



The Municipal Corporation of the Town of Fort Erie

BY-LAW NO. 134-2001

BEING A BY-LAW TO STOP UP, CLOSE AND CONVEY PARTS OF WALNUT STREET AND GODERICH STREET TO THE BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

WHEREAS Section 297(1) of the *Municipal Act*, R.S.O. 1990, Chapter M.45 as amended, provides inter alia that the council of every municipality may pass by-laws for stopping up any highway or part of a highway for a specified period or periods of time and for leasing or selling the soil and freehold of the stopped up highway or part of a highway, and

WHEREAS Section 300(1) of the said *Municipal Act* provides for the publication of notice of the proposed by-law for stopping up and selling a highway, and

WHEREAS Section 315 of the said *Municipal Act* provides for the sale of the stopped up highway which prescribes that the council shall by by-law set the sale price of the land to be sold and shall offer to sell it to the owner abutting the land to be sold and where,

- (a) there are parcels of land abutting on opposite sides of the land to be sold, the owner of each parcel has the right of first refusal to purchase the land to its middle line, and

WHEREAS Section 315(3) of the said *Municipal Act* provides that if a person entitled under subsection (2) to purchase the land does not exercise the right to purchase within such period as may be fixed by by-law, the municipality may sell the land that the person has the right to purchase to any other person at the price set under subsection (2) or at a greater price, and

WHEREAS Section 44(1) of the *Regional Municipalities Act*, R.S.O. 1990, Chapter R.8 provides that where an area municipality intends to stop up a highway or part of a highway it shall so notify the regional corporation by registered mail, and

WHEREAS a request by the Buffalo and Fort Erie Public Bridge Authority (hereinafter referred to as "the PBA") to purchase Parts of Walnut Street and Part of Goderich Street adjacent to their lands was approved by Resolution No. 5 at the Council meeting of April 23rd, 2001 directing the Clerk to proceed in accordance with the provisions of the *Municipal Act* to stop up, close and convey Part of Walnut Street between Archange and Goderich Streets; that Part of Walnut Street, in part, west of Goderich Street and Goderich Street between Walnut and Queen Streets subject to the Buffalo and Fort Erie Public Bridge Authority being responsible for all of the associated costs and staff negotiating the selling price to the satisfaction of Council, and

WHEREAS the PBA is the sole abutting property owner to the subject highways, and

WHEREAS the PBA has indicated its willingness to proceed to acquire the subject highways abutting their lands, and

WHEREAS pursuant to Section 44(1) of the *Regional Municipalities Act*, the Council of the Regional Municipality of Niagara at its meeting of June 21, 2001 indicated they had no objections to the proposed stopping up, closing and conveyance of the subject highways, and

WHEREAS it is deemed desirable to stop up close and convey to the PBA that Part of Walnut Street located between Archange and Goderich Streets according to the Douglas and Wallace Plan for the former Village of Fort Erie, now known as Plan 504 for the Town of Fort Erie and designated as Parts 1, 2 and 3 on Reference Plan 59R-11424; that Part of Walnut Street west of Goderich Street described as Lots 7, 8, 9, 10, 52 and 53, Block Y, Plan 27 for the former Village of Fort Erie, now known as Plan 519 for the Town of Fort Erie and designated as Part 22 on Reference Plan 59R-10134; and Part of Goderich Street located between Walnut and Queen Streets according to the Douglas and Wallace Plan, now known as Plan 504 for the Town of Fort Erie and according to Plan 27, now known as Plan 519 and designated as Parts 4, 5, 6 and 7 on Reference Plan 59R-11424, and

WHEREAS notice of the intention of the Council of the Town of Fort Erie to consider a by-law to stop up, close and convey the subject highways to the abutting property owners was published in The Times on May 19, 26, June 2 and 9th, 2001, and

WHEREAS although concerns were expressed at the Public Hearing to the stopping up, closing and conveyance of the said highways, no bonafide objections relating to ingress and egress were received and presented to the Municipal Council of the Town of Fort Erie at the Public Hearing held June 11th, 2001 and Council having given full consideration thereto has determined that it would be appropriate and in the public interest to pass this by-law, there being no concerns expressed relating to ingress or egress to private property as a result of the subject highways being closed and conveyed, and

WHEREAS it is deemed desirable to stop up, close and convey to the abutting property owner Parts of Walnut Street and Goderich Street subject to certain conditions;

NOW THEREFORE the Municipal Council of The Corporation of the Town of Fort Erie hereby enacts as follows:

1. **THAT** Part of Walnut Street according to the Douglas and Wallace Plan for the former Village of Fort Erie, now known as Plan 504 for the Town of Fort Erie and designated as Parts 1, 2 and 3 on Reference Plan 59R-11424; that Part of Walnut Street described as Lots 7, 8, 9, 10, 52 and 53, Block Y, Plan 27 for the former Village of Fort Erie, now known as Plan 519 for the Town of Fort Erie and designated as Part 22 on Reference Plan 59R-10134

and that Part of Goderich Street according to the Douglas and Wallace Plan now known as Plan 504 for the Town of Fort Erie and according to Plan 27, now known as Plan 519 and designated as Parts 4, 5, 6 and 7 on Reference Plan 59R-11424 be and they are hereby declared as surplus lands.

2. **THAT** Part of Walnut Street according to the Douglas and Wallace Plan for the former Village of Fort Erie, now known as Plan 504 for the Town of Fort Erie and designated as Parts 1, 2 and 3 on Reference Plan 59R-11424; that Part of Walnut Street described as Lots 7, 8, 9, 10, 52 and 53, Block Y, Plan 27 for the former Village of Fort Erie, now known as Plan 519 for the Town of Fort Erie and designated as Part 22 on Reference Plan 59R-10134 and that Part of Goderich Street according to the Douglas and Wallace Plan now known as Plan 504 for the Town of Fort Erie and according to Plan 27, now known as Plan 519 and designated as Parts 4, 5, 6 and 7 on Reference Plan 59R-11424 be and they are hereby stopped up and closed.

3. **THAT** the selling price of the stopped up and closed highways as described in Section 2 hereof be and it is hereby established as follows:

(i)	Part 22 of Plan 59R-10134 comprised of approximately 13,547 sq. ft. @ \$7.46 per sq. ft.	=	\$101,060.62
(ii)	Parts 1 and 2 of Plan 59R-11424 comprised of approximately 31,729 sq. ft. @ \$7.46 per sq. ft.	=	\$236,698.34
(iii)	Parts 3, 4, 5 and 6 of Plan 59R-11424 comprised of approximately 11,813 sq. ft. @ \$3.73 per sq. ft.	=	\$ 44,062.49
(iv)	Part 7 of Plan 59R-11424 comprised of approximately 10,463 sq. ft. @ \$7.46 per sq. ft.	=	<u>\$ 78,053.98</u>
	Total sq. ft. 67,552		
		Total	<u><u>\$459,875.43</u></u>

SELLING PRICE: \$459,875.00 plus g.s.t., if applicable

4. **THAT** subject to Section 6 herein the soil and freehold of the stopped up highways as described in Section 2 hereof shall be conveyed to the only abutting property owner, the PBA at the price fixed by Section 3 above.
5. **THAT** Section 4 above shall be subject to the following:
- (i) Receipt of certification from the Town Solicitor prior to registration of the Transfer/Deed of Land that the purchaser owns the lands abutting the subject road allowances, where applicable.

- (ii) Where applicable, the purchaser agrees that the subject road allowance conveyed shall merge in title with the owners abutting lands and the subject road allowance cannot be sold again separately unless a consent is obtained under the provision of the *Planning Act* and further, such clause shall be included in the schedule annexed to and forming part of the Transfer/Deed of Land.

6. **THAT** Sections 3 and 4 above are subject to the granting of easements and Acknowledgement Agreement for municipal and utility infrastructure as follows:

- (a) Prior to any conveyance to the PBA, the PBA shall enter into an Acknowledgement Agreement with the Town of Fort Erie in a form to be prepared by the Clerk of the Town of Fort Erie and approved by the Town Solicitor for execution by the Town and the PBA acknowledging that water and sanitary sewer services located on Walnut Street described as Parts 1, 2 and 3 on Reference Plan 59R-11424 only benefit the PBA lands and the Town shall agree to divest itself of the municipal infrastructure and the PBA shall agree to assume the said infrastructure and to maintain such at its own expense as private services. Furthermore, the PBA shall agree to accept storm water from Archange Street over Part 3 on Reference Plan 59R-11424.
- (b) The Acknowledgement Agreement shall also provide an undertaking by the PBA to grant an easement to the Town of Fort Erie for municipal infrastructure located in the Goderich Street road allowance extending southerly across the Peace Bridge Plaza to Garrison Road, as part of the Phase 2 Site Plan Agreement process.

Further, the PBA shall agree to maintain the storm sewer and catch basin located within Part 22 on Reference Plan 59R-10134 (Walnut Street extension).

- (c) The PBA shall further acknowledge under the Acknowledgement Agreement:
 - (i) Bell Canada plant located on the south side of Walnut Street solely serving the purposes of the PBA for future maintenance, replacement or relocation purposes.
 - (ii) Enbridge Consumers Gas plant located on Walnut Street and Goderich Street solely serving the purposes of the PBA for future maintenance, replacement or relocation purposes.
 - (iii) Canadian Niagara Power Company Limited intentions to bury their existing overhead lines along the proposed realigned intersection of Goderich Street and Queen Street.

- (d) The Town of Fort Erie shall grant an easement to Bell Canada over Part 4 on Reference Plan 59R-11424 for the maintenance, replacement or relocation of telephone plant subject to payment by Bell Canada in the amount of \$7,135.00, plus g.s.t.
 - (e) An easement shall be granted to the Town of Fort Erie by the PBA over Parts 5 and 6 on Reference Plan 59R-11424 for the maintenance, replacement or relocation of water and sewer services and shall be delivered to the Town and registered at the same time as the conveyance to the PBA.
- 7. **THAT** subject to receipt of agreement in writing from Peace Bridge Brokerage Ltd. and the PBA executing an Acknowledgement Agreement with the Town to assume the municipal infrastructure, namely, watermain, sewermain and stormsewer and to maintain such at its own expense as private services, the Town of Fort Erie shall undertake to discharge its easement registered as Instrument No. 646774 on January 27, 1993 against the lands owned by the PBA known as the easterly part of Walnut Street and described as Part 1 on Reference Plan 59R-8217.
- 8. **THAT** as a condition of sale of the subject highways the PBA agrees to:
 - (a) Contribute to the Town of Fort Erie one-third of the cost of the Riverwalk Project, to a maximum of \$335,000.00 depending on the design and construction costs, whichever is the lessor and such conditional commitment by the PBA is set out in their letter dated August 8, 2001, annexed hereto as Schedule "B" to this by-law.
 - (b) Grant to the Town of Fort Erie the right in perpetuity of some form of wayfinding and marketing signage on the bridge structure and/or plazas according to the terms set out by the PBA in their letter dated August 8, 2001 annexed hereto as Schedule "C" to this by-law.
- 9. **THAT** the purchaser shall be responsible for all costs incurred by The Corporation of the Town of Fort Erie associated with this transaction, save and except the first appraisal.
- 10. **THAT** attached to this by-law as Schedule "A", is the affidavit of Carolyn J. Kett, Clerk of the Town of Fort Erie setting out the procedures taken for the publishing of notices pursuant to the provisions of the *Municipal Act*.
- 11. **THAT** the Mayor and Clerk be and they are hereby authorized and directed to execute any and all legal documentation necessary to complete this transaction.

12. THAT the Clerk is hereby authorized to effect any minor modifications or corrections to this by-law that may become evident after its passage thereof and necessary for the completion of the road closings and conveyance.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 13TH DAY OF AUGUST, 2001.



MAYOR



CLERK

I, the Clerk, Carolyn J. Kett, of The Corporation of the Town of Fort Erie hereby certify the foregoing to be a true certified copy of By-law No. 134-2001 of the said Town. Given under my hand and the seal of the said Corporation this _____ day of _____, 2001.

SCHEDULE "A" TO BY-LAW NO. 134-2001

IN THE MATTER OF the stopping up, closing and conveying to the abutting property owner that Part of Walnut Street located between Archange and Goderich Streets according to the Douglas and Wallace Plan for the former Village of Fort Erie, now known as Plan 504 for the Town of Fort Erie and designated as Parts 1, 2 and 3 on Reference Plan 59R-11424; that Part of Walnut Street west of Goderich Street described as Lots 7, 8, 9, 10, 52 and 53, Block Y, Plan 27 for the former Village of Fort Erie, now known as Plan 519 for the Town of Fort Erie and designated as Part 22 on Reference Plan 59R-10134; and Part of Goderich Street located between Walnut and Queen Streets according to the Douglas and Wallace Plan, now known as Plan 504 for the Town of Fort Erie and according to Plan 27, now known as Plan 519 and designated as Parts 4, 5, 6 and 7 on Reference Plan 59R-11424.

AFFIDAVIT

- (1) I, Carolyn J. Kett, of the Town of Fort Erie, in the Regional Municipality of Niagara, in the Province of Ontario, affirm that I am the Clerk of the Corporation of the Town of Fort Erie and as such have knowledge of the facts hereinafter deposed to.
- (2) Notice of the intended consideration of the passing of a by-law to stop up, close and convey to the abutting property owner that Part of Walnut Street located between Archange and Goderich Streets according to the Douglas and Wallace Plan for the former Village of Fort Erie, now known as Plan 504 for the Town of Fort Erie and designated as Parts 1, 2 and 3 on Reference Plan 59R-11424; that Part of Walnut Street west of Goderich Street described as Lots 7, 8, 9, 10, 52 and 53, Block Y, Plan 27 for the former Village of Fort Erie, now known as Plan 519 for the Town of Fort Erie and designated as Part 22 on Reference Plan 59R-10134; and Part of Goderich Street located between Walnut and Queen Streets according to the Douglas and Wallace Plan, now known as Plan 504 for the Town of Fort Erie and according to Plan 27, known as Plan 519 and designated as Parts 4, 5, 6 and 7 on Reference Plan 59R-11424, was published in The Times, a newspaper having general circulation in the Town of Fort Erie on May 19, 26, June 2 and 9th, 2001.
- (3) Attached to this Affidavit and now produced and shown to me and marked as Exhibit "1" to this my Affidavit is a copy of the actual notice inserted in The Times on May 19, 26 and June 2 and 9th, 2001.
- (4) The proposed by-law referred to in the notice as shown in Exhibit "1" annexed hereto came before the Municipal Council of the Town of Fort Erie on the 11th day of June, 2001 and persons applied to be heard and stated concerns but no bonafide objections were presented.

SWORN BEFORE ME)
at the Town of Fort Erie)
in the Regional Municipality)
of Niagara this 13th day of)
August, 2001)



Carolyn J. Kett



A Commissioner of Oaths, etc.

THIS IS EXHIBIT "I"
TO THE AFFIDAVIT OF
CAROLYN J. KETT
DATED THIS ~~25~~ DAY

August OF , 2001


A Commissioner of Oaths, etc.

PROPOSED ROAD CLOSING AND CONVEYANCE PARTS OF WALNUT STREET AND PART OF GODERICH STREET

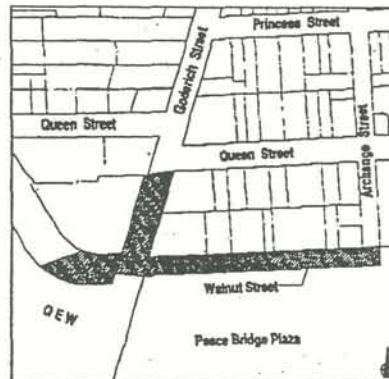
NOTICE is hereby given that pursuant to the provisions of the *Municipal Act*, R.S.O. 1990, Chapter M.45 as amended, the Municipal Council of the Town of Fort Erie intends to consider a by-law to stop up, close and convey to the abutting property owner, being the **Buffalo and Fort Erie Public Bridge Authority**, parts of the following highways:


Part of Walnut Street located between Archange and Goderich Streets according to the Douglas and Wallace Plan for the former Village of Fort Erie, now known as Plan 504 for the Town of Fort Erie.

Part of Walnut Street, west of Goderich Street described as Lots 7, 8, 9, 10, 52 and 53, Block Y, Plan 27 for the former Village of Fort Erie, now known as Plan 519 for the Town of Fort Erie and designated as Part 22 on Reference Plan 59R-10134.

Part of Goderich Street located between Walnut and Queen Streets according to the Douglas and Wallace Plan, now known as Plan 504 for the Town of Fort Erie and according to Plan 27, now known as Plan 519.

The Buffalo and Fort Erie Public Bridge Authority wishes to acquire the road allowances to accommodate the expansion of the customs and immigration facility located at the Peace Bridge Plaza and the rerouting of commercial traffic.



Proposed Road Closure and Conveyance
Parts of Walnut Street and Goderich Street
 road allowances proposed to be closed and conveyed

A copy of the plan and by-law may be viewed at the Clerk's Office at Town Hall.

On **Monday, June 11th, 2001 at 6:00 p.m.** in the Council Chambers at Town Hall, the Municipal Council of the Town of Fort Erie will hear in person or by counsel, solicitor or agent, any person who claims his/her lands may be prejudicially affected by the said by-law and who applies to be heard. Any person who wishes to be heard shall advise the Clerk by Friday, June 8th, 2001 with an extended deadline of 3:00 p.m. on Monday, June 11th, 2001.

Carolyn J. Kett, A.M.C.T.
Town Clerk
Telephone: 905-871-1600 ext. 203
ckett@forterie.on.ca



THE PEACE BRIDGE
CROSSING PATHS ★ BUILDING FUTURES

SCHEDULE "B" TO BY-LAW 134-2001

TOWN OF
FORT ERIE

AUG 8 3 53 PM '01

August 8, 2001

HAND DELIVERED

Town of Fort Erie
Municipal Centre
1 Municipal Drive
Fort Erie, Ontario
L2A 2S6

Attention: Ken Zurby, C.A.O.

Dear Ken:

Re: Walnut and Goderich Streets Closure and Conveyance

This letter is in follow up to your recent correspondence and our meetings concerning the purchase of Walnut and Goderich Streets. The Buffalo and Fort Erie Public Bridge Authority (the "PBA") is in general agreement with the suggested resolution contained in your letter dated July 24, 2001 as modified in your letter dated July 25, 2001. The terms of this agreement are set out in this letter.

The PBA is prepared to purchase the roads for the price of four hundred and fifty nine thousand, eight hundred and seventy five dollars (\$459,875.00). The PBA made commitments to its neighbours in the south end of Fort Erie to improve the esthetics, put in place certain mitigation efforts and generally assist in improving the area. A commitment by the PBA to enter into a partnership with the Town and The Niagara Parks Commission to fund the walk along the river, from the baby hole to the former lot of Agrette's store (the "RiverWalk") is consistent with the PBA's commitments. The PBA is supportive of the River Walk and is prepared to contribute up to a third of the design and construction costs to a maximum of three hundred and thirty five thousand dollars (\$335,000.00).

In the spirit of this partnering relationship with the Town the PBA requests that the council apply the sale proceeds, of four hundred and fifty nine thousand eight hundred and seventy five dollars (\$459,875.00) to improvements in the south end neighbourhood.



The PBA, by way of information to the Council, is committed to the following improvements:

- installing a noise wall on the north side of the truck roadway;
- eliminating the Queen Street jog;
- constructing a parkette on Queen Street;
- paying for the cost of the Queen Street Urban Design;
- relocating certain hydro lines from above ground to below ground;
- replacing the Town's sewer line along Goderich Street.

These improvements will be set out in more detail in subsequent correspondence.

There will be further discussions with the Town whether the PBA should construct and pay for these improvements or whether it would be more appropriate for certain projects to be constructed through the Town at the PBA's expense. The budget for these improvements (excluding the River Walk Commitment and the purchase of the roads) is two million dollars. The application of the sale proceeds from the Town when combined with these additional commitments by the PBA will have a very positive impact on the south end of Fort Erie. The PBA is asking that the money provided to the Town be spent for the benefit of those neighbours.

The PBA can not make any financial commitment, which is open-ended. This commitment for funding part of the River Walk is open for three years from today's date. I understand that you requested a two-year commitment. The PBA is prepared to commit for up to three years in case there are unanticipated delays. It is a further condition of funding that the River Walk project must be substantially as described earlier in the letter.

The PBA wishes to be a true partner in this process and receive all appropriate materials, design concepts, plans, and budgets. The PBA should be invited to appropriate meetings. The PBA's contribution should be recognized on a permanent basis by signage. Another caveat imposed by the PBA towards its contribution is any development of the River Walk must not have an impact on the shoreline which will effect the PBA's Niagara River water studies (for water levels) required by the International Joint Commission (IJC) and other approving agencies for the construction of the new Peace Bridge. The IJC and Minister of Natural Resources would not likely approve any fill into the Niagara River. This concern is of great importance to the PBA.

We appreciate your confirmation that no funding is required concerning the electronic signboard for adventures in archaeology. The PBA is of supportive of the town's application for approval of an electronic sign for Adventures in Archaeology. There is no entity in Fort Erie, which is more sensitive to and supportive of the preservation and appreciation of the archaeology of this area than the PBA. Most of the archaeological artifacts at the Museum are from

PBA's lands. The PBA supports an electronic sign for Adventures in Archaeology but reserves its rights concerning particular sign proposals. The PBA will by separate letter detail its involvement in the "way finding" study.

There are a number of small matters that need to be addressed. The first is GST. This sale is zero rated for G.S.T purposes by virtue of Section 2 Part VIII schedule VI of the Excise Tax Act. The PBA is not required to pay GST on this transaction.

Article 6 (a) of the draft by law as presently worded requires the PBA to acknowledge that the water and sanitary sewers on Walnut Street only benefit PBA lands and the PBA will assume same. I appreciate your suggestion the Town will release the easement provided that the PBA will undertake to assume these services and that Peace Bridge Brokerage agrees in writing to this arrangement. The PBA is in principle agreeable to taking over the water and sanitary sewers. I understand that the storm water sewer services part of Archange Street. I suggest we close the roads purchase and then deal with the easement issues after closing.

I understand that an existing municipal service along the closed portion of Walnut was also not conveyed. I suggest that the same procedure set out above be considered.

I would also appreciate the PBA be advised as to the costs set out in Article 7 of the by-law.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Earl Rowe". The signature is fluid and cursive, with the first name "Earl" being more prominent than the last name "Rowe".

Earl Rowe



August 8, 2001

Mr. Kenneth Zurby
CAO
Town of Fort Erie
1 Municipal Centre Drive
Fort Erie, ON L2A 2S6

RE: WAYFINDING STUDY

Dear Ken:

Further to your query as to the Authority's willingness to participate in the Fort Erie Transportation and Wayfinding Study, I am pleased to advise that we will share in the costs of the study and pay for the implementation costs of recommendations impacting Authority owned land as well as an appropriate contribution in signage along Queen to ensure effective direction to the Niagara Parkway. This is in direct recognition of the effect on local businesses associated with the closing of Goderich Street. We will contribute \$28,000 to the costs of Phase I of the study and up to \$22,000 in Phase II contingent upon other benefiting stakeholders equal participation.

It should, of course, be understood that the final decision with respect to signage will rest with the Authority. You should also be aware that we are anticipating signage locations on the Canadian Plaza primarily between the primary inspection stations and the borders of Authority owned lands, not on the bridge structure itself or in the U.S. Plaza.

Sincerely,

A handwritten signature in cursive script that reads "Earl Rowe".

Earl Rowe
General Manager/Corporate Services

ER/kab

