

**Environment and Land Tribunals
Ontario**

Conservation Review Board

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**Tribunaux de l'environnement et de
l'aménagement du territoire Ontario**

Commission des biens culturels

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ISSUE DATE:

September 17, 2013

IN THE MATTER OF subsection 29(5) of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended

Objectors/Owners:

Benedict Dunne and Miriam Dunne (88 Park Avenue)
Ralph Cuervo-Lorens and Carla Zabek (474 Lakeshore Road East)

Subject:

Notice of Intention to Designate (Broxstowe House)

Property Addresses:

88 Park Avenue and 474 Lakeshore Road East

Legal Description:

Part Lots 4 and 5, Plan 110 (88 Park Avenue)
Part Lots 2, 3, 5, and 6, Plan 110 (474 Lakeshore Road East)

Municipality:

Town of Oakville

CRB Case No.:

CRB1208

Su Murdoch, Panel Chair, Vice-Chair

Jerry V. DeMarco, Associate Chair

Robert V. Wright, Vice-Chair

APPEARANCES

Counsel for the Town of Oakville:

Joanna Wice, Assistant Town Solicitor

Self Represented Owners/Objectors:

Benedict Dunne on behalf of himself and as the Representative of Miriam Dunne

OVERVIEW

This Hearing was convened under s. 29(8) of the *Ontario Heritage Act*, R.S.O. 1990, Chapter O.18, as amended (“Act”), for the purpose of reporting to the Council of the Town of Oakville (“Town”), whether, in the opinion of the Conservation Review Board (“Review Board”), all or part of two properties known as 88 Park Avenue and 474 Lakeshore Road East in the Town of Oakville, should be protected by by-law under s.29 of the Act.

Ralph Cuervo-Lorens and Carla Zabek object to the Notice of Intention to Designate (“Notice”) the property which they own at 474 Lakeshore Road East, on the basis that the Town has not satisfied the test of Ontario Regulation 9/06: Criteria for Determining Cultural Heritage Value or Interest (“Regulation 9/06”) for protection under s. 29 of the Act. They also question the process that led to the Notice being issued, and matters related to their application to demolish the house and garage on their property.

Benedict Dunne and Miriam Dunne object to the Notice of Intention to Designate the property which they own at 88 Park Avenue, also on the basis that the Town has not satisfied the test of Regulation 9/06 for protection under s. 29 of the Act. The Dunnes also question how and why their property was elevated from a listing on the Town’s Heritage Register, to a candidate for protection under s. 29, when only the owners of 474 Lakeshore Road East applied for a demolition permit.

A third property, 86 Park Avenue, is included in the Notice but as there are no objections to its designation, it is not part of the proceeding.

For the reasons set out below, the Review Board recommends that the two properties be protected under s. 29 of the Act for cultural heritage value or interest reasons.

BACKGROUND

The properties at 88 Park Avenue and 474 Lakeshore Road East were subdivided in 1951 from a larger parcel of land, each with a portion of one dwelling known as Broxstowe House. The lot lines of the subdivided properties are at the common (shared) walls of this dwelling. (The third property (86 Park Avenue) also includes part of Broxstowe House.) In addition, the property at 474 Lakeshore Road East contains a detached, 1920s era garage associated with the house and included in the Notice.

Following receipt of an application to demolish the part of the Broxstowe dwelling and the garage at 474 Lakeshore Road East, the Town issued the Notice for that property, as well as 86 and 88 Park Avenue. The owners of 474 Lakeshore Road East and 88 Park Avenue objected, and those matters were referred to the Review Board.

Pre-hearing teleconferences were held on April 12 and May 30, 2013, where dispute settlement was sought in a private, without prejudice discussion. These were attended by the Parties, and a Review Board panel of Ms. Murdoch and Mr. DeMarco. No agreed statement of facts resulted from these discussions. No party objected to Ms. Murdoch or Mr. DeMarco being part of the panel for the main hearing.

Notice of this Hearing was served by the Review Board on the Parties and was published in the *Oakville Beaver* on July 18, 2013, in the manner required under the Act. The Statement of Service was filed as Exhibit 1.

The Hearing took place on July 29, 2013, at the Town's municipal office at 1225 Trafalgar Road, Oakville. On the morning of the Hearing, the Review Board panel members, Town representatives, and the owners/objectors of 88 Park Avenue conducted a site visit of 86 and 88 Park Avenue, and viewed 474 Lakeshore Road East from 86 and 88 Park Avenue and from Lakeshore Road East. The owners/objectors of 474 Lakeshore Road East did not attend, although they had the opportunity to do so.

While it is regular practice for the Review Board to set aside time to hear statements from members of the public, none asked to make a statement.

Lists of the exhibits filed at the Hearing and the witnesses who testified are found at Schedules 1 and 2, respectively.

On July 16, prior to the commencement of the Hearing, Mr. Cuervo-Lorens, on his own behalf and as the Representative of Ms. Zabek, wrote to the Review Board requesting an adjournment. That request was denied. Reasons from the pre-hearing conference panel that dealt with that adjournment request were subsequently requested by Mr. Cuervo-Lorens and are provided by the pre-hearing conference panel as Schedule 3 to this Hearing Report.

Mr. Cuervo-Lorens informed the Review Board by email on July 26, 2013, that he and Ms. Zabek would not be attending the Hearing but that they were not withdrawing their objections. At the start of the Hearing, the Review Board cited s. 7(1) of the *Statutory Powers Procedure Act*, which provides a tribunal the authority to hold a hearing in the absence of a Party if that Party was properly informed of the hearing. All Parties and the

public were informed of the Hearing in the manner required. At the Hearing, the Town and Mr. Dunne were canvassed as to their positions and they agreed that the Hearing should proceed.

Due to the non attendance of Mr. Cuervo-Lorens, the disclosure materials received from him in advance of the Hearing were not evidence in the Hearing and have not been considered by the Review Board in this Hearing Report. The letter of Objection from Mr. Cuervo-Lorens and Ms. Zabek, dated November 22, 2012, was entered by the Town as an exhibit, and, therefore, it was considered by the Review Board.

PRELIMINARY MATTERS AND IDENTIFIED ISSUES

At the start of the proceeding, two preliminary matters were recognized: the Town's process under s. 27 (Register of properties of cultural heritage value or interest) in relation to s. 29 of the Act; and the relatedness of the three properties.

The evidence presented at the Hearing identified the following issues:

Issue No. 1

Does each property meet the test of Ontario Regulation 9/06: Criteria for Determining Cultural Heritage Value or Interest for design or physical value?

Issue No. 2

Does each property meet the test of Ontario Regulation 9/06: Criteria for Determining Cultural Heritage Value or Interest for historical or associative value?

Issue No. 3

Does each property meet the test of Ontario Regulation 9/06: Criteria for Determining Cultural Heritage Value or Interest for contextual value?

Issue No. 4

Are the descriptions of the heritage attributes accurate?

CASE FOR THE MUNICIPALITY

The Town argued that the two properties possess cultural heritage value or interest under Regulation 9/06.

Susan Schappert is the Heritage Planner, Planning Services Department, Community Development Commission, for the Town. She is a full member in good standing with the Canadian Institute of Planners and the Ontario Professional Planning Institute. She has previously been employed as Community Programs Officer for Ontario Heritage Trust and as Heritage Researcher for the City of Peterborough, as well as earlier positions in community planning and heritage outreach. Ms. Schappert stated that her analysis and conclusions in this matter were reached independently and are based on her professional expertise. The Review Board found that Ms. Schappert is qualified as an expert in heritage planning, particularly as it applies to the policies and practices of the Town.

Ms. Schappert undertook the historical and physical research of the properties and drafted the staff report from which the statement of cultural heritage value or interest and description of heritage attributes (the "Statement") was drafted. In her testimony, she provided an overview of her witness statement and referenced the supporting documentation.

Ms. Schappert explained that the three properties, 86 Park Avenue, 88 Park Avenue, and 474 Lakeshore Road East, are within Lot 11, Concession 4, South Dundas Street, Trafalgar Township. In 1905, this part of Lot 11 was subdivided into building lots and registered as Plan 110. The property at 88 Park Avenue is part Lots 4 and 5; the property at 474 Lakeshore Road East is part Lots 2, 3, 5, and 6; and the property at 86 Park Avenue is part Lots 5 and 6; all of Plan 110. Plan 110, plus Plan 105 and Plan 114 to the west, mark the beginning of the Orchard Beach, or Orchard Park, subdivision. From Ms. Schappert's review of the documents, the intent of the original developers of the subdivision, Samuel Bacon and Charles David Carson, was to build an "exclusive lakeside community" of "summer cottages for wealthy Toronto residents."

In 1917, Anna "Maude" (Cawthra) Brock bought Lots 5 and 6, Plan 110, which already contained a last quarter 19th century, one-and-a-half, or two-storey farmhouse (which stands at 86 Park Avenue). In 1920, she and her spouse Colonel Henry Thompson Brock also bought Lots 2, 3, and 4, Plan 110. The Brocks were prominent residents of Toronto and are attributed with the 1920s enlarging and remodelling of the farmhouse using the then popular Tudor Revival style of architecture. Known as Broxstowe House, it was their summer home. Colonel Brock died in 1933. In or about 1939, the widowed Mrs. Brock donated the property for use as a community supported home for British school children evacuated to safety from the Second World War bombings in England. It was used as such between 1940 and about 1944. It is this use that the Town assigns the most significance for cultural heritage value and interest.

In 1951, the lots on which Broxstowe House stands were subdivided into three parcels of land, each with a portion of the dwelling:

- the property at 86 Park Avenue has a dwelling unit that began as the one-and-a-half or two-storey farmhouse constructed in the last quarter of the 19th century. In the 1920s, it was enlarged to the west and north, and remodelled by the Brocks in the Tudor Revival style. It faces east to Park Avenue;
- the property at 88 Park Avenue has a dwelling unit that began as part of the farmhouse, notably in the 1920s, as a single storey addition to the north side. This addition was likely a library or reading room, with a tall fireplace on the west wall. The south wall of the first storey of 88 Park Avenue is common to the north wall of 86 Park Avenue. A second storey was added to the one storey section in 1997. It was matched to the existing Tudor Revival style. The height of the chimney on the west wall was raised. This dwelling unit faces east to Park Avenue; and
- the property at 474 Lakeshore Road East has a dwelling unit oriented in a northerly direction toward Lakeshore Road East and a detached, 1920s, 3-bay, Tudor Revival style garage at the west. The one storey, west section of the farmhouse (now 86 Park Avenue) was replaced in the 1920s with the two-storey section now forming the east end of 474 Lakeshore Road East. The west wall of 86 Park Avenue and the east wall of 474 Lakeshore Road East is a common wall. The end of the farmhouse roof (clad with wood shingles) is visible inside the attic of this east section of 474 Lakeshore Road East. A one storey, living room addition built onto the west end of 474 Lakeshore Road East, sometime after 1949, was replaced in 1984 with a two-storey addition and finished with Tudor Revival style elements.

It is Ms. Schappert's opinion that Broxstowe House, although shared over three legally separate properties, is "one (undivided) historic house" with the cultural heritage value of each portion of the house tied to the other portions. This does not include the 1997 second-storey added to the 1920s addition at 88 Park Avenue; nor the 1984, two-storey, west addition to the portion of the house at 474 Lakeshore Road East. She concludes that the undivided house and detached garage (the garage is at 474 Lakeshore Road East) meet the test of Regulation 9/06 for all of the value and interest criteria: design or physical; historical or associative; and contextual. The Statement included in the Town's Heritage Report contains the summary of her findings, although

the wording was somewhat modified in the final Statement included in the Notice. It provides that:

The property has design value or physical value under Regulation 9/06 criterion 1.(i) as:

The subject house is a representative example of a *circa* 1920s Tudor Revival style residence, which was rebuilt or added on to a pre-1900 farmhouse.

The property has historical value or associative value under criterion 2.(i) as:

The subject property is directly associated with the “Broxstowe House,” a home to accommodate young “war guests” during the Second World War. The home was a community supported endeavor to help protect the civilian population of Britain, especially children, from aerial bombing of British cities. While there were many smaller initiatives in Oakville to contribute to the war effort on the home front, the founding and maintenance of Broxstowe House was one of the most significant. Broxstowe House accommodated 10-15 English schoolboys between 1940 and 1944.

The property has contextual value under criterion 3.(i) as:

The house supports the evolving historic character of the area, which consists of older farmsteads and estate houses to the 1910-1940s era houses from the Orchard Beach subdivision to more recent infill.

In cross examination, Mr. Dunne queried why the property at 468 Lakeshore Road East (to the immediate west of number 474), which includes the coachman’s house built in the 1920s for the Brocks, is not included in the designation proposal. Ms. Schappert explained that the owners were approached and discussions are on hold pending the outcome of this proceeding.

Mr. Dunne observed that elsewhere in the Orchard Park area, historic buildings have been demolished and new housing constructed. Ms. Schappert explained that not all properties meet the test of Regulation 9/06 and that some new structures “fit with the evolving character of the area.”

Regarding Mr. Dunne’s concern that his property at 88 Park Avenue is being proposed for protection under the Act, when it was the owners of 474 Lakeshore Road East that applied for the demolition permit, Ms. Schappert explained that a property does not need to be on the Heritage Register to be a candidate for designation. She testified that

in the Town not all proposals for protection under s.29 of the Act are prompted by a permit application, and she gave the examples of eight recent designations, only two of which followed a *Planning Act* application.

The second witness for the Town, David Cuming, testified that he was retained by the Town to peer review Ms. Schappert's Heritage Report and the wording of the Statement. He stated that he did so based on his heritage planning expertise, which includes past work in the Town, and that he does his work independently of any direction from the Town. As such, Mr. Cuming was qualified by the panel as an expert witness in heritage planning.

Mr. Dunne raised a concern that information contained in Mr. Cuming's witness statement is "new" information (that is, not contained in the Town's Statement) and was, therefore, inadmissible. He alluded to similar concerns on the application to adjourn the Hearing that was made by Mr. Cuervo-Lorens. Ms. Wice reiterated the position stated at the time of the adjournment request, that the Town has not modified its Statement based on Mr. Cuming's findings. She submitted that the purpose of the Hearing is for the Review Board to hear all relevant evidence, including that of Mr. Cuming as an expert witness, and to decide if, and how, to use this evidence when making a recommendation to the Town Council. The Review Board found that this information had been provided in the disclosure materials fourteen days prior to the Hearing, and that it forms part of the independent opinion of Mr. Cuming as an expert in heritage planning tasked with providing a thorough evaluation of the properties. The Review Board, therefore, allowed Mr. Cuming to proceed with his evidence but indicated that the information would be weighed in the context of his own opinion evidence and not the Town's official position.

Mr. Cuming noted that he visited two of the properties but was denied access to 474 Lakeshore Road East so it was viewed only from the sidewalk.

As analysed in his witness statement, Mr. Cuming endorsed the research and evaluation process undertaken by the Town as complying with the requirements of the Act, Regulation 9/06, and accepted heritage planning standards. He also endorsed the findings of the Town's Heritage Report and the wording of the Statement, but added that, in his view, the findings in relation to Regulation 9/06 could be broadened and some minor amendments made to the description of heritage attributes.

Regarding the criteria of design or physical value, Mr. Cuming would add that Tudor Revival was popular in the early 20th century as a suburban style but its use was not widespread in the Town. Broxstowe is "a fairly early use of the style in Oakville."

Although Mr. Cuming stated that this dwelling does not exhibit all the elements found in a style book, he agreed with the Town that it is representative of the style.

Using a thematic approach, it is Mr. Cuming's opinion that the historical or associative value of the properties also contributes to the understanding of the impact on the community when Lakeshore Road was completed between 1915 and 1919 as Ontario's first all concrete motorway. He testified that when the corridor west of Toronto became accessible by motor car, several of Toronto's social and business elite, including the Brocks, established summer homes in the Town, Toronto's elite became the Town's elite, and there was increased investment in the Town as a community. He said that the 3-bay garage at 474 Lakeshore Road East is part of this transportation theme.

Based on his research, Mr. Cuming concluded that Colonel Brock was a "staunch patriot to Canada" who advocated for the promotion of Canadian and British relations and that this philosophy was integral to the decision of his widow to donate Broxstowe House for billeting young British evacuees. He said that its operation was a publicly supported contribution of the Town to the Second World War effort. In Mr. Cuming's opinion, this building should be protected because other examples of Canada's wartime heritage are being lost, such as Camp X at Oshawa.

Mr. Cuming agreed with the Town on the contextual value of the properties in maintaining and supporting the character of the area (criterion 3(i)). He also found contextual value under criterion 3(ii) in that the properties are physically, functionally, visually, and historically linked to their surroundings. According to Mr. Cuming, it is significant that the Brocks chose this farmhouse to remodel. Its location was in a newly suburbanized area, oriented to Lakeshore Road.

Based on his analysis, Mr. Cuming reached the conclusion that the Town's Statement should be expanded as set out below.

Under historical or associative value criterion 2.(i):

The Broxstowe House has direct associative value with a person important to a community, specifically Colonel Henry Thompson Brock, a notable and distinguished military man, lawyer and business man; and,

The Broxstowe House has direct historical value with the theme of early-twentieth century suburbanization of Oakville and the 1915-1919 building of Lakeshore Road as the first all-concrete, inter-urban highway in Canada.

Under historical or associative value criterion 2.(ii):

The former Brock Estate and its component buildings stand as material artifacts and representations of the Brock-Cawthra family, business, military and community lifeways and connections and has the potential to yield information that contributes to an understanding of a community or culture.

Under contextual value criteria 3.(i) and (ii):

The Broxstowe House has contextual value as it is:

- important in maintaining the streetscape character of the Park Avenue and Lakeshore Road East area,
- important in supporting the streetscape character of the Park Avenue and Lakeshore Road East area,
- physically linked to its surroundings,
- functionally linked to its surroundings,
- visually linked to its surroundings,
- historically linked to its surroundings

Regarding the description of the heritage attributes of 88 Park Avenue, Mr. Cuming stated that the Statement should specify the type of brick as “rug brick-clad concrete block foundations” and include reference to its “two-storey height rug brick chimney.”

THE DUNNES

Mr. Dunne was self-represented and did not call any other witnesses. He entered as an exhibit a letter from the Town dated July 13, 2009, addressed to Miriam Dunne and him. This letter outlines the Town’s proposal to list 88 Park Avenue on the Town’s Heritage Register. This letter, and the letter of Objection submitted by the Dunnes dated November 20, 2012, constitute their submissions.

Mr. Dunne testified that there are several Tudor Revival style dwellings in the Town. He said that the second-storey of his dwelling, added in 1997, was designed to blend with the Tudor Revival elements of the pre-existing structure. He further stated that the gable elements in the two-storey, 1920s east section of 474 Lakeshore Road East are applied wood, typical of the Tudor Revival period (as opposed to structural timbers of the original Elizabethan period), but the Tudor elements of the second-storey facade of the east section are a faux paint treatment, not wood. He testified that the 1997 addition at the west end of 474 Lakeshore Road East was designed to blend with the Tudor

Revival style of the balance of the building. It is his view that these alterations, style blending, and faux treatments undermine the authenticity of this structure as a representative example of the Tudor Revival style.

Mr. Dunne queried how the short term billeting of ten to fifteen boys in Broxstowe House qualifies as “significant” in terms of the overall war effort in Canada, and, he pointed out, the evidence of newspaper references to the founding and operation of Broxstowe House as a refuge only spans three months.

Mr. Dunne submits that contextually the neighbourhood is a mix of historic dwellings, and infill housing of less than twenty years in age. He stated that the demolition of older structures is common in the area and that this illustrates an inconsistency in the Town’s policy and practice on heritage conservation.

Of particular concern to Mr. Dunne is how his property was elevated from being listed on the Town’s Heritage Register, to a candidate for protection under the Act, when only the owners of 474 Lakeshore Road East applied for a demolition permit.

MR. CUERVO-LORENS AND MS. ZABEK

As noted, Mr. Cuervo-Lorens and Ms. Zabek did not attend the Hearing, but their letter of Objection dated November 22, 2012, was entered by the Town as an exhibit and, therefore, it was considered by the Review Board. Most of the submissions contained in their letter address the issue of an application to demolish their house and garage at 474 Lakeshore Road East, and their concerns about the process of designation undertaken by the Town.

Regarding design or physical value, the submissions of Mr. Cuervo-Lorens and Ms. Zabek contained in their letter contend that the “heritage value of the Undivided House, if any, is found mostly in 86 and 88 Park Avenue.” The letter goes on to state that a significant portion of the heritage value has “been lost through the many alterations carried out over time with scant regard for heritage consideration,” notably the 1951 severances of land, the demolition of another house and attached garage on the Brock estate, the 1984 and 1997 additions, and other modifications to each property. The letter states that in 2004 the painted-on Tudor “timbers” of the north facade of the 1920s section of 474 Lakeshore Road East, which “before resembled a Swiss or Tyrolean Lodge more than anything remotely Tudoresque,” were repainted, and that the fenestration (windows) noted by Town staff as “‘historic’ is simply not: it has been changed both after the subdivision in 1951 and again by us since 2001.” The letter

states that to qualify for protection, the dwelling must be “more than just a few crude Tudoresque add-ons.”

Regarding the historical or associative value of the use of Broxstowe House in billeting young British evacuees, Mr. Cuervo-Lorens agrees in the letter, that this was a commendable local initiative in the war effort. However, he queries whether the entire house was involved in housing the boys and why the protection of the three properties is deemed necessary to commemorate this initiative.

Regarding contextual value, the letter states that this area has “changed significantly since the 1940s” and that it is in transition with “character houses and modern and exaggerated mansions built without any pretence of respecting the heritage character of the area.”

ANALYSIS

PRELIMINARY MATTERS

i) The Town’s Process

Part of the objection by the Dunnes is the question of how and why their property at 88 Park Avenue was elevated from a listing on the Town’s Heritage Register under s.27 of the Act to a candidate for protection under s. 29 of the Act, when a demolition permit application was made only in relation to 474 Lakeshore Road East.

The Review Board concurs with the Town’s explanation that, under the Act, a property can be considered at any time as a candidate for protection under s. 29. The evaluation process under Regulation 9/06 is apart from the process of being listed on the Register prescribed by s. 27 of the Act. The Review Board is satisfied that the cultural heritage evaluation undertaken for 88 Park Avenue stands alone and is not an attempt to reinforce any denial of a demolition permit application for 474 Lakeshore Road East.

ii) The Relatedness of the Properties

The subject properties are three legally distinct parcels of land with separate ownership and Land Titles registrations. The heritage attributes of each property are described by the Town as “the undivided structure that existed during the most significant period of the undivided structure in the 1940s, when it was used as a home for evacuated British children during World War 2” and includes the 1920s garage at 474 Lakeshore Road East.

Part IV of the Act (which contains s. 29 (municipal) and s. 34.5 (provincial)) provides for the protection of an individual property, defined as “real property and includes all buildings and structures thereon.” Real property means land and those features of a fixed, immovable nature.

Part V of the Act provides for the protection of multiple properties that form one area of cultural heritage value or interest as a “heritage conservation district.”

Unless the Town considers the protection of the three properties as a Part V, Heritage Conservation District, the provision under the Act that applies in this situation is s. 29, which requires separate evaluations and descriptions of the heritage attributes of each property. The Review Board finds that under this shared heritage attribute circumstance the Town correctly applied s. 29 of the Act and the provisions of Regulation 9/06. In this Hearing Report, the Review Board has examined the value or interest of each of the two properties in their own right while being mindful of the fact that Broxstowe House spans three separate properties.

Issue No. 1

Does each property meet the test of Ontario Regulation 9/06: Criteria for Determining Cultural Heritage Value or Interest for Design or Physical Value?

Regarding the criteria for the purposes of s. 29(1)(a) of the Act, s. 1.(2)1. of Regulation 9/06 provides:

1. 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.

The Town considers that the three properties, with Broxstowe House in its undivided form, collectively meet criterion 1.(i) as “a representative example of a *circa* 1920s residence with Tudor Revival style details, which was rebuilt or added on to a pre-1900 farmhouse” (as per the Notice).

It is not clear whether the intent of the Town’s wording above is to identify the house (and presumably the garage) as a representative example of a Tudor Revival style dwelling, or as a representative example of the 1920s remodelling of an earlier structure

using Tudor Revival style elements. Mr. Cuming reasons that this is an example of the suburbanization of the Town resulting from the combined opening of Lakeshore Road and the 1920s practice of remodelling an existing dwelling into a Tudor Revival style summer home with garage. His reasoning is more a consideration of the historical or associative criterion in s. 1.(2)2. of Regulation 9/06.

Given the evidence that Broxstowe House began as a late 19th century farmhouse, was enlarged and remodelled in the 1920s in the Tudor Revival style, and subsequently enlarged and modified on several occasions, the Review Board finds that a large part of the exterior of the house is a recent interpretation of the Tudor Revival style, and as such, the style authenticity is diminished. The Review Board finds that the exterior of this dwelling is not a representative example of Tudor Revival style, as intended in Regulation 9/06, and, therefore, each property does not meet the criterion in s. 1.(2)1. of the Regulation. The Review Board notes that the 1920s garage may be more original in style and form.

Issue No. 2

Does each property meet the test of Ontario Regulation 9/06: Criteria for Determining Cultural Heritage Value or Interest, in the category of Historical or Associative Value?

S. 1.(2)2. of Regulation 9/06 provides:

2. 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.

Based on the evidence, the Review Board agrees with the Town's submission that there is historical or associative value found in the use of Broxstowe House from 1940 to about 1944 as a home for young British evacuees. Although the total number of evacuees housed was only "ten to fifteen," the gesture and the community involvement in this war effort are noteworthy. Each property at issue in this proceeding contains a portion of Broxstowe House and the Review Board finds that each property qualifies under this criterion. Mr. Cuming's evidence regarding the role of the Brocks, who they were and why they were associated with Oakville, and their promotion of British and Canadian relations, is relevant as background information to this primary story.

Issue No. 3

Does each property meet the test of Ontario Regulation 9/06: Criteria for Determining Cultural Heritage Value or Interest, in the category of Contextual Value?

S. 1.(2)3. of Regulation 9/06 provides:

3. 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.

The Town endorses criterion 3.(i) by saying in the Statement: “The undivided form of Broxstowe House (which includes portions of all three existing properties) also supports the evolving historic character of the area, which consists of older farmsteads and estate houses to the 1910-1940s era houses from the Orchard Beach subdivision to more recent infill.” The evidence depicts this area as having an “eclectic and continually evolving character,” with its value found in the “individual and unique properties, not cookie cutter like subdivisions.” It was demonstrated by the evidence that there are several s. 29 protected properties in the area and that older buildings have been demolished for modern infill. No one at the Hearing categorized the subject properties (individually or collectively) as a physical landmark (as in 3.(iii)).

The Review Board agrees with the Town’s submission that each property, and the three properties collectively, have contextual value because they support the character, and are part, of the eclectic built form mix of this area.

Issue No. 4

Are the descriptions of the heritage attributes accurate?

The Notice of Intention to Designate states under the heading “Summary of Heritage Attributes” that the heritage attributes “of all three properties relate to the portions of the undivided structure that existed during the most significant period of the undivided structure in the 1940s, when it was used as a home for evacuated British children during World War 2.” The Notice describes only those portions of the undivided house and the garage that the Town believes relate to this 1940s period. It excludes the 1984 and 1997 additions. The supporting documentation, made exhibits at the Hearing, includes surveys of the property at various dates; Figure 5, being a *Globe and Mail* photograph dated July 26, 1940; and Figure 6, being a Fire Insurance Plan of 1949.

The Review Board notes that the Notice includes “the painted stucco exterior cladding”

of 474 Lakeshore Road East, yet the letter from Mr. Cuervo-Lorens submits that in 2004 he “re-painted the entire house and in the course of that altered the painted timber pattern on the north side of the 1920s part of the Subject House.” The Town also has included the “fenestration, including any remaining historic windows” of 474 Lakeshore in the Notice. Mr. Cuervo-Lorens submits that the fenestration “has been changed both after the subdivision in 1951 and again by us since 2001.” It also is not clear in the wording of the Notice whether all fenestration is to be included, or just the historic windows.

Considering these as examples of inconsistencies between the Town’s descriptions of heritage attributes, and evidence heard, it appears to the Review Board that the description of heritage attributes would benefit from a review by the Town. This would be, first, to confirm that the elements listed are associated with the 1940s period of significance; and, second, to ensure that there is clarity as to what is being proposed for protection.

Mr. Cuming’s suggestion that the type of brick used to clad the concrete foundation at 88 Park Avenue be identified in the description as “rug” brick has merit. His description of “the two-storey height rug brick chimney” at 88 Park Avenue also has merit, but only once the 1940s height of the chimney is determined. Mr. Dunne gave evidence that he added an upper section to the chimney, thereby increasing its original, as built, height.

Given the implications of designation on the property owners, and that the designating bylaw sets the guidelines for review of any applications for alteration and/or demolition or removal of any buildings or structures, accurate and clear descriptions of the heritage attributes of the properties are warranted.

The Review Board notes that the Town is proposing to protect the Broxstowe house and garage as the only heritage attributes of the three properties. The descriptions of heritage attributes do not include any elements of what could be termed the cultural heritage landscape of the Brock estate (as it existed in the 1940s period of significance). Examples of elements that give context (or setting) to a structure such as an estate dwelling are typically historic gardens; specimen trees (in this case, of note are the mature London plane and birch trees); fixed infrastructure, such as driveways, lawn furnishings (fountains, statuary), and fencing, etc.; and evidence of planned vistas, patterns, or relationships within the property, where these exist. It is not clear in the evidence if the cultural heritage landscape aspect of each property is an intended omission, or is something that warrants consideration at this time.

SUMMARY

The existence of one heritage attribute (house plus associated garage) spanning three legally separate parcels is a challenging situation. It is the Review Board's conclusion that the Town conducted a reasonable process under s. 29 of the Act, given this situation.

Based on the evidence at the Hearing, the Review Board agrees with the Town's submission that cultural heritage value or interest as prescribed by Regulation 9/06 is found in the two candidate properties, 88 Park Avenue and 474 Lakeshore Road East. For the reasons given in the Analysis section of this Report, the Review Board finds that the cultural heritage value or interest of each property is primarily supported by their meeting the historical or associative values criteria, and, to a lesser extent, the contextual value, as prescribed in Regulation 9/06.

The Review Board finds that the properties do not meet criteria s. 1.(2)1. of Regulation 9/06, when based on the house being a representative example of the Tudor Revival style. The 1920s era garage at 474 Lakeshore Road East may be representative of that style, if the style elements are proved authentic, but its significance is more in relation to the historical and associative aspects of the opening of Lakeshore Road and motoring to summer homes in Oakville.

RECOMMENDATION

The Conservation Review Board recommends that:

1. The Statements of Cultural Heritage Value or Interest be revised to eliminate the reference to the properties being a representative example of the Tudor Revival style;
2. The description of heritage attributes for each property be reviewed with the following purposes:
 - (a) to confirm that only those physical elements associated with the significant 1940s period of use of the properties by young British evacuees are included;
 - (b) to consider the inclusion as heritage attributes any significant,

1940s, cultural heritage landscape elements within each property;

(c) to ensure that the final wording clearly identifies and describes the scope and intent of the protection.

Following this review, it is recommended that the Town of Oakville proceed with the protection of the two properties, 88 Park Avenue and 474 Lakeshore Road East, under the provisions of s. 29(14) of the *Ontario Heritage Act*, R.S.O. 1990, Chapter O.18, as amended.

“Su Murdoch”

Su Murdoch, Panel Chair, Vice-Chair
September 17, 2013

“Jerry V. DeMarco”

Jerry V. DeMarco, Associate Chair
September 17, 2013

“Robert V. Wright”

Robert V. Wright, Vice-Chair
September 17, 2013

SCHEDULE 1**EXHIBITS LIST**

- Exhibit 1: Affidavit of Notice of Hearing being served, as required under the *Ontario Heritage Act*, tabled by the Conservation Review Board
- Exhibit 2: Town of Oakville Document Book, July 29, 2013
- Exhibit 3: Acknowledgement of Expert's Duty, signed July 12, 2013, Susan Schappert
- Exhibit 4: Letter, July 13, 2009, from the Town of Oakville to Benedict and Miriam Dunne re "Addition of listed, non-designated properties," tabled by Mr. Dunne
- Exhibit 5: Acknowledgement of Expert's Duty, signed July 12, 2013, David Cuming
- Exhibit 6: *Armorial Families: A Directory of Gentlemen of Coat-Armour, 1929*: Entry for Brock (5 pages), tabled by Town of Oakville

SCHEDULE 2

LIST OF WITNESSES IN ORDER OF APPEARANCE

Susan Schappert, Heritage Planner, Town of Oakville

David Cuming, heritage consultant, on behalf of the Town of Oakville

Benedict Dunne, owner of 88 Park Avenue

SCHEDULE 3**REASONS REGARDING ADJOURNMENT REQUEST**

BEFORE:

Su Murdoch
Jerry V. DeMarco

Background

On July 16, 2013, the Review Board received the following email from Ralph Cuervo-Lorens, on behalf of himself and as the Representative of Carl Zabek, requesting an adjournment of the July 29, 2013 commencement of the hearing in this matter:

I am the Owner of the property at issue in this proceeding and write to seek a reasonable adjournment of the CRB hearing presently scheduled to begin July 29 in Oakville under Rule 26.

We received the Town's disclosure brief yesterday. It contains information and material not previously provided to the owners. As well, portions of the Town's recently as well as its expert in his "Witness Statement" appear to rely on material not disclosed by the Town. None of this material has been previously considered or reviewed by me or by our expert. The information and documents at issue are material to the determination of the issues the Board needs to consider.

Together with our expert, we (and I assume also the owner of the adjacent house who is also part of this proceeding) need a reasonable time to review and consider the new material, obtain any further production deemed relevant, and if warranted be able to test the Town's evidence and provide a response. Our expert may also need to revise his opinion and evidence as a result of the new material. Being able to properly meet the Town's case is a requirement of a fair hearing.

By a copy of this email I am seeking the Town's position on the adjournment. I have asked the owner of the adjacent house, Mr. Dunne, and are waiting for his reply. I did not want to delay making this application as we are just inside the fourteen day period referred to in the Rules.

I would suggest that, if the Board is agreeable, a further case conference be held (perhaps during the time that has been set aside for the hearing) to discuss timing, further production and new hearing dates. At that time and for the Board's information I will also be requesting permission to have a recorder present and a determination of the mechanics of the site visit.

Rule 26 provides:

Rule 26 - Requesting an Adjournment Less Than Fourteen Days Before a Scheduled Hearing Date

26.01 A party who requests an adjournment less than fourteen days before a scheduled hearing date shall, as soon as possible, file a written request with the Review Board and notify every other party of the request.

26.02 In making the request under subrule 26.01, the party requesting the adjournment shall submit all information required under subrule 25.03, to the extent possible.

26.03 The Review Board may decide to grant or to deny the request based on the information provided by the requesting party, if it considers it appropriate to do so.

26.04 The Review Board may require that the request be made at the beginning of the hearing at which time the Review Board will provide every other party with the opportunity to make submissions.

26.05 The Review Board will grant a request for an adjournment that is made less than fourteen days before the next scheduled hearing date only for unavoidable emergencies, such as illnesses so close to the hearing date that another representative or witness cannot be obtained. The Review Board must be informed of these emergencies as soon as possible.

26.06 After considering the request and any submissions, the Review Board may:

- (a) grant the request and fix a new date;
- (b) grant a shorter adjournment than requested;
- (c) deny the request, even if every party consented;
- (d) direct that the hearing proceed as scheduled but with a different witness, or

evidence on another issue; or
(e) give any other direction that it considers appropriate.

Subrule 25.03, which is referred to in subrule 26.02, provides:

25.03 At least fourteen days before a scheduled hearing date, a party requesting an adjournment shall file with the Review Board a written request, and the request shall include:

- (a) the reason(s) for the request;
- (b) the proposed new date;
- (c) a statement by the requesting party that it has notified every other party; and
- (d) a statement by the requesting party that it has obtained the consent of every other party to the adjournment and to the proposed new date, if that is the case.

Responses to the adjournment request were received by the Review Board from Mr. Dunne (who raised a question about receipt of the Town's materials and deferred to Mr. Cuervo-Lorens on the issue of the adjournment) and the Town on July 16, 2013.

The Town did not consent to the adjournment request and pointed out that Rule 26 contemplates an adjournment for emergencies, which was not applicable to this situation. The Town noted that it had complied with the procedural directions arising from the prehearing conferences, even though it had not received any expert reports or materials from the objectors.

The Town added that the time needed to review materials is presupposed by the Review Board's rule requiring disclosure at least two weeks. The Town submitted that there was time before the commencement of the hearing for Mr. Cuervo-Lorens to review the materials and make submissions. The Town added that its records indicate that its materials had been sent to Mr. Dunne on July 15, 2013.

Mr. Cuervo-Lorens made additional submissions later on July 16, 2013. He submitted that the Town's opposition was unreasonable. He also noted that he had cooperated on a previous time extension issue. His additional submissions focused mainly on fairness considerations regarding what he understood to be a shifting case, in that the Town's expert was now suggesting additional grounds for designation and amendments to existing ones.

On July 17, 2013, the Review Board then wrote the Town as follows:

We have received your e-mail noting the Town's position on the adjournment request of Mr. Cuervo-Lorens as well as his reply. Before the Review Board gives further consideration to the request for adjournment we ask that the Town provide the Review Board with any submission it may wish to make on the comments regarding the Town's expert and the additional grounds for designation and amendment to existing grounds for designation.

The Town responded immediately as follows:

At this time, my instructions with respect to this hearing are to proceed on the basis of the original grounds for designation. Mr. Cuming was retained to peer review the work of Ms. Schappert and provide an external professional opinion with regards to the merits of designation of these properties. Although Mr. Cumming's independent opinion is that those grounds go farther than what is contained in the current draft, I have no instructions to amend the original grounds.

I would note further that to date, the Town has not received the material that Mr. Cuervo-Lorens indicates was served on the Review Board, contrary to the procedural orders and Rules. Mr. Cuervo-Lorens has indicated that he purposefully "held back" those documents. I would ask that the Board direct that those materials be served immediately.

The prehearing conference panel of the Review Board then considered Mr. Cuervo-Lorens' request for an adjournment, including his subsequent related correspondence, in light of all of the submissions and directed Review Board staff to deliver the following direction to the parties:

Pursuant to Rule 26, I have been directed to advise you that the request for an adjournment is denied. Nevertheless, the Review Board will provide the parties an opportunity to submit reply evidence if desired. The parties shall disclose and file with the Review Board any reply evidence and reply reports of an expert by July 24, 2013.

The correspondence from the Review Board went on to note:

Please note that the Review Board has not yet received the objectors' original disclosure and reports under Rules 27.03 and 27.04, which were due at least 14 days before the hearing date. Please ensure that such material, including the Acknowledgement of Expert's Duty Form(s), is received by the other parties and

the Review Board by tomorrow (July 18, 2013).

On July 18, Mr. Cuervo-Lorens requested the prehearing conference panel's reasons for denying the adjournment request. These are set out as follows.

Reasons

The Review Board considered the request for an adjournment in light of the applicable Rules and requirements for procedural fairness. An adjournment is a discretionary matter for the Review Board to consider in the specific circumstances of a given case. The Review Board found that the most significant fairness concern raised by Mr. Cuervo-Lorens was addressed in the Town's response to the Review Board's query, in which counsel indicated that her instructions were to proceed on the basis of the original grounds for designation.

The Review Board also considered the fact that Mr. Cuervo-Lorens had not complied with the requirement to serve and file his materials on time, that there was still ample time to prepare for the hearing, that the Rule requires advance disclosure in order to avoid many of the very concerns that Mr. Cuervo-Lorens raised, and that the request did not relate to an emergency situation. While the Review Board did not find that there was any remaining prejudice to Mr. Cuervo-Lorens in light of the Town's response to the Review Board's query, the Review Board nevertheless allowed for the submission of further materials by July 24, 2013.