



## The Municipal Corporation of the Town of Fort Erie

BY-LAW NO. 150-2000

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### BEING A BY-LAW TO STOP UP, CLOSE AND CONVEY PART OF ELLIS AVENUE (FORMERLY ELIZABETH AVENUE) (360507)

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**WHEREAS** Section 297(1) of the *Municipal Act*, R.S.O. 1990, Chapter M.45 as amended, provides interalia 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 abutting property owners was considered by the Land Committee at its meeting of May 3<sup>rd</sup>, 2000 and it was subsequently recommended and approved by Council-in-Committee at its meeting of May 15<sup>th</sup>, 2000 that the Clerk proceed in accordance with the provisions of the *Municipal Act* to stop up, close and convey part of Ellis Avenue between Bertie Street and Seymour Avenue as requested by Donovan Bryant and George Henningham as the abutting property owners subject to the applicants remitting the administration fee and agreeing to be responsible for all of the associated costs, and

**WHEREAS** each of the property owners abutting the unopened portion of Ellis Avenue between Bertie Street and Seymour Avenue have been offered an opportunity to purchase their entitled portion of the subject road allowance at the appraised value subject to easement considerations, and

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**WHEREAS** pursuant to Section 44(1) of the *Regional Municipalities Act*, the Council of the Regional Municipality of Niagara at its meeting of \_\_\_\_\_, 2000 indicated they had no objections to the proposed stopping up, closing and conveyance of the subject road allowance, and

**WHEREAS** it is deemed necessary for certain purchasers of the subject road allowance to grant easements as described hereunder, and

**WHEREAS** it is deemed desirable to stop up, close and convey to the abutting property owners that part of Ellis Avenue (formerly Elizabeth Avenue) between Bertie Street and Seymour Avenue, according to Registered Plan 122 for the former Township of Bertie now known as Plan 462 and described as Parts 1, 2, 3 and 4 on Reference Plan 59R-11137, 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 highway to the abutting property owners was published in The Times on July 29, August 5, 12 and 19, 2000, and

**WHEREAS** no objections to the stopping up, closing and conveyance of the said highway were received and presented to the Municipal Council of the Town of Fort Erie at the public hearing held August 21, 2000, and

**WHEREAS** it is deemed desirable to stop up, close and convey to the abutting property owners part of Ellis Avenue (formerly known as Elizabeth Avenue) between Bertie Street and Seymour Avenue;

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

- (1) **THAT** part of Ellis Avenue (formerly Elizabeth Avenue) between Bertie Street and Seymour Avenue according to Registered Plan 122 for the former Township of Bertie now known as Plan 462 and described as Parts 1, 2, 3 and 4 on Reference Plan 59R-11137 be and it is hereby declared as surplus lands.
- (2) **THAT** part of Ellis Avenue (formerly known as Elizabeth Avenue) between Bertie Street and Seymour Avenue according to Registered Plan 122 for the former Township of Bertie now known as Plan 462 and described as Parts 1, 2, 3 and 4 on Reference Plan 59R-11137 be and it is hereby stopped up and closed.



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- (3) **THAT** the selling price of the stopped up and closed highway as described in Section 3 hereof be and it is hereby established as follows:

Part 1 – Reference Plan 59R-11137	\$ 2,232.00 plus g.s.t.
Parts 2, 3 and 4 – Reference Plan 59R-11137	\$ 2,232.00 plus g.s.t.

- (4) **THAT** the soil and freehold of the stopped up highway as described in Section 2 hereof shall be conveyed to the abutting property owners at the priced fixed by Section 3 above and the abutting property owners shall have 30 days from the date of passage of this by-law or as extended under the authority of the Clerk of the Town of Fort Erie to complete the purchase of their entitled portion of the road allowance at the price fixed by this by-law. Otherwise, the Clerk may undertake to sell the subject lands to any other person at the price fixed herein.
- (5) **THAT** Section 4 above shall be subject to the following, if the subject lands are purchased by the abutting property owners:
- (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 an easement by the Town to Canadian Niagara Power Company Limited over Part 3 on Reference Plan 59R-11137 for overhead electrical lines.
- (7) **THAT** each of the purchasers shall be responsible for the sharing of costs incurred by The Corporation of the Town of Fort Erie in this transaction, save and except appraisal fees.
- (8) **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*.

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- (9) **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.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 21<sup>ST</sup> DAY OF AUGUST, 2000.**

  
\_\_\_\_\_  
**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. 150-2000 of the said Town. Given under my hand and the seal of the said Corporation this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_

**SCHEDULE "A" TO BY-LAW NO. 150-2000**

**IN THE MATTER OF** the stopping up, closing and conveyancing to the abutting property owners part of Ellis Avenue (formerly known as Elizabeth Avenue) between Bertie Street and Seymour Avenue, according to Registered Plan 122 for the former Township of Bertie now known as Plan 462 and described as Parts 1 and 2 on Reference Plan 59R-

**A F F I D A V I T**

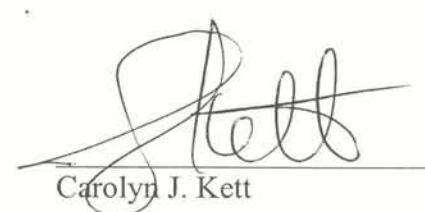
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- (1) I Carolyn J. Kett, of the Town of Fort Erie, in the Regional Municipality of Niagara, in the Province of Ontario, affirm that I am the Clerk of the Corporation of the Town of Fort Erie and as such have knowledge of the facts hereinafter deposed to.
- (2) Notice of the intended consideration of the passing of a by-law to stop up, close and convey to the abutting property owners part of Ellis Avenue (formerly known as Elizabeth Avenue) between Bertie Street and Seymour Avenue, according to Registered Plan 122 for the former Township of Bertie now known as Plan 462 and described as Parts 1 and 2 on Reference Plan 59R- , was published in The Times, a newspaper having general circulation in the Town of Fort Erie on July 29, August 5, 12 and 19, 2000.
- (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 July 29, August 5, 12 and 19, 2000.
- (4) The proposed by-law referred to in this notice as shown in Exhibit "1" came before the Municipal Council of the Town of Fort Erie on the 21<sup>st</sup> day of August, 2000 and

**SWORN BEFORE ME**

at the Town of Fort Erie )  
in the Regional Municipality )  
of Niagara this 21<sup>st</sup> day of )  
August, 2000 )

  
A Commissioner of Oaths, etc.

  
Carolyn J. Kett



THIS IS EXHIBIT "1"  
TO THE AFFIDAVIT OF  
CAROLYN J. KETT  
DATED THIS 24<sup>th</sup> DAY OF  
AUGUST, 2000

  
A Commissioner of Oaths, etc.



## PROPOSED ROAD CLOSING AND CONVEYANCE

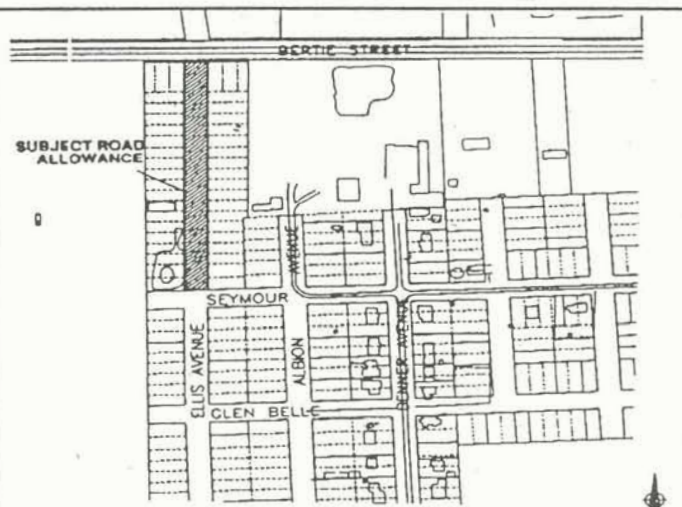
### PART OF ELLIS AVENUE (FORMERLY ELIZABETH AVENUE) BETWEEN BERTIE STREET AND SEYMOUR AVENUE

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 owners part of the unopened road allowance known as Ellis Avenue (formerly Elizabeth Avenue) located between Bertie Street and Seymour Avenue.

A copy of the plan may be viewed at the Clerk's Office at Town Hall. A copy of the by-law may be viewed at least five days prior to the Council meeting.

On Monday, August 21, 2000 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 prior to Friday, August 18, 2000.

Carolyn J. Booth, A.M.C.T.  
Town Clerk  
Telephone: 871-1600 ext. 203



Proposed Road Closing and Conveyance  
Unopened Road Allowance known as Ellis Avenue  
Located on Plan 122, now known as Plan 462



portion of Road Allowance proposed to be closed.

DEPARTMENT OF PLANNING AND PROPERTY SAFETY  
July 2000