

MEMORANDUM

August 18, 2015

TO: Mayor and Council

CC: Penny Ballem, City Manager
Sadhu Johnston, Deputy City Manager
Janice MacKenzie, City Clerk
Lynda Graves, Manager, Administration Services, City Manager's Office
Rena Kendall-Craden, Director, Communications
Mike Magee, Chief of Staff, Mayor's Office
Kevin Quinlan, Deputy Chief of Staff, Mayor's Office
Braeden Caley, Director, Policy and Communications, Mayor's Office
Brian Jackson, General Manager, Planning and Development Services
Jane Pickering, Deputy Director of Planning
Francie Connell, Director of Legal Services
Bill Aujla, General Manager, Real Estate and Facilities Management

FROM: Anita Molaro, Assistant Director, Planning and Development Services

SUBJECT: First Shaughnessy Heritage Conservation Area - Responses to Questions Arising from the Public Hearing

The purpose of this memo is to provide Council with staff responses to questions from both the public and Council that arose during and after the Public Hearing of the First Shaughnessy Heritage Conservation Area on July 28 2015. The Public Hearing on this report will reconvene on September 15, 2015.

Besides the referral report on this item and the appendices of this report, other information has been submitted by staff to the attention of Council and the public all of which has been posted on the website as outlined below:

Yellow Memo dated July 21, 2015:

<http://former.vancouver.ca/ctyclerk/cclerk/20150721/documents/phea-YellowMemo.pdf>

Coriolis Consulting - Supplemental Report:

<http://former.vancouver.ca/ctyclerk/cclerk/20150721/documents/phea-YellowMemo-Appendix2.pdf>

This Yellow Memo provides further information to Council and will be accessible to the public through posting on the City's website. At the July 28th Public Hearing staff responded to a number of questions asked by Council up until that date. The written questions and staff responses which were provided to Council verbally at the Hearing are included in the list below:

1. *What is the legal basis for designating a heritage conservation area without compensating affected property owners?*

The preservation of heritage is considered an important public policy goal in British Columbia and the jurisdiction for this activity is embedded in a number of statutes, including the Heritage Conservation Act, the Local Government Act, the Community Charter and, in the case of Vancouver, in the Vancouver Charter.

The heritage conservation provisions, contained in Part XXVIII of the Vancouver Charter, empower Council to establish heritage conservation areas. They also address the issue of compensation in relation to the exercise of Council's heritage powers.

The general principle contained in the Charter is that compensation is not available for any loss or damage, or any reduction in the value of property that results from the exercise in good faith of any power under Part XXVIII, subject to two exceptions set out in the statute. Section 577 of the Vancouver Charter sets out this basic principle:

"Limit on compensation

577. Except as provided in sections 583 (7) and 595, no person is entitled to compensation for

(a) any loss or damage, or

(b) any reduction in the value of property

that results from the performance in good faith of any duty under this Part or the exercise in good faith of any power under this Part."

There are two exceptions to the general "no compensation" principle. One exception (583(7)) is if the City damages property while completing a heritage inspection, in which case the City must compensate the owner for any damages.

Section 593 authorizes Council to designate individual properties or features as protected and is generally used by Council to designate individual heritage properties. If Council designates a property through enactment of a heritage designation by-law and the designation causes a reduction of value, the owner can make an application for compensation under section 595 of the Charter. If agreement cannot be reached on compensation, the issue can be resolved by binding arbitration under the Charter. Designation of a property by heritage designation by-law is different than designation of a heritage conservation area under an official development plan.

A “heritage conservation area” is defined as “an area designated under section 561(2)(c)(iv) in an official development plan”. Section 561 authorizes Council to prepare development plans to designate heritage conservation areas in accordance with section 596A. Section 596A gives Council the tools to protect a larger neighbourhood, including such things as the overall streetscape character, by creating a heritage conservation area by means of an ODP. Section 596A requires that the ODP include a description of the special features or characteristics of the area that justify the designation, the objectives of the designation, and guidelines respecting the manner in which the objectives are to be achieved, either in the ODP or in a zoning by-law. Section 593 does not require the inclusion of such details in a heritage designation by-law.

Council’s authority to implement a heritage conservation area is found in section 596A of Part XXVIII. No person is entitled to compensation as the result of creation of a heritage conservation area. However Council does have the ability to enable other development opportunities for properties listed in the conservation area.

The proposed new zoning for First Shaughnessy does include development opportunity benefits for pre-1940 homes (those properties listed in the heritage conservation area as “protected heritage property”). These include new provisions for certain dwelling uses including coach house, multiple conversion dwelling and infill buildings, all designed to support the achievement of the important public policy goal of heritage conservation while providing other appropriate opportunities for land value enhancement for owners of properties listed as protected.

2. *What criteria will be used to evaluate whether a pre-1940s house can be removed from the heritage list?*

- In Section 3.4 of the proposed First Shaughnessy Design Guidelines, there are General Standards for Conservation, which include:
 - Assessment of Heritage Character and Heritage Value
 - Conservation Principles
 - Conservation Approach
 - Heritage Character-Defining Elements
- Heritage Character-Defining Elements that would be examined to determine heritage merit include:
 - (a) Exterior Form;
 - (b) Roof;
 - (c) Exterior Walls;
 - (d) Windows and Doors;
 - (e) Entries and Porches;
 - (f) Interior Architectural Features (if there are any of note); and,
 - (g) Landscape Features.

3. *How many pre 1940's homes may be considered not to be architecturally meritorious and no longer retain heritage character?*
- The City's heritage consultant Donald Luxton conducted an extensive review of all First Shaughnessy properties to confirm the list of those built pre-1940, and estimates that less than 5% of the 315 houses on the list are non-meritorious, based on visual assessment.
4. *How many applications and inquiries were made before the moratorium that would be affected by this rezoning?*
- At the time of enactment of the initial moratorium there were approximately 19 enquiries including 1 application for demolition of pre-1940 homes in FSD
 - 8 projects proceeded through the merit evaluation process and developed into applications for either retention schemes or new house applications where the existing dwelling was evaluated as having no heritage merit.
 - Of those eight, 5 proceeded through process to approval and have had permits issued.
 - The other 3 are counted within the in-stream applications we have at present.
5. *How many of these applications will be affected by the new guidelines set out in the First Shaughnessy Heritage Conservation Area?*
- There are currently 11 in-stream applications (8 as noted above; and 3 new ones):
 - 3 are retention schemes
 - 8 are new house projects
6. *What are the average costs incurred by the applicants for the aforementioned applications*
- In terms of City processing fees, the approximate fee for a development permit in First Shaughnessy for a new home that is required to be reviewed by the First Shaughnessy Advisory Design Panel is \$3,450 and for a small renovation project that does not need to go to the First Shaughnessy Advisory Design Panel the processing fee is \$824.
 - Once a development permit is issued, there are also fees for a building permit, which is based on the square footage of the project.
 - The City does not have access to other information in regard to applicants costs.
7. *Several architects who spoke raised concern that the specifics of the zoning bylaw will lead to loss of creativity in architectural design and "cookie cutter" new builds. Is the latitude for creativity in housing design in the "discretion" of the Director of Planning? Is it possible to review and amend the specifics of this bylaw after a "trial" period?*
- The proposals aim to ensure new buildings better fit the neighbourhood, in terms of siting and scale, which the community has identified as a critical issue.
 - There is discretion in the zoning that will provide flexibility related to siting, including height, building yards and set-backs, building depth and footprint. This will enable the Director of Planning to look at each site's context to determine what is appropriate.

- There is also sufficient latitude for creativity and unique designs, noting that the Design Guidelines are not prescriptive in building expression or architectural style.
- If adopted, the new regulations will come into full effect once the by-laws are enacted, so there is no “trial” period. However, staff routinely review the impact of such a significant policy decision and would bring forward any necessary suggestions to Council in the form of minor text amendments if there is a need to adjust the impact.

8. *Is it almost always safer and less costly to build new than repair and maintain existing building as one speaker stated?*

- Safety issues such as asbestos have to be dealt whether you are doing a new building (and demolishing an existing building), or are doing a renovation of a heritage building
- It is possible to address these types of safety concerns in a renovation, and there are many ways to do this while still ensuring the heritage character is retained.
- Generally, new home construction costs less on a per square foot basis than heritage retention (the economic consultant estimated that heritage renovations add a \$50 per sq. ft. premium cost to typical construction project costs). However, the total dollar value of building a new home may cost more or less than renovating the existing building, depending on the scope of the renovation and the size of the new home being built.

9. *Is it possible to handle environmental problems such as mold, lead-painting, asbestos, pests through renovations?*

- Yes, it is possible to address all of these problems through a renovation.

10. *If a lot has infill buildings built after 1940 but the main home is pre-1940, can the infill buildings be demolished and heritage home expanded?*

- Yes, with a Heritage Alteration Permit, it is possible to demolish a post-40s infill building.
- The infill could either be rebuilt or the main house expanded.

11. *Why exclude basements from FSR for new builds? Does this not make the new homes much bigger and bulkier?*

- Not counting this floor area will enable people to build full basements, making them more livable, which staff feel is important for both new builds and renovations.
- This exclusion will not make buildings bulkier, as both the existing zoning and proposed new regulations have a limit on above grade floor area.
- In addition, the new regulations include a maximum floor area, building footprint and building depth requirements, which will help manage building scale.

12. *Would it improve the economics and value of retaining/renovating heritage home if only retention of heritage home was allowed to exclude basements from the FSR calculation?*

- While the consultant didn’t look at this specifically, removing the basement exclusion from FSR for new buildings will likely improve the financial comparison of retention proposals versus new building proposals.

13. Is there risk of infill housing (e.g., coach house) destroying heritage landscape?

- The proposal for First Shaughnessy includes:
 - Coach Houses would be allowed on sites less than 18,000 s.f., and located above an accessory building.
 - Infill buildings would be allowed on sites over 18,000 s.f.
- There is a long history of smaller infill buildings in the area, so they are part of the existing character and will continue to be allowed.
- Infill opportunities on a site will be determined through review of the site context and applicable regulations.
- The loss of mature trees and landscaping will be avoided wherever possible, noting there will need to be a balance struck between creating development opportunities for heritage properties, and maintaining mature landscaping.
- Finally, these additional units on a site are only permitted on sites with a protected heritage property, and are not available to the other half of the total lots that don't have a pre-40s building.

For further reference, see:

Yellow Memo dated July 21, 2015, Appendix B1 (Appendix A3, pg. 12 - 13)
<http://former.vancouver.ca/ctyclerk/cclerk/20150721/documents/phea-YellowMemo-AppendixB1.pdf>

Staff will be available to answer any further questions or provide needed clarification of the foregoing when the Public Hearing reconvenes on September 15, 2015.

Sincerely,



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