SUBJECT: Application for Approval of a Draft Plan of Condominium Conversion, "Berkindale Manor", for Lands Located at 75 Berkindale Drive (Hamilton) (PED06398) (Ward 5)

RECOMMENDATION:

That approval be given to Condominium Conversion Application 25CDM-CONV-06-04, by 2097242 Ontario Inc. (Al-Karim Damji), owner, to establish a Draft Plan of Condominium for 46 existing townhouse units, located at 75 Berkindale Drive (Hamilton), as shown on the attached map marked as Appendix “A” to Report PED06398, subject to the following conditions:

(a) That this approval apply to the plan, prepared by MacKinnon & Associates, and certified by Rod Lord, O.L.S., dated July 14, 2006, showing a total of 46 residential townhouse units, attached as Appendix “B” to Report PED06398.

(b) That the following conditions shall apply to the Draft Plan of Condominium approval:

Development Planning and Engineering:

1. That the Final Plan of Condominium comply with all of the applicable provisions of the applicable Zoning By-law.

2. That the owner satisfy all conditions, financial or otherwise, of the City of Hamilton.

3. That the Owner shall submit a report in accordance with Section 9(4) of The Ontario 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 buildings and any Owner initiated measures required to correct any deficiencies prior to the release of the final plan for registration.

4. That the owner pays all outstanding municipal taxes, to the satisfaction of the Corporate Services Department (Tax Administration/Banking Section).

5. That the owner shall include the following warning clause in the Condominium Agreement and all purchase and sale and/or lease agreements:

“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.”

Bell Canada:

6. The Owner shall agree in the Agreement, in words satisfactory to Bell Canada, to grant to Bell Canada any easements that may be required 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.

Lee Ann Coveyduck
General Manager
Planning and Economic Development Department

**EXECUTIVE SUMMARY:**

The purpose of this application is to establish a Plan of Condominium for a total of 46 existing townhouse units. The existing tenants are protected under the Tenant Protection Act.

The proposed condominium conversion has merit and can be supported as it conforms to the City of Hamilton Official Plan, the “Urban Policies” of the Hamilton-Wentworth Official Plan, and is consistent with the Provincial Policy Statement.
BACKGROUND:

Proposal

The subject property has a total of 46 townhouse units contained within six blocks. Fifteen of the units are street townhouses, each having their own private driveway and garage. The remaining 31 units are cluster rowhouses with access to two communal parking areas containing a total of 36 parking spaces. The subject lands are located at the northwest corner of Berkindale Drive and Bell Manor Street, generally located southwest of Barton Street East and Gray Road (see Appendix “A”). 36 of the units contain three bedrooms; the remaining 8 units have two bedrooms. This proposal is for a change in tenure from town/rowhouse rental units to condominium units.

Location: 75 Berkindale Drive
Owner: Al-Karim Damji
Applicant: 2097242 Ontario Inc. (Berkindale Manor)

Property Description:
Lot Area: 0.90 hectares
Lot Frontage: 159.80 metres on Berkindale Drive
Flankage: 54.87 metres on Bellmanor Street

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>Townhouses</td>
<td>“DE/S-306” (Low Density Multiple Dwellings) District, Modified</td>
<td></td>
</tr>
</tbody>
</table>

Surrounding Land Uses

<table>
<thead>
<tr>
<th>North</th>
<th>Apartments and Vacant</th>
<th>“E/S-306” (Multiple Dwellings, Lodges, Clubs, Etc.) District and “E-2/S-306 &amp; 306a” (Multiple Dwellings) District</th>
</tr>
</thead>
<tbody>
<tr>
<td>West</td>
<td>Single Detached Dwellings and Plaza</td>
<td>“D” (Urban Protected Residential - One and Two Family Dwellings, Etc.) District and “G-4/S-912 &amp; 912a” (Designed Neighbourhood Shopping Area) District</td>
</tr>
<tr>
<td>South</td>
<td>Semi-Detached Dwellings</td>
<td>“D” (Urban Protected Residential - One and Two Family Dwellings, Etc.) District</td>
</tr>
<tr>
<td>East</td>
<td>Townhouses</td>
<td>“DE/S-205” (Low Density Multiple Dwellings) District</td>
</tr>
</tbody>
</table>
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 and the City of Hamilton Official Plan.
   
   (iii) It is considered to be compatible with existing uses in the surrounding area.

2. The City of Hamilton Official Plan housing policies are intended to guide future growth and development, which includes fostering a healthy rental housing market within the City. In this regard, Section 7.11 of the City of Hamilton’s Official Plan identifies three conditions that must be satisfied in order to recommend condominium conversion. These 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 (24) 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 Canada Mortgage and Housing Corporation (CMHC) provides annual statistical information on the national, provincial and local housing markets. For this exercise, the City uses local housing market data that is specifically-ordered from CMHC (2004/2005). The subject property is located in the East Hamilton Zone 3. For this Zone, the CHMC vacancy rate for two and three-bedroom townhouse units was 5.8% & 4.5%, respectively, in 2005, and 3.9% & 6.2%, respectively, in 2004. The vacancy rate for two and three-bedroom townhouse units in the former City of Hamilton was 4.4% and 3.8%, respectively, in 2005. In 2004, the rate was 5.9% and 4.1%, respectively, in the former City of Hamilton.

When justifying this proposal via this statistical information, two and three-bedroom units in the entire City of Hamilton and for the East Hamilton Zone for 2004 and 2005 was 2,691. Two and three-bedroom units in the entire City of Hamilton for 2004 and 2005 had a total of 106 vacant units, which puts the vacancy rate at 3.8%. Since two of the units in this proposal were vacant, they where subtracted from the amount of total vacant units. The new total amount of
units is now 104, which creates a minor reduction in the vacancy rate to 3.78%. Further, the total amount of two and three-bedroom units for the East Hamilton Zone (2004 and 2005) is 935, of which 46 were vacant, putting the vacancy rate at 4.9%. In this case, removal of the two units brings the vacancy rate to 4.7%

It has, therefore, been determined that the proposed conversion meets the intent of the Official Plan as it does not negatively impact the vacancy rates such that they will not fall below 2%.

Using the same CMHC statistical information, Policy 3 of the Official Plan mentioned above is not negatively effected. According to the information provided, two-bedroom units in the City of Hamilton had an average rent of $810.00 per month and three-bedrooms were $886.00 in 2005. For the East Hamilton Zone, a two-bedroom unit had an average rent of $792.00 and three-bedrooms had an average of $880.00. The proposed conversion units are currently rented at $887.88 per month. Therefore, the average rents in the existing building meet Policy 3 of Section 7.11 in the Hamilton Official Plan.

In summary, the proposed condominium conversion conforms to the policies of the City of Hamilton Official Plan.

3. The applicant has been diligent in advising the existing tenants, staff and the local Ward Councillor of their intent to convert the existing rental townhouse units into condominiums. The owners have consulted with the tenants, they have been well informed of the conversion proposal, and are in support of the proposed change in tenure. At the time this application was submitted, forty-four units were occupied, and the consultant has indicated that all of the tenants are in support of the conversion proposal. The owner has also notified the tenants of the proposal, provided details of tenant’s rights under the Tenant Protection Act, and what the proposed conversion would be in the way of upgrades to the existing building. The owner also held a meeting to provide further opportunity for the tenants to ask questions.

4. 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.

In addition, the following conditions should be applied to the Draft Plan of Condominium approval: that the Final Plan of Condominium comply with all the provisions of the Hamilton Zoning By-law; that the owner satisfy all conditions, financial or otherwise, of the City of Hamilton; that the owner pays all outstanding municipal taxes; and that the owner agrees to grant to Bell Canada any easements that may be required subject to final servicing decisions.
Given that the proposed condominium conversion is in close proximity with Barton Street East, the inclusion of a noise clause warning is also included in a condition of Draft Plan of Condominium approval.

ALTERNATIVES FOR CONSIDERATION:

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

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial: N/A.

Staffing: N/A.

Legal: The Planning Act, R.S.O. 1990 does not require a notice of Public Meeting for an application for Condominium Conversion. However, formal notice was given to all existing tenants.

POLICIES AFFECTING PROPOSAL:

Provincial Policy Statement

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

Policy 1.7.1 (e) outlines that long term economic prosperity will be supported by planning so that major facilities (such as airports, transportation corridors, sewage treatment facilities, waste management systems, industries and aggregate activities) and sensitive land uses are appropriately designed, buffered and separated from each other to prevent adverse effects from odour, noise and other contaminants, and minimized risk to public health and safety. Due to the proximity of the subject lands to Barton Street, a noise warning clause should be included in the Condominium Agreement and all offer of purchase and sale and/or lease.

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 Ares are intended to accommodate approximately 96% of new residential housing units in the Region to the year 2020. This proposal conforms to the Hamilton-Wentworth Official Plan.
The City of Hamilton Official Plan

The subject lands are designated “Residential” on Schedule “A”, Land Use Concept of the City of Hamilton Official Plan. The proposal conforms to the “Residential” designation of the Official Plan.

As mentioned above, the Official Plan also provides guidance in assessing the merits of proposed condominium conversions under Section C.7.11. These Official Plan policies have been addressed in the Analysis/Rationale and the Relevant Consultation Sections of this report. The proposal satisfies the conversion policies of the Plan.

**RELEVANT CONSULTATION:**

The following Departments and Agencies had no comment or objections:

- Public Works Department (Forestry)
- Public Works Department (Traffic)
- Corporate Services Department (Budgets and Finance)
- Horizon Utilities Corporation

**Corporate Services Department (Taxation)**

The Taxation Division has identified that as of September 12, 2006, there was an outstanding balance of **$34,703.55** owing to the City of Hamilton.

**Public Health and Community Services Department, Program Policy & Planning Division**

The proponent has indicated that the average rent for the units is $887.88.

**Current Housing Market Analysis**

By using specifically-ordered data from Canada Mortgage and Housing Corporation (CMHC), we are able to provide an analysis of the rental market activity in the former City of Hamilton. **Table 1** shows the vacancy rate and average market rent for the local housing market zone (i.e. Zone 3) for privately initiated two and three bedroom townhouse units.
Table 1: Vacancy Rate and Average Market Rent for 2 & 3-Bedroom Townhouse Units in CMHC Zone 3 - East Hamilton

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<tr>
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<tbody>
<tr>
<td>Two-Bedroom</td>
<td>3.9%</td>
<td>$789</td>
<td>5.8%</td>
<td>$792</td>
</tr>
<tr>
<td>Three-Bedroom</td>
<td>6.2%</td>
<td>$870</td>
<td>4.5%</td>
<td>$880</td>
</tr>
</tbody>
</table>

Source: CMHC (2005)

Table 2 shows the vacancy rate and average market rent for the former City of Hamilton for privately initiated two and three bedroom townhouse units.

Table 2: Vacancy Rate and Average Market Rent for 2 & 3-Bedroom Townhouse Units in the former City of Hamilton

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<tbody>
<tr>
<td>Two-Bedroom</td>
<td>5.9%</td>
<td>N/A</td>
<td>4.4%</td>
<td>$810</td>
</tr>
<tr>
<td>Three-Bedroom</td>
<td>4.1%</td>
<td>N/A</td>
<td>3.8%</td>
<td>$886</td>
</tr>
</tbody>
</table>

Source: CMHC (2005)

In 2005, the former City of Hamilton’s average vacancy rate for a two and three-bedroom townhouse units were 4.4% and 3.8% respectively. In 2004, the vacancy rate for two and three-bedroom townhouse units were 5.9% and 4.1% respectively in the former City of Hamilton. The average vacancy rates for two and three-bedroom townhouse units in Zone 3 were 5.8% and 4.5% in 2005. The vacancy rates in 2004 for two and three-bedroom apartment units were 3.9% and 6.2% respectively in CMHC Zone 3. The conversion of the subject rental units to condominiums does not negatively impact the vacancy rates such that rates would fall below 2%.

According to information attached with the proponent’s application, the average rents in the complex are not significantly lower than the average market rent for two and three-bedroom units in the former City of Hamilton and the local housing market zone.

Conclusion

The City of Hamilton recognizes the importance of maintaining and increasing the number of affordable rental units in Hamilton. The following Official Plan requirements for both the local housing market zone and the former City of Hamilton have been met:

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 (24) 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.

Public Consultation

As part of the application process, the applicant has been in consultation with the tenants regarding the condominium conversion process. They have provided the tenants with written notice, a Public Information meeting, as well as a newsletter, so as to have a mutual exchange of information, listen to tenant’s concerns, explain tenant rights and the conversion process (see Appendix “C”). The steps taken by the applicant with regards to this information exchange is outlined in the Analysis/Rationale Section of this report. In addition, the Notice of the Public Meeting was circulated to all current tenants.

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

:JM
Attachs. (3)
Location Map

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

File Name/Number: CDM-CONV-08-04
Date: Sept 8, 2006

Appendix "A" Scale: N.T.S.
Planner/Technician: JM/LM

Subject Property

Condominium Conversion for 75 Berkindale Drive, Hamilton

Ward 5 key map N.T.S.
Date: June 22, 2006.

To: All Residents – Berkindale Manor

From: Angela Schuller - Property Manager.

RE: TENANT MEETING - UNIT 89 - WEDNESDAY, JUNE 21, 2006 AT 5.30P.M.

Hello Again Everyone:

We would like to sincerely thank the 29 tenants who took the time to come to the meeting yesterday. Perhaps some of you were working or otherwise disposed, so I thought I would send a little follow up to the meeting.

It was just great to experience the gracious reception you all afforded me, and the patience in listening to our proposed improvement to the community.

Just to recap… I advised that the Landlord intends to submit an application for a Draft Plan of Condominium to the City of Hamilton. Once this is done, there will be a series of engineers, surveyors and planners at the site, doing necessary assessments etc., of the property. Once it has gone before the planning staff at the City of Hamilton, and reviewed for consistency with the Official Plan requirements, it will then be circulated to the various departments of the City for input and comments. Following that there will likely be a public meeting and it will then go before the City Council and Regional Council (if applicable) for final approval.

After that step, there is usually an inspection by the City Building Department and also the Fire Department to ensure that all property standards are met and then if all goes well, the Condominium is registered.

At that point the real excitement begins…. Our tenants will obviously receive first right of refusal to purchase, if they choose. **If you prefer to remain as a tenant, providing you are not in default of your lease, you may stay in the unit as a tenant for as long as you choose. You are very adequately protected under the Tenant Protection Act, and cannot at any point be required to move for the sake of conversion, or sale of the unit.**

If you choose to purchase, we will be dealing with each family individually to take that next step.
I was so happy to see that so many of you were interested, but I was not overly surprised, particularly in light of the manner in which most of you show great pride of ownership in the property. So, I would also like to thank everyone who is doing that – and going the extra mile to help your neighbours with exterior maintenance.

As I noted, we will be upgrading the exterior, and yes, we will definitely address the exterior lighting as promptly as possible. Further memorandums will be circulated over the next few weeks, updating you all as the process unfolds.

As well, our next meeting will be in approximately one month from now, in the form of a community barbecue. You will be advised of the date within the next week.

Thanks again.

GOLD DUST INC.

(Agents for and on behalf of Berkindale Manor)

Angela Schuller
Property Manager.
APPENDIX “C” to Report PED06398

August 12, 2006
Tenants’ Meeting

Berkindale Manor

What is a Condominium?

A 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.

Condominium projects are managed by a Board of Directors, elected from the homeowners. Typically a Board will retain the services of a property management company to make day-to-day operating decisions.

Condominium ownership is premised on payment of a monthly maintenance fee. This fee will be used to pay for upkeep, maintenance and repair of all of the common elements of the condominium, including parking areas, common landscaped areas, snow removal etc.

Other items such as utilities may be charged to the individual units or included in the maintenance fee.

Berkindale Manor will be responsible for the payment of the maintenance fee for the rental units, whereas the owner-occupied units will pay the maintenance fee directly.

What Does Condominium Conversion Mean to You?

Approval of the Conversion will NOT change your rights as a tenant. You may remain a tenant as long as you want, and continue to pay rent. Berkindale Manor will still own your rental unit.

The condominium Board of Directors will be responsible for all of the units, rental and owner-occupied, however, the Tenant Protection Act will continue to apply to you.

If you are a tenant at the time of approval, you can either buy your unit or remain as a tenant for as long as you like. Your unit can not be sold unless you move.

What is the Approval Process?

A Draft Plan of Condominium was submitted by Mackinnon & Associates on behalf of Berkindale Manor for the conversion of these units. The City of Hamilton is in the process of reviewing the application and after the August 12th tenants’ meeting will prepare a staff report and schedule a formal public meeting in accordance with the Planning Act.

The City will be mailing out a notice to all residents of Berkindale Manor inviting tenants to attend this meeting.

If the conversion of this property to condominium is supported the Planning and Economic Development committee, a recommendation for approval will be presented to City Council the week following the public meeting, for final approval.

Further details will be provided by the City through the formal notification process.