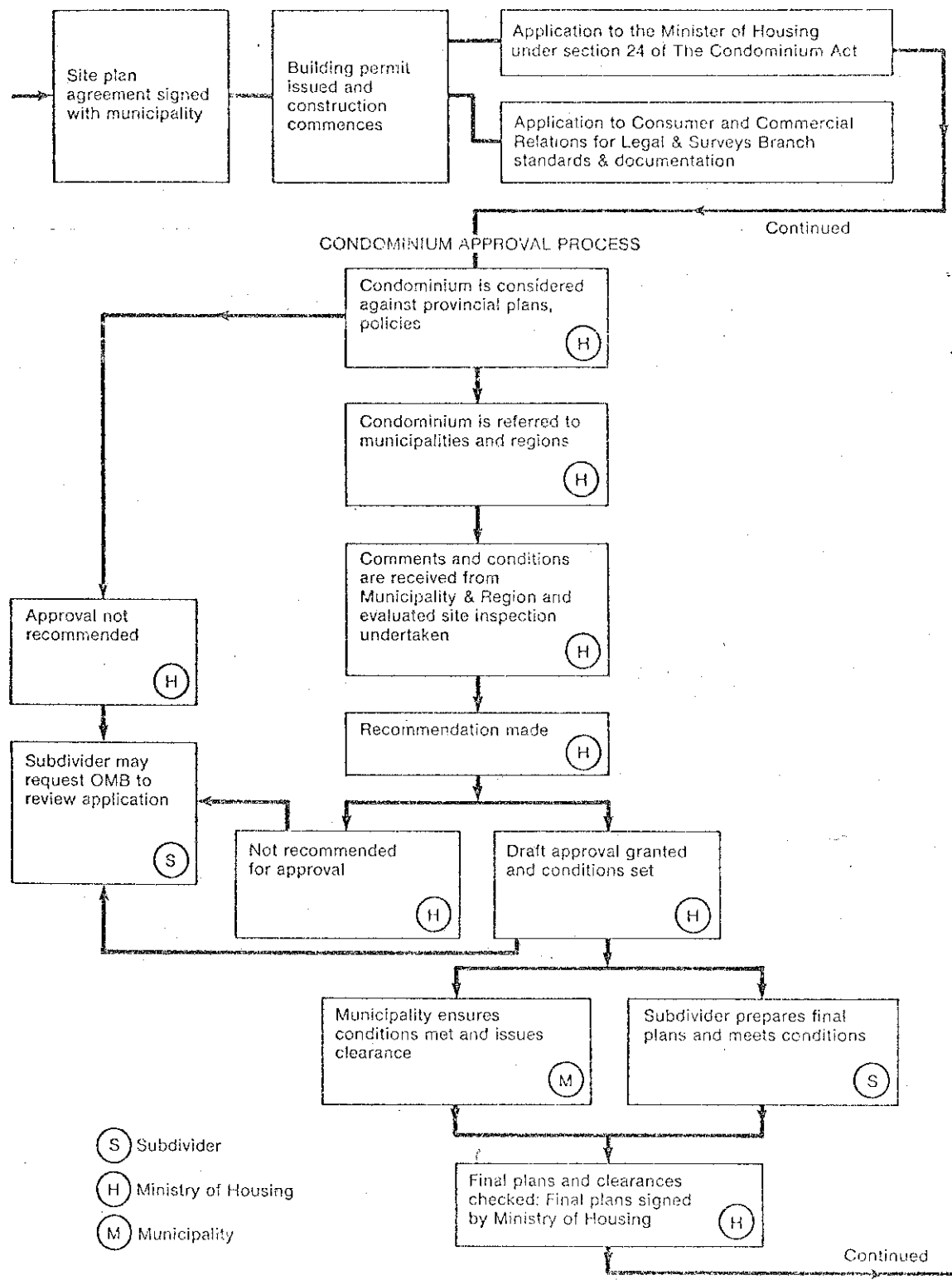


v.f.
01/80

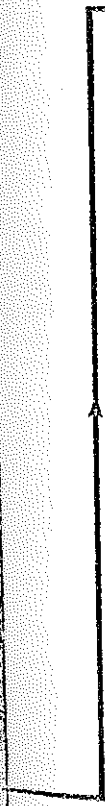


- (S) Subdivider
- (H) Ministry of Housing
- (M) Municipality

Sent back to Ministry of
Consumer and Commercial
Relations for Registration of
description and declaration

Developer
registers in
Land Registry
Office

Title given to
unit owners



- Perspective drawings and plans showing building elevations and cross sections of industrial and commercial buildings and residential buildings containing 25 or more dwelling units.

If the development is to be condominium, the site plan should depict: the type and number of units proposed; the layout of the units and those portions of the site shared by the owners, such as internal roads, underground services, common elements, utility areas, parking areas, and recreational facilities; proposed landscaping; any other matters required under Section 35a of The Planning Act.

To analyze the developer's proposal, the municipality circulates the plans to internal departments and agencies. Normally, once the agreement is achieved, it can be registered on title and the building permit can be issued.

5) Application to the Ministry of Housing
Section 24 (2) of The Condominium Act requires that prior to the registration of a condominium description, the approval of the Minister of Housing is required under Section 33 of The Planning Act. Most projects are under construction or nearing completion at the time of the application. The process undertaken by the Ministry of Housing is outlined in Chart 2.

If the proposal is part of an existing, recently registered plan of subdivision, the Ministry consults only with the local municipality, and the regional municipality, if one exists.

Many municipalities will re-circulate the site plan to all their internal agencies. Some re-circulation may be quite legitimate since conditions and standards can change over time, and some time may have elapsed between the two processes. Delays can also occur if the developer has not disclosed his intention to build a condominium at the site plan stage, since the municipality may require different standards or conditions for condominiums than for rental buildings. This may even necessitate another written agreement with the municipality to bring the project into line with municipal policies. If the building is nearing completion, changes can be a very expensive burden.

Some municipalities use this second circulation as an opportunity to extract additional levies from the developer. If the developer has committed his project to one of the federal or provincial programs that require price ceilings, it can be very awkward. The Study Group was advised that some projects had been delayed because a municipality refused to consent to registration of the condominium until additional levies were paid.

6) Applications to the Ministry of Consumer and Commercial Relations

a) The Condominium Act requires that if the land is in an area to which The Land Titles Act applies, then the land must be placed in the Land Titles system before the condominium can be registered. If the land is not in an area in which The Land Titles Act applies, then the title must be certified under The Certification of Titles Act. Both applications require many months of procedure and should be commenced as soon as the developer decides to build a condominium in order that registration of the condominium not be delayed.

b) The developer's surveyor must submit prints of his proposed property description, and structural plans and draft copies of the proposed condominium declaration to The Ministry of Consumer and Commercial Relations for approval. The plans may be compiled from information shown on the architectural plans and verified by the surveyor at a later date when construction is completed.

The Ministry of Consumer and Commercial Relations checks the plans against any surveys of surrounding lands, for agreement with the structural plans and to ensure that there is no conflict between the description and declaration.

Draft approval of the documents (known as the "J" Form) is then given. From the submission of the documents to their draft approval, delays often occur because of insufficient staff in the Ministry. The Ministry reviews the documents only for adherence to the minimum requirements of The Condominium Act and not for internal consistency or for the protection of purchaser (Section 3 (1) of The Condominium Act).

7) Registration and transfer of title

The period between ministerial draft approval and final approval for condominium registration can vary from one month to well over a year. This can be a very critical stage, but the timing is dependent upon the developer, the municipality and, in some cases, the mortgage company. In all likelihood, people are living in the project in accordance with agreements of purchase and sale, and are paying rent.

Prior to the Ministry of Housing issuing its final approval for registration (see Charts 1 and 2), a letter of clearance is required from the municipality, stating that the developer has satisfied all of its requirements.

Approval from the Ministry of Consumer and Commercial Relations is also required to indicate that the description is satisfactory (Section 4).

Some mortgage companies stipulate that a certain percentage, sometimes as high as 80% of the units must be sold prior to their giving their required consent to registration (Section 3 (1) (b)) (see chapter on Lending Institutions). In a soft market, this requirement can cause a lengthy delay in registration.

Once the plans are endorsed with the Minister's signature, Ministry of Housing officials send the documents to the Ministry of Consumer and Commercial Relations, who in turn forward them to the local registry office. The declaration and description may then be registered by the developer (Section 2 (6)).

In most land registry offices it takes less than two days from the registration of the condominium to the time the registry office has set up ledgers showing the title to each unit and is ready to receive individual mortgages and transfers of title to purchasers. The land registry offices in Toronto and Brampton, however, have experienced longer delays because of the large volume of condominiums processed and insufficient staff.

We recommend that the Ministry of Consumer and Commercial Relations review staffing requirements of its survey standards branch and the land titles division of the Toronto and Brampton land registry offices in order to allocate sufficient personnel to the condominium approval and abstracting process.

To summarize, the Ministry of Consumer and Commercial Relations is responsible for checking that the condominium description and certain provisions of the declaration comply with The Condominium Act. The Ministry of Housing coordinates planning analysis and approves the division of property under The Planning Act. It is the municipality's responsibility to approve the site plan and ensure that construction standards meet the Ontario Building Code requirements.

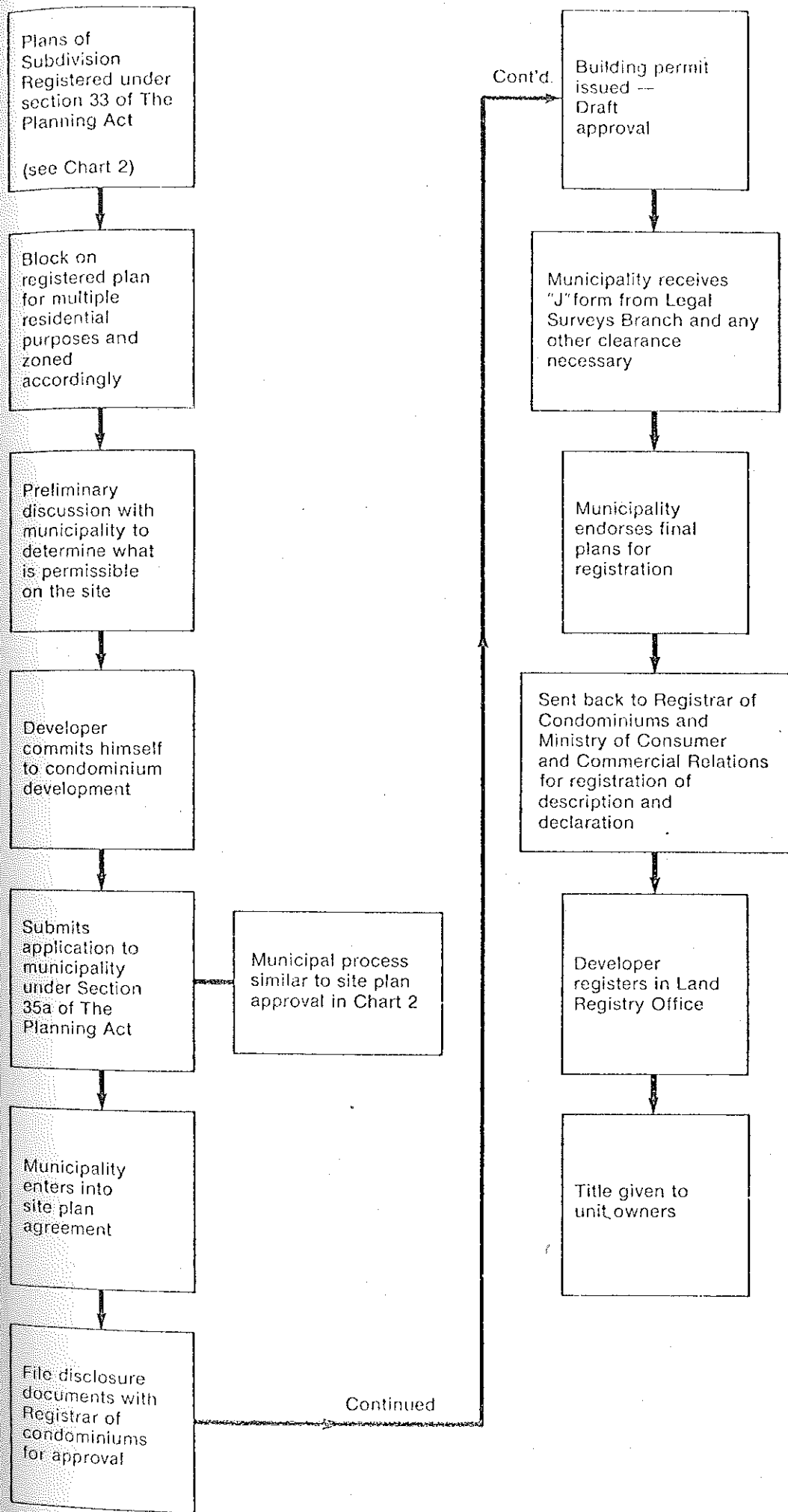
Recommended approval process
After careful review of the registration process, the Study Group is convinced that the entire procedure should be overhauled. Our view of a new planning approval process is detailed in the following recommendations and in Chart 3. The new process is an attempt to register condominium projects faster and more efficiently.

As the municipality is responsible for planning evaluation, including consideration of municipal housing mix, it is the municipality that determines whether a project is rental or condominium.

Since it is the local areas which are most affected by new development, and since it is the policy of the Government of Ontario to give greater decision-making powers to municipalities, the approval of condominium development should rest with this level of government. In order that local government has the input which is necessary in the field of condominiums, the draft plan of condominium should be tied to the issuance of the building permit and the role of the Ministry of Housing in the registration process should be eliminated.

Once the developer has stated his intention to the municipality to build a condominium, he should be required to enter into a site plan agreement. This agreement should outline all those items the local government will require before it will approve the project for condominium registration.

This process should reduce the delay that arises from the nondisclosure of the intention to build a condominium. If the local government is aware of the developer's intention at the outset, the requirements for condominium development will be imposed at the earliest stage possible.



Recommendation No. 1:

The new approval process (Refer also to Chart 3): If an approved zoning by-law is in place, and the site is on a block of land described on a registered plan of subdivision, then:

A. The builder-developer discloses his intention to the municipality to develop a condominium project.

B. The builder-developer applies to the municipality for a site plan agreement under Section 35a of The Planning Act, and a building permit.

C. The municipality processes the site plan application to ensure that all municipal standards and policies are adhered to.

D. The municipality enters into a development agreement with the builder-developer setting out the conditions and standards of development. Levies should be determined at this stage, if they have not already been determined at the plan of subdivision stage.

We are attempting by this process to put the developer and the local government in the position of having all the demands and requirements involving the project known at the outset.

E. The builder-developer submits documentation for a disclosure statement to the Registrar of Condominiums (see chapter on Registrar).

Currently, no municipalities have the right to approve condominium documentation, although some are performing this function anyway. Under the new process, document approval will be the exclusive jurisdiction of the Registrar of Condominiums and will be a condition that must be met before the builder-developer can proceed with the proposed project.

F. Prior to the issuance of the building permit, the purchaser may only enter into a non-binding reservation agreement which the purchaser can terminate at any time up to 10 days after he receives his copy of the documents as approved by the Registrar.

G. After the site plan agreement is finalized and notice of approval received from the Registrar of condominiums, the municipality issues the building permit. The building permit becomes the draft approval (see chapters on Purchasing a Condominium and Approval Process).

H. The builder-developer starts construction.

I. The builder-developer submits his proposed declaration and description to the Ministry of Consumer and Commercial Relations for a review as to the registerability of the documents.

J. The municipality receives the "J" form from the Ministry of Consumer and Commercial Relations and any other clearances necessary as a result of conditions imposed in the development agreement.

K. The municipality, once satisfied that all the terms of the agreement have been carried out and after a detailed inspection of the site, endorses the final plans for registration. Upon completion to the satisfaction of the Ministry of Consumer and Commercial Relations and the local government, registration can take place.

By having the developer disclose his intention and enter in a site plan agreement, the local government will be required to issue final approval on the basis of the developer having met the terms of the site plan agreement.

L. The actual registration of the condominium will be effected by filing the declaration and description in the local land registry office and with the Registrar of Condominiums.

Advantages of the new system

The advantages of the recommended approval process are evident. It places the approval authority for the condominium where it belongs, at the municipal level, and fits in with the philosophy of local authority and local responsibility. It also removes the duplication in the process. By tying the approval process to the building permit and site plan agreement, the proposal goes through the municipal system once and not twice. This means that everyone involved should have clear cut policies and standards to judge the merits of each and every proposal. Additionally, it forces the developer to disclose at an early stage his intention to develop a condominium.

Another advantage is that the municipality has one opportunity to charge levies and cannot go back at a later date to increase the levies. Levies should be determined in the site plan agreement, if not already agreed to at the subdivision stage, and should be adhered to.

No binding agreement of purchase and sale will be entered into before draft approval. This will prevent purchasers from tying up their capital without a commitment that the project will become a condominium.

Elimination of duplication in the approval process should also reduce the time period that purchasers live as tenants in condominium developments awaiting registration.

The new process puts the onus on the municipality to ensure proper standards, since it will be solely responsible for approval. Section 35a(5) of The Planning Act gives a municipality the authority to enforce site plan agreements.

The new process will be the catalyst to encourage municipalities to have adequate standards and guidelines in properly-formulated policies, and will eliminate the ad hoc approach that is used today. The rules of the game must be spelled out clearly for all to understand and to point out the levels of responsibility.

Changes to legislation required

If the recommended process is accepted, amendments to The Planning Act and The Condominium Act would be required to bring this new system into force. The following are the various pieces of legislation that must be amended.

Recommendation No. 2:

Section 29 of The Planning Act be amended:

A) To require that where no municipal structure exists, the Minister of Housing be the approval authority.

This is necessary in Northern Ontario where the lack of organized municipalities may mean that Section 35a would not apply. Under these circumstances, the Minister of Housing should retain his authority to enter into agreements.

B) To require that where a municipality has no official plan and cannot use Section 35a of The Planning Act, the project be part of a registered plan of subdivision approved under Section 33 of The Planning Act.

This should only affect resort condominiums. It is necessary since not all municipalities in Ontario are covered by official plans and therefore capable of using Section 35a.

Recommendation No. 3:

Section 35a of The Planning Act be amended:

A) To define "development" in subsection (1), and amend the definition of "redevelopment" to provide that conversion-to-condominium applications be covered.

Section 35a was not designed to control condominium development and needs certain amendments to handle all situations.

B) To empower the municipality to impose such conditions as the Minister of Housing may impose under Section 33(5), subject to the appeal provisions of Section 33(7).

This amendment refers to the Minister's power to impose general conditions which, in his opinion, are advisable before approving a plan of subdivision. This does not extend to the approval of documentation.

C) To empower the municipality to require that an application for first registration in the land titles system, or for certification of title, be commenced prior to issuance of a building permit.

D) To clarify that the municipality has the authority to impose standards of width and construction material on all internal roads.

This clarification is essential if the problems of present owners in a matter not currently within the control of Section 35a are not to be repeated. The chapter on Municipal Policy and Standards is more detailed on this aspect, but we cannot over-emphasize the need for a clear legislative mandate.

E) To remove the 25-unit minimum in the municipality's authority to require architectural drawings.

F) To enable the municipality to establish planning, engineering and construction standards which will minimize long-term maintenance and operation costs.

Recommendation No. 4:

Section 24 of The Condominium Act should be amended to reflect the new system.

Chapter 2 Construction

The problem of construction deficiencies in condominiums was one of the issues most frequently dealt with at the public hearings. Most deficiencies are not the result of builders' deliberate attempts to construct inferior structures; rather the deficiencies come about from the nature of the construction industry as a whole.

Recommendations for changes can only be examined in the light of why deficiencies occur and what action has already been taken to improve the purchaser's lot.

Design and construction considerations

The preliminary architectural drawings and the architectural portion of the final working drawings of the condominium are normally produced by an architect retained by the builder.

Practice has varied in the industry as to the degree of the architect's involvement, which has run from providing stock plans based on the size, shape and permitted density of the site to providing architectural drawings designed for the specific site or to providing detailed supervision of construction.

Since 1974, the Ontario Building Code has required that buildings exceeding 6,000 square feet, or three stories, be designed by architects or professional engineers, who should also be responsible for field review of the building during construction to ensure adherence to the design. This should increase the involvement of professionals in actual construction. However, the requirements for field review by architects or professional engineers under the new Ontario Building Code have not yet produced a body of buildings where it is possible to identify any significant improvement in quality control.

On receipt of the architectural drawings, the builder will retain structural, electrical and mechanical engineers, either separately or as a group to add their plans to the working drawings.

A good builder may even have his architect retain the various engineering consultants so that their plans may be reviewed for consistency with the architect's drawings.

Based on the working drawings, the builder requests bids from contractors to do various portions of the work, such as concrete forming, drywall and painting. Depending on the complexity of the project, there may be several layers of contractors in a pyramid of contracts and sub-contracts. Many large builders have some in-house capacity or else have sub-contractors who regularly work for them. However, the actual workers are drawn from the same pool of labourers no matter who the contractor is.

The majority of condominiums referred to in submissions were constructed prior to the supervision requirements of the 1974 Ontario Building Code. The only quality control on their development was by the builder's site superintendent.

Despite the new building legislation, today, as several years ago, the site superintendent is still the first line of quality control. The site superintendent, who may be the builder himself, a regular employee, or, more often, an individual hired for the project, occasionally has staff to aid in the office work and field supervision; usually, however, he has little back-up staff.

Construction deficiencies

There are several reasons for construction deficiencies in condominiums:

1. The craft of building has become increasingly de-personalized in the mass nature of modern construction; thus, tradesmen move from building to building and builder to builder, feeling little direct involvement and interest in the product, with such lack of feeling often affecting the quality of workmanship.
2. The Mechanics' Lien Act, by allowing a tradesman to register a lien and thereby disrupt mortgage advances, makes it very difficult for the builder to withhold payment due to shoddy workmanship.
3. The marketing of condominium units to persons of moderate income means that there is a smaller margin of profit than in other types of building. Therefore, some builders concentrate cost-cutting on such site services as supervision and quality control.
4. The nature of building codes from time to time and place to place has been largely reactive to problems which have occurred. Such codes have not provided a design handbook or standard of workmanship for the building industry.

The Ontario Building Code

Prior to 1974, municipalities were authorized to pass by-laws under The Planning Act regulating certain aspects of building structure. Practice varied from the passing of few, if any, by-laws to the adoption of and additions to the suggestions of the National Building Code, which was produced by the National Research Council of Canada as a model code for municipalities.

Because of the lack of uniformity in building requirements from municipality to municipality and the lack of any minimum standard, the Government of Ontario produced a minimum standard code based on the National Building Code.

The Building Code Act, 1974, requires municipalities to appoint chief building officials and the necessary inspectors to enforce the provisions of the Code. No one can construct a building unless a permit has been issued by the chief building official and the municipality has examined the builder's plans and specifications prior to issuing the permit.

A Building Code Commission was created to resolve disputes between inspectors and others regarding technical interpretation of the Code. A Building Materials Evaluation Commission was created to examine and research materials, techniques and design; this latter commission was intended to improve construction quality.

The Code superseded all municipal by-laws relating to construction of buildings. The powers of the municipalities to pass by-laws regulating building structure were made subject to The Building Code Act. Municipalities can still pass by-laws setting standards in areas not covered in the Code, but the majority of municipalities have not done so.

Many municipalities feel that their power has been preempted by The Building Code. Some even refuse to pass by-laws relating to maintenance and occupancy of buildings as permitted in The Planning Act, where this would imply a control of construction.

A review of the Ontario Building Code indicated that the consumer largely misinterprets the Code's intended meaning by considering it to be a design handbook and standard for the quality of workmanship.

It appears that the Code is primarily concerned with preventing fire and the collapse of a structure. We note that at least one municipality is challenging the Code for the right to require higher fire safety standards. The Code also provides data for design of such items as heating and air conditioning systems.

The Code is weak in the areas of insulation, sound-proofing, workmanship, quality and the establishment of standards for the design life of materials and construction.

These items are of major importance. The Code, in essence, declares the minimum standard of safety for a particular area. It does not make the distinction between a method of high-maintenance and low-cost construction and a low-maintenance, high-cost method of construction. Thus, the Code has not considered, and indeed was not designed, to consider the cost benefits of various types of construction.

Construction complaints

Numerous condominium construction complaints were presented at the public hearings.

Solutions to a few, such as the tale of the fire engine rushing to the scene of a fire and sinking to its axles on an improperly-compacted internal street, are dealt with in other parts of the report (see chapter on Municipal Policy and Standards). Others, such as the story of the woman who sat down in her bathtub and sank with the tub through the floor into the unit below, will, we hope, be dealt with by the HUDAC New Home Warranty Program.

However, certain general issues were raised that must be mentioned:

1. Purchasers complained about a lack of sound-proofing.
2. Purchasers complained about design characteristics that adversely affect utility usage, because this cost is often the main component of common expenses. Most complaints related to bulk metering, single-glazed windows and the lack of insulation as being damaging because many highrise units are electrically heated and therefore energy expensive.

Because of the publicity given to energy shortages, some purchasers are demanding more economical design where methods of reducing utility use are provided, such as separate temperature controls in rooms, protection of entrances from loss of heat, proper landscaping to provide wind protection in winter, and more efficient heat production methods such as heat pumps.

3. Owners complained that internal street systems generally did not provide access for adequate snow or garbage removal and were rarely built to the usage standards of municipal roads. Internal services such as sewers and water mains are rarely inspected by the municipality or designed for easy access, maintenance and repair.

4. People complained that workmanship is shoddy. There is a tendency for purchasers to consider poor finishing as a matter being a breach of The Building Code. Even where workmanship is adequate, purchasers tend to view cracks from normal shrinkage and settling as an indication of bad design or construction.

5. People complained about a host of items, including aluminum wiring as a potential fire hazard, galvanized metal piping with its potential for quick corrosion, materials with short life spans which have to be replaced out of common expenses, and underground garages designed without proper protection against water penetration. A more recent problem is the discovery that brick-clad highrise buildings have a tendency for the brick to peel away from the structure and fall because of the differing shrinkage rates of the brick facing and the concrete load-bearing walls.

A condominium purchaser expects higher quality construction than does a tenant because, as an owner, he anticipates a longer period of residency and consequently is more concerned about matters which affect his maintenance costs and equity.

6. Many owners complained that inadequate attention had been given in the Building Code to the policy consideration of the construction quality of buildings offered for sale, as distinguished from buildings to be retained by an owner-builder.

Recommendation No. 5:

The Ontario Building Code be reviewed for the purpose of:

A. Establishing a standard of design and workmanship desirable for a building retained to the public, as distinguished from the minimum requirements necessary for the safety of occupants.

B. Establishing standards on the lifetime costs of maintenance and repair.

C. Establishing standards on sound-proofing.

D. Ensuring energy-efficient design, including increased insulation.

E. Establishing the Building Code as a minimum construction standard, with the municipality being given the power to establish higher standards.

Inspection

The foregoing concerns are design and construction faults not controlled by the Ontario Building Code. There are just as many defects which are a result of violations of the Code.

It is important to emphasize that under the present system, the site supervisor employed by the builder is the only person responsible for controlling adherence to specifications, and for control of faulty workmanship.

The municipal inspector makes intermittent inspections of the site. Some of these inspections are mandatory, such as at the backfill, roof, pre-occupancy and completion stages. Others are merely a result of the inspector's route of sites which must be inspected and the number of problems the inspector expects to have with the builder's adherence to Building Code standards.

The municipal inspector inspects for conformity to the Building Code and zoning requirements and does not inspect in detail the quality of workmanship.

Often the main municipal inspector makes only general inspections and relies on specialist inspectors for detailed work. The municipality may have specialists in plumbing, health, or structural work. The municipal fire department usually makes the most stringent inspections and often finds design problems not caught by the municipality at the site plan stage.

Other organizations also do specialized inspections. Ontario Hydro inspects and certifies electrical work and the Ministry of Consumer and Commercial Relations inspects elevator installations. The Ontario Building Code now requires the builder to retain architects or engineers to inspect if the building is over 6,000 square feet in area or three stories high. The architects and engineers are responsible only for inspecting to ensure conformity with the design, not for construction quality.

Construction deficiencies still occur for several reasons:

1. Inspections are intermittent and are not intended to provide on-going site supervision.

Many examples of construction deficiencies were presented at the public hearings. One man, for instance, discovered that the insulation batting in several sections of his unit was missing, with only the paper covering affixed to the walls. Other insulation was found without its paper wrapping indicating that the wrapping had been removed and used to simulate extra insulation battings during a municipal inspection.

2. There are an inadequate number of inspectors in most municipalities.

3. Only in some municipalities are inspectors properly trained in areas outside their particular employment experience. The qualifications of inspectors range from experience as tradesmen to graduation from community colleges with training as architectural or engineering technologists.

4. Even now, professional inspection is merely to ensure conformity to the design and rarely relates to the detail or standard expected by a purchaser.

Enforcement of Code and inspection:

Various suggestions were made at the hearings as to who should be responsible for the quality of construction.

Some consumers felt that due to the time, cost and difficulty of suing a builder because of construction deficiencies, greater accountability for quality should be borne by the organizations that inspect condominiums.

Some owners suggested that the lender of construction money might be made liable. But in that case, there would probably be a reduction in the money available for housing, or an increase in the mortgage interest rate because of increased risk incurred by the lender.

Others felt that the municipality might be made liable. Currently, the law is in a state of flux regarding the municipality's liability to purchasers for failure to properly enforce by-laws. We are of the opinion, however, that there is little benefit in making the municipality specifically liable if inspection, by its intermittent nature, cannot truly control quality.

Perhaps the best course of action is to ensure that municipal inspections are made properly and with the resources adequate to reveal likely deficiencies.

Recommendation No. 6:

The Province of Ontario establish training standards for municipal inspectors and provide the municipalities with funds for educational programs which would allow the municipalities to meet those standards.

Deficiency correction

Normally, a purchaser inspects his condominium unit prior to occupancy and the builder agrees at that time to correct any items which might need repair. A few builders extend this procedure to the common elements and arrange for an inspection by the board of directors.

Correction of in-suite deficiencies identified at the pre-occupancy inspection is fairly common, but correction of common element deficiencies is less so. A few condominium corporations have taken the builder to court, such as in *Frontenac Condominium Corp. #1 vs. Joe Macciochi & Sons Ltd.* and have been successful, but the expense and time is substantial. One factor that adds to uncertainty in trying to recover costs by suing the builder is the unresolved question as to who has status to sue the builder. It is uncertain whether the condominium corporation, which has had no contractual relations with the builder, has the power to sue him over deficiencies to the common elements (see chapter on The Condominium Corporation).

Condominium corporations have attempted to protect themselves against a claim of inadequate authority by having a representative group of owners join with them to sue on behalf of all of the unit owners as co-plaintiffs. This duplication is wasteful.

Some doubt also exists as to whether the condominium corporation can settle an action against a builder without a difficult internal procedure because the right to the action might be an asset; thus, a settlement may be a substantial change in that right requiring an 80% vote of members. (Section 14(1)). (See chapter on Financial Administration.)

Warranties

Construction work performed and building materials supplied are often warranted to the builder by the tradesman or the manufacturer. Should defects occur after the condominium corporation is registered, a cooperative builder will call on the warranty on behalf of the corporation to have the necessary repairs made.

Problems arise for the unit owners, however, when the work or materials are not warranted or if the warranty is personal to the builder and the builder does not cooperate in calling on the warranty. The tradesman or manufacturer is under no contractual obligation with the condominium corporation to make repairs. Because of the wide range of construction practices and warranty types, it is not feasible to impose a legislative warranty scheme, aside from the HUDAC New Home Warranty Program.

Recommendation No. 7:

The builder acquire warranties, where possible, in a form capable of transfer to the Condominium Corporation and, on the election of a Board of Directors by the Unit Owners, turn the warranties over to the Condominium Corporation.

HUDAC New Home Warranty Program

On January 1, 1977, The Ontario New Home Warranties Plan Act, 1976, came into effect to ease the problem of rectifying deficiencies. The Act created a non-profit corporation to administer the warranty plan, to assist in the conciliation of disputes between vendors and owners, and to administer a guarantee fund.

The Act states that no person can act as a vendor or a builder of a new home unless he is registered with the warranty corporation (the definition of "home" includes a condominium unit). Purchasers can verify that their builder is registered by requesting evidence of registration from him.

An applicant may be refused registration if he is not financially responsible or technically competent, or if his past conduct affords reasonable grounds for belief that his undertakings will not be carried on in accordance with law, integrity and honesty.

Every vendor of a previously-unoccupied condominium after January 1, 1977, warrants to the owner that it is constructed in a workmanlike manner and is free from defects in material; is fit for habitation; is constructed in accordance with the Ontario Building Code; and is free of major structural defects as defined in the by-laws of the warranty corporation.

Purchasers should note that the signing of an agreement of purchase and sale constitutes a sale under the warranty program. Thus, only purchasers who signed agreements after January 1, 1977, are covered by the program unless the builder voluntarily obtained such a warranty.

The warranty does not apply to the following: defects in materials supplied by the owner or purchaser; secondary damage caused by defects such as property damage and personal injury; normal wear and tear; normal shrinkage of materials caused by drying; damage caused by dampness arising from the failure of the owner to maintain adequate ventilation; damage resulting from improper maintenance; alterations, deletions or

additions made by the owner; subsidence of the land around the building other than beneath the footings; damage resulting from an act of God; damage caused by insects or rodents; damage caused by municipal services or other utilities; and surface defects accepted by the purchaser.

The warranty corporation will pay, out of its guarantee fund, any person who could sue the vendor for financial loss because of the bankruptcy of the vendor or the vendor's failure to perform the contract. It will also pay any owner who could sue the vendor because of a breach of the warranty.

A claim for a breach of warranty must be made within one year after the warranty takes effect or if there is a major structural defect within four years after the warranty takes effect.

For the purpose of the warranty, the condominium corporation is deemed to be the owner of the common elements and the warranty takes effect on registration of the condominium. The warranty for units takes effect from the date in the warranty certificate issued by the builder, which is the date the unit is completed for possession.

At the moment, the warranty limit is \$20,000 per unit for unit problems and not more than \$1 million, or \$20,000 per unit, whichever is the lesser, for common element deficiencies. The warranty corporation may also decide to perform work in mitigation or in lieu of damages.

Upon receipt of a complaint, the warranty corporation sends out an inspector. Complaints for those units and corporations covered by the warranty should be addressed to: HUDAC New Home Warranty Program, 180 Bloor Street West, Suite 702, Toronto, Ontario, M5S 2V6.

There are several difficulties with the HUDAC program:

- 1) An owner who purchased a unit after January 1, 1977, in a condominium registered before that date, is covered for deficiencies in his unit only and not for deficiencies in the common elements.
- 2) A condominium corporation registered after January 1, 1977, may find itself in the position of having the common elements completed, but having three categories of units:
 - a) units sold before January 1, 1977 and not covered by the warranty;
 - b) units sold after January 1, 1977 and covered by the warranty
 - c) unsold units for which there can be no claimant under the warranty.

The seriousness of these anomalies will depend upon the definition of units and common elements in the condominium

3) A condominium corporation's warranty may expire before a Board of Directors, elected by purchasers, can make a claim if the builder delays passing control or management information for the year of the warranty. In these circumstances, an owner should go directly to the warranty corporation with his complaint.

4) The warranty corporation does not step into the position of the builder for the purpose of obtaining mortgage advances nor do its costs take priority over mechanics' lien or other claimants. Thus, the warranty corporation has little incentive to spend money for completion; rather, it regards each dollar spent as a dollar lost.

The cumulative effect of these difficulties is to render completion under the existing warranty program an unsatisfactory method of correcting deficiencies. The reason is that a large part of the effectiveness of the program lies in the willingness of the warranty corporation to take action. The warranty corporation makes its own by-laws covering the claims process and through making these by-laws complex or through simple inaction can render the legislation ineffective.

Discussions with persons who have had experience with the warranty corporation indicated that the warranty corporation has not taken an aggressive approach to resolving claims. In particular cases, where the bankruptcy of builders has left unfinished portions of the claim procedure, the warranty corporation has avoided action and asked that other parties such as lending institutions with money left to advance go in and complete.

Recommendation No. 8:

The Ontario New Home Warranties Plan Act be amended:

A. To empower the warranty corporation to act as a trustee to borrow money from a lender who has unadvanced mortgage funds on a condominium project. Such a loan to take priority over claimants whose claims are registered subsequent to the registration of the mortgage.

B. To empower the warranty corporation to use such money for the completion of units or common elements not covered by the warranty and any remainder of such money for full or partial satisfaction of warranty completion and repair costs.

Recommendation No. 9:

The warranties on the common elements take effect from the date the builder has ceased to have control of the condominium Board of Directors.

Existing deficiencies

Correction of inspection and code requirements and the HUDAC New Home Warranty Plan will reduce the deficiencies in new condominium housing, but, at present, there are a large number of condominiums that are faced with incomplete construction, building deficiencies or a poor standard of construction requiring extensive maintenance.

A few condominium corporations may be able to recover costs by suing the builder, but the corporations will have difficulty raising money for correction in cases where it is difficult to determine whether the problem stemmed from a deficiency or merely a design meeting minimum but still inadequate building by-law standards.

The problem of recovering costs was illustrated in a recent example where extensive repair of a corporation's roofing was estimated at approximately \$2,000 per unit. The corporation could not get a loan for the required amount because it had no assets to borrow against, and obviously a levy of \$2,000 on each unit owner was out of the question.

While the Government of Ontario should act, it should do so in a way that does not burden the province's taxpayers.

Recommendation No. 10:

The Government of Ontario guarantee loans through private lending institutions to condominium corporations not covered by the HUDAC New Home Warranty Program for the correction of construction deficiencies.

Condominium Corporations, other than conversions from rental buildings, registered after January 1, 1977, are covered under the HUDAC New Home Warranty Program.

Determination of deficiencies

One of the major difficulties for a condominium corporation is often the lack of information available regarding the location of plumbing and electrical services, and the design of other items which are not easily investigated, such as roofs.

Corporations are often able to obtain a set of original plans from the builder, but these may not represent changes in design during construction. The municipality is the only body with the inspection services and the ability to control the builder's actions sufficiently to ensure up-to-date information.

Recommendation No. 11:

The Municipality require "as built" plans to be filed with the Municipality on completion of construction. All such plans be made accessible to representatives of the condominium corporation in question.

Chapter 3 Municipal policy and standards

"In recent months, the Council has directed the Planning Department to review parking standards imposed on condominium projects, through implementing zoning by-laws. The problem of parking shortages within condominium projects is accentuated by the small proportion of public street parking made available to a condominium. This factor becomes even more critical when many large condominiums are located along major arterials where street parking is prohibited. In light of the present parking problems which are being encountered by condominium corporations, it may be necessary to increase the present parking requirements for multiple residential developments."

—From a brief presented by The Township of Gloucester.

During the course of the hearings, a survey was undertaken to determine what policies and standards municipalities had established to deal with condominium development. The results of the survey are listed on Chart 4. As can be seen, there is very little consistency among municipalities regarding condominium policy. Even within the same municipality, policies varied from project to project. Some municipalities were not aware of the powers they had to control development and had not set standards and policies for condominium development. In some municipalities it was difficult to determine what process they used to evaluate condominium development, let alone determine their standards.

Throughout the hearings, much criticism was levelled by condominium owners at what they perceived to be a failure by municipalities to accept responsibility for the quality of design and construction. Some of these complaints are listed below:

- a) Copies of the site plan agreement were difficult to obtain.
- b) Municipal inspections varied in quality.
- c) Internal road quality standards were inadequate.
- d) Internal road design made movement and servicing difficult.
- e) Recreational amenities were not always necessary and were costly to maintain.
- f) The mixing of townhouses and apartments in one corporation caused conflict.

The Study Group was concerned about the lack of formal policy at the municipal level and the fact that many municipalities did not enforce either the site plan agreement or their various by-laws.

Should the planning approval process be changed as recommended in the chapter on the Approval Process, municipalities will clearly be the responsible agency for condominium development within their jurisdiction. This will necessitate the adoption of policies and standards as well as the enforcement of agreements and by-laws.

Policy instruments

In order to use The Planning Act site plan approval process, the municipality must have an official plan. An official plan is a formal document endorsed by a municipal council and approved by the Minister of Housing under The Planning Act. This document determines general land use patterns and spells out policies and guidelines that will direct growth for that municipality. The official plan, unlike the zoning by-law, is meant to be a guide for growth, not a rigid set of rules. This ability to be flexible does not prohibit innovative approaches.

The official plan is implemented by zoning by-laws. The zoning by-law is a very rigid, standards-oriented document passed by the municipal council and approved by the Ontario Municipal Board. It very specifically dictates how the land is to be used, floor space requirements, front yards, side yards, and other factors.

It is also in the zoning by-law that the municipality defines "single-family". A number of briefs indicated that in certain projects the zoning by-law stated that each unit was to be occupied by a "single-family" but units were in fact occupied by two or three families. Concern was expressed about overcrowding and its inherent health and maintenance problems. It was indicated that little, if any, support was given by the local officials. In some cases, with many members of an extended family living in one unit, it was difficult to determine which members constituted part of a "single family" as defined in the by-law. One example that came to our attention involved 27 people living in a two-bedroom high-rise condominium.

Recommendation No. 12:

A. Municipalities provide a clear definition of "single-family" in their zoning by-laws and enforce the provision. In the absence of a definition of "single-family" in a condominium declaration, a condominium corporation be allowed to import a definition under the municipality's maintenance and occupancy by-law.

B. As an alternative, municipalities provide restrictions on the maximum number of persons per bedroom or per floor space under their powers to pass maintenance and occupancy by-laws.

The site plan agreement made pursuant to Section 35a of The Planning Act, was discussed in the chapter on the Approval Process. As was indicated, the municipality can have extensive control over development with proper use of this legislation. Unfortunately, many municipalities do not fully avail themselves of this provision, and to the detriment of future occupants do not enforce such an agreement.

Chart 4 — Survey of municipal services and standards

MUNICIPALITY	GENERAL			PLANNING				CONDOMINIUM ROADS				PARK STANDARDS
	# CDM. APT. CORPS. # UNITS	# TOWNHOUSE CORPS. # UNITS	GENERAL CDM. POLICY	REGULAR SUBN. AGREEMENT AT SITE PLAN STAGE	SITE PLANNING CONTROLS	HOW ENFORCED	COMMITMENT CDM. OR RENTAL	UP TO MUNICIPAL STANDARDS	MUNICIPAL MAINTENANCE	MUNICIPAL SNOW PLOW	FIRE ROUTE BY LAW	
REGION OF DURHAM												
AJAX	3/542	9/687	NO*	YES	YES	BLDG. INSP.	ORAL	YES - QUALITY	SOME CHARGE	SOME CHARGE	YES	NO
OSHAWA	7/455	14/1183	YES	YES	35A		YES	NO	NO	NO	NO	YES*
PICKERING	1/179	8/441	NO					YES - QUALITY	NO	NO	NO	APT: 150% T.H.: 200% + 20%
WHITBY	N/A	5/232	NO	YES	YES	AGREEMENT REG. ON TITLE	YES	NO	NO	NO	YES	NO
METROPOLITAN TORONTO												
EAST YORK	6/1719	1/54	DRAFT POLICY	YES	YES		YES	VARIES	NO	NO	NO	NO
ETOBICOKE	19/6097	19/1529	YES	YES	YES		YES	YES	NO	NO	YES	*
NORTH YORK	39/8687	57/4949	CONVERSION	YES	YES	BLDG. INSP.	NO	YES QUALITY	NO	NO	YES	NO
SCARBOROUGH	23/3311	66/4275	NO*	YES	YES	BY DEVEL. DEPT.	YES	YES QUALITY	NO	NO	YES	APT: 140% T.H.: 180%
TORONTO	21/2322	7/156	CONVERSION		IF REZONED		NO	NO	NO	NO	NO	NO
YORK	6/1757	N/A	YES	YES	YES		YES	NO	NO	NO	YES FOR FUTURE NO	150%
REGION OF OTTAWA - CARLETON												
GLOUCESTER	4/993	23/2808	NO	YES	35A		NO	NO	NO	NO	YES	125%
MARCH	N/A	6/564	YES (INCL. CONVERSION)	YES	SOME-TIMES		NO	NO	NO	NO	YES	NO
NEPEAN	4/912	12/802	NO	YES	35A	LETTERS OF CREDIT INSPECT.	NO	NO	NO	NO	YES	NO
OTTAWA	27/4161	21/1868	NO	YES	35A	BLDG. INSP.	YES	NO	NO	NO	YES	MORE THAN RENTAL
RESTRUCTURED COUNTY OF OXFORD												
TILLSONBURG	N/A	1/22	YES	YES	35A	NO	YES	NO	NO	NO	NO	NO
WOODSTOCK	N/A	2/45	CONVERSION*	YES	35A	AGREEMENT	YES**	NO	NO	NO	NO	YES
REGION OF PEEL												
BRAMPTON	3/714	19/1839	DRAFT POLICY*	YES	YES	BLDG. INSP.	YES	YES	NO	NO	YES	NO
MISSISSAUGA	27/4089	70/6107	YES	YES	YES		YES	YES - QUALITY	NO	NO	YES	225%
REGION OF YORK												
AURORA	N/A	1/53	NO	YES	35A	LETTER OF CREDIT + PERF. BOND	NO	YES - QUALITY	NO	NO	NO	125%
MARKHAM	5/937	21/1693	IN OP.	YES	35A	BLDG. INSP.	NO	NO	NO	NO	YES	APT - 150% T.H. - 125%
NEWMARKET	1/107	N/A	NO	YES	35A	PERF. BOND	NO	YES QUALITY	NO	NO	NO	NO