



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	July 11, 2023
SUBJECT/REPORT NO:	Application for a Condominium Conversion for Lands Located at 121-125 King Street East, Hamilton (PED23171) (Ward 2)
WARD(S) AFFECTED:	Ward 2
PREPARED BY:	Rino Dal Bello (905) 546-2424 Ext. 1024
SUBMITTED BY:	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

That **Condominium Conversion Application 25CDM-CONV-202307, by Bousfields Inc. c/o David Falletta and Gore Park Lofts Development Corp., Owner**, to establish a Draft Plan of Condominium for 46 new residential units, one commercial unit and 46 storage lockers, on lands located at 121-125 King Street East (Hamilton), as outlined on the location map attached as Appendix "A" to Report PED23171, be **DENIED** on the following basis:

- (a) That the proposed Condominium Conversion Application does not comply with the policies of the Urban Hamilton Official Plan and the Downtown Hamilton Secondary Plan respecting Condominium Conversion of Rental Housing Units;
- (b) That the proposed Condominium Conversion Application is not consistent with the Provincial Policy Statement (2020) in respect to maintaining a range of mix of residential.

EXECUTIVE SUMMARY

The Applicant Bousfields Inc., c/o David Falletta on behalf of Gore Park Lofts Development Corp, Owner, has applied for a Draft Plan of Condominium (Condominium Conversion) for 46 residential units, one commercial unit and 46 storage lockers for

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OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

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lands located at 121-125 King Street East (Hamilton). The Condominium Conversion would allow for the tenure of the units to change from rental to condominium ownership.

The owner purchased the subject site in 2017. The agent advised that at the time of purchase, the property at 121 King Street East had been vacant with the exception of the one ground floor commercial unit. The agent also advised that the property at 125 King Street East had two active residential tenancies in 2016 (although 13 units were listed on the building's rent roll) but the building was vacant by the end of 2017.

Staff have identified information that was not provided with the application that is needed to evaluate the application. This includes confirmation of the total number of new units (discrepancy between 46 and 40 units) and existing units (which were identified as 16 existing rental units on the 2017 Site Plan Control application), the rental rolls for the 16 existing rental units which indicates what the rental rates would have been for these units, and the number of bedrooms per unit for the 16 existing rental units. Staff note that if any of the 16 existing rental units to be converted were two-bedroom units, the application would not meet the vacancy rate for 2022 as indicated by Housing staff and therefore would not comply with Official Plan policies.

As such, the proposed Condominium Conversion cannot be supported for the following reasons:

- There is insufficient information to review the application for Condominium Conversion against the Urban Hamilton Official Plan and the Downtown Hamilton Secondary Plan Condominium Conversion policies as the number of bedrooms per unit to confirm the vacancy rate has been above 2% for two consecutive reporting years, and the rental rates, have not been provided;
- The proposal does not retain the existing 16 rental units which were identified on the 2017 Site Plan Control application; and,
- As submitted, the proposal does not comply with the Condominium Conversion of Rental Housing Units Policy B.3.2.5.1 of the Urban Hamilton Official Plan and does not comply with the Condominium Conversion Policy B.6.1.4.11 of the Downtown Hamilton Secondary Plan.

Alternatives for Consideration – See Page 13

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

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Legal: *Bill 23* amended the *Planning Act* to remove the mandatory requirement for a public meeting to consider a proposed Draft Plan of Condominium.

HISTORICAL BACKGROUND

Application Details	
Owner:	121-125 King Street East
Applicant/Agent:	Bousfields Inc. (David Falletta)
File Number:	25CDM-CONV-202307
Type of Application:	Draft Plan of Condominium (Condominium Conversion)
Proposal:	To establish a Draft Plan of Condominium (Condominium Conversion) for 46 residential units, including the conversion of 16 existing residential rental units, one commercial unit and 46 storage lockers.
Property Details	
Municipal Address:	121-125 King Street East
Lot Area:	607.0 square metres
Servicing:	Full municipal services.
Existing Use:	121 King Street East – An existing four storey building with three residential rental units and one commercial unit on the second floor. 125 King Street East – An existing four storey building with thirteen residential rental units and four ground floor commercial units. This information was provided on the Approved Site Plan Control Drawing SPA-17-086.
Documents	
Provincial Policy Statement (PPS):	The proposal is not consistent with the Provincial Policy Statement (2020).
A Place to Grow:	The proposal conforms to A Place to Grow: Growth Plan for the Greater Golden Horseshoe 2019, as amended.
Official Plan Existing:	Urban Hamilton Official Plan The subject lands are identified “Downtown Urban Growth Centre” on Schedule E – Urban Structure and designated “Downtown Mixed Use Area” on Schedule E-1 – Urban Land Use Designations.

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Documents	
Secondary Plan:	The subject lands are designated “Downtown Mixed Use w/ Pedestrian Focus” in the Downtown Hamilton Secondary Plan. Also designated “Mid-Rise”, located along a “Priority Transit Corridor” in a “Higher Order Transit Station Area”.
Zoning Existing:	Downtown Prime Retail Streets (D2), Zone.
Processing Details	
Received:	March 28, 2023
Deemed Complete:	March 31, 2023
Processing Time:	102 days

Site Plan Control Application

The applicant submitted a Site Plan Control application (SPA-17-086) which received final approval on March 21, 2019, attached as Appendix “B” to Report PED23171. The application form indicated that the residential development was not intended to become a condominium. The Site Plan was for changes to the existing buildings, including additions, to create a building with 40 residential units (plans submitted identified 30 one bedroom units, 10 two bedroom units, and two commercial units). Construction began in 2019 and included re-construction of building interior and upper storey additions.

Existing Land Use and Zoning

	Existing Land Use	Existing Zoning
Subject Lands:	Residential/Commercial uses	Downtown Prime Retail Street (D2) Zone

Surrounding Land Uses:

North	Commercial uses	Downtown Central Business District (D1) Zone
South	Gore Park	Downtown Prime Retail Street, (D2) Zone
East	Commercial uses	Downtown Prime Retail Street, (D2) Zone

Surrounding Land Uses (Continued):

West Commercial uses Downtown Prime Retail Street,
(D2) Zone

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Provincial Policy Statement (2020)

The application has been reviewed with respect to the Provincial Policy Statement. Staff notes that the subject application is consistent with the policies that focus growth in Settlement Areas 1.1.3.1. Policy 1.4.1 directs municipalities to provide for the mix of housing options in terms of both tenure (rental and ownership) and built form. In addition, Policy 1.4.3(a) outlines establishing and implementing minimum targets for the provision of housing which is affordable to low and moderate income households.

The application does not meet the intent of Policy 1.4.3(b)(1), in that the application does not facilitate “all forms of housing required to meet the social, health, and well-being requirements of current and future residents” due to the loss of rental housing as a result of the proposed Condominium Conversion.

Therefore, the proposal is not consistent with the Provincial Policy Statement (2020).

Urban Hamilton Official Plan

The subject lands are identified as “Downtown Urban Growth Centre” on Schedule “E” – Urban Structure and designated “Downtown Mixed Use Area” on Schedule “E-1” – Urban Land Use Designations. The following policies, amongst others, apply to the proposal.

Condominium Conversion of Rental Housing Units

“B.3.2.5.1 To protect the adequate provision of a full range of housing, conversion to condominium of rental apartment or townhouse buildings or groups of buildings comprised of six or more units shall be permitted if any one of three general criteria are met, outlined as a), b) and c) below:

- a) All the following criteria are met:
 - i) The rental vacancy rate by dwelling unit and structure type for the City and the respective local housing market zone, as identified on Schedule G – Local Housing Market Zones and

based on CMHC data, has been at or above 2.0% for the preceding 24 months;

- ii) The proposed conversion shall not reduce the rental vacancy rate by dwelling unit and structure type to below 2.0% for the City and the respective local housing market zone;
 - iii) The existing market rent levels for the units proposed to be converted are not significantly (approximately 10%) below the average market rent levels for the City and the respective local housing market zone for rental units of a similar dwelling unit and structure type and size;
 - iv) For vacant rental units, the last market rent levels charged prior to vacancy for the units proposed to be converted were not significantly (approximately 10%) below the average market rent levels at the time for the City and the respective local housing market zone for rental units of a similar dwelling unit and structure type and size; or,
- b) At least 75% of the current tenants support the conversion to condominium, as demonstrated to the satisfaction of the City; or,
 - c) The subject building or group of buildings is a protected heritage property on the date of application.”

The property falls in the Downtown Core of Canada Mortgage Housing Corporation’s housing market information portal. The Table below highlights the vacancy rates for the past 24+ months and shows the vacancy rate was higher than 2% for both years 2021 and 2022, with the exception of two bedroom units which was at 3.8% in 2021 however fell to 1.3% in 2022.

Unit type	Bach	1BR	2BR	3BR
Vacancy Rate 2021	4.9	4.0	3.8	3.3
Vacancy Rates 2022	-	2.2	1.3	-

As the applicant has not provided the bedroom breakdown per unit type, staff cannot confirm whether the proposal complies with policy B.3.2.5.1 a) i). Staff note that if there are two bedroom units, the proposal would not comply as the vacancy rate was below 2% in 2022.

Policy B.3.2.5.1 a) ii), indicates that the proposed conversion shall not reduce the rental vacancy rate by dwelling unit and structure type to below 2.0% for the City and the

respective local housing market zone. Staff are not able to confirm if the proposal complies with this policy as detailed information on unit type was not provided to confirm if there would be an impact on the existing vacancy rates for the unit types with the proposed conversion.

As per Policy B.3.2.5.1 a) iii) and iv), staff could not verify the market rent levels for the vacant rental units since the applicant did not provide this information with their application.

With regards to policy B.3.2.5.2 b), the applicant did not seek tenant support for the conversion since, as they have indicated, the units have been vacant since 2017, so the policy does not apply.

As per Policy B.3.2.5.1 c) the existing buildings are not protected heritage property, so the policy does not apply.

“B.3.2.5.3 Notwithstanding Policy B.3.2.5.1, the City may approve an application to convert rental housing to condominium tenure, where it is demonstrated to the satisfaction of the City that:

- a) Repair or retrofitting is immediately required to meet health and safety standards; and,
- b) Income received from rent and available from government funding programs, including rent increases permitted under provincial legislation, is not capable of supporting the work required.”

At the time of the submission of the Site Plan Control application, the applicant indicated the existing units that were within the buildings were vacant and indicated the units were not available for rent. The applicant did not indicate that these units would be converted to condominium tenure but indicated in the Site Plan Control application that the residential development would not have condominium tenure. The applicant applied for a tax increment grant for the property which was granted on July 20, 2020. The application submitted for the tax grant did not indicate there were existing rental units within the buildings. A tax grant application is not a *Planning Act* application or the mechanism for review of Official Plan policies so a review of the Official Plan policies under the tax grant was not performed.

“B.3.2.5.4 The City may require applicants to submit certified financial statements in support of an application under Policy B.3.2.5.3.

B.3.2.5.5 A complete application for conversion to condominium of rental apartment or townhouse buildings or groups of buildings comprised of six or more

rental units shall include, in a manner acceptable to the City, proof of tenant notification of the conversion proposal and proof of notification of the rights of tenants under provincial residential tenancy legislation.”

Policies B.3.2.5.4 and B.3.2.5.5 have been included for information purposes and do not apply to the proposal.

Demolition/Redevelopment of Rental Housing Units

“B.3.2.5.6 To protect the adequate provision of a full range of housing, development or redevelopment that would have the effect of removing all or part of rental apartment or townhouse buildings or groups of buildings comprised of six or more units, and would result in the loss of six or more rental housing units shall be permitted if any one of two general criteria are met, outlined as a) and b) below:

- a) All of the following criteria are met:
 - i) The rental vacancy rate by dwelling unit and structure type for the City and the respective local housing market zone, as identified on Schedule G – Local Housing Market Zones and based on CMHC data, has been at or above 2.0% for the preceding 24 months;
 - ii) The proposed removal shall not reduce the rental vacancy rate by dwelling unit and structure type to below 2.0% for the City and the respective local housing market zone;
 - iii) The existing market rent levels for the units proposed to be removed are not significantly (approximately 10%) below the average market rent levels for the City and the respective local housing market zone for rental units of a similar dwelling unit and structure type and size;
 - iv) For vacant rental units, the last market rent levels charged prior to vacancy for the units proposed to be removed were not significantly (approximately 10%) below the average market rent levels at the time for the City and the respective local housing market zone for rental units of a similar dwelling unit and structure type and size; or,
- b) The building (or buildings) is determined to be structurally unsound, confirmed by the submission of a structural audit, prepared by a

qualified professional with the conclusions of such audit deemed acceptable by the City.

- B.3.2.5.7 Notwithstanding Policy B.3.2.5.6, renovations to an existing building which reduces the number of dwelling units by six or more units, but does not reduce the area of living space, may be permitted provided Policy B.3.2.5.6, clauses a) i) and ii) are satisfied.”

Policies B.3.2.5.6 and B.3.2.5.7 have been included for information purposes and the proposal has not been reviewed against these policies as policy B.3.2.5.6 has been not withstood by the Downtown Hamilton Secondary Plan policies which take precedence over the policies listed above.

Downtown Hamilton Secondary Plan

The subject lands are designated “Prime Retail Streets: within the Downtown Hamilton Secondary Plan. The following policies, amongst other, apply to the proposal.

Housing

- “B.6.1.4.11 Notwithstanding Policy B.3.2.5.6 of Volume 1, the demolition/redevelopment of rental housing units shall be permitted only where the following can be achieved to offset the impacts:
- a) It shall be demonstrated that the rental housing units have been replaced on-site; and,
 - b) An acceptable tenant relocation and assistance plan addressing the right to return to occupy the replacement housing at similar rents, the provision of alternative accommodation at similar rents, and other assistance to lessen the hardship, is provided.”

The Downtown Hamilton Secondary Plan was in effect on August 14, 2019 and the above noted policies were introduced to the Secondary Plan. The existing buildings that are proposed to be converted to condominium originally contained 16 rental units as indicated on the Site Plan Control application in 2017 and the approved site plan drawing attached as Appendix “C” to Report PED23171. The existing rental units were vacant at the time of the submission of the Site Plan Control application but available for rental.

The applicant has not provided any documentation or demonstrated that the original rental units have been replaced in the proposed redevelopment and has indicated that the original rental units and the new proposed units have been pre-sold and are not

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being offered as rental units. The applicant did also not provide documentation for a tenant relocation plan since the agent has advised that the units were vacant since 2017.

Therefore, the proposed development does not comply with Section B.6.1.4.11 a) Housing, Downtown Hamilton Secondary Plan.

The agent on the file submitted a memo, attached as Appendix “D” to Report PED23171 to the City indicating that a condominium agreement could be structured in a manner that the existing units would remain rental and the proposed units would have condominium tenure. Staff have not been provided the information about the unit breakdown on the proposed 46 units as indicated in the condominium application, and the discrepancy between the unit count shown and approved on the site plan against the units indicated in the condominium application.

The intent of the policy is to protect the rental units regardless of whether the units are occupied and the use as a rental residential dwelling does not change.

Therefore, the proposed development does not comply with Section B.6.1.4.11 b) Housing, Downtown Hamilton Secondary Plan.

City of Hamilton Zoning By-law No. 05-200

The subject lands are zoned Downtown Mixed Use-Pedestrian Focus (D2) Zone in the City of Hamilton Zoning By-law No. 05-200 which permits a multiple dwelling and commercial uses on the ground floor.

RELEVANT CONSULTATION

Departments and Agencies	
Canada Post Corporation; Metrolinx; and, Planning and Economic Development Department, Economic Development Division, Commercial Districts and Small Business Section and Corporate Real Estate Office Section. Cultural Heritage, Urban Design.	No Comment

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	Comment	Staff Response
Development Engineering Approvals Section, Growth Management Division, Planning and Economic Development Department	The grading, drainage and servicing concerns for the subject lands were dealt with under Site Plan Control Application SPA-17-086.	Noted
Growth Planning Section, Growth Management Division, Planning and Economic Development Department	The Owner and Agent should be made aware that per our addressing comment for the underlying Site Plan application SPA-17-086 and per the Official Address Notification Letter dated March 2, 2020, the following municipal addresses of 121 King Street East (apartment building with 40 residential units), 125 King Street East (eastern commercial unit), 7 Catharine Street North (southern commercial unit), and 11 Catharine Street North (northern commercial unit) will be retained for the subject development. Staff recommends a draft approval condition to confirm unit numbering of all units in the building, as noted below;	Noted
Sustainable Communities Section, Planning and Economic Development Department	Staff notes that the previous application for Site Plan indicated that there were 16 existing residential rental units on the lands. The application for Conversion to Condominium does not conform to Policy 6.1.4.11 since the previously existing rental units are not proposed to be replaced. Per Urban Hamilton Official Plan requirement B.3.2.5.1 (iv) requiring demonstration that tenants support the conversion – We require this information as it appears that Gore Park Lofts has been the owner of this property at least since January 31, 2018 – so not new owners, see below; alternatively confirming what happened to the previous tenants if the building is empty.	Noted in Report

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	Comment	Staff Response															
Housing Services Division, Healthy and Safe Communities Department (Continued)	<p>Per B.3.2.5.1(i) and (ii) Vacancy rates: The address falls in the Downtown Core of CMHC’s housing market information portal. The Table below highlights the vacancy rates for past 24+ months and shows vacancy was higher than 2% for both 2021 and 2022 this in compliance with the Urban Hamilton Official Plan requirement.</p> <table border="1"> <thead> <tr> <th>Unit type</th> <th>Bach</th> <th>1BR</th> <th>2BR</th> <th>3BR</th> </tr> </thead> <tbody> <tr> <td>Vacancy Rate 2021</td> <td>4.9</td> <td>4.0</td> <td>3.8</td> <td>3.3</td> </tr> <tr> <td>Vacancy Rates 2022</td> <td>-</td> <td>2.2</td> <td>1.3</td> <td>-</td> </tr> </tbody> </table> <p>B.3.2.5.1(iii): Without the rent rolls of the previous tenant and full proposal of what the conversion will be, we cannot confirm this requirement or conclude if there will be a loss of affordable housing units.</p> <p>Without the rent rolls of the previous tenant and, it cannot be confirmed if the requirements or conclude if there will be a loss of affordable housing units.</p>	Unit type	Bach	1BR	2BR	3BR	Vacancy Rate 2021	4.9	4.0	3.8	3.3	Vacancy Rates 2022	-	2.2	1.3	-	Noted in Report
Unit type	Bach	1BR	2BR	3BR													
Vacancy Rate 2021	4.9	4.0	3.8	3.3													
Vacancy Rates 2022	-	2.2	1.3	-													
Bell Canada	<p>The Owner acknowledges and agrees to convey any easement(s) as deemed necessary by Bell Canada to service this new development. The Owner further agrees and acknowledges to convey such easements at no cost to Bell Canada.</p> <p>The Owner agrees that should any conflict arise with existing Bell Canada facilities where a current and valid easement exists within the subject area, the Owner shall be responsible for the relocation of any such facilities or easements at their own cost.</p>	Noted															

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The proposal cannot be supported for the following reasons:

- There is insufficient information to review the application for Condominium Conversion against the Urban Hamilton Official Plan and the Downtown Hamilton Secondary Plan Condominium Conversion policies including number of bedrooms per unit to confirm the vacancy rate has been above 2% for two consecutive reporting years and the rental rates;
- The proposal does not retain the existing 16 rental units; and,
- The proposal does not comply with the Condominium Conversion of Rental Housing Units Policy B.3.2.5.1 of the Urban Hamilton Official Plan and does not comply with the intent of the Condominium Conversion policies of the Downtown Hamilton Secondary Plan Policy B.6.1.4.11.

ALTERNATIVES FOR CONSIDERATION

1. Council may approve the application in part so that the 16 existing rental units would be protected and direct staff to prepare a list of conditions for Draft Plan of Condominium. The effect of this would be that the existing rental units would be protected and there would be no loss of rental units.
2. Council may approve the application with all 46 units, one commercial unit, and 46 storage lockers which would be converted to condominium tenure, and direct staff to prepare a list of conditions for Draft Plan of Condominium. The effect of this would be that the existing rental units would not be replaced and there would be the loss of rental units.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

Built Environment and Infrastructure

Hamilton is supported by state-of-the-art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

Culture and Diversity

Hamilton is a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PED23171 – Location Map

Appendix “B” to Report PED23171 – Site Plan Application

Appendix “C” to Report PED23171 – Approved Site Plan drawing

Appendix “D” to Report PED23171 – Memo from Consultant

RD:sd