

ONTARIO LAND TRIBUNAL

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

Owner: Solmar (Niagara 2) Inc.
Objector: Two Sisters Resorts Corp.
Subject: Notice of Intention to Designate
Property Address: 200 John Street East and 588 Charlotte Street
Municipality: Town of Niagara-on-the-Lake
CRB Case No.: CRB1824 and CRB1825

WITNESS STATEMENT OF WILLIAM BUCHANAN

This Witness Statement is organized as follows:

Part I Qualifications
Part II Retainer
Part III Issues
Part IV June 2021 Tree Inventory Report
Part V Conclusion

I Qualifications

1. I am the owner and President of Buchanan Expert Tree Care Inc. (Betc). Betc is a full-service arboricultural tree care company specializing in the preservation of trees and shrubs. We offer unique services not available from most tree care companies as a result of our level of skill, certifications, education and experience. Examples include macro-injections on American Elms to protect against Dutch Elm Disease, custom blend of organic root bio-stimulation and plant health care diagnostics.

2. I have an Honours Bachelor of Science degree in Forestry from Lakehead University. This program is unique to other degree programs in that it has enough of a mathematics component to qualify for a minor in mathematics. In addition, a thesis is a graduation requirement.
3. I am an ISA Board Certified Master Arborist (BCMA) (NY-0392B) as well as an Ontario certified Butternut Health Assessor (BHA).
4. I have 27 years experience in assessing estate arboretum-like properties, such as Randwood, in Ontario, and in New York, New Jersey and Pennsylvania. Past projects include the estates of Ralph Lauren, Martha Stewart, George Soros, Long Wood Gardens (Dupont Estate) and Villanova University to name a few.
5. Attached as Appendix "A" is a copy of my *Curriculum Vitae*.
6. All of my experience as an arborist has essentially been educational and field work, and in advising clients in terms of tree and arboriculture matters such as the identification of species and their age, tree condition and origin.
7. I have not to date been qualified to give evidence in arboriculture before a Court or Tribunal. I am aware of and accept my duties to this Board in doing so.
8. I have reviewed and signed an Acknowledgment of Expert's Duty dated June 26, 2021, which is attached as Appendix "B".

II. Retainer

9. I was retained by Two Sisters Resorts Corp. ("Two Sisters") in 2017 and 2018 with respect to a tree maintenance program in respect of the lands known municipally as 144 and 176 John Street East (the "Randwood Estate").
10. Our work on the Randwood properties began in the winter of 2017. I conducted an extensive tree by tree inventory with instructions from the owner of the property to focus on preserving and restoring the neglected arboretum while improving the

safety and health of the trees on the property. This included restoration pruning for health, safety and aesthetics. Extensive cabling was done on select trees to help secure poorly structured canopies. Plant health care services were performed to help improve survival of specimen trees. A last select removal of dead or hazardous trees was done for safety of area and to prevent residual damage to specimen trees in fall zones. We also maintained a dead snag White Pine as a habitat tree for wildlife to add balance to the arboretum ecosystem.

11. In respect of my work on 144/176 John Street East, hundreds of trees were pruned of dead wood, rubbing and storm damaged limbs as indicated above.
12. In approximately 2018, I was retained by Solmar (Niagara 2) Inc. ("Solmar") with respect to the lands that are the subject matter of this proceeding – 200 John Street East and 588 Charlotte Street (the "Subject Lands"). The Subject Lands are adjacent to the Randwood Estate properties at 144 and 176 John Street East.
13. In respect of the Subject Lands, I have previously prepared the following reports:
 - a Tree Inventory and Condition Report and Tree Inventory Sketch dated July, 2020;
 - an Arborist Report and Tree Preservation Plan dated September 10, 2020; and
 - an Arborist Report and Tree Inventory Report (in conjunction with Stantec Consulting) dated April 9, 2021.

The above-noted reports were prepared on behalf of Solmar and filed with the Town in support of land use approval applications relating to a subdivision application on the Subject Lands.

14. In 2021, I was retained to provide arboricultural advice in relation to Notices of Intention to Designate (“NOID”) and the heritage designation of the Subject Lands under the *Ontario Heritage Act* (the “OHA”) by the Town.
15. Again in conjunction with Stantec Consulting Inc., I prepared a report entitled “200 John Street East and 588 Charlotte Street, Niagara-on-the-Lake, Ontario Arborist Report and Tree Inventory Report” dated June 26, 2021 (the “Tree Inventory Report”).
16. In preparing that report, which was done specifically for this proceeding, I drew on my earlier reports listed in paragraph 13 above and the documents referenced therein, and my extensive field work on the Subject Lands. I also reviewed an aerial photo posted to the Town’s website entitled “The Rand Estate Cultural Heritage Landscape”.

III Issues

17. The issues in respect of this proceeding are set out in the Procedural Order dated March 24, 2021.
18. My work is relevant to the following issue:
 - 1(a) – *What are the “surviving elements of the Dunington-Grubb landscape the Town wishes to protect other than the:*
 - *Tea pavilion*
 - *Pool pavilion*
 - *Tea pavilion and formal plantings and pergola around the pool*
19. My conclusions and opinion are based on the Tree Inventory Report. I wish to make it clear that as part of my evidence, I adopt that report.

IV. The June 2021 Tree Report

Overview of the Study Area – 200 John and 588 Charlotte

20. The Subject Lands are two of four remaining parcels of the original Rand Estate. I understand the parcels fronting on John Street East, 144 and 176, to contain significant built heritage resources, including the Rand Mansion and the Sheets House.
21. The Subject Lands are adjacent to and generally behind 144 and 176 John Street. 200 John Street East is an irregularly shaped parcel with access via a long gravel driveway from John Street East. 588 Charlotte Street is also located to the west of 200 John Street East.
22. The parcels at 144 and 176 John Street East contain an extensive tree canopy, and are characterized by a unique collection of tree and plant material. As described above, our firm has done extensive work in terms of tree preservation and maintenance on these two properties.
23. The tree canopy on the Subject Lands has undergone several changes in recent years, including tree removal from both properties in 2017 and 2018.
24. The details of our work and findings are referenced in the Tree Inventory Report and summarized below.

Background and Methodology

25. I am aware that one of the issues in the CRB proceeding is the identification of the “*surviving elements of the Dunington-Grubb landscape*” on 200 John Street East,

and a subsequent determination as to whether or not the identified Dunington-Grubb elements have cultural heritage value or interest.

26. The objective of the Tree Inventory Report was to provide David Waverman, senior landscape architect and his team with arboricultural data to assist them in the determination of what constitutes the “*surviving elements of the Dunington-Grubb landscape*” to enable them to then conduct a cultural heritage evaluation.
27. I am not qualified to identify elements of Dunington-Grubb design, or to give an opinion on cultural heritage value or cultural heritage landscapes. My role in this matter has been to determine, in my opinion, based on observation, education and experience, the following attributes of the vegetation on the site:
 - (1) The identification of a species;
 - (2) The age of the species;
 - (3) The condition of the species; and
 - (4) Whether the species is naturally occurring or planted.
28. This information in turn will assist the qualified heritage landscape professionals in assessing whether or not certain vegetation or landscape features are part of the Dunington-Grubb designed landscape, and of cultural heritage value or interest.
29. The determination of age of a tree varied depending on the tree and situation. The Juniper hedge along the Linear strip accessed via John St East was determined very accurately by counting the growth rings on a stump of one that has already been cut down. The Purple Plums around the Pool was determined by counting the rings accurately from a large dead leader cut near base of tree and extrapolating the growth of that to a full-sized tree based on diameter differential. White Pines and other conifers were accurately aged by counting number of inter-nodes (space between whirls of branches going up trunk represents one year of growth). Other larger deciduous trees like Black Walnuts, Oaks, Hickories etc. were an opinion,

based on species and site conditions keeping in mind that the soil on this site is spectacular for maximum growth for any given species.

30. Another key item of our work was to determine if a tree was planted or naturally occurring. In some cases it is obvious. For example, trees in a pattern are generally cultured trees, as nature isn't so organized, but is random. Further, certain species just are not found growing naturally. For example, the thornless Honey Locust is a cultivated variety that has been engineered to remove its potentially dangerous thorns.
31. Another factor at play in the determination of natural vs. cultural tree is shade tolerance of a tree. The Linear strip along 200 John Street East has several Pine and Spruce species. They are not shade tolerant (with the exception of the White Pine), and are planted in a pattern. In this case for example, I believe they were planted in an open treeless situation to create a privacy screen between 210 John Street East and 176 John Street East. Age also informs the natural vs. cultural tree determination. For example, a 250 year old tree would be naturally occurring as the area was not developed at that time.
32. A further influencing factor in determining whether trees were naturally occurring or planted was location. Whether trees were in conflict with man-made structures or causing damage such as growing into the concrete bridge over the creek and into or abutting the stone wall, these were considered naturally occurring.
33. In order to undertake our work, each parcel of the Subject Lands was divided into three groups, and then further divided into sub-groupings. The subgroupings were identified in response to both vegetation on the ground, as well as the aerial mapping posted to the Town's website that set out what is alleged to be elements of Dunnington-Grubb landscape.

34. In order to follow the methodology of the inventory, reference to Appendix D of the Tree Inventory Report, being the Tree Inventory Plans, should be followed electronically to enable the reader to zoom in.
35. In respect of 200 John Street East, three separate areas of the property were identified:
- (a) The linear Strip Accessed via John Street East;
 - (b) The northwest section; and
 - (c) The southeast section.
36. Trees in each of these areas were then inventoried as follows:
- (a) In respect of the first area of 200 John Street East, 47 trees were individually inventoried and evaluated, as well as 34 that were inventoried within a 6-metre buffer along adjacent properties (being 176 John Street East containing the Rand Mansion and 210 John Street East). The results of the evaluation is set out in **Table 2** of the Tree Inventory Report.
 - (b) In respect of the northwest section of 200 John Street East, an area I understand to contain the documented Dunington-Grubb tea house and plantings, 57 trees were evaluated within 200 John Street boundaries and 4 were evaluated within a 6-metre buffer along the adjacent properties. Of note is that between the Calvin Rand Summer home, the Carriage House and the 176 John Street East Property, there is a buffer of planting identified as Group 5 – which contains a grove of Lilac Species approximately 100 years old, a row of Rose of Sharon and a cedar row. The results of the evaluation are set on in **Table 3** of the Tree Report.
 - (c) The southeast section of 200 John Street East is predominately open field with low growing herbaceous material, and the trees inventoried were primarily around

the borders. This part of the evaluation was grouped into three subsections with the results of the evaluation being set out in **Table 4**.

37. The NOID issued by the Town in respect of 588 Charlotte Street does not contain reference to any Dunington-Grubb landscaping. However, given that the trees on this site had been fully inventoried, the Tree Inventory Report considers their characteristics.
38. In respect of 588 Charlotte Street, the lands were split into the following three groups
 - (a) The Strip providing access to Charlotte Street;
 - (b) The north section; and
 - (c) The south section.
39. In the access strip, three trees were individually evaluated, as well as one tree within a six-metre buffer on the adjacent property at Weatherstone Court. The results of the evaluation are set out in **Table 5** of the Tree Inventory Report.
40. In respect of the north section of 588 Charlotte Street, which borders the Weatherstone Court subdivision, a grouping of trees which acts as a privacy screen (likely planted at the time development of Weatherstone development completion) was evaluated, along with two individual trees and several other groupings. The results of the evaluation are set on in **Table 6** of the Tree Inventory Report.
41. The south section of 588 Charlotte Street consists of 6 inventoried trees with the results of the evaluation being set out in **Table 7** of the Tree Inventory Report.

Summary of findings

42. A summary of my findings are as follows:

200 John Street East

A. Linear Strip

43. The linear strip accessed via John Street East contains a mix of both coniferous and deciduous trees.
44. The trees in the area range from 10 to 100 years of age. Of the trees inventoried, 44 were classified as natural and 35 were classified as cultural/planted. As indicated above, several of the trees were documented to be 80 to 100 years old and cultural/planted. These include:
- Horsechestnut
 - White Pine
 - Norway Spruce
 - Honey Locust
 - Black Walnut
 - Big Shellbark Hickory

B. Northwest Section

45. The northwest section of 200 John Street East contains the tea house/pool area and groupings of tree species. Within this highly designed section, 54 trees were categorized as cultural/planted and 12 as naturally occurring trees.
46. Cultural/planted trees include trees between the ages of 80 to 100 being:

- White Pine
- Big Shellbark Hickory
- Eastern White Cedar
- Scots Pine
- Austrian Pine
- Boxwood

C. Southeast Section

47. The southeast section of 200 John Street East is predominantly an open field with low growing herbaceous material. A north grouping of trees is considered to be approximately 30 years of age. An east grouping bordering on 210 John Street East and 240 John Street East contain trees in various stages of growth.
48. A southern grouping in the southeast section of 200 John Street East bordering the Upper Canada trail contains trees ranging from 20 to 75 years of age. The trees in this area are predominantly naturally occurring.

588 Charlotte Street

A. The Strip providing access to Charlotte Street

49. The strip of Charlotte Street providing access to 588 Charlotte Street contains two significant trees, identified in the Tree Inventory Report as Tree 79 and 80. Both trees are White Oaks approximately 175 to 250 years old. Part of 588 Charlotte Street also borders the residential subdivision of Weatherstone Court and is screened by a row of White Cedars.

50. Due to the percentage of naturally occurring trees in this area, it is not believed to be a designed landscape. The two trees which are older than 175 years are considered to be significant trees.

B. North Section

51. The north section of 588 Charlotte Street again borders Weatherstone Court to the west. There are significant groupings of trees which provides a privacy screen between both properties. There is a high percentage of naturally occurring trees in this area. However, there is a grouping of trees acting as a buffer which is believed to be planted/cultural in order to provide screening for the Weatherstone Court properties.

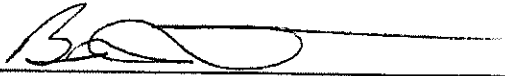
C. South Section

52. The south section of 588 Charlotte Street contains 6 inventoried trees all categorized as natural. Three of these trees are significant trees. Tree 72, is a White Oak approximately 125 years old. Tree 73 is a Red Oak approximately 225 years old and Tree 75 is a White Oak approximately 125 years old.

XIV. Conclusion

53. Determining whether or not a planting is or is not Dunington-Grubb is beyond my scope of expertise.
54. The results of the Tree Report can assist qualified landscape architects in determining whether or not trees are likely to be part of a designed landscape and aged in such a way as to support an association with the Dunington-Grubb Studio.

Dated at the Town of Pelham, June 27, 2021

A handwritten signature in black ink, appearing to read 'Bill Buchanan', written over a horizontal line.

Bill Buchanan, HBSCForestry

ISA Board Certified Master Arborist NY-0392B

WILLIAM BUCHANAN

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EXPERIENCE

2006 – TO PRESENT

OWNER/OPERATOR, BUCHANAN EXPERT TREE CARE INC.

Tree care company in Niagara Region specializing in the preservation of trees.

2005– 2006

GENERAL MANAGER, TREETECH

Sales and Company Management
Burlington Ontario

1994-2005

ARBORIST/MANAGER, SAVEATREE

Technician, sales, sales management and district manager.
New York, New Jersey and Philadelphia respectively.

EDUCATION

APRIL 1994

HONORS BACHELOR OF SCIENCE IN FORESTRY, LAKEHEAD UNIVERSITY

Graduated First Class Standing

SKILLS

- ISA Board Certified Master Arborist NY-0392B
- Ontario Butternut Health Assessor

MEMBERSHIPS

- ISA (International Society of Arboriculture)

Appendix B

Acknowledgement of Expert's Duty: Video Hearing

Case Number	Municipality
CRB1824 and CRB1825	Town of Niagara-on-the-Lake

1. My name is William Buchanan (name)
I live at the Town of Pelham (municipality)
in the Regional Municipality of Niagara (county or region)
in the Province of Ontario (province)

2. I have been engaged by or on behalf of ..Solmar.(Niagara 2).Inc......
(name of party/parties) to provide evidence in relation to the above-noted Review Board proceeding.

3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - a. to provide opinion evidence that is fair, objective and non-partisan;
 - b. to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - c. to provide such additional assistance as the Review Board may reasonably require, to determine a matter in issue.
 - d. not to seek or receive assistance or communication, other than technical support, from any third party, including but not limited to legal counsel or client, while giving oral evidence in chief, under cross-examination or while in reply.

4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date 6/26/21


Signature