

**Conservation Review Board**  
Commission des biens culturels



**ISSUE DATE:** December 03, 2020

**CASE NO.:** CRB1918  
CRB1919  
CRB1920

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

Owners: Dan D'Alessandro & Mary D'Alessandro  
Objectors: John Colin Black  
Subject: Notice of Intention to Designate  
Property Address: 21 Prideaux Street  
Legal Description: PT LT 31 TP PL 86 NIAGARA AS IN RO432606  
Municipality: Town of Niagara-on-the-Lake  
CRB Case No.: CRB1918  
CRB Case Name: Black 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: John Colin Black  
Subject: Notice of Intention to Designate  
Property Address: 27 Prideaux Street  
Legal Description: PT LT 30 TP PL 86 NIAGARA AS IN RO434461  
Municipality: Town of Niagara-on-the-Lake  
CRB Case No.: CRB1919  
CRB Case Name: Black 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: Thomas Elltoft, Kimberley Elltoft  
Objector: John Colin Black  
Subject: Notice of Intention to Designate  
Property Address: 31 Prideaux Street

Legal Description: PT LT 30 TP PL 86 NIAGARA AS IN NTW8087  
Municipality: Town of Niagara-on-the-Lake  
CRB Case No.: CRB1920  
CRB Case Name: Black v. Niagara-on-the-Lake (Town)

**APPEARANCES:****Parties****Counsel**

Thomas Elltoft	Self-represented
John Colin Black	Brian Duxbury
Town of Niagara-on-the-Lake	Terry Hill

**HEARD:** September 28, 2020 by telephone conference call  
**ADJUDICATOR(S):** Daniel Nelson, Member

**PROCEDURAL ORDER**

---

**Background**

[1] This is a procedural order of the Conservation Review Board (“Review Board”) arising from a pre-hearing conference (“PHC”) in respect of objections by John Colin Black to Notices of Intention to Designate (“NOID”) the properties at:

- at 21 Prideaux Street, Town of Niagara-on-the-Lake (CRB1918);
- at 27 Prideaux Street, Town of Niagara-on-the-Lake (CRB1919);
- at 31 Prideaux Street, Town of Niagara-on-the-Lake (CRB1920); (the “properties”).

[2] Dan and Mary D’Alessandro, owners of 21 Prideaux Street, objected to the issuance of the NOID but subsequently withdrew the objection and are no longer parties

at the hearing. The matter remains open as Mr. Black maintains his objection to the designation.

[3] Given the overlap of parties and the contiguous nature of the properties, the Review Board orders that these matters shall be dealt with concurrently.

### **Organization/Conduct of the Hearing**

[4] The Review Board will hold the hearing for these matters by Microsoft Teams video conference call on **March 17, 18 and 19, 2021** commencing at **9:30 a.m.** The hearing will be open to the public and public notice will be published. No adjournments will be granted before or during the hearing except in accordance with the Review Board's *Rules of Practice and Procedure* ("Rules").

[5] The parties to the hearing are:

- John Colin Black;
- Town of Niagara-on-the-Lake.

[6] No persons have requested participant status in these matters.

[7] The Objector intends to call three witnesses; and the Municipality intends to call three witnesses.

[8] The parties, and the witnesses they intend to call to provide evidence at the hearing, are directed to dial into the call prior to the start time of the hearing each day in accordance with instructions that will be issued by the Review Board.

[9] A party may attend or participate in a proceeding in person by video conference call, 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, a Form 1,

Representative of a Party—Commencement of Authorization, which can be found in Appendix A to the Rules.

[10] 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.

### **Photos in Lieu of Site Visit**

[11] In lieu of a site visit, the parties are directed to jointly provide photographs of the property in accordance with the Review Board's Photos In Lieu of Site Visit: Guidance to Parties as set out in Appendix 1 hereto.

[12] Such photographs are not evidence but a joint submission of the parties to assist the Review Board in understanding the context of the site.

### **Expert Witnesses and Evidence**

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

[14] 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.

[15] All expert reports are expected to conform to the Review Board's Guidance to Parties on Expert Reports and Other Disclosure Matters as set out in Appendix 2 hereto.

[16] If any of this is not done, the Review Board may refuse to hear the expert's testimony.

### **Disclosure**

[17] At least 21 days prior to the scheduled 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;
- an Agreed Statement of Issues;
- copies of all other documentary and other evidence that the party will refer to, or tender as evidence, at the hearing.

[18] The materials are to be exchanged between 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.

[19] 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.

[20] 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

Appendix 1 – Photos In Lieu of Site Visit: Guidance to Parties

Appendix 2 – Guidance to Parties on Expert Reports and Other Disclosure Matters

If there is an attachment referred to in this document,  
please visit [www.olt.gov.on.ca](http://www.olt.gov.on.ca) to view the attachment in PDF format.

**Conservation Review Board**

A constituent tribunal of Ontario Land Tribunals

Website: [www.olt.gov.on.ca](http://www.olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

# **Appendix 1**

## **Photos in Lieu of Site Visit**

### **Guidance to Parties**

It is the practice of the Review Board, on the morning of the first day of a hearing, to visit the property that is the subject of the hearing. Site visits allow the members of the Review Board to understand the property in its context while illuminating the testimony of any witness discussing the property. While no evidence may be presented at a site visit, the parties are invited to draw the Review Board's attention to particular features of a property, if applicable.

Site visits, at this time, are not practical or desirable despite their importance.

In the alternative, the Review Board may request that the parties submit photos of a property in lieu of a site visit.

If such a request is issued, the site photos will be submitted to the Review Board in accordance with the following requirements:

1. The parties will jointly submit these materials not less than 5 days before the hearing date or at such other time as the Review Board may order.
2. Photos must be in colour.
3. Photos should be of sufficient resolution to allow the Review Board to see the property and zoom in on relevant features without a loss of picture quality.
4. There must be:
  - a. Wide-angle shots of the property from each side of the property, capturing all buildings on the property, if applicable, to allow for a contextual understanding of the how the buildings relate to each other;
  - b. Wide-angle shots of the property from each side of the property, sufficiently wide to capture some of the adjoining properties to allow for a contextual understanding of the property as it relates to its community;
  - c. Wide angle shots of each side of each building on the property;
  - d. Close-up shots of each side of a building;
  - e. Close-up shots of any applicable architectural features or heritage attributes, from multiple angles and directions, if applicable, with text and arrows identifying such attributes;
  - f. If available, aerial photos of the property with text and arrows identifying all buildings or applicable heritage attributes on the property;
  - g. Equivalent wide-angle and close-up photos for any identified heritage attributes found inside a building, if applicable;
5. A failure to provide required photos of an identified heritage attribute may result in the Review Board's refusal to hear any evidence on such an attribute.

6. The parties may add text, arrows, or other identifying marks to a digital photo to highlight applicable features or heritage attributes of a property/building. No evidence regarding such features or attributes, nor any comments regarding same may be added to the photo.
7. Each photo must be sequentially numbered in accordance with the index required below.
8. The photos must be accompanied by an index identifying each photo by number and notes indicating what is being shown in the photo, any relevant features found in the photo, and the direction of shot. Such index should be typed and submitted in MS Word or PDF format in accordance with the template below.
9. The name of each photo will be the CRB case number and its index number (e.g. CRB0000photo1).
10. Each digital photo and the photo index may be sent to the Case Coordinator by email ([Conservation.Review.Board@ontario.ca](mailto:Conservation.Review.Board@ontario.ca)). The maximum size of any one email sent to this email address is 35 mb. Depending on the size of the files, it may be necessary to send multiple emails. **In this case, please ensure the subject line of each email states the CRB file number and that the body of the email states that it is photo submission in lieu of a site visit and the number of emails constituting the submission (e.g. "email 1 of 4").**

## CONSERVATION REVIEW BOARD

### PHOTO INDEX

CRB File No.	Hearing Date:
Property Address:	Municipality:

<b>Photo Number</b>	<b>What is being Shown?</b>	<b>Applicable Heritage Attributes</b> (if none write "N/A")	<b>Direction of Shot</b> (in what direction was photographer facing)
1	<i>(e.g. front of house)</i>	<i>(e.g. "cornice")</i>	<i>(e.g. "West")</i>
2			
3			

## Appendix 2

### GUIDANCE TO PARTIES ON EXPERT REPORTS & OTHER DISCLOSURE MATERIALS

1. The Review Board expects that any expert report would consist of the following elements, in the following sequence:
  - a. An analysis of the property as it exists, describing its features in architectural terms, and placing such features and overall design in the context of architectural history by citing academically credible secondary sources on such history. Images appropriate for highlighting features described should be included. Accurate reference to the architectural lexicon is expected when describing architectural features.
  - b. Where applicable, an analysis of the property as it relates to the available corpus of work of the architect or craftsman in question with reference to primary/archival sources, including contemporaneous issues of relevant architectural journals. Reference should also be made to academically credible secondary sources including, if applicable, the Biographical Dictionary of Architects in Canada.
  - c. Where applicable, a review of the history of the property and the historically relevant themes, events, beliefs, persons, activities, organizations or institutions connected with the property (whichever is applicable), placing the property or such relevant factors in its historical context by citing primary/archival sources, including (but not limited to) archival photographs, historical atlases, archival newspapers, fire insurance plans, original business directories, and archival diaries and correspondence, together with academically credible secondary sources.
  - d. A detailed and criterion-by-criterion evaluation of the property, in light of the analysis conducted, as it applies to the criteria set out in O. Reg. 9/06. If a criterion does not apply, the expert should explain why.

- e. A conclusion, drawing together these various analytical elements.
  - f. A bibliography, as per the citation guidelines below.
  - g. Appendices consisting of:
    - fully and clearly replicated historic and archival materials relied upon in the expert report.
    - relevant extracts from secondary sources relied upon in the expert report.
2. The report should be cited in accordance with a consistent academic citation method appropriate for historical research. Generally, as this is historical research, the Review Board would expect the report to comply with the Chicago (Notes-Bibliography) citation method. An expert report using, for example, the APA or MLA citation method, while not standard for historic research, is also acceptable. Both primary and secondary material should be appropriately cited.
  3. Expert reports, in the context of heritage preservation, are not acceptable where the expert simply rephrases a criterion set out in O. Reg. 9/06 in either the negative or the positive. It is never enough to make such an assertion without a detailed evaluation of the criterion, as it relates to a property, and linking such evaluation to the historical record and secondary sources.
  4. The Review Board recognizes that there may be good reason to vary from these expert report guidelines and the author of an expert report may do so, provided that an explanation for such variation is provided; otherwise, an unfair adverse inference could be drawn as to the credibility of the expert.
  5. It is not necessary for any party to replicate in disclosure materials the following standard sources:
    - The *Ontario Heritage Act* or any other Ontario legislation freely available from [www.ontario.ca/laws](http://www.ontario.ca/laws)
    - O. Reg. 9/06
    - Parks Canada's Standards and Guidelines for the Conservation of Historic Places in Canada
    - Ontario's Provincial Policy Statement

- The Ontario Heritage Toolkit
  - Any caselaw, including the Review Board decisions, freely available on [www.canlii.org](http://www.canlii.org).
6. The Review Board also recognizes that producing expert reports and disclosure materials with elaborate tabs and binding can be costly for some parties. Neither is required, provided that the materials are securely bound together in some fashion, and comprehensively and sequentially paginated.