

**Environment and Land Tribunals  
Ontario**

Conservation Review Board

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**Tribunaux de l'environnement et de  
l'aménagement du territoire Ontario**

Commission des biens  
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**CRB0911**

## CONSERVATION REVIEW BOARD

### **RE: THE CITY OF OSHAWA – INTENTION TO DESIGNATE THE PROPERTY KNOWN AS 3265 SIMCOE STREET NORTH IN THE CITY OF OSHAWA**

**Peter A.P. Zakarow, 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 2009 (“Act”), for the purpose of reporting to the City of Oshawa (“City”), whether, in the opinion of the Conservation Review Board (“Review Board”), on the basis of the evidence it heard, the property known as 3265 Simcoe Street North (Columbus Community Centre) should be protected by bylaw under s.29 of the Act.

The current legal description of the subject property is Plan H-50017, Lot 15, Part 1, East Whitby, Oshawa, Ontario.

The 2010 (current) owner is the City of Oshawa (“City”/“Owner”).

The City issued a Notice of Intention to Designate Columbus Community Centre property under s.29 of the Act to the Ontario Heritage Trust on July 28, 2009 and published a notice in the *City News* on July 29, 2009.

An ad hoc group of 57 individuals submitted notices of objection in the form of a common petition to the City Clerk on 28 August 2009 (Exhibit 2, Tab 26). The Review Board held one oral (in-person) Pre-Hearing Conference on this matter on February 23, 2010 in Oshawa. Two (2) Objectors and one (1) Representative of an Objector participated in the Pre-Hearing Conference. There was no agreed statement of fact resulting from this event.

Following the Pre-Hearing Conference, the Review Board Ordered that the Objectors select a small number of Representatives to participate in the Hearing. The Review Board received form letters from 44 Objectors intending to pursue their objection. The Review Board deemed that the Objectors did not comply with the Order, as no Representatives were named.

Notice of this Hearing was served by the Review Board on the Parties and was published in *Oshawa This Week* on June 9, 2010 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 June 21, 2010, commenced at 10:00 a.m. at the Legends Centre, 1661 Harmony Road North, Oshawa, Ontario. A site visit that included a walk through the interior of the community centre and around the property was conducted that same morning by the Chair and Member of the Review Board.

The Hearing ended at about 12:30 pm on the same day.

### **Counsel in Order of Appearance**

Kelly Gravelle, Solicitor, Corporation of the City of Oshawa

### **Witnesses in Order of Appearance**

Margaret Kish, Heritage Planner, City of Oshawa

Joe Marion, Heritage Oshawa

### **Objectors in Order of Appearance**

Gail Woodward

### **City Advisors**

Tom Goodeve, Planner, City of Oshawa

### **Procedural Matters**

#### **Jurisdiction of the Review Board**

All Parties were reminded that the jurisdiction of the Review Board under s.29 of the Act is to hear evidence within the framework of Ontario Heritage Act Regulation 9/06 - Criteria for Determining Cultural Heritage Value or Interest.

The Review 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 Review 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 Review 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.

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

#### **Parties in Attendance**

The Review Board noted that only one of 57 stated Objectors (Parties) were present at the start of the Hearing. Due to the particular circumstances of this Hearing, the Review Board instructed staff to periodically check for any email or voicemail correspondence concerning delays.

The single objecting Party present at the Hearing, Ms. Gail Woodward, identified herself and was thanked by the Review Board for her attendance. Ms. Woodward stated that she was not opposed to the designation, but that she continued to have concerns about the use of the name “Columbus Community Centre” to describe the designated place.

After careful contemplation with all Parties in attendance, the Review Board enacted s.7(1) of the Statutory Powers Procedure Act, which allows tribunals to “proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.”

### **Members of the Public in Attendance**

As is the custom of the Review 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**

The property that is owned by the City of Oshawa is located along Simcoe Street in the former village of Columbus. The property consists of the former town hall set approximately 80m back from the street.

The Columbus Community Centre consists of a rectangular, pitched-roof brick structure topped by a bell tower. A perpendicular side addition has created an L-shaped footprint. The building’s stucco cladding, rectangular windows and addition date from 1967. Prior to the renovations, the building’s polychromatic brick cladding and its pointed-arch windows were visible and intact. A small commemorative cairn is located in front of the building in the middle of a driveway to the building’s entrance through the property.

The immediate area is part of the former village of Columbus. The 19<sup>th</sup>-century Columbus United Church is located adjacent to the property. The former village has become integrated into the exurban developments of Oshawa, but the village landscape remains discernible, primarily due to the extant church and the former town hall (now Columbus Community Centre).

### **Case for the City of Oshawa**

The City’s Counsel, Ms. Kelly Gravelle, summarized events related to the objection. She mentioned that the City had appreciated the opportunity to participate in an oral Pre-hearing Conference. The City had worked closely with the Review Board to address issues raised by the Objectors, including commissioning a new registered plan for the Columbus Community Centre property and preparing information packages for the community as Ordered by the Review Board. She also reviewed the types of activities that had been undertaken to prepare for the Hearing, such as meetings between City staff and Heritage Oshawa volunteers and putting together the evidence book. After all that work, the City received one package from the Objectors and found its contents to be both confusing and lacking relevance to the matter in front of the Review Board.

The Review Board noted that only one Objector was present to be a Party to the Hearing and that the single Objector in attendance was not opposed to the designation itself. The only materials submitted prior to the Hearing were submitted by an Objector who was not present for the Hearing. The issues raised in this material concerning ownership of the property were fully

addressed by the City's witness who confirmed that the City of Oshawa holds full legal title to the property. Other matters were outside the scope of the Review Board.

The Review Board offered the Municipality the option to proceed in order to fully document the nature of the case. Counsel responded that the City wanted to proceed with the Hearing and that Counsel would be advising the City that Council could make an application to the Review Board to be awarded payment of costs from Objectors who did not attend the Hearing.

Counsel began by addressing the issue of the legal ownership of the property. She reviewed the history of the amalgamations and municipal divisions that had eventually resulted in the current property title resting with the City of Oshawa. She stated that for the purposes of the proposed designation bylaw a new R-Plan had been surveyed and registered for the subject parcel (PIN 16396-0091) on October 5, 2009 (Exhibit 2, Tab 3).

**Witness: Ms. Margaret Kish**

**Ms. Margaret Kish was sworn as a witness.** Her Curriculum Vitae was included as Exhibit 2, Tab 2.

Ms. Kish, a planner with the City of Oshawa, was sworn in as a witness to present evidence about the City's procedures for heritage designations. Ms. Kish reviewed various initiatives and planning requirements established by the City to meet heritage preservation obligations. She explained that the City relies on its Built Heritage Committee, known as Heritage Oshawa, for research and advice on heritage matters. In reviewing the process that led to the drafting of the Intention to Designate the Columbus Community Centre under the Act, she explained that the City considered the issue in consultation with area residents before it reached its decision to move forward with designation. The chronology of the City's actions was outlined in Exhibit 2, Tabs 8-11.

Ms. Kish explained that the City had initially intended to designate the property in time for the sesquicentennial of the building in 2009.

Ms. Kish also spoke about the error in the legal description in the original Designation Report sent to Council, but stated that it had been corrected in subsequent documents and that the intention of the designation was clear in the site plan used in the Report (Exhibit 2, Tab 14).

**Witness: Mr. Joseph Marion**

**Mr. Joseph Marion was sworn as a witness.** He is Chair of the Design Committee of Heritage Oshawa.

Mr. Marion described his various positions as a municipally appointed member of Heritage Oshawa, the committee appointed by the City under the Act to advise Council on heritage matters.

Mr. Marion said that Heritage Oshawa maintains a registry of properties of heritage interest, evaluates properties and conducts research on properties. It also tracks demolitions and provides training on heritage matters. He stated that the Columbus Community Centre was brought to the attention of Heritage Oshawa in 2004. In 2006, the author of the heritage report (Exhibit 2, Tab 7) was hired to conduct research about the property.

In response to a question from Counsel, Mr. Marion said that the Columbus Community Centre was included in the registry because of its architecture and history. Specifically, it is made of

two-tone brick and was designed in a manner typical of that era. It was built in 1859 by R. T. Manuel, an Oshawa builder, for the village of Columbus, which was then the largest village in the Township of East Whitby. Historic evidence about the building includes contemporary newspaper accounts. It served as a town hall until amalgamation but the Council chambers and the Clerk's office were used as classrooms in the 1930s and 1950s. Its renovation in 1967 changed the windows and the exterior cladding. The bell from its tower was removed for installation in the cairn on the property. A drill hall formerly occupied part of the property. The associative value of the Columbus Community Centre included its physical connection to the Presbyterian (now United) church and the drill hall, which created the "centre of Columbus."

Mr. Marion said that the criteria of OHA Regulation 9/06 were applied to the evaluation of the Columbus Community Centre as advised in the Ministry of Tourism and Culture's Heritage Toolkit. It was the determination of Heritage Oshawa that the property was rare or unique in the City of Oshawa; that it is associated with the theme of East Whitby Township as a self-governing entity; and that it yields an understanding of the history of the community. Changes to the building since its construction are acknowledged but are not sufficient to prohibit its designation.

Asked by the Review Board about the lack of references in the proposed Statement of Cultural Heritage Value (Exhibit 2, Tab 14) to the interior of the building, Mr. Marion stated that it was normal procedure for Heritage Oshawa and the City of Oshawa to "stay away from interiors." He stated that he believed that the Statement was appropriate and that no reference should be made to interior elements.

There was no cross-examination. Ms. Woodward, the objecting Party present at the Hearing, stated that she agreed with the witness concerning the history and heritage significance of the property.

### **This concluded the case for the City**

### **Case for the Objecting Parties**

The only Party present, Ms. Gail Woodward, restated that, in her opinion, the name of the historic place was important and that "Old Town Hall" was more appropriate and more dignified. She believed that the current name "Columbus Community Centre" did not connote the building's connection to its long use as a town hall. The Review Board stated that this concern had been expressed in materials received from another Objecting Party. The Review Board told Parties that it is concerned exclusively with determining significance. Issues concerning commemoration, such as naming, plaques, or publicity, are outside the scope of the Review Board, but it asked for comment from the City.

### **Summation of the Case for the City**

Counsel for the City, Ms. Gravelle, summarized the points made by witnesses and said that the City agrees with residents of the former Village of Columbus and East Whitby who have spoken at meetings about other heritage matters, including a potential heritage conservation district, that the building is important.

On questioning from the Review Board, Ms. Gravelle explained that the City consults with Heritage Oshawa about changes to designated municipally owned properties/buildings. She

agrees that the name is important for commemorative purposes and that “Old Town Hall” is likely more “dignified” and “appropriate” than “Columbus Community Centre.” She believes that this issue can be addressed by the City.

### **Summation of the Case for the Objecting Party**

Ms. Woodward thanked the Review Board for hearing the case and said that she supported the designation.

### **The Hearing ended at 12:15 pm.**

## **Discussion**

### **1. Issue of Costs**

It is rare within the formal, quasi-judicial environment of the Review Board as an adjudicative tribunal to experience a situation where a Party does not adhere to the CRB Rules of Practice and Procedure (“Rules”) or other Statutory requirements.

In this case, 57 individuals signed a common petition outlining their shared objection to the Notice of Intention to Designate. These 57 were not an incorporated body. The Review Board worked diligently within its Rules and applicable legislation to bring structure to the large number of Objectors for the purposes of this proceeding.

Only three Objectors or Representatives attended the Pre-Hearing Conference held in Oshawa in person, rather than via a teleconference, specifically at the request of the Objectors. The Review Board then Ordered the Objectors to identify between 3 and 5 official Representatives to present the case on behalf of the 57 individuals at the Hearing. There was no compliance with this legal Order.

Although the Notice of Hearing was issued by the Review Board in the manner required, only one Objector and the City of Oshawa (City/Owner) attended the Hearing. It subsequently was conveyed to the Review Board that most Objectors had decided to either not attend or to attend on their own schedule, as there was dissatisfaction that a request to convene a Hearing only in the evenings was not accepted by the Review Board. The Review Board proceeded with the Hearing under the authority of s.7(1) of the Statutory Powers Procedure Act (“SPPA”).

At the Hearing, legal counsel for the City stated that City Council would be advised of its ability to claim costs under the authority of s.17(1) of the SPPA as the result of the conduct (as per s.17(2a)) of the objecting Parties.

In this case, the Review Board noted the challenge of ensuring a fair, expeditious, and cost-effective proceeding when Parties did not attend the Hearing and there was no compliance with the Review Board Order concerning Representatives. The power of an adjudicative tribunal to make an Order to pay costs exists to help compel accountability and respect of its participants.

The Review Board said that it would be open to receiving a costs claim from the City of Oshawa against those individual Parties who did not attend the Hearing, with the proviso that the City carefully consider the parameters on which costs can be assigned as per the SPPA s.17.

### **2. Lack of Objecting Evidence**

Due to the absence of all objecting Parties, except Ms. Woodward, the case was heard without the presentation of any opposing evidence or cross examination. The set of materials submitted by an Objector on 1 June 2010 to the Review Board and the City of Oshawa concerned matters outside the jurisdiction of the Review Board, with the possible exception of a mention, without further explanation, about “the flag pole, windows and exterior cladding of the building.” Regardless, the Review Board considers that a Hearing affords a municipality the opportunity to 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, and that this opportunity had been fulfilled.

### **3. Additional Public Comment Sought**

Subsequent to the Hearing, the Review Board received a few concerns from some of the objecting Parties that the scheduled Hearing was completed before the start of an advertised evening time to hear additional public comment. Although the Review Board’s practice is strictly not to receive any submissions following the close of a Hearing, the Review Board acknowledged that while Notice to the Parties was very clear, the Notice to the general public could have been confusing to those who do not know the formal process conducted by the Review Board.

In the interest of conducting a fair proceeding, the Review Board gave additional Notice in *Oshawa This Week* on July 8, 2010 allowing any member of the general public who had planned to attend the evening session to submit a written statement to be submitted to the Review Board office by August 6, 2010. Through this special process, one member of the public submitted comments, which were supportive of the Designation. The Review Board then considered all evidence and argument to make its Recommendation.

### **4. Designation Versus Commemoration**

It must be noted that there is a clear delineation between the concepts of designation and commemoration. The Review Board has powers under the Act to help resolve disputes concerning designation, which constitutes the protection of real property having demonstrated significant cultural heritage value or interest, by municipal bylaw or Provincial order. One general theme outlined by some objecting Parties, including the only objector who attended the formal hearing, was the dissatisfaction of the City referring to the built structure on the subject property as the “Columbus Community Centre” rather than as the Town Hall of the former Township of East Whitby. It is important to note that such a naming discrepancy is irrelevant under the concept of designation, unless an incorrect name materially affects the evaluation of the historical or associative value of the property under Ontario Regulation 9/06, which could affect whether the property is deemed to be significant or not. In this case, no argument was made to support that the naming issue affects the evaluation of the historical value of the property. Rather, many local residents simply want to ensure that the property is commemorated under a certain name. Herein lies the problem where people have confused commemoration with designation. The Review Board is tasked to make a Recommendation of whether a property, according to the criteria outlined in the Act, has significant cultural heritage value or interest to be protected by, in this case, local bylaw. Enacting a designation bylaw has

nothing to do with commemoration, in that there is no requirement for a heritage plaque, historical or archival documentation, or any other special items to help commemorate a building. Designation is about assessing the cultural heritage value or interest of real property, which could include a built structure on it, and setting a framework for protecting the identified significant heritage attributes into the future in light of any proposed alterations, demolition or any other issues that could affect those identified physical attributes. Therefore, parties before the Review Board, and members of the public, should seek to understand the difference between designation and commemoration, as the Review Board's mandate deals with designation.

## **Findings of the Board**

### **1. Cultural Heritage Evaluation**

The Review Board considers that the evidence presented by the City of Oshawa and Heritage Oshawa showed appropriate steps were taken to collect the necessary information and apply the criteria of Regulation 9/06 in determining the cultural heritage value or interest of the subject property.

### **2. 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, demolition/removal, and heritage property standards will be based. The City of Oshawa acknowledged that it must consult with Heritage Oshawa when changes to the property are contemplated. For these reasons, the Statement of Cultural Heritage Value or Interest and description of heritage attributes should have substance and clarity.

The Review Board has several comments to make concerning the Statement of Cultural Heritage Value or Interest.

The first concerns the structure of the Statement. As submitted to the Review Board (Exhibit 2, Tab 14), the Statement of Cultural Heritage Value or Interest drafted by the City does not clearly distinguish the reasons for the property's cultural heritage value from historic and architectural facts about the building. Further, no description of the property itself is provided. Following the guidance provided in the *Ontario Heritage Toolkit* ("Designating Heritage Properties"), the Review Board recommends that descriptive information should be clearly separated from the explanation of the reasons why the property is important and merits designation, as per the finding as determined by applying the criteria of Regulation 9/06.

The Review Board also notes the evidence given that this former town hall constructed in 1859 was used for that purpose by the Township of East Whitby until amalgamation with the City of Oshawa in 1973. The City could consider whether this fact contributes to the reasons why the property is of cultural heritage interest and, if so, which attributes, such as the shape and scale of the original town hall structure, speak to this value.

With respect to heritage attributes, the Review Board is recommending that the attributes be

reviewed to ensure that they are more clearly linked to the property's heritage value. As written, all changes to the building, including those made since 1973, are potentially of heritage value. While this may be the intention of the City, the Review Board notes that these changes, such as the stucco cladding, would be afforded protection under the Act. The City may also wish to include features, such as the shapes of original window and door openings, from the original building that are partially or completely masked by changes made in 1967 and later. The attribute "historical cairn" could be modified to include the bell referenced in the history and in the discussion of the property's heritage value. Lastly, the attributes of the landmark might also refer to the unobstructed view of the building and cairn from the street, as well as the visual relationship between the building and the neighbouring church.

### **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 former town hall of a form and scale that is representative of town halls constructed in the mid 19<sup>th</sup> century in many municipalities in Ontario (Reg. 9/06, 1.i) and served the residents of the Township of East Whitby in that capacity until 1973 (Reg. 9/06, 2.i). Together with the extant church adjacent to the property, it created the centre of the village (Reg. 9/06, 3.i and 3.ii) and has become a landmark in this part of the current city of Oshawa (Reg. 9/06, 3.iii).

### **Recommendation**

The Conservation Review Board recommends that Council of the City of Oshawa proceed with the protection of the property known municipally as 3265 Simcoe Street North (Columbus Community Centre) under s.29 of the Ontario Heritage Act, R.S.O. 1990, Chapter O18, as amended to 2009. 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 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 Oshawa.

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

(ORIGINALLY SIGNED BY)

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Peter A.P. Zakarow

September 22, 2010

(ORIGINALLY SIGNED BY)

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Julie Harris, Member

September 22, 2010

**Exhibits List**

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

Exhibits 2: Document Book of The Corporation of the City of Oshawa