

Committee of the Whole (1) Report

DATE: Tuesday, December 3, 2024

WARD: 1

TITLE: RESPONSE TO NOTICE OF OBJECTION TO THE NOTICE OF INTENT TO DESIGNATE PROPERTY LOCATED AT 12000 PINE VALLEY DRIVE UNDER PART IV OF THE ONTARIO HERITAGE ACT

FROM:

Haiqing Xu, Deputy City Manager, Planning, Growth Management and Housing Delivery

ACTION: DECISION

Purpose

To provide Council with information, analysis, and options regarding the Notice of Objection to the City's Notice of Intent to Designate (NOID), and to recommend to Council not to withdraw the Notice of Intent to Designate the subject property municipally known as 12000 Pine Valley Drive (as shown on Attachments 1 and 2), but to proceed with enacting the By-law to designate the McMurchy/Bryson House at 12000 Pine Valley Drive, Vaughan, under Part IV of the *Ontario Heritage Act*.

Report Highlights

- The Owner(s) served a Notice of Objection to the Notice of Intent to Designate 12000 Pine Valley Drive on October 18, 2024;
- Staff reviewed the objection, and provide response and options herewith;
- Staff recommend the city proceed to designate 12000 Pine Valley Drive as amended and approve the Designation By-law under Part IV of the *Ontario Heritage Act*.

Recommendations

1. THAT the Notice of Objection to the Notice of Intent to Designate 12000 Pine Valley Drive under Part IV of the *Ontario Heritage Act* (as shown on Attachment 3) be received;

2. THAT Council consider the Notice of Objection dated October 18, 2024, and affirm its decision of June 25, 2024, stating its intention to designate the subject property at 12000 Pine Valley Drive under Part IV of the *Ontario Heritage Act*, and
3. THAT the By-law to designate 12000 Pine Valley Drive under Part IV of the *Ontario Heritage Act*, which will be prepared in a form satisfactory to the city, be approved and enacted by Council.

Background

Cultural Heritage staff submitted a report proposing the Designation under Part IV of the *Ontario Heritage Act* of the subject property at 12000 Pine Valley Drive. This report was reviewed by the Heritage Vaughan Committee, who submitted the recommendation to Council on Wednesday May 29, 2024. This was reviewed at Committee of the Whole (2) on June 18, 2024, and Council affirmed its Intent to Designate by publishing the intent on September 18, 2024.

An Objection to Designation was received on October 18, 2024, via email and courier, from Natalie Ast of Overland LLP, on behalf of the owner (as shown on Attachment 3). Cultural Heritage staff proceeded to open communications with the property owner's lawyer on October 21, 2024, and due to a very tight turnaround for staff reporting, Cultural Heritage staff was unsuccessful in their attempt to have the objection withdrawn.

Previous Reports/Authority

[Heritage Vaughan Committee](#) – May 29, 2024.

[Committee of the Whole \(2\) Report No. 25 Item 41](#) – June 18, 2024.

[Council Meeting](#) – June 25, 2024.

Analysis and Options

The Letter of Objection (see Attachment 3) states that the owner objects to the designation, due to timing, no mention of Highway 413, and the designation being overly broad. Staff had a conversation with the owner's lawyer Monday, October 21, 2024, following receipt of the objection letter.

Timing

*As further discussed below, we note that the Heritage Vaughan Committee Report dated May 29, 2024 (the "**Heritage Report**") is **incorrect** that this matter must be dealt with by City Council by January 1, 2025. As a result of legislative amendments in effect since June 6, 2024, **City Council has until January 1, 2027**, to determine whether the Site should be designated under the Ontario Heritage Act.*

This fact should have been brought to the attention of Committee of the Whole or City Council by City Staff after June 6, 2024.

It is important to note that the Statement of Cultural Heritage Value or Interest was researched and completed by May 4, 2024, and was presented to the Heritage Vaughan Committee on May 29, 2024.

The report was finalized and presented prior to legislative changes coming into effect, and therefore the issue of timing is of no significance.

No Mention of Highway 413

The Notice of Intention and Heritage Report also neglect to mention the Site's position as being within an area of study by the Ministry of Transportation for the GTA West Transportation Corridor for the proposed Highway 413 highway and transit corridor. In the absence of any consideration or even mention of the future Highway 413, the Heritage Report and the Statement must be considered to be incomplete.

It is unclear whether Staff have neglected to study this important and urgent regional planning context, or if there is an intention to influence decisions with respect to Highway 413 by designating properties that fall along its path. It also begs the question as to whether there is any utility in designating this Site, due to its geographical position in the direct path of the proposed highway.

Cultural Heritage staff are tasked with maintaining the Municipal Heritage register and following the *Ontario Heritage Act*, amongst other municipal policies to protect cultural and built heritage resources. Due to the enacted timelines at the time by the provincial government for designation, staff reviewed the City's inventory and completed designation reports for properties that are strong candidates.

It is not within the scope of heritage staff's review to evaluate the value of the above heritage resource vs the value of Highway 413, as it is not one of the requirements under the OHA.

Designation is Overly Broad

From a general position, the Notice of Intention, Heritage Report and its attachments including the Statement appear to be a desktop study of the Site and Building. For example, some of the current photos included in Attachment 4 are sourced from Google Maps, while other photos are undated and unattributed. The bibliography included in the Statement only refers to six sources, including general sources for Georgian architecture in Ontario and two sources from the "Find a Grave" website, indicating a lack of more thorough and detailed research.

Further, the designation purports to apply to the entirety of the Site, which is a sizeable, active farm site, where the building itself occupies only a small portion of the land. Our client objects to the designation of the entire Site, as the farmlands surrounding the building do not exhibit design or physical value, historical or associative value, nor contextual value.

The Statement of Cultural Heritage Value and Interest for the subject property has been academically researched with primary, secondary and tertiary sources available to provide a well-rounded report to support designation. Supplementary sources such as Google maps (Attachment 5) allow staff the up-to-date view of properties in an accessible manner without trespassing onto private property. However, due to the applicant's objection of using google maps image, staff have gone on site and taken new pictures of the structure.

Staff met with the owner's lawyer and parties on October 21, 2024, and brought forward an amendment to the designation boundary line to focus on the building itself and not the entirety of the site. The mentioned parties did not accept this mediation alternative and have opted to move forward with the objection.

ALTERNATIVES FOR CONSIDERATION

Under Section 29 (6) of the *Ontario Heritage Act*, Council may decide whether or not to withdraw the Notice of Intent to Designate the property. A Notice of Intent to Designate was served onto the property owner(s) and was published on the City's website. By withdrawing the Notice of Intent to Designate, a Notice of Withdrawal would be served onto the owner(s) and a copy would be posted on the City's website.

1. Decline the Notice of Objection

By declining the objection, Council affirms the City's decision to designate the property and adopt the Designation By-law. The goal of designation is to ensure the city encourage the rehabilitation, renovation and restoration of built heritage resources to appropriately manage, conserve and protect Vaughan's cultural heritage.

- Cultural Heritage staff, have proposed a revised boundary line, specifically outlining the heritage attribute (as seen on Attachment 2) with the intention of marking the heritage attribute as what City solely want designated.
- The subject property continues to meet four (4) of the nine (9) possible criteria under O.Reg. 9/06 where a minimum of only two (2) criteria are required for designation candidacy.
- Protection of the property is consistent with both provincial, regional, and local policy which directs the City must conserve significant built heritage resources.
- Should the designation proceed, the Owner(s) may appeal the designating by-law to the Ontario Land Tribunal (OLT) once the designating by-law has been passed, notice has been provided, and by-law has been published in accordance with Section 29(8) of the *Ontario Heritage Act*. Through an appeal under section 29 of the OHA, there is an opportunity for heritage attributes to be modified during the appeal process, should the OLT deem it appropriate. The decision of the OLT is binding.

2. Withdraw the Notice of Intent to Designate

Council could choose this option if it is convinced by the Notice of Objection claim that the building does not possess the cultural heritage value identified by Cultural Heritage staff.

Should Council decide not to proceed with Designation, the building will be removed from the City's Municipal Heritage Register automatically, and all protection under S.27 of the *Ontario Heritage Act* will be lost.

Once removed, it cannot be re-listed on the Register again for five (5) years, i.e., January 1, 2032. It should be noted that:

- Designation does not restrict the legal use of property, prohibit alterations and additions, does not restrict the sale of a property, and has been demonstrated to increase its resale value.
- Designation ensures the City's ability to manage change to the heritage attributes of the subject property through the Heritage Permit process.
- Without designation, the subject property stands at risk of losing its cultural identity, and the heritage, environmental, informational, and aesthetic values.
- Designation makes the property eligible for any grants and other financial programs available municipally, provincially, and federally.

Staff does not consider withdrawing the Notice of Intention to Designate the subject property to be a responsible conservation measure. By withdrawing the Notice of Intention to Designate, the City would be unable to provide long-term management, conservation, and legal protection to this significant cultural heritage resource.

Financial Impact

There are no requirements for new funding associated with this report.

Operational Impact

There are no operational impacts associated with this report.

Broader Regional Impacts/Considerations

There are no broader Regional impacts or considerations.

Conclusion

Staff recommends that Council proceed with designation with the amended designation boundary lines to reflect the heritage resources present on the property (the building) as per Attachment 2.

Withdrawing the Notice of Intention to Designate would deprive the City of its capacity to enact long-term management, conservation, and legal safeguards for this significant cultural heritage asset. Moving forward with the designation would meet the policies of the Official Plan and the Priority and Goals of the 2022-2026 Strategic Goal, specifically that of City Building, Community Wellbeing and Environmental Sustainability.

Designation under the *Ontario Heritage Act* is essential for the City to effectively oversee proposed changes to the heritage attributes of the property through the Heritage Permit process. Without designation, this property is vulnerable to losing its cultural identity and the associated social, environmental, informational, and aesthetic values. Accumulation of loss of heritage properties will erode Vaughan's connections to its longstanding communities and history.

Considering that the property meets four (4) out of nine (9) criteria under O.Reg 9/06 of *Ontario Heritage Act* for Part IV designation, and revisions are proposed as presented to the landowner's representatives, Staff recommends that Council approve the designation of 12000 Pine Valley Drive under Part IV of the *Ontario Heritage Act*.

If Council adopts the recommendations in the staff report, a by-law designating the Property to be of cultural heritage value or interest would then be prepared to be passed by Council. Once passed, the designation by-law may be appealed to the Tribunal within 30 days of the by-law being published on the City's website. The notice of appeal would need to set out the objection to the by-law and the reasons in support of the objection.

After holding a hearing, the Tribunal may dismiss the appeal or allow the appeal in whole or in part and repeal the by-law or amend the by-law. Alternatively, if the appeal is allowed, the Tribunal may direct Council to repeal the by-law or amend the by-law in accordance with the Tribunal's order. The decision of the OLT is binding.

For more information, contact Shahrzad Davoudi-Strike, Senior Manager of Development Planning, ext. 8653.

Attachments

1. Location Map
2. Location Map – Detailed
3. Objection Letter
4. Statement of Cultural Heritage Value
5. Photographs of Property

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