

MEMORANDUM

September 14, 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
Francie Connell, Director of Legal Services
Yvonne Liljefors, Assistant Director of Legal Services
Catherine Kinahan, Solicitor, Legal Services
Bill Aujla, General Manager, Real Estate and Facilities Management
Jerry Evans, Director, Real Estate Services
Bryan Sears, Associate Director, Real Estate and Facilities Management
Brian Jackson, General Manager, Planning and Development Services
Jane Pickering, Deputy Director of Planning
Anita Molaro, Assistant Director, Planning and Development Services
Marco D'Agostini, Senior Heritage Planner
Donald Luxton, Donald Luxton & Associates, Heritage Consultant

FROM: Iain Dixon, Assistant Director of Legal Services

SUBJECT: First Shaughnessy Heritage Conservation Area - Temporary Protection
Timeframe and Responses to Issues Raised in Recent Communications

The purpose of this memo is to provide Council with information to clarify matters raised in a recent letter to Council sent by the law firm Gudmundseth Mickelson LLP and to clarify the expiry date for the current temporary protection in place for the proposed First Shaughnessy Heritage Conservation Area.

Issues Raised in Recent Gudmundseth Letter

On September 9, 2015 a letter was sent to Mayor and Council from the law firm Gudmundseth Mickelson LLP ("Gudmundseth") on behalf of a group of First Shaughnessy property owners. Issues were raised in the letter which staff would like to clarify.

Mailing Address:
453 West 12th Avenue
Vancouver, BC V5Y 1V4
Canada
Telephone: (604) 873-7512
Fax: (604) 873-7445

Delivery Address:
401-515 West 10th Avenue
Vancouver, BC V5Z 4A8
Canada



1. Compensation for the proposed Heritage Conservation Area Official Development Plan

The Gudmundseth letter contests the legal authority of the City of Vancouver to establish a heritage conservation area (“HCA”) without compensating property owners and states that property owners are entitled to compensation. The legal basis for the recommendation to establish an HCA without compensation was previously described in a Yellow Memo to Council dated August 18, 2015 which is posted on the City’s public website. For ease of reference, the portion of that memo addressing this issue is set out below:

“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 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. Coriolis Report

The Gudmundseth letter also states that the group of property owners it represents rejects the conclusion of the economic consultant, Coriolis Consulting Corp. (“Coriolis”), that there will be no material reduction in the value of properties designated as “protected heritage properties”. Staff note that Coriolis did not conclude that there would be no material reduction in value. Rather, its conclusion was that if the market does not value the off-setting benefits included in the proposed new regulations, then the obligation to retain pre-1940 houses would put downward pressure on the value of properties that would otherwise (under existing regulations) be candidates for demolition. Coriolis noted that it is very difficult to assign numbers to the potential impact of any reduced market interest. Coriolis concluded that, depending on the property, the proposed new regulations could have a small economic impact that will range between slightly positive and slightly negative (i.e. plus or minus 5% of value) if all the incentives in the proposed new regulations are used. Further, Coriolis stated that they would expect that:

“the prestige of the neighbourhood, the small total number of lots, and the continuing strong demand for single family homes will mean that the proposed new regulations will not cause significant, persistent negative impacts on lot values for lots with pre-1940 houses in First Shaughnessy.”

Economic Analysis of Proposed Changes to First Shaughnessy Zoning District: Supplemental Report, July 2015 (Coriolis Consulting), p. 31.

3. Pre-1940 Date

Finally, the Gudmundseth letter states that the group of property owners it represents rejects the approach of the heritage consultant, Donald Luxton & Associates (“Luxton”), that all pre-1940 homes in the First Shaughnessy area are worthy of heritage protection.

Staff would like to clarify that the pre-1940 date was established by City Council, not Luxton, when Council adopted the First Shaughnessy Official Development Plan and Design Guidelines in 1982. The 1940 date is based on the fact that the majority of development in the area occurred from 1907 when the area was established by the CPR up until the start of World War II. Buildings built prior to 1940 reflect the high social and economic status of property owners in First Shaughnessy at the time. After the start of World War II, the quality and style of buildings being constructed in the area changed dramatically, as they did throughout the city.

In 1994, Council adopted the First Shaughnessy Heritage Inventory as part of the First Shaughnessy Design Guidelines. This inventory lists all of the properties currently recommended to Council as protected heritage property, along with others that have since been demolished. The 353 sites listed in the 1994 inventory are identified as having historical significance to the City of Vancouver. In our recent study, Luxton was asked to confirm the list of pre-1940s buildings. Luxton was not asked to review the current architectural merit or historic integrity of each of the 353 sites.

As stated at the Public Hearing on July 21, 2015 and re-iterated in the August 18, 2015 Yellow Memo to Council, Mr. Luxton estimates that less than 5% of the 315 properties recommended as “protected heritage property” are non-meritorious, based on visual assessment. For any buildings on the list of protected heritage property that do not warrant conservation, the proposed Heritage Procedures By-law includes a process through which such properties can be reconsidered by Council. This process would involve an evaluation of Heritage Character and Heritage Value, as described in Section 3.4 of the proposed First Shaughnessy Design Guidelines, which Guidelines are in support of the Heritage Conservation Area Official Development Plan. Should a home on the list of protected heritage property be determined to have no Heritage Character and/or Heritage Value, it could be removed from the list by City Council after a Public Hearing.

Expiry of Temporary Protection

As described in the report to Council dated May 29, 2015 entitled “*Heritage Action Plan Update: Recommendations to Adopt a Heritage Conservation Area Official Development Plan and New District Schedule for First Shaughnessy*”, pursuant to Section 589A of the Vancouver Charter, all property within an area to be designated as an HCA has temporary protection for a period of 120 days beginning on the date of first reading of a by-law to adopt a development plan establishing the HCA (see page 18). This first reading took place on June 9, 2015, thus the 120 day temporary protection period will expire on October 6, 2015.

Further clarification of the foregoing will be provided by staff and the City's consultants when the Public Hearing reconvenes on September 15, 2015. Please don't hesitate to call with any concerns.

Yours truly,

CITY OF VANCOUVER

Per:



Iain Dixon
Assistant Director of Legal Services