

Conservation Review Board
Commission des biens culturels



ISSUE DATE: March 15, 2017

CASE NO.: CRB1507

PROCEEDING COMMENCED UNDER subsection 32(14) of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended

Objector: Kim Wilson
Owner: Tomas Tocek Sr.
Subject: Notice of Intention to Repeal Designation By-law No. 2002-054
Property Address: 5781 Highland Avenue (Leeming House)
Legal Description: Lots 19, 21 and 23, Registered Plan 32
Municipality: City of Niagara Falls
CRB Case No.: CRB1507
CRB Case Name: Wilson v. Niagara Falls (City)

Heard: In writing

APPEARANCES:

Parties

Counsel/Representative⁺

City of Niagara Falls

Ken Beaman

Tomas Tocek, Sr.

Tomas Tocek, Jr.⁺

Kim Wilson

Self-represented

ORDER OF THE BOARD DELIVERED BY LAURIE SMITH AND ROBERT V. WRIGHT

Background

[1] This is a procedural order of the Conservation Review Board (“Review Board”) regarding the pre-hearing conference (“PHC”) in this matter, which concerns objections by Amanda Angelone and Kim Wilson to a Notice of Intention to Repeal the Designation By-Law for the property municipally known as 5781 Highland Avenue in Niagara Falls, Ontario (the “property”).

[2] The original parties to the proceeding were:

- the City of Niagara Falls, represented by counsel Ken Beaman (“City”);
- the property owner, Tomas Tocek Sr., represented by Tomas Tocek Jr. (“Owner”); and
- Amanda Angelone and Kim Wilson (“Objectors”).

[3] The PHC commenced on March 29, 2016, in person, at City Hall, Niagara Falls, Ontario. The parties agreed to continue the PHC on a subsequent date to be determined. The Review Board sent to the parties a Notice of Continuation of PHC in Writing (“Notice”) dated July 11, 2016 to address procedural matters, and an amended Notice dated August 9, 2016.

[4] On September 18, 2016, Ms. Angelone advised the Review Board in writing that she was withdrawing her objection and did not wish to be a party to this proceeding. Her file has been closed by the Review Board.

[5] Pursuant to the Notice, the remaining parties provided written submissions, but they could not provide an Agreed Issues List or an Agreed Statement of Facts as had been requested in the Notice. In addition, the parties declined to participate in a pre-hearing settlement conference, which had also been referenced in the Notice. The Review Board is, therefore, issuing this procedural order for the purpose of proceeding with the organization and conduct of the hearing.

Organization/Conduct of the Hearing

[6] The hearing will take place at City Hall in the City of Niagara Falls on two consecutive days, starting at 10 a.m. each day, on a date to be scheduled by the Review Board Case Coordinator. The parties have until March 24, 2017 to indicate to the Case Coordinator the dates they are not available for the hearing between May 1 and July 31, 2017. The hearing will be open to the public and public notice will be published. A site visit will take place in the morning of the first day of the hearing with the parties and Review Board members in attendance. No adjournments will be granted before or during the hearing except in accordance with the Review Board's *Rules of Practice and Procedure* ("Rules").

[7] The remaining parties are Kim Wilson, Tomas Tocek Sr. and the City of Niagara Falls. A party may attend or participate in the proceeding in person, with a representative, or may send a representative to attend in place of the party. A representative or party shall file, upon request of the Review Board, Form 1, Representative of a Party – Commencement of Authorization, which can be found in Appendix A to the Rules.

[8] If a party fails to appear at the hearing without giving notice to the Review Board and all parties in advance, and/or does so without reasonable cause, the Review Board has the discretion under the *Statutory Powers Procedure Act* to proceed with the hearing in their absence.

[9] The issue at the hearing is whether the City of Niagara Falls By-Law No. 2002-054 designating the property as having cultural heritage value or interest should be repealed.

[10] At the hearing, the City shall present its case first, followed by the Owner, and then by the Objector. The City and the Owner will each have the opportunity to submit appropriate evidence in reply. All parties will have the opportunity to cross-examine

witnesses presented by the other parties. Each party will have the opportunity to present closing arguments.

Requirements for the Hearing: Witnesses, Document Exchange and Expert Evidence

[11] At least 14 days prior to the hearing date, the following items are to be served on every other party and filed with the Review Board:

- a list of intended witnesses and the order in which they will be called;
- a list of intended expert witnesses and the order in which they will be called.
In addition, the name, address and qualifications of each expert, and copies of the expert's report(s) and all documents to which the expert will refer;
- witness statements for all intended witnesses;
- an Agreed Statement of Facts, where applicable; and
- copies of all other documentary and other evidence that the party will refer to, or tender as evidence, at the hearing.

The materials are to be exchanged among all parties and two paper copies are to be provided to the Review Board, as well as an electronic copy. Paper copies should be paginated, with tab markers, and colour images, where appropriate.

[12] Any party who wishes the Review Board to issue a summons to a witness must follow the procedure set out in Rule 30.

[13] The City has already disclosed the following documents by serving them on the other parties and filing them with the Review Board:

- Melanie Battell, "A Report on the History and Architecture of the Reverend William Leeming House: 5781 Highland Avenue, Niagara Falls, Ontario," (2000); and

- Peter John Stokes, “Report on the Leeming House, Niagara Falls, Ontario, Including Work Outlines for Rehabilitation for Occupancy and Restoration and Enhancement” (2001).

[14] The Owner has disclosed the following document by serving it on the other parties and filing it with the Review Board:

- “Shawn Chesney Home Inspections Property Inspection Report: 5781 Highland Avenue, Niagara Falls, Ontario, Canada, L2G 4X5,” (2016).

[15] Any intended evidence, including documents, not disclosed within the timeframe set out above, may not be used as evidence at the hearing unless the Review Board directs otherwise. Where a witness statement or expert report has not been provided by the required date, the witness may not give evidence at the hearing unless the Review Board directs otherwise.

[16] The Review Board will not compel the Owner to permit other parties or their delegates to enter onto the property. However, the Owner will not be permitted to introduce evidence at the hearing as to the attributes or condition of the property unless he has fully disclosed that information to the other parties and filed it with the Review Board, as set out above and required by the Rules.

[17] An expert witness who is providing opinion evidence must execute the Acknowledgement of Expert’s Duty form prior to or at the hearing.

[18] An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Review Board may refuse to hear the expert’s testimony.

[19] The Review Board may vary or add to this Order at any time, either on request or as it sees fit, and may do so by an oral ruling or in writing.

“Laurie Smith”

LAURIE SMITH
MEMBER

“Robert V. Wright”

ROBERT V. WRIGHT
VICE-CHAIR

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