

Conservation Review Board
Commission des biens culturels



ISSUE DATE: January 07, 2019

CASE NO(S):

CRB1822
CRB1823
CRB1824
CRB1825

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

Owner/Objector: Two Sisters Resorts Corp.
Subject: Notice of Intention to Designate
Property Address: 144 John Street East
Legal Description: Lot 144 RCP 692 Niagara
Municipality: Town of Niagara-on-the-Lake
CRB Case No.: CRB1822
CRB Case Name: Two Sisters Resorts Corp. v. Niagara-on-the-Lake (Town)

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

Owner/Objector: Two Sisters Resorts Corp.
Subject: Notice of Intention to Designate
Property Address: 176 John Street East
Legal Description: Lot 144 RCP 692 Niagara
Municipality: Town of Niagara-on-the-Lake
CRB Case No.: CRB1823
CRB Case Name: Two Sisters Resorts Corp. v. Niagara-on-the-Lake (Town)

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

Owner: Solmar (Niagara 2) Inc.
Objector: Two Sisters Resorts Corp.
Subject: Notice of Intention to Designate
Property Address: 200 John Street East

Legal Description: Lot 145 RCP 692 Niagara Except Pt 1 to 9,
30R8436
Municipality: Town of Niagara-on-the-Lake
CRB Case No.: CRB1824
CRB Case Name: Two Sisters Resorts Corp. v. Niagara-on-the-
Lake (Town)

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

Owner: Solmar (Niagara 2) Inc.
Objector: Two Sisters Resorts Corp.
Subject: Notice of Intention to Designate
Property Address: 588 Charlotte Street
Legal Description: Lot 156 RCP 692 Niagara; Part Lot 145 RCP 692
Niagara Part 1 to 9, 30R-8436; S/T RO718339,
S/T RO413742, T/W RO413742 (PT 13,
30R1792 Except Pt 5, 30R8436)
Municipality: Town of Niagara-on-the-Lake
CRB Case No.: CRB1825
CRB Case Name: Two Sisters Resorts Corp. v. Niagara-on-the-
Lake (Town)

Heard: December 14, 2018 by telephone conference call

APPEARANCES:

Parties

Two Sisters Resorts Corp. and
Solmar (Niagara 2) Inc.

Town of Niagara-on-the-Lake

SORE Association

Counsel

Sara Premi and Thomas Richardson

Callum Shedden, Brent Harasym, and
Scott Snider

Patrick Little

ORDER OF THE BOARD DELIVERED BY DANIEL NELSON

Background

[1] This is a procedural order of the Conservation Review Board (“Review Board”) arising from pre-hearing conferences (“PHCs”) in respect of objections by Two Sisters Resorts Corp. and Solmar (Niagara 2) Inc. (“Objectors”) to Notices of Intention to Designate issued by the Town of Niagara-on-the-Lake (“Municipality”) for the properties at:

- 144 John Street East (CRB 1822)
 - Owned by Two Sisters Resorts Corp.
- 176 John Street East (CRB1823)
 - Owned by Solmar (Niagara 2) Inc.
- 200 John Street East (CRB1824)
 - Owned by Two Sisters Resorts Corp.
- 588 Charlotte Street (CRB1825)
 - Owned by Solmar (Niagara 2) Inc.

[2] All of the above-referenced properties are located in the Town of Niagara-on-the-Lake, Ontario (“properties”).

[3] The properties are fragments of the original Rand or Randwood Estate.

[4] The Objectors are related companies with shared counsel.

Concurrent Hearings

[5] Given the overlapping parties and counsel, the Review Board orders any PHCs and/or hearings related to these four proceedings are to be held concurrently unless otherwise ordered.

Additional Party

[6] The community group known as SORE Association (Save our Randwood Estate) (“SORE”) sought party status in these proceedings. Counsel for the Objectors objected to the addition of SORE as a party. The Municipality consented to its addition.

[7] Rule 21.03 of the Review Board’s *Rules of Practice and Procedure* (“Rules”) sets out the criteria by which the Review Board may add a party. In essence, it must be shown that:

- SORE has a genuine interest in the issues arising from the designation of these properties;
- SORE will be able to make a useful and different contribution to the understanding of these issues; and,
- The addition of SORE as a party does not cause any delay or prejudice to an existing party.

[8] The Municipality was satisfied that SORE met all the criteria to be added as a party. In its view, SORE (and its members, before incorporation) have had a long interest in the preservation of the properties. The Municipality noted that SORE has retained its own heritage expert, ERA Architects (“ERA”).

[9] The Objectors did not appear to dispute that SORE has a genuine interest in the issues but were concerned about the legal status of the organization. It was not clear, to the Objectors, whether or not SORE was incorporated and, therefore, would not necessarily have internal mechanisms to allow it to speak with one voice in submissions, particularly in any settlement discussions. They were also concerned about this potential lack in internal structure as it related to what appears, to the Objectors, some disagreement between the Municipality and SORE’s experts regarding

the heritage attributes of the property. Counsel for the Objectors conducted corporate searches and were unable to find SORE's letters patent.

[10] On the other hand, the Objectors acknowledged that it would be more efficient for SORE to represent the many interested persons in these matters and, perhaps, in their view, rein in some of the public's animosity regarding the project, at least among those who are members of SORE.

[11] Counsel for SORE was able to confirm that SORE was incorporated federally at the PHC. The Review Board asked that SORE's counsel share the Certificate of Incorporation with the parties and this was done later the same day by email to the parties and the Review Board, which confirmed that SORE was incorporated on November 9, 2018. This certificate set out the purpose of the corporation, which is "to ensure the responsible care, maintenance, use, and development of the Rand Estate in Niagara-on-the Lake".

[12] By subsequent letter sent to the Review Board, dated December 17, 2018, counsel for the Objectors noted that SORE's head office, as set out in the certificate, is the office of the SORE's counsel and that the only director listed, Bryce Murray, is a lawyer in the same firm. In addition, they are concerned that the objects of SORE do not specifically include representing ratepayers or members of the public of Niagara-on-the-Lake.

[13] With respect, the Review Board finds none of these subsequent submissions to be compelling. Mr. Murray, the named director, may only be a first director of the corporation; it is not uncommon for an organization's solicitor to act as such until the proper directors are elected. However, even if this is not the case, Mr. Murray may still act as a director regardless of his affiliation or location. There is no requirement for an interested party to reside in the particular municipality where a designated property exists. Nor must SORE specifically represent ratepayers or members of the public of

Niagara-on-the-Lake; rather, it appears to represent members of the public who are interested in the historic preservation of the properties, wherever located, which is not inappropriate.

[14] Counsel for SORE, in his submissions at the PHC, also noted that the organization maintains an active website on the preservation of the properties with many unique visitors. In addition, counsel for SORE provided his commitment that if SORE was added as a party, they will have internal mechanisms set up to authorize counsel to settle matters on its behalf.

[15] It is clear to the Review Board that SORE easily meets the first criterion: it has a genuine interest in the proceedings. The Review Board also finds the argument that SORE can better represent and manage the strong community interest in the proceedings, instead of many people seeking individual participant status, compelling. As this is a very early stage in the proceeding, there is no prejudice or delay caused by its addition either.

[16] The remaining question is whether SORE would make a useful and different contribution to the proceedings. It has retained ERA Architects, which is a well-known firm in the area of heritage preservation in this province. As the ERA correspondence submitted before the PHC shows, ERA has already been involved in analyzing the property as it relates to the criteria set out in Ontario Regulation 9/06 and in reviewing the submissions of the Objectors and the Municipality. This may provide both useful and different expert analysis of the property, different from both the Objector and the Municipality. Additionally, as a focal point for persons interested in the designations, it can potentially present a variety of alternate perspectives.

[17] For these reasons, the Review Board finds that:

- SORE does have a genuine interest in the proceedings;

- SORE will make a useful and different contribution to the understanding of the issues arising from these proceedings;
- there is no prejudice or delay in adding SORE as a party,

and, as a result, orders that SORE be added as a party.

[18] The Review Board further orders that SORE provide written confirmation, signed by the president or other officer of the corporation, that it has duly appointed a named representative (whether its counsel or otherwise) who has authority to settle, on behalf of the organization, any matter arising from these proceedings and that such appointment was made in accordance with its bylaws. Such written confirmation shall be submitted to the Case Coordinator before the date of any Pre-hearing Settlement Conference (“PHSC”).

Pre-hearing Settlement Conference

[19] The Objector “earnestly” requests the involvement of the Review Board in settlement, which means that a PHSC would need to be organized pursuant to Rule 19.

[20] The Municipality and SORE are open to both formal or informal settlement discussions.

[21] Pending the scheduling of a PHSC, the Review Board suggested that the parties pursue informal settlement discussions between the parties. The Review Board would schedule regular PHCs so that the parties can provide updates on the progress of such discussions.

[22] The Case Coordinator is directed to canvas the parties for dates for a second PHC at the end of January 2019, for the purposes of:

- the Parties providing an update on any informal settlement discussions; and,
- the Review Board providing an update on the scheduling of a PHSC with a different Member of the Review Board.

[23] 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

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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