

REGION OF OTTAWA-CARLETON
RÉGION D'OTTAWA-CARLETON

REPORT
RAPPORT

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 Your File/V/Réf.

DATE 26 October 1999

TO/DEST. Co-ordinator
 Planning and Environment Committee

FROM/EXP. Planning and Development Approvals Commissioner
 Acting Regional Solicitor

SUBJECT/OBJET **INTERVENOR STATUS**
CITY OF TORONTO'S APPEAL OF THE ONTARIO
MUNICIPAL BOARD DECISION RE.
TORONTO OFFICIAL PLAN AMENDMENT NO. 2
CONVERSION OF RENTAL HOUSING TO CONDOMINIUM

DEPARTMENTAL RECOMMENDATION

That the Planning and Environment Committee recommend that Council direct staff to seek intervenor status to support the City of Toronto's appeal of the Ontario Municipal Board decision on the City of Toronto Official Plan policies regarding the conversion of rental housing units to condominium tenure.

BACKGROUND

In April 1999, the City of Toronto adopted Official Plan Amendment No. 2 which established policies regarding the conversion of rental housing to condominium. The Amendment was initiated to harmonize the policies of the seven former municipalities and to address changes in Provincial legislation.

The amendment was appealed to the OMB. In September 1999, the Board ordered that OPA 2 is illegal and invalid and therefore was not approved. The City of Toronto is seeking leave to appeal the OMB's decision to the Superior Court of Justice Divisional Court. The City is also seeking the support of other municipalities. Hamilton participated in the original Board hearing and will be joining the City of Toronto at the Divisional Court.

The OMB's decision has implications on the Region of Ottawa-Carleton's ability to implement Regional Official Plan policy 3.3.2 9 on rental conversion. The decision negates the authority of a municipality to adopt new policies on rental conversion and raises questions about the legality of existing conversion policies in approved official plans.

DISCUSSION

Since 1976, Regional Council has applied a policy limiting the conversion of rental units to condominium tenure, in order to protect the existing stock of affordable housing. The policy has prohibited rental conversion unless the vacancy rate was at least 3%. This policy was included in the 1988 Regional Official Plan.

Under the former *Rental Housing Protection Act* (1989) the conversion of rental housing to other forms of tenure was subject to the approval of the area municipalities. The *Tenant Protection Act* (1997) which repealed the *Rental Housing Protection Act*, eliminated the need to obtain municipal consent for a conversion. However, staff from the Ministry of Municipal Affairs and Housing assured Regional staff that the new legislation did not prevent municipalities from adopting policies pursuant to *The Planning Act* limiting the conversion of rental housing. The new Regional Official Plan carried forward the old policy of prohibiting conversions if the vacancy rate was less than 3% as well as adding some new provisions. The Ministry of Municipal Affairs and Housing approved the Official Plan (including this policy) in October 1997. Subsequently, the City of Ottawa appealed the policy to the Board. The Board approved the attached policy 3.3.2.9, subject to minor modifications agreed in mediation with the City of Ottawa in 1999. However, no one challenged the policy on the basis that it was challenged in Toronto.

In the Toronto case, it was argued that it is implicit with the repeal of the *Rental Housing Protection Act* that municipalities could no longer regulate the conversion of rental housing. Toronto's OPA 2 proposed to regulate conversion by authority of the *Planning Act*, which is also the basis of Ottawa-Carleton's policy. The conversion of rental housing to condominium or freehold tenure gives rise to the ability to grant or withhold approval and to impose conditions under the *Planning Act*, section 51. The City of Toronto and Regional staff are of the view that this authority includes the ability to refuse approval if the vacancy rate is not at a certain level.

Housing affordability is a serious problem for many households in Ottawa-Carleton. In 1996, 41% of rental households were spending more than 30% of their income for housing. A large portion of the existing rental housing stock constitutes an important supply of affordable units. The construction of new rental housing is almost non-existent. No new social housing is being built and in 1998, private rental completions totalled 20 units. Roughly 1,700 rental units were converted to condominium or freehold tenure between mid-1996 and 1998 when vacancy rates exceeded 3%. Rental vacancy rates are now below the 3% "balanced market" target. Therefore, it is important for the Region to maintain its ability to implement its conversion policy.

RULES PERTAINING TO SEEKING INTERVENOR STATUS

The rules of Court provide that a person or organisation may request intervenor status if that person has an interest in the matter being considered, if that person may be adversely affected by a judgement in the legal action or if there are common questions of law or fact between the person seeking intervenor status and those who are already parties to the proceeding. While the decision to grant intervenor status is a discretionary one, an applicant for such status need only meet one

of the three above tests in order to be able to apply. It is the opinion of staff that the policies in the Regional Official Plan are sufficiently similar to those in Toronto's Official Plan Amendment No. 2 that the Region can likely show that each of these three principles for being granted intervenor status.

FINANCIAL IMPLICATIONS

There could be a cost related to the legal representation of the Region of Ottawa-Carleton at the Superior Court of Justice (Divisional Court). While the Region would be represented by staff from the Legal Department, in the event the appeal was dismissed by the Court, it is possible that costs could be awarded against the Region. However, the responsibility to pay any such award of costs would be shared by all those in support of the appeal.

CONSULTATION

There was an extensive consultation process leading to the approval of the Regional Official Plan policy 3.3.2.9.

CONCLUSION

Since 1976, Regional Council has applied a policy limiting the conversion of rental units to condominium tenure, in order to protect the existing stock of affordable housing. The OMB decision regarding the City of Toronto's OPA 2 raises questions about the validity of Council's policy on rental conversion. In order to safeguard Council's authority to adopt policies to protect a diminishing rental stock, Committee and Council are asked to direct staff to seek intervenor status to support the City of Toronto's appeal.

Approved by
N. Tunnacliffe, MCIP, RPP
Planning and Development Approvals Commissioner

Approved by
E. Johnston
Acting Regional Solicitor

Attach. (1)

ANNEX A

Rental Conversion

9. Permit the conversion of rental housing to condominiums and equity co-ops and other forms of tenure provided that:
 - 1) the vacancy rate for the Ottawa CMA exceeds 3 percent and
 - 2) the rental prices of the units to be converted are above the average rental prices as reported yearly for the Ottawa CMA by CMHC's *Rental Market Survey* for each unit and bedroom type. However, a heritage building designated under parts IV or V of the *Ontario Heritage Act* may be exempted from this policy at the discretion of the local municipality. In the event that rental housing is converted to other forms of tenure, Council shall consider entering into an agreement with the proponent to sell the units at or below the affordable ownership price established annually by RMOC as per policy 4 above, or alternatively, shall support local municipalities who seek such agreements. (OMB Modification, March 5, 1999).