
SUBJECT: RECOMMENDATION REPORT
Objection to Notice of Intention to Designate – Phase IV Properties

PREPARED BY: Evan Manning, Senior Heritage Planner, ext. 2296

REVIEWED BY: Regan Hutcheson, Manager of Heritage Planning, ext. 2080
Stephen Lue, Senior Development Manager, ext. 2520

RECOMMENDATION:

1. THAT the Staff report, dated February 06, 2024, titled "RECOMMENDATION REPORT, Objection to Notice of Intention to Designate – Phase IV Properties", be received;
2. THAT the written objection to designation under the *Ontario Heritage Act* as submitted on behalf of the property owner of 10725 Kennedy Road (Ward 6), be received as information;
3. THAT Council affirm its intention to designate 10725 Kennedy Road (Ward 6): "Francis and Mary Walker House" under Part IV, Section 29 of the *Ontario Heritage Act* in recognition of its cultural heritage significance;
4. THAT the Clerk's Department be authorized to place a designation by-law before Council for adoption;
5. THAT the Clerk's Department be authorized to publish and serve notice of Council's adoption of the designation by-law as per the requirements of the *Ontario Heritage Act*;
6. AND THAT Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

This report provides information on an objection submitted for 10725 Kennedy Road (the "Property") for which Council has stated its intention to designate under Part IV, Section 29 of the *Ontario Heritage Act* (the "Act"), in accordance with the Staff recommendations adopted by Council on November 15, 2023, and noted in the recommendations of this report.

BACKGROUND:

Notice of Council's Intention to Designate has been provided to the Property Owners
On November 15, 2023, Council stated its intention to designate fourteen properties under Part IV, Section 29 of the Act. A notice of intention to designate was provided to

the property owners and the Ontario Heritage Trust, and was published in accordance with the Act. The objection period ended on December 20, 2023.

The City Clerk received a notice of objection on behalf of the owner of one of the fourteen properties within the timeframe as set out in the Act: 10725 Kennedy Road (Ward 6), as shown in Appendix ‘A’. The Act requires that Council consider and make a decision on an objection within 90 days from the end of the objection period. City Council may decide to withdraw, amend, or affirm its intention to designate. Council has until March 19, 2024, to make a decision on the objection (see Appendix ‘C’). If Council decides not to withdraw a notice of intention to designate a property, Council may pass a by-law designating the Property. Council has 120 days from after the date of publication of the notice of intention (November 20, 2023) to pass a designation by-law. Should Council not act within this timeframe, a notice of intention to designate is deemed to be withdrawn. As noted, the deadline is March 19, 2024.

Properties are to be assessed using Provincial Designation Criteria

Ontario Regulation 9/06, as amended, (“O.Reg. 9/06”) prescribes criteria for determining a property’s cultural heritage value or interest for the purpose of designation. The regulation provides an objective base for the determination and evaluation of resources of cultural heritage value, and ensures the comprehensive, and consistent assessment of value by all Ontario municipalities. Municipal councils are permitted to designate a property to be of cultural heritage value or interest if the property meets two or more of the prescribed criteria (excerpted from O.Reg. 9/06):

1. *The property has design value or physical value because it is a rare, unique, representative or early example of a style, type, expression, material or construction method.*
2. *The property has design value or physical value because it displays a high degree of craftsmanship or artistic merit.*
3. *The property has design value or physical value because it demonstrates a high degree of technical or scientific achievement*
4. *The property has historical value or associative value because it has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community.*
5. *The property has historical value or associative value because it yields, or has the potential to yield, information that contributes to an understanding of a community or culture.*
6. *The property has historical value or associative value because it demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.*
7. *The property has contextual value because it is important in defining, maintaining or supporting the character of an area.*
8. *The property has contextual value because it is physically, functionally, visually or historically linked to its surroundings.*

OPTIONS/ DISCUSSION:***Heritage Section Staff (“Staff”) considered the reasons for objection and have provided a brief response to each objection as presented by the Owner of the Property***

The proposed heritage resource is contained within a future development site owned by 10725 Kennedy Developments Limited (“10725”). Through their legal counsel, 10725 objected to designation as they opine that the Property does not meet the minimum of two O.Reg. 9/06 criteria required for designation. Staff’s extensive research on the Property demonstrates that it exceeds the minimum number of O.Reg. 9/06 criteria for designation. Specifically, Staff find that the Property has design/physical value as a representative example of a village tradesman’s dwelling in the Ontario Cottage style, and has historical/associative value as it is associated with the early economic development of Markham Township. The Property is also associated with the locally significant theme of immigration, particularly families of British origin that came to Markham in the first half of the nineteenth century. Further, Staff find that the Property has contextual value as one of a group of nineteenth century buildings that help define the character and extent of the historic crossroads hamlet of Cashel (refer to Appendix ‘B’).

Staff also note that 10725 did not retain a qualified heritage professional to undertake an evaluation of the historical significance of the Property, instead relying on a cursory evaluation undertaken by their legal counsel (Ira T. Kagan of Kagan Shadtti DeMelo Winer Park LLP). Staff note that Mr. Kagan is neither a member of the Canadian Association of Heritage Professionals or the Ontario Professional Planners Institute. As such, Staff question whether a meaningful evaluation of the Property’s heritage significance has been undertaken. Staff, therefore, continue to opine that 10725 Kennedy Road is a significant heritage property worthy of Part IV designation.

The protection and preservation of heritage resources is consistent with City policies
Markham’s Official Plan 2014 contains cultural heritage policies related to the protection and conservation of heritage resources that are often a fragile gift from past generations. They are a non-renewable resource, and once lost, are gone forever. Markham understands the importance of safeguarding its cultural heritage resources and uses a number of mechanisms to protect them. Council’s policy recognizes their significance by designating individual properties under the Act to ensure that the cultural heritage values and heritage attributes are addressed and protected.

Provincial planning policies support designation

The Provincial Policy Statement, 2020, issued under Section 3 of the *Planning Act* includes cultural heritage policies that indicate significant built heritage resources and significant cultural heritage landscapes shall be conserved. Designation provides a mechanism to achieve the necessary protection.

Designation acknowledges the importance of a cultural heritage resource

Designation signifies to an owner and the broader community that the Property contains a significant resource that is important to the community. Designation does not restrict the use of the Property or compel restoration. However, it does require an owner to seek approval for property alterations that are likely to affect the heritage attributes described

in the designation by-law. Council can also prevent, rather than just delay, the demolition of a resource on a designated heritage property.

The Process and Procedures for Designation under Part IV of the Act are summarized below

- Staff undertake research and evaluate the property under O.Reg. 9/06 to determine whether it should be considered a significant cultural heritage resource worthy of Part IV designation;
- Council is advised by its municipal heritage committee with respect to the cultural heritage value of the Property;
- Council may state its Intention to Designate the property under Part IV of the Act and is to include a statement explaining the cultural heritage value or interest of the Property and a description of the heritage attributes of the Property;
- Should Council wish to pursue designation, notice must be provided to the owner and the Ontario Heritage Trust that includes a description of the cultural heritage value of the Property. A notice, either published in a local newspaper or posted digitally in a readily accessed location, must be provided with the same details (i.e. the City's website);
- **Following the publication of the notice, interested parties can object to the designation within a 30-day window. If an objection notice is received, Council is required to consider the objection and make a decision whether or not to withdraw the notice of intention to designate;**
- Should Council proceed with designation, it must pass a by-law to that effect within 120 days of the date in which the notice was published. There are notice requirements and a 30-day appeal period following Council adoption of the by-law in which interested parties can serve notice to the municipality and the Ontario Land Tribunal ("OLT") of their objection to the designation by-law. Should no appeal be received within the 30-day time period, the designation by-law comes into force. Should an objection be received, an OLT hearing date is set to examine the merits of the objection and provide a final decision.

FINANCIAL CONSIDERATIONS:

External heritage consultants may be required to provide evidence at the OLT in support of designation if property owners appeal. External legal services may also be required in the event of any appeals to the OLT. This constitutes a potential future financial cost.

HUMAN RESOURCES CONSIDERATIONS:

Not Applicable

ALIGNMENT WITH STRATEGIC PRIORITIES:

The protection and preservation of cultural heritage resources is part of the City's Growth Management strategy.

BUSINESS UNITS CONSULTED AND AFFECTED:

Heritage Markham, Council's advisory committee on heritage matter, was consulted on the designation proposals. Clerks and Planning and Urban Design Department (Heritage Section) will be responsible for future notice provisions. An appeal to the OLT would involve staff from the Planning and Urban Design (Heritage Section), Legal Services, and Clerks Department.

RECOMMENDED BY:

Giulio Cescato, RPP, MCIP
Director of Planning and Urban Design

Arvin Prasad, MPA, RPP, MCIP
Commissioner of Development Services

APPENDICES:

Appendix 'A': Location and Image of the Property

Appendix 'B': Statement of Significance

Appendix 'C': Letter of Objection

APPENDIX ‘A’
Location and Image of the Property

10725 Kennedy Road (Ward 6): “Francis Mary and Walker House”

Primary Elevation and Property Map



APPENDIX 'B': Statement of Significance

STATEMENT OF SIGNIFICANCE

Francis and Mary Walker House

10725 Kennedy Road
c.1850

The Francis and Mary Walker House is recommended for designation under Part IV, Section 29 of the Ontario Heritage Act as a property of cultural heritage value or interest as described in the following Statement of Significance.

Description of Property

The Francis and Mary Walker House is a one-storey brick dwelling located on the east side of Kennedy Road, south of Elgin Mills Road East, in the historic crossroads hamlet of Cashel. The house faces west.

Design Value and Physical Value

The Francis and Mary Walker House has design and physical value as a representative example of a village tradesman's dwelling in the Ontario Cottage style. This building style, a simplified version of the Regency Cottage, is most often associated with families of British origin. The Regency Cottage was in use in various parts of the British Empire during the early to mid-nineteenth century. The trademark characteristics of an Ontario Cottage include a one-storey height, a Georgian tradition sense of symmetry and formality, and a hip or cottage roof. French doors or a bellcast-roofed veranda, features that would be more closely associated with the Regency Cottage style, are occasionally seen.

Historical Value and Associative Value

The Francis and Mary Walker House has historical value as it is associated with the early economic development of Markham Township, and the locally significant theme of immigration, particularly families of British origin that came to Markham in the first half of the nineteenth century. Most notably, the property is associated with Francis Walker, an English immigrant who operated a blacksmith shop next to his home in Cashel from c.1850 to 1873. The blacksmith shop was an important local industry. Francis Walker and his wife Mary emigrated from England sometime between 1840 and 1846. The family came to Cashel between 1846 and the enumeration of the 1851 census. In 1851, Francis Walker purchased a property on the north-west part of Lot 25, Concession 6 from Archibald Hugh Fenwick that may have already contained a dwelling and blacksmith shop. After the Walker family sold the property in 1873, the blacksmith shop continued to operate under the ownership of Stephen LeFraugh until 1884.

Contextual Value

The Francis and Mary Walker House has contextual value as one of a group of nineteenth century buildings that help define the character and extent of the historic crossroads hamlet of Cashel.

Heritage Attributes

Character-defining attributes that embody the cultural heritage value of the Francis and Mary Walker House are organized by their respective Ontario Regulation 9/06, as amended, criteria below:

Heritage attributes that convey the property's design and physical value as a representative example of a village tradesman's dwelling in the Ontario Cottage style:

- Rectangular plan;
- Fieldstone foundation;
- Brick masonry with projecting plinth and splayed arches over the door and window openings;
- Hip roof with projecting, boxed eaves;
- 3-bay configuration of the primary (west) foundation;
- Single-leaf front door opening with rectangular transom light featuring geometric, multi-paned glazing;
- Flat-headed rectangular window openings with two-over-two paned single-hung windows.

Heritage attributes that convey the property's historical and associative value as a link to the economic development of Markham Township, and the locally significant theme of immigration, particularly families of British origin that came to Markham in the first half of the nineteenth century:

- The dwelling is a tangible reminder of the Walker family that historically resided here and the blacksmith shop, an important local industry within Cashel that operated on the property from c.1850 to 1884.

Heritage attributes that convey the property's contextual value as a building that is important in defining, maintaining and supporting the character and extent of the historic crossroads hamlet of Cashel:

- The location of the building facing west, within the historic crossroads hamlet of Cashel.

Attributes of the property that are not considered to be of cultural heritage value, or are otherwise not included in the Statement of Significance:

- Front door;
- Painted finish on brickwork;
- Rear additions;
- Accessory building.

APPENDIX 'C': Letter of Objection

10725 Kennedy Road



Kagan | Shastri
DeMelo | Winer | Park
LAWYERS | LLP

IRA T. KAGAN
Tel: 416.368.2100 Ext. 226
ikagan@ksllp.ca

File No: 23457

November 23, 2023

By Email

Ms. Kimberly Kitteringham, City Clerk
City of Markham
101 Town Centre Blvd
Markham Ontario, L3R 9W3

Dear Ms. Kitteringham

**Re: Notice of Objection
Proposed Designation under Part IV of the Ontario Heritage Act, (the "Act") of
10725 Kennedy Road Markham Ontario (the "Property")**

We are the solicitors for 10725 Kennedy Developments Limited, the registered owner of the Property. Kindly consider this letter as our client's Notice of Objection to the proposed designation of the Property under the Act.

Our client is a developer who plans to develop the property in due course. The Property is currently listed pursuant to the Act but is not designated. As the Property is not unique, not built with high craftsmanship, nor historically significant, **our client opposes the proposed designation under the Act and requests that the City not designate it.**

Our client believes that an objective assessment of the Property would confirm that it holds little heritage or cultural significance and is not appropriate for designation under the Act. The Property is comprised of three buildings; a single detached residence, an outer dilapidated storage building and a wooden shed. The single detached residence is a white painted building typical of hundreds, if not thousands, of older homes in and around the province. The single detached residence contains certain characteristics of the Regency Cottage style, but they are not present to an intensity to distinguish the

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building as a representative example of that style of architecture. Further, the single detached residence is set back from the road and not visible from the public realm.

All properties are evaluated against Ontario Regulation 9/06 under the Act to determine their heritage attributes. The evaluation criteria include:

1. The property has design value or physical value because it is a rare, unique, representative or early example of a style, type, expression, material or construction method.
2. The property has design value or physical value because it displays a high degree of craftsmanship or artistic merit.
3. The property has design value or physical value because it demonstrates a high degree of technical or scientific achievement.
4. The property has historical value or associative value because it has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community.
5. The property has historical value or associative value because it yields, or has the potential to yield, information that contributes to an understanding of a community or culture.
6. The property has historical value or associative value because it demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.
7. The property has contextual value because it is important in defining, maintaining or supporting the character of an area.
8. The property has contextual value because it is physically, functionally, visually or historically linked to its surroundings.
9. The property has contextual value because it is a landmark.

For a property to be designated under the Act it must meet at least two of the nine criteria above. On any objective standard, the Property fails to meet the minimum two of nine criteria.

The Property is not rare, unique, representative or an early example of an architectural style. Instead, the Property was likely built to a plan contained in a design book. The Property does not present higher craftsmanship or artistic qualities typical of other designated properties under the Act. There is no reason to believe that the Property is of high technical nor scientific achievement. Rather, it is built in the typical style for the given area and constructed of common materials.

Although the Property was owned by several individuals, people of note only owned it for a brief period. For example, when reviewing the property registrar, William Berczy owned the Property but appears not to have left any physical impacts on it as it stands today. Numerous parties and families have owned the Property since the mid-1800s but there are no significant impacts or contributions of note after a review of all publicly listed owners of the Property. Simply, a review of those owners does not yield information that would demonstrate that the Property contains meaningful contributions to the understanding of Markham or its culture.

Based upon research it does not appear that the Property was designed by an architect nor does it demonstrate a significant architectural style. Since the single detached residence is not visible from the street, it does not provide a contextual value to the character of the area. The Property currently serves as a residential use and provides little if any historical significance or context to the neighborhood or the City of Markham. The surrounding area is a mix of land uses and does not have a discernible heritage character.

Should the City Council ultimately designate the Property, our client will have no alternative but to appeal the designation to the Ontario Land Tribunal and reserves the right to do so. Thank you for considering our client's concerns.

Yours very truly,

A handwritten signature in cursive script that reads "Ira Kagan".

KAGAN SHASTRI DeMELO WINER PARK LLP

Ira T. Kagan

Encl. Notice of Intention to Designate

Cc: Client

Please Reply to the: Yorkville Office