



The Municipal Corporation of the  
Town of Fort Erie

**Special Council-in-Committee Meeting Agenda**

**Wednesday, February 22, 2023 - 6:00 PM**

**Council Chambers**

Meetings are being held in-person and via Video Teleconference  
as may be permitted. All meetings can be viewed at: Town's  
Website:

<https://www.forterie.ca/pages/CouncilAgendasandMinutes>

Town's YouTube Channel: [www.youtube.com/townofforterie](http://www.youtube.com/townofforterie)

or click on the YouTube icon on the home page of the Town's  
website ([www.forterie.ca](http://www.forterie.ca)) or Cogeco "YourTV"

Page

- 1. Call to Order**
- 2. Roll Call**
- 3. Announcements/Addenda**
- 4. Declarations of Pecuniary Interest**
- 5. Notice of Upcoming Public Meetings**
  - (a) Proposed Draft Plan of Subdivision and Zoning By-law Amendment  
  
Re; Crescent Acres (0-10747 Kraft Road ) - Owner: Crescent Acres Ltd. (Mark Basciano) - Agent: Upper Canada Consultants (Matt Kernahan) - Monday, February 27, 2023 - 6:00 p.m. - Council Chambers, Town Hall. The information report will be available by 5:00 p.m. on February 23, 2023.
  - (b) Proposed Combined Official Plan and Zoning By-law Amendment  
  
Re: 214 Courtwright Street - Owner: 2550663 Ontario Inc. (Greg Walker) - Agent: NPG Planning Solutions (Jeremy Tran) - Monday, February 27, 2023 - 6:00 p.m. - Council Chamber, Town Hall. The information report will be available by 5:00 p.m. on February 23, 2023.
  - (c) Proposed Zoning By-law Amendment

Re: 229 Cherryhill Boulevard South - Owner: John Lally (1000112697 Ontario Inc.) - Agent: Cam Lang - Monday, March 6, 2023 - 6:00 p.m. - Council Chambers, Town Hall. The information report will be available by 5:00 p.m. on Wednesday, March 1, 2023.

**NOTE: The notice in the February 2, 2023 Post incorrectly states February 27, 2023. Corrected Notifications have/will be given in all media sources.**

(d) Proposed Zoning By-law Amendment

Re: 0-19302 Courtwright Street - Owner/Applicant: David Zappone - Monday, March 6, 2023 - 6:00 p.m. - Council Chambers, Town Hall. The information report will be available by 5:00 p.m. on Wednesday, March 1, 2023.

**NOTE: The notice in the February 2, 2023 Post incorrectly states February 27, 2023. Corrected Notifications have/will be given in all media sources.**

(e) Proposed Zoning By-law Amendment

Re: 0-17100, 0-17101 & 0-17102 Schooley Road - Applicant: A.J. Clarke and Associates Ltd. (Stephen Fraser) - Owner: Marz Homes (Crystal Beach) Inc. - Monday, March 6, 2023 - 6:00 p.m. - Council Chambers, Town Hall. The information report will be available by 5:00 p.m. on Wednesday, March 1, 2023.

**NOTE: The notice in the February 9, 2023 Post incorrectly states February 27, 2023. Corrected Notifications have/will be given in all media sources.**

(f) Proposed Zoning By-law Amendment

Re: 4409 Erie Road - Applicant: Mary Lou Tanner (NPG Planning Solutions) - Owner: Crystal Beach Cottages Inc. (Bryan Keenan) - Monday, March 6, 2023 - 6:00 p.m. - Council Chambers, Town Hall. The information report will be available by 5:00 p.m. on Wednesday, March 1, 2023.

## 6. Planning and Development Services

### 6.1 Presentations and Delegations

## 6.2 Reports

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**PDS-12-2023** Designated Heritage Property Grant Program

Recommendation:

**That:** Council approves the proposed Designated Heritage Property Grant as outlined in Report PDS-12-2023, and further

**That:** Council directs staff to prepare a by-law for implementing the Designated Heritage Grant Program to support the preservation and conservation of heritage properties, and further

**That:** Council directs staff to circulate the Designated Heritage Property Grant Program Guide to the owners of designated heritage properties in the Town of Fort Erie.

[PDS-12-2023 - Designated Heritage Property Grant Program](#)

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**PDS-13-2023** Proposed Combined Official Plan and Zoning By-law Amendment - 214 Windmill Point Road South - South Coast Consulting - Steven Rivers (Applicant/Agent) - Joseph & Irene Moore (Owners)

Recommendation:

**That:** Council approves the amendments to the Town's Official Plan and Zoning Bylaw No. 129-90 as detailed in Report No. PDS-13-2023 for the lands known as 214 Windmill Point Road South, and further

**That:** Council directs Staff to submit the necessary by-laws.

[PDS-13-2023 - 214 Windmill Point Road South - Recommendation Report](#)

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**PDS-14-2023** Proposed Noise and Nuisance By-law

Recommendation:

**That:** Council approves the Noise and Nuisance By-law attached as "Appendix 1" to report No. PDS-14-2023 and directs that Noise and Nuisance By-law No. 30-09, be repealed.

[PDS-14-2023 - Noise & Nuisance By-law Report](#)

## 6.3 New Business/Enquiries

- 7. Scheduling of Meetings**
- 8. Adjournment**





## Planning and Development Services

<b>Prepared for</b>	Council-in-Committee	<b>Report No.</b>	PDS-12-2023
<b>Agenda Date</b>	February 22, 2023	<b>File No.</b>	231101

### Subject

#### DESIGNATED HERITAGE PROPERTY GRANT PROGRAM

### Recommendations

- THAT** Council approves the proposed Designated Heritage Property Grant as outlined in Report PDS-12-2023, and further
- THAT** Council directs staff to prepare a by-law for implementing the Designated Heritage Grant Program to support the preservation and conservation of heritage properties, and further
- THAT** Council directs staff to circulate the Designated Heritage Property Grant Program Guide to the owners of designated heritage properties in the Town of Fort Erie.

### Relation to Council's 2018-2022 Corporate Strategic Plan

Priority 5: Managed Growth through Responsibility, Stewardship and Preservation

Goal 5.1: Capital investment plan to include cultural and natural heritage preservation, recreation, active transportation and infrastructure investments

### List of Stakeholders

Owners of Designated Heritage Properties  
Municipal Heritage Standing Committee  
Fort Erie Residents  
The Town of Fort Erie

Prepared by:	Submitted by:	Approved by:
<b>Original Signed</b>	<b>Original Signed</b>	<b>Original Signed</b>
Fahima Begum, BA/BSW, MScPI Junior Community Planner	Alex Herlovitch, MCIP, RPP Director, Planning & Development Services	Chris McQueen, MBA Chief Administrative Officer
Reviewed by:		
<b>Original Signed</b>		
Signe Hansen, OALA, CSLA, MBA Manager, Community Planning		

### **Purpose of Report**

The purpose of this report is to present the draft Designated Heritage Property Grant Program for Council consideration. The objective of the program is to support designated heritage property owners in the maintenance, conservation, and restoration of heritage attributes.

### **Background**

The Town of Fort Erie's cultural heritage is one of the attributes that makes it unique and a desirable community in which to live and to visit. Well maintained cultural heritage and heritage resources help foster local identity and a sense of place, community pride and quality of life, and also contributes to a sustainable community. Cultural heritage is a non-renewable resource and the preservation of such is a shared responsibility.

The Ontario Heritage Act provides for the protection of individual properties and districts through designation, based on cultural heritage value or interest. While designation provides protection to heritage assets, ongoing maintenance, conservation and restoration are required to ensure long-term preservation. Citizens whose properties are designated under the Ontario Heritage Act share in caring for the heritage resources that reflect the distinct and rich character of the Town of Fort Erie.

The protection and conservation of the Town's cultural heritage resources has long been a priority of Council, as well as the Council-appointed Municipal Heritage Standing Committee. To this end, staff were directed to explore opportunities to assist the owners of designated heritage properties with the conservation and maintenance of these limited resources.

The Town has offered a Heritage Tax Rebate Program since 2007 by way of Report CDS-107-07 dated December 3, 2007. Report [CS-15-2021](#), dated December 6, 2021, provided

a heritage tax rebate program review, which led to [By-law 157-2021](#), wherein Council approved an update to expand and enhance the potential grant funding of the Town's Heritage Tax Rebate Program. As a result, the owners of designated heritage properties, if in good standing with the Town and Province, are eligible to apply for a refund of up to 40% of their property tax, based on a maximum assessed value of \$500,000 for each eligible heritage property. In 2022, five property owners applied to the Heritage Tax Rebate Program. The average tax rebate amount that was provided for the 2021 tax rebate year was \$1,236.66. Six and seven property owners applied to the program in 2021 and 2023 respectively.

Through the 2022 operating budget deliberations, Council approved an annual budget allocation of \$50,000 for a Designated Heritage Grant Program, intended to support owners of designated heritage properties in the maintenance, conservation and restoration of designated heritage features. This proactive program will contribute to the preservation of the Town's heritage and historic structures.

The Town of Fort Erie currently has 23 designated heritage properties. The Municipal Heritage Standing Committee is actively working to evaluate and potentially designate the 35 properties currently on the Municipal Register of Properties of Cultural Heritage Value and Interest.

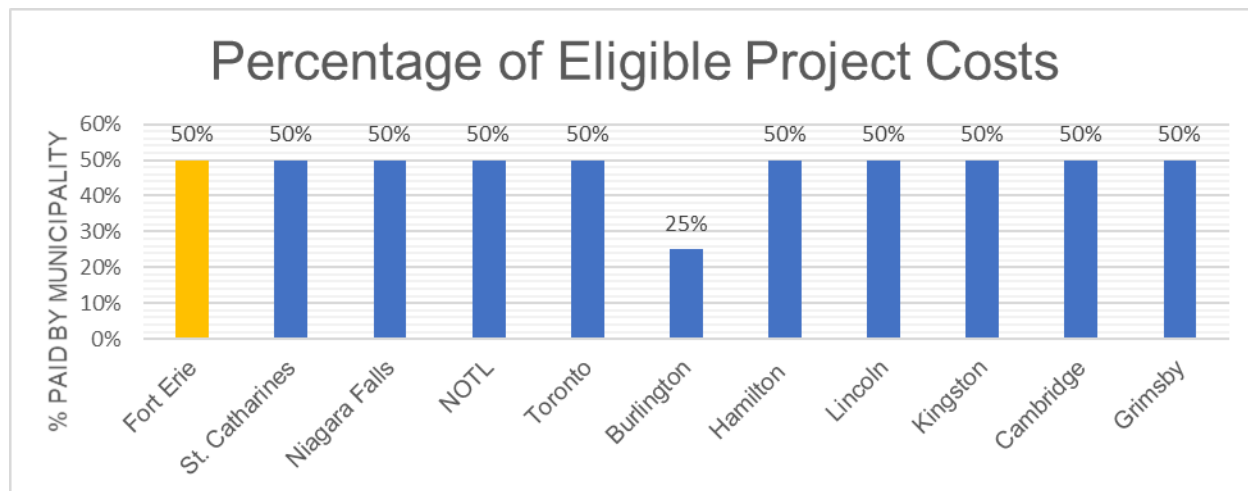
### **Analysis**

The proposed Designated Heritage Property Grant Program intends to offer matching financial support to owners of properties designated under Part IV of the Ontario Heritage Act for the conservation and restoration of heritage features and attributes identified in the designating by-law.

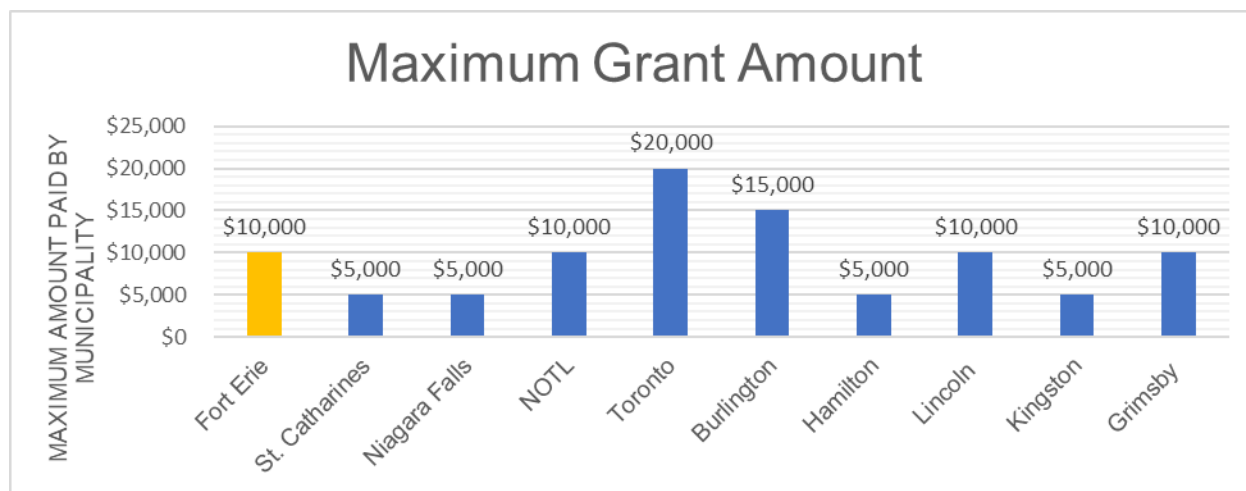
In order to determine the guidelines of the proposed Designated Heritage Property Grant, a best practice review of heritage grants in other municipalities in the Niagara Region was conducted, including the City of St. Catharines, City of Niagara Falls, Town of Niagara-on-the-Lake, Town of Grimsby, and Town of Lincoln. This review also assessed municipalities outside of the Niagara Region, including the City of Toronto, City of Burlington, City of Hamilton, City of Kingston, and the City of Cambridge. This analysis demonstrated consistent requirements regarding eligible properties, grant requirements, eligible projects, and the application process, that offered guidance to the development of the Town program.

### **Best Practices Review**

Within the Niagara Region, five other municipalities have an established grant program that supports property owners in maintaining, conserving and restoring their heritage properties. Another five municipalities outside of the Region have also been analysed for their comparable requirements. Relative to eligible project costs, 9 municipalities match 50% of eligible project costs to an upset limit, with property owners covering the remaining costs. One municipality covers 25% of eligible costs. It is recommended that the Town of Fort Erie's program provide a 50% matching grant for eligible project costs to an upset limit (see graph below).



The upset limit for grant funding for individual properties ranges from \$5,000 to \$20,000 across the 10 municipalities surveyed. Five municipalities, including the City of St. Catharines, the City of Niagara Falls, the City of Hamilton, the City of Kingston, and the City of Cambridge provide a maximum grant funding of \$5,000. The Town of Grimsby, the Town of Niagara-on-the-Lake, and the Town of Lincoln provide a maximum grant amount of \$10,000 per project; the City of Burlington provides up to \$15,000; and the City of Toronto provides up to \$20,000 (see graph below).



#### **Proposed Fort Erie Designated Heritage Grant Program**

It is recommended that the Town of Fort Erie Designated Heritage Property Grant Program provides a 50% matching grant for eligible improvements, to an upset limit of \$10,000 per property every two years. The funding will be matched by the owner based on actual expenditures verified through invoices, and will be paid out upon completion of the project. With 23 currently designated heritage properties, the program could support a minimum of five applicants every year.

This aligns with the best practices of other municipalities in regards to grant amount. As identified in the chart above, numerous municipalities offer \$5,000 a year of funding, including the City of St. Catharines, the City of Niagara Falls, the City of Hamilton, the City of Kingston, and the City of Cambridge. In staff's experience with other incentive programs, \$10,000 over a two-year period will allow for more robust improvements, while accounting for construction delays due to contractor and material availability.

Eligibility requirements are set in place to ensure grant funding supports work that conserves, reconstructs and/or restores designated heritage attributes. Work to any identified heritage attributes of a designated property would be eligible, whether on the interior, exterior, or structural. It is expected a heritage expert would be retained by the property owner to guide the work appropriately. Work is to be completed according to accepted standards and guidelines of heritage conservation, as identified in the *Standards and Guidelines for the Conservation of Historic Places in Canada*.

Pursuant to the Ontario Heritage Act, a Heritage Permit is required to undertake improvements to designated heritage properties. As such, a Heritage Permit would be required to access this funding, and it is expected that the Heritage Permit application process and Designated Heritage Property Grant application will typically run concurrently.

The Designated Heritage Property Grant Program (attached as Appendix 1) outlines the steps required for evaluating, approving and monitoring progress of work undertaken with grant funding, as listed below. Applicants need to provide the necessary details as outlined in the Designated Heritage Property Grant Guide in order to be eligible for the program, and will be approved on a first come, first served basis.

- Step 1: Pre-consultation
- Step 2: Application
- Step 3: Evaluation
- Step 4: Undertake Work
- Step 5: Final Report
- Step 6: Inspection
- Step 7: Payment

These steps are in place to ensure applicants fulfill their intended goals regarding conserving their property's heritage attributes, staff are able to monitor progress to project completion, and funding is appropriately allocated.

Applications will be reviewed by staff and the Municipal Heritage Standing Committee, with a recommendation for approval or denial. It is recommended that approval of application be delegated to the Director of Planning and Development Service (or their authorized designate).

Work associated with a grant application must be completed and approved, before an owner can apply for a subsequent grant.

#### **Financial/Staffing and Accessibility (AODA) Implications**

Planning and Development Services staff resources will administer the program and ensure funds are appropriately allocated.

Owners of designated properties can apply for a grant of up to 50% of the eligible project costs, up to an upset limit of \$10,000 every two years. Through 2022 budget deliberations, Council approved a \$50,000 base budget allocation through a new Heritage Reserve as a result of CS-18-2022 and By-law 150-2022. The approved amount of \$50,000 in 2022 was transferred to the Reserve for future use. A \$50,000 allocation will also be included in the 2023 operating budget. Thus, with Council approval, \$100,000 altogether will be available to the program in 2023.

Application forms can be provided as physical and electronic copies, and a pre-consultation meeting can be arranged in a manner that suits the applicants, in order to ensure the process is accessible and aligns with AODA requirements.

### **Policies Affecting Proposal**

The [Ontario Heritage Act](#) sets out regulations for designating and conserving properties of cultural heritage value or interest. The Act outlines standards for their protection, maintenance, use and disposal. In particular, section 39 (1) describes that the council of a municipality may pass by-laws for the making of a grant or loan to the owner of a property designated for the purpose of paying for the whole or any part of the cost of alteration of designated property on such terms and conditions as the council may prescribe.

### **Comments from Relevant Departments/Community and Corporate Partners**

The draft Designated Heritage Property Grant Program has been reviewed by the Municipal Heritage Standing Committee. The Municipal Heritage Standing Committee's recommendations were incorporated into the Designated Heritage Property Grant Program.

At its meeting of November 16, 2022, the Municipal Heritage Standing Committee reviewed the Designated Heritage Property Grant Program Guide and passed the following motion:

That Council accept the document with their suggested changes.

***Carried***

### **Communicating Results**

If the Designated Heritage Property Grant Program is approved by Council, it should be promoted through local media. Owners of designated heritage properties will be notified by mail.

### **Alternatives**

Council may elect to hold the Designated Heritage Property Grant Program in abeyance for further consideration. Staff do not recommend this alternative, as the program was developed in response to Council's desire to offer assistance and incentives to encourage the maintenance of designated heritage properties, and Council has already allocated funds to this program in 2022.

### **Conclusion**

The proposed draft Designated Heritage Property Grant Program responds to Council's desire to encourage the timely maintenance of designated heritage properties, as a means of further preserving the Town's cultural heritage. The Designated Heritage Property Grant Program has been developed after analysing grant programs in 10 other municipalities and consulting with the Municipal Heritage Standing Committee. The proposed grant is comparable to programs in surrounding municipalities and can support local efforts to maintain the Town's cultural heritage and identity.

### **Attachments**

Appendix 1– Designated Heritage Property Grant Program Guide

# **Town of Fort Erie Designated Heritage Property Grant Program Guide**



**Planning & Development Services Department**  
**The Corporation of the Town of Fort Erie**  
1 Municipal Centre Drive  
Fort Erie Ontario L2A 2S6  
905-871-1600





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## SECTION 1.0 – INTRODUCTION

The Ontario Heritage Act (OHA) is provincial legislation that allows for the designation of individual properties and districts as being of cultural heritage value or interest. Municipalities have the role of determining if a heritage property will be designated under the OHA. The Town of Fort Erie has mandated that the Municipal Heritage Standing Committee (MHSC) provide advice and recommendations for the purposes of the conservation of built heritage. Twenty-three properties are designated under the OHA, in the Town of Fort Erie.

While designation provides for the protection of heritage assets, ongoing maintenance, conservation and restoration are required to ensure long-term preservation. The Designated Heritage Property Grant Program offers financial support to help property owners maintain the heritage features and attributes of their designated heritage properties, as set out in the designating by-law. This Guide sets out the process and criteria by which owners of designated properties may apply for a Designated Heritage Property Grant.

### 1.1 IMPORTANCE OF HERITAGE RESOURCES

Designating properties under the OHA protects them from being lost to time, while managing the risk of alterations or demolition. While changes to heritage features and attributes is still possible, designation provides a due process by which property owners, Council, and other interested parties can determine the best course of action for preservation. Maintaining a designated heritage property and attributes provides numerous benefits, including:

- **Preserving a sense of place and community identity**

Fort Erie is situated on the traditional territory of the Anishinaabeg and Haudenosaunee peoples with a history dating back at least 13,000 years. Fort Erie's cultural heritage is represented by many attributes that make Fort Erie unique. Cultural heritage is a non-renewable resource and the preservation of such is a shared responsibility. Citizens whose properties have received a heritage designation share in caring for these heritage resources, and these assets reflect the distinct and rich character of the community.

Heritage resources enhance our quality of life and sense of place, and are part of the fourth pillar of a sustainable community – Social, Economic, Environmental, and Cultural. Well maintained cultural heritage assets foster local identity and community pride. This grant program is intended to support the valuable cultural heritage resources within the Town of Fort Erie.

- **Promoting economic growth**

Designated heritage properties can help the local economy by creating jobs in craftsmanship and preservation. In order to restore older buildings and structures, specialized skills from local businesses are needed, which generates income in the community. Designation can also help increase assessment and property value.

- **Encouraging tourism**

The historic, cultural, scientific, and artistic significance of a place can attract tourists from around the country and world, thus stimulating local businesses. Whether it be a historical landmark, an architectural masterpiece or a significant tree, people are drawn to unique sites for exploration and leisure.

## 1.2 MAINTAINING HERITAGE RESOURCES

It is important to maintain heritage properties, features and attributes so history can be preserved for current and future generations. While designation identifies the need to conserve a heritage property, maintenance is required to ensure its sustainability.

The Ontario Heritage Trust outlines eight guiding principles in the conservation of historical properties, including:

- 1. Respect for documentary evidence**

Ensure work is based on historical documentation, such as historical drawings, photographs, and physical evidence.

- 2. Respect for the original location**

Only move buildings if there is no other way to save them since site is also a component of the property's significance.

- 3. Respect for historical material**

Choose to conserve and repair over replacing building finishes and materials in order to maintain the property's historical content.

- 4. Respect for original fabric**

Use like materials when repairing properties in order to maintain both their likeness and their integrity.

- 5. Respect for the buildings' history**

Do not erase or destroy later additions to a property in order to restore it to a single time period or restore it to one period at the expense of another.

- 6. Reversibility**

Ensure alterations that are made are able to return to original conditions in order to conserve previous building designs. For example, if a new door opening is put in a stone wall, number and store the original stones to allow for future restoration.

- 7. Legibility**

Ensure new work is distinguishable from old, and buildings are recognized as products of their time.

- 8. Maintenance**

Carry out regular upkeep in order to avoid high costs of future restoration<sup>1</sup>.

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<sup>1</sup> Ontario Heritage Trust (n.d.). *Eight guiding principles in the conservation of historical properties*. Retrieved from <https://www.heritagetrust.on.ca/en/pages/tools/tools-for-conservation/eight-guiding-principles>

## **1.3 PURPOSE**

The purpose of this program is to:

- Establish a clear, equitable, efficient and accessible process and criteria for the provision of Designated Heritage Property Grants to eligible applicants, and
- Support the maintenance, conservation, and restoration of designated heritage properties and heritage attributes in the Town of Fort Erie.

In order for a property or structure to be designated under the OHA, it must be assessed with respect to general criteria as provided for in the OHA and O. Reg 569/22, and be designated under Part IV of the OHA.

## **SECTION 2.0 – ELIGIBILITY**

### **2.1 ELIGIBLE PROPERTIES**

Owners of properties designated under Part IV of the OHA are eligible to receive funding for the conservation and restoration of heritage attributes.

### **2.2 GRANT DESCRIPTION**

Through the Designated Heritage Property Grant Program, an owner may apply for a grant of up to 50% of eligible costs to an upset limit of \$10,000 for work performed to the identified heritage features and attributes of a designated property. An owner can apply for the grant once every two (2) years.

Grant amounts will be determined based on the lower of two (2) cost estimates provided from a heritage expert (registered and bona fide contractor, qualified architect or engineer, or restoration consultant), who must not have a business or personal relationship with the owner. Cost estimates must provide an itemized and detailed description of each component of the proposed work, based on specifications, architectural drawings, specialist reports, and recent and historical photos which clearly indicate the heritage attributes subject to the proposed work. A complete application package shall include:

- A completed application form,
- The designating by-law, listing heritage features or attributes,
- Photos of the heritage features or attributes in original and good condition,
  - Recent and date stamped photos that provide an overview of the property prior to construction/renovation,
  - Recent and date stamped photos of the heritage attributes prior to construction/renovation,
- A detailed work plan and description of work prepared by a heritage expert demonstrating how each component of the proposed work will be undertaken (including specifications, architectural drawings, and/or specialist reports where relevant),

- A Heritage Impact Statement, if requested through pre-consultation,
- Two (2) dated, detailed and itemized cost estimates based on the proposed description of work (including materials, labour, equipment, and related expenses). Lump sum estimates will not be accepted,
- The owner’s authorization, if submitted by someone other than the owner,
- An approved heritage permit, building permit, and/or other Town approval issued for the work as applicable, and
- Accreditation of the heritage expert.

The Town may request additional information to process an application, as required. The Town may also confirm the qualifications and status of a contractor or contact the contractor to clarify and confirm items.

Poor or defective work may be deemed ineligible for funding at the end of the project. Only projects of a satisfactory quality of work per the Standards and Guidelines for the Conservation of Historic Places in Canada will be deemed eligible for grant funding.

Applications will be considered on a first come, first served basis, due to a limit in funding. Grants will be paid out upon completion of the project, submission of proof of work and final paid invoice(s), provided the work is to the satisfaction of the Town and the applicant is in good standing with the Town and the Province.

Work associated with an application must be competed and approved, before a property owner can apply for a subsequent application.

## **2.3 ELIGIBLE PROJECTS**

In general, eligible projects must be directed toward the conservation and/or restoration of heritage features and attributes cited in the Reasons for Designation in the property’s designating by-law. Application eligibility will be determined by Planning and Development Services staff, in consultation with the Municipal Heritage Standing Committee.

Retroactive funding requests will not be considered.

The projects described below are eligible for grant funding. Specific work that is eligible is summarized in Section 4.0.

### **2.3.1 General**

Any work that conserves or restores heritage features or attributes specified in the designating by-law is eligible. Eligible projects fall into the three following categories:

#### **1) Conservation of existing and significant attributes**

The restoration of existing and significant heritage features and attributes that align with the designating by-law. This would include, but is not limited to, repairing deteriorated elements, such as doors and windows, siding and roofing materials, porches and steps, brick, and other attributes as described in the designating by-law.

#### **2) Reconstruction of existing and significant attributes**

The reconstruction of existing and significant architectural attributes that still exist, but are beyond conservation or repair. This would include only accurate reconstruction of

the original attributes, using materials, sizes, and configurations that match the original.

### **3) Restoration of significant attributes**

The reconstruction of significant heritage attributes which have been lost, but for which the appearance can clearly be determined from documentary sources. Documentary sources must pertain to the particular property for which funding is requested, and demonstrate the original significance of the attribute(s). The documentation should be in the form of historical drawings or photographs that clearly show the attribute(s) to be restored.

To achieve optimal outcomes, work on historical buildings requires care and often involves specialized materials, techniques, and expertise. It is an expectation of the program that the applicant consults with an expert in heritage preservation before undertaking any work.

Short-term, routine maintenance is not eligible. This includes minor repairs, such as repairing a broken step or broken window glass, painting that is not part of a restoration project, repairing roofing material, etc.

#### **2.3.2 Structure**

A building's exterior may be identified as a character-defining element of a designated heritage property. This may include a building's colour, composition, orientation, scale and texture. The exterior form may also be related to its surroundings, including spatial relationships with adjacent buildings, climatic considerations, circulation for vehicles and pedestrians, natural features, plazas or views.

Deteriorated elements of the exterior form could be stabilized through structural reinforcement and weather protection, or the correction of unsafe conditions, until repair work is carried out. Missing parts can be recreated based on physical and documentary evidence, and obscure parts can be revealed to re-establish character-defining proportions and massing.

Only work that corrects serious structural faults and restores the building to structural soundness is eligible. Routine maintenance and structural work needed for modern renovations are not eligible.

#### **2.3.3 Exterior**

Eligible projects might include the conservation, restoration or reconstruction of significant architectural attributes that are cited in the property's designating by-law, such as:

- Doors, windows and shopfronts,
- Entrances, porches, and balconies,
- Roofs,
- Repair, repointing, and cleaning of masonry,
- Stucco,
- Storm and screen windows,

- Glass and glass products,
- Eavestroughs,
- Wood and wood products,
- Architectural and structural metals, and/or
- Any other attributes important to the overall composition of the structure as specified in the designating by-law.

More detail is provided in Appendix 1.0

### **2.3.4 Interior**

The conservation or restoration of interior attributes specifically identified in the property's designating by-law are eligible. Eligible interior attributes may include woodwork, plasterwork, wall or ceiling murals, bannisters and railings, flooring or other attributes. Heritage value for interior attributes can be derived from their physical characteristics as well as where they are located in the historical building. New services, such as electrical work, plumbing, heating, and insulation are not eligible.

## **SECTION 3.0 – APPLICATION PROCESS**

### **3.1 STEPS**

- **Step 1: Pre-consultation**

The applicant is required to schedule a pre-consultation meeting with Town staff early in the process of planning a project, in order to review eligibility, application requirements and coordination with other permit applications, such as a Heritage Permit Application. This advance consultation helps to avoid ineligible projects, and ensure appropriate experts are engaged and appropriate documentation is prepared.

- **Step 2: Application**

The property owner shall submit a complete Designated Heritage Property Grant Program application to the Planning and Development Services Department.

This application must include all details necessary for a full understanding of the proposed work, including:

- A completed application form,
- The designating by-law, listing heritage features or attributes,
- Photos of the heritage features or attributes in original and good condition,
  - Recent and date stamped photos that provide an overview of the property prior to construction/renovation,
  - Recent and date stamped photos of the heritage attributes prior to construction/renovation,
- A detailed work plan and description of work prepared by a heritage expert demonstrating how each component of the proposed work will be undertaken (including specifications, architectural drawings, and/or specialist reports where relevant),

- A Heritage Impact Statement, if requested through pre-consultation,
- Two (2) dated, detailed and itemized cost estimates based on the proposed description of work (including materials, labour, equipment, and related expenses). Lump sum estimates will not be accepted,
- The owner’s authorization, if submitted by someone other than the owner,
- An approved heritage permit, building permit, and/or other Town approval issued for the work as applicable, and
- Accreditation of the heritage expert.

Where necessary, the Town may request additional information, plans, specifications, drawings, and/or photos.

• **Step 3: Evaluation**

The application will be reviewed by the Town in consultation with the Municipal Heritage Standing Committee, and Town Arborist as appropriate.

Staff and/or members of the Municipal Heritage Standing Committee may visit the site to view the heritage features and attributes, and discuss the proposed work with the owner, as appropriate.

Approval of the application is delegated to the Director, Planning and Development Services. The applicant will be informed in writing of the Town’s decision, and of the conditions under which the grant will be paid. The decision made is final.

• **Step 4: Undertake Work**

Following approval of an application, and subject to a building permit and heritage permit as applicable, the owner will undertake the work. The owner is required to contact the municipality concerning any proposed change to the project during the course of the work. Any new work or any changes to the work will not be funded without prior written approval. Allow sufficient time for the Town and Municipal Heritage Standing Committee to review and consider changes prior to performing them.

• **Step 5: Final Report**

Once work is completed, the owner shall submit a Final Report to the Town, including photos of completed work, final invoices, and proof of payment.

• **Step 6: Inspection**

Work shall be inspected to ensure conformity with the approved application. Inspections will be carried out by Town staff.

• **Step 7: Payment**

The grant is paid to the owner by the municipality upon receipt of the Final Report and Inspection, provided the work is consistent with the approved application and performed to the satisfaction of the Town.



### **3.2 HERITAGE ADVICE**

It is an expectation that applicants seek professional advice when planning heritage conservation and restoration projects. The following serve as useful starting points for documentary information and reference:

- Ontario Heritage Toolkit
- Standards and Guidelines for the Conservation of Historic Places in Canada
- The Fort Erie Historical Museum
- The Ministry of Heritage, Sport, Tourism and Culture Industries

### **3.3 TERMS AND CONDITIONS**

- Funding is allocated annually by Council. Applications are considered on a first come, first served basis, based on an approved application. Approval of the grant application is at the discretion of the Town, and is subject to the availability of funds.
- The property and heritage attributes must be designated under Part IV of the OHA.
- Property taxes must be paid in full at the time of application and at the time the project is completed.
- The applicant must be in good standing with the Town and in compliance with the OHA.
- The grant is conditional upon receiving a Heritage Permit for the work and any planning and building code approvals, as required.
- Approved work must be completed within two (2) calendar years of the date of grant approval, otherwise grant funding will be withdrawn.
- The grant is not transferable to new property owners upon sale of the property.
- Work carried out prior to application approval is ineligible for the grant.
- Work carried out must comply with proposed work outlined in the approved application form. The owner is required to contact the municipality concerning any changes to the project that are proposed during the course of the work. Any new work, or any changes to the work, will not be funded without prior written approval.
- Works must be completed according to acceptable standards as identified in the Standards and Guidelines for the Conservation of Historic Places in Canada.
- Upon approval of an application, the applicant shall enter into a written agreement with the Town.

### **3.4 CONTACTS**

For more information regarding the Town’s Designated Heritage Property Grant Program, please contact:

Fahima Begum, Junior Community Planner  
1 Municipal Centre Dr., Fort Erie, ON L2A 2S6  
(905) 871-1600 ext. 2527  
fbegum@forterie.ca

You may also visit the Town of Fort Erie Heritage Planning webpage at:

<https://www.forterie.ca/pages/HeritagePlanning>

## **APPENDIX 1.0 – PROJECTS ELIGIBLE FOR DESIGNATED HERITAGE PROPERTY GRANT FUNDING**

The following offers a number of guidelines for the type of work that may be eligible under the Designated Heritage Property Grant. Project work must pertain to heritage features and attributes cited in the Reasons for Designation in the property’s designating by-law, as well as be recommended by a heritage expert, in order for an application to be approved.

### **1. Doors, Windows and Shopfronts**

Doors, windows and shopfronts should be protected and maintained with appropriate surface treatments. Recognized conservation methods should be used to repair parts of doors and windows through patching, piecing-in, consolidating or otherwise reinforcing them. Limited replacement may be needed with a compatible substitute material, of extensively deteriorated or missing parts of doors, windows and shopfronts. When designing and constructing a new door or window that is completely missing, use a design that is compatible with the style, era and character of the historical place, or a replica based on documentary evidence.

Repairs should match the existing work, both visually and physically, as closely as possible. Moreover, adjacent character-defining elements should be protected from accidental damage or exposure to damaging materials during maintenance or repair work.

### **2. Entrances, Porches and Balconies**

Entrances, porches and balconies can be identified as character-defining elements of an historical place, and can include canopies, overhangs, pergolas, stairs, verandas, vestibules, and widow’s walks.

Entrances, porches and balconies should be protected and maintained by using appropriate surface treatments. Deteriorated entrances, porches and balconies should be stabilized using structural reinforcement and weather protection, or correcting unsafe conditions until repair work can be carried out, rather than removing deteriorated entrances, porches or balconies.

Repairs should use a minimal intervention approach and be based on documentary or physical evidence.

### **3. Roofs**

Roof assemblies can include visible components, such as chimneys, cresting, cupolas, dormers, eaves, fascias, gables, gutters, parapets, soffits, turrets and weathervanes. They can also include components such as cladding, flashing and ventilation, insulation, substructure, and vapour control. Roofs should be repaired by patching, piecing-in, consolidating, or otherwise reinforcing, through recognized conservation methods. Limited replacements may be needed for extensively deteriorated or missing parts of the roof, and should match the existing work as closely as possible.

This also includes the repair and replacement of wood clapboard or board-and-batten, repair and repointing of masonry, stucco repair, and/or the repair or replacement of original roofing material. It also includes removal of modern material, and replacement with original materials in cases when original material can be documented.

Repairs to or renewal of modern materials are not eligible.

The conservation or renewal of original roofing and siding materials deals exclusively with historical materials. The materials are defined as wooden shingles; shakes; boards roofing; metal roofing made of copper, zinc, tin or terneplate; and roofing of clay tile and slate. Copper sheeting and slate shingles among other materials can last for numerous decades, while wood and asphalt shingles and membrane roofing may require more frequent replacement. Frequent replacement can affect the heritage value of roofs, and so material, shape, exposure, detailing, and pitch all need to be considered when replacing a roof.

Designated Heritage Property Grants are intended to help offset the extra costs associated with the specialized supplies, materials, and skills required for the preservation of heritage properties. For this reason, materials such as standard asphalt shingles and other “modern” readily available roofing types are not eligible under this program unless they are original to the designated property.

#### **4. The Repair, Repointing, and Cleaning of Masonry**

Masonry work is eligible only if the materials and methods used will not cause harm to the historical masonry. It can include mortared or dry laid natural stone, cast stone, terra cotta, brick, and concrete block. Its various characteristics, such as its joint width and profile, coursing pattern, brick or mortar, finish dressing, and stone’s colour and texture can all require careful consideration for heritage preservation.

Functional, decorative and sculptural components, for example, cornices, lintels, band courses, water tables, and scuppers and carvings also contribute to a property’s heritage value. Masonry may act as the structural system and the building envelope, and so conservation must take both these roles into account. Masonry can best be preserved through timely and appropriate maintenance.

Application of water-repellent coatings is not eligible, as it can trap moisture inside the masonry. To avoid damage from water penetration and freezing in cold weather, repair of failed flashings, deteriorated mortar joints, and other mechanical defects should be done in a timely fashion.

Surface treatments, such as breathable coatings, should only be used as a last resort if repairs, flashings, alternative design solutions or flashings fail to stop water penetration, and if a maintenance program is provided for the coating.

Cleaning of masonry buildings may be eligible if it is necessary for the building’s preservation, specifically to halt deterioration and remove heavy soiling and graffiti, and if it is carried out using suitable materials, methods, and pressures. The gentlest cleaning

method possible should be used, and the result should be observed overtime to determine its immediate and long-term effects. Otherwise, cleaning treatments for solely aesthetic reasons can accelerate deterioration.

Grants will not be paid for sandblasting since it can remove materials' hardened exterior and cause them to deteriorate.

## **5. Stucco**

Designated Heritage Property Grants may be applied to the restoration of stucco and pebbledash where this is known to have been the historical exterior finish for the structure.

To receive the grant, the stucco work must replicate the original or historical rendering of the building in colour, materials, and texture. Appropriate coating or paint systems should be selected, based on compatibility with previous layers of character-defining colour, texture, finish, and paint.

Repairs should be visually and physically compatible, and identifiable for future research upon close inspection.

Modern stucco mixtures and compositions with high cement contents are not eligible since they may not adhere to existing historical materials, and would likely require repeated maintenance.

## **6. Storm and Screen Windows**

Designated Heritage Property Grants may be applied to the repair, conservation or reconstruction of wooden storm or screen windows if the historical use of storm windows is documented. The storm or screen windows must be original, or replicas of the original in both style and material.

Storm windows utilizing materials such as lexan, plexiglass, aluminum, or extruded metal are not eligible for funding.

## **7. Glass and Glass Products**

The Designated Heritage Property Grant Program may be applied to the conservation and repair of glass and glass products when identified as character-defining elements in a designated property. Their functional and aesthetic attributes, such as their colour, texture, translucency or opacity, reflectivity, or treatment, can make them character-defining.

In particular, stained glass requires specialists who may involve art conservators. Funding may be provided for the repair of lead, copper and wooden frames, or for the restoration of stained-glass lights. Reinforcing panels and protecting windows with a second sash should be overseen by a conservator who specialises in stained glass, and the method of installation should ensure it does not lead to further deterioration.

Funding is not provided for the installation of lexan, plexiglass, or other synthetic

materials to protect stained glass windows. These materials are considered as new storm windows and are ineligible.

## **8. Eavestrough**

Designated Heritage Property Grants may be applied to the restoration of gutters and downpipes only where these items are considered to be significant attributes as identified in the Reasons for Designation in the property’s designating by-law. This may include gutters and downpipes of now rarely-used, but long-lasting materials, such as copper and lead; gutters and downpipes that incorporate decorative elements often found at the “storm heads” or at the metal straps; and gutters that are built into the building cornice.

Galvanized metal and modern materials, such as plastic, vinyl, or aluminum are not eligible for grant consideration.

## **9. Wood and Wood Products**

Wood and wood products may be determined to be significant attributes of a heritage property. Wood may include sawn or hewn timbers, logs, and milled or sculpted lumber, while wood products may include glue-laminated timber, plywood, or composites such as wafer board or particleboard. Roofs, windows and doors, structure, cladding, carvings, interior fences, and fences may all contain wood and wood products.

As wood is susceptible to moisture, insect infestation, ultraviolet radiation, and fire, properties should be protected from these threats. Consolidating or replacing decayed and damaged wood, and fixing the conditions that led to the initial damage and decay can be done to repair the wood elements. Carpentry techniques can be used to do this. Newer wood products, such as plywood, might require replacements instead of repairs as a result of the manufacturing process involved and their modular nature.

## **10. Architectural and Structural Metals**

Structural metals usually include materials such as steel or iron columns, frames, trusses, or beams. Architectural metals entail all other metal elements, such as roofing, windows, doors, cladding, sculpture, flashings, railings and bannisters, stairs, curtain-wall mullions and spandrel panels, fences, gates, cresting, hardware, signposts, and bathroom fixtures and partitions. Historic places in Canada have used steel, galvanized steel, stainless steel, aluminium, bronze, lead, zinc, nickel, tin, copper and copper alloys, and cast iron and wrought iron, among other metals.

Metal can deteriorate through corrosion, deformation, abrasion, erosion, cracking and fatigue, as well as from flaws from original assembly, manufacture or design. The type of metal and form of damage to it must be properly identified before it can be repaired. A metal conservator or conservation professional can help accurately identify the type of metal.



## Planning and Development Services

<b>Prepared for</b>	Council-in-Committee	<b>Report No.</b>	PDS-13-2023
<b>Agenda Date</b>	February 22 <sup>nd</sup> , 2023	<b>File Nos.</b>	350302-0162 & 350309-0545

<b>Subject</b>	<b>PROPOSED COMBINED OFFICIAL PLAN AND ZONING BY-LAW AMENDMENT 214 WINDMILL POINT ROAD SOUTH SOUTH COAST CONSULTING. - STEVEN RIVERS (APPLICANT/AGENT) JOSEPH &amp; IRENE MOORE (OWNERS)</b>
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<b>Recommendation</b>	<p><b><u>THAT</u></b> Council approves the amendments to the Town's Official Plan and Zoning By-law No. 129-90 as detailed in Report No. PDS-13-2023 for the lands known as 214 Windmill Point Road South, and further</p> <p><b><u>THAT</u></b> Council directs Staff to submit the necessary By-laws.</p>
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<b>Relation to Council's 2018-2022 Corporate Strategic Plan</b>	
Priority:	Managed Growth through Responsibility, Stewardship and Preservation

<b>List of Stakeholders</b>	South Coast Consulting - Steven Rivers (Applicant/Agent) Joseph & Irene Moore (Owners) Residents and Property Owners in the Town of Fort Erie
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Prepared by:	Submitted by:	Approved by:
<b>Original Signed</b>	<b>Original Signed</b>	<b>Original Signed</b>
Mackenzie Ceci Senior Development Planner	Alex Herlovitch, MCIP, RPP Director, Planning and Development Services	Chris McQueen, MBA Chief Administrative Officer
Reviewed by:		
<b>Original Signed</b>		
Anamika Dilwaria, MCIP, RPP Manager, Development Approvals		

**Purpose**

The purpose of this report is to provide recommendations to Council with respect to the proposed Combined Official Plan and Zoning By-law Amendment for the property known as 214 Windmill Point Road South.

The application was submitted by Steven Rivers of South Coast Consulting on behalf of Joseph and Irene Moore, Owners of the subject property. A Location Plan showing the subject property is attached as **Appendix “1”**.

The application proposes to sever 214 Windmill Point Road South to facilitate the creation of three new residential lots, shown as Parts 2, 3 and 4 on the sketch contained in **Appendix “2”**. The existing single detached dwelling is proposed to be maintained on the retained lot, denoted as Part 1 on the sketch. In order to facilitate the proposed future severances, the Applicant is requesting amendments to the Town’s Official Plan and Zoning By-law, as the proposed lots do not comply with the minimum lot frontage requirement of 46.00 m under Section 4.6.3. II. b) of the Official Plan, and Subsection 8.4 of the Zoning By-law. Further, the lots do not comply with the definition of an infilling lot under Section 4.6.3. II. a) of the Official Plan, which currently only contemplates the creation of one new lot.

Staff note that the subject property was subject to a previous Minor Variance application (File No. A33/22). The decision of the Committee of Adjustment was appealed to the Ontario Land Tribunal. A hearing was held on December 14<sup>th</sup>, 2022. The decision was issued on January 20<sup>th</sup>, 2023, which authorized the three variances to the Town’s Zoning By-law.

Staff note that the Combined Official Plan and Zoning By-law Amendment application only relates to matters associated with the proposed lot creation, and does not relate to the previous minor variance application.

### **Nature of the Site**

The subject property is located outside of the urban area boundary on the east side of Windmill Point Road South and south of Thunder Bay Road. The property, which contains one single detached dwelling and a corresponding septic system, is approximately 11.51 ac (4.66 ha) in size, with approximately 130 m of frontage on Windmill Point Road South. The following summarizes the land uses surrounding the subject property:

- North:** Single-detached dwellings, Significant Woodlot and associated Vegetation Protection Zone  
**South:** Windmill Point Lane West, single detached dwellings, and Lake Erie  
**East:** Single detached dwellings and Lake Erie; and  
**West:** Windmill Point Road South, single detached dwellings, and Provincially Significant Wetlands

### **Planning Context**

#### **2020 Provincial Policy Statement**

The subject property is located within the *Rural Area* under the 2020 Provincial Policy Statement and is designated as *Rural Lands*, which are reserved for the management or use of resources, resource-based recreational uses, agricultural uses, home occupations and home industries, cemeteries, and other rural land uses. *Rural Lands* are also reserved for residential development, including lot creation, that is locally appropriate, compatible, and can be privately serviced. The Provincial Policy Statement also notes that natural heritage features shall be protected for the long term.

The proposal complies with the intent of the Provincial Policy Statement as each of the proposed lots can accommodate a sustainable private sewage system, and are similar in size to other lots in the community. Further, the proposed lot lines, and future development and site alteration will be located outside of the natural heritage features.

#### **2020 Growth Plan for the Greater Golden Horseshoe (Growth Plan)**

The subject property is also located within the Greater Golden Horseshoe Growth Plan Area, is contained within the *Rural Area*, and is designated as *Rural Lands*. Reserved uses generally correspond with those identified in the Provincial Policy Statement, including new multiple lots and residential development in appropriate, site-specific locations. Further, the Growth Plan contains policies to maintain, restore and/or enhance the natural heritage system.



As the proposal provides sustainable private sewage systems for each lot, is compatible with the community, and adheres to Growth Plan policies relative to natural heritage features, the proposal complies with the intent of the Growth Plan.

### **2022 Niagara Official Plan (NOP)**

The Niagara Official Plan (NOP) designates the subject property as *Rural Lands*. The predominant use of these lands is for agricultural uses. However, non-agricultural related development, including lot creation, may be permitted, subject to the following criteria:

- a maximum of three new lots (in addition to the retained lot) may be permitted on each lot in existence as of June 16, 2006;
- the minimum size of the proposed and retained lots shall each be 1 hectare unless it is determined through a hydrogeological study, that considers potential cumulative impacts, that a smaller size lot will adequately accommodate private water and sewage treatment facilities for long-term operation but not be less than 0.4 hectares;
- the development will be at a scale and density suitable to the physical characteristics of the site;
- soil and drainage conditions;
- installation and long-term operation of an adequate means of waste disposal;
- the proposed development will be consistent with the natural heritage policies of this Plan; and
- proposed developments must be appropriately separated from conflicting land uses.

The proposed lot creation complies with the intent of the NOP. It has been demonstrated that sustainable private sewage systems can be accommodated on each of the proposed lots, and that the proposed lots are compatible with the surrounding community. Further, with respect to the appropriateness of the proposal as it relates to natural heritage features, the proposed lot lines are located outside of the Significant Woodlot and associated 30 m Vegetation Protection Zone.

Staff note that the driveway that was recently relocated in association with the existing residential use on Part 1 is located within the Vegetation Protection Zone and was constructed before this application was submitted. Staff recognize that this application provides the Town and Region with an eventual mechanism to request the relocation of

the driveway and the revegetation of the Vegetation Protection Zone. Consistent with the comments provided by Regional Staff through the previous Minor Variance application process (File No. A33/22), Regional Staff continue to request that the existing driveway be moved outside of the feature and its Vegetation Protection Zone, and continue to recommend that a Landscape Plan be prepared as a condition of the future consents to demonstrate how the entirety of the Vegetation Protection Zone will be planted with native, natural self-sustaining vegetation.

### **Town of Fort Erie Official Plan**

The majority of the subject property is designated Rural in the Town's Official Plan. Reserved uses of the Rural land use designation include agriculture of all types, agriculturally-related uses, linear facilities of public utility agencies, parks, conservation clubs, veterinary establishments and kennels, the conservation of wildlife and forest, and non-agricultural development, including residential development. Lot creation is permitted subject to the following policies under Section 4.6.3 II. of the Town's Official Plan:

- a. Infilling lot shall mean the establishment of one new dwelling on a new lot which fronts on a public road and which is situated on the same side of the road and between either an existing dwelling and another existing dwelling or a natural heritage feature or an improved road allowance where the distance between such structures or features is 90 metres or less;
- b. The minimum lot size should be 0.4 hectares with a minimum frontage of 46 metres;
- c. It does not adversely affect the integrity or efficient management of natural heritage resources; and
- d. Any new lot is of sufficient size and has suitable soil site conditions for the installation and long-term operation of a sustainable private waste disposal system and sustainable private potable water supply as determined by the Town or relevant approval agency.

The Applicant is requesting an amendment to the Official Plan as the proposed and retained lots shown in **Appendix "2"** do not comply with the lot frontage requirement of 46.00 m under Section 4.6.3. II. b. of the Official Plan. Further, the lots do not comply with the definition of an infilling lot under Section 4.6.3. II. a.

The portion of the property adjacent to the Lake Erie shoreline is designated Environmental Protection in the Town's Official Plan. These lands are also designated as a Natural Hazard in accordance with Schedule C1 of the Official Plan. These designations correspond with the floodplain that is associated with the Lake Erie shoreline. The proposed lot creation is located outside of these land use designations.

In accordance with Schedule C of the Town's Official Plan, the eastern portion of the property is located within an Environmental Corridor that is associated with the Lake Erie Shoreline. Further, the majority of the north property line is impacted by woodlands over 2 ha. The proposed lot lines are located outside of these features.

The subject property is located within a zone of archeological potential in accordance with Schedule D of the Town's Official Plan. Regional Staff did not identify archeological study requirements at the Official Plan and Zoning By-law Amendment stage.

Schedule B of the Official Plan illustrates that the subject property is not located within a petroleum resource area. Further, there are no active wells within 75 metres of the subject property.

Section 13.7 III of the Town's Official Plan details criteria for consideration when an amendment to the Official Plan is proposed. Staff have addressed the relevant criteria in detail below:

- a. The need for the proposed use;

The subject property is designated Rural in the Town's Official Plan and is not being used for agricultural purposes. This designation permits non-agricultural development, including residential development and lot creation. The proposal involves the creation of three new lots for the development of future single detached dwellings, and the balance of the property would be retained to accommodate the existing single detached dwelling. Creation of the three lots would not negatively impact the agricultural viability of the community.

- b. The extent to which the existing areas in the proposed categories are developed, and the nature and adequacy of such existing development;

The portion of the subject property that is proposed to be severed is currently part of the lawn associated with the existing single detached dwelling. Several single detached dwellings are present throughout the surrounding rural community.

- c. The physical suitability of the land for such proposed use, and in the case of lands exhibiting or abutting a Natural Heritage feature, demonstration of compliance with the Natural Heritage policies of this plan;

The [Hydrogeological Assessment](#) that was submitted with the application demonstrates that the proposed lot areas are adequate to accommodate individual private sewage systems. Further, the proposed lot lines, and future development and accompanying site alterations are located outside of the Significant Woodlot and associated 30 m Vegetation Protection Zone. As such, the property is considered physically suitable for the proposed development.

- d. The location of the area under consideration with respect to:
- I. the adequacy of the existing and proposed highway system in relation to the development of such proposed areas,
  - II. the convenience and accessibility of the site for vehicular and pedestrian traffic and the traffic safety in relation thereto, and
  - III. the adequacy of the potable water supply, sewage disposal facilities, and other municipal services in view of the policies contained in this Plan and in accordance with technical reports or recommendations of the Ministry of the Environment and the Regional Niagara Public Health Department and any other appropriate authority deemed advisable.

The proposed and retained lots will front onto Windmill Point Road South, which is a travelled and maintained municipal road. Site generated traffic from the proposed development is expected to be minimal.

With respect to servicing, a municipal water main is available within the Windmill Point Road South road allowance to service the proposed lots. Further, Regional Staff have confirmed that based on the [Hydrogeological Assessment](#), the severed and retained lots are adequately sized to accommodate individual private sewage systems.

- e. The compatibility of the proposed use with uses in adjoining areas;

Although the lots south of the subject property and Windmill Point Lane East and West were created by plan of subdivision prior to the *Planning Act* coming into force and effect, the lots still contribute to the overall fabric and character of the community. The surrounding community consists of single detached dwellings on Waterfront Rural Residential lots that are smaller than the proposed lots, and single detached dwellings on Rural lots that vary in size.

Staff note that the proposed lot lines, and future development and accompanying site alterations are located outside of the Significant Woodlot and associated 30 m Vegetation Protection Zone. However, the driveway that was constructed in association with the existing residential use on Part 1 is located within the Vegetation Protection Zone. Staff recognize that this application provides the Town and Region with an eventual mechanism to request the relocation of the driveway and the revegetation of the Vegetation Protection Zone, which would improve the compatibility with adjacent natural heritage features.

To address the natural heritage compatibility concerns associated with the driveway on Part 1, Town Staff recommend the creation of two new lots instead of three. The Significant Woodlot largely follows the north property line of Part 1 on **Appendix “2”**. The Vegetation Protection Zone is measured 30 m from the edge of the Significant Woodlot, meaning that with a proposed lot frontage of 29.43 m, the narrow / western portion of Part 1 is located entirely within the Vegetation Protection Zone. As such, the driveway cannot be relocated outside of the Vegetation Protection Zone on Part 1 as

proposed. In order to facilitate the relocation of the driveway outside of the Vegetation Protection Zone, Staff recommend increasing the lot frontage of Part 1, and reducing the number of proposed lots by one rather than reducing the frontages of Part 2, 3 and 4 further. Reducing the number of proposed lots by one would permit the creation of two lots that comply with the lot frontage and area requirements of 46.00 m and 0.4 ha, respectively, under the Town's Official Plan, and would increase the frontage of Part 1 from 29.43 m to approximately 38.00 m. Staff note that amendments to the Town's Official Plan are still required under this modified proposal as the retained lot will not comply with the lot frontage requirement of 46.00 m, and the proposed lots do not comply with the definition of an infilling lot under Section 4.6.3. II. a) of the Official Plan as more than one new lot is being proposed. A proposal for two lots is supportable as it is in keeping with the intent of the 2022 Niagara Official Plan, which permits a maximum of three new lots as-of-right.

Staff are of the opinion that the proposed modifications would address outstanding natural heritage compatibility concerns associated with the overall development of the subject property, and respond to the concerns raised by area residents.

- f. The effects of such proposed use on the surrounding area in respect of the minimizing of any possible depreciating or deteriorating effect upon adjoining properties;

There is no evidence to suggest that the proposed development will have a depreciating or deteriorating effect on adjoining properties.

- a. The potential effect of the proposed use on the financial position of the municipality; and

The proposed amendment will not negatively affect the financial position of the municipality as any works associated with the proposed development are the responsibility of the Owner/Developer. The proposed residential development will increase the tax base of the municipality, and provide the municipality with development charges.

- b. The potential effect of the proposed use in relation to the intent and implementing regulations of the Environmental Protection Act.

The proposed use and development are not anticipated to impact the intent and implementing regulations of the Environmental Protection Act.

### **Comprehensive Zoning By-law No. 129-1990**

The majority of the subject property is zoned Rural (RU) Zone in accordance with Subsection 8.4 of the Town of Fort Erie Comprehensive Zoning By-law No. 129-90, as amended.

The portion of the subject property adjacent to the Lake Erie shoreline is zoned Hazard (H) Zone in accordance with Subsection 34 of the Town of Fort Erie Comprehensive Zoning By-law No. 129-90, as amended. This zoning corresponds with the floodplain that is associated with the Lake Erie shoreline. The proposed lot creation is located outside of the H Zone and lands regulated by the Niagara Peninsula Conservation Authority.

Permitted uses of the RU Zone include agricultural and agriculturally related uses, parks, conservation clubs, kennels, pet day care establishments, the conservations of plants and wildlife, one single detached dwelling, one accessory apartment dwelling, home occupations, and uses, buildings and structures accessory thereto.

The minimum lot frontage requirement for rural lots with single detached dwellings as the principle use is 46.00 m. Further, the minimum lot area requirements are 1.0 ha, or 0.4 ha if a Hydrogeological Study/Assessment is undertaken and demonstrates that a private septic system can be achieved on a lot with an area less than 1.0 ha.

The Applicant is proposing to create three new lots for residential development, shown as Parts 2, 3, and 4 on the sketch contained in **Appendix “2”**. The retained lot (Part 1) is denoted as Part 1 on the sketch. The lot frontages of the proposed and retained lots do not comply with the 46.00 m requirement under Subsection 8.4 of the Zoning By-law. The Applicant is seeking site-specific zoning relief to address the lot frontage deficiencies. The lot frontages and areas of the proposed and retained lots are presented in **Table 1** below alongside the requirements under Section 8.4 of the Zoning By-law. The requested site-specific provisions are highlighted in red.

**Table 1.** Lot frontages and areas of proposed and retained lots alongside as-of-right zoning requirements.

Part No.	Minimum Lot Frontage (Required)	Minimum Lot Frontage (Proposed)	Minimum Lot Area (Required)	Minimum Lot Area (Proposed)
1	46.00 m	29.43 m	(i) 1.0 ha	3.43 ha
2		33.53 m	(ii) 0.4 ha, if a hydrogeological study undertaken by an applicant demonstrates that a private septic system can be achieved on lot with less than 1.0 ha of lot area with no negative impacts on surface and/or ground water features subject to review and approval by the relevant approval authority.	0.41 ha
3		33.53 m		0.41 ha
4		33.53 m		0.41 ha

Staff’s recommendation to reduce the number of proposed lots from three to two in order to address the natural heritage compatibility concerns associated with the driveway on Part 1 would bring the lot frontages of Parts 2 and 3 into conformity with the Zoning By-law’s lot frontage requirement of 46.00 m. Further, although the lot areas of Parts 2 and 3 were already in conformity with the Zoning By-law under the original proposal, the modified proposal would also increase the proposed lot areas from 0.41

ha to 0.56 ha. Lastly, the modified proposal would also increase the lot frontage of Part 1, bringing it closer in conformity with the Zoning By-law. The requested site-specific provision that is required under the modified proposal is highlighted in red in **Table 2** below.

**Table 2.** Approximate lot frontages and areas of proposed and retained lots based on Staff's recommended modifications.

Part No.	Minimum Lot Frontage (Required)	Minimum Lot Frontage (Proposed)	Minimum Lot Area (Required)	Minimum Lot Area (Proposed)
1	46.00 m	38.00 m	(i) 1.0 ha (ii) 0.4 ha, if a hydrogeological study undertaken by an applicant demonstrates that a private septic system can be achieved on lot with less than 1.0 ha of lot area with no negative impacts on surface and/or ground water features subject to review and approval by the relevant approval authority.	3.54 ha
2		46.00 m		0.56 ha
3		46.00 m		0.56 ha

To achieve the above described configuration, Staff recommend that a site-specific zoning provision be included in the amending By-law which states that Part 1 has a minimum lot frontage of 38.00 m. Further, in accordance with the Region's comments, Staff recommend that the 30 m Vegetation Protection Zone that is associated with the Significant Woodlot be rezoned to a site-specific Environmental Conservation Overlay Zone that permits the use of the land for no other purpose than a Vegetation Protection Zone associated with the adjacent Significant Woodlot. Lastly, to have certainty regarding the future use of the two new lots, Staff recommend that a site-specific provision be included that restricts the use of the lots for one single detached dwelling, one accessory apartment dwelling, and uses, buildings and structures accessory thereto.

#### **Financial/Staffing and Accessibility (AODA) Implications**

All costs associated with processing the application are the responsibility of the Owners.

No impediments to the AODA legislation are expected to be developed through the amendments proposed.

#### **Studies**

A [Hydrogeological Assessment](#) was submitted with the application. The findings of this Assessment are discussed in detail throughout Report No. [PDS-02-2023](#). The Hydrogeological Assessment was reviewed to the satisfaction of Regional Staff.

At the January 16<sup>th</sup>, 2023 Public Meeting, Council and Staff were informed that the Windmill Point Association commissioned a peer review of the Hydrogeological Assessment. The [peer review](#), which was received by Staff on February 13<sup>th</sup>, 2023, has been hyperlinked in this Report for information purposes.

### **Policies Affecting Proposal**

A Public Information Open House for these applications was held on September 20<sup>th</sup>, 2022. All property owners within 120 metres of the subject property were notified of the Open House via mailed notice.

Notice of the January 16<sup>th</sup>, 2023 Public Meeting was circulated in accordance with the *Planning Act* by placing an advertisement in the December 22<sup>nd</sup>, 2022 edition of the *Fort Erie Post*. In addition, all property owners within 120 metres of the subject property were mailed a “Notice of Complete Application and Public Meeting” on December 19<sup>th</sup>, 2022.

Land use policies that apply to the subject property are contained in the Town’s Official Plan and applicable Regional and Provincial regulations.

### **Comments from Relevant Departments/Community and Corporate Partners**

A request for comments regarding this application was circulated to relevant Departments/Community and Corporate Partners on August 23<sup>rd</sup>, 2022. Comments received to date are available in Report No. [PDS-02-2023](#) for review.

### **Public Comments**

A Public Information Open House for this application was held on September 20<sup>th</sup>, 2022. All property owners within 120 metres of the subject property were notified of the Open House via mailed notice. The Open House was attended by Town Staff, the Applicant, and fifteen area residents. Written comments were received from two additional area residents in advance of the Open House,

All public comments received in advance of the Public meeting are available for review through Report No. [PDS-02-2023](#).

Responses to the concerns raised by members of the public and Council at the Public Meeting and Council Meeting are provided below.

### **Driveway Relocation**

Concerns were raised regarding the driveway that was relocated to the northern limit of Part 1. Area residents feel that the Vegetation Protection Zone should be reinstated.



### *Staff's Response*

Regional Staff have requested for the driveway to be moved outside of the natural heritage feature and its associated Vegetation Protection Zone, and continue to recommend that a Landscape Plan be prepared as a condition of the future consents to demonstrate how the entirety of the Vegetation Protection Zone will be planted with native, natural self-sustaining vegetation. Staff note that requiring the relocation of the driveway as a condition of the consents means that the proposed new lots could not be created until the condition is satisfied. Under the *Planning Act*, Owners/Applicants have two years to fulfill their conditions of consent.

### Property Lines

Concerns were raised regarding the location of the subject property's property lines adjacent to the Lake Erie shoreline.

### *Staff's Response*

The determination of property lines is a civil and legal matter. It is Staff's understanding that the parties involved in the dispute have consulted and engaged their Lawyers.

The Town's Parkland Dedication By-law (69-08) states that waterfront lands designated as Environmental Protection in the Town's Official Plan shall be gratuitously conveyed to the Town through the development review process and shall not be accepted by the Town as parkland dedication, nor included in the calculation thereof. With respect to this development application, securement of these lands and cash in lieu of parkland dedication at a rate of 5% of the appraised value of the lands would occur by way of conditions of the future consent applications. This means that the proposed new lots could not be created until the conditions are satisfied. Under the *Planning Act*, Owners/Applicants have two years to fulfill their conditions of consent. Staff are of the opinion that this provides sufficient time for the civil dispute regarding the waterfront lands to be resolved, and for the proposed amendments to the Town's Official Plan and Zoning By-law can proceed in the meantime.

### Fowler's Toad

Concerns were raised with respect to the Fowler's Toad, noting that the proposed development would limit the movement of the toad to and from the shoreline of Lake Erie.

### *Staff's Response*

The Environmental Corridors and Linkages identified on Schedule C of the Town's Official Plan were informed by the Natural Areas Inventory (NAI) that was completed by the Town in 2002/2003. The NAI states the following:

- *“linkages and corridors help reduce the negative impacts of habitat fragmentation by increasing connectivity. Habitat fragmentation occurs when a large, continuous tract of vegetation is broken into progressively smaller remnants by land uses that are incompatible or hostile to their inhabitants”; and*
- *“Wherever possible, linkages follow watercourses or the shoreline since these are, in many cases, already associated with some type of natural or semi-natural cover, and are routes that many types of wildlife will tend to utilize”.*

Although the eastern portion of the property is located within an Environmental Corridor that is associated with the Lake Erie Shoreline, the proposed lot creation and resulting residential development are located outside of the Environmental Corridor. As such, the proposed development is not anticipated to alter the function of the existing Corridor, and accordingly, the movement of the Fowler’s toad to and from the shoreline of Lake Erie.

#### Ownership of Subject Property

Concerns were raised by several area residents regarding the ownership of the property.

#### *Staff’s Response*

Staff have received a copy of the Parcel Register for the subject property and can confirm that Joseph and Irene Moore are the registered Owners of the subject property. Joseph and Irene Moore acquired the property in July of 2020.

#### Compatibility of the Proposal

Concerns were raised regarding the compatibility of the proposal.

#### *Staff Response*

Throughout this Recommendation Report, Staff have recommended modifications to the proposal that address the natural heritage compatibility concerns associated with the overall development of the subject property. This includes a reduction to the number of proposed lots, imposing a condition of consent requiring the relocation of the driveway and the replanting of the Vegetation Protection Zone, and introducing a site-specific Environmental Conservation Overlay Zone to delineate the Vegetation Protection Zone and restrict future site alteration and development.

### **Alternatives**

Council may elect to deny the proposal to amend the Town’s Official Plan and Zoning By-law based on Staff’s recommended modifications. Planning Staff do not recommend this as the modified proposal is consistent with Provincial, Regional, and Town planning

policies, represents good land use planning, and is responsive to the concerns of area residents.

Further, Council may elect to support the Applicant's original proposal to amend the Official Plan and Zoning By-law to facilitate the creation of three lots. Staff do not recommend this as the proposal does not address outstanding natural heritage compatibility concerns associated with the overall development of the subject property. If Council elects to approve the Applicant's original proposal, Staff recommend that the 30 m Vegetation Protection Zone that is associated with the Significant Woodlot be rezoned to a site-specific Environmental Conservation Overlay Zone that permits the use of the land for no other purpose than a Vegetation Protection Zone and the existing driveway, and that the use of proposed Parts 2, 3 and 4 be restricted to the following: one single detached dwelling, one accessory apartment dwelling, and uses, buildings and structures accessory thereto.

Alternatively, Council may elect to deny the Applicant's original proposal altogether.

#### **Second Opinion Clause**

Should a motion be placed before Council that does not support Planning Staff's recommendations, Council is advised to table its decision to consider the matter further or until such time as a second planning opinion on the motion, from an independent planning consultant, can be obtained. If the Applicant has an opinion from an independent planning consultant then Council can consider their report as the second planning opinion. In the event, the second planning opinion, obtained by the Clerk or provided by the Applicant, is supported by Council, and Council makes a decision based on that second planning opinion, then the planner who has provided the second opinion shall be retained for the purpose of an Ontario Land Tribunal hearing. The procedures under PLA-06 shall be followed as well.

#### **Communicating Results**

There are no communication requirements at this time.

#### **Conclusion**

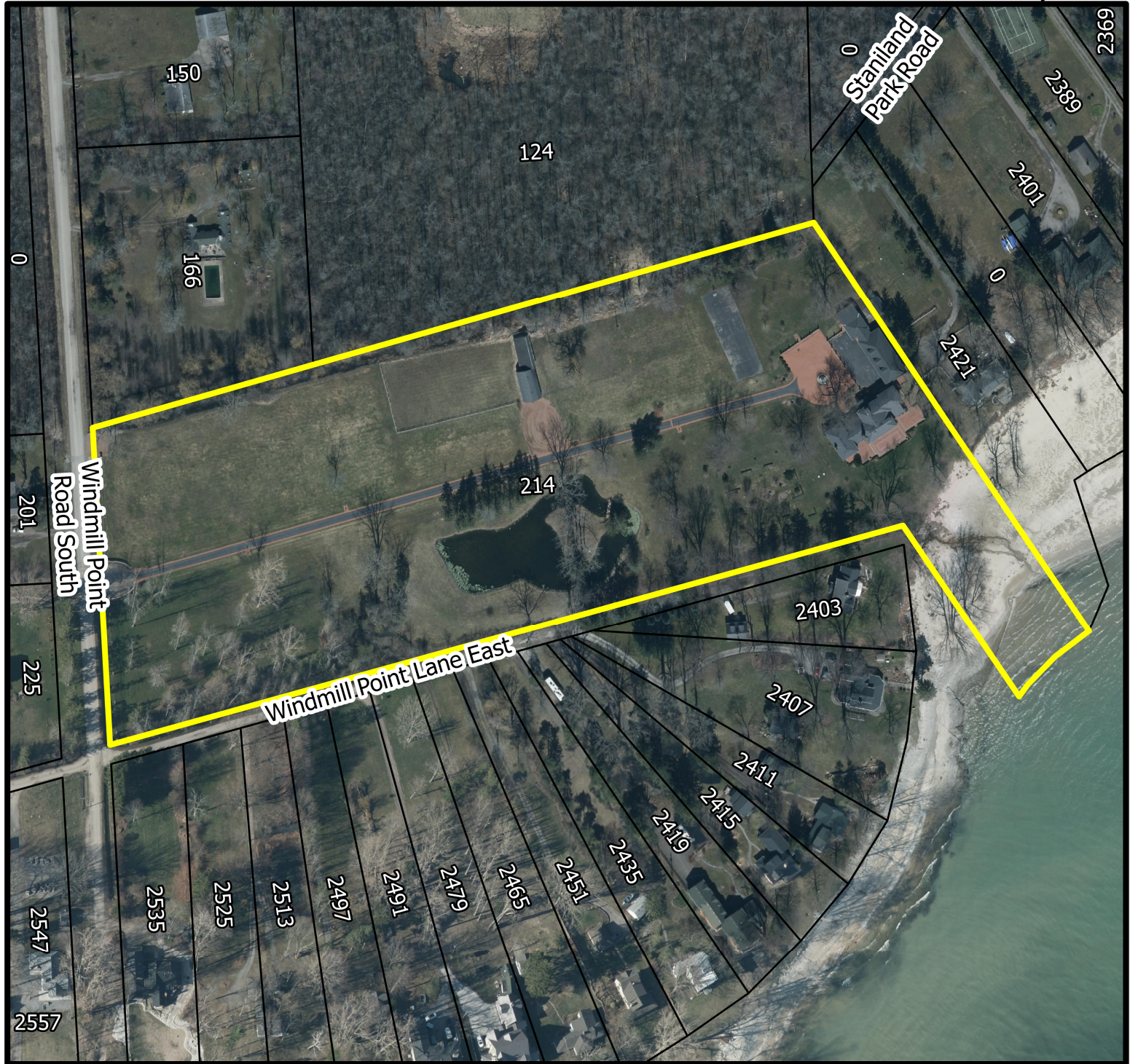
Planning Staff are of the opinion that the proposal to amend the Town's Official Plan and Zoning By-law in accordance with Staff's recommendations represents good planning. The application will facilitate the creation of two new rural lots for future residential development. The proposal is consistent with Provincial, Regional, and Town planning policies, and is responsive to the comments received from Regional Staff and area residents. Staff recommend that Council approves the Combined Official Plan and Zoning By-law Amendment, subject to the recommendations made by Staff throughout this Report.

<b>Attachments</b>
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**Appendix “1”** - Location Plan

**Appendix “2”** - Consent Sketch





## LOCATION PLAN

### Combined Official Plan and Zoning By-law Amendment 214 Windmill Point Road South

 Subject Lands - 214 Windmill Point Road South

N

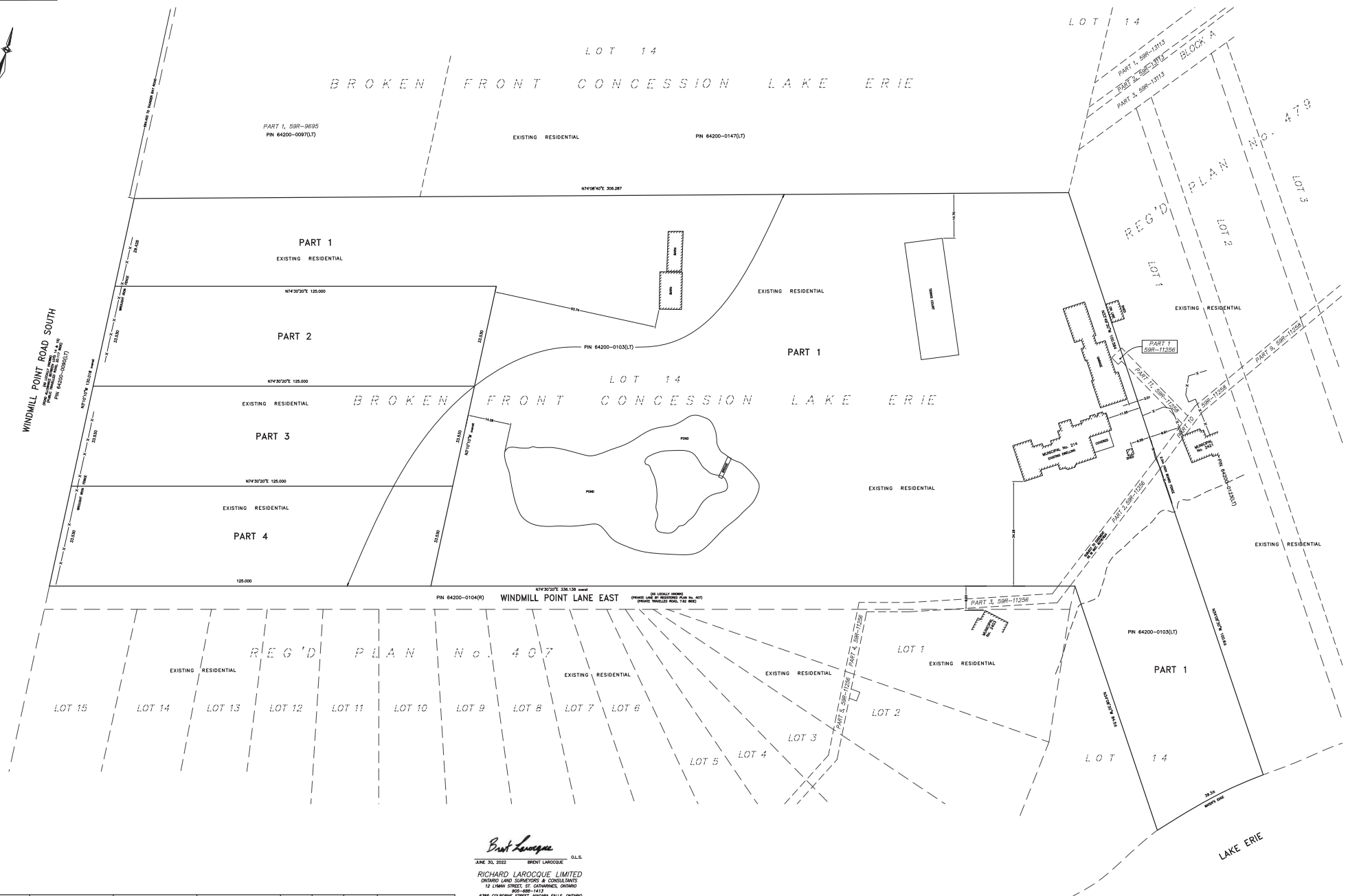
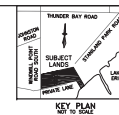




THIS SKETCH IS DESIGNED TO ACCOMPANY AN APPLICATION UNDER THE PLANNING ACT  
 PART OF LOT 14  
 BROKEN FRONT CONCESSION LAKE ERIE  
 (UNINCORPORATED TOWNSHIP OF NORTON)  
 TOWNSHIP OF FORT ERIE  
 REGIONAL MUNICIPALITY OF NIAGARA

SCALE 1:400 METRIC  
 10m 0 10m 20m

AREA SCHEDULE	
DESCRIPTION	AREA (sq)
PART 1	34,201.5
PART 2	4,084.7
PART 3	4,084.7
PART 4	4,084.7



*Brent Larocque*  
 Q.L.S.  
 JUNE 30, 2022 BRENT LAROCQUE  
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## Planning and Development Services

<b>Prepared for</b>	Council-in-Committee	<b>Report No.</b>	PDS- 14- 2023
<b>Agenda Date</b>	February 22, 2023	<b>File No.</b>	310101

<b>Subject</b>	
<b>PROPOSED NOISE AND NUISANCE BY-LAW</b>	

<b>Recommendations</b>	
<b>That</b>	Council approves the Noise and Nuisance By-law attached as “Appendix 1” to report No. PDS-14-2023 and directs that Noise and Nuisance By-law No. 30-09, be repealed

<b>Relation to Council’s 2018-2022 Corporate Strategic Plan</b>	
N/A	

<b>List of Stakeholders</b>	
<ul style="list-style-type: none"><li>• Mayor &amp; Council</li><li>• Municipal Staff</li><li>• Town of Fort Erie Residents</li></ul>	

Prepared by:	Submitted by:	Approved by:
<b>Original Signed</b>	<b>Original Signed</b>	<b>Original Signed</b>
Jensen Cornelius, CPSO Municipal Law Enforcement, Planning and Development Services	Alex Herlovitch, MCIP, RPP Director, Planning & Development Services	Chris McQueen, MBA Chief Administrative Officer

### **Purpose of Report**

This report seeks council approval to update the Town's Noise and Nuisance By-law. The existing regulations regarding noise and nuisance are contained within the proposed Noise and Nuisance By-law with updated sections and additions.

Town staff from various departments including the By-law Department and the Parks Department have reviewed the existing Noise and Nuisance By-law 2009-30 for the purpose of improving clarity, easier interpretation and enforcement. The By-law has been enhanced to ensure that all residents are able to enjoy their properties and public spaces while respecting their neighbours and the community.

### **Analysis**

The Parks and Recreation Department approached the By-law Department with changes within the current Noise and Nuisance By-law to proactively reflect recent activity in the Niagara Region. The proposed By-law will permit for the use of regular activities within the Towns sports parks, while still regulating unwanted or undesired behaviours within the parks to ensure nearby residents are not disturbed. Upon closer review of the By-law, By-law Enforcement Staff decided that the proposed amendments and additions were required to ensure the By-law is effective for enforcement as well as the ease of understanding to both the resident and enforcement personnel in line with other municipalities regulations.

#### **Section 2.0 Definitions:**

There have been a number of proposed definitions added or amended for better clarification and ease of understanding by users and enforcement personnel. Amongst some of the new definitions are those for "clearly audible", "direct light", "indirect light", "persistent" and "trespassing light". These definitions were added to ensure that complaints received by the By-law Department are properly addressed and for the ease of understanding of each infraction under the By-law.

#### **Section 3.0 Noise:**

This section regulates the noise that is reasonable, unreasonable and outlines the exemptions of which noise is permitted. Some additions to this section include hours in which unreasonable noise is prohibited on outdoor patios, as well as outlines exemptions as a result of trends in the Niagara Region. The By-law provides exemptions to sports, exercise or recreational activities at public parks or public beaches where activities have been authorized. This has been a trend within the Niagara Region due to recent civil action taken against Municipalities within the Region. This section allows for reasonable noise within parks and beaches as approved by the Town.



#### **Section 4.0 Lighting:**

This section regulates reasonable and unreasonable lighting. In the recent years, By-law Enforcement has received an increase number of complaints regarding nuisance lighting. The changes within the By-law speaks to direct light, indirect light or light glare that results in light trespass, which often effects inhabitants of the Town. The By-law permits owners to have lighting on their property to provide safety and security, while prohibiting unreasonable lighting that disrupts the enjoyment of nearby neighbours. Normal farm practice is exempt from this portion of the By-law.

#### **Section 5.0 Public Nuisance:**

This section regulates public nuisances. Some of the changes seen in this section of the By-law will regulate public nuisances such as: public drunkenness or intoxication, fighting, profane or abusive languages/gestures and loitering in public spaces after being asked to leave by enforcement authorities. At present, these situations can be handled by the Niagara Regional Police, however, this section can assist with enforcement in our public parks and beaches by the By-law Enforcement Officers.

#### **Section 7.0 Offences and Penalties:**

This section allows By-law Enforcement Officers to act under the Provincial Offences Act as well as the Town's Administrative Penalties By-law 111-2019. Fine amounts have remained at \$250.00 for unreasonable noise, noise deemed likely to disturb inhabitants, trespassing light, light affecting operation of a motor vehicle on a highway, and public nuisances. There have been two infractions added which include; fail to comply with an order (\$500.00) and obstruct an officer (\$300.00). These infractions reflect the seriousness of the offence and the impact this behaviour has on neighbouring properties and the community.

Additionally, tiered offences have been added to the By-law to allow a mechanism for By-law Enforcement Officers to gain compliance with the By-law for repeat offenders.

#### **Financial/Staffing and Accessibility (AODA) Implications**

With the addition of two new infractions to the Noise/ Nuisance By-law the Town can anticipate a nominal increase in revenue generated through application of the proposed penalties.

#### **Policies Affecting Proposal**

By-law 111-2019, Being a By-law to establish a System for Administrative Penalties.

#### **Comments from Relevant Departments/Community and Corporate Partners**

The draft By-law responds to enforcement concerns and enhances the ability to serve the public.

The Legal Department reviewed the By-law and made relevant comments that have been implemented.

### **Communicating Results**

A community notification of the new Noise / Nuisance By-law would be recommended. Should Council accept staff recommendations a media notification could be undertaken by Town staff to communicate to residents how the Noise / Nuisance By-law will be transitioned.

### **Alternatives**

Council has the option of making no changes to the existing By-law or propose alternative policies or standards that can be incorporated in a revised draft.

### **Conclusion**

That the proposed draft Noise and Nuisance By-law is approved by Council in its entirety and By-law #2009-03 be repealed.

### **Attachments**

Appendix “1” – Draft By-law.



# The Municipal Corporation of the Town of Fort Erie

## By-law No. xx-2023

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### Being a By-law to Regulate Public Nuisances and Noise in the Town of Fort Erie and to Repeal By-law No. 30-09

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**Whereas** section 11 of the *Municipal Act, 2001*, S.O. 2001, c. 25 ("*Municipal Act, 2001*" or "the statute") provides that a lower-tier municipality may pass by-laws respecting the economic, social and environmental well-being of the municipality, the health, safety and well-being of persons, the protection of persons and property and by-laws respecting animals; and

**Whereas** section 128 of the *Municipal Act, 2001* provides that a local municipality may prohibit and regulate with respect to public nuisances, including matters that in the opinion of Council are or could become or cause a public nuisance; and

**Whereas** section 129 of the *Municipal Act, 2001* provides that a local municipality may prohibit and regulate with respect to noise and outdoor illumination, including indoor lighting that can be seen outdoors; and

**Whereas** section 425 of the *Municipal Act, 2001* provides that a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality passed under the statute is guilty of an offence; and

**Whereas** section 429 of the *Municipal Act, 2001* authorizes a municipality to establish a system of fines for offences under its by-laws; and

**Whereas** section 434.1 of the *Municipal Act, 2001* authorizes a municipality to establish a system of administrative monetary penalties to assist the municipality in promoting compliance with its by-laws; and

**Whereas** the Council of The Corporation of the Town of Fort Erie deems it necessary and desirable in the public interest to regulate public nuisances and noise in the municipality and to enact this By-law for that purpose;

**Now therefore** the Municipal Council of The Corporation of the Town of Fort Erie enacts as follows:

#### 1.0 SHORT TITLE

1.1 The short title of this By-law is the "Noise and Nuisance By-law".

## 2.0 DEFINITIONS

2.1 The following terms are defined for the purposes of this By-law:

**“administrative penalty”** means a monetary penalty administered pursuant to Town By-law No. 111-2019, as amended from time to time.

**“agricultural operation”** has the same meaning as in the *Farming and Food Production Protection Act, 1998*, S.O. 1998, c. 1 (*“Farming and Food Production Protection Act, 1998”*).

**“animal”** means any member of the animal kingdom other than a human.

**“clearly audible”** means that the sound or noise in question is easily perceptible, without undue effort, to a disinterested person with no hearing disability.

**“construction”** means erection, alteration, repair, dismantling, demolition, structural maintenance, land clearing, earth moving, grading, excavating, laying of pipe and conduit (whether below or above ground level), street and highway building, application of concrete, equipment installation and alteration, and structural installation of construction components and materials, in any form or for any purpose.

**“Council”** means the Council of The Corporation of the Town of Fort Erie.

**“direct light”** means light emitted directly from the lamp or reflector of a luminaire.

**“enforcement authority”** means an officer and any person appointed or otherwise delegated the authority of administration and enforcement of this by-law.

**“exterior luminaire”** means a luminaire that is situated outside of any building or structure, including those affixed to exterior walls or surfaces of any building or structure.

**“garage sale”** means a sale conducted at a residential property by its owner or occupant of household goods belonging to the owner or occupant, as the case may be, and includes a yard sale, lawn sale and other similar events.

**“glare”** means light emitted from a luminaire of sufficient intensity to (i) reduce the viewer’s ability to see; or (ii) produce a sensation of discomfort, to a disinterested person with no visual disability or undue sensitivity to light.

**“highway”** has the same meaning as in the *Highway Traffic Act*, R.S.O. 1990, c. H.8 (*“Highway Traffic Act”*).

**“indirect light”** means light emitted from a luminaire that has been reflected or scattered off other surfaces.

**“inhabitants”** means one or more persons who reside in the Town, temporarily or permanently, and may include visitors to the Town.

**“interior luminaire”** means a luminaire that is situated inside of any building or structure, including those affixed to interior walls or surfaces of any building or structure, which emits light that can be seen outdoors.

**“luminaire”** means a complete lighting device that includes one or more lamps enclosed in a housing and is accompanied by one or more reflectors, refractors or other similar items and, without limiting the generality of the foregoing, includes laser source lights, signal beacons, floodlights, spotlights, flashing lights, high-intensity lights and other forms of illumination.

**“motor vehicle”** has the same meaning as in the *Highway Traffic Act*.

**“normal farm practice”** has the same meaning as in the *Farming and Food Production Protection Act, 1998*.

**“officer”** means a by-law enforcement officer of the Town, a member of the Niagara Regional Police Service, a member of the Ontario Provincial Police and any other provincial offences officer designated under the *Provincial Offences Act*, R.S.O. 1990, c. P.33 (*“Provincial Offences Act”*).

**“occupant”** means a person that occupies a property and includes owners, renters and lessees.

**“order”** means any notice of non-compliance issued under this By-law.

**“outdoor patio”** means an outdoor area adjacent to or in any way associated with an eating establishment or tavern that is designed or used as an area for the sale and service of any food or beverage by the eating establishment or tavern.

**“owner”** means the registered owner of a property.

**“persistent”** means continuously for a period of ten (10) minutes or longer or intermittently for an aggregate period of ten (10) minutes or longer in any sixty (60) minute period.

**“person”** means an individual, corporation, partnership or association.

**“point of reception”** means any location on a property where noise originating from other than that property is received.

**“property”** means any land or premises within the Town.

**“public nuisance”** means any act, conduct or thing that is injurious to health, indecent, offensive to the senses of a disinterested person or that otherwise interferes with the reasonable enjoyment of life or property.

**“Town”** means The Corporation of the Town of Fort Erie or the geographic area of the municipality, as the context requires.

**“trespassing light”** means light emitted from a luminaire that is easily perceptible, without undue effort, to a disinterested person with no visual disability or undue sensitivity

to light, at a property other than the one on which the luminaire is situated, and includes direct light, indirect light and glare.

### **3.0 NOISE**

- 3.1 No person shall make, cause or permit an unreasonable noise or noise that is likely to disturb inhabitants.
- 3.2 Without limiting the generality of section 3.1, noise resulting from the following acts is deemed to be unreasonable noise or noise that is likely to disturb inhabitants:
- (a) the ringing of bells, blowing of horns or sounding of sirens on any motor vehicle except as required or authorized by law or for reasons of safety;
  - (b) the operation of a motor vehicle in a manner that results in grading, grinding or rattling or other like sound or noise due to disrepair or inadequate maintenance;
  - (c) the revving, racing or accelerating of a motor attached to a motor vehicle while the motor vehicle is not in motion;
  - (d) the operation of any radio, television or other electronic device, musical or sound producing instrument with such volume so as to annoy or disturb inhabitants;
  - (e) the operation of any radio, amplifier, speaker or similar sound producing device for the purpose of advertising a good or service in a manner that projects sound or noise into any public street or other public place;
  - (f) the operation of any radio, amplifier, speaker or similar sound producing device in a manner that produces sound or noise that is clearly audible at a point of reception;
  - (g) between the hours of 9:00 p.m. of one day and 7:00 a.m. of the following day, the operation of equipment used for construction;
  - (h) the persistent yelling, shouting, swearing and/or speaking of any person at a volume that is clearly audible at a point of reception;
  - (i) the persistent barking, howling whining or other like sounds made by an animal kept or used for any purpose other than a normal farm practice carried on by an agricultural operation.
  - (j) between the hours of 11:00PM of one day and 11:00AM of the following day, the operation of an outdoor patio on a manner that produces sound or noise that is clearly audible at a point of reception, if any part of such patio is located within 60 metres of a residential zone.
- 3.3 This By-law shall not apply to noise resulting from:
- (a) the operation of any emergency service vehicle or ambulance while carrying out its lawful duties;
  - (b) the use of a warning device during the lawful operation of a motor vehicle;

- (c) the operation of any railway or airport within the legislative authority of Parliament;
- (d) the operation of equipment by or on behalf of the Town for construction projects, general maintenance projects and emergency projects of the Town;
- (e) the operation of equipment by or on behalf of the Town for Town maintenance operations including but not limited to snow removal, street sweeping, line painting, grass cutting, tree and shrub pruning, mulching and field maintenance;
- (f) the collection or disposal of garbage, waste or recyclable material by the Town or the Regional Municipality of Niagara;
- (g) the reasonable use of equipment for snow removal on private property;
- (h) any parade hosted, authorized or approved by the Town, provided that the parade is carried on in accordance with all terms and conditions of the authorization or approval;
- (i) the reasonable use of a radio, amplifier, speaker or similar sound producing device in a public place during a special event hosted, authorized or approved by the Town, provided that the event is carried on in accordance with all terms and conditions of the authorization or approval;
- (j) any discharge of fireworks that complies with the fireworks by-law of the Town;
- (k) sports, exercise or recreational activities or events at public parks or public beaches where such activities or events have been authorized or approved by the Town and are carried on in accordance with all terms and conditions of the authorization or approval;
- (l) the operation of bells or chimes in relation to any religious or military ceremony;
- (m) activities that are part of a normal farm practice carried on by an agricultural operation; and
- (n) activities carried out in compliance with a permission granted under federal or provincial legislation, including but not limited to an environmental compliance approval.

#### **4.0 LIGHTING**

- 4.1 No person shall use or operate, or cause or permit the use or operation of, any exterior luminaire or interior luminaire in a manner that emits direct light, indirect light or glare such that it creates and/or results in trespassing light.
- 4.2 No person shall use or operate, or cause or permit the use or operation of, any exterior luminaire or interior luminaire in a manner that emits direct light, indirect light or glare such that it affects the operation of a motor vehicle on a highway by any person.
- 4.3 This By-law shall not apply to direct light, indirect light or glare resulting from:

- (a) the operation of any emergency service vehicle or ambulance while carrying out its lawful duties;
- (b) the use of vehicular lights during the lawful operation of a motor vehicle;
- (c) the operation of equipment by or on behalf of the Town for construction projects, general maintenance projects and emergency projects of the Town;
- (d) the operation of equipment by or on behalf of the Town for Town maintenance operations including but not limited to snow removal, street sweeping, line painting, grass cutting, tree and shrub pruning, mulching and field maintenance;
- (e) the reasonable use of luminaires during a special event hosted, authorized or approved by the Town, provided that the event is carried on in accordance with all terms and conditions of the authorization or approval;
- (f) sports, exercise or recreational activities or events at public parks or public beaches where such activities or events have been authorized or approved by the Town and are carried on in accordance with all terms and conditions of the authorization or approval;
- (g) activities that are part of a normal farm practice carried on by an agricultural operation; and
- (h) activities carried out in compliance with a permission granted under federal or provincial legislation.

## **5.0 PUBLIC NUISANCE**

5.1 No person shall cause or permit a public nuisance.

5.2 Without limiting the generality of section 5.1, the following acts, conduct and things are deemed to be a public nuisance:

- (a) loitering in a public place after a request from an enforcement authority to leave;
- (b) fighting;
- (c) using profane or abusive language or gestures;
- (d) littering;
- (e) defacing, damaging or vandalizing public or private property;
- (f) spitting, expectorating, urinating or defecating in a public place;
- (g) public drunkenness or public intoxication;
- (h) conducting a garage sale at any property that is not located in a residential zone under Town By-law No. 129-90, as amended from time to time;
- (i) between the hours of 6:00 p.m. of one day and 8:00 a.m. of the following day, conducting a garage sale at a property that is located in a residential zone under Town By-law No. 129-90, as amended from time to time;



- (j) conducting a garage sale more than four (4) times per calendar year at a property located in a residential zone under Town By-Law No. 129-90, as amended from time to time;
- (k) the attracting and or feeding of animals domesticated or otherwise in such a way that is causes damage or otherwise creates a nuisance or disturbance to another person or another persons property, other than as part of a normal farm practice carried on by an agricultural operation;
- (l) obstructing, interfering with or otherwise impeding the movement of persons or motor vehicles;
- (m) obstructing or attempting to obstruct an enforcement authority in the course of his or her duties; and
- (n) any act, conduct or thing prohibited by sections 3.2, 4.1 or 4.2 of this By-law.

## **6.0 ADMINISTRATION AND ENFORCEMENT**

- 6.1 This By-law shall be administered and enforced by the Town and enforcement authorities.
- 6.2 An enforcement authority may, for the purpose of enforcing this By-law, exercise any power, authority or remedy granted to the Town pursuant to the *Municipal Act, 2001*.
- 6.3 An enforcement authority may, at all reasonable times, enter upon and inspect any property to determine if this By-law is being complied with.
- 6.4 For the purposes of an inspection under section 6.3 of this By-law, an enforcement authority may require the production for inspection of documents or things relevant to the inspection, inspect and remove relevant documents or things for the purpose of making copies or extracts, require information from a person concerning a matter related to the inspection and/or take photographs, samples, measurements necessary for the purposes of the inspection and may also include being accompanied by a person possessing special or expert knowledge.
- 6.5 An enforcement authority who is satisfied that there has been a contravention of this By-law may make an order requiring the person who contravened the By-law or caused or permitted the contravention and/or the owner or occupant of the property where the contravention occurred to discontinue the contravening activity and/or to bring the property into compliance with this By-law.
- 6.6 No person shall fail to comply with an order made under section 6.5.
- 6.7 An order made under section 6.5 shall set out the municipal address and/or legal description of the property, reasonable particulars of the non-compliance and the work required to correct it and the date(s) by which there must be compliance with the order.
- 6.8 An order made under section 6.5 may be served by regular mail, registered mail or hand delivered to the last known address of the person to whom it is issued, by

email to the last known email address of the person to whom it is issued, or by posting the order at the property where the contravention occurred.

- 6.9 Where any person fails to comply with an order made under section 6.5 by the prescribed date(s), the Town may do any matter or thing necessary to bring the property into compliance with this By-law at the expense of the person in default of the order.
- 6.10 The Town may recover the cost of any matter or thing done pursuant to section 6.8 of this By-law by adding the cost to the tax roll and collecting it in the same manner and with the same priority as municipal taxes.
- 6.11 No Person shall obstruct or hinder, or attempt to obstruct or hinder, an enforcement authority in the exercise of a power or the performance of a duty under this By-law.

## **7.0 OFFENCES AND PENALTIES**

- 7.1 Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to such penalties as are provided for in the *Municipal Act, 2001* and the *Provincial Offences Act*.
- 7.2 Where an enforcement authority is satisfied that a person has failed to comply with any provision of this By-law, the enforcement authority may issue a penalty notice imposing an administrative penalty in the amount as established in Schedule "A" to this By-law.
- 7.3 Administrative Penalty By-law No. 111-2019, as amended or replaced from time to time, applies to each administrative penalty issued pursuant to this by-law.
- 7.4 Every person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty By-law No. 111-2019, be liable to pay to the Town an administrative penalty in accordance with that By-law.

## **8.0 GENERAL**

- 8.1 In the event of a conflict between this By-law and the provisions of another Town by-law, the provisions of this By-law shall prevail.
- 8.2 If any section or part of this By-law is found by any court of competent jurisdiction to be illegal or beyond the power of Council to enact, such sections or parts shall be deemed to be severable and all other sections or parts of this By-law shall be deemed to be separate and independent therefrom and to be enacted as such.
- 8.3 This By-law shall be read with all changes in number or gender as are required by context.

- 8.4 Any reference to legislation in this By-law includes the legislation and any amendment, replacement, subsequent enactment or consolidation of such legislation.
- 8.5 The Clerk of the Town is authorized to affect any minor modifications, corrections or omissions, solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after the passage of this by-law.
- 8.6 By-law No. 30-09 is repealed.
- 8.7 This By-law shall come into force and effect on the date of passage.

**Read a first, second and third time and finally passed this    day of    , 2023.**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

I, \_\_\_\_\_ Clerk of The Corporation of the Town of Fort Erie, certify the foregoing to be a true copy of By-law No. xx-2023 of the said Town. Given under my hand and the seal of the said Corporation, this    day of    , 20

**SCHEDULE "A"**  
**to Noise and Nuisance By-law No. XX-2023**

**Administrative Monetary Penalties**

For the purposes of this By-law:

Column 1 ("Description of Offence") in the table sets out the short form wording to be used in a Penalty Notice for a contravention of the designated provisions listed.

Column 2 ("Section") in the table lists the specific section of the provision that has been contravened.

Column 3 ("Penalty Tier 1") sets out the Administrative Monetary Penalty amounts that are payable for contraventions of the designated provisions listed in Columns 1 and Column 2.

Column 4 ("Penalty Tier 2") sets out the Administrative Monetary Penalty amounts that are payable for a second (2<sup>nd</sup>) contravention of the designated provisions listed in Columns 1 and Column 2 by the same person within a one (1) year period since the previous offence conviction.

Column 5 ("Penalty Tier 3") sets out the Administrative Monetary Penalty amounts that are payable for a third (3<sup>rd</sup>) contravention of the designated provisions listed in Columns 1 and Column 2 by the same person within a one (1) year period since the previous offence conviction.

<b>COLUMN 1</b>	<b>COLUMN 2</b>	<b>COLUMN 3</b>	<b>COLUMN 4</b>	<b>COLUMN 5</b>
Offence	Section	Penalty Tier 1	Penalty Tier 2	Penalty Tier 3
Unreasonable noise or noise likely to disturb inhabitants	3.1	\$250.00	\$350.00	\$450.00
Noise deemed to be unreasonable or likely to disturb inhabitants	3.2	\$250.00	\$350.00	\$450.00
Trespassing light	4.1	\$250.00	\$350.00	\$450.00
Light affecting operation of motor vehicle on highway	4.2	\$250.00	\$350.00	\$450.00
Public nuisance	5.1	\$250.00	\$350.00	\$450.00
Act, conduct or thing deemed to be a public nuisance	5.2	\$250.00	\$350.00	\$450.00
Fail to comply with an order	6.6	\$500.00	\$600.00	\$700.00
Obstruct an officer	6.11	\$300.00	N/A	N/A