55 Charles Street West – Draft Plan of Condominium Application - Supplementary Report

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<th>Date:</th>
<th>June 20, 2014</th>
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<td>To:</td>
<td>Toronto and East York Community Council</td>
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<td>From:</td>
<td>Director, Community Planning, Toronto and East York District</td>
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<td>Wards:</td>
<td>Ward 27 – Toronto Centre-Rosedale</td>
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<td>Reference Number:</td>
<td>05 112260 STE 27 CD</td>
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**SUMMARY**

This application involves the conversion of an existing 32-storey, 148 unit high-end of market rental apartment building into a residential condominium building at 55 Charles Street West. This condominium was approved by City Council at its February 22 and 23, 2010 meeting, with the three year time limit to register the condominium, initially set to lapse on February 23, 2013. This time limit was previously extended by an additional two years to February 23, 2015. This report recommends that the lapsing date for draft condominium approval be further extended by an additional three years to February 23, 2018, to allow the applicant additional time to fulfill the conditions of approval and register the condominium.

**RECOMMENDATIONS**

The City Planning Division recommends that:

1. City Council extend the draft condominium approval lapsing period for 55 Charles Street West with the conditions that were approved at City Council’s meeting of February 22 and 23, 2010, and further extended at its meeting of...
November 27, 28 and 29, 2012, with the following change to condition 1 and the addition of a new condition 14, as set out in Attachment 1 to the report (June 20, 2014) from the Director, Community Planning, Toronto and East York District:

"1. The plan of condominium (declaration and description) shall be registered on or before February 23, 2018, otherwise the approval shall lapse and be of no further force and effect unless an extension is granted by the City pursuant to Section 51 (33) of the Planning Act.

14. The Owner shall enter into a Condominium Agreement satisfactory to, and at the discretion of, the City Solicitor whereby the Owner agrees to ensure that all tenants of the building residing in units on or before the date of registration of the condominium, are entitled to the right of security of tenure and the right of first refusal as referred to in Section 51 of the Residential Tenancies Act, 2006, and that such rights will continue to be offered by the current Owner and subsequent purchasers despite any changes to such Act."

Financial Impact
The recommendations in this report have no financial impact.

DECISION HISTORY
The initial conditions for the condominium approval at 55 Charles Street West were approved at City Council's meeting of February 22, and 23, 2010. The staff report can be found through the following hyperlink:

The original three year time limit to register the condominium was set to lapse on February 23, 2013, so City Council extended the time limit for registration by two years to February 23, 2015 at its November 27, 28 and 29, 2012 meeting. The staff report can be found through the following hyperlink:

ISSUE BACKGROUND
An application was submitted on March 1, 2005, to convert an existing 32-storey, 148 unit high-end of market rental apartment building at 55 Charles Street West into a residential condominium building. City Council authorized Draft Approval for the Plan of Condominium on February 22 and February 23, 2010. The time limit to register the condominium was initially set to lapse on February 23, 2013, however following a request by the applicant, City Council authorized an extension of an
additional two years to February 23, 2015 to fulfill the conditions of approval. The applicant has contacted City Planning asking for a further extension of an additional three years to fulfill the conditions of approval, to allow additional time to make the required repairs and renovations.

**COMMENTS**
The condominium has not yet been registered. As the time limit to register the condominium is set to lapse on February 23, 2015, the applicant has requested an extension in advance to allow additional time to satisfy the remaining conditions of approval.

A Comprehensive Reserve Fund Study has been completed as required. This Comprehensive Reserve Fund Study, among other matters, identified necessary repairs and renovations that are required to be completed prior to final approval and registration of the condominium. Many of these repairs have been completed, however certain repairs are outstanding, given the scope and magnitude of the required work which must be completed while accommodating existing tenants. This necessary work involves many major renovations including but not limited to: replacement of windows, repairs to cladding, repairs to the garage, repairs to the lobby, and the improvement and/or addition of new amenity rooms. Due to the nature and extent of the repairs, Staff recommend that Draft Approval be extended and a revised time limit be established that would require the conditions of approval to be met and the condominium registered by February 23, 2018.

Section 51 of the Residential Tenancies Act provides certain rights to tenants residing in rental buildings being converted to condominium. These include: the right to security of tenure by ensuring the tenants cannot be evicted for the owner or owner’s family's personal use or for use by prospective purchasers or their families; and the right to first refusal to allow tenants the first opportunity to purchase their units should their units be sold. To ensure that tenants continue to be entitled to these rights provided under the Province's Residential Tenancies Act, the applicant has agreed to the addition of a condition whereby the applicant will offer the same tenant rights despite any possible changes to the legislation.
If Council chooses to approve the request for additional time to fulfill the conditions of approval, a total of 8 years would have been allotted to the applicant to satisfy such conditions. This is 5 years longer than the original time limit provided under the original Draft Plan of Condominium approval. Staff consider this 8 year time period more than sufficient to undertake the necessary repairs to address the conditions of approval, and strongly urges that all remaining work be completed and the condominium registered well in advance of the new deadline, if granted.

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SIGNATURE

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Director, Community Planning
Toronto and East York District

Attachment 1: Revised Conditions of Draft Plan of Condominium Approval
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The owner shall meet the following conditions prior to the City’s consent for final registration of the plan of Condominium:

1. The plan of condominium (Declaration and Description) shall be registered on or before February 23, 2018, otherwise the approval shall lapse and be of no further force and effect unless an extension is granted by the City pursuant to Section 51 (33) of the Planning Act.

2. The owner shall, prior to the registration of the plan of condominium (Declaration and Description), at its own expense not to be passed on to the tenants of the building, carry out and complete a comprehensive reserve fund study, as defined in s. 27 of O. Reg 48/01 made under the Condominium Act, 1998 as a “comprehensive study”, including the matters required in condition 4 below, to the satisfaction of the Chief Planner and Executive Director.

3. The physical analysis of the comprehensive study described in conditions 2 and 4 shall be conducted by a professional engineer registered as such and holding a certificate of authorization within the meaning of the Professional Engineers Act.

4. In addition to the requirements under the regulations made under the Condominium Act, 1998,

   (a) the financial analysis component of the comprehensive study shall include a simple, easily read table setting out, by unit type, the recommended dollar amount of contributions to the reserve fund that will be required to be paid annually by each individual unit owner for each year covered by the study (not less than 30 years) based on the reserve fund required to be established by the owner in accordance with condition 6 below;

   (b) the physical analysis component of the comprehensive study shall include in addition to the component inventory and assessment of each item within the component inventory, a detailed list of:

      (i) the repairs and components to be replaced as a result of outstanding work orders issued by the City of Toronto;
      (ii) the repairs and components to be replaced in order to bring the building into compliance with c. 629, Property Standards, of the City of Toronto Municipal Code; and
      (iii) any other repairs and components to be replaced which in the opinion of the consultant(s) carrying out such study should be completed by the owner prior to registration of the plan of condominium (Declaration and Description) against the lands; and
in addition to their signatures, the persons conducting the comprehensive study in respect of the property shall include the following statement in the study:

“Notwithstanding that our fee for this study will be paid by the Owner (or Condominium Corporation as the case may be) and that we have prepared this study for the Owner (or Condominium Corporation as the case may be), we acknowledge that the Condominium Corporation which will be created upon registration of the plan of condominium and the purchasers and prospective purchasers of units within the building are relying upon this study and the opinions and findings expressed herein, and consent and agree to such reliance.”

5. The owner shall, prior to registration of the plan of condominium (Declaration and Description), at its own expense, complete each of the repairs and replace each of the components set out on the lists compiled pursuant to conditions 4(b) (i), (ii) and (iii) above as detailed in the comprehensive study, and provide to the Chief Planner and Executive Director a certificate from the persons carrying out the study, or from such other duly qualified engineer, confirming all of the said repairs and replacements have been satisfactorily completed.

6. Prior to the registration of the plan of condominium (Declaration and Description), the owner shall provide to the satisfaction of the Chief Planner and Executive Director a letter from its solicitor confirming that the amount required to be contributed to the reserve fund is being held in trust, and that the solicitor has received instructions to contribute such funds to the reserve fund once it has been established. The owner shall contribute to the reserve fund, once established, for the benefit of the condominium corporation to be created, an amount not less than the greater of:

(a) the amount recommended in the comprehensive study required in conditions 2 and 4 above; and

(b) the amount required pursuant to the Condominium Act, 1998.

7. In the event the Owner of the Site has entered into one or more agreements to convey any of the proposed units, the owner shall, prior to the registration of the plan of condominium (Declaration and Description) provide its solicitors’ confirmation that the disclosure statement required to be delivered to every person who purchases a unit or a proposed unit pursuant to Section 72 of the Condominium Act, 1998, did in addition to the matters specified in such Act:

(a) include a copy of the table required to be prepared in condition 4(a) above as updated and signed by the person who carried out the financial analysis
component of the comprehensive study required in condition 2 to reflect the amount to be contributed to the reserve fund and being held in trust pursuant to condition 6 above; and

(b) that such updated table include the statement required in condition 4(c) above, or alternatively, if the Owner has not entered into any agreement to convey one or more units, the owner shall provide its solicitors confirmation such is the case.

8. The Declaration shall contain wording satisfactory to the City Solicitor to ensure the following conditions:

(a) The condominium corporation shall, at its expense update the table required pursuant to condition 4(a) above on an annual basis commencing with the first reserve fund study conducted by the condominium corporation after the registration of the condominium, so as to reflect the actual reserve fund maintained by the corporation, and shall send a copy of each updated table to each unit owner and to the corporation’s auditor as part of the notice required pursuant to Section 94(9) of the Condominium Act, 1998 as well as retaining a copy for its records.

Nothing herein shall be interpreted as requiring the original author of the table to author the subsequent tables required by this condition but the table shall be prepared by a person authorized by the regulations under the Condominium Act, 1998 to carry out the financial analysis component of a reserve fund study and each updated table shall include the statement required in condition 4(a) above;

(b) Prior to entering into an agreement of purchase and sale respecting the sale of a unit, the unit owner shall provide a copy of the most recent table delivered to them pursuant to condition 4(a) above to the prospective purchaser, failing which the purchaser of such unit may rescind the agreement of purchase and sale before accepting a deed to the unit being purchased that is in registerable form;

(c) On receipt of a request from a prospective purchaser of a unit, the condominium corporation shall, within 10 days of the request being made, provide a copy of the most recent reserve fund study; and

(d) Conditions 8(a), (b) and (c) above shall cease to apply on the date that is one year following the date the condominium corporation has:

(i) conducted its first comprehensive reserve fund study (a “comprehensive study”); and,
(ii) sent the required notice to the owners and copies to the auditor arising from such study in accordance with Section 94(9) of the Condominium Act, 1998.

9. The Declaration shall contain a clause stating that the provisions in the Declaration dealing with conditions 8(a) to (d) above, inclusive shall not be amended without the written consent of the approval authority, under the Condominium Act, 1998.

10. The owner of the Site shall provide a tax certificate which confirms that all municipal taxes have been paid in full.

11. The owner of the Site agrees not to pass on, in the form of rent increases to tenants of the building residing in units on or before the date of registration of the condominium, any costs associated with the renovations or alterations of the building to comply with the conditions herein and which are related to converting the buildings or readying the buildings for condominium, or any increase in property taxes due to a change in the assessed value of the property identified in this application which may occur due to the condominium registration.

The costs of renovations or alterations not to be passed on in the form of rent increases to tenants, includes but is not limited to the following building improvements that are proposed as part of the conversion plans:

- improvements and upgrading to the lobby and parking lobbies and garage;
- improvements to or new amenity rooms (such as fitness, pool and audio visual rooms);
- replacement of corridor ventilation system and the addition of cooling capability; and
- upgrading of the plumbing system to individual units.

12. Prior to the registration of the plan of condominium (Declaration and Description), the owner shall provide the Chief Planner and Executive Director written confirmation that written notice has been provided to all existing tenants that:

(a) Registration of the condominium is imminent;

(b) The owner has provided sitting tenants a copy of Condition 11 above; and

(c) The owner has provided sitting tenants with a copy of the relevant provisions under the Residential Tenancies Act, 2006 concerning their security of tenure and right of first refusal.
13. The owner shall, prior to registration of the plan of condominium (Declaration and Description) and to the satisfaction of the Executive Director of Technical Services:
   (a) include wording in the Declaration and Description clearly specifying that the residential visitor parking cannot be sold to or owned by residential unit owners other than the Declarant, its affiliate, or the Condominium Corporation;

   (b) Provide and maintain a minimum of 120 parking spaces on the site to serve this project, including a minimum of 118 resident spaces and 2 Car-share spaces; and

   (c) Secure a car-share provider for the proposed Car-share parking spaces.

14. The Owner shall enter into a Condominium Agreement satisfactory to, and at the discretion of, the City Solicitor whereby the Owner agrees to ensure that all tenants of the building residing in units on or before the date of registration of the condominium, are entitled to the right of security of tenure and the right of first refusal as referred to in Section 51 of the Residential Tenancies Act, 2006, and that such rights will continue to be offered by the current Owner and subsequent purchasers despite any changes to such Act.