

**Conservation  
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REPORT OF THE HEARING OF THE CONSERVATION REVIEW BOARD IN  
RESPECT OF THE APPLICATION TO REVOKE THE DESIGNATION OF THE  
AND AND PREMISES KNOWN AS PART OF MILL SITE NO. 3 AND LOTS  
21, 22, 23 AND 24 SOUTH SIDE OF CAMPBELL STREET, TOWNPLOT OF  
SHEGUIANDAH IN THE TOWNSHIP OF HOWLAND IN THE DISTRICT OF  
MANITOULIN

Introduction

A hearing was held pursuant to Section 55(6) of the Ontario Heritage Act R.S.O. 1990, Chapter 0.18 in the Senior Citizens' Hall in Sheguiandah in the Township of Howland on November 4, 1993. Mr. Robert Bowes, Chair, and Ms. Heather Broadbent, Vice-Chair, of the Conservation Review Board, presided. Prior to the hearing the Board visited the property. The Board tabled an affidavit certifying that Notice of the Hearing was given in the Manitoulin Expositor on October 6, 13 and 20, 1993 (Exhibit #1).

At the outset of the hearing, the applicant, Ms. Joanne Wade-Eagleson, owner of the property in question and resident on the property, asked that the hearing be adjourned on the grounds that she needed more time to digest the contents of the Exhibit Book which the Ministry of Culture, Tourism and Recreation had prepared for the hearing and which she had only recently received. Ms. Becky Thorson, Counsel for the Ministry, opposed the request for adjournment because the applicant had already seen most of the material in the Exhibit Book and because the material dealt primarily with the archaeological significance of the site, which she understood Ms. Wade-Eagleson would not be disputing. Ms. Thorson also cited the time and expense associated with rescheduling.

The Board denied the request for adjournment, noting that the Ministry had sent the Exhibit Book to the applicant in advance of the hearing as a courtesy, not as a requirement.

Ms. Thorson of the Ministry asked that Ms. Wade-Eagleson present her case first, since Ms. Wade-Eagleson was the one seeking a change in status. Ms. Wade-Eagleson agreed to present first.

Ms. Wade-Eagleson called a number of witnesses: Mr. Chuck Pinand, a previous owner of part of the designated site; Mr. John Dunlop, Reeve of Howland Township in the 1950s; and Maria Willis and John Lewis, both current owners of part of the designated site.

Ms. Thorson called three witnesses: Ms. Roberta O'Brien, an archaeologist who had worked with the Archaeological Committee of the Ontario Heritage Foundation; Dr. Peter Storck, the Curator of New World Archaeology at the Royal Ontario Museum and a Paleo-Indian and lithic technology specialist; and Mr. Winston Wong of the Ministry's Archaeology and Heritage Planning Unit, who deals with the permit process under the Ontario Heritage Act.

Mr. Ken Ferguson, the Reeve of Howland Township, also made a presentation to the Board.

#### The Case for the Owner

Ms. Wade-Eagleson outlined that she was not going to dispute the archaeological significance of the site. Her complaint was with the way the designation had been originally established and how it had been dealt with by the provincial government ever since. She felt the government had been unfair, unjust and incompetent and had violated her human rights. The applicant stated that she would not have taken the property in 1977 if she had known it was designated.

When the site was designated in 1954, the designation was published in the Ontario Gazette henceforth but was not registered on title (Exhibit #2). Ms. Wade-Eagleson felt that this was inadequate action and led to the fact that she and others who have acquired part of the site since 1954 did so without realizing it was encumbered, even though their solicitors had searched the title at the registry office. She cited as an indication that the government had originally intended to notify landowners but had failed to do so in a 1954 document in the Ministry Exhibit Book (Exhibit #5, Tab #15).

Ms. Wade-Eagleson allowed that a Provincial Historic Site sign was there when she bought the property but she felt that the information was insufficient and did not convey the full meaning of designation. She thought there was a Native burial ground behind her garage and she let people view the area.

The applicant referred to the Master Plan on the site prepared by consultants for the Township, the Ojibways of Sucker Creek and Sheguiandah First Nation with the financial support of the province (Exhibit #5, Tabs 10 to 14).

She noted the statement in the plan that between 1953 and 1992 it appears that there was never formal notice to the affected owners, nor were the implications of designation or their rights explained to them, and felt that the Plan recommendation that owners not be prosecuted for any resource destruction during that period was a tacit recognition that a thorough notification and follow-up with landowners had not occurred. (Exhibit #5, Tab 14).

Ms. Wade-Eagleson went on to state that because of the nature of the designation process and the lack of follow-up none of the current landowners of the site knew of the designation until 1989, when they became aware of it because of investigations related to the preparation of the Master Plan. She asked why the designation was not registered on title when the new Ontario Heritage Act (which requires that this be done for new archaeological designations) came into effect in the mid-seventies.

Ms. Wade-Eagleson stated that even the Township seemed unaware of the designation until the late 1980s, when they became interested in the economic potential of the development of the Sheguiandah site and began work on the Master Plan. She cited as evidence of this lack of awareness the fact that the 1980 Official Plan for Manitoulin zoned Sheguiandah as a hamlet with no restrictions on use because of an archaeological site, and noted that work by the Township on a new water system in the Eighties had originally been planned to traverse parts of the archaeological site until the Township realized what they would be doing (because of the work in the Master Plan) and had to alter their plans to avoid the site. Ms. Wade-Eagleson stated that only after more than one inquiry on her part in 1990 was an archaeological site map found at the Gore Bay Registry Office and the Office later confirmed that it was not considered an Official Map (Exhibits #3 and #4). The applicant was critical of the Township Council for purchasing core areas of the site from 1988 to 1990 and yet not initiating formal contact with all landowners of the site during that period. She also criticized Council for trying to obtain written permission retroactively from landowners for the incursion of archaeologists on their lands in 1991 as part of investigations undertaken for the masterplanning exercise.

Ms. Wade-Eagleson stated that archaeologists had trespassed on her land many times and that none of the landowners had given written permission for the archaeological field work undertaken in 1991. She called three witnesses.

Witness: Chuck Pinand - He testified that he had owned "The Gables" (part of the site) when Thomas Lee discovered the site and that he never received notification of designation nor was there any evidence of it registered on his deed when he sold.

Witness: John Dunlop - This witness stated that, as Reeve of Howland Township in the 1950s, he knew Tom Lee. Mr. Dunlop testified that he wouldn't have signed a document giving archaeologists permission to work on property without obtaining the landowners' permission, and he recalled no discussion of the implications of designation at that time.

Witness: Maria Willis - This owner of a portion of the site stated that she never gave written permission to the archaeologists to investigate her property.

Witness: John Lewis - This owner of part of the site stated that he had never given written permission to archaeologists to investigate his property and that he was upset by the designation which he felt had caused his property to drop in \_ value.

Under cross-examination, Ms. Wade-Eagleson said that when she acquired the property she did not ask her real estate lawyer about the historic site sign. She felt that it was the lawyer's job to be concerned about it. She confirmed that she had rented a barn on her property to the archaeologists during the investigations in 1991. She had understood that they were going to look at Lee's site (she thought there might be a burial ground behind her barn) and had given them verbal permission to look at her bush lots but not her pasture which she specifically asked them to avoid.

Ms. Wade-Eagleson told the Board that the main issue for her was her pasture (part of Mill Site No. 3) which she wanted to divide in three for her three children. She was not as concerned with the four bush lots (lots 21 through 24). She reiterated that she was appealing the unfairness of the

whole designation procedure and its aftermath. She felt that lately the government had been trying to do better in its dealings with the landowners and stated that the hearing was about trying to do better. She asked that the designation be removed from her pasture. If it is not possible to reach agreement on this, she asked that a moratorium be placed on the designation for a year during which time mitigation could remove any artifacts from the pasture. She closed by saying she may go to court to seek damages for suffering caused by the treatment she had received.

## The Case for the Ministry

Ms. Thorson, Counsel for the Ministry, stated that the question before the Board was limited to the archaeological significance of the property and that what the owner might want to do with the property was no concern of the Board. The onus, she said, was on the owner to show why the property is not archaeologically significant and why the designation should therefore be revoked. Ms. Thorson maintained that the designation was a valid process in 1954 and that it continued in effect in 1976 under the new Ontario Heritage Act. Under both the Ontario Heritage Act and its predecessor, the Archaeological and Historic Sites Protection Act, owners had to apply for a permit to alter the property and approvals were subject to terms and conditions set by the Minister. The original designation was published on March 20, 1954 in the Ontario Gazette (regs. 32-54) and had been published in the regulations in the Gazette ever since.

Ms. Thorson called three witnesses: Roberta O'Brien to review Ministry activity with regard to the site over recent years; Dr. Peter Storck to establish the significance of the site; and Winston Wong to show that the permit process under Part VI of the Act balances the interest of the owner and the public. She asked the Board to recommend that the designation be kept in place.

Witness: Roberta O'Brien, Ministry archaeologist, experienced in working with the Archaeology Committee of the Ontario Heritage Foundation (Exhibit #5 Tab #23). Ms. O'Brien's review of past activities concerning the site included: the recommendation of archaeologist Thomas Lee of the National Museum of Canada to the Archaeological and Historical Sites Board of Ontario that the site be designated to protect it from looters, and the Province's designation in 1954 (Exhibit #5, Tab #15): the dedication by the Historic Site" and Monuments Board of Canada that the site was of national significance (providing recognition but imposing no control) (Exhibit #5, Tab #16); and during 1953/54 the erection of three large signs on the site (Exhibit #5, Tab 20) and the provision of notices (Exhibit #6) to Thomas Lee to place around the site (Lee reported in 1957 that the smaller notices were no longer there). There is no knowledge of any other notices.

In 1989 the Township of Howland, wishing to use the site for economic development, began an Archaeological Master Plan with the support of the Ministries of Northern Development and of Culture, Tourism and Recreation. Partners of the Township in the study were the Ojibways of Sucker Creek and the Sheguiandah First Nation.

The study encompassed whole Township but focused on the designated site. It was made up of 4 Phases:

Phase 1 - background research; Phase 2 - field work, including survey (Report of Phases 1 and 2 submitted in February 1992); Phase 3 - feasibility study of an Interpretive Centre; and Phase 4 - strategies for protection flowing from the work of Phases 1 and 2 (Report for Phase 4 submitted in March 1993).

Ms. O'Brien briefly described the zoning recommended in the Phase IV Report of the Master Plan which recognized that some parts of the site are more sensitive than others and led to recommendations that activities be planned and managed differently in various areas of the site. For example, Zone 1 identified the most sensitive areas of the site and where the least amount of disturbance has occurred. The Master Plan recommends that non-archaeological activity in this zone be restricted to current land uses which are non-destructive. For Zone 2, the Master Plan recommends that development beyond current permissible land uses be preceded by full scale archaeological assessment and impact mitigation. The bush lots of Ms. Wade-Eagleson were in proposed zones 1 and 2, while her pasture fell largely in Zone 2 (Exhibit #5, Tabs 10-14).

On May 26, 1992 information on the work on the site was presented by the Township to a public meeting. Most questions concerned designation. The Ministry noted the questions and called a landowners' meeting on July 11, 1992 at which Ms. Wade-Eagleson was present and where an Information Bulletin for Landowners was distributed (Exhibit #5, Tab 18). Ms. O'Brien reported that there was discussion of the sign on the site at the meeting, during which Ms. Wade-Eagleson confirmed that she had seen it.

Ms. O'Brien reported that the Ministry does receive queries about designated sites from real estate lawyers. These queries go to the data coordinator who checks the files and responds.

Under cross-examination, Ms. O'Brien responded to a question concerning the provision of information on the site in the 1950s for landowners; Ms. O'Brien stated that there was considerable information on the site available through magazine articles.

Witness: Dr. Peter Storck is the Curator of New World Archaeology at the Royal Ontario Museum and a Paleo-Indian and lithic technology specialist who has worked on the site. Dr. Storck described the field work undertaken concerning prehistoric plants in 1990 and the excavations and surface collection done in 1991. Concerning the significance of the site, he stated that recent research makes Lee's interpretation that the site is 30,000 years old less likely but more work needs to be done on this.

However, its provincial, national, even international significance depends on the fact that there was clearly occupation 9,500 years ago by late Paleo-Indian people. This is established by cross-dating spear points, which are very diagnostic, with points from other sites. The site was used for habitation and quarrying (tool-making) and was also used by more recent Archaic and Middle Woodland peoples. What makes the site unique is that the swamp records are intimately related to the human occupation, which almost never occurs, providing an unparalleled record of human and environmental interaction in the post-glacial period.

Dr. Storck stated that all of the Wade-Eagleson property in question is significant because of its proximity to the core habitation and quarrying area. He asserted his agreement with the zoning recommended in the Master Plan. Dr. Storck recounted that he had undertaken surface collection on the Wade-Eagleson pasture because Ms. Wade-Eagleson did not want to have the field ploughed. He reported that even under these bad conditions they found 2,000 artifacts on the upper portion of the field, which shows that the site definitely extends onto that property. Dr. Storck believed that he had verbal permission from Ms. Wade-Eagleson and recollected that he had been very careful with all landowners. He noted that the pasture falls largely into Zone 2 in the plan which means that it is theoretically mitigatable (i.e., mitigation could be done before development). However, because of the limited nature of the 1991 investigation of the pasture, it is very difficult to estimate how much you would find, how many people you would need, or how much mitigation would cost.

Dr. Storck responded to a question raised earlier during cross-examination as to why little was done on the site from the 1950s to the late 1980s. The controversy surrounding Lee's 30,000 year interpretation destroyed his career and for years inhibited young scholars from studying the site. In answer to a query from the Board, Dr. Storck reported that the 1991 field investigation had revealed that the site had been both looted and otherwise disturbed (fires, people walking, erection of a hydro pole).

Witness: Winston Wong, of the Ministry's Archaeological and Heritage Planning Unit, who deals with the permit process under the Ontario Heritage Act. Mr. Wong reviewed activities that do require a permit and those that do not require a permit in the various zones. The nature of any investigation which would be undertaken to determine whether development should proceed would depend on both the sensitivity of the zone and the degree of disturbance planned.

An archaeological assessment, if required, would have to be done by an archaeologist licensed by the Ministry and the Ministry would review the proposal and recommendations and the landowner would have to have regard for the recommendations. The assessment could range from just surface collecting to test-pitting every 5 to 10 metres to more intensive analysis and test-pitting. The investigation could result in an approval for the development proposal which might involve excavation with an archaeological monitor as the next step, or a refusal or alteration (avoiding certain areas) of the proposal.

Mr. Wong pointed out that in Ontario the Planning Act is often used to protect resources by making it a requirement to have archaeological surveys and mitigation before granting approvals for land disturbance activities. Under

the Planning Act the proponent bears the cost for this.

During cross-examination Ms. Wade-Eagleson queried why she should have to pay \$15,000 to do archaeological mitigation.

In response to questions from the Board, Mr. Wong stated that the Ministry agrees with the intent of Phase IV of the

Master Plan and is seeking ways to implement the recommendations, although it would like to qualify some. He further responded that the Ministry was thinking more of using the Phase IV recommendations as a guideline for managing the site rather than as a basis for changing the boundaries of the designated area. Ms. Thorson reminded the Board that the Master Plan was not a Ministry document.

#### Other Presentations

Mr. Ken Ferguson, the Reeve of Howland Township, also made a presentation to the Board. He thanked all those involved with attempts to resolve the concerns at the Sheguiandah site and expressed the Township Council's hope that a resolution could be reached which recognized the concerns of the landowners, the importance of the archaeological resource, the educational and cultural value of the site, and the economic opportunity available. He tabled a Council resolution of support for the revocation of the designation of Ms. Wade-Eagleson's pasture (field) and asked that the

process of mitigation on the pasture commence as soon as possible, funded by the province, so that in future Ms. Wade-Eagleson could transfer the land to her children free of the implicit encumbrance of mitigation costs (Exhibits #8, #9). He also addressed Recommendation 7 of the Master Plan, which deals with the referral of applications for consent to sever lands located in Zones 1, 2 and 4 to the Ministries of Culture, Tourism and Recreation (MCTR) and of Municipal Affairs and to the Township, and places the onus on the applicant to supply sufficient information. The Township believes MCTR should provide financial assistance to owners compiling this information (Exhibit #10).

During questioning from the Board Mr. Ferguson confirmed that the archaeological significance of the Sheguiandah site had been overlooked in the preparation of the Official Plan for the Island in the early 1980s and in the initial work in the Class Environmental Assessment for the water system. He stated that the Township sought written permission retroactively from landowners for the 1991 archaeological investigation because of an earlier oversight.

### Findings

In our view, having in mind the purpose and the function of the hearing process, the obligation of the Board in recommending to the Minister whether or not the application for revocation of designation should be approved does not deal solely with a determination of the archaeological significance of the property, but rather extends to placing recommendations on significance within the context of consideration of the effectiveness of designation a. a mechanism for the protection and management of heritage resources. The Board appreciates the frustration felt by Ms. Wade-Eagleson and other current landowners who until recently were not fully aware of the limitations designation placed on the use of the property. The Board also finds it unfortunate that the designations have not been registered on title since the passage of the Ontario Heritage Act. However, the Board also notes that designation could be applied to other private properties in the province to protect the public interest, even though the affected landowners may not have been aware of the archaeological resources on their properties at the time they acquired them.

Designation of archaeological sites is a direct provincial intervention to protect resources of considerable significance. To be effective, it requires a planned approach and policies and procedures to guide implementation and management of the programme. The Heritage Policy Interpretation Bulletin on information for landowners provides a useful beginning. Designation attempts to protect the public interest, while allowing landowners continued ownership and private use of their property as long as the resource is not threatened. It has worked in other jurisdictions as a mechanism for protection and management of

heritage where there has been regular communication and close cooperation among senior and local levels of government and landowners. Landowners have been enlisted to assist in the ongoing protection and even interpretation of the resource.

As long as there is both a public and private interest in such a property, both parties need to learn to live together and work to balance these interests and strive to develop strategies which further both. At the moment, we do not have such a working arrangement with regard to the Wade- property and the archaeological site in general.

Based on the current state of information, Sheguiandah remains a highly significant archaeological resource and the Wade-Eagleson property an important part of that site. However, the level of archaeological information available on the Wade-Eagleson pasture is limited due to the restricted nature of the 1991 investigation there. It would serve everyone's interest to have more detailed information on the extent and nature of the resources in the pasture. Finally, the Board was disturbed to hear of the evidence of looting and resource destruction noted during the 1991 field investigation.

#### Recommendations

- 1) That, because of the significance of the Sheguiandah archaeological site, and the location of the Wade-Eagleson property on the site, the Minister refuse the application to revoke the designation of the Wade-Eagleson property.
- 2) That the Minister, in consultation with the Ontario Heritage Foundation, prepare policies and procedures for dealing with provincially designated archaeological sites which could consider such matters as: regular site inspection and communication with local government and landowners; financial and other support for ongoing research on the site; financial and other support for survey and mitigation measures that may be required; and involvement of landowners in the ongoing protection and possibly in the interpretation of the site and that these policies and procedures be applied in considerations of the future of the Wade-Eagleson property.
- 3) That the Minister consider the zoning recommendations of the Master Plan in refining its approach to the management of the archaeological resources on the Wade-Eagleson property and the rest of the Sheguiandah archaeological site.

- 4) That the Minister register forthwith the designation on the title of all properties designated under Part VI of the Ontario Heritage Act, where this has not previously occurred (most specifically, those originally designated - under the Archaeological and Historic Sites Protection Act).
- 5) That the feasibility of any proposals for development and/or severances concerning the Wade-Eagleson property and other parts of the archaeological site be examined not only from an archaeological point of view but also considering a full range of planning perspectives (e.g., the concept of building envelopes to protect natural and cultural environmental concerns).

(Original Signed by)

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Robert Bowes  
Chair

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Heather Broadbent  
Vice-Chair

List of Exhibits

Exhibit #

- 1 Affidavit re: Notice of Hearing
- 2 Copies of deeds of Wade-Eagleson (previously Dunlop) property and some other landowners of designated site
- 3 Map of Sheguiandah site from Registry Office
- 4 Letter of Nov. 3, 1993 to Ms. Wade from R.J. Lane, Land Registrar re: Map
- 5 Exhibit Book/Book of Authorities of the Ministry of Culture, Tourism and Recreation, October 1993. Tabs. 1-25
- 6 Copy of Notice of Historic Site
- 7 List of Slides of the Sheguiandah Archaeological site, shown by Dr. Peter Storck
- 8 Presentation of Howland Township Council to Conservation Review Board
- 9 Certified copies of Howland Township Council resolutions passed on April 2, 1990, June 2, 1992 and Sept. 14, 1992
- 10 Certified copy of Howland Township comments, position and recommendations, as submitted to the Ministry of Culture, Tourism and Recreation on the Master Plan.