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LEGAL LANDSCAPE for HERITAGE

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Provincial Policy Statement

- Section 2.6.1 – *Significant heritage resources and significant cultural heritage landscapes shall be conserved*
- Section 4.3 – PPS shall be read in its entirety and all relevant policies to be applied to each situation
- Section 4.5 – “The Official Plan is the most important vehicle for implementation for this Provincial Policy Statement.”

Growth Plan for the GGH

- 4.2.4 – A Culture of Conservation
- Municipalities will develop and implement Official Plan policies and other strategies in support of the following conservation objections:
 - (e) cultural heritage conservation, including conservation of cultural heritage and archaeological resources where feasible, as *built-up areas* are intensified

Input of Conservation Review Board

- Ontario Heritage Act s. 25.1(1) – “Despite s.5 of the *Ontario Municipal Board Act*, the Board may appoint a member of the Review Board to sit on a panel of the Board conducting an appeal under this Act for the duration of the appeal.”
- Chair of the Ontario Municipal Board – Comments at the Standing Committee Tuesday September 8, 2009 - “And the Conservation Review Board is an interesting Board all by itself. Its another group of advocates -

the Conservation Review Board are advocates; they're not adjudicators. My experience in assigning them to a hearing at the OMB – it becomes very complex - Alma College is one of the examples where we put a Conservation Review Board member sitting with an OMB member, and there were a series of rather unpleasant events that occurred there - I'm very careful about what I do in terms of assigning a Conservation Review Board member.”

Selected OMB Decisions on Heritage

- 1. Bronte Quad – approved moving of designated building (*Birchgrove Estates Inc. v. Oakville (City)* (2007), 55 O.M.B.R. 308; PL050679)
- “Just as the Board cannot dismiss or disregard the direction to conserve significant heritage resources, the Board cannot dismiss or disregard the consideration emphasis and priority the Province has placed on intensification within built-up areas. The challenge before the Board is to determine if the provincial goal of intensification can be achieved while meeting the provincial goal of heritage conservation.”

- heritage landscapes”, the PPS implicitly acknowledges that there may be built heritage resources and cultural heritage landscapes which are not significant and which do not warrant conservation. Such an interpretation allows for the balancing of a variety of provincial interests as mandated by the PPS.”
- “The Board, in determining conformity, must engage in a balancing exercise, considering the imperatives of growth and the culture of conservation.”
- “Further, the Board finds that if the Commercial Core is not economically viable, valuable heritage resources or attributes may be threatened.”

Legal Interpretations?

- 1. OMB interprets charters and international best practices as “balancing” with planning and economic interests.
- “This interplay is also recognized, and repeated, in various charters, standards, guidelines and tool kits that have been developed to provide assistance to decision makers. Although the specific language varies a bit, the similarity of intention is clear: heritage conservation is a multi-disciplinary process and, where the heritage property or structure is intended to remain in private ownership, then the needs, challenges, and limitations of the owner form fair and legitimate consideration in the final decision. This comes into particularly sharp focus in instances where the public preference is for substantial investment in

renovation, restoration and re-use and where most, if not all, of the financing for this work is expected to come from that private interest.”

- 2. Frank errors in law underpin Port Dalhousie decision – s.43 Decision confirmed Board member wrong in giving no weight to pre-2005 HCD, and in applying intensification provisions of Growth Plan. (61 O.M.B.R. 399 at 469)

Planner's Role?

- 1. Educate yourself on underlying intent and international best practices for interpreting heritage policy
- 2. Ensure Official Plan policies are clear -
 - use “left in place” instead of “conserved”
 - use “similar to” rather than “compatible”
 - use “notwithstanding other policies of this Official Plan, these heritage polices shall prevail”
 - Educate heritage advisory committees; council members; communities; and developers
 - Commit, commit, commit

Thank You

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