

**Conservation Review Board**  
Commission des biens culturels



**ISSUE DATE:** October 11, 2019

**CASE NO.:** CRB1819

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

Owners: Laurel Gallea  
Objectors: Scott Gallea, Joe Kielbowich, John Leuser, Andrew Switzer  
Subject: Notice of Intention to Designate (Lampman House)  
Property Address: 1021 Garner Road East  
Legal Description: PT LT 52, CON 3 ANCASTER, AS IN VM189287 Street, as in 50224; Oakville/Trafalgar  
Municipality: City of Hamilton  
CRB Case No.: CRB1819  
CRB Case Name: Gallea v. Hamilton (City)

**Heard:** November 7, 2018 and November 22, 2018

**APPEARANCES:**

**Parties**

**Counsel\*/Representative**

Laurel Gallea

Scott Gallea

City of Hamilton

Stephen Chisholm<sup>+</sup>

**Objectors**

Scott Gallea

Self-represented

Joe Kielbowich

Self-represented

John Leuser

Self-represented

Andrew Switzer

Self-represented

## ORDER OF THE BOARD DELIVERED BY DANIEL NELSON

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### Background

[1] This is an order of the Conservation Review Board (“Review Board”) in respect of an objection by Scott and Laurel Gallea, Joe Kielbowich, John Leuser, and Andrew Switzer (“Objectors”) to a Notice of Intention to Designate the property at 1021 Garner Road East in the City of Hamilton, Ontario (the “property”). Laurel Gallea is the owner of the property and is a party to these proceedings automatically. Her representative in these proceedings is Scott Gallea.

[2] On November 7, 2018, the Review Board held a Pre-Hearing Conference by telephone (“first PHC”) with all the parties in attendance. The Review Board was concerned that the Objectors were maintaining their objection to the designation of the property but had not disclosed any grounds for the objection that related to the cultural heritage value or interest of the property (“CHVI”), nor any specific objections to the identified criteria forming the CHVI, as set out in Ontario Regulation 9/06 (“O. Reg 9/06”).

[3] Following the first PHC, the parties were directed to discuss, amongst themselves, the matter of CHVI for the property to see if there was, in fact, any heritage objection, and consider whether the issues they do have were more properly dealt with in another forum.

[4] A second PHC was held on November 22, 2018 but the results were inconclusive, and the parties indicated that they were going to continue to discuss the matter. Mr. Switzer did not attend this second PHC.

[5] Since that time, the Review Board’s case coordinator has attempted to solicit information on the status of these discussions and schedule a further Pre-Hearing Conference without success. Eventually, the parties stopped responding to the case coordinator’s inquiries with his email of May 29, 2019, a voicemail of July 17, 2019, and another email of August 19, 2019 going unanswered.

[6] As a consequence of this behaviour, on September 20, 2019, the Review Board directed the Objectors to confirm their intentions to continue with their objections, in

writing, by September 27, 2019. The parties were reminded that a failure to respond by that time could result in the sanctions set out in Rule 15.03 of the Review Board's *Rules of Practice and Procedure* ("the Rules").

[7] Responses, within the time specified, were received by the Review Board from the objectors Scott Gallea (for himself and for Laurel Gallea), Joe Kielbowich, and John Leuser.

[8] No response was received from Andrew Switzer.

[9] The City of Hamilton's position, in response to the Review Board's letter of September 20, 2019, was that it would seek to bring a motion to dismiss the objections since no grounds for the objection have been articulated by the Objectors.

### **Non-Compliance with Direction**

[10] Rule 15.03 gives the Review Board broad authority to make orders governing the conduct of a proceeding and deal with non-compliant parties. Mr. Switzer had ample opportunity to respond to the direction of the Review Board, as his fellow Objectors were able to do so, despite being warned of the consequences. By failing to indicate, in writing, his intention to continue as an Objector, he has not complied with a direction of the Review Board, contrary to Rule 15.03(b).

### **Substantive Objections**

[11] The original objections of the Objectors, submitted to the City, in May of 2018, do not appear to disclose any substantive grounds for the objections which could properly be the subject of a hearing before the Review Board and would, therefore, be outside the jurisdiction of the Review Board. The Review Board raised these concerns with the parties at the first PHC. Since that time, it does not appear to the Review Board that the Objectors have articulated *intra vires*<sup>1</sup> grounds for the objection.

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<sup>1</sup> Meaning grounds that are within the jurisdiction of the Review Board.

[12] It should be noted that the *Ontario Heritage Act* (“OHA”) states at s. 29(5) that any notice of objection should set out “the reason for the objection and all relevant facts.” As the Review Board’s jurisdiction is largely limited to considerations of cultural heritage value or interest and the criteria giving rise to CHVI, as set out in O. Reg 9/06, then it must be that any reason given by an Objector has to necessarily connect to that jurisdiction. Likewise, “relevant facts” must be logically connected to the CHVI and to the criteria set out in O. Reg. 9/06 and must tend, in some way, to prove or disprove the existence of such CHVI or the underlying criteria.

[13] The Review Board does not expect perfectly articulated objections at the initial stages of a proceeding and certainly not within the 30 day of receipt of the Notice of Intent to Designate per the OHA. As the Review Board noted in *Li-Chuan v Toronto (City)*, 2018 CanLII 126342 (ON CONRB) at para. 16:

An objection that does not specifically use the words of the Act [OHA] and the Regulation [O. Reg. 9/06] is not automatically invalid or frivolous. Nor is it a requirement for an objector to identify, on the relatively short notice required by the Act, the precise nature of their objection *vis-à-vis* O. Reg. 9/06.

[14] Nevertheless, the Review Board does expect some relevant articulation in order to comply with the OHA and ensure that it has jurisdiction. It is also reasonable for the City to expect reasons for the objection and relevant facts that are connected to the CHVI and O. Reg. 9/06 in order to properly prepare for any hearing in the proceeding, should one be scheduled.

[15] It may be, on the other hand, that the Objectors’ objections rest entirely on matters that are outside the jurisdiction of the Review Board, in which case, these proceedings must, necessarily, be dismissed under Rule 14 and the Objectors may need to investigate other fora for their issues. The Objectors’ concern about the Municipality’s processes leading up to the designation would be one such example.

### **Order**

[16] For the reasons set forth above, the Review Board orders:

1. That Andrew Switzer is removed as a party from these proceedings pursuant to Rule 15.03(iii).
2. That the Objectors provide written submissions to the City and the Review Board setting out their reasons for their objection and all relevant facts. These reasons and relevant facts must be *prima facie* connected to the CHVI and O. Reg. 9/06. Reasons for the objection that are outside the jurisdiction of the Review Board must not be included in these written submissions.
3. The Objectors' written submissions:
  - a. Must consist of not more than 5 typewritten pages per Objector.
  - b. Must be served upon the Review Board and the City by **Tuesday, November 12, 2019** ("submissions deadline") in accordance with Rule 11 and Rule 12.
  - c. May be submitted by the Objectors individually or may be submitted collectively such that only one written submission is made by all of the Objectors together, as the Objectors may determine.
  - d. May include a heritage report of a heritage consultant, heritage planner, heritage architect, or other such potential expert to assist with such submissions, and an Objector may write to the Review Board, in such a case, to seek permission to exceed the page limit referenced above in subparagraph (a).
4. The City may provide written submissions as to whether the Objectors' written submissions disclose no *intra vires* grounds for the objections and as to whether the proceedings should be dismissed under Rule 14. Such written submissions should consist of not more than 5 typewritten pages. The City's written submissions must be served upon the Review Board and the Objectors by **Thursday, November 21, 2019** in accordance with Rule 11 and Rule 12.

5. The Objectors may provide written submissions in reply to the City's written submissions as to how the grounds for the objection are *intra vires*, contrary to the assertions of the City, and as to whether these proceedings should not be dismissed under Rule 14. Such written submissions should consist of not more than 5 typewritten pages. The Objectors' written submissions in reply must be served upon the Review Board and the City by **Thursday, November 28, 2019** in accordance with Rule 11 and Rule 12.
6. If any one or more, but not all, of the Objectors fails to provide written submissions by the submissions deadline or is otherwise in breach of this order, they will be removed as a party to these proceedings in accordance with Rule 15.03 without further submissions from the parties.
7. If all the Objectors fail to provide written submissions by the submissions deadline or are otherwise all in breach of this order, then these proceedings will be dismissed in accordance with Rule 15.03 without further submissions from the parties.
8. If, after reviewing the submissions of the parties, the Review Board is satisfied that there is no *intra vires* grounds for an objection then it may dismiss these proceedings for want of jurisdiction in accordance with Rule 14.
9. 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.

*"Daniel Nelson"*

DANIEL NELSON  
MEMBER

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**Conservation Review Board**

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