

CITY OF VANCOUVER

ADMINISTRATIVE REPORT

Report Date: April 3, 2007
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Meeting Date: May 17, 2007

TO: Standing Committee on Planning and Environment

FROM: Subdivision Approving Officer in consultation with the Director of the Housing Centre

SUBJECT: Strata Title Conversion - 2665 West Broadway "The Maguire Building"

RECOMMENDATION

THAT the application to convert the occupied building at 2665 West Broadway (Lot A, Block 19, District Lot 192, Group 1 NWD, Plan BCP5860) to strata title ownership be refused.

GENERAL MANAGER'S COMMENTS

The General Manager of Community Services RECOMMENDS approval of the foregoing

COUNCIL POLICY

Under the *Strata Property Act*, City Council is the approving authority for any application seeking to convert a previously occupied building to strata title ownership.

Council policy is reflected in the City's Strata Title and Cooperative Conversion Guidelines, which outline factors which Council will consider in reviewing applications for converting previously occupied buildings to strata title or cooperative ownership. Council approval is required specifically for all residential buildings containing six dwelling units or more. Council's authority for dealing with proposed conversion of smaller residential projects and all non-residential projects has been delegated to the Subdivision Approving Officer.

PURPOSE

Council approval is sought by Mr. Les Sallay for an application to convert the previously occupied building ("The Maguire Building") at 2665 West Broadway (Lot A, Block 19, District Lot 192, Group 1 NWD, Plan BCP5860) to strata title ownership. A total of thirty-six residential and seven commercial strata lots are proposed.

BACKGROUND

The provisions of the *Strata Property Act* pertaining to conversion of previously occupied buildings enables Council to approve the strata conversion, approve the conversion subject to conditions, or refuse the conversion. A strata title conversion application must not be approved unless the building substantially complies with applicable City by-laws and in particular the Building By-law.

In addition, the *Act* states that before making its decision the approving authority must consider:

- (a) the priority of rental accommodation over privately owned housing in the area;
- (b) any proposals for the relocation of persons occupying a residential building;
- (c) the life expectancy of the building;
- (d) projected major increases in maintenance costs due to the condition of the building; and
- (e) any other matters that, in its opinion, are relevant.

Applications for strata title conversion of buildings containing six or more previously occupied residential units are relatively rare. The last one before Council, in February 2005, for a building at 2226 West 12th Avenue, had some similarities with the current application, as described later in this report. The infrequency of these applications is largely a consequence of:

- (i) the cost of significant building upgrading older buildings would have to achieve in order to substantially comply with current Building By-law requirements, as required by the *Strata Property Act*; and
- (ii) the difficulty in achieving the support of at least two-thirds of the households occupying the building, as specified in Council's "Strata Title and Cooperative Conversion Guidelines".

Pursuant to Section 49 of the *Residential Tenancy Act (2002)*, which pertains to a landlord's use of property, a two-month notice period is required to end tenancy if the landlord intends, in good faith, to convert a residential property to strata lots under the *Strata Property Act*.

The Maguire Building site is zoned C-2C1 and contains a recently constructed, four-storey, mixed-use building, consisting of seven commercial units at the ground floor, and thirty-six dwelling units on the second, third and fourth floors. The occupancy permit for the residential portion (and shell occupancy for the commercial portion) was issued on November 2, 2004. The location of the site is shown in Figure 1.

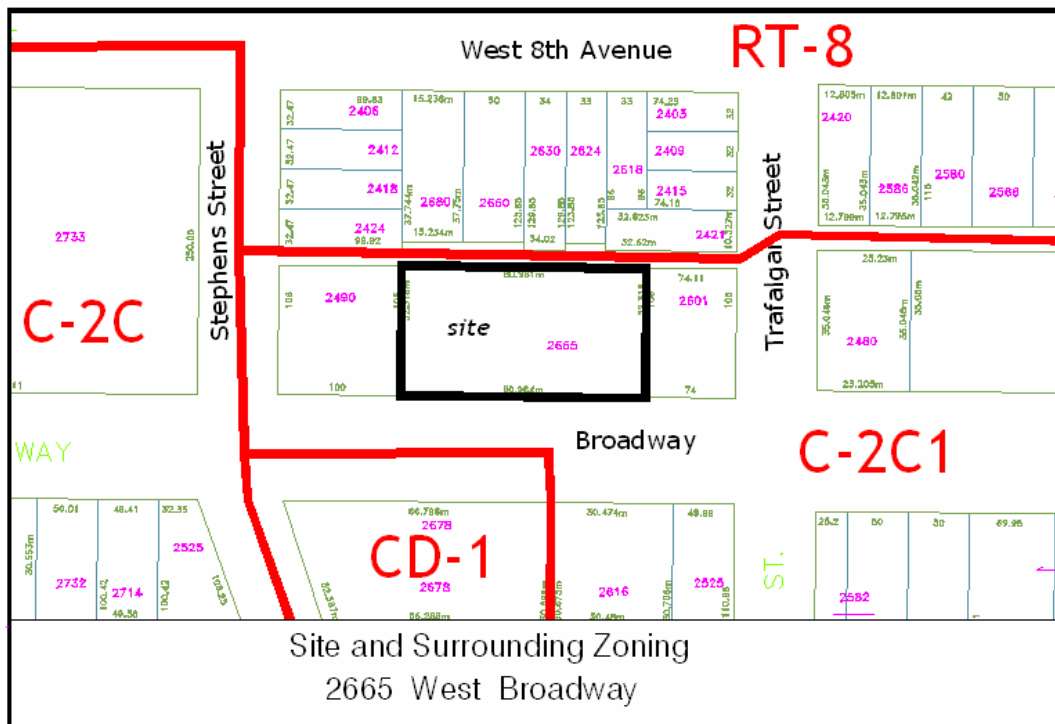


Figure 1

The building is owned by a limited numbered company (0764069 B.C. Ltd.), which took possession of the building in July, 2006 with the intent of converting it to strata title ownership. The commercial and residential units have been occupied by rental tenants since building completion. Thirty-four of the thirty-six residential units were tenanted at the time of strata title conversion application, which was submitted on August 24, 2006. Subsequently, the two vacant units were rented on a short-term basis.

DISCUSSION

In addition to Development Services, the City Engineer, Chief Building Official and Director of the Housing Centre have reviewed this application.

The City Engineer has no servicing requirements for this site. The Chief Building Official reports that the previously occupied building substantially complies with all relevant City by-laws.

The City's procedures for soliciting the input of tenants residing in a building proposed to be converted to strata title seek to ensure tenants are providing an informed response. A City brochure explaining the strata title conversion process and the Council-approved guidelines is sent by the City to each tenant, along with a response form. Upon confirmation of this mailing, the owner is advised and it is up to the owner to recover the completed response forms and submit them to the City.

It is quite common - if not expected - that an owner may negotiate arrangements with individual tenants in order to obtain their support for the strata title conversion. These negotiations can vary amongst tenants but experience indicates that some tenants do negotiate terms that they find sufficient to offer their support to the application. The negotiations commonly entail various incentives offered by the proponent, including some period of "rent-free" accommodation, possible assistance in tenant relocation (e.g., search assistance, moving expenses), or right to buy their unit at a discount.

In the current application, Mr. Sallay had previously obtained a tenant response form and distributed copies to the tenants in advance of the City notification, without the accompanying explanatory materials. Whether this placed tenants in a disadvantageous position for subsequent negotiations with Mr. Sallay is not clear. When the City's notification was subsequently sent out, tenants were directed to return their response forms directly to the City, to enable comparison with the forms returned to Mr. Sallay. Although tenants received the response forms to complete twice, the additional City notification was seen as necessary to ensure tenants had sufficient information upon which to base their negotiations and their response.

Of the thirty-six response forms sent to tenants by the owner and then subsequently by the City, 24 tenants responded to the owner and 17 tenants responded directly to the City, with some duplications. Two units were vacant at time of application but were subsequently rented on a short-term basis, with both new tenants supporting the application. Combined results are as follows:

Responses Submitted	To City	To Owner	Combined (eliminating duplication)
Opposed:	4	0	4 (11%)
In Favor:	12	24	27 (75%)
Don't Know:	1	0	1 (3%)
No Response:			4 (11%)
TOTAL:	17	24	36 (100%)

Favourable responses to the owner and the City were consistent except for one tenant, who responded favourably to the owner but noted opposition to the City. Two other tenants indicated that their preference would be to see the building remain rental, but agreed, with some reservation, to support the application, in order to obtain a longer lease arrangement. One tenant indicated he felt it was pointless to object as he had been advised by the applicant that sufficient support from the other tenants had already been secured. A few tenants, in their responses and in phone calls to City staff, indicated they felt pressured by the applicant to support the conversion, with several of these calls coming before the application had been submitted.

Despite the tenant comments to staff that suggest unconditional tenant support may not be as high as 75%, it seems that the minimum two-thirds support threshold (24 tenants) has been satisfied.

In accordance with City guidelines, prior to application submission, the owner had posted the required notices in the building of their intent to strata title and provided tenants with prospective sale prices and estimated management fees.

In addition, the owner offered each tenant a "right of first refusal", giving each tenant 48 hours to match any "Offer to Purchase" received when their suite is listed for sale. The owner negotiated with many tenants individually to obtain their support for the proposal. Some were offered longer lease terms of up to a year, some with forgoing of their last month's rent, and others with reduced notice provisions, or combinations of these incentives. The owner submitted to the City copies of twenty-one such agreements. All tenants were in fixed term leases with varied expiry dates, the last at February 28, 2007, with rental rates varying from \$1,325.00 for 1-bedroom units up to \$2,900.00 for a 3-bedroom unit.

Since this is a recently completed building, staff did not require the applicant to submit a written report from a registered Architect, Engineer, or any other person, in a form acceptable to the City Building Inspector, that the building is of a reasonable quality for its age, including reference to the state of repair, general workmanship and measure of compliance with relevant City By-laws.

Development Application No. DE406400, submitted on December 21, 2001 for the building at 2665 West Broadway, includes a design rationale in which the original owner states their intent is for the building to consist of "rental dwellings". In July, 2003, the original owner decided to opt out of the Homeowner Protection Plan, opting to have a covenant registered against the title of the property which requires the building to remain under single-ownership for ten years, effectively ensuring the building would remain rental for the period when the Homeowner Protection Plan would otherwise be applicable.

Interestingly, the covenant does indicate in the preamble that: "The Owner wishes to develop the Lands and construct on the Lands a multi-unit building which is to be strata-titled (the 'Development') with all Dwelling Units and associated Common Property being held for Rental Purposes and owned by the Owner." Although this indicates an intention to strata title, a strata plan was not filed in the Land Title Office prior to occupancy. Whether this was an oversight by the original owner is irrelevant since the covenant restriction prevails. However, this covenant can be discharged upon opting back into the Homeowner Protection Plan and Mr. Sallay has been taking steps to do so, as to be prepared should strata title conversion be approved by Council.

The Approving Officer is concerned that it could become more common practice for building owners to strata title rental buildings when rental availability is in short supply, particularly in lower income markets. The application under consideration involves a recently constructed building which could have been strata titled prior to initial occupancy at the end of 2004, without any requirement for City approval. This option was not exercised at the time because it is clear the applicant proposed all units as rentals.

Since that time, rental stock has diminished in the west side area, sufficient to cause concern for the City's support of a strata conversion which would create a further deficit of rental units.

After concluding assessment of this application and sharing the recommendation of non-support with Mr. Sallay in January, he contracted with Brook + Associates to assist in further advancing this application. Subsequently, the applicant has sought to encourage Council approval of this application by offering a voluntary financial contribution to the City's affordable housing fund, as a means of mitigating the loss of some rental accommodation. Based on a recent development application involving demolition of nine rental units on a West End site subject to "rate of change" considerations under RM-5 zoning, Brook + Associates, on behalf of 0764069 B.C. Ltd., initially offered a \$360,000 (\$10,000 per unit) voluntary payment in support of this strata title conversion application. This was revised on March 15, 2007 to a \$15,000 per unit voluntary payment, subject to terms and conditions based on unit sale and occupancy as outlined in Appendix A.

Staff have not previously had to respond to an offer of a voluntary financial contribution to the City associated with a strata title conversion application. Council's current Strata Title and Cooperative Conversion Guidelines do not make reference to an offering of this nature.

As well, the *Strata Property Act* does not specifically provide for consideration of a voluntary financial contribution when the approving authority deals with a strata title conversion application. However the *Act* does require Council to consider "any other matters that, in its opinion, are relevant" [Section 242(6)(e)]. The breadth of this wording may be sufficient for Council to determine that a cash payment is relevant and consider it in reaching a decision on this strata title conversion application.

Assessment of the broader policy implications of considering voluntary financial contributions to the City's affordable housing fund is contained in the following comments from the Director of the Housing Centre.

Director of the Housing Centre Comments

"The Maguire Building is a residential/commercial building with 36 residential rental units: twenty-nine 2-bedroom units, six 1-bedroom units, and one 3-bedroom unit. All the units are above-average in size, measured by floor space. The building could have been strata titled before occupancy, but was completed as purpose-built rental. The current owner purchased the building last year as an un-stratified rental building.

	<i>Number</i>	<i>Av. Sq. Ft.</i>	<i>Av. Rent</i>	<i>Rent/Sq. Ft.</i>
1 Bedroom	6	876	\$1,398	\$1.60
2 Bedroom	29	1,156	\$1,734	\$1.51
3 Bedroom	1	1,581	\$2,900	\$1.83
Total	36	1,122	\$1,710	\$1.53

According to CMHC's October 2006 survey, the market-rental vacancy rate in the Kitsilano-Point Grey area was 0% (compared to 0.3% in 2005 and 0.6% in 2004), and there were just over 1,200 two-bedroom rental units in the area. The rents for the units at 2655 West Broadway are relatively high; the 2-bedroom units are part of the most expensive 16% of the area's stock, but this reflects the age and size of the units. On a per-square-foot basis, the building's rents are on the low side for newly built space.

In terms of supply, at the end of last year, the Kitsilano-Point Grey area had over 660 condo units under construction or in the development pipeline. No purpose-built rental projects have been completed this year, and none are under construction. The existing purpose-built rental stock in the area is being eroded through redevelopment. In addition, at least two strata titled buildings that had previously been all-rental have been sold off as individual condo units.

Approving this application would have a negligible impact on the condo supply while further reducing the area's rental stock. Some of the strata titled units would be rented out by individual purchasers, but probably at considerably higher rents, and with the potential of being re-absorbed into the condo market at any time.

The applicant has proposed a contribution to the City's Affordable Housing Fund as compensation for the loss of rental. The proposal is that \$15,000 would be contributed for each unit sold to an owner-occupier, and that if any of the other units were sold to an owner-occupier within 5 years, the vendor would be obliged to pay \$15,000 (see letter attached as Appendix B). This proposal is not supported for three reasons.

The primary reason is that \$15,000 is less than 5% of the cost of buying a site and building a 1-bedroom unit today. Taking into account the cash flow generated by a market rental project, a minimum of \$100,000/unit would be required to support the development of rental housing in a high land cost location such as Kitsilano. The secondary reason is that the administration of such a covenant would be very difficult as each unit not sold to an owner-occupier would have to be monitored to ensure that it was rented to a tenant or available for tenancing if vacant, and to ensure that if it is sold to a subsequent purchaser during the 5 year term of the covenant, either the \$15,000 is collected or the new owner will not be occupying the unit. Thirdly, the 5 year term proposed is too short. If Council were of a mind to allow the conversion of the building to strata, then the very minimum recommendation would be to require that the building remain rental and held by a single owner for 10 years, though a 20 year restriction would be more appropriate, after which time the units could be sold to individual purchasers whether investors or owner-occupiers.

Given the present housing market, the Director of the Housing Centre does not support the proposed conversion of 36 units at 2665 West Broadway from rental to strata title."

Recent Similar Application

On February 1, 2005, Council considered, and approved, a similar application for strata title conversion of thirty-four residential units at 2226 West 12th Avenue. That application was also made by Mr. Sallay, representing the subject building owner at the time. In addition to involving a building with a similar number of rental units, that application also involved a building of recent construction, in a west side location, with comparatively high rental rates. In the case of the building on West 12th Avenue, tenants were required to sign leases in which they essentially waived their right to object to any subsequent strata conversion application, if the owner chose to make such application at a later date. This lease provision was problematic in considering the previous application. On one hand, it supported the applicant's contention that strata titling had been contemplated before the residential units were occupied. On the other hand, it essentially precluded tenants from expressing their own opinions on strata titling without being in breach of their lease agreement. On balance, and due to other application-specific circumstances, including the higher (0.6%) vacancy rates

at that time, the conversion of the West 12th Avenue building to strata title ownership was approved.

Leases signed by the tenants of the current application do not contain such a clause.

A review of the current status of the strata titled units at 2226 West 12th Avenue indicates that 17 of the 34 units continue to be occupied on a rental basis (see Appendix B, page 1). Mr. Sallay suggests a similar outcome if The Maguire Building is strata titled (see Appendix B, page 2).

Admittedly, if strata title conversion approval was granted for The Maguire Building, some purchasers might be owner-investors who would choose to retain a rental occupant, at least in the short term. Nonetheless, there would be no certainty as to how the occupancy might change over time between owner-occupants and owner-investors. In fact, recent changes to the *Strata Property Act* that became effective on January 1, 2006, could in future years lead to an overall decline in the number of rental units in buildings that were strata titled prior to 2000, under the former *Condominium Act*.

Under the former *Condominium Act*, a developer could file a rental disclosure statement, which allowed the developer, and owners who bought directly from the developer, to rent out their units even if a majority of the owners subsequently decided to pass a rental restriction by-law. The *Strata Property Act* now makes it clear that subsequent purchasers cannot rely on the rental rights created for a developer and the initial strata lot purchaser. As of January 1, 2006, a strata corporation, at its discretion, can pass a rental restriction by-law to prohibit rental of strata units entirely, or alternately impose limitations with regard to rentals. Rental disclosure statements can still be filed by a developer when a building is strata titled which would continue to allow original purchasers to be "grandfathered" from subsequent rental restriction by-laws. However, once a strata lot is resold, the new purchaser would be subject to any rental restriction by-law passed by the strata corporation.

FINANCIAL IMPLICATIONS

There are no financial implications.

SOCIAL IMPLICATIONS

Social implications are included in the comments from the Director of Housing above.

CONCLUSION

Based on the foregoing, and on comments received by the Manager of the Housing Centre, the Subdivision Approving Officer does not support this application.

* * * * *



Brook + Associates Inc
Suite 410 – 535 Thurlow Street
Vancouver, BC V6E 3L2

www.brookdev.com
T 604 731 9053
F 604 731 9075

March 15, 2007

Mr. Rick Scobie

Co-Director of Development Services - Policy & Regulations
Development Services
City of Vancouver
453 West 12th Avenue
Vancouver, B.C.
V5Y 1V4

Dear Rick:

RE: **PROPOSED STRATA CONVERSION : 2665 WEST BROADWAY**

I have been instructed by 0764069 BC Ltd. to increase the offer made to the City on March 9, 2007 as follows:

0764069 BC Ltd. is prepared to offer \$ 15,000 per unit, for each unit sold to an owner/occupier. Units sold to investors (non-resident) would carry a 5-year restrictive covenant to rent the unit, with a provision to pay \$15,000 to the City should the unit be sold to owner occupier during the 5-year period.

While current rents for units at 2665 West Broadway would not be considered as affordable, this latest offering enhances the opportunity to provide rental housing opportunities on site, as well as to increase the supply of affordable rental housing through a cash-in-lieu contribution.

We would again request that the City give priority consideration to this offer, and that concurrent staff commentary be provided to Council in its deliberations on affordable housing.

Yours very truly,
BROOK + ASSOCIATES INC.

Charles I. Brook

cc: Cameron Gray, Director, Housing Centre
Les Sallay



DEC. 19. 2006 2:08PM OFFICE

NO. 5304 P. 2



Prudential - United Realty
#201 - 2107 West 40th Avenue, Vancouver, BC V6M 1W4
Bus (604) 263-8900 Fax (604) 263-0864

Mr. F.A. (Rick) Scobie
Co-Director of Development Services
Policy and Regulations
City of Vancouver
453 West 12th Avenue
Vancouver, B.C.
V5Y 1V4

RE: The Deseo – 2226 West 12th Avenue, Vancouver

We are writing you at the request of Mr. Les Sallay with reference to the above building. We are the property managers for Strata Plan BCS 1202 and prior to the building stratification, we were also managing the building. Once the stratification process was complete, our real estate marketing division handled the sales of the units. At the completion of our marketing, there were approximately eighteen (18) of the thirty four (34) units that were brought by individual investors and kept as rental units.

As of today, seventeen (17) units are still rented (a year and a half later). Having been in the real estate profession as a salesman, property manager and broker/owner for over thirty (30) years in Vancouver, I am of the opinion that these individual units will probably remain in the rental pool for years to come as they are affordable to your average small investor.

Should you have any questions, please feel free to contact the undersigned at your convenience. (cell: 604-318-1304).

Thank you.

Respectfully yours
PRUDENTIAL UNITED REALTY

Michael A. Bertrand, Broker/Owner

c.c. Mr. Les Sallay

Dec. 20. 2006 10:39AM JEL Investments

No. 0816 P. 2

0764069 B.C. LTD.
3850 Point Grey Road
Vancouver, BC
V6R 1B4

December 20, 2006

City of Vancouver
453 West 12th Avenue
Vancouver, B.C.
V5Y 1V4

Attention: Mr. F.A. (Rick) Scobie
Co-Director of Development Services - Policy and Regulations

Dear Sir,

RE: The Maguire Building – 2665 West Broadway, Vancouver

As a follow up to our application to convert the above referenced rental building to Strata ownership, I have been in discussions with Michael Bertrand of Prudential United Realty, who has managed the Deseo property at 2226 West 12th Avenue for the past two years. The Deseo building was converted from rental to Strata in early 2005. 5 condominiums were retained by the developers and the other 12 were purchased by investors. Mr. Bertrand informs me that, out of 34 strata lots, 17 are still currently rental units (50%).


In comparison to the Deseo property, 6 residences at the Maguire Building would be retained by our group and 2 by our tenants, leaving 28 to go to market. The Maguire was built to condo quality more than The Deseo. Built approximately 2 years ago, the Maguire building was constructed of concrete with 20% of the building assigned to commercial units. The residential rental rates are substantially higher than the standard apartment prices in the neighbourhood, ranging from \$1,400 for 1 Bedrooms to \$2,900 for a 3 bedroom. Our experience shows that it is likely that approximately 40% of these 28 units would be purchased by investors, making the impact on rental stock reduction negligible.

If we can provide you with anything else to assist you in supporting our application please do not hesitate to contact me.

Regards,

0764069 B.C. Ltd.

Per



Jas Sahay
President