



The Municipal Corporation of the Town of Fort Erie

BY-LAW NO. 237-04

BEING A BY-LAW TO STOP UP, CLOSE AND CONVEY PART OF COLUMBIA ROAD

WHEREAS the history of this matter is as follows:

1. Under Section 297(1) of the former *Municipal Act*, R.S.O. 1990, Chapter M.45 as amended, it provided inter alia that the council of every municipality may pass by-laws for stopping up any highway or part of a highway for a specified period or periods of time and for leasing or selling the soil and freehold of the stopped up highway or part of a highway, and
2. Under Section 300(1) of the said former *Municipal Act* it provided for the publication of notice of the proposed by-law for stopping up and selling a highway, and
3. Under Section 315 of the said former *Municipal Act* it provided for the sale of the stopped up highway which prescribes that the council shall by by-law set the sale price of the land to be sold and shall offer to sell it to the owner abutting the land to be sold and where,
 - (a) there are parcels of land abutting on opposite sides of the land to be sold, the owner of each parcel has the right of first refusal to purchase the land to its middle line, and
4. Under Section 315(3) of the said former *Municipal Act* it provided that if a person entitled under subsection (2) to purchase the land does not exercise the right to purchase within such period as may be fixed by by-law, the municipality may sell the land that the person has the right to purchase to any other person at the price set under subsection (2) or at a greater price, and

WHEREAS correspondence was received at the Council meeting of June 10, 2002 from Dwayne Rush and Sharon Frenette of 1785 Ontario Drive, requesting an opportunity to purchase part of the Columbia Road allowance in order to clear title and to build a garage, and

WHEREAS Report No. F-29-02 was approved at the Council-in-Committee meeting of August 12, 2002 respecting Land Committee recommendations and it provided direction therein for the Clerk to proceed in accordance with the provisions of the *Municipal Act* to stop up, close and convey the unopened portion of Columbia Road between Ontario Drive and Rebecca Street at the expense of the abutting property owners, and

WHEREAS the *Municipal Act*, 2001 came into force and effect on January 1, 2003, and

WHEREAS ownership of the lands by the original applicant has changed and the new owners, Sheila and Malcolm Gellatly have requested that the application continue since they are interested in purchasing the subject road allowance, and

WHEREAS in processing the application, the Town in continuation of the policy and practice of the former *Municipal Act* offered half of the road allowance to each of the abutting property owners deeming it appropriate in fairness and equity to offer to each of the abutting property owners, and

WHEREAS all of the abutting property owners save and except the property owners at 1795 Ontario Drive have expressed an interest in acquiring their entitled portion of the subject road allowance, and

WHEREAS notice of the intention of the Municipal Council of the Town of Fort Erie to consider a by-law to stop up, close and convey the subject highway to the abutting property owners was published in The Times on December 4th and December 11th, 2004, and

WHEREAS no objections to the stopping up, closing and conveyance of the said highway were received and presented to the Municipal Council of the Town of Fort Erie at the public hearing held December 13, 2004, and

WHEREAS it is deemed desirable to stop up, close and convey to the abutting property owners that part of Columbia Road located between Ontario Drive and Rebecca Street;

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

1. **THAT** part of Columbia Road between Ontario Drive and Rebecca Street according to Registered Plan No. 145 for the former Township of Bertie now known as Plan 485 for the Town of Fort Erie and more particularly described as Parts 1 to 8 on Reference Plan 59R-12618 be and it is hereby declared as surplus lands.
2. **THAT** part of Columbia Road between Ontario Drive and Rebecca Street according to Registered Plan No. 145 for the former Township of Bertie now known as Plan 485 for the Town of Fort Erie and more particularly described as Parts 1 to 8 on Reference Plan 59R-12618 be and it is hereby stopped up and closed.
3. **THAT** the selling price of the stopped up and closed highway as described in Section 2 hereof be and it is hereby established as follows:

Part 1 on R.P. 59R-12618	\$ 1,288.00
Part 2 on R.P. 59R-12618	\$ 211.00
Part 3 on R.P. 59R-12618	\$ 317.00
Part 4 on R.P. 59R-12618	\$ 570.00
Part 5 on R.P. 59R-12618	\$ 570.00
Part 6 on R.P. 59R-12618	\$ 1,769.00
Part 7 on R.P. 59R-12618	\$ 1,769.00
Part 8 on R.P. 59R-12618	\$ 380.00

4. (a) **THAT** the soil and the freehold of the stopped up highway as described in Section 2 hereof shall be conveyed to the abutting property owners at the price fixed by Section 3 above and the abutting property owners shall have 30 days from the date of passage of this by-law or as extended under the authority of the Clerk of the Town of Fort Erie to complete the purchase of their entitled portion of the road allowance at the price fixed by this by-law.

- (b) **THAT** otherwise, the Clerk may undertake to sell the subject lands to any other person at the price fixed by this by-law but in the event two property owners are interested in the same part of the road allowance rejected by the property owners at 1795 Ontario Drive, the Clerk shall request bids from the interested property owners, with a reserve bid established by the selling price herein for that particular part on the reference plan and the interested property owners shall have an opportunity to submit their best price for the subject part of the road allowance and it shall be conveyed to the highest bidder.
5. **THAT** Section 4 above shall be subject to the following, if the subject lands are purchased by the abutting property owners:
- (a) Receipt of certification from the Town Solicitor prior to registration of the Transfer/Deed of Land that the purchaser owns the lands abutting the subject road allowances, where applicable.
- (b) Where applicable, the purchaser agrees that the subject road allowance conveyed shall merge in title with the owners' abutting lands and the subject road allowance cannot be sold again separately unless a consent is obtained under the provision of the *Planning Act* and further, such clause shall be included in the schedule annexed to and forming part of the Transfer/Deed of Land.
6. **THAT** each of the purchasers shall be responsible for the sharing of the road closing administration fee of \$1,000.00 on a pro-rata basis despite the provisions of By-law No. 230-96 and the sharing of costs incurred by the Corporation of the Town of Fort Erie in this transaction save and except the appraisal fees.
7. **THAT** attached to this by-law as Schedule "A" is the affidavit of Carolyn J. Kett, Clerk of the Town of Fort Erie setting out the procedures taken for the publishing of notices pursuant to the provisions of the *Municipal Act, 2001*.
8. **THAT** the Mayor and Clerk be and they are hereby authorized and directed to execute any and all legal documentation necessary to complete this transaction.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 13th DAY OF DECEMBER, 2004.


MAYOR


CLERK

I, Carolyn J. Kett, the Clerk, of The Corporation of the Town of Fort Erie hereby certifies the foregoing to be a true certified copy of By-law No. 237-04 of the said Town. Given under my hand and the seal of the said Corporation this day of _____, 200 .

SCHEDULE "A" TO BY-LAW NO. 237-04

IN THE MATTER OF the stopping up, closing and conveyance of part of Columbia Road between Ontario Drive and Rebecca Street according to Registered Plan No. 145 for the former Township of Bertie now known as Plan 485 for the Town of Fort Erie and more particularly described as Parts 1 to 8 on Reference Plan 59R-12618.

AFFIDAVIT

1. I, Carolyn J. Kett, Clerk of the Town of Fort Erie, in the Regional Municipality of Niagara, in the Province of Ontario, affirm that I am the Clerk of the Corporation of the Town of Fort Erie and as such have knowledge of the facts hereinafter deposed to.
2. Notice of the intended consideration of the passing of a by-law to stop up, close and convey to the abutting property owners the unopened road allowance, known as part of Columbia Road between Ontario Drive and Rebecca Street according to Registered Plan No. 145 for the former Township of Bertie now known as Plan 485 for the Town of Fort Erie and more particularly described as Parts 1 to 8 on Reference Plan 59R-12618, was published in The Times, a newspaper having general circulation in the Town of Fort Erie on December 4th and 11th, 2004.
3. The proposed by-law referred to in this notice as shown in Exhibit "1" came before the Municipal Council of the Town of Fort Erie on the 13th day of December, 2004, and persons with an interest appeared and addressed the Council.


SWORN BEFORE ME

at the Town of Fort Erie
in the Regional Municipality
of Niagara this 17th day of
December, 2004

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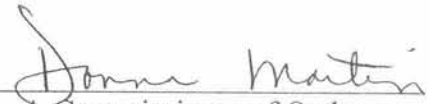
Carolyn J. Kett



A Commissioner of Oaths, etc.

Donna Martin
ACTING DEPUTY CLERK
Town of Fort Erie
Commissioner of Oaths, Etc.

THIS IS EXHIBIT "1"
TO THE AFFIDAVIT OF
CAROLYN J. KETT
DATED THIS 14TH DAY OF
DECEMBER, 2004



A Commissioner of Oaths, etc.
Donna Martin
ACTING DEPUTY CLERK
Town of Fort Erie
Commissioner of Oaths, Etc.

