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WFN LEASES



P O R R E L L I L A W
Working for you

WFN LEASING AND LAND DEVELOPMENT

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1. INTRODUCTION

- Reserve land development and conveyancing represents large part of our practice
- Office is on the Westbank First Nation reserve
- Member and past chairman of WFN Economic Development Commission

- Projects I've worked on include :
 - Royal Heights, a 33 lot subdivision in West Kelowna Estates in the early 90's
 - many manufactured home parks
 - More recently (for developer or Band Member):
 - Aria, 175 unit condo on 2 Eagles golf course
 - Home Depot/Canadian Tire development
 - Anthem's Superstore development
 - Sunrise Estates, 100 homes
 - Sage Creek, 270 unit modular home development
 - Vintage View, retail/hotel development (Tim Hortons, Best Western)
 - big box development on the Adams Lake Band

continued...

- Gaspari's Westside Landing (OK Tire, Wagners Maytag)
- Copper Sky, 536 unit condo development
- Tesoro Arca, 85 unit townhouse development
- Synatan, Winners/Future Shop site in Westbank
- West Harbour , 200 homes lakefront development
- Cottages on Osoyoos Lake (285 units proposed)
- Sears Home Centre
- Lakeview Lodge, 100 bed Residential Care Facility

Many other developments on Westbank First Nation and other reserves in BC, in various stages of development

2. WESTBANK FIRST NATION

- Development on this Reserve exploded few years ago
- 2010 tax assessed value of buildings was \$1.12 billion
- Building Permits average about \$50 million a year
- Over 300 businesses located on WFN
- Recent explosion of growth started with the Hub Centre with Home Depot as the anchor
 - First Canadian Title insured Headlease: a first in Canada on Reserve
- Followed by other large multinational and national operators: Walmart, Canadian Tire, Staples, Superstore, London Drugs, Future Shop, Winners, etc.
- Broken ground on the new Okanagan Lake Shopping Centre (8 cinema Landmark movie theatre, Shoppers Drug Mart, 2 banks, etc.)

- WFN is blessed in that it has:
 - sound, stable, progressive Self-Government
 - nationally recognized leader in Chief Robert Louie
 - membership that, for the most part, favours development
 - large amount of urban, undeveloped prime land, adjacent to or intersected by a highway, access to services, often highway , waterfront or lakeview
 - an Economic Development Commission (first Band in Canada with an EDC we are told)
 - About 10,000 non-natives living on WFN lands
 - Growth has far outstripped that of surrounding areas and most of B.C.

COPPER SKY



3. RESERVE LAND “101”

- Reserve Lands are generally held in the name of Her Majesty The Queen (the “Crown”) for the benefit of the particular First Nation
- Generally there is no concept of “Fee Simple” and most Reserve lands not registered in any Provincial Land Title system (Lakeridge is exception)
- Primarily 2 types of interests in Reserve lands:
 - Community lands: Band lands, not allotted to a specific member
 - CP or Certificate of Possession lands: lands where individual Band members have been granted rights of possession under the Indian Act

- CP lands also known as “Locatee lands” because “location tickets” were issued to CP holders under an earlier version of the Indian Act (prior to 1951)
 - so CP holders are referred to as “locatees”
- Majority of WFN lands are locatee or CP held lands
- The Indian Act being a very paternalistic piece of legislation prevents First Nations from freely dealing with their lands
 - their CP can only be transferred to the Band or another Band Member
 - so generally the way a non-native obtains an interest on Reserve is through a lease

- Reserve lands are generally NOT registered in any provincial land title system - registered in the Indian Lands Registry in Ottawa:

- so the safe guards that the Provincial Land Title System provides are not generally available on most reserves for CP lands

- Westbank First Nation is an exception in that it recognizes priority of registration

- and gives priority over unregistered interests

4. LEASING PROCESS ON RESERVE LANDS

- Process of gaining an interest on most Reserves by a developer usually quite a bit more complicated than freehold
- Distinction between the WFN and almost all other Bands because WFN has Self-Government

A. Typical Leasing Procedure (NON-WFN Lands)

- Developer enters into agreement to lease with the Band or Band Member
- An application is then made to the Department of Indian Affairs in Vancouver to lease the lands
- On most Reserves, if lease more than 49 years, requires a majority vote of the Band membership to approve it (even if CP lands)
- As part of the application process, the applicant submits an appraisal of the property, environmental assessment, technical drawings, surveys, etc.

- The applicant's lawyer usually negotiates the form of lease with Indian Affairs (Department of Justice)
- The Band is consulted and the Band Council approves the lease by resolution
- Ultimately (hopefully) the lease is signed by the Developer, Band Council, Canada and the locatee and submitted for registration in the Indian Lands Registry, Ottawa
- Whole process can take a long, long time (years)
- Add another year or more for the process if Band Land (vs. CP Land)
 - land must first be surrendered and Designated for leasing

B. WFN Leasing Process

- In 2005, Canada and WFN signed Self-Government Agreement
- Among other things, took land management and development away from Indian Affairs
- Headlease is directly with the Band member (or the Band if Community lands), not Her Majesty The Queen
- No dealings with Indian Affairs
- No appraisal required
- No band vote required (unless Community lands) regardless of the length of lease
- Free to tailor your own form of Headlease that is more protective of lessee's and sublessee's
- Generally a much, much quicker process, resulting in a more secure lease

5. STRUCTURE OF LEASE

- For most reserves, the Headlease is between Her Majesty The Queen and the Developer
- INAC has some 55 forms of formatted leases
- WFN, it's between the locatee or Band and the Developer and the parties are free to negotiate their own form of “tenant-friendly” lease

- Important points in the lease:
 - **Term:** For residential developments in B.C. the **99 year lease** has been become the gold standard (for most bands this means a majority membership vote)
 - **Payment of rent:** The rent **PREPAID** up front again the gold standard for Reserve development
 - that is, all the rent owing is paid up front so there can be no termination for failure to pay rent

- Historically there are many Headleases (in manufactured home parks for example) where rent isn't prepaid
 - rents a percentage of revenue and reviewed every 5 years
 - this model is no longer very popular
 - in residential subdivisions banks won't finance
- Most successful, secure residential leases fully prepaid for a 99 year term
 - to my knowledge, every WFN residential subdivision has a 99 year prepaid Headlease

SECURE LAND REGISTRY: WFN

- Most Bands in Canada utilize a system of recording in the Indian Lands Registry in Ottawa which is not entirely accurate or secure
- Effective November 5, 2007, the Westbank First Nation passed regulations pursuant to its Self-Government Agreement and Constitution which among other things:
 - Made all registrations mandatory
 - All prior interests are protected
 - Registered interests will have priority in order of registration
- Westbank First Nation uses electronic registration of documents which is quick and efficient

6. PROPERTY TRANSFER TAX

- No Property Transfer Tax generally (except Lakeridge Park)
- Doesn't disqualify you from PTT First Time Exemption in future

7.SUMMARY

- On WFN land you can generally be assured of a secure lease:
 - protection that the WFN Self Government, Constitution and leases provide
 - fully Prepaid 99 year headleases
 - efficient Westbank Lands Register which recognizes priority of registered leases and subleases
 - generally, no Property Transfer Tax

Thank You

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