



Committee of the Whole Report

Report Number: ED2023-002

Meeting Date: February 7, 2023

Title: **Repeal and Replacement of Designating By-law – 1590 Elm Tree Road, Geographic Township of Ops**

Description: Proposed repeal and replacement of By-law 2022-082 and 2022-109 designating 1590 Elm Tree Road under Part IV of the Ontario Heritage Act

Author and Title: Emily Turner, Economic Development Officer – Heritage Planning

Recommendations:

That Report ED2023-002, **Repeal and Replacement of Designating By-law – 1590 Elm Tree Road, Geographic Township of Ops**, be received;

That the Municipal Heritage Committee’s recommendation to repeal and replace By-law 2022-082 and 2022-109 to designate 1590 Elm Tree Road be endorsed;

That staff be authorized to issue a Notice of Repeal and Notice of Intention to Designate 1590 Elm Tree Road, Geographic Township of Ops;

That a designating by-law be brought forward for adoption at the next Regular Council meeting following the end of the notice period;

That a by-law to repeal By-laws 2022-082 and 2022-109 be brought forward for adoption at the next Regular Council meeting following the end of the notice period; and

That this recommendation be brought forward to Council for consideration at the next Regular Council Meeting.

Department Head: _____

Financial/Legal/HR/Other: _____

Chief Administrative Officer: _____

Background:

1590 Elm Tree Road was designated under Part IV of the Ontario Heritage Act in May 2022 by By-law 2022-082. A consolidated version of this by-law, which includes an amendment discussed below, is attached as Appendix A. The property is a large agricultural parcel and its primary heritage attribute is the historic Georgian-style stone house in the southwest corner of the property. The house is believed to have been constructed around 1840 and is one of the oldest surviving homes in Ops Township. The designation was requested by the owners of the property.

At the same time as the designation was being undertaken, the owners were also in the process of severing a lot from the eastern side of the property. The house is located on the retained portion of the property. This severance has no impact on the identified heritage attributes of the property and is supported from a heritage perspective. Unfortunately, the severance and the designation were finalized around the same time but the severance came into effect first, meaning that the legal description contained in the designating by-law is not the same as the new legal description for the retained portion of the property. As a result, the designation by-law cannot be registered on title for the property until the legal description is corrected. Staff are proposing that the original designating by-law be repealed and a new by-law with the correct legal description be passed to replace it.

The repeal of a designating by-law at Council's initiative and the passage of a new designating by-law are governed by Sections 31 and 29, respectively, of the Act. Both sections require Council to consult with its municipal heritage committee prior to making a decision. At its meeting of January 12, 2023, the Kawartha Lakes Municipal Heritage Committee reviewed the proposed repeal and replacement of the by-law and passed the following motion:

KLMHC2023-009

Moved By J. Pitcher

Seconded By W. Bateman

That Report KLMHC2023-005, **Repeal and Replacement of By-law – 1590 Elm Tree Road, Geographic Township of Ops**, be received;

That the repeal and replacement of By-laws 2022-082 and 2022-109 be endorsed; and

That this recommendation be forwarded to Council for approval.

Carried

This report addresses that direction.

Rationale:

Generally, when a severance is undertaken with regard to a designated property, a by-law amendment would be undertaken to correct the legal description of the property. Amending a designation by-law, as opposed to repealing and replacing it, is the simpler and preferred method for making changes to a by-law of this type, but unfortunately will not address the issue regarding the legal description in this by-law. When the initial by-law was sent to the Land Registry Office for registration on title for the property, it was rejected because the legal description contained in the by-law did not match the new legal description for the retained lot. An administrative amendment was brought forward to Council and passed as By-law 2022-109 to address the issue with this by-law, but was also rejected by the Land Registry Office because the original by-law had not been registered against the property due to the conditions arising from the severance. The Land Registry Office has requested that a new by-law be passed with the correct legal description and the old by-law repealed. The new by-law will then be registered on title for the property.

The repeal of a designating by-law at Council's initiative is outlined under Section 31 of the Act. Should Council agree to this course of action, a notice of repeal of by-law will be issued. At the same time, a notice of intention to designate, with a new and revised by-law, will also be issued under Section 29 of the Act. These are separate legal processes, but can be performed simultaneously, as is being proposed. As the by-laws will be repealed and replaced at the same time, there will be no lapse in heritage protection of the property.

It should be noted that because a new by-law is being passed, as opposed to simply an amendment taking place, the property must fulfil the new requirements for designation under Ontario Regulation 9/06 as amended by Bill 23, the More Homes Built Faster Act (2022). These amendments came into force on January 1, 2023. Under the amendments, a property must now fulfil two of the nine criteria outlined under Ontario Regulation 9/06 as opposed to one. These criteria are grouped into three categories (Design and Physical Value, Historical and Associative Value and Contextual Value)

which are identified in the designating by-law. 1590 Elm Tree Road fulfils multiple criteria under the Regulation and is still eligible for designation. The way in which it fulfils the various criteria categories is identified in the by-law. A more detailed discussion of how the property fulfilled the criteria under the Regulation was provided to Council through a heritage evaluation report at the time the original by-law was passed. This report is attached as Appendix B for Council's information.

The new by-law will be substantially the same as the old by-law, except for the amendment of the legal description contained in Schedule A. There is no change to the content or intent of the by-law beyond this amendment and will be no changes to the scope of heritage protection for this property. The by-law will not apply to the severed lot. A consolidated version of By-law 2022-082 is attached at Appendix A for reference.

Under both Section 31 and 29 of the Act, notice is required to be provided to the owner of the property regarding the City's intent to repeal the original designating by-law and pass a new one. A public notice in the newspaper is also required. The Act provides for objections to be made to this process, either by the property owner or any member of the public, but staff do not anticipate this occurring as objections to the designation of privately-owned residential properties are rare. The owner of the property has been made aware of the issue with the original by-law and the direction proposed to correct it and is supportive. The objection period is 30 days from the date of the publication of the notice in the newspaper after which time the new by-law will be brought forward to Council for ratification.

Provincial Policy Conformity

Provincial Policy Statement (2020)

The Provincial Policy Statement (PPS) sets the policy foundation for development and land use planning Ontario. The policy intends to balance the needs of growth and economic development with the need for ensuring a high quality of life, public safety and health, and the conservation of natural and cultural heritage resources. Section 2.6 (Cultural Heritage and Archaeology) requires municipalities to conserve significant built heritage resources and significant cultural heritage landscapes as part of the land use planning process, stating that "Significant built heritage resources and significant cultural heritage landscapes shall be conserved."

Significant built heritage resources, as defined by the PPS, are those which have been determined to have cultural heritage value or interest as established by the criteria under the Ontario Heritage Act. These criteria are outlined by Ontario Regulation 9/06. The subject property fulfils these and has already been designated under Part IV of the Ontario Heritage Act. The update to the legal description ensures that the City's legal obligations under the Act are being fulfilled.

A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019)

A Place to Grow: Growth Plan for the Greater Golden Horseshoe was prepared by the Ontario government in order to help guide the land use planning process and assist communities within the Greater Golden Horseshoe achieve a high quality of life, positive economic development, and protection for important local resources.

Section 4.2.7 (Cultural Heritage Resources) requires municipalities to conserve their cultural heritage resources as part of the land use planning process "in order to foster a sense of place and benefit communities". The Growth Plan defines cultural heritage resources as "built heritage resources, cultural heritage landscapes, and archaeological resources that have been determined to have cultural heritage value or interest for the important contribution that make to our understanding of the history of a place, event, or a people. While some cultural heritage resources may already be identified and inventoried by official sources, the significance of others can only be determined after evaluation."

The subject property has been determined to have cultural heritage value or interest through an of the property based on Ontario Regulation 9/06 and has already been designated under Part IV of the Act because of the community benefit gained through its ongoing preservation. The update to the legal description ensures that the City's legal obligations under the Act are being fulfilled.

City of Kawartha Lakes Official Plan (2012)

The City of Kawartha Lakes Official Plan was amended in 2017 to include strengthened cultural heritage policies. Official Plan Amendment 26 outlined those amendments.

Three of the heritage policies speak directly to the conservation of individual heritage properties:

- a) Cultural heritage resources of significant cultural heritage value or interest shall be identified, protected and conserved.
- e) The City shall use the tools available to it under the Municipal Act, the Planning Act, the Environmental Assessment Act, and the Ontario Heritage Act to conserve cultural heritage resources.
- f) Cultural heritage resources shall be maintained in situ and in a manner that prevents the deterioration and conserved the identified cultural heritage values or interest and/or identified heritage attributes of the cultural heritage resource.

The City's policies require it to conserve cultural heritage resources and designation under Part IV of the Ontario Heritage Act is a tool for doing so. In this case, the subject property is already designated under Part IV of the Ontario Heritage Act and the adoption of a replacement by-law is required to ensure fulfilment of the requirements for legal protection under the Act and its continued conservation.

Other Alternatives Considered:

There are no recommended alternatives. Registering heritage designation by-laws on title is a legal requirement and the proposed process outlined in this report is required to fulfil the City's obligations under the Ontario Heritage Act.

Alignment to Strategic Priorities

The designation of property under Part IV of the Ontario Heritage Act supports the following goals from the Council adopted Strategic Plan:

- A Vibrant and Growing Economy
- An Exceptional Quality of Life

The identification and protection of heritage assets in the community through designation promotes and exceptional quality of life by supporting and promoting arts, culture and heritage within the municipality. Designation provides long term protection and management for key heritage resources in the municipality and recognizes their importance to the community. The correction of the legal description in this by-law

ensure that long term protection is achieved in accordance with provincial requirements.

The protection of heritage resources in the municipality also assists in the growth of the local economy in general by identifying, protecting, and celebrating places where people want to live, work and visit. It encourages investment in local communities by ensuring and promoting attractive places for residents and businesses to be. It also has a direct impact on developing local tourism through the preservation of sites and landscapes that people want to visit.

Financial/Operation Impacts:

There will be advertising costs and costs for the provision of public notices and registration of the new designation by-law on title, which are covered by the existing Heritage Planning budget.

Should the repeal and replacement of the by-law be appealed to the Ontario Land Tribunal by the owner or a third-party, there may be costs associated with the appeal. However, staff do not anticipate an appeal associated with this process. The initial designation of this property was initiated by the property owners and third-party appeals regarding the designation of privately-owned residential properties are rare.

Consultations:

Municipal Heritage Committee
Clerk's Office
Land Registry Office
Property Owner

Attachments:

Appendix A – Consolidated By-law 2022-082



2022-082
Consolidated Designa

Appendix B – Heritage Evaluation Report: 1590 Elm Tree Road



Adobe Acrobat
Document

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