

Conservation Review Board
Commission des biens culturels



ISSUE DATE: November 10, 2017

CASE NO.: CRB1614

PROCEEDING COMMENCED UNDER subsection 29(5) of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended

Owner/Objector: 2480670 Ontario Inc.
Subject: Notice of Intention to Designate
Property Address: 69 Long Branch Avenue and 24 Marina Avenue
Legal Description: Plan M9 Blk E Pt Lots 9, 10 and 11 and Plan M9 Blk E Pt Lots 9 & 10
Municipality: City of Toronto (Etobicoke)
CRB Case No.: CRB1614
CRB Case Name: 2480670 Ontario v. Toronto (City)

Heard: In writing

APPEARANCES:

Parties

Counsel*/Representative

2480670 Ontario Inc.

Gil Shcolyar

City of Toronto

Mark Crawford*

ORDER OF THE BOARD DELIVERED BY DANIEL NELSON AND ROBERT V. WRIGHT

REASONS

Overview

[1] This is an order of the Conservation Review Board (“Review Board”), made under Rule 15.03 of the Review Board’s *Rules of Practice and Procedure* (“Rules”). Rule 15.03

gives the Review Board the discretion to dismiss a proceeding, among other alternatives, to prevent an abuse of process or to allow for the proper conduct of a proceeding. For the reasons set out below, the Review Board dismisses the proceeding initiated by 2480670 Ontario Inc. (“Objector”), which objected to a Notice of Intention to Designate the property owned by the Objector and located at 69 Long Branch Avenue and 24 Marina Avenue in Toronto, Ontario (“Property”).

Background

[2] The Objector, represented by Gil Shcolyar, has failed to participate in the last three Pre-Hearing Conference (“PHC”) telephone conference calls (“TCC”s), held on:

- February 15, 2017;
- May 15, 2017; and
- July 11, 2017.

[3] Chris Lawless, a project manager with ERA Architects, participated in the May 15, 2017 TCC. Mr. Lawless advised the Review Board that ERA Architects had been retained by the Objector but that he was not authorized to act as the Objector’s representative. Mr. Lawless was directed by the Review Board to inform the Objector of the consequences should he fail to participate in the July 11, 2017 PHC TCC.

[4] On September 28, 2017, the Review Board canvassed the parties by email about continuing the PHC in October 2017 and offered dates of October 10, 11, 12, 17, 18, or 19, 2017. Mr. Shcolyar responded by email on the same day, saying: “Sorry we are out of the country until the 15”. On September 29, 2017, the Review Board replied by email requesting Mr. Shcolyar’s availability for the dates offered after October 15, 2017. The Review Board received no reply to this inquiry.

[5] On October 12, 2017, the Review Board sent an email to Mr. Shcolyar, attaching a letter that directed him to provide his availability for a PHC TCC on October 17, 18 or 19,

2017. The letter referred to the PHC TCCs in which the Objector had failed to participate, set out Rule 15, and warned that:

Under the circumstances, the Review Board directs that you respond to our email of September 29, 2017 and provide the information requested by October 16, 2017. Please be advised, if the Review Board does not receive a response from you by **October 16, 2017**, the Review Board will dismiss this proceeding in accordance with Rule 15.03(b) and/or (c).

[6] The Review Board received no reply from the Objector to the above letter.

[7] Counsel for the City of Toronto (“City”), and various City staff have participated in every PHC TCC.

Relevant Rules

[8] Rules 2.02 and 15.03 of the Rules provide:

2.02 The Review Board shall apply these Rules in a manner that will, in its opinion, produce the just, most expeditious and cost-effective determination of every matter.

15.03 To prevent an abuse of process or to allow for the proper conduct of proceedings, where a party or its representative:

- (a) has not complied with a requirement of these Rules;
- (b) has not complied with an order, direction, or request for information from the Review Board; or,
- (c) has caused undue delay, or otherwise prevented the fair, just or expeditious resolution of the matter;

the Review Board may:

- i. direct that the proceeding be stayed until the Review Board is satisfied that the direction, order or request has been complied with;
- ii. dismiss the proceeding; or,
- iii. make any other order it considers appropriate.

Issue

[9] The issue is whether the Review Board should exercise its discretion to dismiss the proceeding under Rule 15.03.

Discussion, Analysis and Findings

[10] In this case, the Objector, represented by Mr. Shcolyar, has refused or neglected to:

- participate in three scheduled PHC TCCs without providing any notice in advance and without providing any excuse or justification for not participating; and
- respond in a meaningful way, or not at all, to the requests from the Review Board to continue the PHC by scheduling a PHC TCC.

[11] Proceedings before the Review Board are summary in nature and, under Rule 2.02, the Review Board “shall apply these Rules in a manner that will, in its opinion, produce the just, most expeditious and cost-effective determination of every matter.” A proceeding cannot be carried out in a fair, just, and expeditious manner (see Rule 15.03(c)) if a party (especially the party that initiated the proceeding) refuses or neglects to respond to directions from the Review Board and engage in the proper conduct of the proceeding. Such behaviour can delay a proceeding, prevent its resolution in the ordinary course, and waste the resources of the parties and the Review Board. All of these consequences have arisen in this case as a direct result of the Objector’s behaviour.

[12] The Review Board finds that the Objector has not complied with directions and requests for information from the Review Board, and has caused undue delay, or otherwise prevented the fair, just or expeditious resolution of the matter, within the meaning of Rule 15.03(b) and (c). Under these circumstances, and applying Rule 2.02, the Review Board considers it appropriate to exercise its discretion to dismiss the proceeding under Rule 15.03.ii.

ORDER

[13] The proceeding is dismissed.

"Daniel Nelson"

DANIEL NELSON
MEMBER

"Robert V. Wright"

ROBERT V. WRIGHT
VICE-CHAIR

If there is an attachment referred to in this document,
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Conservation Review Board

A constituent tribunal of Environment and Land Tribunals Ontario

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