

CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT *Planning Division*

TO: Chair and Members Planning Committee	WARD(S) AFFECTED: WARD 10
COMMITTEE DATE: December 6, 2011	
SUBJECT/REPORT NO: Application for a Draft Plan of Vacant Land Condominium for Lands Located at 327 Fruitland Road (Stoney Creek) (PED11210) (Ward 10)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department	PREPARED BY: Greg Macdonald (905) 546 2424, Ext. 4283
SIGNATURE:	

RECOMMENDATION:

That approval be given to **Draft Plan of Vacant Land Condominium 25CDM-201107, Multi-Area Developments Inc., Owner**, to create 5 units and a common element (Private) Roadway, on lands located at 327 Fruitland Road (Stoney Creek), as shown on Appendix "A" to Report PED11210, subject to the following conditions:

- (a) That this approval applies to the plan prepared by A.J. Clarke & Associates Ltd., signed by B.J. Clarke Ontario Land Surveyor, dated September 9, 2011, showing the following condominium elements: 5 units for commercial uses and a common element road, attached as Appendix "B" to Report PED11210.
- (b) That the Final Plan of Condominium shall comply with all of the applicable provisions of Zoning By-law No. 3692-92, to the satisfaction of the Director of Planning.
- (c) That the final plan of condominium shall comply, in all respects, with the approved Site Plan (DA-10-161), to the satisfaction of the Director of Planning.

- (d) That the owner shall satisfy any conditions, financial or otherwise, of the City of Hamilton, to the satisfaction of the Director of Planning.
- (e) That the owner shall enter into, and register on title, the Condominium Agreement incorporating the approved plan of condominium and related conditions, to the satisfaction of the City Solicitor.
- (f) That the owner provides the Manager of Engineering Design and Construction with evidence that satisfactory arrangements, financial and otherwise, have been made with a telecommunication service provider, approved by the Canadian Radio and Telecommunication Commission (CRTC), that adequate telecommunication service will be provided to the condominium, including 9-1-1 emergency calling service that identifies, at a minimum, the caller's name and location information.
- (g) That the Condominium Agreement includes clauses advising unit purchasers or lease holders that all parking spaces, except for a reasonable number of parking spaces needed to be reserved for specific uses or for employee or owner parking, will be utilized communally amongst all 5 Condominium Units, except for access restrictions for the interior of Unit 5 (the mini-storage use), to the satisfaction of the Director of Planning.
- (h) That the Condominium Agreement include clauses advising unit purchasers or lease holders that access to the outdoor portions of their respective condominium units is granted to the Condominium Corporation or the owners of the other Condominium Units within the Condominium Corporation, subject to appropriate notification, in order to complete any necessary emergency repairs or maintenance on any above or below ground services impacting either the Common Element Condominium driveway or other Condominium Units within the Condominium Corporation, to the satisfaction of the Director of Planning.

EXECUTIVE SUMMARY

The purpose of the application is for approval of a Draft Plan of Vacant Land Condominium for 5 condominium units for commercial uses and a common element condominium road. The effect of the application is for a different form of tenure for the approved commercial development which otherwise would have been under one owner with separate leases for each building or commercial use.

The proposal has merit and can be supported since the proposed development is consistent with the Provincial Policy Statement, and conforms with the Places to Grow Plan, Hamilton-Wentworth Official Plan, Stoney Creek Official Plan and Urban Hamilton Official Plan.

Alternatives for Consideration - See Page 11.

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial N/A.

Staffing N/A.

Legal As required by the Planning Act, Council shall hold at least one (1) Public Meeting to consider an application for a Draft Plan of Vacant Land Condominium.

HISTORICAL BACKGROUND

The applicant has applied for a Draft Plan of Vacant Land Condominium for lands located at 327 Fruitland Road (Stoney Creek) in order to permit 5 condominium units for commercial uses and a common element condominium road (see Appendix "B").

Chronology:

June 20, 2006: Planning and Economic Development Committee approve Zoning Application ZAC-06-11 and Official Plan Amendment Application OPA-06-03. The applications served to rezone and redesignate portions of the subject lands from an Industrial/Business Park zone and designation to a Commercial zone and designation in order to permit a commercial plaza.

November 10, 2010: Development Review Committee is held to review Preliminary Site Plan Control Application PSR-10-128, to construct a commercial plaza consisting of two commercial retail buildings, a gas station with carwash and convenience retail, a Tim Hortons restaurant, and a mini-storage facility.

February 7, 2011: Site Plan Control Application DA-10-161 is approved, subject to conditions. The application is to permit the lands at 327 Fruitland Road to be developed for 3 commercial retail units, a gas station with carwash and convenience retail, a Tim Hortons restaurant, and a mini-storage facility.

June 1, 2011: Draft Plan of Vacant Land Condominium Application 25CDM-201107 is deemed complete.

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June 6, 2011: All conditions of approval of Site Plan Control Application DA-10-161 are satisfied, and the Building Services Division was advised that the applicant is eligible to apply for and receive approval of any necessary Building Permit applications.

June 10, 2011: Circulation of Notice of Complete Application and Preliminary Circulation for Application 25CDM-201107 to all property owners, residents, and tenants within 120 metres of the subject lands.

November 18, 2011: Circulation of Notice of Public Meeting to all property owners, residents, and tenants within 120 metres of the subject lands.

DETAILS OF SUBMITTED APPLICATION:

Owner/Applicant: Multi-Area Developments Inc.
(c/o Aldo and/or David DeSantis)

Agent: A.J. Clarke and Associates (c/o Steve Fraser)

Property Description:

<u>Area:</u>	2.2 hectares
<u>Frontage:</u>	155.04 metres (Fruitland Road)
<u>Flankage Depth:</u>	122.69 metres (Barton Street)

Servicing: Full Municipal Services

EXISTING LAND USE AND ZONING:

	<u>Existing Land Use</u>	<u>Existing Zoning</u>
<u>Subject Lands:</u>	Commercial Plaza Under Construction	General Commercial “GC-47” Zone
<u>Surrounding Lands:</u>		
North	Remnant Single Detached Dwellings and Industrial Uses	Prestige Business Park (M3) Zone
South	Commercial Plaza and Townhouses	General Commercial “GC-19” Zone and Multiple Residential “RM3” Zone
West	Vacant	Prestige Business Park (M3, 397) Zone
East	Vacant and Industrial Uses (East Side of Fruitland Road)	Prestige Business Park (M3) Zone and Business Park Support (M4) Zone

POLICY IMPLICATIONS

Provincial Growth Plan for the Greater Golden Horseshoe

The application has been reviewed with respect to the Provincial Growth Plan for the Greater Golden Horseshoe (Places to Grow). Staff considers the application to conform with the policies that manage growth to the built up areas, as per the Policies contained in Section 2.2.2.

The proposal maintains the intent to create vibrant neighbourhoods, which are mixed-use, transit-supportive, and pedestrian-friendly. The subject lands are accessed by public transit, and walkways throughout the development have been provided. It should be noted that the employment policies from Places to Grow do not apply, as the subject lands had already been redesignated to permit commercial uses prior to Places to Grow and are designated “Arterial Commercial” in the new Urban Hamilton Official Plan through a municipally initiated comprehensive review.

Provincial Policy Statement

The application has been reviewed with respect to the Provincial Policy Statement (PPS). Staff recognizes that the application is consistent with the policies that focus growth in Settlement Areas 1.1.3.1. It should be noted that the employment policies from the Provincial Policy Statement do not apply, as the subject lands had already been redesignated to permit commercial uses and are designated “Arterial Commercial” in the new Urban Hamilton Official Plan through a municipally initiated comprehensive review.

Hamilton-Wentworth Official Plan

The subject property is designated as “Business Park” in the Hamilton-Wentworth Official Plan. Policy 3.1.3 outlines a role for Business Parks within the municipality and that their roles and functions are shifting. They are to accommodate a full range of manufacturing, construction, research and development uses, and service type uses.

Policy 3.1.3.2 permits grouped commercial uses of a retail or service nature such as banks, restaurants, and professional offices that will not adversely affect established and/or approved retail areas in Business Parks. Such uses will be directed to locations along major roads or in designated commercial nodes within the Business Park.

Based upon the foregoing, the application conforms to the Hamilton-Wentworth Official Plan. It should be noted that in the new Urban Hamilton Official Plan the subject lands are no longer located within the Business Park and are designated “Arterial Commercial”.

Stoney Creek Official Plan

The subject lands are designated “General Commercial” on Schedule ‘A’ - General Land Use Plan in the Stoney Creek Official Plan. The following policies, among others, are applicable to the subject lands:

- “A.3.3.2.1 The General Commercial designation applies to certain existing and proposed areas of individually managed commercial establishments located along highways and arterial roads. General Commercial uses benefit from accessibility and visibility and thereby provide a service to both pedestrian and automobile-borne trade.
- A.3.3.2.2 Land designated General Commercial by this Plan may be used for retail and service shops, offices, financial institutions, automobile sales, service and repair establishments, printing shops, restaurants, hotels, places of assembly and entertainment, commercial marinas, local institutional and

community uses, and uses similar and accessory to the foregoing including dwelling units.

A.3.3.2.6 Notwithstanding the permitted uses as outlined in Policy A.3.3.2.2 of this Sub-section, the use of:

- (l) In addition to the uses permitted in Policy A.3.3.2.2 of this Plan, the lands known as 627 - 633 Barton Street may also be used for any assembling, manufacturing, or processing use which is not obnoxious as defined by the Zoning By-law; warehouses; wholesale uses; building supply outlets in enclosed buildings; custom workshops; laboratories; printing establishments and swimming pool sales and service.”

The purpose of the application is to establish Vacant Land Condominium tenure for the approved, and under construction, commercial development of the subject lands. All of the proposed uses conform to the “General Commercial” designation and the General Commercial “GC-47” Zone requirements and, therefore, the proposal conforms to the Stoney Creek Official Plan.

Urban Hamilton Official Plan (Ministerial Approved)

The Urban Hamilton Official Plan received Ministerial Approval from the Ministry of Municipal Affairs and Housing on March 16, 2011 and, therefore, can no longer be modified. The final decision on the Urban Hamilton Official Plan has been appealed.

The proposal has been evaluated against the policies of the Council adopted and Ministerial Approved Urban Official Plan. The site is located within the “Arterial Commercial” designation on Schedule E-1 and, as such, the following Policies have been considered:

- “E.4.8.2 The following uses shall be permitted on lands designated Arterial Commercial on Schedule E-1 - Urban Land Use Designations:
- (a) Commercial uses including banquet halls, restaurants including garden centres, furniture stores, building and lumber supply establishment, home improvement supply store, and retail primarily for the sale of building supplies;
 - (b) Automotive related uses primarily for vehicle sales, service and rental, parts sales, gas bars, car washes, and service stations;
 - c) Commercial recreational uses, excluding theatres;

- d) Industrial supply and service and contractor sales;
- e) Accommodation, excluding residential uses;
- f) Enclosed storage including mini warehousing; and,
- g) Accessory uses.”

The proposed Vacant Land of Condominium would establish condominium tenure on the subject lands instead of a lease arrangement for the individual buildings. The range of uses proposed for the subject lands conform with the “Arterial Commercial” designation, although final uses for each of the commercial retail buildings is not known. Any proposed uses would have to comply to the General Commercial “GC-47” Zone requirements. Based on the above, the proposed Vacant Land Condominium conforms to the new Urban Hamilton Official Plan.

RELEVANT CONSULTATION

The following Departments and Agencies had no comments or objections:

- Taxation Division, Corporate Services Department.
- Operations and Waste Management Division, Public Works Department.
- Hamilton Municipal Parking System.
- Horizon Utilities.

Public Works Department (Operations and Waste Management Division) has advised that the development is ineligible for municipal waste pickup. A note to that effect was included on the approved Site Plan Control Application (DA-10-161).

Public Works Department (Forestry and Horticulture Section) has advised that any changes to the development impacting the previously approved landscape plan and street tree planting plan (approved through DA-10-161) would have to be reviewed by the Forestry and Horticulture Section. The proposed Condominium Application does not impact the approved Site Plan.

Public Works Department (Traffic Engineering Section) has advised that there are no comments on the condominium application, but that a tanker truck for the proposed gas station must be able to access the site without using the centre turning lane on Fruitland Road. This has been addressed through the related Site Plan Control Application.

Hamilton Street Railway has commented on the promotion of pedestrian connections and high quality amenities, and that the contractor should work with HSR on a new bus platform on Barton Street. This new bus platform has been included in the final approved site plan and will be constructed by the applicant based on specifications provided by HSR.

Bell Canada has requested standard conditions pertaining to the availability of communication/telecommunication infrastructure. This requirement would be included within the Condominium Agreement as Condition (f).

Public Consultation

In accordance with the new provisions of the Planning Act and the Council Approved Public Participation Policy, Notice of Complete Application and Preliminary Circulation was circulated to 170 property owners, residents, and tenants within 120 metres of the subject property on June 10, 2011. No letters or correspondence were received as a result of the pre-circulation. A Public Notice sign was erected on the property on June 13, 2011. Notice of the Public Meeting has been given in accordance with the requirements of the Planning Act.

ANALYSIS / RATIONALE FOR RECOMMENDATION

1. The proposed Draft Plan of Vacant Land Condominium has merit and can be supported for the following reasons:
 - (i) It is consistent with the Provincial Policy Statement and conforms to the Places to Grow Plan (Growth Plan for the Greater Golden Horseshoe);
 - (ii) It conforms to the Hamilton-Wentworth Official Plan and the “General Commercial” designation in the Stoney Creek Official Plan;
 - (iii) It conforms to the “Arterial Commercial” designation in the new Urban Hamilton Official Plan; and,
 - (iv) It allows for an innovative form of condominium tenure that is contemplated and regulated under the Condominium Act for a commercial development that is final approved and under construction.
2. The application proposes the development of 5 Vacant Land Condominium Units for commercial uses and a common element condominium road. The units would consist of the following uses:

- Unit 1 is for a gas station, convenience retail and car wash and parking area;
- Unit 2 is for a Tim Hortons restaurant with drive-through and parking area;
- Unit 3 is for a commercial retail building with parking;
- Unit 4 is for two commercial retail buildings with parking; and,
- Unit 5 is for a mini storage establishment with parking.

A Vacant Land Condominium establishes condominium units whereby the individual condominium units would consist of not only the buildings but all above and underground services, parking, landscaping, sidewalks, etc., within the boundary of their unit. All five units would also be tied to the common element condominium driveway that connects Fruitland Road with Barton Street, which also contains certain underground services to be maintained by the Condominium Corporation. The Condominium Corporation can also establish rules regulating the construction, layout, architecture, and design of each unit. While the above noted chart denotes what is currently proposed and mostly under construction, the actual final development could change, but this would not impact the condominium as vacant land condominium unit boundaries are not lot lines for zoning purposes. Any future changes that would occur after the Condominium Corporation is established would need approval from the Condominium Corporation Board and any applicable municipal approvals (i.e. Site Plan Control, Minor Variances, etc.).

3. The approved Site Plan Control Application (DA-10-161, see Appendix “C”) includes final approved engineering site servicing plans. Some of the sewer and/or water lines have been designed to connect through various condominium units or directly from municipal services on Barton Street or Fruitland Road, not just directly from services that are underneath the common element condominium driveway. The Condominium Act already allows the Condominium Corporation to enter the private condominium units to conduct repairs if each individual condominium owner does not maintain their own underground services adequately. Therefore, a series of access and maintenance easements are not required. However, to provide certainty that the Condominium Agreement will include clauses advising purchasers and tenants that the Condominium Corporation or other unit owners can access the other units to make such repairs, Condition of Draft Plan Approval (h) is included in the recommendation.
4. The commercial development that has been approved and under construction would form part of one contiguous development with shared internal driveways and pedestrian connections between the units. It is not envisioned that a customer would be forced to drive between condominium units, but rather that a customer arriving by vehicle, could if desired, park at one location and shop or take advantage of services within other units. Therefore, a draft plan condition has been included to ensure that condominium unit owners do not unduly restrict parking within their units to only parking for their uses. Some flexibility has been

built into the condition to allow for dedicated employee or owner parking or where special circumstances may generally warrant such a restriction (see Condition of Draft Plan Approval (g) contained in the Recommendation section of this Report).

ALTERNATIVES FOR CONSIDERATION:

Should the proposed draft plan of Condominium be denied, the subject lands would continue to be used for commercial uses permitted under the General Commercial “GC-47” zone under an ownership tenure whereby the owner of the property would own all of the buildings and could lease individual buildings or portions of building to prospective commercial tenants. The form of development would not be impacted by a denial.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Financial Sustainability

- ♦ Generate assessment growth/non-tax revenues.

Growing Our Economy

- ♦ Competitive business environment.

Healthy Community

- ♦ Plan and manage the built environment.

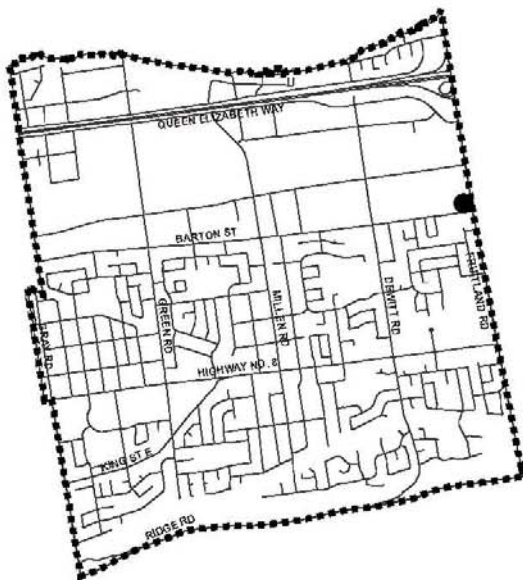
APPENDICES / SCHEDULES

- Appendix “A”: Location Map
- Appendix “B”: Draft Plan of Condominium
- Appendix “C”: Site Plan

:GM
Attachs. (3)



● Site of the Application



Ward 10 Key Map

N.T.S.

Location Map



PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

File Name/Number:
25CDM-201107

Date:
September 9, 2011

Appendix "A"

Scale:
N.T.S.

Planner/Technician:
GM/KA

Subject Property

327 Fruitland Road

[illegible]