1465 Birchmount Rd – Common Elements Condominium and Part Lot Control Exemption Applications – Final Report

Date: January 24, 2011

To: Scarborough Community Council

From: Director, Community Planning, Scarborough District

Wards: Ward 37 – Scarborough Centre

Reference Number: 10 295927 ESC 37 CD and 10 295906 ESC 37 PL

SUMMARY

These applications were made after January 1, 2007 and are subject to the new provisions of the Planning Act and the City of Toronto Act, 2006.

The draft plan of common elements condominium and part lot control applications propose to create seven separately conveyable townhouse parcels with a common elements condominium at 1465 Birchmount Road. The project is currently under construction.

The common elements condominium is required to provide legal access to the individual garages of the units and to ensure shared ownership and maintenance of the driveway, retaining wall, walkway, garbage storage area, visitor parking and landscaping by the condominium corporation. The part lot control exemption is required to provide for the eventual disposal of the townhouse parcels.

This report reviews and recommends approval of the draft plan of common elements condominium and part lot control exemption.
The City Planning Division recommends that:

1. In accordance with the delegated approval under By-law 229-2000, as amended, City Council be advised that the Chief Planner intends to approve the draft plan of common elements condominium for the lands at 1465 Birchmount Road as generally illustrated on Attachment 1, subject to:

   (a) the conditions as generally listed in Attachment 2, which, except as otherwise noted, must be fulfilled prior to the release of the plan of condominium for registration; and

   (b) any such revisions to the proposed condominium plan or any such additional or modified conditions as the Chief Planner may deem to be appropriate to address matters arising from the on-going technical review of this development.

2. City Council enact a part lot control exemption by-law with respect to the subject lands at 1465 Birchmount Road as generally illustrated on Attachment 3, to be prepared to the satisfaction of the City Solicitor and to expire one year following enactment by City Council.

3. City Council require the owner to provide proof of payment of all current property taxes for the subject lands to the satisfaction of the City Solicitor, prior to the enactment of the part lot control exemption by-law.

4. Prior to the introduction of the part lot control exemption bill, City Council require the owner to register, to the satisfaction of the City Solicitor, a Section 118 Restriction under the Land Titles Act agreeing not to transfer or charge any part of the lands without the written consent of the Chief Planner or his designate.

5. City Council authorize the City Solicitor to take the necessary steps to release the Section 118 Restriction from title at such time as confirmation is received that the common elements condominium has been registered.

6. City Council authorize and direct the City Solicitor to register the part lot control exemption by-law on title.

7. City Council authorize the City Solicitor to make such stylistic and technical changes to the draft part lot control exemption by-law as may be required.

Financial Impact
The recommendations in this report have no financial impact.
DECISION HISTORY
This development, currently under construction, was the subject of a rezoning application (No. 03 154931 ESC 37 OZ) that was appealed to the Ontario Municipal Board. A settlement was eventually reached that saw the number of proposed townhouses reduced from ten to seven units. This density permission is reflected in the Board-approved Site Specific By-law No. 740-2005(OMB).

The site-specific performance standards implemented through By-law No. 740-2005(OMB) were varied in 2009 by the Committee of Adjustment (File Nos. A156/09SC and A157/09SC) to permit increases in height and density, reduced front and rear yard setbacks as well as reduced parking space widths.

This development was also subject to site plan approval. A site plan agreement between the owner and the City was executed in 2005, and was registered on title as Instrument No. AT897491.

ISSUE BACKGROUND
Proposal
The proposal consists of seven townhouses in two blocks, where three townhouses (forming "Block A") front on to Birchmount Road and four townhouses (forming "Block B") front on to the internal walkway and drive. A common elements condominium application has been filed respecting the development's internal components, namely the walkway, drive, garbage area, retaining wall, visitor parking and landscaped area, to guarantee their provision and maintenance in perpetuity by the condominium corporation. Exemption from part lot control is being sought in order to enable the division of land to create separately conveyable parcels for the seven townhomes.

Site and Surrounding Area
The subject property is on the east side of Birchmount Road north of Exford Drive, between Lawrence Avenue East in the south and Ellesmere Road in the north. The subject property is 0.124 hectares (0.3 acres) in area, with a 21.49 metre (70.5 foot) frontage on Birchmount Road (see Attachment 4, the Application Data Sheet). Single family and small multi-family residential development surrounds the site on the Birchmount Road east frontage. The western frontage of Birchmount Road, facing the site, contains industrial uses and forms part of the Wexford Employment District.

Provincial Policy Statement and Provincial Plans
The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. The PPS sets the policy foundation for regulating the development and use of land. The key objectives include: building strong communities; wise use and management of resources; and, protecting public health and safety. City Council’s planning decisions are required to be consistent with the PPS.
The Growth Plan for the Greater Golden Horseshoe provides a framework for managing growth in the Greater Golden Horseshoe including: directions for where and how to grow; the provision of infrastructure to support growth; and protecting natural systems and cultivating a culture of conservation.

City Council’s planning decisions are required by the Planning Act to conform, or not conflict, with the Growth Plan for the Greater Golden Horseshoe.

**Official Plan**

The subject property is designated Neighbourhoods by the City of Toronto Official Plan. Neighbourhoods are considered physically stable, made up of residential uses in lower scale buildings such as detached houses, semi-detached houses, duplexes, triplexes and townhouses, as well as interspersed walk-up apartments that are no higher than four storeys. Development within Neighbourhoods is required to respect and reinforce the physical pattern and character of the neighbourhood.

**Zoning**

At its meeting of August 25-27, 2010, City Council adopted a new, harmonized zoning by-law for the City of Toronto. By-law No. 1156-2010 has been appealed in its entirety and is now before the Ontario Municipal Board. No hearing dates have been set. While the by-law is under appeal, the provisions of both the former zoning by-laws and the new zoning by-law are in effect for sites that are subject to Zoning By-law No. 1156-2010.

This site is zoned Residential Multiple Dwelling (RM) Zone through By-law No. 1156-2010, and is subject to Exception 455. This zoning permits detached houses, semi-detached houses, duplexes, triplexes, fourplexes, and apartment buildings that are limited in height, as well as a limited set of other suitable uses. Through the former City of Scarborough Dorset Park Community Zoning By-law, the site is zoned Multiple-Family Residential (M) Zone, permitting single-, two- and multiple-family dwellings as well as duplexes and fourplexes. Through a site-specific exception to the Dorset Park Community Zoning By-law, the definition of "Multiple-Family Dwelling" on the site is "attached, residential dwelling units having individual access to grade".

**Site Plan Control**

A site plan agreement between the owner and the City was executed in 2005, and was registered on title as Instrument No. AT897491.

**Agency Circulation**

The application was circulated to all appropriate agencies and City divisions. Responses received have been used to assist in evaluating the application and to formulate appropriate draft plan approval conditions.
COMMENTS
The application for a common elements condominium is necessary for providing ongoing shared ownership and maintenance of the internal site service and amenity elements, and is appropriate for the orderly development of the lands.

Land Division
Section 50(7) of the Planning Act, R.S.O. 1990, as amended, authorizes City Council to adopt a by-law exempting lands within a registered plan of subdivision from part lot control. The subject lands are within a registered plan of subdivision. The lifting of part lot control on the subject lands is considered appropriate for the orderly development of the lands and will facilitate the development.

To ensure that the part lot control exemption does not remain open indefinitely, it is recommended that the by-law contain an expiration date. In this case, the by-law should expire one year following enactment by City Council. This time frame provides sufficient time for the completion of the proposed development.

Before the common elements condominium is released for registration, the part lot exemption by-law must be enacted in order to create the legal descriptions for each of the parcels of tied lands (the “POTLS”). The Section 118 Restriction is used to prevent the conveyance of the POTLS to the public until the common elements condominium is registered.

CONTACT
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SIGNATURE

________________________________________
Raymond David, Director
Community Planning, Scarborough District

ATTACHMENTS
Attachment 1: Draft Plan of Common Elements Condominium
Attachment 2: Draft Plan Approval Conditions
Attachment 3: Part Lot Control Exemption Plan
Attachment 4: Application Data Sheet
Attachment 1: Draft Plan of Common Elements Condominium
Attachment 2: Draft Plan Approval Conditions

(1) The owner shall provide to the Director Community Planning, Scarborough District, confirmation of payment of outstanding taxes to the satisfaction of Revenue Services, City of Toronto (statement of account or Tax Clearance Certificate).

(2) All Site Plan matters and facilities have been completed or financially secured to the satisfaction of the City.

(3) The owner shall file with the Director Community Planning, Scarborough District, a copy of the final Declaration and Description containing all necessary schedules and certifications required by the Condominium Act for registration.

(4) Together with the final version of the Declaration, the Owner shall provide a solicitor’s undertaking indicating that:

   (i) the Declaration provided to the City is the final Declaration to be submitted for registration, subject only to changes requested by the Land Registrar;

   (ii) the City will be notified of any required changes prior to registration; and

   (iii) forthwith following registration of the Declaration, a copy will be provided to the City.

(5) Visitors parking spaces will be clearly delineated on the condominium plan to be registered.

(6) If the condominium is not registered within 5 years of the date of draft plan approval, then this approval shall be null and void and the plans and drawings must be resubmitted to the City for approval.
Attachment 3: Part Lot Control Exemption Plan
Attachment 4: Application Data Sheet

APPLICATION DATA SHEET

Application Type: Condominium Approval and Part Lot Control Exemption
Details: Common Elements
Application Number: 10 295927 ESC 37 CD & 10 295906 ESC 37 PL
Municipal Address: 1465 BIRCHMOUNT RD
Location Description: PLAN 3473 N PT LOT 1 **GRID E3704
Project Description: Common Elements Condominium and Part Lot Control applications for a 7 unit townhouse project currently under construction

Applicant: LEONARD COPETTI
Agent: ERNEST H. HODGSON
Architect: 1639216 ONTARIO LIMITED
Owner: PLANNING CONTROLS

Official Plan Designation: Neighbourhoods
Zoning: ZBL 1156-2010: RM – Residential Multiple Dwelling (x455)
Dorset Park Community ZBL: M – Multiple Family Residential
Historical Status: Exception No. 33

Height Limit (m): 10.44, varied to 10.54-10.63
Site Plan Control Area: Y

PROJECT INFORMATION

Site Area (sq. m): 1244.49
Frontage (m): 21.49
Depth (m): 57.91
Total Ground Floor Area (sq. m): 400.67
Total Residential GFA (sq. m): 944.84
Total Non-Residential GFA (sq. m): 0
Total GFA (sq. m): 944.84
Lot Coverage Ratio: one suite per 160 square metres lot area
Floor Space Index: 0.76

FLOOR AREA BREAKDOWN (upon project completion)

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CONTACT: PLANNER NAME: Carly Bowman, Planner
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