

To: Development Services Committee

From: Warren Munro, HBA, RPP, Commissioner,
Development Services Department

Report Number: DS-22-103

Date of Report: May 4, 2022

Date of Meeting: May 9, 2022

Subject: Outcome of third-party Appeal to the Ontario Land Tribunal:
Designation of 1711 Simcoe Street North (Camp Samac) under
Section 29 of the Ontario Heritage Act

Ward: Ward 2

File: 12-04

1.0 Purpose

The purpose of this Report is to:

- a) Update Committee and Council on the outcome of the appeal made by Jane Andrea Clark (the “Appellant”) to the Ontario Land Tribunal (“O.L.T.”) concerning the proposed designation of Camp Samac, located at 1711 Simcoe Street North (the “Subject Property”), under Part IV of the Ontario Heritage Act, R.S.O. 1990, c. O.18 (the “Ontario Heritage Act”); and,
- b) Obtain Council’s endorsement of a revised draft Designation By-law and associated Designation Statement and Description to designate the Subject Property as a property of cultural heritage value or interest under Part IV of the Ontario Heritage Act.

Attachment 1 is a map showing the location of the Subject Property and the existing zoning in the area.

Attachment 2 is a copy of Report DS-21-74 dated April 7, 2021 entitled “Proposed Designation Pursuant to Ontario Heritage Act: Camp Samac Property at 1711 Simcoe Street North”. Owing to its length, this report is not attached but is available at the following link: http://app.oshawa.ca/agendas/development_services/2021/04-12/REPORT_DS-21-74.pdf.

Attachment 3 is a copy of the O.L.T. decision issued March 14, 2022 (Case Number OLT-21-001150) granting the City’s motion to dismiss the appeal of the Appellant concerning the designation of Camp Samac under Part IV of the Ontario Heritage Act.

Attachment 4 is a copy of the proposed revised Designation By-law and associated Designation Statement and Description, which contains the Statement of Cultural Heritage Value or Interest and the heritage attributes of the Subject Property being protected.

Attachment 5 is a copy of an email dated April 27, 2022 from Scouts Canada (the "Owner") advising that they are in support of the recommendation of this Report, namely, that Council endorse the proposed revised Designation By-law and associated Designation Statement and Description for Camp Samac and approve the designation of Camp Samac under Part IV of the Ontario Heritage Act.

Attachment 6 is a draft flow chart released by the Provincial government illustrating the process to designate a property under Section 29 (Part IV) of the Ontario Heritage Act as of July 1, 2021.

2.0 Recommendation

That the Development Services Committee recommend to City Council that, pursuant to Report DS-22-103 dated May 4, 2022, Council endorse the proposed revised Designation By-law and associated Designation Statement and Description for Camp Samac as shown on Attachment 4 to said Report and approve the designation of Camp Samac under Part IV of the Ontario Heritage Act.

3.0 Executive Summary

Not applicable.

4.0 Input From Other Sources

The following have been consulted in the preparation of this Report:

- Commissioner, Finance Services
- City Solicitor

5.0 Analysis

5.1 Background

5.1.1 Council's Intention to Designate Camp Samac

On March 2, 2020, the Development Services Committee considered Correspondence DS-20-54 requesting that City Council designate the Subject Property as a heritage property under the Ontario Heritage Act and referred the matter to staff for a report.

Development Services staff subsequently notified Scouts Canada of the above request for heritage designation, and requested their position with respect to the proposed heritage designation of the Subject Property under Part IV of the Ontario Heritage Act.

By letter dated April 28, 2020, the Owner indicated to staff that they were not in favour of the proposed designation. This position was based on several considerations, as outlined

in their letter, which are tied to their Mission and informed by their experiences at other Scouts' sites that have heritage designations.

On May 25, 2020, City Council considered Resolution CNCL-20-42 entitled "Recommendation for Procurement of Heritage Research Report for Camp Samac Property located at 1711 Simcoe Street North", and adopted the following recommendation, with bolding added for emphasis:

- “1. That Development Services staff be authorized to retain the services of a qualified heritage consultant to obtain a heritage research report for Camp Samac at 1711 Simcoe Street North, paid for from the Professional and Technical account within the Heritage Oshawa 2020 Budget; and,
2. That once the heritage research report for Camp Samac at 1711 Simcoe Street North is prepared, Development Services staff be authorized to advance discussions with Scouts Canada and the Inventory and Designation Working Group of Heritage Oshawa to investigate if a Designation Statement and Description can be prepared in such a way that recognizes the importance of Camp Samac **while protecting Scout Canada’s ability to evolve and improve the site as deemed necessary to achieve their Mission**; and,
3. That Heritage Oshawa be provided a copy of the heritage research report and the opportunity to advise whether Camp Samac at 1711 Simcoe Street North should be designated under Part IV of the Ontario Heritage Act; and,
4. That staff report back to the Development Services Committee on the results of the discussions described above and a recommendation for the potential designation of Camp Samac at 1711 Simcoe Street North.”

In the first quarter of 2021, in response to the direction in bold above, City staff prepared a Designation Statement and Description for Scouts Canada to review and confirm support.

On March 31, 2021, Scouts Canada advised that they now support the designation on the basis of the language in the Designation Statement and Description.

On April 26, 2021, City Council considered Report DS-21-74 entitled "Proposed Designation Pursuant to Ontario Heritage Act: Camp Samac Property at 1711 Simcoe Street North", and adopted the following recommendation:

- “1. That, pursuant to Report DS-21-74 dated April 7, 2021, Development Services staff be directed to undertake the process established in the Ontario Heritage Act to designate Camp Samac, located at 1711 Simcoe Street North, as a property of cultural heritage value or interest under the Ontario Heritage Act by undertaking actions such as the following:
 - (a) Prepare a Notice of Intention to Designate the property located at 1711 Simcoe Street North under the Ontario Heritage Act;

- (b) Publish the Notice in the Oshawa This Week newspaper;
 - (c) Forward the Notice to the Ontario Heritage Trust and the Owner in accordance with the Ontario Heritage Act; and,
 - (d) Prepare the necessary by-law which will generally include the draft Designation Statement and Description which forms Attachment 2 to DS-21-74, which has received input from the Owner for subsequent consideration by Council.
2. That, pursuant to Report DS-21-74 dated April 7, 2021, Development Services staff be directed to procure an appropriate heritage plaque for Camp Samac, in consultation with Heritage Oshawa and Scouts Canada in terms of content, that recognizes the property's history and the history of the Scouts Canada organization, to be installed near the Simcoe Street North entrance gate in a location satisfactory to the Commissioner of Development Services and Scouts Canada.
 3. That, pursuant to Report DS-21-74 dated April 7, 2021, the Commissioner of Finance Services be directed to identify an appropriate funding source to obtain a heritage plaque for Camp Samac.
 4. That, pursuant to Report DS-21-74 dated April 7, 2021, Recreation and Culture staff be directed to coordinate with Scouts Canada to include Camp Samac at future Doors Open events, showcasing collaboration between the City and Scouts Canada and allowing members of the public to experience Camp Samac, learn about its history, and better understand Scouts Canada's Mission and Mandate."

Pursuant to Council's endorsement of Report DS-21-74, City staff prepared a Notice of Intention to Designate Camp Samac under Part IV of the Ontario Heritage Act (the "Intention to Designate Notice"). The Intention to Designate Notice was published in the Oshawa This Week newspaper on May 13, 2021 and also was forwarded to the Ontario Heritage Trust and the Owner, in accordance with the requirements of the Ontario Heritage Act.

5.1.2 Appeal of the Notice of Intention to Designate

On June 8, 2021, the City Clerk received a Notice of Objection from the Appellant with respect to the Intention to Designate Notice.

On June 21, 2021, City Council considered Resolution CNCL-21-54 entitled "Jane Clark Letter of Objection to the Notice of Intention to Designate 1711 Simcoe Street North pursuant to the Ontario Heritage Act", and adopted the following recommendation:

- "1. That the Ontario Land Tribunal be advised that Oshawa City Council maintains their position that Camp Samac at 1711 Simcoe Street North be designated under Part IV of the Ontario Heritage Act; and,

2. That the City of Oshawa seek party status at the Ontario Land Tribunal; and,
3. That City staff be authorized to attend the Ontario Land Tribunal hearing in support of Council's position; and,
4. That upon the conclusion of the Ontario Land Tribunal hearing, City staff report back to the Development Services Committee and Council with the Ontario Land Tribunal's recommendation report with respect to the designation of the Camp Samac."

A case management conference ("C.M.C.") was held on November 24, 2021, where concerns were raised by the City as to whether the O.L.T. has jurisdiction to hear the Appellant's objections. The O.L.T. issued a procedural order on December 17, 2021, directing that this question be resolved by way of a motion in writing.

On January 10, 2022, City staff filed a motion to dismiss the appeal of the Appellant on the grounds that the O.L.T. does not have jurisdiction to consider the objection. The Appellant did not object to the Subject Property having cultural heritage value or interest but instead objected to the process by which the designation took place and the wording of the Intention to Designate Notice. However, the O.L.T., having only the scope of jurisdiction of the former Conservation Review Board in this matter, is limited jurisdictionally to evaluate whether or not a property has cultural heritage value or interest pursuant to the designation criteria set out in Ontario Regulation 9/06 ("O. Reg. 9/06").

On March 14, 2022, the O.L.T. issued its decision with respect to the City's motion, which was to grant the motion and dismiss the appeal of the Appellant (see Attachment 3).

5.2 Ontario Land Tribunal Concerns with Designation Statement and Description

While the O.L.T. dismissed the Appellant's appeal, it noted some concerns with respect to the content of the Intention to Designate Notice as drafted by the City. These concerns were with respect to:

1. Council's interpretation of the heritage research report by Martindale Planning Services;
2. The organization of the Notice, specifically the heritage attributes and the Statement of Cultural Heritage Value or Interest (S.C.H.V.I.); and,
3. A potential exemption of Scouts Canada from the provisions of Section 34 of the Ontario Heritage Act.

The following sections highlight those concerns and provide a staff response.

5.2.1 Council's Interpretation of the Heritage Research Report

The O.L.T. provided ancillary comments as part of its written decision (see Attachment 3) highlighting that the "City may not have properly considered the expert report, which it commissioned, on the property." It is staff's understanding that the O.L.T. is making reference to the fact that the Notice did not include all heritage attributes recommended by

Martindale Planning Services in the heritage research report for the subject property dated September 2020. Owing to its length, the report is not attached to this Report but is available on the City's website and can be found at the following link:

https://www.oshawa.ca/city-hall/resources/Heritage/Heritage-Research-Rpt_1711-Simcoe-St-N.pdf.

Staff Response: It is within the jurisdiction of a municipality to determine which features of a property it wishes to include within its Notice of intention to Designate as heritage attributes. The O.L.T. notes in its decision in paragraph 36 with respect to the objection from the Appellant:

“Leaving aside these practical concerns, the Objector’s submissions are fatally flawed because, in effect, the Objector is asking the Tribunal to judicially review the municipality’s decisions regarding the drafting of the NOID, which is an area within its authority as a municipality.”

It is the opinion of staff that, through its approval of Report DS-21-74, Council has properly considered the report and chosen to include only certain heritage attributes, as is its delegated ability to do so under the Ontario Heritage Act.

5.2.2 Organization of the Notice of Intention to Designate

The O.L.T. provided ancillary comments as part of its written decision (see Attachment 3) highlighting that language contained in the Intention to Designate Notice may have not been properly drafted and that the City “mixed up heritage attributes and the statement of CHVI”. It is staff’s understanding that the language in question is that listed as associative/historical and contextual heritage attributes.

Staff Response: In view of the foregoing, staff consider it appropriate that the draft Designation Statement and Description for the Subject Property, as previously approved by Council pursuant to its consideration of Report DS-21-74, be modified to ensure that it correctly organizes associative/historical and contextual features of the property within the SCHVI, rather than as heritage attributes. Accordingly, staff have attached a revised draft Designation By-law and associated Designation Statement and Description to this Report for Council’s consideration (see Attachment 4).

5.2.3 Potential Exemption from Section 34 of the Ontario Heritage Act

The O.L.T. provided ancillary comments as part of its written decision (see Attachment 3) highlighting that language contained in the Intention to Designate Notice may be construed as attempting to exempt Scouts Canada from the provisions of the Ontario Heritage Act. It is staff’s understanding that the provisions in question are those under Section 34 of the Ontario Heritage Act.

Section 34 of the Ontario Heritage Act requires, in part, Council's consideration of applications to demolish buildings and structures on Part IV designated properties. Section 34 (1) of the Ontario Heritage Act reads as follows:

- “34. (1) No owner of property designated under section 29 shall do either of the following, unless the owner applies to the council of the municipality in which the property is situate and receives consent in writing to the demolition or removal:
1. Demolish or remove, or permit the demolition or removal of, any of the property's heritage attributes, as set out in the description of the property's heritage attributes in the by-law that was required to be registered under clause 29 (12) (b) or subsection 29 (19), as the case may be.
 2. Demolish or remove a building or structure on the property or permit the demolition or removal of a building or structure on the property, whether or not the demolition or removal would affect the property's heritage attributes, as set out in the description of the property's heritage attributes in the by-law that was required to be registered under clause 29 (12) (b) or subsection 29 (19), as the case may be.”

Staff Response: In view of the foregoing, staff consider it appropriate that the draft Designation Statement and Description for the Subject Property, as previously approved by Council pursuant to its consideration of Report DS-21-74, be modified to provide clarity that it complies with Section 34 of the Ontario Heritage Act. The draft Designation Statement and Description was originally drafted by staff for Council using language that conveyed an overt message to give future guidance in the event that demolition applications that would not affect the property's heritage attributes are submitted for the purpose of receiving Council's consent. As such, it was not staff's intent to circumvent the Ontario Heritage Act in any way, given that it has always been understood by staff that municipal consent from Council for demolition applications is required pursuant to the provisions of Section 34 of the Ontario Heritage Act. Accordingly, staff have attached a revised draft Designation By-law and associated Designation Statement and Description to this Report for Council's consideration (see Attachment 4).

5.3 Further Consultation with Scouts Canada

On March 17, 2022, staff provided the Owner with a copy of the revised draft Designation By-law and associated Designation Statement and Description. The Owner has advised via email dated April 27, 2022 that they are in support of the recommendation of this Report, namely, that Council endorse the proposed revised Designation By-law and associated Designation Statement and Description for Camp Samac and approve the designation of Camp Samac under Part IV of the Ontario Heritage Act.

5.4 Heritage Designation Process and Transitional Rules

The Ontario Heritage Act provides the framework for the identification, conservation and protection of cultural heritage resources, and empowers a municipality to designate, by bylaw, a property to be of cultural heritage value or interest in order to protect the property's cultural heritage value.

On July 1, 2021, the Provincial government implemented changes to the Ontario Heritage Act proposed under Bill 108, the "More Homes, More Choice Act, 2019, S.O. 2019, c. 9" ("Bill 108"). As a result, some procedures have changed with respect to the designation process, including the appeal process for heritage designation.

Attachment 6 illustrates the process to designate a property under Section 29 (Part IV) of the Ontario Heritage Act, as amended through Bill 108.

Staff note that given the Intention to Designate Notice relating to the Subject Property was issued on May 13, 2021, prior to the Bill 108 changes to the Ontario Heritage Act coming into force on July 1, 2021, the designation of the Subject Property is governed by Part IV, Section 29 of the Ontario Heritage Act as it read prior to the Bill 108 change, the text for which can be found at the following link: <https://www.ontario.ca/laws/statute/90o18/v20>.

Certain transitional rules were brought forward as a result of the Bill 108 changes (i.e. Ontario Regulation 385/21), which state that where a designation of a property had commenced before July 1, 2021 (i.e. issuance of a Notice of Intention to Designate) it shall be continued and disposed of under the Act as it read on June 30, 2021.

However, if the council of a municipality has not, before June 30, 2021, passed a by-law designating the property or withdrawn the Notice of Intention to Designate before that day, that Notice will be deemed to be withdrawn on the later of the following dates, unless the council of a municipality has passed a by-law in accordance with Section 29 of the Act designating the property before that date:

- i. July 1, 2022.
- ii. If, before July 1, 2022, the council of the municipality and the owner of the property mutually agree to a period that ends after July 1, 2022, the last day of the agreed upon period.

In the event Council approves the recommendation contained in Section 2.0 of this Report, and subsequently passes a designation by-law for the Subject Property (prior to July 1, 2022), staff would publish the Notice of By-Law Passing in the Oshawa This Week newspaper, and forward the Notice to the Ontario Heritage Trust and the Owner in accordance with the Ontario Heritage Act as it read on May 13, 2021, along with a copy of said by-law.

Pursuant to Subsection 29(14.1) of the Ontario Heritage Act as it read on May 13, 2021, the designation by-law for the Subject Property would be final and not subject to appeal.

In the event Council does not pass a designation by-law for the Subject Property prior to July 1, 2022, the matter of designation of the Subject Property shall be continued and disposed of under the Ontario Heritage Act as it reads today. This means that any future designation by-law passed by Council for the Subject Property will be subject to the designation process described in Attachment 6, which includes being subject to an appeal period.

6.0 Financial Implications

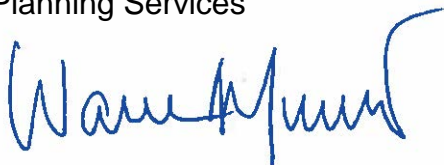
In the event Council approves the recommendation contained in Section 2.0 of this Report, the additional associated costs are generally related to notice requirements, which can be accommodated within the 2022 Departmental budget.

7.0 Relationship to the Oshawa Strategic Plan

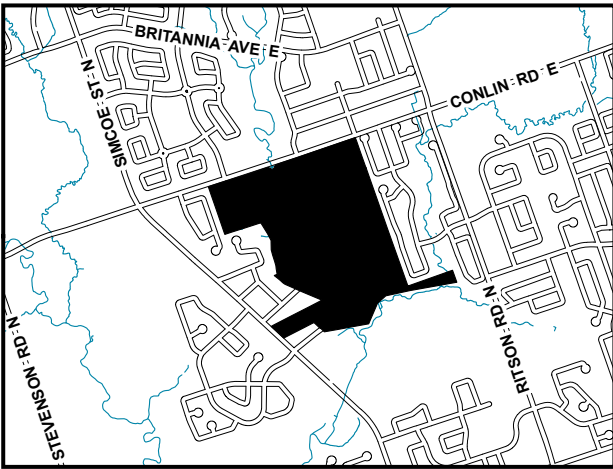
The recommendation in this Report addresses the Accountable Leadership and Cultural Vitality goals of the Oshawa Strategic Plan.



Tom Goodeve, M.Sc.Pl., MCIP, RPP, Director,
Planning Services



Warren Munro, HBA, RPP, Commissioner,
Development Services Department



**Item: DS-22-103
Attachment 1**

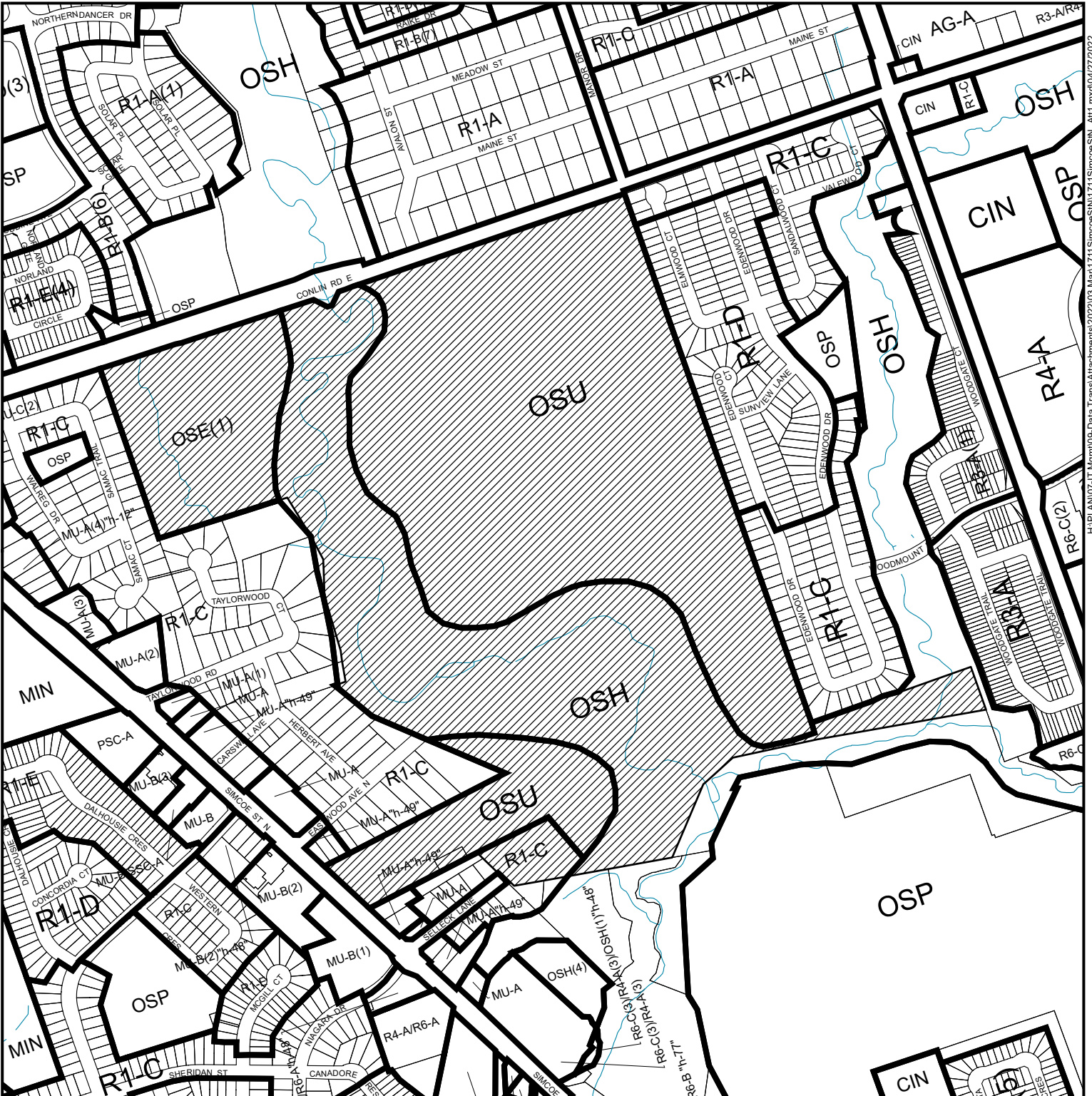
Development Services Department

Subject: Outcome of third-party Appeal to the Ontario Land Tribunal: Designation of 1711 Simcoe Street North (Camp Samac) under Section 29 of the Ontario Heritage Act

Ward: Ward 2
File: 12-04



Subject Property



Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: March 14, 2022

CASE NO(S): OLT-21-001150

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

Objector:	J.A. (Jane Andrea) Clark
Owner:	Scouts Canada
Subject:	Objection to the Notice of Intention to Designate
Property Address:	1711 Simcoe Street North ("Camp Samac")
Legal Description:	PT N1/2 LT 9 CON 4 EAST WHITBY AS IN CO132693; PT LT 10 CON 4 EAST WHITBY; PT LT 11 CON 4 EAST WHITBY; PT ROAD ALLOWANCE BTN LTS 10 AND 11 CON 4 EAST WHITBY CLOSED BY BYLAW 391 AS IN CO123078, CO114510 EXCEPT PART 2 PLAN 40R29010, PTS 1, 2, 3, 40R16107, PTS 1, 2, 40R16108; S/T D418099, EW16403, EW16438, EW16460, EW22701; CITY OF OSHAWA
Municipality:	City of Oshawa
OLT Lead Case No.:	OLT-21-001150
OLT Case No.:	OLT-21-001150
OLT Case Name:	Clark v. Oshawa (City)

Heard: In writing

APPEARANCES:

Parties

Counsel*/Representative

J. A. (Jane Andrea) Clark

Self-represented

Scouts Canada

K. McKenna

City of Oshawa

Adam J. Kosnick*

DECISION DELIVERED BY DANIEL NELSON AND ORDER OF THE TRIBUNAL

BACKGROUND

[1] Scouts Canada is the owner of 1711 Simcoe Street North, in the City of Oshawa ("City"), Ontario (the "property"). The property is operated as a campground for members of Scouts Canada and is known as Camp Samac in honor of the camp's original benefactor, Samuel McLaughlin.

[2] On May 13, 2021, the City gave Notice of Intention to Designate ("NOID") the property as a property of cultural heritage value or interest ("CHVI") under s. 29 of the *Ontario Heritage Act*, R.S.O. 1990 c. O.18 as it read at that time ("OHA"). Scouts Canada consented to the designation. On June 8, 2021, Jane Andrea Clark ("Objector") filed a notice of objection pursuant to s. 29(5) of the OHA. As a result, the matter was referred to the Ontario Land Tribunal ("Tribunal").

[3] A case management conference ("CMC") was held in respect to this matter on November 24, 2021. The Architectural Conservancy of Ontario ("ACO") was added as a participant in the proceedings at the CMC but is not a party in the proceedings.

[4] Concerns were raised at the CMC about the jurisdiction of the Tribunal to hear this matter based on the Objector's objection. The Tribunal issued a procedural order on December 17, 2021, directing that this question be resolved by way of a motion in writing.¹

[5] The parties to the motion are:

- City of Oshawa;
- Scouts Canada; and,
- Jane Andrea Clark.

¹ See *Clark v. Oshawa (City)*, 2021 CanLII 135929 (ON LT)

[6] The ACO is a participant in the motion. Scouts Canada declined to participate in the motion and did not make submissions.

[7] The parties and participant were directed to make written submissions on whether or not the Tribunal, acting under the former OHA (as defined below) has jurisdiction to hear the matter given the nature of the objection of the Objector. No other issue would be considered in the motion.

[8] It is important to note that this matter is governed by the OHA as it read on June 30, 2021 (“former OHA”), pursuant to Ontario Regulation No. 385/21 (“O.Reg. 385/21”). The Tribunal, therefore, only has the jurisdiction of the former Conservation Review Board (“CRB”), which was amalgamated into the Ontario Land Tribunal by operation of the *Ontario Land Tribunal Act*.² For clarity, references to the Tribunal throughout this order mean the Tribunal in its capacity as the former CRB and with only the jurisdiction of the CRB as it was then constituted under the former OHA.

SUBMISSIONS OF THE CITY

[9] The City’s position can be summarised concisely: the Tribunal, in this matter, only has jurisdiction to determine whether or not a property should be designated under the former OHA. Since the Objector agrees that the property should be designated, and since the Tribunal does not have jurisdiction to consider other issues, the matter should be dismissed.

[10] The City also rejects the Objector’s position that s. 34 of the former OHA gives jurisdiction to the Tribunal. Section 34 requires that no building be demolished or removed from a property designated under the former OHA without the consent of the subject municipality. Since the property is not yet designated, the City argues that the Tribunal, in this matter, has no jurisdiction.

² S.O. 2021, c. 4, Sched. 6, s. 2.

[11] The City submits that, because of the lack of jurisdiction, and pursuant to s. 4.6 of the *Statutory Powers Procedures Act*, R.S.O. 1990, c. S.22 (“SPPA”) and by operation of Rule 15.4 of the *Rules of Practice and Procedure* of the Tribunal (“Rules”), the matter should be dismissed.

SUBMISSIONS OF THE OBJECTOR

[12] The Objector begins by conceding that the Tribunal, in this matter, has the power to dismiss these matters pursuant to the SPPA and the Rules.

Section 34

[13] The Objector submits that the Tribunal, in this matter, has jurisdiction under s. 34 of the OHA since the statute provides interim protection of the property under that section by operation of s. 30(2) while a decision regarding designation is made. The Objector also cites page 13 of the 2021 edition of the Draft Ontario Heritage Toolkit, which discusses this interim protection of properties.

Lack of Jurisdiction

[14] The Objector argues that the Tribunal, post-amalgamation, does not, in this matter, have only the jurisdiction of the CRB. It has, instead, all of the jurisdiction of the Tribunal post-amalgamation. At this stage, it may be appropriate to quote the Objector verbatim:

The duties and responsibilities of the Conservation Review Board have been transferred wholesale to the amalgamated Ontario Land Tribunal, with only reporting and timing changes. Despite the name change, the role of the OLT is still to review heritage-related matters, and to provide orders and recommendations as required, based on that review.

[15] She quotes the Frequently Asked Questions (“FAQ”) section of the OLT’s website in support of this argument.

Recommendations

[16] The Objector submits that the CRB had a habit of making recommendations beyond that of determination of CHVI. She posits the following:

I believe the existing legislation and precedent shows that OLT has inherent jurisdiction to consider and make recommendations about ancillary matters in its designation-review role, such as inappropriate or invalid language in the NOID that could have the effect of nullifying the protections and intent of the Act concerning the heritage attributes of the property and the structures on it, as in this case.

[17] No caselaw was advanced in support of this position regarding inherent jurisdiction.

Problems with the NOID

[18] Finally, the Objector argues that the NOID, as written, is:

incomplete, inconsistent, and in compliance with the current requirements of the OHA for the mandatory content of designation bylaws and contains inappropriate content that purports to substitute a process (or non-process) for dealing with alterations or demolitions that is contradictory to the process set out in the Act itself.

[19] She does not elaborate on these issues with the NOID in her motion materials but did enumerate them in her original letter of objection dated June 8, 2021, a summary of which is as follows:

Heritage Attributes

- There is an extensive list of heritage attributes in the research report prepared by the City but only one, the camp gate, was included.
- No attempt was made to link the attributes to the CHVI of the property as required by the OHA.

Statement of Cultural Heritage Value or Interest

- Attributes contain associative and contextual values that belong in the Statement and not in the list of Heritage Attributes

Issues with NOID

- Instead of providing a statement explaining the CHVI of the property, the NOID refers to “Reasons for the Proposed Designation”. The legislation does not provide for the use of alternative language.
- The NOID contained language that permits Scouts Canada to alter, repair, maintain or demolish existing structures and construct new buildings or structures without the approval of City Council. There is no provision in the OHA to permit this and City Council has abdicated its responsibility under the OHA as a result.
- Buildings and other property features do not appear as attributes despite the important history of them.

SUBMISSIONS OF THE ACO

[20] The ACO begins by submitting that the Tribunal, in this matter, has jurisdiction to make recommendations not only about the CHVI in the property but to make recommendations beyond that of designation. It suggests that, going as far back as 2006, the CRB has done so previously.

[21] The ACO makes similar submissions with respect s. 34 of the OHA and argues that since issuing the NOID, interim demolition protection applies, then the Tribunal has jurisdiction since it is “functionally designated”.

[22] Finally, the ACO argues that the Tribunal, in this matter, has “inherent jurisdiction to consider and make recommendations about ancillary matters...”. It should be noted that no case law was advanced to support this argument of inherent jurisdiction.

ANALYSIS AND FINDINGS**Section 34 Arguments**

[23] The Objector and ACO’s arguments around s. 34 of the OHA are difficult to follow. Section 34 provides clear demolition control over designated properties and properties where a NOID has been issued but designation has not yet adopted by a municipality. This is not in dispute.

[24] The Objector and the ACO fail, however, in explaining how this clause gives additional jurisdiction to the Tribunal. Put simply: it does not. Furthermore, while not argued by either party, appeals from decisions made by a municipality under s. 34 were to the former Local Planning Appeal Tribunal (“LPAT”) and not the CRB. Even if this section gave jurisdiction to the Tribunal, which it does not, the appeal would be to LPAT and not the Tribunal acting with only the jurisdiction of the former CRB.

Jurisdiction

Does the Tribunal only have the Jurisdiction of the CRB?

[25] The arguments of the Objector and the ACO, in this regard, can be dealt with quickly. In advancing this argument, the Objector and the ACO failed to consider the transition rules established by O. Reg. 385/21.

[26] The regulation is clear: “A matter or proceeding that is mentioned in subsection (3) and commenced before July 1, 2021, shall be continued and disposed of under the Act as it read on June 30, 2021.”³ For greater certainty, this matter is a matter referenced in subsection (3) of the regulation.

[27] Thus, the Tribunal, in this matter, only has the jurisdiction of the former CRB as a result of O.Reg. 385/21.

Does the Tribunal have Jurisdiction without a Valid Objection?

[28] The Objector agrees, in her letter of objection and her submissions, that the property has CHVI. Instead, the Objector objects to the process by which the designation took place and the wording of the NOID itself. This goes directly to the heart of the City’s motion to dismiss. Thus, it is logical to begin with the role of the CRB, as it was then, and its jurisdiction.

³ O.Reg 385/21, s. 18(2).

[29] As the CRB noted in *Trothen*,

It is the duty of the Review Board, upon receiving an objection pursuant to the OHA, to conduct a public inquiry into the designation or repeal of designation of a property, to receive evidence regarding same, and, after carefully reviewing such evidence, to write a report with a recommendation on the matter to the municipality and allow the municipality, in light of this analysis by the Review Board, to reconsider, if applicable, its position.⁴

[30] Later, the CRB noted in *Ferron*:

The Review Board makes an independent assessment of the evidence of the parties in order to make its recommendations as to whether a subject property is one of cultural heritage value or interest or not within the parameters of the OHA. It is a subject matter expert in cultural heritage value or interest. It is not an expert in broader public policy issues that may shape a municipality's final decision.⁵

[31] The Ontario Divisional Court, which hears appeals from tribunals, noted that:

The OH Act [the OHA] appears to confer upon the CRB the function of determining whether a property should be designated (s. 29(a)) ... **Logically its findings of fact should be restricted to the heritage merits of the property and as to which it may make its recommendation** (which the Council must consider but need not necessarily follow - as Council did here). Council is not required to adopt the recommendations of the CRB...⁶ [emphasis added]

[32] The issue of the jurisdiction of the former CRB is well-settled law as outlined in the caselaw cited above. The Tribunal, having only the jurisdiction of the former CRB in this matter, has limited authority to act and a highly focused jurisdiction on evaluating whether or not a property has CHVI. It does this through an analysis of evidence presented to it through the framework of the designation criteria set out in O.Reg. 9/06. Based on this analysis, the Tribunal writes a report outlining its recommendations to the municipality in question, which it must consider the report but is not bound by it.

[33] What the Tribunal, in this matter, cannot do is investigate or review the decision-making processes of municipalities in reaching their decisions or the discretion granted to

⁴ *Trothen v. Sarnia (City)*, 2016 CanLII 29998 (ON CONRB), at para 45.

⁵ *Ferron v. Niagara Falls (City)*, 2020 CanLII 94347 (ON CONRB) at para. 16.

⁶ *Friends of Eden Mills Inc. v. Eramosa (Township)*, 1998 CanLII 17742 (ON SCDC), at para 15.

them. Again, to quote *Trothen*: “It is not a form of quasi-judicial review.”⁷ It cannot even cure prescriptive procedural defects on the part of a party.⁸ It certainly has no power to adjudge a municipality’s actions leading to the issuance of the NOID:

Yet, there is no indication in the OHA that the Legislature intended the Review Board to exercise a general authority to police a municipality’s compliance with the provisions of the OHA, or to interpret the provisions of the OHA “at large”, unrelated to its assigned task of making findings of fact and recommendations on whether a property has cultural heritage value or interest.⁹

[34] Nor was the CRB given any authority to compel a municipality to do or not do something:

The OHA is silent on the point, but it is presumed that any challenge to a municipality’s process in those cases would have to be advanced in court. Moreover, even in a case that comes before it, the Review Board is not given any remedial power to order a municipality to carry out any particular action. The Legislature could have given such power to the Review Board, but it did not do so.¹⁰

[35] Assuming that the Tribunal held a hearing in this matter, it would presumably receive no evidence of the cultural heritage value or interest and, thus, would have little to analyze and little upon which to make any recommendation within its jurisdiction since the issue is not in dispute. Assuming, again, that the Tribunal, instead, heard evidence in respect to the Objector’s concerns, it has no authority to do anything about the Objector’s concerns. It cannot compel the municipality to do anything; it may only make recommendations about designation. The Objector is therefore asking for a toothless exercise.

[36] Leaving aside these practical concerns, the Objector’s submissions are fatally flawed because, in effect, the Objector is asking the Tribunal to judicially review the municipality’s decisions regarding the drafting of the NOID, which is an area within its authority as a municipality. That authority is limited by other statutes, provincial government oversight,

⁷ *Trothen*, *supra*, at para 44.

⁸ *Hanlon Glen Homes Inc. v. Mississauga (City)*, 2021 CanLII 31904 (ON CONRB) at para. 5.

⁹ *WAM Montez C & W Inc. v. Toronto (City)*, 2019 CanLII 106918 (ON CONRB) at para. 16

¹⁰ *Ibid.*, at para. 18 (ON CONRB)

and the superior courts, which have the power to judicially review such discretion and authority, but not by this Tribunal acting under the former OHA.¹¹

[37] Furthermore, despite the arguments of the Objector and the ACO, the Tribunal has no inherent jurisdiction. Like all tribunals, of any kind, it only has the power given to it specifically by statute and no more. Only the superior courts have inherent jurisdiction, over all manner of things, being common law courts, unless a statute specifically assigns a particular jurisdiction elsewhere.

[38] It is clear, therefore, that the jurisdiction of the Tribunal, in this matter, is only in respect to making recommendations as to whether or not the subject property has CHVI and ancillary recommendations that might flow therefrom. It has no ability to adjudge the process and decision-making processes of the municipality. It cannot do what the Objector and the ACO asks of it in this matter.

Making Recommendations

[39] The Objector and ACO are quite correct that the Tribunal, in its former capacity as the CRB, was in the habit of offering recommendations to a municipality in respect to the drafting of statements of CHVI and identifying or revising potential heritage attributes. It had expertise in these matters.

[40] However, if the Tribunal, in this matter, has no jurisdiction to hear the matter, then it cannot proceed to hold a hearing and, as a result, cannot issue a report with its recommendations.

NOID

[41] There is no doubt that the Objector and participant raise grave concerns about the nature and scope of the NOID as drafted by the City (and the eventual bylaw should it be

¹¹ See the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1. Under the statute, judicial review applications are brought before the Divisional Court, which is a specialised branch of the Ontario Superior Court.

passed on the basis of the NOID). The City may not have properly considered the expert report, which it commissioned, on the property. It may not have properly drafted the NOID and mixed up heritage attributes and the statement of CHVI. Most troubling of all is the apparent attempt by the City to exempt Scouts Canada from the provisions of the OHA by bylaw when bylaws are inherently subject to provincial statute, which have primacy.

[42] These are important questions to be asked but the Tribunal has no authority to consider them. Unfortunately, the Objector and the ACO brought these concerns to the wrong forum. These questions, necessarily, must be tested by way of judicial review before the Divisional Court as a court of inherent jurisdiction with authority to review the municipality's decisions and, if necessary, quash them.

CONCLUSION

[43] As the Objector's objection discloses no grounds within the jurisdiction of the Tribunal in this matter, and for the reasons set forth above, the City of Oshawa's motion is granted, and the Case Coordinator is directed to close this file forthwith.

"Daniel Nelson"

DANIEL NELSON
MEMBER

Ontario Land Tribunal

Website: olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

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.



**By-law -2022
of The Corporation of the City of Oshawa**

being a by-law to designate the property located at Camp Samac, municipally known as 1711 Simcoe Street North, specifically PIN 16270-1036(LT); PT N1/2 LT 9 CON 4 EAST WHITBY AS IN CO132693; PT LT 10 CON 4 EAST WHITBY; PT LT 11 CON 4 EAST WHITBY; PT ROAD ALLOWANCE BTN LTS 10 AND 11 CON 4 EAST WHITBY CLOSED BY BYLAW 391 AS IN CO123078, CO114510 EXCEPT PART 2 PLAN 40R29010, PTS 1, 2, 3, 40R16107, PTS 1, 2, 40R16108; S/T D418099, EW16403, EW16438, EW16460, EW22701; CITY OF OSHAWA, Regional Municipality of Durham, as being of cultural heritage value or interest pursuant to the *Ontario Heritage Act*, R.S.O. 1990, Chapter O.18.

Recitals:

WHEREAS Section 29 of the *Ontario Heritage Act*, R.S.O. 1990, Chapter O.18 (the "Act") authorizes the Council of a municipality to enact by-laws to designate a property to be of cultural heritage value or interest.

AND WHEREAS the Provincial Council for Ontario: Boy Scouts of Canada is the registered owner of the property located at Camp Samac, municipally known as 1711 Simcoe Street North, in the City of Oshawa. Per City Council's decision on April 26, 2021, the property, legally described as PIN 16270-1036(LT); PT N1/2 LT 9 CON 4 EAST WHITBY AS IN CO132693; PT LT 10 CON 4 EAST WHITBY; PT LT 11 CON 4 EAST WHITBY; PT ROAD ALLOWANCE BTN LTS 10 AND 11 CON 4 EAST WHITBY CLOSED BY BYLAW 391 AS IN CO123078, CO114510 EXCEPT PART 2 PLAN 40R29010, PTS 1, 2, 3, 40R16107, PTS 1, 2, 40R16108; S/T D418099, EW16403, EW16438, EW16460, EW22701; CITY OF OSHAWA, Regional Municipality of Durham (the "Property"), shall be designated under Section 29 of the Act. Since 1946, Camp Samac at 1711 Simcoe Street North has been used as a Scout camp, taking advantage of its natural features (Oshawa Creek, Lake Samac, woodlands and open spaces) to provide a unique outdoor setting for Scouting and Guiding programs. Thousands of youth have benefitted from the opportunities to learn outdoor skills, develop leadership qualities, grow as individuals and interact with others while enjoying sports and recreational activities.

AND WHEREAS on May 13, 2021, the City forwarded to the Ontario Heritage Trust and the registered owner of the Property a Notice of Intent to Designate the Property.

AND WHEREAS the City's Notice of Intent to Designate the Property was published on May 13, 2021 in the *Oshawa This Week* newspaper having general circulation in the City of Oshawa.

AND WHEREAS the last day for serving a Notice of Objection to the Notice of Intent to Designate the Property was June 14, 2021.

AND WHEREAS a Notice of Objection to the proposed designation was served on the City Clerk on June 8, 2021.

AND WHEREAS on March 14, 2022, the Ontario Land Tribunal granted a motion by the City of Oshawa to dismiss the objection.

AND WHEREAS Council supports the ability of Scouts Canada to alter, repair, maintain and demolish the buildings and structures within the interior of the Camp Samac property in the future, provided that Scouts Canada makes any required applications to the City to do so and provided that these actions are consistent with and achieve Scouts Canada's Mission in providing and maintaining access to the natural environment and continuing to facilitate scouting adventures on the property for generations of Canadian youth now and in the future.

NOW THEREFORE BE IT ENACTED AND IT IS HEREBY ENACTED as a by-law of The Corporation of the City of Oshawa, by its Council, as follows:

1. The Property, including its features which are described in Schedule "A" to this By-law, located at Camp Samac, municipally known as 1711 Simcoe Street North, and legally described as PIN 16270-1036(LT); PT N1/2 LT 9 CON 4 EAST WHITBY AS IN CO132693; PT LT 10 CON 4 EAST WHITBY; PT LT 11 CON 4 EAST WHITBY; PT ROAD ALLOWANCE BTN LTS 10 AND 11 CON 4 EAST WHITBY CLOSED BY BYLAW 391 AS IN CO123078, CO114510 EXCEPT PART 2 PLAN 40R29010, PTS 1, 2, 3, 40R16107, PTS 1, 2, 40R16108; S/T D418099, EW16403, EW16438, EW16460, EW22701; CITY OF OSHAWA, Regional Municipality of Durham is hereby designated as being of cultural heritage value or interest.
2. The reasons for designation of this Property under the Act are set out in Schedule "A" to this by-law. Schedule "A" forms an integral part of this by-law.
3. A copy of this by-law shall be registered against the Property in the Land Registry and Land Titles Offices for the Land Registry Division of Durham (No. 40).
4. The City Clerk is hereby authorized to serve a copy of this by-law on the Ontario Heritage Trust and the registered owner of the Property, and to publish notice of the passing of this by-law in the *Oshawa This Week* newspaper.

By-law passed this 24th day of May, 2022.

Mayor

City Clerk

Schedule "A" to By-Law Number __-2022
Passed This _____ Day of _____, 2022

Designation Statement and Description of Property

Location and Description of Property:

Camp Samac, municipally known as 1711 Simcoe Street North, is a 63.54 hectare (157 ac.) property owned by Scouts Canada with frontages and driveway access along the east side of Simcoe Street North, south of Eastwood Avenue North, and along the south side of Conlin Road East, east of Walreg Drive. The property is located on a traditional Aboriginal portage route linking Lake Ontario with Lake Scugog. It contains 21 buildings, almost all constructed of logs, which are used for various aspects of Scouts Canada programs, along with an outdoor swimming pool.

Legal Description:

The property, Camp Samac, at 1711 Simcoe Street North is legally described as:

PIN 16270-1036(LT); PT N1/2 LT 9 CON 4 EAST WHITBY AS IN CO132693; PT LT 10 CON 4 EAST WHITBY; PT LT 11 CON 4 EAST WHITBY; PT ROAD ALLOWANCE BTN LTS 10 AND 11 CON 4 EAST WHITBY CLOSED BY BYLAW 391 AS IN CO123078, CO114510 EXCEPT PART 2 PLAN 40R29010, PTS 1, 2, 3, 40R16107, PTS 1, 2, 40R16108; S/T D418099, EW16403, EW16438, EW16460, EW22701; CITY OF OSHAWA

Statement of Cultural Heritage Value or Interest:

Since 1946, Camp Samac at 1711 Simcoe Street North has been used as a Scout camp, taking advantage of its natural features (Oshawa Creek, Lake Samac, woodlands and open spaces) to provide a unique outdoor setting for Scouting and Guiding programs. Thousands of youth have benefitted from the opportunities to learn outdoor skills, develop leadership qualities, grow as individuals and interact with others while enjoying sports and recreational activities.

Camp Samac has associative and historical value derived from:

- The opportunities that the camp has provided since 1946 for youth to learn, grow and have fun in a tranquil outdoor setting, in all four seasons;
- Its close association with (and in fact named after) Colonel Robert S. McLaughlin, founder of General Motors of Canada;
- Its influence on thousands of young men and women through their involvement in Scouting and Guiding activities, both as youth and as leaders, over the years; and,
- The presence of a number of esteemed visitors over the years, including Lady Baden-Powell (the wife of the founder of Scouting) in 1946, former Governor-

General Roland Michener in 1971, former Lieutenant-Governor Pauline McGibbon in 1979, and Lord Baden-Powell's grandson in 1987.

Heritage Attributes:

The key heritage attributes of Camp Samac at 1711 Simcoe Street North that reflect its value as an important link to the history of Oshawa consist of the following:

Design/Physical Value:

- The westerly gate structure which represents a high degree of craftsmanship and/or artistic merit.

Contextual Value:

- Its outstanding setting, nestled in the Oshawa Creek valley, with many views of Lake Samac;
- Its physical, functional, visual and historical link to its surroundings, particularly the Oshawa Creek valley lands; and,
- Its role as a landmark, readily identifiable to many residents of Durham Region including those outside of the Scouting movement.

Connor Leherbauer

Subject: FW: follow up

From: Kalie McKenna <kalie.mckenna@scouts.ca>
Sent: Wednesday, April 27, 2022 7:42 AM
To: Connor Leherbauer <Cleherbauer@oshawa.ca>
Subject: follow up

Hi Connor,

Thank you for your patience and understanding, at this time we can proceed with supporting the recommendation to council.

Have a great day,

Kalie

Kalie McKenna
Director, Property Operations
Scouts Canada – National Service Centre
kalie.mckenna@scouts.ca
T (613) 224-5134 ext. 274
C (343) 549-7720

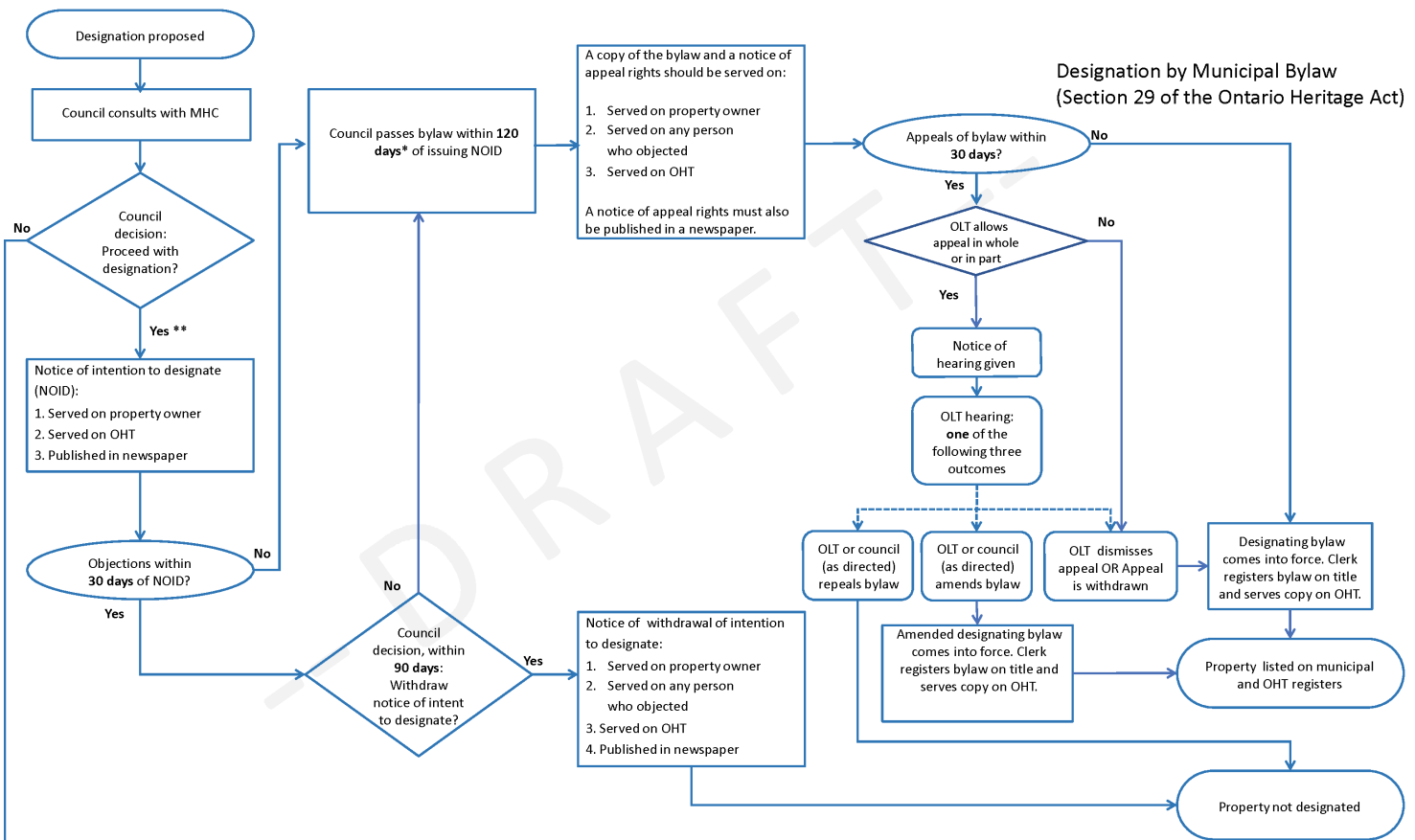


Title: Process to Designate a Property Under Section 29 (Part IV) of the Ontario Heritage Act as of July 1, 2021

Subject: Outcome of third-party Appeal to the Ontario Land Tribunal: Designation of 1711 Simcoe Street North (Camp Samac) under Section 29 of the Ontario Heritage Act

Ward: Ward 2

File: 12-04



*If council fails to meet these timelines, the NOID will be deemed withdrawn, and council must issue a notice of withdrawal. For exceptions to the 120-day timelines, please consult the guidance text.
** Council has a limited 90 day period to give its notice of intention to designate a property when the property is subject to an official plan amendment, a zoning bylaw amendment, or plan of subdivision.