



ADDRESSING DEMOLITION BY NEGLECT OF BUILT HERITAGE IN RICHMOND HILL

A HRH discussion paper

ABSTRACT

The trend towards higher property values, lack of transparency in the decay of heritage assets in the city registry, and a reliance on growth fostered by a development community that discounts historical values is fueling a demolition by neglect strategy by some property owners within the City of Richmond Hill to the detriment of the City's Cultural Heritage. That if the trend continues, it will have effectively reduced the historical inventories to near zero over time.

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Contents

Introduction and context: 2

One way forward: 4

HRH to discuss:..... 4

A suggested structure for discussion 4

Introduction and context:

Over the recent past the following has occurred within the City of Richmond Hill which reflects a trend:

1. Two instances of demolition by neglect of two designated properties – one an attempt to demolish the old Jefferson schoolhouse (SRPRS.19.199 Demolition Request for 11575 Yonge Street, the former Jefferson Schoolhouse). Two the declaration as unsafe a designated property (SRPRS 20.079 – Demolition Request for 10027 Yonge Street Dr. Duncumb's Hall) after 10 years or more of neglect and subsequent request to the HRH to demolish and councils approval.
2. The unapproved removal of a heritage feature of a property in the city's register (SRPRS.19.091 – Assessment of the Cultural Heritage Value of 53 Centre Street East) and the subsequent application and approval to demolish the building by council.
3. The removal of over 20% of the inventory in the Heritage register (SRPRS.19.187 - Update to the City's Heritage Register) due to past demolitions or approvals to demolish since 2007.

In Ontario, a trend has been to recognize the value in the protecting and preserving the value of our cultural heritage. In March, 1975 the original Ontario Heritage act was enacted. In 2005 legislation to strengthen its structure and transparency in protecting the Ontario's Cultural Heritage was enacted. While setting the Provincial framework for preserving our cultural heritage the onus of the responsibility was left up to the local municipalities by providing them the tools with implementing this vision.

Some of the roles of the municipalities involved keeping a Register, ability to set up a municipal heritage committee comprised of volunteers from the community to represent the public and provide advice to the elected councils. The elected councils set the tone of establishing the value of cultural heritage within the community. One is by giving direction to municipal staff. They also enact various standards and bylaws to operate in a manner that must be consistent with provinces direction for built cultural heritage and landscapes.

The environment of balancing the preservation of cultural heritage with growth has been altered due to but not limited to; high property values, municipalities' inconsistency in applying principles of conservancy, lack of clarity in the OHA, lack of transparency in listings such that recently an update to the legislation was enacted. Demolition by neglect is a direct result of this imbalance. A lack of transparency in the decay of heritage assets and/or tools that the City has or has not integrated the OHA principles in its decision making will lead to a drastic reduction of our historical inventories within a short period of time.

According to the ACO (Architectural Conservancy of Ontario) recent changes in OHA legislation is for better provincial direction by requiring the council of a municipality to consider any principles that may be prescribed by regulation when exercising decision making under prescribed provisions of Parts IV or V of the OHA. Presumably the prescribed provisions will be councils' powers to designate property and to approve alteration, demolition and removal of designated property under Parts IV and V, but they could also include listing powers. Their rational: Lack of clearly articulated provincial policy objectives to guide what municipalities should consider when protecting properties under the OHA can result in an inconsistent interpretation and application of the OHA. The governments' expected outcome is it will allow the Province to better guide heritage conservation in Ontario, by providing principles that facilitate a more consistent approach to municipal decision making under the OHA, and a better understanding of how the legislation is to be applied.

Some principles (adapted from Standards & Guidelines for Conservation of Provincial Heritage Properties April 2010 published by the Ministry of Tourism and Culture) to consider are as follows;

1. Accountability and Transparency
 - a. Decisions about Richmond Hill heritage properties will be made in an open, accountable way, taking into account the views of interested persons and communities.
2. Identification and Evaluation
 - a. Richmond Hill heritage properties will be identified and evaluated based on research and documentary evidence.
3. Continuing Care
 - a. Sustaining the cultural heritage value of Richmond Hill heritage properties for long term benefit will be achieved most effectively by preventing deterioration through regular, on-going care.
4. Impact Assessment
 - a. Assessment of the impact of proposed activities on the cultural heritage value and the heritage attributes of Richmond Hill heritage properties will inform the decisions that may affect them.
5. Use and Reuse
 - a. Richmond Hill heritage properties in active use by the municipality and public bodies will continue to be used, or will be adaptively re-used, but uses that threaten a property's cultural heritage value will be avoided. Where no use of a property is possible, appropriate, timely disposal will take place.

Another specific change to the OHA (Ontario Heritage act) was to address several past concerns in the area of demolitions and alterations. Changes to sections 33 and 34 was to address:

1. Clarify that demolition or removal under section 34 (and certain other similar sections) of the Act includes demolition or removal of heritage attributes, as well as demolition or removal of a building or structure. It clarifies that alter does not include demolition or removal for purposes of certain sections of the Act. Prescribe in regulations as to which sections in the Act this applies. Before, the Act defined “alter” but did not define demolition or removal of a building or structure.
2. Its purpose was so municipalities, property owners and LPAT members would have a better understanding of the distinction between alteration and demolition to help reduce disagreements that can cause approval delays, especially when dealing with more complex proposals.

This would effectively treat:

- the demolition or removal of a heritage attribute of a designated property, building or structure will not be considered an alteration and will be treated in the same way as demolition or removal of buildings/structures.
- Alteration under section 33 and demolition/removal under section 34 will follow virtually identical processes with the same right of appeal to the LPAT.
- Fines are increased for illegal changes of this kind as they would fall under the penalty provisions for demolition/removal (\$1M as opposed to \$50k).
- It would appear that restoration costs could not be recovered in this scenario, as this remedy is available (under s. 69 (5.1)) only for illegal alterations.

In enacting these changes the Provincial Government is recognizing that the trend of unauthorised alterations or demolitions (including Demolition by Neglect strategies) required a tool for municipalities to provide a negative incentive to owners who abuse the processes established.

One way forward:

What is now required is for the HRH to advise council as to how to interpret and utilize these changes to protect the cultural heritage of this city.

One is to give clear direction to city staff that fines for unauthorized alteration and/or demolitions will be viewed not only as the absence of requesting the approval of the city but also the systemic neglect of city bylaws and the responsibilities of the owners of property's in the city cultural heritage register. In neglecting to maintain a property in accordance with city and provincial regulations, the owner is effectively enlisting Mother Nature to demolish the building or heritage attributes without the City's approval. Man-made structures require man-made maintenance to stay safe for humans even if the property is not occupied.

An important tool for controlling demolition by neglect is a carefully drafted provision in our local property standards by-laws requiring affirmative maintenance and ensuring that the City council and staff are equipped with adequate remedies and enforcement authority. A review of our property maintenance by-laws by amending them in order to increase their effectiveness and to incorporate the direction identified above. This is one area were effectively an integration of the principles of heritage as laid out by the province in our local bylaws. One important remedy to include in the ordinance is the authority for the City to make the repairs directly and then charge back the owner by placing a lien on the property. In some jurisdictions, such as New York City, civil penalties up to the fair market value of the property may be levied against violators.

Attached to this discussion paper is a Canadian research paper that outlines the background, context and areas of improvement that can help address heritage demolition by neglect issues within the City of Richmond Hill.

Areas that they mention are: Property Standards By-law (occupied); Property Standards By-law (vacant); Vacant Building Registry; Grant Program; Tax Program; Loan Program; and Communication and Education.

HRH to discuss:

A request to the city to allow staff to work with the HRH to recommend to council how to integrate the principles (with specific emphasis on #3 and #5) in our current review of the city's bylaws and zoning or any other areas.

A suggested structure for discussion

- Provide overview of the Province's recent changes to OHA to protect heritage resources
- Areas of municipal practices to be improved
 - Demolition by Neglect – standards by-law charge
 - Property Standards By-law for listed and designated properties (both occupied and vacant)
 - Fines for illegal removal of structure/alterations of a listed properties and designated properties
 - Various financial incentives for designated and listed properties (tax, loan programs)
 - Criteria to add listed properties
 - Development Impact
 - Adaptive Reuse – through development process
 - Communication and education programs
- Recommendation
 - Work with staff to strengthen current practices and processes
 - Report back to Council for proposed modification on practices