SUBJECT: Application for Approval of a Draft Plan of Condominium Conversion for Lands Located at 9 Sherman Avenue South (Hamilton) (PED08148) (Ward 3)

RECOMMENDATION:

That approval be given to Condominium Conversion Application CDM-CONV-08-01, by L.A.C.I. Enterprises Inc. (Luigi Centurami), owner, to establish a Draft Plan of Condominium for eight existing apartment units, located at 9 Sherman Avenue South (Hamilton), as shown on the attached map marked as Appendix “A” to Report PED08148, subject to the following conditions:

(a) That this approval apply to the plan prepared by A.T. McLaren Limited and certified by S.D. McLaren, O.L.S., dated May 9, 2008 (Revision 2), showing a total of eight residential apartment units and seven vehicular parking spaces, attached as Appendix “B” to Report PED08148.

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

Development Planning and Engineering:

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

(ii) That the owner satisfies all conditions, financial or otherwise, of the City of Hamilton.
EXECUTIVE SUMMARY:

The purpose of this application is to create a Plan of Condominium for eight existing apartment units within a building located at 9 Sherman Avenue South. The condominium conversion will allow for the tenure of the units to change from rental to condominium ownership. The building has undergone significant renovations since being damaged by fire a number of years ago, and it has been vacant until quite recently. The five new occupants have signed agreements to purchase units in the event the proposed condominium conversion is completed, and are intentionally not protected by the Tenant Protection Act.

The proposed condominium conversion has merit and can be supported with conditions as the proposal is consistent with the Provincial Policy Statement, conforms to the “Urban Area” policies of the Hamilton-Wentworth Official Plan, and the “Residential” and “Housing” policies of the City of Hamilton Official Plan.

BACKGROUND:

Proposal

This proposal has been submitted in order that the owners of 9 Sherman Avenue South may seek approval of a Draft Plan of Condominium to allow a change in tenure of the eight apartment units located on site. The proposal would allow individual ownership of each unit, exclusive use of balconies and common use of the remainder of the site including landscaped area, halls, seven parking spaces, and access area (see Appendix “B”). No additional construction is proposed.
SUBJECT: Application for Approval of a Draft Plan of Condominium Conversion for Lands Located at 9 Sherman Avenue South (Hamilton) (PED08148) (Ward 3) - Page 3 of 8

Location: 9 Sherman Avenue South
Owner: L.A.C.I. Enterprises Inc. (Luigi Centurami)
Applicant: John DiPietro Professional Corp.

Property Description: Lot Area: 553 square metres
Lot Frontage: 13.945 metres
Lot Depth: 34.124 metres

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></td>
<td>Apartment Rental Units</td>
<td>“E” (Multiple Dwellings, Lodges, Clubs, etc.) District</td>
</tr>
</tbody>
</table>

Surrounding Land Uses

<table>
<thead>
<tr>
<th>North:</th>
<th>Parking and Bank</th>
<th>“H” (Community Shopping and Commercial) District</th>
</tr>
</thead>
<tbody>
<tr>
<td>West:</td>
<td>Residential</td>
<td>“G3” (Public Parking Lot) and “D” (Urban Protected Residential - Single and Double) District</td>
</tr>
<tr>
<td>South:</td>
<td>Residential</td>
<td>“E” (Multiple Dwellings, Lodges, Clubs, etc.) District</td>
</tr>
<tr>
<td>East:</td>
<td>Residential</td>
<td>“C” (Urban Protected Residential etc.) 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) The proposal complies with the City of Hamilton Zoning By-law as a legal non-conforming use.
   (iv) It is considered to be compatible with existing uses in the surrounding area.
2. The housing policies found in the City of Hamilton Official Plan are intended to guide future growth and development, which includes fostering a healthy rental housing market within the City. In this regard, Section C.7.11 of the City of Hamilton’s Official Plan identifies three conditions that must be satisfied in order to recommend the conversion of rental stock to condominium ownership. These conditions are as follows:

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

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

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

The Canada Mortgage and Housing Corporation (CMHC) provides annual statistical information on the national, provincial and local housing markets. In order to evaluate the proposal against the above noted Official Plan policies, the City uses local housing market data that is specifically-ordered from CMHC (see Table 1 and 2).

Table 1: Vacancy Rate and Average Market Rent for Two-Bedroom Apartment Units in CMHC Zone 2 - Central East

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</thead>
<tbody>
<tr>
<td>Two-Bedroom</td>
<td>4.67%</td>
<td>$675</td>
<td>9.15%</td>
<td>$681</td>
</tr>
</tbody>
</table>

Source: CMHC (2006)

Table 2: Vacancy Rate and Average Market Rent for Two-Bedroom Apartment Units in City of Hamilton

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</tr>
</thead>
<tbody>
<tr>
<td>Two-Bedroom</td>
<td>4.65%</td>
<td>$746</td>
<td>5.06%</td>
<td>$745</td>
</tr>
</tbody>
</table>

Source: CMHC (2006)
The subject property is located in Central-East Hamilton (Zone 2). For this Zone, the CHMC vacancy rate for two-bedroom apartment units in 2005 was 4.67% and 9.15% in 2006. The vacancy rate for the entire former City of Hamilton for two-bedroom apartment units was 4.65% in 2005, and 5.06% in 2006. It has been determined that the proposed conversion meets the intent of the Official Plan, since it does not negatively impact the vacancy rates such that they will fall below 2% in either CMHC Zone 2 or the City of Hamilton.

Using the same CMHC statistical information, Policy 3 of the Official Plan mentioned above is not negatively affected since two-bedroom apartment units in the City of Hamilton had an average rent of $745.00 per month (2006). For the Central-East Hamilton (Zone 2), a two-bedroom apartment unit had an average rent of $681.00. The average rent being paid by the existing occupants of the proposed conversion units is $750.00 per month. Therefore, the average rents of the proposed conversion units are not significantly lower than the average market rent for two-bedroom units in the City of Hamilton and local housing market Zone.

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

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

However, in the case of the subject property, the units have been vacant while the building underwent significant renovations to repair fire damage. All the occupants that will live in the newly renovated units, including five existing occupants, have a Purchase Agreement with the owner of the property. Similar to the circumstances of a newly built condominium, this Agreement is intended to clarify that the occupier can move into a future condominium unit prior to registration of the condominium without creating a landlord/tenant relationship. As such, in this case, the occupiers will not be protected by the Residential Tenancies Act.

Through this Purchase Agreement, the applicant has advised occupants of their intent to convert the existing apartments into condominiums. As further assurance of the clarity of this intent, staff has requested written acknowledgements of all occupants advising that:
(i) They are aware of the proposed condominium conversion.

(ii) They are aware that they are not tenants and not protected under the Tenant Protection Act.

(iii) They support the proposed condominium conversion.

Copies of the acknowledgement letters from the five existing occupants are attached as Appendix “C”. The remaining 3 units are currently vacant.

4. The recognized use of the property as an eight unit multiple dwelling is permitted. In addition, the existing parking area, as well as the lack of a required loading space, are both legally established non-conforming situations that predate the adoption of the Zoning By-law to July 25, 1950. As the subject condominium conversion application is changing the tenure rather than use, it is not affected by zoning regulations.

5. According to Building Division files, the subject property has undergone significant internal and external renovations since being damaged by fire some time ago. Upon inspection of the site, a number of the external renovations are evident, including residing of the building and improvements to the front porch. In addition to this work, 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 order to ensure the quality and safety of future owners and/or residents (see Recommendation (b)(iii)).

As noted in the recommendation, approval of this Draft Plan of Condominium conversion will be subject to conditions of approval, including the applicant satisfying conditions financial and otherwise of the City.

**ALTERNATIVES FOR CONSIDERATION:**

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

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Financial:** N/A.

**Staffing:** N/A.

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

Provincial Policy Statement

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

Hamilton-Wentworth Official Plan

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

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

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 Section of this report. The proposal satisfies the conversion policies of the Plan.

CONSULTATION WITH RELEVANT DEPARTMENTS/AGENCIES:

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

- Traffic Division, Public Works Department.
- Bell Canada.
- Horizon Utilities.
Public Consultation

As part of the application process, the applicant has been in consultation with the occupants regarding the condominium conversion process. They have met with the occupants so as to have a mutual exchange of information and explain occupant’s rights and the conversion process. Subsequently, all existing residents have provided a written acknowledgement respecting the proposed conversion (see Appendix “C”). In addition, the Notice of the Public Meeting was circulated to all current occupants.

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

:CPB
Attachs. (3)
JOHN DIPIETRO PROFESSIONAL CORPORATION
BARRISTER & SOLICITOR

AREA CODE 905
TELEPHONE 526-0736
FAX 521-2772

8 MAIN STREET EAST, SUITE 200
HAMILTON, ONTARIO
L8N 1E8

June 10, 2008

TO: The City of Hamilton

AND TO: Luigi Centurami

AND TO: JOHN DIPIETRO PROFESSIONAL CORPORATION

Dear Sir: Re: Property municipally known as 9 Sherman Ave. S.
Hamilton, Ontario
My File No: 10653
OCCUPANCY RE: Unit 3

I, Angela Buzzo, hereby confirm that I am not a tenant of the above property. I am occupying the property as a licensee pursuant to an interim occupancy agreement contained in an agreement of purchase and sale that is to be executed. I understand that I have no protection rights under the Residential Tenancies Act.

Dated at Hamilton this 10 day of June 2008

[Signature]
June 10, 2008

TO: The City of Hamilton

AND TO: Luigi Centurami

AND TO: JOHN DIPIETRO PROFESSIONAL CORPORATION

Dear Sir: Re: Property municipally known as 9 Sherman Ave. S.
       Hamilton, Ontario
       My File No: 10653
       OCCUPANCY RE: Unit 4

       I, Carl Nazirullah, hereby confirm that I am not a tenant of the above property. I am
occupying the property as a licensee pursuant to an interim occupancy agreement contained in an
agreement of purchase and sale that is to be executed. I understand that I have no protection
rights under the Residential Tenancies Act.

       Dated at Hamilton this 10 day of 06/2008

                                      Carl Nazirullah
June 10, 2008

TO: The City of Hamilton
AND TO: Luigi Centurami
AND TO: JOHN DIPIETRO PROFESSIONAL CORPORATION

Dear Sir:

Re: Property municipally known as 9 Sherman Ave. S.
Hamilton, Ontario
My File No: 10653
OCCUPANCY RE: Unit 5

I Heidi Panesar, hereby confirm that I am not a tenant of the above property. I am occupying the property as a licensee pursuant to an interim occupancy agreement contained in an agreement of purchase and sale that is to be executed. I understand that I have no protection rights under the Residential Tenancies Act.

Dated at Hamilton this 10th day of JUne 2008

Heidi Panesar
June 10, 2008

TO: The City of Hamilton

AND TO: Luigi Centurami

AND TO: JOHN DIPIETRO PROFESSIONAL CORPORATION

Dear Sir:

Re: Property municipally known as 9 Sherman Ave. S.
Hamilton, Ontario
My File No: 10653
OCCUPANCY RE: Unit 6

I Nick Gagnon, hereby confirm that I am not a tenant of the above property. I am occupying the property as a licensee pursuant to an interim occupancy agreement contained in an agreement of purchase and sale that is to be executed. I understand that I have no protection rights under the Residential Tenancies Act.

Dated at Hamilton this day of June 2008

[Signature]

Nick Gagnon
June 10, 2008

TO: The City of Hamilton

AND TO: Luigi Centurami

AND TO: JOHN DIPIETRO PROFESSIONAL CORPORATION

Dear Sir: Re: Property municipally known as 9 Sherman Ave. S.
Hamilton, Ontario
My File No: 10653
OCCUPANCY RE: Unit 8

I Mark Baldwin, hereby confirm that I am not a tenant of the above property. I am occupying the property as a licensee pursuant to an interim occupancy agreement contained in an agreement of purchase and sale that is to be executed. I understand that I have no protection rights under the Residential Tenancies Act.

Dated at Hamilton this 6 day of 2008

Mark Baldwin