

**Conservation Review  
Board**

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## **CONSERVATION REVIEW BOARD**

**RE: THE CORPORATION OF THE TOWN OF OAKVILLE –  
INTENTION TO DESIGNATE THE PROPERTY KNOWN AS THE  
MCKELLAR ESTATE, 3015 DUNDAS STREET WEST, OAKVILLE  
(CRB File #2007-13).**

**Peter A.P. Zakarow, Chair  
Karen Haslam, Member**

**September 30, 2008**

This hearing was convened under s.29(8) of the Ontario Heritage Act, R.S.O. 1990, Chapter O.18, amended to 2006 (“Act”), for the purpose of reporting to the Council of the Town of Oakville (“Town”), whether, in the opinion of the Conservation Review Board, on the basis of the evidence it heard, the property known as 3015 Dundas Street West should be protected by bylaw under s.29 of the Act.

The current legal description of the property is Part of Lot 31, Concession 1, North Dundas Street, Town of Oakville, municipally known as 3015 Dundas Street West, Town of Oakville, and the current owner is the Estate of Angus McKellar. This property is unoccupied and contains a main two-storey structure with a central entrance from Dundas Street West. The property is located at a main intersection, Bronte Road and Dundas Street West, and has been completely fenced to reduce vandalism and unauthorized access. There is a garage structure on the property that is not listed as a heritage attribute in the Notice of Intention to Designate.

The Board held a pre-hearing conference on this matter, May 29, 2008. There was no agreement of settlement or agreed statement of fact as a result of the pre-hearing conference, hence a formal hearing was scheduled.

Notice of this hearing was given by the Board, in the manner required under the Act, in the *Oakville Beaver*, on September 19, 2008. An affidavit by the Board’s Case Coordinator with respect to this notice was filed as Exhibit 1.

The hearing day commenced with a site visit of the subject property at 8:30 a.m. on September 30, 2008, and the hearing convened the same day at 10:00 a.m. in the Oakville Room, Oakville Town Hall, 1224 Trafalgar Road.

The hearing ended in the afternoon of October 1, 2008.

**Counsel in Order of Appearance**

Ms. Nadia Chandra, Assistant Town Solicitor on behalf of the Town of Oakville  
Mr. Blair S. Taylor, solicitor, on behalf of the Objector/Owner

**Witnesses in Order of Appearance**

Mr. Charles McConnell  
Mr. Michael Seaman  
Ms. Ruth Victor  
Mr. Christopher Shepherd

**Members of the Public in Order of Appearance**

Ms. Michelle Knoll  
Ms. Margaret Betty (did not appear)  
Mr. Dick McIlroy (did not appear)

**Jurisdiction of the Board**

All parties were reminded that the jurisdiction of the Board is to hear evidence within the framework of Ontario Heritage Act Regulation 9/06, to assess the cultural heritage value or interest of a property being proposed for designation under s.29 of the Act.

The Board does not address issues of demolition or selective demolition, the costs of physical maintenance or repairs, any planning applications or issues that are under the jurisdiction of the Planning Act, the current state of repair of a property, or any future use of the property.

Evidence on any of these matters will only be heard if it gives context to the discussion of cultural heritage value or interest and any heritage attributes or features that may support that value or interest.

The Board indicated that it would be diligent in adhering to these parameters and reminded both parties of the practice of limiting evidence and argument deemed to be outside of this scope.

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. Three people so indicated: Michelle Knoll, Margaret Betty, and Dick McIlroy.

**Procedural Matter**

**Mr. Taylor asked that since his witness (who was appearing under a Summons) was ill, that he be allowed to call him first and after cross-examination the witness could be excused. This fundamentally changes the opening structure of**

a usual CRB hearing, but as Ms. Chandra agreed to this, the Board granted the procedural request.

**Witness (Summons by Owner/Objector) – Charles McConnell**

**Mr. McConnell was sworn as an expert witness in urban and regional planning.**

Mr. McConnell was identified as the Manager of Planning, Planning Services Department, Town of Oakville. His Curriculum Vitae (Exhibit 3) lists his related educational credentials and work experience.

Mr. McConnell referenced the Disclosure Book from O'Connor MacLeod and Hanna LLB (Exhibit 2) Tab 19: Town of Oakville Staff Report dated September 25, 2007, and Tab 21: Notice of Intention to Designate dated October 10, 2007.

Mr. McConnell stated that the property at 3015 Dundas Street West is located on the north side of Dundas Street West, west of Old Bronte Road. It is one removed from the corner by the gas station at the northwest corner of this intersection. The property consists of the main house and the garage. Mr. Clement Feierabend, Trustee for the Estate of Angus McKellar, applied for a demolition permit for the house and garage in late July and early August 2007.

In July 2007, a heritage review of the property consisting of site visits, a property title search, and literature search was undertaken. The final evaluation was based on the criteria in Regulation 9/06, namely, historical association, contextual heritage value, and architectural significance. As well, the property was evaluated against the Town of Oakville Heritage Register and Designation Assessment Checklist.

Mr. McConnell reviewed his Staff Report. Mr. Taylor confirmed that the report was signed by Mr. McConnell who was then Manager, Current Planning and Urban Design (North Oakville), and that the report was also signed by Mr. Peter Cheatley, then Director, Planning Services Department.

**Historical Association:**

Mr. McConnell gave evidence that the property was owned by Hagar family members, who are the founders of the village of Palermo. The Hagar property established a strong physical presence at the main intersection of Bronte Road and Dundas Street West. Lawrence Hagar built the first store in the community, adjacent to the family homestead at 2527 Dundas Street West. His son David built and operated two large hotels in the village.

The property at 3015 Dundas Street West was sold to Thomas Thompson, who subsequently built a hotel for a stagecoach stopping place on this site.

The Staff Report indicates that the property contributes to the understanding and development of Palermo, but has limited value due to its current "detachment" from the

current Palermo hub at the northeast segment of Dundas Street West and Bronte Road.

Contextual Value:

Although the property is highly visible, currently the property is incongruous with development along Dundas Street West, and has no contextual value in defining and maintaining the historical character of Palermo.

Architectural Significance:

Although the building on the property is a two-storey structure built around 1860, its architectural merit is not legible at this time as the building has been altered and is in poor condition. Mr. McConnell considers that there is no architectural value.

**Cross-examination of the Witness**

In answer to questions by Ms. Chandra, Mr. McConnell agreed that he has no experience in heritage planning and evaluation. He also agreed that the Town's Heritage Register and Designation Assessment Checklist uses numeric rankings for more specific analysis than the provincial criteria, and that the analysis in the Staff Report of September 25, 2007, includes these Heritage Checklist rankings.

Mr. McConnell also agreed that an earlier document was brought forward to the Heritage Oakville Committee with a similar recommendation to not designate, but the Committee thought that the site should be designated. It was identified that the Committee is comprised of interested citizens passionate about heritage conservation, with a wide and well-balanced perspective of experience and opinions.

All information was brought before Council, which decided to designate the property.

**Re-examination of the Witness**

Mr. Taylor reviewed with Mr. McConnell the facts pertaining to the Hagar property as described in the Notice of Intention to Designate, and distilled these into seven primary points:

1. Lawrence Hagar is considered the founder of Palermo
2. The Hagar family owned the property at 3015 Dundas St. West
3. Lawrence Hagar was well known; he owned a store at 2527 Dundas St. West
4. Mr. T. Thompson was the subsequent property owner
5. Mr. T. Thompson built a hotel in 1860 as a stagecoach stopping place
6. The house at 3015 is typical of a hotel on a stagecoach route
7. The Hagar house had a wraparound verandah

Mr. Taylor then indicated that the Municipality Document Book (Exhibit 5) contains no title reference to Thomas Thompson and indeed has no mention of him; that the Witness Statement of Michael Seaman, now Manager of Heritage Services for the Town of Oakville, states that the house was built in 1836 (page 3, Exhibit 4), was lived in by Lawrence Hagar, and is a Georgian-style dwelling.

Procedural Matter:

Mr. Taylor stated his opinion that the Municipality is obligated to prove what is in the Notice of Intention to Designate and should be tightly controlled to only that which is in the Notice as issued publicly. He asked the Review Board to limit the scope of the case to what is listed in the Notice.

The Review Board indicated that the Notice of Intention to Designate clearly states that any inquiries were to be directed to the Heritage Planner for the Town of Oakville, and that s.29(4) and (4.1) of the Act outline the requirements for the Notice. Ms. Chandra noted that the “spirit” of the Notice is to give an overview, but that every detail is not to be articulated in the public notice. Mr. Taylor noted that procedural fairness would require the issuance of a proper Notice and a commitment to reference its contents during the Board proceedings.

The Review Board answered that the municipality should be diligent in the preparation of the Notice, but that in an open and transparent hearing process there is flexibility to present evidence on cultural heritage value or interest which can expand or modify any information originally communicated. Therefore, the Board did not agree with Mr. Taylor that inaccuracies in the Notice of Intention to Designate represent a fundamental breach and an invalidation of process. As recommendations can be made to amend the language in the Notice as a result of the CRB hearing process, the Board agreed to continue the proceeding.

The Board also noted that the municipal council holds the ultimate power in the decision of a s.29 designation, and that Council has the option to take under advisement the various recommendations of staff, the municipal heritage committee, citizens, and the CRB in rendering this decision

## **CASE FOR THE TOWN OF OAKVILLE**

### **Witness – Michael Seaman**

#### **Mr. Seaman was sworn as an expert in Heritage Planning**

Mr. Seaman was identified as the Manager of Heritage Services for the Town of Oakville, a Registered Professional Land-use Planner, and a member of the Canadian Association of Heritage Professionals. His Curriculum Vitae (Exhibit 4, Appendix A) lists his related educational credentials and work experience.

Mr. Seaman did not use the Town of Oakville’s Heritage Register and Designation Assessment Checklist, but relied only on evidence pursuant to Ontario Regulation 9/06, as per the request of the Board. Based on a site visit in September 2008 and subsequent research, he believes the property meets more than one of the required criterion stipulated in the Regulation.

### **Design or Physical Value**

Mr. Seaman's evidence indicated that the structure known as the "Hagar House" located on the property is an early example of Georgian styling. It is a two-storey, frame dwelling with a three-bay, symmetrical plan and a side gable room. It has a front central doorway; wood window sashes and wood trim; a cornice with eave returns; a side gable roof; and historic wood cladding and wood trim beneath the vinyl cladding on the main house and on the rear addition. Mr. Seaman considers this a rare and unique structure as it is the only remaining Georgian house in the area.

Further, referring to Tab A of Exhibit 5, Mr. Seaman mentioned:

- The flooring and trim may or may not be original. These elements are not included in the designation but do help determine the age of the building
- The door is a later type, but the surrounds are early
- The presence of squared nails indicates a 19<sup>th</sup> century vintage
- Wood cladding consistent with a building of this age is being protected by the vinyl siding
- The returned eaves are an early feature
- Small upper windows have 2 over 2-panes type sash
- Looking at it from the northeast, this is a very square structure
- Looking at it from the north – the one storey, rectangular form and structure and its relation to the main house structure
- Looking at it from the west, it is a square structure
- Looking at it from the northwest, three original window openings form a symmetrical pattern
- Most of the original design elements still exist

During his testimony, Mr. Seaman was asked by the Review Board to only refer to photos in Tab A that referred to or helped describe the stated heritage attributes (exterior) applicable to the proposed designation.

The witness reiterated that it is a Georgian/Neo Classical style house with an evolving history. It is a solid piece of workmanship.

### **Historical or Associative Value**

Referring to Tab C of Exhibit 5, Mr. Seaman said that Palermo was a thriving centre at the juncture of two main roads. The Thompson Hotel was one of three main hotels in the area. There was a foundry and fourteen buildings there prior to 1925. The settlement patterns were those of a rural hamlet.

Referring to Tab J of Exhibit 5, he said the Lawrence Hagar (the first) is considered one of the founders of Palermo, having purchased the property (200 acres) in 1809. He married and lived in the community, became quite active in the local church, and had considerable local influence. He built the first store in the community in 1830, and in 1836 built a hotel. It was noted that Thompson did not own the property.

### **Contextual Value**

The dwelling on the property is on the north side of Dundas Street coming into Palermo from the West. It is an “urban” house, one lot removed from the corner of Dundas and Old Bronte Road. It is the only two-storey house on Dundas Street built in the Georgian style. Although there has been extensive development in the area, it is a reminder of Palermo Village.

### **Cross-examination of the Witness**

#### **Historical Value:**

Under cross-examination, Mr. Seaman noted that the garage is not part of the designation as outlined in Tab 6 of Exhibit 5, and thus he did not assess it in his report.

Utilizing Tab 7 and Tab 8 of Exhibit 2, Mr. Taylor had Mr. Seaman review the chain of Title for Part 1 and Part 2 of Lot 31, Concession 1, North Dundas Street. After extensive cross-examination, Mr. Seaman agreed that it appears that Thomas Thompson never owned the property known as 3015 Dundas Street West. The house at 3015 is not the inn built by Thomas Thompson. Part 2 of Lot 31 (1/8 acre) was sold in 1955 to Angus McKellar and in 1957, he purchased Part 1 of Lot 31, and the two parcels were re-merged into the present McKellar Estate. Tab 14 of Exhibit 2 shows that Thomas Thompson built the hotel on the corner property known as 3005 Dundas Street West, Part of Lot 31, Concession 1, S.D.S.

Drawing from comments in Appendix K, “The Hagers of David’s Lawrence” Tab 6-J of Exhibit 5, Mr. Taylor contended that this house did not belong to the original Lawrence Hagar, a well known preacher and settler. Exhibit 8 shows the original Hagar homestead which burned down in 1928, and a drawing at Tab 6-K of Exhibit 5 indicates that the house at 3015 was built by Jonathon Hagar who lived there with his brother William and niece Rachel Speers. Mr. Taylor concluded, therefore, the property does not fit the historical value component of s. 29 of the Act and the Notice of intention to Designate (Exhibit 1). Mr. Seaman had no response to this reasoning.

**Mr. Seaman requested a short recess during questioning.**

#### **Physical or Design Value:**

Mr. Seaman reviewed Tab 6-B, Exhibit 5, and admitted that the Georgian houses evidenced had no porches like the house pictured in Tab 6-C, Exhibit 5, (the “Hagar House, Palermo”), however, he reiterated that the subject house is in the Georgian style of architecture. The moldings are similar, the square shape of the house with its three original windows and symmetrical front, all point to Georgian style. After questioning about some of the missing elements, Mr. Seaman asserted that while some of the elements of the style are “vanished elements,” the house still retains the style.

#### **Contextual Value:**

Mr. Taylor referred to Tabs 25, 28, 30, and 31 of Exhibit 2 submitting that while not accepted as direct evidence in this case, he considers that the Town’s plan for dense

commercial development in this area negates the property and house being a reminder of the landscape of Palermo.

### **Re-examination of the Witness**

Ms. Chandra asked if Mr. Seaman still felt that the house was built prior to 1870. Mr. Seaman said yes. Ms. Chandra asked if he now thought that the property was owned by the Hagar family, albeit Jonathan not his father Lawrence, to which Mr. Seaman said yes. Ms. Chandra stated that although the Ontario Heritage Act requires that the property need meet only one criterion, this property still meets all three requirements. The owner was still a son of the founder of Palermo and the property is one of the last connections to the Hagar family (Historical Value), the architecture and materials form an early example of Georgian style (Design Value), and on entering Palermo along Dundas Street the house is on the edge of the old rural hamlet and a reminder of past agricultural land use (Contextual).

### **This concluded the case for the Town.**

***October 1, 2008 – Hearing reconvened at 9:00 a.m.***

### **Case for the Objector**

Mr. Taylor started his case by asserting that numerous facts presented by the Town are incorrect and that he would be calling witnesses to prove this, including:

- The gas station at the corner of Old Bronte Road and Dundas Street West is at the location of the hotel owned by Thomas Thompson.
- The Hagar homestead burned down in 1928.
- In 1871, Jonathan Hagar inherited the property from his father Lawrence.
- The house at 3015 Dundas was built as a private residence, not an inn.

### **Witness – Clement Feierabend**

**Mr. Feierabend was sworn as a witness.**

Mr. Feierabend is an accountant and confirmed that that he is the executor for the Estate of Angus McKellar. He was hired in 1997 to handle the estate, which involves three individuals and three charities, and to do so until all litigation is completed. It is his duty to realize the highest value for the estate and is held personally responsible for this undertaking.

Referring to Tabs 17 and 18, Exhibit 2, Mr. Taylor asked Mr. Feierabend to review the background and sequence of events pertaining to this case.

Mr. Feierabend reported that the last legal tenant (an elderly widow) inhabited the building in 2000 until she came under the guardianship of the Province and moved. She had not paid rent for some time and rarely responded to any of Mr. Feierabend's letters. In April 2007, the property was listed in the Heritage Register and he was not consulted about this. On July 24, 2007, he wrote to the Town of Oakville requesting permission to demolish and remove the garage on the property. He engaged a local contractor to complete a major cleanup of the property and secure the house. This was followed in August 2007 with a second letter asking for permission to demolish the house on the property. His contractor felt that there would be no problem in demolishing the house.

Referring to Tabs 20 and 21 of Exhibit 2, Mr. Feierabend confirmed that the Planning Services Department of the Town had recommended the removal of the property from the Town's Register of Properties of Cultural Heritage Value and Interest (which is outlined in their report of October 9, 2007). A conversation between his contractor and a Town staff member alluded to the Town's support that a demolition permit for the garage be issued. He understood that notwithstanding the staff recommendation, the Heritage Oakville Committee recommended that the property not be removed from the Register of Properties, and that the Notice of Intention to Designate be executed. This was subsequently carried at the Council meeting on October 9, 2007.

Mr. Taylor reviewed Tab 21, Exhibit 2, asking the Review Board to note seven aspects of the Notice of Intention to Designate:

- 1 The property was owned by the Hagar family
- 2 Lawrence Hagar was well known for his involvement with the church in Palermo
- 3 The subsequent property owner, Thomas Thompson, is believed to have built the structure in 1860
- 4 The house was used as a hotel and stagecoach stopping place
- 5 The house is typical of a hotel on a stagecoach route
- 6 Built in 1860, it has architectural features typical of the Georgian style
- 7 There was a corner wraparound verandah which no longer exists.

As Mr. Feierabend was not sworn as an expert witness, he could not address any of the cultural heritage value or interest issues arising from this list.

Ms. Chandra had no questions of this witness.

### **Witness – Ruth Victor**

**Ms. Victor was sworn as an expert in land-use planning with some experience in heritage matters (but not a heritage expert).**

Ms. Victor confirmed that she was retained by the Objector/Owner on September 8, 2008, and was able to do site visits on September 13 and 15, during which she took

photographs. It was acknowledged that she would only be speaking to the point of contextual value, as it relates to land-use planning.

Ms. Victor referred to Tab 25 and Tab 29 in Exhibit 2 regarding the land use pattern and the functional plan for transportation routes and facilities. She noted that all lands north of Dundas Street and south of Highway 407 have been amended to be deemed “urban.” She then proceeded to discuss the completed environmental assessment and approved infrastructure budget for a major road and transit expansion that affects the subject property. The Review Board Chair reiterated that the Board can only consider the property ‘as of today’ and cannot take into account any planning issues that speak to the future use of the property.

Mr. Taylor referred Ms. Victor to Tab 27 of Exhibit 2, which has a map plotting the cluster of listed heritage properties around the corner of Old Bronte Road and Dundas Street West. Ms. Victor noted that the subject house does not appear to be part of that cluster of houses. The gas station is a major disruption in the streetscape, forming a physical separation on the east, west, and south. The subject property is now orphaned by the new Dundas Street. The subject house has been altered, is separate and disconnected from Palermo.

Ms. Victor agreed with Mr. Taylor that a landmark for visual and physical transition into Palermo would be the church building. The subject property is at a busy intersection and does not create a functional transition as it would if it was at the corner of Old Bronte Road and Dundas Street West. Referring to Tab 8 of Exhibit 5, Ms. Victor gave the opinion that the subject property did not fit the Provincial Policy Statement Section 2.6:Cultural Heritage and Archaeology Resources definition of a *significant* built heritage resource.

### **Cross-examination of the Witness**

Ms. Chandra asked Ms. Victor to read Section 2.6.1 of the Provincial Policy Statement she noted in her testimony. Ms. Victor read this section out loud, but Ms. Chandra did not have any further questions or follow-up of this request for Ms. Victor.

### **Witness – Christopher Shepherd**

**Mr. Shepherd was sworn as an expert on architectural design and heritage design.**

Mr. Shepherd’s Curriculum Vitae is at Tab 31, Page 19, Exhibit 2. He was retained by the Objector/Owner in March 2007.

In answer to Mr. Taylor’s enquiry, Mr. Shepherd confirmed that he had made a site visit. He indicated that this was the first time that his testimony would be in opposition to a designation. It was his opinion that there was an error in the Notice of Intention to Designate.

Referring to Tab 31 of Exhibit 2, and Exhibit 7 and 8, Mr. Shepherd noted that the homestead of the founder of Palermo, Lawrence Hagar, was constructed prior to 1827 and subsequently burned down in 1928. The house at 3015 Dundas Street West, sometimes referred to as Addison Hager's house, is likely the two-storey, three-fireplace house shown on the 1848 tax assessment list, although in the name of Lawrence Hagar. He felt that reference to the building as an inn or stagecoach stop does not seem supported by the documentation or by the physical form, which is typical of single-family residential use. The hotel built by Thompson and listed as Concession 1, North Dundas Street, Lot 31, ¾ acre, was the northwest corner of Old Bronte Road and Dundas Street West, currently the abandoned gas station next door to the subject property. Referring to Exhibit 7, the excerpt from the Anson Buck papers, he noted that the building west of the hotel was a "new house built by Jonathan Hager" and the building west of that one was "the large frame house built by 'Low Hager...". To Mr. Shepherd, this made it clear that 3015 Dundas West was not a hotel or the stagecoach stop.

After extensive questioning by Mr. Taylor about Exhibit 9 and a review of Tab 8 of Exhibit 2, Mr. Shepherd confirmed his opinion that the subject Hagar House is the one built by Jonathan Hagar upon inheriting the land from his father in 1871. The earliest it could have been built was in January 1867, after Jonathan returned from Australia. Lawrence Hagar did not "live in this house for decades".

Mr. Shepherd compared the images entered as Exhibit 6, 8, and 12 indicating that the subject house was not the hotel/inn as put forward by the Town. It is his opinion that a majority of the material presented by the Town is incorrect and lacks credibility.

Mr. Shepherd summarized his opinion under the structure of Regulation 9/06.

#### **Design or Physical Value**

Mr. Shepherd's report contends that "there are no character-defining attributes remaining." The dwelling on the property is not unique or rare. It has no craftsmanship, and no high degree of technical achievement.

Referring to Mr. Seaman's comment about "vanished elements" of some heritage houses, Mr. Taylor listed the following as "vanished elements":

- Original door
- Shutters
- Original window sashes
- The front porch
- The "extra" room
- Masonry chimneys
- The rear porch
- Vinyl siding covering horizontal wood siding (trapped water may be damaging wood clapboard)
- No main hall
- No main staircase

- The grade of the first floor vs. the image of the elevated front porch

The house is a Hagar family associated structure with Georgian style influences, the kind of design commonly used for many years. With its porch, fretwork or “gingerbread” trim (applied decoration of late 1800s), squared nails (used until the late 1900s), and the lack of a main central hall and equal rooms, this house is an ordinary frame farmhouse. Mr. Shepherd noted that symmetry is very common and has been used since the first log cabins right up to current subdivision houses. He also noted that reconstructing an element is not heritage, but restoring it is. In this case, he feels that too many elements are gone.

#### **Historical or Associative Value**

Mr. Shepherd contends that the property tells nothing about the community or its culture. There is no significant or direct association to Palermo since the owner of the house, Jonathan Hagar, spent the majority of his life outside of the community. While he was a colourful storyteller, his stories do not bear on the heritage of the property. There is insufficient association between John Lawrence Hagar, Senior, the founder of Palermo, and the subject house occupied by other family members, to warrant heritage merit.

#### **Contextual Value**

Mr. Shepherd reported that “the contextual value has been greatly diminished due to two factors: the development of the adjoining lands into multilane roadways, and gasoline retailing, strip malls, and subdivision housing to the south.” Upon further questioning, he reiterated that Old Palermo is east of Old Bronte Road, while this property is west of it, surrounded by elements not of historical interest and not part of Old Palermo. There is no connection of the house to Old Palermo since this effectively is sitting in a triangle separated from the other Old Palermo houses and as such it does not support the character of the village and does not maintain any sense of a rural history. It is not a landmark, a prominent property, nor a distinctive building.

Mr. Shepherd’s final remark was: “This house does not meet any of the criteria of Regulation 9/06 nor the spirit of the Act, and there is a danger in loss of public support for heritage preservation if these places are designated with no merit.”

#### **Cross-examination of the Witness**

Ms. Chandra questioned Mr. Shepherd on the date that the house was built. Referring to Tab L of Exhibit 5, Mr. Shepherd said that the assessment records of 1848 indicate that there was a house with three additional fireplaces, but he did not believe that this is recording the original Lawrence Hagar, Senior, house. It would have value to the Hagar family since they owned the land, but they had houses at other locations also and this one had no significant value. When questioned on it being an inn, Mr. Shepherd said that there is no evidence in the tax assessments that it was an inn. Two bachelors lived there and they were not identified as innkeepers.

## **This concluded the case for the Objector.**

### **Members of the Public**

Although Margaret Betty and Dick McIlroy had indicated interest in making a statement, neither attended the second day of the hearing. Michelle Knoll asked to make a presentation and requested ample time to disclose facts and information pertinent to the case. The Board noted that this was not permissible as a member of the public, but that she could use up to ten minutes to make a statement.

### **Ms. Michelle Knoll was sworn as a witness.**

Ms. Knoll identified herself as a member of Heritage Oakville. She reviewed the process whereby five members of Heritage Oakville unanimously voted to ask Council to designate this property. She presented several documents and said that she has concluded that the house belonged to Jonathan Hagar and is built on Lawrence Hagar's land. During Jonathan's time in the house, it was considered a "museum" since he brought back many specimens from his travels, particularly from Australia. There were always people there. She also said that it had the last "spring house." referring to the natural spring water well housed in the back lean-to, attached to the main house.

As this member of the public continued to convey very important and pertinent information, the Board questioned Ms. Chandra as to why Ms. Knoll was not called as a witness for the Town. Ms. Chandra's response was that it was a "policy" decision and that she could not discuss it publicly. Ms. Knoll said that members of Heritage Oakville were not included in the CRB process, their information was not included in the Town's case, and they were not allowed to go onto the subject property. Ms. Chandra intimated that she was simply following directives from Council in presenting this case.

When Ms. Knoll exceeded her allotted ten minutes, she was asked to cease her presentation.

### **Summation of the Case for the Objector**

Mr. Taylor presented his summation and referenced the inaccuracies of the Notice of Intention to Designate. He submitted the 185 Beta Street, Toronto, CRB Hearing Report to the Review Board and highlighted part of the Recommendation in that case which speaks to the issue of inaccuracies in a Notice of Intention to Designate. Specifically, Mr. Taylor outlined the Board's past practice of questioning the validity of a proposed designation bylaw where evidence and argument are unsubstantiated and thus misleading. Since the Notice from the Town Oakville is considered by him to be inaccurate, Mr. Taylor suggested that the Board take this into consideration. He

asserted that the Town failed to prove the three critical statements in the Notice and therefore failed to meet its obligation.

Recalling the evidence of Ms. Victor, Mr. Shepherd, and Mr. Seaman, and referring to Exhibit 2, Tab 6K, Tab 8, Tab 21 and other evidence, Mr. Taylor pointed out:

- The house was not built in 1836
- The house was built after 1867 when Jonathan Hagar returned home from his travels
- The chain of title for the property shows that Thomas Thompson was never an owner
- Mr. Seaman admitted it is not the inn owned by Thomas Thompson
- Lawrence Hagar, Senior, founder of the village of Palermo did not live in this house for “several decades”
- Surrounded by Dundas Street, a vacant lot on the west, and new development plans, there is a definite disconnect to the historic Palermo
- It is not a true Georgian style house (there is evidence of later “gingerbread” trim)
- The house was not built by a craftsman
- The house is not rare or unique
- The historical and associative links are not direct to Lawrence Hagar, Senior
- For the first time ever, Mr. Shepherd is arguing against designation

Mr. Taylor considers there is overwhelming evidence that the property does not meet the criteria of Regulation 9/06 and suggests that the designation proposal be terminated.

### **Summation of the Case for the Town**

Ms. Chandra admitted that there are flaws in the wording of the Notice of Intention to Designate, but contends that the property still meets the criteria of Regulation 9/06 and thus is worthy of designation.

### **Design or Physical**

- Early Georgian style, according to Mr. Seaman (an expert)
- Built earlier than 1870
- Verandah could have been added later
- Has symmetrical features of windows, door placement, eave returns
- Has wood trims and wood cladding

### **Historical or Associative**

- A very long history of ownership by the Hagar family
- Sufficient connection to founders of Palermo no matter whose house it was
- The Hagars did build and own an inn *circa* 1836 (no location given)
- This house was likely a stagecoach stopping place

### **Contextual**

- It is the last reminder of the historic village of Palermo at this corner

Overall, Mr. Seaman's evidence meets at least one criterion of Regulation 9/06.

**The hearing ended at 2:00 p.m.**

## **Findings of the Board**

### **Identification of Issues**

#### **1. Town of Oakville Heritage Policies and Practices**

It was noted that the owner was not consulted by the Town when the property was placed on the Register. Additionally, it was asserted that a staff report that did not support designation should have been weighed more heavily by Council.

Neither of these situations is considered by the Review Board to have relevance to its proceedings in the determination of cultural heritage value or interest in this property. Additionally, while the Town of Oakville has their own process of assessing cultural heritage value or interest, which includes a numerical ranking system, it was disclosed early in the proceeding that evidence around that ranking system would not be accepted by the Board. Instead, all evidence and argument would have to speak directly to the criteria areas found in Ontario Regulation 9/06.

#### **2. Physical Condition**

Regulation 9/06 does not consider physical condition *per se* as a criterion. The Board does accept that, in some instances, physical condition may be directly relevant to the historic integrity of a heritage attribute, and therefore the cultural heritage value or interest of the property. This situation was raised in discussion around the "vanished elements" of the design or physical value of the house, as well as the assertion that restoring an element is heritage preservation, while reconstructing is not necessarily so.

#### **3. Design or Physical Value**

The Town's case noted that the "Hagar House" is an early example of a Georgian style dwelling. It is a two-storey, frame house with a three-bay symmetrical plan and a side gable room. It has a front central doorway; wood window sashes and wood trim; cornice with eave returns; a side gable roof; and historic wood cladding and wood trim beneath the vinyl cladding on the main house and on the rear addition. Their witness, Mr. Seaman, considers it rare and unique as it is the only remaining Georgian style house in the area.

Under cross-examination, Mr. Seaman reviewed Tab 6-B, Exhibit 5, and admitted that the Georgian houses evidenced had no porches like the house pictured in Tab 6-C, Exhibit 5, – the “Hagar House, Palermo,” however reiterated that the subject house is in the Georgian style. The moldings are similar, the square shape of the house with its three original windows and symmetrical front, all are in keeping with Georgian style architecture. After questioning about some of the missing elements, he felt that while some of the original components are “vanished elements,” the house still retains the style.

The Objector’s heritage witness, Mr. Shepherd, contended that “there are no character-defining attributes remaining” on the property. The house is not unique or rare. It has no craftsmanship and no high degree of technical achievement. Referring to Mr. Seaman’s comment about “vanished elements” of some heritage buildings, Mr. Taylor listed those of the subject property as the original door, shutters, original windows, front porch, “extra” room, masonry chimneys, rear porch, vinyl siding covering horizontal wood siding,, no main hall, no main staircase, and the grade of the first floor compared with the picture of the elevated front porch. When viewed against any remaining design elements, it becomes clear that much of any design or physical value has been diluted.

The house reflects Georgian influences, but these are of the kind commonly used for many years. With its porch, fretwork (applied decorative “gingerbread” trim, squared nails (used until the late 1900s), and the lack of a main central hall and equal rooms, this house is an ordinary frame farmhouse. Mr. Shepherd is of the opinion that too many original elements are gone.

The Objector’s case supports the notion that the property does not meet the three sub-criteria listed, in that it does not seem to be rare, nor display a high degree of craftsmanship, or technical achievement. The Town did not convey valid arguments or well researched perspective to refute the Objector’s claim that this property does not have design or physical value.

## **5. Historical or Associative Value**

The Town’s primary case for designation is based on the strong historical association of this property with the founding and development of the community of Palermo. The Notice of Intention to Designate also notes the prominence of Thomas Thompson as a property owner and its use as a hotel/inn and stagecoach stopping place. Mr. Seaman noted that his research confirmed that Thomas Thompson never owned the property and thus wanted to amend this inaccuracy in the Notice. Instead, his research focused on the prominence of property owner Lawrence Hagar, who was very involved in the local church and is one of the founders of the village of Palermo.

The Objector’s case very methodically and convincingly outlined the chain of ownership to reveal that it seems that the subject property did not belong to Lawrence Hagar, but rather to his son Jonathan Hagar. Records presented clearly outlined that Thomas Thompson built a hotel on a corner property known as 3005 Dundas Street

West. The presentation of Exhibit 8 showed the original Hagar homestead, which burned down in 1928, and a drawing (Tab 6-K of Exhibit 5) indicates the house at 3015 was built for Jonathon Hagar who lived there with his brother William and niece Rachel Speers. A historical perspective was also conveyed which characterized Jonathan Hagar as a world traveler who spent very little time in the community of Palermo. While argument was raised that the property and house are historically significant because Jonathan would tell stories of his world travels to members of the community, this does not seem to speak to the understanding of the historical or associative value criterion in Ontario Regulation 9/06.

In the opinion of the Review Board, the Town failed to provide any realistic argument in defense or contrary to the systematic unraveling of their historical or associative value position by the Objector. Given the evidence and perspective presented by both Parties, the Board does not find any compelling evidence to deem that this property holds significant historical or associative value under Regulation 9/06.

## **6. Contextual Value**

The Notice of Intention to Designate does not seem to convey any significance in this property using the contextual value criterion of Regulation 9/06. At the hearing, the Town outlined that this property is very significant in that the house helped announce to people traveling from the west that they were entering the old village of Palermo. It is the only two-storey house of Georgian style influence remaining. Mr. Seaman said that the village was more than just the four corners of the historic intersection and that this property is still significant, although now removed from the immediate clustering of other heritage properties.

Ms. Victor presented a map looking at the cluster of listed heritage properties around the corner of Old Bronte Road and Dundas Street West, and displayed how the subject property is not part of this cluster. She also noted how the major development of both roads has diluted any contextual value of the subject property.

Mr. Shepherd reported that “the contextual value has been greatly diminished due to two factors: the development of the adjoining lands into multi-lane roadways, and gasoline retailing, strip malls, and subdivision housing to the south.” Old Palermo is east of Old Bronte Road, while this property is west of it and now surrounded by elements not of historical interest and not part of Palermo. The connection to Old Palermo has been lost and, since it effectively is sitting in a triangle separated from the other old Palermo houses, the property no longer supports the character of the village and does not maintain any sense of a rural history.

Supporting this, Ms. Victor noted that the subject property is at a busy intersection and does not create a functional transition from new development to Old Palermo, as it would if it was at the corner of Old Bronte Road and Dundas Street West. On the issue of being a landmark, Mr. Shepherd noted that this property does not seem to represent a landmark, as defined under Regulation 9/06.

When applying the contextual value criterion from Regulation 9/06, it seems very unrealistic that this property could be seen as holding cultural heritage value. The Town's decision to place a major intersection within feet of the property, as well as the subdivision and strip mall development located across the street, clearly dilutes any contextual value that this property would have once held.

## **Discussion**

As has been articulated in numerous proceedings before the Review Board, the municipality has the onus of showing diligence in ensuring that the reasons given to protect a property under the Ontario Heritage Act are as researched and accurate as possible.

While historical research is by no means a conclusive undertaking, diligence and effort must be taken to ensure accountability is demonstrated in this public process.

Through the evidence and arguments provided, the Board considers much of the content of this Notice of Intention to Designate to be either unsubstantiated or simply inaccurate. This appears to be a situation where historical analysis has somehow confused multiple properties, owners, and their related historical facts. These should have been more carefully addressed and corrected before attending the formal Review Board hearing.

In all, it is the opinion of the Review Board that the Town's failure to present compelling evidence and not employ evidence that a member of the public has in their possession; combined with the lack of diligence in compiling the merits justifying designation of this property, makes the validity of the proposed bylaw questionable.

In reference to Regulation 9/06, the Board is of the opinion that this property does not meet the requirements for design or physical value, historical or associative value, or contextual value. While the property referenced in the Notice of Intention to Designate does seem to represent value under these criteria, it seems that no such property actually exists. The property depicted is rather a confusion of historical facts relating to two different properties and histories.

## **Board Recommendation**

Based on the evidence heard, the Review Board has concluded that the proposed Statement of Cultural Heritage Value and Description of Heritage Attributes for the subject property is fundamentally flawed and thus lacks credibility. For this reason, the Board recommends that the Council of the Town of Oakville not proceed with the protection of the property known as 3015 Dundas Street West (McKellar Estate) under s.29 of the Ontario Heritage Act, R.S.O. 1990, c.O.18, as amended 2006.

Whatever the decided course of action, it must be clear that the majority of reasons

justifying designation are flawed in that they actually or may pertain to another property, not the subject property.

The Board recognizes that the final decision in this matter rests with the Council of the Town of Oakville.

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

(ORIGINALLY SIGNED BY)

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Peter A.P. Zakarow, Chair  
December 19, 2008

(ORIGINALLY SIGNED BY)

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Karen Haslam, Member  
December 19, 2008

## **Schedule 1**

### **Exhibits List**

Exhibit 1: Affidavit of Notice of Hearing, submitted by the Board

Exhibit 2: Estate of Angus McKellar Document Book, submitted by the Objector

Exhibit 3: Curriculum Vitae of Charles McConnell, submitted by the Objector

Exhibit 4: Expert Witness Statement of Michael Seaman, submitted by the Town

Exhibit 5: Town of Oakville Document Book, submitted by the Town

Exhibit 6: Photo of the Thompson Inn (Halinet website - Oakville Images), submitted by the Objector

Exhibit 7: Excerpt from the Anson Buck Papers, submitted by the Objector

Exhibit 8: Photo of the Lawrence Hagar homestead (Trafalgar Township Historical Society), submitted by the Objector

Exhibit 9: Will of Lawrence Hagar, submitted by the Objector

Exhibit 10: Will of Jonathan Hagar, submitted by the Objector

Exhibit 11: Curriculum Vitae of Ruth Victor, submitted by Objector

Exhibit 12: Photo of Subject Property (Trafalgar Township Historical Society), submitted by the Objector