



Fun with Strata Subdivisions

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Strata Subdivisions

Discussion Topics

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- Different types of Strata Developments
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- Bare Land Strata
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Strata Developments

- What is a Strata?
 - "Fee Simple" = Plans created under the *Land Title Act*
 - Strata Developments = Created under the *Strata Property Act*
 - "Fee Simple" is an erroneous term as both types of subdivision create land that can be owned as fee simple



Why are they created & who benefits?



Different types of Strata's

- Bare Land Strata subdivision
- New Building Strata
- Phased Strata
- Strata Title Conversions (Previously Occupied Buildings)





Bare Land Strata

A Bare land strata plan is defined by s.1(1) of the *Strata Property Act* as a strata plan on which the boundaries of the strata lots are defined on a horizontal plane by reference to survey markers, and **not by reference to the floors, walls and ceiling of a building**. Although bare land strata lots are created for individual ownership, the strata plan typically includes land that is **common property** or **limited common property** that, together with access routes, are owned in common by the owners within the plan and controlled by the Strata Corporation.



Example: Bare land Strata Plan



Building Strata



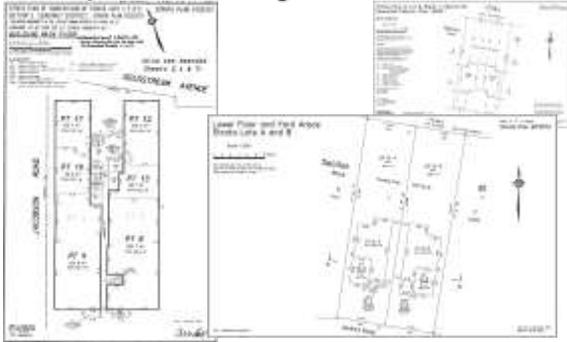
Subdivided under the *Strata Property Act* and it permits the subdivision of land occupied or to be occupied by a building into Strata lots, with boundaries in the centers of floors, walls, and ceilings.

As a general rule, building strata subdivisions under the Strata Property Act are **not subject to an approving officers approval**, however a building must be capable of human habitation or occupancy before it may be subdivided under the Building Strata provisions of the Act.

A building plan must be submitted to the approving officer only when the strata plan includes parcels of land separated by land not owned by the person tendering the strata plan.



Example: Building Strata Plan



Approving Officer Considerations

Two types of strata plan are subject to an Approving Officer review:

- Bare Land Strata Subdivision
- Phased Strata Subdivision
 - Phased plans for subdivision can occur with;
 - Bare Land Strata
 - Building Strata



Bare Land Strata Subdivision

What can the Approving Officer Consider?

- Approving Officer Considerations
- Infrastructure Improvements



What factors can the Approving Officer consider when evaluating a bareland strata?

Lot Size

- Zoning regulations for minimum areas and frontages are applicable
- Parcel size "Averaging" can occur



What factors can the Approving Officer consider when evaluating a bareland strata?

Configuration of the Land, Intended Use, Future Subdivision

Consideration limited to whether a building or structure appropriate to the intended use can be constructed on each strata lot in compliance with Zoning and any applicable Development Permit



Infrastructure Improvements

- *Offsite Services* to be constructed in accordance with Development / Subdivision Servicing Bylaw
- *Frontage improvements* (fronting municipal roadway) as per Development / Subdivision Servicing Bylaw



Infrastructure Improvements

The approving officer has **no** ability to impose infrastructure improvements constructed within a bare land strata subdivision;

- These should be built in accordance with "Best Engineering Practice"



Access

The AO Should consider:

- Location
- Configuration
- Future Role of the Access route



Access

When can municipal standards be applied?

- When access routes are necessary for the municipality,
- When the access is considered necessary to access adjacent lands;
- Are the continuance of existing lanes and deemed necessary for road connectivity.



Access...



Technical Reports

The Approving Officer can gain reports and referrals to assist in their review

a) From local fire and police authorities

b) Engineering studies or reports from a professional engineer on the design and construction

This area will be discussed further in the "Additional Items" portion of the course



Declining a Bareland Strata Subdivision...

The Approving Officer may refuse to approve a subdivision where the provisions of the LTA or Strata Property Act related to access and the sufficiency of highway allowance are not met...

- The width is not sufficient to meet police and fire protection
 - The access route is not sufficient to provide practical and reasonable access to the strata lots,
- or
- The access routes have not been designed or are not capable of being constructed in accordance with good engineering practice.



Questions...

- Have you ever encountered a unique Bare Land Strata issue that you would like to share?



Phased Strata Subdivision



Phased Strata Subdivision

- What is a Phased Strata subdivision?

Means a strata plan that is deposited in successive phases under part 13 of the Strata Property Act

- The only time a strata plan can be created in phases is with a Phased Strata Declaration (Form P), which is filed and sets out a schedule showing the phases and common facilities with each phase complete with estimated dates of commencement and completion.

- Why phase a Strata Plan?

- *Phased Strata plans allow building strata lots or bare land strata lots to be created in phases as the project is developed so that the owner/developer can sell strata lots without completing the project in its entirety.*

What is a “Form P”?

- It is the common term for a Phased Strata Plan declaration

Before applying to deposit the first phase of a phased strata plan, the written endorsement of the Approving Officer to a phased strata plan declaration in the prescribed form (Form P) is required.

The “Form P”

- The Form P includes:
 - Estimated Dates of Commencement and Completion
 - Election to proceed date
 - Boundaries of each phase
 - Maximum number of units and types of structures in each phase
 - Unit entitlement (each units share in overall strata expenses)
 - Common Facilities
 - Developer and Approving Officer endorsement

Example Form P



Form P

Withholding Approval

- Limited authority to withhold approval on grounds of public interest at time of Form P submission.

Jurisdiction

- Jurisdiction relates to phased bare land strata applications (Section 3 Bare Land Strata Regulations).



Phased Strata Considerations for Approving Officers



- Ensure that common facilities not completed in the first phase are adequately funded (security / bond)
- Setbacks from Phase boundaries
- Consider the effects of time



Amenity Areas & Common Facilities

What is a common facility?

- Means a major facility in a phased strata plan, including a laundry room, playground, swimming pool, recreation center, clubhouse or tennis court, if the facility is available for the user of the owners
- If a common facility is to be constructed in conjunction with a phase of a strata plan, the plan must be approved provided that
 - The owner developer has fulfilled the requirements of s.233 of the Strata title Act
 - The common facility is at least 50% completed as verified by a certificate of a registered architect or P.Eng



Phased Strata Considerations for Approving Officers

- Treat each phase as a separate subdivision
- Ensure each phase has access and services between completed portions and the remainder
- Common Elements – Ensure Reciprocal private easements exists to all common property, services and access'



Example; Phased Strata Plan



Approval of Phase

- Before the owner developer applies to deposit a phase of a phased strata plan, the owner developer must obtain the approval of the Approving Officer.
- The Approving Officer must approve each separate phase through a certificate of approval to ensure it is in compliance with Form P.²
- Each phase should be treated as a separate subdivision, complete in itself.
 - Consider the passage of time in consideration of the Form P
- The remainder of the parent property should be viable as a separate parcel in regards to its ability to subdivide/develop (zone, access, services and/or easements, etc.)



Approval of Phase *withheld*

- Approval of a phase cannot withheld unless that plan does not substantially comply with the requirements for that phase as set out in the Phased Strata Plan declaration¹
- It should be noted that s.85(3) does not apply to the Strata Property Act

Headings for approval plan considerations on public interest

(1) A declaration shall not be approved or required for the approval of a phase until it is found to be consistent for consideration and approval in the public interest after the date set out by the Lieutenant Governor in Council.

(2) A declaration shall not be approved or required for the approval of a phase until it is found to be consistent for consideration and approval in the public interest after the date set out by the Lieutenant Governor in Council.

(3) In considering an application for conditional approval of a phase, the approving officer may, in addition to the requirements of the Strata Property Act, consider the public interest in approving the phase.



Effect of deposit of Phase

When a phase of a strata plan is deposited

- The land in the phase is subdivided from the rest of the parcel(s) and is consolidated with the land in any previously deposited strata plan of the same development
- The strata corporation that is established with the deposit of the phase is amalgamated with the strata corporation established by the deposit of the strata plan for the first phase,

and

- The owners of the Strata lots in the phase are members of the strata corporation



Phased Strata Headaches





Winding up a strata?

- Infrastructure standards/maintenance
- Subdivision regulations/Zoning/setbacks
- DCC's ? / Parkland Dedication?

When does a Form P need to be re-considered?

- When an owner developer wishes to amend the phased strata plan declaration to extend the time for making an election to proceed with the next phase
- Any amendment to the phased Strata Plan declaration (other than extending the time)
- Any reduction of unit entitlement of a subsequent phase



Form P Re-consideration?

What are the considerations of the Approving Officer?

- The approving officer must *not* allow a declaration to be amended to extend the time for the election
 - More than once, or
 - For more than one year from the date stated in the declaration
- Excepting in accordance with a court order as noted in subsection s.232 (3) *Strata Property Act*, which is when the Supreme Court orders an approving officer to grant the extension of time requested.



When does the Supreme Court get involved?

On the application of an owner/developer, the supreme court may order an approving officer to grant the time extension request.



5% Park and Strata?

Does your municipality seek a 5% park dedication or cash-in-lieu payment during strata development?

- s.872 (LGA) provides a definition of Subdivision which includes both subdivisions created under the Land Title Act and the Strata Property Act, which is relevant for all of Part 26 of the Local Government Act.
 - There are no exclusions in regards to the provision of park land in strata's or phased strata developments.



Strata Conversions of Previously Occupied Buildings

- Previously occupied buildings may be converted into Strata lots.
- The *Approving Authority* for such applications is the local government (i.e.. Council or board) which may pass a resolution delegating this authority to the Approving Officer or another local government official.



Strata Conversions Legislation

- Legislative reference for the creation of strata units in previously occupied building is contained in s. 242, of the *Strata Property Act*
- *Application* of the legislation is primarily determined within each jurisdiction, including the delegation of authority and issues associated with rental housing in the community.



Strata Conversions Legislation

- The approving authority *may*
 - Approve the Strata Plan, or approve the Strata Plan subject to Terms and conditions, OR
 - Refuse to approve the Strata Plan, OR
 - Refuse to approve the Strata Plan until the terms and conditions imposed by the approving authority are met

There is no avenue of appeal as the decision of the approving authority is final.



Strata Conversions

The approving authority must consider...

- The priority of rental accommodation over privately owned housing
- The proposal of the owner developer for the relocation of occupants
- The life expectancy of the building
- Projected major increases in maintenance costs due to building conditions
- Other relevant matters
- The compliance of the building with all current applicable bylaws (zoning, building code, etc.)



Strata Conversions Legislation

The approving authority must **not** approve the Strata Plan unless...

The Building substantially complies with;

- Applicable bylaws (municipal or Regional District)
- Applicable Nisga'a Government Laws
- The applicable laws of the Treaty First Nation
- The BC Building Code referred to in the Building Regulations of BC, except in relation to a treaty first nation that has entered into an agreement described in s.692(5) LGA, and only to the extent that the agreement authorizes different standards from the BC Building Code.



Strata Subdivisions

Any Questions?



Parking

On a bare land strata plan, parking shall be provided as:

- common property,
- limited common property or otherwise,

as the approving officer considers necessary to meet the normal parking requirements of the development, having regard to the number and size of the lots, width of the access routes and the intended use of the strata lots.



Sewage Disposal and Potable Water

- Must be proven out and protected by the appropriate legal agreement if a Community System is not available.
- Approving Officers may rely on certification by a professional engineer
- Works to service the property (to the property line) must be bonded if not constructed prior to subdivision (not internal works)

