

## Corporate Report

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**Report from** Planning and Development Services, Planning Services

**Date of Report:** September 4, 2013      **Date of Meeting:** September 23, 2013

**Report Number:** PDS-279-2013      **File:** 60.46.398

**Subject:** Application for Draft Plan of Condominium Approval at 38 Lincoln Avenue  
Applicant: PBG Properties; Agent: PBG Properties

### Recommendation

That the report from Planning and Development Services, Planning Services, dated September 4, 2013, regarding an application for draft plan of condominium approval, for lands known municipally as 38 Lincoln Avenue be referred to Council for consideration after the public meeting scheduled for October 7, 2013. FORTHWITH.

### Staff Recommendation

That Council grant draft plan of condominium approval for the lands municipally known as 38 Lincoln Avenue, subject to the conditions of draft plan of condominium approval outlined in Appendix "1" of this report; and,

That the City Clerk be directed to make the necessary Notice of Decision required by the Planning Act, R.S.O. 1990, c.P. 13, as amended; and,

That after notice of Council's decision has been given, the Director of Planning and Development Services be authorized to endorse the plan as "draft approved" on the day after the appeal period has expired, in accordance with the Planning Act, provided that no appeals have been lodged; and,

That upon expiration of the appeal period, the City Clerk be directed to forward an application to the Ontario Municipal Board for approval of the draft plan of condominium, if any appeals are received; and,

Further that the City Clerk be directed to make the necessary notifications.

FORTHWITH

### Summary

The purpose of the application is to request approval of a draft plan of condominium to convert the 3 storey, 49 dwelling unit apartment building to condominium tenure.

## **Background**

The property contains one apartment building with a total of forty-nine (49) dwelling units. A Site Plan Agreement for the apartment building has recently been registered on title. Development of the site is currently in the final stages of construction and occupancy permits have been granted. The applicant wishes to convert the tenure from rental to condominium for financial purposes.

## **Report Proposal**

The applicant is proposing to convert the recently constructed apartment building to condominium tenure. The proposed draft plan of condominium is included in Appendix "2".

## **Site Analysis**

### **Location**

The subject lands are located on the south side of Lincoln Avenue, west of Loraine Drive (Appendix "3").

### **Existing Land Use**

- i. Site: The site is irregularly shaped with a lot area of 0.8 hectares (1.98 acres) and lot frontage of 84 m (275 feet) on the south side of Lincoln Avenue.
- ii. Neighbourhood:  
North: Parkland (Garden City Municipal Golf Course)  
South: Residential and Commercial (single detached dwellings and St. Catharines Flea Market)  
East: Residential (single detached dwellings)  
West: Natural Areas and Commercial / Industrial uses

### **Official Plan**

The site is designated as Low Density Residential by the Garden City Plan (GCP) which permits a variety of housing types, including apartment dwellings, subject to a zoning by-law amendment. A zoning by-law amendment to permit the apartment building was approved by Council on September 20, 2011. Compliance with the GCP and specific policies relating to the conversion from rental to condominium tenure are outlined in the Planning Considerations section of this report.

### **Zoning By-law**

The site is zoned Mixed Density Residential (R5) by Zoning By-law 62-86 (Zone 7), as amended by By-law 2011-33 and 2011-139. The R5 zone permits a variety of residential uses, including apartment buildings, subject to the provisions of the zoning by-law. A small portion of land along the south-west

border of the property is zoned Environmental Protection Area. Compliance with the Zoning By-law is addressed in the Planning Considerations section of this report.

### **Circulation Comments**

The application was circulated to all applicable City department and agencies for their comments and/or requirements. Since design requirements were addressed through the Site Plan Approval, no objections or requirements were received. The following detailed comments were offered:

- The Development Division of Planning and Development Services has advised that the applicant will be required to post securities for all of the common elements within this development that are incomplete at the date of registration. These securities will be in addition to the requirements of the Site Plan Agreement. Cost estimates will be required in order to establish the required security amounts such as underground servicing & lighting. This requirement will form part of the required Condominium Assumption Agreement.
- The Traffic Division of Transportation and Environmental Services, and Recreation and Community Services offered no concerns or objections to the proposed Draft Plan of Condominium.
- The Region of Niagara advises that the site does not meet criteria for public waste collection, and private waste collection shall be necessary, and that all prospective purchasers and tenants be advised accordingly.

### **Planning Considerations**

Construction of the existing apartment building is nearing completion. There are a total of forty-nine (49) apartment units.

### **Provincial Policies**

The Provincial Policy Statement (PPS) and Places to Grow Plan for the Greater Golden Horseshoe (Growth Plan) contain policies that direct growth to settlement areas where appropriate levels of services and infrastructure exist. Growth management policies also direct a significant portion of new growth to the built-up areas through intensification. Land use patterns shall be based on densities and a mix of land uses that efficiently use land, resources, infrastructure, and public service facilities which are planned or available. The proposal is in conformity with Provincial policies.

### **Regional Policy Plan**

The site is within the City's Urban Area Boundary, as defined by the Regional Policy Plan (RPP). A full range of residential, commercial and industrial uses are permitted generally within the Urban Area. The RPP promotes the use of land for infilling, intensification and redevelopment to promote a more compact urban form of development. Regional staff has confirmed that the proposal complies with Regional policies.

### **Garden City Plan**

The site is designated Low Density Residential by the Garden City Plan (GCP). The Low Density Residential designation permits a variety of housing types, including apartment dwellings, subject to a zoning by-law amendment. A zoning by-law amendment to permit the apartment building was approved by Council on September 20, 2011. The existing development provides a density of 61 units per hectare, and, as noted in the staff report for the zoning by-law amendment, Section 8.2 of the GCP permits new medium or high density development provided they are located on arterial or collector roads, in close proximity to and accessible to commercial centres, community facilities, parks, natural areas, public transit, and existing medium or high density development. In this regard, Lincoln Avenue is identified by the GCP as a Collector Road (Schedule C Transportation Network). Shopping is available along nearby Hartzel Road. The Garden City Golf Course is across the road on Lincoln Avenue. Eastmount Park and the Merritt Trail system are also in close proximity. Public transit is available along Oakdale Avenue and Hartzel Road. No amendment to the GCP is required.

### **Conversion from Rental to Condominium**

Section 3.2(d) of the City's Official Plan supports the conversion of rental accommodation to condominium ownership only if "the proposal does not adversely affect the supply of affordable rental housing in the municipality." In this regard, staff considers current vacancy rates for affordable rental accommodation to determine adverse effect. The Garden City Plan states, more specifically, that "conversion shall be discouraged where:

- 1) the annual rental vacancy rate by dwelling/structure type, as defined and reported through the Canada Mortgage and Housing Corporation (CMHC) Rental Market Survey, is less than 3% within the municipality; and,
- 2) the ownership housing to be created is not considered to be affordable." (Part D, Section 7.8(iv))

In terms of vacancy rate, the report from CMHC (Fall 2012) indicates vacancy rates are at 4.0% within the region (average of all dwelling types). More specifically, rates are at 5.0% in Central St. Catharines, and 3.7% in the remainder of the municipality. These rates are above the 3% threshold required by the Garden City Plan, and as such the proposal complies with the first criteria. Staff is of the opinion that the new decrease of 49 units under this application will not adversely affect the supply of affordable housing in St. Catharines.

Staff determine affordability in accordance with the Provincial Policy Statement (PSS) definition, being housing for which the purchase price is at least 10% below the average purchase price of a resale unit in the region (regardless of dwelling type). The average

purchase price of all resale units in the region is \$230,000 (CMHC, 2012). Units marketed 10% below this average, \$207,000 or less, are considered affordable.

The applicant has submitted projected resale values for the ownership units indicating an appraised market sale price of \$149,900, well below the affordability threshold outlined above, being \$207,000; therefore, the units are considered to be affordable in accordance with the PPS definition.

The proposal complies with the policies in the Garden City Plan with regard to conversion from rental to condominium tenure.

Council should be aware that condominium conversion is routinely sought for financing purposes. In these instances, the units continue to be rented, notwithstanding they are condominium units. CMHC rental stats do not recognize this scenario.

### **Zoning By-law**

The site is zoned Mixed Density Residential (R5) by Zoning By-law 62-86 (Zone 7), as amended by By-law 2011-33 and 2011-139. The R5 zone permits a variety of residential uses, including apartment buildings, subject to the provisions of the zoning by-law. A small portion of land along the south-west border of the property is zoned Environmental Protection Area.

An amendment to the zoning by-law is not required; however, a minor variance is required to address parking. The zoning by-law requires 1.5 parking spaces per unit for rental unit, and 1.75 spaces per unit for condominium units. There are currently 74 parking spaces provided on the property, 1.5 units per dwelling unit. The zoning by-law requires a ratio of 1.75 parking spaces for condominium units, which equates to 86 spaces. An application for minor variance from the Committee of Adjustment will be required if the draft plan of condominium application is approved by Council. This variance seeks approval of the existing 74 parking spaces provided on site. This requirement is included in Appendix 1 as a condition of draft plan approval.

Council should be aware that the proposed new zoning By-law to be considered by Council in November, proposes a parking requirement of 1.5 spaces per unit, regardless of the tenure of the unit.

### **Draft Plan of Condominium**

The draft plan of condominium (standard condominium) proposes ownership tenure for 49 apartment units. Upon assumption, the condominium corporation will be responsible for Site Plan Agreement.

Section 50.1(24) of the Planning Act guides staff in assessing applications for draft plan of condominium approval and staff are satisfied that the proposal fulfills these criteria.

### **Site Plan Agreement and Condominium Assumption Agreement**

Site plan control applies to all residential development with five or more dwelling units, including this development. The applicant has entered into a site plan agreement with the City. This site plan review and agreement process is the principal tool through which Staff will implement design considerations to maximize compatibility with the surrounding neighbourhood and to ensure long term functionality.

To bind the future condominium corporation to the terms of the site plan agreement, the applicant will be required to enter into a condominium assumption agreement with the City. A clause for inclusion in the assumption agreement is recommended to address the Region's concern that this site is not eligible for public waste collection and that the owner be advised accordingly. Condition 3 outlined in Appendix 1 addresses this concern.

Staff recommends that the requirement to enter into a condominium assumption agreement be included as a condition of draft plan of condominium approval (Appendix "1").

### **Public Open House**

A Public Open House was hosted by staff on August 22, 2013. The purpose of the open house was to present the applicant's proposal and to allow an opportunity for questions to be asked and comments to be received by City staff before decisions are made.

Ten (10) members of the public, as well as the applicant, were in attendance. Questions and concerns related to tenant rights, building maintenance and rent increases.

### **Tenant Rights**

At the public open house, concerns regarding tenant rights and security of tenure were expressed. Prior to the public open house, the property owner notified current tenants of the intent to convert the existing apartment building to condominium tenure. The tenants were advised that tenant rights are regulated under the Residential Tenancies Act, 2006 (RTA). In accordance with Section 51 of the RTA, current tenants at the time of conversion to condominium have their tenure protected. The RTA also grants additional rights to existing tenants, including that the current tenants will be given first opportunity to purchase units, if the landlord decides to sell the units (Section 51(5)). If the tenant chooses not to purchase the unit and it is sold to a third party, the purchaser of the unit must honour the terms of the tenancy of the occupying tenant. As such, the tenancy is secure.

### **Second Planning Opinion Advisory**

Should Council consider not supporting the Staff Recommendation, Council is advised to defer its decision until such time as a second planning opinion from an outside consultant can be obtained. In the event the second planning opinion is supported by Council, and Council makes a decision based on that second planning opinion, and if

and when the matter should be heard before the Ontario Municipal Board, then the planner who has provided the second opinion shall be retained for the purpose of a hearing before the Ontario Municipal Board.

In accordance with established procedures the date for the public meeting is provided in the recommendation and notices for the public meeting have been circulated.

**Notice**

In accordance with established procedures the date for the public meeting is provided in the recommendation and notices for the public meeting have been circulated.

**Financial Implications**

Not applicable.

**Conclusion**

The proposed draft plan of condominium (standard condominium) is consistent with Provincial, Regional and local planning policies. Staff recommends that the application be approved, subject to the conditions outlined in Appendix "1".

**Notification**

It is in order to notify PBG Properties, 275 Fourth Avenue, Box 30087, St. Catharines, ON, L2S 4A1.

**Submitted by:**

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**Prepared by:**

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Planner 1

**Approved by:**

James N. Riddell, MPI, MCIP, RPP  
Director of Planning and Development Services

## **Proposed Conditions of Draft Plan of Condominium**

### **Conditions of Draft Plan of Condominium Approval**

**38 Lincoln Avenue**

**File No. 60.46.398**

**Submission No. 26CD-10-13003**

#### **General Approval**

1. That this approval applies to lands known as Part of Lots 12 and 13, Concession 8 and Part of the Road Allowance between Lots 12 and 13 Concession 8, municipally known as 38 Lincoln Avenue, for 49 apartment dwellings, prepared by Suda & Maleszyk Surveying Inc., dated July 8, 2013.

#### **Zoning**

2. That prior to approval of the final condominium plan that the Committee of Adjustment consider an application for a minor variance to the Zoning By-law regarding a parking reduction, pursuant to the provisions of the Planning Act and that the applicant receives approval to reduce the parking standard to 1.5 spaces per unit.

*(City of St. Catharines)*

#### **Condominium Assumption Agreement**

3. That the owner enter into a Condominium Assumption Agreement with the City of St. Catharines, binding the Condominium Corporation to the terms of the registered site plan agreement, to be registered together with the registration of the final plan of condominium. The Assumption Agreement shall include;
  - i. The submission of securities for all common elements that are not fully constructed and inspected, at the time of registration; and,
  - ii. A clause advising that the registered site plan agreement does not include Regional Waste Collection and that private waste collection is required of the owner. Should the owner request Regional Waste Collection in the future, an amendment to the site plan agreement shall be required. The owner shall comply with the Regional Municipality of Niagara's "Collection of Waste By Way of Entry on to Private Property" policy and enter into an indemnity agreement with the Regional Municipality of Niagara. The owner agrees that any offers of purchase, sale or lease include a clause advising that waste collection is the responsibility of the owner and not the Region of Niagara.

*(City of St. Catharines)*

#### **Administration**

4. That if final approval is not given to this plan within three years of the approval date and no extension has been granted, draft approval shall lapse. If the owner wished to request an extension to the draft approval period, a written explanation



with reasons why the extension is required must be received by the City prior to lapsing date. An updated review and revision to the conditions of approval may be necessary at that time.

*(City of St. Catharines)*

Prior to granting approval to the final plan of condominium, the City of St. Catharines shall be satisfied that all conditions have been met satisfactorily.



### Location Map



SUBJECT LANDS KNOWN AS  
38 LINCOLN AVENUE  
FILE: 60.46.398