

Staff Report 2019-22

Meeting Date: Tuesday, February 12, 2019

Subject: Designated Heritage Grant Program – Inclusion of Commercial and Industrial Properties

Submitted By: Douglas McGlynn, Heritage and Urban Design Planner, Policy & Sustainability, Community Services

RECOMMENDATION

That the Designated Heritage Property Grant Program (DHPG) – Inclusion of Commercial and Industrial Properties Staff Report 2019-22 be approved;

That By-law 2017-70 be amended to include Commercial and Industrial properties designated under Part IV or Part V of the Ontario Heritage Act as properties that can apply for the Designated Heritage Property Grant Program.

REPORT HIGHLIGHTS

- The Designated Heritage Property Grant Program (DHPG) currently provides financial assistance to designated heritage property owners for the maintenance and restoration of their properties deemed residential and institutional.
- The DHPG provides grants of 50% of eligible costs to a maximum of \$4,000 per grant. A single property is eligible to receive two (2) grants in the calendar year should funding allow.
- In review with legal, s.39 of the Ontario Heritage Act (2009) has been found to take precedence over s.106 of the Municipal Act (2001) and, as such, previously designated Commercial and Industrial properties under Part IV or Part V of the Ontario Heritage Act that were prohibited from receiving a Heritage Grant can now apply should it be approved by Council.

DISCUSSION

The DHPG was established by By-law 2006-34 as a financial incentive program to promote and support stewardship of designated heritage properties. Originally administered for the Town by the Caledon Heritage Foundation, administration was returned to the Town in 2010 (Council resolution 2010-032). The program Guidelines and Review Group were established by By-law 2010-065, which was repealed and replaced by By-law 2013-099. In November 2017, By-law 2013-099 was repealed and replaced by By-law 2017-70 to extend the timeframe to complete grants to three years.

The DHPG was based on the premise that s.106 of the Municipal Act (2001) prevented Commercial and Industrial properties designated under Part IV or Part V of the Ontario Heritage Act, from applying for a Heritage Grant.

Section 106 of the ***Municipal Act, 2001*** reads:

106 (1) Despite any Act, a municipality shall not assist directly or indirectly any manufacturing business or other industrial or commercial enterprise through the granting of bonuses for that purpose. 2001, c. 25, s. 106 (1).

Same

(2) Without limiting subsection (1), the municipality shall not grant assistance by,

(a) giving or lending any property of the municipality, including money;

(b) guarantee borrowing;

(c) leasing or selling any property of the municipality at below fair market value; or

(d) giving a total or partial exemption from any levy, charge or fee. 2001, c. 25, s. 106 (1).

Section 39 of the ***Ontario Heritage Act, 2009*** reads:

39 (1) The council of a municipality may pass by-laws providing for the making of a grant or loan to the owner of a property designated under this Part for the purpose of paying for the whole or any part of the cost of alteration of such designated property on such terms and conditions as the council may prescribe. R.S.O. 1990, c. O.18, s. 39 (1).

Loan is lien or charge on land

(2) The amount of any loan made under a by-law passed under subsection (1), together with interest at a rate to be determined by the council, may be added by the clerk of the municipality to the collector's roll and collected in like manner as municipal taxes over a period fixed by the council, not exceeding five years, and such amount and interest shall, until payment thereof, be a lien or charge upon the land in respect of which the loan was made. R.S.O. 1990, c. O.18, s. 39 (2).

Non-application of s. 106 of Municipal Act, 2001

(3) Section 106 of the Municipal Act, 2001 does not apply to a grant or loan made under subsection (1). 2009, c. 33, Sched. 11, s. 6 (14).

LEGAL INTERPRETATION

A legal interpretation of the application of both Acts was reviewed and it was determined that specifically, s.106(1) of the *Municipal Act* states it applies “despite any act” but s.39(3) of the *Ontario Heritage Act* states that s.106 does not apply.

When two laws conflict, common law paramountcy rules apply. In the opinion of both legal resources the paramountcy rules applicable to these facts are (1) the implied exception rule, and (2) recent provision prevails. Therefore, the legal interpretations received by Town staff outline that the *Ontario Heritage Act* does indeed prevail over the *Municipal Act* in the following ways:

(1) *Implied Exception*

*The “implied exception” paramountcy rule is generally stated in the form of the Latin maxim specialia generalibus non derogant, meaning, the general does not derogate from the specific. In the event of a conflict between a specific provision dealing with a particular matter and a more general provision dealing not only with that matter but others as well, the specific provision prevails. It prevails even if the general legislation was subsequently enacted. The specific provision is treated as an exception to the rule embodied in the more general provision (Levis (Ville) c. Cote, 2007 SCC 14 at paras 58-60). In other words, s. 39(3) of the **Ontario Heritage Act** is more specific, in that expressly exempts Heritage grants applicable under a Municipal Grant Program from the application of s. 106 of the **Municipal Act**.*

(2) *Recent Provision Prevails*

*Since a legislature cannot bind its successors, in the event of a conflict between two provisions, the more recent expression of the legislature’s will prevails over the earlier one. Essentially, by enacting a provision that is inconsistent with existing legislation, a legislature impliedly expresses an intention to repeal the existing law and replace it with something else. In other words, the most recent legislation trumps prior legislation in the event of a conflict (implied repeal): s. 39(3) of the **Ontario Heritage Act** is more recent than s. 106(1) of the **Municipal Act**.*

Application of Paramountcy Principles

Having reviewed and applied the legal interpretations to the application of s.106 of the *Municipal Act* and the *Ontario Heritage Act*, it was determined that s.106 of the *Municipal Act* concerning municipal bonusing was no longer applicable to the Towns’ Designated Heritage Grant Program.

CURRENT DHPG PROGRAM

The current DHPG program provides grants of 50% of eligible costs for maintenance and restoration projects to a maximum of four thousand dollars (\$4,000) per grant. A single property is eligible to receive two (2) grants in the calendar year at the discretion of Council and subject to available annual funding.

The introduction and implementation of the Bolton Heritage Conservation District (HCD) has enabled a further 108 properties being eligible to apply for the 2019 Designated

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Heritage Property Grant Program. Having both commercial and industrial properties in the DHPG Program will assist to help validate and promote the HCD principles of good heritage property maintenance and help encourage appropriate property stewardship for eligible and contributing designated properties.

In the 2019 Budget, Council approved a \$15,000 increase to the Designated Heritage Property Grant Program funding. This has resulted in an allocation of \$65,000 to the DHPG Program for 2019. It is anticipated that the future success of the DHPG Program will see more applications from eligible properties resulting in the possibility of more intensive and more demanding heritage restoration and conservation work.

Staff will monitor the application intakes and if required bring further funding requests in future budgets if needed.

NEXT STEPS

Given the increased cost of maintenance and restoration of commercial and industrial buildings, there are a number of municipalities that have established a Heritage Tax Rebate Program to assist designated Commercial and Industrial properties under Part IV or Part V of the Ontario Heritage Act. Town staff will conduct further research to determine if a Heritage Tax Rebate Program is appropriate and report to Council, accordingly.

FINANCIAL IMPLICATIONS

There are no immediate financial implications associated with this report.

COUNCIL WORK PLAN

The matter contained in this report is not relative to the Council Work Plan.

ATTACHMENTS

None