

CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO: Chair and Members Planning Committee	WARD(S) AFFECTED: WARD 13
COMMITTEE DATE: February 5, 2013	
SUBJECT/REPORT NO: Heritage Conservation Easement Agreement Between the City and the Owner of 397 King Street West (Dundas), the Former Dundas District High School (PED13028) (Ward 13)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development	PREPARED BY: Meghan House (905) 546-2424 Ext. 1202
SIGNATURE:	

RECOMMENDATION

- (a) That the City enter into a Heritage Conservation Easement Agreement with the owner of 397 King Street West (Dundas), the former Dundas District High School.
- (b) That the Mayor and Clerk be authorized and directed to execute the Heritage Conservation Easement documentation with respect to Recommendation (a) above, in a form satisfactory to the City Solicitor.
- (c) That the Council-approved "Requests to Designate Properties under Part IV of the Ontario Heritage Act: Priorities" be amended to remove the designation of 397 King Street West (Dundas) from the staff work program, as per Appendix "A" of this Report, upon execution of the Heritage Conservation Easement.

EXECUTIVE SUMMARY

In 2007, the Community Heritage Advisory Panel (CHAP) for Dundas requested designation of the former Dundas District High School while the property was still owned by the School Board. The property has since been sold, and is being adaptively re-used as a multiple unit, residential building. The designation of the property is included on the Council-approved “Requests to Designate Properties under Part IV of the Ontario Heritage Act: Priorities” list as a priority within the current (2013) staff work program.

Independently, the Development Charges By-law was amended in 2012 to permit 100% exemption of Development Charges for the adaptive re-use of protected heritage properties. Protected heritage properties are defined in the Development Charges By-law as those properties that are designated under the Ontario Heritage Act, or subject to an easement held by the municipality or another public body, such as the Ontario Heritage Trust.

As the process for designation under the Ontario Heritage Act may be lengthy, staff is recommending that the City enter into an Easement Agreement with the property owner to protect the property and allow the property owner to be eligible for the exemption under the Development Charges By-law. Staff also recommends that the Heritage Conservation Easement Agreement be used in place of municipal designation, and that the designation of the property be removed from staff’s Council-approved work program. The property has been determined to meet the criteria contained in Ontario Regulation 9/06, and is considered to have sufficient cultural heritage value to warrant protection through an Easement Agreement.

The Hamilton Municipal Heritage Committee recommended approval of the recommendations of this Report at their meeting on January 17, 2013.

Alternatives for Consideration - See Page 8.

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: The purpose of entering into the Easement Agreement is to protect the property, and allow the property owner to be eligible for the exemption under the Development Charges By-law for the adaptive re-use of a protected heritage property. The amount of the Development Charges that would be exempted for the adaptive re-use of the former school building is in excess of \$650,000 (excluding education charges, which are not exempt), as outlined in the following table. The City would be forgoing this revenue.

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Potential Foregone DC Revenue				
		Units	Cost/Unit	Cost
City DC's	1-Bedroom	25	\$ 11,546	\$ 288,650
	2-Bedroom	19	\$ 17,303	\$ 328,757
GO Transit	1-Bedroom	25	\$ 93	\$ 2,325
	2-Bedroom	19	\$ 138	\$ 2,622
Special Area Charge	1-Bedroom	25	\$ 608	\$ 15,200
	2-Bedroom	19	\$ 1,035	\$ 19,665
Total Foregone DCs:				\$ 657,219

Development charges are typically due at the time of issuance of the Building Permit. The owner has entered into a Deferral Agreement with the City, and the Building Permit will be issued based on this Agreement between the owner and the City. The owner will pay all Development Charges if the Heritage Conservation Easement Agreement is not executed, and the property is not otherwise designated as a protected heritage property during the term of this Agreement.

Staffing: Drafting and execution of the Easement Agreement can be accommodated by existing staff in the Planning Division and Legal Services.

Legal: Under Sub-section 37(1) of the Ontario Heritage Act, Council may pass By-laws providing for the entering into of easements or covenants with owners of real property for the conservation of property of cultural heritage value or interest.

The City of Hamilton does not have a By-law in place that delegates that authority to staff to enter into Easement Agreements. Heritage Conservation Easement Agreements are regularly entered into under other Council authorized actions, such as the disposition of property or under the terms of a Hamilton Community Heritage Fund interest-free loan program.

HISTORICAL BACKGROUND

At its meeting of May 24, 2007, the Hamilton LACAC (Municipal Heritage Committee) considered a request from the Community Heritage Advisory Panel (CHAP) for Dundas for designation of the Dundas District High School, and recommended that Council direct staff to undertake a Cultural Heritage Assessment.

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On September 18, 2007, a staff report was brought forward to the Economic Development and Planning Committee, recommending that staff be directed to carry out a Cultural Heritage Assessment of the former Dundas District High School to determine whether the property is of cultural heritage value and worthy of designation under Part IV of the Ontario Heritage Act (Report PED07249). Committee passed a motion on September 20, 2007, to table the matter pending consultation with the City-School Board Liaison Committee. At the April 15, 2008, Economic Development and Planning Committee Meeting, it was reported that the matter of the designation of 397 King Street West, former Dundas District High School, had not been considered by the School Board Liaison Committee.

The matter remained on the Outstanding Business list until Council approved the recommendations of Report PED08211 (October 29, 2008), which provided a process for the consideration of heritage property designations. One of the recommendations also approved at this time was “that the designation of the property at 397 King Street West, Dundas (Dundas District High School), be assigned a high priority, and that Council direct staff to carry out a Cultural Heritage Assessment, a Statement of Cultural Heritage Value, and Description of Heritage Attributes for Council’s consideration for designation under Part IV of the Ontario Heritage Act.” Since that time, the property has been on staff’s work plan for potential designation.

In the meantime, the property has been sold to a private developer, and a Zoning By-law Amendment/Official Plan Amendment, to permit the conversion of the former Dundas District High School building to a 45-unit apartment building, was approved on July 8, 2010 (Report PED10142). The Zoning By-law Amendment also contained specific provisions related to the protection of the features of the front façade and a portion of the side façades.

The Hamilton Municipal Heritage Committee recommended approval of the recommendations of this Report at their meeting on January 17, 2013.

POLICY IMPLICATIONS

Town of Dundas Official Plan:

Section 2.4 - Historic and Architectural Resources of the former Town of Dundas Official Plan encourages the preservation, restoration, or appropriate re-use of historic and architecturally significant landmarks, buildings, and districts throughout the Town (2.4.2.1). The recommendations of this Report meet the intent of these policies.

Urban Hamilton Official Plan:

Volume 1, Section 3.4 - Cultural Heritage Resources Policies of the Council-adopted (adopted July 9, 2009) Urban Hamilton Official Plan states that the City shall “protect and conserve the tangible cultural heritage resources of the City, including archaeological resources, built heritage resources, and cultural heritage landscapes” (Volume 1, 3.4.2.1(a)), “identify cultural heritage resources through a continuing process of inventory, survey, and evaluation, as a basis for the wise management of these resources” (Volume 1, 3.4.2.1(b)), and “support the continuing use, re-use, care, and conservation of cultural heritage resources” (Volume 1, 3.4.2.1 (f)). The Urban Hamilton Official Plan has been approved by the Ministry of Municipal Affairs and Housing, but has been appealed in its entirety to the Ontario Municipal Board (OMB). While the Plan is not in full force and effect, these policies demonstrate Council’s commitment to the identification, protection, and conservation of the cultural heritage resources, and the recommendations of this Report meet the intent of these policies.

RELEVANT CONSULTATION

Under the Ontario Heritage Act, Council must consult with its Municipal Heritage Committee prior to entering into Heritage Conservation Easements. At its meeting of May 24, 2007, the Hamilton LACAC (Municipal Heritage Committee) considered a request from the Community Heritage Advisory Panel (CHAP) for Dundas for designation of the Dundas District High School, and recommended that Council direct staff to undertake a Cultural Heritage Assessment. The Hamilton Municipal Heritage Committee reviewed the request to enter into a Heritage Conservation Easement Agreement at their meeting on January 17, 2013, and recommended approval of the recommendations of this Report.

ANALYSIS / RATIONALE FOR RECOMMENDATION

Staff has undertaken an evaluation of the property to determine if it possesses cultural heritage value sufficient to warrant a Heritage Conservation Easement using the criteria contained in *Ontario Regulation 9/06 - Criteria for Determining Cultural Heritage Value or Interest*. In turn, this evaluation is intended to provide support for a recommendation that Council provide financial assistance for the adaptive re-use of the former school building through exemption from Development Charges.

Evaluation - Ontario Regulation 9/06:

Ontario Regulation 9/06 - Criteria for Determining Cultural Heritage Value or Interest provides criteria for determining cultural heritage value or interest under the Ontario Heritage Act. The regulation identifies three broad categories of criteria: Design or Physical Value, Historical or Associative Value, and Contextual Value, under which

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three subsets of criteria are further identified (see full criteria attached as Appendix “B”). The following provides an evaluation of the property using the criteria in *Ontario Regulation 9/06*:

1. **Design Value or Physical Value.**

The former Dundas District High School was built in 1928 in the Collegiate Gothic style. The building was designed by Hamilton architect William J. Walsh. The building is a three-storey building, clad in rug brick with fine carved stone detailing. The stone Gothic ornamentation includes pinnacles, gargoyles, decorative crests and door lintels that mark the entrance for girls on one side and boys on the other. Stylistically, the building is comparable to other Hamilton schools of the same era and style, such as George R. Allen and Westdale High School. There are a number of additions (1948, 1953, 1956, 1968), yet the building retains its architectural integrity.

The former school building is considered to have design value as a representative example of the Collegiate Gothic style (Criterion 1 (i)). The building’s characteristic features include:

- Three-storey building mass clad in rug brick with stone detailing; and,
- Stone ornamentation on the front façade, including pinnacles, gargoyles, decorative crests and door lintels that mark the “girls” and “boys” entrances.

2. **Historical Value or Associative Value.**

The Dundas Select Academy was established in 1849 as a private grammar school, and was located on Ogilvie Street. The existing building at 397 King Street West was constructed in 1928 on the former mill property, donated by Robert and Frank Fisher - the Fisher brothers agreed to donate their property containing the Fisher Paper Mill (Gore Mills), as well as the vacant lot on the opposite side of King Street, with a stipulation placed on the deed that the property must be kept in perpetuity for educational and public playground use.

The former school building has historical value as having associations with a community institution (Criterion 2 (i)) and Hamilton Architect William J. Walsh (Criterion 2 (iii)).

3. **Contextual Value.**

The former Dundas District High School has contextual value as a community landmark (Criterion 3 (iii)), located on the western edge of Dundas, just below the Niagara Escarpment.

Conclusion

Staff concludes that the property located at 397 King Street West, Dundas, is considered to have sufficient cultural heritage value to warrant the City entering into a Heritage Conservation Easement Agreement with the property owner, and the City committing financial support in the form of an exemption from Development Charges.

Heritage Conservation Easement Agreements:

A Heritage Conservation Easement Agreement is a voluntary legal agreement between the municipality and a property owner to protect the heritage features of a property. The Agreement contains a description of the features of the property to be protected, and permission from the easement holder (the City) is required prior to undertaking alterations to the protected features of the property. In practice, the administration of the easement is similar to a municipal designation under the Ontario Heritage Act. The easement runs with the title of the property, and remains in place when the property is sold.

Staff is of the opinion that the Heritage Conservation Easement Agreement may be used in place of municipal designation to adequately protect the cultural heritage features of the property. Accordingly, staff is recommending that the property be removed from the Council-approved staff work program for designations. An alternative is to move the property to a low priority on the work program.

Development Charges By-law:

Council approved the recommendation “that a Development Charges (DC) Exemption Policy of 100% be applied to the Adaptive Re-use of Protected Heritage Properties within the existing building envelope, across the City of Hamilton” (Report FSC12015, Council-approval February 22, 2012). Under By-law No. 12-053, the following definitions apply:

“Adaptive Re-use” means the alteration of an existing heritage building for compliance of its continuing or resumed use(s) with current building code requirements; or for compliance of its proposed new use(s) with current building code requirements; or for ensuring its structural integrity; or for optimizing its continued, resumed or new use(s); while maintaining the cultural heritage value or interests of the subject building; and in compliance with the conditions of any Heritage Permit required for the subject alterations.

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"Protected Heritage Properties" means properties that are designated under Part IV of the Ontario Heritage Act; or designated under Part V of the Ontario Heritage Act; or subject to a Heritage Easement under Part II of the Ontario Heritage Act; or Subject to a Heritage Easement under Part IV of the Ontario Heritage Act; or subject to a covenant or agreement on title held between the property owner and a conservation authority or level of government in the interest of conserving built heritage.

The re-development of the subject property meets the definition of "adaptive re-use" and, once a Heritage Conservation Easement or designation is in place, the property will be a "protected heritage property".

ALTERNATIVES FOR CONSIDERATION

Decline to Enter into the Easement Agreement.

Council may decline to enter into the Heritage Conservation Easement Agreement. This alternative is not recommended, as it would not further protect the heritage attributes of the property, and would not allow the property owner to benefit from the existing Council-approved exemption from Development Charges for the adaptive re-use of protected heritage properties.

Approval of the Heritage Conservation Easement Agreement, but Retain the Property on the Staff Work Program for Potential Designation.

Council may approve entering into the Heritage Conservation Easement, but recommend that the property remains on the staff work program for potential designation under the Ontario Heritage Act. This alternative may include retaining the property's existing high priority on the staff work program, or amending the priority.

CORPORATE STRATEGIC PLAN

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

Skilled, Innovative, and Respectful Organization

- ◆ Council and SMT are recognized for their leadership and integrity.
- ◆ Staff Comment: The approval of the recommendations of this Report demonstrates Council's commitment to the Council-approved designation process and to existing planning policies.

Financial Sustainability

- ◆ Generate assessment growth/non-tax revenues.
- ◆ Staff Comment: The approval of the recommendations of this Report facilitates the adaptive re-use of an existing building on a property that did not previously generate any tax revenue and will be assessed as multiple unit residential.

Healthy Community

- ◆ Plan and manage the built environment.
- ◆ An engaged Citizenry.
- ◆ Staff Comment: There is demonstrated public interest in the cultural heritage value of this property. The approval of the recommendations of this Report acknowledges this public interest through the conservation of a valued community heritage resource and promotes the re-use of an existing building.

APPENDICES / SCHEDULES

- Appendix "A": Requests to Designate Properties Under Part IV of the Ontario Heritage Act: Priorities (as amended by this Report)
- Appendix "B": Ontario Regulation 9/06

:MH
Attachs. (2)

**Requests to Designate Properties under Part IV of the Ontario Heritage Act:
Priorities (as amended by this Report)**

<u>Year</u>	<u>Property</u>	<u>Date of Request</u>
2013	104 King Street West, Dundas (Dundas Post Office)	24-Sep-09
2013	71 Claremont Drive, Hamilton	28-May-09
2013	82-112 King Street East , Hamilton (Royal Connaught)	09-Apr-08
2013	167 Book Road, Ancaster	24-May-07
2014	52-56 Charlton Avenue West, Hamilton	24-Apr-07
2014	91 John Street South, Hamilton	25-Oct-07
2014	140 Locke Street South, Hamilton	03-Jun-09
2014	3027 Homestead Drive, Mount Hope	24-Jan-08
2015	1395-1401 King Street East, Hamilton	04-Aug-09
2015	1062 Golf Club Road, Binbrook (Woodburn)	27-Mar-08
2015	Gage Park, Hamilton	23-Mar-06
2015	Gore Park, Hamilton	24-Apr-08
2016	Tisdale House, Ancaster	16-Aug-01
2016	111 Kenilworth Access, Hamilton (Barton Reservoir)	26-Feb-09
2016	262 MacNab Street North, Hamilton	18-Dec-08
2016	Desjardins Canal, Dundas	26-Feb-09
2017	1065 Highway 8, Stoney Creek	27-Aug-09
2017	170 Longwood Road North, Hamilton	15-Feb-11
2017	4-12 John Street North, Hamilton (Treble Hall)	08-Feb-11
2017	7 Ravenscliffe Avenue, Hamilton	10-Jun-11
2018	39 Lakeview Drive, Stoney Creek	17-Feb-11
2018	231 Ferguson Avenue South (Ferguson Avenue Pumping Station), Hamilton	18-Oct-11

Ontario Heritage Act

ONTARIO REGULATION 9/06

CRITERIA FOR DETERMINING CULTURAL HERITAGE VALUE OR INTEREST

Criteria:

- 1.(1) The criteria set out in Sub-section (2) are prescribed for the purpose of Clause 29 (1) (a) of the Act. O. Reg. 9/06, s. 1 (1).
- (2) A property may be designated under Section 29 of the Act if it meets one or more of the following criteria for determining whether it is of cultural heritage value or interest:
 1. The property has design value or physical value because it:
 - i. Is a rare, unique, representative or early example of a style, type, expression, material, or construction method;
 - ii. Displays a high degree of craftsmanship or artistic merit; or,
 - iii. Demonstrates a high degree of technical or scientific achievement.
 2. The property has historical value or associative value because it:
 - i. Has direct associations with a theme, event, belief, person, activity, organization, or institution that is significant to a community;
 - ii. Yields, or has the potential to yield, information that contributes to an understanding of a community or culture; or,
 - iii. Demonstrates or reflects the work or ideas of an architect, artist, builder, designer, or theorist who is significant to a community.
 3. The property has contextual value because it:
 - i. Is important in defining, maintaining, or supporting the character of an area;
 - ii. Is physically, functionally, visually, or historically linked to its surroundings; or,
 - iii. Is a landmark. O. Reg. 9/06, s. 1 (2).