



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	June 18, 2024
SUBJECT/REPORT NO:	Notices of Objection to the Notice of Intention to Designate 84 York Boulevard, Hamilton, under Part IV of the <i>Ontario Heritage Act</i> (PED24077) (Ward 2)
WARD(S) AFFECTED:	Ward 2
PREPARED BY:	Emily Bent (905) 546-2424 Ext. 6663 Alissa Golden (905) 546-2423 Ext. 1202
SUBMITTED BY:	Anita Fabac Acting Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That the five Notices of Objection to the Notice of Intention to Designate 84 York Boulevard, Hamilton, under Part IV of the *Ontario Heritage Act*, attached as Appendices “A” through “E” to Report PED24077, be received;
- (b) That Council does not withdraw the Notice of Intention to Designate 84 York Boulevard, Hamilton, under Part IV of the *Ontario Heritage Act*;
- (c) That the draft By-law to designate 84 York Boulevard, Hamilton under Part IV of the *Ontario Heritage Act*, attached as Appendix “F” to Report PED24077, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council.

EXECUTIVE SUMMARY

This Report notifies Council of the five objections to the Notice of Intention to Designate the property at 84 York Boulevard, Hamilton, Philpott Church received in accordance with the *Ontario Heritage Act*, attached as Appendices “A” through “E” to Report PED24077. Under Section 29(6) of the *Ontario Heritage Act*, any objections must be

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considered by Council, who may choose whether or not to withdraw its Notice of Intention to Designate. The common themes in the reasons for objection relate to:

- The cost of repairs to the retain the historic building and resulting impacts to the financial feasibility of the Philpott Church congregation's relocation plan;
- Impacts to construction of the proposed housing development at 84 York Boulevard; and,
- Challenging certain criteria for designation, specifically criteria 5, 7, 8 and 9 from the Ontario Regulation 9/06 evaluation.

Given that the Ontario Land Tribunal does not hear matters on costs of physical maintenance and repairs, that staff support a proposed housing redevelopment that incorporates the existing church and that the property meets sufficient criteria to warrant designation regardless of the specific disputed criteria, staff recommend that Council receive the objection notices and reaffirm its decision to designate 84 York Boulevard, Hamilton, by enacting the draft By-law to designate the property, attached as Appendix "F" to Report PED24077.

Alternatives for Consideration – See Page 10

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: Under Section 29(5) of the *Ontario Heritage Act*, a person who objects to a proposed designation shall, within 30 days after the date of publication of the notice of intention, serve on the clerk of the municipality a notice of objection setting out the reason for the objection and all relevant facts.

Under Section 29(6) of the Act, Council shall consider the objection and make a decision whether or not to withdraw the notice of intention to designate the property within 90 days after the end of the 30-day objection period. Section 29(7) requires that a notice of withdrawal be issued should Council decide to withdraw the notice of intention to designate the property in response to the objection. Where Council decides to proceed with the designation, Section 29(8) of the Act requires Council to pass the designating by-law within 120 days from the date of the notice of intention to designate. Once a designation by-law has been passed, any further objection would be heard before the Ontario Land Tribunal.

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Designation under Part IV of the *Ontario Heritage Act* allows municipalities to recognize a property's cultural heritage value or interest, and to conserve and manage the property through the Heritage Permit process enabled under Sections 33 (alterations) and 34 (demolition or removal) of the *Act*.

Where alterations to designated properties are contemplated, a property owner is required to apply for, obtain, and comply with a Heritage Permit, for any alteration that "is likely to affect the property's heritage attributes, as set out in the description of the property's heritage attributes in the by-law" (Sub-section 33(1)).

The City of Hamilton also provides financial incentive programs, including development charge exemption and heritage grants and loans, to assist in the adaptive re-use and continued conservation of properties once they are designated.

BACKGROUND

On March 27, 2024, Council directed staff to issue a Notice of Intention to Designate the significant heritage property located at 84 York Boulevard, Hamilton, known as Philpott Church, comprised of a brick church building originally constructed in two phases in 1901 and 1906, in accordance with Part IV of the *Ontario Heritage Act* (see Report PED24007, Hamilton Municipal Heritage Committee Report 23-009 and Planning Committee Report 24-003).

The Notice of Intention to Designate was published in the Hamilton Spectator on April 15, 2024, and served on the registered owners of 84 York Boulevard and the Ontario Heritage Trust. The legislated objection period ended on May 15, 2024. The City Clerk received five notices of objection to the Notice of Intention to Designate, including:

1. April 25, 2024 - Lead Pastor of Philpott Church, Russell Bartlett, attached as Appendix "A" to Report PED24077);
2. May 6, 2024 – Philpott Church Building Committee Chair, Malcolm Sears, attached as Appendix "B" to Report PED24077;
3. May 13, 2024 – Sullivan Mahoney Lawyers, counsel for the ownership group HC EC 89 Park LP, attached as Appendix "C" to Report PED24077;
4. May 14, 2024 – Heidi Wilton, attached as Appendix "D" to Report PED24077; and,
5. May 15, 2024 – Elder at Philpott Church, Tim Rosenberger, attached as Appendix "E" to Report PED24077.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The Recommendations of this Report are consistent with Provincial and Municipal legislation, policy and direction, including:

- Ensuring significant built heritage resources are conserved (Provincial Policy Statement, 2020, Sub-section 2.6.1);
- Designating properties of cultural heritage value under Part IV of the *Ontario Heritage Act* (Urban Hamilton Official Plan, Section B.3.4.2.3);
- Encouraging the rehabilitation, renovation and restoration of built heritage resources so that they remain in active use (Urban Hamilton Official Plan, Section B.3.4.1.5); and,
- Using all relevant provincial legislation and all related plans and strategies to appropriately manage, conserve and protect Hamilton’s cultural heritage resources (Urban Hamilton Official Plan, Section B.3.4.2.1(i)).

Downtown Hamilton Secondary Plan

As summarized in the Formal Consultation Document for FC-22-110 (see Appendix “J” to Report PED24007), the development proposal for the subject property does not require an Urban Hamilton Official Plan Amendment or Zoning By-law Amendment, but requires a Holding Provision Removal for H17, H19 and H20, a Site Plan Control application and a Minor Variance application to facilitate the proposal. Holding Provision 17 requires the submission of a Visual Impact Assessment, while Holding Provisions 19 and 20 related to a Section 37 agreement of Community Benefits and the replacement of any rental housing proposed for removal.

Condition c) ii) of Holding Provision 17 requires that the owner demonstrate compliance with the policies of the Downtown Hamilton Secondary Plan by submitting the following studies for approval:

1. Shadow Impact Study;
2. Pedestrian Level Wind Study;
3. Visual Impact Assessment;
4. Traffic Impact Study; and,
5. Functional Servicing Report.

Further, as noted above in Volume 1 of the Urban Hamilton Official Plan, while residential intensification is encouraged in the built-up areas of the City, Policies B.2.4.1.4 b) - I), B.2.4.3.1 and B.2.4.3.2 direct residential intensification involving cultural heritage resources to be in accordance with Section B.3.4 – Cultural Heritage Resource

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Policies, which generally directs these resources to be conserved in conjunction with new development. Specifically, Section B.3.4.1.4 states that:

“Ensure that all new development, site alterations, building alterations, and additions are contextually appropriate and maintain the integrity of all on-site or adjacent cultural heritage resources.”

The Downtown Hamilton Secondary Plan Cultural Heritage Resources Policies also promote conservation of cultural heritage resources. Policy B.6.1.11.1 d) indicates that conserving existing on-site heritage resources “shall be a priority in all development.” Further, Policy B.6.1.11.1 e) indicates that “the City may require that as part of development proposals that cultural heritage resources be retained on-site and incorporated” and that “retention and protection of cultural heritage resources on lands subject to development may be a requirement as a condition of development approval.”

Downtown Entertainment Precinct

The Downtown Entertainment Precinct Master Agreement is an agreement between the City of Hamilton and the Hamilton Urban Precinct Entertainment Group which allows for a private sector-led redevelopment of the identified Precinct through investment in several city entertainment assets, including FirstOntario Centre. Generally, the Master Agreement speaks to improvements to specific entertainment assets, public realm improvements and the relocation of the Salvation Army, which is located immediately west of the subject lands. FirstOntario Centre is located across the street from the subject lands and the Salvation Army.

The Hamilton Urban Precinct Entertainment Group submitted a letter of support for the demolition of the Philpott Memorial Church and redevelopment of 84 York Boulevard, which was received by Planning Committee on February 23, 2024, when the recommendation to designate was originally considered.

RELEVANT CONSULTATION

External

- Agent for HC EC 89 Park LP - Armstrong Planning.

Internal

- Ward 2 Councillor Kroetsch;
- Hamilton Municipal Heritage Committee; and,

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- Corporate Services Department, Legal and Risk Management Division, Legal Services.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The intent of municipal designation, under Part IV of the *Ontario Heritage Act*, is to enable a process for the management and conservation of significant cultural heritage resources. Once a property is designated, the municipality can manage change to a property through the Heritage Permit process to ensure that the significant features of the property are maintained. Protected heritage properties that are designated under the *Ontario Heritage Act* are required to be conserved through the *Planning Act* development application process, as the conservation of significant heritage property is a provincial interest.

The following is a summary of the five notices of objection to the designation of 84 York Boulevard. The common themes in the reasons for objection relate to the cost of repairs to retain the historic building and resulting impacts to the financial feasibility of the Philpott Church congregation's relocation plan, impacts to construction of the proposed housing development at 84 York Boulevard and, challenging certain criteria for designation, specifically criteria 5, 7, 8 and 9 from the Ontario Regulation 9/06 evaluation.

Objection #1 - Lead Pastor of Philpott Church, Russell Bartlett

On April 26, 2024, Lead Pastor of Philpott Church, Russell Bartlett provided notice of objection which states that the designation may jeopardize the purchase and sale agreement with the buyer of 84 York Boulevard, which has not yet closed. Mr. Bartlett believes that designation would create an obstacle to funding the construction of the church's proposed new location at 160 King Street East. The objection also states that engineering studies conducted over the last decade have indicated that the costs of maintaining the current building at 84 York Boulevard are too high for the congregation to afford, which he believes is not reasonable to pass along to a developer. Lastly, the objection suggests that the staff evaluation of the property (as noted in Report PED24007) fails to acknowledge the congregation's active work in the downtown Hamilton community, arguing that the designation threatens the legacy of the Christian Workers' movement that the congregation is currently fulfilling and intends to continue in their new location. The full notice of objection is attached as Appendix "A" to Report PED24077.

Objection #2 - Philpott Church's Building Committee Chair, Malcolm Sears

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On May 5, 2024, Philpott Church's Building Committee Chair, Malcolm Sears, provided notice of objection that acknowledges that the property does meet some criteria for designation, but disputes other criteria for designation, including criteria 5, 7, 8 and 9 of Ontario Regulation 9/06. Mr. Sears believes that the more appropriate way to memorialize the legacy of Peter Philpott is by expanding the work he started 130 years ago, which would be facilitated by the congregation relocating and rehabilitating their new property, as opposed to preserving the building at 84 York Boulevard. The objection cites the Cultural Heritage Impact Assessment conducted by MHBC Planning (attached as Appendix "F" to Report PED24077), which spoke to the feasibility of retention and integration of the building into a new development, as well as previous technical studies regarding the condition of the building. The objection also speaks to the implications for Philpott Church, noting that the sale of 84 York Boulevard to the developer has not yet closed and that the proposed designation has caused the developer to challenge the conditions of sale and devalue the property, threatening the financial viability of the church's relocation to 160 King Street East and thereby threatening the continued ministry of Philpott Church. Lastly, the objection argues that retaining the existing building at 84 York Boulevard would inhibit the redevelopment of this property at the centre of the city which stands to contribute much needed housing. The full notice of objection is attached as Appendix "B" to Report PED24077.

Objection #3 - Sullivan Mahoney Lawyers, counsel representing HC EC 89 Park LP

On May 13, 2024, Sullivan Mahoney Lawyers, counsel representing HC EC 89 Park LP, submitted a notice of objection with reasons for objection related to: heritage integrity, contextual value, the proposed heritage attributes, impediments to repairing the façade and the feasibility of long-term conservation. The objection suggests that it is not reasonable to designate a building for long-term retention and conservation when a structural engineering study concluded that the stone veneer was failing and required repair or replacement. Further, the study indicated that while the structure is sound, there is not sufficient useable brick within the existing building to feasibly repair the facades. The objection also disputes the contextual value of the property in relation to criteria 7, 8 and 9 of Ontario Regulation 9/06 and the related contextual heritage attributes in the Statement of Cultural Heritage Value or Interest. The full notice of objection is attached as Appendix "C" to Report PED24077.

Objection #4 – Heidi Wilton

On May 14, 2024, Heidi Wilton, provided notice of objection that questions the City's pursuit of designation of a building that is not believed to be suitable for delivering essential housing. The objection states that the cultural heritage value is not compelling enough to retain the existing structure at the loss of functional housing and asks the city

to comment on other tangible outcomes addressing the housing crisis should designation of 84 York Boulevard move forward. The full notice of objection is attached as Appendix “D” to Report PED24077.

Objection #5 - Tim Rosenberger, member of Philpott Memorial Church

On May 15, 2024, Tim Rosenberger, member of Philpott Memorial Church provided formal notice of objection, with the caveat that his comments do not reflect the views of the Elders, trustees, the committee that oversees Philpott’s facilities, or the congregation. The objection suggests that no building can reflect an appropriate or effective representation of Peter Philpott or the Christian Workers’ movement, suggesting instead that this legacy remains in the active congregation and in the church’s archival records. The objection also speaks to the exterior and interior changes to the building, including the stone veneer, which Mr. Rosenberger believes have altered the building from its original design associated with architect Charles Mills and are not associated with Peter Philpott. The objector believes that designation will encumber redevelopment of the site and financially impact the construction of the congregation’s new facility. The full notice of objection is attached as Appendix “E” to Report PED24077.

Staff Comments on Reasons for Objection

The objections fall into two general groups: those disputing the staff assessment of the cultural heritage value of the building and secondly that the designation will have an adverse effect on the congregation’s future plans and as a result of concerns associated with the viability and redevelopment of the subject lands.

1. Objections Disputing Cultural Heritage Value

Staff determined that 84 York Boulevard meets eight of the nine criteria contained in Ontario Regulation 9/06, as amended by Ontario Regulation 569/22, and is therefore worthy of designation under Part IV of the *Ontario Heritage Act* (see Report PED24007). A property is only required to meet two of the nine provincial criteria to be considered worthy of designation.

While the notices of objection challenge a number of provincial criteria for designation (including criteria 5, 7, 8 and 9), they do not provide any documentation to support these claims and none of the objections submitted contained opinions provided by a qualified heritage professional. Staff note that, if after further review and analysis the disputed criteria were removed from the Ontario Regulation 9/06 evaluation, the property would still meet four of the provincial criteria for designation (Criteria 1, 2, 4 and 6), and would therefore still exceed the threshold required for designation.

2. Objections Related to Impacts on the Congregation and Redevelopment of the Site, and the Cost of Repairs to Retain the Existing Building

Should Council reaffirm its decision to designate the properties and enact the designation by-law, any future appeals of the designation by-law would be heard by the Ontario Land Tribunal. The Ontario Land Tribunal considers a number of matters, such as the proposed designation of a property as having cultural heritage value or interest, however, according to the Ontario Land Tribunal Appeal Guide:

“The OLT does not hear matters on costs of physical maintenance, repairs, or any proposed work related to the actual condition of the property (or structure), as these are outside the scope of the evaluation of cultural heritage value or interest.”

Therefore, any concerns regarding the cost of physical repairs to the building are not relevant to the objection of whether the property is worthy of designation under the *Ontario Heritage Act*. However, Council may consider these matters in the broader context of Council’s vision for the Downtown, in particular, “it will combine the best of our heritage with new concepts and designs” in balancing adaptive reuse, of all or elements of heritage buildings, with new development opportunities. Further, it is important to note that designated properties are eligible for financial incentives, such as development charge exemption for adaptive reuse within the building envelope, as well as grant and loan programs. The Hamilton Heritage Property Grant Program is intended to provide financial assistance in the form of a grant for structural / stability work required to: conserve and restore heritage features of properties used for commercial, institutional, industrial, or multi-residential purposes; the conservation and restoration of heritage features of properties; and for heritage studies/ reports/ assessments for properties that are designated under the *Ontario Heritage Act*.

Staff note that while the Ontario Land Tribunal does not hear matters related to repairs or maintenance, Council may wish to consider the concerns raised in the objections regarding the condition of the building, the potential cost associated with the building’s repair should it be designated, and the impact that may have on the financial viability of Philpott Church’s relocation to 160 King Street East. As noted in the objections, HC EC 89 Park LP have indicated to Philpott Church that they may reduce the value of the purchase and sale agreement of 84 York Boulevard due to the perceived negative impacts of designation.

Further, staff are willing to continue discussions to find a revised development concept for the site that would balance both a dense housing development and the retention of this significant heritage building. Staff’s recommendations to designate considered the

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Cultural Heritage Impact Assessment and Condition Assessment provided by the proponent for redevelopment, which were included as Appendices “F” and “G” to Report PED24007. In Report PED24007, staff noted that “neither the Condition Assessment or the Cultural Heritage Impact Assessment have discussed the feasibility of sourcing salvaged historic bricks to match or using new bricks that closely match the characteristics of the original brick, to rebuild the exterior wythe to repair the building envelope.” As there were no investigations related to sourcing bricks to repair the building envelope, the ‘feasibility’ of this task has not been demonstrated. The scope of this rehabilitation work would be assessed, and alternatives evaluated as part of the Heritage Permit process, should the property be designated.

Further, the recommendation to retain the building and incorporate it into a new development was made in consideration of the ownership group HC EC 89 Park LP’s ability to adjust the proposal. However, based on the notices of objection, it appears as though Philpott Church is still the owner of the property, as the purchase and sale agreement has yet to be finalized. As the building is structurally sound, and the sale of a multi-unit housing development together with the City’s financial incentives for historic building repair would allow for the building to be retained and integrated into a new development, staff are of the opinion that the building should be retained.

Staff Recommendation

Therefore, staff recommend that the notices of objection to the designation of 84 York Boulevard, attached as Appendices “A” through “E” to Report PED24077, be received and that the draft by-law to designate the property, attached as Appendix “F” to Report PED24077, be enacted.

ALTERNATIVES FOR CONSIDERATION

Under Section 29 (6) of the *Ontario Heritage Act*, City Council may decide whether or not to withdraw the notice of intention to designate the property.

Notice of Withdrawal

By withdrawing the Notice of Intention to Designate, a Notice of Withdrawal would be served, and the municipality would be unable to provide long-term, legal protection to this significant cultural heritage resource (designation provides protection against inappropriate alterations and demolition) and would not fulfil the expectations established by existing municipal and provincial policies.

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Without designation, the property would not be eligible for the City's financial incentives for heritage properties, including development charge exemption and grant and loan programs.

Designation alone does not restrict the legal use of property, prohibit alterations and additions, restrict the sale of a property, and has not been demonstrated to affect its resale value. However, designation does allow the municipality to manage change to the heritage attributes of a property through the Heritage Permit process. Should Planning Committee recommend that Council withdraw the Notice of Intention to Designate, there is the option to revisit designation once the redeveloped plans are approved and completed provided that the existing building is retained and incorporated into the proposal.

Staff does not consider withdrawing the notice of intention to designate either of the properties to be an appropriate conservation alternative.

Negotiate a Heritage Easement or Covenant in Lieu of Designation

Planning Committee may recommend that Council pursue the negotiation of a heritage easement or covenant under Section 37 of the *Ontario Heritage Act* in lieu of passing a designation by-law to ensure that the existing building is maintained, and the cultural heritage attributes are protected while the required *Planning Act* applications for the site are processed. In the event that the proposed development does not move forward this would ensure that existing building and cultural heritage attributes remain. Given that the existing church building is structurally sound and that adaptive reuse and integration of the building into a new development is feasible, staff do not recommend this alternative. Staff are of the opinion that designation is the best way to ensure the heritage value and attributes are conserved. Designation would also allow further conversations around the adaptive reuse of the existing built heritage resource to continue.

Should this alternative be considered, staff propose the following recommendations for approval:

- “(a) That the City enter into a heritage easement or covenant under Section 37(1) of the *Ontario Heritage Act* with the owner of 84 York Boulevard, Hamilton, Philpott Memorial Church, to be registered on title, to conserve the cultural heritage value and heritage attributes of the property, as identified in the Cultural Heritage Impact Assessment attached as Appendix "F" to Report PED24007, including provisions for interim maintenance of the building prior to demolition, salvaging and safe storage of the identified heritage attributes and integration of the attributes and commemoration and interpretation into a new

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development on the property, to be approved through the Site Plan Control application process under the *Planning Act*; and,

- (b) That the Mayor and City Clerk be authorized and directed to execute the heritage conservation easement agreement or covenant, as outlined in Recommendation (a) of Report PED24077, in a form satisfactory to the City Solicitor.”

Analysis of Alternative for Consideration: Negotiate a Heritage Easement or Covenant in Lieu of Designation

The submission package provided by the agent on November 13, 2023, includes a memo titled “Heritage Easement and Protection of Attributes”, attached as Appendix “H” to Report PED24007. The memo outlines an alternative to designation: the negotiation of a heritage easement agreement or covenant, which would provide binding legal protection of the property to ensure that the heritage attributes identified in the Cultural Heritage Impact Assessment are salvaged and reintegrated into a new development as part of a future Site Plan Control application process. This agreement could also require maintenance of the existing building and ongoing protection of the heritage attributes until such time that final Site Plan Control approval is granted. Given staff’s conclusions, and the belief that the existing church building can be retained, staff do not support the heritage easement agreement or covenant approach.

The following provides an analysis of the heritage easement agreement or covenant alternative. A heritage easement or covenant under Section 37 of the *Ontario Heritage Act* is a voluntary legal agreement between a property owner and the City of Hamilton that protects significant heritage features of a property, which in this case would be the heritage attributes identified for salvage and commemoration within the proposed development on the subject property. The terms of the easement or covenant would be registered on title and apply to the current property and all future owners of the property. However, the easement or covenant could be removed following completion of the project. An example of this type of heritage easement was submitted by the agent for staff’s consideration and is included in the memo attached as Appendix “H” to Report PED24007.

Should the alternative to negotiate a heritage easement or covenant be considered, further collaboration would be required between the City and the owner to identify the items of heritage value or interest and conditions of the agreement. While an initial support letter from Philpott Church’s Board of Directors has been provided regarding redevelopment of the site, attached as Appendix “I” to Report PED24007, staff recommend that the applicant consult the congregation regarding their proposed

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Commemoration Plan for any heritage attributes salvaged for reuse within the proposed new development.

APPENDICES AND SCHEDULES ATTACHED

- Appendix “A” to Report PED24077 – Notice of Objection from Russell Bartlett, Lead Pastor, Philpott Church, dated April 25, 2024
- Appendix “B” to Report PED24077 – Notice of Objection from Malcolm Sears, Chair, Building Committee, Philpott Church, dated May 6, 2024
- Appendix “C” to Report PED24077 – Notice of Objection from Sullivan Mahoney Lawyers representing HC EC 89 Park LP, dated May 13, 2024
- Appendix “D” to Report PED24077 – Notice of Objection from Heidi Wilton, dated May 14, 2024
- Appendix “E” to Report PED24077 – Notice of Objection from Tim Rosenberger, dated May 15, 2024
- Appendix “F” to Report PED24077 – Draft By-law to Designate 84 York Boulevard, Hamilton under Part IV of the *Ontario Heritage Act*

EB/AG/sd