AIR SPACE PARCELS – WHAT THEY ARE, WHEN TO USE THEM AND CURRENT ISSUES

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Why are we talking about air space parcels?

- Increases in density result in a need for multi-functional, mixed-use developments
- Typically with a residential component that drives the economics of the project
- Different types of owners want to own different parts of these buildings, because of their different ownership and investment objectives
What are air space parcels?

- Air space parcels are land for the purposes of the *Land Title Act*, and can be transferred, leased, mortgaged and charged.
- An air space parcel is defined as a volume of space, rather than a flat plane.
- The air space parcel volume can be comprised of air, land or a combination of air and land, and it may be occupied by a building.
Regular subdivision plan
To the heavens and the center of the Earth
Air space subdivision plan
Central City stacking plan
The Wild West

- Other air space – strata lots
- *Strata Property Act* creates a statutory regime
- No corresponding regime for air space parcels
- Opportunities and drawbacks
  - Flexibility in creating relationships and cost sharing between owners
  - Enforceability issues
  - Building damage, insurance and re-building
When (not) to use them

• Identify distinct ownership objectives
• Municipal requirements for specific components
• The problems with strata lots
  • Separate sections aren’t completely separate
  • Common property issues
  • Insurance
• Costs
  • Application fees
  • Survey costs
  • Legal costs
  • Code consultant costs
Some rules (and options)

- Single parent parcel
- Road access
  - Easement alternatives and issues
  - Vertical extension of road
  - Air access
- Can’t amend without cancellation of air space plan
- Can’t re-subdivide by air space plan
  - But you can subdivide by a strata plan
- Approving officer requirements
  - Easements that address access and fire code equivalency
  - Section 219 covenant/indemnity
Master easement agreement

- Reciprocal easements for support and access
- Specific easements for certain areas
- Reciprocal covenants
  - Repair, insurance, indemnity
- Specific covenants
  - Signage, regulations
- Cost sharing
- Equitable charge
- Status certificate
Current Issues – Remainder Subdivisions

• Is a remainder land? The problem of negative space
Current LTO policy

- Current LTO position on remainder subdivisions – discretionary approval
Next steps to resolution

- The work of the Joint Task Force
- The future – more certainty, more opportunity
Current Issues – Timing of ASP Creation

- Re-development by non-developers
- Municipal and developer concerns with building encroachments
- ASP subdivision approval delayed until building constructed clear of possible encroachments
- Issues with registration of construction financing mortgage
- Need to create air space parcel that’s owned by the developer
Local case study

Note: The Stacking Drawing is conceptual only and may be amended to address the requirements of the parties pursuant to the terms and conditions of this Agreement and the Purchase Agreement.
What you need

- Cooperative municipality
- Lender on side
- Residential classification for property tax assessment
Anticipate building encroachment

- Development Management Agreement
- Anticipate and plan for building encroachment
- New easements
- Part 8 cancellation of air space plan
Next steps towards resolution

- Seek cooperation from other municipalities
- Generate understanding of the issues
- More examples of successful projects
- The future – more successful mixed-use redevelopment projects