
EVEREST

Pages 2 through 155 redacted for the following reasons:
- -
s.14

Dec 2010

Date

Non-Responsive

- ~~Hamilton~~ - subdivision - mailboxes
- mailboxes claimed to be building - court said now
- easements assigned to mailboxes as "buildings" would have been
- all registered
- Condominium Act - allows subdivision of buildings

Columbia Shipbuilding - Sec 73.
Licences not registrable - not an interest in land
Lease of storage sheds in apartment licences - People were buying them & CS wanted LTSA to stop it - ~~CS~~ Land use the

edial

Page

Page

Non-Responsive

Mega M. sked leases.
pressure in chrpmnt
protecting investors, providing certainty
purchasers not knowing what they
are purchasing

AUG 2014

Bradley, Jay FLNR:EX

From: Hagan-Braun, Nathan AL:EX
Sent: Tuesday, November 24, 2009 3:54 PM
To: Parnell, Grant AL:EX
Subject: Accepted: Confirmed: Conference Call re MLA Abbott 73 Land Title Act

Pages 159 through 186 redacted for the following reasons:
- -
s.14, s.15(1)(g)

Bradley, Jay FLNR:EX

From: Bradley, Jay FLNR:EX
Sent: Tuesday, October 4, 2011 9:21 AM
To: 'Jeff Mitton'; 'Brenda Gibson'
Subject: leases under section 73.3 of the Land Title Act

Follow Up Flag: Follow up
Flag Status: Flagged

Hello Brenda and Jeff,

After nearly a month of being away from the office (annual leave), I am wanting to follow up on the status of your review concerning our policy referral of "leases under section 73.3 of the *Land Title Act*" (Policy Analysis Report (May 2011).

Brenda, you had indicated in early August that you wanted to consider the policy issue further and suggested that a preliminary working session with Mr. Colin Stewart (legal counsel for Columbia-Shuswap) might be appropriate. You had spoken with the Columbia-Shuswap Regional District and had placed a call in with Colin to set up a session.

Jeff, if I recollect correctly this policy matter was referred care of you to the LGMA Approving Officer's group.

I'd appreciate your letting me know where things are at this time, as it would be very helpful to have both an Approving Officer's and local government's perspectives for the policy development. Please feel free to jot me an email or call.

Many thanks,

Jay
250-387-9556

Bradley, Jay FLNR:EX

From: Trotter, Ward AL:EX
Sent: Sunday, May 9, 2010 12:30 PM
To: Hagan-Braun, Nathan AL:EX
Subject: LTA

Hi Nathan

A follow up from our meeting a week ago on this file.

1 - would you follow up with registrar as discussed to see if a decision has been made.

s.13 I am thinking that your office may keep such a tracking sheet

Ward

Pages 189 through 199 redacted for the following reasons:
- -
s.14

Bradley, Jay FLNR:EX

From: Bradley, Jay FLNR:EX
Sent: Tuesday, September 27, 2011 9:03 AM
To: Munro, Rosalina
Subject: RE: Request for Consultation: s.73(3) of the Land Title Act

Follow Up Flag: Follow up
Flag Status: Flagged

Hello Rosalina,

I'm just checking in to see how your review of the "building shed lease" policy issue is coming along, as referenced below. Do you have a status update that you can provide?

Thanks,
Jay

From: Munro, Rosalina FIN:EX
Sent: Thursday, June 9, 2011 11:18 AM
To: Bradley, Jay FLNR:EX
Cc: Sinkwich, Jill D FIN:EX
Subject: FW: Request for Consultation: s.73(3) of the Land Title Act

Hi Jay,

Jill Sinkwich has forwarded your email to me as the analyst responsible for the Real Estate Development Marketing Act.

I will be in touch once I get a chance to review the materials you have sent us.

Cheers,

Rosalina Munro
Policy Analyst | Ministry of Finance | (250) 356-5923

From: Bradley, Jay FLNR:EX
Sent: Wednesday, June 8, 2011 3:46 PM
To: Sinkwich, Jill D FIN:EX
Subject: Request for Consultation: s.73(3) of the Land Title Act

<< File: Copy of Letter to L. Blaschuk, Registrar, Kamloops LTO (Apr 27 2011).pdf >> << File: Discussion Paper (May 26.11).docx >>

Subject: **The implications of Section 73(3) of the *Land Title Act* on building leases.**

Hello again, Jill.

Further to my note below, I am sending herewith a "policy analysis report" in response to a specific issue that was raised in a letter to the registrar from s.22 which letter is also attached.

s.22 letter concerns section 73.3 of the *Land Title Act* as it relates to the development of a recreational vehicle resort in the Columbia-Shuswap Regional District.

I would be curious to learn of your Ministry's perspectives on the broader policy options that are being assessed, to deal with building leases that could result in the *de facto* subdivision of lands. The option to amend the *Real Estate Marketing and Development Act* may be of particular interest to you, as it is administered through your Ministry.

I look forward to learning your advice and feedback.

Jay Bradley
Ministry of Forests, Mines and Natural Resource Operations
250-387-9556

From: Bradley, Jay FLNR:EX
Sent: Tuesday, June 7, 2011 4:10 PM
To: Sinkwich, Jill D FIN:EX
Subject: Policy Development: Request for Consultation

Subject: **The implications of Section 73(3) of the *Land Title Act* on building leases.**

Hello Jill.

I am a Land Policy Analyst with the Ministry of Forests, Mines and Natural Resource Operations, with a primary focus on the *Land Title Act*. Currently, our policy group is working on analyses of various policy issues, some of which may lead to legislative amendments.

One policy issue for which options are being developed may impact the *Real Estate Marketing and Development Act*. As I understand your Ministry is responsible for this legislation, I am contacting you to initiate consultations, and learn from you any preference for materials and timeframes to accommodate this.

I propose to send you a Policy Analysis Report and supplemental material that is prepared for the captioned policy issue, which report presents our analysis of options to date. If you are amenable to this approach, I'd request that you review the report and provide feedback from the perspective of your Ministry's interests.

Please let me know if this proposed methodology or any other would work for you.

Sincerely,

Jay Bradley
250-387-9556

Pages 202 through 237 redacted for the following reasons:
- -
s.14

30 Nov 09

s.14

Nathan's black book

notes

for FOI request

originals

Meeting on. 73(3) issue — Date 30 Nov 09.
- Westbeach issue

Jay Simons
- residents raised concerns

s.22

s.22

- looking at property
- wasn't zoned until 2005
- previously RV park.
- in 2005 zoned as commercial 1
- dev't contains restricted use
- amended dev'd lease for storage bldgs
- doing this to take adv. of s. 73 to ~~exclude~~ bring themselves into the exemption for subdivision.
- they embedded various licences within the lease doc.

- don't want those types of dev'ts to proliferate w/o approval of Province and/or local gov't

s.14

Date

s.15(1)(g)

s.15(1)(g)

- This issue is systematic
  - avoidance of public interest considerations in subdivision
- what could be done?
- proposal for having it complaint driven
- could we define a building
  - eg occupancy permit; min ft^2

s.14

Non-Responsive

Charge interest
- Real Estate + Dev's Mktg Act
- this is a big concern

Page

Date

- Unsure that ordinary purchaser would realise that they don't own an RV lot.

- So it is legally very tricky

- Can the LTSA (registrar) inter the purpose just from the submitted plan

- Forwarded email to Allan

Page

s.14

Date 29 Apr '10

s.14

~~[illegible]~~

Non-Responsive

- There is a related issue w/ Strata around subdivision approvals

- need a more thorough look at policy implications & legislative linkages

- real question is about managing subdivisions
  - people are trying to avoid subdivision.

- has the registrar already made a decision
  - have they accepted the registration.

- can we provide policy direction to LTO/ registrar about taking narrow interpretation of the "purposes"

s.14

Pages 244 through 254 redacted for the following reasons:
- -
s.14

KAMLOOPS The Daily News
YourNewsNow.ca

FRIDAY MAY 06, 2011

SUBSCRIPTION OPTIONS

PRINT EDITION»
Includes free digital edition

DIGITAL EDITION»
Print format with enhanced features!

MOST READ | MOST DISCUSSED

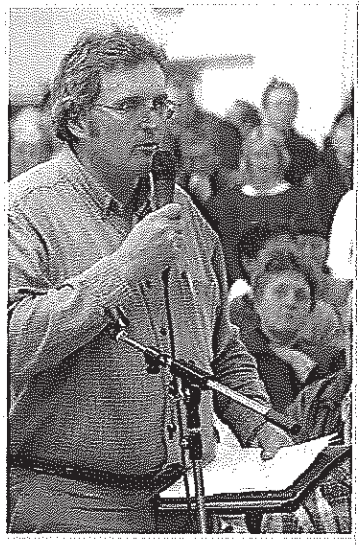
Mine could provide tax windfall for City
Fiery car crash deemed suspicious
Judge doesn't buy drunken man's excuse
Police seek driver whose truck hit 11-year-old girl
HST costs us $350 more on average: report

QUESTION OF THE WEEK

THE **MIKE RINK** STORY

A different kind of builder

DECEMBER 4, 2010
BY CAM FORTEMS
DAILY NEWS STAFF REPORTER



RINKFILE.JPG
MIKE RINK is described as a developer with a vision who likes to build big.

Mike Rink and his wife Marnie McEachern arrived in Kamloops from Regina 30 years ago in a pickup full of tools and pulling a trailer

Over the next 25 years, Rink would progress from building single-family homes to developing some of Kamloops most recognizable buildings, moving people downtown and growing a successful company.

A decade ago his buildings were pushed into foreclosure; he went through personal bankruptcy five years later.

But amid failure, Rink was rebuilding, boldly banking on a recovering B.C. economy and demand for everything from seniors' condominiums to resort properties and housing units aimed at empty nesters.

Today, Rink and McEachern's companies are again in a financial crisis, affecting everyone from banks to hundreds of subcontractors left unpaid from projects in Kamloops, the Shuswap, Okanagan and Squamish.

In a three-part series, The Daily News looks at Rink's roots, his building legacy, troubled financial history and how he grew so big, so fast after bankruptcy.

Today: Mike Rink's imprint is all over Kamloops but he was never far from financial turmoil and controversy.

Monday: In his wake, Rink's financial problems brought grief to many of those who worked for him.

Related Links:

- Rink firms seek more refinancing time

Tuesday: Too big, too fast? New Future Building Group had few financial limits until it ran into the Great Depression.

***

They don't have his name on the exterior, but for anyone who has watched Kamloops' skyline silhouette grow over the past two decades, Mike Rink's signature is all over his buildings.

Typically earth tones or pink, projects built by Rink's New Future Building Corp. make extensive use of stucco on the exterior and have a desert-influenced, Mediterranean style, harkening back to the Plaza Hotel, one of the city's grandest buildings.

Arguably one of Kamloops' biggest builders from the 1990s onward, Rink became a household name when he made an ambitious but ultimately unsuccessful attempt in 1999 to partner with the City of Kamloops in a convention centre project for Lorne Street across from Interior Savings Centre.

In the space of 10 years, after moving here from Regina in the early '80s, Rink went from managing his parents' Travelodge and doing small construction projects to promoting a 250-room Hilton hotel, condominium project and 1,500-seat convention centre that would have required heavy annual subsidies from taxpayers.

That ambitious concept came on the heels of several successful multi-family projects constructed during a building boom in the early 1990s.

It was also a major triumph for Dave and Jean Rink, Mike's parents, who moved to Kamloops in 1979 to purchase the downtown motel. Several years before, they had temporarily lost their eldest son to one of North America's infamous cults.

Mike Rink confirms that as a young man he was a member of the Unification Church, whose followers were known as Moonies after their leader, Rev. Sun Myung Moon.

Rink's sister, Ann Sheridan, said Mike spent 10 months in San Francisco in the mid-1970s working with the church.

She said she recalls her mother and Rink's first wife, who was pregnant at the time, "pleading for his release" on a San Francisco television station.

Mike's father and brother Perry went to California in an attempt to "kidnap him," Sheridan said. But that also failed.

Eventually Mike came home to Regina, but the family wanted to ensure he wouldn't go back.

"My parents paid $25,000 for a deprogrammer (therapist trained in cult techniques) to come up from New York to convince him not to go back to the Moonies."

Rink said he doesn't hide the fact he was a follower of the church, adding that was more than three decades ago.

"I was 22 years old. It was an experience and I don't regret it.... I was travelling and that happened.... I'm a person who listens to everyone's ideas.

I'm not afraid of looking at things. It's my nature."

Rink started in construction in Regina doing small jobs, including basements.
He began building houses here and his success got him noticed with realtors and architects, who brought him more work.

That led to his first big project, Arbutus Estates, Kamloops' first gated community overlooking the Thompson River. From there he built a half dozen condominium projects, building his reputation and the company.

Today, after building many of Kamloops' major residential developments, and going through several controversies and financial setbacks, **Mike Rink** lives with his wife Marnie McEachern in a West End home assessed at $500,000.They've raised four children there.

He lives modestly, he says - "I've had the same carpet in my house for 25 years. "

SUCCESS AND SETBACKS IN THE CITY

In 1999, as he worked to convince the City of Kamloops to partner on the joint venture convention centre across from Riverside Park, Rink was also building two major residential projects in Kamloops.

In the midst of a small recession that gripped the province, Rink pressed ahead with the convention centre proposal, even as builders began slapping liens on Victoria Landing and Terravista - two of the largest residential projects in Kamloops worth tens of millions of dollars.

It would become another of his signatures, then and now: pushing ahead with ever-larger development plans despite a slowing and troubled economy - economies that on two occasions within the space of 10 years pushed his projects into financial peril.

"He wants to build every building big and fabulous," said Sheridan, who worked with her brother for two years, in 2004 and 2005, before they parted ways.

But Rink said his failure at Victoria Landing was due to the lender pulling the trigger too early. He said he was in a position to complete the building with another $200,000 loan.

But the lender was backstopped with a Canada Mortgage and Housing Corp. loan. It chose to start foreclosure, which Rink said guaranteed payment through the mortgage insurance from the Crown corporation.

"They (lender) took a $5 million loss, paid for by the government of Canada."
Today, Rink and his wife, along with a family trust controlled by them, face more than $85 million in debts. New Future Group-related firms were forced to seek protection last month under the federal Companies' Creditors Arrangement Act (CCAA) as bills went unpaid.

Controlled by Rink and McEachern, New Future has six Interior B.C. projects and properties, with a seventh

in Squamish. Work has halted on all of them due to a "liquidity crisis," or inability to pay bills and loan demands.

The Kamloops builder wants to restructure projects through the CCAA. Detailed plans and assessments are underway through a special monitor.

Those revamped plans - a bid to right New Future's sinking ship - will be presented to major creditors, including banks and mortgage companies in a process that would see Rink stay at the helm.

Despite various project setbacks, veteran city businessman Frank Walsh said Rink is known in local business circles for his vision.

"You hear it talked about: he's got an amazing ability to take a piece of land, change the concept and make it work."

The City's chief administrator, Randy Diehl, was in charge of development in Kamloops at City Hall in the early '90s when many of Rink's projects were built.

He said even today Rink possesses a creative development vision that has moved more people into the downtown core and North Kamloops town centre.

"He first built at Victoria and Fifth (Monarch Court) when there were very few projects with a mix of commercial and residential."

At Victoria Landing "it was a different kind of project than we'd seen," Diehl said.

"It was more reflective of the Vancouver market at the time.... He has a different creative slant. He's always trying to find ways to make things happen."
That vision has resulted in a portfolio of major projects he has successfully completed. Those include multi-family buildings in Kamloops and seniors' complexes here, in Chase and in Regina.

But some of those projects in Kamloops have not been without controversy.
Kamloops Coun. Jim Harker recalls Rink telling him before a variance hearing four years ago that he neglected to put sundecks on the Renaissance Retirement Concept building he developed on Tranquille Road to protect seniors from falling off.

Rink was forced to go to council after the building was complete because decks were shown in plans approved by the City.
Despite growing public opposition to the subsidy, and until word of his financial troubles at Victoria Landing and Terravista emerged, Rink convinced Kamloops council in 1999 to partner with him and provide what was at first supposed to be a $250,000 subsidy annually for 10 years. That subsidy continued to grow as the deal advanced.

At Terravista, he was later hired as the project supervisor to complete the building by the purchaser who had bought the project from bankruptcy proceedings started when his company couldn't pay its bills.

Another of Rink's sisters, Connie Jameson, who also works in construction, including a redevelopment of the Amelia on Fourth Avenue downtown, said her brother is confident and persistent.

"He's got great vision. He's very forceful, a good talker."

But Jameson also had a falling out with her brother. She said his track record in Kamloops, unpaid debts and controversial development, made it too hard for her to get approvals from City Hall and council.

"It's hard with City council. That's really who stopped me. They didn't stop him."

For the Renaissance, Harker said he didn't like Rink promising one thing and then coming back with another, using safety as the reason.

"I had 30 years in the fire department and I've never seen a senior citizen fall off a deck."

Harker voted against allowing the variance, but the majority of council agreed with planners that it was a mere oversight and granted permission to operate.

Planners also said Rink opted to finish the building in more expensive stucco, rather than vinyl shown on the plans.

At Mission Hill, two highly visible half-finished buildings off Summit Drive, Rink was denied rezoning three years ago due to concerns about traffic and a reduction in typical parking for 220 units at the proposed $70-million residential building.

But with one councillor absent the first time - current mayor Peter Milobar - councillors opted for a second vote and the project received the go-ahead.
City administrator Diehl said Rink's persistence is not unlike that of any successful developer. But his approach is unique.
If his plans are turned down "he'll come back with a creative angle in a different way."

CONTROVERSY AT THE SHUSWAP
While Rink has been successful in Kamloops in convincing council and City Hall of his plans, evidenced by rezoning success, it has been a different story in the Shuswap.

Rink was denied zoning on two projects, including the controversial **West Beach** Village in 2008. The proposed 218-unit resort and marina project became a national issue due to its proximity to the world-famous Adams River salmon run. Hundreds of opponents stacked a public hearing and the regional district

received letters from across Canada begging local politicians to turn it down.

Under that pressure, the **Columbia-Shuswap** Regional District board denied rezoning. Undaunted, Rink opted not to sell the parcel to the province, which wanted to add it to neighbouring Roderick Haig-Brown Provincial Park.
But Rink said he sat down with his wife and staff. While they still believed in the project, all agreed the negative publicity was causing problems.
"It was affecting our projects elsewhere. We called the negotiator and said 'we'll take the offer..... Two days later they said 'Mike, I've been instructed to inform you there's no more discussion and no more offer.'"

He speculates the $18-million appraisal, which he called far too low, was unpalatable to government when it was trying to show an image of restraint.
"This happened after collapse of the world economy... . The idea of spending $18 million... to a lot of people that would have seemed irresponsible. The politics had changed."

With that prospect of picking up $18 million from the province gone, Rink scrapped plans for condominiums and instead continued developing the former waterfront campground on the premise of 199-year leases for RV lots, anchored by a storage garage and deck - all permitted under the current zoning.
In the absence of any laws preventing it, Rink also put more than 100 buoys in the lake in front of the property, angering environmentalists and local residents.

On the other side of the lake, one of New Future's companies already completed construction on 23 luxury townhouse units at Eagle Bay, called Carmel Cove, before the project was taken to a public hearing for a residential rezoning.

Similarly to its position on **West Beach** Village, the regional district board also denied residential zoning for Carmel Cove. Rink then chose to market the properties under existing zoning, which allowed part-time living, with the remainder for rental, similar to a ski resort.
But financial documents filed by Rink as part of the CCAA process show only two units, plus a quarter interest in another, have been sold. They were marketed at the real estate peak two years ago at $1 million each.
Carmel Cove has $22.8 million worth of debt registered against it. Another $500,000 is owed to suppliers and for unpaid taxes.
West Beach Village has $15 million worth of debt to lenders. Another $1.7 million is owed to contractors for work done on the property.

Rink's vision wasn't restricted to Kamloops and the Shuswap. At the same time he was applying for rezonings and developing projects here, he was also buying up property in the Okanagan and Kootenays for resort projects and developing another senior housing centre in Squamish.

All were in various stages, from construction to bare land, when the worldwide downturn happened late in 2008. New Future had 125 employees.
Today he has five and is trying to restructure and convince creditors to give New Future another chance.

Mike Rink provided comments on a number of aspects of this series, but declined an in-depth interview with The Daily News. He submitted the following written statement:

"Our company is working very hard to ensure the appropriate steps are taken to complete the projects we have on the go. We are doing so in the most disciplined fashion through the courts and with a courts delegated observer overseeing our work. At a later date, we will have more information to announce."
cfortems@kamloopsnews.ca

RINK BROUGHT LIFE TO DOWNTOWN

Since he began developing major residential and commercial buildings in the mid-'90s, Mike Rink's New Future Group has made a long lasting contribution to Kamloops' downtown.

The company boasts it has constructed 500 homes, the majority of them in Kamloops where the company is headquartered.
The list starts with Monarch Court, at Seventh Avenue and Victoria Street, which reintroduced to a neglected downtown core the commercial-residential mix favoured by City planners.

Another notable building in the city's core is Desert Gardens Seniors Centre, which burned down New Year's Eve, in 1996, when it was largely completed.
Construction began anew the following spring. Today Desert Gardens stands as a successful downtown seniors residential and recreation centre, bringing more residents downtown who walk to services and shops, boosting the local economy.

In addition to the Victoria Landing tower downtown - the only residential tower built here in the past two decades - Rink also built the Terravista condos just east of downtown. Beside that development, and in a similar architectural style, he constructed the Loma Bella project directly to the east.

He also developed the retail and office commercial building at 348 Victoria Street.

Outside of downtown, Rink companies are responsible for a phase of Arbutus Estates, which New Future calls Kamloops' first gated community, as well as the North Kamloops Renaissance Retirement building, which brought more people to the North Shore town centre.

NOTE: To post a comment in the new commenting system you must have an account with at least one of the following services: Disqus, Facebook, Twitter, Yahoo, OpenID. You may then login using your account credentials for that service. If you do not already have an account you may register a new profile with Disqus by first clicking the "Post as" button and then the link: "Don't have one? Register a new profile".

The Kamloops Daily News welcomes your opinions and comments. We do not allow personal attacks, offensive language or unsubstantiated allegations. We reserve the right to edit comments for length, style, legality and taste and reproduce them in print, electronic or otherwise. For further information, please contact the editor or publisher, or see our Terms and Conditions.

Disqus could not be loaded because it is not being loaded from a trusted domain.

blog comments powered by DISQUS

Pages 260 through 293 redacted for the following reasons:
- -
s.13, s.15(1)(g)
s.14
s.3(1)(j)

Jay Simons

From: Jay Simons
Sent: Tuesday, September 08, 2009 11:48 AM
To: Andrew McLeod; Andrew Webber; Andy Swetlishoff; Bob Finley; Bob Lapham; Bruce Simard; Christina DeMarco; Dan Plamondon; Debbie Kunz; Don Turner; Geoff Garbutt; Gord Simmons; Hugh Sloan; Jason Llewellyn; Jay Simons; Judy Skogstad; Mac Fraser; Mark Andison; Mike Irg; Mike Tippett; Pamela Duesling; Paul Thompson; Ramona Mattix; Rick Brundridge; Rob Smailes; Steven Olmstead; Terry Mceachen; Tom Anderson; Tom Knight
Cc: Debbie Bobocel (dbobocel@csrd.bc.ca); Graeme Fraser; Jan Thingsted (jthingsted@csrd.bc.ca); Jay Simons (jsimons@csrd.bc.ca); Jennifer Sham; Julia Dykstra; Kathy Gilbert (kgilbert@csrd.bc.ca); Marcin Pachcinski (mpachcinski@csrd.bc.ca); Marrianne Mertens (mmertens@csrd.bc.ca); Sharen Berger (sberger@csrd.bc.ca)
Subject: RV lot leases in Commercial zone

The purpose of this email is to obtain information and possibly initiate discussion regarding what appears to be a loophole in the Land Title Act that is being exploited by developers to circumvent the requirement to register subdivisions, and thus has the potential to neutralize that tool as a control over density and erase the difference between residential and commercial uses.

The Land Title Act s. 73 requires the registration of a plan of subdivision. However, leases of buildings are exempt from these requirements pursuant to s. 73(3). The purpose of the exemption is to keep shopping centre and other commercial building leases out of the requirement for subdivision. It appears now that this is being used to effect division of land parcels by tying land rights to building leases by either providing for the lease of part of a building with the right to occupy a portion of the land, or actually building small buildings on the land and leasing them with the right to occupy an associated portion of the land. One manifestation that we at the Columbia Shuswap RD have encountered is the building of a number of storage sheds on the land that are then leased for a very long term with the right to occupy an RV site. The effect is to provide the right to occupy the RV site for residential use without the need for either a strata or subdivision, although the users may have to effect an absence for a few days to argue that they were not using the land residentially. We have heard of an attempt to build mailboxes and lease them with the right to occupy a portion of the land that was rejected by the Land Title Office, but then in another case a building was divided into lease portions that carried the right to occupy an RV site and the Land Title Office accepted registration of the long term lease.

If you have any information regarding such arrangements in your or any other jurisdiction or would like to discuss the issue further, I would ask that you contact me.

Our expectation is that, if this is developing into a widely used loophole, the matter can be brought to the attention of the provincial government, possibly through the UBCM.

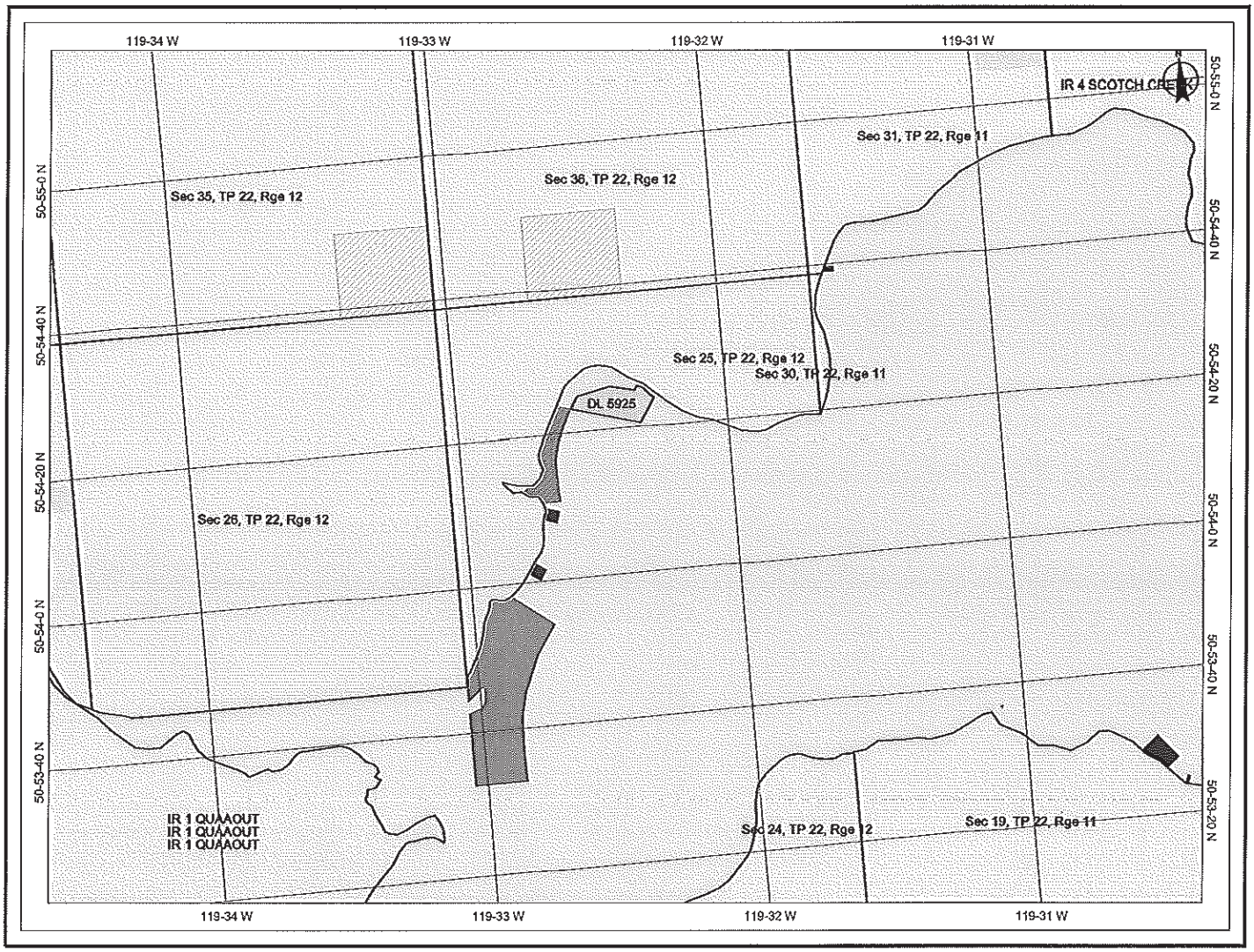
Thank you for your time.

J. Jay Simons B.E.S, M.C.I.P.
Manager, Development Services
Columbia Shuswap Regional District
781 Marine Park Drive NE
Box 978
Salmon Arm, BC, V1E 4P1
Phone:250 832-8194
Phone direct 250 833-5919
Fax:250 832-3375
Toll Free:1 888 248-2773
Email:jsimons@csrd.bc.ca
Web:www.csrd.bc.ca

Bradley, Jay FLNR:EX

From: CSRD [ir2880@csrd.bc.ca]
Sent: Friday, November 20, 2009 4:39 PM
To: Marianne Mertens
Subject: RV LOT LEASES 2009 9 8

RV LOT LEASES
2009 9 8 _001.pd...


119-34 W
119-33 W
119-32 W
119-31 W
50-55-0 N
50-54-40 N
50-54-20 N
50-54-0 N
50-53-40 N
50-53-20 N
IR 4 SCOTCH CREEK
Sec 31, TP 22, Rge 11
Sec 35, TP 22, Rge 12
Sec 36, TP 22, Rge 12
Sec 25, TP 22, Rge 12
Sec 30, TP 22, Rge 11
DL 5925
Sec 26, TP 22, Rge 12
IR 1 QUAAOUT
IR 1 QUAAOUT
IR 1 QUAAOUT
Sec 24, TP 22, Rge 12
Sec 19, TP 22, Rge 11

RE: Consultation documents LTA 73.1 and RV Shed Leases

Friday, August 12, 2011
2:55 PM

Subject	**RE: Consultation documents LTA 73.1 and RV Shed Leases**
From	Bradley, Jay FLNR:EX
To	'Brenda Gibson'
Sent	Friday, August 5, 2011 8:55 AM

Hello Brenda.

Thank you for updating me on your progress.

I am OK with you sharing the report with Jeff. I agree that his insights would add value to the analysis.

s.22

Kind regards,

Jay

From: Brenda Gibson [mailto:bgibson@ubcm.ca]
Sent: Friday, August 5, 2011 8:47 AM
To: Bradley, Jay FLNR:EX
Subject: Consultation documents LTA 73.1 and RV Shed Leases

Hi Jay:

Sorry for the delay in getting back to you. I've spoken with Columbia Shuswap and have a call in to Colin Stewart regarding the shed leases. Once I speak with him, I'll get back to you to propose a meeting. In the meantime, I would like to share your documents with a local government colleague, Jeff Mitton. Jeff is a Deputy Approving Officer with the City of Victoria, and sits as a UBCM representative on the Land Title Survey Authority Stakeholder Advisory Committee. Given his expertise in the area, we often seek his views on land title matters that come to us, and I think he could add considerable value to the discussion on the shed lease issue — and may be willing to sit on a working group if we decide that is a useful next step.

Are you ok with us sharing your polity analysis reports with him on a confidential basis?

Thanks.

Brenda

Brenda Gibson
General Manager, Victoria Operations
UBCM
250 356-0862

RE: Request for Consultation: s.73(3) of the Land Title Act

Friday, August 12, 2011
2:55 PM

Subject	RE: Request for Consultation: s.73(3) of the Land Title Act
From	Bradley, Jay FLNR:EX
To	Munro, Rosalina FIN:EX
Sent	Tuesday, July 26, 2011 1:30 PM

No problem. Please do so.

From: Munro, Rosalina FIN:EX
Sent: Tuesday, July 26, 2011 11:54 AM
To: Bradley, Jay FLNR:EX
Subject: RE: Request for Consultation: s.73(3) of the Land Title Act

Thanks Jay.

Do you mind if I share that email and attachment with FICOM and Housing Policy?

From: Bradley, Jay FLNR:EX
Sent: Tuesday, July 26, 2011 11:35 AM
To: Munro, Rosalina FIN:EX
Cc: Webber Atkins, Garth FLNR:EX
Subject: RE: Request for Consultation: s.73(3) of the Land Title Act

Hi Rosalina.

I'd be very happy to attend the next meeting; thanks for thinking of me and suggesting that I participate.

Non-Responsive

Jay

From: Munro, Rosalina FIN:EX
Sent: Tuesday, July 26, 2011 11:23 AM
To: Bradley, Jay FLNR:EX
Cc: Gill, Marcus A FIN:EX; Mitchell, Jay FIN:EX
Subject: Request for Consultation: s.73(3) of the Land Title Act

Hi Jay,

On July 13th I attended a meeting with people from the Ministry of Community, Sport and Cultural Development (local government/planners), the Ministry of Energy and Mines (Housing Policy) and the Ministry of Transportation (approval officers). The meeting briefly touched upon the controversial development techniques used in the province. Such as the registration of a building strata plan which is really a bare land strata and the new shed lease issue.

At this meeting it was decided that a briefing note (BN) be drafted on the issue of unregulated subdivisions in order to start the discussion on what is the problem(s) and possible solutions. The Housing Policy branch and a member from the Intergovernmental Relations and Planning branch are going to start the BN. The BN will be shared with all parties involved to solicit input and ideas.

Since the shed lease issue affects all of the ministries above and the Financial Institutions Commission I think it would be best to work through this issue along with the other unique developments in the province as a group. I have had a discussion with the Financial Institutions Commission respecting the shed lease issue and we don't believe this issue can be solved through the Real Estate Development Marketing Act. I hope you don't mind but I have suggested that you be included in the upcoming discussions on all of the unique developments in the province, some of which will affect the Land Title Act.

The next meeting for this group will be on August 23 from 2 to 3:30, a meeting request and call in information will be sent out sometime soon.

Cheers,

Rosalina Munro
Policy Analyst | Ministry of Finance | (250) 356-5923

Concern:

- Local governments are essentially concerned that strata plans are being registered that circumvent local government planning requirements, concerning servicing and access, zoning, environment and safety
- Land in a strata plan is being designated as "limited common property" or "private yard area"; the concern is that, in essence, there is a *de facto* subdivision of land
- Property-owners purchase a building strata unit while believing they had in fact purchased a bare land strata lot.
    - There is resulting confusion for prospective homebuyers: not knowing about *Strata Property Act* and the product they are purchasing

Implications:

- The Approving Officer has no jurisdiction to approve building strata parcels; local government planning concerns are not accounted for
- When these building strata subdivisions occur there is no analysis, or mitigation, of development impacts. For example:
    - Environmental and transportation planning impacts
    - Proof of potable water and septic disposal
    - Ground water impacts
    - Road and servicing impacts
- No provisions for parkland or public amenities
- No payment of Development Cost Charges
- Circumvents the Riparian Areas Regulation; avoids the provision of "public access to water"

Legal Context:

It is important to make some distinctions between the different types of subdivision – the governing legislation and requirements for each type of subdivision can be different. This seems to be the source of confusion for approving officials & consumers.

1. **Generally, there are two broad categories of subdivision** (see the diagram below)

- **the subdivision of land:**
    - *Creates parcels defined on a horizontal plane by reference to survey markers on the land itself.*
- **the subdivision of buildings:**
    - *Creates parcels defined by reference to the floors, walls or ceilings of a building.*
- The requirements for parcels created in buildings are not the same as parcels created on land
    - A "parcel" is defined in the *Land Title Act* as a "lot, block or other area in **which land is held** or into **which land is subdivided**"
        - *Local government planning authority and subdivision controls are intended to apply to parcels created on land.*
    - Zoning & local government planning authority under the *Local Government Act* typically does not extend to parcels created within buildings (building strata)
        - *The exception is if the building has been previously occupied, local government approval is required.*

2. **Subdivisions can also be broadly differentiated by their authorizing legislation:**
- Subdivisions authorized by the *Land Title Act* vs. Subdivisions authorized by the *Strata Property Act*
- The subject problem stems from "building strata" subdivisions of **previously unoccupied buildings** which are authorized under section 241 of the *Strata Property Act* (#7 in the diagram below)
    - These buildings stratas can be created without any local government / Approving Officer approval
    - If a strata plan includes a building that has not been previously occupied, the owner-developer must, on tendering the strata plan for deposit in the land title office, file a certificate from a BCLS stating that the building has not been occupied prior to the date of the certificate.
    - The certificate may not be dated more than 180 days prior to the date on which the strata plan is tendered for deposit in the land title office.
- If the buildings being strata converted are **previously occupied**, local government approval (the "approving authority") is required (refer to s.242 of the *Strata Property Act*)

3. **The establishment and designation of "Common Property", "Limited Common Property", and "Private Yard Areas" is common surveying practice and is authorized for strata plans.**
- Each strata lot must contribute proportionately to common expenses, such as strata fees and special levies.
- The Schedule of Unit Entitlement is a table that shows the portion of costs for a strata lot owner and what they are responsible for.
- If the strata development has 5 or more strata lots, the developer must supply a Disclosure Statement to the owner under the *Real Estate Development Marketing Act.*

Analysis:

Problem 1: Local Government Controls are being circumvented

- The perceived problem stems from "building strata" subdivisions of previously unoccupied buildings which are authorized under the *Strata Property Act*
    - These strata plans can be registered without direct local government approval of the building strata subdivision
    - The strata plans can show the building strata" parcels as well as "common property", "limited common property" and "private yard areas".
        - *Surveyors employing these designations are following standard practices; they are not circumventing the rules.*
    - A "Building Strata" parcel is a volumetric space within a building defined by its walls, floors and ceiling. It is not the same as a lot created on the "surface" of the land, water (water lot) or air (air space parcel), and therefore, does not trigger the same requirements (such as parkland, works and services, etc)
        - *Building Strata parcels are created within a building and are not subject to minimum lot size, etc (which controls relate to land parcels).*
        - *Local Government bylaws can govern the number, size, location and use of buildings situated on a parcel, as well as safety, servicing and environmental considerations*

- Creating a Strata Plan of buildings (that must comply with zoning, servicing and safety requirements of the local government in order to be constructed in the first place) is not a further subdivision of the land. Rather, it enables separate titles to be created for each building unit such that they can be sold / owned separately.
- Example: If zoning permits a maximum of two dwelling units for a certain area of land, both of those dwelling units can be converted into building strata units.

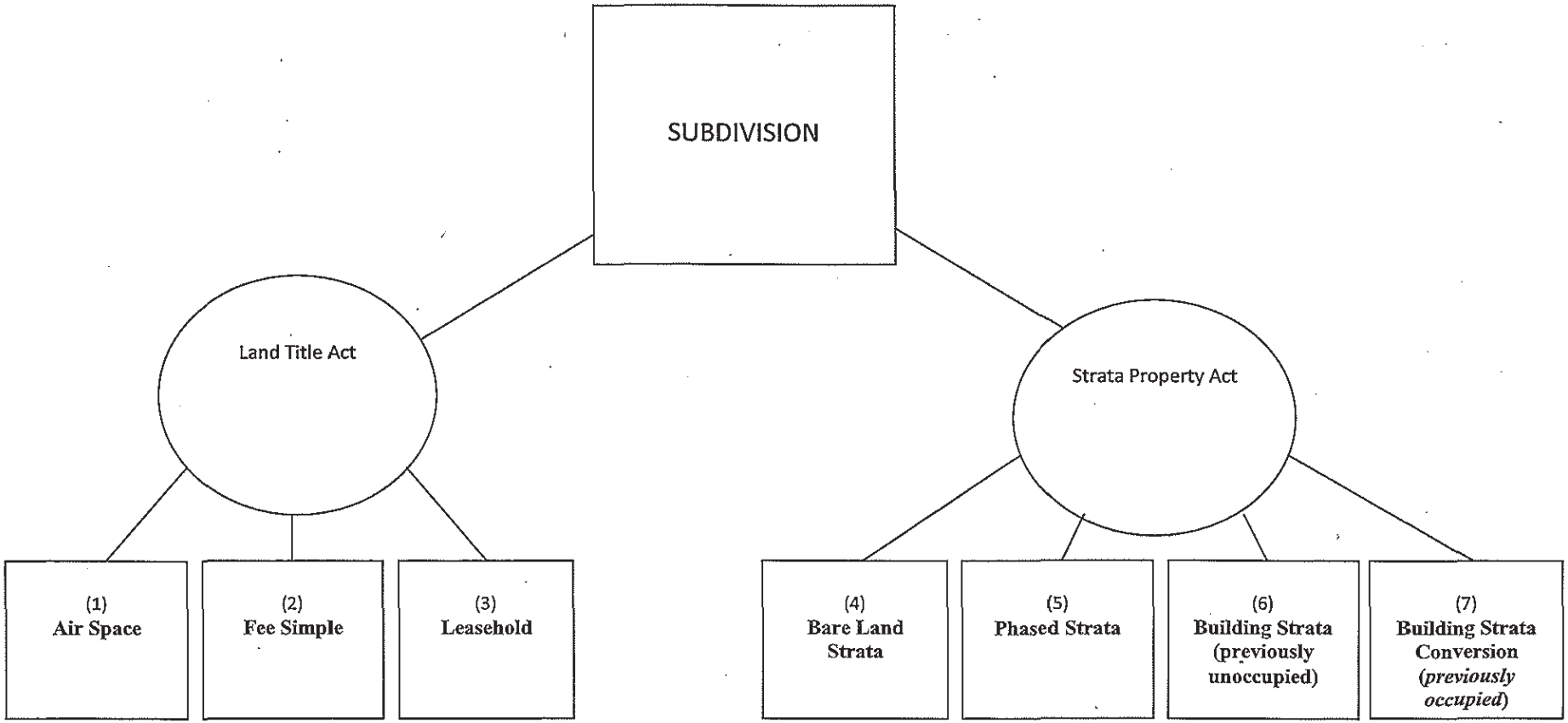
Assessment: Local Government controls are not being circumvented. There is no subdivision of land – only the tenure of buildings which are permitted on the land is being affected. Local Government can / does control the number and type of buildings that are permitted on the land, and the level of servicing that is required.

Problem 2: Purchasers are confused about what they are purchasing

- The problem appears to stem from:
  - Consumer ignorance and lack of education about what is being purchased;
  - Negligence on the part of conveyance lawyers to disclose the requirements and obligations inherent to a strata plan.

s.13

Subdivision Types



Pages 305 through 368 redacted for the following reasons:
- -
s.13, s.14
s.14
s.14
s.14, s.15(1)(g)
s.14, s.15(1)(g)

s.73

Friday, May 13, 2011
2:33 PM

Subject	**s.73**
From	Bradley, Jay AL:EX
To	Hagan-Braun, Nathan AL:EX
Sent	Tuesday, May 18, 2010 1:59 PM

Hi Nathan. When you have a chance would you send me any background info that would be helpful for my review of s.73 of the LTA? It might help me with the basics in order to track down the address / owner or property identifier for a title search.

thx

Pages 370 through 397 redacted for the following reasons:
- -
s.14, s.15(1)(g)

RE: "policy analysis" referral

Tuesday, September 27, 2011
8:56 AM

Subject	**RE: "policy analysis" referral**
From	Bradley, Jay FLNR:EX
To	Gergley, Meagan CSCD:EX
Sent	Friday, June 17, 2011 3:01 PM

Thanks.

From: Gergley, Meagan CSCD:EX
Sent: Friday, June 17, 2011 2:51 PM
To: Bradley, Jay FLNR:EX
Cc: Messenger, Meggin A CSCD:EX; Schmidt, Heike CSCD:EX
Subject: RE: "policy analysis" referral

Hi Jay,

My apologies for the delay in getting back to you. Please follow-up with Meggin Messenger and Heike Schmidt from our Ministry – they are familiar with the issues/interests.

Cheers,
Meagan

From: Bradley, Jay FLNR:EX
Sent: Thursday, June 9, 2011 2:10 PM
To: Gergley, Meagan CSCD:EX
Subject: "policy analysis" referral

Hi Meagan.

I'm hoping you might steer this request in the right direction, towards the policy group / person in your Ministry that might provide feedback on the following issue.
There is an issue in the Columbia-Shuswap Regional District, where a developer is installing small sheds (less than 10 m2) on a property (which sheds do not require a Building Permit and are exempted under the BC Building Code), and then employing s.73.3 of the Land Title Act to register 200-year leases for each building and an appurtenant licence to occupy land. The developer is selling these off at market value.

The local government is concerned that there is a de facto subdivision of land, and the developer is using s.73.3 to circumvent the subdivision requirements that otherwise would apply.

I have prepared a Policy Analysis Report our analysis of options to date. I'd like to learn MCSCD's perspective of these options from the perspective of your agency's interests.

Thanks Jay

Consultation documents LTA 73.1 and RV Shed Leases

Tuesday, September 27, 2011
8:56 AM

Subject	**Consultation documents LTA 73.1 and RV Shed Leases**
From	Brenda Gibson
To	Bradley, Jay FLNR:EX
Cc	jmitton@victoria.ca
Sent	Friday, August 5, 2011 2:48 PM

HI Jay: As discussed this morning, I forwarded your two documents to Jeff Mitton (cc'd above). He has already gotten back to me, and has asked if he can share the paper on LTA 73.1 with an Approving Officer committee he sits on, so I said I'd ask you.

He is also of the view that a working group might be the best way to work towards a solution on the RV shed lease issue and has offered to sit on that group if he is available, s.22 s.22

If you could get back to him on sharing of the one paper I'd appreciate it, and after I speak with Colin, I'll phone you with some ideas about a working group.

Thanks.

Brenda

Brenda Gibson
General Manager, Victoria Operations
UBCM
250 356-0862

Re: Policy Development: Request for Consultation

Tuesday, September 27, 2011
8:56 AM

Subject	**Re: Policy Development: Request for Consultation**
From	Grimmett, Peter FIN:EX
To	Bradley, Jay FLNR:EX
Cc	Mitchell, Jay FIN:EX
Sent	Wednesday, June 8, 2011 4:07 PM

Hello, Jay:

Thank you for the opportunity to comment on possible changes to the Real Estate Development Marketing Act. We also work with the Financial and Corporate Sector Policy Branch (Phone 250 387-1269; E-mail HYPERLINK "mailto:FCSPB@gov.bc.ca" FCSPB@gov.bc.ca), which is responsible for legislative amendments to that Act.

We would ask that you please send your Policy Analysis Report and supplemental material to us at:

L. Jay Mitchell
Deputy Superintendent of Real Estate
Suite 1200 – 13450 102nd Avenue
Surrey, BC V3T 5X3
Phone: 604 953-5300
Fax: 604 953-5301
E-mail: HYPERLINK "mailto:j.mitchell@ficombc.ca" jay.mitchell@ficombc.ca

Our office will provide you with comments after our staff have had time to review your materials.

Sincerely,

Peter

Peter Grimmett
Financial Institutions Commission
Superintendent of Real Estate's Office
Manager, Real Estate
Phone: 604 953-5312
Fax: 604 953-5301
E-mail: mailto:peter.grimmett@ficombc.ca peter.grimmett@ficombc.ca

VISION: Trusted financial and economic leadership for a prosperous province

Please consider the environment before printing this email

From: Bradley, Jay FLNR:EX
Sent: Tuesday, June 07, 2011 4:21 PM
To: Real Estate FIN:EX
Subject: Policy Development: Request for Consultation

Attn: Superintendant of Real Estate (Financial Institutions Commission)
Subject: The implications of Section 73(3) of the Land Title Act on building leases.

I am a Land Policy Analyst with the Ministry of Forests, Mines and Natural Resource Operations, with a primary focus on the Land Title Act. Currently, our policy group is working on analyses of various policy issues, some of which may lead to legislative amendments.

One policy issue for which options are being developed may impact the Real Estate Marketing and Development Act. As I understand you are responsible for overseeing this legislation, I am contacting you to initiate consultations, and learn from you any preference for materials and timeframes to accommodate this.
I propose to send you a Policy Analysis Report and supplemental material that is prepared for the captioned policy issue, which report presents our analysis of options to date. If you are amenable to this approach, I'd request that you review the report and provide feedback from the perspective of your agency's interests.

Please let me know if this proposed methodology or any other would work for you.

Sincerely,

Jay Bradley
250-387-9556

RE: Consultation documents LTA 73.1 and RV Shed Leases

Tuesday, September 27, 2011
8:56 AM

Subject	RE: Consultation documents LTA 73.1 and RV Shed Leases
From	Jeff Mitton
To	Bradley, Jay FLNR:EX
Sent	Friday, August 5, 2011 4:06 PM

Thanks Jay, so just to be clear, I was intending to send the policy consultation paper and the discussion paper. I appreciate both these papers are variations on the issues associated with s.73.1, but perhaps the intent is only to send the policy consultation paper. If I'm stepping deeper into the mud as I go, please forgive me. My intentions are good.

thanks, Jeff

Jeff Mitton
Supervisor - Land Development
Deputy Approving Officer
Engineering and Public Works
City of Victoria
#1 Centennial Square
Victoria, BC V8W 1P6
Tel: 250.361.0298
email: jmitton@victoria.ca

From: Bradley, Jay FLNR:EX [mailto:Jay.Bradley@gov.bc.ca]
Sent: Friday, Aug 5, 2011 3:52 PM
To: Jeff Mitton
Subject: RE: Consultation documents LTA 73.1 and RV Shed Leases

I appreciate the tact.

Just so that I'm clear, what are the "other two papers" being referred to? My understanding is that the "s.73.1" paper would be broached with the Committee at this stage.

The LTSA is typically consulted on these policy matters; having the S.G.'s opinion provided through the lens of this forum would be valuable. Ditto for Bill Buholzer's opinion!

One caution to emphasise is that the papers only provide analyses of the issues, but do not purport to take a position or to present a "decision" one way or the other.

Jay

From: Jeff Mitton [mailto:jmitton@victoria.ca]
Sent: Friday, August 5, 2011 3:41 PM
To: Bradley, Jay FLNR:EX
Subject: RE: Consultation documents LTA 73.1 and RV Shed Leases

Hi Jay. Not trying to be overly sensitive here, but the committee membership includes Bill Buholzer, as our resident legal consultant as well as Mike Thompson, the Surveyor General. I'm thinking I'll cut the letter to the Registrar, don't think there's anything inflammatory in the other two papers, but if you have any concerns given this information, let me know and I'll deal with accordingly.

thanks, Jeff

Jeff Mitton
Supervisor - Land Development
Deputy Approving Officer
Engineering and Public Works
City of Victoria
#1 Centennial Square
Victoria, BC V8W 1P6
Tel: 250.361.0298
email: jmitton@victoria.ca

From: Bradley, Jay FLNR:EX [mailto:Jay.Bradley@gov.bc.ca]
Sent: Friday, Aug 5, 2011 3:34 PM
To: Jeff Mitton; 'Brenda Gibson'
Subject: RE: Consultation documents LTA 73.1 and RV Shed Leases
Hi Jeff.

The LGMA A.O. committee forum sounds appropriate. s.22

s.22

Regards,
jay

From: Jeff Mitton [mailto:jmitton@victoria.ca]
Sent: Friday, August 5, 2011 3:31 PM
To: Bradley, Jay FLNR:EX; Brenda Gibson
Subject: RE: Consultation documents LTA 73.1 and RV Shed Leases

Hi Jay, and Brenda.

Thanks for the go ahead on this request to share. The group I work with is the Provincial Approving Officer Committee. It's somewhat like the Island group or the Development Officers group in Burnaby, but is under and LGMA banner, and is set up to assist Approving Officers generally in the Province. Anyhow I appreciate the opportunity to give our group a chance to comment on the topic. I'm sure we'll get some good feedback.

Jay, you may know Graham Savage, he's recently been recruited as a member of the group, and I certainly appreciate his experience and insights. Talk to you both soon. Have a great weekend.

regards, Jeff

Jeff Mitton
Supervisor - Land Development
Deputy Approving Officer
Engineering and Public Works
City of Victoria
#1 Centennial Square
Victoria, BC V8W 1P6
Tel: 250.361.0298
email: jmitton@victoria.ca

From: Bradley, Jay FLNR:EX [mailto:Jay.Bradley@gov.bc.ca]
Sent: Friday, Aug 5, 2011 3:12 PM

To: 'Brenda Gibson'
Cc: Jeff Mitton
Subject: RE: Consultation documents LTA 73.1 and RV Shed Leases
Hi Brenda.

I'm OK with Jeff sharing the paper with the Approving Officer committee.

Out of curiosity, is this committee the Vancouver Island Development Officer's Group (which is comprised of many of the Island's Approving Officers)? If so, I participate in this group as well and have broached the "shed issue" generally with it (although the paper itself has not been shared).

Jay

From: Brenda Gibson [mailto:bgibson@ubcm.ca]
Sent: Friday, August 5, 2011 2:48 PM
To: Bradley, Jay FLNR:EX
Cc: jmitton@victoria.ca
Subject: Consultation documents LTA 73.1 and RV Shed Leases

HI Jay: As discussed this morning, I forwarded your two documents to Jeff Mitton (cc'd above). He has already gotten back to me, and has asked if he can share the paper on LTA 73.1 with an Approving Officer committee he sits on, so I said I'd ask you.

He is also of the view that a working group might be the best way to work towards a solution on the RV shed lease issue and has offered to sit on that group if he is available s.22

s.22

If you could get back to him on sharing of the one paper I'd appreciate it, and after I speak with Colin, I'll phone you with some ideas about a working group.

Thanks.

Brenda

Brenda Gibson
General Manager, Victoria Operations
UBCM
250 356-0862

ZONE TITLE: COMMERCIAL – 1 ZONE SYMBOL: C1

Principal Uses

5.13 (1) The *uses* stated in this subsection and no others are permitted in the Commercial - 1 zone as principal *uses*, except as stated in Part 3: General Regulations:

(a) *Amusement establishment*
(b) *Campground*
(c) *Convenience store*
(d) *Day care*
(e) *Marina*
(f) *Mini storage*
(g) *Motel*
(h) *Office*
(i) *Outdoor sales*
(j) *Personal services*
(k) *Plant nursery and services*
(l) *Pub*
(m) *Public assembly facility*
(n) *Recycling drop-off facility*
(o) *Rental shop*
(p) *Restaurant*
(q) *Retail store*
(r) *Service station*
(s) *Single family dwelling*
(t) *Tourist cabin*
(u) *Library*

Secondary Uses

(2) The use stated in this subsection and no others are permitted in the Commercial - 1 zone as a secondary use, except as stated in Part 3: General Regulations:

(a) *Accessory use*
(b) *Owner/operator dwelling*

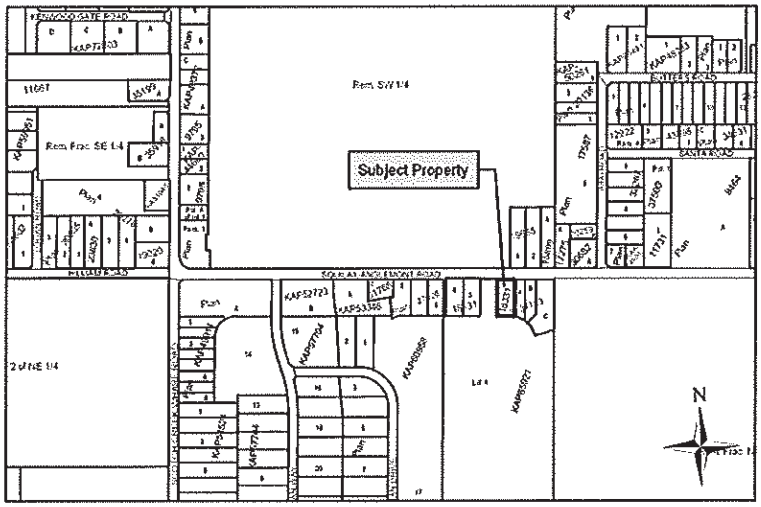
Regulations

(3) On a parcel zoned Commercial - 1, no land shall be used; no building or structure shall be constructed, located or altered; and no plan of subdivision approved; that contravenes the regulations stated in this subsection, except as stated in Part 3: General Regulations and Part 4: Parking and Loading Regulations.

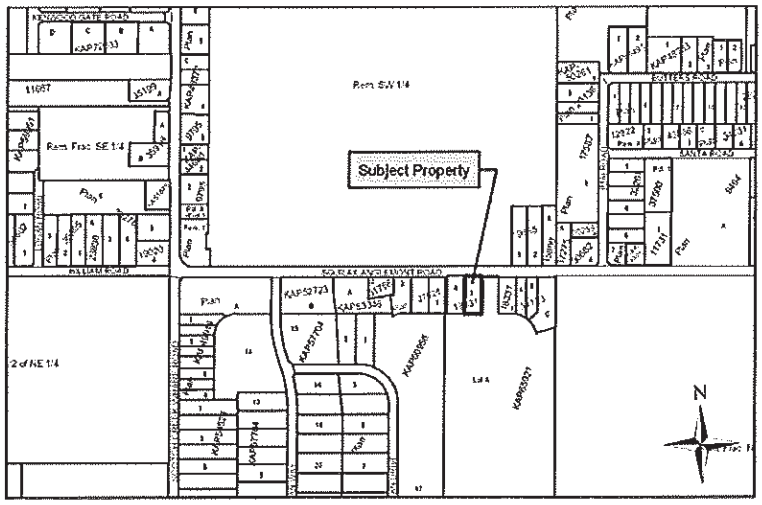
COLUMN 1 MATTER REGULATED	COLUMN 2 REGULATION
(a) Minimum *parcel* size created by subdivision ▪ where *parcel* is serviced by an existing *community sewer system* ▪ in all other cases	 0.4 ha (1.0 ac.) 1.0 ha (2.47 ac.)
(b) Minimum *parcel width* created by subdivision	20 m (65.62 ft.)
(c) Maximum *parcel coverage*	40%
(d) Maximum density of *tourist cabins*	6 per hectare (6 per 2.47 ac.)
(e) Maximum density of *camping spaces*	6 per hectare (6 per 2.47 ac.)
(f) Maximum number of *dwelling units* per *parcel*	one
BL825-12 (g) Maximum *height* for: ▪ Principal *buildings* and structures ▪ *Accessory buildings*	 ▪ 11.5 m (37.73 ft.) ▪ 10 m (32.81 ft.)
(h) Minimum *setback* from: ▪ *front parcel boundary* ▪ *interior side parcel boundary* ▪ *exterior side parcel boundary* ▪ *rear parcel boundary*	 ▪ 4.5 m (14.76 ft.) ▪ 2.5 m (8.20 ft.) ▪ 4.5 m (14.76 ft.) ▪ 3.0 m (9.84 ft.)
(i) *Outdoor sales*, *plant nursery and services*, and outdoor storage and display area	shall be sited in conformance with the minimum *setback* regulations

(4) In this subsection, lands are described by legal description and by map and in the event of any discrepancy between the legal description of the lands and the map, the map governs.

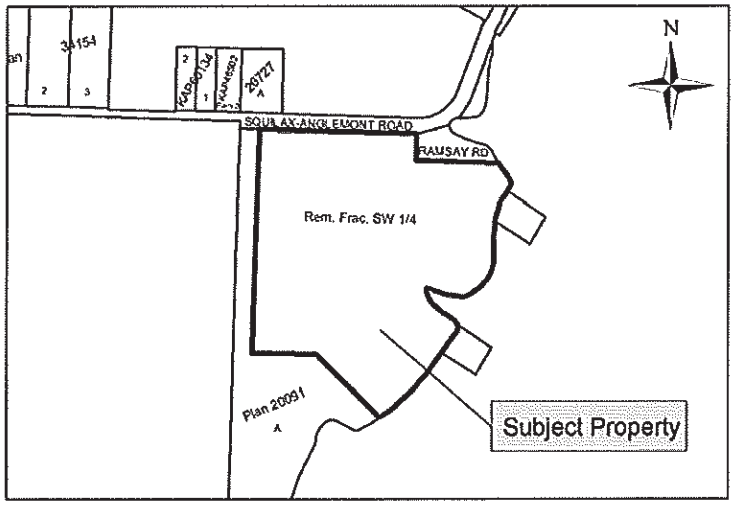
(a) In addition to the principal *uses* listed in subsection (1), the principal *uses* on Lot 1, Plan 18331, Section 27, Township 22, Range 11, W6M, KDYD as shown on the map below shall include: vehicle towing, *vehicle repair*, and *vehicle wrecking*.



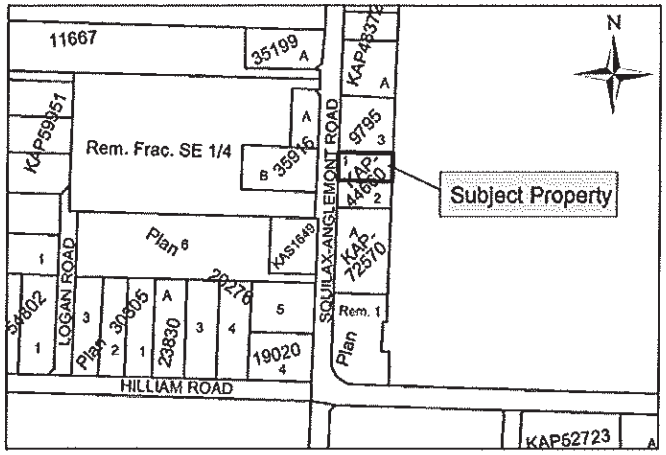
(b) In addition to the principal *uses* listed in subsection (1), the principal *uses* on Lot 3, Plan 18331, Section 27, Township 22, Range 11, W6M, KDYD as shown on the map below shall include: vehicle towing, *vehicle repair*, and *vehicle wrecking*.



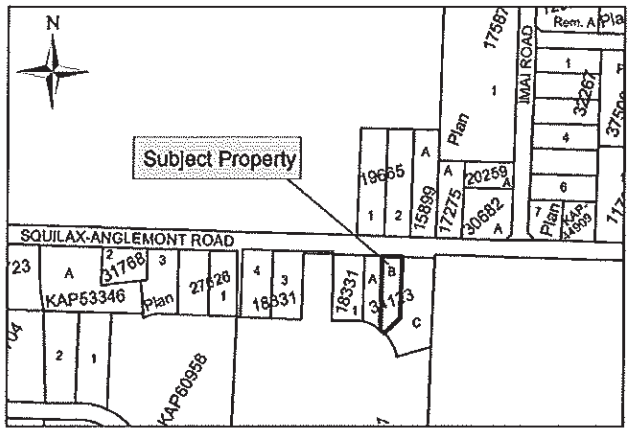
(c) Notwithstanding subsection (3)(f); the maximum number of *dwelling units* permitted on Part SW ¼ Part lying to the West of the West shore of Shuswap Lake Except Plan 20091, Section 25, Township 22, Range 12, W6M, KDYD as shown on the map below, is one per 3.6 ha (8.9 ac.).



(d) Notwithstanding subsection (3)(f); the maximum number of *dwelling units* permitted on Lot 1, Plan KAP44660, Section 34, Township 22, Range 11, W6M, KDYD as shown on the map below, is one per 0.09 ha (0.22 ac.).



(e) In addition to the principal *uses* listed in subsection (1), the principal *uses* permitted on Lot B, Plan 34123, Section 27, Township 22, Range 11, W6M, KDYD, as shown on the map below, shall include *vehicle repair*, welding, metal fabrication and machining.



Section 1.1. General

1.1.1. Application of this Code

1.1.1.1. Application of this Code

1) This Code applies to any one or more of the following:

a) the design and construction of a new *building*,

b) the *occupancy* of any *building*,

c) the change in *occupancy* of any *building*,

d) an *alteration* of any *building*,

e) an addition to any *building*,

f) the demolition of any *building*,

g) the reconstruction of any *building* that has been damaged by fire, earthquake or other cause,

h) the correction of an *unsafe condition* in or about any *building*,

i) all parts of any *building* affected by a change in *occupancy*,

j) the work necessary to ensure safety in parts of a *building*

i) that remain after a demolition,

ii) that are affected by, but that are not directly involved in *alterations*, or

iii) that are affected by, but not directly involved in additions,

k) the installation, replacement, or *alteration* of materials or equipment regulated by this Code,

l) the work necessary to ensure safety in a relocated *building* during and after relocation,

m) safety during construction of a *building*, including protection of the public,

n) the design, installation, extension, *alteration*, renewal or repair of *plumbing systems*, and

o) the *alteration*, rehabilitation and change of *occupancy* of heritage *buildings*.

2) This Code does not apply to;

a) *sewage*, water, electrical, telephone, rail or similar public infrastructure systems located in a *street* or a public transit right of way,

b) utility towers and poles, television and radio or other communication aerials and towers, except for loads resulting from those located on or attached to *buildings*,

c) mechanical or other equipment and *appliances* not specifically regulated in these regulations,

d) flood control and hydro electric dams and structures,

e) accessory *buildings* less than 10 m² in *building area* that do not create a hazard,

f) temporary *buildings* such as construction site offices, seasonal storage *buildings*, special events facilities, emergency facilities, and such similar structures as authorized by the authority having jurisdiction,

g) factory built housing and components certified by a Standards Council of Canada accredited agency, prior to placement on the site, as complying with Canadian Standards Association Standard A277, "Procedure for Certification of Factory Built Houses," or CAN/CSA-Z240 MH Series, "Mobile Homes," but this exemption does not extend to on site preparations (*foundations*, *basements*, mountings), interconnection of modules, connection to services and installation of *appliances*, and

h) those areas that are specifically exempted from provincial *building* regulations or by federal statutes or regulations.

3) This Code applies both to site-assembled and factory-built buildings. (See Appendix A.)

4) *Farm buildings* shall conform to the requirements in the National Farm Building Code of Canada 1995.

5) The Alternate Compliance Methods for Heritage Buildings in Table A-1.1.1.1. in Appendix A may be substituted for requirements contained elsewhere in this Code.

1.1.1.2. Application to Existing Buildings

1) Where a *building* is altered, rehabilitated, renovated or repaired, or there is a change in *occupancy*, the level of life safety and *building* performance shall not be decreased below a level that already exists. (See Appendix A.)

1.1.1.3. Responsibility of Owner

1) Neither the granting of a *building* permit nor the approval of the relevant drawings and specifications nor inspections made by the *authority having jurisdiction* shall in any way relieve the *owner* of such *building* from full responsibility for carrying out the work or having the work carried out in full accordance with the requirements of the British Columbia Building Code.

Section 1.2. Compliance

1.2.1. Compliance with this Code

1.2.1.1. Compliance with this Code

1) Compliance with this Code shall be achieved by

a) complying with the applicable acceptable solutions in Division B (See Appendix A), or

b) using alternative solutions that will achieve at least the minimum level of performance required by Division B in the areas defined by the objectives and functional statements attributed to the applicable acceptable solutions (See Appendix A).

2) For the purposes of compliance with this Code as required in Clause 1.2.1.1.(1)(b), the objectives and functional statements attributed to the acceptable solutions in Division B shall be the objectives and functional statements referred to in Subsection 1.1.2. of Division B.

1.2.2. Materials, Appliances, Systems and Equipment

1.2.2.1. Characteristics of Materials, Appliances, Systems and Equipment

1) All materials, *appliances*, systems and equipment installed to meet the requirements of this Code shall possess the necessary characteristics to perform their intended functions when installed in a *building*.

HG.org
WORLDWIDE LEGAL DIRECTORIES

Easements in Lieu of Subdivision
By: Lawson Lundell LLP
Provided by World Services Group

Easements in Lieu of Subdivision
Published September 30, 2006 - British Columbia, Canada

For many years, parties have created various legal tools to grant others the right to use a portion of their lands. Prior to the imposition of statutory controls on the subdivision and leasing of land, this could simply be accomplished by the property owner granting exclusive possession over a portion of their land to a tenant by way of a lease and everyone was happy. Everyone that is but the local and provincial governments.

For a wide range of public policies reasons, provincial and local governments have determined that the land uses and subdivisions must be regulated. Over the years, the provincial government has granted powers to local governments to control the subdivision of land. Zoning bylaws first appeared in BC in the Municipal Clauses Act of 1899. The Town Planning Act of 1925 was the first comprehensive granting of land use regulatory powers by the provincial government to local governments. In 1957, the planning and zoning powers of local governments and the power to regulate subdivisions appeared in the new Municipal Act. Through the 80's and 90's the planning, zoning and subdivision powers of local governments were constantly rewritten and expanded.

Most of the local government powers over zoning and land uses are now set out in Part 26 of the Local Government Act. Local governments get additional powers to regulate the subdivision of land in Part 7 of the Land Title Act which establishes the statutory office of the "approving officer".

Section 73 of the Land Title Act provides that when subdividing land, a person must comply with Part 7 of the Land Title Act.

Section 73 of the Land Title Act provides as follows:

73 (1) Except on compliance with this Part, a person must not subdivide land into smaller parcels than those of which the person is the owner for the purpose of
(a) transferring it, or
(b) leasing it, or agreeing to lease it for a life, or for a term exceeding 3 years.

(2) Except on compliance with this Part, a person must not subdivide land for the purpose of a mortgage or other dealing that may be registered under this Act as a charge if the estate, right or interest conferred on the transferee, mortgagee or other party would entitle the person in law or equity under any circumstances to demand or exercise the right to acquire or transfer the fee simple.

(3) Subsection (1) does not apply to a subdivision for the purpose of leasing a building or part of a building.

(6) An instrument executed by a person in contravention of this section does not confer on the party claiming under it a right to registration of the instrument or a part of it.

Section 86 of the Land Title Act sets out what matters an approving officer may consider when considering a subdivision application. Section 86 provides as follows:

86 (1) Without limiting section 85(3), in considering an application for subdivision approval, the approving officer may
(a) at the cost of the subdivider, personally examine or have an examination and report made on the subdivision,
(b) hear from all persons who, in the approving officer's opinion, are affected by the subdivision, and
(c) refuse to approve the subdivision plan, if the approving officer considers that

(i) the anticipated development of the subdivision would injuriously affect the established amenities of adjoining or reasonably adjacent properties,
(ii) the plan does not comply with the provisions of this Act relating to access and the sufficiency of highway allowances shown in the plan, and with all regulations of the Lieutenant Governor in Council relating to subdivision plans,
(iii) the highways shown in the plan are not cleared, drained, constructed and surfaced to the approving officer's satisfaction, or unless, in circumstances the approving officer considers proper, security is provided in an amount and in a form acceptable to the approving officer,
(iv) the land has inadequate drainage installations,
(v) the land is subject, or could reasonably be expected to be subject, to flooding, erosion, land slip or avalanche,
(vi) after due consideration of all available environmental impact and planning studies, the anticipated development of the subdivision would adversely affect the natural environment or the conservation of heritage property to an unacceptable level,
(vii) the cost to the government of providing public utilities or other works or services would be excessive,
(viii) the cost to the municipality or regional district of providing public utilities or other works or services would be excessive,
(ix) the subdivision is unsuited to the configuration of the land being subdivided or to the use intended, or makes impracticable future subdivision of the land within the proposed subdivision or of land adjacent to it,
(x) the anticipated development of the subdivision would unreasonably interfere with farming operations on adjoining or reasonably adjacent properties, due to inadequate buffering or separation of the development from the farm, or
(xi) despite subparagraph (ix), the extent or location of highways and highway allowances shown on the plan is such that it would unreasonably or unnecessarily increase access to land in an agricultural land reserve.

Section 87 links compliance with the Land Title Act with compliance with the regulations under the Local Government Act and the municipality's subdivision and zoning bylaws.

87 Without limiting section 85(3), the approving officer may refuse to approve a subdivision plan if the approving officer considers that the subdivision does not conform to the following:

(a) all applicable provisions of the Local Government Act;
(b) all applicable municipal, regional district and improvement district by-laws regulating the subdivision of land and zoning;
(c) if the land affected is within the trust area under the Islands Trust Act, all applicable local trust committee by-laws regulating the subdivision of land and zoning.

Thus under the Land Title Act and the Local Government Act, an approving officer may refuse to approve a subdivision application unless all of the local bylaws are complied with. As a condition of approving most subdivisions, the approving officer will impose the many subdivision servicing requirements that the local bylaws establish such as the construction of roads, installation and undergrounding of utilities, payment of development cost charge levies, construction of sidewalks and so forth.

All of these statutory controls means any party seeking subdivision approval will generally have to comply with extensive and often expensive requirements of the local government. Often these requirements cannot technically be met with regard to the specific proposal for the property. Other parties simply may wish to avoid this lengthy approval process and its accompanied cost.

B. The Law Prior to International Paper Industries v. Top Line
Notwithstanding the restriction on leasing a portion of parcel of land set out in Section 73, for many years sophisticated parties using experienced real estate lawyers have proceeded and entered into leases of a portion of a parcel of land without the approval of the approving officer.

Prior to the decision in the International Paper case, it was generally felt that though such a lease contravened section 73 and was not registerable in the Land Title Office, it nonetheless created enforceable rights and obligations as between the landlord and tenant. With that belief, many parties entered into such leases rather than apply for fee simple or leasehold subdivision approval.

C. International Paper Industries v. Top Line
In 1996, the B.C. Court of Appeal handed down the decision in International Paper Industries Ltd. v. Top Line Industries Inc.(1)

In the International Paper case, the landlord Top Line Industries Inc. leased an unsubdivided portion of land to International Paper Industries Ltd. At the time neither party was aware of the prohibition in section 73 of the Land Title Act. Prior to the expiration of the term of the lease and pursuant to the renewal clause in the lease, the tenant sought to renew the lease. The landlord refused and the tenant brought an action seeking a declaration that the lease was valid and the tenant was entitled to the renewal of the lease. The landlord claimed that the lease and any renewal was unenforceable by virtue of the provisions in section 73.

The court considered the existing cases that dealt with rights created by such a lease. In Nesrallahb v. Pagonis,(2) the court considered whether a leasehold interest contravening the predecessor to section 73, created legally enforceable interests or was void ab initio. In that case the court found that there was no interest in land and did not decide the issue of whether or not the lease created personal rights as between the parties.

In Yorkshire Trust Company v. Gunther Farms Ltd.(3) the court considered the situation where an unregistered lease did not contravene section 73. The court found that on the basis of the Nasrallahb decision, the unregistered lease did not create any property rights, but did create personal rights as between the parties.

In Anglican Synod British Columbia Diocese v. Tapanainen(4) the court found that where a lease contravened section 73, the tenant did not acquire an interest in land but the lease did create personal rights and obligations between the landlord and the tenant. The trial judge in the International Paper case followed the decision in Tapanainen and concluded that the lease in the International Paper case created personal rights as between the parties.

In International Paper, the Court of Appeal heard the appeal from the BC Supreme Court. Since section 73 did not spell out the consequences of a breach of the section beyond providing that such a lease could not be registered in the Land Title Office, and since the Court of Appeal found there was no binding past authority, the Court of Appeal found it necessary to examine the policies underlying section 73. Ultimately the Court found that a lease that violated section 73, created no personal or property rights as between the parties. The Court of Appeal distinguished the prior line of cases and rejected the interpretation that found that those cases were authority for the proposition that a lease in contravention of section 73 created in personem rights and obligations. The court found that public policy would be offended if it found that non-compliance with section 73 still created a valid lease. The court found that municipal control over subdivision was necessary to regulate zoning and land development and other public policy concerns. The court refused to imply a condition precedent into the lease, that one party was to bring the lease into statutory compliance with the Land Title Act, and therefore refused to allow the lease to stand on that basis. Finally, the court refused to find that the tenant had a licence or other personal right that would effectively put the tenant in a position of a holder of an unregistered lease. They found that to do so, the public policy concerns behind section 73 would still be offended.

Even though section 73 does not expressly say that a lease in contraction of section 73 is void, rather than such an instrument may not be registered, the court concluded that the public policy aspects of section 73 were paramount and would be offended if the contravening lease would be upheld by the court to assure a tenant any right of occupation. The court ruled the lease was void ab initio, or void from its creation and never had any legal validity and was therefore completely unenforceable.

The Court of Appeal received significant criticism for it decision, in part due to the fact that it was felt by most lawyers that the Land Title Act did not take away any common law property rights. The theory was and is, that the Land Title Act and its predecessor's legislation simply imposed a system of recording titles upon the existing common law. The Land Title Act does not state that leases that violate section 73 are void, just that such leases were not registrable. Lawyers have argued that leases that violate section 73 are still valid as between the parties based on section 20 of the Land Title Act which provides that while an unregistered instrument does not pass any state or interest in land, that such an instrument is still effective as between the parties to the instrument.

The International Paper decision meant a landlord cannot bring a court action to enforce payment of rent under such a lease, nor can a tenant bring an action to enforce the covenant of quiet enjoyment or exclusive occupancy of the premises.

Since the decision was handed down on the International Paper case there have been a series of cases that have considered the decision. Some of those cases have moderated the effect of the International Paper case in certain factual situations, but the case still stands for the proposition that a lease that violates section 73 is void ab initio. (5)

D. Options
In light of the International Paper decision, parties wishing to lease a portion of a parcel of land were left with six choices:

1. Continue as before, ignoring the decision and hope that the parties to the lease honour their obligations notwithstanding the fact that such a lease was void ab initio and unenforceable;

2. Apply for approving officer's approval of a traditional fee simple subdivision. This costly and time-consuming process may however, not reflect the landlord's long term intentions for their land;

3. Apply for approving officer's approval for a leasehold subdivision. This is an alternative form of subdivision approval, where the approving officer approves a lease of a portion of a parcel of land for the term of the lease. The approval is valid only for the term of the lease and expires when the lease expires;

4. Where the tenant owns adjoining or nearby property, the property owner (the landlord) may instead of granting the tenant a lease of a portion of their property, may grant them an easement appurtenant to the tenant's other property;

5. Use an alternative legal structure, such as a lease with an appurtenant easement to achieve many, if not most, of the desired objectives; or

6. Have the grantor grant a licence to the other party, rather than a lease.

E. Fee Simple Subdivision
Fee simple subdivisions are reviewed by other panelists for this course and thus will not be addressed in this paper.

F. Leasehold Subdivision
If parties do want to lease a portion of a parcel of land for a term of over 3 years, they can seek the approval of such a lease by the approving officer. Section 73 does not prohibit the leasing of a portion of a parcel of land, it only requires that if parties wish to do so, the subdivision must be carried out in accordance with Part 7 of the Land Title Act. Normally this would be done by a traditional fee simple subdivision. However, a leasehold subdivision is a possible alternative.

Leasehold subdivisions require that a surveyor prepare an explanatory plan or reference plan of the property, and the portion of the property being leased by the owner to the tenant. The plans are generally prepared pursuant to section 99(1)(k) of the Land Title Act. The owner then makes application to the approving officer for approval of the leasehold subdivision.

Leases of a portion of land are usually approved by the approving officer signing the explanatory plan or reference plan prepared by the surveyor. The approving officer's approval extends only to the term of the particular lease and the leasehold subdivision would expire on the expiry or earlier determination of the lease. The parcel of land identified by the approving officer's approval cannot be transferred separately from the remainder of the parcel.

Most municipalities submit the application for approval for leasehold subdivision approval through the same approval process that they do for regular fee simple subdivisions. However, they often do not impose the same conditions that they would for a fee simple subdivision. If the lease is of a relatively short term, 5 to 10 years, approving officers will, if their subdivision bylaws allow, often exercise their discretion and not require full compliance with the normal subdivision requirements (construct roads, underground utilities, etc.). This makes a leasehold subdivision much less costly than a traditional fee simple subdivision. If the lease is to be in force for a long term, say 20 to 30 years, it is more likely the approving officer will require full compliance with all of the subdivision and zoning requirements.

G. Easements Appurtenant to Another Parcel of Land
In many situations, rather than a fee simple or leasehold subdivision, the goals of the parties can be achieved by the granting of an easement in favour of one party by the other. For example, if the owner of Lot A needs access over Lot B to access Lot A, they could subdivide off a portion of Lot B and consolidate that portion with Lot A. Alternatively the Lot B owner could grant the Lot A owner an easement over that same portion of Lot B. Such an easement would not require the approval of the approving officer.

Obviously, such easements will only work where the grantee owns an adjacent or nearby parcel of land that the easement can be made appurtenant to. The easement must be for the use and benefit of the grantee's lands (the dominant tenement) and be reasonably necessary for the better enjoyment of the grantee's lands (the servient tenement). While the parcels need not be contiguous, there must be some relationship between the two parcels.

Examples where easements could be used instead of carrying out a fee simple or leasehold subdivision include:

(a) an easement to allow a building that encroaches on to the adjoining property to remain;

(b) an easement allowing services such as water or sewer lines to cross over an adjoining property;

(c) an easement allowing a neighbouring owner to expand their parking lot onto an adjacent property;

(d) an easement to allow portions of a building (such as overhangs) to extend into the airspace of an adjoining property;

(e) an easement to allow a neighbour to put a sign on a neighbour's property.

Rather than going to the cost and expense of subdividing off a portion of a lot and its consolidation with the adjoining lot, an easement can achieve many of the goals that give rise to a desire for the subdivision. A simple form of access easement is included with this paper as Appendix A.

In order to achieve the objectives for a particular situation, the easement agreement must be tailored for the facts of the particular transaction. Issues that should be addressed in the easement agreement include:

(a) Term: Is the easement to be permanent or only for a specified term? If the easement is to permit an existing building that encroaches on the adjoining property to remain, will it end when and if the building is destroyed or removed?

(b) Consideration: What is the consideration for the granting of the easement? Is there an exchange of money when the easement is granted or is there an annual fee?

(c) Parties: Will the easement only exist as long as the properties are owned by the current owners, or will it extend to all successors? Will a priority agreement be required from any mortgagees?

(d) Easement Area: The area of the easement must be defined. Is it to be a blanket easement covering the entire parcel or just a portion of it? In most cases, if it is to cover just a portion of the parcel, an explanatory or reference plan prepared by a land surveyor will be required. In some situations, you may be able to avoid the cost of a survey by granting a blanket easement, but then provide that as between the parties, they agree that they will only use a specified portion of the lands;

(e) Risk, Liability, Indemnities and Insurance: The easement agreement should address whose risk it is if any of the improvements on the easement area are destroyed. The easement agreement should provide that the grantee will indemnify the grantor for any damages suffered by the grantor caused by the grantee's use of the easement area. Often there will also be a requirement that the grantee maintain insurance naming the grantor as an insured party;

(f) Maintenance: The easement agreement should address who is to maintain the easement area and who is to bear the cost of such maintenance. If the easement area is to be used jointly by the parties, it is useful to address how the costs will be allocated;

(g) Property Taxes: The easement agreement should address whether or not the grantee will be responsible for any or all of the property taxes that are attributable to the easement area and how the taxes for the property are allocated;

(h) Restrictions on Use: The easement agreement should specify the uses to which the easement area may be placed. The grantor will generally want those permitted uses to be as narrow as possible. The easement agreement may provide that the grantor's permission is required to any expansion of the uses;

(i) Grantor's Obligations: The easement agreement should address what, if any, obligations the grantor continues to have with respect to the easement area;

(j) Registration: The easement agreement should address whether or not the easement agreement is to be registered in the Land Title Office. In order for the easement to be binding upon successors in title, the easement agreement should be registered in the Land Title Office. Upon its registration at the Land Title Office, it will show up as a legal notation to the grantee's property and as an easement against the title to the grantor's property. The easement agreement should provide who is responsible for the cost of registering it including the cost of any explanatory plan required;

(k) Initial Construction: The easement agreement should address who is responsible for the initial construction of the works that are to be permitted under the easement;

(l) Utilities: The easement agreement should address who is responsible for paying for any utilities consumed on the easement area;

(m) Fencing: The easement agreement should address whether or not the grantee may install fencing or other works that outwardly would appear to incorporate the easement area as part of their property;

(n) Release: The easement agreement should provide that it is only binding upon the parties who originally signed the easement agreement, during the period in which they own their respective properties. They should be released from any obligation under the easement agreement upon their sale of their respective properties;

(o) Restrictions on Users: Many easement agreements allow the grantee and any parties authorized by the grantee to make use of the easement area. If the class of persons who are to use the easement area is to be restricted, that should be provided for in the easement agreement;

(p) Commencement Date: The date that the easement is to commence should be specified. Often the easement will commence upon execution of the easement agreement but there may be situations where the grantee may use the easement area only once certain works are completed;

(q) Arbitration Clause: If there are issues that are left for determination between the parties, such as the cost-sharing arrangement, an arbitration clause should be inserted in the easement agreement;

(r) Exclusivity: The easement agreement should address the degree of exclusivity to the easement area that the grantor will provide to the grantee;

(s) Underground: Many easement agreements, particularly those with utilities, will provide that all the works must be installed underground and that the surface of the land must be restored by the grantee. In such circumstances, the easement should specify what works the grantor may install on the surface of the lands (i.e., can the grantor pave over the easement area). Often, when works are installed underground, the grantor requires that the grantee provide "as built" plans showing the actual location of the underground works;

(t) Restrictions on Grantor: The easement agreement should provide for any restrictions on the grantor's use of the easement area or the balance of their land, that may impact on the grantee's use of the easement area or the works installed in the easement area.

H. Easements Appurtenant to Lease
One of the ways lawyers have traditionally overcome the constraints imposed by section 73 of the Land Title Act, is to exploit two of the exceptions in section 73.

Section 73(1)(b) says that the restriction on leasing a portion of a parcel does not apply for leases having a term of 3 years or less.(6) A term of 3 years is often not sufficient to satisfy the needs of the parties. They require for valid reasons a longer term to justify their investments and thus exploiting this exemption will not be enough. However, a 3 year term may be acceptable if the grantee is not planning to expend significant monies on the easement area.

One way to get around the 3 year term limit, is to have the landlord grant a lease of 3 years to Party A. Then have the landlord grant an Option to Lease (with the lease having a term of 3 years) to Party B who is related to but not the same party as Party A, with the Option to be exercisable at the end of the 3 year term of the first lease.

The other exception to the general prohibition is that set out in section 73(3) that says the general prohibition against leasing a portion of a parcel of land does not apply to leases of a building or part of a building. A landlord can therefore lease to a tenant all or a portion of a building located on the land, and then grant them an easement appurtenant to the lease over the larger portion of the land that the party really wants to lease. The easement is made appurtenant to the lease and it will terminate when the lease is terminated. Neither the lease nor the easement require the approval of the approving officer. Attached to this paper as Appendix B is a sample of such a lease with an appurtenant easement. The unique provisions of the lease that relate to the easement are shown in bold.

Parties are often very creative in deciding what constitutes a building that can be leased. The Land Title Office, when examining explanatory plans in such circumstances, will not allow the parties to simply use their own definition of what is or is not a building. They will require that the plan clearly identify the building and they have been known to challenge the parties as to what constitutes a building. There have been a few court cases that have considered what is a building. A community mailbox was deemed not to be a building in one particularly creative situation.(7) Small utility buildings and huts have however, been found by the Land Title Office to be buildings. Similarly, canopies located over gasoline pumps have been accepted by the Land Title Office as constituting buildings.

I. Easements at Common Law
When drafting an easement, you must be conscious of certain provisions of the common law relating to easements. The granting of an easement does not transfer possession and does not transfer an estate in land. It is a right given to a parcel of land rather than to an individual. It is a privilege acquired by a landowner (the dominant tenant) for the benefit of his land over the land of another (the servient tenant).

The 4 requirements at common law required to create a valid easement are: (8)

1. There must be a dominant and servient tenement. The land enjoying the benefit of the easement being the dominant and the land subject to the easement being the servient. On any transfer of the dominant tenement the benefit of the easement will be transferred with it. The easement may be appurtenant to a lease as a lease is an interest in land at common law.

2. The easement must accommodate the dominant tenement. It must be for the use and benefit of the dominant tenement. If the easement does not serve the dominant tenement or is not reasonably necessary for the better enjoyment of that tenement, it is not an easement (but perhaps a licence). It must be appurtenant to a particular parcel of land and that land must get some practical advantage from the easement. The parcels need not be contiguous however.

3. At common law the dominant and servient owners had to be different people. As a property owner already had the right to cross over his land, he could not give himself further right to do that. section 18(5) of the Property Law Act however now expressly allows a party to grant themselves an easement.

4. The easement must be capable of forming the subject matter of a grant. In other words it cannot be too wide or uncertain so as to render it meaningless.

Any easement appurtenant to another parcel of land or a lease must still comply with these common law rules relating to easements.

J. Exclusive Possession
The grant of the exclusive use of land, grants an interest in land (i.e. a lease) and is not an easement. One of the essential characteristics of a lease is that it provides exclusive possession being the right to exclude all others from the premises.(9) Without exclusive possession there cannot be a lease notwithstanding any label the parties attach to the document. Conversely, an easement cannot give exclusive possession or unrestricted use of a parcel of land.(10) It can on occasion however, be difficult to determine what degree of possession an easement can provide, without running afoul of the rule against exclusively.

Easements that allow a part of a building to be put and remain on another persons parcel of land have been found to be valid.(11) An easement that gave a party to all intents and purposes, an exclusive right to use a cellar was found to be valid.(12) However, another case where a tenant was given an exclusive easement over a portion of a building subject to the landlord's right to enter to repair was found not to be a valid easement.(13) The right to park in a defined area of another person's land has been found to be a valid easement.(14)

In Mercantile General Life Reassurance Co. v. Permanent Trustee Australia Ltd.(15) it was held that it was possible to grant an easement that gave the dominant tenement:

(a) a right to use a portion of the servient tenement to the dominant tenement, to the exclusion of the servient owner;

(b) the use of the whole of the servient tenement in common with the servient owner;

(c) the dominant tenement the right to use the lands in common with another person deriving their interest from the servient owner; or

(d) a right to use the servient tenement in common with the servient owner and another person deriving their interest from the servient owner.
Other cases have upheld grants that amount to exclusive possession, where the easement expressly provides that the dominant owner may not use the land in question, one day per year.(16) The principle being that as they could not use the land on that day, the easement did not grant them exclusive possession.

The cases distinguish "exclusive possession" from "exclusive occupation". Where the grantor retains control of the premises they have not granted exclusive possession rather they have given exclusive occupation.

The Land Title Office takes the position that an easement that purports to grant exclusive possession converts an easement to a lease and will refuse to register an easement if it purports to give exclusive possession to the grantee.

Thus when drafting the easement agreement, you must be careful not to grant exclusive possession to the tenant. You can insert provisions into the easement agreement such as the following to give the tenant what practically amounts to exclusive possession, but what is not exclusive possession at law:

(e) Provide that the landlord agrees not to let any other parties, other than the landlord, to have access to the easement area;

(f) Provide that the tenant may install a fence or gates around the easement area; and

(g) Restrict the landlord's access to certain time periods and provide that such access shall be conducted in the presence of the tenant.

K. Licence
Instead of granting a party a lease, the parties will often just enter into a licence instead. The difference between a lease and a licence is that a lease is in an interest in land, where a licence is not. The licence is a personal contractual relationship that is not intended to bind successors in title to the land. When the agreement is to have a short term or where security of tenure is not as important, a licence may prove acceptable to the parties.

The courts have found that the distinction between a licence and a lease depends on the truth of the relationship and not the label which the parties have put on it. It is a matter of substance over form. Just because you call it a licence does not make it one. If exclusive possession is to be given under the licence however, this may result in the courts finding that the parties have really created a lease and not a licence. If you are trying to avoid the impact of section 73, by using a licence you may find a court eventually determining what you have is really a lease.

Any licence is revocable in accordance with the terms of the agreement. If the licence is silent as to the right to revoke it, but has a fixed term, it is not revocable before the expiry of the term failing a breach of the licence. If the term is not stated in the licence, it generally may be revoked on reasonable notice.

If a licence is revoked, and the licencee thereafter enters the land, the licencee is a trespasser, even if the revocation of the licence was not lawful. The licencee should have instead sued for damages for breach of contract.

L. British Columbia Law Institute
The British Columbia Law Institute has published a paper entitled "Leases of Unsubdivided Land and The Top Law Case". A copy may be obtained at www.bcli.org.

The paper proposes 3 options in dealing with the decision:

(a) Amend section 73 of the Land Title Act to provide that any purported lease that violates section 73 shall be capable of taking effect as a licence for the purpose of creating personal rights and obligations among the parties to it.

(b) Leave the matter to the courts to develop remedies that blunt the harsh conclusions of Top Line.

(c) Consider Top Line in the context of a legislative response to illegal contracts generally such as the Uniform Illegal Contracts Act which was recently adopted by the Uniform Law Conference of Canada.

In July of 2005 they issued a final Report on the topic entitled: "Report on Leases of Unsubdivided Land and The Top Law Case". The Report recommended that the option set out in (a) above be adopted and that the Land Title Act be amended to provide that any purported lease that violates section 73 shall be capable of taking effect as a licence

West Beach Village

- The subject property is located at a former campground site (Cottonwood Campground)
  - Property is 8.5 hectares (21 acres) in area
  - Located along the shores of Shuswap Lake near the Adams River
  - Some of the property is subject to floodplain constraints
    - Building is subject to recommendations of a geotechnical engineer

2008:

- Proposed 218-unit condominium resort and marina project
  - The developer (Mike Rink) was denied zoning by the Columbia-Shuswap Regional District in 2008

2009

- Developer proceeds to develop property under current zoning.
- The property is zoned under the Regional District of Columbia Shuswap Zoning Bylaw No. 825 as "C-1" (Commercial). Current zoning allows for:
  - A density of 6 camping spaces per 2.47 acres
  - RV sites
  - motel
- The Developer is relying upon the existing "non-conforming" use to achieve a density of 165 RV sites
  - The "non-conforming" use and density are provided for pursuant to the *Local Government Act* (s.911) – likely from the former campground site (Cottonwood Campground) that was permitted on the property
  - Each RV plot would have a storage building that is about 24 ft^2 in area (8 feet wide, 3 feet deep and 5 feet high).
  - Each storage building would have a "building lease"
  - Each lease has attached to it a "non-exclusive licence" to occupy the RV plot.
    - **Licences are only contracts and do not create interests in land**
    - **Licences cannot be registered– they are an unregistered interest**
    - **There is no requirement to publicly disclose a sale of an unregistered interest in land, so there would be no way to obtain this information other than by direct inquiry of the developer.**
  - The term of the lease and licence together are 199 years

C-1 Zone.pdf

July 2009 (From CSRD Board Minutes)

- Written complaint is submitted to the Regional District - signed by 126 concerned residents regarding the nature of the development.
- The CSRD's Solicitor has reviewed the complaint and concluded that in almost every material respect, the development proposal meets the strict working of the Zoning Bylaw.

July 2009 (Letter from s.22 to George Abbott, Minister of Aboriginal Relations and Reconciliation)

- The concern is raised that the Developer is circumventing local govt zoning provisions for density and use, and that section 73(3) of the *Land Title Act* is being exploited because the owner is seeking a *de facto* subdivision without going through the approval process.

October 27, 2009

- Three buildings are moved onto the property by the Developer: an electrical building, washrooms and a cabin.
- The Regional District issues a Stop-Work Order, to stop further construction of the three buildings.

Comment [p1]: http://www.kamloopsnews.ca/article/20091027/KAMLOOPS0101/310279986/-1/KAMLOOPS/west-beach-hit-with-partial-stop-work-order

September 2010

- RV resort under construction with significant work remaining.
- RV sites are being sold from 100,000 - 200,000 on the water. We stayed at a site but the electricity was via long extension cords.

Spring 2011

- The go-ahead of the development is subject to various approvals, including:
  - D.F.O. regarding fish habitat
  - Provincial approval of sewage disposal plans
  - CSRD.

Preliminary Assessment

Two key issues are raised by the Columbia-Shuswap building lease issue:

- There is an effective subdivision of the property through a lease-license arrangement without compliance with the subdivision approval requirements of the *Land Title Act*; and

- The Regional District claims there is currently no means by which it can effectively regulate the small buildings (less than 10 m^2 in floor area) that would be subject to the long-term lease and appurtenant licence.

Section 73(3) of the *Land Title Act*

The first issue arises given the developer's exploitation of section 73(3) of the *Land Title Act*, which exempts leases of buildings or portions thereof from the subdivision approval requirements.

Section 73 maintains that long-term leases of land (in excess of three years) are a form of subdivision: they serve to partition land and create entitlements to use and occupy land in the same way a typical "fee simple" subdivision would. A leasehold subdivision of land must meet the subdivision approval requirements set out under Part 7 of the *Land Title Act*, which typically include the provision of roads, services and drainage, access to each subdivided plot, compliance with local zoning, addressing health and safety standards, and mitigating environmental impacts and hazardous conditions (see section 86 of the *Land Title Act*).

The developer of the West Beach Village property is pursuing to place a number of small storage buildings on the pre-zoned property. Each of these buildings would be sized so that they do not require a building permit (less than 10 m^2), and then each would be leased for 199 years with an accompanying license to occupy the adjoining area of land (a recreational vehicle plot). According to the project's Disclosure Statement, these recreation vehicle "plots" would be marketed to different owners.

Because the actual lease itself pertains solely to the buildings, it meets the exemption criteria provided for by section 73.3 of the Act. While the lease would be registered in the Land Title Office (and there would be no reason for the registrar to reject it), the accompanying license to occupy[1] adjacent land is a form of personal contract. As such, it does not need to be registered.

Comment [p2]: Instead of using a licence to occupy, the Developer could also use an easement or a statutory right-of-way as the instrument to grant rights. The latter instruments would need to be registered against title.

Consequently, the regional district is concerned that parcels of property are being subdivided and marketed without being subject to the subdivision approval process. There is no trigger for local government approval and there is no basis for the registrar to reject the leases.

Local Government Controls

Local Governments are offered broad means and extensive tools to manage land use through the *Local Government Act*. Despite this, the Columbia-Shuswap Regional District indicates it does not have the means to prevent the development of this property as an RV resort, which it maintains would essentially be subdivided and occupied.

The existing property is pre-zoned as "C-1" (Commercial), which includes a number of permitted uses, including campgrounds, marinas and motels. In response to public complaints made to the CSRD Board, its Solicitor (Mr. Colin Stewart) advises that the development meets the strict wording of the existing Zoning Bylaw.

Beyond current zoning, the property also apparently enjoys a "legal non-conforming" status based on the previous campground use (the Cottonwood Campground), which is claimed pursuant to s.911 of the *Local Government Act*. This status ultimately provides for a maximum density of 165 RV sites on the subject property.

The zoning bylaw is the primary means by which the CSRD can control use and density within its jurisdiction. The CSRD Board could pursue to re-zone the property to preclude, or set conditions precedent, to what is currently permitted by the "C1" zoning. Since the concern relates to the use of the storage buildings on the recreational vehicle plots, the zoning bylaw might be amended to:

- Disallow any "accessory buildings" on the property (since the storage buildings are considered to be an "accessory building");
- Limit the maximum combined coverage of accessory buildings on the property (the "C1" zone allows for the maximum coverage of *all buildings* on a lot to be 40%);
- To the extent possible, amend the definitions of relevant uses to ensure the recreational vehicle plots are not permanently occupied.
- Limit the number of unrelated people that can occupy the property at any time, or for a period of time.

While all zoning amendments are possible and would be a matter of routine business for any local government, it is highly questionable whether there would be any practical impact concerning this development, for a number of reasons.

First, it is commonplace to permit "accessory buildings" in most land use zones. It is unreasonable and punitive to preclude such a use.

Second, it is arguably not a function of sound planning for a local government to disallow a certain type of building as soon as the prospect of a lease becomes known. Not only would such action be highly challengeable, it would establish a likely scenario that could occur everywhere in the Province wherever buildings are permitted: a cat-and-mouse game of precluding an otherwise permitted use as soon as it becomes known that the building might be leased with an appurtenant license to occupy.

Third, even though the local government can control the overall coverage or density of buildings permitted on a given lot, it cannot control whether any building or portion thereof can be leased. Anywhere and everywhere in the Province where a building is permitted, even if it is an accessory building that is less than 10 m^2, section 73.3 of the Act authorizes an owner to register one or more leases that could then extend rights to the adjoining land.

Fourth, while various definitions of permitted uses in the zoning bylaw might be tightened to preclude uses that contravene local government policy, there is only so much that can be done in practice. The CSRD's zoning bylaw offers the following definitions for the uses that would be most relevant to the RV development:

- **ACCESSORY BUILDING** is a detached structure, not used for human habitation; that is subordinate to, customarily incidental to, and exclusively devoted to the use with which it relates;

- **ACCESSORY USE** is the use of land, buildings and structures that is subordinate to, customarily incidental to, and exclusively devoted to the principal use or single family dwelling with which it relates. An accessory use does not include human habitation;

- **BUILDING** is a structure used or intended for supporting or sheltering a use or occupancy but does not include a recreational vehicle or park model;

- **CAMPGROUND** is the use of land, buildings and structures for temporary accommodation in tents or recreational vehicles on camping spaces.

Upon inspection, these definitions are already sufficiently clear to indicate that recreational vehicles are permitted as part of a campground use, that RVs are not considered to be a building, and accessory buildings and accessory uses are not meant for human habitation. The crux of the issue is the registration of the lease and the land tenure it purports to provide through the license of occupation.

Fifth, it must be noted that even with zoning amendments, the current developer apparently enjoys a "legal non-conforming" status for the subject property. As long as the conditions under s.911 of the *Local Government Act* are met, the uses and densities that were permitted for the previous Cottonwood Campground can continue unfettered by any subsequent zoning amendments made by the local government.

Pages 418 through 435 redacted for the following reasons:
- -
s.13, s.14, s.15(1)(g)