

Conversion of Rental Housing to Co-ownership

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| Date: | September 25, 2008 |
| To: | Planning and Growth Management |
| From: | Chief Planner and Executive Director, City Planning |
| Wards: | All Wards |
| Reference Number: | Pg080036 |

SUMMARY

This report responds to a request from Planning and Growth Management Committee that the Chief Planner and Executive Director report on a policy or by-law regulating the conversion of rental housing to co-ownership. Council previously dealt with this matter as part of the implementation of Section 111 of the City of Toronto Act. Chapter 667 of the Municipal Code, which was enacted in July 2007, prohibits the conversion of rental housing to any form of co-ownership without a permit from City Council.

Unlike conversion to condominium, where the City is the approval authority for the creation of a condominium, the creation of a corporation (either under the Business Corporations Act or the Co-operative Corporations Act) is a Provincial responsibility. Thus, while the City's Code prohibits this conversion, the means to effectively achieve this is not within the City's direct control. Consequently, the City's ability to enforce the Code's provisions is largely a rearguard action, that is, prosecution after the fact.

On August 25th, the Mayor wrote to the Ministers of Municipal Affairs and Housing, Government Services and Finance/Financial Services Commission and requested that the Province implement one of the following two options: prohibit the registration of businesses operating as co-ownerships and equity co-operatives that involve the conversion of rental buildings; or, defer the incorporation of these types of properties until such time as the City has issued a permit in favour of the conversion of the property. Provincial staff have agreed to meet with City staff to discuss this issue.

This report recommends that Council direct staff to work with the Province to assist in achieving a more proactive approach to regulating the conversion of rental housing to co-ownerships and equity co-ops in the City, consistent with the intent of the powers that were provided under the City of Toronto Act.

RECOMMENDATIONS

The City Planning Division recommends:

1. That City staff meet with Provincial staff to develop a protocol that would enable Provincial staff to:
 - a. not register applications that involve rental conversions under the Business Corporations Act for co-ownerships and under the Co-operative Corporations Act for equity co-operatives or co-operatives with share capital, or
 - b. defer the incorporation of co-ownerships and equity co-operatives until the City has issued a permit in favour of the conversion of the rental property under the authority of the City of Toronto Act, and
 - c. ensure that any prospective registrant under the Business Corporations Act or the Co-operative Corporations Act are fully advised of the City's position regarding the establishment of co-ownerships or equity co-operatives through the conversion of residential rental properties, in advance of such corporations being registered, and
 - d. provide the City, on a semi-annual basis, with a list of any corporations registered with the Province for the purpose of co-ownership of rental property in the City of Toronto so that the City might monitor activity and, if required, take appropriate legal action.

FINANCIAL IMPACT

There are no financial impacts beyond what has already been approved in the City Planning Division's 2008 Operating Budget.

DECISION HISTORY

At its meeting of June 5, 2008 the Planning and Growth Management Committee had before it a communication from Councillors Moscoe and Mihevc (<http://www.toronto.ca/legdocs/mmis/2008/pg/bgrd/backgroundfile-13033.pdf>) regarding the need to develop policies to prevent the conversion of rental housing to equity co-ops or other forms of co-ownership. The Committee requested that the Chief Planner and Executive Director, City Planning Division report on a policy or by-law regulating such conversions.

ISSUE BACKGROUND

City Council was granted new powers to control the demolition and conversion of rental residential units under the City of Toronto Act (Section 111) and subsequently on July 19, 2007 enacted amendments to the Municipal Code to give effect to these new powers. Chapter 667 of the Municipal Code now prohibits conversion of buildings containing 6 or more dwelling units, with one or more rental units, to any form of co-ownership without

approval by Council. Under the City of Toronto Act, there is no appeal to the Ontario Municipal Board if Council refuses to permit the conversion.

COMMENTS

What are Co-ownerships and Equity Co-ops?

Generally speaking, a co-ownership is where the purchaser buys an undivided percentage interest in the whole property, becoming an “owner in common” with the other purchasers. Each purchaser is given the right to lease a particular unit for an extended period of time.

An equity Co-operative is where a purchaser buys shares in a corporation that in turn owns the land and building. The Corporation gives the purchaser the right to occupy a particular unit.

The City’s Rental Housing Demolition and Conversion Policies as embodied in Chapter 667 of the Municipal Code deals with and prohibits conversion of rental housing to both these forms of ownership, in addition to condominium. The Municipal Code uses the term “co-ownership” to collectively refer to both co-ownership and equity co-operative forms of housing.

Key Problems Associated with Co-ownerships and Equity Co-operatives

The co-ownership tenure form is flawed, and benefits to consumers are few. They are inferior and deficient forms of ownership, stemming from the fact that relationships among “owners” are created by private contract. Issues identified are:

- a) financing is very difficult to obtain;
- b) developer/owner first-time financing dries up after original term;
- c) no conventional lenders offer financing;
- d) only one credit union (Duca) has continued to consistently offer financing, while a few lesser known lenders may offer financing, it is not in an on-going, reliable manner;
- e) often financing is provided in the form of loans, not mortgages, usually at a premium interest rate;
- f) there is no clear, legally prescribed form of governance, and in some cases, no way to ensure collection of common, shared expenses and no regime to require an initial capital fund;
- g) other administrative/legal problems such as shared liability (where one shareholder/co-owner has defaulted on payments for a loan, taxes or utilities, others have been left covering the arrears);
- h) no deed for equity co-operatives – just shares in corporation (there is a deed for co-ownerships, but only for an undivided percentage interest in the property); and

- i) not easily marketable as co-ownerships, which means that often these units are marketed (and in some cases sold) to unsuspecting buyers as condominiums that are cheaper.

Current City Provisions

The City has taken full advantage of its powers under Section 111 of the City of Toronto Act to protect the City's existing rental housing stock, and has adopted a By-law (on July 19, 2007) to implement these powers. The provisions of the By-law are contained in Chapter 667 of the Municipal Code, which, among other things, clearly covers the conversion of rental buildings to co-ownership and subjects them to a similar review process that applies to rental conversions to condominium. Any rental building that is converted to co-ownership (or other uses) without City approval and a permit under Chapter 667 of the Code is subject to prosecution and upon conviction a fine of up to \$100,000. In addition, paragraph 667-21 allows the court, upon conviction, an additional fine equal to the "monetary benefit" arising as a result of the conversion.

The ability of the City to proactively prevent conversion of rental housing to co-ownership however, is affected by the fact that the City does not have a specific authority to approve, or refuse, the process of incorporation. Fundamentally, equity co-ops or other forms of co-ownership are, in effect, business arrangements, registered at the Province (with either the Ministry of Finance or the Ministry of Government Services). When the "business" involving the collective ownership of a rental building in which interests or shares are sold entitling the shareholder the right to exclusive possession of a unit is created, the Municipal Code is contravened. However, Section 111 of the City of Toronto Act did not provide a means to allow the City to prevent business corporations from being created and operating these businesses as co-ownerships in the first instance.

Steps Taken to Communicate and Implement these Provisions of the Municipal Code

Prior to the adoption of the By-law under Section 111, discussions took place between staff at the Province (Ministries of Municipal Affairs and Housing, Government Services and Finance/Financial Services Commission). Immediately following Council's adoption of the By-law, several actions were taken to notify interested parties.

- a) A letter was sent to appropriate Provincial representatives to notify them of Council's decision.
- b) The appropriate Provincial operations staff were asked to make available a Notice from the City to prospective registrants under the Business Corporations Act administered by the Ministry of Government Services (for co-ownerships which make up the vast majority of recent activity), and the Co-operative Corporations Act administered by the Financial Services Commission (for equity co-operatives or co-operatives with share capital). To date, only the Financial Services staff has made the notice available to prospective applicants. While City Planning staff initially attempted to distribute the notice via the Ministry of Government Services Central

intake office in Toronto, that Provincial office declined to make the information available. The Ministry considered that given the range of businesses that are created and the location of such businesses across Ontario, providing Toronto-specific information on co-ownerships at their main intake office would not be practical. However, a Service Ontario office serving the Toronto area has recently been established and within the last few months has been accepting certain applications relating to the registration of business corporations and may be able to make the notice available to prospective registrants.

- c) A letter was also sent to individuals (private consultants, investors, lawyers etc.) and groups/organizations (i.e. Law Society, Trade Magazines, Co-operative Association etc.) that had previously shown an interest in the creation or conversion of rental housing to co-ownerships.
- d) Two notices have been posted on City websites (City Clerk's and the small business sites). Also, details on the Rental Housing Demolition and Conversion By-law are offered at City Planning's site on planning for housing at:
<http://www.toronto.ca/planning/housing.htm>

Recent Experience with Conversions to Co-ownership

Data on conversion of rental housing to co-ownership is not readily available. Between the time of the repeal of the Rental Housing Protection Act (RHPA) and Council approval of Chapter 667 of the Code (the period when no approval from the City was required) information is anecdotal, or based on voluntary contact from building owners and their consultants, or complaints from tenants.

Based on December 2006 assessment data and other properties known to staff, there were approximately 100 buildings containing approximately 5,000 units that were in co-ownership or equity co-op structures prior to the passage of Chapter 667.

Almost all of these buildings were originally constructed as purpose-built rental. The vast majority of these buildings are believed to be co-ownership as opposed to equity co-operatives.

In addition to these buildings, there had been a considerable flurry of activity within the months leading up to the adoption of the By-law. Staff are aware of several proponents that were in the process of creating multiple co-ownership projects immediately before the passage of the implementing By-law on July 19, 2007.

Given the information available, there could be as many as 20 more projects containing another 1,000 units for a total estimate of about 120 buildings consisting of approximately 6,000 units.

In the year preceding the passage of the By-law, there were several media stories, including a trade publication, quoting lawyers and consultants who were promoting the concept to investors by packaging purchases of rental properties with their expertise for the sole purpose of immediate conversion to co-ownership. While interest seems to have

waned since the By-law was adopted, Planning staff have continued to receive complaints from tenants that other properties are in the process of being converted. The complaints are being investigated to determine what action, if any, should be taken.

Can the City Prevent the Subsequent Conversion of Co-ownership to Condominium?

Chapter 667 of the Municipal Code would allow the City to prevent the subsequent conversion of equity co-ops or other forms of co-ownership to condominium, however, it is noted that in the past the pressure to “go the next step” has sometimes been difficult to resist due to the arguments of the individual shareholders regarding financial and other hardships of co-ownership.

Can More Be Done to Proactively Prevent Conversions to Co-ownership?

The bulk of the co-ownership businesses are registered with the Ministry of Government Services. Despite the City staff’s best efforts to make information about the City’s By-law available at the Ministry of Government Services Central application intake/registration counter, the Ministry has thus far declined to do so. However, the Ministry of Government Services may now be able to provide, through a recently established Toronto Service Ontario office, notice to potential registrants regarding the City’s proscription on the creation of co-ownerships involving the conversion of existing rental buildings.

Given the fundamental flaws with co-ownership tenure and the City’s By-law, it would be preferable for the Ministry to prohibit registration of applications that involve rental conversions to co-ownerships or equity co-operatives. Alternatively, the Province may defer incorporation of these properties until the City has confirmed that it has granted a permit for the conversion of the properties. This option could be done by:

- a) providing the City’s Section 111 By-law and supporting information at the Province’s application intake/registration counter so that prospective registrants are fully informed of the City’s practices, (or by designing a type of electronic early warning feature to advise applicants that the conversion of rental buildings to co-ownership without City approval and a permit under the Municipal Code will be subject to prosecution and a substantial fine); and
- b) not registering applications under the Business Corporations Act for co-ownerships and under the Co-operative Corporations Act for equity co-operatives or co-operatives with share capital unless and until the City has issued a permit for rental conversion under Section 667 of the Toronto Municipal Code; and
- c) providing the City, on a semi-annual basis, with a list of any corporations registered with the Province for the purpose of co-ownership of rental property in the City of Toronto so that the City might monitor activity and, if required, take appropriate legal action.

As mentioned, Provincial staff have agreed to meet to discuss the issue and, if appropriate, develop a protocol. At this meeting, City staff will request the cooperation of the Provincial Ministries with responsibility for reviewing and registering businesses to allow the City to effectively implement Chapter 667 of the Municipal Code.

CONTACT

Barbara Leonhardt
Director
Policy & Research Section
City Planning Division
416-392-8148
bleonha@toronto.ca

David Spence
Senior Planner
Policy & Research Section
City Planning Division
416-392-8124
dspence@toronto.ca

SIGNATURE

Gary Wright
Chief Planner and Executive Director
City Planning Division

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