



# **The Municipal Corporation of the Town of Fort Erie**

**BY-LAW NO. 38-2003**

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## **BEING A BY-LAW TO AUTHORIZE THE ENTRY INTO AND EXECUTION OF AN ACCESS AGREEMENT WITH THE POINT ABINO ASSOCIATION**

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**WHEREAS** By-law No. 83-2001 of the Corporation of the Town of Fort Erie authorizes the purchase of the Point Abino Lighthouse and Keepers' Dwelling, and

**WHEREAS** subsequent to the passage of By-law No. 83-2001 various amendments have occurred to the Agreement of Purchase and Sale, and

**WHEREAS** as part of the due diligence on the part of the Town of Fort Erie, the Town was interested in negotiating some form of access with the Point Abino Association over the private road (Point Abino Road South) to allow public access to the Lighthouse, and

**WHEREAS** the terms and conditions of the Access Agreement with the Point Abino Association have now been agreed upon and settled in the form of Schedule "A" annexed hereto to this by-law;

**NOW THEREFORE** the Municipal Council of The Corporation of the Town of Fort Erie hereby enacts as follows:

1. **THAT** the entry into the Access Agreement with the Point Abino Association in the form of Schedule "A" annexed hereto to this by-law be and it is hereby authorized and approved.
2. **THAT** the Mayor and Clerk be and they are hereby authorized and directed to execute the Access Agreement and to affix the corporate seal thereto.
3. **THAT** pursuant to Ontario Regulation 403/02 the Treasurer of the Corporation of the Town of Fort Erie has certified that any financial commitments incurred by this by-law beyond the term of Council are within the limits as advised by the Minister of Municipal Affairs and Housing for the year 2003.
4. **THAT** in the event the Point Abino Association requires changes to the insurance provisions of the agreement under Section 6.1(e), the Clerk of the Town of Fort Erie is hereby authorized and directed to carry out same in consultation with the Town's Insurance Broker.

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5. **THAT** the Clerk of the Town of Fort Erie is hereby authorized to effect any minor modifications or corrections to the by-law and schedule of a descriptive, numerical or grammatical nature as may be deemed necessary after passage of this by-law.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 24<sup>th</sup> DAY OF FEBRUARY, 2003.**

\_\_\_\_\_  
**MAYOR**

  
\_\_\_\_\_  
**CLERK**

I, the Clerk, Carolyn J. Kett, of The Corporation of the Town of Fort Erie hereby certify the foregoing to be a true certified copy of By-law No. 38-2003 of the said Town. Given under my hand and the seal of the said Corporation this day of \_\_\_\_\_, 2003.

\_\_\_\_\_

**SCHEDULE "A" to BY-LAW NO. 38-2003**

**POINT ABINO ACCESS AGREEMENT**

Made in triplicate on the                      day of                      , 2003.

**BETWEEN:**

**THE POINT ABINO ASSOCIATION, an Ontario Corporation**  
hereinafter called "the Association"

**OF THE FIRST PART;**

**- AND -**

**THE CORPORATION OF THE TOWN OF FORT ERIE**  
hereinafter called "the Town"

**OF THE SECOND PART;**

**WHEREAS** the Association is the owner of a private road commonly known as "Point Abino Road South" located between the gate and the Point as shown on the attached map in yellow in an area commonly referred to as the "Point Abino Colony", and

**WHEREAS** the Town has entered into an Agreement of Purchase and Sale with the Federal Government to purchase the Point Abino Lighthouse and Keeper's Dwelling which are adjacent to, and within the Point Abino Colony respectively, and

**WHEREAS** due to the private nature of Point Abino Road South, the Town seeks to enter into an agreement with the Association for occasional public use of the said private road in order to access the Point Abino Lighthouse and Keeper's Dwelling, and

**WHEREAS** the Town also seeks access via Point Abino Road South to the Lighthouse and Keeper's Dwelling for repair and maintenance purposes, and

**WHEREAS** the parties mutually agree to the terms and conditions set out hereunder;

**NOW THEREFORE** in consideration of the premises and the covenants and agreements hereinafter to be performed, the parties hereto covenant and agree as follows:

**1.     Ownership of Road**

During the term of this Agreement the Town shall not in any way challenge or attempt to circumvent the Association's title to Point Abino Road South, nor shall the Town attempt to expropriate any portion or all of same.

## **2. Public and Maintenance Access**

2.1 The Association hereby agrees to provide limited public access and access to the Town for repair and maintenance purposes as follows:

- (a) To provide restricted public access along Point Abino Road South to the Point Abino Lighthouse and Keeper's Dwelling subject to the conditions set out in Sections 3, 4 and 6 herein.
- (b) To permit the Town, including its agents and employees, to access the Point Abino Lighthouse and Keeper's Dwelling over Point Abino Road South as required from time to time for the repair, preservation and maintenance of such facilities and to permit such vehicles and equipment as may be required for such purposes to enter on and over Point Abino Road South provided that the weight of such vehicles and/or equipment may not exceed 10,000 lbs. without the prior permission of a Director of the Association. Consistent with the previous long-standing practice by the Coast Guard (i) the Association's policy will be that such permission may be granted by the Association in its discretion only in emergency situations, and (ii) except in emergencies and subject to the aforesaid permission of the Association, heavy equipment and materials weighing over 10,000 lbs. are to be transported to and from the Lighthouse via boat or barge (over the waters of Lake Erie), or by helicopter and not over Point Abino Road South.
- (c) The vehicle and equipment access over the Point Abino Road South granted under Section 2.1(b) of this Agreement shall only, except in the case of emergency, be (i) upon 48 hours prior notice to the Association, such notice to be served through the Association's security contractor who resides adjacent to the gate, and (ii) only during the weekday hours of 8:30 a.m. to 5:00 p.m.

## **3. Restricted Access**

3.1 Public access granted to the Town under Section 2.1(a) shall be restricted to:

- (a) Pedestrian access including bicycles for a limited number of guests during daylight hours in the summer. Such guests will be required to sign personal injury waiver and indemnification forms, and to prominently wear guest passes. Children must be accompanied by responsible adults, and motor vehicles (except as set forth in Section 3.1(b)) and dogs will not be permitted entry. This permission to enter will extend only to Point Abino Road South, and not to the Association's side streets, woods, beaches or any Association member's property. Guest access will be controlled by the Association's security contractor, who resides adjacent to the gate. The Association reserves the right to amend or completely rescind this guest admission policy at any time.



- (b) Mini bus or trolley vehicles with a maximum capacity of twenty (20) passengers. Such vehicles will travel only on the Point Abino Road South without stopping, directly to and from the Point Abino Lighthouse and Keeper's Dwelling. No music or noise (other than normal motor vehicle noise) shall emanate from such vehicles, and no commentary will be made to the occupants of such vehicles regarding the Association members' residences or the identities of the owners of such residences. All persons transported by such vehicles will confine themselves to the vehicles and Lighthouse and Keeper's Dwelling properties only, and will not set foot or trespass on any other property south of the gate. The mini bus or trolley vehicles will park only on the Lighthouse or Keeper's Dwelling properties, and not on the Point Abino Road South.
- 3.2 Public access granted to the Town under Section 3.1(b) shall be permitted on the following days, in each instance between the hours of 10:00 a.m. and 3:00 p.m. and for not more than four (4) round trips to the Lighthouse per day:
  - (a) the first and last Saturday of each of the months of June, July, August and September in each year during the term.
- 3.3 In addition to the foregoing, school visits may be permitted by the Association from time to time during weekdays and the request for such visits shall be submitted at least 72 hours in advance through the Association's security contractor at the gate. Independent group visits may also be requested at least 72 hours in advance through the Association's security contractor at the gate. All such requests may be granted or denied by the Association in its sole discretion.

#### 4. Term

Subject to Section 8 the term of this Agreement shall be for a two (2) year period commencing with the acquisition of the Point Abino Lighthouse and Keeper's Dwelling by the Town provided that, if the Town does not acquire the Lighthouse and Keeper's Dwelling by December 31, 2003, this Agreement shall be deemed never to have commenced.

#### 5. Restrictions on Association

The Association hereby agrees that during the term of this Agreement it shall not do, nor permit to be done, anything that might impede or preclude access to Point Abino Road South in the manner and during the times and dates specified herein.

## 6. Restrictions on the Town

### 6.1 The Town hereby agrees as follows:

- (a) To abide by the rules and regulations established by the Association;
- (b) To abide by the speed regulations established by the Association in relation to Point Abino Road South;
- (c) To adhere to such security requirements as may be imposed by the Association from time to time;
- (d) To indemnify and save harmless the Association and its members against any loss, claims, actions or demands in respect of any injury or damage resulting from any access to the Association's lands given under this Agreement;
- (e) The Town carries Public Liability Insurance coverage in the primary amount of Five Million (\$5,000,000.00) Dollars and Excess Liability coverage in the amount of Forty Five Million (\$45,000,000.00) Dollars under policies with Zurich Insurance Company;

The Town covenants with the Association to maintain the aforementioned insurance coverage or its equivalent, for the duration of this agreement and will on demand provide proof by certificate or otherwise of the continued existence of this insurance coverage from time to time;

- (f) To restore all or any part of the Point Abino Road South to its original condition should it be necessary due to damage caused by any of the Town's vehicles or equipment or the vehicles or equipment of any of its agents used pursuant to this Agreement;
  - (g) To pay the Association an annual fee of Four Thousand Dollars (\$4,000) for the rights herein granted by the Association.
- 6.2 In relation to Section 6.1(f) herein, the Town may videotape and/or photograph Point Abino Road South prior to any vehicles or equipment accessing the Point Abino Lighthouse and Keeper's Dwelling over Point Abino Road South and such video tape and/or photographs shall be referenced for repair, preservation and maintenance purposes under this Agreement.
7. Neither party shall be obligated to renew this Agreement however, if either party wishes to renew it, ninety (90) days written request prior to expiration, sent by registered mail or personal delivery including facsimile transmission, shall be given notifying the other party of its desire to renew the Agreement for a further term as may be agreed upon by the parties.

8. If either party finds the other to be in breach of any of any obligation under this Agreement, the former may notify the latter of the details of such breach in writing by registered mail or personal delivery including facsimilie transmission, after which the breaching party shall have fifteen (15) days from receipt to cure said breach. If said breach is not cured within that time the party finding breach may then immediately terminate this Agreement, also by written notice served by registered mail or personal delivery including facsimilie transmission, in which case the notice of termination shall become effective upon mailing or personal delivery including facsimilie transmission, receipt by the breaching party.
9. Except for the members of the Association there are and shall be no third party beneficiaries under this Agreement.
10. Upon any termination or expiration of this Agreement the Town shall have no right in the Point Abino Road South, nor any claim against the Association or its members.

**IN WITNESS WHEREOF** the Parties hereto have hereunto affixed their corporate seals under the hands of their proper officers duly authorized in that behalf.

**Signed, Sealed and Delivered  
In the Presence of:**

)	<b>POINT ABINO ASSOCIATION</b>
)	
)	
)	
)	_____
)	<b>PRESIDENT</b>
)	
)	
)	_____
)	<b>SECRETARY</b>
)	
)	<b>THE CORPORATION OF THE</b>
)	<b>TOWN OF FORT ERIE</b>
)	
)	
)	_____
)	<b>MAYOR</b>
)	
)	
)	_____
)	<b>CLERK</b>