

Windsor, Ontario, December 5, 2011

REPORT NO. 13 of the
**ECONOMIC DEVELOPMENT
STANDING COMMITTEE**
of its meeting held November 2, 2011

Present: **Councillor Dilkens, Chair**
 Councillor Sleiman
 Councillor Valentinis
 Councillor Marra

Regrets: **Councillor Payne**

That the following recommendation of the Economic Development Standing Committee **BE APPROVED** as follows:

Moved by Councillor Sleiman, seconded by Councillor Valentinis,
That the response found to CQ48-2011 - Heritage Tax Relief found in the administrative report dated September 15, 2011 authored by the Senior Legal Counsel **BE RECEIVED** for information.
Carried.

Clerk's Note: The Report of the Senior Legal Counsel dated September 15, 2011 entitled "Response to CQ48-2011 - Heritage Tax Relief" is ***attached*** as background information.

| Notification



THE CORPORATION OF THE CITY OF WINDSOR
Economic Development Standing Committee-
Administrative Report

MISSION STATEMENT:

"The City of Windsor, with the involvement of citizens, will deliver effective and responsive municipal services, and will promote innovative community partnerships"

LiveLink REPORT#: 15531 SB2011	Report Date: September 15, 2011
Author's Name: Wira Vendrasco Department: Legal Services Division	Date to Standing Committee, November 2, 2011
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To: Economic Development Standing Committee

Subject: Response to CQ48-2011-Heritage Tax Relief

1. RECOMMENDATION: CityWide: X Ward(s):

That the following response to CQ48-2011 **BE RECEIVED** for information.

EXECUTIVE SUMMARY:

2. BACKGROUND:

At the June 20, 2011 council meeting, Councillor Hatfield asked CQ48-2011 as follows:

"In light of council's recent decision to allow the demolition of a building which had a historic and heritage significance-and the reason given by the proponents was to save money since the taxes paid on an empty lot are less than the property taxes owed for a lot with a historic building (even though it may be empty), could our legal and tax department investigate the possibility of bringing in a by-law-law or special legislation which would allow council the ability on a case by case basis to charge the owner of a property of historic significance the lesser tax rate if this will prevent the demolition of such buildings of a historic nature until a new use can be found and the building preserved and possibly restored?"

This question was asked subsequent to the June 7, 2011 council meeting, when council had considered a report from the Heritage Planner about the proposed demolition of the Ernest Wilby House, 1567 Ouellette Ave, which was listed on the Heritage Register.

3, DISCUSSION:

Existing Legislation

Section 27 of the Ontario Heritage Act (ORA) require that the Clerk of every municipality keep a register of properties of cultural heritage value or interest in the municipality (Heritage Register). This Heritage Register must list all designated properties, whether individually designated or in a conservation heritage district. In addition, as of 2005 the ORA permits municipalities to list properties of cultural value or interest that have not been designated. The listing of undesignated properties provides them with interim protection. This means if the property owner of undesignated but listed property wishes to demolish such a property, then the owner must give the municipality 60 days notice of the intention to demolish. This gives the municipality time to decide if it wishes to designate the property. There is no other statutory benefit or advantage provided to properties listed on the Heritage Register, but not designated under the ORA.

As council will see from the following review of the legislation, the statutory provisions for loans or grants, or favourable property tax treatment are restricted to properties designated under the ORA. These benefits do not extend to undesignated properties listed on the Heritage Register.

Ontario Heritage Act --

Section 39 of the ORA permits municipalities to provide grants or loans to designated properties for the purpose of paying for the whole or part of alterations to designated properties. Council has implemented s.39 ORA through the Community Heritage Fund. It is a condition of this program that the property owner enter into either a heritage conservation easement agreement or property restoration agreement with the City for the conservation or restoration of the designated heritage elements, as a condition of receiving the grant or loan.

Planning Act

Section 28 of the Planning Act permits municipalities to provide grants or loans for the payment of eligible costs of a community improvement plan. The conservation or rehabilitation of buildings in defined community improvement areas for the purposes of heritage would qualify as a community improvement. The Olde Sandwich Towne Community Improvement Plan proposes to implement this provision of the Planning Act for the purpose of building conservation and rehabilitation for both heritage designated properties and other properties in Olde Sandwich Towne.

Planning Act and Ontario Heritage Act

Some municipalities have combined the provisions of s.39 OHA with s.28 of the Planning Act in order to provide owners of designated properties with a tax back grant. This usually involves an agreement between the municipality and the property owner, whereby the municipality freezes the amount of property tax payable at the pre-restoration/rehabilitation level for a number of years, and the property owner uses the tax back grant to pay for the cost of the restoration/rehabilitation. To date council has not used the tax back system.

Municipal Act

There are also provisions in the Municipal Act dealing with property tax rebates or relief. Section 365.2 of the Municipal Act contains powers that authorize municipalities to exercise their discretion to pass by-laws providing for heritage tax relief. This amendment to the Municipal Act which: came into force in 2003, sets out the extensive rules that apply if council wishes to exercise **this** power. The heritage tax relief is only available for "eligible heritage properties". These properties are defined as properties that have been individually designated, or are part of a conservation heritage district designated under the OHA, **and** the properties are subject to a heritage conservation easement agreement with the municipality or the Ontario Heritage Foundation-, or, there is an agreement with the municipality for the preservation and main tenance of the property.

The amount of property tax reduction can be between 10 and 40%, and applies only to the building and land, or parts thereof, that qualify as "eligible heritage properties". The relief applies to taxes for both municipal and school purposes. Notice of the by-law has to be given to the Minister of Finance. The Minister of Education provides the school boards with revenue equivalent to that lost (as a result of this by-law). These are the relevant highlights of a heritage tax relief by-law. There are additional statutory provisions that apply if such a by-law is passed.

In the past: Council exercised its discretion to pass by-laws under s. 365.2 of the Municipal Act. By-law 382-2003 provides heritage tax relief for the manse of the Sandwich First Baptist Church. By-law 406-2004 was a pilot program to provide heritage tax relief for potentially nine commercial and/or multi residential properties designated under the OHA, in the core area of Olde Sandwich Towne (six blocks bounded by Detroit St., Russell St., Chippawa St. and Peter St., and properties across the street). The reason for passing By-law 406-2004 was to assist property owners to maintain and restore their properties for the benefit of all residents, and to see if the program could make a positive impact in the Sandwich area. This by-law is set to expire in 2015.

Currently, five of the nine eligible properties are participating in this pilot program.

There are currently 843 properties listed on the Heritage Register. Approximately 145 are designated, either individually (112), or designated in a heritage conservation district (33). The balance of about 700 properties, are listed on the Municipal Heritage Register. Since the heritage tax relief applies only to designated properties, properties that are listed on the Heritage Register but are not designated under the Ontario Heritage Act do not qualify for heritage tax relief under s. 365.2 of the Municipal Act.

To date an additional 291 properties in the Olde Sandwich Towne Heritage Conservation District have not been included on the Heritage Register since that heritage conservation district is not yet in force. The City Planner has expressed his desire to recommend to council that the properties in the Olde Sandwich Towne Heritage Conservation District be provided the property tax relief offered by s. 365.2 of the Municipal Act in order to assist property owners with the restoration and conservation of these properties.

Assessment Act

As a general proposition, in Ontario the matter of property taxation and any reductions thereto are specified in the Municipal Act. Taxation of property is also affected by its assessment. So in addition to the provisions of the Municipal Act, issues of property assessment reduction are set

out in the Assessment Act. However there are no provisions in the Assessment Act that apply to reduce the assessment of heritage properties listed on the Heritage Register, whether designated or not.

From a review of the statutory provisions that are available to council to provide assistance to heritage properties, it can be seen that they all contain as an essential element, the designation of the properties and the active conservation, preservation and rehabilitation of those properties.

Special Legislation

With the introduction of the Municipal Act 2001 and the subsequent amendments to it, it was the intention of the province to give municipalities broad "natural person" powers to conduct their own affairs as they sought fit. This has led to a decrease in the amount of private municipal legislation passed by the province. In fact there has not been any private municipal legislation passed since 2006.

There are certain restrictions imposed on the broad natural person powers of municipalities. These are found in s. 17 of the Municipal Act. Of particular relevance to this council question are the restrictions on municipalities to impose taxes and to make grants or loans except as specifically authorized by the legislation. The above review of the existing legislation indicates that there is no enabling legislation that would authorize council to pass by-laws to provide property tax relief to properties listed on the Heritage Register but not designated under the provisions of the OHA. Therefore if council decides that this is something they wish to pursue then upon your instructions we will pursue this with the province after the provincial election, since the legislature is not currently sitting.

4. FINANCIAL MATTERS:

When council was considering the advisability of passing By-law 406-2004, administration advised council that implementation of the heritage tax relief program to all designated properties (then approximately 80, now about 145) in Windsor was not affordable for Windsor. For this reason By-law 406-2004 applied to potentially nine properties and only for a ten year period.

As previously mentioned, tax relief under Section 365.2 of the Municipal Act can be set between 10% - 40%. If heritage tax relief was extended to current eligible properties, then based upon the most current listing of 145 eligible properties, annual tax relief could be as low as \$148,000 using 10% (municipal portion \$107,000) to a high of \$593,000 using 40% (municipal portion \$428,000). Since there are approximately twice as many properties in the Olde Sandwich Towne Heritage Conservation District as there are current eligible properties, a very crude estimate indicates that the annual tax relief for Olde Sandwich Towne would be double that for the current eligible properties. Potentially providing heritage tax relief to the undesignated properties on the Register further compounds the amount of tax relief. There is currently no provision to allow for such tax relief and it would have to be considered as part of the 2012 budget process as this would add to the list of existing budget pressures.

5. CONSULTATIONS:

John Calhoun, Heritage Planner
Kevin Alexander, Planner III, Community Development
Janice Guthrie, Deputy Treasurer-Taxation and Financial Projects
Thom Hint, City Planner

6. CONCLUSION:

The matter of property taxation and any reductions thereto are strictly regulated by the Municipal Act. Neither the Ontario Heritage Act, Planning Act, Municipal Act nor Assessment Act provide any favourable tax treatment for properties that are listed on the Heritage Register, but not designated under the OHA.

Therefore there is currently no legislation available to council to pass a by-law to reduce property taxes for undesignated properties listed on the Heritage Register.

W. J. L. V. e. n. -'-'/'-' =-----=:;: =----- p o r a t e
Leader Economic Development & Public Safety

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ef Financial Officer/City Treasurer and
orporate Leader Finance and Technology

APPENDICES:

NOTIFICATION:				
Name	Address	Email Address	Telephone	FAX

