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Disputed land 'dinosaur in modern times'

Township seeks ways to place controls on 'Indian' property

By Peter Fitzpatrick
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Where Helen Doctor lives there are no taxes, zoning bylaws don't apply and she can do whatever she likes with her property.

Helen Doctor lives in the middle of Brantford Township.

"We're kind of like a little island," she says, describing the 21 hectares of land she and her husband, Leslie, own on Powerline Road, northeast of the city.

The 14-year veteran of the real estate business insists her property is special because it is Indian land that belongs to neither Brantford Township nor the Six Nations.

Mrs. Doctor, a soft-spoken woman with long silver hair, says the land has been in her family as a farm since 1808. At first it was leased, but in 1835 the Crown gave it to her husband's great-great-grandfather, Peter Green.

The property was part of the Haldimand Grant, a tract of land six miles wide on either side of the Grand River, set apart by Governor Frederick Haldimand for Six Nations Indians in 1784 to reward them for siding with England during the American Revolution.

Over time, most of that land was sold to white settlers until the remainder was turned into the Six Nations Reserve.

The Doctors pay no assessment on the land, despite efforts by the township to tax it in 1969, and it is specifically omitted from zoning regulations.

Township lawyer Owen Young is working with Six Nations coun-

cil to bring the land under some form of control.

"The interesting thing about it is, put to its simplest, the argument is that this is a piece of property that is the same now as it was when Haldimand set it aside," he says.

"We have a dinosaur in modern times."

Mrs. Doctor's lawyer, James Leslie, views the situation as a case of native rights.

"I'm not going to say it's secure from litigation. But it's secure in the ultimate adjudication of it. I'm referring to their title as occupants of Indian land, which came down to them through generations of their family.

Indian land

"It is Indian land, owned by Indians but not part of the reserve . . . For the most part provincial law does not apply — for instance, the Assessment Act."

In contrast, Six Nations Chief Coun. William Montour says the land clearly belongs to the reserve, regardless of who lives on it, because it is part of the original Haldimand Grant.

"It's Six Nations land and Mrs. Doctor is a Six Nations member," he says. "They're part of the old Six Nations tract."

Last June, the township undertook to rezone the property when Mrs. Doctor began developing Smokey Hollow Estates, a 130-unit mobile home retirement community. A township bylaw prohibits mobile homes, but council is powerless to stop or tax the development.

Building the subdivision is not intended to flout municipal bylaws, Mr. Leslie says. Instead,

leasing plots of the land for \$250 a month to mobile home owners is the best way to maintain its exempt Indian status and keep it in the family.

So far, seven plots have been leased and two trailer homes set up.

Township Clerk David Kelman says the property's status gives rise to many issues.

"It raises the question: If you don't pay taxes, should you get services? Can you use the roads? And are you entitled to fire protection? If you've got a subdivision, presumably there's going to be children, and can they go to schools?"

Other problems

He also wonders what residents will do if other problems, such as sewage backup, occurs on a property where there is no local government to appeal to.

If they cannot be taxed, Mr. Kelman says, the Doctors will have to pay for fire protection and to use the township's landfill.

Mrs. Doctor is willing to negotiate such arrangements.

Moreover, she says, the development meets or exceeds township building standards, Ontario Hydro and Bell Canada will service the property and self-contained water and sewage systems are being installed.

She says leasing agreements

protect the residents from problems.

Still, the township wants to halt the development.

"That's the question," said Mr. Kelman. "How can we stop them? We say we'll take them to court, and they say, 'We won't be seen in a white man's court.'"

"Because it's a jurisdictional question, it's not easily answered."

Yet even more profound questions may lurk on the horizon if the Doctors are vindicated.