
WESTBANK FIRST NATION LAND USE LAW NO. 2007-01



**WESTBANK FIRST NATION
LAND USE LAW NO. 2007-01**

WHEREAS Westbank First Nation has jurisdiction and authority over Westbank Lands, resources and Interests in Westbank Lands pursuant to the Westbank Self-Government Agreement effective April 1, 2005;

AND WHEREAS it is in the interests of Westbank First Nation to enact a Law addressing housing, transportation, parks, economic development, infrastructure, social, cultural, environment and other needs in the use and development of Westbank Lands;

AND WHEREAS the Westbank First Nation Constitution provides that Council shall, within two (2) years of the date the Constitution comes into force, refer a final draft Westbank Law to adopt a Land Use Plan to a Special Membership Meeting for enactment by Electors in accordance with section 63.3(e) of the Constitution;

AND WHEREAS Westbank First Nation wishes to address adoption of a Land Use Plan, zoning, procedures for variance and other matters in a Westbank Law;

NOW THEREFORE Westbank First Nation enacts the following as a Westbank Law.

PART I: DEFINITIONS AND INTERPRETATION

1. **TITLE**

1.1 This Law may be cited as the "*WFN Land Use Law No. 2007-01*".

2. **DEFINITIONS**

2.1 In this Law, unless the context otherwise requires:

"Advisory Council" means the Westbank First Nation Advisory Council established under *WFN Advisory Council Law No. 2005-22* or successor thereto;

"Affected Interest Holder" means the holder of an Allotment, Leasehold, or Subleasehold interest in the Westbank Lands or immediately adjacent to the Westbank Lands identified in the proposed amendment to the Land Use Designation, Zoning Designation or application for Variance;

"Board" means Board of Variance established under this Law;

"Building Inspector" means the person appointed by Council from time to time, or with whom Council has an agreement, to act as building inspector for the purpose of enforcing the provisions of the *Westbank First Nation Building Law No. 2005-14* or successor thereto or other specified Westbank Law and includes any delegate.

"Constitution" means the Westbank First Nation Constitution;

“Development Permit” means a development permit or equivalent authorization issued in accordance with the *WFN Subdivision, Development and Servicing Law No. 2005-15* or successor thereto;

“Land Use Designation” means the land use designation as set out in the Land Use Plan maps in the Land Use Plan;

“Land Use Plan” means the plan addressing housing, transportation, parks, economic development, infrastructure, social, cultural, environment and other needs in the use and development of Westbank Lands attached as Schedule “A” to this Law;

“Neighbourhood Plan” means a comprehensive plan for proposed land uses in a defined area of Westbank Lands addressing but not limited to matters such as development vision, community needs and infrastructure requirements;

“Neighbourhood Planning Area” means an area identified on the Land Use Plan as a Neighbourhood Planning Area;

“Physical Development Plan” means the plan adopted by Resolution dated June 30, 2003 and all amendments made to the plan, and includes the process for amending the Physical Development Plan;

“Servicing Maps” means the plans attached as Schedule “C” to this Law setting out the current and long-term servicing and infrastructure plans for Westbank Lands;

“WFN Planning Department” means the Westbank First Nation Engineering, Planning and Public Works Department, as that department may be restructured or renamed from time to time;

“Zoning Designation” means the zoning designation as set out in the zoning maps in the Zoning Regulations;

“Zoning Regulation” means the WFN Zoning Regulation attached as Schedule “B” to this Law;

- 2.2 Unless otherwise provided in this Law, words, expressions and rules of construction used in this Law have the same meaning as in the *Westbank First Nation Constitution*.

PART II: GENERAL

3. GENERAL

- 3.1 Except as otherwise provided in this Law all use of Westbank Lands must conform with the Land Use Plan and Zoning Regulation.
- 3.2 Notwithstanding any provision in the Land Use Plan or Zoning Regulation a Member who holds a Certificate of Possession in Westbank Lands is permitted to construct one single family residential dwelling on the parcel of land described in that Certificate of Possession for use by themselves or their Immediate Family.

- 3.3 Council may by Resolution establish fees payable in respect of applications under this Law. A copy of Resolutions setting out the current fees payable must be available for viewing free of charge at the administrative offices of Westbank and available for distribution at a nominal charge.

PART III: LAND USE PRINCIPLES

4. ADOPTION

- 4.1 The Westbank First Nation Land Use Principles set out in section 4.2 are hereby adopted as the principles that shall guide the interpretation of the Land Use Plan or Zoning Regulation, the consideration of applications for amendments to the Land Use Designation or Zoning Designation or for a variance under this Law.
- 4.2 The Westbank First Nation Land Use Principles are as follows:
- (a) Westbank shall work to promote a healthy and prosperous future to ensure the continued existence of Westbank as a strong political, social and cultural community;
 - (b) Westbank honours its connection to the land, resources and elements of the natural world that provide for its Members' physical and spiritual needs;
 - (c) Westbank recognizes its responsibility to protect the land and her resources for future generations;
 - (d) Westbank shall work to promote sustainable economic development and work to protect the value of Westbank Lands;
 - (e) Westbank in this Law seeks to establish a clear plan for land use through the Land use Plan and Zoning Regulation to provide stability and predictability for the development of Westbank Lands; and
 - (f) Westbank in this Law seeks to ensure a transparent, consistent and credible process for the development of Westbank Lands.

PART IV: LAND USE PLAN

5. ADOPTION

- 5.1 The "Westbank First Nation – Land Use Plan" attached hereto as Schedule "A" is adopted as the Land Use Plan of Westbank First Nation.
- 5.2 Where the Neighbourhood Planning criteria and procedures set out in the Land Use Plan are not, in the estimation of Council, sufficiently comprehensive to guide the preparation of a Neighbourhood Plan for a particular Neighbourhood Planning Area or Neighbourhood Planning Areas, then Council may by Resolution establish additional criteria and procedures for the preparation of a Neighbourhood Plan for those areas.

6. AMENDMENT TO LAND USE DESIGNATION

- 6.1 Council or an interest holder in Westbank Lands may request an amendment to the Land Use Designation.
- 6.2 Where a Neighbourhood Plan is required, it shall be submitted and considered as an application for amendment to the Land Use Designation under sections 6.7 to 6.28.
- 6.3 Where Council or an interest holder in Westbank Lands requests an amendment to the Land Use Designation, they shall at the same time propose an amendment to the Zoning Designation consistent with the proposed amendment to the Land Use Designation, which, notwithstanding Part V of this Law, shall be considered and determined in the same manner and at the same time as the proposed amendment to the Land Use Designation.
- 6.4 Where an interest holder in Westbank Lands requests an amendment to the Land Use Designation and Zoning Designation they shall submit an application to the WFN Planning Department in the form approved by Council.
- 6.5 The application under section 6.4 shall include the following:
- (a) the completed application form;
 - (b) documentation of current ownership;
 - (c) a description of the proposed amendments;
 - (d) the reasons for requesting the proposed amendments; and
 - (e) a map showing the geographic boundary of the area affected by the proposed amendments, including adjacent properties.
- 6.6 Where Council requests an amendment to the Land Use Designation and Zoning Regulation it shall:
- (a) pass a Resolution setting out:
 - (i) a description of the proposed amendments;
 - (ii) the reasons for requesting the proposed amendments; and
 - (iii) a map showing the geographic boundary of the area affected by the proposed amendments, including adjacent properties.
 - (b) provide to the WFN Planning Department a copy of the Resolution passed under subsection (a).
- 6.7 Upon receipt of an application under section 6.4 or a Resolution passed under section 6.6 the WFN Planning Department shall:
- (a) review basic servicing and land use issues in relation to the application or Resolution;

- (b) request additional information if required; and
 - (c) prepare a preliminary report addressing the impact of the proposed amendments in light of the Land Use Principles and goals of the Land Use Plan including a recommendation as to whether or not the proposed amendments should proceed for further consideration; and
 - (d) provide a copy of the preliminary report to Council.
- 6.8 Upon receipt of the preliminary report prepared under section 6.7 the proposed amendments shall be considered at a duly scheduled Council meeting to determine whether they should proceed for further consideration.
- 6.9 In the case of an application by an interest holder for an amendment to the Land Use Designation and Zoning Regulation:
- (a) notice of the Council meeting held under section 6.8 shall be provided to the applicant and the applicant shall have an opportunity to address Council with respect to the application; and
 - (b) the preliminary report of the WFN Planning Department prepared under section 6.7 shall be provided to the applicant prior to the meeting where the application will be considered.
- 6.10 At the Council meeting held under section 6.8, Council shall review the preliminary report of the WFN Planning Department and in the case of an application by an interest holder, if requested by an applicant, hear from the applicant and shall by Resolution decide whether the application should proceed for further consideration.
- 6.11 In the case of amendments proposed by an interest holder, the WFN Planning Department shall give the applicant notice of the decision under section 6.10.
- 6.12 Council shall provide a copy of the Resolution under section 6.10 to the WFN Planning Department and where Council decides that the proposed amendments should proceed for further consideration the WFN Planning Department shall request comments from appropriate reviewing bodies, Affected Interest Holders, the Advisory Council and Westbank First Nation Members in relation to the proposed amendments.
- 6.13 Notice requesting comments under section 6.12 shall be given to the Advisory Council, Affected Interest Holders and Westbank First Nation Members by:
- (a) publication of a notice in the Westbank newsletter mailed to Electors or by separate written notice, delivered or mailed to Electors;
 - (b) written notice, delivered or mailed to Affected Interest Holders;
 - (c) written notice to the Advisory Council; and
 - (d) posting of the notice in a public area of the Westbank administration building.
- 6.14 The notice shall:

- (a) provide a summary of the application or Resolution seeking the amendments to the Land Use Designation and the Zoning Designation;
 - (b) request written comments from the Advisory Council, Affected Interest Holders and Members on the proposed amendments; and
 - (c) specify a date that is at least twenty (20) days from the date of the notice for the Advisory Council, Affected Interest Holders and Members to respond to the WFN Planning Department.
- 6.15 Upon expiration of the time for submitting comments, the WFN Planning Department shall:
- (a) prepare a final report on the proposed amendments taking into consideration the comments received, the needs of the community and other relevant matters including recommendations on the proposed amendments; and
 - (b) provide a copy of the final report to Council.
- 6.16 Upon receipt of the final report prepared under section 6.15 the proposed amendments and final report shall be considered at a duly scheduled Council meeting.
- 6.17 Where the proposed amendments solely affect the Land Use Designation of Westbank Lands held under an Allotment, Council shall by Resolution at the Council meeting held under section 6.16:
- (a) reject the proposed amendments to the Land Use Designation and the Zoning Designation;
 - (b) request the WFN Planning Department to provide additional information with respect to the proposed amendments; or
 - (c) approve the proposed amendments to the Land Use Designation and the Zoning Designation.
- 6.18 Where the proposed amendments affect the Land Use Designation of any Community Lands, Council shall by Resolution at the Council meeting held under section 6.16:
- (a) reject the proposed amendments to the Land Use Designation and the Zoning Designation;
 - (b) request the WFN Planning Department to provide additional information with respect to the proposed amendments; or
 - (c) refer the proposed amendments to a Special Membership Meeting for approval by Electors.
- 6.19 Where Council requests additional information under section 6.17(b) or section 6.18(b) the WFN Planning Department shall prepare a revised final report and provide a copy of the revised final report to Council to be considered at a duly scheduled Council meeting where the procedure under sections 6.16 through 6.18 shall be followed.

- 6.20 A copy of the Resolution under section 6.17, section 6.18 or section 6.19 shall be:
- (a) mailed to the applicant, if applicable;
 - (b) mailed to Affected Interest Holders;
 - (c) mailed to the Advisory Council; and
 - (d) posted in a public area of the Westbank administration building.
- 6.21 Where Council decides to refer the proposed amendments to the Land Use Designation and Zoning Designation to Electors, Council shall schedule a Special Membership Meeting for approval, it shall provide notice to the Membership at least 20 days before the date of the Special Membership Meeting.
- 6.22 Notice shall be provided to the Membership by:
- (a) publication in the Westbank newsletter mailed to Electors, or by separate written notice delivered or mailed to Electors; and
 - (b) posting of the notice in a public area of the Westbank administration building.
- 6.23 Notice of the Special Membership Meeting where the proposed amendments to the Land Use Designation and the Zoning Designation will be provided to the Membership in accordance with section 6.22 and shall include:
- (a) a summary of the proposed amendments;
 - (b) a summary of the final report of the WFN Planning Department on the proposed amendments;
 - (c) a statement that there will be a vote by secret ballot of the Electors present at the Special Membership Meeting to vote on the proposed amendments;
 - (d) a statement that the report of the WFN Planning Department on the proposed amendments is available for inspection at the Westbank administration building; and
 - (e) the date, time and place of the Special Membership Meeting also specifying the time period during which such voting will take place.
- 6.24 At the Special Membership Meeting copies of the final report of the WFN Planning Department shall be made available to Members in attendance.
- 6.25 At the Special Membership Meeting called to vote on the proposed amendments, the purpose and provisions of the proposed amendments shall be explained to the Members present at the Meeting, and Members shall be entitled to ask questions and provide comments.
- 6.26 Upon completion of discussion, the Electors, including Council members present, shall vote by secret ballot on the proposed amendments to the Land Use Designation and the Zoning Designation.

- 6.27 The proposed amendments shall be deemed approved if a Majority of the Electors voting at the Special Membership Meeting vote in favour of the proposed amendments to the Land Use Designation and the Zoning Designation.
- 6.28 The amendments to the Land Use Designation and the Zoning Designation shall be effective as of the date of the Special Membership Meeting where Electors approved the proposed amendments.

PART V: ZONING

7. ADOPTION

- 7.1 The WFN Zoning Regulation attached hereto as Schedule "B" is adopted as the zoning regulation for Westbank Lands.
- 7.2 Except where an amendment to the Zoning Designation is proposed as part of a proposed amendment to the Land Use Designation, all amendments to the Zoning Designation shall be made under section 8 of this Law.

8. AMENDMENT TO ZONING REGULATION

- 8.1 Council or an interest holder in Westbank Lands may request an amendment to the Zoning Designation provided that the proposed amendment is consistent with the Land Use Plan.
- 8.2 Where an interest holder in Westbank Lands requests an amendment to the Zoning Designation they shall submit an application to the WFN Planning Department in the form approved by Council.
- 8.3 Where a proposed amendment to the Zoning Designation is within an area of land identified as a Neighbourhood Plan Area the application shall not proceed until a Neighbourhood Plan has been approved as an amendment to the Land Use Designation.
- 8.4 The application under section 8.2 shall include the following:
- (a) the completed application form;
 - (b) documentation of current ownership;
 - (c) a description of the proposed amendment to the Zoning Regulation;
 - (d) the reasons for requesting the proposed amendment to the Zoning Regulation; and
 - (e) a map showing the geographic boundary of the area affected by the proposed amendment including adjacent properties.
- 8.5 Where Council requests an amendment to the Zoning Designation it shall:

- (a) pass a Resolution setting out:
 - (i) a description of the proposed amendment to the Zoning Regulation;
 - (ii) the reasons for requesting the proposed amendment to the Zoning Regulation; and
 - (iii) a map showing the geographic boundary of the area affected by the proposed amendment, including adjacent properties.
 - (b) provide to the WFN Planning Department a copy of the Resolution passed under subsection (a).
- 8.6 Upon receipt of an application under section 8.2 or a Resolution passed under section 8.5 the WFN Planning Department shall:
- (a) review basic servicing and land use issues in relation to the application or Resolution;
 - (b) request additional information if required; and
 - (c) prepare a preliminary report addressing the impact of the proposed amendment to the Zoning Designation in light of the Land Use Principles and goals of the Zoning Regulation including a recommendation as to whether or not the proposed amendment should proceed for further consideration; and
 - (d) provide a copy of the preliminary report to Council.
- 8.7 Upon receipt of the preliminary report prepared under section 8.6 the proposed amendment to the Zoning Designation shall be considered at a duly scheduled Council meeting to determine whether it should proceed for further consideration.
- 8.8 In the case of an application by an interest holder for an amendment to the Zoning Regulation:
- (a) notice of the Council meeting under section 8.7 shall be provided to the applicant and the applicant shall have an opportunity to address Council with respect to the application for amendment to the Zoning Regulation; and
 - (b) the preliminary report of the WFN Planning Department prepared under section 8.6 shall be provided to the applicant prior to the meeting where the application will be considered.
- 8.9 At the Council meeting held under section 8.7, Council shall review the preliminary report of the WFN Planning Department and in the case of an application by an interest holder, if requested by an applicant, hear from the applicant and shall by Resolution decide whether the application for amendment to the Zoning Designation should proceed for further consideration.

- 8.10 In the case of an amendment to the Zoning Designation proposed by an interest holder WFN Planning Department shall give the applicant notice of the decision under section 8.9.
- 8.11 Council shall provide a copy of the Resolution under section 8.9 to the WFN Planning Department and where Council decides that the proposed amendment to the Zoning Designation should proceed for further consideration the WFN Planning Department shall request comments from appropriate reviewing bodies, Affected Interest Holders, the Advisory Council and Westbank First Nation Members in relation to the proposed amendment to the Zoning Regulation.
- 8.12 Notice requesting comments under section 8.11 shall be given to the Advisory Council, Affected Interest Holders and Westbank First Nation Members by:
- (a) publication of a notice in the Westbank newsletter mailed to Electors or by separate written notice, delivered or mailed to Electors;
 - (b) written notice, delivered or mailed to Affected Interest Holders;
 - (c) written notice to the Advisory Council; and
 - (d) posting of the notice in a public area of the Westbank administration building.
- 8.13 The notice shall:
- (a) provide a summary of the application or Resolution seeking an amendment to the Zoning Regulation;
 - (b) request written comments from the Advisory Council, Affected Interest Holders and Members on the proposed amendments to the Zoning Regulation; and
 - (c) specify a date that is at least twenty (20) days from the date of the notice for the Advisory Council, Affected Interest Holders and Members to respond to the WFN Planning Department.
- 8.14 Upon expiration of the time for submitting comments, the WFN Planning Department shall:
- (a) prepare a final report on the proposed amendment to the Zoning Designation taking into consideration the comments received, the needs of the community and other relevant matters; and
 - (b) provide a copy of the final report to Council.
- 8.15 Upon receipt of the final report prepared under section 8.14 the proposed amendment to the Zoning Designation and final report shall be considered at a duly scheduled Council meeting where Council shall by Resolution:
- (a) reject the proposed amendment to the Zoning Regulation;
 - (b) request the WFN Planning Department to provide additional information with respect to the proposed amendment to the Zoning Regulation; or

- (c) approve the proposed amendment to the Zoning Regulation.
- 8.16 Where Council requests additional information under section 8.15(b) the WFN Planning Department shall prepare a revised final report and provide a copy of the revised final report to Council to be considered at a duly scheduled Council meeting where the procedure under section 8.15 shall be followed.
- 8.17 A copy of the Resolution under section 8.15 or section 8.16 shall be:
- (a) mailed to the applicant, if applicable;
 - (b) mailed to Affected Interest Holders;
 - (c) mailed to the Advisory Council; and
 - (d) posted in a public area of the Westbank administration building.
- 8.18 The amendment to the Zoning Regulation shall be effective as of the date of the Resolution approving the proposed amendment to the Zoning Regulation.

PART VI: SERVICING MAPS

9. SERVICING MAPS

- 9.1 The Servicing Maps attached hereto as Schedule "C" are adopted as the servicing maps for Westbank Lands.
- 9.2 Council may by Resolution initiate amendments to the Servicing Maps, and upon passage of such a Resolution shall develop amendments to the Servicing Maps.
- 9.3 Upon completion of the proposed amendments to the Servicing Maps, Council shall schedule a Special Membership Meeting for the purpose of considering the proposed amendments and shall provide notice to the Membership.
- 9.4 The notice of the Special Membership Meeting required under section 9.3 shall be provided to the Membership at least twenty (20) days before the meeting and shall include:
- (a) the date, time and place of the Special Membership Meeting;
 - (b) a summary of the proposed amendments to the Servicing Maps; and
 - (c) notification that the full copy of the proposed amendments to the Servicing Maps can be obtained at the Westbank administration building.
- 9.5 Notice shall be provided to the Membership by:
- (a) publication of the notice in the Westbank newsletter, delivered or mailed to Electors or by separate notice delivered or mailed to Electors; and

- (b) posting of the notice in a public area of the Westbank administration building and such other places as Council may direct.
- 9.6 At the Special Membership Meeting, copies of the proposed amendments to the Servicing Maps shall be made available to Members present.
- 9.7 At the Special Membership Meeting, the purpose and provisions of the proposed amendments shall be explained by Council, and Members may ask questions and provide comments.
- 9.8 After the Special Membership Meeting, Council shall consider the comments received by Members, the needs of the community and other relevant matters, and shall by Resolution either adopt or reject the amendments to the Servicing Maps.

PART VII: VARIANCE

10. VARIANCE

- 10.1 A person may apply to the Board for a variance in accordance with this Part.

11. ESTABLISHMENT OF BOARD

- 11.1 The Board is hereby established to:
 - (a) evaluate and make decisions on applications for a variance;
 - (b) establish policies and procedures for operation of the Board and the carrying out of its duties that are not inconsistent with this Law and the *Westbank First Nation Constitution*; and
 - (c) carry out such other duties and responsibilities as may be assigned to the Board under Westbank Law.

12. COMPOSITION OF BOARD

- 12.1 The Board shall be composed of three persons as follows:
 - (a) a member of Council, appointed by Resolution of Council;
 - (b) the Director of Operations; and
 - (c) the manager of the WFN Planning Department.

13. CHAIRPERSON

- 13.1 The Director of Operations shall be the Chairperson of the Board provided that in the absence of Director of Operations the Council member on the Board will act as Chairperson.

13.2 The Chairperson shall be responsible for organizing, calling and presiding at all meetings of the Board shall perform such other duties as may be assigned to the Chairperson by the Board.

14. APPLICATION FOR VARIANCE

14.1 A person may apply to the Board for a variance if the person alleges that compliance with any of the following provisions in a Westbank Law would cause the person hardship:

- (a) the siting, dimensions, site coverage, or size of a building or structure; and
- (b) the prohibition of a structural alteration, addition or replacement of or to a building or other structure permitted as a non-conforming use.

14.2 The application under section 14.1 shall include the following:

- (a) the completed application form;
- (b) documentation of current ownership;
- (c) a description of the variance requested;
- (d) the reasons for requesting the proposed variance; and
- (e) a map showing the geographic boundary of the area affected by the proposed variance including adjacent properties.

15. GRANTING OF A VARIANCE

15.1 On an application under this Part, the Board may order that a minor variance be permitted from the requirements of Westbank Law, if the Board finds that undue hardship would be caused to the applicant if required to comply with Westbank Law, and is of the opinion that the variance does not:

- (a) result in inappropriate development of the site;
- (b) adversely affect the natural environment, heritage sites or culturally sensitive areas;
- (c) substantially affect the use and enjoyment of adjacent land;
- (d) vary permitted uses or densities under the WFN Zoning Regulation or the WFN Land Use Plan; or
- (e) defeat the intent of the WFN Zoning Regulation or the WFN Land Use Plan.

15.2 The granting of a variance by the Board under this Law will not relieve the applicant from also complying with the provisions of any federal Act or regulation or provincial Act or regulation, or any legally binding agreement to which the applicant is a party.

16. NOTICE OF APPLICATION

- 16.1 Where the Board receives an application under section 14.1, the Board must notify all Affected Interest Holders.
- 16.2 The notice under section 16.1 must state the subject matter of the application, the time within which the recipient may send written comments on the application to the Board and the place where the comments shall be sent.
- 16.3 The obligation to give notice under section 16.1 will be satisfied if the Board made reasonable effort to mail or otherwise deliver the notice.
- 16.4 A copy of the comments received by the Board shall be provided to the person applying for a variance on or before the hearing of the application.
- 16.5 No application for a variance shall be heard by the Board, unless the Board has complied with this section.

17. NOTICE TO THE APPLICANT

- 17.1 The Board shall give notice to the applicant at least five (5) business days before the date of a meeting, specifying the place, day and hour where the application shall be heard.
- 17.2 Notice shall be given to the applicant by ordinary mail or delivery at the address provided on the application.

18. MEETINGS

- 18.1 The Board shall meet as required to carry out its duties under this Law.
- 18.2 The Board shall meet on Westbank Lands.
- 18.3 The Chairperson shall give notice to Board members at least five (5) business days before the date of a meeting specifying the place, day and hour of the meeting.
- 18.4 Notice of the meeting may be given to a Board member either personally, by telephone, facsimile or e-mail at the telephone number or e-mail address provided by the Board member.
- 18.5 Board meetings shall be closed to all persons except Board members, the applicant and invited WFN employees or representatives provided that the Board may by vote invite such other persons as may be required to provide information to assist the Board in considering the application.
- 18.6 Persons attending Board meetings may only address the meeting if their matter is on the agenda or if they receive permission from the Chairperson.
- 18.7 Westbank shall appoint a person who is not a member of the Board to act as secretary to the Board, and the secretary shall:
 - (a) take attendance of Board members present at meetings;

- (b) record decisions and votes at meetings; and
- (c) perform such other duties, consistent with this Law, as may be assigned to the secretary by the Board.

- 18.8 The secretary to the Board shall, in a timely manner and by ordinary mail or delivery to the address provided on the application, provide copies of records of decisions to an applicant and to Council.
- 18.9 All records of decisions of the Board shall be retained by the Board at the Westbank administration building and copies may be obtained upon payment of any applicable copying fee.
- 18.10 The Board may, subject to this Law, establish rules for its procedure at meetings and no rule made by the Board invalidates a prior act of the Board that would have been valid if that rule had not been made.

19. **QUORUM**

- 19.1 Quorum for a meeting of the Board shall be two Board members provided that where a quorum cannot be established because of conflict of interest provisions in this Law, the matter shall be adjourned to the next meeting or such future meeting where a quorum can be established.
- 19.2 The Chairperson shall be included in counting quorum.
- 19.3 If a quorum can never be established because of conflict of interest provisions in this Law, the application shall be referred to Council for a decision.

20. **VOTING**

- 20.1 All matters before the Board for decision shall be decided by a majority vote of Board members participating in the vote.
- 20.2 The Chairperson shall be entitled to vote.
- 20.3 Unless a secret vote is requested and approved by the Board, all voting shall be by a show of hands indicating a "Yes" vote or a "No" vote. No abstentions are permitted on a vote.
- 20.4 The results of a vote shall be recorded in the minutes of the meeting.

21. **CONFLICT OF INTEREST**

- 21.1 A conflict of interest arises in any situation where a member or a person in their Immediate Family has a personal or business interest in the matter under consideration.
- 21.2 A Board member who has a conflict of interest will, as soon as possible, disclose the nature and extent of their conflict to the Chairperson who shall report the conflict to the remaining Board members.

21.3 Where a conflict of interest exists, the Board member affected shall leave the meeting where the matter is being considered and will not be counted in determining quorum nor participate in discussion nor vote on the matter under consideration.

22. **CONFIDENTIALITY**

22.1 Board members shall not release information received by them in their work with the Board or information relating to the deliberations proceedings or other matters of the Board unless:

- (a) the information is public under Westbank Law or other applicable laws; or
- (b) the information is information that the Board, by vote of members at a meeting, decides to release.

23. **APPEALS**

23.1 A decision of the Board under this Part is final.

PART VIII: NON-CONFORMING USES

24. **NON-CONFORMING USES**

24.1 If at the time this Law comes into force:

- (a) a land or building or other structure, is lawfully used; and
- (b) the use does not conform to the uses permitted under this Law,

the use may be continued as a non-conforming use but if the non-conforming use is discontinued for a continuous period of six months any subsequent use of the land, building or other structure becomes subject to this Law.

24.2 The use of land, a building or other structure, for seasonal uses or for agricultural purposes is not discontinued as a result of normal seasonal or agricultural practices, including:

- (a) seasonal, market or production cycles;
- (b) the control of disease or pests; or
- (c) the repair, replacement or installation of equipment to meet standards for the health or safety of people or animals.

24.3 Where a Development Permit has been issued for a building or other structure at the time this Law comes into force, any building or structure subsequently built in accordance with that Development Permit is deemed, for the purpose of this Part:

- (a) to be a building or other structure existing at that time; and

- (b) to be then in use for its intended purpose as determined from the building permit authorizing its construction.
- 24.4 If sections 24.1 and 24.2 authorize a non-conforming use of part of a building or other structure to continue, the whole of that building or other structure may be used for that non-conforming use.
- 24.5 A structural alteration or addition, except one that is required under Westbank Law or permitted by the Board, must not be made in or to a building or other structure while the non-conforming use is continued.
- 24.6 Nothing in this Part authorizes the non-conforming use to be continued on a scale or to an extent or degree greater than that at the time this Law comes into force.
- 24.7 For the purposes of this part, a change of owners, tenants or occupants of any land, or of a building or other structure, does not, by reason only of the change, affect the use of the land or building or other structure.
- 24.8 If a building or other structure, the use of which does not conform to the provisions of this Land Use Law is damaged or destroyed to the extent of less than 75% of its value above its foundations, as determined by the Building Inspector, it can be repaired or reconstructed to continue the non-conforming use permitted under this Law.
- 24.9 Unless as permitted by the Board, if a building or other structure, the use of which does not conform to the provisions of this Law is damaged or destroyed to the extent of 75% or more of its value above its foundations as determined by the Building Inspector, must not be repaired or reconstructed except as a conforming use under this Law.

PART IX: TRANSITION

25. PHYSICAL DEVELOPMENT PLAN

- 25.1 Proposed amendments to the Physical Development Plan currently being considered by Council but not adopted as of the date this Law comes into force shall be determined in accordance with the policy and criteria in effect at the time this Law comes into force and if approved shall be deemed to be approved amendments to the Zoning Designation under this Law.
- 25.2 Notwithstanding section 24.1 where proposed amendments to the Physical Development Plan currently being considered by Council but not adopted as of the date of this Law have not been actively pursued by the applicant for a period of twelve months or more then that application shall be deemed to have been abandoned and any proposed amendment shall be considered under this Law.

PART X: INTERPRETATION

26. APPLICATION OF LAW

- 26.1 Where any federal Act or regulation or provincial Act or regulation or any other Westbank Law may apply to any matter covered by this Law and Land Use Plan adopted by this Law, compliance with this Law and Land Use Plan will not relieve the person from also complying with the provisions of the other applicable Act, regulation or law.
- 26.2 If any statement, section, sub-section, clause, sub-clause or phrase of this Law, including its appendixes, is for any reason held to be invalid by a decision of a court of competent jurisdiction, the decision shall not affect the validity of the remaining portions of the Law and its appendixes.
- 26.3 The headings given to the sections and paragraphs in this Law and the Land Use Plan adopted by this Law are for convenience of reference only. They do not form part of this Law or Land Use Plan and will not be used in the interpretation of this Law or Land Use Plan.

PART XI: IMMUNITY

- 26.4 No action for damages lies or may be instituted against present or past Council, WFN Law Enforcement Officer, Fire Chief, Officer or fire fighter, or members, employees, servants or agents of either Westbank or Council:
- (a) for anything said or done or omitted to be said or done by that person in the performance or intended performance of the person's duty or the exercise of the person's authority; or
 - (b) for any alleged neglect or default in the performance or intended performance of the person's duty or the exercise of the person's authority.
- 26.5 Section 26.4 does not provide a defence if:
- (a) Council, WFN Law Enforcement Officer, Fire Chief, Officer or fire fighter, or members, employees, servants or agents have, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or
 - (b) the cause of action is libel or slander.
- 26.6 Westbank, present or past Council, or members, employees, servants or agents of any of Westbank or Council is not liable for any damages or other loss, including economic loss, sustained by any person, or to the property of any person, as a result of neglect or failure, for any reason, to discover or detect any contravention of this Law or any other

Westbank Law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other Westbank Law.

26.7 All actions against Westbank for the unlawful doing of anything that:

- (a) is purported to have been done by Westbank under the powers conferred by this Law or any Westbank Law, and
- (b) might have been lawfully done by Westbank if acting in the manner established by law,

must be commenced within six (6) months after the cause of action first arose, or within a further period designated by Council in a particular case, but not afterwards.

26.8 Westbank is in no case liable for damages unless notice in writing, setting out the time, place and manner in which the damage has been sustained, is delivered to Westbank, within two (2) months from the date on which the damage was sustained. In case of the death of a person injured, the failure to give notice required by this section is not a bar to the maintenance of the action. Failure to give the notice or its insufficiency is not a bar to the maintenance of an action if the court before whom it is tried, or, in case of appeal, the Court of Appeal, believes:

- (a) there was reasonable excuse, and
- (b) Westbank has not been prejudiced in its defence by the failure or insufficiency.

PART XII: PENALTY

27. PENALTY

27.1 In addition to any other penalty or liability, any person who violates any provision of this Law and Land Use Plan adopted by this Law is guilty of an offence and liable upon summary conviction to a fine of up to ten thousand (\$10,000) dollars or to a term of imprisonment not exceeding thirty (30) days, or both.

BE IT KNOWN that this Law entitled, “*WFN Land Use Law No. 2007- 01*” is hereby:

Read a first time by Council at a duly convened meeting held on the 5th day of March, 2007;

Read a second time at a Special Membership Meeting held on the 12th day of April, 2007;

Read a third time, and referred to a Special Membership Meeting for enactment by Electors, by Council at a duly convened meeting held on the 23rd day of July, 2007.

Enacted by a vote of Electors at a Special Membership Meeting held on the 26th day of July, 2007.

Signed by the following members of Council:



Chief Robert Louie



Councillor Larry Derrickson



Councillor Loretta Swite



Councillor Michael Werstuik



Councillor Miguel DeGuevara