TO: Chair and Members Planning Committee  
WARD(S) AFFECTED: WARD 12  

COMMITTEE DATE: December 7, 2010  

SUBJECT/REPORT NO:  
Request to Repeal Former Town of Ancaster By-law No. 89-88, Being a By-law to Designate 1051 Old Mohawk Road (Ancaster), Under Part IV of the Ontario Heritage Act (PED10239) (Ward 12)  

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

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

SIGNATURE:  

RECOMMENDATION:  

(a) That Council refuse the application by Ms. Marilyn Steadman, owner of 1051 Old Mohawk Road (Ancaster) City of Hamilton, to repeal the former Town of Ancaster designating By-law 89-88, under Section 32 (1) of the Ontario Heritage Act.  

(b) That Report PED10239 be forwarded to the owner of the property for information.  

EXECUTIVE SUMMARY  

Staff has received a request from the property owner, Ms. Marilyn Steadman, to repeal the designation of 1051 Old Mohawk Road (known as “Craigleith”), under Part IV of the Ontario Heritage Act (see the letter from the owner attached as Appendix “A”, and the location map attached as Appendix “B”). The property was designated by the former Town of Ancaster on June 12, 1989, by By-law No. 89-88 (see Reasons for Designation attached as Appendix “C”). The following Report responds to the owner’s request to repeal the By-law, and provides a preliminary evaluation of the subject property using
the criteria contained in Ontario Regulation 9/06 (see Appendix "D") to determine if the property warrants continued designation under the current regulatory framework.

The subject property is located on the north side of Old Mohawk Road, northwest of the Mohawk Road/Golf Links Road interchange of the Lincoln Alexander Parkway (see Appendix “B”), and is a remnant portion of a 200-acre lot granted to Selah Stiles in 1789. The property was purchased by Samuel Hammill in 1801, and the existing 2-storey brick residence was built in 1870-71. Staff concludes that the property satisfies three of the criteria contained in Ontario Regulation 9/06 and continues to be of cultural heritage value, sufficient for the property to remain designated under the Ontario Heritage Act.

The property owner has not provided a written rationale for the request to repeal the By-law and has not provided any challenges to the cultural heritage value of the property. The Hamilton Municipal Heritage Committee considered this request on November 25, 2010, and recommended that Council refuse the owner’s request to repeal the designation. Accordingly, staff recommends that the Planning Committee and Council refuse the owner’s request to repeal the designation as the property remains of heritage value, and continues to warrant designation under the Ontario Heritage Act.

This recommendation is consistent with Council’s previous decision to deny the request to repeal the designation By-law by the owner of 11 Manor Place, Stoney Creek (PED10098).

**Alternatives for Consideration - See Page 9.**

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)**

Financial: None.

Staffing: None.

Legal: Section 32 (1) of the Ontario Heritage Act provides that an owner of property designated under Part IV may apply to the Council of the municipality to repeal the By-law, or part thereof. Council, after consultation with its Municipal Heritage Committee, shall consider an application, and within 90-days of receipt of the request shall: refuse the application; or consent to the application and cause notice of the intention to repeal the By-law to be served on the owner and the Ontario Heritage Trust, and publish notice of the intention to repeal the By-law in a newspaper of general circulation within the municipality.
Where Council refuses the application, the owner may, within 30-days after receipt of the notice of Council’s decision, apply to the Council for a hearing before the Conservation Review Board (CRB). Where Council consents to the application, any person may, within 30-days after the date of publication of the notice of intention to repeal the By-law, object to the repeal of a By-law, and the matter shall be referred to the CRB for a hearing. Following the hearing and considering the report of the CRB, Council shall make a final decision. Where Council refuses an application, the owner of the property may not re-apply to have the By-law revoked for a period of 12-months, except with the consent of Council.

HISTORICAL BACKGROUND (Chronology of events)

On November 5, 1988, the former Town of Ancaster LACAC agreed that the subject property should be designated under Part IV of the *Ontario Heritage Act*, and in a letter to the Mayor and Town Council, indicated that “the present owner, Mrs. Marilyn Steadman, has been consulted and is fully aware of the implication of designation”. The subject property was designated under the *Ontario Heritage Act* by the former Town of Ancaster on June 12, 1989, by By-law 89-88. The Reasons for Designation (see Appendix “C”) include the features of the main three exterior façades, as well as some interior features.

Subsequently, the property owner received two grants from the Town of Ancaster under the Designated Property Grant Program funded by the Ministry of Culture in the 1980-90’s. The owner received $3,000.00 in 1989 to replace the cedar shingles, and $2,502.67 in 1993 for painting the wood elements on the building.

The owner received approval of a Heritage Permit in May, 2010 (HP2010-038) for replacement of roofing and installation of wood windows to recreate the original windows. This approval was processed under the Delegated Approval process and was issued within one month of receipt of the application.

A written request by the property owner, Ms. Marilyn Steadman, for repeal of the designating By-law was received on October 26, 2010 (see Appendix “A”). The applicant did not provide any written rationale for the request to repeal or any information disputing the Reasons for Designation or the cultural heritage value of the property. The rationale for the request for repeal may be related to the cost of property insurance as this issue was verbally discussed with staff prior to the receipt of the written request to repeal the By-law.
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.

Section 32 (1) of the Ontario Heritage Act provides that an owner of property designated under Part IV may apply to the Council of the municipality to repeal the By-law or part thereof. Repeal of the designation, or a portion of the designation By-law, would not be in keeping with the overall conservation intent of the Ontario Heritage Act as there have been no alterations or other changes to the property that have diminished or otherwise impaired the cultural heritage value of the property or the attributes specified in the Reasons for Designation. The subject property meets the criteria of Ontario Regulation 9/06 - Criteria for Determining Cultural Heritage Value or Interest (see Appendix “D”).

Town of Ancaster Official Plan

A goal of the former Town of Ancaster’s Official Plan was “to conserve the heritage of the Town” (2.5.1). The objectives of the Official Plan were to “identify sites of architectural, historical or archaeological value” (2.5.2 (i)), “to designate individual properties of heritage value” (2.5.2. (ii)), and “to encourage the owners of heritage property to conserve those aspects of their property deemed to be of heritage value” (2.5.2. (iii)).

Urban Hamilton Official Plan

Section 3.4 - Cultural Heritage Resources Policies of the Council-adopted Urban Hamilton Official Plan (adopted 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**

The Hamilton Municipal Heritage Committee considered the owner’s request at their meeting of November 25, 2010, and recommended that the Planning Committee and Council refuse the owner’s request to repeal the designation By-law. Mr. Jeffrey Steadman, a representative of the owner, attended the Hamilton Municipal Heritage Committee as a delegation.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

(include Performance Measurement/Benchmarking Data, if applicable)

**Applicant’s Rationale for the Repeal of the Designating By-law**

The owner did not provide any written rationale for the subject request to repeal the designating By-law. However, typical objections to designation under the *Ontario Heritage Act* include: that designation has an adverse impact on the resale value of the property; that onerous approvals are required prior to changes and renovations (i.e. Heritage Permit); that there is not adequate funding available for owners of heritage properties; and, that property insurance is difficult to obtain and expensive.

Various studies have shown that the resale value of properties is not adversely impacted by heritage designation. A study of almost 3,000 properties in 24 Ontario communities, published in 2000, by Dr. Robert Shipley, concluded that “heritage designation could not be shown to have a negative impact [on property value]”, and heritage properties “generally perform well in the market, with 74% doing average or better than average”. There has been no decrease in the subject property’s value since designation in 1989. Municipal Property Assessment Corporation (MPAC) records, obtained via the Assessment Rolls by the Corporate Services Department, indicate that the property’s value has increased at the same rate, or at a slightly higher rate, than the municipal average for the period of 1996 to 2008.

A Heritage Permit is required under the *Ontario Heritage Act* prior to any alterations that are likely to affect the Reasons for Designation of the property. However, most Heritage Permits in the City are processed under the delegated approval process, where Council has delegated its approval authority to the Director of Planning, and this process is typically complete within one month of receiving the application. Staff recently processed a Heritage Permit for new wood windows and asphalt roofing on the subject

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property, and the Heritage Permit (HP2010-038) was issued within one month of receipt of the application.

This property has received grant funding in the past, and is currently eligible for the Hamilton Community Heritage Fund interest-free loan program.

Staff is aware that some insurance companies do not insure homes over a certain age, regardless of any heritage designations, or will refuse to insure specific properties for a variety of reasons unrelated to heritage designation. Often, the reasons that an insurance company refuses to offer insurance or increased premiums are related to non-heritage matters such as: out-dated wiring or heating systems, heating fuel storage, structural faults, and active wood burning fireplaces.

Staff has discussed the implications of heritage designation with several different insurance companies on the behalf of property owners, and the Ministry of Tourism and Culture (formerly Ministry of Culture) has produced a fact sheet entitled “Insurance and Heritage Properties” (see Appendix “E”). Generally, the insurance industry has a misperception that in the event of a catastrophic loss the building(s) would have to be replicated using the same materials and methods. However, once the heritage attributes of the property have been lost, the designation By-law does not obligate the owner to replicate those attributes that have been lost.

The owner of the subject property has indicated verbally that an inflated premium is being paid for property insurance and has attributed this to the heritage designation. Staff contacted the applicant’s insurance company to discuss this issue and were informed that the heritage status of the property was not an issue, but that the company was a “premium insurance company” that offered an enhanced level of service and coverage. Accordingly, the applicant’s insurance rate is not related to the property’s heritage designation and does not provide rationale for repealing the designation By-law.

**Preliminary Evaluation - Ontario Regulation 9/06**

In 2006, the Province issued criteria for determining cultural heritage value or interest under the Ontario Heritage Act, which must be satisfied if a property is to be designated. The regulation identifies three broad categories: Design or Physical Value, Historical or Associative Value, and Contextual Value, under which three subsets of criteria are further identified (see Appendix “D”). 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 portion of the property that is included in the heritage designation comprises a 2-storey brick house built in 1870-1871 (see photographs in Appendix “F”). The design of the house features several characteristics of the Italianate-style, including a square plan, low-pitched roof, symmetrical arrangement of openings, wide overhanging eaves with pendant brackets, and a round-headed blind window. The house also features a front centre gable with eave returns, four brick chimneys (three chimneys mentioned in Reasons for Designation), etched-glass transom and sidelights around the front entrance, and flat windows with stone lintels and slipsills. The original veranda, window sashes, shutters, and a gable finial have been removed.

   Staff has not observed the interior of the house, but the Reasons for Designation include the French doors on the ground floor, the main stairway, the servant's stairway, the fireplace mantels in the dining room and the master bedroom, and the original wide pine plank floors.

   Accordingly, the existing house meets Criteria 1(i) and 1(ii) as a representative example of vernacular design and construction, and also for displaying a high degree of craftsmanship.

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

   The Crown Patent for Lot 52, Concession 2 (200 acres) was granted to Selah Stiles in 1789 (see historical maps in Appendix “F”). The entire 200 acres was purchased by Samuel Hammill in 1801, and passed on to Thomas Hammill. Thomas Hammill, his wife Mary Aikman, and their nine children lived on a homestead on Lot 52, likely located in the same location as the existing house.

   Just prior to his death, Thomas Hammill sold the property to his daughters, Hannah Aikman Hammill Kern (married to William Kern) and Sarah Regen (widow of James Regen) to clear his debt and secure the family homestead for his wife. Subsequently, the current house was built to house Hammill’s widow (Mary Aikman), the widowed sister (Sarah Regen), and the Kerns.

   Construction on the house began in October, 1870, and it was completed in mid-1871. The two families originally occupied the house together until 1876 when the Kerns moved into Ancaster and built a cottage on Halson Street. Hannah likely returned to live with her sister following William Kern’s death in 1882. Sarah's sons, J.T.H. and Frank Regen, each received a half of the property in her will, and eventually J.T.H. Regen gained title to the entire farm.
Charles Counsell, a bank manager in Hamilton and grandson of George Leith, bought the property in 1910 and named the house “Craileith” after the Leith family homestead at Woodburn in Binbrook Township.

Subsequently, the property was sold and subdivided several times. The house became a rental property and fell into disrepair. In the mid-1980’s, the house was restored by Ron Kelley, a descendent of the Hammill family, and his wife Marguerite. The current owner, Marilyn Steadman, was the owner of the property when it was designated under the Ontario Heritage Act in 1989.

Accordingly, the property meets Criteria 2(i) and 2(ii), as it has historical associations with the prominent and significant local families of Hammill, Aikman and Leith, and is also associated with the early development of the Township of Ancaster.

3. **Contextual Value:**

The subject property currently comprises 0.69 acres, containing a house, a semi-circular driveway and yard areas. The house was originally located on a 200 acre-lot (see historical maps in Appendix “F”) and the property remained a large agricultural parcel along Mohawk Road until the 1980’s. The construction of Highway 403 and the Lincoln Alexander Parkway has disconnected this property from the Town of Ancaster, and the surrounding areas have been developed for suburban residential and commercial uses. The existing house remains in its original location on a slight rise of land, and there is open space to the rear of the property. However, the original extent of the property has been considerably reduced and there are no associated farm buildings or structures remaining. The house is currently located within a suburban context, and its original setting has been altered.

Despite that the context of the existing house has been significantly altered, the property meets Criteria 3(ii), as it is physically and historically linked to its original location and surroundings.

**Conclusion**

Staff concludes that the property, located at 1051 Old Mohawk Road, Ancaster (known as “Craileith”), satisfies three of the criteria categories (five of the criteria sub-sets) and continues to be of cultural heritage value, sufficient for the property to remain designated under the Ontario Heritage Act.
ALTERNATIVES FOR CONSIDERATION:
(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Repeal the designation By-law - Council may agree to repeal the designation By-law. This alternative would satisfy the owner’s request, but is not consistent with the conservation intent of the Ontario Heritage Act and the City’s planning policies as the property continues to be of cultural heritage value.

Repeal a portion of the designation By-law - Council may agree to repeal a portion of the designation By-law (e.g. the interior features). However, the owner has not indicated any specific concerns with the scope of the Reasons for Designation, and staff is of the opinion that without further research and justification this would not be an appropriate strategy for mitigating the owner’s objections to designation.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)


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 polices with respect to conserving significant cultural heritage resources.

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 significant cultural heritage resources, as directed by provincial and federal level policies.

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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”: Owner’s Request
• Appendix “B”: Location Map
• Appendix “C”: Reasons for Designation
• Appendix “D”: Ontario Regulation 9/06 - Criteria for Determining Cultural Heritage Value or Interest
• Appendix “E”: Insurance and Heritage Properties, Ontario Ministry of Culture
• Appendix “F”: Maps and Photographs

MH
Attachs. (6)
October 20, 2010

City of Hamilton,
71 Main Street West,
P.O. Box 2040,
Hamilton, Ontario
L8P 4Y5

Attention: Joseph Muller,
Cultural Heritage Planner

Dear Sirs:

Re: De-designation of Heritage Designation
1051 Old Mohawk Road, Ancaster

I am the registered owner of 1051 Old Mohawk Road, Ancaster.

I hereby apply to de-designate my property under Part 4 of the Ontario Heritage Act.

Kindly advise as to when this will be complete.

Yours truly,

Marilyn J. Steadman
REASONS FOR DESIGNATION

The dwelling municipally known as 1051 Old Mohawk Road, in the Town of Ancaster, has very historic and architectural value and interest. It is an attractive two storey brick home, built in 1870-1871, and is finished in a modest Italianate style. The basic elements of the Italianate style, square plan, two storey height, low pitched hip roof, round headed blind window, brackets and wide overhanging eaves, can all be found on the house. At the same time, however, it lacks the ornate details and exuberant style of many Italianate houses. Since its basic outline and reserved spirit is one more common in the Town, it can be classed as a local or vernacular style, which characteristically includes Italianate details.

Without restricting the generality of the foregoing, the reasons for this Council designating the described premises include the intention that the following features of the described premises should be preserved, that is:

(a) Low pitched hip roof;  
(b) Round headed blind window;  
(c) Wide overhanging eaves and verges supported by moulded drop/pendant brackets;  
(d) Brick walls laid in common bond with the exception of the rear wall;  
(e) Centre gable with neo-classical eave returns;  
(f) Moulded frieze board;  
(g) Three original single stack brick chimneys offset on right and left sides of the roof (two on right, one on left);  
(h) Front door set in a recessed surround of transom and side-lights;  
(i) Three bay main façade;  
(j) Stone slipsills and large flared stone lintels;  
(k) Original ground floor double leaf French doors with four large panes of glass each;  
(l) The main stairway, including the banister, newel posts and associated original woodwork;  
(m) The servants’ stairway, including associated original woodwork;  
(n) Original fireplace mantels now located in dining room and master bedroom; and,  
(o) Original wide pine plank floors, but

Council has no intention that any alteration, maintenance, repair, replacement, or improvement of elements of the premises requires the prior written consent of this Council unless such affect the reasons for the designation of the premises as described in Paragraphs (a) to (o) herein.
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).
Insurance and Heritage Properties

Will heritage designation make my property insurance premiums go up?

Your premiums should not go up as a result of a heritage designation. A variety of other reasons cause insurance companies to increase premiums for older buildings. Such risks include, for example, aging structures, outdated wiring, or problems with heating systems. In fact, some companies do not insure buildings over a certain age. Designation itself, however, does not place additional requirements on the insurer and therefore should not affect your premium.

What happens if a building is destroyed by fire, or some other accident? Would it have to be rebuilt as it was?

The intent of designation is to preserve the historic, physical, contextual or other community heritage value of a property. If a building on a heritage property is completely or partially destroyed, the designation by-law does not oblige the owner to replicate any lost heritage attributes. A replacement building, for example, can be of a different design.

What if I want the original features of my property to be replicated in case of damage?

If this is what you want, make sure you’re properly covered. Insurance coverage for this depends on the degree of risk you and your insurance company are prepared to share. The age, quality and condition of your building will affect what coverage is available and the premium charged.

“Replacement cost” coverage requires prior insurance appraisal of the building. It generally provides for the property to be repaired or replaced with like kind and quality up to the amount stated in the policy. If available, guaranteed replacement cost coverage can provide for replication of original historical detailing and other important features that have been lost or damaged – whether or not a property is designated. Some insurance companies even offer a special type of “by-law endorsement” coverage. If you have a designated property, it is advisable to share your designation by-law with your insurer in order to be certain that heritage attributes are properly covered by your policy.

You can also obtain coverage for “actual cash value” (ACV). The ACV is the calculated cost of replacing the property with something of like kind after taking depreciation into account. When you arrange the insurance, be sure to speak with your insurance representative about the basis of your claims settlement. It is important to understand what you can expect if the building were to be completely or partially destroyed by an insured peril.

As with any insurance plan, it’s best to research the various insurance providers in order to find the most competitive rate and best service from your insurer.

If you have further questions, you can contact the Insurance Bureau of Canada Consumer Information Centre at 416-362-9538 or 1-800-387-2880 (Direct Line). Consumer Office(s) available Mon to Fri. 8:00 am to 6:00 pm. Voice mail is available 24 hr.

What is heritage designation?

Designation is a way for owners to express pride in the heritage value of their property, and for the community to protect and promote awareness of its local history. The Ontario Heritage Act enables municipalities to designate properties of cultural heritage value or interest through a by-law.

Designation can apply to individual properties or to a whole neighbourhood or district. If a property or district is designated, it gains public recognition as well as protection from demolition or unsympathetic alteration so that the heritage attributes of the property can be conserved.

If my property is designated, do I have to restore the property to its original design or appearance?

Heritage designation does not require you to restore your building to its original appearance. Restoring as much of the property that is considered important, and council approval is required for changes that will affect those attributes.

If you want to restore any lost or missing features, you should discuss your project first with the Municipal Heritage Committee or appointed municipal staff person. They can best advise on the proposed work and its likely impact on your property — especially if this involves the removal of any important feature from a later period.

Do I need permission for general maintenance?

General maintenance work, such as repainting of exterior trim, replacement or repair to an existing asphalt roof, or alterations and repairs to property features that are not covered by the designation by-law do not usually require heritage approvals. However, you may still need a building permit. Check with your local building department.

Who decides whether the work is acceptable or not?

Council is responsible for deciding on applications for a heritage permit unless this power has been delegated to municipal staff. Normally the Municipal Heritage Committee will review applications for changes to the property and provide advice to staff and council. Staff and committee members can advise you on how to ensure that the changes you want to make won’t detract from the property’s heritage attributes.
Front (south) façade

Side (east) façade
Rear (north) façade

Side (west) façade
Illustrated Historical Atlas of Wentworth County, 1875.

Imperial Atlas of Wentworth County, 1903