

**Appeal of Committee of Adjustment Decisions
632-638 & 646-652 Northcliffe Boulevard and
754-758 Vaughan Road; Applicant: St. Hilda's Towers Inc.
Ward 28, York Eglinton**

(City Council on November 23, 24 and 25, 1999, adopted this Clause, without amendment.)

The York Community Council recommends that the Legal and Planning staff be directed not to appeal the consent approval decisions of the Committee of Adjustment (York District) regarding applications B-61/99YK to B-67/99YK, relating to the rental building properties at 632-638 and 646-652 Northcliffe Boulevard and 754-758 Vaughan Road.

The York Community Council reports, for the information of Council, having:

- (1) requested the Manager, Community Planning, West District, to report to the November 23, 1999 meeting of Council, on the rights of the existing tenants in the above properties under the provisions of the Tenant Protection Act; and
- (2) requested St. Hilda's Towers Inc. to submit to the Manager, Community Planning, West District, a proposal indicating their plans for providing the existing tenants with an opportunity to purchase the premises, as an alternative to the tenants' right of first refusal; and that such document be presented to the November 23, 1999 meeting of City Council.

The York Community Council submits the following report (November 4, 1999) from the Director, Community Planning, West District:

Purpose:

To provide information on decisions of the Committee of Adjustment to grant consent approval to related properties containing rental units and to recommend that Council appeal the decisions of the Committee of Adjustment.

Financial Implications and Impact Statement:

The financial cost associated with the recommended appeal is an appeal fee of \$275.00.

Recommendations:

It is recommended that:

- (1) City Council appeal the consent approval decisions of the Committee of Adjustment relating to applications B-61/99YK to B-67/99YK for 632-638 and 646-652 Northcliffe Boulevard and 754-758 Vaughan Road;
- (2) Staff be directed to take the necessary action to give effect thereto; and,

- (3) Legal and staff representation be authorized to attend any Ontario Municipal Board hearing on the appeal.

Background:

The subject applications are summarized as follows:

Address: 632-638 and 646-652 Northcliffe Boulevard and 754-758 Vaughan Road
(Ward 28 York-Eglinton)

Applicant: St. Hilda's Towers Inc.

Applications: B61/99YK to B-67/99YK

The Committee of Adjustment of November 2, 1999 granted consent for the technical severance of two related parcels of land on Northcliffe Boulevard and Vaughan Road south of the St. Hilda's senior citizen apartment complex at the south east corner of Eglinton Avenue West and Dufferin Street. The parcels, which are shown on the Location Map attached as Appendix A described as follows:

Parcel A - The north portion of the holdings, has frontage along Northcliffe Boulevard and Vaughan Road and is comprised of, what were at one time, six residential lots in separate ownership. This parcel of the land is occupied by four detached dwellings, one pair of semi-detached dwellings and a variety of accessory buildings.

Parcel B - The south portion of the holdings, fronts onto Northcliffe Boulevard, and is comprised of, what were at one time, three residential lots in separate ownership. This parcel of the land is occupied by one detached dwelling and one pair of semi-detached dwellings.

In April 1992, title of the nine (9) original residential lots merged as a result of St. Hilda's Towers Inc. efforts to acquire, and subsequently consolidate, a number of properties for the purpose of redeveloping the lands for another seniors apartment complex. St. Hilda's Towers currently owns and operates a publicly subsidized non-profit senior citizen residential complex consisting of three high-rise buildings containing approximately 488 dwelling and hostel units.

With the acquisition of each lot, St. Hilda's intent was to rent each dwelling house until it was prepared to proceed with a redevelopment of the assembled lands. To date, St. Hilda's has not been able to complete the land assembly and now desires to re-establish what were previously nine individual residential lots with a dwelling house on each lot.

Therefore, it applied to the Committee of Adjustment for consent approval to re-establish the individual lots and associated rights-of-way (mutual driveways for vehicular and pedestrian use) and to establish clear title so as to retain and use each existing dwelling house as a permitted use.

Comments:

Planning staff commented to the Committee of Adjustment that new policies contained within Official Plan Amendment (OPA) No. 2 relating to the preservation and maintenance of

residential buildings, particularly rental buildings, apply to these consent applications. This amendment was adopted by City Council on March 2,3 and 4 but is currently under appeal to the courts by the City from a decision of the Ontario Municipal Board to not approve the Amendment. Notwithstanding that these new policies are under appeal, they are City Council's adopted policies.

In particular, Policy 135.1 with the Official Plan Amendment No. 2 states that it is the policy of Council "to preserve, maintain and replenish the supply of residential buildings, and particularly rental buildings, across the City of Toronto by restricting the demolition of residential property and the conversion of rental units to condominium and/or freehold, by discouraging the conversions of rental units to equity co-operative, and by encouraging new rental housing production."

As indicated in planning staff comments dated July 14, 1999 to the Committee of Adjustment in considering matters of consent, the Planning Act provides that regard shall be given, among other matters, to whether the consent conforms to the Official Plan. In light of the above-noted adopted policies, the proposed consent application would not conform to the policies of Official Plan Amendment No. 2. Accordingly, staff recommended to the Committee that the consent applications be refused. The Committee at its meeting in July 1999 deferred consideration of the application.

The applications were brought back before the Committee of Adjustment for consideration on November 2, 1999. In a further comment to the Committee of Adjustment dated October 22, 1999, planning staff advised that the previous comment to recommend refusal continued to apply. However, staff also informed the Committee of Adjustment of the action of City Council on September 28, 1999 in dealing with an appeal of consents granted by the York Committee of Adjustment to permit the conversion of six rental townhouses to freehold units at 20-30 Sandcliffe Road. In dealing with that somewhat similar matter, City Council provided an opportunity to allow conversion of rental townhouses to freehold conditional upon documentation satisfactory to the Solicitor for each tenant and the City Solicitor, evidencing a lease agreement, being provided by October 20, 1999 and registered on title, between the owner and each tenant to provide for:

1. security of tenure for a period of time on the basis of the tenant's existing lease or in a form otherwise satisfactory to the tenant,
2. rights of termination by the tenant and provision for notice period, and
3. the tenant's right to first refusal to purchase the premises.

On the basis planning staff also commented to the Committee that if it was inclined to approve the consent applications, a condition which included the preceding terms was requested to be imposed.

The Committee of Adjustment on November 2, 1999 granted consent approval without the condition.

Conclusions:

The consent approval decisions do not conform to the recently adopted City-wide policy regarding the preservation and maintenance of the rental townhouses. The decisions in effect will permit the conversion of the rental townhouses to freehold. Accordingly, the consent decisions should be appealed.

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Insert Table/Map No. 1
St. Hilda's Towers Inc.

(City Council on November 23, 24 and 25, 1999, had before it, during consideration of the foregoing Clause, the following report (November 18, 1999) from the Acting Commissioner of Urban Planning and Development Services:

Purpose:

To outline the rights of existing tenants of the residential rental buildings located at 632-638 & 646-652 Northcliffe Blvd & 754-758 Vaughan Road under the Tenant Protection Act.

Financial Implications and Impact Statement:

None.

Recommendations:

It is recommended that this report be received for information.

Background:

At its meeting of November 9, 1999, the York Community Council had before it a report from the Manager, Community Planning, West District (November 4, 1999) recommending that City Council appeal the consent approval decisions of the Committee of Adjustment for 632-638 & 646-652 Northcliffe Blvd & 754-758 Vaughan Road.

York Community Council (Clause No.1 in Report No.11) took the following actions:

- recommended that Legal and Planning staff not appeal the consent approval decisions of the Committee of Adjustment;*
- requested that the Manager, Community Planning, West District, report to the November 23, 1999 meeting of Council, on the rights of the existing tenants under the Tenant Protection Act (TPA) for the above-noted properties; and*
- requested that the applicant, St. Hilda's Towers Inc., provide the Manager, Community Planning, West District, with a proposal indicating their plans for providing the tenants with an opportunity to purchase the premises. This document will be submitted to the November 23, 1999 meeting of Council under separate cover.*

Comments:

Policy Context:

The above-noted property consists of two related parcels of land, occupied by five detached dwellings and two semi-detached dwellings. These dwellings are currently rented. The Committee of Adjustment gave its consent to severing the parcels into nine separate parcels (the duplexes separated along party walls).

Staff recommended that the consent approval of the Committee of Adjustment be appealed based on the following considerations:

- (1) re-establishing individual lots for each dwelling would not conform to Policy 135.1 of Official Plan Amendment No.2 which states that it is the policy of Council “to preserve, maintain and replenish the supply of residential buildings, and particularly rental buildings, across the City of Toronto by restricting the demolition of residential property and the conversion of rental units to condominium and/or freehold...”; and*
- (2) the consent approval was given without establishing the conditions which would protect existing tenants, such as those established for conversion of six rental townhouses to freehold units at 20-30 Sandcliffe Road (City Council, September 28, 1999).*

OPA 2 provides the policy framework for addressing the potential loss of rental housing stock in the City of Toronto. Once a rental dwelling becomes severed from a rental residential complex, it can more readily be removed from the rental housing stock as the granting of the severance by the Committee of Adjustment will result in the creation of properties with less than three units. This means that, under the TPA, if these properties are sold, future tenants can be evicted by the purchaser for “purchaser’s own use”.

The Tenant Protection Act offers existing tenants certain rights and protections. The following provides information on security of tenure, rights of termination, and rights of first refusal, and how these aspects may apply to the subject properties.

Security of Tenure:

The Tenant Protection Act (TPA) establishes rules for the landlord and tenant relationship, including security of tenure. Security of tenure means that a tenant cannot be required to vacate their unit except under very specific circumstances. This security applies whether or not the tenant has a written lease. Once the term of a “periodic” tenancy ends (e.g. at the end of 12 months for a tenant with a yearly lease, or the end of a month for a tenant on a “month-to-month” lease) the tenancy automatically extends itself with the same terms and conditions as the original tenancy, subject to any permitted rent increases (s.40(2) TPA). Therefore, the tenant can remain in the rental unit for as long as they choose, unless the tenancy is lawfully terminated by the landlord based on one of the permitted reasons in the TPA (e.g. non-payment of rent).

One of the lawful reasons for evicting a tenant is “landlord’s own use”. A landlord is permitted to evict a tenant where the landlord requires possession of the rental unit for use by the landlord, the landlord’s spouse, or a child or parent of one of them (called “landlord’s own use”; s.51 TPA). If there are three or fewer units in the “residential complex”, the tenant may be evicted in order for the purchaser or a member of the purchaser’s family to have possession of the rental unit (s.52 TPA). Residential complex is a defined term under the TPA, and refers to a building or, as in this situation, a related group of buildings in which one or more rental units are located.

However there is a special restriction on these rights in the case of a severance or plan of subdivision. If a rental unit becomes a separately conveyable property, the tenant living in the unit at the time of the consent or approval cannot be evicted for the landlord's or purchaser's own use (s.59 TPA). Protection from these types of evictions is not available to any new tenant moving into the unit after the original tenant has left.

There is no similar provision under the TPA dealing with rental units which are part of another separately conveyable property – such single family units with second suites (although Legal staff of the Ministry of Municipal Affairs and Housing have confirmed that protection from eviction for the landlord's/purchaser's own use does not apply to rental units which are part of a conveyable property.) Therefore, if a duplexed rental unit is sold, both sets of tenants may be evicted for purchaser's own use because the “residential complex” now has three or fewer units as a result of the consent.

Staff are aware of at least one property in the related residential properties which contains two rental units within a single-detached dwelling. It is possible that existing tenants within this dwelling will not be protected from termination of tenancy due to the landlord's or purchaser's own use.

Rights of Termination by the Tenant:

All tenants are permitted to give notice that they will vacate the unit (s.46 TPA). In the case of a monthly or yearly tenancy, the tenant must give the landlord notice at least 60 days before the notice would be effective (e.g. if the tenant has a one-year lease, the notice would be effective on the last day covered by the lease). If the tenants have long-term leases, they will be responsible for paying rent until the end of the term, even if they move out earlier. If the tenants have “month-to-month” leases and move out earlier, they would still be responsible for two month's rent.

Right of First Refusal to Purchase Unit:

The TPA does not confer right of first refusal to purchase to the sitting tenant of a unit which has been severed. Landlords are only required to offer the unit for purchase by a sitting tenant under certain circumstances where a rental unit has been converted to a condominium (s.54 TPA). For condominium conversions, where the owner has received an acceptable offer to purchase, the tenant has the right to purchase the unit if within 72 hours they are able to match the offer (there are exceptions).

Although, tenants do not automatically have right of first refusal to purchase their unit when it has been severed (as it is a freehold property and not a condominium), there is nothing in the TPA which prohibits the landlord from selling the unit to the sitting tenant. This would apply to all tenants of the rental units. If the tenant decides not to purchase the unit, and the unit is subsequently sold, the new owner cannot evict the tenant for “landlord's/purchaser's own use”. Again, this restriction applies only to separately conveyable rental units, and not conveyable properties with more than one rental unit (as noted above).

Under the TPA, “right of first refusal” also comes up in the context of renovations to a rental unit (s.56). Where the landlord requires vacant occupancy of a unit in order to undertake extensive repairs or renovations, the right of first refusal in this instance means that the sitting tenant has the right to move back into the unit after the work is completed.

Tenants in residential complexes of 5 or more units are also entitled to compensation, whether or not they decide to exercise their right of first refusal (s.57). Compensation from the landlord includes either:

- another unit acceptable to the tenant; or*
- the lesser of three months rent or the rent payable for the period that vacant occupancy is required.*

A restriction applies where the size of the complex has been reduced to fewer than 5 units because of a severance, and the landlord undertakes renovations which require vacant occupancy (s.58 TPA). In this situation, the sitting tenant is entitled to the same right of first refusal and compensation provisions which would have existed had the severance not occurred (s.58 TPA). However, compensation applies only where the notice of termination for renovation is given within 2 years of the date of severance.

There are other conditions which may apply to limit compensation provisions, however, this would depend on particular facts and circumstances which we may not currently be aware of in relation to these properties.

Conclusions:

The Tenant Protection Act protects the existing tenants of the separately conveyable rental units from eviction due to the landlord’s/purchaser’s own use. Tenants of dwellings where there are more than one rental unit (which may include a second suite in a single-family dwelling) may not be protected from evictions on these grounds. All other potential grounds for eviction continue to apply to all units.

Tenants may give notice (e.g. 60 days in the case of a monthly or yearly tenancy) of their intent to vacate the property at the end of the applicable rental period. The tenants are responsible for paying rent until the end of the term, even if they choose to move out at an earlier date.

The TPA does not give the tenants, in this case, right of first refusal to purchase their rental units.

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(City Council also had before it, during consideration of the foregoing Clause, the following report (November 16, 1999) from the Acting Commissioner of Urban Planning and Development Services:

Purpose:

To provide for information on St. Hilda's Towers Inc. proposal for providing sitting tenants with an opportunity to purchase the existing dwelling houses.

Financial Implications and Impact Statement:

None.

Recommendations:

It is recommended that this report be received for information.

Background:

At its meeting of November 9, 1999, the York Community Council had before it a report from the Manager of Community Planning, West District dated November 4, 1999 recommending that City Council appeal the consent approval decisions of the Committee of Adjustment for 632-638 and 646-652 Northcliffe Boulevard and 754 and 758 Vaughan Road.

York Community Council (Clause No. 1 in Report No.11) took the following actions:

- (a) recommended that Legal and Planning staff not appeal the consent approval decisions of the Committee of Adjustment;*
- (b) requested that the Manager, Community Planning, West District, report to the November 23, 1999 meeting of Council on the rights of the existing tenants under the Tenant Protection Act (TPA) for the above-noted properties; and*
- (c) requested that the applicant, St. Hilda's Towers Inc., provide the Manager of Community Planning, West District, with a proposal indicating their plans for providing the tenants with an opportunity to purchase the premises and for the proposal to be submitted to the November 23, 1999 meeting of Council.*

This report provides information on action item (c). Information on item (b) will be before City Council under separate cover.

Comments:

The Board of Directors of St. Hilda's Towers Inc. on November 13, 1999 adopted a resolution outlining its proposal to provide existing tenants with an opportunity to purchase their premises. St. Hilda's Towers Inc. proposes to:

- (1) obtain advice from a licensed real estate agent in setting the price at which any house is to be listed for sale;*
- (2) first advise the existing tenant within any individual house which it determines to sell of the price at which the house will be listed and provide the tenant an opportunity, for at least seven days, to make an offer to purchase the dwelling before St. Hilda's entertains offers from third parties; and,*
- (3) following the seven day first offer period, continue to entertain offers from existing tenants for the dwelling in which they reside or for any other dwelling, in competition with other qualified purchasers.*

A copy of the resolution and cover letter from Smith Lyons, the solicitors representing St. Hilda's Towers Inc., is attached as Attachment I.

Conclusions:

St. Hilda's Towers Inc. will provide existing tenants an opportunity to acquired ownership of the dwelling houses in which they reside on right of first offer basis as outlined in the proposal attached to this report.

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(A copy of Attachment I, referred to in the foregoing report, is on file in the office of the City Clerk.)