



## TOWN OF RICHMOND HILL

### COUNCIL

September 29, 2009

SRPD.09.104

Planning and Development

Planning

**SUBJECT: Designating By-law for the David Dunlap Observatory Lands (SRPD.09.104)  
File No. D12-07228 – 123 Hillsvie Drive**

### PURPOSE

The purpose of this report is to address the comments received at the September 14<sup>th</sup>, 2009 Council meeting with regards to the designating By-law No.100-09 for the David Dunlap Observatory Lands located at 123 Hillsvie Drives.

### RECOMMENDATIONS

- a) That the SRPD 09.104 dated September 29, 2009 be received;
- b) That By-law No. 100-09, attached as 'Appendix A' to SRPD.100.104, be passed as the designation by-law for the David Dunlap Observatory Property, 123 Hillsvie Drive, including land and buildings, as a property of cultural heritage value or interest under Part IV, Section 29, Ontario Heritage Act, R.S.O. 1990, Chapter 0.18, as amended;
- c) That staff be directed to establish an archive to retain historical information and research materials regarding the David Dunlap Observatory Property for the future good of the site, and that these materials be made available to the public with required permission; and,
- d) That staff be instructed to commence a cultural heritage review of Land Parcel "B" identified as the 'Panhandle Lands' located on 350 16<sup>th</sup> Avenue, such a review to be completed in time to inform the forthcoming David Dunlap Observatory Lands Planning and Conservation Management Study; and
- e) That staff be instructed to commence the David Dunlap Observatory Lands Planning and Conservation Management Study.

Contact: Joanne Leung, Manager of Urban Design at Extension 5498  
Patrick Lee, Director of Policy at Extension 2420

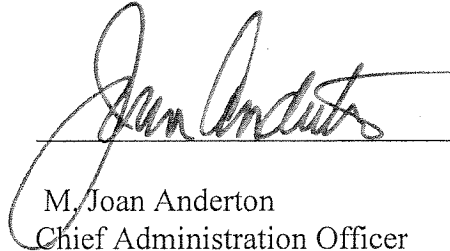
Submitted by:



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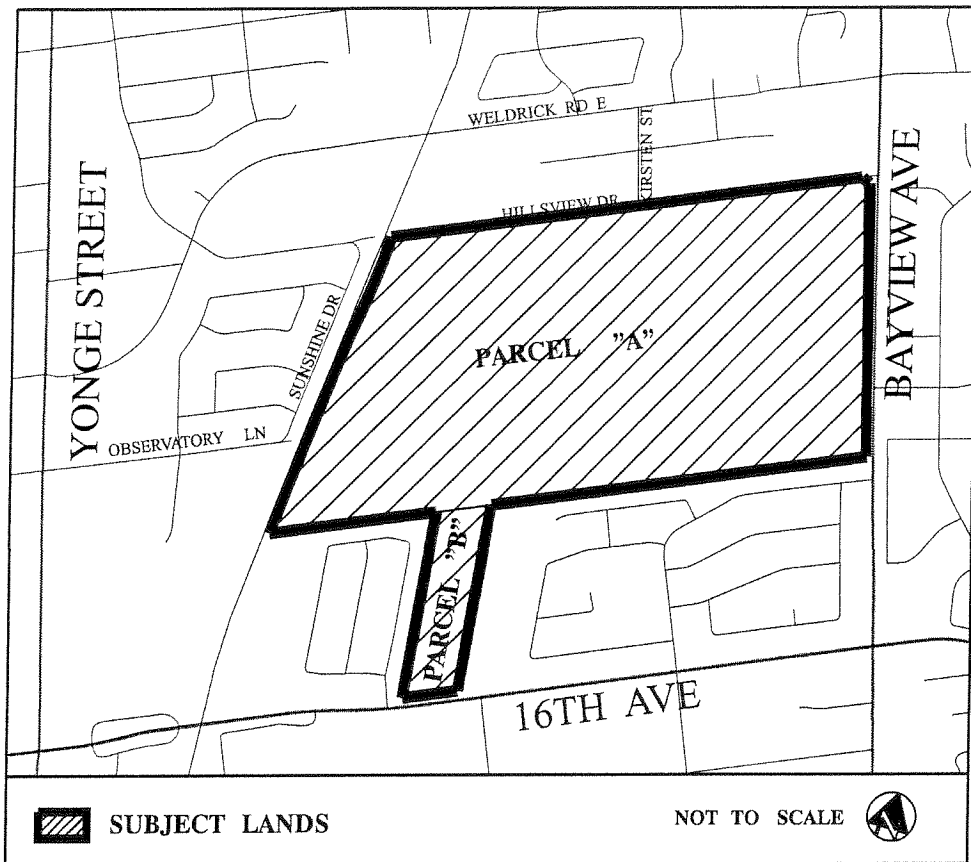
Ana Bassios  
Commissioner of Planning and Development

Approved by:



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M. Joan Anderton  
Chief Administration Officer



## BACKGROUND

The David Dunlap Observatory Lands are approximately 76 ha (189.78 acres) in area, located north of 16<sup>th</sup> Avenue and immediately west of Bayview Avenue in the Town of Richmond Hill. For the purpose of this staff report, the lands have been identified as Parcel "A" and Parcel "B" as shown on the Location Map. The current owner of the lands is Corsica Developments Limited who acquired the property from the University of Toronto in 2008.

The Parcel "A" lands are the majority of the land holdings and contain three main buildings that are part of the Observatory campus. Parcel "A" has a municipal address of 123 Hillsview Drive, and for the purposes of this report is referred to as the "Observatory Lands".

The Parcel "B" Lands have the municipal address of 350 16<sup>th</sup> Avenue, and are occupied by the Elvis Stojko Arena and a park that were built by and which are under lease to the Town. Parcel "B" is referred to in this report as "the Panhandle Lands".

The current designation process concerns only the Observatory Lands, which are shown as Parcel "A".

## **The Designation Process**

Culminating from an original Notice of Intent to Designate the lands as a cultural heritage landscape in October of 2007, followed by a 7 day Conservation Review Board hearing in January 2009 and a decision of the Board in June 2009, a by-law has been developed to identify the lands, buildings and features that should be conserved and honored into the future.

On September 8<sup>th</sup>, 2009, Staff presented draft designating By-law 100-09 to the Committee of the Whole with the recommendation that the By-law be forwarded to the September 14<sup>th</sup> Council meeting for consideration and passage. The draft designating By-law 100-09 took its direction from the report of the Conservation Review Board (CRB) and was crafted with the assistance of the heritage consultant and legal counsel that represented the Town at the CRB hearing. The By-law implements all of the recommendations of the CRB and identifies key heritage attributes; associative and historical values; and contextual values of the property.

At the September 14<sup>th</sup> Council meeting, Council received additional comments from a number of deputants, and in particular, an amended version of the draft By-law by the Richmond Hill Naturalists (attached as 'Appendix B' to SRPD09.104). Staff have been directed by Council to consider the additional input and report back.

Since Council's direction to initiate the heritage designation of the David Dunlap Observatory Lands in 2007, the Town has been following a rigorous and transparent designation process in accordance with the *Ontario Heritage Act*, which included the public Notification of the Intent to Designate with a 30 days appeal period, as well as a public hearing conducted by the Conservation Review Board as a result of the objections filed by the Richmond Hill Naturalists, the Observatory Hill Homeowners Association, and Corsica Developments (Metrus), the purchaser of the property.

The Conservation Review Board proceedings respecting the David Dunlap property extended over 7 hearing days (January 15 and 16, 2009; January 19 to 23, 2009). A total of 7 expert witnesses testified during the proceedings as well as a number of concerned residents and staff (both former and current from the University of Toronto). The CRB Recommendation Report was released on June 3<sup>rd</sup>, 2009, and it recommended that Council proceed with the protection of property known as 123 Hillview Drive (David Dunlap Observatory) under Section 29 of the Ontario Heritage Act.

## **By-law Development**

The development of a designation by-law is rooted in the content of the Notice of Intent to Designate.

S. 29 (4) of the *Act* outlines the content of the Notice, which has two requirements that are important for the By-law process:

1. an adequate description of the property so that it may be readily ascertained;
2. a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property (heritage statement/description)

The Notice took its guidance in format and approach from the *Ontario Heritage Tool Kit*, which is published by the Ministry of Culture (extract see 'Appendix C' to SRPD 09-104). A Legal Description of the Property, a Statement of Cultural Value, and a Description of Key Heritage Attributes including the proposed boundary of the Cultural Heritage Landscape had been clearly stated reflecting the structure and content demonstrated in the *Ontario Heritage Tool Kit*.

In order to establish the cultural heritage value of the property, the Town's heritage consultant has also applied the criteria of Ontario Regulation 9/06 under the *Ontario Heritage Act* in evaluating the attributes and features of the property. This approach considers the property against three sets of cultural heritage values: design/physical, historical/associative, and contextual; and provides a rational framework within which assessment can be made regarding an element's heritage significance.

Town staff, the Town's heritage consultant, and the Town's outside legal counsel are all of the opinion that the content and form of the property description and the heritage statement/description, as found in the Notice of Intent to Designate have met and/or exceeded the requirements of the *Act* and provided required information and descriptions for the by-law process.

In reviewing the establishment of the Cultural Heritage Landscape for the Observatory Lands, the Board concurs with the Town's approach through the application of the criteria of Regulation 9/06 of the *Ontario Heritage Act* on the buildings and other elements on the property. Overall the Board commends the Town in its effort to initiate the designation process, and its demonstrated diligence in ensuring that the reasons given to designate the property under the *Act* were well researched.

Regarding the Town's Notice of Intention to Designate, the Board finds that it,

*"...shows the level of detail, historic and investigative rigor, and clear language that is ideally expected for a property of this significance...; and that,*

*Even given the time constraints forced upon the Town from the sale of the property of U of T, the Town engaged in public consultation and crafted a well-reasoned approach that offers the creation of a cultural heritage landscape..."* (P.49 CRB)

In light of the detailed direction provided by the Conservation Review Board in its decision of June 3, 2009, Town staff with the assistance of legal counsel for the CRB hearing and the Town's heritage consultant compiled the by-law to designate the Observatory Lands as a cultural heritage landscape.

The Draft By law is derived directly from the CRB decision's discussion on the level of details on the statement of value and the descriptions of the attributes, and has incorporated all changes that were recommended by the CRB.

## DISCUSSION

A total of 18 deputants appeared before Council on September 14<sup>th</sup> to outline their concerns. This included a draft of the by-law presented by the Richmond Hill Naturalists.

Staff has categorized the comments (including the Richmond Hill Naturalists' version of the by-law) into six areas. These comments are discussed below within the context of the Conservation Review Board recommendations and the larger framework of heritage conservation practice in Ontario, as guided by the Ministry of Culture through its publication *Ontario Heritage Tool Kit* (extract see 'Appendix C' to SRPD 09.104).

### **A. The Treatment of the Panhandle Lands (Parcel "B")**

The inclusion of the Panhandle Lands into the Designation By-law of the Observatory Lands (Parcel "A") has been raised a number of times both during the CRB hearing and also at the Committee of the Whole on September 8, 2009 and Council on September 14<sup>th</sup>. At the September 8<sup>th</sup> Committee of the Whole meeting, the Town's outside legal counsel at the CRB hearing presented his opinion on why the Panhandle Lands could not be part of **this** Designation Bylaw.

Under the *Act*, any application of Section 29 designation applies to the legal description of the real property. The Board is bound to define its scope of enquiry for a proceeding as the real property identified in the Notice of Intention to Designate. And as such, the Board has stated in the Scope of Inquiry that,

*For the purpose of these proceedings, it is agreed that the subject property is defined only encompassing Part 1, Plan 65R-29959, of the David Dunlap Observatory property, therefore excluding any direct evaluation of Parts 2 and 3, Plan 65R-29959, also known as the Panhandle Lands. (P.18 CRB)*

This definition of scope of inquiry had indeed been agreed upon by all parties during the 7 days CRB hearing in January 2009, and that Mr. Lord, legal Counsel to the Naturalists, agreed that real property is governed by the designation process under the *Act*, and that the Town can consider a lesser area as they have with Part 1 (Parcel "A") of the real property.

As the public Notice of Intent to Designate did not include the Panhandle Lands, nor has there been any proper study of the land's heritage values, the lands cannot be included within the designation process for Parcel "A" within the context of this By-law. The Board, however, recognized the potential cultural heritage value of the Panhandle Lands, and recommended that a

separate heritage review be undertaken; and Recommendation (d) of this staff report addresses this matter.

## **B. The Extent of the Cultural Heritage Landscape and Boundary**

The question of designating the entire area of Parcel 'A' as a cultural heritage landscape was raised by a number of deputants at Council. Regarding the effort to designate the 100% of the lands as a cultural heritage landscape, the CRB report provided clear guidance as follows,

*In all, the proposal of the Naturalists is well researched and a very thorough attempt to compel protection of all of Part 1 as a cultural heritage landscape. However, behind the text, the extensive archives of photos and other historical research (seemingly ready for display in a museum), and the uncharacteristically common themes that tie together reports prepared by independent experts, the Board finds that the Naturalists do not present a case for heritage conservation that truly differentiates itself from the Town's proposal. The Board recognizes the case to protect all of Part 1 through a cultural heritage landscape, and also understands other benefits in keeping the entire parcel of property intact, but does not believe that the Ontario Regulation 9/06 test has been met to justify such an outcome (P. 51 CRB)*

The Board summarized in the decision the extent of the Cultural Heritage Landscape proposed by the four parties to the hearing. The position of the Town presented was to identify the westerly half of the Observatory Lands as comprising the cultural heritage landscape. The position of the Naturalists, supported by the Homeowners Association, was that all of the Observatory Lands should be protected as cultural heritage landscape. Finally, the case presented on behalf of the owner was that a much smaller area located adjacent to the Observatory, the Administration Building, and Elms Lea should be protected as cultural heritage landscape.

In considering the owner's proposed boundary, the Board finds it, "*too narrowly defines the area of protection, and that such a plan would lead to a dilution of the integrity of the significant cultural heritage value of the property.*" On the other hand, the Board feels that the proposal of the Naturalists and that of the Observatory Hill Homeowners Association is "*more of a blanket approach without sufficient evidence to justify the inclusion of many portions of the property.*" (p.56, CRB Report) The Board is recommending an approach that closely matches that proposed by the Town, with a modification to modestly increase the extent of the cultural heritage landscape.

## **C. Surveyed line of the Cultural Heritage Landscape Boundary**

In consideration of the limits of the Cultural Heritage Landscape, the Board commented:

*With respect to the location of a boundary line to the east, the Board recommends that a line be located and properly surveyed for clarity at least 150 metres east of the most eastern portion of the research tree planting line, and extend from the north to south lot*