

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 9, 2014

Item 2, Report No. 36, of the Committee the Whole, as amended, by the Council of the City of Vaughan on September 9, 2014, as follows:

By approving the recommendation contained in the report of the City Clerk, on behalf of the Heritage Vaughan Committee, dated September 2, 2014.

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HERITAGE VAUGHAN COMMITTEE REQUEST FOR COUNCIL TO ENDORSE PROPOSED CHANGES TO THE ONTARIO HERITAGE ACT

The Committee of the Whole recommends that consideration of this matter be deferred to the Council meeting of September 9, 2014.

Recommendation

The City Clerk, on behalf of the Heritage Vaughan Committee, forwards the following recommendation from its meeting of July 16, 2014, for consideration:

1. That Council endorse the proposed changes to the Ontario Heritage Act (OHA), contained in Community Heritage Ontario's CHOnews bulletin, titled "Ideas for Amending the Ontario Heritage Act", dated March 2014, as set out in Attachment 1; and
2. That should Council endorse Heritage Vaughan's recommendation, that the Ministry of Tourism, Culture and Sport be advised of Council's endorsement.

Contribution to Sustainability

The Heritage Vaughan Committee advises Council on matters relating to the City's architectural and historical heritage, as well as on any matters relating to the designation and conservation of properties of cultural heritage value or interest, as individual properties, or as heritage conservation districts, pursuant to the *Ontario Heritage Act*.

Economic Impact

N/A

Communications Plan

Council's decision in this matter will be communicated to the Heritage Vaughan Committee.

Purpose

The purpose of this report is to bring forward for Council's consideration Heritage Vaughan Committee's request from its meeting of July 16, 2014, that Council endorse the proposed changes to the Ontario Heritage Act (OHA), contained in Community Heritage Ontario's CHOnews bulletin, titled "Ideas for Amending the Ontario Heritage Act", dated March 2014.

Background - Analysis and Options

At its meeting of July 16, 2014, a Heritage Vaughan Committee member brought forward a news bulletin, dated March 2014, by Community Heritage Ontario (CHO), as 'New Business'. The news bulletin contained proposed ideas for amending the Ontario Heritage Act.

The Committee reviewed the news bulletin and recommended that the proposed changes to the Ontario Heritage Act (OHA), contained in Community Heritage Ontario's CHOnews bulletin, titled "Ideas for Amending the Ontario Heritage Act", dated March 2014 (Attachment 1), be forwarded to Council for their endorsement and that should Council endorse the proposed changes, that the Ministry of Tourism, Culture and Sport be advised of Council's endorsement.

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Relationship to Vaughan Vision 2020/Strategic Plan

This report is consistent with the strategic priorities set out in Vaughan Vision 2020, in particular:

SERVICE EXCELLENCE: Promote Community Safety, Health & Wellness.
Pursue Excellence in Service Delivery.

ORGANIZATIONAL EXCELLENCE: Ensure Financial Sustainability.

Regional Implications

N/A

Conclusion

The Heritage Vaughan Committee's recommendation is being forwarded for Council's consideration.

Attachments

1. Community Heritage Ontario's CHOnews bulletin, titled "Ideas for Amending the Ontario Heritage Act", dated March 2014

Report prepared by:

R. Magnifico
Assistant City Clerk

(A copy of the attachments referred to in the foregoing have been forwarded to each Member of Council and a copy thereof is also on file in the office of the City Clerk.)

COMMITTEE OF THE WHOLE – SEPTEMBER 2, 2014

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Report prepared by:

R. Magnifico
Assistant City Clerk

Respectfully submitted,

Jeffrey A. Abrams
City Clerk

At the CHO Annual General Meeting in Penetanguishene in June 2013, a delegate from Newmarket raised concerns about enforcement under the Ontario Heritage Act ("OHA") and asked CHO to set up a subcommittee to review the situation and propose changes.

The OHA contains penalties if a person (i) furnishes false information; (ii) fails to comply with any order, direction or other requirements made under the OHA; or (iii) contravenes the OHA. There are penalties if a person (i) carries out alterations that are likely to affect the property's heritage attributes; or (ii) demolishes or removes a building or structure on a designated property. It does not contain any enforcement procedures. Enforcement of any violation of the OHA is in accordance with the provisions of the Provincial Offences Act.

The OHA does not contain any penalties with respect to an all too common problem known as "demolition by neglect." There is a provision giving municipalities the authority to pass bylaws prescribing minimum standards for the maintenance of the heritage attributes of designated properties. Penalties could result from contraventions of such bylaws. This delegates the problem of neglect to individual municipalities. There is no province wide standard of maintenance for privately owned designated properties.

There is an additional problem because the Provincial Offences Act contains limitation periods. For example, section 3(3) states: "The offence notice ... shall be served personally upon the person charged within thirty days after the alleged offence occurred." Section 76(1) states: "A proceeding shall not be commenced ... after six months after the date on which the offence was, or is alleged to have been, committed." So if a property owner demolishes a heritage building but the municipal bylaw enforcement officer does not serve the offence notice within thirty days after the demolition took place; or if a proceeding is not started within a six month period after the demolition took place, then any proceeding against the property owner is statute barred and there is a complete defence against prosecution. There are undoubtedly many instances where the municipal bylaw enforcement officer does not know about alleged offences until after the limitation period has expired.

If you compare the OHA with the Residential Tenancies Act ("RTA") in terms of standards and enforcement, there is a striking difference. The RTA provides for provincial inspectors and for a Landlord and Tenant Board to which a tenant is able to bring concerns if a residential accommodation is not up to standards. The regulations of the RTA specify minimum standards for the maintenance of residential accommodation. None of these provisions are in the OHA, so the enforcement of standards for heritage properties is left to municipalities. Not only are there problems with inconsistency and too few bylaw enforcement officers, but there are no common standards across the province for privately owned heritage properties.

The OHA does contain provisions dealing with heritage standards and guidelines for properties that (i) are owned by the Crown in right of Ontario or owned by certain prescribed public bodies; and (ii) have cultural heritage value or interest. These prescribed public bodies are the Agricultural Research Institute of Ontario, Hydro One Inc., Liquor Control Board of Ontario, McMichael Canadian Art Collection, Metrolinx, The Niagara Parks Commission, Ontario Heritage Trust, Ontario Infrastructure and Lands Corporation, Ontario Lottery and Gaming Corporation, Ontario Power Generation Inc., Royal Botanical Gardens, Toronto Area Transit Operating Authority, and the St. Lawrence Parks Commission. (Municipalities and conservation authorities are conspicuously absent from this list.) If there are standards and guidelines for these provincial properties, why not have a parallel list for privately owned heritage properties?

What should be done? The following is a proposal for your consideration (and your comments are welcome):

1. Amend the OHA to add province wide standards and guidelines for privately owned designated properties. City of Brampton Bylaw 154-2012 is instructive in this regard. It amends the property standards minimum maintenance bylaw to specifically deal with heritage properties. This bylaw includes requirements to secure vacant heritage properties to protect them "against the risk of fire, storm, neglect, intentional damage or damage by other causes by effectively preventing the entrance of the elements, unauthorized persons or the infestation of pests"

There is a list of requirements, including boarding windows and doors. In addition to dealing with vacant heritage properties, this bylaw includes requirements to "maintain, preserve and protect the Heritage Attributes to maintain the heritage character, visual and structural heritage integrity of the building or structure and maintain the property in a manner that will ensure the on-going protection and preservation of the existing Heritage Attributes." Lastly, the bylaw contains guidelines for the repair or replacement of Heritage Attributes.

2. Amend the OHA to include penalties for demolition by neglect, namely for contraventions of the proposed standards and guidelines for privately owned designated properties. In addition to penalties, there should be provisions for the issuance of work orders to correct any contraventions.

3. Amend the OHA so there is an override of the limitation periods in the Provincial Offences Act. At a minimum, the timing for the start of the limitation periods should not be until a provincial offences officer is aware of a violation involving an alteration or a demolition. (The Provincial Offences Act definition of a "provincial offences officer" includes a police officer and a municipal bylaw enforcement officer.) In the case of demolition by neglect, deterioration would often be gradual without necessarily a significant trigger event (such as a roof caving in or intentionally leaving doors unlocked to permit access by vandals), so pinpointing the exact date of the occurrence of an alleged offence might be impossible. As long as a property is designated, a limitation period should not apply to a violation for neglect.

4. Amend the OHA to provide for the appointment of provincial inspection officers, similar to the provisions in the RTA, who would be provincial offences officers and have the ability to issue work orders and to serve offence notices.

Before the CHO Board finalizes a proposal for these changes to the OHA and submits a proposal to the Ministry of Tourism, Culture and Sport, we are interested in your comments and suggestions. It is important to take the time to consider these issues.

Paul R. King is immediate past president and a member of the CHO/PCO Board of Directors.