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ISSUE DATE:

October 17, 2012

**CRB1003**

## **CONSERVATION REVIEW BOARD**

**RE: THE CORPORATION OF THE TOWNSHIP OF KING – INTENTION TO DESIGNATE THE PROPERTY KNOWN AS 12605 KEELE STREET (“SHIFT PROPERTY”) IN THE TOWNSHIP OF KING, ONTARIO**

**Su Murdoch, Chair**  
**Stuart Kidd, Member**

This Hearing was convened under s.29(8) of the Ontario Heritage Act, R.S.O. 1990, Chapter O.18, amended to 2009 (“Act”), for the purpose of reporting to the Council of the Township of King (“Township”), whether, in the opinion of the Conservation Review Board, on the basis of the evidence it heard, the property known as 12605 Keele Street (“Shift Property”) should be protected by bylaw under s.29 of the Act. The legal description of the property is Part Lot 2, Concession 3, King Township.

Notice of this Hearing was served by the Review Board on the Parties and was published in *The Weekly Sentinel* of August 1, 2012, in the manner required under the Act. A Statement of Service was filed as Exhibit 1.

The Hearing convened at 11:00 a.m. on August 13, 2012, at the Township of King municipal office at 2075 King Road. The Hearing ended at about 5:00 p.m. on the same day. No site visit was conducted due to the subject property being under agricultural cultivation.

### **Counsel in Order of Appearance**

Mr. James Feehely, Solicitor, Feehely Gastaldi, on behalf of the Township of King  
Mr. Chris Barnett, Solicitor, Davis LLP, on behalf of the property Owner/Objector Hickory Hills Investments Inc.

## **Witnesses in Order of Appearance**

Ms Wendy Shearer  
Ms Leslie Maitland

## **Members of the Public in Order of Appearance**

Ms Elaine Robertson  
Ms Jane Underhill  
Ms Virginia Atkins

## **Jurisdiction of the Board**

All Parties were reminded that the jurisdiction of the Review Board under s.29 of the Act is to hear evidence within the framework of Ontario Heritage Act Regulation 9/06: Criteria for Determining Cultural Heritage Value or Interest (see Appendix B).

The Review Board does not address issues of demolition or removal of a building or structure, as these are the jurisdiction of Council and, on appeal, the Ontario Municipal Board.

The Review Board does not address issues of the costs of physical maintenance or repairs, as these are outside the evaluation of cultural heritage value or interest.

The Review Board does not address any planning permit applications or issues that are under the jurisdiction of the Planning Act. These are between the applicant and the municipality.

Evidence on any of these topics will be heard if it gives context to the discussion of cultural heritage value or interest and/or the integrity of any heritage attributes that may support that value or interest.

## **Scope of Inquiry**

### **Subject Property**

Only that part of Lot 2, Concession 3, King Township, that is associated with the art installation known as "Shift" is under consideration for purposes of this Hearing. Shift was created between 1970 and 1972 by American artist Richard Serra for the then property owner Roger Davidson, a Canadian art collector and dealer. In 1974, Davidson sold the property including Shift to Hickory Hills Investments Inc., the current owner. Shift consists of two groups of three, angled linear poured in place concrete walls of varying lengths strategically set in the rolling contours of a field with two hills and a valley between. No wall exceeds two metres in height. The distance between the farthest extent of the walls is 269 metres. No part of the balance of the property is being considered for protection under the Act.

### Agreed Statement of Fact

A Draft Agreed Statement of Fact was received by the Review Board on July 31, 2012. This was substituted by the Parties with a Final Agreed Statement of Fact and entered as Exhibit 2. There was no change in the text. Essentially, this Agreed Statement establishes the facts of the creation, form, context, and condition of Shift; as well as the career significance of its artist Richard Serra. There were no agreed facts regarding the protection of all or part of this property under s.29 of the Act.

### Statement of Cultural Heritage Value

The Review Board was informed on July 31, 2012, that the Parties agree on the draft wording of the Statement of Cultural Heritage Value contained in Tab 9, Exhibit 3 (Shearer Witness Statement; see Appendix A). This agreement extends to the determination of the subject property as the 4.03 ha parcel within part Lot 2, Concession 3, King Township, that is associated with Shift ("Shift property").

### At Issue

At the start of the proceeding and as evident in the Witness Statements of Ms Shearer and Ms Maitland, the Parties concur that the portion of the subject property that contains Shift meets the test of Ontario Regulation 9/06: Criteria for Determining Cultural Heritage Value or Interest as a candidate for protection under s.29 of the Act. At issue is whether or not s.29 of the Act should be invoked. The Township contends that the Act is the only mechanism available to Council to protect and conserve the Shift property. The Owner/Objector contends that Regulation 9/06 is "too broad" and that the application of s.29 of the Act is unnecessary and "cannot affect the conservation" of the Shift property.

### **Identified Issues**

The evidence presented at this Hearing raised a number of issues which this Report will address:

1. The jurisdiction of s.29 of the Act
2. Interpretation of the Ontario Heritage Act and Regulation 9/06
3. Wording of the Draft Statement of Cultural Heritage Value
4. What is best for Shift?

### **Witness – Wendy Shearer**

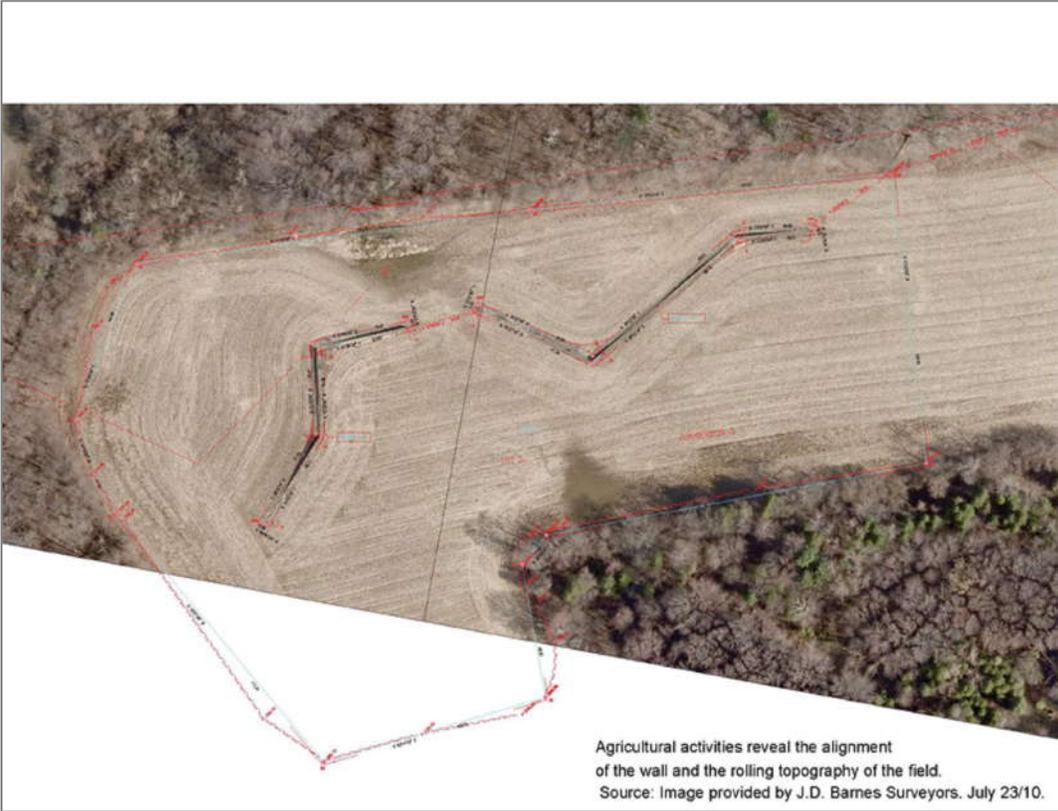
#### **Factual Background of Subject Property and Shift**

Both legal counsels requested that Ms Wendy Shearer present the factual background of the subject property and Shift on behalf of the Parties.

Ms Shearer was sworn as an expert witness in cultural heritage landscape evaluation and

landscape conservation. Her Witness Statement was entered as Exhibit 3. The Review Board reminded Ms Shearer (and Ms Maitland who was in attendance) that as stated in their signed Acknowledgements of Duty as an Expert Witness, their role is to inform the Review Board and not to solely espouse the position that supports their client's interest.

Ms Shearer explained at this time and in subsequent testimony that the original farmstead at this location was 97.5 ha accessed from Bayview Avenue. Urban development on the west half of the original parcel left the remaining farm and forested area fronting on the west side of Dufferin Street, being Lot 2, Concession 3, King Township. Within that remaining parcel of land, the Shift property is at the northwest corner, about 600 metres distant from the nearest farm buildings at Dufferin Street. There is no access to the Shift property from Dufferin. The Shift property is bordered on the north, west, and south by naturalized vegetation including woodlots and a heronry. The east limit is hilltop topography. Lowland grasses are growing in wet areas near the site.



Source: Tab 7, Exhibit 3



View of the wooded backdrop is unobstructed access the winter landscape. (View north east) Source: Tab 6, Exhibit 3

Due to the rolling topography of the property, Shift is not visible from any public location. The public is currently trespassing through a woodlot to enter the Shift property from the northwest.

Shift's artist, Richard Serra, is acknowledged as "one of the most significant artists of the late 20<sup>th</sup> and early 21<sup>st</sup> century." Based on a review of his design sketches, it is apparent to Ms Shearer that Serra analysed the natural topography of the field when selecting the location for Shift. The boundary of the sculpture is the outside limit of the walls. Its length is closely related to the distance two people travelling away from each other can still keep the other person in view. The walls are constructed of poured in place concrete. Each straight wall section is level and none exceed two metres in height. There is a step down in the composition wherever there is a five foot differentiation in land elevation, thereby achieving the overall effect that Shift is responding to the contours of the field. Each wall end is angled to fit together although there is a gap of 24.53 metres between the two wall structures where the natural low ground intersects the sculpture.

The boundary of the setting for Shift is defined by the three vegetated sides on the south, west, and north. On the eastern side the setting is bounded by the highest point of land on which a visitor can stand and still have the entire sculpture in view. As the visitor proceeds farther to the east, the grade changes, the ground slopes down, and the western end of the wall is no longer visible. The boundaries of this setting enclose 4.03 ha of land. The distance separation from the sculpture walls to the edge of the field vary and range from 18 metres to the north, 38 metres to the west, and 35 metres to the south at the closest point.

## **Case for the Municipality**

### **Witness – Leslie Maitland**

Ms Leslie Maitland was sworn as an expert witness in cultural heritage property evaluation and conservation. Her Witness Statement was entered as Exhibit 4.

In March 2010, following the Objection to the Notice of Intention to Designate, Ms Maitland was retained by the Township to provide advice on legislative measures available to protect Shift for cultural heritage value or interest reasons. She researched Shift, its artist Richard Serra, and the site in sufficient detail to conclude that it meets the criteria of Regulation 9/06 “extremely well.” Her Witness Statement (pg 1, Exhibit 4) also identifies “the development of a Conservation Easement or Agreement” as an option for protection of the property. (Both legal counsels confirmed that efforts put toward this initiative were not successful.)

Ms Maitland considers Shift to be part of a very significant movement in art and architecture in the 1960s. She agrees with the Statement of Cultural Heritage Value and description of heritage attributes drafted by Ms Shearer, including the measurement of 4.03 ha as the boundary setting of Shift.

Due to its isolation, the site is currently considered vulnerable and subject to unlawful entry, potential vandalism, and damage through intrusive vegetation. There is concern that a subsequent owner may be a less sympathetic steward of Shift than the current owner of thirty eight years (Hickory Hills).

Ms Maitland explained that protection of a property under s.29 of the Act is “an affirmation of cultural values to a community” and is the “first step toward preservation of a cultural resource.” The suitability of the Act over other legislation is that it is specific to the identification of cultural heritage values or interests. A s.29 bylaw would assign the Township a legislated role as overseer of the cultural heritage of the property, in perpetuity. She considers protection under s.29 to be proactive and provides for conservation of the site through such mechanisms in the Act as the requirements for permission to alter, demolish or remove; provision for a s.29 property standards bylaw under s.35.3; and rights of inspection and enforcement. The site “needs to be protected from and for the benefit of the general public.”

Ms Maitland cited s.2.6 of the Provincial Policy Statement, notably 2.6.3 regarding development or site alteration on lands adjacent to a protected property (Exhibit 5). In her opinion, this triggers the requirement for a cultural heritage impact assessment to identify and mitigate possible impacts to a heritage property.

With respect to whether the Act is applicable to the Shift property, in that the heritage attribute (Shift) is not visible to the public, Ms Maitland explained that protection under the Act does not require nor result in any public right of access or viewing any building or structure on a protected property.

Ms Maitland concurred that protection of a property under s.29 is at Council's discretion. The Act permits the protection of any building or structure (or cultural heritage landscape) on privately owned real property. She acknowledges that the King City Community Plan and the Oak Ridges Moraine Conservation Plan limit the property on which Shift is located to agricultural uses. In her opinion, the ORMCP protects natural topography and is not intended to protect cultural resources.

### **Case for the Objector**

Ms Shearer continued her testimony by explaining that she was retained by Hickory Hills Investments Inc. in 2009. She visited the site several times and collaborated with a colleague to compile a condition assessment of Shift and its setting. At Ms Shearer's suggestion, Hickory Hills has undertaken conservation measures such as not using metal cutters or pesticides to remove or control vegetation. She recommends fencing to prevent trespassing.

Shift was never intended for public viewing. It has maintained its physical integrity in that there is no uneven settling and there are few breaks in the walls. The darkening of the concrete and lichen growth are normal and anticipated processes. The perennial farm cultivation has effectively maintained the distance between Shift and the woodlot/naturalized vegetation boundary. To avoid damage, the farming activities maintain a 1.5 metre buffer between the Shift walls and any cultivation.

Although Ms Shearer applied the criteria to the Shift property and drafted the Statement of Cultural Heritage Value, she stated that she finds the wording of Regulation 9/06 "too broad." She also is not convinced of the added value of a s.29 bylaw in conserving this site. There is a gap between "what a s.29 bylaw can do and what the site needs."

When analyzing the "threats" to Shift, the most obvious to Ms Shearer would be inappropriate development of the surrounding lands. In this she finds the Oak Ridges Moraine Conservation Plan categorization of the property as Natural Core Area sufficient legislative limitation on development and use. She quoted from the Land Use Designation and other sections of the Plan:

**Natural Core Areas** protect those lands with the greatest concentrations of key natural heritage features which are critical to maintaining the integrity of the Moraine as a whole. Only existing uses and very restricted new resource management, agricultural, low intensity recreational, home businesses, transportation and utility uses are allowed in these areas.

Ms Shearer believes that the King City Community Plan reinforces the ongoing agricultural use and prevention of any urban development of this property.

In Ms Shearer's opinion, Hickory Hills has been a conscientious steward to date and she queries whether any future owner would willingly destroy an artistically and financially valuable Serra sculpture. The Act cannot respond to natural disasters such as a tornado or insect infestation destroying the perimeter vegetation that gives context to Shift. The provisions of the Act are permit application based. No s.35.3 minimum standards bylaw can adequately address the conservation needs of this work of art. It needs a site specific maintenance/conservation manual based on accepted Standards and Guidelines (Exhibits 6a and 6b).

## **Members of the Public**

Ms Elaine Robertson was sworn. Ms Robertson is past Chair of the Township of King Heritage Committee and has been working toward the designation of the Shift property since 2004. She has personal knowledge that until recently the owner had the mistaken belief that Shift was an old foundation and was not aware of its artistic significance. She is personally acquainted with Richard Serra and, in her opinion; he is concerned about the ongoing maintenance of Shift. She suggests that creating a "park like setting" for Shift would be "amazing."

Ms Jane Underhill was sworn. Ms Underhill has been a resident of King Township for 53 years and served as a municipal councillor and a member of the Heritage Committee. She believes that Shift was "virtually unknown" prior to the 1990s when studies were undertaken to compile the King Community and Oak Ridges Moraine Conservation plans. To her, Shift is vulnerable and needs repair and ongoing monitoring. She wants Shift to be in "public hands."

Ms Virginia Atkins was sworn. Ms Atkins is a resident of King Township and past president of the King Township Historical Society. She describes Serra as an "international artistic star." She questioned the notion that the current owner has been a good steward of Shift, given that she and friends have in the past clipped weeds and trees away from the walls. She wants Shift to be in "public hands" and considers designation to be the start of this direction.

## **Discussion**

### **1. The Jurisdiction of s.29 of the Act**

#### **Is Shift a fixed and immovable object and therefore subject to s.29 of the Act?**

Part IV of the Act, which contains s.29 and s.34.5, provides for the protection of property defined as "real property and includes all buildings and structures thereon." Real property means land and those features of a fixed, immovable nature. (This differs from the provision for real and personal property under Part II: Ontario Heritage Trust; and restrictions on the definition of property in Part VI: Resources of Archaeological Value.)

Both expert witnesses stated that Shift cannot be moved to a new location and retain its intended meaning as a landscape sculpture set to the specific topography of its location. It is

fixed and immovable, and therefore is a “structure” on a real property. The Review Board agrees with this interpretation. The property, with Shift as its heritage attribute, qualifies as a candidate for evaluation under Part IV of the Act.

Does a protected property need to be in public view and/or accessible by the public?

The Review Board agrees with the expert witnesses that the Act does not require nor result in any public right of access or viewing any building or structure on a protected property.

Can the Act protect “Private Property”?

It was queried whether the Act can protect a “private work of art on a private property.” The Act enables the Minister, and a municipality or approval authority to protect property in private ownership when it is determined by Regulation that the property holds cultural heritage value or interest, and can do so without permission of the property owner.

## **2. Interpretation of the Ontario Heritage Act and Regulation 9/06**

Both expert witnesses confined their evidence to the application of Regulation 9/06 to the subject property and specifically to Shift as the only heritage attribute on the property. Prior to the Hearing, they had agreed on the draft wording of the Statement of Cultural Heritage Value contained in Tab 9, Exhibit 3 (see full text in Appendix A). Ms Shearer qualified this by stating that she finds the wording of Regulation 9/06 “too broad.”

In summary, pursuant to Ontario Regulation 9/06 under the Ontario Heritage Act, the subject lands meet the following criteria for determination of cultural heritage value or interest.

1. The property contains a site of 4.03 ha which has design value because it:
  - i) is a representative example of a material and construction method, namely form work and poured in place concrete;
  - ii) and displays a high degree of craftsmanship and artistic merit in its composition and execution.
  
2. The property contains a site of 4.03 ha which has associative value because it:
  - i) has direct association with sculptor, Richard Serra, recognized as a significant artist of the 20th century.
  
3. The property contains a site of 4.03 ha which has contextual value because it:
  - (i) contains a sculpture of six angled linear walls physically and visually linked to its surroundings.

In reviewing this agreed to Statement, the Review Board considered its collective record in adjudicating on objections under s.29 of the Act; and in interpreting the intent of the Act and wording of Regulation 9/06.

Ultimately, the Act is derived from the Provincial Policy Statement, 2005 (“PPS”) of the Planning Act, notably s.2.6 Cultural Heritage and Archaeology. Section 2.6.1 states: “Significant built heritage resources and significant cultural heritage landscapes shall be conserved.” The PPS defines “significant” as:

(g) in regard to cultural heritage and archaeology, resources that are valued for the important contribution they make to our understanding of the history of a place, an event, or a people.

Part I, s.2 of the Ontario Heritage Act states the objective of the Act by way of identifying the Minister responsible for its administration:

2. The Minister is responsible for the administration of this Act and may determine policies, priorities and programs for the conservation, protection and preservation of the heritage of Ontario.

Regulations 10/06 and 9/06 of the Act prescribe criteria for evaluating (real) property for its cultural heritage value or interest.

The wording of Regulation 10/06: Criteria for Determining Cultural Heritage Value or Interest of Provincial Significance is tightly tied to the condition that to be protected, a property must hold or demonstrate some aspect of the history and/or cultural heritage of Ontario. The mechanism is a Minister’s Order under s.34.5 and the administration/enforcement is at the provincial level.

Regulation 9/06: Criteria for Determining Cultural Heritage Value or Interest is considered to be the municipal level equivalent of Regulation 10/06. The mechanism is a municipal bylaw under s.29 and the administration/enforcement is at the municipal level. It can only be applied to properties within the jurisdiction of the municipality or approval authority. Cultural heritage value or interest does not need to be municipality wide and can be very localized. Of note is that provincially significant sites can be protected at the municipal level under s.29 but the municipality can only apply Regulation 9/06 as the test. It does not have access to Regulation 10/06; the Minister does not have access to Regulation 9/06.

The Act and its Regulations use the word “community” in a way that allows its interpretation to be more than the geographic definition of community. As examples, a property may hold cultural heritage value or interest to an artistic, religious, cultural, or other interests “community.” A reasonable interpretation is that the Act and its Regulations are still seeking “community” cultural heritage resources within the framework of the PPS (“our understanding of the history of a place, an event, or a people) and the Act (“the heritage of Ontario”).

The Regulation 9/06 category of Design or Physical Value does not use the word “community.” The category of Historical or Associative Value specifies the need for a cultural resource to be “significant to a community,” “contributes to an understanding of a community or culture,” or

“demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.” The category of Contextual considers the “character of an area” and being “linked to its surroundings.”

What appears to the Review Board to be lacking in the findings of Regulation 9/06, as presented by Ms Maitland and Ms Shearer and in the agreed to Statement of Cultural Heritage Value, is the “community” context. How does Shift “contribute to an understanding of “a community or culture” in the context of the Act? For example, what “community” holds Shift as significant for cultural heritage value or interest reasons? The Historical or Associative criterion of “demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist . . .” is cited in the Statement, but no evidence to support the completing phrase “who is significant to a community” was presented.

Based on the evidence heard, Shift is unlike most candidate properties which initially or over time gain some association, context, relationship, importance, or story of cultural heritage value or interest to a “community.” No evidence was given that Shift’s origins and meaning are rooted in its geographic or any other “community.” Those who have experienced the Shift property have done so by invitation or without permission. There was no evidence with which the Review Board could reasonably elevate this to a “provincial community” level of evaluation. Is the Township simply the geographic host of a privately owned work by a now internationally significant artist? Does this meet the test of Regulation 9/06 or the intent of the PPS and the Act?

The fact that both expert witnesses were able to apply Regulation 9/06 to Shift perhaps serves to endorse Ms Shearer’s statement that its wording is “too broad” or generic. Ms Maitland stated that the Regulation, and through it s.29, is “an affirmation of cultural values to a community.” Yet, no “community” context was mentioned by either witness and in the Review Board’s reading; this is not established in the Statement of Cultural Heritage Value.

For these reasons, the Review Board is of the opinion that the argument that Shift furthers an understanding or appreciation for the cultural heritage of any part or aspect of a “community,” as intended by Regulation 9/06 and the Act, was not sufficiently established by the evidence presented. This questions the conclusion made that the property qualifies for protection under s.29 of the Act.

### **3. Comment on the Wording of the Statement of Cultural Heritage Value**

The conclusion heard that the boundary of Shift and its setting is encompassed within a 4.03 ha parcel is based on good methodology and analysis. This is a well reasoned boundary definition.

The Statement of Cultural Heritage Value agreed to by all Parties identifies Shift as the only heritage attribute of the property and describes its physicality and setting. The natural and evolved context of the site and surrounding lands is considered integral to Shift’s design. The

description of the heritage attribute contained in the Statement includes the physical walls and extends to the topography and setting (see Appendix A for full text):

- The overall topography of the sculpture setting, namely the two small hills and the valley between them.
- The setting of “Shift” comprising 4.03 hectares of a field in agricultural use extending up to the edge of the surrounding vegetation on the north, west and south sides. A boundary of vegetation consisting of naturalized trees, shrubs, herbaceous plant material to the north, west and south and a high point of land to the east.
- The unencumbered space of the cultivated field that allows seasonal views from the peripheral border.

Of caution in this wording is that the Act does not control land use. As such, it is important to separate a description of existing conditions from the features necessary for long term artistic integrity. For example, the Act cannot ensure that this will always be a “field in agricultural use” or “a cultivated field” with a boundary of vegetation. Only the King Township Community Plan and the Oak Ridges Moraine Conservation Plan control existing and future uses of this property.

#### **4. What is best for Shift?**

In their testimonies, both expert witnesses quickly moved to the immediate need for a long term stewardship and conservation/maintenance strategy for Shift. The members of the public agreed there is a need for ongoing monitoring and maintenance. Thus, it appeared to the Review Board that the primary motivation for the protection of the property under s.29 is to provide for its stewardship and conservation/maintenance within the framework of accepted Standards and Guidelines (Exhibits 6a and 6b)

Ms Maitland cited s.35.3: Building Standards Bylaw which can “prescribe minimum standards” and compliance “for the maintenance of the heritage attributes” of a s.29 property. (Mr. Feehely confirmed that the Township does not have a s.35.3 bylaw in place, as yet.) Ms Shearer contends that relying on a “minimum standards” bylaw does not address the ongoing stewardship and conservation/maintenance needs of a specific property and, more importantly, of an art installation. She believes such a bylaw presents the risk for inappropriate repair, for example, fixing the foundation and breaks in the Shift walls with materials and techniques more suited to buildings.

Ms Maitland cited the use of a heritage impact assessment to identify and mitigate potential negative impacts on a cultural heritage resource. (It was not stated whether the Township of King has such a Planning Act provision.) In this scenario, if the Shift property is being impacted by a proposed development, the requirement for an assessment would be triggered. This is not a mechanism for drafting a conservation/maintenance plan for a property not under threat of

development.

It was established that integral to the long term artistic integrity of Shift is its context – the valley, hills, vegetative boundaries, and the unencumbered space of the cultivated field providing a view of the sculpture from non public vantage points. This natural context already has legislated protection through the King City Community Plan and the Oak Ridges Moraine Conservation Plan, both of which can control land use where the Ontario Heritage Act cannot.

The public sentiment, as expressed by the members of the public who made statements at the Hearing, is that Shift should be a publicly accessible cultural heritage resource. Section 29 is seen as the first step in that direction. This is an unfortunate assumption as the Act does not result in public access to a privately owned, s.29 protected property.

In considering the provisions of the Act for a s.29 protected property, the Review Board agrees with Ms Shearer in that s.29 “cannot affect the conservation” of Shift, specifically described as the immediate need for a stewardship and conservation/maintenance plan being in the best interest of Shift.

### **Findings and Recommendation of the Board**

It was stated at the Hearing that the circumstance of the Shift property is unique. To some extent, the Review Board agrees.

The use of s.29 of the Act to protect a structure not visible or accessible to the public and on privately owned land is not unique.

Based on the evidence heard and the wording of the agreed to Statement of Cultural Heritage Value provided, what is both unique and problematic is that the Shift property does not appear to hold cultural heritage value or interest to any part or aspect of a “community,” as intended by Regulation 9/06 and the Act. As such, in the opinion of the Review Board, the property does not meet the test of Regulation 9/06, as required by s.29 of the Act.

### **Recommendation**

Based on the evidence heard, the Review Board is of the opinion that applying the criteria of Regulation 9/06 and concluding that the property qualifies for protection under s.29 is questionable, given a reasonable interpretation of the intention of the Ontario Heritage Act and the wording of Regulation 9/06. For this reason,

It is recommended that the Shift property not be protected under s.29 of the Ontario Heritage Act.

Given the evidence on the standalone artistic significance of Shift, the Township may chose to

list the subject property, identifying the 4.03 ha parcel associated with Shift, on the Register as defined by s.27 of the Act. This listing gives the Township some ability to monitor the property, notably in instances of Planning Act and similar landuse applications.

*This recommendation is specific to the unique circumstance of the Shift property and should not be construed as a precedence finding of the Review Board.*

*The Review Board appreciates the efforts of all participants in these proceedings.*

“Su Murdoch”

Su Murdoch, Vice Chair  
October 10, 2012

“Stuart Kidd”

Stuart Kidd, Member  
October 10, 2012

## Appendix A

### **STATEMENT OF CULTURAL HERITAGE VALUE**

#### **Regarding: Protection and Conservation of the Sculpture known as “Shift”**

**Street Address:** 12605 Keele Street

**Location:** Concession 3, Part Lot 2

**Municipality:** Township of King, Regional Municipality of York

**Assessment Roll:** #021 000

Council of the Township of King recognizes that a portion of the subject property should be protected and conserved as a significant work of art in the landscape.

#### **Description / Location of Property**

Located on Concession 3, Part Lot 2 approximately 637 metres west of Dufferin Street, Township of King, is a 4.03 hectare parcel containing the sculpture “Shift”. “Shift” is a large scale sculpture with several components, two lines of concrete walls each made up of three contiguous lengths that zigzags through an actively cultivated field of undulating topography. There is a border of naturalized vegetation on the north, west and south edge of the field and the hilltop topography on the east defines the setting. Beyond this there are fields and lands which provide a contextual frame for the sculpture site.

#### **Statement of Cultural Heritage Value or Interest**

The sculpture known as “Shift” contained within a 4.03 ha (9.96 acres) has design value as an early and rare example of large scale minimalist artistic creation of internationally renowned American artist Richard Serra. “Shift” consists of two groups of three angled linear poured in place concrete walls of varying lengths set in the rolling contours of the immediate landscape of the field consisting of two hills with a valley between.

The carefully proportioned and poured in placed concrete components are set in an agricultural landscape allowing an unobstructed view of the sculpture from the area immediately surrounding the installation.

Because of its association with Richard Serra “Shift” is an important piece of sculpture and a unique cultural artifact. The piece was constructed on private land owned by Roger Davidson, a Canadian art collector and dealer. “Shift” was created by Serra between 1970 and 1972. The 4.03 ha (9.96 acres) location of “Shift” is in the furthest west sector of the agricultural lands that made up the 97.5 ha (241 acres) Davidson property. It is not now or never has been visible from any public view point. Celebrated for his creations engaging mass, space, volume, form and place Serra is considered one of the most significant artists of the late 20th and early 21st century. “Shift” is a seminal, groundbreaking example of site specific sculpture and is evidence of the artistic process and Serra’s exploration of distance, topography and composition in a landscape.

The physical extent of “Shift” is best described in Serra’s own words: “We discovered that two people walking the distance of the field opposite one another, attempting to keep each other in view despite the curvature of the land, would mutually determine a topographical definition of the space. The 2 boundaries of the work became the maximum distance two people could occupy and still keep each other in view”. This distance between the furthest extent of the walls is approximately 269 metres.

In summary, pursuant to Ontario Regulation 9/06 under the Ontario Heritage Act, the subject lands meet the following criteria for determination of cultural heritage value or interest.

1. The property contains a site of 4.03 ha which has design value because it:

i) is a representative example of a material and construction method, namely form work and poured in place concrete;

ii) and displays a high degree of craftsmanship and artistic merit in its composition and execution.

2. The property contains a site of 4.03 ha which has associative value because it:

i) has direct association with sculptor, Richard Serra, recognized as a significant artist of the 20th century.

3. The property contains a site of 4.03 ha which has contextual value because it:

(i) contains a sculpture of six angled linear walls physically and visually linked to its surroundings.

### **Description of Heritage Attributes**

The heritage attributes of “Shift” relate to its cultural heritage value as an in situ early and rare example of the artistic creation of American artist Richard Serra and comprise:

- The poured in place concrete walls in their original locations and configurations. The walls are varied in length and elevation. The top of the walls are level but appear to rise from the ground as the topography falls from high point on the two opposite hills to the valley between them. There is an approximate 26 metre long gap between the two sections of the walls. The approximate wall lengths and their alignments comprising: (west to east)

- Section 1: 36.45 m N 20° 55'10" E

- Section 2: 31.57 m N 12° 30'00"W

- Section 3: 33.51 m N 67° 06'30"E

- Gap: 26.53 m N63° 28'50"E

- Section 4: 44.94 m N76° 27'10"W

- Section 5: 68.01 m N38° 45'50"E

- Section 6: 27.9 m N73° 25'50"E

- The overall topography of the sculpture setting, namely the two small hills and the valley between them.
- The eastern boundary of the setting of “Shift” is a north south limit at N170 23’00”W (Refer to attached survey prepared by J.D. Barnes Limited, December 21, 2009, Plan 65R).
- The setting of “Shift” comprising 4.03 hectares of a field in agricultural use extending up to the edge of the surrounding vegetation on the north, west and south sides. A boundary of vegetation consisting of naturalized trees, shrubs, herbaceous plant material to the north, west and south and a high point of land to the east.
- The unencumbered space of the cultivated field that allows seasonal views from the peripheral border.

## Appendix B

**ONTARIO HERITAGE ACT**  
**REGULATION 9/06**  
*No Amendments*  
**CRITERIA FOR DETERMINING**  
**CULTURAL HERITAGE VALUE OR INTEREST**

### Criteria

1. (1) The criteria set out in subsection (2) are prescribed for the purposes of clause 29 (1) (a) of the Act. O. Reg. 9/06, s. 1 (1).

(2) A property may be designated under section 29 of the Act if it meets one or more of the following criteria for determining whether it is of cultural heritage value or interest:

1. The property has design value or physical value because it,
  - i. is a rare, unique, representative or early example of a style, type, expression, material or construction method,
  - ii. displays a high degree of craftsmanship or artistic merit, or
  - iii. demonstrates a high degree of technical or scientific achievement.
2. The property has historical value or associative value because it,
  - i. has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community,
  - ii. yields, or has the potential to yield, information that contributes to an understanding of a community or culture, or
  - iii. demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.
3. The property has contextual value because it,
  - i. is important in defining, maintaining or supporting the character of an area,
  - ii. is physically, functionally, visually or historically linked to its surroundings, or
  - iii. is a landmark. O. Reg. 9/06, s. 1 (2).

### Transition

2. This Regulation does not apply in respect of a property if notice of intention to designate it was given under subsection 29 (1.1) of the Act on or before January 24, 2006. O. Reg. 9/06, s. 2.

## Appendix C List of Exhibits

EXHIBIT NO.	FILED BY	DESCRIPTION OF EXHIBIT
1	Conservation Review Board	Affidavit of Notice of Hearing being served, as required under the Ontario Heritage Act, 4 pages
2	Chris Barnett	Agreed Statement of Facts, 1 page
3	Chris Barnett	Witness Statement, Wendy Shearer, 9 tabs with executed Acknowledgement of Expert's Duty
4	James Feehely	Witness Statement, Leslie Maitland, 7 pages
5	Chris Barnett	Provincial Policy Statement 2005, 38 pages
6 a.	Chris Barnett	Federal Standards and Guidelines for the Conservation of Historic Places in Canada, 4 pages
6 b.	Chris Barnett	Federal Standards and Guidelines for the Conservation of Historic Places in Canada, Section 4.5.4 "Concrete", 5 pages (document pages 229 to 233 inclusive)