

Conservation Review Board
Commission des biens culturels



ISSUE DATE: August 30, 2017

CASE NO.: CRB1507

PROCEEDING COMMENCED UNDER subsection 32(14) of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended

Objector: Kim Wilson
Owner: Tomas Tocek Sr.
Subject: Notice of Intention to Repeal Designation By-law No. 2002-054
Property Address: 5781 Highland Avenue (Leeming House)
Legal Description: Lots 19, 21 and 23, Registered Plan 32
Municipality: City of Niagara Falls
CRB Case No.: CRB1507
CRB Case Name: Wilson v. Niagara Falls (City)

Heard: In writing

APPEARANCES:

Parties

Counsel/Representative⁺

City of Niagara Falls

Ken Beaman

Tomas Tocek, Sr.

Tomas Tocek, Jr.⁺

Kim Wilson

Self-represented

ORDER OF THE BOARD DELIVERED BY LAURIE SMITH AND ROBERT V. WRIGHT

Background

[1] This is a procedural order of the Conservation Review Board (“Review Board”) regarding a motion to dismiss this proceeding.

[2] This matter concerns objections by Amanda Angelone and Kim Wilson to a Notice of Intention to Repeal the Designation By-Law for the property municipally known as 5781 Highland Avenue in Niagara Falls, Ontario (the “Property”). Ms. Angelone later withdrew her objection, and she is no longer a party to this proceeding.

[3] The Review Board has issued two previous procedural orders in this proceeding, dated March 15, 2017 and April 21, 2017. Both orders set out the organization/conduct of and requirements for the hearing, which was scheduled for July 12, 2017, but was adjourned pending the outcome of this motion.

[4] The City has filed the affidavit of Salvatore Valeo, sworn 30 June 2017. Mr. Valeo is a professional engineer and the Chief Building Official for the City. Mr. Valeo testifies in his affidavit that “the dwelling that was located at 5781 Highland Avenue, also known as Leeming House, was heavily damaged and destroyed by fire in the evening of May 24, 2017.” Mr. Valeo stated: “The hulk remaining after the destruction was hazardous, and accordingly, an Unsafe Building Order was issued on May 26, 2017, declaring the building to be unsafe due to fire damage.” Mr. Valeo attaches a copy of the order as an exhibit to his affidavit. He states in his affidavit that “During the weekend of May 27 and 28, the hulk was levelled to the ground. Because the hulk had already been levelled, I did not see any reason to withhold a demolition permit and according the permit was issued on May 29, 2017.” Mr. Valeo attaches a copy of the demolition permit as an exhibit to his affidavit. Finally, Mr. Valeo testifies in his affidavit that “The remaining hulk located at 5781 Highland Avenue was subsequently demolished on May 30, 2017.”

[5] The City of Niagara Falls, represented by counsel Ken Beaman (“City”), and the property owner, Tomas Tocek, Sr. requested that the proceeding be dismissed pursuant to Rule 14 of the Review Board’s *Rules of Practice and Procedure* (the “Rules”). By letter dated June 23, 2017, the Review Board directed: Mr. Tocek, Sr. and the City to provide written submissions, together with any affidavit evidence in support of their submissions; Mr. Wilson to provide any response to these submissions; and Mr. Tocek, Sr. and the City to provide any reply. The Review Board received submissions from all three parties.

[6] Mr. Tocek, Sr., asserts that the dwelling on the Property was heavily damaged by a fire on May 25, 2017, and the Ontario Fire Marshall, the Niagara Regional Police and the municipality issued an order that the dwelling was unsafe due to fire damage. Mr. Tocek, Sr., says that he complied with the order to secure the building and prevent access, the municipality issued a demolition permit and the remains of the dwelling have been demolished. Mr. Tocek, Sr., attaches four documents in support of his submissions:

- a “Consent to Search” form dated 25 May 2017, in which Mr. Tocek, Sr., authorized the police to enter and search the fire scene at the Property;
- a Release from the Niagara Falls Fire Department dated 25 May 2017, releasing the Property to Mr. Tocek, Sr.;
- an Unsafe Building Order issued by the City on 26 May 2017 for the Property; and
- a Demolition Permit issued by the City on 29 May 2017 to demolish the single family dwelling at the Property.

[7] Mr. Wilson submits that he did not feel it was right that the dwelling was demolished prior to a demolition permit being granted. He feels the Property should have been fenced after the fire. He would like a formal inquiry as to how the fire and demolition could have been avoided.

[8] In response, Mr. Tocek, Sr., submits: “There is no more building, the structure has been lost in fire [sic] on 24-May-2017. This hearing should be concluded and objection dismissed [sic].” He notes: “The fire destruction of the house was total”; “the building has been lost in a tragic fire, it is no longer standing”; and the objection to the municipality’s intention to repeal the designation by-law “is about a building that does not exist, it should be dismissed.”

[9] In reply to Mr. Wilson’s submission, the City notes: “The building is gone. The limited resources of the CRB should be expended on buildings that can be saved.”

[10] The issue for the Review Board’s consideration in this matter is whether this proceeding should be dismissed without a hearing under Rule 14. Although the parties were asked to address in their submissions the reasons for dismissal set out in Rule 14, none of them did so. Nevertheless, sufficient information was provided for the Review Board to make a determination.

[11] A copy of the designating By-Law No. 2002-054, which was filed with the Review Board by the City at the commencement of this proceeding, is attached as Exhibit A. The Reverend William Leeming House is the only heritage attribute of the site identified in the designation by-law that is the subject of this proceeding. All three parties agreed in their submissions and evidence that, as a result of the fire and subsequent demolition at the property, the dwelling on the Property no longer exists. None of the parties provided any evidence of cultural heritage value in any other features of the site.

[12] Given that the only heritage attribute identified in the designation by-law no longer exists, the core issue before the Review Board is moot. The Review Board finds that the statutory requirements for bringing the proceeding can no longer be met under Rule 14.01(c). The Review Board further finds that to continue with this proceeding would be frivolous within the meaning of Rule 14.01(a). The Review Board further finds that the matters raised in Mr. Wilson’s submission are outside of the jurisdiction of the Review Board within the meaning of Rule 14.01(b). This proceeding is, therefore, dismissed without a hearing.

“Laurie Smith”

LAURIE SMITH
VICE-CHAIR

“Robert V. Wright”

ROBERT V. WRIGHT
VICE-CHAIR

Attachment 1 – Exhibit A: Designation By-law No. 2002-054

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Conservation Review Board

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

I, the undersigned, Clerk of the Corporation of the City of Niagara Falls, hereby certify the foregoing to be a true and correct copy of By-law 2002-054 dated March 18th, 2002,

of the said City. Given under my hand and the seal of the said Corporation this 17th day of

CITY OF NIAGARA FALLS

April, 2002.

By-law No. 2002-054

Dean Iorfida Clerk

A by-law to designate the property known as the Leeming House, 5781 Highland Avenue, being PIN No. 64314-0055(LT) within the City of Niagara Falls, to be of historic and architectural value and interest.

WHEREAS the Ontario Heritage Act, R.S.O. 1990, S. 29 authorizes the Council of a municipality to enact by-laws to designate real property, including all buildings and/or structures thereon, within the municipality to be of historic value or interest;

AND WHEREAS The Corporation of the City of Niagara Falls has caused to be served upon the owner of the property as described in Schedule "A" hereto and upon the Ontario Heritage Foundation, notice of intention to designate the property and has caused such notice of intention to designate to be published in a newspaper having general circulation in the municipality on December 15, 2001;

AND WHEREAS the reasons for designation are set out as Schedule "B" hereto;

AND WHEREAS no notice of objection to the proposed designation has been served upon the Clerk of the municipality.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF NIAGARA FALLS ENACTS AS FOLLOWS:

1. The property, more particularly described in Schedule "A" hereto, known as the Leeming House, is hereby designated to be of historic value and interest.
2. The City Solicitor is hereby authorized to cause a copy of this by-law to be registered against the property described in Schedule "A" hereto in the proper Land Registry Office.
3. The City Clerk is hereby authorized to cause a copy of this by-law to be served upon the owner of the property and upon the Ontario Heritage Foundation, and to cause notice of this by-law to be published in a newspaper having general circulation in the City of Niagara Falls.

Passed this eighteenth day of March, 2002.

Dean Iorfida
DEAN IORFIDA, CITY CLERK

Wayne Thomson
WAYNE THOMSON, MAYOR

First Reading	March 18 th , 2002.
Second Reading	March 18 th , 2002.
Third Reading	March 18 th , 2002.

SCHEDULE "A" to By-law No. 2002-054

DESCRIPTION

All and singular that certain parcel or tract of land and premises situate, lying and being in the City of Niagara Falls, in the Regional Municipality of Niagara, formerly the Township of Stamford and being composed of all lots Nos. 19, 21 and 23, according to registered Plan No. 32, identified as PIN No. 64314-0055 (LT).

SCHEDULE "B" to By-law No. 2002-054

Heritage Significance:

The property was purchased in 1821 by Margaret Hickman Shaw, whom the Reverend William Leeming married in 1823. Reverend William Leeming was the second Church of England Missionary to the Niagara Peninsula and the first Anglican minister in the area. The Reverend oversaw the building of several churches within the boundaries of present day Niagara Falls.

After Reverend Leeming died in 1863, the property came under various ownerships. In 1913, it was purchased by brothers, Yves Marie Biller and Yves Biller. The Biller family operated a produce distribution business in the City. The fact that the property has remained in the ownership of the Biller Family for 88 years has meant that the house was respected for its past and was not subjected to major renovations over time. The house is an architectural time capsule with an interesting history.

Architectural Significance:

The house is thought to have been constructed just after the War of 1812, perhaps prior to 1821, and its lean-to addition possibly shortly after that date. The house, constructed of brick-filled, post and beam bent timber frame, now a broken-pitched saltbox, one-and-a-half storey form, is a remarkable survival of an early nineteenth century building in the neo-Classical (Loyalist) tradition with vernacular character. The house features a veranda across the front created by the extension of the main roof beyond the front wall. The porch pediment and columns are later embellishments. The facade is symmetrically arranged with 3 bays (openings); two twelve-over-twelve paned windows across the front with the door in the central position. The roof has a medium pitch with two brick chimneys. The exterior is clapboard. The side elevations each have two windows, originally twelve-over-twelve on the ground floor.