

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: September 01, 2021

CASE NO(S): CRB1911

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

Owners/Objectors:	Ning Zhang and Wen Zhu
Subject:	Notice of Intention to Designate
Property Address:	109 Park Street
Legal Description:	Concession: Plan 3 Lot 5 S/S Park; Reg Plan (RP); S/S Park
Municipality:	Town of Amherstburg
OLT Case No.:	CRB1911
OLT Case Name:	Zhang v. Amherstburg (Township)

Heard: July 19 and 20, 2021 by video hearing

APPEARANCES:

Parties

Ning Zhang and Wen Zhu

Town of Amherstburg

Counsel

Anthony Leardi

Jeffrey Nanson

REPORT BY DANIEL NELSON DELIVERED BY THE TRIBUNAL

OVERVIEW

[1] The Town of Amherstburg ("Town") seeks to designate the property known municipally as 109 Park Street in the Town ("the Property"), which is owned by Ning

Zhang and Wen Zhu (the “Objectors”) for having cultural heritage value or interest (“CHVI”) under s. 29 of the *Ontario Heritage Act* (“OHA”).

[2] The Property was original added to the Town’s Heritage Register in July 2007 pursuant to s. 27(1) of the OHA. The Property was acquired by the Objectors on June 28, 2018. The Town adopted a motion to designate the property under. s. 29 on April 8, 2019 and issued the Notice of Intention to Designate (“NOID”) the Property on April 24, 2019. The Objectors issued their Notice of Objection on May 18, 2019.

[3] As a result of the Objector’s objection to the NOID, the matter was referred to the Ontario Land Tribunal.¹ Pre-hearing conferences were held on September 18, 2019, January 30, 2020, and April 23, 2021. A hearing was convened under s. 29(8) of the OHA (“Hearing”) for the purpose of recommending whether, in the opinion of the Tribunal, the Property should be designated under s. 29 of the OHA.

[4] The list of exhibits entered into evidence at the Hearing is attached as Appendix 1 to this Report.

BACKGROUND

[5] It is not in dispute that the original section of the Property, with the gable facing the street and the door, was built c. 1858-1860. A perpendicular wing was added in about 1884. There are subsequent later additions to the back of the house and a separate garage at the back of the property. There are associations with Captain Henry W. Hackett, a Great Lakes boat captain from an important local mariner family, who

¹ Pursuant to the *Ontario Land Tribunal Act*, S.O. 2021, c. 4, sched. 6, the Conservation Review Board (“Review Board”) was amalgamated and continued as the Ontario Land Tribunal (“Tribunal”) as of June 1, 2021. For convenience, this report, issued after June 1, 2021, will refer to the Review Board as the Tribunal regardless of whether it refers to an event before or after June 1, 2021. Note that this matter commenced before July 1, 2021 and is, therefore, subject to the OHA as of June 30, 2021 pursuant to O. Reg. 385/21. As such, this is a report with recommendations, which the Town must consider before making its final decision and is not an order of the Tribunal.

lived in the Property in the 1880s. There is also an association with Brunner Mond Canada Ltd., an important company to the Town in the 20th century, which owned the Property and rented it to an employee.

[6] However, these associations are not the subject of the Hearing and do not now form part of the Town's designation intention for the Property.

[7] The Tribunal heard from three witnesses:

- Angelo Avolio, the Chief Building Official for the Town. Mr. Avolio is the author of the Town's report on the building.
- Dan Schneider, an expert witness for the Town, and author of an expert report on the Property.
- Edward van der Maarel, an expert witness for the Objectors, and author of an expert report on the Property.

[8] With the consent of the parties, the Tribunal determined that Messrs. Schneider and van der Maarel were expert witnesses for the purpose of the Hearing and could provide opinion evidence.

[9] No participants participated in the Hearing and, therefore, there were no presentations to the Tribunal.

ISSUES

[10] At the beginning of the Hearing, the parties made it known to the Tribunal that they had agreed to narrow the issues for the Hearing such that only one question remained for the Tribunal to consider: **does the Property have contextual value because it is important in defining, maintaining, or supporting the character of the area** under s. 3(i) of Ontario Regulation 9/06 ("O. Reg 9/06")?

[11] O. Reg 9/06 sets out the criteria necessary for a determination of CHVI in a property. It is important to note that a property need only meet any one of the O. Reg 9/06 criteria in order to have CHVI and therefore be eligible for designation under the OHA.

[12] There was some discussion about the physical state of the building on the Property but that physical state is not a criterion under O. Reg 9/06 and was, therefore, not considered. Nor did any party allege that the deterioration of the building has resulted in a loss of CHVI vis-à-vis the issue at hand.

Relevant Legislation and Regulation

[13] The relevant legislation in this matter is s. 29 of the OHA, which sets out the process for designating a property as having CHVI, and O. Reg. 9/06, which sets out the criteria for determining CHVI. The relevant extracts of both are set out in Appendix 2 to this Report.

Case for the Municipality

[14] The Town's position has undertaken a significant shift since it issued the original NOID. It has abandoned its position that the Property is a "unique vernacular interpretation of the Classical Revival style" since the Town's expert, Mr. Schneider, cast doubt on it. Mr. Schneider also questioned, in his report, whether there were strong historical or associative links to Captain Hackett and Brunner Mond Canada Ltd. sufficient to trigger the protections of the OHA.

[15] Having abandoned these criteria, and as discussed above in the Issues section, the Town's position now is that the Property has contextual value because it is important in defining, maintaining and supporting the character of the area. It is part of

the streetscape of the neighbourhood with its distinctive form typical of houses on the street, despite infill and changes over the decades, and therefore supports the character of the area.

[16] The Town's position on the matter of the "area" in question is that it is relatively restricted, being roughly Park Street, running East-West between Sandwich Street and Dalhousie Street, both North-South streets. South of Park Street, the streetscape changes and consists of retail/commercial space and multi-storey apartment buildings. To the north of Park Street, running North-South, is Ramsay Street and Bathurst Street which are also residential. Key to the Town's position is that these streets terminate at Park Street and do not penetrate into the commercial streetscape south of Park Street.

[17] In the opinion of Mr. Schneider, the Park Street area is a relatively intact 19th century streetscape. That character of the area is demonstrated in the interesting streetscape of:

- Modest frame dwellings of 1 to 1.5 storeys.
- Shallow setback, which is an indication of age.
- Roof gables facing the street.
- No major stylistic differences.
- Newer buildings in the area follow a generally similar model.
- Buildings that are unsympathetic to this character are not so numerous to seriously alter that character.

[18] Mr. Schneider also identified the heritage attributes of the Property should it be designated:

- The current location of the Property and its orientation to the street.
- Exterior of the c. 1858 house and c. 1884 west addition to it.

- Roof eave returns in the Classical Revival style.
- Chimney locations.
- Front door location and transom in the Classical Revival style.
- Window locations.

Case for the Owners/Objectors

[19] The Objector's expert, Mr. van der Maarel takes an expansive definition to his study area, which was between Sandwich Street in the East to the Detroit River in the West and from Gore Street in the North to Pickering Street in the South.

[20] Mr. van der Maarel came to this definition of the area in question as a result of his walkthrough of the neighbourhood.

[21] After determining that this was the study area, he determined that the contextual importance of the property has been diminished over the years as a result of unsympathetic infill and new builds. In particular, there is the Brewer's Retail Inc. (Beer Store) building at the far eastern end of Park Street and a large 8-storey apartment block to the south of the Property fronting on Pickering Drive to the south of Park Street, along with other commercial developments. His view is that this overshadowing structure is "a juxtaposition of architecture and planning that absolutely makes no sense in an area to be protected on a contextual level." Other properties, he believes, were demolished to permit new construction, which also damages the contextual value of the area.

ANALYSIS

[22] There has been, over the years, a dearth of decisions of the Conservation Review Board that deal specifically with criterion 3(i) of O. Reg 9/06. In some cases, while contextual value, generally, is discussed, s. 3(i) is not analysed or the parties did

not discuss it to any great extent² or the discussion revolved around other aspects of s. 3.³ In other cases, the Review Board found contextual value for the property based on the evidence presented but it is unclear as to how it came to that conclusion analytically.⁴

[23] In *Konrad*, the Review Board noted:

In this case, the only evidence as to the character of the area was a notation in the 2001 evaluation noting that it was located in a “19th century residential area, mixed size, materials, park to east.” The Board finds that this is not sufficient information to **understand the current character of the area**, or to make a determination as to whether the property is important in defining, maintaining or supporting that character. [emphasis added]⁵

[24] While the Review Board was unable to come to a conclusion on contextual value, in *Konrad*, based on the evidence presented to it at the time, there is an important note to be made here. A s. 3(i) analysis requires an understanding of the character of the area as it exists *now* because the regulation uses the present tense, syntactically. The historic character of an area, what it once was, in other words, is not particularly relevant but can, of course, inform the understanding of its current character.

[25] In *Baker*, the municipality argued that the former hospital it sought to designate was part of a campus-like complex that linked the historic downtown and other major sites across the town giving it “processional significance”. This, in effect, was suggesting an extraordinarily broad definition of “area” for the purposes of criterion 3(i). The Review Board noted that, on the other hand, the “immediate vicinity, excluding the

² See, for example, *Deluca v. Bradford West Gwillimbury (Town)*, 2016 CanLII 33703 (ON CONRB) at para. 59.

³ See, for example, *Lambeth Health Organization Inc. v. London (City)*, 2017 CanLII 11494 (ON CONRB) at para 58-60 and *Qureshi v. Mississauga (City)*, 2015 CanLII 99223 (ON CONRB) at para. 88. The question, in these cases, was whether the property was a landmark (s. 3(iii)). In *Black v. Niagara-on-the-Lake (Town)*, 2021 CanLII 44083 (ON CONRB) the question was whether the properties in question were physically, functionally, visually, or historically linked to their surroundings (s. 3(ii)).

⁴ *Fan v. Hamilton (City)*, 2015 CanLII 47123 (ON CONRB) at paras. 134-138.

⁵ *Konrad v. Brampton (City)*, 2017 CanLII 9857 (ON CONRB) (“*Konrad*”) at para. 57.

school, appears to be an area of mixed housing of various ages and styles. Thus, it is difficult to discern how the property defines, keeps, or supports the character of the area.”⁶ This immediate vicinity was, in effect, the properties on the other side of the streets that bordered the former hospital, demarking a very restrictive area. In the end, since the Review Board heard little evidence on the matter, it could draw no conclusions in that matter but, again, subtextually, it can be seen that the concept of “area” within the context of criterion 3(i) can be extraordinarily broad, or extremely narrow depending on the circumstances of the property under evaluation.

[26] In this sense, an obvious parallel can be drawn from the Conservation Review Board’s definition of community in the context of criterion 2 of O. Reg 9/06 : “The Review Board agrees that the definition of “community” is fluid and can be expanded, contracted, or specialized depending on the circumstances.”⁷ Likewise, the concept of “area” in the context of criterion 3 of O. Reg 9/06 must necessarily be fluid and can be expanded, contracted, or specialised depending on the circumstances.

[27] While not binding on the Tribunal and still in draft form, the 2021 Heritage Property Evaluation document (part of the Ontario Heritage Toolkit, prepared by the Government of Ontario) does provide some assistance. On the issue of s. 3(i) of O. Reg 9/06, the document provides the following comments to assist municipalities in making a heritage property evaluation:

To meet this criterion the property needs to be in an **area** that has a **definable character and it is desirable to maintain the character**. The character of a place need not be attractive or picturesque for it to be meaningful. For example, places with an industrial character can be of cultural heritage value. [emphasis added]

The research needs to consider how much or to what degree, the property contributes to determining, establishing, or affirming the character. For example, the research should consider what would happen to the character of the area if the property was considerably altered or lost.

⁶ *Baker v Port Hope (Municipality)*, 2019 CanLII 20795 (ON CONRB) (“*Baker*”) at para. 91-92.

⁷ *Faghani v Toronto (City)*, 2018 CanLII 37799 (ON CONRB) at para 70.

Character: the combination of physical elements that together provide a place with a **distinctive sense of identity**. It may include geomorphology, natural features, pattern of roads, open spaces, buildings and structures, but it may also include the activities or beliefs that support the perceptions associated with the character.
[emphasis added]

Area: refers to a street, neighbourhood, park, landscape, community, district, region, etc.

[28] The Tribunal agrees, generally speaking, with Mr. Schneider's test provided in his *viva voce* evidence, for undertaking a s. 3(i) analysis although the Tribunal has modified it in light of the Toolkit language above. To determine whether a property has contextual value because it is important in defining, maintaining, or supporting the character of an area, it is first necessary to ask the following questions:

- a) What is the area in question?
- b) What is the character of the area today?
- c) Does the property define, support, or maintain the character of that area?
- d) Is it desirable to maintain the character of the area as it is today?

[29] However, while it may be easy to enumerate such a test for a s.3(i) analysis, the application of such a test is rather more complicated than it may, at first, appear. In order to determine the metes and bounds of an area under analysis, one must understand the character of that area. It is only through an understanding of the qualitative character does the boundaries become clear, or at least, less mirky. Yet, an understanding of the area is necessary to discern any particular character. Too big an area can make the discernment of a character impossible; too small and it may be irrelevant. Thus, in many respects, the determination of character and the area are necessarily interwoven into a common determination of a 'sense of place' rather than being an algebraic equation. It is not *a priori* knowledge but, rather, experiential.

(a) What is the Area?

[30] Firstly, the question of what exactly is the area under examination must be examined, while remembering that the idea of area must be a fluid one and can be expanded, contracted, or specialised depending on the circumstances. And it must also be an area with a definable characteristic. It cannot be random.

[31] This was one of the key areas of contention in the hearing as both experts defined the area in question differently. Mr. Schneider defined it quite narrowly while Mr. van der Maarel defined it somewhat larger.

[32] If one adopts Mr. Schneider's definition of the area, the case for the Town is stronger while, if one adopts the definition of Mr. van der Maarel, the case for the Objectors is stronger. Thus, the question of the definition of the area is arguably the lynchpin upon which the entire matter rests.

[33] Mr. Avolio, while a non-expert witness noted that the area, which he defined as being between Sandwich Street and Dalhousie Street, was part of the older residential downtown core of the Town. Houses are of a similar size, generally speaking. The street in question, Park Street, was a residential street with the exception of a Beer Store at one end. He noted that south of Park Street, the streetscape changes dramatically with commercial properties such as a Canadian Tire retail store.

[34] The difficulty for the Objectors in this matter, is Mr. van der Maarel's curious definition of the "area" in question. While Mr. Schneider set out to define a relatively narrow area with a definable character, Mr. van der Maarel did not. In his report, and in his testimony, it never became clear why he selected such an expansive area that clearly has no definable character (however he might choose to define it). It was determined, according to his *viva voce* evidence, by his walkabout. His definition of area consists of the modest residential neighbourhood of Park, Ramsay and Bathurst

Streets, busy commercial zones on Pickering Drive, and parkland between Dalhousie Street and the Detroit River. Mr. van der Maarel provided no rationale for lumping these *prima facie* disparate zones together.

[35] Mr. Schneider, on the other hand, set out a much more modest but easily comprehensible project. For him, the area under analysis is Park Street and the adjoining Ramsay and Bathurst Streets. While not explicitly stated by any of the witnesses, looking at the photographs provided by both the Town and the Objectors' respective experts, it does appear that Park Street forms the southern boundary of an older residential area of the Town with this streetscape continuing north on Ramsay and Bathurst Streets. To the south is densification with apartment buildings and retail/commercial space. To the north, significantly less densification is found with residential properties there.

[36] In reviewing the photographs provided by both experts, one cannot help but see the character that Mr. Schneider was discussing – a streetscape of modest 1 to 1.5 storey homes with gables facing the street and most being of a similar style, whether old, or newer infill (with some obvious exceptions and some densification). But even these exemptions do not take away that feeling of the 'sense of the place' described by Mr. Schneider.

[37] Mr. van der Maarel's testimony would have been far more compelling if he had chosen a definable area that was comprehensible, perhaps using Mr. Schneider's defined area even, but then argued that the character was not worthy of preservation.

[38] Thus, in the end, the Tribunal can only conclude that it prefers the testimony of Mr. Schneider. There is, however, simply not enough evidence before the Tribunal to determine whether the area does, in fact, include Ramsay and Bathurst Streets and how far up these streets the area continues. Thus, for the purposes of this analysis, the Tribunal will focus primarily on Park Street.

(b) What is the Character of the Area?

[39] Having determined a general area for the purposes of this s. 3(i) analysis, one must turn, next, to the question of the character of the area as it is today. What is its distinctive identity, which, as discussed above, can include a pattern of buildings and structures?

[40] In the Conservation Review Board's decision in *Dunne v. Oakville (Town)* it was noted:

The evidence depicts this area as having an "eclectic and continually evolving character," with its value found in the "individual and unique properties, not cookie cutter like subdivisions." It was demonstrated by the evidence that there are several s. 29 protected properties in the area and that older buildings have been demolished for modern infill...The Review Board agrees with the Town's submission that each property, and the three properties collectively, have contextual value because they support the character, and are part, of the eclectic built form mix of this area.⁸

[41] In other words, the Tribunal does not expect that this 'sense of place' or character be frozen in time. A street is almost a living thing and must grow and evolve in order to survive. Part of that evolution means that there will be new construction. It means that there may be offensive intrusions into that character, particularly before the province began to appreciate and protect heritage properties.

[42] It is also important, when conducting a s. 3(i) analysis, to remember that the Ontario legislature clearly intended to distinguish the protections of a heritage conservation district ("HCD") from the designation of an individual property that still supports the character of an area that itself is not a HCD. This reinforces the point that such a streetscape cannot be expected to be immutable. The Tribunal would also note

⁸ CRB1208 (unreported) at p. 14.

that if any new construction in an area means a loss of contextual value, then the s. 3(i) criteria could likely never be met outside of museum-quality streetscapes or HCDs.

[43] Mr. van der Maarel did not seem to discuss his understanding of the character of the area. Rather, his focus was on the fact that there was no character or, if there was one, that it was lost. There was, in his view, no contextual value of any kind because of the view of the Pickering Drive apartment buildings behind the Property, the placement of the Beer Store at the end of the street, and the loss of other residential buildings and infill. While the placement of the Pickering Drive apartment buildings was significant, in cross-examination, he testified that, in his opinion, there was still a lack of contextual value even if these apartment buildings had never been built where they were.

[44] Mr. Schneider, on the other hand, was able to capture, evocatively, the sense of place that is Park Street. In his view, it is an older residential streetscape, which is discussed above in a relatively narrow range of massing and style, largely 1 to 1.5 storey modest homes with gables facing the street, as discussed above.

[45] In the end, the Tribunal has no choice but to prefer the testimony of Mr. Schneider over Mr. van der Maarel. This sense of place, this character of the area, is as Mr. Schneider describes.

(c) Does the Property Define, Support, or Maintain the Character of the Area?

[46] If the Tribunal accepts Mr. Schneider's description of the character of the area, which it does, then it necessarily follows that the Property in question must necessarily help define, support, and maintain the character of the area in question because of the very nature of the Property itself.

[47] As can be seen in the photographic evidence placed before the Tribunal by both parties, the Property is archetypal to that character. It is a 1.5-storey modest frame

house with the gable facing the street built in a vernacular Classical Revival style. Furthermore, as one of the oldest homes on the street, it may well have helped define the streetscape from the beginning although there is no specific evidence on this point.

(d) Is it also desirable to maintain that character?

[48] Although Mr. van der Maarel never explicitly made this point, his evidence on the issue of whether it is actually desirable to maintain the character of the area is compelling. As he argued, there are a number of unfortunate intrusions that could affect the character of the area:

- The existence of the Pickering Drive apartment buildings, discussed above;
- There is the Beer Store at the end of the street;
- The existence of busy commercial properties to the south of the Property;
- Modern infill residential properties;
- There is a potential of a hotel going into the area.

[49] The challenge of heritage preservation and criterion 3(i) is that any area, however one may define it, must necessarily have boundaries to be an area and if there are boundaries there must necessarily be transitional zones as one area becomes another. It simply cannot be that an area cannot be designated under s. 3(i) if it is adjacent to another area that is not in keeping with the character in question. Otherwise, it would be virtually impossible to designate any property under this criterion.

[50] Thus, while these intrusions exist, they do not necessarily mean that this Property, *ipso facto*, has lost contextual value. The question, really, is whether these intrusions are so severe that contextual value has been lost, as Mr. van der Maarel argues. In other words, is there a tipping point after which an area no longer has

character that is worthy of protection? The Tribunal did not really receive a compelling answer to this question from either witness, explicitly or implicitly.

[51] In this case, it is not in dispute that the intrusions identified by Mr. van der Maarel exist except, of course, the hotel, which is unbuilt and, therefore, remains speculative. Thus, the issue of the hotel cannot form part of a s. 3(i) analysis.

[52] Park Street itself, is a low-rise, low density, residential street as Mr. Schneider discussed. To the north are the residential streets of Ramsay and Bathurst. To the south, on the other hand, is Pickering Drive. This is a busy and dense street with the identified apartment buildings that loom over the Property but also includes commercial properties such as the Canadian Tire store. These properties are all oriented towards Pickering Drive and back up against the back yards of the Park Street properties. As discussed above, for any area to be identified, there must be boundaries to that area, or at least, transitional zones. Park Street is, in effect, part of a transitional zone between two areas. They also do not form part of the area under examination as part of this s.3(i) analysis discussed above. For these reasons, the Tribunal does not consider the existence of the apartment buildings to be so intrusive as to undermine the character of the area.

[53] Similarly, the Beer Store at the end of Park Street is also in a transitional zone between the residential area of Park Street and the parkland to the west and then the Detroit River. The store is oriented towards Park Street with access from both Park Street and Dalhousie Street. It is also set back substantially from the residential properties which are located very close to the street. This appears, as Mr. Schneider argued, to minimise its intrusion into the character of the area.

[54] As the photographs provided by both parties show, and as Mr. Schneider testified, the more modern, infill, properties are in general harmony with Mr. Schneider's description of the character of the area, which the Tribunal has adopted, above. And,

as discussed above, some intrusion of modern construction is to be expected and does not vitiate contextual value.

[55] Thus, the Tribunal is satisfied that these intrusions do not cause the Property and the street where it is located to lose contextual value and that character, for the reasons discussed above, should be maintained. In other words, the sense of place remains, and a tipping point has not been reached.

[56] As an aside, it should also be noted that counsel for the Objector's repeated point about a lack of identity, of signage, commemoration, or plaques is a bit of a red herring. The maintenance of the character of an area does not necessarily have to rise to the level of topophilia to be worthy of protection under criterion 3(i).

RECOMMENDATIONS

[57] Having considered the evidence before it and the submissions of the parties at the Hearing, and for the reasons set forth above, the Tribunal recommends that that the Property be designated under criterion 3(i) of O. Reg 9/06. The Property does have contextual value as it helps define, support, and maintain the character of the area in question. That character is a residential streetscape of modest 1 to 1.5 storey homes, many with the gables facing the street. However, this recommendation is subject to caveats.

[58] The Town will have to revise the designating by-law before approving it. This by-law should have a revised Statement of Cultural Heritage Value or Interest to reflect the Town's position that it only has contextual value under criterion 3(i) and include the list of heritage attributes of the Property.

[59] The Tribunal also recommends that the Town give careful consideration as to the ramifications of designation. The Town cannot, on the one hand, claim that the

Property defines, supports, and maintains the character of the area and then make planning decisions that actively undermine that character in the future. The Town should consider how it will avoid detrimental planning decisions that may impact the loss of the character of the area . It is certainly possible that a tipping point could be reached in the future, and the contextual value be lost.

[60] Furthermore, while it did not hear evidence on this as it is outside the jurisdiction of the Tribunal, the condition of the property, which Mr. van der Maarel hinted at, is also something to which the Town must, from a practical perspective, turn its mind.

“Daniel Nelson”

DANIEL NELSON
MEMBER

Ontario Land Tribunal

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

Appendix 1

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



Hearing date(s): July 19 and 20, 2021
 Site Visit Time: n/a
 Hearing Location: MS Teams Video Hearing
 Property Descriptions: 109 Park Street, Town of Amherstburg
 Member(s): Daniel Nelson

HEARING EXHIBIT LIST

Exhibit #	Nature of Exhibit and description	Filed By:
1	Notice of Hearing	CRB
2	Public Notice of Hearing	Municipality
3	List of Documents for Town of Amherstburg	Municipality
4	Supplemental List of Documents for Town of Amherstburg	Municipality
5	Expert Report	Municipality
6	Statement of Fact and Law of the Owners/Objectors	Owners/Objectors
7	Hearing Brief of the Owners/Objectors	Owners/Objectors

Appendix 2**Ontario Heritage Act, Designation of Properties by Municipalities****Definitions**

1. In this Act,

“heritage attributes” means, in relation to real property, and to the buildings and structures on the real property, the attributes of the property, buildings and structures that contribute to their cultural heritage value or interest:

Designation by municipal by-law

29.(1) The council of a municipality may, by by-law, designate a property within the municipality to be of cultural heritage value or interest if,

- (a) where criteria for determining whether property is of cultural heritage value or interest have been prescribed by regulation, the property meets the prescribed criteria; and
- (b) the designation is made in accordance with the process set out in this section.

29.(14) After considering the report under subsection (12), the council, without a further hearing,

- (a) shall,
 - (i) pass a by-law designating the property,
 - (ii) cause a copy of the by-law, together with a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property,
 - (A) to be served on the owner of the property and on the Trust, and
 - (B) to be registered against the property affected in the proper land registry office, and

- (iii) publish notice of the by-law in a newspaper having general circulation in the municipality; or
- (b) shall withdraw the notice of intention to designate the property by causing a notice of withdrawal,
 - (i) to be served on the owner of the property and on the Trust, and
 - (ii) to be published in a newspaper having general circulation in the municipality.

Ontario Regulation 9/06 – Criteria for Determining Cultural Heritage Value or Interest

- 1.(1) The criteria set out in subsection (2) are prescribed for the purposes of clause 29(1)(a) of the Act.
- 1.(2) A property may be designated under section 29 of the Act if it meets one or more of the following criteria for determining whether it is of cultural heritage value or interest:

Design or Physical value

- 1. The property has design value or physical value because it,
 - i. is a rare, unique, representative or early example of a style, type, expression, material or construction method,
 - ii. displays a high degree of craftsmanship or artistic merit, or
 - iii. demonstrates a high degree of technical or scientific achievement.

Historical or Associative Value

- 2. The property has historical value or associative value because it,
 - i. has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community,

- ii. yields, or has the potential to yield, information that contributes to an understanding of a community or culture, or
- iii. demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.

Contextual Value

- 3. The property has contextual value because it,
 - i. is important in defining, maintaining or supporting the character of an area,
 - ii. is physically, functionally, visually or historically linked to its surroundings, or
 - iii. is a landmark.