

# County Planning Director's Assoc. of Ohio Winter Conference December 11, 2017

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quest

CPDAO Treasurer's Report - Winter Conference  
County Planning Director's Association of Ohio

Beginning Balance, August 25, 2017 \$ 6,252.21

Deposits

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\$ -

Expenditures

Check #1007 Potbelly Sandwich Shop - Lunch Reimbursement \$ 163.85  
Summer Conference (August 25, 2017)

Check #1008 Jenny Snapp - Supply Reimbursement \$ 24.78  
Summer Conference (August 28, 2017)

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\$ 188.63

Ending Balance, December 11, 2017 \$ 6,063.58

Respectfully Submitted,

 12/11/2017

Jenny R. Snapp, Treasurer

①

~~②~~

12/11/2017 CPD to

① Introduction

② Rose Simmons - US Census - Ohio - Census 2020 Specialist

↳ history (1790)

pop. 39,298,214

required census - constitution.

census count in 10 years

2005 - Am. Community Survey

↳ "long form"

↳ use of data -

- Apportioning repres.

- Drawing districts

- distrib of fed \$ to states

- enforcing voting rights

- informing planning decis

- informing org decisions

↳ ACS 250,000 receive every month.

↳ <sup>2020</sup> census being conducted in a rapidly changing environment that requires flexibility in design + technology.

- challenges -

↳ goals - count everyone once + only once + in right place  
+ at lower cost.

↳ 4 key innovations

1. Reengineering address canvassing

2. Optimizing self-response

3. Utilize administrative records +

3<sup>rd</sup> party data

4. Reengineering field operations  
(less offices)

↳ need good address data -

U.S. postal service - Quarterly

geographic support service in local gov't

- ↳ LUCA - local updating of census addressing 3<sup>rd</sup> operation (now) more support
- ↳ BAS (Boundary + Annexation Survey) annual survey
- ↳ 2020 Census
  - 8 offices in Ohio
    - Cols, Clev, Zanesville, Cincinnati, Dayton, Toledo, Ashland,
  - ↳ complete count committee
  - ↳ how local gov't can help - see handout.
    - complete count committee
      - ↳ packet? - goes to highest elect. official.
      - ↳ Jan + Feb meetings =
      - ↳ utilize local knowledge + leaders - ex - Somali comm.
    - when organize - NOW
  - ↳ Questions.
  - ↳ webinars for LUCA

③ motion - David Radachy  
2<sup>nd</sup> - Loudan - Klem -

- contact NDC = brochure - flyer - graphics + brochures  
= OTA ↳ seek up to \$500 quote - logo  
motion - David Radachy  
2<sup>nd</sup> Trevor Hunt.  
pending CFO

③  
CPD/O.

④

Tom Johnson - Condo Law

↳ Brosius, Johnson, Briggs  
(see handout)

11,000,000 — units condo in U.S.

59,000 → FC condo units

Coming back <sup>but</sup> financing difficult.

tightened regs for secondary mortg.  
↳ Fannie Mae

2 parts — unit + common elements  
~~jointly~~ owned jointly

↳ no sep tax parcel  
ownership attached to unit

condo act — law of partition.

unit defined of space —

ev. else owned jointly.

condo act amended 2004

↳ comm. units redefined

condo declaration + drawings filed

planning issues — a dev. only has 7

years to expand condo to fullest extent

max 14 years start to finish (add'l

7 years of majority owners sign off)

limitations — must have direct access to street.

2004 amended — add'l property

dev. can reserve access over add'l prop

↳ address landlock parcels.

condo created in stages — Record + declare

↳ phased

unit vs common elements — limited common elements — parking

④ CPDAD  
~~CPA~~

Assoc. does not own property.

2 courses require deed for condo elements to Assoc.  
planning perspective - lot split?

dividing property

~ TII does not apply for condos =

~ substantial completion? min. under roof  
+ enclosed sufficiently -

~ convertible unit (high rise bldg)

unit ID - converted into multiple  
units at some point in the future

~ 2010 - Planned community act - change in  
Ohio law.

~ Questions

⑤ Roundtable -

- David Radachy - Law

- Jenny + Matt - Francis

- Jolika Shetty - Richland

- Ken LeBlanc - Greene

- Dave Gudden - MC

- Trevor Hunt - Wayne

- Loudan Klein - Fairfield

COUNTY PLANNING DIRECTORS ASSOCIATION OF OHIO  
CONDOMINIUM LAW AND PLANNING COMMISSIONS PRESENTATION

December 11, 2017

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## WHAT IS A CONDOMINIUM?

In today's real estate world, it is extremely difficult to simply drive through a community and identify property as a condominium without actually reviewing documents for the community. Today, there are true attached product condominium communities, there are platted lot-attached product communities, there are condominium communities that contain detached units that look like single-family homes and are maintained in a similar manner, there are single-family home communities that have condominium-like services provided, and there are office buildings, strip mall centers and high-rises containing commercial units and, in some instances, residential units, as well as condominiums containing "airspace" units without perimeter walls. In the end, however, if property has been subjected to the provisions of Chapter 5311 of the Ohio Revised Code (the "Condominium Act"), it is a condominium.

The importance of condominium communities for millions of Americans cannot be understated for they have provided a multitude of real property ownership opportunities not otherwise available. But what is a condominium? Despite the fact that many people talk and write about buying and selling "condominiums", in actuality, they are not buying a condominium but are buying a unit in a condominium. A condominium might be a duplex, a single-family home development, attached row, ranch or town homes, an apartment building or complex, an industrial park, a commercial office building, a water slip or even property without perimeter walls. It might be residential housing, a shopping center, a high-rise, or even individual space.

Essentially, a condominium is real property that has been lawfully divided into separate parcels of space, each having all of the essential legal attributes of any other separate parcel of real property, including being able to be separately owned, conveyed, taxed, mortgaged, liened, bequeathed and inherited. Condominiums are "creatures of statute" and may only be created and exist if there is a specific statutory authorization. In Ohio, the statutory authorization for condominiums is found in Chapter 5311 of the Ohio Revised Code (the "Condominium Act"). The Condominium Act was initially adopted in 1963, substantially amended in 1978, and most recently substantially amended in 2004. Ohio's Condominium Act permits the owner of property (or a lessee in the case of a 99-year lease, renewable forever) to convert space into separate parcels of real property called "Units." In effect, the act of creating a condominium in Ohio is the act of subdividing real property into separate parcels (although the Condominium Act specially provides that the provisions of Chapter 711 of the Ohio Revised Code governing subdivisions do not apply) and creating an association of the owners of those separate parcels.



## CONDOMINIUM CREATION

A condominium is created by the preparation and recording of a declaration of condominium with bylaws for the association attached, and a set of condominium "drawings", specifically subjecting a defined and/or described piece of real property to the provisions of the Condominium Act. The Condominium Act specifically sets forth the information that must be included in the declaration of condominium (O.R.C. §5311.05) and the requirements for the condominium "drawings" (O.R.C. §5311.07).

A condominium declaration must include, among other things:

- §5311.05 (B)
- (1) Legal description
  - (2) Name
  - (3) Purposes
  - (4) Building descriptions
  - (5) Unit designations and descriptions
  - (6) Common element descriptions, undivided interests
  - (7) Association membership
  - (8) Agent; service of process
  - (9) Outside organizations
  - (10) Amendments
  - (11) Discretionary provisions

§5311.05 (C) A declaration for an expandable condominium must also include:

- (1) Reservation of option to expand
- (2) Limitations on rights
- (3) Time limits
  - (a) Seven years (Unless extended, a developer has an initial period of seven years to expand the condominium to its fullest extent.)
  - (b) Extend for additional seven years with a vote of a majority of the owners other than declarant and exercised within six months of expiration of initial period.
  - (c) Termination of Option
- (4) Legal description
- (5) Options on expansions
  - (a) Whether mandatory

- (b) If not mandatory whether specific property shall be added
- (c) Limitations
- (6) Timing
- (7) Improvement limitations
- (8) Maximum number of units
- (9) Non-residential units
- (10) Compatibility
- (11) Improvement disclosure statement
  - (a) Mandatory improvements
  - (b) Limits on improvements
- (12) Unit disclosure statement
  - (a) Identical
  - (b) Type limits
- (13) L.C.E. reserved rights
- (14) Drawings
- (15) Successor developer rights

§5311.05 (D) A declaration for a leasehold condominium must also include:

- (1) Ground lease term and record
- (2) Lease expiration dates
- (3) Ownership portions
  - (a) Statement as to whether Unit Owners own improvements
  - (b) Ability to remove improvements after lease expiration
- (4) Redemption of reversion
- (5) Termination of lease rights

The drawings for a condominium must show the dimensions of each unit and common elements, as well as the location and dimensions of all easements and encroachments of record on the condominium property. Specifically, O.R.C. §5311.07 requires that the drawings show the boundaries, location, designation, length, width, and height of each unit; the boundaries, location, designation, and dimensions of the common elements and the limited common elements and exclusive use areas; and the location and dimensions of all appurtenant easements or encroachments. It is not necessary to show interior walls unless they are load-bearing and in the case of commercial units without perimeter walls, it is sufficient to show the monumental perimeter boundaries of the commercial unit. The Condominium Act further

requires that the drawings contain the certified statement of a registered professional surveyor and either a registered architect or registered professional engineer. The surveyor must certify that the drawing “accurately reflects the location of improvements and recorded easements” and the architect or engineer must certify that the drawing “accurately shows each building or water slip as built or constructed.” (O.R.C. §5311.07(B)).

Once the declaration, bylaws and drawings for the condominium are completed and executed in accordance with the provisions of the Condominium Act, the documents are first provided to the Auditor for the County in which the condominium is located who must certify that a copy of the declaration, bylaws and drawings were filed with the Auditor’s office, and then recorded with the Recorder of that County. Upon the recording of the documents, new parcels of real property called “units” are created.

## CONDOMINIUM COMPONENTS

Generally speaking, a condominium is comprised of two parts – units and common elements. The delineation of what constitutes a unit and the common elements is important to, among other things, establish ownership and maintenance responsibilities within the condominium. A unit in a condominium may be (1) a residential unit, (2) a water slip unit, or (3) a commercial unit. The answer to the question “what constitutes a unit?” may vary with respect to an individual condominium, however, units generally consist of a cubicle of space along with various other items as provided for in the Condominium Act or in the declaration of condominium.

A residential unit is a unit “devoted in whole or in part to use as a residential dwelling consisting of one or more rooms on one or more floors of a building”, but may include “exterior portions of the building, spaces in a carport, and parking spaces.” (O.R.C. §5311.01(BB)(1)). In a traditional residential condominium, a residential unit consists generally of the space in the building that is bounded by the undecorated interior surfaces of the perimeter walls, the unfinished surface of the floor at the lowest level, and the unfinished interior surface of the ceiling of the highest floor, all projected, if necessary by reason of structural divisions such as interior walls and partitions, to constitute complete enclosures of space, and all improvements within that space. The residential unit also typically includes items such as doors and windows in the perimeter walls as well as utility and other service lines serving the unit even though they may be located outside the bounds of the perimeter walls.

Today, there are many hybrid forms of residential units including one of the most popular, the detached single-family style dwelling consisting of the entire structure of the single-family dwelling. In such a unit, the owner is responsible for the maintenance, repair and insurance of items that are a part of the unit. For all of these reasons, the definition of the unit in the organizational documents is extremely important.

Commercial units, on the other hand, are designated for separate ownership or occupancy solely for commercial purposes, industrial purposes, or other nonresidential or non-water slip use. A literal reading of the statutory definitions of the various types of units reveals that while a “residential unit” must consist of one or more rooms in a building, a “commercial unit” unit need only consist of property “designated for separate ownership or occupancy” for commercial purposes. (O.R.C. §5311.01(BB)(3)). Furthermore, the language in O.R.C. §5311.07 provides that drawings for a commercial condominium unit “without perimeter walls” may show the perimeter monumental boundaries. Reading O.R.C. §5311.01(BB)(3) and O.R.C. §5311.07 together, a commercial unit may consist of airspace only.

Another type of unit, water slip unit, consists of “the land that is under the water in a water slip and the land that is under the piers or wharves that form the water slip, and that is used for the mooring of watercraft.” O.R.C. §5311.01(BB)(2).

All parts of a condominium other than those defined as being part of a unit are common elements. In the typical condominium community, the common elements generally include items such as the land, streets, amenity facilities, and the structural and exterior portions of the buildings in which the units are located and, unlike the common areas in a traditional single-family subdivision, the common elements are generally owned by all of the unit owners in the condominium as tenants-in-common rather than by the association entity. Thus, when an owner purchases a unit in a condominium, the owner owns the unit together with an undivided interest in the common elements, which cannot be separated from the unit. The undivided interest owned by a unit owner may be calculated on the basis of fair value, size, par value, or allocated equally; with the caveat that par values may only be used in an expandable condominium if the units added are “substantially identical” to units created in the initial stage or the unit types are described and a par value is assigned to each unit type. O.R.C. §5311.04(D)

## CONDOMINIUM ASSOCIATIONS

Because the common elements are collectively owned by all of the unit owners, the Condominium Act mandates that a unit owners' association be established and that each and every person who owns a unit in the condominium must be a mandatory member of the unit owners' association. Although not required by the Condominium Act, most condominium unit owners' associations in central Ohio are incorporated as non-profit corporations for a variety of reasons. Two of the primary purposes of the unit owners' association are to oversee the maintenance and repairs of the common elements and to regulate their use. In order to satisfy those purposes, the condominium association is a "mini-government" with powers to levy and collect assessments and to spend association funds in order to fulfill its functions. Pursuant to the provisions of O.R.C. §5311.081(B), a condominium association by and through its board of directors has the ability to, among other things:

- (a) hire and fire managing agents, attorneys, accountants, and other independent contractors and employees;
- (b) commence, defend, intervene in, settle, or compromise any civil, criminal, or administrative action or proceeding that is in the name of, or threatened against, the association, the board, or the condominium property, or that involves two or more unit owners and relates to matters affecting the condominium;
- (c) enter into contracts and incur liabilities relating to the operation of the condominium;
- (d) regulate the use, maintenance, repair, replacement, modification, and appearance of the common elements;
- (e) adopt rules that regulate the use or occupancy of units, the maintenance, repair, replacement, modification, and appearance of units, common elements, and limited common elements when the actions regulated by those rules affect common elements or other units;
- (f) cause additional improvements to be made a part of the common elements;
- (g) purchase, encumber and convey units, and acquire an interest in other real property and encumber or convey that interest;
- (h) acquire, encumber, and convey or otherwise transfer personal property;
- (i) hold in the name of the association the real property and personal property;
- (j) grant easements, leases, licenses, and concessions through or over the common elements;
- (k) impose and collect fees or other charges for the use, rental, or operation of the common elements or for services provided to unit owners;

- (l) impose interest and late charges for the late payment of assessments and impose returned check charges;
- (m) promulgate and impose reasonable enforcement assessments and reasonable charges for damage to the common elements or other property;
- (n) adopt and amend rules that regulate the collection of delinquent assessments and the application of payments of delinquent assessments;
- (o) impose reasonable charges for preparing, recording, or copying documents, issuance of resale certificates, or statements of unpaid assessments;
- (p) enter a unit for bona fide purposes when conditions exist that involve an imminent risk of damage or harm to common elements, another unit, or to the health or safety of the occupants of that unit or another unit;
- (q) borrow funds, as needed, and pledge such security and rights of the association as may be necessary or desirable to obtain any such loan including, without limitation, the pledge or assignment of the association's right to future income and the association's right to levy assessments upon the members;
- (r) suspend the voting privileges and use of recreational facilities of a unit owner or the occupants of a unit the owners of which are delinquent in the payment of assessments for more than 30 days;
- (s) purchase insurance and fidelity bonds;
- (t) invest excess funds in investments that meet standards for fiduciary investments under Ohio law;
- (u) exercise powers that are (1) conferred by the condominium documents or Ohio law; (2) permitted to be exercised in Ohio by a not-for-profit corporation; or (3) necessary and proper for the government and operation of the association.

As noted, the association has the ability and the obligation to repair and maintain the common elements. To fulfill its obligations, the board, on behalf of the association, has the statutory authority to adopt budgets and levy assessments. Generally, most budget decisions are made by the board and do not require the vote or the participation of the owners\members. O.R.C. §5311.081 mandates that, unless otherwise provided by the condominium's declaration or bylaws, the board shall adopt a budget for revenues, expenditures, and reserves.

In addition, O.R.C. §5311.081(A)(1) mandates, unless otherwise provided by the declaration, that the Board adopt a budget for reserves in an amount adequate to repair and replace major capital items in the normal course of operations without the necessity of special assessments, provided that the amount set aside annually for reserves shall not be less than 10 percent of the budget for that year unless the reserve requirement is waived annually by vote of unit owners exercising not less than a majority of the voting power of the unit owners.

A condominium association has a number of remedies available in the event that an owner fails to pay an assessment to the association. The Condominium Act, in O.R.C. §5311.18, provides that, unless otherwise provided in the declaration or bylaws, the association has a lien upon a unit for the failure to pay assessments or charges that remain unpaid for ten days after any portion became due and payable. The Condominium Act specifically provides that the association has the ability to lien for common expenses, interest, late fees, enforcement charges, and collection costs, including attorney's fees.

The association has the specific statutory right to foreclose upon the recorded lien. O.R.C. §5311.18 (B)(2) allows a receiver to be appointed in any foreclosure action where the association lien is involved and requires the receiver to pay the condominium assessments first from any rents collected. In addition, O.R.C. §5311.18 specifically provides that in a foreclosure action it is not a defense, set-off, counterclaim or cross claim, that the association failed to provide the unit owner with any service, goods, work or materials, or failed in any other duty.