

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: November 18, 2021

CASE NO(S):

CRB2101
CRB2102
CRB2103
CRB2104
CRB2105
CRB2106
CRB2107

PROCEEDINGS COMMENCED UNDER subsection 29(5) of the *Ontario Heritage Act*,
R.S.O. 1990, c. O.18, as amended

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| Owner/Objectors: | Trevor Copp, Kristina Schmuttermeier, Lynda Zugec |
| Owners: | Wentworth Standard Condominium Corporation No. 566, Wentworth Standard Condominium Corporation No. 573, Royal Connaught Inc., and all residential condominium unit owners |
| Subject: | Notice of Intention to Designate (former Royal Connaught Hotel) |
| Property Address: | 110-122 King Street East |
| Legal Description: | All units and common elements comprising of the property included in Wentworth Standard Condominium Plan No. 566, City of Hamilton, being property identifier numbers 18566-0001 (LT) to 18566-0510 (LT), Land Titles Division of Wentworth (No. 62) All units and common elements comprising of the property included in Wentworth Standard Condominium Plan No. 573, City of Hamilton, being property identifier numbers 18753-0001 (LT) to 18573-0162 (LT), Land Titles Division of Wentworth (No. 62) Part of Lot 8, Plan 1431 being Part 3 on 62R20616; City of Hamilton, being property |

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| Municipality: | identifier number 17167-0250 (LT), Land Titles Division of Wentworth (No. 62). |
| OLT Case No(s).: | Part Lots 6, 7 and 8, Plan 1431, being Parts 4, 5, 6, 8 and 9 on Plan 62R20616; being part of property identifier number 17167-0254 (LT), Land Titles Division of Wentworth (No. 62) |
| OLT Case Name: | City of Hamilton CRB2101, CRB2102, CRB2103, CRB2104, CRB2105, CRB2106 and CRB2107 Copp v. Hamilton (City) |

Heard: In writing

APPEARANCES:

| <u>Parties</u> | <u>Counsel</u> |
|-------------------------|-------------------|
| City of Hamilton | Patrick MacDonald |
| Lynda Zugec | Self-represented |
| Trevor Copp | Self-represented |
| Kristina Schmuttermeier | Self-represented |

DECISION DELIVERED BY S. TOUSAU AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] The City of Hamilton ("City") proposes to designate 110 – 122 King Street East ("site" or "property"), being the former Royal Connaught Hotel, under s. 29 of the *Ontario Heritage Act* ("OHA").

[2] In response to the City's Notice of Intention to Designate ("NOID"), objections were filed by Lynda Zugec, Trevor Copp, and Kristina Schmuttermeier ("Objectors"), being three separate owners of residential condominium units on the site.

[3] The Conservation Review Board, now the Ontario Land Tribunal ("Tribunal"), advised the Parties of its intention to dismiss the proceedings without a hearing if the objections fall outside its jurisdiction, being limited to considerations of cultural heritage value or interest ("CHVI") under Ontario Regulation 9/06 ("O. Reg. 9/06"). As invited by the Tribunal, the Objectors and the City filed submissions upon which this Decision is founded.

[4] Each Objector's submission has been considered as a separate preliminary proceeding in arriving at this Decision. However, given that the Objectors' submissions are virtually identical, save for signatures, this single Decision applies collectively and singularly to the objections for purposes of expediency and fairness. Any issues unique to a particular objector are noted accordingly in this Decision.

LEGISLATIVE PROCESS

[5] The City's authority to pass a by-law designating a property for its CHVI arises from OHA s. 29 based on meeting prescribed criteria and following the prescribed process:

- 29(1) The council of a municipality may, by by-law, designate a property within the municipality to be of cultural heritage value or interest if,
- (a) where criteria for determining whether property is of cultural heritage value or interest have been prescribed, the property meets the prescribed criteria; and
 - (b) the designation is made in accordance with the process set out in this section.

[6] Per OHA s. 29(2) to s. 29(4.1), the City must consult with its municipal heritage committee and provide notice to affected owners and the broader community by serving the NOI on the affected owners and publishing the NOI in the local newspaper.

[7] Objectors are required by OHA s. 29(5) to set out the reason for the objection and all relevant facts (underscore added):

A person who objects to a proposed designation shall, within thirty days after the date of publication of the notice of intention, serve on the clerk of the municipality a notice of objection setting out the reason for the objection and all relevant facts.

[8] Also applicable here is s. 4.6(1) of the *Statutory Powers Procedure Act* ("SPPA") enabling the Tribunal to dismiss a proceeding without a hearing under certain circumstances:

- 4.6(1) Subject to subsections (5) and (6), a tribunal may dismiss a proceeding without a hearing if,
 - (a) the proceeding is frivolous, vexatious or is commenced in bad faith;
 - (b) the proceeding relates to matters that are outside the jurisdiction of the tribunal; or
 - (c) some aspect of the statutory requirements for bringing the proceeding has not been met.

[9] In accordance with the subsections (5) and (6) referred to above, Rule 15.4 of the Tribunal's *Rules of Practice and Procedure* ("Rules") repeats the provisions of SPPA s. 4.6(1) and requires notice of its intention to dismiss, and consideration of any submissions received.

[10] O. Reg. 9/06 sets out the criteria for determining CHVI based on one or more criteria under the categories of design or physical value, historical or associative value, or contextual value.

SUBMISSIONS AND FINDINGS

Process

[11] On the legislative process outlined above, the Tribunal is satisfied that all process requirements have been met. The City Clerk's sworn affidavit confirms that the

City's committee process and issuance of the NOID complied in all respects. The Objectors served their notices of objection setting out their reasons for opposition to the NOID. The Tribunal then advised of its intention to dismiss the proceedings without a full hearing, leading to the written submissions upon which this Decision is based.

[12] On the above facts, the Tribunal finds that the process followed by the City satisfies the requirements of OHA s. 29(1)(b). On this finding, the Tribunal will not accept as an issue, Mmes. Zeguc and Schmuttermeier's contention in their notices of appeal that the City did not provide suitable notice or properly hear from affected owners. Similarly, the Tribunal will not consider the allegations presented by Ms. Schmuttermeier related to the role of a municipal councillor. The Tribunal's jurisdiction relates to the rationale for a potential designation and does not tread into the "relative quality of a municipality's approach to satisfying a pre-condition" (*WAM Montez C & W Inc. v. Toronto (City)*, 2019 LNONCRB 13, Case No. CRB1906, para. 14).

Ownership

[13] The primary concern of the Objectors is their apparent dispute with the condominium builder over the ownership of the main lobby. The Objectors advise that this fundamental issue has led to legal, financial and safety issues among the various owners within the building. The Objectors ask for the designation to be delayed until their building issues are resolved.

[14] Using the terminology of the OHA, the NOID refers to "a property of cultural heritage value" ... "known as the Royal Connaught Hotel" and describes its CHVI as including its place in the City's history, its example of evolving architecture, and its contribution to downtown Hamilton. The Tribunal finds that these CHVI characteristics are related to "property" which the Tribunal interprets as the physical structure on a parcel of land to which the NOID applies, here known as the Royal Connaught Hotel. Whether such property is owned or used by two or three legal owners, two of which are

condominium corporations, is not a matter related to the reasons for designation. The ownership or use of the lobby or other parts of the property, if at issue among the owners, is not a heritage consideration and is outside the Tribunal's jurisdiction to hear.

New Issues

[15] In their submissions, the Objectors add to their reasons for objection, submitting that the studies relied upon by the City in support of CHVI predate the extensive overhaul and redevelopment of the building. They submit that the removal of heritage features and additional building height affect the site's heritage value.

[16] The City responds that such issue was not raised on appeal, but that the heritage attributes noted in the NOI remain present on the property. The City's Cultural Heritage Planner's report advises that the site's overall heritage value has been preserved and that its CHVI are sufficiently present to warrant designation.

[17] To the question of allowable additional issues, the Tribunal notes that OHA s. 29(5) requires an objector to set out the reason for the objection and all relevant facts. On initial filing, the Objectors noted only ownership issues found here to lie outside the Tribunal's jurisdiction as explained above. When reviewing requested additional submissions, the Tribunal would certainly consider the further explanation or elaboration of an issue included in the original objection as potential grounds for continuation of the appeal process. In rare cases, even a new ground may be considered for the appeal where the circumstances of the case warrant. However, the Tribunal finds here that neither elaboration nor new ground apply here.

[18] First, for the reasons provided earlier, the submissions' extensive elaboration of ownership or legal issues confronting the Objectors are not relevant to the Tribunal's role in assessing the validity of CHVI.

[19] Second, while a specific fact-based challenge to the CHVI may warrant careful consideration for a full hearing, such is not found to be the case here. It is clear and obvious that the City is aware of, and has accounted for, the recent modifications to the building in its NOID. The City required a heritage impact assessment through its site plan control process when the property was being repurposed. The City does not intend, nor would it be likely, to designate a property based on an absent CHVI. The alleged removal of certain heritage elements from the building in the past, while perhaps unfortunate, does not derogate from the intended heritage designation contained in the NOID.

[20] The Objectors raise only the absence of features resulting from changes to the building, and fail to address as issues, the intended CHVI contained in the NOID. The Tribunal agrees with the City's submission that O. Reg. 9/06 enables a property to be designated if it meets only one of the criteria for CHVI. Simply put, the Royal Connaught Hotel 'is what it is' today and that is what is intended to support and reflect its heritage designation. As such, the Tribunal finds that the Objectors' raising of this new issue of absent features does not warrant a hearing on the merits.

[21] The Objectors raised several other minor matters in the course of making their submissions on the major issues reviewed above, including: signage on the property; other buildings in the City of similar historical significance; challenges to statements in certain professional reports; correctness of the property description; or the alleged absence of return communications from City staff. The Tribunal finds that these issues are either unsubstantiated or fail to address the reasons for CHVI that lie within the Tribunal's jurisdiction.

SUMMARY

[22] The Tribunal's jurisdiction on objections to a NOID focusses on the reasons for CHVI. Under the SPPA and the Tribunal's Rules, a proceeding may be dismissed

without a hearing if, among other options, the proceeding is frivolous or relates to matters outside its jurisdiction. The Tribunal finds that all matters raised by the Objectors fall within one or both of these categories. Accordingly, the proceeding will be dismissed.

ORDER

[23] The Tribunal Orders that this proceeding is dismissed.

“S. Tousaw”

S. TOUSAW
MEMBER

Ontario Land Tribunal

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.