

**Conservation
Review Board**

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**Commission des
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**RE: CITY OF SCARBOROUGH - INTENTION TO DESIGNATE
FALCON INN SITE, KINGSTON ROAD, SCARBOROUGH**

Heather Broadbent, Vice-Chairman
Nathalie Boutet, Member

January 19, 1995

The hearing was convened at the Town Hall of the City of Scarborough on January 19, 1995, pursuant to section 29 (8) of the Ontario Heritage Act, R.S.O. 1990, Ch. 0.18, for the purpose of reporting to the Council of the City of Scarborough whether, in the opinion of the Conservation Review Board, on the basis of the evidence heard, the property known municipally as the "Falcon Inn Site" (also referred to as the "Site"), Kingston Road, Scarborough, should be designated by by-law under the Act. The owners of the property, Temchek Investments Ltd., had objected through their lawyers Ecclestone, Chykaliuk, Hamer, Poisson & Neuwald and their Consulting Engineers, Marshall Macklin Monaghan.

Notice of the hearing was given under the Act in the *Scarborough Mirror* newspaper on December 14, 21 and 28, 1994, by the Board, the relevant affidavit by a member of the Board's staff being Exhibit #1.

The Board, in accordance with its custom, had the opportunity to view the site and the surrounding area prior to the hearing.

Parties present:

Mr. Steven O'Melia, Solicitor for the City of Scarborough
Mr. Richard Schofield, Chairman, Scarborough LACAC
Mr. Frank Edwards, Clerk's Department, City of Scarborough
Mr. Aaron M. Wine, Ecclestone, Chykaliuk, Hamer, Poisson & Neuwald,
solicitors for the owners
Ms. Sharon L. Holder, Project Planner, Marshall Macklin Monaghan
Mr. Sam Vella, ReMax Rouge Realty Limited

Background information:

1. The owners, Temchek Investments Limited, own a parcel of land, part of which is the Falcon Inn Site. The owners are in the process of developing their land.
2. The City is recommending the designation of trees located on the Falcon Inn Site. They are identified on the Tree Inventory and Preservation Plan prepared by Marshall Macklin Monaghan Limited on behalf of the owners, at the request of the City. It is filed as Exhibit #8. The trees are described as follows:
 - #120:Black Walnut tree, (Juglan Nigra), having a diameter, at breast height, of 732 mm (29 inches).
 - #121:Black Walnut tree, having a diameter of 532 mm (21 inches)
 - #139:Sugar Maple tree, (Acer Saccharum), having a diameter, at breast height, of 576 mm (23 inches)
 - #144:Black Walnut tree, having a diameter of 971 mm (38 inches). This tree is considered to be dating back to the 1820s and is one of the oldest Black Walnut trees in Metro.
 - #169:Black Walnut tree, having a diameter of 831 mm (33 inches). This tree is not actually on the part of Temchek property being recommended for designation, but its canopy and roots extend over the property line and must be protected from possible future excavation on the subject property. The owners of tree #169 fully support the designation of the tree.
3. The Tree Inventory and Preservation Plan deals with the entire property proposed to be developed by the owner, but only Unit 1, which is intended to be a single family lot, will be analysed as it is located on the parcel of land that is proposed for designation.
4. The Tree Inventory and Preservation Plan also describes construction practices which are said to be approved by the City (at page 22), to prevent damaging trees during development. The practices may be summarized as follows:
 - (a) Decide which trees could be retained.

- (b) Fence-off the fringe areas and individual trees near the building envelope/excavation area.
 - (c) Snow-fence trees proposed to be retained and which are not located within the fenced-off areas, at the prescribed distances from the trunk to prevent root and trunk damage from construction vehicles.
 - (d) Cut trees which are to be removed by ensuring that falling trees will not damage those which are to be retained.
 - (e) Proper disposal location, not within the fenced-in location, of all trees and other vegetation removed.
 - (f) All construction material and equipment to be kept clear of trees or their vicinity.
 - (g) Pavement not to be placed closer than 1.2 m from the base of the trees, and porous pavement should be utilised.
 - (h) Properly care for trees damaged during construction.
5. The Tree Inventory and Preservation Plan also sets out ways to maximize tree survival and to position new houses on the properties so as not to interfere with the root system of the trees to be preserved.
6. In order to develop the Falcon Inn Site, the owners would need approval by the City in two respects:
- (a) The Planning Act would require the owner and the City to enter into conditions for development which would be registered on title and bind future owners, and
 - (b) the owner and the City would have to agree to a Site Plan Control.
7. The Site Plan Control, Metro Planning Department File no. 55T-88011 (Exhibit #6) sets out 15 conditions for the development of the owners' land. Condition #10 is of relevance here, and it reads as follows:
10. The owner shall agree in the subdivision agreement:
- (a) to submit site plans for all of the residential lots prior to the issuance of building permits, indicating the existing/proposed grades and the location of all proposed buildings and structures;

- (b) to submit detailed tree preservation plans for all of the residential lots prior to the issuance of building permits, based in the "Tree Inventory and Preservation Plan" by Marshall Macklin Monaghan Limited, dated September 1993, indicating the existing/proposed grades at the base of each tree to be preserved and at the drip line;
- (c) that (a) and (b) above be to the satisfaction of the Scarborough Commissioner of Planning and Buildings in consultation with the Scarborough Commissioner of Recreation Parks and Culture, and to the satisfaction of the Metropolitan Toronto and Region Conservation Authority; and,
- (d) to practice any measures for protecting the trees to be preserved on all of the residential lots during development, as identified by the Scarborough Commissioner of Recreation Parks and Culture.

The case for the City of Scarborough:

The evidence for the City of Scarborough was presented by Mr. Richard Schofield.

The City filed as part of Exhibit #7, at Tab 3, a Heritage Designation Report on the Falcon Inn Site, dated February 7, 1994, which presents the historical and contextual significance of the Site, and at Tab 4, an excerpt on the Site from Spilsbury, John: "Fact and Folklore", 1978.

The Site, which has no municipal address as it is currently undeveloped, appears to be Part 1 of Plan 64R -10105. Immediately to the north of the Site lies the old Falcon Inn carriage house, known municipally as #1 Falcon Lane.

In the early part of the 19th century, Jordan Post built a Stage House Inn on what was then the main road, Kingston Road. Many valuable Black Walnut trees, a Carolinian species, were planted on the property. The Black Walnut trees are considered regionally and provincially rare, especially the few remaining 140-150 year old trees on the Site.

Charles Acland acquired part of the Post estate, including the grove of Black Walnut trees. His farm house, named "Deep Dene", was converted into the Falcon Inn when Mr. Acland was forced to retire due to poor health. The owners made efforts to preserve the trees including the Black Walnut trees that were on the site.

The Inn, which was furnished with valuable antiques, was an instant success; it was the place where many major social functions of Toronto's elite were held. Two wings were added and more antique furnishings were acquired. Two acres of lawns and gardens, including a huge sunken rose garden, surrounded the hotel.

Around 1943, the Inn was destroyed by fire but with the help of local people, all of the priceless furniture was saved. Today, only the carriage house, now a residence, and the original grove of century old Black Walnut trees, remain.

The trees recommended for designation are identified on the Tree Inventory and Preservation Plan, filed as Exhibit #8, referred to above.

It was Mr. Schofield's position that in order to protect the trees from the anticipated development of the Site, it is necessary to include in the proposed designation sufficient ground cover to ensure the safety of the fine root system which extends beyond the canopy of each tree. It was also Mr. Schofield's position that the proposed designation is necessary to protect the trees that can easily be destroyed during construction of the surrounding lands, despite the fact that the owners had cooperated with the City in commissioning the Tree Inventory and Preservation Plan and despite the existence of a Site Plan Control, both referred to above.

Mr. Schofield also explained that the determination of whether a site had "historical value" was based on subjective values. It was his evidence that one must consider the historical significance and importance to the local community of a particular site in determining the issue. He went on to explain that such things do not have to be famous or renowned to have historical value. It has to have significance to a particular community.

Mr. Schofield stated in cross-examination that there was no evidence that the owners, who had commissioned an inventory of trees on the property, would not protect the existing trees during the development of the land and that the land was subject to a Site Plan Control which was designed in part to protect the trees on the property. However, he stated that a designation under the Ontario Heritage Act would permit LACAC to have some degree of input in the drafting of the Site Plan Control, thereby preventing changes to the Site Plan Control based on ideologies of transient City counsellors.

Mr. Schofield rejected the proposition made by the lawyer for the owners during cross-examination that the City's attempt to designate a site that did not contain a building was an important test case. In support of this position, Mr. Frank Edwards, clerk at the City's Clerks Department, indicated that there were four

other sites which were presented to City Council for designation which did not contain buildings. They are cemeteries and an Indian Burial Site. The Falcon Inn Site is the only site not owned by the City. Mr. Schofield noted that the "Alexander Muir" tree located on 62 Laing Street, Toronto, was designated under the Ontario Heritage Act. In this case, the Board found that the tree had historical significance to the public.

In conclusion, counsel for the City indicated that it was within the jurisdiction of the Board under the Ontario Heritage Act to permit the designation of sites that do not necessarily contain structures. Counsel added that the City's intention to designate was based on lengthy public and expert consultation and not merely on the interested opinion of individuals at LACAC.

The case for the owners:

The owner's first witness, Ms. Sharon L. Holder, believes that the two measures of land development control described in section 6 above are sufficient to ensure the preservation of the trees on the Site and that a designation under the Ontario Heritage Act would be redundant and unnecessary.

Our attention was focused on Condition #10 of the Site Plan Control referred to in section 7 above.

Ms. Holder indicated that during the development of the Site, the trees thereon would be protected by measures outlined in the Tree Inventory and Preservation Plan. She described that the trees on the Site, a mixture of mature Sugar Maple and Black Walnut and Maple saplings, are described as having high merit for retention. Several of the mature trees located towards the south and west wedges of the Site should not interfere with construction and should be preserved. It is recommended that the trees along the south, west and north property boundary be maintained as a natural buffer to the existing adjacent lots (they include trees numbered 120, 121, 139, 144 and 169, described above).

Ms. Holder pointed out that the Tree Inventory and Preservation Plan describes construction practices which are said to prevent damaging trees during development, and that these practices would be followed by the developers.

In cross-examination, Ms. Holder acknowledged that she had not seen the Site, that she was not the author of the Tree Inventory and Preservation Plan, and that she was not an expert in root preservation.

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Although Ms. Holder believed that the conditions prescribed in the Site Plan Control would be sufficient to preserve the trees on the Site, she recognized that the Site Plan Control was not finalized yet, that further agreements needed to be entered into by the owner and the City as per condition 10 (c) of the Site Plan Control. She acknowledged that in the event of a disagreement between the owners and the City, a hearing of the Ontario Municipal Board under the Planning Act would be convened, at which time protection issues would be addressed. She acknowledged that the Ontario Municipal Board did not offer the same local input and cultural and heritage focus as the Ontario Heritage Act did and that without a designation under the Ontario Heritage Act, the Ontario Municipal Board would probably give little consideration to conservation and historical criteria.

Ms. Holder recognized that if this Board did not designate the Site, LACAC's jurisdiction to intervene in the drafting of a subdivision plan or a Site Control Plan would be removed, although she believed there were chances the Planning Department would still consult LACAC on a voluntary basis.

Ms. Holder pointed out that the owners had shown good faith and respect for conservation by the fact that they had not cut any trees on the Site despite having owned the land since 1988. Hence, she believes a designation recommendation by this Board would be unnecessary.

The owner's second witness, Mr. Sam Vella, is a Real Estate agent who is familiar with the subject land. He testified that his experience allowed him to assess the value of the Site. In his view, a designation under the Ontario Heritage Act would impact negatively on the value of the Site.

He enumerated a number of factors that impact on the value of Real Estate, the cost of land development and the ultimate profit margin an owner is hoping to make. Some of the factors are as follows:

- comparative price of adjacent lots;
- Black Walnut trees enhance the value of the land;
- servicing costs: in this instance, the lots proposed to be developed have the advantage of being adjacent to fully serviced lots, which reduces the developing costs;
- location: he indicated that Lots 1 and 2 of the proposed development are in a prime location in Scarborough.

In his view, a designation under the Ontario Heritage Act impacts negatively on the value of the land. He described some of the negative aspects of a designation as follows:

- a designation adds another level of government intervention due to the necessity of obtaining LACAC's approval on the proposed Site Control Plan;
- delay in obtaining development permits adds to the amount of time required to service the debt, thereby reducing the profit margin; delay is related to engineering fees, paperwork, architectural fees and other costs and fees to obtain permits;
- a perception of risk associated with another level of government intervention for potential buyers;
- the size of the homes to be built on the lots are restricted by the location of trees on the site, if the trees have to be preserved;
- the risk of penalties to future owners of lot 1 as a result of damage done to designated trees;
- although some potential buyers of a designated lot would welcome the designation, it in fact limits the market for potential owners.

Mr. Vella estimates that it would take approximately 18 to 24 months to obtain all permits. He stated that the negative impacts would reduce the market price for Lot 1 (which is located on the Falcon Inn Site) by approximately 15 to 20%.

In cross-examination, Mr. Vella indicated that he was unable to establish with certainty that adding one layer of government intervention, being LACAC's approval, would result in a net loss to the owners. This is due to the fact that there are a number of permits to be obtained before the land may be developed, and obtaining LACAC's approval would not necessarily result in delay in "putting the shovel in the land".

It is the owners' view that LACAC had not discharged the onus of proving that the trees have historical significance. In their view, the mere fact that the trees are old does not make them historically significant. They reiterated that they intended to continue to fully cooperate with the City by preserving the trees, as they had done by preparing a Tree Inventory and Preservation Plan.

Other presentations:

None

Finding of facts:

The Board believes that the trees #120, 121, 139, 144 and 169, located on the Site have historical value and significance to their community and are worth preserving.

The Board did not find that a heritage designation of the Site was superfluous.

The Board is impressed by the level of cooperation the owners have shown and their stated intention to preserve the trees on the Site. However, the Board believes that a designation under the Ontario Heritage Act is necessary to ensure the preservation of the above-mentioned trees by the present and future owners.

Recommendation:

It is the recommendation of the Board that the Falcon Inn Site, Kingston Road, Scarborough, Ontario be designated by by-law under Part IV of the Ontario Heritage Act.

(Original Signed by)
Heather Broadbent
Vice-Chairman

Nathalie Boutet
Member

Falcon Inn Site, Kingston Road, Scarborough, Ontario

List of Exhibits

1. Affidavit of Notice of Hearing
2. Transfer\Deed of Land for Lot 57, RCP 9887, PT. Lot 1, Plan 3476, Pt. Block A, Plan 3476
3. Black and white picture of the Falcon Inn Site
4. Sharon L. Holder's Résumé
5. Large Draft Plan of Subdivision of Lot 57, Registrar's compiled Plan 9887
6. Metro Planning Department File no. 55T-88011, Conditions for Draft Plan Approval
7. Document Book of the City of Scarborough
8. Tree Inventory and Preservation Plan drafted by Marshall Macklin Monaghan Limited
9. Small Plan, spread of leaves