

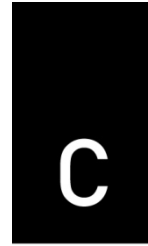


C

CONDO
start to finish

TAMMY A. EVANS - LAWYER, MASTER-PLANNED AND MIXED-USE COMMUNITIES

TAMMY A.
EVANS
BLANEY MCMURTRY LLP



CONDO
start to finish

Blaney
McMurtry
BARRISTERS & SOLICITORS • LLP

 **BRATTYS**^{LLP}
BARRISTERS AND SOLICITORS


DELZOTTO, ZORZI LLP
BARRISTERS & SOLICITORS


FINNEGAN | MARSHALL


FirstService
RESIDENTIAL

HULLMARK

KIRKOR | architects
& planners

KRCMÄR™


TRIDEL
BUILT FOR LIFE

 **WSP**

TAMMY A. EVANS IS A PARTNER AT BLANEY MCMURTRY WITH A PRACTICE FOCUSED ON ALL ASPECTS OF MIXED USE AND CONDOMINIUM DEVELOPMENT AND CONSTRUCTION CONTRACT LAW.

Tammy serves a broad range of clients, from land owners, developers, landlords, and sureties to institutional and private lenders.

Tammy moved her development practice to join the ACES and Real Estate Groups of Blaney McMurtry LLP in February 2010, to more fully meet the legal development and construction needs of her clients.

Prior to private practice, Tammy acted as legal counsel to the Ministry of Government Services (formerly Ministry of Consumer and Business Services) providing legal advice to land registry offices across Ontario as well as to the Ministry's various program areas. While at the Ministry, Tammy was appointed Deputy Director of Titles to adjudicate disputes between land owners as well as applications for compensation from the Land Titles Assurance Fund. Tammy also played an integral role in soliciting and reviewing stakeholder comments, drafting legislation and briefing the Minister's office on the Condominium Act, 1998 and its Regulations.

Prior to being called to the Ontario Bar, Tammy owned and operated a successful land development consulting and project management business assisting many developers across Ontario in achieving their development and construction objectives.

With over 25 years in the industry, Tammy delivers a solid and practical, business-oriented, legal foundation for her clients through all stages of development, from conception to operational matters.

Tammy is often quoted in the press and presents regularly on matters of importance to the development industry, keeping her clients abreast of current trends, important court decisions and legal development requirements.

OFFICE: TORONTO
MOBILE: N/A

TELEPHONE: 416.593.2986
E-MAIL: TEVANS@BLANEY.COM

TAMMY A.
EVANS
BLANEY MCMURTRY LLP





MASTER PLANNED COMMUNITIES/MIXED USE DEVELOPMENTS DEVELOPER BEST PRACTICES

TAMMY EVANS

Developing master planned communities, layered or large scale mixed use developments involves juggling multiple disciplines and overlapping responsibilities, both within the approval authorities as well as the developer's shop. Below are best practices intended to assist builders and developers in achieving project objectives in both a cost and time efficient manner through the three primary stages of project development from concept creation to operation in particular for the more complicated master planned community or large scale mixed use developments.

A. PRE-DEVELOPMENT

- **1. Know your land** - and the surrounding community topography, history, limitations, restrictions, boundaries, services, wildlife, as of right or potential zoning changes required, neighbouring property uses, local resident/interest group concerns, title
 - **2. Assemble a qualified, experienced project team early** - construction lead, architect, condo lawyer, surveyor, appropriate engineers, planner, condo manager to be engaged where appropriate/needed in strategic discussions - use the experts to brainstorm the project vision
 - **3. Create preliminary concept drawings/site plan drawings** that take into consideration both development phasing and construction phasing requirements (these are not necessarily the same timing) and share these with the project team for their early input/identification of potential challenges from construction and development applications/clearances perspectives
 - **4. Pay particular attention to the need for any cross phasing elements** - cross/reciprocal easements, shared servicing, life safety systems for each development phase, articulating the anticipated approach to phasing and completion in both drawing and written explanation. Give the approval authorities as much detail as you can to allow them to understand your vision - transparency encourages trust.
- Municipalities are increasingly reluctant to allow deferral or completion/final clearance of full servicing/easement creation/site plan obligations to later phases particular where the developer has not been as forthcoming with information as the risk of incomplete items being left with the municipality and complaints from community can be significant
- **5. Personally present your vision to planning dept** - attend municipal planning/building department personally to introduce yourself and discuss your preliminary master plan community concept drawing - obtain early indication of any potential obstacles/objections/negative feedback, take these back to your project team for strategic discussion/potential revisions
 - **6. Establish and carefully maintain good working relationship with municipal planning staff** - update them often on progress with pre-development work
 - **7. Identify potential development applications/agreements to be negotiated** - eg. site plan, minor variances, zoning, easements, servicing, conservation, land swap, public space, infrastructure, walkway, crane swing, tie backs, art, construction staging and heavy equipment access (any access through neighbour lands required), sales trailer/office, parkland dedication issues
 - **8. Keep project team informed**, regardless of whether a team member is required to review/advise/take action, it is always most cost and time efficient to keep project team on the same page as project progresses, particularly in the event of a change in direction
 - **9. Build a realistic budget for soft costs** (surveyor, legal, reports, marketing, various studies) as well as hard costs, and build in a reasonable contingency. The more complicated the development, the more primary project team engagement is generally needed

- 10. **Consider preliminary feedback from municipality prior to market launch** - the more controversial development and less than fully supportive feedback, the more likely amendments may be required to the disclosure, which may cause delay and or extra cost or put pre-sales at risk
- 20. **Transfer any easements/lands/insurance/contracts to appropriate party per development staging strategy** and secure any assumption agreements where applicable

- 11. **Comply with Tarion if applicable** - mandatory registration, unit enrolment

B. CONSTRUCTION

- 12. **Keep your project team informed of any construction/ design changes** - be aware of potential "materiality" of any proposed changes, in particular that may affect budget, suite square footages, promised amenities, charges to purchasers - update site stats, plans and share with project team
- 13. **Comply with Tarion if applicable** - builder renewal, reporting, purchaser notice requirements
- 14. **Apply for draft plan of condominium approval (DPA) as early as possible** - to allow time to negotiate and clear conditions, avoid delays to closing
- 15. **Keep your lawyer informed as to construction progress/ delays** - to allow preparation for legal notices, registration and closings
- 16. **Engage your project team to help clear site plan/ DPA conditions**, but have one lead communicating with assigned planner to avoid any confusion, frustration, miscommunication or "lost" documentation with approval authority

C. POST REGISTRATION/OPERATION

- 17. **Clear up any outstanding permit matters**
- 18. **Update Tarion of registration and closings if applicable** - to start clock for reduction/release of security
- 19. **Identify outstanding items for completion and release/ reduction of municipal security** - if applicable - providing evidence and certifications as to work completion to facilitate release/reduction

This article is intended to provide general information and comment on recent cases and items of interest to the development and construction industry. The views and comments are those of the author, are not intended as specific legal advice and do not necessarily reflect the views of Blaney McMurtry LLP or other members of the firm. We encourage you to contact the author for specific legal advice. Legal questions should be addressed to the author.

LAWYER'S
PERSPECTIVE

TAMMY A. EVANS
BLANEY MCMURTRY LLP

SUPPLEMENTAL
MATERIALS

Condominium Developments

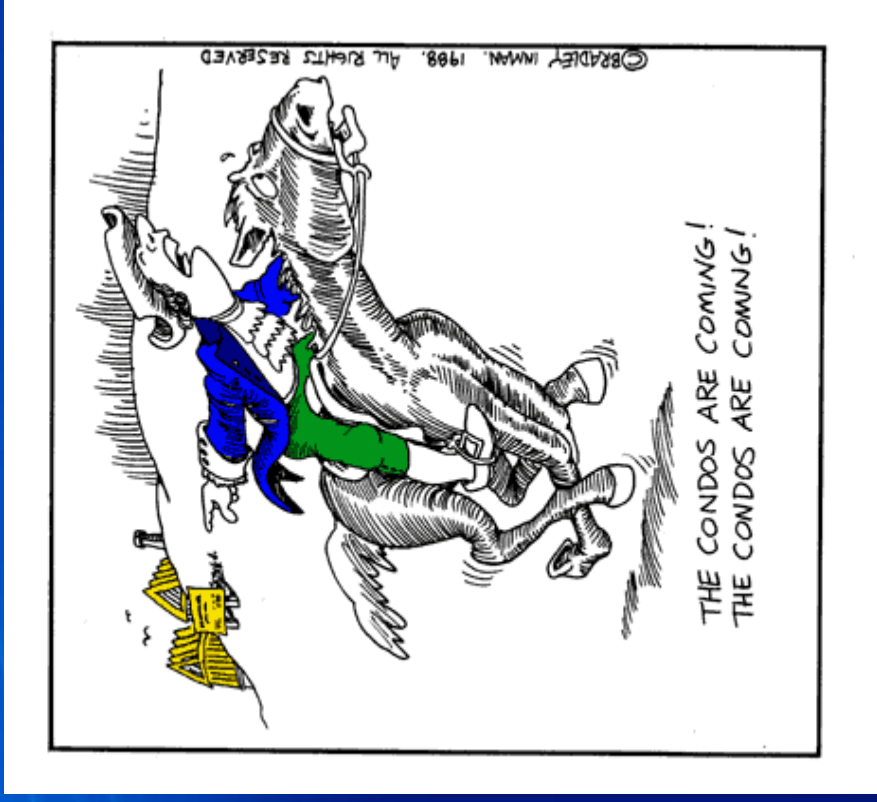
Critical Issues From a Municipality's Perspective
Simcoe County, Barrie and Orillia

Tammy Evans
416.593.2986
tevans@blaney.com

Marc Kemerer
416.593.2975
mkemerer@blaney.com



September 2014



Over 54% of all new construction in Ontario are
condominiums

Legislative Regime Governing Condominium Developments

1. Condominium Act, 1998
2. Planning Act
3. Ontario New Home Warranties Plan Act
4. Land Titles Act/Registry Act
5. Construction Lien Act

1. Condominium Act, 1998

A. Purpose of the Act

- increased consumer protection
- sets up minimum standards for condominium development
- opens up the market to different forms of condominiums
- formalizes the necessary minimum requirements throughout the life of a condominium - from sales (disclosure) to construction completion and ongoing through operation

Condominium Act, 1998

A. Purpose (continued)

- requires consistency in disclosure of key details (see Disclosure Statement Table of Contents)
- provides clarity for purchaser and ease of reference in standardized format of disclosure
- balancing act: not intended to interfere in the marketplace

Condominium Act, 1998

B. Structure of the Act

- target specific areas of historical concern needing regulation (or increased regulation)
- mandated contents for description of project physical and operational design, restrictions and permission (s.7 and s.8)
- mandatory disclosure requirements for sale/lease of units (Part V)
- 10 day rescission right for purchaser
- developer's obligations to complete the project and turn it over to unit owners (s.78)

Condominium Act, 1998

B. Structure (continued)

- operational requirements (Part VI)
 - budget, corporate set up, use of common expenses, reserve fund
- enforcement/self help (Part IX)
 - mandatory mediation and arbitration (s.132)
 - court application for appointing inspector (s.130) or administrator (s.131)
 - compliance order (s.134)
 - oppression remedy (s.135)
 - administrative fine/penalty (s.137) max \$100,000 corporate/\$25,000 individual

Condominium Act, 1998

C. Hierarchy of Regulation of Condominium Developments

1. the Act and Regulations (as amended from time to time)
2. the registered declaration and condominium plans
3. the registered condominium bylaws
4. any registered agreements, etc. authorized by bylaw or in the declaration
5. condominium rules

Condominium Act, 1998

D. Enforcement

- Board of Directors and officers are held to a statutory duty of care in exercising their duty to manage the affairs of the condominium (s.37)
- condominium corporation/owner / mortgagee/occupant has authority to enforce compliance through the Court with the Act, declaration, bylaws, rules or shared facilities agreement (provided mandatory mediation and arbitrator is exhausted first) (s.134)
- one cannot contract out of the Act (s. 176)

Condominium Act, 1998

E. Documentation that creates the condominium

1. The Declaration

- A written description of the project contents mandated by Section 7 of the Act and O. Reg. 48/01, s.5
- Schedules to the Declaration (freehold standard)
 - A - legal description of the lands and easements necessary for operation/access/support
 - B - mortgagees' consent to registration under the Act
 - C - description of unit boundaries
 - D - each unit percentage of common interest in the whole
 - E - common expenses breakdown
 - F - description of exclusive use areas
 - G - confirmation of completion of minimum requirements for construction completion (architect or engineer can sign) (See also O.Reg 48/01, s.5(8) and s. 6)
 - H, I, J, K, L- as necessary for alternative forms of condominium

Condominium Act, 1998

2. The Description (aka: the Condominium Plans)

- contents mandated by the Act (s.8) and Reg 48/01, s.9
- boundaries of units and extent of common elements of the condominium property
- what to look for:
 - connections to public road, access points, parking and locker requirements, bicycle parking, zoning/site plan compliance
 - extent and relationship of unit and condominium boundaries to neighbour property/unit (particularly in mixed use projects)
 - review similar to a site plan review, for consistency with site plan

Condominium Act, 1998

F. Alternative Forms of Condominium

- Non-residential Condominiums/Mixed Use
- Common Element Condominium (Part X)
(With Freehold Parcels Of Tied Land (POTL))
- Phased Condominiums (Part XI)
- Vacant Land Condominiums (Part XII)
- Leasehold Condominium (Part XIII)
- Condominium Conversions
Protection of tenancy (s.4(2) and s.4(3))

Mixed Use Condominiums

- stacked condominiums
- hybrid condominium with freehold component
- shared facilities agreements
- shared access/parking
- easements, restrictions, licenses and cost sharing arrangements
- zoning considerations
- condominium conversion specific issues

PLAN OF QUARTY OF
PART OF BLOCK 10
REGISTERED PLAN 43M-2000
CITY OF MISSISSAUGA
REGIONAL MUNICIPALITY OF PEEL
SCALE 1 : 500

OL.S. SURVEYING INC.
MISSISSAUGA, ONTARIO
MAY 1998

INDEX OF PAGES

PAGE	DESCRIPTION
1	PLAN OF QUARTY OF THE QUARTY
2	PLAN OF QUARTY OF THE QUARTY
3	PLAN OF QUARTY OF THE QUARTY
4	PLAN OF QUARTY OF THE QUARTY
5	PLAN OF QUARTY OF THE QUARTY

DECLARATION HEREBY MADE AT MISSISSAUGA, ONTARIO, MAY 1998

I, OL.S. SURVEYING INC., being a corporation duly organized and existing under the laws of the Province of Ontario, do hereby certify that the foregoing is a true and correct copy of the original plan as filed in the Office of the Registrar of Titles, and that the same is a true and correct copy of the original plan as filed in the Office of the Registrar of Titles.

SIGNED AND DELIVERED IN WITNESS WHEREOF, the above-named Corporation has caused its name to be signed by its duly authorized officers and its corporate seal to be hereunto set, at Mississauga, Ontario, this 19th day of May, 1998.

OL.S. SURVEYING INC.
By: _____
President

**YORK REGION
COMMON ELEMENTS
CONDOMINIUM PLAN No.**

LEVEL 1

INCORPORATED IN THE LANE REGISTERED MAPS THE LANE SHALL BE OPENED UP
... (text) ...

DATE OF ...

REGISTERED

PLAN 8, PART 1

REGISTERED PLAN 65M-3000

LOT 1

LOT 2

LOT 3

LOT 4

LOT 5

LOT 6

LOT 7

LOT 8

LOT 9

LOT 10

LOT 11

LOT 12

LOT 13

LOT 14

LOT 15

LOT 16

LOT 17

LOT 18

LOT 19

LOT 20

LOT 21

LOT 22

LOT 23

LOT 24

LOT 25

LOT 26

LOT 27

LOT 28

LOT 29

LOT 30

LOT 31

LOT 32

LOT 33

LOT 34

LOT 35

LOT 36

LOT 37

LOT 38

LOT 39

LOT 40

LOT 41

LOT 42

LOT 43

LOT 44

LOT 45

LOT 46

LOT 47

LOT 48

LOT 49

LOT 50

LOT 51

LOT 52

LOT 53

LOT 54

LOT 55

LOT 56

LOT 57

LOT 58

LOT 59

LOT 60

LOT 61

LOT 62

LOT 63

LOT 64

LOT 65

LOT 66

LOT 67

LOT 68

LOT 69

LOT 70

LOT 71

LOT 72

LOT 73

LOT 74

LOT 75

LOT 76

LOT 77

LOT 78

LOT 79

LOT 80

LOT 81

LOT 82

LOT 83

LOT 84

LOT 85

LOT 86

LOT 87

LOT 88

LOT 89

LOT 90

LOT 91

LOT 92

LOT 93

LOT 94

LOT 95

LOT 96

LOT 97

LOT 98

LOT 99

LOT 100

NOTES AND LEGEND

... (text) ...

REGISTERED

PLAN 8, PART 1

REGISTERED PLAN 65M-3000

LOT 1

LOT 2

LOT 3

LOT 4

LOT 5

LOT 6

LOT 7

LOT 8

LOT 9

LOT 10

LOT 11

LOT 12

LOT 13

LOT 14

LOT 15

LOT 16

LOT 17

LOT 18

LOT 19

LOT 20

LOT 21

LOT 22

LOT 23

LOT 24

LOT 25

LOT 26

LOT 27

LOT 28

LOT 29

LOT 30

LOT 31

LOT 32

LOT 33

LOT 34

LOT 35

LOT 36

LOT 37

LOT 38

LOT 39

LOT 40

LOT 41

LOT 42

LOT 43

LOT 44

LOT 45

LOT 46

LOT 47

LOT 48

LOT 49

LOT 50

LOT 51

LOT 52

LOT 53

LOT 54

LOT 55

LOT 56

LOT 57

LOT 58

LOT 59

LOT 60

LOT 61

LOT 62

LOT 63

LOT 64

LOT 65

LOT 66

LOT 67

LOT 68

LOT 69

LOT 70

LOT 71

LOT 72

LOT 73

LOT 74

LOT 75

LOT 76

LOT 77

LOT 78

LOT 79

LOT 80

LOT 81

LOT 82

LOT 83

LOT 84

LOT 85

LOT 86

LOT 87

LOT 88

LOT 89

LOT 90

LOT 91

LOT 92

LOT 93

LOT 94

LOT 95

LOT 96

LOT 97

LOT 98

LOT 99

LOT 100

NOTES AND LEGEND

... (text) ...

Condominium Act, 1998

G. Strata Plans



- What are they and when must these be used?
 - used to define the extent of a particular component (both horizontally and vertically) and easements
 - three dimensional plans
 - illustrates both horizontal and vertical layers
 - needed where carving up space both vertically and horizontally (e.g. stacked mixed use with shared building servicing areas)

Condominium Act, 1998

G. Strata Plans (continued)

1. Main easements (general or specific) addressed in strata plans are to create parts for:
 - vehicular and pedestrian access and use
 - maintenance and repair access
 - support
 - loading, refuse
 - shared private lanes/entry/emergency/ingress/egress

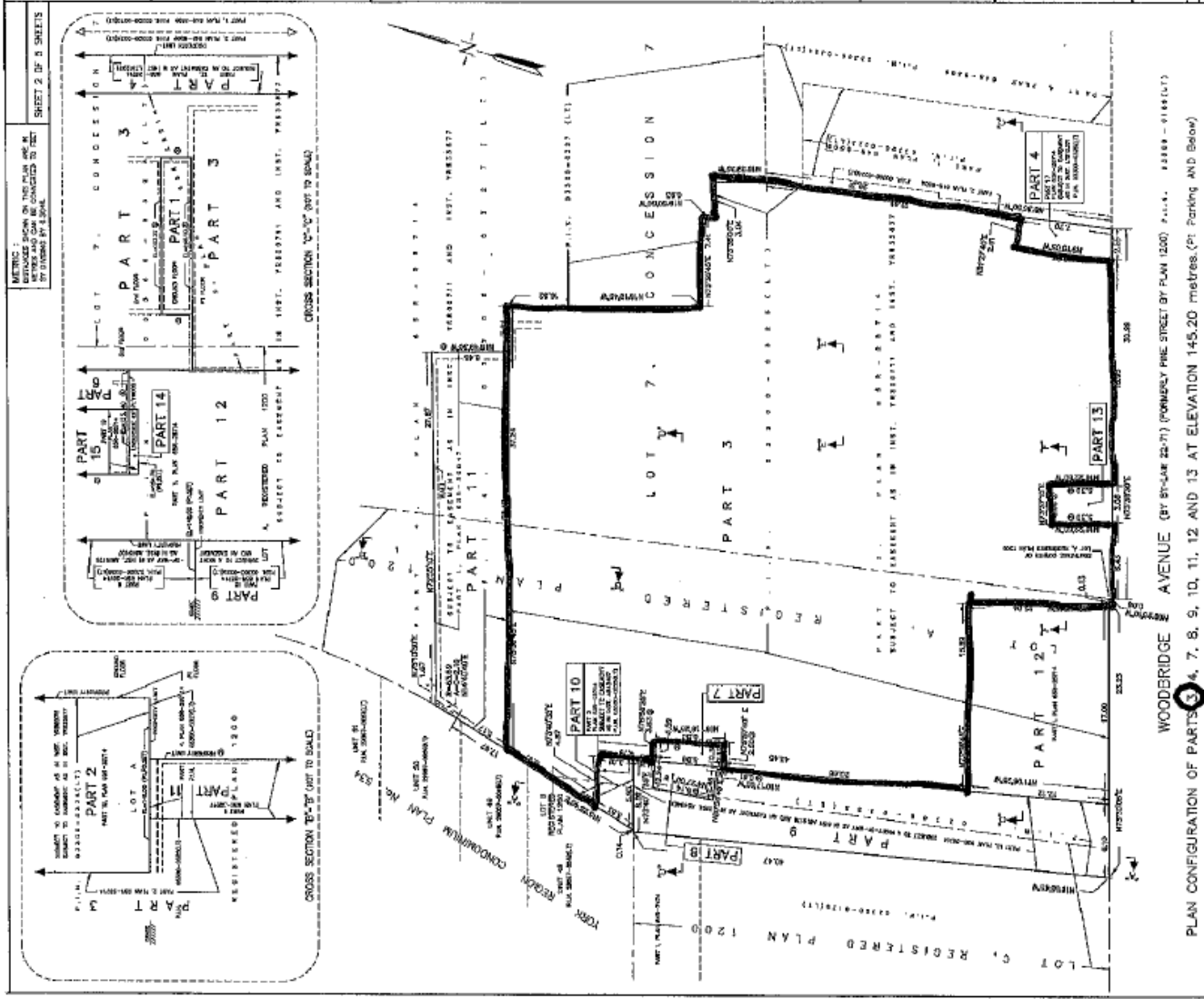
Condominium Act, 1998

G. Strata Plans (continued)

2. Determining the extent of the ownership/easement part on the plan vs. operational matters:
 - best to define via physical/structural – eg: face of wall; centreline component of floor
 - operational considerations:
 - servicing agent doesn't care when the legal part ends
 - control over use
 - shared facilities
 - cost allocation impact

SAMPLE: CONDO STRATA PLAN

[illegible]

[illegible]

R. AVIS SURVEYING INC. SUITE 300, 235 HERRING ROAD, TEMPE, ONTARIO M2H 4Y8 TEL: (416) 499-8333 FAX: (416) 491-4206 EMAIL: office@ravisurveying.com		ORDER NO.: 1207-8 DRAWING NO.: 125-00-040	
CALCULATED BY: DJL DRAWN BY: JLM	CHECKED BY: DJL, JLM		

2. Planning Act

- A. Planning Objectives
- B. Policy/legislative requirements
- C. Planning instruments and new condominiums
- D. Planning instruments and condominium conversions
- E. Conclusions on the planning instruments

Planning Act

A. Planning Objectives

- ensure that development is appropriate from many perspectives: built form, urban design, range of housing etc
- approach the development as would any other development, ensuring compliance with the official plan policies, zoning standards and site plan requirements
- these standards/policies will shape municipality's approach to condominium development
- obtain benefits (parkland dedication, road widening) and servicing improvements necessary for the development

Planning Act

A. Planning Objectives (continued)

- develop policies and approaches that are consistent and defensible
- draft standard form agreements that can be easily updated and tailored to the specific development
- conversions - ensure that the official plan policies will allow for the imposition of appropriate conditions
- tailor the requirements of inspection reports toward updated performance standards
- require that the condominium developers (contemplate or) enter into agreements (private or municipal)

Planning Act

B. Policy/Legislative Requirements

- the creation of a condominium involves two types: new construction or conversion of an existing building
- different standards in terms of which planning instruments may apply
- to understand the planning requirements behind condominium creation need to review together the Provincial Policy Statement 2005, the Condominium Act 1998 and the Planning Act

Planning Act

B. Policy/Legislative Requirements (continued)

1. Provincial Policy Statement 2005 (PPS)

- policy 1.4, Housing, is the main policy that applies with respect to the creation of residential condominiums
- requires the provision of a range of housing types and particularly the provision of affordable housing

Planning Act

B. Policy/Legislative Requirements (continued)

2. Planning Act, Provincial Interest

- s. 2: decisions need to have regard for matters of provincial interest set out in Planning Act (i.e. full range of housing and protection of public health and safety)
- s. 3: decisions need to be consistent with the PPS policies (i.e. provision of affordable housing)

Planning Act

B. Policy/Legislative Requirements (continued)

- 3. Planning Act: Official Plan/Zoning Conformity
 - s. 9(3) Condominium Act, 1998: a description cannot be registered without the approval of the approval authority
 - the condominium proposal must meet current official plan policies and zoning performance standards
 - basis for review no different than any other development application

Planning Act

B. Policy/Legislative Requirements (continued)

4. Planning Act: Site Plan

- s. 41 sets out the conditions that can be requested through site plan control
- s. 41(4) required to provide drawing/plans
- s. 41(7) conditions of approval: loading, parks, grading, landscaping, etc.
- additional layer of regulation

Planning Act

B. Policy/Legislative Requirements (continued)

5. Planning Act, Draft Plans of Condominium

- s.50 of Planning Act establishes a general prohibition on subdivision of land except by consent or through an exemption
- s.9 of Condominium Act, 1998, states that s.50 of the Planning Act does not apply to dealings with whole units (and their common interests) in condominiums

Planning Act

B. Policy/Legislative Requirements

5. Draft Plans (continued)

- BUT draft Condominium plans subject to sections 51, 51.1 and 52 plan of subdivision provisions (9(2) of the Condominium Act)
- s.51(24) criteria: regard must be had to conformity with official plan and effect on matters of provincial interest



Planning Act

B. Policy/Legislative Requirements

5. Draft Plans (continued)

- s.51(25) provides the approval authority has the ability to impose conditions on the approval of a plan of condominium
- conditions are to be “reasonable”, having regard to the nature of the development
- specific conditions include parkland and highway/right-of way dedications

Planning Act

C. Planning Instruments and New Condominiums

1. Timing of compliance with zoning
 - possible to proceed to have application filed and processed up to final approval stage for plan of condominium without complying with the zoning but such an approach may be risky
 - degree of risk will depend on support for proposal
 - seek the necessary zoning approvals first - does not preclude preparing the plan of condominium application or going to market
 - municipality will require compliance with zoning prior to final approval

Planning Act

C. Planning Instruments and New Condominiums (continued)

2. Timing of compliance with site plan

- the same scenario applies to the site plan as to zoning by-law compliance
- typical fulfillment of such requirements is part of the draft plan approval requirements
- site plan approval would have to be a condition of approval of the plan of condominium
- can add another layer of approval conditions
- compliance with the site plan itself will have to occur prior to registration as the building will have been built before registration of the condominium occurs

Planning Act

C. Planning Instruments and New Condominiums (continued)

- 3. New approaches to condominium development
 - recent example in City of Toronto of developer proposing no parking for a condominium building with 315 units located on a major arterial route well served by transit (426 University Avenue)
 - staff recommended refusal but Council approved project with nine parking spaces

Planning Act

C. Planning Instruments and New Condominiums

3. New approaches (continued)

- Toronto OPA to Encourage Development of Units for Households with Children
- City staff are recommending OPA to:
 - (a) include the term “dwelling units suitable for households with children” in official plan policies requiring the provision of a full range of housing; and

Planning Act

C. Planning Instruments and New Condominiums

3. New approaches (continued)

(b) introduce a new area specific policy to require that any new downtown developments containing 100 or more dwelling units construct 10% of those units as dwelling units containing three or more bedrooms (may contain less than three bedrooms if constructed in such a manner that they can be converted to three or more bedrooms)

Planning Act

C. Planning Instruments and New Condominiums

3. New approaches (continued)

- proposed policies have met with considerable opposition from the development sector on the basis that there is no market demand for such units and they are not affordable for average families with children

Planning Act

C. Planning Instruments and New Condominiums

4. Municipal DPA Requirements

- Standard conditions vs. site specific conditions
- Typical standard conditions:
 - based on type of condominium (standard, phased, common element, commercial, mixed use, conversion)
 - fulfillment of site plan/development agreement requirements
 - Road dedications complete
 - clearance from utilities, Canada Post
 - clearance from school boards (as applicable)

Planning Act

C. Planning Instruments and New Condominiums

4. Municipal DPA Requirements (continued)

- Site specific conditions (flows from planning review):
 - based on demand on and proximity to public roads, conservation areas, site servicing, transit, schools, traffic
 - environmental assessments (Phase I and II ESA, Record of Site Conditions)
 - heritage requirements
 - restrictions, purchaser warning statements

Planning Act

D. Planning Instruments and Condominium Conversions

1. Case Law

Shades Mills Development Ltd. v. Cambridge

(1981), OMB

- proposal to convert 15 existing apartment units in a 5 storey apartment building into condominium units
- City's condominium conversion policy not included in the City's Official Plan
- OMB: conversion policy not been subjected to any analysis or criticism or comments outside of staff/Council and "If the municipality wishes to make a policy of this nature applicable, it should propose to do so by way of an official plan amendment"
- Proposal approved but still subject to the City's parking standard and parkland dedication of 5%

Planning Act

D. Planning Instruments and Condominium Conversions

1. Case Law (continued)

Goldlist Properties Inc. v. Toronto (City) (2003, Ontario Court of Appeal)

- seminal case in terms of municipal jurisdiction and condominium conversions
- City OPA 2 restricted the demolition of residential property and the conversion of rental units to condominium units

Planning Act

D. Planning Instruments and Condominium Conversions

1. Case Law (continued)

- OMB ruled that the policy was illegal, an attempt by the City to re-enact the recently repealed *Rental Housing Protection Act*
- Court reversed the OMB decision: looked at the purpose of an official plan and held that a municipality is entitled to include the adequate supply of rental housing in such policies

Planning Act

D. Planning Instruments and Condominium Conversions

1. Case Law (continued)

Fullerton Investments Inc. v. Burlington, Sun Life Assurance v. Burlington (2007, OMB)

- 20 and 119 rental units respectively proposed to be converted to residential condominium
- OPA 62 regarding restrictions on conversion of rental to condo tenure (now Part III, Policy 2.3.2 of Burlington OP) not yet in force

Planning Act

D. Planning Instruments and Condominium Conversions

1. Case Law (continued)

- OMB found there were no specific standards to guide the evaluation of such applications
- in that vacuum looked at the tenant package proffered and protections afforded existing tenants
- found that the conversions were appropriate

Planning Act

D. Planning Instruments and Condominium Conversions

1. Case Law (Continued)

R & G Realty Management Inc. v. North York (City) (2009), Divisional Court

- City refused application for conversion of 161 unit rental apartment building to condominium
- that refusal was overturned by the OMB on the basis that the proposal did have regard for the PPS 2005 and the City's Official Plan
- Court allowed the leave to appeal application by the City, holding that the OMB erred in using a lower standard of review with the PPS 2005 ("consistent with") and that the OMB did not have regard for the City's conversion policies
- OMB should have had regard for the City's mandatory language regarding conversions requiring that there had been "a significant net gain in the supply or rental housing"

Planning Act

D. Planning Instruments and Condominium Conversions

1. Case Law (Continued)

Boardwalk REIT Properties Holdings Ltd (2009),

OMB: PL070735

- OMB dismissed an appeal related to a condominium conversion application in Windsor on the basis that the proposed parking was inadequate for the conversion
- OMB in that case did not accept the argument that the parking standard was grandfathered because the (residential) use would not change: “In this regard the Board prefers the evidence of the City planner, that the parking ratio at 0.72 falls far short of the 1.25 parking standard of the zoning by-law
- appropriateness of site for the type of development, adequate on-site parking and compliance with zoning by-law

Planning Act

D. Planning Instruments and Condominium Conversions (continued)

2. Compliance with updated zoning regulations

- given that there is no change in use, but only a change in tenure, arguably the building will be grandfathered in terms of the zoning standards
- will likely depend on the individual application: are any changes proposed to the building that trigger the requirement for current standards
- best able to ensure this if the condominium conversion policies require such compliance (Burlington OP policy 2.3.2(f)(ii))

Planning Act

D. Planning Instruments and Condominium Conversions (continued)

2. Compliance with updated zoning regulations (cont'd)

- such OP policies provide a reasonable basis for the requirement (*Boardwalk REIT*)
- may be able to use the report commissioned under s. 9(4) of the *Condominium Act, 1998* as a basis for requiring updated standards
- focus of municipal policies, if any, generally on housing policy (i.e. vacancy rates) rather than built form, which may limit the ability to require compliance to updated zoning regulations

Planning Act

D. Planning Instruments and Condominium Conversions (continued)

3. Compliance with updated site plan

- this is an interesting question, since site plan relates to the “usability” of the site (s. 41 of the *Planning Act*)
- a case can be made that the change in tenure will result in an increased use of the site (owners have higher rates of car ownership, etc.)
- this may therefore have to be considered on a case by case basis
- matter to consider in wording of conversion policies

Municipal Act, 2001

- s. 99.1 allows a municipality to pass by-laws to prohibit/regulate the demolition/conversion of residential rental properties
- rarely used, but a source of leverage
- City of Toronto Municipal Code Chapter 667, Residential Rental Property Demolition and Conversion Control

Planning Act

F. Conclusions on Planning Instruments

- to ensure the appropriateness of the condominium development, approach it as keep any other development
- make sure there is compliance with the official plan policies, zoning standards and site plan requirements
- secure the benefits, dedications and easements municipalities have the authority to require under the legislation

Planning Act

F. Conclusions on Planning Instruments (continued)

- obtain improvements in existing services and access to those services
- have standard form of agreements prepared
- develop policies and approaches that are consistent and defensible
- tailor the requirements of inspection reports toward updated performance standards

3. Ontario New Home Warranties Plan Act

- regulates all new home construction in Ontario
- all builders and vendors must be registered (s.6)
- vendor primarily on the hook
- mandates construction completion, inspection and reporting requirements/standards
 - Construction Performance Guidelines (Low Rise Wood Frame construction), Bulletin 19 Design and Field Review Reporting
 - fit and finish guidelines without tolerances
 - common elements Construction Performance Guidelines coming out

3. Ontario New Home Warranties Plan Act – cont'd

- administers the Ontario Home Warranties Plan
 - 1, 2 and 7 year warranty for all new home construction
- all condominium units must be enrolled with Taron prior to dig
- do not cover or regulate condominium conversions
- registration: posting of security to cover
 - a) deposits
 - b) construction completion (warranties)

One-Year Warranty

- Two sets of statutory warranties
 - Unit Warranties – starts from occupancy closing / date of possession
 - common elements – starts from date of registration
 - warranties apply to:
 - new construction “completed”
 - not just “essential elements” – foundation / footings
 - 40% rule
 - performance audit

One-Year Warranty - cont'd

- Provides protection against:
 - Defects in workmanship and materials (“bumper to bumper”) with permitted tolerances
- Condo types:
 - A – lot line condos
 - B – not lot line Part 9 typical Townhouse
 - C – Part 9 and Part 3 – underground garage – Bulletin 19
 - D – highrise Part 3 – 4 floors
 - Schedule C to Declaration – Tarion important
 - Violations of the Ontario Building Code
 - * occupancy permit must now be issued (no more verbals)
 - Unauthorized Substitutions

Two-Year Warranty

- Provides protection against:
 - Health & Safety violations of the Ontario Building Code
 - Defects in the electrical, plumbing and heating distribution systems
 - Defects allowing water penetration
 - Defects in exterior cladding, bricks, siding detailment
 - “rough in” stage covered installation and furnace (eg. toilet = 1 year; storage = 2 years)

Seven-Year Warranty

- Protects against Major Structural Defects including:
 - Defects in work or materials that result in the failure of a load bearing part of the home's structure, or materially and adversely affects its load bearing function;
 - Defects in work or materials that significantly and adversely affect the use of the building as a home
 - eg. Mould – makes it unlivable but must be a result of a defect in construction

Seven-Year Warranty - cont'd

- eg. plastic vents on furnaces lets in carbon monoxide
- eg. Dominion concrete foundations crumbling
- eg. wall cave in - 2nd floor ends up in basement “Shrinkage” cradle



TARION

PROTECTING ONTARIO'S NEW HOME BUYERS

Underwriting Condominium Builders

Underwriting Guidelines

- **Builder Bulletin 28**
- **Assess technical ability**
- **Financial strength**
- **History of applicant**

Underwriting Guidelines

- **Builder Bulletin 28 scoring**
- **Size** 10 points
- **Tenure** 20 points
- **Business/Technical** 20 points
- **Financial** 50 points
- 100 points

Condominium Types

Type A – Project falls under Part 9 of OBC and is a lot-line condo

Type B – project falls under Part 9 of OBC and is not a lot-line condo

Type C – Project falls under both Part 9 & Part 3 of the OBC

Type D – Project falls under Part 3 of OBC

Technical Assessment

- For Projects under Part 9 Technical written test on Part of OBC is required
- For projects where any component of project falls under Part 3 of OBC Tarion conducts meeting to assess technical ability

Condominium Types

Type A – Project falls under Part 9 of OBC and is a lot-line condo

Type B – Project falls under Part 9 of OBC and is not a lot-line condo

Type C – Project falls under both Part 9 & Part 3 of the OBC

Type D – Project falls under Part 3 of OBC

Type C and D Technical/Financial Assessment

- Meeting with developer to assess financial and technical capabilities
- Budgets
- Financing
- Assessment of Construction team (ie- in house or external parties)
- Review of BB 19

Conditions of Registration

- Limits on size and complexity of projects
- Security
- Builder being used for project

Security Requirements

Forms of security

- *Surety Bond*
- *Letter of Credit*
- *Cash*
- *Deposit Trust Agreement (DTA)*

Release of Security

- For first time Type C and D developers security is maintained for 2 years from condo registration
- For Type C and D developers with a track record security release we use the guidelines in Builder Bulletin 28

Release of Security as per BB 28

- For all types of condo projects security reduction is triggered when the condo is registered and a minimum of 50% title transfers are received.
- The initial reduction is based on the risk assessment amount.
- For types A and B, a subsequent reduction occurs one year after condo registration.
- For type C and D, reduction can occur when Final BB 19 report is received

Q & A

4. Land Titles Act/Registry Act

- Different registration systems across Ontario (transition from paper system to automated, Registry and Land Titles)
- Regulates form and minimum content of documentation permitted to be registered/deposited for certification and reliance
- Underlying lands for condominium registration must be under Land Titles Absolute system (or Registry where no LTA) (s. 4 of O.Reg. 48/01 to the Condominium Act, 1998)
- Condominiums must go through the LRO pre-approval process before registration can occur
 - LRO review of declaration and description (condo plans) for compliance with registration requirement
 - Municipality forwards signed description (condo plans)
 - architecturals and structurals go directly from surveyor to LRO

5. Construction Lien Act

➤ New s.33.1 Notice of Intended Registration of Condominium

- effective July 1, 2011
- requires “owner” to publish Notice in a construction trade newspaper before submission for (final) approval
- deadline to publish: no earlier than 5 days and no later than 15 days before submission of plans to Municipality for (final) approval
- intended to provide early notice to trade contractors
- prescribed form and contents (Form 24, O.Reg. 174/11)
- list of contractors who serviced the site in last 90 days
- imposes liability to trade(s) with valid lien who has suffered damages as a result of owner’s failure to comply

Ontario's Condominium Act Review

- announced by McGuinty June 8, 2012
- led by Ministry of Government Services (now Ministry of Government and Consumer Services)
- 3 stages – stages 1 and 2 public/industry engagement process completed
 - now in stage 3 – implementation of action plan
 - legislative analysis, expert panel discussions, drafting
 - key targeted areas:
 - regulation of condominium property management
 - improved consistent disclosure
 - reserve fund adequacy and funding
 - streamlined dispute resolution
 - condo owners and board education

Recap:

Legislative Regime Governing Condominium Developments

1. Condominium Act, 1998
2. Planning Act
3. Ontario New Home Warranties Plan Act
4. Land Titles Act/Registry Act
5. Construction Lien Act

Excellent Reference Materials:

- *Condominiums in Ontario: A Practical Analysis of the New Legislation*, Herskowitz & Freedman (2001)
- *The Condominium Act: A User's Manual*, Loeb (2010)
- Government of Ontario (Service Ontario) Land Registration Bulletins and Guidelines/ Checklists
- Tarion Builder Bulletins
 - Construction Performance Guidelines
 - Bulletin 19 Design & Field Review Reporting

Questions and Answers



Thank you for listening.



Tammy Evans
416.593.2986
tevans@blaney.com

Marc Kemerer
416.593.2975
mkemerer@blaney.com

**Blaney
McMurtry**
BARRISTERS & SOLICITORS LLP