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Sent: Monday, June 22, 2020 10:43 AM
To: Fiske-Nielsen, Kelley <kfiskenielsen@brownleelaw.com>; Matthew Boscarior <matthew.boscarior@wheatlandcounty.ca>; Smith, Kayla <ksmith@brownleelaw.com>
Cc: Michael Ziehr <michael.ziehr@wheatlandcounty.ca>
Subject: RE: Teleconference Request - Lakes of Muirfield; Wheatland County Acquisition

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Agreed on the sale comments.

The County will need to determine which units are:

1. **“green”** – i.e. serviced, accessible, ready for sale;
2. **“yellow”** – meaning there may be some deficiency that can be addressed on a one-off basis (e.g. curbstops, etc.), which could be addressed by a covenant or special term in the sale agreement for the County to address before or after the sale; and
3. **“red”** – units requiring infrastructure work and expenditures of the County, which may require an advertisement under NWPTA, revisions to County capital and/or operating budget, and even may require the receipt of some level of sale revenue of green or yellow units in order to fund the work.

So all on-site deficiencies need to be collected, described, and understood as to which units are affected. Part of the services of the realtor would have include working with the County on establishing and maintaining a list, with information provided by the County, and updating it, so that there is a clear record of what is saleable and what is not.

Lastly, standard listing agreements and standard sale agreements will need some special provisions to ensure that the standard terms do not work against the County. These would include:

1. **Listing Agreement** – these would have commissions earned if an offer at the list price is received. However, as noted above, there may be units that require special terms. So it is not just sale price that is relevant, but terms of sale. Also, the listing agreement would address the categories of n=units, and the maintenance of a 10 listing “inventory” at any time, and other terms from the realtor’s proposal;
2. **Sale Agreement** – the Development is in a state of flux, with completed and incomplete infrastructure, outstanding issues, etc. So:
 - a. **Defects/Deficiencies** – all of these would be part of a disclosure to purchasers, and part of that disclosure may require that the County comes to a decision on what it will be doing and when (e.g. timing of completing roads, etc.) if possible in order to provide some comfort to purchasers. Disclosure to a purchaser is required as these may otherwise be “latent defects” (i.e. unseen defects) which a purchaser can have an action against a vendor for latent defects known the vendor even when the sale agreement is a sale on and as is where is basis. So again, assembly of defects is very important;
 - b. **Condominium Property Act** – the Act imposes special requirements upon a “developer”, which may or may not have been complied with by the Developer to date. These range from disclosure packages to the form and content of the sale agreement. However, the definition of developer is very specific:

(j) “developer” means a person who, alone or in conjunction with other persons, sells or offers for sale to the public units or proposed units that have not previously been sold to the public by means of an arm’s length transaction;

As the units have passed through 2 owner (from MLC to 074, and then to the County) we would suggest that the County take the position (and it would be our opinion) that it is not a “developer” for the purposes of the developer-related provisions of the Act. This allows for freedom as to form and content of the sale agreement, and avoidance of regulatory requirements under the Act

- c. **HOA and Condominium** – the sale agreement should explain the roles of the organizations, and fee structure, to ensure that the purchaser understands what it is getting into and will be subject to;
- d. **Servicing** – same issue as disclosure noted above.

So a standard Addendum to the standard sale agreement will be prepared and attached to each sale agreement. We have a much better understanding of the servicing now. But we will need more specifics on the defects, deficiencies, and outstanding infrastructure, and what units it affects.



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From: Fiske-Nielsen, Kelley

Sent: Monday, June 22, 2020 9:52 AM

To: 'Matthew Boscariol'; Smith, Kayla; Thorkelsson, Rodd

Cc: Michael Ziehr

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Please see below, in highlight, some preliminary feedback, from a legal perspective