TO: Chair and Members  
Economic Development and Planning Committee  

WARD AFFECTED: WARD 5

COMMITTEE DATE: April 20, 2010

SUBJECT/REPORT NO:  
Application for Approval of a Draft Plan of Condominium Conversion (CDM-CONV-09-05) for Lands Located at 2520 Barton Street East and 45 Barlake Avenue, Hamilton (PED10085) (Ward 5)

SUBMITTED BY:  
Tim McCabe  
General Manager  
Planning and Economic Development Department

PREPARED BY:  
Danielle Fama  
(905) 546-2424, Ext. 4148

RECOMMENDATION:

That approval be given to **Condominium Conversion Application CDM-CONV-09-05, by Pat and Dia Ltd., Owner**, to establish a Draft Plan of Condominium for two existing apartment buildings containing a total 293 dwelling units, and 2 commercial units, located at 2520 Barton Street East, and 45 Barlake Avenue (Hamilton), as shown on the attached map marked as Appendix “A” to Report PED10085, subject to the following conditions:

(a) That this approval apply to the plan prepared by Holstead & Redmond Limited, and certified by R.H. Kruys, O.L.S., dated November 4, 2009, showing a total of 293 residential apartment units, 2 commercial units, and 333 parking spaces, attached as Appendix “B” to Report PED10085.

(b) That the Final Plan of Condominium complies with all of the applicable provisions of the applicable Zoning By-law.

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(c) That the Owner satisfies all conditions, financial or otherwise, of the City of Hamilton.

(d) That the Owner shall submit a report in accordance with Section 9 (4) of The Condominium Act, 1998, prepared and certified by a qualified Registered Professional Engineer or Licensed Architect, to the satisfaction of the Chief Building Official of the City of Hamilton, to confirm the structural and mechanical integrity of the building and any Owner initiated measures required to correct any deficiencies prior to the release of the final plan for registration.

(e) That the Owner shall include the following warning clauses in all Purchase and Sale Agreements and any Rental or Lease Agreements required for occupancy:

“Purchasers/tenants are advised that sound levels, due to increasing road traffic, may occasionally interfere with some activities of the dwelling occupants as the sound levels may exceed the Municipality's and the Ministry of the Environment's noise criteria.”

“That the City of Hamilton will not be providing maintenance or snow removal service for the private condominium road”.

(f) That the Owner provides a centralized mail facility, at their expense, with a common lobby, common indoor, or sheltered space, to the satisfaction of the Manager of Building Engineering and Zoning and Canada Post.

(g) That the Owner provides the Manager of Design and Construction with evidence that satisfactory arrangements, financial and otherwise, have been made with a telecommunication service provider, approved by the Canadian Radio and Telecommunication Commission (CRTC), that adequate telecommunication service will be provided to the condominium, including 9-1-1 emergency calling service that identifies, at a minimum, the caller’s name and location information.

(h) That the Owner permanently closes the external access to the variety store located within the existing building, to the satisfaction of the Manager, Building Engineering and Zoning.

**EXECUTIVE SUMMARY**

The purpose of this application is to create a Draft Plan of Condominium for 293 existing rental apartment units and 2 commercial units located within the two existing buildings at 2520 Barton Street East and 45 Barlake Avenue. The condominium conversion will allow for the tenure of the units to change from rental to condominium ownership.
The proposed condominium conversion has merit and can be supported, with conditions, as the proposal is consistent with the Provincial Policy Statement, conforms to the “Urban Area” policies of the Hamilton-Wentworth Official Plan, and the “Residential” and “Housing” policies of the City of Hamilton Official Plan.

Alternatives for Consideration - See Page 13.

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: N/A.

Staffing: N/A.

Legal: The Planning Act does not require a notice of Public Meeting for an application for Condominium Conversion. However, formal notice was given to all existing tenants.

HISTORICAL BACKGROUND

Proposal

This application seeks approval of a Draft Plan of Condominium to allow a change in tenure of the existing 293 apartment units located within the two existing buildings at 2520 Barton Street East and 45 Barlake Avenue to condominium apartment units. The 293 units are comprised of 3 bachelor units, 75 one-bedroom units, 150 two-bedroom units, 62 three-bedroom units, and 3 four-bedroom units. In addition, two units (shown as Units 25 and 26 on the proposed draft plan) are being used for commercial purposes (i.e. a variety store to serve the residents).

The individual apartment units, including balconies and unit parking spaces (total of 333 spaces), as well as the two units containing the variety store, would form the exclusive use areas, while the remainder of the building (including hallways, laundry rooms, lobby, and storage rooms), and the remainder of the site (including landscaped areas, access areas, and amenity space), would form the common use areas (see Appendix “B”).

Committee of Adjustment Application HM/A-03:315

Approval was granted on February 11, 2004, to legalize the existing 293 dwelling units within the existing two buildings located on the property. The Committee of Adjustment decision, which was final and binding on March 3, 2004, required that a minimum of 333 parking spaces be provided. The plans submitted indicate that there are 333 parking spaces being provided (see Appendix “B”).
Committee of Adjustment Application A-79:287

An application for Minor Variance was applied for in order to permit external access for the variety store. The application was denied, and the Committee’s decision was upheld by the Ontario Municipal Board with its decision dated May 23, 1979. It is noted that the City received a conviction against the Owner at the time of the violation from the Court of Ontario. The door was removed to comply with the court order, but based on a site visit and review of the submitted application, the door has been reinstated. Removal of the external access to the variety store is required to bring the building into conformity with the Zoning By-law.

Location: 2520 Barton Street East and 45 Barlake Avenue
Owner/Applicant: Pat and Dia Ltd.
Agent: Lerners LLP

Property Description:
- 2520 Barton Street East:
  - Lot Area: 0.8 ha
  - Lot Frontage: 90.1 metres
  - Lot Depth: 88.8 metres
- 45 Barlake Avenue:
  - Lot Area: 0.7 hectares
  - Lot Frontage: 81.6 metres
  - Lot Depth: 92.9 metres

EXISTING LAND USE AND ZONING:

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<th>Existing Zoning</th>
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<tr>
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<td>“E/S-43a” (Multiple Dwellings, Lodges, Clubs, etc.) District</td>
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Surrounding Land Uses

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<thead>
<tr>
<th>North</th>
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<tbody>
<tr>
<td>West</td>
<td>Commercial Plaza</td>
<td>“G-1/S-635” (Neighbourhood Shopping Centre, etc.) District</td>
</tr>
</tbody>
</table>

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POLICY IMPLICATIONS

Provincial Policy Statement

The application has been reviewed with respect to the Provincial Policy Statement (PPS). Staff notes that the subject application is consistent with the policies that focus growth in Settlement Areas, Policy 1.1.3.1.

However, Policy 1.7.1(e) outlines that long term economic prosperity will be supported by planning so that major facilities (such as transportation corridors) and sensitive land uses are appropriately designed, buffered, and separated from each other to prevent adverse effects from odour, noise and other contaminants, and minimize risk to public health and safety. As the subject lands are located adjacent to Barton Street East, and are within approximately 240 metres of Centennial Parkway North, staff has included a condition of approval (Condition (e)) that requires the Owner to include a noise warning clause in all Offers of Purchase and Sale or Lease Agreements.

Hamilton-Wentworth Official Plan

The subject property is designated “Urban Area” in the Hamilton-Wentworth Official Plan. Policy C-3.1 outlines that a wide range of urban uses, defined through Area Municipal Official Plans and based on full municipal services, will be concentrated in the Urban Areas. Urban Areas are intended to accommodate approximately 96% of new residential housing units in the Region to the year 2020.

As the nature of the application is for the conversion of the existing rental apartment units into a plan of condominium, the proposal conforms to the Hamilton-Wentworth Official Plan.

City of Hamilton Official Plan

The subject lands are designated “Residential” on Schedule “A”, Land Use Concept in the City of Hamilton Official Plan. The Official Plan also provides guidance in assessing the merits of proposed condominium conversions under Section C.7.11. These Official

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Plan policies are addressed in the Analysis/Rationale For Recommendation section of this report (see Page 10). The proposal satisfies the conversion policies of the Plan. As a result, the proposal conforms to the “Residential” designation of the Official Plan.

New Urban Hamilton Official Plan

The New Urban Official Plan for the City of Hamilton was adopted by Council on July 9, 2009. The Plan has been forwarded to the Province of Ontario for final approval, and is not yet in effect.

The plan contains several housing policies, which are intended to maintain a proper balance of primary rental and ownership housing stock. In this regard, Chapter B, Section 3.2.5.1 of the Plan, identifies policies that must be satisfied in order to recommend the conversion of rental stock to condominium ownership:

“3.2.5.1 To protect the adequate provision of a full range of housing, conversion to condominium of rental apartment or townhouse buildings or groups of buildings comprised of six or more units shall be permitted if any one of three general criteria are met, outlined as (a), (b) and (c) below:

(a) All of the following criteria are met:

(i) The rental vacancy rate by dwelling unit and structure type for the City and the respective local housing market zone, as identified on Schedule G - Local Housing Market Zones and based on CMHC data, has been at or above 2.0% for the preceding twenty-four months;

(ii) The proposed conversion shall not reduce the rental vacancy rate by dwelling unit and structure type to below 2.0% for the City and the respective local housing market zone;

(iii) The existing market rent levels for the units proposed to be converted are not significantly (approximately 10%) below the average market rent levels for the City and the respective local housing market zone for rental units of a similar dwelling unit and structure type and size; and,

(iv) For vacant rental units, the last market rent levels charged prior to vacancy for the units proposed to be converted were not significantly (approximately 10%) below the average market rent levels at the time for the City and respective local housing market zone for rental units of a similar dwelling unit and structure type and size; or,
(b) At least 75% of the current tenants support the conversion to condominium, as demonstrated to the satisfaction of the City; or,

(c) The subject building or group of buildings is a protected heritage property on the date of application."

The overall average rents for the two buildings are in the $744.00 - $749.00 range, and the CHMC reported average rents are in the $750.00 - $758.00 range for the Housing Zone and the City of Hamilton. As such, the overall average rents for the existing rental units are not significantly below the average rents reported by CHMC. It is noted that although 17 of the 293 residential units have rents significantly below the average market rent levels for the City and respective local housing market zone, 276 units (94.2% of the total units) have rents that are not significantly below the average market rent.

Tenants from 10 of the 293 apartment units attended an Information Meeting held on June 23, 2009. Comments from seven (7) tenants were provided. One tenant indicated they are in favour of the proposal, one is undecided, and five are opposed. It is noted that the building is not a protected heritage property.

Therefore, based on the information submitted with the application, staff is satisfied that the application would meet the intent of the New Urban Official Plan policies.

RELEVANT CONSULTATION

The following Departments and Agencies had no comments or objections to the proposed conversion:

- Infrastructure Planning and Source Water Protection, Public Works Department.
- Budgets and Finance Division, Corporate Services Department.
- Taxation Division, Corporate Services Department.
- Municipal Property Assessment Corporation.
- Hamilton Police Services.
- Hamilton Emergency Services.
- Horizon Utilities.
- French Catholic School Board.
- French Public School Board.
- Hamilton-Wentworth Separate School Board.
- Hamilton-Wentworth District School Board.
- Union Gas.
Bell Canada:

The following paragraphs are to be included as conditions of Draft Plan of Condominium approval:

1. The Developer is hereby advised that prior to commencing any work within the Plan, the Developer must confirm that sufficient wire-line communication / telecommunication infrastructure is currently available within the proposed development to provide communication / telecommunication service to the proposed development. In the event that such infrastructure is not available, the Developer is hereby advised that the Developer may be required to pay for the connection to and/or extension of the existing communication / telecommunication infrastructure. If the Developer elects not to pay for such connection to and/or extension of the existing communication / telecommunication infrastructure, the Developer shall be required to demonstrate to the municipality that sufficient alternative communication / telecommunication facilities are available within the proposed development to enable, at a minimum, the effective delivery of communication / telecommunication services for emergency management services (i.e. 911 Emergency Services).

2. The Owner shall agree in the Agreement, in words satisfactory to Bell Canada, to grant to Bell Canada any easements that may be required for telecommunication services. Easements that may be required are subject to final servicing decisions. In the event of any conflict with existing Bell Canada facilities or easements, the owner/developer shall be responsible for the relocation of such facilities or easements (Condition (i)).

3. Bell Canada requires one or more conduit or conduits of sufficient size from each unit to the room(s) in which the telecommunication facilities are situated, and one or more conduits from the room(s) in which the telecommunication facilities are located to the street line (Conditions (h) and (i)).

Staff has addressed Bell’s concerns (outlined above) through the inclusion of Condition (g) in the Recommendation section of this report.

Canada Post:

This condominium will receive mail service to centralized mail facilities provided through our Community Mailbox Program. The following condition is requested:

“Canada Post’s multi-unit policy, which requires that the owner/developer provide the centralized mail facility, at their own expense, will be in effect for buildings and complexes with a common lobby, common indoor, or sheltered space.”
Staff has addressed Canada Post's concerns through the inclusion of Condition (f) in the Recommendation section of the report.

**Community Services Department (Housing Division):**

The Official Plan sets policies to guide future growth and development of a community, which includes fostering a healthy rental housing market. A “healthy” or “balanced” rental market vacancy rate is generally considered to be between 2% to 3%. Section 7.11 of the former City of Hamilton Official Plan, and Section 3.2.5.1 a) of the City of Hamilton’s new Urban Official Plan, identifies three conditions that must be satisfied in order to recommend condominium conversion. The conditions are as follows:

1. The rental vacancy rate by dwelling/structure type for the City and the respective local housing market zone has been at or above 2.0% for the preceding twenty-four months;

2. The proposed conversion will not reduce the rental vacancy rate by dwelling/structure type to below 2.0% for the City and the respective local housing market zone; and,

3. The existing market rent levels for the units proposed to be converted are not significantly below the average market rent levels for the City and the respective local housing market zone for rental units of a similar dwelling/structure type.

The average vacancy rates for all unit types in the local housing market zone, and in the City of Hamilton in 2008 and 2009, were above 2%. The conversion of the subject rental units to condominium does not negatively impact vacancy rates such that rates would fall below 2% for any unit type in Zone 3 or in the City of Hamilton.

Based on rent rolls provided by the proponent, it appears that 17 of the 293 residential units have rents significantly below either the average market for Zone 3 or the average market rent for the City of Hamilton. However, given that 276 units (94.2% of the total units) have rents that are not significantly below the average market rent, the application, in general, is in compliance with this criterion.

The application does not provide an estimated selling price. Therefore, staff is unable to comment on the comparative affordability of the proposed condominium units and whether the units could be considered affordable homeownership housing.

**Public Consultation**

The tenants in the building were provided with an information package at a meeting held by the consultants on June 23, 2009 (see Appendix “C”). Details of the proposal and the tenants’ rights under the Residential Tenancies Act were provided. Several
comments were made as a result of this meeting, and the concerns are discussed in the Analysis/Rationale For Recommendation section of this report. In addition, Notice of the Public Meeting was circulated to all current occupants.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

1. The proposal has merit and can be supported for the following reasons:

   (i) It is consistent with the Provincial Policy Statement;

   (ii) It conforms to the Hamilton-Wentworth Official Plan and the City of Hamilton Official Plan; and,

   (iii) The proposal complies with City of Hamilton Zoning By-law No. 6,593.

2. The housing policies found in the City of Hamilton Official Plan are intended to guide future growth and development, which includes the protection of a full range of housing, including rental housing, throughout the City. In this regard, Section C.7.11 of the City of Hamilton’s Official Plan identifies the following three conditions that must be satisfied in order to recommend the conversion of rental stock to condominium ownership:

   “(i) The rental vacancy rate by dwelling/structure type for the City and the respective local housing market zone has been at or above 2.0% for the preceding twenty-four months;

   (ii) The proposed conversion will not reduce the rental vacancy rate by dwelling/structure type to below 2.0% for the City and the respective local housing market zone; and,

   (iii) The existing market rent levels for the units proposed to be converted are not significantly below the average market rent levels for the City and the respective local housing market zone for rental units of a similar dwelling/structure type.

   ”

The Canada Mortgage and Housing Corporation (CMHC) provides annual statistical information on the national, provincial, and local housing markets. In order to evaluate the proposal against the above noted Official Plan policies, the City uses local housing market data that is specifically-ordered from CMHC (see Tables 1 and 2).
Table 1: Vacancy Rate and Average Market Rent by Unit Type in Zone 3 – Hamilton East

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<tbody>
<tr>
<td>Bachelor</td>
<td>*</td>
<td>$527</td>
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<tr>
<td>One-Bedroom</td>
<td>4.6%</td>
<td>$662</td>
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<tr>
<td>Two-Bedroom</td>
<td>5.7%</td>
<td>$722</td>
<td>3.9%</td>
<td>$761</td>
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<tr>
<td>Three Plus - Bedroom</td>
<td>2.6%</td>
<td>$855</td>
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*Data suppressed or not statistically reliable
Source: CMHC (2009)

Table 2 shows the vacancy rate and average market rent for the City of Hamilton for privately initiated bachelor, one-bedroom, two-bedroom, and three plus-bedroom apartment units.

Table 2: Vacancy Rate and Average Market Rents by Unit Type in the City of Hamilton

<table>
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<tbody>
<tr>
<td>Bachelor</td>
<td>7.0%</td>
<td>$509</td>
<td>5.0%</td>
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<tr>
<td>One-Bedroom</td>
<td>3.8%</td>
<td>$644</td>
<td>3.5%</td>
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</tr>
<tr>
<td>Two-Bedroom</td>
<td>4.7%</td>
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<td>Three Plus - Bedroom</td>
<td>3.9%</td>
<td>$874</td>
<td>2.7%</td>
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</table>

Source: CMHC (2009)

The subject property is located in Hamilton East - Zone 3. As outlined in the tables above, the vacancy rate for the City of Hamilton, and for all unit types, has been above 2% for the proceeding 24 months. The conversion of the subject lands from rental units to condominium units does not negatively impact vacancy rates such that current rates would fall below 2% for any unit type in Zone 3 or in the City of Hamilton.

Based on rent rolls provided, 17 of the 293 residential units have rents significantly below either the average market rent for Zone 3 or the average market rent for the City of Hamilton. However, 276 units, or 94.2% of the total units, have rents that are not significantly below the average market rent.
3. The applicant received a Minor Variance to legalize the existing 293 dwelling units. The Committee of Adjustment decision, which was final and binding on March 2, 2004, required 333 parking spaces to be provided. The Draft Plan of Condominium is in compliance with the Committee of Adjustment decision.

The applicant also applied for a Minor Variance in order to permit an external access for the variety store located on the first floor of the southerly apartment building. The application was denied, and the Committee’s decision was upheld by the Ontario Municipal Board with its decision dated May 23, 1979. It is noted that the City received a conviction against the Owner at the time of the violation from the Court of Ontario. The door was removed to comply with the court order, but has since been reinstated. As a condition of Draft Approval (Condition (h)), the Owner will be required to permanently remove the external access to the variety store.

4. As a result of the meeting held on June 23, 2009, to inform the tenants of the proposal to change the tenure of the apartments from rental to condominium, several comments were made. Three of the tenants that attended the meeting raised concerns regarding the inadequate maintenance and management of the buildings. Although not regulated under the Planning Act, it is noted that the tenants are currently protected under the Residential Tenancies Act. If the conversion is permitted, a Condominium Corporation will be established and will be responsible for the maintenance of the building, as well as the outdoor amenity and parking areas.

Also raised as a concern, was the effect the change in tenure would have on the current tenants. The conversion, if permitted, would not impact on the security of tenure of existing tenants of the rental units. Typically, under the Residential Tenancies Act, where a building containing rental units is converted to condominium, current tenants cannot be evicted on the basis that the new condominium Owner requires personal use of the units for themselves, or any member of their immediate family. However, after the first standing tenant vacates the unit, any future tenant would not be entitled to the security of tenure provisions, and could be evicted on the basis of personal use. The result is that over time as tenant turnover occurs, there would be a reduction in security of tenure rights.

5. In accordance with Section 9(4) of the Condominium Act, when an application is made to convert a residential building from rental to condominium tenure, the municipality shall require the owner/applicant to retain a qualified professional to inspect the property and report to the municipality all matters that it considers may be of concern. In order to ensure the quality and safety of future residents, it is essential that the City receives an engineering report, that is signed by a professional engineer or architect, which will address all requirements that are
set out within the present Building Code. As a condition of approval (Condition (d)), staff has recommended that the Owner submit a report to confirm the structural and mechanical integrity of the building, and implement any measures required to correct any deficiencies.

**ALTERNATIVES FOR CONSIDERATION:**

Should the proposed condominium conversion not be approved, the existing units will remain as rental tenure.

**CORPORATE STRATEGIC PLAN**


**Social Development**
- Everyone has a home they can afford that is well maintained and safe.

**Healthy Community**
- Plan and manage the built environment.

**APPENDICES / SCHEDULES**

Appendix “A”: Location Map
Appendix “B”: Draft Plan of Condominium
Appendix “C”: Tenant Information and Meeting Sign In Sheet

:DF
Attachs. (3)
June 10, 2009

Dear Tenant:

RE: 2520 Barton Street East, City of Hamilton

You are invited to attend a Tenant's Information Meeting. This meeting will be held from 1:30 p.m. to 3:00 p.m. with a presentation at 1:45 p.m. on Tuesday, June 23, 2009 at the Pinetree Restaurant, 397 Centennial Parkway North, Hamilton.

Lerners LLP has been retained by the owner of your building, Pat & Dia Ltd., to assist with an application to change the current rental ownership of the apartment buildings at 45 Barlake Avenue and 2520 Barton Street East to condominiums.

What is a Condominium?

- Condominium is a legal term for a form of home ownership.
- Condominium means that the homeowner owns the individual residential unit, plus a proportionate share of the common areas.
- Condominiums are managed by a Board of Directors which are elected from within the homeowners. Typically, the Board of Directors retains the services of a management company that will make the day-to-day operational decisions.
- Pat & Dia Ltd. will continue to own all the units of your building and therefore will continue to be responsible for the maintenance of all units.
- Condominium ownership is premised on the payment of a monthly Maintenance Fee. This fee will be used to pay for the upkeep, maintenance and repairs of all the common elements including: parking and landscaped areas, snow removal, etc.
- Items included in the Maintenance Fee can differ from one condominium project to another, i.e. certain utilities may be charged to individual units in one building and metered to the condominium corporation in another.
- Pat & Dia Ltd. will be responsible for payment of the Maintenance Fee for the rental units as it will continue to own all the units.
What Does This Mean To You As A Tenant?

- Approval of this application for a Draft Plan of Condominium will **NOT** change your rights as a tenant.
- You may remain as a tenant as long as you want, continue to pay rent and enjoy the facilities.
- Pat & Dia Ltd. will still own your rental unit.
- Pat & Dia Ltd. will continue to maintain your unit, the building and the property.
- The *Residential Tenancies Act*, 2006 will continue to apply to you. If you are a tenant at the time of conversion, you can remain a tenant for as long as you like. Your unit cannot be sold unless you move.

What Is The Approval Process?

- A Draft Plan of Condominium application will be submitted in the next few weeks by Lerners LLP on behalf of Pat & Dia Ltd. for the conversion of these units.
- The City of Hamilton will review the application along with the comments from the Tenants Information Meeting and will prepare a Staff Report.
- The Staff Report will then be presented to the public at a future Planning and Economic Development Committee Meeting. The City will be mailing out a notice to all residents of 45 Barlake Avenue and 2520 Barton Street East inviting tenants to attend this public meeting.
- If approval of the application/report is granted, the report will be presented to Council the following week for final approval.

We look forward to seeing you at the Tenant's Meeting on June 23, 2009. Please note that any questions or issues regarding the Draft Plan of Condominium Process will be answered at this meeting. If you are unable to attend, do not hesitate to contact me at 1.800.263.5583.

Yours truly,

Lerners LLP

Brad D. Bain

BDB/pk

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<td>Bish Verma Jamshed</td>
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