TO: Chair and Members Planning Committee
WARD(S) AFFECTED: WARD 10

COMMITTEE DATE: April 3, 2012

SUBJECT/REPORT NO:
Request to Designate 39 Lakeview Drive (Stoney Creek) Under Part IV of the Ontario Heritage Act (PED12047) (Ward 10)

SUBMITTED BY:
Tim McCabe
General Manager
Planning and Economic Development Department

PREPARED BY:
Meghan House
(905) 546-2424, Ext. 1202
Andrea Mikkila
(905) 546-2424, Ext. 7163

SIGNATURE:

RECOMMENDATION:

(a) That Council direct staff to carry out a Cultural Heritage Assessment of 39 Lakeview Drive (Stoney Creek) to determine whether the property is of cultural heritage value, and worthy of designation under Part IV of the Ontario Heritage Act.

(b) That Council include 39 Lakeview Drive (Stoney Creek) in the Register of Property of Cultural Heritage Value or Interest following consultation with the Hamilton Municipal Heritage Committee, as per the provisions of the Ontario Heritage Act and Recommendation (e) to Report PED12047, and that staff make appropriate amendments to the Register of Property of Cultural Heritage Value or Interest.

(c) That if 39 Lakeview Drive (Stoney Creek) is determined to be of cultural heritage value or interest, a Statement of Cultural Heritage Value and Description of Heritage Attributes be prepared by staff for Council’s consideration for designation under Part IV of the Ontario Heritage Act.

(d) That the Cultural Heritage Assessment work be assigned a low priority, and be added to staff’s workplan for completion in 2017, as per the attached Appendix “F” to Report PED12047.
(e) That Report PED12047 be forwarded to the Hamilton Municipal Heritage Committee for information and consultation prior to the Council-approved inclusion of 39 Lakeview Drive (Stoney Creek) in the Register of Property of Cultural Heritage Value or Interest.

(f) That Report PED12047 be forwarded to the owner of 39 Lakeview Drive (Stoney Creek) for information.

(g) That Report PED12047 be forwarded to the individual who requested the designation of 39 Lakeview Drive (Stoney Creek) for information.

**EXECUTIVE SUMMARY**

Staff has received a request to designate 39 Lakeview Drive (Stoney Creek) under Part IV of the Ontario Heritage Act (see Appendix “A”). Under the Council-approved designation process (approved October 29, 2008, Report PED08211), the following Report contains a preliminary evaluation of the subject property using the criteria contained in Ontario Regulation 9/06. This preliminary evaluation of the property provides the basis for a recommendation for continuing Cultural Heritage Assessment work, and for assigning a workplan priority for this assessment work.

The property located at 39 Lakeview Drive (Stoney Creek) (see location map attached as Appendix “B”, and photographs attached as Appendix “C”) comprises a Regency style residential building constructed in the late-1800’s by James and Sarah Ann (Carpenter) Hill.

The property was inventoried by the former City of Stoney Creek Heritage Committee and is included in the City’s Inventory of Buildings of Architectural and/or Historical Interest. A preliminary assessment of the property has been undertaken by staff using the criteria contained in Ontario Regulation 9/06. The property meets two of the three criteria, and is considered to have design and physical value, and historical and associative value.

Through this Report, staff recommends that the Planning Committee and Council direct staff to carry out a Cultural Heritage Assessment of 39 Lakeview Drive (Stoney Creek) to determine whether the property is of cultural heritage value and worthy of designation under Part IV of the Ontario Heritage Act as a low priority within staff’s workplan. This further research and assessment work will provide Committee and Council with adequate information upon which to base a decision regarding designation under the Ontario Heritage Act. The Hamilton Municipal Heritage Committee and the appropriate City Departments will be consulted during the preparation of the Cultural Heritage Assessment and the staff report.

*Alternatives for Consideration - See Page 7.*
FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: None.

Staffing: None.

Legal: The City’s Legal Counsel was consulted in the preparation of the original staff Report regarding the new designation process (Report PED08211). Planning staff has prepared the following review of the legal implications of the recommendations of this Report in consultation with Legal Counsel:

The owner’s consent is not a prerequisite for designation of a property under the Ontario Heritage Act. In the Divisional Court decision Tremblay v. Lakeshore (Town), the court found that the interests of the public, community, and the owner must all be considered when a Council decides whether or not to designate a property. The court found that by making the owner’s consent a condition of designation, the Council had fettered its discretion to make the designation decision, acting contrary to the Ontario Heritage Act.

Accordingly, a Council may decide that it is in the public interest and/or community interest to conserve a property, despite objections by the owner.

As per the designation process approved by Council on October 29, 2008, this Report provides staff with initial direction to complete further research and evaluation of the property for a later decision by Council. If staff is directed to proceed, Council will be able to make an appropriate decision on designation at a subsequent stage in the designation process when it has before it a staff report, the Cultural Heritage Assessment, a draft designating By-law, advice from the Hamilton Municipal Heritage Committee, and the positions of the property owner and any other interested parties.

HISTORICAL BACKGROUND

Designation under Part IV of the Ontario Heritage Act allows municipalities to recognize a property’s cultural heritage value or interest, and to conserve and manage the property through the Heritage Permit process enabled under Sections 33 (alterations) and 34 (demolition or removal) of the Act. Where alterations to designated properties are contemplated, an owner is required to apply for, obtain, and comply with a Heritage Permit for any alteration that “is likely to affect the property’s heritage attributes, as set out in the description of the property’s heritage attributes” (Sub-section 33(1)).
Designation does not restrict the use of a property, prohibit alterations or additions, or restrict the sale of a property. The City of Hamilton also provides heritage grant and loan programs to assist in the continuing conservation of properties once they are designated.

A process for considering requests for designation was approved by Council on October 29, 2008 (see Appendix “D”), and recognizes the Divisional Court decision Tremblay v. Lakeshore (Town).

A third party request to designate the property located at 39 Lakeview Drive (Stoney Creek) under Part IV of the Ontario Heritage Act was received on February 17, 2011 (see Appendix “A”). Under the Council-approved process for considering requests for designation, preliminary screening has been conducted (see Analysis section of this Report) referencing the criteria contained in Ontario Regulation 9/06 (see Appendix “E”) to determine if further Cultural Heritage Assessment work is warranted. This Report also identifies a staff recommendation for the workplan priority of this further Cultural Heritage Assessment work within the context of a four- to five-year timeframe, as per the Council-approved designation process.

**Work Program Priority**

The Council-approved designation process provides for the prioritization of detailed research and assessment work. Within the annual work program, Heritage staff can typically process three to four properties through the designation process, including the preparation of the comprehensive Cultural Heritage Assessment reports and the processing of the designation By-laws in conjunction with Clerks. According to the Council-approved process, Committee and Council may assign a high, medium, or low priority to a designation request. These priorities generally fall within the following time frames:

- A high priority would direct staff to prepare the Cultural Heritage Assessment within the current year’s work program;
- A medium priority would direct the designation request to the 2nd or 3rd year of the work program; or,
- A low priority would direct the request to the 4th or 5th year of the work program.

Work program priorities are assigned based on a number of factors, including:

- Risk to the property with respect to demolition or removal;
- Funding eligibility;
- Heritage value associated with the property;
- Current level of property maintenance;
- The property is City-owned; and,
- Work program/Staff resources.
POLICY IMPLICATIONS

City of Stoney Creek Official Plan

Policy of 5.1.1 provides that an objective of the Official Plan is “to preserve, enhance and/or rehabilitate, where feasible, those resources of historic and architectural merit, and to promote the interest of the residents in the heritage of their City. It is further intended that appropriate measures be established to ensure that these resources will be recovered for active use and be instrumental in setting the visual amenity of Stoney Creek.” The recommendations of this Report meet the intent of these policies.

Urban Hamilton Official Plan

Volume 1, Section 3.4 - Cultural Heritage Resources Policies of the Council-adopted (adopted July 9, 2009) Urban Hamilton Official Plan states that the City shall “protect and conserve the tangible cultural heritage resources of the City, including archaeological resources, built heritage resources, and cultural heritage landscapes” (Volume 1, 3.4.2.1(a)), and “identify cultural heritage resources through a continuing process of inventory, survey, and evaluation, as a basis for the wise management of these resources” (Volume 1, 3.4.2.1(b)). The policies also provide that the “City may, by By-law, designate individual and groups of properties of cultural heritage value under Parts IV and V, respectively, of the Ontario Heritage Act” (Volume 1, 3.4.2.3). The Urban Hamilton Official Plan has been approved by the Ministry of Municipal Affairs and Housing, but has been appealed in its entirety to the Ontario Municipal Board (OMB). While the plan is not in full force and effect, these policies demonstrate Council’s commitment to the identification, protection, and conservation of the cultural heritage resources, and the recommendations of this Report meet the intent of these policies.

RELEVANT CONSULTATION

This Report is the initial stage in the consideration of a request for designation under the process approved by Council on October 29, 2008. Council does not have enough information at this time to determine whether it is in the public interest and/or community interest to conserve the property (see Legal Implications). The purpose of this Report is to provide staff with direction to complete further research and evaluation of the property in order to assemble the information for a later decision by Council. The owner will be contacted when consideration of the potential designation of the subject property is to be discussed, and would be notified of Council’s intent to designate and the passing of any By-laws under the public notification provisions of the Ontario Heritage Act. However, in keeping with Council’s intent in approving the designation process, it is recommended that the owner be forwarded a copy of this Report and advised of any further cultural heritage assessment work to be completed.

Staff will follow the Council-approved process (see Appendix “D”) and formally consult with the Hamilton Municipal Heritage Committee prior to inclusion of the subject property in the Register.
ANALYSIS / RATIONALE FOR RECOMMENDATION

39 Lakeview Drive (Stoney Creek)

The subject property is located at 39 Lakeview Drive (Stoney Creek), Part of Lot 16, Broken Front Concession, Township of Saltfleet. The Crown Patent for Lot 16, Broken Front Concession, Township of Saltfleet was granted to William Halton and registered in 1811. The lot originally comprised 30 acres. The 1875 Historical Atlas of Wentworth County does not show any structures on the property, while a structure is evident on the 1903 Imperial Atlas of Wentworth County when the property was owned by James Hill. Accordingly, the existing brick house was built sometime in the late 1800’s for James and Sarah Ann (Carpenter) Hill. The property currently comprises 0.52 acres. The building is a one-storey, brick structure with a shallow pitched hip roof, central entrance, and nine-over-nine double-hung windows on the front façade. Built in the Regency style, the building’s rear façade faces Lake Ontario.

Preliminary Evaluation - Ontario Regulation 9/06

Ontario Regulation 9/06 - Criteria for Determining Cultural Heritage Value or Interest provides criteria for determining cultural heritage value or interest under the Ontario Heritage Act. The regulation identifies three broad categories of criteria: Design or Physical Value, Historical or Associative Value, and Contextual Value, under which three subsets of criteria are further identified (see Appendix “E”). The following provides a preliminary evaluation using the criteria in Ontario Regulation 9/06:

1. **Design Value or Physical Value**

   The existing house is considered to have design and physical value as an example of Regency architecture demonstrated by the following architectural characteristics: one-storey with a rectangular building plan; shallow-pitched hip roof; and the symmetrically arranged front façade with central front entrance and flanking nine-over-nine double-hung windows.

2. **Historical Value or Associative Value**

   The property is considered to have historical and associative value as having being associated with the Hill and Carpenter families. Both families were early settlers and fruit farmers in Saltfleet Township.

3. **Contextual Value**

   The residence at 39 Lakeview Drive remains in its original location; however, its formerly rural surroundings have been altered, and the house is currently located on a densely developed residential street. Therefore, the property is not considered to have contextual value.
Conclusion

Staff concludes that the property located at 39 Lakeview Drive (Stoney Creek) is of potential cultural heritage value or interest, sufficient for the property to warrant inclusion in the City’s Register of Property of Cultural Heritage Value or Interest and further research and assessment for purposes of possible designation under the Ontario Heritage Act.

Work Program Priority

Staff recommends that further research and cultural heritage assessment work for 39 Lakeview Drive (Stoney Creek) be assigned a low priority within the staff work program. Staff recommends that this work is a low priority because the property does not appear to be subject to pressure for alteration, demolition, vacancy, or other threats to the cultural heritage value of the property that could be prevented or delayed by the provisions of the Ontario Heritage Act.

The assignment of a low priority to the subject designation request would place the research and preparation of a Cultural Heritage Assessment on the staff work program for 2017, and would not displace any of the existing priorities (see Appendix “F”).

ALTERNATIVES FOR CONSIDERATION:

The Ontario Heritage Act enables a Council to include properties that it believes to be of cultural heritage value in the municipal Register of Properties of Cultural Heritage Value or Interest. Council may decide not to include the subject property in the Register. If the property is not included in the municipal Register, then the municipality would be unable to protect the heritage resource from demolition and/or review any potential redevelopment. This alternative is not considered to be an appropriate conservation alternative.

Council may direct staff to not complete a Cultural Heritage Assessment, and no further work will be completed by staff. This alternative is contrary to the Council-approved process for considering requests for designation whereby legitimate requests for designation must be addressed, and cannot be dismissed without complete consideration of all the issues (see Legal Implications section of this Report).

Council may also assign a different work program priority than recommended by staff. Given the consideration of all the factors noted in the Analysis section of this Report, staff is of the opinion that the recommended work program priority is warranted.
CITY STRATEGIC COMMITMENT:


Skilled, Innovative, and Respectful Organization

- Council and SMT are recognized for their leadership and integrity.
- **Staff Comment:** The approval of the recommendations of this Report demonstrates Council’s commitment to the Council-approved designation process and to existing planning policies.

Intergovernmental Relationships

- Maintain effective relationships with other public agencies.
- **Staff Comment:** The approval of the recommendations of this Report demonstrates Council’s commitment to conserving cultural heritage resources, as directed by Provincial and Federal level policies.

Healthy Community

- Plan and manage the built environment.
- An engaged Citizenry.
- **Staff Comment:** The inclusion of this property in the Register will allow staff the opportunity to review any proposed demolition, new development, or re-development on or adjacent to the subject property to ensure consistency with the City’s approved planning polices. There is demonstrated public interest in the cultural heritage value of this property (past inclusion in the City’s Inventory and this request) and its conservation as a community resource. The approval of the recommendations of this Report acknowledges this public interest.

APPENDICES

- Appendix “A”: Request for Designation
- Appendix “B”: Location Map
- Appendix “C”: Historical Mapping and Photographs
- Appendix “D”: Council Approved Designation Process
- Appendix “E”: Ontario Regulation 9/06
- Appendix “F”: Requests to Designate Properties Under Part IV of the Ontario Heritage Act: Priorities (as amended by Report PED12047)

:MH/AMK
Attachs. (6)
February 12, 2011

Meghan House, MCIP, RPP
Cultural Heritage Planner
Planning and Economic Development Department
City of Hamilton
71 Main Street West, 6th Floor
Hamilton ON L8P 4Y5

Dear Meghan House,

I would like to request municipal designation under Part IV of the Ontario Heritage Act of the home located at 39 Lakeview Avenue, Hamilton, Ontario (which was formerly known as Fruitland, Ontario).

This house is a regency style home built in the mid-1800s by James and Sarah Ann (Carpenter) Hill. The Hill/Carpenter family were early fruit farmers in the community and descendents of the United Empire Loyalists.

If there is any further information that you require, please do not hesitate to contact me. My address and phone number are listed below.

Yours truly,

A. Suzanne Hill

Nepean, Ontario
K2J 5M8
Front (south) façade (dated 1991)

Front (south) façade (2011)
Garage on east side of house

Front (south) and side (east) façades
DESIGNATION PROCESS

Designation Initiated

Preliminary Staff screening property meets one or more of three Ontario Heritage Act (OHA) criteria

(Yes) Staff Report and Preliminary Screening To EDPC and Council for direction and prioritization

High Place on Current Year Work Plan Medium Place on Work Plan in 2-3 Years Low Place on Work Plan in 4-6 Years

Property placed in register after consultation with MHC

Full cultural heritage assessment prepared (full screening with City criteria and OHA criteria)

Assessment reviewed by Inventory and Research Subcommittees of the Municipal Heritage Committee

MHC consider staff assessment

MHC provides advice to EDPC via Staff report and recommendation

Staff Report, Cultural Heritage Assessment, Draft By-law and Statement of Cultural Heritage Value forwarded to EDPC for consideration

Council makes a decision on the proposed designation

(Yes) Proposed Designation approved Notice of intent to Designate served and advertised

(Yes) (Yes) Objection received within 30 days

(Yes) Proposed designation referred to Conservation Review Board (CRB)

CRB hearing and report

Council considers CRB report and recommendations

(No) Notice of Withdrawal

Designation by-law passed and registered on Title

Council Approved on October 29, 2008
Ontario Heritage Act

ONTARIO REGULATION 9/06

CRITERIA FOR DETERMINING CULTURAL HERITAGE VALUE OR INTEREST

Criteria

1.(1) The criteria set out in Sub-section (2) are prescribed for the purposes of Clause 29 (1) (a) of the Act. O. Reg. 9/06, s. 1 (1).

(2) A property may be designated under Section 29 of the Act if it meets one or more of the following criteria for determining whether it is of cultural heritage value or interest:

1. The property has design value or physical value because it:
   i. Is a rare, unique, representative or early example of a style, type, expression, material or construction method;
   ii. Displays a high degree of craftsmanship or artistic merit; or,
   iii. Demonstrates a high degree of technical or scientific achievement.

2. The property has historical value or associative value because it:
   i. Has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community;
   ii. Yields, or has the potential to yield, information that contributes to an understanding of a community or culture; or,
   iii. Demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.

3. The property has contextual value because it:
   i. Is important in defining, maintaining or supporting the character of an area;
   ii. Is physically, functionally, visually or historically linked to its surroundings; or,
   iii. Is a landmark. O. Reg. 9/06, s. 1 (2).
Requests to Designate Properties under Part IV of the *Ontario Heritage Act*:
Priorities (as amended by Report PED12047)

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<th>Year</th>
<th>Property</th>
<th>Date of Request</th>
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<td>2012</td>
<td>104 King Street West, Dundas (Dundas Post Office)</td>
<td>24-Sep-09</td>
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<tr>
<td>2012</td>
<td>71 Claremont Drive, Hamilton</td>
<td>28-May-09</td>
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<td>2012</td>
<td>167 Book Road, Ancaster</td>
<td>24-May-07</td>
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<td>2012</td>
<td>397 King Street West, Dundas (Dundas District High School)</td>
<td>24-May-07</td>
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<td>2012</td>
<td>82-112 King Street East, Hamilton (Royal Connaught)</td>
<td>09-Apr-08</td>
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<td>2013</td>
<td>52-56 Charlton Avenue West, Hamilton</td>
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<td>2013</td>
<td>91 John Street South, Hamilton</td>
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<td>2013</td>
<td>140 Locke Street South, Hamilton</td>
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<td>2013</td>
<td>3027 Homestead Drive, Mount Hope</td>
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<td>170 Longwood Road North, Hamilton</td>
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<td>2016</td>
<td>7 Ravenscliffe Avenue, Hamilton</td>
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