

**Conservation Review
Board**

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CRB0902

CONSERVATION REVIEW BOARD

RE: THE CORPORATION OF THE CITY OF NIAGARA FALLS – INTENTION TO DESIGNATE THE PROPERTY KNOWN AS 6320 PINE GROVE AVENUE IN THE CITY OF NIAGARA FALLS, ONTARIO

**Su Murdoch, Chair
Julie Harris, Member**

This hearing was convened under s.29(8) of the Ontario Heritage Act, R.S.O. 1990, Chapter O18, amended to 2006 (“Act”), for the purpose of reporting to the Council of the City of Niagara Falls, Ontario (“City”), whether, in the opinion of the Conservation Review Board, on the basis of the evidence it heard, the property known as 6320 Pine Grove Avenue should be protected by bylaw under s.29 of the Act.

The current legal description of the subject property is Lots 132 through 135, Plan 315, Village of Niagara Falls, now City of Niagara Falls. The 2009 (current) owners on title are Mr. Gordon Oglivie and Ms. Eleanor Attard.

The Board held one pre-hearing conference on this matter on July 16, 2009, which was attended by all Parties. There was no agreed statement of fact at the start of the hearing.

Notice of this hearing was served by the Review Board on the Parties and was published in the September 24, 2009 issue of the *Niagara Falls Review* in the manner required under the Act. A Statement of Service by the Review Board’s Case Coordinator with respect to Notice was filed as Exhibit 1.

The hearing day of October 5, 2009, commenced at 10:00 a.m. at the Niagara Falls Council Chambers, 4310 Queen Street, Niagara Falls. No site visit was conducted.

The hearing ended at about 12:00 noon on the same day.

Non-Attendance by a Party

Mr. Gordon Oglivie and Ms Eleanor Attard as the legal owners of the subject property objected in writing to the Notice of Intention to Designate. Both were notified of the Review Board proceeding in the manner required and were additionally contacted by a letter dated September 29, 2009, sent by traceable courier, reminding them of the deadline to submit disclosure materials and of the time and place for the hearing. They were informed in writing that the

Review Board may conduct this hearing in their absence.

As no disclosure materials were received and neither Mr. Ogilvie nor Ms Attard or their Representative appeared at the hearing, the Review Board cited the authority of s.7(1) of the Statutory Power and Procedures Act which addresses the effect of non-attendance at a hearing after due notice. Under this authority, the Review Board conducted the proceeding in their absence.

Counsel in Order of Appearance

Mr. Ken Beaman, City Solicitor, Legal Services, City of Niagara Falls

Witnesses in Order of Appearance

Mr. Alexander Herlovitch, Director of Planning and Development, City of Niagara Falls

Members of the Public in Order of Appearance

None

Jurisdiction of the Board

All parties were reminded that the jurisdiction of the Board is to hear evidence within the framework of Ontario Heritage Act Regulation 9/06 Criteria for Determining Cultural Heritage Value or Interest.

The Board does not address issues of demolition or selective demolition, as these are the jurisdiction of Council and, on appeal, the Ontario Municipal Board.

The Board does not address issues of the costs of physical maintenance or repairs, as these are outside the evaluation of cultural heritage value or interest.

The Board does not address any planning permit applications or issues that are under the jurisdiction of the Planning Act. These are between the applicant and the municipality. In this case, the Review Board was informed that the property owners had applied to the City for approval to redevelop the subject property.

Evidence on any of these topics will only be heard if they give context to the discussion of cultural heritage value or interest and any heritage attributes that may support that value or interest.

As is the custom of the Board at the start of the hearing, members of the public in attendance were asked if they intended to participate by making a statement later in the proceedings. There were no requests.

Property Description

This property is located at the corner of Pine Grove Avenue and Murray Street in the City of Niagara Falls. Based on the images and description provided by the City, the property contains one dwelling and some mature trees. The images indicate that the dwelling is a large, two-storey, brick and stucco clad structure built in a Tudor Revival style. The immediate area was described as predominately residential, consisting of single-family dwellings of various sizes and dates. There is some modern infill, notably an apartment building, near the subject property.

Case for the City of Niagara Falls

Witness – Mr. Alexander Herlovitch

Mr. Alexander Herlovitch, Director of Planning and Development, City of Niagara Falls, was sworn as a witness. His Curriculum Vitae (Tab 4, Exhibit 3, Disclosure document of The Corporation of the City of Niagara Falls) outlines his professional planning experience since 1981 and his current land-use policy and development responsibilities as the City's Director of Planning and Development. He has been employed by the City of Niagara Falls since October 1987. Mr. Herlovitch explained that his honours essay for a Bachelor of Environmental Studies degree concerned conservation district plans. He has a personal interest in the heritage of Niagara Falls and conducts walking tours of Buffalo, New York. The City's municipal heritage committee is under the jurisdiction of the Planning Department.

Although his Curriculum Vitae makes reference to heritage planning responsibilities while Deputy Director of Planning and Development (October 1987 to October 2007), the Review Board queried Mr. Herlovitch's ability to appear as an expert witness on cultural heritage property. The Review Board explained that the role of an expert witness is to present, without bias, an opinion based on direct professional experience and knowledge in a given field. Given the position of Mr. Herlovitch as the Director of Planning for the City and that no substantive experience in the evaluation of cultural heritage property was cited, the Review Board did not admit Mr. Herlovitch as a heritage planner/cultural heritage expert, but allowed him to present evidence in his capacity as Director of Planning.

Using enlargements of the images in Tab 5, Exhibit 3, plus aerial plot plans, Mr. Herlovitch gave an overview of the relative size and location of the property. He stated that, as a corner property, it supports and defines the character of the streetscape. The subject dwelling is made more visible to the streetscape by its position on a knoll or rise within the property. He described the area as mixed-residential with large-size properties and single-detached dwellings in styles typical of the late 19th and early 20th centuries. There is some modern infill. The area is within the former Drummondville community, which merged with the City of Niagara Falls in 1904.

Mr. Herlovitch explained that, in his opinion, the dwelling exhibits many of the elements of the Tudor Revival style of architecture popular from the 1920s to the 1940s. These include the asymmetrical plan and massing, strong roof feature, massive chimney, half timbering, herringbone patterned brickwork, round headed door opening, plank door, hinges, and gables. He noted that the roof cladding is new and that some of the original window sashes have been replaced with a vinyl clad type.

The Review Board was directed to the images in Tab 6, Exhibit 3, as examples of other Tudor Revival style dwellings in Niagara Falls. These images were submitted to the City by Mr. Gordon Ogilvie and served as the evidence on which the City concluded that the subject dwelling is a higher quality of design and workmanship than these examples. Mr. Herlovitch also noted that another Tudor Revival style streetscape along Valley Street features smaller, less distinguished houses and that it has been visually diminished by a pipe installed in the middle of the road.

The design of the subject dwelling is known to be that of the architectural firm of Findlay & Foulis. Possibly first of Sault Ste. Marie, this firm had offices in Niagara Falls from 1926 to 1935. In Tab 4, Exhibit 3, it is noted that "The City had retained a copy of the original blueprints for the project which gives the name of the architects Findlay & Foulis, drawn for Mr. Mrs. E.A Thomas dated April 1929." These blueprints were not submitted in evidence. According to Mr. Herlovitch, the known and notable works of this firm include Table Rock House (1925), Oak Hall (dates given as 1928 in Tab 2 and 1924 in Tab 3), Niagara Falls Main Post Office (1930), and the

former Sheraton Brock Hotel (now Crowne Plaza; 1929; noted in Tab 3 but not Tab 2). Mr. Herlovitch surmised that the subject dwelling may be the only dwelling designed by this firm.

The dwelling was designed and constructed for Earl and Doris Rosalind Thomas. Earl Thomas was born in Stamford Township in 1894 and began working at T.G. Bright and Company in 1916. He was president of Bright's Wines from 1944 to his retirement in 1959. He brought the French hybrid grape into prominence and made other innovations in grape cultivation and wine production that contributed to the early development and success of the now widespread wine industry of the Niagara region. Bright's is now the Vincor corporation.

Mr. Thomas was also a member/chairman of the Niagara Falls and Suburban Area Planning Board from its inception in 1951 to his death in 1966. He was a member of the Chamber of Commerce, Rotary Club, Niagara Falls Club, Greater Niagara Community Chest, and hospital fundraising committee. No biographical information was provided about Doris Rosalind Thomas. His surviving widow (presumed to be his second wife Beryl Leone Bradley) established a scholarship in the Department of Food Science at the Ontario Agricultural College.

Identification of Heritage Attributes

On inquiry from the Review Board, Mr. Herlovitch confirmed that the City intends to protect the dwelling and the mature trees as the heritage attributes of the property. These attributes are listed or described in Tab 2 under the heading Statement of Significance: Character Defining Elements:

- Association with one of the City's most prominent citizens
- Steeply pitched roof with prominent gables
- Rounded arch over doorway
- Multi-paned small windows
- Half timber and stucco exterior
- Large prominent chimney
- Location and position on large corner lot
- Numerous mature trees on lot

City of Niagara Falls Heritage Property Evaluation

On inquiry from the Review Board about whether the City uses evaluation criteria equivalent to or exceeding Ontario Regulation 9/06 *Criteria for Determining Cultural Heritage Value or Interest*, Mr. Herlovitch explained that the City has a checklist which the Planning Department and municipal heritage committee apply to properties being considered for their cultural heritage value. A score is assigned the property. In this case, the checklist was not applied. The Notice of Intention to Designate was issued in response to a perceived threat by way of a Planning Act application from the owners requesting rezoning.

This concluded the case for the City.

Summation of the Case for the City

Mr. Beaman used an example of a property in Geraldton to demonstrate that cultural heritage value must be considered only in the context of the history and development of the local community. He stated that the subject dwelling under consideration at the hearing is a large, Tudor Revival type of building that, apart from the window sash, is in as built condition. It is important in defining, maintaining, and supporting the character of the streetscape and is associated with Earl Thomas as an important member of the Niagara Falls community. The

City's position is that this property meets one criterion within each category of Regulation 9/06.

Findings of the Board

Due to the absence of the other Parties to this proceeding, this case was heard without the presentation of any opposing evidence or cross examination. Regardless, the Review Board considers that the City must demonstrate due diligence in the evaluation of the cultural heritage value or interest of a property being proposed for protection under s.29 of the Act.

In this regard, it is recommended that some of the following issues be resolved before Council considers proceeding with the protection of this property by bylaw under the Act. These are not presented here in any order of priority:

1. Cultural Heritage Evaluation

Section 29(1) of the Act provides that a property can only be designated by bylaw "(a) where criteria for determining whether property is of cultural heritage value or interest have been prescribed by Regulation [and] the property meets the prescribed criteria."

Mr. Herlovitch stated that the City typically applies a checklist to score the level of cultural heritage value of a property. The checklist was not applied to this property as the owners' application for rezoning prompted Council to issue the Notice of Intention to Designate. As a sample was not provided to the Review Board, it is not possible to determine if this checklist is intended to meet or exceed Ontario Regulation 9/06 as criteria for determining cultural heritage value or interest.

Tab 3, Exhibit 3, states that the Parks Canada publication, *The Evaluation of Historic Buildings*, was used by the City to evaluate this property. The Review Board accepts that the Parks Canada categories of Architecture, History, Environment, and Integrity can be mapped to the Design or Physical; Historical or Associative, and Contextual values categories of Ontario Regulation 9/06.

It is recommended that, if not already done so, the City work toward the development of in-house evaluation criteria that meets or exceeds Regulation 9/06.

2. Credibility of the Research Information

The reporting of the history, characteristics, and associations of this property lacks a full explanation of the methodology employed to locate and analyze information about the history, design, and context of the property or the dwelling.

As examples, no reference is made to an Abstract of Title property search being undertaken to confirm the chronology of ownership; no publication documenting the Tudor Revival style is cited; and no verifiable/primary sources were identified for the information concerning the role of Mr. Thomas in the history of Niagara Falls and/or the importance of the Bright's firm and its activities in the development of Niagara Falls.

In addition, some inconsistencies exist in the information provided in the Notice of Intention to Designate (Tab 1, Exhibit 3), Statement of Significance (Tab 2, Exhibit 3), and Historical Review (Tab 3, Exhibit 3).

It is recommended that all information included in the proposed statement of cultural heritage value be verified.

3. Terminology

The term “Character Defining Elements” (Tab 2, Exhibit 3) employed by the City is not recognized by the Act. Section 29 (6)(a)(ii) of the Act requires a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property.

Under “Description” in the City’s Statement of Significance, it should be clarified that the Act protects real property, not “the two storey house located at 6320 Pine Grove Avenue.” The dwelling is a heritage attribute of the real property.

All references to Part IV of the Act should read s.29, Part IV, of the Act, as s.34.5, provincial designation, is also under Part IV.

4. Content of the Proposed Designation Bylaw

A designation bylaw is the document on which future decisions about a protected property under such provisions of the Act as alteration, bylaw repeal, and heritage property standards will be based. The statement of cultural heritage value and description of heritage attributes should have substance and clarity.

Based on the written and oral evidence, it is the conclusion of the Review Board that the proposed “Statement of Significance” and list of “Character Defining Elements” (Tab 2, Exhibit 3) should be redrafted, notably for the following reasons:

(a) No oral evidence was given on the significance of the Dunnett family as the successors to Earl Thomas in the ownership of the property, yet the Dunnetts are referenced in the Statement of Significance. Clarification on the association of the Dunnett family to this property, if significant, is recommended.

(b) Although the design of this dwelling can be attributed to the architectural firm of Findlay & Foulis, this does not, in itself, meet Regulation 9/06 criterion 2.iii: “demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.” There should be some qualifier, for example, is this the only residential building designed by this firm, as suggested by Mr. Herlovitch? Does this dwelling demonstrate or reflect any “work or ideas” in the evolution of the firm? Does it exhibit some characteristic or quality that elevates it above other works of this firm, sufficient to warrant protection under the Act?; and so forth.

(c) No reference was made by the City to what appears to be an addition to the rear of the dwelling. Is this addition to be included in the description of the dwelling, and therefore protected by the Act?

(d) The Character Defining Elements description of the dwelling as a heritage attribute does not appear to capture all of the Tudor Revival elements identified by Mr. Herlovitch, for example, the form and massing, herringbone pattern brickwork, plank door, builders hardware (hinges), etc. This description should be reconsidered.

(e) The City is proposing the inclusion of “numerous mature trees” as a heritage attribute of the property. No evidence was heard as to why these trees hold cultural heritage value. There was no identification of the species, no plot plan, and no analysis as to whether the trees are a natural feature (in which case would be disqualified for protection of the Act) or planted as part of a landscape plan that would allow them to be meaningfully identified as heritage attributes.

Summary

Based on the written and oral submissions, the Review Board accepts that this property warrants protection under s.29 of the Act.

The property contains a dwelling that appears to be a representative example of the Tudor Revival style of architecture (Reg. 9/06, 1.i) and that exhibits a high degree of craftsmanship (Reg. 9/06, 1.ii) consistent with other expressions of this style in moderately large dwellings of its period.

The property has direct association with a person who is significant to the community (Reg. 9/06, 2.i), specifically Earl Thomas. (The argument of a significant association with the Dunnett family was not substantiated in the evidence heard by the Review Board.) The architect Findlay & Foulis is identified (but there should be some qualifier as to if and how this property “demonstrates or reflects the work or ideas of” this firm in the context of the community (Reg. 9/06, 2.iii).

The property does support the character of the area (Reg. 9/06, 3.i) (but there was no evidence to substantiate that the property is a community landmark).

Recommendation

The Conservation Review Board recommends that Council of the City of Niagara Falls proceed with the protection of the property known municipally as 6320 Pine Grove Avenue under s.29 of the Ontario Heritage Act, R.S.O. 1990, Chapter O18, as amended to 2006. Before proceeding with protection by bylaw, however, it is recommended that the statement of cultural heritage value or interest be redrafted to capture the verifiable and significant elements of the proposed protection. The provided list of “Character Defining Elements” (identification and description of heritage attributes) should be replaced with a statement identifying the heritage attributes of the property as the Tudor Revival style dwelling and, potentially, the mature trees. These heritage attributes should be described in a manner than aligns with the evidence heard, and as outlined by the Review Board in this report.

The Review Board recognizes that the final decision in this matter rests with the Council of the City of Niagara Falls.

The Review Board appreciates the efforts of all participants in these proceedings.

(ORIGINALLY SIGNED BY)

Su Murdoch, Vice-Chair
October 9, 2009

(ORIGINALLY SIGNED BY)

Julie Harris, Member
October 9, 2009

Schedule 1

Exhibits List

Exhibit 1: Statement of Service, submitted by the Review Board

Exhibit 2: Property Abstract confirming current ownership, submitted by the City

Exhibits 3: Disclosure, The Corporation of the City of Niagara Falls, Ken Beamen, City Solicitor.

Schedule 2

**ONTARIO HERITAGE ACT
REGULATION 9/06
No Amendments
CRITERIA FOR DETERMINING
CULTURAL HERITAGE VALUE OR INTEREST**

Criteria

1. (1) The criteria set out in subsection (2) are prescribed for the purposes of clause 29 (1) (a) of the Act. O. Reg. 9/06, s. 1 (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:

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.

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.

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. O. Reg. 9/06, s. 1 (2).

Transition

2. This Regulation does not apply in respect of a property if notice of intention to designate it was given under subsection 29 (1.1) of the Act on or before January 24, 2006. O. Reg. 9/06, s. 2.