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RECEIVERSHIP OF HOUSING PROJECT UPDATE

The Community and Health Services Committee recommends the adoption of the recommendation contained in the following report dated January 17, 2011, from the Commissioner of Community and Health Services and Regional Solicitor.

1. RECOMMENDATION

It is recommended that:

1. The Region forego recovery of additional subsidy advances provided to Thornhill Green Co-operative Homes Inc. in the amount of $176,151 in addition to the secured loan advances in the amount of $2.1 million plus accrued interest subsequent to the sale of the net assets of Thornhill Green to Housing York Inc.

2. PURPOSE

Pursuant to Council’s direction of February 21, 2008, this report updates Council as to the final disposition of the court proceedings arising from the Receiver’s motion to sell Thornhill Green Co-operative Homes Inc. (Thornhill Green) to Housing York Inc. (Housing York). The report also recommends that the Region forego recovery of the secured loan of $2.1 million advanced to the Receiver together with the accrued interest as well as the repayable funds advanced to Thornhill Green prior to the Receivership.

3. BACKGROUND

Thornhill Green is a large social housing community in Markham

Thornhill Green is a 101 unit townhouse complex located on Inverlochy Blvd. in Markham (*see Attachment 1*). Inverlochy Blvd. is one block east of Yonge Street, south of Highway 407. An additional unit is used as an office. The property includes approximately 6.4 acres of land with units on both sides of Royal Orchard Blvd. The complex was constructed in 1966 and includes a mix of three and four bedroom units.

Thornhill Green Co-operative has an unusual history

Most social housing communities were purpose built. However, in the late 1980’s and early 1990’s the Province funded an acquisition and rehabilitation program. Through this program existing buildings were purchased, renovated as necessary and then operated as social housing.

Thornhill Green was a privately owned rental property. With the assistance of a development consultant, the Thornhill Green tenants formed a Co-operative Corporation and received provincial program and funding approval to purchase the property. It should be noted that the purchase and renovations were entirely funded through a 35 year social housing mortgage. Tenants did not make financial contributions and therefore there is no personal equity in the property. The property became a social housing co-operative in 1993. Thornhill Green is the only acquisition/rehabilitation program property in the Region.

The Region provided the Thornhill Green board of directors and subsequently the Receiver with recoverable additional funding

In 2005, Thornhill Green approached the Region to request funding assistance for various capital repairs. The Region initiated technical studies to assess the property and, in the course of that exercise, identified urgent health and safety issues (i.e. hazardous walkways and carbon monoxide control issues) that required immediate attention. Additional subsidy of $143,900 was advanced to the Thornhill Green board of directors to fund the repairs. At the end of January 2006, the Province notified the Region that Thornhill Green's February 1, 2006 mortgage renewal was in jeopardy as a result of property tax arrears. Accordingly, a further $32,250 was advanced by the Region to pay the property taxes. In total, $176,151 was advanced as additional subsidy.

In July 2006, in response to Thornhill Green's serious financial and operational issues, the Region appointed Mintz and Partners Limited as the Receiver and Manager, pursuant to the provisions of the *Social Housing Reform Act, 2000*, S.O. 2000, c. 27 ("SHRA"). Approximately one year later, following the Region's application to the Ontario Superior Court of Justice, Mintz and Partners Limited's "statutory receivership" was replaced by a court appointed receivership, again in accordance with the SHRA.

The Region entered into a loan agreement with the Receiver to fund a major capital repair program. The loan funds, totalling $2.1 million, are interest bearing and subject to repayment when the Region determines that there is capacity to pay or at the latest upon discharge of the social housing mortgage.

The Region determined that the Thornhill Green Receivership could best be resolved through a sale to Housing York

As the Receiver was proceeding with the capital repair program, asbestos was identified in the ceiling tile and drywall compound in the townhouse units. Asbestos was a common building material in the 1960's and is considered safe unless it is disturbed. However, the presence of asbestos dramatically increased the costs of the mould remediation program that was underway. As a result, the Regional loan funds were insufficient to enable the Receiver to complete the capital repair program. At that time it was estimated that a further $600,000 would be required.

In its meeting on February 21, 2008, Council authorized the following:

- that a request be made to the Receiver to bring a motion to the Court seeking a sale of the assets and liabilities of Thornhill Green to Housing York
- that a request be made to the Ministry of Municipal Affairs and Housing for approval of the sale and for exemption from the land transfer tax
- that an additional contribution of $600,000 funded from the Region's Social Housing Reserve Fund be made to the Housing York capital reserve to cover the cost of completing the capital repair program, with the proviso that the Region's reserve be reimbursed from the 2008 Housing Services Budget if sufficient funds were approved
- that additional funds (estimated at $135,000) be transferred from the Social Housing Reserve to Housing York if land transfer taxes were applied to the transaction, and
- that a Housing York staff complement increase of 1.5 full time equivalents be approved to assume the property management and administrative functions for Thornhill Green, funded from the Thornhill Green operating revenues with no additional tax levy impact

Through a February 13, 2008 report, the Board of Directors of Housing York approved the purchase of Thornhill Green conditional upon receipt of the requisite consents and receipt of the additional $600,000 in repair funding and reimbursement of the land transfer tax if applicable.

The Receiver's sale motion was contested by Thornhill Green and the Co-operative Housing Federation of Canada

Although the SHRA contemplates receiverships in a co-operative housing context and includes sale provisions among the receiver's powers, the Thornhill Green receivership was the first time those provisions had been tested. The Cooperative Housing Federation of Canada (CHFC) applied for, and was granted, permission to intervene in the Receiver's sale motion. CHFC took the position that every effort had to be made to preserve co-operative governance and that sale of a co-operative to a non-profit housing corporation, particularly one owned by the service manager, was inappropriate. CHFC pursued and funded a series of proceedings in several legal venues in an attempt to block the sale. Proceedings included an injunction, a motion to discharge the Receiver, a motion to amend the receivership order, a judicial review of the Region's decision to approve the sale and various leave applications and appeals of every decision to allow the sale to Housing York, up to and including an appeal to the Supreme Court of Canada.

The Courts agreed that the sale of Thornhill Green to Housing York was appropriate in the circumstances

In all cases, the various courts upheld the actions and decisions of the Region. In the judicial review considering the Region's decision to approve the sale, the Court denied Thornhill Green's request to quash the decision but found that the Region "owed a duty of procedural fairness” to Thornhill Green which duty had not been properly discharged. However, the breach of the duty was not deemed serious enough that the Region’s consent to the sale/transfer should be set aside (or quashed). In every other aspect of the proceedings, the Courts supported the sale.

The Court of Appeal, which is the highest court in Ontario, was the last court to make substantive findings in this case. Among other things, the Court of Appeal found:

- The Receiver acted within its mandate and the sale of Thornhill Green’s assets was fair and commercially reasonable.
- The Receiver took into account the interests of the members of Thornhill Green and proposed a resolution that substantially protected the residents.
- The proposed sale to Housing York reflected the commercial realities of the situation and addressed in a comprehensive manner the financial problems that faced Thornhill Green.
- There was no basis for interfering with the motion judge’s discretion in the circumstances. In fact, the Court of Appeal explicitly agreed with what had been done.

In cases of this nature, there is no automatic right of appeal to the Supreme Court of Canada. Accordingly, Thornhill Green was required to seek leave to appeal to the Supreme Court, which it did in September, 2010. On December 23, 2010 the Region received the decision of the Supreme Court, which denied Thornhill Green’s request for permission to appeal. There are no further avenues of appeal, and the transfer of the assets of Thornhill Green to Housing York can now proceed.

4. ANALYSIS AND OPTIONS

With the all requisite approvals now in place, Housing York and the Receiver can now proceed with the transaction that was approved by the Court. In so doing there are additional matters that warrant Council consideration.

The Region’s secured loan makes the Thornhill Green mortgage ineligible for the interest savings achieved through the provincially administered social housing mortgage pool

Social housing mortgage renewals are administered by the Province. The Ontario Financing Authority tenders all concurrently renewing social housing mortgages and in so doing achieves substantial interest rate reductions. As debt service costs are a key component of the SHRA funding formula, the interest savings translate into lower subsidy costs for the Region.

The Thornhill Green mortgage was ineligible for the pool for other reasons when the Region’s secured loan agreement was submitted to the Province for approval. It wasn’t until several years later that provincial staff indicated that the loan terms would continue to make the mortgage ineligible for the pool. Provincial staff have since clarified that all mortgages in the pool must be pristine debt with no other security that performs during the term of the mortgage. Performance has been defined as any requirement for payment on a secondary security during the term of the first mortgage.

Thornhill Green's most recent mortgage renewal was similarly not eligible for the pool. As a result, the mortgage renewed at a rate 1.2% higher than the comparable rate for the social housing mortgage pool. With the sale of Thornhill Green to Housing York, the Region's loan is the only remaining barrier to inclusion of the Thornhill Green mortgage in the provincial pool. It would be in the Region's best interest to remove this barrier. In addition, given the Region is the sole shareholder of Housing York, the existing loans are effectively a loan and repayment to ourselves

Through the sale, Thornhill Green's liabilities will become Housing York's liabilities

The liabilities assumed by Housing York will become part of their overall corporate obligations and, similarly, the repayment obligations will become corporate obligations. The mortgage costs will easily be covered off by the associated operational and subsidy revenues. The subsidy advances and loan however, are a concern as they could require Housing York to redirect surpluses achieved in other areas of the portfolio to repaying Thornhill Green's obligations to the Region. Past history has been that Housing York surpluses are typically directed to items such as building reserves for the new Affordable Housing Program buildings or supporting Housing York's Green initiatives.

As a result of the delay in the sale, the capital repair costs will have increased

The additional funding requirement was estimated at $600,000 in early 2008. In the three years that have passed, construction costs have increased and the asset has continued to age. The $600,000 approved in 2008 is unlikely to be sufficient. Total costs are not yet known as Housing York will need some time to assess the property and develop a repair plan.

On a positive note, through prudent operational management and by increasing rents to reasonable market levels, the Receiver has substantially improved Thornhill Green's financial position. A review of Thornhill Green's January 31, 2010 audited financial statements indicates that if the Region were to forgive the subsidy advances and the loan interest accrued, net of the remaining operating deficit approximately $460,000 in additional cash would be available to support Housing York's capital repair program at Thornhill Green.

5. FINANCIAL IMPLICATIONS

Regional write-offs are not required to forgive the subsidy advances or the loan and accrued interest

In 2005 and 2006, the Region provided a total of $176,151 in additional subsidy to the Thornhill Green Board of Directors. The Region had the option of recovering these funds and required Thornhill Green to show the advances as a liability on their financial statements. The advances were processed as program expenditures, so there is no corresponding receivable that would require a write-off.

A write-off of the $2.1 million secured loan and accrued interest ($311,653 at December 31, 2010) will be repaid from the Social Housing Reserve which had a balance of $66.169 million at December 31, 2010.

The $600,000 approved by Council in 2008 may be partially recovered from program surpluses in 2011

Council approved an additional contribution of $600,000 from Housing York's capital reserve to assist with the capital repair program, to be advanced as part of the sale proceedings. In approving the additional capital funding from the Social Housing Reserve, Council required that the advance be reimbursed from the Region's 2008 Housing Budget.

In 2008 the Region was still benefitting from in year program savings, largely related to the renewal of social housing mortgages at lower interest rates. As those savings have now been fully realized there may not be sufficient 2011 program savings to fully reimburse the reserve. As such, the funds will be advanced from the Reserve and reimbursed from the 2011 budget, in whole or in part, if funds are available in the Housing Program budget at year end.

Forgiving the Regional liabilities to be assumed by Housing York will reduce the impact of Thornhill Green on Housing York's portfolio as a whole and will result in mortgage savings of approximately $620,000 over the remaining life of the mortgage.

Housing York will purchase Thornhill Green by way of an assumption of liabilities.

In practical terms, the receivables owed to the Region will be off-set by a payable on Housing York's financial statements. Finance staff have advised that as Housing York is a wholly owned Regional subsidiary, writing off the loan and interest has no net effect on the Corporation as a whole. However, if the liabilities are maintained, repayment will be required from Housing York's revenues, to the possible detriment of the balance of their housing portfolio.

Removing the Region's loan from the property will enable the Province to include the mortgage in the social housing mortgage pool as part of the 2012 renewal process. Based on current mortgage pool interest cost reductions, the mortgage savings achieved through a return to the pool are estimated at $620,000 over the remaining life of the mortgage.

6. LOCAL MUNICIPAL IMPACT

Thornhill Green has received considerable media attention and the condition of the property continues to be an area of focus for neighbouring Markham residents. Housing York will be expected to move quickly to ensure that the property is suitably upgraded and maintained on an on-going basis. Forgiving the Thornhill Green liabilities owed to the Region will better position Housing York to meet community standards. Aside from enhancing the condition of the building and changing the status of the residents of Thornhill Green to tenants as opposed to co-operative members, there is no impact on the residents. They will continue to reside in the units, and will pay rent to Housing York as opposed to occupancy fees to the Thornhill Green Co-Operative.

7. CONCLUSION

This report fulfills a reporting requirement established by Council initially in 2008. The report updates Council as to the final disposition of the court proceedings arising from the Receiver's motion to sell Thornhill Green Co-operative Homes Inc. (Thornhill Green) to Housing York and recommends that the Region forgo recovery of repayable funds previously advanced to the Thornhill Green board of directors and the Receiver.

For more information on this report, please contact Sylvia Patterson, General Manager of Housing and Long Term Care Branch, at Ext. 2091 or Daniel E. Kuzmyk, Senior Counsel-Litigation, at Ext. 1401.

(Attachment 1 referred to in this clause was included in the agenda for the January 19, 2011 meeting.)


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Colonsay Road
Yonge Street
Inverlochy Boulevard
Royal Orchard Boulevard
Apple Orchard Path
40
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