

RE: LETTER FROM MAYOR DIANE STROM, GIBSONS MUNICIPAL COUNCIL,
TOWN OF GIBSONS, WHICH APPEARED ON THE AGENDA FOR THE MARCH 02ND
MEETING OF COUNCIL (ITEM 4 F)
PROVISION OF MUNICIPAL CONTROL OF STRATA PLANS FOR NEW AND
UNOCCUPIED BUILDINGS

MUNICIPAL MANAGER'S RECOMMENDATION:

1. THAT the recommendation of the Director Planning & Building Inspection be adopted.

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TO: MUNICIPAL MANAGER 1987 March 03
FROM: DIRECTOR PLANNING & BUILDING INSPECTION Our File: 02.200

SUBJECT: PROVISION OF MUNICIPAL CONTROL OF STRATA
PLANS FOR NEW AND UNOCCUPIED BUILDINGS -
CORRESPONDENCE FROM TOWN OF GIBSONS, B.C.

RECOMMENDATIONS:

1. THAT Council approve the resolution as presented in Section 3.0 of this report for submission to the UBCM for consideration at its annual Convention, and that a copy of this report be now sent to the UBCM and the Lower Mainland Municipal Association.
2. THAT a copy of this report be forwarded to Mayor Diane Strom, Town of Gibsons, 474 South Fletcher Road, P.O. Box 340, Gibsons, B.C. V0N 1V0

R E P O R T

1.0 BACKGROUND

Appearing on the Agenda of 1987 March 02 was a letter from the Town of Gibsons requesting Council's support with respect to a resolution relating to municipal control of strata subdivisions of new and unoccupied buildings. The following resolution has been passed by the Gibsons' Municipal Council with the intent that it be presented to the U.B.C.M. Convention this September:

WHEREAS under Section 99(2) of the Land Title Act there is mandatory requirement for the submission of satisfactory evidence to the registrar that the approving officer has granted approval of subdivisions;

AND WHEREAS Section 729 of the Municipal Act references particular areas of subdivision criteria that the approving officer should maintain regard for in the approval process together with concern for local subdivision by-law requirements;

AND WHEREAS Section 7(2) of the Condominium Act negates the requirement for approving officer signature on strata plan of subdivision of a new unoccupied buildings, thus invalidating and superceding all other municipal regulations;

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NOW THEREFORE BE IT RESOLVED that Part 1, Section 7(1)(f) of the Condominium Act be amended to read as follows:

"(f) shall be accompanied by a certificate of approval issued by an approving officer; and

THAT Part 1, Section 7(2) of the Condominium Act be deleted."

2.0 PURPOSE OF RESOLUTION

Under a 1975 amendment to the Strata Titles Act, strata plans involving new and unoccupied buildings were allowed to be registered by a B.C. Land Surveyor without reference to or approval of Municipalities. As long as the Surveyor would certify that the development was new and not previously occupied, no other approval was required.

Since that time, Burnaby has, through items of correspondence and UBCM Resolutions, endeavoured to have the Act amended (now the Condominium Act) to provide that all strata plan applications, whether or not new and unoccupied buildings are involved, be made subject to municipal approval (as was the case prior to 1975), A Burnaby sponsored 1983 UBCM Resolution (B48) on this matter was the last to be presented and approved by the UBCM Convention.

Burnaby's actions in this regard reflect a concern that an absence of municipal jurisdiction in this matter, in effect nullifies the powers granted to Municipalities under the Municipal Act to regulate land use and density. A Municipal Zoning Bylaw regulates the development and use of land having regard to the varying character of different zones and the prevention of overcrowding of land. The number of units which a building can contain and the resulting allowable development densities are guided by these considerations.

The absence of municipal control with respect to strata plans involving new and unoccupied buildings, represents a loophole in the Condominium Act that has been used to circumvent the Zoning By-law regulations in certain instances. This relates to the past and potential development of additional dwelling unit accommodation created by means of strata titling new semi-detached dwellings, thus converting a two-family dwelling into four dwelling units.

In the case of converting an existing, occupied dwelling into strata lots, the legislation under Section 9(2), stipulates that the approving authority shall not approve the conversion unless the building complies with the bylaws of the Municipality. Similar provision should also exist for new, unoccupied buildings.

In 1984, the Provincial Government responded to the previous Resolution by proposing that building permits be required as a filing document for strata plans at the Land Title Office. Any subsequent changes would be filed as part of a disclosure requirement under the Condominium Act.

The effect of this is that a record would be provided of strata plan applications which could be referred to by a Municipality for information. On the other hand, there would be no specific involvement by the Municipal Approving Officer, we would not see or sign the strata survey documents, nor would there be departmental implementation of the Guidelines for Duplex Condominiums and Conversions (i.e. separate utilities, written statement by the applicant agreeing to comply with R4 or R5 zoning requirements).

Clearly, these proposals would not provide a Municipality with any control over the issuance of a strata plan which involves new and previously unoccupied buildings.

This is also the opinion of the Municipal Solicitor who expressed the view that the measures being proposed by the Province will do nothing to prevent a situation whereby a building permit is granted for a two-family dwelling but, before occupancy, the property is converted to four strata units in contravention of the Burnaby Zoning By-law.

3.0 CONCLUSIONS AND PROPOSED ACTIONS

Staff believe that there remains a need for an amendment to the Condominium Act to ensure that municipal zoning by-laws are not made ineffectual by excluding the requirement for municipal approval of strata title applications for new and unoccupied buildings.

In keeping with the rationale presented in this report, and in previous resolutions in this matter, it is felt that additional explanatory information is required to that contained in the resolution adopted by the Gibsons' Municipal Council. It is therefore recommended that Council support the Gibsons' resolution by adoption of the following for submission to the 1987 U.B.C.M. Convention.

WHEREAS the Condominium Act provides that where a strata plan is part of phased development or is a bare-land strata plan, a certificate of approval by a municipal approving officer is required, and where a previously occupied building is converted to strata lots the approval of a Municipal Council is necessary;

AND WHEREAS no such municipal approval is required where a strata plan involves a building that has not been previously occupied, or a building to be constructed and developed, in which case only the obtaining of a certificate from a B.C. Land Surveyor verifying the status of the building and filing it with the Registrar of Land Titles is necessary;

AND WHEREAS a Municipality has no control over a strata plan developed under these circumstances and the powers granted to Municipalities in the Municipal Act to regulate the density of land use and the siting, size, and dimensions of buildings under a zoning by-law are rendered ineffective;

AND WHEREAS the absence of municipal jurisdiction in such cases may result in developments which overcrowd the land, create parking problems, provide an added load

on municipal services and utilities, increase pressures on neighbourhood parks and community facilities, and prevent the realization of such desirable community objectives as the preservation of the character of residential districts, the character of dwellings already erected and the suitability of such areas for low density residential accommodation:

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THEREFORE BE IT RESOLVED that Part 1, Section 7(1)(f) of the Condominium Act be amended to read as follows:

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THAT Part 1, Section 7(2) of the Condominium Act be deleted."



A.L. Parr
DIRECTOR PLANNING &
BUILDING INSPECTION

JSB/mcb

cc: Municipal Solicitor
Chief Building Inspector