June 8, 2006

Open Letter To:

Mayor and Council
City of Hamilton
City Hall,
Hamilton, Ontario

Dear City Council:

Re: Development Proposed for the Lister Block in Contravention of the Ontario Planning Act and Ontario Heritage Act

The Hamilton City Council is facing a critical and important decision with regard to the Lister Block.

As a person with a long and deep interest in planning and a record of research in the field of heritage planning in particular, I have been asked to offer some considered comments regarding the City’s current deliberations. I suggest extremely careful thought on the Lister Block issue. I believe we are at a turning point with regard to heritage planning in the Province of Ontario. The councils of today will be remembered for a long time as a result of their wisdom or lack of wisdom in these matters.

Let me outline some legal, moral, planning and economic factors that I think are in play here.

First of all let me address the current legal situation with regard to the Ontario Planning Act. As of March 2005 the Provincial Policy Statement (PPS) issued under the Planning Act says, in reference to “significant heritage resources” that they “shall” be conserved. Among other things significant means designated under the Heritage Act. Since it was designated in 1996 by the Hamilton City Council this directive certainly applies to the Lister Block. The PPS states the Provincial interest and is binding on municipalities. It is categorical and in that sense the current discussion, which contemplates a council violating the directive, should not even be happening.

So why is this discussion taking place? I said that we are at a turning point in the province. It has long been the practice of municipal councils to treat heritage considerations as secondary at best and for property owners and developers to think of the official designation of a structure as having historic significance to the community as a minor irritant to be overcome in the pursuit of expanded profit.
Heritage Resources Centre – Faculty of Environmental Studies - University of Waterloo
Waterloo Ontario, N2L 1G3
This is reminiscent of the situation twenty five or thirty years ago when we first saw environmental laws and regulations creep tentatively into our public policy landscape. Prior that time councils had welcomed industry even when they polluted. Private corporations had protested that respect for the environment would bankrupt them. Even once we had regulations, rampant, flagrant and illegal dumping continued. It wasn’t until private citizens took action through the courts that things began to turn around. A Brock University professor sued a giant a chemical firm in Niagara for killing fish in a federally regulated waterway, and won. In Hamilton, as you no doubt know, a private citizen took the municipality to court over the city’s failure to respect its own environmental regulations, and won.

I don’t think anyone now could get elected if they were known to disrespect the environment or be in favour of pollution. It is still possible, or so many people think, to seek a municipal council seat even when one has little or no knowledge or respect for heritage conservation or the meaning of significant community cultural resources. I suggest that we are approaching the time when once again private citizens may need to seek the recourse available to them through the courts to bring these issues into proper focus. I suggest that councils who are in violation of the Provincial Policy Statement and the Planning Act might be taken not just to the OMB but to court. And we will find, as in the case of the divisional court ruling on a case in the Town of Lakeshore in 2003 that the citizens will win. But do we need to go that far. Let us hope not.

Next let us consider the moral aspect, that is, what is the right thing to do? The Ontario Heritage Act not only sets out the procedure for how a community, with broad consultation, identifies and recognizes its significant heritage resources, it also now provides municipal councils with the power to actually protect those resources from being compromised and destroyed. It is a power only recently conferred on councils in Ontario but one which has long existed in most other jurisdictions in the developed world. Like most of our other laws it has deep roots in our legal tradition and is Ontario’s commitment to international conventions under the United Nation which also include such things as respect for human rights. The care of the community’s heritage is a serious undertaking that must now join the care of the environment as a prime concern for elected representatives. In one of the court rulings referred to above the judge wrote that, “the purpose of the act is to provide for the conservation, protection and preservation of the heritage of Ontario,” and it made its ruling because, “the town imposed conditions contrary to the intent of the legislation.”

Some will say that prior to passage of the revised Ontario Heritage Act in 2005, prevention of demolition was not possible and that the Lister Block falls under to old act. If a man were found beating his wife and children in a way that was not specified exactly in the criminal code and only afterwards was the law corrected to include his acts... would we say he was innocent? No. Family violence is wrong and violence against community heritage is wrong and councils must do the right thing and not act “contrary to the intent of the legislation.”

Turning to the matter of good planning, it is clear to all that managing change in a community is a complex and difficult undertaking. There are always multiple interests, competing agers das and irreconcilable points of view. In sorting out these complexities we look to precedent, the solutions that have worked in the past as well as to the potential future outcomes of our actions. In this regard a recent OMB ruling is instructive. In commenting on its decision in a Brampton case this year the Board cited public trust in the planning system as its main reason for turning down a development application. “It is important,” the Board said, “that the public have confidence that the process of change is open, measured and orderly.” There had been a consultation process,
there was a plan approved by the City Council in place and the developer suddenly wanted to do something completely at odds with that plan. The Board rightly said, “Sanctioning hasty change would deprive the public of any assurance that planning documents mean what they say.”

There are few aspects of our planning system that are more thorough, “open, measured and orderly,” than the process of heritage designation. In many cases it takes years to complete. The Lister Block went through this process and has duly been acknowledged as a significant community cultural resource. And now, on the basis of what appears to be a constantly changing demolition and building plan, this council is contemplating “depriving the public of any assurance that planning documents mean what they say.”

For some this may just seem like a site specific squabble but I invite everyone, including councilors, to imagine their worst fears about their own neighbourhoods. I invite you to close your eyes and think of the auto wrecker’s yard starting up next door or the sex shop or whatever it is you would not like on your street. But the zoning would protect us, the official plan wouldn’t allow it, the OMB will intervene. That is what the residents of Hamilton thought when this building was designated. If we can’t trust heritage designation to guide change in our cities then anything can happen.

The final factor I would like to introduce is the economic argument. In so many, many decisions in Ontario communities over the years, these are the arguments which usually trump all others. The owner/developer of a property promises jobs and investment, cries that anything less than the scheme they’ve presented this week will ruin them financially and that all the previous consultative planning should be put aside to accommodate them. This is how London Ontario allowed the demolition of an entire heritage block in their downtown and ended up with rubble heap that remained vacant for over ten years after the developer left town. The London buildings lost back in the late 1980s would be prime redevelopment real estate today. Eventually the City had to develop the block themselves with taxpayers’ money.

What is the answer to this economic mantra of destruction? In a study of “heritage development” in this province that we completed at the University of Waterloo earlier this year, we found that there is a thriving, good return on investment business in the adaptive reuse of older existing buildings. This report is available on the website of the Heritage Resources Centre and it contains interviews with successful heritage developers, facts and figures and examples of successful projects. It may always be possible to make even more money from a given site. That person who wants to cut up old cars or sell naughty toys next door to you may argue that they can make more money that way. But community planning and development is not about making more money for a few. It is about managing change reasonably in our cities in a fair and predictable way. And when heritage resources, properly identified and hopefully protected are involved then we have to treat those resources as we are learning to treat the environment. We no longer pour chemicals into our rivers, or at least we are better than we used to be, and we ought not to destroy our irreplaceable inheritance.

Yours Sincerely
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Chair, Heritage Resources Centre