

**LOWER MAINLAND TREATY ADVISORY COMMITTEE
BOARD
TECHNICAL WORKSHOP ON SERVICING AGREEMENTS**

June 28, 2006

Notes of the **Lower Mainland Treaty Advisory Committee (LMTAC) Board Technical Workshop on Servicing Agreements** scheduled 5:30 p.m. to 8:30 p.m. on Wednesday, June 28, 2006 in the 2nd floor Boardroom, GVRD Offices, 4330 Kingsway, Burnaby, B.C.

ATTENDANCE:		
JURISDICTION:	LMTAC ELECTED REPRESENTATIVE:	LMTAC STAFF REPRESENTATIVE:
Greater Vancouver RD	Director Ralph Drew (Co-Chair)	Marino Piombini
Belcarra, Village of	Councillor Colin Richardson	Lynda Floyd
Bowen Island, Municipality of	Councillor Lisa Barrett (arrived 5:42 pm)	
Burnaby, City of	Councillor Sav Dhaliwal	Kimberley Flick
Coquitlam, City of	Councillor Barrie Lynch	Kerri Lore
Delta, Corporation of	Mayor Lois Jackson	Cheryl Hall
Langley, City of	Councillor Ted Schaffer	
Maple Ridge, District of	Councillor Al Hogarth	
New Westminster, City of	Councillor Bob Osterman	
North Vancouver, City of	Councillor Bob Heywood	Ken Tollstam Richard White
North Vancouver, District of		Dennis Back Margaret Eckenfelder
Pitt Meadows, District of	Councillor Debra Eisel	Laurie Darcus
Port Coquitlam, City of	Mayor Scott Young Councillor Mike Bowen	Tony Chong Jim Maitland
Richmond, City of	Councillor Harold Steves	
Squamish, District of	Councillor Corinne Lonsdale	Kim Anema
Sunshine Coast RD		Steve Lee
Surrey, City of		Robert Costanzo
Vancouver, City of	Councillor George Chow (arrived 5:42 pm)	Barb Pearce Rhys Williams
West Vancouver, District of	Councillor Jean Ferguson	Rick Beauchamp
Whistler	Councillor Ralph Forsyth	
White Rock, City of	Councillor Mary-Wade Anderson	
LMTAC STAFF ATTENDANCE:		
Regan Schlecker, Managing Director		
Mark Kirsop, Research and Communications Coordinator		
GUESTS:		
Donald Lidstone, Lidstone, Young and Anderson		
Terry Raymond, UBCM FNR Chair		
Marlene Wells, UBCM		
Bill Halstead, Chief Corporate Officer, District of Campbell River		
PREPARATION OF MEETING MINUTES:		
Karen Miller, Recording Secretary, Raincoast Ventures Ltd.		

Call to Order

Chair Drew confirmed a quorum was in attendance and called the workshop to order at 5:37 p.m.

1. WELCOME/INTRODUCTIONS

Chair Drew welcomed members and initiated a roundtable of introductions. Chair Drew recognized the importance of building relationships with First Nations; and reviewed the history of

service agreements with an interest in developing a consistent approach to delivering services within the Lower Mainland. He noted the *Towards a Model Local Government Service Agreement with Lower Mainland First Nations* Draft Discussion Paper was endorsed in principle by the LMTAC Board in May 2006 and feedback from members was encouraged for a final draft.

5:42 p.m.

Councillors Lisa Barrett and George Chow arrived at the meeting.

2. LMTAC STAFF OVERVIEW OF DISCUSSION PAPER

Towards a Model Local Government Service Agreement with Lower Mainland First Nations.

Regan Schlecker, Managing Director, and Mark Kirsop, Research and Communications Coordinator, provided an overhead presentation titled "*Towards a Model Local Government Service Agreement with Lower Mainland First Nations*" and discussed slides titled:

- Discussion Paper – Timeline
- Discussion Paper – Table of Contents
- Discussion Paper – Section A
- Discussion Paper – Section B
- Regional Considerations – Section C
- Examples of Service Agreement Provisions – Section D
- Elements of a Model Local Government Service Agreement – Section D
- General Terms (clauses 1-13) – Section D
- Customary Provisions (clauses 14-16) – Section D
- Services (clauses 17-25) – Section D
- Additional Recommended Provisions (clauses 26-32) – Section D
- Discussion Paper – Key Messages
- Discussion Paper – Next Steps.

During the presentation, Ms. Schlecker noted that the LMTAC Technical and Strategic Working Group (TSWG) commenced work in November 2005 on the draft discussion paper; presented it to the GVRD Regional Administrators' Advisory Committee (RAAC) April 5, 2006 and May 3, 2006; following which the discussion paper was endorsed in-principle by the LMTAC Board in May 2006. A comprehensive listing of service agreements referenced and background research was included in the appendices of the discussion paper. Ms. Schlecker acknowledged that recent federal legislation delegates more land management authorities to Bands and the result was an increased demand for service to new development.

Mr. Kirsop considered the development of guiding principles; noted that various diverse service agreements were referenced and four selected service agreements were used to create the model recommended within the discussion paper; and highlighted the general terms, customary provisions, services and additional recommended provisions elaborated upon within the paper. The construction of on-reserve infrastructure was recognized as important, although to-date no service agreement adequately considers "global servicing".

Ms. Schlecker noted that the success of the service agreements could be enhanced with relationship building initiatives; and the paper outlined significant potential areas of interest; and reviewed key messages. She invited feedback, and stressed that written comments should be submitted by July 28, 2006 so that staff could incorporate suggestions within the final draft to be presented to the LMTAC Board in September for endorsement in-full.

3. PRESENTATIONS

3.1 Legal Context – What makes servicing agreements with First Nations different?

Donald Lidstone, Lidstone, Young and Anderson, provided an overhead presentation titled “*Local Government and First Nations Servicing Agreements*”, and discussed slides titled:

- Introduction
- Indian Act
- Indian Self-Government Enabling Act
- Local Government Concerns
- First Nations Concerns
- Agreement Issues
- Capital Costs
- Community Benefits.

During the presentation Mr. Lidstone recognized historical issues across Canada relative to agreements, template establishment, and the relationship of taxation and servicing specific to the weaknesses of local governments. He noted that First Nations and their lawyers were well versed in the area of servicing agreements; and recognized the importance of models based on best practices and solidarity between communities.

Mr. Lidstone emphasized the importance of solidarity among Lower Mainland communities; and stressed that service agreement negotiators should make sure that the best possible clauses were included so that bad precedents were not set. From a legal perspective, Mr. Lidstone noted that servicing agreements were often reached: prior to First Nation tax law enactment in contemplation of tax notice; after tax law enactment; and in consideration of special agreements for particular projects.

Relative to the *Indian Act*, and *Indian Self-Government Enabling Act*, taxation and servicing was discussed. Local government concerns were recognized: specific to incremental servicing costs for City, however City taxes and Development Cost Charges (DCCs) no longer apply; revenue received does not match revenue foregone or actual costs; and elimination of City taxes and DCCs creates uncertainty about future servicing obligations. Therefore, reserves were often legally subsidized and assisted by the surrounding communities.

Further concerns were identified, including: City is required by statute to comply with strict budgetary process, yet development on reserve is unpredictable; lost opportunity to generate net taxation revenue; development on reserve; local government does not get full cost recovery after transfer of tax room; service agreements only moderate the tax/DCC loss, and the net fiscal impact is uneven; servicing agreement on local government does not fully compensate capital revenue losses; and local government may deny or cut-off services, although in reality it was difficult to practice.

First Nations concerns were discussed relative to certainty/uncertainty, self-reliance, and level of services. Integration of First Nations into the servicing agreement was suggested. Agreement issues relative to term, electoral approval, dispute resolution, permitted uses, infrastructure planning, new development; bulk meters; engineering standards; First Nations bylaw, payment and operating fees, access and right-of-way provision were discussed.

Mr. Lidstone recommended an initial agreement focused on residential uses limited to a specific number of units; and that an official plan, prepared by the First Nation, be attached to the agreement; and that new development options be considered within clauses of the agreement. Engineering standards within the agreement were commented on: a) Master Municipal Standards (MMS); b) satisfaction of municipal engineer; c) reference servicing bylaw. Municipal land use bylaws do not apply on reserve; and therefore a First Nation can adopt their own bylaw, or incorporate a municipal bylaw and enact it. A detailed and lengthy payment provision must be

included in the servicing agreement, including security, regional district charges, inspections and maintenance, penalties, and default mechanisms.

Capital cost burden on local government was discussed noting that it was important to build recovery of costs into the agreement, considering that assistance to business (e.g. retail/commercial activities) was illegal. Examples of off-site infrastructure replacement; amendment process; capital cost equivalents; off-site servicing; amenity provision or payment were noted. Public amenity objectives and community benefits could be controlled somewhat within a servicing agreement.

In support of well developed servicing agreements, it was emphasized that because contract law could be enforced on reserve lands, it was stronger than municipal zoning law.

In response to members' questions during and after the presentation, Mr. Lidstone provided the following comments:

- Provincial legislation indicates that an agreement for more than five years would require electorate approval for a capital liability; and therefore such could be considered within a five-year capital agreement, with a separate operating agreement for a much longer term;
- the meaning of the acronym NIMTOF is "not in my term of office";
- it is very important to endeavour to achieve maximum certainty and predictability within a servicing agreement so that no unforeseen third party eventualities could impact the municipal system at a later date;
- treaty-making is a much different process to servicing agreements which are addressed from the perspective of a municipal/corporate entity rather than government to government relations;
- in contemplation that Agricultural Land Reserve (ALR) land may be subject to servicing, consideration for such should be addressed within a servicing agreement;
- as an entity/agency/institution of the province, there is no control over land removal from the ALR, however without estimates on the servicing needs they could not be covered within a current servicing agreement and would need to be part of a future agreement;
- where a municipality or regional district is asked to provide some services in regard to the reserve lands to serve First Nation members, new development or future development, a negotiation with respect to the collateral matter related to a servicing agreement document is different from the treaty process and implementation;
- it is recognized that certainty is desired through the treaty process, and servicing must be negotiated outside of the treaty process (e.g. reserve lands now or Treaty Settlement Lands (TSL) in future);
- servicing should not be included in a Treaty as it could pose large challenges for future Councils, and therefore servicing agreements should be separate;
- recognizing traditional territory could spread through various municipalities and servicing agreements engaged by one municipality may not always be supported by an adjacent municipality, a geographical area definition of the lands must be included with the agreement as an attached schedule; and
- with respect to dyking, and its task of protection for an entire municipality, the provincial government has taken a position that it is the responsibility of the municipality to acquire the land to create a dyking system; and if a portion is on a reserve and has not been acquired by the municipality, the First Nation could take a legal position relative to payment required for local government trespassing; therefore it is recommended that a s35 easement be acquired under the *Indian Act*.

Request for Action

It was requested that LMTAC staff provide a copy of Donald Lidstone's presentation to LMTAC members for reference.

Mayor Jackson recommended that members and Mr. Lidstone read a publication titled "*First Nations Second Thought*" by Thomas Flanagan.

3.2 Local Government Panel

Chair Drew introduced local government panel members: Dennis Back, Director of Corporate Services, District of North Vancouver; Rick Beauchamp, Director of Administrative Services, District of West Vancouver; and Rhys Williams, Manager of Information Services, City of Vancouver. The panel shared lessons learned.

3.2.1 Dennis Back, District of North Vancouver

Dennis Back, District of North Vancouver, provided background information relative to the Tsleil-Waututh and Indian Reserve No.3; with approximately 800 market housing development units, noting that each project was originally subject to a separate servicing agreement.

An overarching servicing agreement to replace the previous agreements was desired by the First Nation and negotiations commenced in 2000 to purchase select services (water, sewer, fire, and limited library service). Staff found the cherry picking approach unacceptable and expressed that a package of services was being provided similar to that of services provided to other residents of the District. A framework for servicing included the whole of the reserve (market housing and the First Nation village); and contemplated that the Band would pay for all on reserve infrastructure – specifically when increased capacity was required. As well as the initial five year agreement, a separate agreement was reached relative to the First Nation village infrastructure upgrades prior to ongoing maintenance being undertaken by the District.

Payment for services were negotiated with the District of North Vancouver starting with the concept of 100% cost recovery, and resulting in an agreement wherein the annual fee represented fair value and takes into account that the Band was providing some of their own services (e.g. cost of governance, on-reserve recreation facilities); and some of the soft services (e.g. municipal planning, finance) the Band does not require. The fee represents approximately 60% of the value of the amount that would have been levied as taxes; but likely represents about 100% of the cost of service delivery. Growth in the number of dwelling units and percentage change in the District's tax rate are considered within annual review of the agreement. The agreement was renewed for a second term of five years.

A capture towards the capital costs of infrastructure was not negotiated within the service agreement, but will be the subject of much discussion within the next renewal process. A co-management agreement on Cates Park; a parks master plan providing for \$7 million over time with the First Nations presence was developed. A co-operation protocol agreement was drafted and will likely be in place by year end. There are more Council-to-Council meetings planned to build on the relationship developed to-date.

In response to a query relative to consideration of regional service (e.g. parks, air quality, 911 etc.), Mr. Back advised it had not been addressed within the current servicing agreement.

3.2.2 Rick Beauchamp, District of West Vancouver

Rick Beauchamp, District of West Vancouver, advised that West Vancouver had an expired agreement with the Squamish Nation, which is based on the Squamish Nation paying 75% of the general mill rate for services received. Energy is now being spent on a new master servicing agreement, and the political will of both parties was present to move forward.

The Squamish Nation, comprised of approximately 300 residents, desires some certainty, as does the district. In the past there has been mistrust by both parties attributed to a lack of understanding of different cultures and governance models was acknowledged. Considerable effort has been given to relationship-building work to develop a new understanding and vision for both communities. Community to Community forum and Informal meetings have been held to encourage dialogue between senior officials.

A number of joint projects have been undertaken including the police involvement with the Squamish Nation youth; and a contract with the Attorney General's office allowing West

Vancouver police and RCMP to provide policing services to the Squamish Nation reserves; participation in celebrations; and jointly served committees were credited with improving understanding and relations between the two communities. The West Vancouver Council, through the leadership of Mayor Goldsmith-Jones, has taken an active role in building the relationship with the Squamish Nation. North Shore sustainability has been a focus of discussion and a new understanding of long-term vision sharing has been positive and attributed to moving forward with the development of a new master service agreement..

The regional context has been included in the visioning to some degree as part of the mandate in negotiations. A steering committee with representation by senior officials; and working committees relative to planning, governance and taxation have been established. Work planning has taken place and a willingness to proceed quickly has been realized. Contributions for DCCs and community benefits were recognized as challenges. Integration of inter-governmental and regional aspects were considered topics currently at the preliminary stage. A skeleton agreement and Memorandum of Understanding are being prepared at a high level to reinforce commonalities related to the communities. The Squamish Nation has prepared a land use plan to help guide their development.

A taxation model based on the BC Assessment Authority assessments (appraised First Nation properties) will demonstrate the true cost of services for First Nation residents with offset funding to be established from other Squamish Nation funding sources.. Scenarios and calculations using the tax model will be considered in developing the final agreement.

. Some first principles were approved by West Vancouver Council, but not endorsed by the Squamish Nation as they were felt to be too restrictive. We are now focusing on interest-based negotiations. Negotiations are progressing well with an estimated time-line of 18 months for completing a new master servicing and taxation agreement.

3.2.3 Rhys Williams, City of Vancouver

Rhys Williams, City of Vancouver, noted parallelism with other municipalities and recognized that protocols were being established to move forward with the Musqueam First Nation Council-to-Council. Old agreements were very limiting and involved collection of taxes. Musqueam moved to being self-governing in 1994; and various agreements were collapsed into one servicing agreement. Consistency of Band staff was recognized as a challenge relative to disconnect between staff and Council on priorities.

Upgrade of sewers has required addendums to the agreement. The main agreement has now been opened and the parties are at the second draft stage of a new agreement; with a one page protocol specific to government-to-government relations. It was recognized that the agreement involved a high level summary with a chapter for each service, with the intent that the chapters could be revisited individually if needed.

Relative to the regional perspective, the agreement does not explicitly deal with parks, air quality, hospitals, or schools. Outstanding legal issues with the GVRD have a current influence on the viewpoint of the Musqueam. GVRD's responsibility to pursue equity on behalf of constituents was commented on.

The service billing process was reviewed by Mr. Williams, recognizing that select services were purchased on the gross cost rate with the result that the final bill comes to 88% of the full tax rate. Excluded are Council and administrative services that the Musqueam First Nation provides, as well as parks; while library services are included within the servicing agreement.

A Squamish reserve in Kitsilano was acknowledged, noting that a meeting was scheduled to discuss needs; the Squamish recognize reliance on the City of Vancouver for services, and that development should be seamless with respect to a consistent cityscape.

4. GENERAL DISCUSSION / NEXT STEPS

Chair Drew invited general discussion and questions directed to the panel or Mr. Lidstone.

In response to a question relative to whether any of the agreements had a dispute mechanism specifically for the renewal portion of the agreement, the following comments were offered:

- the District of North Vancouver had a dispute resolution mechanism which was not specific to any one provision;
- the City of Vancouver did not have a five year agreement limit; and therefore a public process was not required; and a commercial arbitration clause was included; and
- West Vancouver intended to use a similar commercial arbitration clause.

On the topic of cultural misunderstandings, panel members indicated:

- cultural misunderstanding was probably not unusual or uncommon;
- it takes time to gain an understanding which could be facilitated by scheduling informal gatherings to build relationships; and
- within the negotiation process there was some experience with how the governance models operated (e.g. elected and appointed positions and high turnover).

Further, it was recognized that:

- there was a large difference between negotiating a service agreement with a developer or municipality and doing so with a First Nation because discussions about future equity must countenance the history of the First Nation community and unbalanced relationship;
- efforts must be made to build a relationship and trust;
- importance was placed on a long term relationship that provides certainty for both parties from a financial planning, infrastructure and development perspective;
- mutual respect and trust were recognized as key, as well as the understanding of the symbiotic relationship;
- FCM, Council-to-Council meetings, attendance of each others' social functions, and having ongoing committees that liaise with each other were stressed as critical; and
- both cultures reflect a different frame of reference; inclusion of First Nations Elders that hold influence was helpful in terms of reconciliation, trust and openness.

In response to a member question, panel members indicated that the term 'reasonableness' was not included in agreements as the test of reasonableness and its definition could vary. Mr. Lidstone emphasized that it was far more effective to spell out details of the agreement, rather than leaving it to a future arbitrator.

With respect to the legal implications of the *Community Charter*:

- an agreement relating to capital liability could be separated out and restricted to five years, while other areas (e.g. operating agreement) could involve a longer term;
- the *Community Charter* does not preclude a municipality from entering an agreement for a longer term with a certain amount of revenue on an ongoing basis;
- the shorter provision comes from the 1960 *Municipal Act*, and it has now been narrowed down to an AAP, Counter petition, and the municipality's liability requiring the approval of the electors specific to a capital obligation;
- relative to long term planning and consultation, a good relationship with a First Nation would include dialogue relative to long term build out which would be stated in the agreement so that there was a limit contemplated (e.g. 25 year agreement with expected ultimate build out and an OCP-type plan included, with the geographical land defined in a schedule);
- if the uses or development change then they would come back to the table and do an addendum or a new agreement; and
- the agreement should spell out the process, costs, and services for an uptake ceiling.

With reference to the general taxation rate negotiated or demonstrated within a servicing agreement with First Nations, the panel indicated:

- for the District of North Vancouver, the 68% roughly negotiated was reasonable, and there was a comfort level with on-reserve infrastructure provided by the First Nation;
- initially a lump sum number was negotiated rather than a percentage on the first agreement with the District of North Vancouver, political history was referenced noting fair value was achieved within the agreement;
- the District of West Vancouver originally negotiated 75% of general taxation based on taxable improvements for non-First Nation residences;
- current negotiations were starting from a position of 100% for non-First Nation lands – percentage to be reduced if the First Nation was providing services; for on First Nation lands it would start at 0% and build up based on what services they were receiving;
- the agreement must be supportable in the public domain, so time must be taken to understand end results;
- the principle behind the number was important; gross or net costs of services provided were the consideration for the City of Vancouver, and a 7% overhead percentage was agreed upon based on ownership of infrastructure.

The meeting was apprised that the District of North Vancouver had a service agreement with the Squamish First Nation dating back to 1982 which contained many of the same elements as the agreement with the Tsleil-Waututh.

Dennis Back, District of North Vancouver, acknowledged Marlene Wells, UBCM, relative to work done on her Masters thesis based on the residential and commercial aspects of the Tsleil-Waututh.

Chair Drew advised that Ms. Wells had replaced Joanne Gouche for the file on Aboriginal relations with UBCM.

Chair Drew recognized challenges with the subject of DCCs and regional services from a holistic approach, however active focus and discussion in evolving service agreements was encouraged. He urged members to submit their comments, suggestions and recommendations to LMTAC staff by July 28, 2006 to incorporate them in the final Discussion Paper for presentation in September.

Appreciation was expressed to Donald Lidstone and Panel members for their presentations.

5. **CONCLUSION**

It was MOVED and SECONDED

THAT the LMTAC Board Technical Workshop on Servicing Agreements held June 28, 2006 be now concluded.

CARRIED UNANIMOUSLY

(Time: 8:21 p.m.)