



Town of Newmarket
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Main Street Clock Inc. Properties - Update Staff Report to Council

Report Number: 2020-09

Department(s): Planning & Building Services

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Meeting Date: February 3, 2020

Recommendations

1. That the report entitled Main Street Clock Inc. Properties - Update dated February 3, 2020 be received.

Purpose

This report will provide Council with a chronology of the Town's actions regarding the unauthorized demolition of the building that previously occupied 184/186 Main Street South. This report will also provide Council with an update on the status of the restoration and redevelopment relative to Main Street Clock Inc.'s adjacent landholdings, being:

1. 188/190 Main Street South;
2. 192 Main Street South; and
3. 194 Main Street South.

Background

Main Street Clock Inc. owns a total of five properties along the west side of Main Street South, south of Park Avenue. As per 2018 Ontario Municipal Board Minutes of Settlement, Main Street Clock Inc. was in the process of restoring and redeveloping these properties. The Minutes of Settlement required Main Street Clock Inc. to complete renovations within the existing buildings and complete façade restoration using appropriate heritage conservation techniques. As described in this report, various Building Permits and Heritage Permits have been issued since April 3, 2019 by the Town in support of these works, with the objective being to restore these properties and

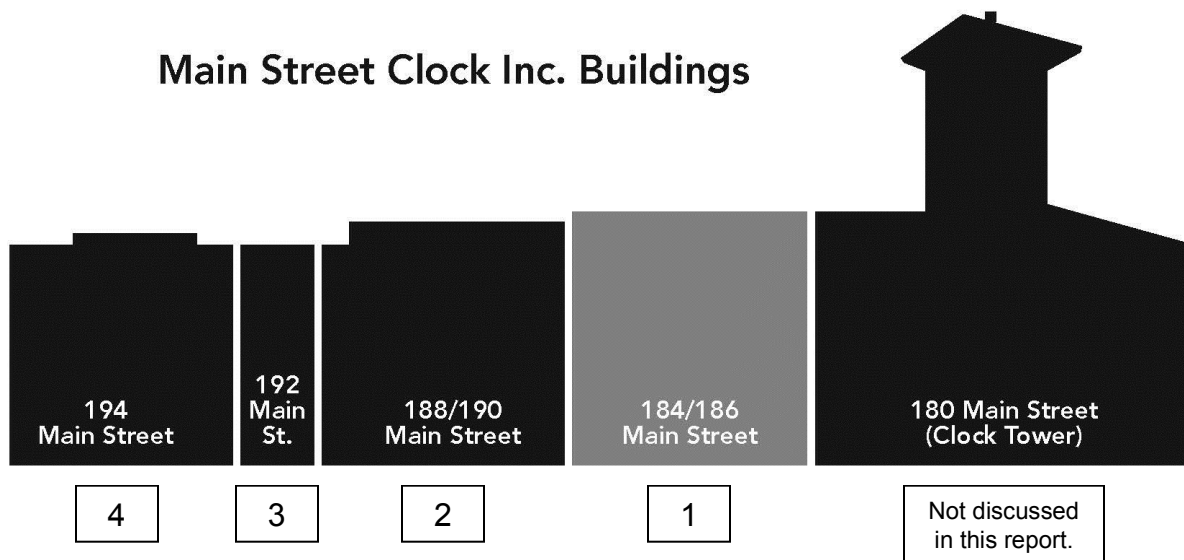
having them occupied so that they contribute to the vitality, function and character of Historic Main Street.

All of the properties owned by Main Street Clock Inc. are located within the Lower Main Street Heritage Conservation District, which is designated under Part V of the Ontario Heritage Act. The Heritage Conservation District Plan for Lower Main Street South establishes a framework through which physical changes to the district can be assessed and guided so that such changes contribute to, rather than detract from, the district's integrity and character. Development proposals by private property owners are reviewed against the heritage conservation district plan. Where they are required, Heritage Permits are issued by the Town to allow physical works to be completed on buildings located within the district, in order to ensure that such works are completed in keeping with the Heritage Conservation District Plan's goal and objectives. These Heritage Permits are required in addition to Building Permits required under the Ontario Building Code.

Discussion

Main Street Clock Inc. owns the following five properties along Main Street:

1. 184/186 Main Street South;
2. 188/190 Main Street South;
3. 192 Main Street South;
4. 194 Main Street South; and
5. 180 Main Street South (not discussed in this report).



This report will discuss each of the properties noted above, with the exception of 180 Main Street (clock tower building):

184/186 Main Street (the “Simpson Building”)

A Building Permit was issued on April 3, 2019 for interior alterations of this building. A Heritage Permit was issued on July 23, 2019 for building façade modifications.

Work then commenced on the property as per these Permits and subsequently on October 10, 2019 the Town became aware that the building had been removed. No demolition permit had been issued by the Town, and the building removal was inconsistent with previously agreed upon Minutes of Settlement between Main Street Clock Inc. and the Town. The Town then issued a Stop Work Order and Order to Comply and undertook investigative steps to determine the details and circumstances regarding the removal of the building. As part of this demolition, Main Street Clock Inc. removed a large portion of the front façade, including windows, and is currently storing it on the property. The Town concluded that an unauthorized demolition occurred, which was acknowledged by Main Street Clock Inc.

Town staff gathered evidence and information, including speaking with others included in the project, regarding the demolition and undertook a fulsome review and assessment of its recourse options. Ontario’s *Building Code Act* and the *Ontario Heritage Act* (the “Acts”) provide penalties for persons and corporations that contravene the Acts. The maximum penalty under the *Building Code Act* for the unauthorized demolition of a building is \$500,000. The maximum penalty under the *Ontario Heritage Act* for the unauthorized demolition of a building located within a designated Heritage Conservation District is \$1,000,000 or a term of imprisonment for not more than one year.

After careful consideration of past penalties imposed by the Courts under the Acts in similar situations that may provide precedent, and the Town’s objective to protect its heritage and continue to move forward with the development and revitalization of Main Street, the Town determined that it was more effective, efficient and would render the best possible achievable outcome to pursue recourse and consequences against Main Street Clock Inc. outside of legal action. Accordingly, rather than pursue prosecution under the Act, the Town sought and achieved a prosecutorial result through an agreement with Main Street Clock Inc. securing both a penalty payment and a full rebuild of the Simpson Building. The rebuild requirements will be registered on title.

Through the agreement, the Town secured a total financial penalty of \$200,000 against Main Street Clock Inc. through:

- a penalty payment of \$100,000; and
- the withdrawal by the Town of Community Improvement Plan (CIP) funding of \$100,000

In addition to the above financial penalties, the agreement includes:

- the obligation of Main Street Clock Inc. to fully reconstruct the Simpson Building in a manner acceptable to the Town of Newmarket;
- the obligation of Main Street Clock Inc. to post a letter of credit in the amount of \$300,000 to secure the complete reconstruction of the Simpson Building and completion of work on other associated properties (188/190 Main Street, 192 Main Street and 194 Main Street, see below sections) to the satisfaction of the Town's Chief Building Official and Town's heritage consultant; and
- the acknowledgment by Main Street Clock Inc. of its unauthorized demolition of the Simpson Building.

As noted, a large portion of the front façade, including windows, is currently being stored on the property. As part of the reconstruction of the building, the negotiated agreement requires Main Street Clock Inc. to incorporate this historic façade and windows into the reconstructed Simpson Building. In addition, Main Street Clock Inc. is required to recreate the building as close as reasonably possible to the configuration which existed immediately prior to the demolition; there shall be no increase in height, density or floor space or change in permitted use from what previously existed.



Photo 1: Historic front facade and windows.

The Town's negotiated agreement also eliminates the risks associated with pursuing legal action such as a non-conviction, a less substantial financial penalty and a lengthy legal process. Instead, it achieves a timely and controlled prosecutorial outcome by securing a significant penalty payment, provides an acknowledgement of responsibility for the unauthorized demolition, and obligates Main Street Clock Inc. to fully reconstruct the Simpson Building. Moreover, the negotiated agreement achieves the larger planning goal of bringing vitality and function back to this section of Main Street in a timely manner. Legal action may have resulted in a financial penalty to Main Street Clock Inc., but it would not have necessarily resulted in achieving these other planning goals, including the full reconstruction of the Simpson Building. Given this, staff believe that the consequences flowing from the agreement serve the interest of the Town and the Newmarket community to a greater extent than would pursuing formal proceedings through legal action.

188/190 Main Street

A Building Permit was issued on April 3, 2019 for interior alterations. A Heritage Permit was issued on April 25, 2019 for building façade modifications, which included the

restoration of the front façade as well as the brick cladding on the south elevation, which was thought to be original.

On the front façade, the restoration work included the following elements (among others):

- Cleaning of brick including removal of paint from brick face.
- Dismantling and replacement of damaged bricks or wall assemblies with bricks.
- Repair and re-pointing of areas of mortar deterioration.
- Remove miscellaneous items from masonry (electrical, wiring, metal anchors, etc.) and repair damaged bricks.
- Replacement of wood window lug sills.

Regarding the brick cladding on the south elevation, following issuance of the permits it was found that the existing brick was not original to the building; it was in fact a later cladding material that was placed over an older layer of stucco cladding. Moreover, it was found that the brick cladding was in poor condition.

In November 2019 Main Street Clock Inc. requested a revision to these previously issued Permits in order to allow the removal of the existing brick and stucco cladding south elevation and replacing it with reclaimed wood siding that had been exposed on the north elevation (shown in Photo 1). Town staff and the Town's heritage consultant completed a site visit on December 2, 2019 to review the context of the proposed changes. It was determined that the change represented a supportable approach; the Town's heritage consultant stated that:



Photo 2: North elevation of 188 Main Street

“The proposed re-clad of the return (south) facade with a sympathetic material conforms with the HCD Plan, as it will improve the historic building in a manner that respects the historic materials, distinctive features and physical function of the building.”

In addition to the proposed change to the south elevation, it was noted by staff that the west (rear) elevation is more visible from the public realm (from Market Square) than the south elevation, which is largely blocked from public view by the adjacent building to the south. Therefore it was requested that the same historic horizontal wood cladding as proposed on the south elevation be continued around to the west elevation, in order to present a more historic appearance from the more prominent location. In addition, staff suggested allowing a combination of reclaimed and new wood cladding materials on both elevations to ensure that both the south and west elevations achieve a consistent treatment. Main Street Clock Inc. agreed to this request, and to allow this cladding change a new Heritage Permit was signed on January 20, 2020 and the previously placed Order to Comply and Stop Work Order applied to this building were lifted.

192 Main Street

Approval was granted on April 3, 2019 for the reconstruction of infill elements on this property as part of the 188/190 Main Street Building Permit. Historically no building occupied this space as it was a formerly a pedestrian alleyway.

The building that most recently occupied this property was a modern infill. This building was joined with, and shared an internal wall with, the abutting properties to the north and south (being 188/190 Main Street and 194 Main Street respectively). Being that these properties are joined, the heritage aspects for 192 Main Street were reviewed with those of the abutting buildings.

The proposed work on this property consists of rebuilding the single storey commercial building between the two larger abutting properties, with a new supporting wall abutting 194 Main Street to the south. Although a single storey in height, a false second storey façade (with window) is approved to be constructed in order to create the consistent 2-storey appearance from the street. The false window is to be placed at the same height as the windows in the abutting buildings, and the overall architecture of the building is to be in a heritage manner in order to create a cohesive, historic character along the storefronts.

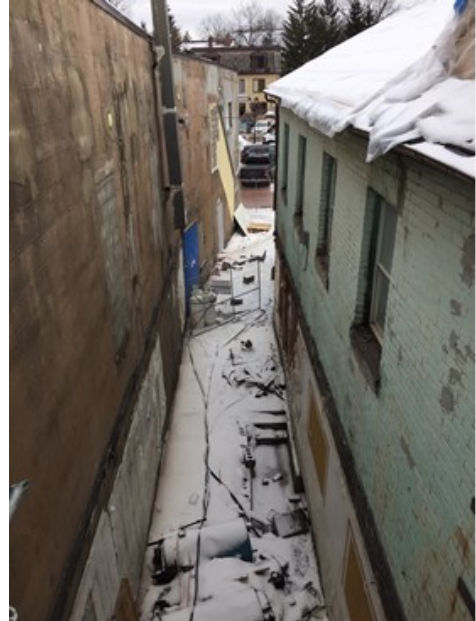


Photo 3: 192 Main Street, between 194 Main Street (left) & 190 Main Street (right)

194 Main Street

A Building Permit was issued on April 3, 2019 for interior alterations. A Heritage Permit was issued on April 25, 2019 for building façade modifications, specifically for the restoration of the front façade. Similar to the restoration work being completed on 188/190 Main Street, this work included the following elements (among others):

- Rebuilt parapet with new bricks.
- Installation of storefront, including glazing and recessed wood panelling
- Installation of a replica heritage cornice above storefront.
- Installation of masonry window sills.
- Addition of the new heritage replica windows.
- Cleaning of brick.
- Remove miscellaneous items from masonry (electrical, wiring, metal anchors, etc.).
- Dismantling and replacement of damaged bricks or wall assemblies with bricks.
- Repair and re-pointing of areas of mortar deterioration.
- Filling of large holes with restoration repair mortar.

- Removal of inactive brick anchors.

Staff and the Town’s heritage consultant inspected the restoration work on January 15, 2020. The purpose of the inspection was to determine if the work completed to date had been done as per the previously issued Heritage Permit.



Photo 4: Restored parapet at 194 Main Street



Photo 5: Restored front facade at 194 Main Street

The restoration work completed at 194 Main Street was found to be in compliance with the Heritage Permit that was issued for the works.

Scaffolding at 194 Main Street

Scaffolding was erected by Main Street Clock Inc. to facilitate the completion of the restoration and redevelopment of these properties as well as heritage and building inspections. Following the confirmation that the restoration works were completed in accordance to the Heritage Permit, staff authorized Main Street Clock Inc. to remove the section of scaffolding in front of 194 Main Street. Scaffolding is to remain in place in front of 184/186 Main Street, 188/190 Main Street and 192 Main Street to facilitate the required future works to those buildings.

Future Work and Permits

As noted in this report, the following work is required to be completed by Main Street Clock Inc.:

1. 184/186 Main Street (the “Simpson Building”): Reconstruction of the building. A new Building Permit will be required with requisite plans and technical reports for

the rebuild. A new Heritage Permit will also be required and the plans for which will be reviewed by staff, the Town's heritage consultant and the Lower Main Street South Heritage Conservation District Advisory Group, as per the established process.

2. 188/190 Main Street: Restoration of the front façade and changes to the other three elevations.
3. 192 Main Street: Construction of the new infill building.

Conclusion

Through a legal agreement with Main Street Clock Inc., the Town was able to achieve prosecutorial consequences regarding the unauthorized demolition of 184/186 Main Street. The negotiated agreement confirms responsibility for the unauthorized demolition to Main Street Clock Inc., and includes a significant financial penalty. Further, the agreement commits Main Street Clock Inc. to fully reconstruct the Simpson Building and it achieves the larger planning goal of bringing vitality and function back to this section of Main Street in a timely manner.

The balance of the properties owned by Main Street Clock (188/190 Main Street, 192 Main Street, and 194 Main Street) continue to be restored and redeveloped. Staff look forward to the full restoration of these properties so that they can once again contribute to the vitality, function and character of Historic Main Street.

Business Plan and Strategic Plan Linkages

- Long-term Financial Sustainability
- Extraordinary Places and Spaces (priority focus on the Mulock park)

Consultation

Legal Services and the Chief Building Official were consulted during the preparation of this report.

Human Resource Considerations

None.

Budget Impact

None.

Attachments

None.

Approval

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Jason Unger, MCIP, RPP, Acting Director of Planning & Building Services

Peter Noehammer, P. Eng, Commissioner of Development & Infrastructure Services

Contact

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