

Bylaw 15376

Being a Bylaw to Designate the J. MacGregor Thom Residence as a Municipal Historic Resource

WHEREAS the Historical Resources Act, R.S.A. 2000, c. H-9, as amended, permits the municipal council of a municipality to designate any Historic Resource within the municipality whose preservation it considers to be in the public interest together with any specified land in or on which it is located, as a Municipal Historic Resource; and

WHEREAS it is deemed in the public interest to designate the building located at 11220 – 62 Street NW known as the J. MacGregor Thom Residence and the land on which the building is situated as a Municipal Historic Resource; and

NOW THEREFORE the Municipal Council of the City of Edmonton, having complied with the Historical Resources Act, and duly assembled, hereby enacts as follows:

1. BUILDING AND LANDS DESIGNATED AS A MUNICIPAL HISTORIC RESOURCE  
The building known as the J. MacGregor Thom Residence (specifically described in Schedule “A”) (the “Building”) and the land on which the building is located being legally described as Plan 4065AE, Block 7, Lot 13 (the “Land”) are hereby designated as a Municipal Historic Resource.

2. PERMITTED REPAIRS AND REHABILITATION

Subject to Section 3 hereof, the Building and Land shall not be removed, destroyed, disturbed, altered, rehabilitated, repaired or otherwise permanently affected, other than in accordance with the terms of Schedule "A" attached, and the General Guidelines for Rehabilitation attached as Schedule "B", to this Bylaw.

3. ADMINISTRATOR

The General Manager of the Planning and Development Department is hereby appointed to administer the implementation of any matters arising from the matters set out in this Bylaw, and the Schedules attached hereto, including, without limitation, the execution of a Rehabilitation Incentive and Maintenance Agreement as set out in Schedule "C".

4. EFFECTIVE DATE

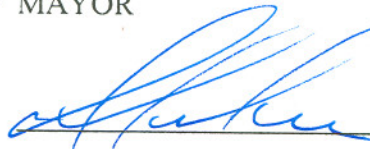
This Bylaw shall come into effect on the date on which this Bylaw is passed by Council.

READ a first time this	3 <sup>rd</sup>	day of	February	, A. D. 2010;
READ a second time this	3 <sup>rd</sup>	day of	February	, A. D. 2010;
READ a third time this	3 <sup>rd</sup>	day of	February	, A. D. 2010;
SIGNED and PASSED this	3 <sup>rd</sup>	day of	February	, A. D. 2010.

THE CITY OF EDMONTON



Deputy / MAYOR



CITY CLERK

**SCHEDULE "A"**

## **SOUTH FAÇADE**

The 1930 South façade:

- Clinker brick exterior, with stucco around the base of the house;
- South facing gable roof;
- Square detail on the two tips of eave overhang that are extended from the south facing gable roof;
- Two four over one double hung sash wooden windows;
- Two tripartite wooden windows; and
- Wooden panelling under the eaves.

## **NORTH FAÇADE**

The 1930 North façade:

- Clinker brick exterior, with stucco around the base of the house;
- One tripartite window;
- Two four over one double hung sash wooden windows;
- North entrance doorway and projecting roof; and
- Wooden panelling under the eaves.

## **WEST FAÇADE**

The 1930 West façade:

- Clinker brick exterior, with stucco around the base of the house.

## **INTERIOR**

- Interior hardwood flooring and trim woodwork.

## **ROOF**

- When roof is ready for re-shingling it must be cedar shingles.

**Photo #3: North East Facade**



**SCHEDULE "B"**

**6. Repair and Replacement:**

Deteriorated architectural features shall be repaired rather than replaced whenever possible. Where replacement is necessary, the new material should match the original as to material composition, colour, texture, design, etc. The repair or replacement of architectural features shall be based on a sound knowledge of the original characteristics of the feature. Such knowledge shall be based on historical or pictorial evidence and not upon conjecture.

**7. Cleaning:**

In all cases, surface cleaning shall be undertaken with the gentlest means available. Sandblasting and other cleaning methods that damage historic buildings shall not be undertaken without thorough testing prior to use on a building. Sandblasting is NOT recommended on brick, stone or wood. In all instances, it should be ascertained that a building exterior is really in need of cleaning prior to undertaking the work.

**8. Reversibility of Intervention:**

When the introduction of new elements or materials is necessary to stabilize or preserve the Municipal Historic Resource, alterations shall be undertaken such that the new materials, should they fail, may be removed at a later date without damage to the original fabric of the Municipal Historic Resource. Where this is not possible (i.e. use of epoxy or other permanent interventions) only those methods and materials which have been thoroughly tested and found satisfactory in situ shall be used.

**9. Recording:**

Prior to undertaking any alterations, particularly in cases where alterations may threaten the building fabric (underpinning, moving structures), the applicant/owner shall provide notice to the administrator of the City of Edmonton Planning and Development Department's Heritage Program to enable measures to be taken to provide a complete and accurate record of the architectural features of the Municipal Historic Resource. Measured drawings and photographs of details may prove invaluable if major features are damaged or lost during the subsequent repair work. Any Historic Resource which is the subject of an application to unsympathetically alter or demolish such resource shall be professionally recorded.

**10. Original Construction Details:**

In some historic structures, poor construction details or inappropriate materials resulted in rapid deterioration of certain building elements. In these instances, accurate reconstruction of the original detail will inevitably result in the failure of the element. Therefore, reconstruction should be undertaken in such a fashion as to duplicate the original appearance as closely as possible while using details based on sound construction practices.

## **GUIDELINES FOR DEVELOPMENT ON THE REGULATED LANDS**

### **1. General Purpose:**

To establish guidelines on future development on the lands on which the J. MacGregor Thom Residence is located to protect the heritage character of the Municipal Historic Resource and the immediate surrounding lands.

### **2. Area of Application:**

The area of application shall apply to the portion of land located at 11220 - 62 Street NW and legally described as Plan 4065AE, Block 7, Lot 13 as shown in Schedule "A" of this Bylaw (the "Land").

### **3. Development Criteria:**

The Development Officer and the Heritage Planner shall have regard for the following guidelines when reviewing a development permit application for any additions or alterations to the J. MacGregor Thom Residence.

### **4. Historic Integrity:**

- 4.1. Should redevelopment of the J. MacGregor Thom Residence occur, such redevelopment must respect the historic character of the regulated portions of the building designated as a Municipal Historic Resource. As well, any future development within the Lands must conform to "General Guidelines for Rehabilitation" and the "Standards and Guidelines for the Conservation of Historic Places in Canada."
- 4.2. There shall be no building development in the front yard of the historic structure.
- 4.3. Additions or additional structures must be sympathetic in either matching material or style, or both, in order that the Building continues to be read as one unit.



**THIS REHABILITATION INCENTIVE AND MAINTENANCE AGREEMENT**

made this          day of                                  , 2010.

BETWEEN:

**THE CITY OF EDMONTON**  
(the "City")

OF THE FIRST PART,

-and-

**Howard Lawrence and Carmen Lawrence**  
(the "Owner")

OF THE SECOND PART,

WHEREAS:

1. The Owner is the registered owner of land municipally described as:

**11220 – 62 Street NW**  
**Edmonton AB**

and legally described as: Plan 4065AE, Block 7, Lot 13("the Land"), and the building known as the J. MacGregor Thom Residence located thereon (the "Building");

2. On November 10, 2009, City Council authorized the service of a Notice of Intention to Designate the Land and Building as a Municipal Historic Resource in accordance with the Historical Resources Act, R.S.A. 2000, c. H-9;
3. A condition or covenant relating to the preservation or restoration of any land or building, entered into by the owner of the land and the council of a municipality, may be registered with the Registrar of Land Titles, and may be enforced whether the condition or covenant is positive or negative in nature notwithstanding that the grantee may not have an interest in any land that would be accommodated or benefited by the condition or covenant;
4. The Owner has agreed with the City to rehabilitate and maintain the Land and Building in accordance with the covenants and conditions in this Agreement;
5. In anticipation that the Municipal Council of the City will designate the Land and Building as a Municipal Historic Resource, the City wishes to pay the Owner money in satisfaction of the Owner's or successors right to compensation under the Act, and the Owner agrees to accept such money in lieu of compensation under the Act;

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Owner, the parties agree as follows:

2.8. "Rehabilitation Work" means the work set out in Section 4.1. of this Agreement to be completed by the Owner.

**3. OWNER'S WAIVER OF RIGHTS:**

3.1. The Owner and successors hereby expressly agrees to waive all rights to claim additional or alternative compensation beyond the Maximum Incentive of this Agreement for any cause, whether arising in common law, equity or by statute, because of the City's designation of the Land and Building as a Municipal Historic Resource or the City's issuance of the Notice of Intention to Designate.

3.2. The Owner waives any rights the Owner may have to dispute the sufficiency of the Notice of Intention to Designate and hereby releases the City, its agents and employees from any deficiencies of the Notice of Intention to Designate or the issuance thereof

**4. REHABILITATION WORK:**

4.1. Upon the passage of the Designating Bylaw, the Owner shall commence the Rehabilitation Work as set out in the table below:

<b>PHASE</b>	<b>DESCRIPTION OF CITY FUNDED WORK</b>	<b>Total Cost</b>	<b>ALLOCATED AMOUNT</b>
<b>Phase 1</b>	<b>Roof:</b> remove asphalt roofing and replace with historically correct #1 cedar shingles	\$11,112.00	\$5,556.00
<b>Phase 2</b>	<b>Masonry:</b> repairs and re-pointing as required on all masonry	\$22,285.00	\$11,142.50
<b>Phase 3</b>	<b>Painting:</b> all exposed wood surfaces including soffits, fascia, front porch, and all windows and storms	\$21,735.00	\$10,867.50
<b>Phase 4</b>	<b>Foundation:</b> stabilize and repair existing foundation, underpin crawlspace, install concrete pedestal for existing chimney, etc.	\$95,068.00	\$47,534.00
<b>Phase 5</b>	<b>Clinker brick pathway:</b> repair historic brick pathway using existing clinker brick and replacement brick where required	\$3,780.00	\$1,890.00
	<b>General Contractor Fee</b>	\$6,562.00	\$3,281.00
	<b>Other work not eligible for funding</b>	\$35,002.00	
	<b>Sub-total</b>	\$195,544.00	\$80,271.00
	<b>City Contribution</b>		\$80,271.00

Rehabilitation Work in accordance with the provisions of this Agreement, which sum shall be payable in yearly instalments as described below.

- 6.2. Notwithstanding anything else herein contained, the City shall not be obligated to pay any portion of the Maximum Incentive until the City is satisfied, in its sole discretion, as to the registration of the Designating Bylaw and this Agreement against the title to the Land.
- 6.3. The City will holdback up to 10% of the grant monies allocated until all the project work is completed or the General Manager of the Planning and Development Department is satisfied that the work completed is satisfactory for full or partial payment.

*Payment in the First Year*

- 6.4. On or before December 31, 2010, the City shall pay the owner the lesser of:
  - 6.4.1. A maximum payment of \$80,271, or
  - 6.4.2. One half the value of all the Rehabilitation Work for which the City has issued Notices of Completion in 2010.

If by December 31, 2010, the Owner has not completed enough Rehabilitation Work (verified by Notices of Completion) to qualify for the full Maximum Incentive, the difference shall be applied to payments in 2011 or 2012.

If by December 31, 2012, the Owner has not completed enough Rehabilitation Work (verified by Notices of Completion) to qualify for the Maximum Incentive, the City shall not be obligated to pay the difference to the Owner in that year or in any future years. Notwithstanding the foregoing, the City may agree with the Owner in writing to carry forward some or all of the unpaid Maximum Incentive. The Owner expressly agrees, however, that payment of any or all of the Maximum Incentive is conditional upon completion of the Rehabilitation Work strictly in accordance with this Agreement.

- 6.5. The City may, in its absolute discretion, provide for partial payment of any amount up to the Maximum Incentive for any Phase(s) notwithstanding that a Notice of Completion for the Phase(s) has not yet been issued.

**7. MAINTENANCE:**

- 7.1. In January of the fifth (5<sup>th</sup>) year after the issuance of the Notice of Completion for the final Phase(s) of the Rehabilitation Work, and every five (5) years after that, the Owner shall allow the City's Heritage Planner or designate (the "Inspector") to conduct an inspection of all the regulated portions of the Building.

This amount shall be recoverable by the City from the Owner within thirty (30) days of the Owner receiving a written demand and summary of costs from the City, failing which such amount payable shall be a charge on the Land and the City is at liberty to register such charge on title to the Land. The rights of the City under this clause shall be in addition to and not substitution of any other rights of the City against the Owner whether by way of damages for breach of covenant or otherwise.

7.10. The failure of the City at any time to require performance by the Owner of any of the Owner's covenants shall in no way affect the City's right to enforce such covenant, nor shall the waiver by the City of the performance of any covenant be taken or be held to be a waiver of the performance of that covenant or any other covenant hereunder at any later time.

7.11. The Owner hereby releases the City, its agents and employees from any liability whatsoever that the City may have to the Owner arising out of or related to the City's performance of such obligations, save for any such liability as may be due to the City's negligence. The Owner hereby agrees to cooperate with the City and allows the City such necessary access to the Building and the Land as is requisite for the City to fulfil the requirements of this section.

7.12. Pursuant to and in accordance with Section 29 of the Act this Agreement shall be registered on title to the Land and the conditions and covenants herein shall run with the Land and shall bind the Owner and subsequent owners and successors in title to the Owner.

## **8. REZONING:**

8.1. Within one (1) year of the execution of this Agreement, the Owner shall apply to the City to have the Lands rezoned to DC1 (Direct Development Control) Provision. Nothing in this Agreement fetters Council's discretion to approve or reject the Owner's rezoning application.

8.2. Notwithstanding any other provision of this Agreement the City may, in its sole and absolute discretion, hold back the Incentive grant until the Planning and Development Department has received a valid application to rezone the Lands to DC1 (Direct Development Control).

## **9. INSTALLATION OF PLAQUES:**

9.1 The Owner shall permit the placement of two (2) plaques in a visible location on or in proximity to the Building upon, or anytime after, the passing of the Designating Bylaw. One plaque shall be created and installed by the City at the City's sole expense to a design and specification solely within the City's discretion identifying the Building and the Land as a Municipal Historic Resource.

- 12.1.2. Within seven (7) days of the receipt of the Arbitration Notice, the Defending Party shall by written notice advise the Disputing Party that it disputes all matters referred to in the Arbitration Notice except those for which the Defending Party admits responsibility and proposes to take remedial action.
- 12.1.3. The terms of reference for arbitration shall be those areas of dispute referred to in the Arbitration Notice with respect to which the Defending Party has not admitted or proposes to take remedial action.
- 12.1.4. The Defending Party and the Disputing Party shall within ten (10) days after the date of receipt by the Disputing Party of the Defending Party's notice, appoint an arbitrator who shall be acceptable to both parties (the "Arbitrator"). In the event that the parties shall fail to appoint the Arbitrator, then either party may, on written notice to the other, apply to the President of the Alberta Arbitration and Mediation Society to name the Arbitrator.
- 12.1.5. Not later than twenty (20) days after the appointment of the Arbitrator, the Arbitrator shall make his written decision, and shall give it to the parties immediately.
- 12.1.6. Unless the Arbitrator orders otherwise, the City and the Owner shall equally bear the costs of the arbitration.
- 12.1.7. The decision of the Arbitrator is final and binding on the parties and there shall be no appeal of the decision to the courts.
- 12.1.8. Except as modified by this Agreement, the provisions of the Arbitration Act R.S.A. 2000 c. A-43, as amended, shall apply.

**13. NOTICE:**

- 13.1. Any notice given pursuant to the terms of this Agreement shall be sufficiently given:
  - 13.1.1. In case of notice to the City, if such notice is sent by prepaid registered mail, or personally delivered, in an envelope addressed to:

**General Manager, Planning and Development Department**  
5<sup>th</sup> Floor, 10250 – 101 Street NW, Edmonton AB T5J 3P4

and also to:

**Corporate Services Department, Law Branch**  
9<sup>th</sup> Floor, Chancery Hall, #3 Sir Winston Churchill Square  
Edmonton AB T5J 2C3

14.6. Everything herein contained shall inure to the benefit of and be binding upon the parties hereto, their administrators, successors and assigns respectively.

IN WITNESS WHEREOF the parties have signed this Agreement on the day and year first above written.

A P P R O V E D

THE CITY OF EDMONTON  
as represented by the General  
Manager of the Planning and  
Development Department

As to Form \_\_\_\_\_  
Corporate Services Department, Law Branch

Per: \_\_\_\_\_  
R. Gary Klassen

As to Content \_\_\_\_\_  
Head of Planning and Policy Branch

Witness \_\_\_\_\_

Per: \_\_\_\_\_  
Howard Lawrence

Witness \_\_\_\_\_

Per: \_\_\_\_\_  
Carmen Lawrence

*For Home Owners*

CANADA ) I, \_\_\_\_\_  
PROVINCE OF ALBERTA ) of the City of Edmonton,  
TO WIT ) in the Province of Alberta  
) MAKE OATH AND SAY:

1. THAT I was personally present and did see Carmen Lawrence named in the attached Agreement who is personally known to me to be the person(s) named therein, duly sign and execute the same for the purposes named therein;
2. THAT the same was executed at the City of Edmonton, in the Province of Alberta, and that I am subscribing witness thereto;
3. THAT I know the said Carmen Lawrence and she is in my belief the full age of eighteen years.

SWORN BEFORE ME )  
at the City of Edmonton, in the )  
Province of Alberta, this \_\_\_\_\_ day )  
of \_\_\_\_\_, A.D. 2010 )  
)  
)  
)  
)  
)  
)  
)  
)

\_\_\_\_\_  
(witness signature, name and address)

\_\_\_\_\_  
A Commissioner for Oaths in and for  
the Province of Alberta