

Real Property Committee PEI Law Society

Presentation to Land Matters Advisory Committee

Introductory Comments

- Presentation materials should not be considered as an advocacy position for any group, person, corporation or industry
- Comments are made on behalf of the Real Property Committee and are reflective of legal experiences in dealing with real property related matters
- Comments reflect matters that present challenges when dealing with real property and as they affect the public at large

TOPIC – Lands Protection Act – No Reasons Given for Denials

Concerns

- No decisions for denials leaves both sellers and purchasers unsure as to next steps
- Costly for potential purchasers as application fee lost
- Difficult to advise sellers and purchasers following a denial
- No clarity as to options for next steps, judicial review, etc.
- Requirement to provide reasons for a decision are a fundamental principle to administrative law

Objective

- Consider implementing a requirement for Executive Council to provide reasons for all denials so as to promote transparency and certainty for sellers and purchasers
- This would be beneficial for compliance with principles of administrative law

TOPIC – Lands Protection Act - Succession

Concerns

- Current aggregate land limits can impede the transfer of a family farm to the next generation if the farm operation requires a designated land base for its successful operations
- Potential for negative consequences if a family farm only has one heir to continue operations
- Current legislative provisions are discretionary and do not provide for certainty (LPA, s. 2(2) and 2(3))

Objective

- Consider implementing provisions that provide for certainty and predictability in dealing with succession issues where aggregate land holdings may be exceeded on the death of a family member(s)

TOPIC – Lands Protection Act - Thresholds

Concerns

- Five (5) acre land threshold is a very low threshold for resident owned corporations
- The current application process results in additional time, costs and expenses for resident owned corporations
- Results in additional time for those selling land to resident owned corporations

Objective

- Consider whether the existing land holding thresholds of five (5) acres can be increased for resident owned corporations

TOPIC – Lands Protection Act - Identification

Concerns

- Process of identification and de-identification seems to be arbitrarily decided in some cases
- De-identification process is very cumbersome
- De-identification process adds time, costs and expense to land owners
- De-identification process involves a review within multiple Government departments and is duplicative
- Is it necessary for one acre lots that meet Planning Act standards to have IRAC de-identification approval?

Objective

- Consider whether the process of identification and de-identification is needed
- Consider whether the de-identification process can be streamlined to make it less cumbersome

TOPIC – Lands Protection Act – General Comments Regarding Recent Changes

Issues

- Arable and Non-arable lands
- Leasing in/Leasing out
- Global Lease Permits

- Aggregate Land Holding Limits

Comments

- A positive introduction to the LPA
- A positive introduction to the LPA
- Many do not seem to be aware of Global Lease permits and the requirement to make annual filings
- Calculations can be complicated, complex and are often not fully understood

TOPIC – Planning Act – Administration

Concerns

- Responses can seem ad hoc, and in some cases, subjective (i.e. variances)
- Timing for responses/approvals can be quite lengthy in many cases which adds time, costs and delays to the general public
- Staffing levels

Objective

- Consider the demand currently in place and how best to respond with staffing levels
- Consider how to remove subjectivity from any portions of the Planning Act so as to ensure certainty

TOPIC – Planning Act – Administration

Concerns

- Many smaller municipalities do not seem equipped with the resources needed to fully prepare, implement and manage proper land planning and development needs
- Issues with municipal amalgamations and planning processes

Objective

- Consider if smaller municipalities can be assisted with Provincial resources to prepare, implement and manage land planning and development matters
- Consider whether proper planning matters need to be in place as part of municipal amalgamations

TOPIC – Planning Act – General

Concerns

- Planning Act can be modernized in some ways
- Land Use clarity needed
- Bare land condos are becoming more popular, but there is a large degree of uncertainty towards jurisdiction pertaining to their overall development, including the responsibility for approvals, building permits, road access, etc.
- Special Planning Areas are problematic for many land owners

Objective

- Consider a review of the entire Planning Act
- Consider how condominiums should factor into principles of proper planning and the Planning Act at large
- Consider reviewing whether Special Planning Areas are still needed

TOPIC – Registration of Surveys

Concerns

- Lack of clear requirement to have surveys registered
- Different approaches between jurisdictions
- Lack of consistency as to who is responsible for registration
- Significant amount of time can be spent trying to locate approved survey plans
- Costly

Objective

- Ensure that there is a clear legislative requirement to have all approved land surveys registered in the appropriate land registry

TOPIC – Land Registry System

Concerns

- Most Canadian Provinces have moved to a Land Titles System
- Registry based system adds time and costs to land transactions
- Impossible to operate remotely with a registry based system
- There are delays in getting information uploaded to Geolinc in a timely manner, resulting in questions from the public as to accurate land ownership records

Objective

- Consider whether a transition to a Land Titles system should be considered

TOPIC – Land Transfer Tax

Concerns

- Exemptions exist for tax free transfers from an individual to a wholly owned corporation but the restrictions can limit the ability to complete “inter-family” transfers where a corporate entity is involved if the shareholders differ from the land owners

Objective

- Consider whether an exemption can be developed allowing for land transfers to be completed without triggering transfer tax so long as the transfer is an “inter-family” transfer

Three (3) Take Aways

- Consider updates to provincial planning and land use regulation through the Planning Act for unincorporated areas of Prince Edward Island, which will likely necessitate increased staffing requirements.
- Consider providing more transparency through the Lands Protection Act, including the provision of written reasons for all denials.
- Address the burdens created by the Lands Protection Act on resident owned corporations, with emphasis on the land holding thresholds and succession issues.

PEI Real Property Committee

Presentation to the Land Use Advisory
Committee