

NOT ALL STRATA DEVELOPMENTS ARE THE SAME

[revised to clarify ownership and process August 2010]

This is an article in a series of background articles prepared by OPSRRA in conjunction with a review of the Otter Point and Shirley/Jordan River Official Community Plans (OCPs).

Heather Phillips, Otter Point's representative to the Juan de Fuca Land Use Committee, submitted the original article to the June 2010 OPSRRA newsletter then revised this article to include new information about ownership in a strata and how a strata is approved.

The content of the article is based upon Heather's discussions with June Klassen, CRD Manager of Local Area Planning for the Juan de Fuca Electoral Area.

Why do we need to be informed about strata?

Strata developments can be controversial so accurate information is important. The following is an explanation of some of the basic characteristics of a strata corporation and the ownership of property by such a corporation.

What is a strata?

All strata are characterized by common property belonging to a strata corporation that acts as a legal person to hold title to certain of the areas covered by the strata plan. This type of corporation exists under the provincial *Strata Property Act* and the title to the property is bound to the strata corporation. It is quite different from a non-profit or business corporation registered under the *Society Act*. While each strata corporation has its own bylaws, the mandatory regulations and procedures for such a corporation are described in the *Strata Property Act* and similar regulations. The Lieutenant Governor, Superintendent of Real Estate or the Supreme Court may be called on to interpret the act and regulations.

How does a strata corporation operate?

The strata corporation has the title to the common property. Each strata member owns a private dwelling and has rights to use assigned limited common property and common property. In a bare-land strata, title to some parcels of land associated with the strata are held individually by members of the strata corporation. These are the areas where the private dwellings are located. There is also a parcel that that strata corporation owns and this is the common area. When the strata corporation is registered at the Land Title Office, the unit entitlement for each recognized unit of the strata is established. The unit entitlements identify the limited common property assigned to each member as well as the common property and, like shares, the entitlements determine the voting rights of the members when the strata corporation is operating. An example of limited common property would be the yard area associated with a dwelling or a parking space. In addition to road access, common property might include septic fields and wells. The

owners have benefits and financial responsibilities, including property taxes, for their assigned limited common property and their share of the common property.

As everyone knows, use of all land is limited by federal, provincial and local laws such as Official Community Plans and zoning bylaws. There may also be a building scheme or covenants put in place by the developer that affect use of both private and common property. Within such established limits, strata members together determine use of their common property. Procedures for meetings, keeping records, establishing contingency funds, dividing costs and making decisions are described in the *Strata Property Act* and regulations.

Building strata may involve common property in the form of the roof and outside walls of a building, with private property or limited common property encased in the building shell. Some zones in the Juan de Fuca Electoral Area allow duplex buildings. A duplex may be established as a building strata or become a building-conversion strata to accommodate separate ownership of the two dwelling units. The building shell, building site and associated water supply and septic arrangements would be common property. In the recent past, there have been problems in British Columbia when the two owners of a duplex have not seen the need to follow regulations. Their strata corporation becomes "non-conforming". When neighbourliness fails for a non-conforming strata, there are no proper records to guide the resolution of disputes.

What are the different types of strata?

There are three types of "strata" in the Juan de Fuca Electoral Area (JDFEA): bare-land strata, building-conversion strata and building strata.

1. Bare-land strata:

- ◆ A bare-land strata has both privately held lots and common property which usually includes a shared access road.
- ◆ Such a road will be outside of the public highways system and maintained by the strata corporation.
- ◆ Because the JDFEA is unincorporated and does not employ an Approving Officer, a bare-land strata plan that is a subdivision plan must be approved by the Provincial Approving Officer, pursuant to the *Bare Land Strata Regulations*. The Approving Officer refers all subdivision plans to the health authority and the Capital Regional District (CRD) to ensure the strata meets their requirements and bylaws.
- ◆ Because a bare-land strata may create three or more additional lots and the smallest lot may be 2 Ha or less, the parks dedication requirement described in Section 941 of the *Local Government Act* may be triggered.
- ◆ Although some privately owned lots associated with the strata may be smaller than the minimum parcel size described in the zoning, the Approving Officer may use lot averaging and include the common property in the calculation. He may

approve the subdivision plan if the average lot size meets the zoning minimum lot size.

- ◆ The strata must meet all other zoning requirements.

2. Building strata:

- ◆ The building strata commonly referred to as a "four on ten" type development in the JDFEA generally consists of several separate dwellings, each placed on limited common property that belongs to the strata corporation. Just as a mobile home is a privately owned unit that may be placed on a rented pad, a building may be privately owned while the property it is placed on belongs to the strata corporation. The building site and yard are assigned for the use of the building owner as limited common property.
- ◆ There may also be "common property" areas such as the access roads, sewage disposal equipment and septic fields, and the land and equipment needed for water supply.
- ◆ This type of strata development can occur in the JDFEA because there are zones that permit multiple dwelling units on a property. In a zone where a duplex is allowed, the duplex may be established with a strata corporation as owner.
- ◆ A building strata can only be created with new, unoccupied buildings which must be completed to lock up to enable the strata to be registered at the Land Title Office. The Land Surveyor will make this determination.
- ◆ The property owner will meet all requirements for a building permit and zoning for the property.

3. Building-conversion strata:

- ◆ A building-conversion strata is where existing buildings are converted to ownership by a strata corporation. For example, a duplex may be converted to strata ownership.
- ◆ Because the permits for the buildings may have been issued some time before, the application to create a strata through building-conversion requires a review and permission from the CRD Board. The Board will ensure the buildings are suitable for the proposed use and may require they meet current standards before the strata corporation can be registered.
- ◆ The Electoral Area Services Committee, not the Land Use Committee, will examine any application for a building-conversion strata and make recommendations to the Board.
- ◆ Building-conversion strata can occur in the JDFEA where zones permit multiple dwellings on a lot or where a duplex is permitted.
- ◆ In urban areas these generally involve apartment or townhouse buildings.

Conclusion

For building-conversion and building strata, there is no subdivision. The Provincial Approving Officer and the CRD Planning Services Department are not involved in the approval process and a park dedication will not be triggered. The strata corporation has title to a parcel and makes decisions about use of the property. To apply the zoning bylaws for building-conversion or for building strata, calculations for the size and area covered by buildings are made as if all principal buildings were one and all accessory buildings were one. If only one accessory suite is allowed, the strata corporation must decide how to allocate the benefit. The main difference between a building strata and a building-conversion strata is that with the new buildings, the strata corporation can be registered when the building or building is at lockup stage. Only the building permit is required. With a building-conversion strata, the CRD Board is responsible for determining if the buildings are suitable for the proposed use.