

Condominium and the City: The Rise of Property in Vancouver

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INTRODUCTION:

In the past decade the City of Vancouver has become a poster city for urban redevelopment in North America. Its planners are celebrated, its neighborhoods studied, and its name attached to a movement in urban planning—"Vancouverism" (Bogdanowicz and Anderson 2006; Boddy 2004, 2010).¹ The prominent face of that redevelopment consists of the inner-city neighborhoods boasting glass-sheathed residential towers flanked with townhouses that front increasingly vibrant streetscapes with the Pacific Ocean close at hand. The covers of two recent books on Vancouver—geographer John Punter's *The Vancouver Achievement* (2003) and urban designer Lance Berelowitz's *Dream City: Vancouver and the Global Imagination* (2005)—display these neighborhoods as resplendent urban marvels in the midst of what both authors view as an impressive urban renaissance.²

Vancouver is also notorious for being home to one of the poorest and most troubled neighborhoods in Canada, an area and community known as the Downtown Eastside. The causes of this concentration of poverty elude simple explanation, but its existence and the prevalence of homelessness there and elsewhere in the city act as persistent reminders that the city has no shortage of continuing challenges, not the least of which, for many, is access to affordable housing. The class dynamics and the displacements of people and communities that have accompanied Vancouver's redevelopment are the subjects of two other books, by geographer David Ley (1996, 8), who observes "the *embourgeoisement* of the inner city," and Nicholas Blomley (2004, 32), who describes "local resistance to gentrification and displacement". They write not of urban renaissance, but of gentrification—in broad terms "the production of urban space for progressively more affluent users" (Hackworth 2002, 815)—and its repercussions.

Whatever the "Vancouver Achievement" in city-building might be, my claim in this article is that statutory condominium, a legal innovation without peer in its capacity to increase the density of private ownership in land, has become an indelible part of the city. Beginning in 1970, condominium (or strata title as it is known in British Columbia) provided the legal architecture for the remaking of Vancouver.³ The city that has emerged since, and which continues to draw people as residents, as investors, and as voyeurs, has done so in tandem with the appearance and then rapid proliferation of condominium as legal form, but also as built structure and social space. The result is a city that is more accessible to some, less accessible to others, and increasingly dense in private interests in land.

Statutory condominium facilitates the densification of private interests by enhancing the capacity to subdivide land in three dimensions. This was possible at common law, but difficult, and the durability of vertical subdivision was uncertain, particularly so for the freehold interest known as the fee simple, the largest bundle of private property rights in land in the common law and the bundle that is generally understood to confer the status of "owner" on its holder. Before statutory condominium,

fee simple interests might commonly be subdivided in two dimensions, a subdivision that could be represented by a line on a map. The common law had also proven adept at subdividing interests in land in non-material terms. One person, for example, might hold the legal interest in a parcel of land, another person the equitable or beneficial interest as in a trust. However, an owner's ability under the common law to subdivide interests vertically was much less refined. The statutes that introduced condominium to jurisdictions across North America and most of the rest of the common law world in the 1960s simplified the stacking of fee simple interests in land in a vertical column. They did so by coupling a fee simple interest in a defined area of a building with a common-property interest in the shared spaces, and then by providing a structure of government for regulating the use of the private and common property.

The effect of this new statutory condominium regime was to detach the legal category of land from the surface of the earth, a feature that led to various playfully incredulous monikers: "Land without Earth" (Pitman 1962); "A Hybrid Castle in the Sky" (Schwartz 1964); "The Flying Fee" (Shiff 1970); and "Property in Thin Air" (Gray 1991). Playfulness aside, it is the detaching of the legal category of land from the earth's skin that enabled the increase in density of private interests in land. Within the frame provided by condominium statutes, ownership of land could be layered in a column that was limited only by the height and depth to which buildings could be constructed. Where there was once a single fee simple interest, there could, after statutory condominium, be several hundred.

This is an article is in four parts. Part I uses British Columbia's Strata Titles Act of 1966 as generally representative of condominium legislation to describe the principal features of statutory condominium and the ways in which it differed from the common law and other legal mechanisms for spatially subdividing interests in land. Part II reviews what some contemporary commentators viewed as the transformative possibilities of condominium. Part III documents the arrival and maps the spread of condominium in Vancouver, using the city as an example of a broader trend toward condominium across North America, but also documenting the exceptional prevalence of the legal form in this western Canadian city. but also as exceptional for the prevalence of the legal form. Part IV reflects on the capacity of condominium, as a distinct form of property, to structure a particular urban landscape and to alter conceptions of what it means to hold a private property interest in land. The result is an article that is, in turn, legal and geographical. It focuses attention on a relatively new and increasingly prominent legal form, documents its arrival and spread across a city over forty years, and considers its contribution to the transformation of the urban landscape of a North American city and, perhaps, to the idea of property. It is a project that engages a legal form and its urban location.

What follows, then, is primarily a descriptive account of a legal form and a mapping of its spread, by decade, across a single city. The choice of scale warrants comment. Mapping the legal form of condominium obscures the variety of built structures (everything from duplexes to several-hundred-unit residential towers) that are constructed around it. I have described the common physical characteristics of condominium structures in some Vancouver neighborhoods, but the diversity of structures is not reflected in the maps. Other scales, larger or smaller, would yield other insights. A study of a single condominium building or cluster of buildings, for example, might elucidate the practice of condominium as a social space and its potential to

transform what it means to own property, something I allude to in Part IV. A study of the larger metropolitan area would usefully extend the analysis to the most significant urban development of post- World War II North America—the rapid expansion of the suburbs. In this case, the emphasis in some cities would shift from condominium toward community or neighborhood associations that share the legal features of condominium—private property, joined with common property, and mandatory membership in an association that governs the private and common property—but usually take the form of single-family residences within gated or at least privately bounded spaces.⁴ Condominium combines these features in a single building.

These possibilities notwithstanding, there are good reasons to focus on a single municipal jurisdiction and on Vancouver in particular. The legislation creating condominium is province-wide in application, but the zoning of cities (which determines where condominium might usefully be employed) and the measures to contain the negative effects of condominium (moratoria on condominium conversions) are largely municipal. Provinces or states established the legal structure in North America, but municipalities have been most affected by, and therefore most interested in, managing its spread. The choice of Vancouver is somewhat more arbitrary, and is certainly influenced by the fact that it is my home and where I teach property law.⁵ With a population of approximately six-hundred thousand, Vancouver is the largest city in the province of British Columbia and the focal point of a metropolitan area approaching 2.3 million people.⁶ It is also the provincial centre of business and finance. Perhaps most importantly, it is a city that has garnered considerable academic and professional attention for its successes in creating a desirable urban environment. It is also a city in which the legal form of condominium has become particularly widespread, at least by Canadian standards. Vancouver appears to be representative of an urban North American trend toward condominium, but also exceptional for the popularity of this form of land ownership.

PART I – STATUTORY CONDOMINIUM

In North America, condominium is a relatively recent creature of statute. It first appeared in 1961 when, as part of an effort “to provide an additional means of increasing the supply of privately owned dwelling units,” the United States Congress amended the National Housing Act to make a particular bundle of property rights—private ownership in a single unit of a multi-unit building *and* common ownership of shared facilities among the owners of the units—viable as security for a loan.⁷ The result was a wave of condominium legislation across the United States to facilitate the creation of these individualized bundles of private and common property.⁸ Canadian provinces followed suit, British Columbia first with a Strata Titles Act that came into force September 1, 1966.⁹ A Torrens (or title registration) jurisdiction, British Columbia turned to Australia, wellspring of title registration, for compatible condominium legislation: The Conveyancing (Strata Titles) Act 1961 (see Watson and Grimes 1965). The Australian terminology was different—strata lot instead of condominium—but the legal structure was the same. Other provinces drew on either Australian or US templates and, by the end of the decade, a legal form that was almost unknown in common law jurisdictions in 1960 was available almost everywhere.¹⁰

Subdividing Land

At the heart of the new condominium statutes were provisions for the subdivision of land. In British Columbia, the Strata Titles Act (1966) provided that “land may be subdivided into strata lots by the deposit of a strata plan,” and those strata lots “may devolve or be transferred, leased, mortgaged, or otherwise dealt with in the same manner and form as any land” (s. 3(1)). In other words, the fee simple interest in a strata lot held exactly the same attributes as a fee simple in land; the strata lot or condominium was land.

The combination of private parcels with common ownership of shared facilities in multi-unit buildings was possible at common law, but the process was difficult and uncertain. The principal difficulty lay not in the creation of a fee simple interest in a horizontal segment of a building. This was unusual, although feasible, at common law, and some jurisdictions, including England, had statutory provisions to facilitate that subdivision.¹¹ Instead, the more difficult element at common law lay in establishing the longevity of the rules that governed and made possible the shared use and maintenance of the common spaces and facilities. These rules could be established in covenants between the holders of individual units, but the common law limited the enforceability of these agreements when the parties to the agreements transferred their interest. Covenants requiring the payment of fees or the performance of certain tasks—positive covenants—would not travel with the land. However, the viability of multi-unit developments that combined private and common ownership depended on the durability of these agreements to maintain the common areas and facilities. In the late 1960s, as condominium legislation was spreading rapidly across North America, legal scholar Dick Risk (1968) concluded that in Canada, “(c)ondominium developments in which the interest is a fee simple probably can not be achieved in the common-law provinces in the absence of enabling legislation” (10).¹² In fact, in some title registration jurisdictions, including British Columbia, only the owner of the surface of the land could hold a fee simple interest.¹³ Fee simple in a layered, multi-unit development was impossible; freehold interests could be physically subdivided, but only in two dimensions.

There were other means to effect a vertical subdivision of land. These included leasehold and cooperative ownership, but each held significant limitations for those who desired fuller attributes of ownership. The tenant in a lease, particularly the short-term leases that characterized residential tenancies, lacked the right to an increase in the value of the property and the security of tenure that the holder of a fee simple enjoyed. Long-term leases mitigated these shortcomings, and the landlord-tenant relationship enabled the attaching of conditions that could not be attached to a freehold interest. In the absence of condominium legislation, conveyancing lawyers in England used long-term leases to structure what was known as the sale of flats. However, as Peter Smith (2005, 516) suggests, a lease, even a typical long-term lease of 99 years, is “a wasting asset” that will come to an end. In 2002, with expiry dates looming on a large number of leases and concern growing about the inability of the common law to create longer-term options, the English Parliament provided a statutory alternative to enable the subdivision of multi-unit buildings into individual freehold interests which it labelled commonhold units (Commonhold and Leasehold Reform Act).¹⁴

On the other hand, the cooperative, a legal innovation that appeared in the late nineteenth century in New York, avoided these limitations by creating a corporation that owned the building and the land on which it stood, and then by dividing the shares in that

corporation among the “owners” of the units. The shares entitled their owners to the exclusive possession, under a lease from the corporation, of one of the units in the building. The shares would increase in value as the building and units increased in value, but the occupants of the units owned the shares, not the units themselves. In these circumstances, mortgage financing was more difficult because only the corporation held title to the land. Unless lenders were prepared to take the shares and the accompanying lease agreement as security for a loan, and many were not, then a cooperative would grant a single mortgage against the building, with a duty on all shareholders to cover the unpaid debt. Similarly, property taxes were levied against the building with the burden of payment distributed among the shareholders. In short, the cooperative created what Curtis J. Berger (1963, 993-94), an early observer of condominium in the United States, described as “financial interdependence” among the owners, a situation that led to the collapse of many cooperative housing arrangements in the depression of the 1930s. The principal attraction of condominium, suggested Berger, lay in its capacity “to enable occupants of a multi-unit project to achieve more *concomitants of ownership* than are now available either to renters or to cooperators” (989, emphasis added).

Bounding in Three Dimensions

In the common law, the idea of possession—physical possession and the intention to possess—lies at the core of the ownership of land. According to the much-cited aphorism, possession is nine-tenths the law. The forms of possession that gave rise to rights of ownership lay originally in the customary practices of a community and later in the common law, but the physical boundaries of what was possessed came increasingly to be determined by the survey and cadastral map. The surveying and mapping of property interests, and of recording that information in a central repository managed by the state, converted those interests, which had once been defined in customary practices, into individualized, transferable parcels of private property (Kain and Baigent 1992).¹⁵ In these circumstances, defining boundaries along the surface of the earth became less the result of community practices or even of the common law than the product of surveyors who marked the land in ways that could be recorded in the registries of nation-states. The common law established certain guiding principles in areas of potential dispute, but was largely uninvolved in the definition of lateral boundaries.

However, the common law remained important in defining the height and depth to which the ownership of land extended. In doing so, it was both expansive and vague. “Land,” wrote the great chronicler of the common law Sir William Blackstone (1765-1769), “hath also, in its legal signification, an indefinite extent, upwards as well as downwards. *Cujus est solum, ejus est usque ad coelum* (whoever has the land possesses all the space upwards to an indefinite extent), is the maxim of the law” (18). In the twentieth century, the advent of air travel would cause judges to reinterpret the maxim to establish the upper limit of private property as that airspace which the landowner could reasonably use (Richardson 1953; Wright 1968; Banner 2008). If private property had indeed extended to the heavens (a doubtful proposition, notwithstanding the maxim, given the importance of possession to the common law and the impossibility of possessing this column of airspace), this was the largest judicial reclamation of territory from private hands to the commons in the history of the common law. In any event, a detailed definition of the vertical boundaries of private property was unnecessary until the

emergence in the twentieth century of the airspace parcel and then of the statutory condominium.

Using what Ted Steinberg (1995, 137-140) describes as “three-dimensional deeds,” property owners in New York and then Chicago began trading air rights or airspace parcels in the early 1900s. The common scenario was of a railway company selling air rights above its stations or rail yards, spaces that would come to be filled with hotels and office towers. New Jersey appears to have taken the lead among North American jurisdictions in 1938 when it enacted airspace legislation to confirm the validity of the emerging practice to separate the ownership of defined parcels of airspace from ownership of the surface of the earth (Harvard Law Review 1938, 335-36).¹⁶ Other jurisdictions would follow, British Columbia in 1971 with its Air Space Titles Act, which enabled an owner to sever the fee simple interest to an airspace parcel from the title covering that portion of the surface of the earth below or, indeed, above the airspace parcel. Under the legislation it was as possible to create an airspace parcel below as above ground. The act defined an airspace parcel as “a volumetric parcel, whether or not occupied in whole or in part by a building,” (s. 1), and the holder of a fee simple interest could create such a parcel with the deposit of an “air space plan” that defined the volume and location of the space (s. 4). Once created, the airspace parcel enjoyed the same legal status as an interest in land that included some portion of the surface of the earth (s. 4).¹⁷

The legal attributes of a strata lot or condominium unit mimicked those of an airspace parcel. In fact, airspace titles and condominium operated on similar principles and worked to similar effect; both were intended to facilitate the subdivision of fee simple interests in three dimensions. Moreover, airspace titles and condominium could work in tandem. With the deposit of an airspace plan, the holder of a fee simple interest in a parcel of land could subdivide the land into separate airspace parcels. Once a building had been built, then, with the deposit of strata plans, each airspace parcel could be further subdivided into individual strata lots, establishing each as an independent parcel of land. A single building, therefore, might contain multiple airspace parcels subdivided independently into multiple strata lots.¹⁸

The advent of airspace titles and condominium required a detailed three-dimensional survey, not just the guiding maxims of the common law. Under the Air Space Titles Act (1971) the volume of an airspace parcel had to be defined by reference to a “geodetic elevation” designated by the Surveyor-General and derived from the Geodetic Survey of Canada (ss. 1(c), 7). As a result, an airspace parcel could be defined entirely on paper; a building might or might not arise to define its physical space. A strata lot, on the other hand, had to be defined in terms of a building—“by reference to floors, walls, and ceilings” (s. 4(1)(d)). Nonetheless, airspace titles and strata lots shared the requirement for a detailed definition of the volume of land, not only of its plane. The effect of this subdivision was to detach the category of land from the surface of the earth.

Common Property and Governance

Robert Ellickson (1992-1993, 1381) suggests the “inevitability of a network of public lands” in a property law regime organized primarily around private property.¹⁹ Without common property through which people can move freely, private property becomes unusable or inefficiently usable because of the resources required to negotiate and secure access. Public roadways represent his paradigm of inevitable common

property because of their capacity to facilitate circulation between private parcels. The common property in a condominium performs the same role of facilitating access to, while preserving the integrity of, private property.

British Columbia's original Strata Titles Act (1966) defined common property as land "in a strata plan that is not comprised in any strata lot shown in the plan" (s. 2). In other words, the lobby, elevators, stairwells, corridors, service rooms, and any other part of the building or the land shown on a strata plan that was not included within a strata lot were common property and owned collectively by the owners of individual strata lots. Roofs, exterior walls, and other parts of the building that were integral to all the units were also common property. The owners of the strata lots held the common property "as tenants in common in shares proportional to the unit entitlement of their respective strata lots" (s. 5).²⁰ The unit entitlement was set in the strata plan. Entitlements could be divided equally, or they could vary, usually in relation to the relative values of the strata lots, and they determined the proportion of expenses (such as building maintenance and insurance) that each strata lot owner was required to pay.

The statutory condominium regimes of the 1960s also provided schemes for the collective governance of multi-unit buildings. The unit entitlement, which determined the proportion of common expenses, also determined the voting rights of strata lot owners (in British Columbia, see *ibid.*, s. 4(1)(f)). Some commentators described the statutory condominium as creating a form of local government akin in some respects to that of a municipality (Rosenberg 1969, 1.6-1.8). The principal difference, of course, is that condominium provided a form of private rather than public government perhaps more aptly described, in the case of a condominium tower, as a "vertical gated community." Robert Nelson (1999) has argued that the opportunity to create community or neighborhood associations, which have been widely used in suburban developments to define acceptable uses of land (and of which condominium is one form), should be extended to established neighborhoods in order to "facilitate the 'deregulation' or 'privatization' of zoning" (829; see also Reichman 1976; Ellickson 1982). Others view the community association as a "legal technology of exclusion," established to filter those who will have access to the private and common property interests within (Frug 2006). Evan McKenzie (1994) describes condominium as allowing "a return to the ancient concept of city as fortress, in which society's hives huddle to defend their lives and possessions against have-nots outside the gates" (95).²¹ Community associations, including condominium, embed private interests in community, but in a community that excludes all but the holders of the private interests. This capacity to include and exclude would become apparent as the legal form spread across Vancouver.

PART II - CONDOMINIUM AS PROPERTY

According to political philosopher C.B. McPherson (1978), property as a legal right and therefore as an enforceable claim has always needed justification; property "depends on society's belief that it is a *moral* right," that it is "a human right" (11, emphasis in original).²² This is particularly true of private property, where the holder has a right to exclude others, or, as Larissa Katz (2008) has recently argued, an exclusive right to set the agenda for an object. Seventeenth century political philosopher John Locke offered one of the most influential of justificatory theories—that the right to

private property arises in the state of nature through the mixing of one's labor with the material world (Locke 1698, 285-302). The justifications for the regimes of statutory condominium, which fostered a massive increase in the density of private property in land, lay in other resonant justificatory traditions, particularly those that link private property with freedom and with economic efficiency.

From its introduction, many observers touted condominium and its capacity to increase the density of private interests as a legal mechanism with enormous potential to effect positive social change.²³ Alvin Rosenberg, author of the first text on Canadian condominium law, published in 1969, described the possibilities of condominium in the following terms:

In future years condominium may well be instrumental in effecting major changes. Large parts of the urban populations may be shifted to the city cores where costs of servicing, public facilities and transportation are at a minimum. A new class of responsible citizens may be created with a larger stake in the community *because of their private ownership of their homes* and working premises. The trend towards tenant living may be reversed. If the democratic, capitalistic society is to remain vital and vibrant, there is a need for the type of citizen who takes pride in owning his own home or business premises. In this period of rising land, servicing and construction costs the condominium may be the only way to fulfill this need. The condominium concept, if it is successful, will have reflected, or have been a response to, a need for social change and, in turn, will have promoted that change or at least made it possible. (1.2-1.3)

This was a powerfully optimistic view of the transformative potential of a legal form.²⁴ The basis for this optimism lay in the ability of condominium to facilitate the subdivision of land, opening the possibility of ownership to more people, and increasing the density of private interests in the process. Home ownership fostered “responsible citizens;” increased population density created efficient cities; and condominium provided the legal mechanism that made both possible.

The link between property and citizenship was founded in a justificatory tradition that linked private property with freedom. A few years earlier, legal scholar Charles Reich (1964) had given a new voice to that tradition with a widely read article on “The New Property”. In it he suggested “property performs the function of maintaining independence, dignity and pluralism in society by creating zones within which the majority has to yield to the owner” (771). In other words, private property provided a sphere of freedom for the individual and the platform from which the individual could fully and freely participate in society. Rights of free speech, association, peaceful assembly, religion, and conscience, along with the right to vote—civil and political rights—“must have a basis,” argued Reich, “in property” (ibid.). Reich was arguing to extend the concept of property to various government entitlements, but similar arguments had long been made with respect to land and to home ownership in particular. Condominium made possible a wider distribution of ownership and, potentially, of freedom, at least if one were an owner.

Condominium, in Rosenberg's account, would also increase the efficiency of cities. By subdividing land—creating smaller, more affordable interests that opened the

possibility of home ownership to more people—condominium facilitated an increase in human densities. In a society that valued home ownership, condominium had the potential to bring people back into inner cities, diminish urban sprawl, and create cities where public and private services could be provided more efficiently. However, the relationship between the legal and the urban was not unidirectional. Condominium might renew the vitality and vibrancy of cities, but the need for that renewal and of a legal form to facilitate it was a response, at least in part, to fears that urban sprawl might bring about the disintegration of the city (Sinclair 1968, 1-3; Watson and Grimes 1965, 272-73). In effect, a perception of the city's disintegration and decline gave rise to a legal form that might sustain and ultimately transform the city.

Another commentator situated the development of condominium within the cold war, arguing that “the worldwide population explosion, the mass migration to urban and suburban areas, and the accelerating rate of technical advance call for a legal response to the needs of the new society without abandoning the heritage of the past” (Cribbet, 1963, 1207). By “heritage of the past” he meant private property, in distinction to the socialized property of the Soviet Union. Condominium, which appeared to extend the possibility of private homeownership, was an appropriately American response to the challenge of providing adequate housing.

This view is part of a broader cultural understanding that links private property with efficiency: that among ownership regimes private property best promotes economic efficiency and, ultimately, prosperity.²⁵ In his contemporary study of the law of airspace, Robert Wright (1968) emphasized the economic advantages of enhancing the capacity to subdivide land in three dimensions:

If airspace were inseparable from the surface, the result was economically stifling, and if it were an incorporeal thing, incapable of possession and of value only as it enhanced the use of the surface, then nothing much could be done with it. Since this was economically troublesome and constricting, without any corresponding benefit, the theory that it *was* something which could be possessed was more likely to prevail. (68, emphasis in original)

The inevitability that the ownership of spaces above the surface of the earth might be severed from ownership of the surface of the earth was a function, in Wright's account, of the efficiencies of private property. In short, the capacity to subdivide land in three dimensions was a refinement that secured the more efficient allocation of resources by enabling land, material or ethereal, to lodge with an owner who valued it most. At some point the division of private interests might become an obstacle to economic efficiency, an idea that Michael Heller (1998) has captured in the “tragedy of the anticommons.” The fracturing of ownership along too many lines increases the costs of using land; too many fractures and the land will not be used because the costs become too great. However, condominium provided for common property and a structure of governance to minimize those transactions costs and seemingly to enhance the efficient use of land.²⁶

The combination of private property, common property, and a structure of collective governance was a package that legislators were quick to embrace. Berger (1963) opened his early study of the condominium statutes in the United States by noting

that “(s)eldom have hard-nosed lawmakers greeted innovation more cordially than they have greeted the condominium” (987). Several years later, British Columbia passed its condominium legislation with no recognizable opposition. One member of the provincial legislature from a constituency in east Vancouver remarked on the unfairness that homeowners (a category that would soon include condominium owners) received provincial homeowner’s grants while renters did not (Province 1966). However, the concern was primarily with the inequity of a homeowner’s grant that renters did not receive, not with the capacity of the Strata Titles Act to create new, privately owned homes. Generally, the reaction to the new legal form was enthusiastic, if a little incredulous that a space bounded in three dimensions and detached from the earth might be considered real property. The critiques of condominium would come as the legal form began to spread through the city.

PART III - CONDOMINIUM IN VANCOUVER

The first strata title or condominium development in British Columbia appeared in the Vancouver suburb of Port Moody in February 1968. It was a modest three-level, forty-two-unit development spread over two buildings (Land Title Office, Strata Plan NW 1; hereafter LTO).²⁷ Two years later, in May 1970, Vancouver’s first condominium—a twenty-four-unit residential building—was built in a relatively affluent west-side neighborhood near the shopping district of Kerrisdale (LTO, Strata Plan Vr. 9).²⁸ Others followed in a trickle—one more in 1970, five in 1971—until 1972 when developers registered twenty-one condominium complexes containing 730 strata parcels, most of them in neighborhoods immediately to the west and south of Vancouver’s downtown core. The numbers dipped slightly the following year, but then more than doubled in 1974 to forty-five new strata plans. It had taken several years, but developers, purchasers, and financiers had, by the mid 1970s, warmed to the new legal form that combined private ownership of individual units with shared ownership of common areas. By the end of 1980, property owners had registered 447 strata plans containing more than ten thousand strata parcels. The strata plan buildings ranged from duplexes to residential high-rises, with an average size of twenty-three units, and were located primarily in the neighborhoods of Kitsilano, Fairview, Mount Pleasant, and the West End (Figure 1 and Appendix A).

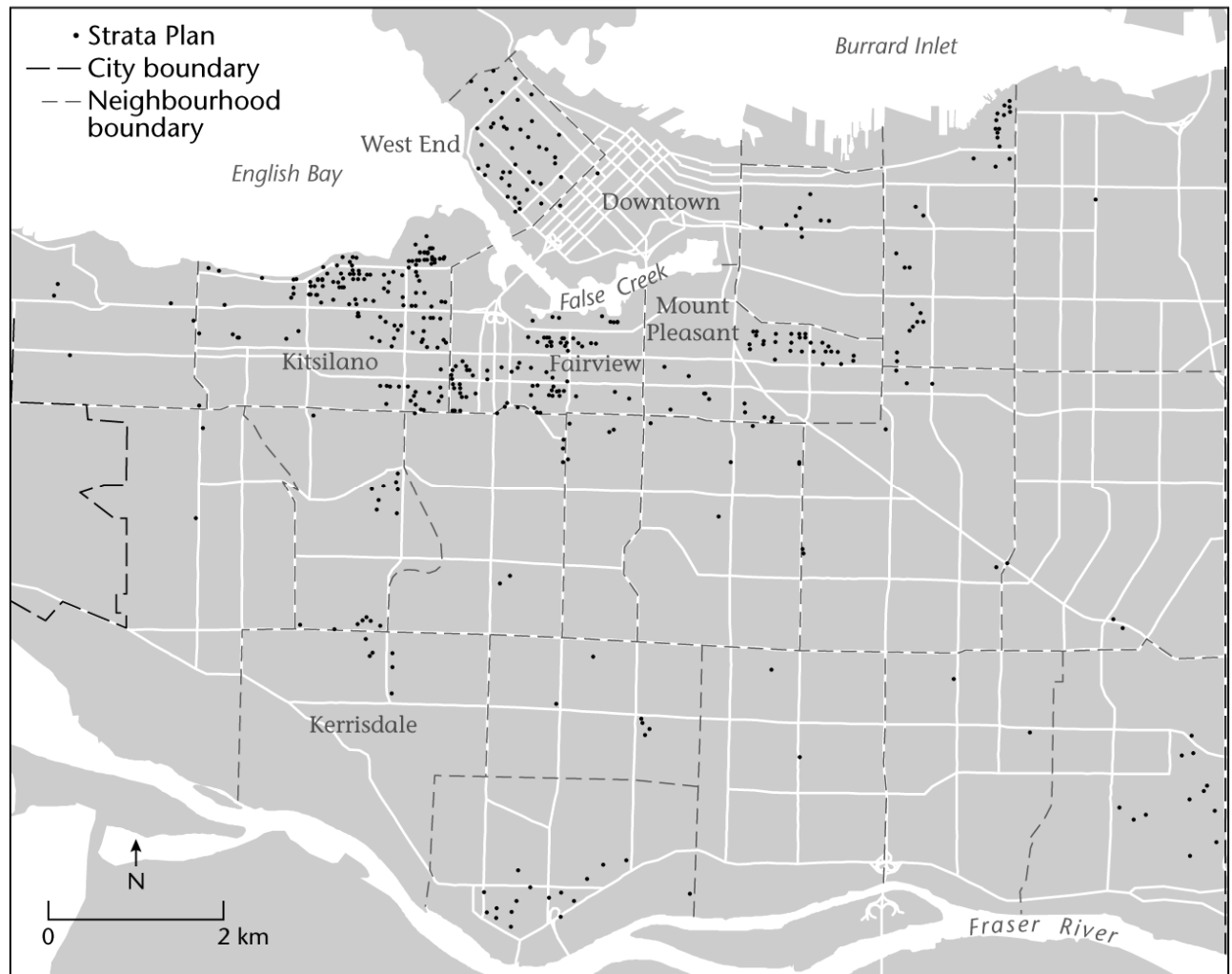


Figure 1 City of Vancouver Strata Plan Locations, 1970-80

The distribution of strata title developments in Vancouver bears out David Ley's observation that most of the early condominium developments in the city occurred "in or near established middle-class districts" (Ley 1996, 48). He explains the turn to condominium in the central city as part of a broader economic restructuring away from an industrial and toward a service economy. With this economic shift came a transformation in the labor market, from blue-collar to white collar and professional workers, and a change in housing markets. This "new middle class" sought home ownership, some of which it found in the suburbs, but also, because of condominium, in the increasingly high-density, amenity-rich inner city. Most of the purchasers in these early years earned moderate incomes and fell into one of three categories: young, childless singles or couples with above average family incomes (who anticipated moving into a single detached home when income or family size increased); young couples with children (most of whom also hoped to move into single-family residences); and older "empty-nesters" (who were "downsizing" from a single-family residence). Those without young children tended to occupy apartment condominiums, those with gravitated toward

townhouses (Eadie 1978, 84, 91). These were the faces of a new middle class that was beginning to occupy the inner city as condominium owners.

The changing ownership status was one among a larger set of social and economic forces, but was nonetheless important. “Condominium,” argues Ley (1996), “joined the renovated property as the landscape face of *embourgeoisement*” (48-49).²⁹ In this conception, condominium was not only a legal form, but also a built form and a new social space that was being constructed around it—the “condo.” It was a social space of gentrification, brought about by an economic restructuring that increased the affluence of some, but displaced others. Ley begins his book with an account of the eviction in 1972 of Mrs Edna Shakel from her three-room apartment in an old house in Vancouver’s Fairview neighborhood to make way for a condominium development. She would be one of the first in Vancouver to lose her home when condominium displaced residential tenancy, but others would follow, and it was not long before the legal form, and the transformations it enabled, became a site of conflict.

Condominium might subdivide new or existing buildings, and when an owner converted an established set of legal relationships in an occupied building—usually that of landlord-tenant—to condominium, the residents who were unable or unwilling to purchase the fee simple interest in their rental unit were displaced. In November 1972, the *Vancouver Sun* reported that sixty-one rental apartment buildings in Vancouver and the surrounding municipalities had been converted, and suggested that many more conversions were under way (McCormick 1972). Ley (1981, 139-41) estimates that low-cost rental accommodation disappeared at a rate of more than one thousand units per year through much of the 1970s.

The provincial government was soon struggling to formulate an appropriate response to a growing chorus of concern about evictions that stemmed from condominium conversions. In February 1973, Premier David Barrett, who headed the recently elected centre-left NDP government, told the Legislative Assembly that he thought there had been “unfortunate abuses of the Strata Titles Act” (British Columbia Legislative Assembly, 831). However, sensitive to the criticisms that his government was unduly interfering in private property interests with its sweeping efforts to regulate land use in the province, including an extensive agricultural land reserve, Premier Barrett wondered aloud about the outcry if the government imposed restrictions on condominium conversions:

Somebody has to assume the responsibility to protect the individual against the vagaries of private enterprise. It's very interesting. An excellent plea, made on behalf of renters. But if we brought in a bill to say, “You can't do with your property, even though it's your private property, what you think you can do,” what would be the response—on “hot-line” shows? What would be the response in the media? “The heavy hand of state socialism is curtailing investment and the construction of housing.” “The heavy hand of state socialism is going to interfere.” Ah, how a picture changes. (ibid., 830)

Rather than restricting conversions directly, in April 1973 the province amended the Landlord and Tenant Act to require that landlords provide residential tenants with four months’ notice of a conversion to condominium and pay up to three hundred dollars

in moving expenses (An Act to amend the Landlord and Tenant Act 1973, s. 7). The province also amended the Strata Titles Act to require municipal approval of strata plans before they could be registered in the land registry (An Act to Amend the Strata Titles Act, 1973, s. 1). This put the responsibility for managing the rise of condominium on municipalities.

Almost immediately, Vancouver began to receive applications to approve strata title plans for newly constructed buildings and converted rental properties. The proposals for new construction faced little opposition. Council was nearly always unanimous in approving the plans and, in 1974, as the number of new condominium developments continued to grow, the province again amended its strata legislation to remove the need for a municipal council to approve a strata plan for a new building; a municipal approving officer could endorse applications that met building code and zoning requirements (Strata Titles Act 1974, s. 3(5)(f)).³⁰

On the other hand, applications to convert existing rental properties to condominium provoked debate. In May 1973, a sharply divided city council defeated a motion to place a one-year moratorium on all condominium conversions (City of Vancouver Archives 1973a, 405; hereafter CVA). The next day the displacement of elderly residents from Hycroft Towers, an apartment building on the edge of the affluent Shaughnessy neighborhood, became front-page news (Oberfield 1973). Between the Legislative Assembly's approval of the amendment to the Strata Titles Act to require municipal approval of strata plans (April 12, 1973) and its coming into force (April 18, 1973), the owners of Hycroft Towers deposited a strata plan to subdivide the building. This subdivision, without municipal approval after the Legislative Assembly had voted to require municipal approval, provoked anger that the owners' unapologetic defence of their plans only fomented: "The worst thing in the world," claimed one, "is to have people renting. If they had been told this when they first went in there 20 years ago, they'd own their own apartments now" (ibid.). Given the escalating rhetoric, the relatively affluent and elderly tenants, and a sense that due process had been circumvented, Hycroft Towers became a touchstone for those concerned about the loss of rental housing. One month later, in June 1973, council reconsidered and narrowly passed the motion to place a one-year moratorium on conversions (CVA 1973c, 667; see also Coffin 1973). Of major urban centres in North America, Vancouver was the first to impose such a moratorium; many would follow.³¹

Some property owners converted existing residential tenancy buildings to condominium, but more commonly they demolished buildings to make way for new condominium buildings. In 1974, Kitsilano residents picketed the construction site of a fourteen-story condominium building (Figure 2). The developer had knocked down two small rental apartment buildings, displacing ninety tenants who had paid an average of \$150 per month in rent. Units in the new building were selling for fifty thousand dollars and up, a price that the protestors believed was unaffordable to most of the displaced tenants. The pickets halted excavation for several days, but the developer secured a court injunction to prohibit picketing, and the project proceeded, as did others (Province 1974; Stobie 1979, 109-17).



Figure 2 Condominium Protest in Vancouver's Kitsilano neighborhood.
Source: *The Province*, March 18, 1974.

Landlords converted their buildings to condominium because the subdivided land could be sold for more than the whole parcel. Geographers Chris Hamnett and Bill Randolph (1984, 1986) identified this “value gap” as one of the principal reasons for the replacement of private rental housing with owner-occupied units in central London (see also Ley 1999, 49-51). They attributed the gap not to an increasing desire for private property, but rather to a set of structural changes, including rent control and enhanced protections for tenants that reduced returns to rental property, changes in the tax regime that favored building or converting to owner-occupied units, and the increasing availability of mortgage financing.³²

Similar factors created a value gap between residential tenancy and condominium buildings in Vancouver (Ley 1996, 48-51). A substantially revised federal Income Tax Act, which came into effect on January 1, 1972, introduced a capital gains tax, but exempted an individual's principal residence, sheltering any increase in its value from income tax and making home ownership more attractive as an investment (Income Tax Amendment Act 1970-71-72, ss. 3, 40(2)(b)). The revisions to the tax code also eliminated the ability of landlords to transfer losses from residential rental buildings to other sources of income, making the building and operating of rental apartment buildings less attractive. The prospect of losses only increased in 1974 when the province set limits on rent increases.³³ On the financing side, lending institutions were increasingly willing to take the fee simple interest in a strata lot as security for a loan, making the purchase of condominium units that much more accessible. A 1973 study of the housing market in

Vancouver's West End concluded that developers might be enticed back from condominium to rental property construction if rents increased by 30 percent (CVA 1973d, 485). An industry report the following year suggested that rents would need to increase by 50 percent to create a positive return on investment in rental housing (Block Bros. Annual Report cited in Stobie 1979, 30). In this climate, private sector rental housing construction disappeared as industry turned to condominium to provide the legal architecture for new and renovated buildings.

Concern over the loss of rental housing was focused not just on the loss of individual units, but also on the loss of community that accompanied the dispersal of former tenants. One tenants' organization acknowledged the inherent lack of permanency in residential tenancies, but noted that "there is a substantial difference between a single eviction and the displacement, by the stroke of a pen, of what is in effect a whole community of tenants" (CVA 1973b; Stobie 1979, 88-97). Perhaps in response, in 1974 Vancouver's City Council extended the conversion moratorium for a second year, except in circumstances where at least 90 percent of the existing tenants approved (CVA 1974, 366, 385-87).³⁴ It maintained this moratorium in 1975 and again in 1976, but that year council modified the exception to allow conversions where no more than 10 percent of the tenants objected, putting the onus to reach the threshold on those who objected (CVA 1975, 288, 370; 1976, 303). In 1977, Council made the moratorium and this exception its continuing policy (CVA 1977, 492, 507).

In the years that followed, the city and the province gradually made it easier to convert residential tenancies to condominium. In 1979, council broadened the exception to allow conversions where no more than one-third of the tenants objected (CVA 1979, 186-87, 243-45). Then in 1984, in a rewriting of landlord-tenant legislation, the provincial government halved the notice requirement for conversions from four to two months and eliminated the statutory requirement that landlords pay up to three hundred dollars in moving expenses (Residential Tenancy Act 1984, s. 29). Finally, in 1986 city council disbanded its seldom-used relocation service, eliminating what had become a nominal fee of fifty dollars per unit on conversions. It also reversed the onus so that an owner-developer had to provide written consent from two-thirds of the households occupying a building before a conversion could proceed (CVA 1986, 1232, 1332-35). These guidelines—the Strata Title and Cooperative Conversion Guidelines—remain in place.

In the 1980s, the west-side neighborhood of Kitsilano remained the site of most vigorous activity in the condominium market, but dense pockets were emerging elsewhere (Figure 3). In the late 1970s, developers had turned their attention to the north-facing slope above False Creek, an incline known as Fairview Slope (the shaded area in Fairview, Figure 3). It contained a deteriorating stock of single-family houses, many of which had been converted to rooming houses or communal homes and which one author described as a "hidden village of mellow ambience" (Gutstein quoted in Mills 1989, 201). A spate of residential construction over a few short years, peaking in 1981, transformed the enclave into "a high-density area with expensive townhomes and condominium apartments offering high-amenity 'city living.'" (Ley, Hiebert and Pratt 1992, 243). The transformation coincided with the federal government's extensive redevelopment of Granville Island and the city's redevelopment of False Creek's south shore. Formerly industrial land became public market, retail space, residential

neighborhood, and park, spurring the redevelopment of the adjacent land on Fairview Slope.³⁵ But while the city employed a variety of legal instruments including cooperatives, residential tenancies, and leasehold condominiums in an effort to create a neighborhood accessible and appealing to people at a range of income levels, private developers on the slope used condominium almost exclusively.

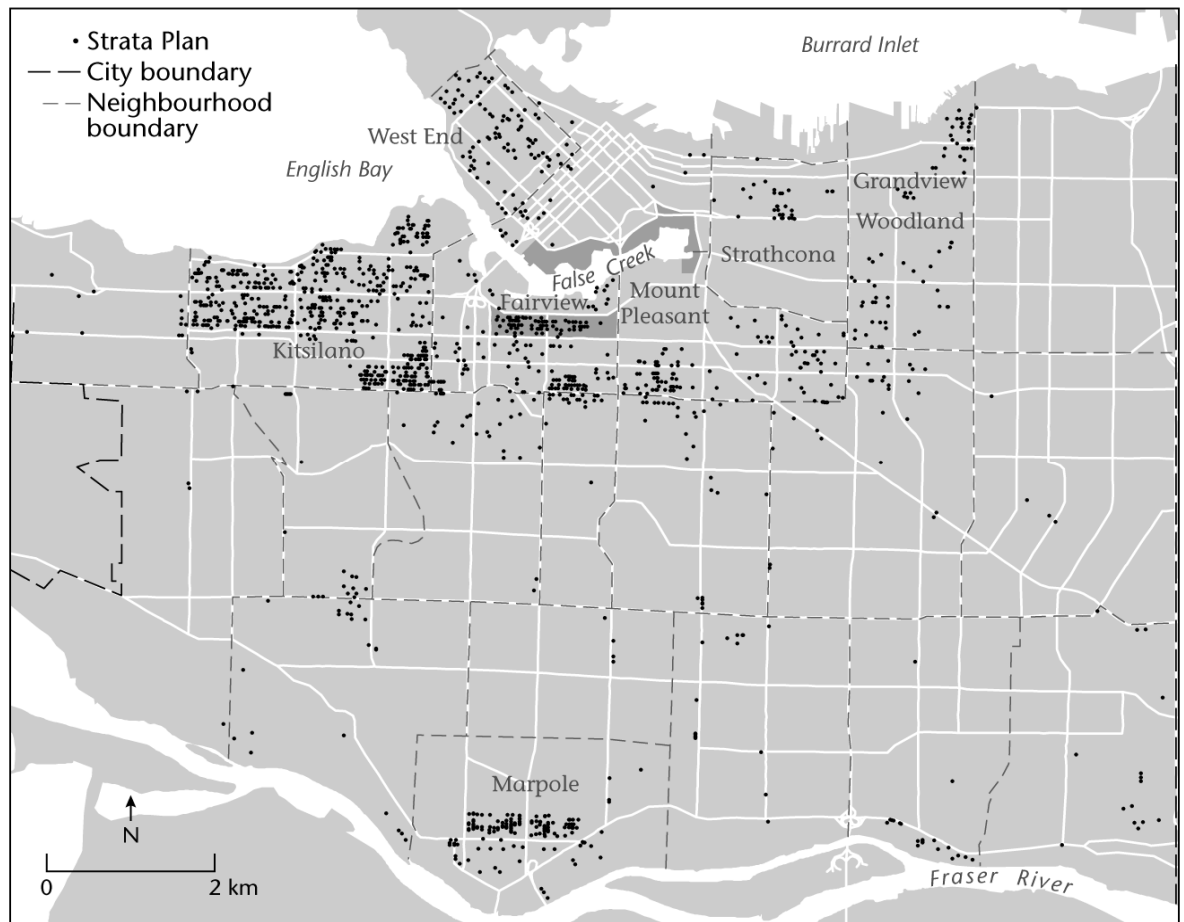


Figure 3 Registered Strata Plans in the City of Vancouver, 1981-1990

This sudden and comprehensive redevelopment of Fairview Slope is indicative of what geographers Jason Hackworth and Neil Smith (2001) have categorized as “second-wave” gentrification. They describe a first wave, beginning in the 1950s and chronicled first in London by sociologist Ruth Glass (1964), as small-scale, sporadic, and driven by middle and upper-class owner-occupiers who renovated houses in working class districts. A second, “anchoring phase” of gentrification in the 1970s and 1980s was “increasingly entwined,” suggests Smith (2002, 440), “with wider processes of urban and economic restructuring,” characterized in Vancouver and elsewhere by a decline in the industrial and manufacturing sectors and the rise of a professional, service economy. Developers became more involved, as did central and local governments, in the new, larger-scale projects that might transform neighborhoods abruptly rather than incrementally.

Condominium development also accelerated in Vancouver's West End and, as part of a gradual eastward drift, in Mount Pleasant, Strathcona and Grandview Woodlands. In addition, a tight cluster of condominium buildings appeared in Marpole around the southern end of Granville and Oak streets, two of the major north-south arterial roadways and the neighborhood closest to the Vancouver International Airport across the Fraser River in the adjoining municipality of Richmond. This bunching of condominium appeared in a pocket zoned for multi-unit residences, most of them three or four stories high; the zoning across most of the rest of south Vancouver restricted land use to single-family residences, a structure for which condominium was not useful.

In 1986, Vancouver hosted a world's fair—EXPO '86—an event that the provincial government intended to be, and is now widely regarded as, a watershed in the city's history, the moment at which Vancouver presented itself on the world's stage for the first time (or at least since the Empire Games in 1954). The grounds of the fair occupied former industrial land along the north shore of False Creek (the shaded area on the north shore of False Creek, Figure 3), land that the provincial government had amassed before the fair and sold afterwards to the prominent Hong Kong developer Li Ka-shing and his company Concord Pacific. Headed by his son, Victor Li, the company built and continues to extend the dense urban residential neighborhood of condominium towers and townhomes, parks and marinas, and a pedestrian seawall. This is the neighborhood which appears on the covers of Punter's (2003) and Berelowitz's (2005) books on Vancouver and that has attracted the attention of city planners across the continent. Although the largest single project, it is only a part of a construction boom of residential condominium towers in and around Vancouver's central business district. The result has been a dramatic increase in the number of people living in the Downtown neighborhood. From a relatively stable population level of 6,000 through the 1970s and 1980s, the neighborhood had grown to more than 43,000 by 2006.³⁶

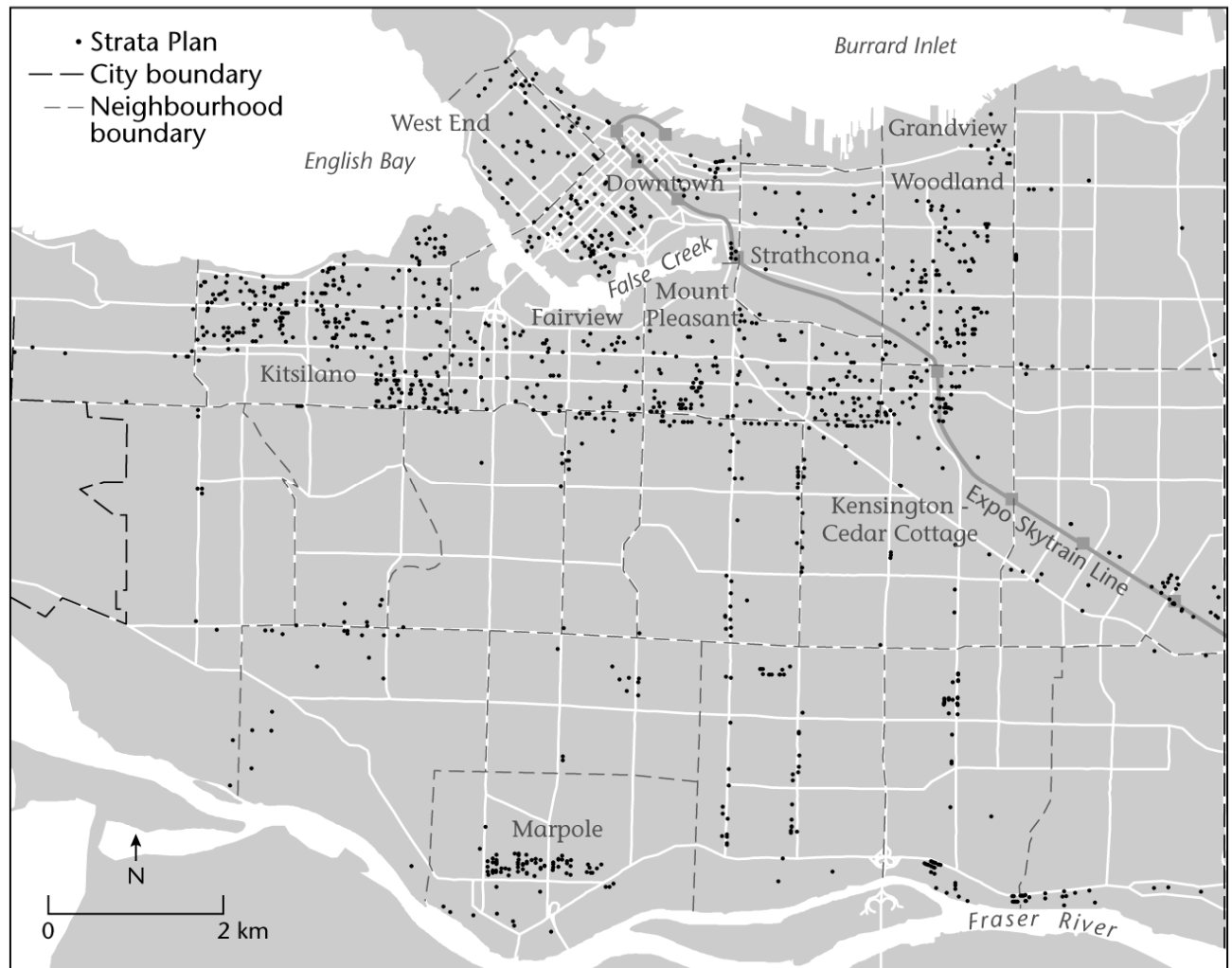


Figure 4 Registered Strata Plans in the City of Vancouver, 1991-2000

Geographer Kris Olds suggests that while the world's fair brought Vancouver international attention, it was the province's sale of the Expo lands to Hong Kong's "most famous tycoon" and the residential mega-project which followed that consolidated Vancouver's connection to the Pacific Rim and cemented the City within the ambit of global flows of capital and people (Olds 2001, 96, generally 57-140). Many of the East Asian economies were generating enormous economic surpluses through the 1980s, and a series of political events (the uncertainty caused by the violence in Tiananmen Square in 1989 and the approaching return of Hong Kong to China in 1997) coupled with the presence of a renowned Hong Kong developer made Vancouver an attractive destination. Canada encouraged these developments with immigration policies that favored those with wealth and willingness to invest in a Canadian business (Punter 2003, 61, 85-86).³⁷ Much of the inflowing capital was destined for property markets, and the Concord Pacific development, Olds (2001) argues, "is an elegant marker of the intersection of a burgeoning trans-Pacific residential property market with trans-Pacific migration, and succession plans within one of the world's leading Chinese corporate groups" (114).

Condominium provided the basic legal architecture of the Concord Pacific mega-project and other, smaller-scale developments, creating units of private property that were attractive for prospective immigrants and, more generally, for investors, domestic and foreign. A “condo” was self-contained and simple, could be owned from a distance, occupied or left vacant, and transferred in a market of highly fungible commodities. Some developments in Vancouver went on sale first in Hong Kong and other Asian markets and sold out without ever being offered for sale in Vancouver, provoking local consternation (Gutstein 1990, 156-59).³⁸ But even if the marketing occurred concurrently in local and distant markets (as was commonly the case with the large buildings around the downtown core) or entirely within the city, condominium was part of a process that embedded land and a city in markets that were increasingly global. Indeed, Ley and Tutchener (2001, 219), in a study of changing house prices in Vancouver and Toronto, 1971-96, suggest the changes in these two Canadian gateway cities track global rather than regional or national indicators of economic development. Vancouver, which attracted a high proportion of foreign investor immigrants, shows a particularly strong correlation between levels of overseas migration and average house prices (ibid., 208).

Hackworth and Smith (2001) describe a third wave of gentrification that followed the recession of the early 1990s and continues into the twenty-first century. It is, suggests Smith (2002), “gentrification generalized;” a process of urban up-scaling that manifests itself differently but that “had evolved by the 1990s into a crucial urban strategy for city governments in consort with private capital in cities around the world” (440). “Gentrification as urban strategy,” he continues, “weaves global financial markets together with large- and medium-sized real-estate developers, local merchants, and property agents with brand-name retailers, all lubricated by city and local governments for whom beneficent social outcomes are now assumed to derive from the market rather than from its regulation. Most crucially, real-estate development becomes a centrepiece of the city’s *productive economy*” (443, emphasis in original). If gentrification is understood broadly—in Hackworth’s terms “the process of converting inner-city space for more affluent users” (2002, 839)—then this characterization of third wave gentrification seems to describe the regeneration of Vancouver’s inner city beginning in the mid 1990s.

The rush to condominium declined somewhat in the 2000s to a little more than one hundred new buildings per year, but the average size of the developments remained relatively high by Vancouver standards (roughly thirty units per building), a function of the condominium towers that continued to rise around the central business district, as well as those that were beginning to cluster around Skytrain (elevated transit) stations. Kitsilano remained an active site, but much of the land in that neighborhood which might be subdivided with condominium had already been subdivided, and the pace of strata plan registrations slowed. This slowing is even more apparent in the neighborhoods of Fairview and the West End, which were largely built out to the zoning limits by the end of the 1990s. It was the neighborhoods to the east, which had seen relatively little condominium activity until the 1990s, that contained much of the new development.

Dramatically rising property values in the early 2000s sustained the eastern spread of condominium, which was also the eastward march of gentrification. Much of the concern over this “upscaling” focused on the Downtown Eastside, one of the nation’s poorest and most troubled urban communities. The juxtaposition of the affluence which

accompanied condominium buildings and the acute poverty within the community threw into relief the challenges that gentrification and one condominium development in particular (the Woodward's building) posed to an established, if poor community.³⁹ Condominium was a threat, suggests Blomley (2004, 29-74), not only for a community of renters who would be displaced, but also because the notions of private property embedded within condominium threatened the collective claims of the Downtown Eastside community to the Woodward's building and to the neighborhood more generally. The proposed development did not proceed (although another mixed-use and mixed-income development in the same building has recently opened), but the movement toward condominium continued, particularly in the neighborhoods to the south and east of Strathcona (Figures 4 and 5).

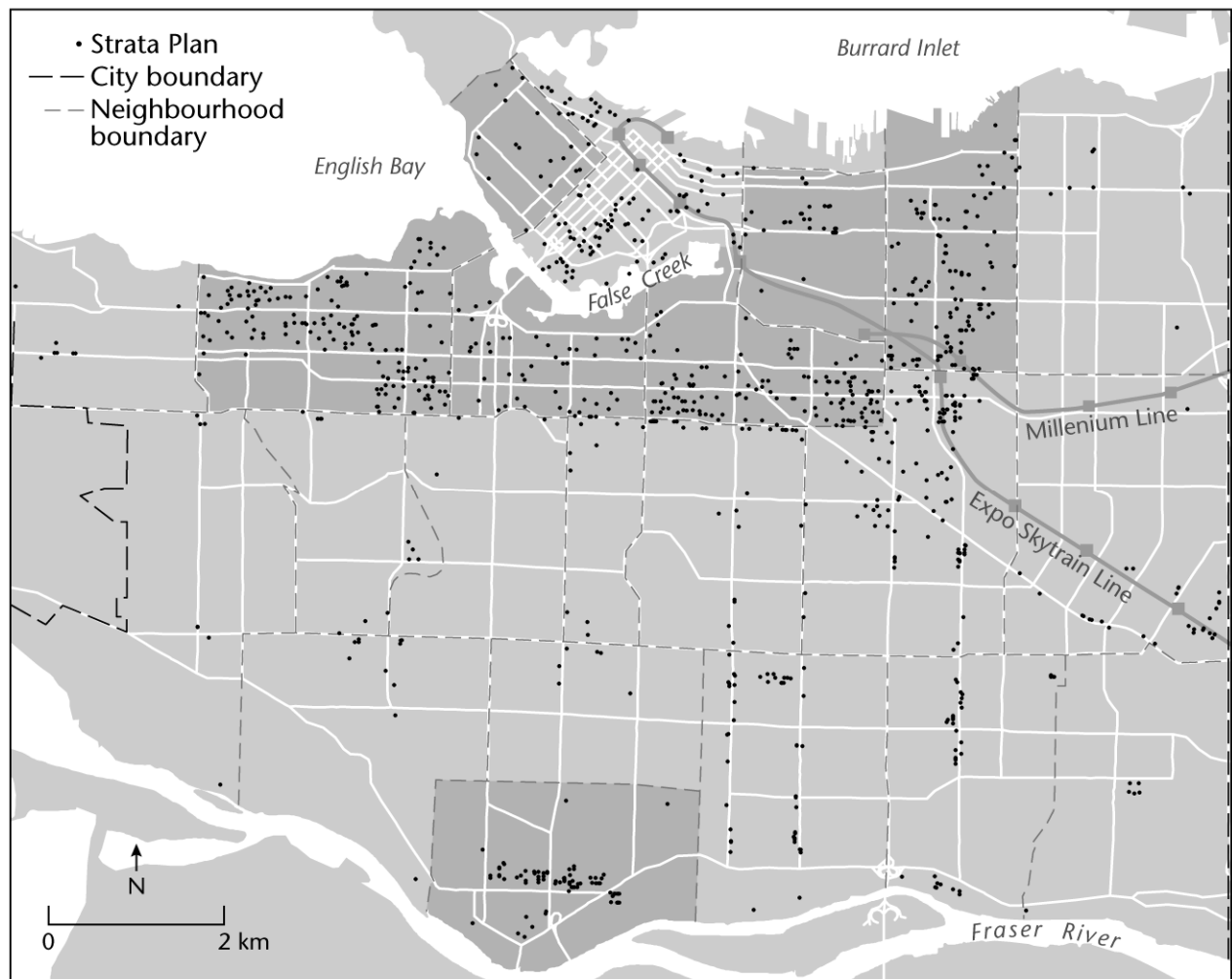


Figure 5 Registered Strata Plans in the City of Vancouver, 2001-2009
The strata plan (LMS #4705) that appears in the middle of False Creek is a marina and home to some of Vancouver's largest yachts.

The final map displays the locations of all the strata plans registered in Vancouver from 1970-2007 (Figure 6). What the map most obviously reveals is that condominium is not equally prevalent across the city. The clustered distribution is a function, in large part,

of municipal zoning. Condominium occupies those areas of the city that are zoned for multi-unit residential buildings. The permissible form of multi-unit building varies from duplexes or triplexes, as in much of Kitsilano, to the residential towers that cluster around and obscure the skyline of the central business district. Whatever the size of a multi-unit building, condominium provides a useful legal structure for demarcating private from common spaces and for creating a system of collective governance. In areas that the city has zoned for single-family residences, however, condominium is not helpful. As a result, the map presents an uneven and elongated ring of condominium buildings around False Creek, neighborhoods where the zoning allows for higher densities. The area devoid of condominium immediately to the east of False Creek (once a tidal mudflat and eastern basin of the inlet) is largely vacant, formerly industrial land, its future uncertain as the city council considers whether to allow residential development or to encourage some form of commercial use that would create employment opportunities. Beyond the neighborhoods dense with condominium is a low-density single-family residential city. These low-density neighborhoods are punctuated by higher-density zoning along most of the arterial streets and a few retail/commercial clusters, as well as the beginnings of increased density along the Skytrain line in the east.⁴⁰ However, apart from its inner-city—an area that may now be effectively defined by the density of condominium—much of Vancouver remains a single-family residential city.



Figure 6 Registered Strata Plans in the City of Vancouver, 1970-2009

Municipal zoning helps to explain the sharp demarcation of condominium and non-condominium neighborhoods, but it does not explain the prevalence of condominium in Vancouver. In fact, condominium is something that defines Vancouver among

Canadian cities. This is apparent in a skyline increasingly dominated by residential condominium towers, but also in the census data. Statistics Canada tracks private households according to the nature of tenure (freehold or leasehold) and the type of ownership (“part of a condominium” or “not part of a condominium”).⁴¹ In 1981, in the larger urban area (then called the Greater Vancouver Regional District, now Metro Vancouver), owner-occupied condominium units amounted to 5 percent of all private households and nearly 8.5 percent of private households that owned the property in which they lived (Stats. Can. 1981). In 1991, these figures had doubled: 10 percent of private households and 17.5 percent of owner-occupied private households lived within condominium (Stats. Can. 1991). By 2006, the most recent survey, the numbers had virtually doubled again: 20 percent of private households and 30 percent of home-owner households live in within a condominium in Metro Vancouver (Stats. Can. 2006).⁴² In the City of Vancouver itself in 2006, the first year in which this data exists at the city level, the numbers are somewhat different. Because a much higher proportion of residents in the city live within residential tenancies (51 percent in the city as opposed to 35 percent in the metropolitan area), a smaller proportion of all private households live within condominium (17 percent in the city as opposed to 20 percent in the metropolitan area). However, of owner-occupied households within the city in 2006, 37 percent lived within condominium (Stats. Can. 2006), a remarkably large proportion considering that the legal form first appeared in the city only forty years ago. With a population of approximately 600,000 in 2009, there are now 95,000 condominium units spread between nearly 4,100 buildings (Appendix A). The rise of condominium in urban areas is an unmistakable trend across the country, but is particularly pronounced in Vancouver.⁴³

PART IV – CONDOMINIUM, PROPERTY, AND THE CITY

Condominium arrived in Vancouver in 1970 and, measured by proliferation, has become a remarkably successful legal innovation. A large and increasing proportion of Vancouverites live within condominium, which has come to structure the ownership of land across a large swath of the city. Indeed, its concentration usefully defines the inner city. Condominium, a form of property characterized by private ownership of an individual unit in a multi-unit building, a share in the ownership of common property, and a right to participate in the collective governance of this property, is increasingly the way that people own land in cities. A creature of statute, it shares a similar legal structure to the community or neighborhood associations that have become prevalent in the suburbs of many North American cities. Condominium differs in that it subdivides a single building, facilitating the capacity to subdivide upwards rather than outwards. In doing so, it enables a massive increase in the density of private interests in land. Where there was once a single fee simple interest to a portion of the earth’s surface, there might now be several hundred, each attaching to an area, defined in three dimensions, within a building. Condominium provides the legal architecture for this increase in density of private interests and, in turn, for a potential increase in human densities.

Reflecting its success as a legal form, the “condo” has entered the lexicon to describe apartments that are owned under a condominium structure, but also to describe the location of modern, upscale, amenity-rich urban living. This usage reflects the perception of the legal form as the preserve of an affluent, professional class. In

Vancouver the tall, glass-sheathed condominium towers clustered on the downtown peninsula make this segment of the condominium market particularly visible. However, this visibility belies the diversity of structures that have been built around the legal form and its capacity to make home ownership possible to a broad socio-economic spectrum. Condominium has proliferated in Vancouver in all but the neighborhoods that are restricted to single-family residences.

As land values have risen in the city, condominium has extended the possibility of home-ownership to many who would otherwise be excluded if the smallest spatial unit of ownership remained the standard city lot and the single-family residence. However, as a legal structure that operates to subdivide buildings into individually owned, three dimensional parcels, its success has displaced other forms of tenure and those who might occupy buildings structured around those forms of tenure. In Vancouver, as elsewhere, the conversion of rental apartment buildings to condominium, coupled in most cases with a renovation of those spaces, has displaced tenants, pushing out those who might rent in older buildings but not purchase the renovated units. The association of condominium with affluence, therefore, reflects not just the visibility of “up-market” condos, but also the connection between the legal form and the displacement of tenants. Displacement need not be direct: changing forms of tenure in individual buildings affect land values more broadly, and wealthier owners demand different amenities and expect different streetscapes than those with fewer means. Neighbourhoods will change with the arrival of condominium, and the mapping of condominium in Vancouver reveals something of the reach of gentrification in the city.

Why the particular prevalence of condominium in Vancouver? Several suggestions are in order. If condominium is a marker of gentrification, then the literature that has attempted to account for the processes of urban upscaling is relevant. In the Canadian context, Ley (1986) found that inner-city gentrification correlated most strongly with “the presence of a ‘postindustrial’ metropolitan economy, oriented toward advanced service and white collar employment” and with the availability of cultural amenities associated with an “urban lifestyle” (524).⁴⁴ Certainly in Vancouver, the structural shift in the city’s economy from resource extraction and processing to the service sector created not only the physical space for redevelopment but also the shift in the labor market from blue to white collar, a labor force more inclined to own than to rent. However, the willingness of this “new middle class” to accept and even embrace higher-density living is the result not only of proximity to the central business district of a service economy, but also to a diverse array of services and cultural amenities. Vancouver shares these features with other urban centres of comparable size, but in a natural setting that significantly enhances the appeal of living in the inner city. This natural setting, defined in large measure by ocean and mountains, provides some geographical constraints on urban sprawl. Coupled with a provincially mandated agricultural land reserve that prevents the development of much of the farm land in the Fraser Valley to the south and east of Vancouver and the City’s refusal to allow a highway into its downtown core, the result is an inner-city density with few equivalents in North America. Moreover, the city has been widely acclaimed as a leader in urban planning and design, structuring development and creating spaces that have drawn people to the inner city and to higher density living (Punter 2003; Macdonald 2008; Fox 2010).

The mix of cultural and environmental amenities has pulled Vancouverites to higher-density living, but they have also been pushed by rising land prices. Much of the explanation for the higher prices in the last two decades lies in the influx of overseas capital and migrants. Enormous economic expansion in East Asia coupled with moments of political uncertainty and instability have brought people and capital to North America and its west coast in particular. Vancouver's population declined in the early 1970s, but has grown steadily since the early 1980s at a rate between 1 and 2 percent per year (City of Vancouver n.d.). Most of that increase, particularly since the late 1980s, is from overseas migration, primarily from East and South Asia, and residential real estate prices have tracked upwards with the increasing number of immigrants (Ley and Tutchener 2001, 208). Those from China (including Hong Kong and Taiwan) seem to have been particularly active in the market for condominium apartments, in part because of high profile Chinese developers, but also because of their familiarity with high-density urban living (Boddy 2004). Rising condominium apartment prices have certainly contributed to and perhaps led a much broader increase in land prices. Since the mid 1990s, Vancouver has had the highest residential housing prices in the country, pushing those who seek to own land to acquire smaller parcels. Condominium has been the means to create those parcels, but it has also been the legal mechanism that has expanded the market for land, embedding the city in international flows of people and capital, and, by doing so, contributing to the rising prices and hence the need to create smaller parcels.

How much of the change in Vancouver over the past forty years can we attribute to a legal form of ownership? Certainly, an account of Vancouver's transformation would be incomplete without considering the role of condominium; it has become the principal form of residential property ownership in the inner-city—its density now defines the inner-city. However, I think we can go further: Vancouver without condominium would be very different from the city that has emerged. The legal form was introduced in the 1960s to enable fuller rights of ownership to attach to a single unit in a multi-unit building than had been possible at common law or under cooperatives or residential tenancies. It is, at least in part, the opportunity to hold this fuller bundle of property rights that has brought people into the city as residents or as investors. Perhaps the cooperative might have been modified to satisfy lenders that its shares provided adequate security for a loan; perhaps greater security of tenure might have been extended to residential tenants and the tax system remade to create incentives to build large-scale rental accommodation; or perhaps another legal form might have emerged to play the role that condominium has performed. Instead, governments across North America created statutory condominium and it became the preferred legal architecture for multi-unit residential buildings, nowhere more so than in Vancouver.

In a recent study of Toronto, Ute Lehrer and Thorben Wieditz (2009) conflate the legal form and the processes of change, which they understand within the frame of gentrification, in describing the “condofication” of the city. Ley has placed condominium with the renovated property “as the landscape face of *embourgeoisement*” (1996, 48-9). But perhaps it is the newness of the legal form and the fact that the buildings constructed around it are also new, or newly renovated, that has led many to associate condominium with gentrification. As the buildings age, the lustre of many will fade and the extent of renovation or re-building rather than the form of ownership will define the character of neighborhoods. In the longer term, it is the capacity of condominium to increase the

density of private interests in land that will endure. Whether this feature will remain a catalyst for continuing processes of urban up-scaling remains to be seen, but the initial move to condominium has been a central part of a dramatic rearrangement of Vancouver's inner city.

Might the sudden rise of condominium challenge deeply rooted conceptions of what it means to own property?⁴⁵ Another place to look would be to the changing forms of ownership and to condominium in particular. If the ownership of land remains the paradigm through which private property is understood, and an increasingly large proportion of land is held within condominium, which combines private and common property with collective governance, then it may become increasingly difficult to think of private property solely or even primarily in terms of, in Blackstone's famous caricature, "sole and despotic dominion." The legal form of condominium itself embeds private property within community, albeit a community that excludes all but owners. Does this embedding weaken an individualistic and detached sense of private property, or, by limiting the community to a defined group of owners, enhance that detachment?⁴⁶ These are few among many questions that might well be asked of this relatively new, but increasingly ubiquitous and important form of ownership—condominium.

Appendix A

Registered Strata Plans, Strata Parcels, and Strata Conversions in the City of Vancouver, 1970-2009

Years	New Strata plans		New Strata parcels		Average parcels per plan	New Strata plans resulting from conversions ⁴⁷	
	Total	Average per year	Total	Average per year		Total	% of new strata plans
1970	2		38		19		
1971-1980	445	45	10430	1043	23	25	6 %
1981-1990	1409	141	19456	1946	14	243	17 %
1991-2000	1226	123	35432	3543	29	179	15 %
2001-2009	1004	112	29483	3276	29	107	14 %
1970-2009	4086	102	94839	2371	23	554	14%

Note: Average figures and percentages rounded to the nearest whole number.

** data for conversions in 2008 and 2009 forthcoming.

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¹ Vancouverism: Architecture Builds the City 2010, <http://www.vancouverism.ca/> (accessed August 11, 2010) and "Vancouverism in Vancouver," <http://www.youtube.com/watch?v=JOjLZrXTH8> (accessed August 11, 2010).

² "Vancouver has achieved an urban renaissance more comprehensively than any other city in North America" (Punter 2003, 3); "Vancouver has insinuated itself into the consciousness of the world in a calculated seduction of the global imagination" (Berelowitz 2005, 263),

³ The forty years from 1970 mark the most significant re-making of the city since its making in the decades around the turn of the nineteenth century. On the early years, see McDonald 1996.

⁴ The literature on the suburbs is voluminous, but for particular attention to community associations see McKenzie 1994; Barton and Silverman 1994. For a comparative analysis of condominium in the inner-city and suburbs, see Skaburskis 1988.

⁵ In fact, the impetus for this article came from a desire to get the students in my first-year property law classes out of the classroom and into the city, and then from a need to have something to say on field trips as I tried to encourage them to read the urban landscape for what it revealed about property law.

⁶ The most recent data shows the population continuing to grow, reaching 2.3 million for the Vancouver metropolitan area in 2009 (Statistics Canada, "Population of Census Metropolitan Areas," <http://www40.statcan.gc.ca/101/cst01/demo05a-eng.htm> (accessed August 11, 2010)).

⁷ It did so by enabling the Federal Housing Authority "to insure any mortgage covering a one-family unit in a multi-family structure and an undivided interest in the common areas and facilities which serve the structure" (National Housing Act 1961).

⁸ For a list of all fifty-two statutes and the date each was passed, see Ferrer and Stecher 1967, 129-33.

⁹ The full title was An Act to Facilitate the Subdivision of Land in Strata and the Disposition of Title Thereto. For commentary, see Pavlich 1983. It became the Condominium Act, 1979, and then the Strata Property Act, 1998.

¹⁰ The notable exception is England. See the discussion below.

¹¹ The English *Law of Property Act, 1925*, s. 205 defined land to include “buildings or parts of buildings (whether the division is horizontal, vertical, or made in any other way).” In *Iredale v. Loundon* (1908, 333), the Supreme Court of Canada ruled that “it is too late to dispute the proposition that an upper room not resting directly upon the soil but supported entirely by the surrounding parts of a building might at common law be the subject of a feoffment and livery as a corporeal hereditament, that is to say, land.”

¹² For an analysis of the challenges to individual ownership of a single unit in a multi-unit building, and of various responses before statutory condominium, see Rosenfeld 1961 and Davis 1966.

¹³ *Land Registry Act* 1960, s. 145: “the owner of the surface of the land is alone entitled to be or remain registered as the owner in fee simple.” This section was not revised until *An Act to Amend the Land Registry Act* 1971, s. 18.

¹⁴ However, David Clarke (2006, 180-86) notes the uncertainty in England about the legal form and the slow uptake.

¹⁵ James C. Scott (1998) suggests the enhanced capacity to survey and map territory, and thereby to centralize knowledge, facilitated not only the rise of private property but of the nation-state itself.

¹⁶ In 1927, Illinois had granted this power to railroad and terminal companies railway companies (Bell 1928).

¹⁷ Section 4 says an airspace parcel “shall devolve and may be transferred, leased, mortgaged, or otherwise dealt with in the same manner and form as any land.”

¹⁸ See the example of the Market Square development in Saint John, New Brunswick in Leger (1985).

¹⁹ Ellickson is using “public land” not as it is commonly used to denote state owned lands, “but rather to describe situations in which privileges of access are widely shared” (ibid.). See also Rose 1986.

²⁰ The unit entitlement could be apportioned equally, and many were in the early strata plans. For example, each strata lot held a unit entitlement of one or one hundred. The scale did not matter; it was the relative proportion that was important. The unit entitlement could also be apportioned based on estimates of differential value. Thus, the strata lot encompassing the penthouse might have a greater unit entitlement than a ground floor lot. Whatever the approach, the unit entitlement was established with the filing of the strata plan.

²¹ McKenzie, *Privatopia*, 95.

²² See also the emphasis in Underkuffler (2003) on the values that underscore property rights.

²³ A *Vancouver Sun* editorial in 1966 suggested that the new Strata Titles Act “has special significance for Vancouver, with its downtown core crowded onto a small peninsula. It raises new possibilities for office and apartment developments above the Canadian Pacific Railway yards. Small investors will be able to participate in high-rise

development, and it may bring back to the city more families who are attached to the idea of owning their own home. The possibilities it raises, of course, are limitless.”

²⁴ Others at the time were less convinced of the transformative potential. Risk (1968) wrote: “In the near future, and in its present form, condominium will probably not be a major factor in any solution to our housing problems, and will probably not rearrange our cities and our property texts, although this attitude may reflect the customary pessimism of a lawyer” (72). But see also the later work of Andrejs Skaburskis (1988b): “Thus, the condominium legislation introduced in the late 1960s in Canada will have a major, long-term impact on the spatial structure of our cities” (122).

²⁵ Economist Amartya Sen (1999) has linked the economic efficiency and freedom, arguing that the justification for private property and markets stem not from the wealth they produce, but rather from the freedom that the wealth allows.

²⁶ Heller (1998) notes in several places that the condominium ownership regime and governance structure works to prevent the tragedy of the anticommons (624, note 11, 655).

²⁷ Each land registry office in the province numbered the strata plans sequentially.

²⁸ The Vancouver land registry office served more than just the city of Vancouver, including North and West Vancouver and the Vancouver-Whistler corridor. Many of the early developments were in Whistler and City of North Vancouver.

²⁹ See also Ley (1981, 133): “In Kitsilano the condominium represents the landscape face of up-filtering and the *embourgeoisement* of the inner city.”

³⁰ The new *Strata Titles Act* was proclaimed in force August 15, 1974. Section 3(5)(f) required the approval of an “approving officer” who was to be appointed by the municipal council. Municipal councils still had to approve conversions within their boundaries (*ibid.*, s.5(3)(a)).

³¹ Toronto would follow with a conversion moratorium in 1974 (Stanbury and Todd 1990, 400, 408). On the regulation of conversions in US cities see John A. Casazza (1982, 14-21). See the attempt to describe the extent and account for the impact of condominium conversions across the US in van Weesep (1981).

³² In doing so, they follow Harvey and Chatterjee (1974).

³³ The Residential Premises Interim Rent Stabilization Act (1974, s. 2) limited rent increases to 8 percent per year. Later the same year, in the Landlord and Tenant Amendment Act (1974), the government repealed the interim act (s. 20) and rewrote that part of the Landlord and Tenant Act dealing with rental rates and increases (s. 10). The new s.27(2) of the Landlord Tenant Act included a 10.6 percent limit on annual rent increases.

³⁴ CVA, City of Vancouver, Council Minutes, Vol. 116, pp. 385-87, Standing Committee of Council on Housing Report to Council, 19 February 1974, and pp. 365-66, Council Meeting 26 February, 1974.

³⁵ The Project for Public Spaces identifies Granville Island as one of “60 of the World’s Great Places,” http://www.pps.org/info/gps/60places?referrer=gps_home (accessed August 11, 2010). Ley (1996, 7) describes Granville Island as “a quintessential public space in the postmodern city.”

³⁶ City of Vancouver Planning Department Information Sheet, “Total Population, City of Vancouver Local Areas, 1971-2006”,

<http://vancouver.ca/commsvcs/planning/census/2006/localareaspop.pdf> (accessed August 11, 2010).

³⁷ On the earlier influence of Hong Kong, including its architectural influence in Vancouver, see Boddy (2004, 16-18).

³⁸ And see Hutton (2004): “These new condominiums have been aggressively marketed in Asia, underscoring both globalization of residential property markets and Vancouver’s increasingly transnational quality” (1969).

³⁹ But see Roe (2009) on the changing nature of that community.

⁴⁰ Although the map suggests a similarly low population density in east and west Vancouver, densities are substantially higher in east Vancouver. See the maps displaying dwelling units per acre and population densities in Villagomez (2008 and 2010).

⁴¹ The fact that the categories of ownership are defined in terms of condominium is another marker of the importance of this structure of ownership.

⁴² On the 1981 and 1991 census results, see Lo (1996).

⁴³ In Metro Toronto, where condominium ownership is next most prevalent after Vancouver of major Canadian cities, condominium amounted to 10.5 percent of private households and nearly 21 percent of privately owned properties (Statistics Canada, 2006).

⁴⁴ See also the vigorous debate that ensued over Ley’s conclusion that there is little correlation between the size of the “rent gap” (the disparity between potential rent with redevelopment and actual rent) and gentrification (Smith 1987; Ley 1987).

⁴⁵ Brisbin and Hunter (2006) have sought to test whether the “policy entrepreneurship” of regional and municipal planners might have some effect on prevailing conceptions of property.

⁴⁶ See McKenzie (1994, 122-49) on the nature and effect of private government within community associations, including condominium.

⁴⁷ Beginning April 18, 1973, the province required municipal approval for condominium conversions (An Act to Amend the Strata Titles Act, S.B.C. 1973, c. 86, s. 1). In this table, the conversion numbers before 1980 were derived by matching the addresses of buildings that Vancouver City Council approved for conversion (recorded in the Council Minutes) with the addresses of registered strata plans. Beginning in 1979 those numbers are augmented with records from the City of Vancouver’s Housing Policy Centre. As a result, the table does not include any conversions that preceded the April 18, 1973 amendment. Hamilton (1978, 13) reported 30 conversions in the Metropolitan Vancouver Area (excluding Surrey) in the three years 1971-1973. In addition, the figures prior to 1980 do not include those non-condominium buildings that were demolished and rebuilt as condominium.