

**Conservation Review Board**  
Commission des biens culturels



**ISSUE DATE:** September 18, 2019

**CASE NO(S):** CRB1902

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

**Owner:** TTRAM Developments Inc.  
**Objectors:** Ken Vogel  
**Subject:** Notice of Intention to Designate (former Victoria School Annex)  
**Property Address:** 400 Maple Street  
**Legal Description:** Lots 10, 11 and 12 South of Fifth Street and Lots 10, 11 and 12 North of Sixth Street, Registered Plan No. 45  
**Municipality:** Town of Collingwood  
**CRB Case No.:** CRB1902  
**CRB Case Name:** Vogel v. Collingwood (Town)

**Heard:** April 25, 2019 and June 4, 2019

**APPEARANCES:**

**Parties**

**Counsel\*/Representative**

TTRAM Developments Inc.  
Ken Vogel

Jason Price

Town of Collingwood

Eric Davis+  
Trenton Johnson+  
Sara Almas

## **ORDER OF THE BOARD DELIVERED BY DANIEL NELSON**

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[1] This is an order of the Conservation Review Board (“Review Board”) in respect of an objection by TTRAM Developments (“TTRAM”) Inc. to a Notice of Intention to Designate the property at 400 Maple Street in the Town of Collingwood and which is commonly known as the Victoria School Annex (the “property”).

### **Background**

[2] On January 25, 2019, the Town submitted the materials required to open this file to the Review Board. In these materials was the letter of objection of Ken Vogel. This email, dated December 5, 2018 stated: “Please also note that we will support the designation of the Victoria School Annex once the building and adjoining property have been severed according to our draft plans...” In other words, it appears, from a plain reading of the objection letter, that Mr. Vogel was agreeable to the designation provided that the Town approved Mr. Vogel’s redevelopment and severance plans for the site.

[3] Nowhere in the objection letter was a discussion of how the Municipality’s determination of cultural heritage value or interest (“CHVI”) was flawed, nor any discussion of the lack of requisite criteria for such a determination under Ontario Regulation 9/06 (“O. Reg 9/06”) although, to be clear, there is no requirement that a party identify such issues at that early stage in the proceedings.

[4] At the first Pre-Hearing Conference (“PHC”), held on April 25, 2019, after having the jurisdiction and role of the Review Board clarified, Mr. Vogel and Mr. Price indicated that they did, indeed, object to the designation of the property but were not able to articulate the reasons for such an objection.

[5] Messrs. Vogel and Price also confirmed that the property had been transferred from K. Vogel Construction Limited to TTRAM Developments Inc. on January 1, 2019, and that they are the owners of TTRAM. Proof of the transfer was provided subsequent to the PHC. Mr. Vogel also clarified that his emailed objection letter of December 5,

2018 was on behalf of the respective corporations and was not submitted in his personal capacity.

[6] On June 2, 2019, Ken Vogel signed a Form 1 – Representative of a Party-Commencement of Authorization document. This appointed Mr. Price as a representative of Mr. Vogel “in all matters for the purposes of a proceeding before the Conservation Review Board” in respect to this matter. This Form 1 was faxed to the offices of the Review Board and received on June 3, 2019.

[7] A second PHC was held on June 4, 2019 and only Mr. Price attended on behalf of TTRAM. Mr. Price, during the PHC, indicated that he would be sending a withdrawal of the owner’s objection and he did so on June 11, 2019 by email to the Review Board’s case coordinator. In that email, Mr. Price wrote that “With respect to our objection to the proposed heritage classification to the above note property please be advised that we our [sic] withdrawing our objection.” [emphasis added] Mr. Vogel was copied on Mr. Price’s email and Mr. Vogel has never retracted the June 2, 2019 Form 1.

[8] Following this, and in an abundance of caution, the Review Board requested that Mr. Vogel confirm the withdrawal of the objection since the Form 1 appointed Mr. Price as Mr. Vogel’s representative instead of appointing Mr. Price as TTRAM’s representative. The Review Board contacted Mr. Vogel on June 12 asking for his confirmation.

[9] Since that time, Mr. Vogel has informed the Review Board that TTRAM is in discussions to sell the property and has made repeated requests that the Municipality defer the designation until the sale is completed. Such requests have been firmly denied by the Municipality.

[10] To date, Mr. Vogel has still not provided this requested confirmation, as requested by the Review Board.

## **Jurisdiction**

[11] The Review Board is an unusual creature of statute. While it is a tribunal, in the normal sense, it is one with a narrow focus and jurisdiction. At its simplest, once the steps for a referral of a proceeding to the Review Board are perfected, in accordance with the *Ontario Heritage Act* (“OHA”), and while there is a sustaining objection to the designation, then the Review Board is to hold a hearing to review the evidence from the parties as to whether or not the property in question is a property with CHVI and make findings thereof. These findings are reported to the municipality which is to consider the report and make a final determination regarding the designation of the property.

[12] Despite its narrow focus and jurisdiction, the Review Board is still a tribunal with statutory powers under the *Statutory Powers Procedures Act* (“SPPA”) and does, by operation of s. 23 and s. 25.0.1(a) of the SPPA, and through them, Rule 14 of the *Rules of Practice and Procedures* (“Rules”) have authority to control its own processes for the proper conduct of proceedings.

[13] In this case, Mr. Vogel appears to take the unusual position that he will not provide his concurrence with Mr. Price’s withdrawal of the objection, as requested by the Review Board as a courtesy only, in the hope, presumably, of obtaining concessions from the Town -- something the Town is not willing to do. The decisions as to whether to accept or reject Mr. Vogel’s requests for deferral are ones for the Town’s to make and the Review Board has no authority to review such decisions. The municipality, in turn, wants to proceed to an immediate hearing in order to resolve the matter.

## **Request for a Hearing**

[14] The Review Board sought to set a follow up PHC to clarify the matters, however, the Municipality requested that the matter proceed directly to hearing instead. However, the Review Board does not think the matter can be set down for hearing, while there is a question about whether the Review Board has jurisdiction to hear the matter where the objecting party has indicated there is no disagreement about the subject property’s CHVI. Since the jurisdiction of the Review Board is focused on whether or not a

property has CHVI, and there is no apparent disagreement over the existence of the property's CHVI, then the Review Board has no further jurisdiction to hear the matter since it can only hear, generally speaking, evidence as it relates to the criteria set out in O. Reg. 9/06. The remaining areas of disagreement between the parties are unrelated to the determination of CHVI and the Review Board has no judicial review authority to review these unconnected decisions and processes of the Municipality. That is a role reserved to certain other tribunals and the Superior Court, as a court of inherent jurisdiction.

[15] Should the objector provide submissions to show that there is disagreement regarding the property's CHVI then a request for a hearing could be considered.

### **Withdrawal of Objection**

[16] With respect to the objection and its withdrawal, it is clear from the oral submissions and written materials of Messrs Price and Vogel that:

- The only objector in this matter is the owner of the property, TTRAM Developments Inc.;
- The owners of TTRAM Developments are Mr. Vogel and Mr. Price;
- Mr. Vogel authorized Mr. Price to act as his representative in this matter by operation of the Form 1 dated June 2, 2019;
- Mr. Price was the sole representative of TTRAM at the second PHC in accordance with the June 2, 2019 Form 1 and he indicated their intention to withdraw their objection;
- Mr. Vogel was provided notice of the second PHC but did not himself appear thereat, presumably content to have Mr. Price represent him;
- The June 2, 2019 Form 1 has never been cancelled; and
- Mr. Vogel has never explicitly repudiated Mr. Price's June 11, 2019 withdrawal email despite being copied on it.

[17] As referenced above, the Review Board, in an abundance of caution and as a courtesy, asked Mr. Vogel to confirm the withdrawal. He has not done so.

### **Order**

[18] To remedy this impasse, the Review Board orders the parties to provide written submissions by September 25, 2019 (“deadline”) as to:

- whether or not these proceedings should be dismissed under Rule 14.01 (a) or (b), or otherwise; and,
- whether or not costs should be assessed against a party in accordance with Rule 34.

[19] These written submissions shall consist of no more than 5 pages of typewritten text and shall be served upon the Review Board and the other party by the deadline in accordance with Rule 11 and Rule 12.

[20] The Review Board further orders that:

- By the deadline, the Objector will complete and submit a Form 1, specifying which person represents TTRAM Developments Inc.
- If the Objector does not provide the requisite written submissions and the Form 1 on behalf of TTRAM Developments Inc. by the deadline, the Review Board will dismiss these proceedings in accordance with Rule 15.03 without further submissions of the parties.

[21] In the alternative, Mr. Vogel may provide his consent to the withdrawal by the deadline and, should he do so, the Review Board will order that these proceedings be dismissed.

[22] If the withdrawal is not confirmed by Mr. Vogel, and the Objector provides the requisite written submissions and Form 1 by the deadline, the Review Board will consider such submissions and make such orders, as may be appropriate, including orders requiring further submissions by the parties.

*"Daniel Nelson"*

DANIEL NELSON

MEMBER

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**Conservation Review Board**

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