BRATTYS LLP
BARRISTERS AND SOLICITORS

M E M O

DATE	:	July 12, 2024
ATTENTION	:	S&G Consulting Inc., Branthaven 735 Oval Inc. and Branthaven 740 Oval Inc.
RE	:	Oval Court Plan of Subdivision Approval
FROM	:	Daniel Botelho

This memo is being provided in response to various questions that have been posed in respect of the items below.

You are seeking approvals for registration of a plan of subdivision for a number of properties that currently form part of an existing plan of subdivision and which are currently occupied by large single use commercial facilities.

The redevelopment plan is to convert the current uses to various residential high-rise buildings each forming part of an individual condominium plan, with certain areas, roadways and facilities being shared.

1. Block Lines and Boundaries

The concern raised is that the final condominium plans that may be deposited may not have the same boundaries and 'lot' lines as the blocks that are proposed for the plan of subdivision. This is a common issue that arises and it is very rare in high density developments to be able to forecast and predict the future lot lines of future condominium developments that are in close proximity to the other. The 'best' or 'proper' divisions of the properties may not be ascertainable until the developments are further down the path of approvals and more information and details are known about each site.

The answer to this is that there is no requirement or need that a condominium plan follow any underlying lot or block fabric. It would be ideal to have the lines and boundaries be the same but it is not necessary for any Planning Act requirements nor any zoning requirements.

The condominium boundaries will be determined by registration of reference plans prior to condominium registration that will describe the boundaries and lands forming part of the condominium plan. The condominium plan and the lands that are actually included in a condominium plan are subject to approval by the planning authority at the time of site plan approval and thereafter at the time of condominium application.

These types of developments normally proceed on that basis of what is the best allocation of lands and portions of garages, shared driveways and walkways to allow the development to proceed in an orderly fashion and subject to construction requirements going forward, as well as best practice for future operation regardless of any underlying lot/block fabric.

2. Private Roads

There is also an intention to provide for one of the internal roadways (and potentially others) which is shared between 2 or more of the intended condominium developments to be shared roadways which are private roadways and not assumed by the municipality.

This is also common in such large scale developments and actually offers certain advantages and benefits, such as no public maintenance or repairs of the roadway and the ability to accommodate features, facilities or services along the roadway which would otherwise not be achievable with a public roadway.

Such roadways can be incorporated as common elements of any one or more condominium plans; be subject to easements in favour of the other developments that will share in the benefit of the roadway; be subject to cost sharing agreements in order to share the cost of operation, maintenance and repair of the roadway; and be subject to public easements to allow the general public to use and access the roadway if desired.

In addition to the options above, it is also possible and common place to stagger the construction of such roadways within each applicable condominium plan such that the roadway comes into operation when needed and it does not impede the construction of future developments.

3. Public Easements

As noted above for the private road instances, it is also common place to allow for easements in favour of the City to permit use by the general public of any one or more spaces. Most municipalities are now referring to such easements as 'POPS' which is an acronym for "Privately Owned Public Spaces". In order to achiever this POPS easement, an easement is registered in favour of the City granting right to use in favour of the public.

The benefit of POPS easements is that the development is able have certain areas or facilities that the City may not want or be able to maintain and which are better owned or operated by a condominium corporation. This applies to roadways, walkways, parkettes and other outdoor types of open spaces.

The POPS easement is also a very popular tool for conveyance of easements over walkways that are intended to be utilized by the general public, and in this regard, the site is to contain a public walkway or 'promenade' for use by the general public to traverse the site and the use of a POPS easement in favour of the City is a proper vehicle to provide that right and benefit to the general public.

I note that I have not seen this model used for indoor spaces or areas but that does not mean it is not possible, but rather just not common at this time.

4. Shared Underground Garages

With respect to underground garages, it is also common for multiple condominium plans to operate one large underground parking garage rather than each condominium plan maintaining its own individual garage. The benefits are numerous, but generally, it allows for more efficient use of underground areas.

In this scenario, the garage forming part of each plan is formed and constructed at the time of each building being constructing with knock out panels or other features installed in order to close off the area(s) of the garage that will go into operation from the areas that will be under construction or built in the future.

Where this occurs, care needs to be taken that only the areas that will be in operation will be subject to life safety and fire safety requirements in order to allow occupancy of any portions of the underground areas or the buildings above grade.

From a legal access perspective, easements are granted at the time of condominium registrations in order to allow each component of the development that is to share in such garage to have the legal right for the required users to utilize the shared garage as intended.

In reference to the P1 Floor Plan Drawing No. P099 appended to this memo, the Draft Plan of Subdivision Block Line (red) reflects the at grade ownerships whereas shaded areas (purple) reflects areas below grade that are to form part of the neighbouring garage ownership.

Additionally, agreements often referred to as Reciprocal Agreements or Cost Sharing Agreements are entered into by each component of the development that shares in the use of the garage in order to provide for allocation of operation, maintenance and repair responsibilities as well as cost sharing responsibilities. The agreements provide the framework for the operation of the garage and ensure contribution by all parties towards same, in addition to other details of the developments that are usually addressed therein.



Parking Deck Slopes N/S Relative to Grade

diamond schmitt

P1 Floor Plan P099

Oval Court 24/07/15 As indicated