

Conservation Review Board
Commission des biens culturels



ISSUE DATE: January 31, 2017

CASE NO.: CRB1510

PROCEEDING COMMENCED UNDER subsection 32(4) of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended

Owner: Helen Campbell
Subject: Refusal of Application for Repeal of Designating Bylaw No. 130-2012
Property Address: 90 Park Street (also known as Haddington Villa)
Legal Description: Part Park Lot 1, Plan Old Survey as in 549913; T/W 549913, except easement therein
Municipality: Municipality of Chatham-Kent
CRB Case No: CRB1510
CRB Case Name: Campbell v. Chatham-Kent (Municipality)

Heard: In writing

APPEARANCES:

Parties

Counsel⁺/Representative

Municipality of Chatham-Kent

David V. Taylor⁺

Helen Campbell

Self-represented

REPORT OF THE BOARD DELIVERED BY SU MURDOCH

OVERVIEW

[1] This Report concerns an application under s. 32(1) of the *Ontario Heritage Act* (the “OHA”) by Helen Campbell (the “Owner”) to repeal designating By-law 130-2012 and the denial of that application by the Council of the Municipality of Chatham-Kent (the “Municipality”). The matter was referred to the Review Board pursuant to s. 32(5) of the OHA.

[2] Having considered the evidence, and for the reasons given in this Report, the Conservation Review Board (the “Review Board”) recommends that the by-law designating the property not be repealed.

BACKGROUND

[3] The subject property is known municipally as 90 Park Street in Chatham within the Municipality of Chatham-Kent (the “property”). It was designated under s. 29 of the OHA on June 25, 2012, by By-law 130-2012. At the date of the passing of By-law 130-2012, Helen Campbell was the property owner. This is the same Helen Campbell who has applied for the repeal of By-law 130-2012 under s. 32(1) of the OHA.

[4] In the interest of ensuring a fair and understandable process, the Review Board and Parties agreed to a written hearing format and on September 8, 2016, the Review Board issued an Order to this effect. Written submissions and argument were exchanged among the Parties and received by the Review Board.

[5] The Review Board numbered the submissions as Exhibits, as listed in Appendix 1 of this Report.

ISSUE

[6] The issue is whether all or part of By-law 130-2012, which designates 90 Park Street as a property of cultural heritage value or interest under s. 29 of the OHA, should be repealed in accordance with the provisions of s. 32 of the OHA.

RELEVANT LEGISLATION AND REGULATION

[7] *Ontario Heritage Act*

Definitions

1. In this Act,

“heritage attributes” means, in relation to real property, and to the buildings and structures on the real property, the attributes of the property, buildings and structures that contribute to their cultural heritage value or interest;

PART IV - CONSERVATION OF PROPERTY OF CULTURAL HERITAGE VALUE OR INTEREST

Definition

26. (1) In this Part, “property” means real property and includes all buildings and structures thereon.

Same

(2) In sections 27 to 34.4, “designated property” means property designated by a municipality under section 29.

Designation by municipal by-law

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; and
- (b) the designation is made in accordance with the process set out in this section.

Referral to Review Board

(7) Where a notice of objection has been served under subsection (5), the council shall, upon expiration of the thirty-day period under subsection (4), refer the matter to the Review Board for a hearing and report.

Repeal of designating by-law, owner's initiative

32. (1) An owner of property designated under this Part may apply to the council of the municipality in which the property is situate to repeal the by-law or part thereof designating the property.

Decision of council

(2) After consultation with its municipal heritage committee, where one is established, the council shall consider an application under subsection (1) and within ninety days of receipt thereof shall,

- (a) refuse the application and cause notice of its decision to be given to the owner and to the Trust; or
- (b) consent to the application and,
 - (i) cause notice of the intention to repeal the by-law to be served on the owner and the Trust, and
 - (ii) publish notice of the intention to repeal the by-law in a newspaper of general circulation in the municipality.

Application for hearing

(4) Where the council refuses the application under subsection (2), the owner may within thirty days after receipt of the notice under subsection (2) apply to the council for a hearing before the Review Board.

Referral to Review Board

(5) The council shall, upon receipt of an application under subsection (4), refer the matter to the Review Board for a hearing and report, and shall publish a notice of the hearing in a newspaper having general circulation in the municipality at least ten days prior to the date of the hearing.

Hearing

(6) The Review Board shall as soon as is practicable hold a hearing open to the public to review the application, and the council and the owner and such other persons as the Review Board may specify are parties to the hearing.

Report

(9) Within thirty days after the conclusion of a hearing under subsection (6), the Review Board shall make a report to the council setting out its findings of fact, its recommendations as to whether or

not the application should be approved, and any information or knowledge used by it in reaching its recommendations, and shall send a copy of its report to the other parties to the hearing.

Decision of council

(11) After considering a report under subsection (9), the council without further hearing shall,

- (a) refuse the application and cause notice of its decision to be given to the owner; or
- (b) consent to the application and,
 - (i) cause notice of the intention to repeal the by-law to be served on the owner and the Trust, and
 - (ii) publish notice of the intention to repeal the by-law in a newspaper of general circulation in the municipality

Decision final

(11.1) A decision made under clause (11) (a) is final.

O. Reg. 9/06: Criteria for Determining Cultural Heritage Value or Interest Criteria

1. (1) The criteria set out in subsection (2) are prescribed for the purposes of clause 29 (1) (a) of the Act. O. Reg. 9/06, s. 1 (1).
 - (2) A property may be designated under section 29 of the Act if it meets one or more of the following criteria for determining whether it is of cultural heritage value or interest:
 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.
 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.
 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.

CASE FOR THE OWNER

[8] Ms. Campbell is the property owner and applicant to repeal the designating by-law. On August 21, 2015, she submitted a written request to repeal designating By-law 130-2012. That request was denied by the Municipality of Chatham-Kent by a Council Motion dated October 26, 2015. Ms. Campbell was informed of that denial and applied for a Hearing before the Review Board.

[9] Based on a review of her submissions for this Hearing (Exhibits 2, 3, 4, and 5), the Review Board summarized Ms. Campbell's arguments for the repeal of By-law 130-2012 as follows:

- (a) That the initial designating of the property was not conducted in accordance with the provisions of s. 29 of the OHA, specifically that she did not receive the Notice of Intention to Designate (the "Notice") as required by the OHA and was thus not afforded the opportunity to object within 30 days of receiving such Notice;
- (b) That she was not informed that By-law 130-2012 would be registered on the property Parcel Register (Title) at the Land Registry Office and considers this registration an encumbrance on her property and estate;
- (c) That she was misinformed in 2012 by staff of the Municipality that "exiting" i.e., repealing a designating by-law, was automatically granted on request of the property owner;
- (d) That the benefit to her of the Heritage Property Tax Relief Program (the "Program") has diminished since 2012; that this is further evidence of misinformation relayed to her by municipal staff; and that by not applying for

this benefit in recent years, this should suffice as opting out of the designation by-law.

[10] On examination of Exhibits 2, 3, 4, and 5, the Review Board did not find any statement by Ms. Campbell of her position on whether or not the property continues to hold cultural heritage value or interest as described in By-law 130-2012, as stated in the Municipality's Heritage Report (Exhibit 8: By-law 130-2010, Schedule A), or as prescribed in Ontario Regulation 9/06: Criteria for Determining Cultural Heritage Value or Interest ("O. Reg. 9/06").

[11] In her October 8, 2016 response (Exhibit 2) to the Municipality's September 12, 2016 initial submission (Exhibit 6), Ms. Campbell states in response to Points 10 and 11:

I do not question the fact of the validity of my home is heritage. Buld [sic] in 1847 it can hardly be anything else. I have repaired it from roof to cellar and into the 21st century. Now it needs help to survive technology of 21st century. Please return it to me so I can see my heirs free to follow any wishes and I might finish my life in my home.

CASE FOR THE MUNICIPALITY

[12] The Municipality's September 12, 2016 submission (Exhibit 6) includes sections of Background, Law, Argument, and Conclusion but does not include a copy of the Municipality's cited Heritage Report, which forms Schedule A of By-law 130-2012. A copy of By-law 130-2012, and therefore a copy of the Heritage Report, was earlier submitted as part of the referral of this file by the Municipality to the Review Board for a Hearing (Tab 6, By-law 130-2012). The Review Board referenced that copy of the By-law and Heritage Report for purposes of this Hearing, for convenience entering it as Exhibit 8.

[13] The Municipality's position on the determination of the cultural heritage value or interest of the property is stated in Exhibit 6, No. 2, as follows:

The criteria for determining cultural and heritage value is contained in Ontario Regulation 9/06, under the *Ontario Heritage Act*, and includes the following which are pertinent to the Heritage Report:

The property is representative or an early example of a style, type, expression, material or construction method;

The property has direct associations with an event, person, activity, organization or institution that is significant to a community.

[14] Exhibit 6, No. 7, extracts sections of the Heritage Report considered pertinent to the statement of cultural heritage value or interest, as follows:

The Heritage Report identifies key historical facts of the Property that contribute to its value, including the following:

- the property was originally part of a larger parcel of land owned by local grain and timber merchant, agent to the Gore Bank and Bank of Upper Canada, and first Reeve of Chatham (upon its incorporation as a village in 1851), George Witherspoon;
- it is believed that Witherspoon's sister, Helen (Witherspoon) Charteris (also the wife of his former business partner, Alexander Charteris) built the present day home and named it after the Witherspoon ancestral home in Haddington Scotland;
- the villa was owned by prominent Chatham druggist and Lieutenant Colonel of the 24th Kent Regiment of Infantry, Robert McLaren, in the early twentieth century;
- the home was later owned by Police Chief and first president of the Association of Chiefs of Police, Clarence Bagnall, from 1950 to the 1990's; and
- the villa, constructed of brick and designed in an amalgamation of Italianate and Gothic Revival styles, is a well preserved example of a stylish upper middle class residence.

[15] Exhibit 6, No. 21, states: "The Municipality continues to rely on the findings of this Heritage Report." Exhibit 6, No. 22, states: "The Heritage Report specifically details how the Property meets several of the criteria for Ontario Regulation 9/06 of the OHA. The Municipality continues to rely on the Heritage Report's assessment of the prescribed criteria."

[16] The Municipality's November 4, 2016 submission (Exhibit 7) responds to Ms. Campbell's statement that "she was given no notice of her property being designated under the OHA by By-law 130-2012." The Municipality provided the April 25, 2012 letter to "Helen Eileen Campbell" informing her that "at the Council Meeting held April 16, 2012, Chatham-Kent Council approved the Municipal Heritage Committee's recommendation for the Intent to Designate property located at 90 Park Street, Community of Chatham (City), under Part IV of the OHA, for its cultural heritage value and interest." The letter indicates that a copy of the Notice "is enclosed for your records" and gives the "last day of filing a Notice of Objection being May 24, 2012." The Review Board notes that no copy of the Notice accompanies the April 25, 2012 letter as included in Exhibit 7.

ANALYSIS

[17] The Review Board's interpretation of the scope of inquiry intended under s. 32 of the OHA has been analyzed in several Review Board Reports, notably as follows.

[18] In CRB1305 (2014) 1105 Front Street South, Amherstburg, the Review Board found at paras. 36-37:

The Review Board's mandate under s. 32(6) and 32(9) is to hear evidence on the application and recommend whether all or part of s. 29 by-law should be repealed. Unlike a proceeding under s. 29(8), the evidence presented is not scoped to determining whether a property meets prescribed criteria for determining cultural heritage value or interest, that being the criteria of Ontario Regulation 9/06.

The Review Board agrees with [the Party] that the Town is not limited to the criteria of Regulation 9/06 when considering an application for by-law appeal. Other relevant factors may also be considered. The Town is also not precluded from applying and using the criteria as its reason for denying the application.

[19] In *Armstrong v. Goderich (Town)*, 2016 CanLII 27018 ("*Armstrong*"), the Review Board found at para. 58 that:

because discretion must be exercised in a manner that supports the purposes of the applicable legislation, and the OHA s. 29 criteria are clearly meant to provide guidance on designation recommendations and decisions, the Review Board finds that those criteria are also relevant to de-designation decisions, especially given that s. 32 does not specifically offer any alternative criteria but incorporates s. 29 by reference.

[20] In summary, the inquiry under s. 32 focuses on the determination of whether or not a property designated under s. 29 continues to hold cultural heritage value or interest as prescribed by O. Reg. 9/06; and, “other relevant factors may also be considered.”

[21] Regarding the inquiry into cultural heritage value or interest, the Municipality maintains that the statement of cultural heritage value or interest and description of heritage attributes of the Heritage Report as contained in Schedule A of By-law 130-2012 continue to be valid. As the owner in 2012 when the property was designated, and now by exercising her right to apply for a repeal of the by-law, Ms. Campbell has been afforded two opportunities to bring evidence to the contrary, but did not. Her statement in Exhibit 6 that she does “not question the fact of the validity of my home is heritage” suggests to the Review Board that her reasons for by-law repeal can be categorized as other factors, separate from cultural heritage value. The Review Board, therefore, can only conclude that the Parties are in agreement that the property continues to hold cultural heritage value or interest.

[22] Regarding Ms. Campbell’s position on those reasons not directly relevant to cultural heritage value or interest, the Review Board considered her submissions as below.

[23] Ms. Campbell contends that the 2012 designation of her property was not conducted in accordance with the provisions of s. 29 of the OHA, specifically that she did not receive the Notice of Intention to Designate as required by the OHA and thus was not afforded the opportunity to object within 30 days of receiving such Notice. Although this category of irregularity is within the context of a previous process, the

Review Board acknowledges that this matter is of concern to Ms. Campbell and was responded to by the Municipality.

[24] The April 25, 2012 letter provided by the Municipality in Exhibit 7 is accepted by the Review Board as confirmation that the Notice of Intention to Designate was sent to Ms. Campbell. Although no copy of the Notice referenced as the attachment to the April 25, 2012 letter was included in Exhibit 7, further evidence of Ms. Campbell's awareness of the designation initiative is confirmed by the June 11, 2012 Planning Services report, page 2, within Exhibit 6. This states: "The owners of all the properties are in support of the recommended designations under the Ontario Heritage Act."

[25] The Review Board then considered the relevance of Ms. Campbell's claim that she was not informed that By-law 130-2012 would be added to the Parcel Register (Title) for the property at the Land Registry Office. The Review Board cannot verify whether Ms. Campbell was informed but accepts that this is an administrative requirement applicable to most property specific by-laws, including those under the OHA, and therefore is not relevant to the matter now before the Review Board.

[26] The Review Board considered the contentions by Ms. Campbell that: firstly, she was misinformed by municipal staff in 2012 that the repeal of a designating by-law ("exiting") was automatically granted on request of the property owner; and secondly, that the benefit of the Heritage Property Tax Relief Program had diminished over time and her choosing not to apply to this Program in recent years should have signaled her opting out of By-law 130-2012. Matters of how a property owner is informed of the implications of designation under the OHA or of the workings of the Heritage Property Tax Relief Program are within the purview of the municipality and not the Review Board.

[27] Overall, when considering how the cultural heritage evaluation of the property was conducted, as evidenced by the Heritage Report, the Review Board is satisfied that the Municipality undertook a reasonable process in 2012 when identifying 90 Park Street as a candidate for designation, when applying the criteria of O. Reg. 9/06, and when assembling the required statement of cultural heritage value or interest and

description of heritage attributes in accordance with the OHA. Moreover, the Owner had the opportunity in this hearing to bring evidence countering the Municipality's position regarding the cultural heritage value or interest of the property and did not do so. On the contrary, the Owner accepts that the property still has such value or interest. The other reasons given by the Owner for by-law repeal are found by the Review Board to be either not relevant or are insufficient to consider on the primary question of whether or not the property continues to hold cultural heritage value or interest.

SUMMARY AND RECOMMENDATIONS

[28] Having considered the evidence and submissions, and for the reasons set out above, the Review Board recommends that By-law 130-2012 designating the property not be repealed.

"Su Murdoch"

SU MURDOCH
VICE-CHAIR

Appendix 1 – Exhibits List

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Conservation Review Board

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

Appendix 1**Exhibits List**

Exhibit #	Nature of Exhibit and description	Filed By:
1	Statement of Service (noting that Notice of Hearing was served on the parties and directed public notice according to the Rules and the Act)	Conservation Review Board
2	Response Submission dated October 8, 2016	Owner/Objector Helen Campbell
3	Submission dated November 10, 2016	Owner/Objector Helen Campbell
4	Submission dated November 21, 2016	Owner/Objector Helen Campbell
5	Submission dated November 27, 2016	Owner/Objector Helen Campbell
6	Initial Submission dated September 12, 2016	Municipality of Chatham-Kent
7	Response Submission dated November 4, 2016	Municipality of Chatham-Kent
8	Bylaw 130-2012, with Schedules A (Heritage Report) and B (property description), as contained in Tab 6, Case CRB1510 referral materials	Municipality of Chatham-Kent