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ASPECTS OF APPRAISING IN NUNAVUT

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INTRODUCTION

Nunavut Territory is huge. It spans three time zones over some 2.093 million square kilometres. That amounts to 21% of Canada's entire land area. Yet, there are only around 38,000 people that call Nunavut home. In perspective, if you invited all of these people to a Toronto Blue Jay's baseball game at the Rogers Centre in Toronto (capacity 53,500 people), there would still be lots of seats available. This article will focus on land and tenure in Nunavut from an appraiser's perspective.



TRANSPORTATION AND CONSTRUCTION MATERIALS

Air travel is crucial to getting around in the North, because there are no roads between the main Arctic communities. Larger bulk deliveries of construction materials, vehicles, heavy equipment, housewares and non-perishable items, etc., are supplied by Sealift to communities. Depending upon sea ice conditions, Sealift services the North between late June and late October. It remains the most economical way to transport bulk goods to the Arctic. But, with such a narrow operating window, the more remote northern communities may only get one delivery a year. New construction projects need considerable logistical planning, as a missed pallet of windows could result in an expensive airfare to maintain a tight construction timeline.

Compared to a construction budget for a project in the South, work in the North would likely include significant additional costs for materials transportation (via Sealift), flights and accommodation for trades, winter heating costs, etc., that can push the cost up 25% or more. A prudent appraiser should run a cost approach in his or her analysis, since the simple Principle of Substitution is a key metric to identifying market value.

NUNAVUT LAND CLAIMS AGREEMENT

Nunavut Day is celebrated every year on July 9, marking the day that the Canadian Parliament passed the *Nunavut Land Claims Agreement Act (NLCA)* and the *Nunavut Act*.

Nunavut officially separated from the Northwest Territories on April 1, 1999. The *NLCA* remains the largest land claim in Canadian history and appraisers working there need to be aware that they are at all times guests of the Inuit, and the properties that they appraise are, in most cases, subject to land leases granted by the Inuit.

The 41 articles of the *NLCA* addressed a range of political and environmental rights and concerns, including wildlife management and harvesting rights, land, water and environmental management regimes, parks and conservation areas, heritage resources, public sector employment and contracting, and other issues, such as title to Inuit owned lands.

The main features of the agreement were:

- *NLCA* gave the Inuit of Nunavut title to approximately 350,000 km² of land, of which 35,257 km² include mineral rights;
- The right to harvest wildlife on lands and waters throughout the Territory;
- A share of royalties from oil, gas and mineral development on Crown lands;
- The right to negotiate with industry for economic and social benefits from the development of non-renewable resources on Inuit owned lands;



- Equal representation of Inuit with the government on new management boards overseeing wildlife, resources and environmental management;
- The creation of three federally funded national parks; and
- Capital transfer payments for the establishment of the Government of Nunavut.

MUNICIPAL LAND

Article 14.8 of the *NLCA* speaks to the *Limits on Alienation of Municipal Lands*. In effect, “the Municipal Corporation shall not sell, assign, or create any interest or rights in such lands that: (a) exceed 99 years in duration, including any period of renewal; or b) arise more than 99 years in the future.”

However, the *NLCA* allowed for a referendum “at any time after 20 years” in order to allow municipal voters to elect by referendum to remove this restriction. A referendum took place in 2016 with the vote in favour of keeping the status quo.

STANDARD LAND LEASES

Much of the land in the Territory is designated either Inuit owned or Crown land, so it is unlikely that an appraiser will find the subject property on fee simple title. There are a few fee simple titled parcels in Iqaluit, but they are unlikely to be held by non-Inuit individuals or non-Inuit corporate entities. The *Constitution Act* requires Senate appointees to own at least \$4,000 worth of land. In 2016, Nunavut Senator Dennis Patterson put forward a motion to amend the *Constitution Act* in light of the issues surrounding the interpretation of ‘owning land’ in Nunavut.

Prior to the establishment of Nunavut in 1999, many land leases had mostly been granted by the Commissioner for the Northwest Territories. These simple land lease documents were structured upon basic parameters, such as stating a term of years certain (usually 30 years) and an annual rent (subject to amendment every five years).

The adjustment to the rental rate was based upon an amendment issued by the Deputy Minister. In the leases I have reviewed, there was no arbitration clause, just provision for “the determination of the fair appraised value will be made by the Supreme Court of the Northwest Territories” if the tenant does not find the new rate acceptable.

Standard land leases typically include a ‘Land Use’ clause determining the category of occupancy (residential, industrial, commercial, etc.), which is usually aligned with the municipal plan. This makes the highest and best use of the land as though vacant analysis somewhat moot, as the use of the land is bound to the permitted use caveat in the lease.

The lease may include a construction clause, as the expectation is that someone occupying the land would be expected to follow through with building something on that land. The construction clause not only mentions the expected minimum value of the construction project, but also the time limit to complete construction (typically two years) with work starting within six months of the effective date of the start of the lease. If the tenant fails to build, there is a clause that potentially terminates the lease. From a municipal land management perspective, this ensures that the land is fully utilized to the benefit of the community.

Standard land leases also consider what happens to the improvements on the land at the end of the term. Provisions may set the assumption that the land will be returned to its original state (all improvements removed, although not including any land fill for roads, foundations, etc. that might still be useful) and deliver up the land in a condition satisfactory to the Deputy Minister.

Standard land leases I have seen did not include a renewal clause, meaning that the tenant would need to renegotiate a new lease without any guarantee that they could continue at the location beyond the term of the original lease.

As communities grow, municipalities will devise plans to create lots for future use and offer them for lease. The municipality will front-end the cost to create the roads and install the power lines within these expansion areas. Note that not all communities have underground water and sewer services, and buildings without underground connections are thus provided with water/sanitary services by tanker service to supply and extract (although not at the same time to the same truck). Heating utilities typically include an oil-fired boiler or furnace with on-site heating oil storage tank. Solar power would be a challenge during the winter months, for obvious reasons.



It is worth mentioning that many buildings are constructed above the ground, supported on a steel frame and steel piles driven down to bedrock. This allows for the land to be developed above typically steep terrain. The purpose of the air gap is to prevent heating the perma-frost layers below, as this would result in the ground heaving. If you ever get to Iqaluit, check out the new (2018) Aquatic Centre with six-lane 25-metre pool and leisure facilities, all constructed above ground, with an air gap under the building superstructure. Some buildings are constructed on the ground, such as the new terminal building. However, if you look closely, they feature the 'Thermosyphon system' passive cooling technology.

Incidentally, buildings are sequentially numbered in the communities. That way, the fire service can find the exact location of the house or building.

POST NLCA LAND LEASES

After the proclamation of the *NLCA Act* and the *Nunavut Act*, municipal corporations updated bylaws to provide greater clarity to align to this new legislation. While they had powers (for example, under the *Hamlets Act*), the hamlets wanted to establish an updated uniform process for the disposal of real property owned, leased or otherwise held by a municipality. For example, the Municipal Corporation of the Hamlet of Pond Inlet through its Lands Administration Bylaw (approved Feb 2, 2002) highlights some of the provisions of note to the appraiser.

In the Pond Inlet Bylaw, pricing of new lots (developed after May 31, 1997), is based upon known development costs, including allowances for site specific factors. These specific factors include size of parcel, condition, desirability of location, adjacent land users, historical use of the lot, and proposed land uses. The adjustment can be applied either by adding or subtracting 25% of the development costs of new lots.

Since a new lot is priced on the basis of development costs, an 'old lot' could potentially have had its development costs paid out. The Bylaw considers this and states that the lot price will be determined by either the replacement cost or the market value as determined by a qualified land appraiser or assessor, or a calling for bids by public tender (with the proviso that the reserve is not less than the replacement cost).

EQUITY LEASES

An equity lease allows the lessee to pay the entire balance of the lot price and off-site levies upon signing the lease. This 'front-ending' of the rent is considered to be the tenant's equity in future occupancy of the land.

There remains the provision that the tenant pays an annual rental fee. In Iqaluit, the annual rental fee may be \$1.00 per annum. In Pond Inlet, it is \$50.00 per annum, as per the Bylaw.

Under the *NLCA*, at any time after 20 years a referendum may be held on whether to maintain or change the Territory's leasehold title system. There was a vote in 2016 on the question



“do you want the municipality of (city or hamlet name) to be able to sell municipal lands?” The result was “No.” The *NLCA* leaves open the possibility that future referendums can still take place (any time after the 20-year anniversary). If a future referendum allowed for sales of land in Nunavut, the fee simple title for the lot may be available to be transferred to the lessee.

Leases established after the creation of Nunavut are likely to make reference to the equity lease and referendum clause. There is, however, an overlap for standard land leases. In this scenario, a lessee (in Pond Inlet for example) holding a non-equity lease may apply for an equity lease under section 34 “...the cost of an old lot will be based on the replacement cost of the lot and lease fees paid to date will be deducted from that cost.”

If the lessee wishes to surrender their equity lease, they are entitled to a refund of equity, less deposit (5%) of the lot price.

EQUITY LEASES – REPLACEMENT GUARANTEE

Perhaps one of the main features of the equity lease is the inclusion of a Replacement Guarantee clause. For example, an equity lease with the City of Iqaluit for a term of 30 years might state that “the City, shall, at the expiration of the said term, grant to the Lessee a new lease of the land for a further term of thirty (30) years, at a rental rate of One (\$1.00) per annum and subject to the same covenants... (except for this clause).” In effect, the lessee potentially has occupancy for 60 years on the land. This is important for investment grade assets.

It is recalled that, in income capitalization, the capitalization rate is applied to the stabilized net operating income. The indication of value is thus based upon the assumption that the purchaser collects the stabilized net operating income into perpetuity. Appraisers will be familiar with the concept of present value. The reality is that, over the time horizon, the further into the future you look, the lower the present value of those future revenues will be. The present value of \$1.00 at 7.0% declines to less than \$0.01 after 55 years. Changing the rate to 8.0% would take at least 63 years before the present value of \$1.00 is under \$0.01 per annum.

Ideally, when appraising investment assets on equity land leases, it is useful to remain cognizant of the remaining initial term of the lease and whether the lease provides for a replacement guarantee. If the unexpired term of the lease is, say, over 50 years, then an income approach could reference income capitalization as a value test. However, a cash flow analysis would also be recommended, with the appraiser completing a discounted cash flow (with no reversion) to provide a secondary analysis.

The mechanism for sale of improved assets in the Territory is thus achieved through the assignment of the land lease interest. As in the example of the *Pond Inlet Lands Administration Bylaw*, this is referred to as a ‘transfer.’

SUMMARY

Working in the North requires a resilience to the environment and an ability to be flexible, especially if your flight is cancelled for four days due to ice fog. At all times, you are a visitor on Inuit lands and a basic understanding of how land is used is fundamental to the appraisal process.

- Nunavut Territory emerged from the *Nunavut Land Claims Act* and the *Nunavut Act* just over 20 years ago.
- A provision within the *NLCA* identified that municipalities could not sell, assign, or create any interest or rights in such lands that exceed 99 years in length.
- Land lease terms are typically found to be for 30 years, with 30-year options to renew; however, the overall term cannot be more than 99 years.
- In effect, for the most part there are no marketable fee simple lands in the territory.
- Equity leases are land leases where the lessee makes payments that are credited against the principal lot price (adjusted for appropriate interest and service charges).
- The *NLCA* includes provision for a referendum of Nunavummiut voters, asking “Do you want the Municipality of _____ to be able to sell municipal lands? Yes or No.”
- The last vote in May 2016 was “no,” meaning that the Municipality would keep ownership of all municipal lands and would continue to lease them.
- Under the *NLCA*, if the vote was ‘yes,’ municipalities could convert existing equity land leases to fee simple title.
- The *NLCA* allows for future referendums.

END NOTES

- ¹ https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/421S221E
- ² <https://www.cbc.ca/news/canada/north/dennis-patterson-nunavut-senator-land-requirement-1.3492697>

ADDITIONAL READING

- *CUSPAP 2020* – Section 5.10
- *Nunavut Land Claims Agreement* https://www.gov.nu.ca/sites/default/files/Nunavut_Land_Claims_Agreement.pdf
- *Nunavut Act* <https://laws-lois.justice.gc.ca/eng/acts/n-28.6/page-1.html#h-369707>
- *Dear Qallunaat (white people)* by Sandra Inuitiq <https://www.cbc.ca/news/canada/north/dear-qallunaat-white-people-inuit-sandra-inuitiq-1.5020210>