

February 26, 2013

**Delivered Via Email: [pgmc@toronto.ca](mailto:pgmc@toronto.ca)**

Chairman and Members  
Planning and Growth Management Committee  
c/o Merle MacDonald  
*Committee Administrator*  
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File: 21362.0661

Dear Sirs/Mesdames:

**Re: Planning and Growth Management Committee  
Agenda Item PG22.3 – February 28, 2013  
Official Plan Five Year Review: Official Plan Amendment  
Continuation of Statutory Meeting to Adopt new Heritage  
and Public Realm Policies**

We represent the Roman Catholic Episcopal Corporation for The Diocese of Toronto, in Canada (the "Archdiocese"), in respect of approximately 123 property, parish and mission interests throughout the City of Toronto. Those interests cover 42 of the City's 44 Wards and represent approximately 600,000 parishioners.

We appeared as a deputation on behalf of the Archdiocese at Committee's last consideration of this matter on October 12, 2012. We requested at that time that the proposed Official Plan policies be amended to include the following provisions:

1. The identification, preservation and conservation of cultural heritage resources shall be determined and undertaken in a manner that is both respectful and cognizant of any relevant cultural context and religious beliefs.
2. City decisions on applications for alteration, demolition or removal of religious properties on the Heritage Register shall recognize the unique nature and needs of these properties by balancing the goals of heritage conservation and freedom of religion. The Provincial Guideline "Heritage Places of Worship" shall be considered and applied in such applications.

3. Alterations to designated places of worship involving liturgical elements of cultural heritage significance shall be permitted if the alterations are required for liturgical purposes. Where these alterations affect an identified heritage attribute, a heritage impact assessment shall be prepared to describe the impact on the attribute(s) and mitigating strategies in keeping with Provincial Guideline. For clarity, liturgical elements shall mean building elements, ornaments or decorations that are symbols or material things considered by a faith to be part of its rites of public worship.

We hereby repeat that request on behalf of the Archdiocese and like-minded faith groups, subject to the modification set out below.

Our client was disappointed at not being invited to the working group sessions that took place following the last Committee consideration of this matter. The Archdiocese has consistently expressed a strong interest in heritage policies, at both the municipal and provincial level, and it would have been appropriate for it to be part of that group. Nonetheless, we have pursued the matter with City staff but have been unable to reach a satisfactory resolution. Unfortunately, those discussions are not referenced in the staff report and there is no mention of the concern that has been raised.

Through our discussions with staff, we understand that their principal objection to the proposed changes set out above is that they do not want to incorporate the Provincial Guideline by reference within the Official Plan in the same way that the external document, "*Standard and Guidelines for the Conservation of Historic Places in Canada*" has been incorporated. Since that is the case, our client would accept the deletion of the references to the Guideline by deleting the second sentences of numbered paragraphs 2 and 3 above. That would reduce the request to the following:

1. That the identification, preservation and conservation of cultural heritage resources shall be determined and undertaken in a manner that is both respectful and cognizant of any relevant cultural context and religious beliefs.
2. That City decisions on applications for alteration, demolition or removal of religious properties on the Heritage Register shall recognize the unique nature and needs of these properties by balancing the goals of heritage conservation and freedom of religion.
3. Alterations to designated places of worship involving liturgical elements of cultural heritage significance shall be permitted if the alterations are required for liturgical purposes. For clarity, liturgical elements shall mean building elements, ornaments or decorations that are symbols or material things considered by a faith to be part of its rites of public worship.

We have also been advised by staff that the thrust of the requests set out above "go without saying" and do not need to be incorporated in the Official Plan. With respect, our client prefers the certainty of having its concerns specifically addressed. Sidebar comments do not have any binding legal effect and cannot be relied upon to address this important concern.

Our client's request for an acknowledgement that places of worship present different issues to be considered in a heritage context is a modest one and we do not understand the City's

reluctance to include such language within its Official Plan policies. The consideration of religious needs, where applicable, should be considered when making decisions on the conservation of a heritage place of worship. Such properties have a unique status in law that should be reflected in the City's planning policy framework.

We reiterate that the proposed Official Plan policy as it is drafted would mean that any designated church could require approval of City Council to move an affixed altar, statue or religious stained glass windows, should these objects be considered to have heritage attributes. As the proposed policy is now written, this approval would be based exclusively on whether the alteration would negatively impact the heritage values and attributes of the church and there would be no binding requirement that staff or Council have any regard for the religious significance of the attributes.

The Archdiocese and like-minded faith groups simply don't think that it is appropriate that their properties be subjected to a one-size-fits-all policy that has absolutely no formal regard to the religious use of their properties. The important and provincially recognized concern regarding freedom of religion in a heritage context, which the Archdiocese and other faith groups were consulted on and supported, deserves similar independent recognition within the City's planning policies and should not be dependent on the evolving law regarding fixtures.

The Archdiocese has obtained an opinion from one of Canada's leading constitutional experts that a purported municipal heritage control of a property that has no regard for its religious nature is contrary to the right to freedom of religion that is enshrined in the *Canadian Charter of Rights and Freedoms*. Municipal control of a designated place of worship, as exercised through the *Ontario Heritage Act*, must balance those interests and must not impair the ability of a faith to worship in a manner that the faith deems appropriate. We are respectfully asking the City to respond to the need for this balance in their Official Plan policies.

This concern is important enough to the Archdiocese that it is prepared to pursue it before the Ontario Municipal Board. We submit that an appeal of these policies should not be necessary given the unique status in law of places of worship and the relatively modest and self-evident nature of our client's request, and ask that Council direct that the language set out above be included within the proposed Official Plan amendment.

Yours truly,

MILLER THOMSON LLP

Per:



Steven J. O'Melia  
SJO/dms

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