

IN THE MATTER OF Sections 34(19), 17(36) and 41(12) of the  
*Planning Act*, R.S.O. 1990, c. P. 13, as amended

AND IN THE MATTER OF Section 42(6) of the  
*Ontario Heritage Act*, R.S.O. 1990, c. O. 18, as amended

AND IN THE MATTER OF Appeals against Zoning By-law Number 2006-228,  
Official Plan Amendment No. 31 of the City of St. Catharines, the Failure of the  
City of St. Catharines to approve a Site Plan Application within 30 days, and the  
City of St. Catharines' refusal of a Heritage Permit Application  
O.M.B. FILE NOS. R060208, O060218, M070079 and M070073

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## 1.0 OVERVIEW

### 1.1 PDVC's Applications Embrace Both Heritage Conservation and Revitalization of Port Dalhousie's Commercial Core

1.1.1 PDVC's applications should be approved because they appropriately address:

- (a) Conservation of Port Dalhousie's Heritage; and
- (b) Revitalization of Port Dalhousie's Commercial Core.

### 1.2 Conservation of Port Dalhousie's Heritage

1.2.1 PDVC's redevelopment proposal appropriately addresses heritage conservation.

1.2.2 The PDVC proposal is consistent with the cultural heritage and archaeology provisions of the Provincial Policy Statement ("PPS"). The significant built heritage resources and the significant cultural heritage landscapes related to the PDVC proposal are being conserved.

1.2.3 The PDVC proposal appropriately responds to the heritage policies of the Regional Policy Plan ("Region's OP") and the St. Catharines Official Plan ("City's OP"), by appropriately conserving heritage features within the Commercial Core, and by retaining and strengthening the heritage values, attributes and integrity of the Port Dalhousie Heritage Conservation District (the "District"), including in particular its Commercial Core.

1.2.4 The PDVC proposal has been appropriately guided by the Port Dalhousie Heritage Conservation District – Guidelines for Conservation and Change (the "District Guidelines"):

- (a) the proposal is consistent with the Conservation Intent of the District Guidelines;
- (b) the proposal is consistent with all six Conservation Priorities of the District Guidelines;
- (c) the proposal retains (and strengthens) the heritage values and attributes of the District, as identified in the District Guidelines;

- (d) there is no rigid three-storey height limit established by the District Guidelines, and the District Guidelines specifically contemplate that specific proposals unanticipated by the District Guidelines might nonetheless be consistent with the Conservation Priorities; and
- (e) the proposal appropriately addresses the guidelines set forth in the District Guidelines.

### 1.3 **Revitalization of Port Dalhousie's Commercial Core**

- 1.3.1 PDVC's proposal appropriately addresses the City's Official Plan policy of supporting the revitalization of the historic Port Dalhousie area through the development of the Commercial Core for regional (tourism) oriented facilities.
- 1.3.2 PDVC's redevelopment proposal appropriately builds upon the City's Comprehensive Development Strategy for Port Dalhousie.
- 1.3.3 "Incremental revitalization" and adaptive re-use of Port Dalhousie's Commercial Core has been occurring for over 100 years, and the desired revitalization of the Commercial Core has not yet been realized.
- 1.3.4 Various development alternatives were considered by PDVC, but the only proposal before the Board is the PDVC proposal.
- 1.3.5 All of the uses proposed by PDVC are appropriate, and consistent with the City's desires for the Commercial Core (as set forth in its Official Plan):
  - (a) the theatre and hotel uses are appropriate inclusions within an area seeking to attract regional tourists;
  - (b) the restaurant and retail uses are also appropriate inclusions, and represent a logical continuation of uses that have always been present within the Core;
  - (c) the residential uses are appropriate within the Commercial Core, as part of a vibrant mix of uses, and they are being deployed in a way that does not detract from the grade-related retail commercial character of the Core;

- (d) there is no onus on PDVC to prove the economic viability of the theatre or any of the other uses proposed; and
- (e) the City's holding provisions appropriately ensure that all of the elements of the revitalization proposal get delivered as a package.

1.3.6 PDVC's proposal also appropriately responds to Provincial policies in both the PPS and the Growth Plan which encourage redevelopment and intensification within built-up areas.

#### **1.4 PDVC's Proposal "Fits" Within the Heritage District**

1.4.1 The new development proposed by PDVC "fits" within the Heritage Conservation District.

1.4.2 The analysis of "fit" proffered by PDVC's consultants, supported by the City's Planning Director, Paul Chapman, and its Heritage Peer Reviewer, Michael McClelland, was a considered, comprehensive and complete analysis.

1.4.3 The assertions by the PROUD and City witnesses that the PDVC proposal does not "fit" within the Heritage Conservation District largely consisted of assertions without proof, or assertions based on inadequate and incomplete analysis (e.g. Mr. Goldsmith's "massing" studies, and Regional planning staff's mischaracterization of the heritage reports and reliance on the Ministry of Culture's comments).

#### **1.5 Parking and Traffic Issues Have Been Appropriately Addressed**

1.5.1 With respect to traffic issues, the uncontradicted expert evidence is that traffic arising from the PDVC proposal will be appropriately and adequately handled by the area road network.

1.5.2 With respect to parking, the uncontradicted expert evidence is that:

- (a) during the majority of days throughout the year, parking is not a problem in Port Dalhousie;
- (b) the PDVC proposal will resolve the current parking problems during the contentious evening and late night periods; and

- (c) during the less problematic weekend afternoon periods, parking demand will increase, but the parking requirements set forth in Zoning By-law 2006-228 have appropriately addressed this issue.

**1.6 Original Decision of City Deserves Respect and Deference; Reversal of Decision by City Does Not**

- 1.6.1 In adopting OPA 31 and enacting Zoning By-law 2006-228, the City followed an exemplary public process.
- 1.6.2 The decision of the City to reverse its position and oppose its own by-laws was far from exemplary.
- 1.6.3 The Board should have regard to both decisions, but the decision that deserves respect and deference is the original decision to adopt OPA 31 and enact Zoning By-law 2006-228.

## 2.0 PROVINCIAL POLICY

### 2.1 PDVC's Proposal is Consistent with the Provincial Policy Statement

2.1.1 The Board's decision on the three Planning Act matters (OPA 31, Zoning By-law 2006-2008 and PDVC's site plan appeal) must be consistent with the PPS.

**[Planning Act, s. 3(5); Exhibit 5(a), Tab 1, pg. 6]**

2.1.2 The Board's decision on PDVC's heritage permit appeal must also be consistent with the PPS, as the heritage appeal affects a planning matter pursuant to Section 3 of the Planning Act.

**[Birchgrove Estates, PDVC Book of Authorities, Tab 1, pg. 4]**

2.1.3 The PPS is intended to be read in its entirety, and no one section of the PPS overrides others. Just as the Board cannot dismiss or disregard the PPS direction to conserve significant heritage resources, the Board cannot dismiss or disregard the considerable emphasis and priority the PPS places on intensification and redevelopment within built-up areas.

**[PPS, Section 4.3; Exhibit 5(b), pg. 28]**

**[Birchgrove Estates, PDVC Book of Authorities, Tab 2, pg. 9]**

2.1.4 OPA 31, Zoning By-law 2006-228, PDVC's site plan application and PDVC's heritage permit application are all consistent with the PPS.

### 2.2 PPS Cultural Heritage Policies

2.2.1 Section 2.6.1 of the PPS calls for the conservation of significant built heritage resources and significant cultural heritage landscapes.

**[Exhibit 5(b), pg. 25]**

2.2.2 The PPS defines *significant* as:

“...in regard to cultural heritage and archaeology, resources that are valued for the important contribution they make to our understanding of the history of a place, an event, or a people...”

[Exhibit 5(b), pg. 40]

2.2.3 *Conserved* is defined as:

“...the identification, protection, use and/or management of cultural heritage and archaeological resources in such a way that their heritage values, attributes and integrity are retained...”

[Exhibit 5(b), pg. 33]

2.2.4 *Heritage Attributes* are defined as:

“...the **principal** features, characteristics, context and appearance that contribute to the cultural heritage significance of a *protected heritage property*...” [emphasis added]

[Exhibit 5(b), pg. 35]

2.2.5 *Built Heritage Resources* are defined as:

“...one or more **significant** buildings, structures, monuments, installations or remains associated with architectural, social, political, economic or military history and identified as being important to a community...” [emphasis added]

[Exhibit 5(b), pg.33]

2.2.6 A *cultural heritage* landscape is defined as:

“...a defined geographical area of heritage significance which has been modified by human activities and is valued by a community. It involves a group(s) of individual heritage features ... which together form a significant type of heritage form, distinctive from that of its constituent elements or parts. Examples may include, but are not limited to, heritage conservation districts...”

[Exhibit 5(b), pg. 33]

2.2.7 It is acknowledged that the Port Dalhousie Heritage Conservation District, having been designated as a heritage conservation district under Part V of the Ontario Heritage Act, is a significant cultural heritage landscape. It is further

acknowledged that there are significant built heritage resources within the District.

2.2.8 However, it must also be acknowledged that the PPS direction to “conserve” does not require the preservation or retention of everything within the District:

- (a) not everything must be retained; only the heritage values, attributes and integrity need be retained; and
- (b) the heritage attributes of a district do not encompass all matters within the district, but only the principal matters that contribute to the cultural heritage significance of the district.

**[Birchgrove Estates, PDVC Book of Authorities, Tab 2, pp. 11, 12]**

**[Rose Corporation, PDVC Book of Authorities, Tab 5, pp. 24, 25]**

2.2.9 A number of witnesses acknowledged that the approach to heritage conservation required by the PPS involves prioritizing and ranking of heritage assets [Morgan, Goldsmith, Stovel, Martindale, Blozowski, McClelland, Higgins, Kirkland].

2.2.10 The first step in a heritage impact assessment involves historical research, site analysis and evaluation. The second step calls for an identification of the significance and heritage attributes of the cultural heritage resource. The entire history of a resource and the listing of all of its characteristics is part of step 1; step 2 demands a winnowing down to identify those elements that are significant and stand out.

**[Ontario Heritage Toolkit, Exhibit 5(c), pg. 598]**

**[Birchgrove Estates, PDVC Book of Authorities, Tab 2, pg. 12]**

2.2.11 The need to prioritize and rank those assets within the District that should be retained (and by extension, those assets that need not necessarily be retained) is especially important in this case, given that:

- (a) the City’s Official Plan specifically encourages development and revitalization within the Commercial Core; and

