

**Conservation Review Board**  
Commission des biens culturels



**ISSUE DATE:** March 24, 2021

**CASE NO.:** CRB 1824  
CRB 1825

**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, 30R8436; 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)

BEFORE:

SUSAN de AVILLAR SCHILLER            )  
VICE CHAIR                                )  
  )     Wednesday, the 24<sup>th</sup>  
  )     day of March, 2021

## **PROCEDURAL ORDER**

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1. 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.

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

2. The Review Board will hold the hearing for these matters by video on **July 19, 20, 21 and 22, 2021**, commencing at **10 a.m.** The video conference platform will be determined at a later date and the Parties will be advised.

The parties are expected to cooperate to reduce the length of the hearing by eliminating redundant evidence and attempting to reach settlements on issues where possible.

3. The Parties and Participant to the hearing are as set out in **Attachment 1** and below:
  - Two Sisters Resorts Corp. and Solmar (Niagara 2) Inc.;
  - SORE Association;
  - Town of Niagara-on-the-Lake.
  - Niagara-on-the-Lake Conservancy (Participant)
4. The issues are set out in the Issues List attached as **Attachment 2**. There will be no changes to this list unless the Review Board permits, and a party who asks for changes may have costs awarded against it.
5. The order of evidence shall be as set out in **Attachment 3**.

6. Direct evidence is limited to 30 minutes for each witness. Cross-examination is limited to a maximum of 2 hours for each witness. Parties of like or similar interest will share a single 2 hours of cross-examination per witness, with the 2 hours divided between these parties as they see fit. Opening statements are limited to a maximum of 10 minutes. If the evidentiary portion of the hearing takes up the entire scheduled time for the hearing, the default will be a written argument. In such circumstances, the Board may set requirements for such written argument.

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

7. 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 **Attachment 4** hereto.

8. 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**

9. An expert witness who is providing opinion evidence must execute the Acknowledgement of Expert's Duty form tailored specifically for evidence at video hearings and found at **Attachment 5**.

10. 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. The witness statement is to address specifically the expert's opinion on the issues for the hearing and the reasons therefor.

11. 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 **Attachment 6** hereto, except as modified by the directions in this Procedural Order.
12. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence.

### **Requirements Before the Hearing**

13. The parties shall file a list of witnesses, including a curriculum vitae and area of qualification for each witness by no later than **June 3, 2021**. Any challenges to qualification area to be filed by no later than **June 18, 2021**. Any challenges so filed shall state clearly and concisely the reason(s) for the challenge to the proposed qualification of the witness.
14. On or before **June 28, 2021**, the parties shall provide copies of their expert witness statements to the other parties, the participant and to the Review Board's case coordinator.
15. On or before **June 28, 2021**, a participant shall provide copies of their written participant statement to the other parties and the Review Board's case coordinator.
16. On or before **July 5, 2021**, the parties shall provide copies of their visual evidence to all of the other parties and the participant.
17. On or before **July 5, 2021**, the parties may provide to all other parties, the participant and the Review Board's case coordinator a written response to any written evidence.

18. The parties shall cooperate to prepare a joint document book, which shall be provided to the Review Board by no later than **July 5, 2021**.
19. A party who provides written evidence of a witness to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Review Board by **July 5, 2021** that the written evidence is not part of their record.
20. The parties shall prepare and file a preliminary hearing plan with the Review Board on or before **July 5, 2021** that sets out the order in which each Party's witnesses will be called.
21. All filing shall be electronic and one hard copy shall be provided to the Review Board. Electronic copies may be filed by email, and with a USB key provided to the Review Board.
22. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness.

**This Member is not seized.**

**So Orders the Conservation Review Board.**

*"Becky Fong"*

BECKY FONG  
REGISTRAR

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

## Attachment 1

### List of Parties and Participants

#### Parties

1. **TWO SISTERS RESORTS CORP. and SOLMAR (NIAGARA 2) INC.**

**SULLIVAN MAHONEY LLP**

40 Queen Street  
St. Catharines, ON, L2R 6Z2  
Tel: (905) 688 6655  
Fax: (905) 688 5814

**Thomas A. Richardson**

[tarichardson@sullivanmahoney.com](mailto:tarichardson@sullivanmahoney.com)

**Sara J. Premi**

[sjpremi@sullivanmahoney.com](mailto:sjpremi@sullivanmahoney.com)

2. **THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE**

**TURKSTRA MAZZA ASSOCIATES**

15 Bold Street  
Hamilton, ON, L8P1T3  
Tel: (905) 529-3476  
Fax: (905)529-3663

**Nancy Smith**

[nsmith@tmalaw.ca](mailto:nsmith@tmalaw.ca)

3. **SORE ASSOCIATION**

**GOODMANS LLP**

Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON, M5H 2S7  
Tel: (416) 597 4183  
Fax: (416) 979 1234

**Catherine Lyons**

[clyons@goodmans.ca](mailto:clyons@goodmans.ca)

## Participant

### 4. NIAGARA-ON-THE-LAKE CONSERVANCY

#### **G. JANES, CHAIR**

c/o Judy MacLachlan

PO Box 1582

Niagara-on-the-Lake

ON, L0S 1J0

Tel: (905) 468 2841

## Attachment 2

### List of Issues

#### 200 John Street East (“200 John”)

1. Has the Town correctly, clearly and accurately described the Heritage Attributes of 200 John for the purpose of establishing that it has cultural heritage value or interest as prescribed by O.Reg. 9/06 and, therefore, should be designated under Section 29 of the *OHA*? Specifically:
  - (a) What are the “surviving elements of the Dunington-Grubb landscape” the Town wishes to protect, other than the:
    - ✓ Tea Pavilion;
    - ✓ Pool House; and
    - ✓ Tea Pavilion Formal plantings and Pergola surrounding the Pool?
  - (b) Other than the Heritage Attributes listed in Issue 1(a), are the “surviving elements of the Dunington-Grubb landscape” that the Town wishes to protect Heritage Attributes, and should they be identified as such for the purpose of establishing that 200 John has cultural heritage value or interest as prescribed by O.Reg. 9/06 and, therefore, should be designated under Section 29 of the *OHA*?
  - (c) Are the structures listed below Heritage Attributes, and do they contribute to the heritage value of 200 John for the purpose of establishing that it has cultural heritage value or interest as prescribed by O.Reg. 9/06 and, therefore, should be designated under Section 29 of the *OHA*:
    - ✓ The Pool associated with the Tea house;
    - ✓ The extant Wooden Stop/Whistle Stop;



- ✓ The two-storey Carriage House with hipped roof; and
- ✓ The Calvin Rand Summer House (a.k.a. the Guest House)?

### **588 Charlotte Street (“588 Charlotte”)**

1. Do the structures listed below contribute to the heritage value of 588 Charlotte for the purpose of establishing that it has cultural heritage value or interest as prescribed by O.Reg 9/06 and, therefore should be designated under Section 29 of the *OHA*:

- ✓ the Main Dwelling;
- ✓ Outbuilding One - fronting onto gravel driveway;
- ✓ Outbuilding Two - adjacent to Main Dwelling;
- ✓ Outbuilding Three - single entrance; and
- ✓ the One-storey Rectangular Building with hipped roof and overhang eaves and large French doors with ornate diamond- shaped windows associated with the original design?

### **Attachment 3**

#### **Order of Evidence**

1. Two Sisters Resorts Corp. and Solmar (Niagara 2) Inc.
2. The Corporation of the Town of Niagara-on-the-Lake
3. SORE Association
4. Two Sisters Resorts Corp. and Solmar (Niagara 2) Inc. (Reply)

**Attachment 4**  
**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.

Given the current emergency declared by the Government of Ontario pursuant to *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, site visits, at this time, may not be practical or desirable despite their importance.

In the alternative, the Review Board, during the currency of this emergency, 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			

## Attachment 5

### Acknowledgement of Expert's Duty: Video Hearing

Case Number	Municipality

1. My name is ..... (*name*)  
I live at the ..... (*municipality*)  
in the ..... (*county or region*)  
in the ..... (*province*)
2. I have been engaged by or on behalf of .....  
(*name of party/parties*) to provide evidence in relation to the above-noted Review Board proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
  - a. to provide opinion evidence that is fair, objective and non-partisan;
  - b. to provide opinion evidence that is related only to matters that are within my area of expertise; and
  - c. to provide such additional assistance as the Review Board may reasonably require, to determine a matter in issue.
  - d. not to seek or receive assistance or communication, other than technical support, from any third party, including but not limited to legal counsel or client, while giving oral evidence in chief, under cross-examination or while in reply.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date \_\_\_\_\_

\_\_\_\_\_  
Signature

## **Attachment 6**

### **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 craftsperson 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.