



**CITY OF HAMILTON**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Planning Division**

<b>TO:</b>	Chair and Committee Members Hamilton Municipal Heritage Committee
<b>COMMITTEE DATE:</b>	August 20, 2020
<b>SUBJECT/REPORT NO:</b>	Designation of 1389 Progreston Road, Carlisle (Flamborough), (Evergreen Farm) under Part IV of the <i>Ontario Heritage Act</i> (PED20125) (Ward 15)
<b>WARD(S) AFFECTED:</b>	Ward 15
<b>PREPARED BY:</b>	Miranda Brunton (905) 546-2424 Ext. 1202
<b>SUBMITTED BY:</b>	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
<b>SIGNATURE:</b>	

### RECOMMENDATION

- (a) That maintenance of the designation of 1389 Progreston Road, Carlisle (Flamborough), (Evergreen Farm) shown in Appendix “A” to Report PED20125, as a property of cultural heritage value pursuant to the provisions of Part IV of the *Ontario Heritage Act*, be approved;
- (b) That the Statement of Cultural Heritage Value or Interest and Description of Heritage Attributes, attached as Appendix “B” to Report PED20125, be approved;
- (c) That the City Clerk be directed to take appropriate action to continue with the designation of 1389 Progreston Road, Carlisle (Flamborough) (Evergreen Farm) under Part IV of the *Ontario Heritage Act*, in accordance with the Notice of Intention to Designate, attached as Appendix “D” to Report PED20125.

### EXECUTIVE SUMMARY

The purpose of this report is to provide the Hamilton Municipal Heritage Committee (HMHC) with a chronology of events leading to the designation of the subject property,

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OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

**SUBJECT: Designation of 1389 Progreston Road, Carlisle (Flamborough),  
(Evergreen Farm) under Part IV of the *Ontario Heritage Act*  
(PED20125) (Ward 15) - Page 2 of 10**

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provide the HMHC an opportunity to discuss the designation and to confirm whether the property should be designated.

The subject property, located at 1389 Progreston Road, Carlisle (Flamborough), referred to as 'Evergreen Farm' is comprised of a mid-nineteenth century frame house, detached bank barn, drive shed and stone rubble ruins from a Mill on an irregularly-shaped, approximately 4.52 hectare property.

In September of 2019, in response to concerns that the heritage resources on the property could potentially be removed for new development as indicated by the Realtor's listing, the Inventory and Research Working Group recommended that Evergreen Farm be added to the City of Hamilton's Municipal Register of Properties of Cultural Heritage Value or Interest (the 'Register'). Following approvals of the recommendation from Planning Committee and Council, the property was added to the Register on December 11, 2019. However as there was an existing demolition application for the property that predated the addition to the Municipal Register, the property was not subject to the 60-day protection generally afforded to properties that are listed on the Municipal Register.

On April 21, 2020 a demolition permit was issued for the subject property. On April 22, 2020, the Committee of the Whole approved the Councillor's motion to designate the property. The Notice of Intention to Designate the subject property was issued on April 23, 2020 which voided all building and demolition permits issued for the subject property. Due to COVID-19 precautions, all meetings for the HMHC were cancelled and Council was not able to consult with the HMHC prior to issuing the Notice of Intent to Designate. Staff's cultural heritage evaluation of the subject property determined that the subject property has design/physical value, historical/associative value and contextual value, and meets five (5) of the nine (9) criteria for designation set out in Ontario Regulation 9/06.

On May 8, 2020, the City of Hamilton received a Notice of Objection to the proposed designation of the subject property from the property owner (attached as Appendix "E" to Report PED20125) The reasons given, amongst others, were that the house did not meet any of the prescribed criteria in Regulation 9/06 for determining cultural heritage value or interest including: no design value or interest, no physical value, no historical or associative value and no contextual value.

**Alternatives for Consideration – See Page 9**

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: N/A

**SUBJECT: Designation of 1389 Progreston Road, Carlisle (Flamborough), (Evergreen Farm) under Part IV of the *Ontario Heritage Act* (PED20125) (Ward 15) - Page 3 of 10**

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Staffing: N/A

Legal: Due to COVID-19 and the cancellation of all public meetings hosted by the City of Hamilton, Council was not able to consult with the Hamilton Municipal Heritage Committee prior to issuance of the Notice of Intention to Designate. Formal objections may be made under the *Ontario Heritage Act*, and heard before the Conservation Review Board, prior to further consideration by Council of the designation By-law.

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" (Sub-section 33(1)). Designation does not restrict the use of a property. Designation does not mean alterations, additions, or demolition of a property could never take place. However, a Heritage Permit is required for any alterations to an identified heritage attribute of a designated property. The City of Hamilton also provides heritage grant and loan programs to assist in the continuing conservation of properties, once they are designated.

## **HISTORICAL BACKGROUND**

A summary of events leading up to and following the designation of 1389 Progreston Road, Carlisle (Flamborough), is provided below:

Date	Summary of events
1991	1389 Progreston Road, Carlisle (Flamborough), referred to as Evergreen Farms, was first identified by the Local Architectural Conservation Advisory Committee (LACAC) during their 1991 Historical building Survey of the Town of Flamborough and included on the Inventory.

**SUBJECT: Designation of 1389 Progreston Road, Carlisle (Flamborough),  
(Evergreen Farm) under Part IV of the *Ontario Heritage Act*  
(PED20125) (Ward 15) - Page 4 of 10**

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July 27, 2018	Owner applies for a site plan waiver for property because Core Natural Heritage features exist on the property. The site plan waiver was issued, on the basis that the owner had obtained all necessary permits and approvals from the Conservation Authority; however, heritage status was not considered as part of this review.
July 27, 2018	The owner submits multiple building permit applications for the property, these include a permit for the demolition of the existing house and a new septic system and waterline from well for the new house.
August 14, 2018	Review letter for demolition permit issued with a list of outstanding items (deficiencies) needed prior to issuance. These included the disconnection of utilities and owner agreement form (an owner agreement form is a commitment from the owner to rebuild within two (2) years and to obtain a building permit prior to demolition).
August 17, 2018	The owner submits a building permit application for a new house.
September 4, 2018	Review letter for building permit application sent with list of outstanding items. These included a requirement for verification from Conservation Halton and nine (9) building code items to be addressed.
May, 2019	Applications to extend building and demolition permit applications granted.
Summer 2019	The property is listed for sale during the summer, the listing advertised plans for a new house on the property.
September 20, 2019	Members of the Inventory and Research Working Group (IRWG), of the Hamilton Municipal Heritage Committee, noticed the property was listed for sale and became concerned about the future of the heritage resource on the property. Preliminary analysis by IRWG found that the property met the criteria specified for designation as defined in Ontario Regulation 9/06, recommending that the property be added to the Municipal Register and to Staff's Designation Work Plan.
October, 2019	Applications to extend building and demolition permit applications granted.

**SUBJECT: Designation of 1389 Progreston Road, Carlisle (Flamborough),  
(Evergreen Farm) under Part IV of the *Ontario Heritage Act*  
(PED20125) (Ward 15) - Page 5 of 10**

November 1, 2019	Courtesy letter mailed to property owner notifying that there was a request to add the property to the Register (refer to Appendix "C" to Report PED20125).
November 21, 2019	Hamilton Municipal Heritage Committee reviews IRWG's recommendation to add the property to heritage register and forwards it to the Planning Committee.
December 3, 2019	Planning Committee reviews recommendation to add property to the Register and forwards this to Council.
December 11, 2019	Council ratified the recommendation, directing staff to add the subject property to the Municipal Register. Although the subject property was added to the Municipal Register at this time, there was an open demolition permit application for the subject property dating back to 2018. As the open application predated the addition to the Municipal Register, the property was not subject to the 60-day protection generally afforded to properties that are listed on the Municipal Register.
April 21, 2020	A demolition permit was issued for the one-and-one-half storey wood-frame home constructed circa 1870 located at 1389 Progreston Road, Carlisle. A new septic and waterline permit and building permit for the construction of a new residence was also issued.
April 22, 2020	Committee of Whole (COW) meeting. Ward Councillor brought forward a motion to Designate the subject property (refer to Appendix "D" to Report PED20125). COW approved the motion directing the issuance of the Notice of Intention to Designate. Due to Covid-19 precautions, City Hall was closed and all other committee meetings were cancelled, including the Hamilton Municipal Heritage Committee. As such, Council was unable to consult with the Heritage Committee prior to approving the designation of the subject property.
April 23, 2020	Notice of Intention to Designate the subject property was issued in the newspaper (Hamilton Spectator) (refer to Appendix "E" to Report PED20125).
April 23, 2020	Property owner served with the Notice of Intention to Designate in the form of a letter via registered mail and through email. The Ontario Heritage Trust was also provided with the Notice of Intention to Designate via registered mail.

**SUBJECT: Designation of 1389 Progreston Road, Carlisle (Flamborough),  
(Evergreen Farm) under Part IV of the *Ontario Heritage Act*  
(PED20125) (Ward 15) - Page 6 of 10**

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April 23, 2020	Following issuance of the Notice of Intention to Designate, all existing building and demolition permits for the subject property were void in accordance with s. 30 of the <i>Ontario Heritage Act</i> . This include the demolition permit and the septic, waterline, and new building permits.
April 30, 2020	Notice of Intention to Designate, with Statement of Cultural Heritage Value or Interest, was published on the City of Hamilton webpage.
May 8, 2020	The City of Hamilton received a Notice of Objection from the property owner (refer to Appendix “F” to Report PED20125). The objection cites defects in the Notice of Intent to Designate such as failure to consult with the Hamilton Municipal Heritage Committee as required. The objection also contains opinion evidence from consultants hired by the owner stating that there are insufficient grounds for designating the property.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

### **Provincial Policy Statement:**

Section 2.6 of the Provincial Policy Statement pertains to Cultural Heritage and Archaeology and the following section applies, amongst others:

“2.6.1 Significant built heritage resources and significant cultural heritage landscapes shall be conserved.”

The actions of Council and the recommendations of Report PED20125 are consistent with this policy as the property’s designation under Part IV of the *Ontario Heritage Act* would formally protect the built heritage resources located at 1389 Progreston Road, Carlisle (Flamborough).

### **Greenbelt Plan:**

Section 4.4.1 of the Greenbelt Plan pertains to Cultural Heritage:

“4.4.1 *Cultural heritage resources* shall be *conserved* in order to foster a sense of place and benefit communities.”

The action of Council and recommendations of Report PED20125 comply with this section of the Greenbelt Plan as the property is recommended for designation in order to formally protect and conserve the tangible built heritage of 1389 Progreston Road,

**SUBJECT: Designation of 1389 Progreston Road, Carlisle (Flamborough),  
(Evergreen Farm) under Part IV of the *Ontario Heritage Act*  
(PED20125) (Ward 15) - Page 7 of 10**

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Carlisle (Flamborough) for the community.

**Rural Hamilton Official Plan:**

Volume 1, Section B.3.4 - Cultural Heritage Resources Policies of the Rural Hamilton Official Plan (RHOP) provides direction in the management of cultural heritage resources. The following policies are applicable to the recommendations in Report PED20125:

- “B.3.4.2.1 (a) Protect and conserve the tangible cultural heritage resources of the City, including archaeological resources, built heritage resources, and cultural heritage landscapes for present and future generations.
- B.3.4.2.1 (b) Identify cultural heritage resources through a continuing process of inventory, survey, and evaluation, as a basis for the wise management of these resources.
- B.3.4.2.3 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*, including buildings, properties, cultural heritage landscapes, heritage conservation districts, and heritage roads or road allowances.”

The action of Council and recommendations of Report PED20125 comply with these policies as the property is recommended for designation in order to formally protect and conserve the tangible built heritage of 1389 Progreston Road, Carlisle (Flamborough).

**RELEVANT CONSULTATION**

As outlined in the *Ontario Heritage Act* Section 9(2), [w]here the council of a municipality has appointed a municipal heritage committee, the council shall, before giving notice of its intention to designate a property under subsection (1), consult with its municipal heritage committee”. In normal “pre-covid-19” circumstances, the Hamilton Municipal Heritage Committee would have been consulted prior to Council ratifying a decision to designate a property. However, following direction from the Provincial Government regarding the novel coronavirus (COVID-19) pandemic, City Council closed all Municipal facilities and cancelled all public meetings, including Hamilton Municipal Heritage Committee meetings. As such, Council was not able to consult with the Hamilton Municipal Heritage Committee prior to the issuance of the Notice of Intention to Designate for the subject property.

**ANALYSIS AND RATIONALE FOR RECOMMENDATION**

The intent of municipal designation, under Part IV of the *Ontario Heritage Act*, is to enable a process for the management and conservation of cultural resources. Once a property is designated, the municipality is enabled to manage change and alterations to the property through the Heritage Permit process and to ensure that the significant features of the property as identified in the designation by-law are maintained through the provision of financial assistance programs and the enforcement of Property Standards By-laws.

Ontario Regulation 9/06: Criteria for Determining Cultural Heritage Value or Interest:

Section 29 (1) of the *Ontario Heritage Act* permits the Council of a municipality to designate property to be of cultural heritage value or interest where property meets the criteria prescribed by Provincial regulation. In 2006, the Province issued Ontario Regulation 9/06: Criteria for Determining Cultural Heritage Value or Interest. According to Sub-section 1 (2) of Ontario Regulation 9/06, a property may be designated under Section 29 of the *Ontario Heritage Act* where it meets one or more of the identified criteria. Ontario Regulation 9/06 identifies criteria in three broad categories: Design/Physical Value, Historical/Associative Value and Contextual Value.

Research from IRWG's preliminary evaluation and additional research by the Heritage Planner informed the following reasons for designation:

1. Design / Physical Value:

The *physical and architectural design* of the house has merit as it is an interesting example of historic preservation through the incorporation of an existing building into a new build. Additionally, the house is a rare example of a vernacular residence influenced by the Gothic Revival style and is a rare example of a remaining farmstead in the Flamborough area with intact house and bank barn.

2. Historical / Associative Value:

The property has important *historical associations* as its first owners, James Kievel then Freeman Green, were associated with the establishment and early development of Progreston. Freeman Green's Woolen Mill, formerly located on the property, was an important pillar in the local economy.

3. Contextual Value:

The property has *contextual value* in defining the historic character of the Carlisle



settlement area. It is functionally linked to its surroundings and considered a local landmark. The property is prominently situated on Bronte Creek and is associated with prominent members of the local community, namely James Kieval and Freeman Green.

### Conclusion

It was determined that the subject property has design/physical value, historical/associative value and contextual value meeting five (5) of the nine (9) criteria as defined in Ontario Regulation 9/06. For the reasons for designation summarized above, and further outlined in the Statement of Cultural Heritage Value or Interest in Appendix "B" to PED20125, staff support its designation.

### **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 may generally consider two alternatives: agree to designate property or decline to designate property.

In this instance as Council has already issued a Notice of Intent to Designate, the Committee could recommend that Council proceed with the designation as issued, the current recommendation of Report PED20125, withdraw the current designation and issue a new and modified designation, or that it withdraw the designation completely.

#### **1) Withdraw current designation and issue a new and modified designation**

After reviewing Report PED20125 and the Statement of Cultural Heritage Value and Description of Heritage Attributes for the subject property (attached as Appendix "B" to Report PED20125), the HMHC may recommend changes to the Statement of Cultural Heritage Value or Heritage Attributes. This would require the current Notice of Intention to Designate to be withdrawn and a new Notice of Intention to Designate be issued with the Statement of Cultural Heritage Value and Description of Heritage Attributes.

#### **2) Withdraw designation**

In withdrawing the designation, without issuing a new designation, the municipality would be unable to provide long-term, legal protection to this significant heritage resource. Designation provides protection against inappropriate alterations, new construction and demolition. Withdrawing the designation of the property will likely result in demolition of the building.

Furthermore, without designation, the property would not be eligible for the City's heritage grant and loan programs. 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.

## **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

### **Clean and Green**

*Hamilton* is environmentally sustainable with a healthy balance of natural and urban spaces.

### **Built Environment and Infrastructure**

*Hamilton* is supported by state of the art infrastructure, transportation options, buildings, and public spaces that create a dynamic City.

### **Culture and Diversity**

*Hamilton* is a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.

## **APPENDICES AND SCHEDULES ATTACHED**

- Appendix “A” - Location Map
- Appendix “B” - Statement of Cultural Heritage Value or Interest and Description of Heritage Attributes
- Appendix “C” - Letter to Owner - Register Addition
- Appendix “D” - Excerpt from City Council Minutes 20-008
- Appendix “E” - Notice of Intention to Designate
- Appendix “F” - Notice of Objection