

**Municipality of Chatham-Kent**  
**Community Development**  
**Planning Services**

**To:** Mayor and Members of Council

**From:** Ryan Jacques, MCIP, RPP  
Manager, Planning Services

**Date:** April 19, 2021

**Subject:** Application for a Plan of Condominium with Exemption under Section 9(3) of the Condominium Act  
PL202100064 – 1544951 Ontario Inc. c/o Robert Piroli  
550 Park Avenue West, Community of Chatham (City)

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**Recommendation**

It is recommended that:

1. The application of 1544951 Ontario Inc. for an exemption under Section 9(3) of the Condominium Act for approval of a Plan of Condominium (Standard Condominium), for a 6-storey residential building, at the property known as 550 Park Avenue West, in the Community of Chatham (City), in Part of Lots 21 & 22, Concession 2, EB (Raleigh), be approved, and:
  - a. That the Mayor and Clerk be authorized to sign the Final Plan of Condominium.

**Background**

The subject property is located on the south side of Park Avenue West, between Keil Drive South and Wedgewood Avenue, in the Community of Chatham (City) (Roll No. 3650 420 022 30800). The lands are designated Medium Density Residential by the Chatham Secondary Plan for the Southwest Quadrant (SWQSP) and within Site-specific Policy Area 7.3.9.1. The subject lands are zoned Residential High Density Second-1510 (RH2-1510). A key map showing the location of the subject property and surrounding area is attached as Appendix A. Site photos are attached as Appendix B.

At its April 27, 2020 meeting, Council approved multiple Planning Act applications to facilitate the development of two 6-storey residential apartment buildings at 550 & 570 Park Avenue West. This included approval for Site Plan Control (File D-11 C/04/20/O) for which a site plan agreement has since been registered as Instrument No.

CK177993. The site plan agreement covers a range of municipal requirements for the development to be completed by the owner, including, but not limited to, items such as the provision for landscaping, parking, servicing and safe access for pedestrians and vehicles. Approval of the overall development was granted following a public process that included a virtual public open house and public meeting.

The subject property is currently being developed with the first of the two residential structures. This development is expected to be complete and available for occupancy in 2021. Provisional Consent was granted by the Committee of Adjustment at its January 28, 2021 hearing, to sever the subject property into two separate parcels, each to contain one of the approved 6-storey structures. It is expected that the severance will be finally implemented prior to occupancy of the structure currently under construction and registering of a plan of condominium.

### Plan of Condominium

The current application is for an exemption under Section 9(3) of the Condominium Act for approval of a Plan of Condominium (Standard Condominium) for the residential structure currently under development. The exemption will allow for the registration of a condominium description without the requirement for public notice/meeting, a common request when a development meets the following conditions:

- a) a residential building is constructed or a building permit for its construction has been issued;
- b) the development has received site plan control approval; and
- c) the development (the new proposed units) does not contain any occupied residential rental units.

As the current development complies with the above conditions, it is appropriate that the requested exemption be granted for the registration of description of the plan of condominium. A draft plan of condominium is attached as Appendix C for review which details the current 121 residential unit development on the east portion of the subject property. It is anticipated that the same request will be made for the second building prior to project completion and occupancy. The second structure will be located on the west half of the subject lands.

### Comments

#### **Provincial Policy Statement**

The recommendation raises no concern of provincial interest as it continues to support development that is both feasible and appropriate for the subject lands and area, and provides the community with a range of housing choices.

## **Condominium Act**

Under Section 9 of the Condominium Act, an owner may request approval of a plan of condominium subject to Section 51 of the Planning Act (subdivisions). As such, the usual approval process for plans of subdivision is invoked, which with respect to a condominium development would include: review by municipal and provincial agencies, public notification, draft plan approval, a condominium agreement and final registration.

The Condominium Act also provides that owners can be exempted from the above mentioned Planning Act provision if the approval authority is of the opinion that such exemption is appropriate in the circumstances. The reasons for exemption are not specified, but usually applicants can be exempted if the development is suitable for a condominium by virtue of design and amenities, and if all municipal requirements and conditions have been addressed – typically through approved Planning Act applications such as rezoning and/or site plan control. The proposed condominium meets these tests.

The applicant retained Robert G. Millson Professional Corporation to facilitate the application process. Mr. Millson has provided Administration with a legal opinion of the Condominium Act processes applicable to this application. This opinion is attached as Appendix D for review.

## **Official Plan**

The subject property is designated Medium Density Residential within the Secondary Plan for the Southwest Quadrant (SWQSP) within the Primary Urban Centre of Chatham. On April 27, 2020, Council approved OPA No. 58 which placed the lands into Site Specific Policy Area 7.3.9.1 to permit two 6-storey residential apartment buildings on the subject lands. The site-specific policy includes the following provisions:

- a) Residential buildings shall be six storeys high or less
- b) The maximum residential density shall be 38 units per gross acre.

Overall, OPA No. 58 was approved following a comprehensive planning process which included public meetings, submission of supporting reports and studies, and a site plan process that culminated in a site plan agreement that covers all requirements related to the physical structures, site functionality and servicing. The subject lands are currently being development in a manner consistent with those applicable Official Plan policies and the plan of condominium proposal does not change the form or function of these lands

## **Plan of Condominium (Standard Condominium)**

The plan of condominium approval is primarily the mechanism for establishing the condominium corporation that will allow for the sale of individual units along with an interest in the property's common elements and interests (i.e. hallways, elevators). In

terms of the development proposed for the subject lands, this will allow for a freehold condominium corporation known as a Standard Condominium, which is common with new builds. The following Official Plan policy is specific to plans of condominium:

- 6.3.3.36 a) *For new developments, only those proposals submitted under the Condominium Act that conform to the policies and designations of this Official Plan and can be provided with adequate services shall be recommended for approval. In evaluating those plans, the Municipality shall require information specified in this Official Plan to evaluate a proposal, and shall require a development agreement to ensure adequate service levels.*

In sum, the application is being made under Section 9(3) of the Condominium Act and conforms to the policies and designations of this Official Plan, with all services have been addressed in the registered development agreement (Instrument No. CK177993).

Overall, the proposal conforms to the Official Plan.

### **Zoning By-law**

The subject property is zoned Residential High Density Second-1510 (RH2-1510). This site-specific zoning permits the 6-storey residential apartment building currently under development and includes specific provisions for this use which the development also meets.

The application does not contemplate any physical change to the property. Therefore, the subject lands comply with all applicable zoning provisions and will continue to do so following the registering of a plan of condominium for the existing structure.

### **Community Improvement Plan**

Following the previous Planning Act approvals for the two 6-storey residential apartment dwelling development on the subject lands, the Developer and the Municipality entered into a tax incentive agreement under the Chatham-Kent Community Improvement Plan (CIP), which is now registered under instrument number CK177638. This agreement makes the Developer eligible to receive grants under the Property Tax Increment Equivalent Program. Eligibility is subject to the terms and conditions of the agreement for up to 10 years for 100% tax rebate.

Although this application is for approval of plan of condominium, the ownership structure is intended to remain fully with the Developer as market rental units. As such, the intent and purpose of the grant program will continue to be met. Administration will evaluate the ownership structure prior to each annual grant calculation and payment to determine if eligibility continues to be met.

## **Conclusion**

The proposal conforms to the Provincial Policy Statement, Condominium Act, Official Plan and Zoning By-law. Therefore, the application is being recommended for approval.

### **Areas of Strategic Focus and Critical Success Factors**

The recommendation in this report supports the following areas of strategic focus:

Economic Prosperity:

Chatham-Kent is an innovative and thriving community with a diversified economy

A Healthy and Safe Community:

Chatham-Kent is a healthy and safe community with sustainable population growth

People and Culture:

Chatham-Kent is recognized as a culturally vibrant, dynamic, and creative community

Environmental Sustainability:

Chatham-Kent is a community that is environmentally sustainable and promotes stewardship of our natural resources

The recommendation in this report supports the following critical success factors:

Financial Sustainability:

The Corporation of the Municipality of Chatham-Kent is financially sustainable

Open, Transparent and Effective Governance:

The Corporation of the Municipality of Chatham-Kent is open, transparent and effectively governed with efficient and bold, visionary leadership

Has the potential to support all areas of strategic focus & critical success factors

Neutral issues (does not support negatively or positively)

### **Consultation**

There was no consultation required for this report.

### **Financial Implications**

There is an anticipated decrease in future property taxes receivable as a result of the recommendation. The Municipal Property Assessment Corporation (MPAC) treats a

rental building and a condominium building differently. For a rental building, MPAC uses a gross income multiplier to determine the value used for taxes in the multi-residential tax class. For condominium units, MPAC uses the sum of the total of the market values for all the individual units in the residential tax class. This approach tends to provide higher assessments and property tax obligations for rental buildings.

Prepared by:



Anthony Jas  
Planner I, Planning Services

Reviewed by:

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Ryan Jacques, MCIP, RPP  
Director, Planning Services

Reviewed By:

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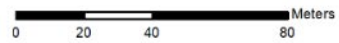
Bruce McAllister, MCIP, RPP  
General Manager, Community Development

Attachments: Appendix A – Key Map  
Appendix B – Site Photos  
Appendix C – Draft Plan of Condominium  
Appendix D – Legal Opinion provided by Applicant

Appendix A – Key Map



This is not a plan of survey.  
INCLUDES MATERIAL ©(2010) OF THE QUEEN'S PRINTER FOR ONTARIO. ALL RIGHTS RESERVED.





Appendix B – Site Photos



Looking northeast from the subject lands towards the apartment building currently under construction.



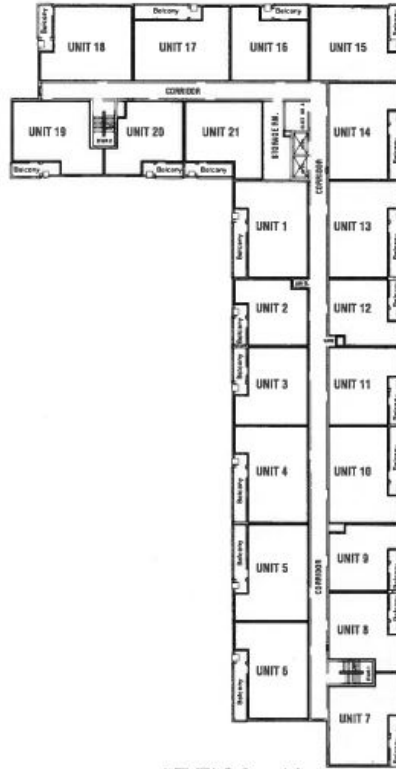
Looking east from Park Avenue West towards the subject lands.



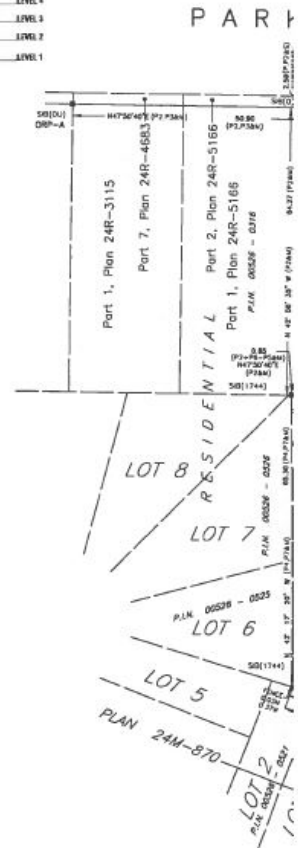
Appendix C – Draft Plan of Condominium



LEVEL 1  
 UNITS 1 to 16 (inclusive) (RESIDENTIAL UNITS)



LEVELS 2 and 6  
 UNITS 1 to 21 (inclusive) (RESIDENTIAL UNITS)



ADDITIONAL INFORMATION REQUIRED UNDER CONDOMINIUM ACT, 1998 AND SECTION 51(17) OF THE PLANNING ACT (R.S.O. 1990)

(A) AS SHOWN ON PLAN	(G) AS SHOWN ON PLAN
(B) AS SHOWN ON PLAN	(H) PIPED MUNICIPAL
(C) AS SHOWN ON PLAN	(I) CLAY DEPOSITS
(D) RESIDENTIAL CONDOMINIUM UNITS	(J) AS SHOWN ON PLAN
(E) REFER TO KEY PLAN	(K) ALL SERVICES TO BE PROVIDED
(F) AS SHOWN ON PLAN	(L) AS SHOWN ON PLAN

SITE INFORMATION:  
 SITE AREA: 1.456 ha. / 3.587 Acres  
 DENSITY:  
 18.1 RESIDENTIAL UNITS PER HECTARE  
 33.6 RESIDENTIAL UNITS PER ACRE

LEVEL	NUMBER OF RESIDENTIAL UNITS PER LEVEL
LEVEL 1	16
LEVEL 2	21
LEVEL 3	21
LEVEL 4	21
LEVEL 5	21
LEVEL 6	21
TOTAL	121

Appendix D – Legal Opinion



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January 11, 2021

**Municipality of Chatham-Kent**  
**Attention: Allison Lambing, Planner II, Planning Services**  
**Attention: Anthony Jas**  
315 King Street West  
PO Box 640  
Chatham, Ontario  
N7M 5K8

Dear Allison & Anthony:

*Re: 550-570 Park Avenue West, Chatham, Ontario*  
*Our File No. P11933*

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We confirm that we will be submitting an Application for Draft Plan of Condominium with respect to the apartment building on the easterly one-half of the above-described lands.

In our conversation with Anthony, I provided a brief overview of the application process we have used in other municipalities. I will provide further details in this letter which may be helpful to you. In the event you already have this information, please feel free to ignore most of the contents herein.

Under Section 9(2) of the *Condominium Act* Sections 51, 51.1 and 51.2 of the *Planning Act* apply with necessary modifications to any application to register a description under the *Condominium Act*.

In particular Section 51(17) of the *Planning Act* requires an applicant to provide the Municipality with the information and documents described therein and these documents would include in particular the condominium drawings as provided by an architect or a surveyor.

Notwithstanding these requirements an applicant may make request for two different exemptions under Section 9 of the *Condominium Act*. The two (2) types of exemption that can be considered under the request are as follows:

- i. Pursuant to the *Planning Act*, *O. Reg. 5444/06, Section 7* applications for registration of a condominium description can be exempt from public notice / meeting requirements and can go straight to Council for approval. An application under the *Planning Act* for Draft Plan of Condominium is still required. This is the most common exemption granted.
- ii. Pursuant to the *Condominium Act, Section 9(6) and (7)* before making any application under the *Planning Act*, an application can be made to have registration of a condominium description exempt from the provisions of the *Planning Act* that would normally apply to a draft Plan of Condominium. There may be no benefit to requiring the condominium to go through the *Planning Act* process of draft plan approval if all of the conditions of development have already been addressed through the site plan approval process.

In order to use the application for an exemption certificate described in (ii) above the Municipality would formalize the process for requesting the exemption which would include the following:

- i. Setting a Fee for the process;
- ii. Developing a Form for the process;
- iii. Requiring that Site Plan requirements have been completed or adequate security posted.

Our experience is that most municipalities require us to submit the Application for Draft Plan of Condominium and exempt us only from the public notice / meeting requirements under the *Planning Act, O. Reg. 544/06, Section 7*. This is the process 1544951 Ontario Inc. proposes to pursue.

We will attach to this letter a further letter wherein we request that the Applicant be exempt from the public notice / meeting requirements described above.

Attached are relevant copies of the provisions from the *Condominium Act* and the *Planning Act* referred to herein. Also attached is a Ministry of Housing directive setting out requirements for a certificate of exemption as described in (ii) above.

I apologize if I am reviewing information already well known to you.

Please call me if you have any questions as to the contents of this letter.

Yours truly,  
**Robert G. Millson Professional Corporation**



Robert G. Millson  
RGM:ag  
Enclosure  
cc. Rob Piroli