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When prospective homeowners venture into suburbia from New York City, they tend to rejoice at the sight of sparkling lakes and streams, rolling hills and forested vistas; homes boasting "lake views" or a "babbling brook" consequently command premium prices. So it is often a shock to discover that the very qualities homeowners seek to acquire may cause the imposition of significant limitations on the use of their property.

Tom and Ellen, for example, bought a newly-constructed contemporary from a developer of national repute in a northern Westchester subdivision. The two-acre property seemed enormous to them after leaving their Manhattan apartment, but they noticed that the house was set far back to the rear of the premises where the land dropped precipitously to what appeared to be a "wooded area." When they decided to build a wrap-around deck on the remaining level portion of land so their three-year-old son could ride his tricycle safely, they encountered the meaning of the term "environmental restrictions," a phrase they vaguely remembered their lawyer mumbling at the closing.

It turned out that the Subdivision Map specifically prohibited further construction on their lot, which represented a compromise between the Planning Board and the developer. The house was sited precisely on the portion of property where construction was authorized, while the rest of the land, particularly that "wooded area" in the back, consisted of wetlands or wetland buffer area.

At first, Tom and Ellen didn't understand what wetlands had to do with their application to the Building Department. But they quickly learned they could do nothing at all due to the Notes on the Subdivision Map, and that only the Planning Board had the authority to revoke or revise the prohibition. The town had also subsequently enacted a Wetlands Ordinance which prohibited construction within

300 feet of a wetland buffer, rendering an application to the Planning Board costly, time-consuming, and doomed to failure. Having spent over \$750,000 for their home, Tom and Ellen were amazed that building a simple wooden deck for the recreational and safety needs of their child was an unreasonable expectation.

In Peter and Leslie's case, when the young couple hired a construction crew to repair their driveway, they were served with a Summons and Notice of Wetlands Violation by the Building Inspector for neglecting to obtain a wetlands permit. Peter and Leslie had no idea they needed permission to repair their driveway, much less that they needed to obtain a wetlands permit, particularly since they didn't know there were wetlands on their property! The local newspaper reported the story, referring to them as "environmental bandits" and causing them deep distress and humiliation, as well as obliging them to pay the town a fine of several hundred dollars.

But the anecdotes related here are not intended to frighten readers. Rather, the objective of this column is to alert and enlighten so that homeowners may avoid unpleasant surprises. The first and most important protective device is the retention of a lawyer knowledgeable about real estate as well as land use and environmental law. Many purchasers "shop around" trying to find an attorney who charges the least, but a low fee may indicate that the attorney intends to spend minimal time on the transaction, or worse, is inexperienced and therefore unaware of how much time must be invested. Either way, the client may find that the cheap way is actually more costly in the long run.

Second, each municipality enacts its own environmental regulations, from wetlands and water course laws to tree-cutting ordinances and beyond. In addition, the County Department of Health regulates septic approval, often in conjunction with the New York City Department of Environmental Protection; and the

New York State Department of Environmental Control regulates state wetlands. Accordingly, homeowners are advised to visit Town Hall and obtain a copy of the local environmental ordinances from the Town Clerk, often available at no cost.

Third, it is crucial that no alteration of the premises occur without approval from the appropriate authorities. Since the Building Inspector, Wetlands Officer and Wetlands Commission possess wide discretionary enforcement powers, homeowners should discuss plans with local officials before commencing work.

Finally, find out what you need to know from the experts. Determining whether wetlands exist on one's property, for example, can be problematic. Hiring professionals with the expertise to accomplish a homeowner's goals is often the most expeditious approach.

Just as zoning ordinances are designed to keep the "pigs out of the parlor," environmental regulations protect property values by ensuring that the quality of life homeowners acquire, along with the bricks and mortar of their dwelling, is not negatively impacted. Future columns will focus on issues such as the New York City Watershed Agreement; the Bond Act of 1990; and the federal, state and local initiatives to make the waters of the Long Island Sound and the Hudson River "fishable and drinkable."

Jessica Bacal is a Columbia Law School Graduate who maintains a general practice of law in Westchester County, with emphasis on real estate and land use. An elected official of the Town of Lewisboro, she previously served as Planning Board Chair and Conservation Advisory Board Chair, and continues to be an adjunct Professor of Law at Berkeley College, where she was also the Assistant Dean of the Evening Studies Program. Ms. Bacal is of Counsel to the firm of Banks Graen Shapiro & Gettinger, LLP in Mount Kisco, New York.

