SUBJECT: Application for Approval of a Draft Plan of Condominium (Common Elements Condominium) for the Property Located at 7 Sirente Drive (Hamilton) (PED08175) (Ward 7)

RECOMMENDATION:

(a) That approval be given to Condominium Application 25CDM200806, by Empire Communities, owner, to establish a draft plan of condominium (Common Elements Condominium) to create a condominium road, visitor parking areas, landscaped areas, sidewalks, and an emergency access road for sixty-four dwelling units (40 street townhouses and 24 maisonettes) for the property located at 7 Sirente Drive (Hamilton), as shown on the attached map marked as Appendix “A” to Report PED08175, subject to the following conditions:

(i) That this approval applies to the plan prepared by Bryan Jacobs, dated April 23, 2008, showing the following condominium elements: a road, 21 visitor parking spaces, landscaped areas, sidewalks, and an emergency access road, attached as Appendix “B” to Report PED08175.

(ii) That the Final Plan of Condominium complies with all applicable provisions of Zoning By-law No. 6593.

(iii) That the Owner shall enter into a Development Agreement to ensure that each of the proposed sixty-four street townhouse dwellings have tied parcels to the plan of condominium and to address any other requirements of the City of Hamilton, to the satisfaction of the City Solicitor.

(iv) That the Owner shall receive final approval of Part Lot Control Application PLC-08-012, including the enactment and registration on title of the Part Lot Control By-law.
SUBJECT: Application for Approval of a Draft Plan of Condominium (Common Elements Condominium) for the Property Located at 7 Sirente Drive (Hamilton) (PED08175) (Ward 7) - Page 2 of 8

(v) That the Owner shall include the following warning clause in the Development Agreement, Condominium Agreement, and all Offers of Purchase and Sale Agreements:

Applicable to all units/lots:

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

Noise Warning Clause Type A (applicable to units/lots 13 to 27):

"Purchasers/tenants are advised that, despite the inclusion of noise control features in the development and within building units, sound levels due to increasing road traffic may occasionally interfere with some activities of the dwelling occupants as the sound levels exceed the Municipality's and the Ministry of the Environment's noise criteria."

Noise Warning Clause Type B (applicable to units/lots 5 to 64):

"This dwelling unit has been fitted with a forced air heating system and the ducting, etc., was sized to accommodate central air conditioning. Installation of central air conditioning by the occupant will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound levels are within the Municipality's and the Ministry of the Environment's noise criteria. (Note: the location and installation device should be done so as to comply with the noise criteria of MOE Publication NPC-216, Residential Air Conditioning Devices, and thus minimize the noise impacts both on and in the immediate vicinity of the subject property.)"

(vi) That all conditions of approval of Site Plan Control Application DA-08-028 have been satisfied, to the satisfaction of the Director of Planning, Planning and Economic Development Department.

(vii) That the final plan of condominium complies, in all respects, with the approved Site Plan (DA-08-028), to the satisfaction of the Director of Planning, Planning and Economic Development Department.

(viii) That the Owner shall satisfy any conditions, financial or otherwise, of the City of Hamilton.

(ix) That the Owner covenants and agrees to provide the Manager of Engineering 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) to provide adequate telecommunication service to the lands within the approved Draft Plan,
EXECUTIVE SUMMARY:

The purpose of the application is to establish a draft plan of condominium (Common Elements Condominium). The proposed draft plan of condominium has merit and can be supported as it implements the approved site plan (DA-08-028), plan of subdivision (62M-1098), and it conforms to the Hamilton Official Plan and Zoning By-law No. 6593.

BACKGROUND:

The application is to establish a draft plan of condominium (Common Elements Condominium) to create the following condominium elements: a private road, 21 visitor parking spaces, landscaped areas, sidewalks, and an emergency access road for sixty-four dwelling units (40 street townhouses and 24 maisonettes), as shown on the attached plan marked as Appendix “B”. The condominium road would be accessed from Sirente Drive, with an emergency access driveway provided to Newport Crescent. The sixty-four lots and the common elements would be created through Part Lot Control Application PLC-08-012.

Part Lot Control Application PLC-08-012

The applicants have applied concurrently for the removal of Part Lot Control and to establish a draft plan of condominium (Common Elements Condominium). The Part Lot Control Application has not yet been approved, but upon approval and passing of the implementing By-law to remove the subject lands from Part Lot Control, the following parts on the draft reference plan would be created (see Appendix “C”):

- Sixty-four lots for dwelling units (40 street townhouses and 24 maisonettes) (Parts 1 through 64); and,

- 2 Parts (Parts 65 and 66) for a private (condominium) road, visitor parking spaces, landscaped areas, sidewalks, and an emergency access road.
Minor Variance Application HM/A-08:128

Minor Variance Application HM/A-08:128 was approved by the Committee of Adjustment in May 2008 (see Appendix “D”). The application was to permit a number of modifications to setbacks (front yard, rear yard depth from The Linc, and distance between end walls), balcony encroachments, and building height, and also permitted a common element condominium road to be considered a street. The application also established the exterior lot lines as the lot lines for zoning standards in order to facilitate the development in a freehold form of ownership.

Site Plan Application DA-08-028

Site Plan Application DA-08-028 was approved, with conditions, on April 14, 2008 (see Appendix “E” for a copy of the approved site plan). The site plan was approved conditionally upon satisfaction of engineering plans, landscape plans, site lighting plans, a noise study, minor variance, etc. The site plan was to permit the development of the property for sixty-four dwelling units (40 street townhouses and 24 maisonettes). As of this date, the applicant has satisfied most of the conditions of approval. Receiving final approval of all of the conditions of approval of DA-08-028 would, therefore, be a condition of draft plan approval for 25CDM-200806.

Subdivision Application 25T-89032 “Rose Gardens”

Draft Plan of Subdivision 25T-89032, “Rose Gardens”, was draft plan approved in May 1990. Phase 3 of the subdivision, which includes the subject lands as Block 107, was registered on October 31, 2007 as Plan 62M-1098.

Zoning Application ZA-89-132

Zoning Application ZA-89-132 was approved in June 1990 as By-law No. 90-183. The application rezoned the subject lands from the “AA” (Agricultural) District to the “RT-20/S-1172” (Townhouse - Maisonette) District. The proposed use of the property for townhouses conforms to this zoning in conjunction with approved Minor Variance Application HM/A-08:128.

Details of Submitted Application

Location: 7 Sirente Drive (Hamilton)
Owner: Empire Communities
Applicant: Armstrong Hunter and Associates
Lot Size: Area: 0.58 hectares (area of proposed condominium only)
Width: 6.0 - 7.0 metres (width of condominium road) plus 1.5 metres for a sidewalk in certain areas
Subject: Application for Approval of a Draft Plan of Condominium (Common Elements Condominium) for the Property Located at 7 Sirente Drive (Hamilton) (PED08175) (Ward 7) - Page 5 of 8

Servicing: Subject lands are serviced from Sirente Drive and Newport Crescent, but each individual unit/lot is to be serviced internally through private services.

LAND USE AND ZONING

<table>
<thead>
<tr>
<th>Subject Lands</th>
<th>Existing Land Use</th>
<th>Existing Zoning</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Future Street Townhouses and Maisonettes)</td>
<td>“RT-20/S-1172” (Townhouse - Maisonette) District</td>
<td></td>
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</tbody>
</table>

Surrounding Land Uses

- **North**: Lincoln Alexander Parkway, Agricultural “AA” District
- **East**: Street Townhouses and Single Detached Dwellings, “RT-30” (Street – Townhouse) District and “C” (Urban Protected Residential, Etc.) District
- **South**: Vacant (Future Multiple Dwellings), “DE-3/S-1551a” (Multiple Dwellings) District
- **West**: Townhouses, “E-2/S-1221” (Multiple Dwellings) District

ANALYSIS/RATIONALE:

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.
   (iii) It conforms to the “Residential” designation of the Hamilton Official Plan.
   (iv) It conforms to the “Attached Housing” designation in the approved Crerar Neighbourhood Plan, upon finalization of the redesignation of the portion of the property designated “Utilities” to “Attached Housing”.
   (v) It implements the approval of Site Plan Control Application DA-08-028 and Minor Variance Application HM/A-08:128.
   (vi) The proposed development is compatible with existing and planned development in the immediate area.
2. The proposed draft plan of condominium (Common Elements Condominium) would be comprised of the following condominium elements: a road, 21 visitor parking spaces, landscaped areas, a walkway, and an emergency access road. The condominium driveway ranges in width from 6.0 metres to 7.0 metres and would provide vehicular access to the sixty-four dwelling units (40 street townhouses and 24 maisonettes). The driveway would be accessed from Sirente Drive with an emergency access only to Newport Crescent. Landscaped areas will provide aesthetics and be maintained by the Condominium Corporation. Exterior fencing, including an acoustical fence, decorative fence, and entrance feature, are also included in the common element.

3. The land proposed for the common elements condominium and the sixty-four dwelling units (40 street townhouses and 24 maisonettes) will be created through the removal of Part Lot Control. In this regard, final approval and registration of the Common Elements Condominium cannot occur until such time as Part Lot Control Application PLC-08-012 is approved and the By-law removing the lands from Part Lot Control has been passed.

4. The applicant must also enter into a Development Agreement with the City of Hamilton as a condition of draft plan approval. This Agreement would ensure that the tenure of all the subject residential parcels become “tied” to the proposed draft plan of condominium (Common Elements Condominium). This will have the effect of ensuring that individual townhouse lots are not sold until the condominium has been registered as a Common Elements Condominium under the Condominium Act.

5. The City of Hamilton will provide municipal waste removal as the site has been designed to meet municipal standards for curb side pickup of garbage, recycling, and green bins. However, the condominium road will be privately owned and maintained. Therefore, as a condition of approval, the applicant must include a warning clause in the Development Agreement, Condominium Agreement and the Purchase and Sale Agreements, to advise perspective purchasers of the following:

“Purchasers are advised that the City of Hamilton will not be providing any maintenance or snow removal service for the private condominium road.”

6. As a condition of approval of Site Plan Control Application DA-08-028, a noise study was required. This study has been received and approved. One of the recommendations of the study was the requirement for certain warning clauses to be included in agreements of purchase and sale, and within the Development Agreement and Condominium Agreement. This requirement is included as a condition of approval of Condominium Application 25CDM-200806.
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**ALTERNATIVES FOR CONSIDERATION:**

In the event Council does not approve the proposed draft plan of condominium (Common Elements Condominium) application, the project could only proceed as a standard form condominium development upon revision to the application or as a rental tenure development.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

<table>
<thead>
<tr>
<th>Category</th>
<th>Implication</th>
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<tbody>
<tr>
<td>Financial</td>
<td>N/A</td>
</tr>
<tr>
<td>Staffing</td>
<td>N/A</td>
</tr>
<tr>
<td>Legal</td>
<td>As required under the Planning Act, Council shall hold at least (1) Public Meeting to consider an application for a draft plan of condominium (Common Elements Condominium).</td>
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</tbody>
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**POLICIES AFFECTING PROPOSAL:**

**Provincial Policy Statement**

The application is consistent with respect to the Provincial Policy Statement, in that the application focuses growth in settlement areas.

**Hamilton-Wentworth Official Plan**

The subject property is designated “Urban Area” in the Hamilton-Wentworth Official Plan and the proposal conforms to the Hamilton-Wentworth Official Plan.

**City of Hamilton Official Plan**

The subject property is designated “Residential” on Schedule ‘A’ - Land Use Concept of the City of Hamilton Official Plan. The proposed townhouses and condominium road maintain the general intent of the City of Hamilton Official Plan in that the “Residential” designation permits various types of dwellings with preference given to the locating of similar densities together, as per Policy A.2.1.1. In this regard, the subject lands abut street townhouses to the east, block townhouses on the west side of Upper Wellington, and future apartments on the south side of Sirente Drive and, therefore, the proposal would conform with and implement the City of Hamilton Official Plan.

**Approved Crerar Neighbourhood Plan**

The subject lands are designated “Attached Housing” and “Utilities” in the approved Crerar Neighbourhood Plan. The proposed Common Element Condominium, to facilitate a conditionally approved townhouse development, would conform with and implement the “Attached Housing” designation. Through the review of Site Plan Control Application DA-08-028, no servicing easement was identified as existing or required and
approval of the site servicing plan has been granted. Therefore, the Crerar Neighbourhood Plan should be amended to redesignate the portion of the subject property designated as “Utilities” to “Attached Housing”.

**RELEVANT CONSULTATION:**

Bell Canada has requested a standard condition pertaining to the availability of communication/telecommunication infrastructure.

**PUBLIC CONSULTATION:**

Ontario Regulation 544/06, which implements changes respecting Plans of Subdivision within Bill 51, introduced Public Notice and meeting requirements for Vacant Land and Common Element Condominiums. Therefore, consistent with the Public Participation Policy that was approved by Council, 280 pre-circulation notices were mailed to all property owners and tenants within 120 metres of the subject property, requesting comments. To date, no comments have been received from any members of the public in response to the Draft Plan of Condominium circulation.

Further, a Public Notice sign was posted on the property in June 2008. Notice of the Public Meeting of the Economic Development and Planning Committee will be given in accordance with the provisions of the Planning Act.

**CITY STRATEGIC COMMITMENT:**

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

- **Community Well-Being is enhanced.** ☐ Yes  ☐ No
  The public are involved in the definition and development of local solutions.

- **Environmental Well-Being is enhanced.** ☐ Yes  ☐ No
  Human health and safety are protected.

- **Economic Well-Being is enhanced.** ☐ Yes  ☐ No
  Infrastructure and compact, mixed use development minimize land consumption and servicing costs.

**Does the option you are recommending create value across all three bottom lines?**

- ☐ Yes  ☐ No

**Do the options you are recommending make Hamilton a City of choice for high performance public servants?**

- ☐ Yes  ☐ No

:GM

Attachs. (5)
COMMITTEE OF ADJUSTMENT

DECISION OF THE COMMITTEE

APPLICATION NO. HM/A-08:128
SUBMISSION NO. A-128/08

IN THE MATTER OF The Planning Act, 1960 and of the Zoning By-Law No. 6593, of the City of Hamilton, Sections 2, 5, 10E, 18 and 19B Schedule S-1172.

AND IN THE MATTER OF the Premises known as Municipal number 7 Sirente Drive, in the City of Hamilton and in an "RT-20/S-1172" (Townhouse-Maisonette) district;

AND IN THE MATTER OF AN APPLICATION by the agent Armstrong Hunter and Associates on behalf of the owner Empire Communities, for relief from the provisions of the Zoning By-Law No. 6593, under Section 45 of The Planning Act, R.S.O. 1990, c. P. 13, so as to permit the erection of a sixty-four (64) unit mixed use development consisting of townhouses and maisonette dwellings notwithstanding that:

1. A front yard depth of 4.3m shall be provided instead of the minimum front yard depth of 6.0m;

2. A rear yard depth to the mountain freeway right-of-way (LINC) of 18.0m shall be provided instead of the minimum required rear yard depth to the mountain freeway right-of-way (LINC) of 22.85m;

3. A distance separation of 3.0m between two end walls containing no windows located on the same lot shall be provided instead of the minimum required separation of 3.5m;

4. Balconies and unenclosed porches projecting 1.5m into a required yard shall be provided instead of the maximum permitted projection of 1.0m into a required yard;

5. A building height of 13.5m (three storeys) shall be provided instead of the maximum permitted building height of 11m (three storeys);

6. A private common element condominium road will be considered a street for the purposes of lot frontage whereas the By-law requires frontage on a public highway (street);

7. Street townhouses fronting onto a private condominium road shall be considered a block townhouse development for the purposes of Section 10E and 19B of the Hamilton Zoning By-law; and,

8. For the purpose of the regulations contained in Section 10E of the Hamilton Zoning By-law, the boundary of Block 107 according to registered Plan 02M-1098 shall be deemed to be the lot lines for this purpose and the regulations of the RT-20/S-1172 (Townhouse – Maisonette) District Section 10E including but not limited to lot area, lot frontage, lot depth, lot coverage, parking and building setbacks, shall be from the boundaries of Block 107 according to Registered Plan 02M-1098 and not the individual property boundaries of the freehold dwellings (Townhouse & Maisonette).

Note: This development has been approved under the site plan process (DA-08-028) and must conform to this approval. Variances regarding setbacks between buildings is only to the Zoning By-law and does not relieve the applicant from adhering to the requirements of the Ontario Building Code.
THE DECISION OF THE COMMITTEE IS:

That the said application IS GRANTED for the following reasons:

1. The Committee having regard to the evidence is of the opinion that the relief granted is of a minor nature.

2. The relief granted is desirable for the appropriate development of the land and building and is not inconsistent with the general intent and purpose of the By-law and the Official Plan as referred to in Section 45 of The Planning Act, 1990.

3. The Committee having regard to the evidence is satisfied that there will be no adverse impact on any of the neighbouring lands.

DATED AT HAMILTON this 29th day of May, 2008

M. Dudzic (Chairman)

D. Smith

D. Drury

D. Serwatuk

V. Abraham

C. Lewis

L. Tew

L. Gaddye

M. Switzer

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS June 18th, 2008.

NOTE: This decision is not final and binding unless otherwise noted.