

Ministry of Culture
400 University Avenue
Toronto ON M7A 2R9

Ministère de la Culture
400, avenue University
Toronto ON M7A 2R9



Conservation Review Board
Tel 416-314-7137
Fax 416-314-7635

Commission des biens culturels
Tel 416-314-7137
Telec 416-314-7635

CONSERVATION REVIEW BOARD

RE: THE CORPORATION OF THE TOWN OF LAKESHORE – INTENTION TO DESIGNATE THE PROPERTY KNOWN AS 2722 COUNTY ROAD 42 (ST-JOACHIM CHURCH) IN THE VILLAGE OF ST-JOACHIM, ONTARIO;

AND THE PROPERTY KNOWN AS 7025 TECUMSEH ROAD (L'ANNONCIATION CHURCH) IN THE VILLAGE OF POINTE-AUX-ROCHES (STONE POINT), ONTARIO

Peter A.P. Zakarow, Chair
Su Murdoch, Vice-Chair

June 26 and 27, 2007

This hearing was convened under section 29(8) of the Ontario Heritage Act, R.S.O. 1990, c.O.18, as amended ("Act"), for the purpose of reporting to the council of the Town of Lakeshore, Ontario ("Town"), whether, in the opinion of the Conservation Review Board, on the basis of the evidence it heard, the property known as 2722 County Road 42 (St-Joachim church) in the village of St-Joachim, Ontario, and the property known as 7025 Tecumseh Road (l'Annonciation church) in the village of Pointe-Aux-Roches, Ontario, should be designated by bylaw under the Act.

The current legal descriptions and owners are:

2722 County Road 42: Legally known as LT A PL 248 Rochester Except R404801 & R989967, Lakeshore. This property contains a brick church building (now vacant), a brick rectory, and a monument between the church building and the road, and is referred to as "St-Joachim church." The owner is The Roman Catholic Episcopal Corporation of the Diocese of London in Ontario.

7025 Tecumseh Road: Legally known as Pt LT 4-5 PL 248 Rochester PT 1, 12R5529; S/T RO13534, Lakeshore. This property contains a brick church building (now vacant) and a brick rectory and is referred to as "l'Annonciation church." The owner is The Roman Catholic Episcopal Corporation of the Diocese of London in Ontario.

Three objections were filed with the Clerk of the Town regarding the Notice of Intention to Designate published on March 29, 2006:

1. April 24, 2006: The Roman Catholic Episcopal Corporation of the Diocese of London in Ontario (“London Diocese”) stated reasons with regard to the St-Joachim church property: “We do not object to the intention by the Town to designate the monument and steeple under the Act with the understanding that the steeple would be removed from the church building and erected next to the monument creating a parkette. The rest of the church will be demolished and then the agreements of purchase and sale will be completed [list of other conditions outside governance of the Act].”

The Diocese stated its objection, without reasons, to the intention by the Town to designate the l’Annonciation church property under the Act. The objection is accompanied by a request for consent “under section 34(1) of the Act” to remove those items from an attached list that are fixtures to be used in the new church, La Visitation.

2. April 26, 2006: The SOS Églises (Save our Sanctuaries) (“SOS”) stated six reasons and its objection to the proposal to designate only certain parts of the St-Joachim church property (i.e., the spire, belfry, and monument) under the Act. Among other reasons is that “a partial designation leaves doubts as to whether or not the Roman Catholic Diocese of London may proceed to demolish those parts of the Church structure not designated under the Act.”

3. April 26, 2006: The Architectural Conservancy of Ontario, Windsor Region Branch, (“ACO”) gave the same six reasons and objection as SOS.

Notice of this hearing was given by the Board, in the manner required under the Act, in the Lakeshore News on June 13, 2007. An affidavit by a member of the Conservation Review Board’s staff with respect to this notice was filed as Exhibit 1.

The Board, in accordance with its customary practice, had the opportunity to inspect the properties (site and exterior of St-Joachim church and site, exterior, and interior of l’Annonciation church) at 9 a.m. on Tuesday, June 26, 2007, in advance of the start of the hearing.

The Board met in the Town of Lakeshore Council Chambers, 419 Notre Dame Street, Belle River, Ontario, commencing at 10:30 a.m., Tuesday, June 26, 2007, and ending at 12:20 p.m., Wednesday, June 27, 2007.

Counsel in Order of Appearance

- James Renick, solicitor, on behalf of the Town of Lakeshore
- Christopher G. Knowles, solicitor, on behalf of Objectors SOS Églises and The Architectural Conservancy of Ontario, Windsor Region Branch
- Daniel McNamara, solicitor, on behalf of Objector The Roman Catholic Episcopal Corporation of the Diocese of London in Ontario

Witnesses In Order of Appearance

- Paul Dilse, heritage planning consultant
- David Tremblay, representing SOS Églises
- Christopher Borgal, restoration architect
- Annette Rondot, area resident
- David Savel, financial administrator, London Diocese
- Rev. Dr. John P. Comiskey, assistant professor, St. Peter's Seminary

Members of the Public In Order of Appearance

- André Chenier
- Roger St-Pierre
- Joyce Tymec
- Michael Lanoue
- R. Chauvin

The first day of the hearing commenced at 10:30 a.m., Tuesday, June 26, 2007.

Procedural Matters

At the start of the hearing, the Board cautioned that the jurisdiction of the Board is to determine, based on the evidence heard, if there is sufficient cultural heritage value or interest in each property independently, to proceed with designation by bylaw under section 29 of the Act. The Board outlined that the hearing would be split into two parts, relating to each property, with any common evidence or arguments presented only once during the first property's portion of the hearing (St-Joachim) but applying to both properties.

The Board advised all parties that any matter related to the physical condition of the properties and any costs of repairs related to the property's future use are not issues deemed relevant under the Act, and thus are outside of the scope of the hearing. In this way, the permissible scope of evidence was clearly communicated to all parties. While discussion of these issues had been allowed at the three pre-hearing conferences (October 24, 2006; December 7, 2006; January 30, 2007) in an informal effort to understand and mediate the larger circumstances associated with the Notice of Intention to Designate and the objections, different rules apply to the hearing.

The Board allowed all parties to participate in both hearings, although the objections of SOS and ACO were specific to St-Joachim, and the objection of the London Diocese specific to l'Annonciation.

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. André Chenier and Roger St-Pierre requested the opportunity to speak and were scheduled by the Board to do so following the summations.

St-Joachim Church Property

Case for the Town of Lakeshore

James Renick, solicitor on behalf of the Town, began by explaining that the position of the Town is to designate the property under section 29 of the Act and to identify only the spire and belfry of the St-Joachim church building and the monument to the Sacred Heart of Jesus located on the site as heritage attributes. Based on this, the Town outlined a proposal whereby the spire and belfry are to be physically removed from the existing church structure and coupled with the monument to form a new public park/village green at ground level on the existing property. The full remainder of the church structure would be demolished, as would be the rectory, to fulfill obligations under an agreement of purchase and sale. Mr. Renick further explained that council has tabled this proposal as a compromise with the Church over the designation of the entire St-Joachim and l'Annonciation church properties.

Witness – Paul Dilse, Heritage Planning Consultant

Mr. Paul Dilse was sworn in as a witness.

Based on his curriculum vitae (Tab I, Exhibit 2), Mr. Dilse was accepted as an expert witness in built heritage evaluation and planning.

Mr. Dilse stated that he and architects Peter Stewart and George Robb were commissioned by the Town to prepare a heritage assessment of St-Joachim church, rectory, and monument. The report, Heritage Assessment of St. Joachim Church, Its Rectory and Monument, St. Joachim, Ontario, is dated November 6, 2005 (Tab E, Exhibit 2).

The Board had all parties clarify whether the rectory is in fact an included structure in each property's designation materials, as neither is identified as a heritage attribute in the Notice of Intention to Designate. The Town asserted that neither rectory was included; thus the Board directed all parties to refrain from presenting any information on the rectories in their evidence. In presenting his expert testimony, Mr. Dilse stated that his professional position is that the entire church property (complete church structure, rectory, and monument) should be protected, not just the spire, belfry, and monument. Following this position, he agreed to speak to the findings of the heritage assessment and not give evidence in defence of the Town's intention to designate only these selected elements.

Mr. Dilse reviewed the materials in Tab F, Exhibit 2, notably p.94, as an indenture dated June 3, 1880, transferring lands "for the purposes of erecting thereon a Roman Catholic Church and Parsonage and occupying part thereof as a Burying Ground for the use of the Roman Catholics of the River Ruscom and Vicinity."

Mr. Dilse also referenced Plan 248, dated January 22, 1883, as the subdivision of part of lot 8 in the range west of the River Ruscom, and the beginning date of the village of St-Joachim (Tab F, following p.97). Other references to the history and commemoration of the church (pp.68-93, Tab F) were outlined.

Mr. Dilse then reviewed sections of the heritage assessment, omitting all references to the rectory, physical condition, impact of closure and proposed demolition, property standards, and feasibility of a new use. The section entitled Background (location, ownership, previous litigation, start of demolition, move toward protection, site visit, and terms of reference) was reiterated.

Mr. Dilse explained that the cultural heritage evaluation of the heritage assessment is organized on the then proposed provincial evaluation criteria of Design or Physical Value, Historical or Associative Value, and Contextual Value. These criteria have since been adopted (January 24, 2006) as Regulation 9/06, Criteria for Determining Cultural Heritage Value or Interest. Here is a summary of Mr. Dilse's evidence related to the criteria:

Design or Physical Value (Dilse, Stewart, Robb)

St. Joachim Church, first built in 1881 and remodelled in 1891, is a simple but attractive architectural composition. Its white oak timber framework, erected by the parishioners of the Ruscom River area with direction from Elzéar Jacques of Tecumseh, and the outer brick walls (also built by local help) are interesting for their demonstration of local skill in felling, squaring and raising timber and laying brick. The construction method is neither early nor rare for Ontario, but it is representative of a vernacular building tradition from an early time in the development of the farms around the Ruscom River. Overlying the vernacular structure are architectural features reflective of the knowledge Father Ambroise Lorion, a Roman Catholic priest from Quebec, brought to St. Joachim River Ruscom in the westernmost region of Southern Ontario. Father Lorion's choice of the round Roman arch on the exterior and in the interior and his preference for a bell-tower with open belfry make St. Joachim Church a rare expression of French Canadian Roman Catholic tastes and traditions in architecture during the nineteenth century in the Town of Lakeshore and Essex County.

Historical or Associative Value (Dilse, Stewart, Robb)

St. Joachim Church and rectory, which predate the laying out of village lots in St. Joachim, are not only important to the history of the Roman Catholic faith in the local area but also are central to the history of the village of St. Joachim. As the community was generally French Canadian and Roman Catholic, St. Joachim Church, its rectory (built in 1882 and remodelled about 1929) and the parish compound that developed to the west of the church and rectory served as the unrivalled institution in St. Joachim. Contrast the situation in St. Joachim to ethnically diverse or predominantly Protestant villages and small towns of nineteenth century Ontario where there were usually a number of churches - Anglican, Baptist, Methodist, Presbyterian, Roman Catholic, etc. That the religious monument erected in 1919 in front of the church served as the village war memorial is further proof of the paramount importance of the church property to the village and surrounding countryside.

For the parish's centenary publication in 1982, political and religious leaders attested to the church's and parish's historical importance to St. Joachim. Essex County Warden J.H. Menard wrote: "The Parish has been the cornerstone for the development of the Community of St. Joachim and has contributed to the well being and development of the Community." Rochester Township Reeve Shannon Olson wrote: "In this community, over the hundred years, the Church has been the focus and backbone of this St. Joachim community."

Others in 1982 remarked on how St. Joachim Church provides visual evidence of French Canadian settlement in rural southwestern Ontario. The Hon. William G. Davis, Premier of Ontario, wrote: "Your Centennial celebration honours their [the earliest settlers] achievements and those of all who followed in their footsteps in building amidst the pastoral landscape of Rochester Township the tranquil community of St. Joachim and the parish which has served so well the spiritual needs of many of our Franco-Ontarians." Mgr. John Michael Sherlock, Bishop of London, wrote: "On remercie le bon Dieu de l'héritage qu'on a reçu. C'est un héritage visible dans la belle église dont vous êtes fiers et dans les dons culturels que vous avez préservés." In translation: "We thank God for the heritage we've received. It's a heritage visible in the beautiful church that you are proud of and in the cultural gifts you've preserved."

Contextual Value (Dilse, Stewart, Robb)

In his 1944 doctoral thesis on the geography of Essex County, Neil F. Morrison discusses the primacy of the church in the rural French Canadian landscape: "In general, it may be said that the rural French-Canadian cultural structure rests upon four pillars - church, home, farm and language. The lofty spire of the Roman Catholic Church rises above the smaller French communities of Essex County and dominates the rural landscape just as it does in the Province of Quebec."

In the area encompassed by the Town of Lakeshore where there were at one time five French Catholic churches, St. Joachim Church best exemplifies the landmark status of the church in the French Canadian countryside. Sited nearly dead centre on Essex County Road 31 (French Line), the church is viewed in the almost treeless plain of northern Essex County from a considerable distance to the south. In addition to the church's visual significance in the surrounding countryside, the church is the dominant historic building in the village. The placement of the rectory and monument in a treed lawn west of the church contribute to the sense that the property functions as the village green.

Mr. Dilse explained that the conservation strategy recommended in the heritage assessment is for the Town to list the property on a Register of Cultural Heritage Properties (as defined by the Act) as a first step toward its recognition and protection.

Cross-examination of the Witness

Mr. Knowles asked Mr. Dilse to elaborate on what position the church compound holds in the village. Mr. Dilse stated that the compound was the beginning of the village, having been surveyed before other lots. The church, rectory, and monument form a village green or town square.

Mr. Dilse added that the area had a number of settlers associated with the Great Western Railway, and in the 19th century there was a distinct French culture. The church is a landmark visible from long distances and considered by Mr. Dilse to form part of a cultural heritage landscape. It is in the centre of the French Line, a notable local roadway. The composition of one church/one community is more like Quebec than Ontario where several Protestant denominations had/have church buildings. The distinction of St-Joachim is that it is the only church in the community and that this is part of the traditional French Roman Catholic culture.

It is Mr. Dilse's opinion that retaining parts (spire and belfry) and demolishing the balance of the church makes these into artifacts, destroys the context, and is in violation of the heritage conservation principles of the Venice and Appleton charters. He stated that the whole building (not necessarily in use as a church) yields information about the cultural heritage of the community.

Procedural Matter

The Board recognized that the London Diocese has not objected to the Notice of Intention to Designate but offered Mr. McNamara the opportunity to cross-examine as the circumstance of St-Joachim and l'Annonciation (to which the Diocese objected) properties are similar.

Mr. McNamara noted that the wording cited by Mr. Dilse in the June 3, 1880 land transfer regarding use of the property for a church, parsonage, and burying ground has since been revoked. He also questioned Mr. Dilse on whether the sampling of other area church buildings for comparison purposes in the heritage assessment can be considered sufficient. Mr. Dilse reiterated the list of sites visited and acknowledged that similar architectural features exist in the area examples now shown to him by Mr. McNamara (Exhibit 4, pp.230-238).

Mr. Renick queried if the cultural value of the belfry and spire would be maintained if these were kept at the existing height, rather than removed and placed at grade level. Mr. Dilse responded that any removal would render these as artifacts, although keeping the belfry and spire "in situ" would be better than placing them at grade.

This concluded the case for the Town.

Case for SOS Églises and The Architectural Conservancy of Ontario, Windsor Region Branch

Procedural Matter

Mr. Knowles explained that he is presenting on behalf of both objectors, SOS Églises and The Architectural Conservancy of Ontario, Windsor Region Branch. His services are being provided at no cost.

Mr. Knowles began by explaining to the Board that the position of the Objectors is that St-Joachim church building should be designated in its entirety. They have no objection to the designation of the l'Annonciation church property. It is their contention that this is also a matter of the fundamental rights of Ontario's francophone minority as entrenched in the Charter of Rights and Freedoms.

Witness – David Tremblay, Area Resident and Founding Member of SOS

Mr. David Tremblay was sworn in as a witness.

Mr. Tremblay described himself as a former teacher who was born in the Pointe-Aux-Roches area and someone who has expertise in construction and woodworking. His farm has been owned by six generations of his family. He is a founding member of SOS.

Procedural Matter

Mr. Knowles began by referencing an Affidavit of Raymond Breton (Tab I, Exhibit 3) regarding Ontario Divisional Court file 189/03, November 2003, where the court ruled that the Town imposed a condition contrary to the intent of the Act, i.e., by requiring consent of the owner before considering the property for designation under section 29 of the Act. The Board acknowledged that it accepts the evidence and ruling of this case, but as Raymond Breton was not present today, his affidavit could not be admitted as evidence.

Mr. Tremblay then described SOS as an ad hoc group of residents mainly from the communities of St-Joachim, Pointe-Aux-Roches, Comber, and Belle Riviere that wants to ensure that "we (as Franco Ontarians) are not forgotten." They are concerned by rapid changes in the area and the decline in the number of French-speaking residents as a percentage of the total population. Meetings and rallies held by SOS to gauge public support for protection of the churches were very well attended. Support was also found in the ACO, Heritage Canada, Société Franco-Ontarienne, and others, particularly when launching the challenge to the Divisional Court. SOS has made an effort to find new owners and uses for the property. Members participated in the heritage assessment prepared by Dilse, Stewart, and Robb.

As a spokesperson for SOS, on April 24, 2001, Mr. Tremblay requested that council designate the St-Joachim and l'Annonciation properties.

Mr. Tremblay stated that the church is very important to him and to the French community, which has always been a minority in the area. It was only when at church that he/they felt "the freedom to practice their language and culture. Outside the church, including schools, was all English. It was while attending Mass that history was exchanged and they gained the strength to continue." Of those residents who moved elsewhere and returned to visit, the church was "our home - our coming back."

In Mr. Tremblay's opinion, designation under the Act of both churches is important, not one or the other. The churches are the focal point of each Francophone community. The architecture is French Canadian in style; the workmanship (including the use of oak) is good. It is the visible presence of the church building that is important.

Mr. Tremblay considers the recent removal of a local municipal office to be an example of the loss of community and French institutions, the result of which will be the disappearance of interest in French language and culture. Only an estimated 11% of the community now speaks French.

Mr. Tremblay does not want the church to become a collection of artifacts as a result of the removal and retention of the spire and belfry, and demolition of the balance. It is his and the position of SOS that these lands "tell the story of our community history."

Cross-examination of the Witness

Mr. Renick had no questions.

Mr. McNamara asked Mr. Tremblay if he is aware the Mass is given in French at La Visitation church. Mr. Tremblay responded that his statement about "our home - our coming back" can only apply to his own church, being the building his ancestors supported. He agrees that the French language services of La Visitation help preserve French culture.

Mr. McNamara asked how two empty buildings could help French youth maintain their culture and language. Mr. Tremblay responded that our ancestors built the building and the designation recognizes that "important historical events/facts happened there." The building would further reinforce French heritage and culture, even with another use.

Witness – Christopher Borgal, Restoration Architect

Mr. Christopher Borgal was sworn in as a witness.

Based on his curriculum vitae (Tab H, Exhibit 3), Mr. Borgal was accepted as an expert witness as an architect with experience in heritage building evaluation and restoration.

Mr. Borgal explained that when president of ACO, he did a brief examination of both churches. His last site visit was on October 28, 2002, and he did a recent review of the heritage assessment prepared by Dilse, Stewart, and Robb.

Mr. Borgal stated that both church buildings are key components of their respective community and are symbolic expressions of French culture. Their removal would "gut the community."

With regard to St-Joachim, Mr. Borgal stated that the building has significant French architectural detailing such as Romanesque window openings, open belfry, position on the site, and relationship to the rectory and community. There are some interesting technical issues relating to its being a timber frame structure that was renovated and bricked to give a

greater sense of permanency. The church is distinct in how it relates to this community, and is unlike other communities in Ontario. Its design is culturally based. The churches symbolize religion and culture, are physical guideposts for the surrounding communities, and are remnants of a much larger civilization (the French in Canada before the British conquest). Their demolition would remove identifiable French Canadian attributes, area landmarks, and gut the core of the village.

In Mr. Borgal's experience, 19th century structures were built to last, unlike modern structures, which are designed to last a finite period of time. There is embodied energy in existing structures, making their retention a rationale for energy conservation.

Cross-examination of the Witness

Mr. Renick had no questions.

Mr. McNamara questioned if Mr. Borgal is familiar with any other area churches plotted on the map (Exhibit 2A). Mr. Borgal responded in the negative but stated that each church would be important to the community in which it exists.

This concluded the case for SOS and ACO.

Mr. McNamara stated that his evidence could be held for the hearing scheduled for the l'Annonciation church property.

Members of the Public

Witness – André Chenier

André Chenier was sworn in as a witness.

André Chenier identified himself as a member of SOS and of the French Canadian community in the Ottawa area. He taught in the St-Joachim area in the 1960s. He expressed his amazement that French culture survives in this area. He attributes this to a sense of community, belonging, and survival. In his opinion, the church building as "their space," contributes to this survival. They need indicators that there are links between each other and the past.

Mr. Chenier believes that abandoning the church would lead to abandoning the French schools. The community tried to convince the London Diocese to keep local churches.

Mr. Chenier sees designation as giving some permanency to the buildings so there is a chance for the community to find a new use. SOS has been seeking re-use options and sees this as "difficult but not impossible." In his opinion, both churches are worthy and important to their community.

Mr. Chenier stated that most French Canadian churches have the Sacred Heart monument as a result of military victories by France in 1870. Its symbolism is older than a First World War memorial.

Cross-examination of the Witness

There were no questions.

Witness – Roger St-Pierre

Roger St-Pierre was sworn in as a witness.

Roger St-Pierre identified himself as a 35 plus-year member of the St-Joachim community, French Canadian, Roman Catholic, a member of the Church Council, and a member of SOS. He feels he is being “robbed.”

In Mr. St-Pierre’s opinion, the decision to close the church was abrupt and he feels the London Diocese closed the doors on communication. He wants to keep the churches for the benefit of this and future generations. For local farm families, the only weekly outing was to church for Mass. The church was the focal point of everything we did.

Cross-examination of the Witness

Mr. Knowles asked if it was fair to state that the “building is a living history.” Mr. St-Pierre agreed.

Summations

Summation of the Case for SOS and ACO

Mr. Knowles summarized that:

- There is a theme that the institution of the church is important
- That the linguistic (French) minority has historical value
- A building can yield information about culture
- The building is a landmark
- The presence of the building maintains the character of the community

Mr. Knowles stated that this designation is about the preservation of French culture and language and reminded the Board of its obligation with regard to the Charter of Rights and Freedoms. The Board acknowledged that while the Charter has no direct relevance to the scope of the Board’s mandate, the protection of French language rights would be considered within the context of evaluation criteria for historical/associative and contextual value or interest under Regulation 9/06.

Summation of the Case for the Town

Mr. Renick stated that when considering designation under the Act, the Town had tried to find a compromise position. Council approached the two churches “as a package” and balanced the retention of l’Annonciation church, with the demolition (with salvage of the spire, belfry, and monument) of St-Joachim church.

Summation of the Case for the London Diocese

Mr. McNamara stated that the London Diocese is in a “most difficult position.” The community is now divided; the Diocese needs “to move on.” The position of the Diocese is that the designation of the spire, belfry, and monument at St-Joachim is acceptable. There are other churches in the area that are French Canadian and the Diocese has not “gutted” the subject communities by removing the church buildings.

The St-Joachim hearing ended at 3:15 p.m. and was immediately followed by the hearing for l'Annonciation.

L'Annonciation Church Property

Case for the Town of Lakeshore

James Renick, solicitor for the Town, began by again summarizing that when considering designation under the Act, the Town approached the two church properties, St-Joachim and l'Annonciation, as a "package" and settled on the compromise of including as heritage attributes the exterior and elements of the interior of l'Annonciation, and the spire, belfry, and monument of St-Joachim (with the church structure being demolished and artifacts rearranged on site in a village green setting).

Witness – Paul Dilse, Heritage Planning Consultant

Mr. Paul Dilse continued sworn as an expert witness.

Mr. Dilse stated that he and architects Peter Stewart and George Robb were commissioned by the Town to prepare a heritage assessment of l'Annonciation church and rectory. This report, Heritage Assessment of the Church of the Annunciation and its Rectory, Stoney Point, Ontario, is dated November 6, 2005 (Tab G, Exhibit 2).

Mr. Dilse stated that the same research methodology and background outlined for St-Joachim applies to l'Annonciation. In addition, he referenced Tab H, Exhibit H, p.151, as proof that Louis Caron Junior of Nicolet, Quebec, is the architect for l'Annonciation and that this is his only work in Ontario. The history of the Caron family and their architectural and building supply firm is provided (Tab H, Exhibit 3, pp.157-225).

Mr. Dilse reviewed sections of the heritage assessment, omitting all references to the rectory, physical condition, impact of closure and proposed demolition, property standards, and feasibility of a new use. He outlined how the cultural heritage evaluation of the heritage assessment is based on the same criteria he used in preparing the St-Joachim assessment, and here is his summary:

Design or Physical Value (Dilse, Stewart, Robb)

The church and rectory in Stoney Point are the products of Father N.D. St-Cyr's ambitious plans for transforming the Roman Catholic Church property in Stoney Point. Father N.D. St-Cyr, from Nicolet, Quebec, arrived at Stoney Point at the start of 1893 and was still making improvements to the physical fabric of the church property three years before his departure in 1914.

For the design of the church, Father St-Cyr turned to Louis Caron Junior whom he knew from Nicolet. Louis Caron Junior, in practice as an architect since 1890, was a prolific

designer of churches, rectories, convents and other buildings in Quebec. The Church of the Annunciation in Stoney Point, erected in 1905 to his 1903 plans, was his only church commission in Ontario. The design Louis Caron Junior supplied is in some ways similar to his designs for churches in Windsor Mills, Gentilly, Sainte-Cécile de Lévrard, Notre-Dame-du-Bon-Conseil, Saint-Louis-de-Blandford and Victoriaville. The design reflects the traditions of church building in Quebec and the architectural tastes of French Canadians at the turn of the twentieth century.

The Church of the Annunciation exhibits in both its exterior and interior the Romanesque Revival style in the French Canadian tradition. The exterior features the round Roman arch which often distinguishes Roman Catholic churches in Ontario from Protestant churches and their preference for the pointed Gothic arch. Characteristically French Canadian are the bell-tower with open belfry (clocher), twin flanking towers (in this case reduced to pilasters surmounted by pinnacles), an oculus at the apex of the front gable (in the third tier of the central tower) and a spirelet (fleche) of the same design as the front pinnacles and located toward the south end of the church over the sanctuary and altar inside.

Pressed tin, a material that became widely available in the late nineteenth century, adorns the roofline of the church that is generally restrained in appearance on the exterior; and is applied throughout the interior to great decorative effect. The pressed tin patterns were probably designed in Nicolet and may even have been cast in the factory of Louis Caron et Fils where a blacksmith and metal workers were employed. In any event, the varied and wide use of pressed tin at the Church of the Annunciation and its survival into the twenty-first century are remarkable; perhaps of interest to the whole province.

For Father St-Cyr's last project, he ordered the magnificent Casavant pipe organ in 1911 from St. Hyacinthe, Quebec for installation in the centre of the church's gallery.

After his departure, the influence of French Canadian designers continued. The painted decoration on the ceiling by Louis and Roland Jobin, Montreal transplants who worked on many ecclesiastical projects in Essex County, add to the artistic merit of the church's interior.

The influence of a Quebec-educated priest and Quebec designers on the Church of the Annunciation in Stoney Point is key to understanding the church's historic character.

Historical or Associative Value (Dilse, Stewart, Robb)

The design influences from Quebec on the Church of the Annunciation demonstrate the close links a hundred years ago between Quebec and Essex County, 800 kilometres away. The Church of the Annunciation is the legacy of the cultural connection between French Canadians across provincial borders. G. Emmett Carter, the Bishop of London, acknowledged the cultural connection in the introduction to Breault's 1967 history:

Notre milieu canadien-français, fidèle aux traditions de ceux qui ont longé le fleuve St-Laurent et qui ont fondé leurs foyers sur les bords de nos grands lacs se réjouit de la foi gardée intacte, de l'attachement à l'église paroissiale, à l'église universelle. [In translation: The French Canadians in our midst, faithful to the traditions of those who lived along the St. Lawrence River and who founded their homes on the shores of our Great Lakes, rejoice in their faith guarded intact, in their attachment to the parish church, in the church universal.]

In addition to its broader significance, the church has been the centre of parish life and village activity for a century. It has served the function of the most important institution in the generally French Canadian and Roman Catholic community, and has stood alone without the normal array of different churches seen in most other Ontario villages and small towns.

Contextual Value (Dilse, Stewart, Robb)

In his 1944 doctoral thesis on the geography of Essex County, Neil F. Morrison discusses the 'primacy of the church in the rural French Canadian landscape:

In general, it may be said that the rural French-Canadian cultural structure rests upon four pillars - church, home, farm and language. The lofty spire of the Roman Catholic Church rises above the smaller French communities of Essex County and dominates the rural landscape just as it does in the Province of Quebec.

In its height, size and embellishment, the Church of the Annunciation symbolizes the French Canadian cultural structure of Stoney Point. The church is the dominant historic building in Stoney Point, and its rectory is the most imposing historic house in the village.

Mr. Dilse explained that the conservation strategy recommended in the heritage assessment is for the Town to list the property on a Register of Cultural Heritage Properties (as defined by the Act) as a first step toward its recognition and protection.

Mr. Dilse noted that some of the interior elements proposed for designation under the Act had been removed for use in La Visitation church.

Cross-examination of the Witness

Mr. McNamara queried if any of Louis Caron Junior's church buildings are still standing. Mr. Dilse stated some exist in Quebec.

Mr. McNamara asked if changes to the building since 1905, such as the 1929 painting (clarified by Mr. Dilse as the painting behind the altar), 1961 renovation, and removal of the spire, have an impact on the heritage attributes being designated. Mr. Dilse noted that the Notice of Intention to Designate states "all the front façade and west elevation features and materials shown in Figure 6 of this report and still apparent are worthy of conservation as

are the surviving historic features and materials of the east and rear elevation.” Figure 6 refers to an early photograph reproduced in the heritage assessment by Dilse, Stewart, and Robb.

Mr. McNamara asked if Messrs. Dilse, Stewart, and Robb looked at other interiors. Mr. Dilse responded they looked at other church exteriors, but not interiors.

Mr. McNamara showed Mr. Dilse the document on pp.230-238, Exhibit 4, “Roman Catholic Churches in Essex and Kent Counties Parishes Established Pre-1900 that still have older buildings,” as prepared by David Savel, Financial Administrator, London Diocese. Mr. Dilse acknowledged that there appear to be other examples of the use of pressed tin. He also noted that historically, the (barrel) vaulted roof was a known indicator of a Roman Catholic church. He agreed with Mr. McNamara that other churches in this document demonstrate French Canadian architectural attributes.

Mr. McNamara cited the reference in the heritage assessment (Tab G, Exhibit 2, p.111) that: “The impact of demolition would transcend the boundaries of Stoney Point, representing a loss of economic potential in rural Essex County, a cultural loss to the Franco-Ontarian community at large, and a loss to all who appreciate the historic use of pressed metal.” Mr. Dilse clarified that the “loss of economic potential” would be that no one would come to the village if the church were closed.

Mr. McNamara submitted Exhibit 5 in response to the statement in the heritage assessment to the British Churches Conservation Trust and Quebec’s Religious Heritage Restoration Programme, as models for funding church building restoration. The statement was made that no equivalent program exists in Ontario.

This concluded the case for the Town.

Procedural Matter

The Board noted that Mr. Knowles did not have a copy of the Notice of Intention to Designate as included in a letter dated April 3, 2006, from the Town to the London Diocese. A copy is to be provided to Mr. Knowles by the Town.

The hearing ended for the day at 4:40 p.m.

The hearing resumed at 9 a.m., Wednesday, June 27, 2007.

Case for the London Diocese

Mr. McNamara explained his intention to outline the chronology of events from 1995-2002, the parish clustering project, construction of La Visitation church, the French language services offered by the London Diocese, an overview of the types and locations of church buildings within the London Diocese, and other matters.

Witness – Annette Rondot, Chair, Parish Council

Ms. Annette Rondot was sworn in as a witness.

Ms. Rondot described herself as being baptized at l'Annonciation church, a life member of the parish, of French Canadian Roman Catholic descent, a member of the Cluster Advisory Committee, Building Committee for La Visitation church, and is Chair of the Parish Council, among other involvements. She teaches French to preschoolers.

Ms. Rondot explained that the clustering process involved grouping the parishes of Notre Dame de Lourdes at the village of Comber, l'Annonciation, and St-Joachim into one cluster. About March 2000, the St-Joachim church building was closed due to unsafe conditions (notably falling plaster). Studies were commissioned for l'Annonciation and St-Joachim to determine what repairs were needed to continue the use of the buildings. The costs were found to be too high so the parishioners were approached with three options: renovate the three structures, renovate l'Annonciation as the largest building, or build a new church. Ms. Rondot stated that in September 2000, 65% of those who voted were found in favour of constructing a new church.

Ms. Rondot stated that in about 2002, the church at Comber was closed and sold to a Mennonite congregation. All parishioners moved to l'Annonciation and became one parish known as La Visitation. In December 2006, all activities moved to the new church building.

Ms. Rondot stated that although the French are still a minority at La Visitation, all the services are offered in French and/or English. Most of the contents of the new church are from the older churches, in an effort "to honour our ancestors, who we are, and where we come from." These items are listed on p.217 of Exhibit 4.

For Ms. Rondot, it "is not the building that defines her as a French Canadian Catholic." She considers that they built a new church "as our ancestors did - for our children."

Mr. McNamara inquired if most drive to church. Ms. Rondot indicated that as most families live on surrounding farms and not in the villages, they have always driven to church.

Cross-examination of the Witness

Mr. Renick had no questions.

Mr. Knowles queried if heritage or cultural values were ever discussed at cluster meetings. Ms. Rondot responded, not to her knowledge.

The Board asked for a definition of "clustering." Ms. Rondot explained that it involves a rotation among the three parishes of where Mass is conducted and is generally the result of not having a priest available for each parish.

For the Board's knowledge, Mr. McNamara reviewed the chronology of events between 1995 and 2002, including the formation of the Cluster Advisory Committee, decision to build a new church, April 24, 2001 request to Town council by David Tremblay and others for designation under section 29 of the Act, October 1, 2002 demolition permit for St-Joachim,

temporary stay of that permit, preparations for the Ontario Superior Court of Justice Divisional Court hearing, and other events. These are chronicled in the November 28, 2002 Affidavit of Robert Anthony Daniels for the Ontario Superior Court of Justice, file 02-RD-54677 (pp.105-126, Exhibit 4).

Witness – David Savel, Financial Administrator, London Diocese

Mr. David Savel was sworn in as a witness.

Mr. Savel stated that as Financial Administrator he is responsible for all matters of business and property for the London Diocese.

Mr. McNamara asked Mr. Savel to explain the context of the letters on pp.179 -216 of Exhibit 4. Mr. Savel stated that parishioners sent these to protest the proposal by Town council to designate the St-Joachim and l'Annonciation properties under the Act.

Mr. McNamara asked Mr. Savel to review the photographs and descriptions of the area churches as compiled by Mr. Savel in the document "Roman Catholic Churches in Essex and Kent Counties Parishes Established Pre-1900 that still have older buildings" (pp.230-238, Exhibit 4) and reference these to the map on p.243. Mr. Savel noted that the establishment dates are for the parish and not the date of construction, and that the dollar amounts include capital purchases, new construction, and restoration, but not routine maintenance. Church properties designated under the Act are listed on p.239, Exhibit 4.

Procedural Matter

It was agreed that Mr. Savel is not qualified to comment on the architectural features of the church buildings. Mr. McNamara stated that the Diocese would not be calling a heritage expert to give evidence of this type.

Mr. McNamara noted that p.240, Exhibit 4, is a list of French language services provided by the Diocese.

Mr. Savel noted that p.248, Exhibit 4, is a copy of the webpage of the provincial Office of Francophone Affairs and that there is no heading for "Church."

Mr. Savel explained that, in the past, the policy was if a church building is no longer used for Catholic Church related purposes, it must be demolished. This policy has been changed to include the sale to a buyer who intends a use that is in keeping with Catholic principles. A restrictive covenant to this effect is placed on the deed.

Cross-examination of the Witness

Mr. Renick confirmed with Mr. Savel that although there are many parishes within the London Diocese, only five church properties are within the jurisdiction of the Town.

Mr. Knowles noted that Mr. Savel's report indicates money was spent on a building designated under the Act. He queried Mr. Savel if the Act is specifically discussed when restoration work is undertaken for any church building, or if a heritage building restoration expert is on the Diocese staff or is consulted when work is proposed. Mr. Savel replied in the negative to all queries.

Mr. Knowles asked if Mr. Savel had contacted Francophone Affairs regarding the lack of a heading for “church” on their webpage. He replied in the negative.

Witness – Rev. Dr. John Comiskey, Assistant Professor, St. Peter’s Seminary

Rev. Dr. John Comiskey was sworn as an expert witness.

Based on his curriculum vitae (following p.229, Exhibit 4), Rev. Dr. Comiskey was sworn as an expert witness in ecclesiastical history and related Roman Catholic Church matters.

Rev. Dr. Comiskey stated that he is not qualified to address the Design or Physical Value evaluation criteria in Regulation 9/06. He then referenced his letter of June 6, 2007, to the Town (p.228, Exhibit 4). With regard to Regulation 9/06, 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,” Rev. Dr. Comiskey concluded “every church could fit this criteria,” just as could other buildings such as a hospital, school, or sports arena.

Similarly, every church meets the criteria of 2.(ii) “yields, or has the potential to yield, information that contributes to an understanding of a community or culture.” Rev. Dr. Comiskey would define “community,” in this context, as the “Roman Catholic community.”

Rev. Dr. Comiskey explained that churches are built to preserve the Roman Catholic faith, not a particular ethno-culture. Parishes are established according to need, within the context of promoting the faith in those areas where groups of people have collected. The historical and associative value, therefore, is “to promote the Roman Catholic faith.” Until the 1960s, Latin was the language for all liturgical services. Other services are provided in the “people’s language” or the language spoken by the majority of parishioners (French, Italian, Irish, etc.) as a mechanism of bringing the faith in a way that could be best understood.

Rev. Dr. Comiskey stated that he considers French culture important to the history of Essex County and the western end of Kent County (as well as Ontario and Canada). He noted that Assumption Church in Windsor, which is designated under the Act, is the oldest parish in Canada (1767), west of Montreal. In the history of the London Diocese, he does not consider either St-Joachim or l’Annonciation in the category of “significant” or “iconic” churches.

With regard to Contextual Value, Roman Catholic churches are not built as landmarks. Although “lovely and attractive buildings”, the church location is chosen because the people are there. The size of the church building relates to function, i.e., it needs to accommodate the gathering of all of parishioners. A church does become part of the landscape.

Cross-examination of the Witness

Mr. Renick had no questions.

Mr. Knowles questioned why the different ethno-cultural backgrounds of the parishes in the Windsor area are indicated on the map (p.243, Exhibit 4). Rev. Dr. Comiskey responded by defining the Roman Catholic Church hierarchy where a “community” is a small unit that may or may not increase; next is a “mission”; and then “parish” (with a priest) and that the London Diocese was formed in 1856.

Mr. Knowles asked if the Roman Catholic Church takes into consideration ethnic and linguistic background. Rev. Dr. Comiskey replied in the affirmative but this was not to promote cultural heritage but to provide buildings for them to meet.

Mr. Knowles inquired if Rev. Dr. Comiskey would agree that the French “theme” in this area over the last century now also has validity. Rev. Dr. Comiskey responded that he is concerned with these French communities but that the Roman Catholic Church provides services that are not attached to a particular place. The provision of services “moves around as the population needs change; adding or taking away where and as needed.” He recognizes that for the community, the church building has gained historical or associative value, but this is not the position of the Church. Services being provided in a vernacular language or mother tongue “is about the faith, not the culture.”

Rev. Dr. Comiskey continued that he sees the design of Roman Catholic churches as a composition of functional parts, i.e., “how to make the celebration the best for the people.” Buildings also should inspire. He noted that, in the past, due to discrimination some Roman Catholic churches were barred from town. A population often settled around a church built outside the town limits.

This concluded the evidence of the London Diocese.

Case for SOS and ACO

Mr. Knowles stated he would not be entering evidence and proceeded with his summation.

Summation of the Case for SOS and ACO

Mr. Knowles summarized the case by concluding that the l’Annonciation church property, with the church building as the principal feature, meets all the criteria for designation under the Act. He directed the Board not to consider costs, feasibility, or buying options, as no evidence was admitted in these matters.

Summation of the Case for the London Diocese

Mr. McNamara began by stating that the heritage assessment by Dilse, Stewart, and Robb is too restricted and should have looked at other church buildings in Essex County. He submits that it has been established through evidence presented that a number of churches have the same type of heritage attributes, such as Romanesque design, arches, open belfry, pressed tin, twin towers, etc.

With regard to the architect, Louis Caron Junior, l'Annonciation is not the only surviving example of his work, others being in Quebec, and it was not sufficiently established through evidence that Caron was a significant architect.

Contrary to the statement that the loss of the church building detracts from the French community, the London Diocese continues to provide extensive francophone services at La Visitation. Ms Rondot gave evidence that the closure of the three churches has resulted in a stronger French community.

Under Regulation 9/06, any church would have historical or associative value, just as the celebration of a common faith could have this value. Mr. McNamara doubts it is the intention of the province that all church buildings/properties be designated under the Act.

Mr. McNamara referred the Board to the letters on pp.179, 180, 182, regarding the sentiment against the proposal to designate these churches. He also recalled the statement of Dr. Rev. Comiskey that St-Joachim and l'Annonciation are not "significant or iconic" church buildings.

Mr. McNamara suggests that only one property should be designated under the Act, as the two are very close geographically, and that they are supportive of the designation of the St-Joachim proposed attributes.

Summation of the Case for the Town

Mr. Renick stated that Rev. Dr. Comiskey's definition of "community" as "Roman Catholic community" is too narrow.

With regard to the architect, he noted that l'Annonciation is the only Louis Caron Junior church in Ontario.

Mr. Renick also disagrees with the London Diocese that if a building is "not the last, it is not important." The Town can only protect the five church properties within its jurisdiction, and the character of the municipality is that it is a collection of several small communities.

Mr. Renick commented that if the intention of the Roman Catholic Church was to construct buildings that inspire awe, there should be some expectation that they will become landmarks. He added that l'Annonciation is not a case where the church was built on the outskirts of a larger community due to discrimination. The church was built and then a community grew around it.

Mr. Renick concluded, "Events shape how buildings are perceived and their significance." Stoney Point is a "community" and the people are connected to their buildings. This is both good and bad (complicates decision making) when considering the future disposition of church buildings.

Members of the Public

The Board gave a final opportunity for members of the public to make a statement.

Witness – Joyce Tymec

Joyce Tymec was sworn in as a witness.

Ms. Tymec identified herself as a resident of Stoney Point for sixty years and a retired Catholic schoolteacher who taught in both languages in Essex County.

Ms. Tymec stated that these buildings could be used for other purposes. They would serve as a daily reminder that God is among us. In her experience, children are interested in their heritage and need visual reminders of their history. Churches are also markers to locate a community on the landscape; directions are given based on the proximity to the church site.

Cross-examination of the Witness

There were no questions.

Witness – Michael Lanoue

Michael Lanoue was sworn in as a witness.

Mr. Lanoue identified himself as a long-term area resident.

Mr. Lanoue stated that to vote in the decision regarding the dispositions of the existing churches, you had to “financially support your decision.” He presented a mathematical analysis of the vote and questioned the validity of the statement by the London Diocese that the 65% required majority was met. He also recalled a statement by the architect for the Diocese that “if you repair the church it will be here in 100 years; if you build new, it won’t be here in 100 years.” Mr. Lanoue concluded by stating that churches are community landmarks.

Cross-examination of the Witness

There were no questions.

Witness – R. Chauvin

Mr. R. Chauvin was sworn as a witness.

Mr. Chauvin stated that his family arrived in the area in the early 19th century and that he is the sixth generation on the farm.

Mr. Chauvin described the community as being composed of different people. The church as a “landmark” means more to the rural people than the “bedroom” residents who commute elsewhere every day. For his family, when “working on the land you could always look up and see the two steeples.” This meant everything to them. For the families with deep roots, the church is the heart. It is not the same in a city.

Mr. Chauvin explained that in 1911 when Fr. St. Cyr ordered a Casavant pipe organ for the church, it committed the parish members to a \$9,000 debt. The families paid the debt; but now the organ has been taken to La Visitation.

Cross-examination of the Witness

There were no questions.

The hearing ended at 12:20 p.m.

Findings of the Board

The findings of the Board are structured to answer certain significant questions/issues that were raised in the hearing, ultimately setting out recommendations for the Town with respect to the designation of these two properties. What follows is some perspective on the fundamental questions raised in evidence before the Board, and this discussion is used as further context to the formal Board recommendations that follow.

One Report With Recommendations

The Board established that evidence that applied to both properties could be presented at the first hearing (St-Joachim) and the information extended to the second hearing (l'Annonciation). All parties participated in both hearings, although the objections of SOS and ACO were specific to St-Joachim, and the objection of the London Diocese specific to l'Annonciation. For this reason, the Board has prepared one report with recommendations that differentiates between the two properties only where necessary.

Summary Background

Mr. David Tremblay described SOS Églises as an ad hoc group of residents that wants to ensure that "we (as Franco-Ontarians) are not forgotten." They advocate for the protection of St-Joachim and l'Annonciation as French Roman Catholic church buildings and important landmarks associated with the historic Francophone communities of St-Joachim and Point-Aux-Roches.

On April 24, 2001, SOS (through Mr. Tremblay) requested that the Town consider designation of the St-Joachim and l'Annonciation properties under Part IV of the Act (now section 29 of Part IV). On March 12, 2002, council refused the request (report of March 1, 2006, Exhibit 2, Tab K). On October 1, 2002, the Town issued the London Diocese a demolition permit for the St-Joachim church building. By October 30, "the church was essentially void of chattels and numerous fixtures" (Exhibit 4, pp.105-126). This left the structure vulnerable to deterioration through exposure to the environment.

Council refused to consider the properties as candidates for designation, unless it had permission of the owner, the London Diocese. This resulted in an appeal to the Ontario Divisional Court (file 189/03, formerly 02-GD-54677). On November 1, 2002, the Divisional Court issued an Order to stay the demolition permit. A November 2003 decision by the Divisional Court ruled that the Town imposed a condition contrary to the intent of the Act, i.e., by requiring consent of the owner before considering the property as a candidate for designation.

On March 13, 2006, the Town issued the Notice of Intention to Designate (“Notice”) that contains the Statement of Cultural Heritage Value or Interest and description of heritage attributes (“Statement”).

It is acknowledged that other matters such as a property severance and rezoning application transpired during this period but these are not considered relevant to the matters now before the Board.

Validity of the Evaluation Methodology Applied

Reason 3 in the objections of SOS and ACO claims that “The Town failed to consider the criteria for determining whether or not a property is of cultural heritage value or interest provided in Ontario Regulation 9/06.”

In 2005, the Town responded to the November 2003 Divisional Court decision by commissioning heritage consultants Messrs. Peter Stewart, Paul Dilse, and George Robb to prepare heritage assessment reports for each property. These two reports were completed in November 2005 and submitted as exhibits.

Mr. Dilse explained, and the Board concurs, that in April 2005 the Act was amended and that the provincial criteria for determining cultural heritage value or interest were in draft form when the heritage assessments were compiled in November 2005. In the absence of Town-generated evaluation criteria, the draft provincial criteria were applied for purposes of the heritage assessments. In January 2006, the draft criteria became Regulation 9/06, Criteria for Determining Cultural Heritage Value or Interest.

The Board notes that Regulation 9/06 is to be used in default for those communities that have not developed local criteria that meet or exceed the level of evaluation required by Regulation 9/06. Mr. Dilse gave evidence that the Town did not have local evaluation criteria in place in November 2005, and in answer to a question from the Board it seems that no local criteria yet exists.

The Board accepts that the evaluation methodology applied in the heritage assessments, the findings of which were reviewed by the Town, complies with Regulation 9/06. Therefore, the Board does not agree with reason 3 in the objections of SOS and ACO.

Claim of Insufficient Comparison

The London Diocese presented evidence to illustrate that many of the church buildings in its portfolio are comparable to those at St-Joachim and l’Annonciation. The London Diocese is of the opinion that the heritage assessments should have included a broader sample for comparison purposes before reaching any conclusion regarding the cultural heritage value or interest of these two properties. The suggestion was that had the larger real estate portfolio of the London Diocese been considered, other church buildings might have been selected as representative, best example, rare, unique, etc. under the criteria of Regulation 9/06.

The Board agrees that there is an implied methodology within Regulation 9/06 to compare a candidate property to other examples. The purpose is to give some benchmark with which to evaluate the relative merits of the candidate property. However, the Board does not accept that the overall intent is to then select only the best example or a representative sample for protection under section 29 of the Act.

As with any comparative methodology, for the results to be valid the sampling must have some commonality of factors and influences, such as within one “community.” In this regard, it was stated by the Rev. Dr. Comiskey that the Roman Catholic Church is mandated to seek how best to serve the faith and thus the religious needs of its parishioners. “Community” means the Roman Catholic faith community, within which there are groups or “clusters” of parishioners. When members of the faith no longer gather in a specific geographic location, the Church will move to best serve a greater number of people. Real estate acquisition and divesting by the Church is simply a by-product of this fundamental mandate. The result for the London Diocese (and elsewhere in the province) is a large inventory of church buildings scattered across several municipal boundaries.

The Roman Catholic Church “community,” therefore, is not the same as an incorporated municipal “community” with geographic boundaries.

Based on what it heard, the Board concludes that, for the Roman Catholic Church, if a church building is no longer needed for religious purposes, it no longer has value. In the past, this has been the justification for requiring the demolition of a church building when no longer used for Roman Catholic religious purposes. This policy has since been revised to allow the adaptive re-use of a church building for uses that are compatible with the principles of the Roman Catholic faith.

In contrast, the Town stated, and the Board concurs, that under the Act the Town only has jurisdiction over the five Roman Catholic Church properties within its municipal boundary.

The Board is of the opinion that the methodology implied in Regulation 9/06 involves sampling for comparative purposes and that Regulation 9/06 in itself does not limit comparison to examples within a municipal boundary. The overlay to the Regulation is the Act, which does restrict the jurisdiction of the municipality to protecting properties within its geographic borders.

It is the Board’s opinion that, in the case of church properties where the meaning of religious “community” crosses municipal jurisdictions and where it can be demonstrated that there is a commonality of factors and influences, a comparative sampling that includes properties outside of the municipal boundary is valid. The final evaluation of cultural heritage value or interest and the decision to protect a property within its jurisdiction under section 29 of the Act remains that of the municipal council.

Issue of Minority Rights under the Charter of Rights and Freedoms

Reason 6 in the objection of SOS and ACO claims that “The Town has failed to consider its Constitutional obligations to respect and protect the linguistic rights of minorities by failing to consider the impact of its resolution on the Francophone cultural and linguistic ministry of St-Joachim and the greater Windsor-Essex region.”

SOS and certain members of the public gave evidence that the church building was where parishioners, in some instances six generations of their families, professed their commitment to God and the Roman Catholic faith. It was also where non-religious, French-only language, culture, and traditions were shared. The parishioners contributed to the upkeep and furnishing of the church building. Although now vacant, both buildings continue to be held as symbols of the Roman Catholic religious and Francophone cultural presence in their respective communities.

The Board acknowledges that letters sent to the Town in opposition to the proposed designation of the St-Joachim and l’Annonciation properties (Exhibit 4, pp.179-216) may contradict this sentiment. None of the authors of these letters gave evidence at the hearing.

The Rev. Dr. Comiskey gave evidence that providing religious services in any given language is in keeping with the Roman Catholic Church philosophy of bringing the faith to the people in a way that is best understood, i.e., in their mother tongue. For this reason, religious services in French and English have been offered at La Visitation Church since opening in December 2006. The Church does not consider the church building a centre for the sharing of ethno-cultural practices and traditions. This is only a consequence of the building being available as a community-gathering place.

Based on the evidence provided, it appears to the Board that the provision of French language services at La Visitation is comprehensive and at least equal to those previously provided at St-Joachim and l’Annonciation. Also, the Town did, in fact, recommend the designation of both properties under section 29 of the Act for reasons that include their association with the Francophone population of this area. It is the Board’s opinion that this likely meets the Constitutional obligation to “respect and protect the linguistic rights of minorities,” noting that such a Charter issue is outside of the scope of the powers given to the Board under the Act.

Effect of Issuing a Notice of Intention to Designate

In its objection, the London Diocese provided a “List of Items to be used in the new church (Visitation Parish)” and sought “consent under section 34(1) of the Act to remove those items from the attached list that are fixtures to be used in the new church.”

The Board acknowledges that the Roman Catholic Church may have removed certain items from the St-Joachim church building in October 2002, under the authority of the still-valid demolition permit.

Mr. Tremblay and Mr. Chauvin queried the recent removal of certain items from the church buildings for installation at La Visitation, which opened in December 2006.

Annette Rondot confirmed that some of the items were relocated to La Visitation to “honour our ancestors, who we are, and where we come from.”

The Rev. Dr. Comiskey stated that certain liturgical items used for the sacraments hold sanctity within the Roman Catholic faith and there is an obligation to keep these items within a religious context. The Board acknowledges this entitlement.

The effect of the Notice issued under section 29(3) is stated in section 30(1) of the Act which, in effect, voids any permit that allowed for the alteration or demolition of the property and that was issued by the municipality under any Act, before the day the Notice was served. Under section 30(2), sections 33 and 34 apply with necessary modifications to property as of the day Notice is given under subsection 29(3) as though the designation process were complete and the property had been designated under section 29.

It is the Board’s opinion that the removal of items that are fixed, i.e., part of the real property and not transient, falls within section 33(1) as an alteration, not 34(1) as demolition or removal. Section 33(1) states:

No owner of property designated under section 29 shall alter the property or permit the alteration of the property if the alteration is likely to affect the property’s heritage attributes, as set out in the description of the property’s heritage attributes that was required to be served and registered under subsection 29(6) or (14), as the case may be, unless the owner applies to the council of the municipality in which the property is situate and receives consent in writing to the alteration.

For the purposes of the designation bylaw, the Town will need to determine which items identified as heritage attributes in the proposed designation bylaw have been removed from the properties. Since Notice was issued on March 13, 2006, items should have only been removed after this date if the London Diocese had written permission from the Town under section 33(1) of the Act. While not primary to the Board’s scope of inquiry, the Board considers it important to raise this issue as a potential breach of the Act. Further, this issue raises a question as to the Town’s understanding of the critical importance of clearly communicated Notice and its strict adherence under the Act.

Statement of Cultural Heritage Value or Interest and List of Heritage Attributes

Regulation 9/06 is to be applied, in default, in those municipalities without local evaluation criteria that meet or exceed the provincial standard. The development of municipal-level evaluation criteria is encouraged, as these are better able to differentiate any local qualities or characteristics that hold cultural heritage value or interest. No such criteria have been developed for the Town.

In considering the evidence regarding cultural heritage value or interest, and given the lack of local evaluation criteria, the Board is governed by Regulation 9/06. A property may be designated under section 29 of the Act if it meets one or more of the criteria of design or physical value, historical or associative value, and contextual value.

The Board reviewed the March 13, 2006 Statement of Cultural Heritage Value and description of heritage attributes proposed by the Town. It is noted that the text was extracted verbatim from the November 6, 2005 reports, Heritage Assessment of St. Joachim Church, Its Rectory and Monument, St. Joachim, Ontario; and Church of the Annunciation and its Rectory, Stoney Point, Ontario, compiled by Messrs. Stewart, Dilse, and Robb. This is confirmed by the "Reliance on Heritage Assessments" section in the Statement. The Board recommends that the Town establish its own set of evaluation criteria to better support the protection of their local heritage.

Although not in the language or strict organization of Regulation 9/06, the Board considers the text of the Statement to be sufficient for designation bylaw purposes as drafted, except where noted in the following.

St-Joachim

Design or Physical Value

In its evidence, the London Diocese established the existence of other examples of the use of the Roman arch on French Canadian Roman Catholic architecture in the area. The Board recommends removal of the word "rare" in the final sentence:

"Father Lorion's choice of the round Roman arch on the exterior and in the interior and his preference for a bell-tower with open belfry make St. Joachim Church an (~~rare~~) expression of French Canadian Roman Catholic tastes. . . ."

Historical or Associative Value

No changes are required.

Contextual Value

No changes are required.

Selection of Heritage Attributes

For clarity, it should be stated in the statement of cultural heritage value/interest that it is the church building and monument that are protected.

It is evident that the Statement for the St-Joachim property was extracted from the heritage assessment prepared by Stewart, Dilse, and Robb. The description of heritage attributes in the heritage assessment, however, was not transferred. The Town identifies only the spire, belfry, and monument as the heritage attributes that support the cultural heritage value or interest of the property.

The Town premised its case before the Board with the statement that the intention to designate the l'Annonciation property with interior and exterior elements of the church building as the heritage attributes, and the St-Joachim property with only the spire and belfry of the church building and the monument to the Sacred Heart of Jesus as the heritage attributes to be salvaged before complete structural demolition, represents an attempt by council to "balance the interests of all parties."

No evidence was given by the Town to substantiate the selection of the spire, belfry, and monument as the *only* heritage attributes that support the cultural heritage value or interest of the property for designation bylaw purposes. This does not appear to the Board to be a decision supported by the heritage assessment and it is not reflective of the significance as described in the Statement of Cultural Heritage Value in the proposed bylaw. It is an external decision to "balance the interests of all parties."

The Board, therefore, agrees, in part, with reason 1 in the objections of SOS and ACO, which states that "a partial designation fails to recognize the historical and cultural significance of the St. Joachim Church property." In its evidence, the Town confirmed that a non-heritage process or reasoning resulted in the selection of only the spire, belfry, and monument as heritage attributes. The Board is of the opinion that the Town should reconsider this position. Some or all of the heritage attributes identified in the Dilse, Stewart, Robb report and that survive *in situ*, may also support the cultural heritage value or interest of this property and, as such, should be described in the designation bylaw.

Implied Demolition

Reason 2 in the objections of SOS and ACO claims that "A partial designation leaves doubt as to whether or not the Roman Catholic Diocese of London may proceed to demolish those parts of the church structure not designated under the Act."

It was known to all parties that the intent of the Town regarding the St-Joachim church building is to allow the removal of the spire and belfry, followed by the demolition of the remaining structure. The Board considers this a misapplication of section 29 of the Act.

Under section 29, the Town must describe those heritage attributes that support the cultural heritage value of the property and are protected by the designation bylaw. Any subsequent application for alteration (section 33(1)), partial or full demolition, or removal of a structure from the property (section 34) must consider the impact of the proposed action on the protected heritage attributes.

The action being proposed by the Town is more in keeping with a heritage impact assessment that recommends as a conservation strategy that the structure be documented and significant features salvaged before demolition. There would be no purpose in applying the protection of the Act if the intent at the start was to salvage pre-selected features as artifacts and demolish the structure.

Section 34 of the Act is the mechanism for the demolition or removal of a building or structure on a property designated under section 29. An application to demolish or remove

a building or structure can be made by the property owner. If the Town, after a review of the designation bylaw, gives consent, does not give consent, or gives consent with terms and conditions, the owner can appeal the decision to the Ontario Municipal Board.

The Board agrees there is merit in reason 2 in the objections of SOS and ACO.

Removal of the Rectory Building

Section 29 of the Act applies to the real property. The designation bylaw describes the features of the real property, known as heritage attributes, that support the cultural heritage value or interest of that property as identified in the required Statement of Cultural Heritage Value or Interest.

Even though not specifically mentioned as a heritage attribute, the rectory building will be governed by the designation bylaw as a result of it being on the property. To be demolished or removed from the property, the owner will have to apply for permission under section 34 of the Act.

It appears to the Board that there is no intent to include the rectory within the designation bylaw. To achieve this, the Town may choose to exclude by legal description in the bylaw that portion of the property that includes the rectory.

L'Annonciation

Design or Physical Value

In its evidence, the London Diocese established the existence of other examples of the use of "pressed tin" in French Roman Catholic church buildings in the area.

The Board recommends removal of the phrase "perhaps of interest to the whole province" from the final sentence of paragraph 4:

"In any event, the varied and wide use of pressed tin at the Church of the Annunciation and its survival into the twenty-first century are remarkable; ~~perhaps of interest to the whole province.~~"

Historical or Associative Value

No change.

Contextual Value

No change.

Description of Heritage Attributes

For clarity, it should be stated that it is the church building that is protected.

The description of heritage attributes was extracted verbatim from the heritage assessment, and includes a reference to "Figure 6 of this report." That Figure or illustration is not included in the Statement of Cultural Heritage Value. It is recommended that the

description be rewritten to clearly identify the heritage attributes to be protected. This will also assist when making future decisions about applications for alteration, demolition, and/or removal.

The Town needs to determine which, if any, of the listed heritage attributes already have been removed.

Removal of the Rectory Building

The information provided regarding the removal of the rectory building from the St-Joachim property also applies to l'Annonciation.

Summary of Board's Response to the Written Objections

1. The Board agrees, in part, with reason 1 in the objections of SOS and ACO that "A partial designation fails to recognize the historical and cultural significance of the St. Joachim Church property," but only in that the Town admittedly used a non-heritage process or reasoning to select the spire, belfry, and monument as the only heritage attributes. It may yet prove that these are the only heritage attributes that, for heritage reasons, will be described in the designation bylaw.

2. The Board finds merit in reason 2 in the objections of SOS and ACO that "A partial designation leaves doubt as to whether or not the Roman Catholic Diocese of London may proceed to demolish those parts of the church structure not designated under the Act." The Town's selection of heritage attributes for salvage combined with the prior agreement that the church structure can be demolished is a misapplication of section 29 of the Act.

3. The Board does not agree with reason 3 in the objections of SOS and ACO that "The Town failed to consider the criteria for determining whether or not a property is of cultural heritage value of interest provided in Ontario Regulation 9/06." The Board accepts that the evaluation methodology applied in the heritage assessments, the findings of which were reviewed by the Town, complies with Regulation 9/06.

4. Regarding reason 4 in the objection of SOS and ACO, the Statement of Cultural Heritage Value or Interest for St-Joachim references all categories in Regulation 9/06 as if the intent of the Town was to protect the "property in its entirety" with the church building as the principal feature. This, however, is not reflected in the description of heritage attributes. The Town admitted to using a non-heritage process or reasoning to select only the spire, belfry, and monument as heritage attributes. Only in this regard, does the Board agree with reason 4.

If reason 4 is in reference to the rectory building not being included as a heritage attribute, this was not countered by the objectors at the start of the hearing.

5. The Board does not agree with reason 5 in the objection of SOS and ACO that "The Town failed to consider the heritage assessment which it commissioned on its own initiative

and which was prepared by Toronto architect Peter Stewart and Paul Dilse, Heritage Planning Consultant.” It appears to the Board that the Town relied exclusively on these documents, except for omitting the rectory buildings, and in the case of St-Joachim, revising the description of heritage attributes.

6. The Board does not agree with reason 6 in the objection of SOS and ACO that “The Town has failed to consider its Constitutional obligations to respect and protect the linguistic rights of minorities by failing to consider the impact of its resolution on the Francophone cultural and linguistic ministry of St-Joachim and the greater Windsor-Essex region.” The Town is recommending the designation of both properties under section 29 of the Act for reasons that include their association with the Francophone heritage of this area. Evidence was given that the provision of French language services by the Roman Catholic Church at La Visitation is at least equal to those previously provided at St-Joachim and l’Annonciation.

7. The Board acknowledges that the London Diocese did not object to the designation of the St-Joachim property under section 29 of the Act provided that the description of heritage attributes was limited to the “monument and steeple.” The further direction for the steeple to be removed and placed with the monument in a landscaped parkette and the “rest of the church building will be demolished” are not permissible under section 29 of the Act. Demolition is a section 34 matter.

8. As the objection of the London Diocese to the designation of the l’Annonciation property under section 29 of the Act does not contain any reasons for the objection, the Board has no comment.

9. Within the objection of the London Diocese is a request for “consent under section 34(1) of the Act to remove those items “from the attached list that are fixtures to be used in the new church.” This is a matter for Council’s consideration under section 33 of the Act.

Suggestion for a Heritage Management Plan for Church Properties

The London Diocese maintains one portfolio of church buildings within several municipal jurisdictions. Within this are church buildings/properties that are redundant to the mandate of serving the Roman Catholic faith and the religious needs of its parishioners, but that may meet the criteria of Regulation 9/06 as candidates for designation under section 29 of the Act.

The Board is of the opinion that the comparative evaluation implied by Regulation 9/06 may at times warrant extending beyond the geographic jurisdiction of a municipality. As with any comparative methodology, the sampling must have some commonality of factors and influences. The overall intent is not to select only the best example or a representative sample for protection under section 29 of the Act. It is to establish a valid benchmark with which to evaluate the relative merits of the candidate property.

It could be argued that the “community” of the Roman Catholic Church within a region meets this commonality of factors and influences.

Based on the evidence presented at the hearings for the St-Joachim and l'Annonciation properties, the Board acknowledges that for the Roman Catholic Church, its buildings only hold value when serving the needs of the faith. Cultural heritage value, as defined by Regulation 9/06 Criteria for Determining Cultural Heritage Value or Interest, is being assigned to these buildings for other reasons. In some instances, this is creating controversy within the community and financially burdening the Diocese.

It is the Board's suggestion that some overall rationale or protocol be developed for the heritage conservation management of all church buildings/properties within the London Diocese portfolio (and elsewhere). This differs from the management of a real estate portfolio.

The London Diocese (and elsewhere) may benefit from a cooperative relationship with members of such organizations as the Canadian Association of Heritage Professionals, Architectural Conservancy of Ontario, Community Heritage Ontario, and Heritage Canada in developing a strategy guided by accepted standards and guidelines for heritage conservation. The Board notes that Ontario Heritage Trust also has a particular interest in this issue. Such a strategy will likely involve the evaluation of the cultural heritage value or interest of each property with heritage professional recommendations for an appropriate strategy such as a conservation plan, stabilization, legislative protection, demolition with/without salvage of artifacts, policies for adaptive reuse, and commemoration, as deemed appropriate for each property.

The role of the parishioners and others would be to describe their associations, past and present, within the categories of Regulation 9/06 and/or evaluation criteria that meets the provincial standard.

It is the Board's belief that this approach may alleviate some of the mistrust of information and frustration with the heritage evaluation and decommissioning process that was evident at the St-Joachim and l'Annonciation hearings. This would also provide municipalities with credible information on which to apply local evaluation criteria and determine an appropriate course of action. Ideally, the interests and concerns of all parties can be met.

Recommendations to Council of the Town of Lakeshore

It is the Board's intention that the following recommendations be applied to the final drafting of the designation bylaw(s). It is the Board's opinion that, if the recommended changes are made, re-issuance of the Notice(s) of Intention to Designate would not be required.

Recommendation 1

St-Joachim

Based on the evidence presented, it is the opinion of the Board that there is sufficient cultural heritage value or interest in the property known municipally as 2722 County Road 42 (St-Joachim Church) in the village of St-Joachim to proceed with designation of the

property under section 29, OHA, R.S.O. 1990, c.O.18, as amended. It is the Board's opinion that the entire church building (not just the spire and belfry) and the monument should be included in the proposed designation bylaw.

To this end, the Board recommends that:

1. If it is Council's intent to exclude the rectory building from the governance of the designation bylaw, this should be reflected in the legal description of the real property as it appears in the proposed bylaw;
2. Council consider the word change to the Statement of Cultural Heritage Value or Interest as noted in the St-Joachim - Design or Physical Value section of this report above;
3. Council review the findings of the November 6, 2005 Heritage Assessment of St. Joachim Church, Its Rectory and Monument, St. Joachim, Ontario, and consider which of the heritage attributes identified in this Assessment continue to support the cultural heritage value or interest of this property and, as such, should be described in the designation bylaw, and that this review be done in a timely manner;
4. Council be advised that under section 29 of the Act, the identification and description of heritage attributes for designation bylaw purposes does not mean that only those heritage attributes are to be retained and the balance of the structure demolished or removed from the property. This is a separate process under the Act through which the owner can apply for permission;
5. Council proceed with the designation under section 29 of the Act of 2722 County Road 42 (St-Joachim Church) in the village of St-Joachim, as a property of cultural heritage value or interest under section 29, OHA.

Recommendation 2

L'Annonciation

Based on the evidence presented, it is the opinion of the Board that there is sufficient cultural heritage value or interest in the property known municipally as 7025 Tecumseh Road (l'Annonciation Church) in the village of Pointe-Aux-Roches (Stoney Point) to proceed with designation of the property under section 29, OHA, R.S.O. 1990, c.O.18, as amended.

To this end, the Board recommends that:

1. If it is Council's intent to exclude the rectory building from the governance of the designation bylaw, this should be reflected in the legal description of the real property as it appears in the proposed bylaw;
2. Council consider the word changes to the Statement of Cultural Heritage Value or Interest as noted in the L'Annonciation - Design or Physical Value section of this report above;

3. Council clarify the description of heritage attitudes to correct the ambiguity caused by the reference to “Figure 6.”

4. Council proceed with the designation under section 29, OHA, of 7025 Tecumseh Road (l’Annonciation Church) in the village of Pointe-Aux-Roches (Stoney Point) as a property of cultural heritage value or interest under section 29, OHA.

Recommendation 3

That council consider establishing local evaluation criteria that meet or exceed the requirements of Regulation 9/06 Criteria for Determining Cultural Heritage Value. In this way, the special qualities, characteristics, and heritage, notably of the Francophone population, that hold cultural heritage value or interest to the municipality will be integral to the local evaluation process.

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

(original signed) by:

Peter Zakarow, Chair

(original signed) by:

Su Murdoch, Vice-Chair

EXHIBITS LIST

Exhibit 1: Affidavit of Notice of Hearing, as required under Ontario Heritage Act, 3 pages.

Exhibit 2: Town of Lakeshore's submission of documents, 239 pages, tabled by Mr. Renick.

Exhibit 2A: Map of the location of French parishes in Essex County, 1 page, tabled by Mr. Renick.

Exhibit 3: Architectural Conservancy of Ontario - Windsor Region Branch and SOS Églises submission of documents, (no total pagination), tabled by Mr. Knowles.

Exhibit 3A: Memorandum of Fact and Law of the Objectors (Architectural Conservancy of Ontario - Windsor Region Branch and SOS Église), 21 pages, tabled by Mr. Knowles.

Exhibit 4: Diocese of London submission of documents, 253 pages, tabled by Mr. McNamara.

Exhibit 5: Information on The Churches Conservation Trust; and Quebec's Religious Heritage Restoration Programme, 5 pages, tabled by Mr. McNamara.