

Splintered Rights

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Increased density of city cores and the accompanying escalation of land values inspire innovative responses to market place demands. The "splintered rights" theme will be played with unlimited variations and will challenge the right of way professional to strive for mastery.



Mixed-use Redevelopment Project by I.D.J. Management Group in Toronto.

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The "Bundle of Rights" analogy that many of us are familiar with has taken on new dimensions since the inception of the "Condominium" and "Cooperative Ownership" concepts.

New developments exist in which a building is composed of both a residential condominium and also contains commercial elements that are owned separately. The building may contain more than one condominium corporation, or the land may be divided vertically and horizontally into diverse ownerships.

Imagine, if you will, a twelve storey building in the corner of two major streets in the Toronto city core. The building has shops on the street level, four storeys of office space above and seven storeys of apartments above the offices. There are two lobbies, one leading to the offices and one leading to the residential component. The garage access ramp is inside the structure and is served by a driveway through the structure. There is some parking at grade and vehicular access to two adjacent buildings which are not part of the project.

Such a project presents some interest-

ing new dimensions to the "Bundle of Rights" analogy. The apartments, one lobby, the residential elevators and parts of the basement, mechanical rooms, storage and parking areas are a condominium. The commercial space and one lobby, the four storey elevator and portions of the garage are not part of the condominium and are owned by the developer, a joint-venture partnership, with virtually all of the commercial elements leased to a variety of tenants.

Consider the title of a condominium unit owner in the project described above. He has full ownership of a space within the building bounded by the interior wall finish, the exterior doors and the windows of his apartment; he has exclusive use, but not the ownership, of the balcony or terrace to which the unit leads, and possible ownership or exclusive use of a parking stall. He has an undivided interest in the structural and mechanical elements of the residential portions of the building and he, in common with the other apartment owners, has rights-of-way and easements through the commercial elements of the building below for support, for access and for service ducts, sewers, telephone lines, water lines and the right to access and maintain such services.

The liabilities which the apartment dweller assumes with ownership are a proportionate share of the costs associ-

ated with the operation and maintenance of the residential portion of the building and a share of costs of operation and maintenance of portions of the building below which are used by both the condominium and commercial element. These latter expenses are usually embodied in a cost-sharing agreement between the parties.

The apartment owner also has, in effect, become subject to a new level of government. Apart from the usual federal, provincial and municipal laws and regulations, he is governed, in his use of his unit, by the rules and by-laws of the condominium corporation.

The right-of-way professional, in dealing with road widenings, easements or rights-of-way through such a property needs a clear understanding of the degrees of interest in the lands to be acquired. He must be able to understand complex survey plans which divide land horizontally and vertically. He must understand condominium declarations and the leases to establish the actual ownership of the land and of the improvements effected by his requirements.

The agent must recognize that dealing with condominium corporations requires a good knowledge of the relevant statutes and he must be able to deal with tenants with respect to leasehold improvements as well as the owners in

Review

by **Wayne F. Kennedy, SR/WA**
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RETHINKING THE FEDERAL LANDS, published by Resources for the Future, Inc., 1755 Massachusetts Avenue, NW, Washington, D.C. 20036, 1984: 297 pages; Hard Cover Price \$39.00, Paperback Price \$11.95.

fee simple. Part of the problem is identifying the owner or owners and their degree of interest and part is negotiating with those owners.

Negotiations for lands or rights-of-way with a condominium corporation can be time-consuming, as the members of the Board are elected from the apartment owners who may not fully understand the extent of their ownership, and who may have inflated ideas about the value of the property. Often complicating the negotiations, in projects such as the one described, is a level of conflict that can develop between the owners of the condominium and of the commercial elements of the building. Disagreements can arise over the quality and costs of maintenance, landscaping and snow removal. Conflict may also result from divergent views regarding the placement of signs, decorating, and noise or the intrusion of tenants, their vehicles and suppliers' vehicles into the condominium portions of the project.

Perhaps the analogy we have been using could be renamed the "Bundle of Splintered Rights." With increasing densities in city cores, with escalating land values and with new innovative responses to planning requirements and to demands of the market-place we can expect unlimited variations of the "Splintered Rights" and new challenges for the professional.

Resources for the Future (RFF) is a nonprofit organization for research and education in the development, conservation, and use of natural resources, including the quality of the environment. Sterling Brubaker, an Associate Director of RFF's Renewable Resources Division and a senior fellow, edited "Rethinking the Federal Lands" by drawing on the papers and discussions of the RFF's 1982 workshop in Portland, Oregon. He summarizes in Part I the issues and arguments for an against federal land tenure, as viewed by the contributors to the workshop. The contributors are recognized scholars in the field of land and natural resources economics. The papers which make up the book are grouped as follows: Part II, The Federal Lands: Why We Kept Them — How We Use Them; Part III, Retention, Disposal, and Public Interest; and Part IV, Intermediate Positions and Special Problems.

The backdrop for the workshop and the sense of this book is the Reagan Administration's efforts to curb the role of the Federal Government and to stimulate growth in the private sector by proposing to alter the ownership and management of Federal lands. Examples include proposals to increase energy and mineral development on Federal lands, to accelerate timber harvesting in national forests and especially to expand the sale of Federal lands.

Each of the experts has studied in depth the matter of Federal versus pri-

vate ownership of Federal lands and each offers suggestions or alternatives to existing ownership and management practices.

Many good arguments are made for disposing of Federal lands and many are made for retaining them. One of the most interesting is the concept that, rather than debate the virtues of Federal versus private ownership, the Federal lands should be leased for long terms tantamount to fee ownership. This concept, it is argued, should satisfy those who believe that only through private ownership can such lands be utilized to optimum economic advantage. It is also contended that by retention of fee ownership, the Federal Government is able to maintain adequate control over these lands to assure the integrity of land use and avoid "cut and run" exploitation.

The RFF takes no position on the merits of the arguments for and against Federal ownership of lands. Its stated interest is to "give reasoned consideration to basic issues concerning the public lands." Readers are invited to examine the facts and arguments made by the authors and decide for themselves. No matter which side of the issue you think you are on, you will become much more knowledgeable on the subject after reading this book. Anyone involved or interested in the evaluation or management of public lands should consider this book as priority reading.