

# PART IV DESIGNATIONS (individual properties) & HEAS

*Presenter:*  
*Wayne Morgan*



# Presenter:

- Chair of a MHC for 20 years
- Owned and restored a designated property
- Staff advisor on heritage conservation
- Currently a heritage planning consultant
- Professional planner and member OAHP
- Director and VP of CHO



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# Outline

1. Why Designate
2. What is Part IV Designation
3. Format of Designation By-law
4. Report Supporting Designation By-law
5. What properties can be designated
6. Effect of Designation
7. Process for Designating a property
8. Heritage Easement Agreements



# Why designate?

- *Prevent demolition;*
- *Prevent demolition by neglect (standards by-law);*
- *Prevent inappropriate alterations - Manage change to heritage attributes;*
- *Ensure heritage values part of any redevelopment;*
- *For heritage grant & property tax reduction;*
- *For relief under Building Code;*
- *Provides recognition; and*
- *Request from owner or Community*



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# What is Part IV designation?

- *A by-law, authorized by the Ontario Heritage Act (OHA), passed by a municipal and registered on the property title*

- **OHA “29. (1)** The council of a municipality may, by by-law, designate a property within the municipality to be of cultural heritage value or interest..”



# Format of a designation by-law

- *Standard preamble*
- *Two attached schedules:*
  - *Reasons for designation (Schedule A)*
  - *Property description (Schedule B)*



# OHA requirements for a designation by-law

- [OHA “29. \(6 & 4\)](#)

.... The council shall

(i) pass a by-law designating the property,

(ii) Cause a copy of the by-law, together with:

a statement explaining the cultural heritage value or interest of the property and

a description of the heritage attributes of the property

(A) to be served on the owner of the property and on the Trust, and

(B) to be registered against the property affected in the proper land registry office, ...”



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# Designation By-law

## Example – 28 Daisy Avenue, Toronto

By-law 772-2013

[www.toronto.ca/legdocs/bylaws/2013/law0772.pdf](http://www.toronto.ca/legdocs/bylaws/2013/law0772.pdf)



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# Designation By-law Format

- ***Preamble***

- OHA authorizes designation
- Council authorised designation
- OHA process followed – notice of intention to designate
- Reasons attached as Schedule A
- Legal description in Schedule B (& C)



# Designation By-law Format

## Schedule B (&C) – legal description:

### **SCHEDULE "B" - 28 Daisy Avenue, Toronto**

#### LEGAL DESCRIPTION

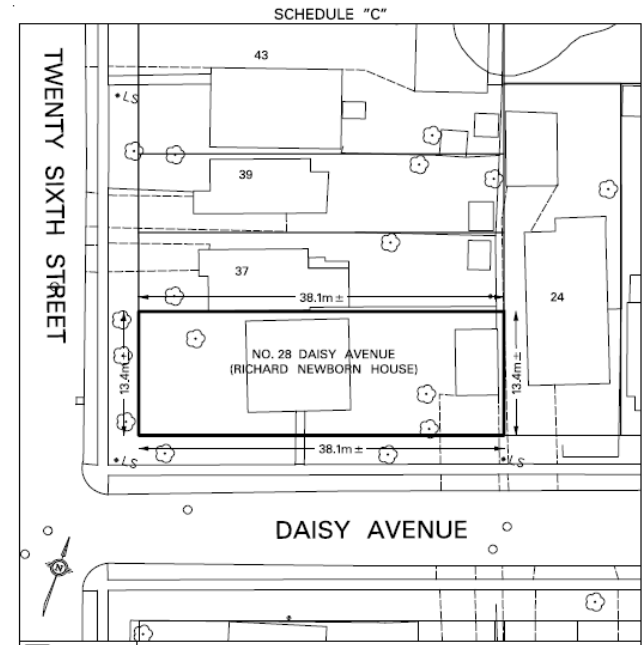
PIN 07597-0028 (LT)

PT LT 109, PL 1571, AS IN TB641970

City of Toronto (former City of Etobicoke) and  
Province of Ontario

Land Titles Division of the Toronto Registry Office  
(No. 66)

The hereinbefore described land being delineated by  
heavy outline on Sketch No. PS-2013-048  
dated May 17, 2013, as set out in Schedule "C".



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# Designation By-law Format

## Schedule B (&C) – legal description:

- Legal description and Property Identification Number (PIN):
  - From registry office,
  - Assessment roll – short legal description
- Can apply to part of the property
  - Require a reference plan to define that part of the property
  - Reference plan must be registered with the designation by-law



# Designation By-law Format

## ***Schedule A – Reasons for Designation:***

Also referenced as Statement of Significance:

### Suggested format

1. Description including criteria discussion
2. Statement of Heritage values
3. Attributes (required by OHA)

One or two pages in length



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# Designation By-law Format

## ***Schedule A - 1. Description***

- include identification of criteria that it meets for designation

The property at 28 Daisy Avenue is worthy of designation under Part IV, Section 29 of the *Ontario Heritage Act* for its cultural heritage value, and meets the criteria for municipal designation prescribed by the Province of Ontario under the three categories of design, associative and contextual values. Located on the northeast corner of Daisy Avenue and Twenty-Sixth Street in Long Branch, the Richard Newborn House (c. 1851) is a 1½-storey house form building. The site is listed on the City of Toronto Inventory of Heritage Properties.



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# Designation By-law Format

## ***Schedule A - 2. Statement of Cultural Heritage Value***

The Richard Newborn House is a rare surviving example of a stone house form building in Etobicoke and the only one remaining in Long Branch. In its original location facing south toward Lake Shore Boulevard West and Lake Ontario, it is purported to be the oldest remaining farmhouse along the Etobicoke waterfront between the Humber River and Etobicoke Creek. While its stonework is concealed by stucco cladding, the structure retains the form of a characteristic Ontario House with its 1½-storey profile and the central gable.

The property at 28 Daisy Avenue contributes to an understanding of the early development of southwest Etobicoke Township as a farming community, prior to the area's evolution as a seasonal resort and its incorporation as the Village of Long Branch. With the partitioning of the original farm lot for a residential subdivision, the Richard Newborn House stands as a reminder of the area's historical origins.

As a rare extant stone farmhouse in Long Branch, the Richard Newborn House is a local landmark that is recognized on the City of Toronto Inventory of Heritage Properties.



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# Designation By-law Format

- ***Schedule A – 3. Attributes:***
  - Start broadly and then move systematically through details
  - This list is important – basis for dealing with alterations
  - Consider the position of structures on the property
  - May list features not included in the designation



# Designation By-law Format

## ***Schedule A - 3. Attributes***

- The 1½-storey house form building
- The scale, form and massing on a rectangular-shaped plan
- The stone foundation, walls and detailing (the building has been clad with stucco)
- The gable roof, with brick chimneys and a gable peak with a flat-headed window opening on the south slope
- The principal (south) façade, which is symmetrically organized with a central entrance
- The main entry, which is set in a wood surround with three-quarter-length panelled sidelights with round-arched windows and a flat multi-paned transom
- Flanking the entrance, the single flat-headed window openings that incorporate arched windows





# Designation By-law Format

## ***Schedule A - 3. Attributes (ctd)***

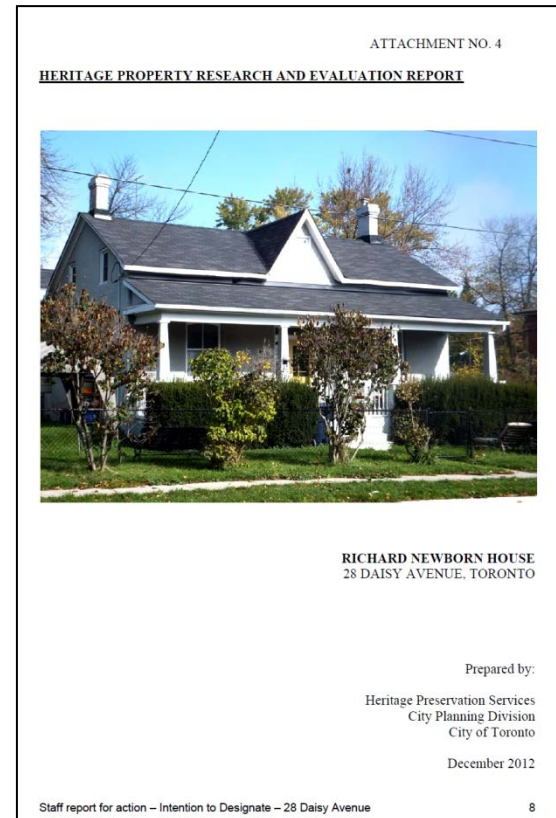
- The fenestration on the side elevations (east and west), with pairs of flat-headed window openings that are reduced in height in the upper storey (some of the openings have been covered over)
- Protecting the south façade, the open wood verandah with a gable roof, brick posts and wood piers (the current verandah is not original but is recognized because it represents the evolution of the structure)
- The placement of the house form building on the northeast corner of Daisy Avenue and Twenty-Sixth Street.



# Report Supporting Designation By-law

## ***Research & Evaluation Report:***

- Example found at:  
[www.toronto.ca/legdocs/mmis/2013/ey/bgrd/backgroundfile-55728.pdf](http://www.toronto.ca/legdocs/mmis/2013/ey/bgrd/backgroundfile-55728.pdf)
  - Should provide:
    - History of property
    - Justification for designation – use of criteria
    - Photographs
    - Research sources
  - Should be defensible if challenged



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# Report Supporting Designation By-law

## 28 Daisy Avenue: History

## Criteria

### i. HISTORICAL TIMELINE

Key Date	Historical Event
1806	The Patent for Lot 7, Concession 1of Etobicoke Township is given to Colonel Samuel Smith
1847	Richard R. Newborn purchases the 100-acre parcel
1851	Richard Newborn, his wife and five children are recorded in the Decennial Census in a single-storey stone house
1851	In the first tax assessment roll for Etobicoke Township, Richard Newborn is assessed \$768 for his 100-acre farm lot <sup>1</sup>
1853	Newborn conveys a small portion of his lot to the Hamilton and Toronto Railway Company, which extends its tracks through the property
1855	The tax assessment roll rises dramatically to \$975
1861	The Decennial Census indicates that the Newborn family occupies a one-and one-half storey stone house
1890	Newborn sells a small portion of his acreage to John O'Connor
1911 Mar	Toronto General Trusts, Newborn's executors, and his heir and daughter-in-law Susannah Newborn sell the property to Eric N. Spinney, who immediately conveys it to the Lake Shore Land Company
1911 June	Plan 1572 (labelled the "Lake Shore Gardens Annex") is registered by the Lake Shore Land Company <sup>2</sup>
1911 Sept	Under Plan 1572, Lot 109 containing the Richard Newborn House is acquired by Hugh McCullum
1922	McCullum's heirs sell the south part of Lot 109 containing the farmhouse to Alice M. Walton, whose family retains it until 1949; the next transaction occurs in 1977
2006	Toronto City Council confirms the inclusion of the property on the City's heritage inventory <sup>3</sup>

Design or Physical Value	
i. rare, unique, representative or early example of a style, type, expression, material or construction method	X
ii. displays high degree of craftsmanship or artistic merit	N/A
iii. demonstrates high degree of scientific or technical achievement	N/A



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# What properties can be designated?

Regulation 09/06 passed under the OHA specifies criteria:

1. Design or physical value
  2. Historical or associative value
  3. Contextual Value
- Must meet one of the criteria

**OHA “29. (1)** The council of a municipality may, by by-law, designate a property within the municipality to be of cultural heritage value or interest if, (a) where criteria for determining whether property is of cultural heritage value or interest have been prescribed by regulation, the property meets the prescribed criteria; .....



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# *Designation Criteria*

## 1. Design value or physical value:

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.



# *Designation Criteria*

## 1. Design value or physical value:



Graham / Robinson house  
12130 Albion-Vaughan Road  
Town of Caledon

- Representative example of its architectural style
- High degree of craftsmanship

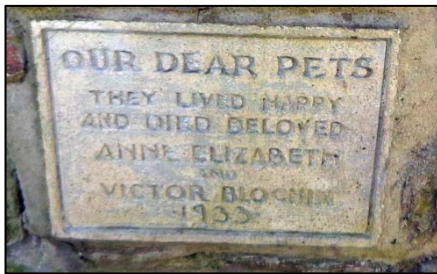


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# *Designation Criteria*

## 1. Design value or physical value:



Pet Cemetery  
14378 Yonge Street  
Town of Aurora

Cultural Heritage Landscape

- Early example of a type of landscape



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# *Designation Criteria*

## 2. Historical value or Associative value:

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.



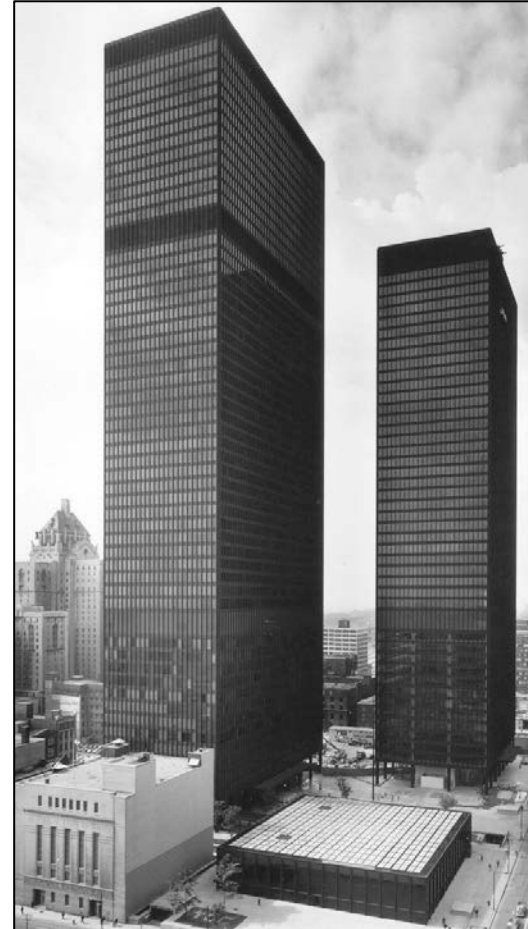


# *Designation Criteria*

## 2. Historical value or Associative value:

Toronto Dominion Building  
66 Wellington Street West  
City of Toronto

- Association – designed by a prominent international modernist architect – Mies van der Rohe (“less is more”) in association with prominent Toronto firms - John B. Parkin and Bregman and Hamann



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# *Designation Criteria*

## 1. Historical or Associative Value:



MacDonald House  
121 Centre Street  
City of Vaughan (Thornhill)

- Association - J. E. H. MacDonald – painter



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# *Designation Criteria*

## 3. Contextual value:

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.

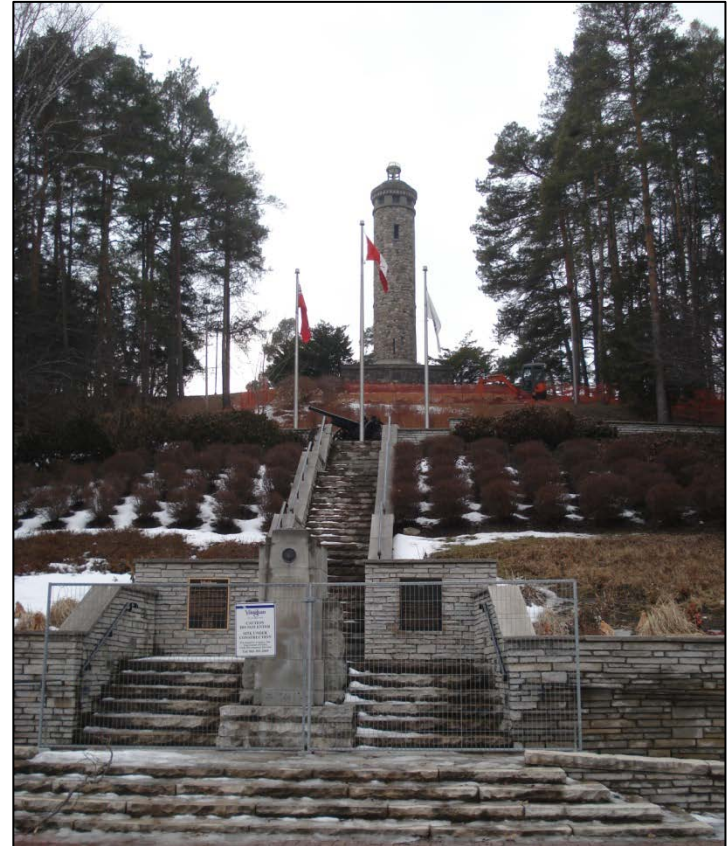


# Designation Criteria

## 3. Contextual value:

Woodbridge Memorial Tower  
80 Wallace Street  
City of Vaughan (Woodbridge)

- Landmark – point of reference in the landscape



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# *Designation Criteria*

## 3. Contextual value:

Union Hotel  
425 & 431 Davis Drive  
Town of Newmarket

- Landmark – point of reference in the landscape
- Physically linked (431)



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# *Effects of Designation - Alteration*

**OHA “33. (1)** No owner of property designated under section 29 shall alter the property or permit the alteration of the property if the alteration is likely to affect the property’s heritage attributes, as set in the description of the property’s heritage attributes that was required to be served and registered under subsection 29(6) or (14), as the case may be, unless the owner applies to the council of the municipality in which the property is situate and receives consent in writing to the alteration.”

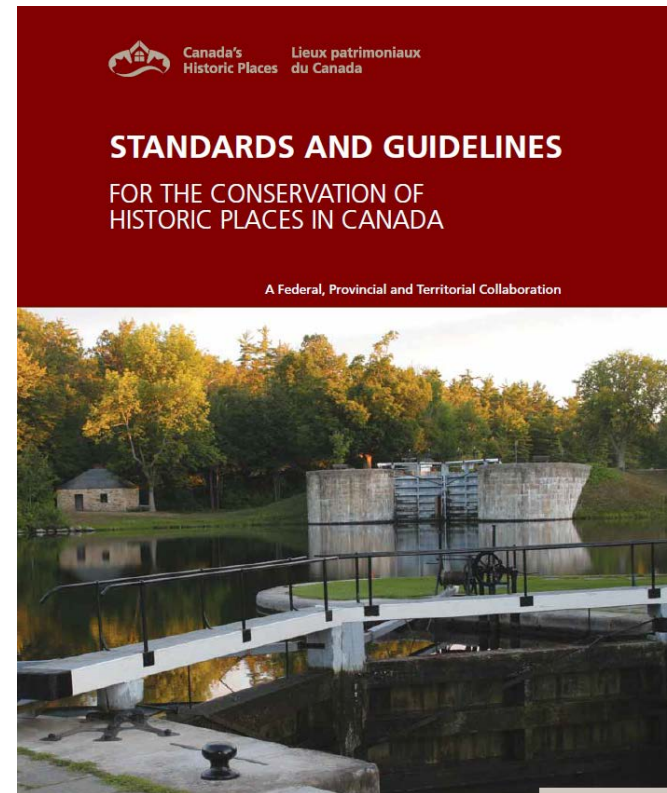
- Limited to heritage attributes
- Change is possible – subject to Council permission
  - Council may have delegated some approvals to staff
- Council may require a ‘heritage impact assessment’ & other info
- Council must decide within 90 days of receiving a complete application and issuing receipt
- Decision of Council appealable to the Conservation Review Board



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# *Effects of Designation - Alteration*

- Evaluation:
    - Is the proposed alteration:
      - in keeping with ‘good conservation practice’?
- [www.historicplaces.ca/en/pages/standards-normes](http://www.historicplaces.ca/en/pages/standards-normes)
- maintaining the heritage character of the property?
  - the best alternative?



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# *Effects of Designation - Demolition*

**OHA “34. (1)** No owner of property designated under section 29 shall demolish or remove a building or structure on the property or permit the demolition or removal of a building or structure on the property unless the owner applies to the council of the municipality in which the property is situate and receives consent in writing to the demolition or removal.”

- Demolition is possible – subject to Council permission
  - Council cannot delegate demolition approval
- Council may require a ‘heritage impact assessment’ & other information (OHA 34. (1.1))
- Council must decide within 90 days of receipt of a complete application and issuing receipt
- Council’s decision appealable to the Ontario Municipal Board which may order that the municipality consent to the demolition



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# *Effects of Designation - Demolition*

- Evaluation
  - Is demolition warranted given the submitted information and the potential loss of the heritage resource?
  - Are there other options? – retain (in whole or part and build behind the heritage resource)
  - Can the potential loss be mitigated?
    - Salvage
    - documentation



# *Effects of Designation - Other*

- Eligibility for:
  - Possible property tax reduction
    - 41 municipalities participate
    - Addition requirements may apply
      - Further heritage protection, insurance
  - Possible grant
- Disaster preparedness:
  - Process for dealing with heritage properties after disaster
    - Protecting resource until decision made
    - Investigation by appropriately qualified professionals
    - Options
      - » Partial retention
      - » Reconstruction
    - documentation



# *Effects of Designation - Other*

- Planning:
  - Provincial Policy Statement (2014) – *Planning Act*
    - Applied only to planning applications
      - Section 2.6
        - » 2.6.1 “Significant built heritage resources and significant cultural heritage landscapes shall be conserved.”
          - Significant includes designated properties
        - » 2.6.3 “Planning authorities shall not permit development and site alteration on adjacent lands to protected heritage property except where the proposed development and site alteration has been evaluated ...”
          - Protected includes designated properties



# *Designation Process*

- Details specified in Part IV of OHA
  - Not specified – research report
    - Request to Council – express intent to designate
  - Council expresses intent to designate
    - Effect – as if it were designated
    - Serving and publishing of notice
    - Consultation with MHC
  - If no objection (30 days), Council passes by-law
    - Registered on title
    - Serving and publishing of designation



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# *Designation Process*

- If objection to intent to designate:
  - Referred to the Conservation Review Board (CRB)
  - CRB holds hearing
  - CRB issues report (not decision) to municipal council
  - Council decides whether to proceed with the designation taking into consideration the CRB report.
- If Council proceeds with designation, Council passes by-law & registers and gives notice as above.
- If Council decides not to designate it withdraws its intent to designate.



# *Heritage Easement Agreements*

OHA “37. (1) ... the council of a municipality may pass by-laws providing for the entering into of easements or covenants with owners of real property or interest in real property, for the conservation or property of cultural heritage value or interest.”

OHA 37. (2) – easement registered on title

OHA 37 (3) – easement runs with the title & municipality enforces it.

OHA 37 (5) – in cases of conflict with designation, easement prevails

-Easement entered with consent of owner – in connection with:

- a planning application,
- a grant,
- property tax relief, or
- sale of surplus municipal heritage properties

-- runs in perpetuity

-- decision of council final – no appeal



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# *Heritage Easement Agreements*

- Ontario Heritage Trust established a model easement agreement adapted by municipalities
- Standard Content:
  - Reasons for identification
  - Photographs
  - Requires maintenance & repair by owner
  - Permits specified alterations



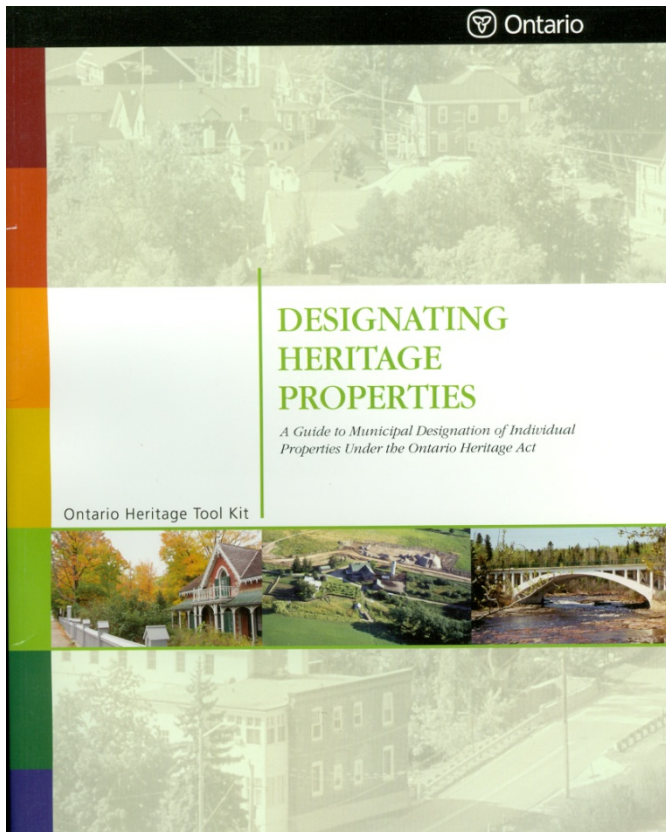
# *Heritage Easement Agreements*

- Standard Content (ctd)
  - Requires property to be insured
    - Municipality a named party on policy
    - Proceeds to be used to restore/repair building
  - Municipality can reconstruct if owner fails to; charge to owner
  - Controls signage
  - Municipality can put a plaque on the property





# Additional resource on designation



Ontario Heritage Tool Kit –  
Ministry of Tourism,  
Culture & Sport Website



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# Additional resources on HEAs

- City of Markham website:
  - Heritage Matters – Heritage



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To understand how other MHCs are using Part IV designation and HEAs:

- Join us at CHO/PCO

