



Staff Report

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Report To:	Planning and Development Committee		
Date of Meeting:	June 28, 2021	Report Number:	PDS-040-21
Submitted By:	Ryan Windle, Director of Planning and Development Services		
Reviewed By:	Andrew C. Allison, CAO	Resolution#:	
File Number:	PLN34.5.2.13; HPA2021-001	By-law Number:	
Report Subject:	Request to Repeal Designation By-law; 4478 Highway 35/115		

Recommendations:

1. That Report PDS-040-21 be received;
2. That Council refuse the application to repeal the heritage designation By-law 97-17 for the property located at 4478 Highway 35/115;
3. That a copy of Council's resolution be sent to the Ministry of Heritage, Sport, Tourism, and Culture Industries, the Association of Municipalities of Ontario, the Insurance Bureau of Canada, and Ontario Heritage Trust; and
4. That all interested parties listed in Report PDS-040-21 and any delegations be advised of Council's decision.

Report Overview

The Planning and Development Services Department received a request from the property owner of 4478 Highway 35/115 requesting to repeal the heritage designation By-law 97-17 on their property as a result of insurance premium costs attributed to the designation, and implications for resale value. In accordance with the provisions of the *Ontario Heritage Act*, the Municipality has 90 days to make a decision on this request.

The Clarington Heritage Committee (CHC) was consulted on the request, and the property owner was invited to attend the June 15 CHC meeting to speak to the request to repeal the heritage designation. Planning and Development Services staff has also reached out to different sources to better understand the insurance matters.

Notwithstanding the owner's rationale for repeal, property devaluation and insurance issues, the owner has not provided any challenges to the cultural heritage value of the property.

Planning and Development Services staff and the CHC recommend Council refuse the owner's request to repeal the designation on the property as the attributes that account for the property's cultural heritage value or interest as detailed in the designation By-law continue to warrant designation under the *Ontario Heritage Act* and the property remains significant to Clarington's cultural heritage fabric.

1. Background

Ontario Heritage Act Process

- 1.1 The Planning and Development Services Department received a request from the owner of the property at 4478 Highway 35/115 to repeal the heritage designation By-law 97-17 as a result of insurance premiums related premium costs attributed to the designation, and the potential affect of the heritage designation on the potential resale value of the property.
- 1.2 The subject property is designated under Part IV of the *Ontario Heritage Act (OHA)*. In accordance with Subsection 32(1) of the OHA, an owner may apply to Council to repeal a designating by-law. Council has up to 90 days to render a decision on the application.
- 1.3 Specifically, the OHA provides for a Decision of Council in Subsection 32(2) stating after consultation with its municipal heritage committee, where one is established, the Council shall consider an application under subsection (1) and within 90 days of receipt thereof shall (a) refuse the application and cause notice of its decision to be given to the owner of the property and the Trust; or (b) consent to the application, and cause notice of the intention to be served on the owner and the Trust.
- 1.4 The OHA does provide for an extension of the 90-day timeframe to make a decision on the application where it is agreed upon by the applicant and Council.

- 1.5 The [Ontario Heritage Toolkit for Designating Heritage Properties under the OHA](#) addresses situations in which the owner has applied to repeal a designation by-law. As properties are designated to protect and conserve them for future generations, the repeal of a designation by-law is a serious matter that should be given careful consideration.

Bill 108 Changes to the Ontario Heritage Act

- 1.6 The Bill 108 changes to the OHA, and accompanying regulations, are scheduled to be proclaimed and come into effect on July 1, 2021. As this application was submitted prior to July 1, 2021, the transition provisions provide for the request to be considered under the existing process established under Subsection 32 of the OHA, as noted above. However, as of June 1, 2021 the Conservation Review Board (CRB) which traditionally heard objections for OHA matters has been incorporated into the newly created Ontario Land Tribunal (OLT), along with the Local Planning Appeal Tribunal. As such, any objections related to on-going current applications under the OHA would be heard by the Ontario Land Tribunal. However, it is Staffs understanding that any appeal of current in process applications would follow the existing process whereby the OLT (acting as the CRB) would provide a non-binding recommendation to local Council.

Designation and History of 4478 Highway 35/115

- 1.7 The current owner of the property requested the property be designated in 1997. The process to determine the cultural heritage value and interest of the property was undertaken to ensure it met the requirements for designation under the OHA. At that time, the CHC was known as the LACAC (Local Architectural Conservation Advisory Committee). It was LACAC's practice to work closely with the property owners, undertaking consultation beyond what was required by the OHA at the time.
- 1.8 By-law 97-17 (**Attachment 2**) describes the heritage home at 4478 Highway 35/115 as an Italianate house dating to 1880, built for G.M. Long, who ran a General Store in Orono and served on the Orono Town Council. The Italianate composition is characterized by its low-pitched hipped roof, wide overhanging eaves, buff-brick hood mouldings, and heavily carved wooden brackets. The By-law identifies several exterior and interior architectural features as attributes that contribute to the property's cultural heritage value or interest in support of the designation.
- 1.9 In 2008, the property owners approached the Municipality about issues they were experiencing in insuring the home. After undertaking research and providing the insurance companies additional information through correspondence with the owner, staff understands a policy was secured that met the property owner's needs. Planning and Development Services files indicate it was determined at that time that the age of the home, rather than the designation, was the factor in determining the cost of the insurance.

- 1.10 The owner has not provided any information disputing the Reasons for Designation of the cultural heritage value of the property.



Figure 1: Photo of 4478 Highway 35/115

2. Discussion

Ontario Heritage Act

- 2.1 Subsection 32(1) of the OHA provides that an owner of property designated under Part IV may apply to the Council of the municipality to repeal the By-law or part thereof. Repeal of the designation, or a portion of the designation By-law, would not be in keeping with the overall conservation intent of the Ontario Heritage Act as there have been no alterations or other changes to the property that have diminished or otherwise impaired the cultural heritage value of the property or the attributes specified in the Reasons for Designation. The subject property meets the criteria of *Ontario Regulation 9/06 – Criteria for Determining Cultural Heritage Value or Interest*.

Insuring Heritage Homes

- 2.2 The property owner contacted Planning and Development Services staff in 2020 to inquire about removing the heritage designation from their home, again due to rising insurance costs and a struggle to secure a suitable policy.

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- 2.3 Staff provided information to the homeowner regarding insuring heritage homes available from the Ministry of Heritage, Sport, Tourism and Cultural Industries and the Insurance Bureau of Canada to clarify the insurance requirements for designated dwellings.
- 2.4 Information from the Ministry (**Attachment 3**) indicates the heritage designation does not require the homeowner to restore the building to its original appearance. It further states the premiums should not go up as a result of a heritage designation; and identifies other reasons that may cause an increase in insurance premiums for older buildings where there is a high level of risk (e.g. out-dated wiring, old heating systems). It is noted some companies do not insure buildings over a certain age whether the building is designated or not.
- 2.5 The [Insurance Bureau of Canada's website](#) acknowledges owning a heritage property is an investment in Canada's history and community stewardship, and provides tips for insuring a heritage or designated property which include:
- Shop around: Find an insurer to who understands the specific risks associated with a heritage property;
 - Consider the claims settlement process and the deductible options for the property;
 - Reduce risk: Take steps to protect the property and reduce the chance of making a claim. The cost of insurance is directly related to risk; by reducing risk, you may be able to lower your premiums;
 - Keep accurate records: Current maintenance and renovation records help insurers make informed decisions;
 - Document unique characteristics: Record and photograph
- 2.6 The Insurance Bureau of Canada also provides information that would apply in the event a heritage property is damaged. The insurer determines the replacement cost of the home (i.e. what it would cost to rebuild). Factors that may affect replacement costs are identified and include Planning approvals, by-laws, distinctive features and superior craftsmanship associated with heritage homes, as well as potential contaminants that may be in historic building materials. It is important the homeowner understands property insurance options and knows what they want their coverage to do.
- 2.7 In May 2021, Planning and Development Services staff provided a letter to the property owner to send to insurance companies to clarify that in the event of the loss of a listed or designated building, the owner is not required to rebuild or replicate the original building. While insurance companies may provide insurance to replace homes in "like kind and quality", this is not enforced through the *Ontario Heritage Act*, and not a requirement of the Municipality.

- 2.8 The owner of 4478 Highway 35/115 advised staff they provided the letter to their insurance company. However, they have not yet been able to secure a suitable quote to renew their policy once it expires in September. As such, they have opted to pursue the request to repeal the designation and submitted a formal request on May 5, 2021.

Property Value

- 2.9 The owner has indicated that real estate agents have informed them that due to the designation the resale value of the property could be adversely affected. However, various studies have shown that the resale value of properties is not adversely impacted by heritage designation. A study of almost 3,000 properties in 24 Ontario communities, published in 2000, by Dr. Robert Shipley, concluded that “heritage designation could not be shown to have a negative impact [on property value]”, and heritage properties “generally perform well in the market, with 74% doing average or better than average”.
- 2.9 There has been no decrease in the subject property’s value since designation in 1997. In fact, Municipal Property Assessment Corporation (MPAC) records, indicate that the property’s value has increased as the same rate as surrounding properties.

Clarington Heritage Committee

- 2.10 In accordance with the provisions of the OHA, the CHC was consulted on the subject repeal request. Staff advised the CHC of the receipt of the request at its May 2021 meeting as part of new business. The matter was considered at the CHC’s June 15, 2021 meeting. The property owner attended on June 15 to speak to their application.
- 2.11 The property owner explained to the CHC the reasons for their request to de-designate their home due to challenges they have encountered securing reasonable insurance coverage. This has been the case despite contacting several insurance companies and providing them with the information about insuring heritage homes provided by staff. Specifically, the CHC heard quotes for policies would increase substantially once the home was identified as heritage, and in some cases, the property owner was advised the providers no longer insure heritage homes at all. Although not their primary concern, the owners also noted they had been advised by a real estate agent that a heritage designation on a home may adversely affect resale value.
- 2.12 CHC members asked the property owner questions relating to any improvements they have undertaken to upkeep their home, inquired as to whether the home had been used for anything other than a residence, and provided information relating to such matters that may assist the owner with obtaining suitable coverage. The property owner advised they have routinely undertaken maintenance and improvements as recommended by their insurance provider.

- 2.13 Planning and Development Services staff requested ARA, the Municipality's cultural heritage consultant, to conduct a street view site visit of the property as part of the review of the request to repeal. An ARA representative attended the CHC meeting and was able to confirm the home appears to retain its exterior cultural heritage attributes as outlined in the designation by-law.
- 2.14 CHC members indicated at the time of designation of the property in 1997, the proper process was followed, and the Municipality and LACAC members worked closely with the homeowner to designate the home. The historical attributes identified by the designation by-law are still intact, and the CHC considers the property to retain its cultural heritage value. As such, the property should remain designated by by-law.
- 2.15 While CHC members acknowledged there is an issue with insuring heritage homes, and expressed empathy towards the homeowner and their experience, Committee members recognized the CHC's mandate to ensure Clarington's cultural heritage value is conserved. They noted any recommendation from the CHC in a case such as this should be based upon whether the home retains its cultural heritage significance and should continue to be protected. Consideration of economic components is outside the scope of the CHC.
- 2.16 Taking into consideration the discussion and dialogue with the owners, the CHC passed the following Motion 21.28 at its June 15, 2021 meeting:

"That the CHC has reviewed the designation By-law 90-17 for 4478 Highway 35/115 and finds it to be still valid, and therefore recommends to Council that the property should remain designated.

However, the CHC also requests that in the event Council decides to approve the request to repeal the designation by-law for 4478 Highway 35/115, that the property remain on the Municipal Register as a non-designated property."

The meeting minutes are draft until ratified by the CHC at their next meeting. As per Council protocol the draft minutes will be submitted for the Council agenda on July 5.

Planning and Development Services Staff Comments

- 2.17 A request to repeal a heritage designation by-law to de-designate a property is not common in Clarington. As noted in subsection 1.5 above, such a request is serious and must be considered carefully. To staff's knowledge, the only designation by-laws that have been repealed to date, include the former Rickaby's building in downtown Bowmanville after the building was destroyed by fire in 2008, and two properties along the Highway 407 corridor that were subject to the Environmental Assessment and had Cultural Heritage Evaluation Reports fully documenting their attributes prior to demolition by the Province.

- 2.18 As part of the review of the request, staff undertook research to better understand this matter. The challenge obtaining insurance for a heritage home is not unique to Clarington, nor is it new. The issue has been the topic of recent news articles that identify the high cost of building materials caused by the ongoing COVID-19 pandemic as a factor exacerbating the challenges heritage homeowners encounter securing suitable property insurance. In certain instances, insurance companies are changing their corporate policies to no longer insure heritage homes.
- 2.19 Staff reached out to several owners of designated heritage properties on this matter, and generally found they have not had issues obtaining reasonable insurance policies. However, it is noted in all cases the owners had a long history with their provider and had not made a claim. As part of their consideration of the request, a CHC member also contacted a major insurance provider, and was advised the company no longer offered insurance on designated heritage homes due to government agency approvals associated with repairs.
- 2.20 Staff also spoke with an insurance broker who indicated while there are options, it is becoming more difficult to insure old or heritage homes. This can become an issue when homeowners switch insurance companies. Further, some insurance companies have advised they are no longer insuring heritage homes, as was noted above.
- 2.21 The information uncovered through the research indicates the matter of insuring older homes, including designated heritage homes, is complex and dependent upon consideration of myriad of factors that are unique to each property. While it appears there exists insurance providers willing to offer suitable policies for heritage homes, it seems to take a great deal of effort on the part of the homeowner to research and shop around for a policy that is suitable at a reasonable cost. This is a matter that should be considered by the Province.
- 2.22 Planning and Development Services staff appreciates the difficulty the homeowner has experienced as there does appear to be misalignment between the requirements of the OHA, and laws and regulations by which insurance providers must abide. This issue appears to be centered upon the replacement cost of heritage homes and attributes with materials of like kind and quality. However, staff must review the request to repeal a designation by-law in the context of the Province's direction pursuant to the OHA, and the prescribed criteria for establishing cultural heritage value or interest.
- 2.23 Planning and Development Services staff has reviewed the property owner's request to de-designate the property by repeal of By-law 97-17, and recommends that the request for repeal of the designation be refused based upon the following considerations:
- (i) The Municipality encourages the conservation and protection of significant historic resources through the Clarington Official Plan;

- (ii) The cultural heritage attributes identified in the designation by-law are still intact. The subject property retains its cultural heritage value and remains significant to the community. The designation by-law is still valid;
- (iii) The designation of a property under the *Ontario Heritage Act* is based upon the heritage merit of the property. The criteria for establishing cultural heritage value or interest does not include consideration of insurance and/or financial/economic factors;
- (iv) The de-designation of a heritage property based on the cost of insurance and potential resale value would undermine and erode the efforts of the CHC and the Municipality to conserve and protect Clarington's cultural heritage resources for the long-term. Further, such action could establish a precedent for using such costs to justify de-designation of other heritage properties.

Next Steps

- 2.24 As part of its discussion, CHC identified this matter as a topic of interest for its Public Education and Outreach subcommittee. Staff will encourage the CHC to explore opportunities to provide relevant information to heritage property owners, and to better inform insurance providers about the requirements of insuring a heritage home. Also, real estate representatives will be provided with links to the research carried out on the property values of heritage homes.
- 2.25 The Ministry of Heritage, Sport, Tourism and Culture Industries is currently undertaking consultation through the Environmental Registry of Ontario (ERO) on updates to the OHA Toolkit following the amendments to the OHA made under Bill 108. Staff is undertaking a review of the proposed updates and will take the opportunity to bring the matter of insurance and property values to the attention of the Province as part of staff's comments. The ERO posting for consultation on the updates to the Toolkit closes on July 1st.
- 2.26 Following a decision by Council, notice of the decision will be sent to interested parties, and staff would carry out the process prescribed under the OHA. Staff also recommends providing a copy of this report to the Ministry, and the Insurance Bureau of Canada.

3. Concurrence

Not Applicable.

4. Conclusion

- 4.1 Staff conclude that the property located at 4478 Highway 35/115 satisfies the criteria categories of Design or Physical Value and Contextual Value, and has some associative cultural history value. It continues to be of cultural heritage value, sufficient for the property to remain designated under the *Ontario Heritage Act*.
- 4.2 The owner of the property known as 4478 Highway 35/115 submitted a request to repeal designation By-law 97-17 applicable to the property. The CHC considered the matter at its June 15, 2021 meeting, at which the owner attended to speak to the request.
- 4.3 In accordance with the OHA, the designation of a property is based upon cultural heritage value or interest. The de-designation of a property due to insurance and resale considerations does not fulfill the intent of the OHA and has the potential to establish a precarious precedent for the Municipality.
- 4.4 It is respectfully recommended that Council refuse the application to repeal the heritage designation By-law 97-17 for the property located at 4478 Highway 35/115 and that interested parties be notified as required.

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Attachments:

Attachment 1 – Location Map and Aerial Photo of 4478 Highway 35/115

Attachment 2 – Designation By-law 97-017 for 4478 Highway 35/115

Attachment 3 – Information Sheet from Ministry Re: Insuring Heritage Homes

Interested Parties:

List of Interested Parties available from Department.