

June 21, 2022

To whom it may concern,

Please see the attached correspondence from our Solicitor regarding the HWDSB Board of Trustees' opposition to the proposed Cultural Heritage Landscape designation of the Ancaster High School lands.

There remains a preference to maintain these lands as green space for community access. To this end, we express our continued willingness to cooperatively work on this matter with the City of Hamilton to support the Ancaster community we serve.

Sincerely,



Dawn Danko
Chair of the Board of Trustees, HWDSB

June 21, 2022

SENT VIA EMAIL

City of Hamilton
71 Main Street West
Hamilton, ON
L8P 4Y5

Mark R. Giavedoni
Certified Specialist (Real Estate Law)
Phone +1 905 540 8208
Fax +1 905 528 5833
mark.giavedoni@gowlingwlg.com
File No. H223912

Dear Sirs/Madames:

**Re: Ancaster High Cultural Heritage Landscape Designation
374 Jerseyville Road, Ancaster (the “Lands”)**

We are solicitors to Hamilton-Wentworth District School Board (“HWDSB”) and write to formally express our objection and opposition to the City of Hamilton’s recommendation to add the Lands to the City’s Cultural Heritage Landscape Inventory and mapping as part of the Official Plan review exercise (the “Inventory”). The City of Hamilton’s Heritage Committee moved to recommend to Planning Committee that the Lands be added to the Inventory at its meeting on June 10, 2022 and the Planning Committee subsequently endorsed this recommendation to Council on June 14, 2022, despite HWDSB’s objections.

Background

The Chair of HWDSB advised Council of the intent to sever a 12 acre parcel of land from the campus of Ancaster High School on June 20, 2018.

In response to this notice, a motion was introduced by the Ward Councillor at the July 2018 Planning Committee, and carried at the August 2018 Council meeting, directing the Municipal Heritage Committee to commence the process to designate all 43-acres of the Lands under the Ontario Heritage Act.

The motion directed staff ‘...to start the process of designating the campus of Ancaster High School site as a site of historical significance and report back to the Heritage Committee on providing the property with a Heritage designation.’

City Council approved this motion at its August 2018 meeting with background recitals that suggest the designation is tied to the City’s inability to purchase part of the Lands at market value, if they were to be sold.

On August 16, 2018 the Chair of HWDSB wrote to the Mayor and City Councillors (see attached). In the correspondence the Chair outlined:

‘The Hamilton-Wentworth District School Board trustees value our partnership with the City of Hamilton and as partners, we would like to continue investing in partnership projects.’

The letter continued by noting:

'A heritage designation for the Ancaster Secondary site would be detrimental to our school renewal plans for a number of schools, but especially the much needed work on the Ancaster High Secondary School and is not a creating solution regarding property dispositions to which school boards must adhere. Our school renewal plans hinge on the sale or parts or whole properties to reinvest in renewal projects. A heritage designation appears as a block to our severance application and will have a lasting impact on all of our school communities. We have shown restraint and offered to the City a unique deferred payment opportunity to consider, should you wish to purchase property, and will continue to take this and similar approaches in all of our decision making.

We believe that use of a heritage policy to address our collective dislike of property disposition rules is misplaced.'

Further to the correspondence submitted to the City in August of 2018, subsequent correspondence was sent to the City of Hamilton Heritage Committee on November 28, 2018 (see attached). This correspondence outlines issues with the motivation for the designation, noting that it is '...not a land-use planning tool that takes the place of a zoning by-law, a site plan agreement, severance conditions or a myriad of other land-use planning tools available to a municipality. Instead, the motion at the Planning Committee can be seen as an abuse of process to discriminate against HWDSB in its efforts to deal with its own property and to realize revenue. The subtext of the motion is clear: if the City cannot afford to acquire the lands, then no one will acquire the lands.

...HWDSB and the City of Hamilton have had a strong record of working together in this community for the benefit of the same stakeholders and have taken great pride in their ability to communicate and cooperate in serving this community within their respective mandates; however, if the City of Hamilton wishes to continue to utilize the heritage designation process as a land-use tool to deter or prevent development that it arbitrarily deems inappropriate, then HWDSB will have no other alternative but to seek full recourse under the law.'

HWDSB submitted two severance applications to the City of Hamilton on January 23, 2019.

Despite HWDSB's request to the contrary, the motion for designation was passed. In good faith, HWDSB agreed to suspend the severance applications, pending the City obtaining and reviewing with HWDSB cultural heritage reports concerning the Lands. This was expected to take three months. In February of 2019 (6 months after the resolution at Planning Committee) the City of Hamilton's Planning Division retained Archaeological Research Associates Ltd. ("ARA") to prepare a comprehensive Cultural Heritage Assessment ("CRA") for the Lands, which report was finalized in September 2020 (19 months after ARA was engaged).

The ARA report concluded that the property does not meet the criteria to warrant designation under Part IV of the Ontario Heritage Act.

In October of 2021 (13 months after the completion of the ARA report), the City engaged a second consultant to prepare a CRA for the Lands with an increased emphasis on reviewing the property's associative and contextual value within the context of the community. There was no Council resolution to authorize undertaking of this second study. The City of Hamilton's Planning Department retained

Archaeological Services Inc. (ASI) to prepare a comprehensive CHA for the Lands. In the process of the writing of this report input was provided by Chair Dawn Danko and the Manager, Planning Accommodation and Rentals, Ellen Warling. This report was finalized in May 2022 (7 months after ASI was engaged by the City). The ASI report concluded:

‘The property is valued by many residents in Ancaster. However, in consideration of the results of the research, analysis and application of prescribed heritage evaluation criteria, the property located at 374 Jerseyville Road West has limited cultural heritage value or interest. On its own and of itself, the property does not sufficiently meet the heritage evaluation criteria discussed herein. However, if the property were to be evaluated in combination with properties to the east and north, 374 Jerseyville Road West may contribute to a potentially significant cultural heritage landscape that tells a compelling and complete story of Ancaster’s post Second World War growth and land-use development patterns.’

The ASI report did not recommend designation under Part IV of the Ontario Heritage Act. It suggested further study of the surrounding area. Despite this recommendation from ASI, City Staff recommended the study area be added to the City’s Inventory.

This study area would include the Spring Valley V.L.A. Subdivision, the Ancaster Little League Ball Park, the Spring Valley Arena, the Ancaster Lions Outdoor Pool, the Spring Valley Trail Access, the Matthew Krol Field, the Sulphur Springs Trail Race Access, the Robert E. Wade Ancaster Community Park, the Ancaster Rotary Centre, the Morgan Firestone Arena, Frank Panabaker Elementary School & Ancaster Senior Public School and Amberly Park (see attached Schedule).

The ASI report was completed in May of 2022. In communication between staff, HWDSB staff were aware of the completion of this report. Hamilton staff noted that the findings of the ASI report were consistent with the findings of the initial ARA report as it did not recommend designation under Part IV of the Ontario Heritage Act. HWDSB staff requested a copy of the report prior to the Committee meeting as it may be necessary to send a delegation. On Thursday June 2nd at 4:19pm, HWDSB was provided a link to the Heritage Committee agenda that had been posted on the City’s website. Given the timing, HWDSB was not able to send a Delegation to the Heritage Committee.

At this meeting, Committee heard a presentation from Rebecca Sciarra from ASI, who again noted that the property was not recommended for protection as a cultural heritage landscape under Part IV of the Ontario Heritage Act. It was noted that if the property were evaluated in combination with properties to the east and north, the Lands could contribute to a potentially significant cultural heritage landscape that tells a compelling and complete story of Ancaster’s post Second World War growth and land-use development patterns. Further study would be necessary to confirm this.

The motion from the Hamilton Municipal Heritage Committee was unanimously approved despite the recommendations of the two Heritage Consultants that had been hired by the City.

At the June 13th, 2022 Planning Committee, the writer attended to object to the listing on the Inventory. At that meeting, members of the Planning Committee questioned the rationale of the Heritage Committee to recommend an action contrary to two third party consultants. It became clear that the motivation behind the recommendation was to impact the pending severance applications and the value of the Lands.

Concerns & Issues Raised

HWDSB notes the following material concerns and issues if the City proceeds to place the Lands on the Inventory:

i) No Heritage Value

There is no readily identifiable heritage value in placing the Lands on the Inventory, as the City's own third party consultants confirmed in their reports that the Lands do not meet the criteria to establish this under the Ontario Heritage Act. Staff's report to the Heritage Committee confirmed and supporting these findings.

The potential for a contextual cultural landscape would place the Lands within a broader area of surrounding lands, which has not been identified. ASI indicated further study would be required to identify the full extent of these lands and the cultural significance to warrant placement on the Inventory. This was discussed at Planning Committee and was rejected by a majority of the members. There is no justification to place the Lands on the Inventory without identifying the other lands that would form part of the same heritage landscape.

ii) Unfair Process

The HWDSB severance applications were and are intended to prepare the Lands for future uses. The Lands are not listed for sale, are not designated surplus to the needs of HWDSB and no process under the Education Act's disposition of real property has been commenced. The severance process does not impact land use, only subdivision constraints.

HWDSB agreed to stand down the applications pending the City's CHA. What was to take three months took three years and HWDSB patiently awaited the City's internal assessment. The City refused to share its findings with HWDSB and no constructive dialogue on the CHAs was able to take place before the City pushed the findings and recommendations to Heritage Committee. HWDSB did not have sufficient time to review the CHA reports and have a delegation present.

The Heritage Committee recommendation to place the Lands on the Inventory went to Planning Committee one business day later, when it should have been brought to the next Planning Committee for consideration, after all affected parties, including the City, had time to fully consider the options. The City refused to do so and pushed the recommendations ahead to the detriment of HWDSB.

iii) False Motivation

It is important to note that there was very little discussion at both committees on the heritage value of the Lands. This is mostly in part because the two heritage consultants found there was none. All public dialogue was centred on the City's concern that if HWDSB were to sell the Lands, the City would not be able to afford them, as the Education Act mandates that the disposition of surplus real property be sold for fair market value. This is not a prudent use of a heritage assessment. It suggests the City is using heritage assessments as a land use planning constraint, when the City has a plethora of land use planning tools at its disposal. The recommendation of the Heritage Committee and the Planning

Committee is clearly inappropriate, given the City's clear objectives and motivation for advancing the placement of the Lands on the Inventory.

Objection and Recommended Alternative

HWDSB urges City Council to reject the recommendations of Planning Committee and the Heritage Committee and not include the Lands on the Inventory. The City cannot do so without identifying and similarly affecting all the surrounding lands which form part of the same landscape, and neither City Staff nor the retained consultants have been able to identify the scope of the landscape and related cultural or heritage purpose.

There has been no real dialogue with HWDSB on the issue and on the CHA reports. HWDSB is open to continued discussion and consideration of options within its statutory and regulatory framework and mandate. The City of Hamilton/HWDSB Liaison Committee would be a suitable forum for this.

The City's placement of the Lands on the Inventory will only lead to further challenges here, contrary to the public interest. It is premature, at best, and a decision made without appropriate context and due process. The perception, if not the actual function, of this recommendation is to alter the land value and constrain the land use planning regime, neither of which are the objectives nor purpose of a heritage classification. We urge Council to reject the recommendation of its Heritage Committee and Planning Committee in respect of the Lands.

Yours very truly,

Gowling WLG (Canada) LLP



Mark R. Giavedoni
Partner

MRG/ar

CITY OF HAMILTON NOTICE OF MOTION

Planning Committee: July 10, 2018

MOVED BY COUNCILLOR xxxxxxxxxxxxxxxx.....

Ancaster High School, 374 Jerseyville Road West, Ancaster, to be considered for Heritage Designation.

WHEREAS the Chair of the Hamilton Wentworth District School Board (HWDSB) advised Council on June 20th that their intent was to sever 11 acres of land from the campus of Ancaster High School at 374 Jerseyville Road West;

WHEREAS the HWDSB has advised the City that they could purchase the 11 acres of land from the Board to keep it in public use for a price of “highest and best use” which means residential development or one to one and a half million dollars per acre or 11 to 13 million dollars;

WHEREAS in the June 28th Ancaster News story, the board chair states that “There is no threat to the use of this property”, the same article quotes the local trustee as saying their desire is to get the property in the hands of the City. This means at highest and best use or residential development price, not the cost of parkland;

WHEREAS the City currently has an infrastructure deficit of \$3.5 billion dollars and therefore unlikely to afford to purchase the 11 acres at highest and best use prices or 11 to 13 million dollars;

WHEREAS the taxpayers of Ancaster have already paid for the site once;

WHEREAS the Town of Oakville recently put a heritage designation on Glen Abby Golf Club as it formed an integral part of the Town’s Culture and Heritage;

WHEREAS in the 1950’s the Ancaster High School Board, in conjunction with the Town of Ancaster, decided to jointly purchase the existing High School Campus with the novel idea that the school would use the site during the day and community would use the site in the evening and on weekends; and

WHEREAS the Ancaster High School with some 40 acres, form an integral part of the community for the past 60 years. The Town has invested in a pool at this site with the similar novel idea that the school would use it during the day and the community could use the pool in the evenings and on weekends;

THEREFORE BE IT RESOLVED:

That staff be directed to start the process of designating the campus of Ancaster High School site as a site of historical significance and report back to the Heritage Committee on providing the property with a Heritage designation.

HWDSB

Todd White
Chair of the Board
Hamilton-Wentworth District School Board
20 Education Court, P.O. Box 2558
Hamilton, ON L8N 3L1
905-527-5092 ext. 2279

August 16, 2018

Mayor and City Councillors – City of Hamilton
71 Main Street West
Hamilton, ON L8P 4Y5

Delivered by electronic mail.

Dear Mayor Eisenberger and City Councillors,

I am writing to you today in response to a motion that was passed on Monday, August 13, 2018 at the General Issues Committee in respect to the Ancaster Secondary School property (green space) and a possible Heritage Status designation. The Hamilton-Wentworth District School Board trustees value our partnership with the City of Hamilton and as partners, we would like to continue investing in partnership projects.

Our school board has been working to revitalize all of our facilities and we have worked diligently to find creative solutions to ensure our students needs are being met in buildings which offer the best learning environments. Through this work, we have attracted over \$100 million from the province in terms of funding for various revitalization projects.

We have been very responsive and flexible to the concerns of both City Councillors and residents that have come forward with regards to projects such as, Riverdale/Lake Avenue Community Hub, Sir John A. Macdonald property Community Hub, Millgrove, Hill Park, New North Secondary, Beverly Central, Greenville, and it is vital that we continue to build on our collective success.

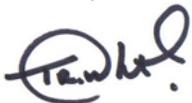
A heritage designation for the Ancaster Secondary site would be detrimental to our school renewal plans for a number of schools, but especially the much needed work on the Ancaster High Secondary School and is not a creative solution regarding property dispositions to which school boards must adhere. Our school renewal plans hinge on the sale of parts or whole properties to reinvest in renewal projects. A heritage designation appears as a block to our severance application and will have a lasting impact on all of our school communities. We have shown restraint and offered to the City a unique deferred property payment opportunity to consider, should you wish to purchase property, and will continue to take this and similar approaches in all of our decision making.

We believe that use of a heritage policy to address our collective dislike of provincial property disposition rules is misplaced.

We want Hamilton students to have the best learning environments available to them, however, a motion seeking the possibility of a heritage designation for the Ancaster site will not allow this to happen. I would ask that City Councillors reconsider their direction in asking staff to explore the heritage designation process and allow the land severance for the Ancaster property to move forward within the application process.

We value our partnership with the City and the great strides that have been taken to work together on a number of projects referenced throughout this letter, however this type of direction and approach could set us back.

Sincerely,



Todd White
Chair of the Board
Hamilton-Wentworth District School Board



Todd White
Chair of the Board
Hamilton-Wentworth District School Board
20 Education Court, P.O. Box 2558
Hamilton, ON L8N 3L1
905-527-5092 ext. 2279

November 28, 2018

Hamilton Municipal Heritage Committee
City of Hamilton
71 Main Street West
Hamilton, ON L8P 4Y5

Attention: Ms. Loren Kolar, Legislative Coordinator

Dear Ms. Kolar:

Re: Ancaster High School – 374 Jerseyville Road West, Ancaster

We write in response to the motion by Councillor Lloyd Ferguson (moved by Councillor Collins on his behalf) at the July 18, 2018 Planning Committee and carried at the August 14, 2018 meeting, directing the Municipal Heritage Committee to commence the process to designate all 43 acres of the Ancaster High School property under the *Ontario Heritage Act*.

The comments on the record and in the minutes of the Planning Committee show that the motivation for pursuing such a designation is aimed at preventing the Hamilton-Wentworth District School Board (“HWDSB”) from considering options on how to divest itself of a portion of the site that is not required to achieve its mandate under the *Education Act*.

We understand that the role and function of a designation under the *Ontario Heritage Act* is to recognize lands and structures of a significantly historical and cultural nature to the City of Hamilton and its community. It is not a land-use planning tool that takes the place of a zoning bylaw, a site plan agreement, severance conditions or a myriad of other land-use planning tools available to a municipality. Instead, the motion at the Planning Committee can be seen as an abuse of process to discriminate against the HWDSB in its efforts to deal with its own property and to realize revenue. The subtext to the motion is clear: if the City cannot afford to acquire the lands, then no one will acquire the lands.

We note with reference, two articles in *The Hamilton Spectator* on August 15, 2018: the first reported on the Planning Committee motion for Ancaster High and the second was a decision by the Municipal Heritage Committee to reject a designation for the Stoney Creek United Church, which has deep historical and cultural significance to the City of Hamilton and the Methodist and United Church Congregations. The basis of that decision appears to be that a designation would impact the ability of the congregation to sell the church on the open market.

HWDSB and the City of Hamilton have had a strong record of working together in this community for the benefit of the same stakeholders and have taken great pride in their ability to communicate and cooperate in serving this community within their respective mandates; however, if the City of Hamilton wishes to continue to utilize the heritage designation process as a land-use tool to deter or prevent development that it arbitrarily deems inappropriate, then HWDSB will have no other alternative but to seek full recourse under the law.

HWDSB

Todd White
Chair of the Board
Hamilton-Wentworth District School Board
20 Education Court, P.O. Box 2558
Hamilton, ON L8N 3L1
905-527-5092 ext. 2279

We are hopeful that the Municipal Heritage Committee will reconsider HWDSB's position on this matter and continue to involve HWDSB in any deliberations on this topic before making any recommendations to City Council or its committees.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd White", enclosed within a circular scribble.

Todd White
Chair of the Board
Hamilton-Wentworth District School Board

Cc: Municipal Heritage Committee