

More at stake than a golf course

The Musqueam Band's targeting of two pieces of prime west side real estate is just for starters in B.C. land claims

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The backlash being whipped up by opponents of the leaked deal to transfer the University Golf Course lands to the Musqueam Indian Band as part of a land claims settlement hasn't been quieted by the band's promise that the property will remain as a golf course until 2033.

But those opposing it so vehemently haven't clued into the fact -- and perhaps the provincial government hasn't, either -- that 120 pristine acres of the University Golf Course in the heart of Vancouver isn't the only prize sought by the Musqueam.

Rather, their acquisition is the means to an end. What the band really has its sights set on is an even greater bonanza: A parcel of 162 acres of superb green space, much of it high-bank waterfront, also within the limits of the city.

That parcel is the Shaughnessy Golf and Country Club overlooking the Strait of Georgia at the mouth of the north arm of the Fraser River.

This parcel forms a part of Musqueam Indian Reserve No. 2 and was leased to Shaughnessy in 1958 for a period of 75 years. The original lease was a sweetheart deal negotiated by the federal government on behalf of the Musqueam, but on terms much less rewarding than what the Musqueam had sought. Shaughnessy got the land for a mere \$29,000 a year with no escalation for 15 years. As a further insult to the Indians, escalation was capped at a maximum of 15 per cent.

Litigation in the 1980s eventually sorted out that travesty and the Musqueam band was awarded \$10 million in damages, paid by Canadian taxpayers. But the lease remained in place, to be renegotiated every 15 years. The fact that the lease does not expire until 2033 presents a conundrum to both the golf club and the Indian band.

The Musqueam are frustrated by the fact that just beyond their grasp is a piece of their reserve whose value, at its highest and best use, may not be that far shy of \$1 billion in today's market. And Shaughnessy club members well know they will be unable to afford to pay an economic rent for the property at renewal in 2018 and may have no alternative but to walk away from the lease.



CREDIT: Mark van Manen, Vancouver Sun

The scenic (and exceedingly valuable) 17th hole at the Shaughnessy Golf and Country Club. A deal to return the Shaughnessy lands to reserve status in 25 years -- a full generation -- would be an extraordinary coup for the Musqueam band.

Shaughnessy has investigated alternative sites for a backup course, even approaching the Musqueam Band itself, as Chief Ernie Campbell told a parliamentary committee in 1999. If Shaughnessy was forced to cancel its lease, as can happen on six months' notice, it would lose everything except the salvage value of its buildings.

Clearly a better solution for its members would be to have the band buy out the lease before renewal or expiry, as the band did in 2003 with another golf course development.

Suddenly a deal seems possible: Musqueam wins the University Golf Course in a land claims settlement, trades the property to Shaughnessy together with an affordable lease, and the university lands remain a golf course until the lease expires in 2033, just as Campbell said it would.

It is, as they say, win-win: Shaughnessy golfers get a great course to play in their own backyard, and the Musqueam get back lands with virtually unlimited potential for development.

For years the Musqueam band has been claiming that it hasn't enough land to house its families. "We are struggling to find land to provide housing and economic opportunities for our people," Campbell declared in a 2005 court filing opposing the province's approval of a site in Richmond for the relocation of the River Rock Casino.

In the land claims negotiations the Musqueam "consistently identified a shortage of land as a central issue for them," the provincial ministry of aboriginal relations says in response to entreaties from opponents of the university deal.

But for a band short of land, Musqueam has shown a remarkable willingness to dispose of property by way of lease to third parties: 162 acres to Shaughnessy; 38 acres for the Musqueam Park subdivision; 50 acres for the Salish Park subdivision; 57 acres for the former Eaglequest golf centre.

After Musqueam paid out \$5 million to buy back the Eaglequest lease four years ago, the band continued to use this prime piece of Fraser River waterfront property as a golf course rather than develop it for reserve housing. One reason may be that the band's population actually is in decline, as was shown by the 2001 census.

Acquiring the university lands, followed by a deal to the return to reserve status of the Shaughnessy lands in 25 years -- a full generation -- would be an extraordinary coup for the 1,300 people populating the Musqueam band, fewer than one-half of them registered Indians (2001 census.)

It is not just that the Shaughnessy setting is extraordinary -- perched above the Strait of Georgia foreshore with views to the southwest, and bordering on Pacific Spirit Park and the two high-end residential leasehold properties, Salish Park and Musqueam Park -- but also because there are no obvious constraints to development.

Reserve lands are beyond the zoning and density controls of the City of Vancouver. Post-treaty, however, their form of tenure may be changed.

If the recent Tsawwassen treaty example is followed, former reserve lands will be called "Musqueam lands" and the band will have law-making authority over them. The band has, however, a long-standing services agreement with the city for the provision of sewer and water, etc. That reliance on Vancouver for municipal services may give the city some measure of control over future use.

The ramifications of the proposed university giveaway are unfolding as expected, and

indeed hold the potential to affect Indian land claims for many years to come. Yet to date they appear to have been given little consideration by the provincial government.

There is, at the outset, an onslaught of public antagonism, which can only be expected to grow, spurred on, as it is, by the petition-wielding Martin Zlotnik, a member of the Vancouver Park Board and former mayoral candidate. Zlotnik's answer is to give Musqueam alternative lands -- a 120-acre parcel of Pacific Spirit Park, also controlled by the province.

That's not likely. Pacific Spirit Park -- 1,885 acres bordering the University of British Columbia and stretching across the Point Grey peninsula -- is replete with ecologically sensitive areas, including Camosun Bog and a full-fledged Ecological Reserve.

Cutting up this high-use park, crisscrossed by more than 30 nature trails, would attract an even greater public backlash, not to mention the precedent it would set; Musqueam is not the only band to seek lands in Vancouver.

The North Shore's Squamish Band once had an extensive reserve in what is now Kitsilano. The lands were taken from the band in a questionable exercise, as was land used by the CPR at the southern foot of Vancouver's Burrard Bridge. (A small parcel there has now been affirmed by the courts as a Squamish reserve.) No doubt Premier Gordon Campbell and his aboriginal relations minister, Michael de Jong, have already heard from the Squamish about the university deal.

Campbell's riding of Vancouver-Point Grey includes both the University Golf Club lands and Pacific Spirit Park. The deal raises the question of whether he plans to run again, for divestiture of either may well cost him his seat in the next provincial election in May 2009.

What is also puzzling is that the Campbell government appears to be letting the federal government off the hook. In the 1970s, when the federal government under Pierre Elliott Trudeau first began to take seriously Indian claims in B.C., it undertook an inventory of federally owned lands in British Columbia. Among others, the listed properties included Vancouver International Airport and Stanley Park, both within the territory claimed by the Musqueam. With Musqueam threats to those properties gone, federal politicians now can breathe a little easier.

There is little doubt the legacy of the university deal would be a negative impact on the future of comprehensive land claims negotiations in B.C. By ceding the university lands to the Musqueam the province would be abrogating a long-held policy of both B.C. and Canada of refusing to make so-called alienated (i.e., occupied) lands available to Indians in claims settlements. That a Musqueam land claim presented in the 1980s was rejected by the federal government on the basis that the claimed lands were alienated, and thus unavailable, speaks to the weight of this policy.

To end it would mean Indian bands throughout B.C., armed by the Musqueam precedent, could similarly demand conveyances to them of publicly or privately held lands. Among a wary public, the political repercussions would be swift, vocal and beyond the ability of governments to withstand. Claims negotiations might well falter and die.

Finally, such a blunder would give credence to the notion, seemingly accepted by a substantial part of the public, that Indians once owned all of B.C. In fact, the Indian interest in land is a limited one, as the courts have agreed, subject to the underlying title of the Crown.

While the legitimacy of Indian claims is not at question, their focus on land greatly

inhibits their resolution. It arises in part from past actions of the federal government in inviting tribes and bands to cross-hatch their traditional land base on a map of B.C. What the feds sought to achieve was to put settlement pressure on the province, as owner of the lands, and thereby limit the federal contribution.

Soon the map was covered, including even those vast areas of B.C. that are inaccessible wilderness.

Historically, claims were framed in a different context. The Nisga'a claim of 1913 put it this way:

"The claims which we make in respect of this territory [the Nass River Valley] are clear and simple. We lay claims to the rights of men."

In 1927, the Haida chief Peter Kelly suggested non-Indians were wrong-headed about land claims.

"We do not want anything extravagant," he said, ". . . anything hurtful to the real interests of the white people. We want that our actual rights be determined and recognized; we want a settlement based on justice. We want a full opportunity of making a future for ourselves."

Reaction to the Musqueam affair, if it goes ahead, may determine whether that opportunity is realized, or lost.

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