REPORT
1999 July 12

CITY OF BURNABY

COMMUNITY PLANNING & HOUSING COMMITTEE

*HIS WORSHIP, THE MAYOR
AND COUNCILLORS*

RE: THE LEGENDS HOUSING CO-OPERATIVE - 5281 OAKMOUNT CRESCENT

RECOMMENDATIONS:

1. THAT Council direct staff to prepare a bylaw to discharge the Housing Agreement between the City, The Legends Housing Co-operative and British Columbia Building Corporation.

2. THAT Council direct staff to remove the covenant on title that restricts the use of the site to non-market housing at the same time that the Housing Agreement is discharged.

3. THAT a copy of this report be sent to:

   Mrs. Fay Kantrowiz, Secretary, The Legends
   302 - 5281 Oakmount Crescent
   Burnaby, B.C. V5H 4S7

   Mr. Marc Ricou
   Senior Real Estate Analyst
   British Columbia Building Corporation
   3350 Douglas Street
   Victoria, B.C. V8Z 3L1

REPORT

The Community Planning and Housing Committee, at its meeting held on 1999 June 29, received and adopted the *attached* report supporting a proposal to discharge the Housing Agreement affecting the subject property. The Committee advised that members of the Legends Co-operative are, in the face of a downward real estate market, concerned that the co-operative structure of their development puts members at significant financial risk for the mortgage default of others who own shares in the Co-operative.

: COPY - CITY MANAGER
- DIR. PLNG. & BLDG.
- CITY SOLICITOR

The Committee concluded by noting that the Co-operative's concerns are well-founded, and referred to the experience of equity co-operatives that have recently failed or are at risk as justification for taking this action to prevent a similar experience at the Legends.

Respectfully submitted,

Councillor L.A. Rankin
Chairman

Councillor C. Redman
Member

Councillor J. Young
Member

TO:	CHAIRMAN AND MEMBERS COMMUNITY PLANNING AND HOUSING COMMITTEE	1999 June 24
FROM:	DIRECTOR PLANNING AND BUILDING	Our File: 12.301.1
SUBJECT:	**THE LEGENDS HOUSING CO-OPERATIVE-5281 OAKMOUNT CRESCENT**	
PURPOSE:	To recommend that the Housing Agreement affecting this project be discharged.	

RECOMMENDATION:

1. **THAT** the Housing Committee recommend that Council direct staff to prepare a bylaw to discharge the Housing Agreement between the City, The Legends Housing Co-operative and British Columbia Building Corporation.

2. **THAT** the Housing Committee recommend that Council direct staff to remove the covenant on title that restricts the use of the site to non-market housing at the same time that the Housing Agreement is discharged.

3. **THAT** a copy of this report be sent to:
   Mrs. Fay Kantrowiz, Secretary, The Legends
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REPORT

1.0 BACKGROUND

As part of the development of the former Oakalla Prison lands (The Oaklands), the Development Plan established a target that 20% of the units be non-market housing units. This requirement was included in the plan to ensure that the site would provide housing that met a wider range of needs. The policy resulted in the development of a 73 unit non-profit mixed income housing co-operative for families and seniors, a 20 unit non-profit rental housing development for families that is currently under construction and a 36 unit equity co-operative housing development, know as "The Legends."

Late last year, the Planning and Building Department staff was approached by the President and Secretary of The Legends (see ***attached*** letter) who requested that the Housing Agreement be amended so that the development would become a standard condominium development.

At its February meeting, the Committee received a report from the Director Planning in response to the request to change the terms of their Housing Agreement and land lease. Due to the way the Co-operative was originally structured and subsequently marketed, and in the face of a downward real estate market, the members were concerned that they were at significant personal risk if other members defaulted on their mortgages.

The report recommended that staff work with members of The Legends Co-operative to explore possible amendments to the Housing Agreement that would permit the Co-operative to be re-established as a price-controlled condominium development and report back to the Committee. The Committee supported the staff recommendation.

Since February, staff has had numerous discussions and meetings with members from the Co-operative, including a meeting with staff from BCBC, the lessor of the land. In these meetings a variety of approaches to responding to the Co-operative's problems were explored. In addition, planning staff has researched methods by which the price control mechanism could be maintained. This report presents the results of this investigation, and recommends that the Housing Agreement be discharged..

2.0 THE LEGENDS HOUSING AGREEMENT

The Legends was developed as an equity co-operative. An equity co-operative is an ownership model that provides for the purchase of a unit (or shares) at a lower price with the knowledge that one's return on equity at resale will be limited to a level below market return. The initial purchase price is often lower due to cost savings in development methods (non-profit developer) and by special arrangements on the purchase of the land. In the case of The Legends the property was leased for a period of 60 years at a price below market. An equity co-operative is different from a non-profit co-operative in that it is essentially a modified form of ownership housing where the owners collectively own the assets and land, usually subject to guidelines affecting price and/or residency. A non-profit co-operative is part of the publicly financed non-profit housing stock that is subject to an Operating Agreement that controls housing charges, residency and subsidy.

As a condition of rezoning the property, recognizing that the project would comprise a component of the affordable housing requirement for the Oaklands site, a Housing Agreement was registered on title. This Agreement was signed by the Co-operative, the City and BCBC. The agreement contained the following conditions:

- The development was restricted to occupancy by at least one senior (55 years or older) in each unit;
- The price at resale limited by an increase determined by the original price plus the Vancouver Consumer Price Index;
- The development would operate as a co-operative.

At the outset, The Legends equity Co-operative was to be targeted exclusively to seniors. It was theorized that development would be attractive to seniors who had sold their houses and wanted to access some of their equity by buying a smaller, more affordable unit. Evidence elsewhere had indicated that the benefit of having a more attractively priced unit would offset the impact of not experiencing full market appreciation in the future. Further, the units were designed with some features that would appeal to seniors such as adaptable space, parcel shelves near front doors and wider halls. The units in The Legends were also significantly lower priced than the condominium units available elsewhere at The Oaklands.

While there was some interest by seniors in the development, it became clear that marketing the units was more difficult than expected. Some of the reasons given as to the reason that seniors were not purchasing the units were:

- The site is fairly steeply sloping, making walking difficult for older people;
- Shopping and medical offices are not close by;
- There are a wide range of market housing choices appropriate for seniors in Burnaby (Metrotown, Edmonds, Lougheed Mall) in the same price range;
- The concept of a limited equity seniors' housing co-operative (especially on leased land) is considered unconventional;
- They had received numerous requests from non-seniors who wished to purchase units.

Because of this, in May of 1996, the Co-operative requested an amendment to the Housing Agreement that removed the age restriction and price control mechanism. The City agreed to the former request, but felt that removal of the latter clause would mean that there would be little to distinguish this project from a conventional condominium project. It should be added that the Co-operative also pursued a change to the lease from a 60 year term to a 99 year term or, fee simple-ownership outright. Since the time of the change in the Housing Agreement, the development has been fully sold out.

3.0 THE HOUSING AGREEMENT AMENDMENT REQUEST

The new request for an amendment to the Housing Agreement stems from a concern that the structure of the Co-operative may mean that individual members may become responsible for the mortgage default of others, and make the units difficult to resale. Both factors have been exacerbated by the state of the real estate market where values for ***all*** housing has fallen in the last 2 years; especially for apartment style accommodation which has also faced the impact of the "leaky condo" situation. There are currently three units listed for sale at The Legends. Besides the impact of the normal housing market factors (downturn, "leaky condo"), it is felt that these units are not selling due to the fact the project is a "co-operative" rather than a "condo" and the risk to the Co-operative created by potential mortgage defaults.

3.1 The Mortgage Situation

Due to CMHC mortgage insurance requirements, the project was strata titled at the outset. One of the benefits offered for strata titling the development was that individual members would not be responsible for the mortgage defaults of other members; in essence each member's mortgage would be tied to an individual unit. As it turned out, the Bank that financed the project would only do so if the mortgagee was the Co-operative and not individual members. The end result is that the Co-operative shows up as the mortgagee on each title and the member who occupies it is the covenantor.

The primary responsibility, from a legal sense for payments on the mortgage is the Co-operative with the individual member guaranteeing payment to the Co-operative. In the event of a default, the foreclosure action would be taken against the Co-operative. If the Co-operative and/or the member did not make the mortgage payments, the Bank would get a foreclosure order clearing the Co-operative from title, and the Bank could sell the unit. However, if the Bank sold the unit for less than the amount owing in the mortgage, then the Co-operative could then be liable for the difference. While it is true that the Co-operative could pursue the individual member for payment of this difference (and they have received legal advice concerning this point), it would be extremely difficult and costly to be successful.

Recently, a member did default on the mortgage on a unit. In order to avoid being liable for the costs of foreclosure proceedings, the Co-operative took over the mortgage payments and are now renting the unit to a tenant. This, in itself, cost the Co-operative over $9,000 in mortgage areas and legal fees..

While the structure would be sustainable in a rising real estate market, it is clear that in the current market there is significant risk to the Co-operative that others may default on their mortgage. Another factor that increases this risk is that about one-third of the units were purchased under CMHC's 5% down payment program (which was introduced in Canada at about that time); many of the outstanding mortgages amounts are approaching the market value of the units, making it more attractive to default on a mortgage. It is important to note that when the original purchasers bought their units, they did on the basis of the "equity" co-operative model, where members contribute a significant amount of equity to the purchase, minimizing the need for mortgages. Obviously, the risk of default is much less where owners carry no, or small, outstanding mortgages. The original owners feel that the application of the 5% down payment program on this project has significantly increased the Co-operative's risk from mortgage default.

4.0 DIFFICULTIES AMENDING THE HOUSING AGREEMENT

The President and Secretary of the Co-operative have met with staff to clarify the nature and extent of the potential difficulties faced by the Co-operative. Staff has also discussed the situation with staff at BCBC, as well as the original project development consultant to obtain background information.

Staff believe that the Co-operative's concerns are well-founded. As shown by the foreclosure action taken on one unit and the inability to sell units, the equity Co-operative's future is uncertain. As part of the review of this situation, staff consulted with an economist who is doing research on the efficacy of the equity co-operative model and has found that almost all of the projects that were developed in the "boom" of the housing market in the Lower Mainland are in jeopardy. In some cases, the residents have been mired in length and costly legal proceeding and in other cases whole project could be facing foreclosure because all of the units could not be sold. The Legends is the only equity co-operative that was developed in Burnaby during this time.

Currently, the Board of Directors of the Co-operative are given the role of monitoring the resale value of the units, since the Co-operative in effect controls the strata titles. If the Co-operative were to disband and be replaced by a standard condominium corporation, this mechanism would no longer be maintained.

Staff investigated various ways by which the Co-operative's concerns about risk can be addressed while, at the same time, ensure that the development can still meet the Oakalla Development Plan's requirement that the housing be affordable. Specifically, ways and means to ensure that the units will continue to be sold at below market value (say, 80% of market value) were investigated. Each method that was considered was evaluated against the following criteria:

- understandable to current owners and future buyers
- able to implement (cost, acceptability to members and mortgage holder)

- able to effectively monitor and enforce
- achievement of goal of enhancing affordability

Unfortunately, staff has not found any clear, understandable, cost-effective method to regulate resale prices in a private market condominium. While it is possible to register a Housing Agreement that requires, for example, that Strata Corporation to ensure that the unit sold at a certain percentage of market value, in reality, it is legally difficult for an entity such as a Strata Corporation to interfere between a willing buyer and willing vendor. The Strata Corporation would have to intervene in some manner to block a sale that did not reflect the guidelines or would have to levy a penalty on the buyer or vendor. Obviously, undertaking such actions would result in a costly process to remedy the situation.

Similarly, the involvement of the City in enforcing what is essentially a private transaction would be problematic. When a unit resales, there is no method that is easily implemented, monitored or enforced that ensures that a price control mechanism would be followed. First, it is not clear how the City's involvement would be triggered from a legal sense. Would the City be required to review the Offers to Purchase, and who would make sure that this happens? Further, in the absence of any acceptable penalty to the buyer or vendor who did not honour the details of the Housing Agreement, the City could find itself in a position where it had to pursue compliance in some manner.

Only two methods of controlling prices in a condominium type environment have been found. The first relates to involvement by a third party (a non-profit society) who would monitor prices at resale on a project that is currently under construction in North Vancouver. To accomplish this, about ten legal agreements and restrictive covenants have been registered on title. In essence, the third party has to approve the property transaction. Since the units are restricted to 85% of market, there is some question as to whether this reduction is actually in the range of normal market variability; the estimation of market value is not a precise calculation and is open to variance.

The second method involves the registration of a "sleeping" second mortgage on a development at the outset that recognizes the benefit that the buyers received. If the buyer sells at a price higher than the guidelines, the second mortgage is "called" and the owner has to pay back the extra increment in value. This method works well when structured into a project from the beginning, but would not be possible to implement once individual owners have obtained mortgages.

With the information learned to date, staff is recommending that the Housing Agreement be discharged so that the Co-operative become a standard condominium without price control mechanisms. It is clear that if the project became a standard condominium, the value of the units would rise. However, the members will be responsible for paying all legal costs associated with the strata title conversion as well as the discharge of the Housing Agreement.

In the end, it is recognized that these changes will result in a purely market condominium project, which is contrary to the intent of the guidelines established for this site by the Oakalla Development Plan. At the best, The Legends will still remain a modest relatively affordable housing development that would not have been built if the site had been marketed as a pure market site. The building contains smaller unit sizes and units with wheelchair adaptability features that are not readily available elsewhere at the Oaklands.

5.0 COVENANT RESTRICTING LAND USE TO NON-PROFIT HOUSING

As part of the development of The Oakalla Development Plan, (The Oaklands) three sites were designated for affordable housing and as a condition of development, had covenants placed on title restricting the use to:

> *"the construction and erection of non-market housing projects supported by a government or institutional subsidy, or other non-profit or affordable housing projects that are approved by the Municipal Council of the Grantee."*

Together, these sites comprise 23% of the housing units at the Oaklands, which was slightly greater than the policy goal of 20% of all units being affordable. With the removal of the Legends site from this inventory, just over 17% of the units at the Oaklands are non-market, including a 73 unit non-profit co-operative for families and seniors and a 20 unit non-profit rental townhouse development for families. Both of these developments are considered secure, long term affordable housing in that they are developed under the Province's Homes BC Program and are governed by Operating Agreements.

Should Council agree with the recommendation to discharge the Housing Agreement, between The Legends Housing Co-operative, the City and BCBC, staff recommend that the covenant restricting the use of the site where the Legends is located to non-market housing be removed, as it will no longer be relevant. It is suggested that the covenant be removed at the same time that the Housing Agreement is discharged.

6.0 THE LAND LEASE

In an effort to assist the Co-operative staff from BCBC had indicated that it would be amenable to extending the lease term to 99 years or give the members the option of converting the lease to fee simple ownership. After receiving the estimate that conversion to fee simple would cost the Co-operative about $1,300,000 or on average, $5640 per unit, the members, at a special general meeting held on 1999 June 10, passed a resolution to purchase the lands on a fee simple basis and obtain the required City of Burnaby approvals to discharge the Housing Agreement.

7.0 CONCLUSION

Members of The Legends Co-operative are, in the face of a downward real estate market, concerned that the co-operative structure of their development puts members at significant financial risk for the mortgage default of others who own shares in the Co-operative. Staff believe that the Co-operative's concerns are well-founded, and refer to the experience of other equity co-operatives that have recently failed or are at risk as justifications for taking action to prevent a similar experience at The Legends. Despite discussions with the members and research undertaken by staff, there is no easily understood or effective method available to maintain the affordability criteria that is a part of the current Housing Agreement. In the end, if the Housing Agreement is discharged, The Legends, with its modest design, finishes and unit sizes, still represent the most affordable market housing development at The Oaklands neighbourhood.

It is recommended that the Committee recommend that the Housing Agreement between The Legends, BCBC and the City of Burnaby be discharged and that the Co-operative be permitted to become a standard market condominium. Staff also recommend that the covenant restricting the use of the site where the Legends is located to non-market housing be removed, as it will no longer be relevant. It is suggested that the covenant be removed at the same time that the Housing Agreement is discharged.

B. Rukdun

for D.G. Stenson, Director
PLANNING AND BUILDING

BG\tn

Attachment

cc: City Manager
City Solicitor
Director Finance

THE LEGENDS
5281 Oakmount Crescent
Burnaby, BC V5H 4S7

October 19, 1998

City of Burnaby
4949 Canada Way
Burnaby, BC V5G 1M2

Attention: Director of Planning

RE: THE LEGENDS HOUSING CO-OPERATIVE - 5281 OAKMOUNT CRESCENT, BURNABY, BC

The Secretary of the Legends Housing Co-operative, Fay Kantrowiz, recently met with Beverly Grieve and discussed the possibility of the Co-op becoming a strata title property only, and Ms. Grieve asked that a letter be sent to you outlining the reasons for such a change.

The original intent of the Legends development was a seniors equity co-op, with a minimum equity requirement of 25% down. A number of seniors bought in under these conditions, some actually investing 100% equity. These conditions were subsequently changed, the seniors requirement was dropped, and the equity requirement for purchasers reduced from 25% to 5%. These changes were made with no input from the original purchasers.

The subsequent marketing of the development was marked by a de-emphasizing of the co-op aspect and instead the emphasis was put on the low down payment requirement, with the balance being equivalent to rent. As a consequence of these changes, and the softening real estate market, a number of owners now find themselves in a negative equity position. This has created the situation where those owners who have little equity in their units and wish to sell, may now find it easier to walk away from their financial commitments. Since the building is owned by all members, the remaining owners would be faced with the additional housing and mortgage costs of those who chose to abandon their units.

This in fact is the current position, as the Co-op has been notified by the Bank of Montreal that it is foreclosing on an owner for non payment of their mortgage. As the Co-op has no cash assets of its own, this puts the remaining members, a number of whom are on fixed incomes, in serious financial jeopardy.

Since the development, as well as being an equity co-op, is also stratified under the Condominium Act, the Board of Directors feel it would be a more realistic and fairer arrangement if the co-op status was removed and the development made straight strata title. This would mean all owners would be personally responsible for their mortgage commitments. Otherwise there is the possibility of the Co-Op becoming non-viable, which would be to the advantage of neither the members nor the municipality.

We look forward to receiving your response at your earliest convenience.

Yours truly,

F Kantrowiz

Thor Roos, President
(604) 430-5253

Fay Kantrowiz, Secretary
(604) 454-1540