

NOTICE OF OBJECTION TO DESIGNATE

Municipal Heritage Property

The Heritage Property Act, SS 1979-80, c H-2.2, s 13(1)

Remedy Sought:

1. Notice is hereby given that the owners of the property, CARMEN LIEN and ADRIANA GOURGARIS (collectively, the “**Owners**”), object to the bylaw to designate as Municipal Heritage Property the following real property known as:

Cook Residence;

Legally described as:

Surface Parcel #109501736

Reference Land Description: Lot 5, Blk/Par 631, Plan No. AP 3598;

And located at:

3160 Albert Street, Regina, Saskatchewan (the “**Premises**”).

2. The Owners hereby requests:
 - a. The City:
 - i. Withdraw Bylaw No. 2019-7 pursuant to section 13(3)(b) of *The Heritage Property Act*; and
 - ii. Remove the Premises from Bylaw No. 8912, The Heritage Holding Bylaw;
 - b. Alternatively:
 - i. The City direct the matter for a hearing to the Review Board pursuant to sections 13(3)(b), 14 and 15 of *The Heritage Property Act*; or
 - c. In the event the City determines the Premises will be designated a municipal heritage property, that the City amend Bylaw No. 2019-7 to identify the heritage aspects of the Premises.

Background Information:

3. The Premises was listed on Schedule “A” to Bylaw No. 8912 (the “**Heritage Holding Bylaw**”).

4. Carmen Lien and Adriana Gourgaris (collectively, the “**Owners**”) first viewed the Premises on September 7, 2018. After viewing the Premises, the Owners met with the City of Regina (the “**City**”) to inquire about the status of the Premises on the Heritage Holding Bylaw.
5. The Owners purchased the Premises in November of 2018. After purchasing the Premises, the Owners met with the City to determine how the Premises could be removed from the Heritage Holding Bylaw. The Owners were instructed the easiest way to remove the Premises from the Heritage Holding Bylaw was to submit an application for a demolition permit.
6. The Owners applied to the City for a demolition permit on or about November 28, 2018. In response to the demolition permit application, the City held the demolition permit for sixty (60) days in accordance with the Heritage Holding Bylaw. To date, the City has not approved or denied the demolition permit.
7. The City provided written notice to the Owners of the proposal to designate the Premises as a designated municipal heritage property pursuant to section 11(2)(b) of *The Heritage Property Act*, SS 1979-90, c H-2.2 (the “*Act*”) (hereinafter referred to as the “Notice of Intention to Designate”). The Notice of Intention to Designate states the Premises has heritage significance because:
 - a. It is an excellent example of Tudor Revival style in its design;
 - b. It is associated with the locally prominent architectural firm – Van Egmond and Storey; and
 - c. It is associated with the Interwar development of the Lakeview neighbourhood and the estate-like residential development on Albert Street.
8. Bylaw No. 2019-7 (the “Designation Bylaw”), if passed, would result in the Premises becoming a Designate Municipal Heritage Property pursuant to section 11(1)(a) of the *Act*.
9. The Owners object to the Designation Bylaw. The Owners seek to have the Designation Bylaw withdrawn. In the alternative, the Owners seek to have the objection heard by the Review Board.

Grounds for Objection:

10. City Council approval of the Designation Bylaw without the consent of the Owners is unprecedented. The approval of the Designation Bylaw without the consent of the Owners is inconsistent with City policies, including Design Regina: The Official Community Plan, City publications and City Council meeting minutes.

11. The designation of the Premises as municipal heritage property without the consent of the Owners is akin to expropriation of the Premises to the extent that it interferes with the Owners' property rights. While designation without the consent of the Owners is statutorily permitted, the City's authority should be used cautiously. Involuntary designation of municipal heritage properties should be reserved for circumstances where the property has significant heritage value to the city of Regina. The City should not exercise their authority to involuntarily designate the Premises in the present circumstances.
12. The Premises does not have heritage significance because, *inter alia*:
 - a. The Tudor Revival design elements of the Premises are decorative façade;
 - b. The Premises was not occupied by a historically significant person;
 - c. The Premises was not the location of a historic event;
 - d. The location of the Premises in the Lakeview neighbourhood is not historically significant; and
 - e. The year the Premises was constructed, while Interwar, is not of historical significance.
13. The architect of the Premises is not determinative of the heritage significance of the Premises. Buildings designed by the Regina architectural firm of William G. Van Egmond & Stanley E. Storey ("Van Egmond and Storey") are not *prima facie* municipal heritage properties. Only 19 of the 380 buildings designed by Van Egmond and Storey and located in Regina have been designated Municipal Heritage Properties. Further, the Premises is not primarily constructed out of brick building material and is therefore not characteristic of Van Egmond and Storey design.
14. In the event the Premises does have heritage significance, the cost of maintaining the Premises greatly exceeds the heritage significance of the Premises. The cost of repairing the defects in the Premises, completing the work required to make the Premises compliant with current construction codes and repairing the foundation of the Premises is approximated at \$2,978,818.65. The Owners are unable to fund the required restoration and repairs to the Premises. It is not viable to maintain the Premises in its current form.
15. The features of the Premises which may have heritage significance, including, but not limited to, the decorative wood brackets, the brick and stucco exterior, the stone door surround and the external brick chimneys, can be replicated on a redeveloped or rebuilt structure. The features are façade and are largely unrelated to the structural integrity of the Premises. The style and character of the Premises could be maintained on a redeveloped or rebuilt structure at a significantly lower cost to the Owners.

16. Alternatively, in the event the City seeks to designate the Premises as a municipal heritage property, the Designation Bylaw must be amended to include sufficient detail to identify the features of the Premises which have heritage significance.
17. The Designation Bylaw, in its current form, is unreasonably overbroad. Compliance with the Designation Bylaw, if passed in its current form, will impose an undue hardship on the Owners. The ambiguity of the Designation Bylaw creates uncertainty as to the heritage significance of the Premises and what the Owners are permitted to do with respect to the Premises.
18. The Designation Bylaw creates administrative uncertainty. There will likely be subjective and inconsistent enforcement of the Designation Bylaw by City administration as a result of the ambiguity of the Designation Bylaw.
19. Finally, the Designation Bylaw is not reasonable having regard for the unviability of maintaining the Premises in its current form. The current state of repair of the Premises will continue to decline if the Owners are not permitted to undertake specified, limited repairs to the Premises. The Designation Bylaw must specify the features of the Premises which have heritage significance to enable the Owners to identify and undertake such repairs.

Evidence

20. The Owners plead and rely on the evidence described in Appendix "A".
21. The Owners reserve their right to rely on such further and additional evidence as may be required for the proceeding before the Review Board including, but not limited to, any evidence required to respond to the submissions of the City or any other third party before the Review Board.
22. In the event the Designation Bylaw is directed to the Review Board, the Owners intend to advance oral and written submissions to the Review Board.

DATED at Regina, Saskatchewan, this 21 day of March, 2019.

McDOUGALL GAULEY LLP

Per: *Richards*
Fashia M. Richards
Solicitor for the Owners,
Carmen Lien and Adriana Gourgarris

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Appendix "A" to Notice of Objection

	Date	Description	Total Pages
1.	SS 1970-1980	<i>The Saskatchewan Heritage Act, SS 1979-80, c H-2.2</i> Note: Copy not provided	54
2.	March 31, 2004	The Architectural Heritage of Storey and Van Egmond: A Preliminary Assessment, Report for Saskatchewan Culture, Youth and Recreation, Regina by Ross Herrington M.A., M.Sc., P.Eng	250
3.	March 20, 2014	Design Regina, Official Community Plan Note: Copy not provided	126
4.	March 20, 2014	Design Regina, Secondary Plans Note: Copy not Provided	632
5.	November 9, 2017	Welcome to the City of Regina's Thematic Framework and Evaluation Criteria Open House - Presentation	10
6.	June 26, 2018	City of Regina Bylaw No. 8912 Note: Copy not Provided	16
7.	November 12, 2018	Appraisal of 3160 Albert Street by Admiral House Inspections Ltd.	22
8.	December 22, 2018	Quotation by Ledcor Construction Limited	4
9.	January 9, 2019	City of Regina Recommendation, with Letters of Support	14
10.	March 6, 2019	Insurance Statement by Rob Barlow, Insurance Broker	4
11.	March 14, 2019	Revised Quotation by Ledcor Construction Limited	2
12.	March 19, 2019	Affidavit of Carmen Lien	101
13.	March 19, 2019	Affidavit of Adriana Gourgaris	8
14.	March 20, 2019	Report of Layne Arthur, Architect	14
15.	Undated	City of Regina Heritage Property Designation Criteria	11
16.	Undated	City of Regina Statement of Significance	4
17.	Various, including but not limited to: May 4, 1992 November 16, 1992 June 24, 1996 November 21, 2005 March 12, 2012	City of Regina City Council Meeting Minutes Note: Copy not Provided	