



CITY OF KINGSTON
INFORMATION REPORT TO KINGSTON MUNICIPAL
HERITAGE COMMITTEE

Report No.: KMH-07-011

TO: Chair, Kingston Municipal Heritage Committee
FROM: Denis Leger, Commissioner, Corporate Services
RESOURCE STAFF: Hal Linscott, Director of Legal Services & City Solicitor
Mark Van Buren, Director Engineering Department
DATE OF MEETING: 2007-11-12
SUBJECT: Regent Street Barriefield – Information Update

EXECUTIVE SUMMARY:

This information report results from the following motion from the August 13th Meeting of the Kingston Municipal Heritage Committee:

“That the Legal Department be requested to provide an update regarding the status of the Lower Regent Street Hill, Barriefield at the 10th September meeting further to previous concerns expressed by the Committee and Direction provided by City Council at the 20th September 2005 meeting.”

The resolution of the Council meeting of September 20th 2005 is as follows;

WHEREAS the lower Regent Street hill road allowance has been an integral part of Barriefield's historic landscape, street and pedestrian pathway since the founding of the Village; and

WHEREAS the heritage values of retaining and protecting this specific heritage landscape feature is identified in the Barriefield Heritage Conservation District Plan; and

WHEREAS the Official Plan for Pittsburgh Township assures the preservation of such features and their protection where public works are undertaken; and

WHEREAS amendments to the Ontario Heritage Act support the protection of landscapes features that are identified in a heritage conservation district plan when public works are undertaken; and

WHEREAS questions have arisen concerning both public and private works within this road allowance that have compromised the pathway and other heritage features,

THEREFORE BE IT RESOLVED THAT the Municipal Heritage Committee recommends to Council that the Regent Street hill road allowance should continue to be held in public ownership,

- and further -

THAT a plan should be implemented by the City in the 2006 budget for restoring and maintaining these heritage landscape features including the public path on the Regent Street hill,



- and further -

THAT public involvement in maintaining and enhancing these features should be encouraged.

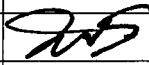
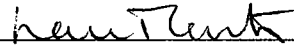

RECOMMENDATION:

This report is for information purposes only.

AUTHORIZING SIGNATURES:

 Denis Leger, Commissioner of Corporate Services
 Glen Laubenstein, Chief Administrative Officer

CONSULTATION WITH THE FOLLOWING COMMISSIONERS:

Commissioner Beach, <i>Sustainability & Growth</i>	N/R
Commissioner Segsworth, <i>Public Works & Emergency Services</i>	
Commissioner Hunt, <i>Finance & Corporate Performance</i>	N/R
Commissioner Thurston, <i>Community Development Services</i>	
Commissioner Leger, <i>Corporate Services</i>	N/R
Jim Keech, President, <i>Utilities Kingston</i>	

(N/R indicates consultation not required)

November 12, 2007

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OPTIONS/DISCUSSION:

An update has been requested regarding the Lower Regent Street hill in Barriefield.

The original subdivision agreement for Greenbay Estates, dated December 5th, 1992 included a path along the back of Lot 5 from near the top of the unopened Regent Street road allowance to the lower level at Greenbay Road (see Exhibit "A", a reduction of the original subdivision proposal, which illustrates this concept). There were steps recommended at either end with retaining wall features. During final construction in 2002 changes were implemented to the Landscaping Plan and approved by the Planning Committee. The proposal was altered to include stairs created from stone and the retaining walls were eliminated. Exhibit "B" is a reduction of the approved revised plan which has now been constructed. The changes were a joint recommendation of neighbours, the Heritage Committee, the Developer and staff. No new path from the top of the unopened road allowance to the bottom of the unopened road allowance was identified to be constructed during construction of the subdivision.

Some time before 2004, a complaint was received by the City's Operations Division regarding the overgrowth of weeds etc. on the unopened Regent Street right of way. An additional complaint also arose in that same timeframe that during heavy rain events, the upper portion of the hill was experiencing erosion in close proximity to a neighbouring house. As a result, City staff undertook to remove the brush and lay granular material to reduce the erosion. The placement of rock rubble has effectively curbed the erosion situation.

Within the unopened road allowance is existing municipal infrastructure including a watermain and a sanitary sewer. Staff would not recommend declaring these lands surplus in order to continue our ability to operate and maintain this infrastructure. Staff continues to support the first recommend clause and agree that the lands should remain in public ownership.

The second recommend clause recommends that budget in 2006 be made available for restoring and maintaining heritage landscape features, including the public path on the Regent Street hill. It is unclear what previous features are to be restored as the hill was composed of brush and at most may have included a trodden path down the hill. The current grade on the hill is not deemed a safe gradient for walking. In keeping with City policy, any public path would have to be constructed in a manner that is also accessible. In order to create a safe and accessible path the construction would require a zig-zag style ramp with intermittent platforms. This is not being recommended in order to retain easy access to the underground infrastructure. In the event that maintenance was required on the infrastructure, the extensive ramp system would need to be removed to permit work. It would also be necessary to determine whether such a ramp would be appropriate from a heritage perspective. The City's Heritage Planner's has provided comments, attached to this Information report as Exhibit "C".

In response to the final recommend clause, staff is seeking additional details from the Heritage Committee in order to provide their impression of the design of the path for the unopened Regent Street right of way which can then be tested against appropriate standards for safety as well as long term operation and maintenance costs.

EXISTING POLICY/BY LAW:

Lands owned by the Municipality remain in public ownership unless deemed surplus to Municipal needs. Council approval would be required to declare lands surplus.

NOTICE PROVISIONS:

N/A

ACCESSIBILITY CONSIDERATIONS:

The construction of a non-accessible path is not in keeping with the City's policy on accessibility.

FINANCIAL CONSIDERATIONS:

N/A

CONTACTS:

Tony Fleming, Senior Legal Council, Legal Services

613-546-4291, Ext. 1293

Kimberley J. Brown, Infrastructure Engineer, Engineering Department

613-546-4291, Ext. 3132

Marcus Letourneau, Heritage Planner, Culture and Recreation

613-546-4291, Ext. 1386

OTHER CITY OF KINGSTON STAFF CONSULTED:

Damon Wells, Director Public Works

Steve Chew, Senior Planner, Planning and Development

Kristine Hebert, Planner, Culture and Recreation

Del Stowe, Permit Supervisor, Building and Licensing

Barry Kaplan, Accessibility Project Coordinator

EXHIBITS ATTACHED:

Exhibit "A" – Original Landscape Development Plan

Exhibit "B" – Approved Revised Landscape Plan

Exhibit "C" – Comments from Marcus Letourneau

**Comments on Regent Street Hill
M. Letourneau
October 24, 2007**

With regard to the issue of the Regent Street hill, there are several relevant policies and legislation which must be considered.

As the primary Act governing heritage conservation in the province, the *Ontario Heritage Act, R.S.O. 1990, c. O.18* speaks specifically to public works being consistent with a heritage conservation district plan.

41.2 (1) Despite any other general or special Act, if a heritage conservation district plan is in effect in a municipality, the council of the municipality shall not,

- (a) carry out any public work in the district that is contrary to the objectives set out in the plan; or

Further, the *Ontario Heritage Act* indicates that no owner of a property located within a heritage conservation district may alter, or permit the alteration of, any part of the property, other than the interior of any structure or building on the property without obtaining permission from the municipality (Section 42 (1)) However, the Act does not state that review of works is required by a municipal heritage committee, only that Council provide approval. As Section 42(4.1) notes:

If the council of a municipality has established a municipal heritage committee under section 28, the council shall, before taking any action under subsection (4) with respect to an application to demolish or remove any building or structure on property in a heritage conservation district, consult with its municipal heritage committee. 2005, c. 6, s. 32 (3).

In this case, under the terms of the Act, a municipal heritage committee is only required to be consulted if there is a demolition or building removal. Nevertheless, within the *Terms of Reference* for the Kingston Municipal Heritage Committee, the following role was mandated by Council in By-law 2004-360 in SCHEDULE "B-5 (Clause C):

The Terms of Reference for the Kingston Municipal Heritage Committee (LACAC) shall be as follows:

- (i) Advise Council on matters of cultural heritage;
- (ii) Advise Council on all applications pertaining to a heritage property or a heritage district for the purpose of:
 - Designation or de-designation
 - Alteration, addition or demolition
 - Loans or grants
 - Easement agreements;

Thus, the established process within the City of Kingston is that applications for alteration in a heritage conservation district are reviewed by KMHC, and a recommendation is put forward to Council.

The *Provincial Policy Statement, 2005* would also have to be considered in any plan for redevelopment of the Regent Street Hill. Focusing on Section 2.6 (CULTURAL HERITAGE AND ARCHAEOLOGY), there are three relevant components.

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

2.6.2 *Development and site alteration shall only be permitted on lands containing archaeological resources or areas of archaeological potential if the significant archaeological resources have been conserved by removal and documentation, or by preservation on site. Where significant archaeological resources must be preserved on site, only development and site alteration which maintain the heritage integrity of the site may be permitted.*

2.6.3 *Development and site alteration may be permitted on adjacent lands to protected heritage property where the proposed development and site alteration has been evaluated and it has been demonstrated that the heritage attributes of the protected heritage property will be conserved.*

Mitigative measures and/or alternative development approaches may be required in order to conserve the *heritage attributes* of the *protected heritage property* affected by the adjacent *development* or *site alteration*.

There are additional policies within the *Official Plan for the Pittsburgh Planning Area* (June 30, 2004 Consolidation) relevant to the discussion concerning works on the Regent Street hill.

Notable, Section 2M.1.2 indicates that “the heritage value of designated properties shall be maintained when these properties are altered, added to or renovated and when surrounding lands are developed or redeveloped.” This is supported by Section 3D, entitled BARRIEFIELD PLANNING AREA.

Council recognizes that the Barriefield Heritage Conservation District comprises a unique ensemble of heritage buildings and landscapes that have resulted from a century and a half of many social, economic, natural and physical changes.

Council will conserve and protect this unique heritage character in the process of change. Council and the Committee of Adjustment, in making decisions on Planning Act applications (i.e. Official Plan amendments, Zoning By-law amendments, subdivisions, consents, minor variances, site plans, etc.) shall be consistent with the policies and guidelines in the Barriefield HCD Plan which has been adopted by Council and shall consider any other relevant matters.

Council, in making decisions on permit applications under Part V of the Ontario Heritage Act for new development, additions, alterations, repairs and demolition, shall be consistent with the policies and guidelines in the Barriefield HCD Plan which has been adopted by Council, and shall consider any other relevant matters.

In this case, there are provisions for the consideration of “other relevant matters” so long as the decision made takes into account the provisions of the district plan and guidelines.

There are also policies concerning landscaping and public works in Section 3D.9:

3D.9.1 The vegetated slopes of the Great Cataraqui River, existing trees, tree lines, hedgerows, and other heritage landscape features and vegetation will be preserved where possible.

3D.9.2 Public works undertaken in Barriefield shall minimize adverse impacts on the heritage streetscape and landscape

Within the *Barriefield Heritage Conservation District Plan* (May 1992), there are policies relating to the maintenance of heritage character and public works. On page ii-iii, it is stated that Council recognizes the following:

- the Barriefield Heritage Conservation District comprises a unique ensemble of heritage buildings and landscapes that have resulted from a century and a half of many social, economic, natural, and physical changes
- this unique heritage character is to be conserved and protected in the process of change

This is further supported by Section 2.2.3 - Objectives: Landscape which includes the following objectives:

- to encourage the maintenance, enhancement, and protection of the village landscape character of Barriefield
- to encourage the protection and retention of existing road and streetscapes within Barriefield and to avoid or minimize the adverse effects of public undertakings
- to enhance public spaces with appropriate landscaping

There is clear guidance for public works in Section 2.3: Barriefield District Conservation Principles.

All public works should seek to avoid adverse effects to the character of Barriefield heritage conservation district and in particular to individual heritage buildings, archaeological sites, walls, fences, and distinctive trees and treelines within the district.

This supported by Section 4.5.7: Public Works:

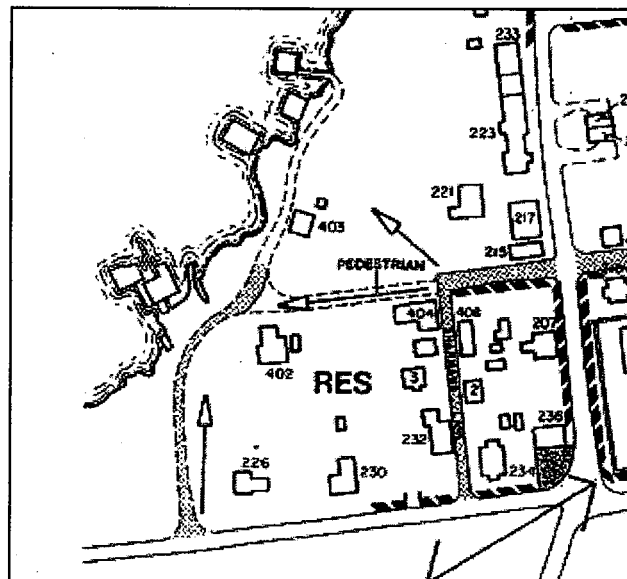
Public works within the district e.g. road widening, new road construction, any flood works or bank stabilization, undertaken by a variety of authorities e.g. the municipality, Conservation Authority, and Federal Ministries and agencies, have the potential to cause considerable disruption to the rich variety of heritage resources both above and below ground.

According, every effort should be made in those activities subject to Provincial and Federal Planning and environmental legislation, to minimize adverse effects to the heritage conservation district and its constituent elements.

Lastly, there were specific recommendations for improvements in Section 5.5 of the Appendices volume (Volume 2). The area of the Regent Street hill was located in what was identified as Landscape Unit 2. The following recommendation was articulated for this area:

Removing trees and exposing the top of the bank should be avoided. The existing unopened road allowances should be developed as pedestrian links to the lower slopes.

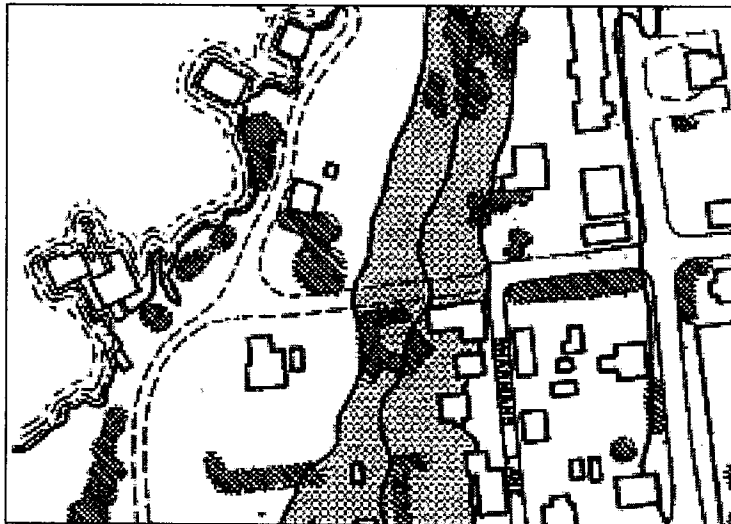
Within Appendix 5, the area is identified as a pedestrian link. (Figure) However, the area is also identified as being over a 30% slope. (Figure) Further, the right of way is identified as providing informal public pedestrian access rather than formal access. There was no preexisting municipally maintained pathway, although the road is identified as existing in an 1870 map of the village and in the 1922 fire insurance map. The road was identified as closed in the 1978 District Plan. It was also noted in the 1992 Plan that the landscape section of the plan was not always acted upon, and sometimes actions taken were contrary to the 1978 District Plan.



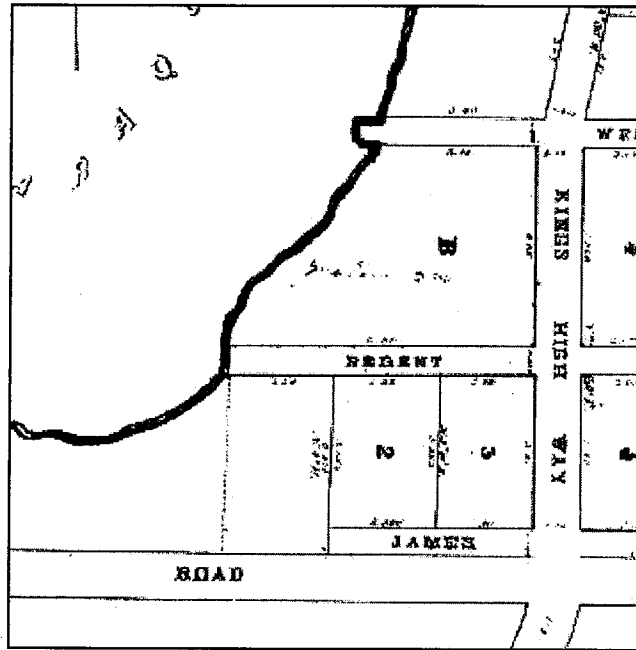


The Regent Street extension provides informal public pedestrian access to the river's edge.

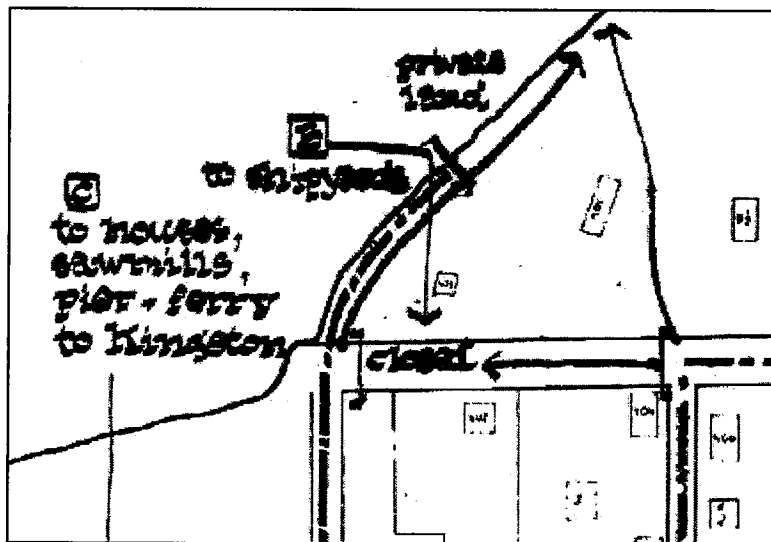
Area of Slope
> 30%



1870

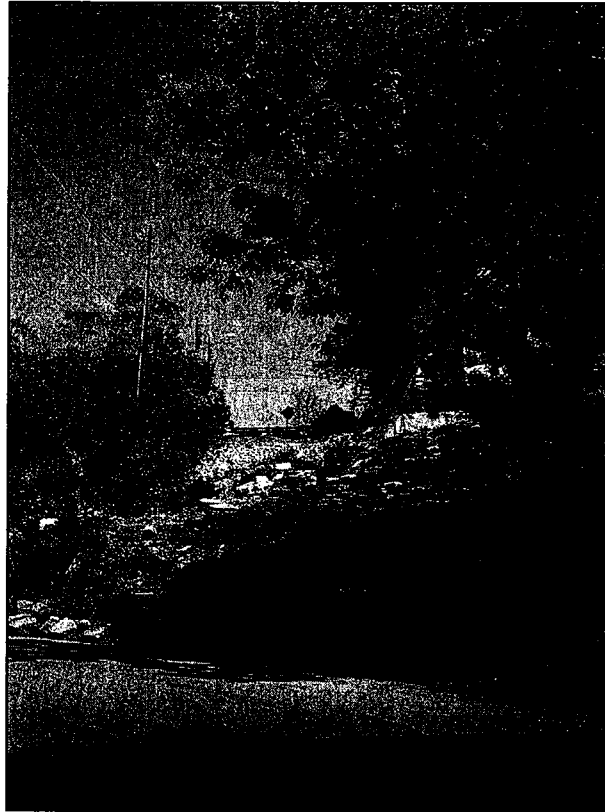


Detail from
1978 Plan



There are no heritage records that Council approved the alterations to the Regent Street hill. However, Council did approve construction of the Green Bay subdivision, which had the effect of cutting into the pre-existing slope, making it steeper. (Figure) The question remains as to whether the introduction of a pedestrian pathway at this point would

2005



adversely affect the heritage character of the area; this would be dependent upon its design which would also have to take into consideration both maintenance of the pathway, health and safety concerns, and accessibility requirements. It should also be noted that the *Pathways and Cycling Study* does not identify this as a pedestrian link; instead, the link is identified as another trail further down Green Bay Road on a more gently sloped historic pathway. A path has already been created in this location.

Relevant Legislation/Policy

- *Ontario Heritage Act, R.S.O. 1990, c. O.18*
- *Ontarians with Disabilities Act, 2001, S.O. 2001, c. 32*
- *Provincial Policy Statement, 2005*
- *Official Plan for the Pittsburgh Planning Area (June 30, 2004 Consolidation)*
- *Barriefield Heritage Conservation District Plan (May 1992)*
- *By-law 2004-360 (A By-law to define the Composition and Terms of Reference for Committees established by the Corporation of the City of Kingston)*
- *Pathways and Cycling Study (November 2003)*