

The case for freehold townhouses

They could increase affordability, but that won't happen until the Land Title Act is changed

BY BOB RANSFORD, SPECIAL TO THE SUN AUGUST 20, 2011



The three town houses built by Art Cowie at 33rd Avenue and Cambie were required to have a one-inch space between them.
Photograph by: Glenn Baglo, PNG Files, Special to The Sun

B.C.'s land title laws are standing in the way of Vancouver welcoming a form of housing that could add to diversity in the city and help to improve housing affordability.

Throughout Eastern Canada, the U.S. and much of the rest of the world, row townhouses owned as freehold property have existed for centuries.

Victoria has been asked to change the law that is preventing Vancouver from seeing this form of housing become commonplace here, but the provincial government is slow in responding.

Freehold or fee-simple-owned attached zero-lot-line row houses are a common form of inner-city and suburban housing both new and old - almost everywhere except Vancouver. This form of housing uses land more efficiently than probably any other form of ground-oriented housing - housing in a form that has direct access from the street.

Typically, a row townhouse is a two or three-storey single-family home attached to other townhouses. It is usually built along a street with its own front and rear entries. In most other places in the world, the townhouses are built so that owners can buy the individual unit. They typically own the entire footprint, including any front or rear yard.

We've seen row houses in Vancouver, but with the exception of one experimental project, all are owned communally as condominium homes under B.C.'s Strata Property Act, rather than outright in a freehold form under the Land Title Act, like most detached housing.

The freehold form of ownership is often viewed as a superior form of ownership, as the homeowner feels he or she truly owns a piece of real estate from top to bottom, rather than owning a right to a limited defined area and then sharing in the ownership of all of the common property, like most condominium developments. Freehold ownership allows owners to determine how they use and maintain their own properties, often including yards, without the complexity of a governing strata corporation.

But these townhouses don't exist in Vancouver. That's because B.C.'s Land Title Act is missing a crucial provision that allows adjoining neighbours to register an agreement on the property's title that governs how they jointly deal with the common wall - or "party wall"

- they share.

The late Art Cowie, who was a Vancouver MLA, city councillor, Park Board commissioner and professional planner, worked tirelessly before his death more than a year and a half ago to make freehold row townhouses a reality in Vancouver. He went out on a limb and assembled a couple of singlefamily lots on Cambie Street at 33rd Avenue and went about building three row townhouses to showcase this form of housing.

Before he could get final approval to start the project, the visionary Cowie ran into a problem. City lawyers weren't prepared to allow the three units to be attached to each other. They would have to be built with a one-inch space between them, each with its own free-standing concrete firewall. Each unit had to be designed and built as an individual building, adding to the construction cost.

An arcane deficiency in the B.C. Land Title Act caused the city to require this convoluted approach to building row townhouses.

The act doesn't provide for a legal agreement, spelling out the maintenance and use of the party wall, to be registered as a "positive covenant" on the property's title to ensure in perpetuity that current and future owners are obligated by the party wall agreement.

"Negative covenants" can be registered on title, but positive covenants can only be registered if they are registered in the name of a municipality, which can then, in theory, enforce them. A positive covenant states on title what owners are required and obligated to do, such as maintaining a party wall and the wires and pipes that run through it. A negative covenant is a statement on title saying what owners can't do.

Over the past few years, a few other B.C. municipalities have allowed true attached freehold row townhouses to be built. The municipalities have become signatories to special positive covenants to bring the party wall agreement into effect. These covenants have been registered in favour of the municipality. As far as I know, none of those covenants has yet been tested in a dispute between owners where the municipalities, as a party to the covenant, would be stuck in the middle of that dispute.

The city of Vancouver has refused to follow this cumbersome workaround deficiency in the Land Title Act. First, such a process likely exposes the city to some liability in enforcing a positive covenant.

This process also requires a whole new bureaucracy to administer party wall agreements for what could potentially be hundreds if not thousands of these homes, if freehold row townhouses are a housing form made available in Vancouver.

Instead, the city has requested that the provincial government amend the Land Title Act to include a provision that allows owners to register positive covenants for party wall agreements that will forever be attached to the title of the land. Alberta, Saskatchewan and Manitoba already have such legislation.

The city originally made this request to the province in 2008.

Last week, a spokesperson for the Ministry of Forests, Lands and Natural Resource Operations told me that the ministry has been working with the city of Vancouver and other stakeholders to understand the issues related to freehold row housing and to ensure an appropriate legal and policy framework is in place to support interested municipalities.

The spokesperson said discussions are still in a "preliminary consultation phase", which will continue into early fall 2011.

Preliminary consultation? That's slow progress after three years. If Vancouver is ever going to see this form of housing that's ubiquitous in many other cities, things are going to have to move a little faster.

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