CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO: Chair and Members
   Economic Development and Planning Committee

WARD(S) AFFECTED: WARD 2

COMMITTEE DATE: August 9, 2010

SUBJECT/REPORT NO:
Hamilton Community Heritage Fund Loan Program Application (HCHF2009-002) for 35 - 43 Duke Street (Hamilton) (Sandyford Place) (PED10174) (Ward 2)

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

PREPARED BY:
Meghan House
(905) 546-2424, Ext. 1202

SIGNATURE:

RECOMMENDATION

That approval be given to Hamilton Community Heritage Fund Loan Program Application (HCHF2009-002), for property located at 35 - 43 Duke Street (Hamilton), as shown on Appendix “A” to Report PED10174, subject to the following:

(a) That a loan commitment of up to $100,000.00 be approved, in accordance with the terms and conditions of the Hamilton Community Heritage Fund Loan Program, for painting and caulking of wood elements, repointing and repair to chimneys, and the repair and reconstruction of four sets of stone stairs.

(b) That the applicant and the City shall enter into a Heritage Conservation Easement Agreement.

(c) That the Mayor and Clerk be authorized and directed to execute the loan agreement and security documentation with respect to (a), in a form satisfactory to the City Solicitor.

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(d) That the General Manager of the Planning and Economic Development Department be authorized to amend the loan agreement provided that the terms and conditions of the Hamilton Community Heritage Fund Loan Program are maintained.

(e) That the applicant shall obtain an approved Heritage Permit prior to the commencement of any of the proposed improvements.

(f) That all work shall be completed, in accordance with the requirements of the Ontario Heritage Trust, as easement holders on the property.

(g) That Report PED10174 be forwarded to the Hamilton Municipal Heritage Committee for information.

**EXECUTIVE SUMMARY**

The Hamilton Community Heritage Fund (HCHF) was established by the former City of Hamilton during the mid-1980’s. In 2001, Council authorized that this fund be made available to all eligible heritage property owners within the newly amalgamated municipality. The original maximum loan amount was set at $20,000, but an increase to the maximum loan amount to $50,000 was authorized by Council in 2005 (Report PED05091). The loan is only available to properties designated under the Ontario Heritage Act.

The owner of the subject property, located at 35 - 43 Duke Street (Hamilton) (see location map attached as Appendix “A”), designated under Part IV of the Ontario Heritage Act, applied for a $85,000 loan under the program in order to paint and caulk wood elements, repoint and repair chimneys, and repair and reconstruct four sets of stone stairs. The applicant originally applied for the loan in spring 2009, in co-ordination with an application for funding under the Parks Canada National Historic Sites of Canada Cost-sharing Program. The property was not granted Federal funding, and the subject loan application was put on hold. Several of the quotes for the loan application have not been amended to account for cost increases and the introduction of the HST. If all the proposed work is completed, the total amount would be approximately $90,000, plus HST. Accordingly, a loan amount of up to $100,000 is being recommended.

*Alternatives for Consideration* - See Page 9.

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS** (for Recommendation(s) only)

**Financial:** Funding is provided under the terms of the Hamilton Community Heritage Fund Loan Program, as approved by City Council on September 14, 2005. The loan monies are to be advanced from the City of Hamilton’s line-of-credit, with the foregone interest being charged to Account Number
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52901-812040. Any costs incurred for the HCHF Loan program are to be funded from the HCHF Reserve 102049.

Staffing: Administration of this loan can be accommodated within the Community Planning and Design Section (Heritage and Urban Design) of the Planning and Economic Development Department, as well as within the Corporate Services Department.

Legal: Review of all documentation associated with the loan will be appropriately undertaken by the City Solicitor to protect the City’s interests. In certain cases, as projects move forward, it is sometimes necessary to make minor amendments to previously approved loan commitments and agreements. Therefore, staff is recommending that the General Manager of Planning and Economic Development be authorized (with the input from the General Manager of Finance and Corporate Services and the City Solicitor) to amend loan commitments/agreements without further Council approvals, provided that the terms and conditions of the Hamilton Community Heritage Fund Loan Program are maintained.

Under Section 33 of the Ontario Heritage Act, a Heritage Permit will be required prior to commencement of any of the proposed improvements.

**HISTORICAL BACKGROUND** (Chronology of events)

The former City of Hamilton established the Hamilton Community Heritage Fund (HCHF) in 1985 (By-law No. 85-120) as part of the Province of Ontario’s Building Rehabilitation and Improvement Campaign, commonly referred to as the “BRIC” program. The grant agreement entered into by both parties (the Province of Ontario and the former City of Hamilton) established a fund that originally comprised $441,666.67. Of this total amount, $250,000 (57%) was from the Province, and $191,666.67 (43%) was from the former City of Hamilton.

The intent of the Hamilton Community Heritage Fund, as established by the grant agreement, was to establish a permanent fund for the purpose of investing in architectural conservation. Specifically, the fund was to be used:

- For loans for the purchase and/or conservation of heritage property;
- To guarantee loans for the purchase and/or conservation of heritage property; and,
- For grants to owners of designated heritage property for the conservation of that property.
Heritage property was defined in the agreement as a property designated under the Ontario Heritage Act. The former City of Hamilton operated the fund solely for the purpose of low or no-interest loans. Between 1985 and 2001, approximately 60 loans were approved, accounting for approximately $530,000.

The HCHF was originally established as a revolving fund, with the former City of Hamilton offering low-interest loans for eligible conservation work on buildings designated under the Ontario Heritage Act. As interest rates declined during the 1990’s, the program was revised to permit interest-free loans, and the former City of Hamilton continued to offer loans of up to $20,000, repayable over a ten-year period and secured by a lien. The agreement with the Province of Ontario stipulated that loans of $15,000 or more required a Heritage Conservation Easement Agreement between the property owner and the City. The subject application is for an amount over $15,000 and, in accordance with the terms of the HCHF, the property owner and the City shall enter into a Heritage Conservation Easement Agreement prior to release of the monies (Recommendation (b)).

After municipal amalgamation, Council agreed to maintain the HCHF program as a permanent reserve to provide loan assistance to all designated heritage properties within all of the former municipalities (Report PD00151(A), Item (f)). In 2005, Council approved an increase in the maximum loan amount to $50,000 (Report PED05091), and under the current terms of the program, the loan is registered as a mortgage on the property and repayable over a period of up to ten-years, with no accumulated interest.

The current terms of the program, approved by Council in 2005, stipulate that to be eligible for a loan, the property must be designated either individually under Part IV of the Ontario Heritage Act, or as part of a Heritage Conservation District, under Part V of the Ontario Heritage Act. Funding is available only for work that conserves or restores the historic fabric and significant architectural elements of a building. Interior features are only eligible for funding if specifically mentioned in the Reasons for Designation or Description of Heritage Attributes of a property designated under Part IV of the Ontario Heritage Act. Routine maintenance and repair is not eligible.

To date, a total of $237,264.00 (7 projects) has been approved under HCHF since municipal amalgamation (see Appendix “B”), excluding the loan recommended for approval in this report.

**POLICY IMPLICATIONS**

**Ontario Heritage Act**

Section 33 of the Ontario Heritage Act requires that the owner of a designated property shall not alter the property, or permit the alteration of the property, unless the owner applies to the Council of the municipality and receives consent, in writing, to the
alteration. The owner has applied for and received a Heritage Permit for the proposed work.

Section 106 of the Municipal Act enables the municipality to make grants, on such terms as the Council considers appropriate, to any person, group or body, including a fund, within or outside the boundaries of the municipality, of any purpose that the Council considers to be in the interests of the municipality. This includes a loan (Section 107(2)), and is subject to the bonusing provisions of Section 106. A loan to a Condominium Corporation does not trigger the bonusing provisions as it is a not-for-profit corporation.

City of Hamilton Official Plan

Section C.6 - Heritage Resources of the former City of Hamilton Official Plan applies and encourages the preservation, maintenance, reconstruction, restoration, and management of property considered to have historic, architectural, or aesthetic value (6.1).

Urban Hamilton Official Plan

Section 3.4 - Cultural Heritage Resources Policies of the Council approved Urban Hamilton Official Plan (adopted July 9, 2009) provides for the City to “encourage the rehabilitation, renovation, and restoration of built heritage resources in order that they remain in active use” (3.4.1.4). The Plan further states that the City shall “protect and conserve the tangible cultural heritage resources of the City, including archaeological resources, built heritage resources, and cultural heritage landscapes” (3.4.2.1), and “support the continuing use, reuse, care, and conservation of cultural heritage resources and properties by encouraging property owners to seek out and apply for funding sources available for conservation and restoration work” (3.4.2.1 (f)). Although, the Urban Hamilton Official Plan has not been approved by the Ministry of Municipal Affairs and Housing, and is not in effect, these policies demonstrate Council’s commitment to the identification, protection, and conservation of the cultural heritage resources.

RELEVANT CONSULTATION

Heritage Planning staff has been informed by staff of the Building and Licensing Division that HCHF applications not requiring a building permit do not require review by Building and Licensing.

Pursuant to Sections 28(1), 33(4), and 42.4 of the Ontario Heritage Act, the Hamilton Municipal Heritage Committee advises and assists Council on matters relating to Part IV and Part V of the Ontario Heritage Act. The Hamilton Municipal Heritage Committee will be consulted through the Heritage Permit Application process through its Heritage Permit Review Sub-committee. The Hamilton Municipal Heritage Committee shall be...
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advised of the decision regarding this loan by copy of this report and recommendations at its August 26, 2010 meeting (Recommendation (g)).

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

(include Performance Measurement/Benchmarking Data, if applicable)

The owner of the subject property, located at 35 - 43 Duke Street (Hamilton) (see location map attached as Appendix “A”), designated under Part IV of the Ontario Heritage Act, applied for a $85,000 loan under the program in order to paint and caulk wood elements, repoint and repair chimneys, and repair and reconstruct four sets of stone stairs.

The subject property is designated under Part IV of the Ontario Heritage Act by By-law 75-237. In 2009, $85,000 was requested by the applicant to assist with painting and caulking wood elements, repointing and repair of chimneys, and repointing and repair of four sets of stone stairs. This initial loan application was intended to be co-ordinated with an application for funding under the Parks Canada National Historic Sites of Canada Cost-sharing Program. The property was not granted Federal funding and the subject HCHF application was put on hold. Several of the quotes for the HCHF application have not been amended since 2009 to account for cost increases and the introduction of the HST. According to the 2009 quotes, if all the proposed work is completed, the total value of the work would be approximately $90,000, plus HST. Accordingly, a loan amount of up to $100,000 is being recommended to assist the Condominium Corporation with completion of the work without the benefit of Federal funding, as well as with increased 2010 renovation costs and the introduction of the HST.

The proposed work comprises (refer to photos attached as Appendix “C”):

- The sanding and removal of old caulking and re-painting and re-caulking the wood elements of the building, including the window sashes and frames, the doors and frames, and the eaves and soffits. Some isolated replacement of wood may be required where the wood has deteriorated beyond repair;

- The repointing and replacement of brick, as required, on ten chimneys and the installation of new chimney caps; and,

- The repair and reconstruction of four sets of stone stairs.

A portion of the proposed work is for repair and replacement of materials in kind, and does not require a Heritage Permit under Section 33 of the Ontario Heritage Act. The owner/applicant has applied for a Heritage Permit for the repairs to the chimneys and stairs. Through the Heritage Permit process, staff and the Heritage Permit Review Sub-
committee will ensure that the proposed construction methods are consistent with accepted principles and practice of the conservation and management of heritage fabric. The Ontario Heritage Trust, as an easement holder on the property, has conditionally approved some of the work, and additional approvals will be required prior to the commencement of the work.

The requested amount of $85,000.00 exceeds the $50,000.00 maximum amount in the Council approved Summary of Terms. Staff believes that an amount up to $100,000.00 is justified by the national significance of the property, the scope of the project, and the multiple ownership of the property (i.e. $100,000 divided by 12 condominium owners is approximately $8,333 per unit). The HCHF program terms require that an easement agreement be registered between the City and the owner(s) for loan amounts over $15,000.00. An easement between the City and the owner(s) of Sandyford Place would protect the City’s investment in the property, and would allow for clarification of the heritage features to be conserved and protected.

The proposed work will conserve the significant features of the property and meets the intent and eligibility criteria of the Hamilton Community Heritage Fund Loan Program, and staff recommends approval of the requested loan.

Financial Terms and Securities

Under the terms of the Program, the loan funds are disbursed in two equal amounts. The applicant has requested that the first disbursement from the City occur immediately after the approval of the loan, to be held in trust with their solicitor, Simpson Wigle Law LLP, and disbursed, as required, to pay invoices related to the project. The second disbursement from the City would occur after 50% completion of the project, as determined by City Planning staff, and again be held in trust with their solicitor.

In addition, as the applicant is a Condominium Corporation, the City will not be able to obtain a traditional mortgage. When a lending institution is loaning monies to a condominium corporation, they may use a number of measures to secure the loan. The following opinions for securing the loan have been provided by Simpson Wigle LLP, legal counsel for the applicant, in a letter dated January 26, 2009:

1. The loan will be secured by a General Security Agreement (GSA). Notice of the GSA will then be registered under the Personal Property Security Act. The GSA is usually registered for a period of years equal to the amortization period of the loan, plus one year, to ensure that the notice does not expire prior to the end of the loan term.

2. In addition to the GSA, the lender will take an assignment of lien rights from the Corporation. This agreement appoints the lender as an agent of the Corporation for the purpose of registering condominium liens on units that fail to pay their common
expenses. It would be noted that once the loan is entered into by a Corporation, the carrying costs of that loan become part of the common expenses of the Corporation. The Personal Property Security Act provides that if an owner fails to pay the common expenses, the Corporation has an automatic lien against their unit. A Notice of Lien must be registered on title to the unit within three months of the date of first arrears in order to preserve the lien's priority. If it is properly registered, the Act provides that a lien takes priority over any registered mortgage or other interest in the condominium unit. The only thing it does not take priority over is provincial or municipal taxes. Under the lien, the Corporation has the right to sell the property to recover what is owing to it. The assignment of lien rights provides that if the lender becomes aware that the Corporation's Board of Directors is not arranging for liens to be registered on units that are in arrears, the lender can arrange for those units to be liened, and charge the cost of that back to the Corporation. It would also constitute a default in the loan, giving the lender the right to call the loan in.

3. Along with the assignment of lien rights, there are, typically, a number of undertakings the condominium would agree to depending upon its circumstances. These might include an undertaking to provide financial statements quarterly, semi-annually, or annually to the lender, an undertaking to provide its audited financial statements to the lender, an agreement not to change property management, solicitors or auditors without notifying the lender (this is to ensure that the new parties are aware of the loan and its terms), an undertaking not to enter into another loan agreement during the term of this current loan without the consent of the lender, and an undertaking not to expend any significant funds from the reserve fund without notifying the lender in advance.

4. On some occasions, a collateral mortgage may be given in support of a loan where the Corporation has some asset that it can attach to such as the superintendent’s unit; however, in the case of Sandyford Place, the Corporation does not own any units or other property.

5. It should also be noted that if a Board of Directors failed to protect the Corporation's interest by arranging for liens to be registered in a timely fashion, they themselves may become personally liable to the Corporation for their negligence.

6. Finally, it is fairly common to arrange for the lender’s name to be endorsed on the condominium Corporation’s master insurance policy. Once the security is in place, the lender essentially has security against all of the units within the Corporation and could, conceivably, after default in the loan, cause all of the units to be sold to recoup its investment.

The City’s legal counsel concurs with this advice.
ALTERNATIVES FOR CONSIDERATION
(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Funding for the conservation or maintenance of features related to the cultural heritage value of property designated under the Ontario Heritage Act is a discretionary activity of Council. Council, as advised by staff, may consider two alternatives: agree to fund the application, or decline to fund the application.

Decline to Fund

By declining funding, the municipality would be refusing applicants that meet the criteria and budget for the HCHF program, as approved by both the Council and Hamilton Municipal Heritage Committee. Refusal of funding will not encourage owners of properties designated under Part IV of the Ontario Heritage Act to undertake the appropriate restoration and repair necessary for the long-term conservation of these heritage resources.

Accordingly, staff does not consider declining funding for this HCHF application to be an appropriate conservation alternative.

Approve a different amount

Council may decide to approve an amount that is different from the staff recommendation. This alternative is not recommended, as it may compromise the ability of the owners to complete work that is necessary of the conservation of the property and does not recognize the size and multiple ownership of the property.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)


Skilled, Innovative and Respectful Organization

- Council and SMT are recognized for their leadership and integrity.
- Staff Comment: The approval of this loan demonstrates commitment to previously Council-approved policies and programs.
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Financial Sustainability

- Generate assessment growth/non-tax revenues.
- **Staff Comment**: The proposed conservation work will improve the condition of a private property, and may result in a higher assessment value for the subject property and adjacent properties.

Intergovernmental Relationships

- Maintain effective relationships with other public agencies.
- **Staff Comment**: The subject property is recognized as a National Historic Site of Canada by the Historic Sites and Monuments Board of Canada, and is subject to an easement held by the Ontario Heritage Trust, an agency of the Ontario government. The approval of this loan demonstrates a commitment to conserving cultural heritage resources, as directed by provincial and federal level policy.

Growing Our Economy

- Newly created or revitalized employment sites.
- A skilled and creative labour pool that supports new employers.
- A visitor and convention destination.
- **Staff Comment**: The proposed conservation work will create work for skilled and specialized trades, and will enhance the condition of private property.

Healthy Community

- Plan and manage the built environment.
- **Staff Comment**: The proposed conservation work will improve the safety and appearance of private property.

**APPENDICES / SCHEDULES**

- Appendix "A": Location Map and Photographs
- Appendix "B": HCHF Previous Loans
- Appendix "C": Photographs

:MH
Attachs. (3)
Appendix "A" to Report PED10174

Location Map

File Name/Number: HCHF2009-002
Date: April 29, 2009
Appendix "A"

Subject Property

35-43 Duke Street

Ward 2 Key Map N.T.S.
PREVIOUSLY APPROVED HCHF LOANS

The Hamilton Community Heritage Fund (HCHF) was established by the former City of Hamilton in 1985 (By-law No. 85-120). After Municipal amalgamation, the Council revised the scope of the original HCHF to apply City-Wide (Report PD01141(a)), and in 2005, revised the terms and maximum loan amount of the HCHF (Report PED05091).

Projects that have previously been approved for funding are as follows:

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<thead>
<tr>
<th>Application</th>
<th>Location</th>
<th>Status</th>
<th>Amount</th>
<th>Work</th>
</tr>
</thead>
<tbody>
<tr>
<td>HCHF2007-001</td>
<td>St. Paul’s Presbyterian Church, Hamilton</td>
<td>Completed</td>
<td>$50,000.00</td>
<td>Protective Glazing</td>
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<tr>
<td>HCHF2008-001</td>
<td>1059 Highway 8, Stoney Creek</td>
<td>Completed</td>
<td>$50,000.00</td>
<td>Windows, Woodwork</td>
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<tr>
<td>HCHF2008-002</td>
<td>153 St Clair Avenue, Hamilton</td>
<td>Completed</td>
<td>$14,999.00</td>
<td>Repointing, Porch Repairs</td>
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<tr>
<td>HCHF2008-003</td>
<td>235 Bowman St, Hamilton</td>
<td>Completed</td>
<td>$50,000.00</td>
<td>Roof</td>
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<tr>
<td>HCHF2009-001</td>
<td>957 Governor’s Road, Dundas</td>
<td>Completed</td>
<td>$5,145.00</td>
<td>Roof</td>
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<tr>
<td>HCHF2009-003</td>
<td>108 James Street North, Hamilton</td>
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<td>HCHF2009-004</td>
<td>122 MacNab Street South, Hamilton</td>
<td>Completed</td>
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<td>Masonry</td>
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<td><strong>Total 2007-2009</strong></td>
<td></td>
<td></td>
<td><strong>$237,364.00</strong></td>
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Sandyford Place - Front (north) elevation

Sandyford Place - Front (north) and side (east) elevations
Sandyford Place - Rear (south) elevation

Sandyford Place - Detail of chimney to be repaired
Sandyford Place, No. 41 - Entrance and Stairs

Sandyford Place, No. 43 - Entrance and Stairs
Sandyford Place - Detail of wooden soffits to be painted and caulked

Sandyford Place - Detail of wood requiring sanding, painting and caulking, as well as selective replacement