



# The Municipal Corporation of the Town of Fort Erie

BY-LAW NO. 171-06

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## BEING A BY-LAW TO ESTABLISH HERITAGE TREE CRITERIA FOR THE TOWN OF FORT ERIE

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**WHEREAS** the Provincial Policy Statement describes cultural heritage as “resources that are valued for the important contribution they make to our understanding of the history of a place, an event, or a people.” The Policy sets the framework for municipalities to make efforts to protect natural heritage resources.

**WHEREAS** the Ontario Heritage Act permits municipalities to designate those elements within the Town that are considered to be of importance from a heritage perspective. Included is the option to designate natural heritage features including trees. The *Ontario Heritage Act* permits or does not pre-clude the designation of Heritage Trees.

**WHEREAS** the Town’s By-Law To Regulate The Destruction, Injury And Harvesting Of Trees In The Town Of Fort Erie (By-law 60-04) provides a mechanism for the protection of a Heritage Tree(s), as well as a Community significant Tree(s).

**WHEREAS** the Region’s Tree and Forest Conservation By-law (By-law No.47-2006)) also provides the opportunity for the protection of heritage trees identified by the local municipality.

**WHEREAS** the new Official Plan for the Town of Fort Erie, adopted on September 11, 2006 by way of By-law No. 150-06 contains Natural Heritage policies, and

**WHEREAS** Section 11 of the Official Plan for the Town of Fort Erie pertains to Cultural Heritage and states, in part:

*“XI. The Town and/or Region’s Tree Conservation By-laws provide the opportunity to designate Heritage Trees under the Heritage Act. Prior to designating a Heritage Tree(s), council shall develop criteria which will be used to assist in determining the appropriateness of the designation.”*

**WHEREAS** Council adopted the recommendations of Report CDS-078-06, being:

“The Proposed Criteria “For The Designation of Heritage Trees under the *Ontario Heritage Act*” as recommended by the Town’s Heritage Committee (LACAC) be received in principle; and

“A Public Meeting regarding the Proposed Draft Heritage Tree criteria be held at the Council-in-Committee Meeting of Monday, October 2, 2006 to receive input prior to adopting the criteria.”

**WHEREAS** a Public Consultation Meeting was held on October 2, 2006 to receive input.

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

1. **THAT** the Criteria for the designation of Trees under the Ontario Heritage Act referred to as "*Town of Fort Erie Guidelines For Natural Heritage Designation Under The Ontario Heritage Act*" attached hereto as Schedule A be and the same is hereby adopted.
  
2. **THAT** pursuant to the provisions of Section 227 of the *Municipal Act, 2001* the Clerk of the Town of Fort Erie is hereby authorized to effect any minor modifications or corrections of an administrative, numerical, grammatical, semantical or descriptive nature or kind to the by-law may be necessary after the passage of this by-law.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 23<sup>rd</sup> DAY OF October, 2006.**

  
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**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. 171-06 of the said Town. Given under my hand and the seal of the said Corporation this day of \_\_\_\_\_, 200 .

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SCHEDULE A To By-LAW No. 171-06

# TOWN OF FORT ERIE

## GUIDELINES FOR NATURAL HERITAGE DESIGNATION UNDER THE ONTARIO HERITAGE ACT

October 16, 2006

# Guidelines for Natural Heritage Designations Under the Ontario Heritage Act

## 1. Purpose

The purpose of these Guidelines is to assist the Town of Fort Erie and its Heritage Committee (LACAC) in reviewing the appropriateness of designating tree(s) under the Heritage Act for their heritage value and as important heritage resources to the Town.

The Town has a unique wealth of heritage resources, which is an essential part to its cultural identity. Some elements of these resources are more traditionally obvious, such as buildings that have an architectural and/or historical value. Others are not so obvious, such as a lone tree or grouping of trees that have a more intrinsic heritage importance.

The Town recognizes the ecological importance of protecting and/or conserving natural areas. The Town has a rich diversity of woodlots, watercourses, fish habitat, shoreline and wetlands of varying significance. The Town also recognizes that certain natural features such as trees can provide a cultural heritage value.

## 2. Basis

### **Provincial Policy Statement**

The Provincial Policy Statement describes cultural heritage as “resources that are valued for the important contribution they make to our understanding of the history of a place, an event, or a people.” The Policy sets the framework for municipalities to make efforts to protect natural heritage resources.

### **Ontario Heritage Act**

The Ontario Heritage Act permits municipalities to designate those elements within the Town that are considered to be of importance from a heritage perspective. Included is the option to designate natural heritage features including trees. The *Ontario Heritage Act* permits or does not pre-clude the designation of Heritage Trees. There are minimum criteria under the *Act* that must be met.

The first type of criteria are related to architectural elements and not applicable to trees. Therefore, in order to designate a tree(s) the property must meet one or more of the following criteria:

The property has historical value or associative value because it:

- has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community,

- yields, or has the potential to yield, information that contributes to an understanding of a community or culture, or
- demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.

The property has contextual value because it:

- is important in defining, maintaining or supporting the character of an area,
- is physically, functionally, visually or historically linked to its surroundings, or
- is a landmark.

### **A By-Law To Regulate The Destruction, Injury And Harvesting Of Trees In The Town Of Fort Erie**

This By-law provides a mechanism for the protection of a Heritage Tree(s), as well as a Community significant Tree(s). The Region's Forest Conservation By-law also provides the opportunity for the protection of heritage trees identified by the local municipality. For this reason, Council, through the Town's Local Architectural Advisory Committee (Heritage Committee), has established these Guidelines to assist in assessing the heritage importance of a tree or treed area.

These guidelines assist in assessing the importance of Heritage Trees. Community significance is one of the criteria for consideration.

#### **3. Criteria - Heritage Tree(s)**

A heritage tree(s) shall represent a significant heritage specimen(s) because of the tree(s) historical or cultural importance relative to a person, place, event or period; or because it is distinctly rare due to species type and/or its associated size, age, shape form or colour. The tree(s) may be considered a community landmark for these reasons and the prominent location of the tree(s).

The following criteria should be used for assessing the worthiness of a tree(s) for heritage designation. No designation should take place unless one of these criteria is met **in a significant fashion**. The more criteria that are met the more serious the consideration for designation should be.

Criteria to be used for consideration of a tree(s) are:

1. A heritage tree(s) could be outstanding because of rarity of the species, size, age, form, shape, colour or other distinctive feature or species rarity or genetic constitution.
  - For species rarity, regard should be given to whether a native species is provincially, regionally or locally rare. Preference will be given to species

meeting all of these criteria. The tree(s) should at least be locally rare. A non-native species could stand as an example that represents a unique species but is unusual or exceptional to the area. The size, age, form, shape colour or other factors could be considered in determining the rarity of the species.

- The age of the tree should be considered relative to the rarity for that species, as well as, relative to human activity. For example, consideration should be given to whether the tree is pre-settlement, early settlement, post urbanization or pre-construction in the order of priority stated.
  - Consideration should be given to the size of the tree(s). Focus should be whether the size of the tree(s) is rare for that species or whether the size of the tree provides a sense of prominence to the community.
  - Consideration should be given to, in order of preference, whether the shape of the tree is striking, significant, notable or ordinary from an aesthetic perspective or rarity within the species.
  - Consideration should be given to whether the tree(s) form or structure is majestic, characteristic or atypical.
2. A heritage tree(s) could be associated with an historic person, place or event. For example, an old tree on a battlefield site and the growth of the tree reflects battle events. The tree could be associated with a famous hanging or identified as one of the important features in a designating by-law for a historic building or property. Historical significance could be national, provincial, or local/community based.
  3. A heritage tree(s) could have cultural significance for reasons associated with Points 1 or 2 above, or because of a connection with or reference to published poems or stories.
  4. A heritage tree(s) could have community significance because it represents a Community Landmark for Points 1, 2 or 3 above and is located within a prominent setting visible to the community.
  5. Public accessibility and location are criteria to consider for designation. A heritage tree that is visible and/or accessible to the community provides greater opportunities to residents and visitors for enjoyment and education. In this respect, preference for designation should be given to trees on public lands or trees on private lands where land owner permission is obtained.
  6. The condition of the tree and expected longevity of the tree must be considered. Preference should be given to a tree(s) in good condition with no apparent or minor damage. The expected longevity of the tree(s) should be at least 30 years and if in an urban setting the possible impacts of development on longevity should be considered.

## **4. Implementation**

### **Tree Registry List**

Similar to heritage buildings, the Town will develop a Tree Registry List of registered heritage tree and potential heritage trees. The registry will include details about the resource, including species, and specimen details.

### **Required Information**

In order to process applications for designation, the Town will require a legal description, map of the property including the location of the resource, authorization from the landowner, an assessment of the resource, prepared by the Town, and a letter from the owner expressing the intent and reasons for designation. An assessment of the resource may include an Arborist Report completed by the Town if the age, condition or expected longevity of the tree is in question. In addressing the expected longevity of the tree(s) the Arborist Report should identify what mitigation measures such as buffer area etc. are necessary to ensure the longevity of the tree(s) in an urban setting. An Arborist Report shall be mandatory if there is a designation contemplated without property owner permission. The following approach will be followed with respect to the preparation of an Arborist Report:

**The Committee should provide assistance to proponents requesting designation by assisting in determining if volunteers with expertise or agency staff can assist in providing opinions on the age, condition and perhaps rarity of a tree;**

**If an Arborist Report from a qualified Forester is required and the Report may be costly the proponent could then approach Council to determine if funding assistance for the Report could be obtained;**

**The Town would only be required to initiate and pay for the Arborist Report if Council were to consider designation without property owner permission.**

### **Plaques**

Plaques will be provided in those instances where the resource is part of a public site, such as a park or on municipal land. As an alternative, the Town of Fort Erie will issue a framed plaque to the owner of a heritage tree(s) on private land for recognition.

### **Inspection**

The Town will be given access rights to inspect the resources to ensure they still exist, and to assess their health. In these instances, notice will be given to the landowner in advance. However, in those instances where the resource is under immediate threat of wilful harm or neglect, the Town may enter onto a site to inspect without prior written notice.

### **Assistance from the Town**

The Town can provide assistance to landowners by offering services such as inspection of the resources, assessment of health, means of protection. When pruning or treatment is required, 30 day written notice should be given to the Town to ensure the long-term health of the resource.

### **Removal of Designation**

In those instances where the resource has been removed as a result of either human or natural occurrences, the Town will have the right to remove designation from the site. Removal of this recognition will be in accordance with the Ontario Heritage Act.

### **Penalty**

In the event of wilful damage being inflicted upon a natural heritage resource, the person causing the harm/damage will be subject to penalty under the respective Town's or Region's Tree Bylaws.