CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

Report to: Chair and Members Economic Development and Planning Committee
Submitted by: Tim McCabe
General Manager
Planning and Economic Development Department

Date: June 15, 2009
File: 25CDM-200813

Prepared by: Cam Thomas
(905) 546-2424, Ext. 4229

SUBJECT: Application for Approval of a Draft Plan of Vacant Land Condominium “Kitty Murray Woods” for Lands Located at 7-67 Butternut Grove Lane and 3-43 Black Walnut Crescent, (formerly 149 Stonehenge Drive) (Ancaster) (PED09187) (Ward 12)

RECOMMENDATION:

That approval be given to Condominium Application 25CDM-200813, “Kitty Murray Woods”, Stonehenge Development Services Limited, Owner, to establish a draft plan of condominium (Vacant Land Condominium) to create 36 units (condominium lots) for single detached dwellings. The internal roadways, storm water management pond, visitors’ parking spaces, entrance feature and landscaped areas, shown as Block “1” (Appendix “B”), will be developed as common element features on lands located on the south-east corner of Kitty Murray Lane and Stonehenge Drive, to be known municipally as 7-67 Butternut Grove Lane and 3-43 Black Walnut Crescent, (formerly 149 Stonehenge Drive), Ancaster, as shown on Appendix “A” to Report PED09187, subject to the following conditions:

(a) That this approval apply to the plan prepared by A.J. Clarke and Associates Limited, and certified by B.J. Clarke, O.L.S., dated October 21, 2008, showing the following condominium elements: 36 units for single detached dwellings, and one block for common elements, which include 6 metre wide internal roadways, storm water management pond and associated features, visitors’ parking spaces, entrance feature and landscaped areas, attached as Appendix “B” to Report PED09187.

(b) That the Final Plan of Condominium complies with all applicable provisions of Zoning By-law No. 87-57, as amended by By-law 08-016.

(c) That the Final Plan of Condominium comply in all respects, including finalization of Site Plan Approval (DA-08-021), related to this development, to the satisfaction of the Director of Planning, Planning and Economic Development Department.
(d) That the Owner shall enter into a Development Agreement:

(i) To construct the condominium roads, storm water management pond and visitors’ parking areas, to the satisfaction of the Director of Development Engineering, Planning and Economic Development Department; and,

(ii) To ensure that each of the proposed units have tied parcels to the common elements areas, to the satisfaction of the City Solicitor.

(e) That the Owner agrees to deed, free and clear to the City of Hamilton, any easements that may be required for utility purposes, to the satisfaction of the Director of Planning, Planning and Economic Development Department.

(f) That the Owner shall include the following warning clause in the Condominium Agreement and in all Offers of Purchase and Sale, and Rental or Lease Agreements, to the satisfaction of the Director of Operations and Maintenance, Public Works Department:

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

(g) That the Owner shall agree to enter into a Private Road Agreement, prior to registration, if City Waste Management services are deemed to be necessary for the removal of garbage and recyclables for the condominium corporation, to the satisfaction of the Director of Waste Management, Public Works Department.

(h) That the Owner shall include in all Offers of Purchase and Sale and Rental or Lease Agreements, a statement that advises the prospective purchaser/tenant of the following matters pertaining to Canada Post:

(i) That the home/business mail delivery will be from a designated Centralized Mail box; and,

(ii) That the developers/owners be responsible for officially notifying the purchasers of the Centralized Mail Box locations prior to the closing of any home sales.

(i) That the Owner further agrees to satisfy the following requirements of Canada Post:

(i) Install concrete pad in accordance with the requirements of, and locations to be approved by Canada Post, to facilitate the installation of Community Mail Boxes;
(ii) Identify the pads above on the engineering service drawings. The pads are to be poured at the same time of the sidewalk and/or curb installation within each phase of the plan of condominium; and,

(iii) Determine the location (adjacent to Units 17 or 20) of all centralized mail facilities in accordance with Canada Post, and to post the location of these sites on appropriate maps, information boards, and plans.

(j) That the Owner satisfy all conditions, financial or otherwise, of the City of Hamilton.

EXECUTIVE SUMMARY:

The purpose of the application is to develop a Vacant Land Condominium to permit 36 units (condominium lots) for single detached dwellings on private roads (see Appendix “B”). The proposal is consistent with the Provincial Policy Statement, and conforms to the Hamilton-Wentworth Official Plan and the Ancaster Official Plan. The proposal is consistent with the approved Site Plan DA-08-021, and would provide new infill housing which is compatible with the surrounding residential area.

BACKGROUND:

Vacant Land Condominiums

A Vacant Land Condominium is a plan of condominium usually intended for the development of detached units in which common elements and units are created, but in which there has been no construction of buildings or structures at the time of condominium registration. This form of condominium offers flexibility to unit purchasers in certain instances by enabling ‘Build to Suit’ arrangements, while providing the benefit of common services and facilities.
Proposal

The application is to establish a Vacant Land Condominium for 36 single detached dwelling units, in a single phase for lands to be known municipally as 7-67 Butternut Grove Lane and 3-43 Black Walnut Crescent, Ancaster (formerly 149 Stonehenge Drive), as shown on the attached map marked as Appendix “A”. Each condominium owner will have individual ownership of their dwelling, driveway, and respective condominium lot, which is identified on the condominium plan as a “unit” (see Appendix “B”).

The areas under common elements are shown as Block “1”, and include the internal roads, visitors’ parking spaces, storm water management pond, entrance feature and landscaped areas (which extend along the frontage portion of Stonehenge Drive and along the portion of the internal road). The proposed Draft Plan of Condominium affects lands that are identified as Part of Lot 49, Concession 3, in the Geographic Township of Ancaster.

The 36 units which are identified on the proposed Draft Plan of Condominium (see Appendix “B”) would be created upon registration, which can occur after the Owner enters into a Development Agreement to address the construction of the internal roads, visitors’ parking areas, and storm water management pond, and to ensure that each of the units has tied parcels to the common elements (Recommendations (d) (i) and (ii)).

Official Plan Amendment Application OPA-06-030

The lands were formerly part of Redeemer University, and were the subject of an Official Plan Amendment and Zoning By-law Amendment, which were approved by the Economic Development and Planning Committee on January 15, 2008, and by City Council on January 30, 2008.

An Official Plan Amendment was required to redesignate the subject lands from “Institutional” to “Residential” on Schedule “B”, Land Use Plan, Urban Area, and from “Institutional” to the “Low Density Residential 1” designation in the Meadowlands III Secondary Plan. The provision of a buffer for the adjacent Tiffany Creek Subwatershed lands required the redesignation of lands along the easterly boundary from “Institutional” to “Natural Open Space” in the Meadowlands III Secondary Plan.

Zoning By-law Amendment ZAC-06-112

The lands were rezoned from the Institutional “I” Zone to the “RM4-567” (Multiple Residential) Zone, Modified, to permit single detached dwelling units to be developed on property having a minimum lot area of 2 hectares along a 6.0 metre wide condominium road with a maximum density of 16 units per hectare. The maximum permitted density
would allow for the development of up to 41 single detached dwellings, although the approved site plan and proposed Vacant Land Condominium identify 36 units. The minimum 10 metre wide buffer portion was rezoned from the Institutional “I” Zone to the Conservation/Hazard (P5) Zone in Zoning By-law 05-200. The amended zoning was approved through By-law 08-016.

The buffer requirements for development adjacent to the Tiffany Creek Provincially Significant Wetland were determined through an Environmental Impact Study (E.I.S.), which was approved, to the satisfaction of the City of Hamilton and the Hamilton Conservation Authority. The easterly boundary, shown as the “Development Limit”, was determined by the Hamilton Conservation Authority, through the staking of the site, which allowed for the establishment of a minimum 10 metre wide buffer, which is based on the greater of 30 metres from the watercourse, 15 metres from the wetland boundary, and 10 metres from the top-of-bank.

**Consent Application AN/B-08:162**

Consent Application AN/B-08:162 received approval from the Committee of Adjustment on January 31, 2008, to sever the subject lands from the Redeemer University campus as a 2.59 hectare parcel. Final approval was issued on April 9, 2008. The configuration of the easterly boundary of the severed portion was determined through the applicant’s E.I.S., which identifies this boundary as the “Development Limit” and as “Development Limit / Dripline” (along the southerly boundary).

The proposed Vacant Land Condominium conforms to the severed parcel, but excludes the 0.08 hectare portion of lands that have been dedicated to the City for the road widening and the corner daylighting triangle.

**Site Plan Approval Application DA-08-021**

Approval for Site Plan Control Application DA-08-021 (see Appendix “C”) was issued on February 14, 2008, with standard site plan conditions, including tree management and tree preservation for the protection and integration of existing street trees along both Kitty Murray Lane and Stonehenge Drive. The site plan identified the location of the proposed dwellings, lots, internal roads, and storm water management pond. The proposed future dwellings and driveways conform to the requirements of the “RM4-567” (Multiple Residential) Zone, and are consistent with the location and size of the units provided on the proposed Vacant Land Condominium.

Site Plan Application DA-08-021 required the dedication of road widenings along the frontage of Kitty Murray Lane and at the intersection of Kitty Murray Lane and Stonehenge Drive for a corner daylighting triangle. The site plan required the approval of storm water management plans, site servicing, and erosion and siltation control plans, to
the satisfaction of the City and the Hamilton Conservation Authority. Special Conditions were required for the payment of the Owner’s share of services under Best Efforts Recovery (for the Meadowlands - Phase 5 Subdivision), the approval of the internal street names, and the payment of fees associated with the removal of certain street trees along Kitty Murray Lane. Replacement street trees are required along Kitty Murray Lane in accordance with the approved Overall Planting Plan (see Appendix “D”).

A lighting plan was required to address the interior street lighting for the development along the condominium roads. The site plan was finalized on March 19, 2008.

Committee of Adjustment Application AN/A-09:111

The applicant has requested Minor Variances from the Committee of Adjustment to address matters that were identified through the review of the Residential Multiple - Modified “RM4-567” Zone, in order to permit the development of the property as a Vacant Land Condominium with the creation of individual lot parcels. The Residential Multiple - Modified “RM4-567” Zone was established through the initial Zoning By-law Amendment (ZAC-06-112) on the basis of the project being developed as a Standard Condominium, which treated the overall parcel as a single property without the creation of individual parcels for separate ownership.

The requested variances were provided:

- To recognize the individual single detached condominium dwelling lots, which front onto a private condominium road, as one lot for definition purposes; and,

- To recognize the entire condominium development under the development regulations of the Ancaster Zoning By-law, including the Residential Multiple - Modified “RM4-567” Zone provisions, so that regulations including, but not limited to lot area, lot density, lot frontage, lot depth, lot coverage, parking, building setbacks, landscaping, and setbacks for decks are applied to the entire development rather than to the individual parcels that are created through Vacant Land Condominium approval.

As the variances were technical in nature to enable more flexible interpretation for the proposal as a Vacant Land Condominium, and the intent of the development was maintained, there were no issues related to the support and approval of this application. The application was approved by the Committee of Adjustment on May 21, 2009, and the last date of appeal was June 10, 2009. There were no appeals to this application, and the decision is now in effect.
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Details of Submitted Application

Owner: Stonehenge Development Ltd.

Location: 7-67 Butternut Grove Lane and 3-43 Black Walnut Crescent, (formerly known as 149 Stonehenge Drive) Ancaster

Property Size:

<table>
<thead>
<tr>
<th>Area: 2.51 hectares</th>
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<tbody>
<tr>
<td>Frontage: 248.05 metres along Kitty Murray Lane</td>
</tr>
<tr>
<td>187.85 metres along Stonehenge Drive</td>
</tr>
<tr>
<td>Depth: Approximately 135 metres from the intersection of Kitty Murray Lane and Stonehenge Drive</td>
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</tbody>
</table>

Existing 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>Building Under Construction</td>
<td>Residential Multiple (RM4-567) Zone</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Surrounding Lands:</th>
</tr>
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| West | Single Detached Dwellings | Residential “R4-450” Zone |
| North | Single Detached Dwellings | Residential “R3-409” Zone |

| East | Undeveloped Part of Redeemer University Campus and Tiffany Creek Headwaters Provincially Significant Wetland | Institutional “I” Zone |
| South | Redeemer University Campus | Institutional “I” Zone |
1. The proposal has merit and can be supported for the following reasons:
   
   (i) It is consistent with the Places to Grow Plan and the Provincial Policy Statement in terms of residential intensification, and conforms to the Hamilton-Wentworth Official Plan;

   (ii) It conforms to the policies of the Ancaster Official Plan, including Official Plan Amendment No. 117; and,

   (iii) The proposal would implement the approval of Site Plan Control Application DA-08-021 and Consent Application AN/B-08:162.

2. Specific provisions were developed in the Residential Multiple-Modified “RM4-567” Zone to address the development of single detached dwellings along private roads and on lots that would be created through a plan of condominium. These provisions included setbacks for the dwellings and attached garages along 6 metre wide condominium roads, separation distances between dwellings, setbacks from the Development Limit, setbacks from Stonehenge Drive and Kitty Murray Lane, setbacks from the daylight triangle, and setbacks for decks. These provisions were developed on the basis of the conceptual site plan for 36 single detached dwellings along condominium roads that was provided for the review of the Official Plan Amendment (OPA-06-030) and Zoning By-law Amendment applications (ZAC-06-112). This concept has been maintained through the Site Plan Approval stage.

The approved Site Plan (DA-08-021) has identified specific locations and configurations of the dwelling and driveway for each of the 36 units, which is in accordance with the “RM4-567” Zone provisions. Although the specific nature of this development through the approved site plan would not provide the level of flexibility generally associated with a Vacant Land Condominium, the developer has advised that the project is intended to be developed in accordance with the building locations for the 8 model designs, which are set out in the approved site plan. Any modifications would, therefore, be confined to interior changes within buildings, and would not affect the building designs and locations shown on the approved site plan.

As noted, further modifications to the Residential Multiple-Modified “RM4-567” Zone were recently approved by the Committee of Adjustment to enable the project to be adapted for development as a Vacant Land Condominium, without having to introduce new site-specific regulations. The approved variances were recognized as being technical in nature, and do not affect the intent of the
approved “RM4-567” zoning, and the physical design of the project has been maintained.

3. In accordance with the Public Participation Policy that was approved by City Council on May 29, 2003, a preliminary notice of this application was provided to 119 owners within 120 metres of the subject lands. There were no written responses received for this application.

4. The proposed condominium road will be privately owned and maintained. As a condition of approval (Recommendation (f)), the applicant must include a warning clause in all Purchase and Sale Agreements and Rental and Lease Agreements to advise purchasers of the following:

“Purchasers/tenants are advised that the City of Hamilton will not be providing any maintenance or snow removal service for the internal condominium roads.”

In addition, the Condominium Corporation would have the option of securing the City’s Waste Management services for the removal of garbage and recyclables, or could elect to retain a private waste haulage contractor. In the event that the City’s Waste Management services are preferred for the proposed condominium, a Private Road Agreement would be required to be entered into prior to registration. This requirement is addressed through Recommendation (g).

5. The proposed Vacant Land Condominium may be registered after the Owner has entered into a Development Agreement to ensure the construction of internal roads, visitors’ parking spaces, and storm water management pond, to the satisfaction of the Director of Engineering, Planning and Economic Development Department, and the City Solicitor, and to ensure that the created parcels, shown as units, are tied to the common elements areas. (Recommendations (d) (i) and (ii)).

6. As part of the approval for Site Plan Application DA-08-021, securities were required by the City, and were provided as a lump sum payment to cover the costs for engineering site works and landscaping, and to ensure that the site is developed in accordance with the approved site plan. The required securities from the site plan would apply to the condominium roads and visitors’ parking, and storm water management pond, which are included as common elements in the proposed condominium. As noted in 5. above, a Development Agreement is required prior to registration of the condominium to ensure that this work is completed, to the satisfaction of the City. This requirement is addressed through Recommendation (d) (i).
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ALTERNATIVES FOR CONSIDERATION:

Should the proposed application for a Vacant Land Condominium not be approved, the subject lands could be developed for single detached dwellings as a rental project or a standard condominium.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial: N/A.

Staffing: N/A.

Legal: As required by the Planning Act, Council shall hold at least one (1) Public Meeting to consider an application for a Vacant Land or Common Elements Condominium.

POLICIES AFFECTING PROPOSAL:

Provincial Policy Statement

The application is consistent with the principles and policies of the Provincial Policy Statement which is to focus growth in settlement areas, as provided in Policy 1.1.3.1.

Hamilton-Wentworth Official Plan

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

Ancaster Official Plan

In conjunction with the recent rezoning of the property, the lands were also subject of an Amendment to the Ancaster Official Plan. This amendment provided for the redesignation of the property from “Institutional” to “Residential” on Schedule “A”, (Land Use Plan, Urban Area) of the Ancaster Official Plan, and the redesignation of lands from “Institutional” to “Low Density Residential 1” and “Natural Open Space” on Map 1 of the Ancaster Meadowlands Neighbourhood III Secondary Plan. The amendment was
approved as Official Plan Amendment No. 117, which came into effect on January 30, 2008.

The proposed Vacant Land Condominium is shown to be in accordance with the approved site plan in terms of the intended residential use along a condominium road, and is within the maximum density provision of 18 units per hectare, as set out in the Meadowlands Neighbourhood III Secondary Plan. The required buffer, which was determined through the applicant’s Environmental Impact Statement (E.I.S.), has been established on the retained portion of the Redeemer University lands to enable the protection of the adjacent PSW. Therefore, the proposal is in conformity with Official Plan Amendment No. 117 of the Ancaster Official Plan.

**RELEVANT CONSULTATION:**

**Departments/Agencies having no concerns or objections:**

- Traffic Engineering Section, Operations and Maintenance Division, Public Works Department.
- Tax Administration, Corporate Services Department.
- Budgets and Finance Division, Corporate Services Department.
- Hamilton-Wentworth District School Board.
- Enbridge Pipelines Inc.
- Hydro One Networks.

**The Water and Wastewater Division, Public Works Department** has advised that the lands can be adequately serviced for water by extension from the existing watermain located at Stonehenge Drive and Kitty Murray Lane. The static pressure at the street line is within the range of 60-80 psi on average. Fire flow capacity is sufficient based on 2 hydrant flow tests and the spacing hydrant coverage. There are also no major concerns with respect to the municipal wells or the municipal intake. Adequate systems are available across both street frontages, with the exception of 50 metres along Stonehenge Drive east of Kitty Murray Lane. All units can be readily serviced by the extension of private systems on the internal private streets.

**The Strategic Planning Section, Public Works Department** has advised that a Road classification and Right-of-Way width project is in progress and that the final recommendation is currently unknown.
The Budgets and Finance Division, Corporate Services Department has advised that the Owner is required to pay Best Effort Sanitary Sewer and Watermain fees. It has been further noted that the required fees, were addressed through Site Plan Application DA-08-021.

The Hamilton Conservation Authority advised that they have no issues with the application, but that the Owner shall ensure that erosion and siltation control measures are installed prior to any grading and construction activities on the site. As this matter was a requirement of Site Plan Approval (DA-08-021), it would remain in effect and is not required as a condition of Draft Approval.

Bell Canada has advised that the following conditions shall apply:

1. The developer must confirm that there is sufficient wireline communication telecommunication infrastructure available within the proposed development to provide communication/telecommunication service to the proposed development.

2. The owner/developer shall agree, in words satisfactory to Bell Canada, to grant any easements to Bell Canada that may be required for telecommunication services. Easements may be required subject to final servicing decisions. The owner/developer shall be responsible for the relocation of Bell Canada facilities or easements in the event of any conflicts with existing Bell facilities or easements.

It has been determined that the Owner and Bell have entered into a Joint Use Agreement, effective October 1, 2008, with Cogeco Cable, concerning the requirements for future wireline infrastructure, as set out in Condition 1. This Agreement includes the registration of a perpetual blanket easement over the entire property to grant continued and uninterrupted access for Bell Canada, which pertains to Condition 2. Therefore, Conditions 1 and 2, above have been satisfied, and are not required for this Condominium approval.

Canada Post has advised that the following conditions should apply:

1. All offers of purchase and sale shall include a statement that advises the prospective purchaser:

   (a) That the home/business mail delivery will be from a designated Centralized Mail box; and,

   (b) That the developers/owners be responsible for officially notifying the purchasers of the Centralized Mail Box locations prior to the closing of any home sales; and,
2. The Owner further agrees to:

(a) Install concrete pad in accordance with the requirements of, and locations to be approved by Canada Post, to facilitate the installation of Community Mail Boxes;

(b) Identify the pads above on the engineering service drawings. The pads are to be poured at the same time of the sidewalk and/or curb installation within each phase of the plan of subdivision; and,

(c) Determine the location (adjacent to Units 17 or 20) of all centralized mail facilities in accordance with Canada Post, and to post the location of these sites on appropriate maps, information boards and plans.

These requirements are addressed through Recommendations (h) (i) and (ii); and (i) (i), (ii) and (iii).

**Union Gas** has requested the following condition of Draft Approval:

1. The Owner shall agree to provide the necessary easements and/or agreements required by Union Gas Limited for the provision of gas services for this project, in a form satisfactory to Union Gas Limited.

It has been noted that a Letter of Intent for a Maintenance Agreement to provide for future easements was entered into by the Owner with Union Gas on September 24, 2008. Therefore, this condition would not be required for Draft Approval.

**PUBLIC CONSULTATION:**

Ontario Legislation 544/06, which implements changes respecting Plans of Subdivision within Bill 51, introduced Public Notice and Public Meeting requirements for Vacant Land and Common Element Condominiums. Therefore, consistent with the City’s Public Participation Policy, pre-circulation notices were mailed to all property owners within 120 metres of the subject property to request comments or support for the proposed Vacant Land Condominium application. There were no letters received from the public. Further, a Public Notice sign was posted on the property on February 4, 2009. Notice of the Public Meeting of the Economic Development and Planning Committee was provided in accordance with the provisions of the Planning Act.
CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, and 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
Ecological function and the natural heritage system 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

:CT
Attachs. (4)