



STAFF REPORT ACTION REQUIRED

Update on the Conversion of Rental Housing to Co-ownership

Date:	December 7, 2009
To:	Planning & Growth Management Committee
From:	Chief Planner and Executive Director, City Planning
Wards:	All Wards
Reference Number:	pg10003

SUMMARY

At present, corporations functioning as co-ownerships, including equity co-operatives, are established through a provincial incorporation and registration process. However, the formation of some of these corporate entities involves the conversion of rental housing which is contrary to Section 111 of the *City of Toronto Act* and subject to prosecution under that legislation.

Based on the recommendation of the Planning and Growth Management Committee, City Council at its meeting on October 29 and 30, 2008 directed City staff to meet with provincial staff to develop a protocol to resolve concerns related to the creation of co-ownerships through the conversion of rental housing.

Efforts have been made by the Mayor's office and City staff to meet with Provincial staff and seek changes to relevant legislation and administrative review processes. To date, these efforts have met with limited success. This report describes the work undertaken to resolve the issue and presents several recommendations for further action.

This report has been prepared in consultation with staff from the Legal Services Division.

RECOMMENDATIONS

The City Planning Division recommends that:

1. In order to more effectively administer the provisions of Section 111 of the City of Toronto Act, City Council request the Ministers of Municipal Affairs and Housing, Government Services and Finance and the Chief Executive Officer of the Financial

Services Commission, in consultation with the City Solicitor, to amend application forms and web site information to make reference and appropriate links to City of Toronto information on the establishment of co-ownerships and equity co-operatives (with share capital) involving the conversion of rental properties.

2. City Council direct City Planning staff to:
 - a. continue to liaise with Provincial staff in the relevant application intake offices of the Ministry of Government Services and Financial Services Commission to explore alternative methods of advising potential registrants of corporations involving the conversion of rental property in the City of Toronto of the requirements under Section 111 of the *City of Toronto Act*; and
 - b. update public information on the requirements of Section 111 as it pertains to the conversion of rental housing to co-ownership, and disseminate such information to the Ministry of Government Services and Financial Services Commission, and to other key stakeholders to reiterate and reinforce the City's requirements in this regard.

FINANCIAL IMPACT

There are no financial impacts beyond what has already been approved in the current year's budget.

DECISION HISTORY

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

A Planning report dated September 25, 2008 offered a detailed response on the issues relating to the creation of co-ownerships and the City's current authority to restrict these entities, and suggested a course of action to resolve potential conflicts with provincial legislation and practices (<http://www.toronto.ca/legdocs/mmis/2008/pg/bgrd/backgroundfile-15994.pdf>). The report was adopted, with amendments, by the Planning and Growth Management Committee on October 14, 2008. City Council at its meeting of October 29 and 30, 2008 adopted the recommendations of the Planning and Growth Management Committee and in doing so:

1. Directed City staff to 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 registrants 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.

As requested by the Planning and Growth Management Committee, the City Solicitor also reported directly to the October 29 and 30, 2008 City Council meeting on legal actions that could be taken in the event that a co-ownership was created in contravention of Section 111 of the *City of Toronto Act* (<http://www.toronto.ca/legdocs/mmis/2008/cc/bgrd/backgroundfile-16948.pdf>).

ISSUE BACKGROUND

The Planning Report of September 25, 2008 provided background information on a number of topics relating to co-ownerships including a definition of co-ownerships and equity co-operatives, key problems associated with the tenure form, current City provisions, steps taken to communicate and implement these provisions, recent experience with conversions to co-ownership, and the City's ability to prevent subsequent conversion of co-ownership to condominium. As these matters have been previously addressed, this report will not cover them in any detail.

While co-ownerships and equity co-operatives differ slightly in their tenure arrangements, for the City's purposes in preserving rental housing under Section 111 of the *City of Toronto Act*, these entities have been grouped together under the term "Co-ownership". A complete definition of the term is provided at the following link: <http://www.toronto.ca/legdocs/bylaws/2007/law0885.pdf>

Generally, co-ownerships as defined by the City refer to a situation where a person purchases an undivided percentage interest in a property, or a share in a corporation, which entitles them to exclusive possession of a particular unit in a building. The vast majority of these buildings have been created through the conversion of residential rental properties. Staff estimates that, since the 1970's, about 120 rental buildings containing around 6,000 units have been converted to co-ownership in the City of Toronto.

As discussed in the September 25, 2008 report, co-ownerships are an inferior tenure form that often present a number of legal, administrative and financial problems to their co-owners or shareholders. In many cases, the co-ownership arrangement was selected as a means of circumventing the more established and rigorous condominium approvals process. In 1986, the Rental Housing Protection Act was introduced which gave larger municipalities the authority to restrict the conversion and demolition of rental housing to

other uses, such as equity co-operatives or co-ownerships. However, in 1998 that legislation was repealed. While the City was still able to restrict the conversion of rental buildings to condominium through the condominium application process, restricting conversions to co-ownership was more problematic.

When the *City of Toronto Act, 2006* took effect on January 1, 2007, it provided City Council with additional authority, under Section 111 of that legislation, to pass a by-law to prohibit and regulate the conversion and demolition of rental housing. On July 19, 2007, the City passed by-law 885-2007 to adopt Municipal Code Chapter 667 and implement these *City of Toronto Act* provisions.

This by-law clearly states that, in addition to other forms of conversion, the conversion of rental housing to co-ownership is prohibited without City approval under Section 111. A conversion is determined to occur when the first lease or sale of an interest in a rental property or of a share in a corporation owning or leasing rental property takes place that carries with it the right to occupy a specific unit in the property. Under the *City of Toronto Act*, any co-ownership that is created through the conversion of rental property, without the necessary City approvals, is subject to prosecution and a substantial fine.

As the Province continues to retain the ability to incorporate/register business corporations that operate as co-ownerships, the City's role may become one of prosecution after the fact. With the Province's assistance, a more effective and co-ordinated approach could be developed to deal with the approval of co-ownerships.

COMMENTS

City Efforts to Resolve the Issue

The Mayor and staff in City Planning, and Strategic and Corporate Policy Divisions have approached the Province in an effort to develop a more co-operative method for dealing with co-ownerships.

Mayor's Letter

On August 25, 2008 Mayor Miller wrote to the Ministers of Municipal Affairs and Housing, Government Services and Finance and the Chief Executive Officer of the Financial Services Commission and requested that one of two options be implemented by the Province.

Specifically, the Mayor requested that the Province either:

- prohibit the incorporation of businesses under the *Business Corporations Act* or the *Co-operative Corporations Act* that operate as co-ownerships and equity co-operatives and involve the conversion of rental housing; or
- defer the incorporation of these types of properties until the City has issued a permit to allow the conversion of the property under the *City of Toronto Act*.

The Honourable Ted McMeekin, Minister of Government Services, responded to the Mayor's request. In his letter dated October 23, 2008, the Minister declined to consider taking any action to accommodate the City's interests. He stated that, under the *Business Corporations Act*, responsibility for checking whether articles contained in applications were in compliance with the law rests with the corporations and their lawyers; not with his provincial staff.

Follow-up attempts were made by City Planning staff to meet with staff from the various ministries including the Ministry of Government Services (MGS). Although the Ministry of Municipal Affairs and Housing and Financial Services Commission staff had expressed a willingness to meet, in light of Minister McMeekin's response, MGS staff chose not to participate. As the majority of the more recent co-ownerships have been approved by the MGS, it was considered that the area of greatest concern would not be discussed, and the meeting was not held.

Financial Services Commission staff has continued to advise potential registrants of equity co-operative corporations (corporations with share capital) of the City's position and has requested that one such applicant consult with City Planning staff before making an application.

City of Toronto Act Review

The *City of Toronto Act* required that a provincial review of the legislation be undertaken two years after it came into effect on January 1, 2007. City staff had identified a number of areas of concern that should be addressed in such a review and brought those issues to the Province's attention. One of these concerns involved the conflict between the Province's incorporation process for co-ownerships and the City's interest in regulating the conversion of rental housing.

In January 2009, this provincial review was initiated by the Minister of Municipal Affairs and Housing. However, the scope of the review was limited by the Ministry to technical matters, and did not consider fundamental policy changes.

The revisions to the *City of Toronto Act* were introduced, along with amendments to the *Municipal Elections Act* and other Acts, as Bill 212, the *Good Government Act, 2009*. This Bill was approved at Third Reading on December 3, 2009 and is currently awaiting Royal Assent. The *City of Toronto Act*-related changes included, among other matters, regulation-making powers respecting secondary corporations, provisions regarding the Ombudsman and the Auditor General, clarification of TTC properties exempt from property taxation, and by-laws concerning motor vehicles permits and alternative roof surfaces.

No changes were made concerning the establishment of co-ownerships. The Bill also did not address City requests for express authority regarding the priority of registration of section 111 conditions and agreements on title to further protect rental housing from

conversion or demolition, or to the request for inclusionary zoning powers to require affordable housing in new developments.

The City of Toronto Act requires the Minister to undertake a further review of the Act within five years after the end of the previous review. The City expects the scope of this statutory review to include more substantive policy matters.

Review of Provincial Incorporation/Registration Process

City Planning staff has made a number of attempts to work directly with its counterparts at the Province to improve the review and approval process for co-ownerships (and equity co-operatives). These efforts began in the summer of 2007 with the City's adoption of the implementing by-law under Section 111. Planning staff has also visited the intake offices of the two relevant ministries to familiarize ourselves with the provincial application and review process. The following information is provided to assist in understanding the provincial government's role in processing these applications.

Ministry of Government Services

Most co-ownerships are created through the incorporation of businesses by the Ministry of Government Services under the *Business Corporations Act*. Under this legislation, Articles of Incorporation are endorsed "as of right". In 1979 amendments were made to make the corporate approval process more efficient and streamlined, in part by relieving government staff of the responsibility for checking articles to ensure they conformed to legal requirements. With this change, corporations and their lawyers were given full responsibility to ensure that articles conform to the law. Also, under the Act, applicants are not required to set out their objects or purposes, or to identify whether a corporation will be operating as a co-ownership.

There are currently three methods available to applicants who wish to incorporate a business corporation in Ontario – submitting electronically, in person or by mail. Regardless of the method of application, certain steps must followed. These require the applicant to submit the completed prescribed application form, the appropriate fee and a covering letter giving the contact name and information. An automated name search is also initiated by the applicant to demonstrate that the proposed corporate name and trademark do not conflict with other existing corporate bodies.

A total of three offices in Toronto serve applicants who are filing Articles of Incorporation. The Companies and Personal Property Security Branch serves a broader province-wide client group, while two other Service Ontario Centres (in Downtown Toronto and in the North York area) specifically cater to local interests.

In addition to the Provincial governance limitations, applicants may also choose to incorporate federally under the *Canada Business Corporations Act* or in another province while conducting business in Ontario.

Financial Services Commission

Applications to incorporate equity co-operatives or co-operatives with share capital are handled by the Financial Services Commission (FSC). To incorporate a co-operative with share capital, applicants must submit the completed prescribed form, proof that a corporate name/trademark search has been undertaken, the appropriate fees, and other relevant material, where required.

Once all the above information is provided, the FSC reviews the request to ensure that the necessary details have been provided. After the FSC grants approval, copies of the documents are sent to the applicant for their records.

Assessment and Possible Further Action

To effectively address the disconnect between the Province's registration process for co-ownerships and the City's implementation of Section 111 of the *City of Toronto Act*, legislative change is required. However, it is clear that the Province is not prepared to introduce amendments concerning the issue to either the *Business Corporations Act* or the *City of Toronto Act* at this time.

Based on a review of the provincial applications process, it appears that there are a number of methods of application available to potential registrants. The three MGS and one FSC offices that deal directly with the public are generally not set up to make City of Toronto information available to the public (i.e. they are not equipped with display stands on relevant information sources). At present, it appears that any City information could only be passed on by intake staff that deal in person with the applicants. For example, the FSC staff has been providing the City's information on the Section 111 requirements to any registrant wishing to establish an equity co-operative involving rental buildings in Toronto. However, this requires that provincial government staff is, and continues to be, properly trained on the City's legislation.

Unfortunately, as applicants are not required to submit their application in person for either type of incorporation, relying on staff to advise potential registrants of City requirements will not reach applicants who choose to submit their application electronically or by mail.

To ensure that all applicants are properly notified of the City's requirements, the provincial application forms could be amended to indicate that municipalities may have their own provisions regarding the incorporation of co-ownerships, and that the applicants are responsible for ensuring that they comply with all applicable requirements beyond the provincial and federal legislation. The City of Toronto's Section 111 by-law should be specifically referenced as an example. The information on various provincial web sites could also contain references and links to the City's by-law. This report recommends accordingly.

City Planning staff will also update general information on the Section 111 provisions as they relate to co-ownerships and make this available to key stakeholders that were originally advised of the Section 111 provisions at the time of passage of the by-law in July 2007. These stakeholders, among others include the Law Society of Upper Canada, the Ontario Bar Association, and the Ontario Co-operative Association. This will also help to ensure that lawyers, consultants, realtors and other agents working on behalf of co-ownership corporations are kept aware of the City's legislative action on the matter.

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

[P:\2010\Cluster B\PLN/pg10003]