

Hamilton Municipal Heritage Committee Meeting Presentation – September 17, 2020
(Lynda Zugec)

While I agree with the overall goal of designating the former Royal Connaught Hotel [under Part IV of the Ontario Heritage Act], the report provided by the City of Hamilton staff is somewhat lacking and as such I ask the committee to consider the following.

- **The Property Description and Various Legal Entities Need To Be Properly Detailed**

On page 45, the report indicates that:

The list of heritage attributes recommended to be included [in the Statement of Heritage Value or Interest attached as Appendix “B” to Report PED20159] pertain only to common element features of the building and not to the units of individual condominium owners. These heritage attributes include the lobby and mezzanine common area space on the building’s interior and features on the exterior facades of the 1914-16 and 1931 buildings.

Also, Appendix A on page 50 identifies the entire building pictorially as one entity – and refers to it as 82-112 - a collective whole.

There are two major things wrong with this:

#1 - The report fails to properly detail the separate legal entities, pictorially or otherwise. It only states that the building in its entirety is “one condominium for the six lower floor commercial units and two separate condominiums corresponding to two different phases of the residential portion of the building”.

(#2) The second thing wrong with this is that they are not “common element” or “common area” features of the building in the legal sense, so the report is incorrect in these statements and very much misleading.

I will tell you why specifying the aforementioned is important.

The Builder decided to parse out the “Main Lobby” of the Royal Connaught building as a separate legal entity and put in place an agreement to charge condo owners \$68,000 yearly to enter and exit their condo units through the Main Lobby. As you can imagine, this has been a source of great tension within the building and this type of activity is set to become illegal under the Condo Act (please refer to the Stage 2 Report Recommendations). Hence, what is referred to as common elements are not common elements at all. Many of them are owned by the Builder so as to preserve the Builders’ ongoing revenue stream.

To complicate matters, a surveyor’s report obtained by owners indicates that the Main Lobby property description is actually included in the property description of the Agreement of Purchase and Sale of condo unit owners, meaning condo unit owners were sold the Main Lobby as part of their agreement, but this was then parsed out at a later date unbeknownst to purchasers.

Such complexities necessitate the inclusion of accurate property descriptions and legal entities within the report.

For example, what happens in the event of a disagreement among any of the parties involved? What if Condo 1 agrees with the Builder (who owns the Main Lobby) and Condo 2 disagrees when it comes to updating or altering Heritage Attributes? What if the Builder (who owns the Main Lobby) receives a grant or loan as a result of this heritage designation – does he share it with the other two legal entities? Or how is that decided? Should there in effect be 3 heritage designations given there are 3 legal entities? Or,

should there be 8 heritage designations given that 6 commercial units can be owned by 6 different parties and then the other 2 include the two condos?

The Main Lobby is registered as vacant land with the city in terms of property taxes and was only registered this year in 2020. This is despite being an operational for-profit sales center that is separate from the 2 condominiums. All the owners of individual condo units have been paying property taxes since 2017.

What if property taxes are not paid by one of the entities? Will the other entities be able to receive a loan or grant for something that they all want to update as far as Heritage Attributes are concerned? Or will they be hindered because one entity failed to pay property taxes?

I can continue with such questions, but I assume you are understanding my point. [Because of the immensely complex legal structure specific to the building - even though it is physically one building - the City of Hamilton should engage in proper due diligence and include a properly detailed property description along with the associated legal entities. The City should also be proactive in identifying how disputes can be handled and monies allocated].

Appendix B and Appendix D Need to Be Updated

Appendix B STATEMENT OF CULTURAL HERITAGE VALUE AND DESCRIPTION OF HERITAGE ATTRIBUTES

Appendix D CULTURAL HERITAGE ASSESSMENT REPORT (2013)

As stated on page 41 of the report “The designation of the subject property was subsequently put on hold on the request of the Builder [property owner] in 2013 to facilitate the building’s repurposing into a mixed use condominium.[This involved the construction of a new 14 storey addition on the southwest area of the property fronting onto John Street South and the rehabilitation of the existing former hotel building to accommodate new lower floor commercial uses and residential units above.”] I think many would agree that adding 14 stories to a building is a substantive change.

As an example of a few more substantial changes, Figure 56, 57, 58 and 59 designate window structures and wrought-iron balconies as Historic Attributes and show pictures of them, but these have all been taken down by the Builder since the report that was completed in 2013.

Despite these major changes, the report indicates “The majority of interior and exterior heritage attributes identified in the 2013 Cultural Heritage Assessment Report remain intact and have been restored during the building’s repurposing. As a result, the property’s overall heritage value has been preserved.”

I understand that the City would like to “push this through their desk for approval” so to speak, but a lack of due diligence now will cause considerable problems in the future.