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PATRICK A. BURKE, Q.C.
DAVID K. MACDONALD, BSc. (Hons), LLB., TEP
PIOTR (PETER) LUCZAK, BA., LLB.

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MEETING Sept. 29/09
Council

Telephone: (902) 634-8354
Facsimile: (902) 634-4226
E-mail: burkelaw@ns.sympatico.ca

Wolff House
P.O. Box 549
28 King Street
Lunenburg, Nova Scotia
B0J 2C0

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FILE Denial to permit
17/15-164 Cumberland

REPORT TO COUNCIL
TOWN OF LUNENBURG

Re: Property at 164 Cumberland Street, Lunenburg
Property of Earl Norman Bachman and Brenda Louise Bachman

1. Background

The property in question was conveyed to Brenda Louise Bachman and Earl Norman Bachman by Deed dated July 7, 2009 and recorded at the Land Registry under document number 93875269. (See copy of Deed attached as Appendix A). The property has been migrated under the Land Registration Act. The PID number is 60060944. Mr. & Mrs. Bachman also own the adjacent house property known as 321 Lincoln Street.

A cursory search reveals that Charles Smith obtained three deeds for property in this area (Lot 12 from Emily Jacobs in 1876, Lot 3 from Frederick LeBlanc in 1877 and a parcel of land from Henry Wilson in 1880). After Charles Smith's death the property was conveyed to Theresa Himmelman in 1929. Theresa Himmelman sold the house property (321 Lincoln Street) to Arnold Parks in 1929 and in 1943 conveyed 164 Cumberland Street to the Salvation Army. It subsequently was conveyed to the Wesleyan Church in 1971, and then to Floyd Everett and Paul Rhodenizer in 1974 (presumably for Faith Baptist Chapel). It subsequently was in the name of Faith Baptist Chapel (Faith Baptist Church) and was later conveyed to the IOOF. Accordingly, for almost 80 years the ownership of the building has been different than the ownership of 321 Lincoln Street.

Brenda and Earl Bachman have applied for a Permit to demolish the building at 164 Cumberland Street. 164 Cumberland Street is zoned institutional in Schedule "A", the Zoning Map of the 1996 Land Use By-law. It has apparently been argued that as 164 Cumberland Street was originally part of lands owned by Charles Smith, and is now owned by the owners of the former Charles Smith house, that it should be treated as an out-building and that no Certificate of Appropriateness should be required as a prerequisite to the demolition of the structure.

2. Issue

Is a Certificate of Appropriateness required in this matter?

3. Discussion

The following legislative provisions are applicable in the present circumstances:

- A. Heritage Property Act (R.S. 1989, c.199, as amended) See provisions 19F, 19G and 19H attached (as Appendix B) which address the issue of a Public Hearing concerning demolition or removal and appeal of a Decision.
- B. Heritage Conservation District Regulations made under section 26 of the Heritage Property Act. Regulations 11, 12, 13, 14 and 15 attached (as Appendix C) address the procedure for holding a Public Hearing for a Certificate of Appropriateness, as well as requirements for a Heritage Officer's Decision on a Certificate and the conditions on a Certificate, and time for an appeal.

4. Heritage Conservation District Plan

The policies for conservation of historic architectural character provide:

4.1 - "With regard to demolition, Council's main intention is to protect historic buildings which, for the purpose of this conservation plan and by-law, are considered to be those built before 1940: a date which (roughly) marked the end of the Bluenose Era and the beginning of the Second World War, after which building technology and architectural styles began to change significantly." (See Appendix D).

4.2 - "It shall be the intention of Council to require Certificate of Appropriateness for . . . demolition or removal of historic buildings."

Section 4.8 of the plan states that: "Where application is made for a Certificate of Appropriateness for the demolition or removal of any pre-1940 building in the heritage conservation district, as identified on Map 2, . . . it shall be the intention of Council to require that the application be considered as a public hearing." (Map 2 attached to the plan shows 164 Cumberland Street as a highlighted pre-1940 building). (See Appendix E).

Section 4.11.1 of the Plan is attached hereto as Appendix F.

Section 4.11.2 provides that: "Except for the Anderson barn (36 Pelham St) and the former Benjamin Knock cobbler shop (56 Prince St), which are regarded as historic, pre-1940 buildings and which are shown as such on May 2, demolition or removal of outbuildings shall not require a Certificate of Appropriateness or a public hearing." It also provided that it was the intention of Council to carry out an inventory and analysis of outbuildings to determine their heritage value and to consider future amendments of the plan based on the findings of such work.

5. Heritage Conservation District By-law

Section 1 (Definitions) provides that "building includes a main building (house, commercial building, etc.) and outbuilding (garage - shed, etc.)."

Section 3 of the by-law provides as follows:

3.1.3 - A Certificate of Appropriateness shall be required for demolition or removal of any pre-1940 building . . . as identified on Schedule A, Heritage Conservation District Map.

Section 3.2 states that a Certificate of Appropriateness shall not be required for the following types of development: .7 “demolition or removal of outbuildings, except for those identified as pre-1940 buildings on Schedule A, Heritage Conservation District Map.” **The property at 164 Cumberland Street is identified as a pre-1940 building on the Schedule A Old Town Heritage Conservation District Map attached to the by-law.**

Section 4.13 provides with respect to appeals that: “The denial of a Certificate of Appropriateness, the imposition of conditions on a Certificate of Appropriateness, or the approval or denial of a Certificate of Appropriateness following a public hearing may be appealed to the Nova Scotia Utility and Review Board in accordance with the applicable provisions of the Heritage Property Act and the Nova Scotia Heritage Conservation Districts Regulations.”

4.8 of the By-law provides that “applications for a Certificate of Appropriateness for the demolition or removal of any pre-1940 building identified on Schedule A Heritage Conservation District Map **shall** be referred by the Heritage Officer to the Council for consideration at a public hearing. (My emphasis).

There is no definition of “outbuilding” in the Heritage Conservation District By-law. Black’s Law Dictionary 4th Edition defines outbuilding as: “Something used in connection with a main building . . . a small building appurtenant to a main building, and generally separated from it; an outhouse. . . .”

The New Lexicon Webster’s Encyclopedia Dictionary, Canadian Edition, defines outbuilding as “a building separate from, but near to and serving, an adjacent house or building.”

An Online search has revealed the following definitions:

1. A portion of the premises which is separated from the main structure but is a part of the premises like outhouse, garage, shed any form of storage place etc. (Legal-Explanations.com).
2. a building that is subordinate to and separate from a main building. (wordnetweb.princeton.edu/perl/webwn).
3. Any barn, shop, shed, or other structure located on a lot in addition to a house or other main building. (www.therichmondsite.com/Blogs/Dictionary_O.html).

4. A structure that is not a part of the main building but is necessary to the full enjoyment of the property (ie a shed, garage, etc.). (www.krisholms.com/gloss-o-htm).
5. Any buildings not for human occupation, such as sheds, barns, etc. (www.smm.org/catal/introduction/glossary/).
6. A term used to refer to all nonresidential structures on a site. These include animal pens, storage buildings, sheds, barns, etc. (www.enviro-explorers.com/glossary.html).
7. Any building other than the main structure on a particular allotment of land eg a garage, workshop, etc. (www.privatesalegurus.com.au).

6. Opinion

1. It is the opinion of the undersigned that pursuant to section 3.1.3 of the Heritage Conservation District By-law that a Certificate of Appropriateness is required for the demolition of 164 Cumberland Street, as it is a pre-1940 building identified on Schedule A Heritage Conservation District Map.
2. Pursuant to section 4.8 of the By-law the Heritage Officer must refer any Application for a Certificate of Appropriateness to demolish this structure to Council for consideration at a public hearing as it concerns the demolition of a pre-1940 building.
3. Where, in my opinion, we are dealing with a pre-1940 building shown on Schedule A Heritage Conservation District Map, the Heritage Officer is required to refer the matter to Council for consideration of public hearing and there is no decision in that regard to appeal.
4. The foregoing provisions are sufficient to answer the question or issue posed. Even if the building had **not** been shown as a pre-1940 building on the Heritage Conservation District Map, it is my opinion that it would not fall within the exclusion contained in 3.2.7 of the By-law which states that a Certificate of Appropriateness shall not be required for the demolition of outbuildings. Although Mr. & Mrs. Bachman own 164 Cumberland Street and the adjacent house on 321 Lincoln Street, one ordinarily considers outbuildings as being a structure separate from the main building on a property which is subordinate to the main building. Clearly, the building in this case is contained on an entirely separate lot of land and, in my opinion, it is unlikely that one could consider this as an outbuilding of the Bachman house which is contained on a separate parcel of land. Nevertheless, my opinion in relation to this question is not necessary in order to determine that a public hearing is required before a Certificate of Appropriateness to demolish can be issued..

Respectfully Yours,

Patrick A. Burke, Q.C.
Burke & Macdonald
Town Solicitor

PAB/cp
Enclosures

THIS WARRANTY DEED made this 7th day of July, 2009,

Appendix A

BETWEEN:

**GRAND LODGE, INDEPENDENT ORDER OF ODD FELLOWS,
ATLANTIC PROVINCES**, a body corporate, incorporated under the
Societies Act of Nova Scotia,

(hereinafter called the "GRANTOR")

OF THE ONE PART

-and-

EARL NORMAN BACHMAN and BRENDA LOUISE BACHMAN,
both of Lunenburg, in the County of Lunenburg, as Joint Tenants and not
as Tenants in Common,

(hereinafter called the "GRANTEES")

OF THE OTHER PART

WITNESSETH THAT in consideration of the sum of One Dollar (\$1.00) and other good
and valuable consideration;

The GRANTOR hereby conveys to the GRANTEES as Joint Tenants and not as Tenants in
Common the lands described in Schedule "A" to this Warranty Deed and hereby consents to this
disposition pursuant to the *Matrimonial Property Act* of Nova Scotia.

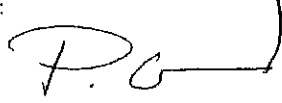
The GRANTOR covenants with the GRANTEES that the GRANTEES shall have quiet
enjoyment of the lands, that the GRANTOR has good title in fee simple to the lands and the right
to convey them as hereby conveyed, that the lands are free from encumbrances, and that the
GRANTOR will procure such further assurances as may be reasonably required.

IN THIS WARRANTY DEED the singular includes the plural and the masculine includes
the feminine, with the intent that this Warranty Deed shall be read with all appropriate changes of
number and gender.

IN WITNESS WHEREOF the GRANTOR has hereunto affixed its seal, attested to by the hands
of its proper officers.

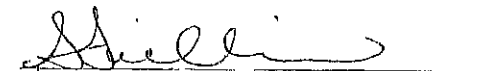
SIGNED, SEALED AND DELIVERED)
in the presence of:)

**GRAND LODGE, INDEPENDENT ORDER
OF ODD FELLOWS, ATLANTIC
PROVINCES**

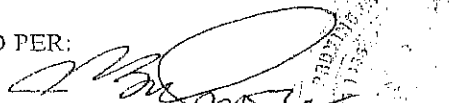

Paulette Osmond
Commissioner of Oaths
in and for the Prov. of N.S.
Expiry: December 31, 2012

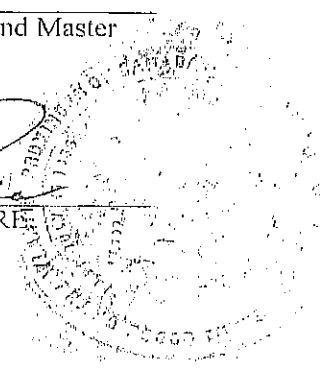
PER:


GEORGE SHORT, Grand Master


Witness

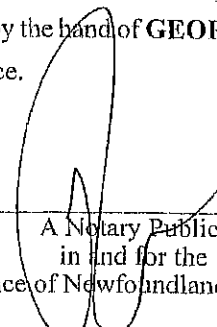
AND PER:


WALWIN BLACKMORE
Grand Secretary




PROVINCE OF NEWFOUNDLAND AND LABRADOR)
COUNTY OF SS)

ON THIS 7th day of July, 2009, before me, the subscriber, personally came and appeared Pauline Osmund, a subscribing witness to the foregoing Indenture, who having been by me duly sworn, made oath and said that the **GRAND LODGE, INDEPENDENT ORDER OF ODD FELLOWS, ATLANTIC PROVINCES**, one of the parties thereto, executed the same by affixing its corporate seal thereto attested by the hand of **GEORGE SHORT**, its Grand Master and duly recognized officer, in his/her presence.


A Notary Public
in and for the
Province of Newfoundland and Labrador
ANDREW K. PARSONS

PROVINCE OF NEWFOUNDLAND AND LABRADOR)
COUNTY OF SS)

ON THIS 3rd day of July, 2009, before me, the subscriber, personally came and appeared Stephanie Sullivan, a subscribing witness to the foregoing Indenture, who having been by me duly sworn, made oath and said that the **GRAND LODGE, INDEPENDENT ORDER OF ODD FELLOWS, ATLANTIC PROVINCES**, one of the parties thereto, executed the same by affixing its corporate seal thereto attested by the hands of **WALWIN BLACKMORE**, its Grand Secretary and duly recognized officer, in his/her presence.


A Notary Public
in and for the
Province of Newfoundland and Labrador
BENJAMIN J. BLACKMORE

AFFIDAVIT OF STATUS

CANADA)
PROVINCE OF NEWFOUNDLAND AND LABRADOR)

I, **GEORGE SHORT**, of Port aux Basques, Province of Newfoundland and Labrador, make oath and say as follows:

1. **THAT** I am the Grand Master of the Grand Lodge, Independent Order of Odd Fellows, Atlantic Provinces and as such have a personal knowledge of the matters herein deposited to.
2. **THAT** Grand Lodge, Independent Order of Odd Fellows, Atlantic Provinces is not now nor will be on the date of delivery of the foregoing and attached Indenture, a non-resident of Canada with the meaning of the *Income Tax Act* (Canada).
3. **THAT** for the purpose of this my Affidavit "matrimonial home" means the dwelling and real property occupied by a person and that person's spouse as their family residence and in which either or both of them have a property interest other than a leasehold interest.
4. **THAT** the lands described in the within Indenture are not occupied as a matrimonial home by any member of the Grand Lodge, Independent Order of Odd Fellows, Atlantic Provinces nor is any member of the Grand Lodge, Independent Order of Odd Fellows, Atlantic Provinces entitled to the use of the lands as a matrimonial home and the lands have never been so occupied while the lands have been owned by the Grand Lodge, Independent Order of Odd Fellows, Atlantic Provinces.
5. **THAT** I acknowledge that I signed the within Indenture on the date of this Affidavit. This acknowledgment is made for the purpose of registering this Indenture pursuant to Section 31(a) of the *Registry Act* R.S.N.S. 1989, c. 392 or section 79 of the *Land Registration Act*, S.N.S. 2001 c. 6, as applicable.

SWORN BEFORE ME at Port aux Basques,)
in the Province of Newfoundland and Labrador,)
on the 7th day of July, 2009:)



A Notary Public)
in and for the)
Province of Newfoundland and Labrador)

Parsons, NL
ANDREW K. PARSONS

George Short

) **GEORGE SHORT, Grand Master,**
) **GRAND LODGE, INDEPENDENT ORDER**
) **OF ODDFELLOWS, ATLANTIC**
) **PROVINCES**

SCHEDULE "A"

ALL that certain lot, piece or parcel of land situate on Cumberland Street in Lunenburg, in the County of Lunenburg and Province of Nova Scotia, and more particularly bounded and described as follows, that is to say:

BEGINNING at an iron bolt driven into the ground at the intersection of the Northwestern boundary line of lands owned or occupied by one Warden Wamboldt with the Southwestern side line of Cumberland Street;

Thence Southwestwardly along the said Northwestern boundary line of the said Warden Wamboldt's land 44 feet 4 inches, more or less, or to an iron bolt driven into the ground;

Thence at right angles Northwestwardly 27 feet 6 inches, more or less, or to an iron bolt driven into the ground;

Thence Northeastwardly and along the Southeastern wall of a barn now standing 44 feet 4 inches, more or less, or to an iron bolt driven into the ground on the said Southwestern side line of Cumberland Street;

Thence Southeastwardly along the said side line of Cumberland Street 27 feet 4 inches, more or less, to the place of beginning,

SUBJECT TO a right-of-way for the owner or owners from time to time of the lot of land conveyed by the Grantors to Arnold L. Parks, by Deed dated the 16th day of February, A.D. 1929 and duly registered in the office of the Registry of Deeds at Bridgewater, N.S. on the 5th day of December, A.D., 1939, in Book 105, at Page 45, under Number 72.

This parcel is exempt from the requirements for subdivision approval pursuant to the Municipal Government Act, Part IX, because the parcel was created by subdivision or consolidation or repeal of subdivision prior to April 16, 1987 which earlier required no approval, or was validated by subsection 2(I) of the Real Property Transfer Validation Act, or was validated by subsection 291(I) of the Municipal Government Act.

Handwritten signature

Appendix B



Heritage Property Act

CHAPTER 199

OF THE

REVISED STATUTES, 1989

Amended 1991, c. 10; 1998, c. 18, s. 561

NOTE - This electronic version of this statute is provided by the Office of the Legislative Counsel for your convenience and personal use only and may not be copied for the purpose of resale in this or any other form. Formatting of this electronic version may differ from the official, printed version. Where accuracy is critical, please consult official sources.

An Act to Provide for the Identification, Preservation and Protection of Heritage Property

Short title

1 This Act may be cited as the *Heritage Property Act*. R.S., c. 199, s. 1.

Purpose

2 The purpose of this Act is to provide for the identification, designation, preservation, conservation, protection and rehabilitation of buildings, structures, streetscapes, areas and districts of historic, architectural or cultural value, in both urban and rural areas, and to encourage their continued use. R.S., c. 199, s. 2; 1991, c. 10, s. 1.

Interpretation

3 In this Act,

- (a) "Advisory Council" means the Advisory Council on Heritage Property;
- (b) "alter the exterior appearance" includes move in whole or in part;
- (c) "building" includes the land and structures appurtenant thereto;
- (ca) "certificate" means a certificate of appropriateness issued by a heritage officer certifying that a proposed development conforms with the requirements of a conservation by-law;
- (cb) "conservation by-law" means a heritage conservation district by-law adopted and approved pursuant to this Act;
- (cc) "conservation plan" means a heritage conservation district plan adopted and approved pursuant to this Act;
- (d) "council" means council of a municipality;
- (da) "development" includes the demolition or removal of a building or structure;
- (e) "heritage advisory committee" means a heritage advisory committee established by a municipality pursuant to this Act;
- (ea) "heritage conservation district" means an urban or rural area with historic or architectural value that is established as a heritage conservation district pursuant to this Act;
- (f) "Minister" means the member of the Executive Council charged by the Governor in Council with the administration of this Act;
- (g) "municipal heritage property" means a building, streetscape or area registered in a municipal registry of heritage property;
- (h) "municipality" means a city, incorporated town or municipality of a county or district;
- (ha) "prescribed" means prescribed by the regulations;

- (i) "provincial heritage property" means a building, streetscape or area registered in the Provincial Registry of Heritage Property;
- (j) "registered owner" means an owner of land whose interest in the land is defined and whose name is specified in an instrument in the registry of deeds, and includes a person assessed in respect of the occupancy of the land. R.S., c. 199, s. 3; 1991, c. 10, s. 2.

Advisory Council on Heritage Property

4 (1) The Governor in Council may appoint not less than five nor more than twelve persons to be the Advisory Council on Heritage Property.

Chairman and Vice-chairman

(2) The Governor in Council shall designate one of the members of the Advisory Council to be Chairman and one of the members to be Vice-chairman.

Term of office of members

(3) A member of the Advisory Council shall hold office for such term as the Governor in Council determines.

Remuneration and expenses

(4) The members of the Advisory Council shall be paid such remuneration as is determined by the Governor in Council and actual and reasonable expenses incurred by them in the discharge of their duties. R.S., c. 199, s. 4.

Powers of Advisory Council

5 The Advisory Council may advise the Minister respecting

- (a) the inclusion of buildings, streetscapes and areas in the Provincial Registry of Heritage Property;
- (b) an application for permission to substantially alter or demolish a provincial heritage property;
- (c) building or other regulations that affect the attainment of the intent and purpose of this Act;
- (d) any other matters conducive to the effective carrying out of the intent and purpose of this Act. R.S., c. 199, s. 5.

Provincial Registry of Heritage Property

6 The Minister shall establish and maintain a Provincial Registry of Heritage Property. R.S., c. 199, s. 6.

Recommendation as provincial heritage property

7 (1) The Advisory Council may recommend to the Minister that a building, streetscape or area be registered as a provincial heritage property in the Provincial Registry of Heritage Property.

Notice of recommendation

(2) The Minister shall cause notice of the recommendation to be served upon each registered owner of the building, streetscape or area that is the subject of the recommendation at least thirty days prior to registration of the building, streetscape or area in the Provincial Registry of Heritage Property.

Content of notice

- (3) The notice shall contain
- (a) a statement that the building, streetscape or area described in the notice has been recommended for registration in the Provincial Registry of Heritage Property;
 - (b) a brief statement of the reasons for the recommendation;
 - (c) a summary of the consequences of registration;
 - (d) a statement that no person shall substantially alter the exterior appearance of or demolish the building, streetscape or area for one hundred and twenty days after the notice is served unless the Minister sooner refuses to register the property; and
 - (e) an invitation to the registered owner to comment on the proposed registration.

Alteration or demolition after notice

(4) No person shall substantially alter the exterior appearance of or demolish a building, streetscape or area for one hundred and twenty days after a notice respecting the building, streetscape or area has been served pursuant to subsection (2) except in those cases where, prior to the expiration of one hundred and twenty days, the Minister refuses to register the property.

Filing of notice

(5) A copy of the notice served pursuant to subsection (2) shall be deposited in the registry of deeds for the registration district in which the building,

streetscape or area is situate. R.S., c. 199, s. 7.

Registration as provincial heritage property

8 (1) At any time not less than thirty days nor more than one hundred and twenty days after service of the notice pursuant to Section 7 and on the advice of the Advisory Council, the Minister may register the building, streetscape or area as a provincial heritage property in the Provincial Registry of Heritage Property.

Notice of registration or refusal

(2) Notice of the registration or the refusal to register shall be served upon each registered owner of the building, streetscape or area and a copy thereof shall be deposited in the registry of deeds for the registration district in which the building, streetscape or area is situate. R.S., c. 199, s. 8.

Deregistration of provincial heritage property

9 (1) On the application of an owner of a provincial heritage property or on its own motion, the Advisory Council may recommend to the Minister that the provincial heritage property cease to be registered in the Provincial Registry of Heritage Property.

Conditions for recommendation

(2) Such a recommendation may be made where

- (a) the property has been destroyed or damaged by any cause; or
- (b) the continued registration of the property appears to the Advisory Council to be inappropriate.

Powers of Minister where recommendation

(3) Where the Minister receives a recommendation for deregistration from the Advisory Council or where it appears to the Minister that the continued registration is inappropriate, the Minister may deregister a provincial heritage property not less than thirty days after a notice giving particulars of the proposed deregistration is served on the registered owner of the provincial heritage property and published in a newspaper circulating in the area where

- (a) the property has been destroyed or damaged by any cause; or
- (b) the continued registration of the property appears to the Minister to be inappropriate.

Notice of deregistration

(4) Where the Minister deregisters a property, the Minister shall cause notice of the deregistration to be sent to the registered owner of the property and a copy thereof to be deposited in the registry of deeds for the registration district in which the property is situate. R.S., c. 199, s. 9.

Sign or plaque

10 The Minister may cause a sign, plaque or other marker to be placed on a provincial heritage property indicating the significance of that property. R.S., c. 199, s. 10.

Approval to alter or demolish

11 (1) Provincial heritage property shall not be substantially altered in exterior appearance or demolished without the approval of the Governor in Council.

Application to alter or demolish

(2) An application for permission to substantially alter the exterior appearance of or demolish provincial heritage property shall be made in writing to the Minister.

Referral of application

(3) Upon receipt of the application, the Minister shall refer the application to the Advisory Council for its recommendation.

Report and recommendation to Minister

(4) Within thirty days after the application is referred by the Minister, the Advisory Council shall submit a written report and recommendation to the Minister respecting the provincial heritage property.

Recommendation to Governor in Council

(5) The Minister shall present the recommendation of the Advisory Council to the Governor in Council for consideration.

Determination by Governor in Council

(6) The Governor in Council may grant the application either with or without conditions or may refuse it.

Notice of determination

(7) The Minister shall advise the applicant of the determination made by the Governor in Council. R.S., c. 199, s. 11.

Municipal registry of heritage property

12 (1) A municipality may by by-law establish a municipal registry of heritage property.

Heritage advisory committee

(2) A by-law made pursuant to this Section shall provide for the establishment of a heritage advisory committee.

Composition of committee

(3) The heritage advisory committee shall consist of at least two members of the council and such persons or such number of persons as the council may determine by by-law.

Term of office

(4) The by-law may provide the term for which members of the heritage advisory committee shall serve.

Planning advisory committee as committee

(5) The by-law may provide that the planning advisory committee of the municipality shall be the heritage advisory committee of the municipality.

Approval of by-law

(6) A by-law made pursuant to this Section is subject to the approval of the Minister of Municipal Affairs, and when so approved has the force of law. R.S., c. 199, s. 12.

Powers of heritage advisory committee

13 The heritage advisory committee may advise the municipality respecting

- (a) the inclusion of buildings, streetscapes and areas in the municipal registry of heritage property;
- (b) an application for permission to substantially alter or demolish a municipal heritage property;
- (ba) the preparation, amendment, revision or repeal of a conservation plan and conservation by-law;
- (bb) the administration of heritage conservation districts pursuant to the provisions of this Act;
- (bc) an application for a certificate that is required by this Act or the conservation plan and conservation by-law to go to a public hearing;
- (c) building or other regulations that affect the attainment of the intent and purpose of this Act;
- (d) any other matters conducive to the effective carrying out of the intent and purpose of this Act. R.S., c. 199, s. 13; 1991, c. 10, s. 3.

Recommendation as municipal heritage property

14 (1) A heritage advisory committee may recommend to the municipality that a building, streetscape or area be registered as a municipal heritage property in the municipal registry of heritage property.

Notice of recommendation

(2) The municipality shall cause notice of the recommendation to be served upon each registered owner of the building, streetscape or area that is the subject of the recommendation at least thirty days prior to registration of the building, streetscape or area in the municipal registry of heritage property.

Content of notice

(3) The notice shall contain

- (a) a statement that the building, streetscape or area described in the notice has been recommended for registration in the municipal registry of heritage property;
- (b) a brief statement of the reasons for the recommendation;
- (c) a summary of the consequences of registration;
- (d) a statement that no person shall substantially alter the exterior appearance of or demolish the building, streetscape or area for one hundred and twenty days after the notice is served unless the municipality sooner refuses to register the property; and
- (e) notification of the right of the owner to be heard and of the time and place for the hearing.

Alteration or demolition after notice

(4) No person shall substantially alter the exterior appearance of or demolish a building, streetscape or area for one hundred and twenty days after a notice respecting the building, streetscape or area has been served pursuant to subsection (2) except in those cases where, prior to the expiration of one hundred and twenty days, the municipality refuses to register the property.

Filing of notice

(5) A copy of the notice served pursuant to subsection (2) shall be deposited in the registry of deeds for the registration district in which the building, streetscape or area is situate. R.S., c. 199, s. 14.

Registration as municipal heritage property

15 (1) At any time not less than thirty days nor more than one hundred and twenty days after service of the notice pursuant to Section 14 and on the advice of the heritage advisory committee, the municipality may register the building, streetscape or area as a municipal heritage property in the municipal registry of heritage property.

Opportunity to be heard

(2) No registration pursuant to subsection (1) shall take place until the council has given the owner of the property an opportunity to be heard and such opportunity shall be given not earlier than three weeks after service of the notice pursuant to subsection (2) of Section 14.

Notice of registration

(3) Notice of the registration shall be sent to each registered owner of the building, streetscape or area and a copy thereof shall be deposited in the registry of deeds for the registration district in which the building, streetscape or area is situate. R.S., c. 199, s. 15.

Deregistration of municipal heritage property

16 (1) On the application of an owner of a municipal heritage property or on its own motion, the council may deregister a municipal heritage property where

- (a) the property has been destroyed or damaged by any cause; or
 - (b) the continued registration of the property appears to the council to be inappropriate,
- after holding a public hearing to consider the proposed deregistration.

Public hearing

(2) Such a public hearing shall be held not less than thirty days after a notice of the hearing is served on the registered owner of the municipal heritage property and published in a newspaper circulating in the area.

Notice of deregistration

(3) Where a municipal heritage property is deregistered, the council shall cause notice of the deregistration to be sent to the registered owner of the property and a copy thereof to be deposited in the registry of deeds for the registration district in which the property is situate. R.S., c. 199, s. 16.

Approval to alter or demolish

17 (1) Municipal heritage property shall not be substantially altered in exterior appearance or demolished without the approval of the municipality.

Application to alter or demolish

(2) An application for permission to substantially alter the exterior appearance of or demolish municipal heritage property shall be made in writing to the municipality.

Referral of application

(3) Upon receipt of the application, the municipality shall refer the application to the heritage advisory committee for its recommendation.

Report and recommendation to municipality

(4) Within thirty days after the application is referred by the municipality, the heritage advisory committee shall submit a written report and recommendation to the municipality respecting the municipal heritage property.

Determination by municipality

(5) The municipality may grant the application either with or without conditions or may refuse it.

Notice of determination

(6) The municipality shall advise the applicant of its determination. R.S., c. 199, s. 17.

Exception to Section 17

18 Notwithstanding Section 17, where the owner of municipal heritage property has made an application for permission to alter the exterior appearance of or demolish the property and the application is not approved, the owner may make the alteration or carry out the demolition at any time after one year from the date of the application, provided that the alteration or demolition shall not be undertaken more than two years after the date of the application. R.S., c. 199, s. 18.

Sign or plaque

19 The municipality may cause a sign, plaque or other marker to be placed on a municipal heritage property indicating the significance of that property. R.S., c. 199, s. 19.

Establishment of heritage conservation district

19A (1) A municipality may establish a heritage conservation district by concurrently adopting a heritage conservation district plan and a heritage conservation district by-law for a part of the municipality and there may be different conservation plans and conservation by-laws for different parts of the municipality.

Conservation by-law

(2) A conservation by-law made pursuant to this Section shall provide for the establishment of a heritage advisory committee and subsections (3) to (5) of Section 12 apply *mutatis mutandis* unless a heritage advisory committee is established pursuant to Section 12.

Adoption of plan and by-law

(3) A conservation plan and conservation by-law shall be adopted by a majority vote of the whole council after a public hearing and consideration of any submissions received, but only those councillors present at the public hearing may vote upon the adoption of the conservation plan and conservation by-law.

Recommendation of Minister of Municipal Affairs

(4) The Minister shall forward a copy of the conservation plan and conservation by-law and the prescribed background studies and information to the Minister of Municipal Affairs for that Minister's recommendation.

Conditions for approval

(5) The Minister shall approve a conservation plan and conservation by-law unless

- (a) the conservation by-law does not carry out the intent of the conservation plan;
 - (b) the conservation plan is not implemented by the conservation by-law;
 - (c) the prescribed background studies or information do not support the conservation plan or conservation by-law;
 - (d) the conservation plan or conservation by-law conflicts with an applicable provincial land-use policy or regulation adopted pursuant to the *Planning Act*;
 - (e) the conservation plan or conservation by-law conflicts with the applicable municipal planning strategy or land-use by-law;
 - (f) in the opinion of the Minister, there is a conflict with any other provincial interest,
- and they take effect on and not before approval by the Minister.

Amendment or repeal

(6) A conservation plan and conservation by-law approved by the Minister pursuant to subsection (5) may concurrently be amended, revised or repealed by the council and subsections (3) to (5) apply *mutatis mutandis*.

Provincial heritage property in proposed district

(7) Where a proposed heritage conservation district includes a provincial heritage property, the Minister shall refer the proposed conservation plan and conservation by-law to the Advisory Council for its recommendation and, upon consideration of the recommendation, shall determine that the conservation plan and conservation by-law

- (a) apply to the provincial heritage property and that Sections 7 to 11 do not apply to the provincial heritage property;
- (b) apply to the provincial heritage property to the extent determined by the Minister and subject to such conditions as the Minister determines; or
- (c) do not apply to the provincial heritage property.

Application to property

(8) Where a building, streetscape or area in an established heritage conservation district is to be designated as a provincial heritage property, the Minister may determine that the conservation plan and conservation by-law apply or do not apply to the provincial heritage property to the extent determined by the Minister and subject to such conditions as the Minister determines. 1991, c. 10, s. 4.

Consequences of establishing district

19B (1) Where a heritage conservation district is established,

- (a) no further building, streetscape or area in the district shall be registered as a municipal heritage property;

- (b) Section 18 does not apply to any municipal heritage property within the district;
- (c) the conservation plan and conservation by-law shall include
 - (i) policies respecting demolition or removal of municipal heritage properties within the district, and
 - (ii) a requirement that a certificate be issued for demolition or removal of any municipal heritage property within the district; and
- (d) notwithstanding clause (c) and for greater certainty, Section 17 continues to apply to a municipal heritage property within the district.

Continuation of municipal heritage property

- (2) Subject to subsection (1), a municipal heritage property located in a heritage conservation district continues to be a municipal heritage property. 1991, c. 10, s. 4.

Design guidelines

19C Design guidelines included in a conservation by-law shall

- (a) with respect to a building or structure, address only the exterior of the building or structure;
- (b) not address the use to which land, a building or a structure may be put. 1991, c. 10, s. 4.

Prohibited restriction in by-law

- 19D A restriction in a conservation by-law that does not permit a building of any kind on a lot is *ultra vires*. 1991, c. 10, s. 4.

Certificate for development

- 19E (1) Where a council has adopted a conservation plan and conservation by-law, a certificate is required to undertake the types of development for which a certificate is required by the conservation by-law.

Requirements for issue

- (2) A certificate shall be issued for a proposed development if the development meets the requirements of the conservation by-law or is approved by the council following a public hearing where the conservation plan and conservation by-law require such a hearing.

Restriction where proposed amendment

- (3) No certificate that is or may be inconsistent with the proposed amendment or revision of a conservation by-law shall be issued for a period of one hundred and twenty days from the date of publication of the first notice advertising the intention of the council to amend or revise the conservation plan and conservation by-law.

Where amendment not adopted within 120 days

- (4) Where the proposed amendment or revision of the conservation plan and conservation by-law has not come into effect after the expiry of the time specified in subsection (3), the certificate shall be issued if, in all other respects, it meets the requirements of the conservation by-law or is approved by the council, as the case may be, following a public hearing, where one is required pursuant to this Act or the conservation plan and conservation by-law.

Restriction on development and building permits

- (5) No development permit granted pursuant to the *Planning Act* and no permit granted pursuant to the *Building Code Act* and regulations that is or may be inconsistent with a proposed conservation by-law, or an amendment or revision thereof, shall be issued for a period of one hundred and twenty days from the publication of the first notice advertising the intention of the council to adopt, amend or revise the conservation plan and conservation by-law.

Where plan and by-law not adopted within 120 days

- (6) Where the proposed conservation plan and conservation by-law, or amendment or revision thereof, has not come into effect after the expiry of the time specified in subsection (5), the permits referred to in subsection (5) shall be issued if, in all other respects, they meet the requirements of applicable by-laws of the municipality. 1991, c. 10, s. 4.

Public hearing re demolition or removal

- 19F (1) Where the conservation plan and conservation by-law require that a certificate be issued for demolition or removal of a building or structure in a heritage conservation district, the council shall hold a public hearing.

Conditions for approval

- (2) Where the council considers an application for a certificate for demolition or removal of a building or structure, the council shall not approve the application unless
 - (a) there is irreversible structural damage or deterioration to the building or structure; or

(b) the applicable policies of the conservation plan respecting demolition or removal of the building or structure are met. 1991, c. 10, s. 4.

Heritage officer

19G (1) A council that has adopted a conservation plan and conservation by-law shall designate a person employed by the municipality as the heritage officer and the heritage officer shall be responsible for the administration of the conservation plan and conservation by-law and the issuance of certificates.

Alternate

(2) A council may, from time to time, authorize another person to act in the heritage officer's stead.

Notice to applicant

(3) Within fifteen days of receiving an application for a certificate, the heritage officer shall inform the applicant whether or not the application is complete.

Issue of certificate by heritage officer

(4) Where no public hearing is required pursuant to a conservation plan and conservation by-law, within thirty days of receiving a completed application, the heritage officer shall grant the certificate if it meets the requirements of the conservation by-law or inform the applicant, in writing, of the reasons for not granting the certificate.

Public hearing

(5) Where required to do so by a conservation plan and conservation by-law, the heritage officer shall refer the application for a certificate to the council for a public hearing and shall issue or deny the certificate in accordance with the decision of council, but no certificate shall be issued until the time for appeal has elapsed or the appeal has been disposed of, whichever is the longer. 1991, c. 10, s. 4; 1998, c. 18, s. 561.

Appeal re subsection 19G(4)

19H (1) The denial of a certificate or the imposition of conditions on a certificate granted pursuant to subsection 19G(4) may be appealed to the Nova Scotia Utility and Review Board by the applicant for the certificate.

Appeal re subsection 19G(5)

(1A) The approval, imposition of conditions on or denial of a certificate pursuant to subsection 19G (5) may be appealed to the Nova Scotia Utility and Review Board by

- (a) the applicant for the certificate;
- (b) an aggrieved person;
- (c) the council of a municipality adjoining the heritage conservation district to which the certificate relates;
- (d) an official in the public service designated by the Minister.

"aggrieved person" defined

(2) In subsection (1), "aggrieved person" includes

- (a) an individual who *bona fide* believes that the proposed certificate will adversely affect
 - (i) the value of or the reasonable enjoyment of that person's property; or
 - (ii) the reasonable enjoyment of the property occupied by that person;
- (b) an incorporated organization the objects of which include promoting or protecting
 - (i) the quality of life of persons resident in the neighbourhood affected by the council's decision, or
 - (ii) features, structures or sites of the community affected by the council's decision of significant historic, architectural or cultural value; and
- (c) an incorporated or unincorporated organization of which the majority of its members are persons who are aggrieved persons pursuant to clause (a).

Duties of Municipal Board on appeal

(3) The Board shall

- (a) confirm the decision of the heritage officer or the council, as the case may be;
- (b) make any decision the heritage officer or the council, as the case may be, could have made; or
- (c) refer the matter back to the heritage officer or council, as the case may be, for reconsideration.

Restriction on powers of Municipal Board on appeal

(4) The Board shall not interfere with the decision of the heritage officer or the council, as the case may be, unless the decision cannot reasonably be said to be consistent with the conservation by-law or clause (a) of subsection (2) of Section 19F. 1991, c. 10, s. 4; 1998, c. 18, s. 561.

Conflict with Building Code Act

19I Where there is a conflict between this Act or the regulations and the *Building Code Act* or regulations, the *Building Code Act* and regulations prevail. 1991, c. 10, s. 4.

Severability of by-law

19J The provisions of a conservation by-law are severable and the illegality of any part does not affect the validity of the rest of the conservation by-law. 1991, c. 10, s. 4.

Agreement between Minister and owner

20 (1) The Minister may enter into an agreement with the owner of a provincial heritage property, and the council may enter into an agreement with the owner of municipal heritage property or property located in a heritage conservation district, whereby the owner grants to the Minister or the council a right or incurs an obligation respecting the use, preservation or protection of the heritage property or property located in a heritage conservation district.

Filing of agreement

(2) An agreement entered into pursuant to subsection (1) shall be deposited in the registry of deeds for the registration district within which the heritage property or property located in a heritage conservation district is situate.

Encumbrance

(3) Where an agreement is deposited in the registry of deeds, the right or obligation given by the owner becomes an encumbrance upon and runs with the property, and the Minister, in respect of provincial heritage property, and the municipality, in respect of municipal heritage property or property located in a heritage conservation district, may enforce the right or obligation against the property and against the owner or any subsequent owners of the property.

Waiver of agreement

(4) A right or obligation created by an agreement made pursuant to subsection (1) may be waived or discharged by the Governor in Council in respect of provincial heritage property and by the municipality in respect of municipal heritage property or property located in a heritage conservation district. R.S., c. 199, s. 20; 1991, c. 10, s. 5.

Appeal

20A (1) The entering into an agreement or waiving or discharging of a right or condition in an agreement by a council pursuant to Section 20 may be appealed to the Nova Scotia Municipal Board by

- (a) an aggrieved person;
- (b) the council of a municipality adjoining the heritage conservation district to which the agreement relates;
- (c) an official in the public service designated by the Minister.

"aggrieved person" defined

(2) In subsection (1), "aggrieved person" includes

- (a) an individual who *bona fide* believes that the proposed agreement or waiver or discharge of a right or condition in the agreement will adversely affect
 - (i) the value of or the reasonable enjoyment of that person's property, or
 - (ii) the reasonable enjoyment of the property occupied by that person;
- (b) an incorporated organization the objects of which include promoting or protecting
 - (i) the quality of life of persons resident in the neighbourhood affected by the council's decision, or
 - (ii) features, structures or sites of the community affected by the council's decision of significant historic, architectural or cultural value; and
- (c) an incorporated or unincorporated organization of which the majority of its members are persons who are aggrieved persons pursuant to clause (a).

Duties of Municipal Board on appeal

(3) The Board shall

- (a) confirm the decision of the council;

- (b) make any decision the council could have made; or
- (c) refer the matter back to the council for reconsideration.

Restriction on powers of Board on appeal

(4) The Board shall not interfere with the decision of the council unless the decision cannot reasonably be said to be consistent with the conservation by-law. 1991, c. 10, s. 6.

Acquisition by municipality

21 (1) The municipality may acquire municipal heritage property or property located in a heritage conservation district or any right therein.

Deemed municipal purpose

(2) Municipal heritage property or property located in a heritage conservation district or any right therein acquired by a municipality shall be and shall be deemed to be property acquired for a city, town or municipal purpose within the meaning of the *Municipal Act*, the *Municipal Affairs Act*, the *Towns Act*, the *Dartmouth City Charter*, the *Halifax City Charter* and Chapter 174 of the Acts of 1903, *An Act to Incorporate the City of Sydney*. R.S., c. 199, s. 21; 1991, c. 10, s. 7.

Financial assistance for restoration

22 (1) The Minister, subject to the approval of the Governor in Council, may provide financial assistance in respect of provincial heritage property and the council may provide financial assistance in respect of municipal heritage property or property located in a heritage conservation district to any person to assist in the restoration or renovation of such property upon such terms and conditions as the Minister or the council, as the case may be, deems fit.

Financial assistance to municipality

(2) The Minister of Municipal Affairs may provide financial assistance to a municipality to assist it in exercising its authority pursuant to this Act.

Payment by Province

(3) Any money required by the Minister of Municipal Affairs to exercise his authority pursuant to this Act may be paid out of money voted for that purpose by the Legislature or out of the Consolidated Fund upon the recommendation of the Governor in Council.

Source of funds of municipality

(4) Any money required by a municipality in the exercise of its authority pursuant to this Act may be raised, levied or collected as part of the general rates or taxes of the municipality. R.S., c. 199, s. 22; 1991, c. 10, s. 8.

Service of notice

23 (1) Service of any notice required to be made by this Act shall be sufficient if served upon the person by registered mail at his last known address.

Substituted service

(2) Where a person upon whom service should be made cannot be identified or his address is not known, service shall be sufficient if notice is affixed in a conspicuous place on the building, streetscape or area and a copy is delivered to any occupant of the property. R.S., c. 199, s. 23.

Manner of entry of notice in registry

24 A notice deposited in a registry of deeds pursuant to this Act shall be indexed as if it were a conveyance by or to, as the case may be, the registered owner of the building, streetscape or area. R.S., c. 199, s. 24.

Contravention of Act

25 (1) A person who contravenes the provisions of this Act is guilty of an offence and is liable on summary conviction to a penalty of not more than ten thousand dollars and in default of payment thereof to imprisonment for a term not exceeding six months.

Maximum penalty for corporation

(2) Where a corporation is convicted of an offence against this Act, the maximum penalty that may be imposed upon the corporation is one hundred thousand dollars and not as provided in subsection (1).

Right of action and remedies

(3) Where there is a contravention or failure to comply with the terms of this Act or any agreement made pursuant to this Act, the Minister, with respect to a provincial heritage property, and a municipality, with respect to a municipal heritage property or property located in a heritage conservation district, may bring an action in the Trial Division of the Supreme Court and the Court may, in addition to any other remedy or relief,

- (a) make an order restraining the continuance or repetition of any such contravention or failure;
- (b) make an order directing the restoration of the property as nearly as may be to its condition prior to the contravention or failure to comply, and directing that upon failure to comply with the order the Minister or the council, as the case may be, may restore the property or may cause it to be

restored at the expense of the owner thereof;

(c) make such other order as is required to enforce the provisions of this Act and as to costs and as to the recovery of the expense of any such restoration as the Court deems just. R.S., c. 199, s. 25; 1991, c. 10, s. 9.

Regulations

26 (1) The Governor in Council may make regulations

(a) determining the form of the Provincial Registry of Heritage Property;

(aa) respecting heritage conservation districts, conservation plans and conservation by-laws and, without restricting the generality of the foregoing,

(i) respecting the adoption and approval of a conservation plan and conservation by-law, including background studies and information, public participation programs and public hearings,

(ii) respecting the purpose of a conservation plan and conservation by-law,

(iii) respecting the content of a conservation plan and conservation by-law,

(iv) respecting certificates required to undertake development in a heritage conservation district, including public hearings, the imposition of conditions to which the certificates are subject and requirements for the issuance of certificates on or before the issuance of permits pursuant to the *Planning Act* and the *Building Code Act*,

(v) respecting appeals;

(b) respecting forms to be used for the purpose of this Act;

(c) defining any expression used in this Act and not defined herein;

(d) determining whether or not compensation for anything done pursuant to this Act is payable and, if payable, the circumstances in which, the extent to which, by whom and to whom such compensation is payable and the manner in which and the person by whom the amount of such compensation is to be determined;

(e) respecting any matter or thing, whether of the foregoing kind or not, that is necessary to effectively carry out the purpose of this Act.

Regulations Act

(2) The exercise by the Governor in Council of the authority conferred by this Section shall be regulations within the meaning of the *Regulations Act*. R.S., c. 199, s. 26; 1991, c. 10, s. 10.

Act binds Crown

27 This Act binds Her Majesty in right of the Province. R.S., c. 199, s. 27.

Deemed municipal heritage property

28 (1) A building, streetscape or area which is a heritage resource pursuant to subsection (5) of Section 27 of Chapter 8 of the Acts of 1980 is and is deemed to be registered in the City of Halifax municipal registry of heritage property.

Deemed agreement under Section 20

(2) An agreement, easement or covenant entered into by the City of Halifax and another person pursuant to subsection (10) of Section 27 of said Chapter 8 is and is deemed to be an agreement entered into by the City and such person pursuant to subsection (1) of Section 20 of this Act. R.S., c. 199, s. 28; revision corrected 1999.



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Appendix C

This consolidation is unofficial and is for reference only. For the official version of the regulations, consult the original documents on file with the Registry of Regulations, or refer to the Royal Gazette Part II.

Regulations are amended frequently. Please check the list of Regulations by Act to see if there are any recent amendments to these regulations filed with the Registry that are not yet included in this consolidation.

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Heritage Conservation Districts Regulations

made under Section 26 of the
Heritage Property Act
R.S.N.S. 1989, c. 199
O.I.C. 92-682 (July 14, 1992), N.S. Reg. 138/92
as amended up to O.I.C. 2000-451 (September 6, 2000), N.S. Reg. 157/2000

Citation

1 These regulations may be cited as the "Heritage Conservation Districts Regulations".

Definitions

2 In these regulations

(a) "Act" means the Heritage Property Act;

(b) "Board" means the Nova Scotia Municipal Board [now Provincial Administrative Review Board];

(c) "directional emphasis" means the relative emphasis given to the horizontal and vertical elements in a building elevation or in a sequence of building elevations;

(d) "district" means a heritage conservation district;

(e) "massing" means the form and shape of the various parts or elements that comprise a building or structure and their relationship to each other in the overall design of the building or structure or in a sequence of buildings or structures;

(f) "registered mail" includes certified mail, signature mail and a service provided by private couriers commonly known as signature service;

(g) "open spaces" include public and private spaces, parks, gardens, parade squares, ponds, waterfront areas, streets, parking areas, yards and areas of vacant or undeveloped land;

(h) "rhythm" means the pattern established by a succession of parts or elements in a building elevation or in a sequence of building elevations;

(i) "service infrastructure" means the various public utility services and structures such as sewerage systems, waterworks, electricity and gas distribution systems, telephone systems, streets, bridges, tunnels, parking facilities, sidewalks and other pedestrian pathways, which together support and service the occupation of a heritage conservation district and contribute to its physical character;

(j) "setting" means the arrangement of

(i) open spaces,

(ii) topography,

(iii) vegetation,

(iv) views from public places within the district to places within the district, and

(v) other natural or constructed features,

that together comprise the visual and physical surroundings of buildings in the district, and that may have historic or architectural significance in their own right;

(k) "symmetry" means the correspondence in size, position and proportion of the parts or elements of a building elevation or of a sequence of building elevations, including windows, doors, bays and chimneys about a dividing line or centre;

(l) "utility structure" means a building or structure housing or supporting public or private utility equipment or machinery, including but not limited to, telephone poles, power poles, electrical transformers, street lighting fixtures, pumping stations, oil tanks, propane tanks and garbage containers;

(m) "visual balance" means equilibrium in the arrangement of the parts or elements of a building elevation or of a sequence of building

elevations, including windows, doors, bays or porches, in relation to each other about a dividing line or centre.

Purpose of a conservation plan

3 (1) The purpose of a conservation plan is to

- (a) provide statements of policy that address problems and opportunities concerning the conservation of the historic or architectural value of buildings and structures in the district and their setting; and
- (b) identify expenditures, initiatives and conservation by-law provisions for the implementation of the conservation plan.

Content of a conservation plan

4 (1) A conservation plan may include statements of policy with respect to the following:

- (a) the conservation, preservation, restoration, rehabilitation, alteration or redevelopment of buildings or structures and their settings based upon their historic or architectural value;
- (b) the demolition or removal of buildings or structures in the district;
- (c) the effects of any alteration or redevelopment of the service infrastructure upon the heritage value of the district;
- (d) the location and architecture of new developments and their settings in relationship to existing developments and their settings within the district;
- (e) the conservation of settings;
- (f) tourism and community improvement undertakings in the district;
- (g) relationship of the proposed conservation plan and conservation by-law with other municipal, provincial or federal community planning or heritage planning policies, regulations or programs, other than those referred to in clause (e) of subsection (2);
- (h) the use of agreements as provided for under Section 20 of the Act; and
- (i) any other matter relating to the conservation of the historical, architectural or cultural value of the district.

(2) A conservation plan shall include statements of policy regarding

- (a) the rationale or justification for heritage conservation measures in the district;
- (b) the rationale for the boundaries of the district;
- (c) the types of development for which a certificate is required;
- (d) the types of development, if any, for which the council shall hold a public hearing pursuant to subsection (5) of Section 19G of the Act; and
- (e) the relationship of the proposed plan and by-law with any municipal planning strategy, land use by-law, subdivision by-law or provincial land use policy or regulation in effect for the district.

Content of a conservation by-law

5 (1) A conservation by-law shall include

- (a) a description of the boundaries of the district by the use of a map or text adequate to identify the area;
- (b) a list of those types of development for which a certificate is required, that may include any or all of the following:
 - (i) the construction of new buildings or structures,
 - (ii) the substantial alteration, restoration or rehabilitation of existing buildings or structures,
 - (iii) the demolition or removal of buildings or structures,
 - (iv) the construction, relocation, reconstruction, substantial alteration, demolition or removal of fences, walls, steps, staircases or other structures that may affect or contribute to the heritage value of the district,
 - (v) the construction, relocation, reconstruction, substantial alteration, demolition or removal of utility structures,
 - (vi) the construction or placement of signage that may affect or contribute to the heritage value of the district,
 - (vii) the substantial alteration of the exterior colour of existing buildings or structures,
 - (viii) the planting, placement or removal of trees, hedges, shrubs or other vegetation that may affect or contribute to the heritage value of the district,
 - (ix) the substantial alteration of grade; and

(c) the form and content of an application for a certificate including, where applicable, a site plan and a graphic representation of buildings or structures.

(2) A conservation by-law may specify developments for which no certificate is required.

(3) A conservation by-law may include design guidelines, which may include any or all of the following:

(a) aspects of the architectural design, character or external appearance of buildings or structures including, but not restricted to, facade design, scale, proportion, bulk, height, massing, symmetry, visual balance, rhythm, directional emphasis, number of storeys, ground area, roof shape, exterior materials, appearance and placement of utility structures, architectural details or ornamentation;

(b) the location or arrangement of buildings or structures in relation to their setting;

(c) the design, location or arrangement of fences, walls, steps, staircases or other structures that may affect or contribute to the heritage value of the district;

(d) landscape design and the placement, location or arrangement of trees, hedges, shrubs and other vegetative features of the district in relation to their setting;

(e) the location, or placement design of signage that may affect or contribute to the heritage value of the district;

(f) the exterior colour of buildings or structures.

(4) A conservation by-law shall include

(a) a list of the types of development for which the heritage officer may issue a certificate directly in accordance with the conservation by-law, and which does not require a public hearing;

(b) a list of the types of development, if any, for which the council shall hold a public hearing.

Public participation program for adoption

6 (1) Before undertaking the preparation of a conservation plan and by-law, a council shall adopt, by resolution, a public participation program.

(2) The content of a public participation program shall be at the discretion of the council, but it shall identify opportunities and establish ways and means of seeking the opinions of the public with respect to the proposed conservation plan and by-law.

(3) The public hearing held pursuant to subsection (3) of Section 19A of the Act shall not be considered a part of the public participation program adopted pursuant to this Section, and the public participation program shall be concluded prior to the publication of the advertisement notifying of council's intention to adopt a conservation plan and by-law.

(4) A council may adopt separate public participation programs for the preparation of conservation plans and by-laws for different districts.

Background studies and information

7 (1) In the preparation of a conservation plan and by-law, the council as a minimum shall undertake studies relating to the following:

(a) the rationale or justification for heritage conservation measures in the district;

(b) the rationale for the boundaries of the district;

(c) the relationship of a conservation plan and conservation by-law with any municipal planning strategy, land-use by-law or provincial land-use policy or regulation in effect for the district; and

(d) an analysis of the social and economic implications of the establishment of the district, as these relate to clause (a).

(2) After acceptance by a council of background studies prepared pursuant to this Section, the council shall provide public access to the studies and provide two copies of the studies to the Minister.

(3) Within sixty days of the receipt of the studies, the Minister may prescribe additional background studies.

(4) The Minister shall advise the council when no additional studies are required.

Public hearing for adoption, amendment or repeal

8 (1) Before adopting a conservation plan and by-law, a council shall hold a public hearing at which oral and written submissions regarding the proposed conservation plan and by-law are received.

(2) The council shall cause notice to be given of the public hearing and of its intention to adopt a conservation plan and by-law by an advertisement inserted at least once a week for two successive weeks in a newspaper circulating in the area of the district, the first of such notices to be published at least twenty-one clear days before the date fixed for the public hearing.

(3) The council shall cause notice of its intention to adopt a conservation plan and by-law to be delivered by personal service upon or by ordinary mail to each assessed owner, or any subsequent owners shown on the records in the regional assessment office, of property within the proposed district at least twenty-one clear days before the date fixed for the public hearing.

Subsection 8(3) amended: O.I.C. 1999-587, N.S. Reg. 128/99.

(4) The notices required by subsections (2) and (3) shall

- (a) describe the proposed district by metes and bounds, by a plan, map or sketch or other description adequate to identify the district;
 - (b) give a synopsis of the proposed conservation plan and by-law and the effect of the conservation by-law on development of the property; and
 - (c) state the date, time and place fixed for the public hearing and the place where and hours during which the proposed conservation plan and by-law may be inspected by the public.
- (5) The council shall provide copies of the proposed conservation plan and by-law or a portion thereof to interested persons and may charge an amount for copies sufficient to recover the cost of reproduction of copies provided.

Approval procedures

9 (1) Upon the adoption of a conservation plan and by-law, four duly certified copies each of the plan and by-law shall be submitted to the Minister for approval together with

- (a) one duly certified copy of the resolution of council adopting a program of public participation;
- (b) copies of the two newspaper notices notifying of the intention of council to adopt;
- (c) one copy of the notice served on property owners; and
- (d) one copy of any written submissions received by council,

and the clerk of the municipality shall provide, by statutory declaration, proof of compliance with the resolution of council adopting a program of public participation, and with the public hearing and notice requirements contained in the Act and these regulations.

(2) Upon approval by the Minister of a conservation plan and by-law, the council shall

- (a) cause a notice to be published in a newspaper circulating in the district stating that the conservation plan and by-law have been approved, their effective date and the place where they may be inspected;
- (b) transmit a copy of the notice to the Minister; and
- (c) cause a copy of the conservation plan and by-law, signed by the Minister, to be filed in the office of the registrar of deeds for the registration district in which the district is situated, without proof of the signature or the official character of the Minister.

(3) Section 19A of the Act and Sections 3 to 9 inclusive of these regulations apply *mutatis mutandis* to the amendment of a conservation plan and by-law.

(4) Notwithstanding subsection (3), the Minister may waive or change the requirement for studies in subsection (1) of Section 7, where Council is proposing to amend a conservation plan or by-law.

Subsection 9(4) amended: O.I.C. 2000-451, N.S. Reg. 157/2000.

Repeals

10 (1) Subsections (1), (2) and (4) of Section 8, clauses (b) and (d) of subsection (1) and subsection (2) of Section 9 apply *mutatis mutandis* to the repeal of a conservation plan and by-law.

(2) In the case of a repeal of a conservation plan and by-law, no background studies are required, but the notices required pursuant to subsection (2) of Section 8 shall contain the reason for the repeal.

Public hearing for certificate

11 (1) The council shall cause notice to be given of a proposed development and of its intention to consider the application for a certificate by a notice to be published at least once a week for two successive weeks in a newspaper circulating in the area of the district, the first of such notices to be published at least twenty-one clear days before the date fixed for the public hearing.

(2) The notice required by subsection (1) shall

- (a) describe the location of the proposed development by civic number, by a plan, map or sketch or other description adequate to identify the location;
- (b) give a description of the proposed development; and
- (c) state the date, time and place fixed for the public hearing and the place where and hours during which information pertaining to the proposed development may be inspected by the public.

Council decision on certificate

12 (1) Subject to subsection (2) and subsection (2) of Section 19F of the Act, the decision of the council to approve or deny the application for a certificate shall be made, by resolution, after consideration of any submissions received and shall be by a majority vote of those councillors present when the vote is taken, but only those councillors present at the public hearing may vote upon the application.

(2) Where the council considers an application for a certificate other than one for demolition or removal of a building or structure, the

council shall approve the application if it meets the requirements of the conservation by-law, including applicable portions of any design guidelines.

(3) Where the council denies the application for a certificate or approves the granting of the certificate with conditions imposed, the council shall include in the resolution the reasons for the denial or imposition of conditions, as the case may be.

(4) The council, by resolution, may specify conditions that shall attach to the granting of the certificate and the reasons for the conditions, and subsection (2) of Section 14 applies to those conditions.

(5) Upon the making of a decision to approve, approve with conditions or deny the granting of a certificate,

(a) the council shall cause notice to be published in a newspaper circulating in the district stating its decision and setting out the right of appeal; and

(b) the clerk of the municipality shall serve on the applicant, by personal service or registered mail, a copy of the resolution containing council's decision and reasons therefore, where required.

Heritage officer decision on certificate

13 (1) When the heritage officer decides to grant a certificate without conditions, the heritage officer shall notify the applicant of the decision by ordinary mail or personal service.

Subsection 13(1) replaced: O.I.C. 2000-451, N.S. Reg. 157/2000.

(2) When the heritage officer decides to grant a certificate subject to conditions or decides not to grant a certificate, the heritage officer shall, by registered mail or personal service, notify the applicant of the decision and the applicant's right to appeal.

Subsection 13(2) replaced: O.I.C. 2000-451, N.S. Reg. 157/2000.

(3) Unless the contrary is proved, any documents served by ordinary mail shall be deemed to be served, delivered or received,

(a) where the delivery is local, on the third day following that upon which the letter, envelope or wrapper containing the document was posted; or

(b) where the delivery is not local, on the day the document would in the normal course of post be delivered,

and in proving such service it shall be sufficient to prove that the letter, envelope or wrapper containing the document was properly addressed and mailed with the correct postage.

Subsection 13(3) amended: O.I.C. 2000-451, N.S. Reg. 157/2000.

Section 13 replaced: O.I.C. 95-521, N.S. Reg. 107/95.

Conditions on certificate

14 (1) A certificate may be granted unconditionally or with conditions.

(2) Where a certificate is granted with conditions, the conditions shall

(a) relate to the development permitted by the certificate;

(b) be for a heritage conservation purpose; and

(c) be in accordance with the design guidelines.

(3) Without limiting the generality of subsections (1) and (2), the conditions subject to which a certificate may be granted include conditions with respect to

(a) the use of specific materials on or in a building or structure;

(b) the filing with the heritage officer of acceptable photographic or other documentation of a building or structure before its demolition or restoration, rehabilitation or alteration;

(c) the making good, after work is completed, of any damage caused to the building or structure by the work;

(d) restoration, rehabilitation or alteration of a building or structure or any part of it following the execution of work, with the use of original materials or acceptable alternatives;

(e) the preservation of or alteration in the design of buildings and structures;

(f) the site plan;

(g) the graphic representation of the proposed buildings and structures;

(h) type, species and placement of vegetation;

(i) the placement and design of signage; and

(j) the exterior colour of buildings and structures.

Appeal period

15 An appeal concerning the refusal of a certificate or the granting of a certificate with or without conditions by either the heritage officer or council shall be served on the Board within twenty-one days of the date of the publication of the notice of the refusal or granting in the newspaper.

Section 15 amended: O.I.C. 95-521, N.S. Reg. 107/95; O.I.C. 2000-451, N.S. Reg. 157/2000.

Last updated: 24-03-2009

4.0 POLICIES FOR CONSERVATION OF HISTORIC ARCHITECTURAL CHARACTER

4.1 General approach to architectural conservation.

Under the Heritage Property Act, the means by which historic architectural character is conserved in a heritage conservation district is through the requirement for issuance of a Certificate of Appropriateness for any architectural alteration, new development, or demolition. Design guidelines are adopted by Council as part of the conservation bylaw, and applications for Certificates of Appropriateness are evaluated in accordance with the guidelines. The conservation plan and bylaw and design guidelines are administered by an appointed Heritage Officer.

With regard to demolition, Council's main intention is to protect historic buildings which, for the purposes of this conservation plan and bylaw, are considered to be those built before 1940: a date which (roughly) marked the end of the Bluenose Era and the beginning of the Second World War, after which building technology and architectural styles began to change significantly.

4.2 Certificate of Appropriateness required for development in district.

It shall be the intention of Council to require a Certificate of Appropriateness for the following types of development within the heritage conservation district:

- .1 construction of new buildings;
- .2 exterior alteration of existing buildings, including, but not limited to:
 - (a) any alteration of windows, doors, dormers, roof, cladding, trim, chimneys, foundation, porches, verandas, and exterior steps or stairs;
 - (b) any addition, including new ells, wings, dormers, porches, verandas, decks, balconies, and exterior stairs;
- .3 demolition or removal of historic buildings;
- .4 signs;
- .5 fences;
- .6 utility structures such as fuel tanks, mechanical or electrical equipment, and satellite dishes.

4.3 Certificate of Appropriateness not required for minor development.

It shall be the intention of Council to permit building repair and maintenance activities and minor developments that will not substantially alter the character of the heritage conservation district to be undertaken without requirement for a Certificate of Appropriateness and to list those types of development in the conservation bylaw.

4.8 Demolition or removal of heritage buildings.

4.8.1 Public hearing required / criteria for review of application.

Where application is made for a Certificate of Appropriateness for the demolition or removal of any pre-1940 building in the heritage conservation district, as identified on Map 2, or any post-1940 building deemed worthy of protection from demolition (see policies 6.1.1.2 and 6.3.1.3), it shall be the intention of Council to require that the application be considered at a public hearing. In determining whether to grant or refuse permission for such demolition or removal, Council shall consider:

- .1 the physical condition, historical significance, architectural integrity, and uniqueness of the building, the extent to which it establishes or supports the architectural character of the surrounding streetscape or area, and its visual prominence and value as a local or regional landmark;
- .2 the proposal, if any, for a replacement building and the extent to which replacement may be preferable to conservation, maintenance, or rehabilitation of the existing building.
- .3 alternative economic uses for the building, and the relative costs and economic returns from rehabilitation vs the costs and economic returns from demolition or replacement, with the onus on the applicant to provide cost estimates for consideration by Council;
- .4 any alternatives to demolition or removal which may be available.
- .5 the advice of the Town of Lunenburg Heritage Advisory Committee and the Lunenburg Heritage Society.

4.8.2 Conditions on certificate of appropriateness for demolition or removal.

A Certificate of Appropriateness granted for the demolition or removal of any building in the heritage conservation district may include conditions respecting:

- .1 the filing with the heritage officer of photographic or other documentation of the building prior to its demolition or removal;
- .2 the salvaging of historic, exterior architectural materials such as mouldings, brackets, doors, windows, etc., prior to demolition;
- .3 the making good, landscaping or other restoration of the site following demolition or removal of the building;
- .4 the architectural character of any replacement building, in accordance with the design guidelines;
- .5 the time frame for construction of any replacement building;
- .6 any other matter pursuant to section 14 of the provincial Heritage Conservation Districts Regulations.

4.11 Outbuildings, garages, sheds, etc.

There are over one hundred outbuildings situated within the heritage district, consisting of sheds, garages, workshops and storage buildings of varying ages and styles, which contribute in varying degrees to the heritage character of the Old Town. Some of these buildings, such as the Anderson barn at 36 Pelham Street and the former Benjamin Knock cobbler shop at 56 Prince Street (both of which were included in the Town's Inventory of Historic Buildings), are known to be old structures with heritage value. The heritage value of others, however, has not been determined.

4.11.1 Certificate of Appropriateness required for outbuilding alteration or new construction.

Council's intention with regard to outbuildings in the heritage conservation district is that they may be altered in a manner consistent with their existing style and materials subject to the design guidelines and the requirement for a Certificate of Appropriateness. Construction of new outbuildings over 80 sq.ft. ground floor area shall require a Certificate of Appropriateness. New outbuildings of 80 sq.ft. or less, however, shall be regarded as minor developments for which no certificate shall be required.

4.11.2 No Certificate of Appropriateness required for demolition of outbuildings

Except for the Anderson barn (36 Pelham St) and the former Benjamin Knock cobbler shop (56 Prince St), which are regarded as historic, pre-1940 buildings and which are shown as such on Map 2, demolition or removal of outbuildings shall not require a Certificate of Appropriateness or a public hearing.

4.11.3 Heritage value of outbuildings in the district to be researched.

It shall be the intention of Council to carry out an inventory and analysis of outbuildings in the heritage conservation district to determine their heritage value, and to consider future amendment of this plan based on the findings of such work.