

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: May 11, 2017

CASE NO(S): MM130083
PL170048

PROCEEDING COMMENCED UNDER subsection 41(4) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended

Appellant: Main Street Clock Inc.
Subject: By-law 2013-51 - Heritage Conservation District Area
Municipality: Town of Newmarket
OMB Case No.: MM130083
OMB File No.: MM130083
OMB Case Name: Main Street Clock Inc. v. Newmarket (Town)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Main Street Clock Inc.
Subject: Application amend Zoning By-law No. 2010-40 - Refusal of Application by the Town of Newmarket
Existing Zoning: Historic Downtown Urban Centre Zone (UC-D1)
Proposed Zoning: Site specific (to be determined)
Purpose: To permit a mixed use building
Property Address/Description: 178,180,184,190 & 194 Main Street
Municipality: Town of Newmarket
Municipality File No.: D14 NP 13-19
OMB Case No.: MM130083
OMB File No.: PL170048

Heard: May 3, 2017 in Newmarket, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Main Street Clock Inc. (“Applicant”)	I. Kagan*/A. DeGasperis*
Town of Newmarket (“Town”)	L. Longo*/P. Voorn*
Trinity United Church (“Trinity”)	B. Horosko*
Heart of Newmarket Citizens’ Group (“Heart”)	G. Fox

**MEMORANDUM OF ORAL DECISION DELIVERED BY BLAIR S. TAYLOR ON
MAY 3, 2017 AND ORDER OF THE BOARD**

INTRODUCTION

[1] The Board held a Prehearing Conference (“PHC”) on May 3, 2017 to organize for the hearing on the merits with regard to two appeals concerning the lands known municipally as 178-194 Main Street (“Subject Lands”). The first appeal is pursuant to the *Ontario Heritage Act* and the second appeal is pursuant to the *Planning Act* (“Act”).

[2] Appearing at the PHC, were a number of individuals seeking either party or participant status.

[3] The Board granted party status to Trinity, and Heart but found it premature to consider the party status request of the Architectural Conservancy of Ontario (“Conservancy”).

[4] The Board dealt with numerous requests for participant status and on the consent of the parties, all those who sought participant status were granted participant status.

[5] The Board dealt with a request for an Order of Consolidation which was granted.

[6] The Board was requested to set a further PHC and also to set a three week

hearing for 2018. The Board did set the PHC, but declined to set a three week hearing date at this time.

[7] The reasons for these decisions of the Board are set out below.

PARTY STATUS REQUESTS

[8] The Board heard party status requests from: Trinity, Heart, and the Conservancy.

[9] Counsel for the Applicant and the Town both consented to the request for party status for Trinity, whose counsel had previously circulated to the Board and to them his client's interest in the matter and request for party status. Accordingly the Board granted party status.

[10] Gerald Fox on behalf of Heart presented a resolution of this incorporated body wherein it resolved to seek party status and authorized Mr. Fox represent them. Counsel for both the Town and the Applicant suggested that rather than party status the Board might award a hybrid participant status that would allow Heart to have members come forward and give evidence and that its land use planner be allowed to give expert land use opinion evidence. Mr. Fox submitted that Heart wanted party status, that he had been a civil litigator for some 17 years, and wished to be able to cross examine witnesses. Based on his submissions, the Board awarded party status.

[11] Gordon Prentice on behalf of Conservancy sought party status. He advised that the Conservancy was well aware of this matter, and that he expected to receive instructions to confirm the party status request after the Conservancy board of directors met on June 17, 2017. Counsel for the Applicant and the Town both advised the Board that it would be premature to award party status, as there was no by-law or resolution as of yet from the Conservancy board of directors. Counsel for the Applicant submitted that if Conservancy wished to seek party status at a later date, it should do so via a

formal motion record. Counsel for the Town suggested that the party status request simply be deferred. The Board in light of the absence of a by-law or resolution of the Conservancy board of directors found it could not award party status, but the Board's decision was without prejudice to the Conservancy bringing the matter back before the Board post June 17, 2017 and that it may be done by oral motion.

PARTICIPANT STATUS REQUESTS

[12] With the exception of Mr. Prentice on behalf of the Conservancy, and Mr. Fox on behalf of Heart, all the participants are shown on Exhibit 3.

APPLICANT'S REQUESTS

[13] Counsel for the Applicant made three requests which the Board will deal with in order: a consolidation order, another PHC, and to set a three week hearing date.

[14] On consent of the parties the Board ordered consolidation of MM130083 and PL 170048.

[15] With regard to a further PHC, the Board set a further one day PHC by appearance for **Friday, August 11, 2017 at 10 a.m. at:**

**Town of Newmarket
Municipal Offices, Council Chambers
395 Mulock Drive
Newmarket, Ontario L3Y 4X7**

[16] For that second PHC, the Board directed that the parties to have a draft Procedural Order ("PO") and Issues List for consideration by the Board. The draft PO will contain a mandatory meeting of all like experts and agreed Statements of Fact, which the Board anticipates will assist in the scoping of issues for the hearing. The parties are to provide their issues to counsel for the Applicant. Without prejudice to the

party status decision with regard to Conservancy, the Board directs Conservancy to similarly provide its issues. The Board charged counsel for the Applicant with the responsibility of providing the draft PO and Issues List to the Case Coordinator on or before Friday, July 7, 2017.

[17] With regard to the final request to set a three week, hearing the Board found that as the parties had not been finalized (and with that their number and extent of expert witnesses) it would be premature to do so at this time.

[18] With regard to the second PHC, I am not seized.

[19] With regard to the second PHC there will be no further notice.

[20] This is the Order of the Board.

"Blair S. Taylor"

BLAIR S. TAYLOR
MEMBER

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

Ontario Municipal Board

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