CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO: Chair and Members  
Economic Development and Planning Committee  
WARD(S) AFFECTED: WARD 11

COMMITTEE DATE: August 9, 2010

SUBJECT/REPORT NO:  
Request to Designate 1065 Highway 8 (Stoney Creek) Under Part IV of the Ontario Heritage Act (PED10169) (Ward 11)

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

PREPARED BY:  
Joseph Muller  
(905) 546-2424, Ext. 1214

SIGNATURE:

RECOMMENDATION:

(a) That Council direct staff to carry out a Cultural Heritage Assessment of 1065 Highway 8 (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 1065 Highway 8 (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 PED10169, and that staff make appropriate amendments to the Register of Property of Cultural Heritage Value or Interest.

(c) That if 1065 Highway 8 (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.

Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.
Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
(d) That the Cultural Heritage Assessment work be assigned a low priority, and be added to staff's workplan for completion in 2015, as per the attached Appendix “G” to Report PED10169.

(e) That Report PED10169 be forwarded to the Hamilton Municipal Heritage Committee for information and consultation, prior to the Council approved inclusion of 1065 Highway 8 (Stoney Creek) in the Register of Property of Cultural Heritage Value or Interest.

(f) That Report PED10169 be forwarded to the Owner of 1065 Highway 8 (Stoney Creek) for information.

EXECUTIVE SUMMARY

Staff has received a request to designate 1065 Highway 8 (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.

A request that the property located at 1065 Highway 8 (Stoney Creek) (see location map attached as Appendix “B”, and photographs attached as Appendix “C”) be designated under Part IV of the Ontario Heritage Act has been received. The two-storey brick residence formerly served as a detached coach house for the residence currently located at 1059 Highway 8 (Stoney Creek). This associated residence is designated under Part IV of the Ontario Heritage Act: (By-law 08-003).

A preliminary assessment of the property has been undertaken by staff using the criteria contained in Ontario Regulation 9/06. The property meets all three of the criteria and is considered to have design and physical value, historical and associative value, and contextual value.

Through this Report, staff recommends that the Economic Development and Planning Committee and Council direct staff to carry out a Cultural Heritage Assessment of 1065 Highway 8 (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 appropriate City departments will be consulted during the preparation of the Cultural Heritage Assessment and the staff Report.
Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.

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Alternatives for Consideration - See Page 9.

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:

This request to designate is being undertaken as a third party request (see Appendix “A”). The Owner’s consent is not a prerequisite for designation of a property under the Ontario Heritage Act. The role of the owner in a property designation was considered in Tremblay v. Lakeshore (Town), a 2003 Divisional Court decision where a group of parishioners successfully challenged, by means of judicial review, the Council of Lakeshore’s decision not to designate a church. 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. Further, the court found that the Council of Lakeshore had made the owner’s consent a condition of designation, effectively pre-empting any consideration of either the public interest or the community interest. In doing so, the Council actually fettered its discretion to make the designation decision, acting contrary to the Ontario Heritage Act.

Accordingly, a Council may decide, after considering all of the circumstances in regard to the particular property before it - including the staff Report, the Cultural Heritage Assessment, the Municipal Heritage Committee recommendation, and any other relevant submissions such as an owner’s objections - that it is in the public interest and/or community interest to conserve a property, despite objections by the owner.

In accordance with the designation process approved by Council on October 29, 2008, the purpose of this Report is to provide staff with initial direction to complete further research and evaluation of the property for a later decision by Council. At this stage of the designation process, the owner of the property has not been formally consulted by staff. Typically, a property owner is not consulted in the preparation of this Report, and Council does not yet have before it information with respect to the owner’s, public’s, or community’s interests. 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” (Subsection 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 request to designate the property located at 1065 Highway 8n (Stoney Creek), under Part IV of the *Ontario Heritage Act*, has been received (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 in the context of a four- to five-year timeframe. 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 2\textsuperscript{nd} or 3\textsuperscript{rd} year of the work program; or,

• A low priority would direct the request to the 4\textsuperscript{th} or 5\textsuperscript{th} 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.

The currently approved work program priorities (as amended in staff Report PED10006) are contained in Appendix “F”.

**POLICY IMPLICATIONS**

**Ontario Heritage Act**

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, a property 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” (Subsection 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.

Inclusion in the municipal Register of Property of Cultural Heritage Value or Interest requires that Council be given 60-days notice of the intention to demolish or remove any building or structure on the property, and the demolition and removal of any building or structure is prohibited during this time period.
Stoney Creek Official Plan

Official Plan policies of the former City of Stoney Creek (Subsections E.5.1, E.5.2) support the preservation, enhancement and or rehabilitation of cultural heritage resources. Possible future designation of 1065 Highway 8 (Stoney Creek) will be in accordance with these policies.

Urban Hamilton Official Plan

Section 3.4 - Cultural Heritage Resources Policies of the Council-adopted Urban Hamilton Official Plan (adopted by Council July 9, 2009) 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” (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” (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” (3.4.2.3). Although the Urban Hamilton Official Plan has not been approved by the Ministry of Municipal Affairs and Housing, and is not in effect, these policies demonstrate Council’s commitment to the identification, protection, and conservation of the cultural heritage resources.

RELEVANT CONSULTATION

This is the initial stage in the consideration of a request for designation under the process approved by Council on October 29, 2008. Typically, a property owner is not consulted in the preparation of this Report. Regardless of the owner’s acceptance or objection to designation, 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 be advised of any further 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.
1065 Highway 8, Stoney Creek

The residence municipally known as 1065 Highway 8 (Stoney Creek) is adjacent to and historically associated with the Carpenter house, a property designated under Part IV of the Ontario Heritage Act, located at 1059 Highway 8 (Stoney Creek). The subject property contains a former coach house, constructed in a rural vernacular style that served the adjacent Queen Anne style house from the late 19th century. Like the Carpenter house, the coach house was likely constructed by local builders. The precise date of construction is unknown, but early photos of the Carpenter house indicate that the coach house was likely constructed soon after the main residence. The buildings were originally located on the same property, but the portion on which the coach house is located was subsequently conveyed to an adjacent property, which also contains a road-side restaurant.

The coach house, now converted to a residential use, is an example of typical Ontario vernacular Queen Anne architecture, characteristic of rural construction in 19th century Stoney Creek. The two-storey square structure features a cross-gable roof, rising at 45 degrees, with gables spanning the full width of each facade. The lower storey has been re-clad with an angel-stone veneer in the 20th century, and the windows have been enlarged, but the original brick is visible on the upper halves of the walls. The original brick is slightly darker than that of the Carpenter house, implying construction at a different time. One-storey 20th century additions to the east and west facades contain new doors, windows, and a staircase that were not part of the original structure. The additions are covered in aluminum siding, and are easily distinguishable from the adjoining brick walls of the original coach house.

Preliminary Evaluation - Ontario Regulation 9/06

In 2006, the Province issued 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 contained in Ontario Regulation 9/06 - Criteria for Determining Cultural Heritage Value or Interest:

1. **Design Value or Physical Value:**

   The original massing of the former coach house at 1065 Highway 8 is largely intact, despite the partial installation of a stone veneer and several small additions. The existing sections of the original red brick walls and cross-gable roof exemplify the Ontario vernacular style commonly used for nineteenth-century accessory structures and rural dwellings. The original coach door and lower sections of the brick walls may also be intact, but are currently concealed.
by 20th century angel-stone cladding. Notwithstanding modern renovations, the overall shape and design of the structure may be considered to have design and physical value.

The one-story plaza style restaurant is a modern structure on the property that is situated approximately five metres to the east of the former coach house. A decorative treatment covers the exterior of the modern structure, which imitates traditional Chinese architecture. The majority of the property is paved for surface parking to accommodate the existing commercial use. Limited green space remains at the northern and eastern edges of the site. Despite its current design features, the modern addition does not contribute significant design or physical value.

2. **Historical Value or Associative Value:**

The former coach house served the Carpenter house at 1059 Highway 8, which is designated under the Ontario Heritage Act. Through a modern conveyance, the original coach house is now part of the neighbouring property, 1065 Highway 8. While somewhat altered today, the coach house building is visible in the early photographs of the homestead. Prior to the conveyance, the property was owned and used by the Carpenter family, and is associated with Thomas H. P. Carpenter, who played an important role in developing a Canadian fruit industry, as well as the general economy of Stoney Creek. The property is considered to have associative historical value.

The modern commercial structure at 1065 Highway 8 has no historical connection to the adjacent coach house or the Carpenter house at 1059 Highway 8. This structure does not appear to have any other historical or associative value.

3. **Contextual Value:**

The former coach house at 1065 Highway 8 remains in its original location, and its context relative to the Carpenter house has remained substantially unchanged. The brick façade and cross-gable roof demonstrates typical nineteenth-century rural architecture of Stoney Creek. The building’s former use and style link it to the neighbouring designated property. To the west, the property is considered to have contextual value, despite the modern structure located to the east.

**Conclusion**

Staff concludes that the property located at 1065 Highway 8 (Stoney Creek) is of potential cultural heritage interest, sufficient for the property to warrant 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 1065 Highway 8 (Stoney Creek) be assigned a low priority within the staff work program. Staff recommends that this work be given a low priority because the property has modest architectural heritage value, is not subject to any significant pressure for further alteration or loss, is actively occupied and maintained, and will not substantially deteriorate or face immediate threats without the protection of designation under the Ontario Heritage Act. No inquiries have been made for funding contingent on designation, and other designation requests are of higher priority for these reasons.

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 2015, and would not displace any of the existing priorities (see Appendices “F” and “G”).

ALTERNATIVES FOR CONSIDERATION:

Under Part IV of the Ontario Heritage Act, the designation of property is a discretionary activity on the part of Council. Council, as advised by its Municipal Heritage Committee, may consider two alternatives: agree to designate property, or decline to designate property.

Decline to Designate

By declining to designate, the municipality would be unable to provide protection to this heritage resource (designation provides protection against inappropriate changes and demolition). Without designation, the property would not be eligible for heritage grant and loan programs from all levels of government. Designation does not restrict the use of property, prohibit alterations and additions, nor does it restrict the sale of a property, or affect its resale value. Accordingly, staff does not consider this an appropriate conservation alternative. This alternative would not be in keeping with the “Triple Bottom Line”, and would not move the City closer to the vision for a sustainable community.

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.
CORPORATE STRATEGIC PLAN


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: There is demonstrated public interest in the cultural heritage value of this property and its conservation as a community resource. The approval of the recommendations of this Report acknowledges this public interest.

APPENDICES / SCHEDULES

• Appendix “A”: Request for Designation
• Appendix “B”: Location Map
• Appendix “C”: 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 PED10168)
• Appendix “G”: Requests to Designate Properties under Part IV of the Ontario Heritage Act: Priorities (as amended by Report PED10169)

:JB/JH
Attachs. (7)
From: [ ]  
Sent: Thursday, August 27, 2009 2:43 PM  
To: Muller, Joseph  
Subject: Request for Designation of 1063 Highway 8  

Joe, As you know my home was designed in 2008 and as I have discussed with you, I would like to put forth a request to have 1063 designated historical.

I purchased 1059 Highway 8 in 2003 and since then have invested a great deal in trying to restore the home to its former glory. Unfortunately there was an original parcel of the land to the east of the home that was severed. On that parcel stands the original coach house to the property of 1059. I would like to request that that portion where the coach house remains be designated historical in order to preserve its heritage. In these times, that severance would never have been allowed unfortunately in years past, the city did not have the same rules. At present the coach house property is owned and currently rents as a two unit apartment. My concern is as development all around me increases, that the land may be sold and destroyed to make way for new residential development. If deemed historical, it may prevent the current and future owners from destroying the building thereby preserving a valuable part of Stoney Creek/Winona history.

Please put forth my request and I thank you for your consideration.

Respectfully,  
Mary Stallbohm
Appendix "B" to Report PED10169

Location Map

File Name/Number:
1065 Highway 8

Date:
February 23, 2010

Subject Property:
1065 Highway 8, Stoney Creek

Ward 11 Key Map

N.T.S.
Residence of T.H.P. Carpenter, 1059 Highway 8, from the *Canadian Horticulturist*, 20: 4 (1897): 126. The coach house is visible in the background.

1065 Highway 8 - South elevation of the coach house, as altered today.
1065 Highway 8 - View from the northwest, from the property of 1059.

The location of the coach house, relative to the restaurant that also occupies 1065 Highway 8.
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 4-5 Years

(No)

Property does not move forward and person/body
that initiated request informed

(No)

Denial. Request does not move forward

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 Subcommittee
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)

Objection received within 30 days

Proposed designation referred to
Conservation Review Board (CRB)

CRB hearing and report

Council considers CRB report
and recommendations

Notice of Withdrawal

(No)

Proposed designation denied

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 Subsection (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 PED10168)

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<td>2014</td>
<td>262 MacNab Street North, Hamilton</td>
<td>18-Dec-08</td>
</tr>
<tr>
<td>2014</td>
<td>Desjardins Canal, Dundas</td>
<td>26-Feb-09</td>
</tr>
<tr>
<td>2015</td>
<td>1065 Highway 8, Stoney Creek</td>
<td>27-Aug-09</td>
</tr>
</tbody>
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