



OAKVILLE

REPORT

PLANNING AND DEVELOPMENT COUNCIL MEETING

MEETING DATE: JUNE 13, 2016

FROM: Planning Services Department and Legal Department PD 16-541
DATE: June 1, 2016
SUBJECT: **Historic Stone Wall - Amendment of By-law 1984-130 -
1028 Lakeshore Road East - Closure, Surplus and Conveyance**
LOCATION: 1028 Lakeshore Road East
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RECOMMENDATION:

1. That the applicable proceedings under the *Ontario Heritage Act* be followed to include in the heritage designation for the property at 1028 Lakeshore Road East the historic stone wall along its frontage through an amendment of By-law 1984-130 "A by-law to designate 1028 Lakeshore Road East as a property of historic and architectural value and interest";
2. That if and when the historic stone wall is included in the heritage designation of 1028 Lakeshore Road East, the historic wall and the Town portion of the lands on which it sits are hereby declared surplus to the needs of The Corporation of the Town of Oakville;
3. That the Town Solicitor be authorized to take such action as may be necessary to close and convey the historic wall and the Town portion of the lands on which it sits to the Owner(s) of 1028 Lakeshore Road East at nominal value in exchange for their covenant to maintain and repair the wall in perpetuity and at no cost or liability to the Town; and
4. That the execution of any required documentation, such as the Agreement of Purchase and Sale, be hereby authorized pursuant to By-law 2013-057.

KEY FACTS:

The following are key points for consideration with respect to this report:

- By-law 1984-130 protects the c. 1832 portion of the historic residence at 1028 Lakeshore Road East.

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- The purpose of the proposed amendment of the designation by-law is to include the historic stone wall that runs along Lakeshore Road East at the northern edge of the subject property. The historic stone wall currently lies on both Town and privately owned property and staff recommend that it would be best for the maintenance and repair of that stone wall if it were completely on the subject private property and that obligation to maintain and repair were assumed by the owners of 1028 Lakeshore Road East with no cost or liability to the Town in the future.
- The owners of 1028 Lakeshore Road East have agreed to the inclusion of the historic stone wall in the heritage designation of their property, and have also agreed to take conveyance of that small portion of the Town's Lakeshore Road East Road allowance on which part of the wall sits for nominal value, and provide a covenant to repair and maintain the wall in perpetuity at no cost or liability to the Town.
- If Council supports the recommendations in this report, the appropriate proceedings will be taken to designate the wall as part of 1028 Lakeshore Road East by amending the Property's Heritage Designation By-law, and then after that the appropriate proceedings will be taken under the *Municipal Act, 2001*, and Town By-laws, to close and convey the portion of the Town property on which a part of the wall sits to the owners of 1028 for nominal value and a covenant to repair and maintain the wall in perpetuity at no cost or liability to the Town.

BACKGROUND:

The property at 1028 Lakeshore Road East ("1028") is located on the south side of Lakeshore Road East, east of Chartwell Road and also has driveway access onto Barringham Drive. A Location Map is attached as Appendix A. The property is designated under Part IV of the *Ontario Heritage Act* by By-law 1984-130, attached as Appendix B. The property is considered significant for its historic and architectural value relating to the one storey c.1832 cottage portion of the residence.

A historic stone wall runs along part of the northern edge of the property, falling on both town property and the privately owned 1028. The owners of 1028 previously had an encroachment agreement with the Town regarding the stone wall, but that agreement has now expired. It is Town staff's preferred solution going forward, subject to Council approval, to convey the Town-owned portion of the land to the owners of 1028 and consolidate it in 1028, once the stone wall is designated under the *Ontario Heritage Act*. The owners of 1028 have agreed they would then be responsible for the repair and maintenance of the stone wall in perpetuity with no cost or liability to the Town. As the owners of 1028 have already been maintaining the wall and support its long term retention, they, along with Town staff, have

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requested that the existing heritage designation by-law for 1028 be updated and amended to include the stone wall.

The proposed amendment to By-law 1984-130 would include a revised legal description, add the stone wall as a heritage attribute and explain its cultural heritage value, as well as update the by-law's text in order to satisfy the requirements of section 29 of the *Ontario Heritage Act, 2005*. The proposed amendment was endorsed by the Heritage Oakville Advisory Committee at their meeting on April 26, 2016.

If and when the designation is complete, then the appropriate procedures under the *Municipal Act, 2001*, and the relevant Town By-laws would be followed to enable the closure of that small portion of the Lakeshore Road East road allowance on which the wall sits and the wall itself to the owners of 1028. This Report declares that small portion surplus to the Town's needs at this time and authorizes the necessary proceedings and document preparation, execution and registration.

COMMENT/OPTIONS:

Process

Section 30.1 of the *Ontario Heritage Act, 2005* allows a municipality to amend existing heritage designation by-laws in order to correct the legal description or to clarify the statement of cultural heritage value. The Act also requires municipalities to make "*such changes as are necessary to ensure that the by-law satisfies the requirements of section 29*" to bring by-laws passed prior to 2005 in line with the requirements of the *Ontario Heritage Act, 2005*.

Should the proposed amendment receive support from Council, notice of intention to amend a heritage designation by-law will be served on the property owners of 1028 Lakeshore Road East, as well as the Ontario Heritage Trust. Publication of the notice in a local newspaper is not required for designation by-law amendments. Following receipt of the notice, the owners are provided a 30 day period objection. If no objections are received, Council may pass the amending by-law at the next appropriate meeting. If an objection is received, Council may withdraw the proposed amendment or move forward with a Conservation Review Board hearing. An objection to the proposed amendment is not anticipated by staff as the amendment is supported by the property owner.

Cultural Heritage Value

Heritage planning staff support the inclusion of the stone wall as a heritage attribute in the designation by-law. While its exact construction date is unknown, it satisfies the following applicable criteria of Ontario Regulation 9/06:

1. **The property has design value or physical value because it,**
 - a. **is a rare, unique, representative or early example of a style, type, expression, material or construction method,**
The stone wall at 1028 Lakeshore Road East is an increasingly rare remnant of the historic stone walls that were once common along Lakeshore Road, formerly known as Colborne Street. The keystone used to construct the wall is also a material that is largely unique to Oakville and its neighbouring municipalities, but also increasingly rare as the material is no longer commercially available.

2. **The property has historical value or associative value because it,**
 - a. **has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community,**
The stone wall may have associations with the historic stone-hooking industry in Oakville, which was in turn associated with the early black community in Oakville.
 - b. **yields, or has the potential to yield, information that contributes to an understanding of a community or culture, or**
The stone wall yields, and has the potential to yield more information regarding the historic stone walls that lined Lakeshore Road and the stone-hooking industry in Oakville.

3. **The property has contextual value because it,**
 - a. **is important in defining, maintaining or supporting the character of an area,**
The stone wall helps to define the historic character of Lakeshore Road.
 - b. **is physically, functionally, visually or historically linked to its surroundings, or**
The stone wall is physically, functionally, visually and historically, linked to its surroundings.

Road Closing and Conveyance

The existing historic stone wall at 1028 encroaches approximately .5 m into the Lakeshore Road East road allowance along the frontage of 1028 and is shown on a surveyor's report dated December 4, 2001 prepared by David Horwood limited, Ontario land surveyors, and attached as Appendix D to this report.

In and around June 2002, part of this historic stone wall collapsed and was rebuilt by the owners of 1028 in its present location. At that time the owners of 1028 obtained

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a 10 year Encroachment Agreement from the Town for that part of the wall on Lakeshore Road East. Upon the expiry of that Encroachment Agreement the wall was to be removed from the Lakeshore Road East road allowance within 60 days.

However, the owners of 1028 then indicated that they did not wish to remove that portion of the historic stone wall on Lakeshore Road East but instead wanted it to stay in place in perpetuity and either be conveyed to them for nominal value plus a covenant to repair and maintain the historic stone wall in the future or have a new encroachment agreement prepared in perpetuity.

Both Town staff and the owners wanted the historic stone wall to stay in place and the question became how best to accomplish this objective.

Road allowance encroachment agreements are not normally given in perpetuity but rather can be terminated on 60 days' notice from the Town with the responsibility on the owner of the encroachment to remove that encroachment by the end of the notice period from the road allowance. This is to enable the Town to do any needed work such as road widening on the portion of the road allowance concerned.

In this case it is not anticipated that a widening would be needed in the shorter term in the vicinity of 1028. To preserve the historic stone wall, Town staff believe it is advisable that the wall at this time, be owned in its entirety by the owners of 1028 and that they commit to maintain and repair that wall in perpetuity.

Thus the recommended approach in this report to have the wall included in the heritage designation of 1028, the portion of the road allowance on which part of the historic stone wall sits closed, declared surplus to the needs of the Corporation and conveyed to the owners of 1028 at nominal value and with a covenant by the owners of 1028 to repair and maintain the wall in perpetuity.

To accomplish this approach the heritage designation process as laid out above would be completed and once completed, the normal road – closing and conveyancing practices of the Town would be followed pursuant to the Municipal Act and Town By-laws 2010 – 164 as amended and 1995 – 71 as amended by by-law 2000 – 104 .

On the closing of the transaction the road – closing by-law and the transfer would be registered along with Notice of the Covenant.

This report will serve as the necessary report to Council identifying the parcel of land and the interest proposed to be transferred and with its adoption, the lands and wall will be declared surplus to the Town's needs.

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CONSIDERATIONS:

(A) PUBLIC

Amendment of an existing heritage designation by-law requires notification to be sent to the owners of the property and to the Ontario Heritage Trust. No publication of the notice of intention to amend is required. Any Notice of Road Closure will be posted at the site.

(B) FINANCIAL

There are no significant costs to the Town associated with the amendment of the heritage designation by-law nor the Road closure and conveyance other than the required conveyancing and registration costs and fees.

(C) IMPACT ON OTHER DEPARTMENTS & USERS

Assuming there are no objections to the amendment, heritage planning staff will be assisted by legal staff to create the new amending by-law and to register it on title. As well Legal staff assisted by Engineering staff will undertake the road-closing and conveyance.

(D) CORPORATE AND/OR DEPARTMENT STRATEGIC GOALS

This report addresses the corporate strategic goal to:

- provide outstanding service to our residents and businesses
- enhance our cultural environment
- be the most livable town in Canada

(E) COMMUNITY SUSTAINABILITY

The proposed application generally complies with the sustainability objectives of the Livable Oakville Plan.

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APPENDICES:

- Appendix A – Location Map
- Appendix B – By-law 1984-130
- Appendix C – Photos of Wall
- Appendix D - Surveyor's Report

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