

**Conservation Review
Board**

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CONSERVATION REVIEW BOARD

CRB 2006-07

**RE: THE CORPORATION OF THE CITY OF BURLINGTON – INTENTION TO
DESIGNATE THE PROPERTY KNOWN AS 3083 LAKESHORE ROAD
(SEATON HOUSE), IN THE CITY OF BURLINGTON, ONTARIO**

**Stuart Henderson, Chair
Stuart Kidd, Member**

16 April 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"). The purpose of the hearing is to report to the Council of the City of Burlington, Ontario ("City"), whether, in the opinion of the Conservation Review Board, on the basis of the evidence it heard, the property known as 3083 Lakeshore Road (Seaton House), should be protected by bylaw under s.29 of the Act.

The current legal description of the property is Part Lots 19, 20 & 21, PL 136, as in 373822 (PIN 07043-0085), and the current owners are Aurel Pauser and Olga Pauser. This property contains a c.1910-1912, Arts and Crafts style dwelling, and associated grounds.

Notice of this hearing was given by the Board, in the manner required under the Act, in the *Burlington Post* on 26 September 2007. An affidavit by a member of the Board's staff with respect to this notice was filed as Exhibit 1.

Counsel in Order of Appearance

Mr. Brian Duxbury, solicitor for the City of Burlington

Witnesses In Order of Appearance

Mr. Daniel R. Chalykoff, Heritage Consultant, on behalf of the City of Burlington

Also in Attendance

Ms. Alana Mullaly, Planner, on behalf of the City of Burlington

Members of the Public in Order of Appearance

None

Mr. Gregory Dell introduced himself as an agent on behalf of Mr. Bruce Johnson, who held an accepted Offer to Purchase the property. The Board advised Mr. Dell that, while he could attend the proceedings and make a statement as a member of the public, he could not be a Party or

Participant with rights to present evidence or cross-examine witnesses. Mr. Dell accepted the Board's direction.

There was no appearance or written submissions by Mr. Aurel Pauser as the Objector and owner; Merk Mortgages Inc. as mortgagee and owner; nor their appointed representatives.

Background

The Board held two pre-hearings on this matter, 6 December 2006, and 30 January 2007. There was no agreed statement of fact as a result of these pre-hearings.

The first hearing on this matter was held on 11 October 2007, at which Mr. Aurel Pauser, as the objector/owner who had lost possession due to a Power of Sale proceeding, was in attendance. Mr. Michael Figol, solicitor representing the mortgagee, Merk Mortgages Inc., was also in attendance. Mr. Figol explained to the Board that he had only been retained the day before the hearing. Accordingly, he sought an adjournment to allow sufficient time to evaluate and represent his client's position on the proposed designation. The outcome was an adjournment to 6 February 2008, making the hearing on this date a continuance of that 11 October 2007 proceeding.

Case for the City of Burlington

Mr. Duxbury tabled and the Board accepted an Affidavit of Service for Appeal by the owner provided to City Council members as Exhibit 2, a Certificate of Ownership of the property as Exhibit 3, Witness Outlines of the City of Burlington as Exhibit 4, and the City's Document Book as Exhibit 5.

Witness – Daniel R. Chalykoff

Based on his Curriculum Vitae in Exhibit 4, the Board permitted Mr. Chalykoff to be sworn as an expert witness in heritage property matters.

Mr. Chalykoff indicated that he had been retained on 31 March 2006 to provide the City with advice and written reports on the cultural heritage value of the subject property relative to its proposed designation under s.29 of the Act. The City placed no limitations on the scope of Mr. Chalykoff's investigations.

Mr. Chalykoff referred the Board to Exhibit 5, tab 1, page 3, which indicated his summary recommendation from his Heritage Impact Statement dated 18 April 2006. It recommended that 3083 Lakeshore Road (the subject property), and the stone wall across Lakeshore Road opposite the subject property be designated under Part 4 (now s.29) of the Act and that all possible measures be employed to prevent demolition of the 1910-1912 house on the subject property, and the wall. He noted that the stone wall referenced in the document is not part of this hearing.

Mr. Chalykoff indicated that he originally had no access to the property when preparing the Heritage Impact Statement. He noted that he has been on site three times since then and in the house twice. He indicated that his favourable opinion of the cultural heritage value of this property had only increased since writing his report.

The Witness indicated how the house had been designed for Mr. Flatt, a prominent businessperson including property development by 1905. Mr. Flatt had been a lumber exporter with some 3,000 men working for him at the peak of his business activities. He became a land developer as a pastime, however his development activities in Burlington and Hamilton were extensive. The house was most certainly designed by the architect William Walsh, Mr. Flatt's nephew. Mr. Flatt had built many of the houses in the area. Mr. Chalykoff stated that it expressed the same architectural style as the large Lakehurst Villa that had existed at the

shoreline immediately across Lakeshore Road from the subject property. Lakehurst Villa was the original house in the area, having been built about 1910 as Flatt's own home. The stone wall still in that location was part of the Villa property. The subject house, which was built of the same stone as the Villa, expressed the spirit of the time. It is a true example of Arts & Crafts styling with its underlying philosophy of connecting urban man with nature. Mr. Chalykoff typified this architectural style as one representing people's desire to get away from industrialized cities and back to nature. He advised that the Pine Cove Survey exemplified this desire and trend to have a less rigid style of housing on a property that allowed natural vegetation and a garden.

Mr. Chalykoff portrayed the construction of this house and those in the area in the context of a time when this cottage type development along Lake Ontario had been accessed by Lakeshore Road. At that date, the road was being paved and would significantly better serve that area. He then indicated how the subject house was intimately related to the other older Arts & Crafts style houses in the area. This includes the house at 3077 Lakeshore Road immediately west of the subject property. It was also developed by Flatt, and is a designated heritage property. These were apparently the original buildings in this area.

The house at 3057 Lakeshore Road was noted to be the most westerly of the three similar style houses on the same side of the street. The City's heritage property inventory indicates how such cottages were planned to provide small gardens on their properties. The subject house was indicated to have the same large side yard as others of similar vintage.

Regarding the architecture, the Arts & Crafts movement was noted by Mr. Chalykoff to be a reaction to the industrial revolution taking place in larger cities. This type of housing design and lifestyle provided a getaway from the intensity of city life. The Witness indicated that there were seven points of architectural consideration represented by this house:

1. Sacrifice: striving for excellence in design included financial sacrifice to design and build all of the articulated surfaces obvious on the exterior of the house with the bay windows, perimeter walls, gables and complex rooflines.
2. Truth: was evident in the honest use of alternative, good and solid building materials.
3. Power: simple strong forms obvious in the roof with many dormers and roof planes.
4. Nature inspired: cobblestone, obvious in the perimeter exterior walls, was from the area Fisher Farm and was built using local stonemasons.
5. Light craftsmanship: evident in the detail including the coursed cedar shingles and banding evident in the gables.
6. Memory: the building is approximately 95 years old and has a very solid foundation being some 14 inches thick made of concrete poured into a preformed board foundation. The Witness indicated that the floors in the building were also very solid and in excellent condition both structurally and in the surface materials.
7. Asymmetry: the building was described as Romanesque.

Mr. Chalykoff indicated that the proposed designation of this house complied with all local heritage evaluation criteria, Regulation 9/06 of the Act, and the Venice Charter.

Mr. Chalykoff indicated that Mr. Pauser had allowed him access to inspect and photograph the exterior and interior of the house approximately a year ago. He indicated that he was overwhelmingly relieved that the interior reflected the condition and features evident on the exterior of the house. He referred the Board to his Field Review Report #1 dated 19 December 2007 under Exhibit 5, tab 12 in this regard. He then referred the Board to Exhibit 5, tab 13, being a later field review report that included more photographs of the exterior and interior of the house. The Witness drew the Board's attention to page 6 showing photographs of "sophisticated" detailing, hardware, and heavy door thicknesses used in the interior.

Mr. Chalykoff referred the Board to tab 14, being a field review report dated 21 December 2007. He compared the subject house to that on the neighbouring property at 3077 Lakeshore Road, which had been designated in 1995. He suggested that the two houses were comparable but that the subject house is a better example of the Arts & Crafts style.

The Board was then referred to tab 15, being a biography of the prominent local architect William James Walsh. He was stated to be known for having had a large impact on the history and built form of the area, as detailed in Exhibit 5, tab 15. He was the architect for the subject building while at the firm of a Stuart & Witten. It is speculated that 3083 Lakeshore Road was built as a model show house.

Regarding its' design or physical value, Mr. Chalykoff indicated that the house was an excellent example of Edwardian period Arts & Crafts styling with a close proximity and more personal relationship between the house and the sidewalk, as noted in Exhibit 5, tab 1, page 20. The style of house with the front porch facing the street was designed to give the impression of a desire to know your neighbours. The siting of the building with the open east side yard was suggested to have been for the provision of a garden area that had been divided into smaller parcels. This was a popular feature associated with Arts & Crafts houses as it provided for vegetable gardens.

Regarding the historical or associative value, Mr. Chalykoff referred to Mr. Flatt as a prominent figure in commerce in Burlington as well as in the development of garden cities movement, as noted in Exhibit 5, tab 1, page 7, in the area. It also has value as an example of the work of the prominent area architect, William J. Walsh.

Mr. Chalykoff suggested the contextual value of this property included it being one of the first four buildings built on the Pine Cove Survey, which was an expression of the Arts & Crafts movement, as well as its direct association with Lakehurst Villa.

The Witness indicated that the entire property should be designated as the surroundings of a yard and garden have a direct relationship to the house and are of importance.

Mr. Chalykoff noted that some trees damaged by a storm in January 2008 had been removed by the owner. He also shared his observations and concerns regarding insufficient heating of the house. He referred to photographs in Exhibit 5 showing where a hot water heating pipe had been cut, perhaps after the commencement of the hearing. Given these alterations and the poor response to requests to inspect the interior the house, he indicated that the owner and mortgagee were in default of the conditions of the individual undertakings of the owner and of the mortgagee, both of which were dated 11 October 2007. Each of the undertakings committed separately to consult with the City and provide access prior to any contemplated work at the subject property, to provide adequate heat to maintain the house, to allow inspections by the City from time to time and to not make any applications for the buildings or property pending the outcome of the hearing.

Case for the Objector

None were in attendance.

Summation of the Case for the City

Mr. Duxbury summarized that the three evaluation categories of Design or Physical, Historical or Associative, and Contextual in Regulation 9/06 are reflected in the subject property. He noted how the dwelling is one of the original core buildings of the Pine Cove Survey.

Mr. Duxbury then brought the Board's attention back to the issue involving the Rules of Procedure and the potential for contempt charges relative to the undertakings signed by the owner and the mortgagee. He noted how both parties had stated their intention to attend this

hearing and that they were not present. He added that they both undertook to properly maintain the property and consult with the City before any work was done, such as removal of the trees or the alleged cutting of the hot water heating pipe, if that was done during the interim period between the 11 October 2007 hearing and now. He added they were not forthright in responding to requests by the City to inspect the property, and for not providing sufficient heat within the house. In this regard, Mr. Duxbury tabled a Field Review Report # 3 dated 18 December 2007 from Mr. Chalykoff summarizing his observations during an inspection of the property. It contends a lack of attention to the maintenance and repair needs of the house. The Board accepted this document as Exhibit 7.

Mr. Duxbury contends that the undertakings had been breached in the worst way. He therefore posed a question to the Board of whether a cause for contempt arose under the provisions of the Statutory Powers Procedures Act that warranted referral to Divisional Court. He asked that the Board keep this file open while the City considered pursuit of legal action at Divisional Court on the issue of contempt by Mr. Pauser and/or Merk Mortgages Inc.

The Chair asked Mr. Dell if he had any observations about the proceedings, to which he expressed his concern about the designation of the subject property. The Board encouraged him to discuss the issue with the City after the hearing.

Findings of the Board

Based on the evidence heard, the Board finds the design or physical, historical or associative, and contextual values or interests prescribed in Regulation 9/06 of the Act to be well manifested in this property, including the buildings, structures, and associated grounds.

The Board recommends that Council proceed with the protection of the property known as 3083 Lakeshore Road (Seaton House), in Burlington, as a property of cultural heritage value or interest under s.29 of the Ontario Heritage Act.

Consideration of the Contempt Issue

The Board has considered the City of Burlington's submissions regarding the potential issue of contempt by the objector and the mortgagee, as a consequence of these parties allegedly failing to fulfill their respective undertakings dated 11 October 2007 given by them to the City regarding the obligation to heat the premises, allowing inspection of the property as necessary, and other related issues.

In sum, the Board considers that it is not appropriate in this situation to state a case for contempt. The City may have other avenues of recourse regarding this issue of contempt, if it considers the matter of contempt to have sufficient merit. The Board does not have adequate evidence before it to consider the making of a case for contempt in this situation.

(original signed by):

Stuart Henderson, Chair

(original signed by):

Stuart Kidd, Member

Schedule 1

Exhibits List

- Exhibit # 1: Affidavit of Notice of Hearing in the Burlington Post newspaper on 26 September 2007, as required under Ontario Heritage Act, 3 pages, tabled by the Board.
- Exhibit # 2: Letter dated 4 February 2008 from Jennifer Shaw, Committee Clerk, City of Burlington with attached Affidavit of Service for Appeal by Aurel Pauser provided to City Council members, 11 pages, tabled by Mr. Duxbury.
- Exhibit # 3: Certificate of title abstract from Land Registry Office # 20 dated 28 January 2008 at 13:55, 3 pages, tabled by Mr. Duxbury.
- Exhibit # 4: "Witness Outlines of the City of Burlington" giving statement summaries and CVs of Daniel R. Chalykoff and Alana Mullaly, index and 4 tabs, tabled by Mr. Duxbury.
- Exhibit # 5: "Document Book of the City of Burlington", index and 16 tabs, tabled by Mr. Duxbury.
- Exhibit # 6: List of Display Boards of 12 panels of photographs and sketches relevant to the subject property, dated 6 February 2008, with email of the same date, 2 pages sent after the hearing from Alana Mullaly.
- Exhibit # 7: "Field Review Report # 3" dated 18 October 2007 by D. R. Chalykoff detailing observations from a site inspection of the subject property, 10 pages, tabled by Mr. Duxbury.

Schedule 2

ONTARIO HERITAGE ACT

REGULATION 9/06

No Amendments

CRITERIA FOR DETERMINING CULTURAL HERITAGE VALUE OR INTEREST

Criteria

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

(2) A property may be designated under section 29 of the Act if it meets one or more of the following criteria for determining whether it is of cultural heritage value or interest:

1. The property has design value or physical value because it,
 - i. is a rare, unique, representative or early example of a style, type, expression, material or construction method,
 - ii. displays a high degree of craftsmanship or artistic merit, or
 - iii. demonstrates a high degree of technical or scientific achievement.

2. The property has historical value or associative value because it,
 - i. has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community,
 - ii. yields, or has the potential to yield, information that contributes to an understanding of a community or culture, or
 - iii. demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.

3. The property has contextual value because it,
 - i. is important in defining, maintaining or supporting the character of an area,
 - ii. is physically, functionally, visually or historically linked to its surroundings, or
 - iii. is a landmark. O. Reg. 9/06, s. 1 (2).

Transition

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