

Conservation  
Review Board

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## CONSERVATION REVIEW BOARD

**RE: THE CORPORATION OF THE TOWN OF RICHMOND HILL –  
INTENTION TO DESIGNATE THE PROPERTY KNOWN AS THE DAVID  
DUNLAP OBSERVATORY, 123 HILLSVIEW DRIVE, RICHMOND HILL  
(CRB File 2007-12).**

**Peter A.P. Zakarow, Chair  
Karen Haslam, Member**

**May 19, 2009**

This hearing was convened under s.29(8) of the Ontario Heritage Act, R.S.O. 1990, Chapter O.18, amended to 2006 (“Act”), for the purpose of reporting to the Council of the Town of Richmond Hill (“Town”), whether, in the opinion of the Conservation Review Board, on the basis of the evidence it heard, the property known as 123 Hillsvie Drive, David Dunlap Observatory (“DDO”), should be protected by bylaw under s.29 of the Act.

The current legal description of the affected property is Part of Lots 42 and 43, Concession 1, former Township of Markham, more specifically described as Part 1, Plan 65R-29959, and the current owner is Corsica Developments (“Corsica”), which is a part of Metrus Developments.

This property had been operating as an observatory under the ownership and management of the University of Toronto (“UofT”) and its Department of Astronomy and Astrophysics until its sale to Corsica. Historically, the property operated as the Marsh family farm from 1802, with some changes to the lot size/description, until its purchase in 1928 for the purpose of establishing the David Dunlap Observatory. The telescope was ordered in 1930, construction took place and the Observatory officially opened in 1935. The subject property is a land mass of about 175 acres, which is primarily an open, undeveloped space with a concentrated cluster of primary buildings, including an Observatory building (housing the telescope), an Administration building, and a dwelling historically referred to as Elms Lea. It is located in the heart of the developed Town of Richmond Hill, with close proximity to the main intersection of 16<sup>th</sup> Avenue and Bayview Avenue. The property has a fenced perimeter, except for an accessible entrance at an established Gate House located on Hillsvie Drive, and borders a major rail line to the west, Hillsvie Drive to the north, Bayview Avenue to the east, and either

residential properties or a public park (actually located on part of the property referred to as the “panhandle,” or Parts 2 and 3 of the overall DDO property) to the south.

The Notice of Intention to Designate (“Notice”) outlines the Town of Richmond Hill’s desire to protect, under s.29 of the Act, roughly one half of the total 175 acres associated with the municipal address of 123 Hillview Drive, also referred to as Part 1 in all legal descriptions.

The Conservation Review Board (“Board”) held two pre-hearing conferences on this matter, September 3, 2008 and October 15, 2008. There was no agreement of settlement flowing from these pre-hearings, however all parties agreed that the property warranted some degree of protection under the Act. It was on the issue of “what degree of protection” was appropriate that a formal hearing was convened.

Notice of this hearing was given by the Board, in the manner required under the Act, in the local publication the *Liberal*, on December 23, 2008. An affidavit by the Board’s Case Coordinator with respect to this notice was filed as Exhibit 1 (Ex 1).

The hearing day commenced with a site visit of the subject property at 8:30am on January 15, 2009, and the hearing convened the same day at 10:00am in Committee Room 2, Richmond Hill Town Hall, 225 East Beaver Creek Road.

The hearing ended in the late afternoon of January 23, 2009, after seven consecutive hearing days.

### **Parties in Order of Appearance**

Mr. Bruce Ketcheson, Counsel, Town of Richmond Hill (“Town”)

Mr. David Bronskill, Counsel, Owner/Objector – Corsica Developments (“Owner”)

Mr. Ian Lord, Counsel, Objector – Richmond Hill Naturalists (“Naturalists”)

Ms. Renu Duggal – Representative, Objector - Observatory Hill Homeowners’ Association (“OHHA”)

### **Witnesses in Order of Appearance**

Mr. Andre Scheinman – Heritage –Town

Dr. Thomas Bolton – Experience with Property – Naturalists (special request to accommodate surgery)

Mr. Andre Scheinman – Heritage – Town (continued – after Bolton)

Mr. Paul Dilse – Heritage – Naturalists

Mr. Dana Poulton – Archaeology – Naturalists

Mr. Garry Hunter – Air Photo and Environmental Systems – Naturalists

Mr. Alex Shevchuk – Landscape Architecture – Naturalists

Mr. Sean Fraser – Ontario Heritage Trust (Summons) – Naturalists

Mr. Michael McClelland – Heritage – Owner

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

Ms. Marie Thompson  
Ms. Joyce Horner  
Ms. Liz Couture  
Ms. Penny Parmenter  
Ms. Gloria Boxen  
Mr. Joseph Shaykewich  
Mr. Matthew Calaminici  
Ms. Jasmine Wong Leckey  
Ms. Ashley Dadoun  
Ms. Anne Dalla Rosa  
Mr. Rod Potter  
Ms. Carrie Hoffelner  
Ms. Deborah Chute  
Ms. Marion Matthias  
Mr. Lawrence Parent  
Ms. Shirley Sequeira  
Mr. Don Fernie  
Mr. Ernie Saequist  
Mr. Joe Agg  
Ms. Karen Widmer  
Mr. Geoff Green  
Dr. Ian Shelton

## **Jurisdiction of the Board**

All parties were reminded that the jurisdiction of the Board is to hear evidence within the framework of Ontario Regulation 9/06, which is part of the Act, to assess the cultural heritage value or interest of a property being proposed for designation under s.29 of the Act.

The Board does not address issues of demolition or selective demolition, the costs of physical maintenance or repairs, any planning applications or issues that are under the jurisdiction of the Planning Act, the current state of repair of a property, or any future use of the property.

Evidence on any of these matters will only be heard if it gives context to the discussion of cultural heritage value or interest and any heritage attributes or features that may support that value or interest. The relative weight of this evidence will be assessed by the Board in formulating its final recommendation.

The Board indicated that it would be diligent in adhering to these parameters and reminded all parties of the practice of limiting evidence and argument deemed to be outside of this scope.

As is the custom of the Board at the start of the hearing, members of the public in attendance were asked if they intended to participate by making a statement later in the proceedings. The Chair acknowledged that there was a large public gallery and about thirty people acknowledged their interest in making a public statement at the appropriate time of the hearing process.

## **Procedural Matters**

### **Public Statements**

The Town acknowledged the extensive public interest in this case and requested that a formal list be compiled to capture the names of the thirty or so citizens who have expressed an interest in making a public statement to the Board. It was also suggested that the Board contemplate setting aside a specific day and time for public statements, to facilitate the attendance of those wanting to participate. Based upon this request, the Board canvassed all parties on this issue. All parties agreed that the introduction of a more formal public statement structure was appropriate in this particular case. The Board ruled that Members of the Public would be permitted to address the Board starting at 2pm on Tuesday January 20<sup>th</sup>, with two hours initially allocated for hearing public statements on this case.

### **Hearing Order**

The Owner requested that the Board amend its hearing structure, communicated during its introduction, to permit the Owner to be the final party to present its case. It was noted that such a structure would provide better perspective to the owner's expert in conducting a peer review. The request was supported by the Town. The Board canvassed the other parties and all agreed to the requested amendment of the hearing structure.

The Board called a short recess to allow for the compilation of the list of citizens interested in making a public statement to the Board.

## **Agreed Statements of Fact**

The Board requested that all parties clearly state their positions on any agreed Statements of Fact that could be taken into consideration by the Board before cases were presented by each party. All Parties agreed that the subject property warrants some level of protection under s.29 of the Act, with the following overviews:

Town – Looking at the entire DDO property noted on the reference plan (Ex 3), there are Parts 1 (main rectangular land mass), and Parts 2 and 3 (which together form a rectangular land extension to the south of Part 1 referred to municipally as 350 16<sup>th</sup> Avenue, or also referred to as the “panhandle”). The Town asserts that only Part 1 is the scope of this Hearing. The three major structures (Observatory building, Administration building, and Elms Lea) are included in the Town's proposal, along with other structures and natural heritage elements collectively forming a clearly defined cultural heritage landscape.

Owner –The owner, Corsica, agrees to the inclusion of the three main structures (Observatory building, Administration building, and Elms Lea) in any plan for designation, and specifically the owner fundamentally agrees with the list and description of the interior and exterior elements outlined in the Notice (subject to some slight modification/clarification). The Town’s proposed cultural heritage landscape is not supported, and the owner will propose a cultural heritage landscape that is a more tightly defined geographic area immediately around the three main structures. The owner agrees that only Part 1 is to be considered as the subject property in this inquiry, and therefore Parts 2 and 3 are out of scope of the Board’s jurisdiction.

Naturalists –This organization supports the protection of Part 1 in its entirety, as manifest in the proposal of protecting all structures and features as a defined cultural heritage landscape encompassing all of Part 1. It is noted that an overview of the cultural heritage value of a farmstead, the Observatory, as well as archaeological potential will be presented to support this position. The status of Parts 2 and 3 is contentious, as it is asserted that the panhandle should be within the scope of the Board and any potential bylaw. In terms of the main three structures and their description in the Notice, a list of errors and omissions is submitted that will form part of their case (Ex 7).

OHHA – They are supportive of the Naturalists’ proposal of the complete protection of all of Part 1, and note that the panhandle should be completely protected by the same bylaw.

The Board notes that there is a shared commitment by all parties to employ the designation process under the Act to offer protection to this property for cultural heritage reasons. It is within the discussion of the scope and magnitude of the Act’s application to the property where the parties differ. While there is common agreement (Agreed Statement of Fact) with respect to the main structures (Observatory building, Administration building, and Elms Lea), the Board is of the opinion that there is sufficient conflict between the parties with respect to the final description of these heritage attributes and associated lands, for bylaw purposes, to warrant evidence to be presented on the main structures, as it pertains to these areas of debate. The Board Chair directs all parties to focus their evidence, as it pertains to the three main structures, to the areas where there is contention when presenting their cases.

### **Case for the Town of Richmond Hill**

Witness – Mr. Andre Scheinman

Mr. Scheinman’s credentials were presented to the Board. The Board accepted Mr. Scheinman as an expert in cultural heritage preservation.

Mr. Scheinman was retained by the Town to do a cultural heritage assessment of the subject property, including its potential as a cultural heritage landscape. The terms of reference for the retainer are found at Ex 5 Tab 40. The Ontario Provincial Policy Statement (“PPS”) defines a “cultural heritage landscape” as: “...*a defined geographical area of heritage significance which has been modified by human activities. Such an area is valued by the community, and is of significance to the understanding of the history of a people or place.*” A cultural heritage landscape can include many components, such as lands, buildings, woods, views, etc. PPS

Policy 2.6.1 states that “*significant built heritage resources and significant cultural heritage landscapes shall be conserved.*”

The Town’s first Notice was prepared using two studies completed by Su Murdoch Historical Consulting (“Murdoch”), focusing on the Elms Lea dwelling, and the Observatory and Administration Buildings respectively. It is clear that the preparation of the second (revised) Notice (Ex 2 Tab 30) is the culmination of combining these earlier studies with the Scheinman cultural heritage landscape assessment (Ex 2A – inserted at Tab 24).

A brief overview outlines many of the highlights of his findings while focusing on the chronology of property ownership, the surviving elements on the site, and the site context. The subject property is a complex site where two major cultural periods are materially represented and overlap in both time and space. The first is the 19<sup>th</sup> century farmstead associated with Alexander Marsh and represented by his brick dwelling, Elms Lea, as well as the lane from Yonge Street, tree stands, and vestigial orchards around the house. The second “cultural landscape” is the DDO “campus,” as an area immediately around the Observatory and Administration buildings, continuing to Elms Lea. This campus area is also referred to as the “precinct.” Outside of the direct precinct lies the radio shack to the east and the gatehouse (also referred to as the caretaker’s house) and carport to the north. This landscape also includes Elms Lea, as it was used as the residence of the observatory director; and the Yonge Street laneway, as it was the primary entrance to the DDO property until the 1960s.

The main cultural elements are listed by Mr. Scheinman as follows: (Ex 2A, page 28)

1. Approach Road (existing entrance from 1964)
2. Gatehouse (Caretaker’s Residence) (1970)
3. Observatory (1935)
4. Administration Building (1935)
5. Formal Landscaping – in the DDO precinct (1959)
6. Radio Shack and associated Antenna (1955)
7. Elms Lea (Alexander Marsh Home) – 1864
8. Vestigial Orchard – south of Elms Lea
9. Original Hardwood row – east of Elms Lea
10. Original Lane to Yonge Street (west of Elms Lea)
11. University of Toronto (UofT) Department of Forestry Plantings – just east of the Radio Shack (1958-1960)
12. UofT “Shelterbelt” nursery planting – located on the far-east portion of property (1939)
13. Boundary between Lots 42 and 43 – old hedgerows show lot delineation
14. Line of original spruces – just west of Elms Lea
15. Vestigial line of original maples – northwest of Elms Lea
16. Pumphouse – located on the far-east portion of property (item added to list during the CRB hearing)

The evaluation criteria of Ontario Regulation 9/06 are applied to assess the significance of the elements found in his analysis. The Town's report states that *"for the purpose of heritage designation under Section 29 of the Act based specifically on cultural heritage value it is recommended that the boundary of the area to be considered a cultural heritage landscape be as shown [in Figure 18 – Ex 2A, page 28] . . . where cultural values are most strongly represented."* It is from this analysis that the concept of a "blue line" is established, where Mr. Scheinman proposes in Figure 18 that a boundary be established on the subject property (denoted by the blue line) where the portion of Part 1 to the west of the blue line be defined as a cultural heritage landscape.

The Statement of Cultural Heritage Value on page 29 of his study (Ex 2A) is elaborated upon by outlining the significance of both the Marsh farmstead, and the establishment of the DDO governed by a "dream" of Dr. Chant and the donation from Jessie Dunlap.

The key heritage attributes expressing the design or physical value of the property, and incorporating a range of periods, architectural styles, and technical achievements, are noted as being:

1. Elms Lea
2. Observatory Building
3. Administrative Building
4. Gatehouse / Caretaker's Residence
5. Sitting of the Observatory and Administration Building relative to each other and to the north/south axis of a compass
6. Designed landscaping in the precinct, including the elliptical island, sundial, curved hedge, and flagpole.

The key heritage attributes which express the historical or associative value of the site are noted as:

1. Landscape features – former lane to Yonge Street, mature Spruce screen at Elms Lea, vestigial orchard, row of Hickories and line of Maples, all surrounding Elms Lea, field patterns in the south-west portion of the property, and Elms Lea itself, all as 19<sup>th</sup> century Marsh farmstead era elements
2. General site topography and grading enhancements
3. Elms Lea
4. Observatory Building
5. Radio Shack
6. The original components which comprised the DDO at its dedication
7. The complex overall land pattern – original field patterns overlaid with Beaux Arts Observatory core and curvilinear road network

This site is a landmark as contemplated by Ontario Regulation 9/06. It holds, significance as an Observatory, both for its astronomical research findings and for housing the second largest telescope in the world when established in 1935. Mr. Scheinman's analysis demonstrates a "strong case" for a cultural heritage landscape in all criteria areas of the Regulation.

Reference is made to the Heritage Interiors report (Ex 2B Tab 25) and the study of the interiors of the main three buildings. This report is used, in conjunction with the list of errors and omissions (Ex 7) submitted by the Naturalists, to resolve some areas of contention with respect to the descriptions of the main structures. After working with the other parties' heritage experts outside of the hearing hours, Mr. Scheinman is able to detail each point listed in Ex 7 and express agreement on most of the items listed as "errors". It is also noted that some of the language in the Notice is incorrect.

The witness is of the opinion that the subject property is a landmark, with not only local significance, but worthy of provincial, national, and even international recognition. As part of his final analysis, Mr. Scheinman makes a correction to his Figure 18 (Ex 2A page 28) to move the northern portion of his "blue line" slightly to the east, effectively enlarging the size of his proposed cultural heritage landscape to include all of the Department of Forestry plantings. Based on his study of the entire property and the application of Ontario Regulation 9/06, it is maintained that the cultural heritage landscape should be restricted to the area west of the "blue (boundary) line," instead of encompassing all of Part 1, as this best represents the clustering of most of the significant heritage attributes.

Finally, what is required by the Act for a Statement of Cultural Heritage Value or Interest is outlined in the Ontario Heritage Tool-Kit (Ex 9 page 17): *"It should not provide a broad history of the property, but should focus on what makes the property important. A detailed description of the property's history can be included in the broader designation report and kept on file with supporting documentation."* Further, with respect to the description of heritage attributes, the Tool-Kit notes (Ex 9 page 18) that *"it is not an exhaustive account of the property's heritage attributes."* This is raised in direct connection to the lengthy list of errors and omissions outlined in Ex 7 and used to demonstrate that many of the listed items (which deal with level of detail of description) are not required.

In commenting on Parts 2 and 3, which include a municipally-built park, the Elvis Stojko arena, and parking lot, Scheinman believes that this property (developed into its current use in 1987) has no cultural heritage value on its own or in forming part of the designation proposal before the Board. While the park and arena have been "thoughtfully" designed, as they carry over an observatory theme and continue the north-south axis theme displayed on the subject property, this is not an example of "instant heritage," (such as examples like architect Gehry's addition to the Art Gallery of Ontario might be deemed).

Mr. Scheinman would not change anything in his position given the witness statements and everything so far disclosed in the hearing.

#### Cross-examination – Naturalists (Lord)

In the opinion of Mr. Scheinman, this site is worthy of the highest level of significance, beyond just local powers.

In reference to the perspective and analysis of the Ontario Heritage Trust ("Trust") and Mr. Sean

Fraser (employed by the Trust), Mr. Scheinman read the Trust's list of heritage attributes. There was limited involvement in two public meetings and the public were permitted to provide feedback on Mr. Scheinman's report as part of the consultation process.

It was learned through historical evidence that Jessie Dunlap acquired this land to help make the vision of Dr. Clarence Augustus Chant, who was a professor who launched the sub department of astrophysics at UofT and developed the vision of the David Dunlap Observatory, a reality for UofT. Her husband, David Dunlap, was highly impressed by a special presentation on astronomy given by Dr. Chant. Jessie Dunlap's Last Will and Testament notes that all property donated to UofT is to be maintained as a legacy to David Dunlap. Dr. Chant lived on the property until his death in the mid 1950s and always saw Parts 2 and 3 (panhandle) as included. His Last Will and Testament provided the funding for an arboretum and a new entrance for the DDO with access to 16<sup>th</sup> Avenue to the south. By raising the evidence that Dr. Chant purchased the panhandle lands solely for the purpose of creating a new entrance to the DDO, the witness is questioned on whether the panhandle should be included as part of the subject property and part of these proceedings. Oral evidence is cited from the long-time caretaker of the property, A. Ritter, who noted that the DDO site was open for public use during daylight hours, as long as people entered through the main entranceway and did not picnic or engage in any other activities that were not supported by the DDO staff. It was noted that while certain intentions were raised in both Wills as cited, these should not be seen as heritage issues pertaining directly to this Board proceeding. No elaboration was given on any heritage significance of the use of the property as a park.

The issue of potential cultural heritage value and any heritage attributes that may lie outside of the proposed cultural heritage landscape is then raised, noting the importance of the Vanderburg farm, its fields and archaeological potential, located in the north-east portion of the subject property. The tree plantings of Dr. Farrar of UofT are identified and it is proposed that these were planted for research purposes beyond the interests of the DDO. Mr. Lord demonstrates that most of Mr. Scheinman's work was completed on the western half of the subject property, which is the area encompassed by his proposed cultural heritage landscape. Mr. Scheinman concurred that most of his time was spent on the western portion of the property, but acknowledged that he did list some heritage attributes from the east portion of the property, and agreed to add the pumphouse to his list of heritage attributes.

Mr. Scheinman is asked to explain what the designation bylaw will look like under his proposal, and to explain the statements in his report (Ex 2A page 27) that outline other areas that also have cultural heritage value. These include old field divisions, areas of forestry experiments, and the "natural" features of the property. Specifically, he is asked to explain his statement; *"In conjunction with the natural values which have been recognized at the site – including a resident deer herd, a wetland associated with the German Mills sub watershed – a compelling argument could potentially be made for the preservation of the whole property and there are many 'tools' (including natural heritage preservation, watershed management) which, if carefully integrated, could assist in doing so."* Mr. Scheinman also clearly notes his reference to natural heritage preservation, which is not to be confused with cultural heritage conservation. The latter is the scope of enquiry of this hearing, while the Board does not have the jurisdiction under the Act to engage in practices such as watershed management or other natural features

management (meaning those features without some cultural heritage association).

The Chair asks Mr. Scheinman whether there would be a case to establish a separate cultural heritage landscape on the eastern portion of the property to offer protection to attributes such as the pumphouse, well, and tree plantings. It is explained that having two separate cultural heritage landscapes on the same property is possible, but not what is being proposed.

#### Cross-examination – OHHA (Duggal)

The significance of the pumphouse is raised using the photography of Ex 10, and it is outlined how it provided a self-sufficient water supply to the Observatory. This has no effect on Mr. Scheinman's opinion of the pumphouse as an attribute.

Mr. Scheinman's practices and the diligence of his research and analysis are questioned, given the short time line to conduct such research and given the level of significance of the property. Mr. Scheinman notes that he undertook his work with a high degree of expertise, diligence, and professionalism.

#### Cross-examination – Owner (Bronskill)

Mr. Scheinman was asked whether everything in his scope of work was completed. According to his terms of reference (Ex 5 Tab 40 page 67), everything was completed. It is noted that interviews with key people were part of his research process.

There is questioning on the relative scale of "significance" of the heritage attributes. It is noted that while identified in one of her reports, Su Murdoch does not include the radio shack or the gate house in her heritage defining list. Reference is also made to the PPS (Ex 12 pages 2 and 3) that defines significance with respect to cultural heritage landscapes. Specifically, *"for a cultural heritage landscape to be significant, it must be valued for the important contributions they make to our understanding of the history of a place, an event, or a people. Typically, the significance of a cultural heritage landscape is identified by evaluation criteria that define the characteristics that have cultural heritage value or interest to local, provincial or federal jurisdictions."* It is noted by Mr. Bronskill that while there can be an exhaustive list of identified attributes, the use of criteria help define those as being significant or not, in the overall weighting of the cultural heritage value or interest in a property.

Mr. Bronskill also outlines from the same part of the PPS the importance of defining the cultural heritage landscape boundaries (Ex 12 page 4). This importance is not only to demonstrate the validity of the establishment of a boundary line, but to also fuse together with the significance argument to suggest that if some of the attributes found within Mr. Scheinman's cultural heritage landscape were deemed not to be significant enough after the employment of criteria, it would be acceptable under the PPS to more tightly define the cultural heritage landscape boundary around the attributes with the most significance. This could entail decreasing the size of the cultural heritage landscape proposed by the Town.

In assessing the relative significance of the two themes associated with the land, the farmstead and the observatory, it is asserted that the observatory is the more significant theme, but that the farmstead still does contribute significance. Mr. Bronskill reads from the report prepared by Mr. Scheinman for another farm property, where he notes that losing a hay barn could undermine the integrity of the cultural heritage landscape. The clearly conveyed significance criteria outlined in an earlier version of Mr. Scheinman's report on the subject property (Ex 2 Tab 13 page 128) is noted, and how on page 130, the cultural significance of the Marsh farmstead is focused on the property immediately surrounding Elms Lea. It is proposed that while this part of the farmstead overlaps with the DDO precinct, the significance of the DDO is all that is required to represent significant cultural heritage value or interest. In this way, Mr. Bronskill attempts to question the relative importance of other attributes located outside of the DDO precinct that rely on the significance of the farmstead. It is asserted that the attributes of the farmstead are still important and contribute to the significance of the property.

Reference is made to a section of his report (Ex 2 Tab 13 page 130) that raises the "compelling argument [that] could be made for the preservation of the whole property". For clarity, it is explained that the intention was to recognize the difference between preservation of cultural heritage attributes and the natural elements.

This is the first cultural heritage landscape being contemplated in the Town of Richmond Hill. (Ex 2 Tab 16 page 139) Mr. Scheinman was asked to study the feasibility of including 100% of the DDO lands in the cultural heritage landscape (Ex 2 Tab 20 page 179), yet through his study only a portion of the property is being proposed as a cultural heritage landscape, as is outlined in his DDO Integrative Summary of Cultural Value (Ex 2 Tab 26 page 236). While this integrative summary tends to emphasize the attributes of the main DDO precinct, the inclusion of trees and fields located to the west of the precinct is questioned. It is noted that it is very important to capture the importance of the topography of the site, and ultimately the knoll which is the primary reason why this property was chosen to house the observatory. By including the lands to the west, the topography and elevation changes are captured to protect the integrity of the knoll. Outside of the topography, numerous references are made to issues that could diminish the significance of certain attributes listed by Mr. Scheinman, such as the trees around the laneway planted at a later time; the Marsh farmstead could be diminished as there were no barns or farm building remaining on the site when the DDO construction began; and that a tree planting plan shows no proposed plantings to the west and north of the Observatory and minimal plantings elsewhere in the precinct. It is also noted that there is no listing of trees/plantings in the Notice of Intention to Designate, as well as no reference to any archaeological resources. It is agreed that the layer of the Marsh farmstead has been undermined by a lack of upkeep, but on the whole he believes that the farmstead trees, and the topography associated with selecting this as the DDO site is very significant and needs to be included within the cultural heritage landscape.

#### Re-examination – Town (Ketcheson)

There is discussion about wording changes between versions of the Town reports. Mr. Scheinman agrees with the changes, but that they were already "understood" in his report. The changes simply offer some additional clarity.

It is agreed that the proposed cultural heritage landscape boundary fully complies with the direction for defining boundaries as found in the PPS. (Ex 12 page 4)

### **Case for the Richmond Hill Naturalists**

#### **Witness – Mr. Paul Dilse**

Mr. Dilse's credentials were presented to the Board. The Board accepted Mr. Dilse as an expert in heritage planning and as an historian.

While establishing the context of his report, reference was made to the "panhandle." The Chair temporarily suspended Mr. Dilse's testimony in order to ask all parties to make submissions on the issue of the scope of the hearing, as it pertains to the panhandle.

#### **Procedural Matter - The Panhandle Discussion**

Town (Ketcheson) – Part 1, and Parts 2 and 3 are in common ownership, with the titles merged under UofT's ownership. The reference plan (Ex 3) defines the property as including the panhandle (Parts 2 and 3) but since the fall of 2007 the Town has taken the position of dealing with Parts 2 and 3 separately from Part 1.

Naturalists (Lord) – Real property is governed by the designation process under the Act. This includes all of the real property parcel/legal description, but Mr. Lord agrees that the Town can consider a lesser area (as they have with Part 1 of the real property). The Naturalists do not consider that dealing with Part 1 alone is a problem, however they should be allowed to call evidence on Parts 2 and 3 for historical or associative value reasons. The Board should not "close minds" to the panhandle evidence because it is not listed in the description of the property contained in the Notice. They are not looking for the Board to include Parts 2 and 3 in any designation report, only to demonstrate that Parts 2 and 3 contribute to a Part 1 designation, and that a bylaw can be registered to affect Part 1 of the reference plan.

OHHA (Duggal) – The property is a whole parcel, and there is a reason it is all together. Their group is seeking to protect the observatory and lands, and for Parts 2 and 3 to be included in the bylaw as part of the cultural heritage landscape.

Owner (Bronskill) – The terms of reference to Mr. Scheinman identify only Part 1 as his area of enquiry. The witness statements of Messrs. Dilse and Shevchuk contradict what Mr. Lord just communicated, as both note that Parts 2 and 3 must be part of the protected area. The Act deals with real property and the Tool-Kit does not reference a Property Identification Number (PIN), but rather the legal property description. S.29(14) of the Act speaks of property "affected," so one can properly look at only part of a property, but in this case all of Parts 1 and 2 and 3 will be affected by bylaw. He would object to the panhandle being included in the cultural heritage landscape area.

Town (Ketcheson) – Tab 32 page 2 refutes Mr. Lord’s position that the Naturalists are not seeking complete protection of the panhandle. Mr. Scheinman did not speak to the panhandle and is no longer present to address any such issues, thus evidence should be limited. The Town is concerned with how contextual matters are dealt with, as most of the Naturalists’ reports include the panhandle and speak to its contextual contributions to designation.

**After considering these varied perspectives, the Board decided to rely on s.15 of the Statutory Powers and Procedure Act (“SPPA”) to allow expanded evidence to be heard for Parts 2 and 3 of the property, but only if that evidence contributes to the understanding of the evaluation of Part 1.**

Witness Mr. Dilse Continued:

The Naturalists define all of Part 1 as a cultural heritage landscape, directly associated with both 19<sup>th</sup> century farming and 20<sup>th</sup> century astronomy. The photograph on the cover of Ex 13C shows how farming and astronomy coexisted, each contributing to substantial development of the local land. Farming produced wealth for constructing Elms Lea and for developing the surrounding community. The lands for the observatory were purchased in phases (Ex 13C p. 20) and the agreement between Jessie Dunlap and UofT includes the intention of creating a park (Tab 35 p.3). The PPS notes that a cultural heritage landscape captures the value a community places on a property, and the Naturalists are of the opinion that the property in its entirety is valued by the local community. The panhandle houses a municipal park that offers views of the DDO and is also a good buffer from new residential development to the south of the property.

The primary built heritage resources are outlined in some detail, specifically to show the significance of those structures outside of the DDO precinct. The Observatory and Administration building are very impressive pieces of built heritage, along with the finely crafted Elms Lea house. These three structures are not in dispute and their protection is agreed to by all parties. Other significant areas like the radio shack, the carport and gatehouse, special landscape features, and specific interior features of the buildings in the DDO precinct are Mr. Dilse’s main focus.

The significance of Elms Lea is traced back to its construction in 1864 by farmer Alexander Marsh, and to the renovation it underwent in 1933 through the careful design of Mathers & Haldenby, the architectural firm responsible for the Beaux Arts style Administration building. The protection of its exterior is agreed to by all parties. There are significant interior elements that the Naturalists are seeking protection of, including those elements outlined in Ex. 13C, revised s.6.4 (page 32).

The Administration building is also a “wonderful” structure, having been sited to form a deliberate architectural relationship between the circular dome at the head of a north-south axis, and the Administration building flanking the east side of the axis. Viewing various aerial photos of the area, the connection of this north-south axis in the construction of the Administration building is evident.

The Observatory itself, otherwise known as the great telescope dome, was the second largest telescope in the world at the time of its opening. Details about its construction history, as well as research and astronomical discoveries, were communicated to the Board to a limited extent only as all parties agree to the protection of the Observatory (telescope).

The radio shack (radio observatory building) was described as a rare structure (constructed of wood and asbestos), that holds importance in placing Canada at the forefront of radio astronomy research. A brief historical analysis demonstrated the use of the property during the Second World War, and this structure's initial use prior to radio observation research.

The gatehouse and carport are considered by the Naturalists to form an important part of the DDO property, having been designed to meet the special security needs of the site. Designed in a modern style by a local architect, these functional buildings work with the driveway, Donald Drive, to specifically restrict unauthorized use and to keep approaching headlights from interfering with the great telescope's field of view.

The brick pumphouse, located on the eastern portion of the property, provided water from a well to all buildings, before there was a municipal water supply. The location of the pumphouse was determined after digging three different wells, and finally finding enough water at the third site to accommodate the DDO buildings. Water is required for the operation of the telescope, thus signalling the importance of the pumphouse.

Various significant cultural landscape features stemming from both periods of the property's use for farming and astronomy are on the property. These include the original entrance to the property from Yonge Street that also was the construction entrance for the building of the DDO; the naturalized park land northwest of the Observatory building which had been an open field during construction and was completely treed in later years; and other areas of tree plantings.

Various interior elements were highlighted, with a specific emphasis on items that had been removed. Mr. Dilse is of the opinion that all books, furniture, and other contents of the Administration building are intrinsic to the building and should be returned by UofT. This also pertains to the wall clocks that have been removed (Tab 4 page 108). In the discussion around real property (fixed) elements which can be governed by the Act, versus personal property (chattel or moveable objects), which cannot be governed by the Act, it is noted that the andirons, while not fixed, are included by the Town in their Notice (Ex 13C, page 30 Fig 45). Mr. Lord notes that the telescope mirror is detachable, but is being treated as a fixed object, so it is asked why the clocks, machinery, and book collection in the administration building would not be treated in this same way.

The Naturalists support the protection of all of Part 1, and thus do not support the creation of the "blue line" by Mr. Scheinman in defining the cultural heritage landscape. The "park" setting of Part 1 preserves the landscape space that has been lost through the residential development in the area.

Through describing the statement of significance from his report, Mr. Dilse repeatedly notes that bylaws are for teaching the public and thus detail is required for education – "people need to

know.” Specifically, every detail is required in a bylaw to protect something, or else mistakes will be made and the protection will not be strong.

The property satisfies the significance required of all three criteria of Regulation 9/06. Design value is from the primary built heritage structures found in the DDO precinct alone. There is historical and associative value to regular citizens using the property, visiting the property while in school, and the great research and findings produced at the DDO. There is contextual value to the large main structures being in the middle of an open space, on a site specifically chosen for topographical reasons, and that these buildings are now surrounded by a planned arboretum. The entire property is recognized as a landmark not only within Richmond Hill, but within the province, nationally, and internationally. From his application of criteria for both provincial designation and national commemoration, Mr. Dilse concludes that the entire property meets all criteria for significance. (Ex 13C pages 37-39)

#### Cross-examination – OHHA (Duggal)

When asked whether this is the most significant site he had seen in thirty years of work, Mr. Dilse replies that this is among the most significant, along with the Distillery District in Toronto. When asked about meeting with the public, Mr. Dilse notes that he took a lot of time to work with volunteers on the site and to conduct his research to write his report, but that he did not attend any community meetings, council meetings, or contact the Trust. It was noted that while Part 1 is significant in its entirety, Mr. Dilse concludes that Parts 2 and 3 do not warrant the same level of significance at this time.

#### Cross-examination – Owner (Bronskill)

Mr. Dilse is questioned on his perspective of the trees, astronomy, fields, soils, and other such traits that do not fit with his expertise in heritage and history. The witness could not recount how many cases he had experience with in heritage, including reports written, so an undertaking to follow up with the Board was made (and later reported as twenty-four heritage reports over the years).

While Mr. Dilse knew of the work Mr. Scheinman was doing, once retained by the Naturalists he never met with Mr. Scheinman to provide any sources or materials. He also did not provide advice to the Naturalists on their objection letter to the Board and never met with any of the other witnesses called by the Naturalists, although each report shares common themes that were given to each witness.

There was some perspective given on the actions of UofT and how it ended the contract with the Dunlap property. This was characterized in a negative way as a violation of the spirit of the entire agreement. Mr. Bronskill outlines at Tab 35 page 3 that paragraph 5 shows that UofT was capable of exiting the agreement at any time with the consent of the Dunlap heirs, which is exactly what happened. This reference to the Jessie Dunlap Will also outlines the characterization of land-use as a park “or such other like or allied purpose in connection with educational work at UofT.” This demonstrates that the establishment of a public park was not the definitive outcome for the lands, as has been characterized by the Naturalists. These

references were refuted by the witness.

Mr. Dilse acknowledges that he does not have knowledge of farms connecting to Yonge Street, laneways, railway access, or forestry research conducted by UofT. When asked whether the gatehouse would be deemed significant if not situated on the DDO property, the witness notes that he could not respond because the gatehouse could not be taken out of context. It was also acknowledged that the pumphouse is a “typical utilitarian” building, as is the radio shack.

Mr. Bronskill notes that all of the significant built heritage resources, except for the pumphouse, as identified by Mr. Dilse (Ex 13C page 21), are located within Mr. Scheinman’s cultural heritage landscape, as defined by the blue line. The issue of the exhaustive, detailed listing for bylaw purposes is raised and Ex 9 page 17 shows that for a cultural heritage landscape an exhaustive list is not required, however sufficient detail is warranted. On the issue of the Board having no jurisdiction to compel the return of personal property (contents) (Ex. 13A para 5), Mr. Dilse is of the opinion that the Board should comment as no one else will address this issue, which he thinks is an error in law/statute.

#### Cross-examination – Town (Ketcheson)

Mr. Ketcheson noted that Mr. Dilse did not meet with Mr. Scheinman when conducting his research and writing his report, and walked the east portion of the property only once. This walk took place one month before submitting his final report, and nine months after starting work on his analysis. It is suggested that this speaks to the relative importance of the eastern property as being low. Mr. Dilse asserts that a visual inspection is only one aspect and that he had been using historical records for his analysis of the eastern grounds. Mr. Dilse agrees that most of the plantings and other features are captured in Mr. Scheinman’s cultural heritage landscape, and notes that he agrees that the trees are more significant as they get closer to the telescope.

According to Mr. Dilse, the importance of the panhandle is reduced as it was purchased as an entrance but was never used as such. His drafting of a Statement of Significance was questioned, including that he did not follow the guidelines which calls for a list (Ex 9 page 18) or the proper Statement of Cultural Heritage Value or Interest, but Mr. Dilse asserts that he did not think that a list was adequate for such an important heritage site. He was also asked about ranking the heritage significance of all the attributes, which he said could be undertaken through a heritage impact assessment. Mr. Ketcheson asks whether the pumphouse is as significant as the great telescope, to which Mr. Dilse responds that he cannot distinguish between them, and that ranking truly does not matter in such a case.

#### Witness – Mr. Dana Poulton

Mr. Poulton’s credentials were presented to the Board. The Board accepted Mr. Poulton as an expert in archaeological fieldwork and archaeological resource management.

Mr. Poulton was retained to conduct a Stage 1 archaeological assessment, which was submitted to the Ontario Ministry of Culture, as referenced by the letter found at Ex 19D. All regular practices were followed, including studying aerial photos, site history, and the master

archaeological plan for the Town of Richmond Hill. There are nineteen archaeological sites registered within a 2km radius of the subject property, with the important Boyle-Atkinson site located 1.8km northwest of the subject property.

It was clarified that the absence of a registered archaeological site on the subject property only means there has been no previous investigation on the property that resulted in a report being filed with the Ministry of Culture. In conducting a Stage 1 assessment, no pit testing takes place. The assessment is largely based on a literature search and an analysis of the topography, water resources, and soil type to determine the potential for finding archaeological resources. Mr. Poulton attempts to relate the potential for archaeological resources to Ontario Regulation 9/06, however he has never worked with the Regulation and has no experience in this type of evaluation.

#### Cross-examination – OHHA (Duggal)

Mr. Poulton only visited the site once and never contacted the owner to seek permission for additional visits because the Naturalists informed him that he would not be granted access. He explained that the presence of primary water sources is very important in assessing the potential for finding archaeological resources. The German Mills Creek (Ex 19C page 5) is part of the Don River and was a very important primary water source. There is high archaeological potential on property within 300m of this water source, which would include parts of the subject property. Given the history of the site, it is expected that the entire property could yield significant findings. The panhandle could prove to be a less significant source, given its proximity to both major (Yonge Street) and minor (16<sup>th</sup> Avenue) roads. Based on the Stage 1 findings, any future site plan or development application would require a Stage 2 or higher archaeological fieldwork assessment,

#### Cross-examination – Owner (Bronskill)

Mr. Poulton is familiar with Regulation 9/06 and the Heritage Tool-Kit but has no formal training in these areas. He has never undertaken a cultural heritage assessment himself, always working with a heritage consultant on these types of projects. He did not provide any input to Mr. Dilse's report. It is asserted that an archaeological assessment is the "below ground" cultural heritage component, and that numerous sites on one property can be grouped together to protect an entire property, but only after an assessment is conducted. A list of potential factors in determining archaeological potential is given in Ex 20 page 4.

The construction of the arena on the panhandle would have required an archaeological assessment. It is assumed that nothing of significance was found on that site. All of Lots 39 to 49 would require archaeological assessment, not just the DDO property. To date, there is no hard evidence of any archaeological resources being found on the subject property over its years of construction and operation. Mr. Bronskill notes that regardless of the location of any "blue line" in defining a cultural heritage landscape, any potential development taking place anywhere on the property would require an archaeological assessment, and thus the issue of archaeology would be dealt with at that stage, not at the current designation stage contemplated by the Board.

### Cross-examination – Town (Ketcheson)

Mr. Poulton did not contact Mr. Scheinman or any Town staff when compiling his report. To assess archaeological potential, a property does not need to be previously designated. Archaeological assessment is something that needs to be permitted by the land owner or is undertaken as part of a development process. It is true that found archaeological resources could strengthen a case for designation, however nothing has been found through Mr. Poulton's preliminary work.

### **Witness – Mr. Garry Hunter**

Mr. Hunter's credentials were presented to the Board. The Board accepted Mr. Hunter as an expert in air photo interpretation and as an environmental systems planner and systems engineer. In this respect, Mr. Hunter is a planner, not under the normal land-use planning perspective, but rather in planning larger environmental landscapes.

Mr. Hunter was retained and provided all source documents and perspective by the Naturalists. Through aerial photo analysis, it is asserted that German Mills Creek is channelized, in that it is not in its original location and seems to have been diverted around the subject property. Ex 21 Figures 14.1, 14.2, and 14.3 all seem to show evidence of a creek system touching the north and south portions of the eastern part of the subject property. Fig 12.1 also shows the clustering of farm buildings, which is substantiated by the Marsh diaries, which tended to be arranged around a natural spring.

Further photographic analysis shows the functioning farm in 1932 and displays the north-south axis from the telescope down to a metal pole located on 16<sup>th</sup> Avenue. Fig 10.1 is an overlay of a UofT planting map that also shows the axis line. There is evidence that the existing well may not have provided enough water for the DDO buildings, so a new well was dug on the eastern portion of the property. Fig 9.3 shows in 1969 how much of the plantings in the east have been moved, likely transplanted around the observatory. Analysis on elevations and drainage is given, but is limited by the Chair in an attempt to remain within the defined scope of the proceedings.

Photos show how the panhandle land, acquired by Dr. Chant for the purpose of a new entranceway, has lot lines that seem to perfectly align with the north-south axis line. Upon further questioning from the Chair, a case is made that this panhandle property was likely acquired from a larger piece of property and new boundaries were created specifically along this north-south axis. The establishment of these lot lines led to the development of the adjacent subdivisions being oriented along this same north-south axis as well.

### Cross-examination – Owner (Bronskill)

While he has undertaken analysis relating back to Ontario Regulation 9/06, Mr. Hunter has no heritage experience in ever applying these criteria. In Ex 21 pages 17 and 18, heritage analysis has been undertaken without any consultation with the Naturalists' heritage expert, Mr. Dilse. It

was noted that Mr. Hunter never met with Mr. Dilse while preparing his report, and that all reports prepared by the Naturalists' witnesses were prepared independently.

#### Cross-examination – Town (Ketcheson)

Through Ex 2A it is demonstrated that most elements noted by Mr. Hunter are captured within Mr. Scheinman's defined cultural heritage landscape. Through Fig 8.2 (Ex 21), it is seen that the best soil, Cashel, on the property is found completely within Mr. Scheinman's area, as are all grading changes and contouring, and all axis symmetry features. The only features located outside of this defined area are the south-east maples, pumphouse, reforestation nursery, water spring, and areas of archaeological potential around the former Vanderburgh farm and German Mills Creek.

#### Cross-examination – OHHA (Duggal)

There was discussion around the current state of the wells, whether they are still fed by springs and are still a significant water source. A potential aquifer is noted but no onsite research was undertaken to confirm anything concerning the current state of natural water.

#### **Witness – Mr. Alex Shevchuk**

Mr. Shevchuk's credentials were presented to the Board. The Board accepted Mr. Shevchuk as an expert in landscape architecture with some experience in heritage, but having no heritage expertise.

Through the report at Ex 22B page 9, it is asserted that before looking at a cultural heritage landscape one must look at the natural landscape, specifically the topography (the knoll the observatory is situated on), site drainage, and forest/field cover. Much historical analysis is presented as six stories, although he is not qualified as an historian nor is there any experience listed on his CV that would demonstrate historical research skills. Site elements are presented on page 33, which include all boundaries, a field plan on page 42, and it is asserted through analysis on page 51 that the northeast corner of the property is a "landmark" according to the application of the Ontario Regulation 9/06 criteria.

Various landscape elements are outlined, including an overview of the original DDO landscape plan that was not executed likely for budgetary reasons. An overview of the arboretum is given on page 70, but the remainder of the report deals with items that are outside of Mr. Shevchuk's area of expertise and for the most part echoes what was already presented by Mr. Dilse. In all, it is asserted that the entire property should be protected (page 86) as there is a clearly defined landscape associated with the astronomy campus; there is a landmark evolved landscape with patterns of trails, fields, roads, and farmsteads; and there is an associative landscape with historical value defined by the significant historical events that took place on this site.

#### Cross-examination – OHHA (Duggal)

It is asserted that it is important to relate back "natural elements" to the property significance,

where the natural elements are intertwined, some planted by humans, other natural such as the water resources. There is evidence that all plantings on the property have continued naturally. The arboretum of plantings along Bayview Avenue is very significant given that many were transplanted to the observatory precinct for a purpose, and thus the arboretum needs to be included in any cultural heritage landscape.

#### Cross-examination – Owner (Bronskill)

The witness has no experience nor did he exhibit a knowledge of cultural heritage, including no mention of the Tool-Kit, until he made a correction during the hearing after gaining additional perspective. Similar to other witnesses, he did not communicate or collaborate with any of the other Naturalist witnesses, instead being given information and analysis by the Naturalists themselves. It is asserted that the Board process does not deal with natural elements, only cultural heritage, so as interesting as this analysis has been, it should be deemed to be out of scope for the purposes of the Board's report. Also, the historical analysis and use of argument such as the reference to the Jessie Dunlap Will on page 31 was not within this witness's area of expertise and was thus a perspective conveyed to him by the Naturalists.

#### Witness – Dr. Tom Bolton

Dr. Bolton was called earlier in the hearing process, to accommodate a scheduling conflict. This was agreed to by all parties and the Board. Dr. Bolton's credentials were presented to the Board, and he was accepted as an expert in Observational Astro-Physics with a specialty in Stellar Physics/Astronomy, but mainly for his experience and perspective with the history and operation of the DDO.

Dr. Bolton joined UofT in 1970 and acted as the associate director of the DDO. It was noted that in 1978 the Observatory Hill subdivision was built and extensive weeping tile was installed along with a storm water sewer next to the marsh area at the southeast corner of the subject property. There are numerous natural springs as well as a deer trails located on the eastern portion of property.

A waterline from the pumphouse supplied water to all of the observatory buildings until the 1960s when municipal water became available, after which the observatory dome (telescope) continued to be serviced only by the pumphouse line. The nursery plantings along Bayview Avenue existed solely to be transplanted to create a wind screen around the telescope dome to the north and west, and were planted by university staff. Over 30,000 tourists per year were visiting the DDO in the early years, which had decreased most recently to about 4,000 per year.

The light pollution problem started in 1972 and in May 1995 the municipality passed a light pollution bylaw that forced local residents to turn lights off at specific times to improve the function/visibility of the telescope. It is asserted that this shows the true landmark importance of this site within the community. While the telescope can still function, it would be even better with some new technology.

In reference to the description of the observatory in Tab 30 page 8, it is noted that this is one of

only a few empire class telescopes, where both the mirror and telescope are important historically. There are also two sitting telescopes that are part of the main telescope, with an option for a third to be used, which highlights that a generic reference to “the telescope” is likely not sufficient.

The discovery of Cygnus X-1 was a global event, where Dr. Bolton had numerous observing opportunities and was able to identify the binary system route. This is one of the main discoveries that really gave the DDO global recognition.

The panhandle was purchased by Dr. Chant and donated to UofT to be used as the main entrance for the DDO, however it could not be used as there would have been a problem with car headlights affecting the use of the telescope.

#### Cross-examination – Town (Ketcheson)

In 1984 there was a plan to sell part of the property to fund a new development. The panhandle lands were leased to the municipality in return for the passing of the light pollution bylaw, although it was farm land that had not been improved by UofT since its purchase. There is no connection of the park trail in Parts 2 and 3 to the subject property, as this would have invaded the privacy of the DDO Director living in Elms Lea. UofT erected a fence and no trespassing signs (in the 1970s) in an attempt to limit access to the property to the main gate (erected in 1994) only. There are no trail systems maintained for the public on the property. Public tours were organized for the DDO precinct, focusing on both the Observatory (telescope) and Administration building, but never for any other portions of the property.

The nursery trees in the east portion of the property were to be transplanted to surround the Observatory building, but the war delayed this event until the trees were too mature to transplant. They were simply left to grow there, as there was no other use for them. Farming was undertaken by DDO staff in fields immediately northeast of the Observatory building. The other plantings were strictly controlled by the UofT Department of Forestry, and had nothing to do with the DDO or its staff. Cash crop farming took place in most other fields in the northeast and southwest of the property until the late 1970s, after which the land was simply left with no maintenance.

#### Cross-examination – OHHA (Duggal)

No questions.

#### Cross-examination – Owner (Bronskill)

Dr. Bolton was asked to characterize whether most out of province visitors during his tenure visited the property to see the great telescope dome or the eastern grounds of the property, to which he responded that they visited both. It is noted that he opposes the sale of the property and any development of the land. It is disclosed that the Vice President Business Affairs for UofT made the decision to sell the property without consulting any of the DDO staff, and that they have created the Dunlap Institute, on another campus, with a portion of the proceeds of the

sale. It is asserted that UofT used a lawsuit against the Dunlap heirs as a “club” to force the property sale. A question is raised concerning the official statement Dr. Bolton made to Town Council, as outlined in the extract from the Council meeting found at Ex 2 Tab 22 page 186. In the statement, he requests a cultural heritage designation for the entire property, as designating only a portion would negatively impact wildlife and the attributes on the rest of the property. Dr. Bolton does not remember ever attending this meeting or making this statement.

#### Re-examination – Naturalists (Lord)

It was asked why there is minimal vegetation in certain fields if there has been no farming since the 1970s. It was noted that UofT cut the northeast fields to minimize noxious weeds. It was also noted that in his meeting with Mr. Scheinman, there was no mention of the eastern portion of the property, including the pumphouse.

#### Witness – Mr. Sean Fraser

Mr. Fraser attended through Summons executed by the Naturalists. Although he is employed as a cultural heritage property expert, he was not called as an expert witness. His purpose is to give some perspective on heritage practice and policy in Ontario and the role of the Ontario Heritage Trust.

The role of the Trust is outlined as providing tools to municipalities to enable them to best make a case to protect cultural heritage properties. Given the size and notoriety of the subject property, the Trust is very interested in this case, as can be seen through correspondence such as that found at Tabs 21 and 47.

In particular, the issue of interior features is discussed, including the ongoing “debate” of real property versus personal property. It is asserted that there is no power under designation to affect any personal property, unless it is expressly part of the agreement of purchase and sale of a property. Defining something as either real property (also deemed to be fixed or an immoveable object) or personal property (chattel) is admittedly an area of debate that is dealt with on a case by case basis. Mr. Fraser asserts that one simplistic test is that if two men cannot carry something off a property, then it is getting close to being a fixed object. Where the primary significance of the DDO property is associated with the use of a “machine,” there is a desire to protect all observatory real property.

#### Request to Introduce Letter – Naturalists (Mr. Lord)

Mr. Lord requested the introduction of a letter he had not previously disclosed to all parties that had been obtained under the Freedom of Information and Protection of Privacy Act (FIPPA). The letter from the Chair of the Trust to the Minister of Culture was to be submitted as evidence to allow Mr. Fraser to comment on the role of the Government of Ontario in the protection of this property. After holding a caucus with all parties, the Board decided that the letter is not directly relevant to the mandate of the Board proceedings, and thus did not allow the letter to be entered as evidence. While it is allowable for parties to submit evidence during a proceeding, under

certain situations that have to be satisfied, it has to be evidence deemed to be relevant to the proceeding. While the Board's role is to assess the cultural heritage value or interest of a property stemming directly from the facts and argument applied to the criteria of Ontario Regulation 9/06, it was deemed that the contents of the letter would not contribute to that analysis. Further, the Board determined that the letter would likely have injected a political element that would have detracted from the unbiased, in-scope proceeding of the Board. In addition, the Chair acknowledged publicly that while the Trust and Ministry have heritage advocacy roles, the Board is a dispute resolution body with no advocacy ties. It was clear from the testimony of Mr. Fraser that the Trust is strongly supportive of the designation of this property, so additional evidence of their advocacy role through a letter was not going to add further value to the proceedings.

#### Continuation of Witness – Mr. Sean Fraser

Further perspective was given on the application of the criteria in Regulation 9/06, where it was asserted that the assessment of an attribute is a binary process; either it meets the test of the criteria or it does not. With respect to bylaws, it was noted that Mr. Fraser sees every designation bylaw in the province, and that all are more than one page in length, given the need for an operational and management component to capture the nature of living sites. Every bylaw should be written so it can be understood by any lay person, planner, politician, or owner, etc., and thus must include sufficient information and be clear enough so that someone twenty years from now can work with it in an effective way.

The Trust works daily with Ontario Regulation 10/06 Criteria for Determining Cultural Heritage Value or Interest of Provincial Significance, which has a different structure than Regulation 9/06. The Trust asks local municipalities to seek out heritage value where it lies, and thus in a case such as the DDO property they would rely on the municipality to assess whether Parts 2 and 3 of the property are included. The Trust plays a supporting role in providing tools and perspective to municipalities in an exhaustive search for cultural heritage value or interest.

Mr. Fraser notes that the Trust sees the DDO property as being very significant, as there is no other property like this in Ontario. While every property has a list of elements that might be significant, not all of these elements may satisfy the criteria in Regulation 9/06. The compilation of this list is the responsibility of the local municipality and depends on how it wants to manage the property and administer the bylaw. It is important to look at the historic integrity of each element to delineate between a commemorative discussion versus a designation discussion, as these are different approaches. Mr. Fraser also explains that, in practice, it is best not to have layers of significance in a bylaw, as it makes the bylaw more difficult to understand. In this way, best practice is that an element is either an attribute or not, or is part of a cultural heritage landscape or not. Mr. Lord notes that "cultural heritage landscape" is not specifically mentioned within Ontario Regulation 9/06.

It is also stated that archaeological potential is not recognized by bylaw anywhere in Ontario, but rather only when it is a licensed site. Trees, when part of a cultural planting, versus being wild trees, can be designated under the Act. Mr. Fraser was asked of his knowledge of any discussions by the Trust with the property owners on the issue of a heritage conservation

easement. He was not aware of any such discussion.

#### Cross-examination – OHHA (Duggal)

Advocacy as a key element of the Trust's mandate was further noted through correspondence between the Trust and the Town on the importance of the subject property. It was asserted that Mr. Scheinman was informed by the Trust of the vast materials and resources compiled by the Naturalists. When asked about the potential for the Trust to create a draft bylaw for this property, Mr. Fraser stated that it would be inappropriate to do so in light of the proceeding before the Board.

#### Cross-examination – Owner (Bronskill)

The mandate of the Trust as outlined in s.7 of the Act includes making recommendations to the Minister of Culture, the ability to hold property in trust, and a broader advocacy role with respect to cultural and natural heritage.

The complexity of the subject property is addressed given its size, that larger sites have been designated in Ontario, and that the interplay of nature and culture is to be captured through a cultural heritage landscape approach. A cultural heritage landscape is difficult to define, even with all of the tools available, but can provide the stewardship and management of "live" spaces through a designation bylaw.

#### Cross-examination – Town (Ketcheson)

The broad interests of the Trust are outlined and it is acknowledged that most of the Trusts' properties are natural heritage-based, not cultural heritage. The letter from the Trust to the Mayor of the Town of Richmond Hill (Tab 47) shows that its interest is also based on natural heritage elements. The Chair reminded all that while natural elements may be significant, they are irrelevant for the Board proceedings unless they are deemed to hold cultural heritage value or interest. Other statutory regimes such as the Planning Act and the mandate of a Conservation Authority deal more effectively with such natural elements. Mr. Scheinman's report (Ex 2A page 27) references a "compelling argument could potentially be made for the preservation of the whole property" and refers to tools such as natural heritage preservation and watershed management.

The rationale for the designation process and bylaw is explored. It allows dialogue between a property owner and a municipality for alterations, and gives a municipality control over the property for cultural heritage purposes. The Act does not govern the "use" of a property as this is under the Planning Act. Issues such as an independent covenant, or a lease, are not dealt with in a designation bylaw, but rather in contract law. Thus any request to maintain the operation of the telescope is outside of the scope of the Act and thus the Board proceedings.

#### Re-examination – Naturalists (Lord)

While the support of the Trust is again raised, it is blended with the support of preserving natural

heritage, much of which could fall outside of the mandate of the Board proceedings. It is noted that proper heritage analysis is conducted early-on so it is not a last minute, “bulldozers at the door”, situation. While photos are sometimes seen in bylaws, the restrictions of the land registry system truly governs what can be included as part of a bylaw.

The Trust performs both Trust and Culture services, where Trust services are site specific and operational work, and Culture is more of a broad policy framework undertaking to provide tools to municipalities. The Trust has no experience before this Board, only some limited experience before the Ontario Municipal Board on heritage conservation district issues.

### **Case for the Observatory Hill Homeowners’ Association**

It was stated by Ms. Duggal that she did not have a formal case to be presented to the Board. The right of the Observatory Hill Homeowners’ Association as a party is to be exercised through cross-examination of witnesses and an ability to make some statements as part of a summation. The Board agreed to this form of participation at the outset, thus there is no official argument being presented by this party. It should be noted that all participation by this party was to support their position that the DDO property, in its entirety, should be protected to the fullest degree possible.

### **Case for the Owner**

At the beginning of the hearing, counsel for the property owner requested that the structure of the Board hearing allow the owner to be the final party to present their case. This was agreed to by all parties as the owner’s expert would primarily be engaged in responding to positions taken by the other parties.

### **Witness – Mr. Michael McClelland**

Mr. McClelland’s credentials were presented to the Board. Mr. Lord extensively questioned the witness on his experience in cultural heritage landscapes. Ms. Duggal raised questions about a perceived bias against heritage as the owner is currently proposing changes to Elms Lea. In reviewing the facts and arguments raised to the Board, including the contents of his CV (Ex 25B), the Board accepted Mr. McClelland as an expert in architecture, with experience in heritage.

Under the terms of his retainer with the property owner, members of Mr. McClelland’s firm walked the entire site to document the property, and numerous interviews were conducted with experts in forestry and astronomy, as well as an arborist. The position being taken has been reached through analysis of the property, but yielded no written report or personal notes that could be disclosed to all parties and the Board. The Chair noted that usually a written report would be presented to the Board, however some of this perspective is contained in Mr. McClelland’s prepared witness statement.

Although no report or notes were provided, a fairly detailed witness statement was relied upon to outline his position (Ex 25A). It was asserted that the cultural heritage landscape proposed by the Town is not based on clearly determined boundary definitions (Ex 25A para 12). In fact, the opinion was given that the designation proposes attributes which are vague and not properly described, or are overly inclusive by referring generally to all fields, lawns, and planting areas, or general site topography and grading enhancements. It is proposed that while there may be significant natural or ecological features on the site, there are land-use planning processes that deal with those, rather than this Board process under the Ontario Heritage Act.

The owner agrees with the description of the heritage attributes proposed by the Town, as the Observatory, Administration building, and Elms Lea, and thus is fully supportive of designation to conserve the cultural heritage value or interest of these three structures. (Ex. 25A para 10) Reference is made to the heritage report on Elms Lea (Ex. 2 Tab 1 page 19) that notes that the park-like setting of Elms Lea is reminiscent of a nineteenth century landscape. The witness suggests that being reminiscent does not clearly mean that such a landscape actually exists there. The early report on the Observatory (Ex 2 Tab 2 page 60-61) is referenced to note that while the property is large, the author Su Murdoch focused on the historic site immediately surrounding the observatory. Even more specifically it is asserted that the reference on page 61 to the large acreage maintaining a reserve for the public to see the stars is in fact a reference to the area immediately surrounding the observatory, and not the farm fields and other outlying parts of the property. The witness asserts that he believes that Su Murdoch carefully considered her language in characterizing these points, and it supports the owner's position that the true area of significance is the DDO precinct area.

Reference to minutes from a meeting of the Richmond Hill Heritage Committee (which reports to Town Council) (Ex 2 Tab 3 page 86) was made to note that in Rec.2, para c, a cultural heritage landscape was suggested by the Committee and staff was directed to prepare a proposed statement of significance for the property around this suggestion. The witness then continues to raise references made by Mr. Scheinman that the farmscape has attributes surrounding Elms Lea; suggestions to the importance in Mr. Scheinman's use of the terms "DDO precinct;" and the language used in his stating the proposed compelling argument that could be made to protect the entire property (using other tools that are available).

Reference is made to the Ministry of Culture's PPS Infosheet (Ex 12 page 4) which defines a cultural heritage landscape as providing a boundary for resources that are contained within it, with a relationship of features both inside and outside the area. The Infosheet also notes that consideration should be given to the surrounding context within which a cultural heritage landscape is located and the need for conservation strategies such as buffer zones. The witness asserts that such a buffer is a separate issue.

The position being argued by the owner is clearly illustrated on a map (Ex 25C) where four main zones are identified. These four zones are: 1. the Entrance, 2. the Observatory area, 3. the Way to Elms Lea, and 4. Elms Lea. It is asserted that most attributes outlined by all parties are captured within these four areas. If one stood at the Observatory building, only a small precinct area can be seen because of specific plantings on the property.

The witness goes through the entire list (description) of key heritage attributes in the Notice (Ex 2, Tab 30 page 316). Of the thirteen listed attributes, it is asserted that the property owner is fully supportive of all except the following five:

1. Caretaker's Residence (Gatehouse) – This does not meet the test of criteria under Ontario Regulation 9/06. While Mr. Dilse provided some limited information, it is asserted that it is inaccurate. Mr. Riva was an unknown architect and while the modernist style was employed in the 1930s, this example must be considered post-modernist. While the point of entry is important, including the gate, it is asserted that this attribute is not as important as others, in a relative way. The fact that this attribute was not described in much detail in Mr. Dilse's analysis and that the landscape surrounding it was not described is proof that this is not as important an attribute. Reference was made to the importance of ranking the significance of attributes as part of applying the criteria of Regulation 9/06. This directly counters the testimony of Mr. Dilse who would not rank attributes and would not view the significance of the gatehouse outside of the context of the DDO property.

2. Laneway to Yonge Street – Most original photos of the property do not show Yonge Street, suggesting that after the new entrance was constructed, this laneway lost significance. While the integrity of the laneway has been lost, there is still a view-corridor, however portions of it are located both on and off the subject property. An attribute has to physically reside on the subject property. There is vagueness in language such as "old field pattern."

3. General Site Topography and Grading Enhancements –Without being properly defined, this reference is far too vague to be included in a bylaw. While there are important attributes, such as the sitting of the Observatory on top of a knoll, this is not properly captured in this statement.

4. Radio Shack – This is only being recommended for historical or associative value, not design or physical value (similar to the carport). It is agreed that the historical value is important, relating back to Mr. Dilse's report that outlines the building's use by the military before it was used as a radio shack. Of all of the great research performed there and the historic findings, there is a question as to what is being conserved if the antennas are no longer situated on the property. Mr. McClelland admits he has struggled with how best to deal with the radio shack. For this reason, he placed a white box around this structure on his cultural setting map (Ex 25C) and suggests that it could represent a fifth defined area to be protected on the property, but is not sure.

5. Complex Overall Land Pattern –The overlay with the old farmstead is counter to all accounts of what Dr. Chant envisioned for the property. In terms of layering, the existence of farm fields in this community, with these being the supposed last remaining farm fields, does not necessarily make them significant. The vagueness of including all fields, lawns, and plantings also misses the importance of capturing the attributes that truly hold significance versus others of less importance. The tree plantings surrounding the Observatory were to block the north wind as well as block light from the neighbourhood, but as the trees got bigger they created a turbulence that negatively affects the functioning of the telescope. All research and interviews by all parties seems to point to the fact that there is no documented importance to the research findings associated with the UofT Department of Forestry plantings on the site, east of the DDO

precinct. It was Dr. Chant's vision to create an arboretum, but this plan was never executed as planned.

There has been much discussion around the use of the property as a park. This is a fenced site, with no trespass signs erected, and a gate, and is predominantly old farm land that has not been maintained. There has always been an effort to keep the public away from Elms Lea as it is a private residence. These realities, regardless of any intention of Jessie Dunlap, do not support the property functioning as a park.

The final recommendation of the owner is to designate Part 1 with the cultural heritage landscape contiguous with the main attributes on the property, as noted in the four identified areas. While there are many natural features on the site, their protection is outside of the Act, and thus the Board's scope. In all, it is asserted that this is a wonderful site that needs to have its significant attributes protected, but the area surrounding those attributes is more clearly defined in the owner's recommendation than the vague larger cultural heritage landscape defined by the Town.

#### Cross-examination – Town (Ketcheson)

It is pointed out that Mr. McClelland did not undertake his own, true analysis of the property, only a peer review of the analysis undertaken by Mr. Scheinman and Mr. Dilse. While no terms of reference could be found defining the scope of the two reports prepared by Su Murdoch, both of her reports were completed before March 2005 when cultural heritage landscape became a construct under the amended Act. Therefore, her reports looked specifically at the structures and it is suggested that Mr. McClelland's assertion as to the choice of Ms. Murdoch's phrasing be diluted.

As per the vagueness of grading and topography elements, it is noted that Mr. Scheinman's report outlines the importance of sitting the observatory on the hill, as well as the sitting of Elms Lea away from Yonge Street where the land was at a lower elevation.

#### Cross-examination – Naturalists (Lord)

While Mr. McClelland notes that this site is worthy of protection, he is asked to estimate what percentage of the total of Part 1 is encompassed by the four boxes that define his suggested cultural heritage landscape on the map in Ex 25C. He is unable to estimate, but considers that what is important is that everyone is working together to assess what should be conserved. It is also suggested that the PPS indicates all policy statements must be read together, thus anything outside of a cultural heritage landscape can be protected through other policies like water conservation, archaeological assessment, and the Planning Act, etc.

The radio shack causes concern as protection under s.29 of the Act would require a description of the design or physical value, and there really is no significance to the physical design. In fact, the structure is clad in dangerous asbestos, as was determined through a building inspection as well as an interview with the former property caretaker Mr. Ritter. It is unknown whether the asbestos cladding was applied when the building was used for military purposes, or as part of

the Observatory, but there is some evidence to suggest that the building was moved to be closer to the Observatory to enable radio research.

On the Caretaker's house (also referred to as the Gatehouse), it was explained earlier that the modernist style was popular from 1900-1940, so it is asked whether this structure was built in the 1970s to replicate this earlier style. Mr. McClelland says that there is nothing in the intent of the design, plan, or materials to associate or blend with the style of other Observatory buildings, and thus no connection to the Beaux Arts style. This building seems to have been purpose-built.

The owner's position is articulated in Ex 25A para 29 where they support the designation of Part 1 with a cultural heritage landscape more appropriately defined around the Observatory precinct buildings and their setting. In all, there is a desire to see the described attributes more clearly defined to benefit the resulting bylaw.

#### Cross-examination – OHHA (Duggal)

When asked for perspective on the arboretum and marsh lands, Mr. McClelland noted that the plantings in the eastern portion of the property were utilitarian in nature, to be re-planted to offer protection to the Observatory building. Specifically on the issue of an arboretum, it was conjectured that there was no landscape architect, botanist, or other professional used in what was executed. Rather, it was very haphazardly implemented and really does not share any of the vision of the planting/landscaping plan that was developed by the architects of the Observatory and Administration building.

#### Summation – Owner/Objector (Corsica)

All parties agree that the subject property is very special and warrants protection through designation. In going through this process, the evidence, arguments, and findings must be limited to the criteria areas of Ontario Regulation 9/06. In this way, the significance of any natural heritage elements and the potential for archaeological resources are not within the jurisdiction of the Board. In addition, current and future use of the property is not to be taken into consideration, according to Board Rules. Ontario Regulation 10/06 (criteria for provincial significance) and UNESCO guidelines are also outside of the scope, as the appeal is under a proposed s.29 designation under the Act.

The three primary structures (Observatory, Administration building, and Elms Lea) are to be protected by designation. The issue surrounding the andirons and other elements that could be either fixtures or personal property is legally-based and there has likely not been enough evidence submitted to the Board for a proper ruling on this issue. It is recommended that the issue be flagged for potential future legal recourse.

There is an important distinction to be made between "interest" and "significance," as it pertains to attributes. The PPS notes that a cultural heritage landscape is a defined geographical area of heritage significance, which can include a grouping of individual heritage features. Therefore, this is akin to saying that one should find the grouping of features and place them in an area,

and then determine whether this cultural heritage landscape is “significant” under the criteria of Ontario Regulation 9/06.

With respect to the evidence, none of Messrs Shevchuk, Poulton, or Hunter is a heritage expert, and it is requested that their evidence be given little weight by the Board in forming their recommendation. Specifically, Mr. Hunter’s evidence was out of scope, inaccurate, and unreliable in some instances. Mr. Shevchuk has no qualification or experience to offer evidence or perspective on the application of criteria in Ontario Regulation 9/06. Mr. Poulton did note the potential for significant archaeological resources, but this can only be confirmed through further fieldwork. It is noted in PPS Policy 2.6.2 that significant archaeological resources will be protected through other policies, such as other sections of the Act or the Planning Act. Any plan for site alteration or development triggers this further study and any required protection.

It seems troubling that all three witnesses (Shevchuk, Poulton, and Hunter) produced independent reports without any consultation on shared findings or statements of fact, and that none of them provided any input to Mr. Dilse’s report or expert testimony. Mr. Dilse, therefore, did not have the benefit of their expertise and formulated his own opinion on issues within the realm of other’s expertise. Mr. Dilse undertook vast historical research of the property and formulated his opinion that the entire property should be protected before he ever walked the property himself. There is significant disagreement between Mr. Scheinman and Mr. Dilse with respect to the eastern portion of the property, yet Mr. Dilse never visited the site before finalizing his position. Mr. Dilse’s position is that everything should be protected, from meadows and fields, to books and furniture, which is a museum-type of static approach and does not support the spirit of cultural heritage landscape and heritage conservation.

Mr. Dilse placed undue importance on the farmscape, while there were hundreds of other farms in the area. No historic case was presented to demonstrate the significance of this particular farm or its founding family. Mr. Scheinman notes that other fields still exist in the municipality that are part of a true farmstead, while this property has lost its integrity as a farm, except for Elms Lea, the original farmhouse, and it is being protected by all parties.

What makes this property significant is the Observatory – otherwise it is not a property worthy of designation. While Mr. Scheinman describes the Observatory as an overlay on the original farmstead, the farmstead has lost its integrity as there are no surviving farm buildings, such as barns – only the original house. Reference is made to the Board recommendation on the Sir Frederick Banting farm property hearing where, in that case, the farmstead was significant when associated with someone or something historically significant. Given the lack of a historical case presented by Mr. Dilse, the Marsh family does not pass this threshold for significance.

The nursery near Bayview Avenue did not fulfill its intended function, which Dr. Bolton stated was to provide trees to be transplanted to an area around the observatory. Mr. Shevchuk explained in Ex 22B page 69 that relatively few trees actually were transplanted from the nursery to the observatory dome area. No trees were planted to the west of the telescope and on page 79 Mr. Shevchuk notes that a summer drought killed off most of the western property plantings and caused the observatory staff to abandon any further transplanting. Any potential protection of the trees will be addressed in another forum and process if a site plan application

is made by the owners. The same is true of any natural springs.

The three heritage experts agree that the panhandle (Parts 2 and 3) should not be included in the cultural heritage landscape, and that any potential significance of this area should be addressed at a later time.

The pumphouse is referred to as a typical utilitarian building and is not listed as a significant heritage resource by Mr. Scheinman, likely due to not meeting the threshold of the criteria of Ontario Regulation 9/06.

On the notion of a public park, Jessie Dunlap had a vision of an arboretum and park, which is very clearly stated in her Will. This vision never materialized, even under the leadership of Dr. Chant. Regardless of this intent, this is not the reality of the land, and the Board must look at what is real and not perception. The Department of Forestry at UofT undertook plantings from 1958-1960, and then nothing happened. Through the evidence of Dr. Bolton and discussions with Mr. Ritter, it is apparent that the property did not function as a park. There is a fence, no trespassing signs, a gate, no park tours, and no access to the grounds near Elms Lea. The public was granted restricted access during daylight hours, but this cannot be construed as operating as a public park.

While there are some important natural resources on the property, and Mr. Scheinman notes that a compelling argument can be made for the preservation of these resources, he did not say the conservation of these features is as cultural heritage resources. As an expert, he took a balanced approach to what is significant.

Mr. Fraser noted the importance of having a detailed bylaw for the benefit of interpretation and use in future years, and thus the need for a sufficient statement of cultural heritage value or interest, not an exhaustive list and description akin to an historical tribute.

The cultural heritage landscape PPS Infosheet (Ex 12 page 4) explains the importance of carefully defining boundaries. Mr. Scheinman reached the creation of his “blue line” boundary through extensive analysis and careful consideration. He came to this conclusion even after his employer (the Town) requested him to consider the entire property.

The owner takes exception to broad references to site topography, grading enhancements, field patterns, and all trees and plantings. Their perspective is that these areas need to be more accurately defined, such as the grading of the knoll the observatory is located upon as referenced by Mr. Ketcheson in his cross-examination of Mr. McClelland. Another example is the siting of Elms Lea away from Yonge Street to situate it on higher ground. It is felt that the current language means that all site grading and topography of the entire Part 1 property could be protected by bylaw.

In terms of some other attributes mentioned, the owner concurs with Mr. McClelland’s assertion that the Caretaker’s house is not significant; as well as the northeast farm field that Mr. Scheinman asserts is of no significance. The owner believes “no significance” should be extended to all farm fields on the property. The inclusion of a similar farm field in the southwest

portion of Mr. Scheinman's proposed cultural heritage landscape is questionable to the owners. As noted, the laneway to Yonge Street has lost its integrity as a significant attribute, while it does remain a view-corridor.

There is no reference in the Notice to the trees in the west portion of the property, yet they are included in Mr. Scheinman's proposed cultural heritage landscape.

The concept of the Observatory precinct or campus is important as the Observatory used to be prominent in the community, yet now is only visible within the precinct. It is important to select only significant attributes and choose clearly defined boundaries, or as Mr. Fraser stated, determine where the core values lie.

The owner agrees that this is an extraordinary place, particularly when viewed from the precinct area. Looking south from the Observatory, the significance of the location of the site is evident. The owner agrees that the property should be protected by bylaw, with the cultural heritage landscape defined by the four zones outlined on the map in Ex 25C.

### **Summation – Objector – Observatory Hill Homeowners' Association**

The Association is seeking designation and protection of the entire property and considers every structure on the property to be significant. This significance lies in the evidence that has been provided by the various parties, particularly the Naturalists, and not simply the fact that this is the last undeveloped large lot of land in downtown Richmond Hill.

It is suggested that all tribunals want to take the common ground and not make tough decisions, so Ms. Duggal asks the Board to make the tough, but right decision of protecting the entire property. The importance of this site can be seen in its impact on the Town in having caused the municipal light bylaw.

The natural features on the property all show an important historical linkage that supports their being protected. Protecting the habitat of birds, wildlife, and insects is also important, although this is not within the scope of the Board. While all other parties agree that the panhandle lands are not within scope, the Association disagrees and feels that Parts 2 and 3 should be protected as well. Notwithstanding the decision by UofT to sell the land, Jessie Dunlap and Dr. Chant's vision will never be fully realized unless the property is fully protected. The Naturalists are singled out for their hard work and research in trying to protect this site.

It is suggested that the continued future use of the telescope is important and should be mandated, although this is not within the scope of the Board. It is emphasized that the Board must do the "right thing" and protect this site. Ms. Duggal shows on a map that she represents a group that lives in the subdivision directly backing onto the southeastern portion of the DDO property.

Ms. Duggal concludes with a very passionate summary of how, as a landed immigrant, it is sad that she is the one having to fight to save our local Canadian history.

## **Summation – Objector – Richmond Hill Naturalists**

Proceedings began in 1997 with the first report by Su Murdoch Historical Consulting, but have been energized by the sale of the property by UofT. Mr. Scheinman was commissioned to do his report, during which time UofT was replaced by the new owner, Corsica, as a party.

The main summation of the case is divided into five main areas:

### **1. Areas of Agreement**

All witnesses were asked whether the criteria of Ontario Regulation 9/06 were supported, and all parties agree to the protection of the three principal structures and an area of land around them as not only being locally significant, but provincially, nationally, and perhaps internationally significant. All parties agree to the creation of a cultural heritage landscape, although the boundaries are in dispute and the owners do not support the significance of the farmscape, only the property's use as the DDO. Part 1 is acknowledged as the scope of investigation by all parties except for the Homeowners' Association which is seeking the inclusion of Parts 2 and 3. The Naturalists are in agreement with the position of the municipality and the Association to include the radio shack, caretaker's residence, and carport structures, although the owners reject this. It is asserted that it is not proper to fully employ the PPS and use the lens of planning (a reference to the owner's position), as this is a hearing under the Ontario Heritage Act and not the Planning Act.

### **2. Why the Blue Line boundary of the Town's proposed cultural heritage landscape should be rejected**

Mr. Bronskill's position to take the planning elements of the PPS and use them as a guide is not correct, as the Board must rely only on Ontario Regulation 9/06, which is a free-standing regulation under the Act. Mr. Fraser explained that the application of these criteria is a binary process, including a rigorous process of identification of potential attributes, evaluating each, and then making a binary decision of whether they are significant or not. Mr. Bronskill is of the opinion that this is part of a continuum where other processes will capture the protection of various elements on the property, at different stages. The question is whether the boundaries of a cultural heritage landscape should be parsed into something less than the entirety of Part 1.

Mr. Bronskill states that the owner supports most of Mr. Scheinman's work, except for the location of his blue line boundary. There are many issues that can be raised to undermine the basis for the location of the blue line boundary. It is problematic that the blue line notion was created before any public consultation. Mr. Scheinman did not engage in the level of detailed research as did Mr. Dilse, which would speak to him not having as good information on which to base his decision. He also did not engage any outside professional assistance in recognizing features. While he noted that he would add the pumphouse as a heritage attribute, he did not agree that it should be included in any cultural heritage landscape.

When Mr. Scheinman's and Mr. Dilse's reports are taken together, there are merits in both approaches, although a description best suited for the purpose of protecting the property through bylaw is needed. The rationale for the creation of the blue line should be put under the microscope by the Board. The final report was written by multiple authors, Mr. Scheinman did not review the final version, the Town tender did not permit Mr. Scheinman to access all materials, he did not have access to all of the buildings (such as the radio shack), and the entire process of drafting the report and issuing the Notice was rushed and driven by the timing of the sale of the property by UofT.

Reference is made to the "unusual evolution" of Mr. Scheinman's report, as he notes in his witness statement (Ex 4 para 39). While the listing of heritage attributes and the overall analysis are sufficient for applying Ontario Regulation 9/06, there is a difference between "good" and "great" planning, and that this is a great site deserving of a higher standard. While not critical of Mr. Scheinman, it is submitted that the blue line and the overall drafting of the core Town documents need more attention and work, and are not sufficient as they stand.

### 3. A review of the Notice (Ex 2 Tab 30)

While there has been considerable evidence submitted to the Board, the principal documents to be considered are Exhibits 2A, 2B, 10, 13C, 19C, 21, and 22B. The fundamental issue before the Board is an analysis of the application of Ontario Regulation 9/06. While some argue that it is problematic that the Naturalist experts worked independently, the real issue is whether they can read Regulation 9/06 and provide a professional perspective.

Mr. Fraser outlined the need for a detailed analysis of the features and the site as a whole, which is what the Naturalist witnesses undertook. Given that the Naturalists are not the property owner nor are the Town, the amount of analysis, evidence, and argument presented really made a substantive contribution to the proceeding.

The current Notice is the start of a journey, but more evolution is required to take it to the high standard that is worthy of such an exceptional property.

### 4. The application of Ontario Regulation 9/06

Mr. Dilse identified in his report (Ex 13C, page 31rev) that the entire property meets all three criteria for determining significant cultural heritage value or interest, under Ontario Regulation 9/06. This includes a cultural heritage landscape that encompasses all of Part 1 of the property, with eight built heritage resources, a driveway, lane, woodlot, hedgerows, tree nursery, and park land. The hearing has focused more on the construct of a cultural heritage landscape rather than the usual characterization of cultural heritage value or interest. The PPS Infosheet (Ex 12 page 4) outlines what is meant by "conserved" and also notes that this can be addressed through a conservation plan or heritage impact assessment. The Board is asked to speak in its recommendation to the importance of employing such options. Picking a clearly demarked boundary such as roads, railways, and fences, is also important.

The 19<sup>th</sup> century farmstead with principal landscape features is a layer of history with a lot of significance. In the binary test, there is no evidence to refute that this is a significant attribute. Jessie Dunlap purchased the entire property as an observatory and park, therefore a plan to only conserve four boxed areas assumes that the rest of the site did not contribute to the legacy of the Observatory. The east portion of the property has been important as a shelter from heat, wind, and electromagnetic interference for the telescope. The preserved landscape pattern is also highly valued by the local community. While Mr. Fraser says that the integrity of the whole is made of pieces, Mr. Poulton says that all parts of the land hold potential. Whether protected later through another process, the protection of archaeological resources, and any natural features, needs to be contemplated now and the Board is requested to speak to this point in its recommendation. The entire property is knit with linkages that pass the binary test.

On the issue of fixtures and personal property, even if something is moveable, if it was “built by the site” it should be deemed to be integral. There is also the importance of community outreach, as UofT used the site for education visits for decades, and thousands of citizens have an attachment to the site. The obvious public support at the hearing is another indication of the importance of the site. Its history and importance is also captured by other means, such as global recognition of DDO research or the song Cygnus X-1 by the globally recognized Toronto band, Rush.

#### 5. Relief requested by the Richmond Hill Naturalists’ position

The Naturalists are seeking full protection of Part 1. They applaud the Town’s efforts for starting the process of protecting this landmark site, but propose that the description contained in Mr. Dilse’s report be employed as the statement and description of cultural heritage value for the bylaw, as it more completely explains the attributes and values of the property. It is also written more succinctly and accurately than the current version employed by the Town, with a high degree of professionalism and based on years of experience in applying Ontario Regulation 9/06.

It is proposed that certain photographic records be used in creating the bylaw, and that these records be properly archived (Ex 10, 16A, 16B, 17).

The telescope is operational and certain components are required for its continued operation. The Board is asked to recommend that the Town and Trust explore a heritage conservation easement respecting the operation and maintenance of the telescope.

In conclusion, the Board is asked to follow Mr. Dilse’s report and its defining of the cultural heritage landscape as all of Part 1. If it does not follow Mr. Dilse’s approach, the Board is asked to strike the short paragraph in the Town’s approach referring to the blue boundary line.

#### **Summary – Municipality – Town of Richmond Hill**

The Town is very supportive of the submission process before the Board, as there is so much support and overlap among the parties.

While all parties have done a good job of demonstrating the significance of the property, it is important to capture the two distinct stories of a farmer using the land, and then the evolved use of that land to house a globally significant Observatory. There is very deep interest and concern held by the local community in ensuring that heritage is protected.

It is true that the designation process was energized by the sale of the property, with Notice first prepared by staff using the Murdoch reports, and then supplemented with the cultural heritage landscape analysis by Mr. Scheinman. The Town has acted responsibly and in an informed fashion, and would like this acknowledged. This is echoed by Mr. Fraser's comment that the Town has exercised leadership and exceptional due diligence in dealing with this issue. There is also acknowledgement of the large amount of work done by the Naturalists, and the contribution this has made to this Board proceeding. The involvement of the Homeowners' Association, along with the show of support from members of the community attending each day and giving statements to the Board, also indicates the protective sense of the local community.

The Town's position is that all of Part 1 be designated by bylaw, to commemorate not only the local significance, but also the provincial, national, and international significance of this property. While this is all fairly easy, it is more difficult to look at specific heritage attributes and the translation of the heritage values into a bylaw. All parties agree to the protection of the three main buildings and the grounds immediately surrounding them. The issue is how to deal with the balance of the property, which is why the town retained Mr. Scheinman.

Mr. Lord notes Mr. Scheinman's lack of community consultation, but states his study was part of a community session where members of the public were able to comment on the document. After this consultation, Mr. Scheinman shifted the north portion of his blue line boundary to capture the planting feature found in the middle of the property. It is therefore unfair to claim that he did not engage in public consultation.

Only experts Scheinman, Dilse, and McClelland have the expertise and experience to undertake and speak to a cultural heritage landscape assessment. While the other witnesses shared useful information, they are not able to provide this same level of expertise in giving advice to the Board on cultural heritage landscape issues, such as the identification of attributes.

From this, the work of Mr. Scheinman and Mr. Dilse should be emphasized by the Board, as Mr. McClelland did not engage in the same level of investigation and analysis in conducting his peer review. When reviewing the four red box areas proposed by Mr. McClelland as the footprint of the cultural heritage landscape, there is little perspective and no report to help justify this proposal. Also, a property of this high level of significance should warrant a more conservative approach to determining such boundaries, given the complexity of overlays of significance. The overlay of the observatory on the farm, the large 170 acre size of the property, and the actual number of cultural heritage elements found on the property all point to the need to take a conservative approach.

Mr. Ketcheson makes it clear that either the Town's or Naturalists' proposition should be accepted, and thus recommended by the Board. While Mr. Bronskill notes that the southwest

farm fields are remnant elements of the farm, and thus should not be included as significant, the Town considers the topography and grading very important, as this was the reason this site was originally selected to house the DDO. A similar situation arises for the screen plantings north of the observatory, which are not fully included in the owner's proposition.

In discussing the radio shack and the view corridor of the Yonge Street laneway, these issues do not need to be dealt with immediately. They simply need to be identified and the first step started in the process of protection. The Town can make decisions on these issues as development or alteration plans are submitted to Council. All of the PPS is relevant to the Town's deliberations.

The PPS Infosheet (Ex 12) demonstrates the use of bylaws under the Act. The definition of "significant" in the PPS focuses on the contribution to an understanding of the history of a place, event, or a people. For a cultural heritage landscape to be significant, not everything within its boundaries needs to be significant. The boundary for a cultural heritage landscape is not the starting point, but rather the identification and grouping of attributes. Among all of the parties, there is very little contention on the identification of attributes. The contention lies in the grouping of these attributes to create a cultural heritage landscape.

The important question, therefore, becomes how do we group significant attributes into a cultural heritage landscape boundary? The greatest number and the most important heritage features are clustered in the western half of the subject property, lying west of Mr. Scheinman's blue boundary line, and therefore within his cultural heritage landscape. While the integrity of the farmstead significance has been lessened or lost, the area defined by the blue line still captures the principal areas of the Marsh farm. The Board is urged to support Mr. Scheinman's position over that of Mr. Dilse. Also, the Town would consider it necessary to properly survey the blue line so there is no dispute in where it lies on the physical property. The Town submits a revised, improved version of the public Notice in Ex. 2 Tab 30.

The Town cautions the Board in commenting on the requests by the Naturalists on the issues of the continued operation of the telescope and any further protection through a heritage conservation easement.

The Town attempted to acquire Parts 2 and 3 of the property from UofT, not Part 1. All parties, except the Homeowners' Association accept that just Part 1 is open for the Board's consideration, although the Board would be permitted to make comments on the associative value of the panhandle supporting the Part 1 analysis. Mr. Dilse notes that Parts 2 and 3 are not as significant as Part 1. The park was designed by the town in the late 1980s in a very sympathetic way that carried through the axial position of the main DDO precinct area. It continues to be controlled by the Town through a lease from the owner.

## **Findings of the Board**

### **Identification of Issues**

#### **1. Treatment of the Panhandle Lands (Parts 2 and 3)**

Evidence provided by various witnesses outlined that the original parcel of land purchased for the establishment of the DDO is now known as Part 1, Plan 65R-29959. The panhandle land (now Parts 2 and 3, Plan 65R-29959) was acquired by Dr. Chant with the purpose of providing a new entrance to the DDO from 16<sup>th</sup> Avenue. Aerial photography over a period of time, particularly the figures outlined in the report by Mr. Hunter, shows that the panhandle was severed from a larger piece of property that had been used as farm land. Figure 9.5 of Hunter's report (Ex 21) indicates that the original field boundaries (in 1946) of the land that would be acquired by Dr. Chant were situated close to perpendicular to the roadway currently known as 16<sup>th</sup> Avenue. It is known from Mr. Dilse's report (Ex 13C page 18) that Dr. Chant could finally afford the purchase of the panhandle land in 1950. In Figure 9.4 of Mr. Hunter's report, it is clear from the aerial photograph taken in 1960 what kind of impact the acquisition of the panhandle had on the surrounding property. Dr. Chant negotiated a severing of this farm land that included the establishment of new property lot lines that differ from the normal perpendicular field lines seen in the 1946 photo. It could be argued that Dr. Chant likely had new property boundaries made to follow the north-south axial line that had been highlighted in the sitting and design of the Observatory and Administration building. While this panhandle property remained unused by the DDO in 1960, it can be seen in Figure 9.4 that a new farm built on the land immediately west of the panhandle was oriented along its recently created east property line that lies on a north-south axis. This is quite different from the original perpendicular from the roadway orientation of traditional property boundaries.

This is a very interesting orientation and can be further seen in the current map of the area (Ex 8). The development of the school to the east of the panhandle, as well as the orientation of houses in the two residential subdivisions that border the school and panhandle respectively, clearly follow this north-south axial line. While definitive proof was not offered to the Board on the orientation of these property lines, a question to Mr. Hunter revealed that the boundaries are within a small margin of error of following the axial line.

The axial orientation theme was embraced with the development of the arena and the public park on the panhandle lands. While the situation of the arena and parking lot was likely governed by maximizing usable space and street frontage, there is no denying that the established property lines played a significant role. As can be seen on the recent map (Ex 8), the arena and parking lot are oriented on this same north-south axis. When the municipality undertook the creation of the park on the panhandle, it was noted in testimony that they purposely created a walking path to align with the north-south axis theme established within the DDO precinct.

Under the Act, any application of s.29 designation applies to the legal description of the real property. This means that a bylaw is attached to a property in its entirety, with specific protection defined in the statement of cultural heritage value and description of heritage

attributes. The Board is bound to define its scope of enquiry for a proceeding as the real property identified in the Notice of Intention to Designate, pending verification that the legal property is properly described. There is a general lack of understanding within the community of the fact that a designation bylaw is applied to real property, and not an attribute, such as a building.

The Naturalists are not seeking to include the panhandle in any potential recommendation for designation, but would like acknowledgement of the relative significance of the panhandle property in support of the case to protect the Part 1 property. Parts 1, 2, and 3 have common ownership, as the title merged under UofT's ownership, although the panhandle has a separate legal address of 350 16<sup>th</sup> Avenue, compared to that of Part 1 which is 123 Hillview Drive. For reasons which likely include further discussions with the new property owner and the terms of the current lease that permit Town use of the land, the Town intends to deal with any future designation of Parts 2 and 3 separately from Part 1, at a later time. The Naturalists and owner agree with this treatment of Parts 2 and 3. The Homeowner's Association continues to argue that Parts 2 and 3 should be part of any cultural heritage landscape defined in bylaw for Part 1.

The Board agreed during the hearing to exercise its powers under s.15 of the Statutory Powers Procedure Act to allow evidence relating to Parts 2 and 3, in an associative way, to supplement the evaluation of Part 1. The evidence that was given, along with additional insights through photography and historical analysis, demonstrates that the panhandle does hold cultural heritage significance in its relation to Part 1, and specifically the DDO precinct. The development of the DDO precinct and its axial plan had a direct impact on the creation of the property boundaries of the severed panhandle lands, and this in turn has directly influenced development on and surrounding the panhandle property. It is also very significant that Dr. Chant acquired the panhandle solely as part of a vision for a new entrance to the DDO, which further illustrates the strong argument for its associative value.

Therefore, the Board recommends that Council acknowledge the demonstrated cultural heritage value and significance of Parts 2 and 3, Plan 65R-29959 (the "panhandle"), with an emphasis on the northern half that is currently used as a park. While there was much debate during the hearing concerning the characterization of the DDO grounds as a public park, it is evident that the northern half of the panhandle is indeed used as a public park that has a direct relationship to the observatory to the north. While the Town has noted that it is not the appropriate time to deal with the issue of potentially conserving and/or protecting the panhandle land, the Board encourages Council to undertake this analysis in the near future. Given the scope of the current proceeding, this is the limit of the Board's jurisdiction in this regard.

## **2. Real Property versus Personal Property**

There continues to be legal debate over the concept of what components are part of the real property as immovable objects (fixtures) and what are deemed to be personal property (moveable chattel). This issue was raised within the context of the protection of the interiors of the main structures, with emphasis on the Administration building and Observatory building. As noted by multiple parties and echoed by Mr. Fraser, those elements that are fixed to the property in a way that conveys that they are considered "as part of the land" can be protected

under the Act, as they are part of the real property. In this same way, the usual interpretation of real property would not include most furniture, articles, and effects, as they are deemed to be personal property.

During this proceeding, requests were made of the Board to stop UofT from removing furniture, books, and other articles from the Administration building. As noted in letters of response, the Board is a dispute resolution body, and not the enforcer of the Act, which is a responsibility that rests with the courts.

The Board is often called upon to interpret the Act and applies a common sense approach on a case by case basis when there is no definitive legal ruling or interpretation. As noted by Mr. Fraser, there is no checklist in assessing the status of certain articles or elements, though he notes that his simple test is that if two men cannot carry something off a property, then it is getting close to being a fixed object. Otherwise, it is likely personal property and thus not within the scope of protection under the Act. Mr. Dilse, in his testimony for the Naturalists, requests that the Board comment on this issue of contents, as he is of the opinion that there is an inherent problem with the Act in this regard.

It is the Board's position that, generally, all of the papers, books, and transient furnishings removed by UofT is personal property, and thus not within the scope of the Act. It is important to note that the spirit of heritage conservation under the Act is to protect the cultural heritage value or interest of a real property and those heritage attributes that embody that value or interest. The designation bylaw allows for the management and dynamic evolution of a cultural heritage property.

The approach sought by the Naturalists, with respect to this issue, does not align with this intention of the Act, particularly in their more static and archival approach that more closely resembles what one would expect within an interpretative museum. In reviewing all of the interior features of the principal structures, as listed in the Notice (Ex 2 Tab 30 page 319), there was minimal disagreement among the parties with the Town's approach.

One area of contention raised by the owner was the inclusion of the "brass andirons representing the Zodiac." In assessing the andirons, while they may be moveable, a case could be made that they were specifically designed for this fireplace, and thus are important to its operation and aesthetic. However, insufficient evidence and argument was raised on this issue, therefore the Board instructs Council to seek more clarity on the andirons before they are included in any final description of heritage attributes.

In a similar way, the Naturalists raise a point over various machinery in the basement of the Administration building, claiming that this should be included as part of the real property. Again, insufficient evidence was given, however a case could be made to justify the importance of that equipment in making parts that are crucial to the operation and maintenance of the telescope. No case was established that those machines must be housed in those specific rooms to function.

Common sense must prevail in regard to the mirror of the telescope. It is removable, as it requires yearly servicing, but clearly is a crucial, functioning part of the telescope, which is fixed and therefore part of the real property.

The Board recommends that Council invest adequate time and diligence in ensuring that these types of components are most suitably classified on an item by item basis, as part of the real property or as personal property. The best test may be how intrinsic each is to the identified cultural heritage value or interest of the property, and in this case, the workings of that property as a whole.

### **3. Level of Detail in Bylaw Language**

An issue was raised regarding the required level of detail in writing the Statement of Cultural Heritage Value or Interest and the Description of Heritage Attributes for bylaw purposes. This was queried primarily by the Naturalists in an effort to propose the use of stronger, clearer, and more detailed language in the writing of these two important sections that form part of any designation bylaw. There are two factors involved: the requirements of the Act, and the interpretation of these requirements by municipalities in crafting a bylaw that effectively governs the cultural heritage property for the long term.

As part of the designation process, s.29(4) of the Act outlines the contents of Notice, which has two requirements that are important for the bylaw process:

- (a) an adequate description of the property so that it may be readily ascertained
- (b) a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property (heritage statement/description).

If there is no objection under the Act, then s.29(6)(a) dictates that Council shall pass a bylaw designating the property that includes a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property. Apart from defining the terms “property” and “heritage attributes,” the Act provides no further guidance on the content of the designation bylaw. Logically, the language of the bylaw will evolve from the terminology of Ontario Regulation 9/06, which must be applied as criteria for determining cultural heritage value or interest. It is also noted that s. 30.1(2)(a) of the Act permits a local Council to amend an existing designation bylaw “to clarify or correct the statement explaining the property’s cultural heritage value or interest or the description of the property’s heritage attributes”.

Mr. Fraser gave evidence that he sees all heritage designation bylaws in Ontario and that all are longer than one page. The bylaw needs an operational component as it affects a living site, and should be user friendly to allow anyone to understand the intent of the designation when managing the cultural heritage value or interest of the property into the future.

In this proceeding, the owner and Town fundamentally argue that the content and form of the property description and the heritage statement/description, as found in the Notice, meets and likely exceeds the requirements of the Act. The Naturalists argue that given the importance of

the DDO property, an even higher level of detail is required to ensure optimal protection of the site for the long term in any future bylaw. It was also argued that Mr. Dilse's approach did not follow the guidelines of the Act or Tool Kit as he did not employ a list for documenting the heritage attributes.

The Board is of the opinion that meeting the requirements of the Act means including a property description and cultural heritage value or interest statement/description that is clear and concise for the long term. The bylaw must provide Council with sufficient detail with which to make decisions under other provisions of the Act, notably requests for consent to alterations under s.33(1). The Board understands the approach of the Naturalists and commends them for the effort undertaken to document the history and significance of the DDO property. Having said this, Council, as the bylaw enforcer, must be satisfied that the property description and heritage statement/description provides sufficient information and guidance with which to manage this property. A bylaw should be an informative and instructive document that clearly and concisely conveys its intent. This may or may not require an itemized list.

The Board is of the opinion that the wording of the Notice meets the requirements of the Act. The Town has indicated that the current wording of the Notice is considered to be a sufficient basis for drafting any potential designation bylaw. It is for these reasons that the Board recommends that Council maintain their current approach to detail, but that the language of the property description, the statement of cultural heritage value or interest, and the description of heritage attributes be updated to contain accurate information, specifically capturing any changes flowing from this Board hearing.

#### **4. The Meaning of a "Significant" under the Act**

The issue of significance was raised numerous times throughout the hearing. "Significant" is a term defined in the 2005 Provincial Policy Statement with respect to built heritage resources and cultural heritage landscapes. Either of these is deemed to be significant if it is "*valued for the important contribution they make to our understanding of the history of a place, an event, or a people.*"

"Significant" is not specifically defined in the Act but the term is used in Ontario Regulation 9/06, specifically in the context of Historical or Associative Value and a property being "significant to a community."

The Board's interpretation is that the test and findings of what is significant flows from the application of the evaluation criteria in Regulation 9/06 (for municipal property) and the other Regulations of the Act. Significance can be equated to having cultural heritage value or interest, as determined by the evaluation criteria of the Regulation.

In practice, the heritage attributes of a property are identified and then evaluated for their level of significance, meaning at what level does each contribute to the identified cultural heritage value or interest of the property. Mr. Fraser describes the common approach to applying Ontario Regulation 9/06 as a binary decision – is it significant or not? Regulation 9/06, however, does not contain any binary ranking system. As constructed, this evaluation process does not really lend to a direct ranking or comparison of individual attributes.

During the hearing there were numerous attempts to have the experts rank or compare the relative significance of specific attributes. Mr. Dilse was asked by Mr. Ketcheson whether the pumphouse was as significant as the telescope, with Mr. Dilse responding that it is improper to compare them. Similarly, Mr. Bronskill asked Mr. Dilse whether the gatehouse would be significant enough to designate if it was not located on and associated with the DDO property. Again, Mr. Dilse responded that it would be improper to view the gatehouse out of the context of the DDO property. While Mr. Dilse's responses may have seemed evasive, they are valid according to the structure of Ontario Regulation 9/06.

From a common sense perspective, clearly the telescope is far more important to the cultural heritage value or interest of the property than the pumphouse, but from the binary outcome of the criteria each is either significant or not. It is the Board's position, based on Ontario Regulation 9/06, that there is no scale measuring the degree of significance once the threshold is passed. After grouping significant attributes to form a cultural heritage landscape, this newly defined area is tested by the criteria to determine if the cultural heritage landscape holds cultural heritage value or interest, and then it is determined what attributes constitute that value or interest. Overall, a description of the heritage attributes is required by the Act. This commonly involves a listing of identified attributes, but in the end they each hold significance. How one applies the Act, PPS, and common sense to put forward the best strategy of heritage conservation should be documented in a transparent and comprehensive way. Any ranking or selection of elements of a property must be done in advance of the bylaw as under the current statutory regime, significance, as a binary decision, is what must be followed.

## **5. The Cultural Heritage Landscape Concept**

The 2005 PPS defines a cultural heritage landscape as *"a defined geographical area of heritage significance which has been modified by human activities and is valued by a community. A landscape involves a grouping(s) of individual heritage features such as structures, spaces, archaeological sites and natural elements, which together form a significant type of heritage form, distinctive from that of its constituent elements or parts."* Most of the focus in the hearing had the parties defining the cultural heritage landscape of the DDO property.

There are various layers of analysis that must be undertaken to determine the existence and appropriate geographic boundary of any cultural heritage landscape(s) on the subject property, and then to evaluate its cultural heritage value or interest (significance) through the application of the criteria in Ontario Regulation 9/06.

In the case of the DDO property, the principal three buildings (Observatory building, Administration building, and Elms Lea), were deemed to be significant through the application of the criteria of Regulation 9/06. Other elements on the property were similarly analyzed and, through various approaches taken by each party, were grouped in a way to establish a cultural heritage landscape. The application of the criteria confirmed the presence of a significant cultural heritage landscape. The Board concurs that this is a valid approach to this property.

## **6. The Involvement of the Minister of Culture**

It must be noted that the relatively sudden decision of UofT to sell the DDO property forced the Town to move quickly to complete the initial stages of the designation process. Given this, the Town must be commended for doing an exceptional job of compiling past forms of analysis, undertaking the cultural heritage landscape study, and compiling a very detailed Notice of Intention to Designate.

All heritage expert witnesses were asked whether they believe that the DDO property holds significance beyond that at the local level. All stated that the site is exceptional and there were various references to the property having provincial, national, and even international significance. This raises the question of why such a site would be recognized only through a municipal level process. This is also a theme echoed by many of the citizens who made the commitment to attend the hearing to make a public statement.

As this case was referred to the Board under s.29(7) of the Act, it is not within the Board's mandate to make recommendations concerning the significance of this site outside of the municipal realm. Having said this, the Board considers it reasonable to comment on this issue, as it is a matter of great public interest.

As noted, the Board holds no mandate for heritage advocacy, and thus is not privy to information or perspective from the Ministry of Culture or the Ontario Heritage Trust. There does seem to be recognition at these levels of the significance of this property, thus likely explaining why staff of both bodies diligently attended all seven days of the hearing. The Board perceives that, perhaps, had the municipality not acted as competently through this process, there may have been a point when the Minister of Culture, on behalf of the Province of Ontario, would have inserted into the proceedings.

The Act is written and applied in a way that places the principal or first responsibility for the identification, evaluation, and protection of a cultural heritage property with the local municipality. While the Minister of Culture has authority under s.34.5(1) of the Act to designate any property within a municipality or in unorganized territory within Ontario, a simple interpretation of this would likely miss the intention of the Act. While, in the Board's opinion, this is not conveyed as effectively as could be, upon a further reading of the Act it seems clear that the responsibility for the bulk of heritage designation rests with local municipalities.

The powers of the Minister under s.34.5(1) seem to complement and complete cultural heritage protection by giving power to the Minister to act when the local Council does not act; to act in an unorganized territory where there is no municipal authority (such as parts of northern Ontario); and to offer additional governance for any property in Ontario that meets the elevated standard of Ontario Regulation 10/06 Criteria for Determining Cultural Heritage Value or Interest of Provincial Significance. Essentially, a municipality can designate any property within its jurisdiction, except for property that is owned by the Crown in right of Ontario or by a prescribed body. The Minister can designate any property that meets the higher threshold of Ontario Regulation 10/06. This appears to the Board to be an overlap of power and jurisdiction.

Outside of the powers of s.34.5(1), it seems that another option for provincial involvement, through a strict reading of the Act, would be s.52(1), which grants the Minister power to designate a property of “archaeological or historical significance.” While there may be a legal argument to justify the use of this power, it must be noted that the province becomes responsible for payment of compensation to the property owner under s.63, if designation is sought using the powers of s.52(1). The size and value of the DDO property would make any such compensation a significant value.

Without specifically analyzing the application of the criteria of Ontario Regulation 10/06, the expert witness testimony heard suggests that the DDO property would meet the provincial test of significance.

The Board does agree that the current process undertaken to seek designation of the DDO property at the municipal level is fully appropriate under statute. However, while the Act does not differentiate the power of designation exercised at the municipal or provincial level, there are some nuanced differences that should be contemplated. The most obvious is where a provincial action could result in a different or higher level statement of cultural heritage value or interest, or could include an expanded or different description of heritage attributes. Having both a municipal level and a provincial level designation could offer differing levels of protection to this very significant property. Also, while municipally designated property requires permission and approvals by a local Council, provincially designated property requires permission and approvals of the Minister and/or the Ontario Heritage Trust as the agent of the Minister. (A similar construct is the practice of having a property protected by a designation bylaw and by a provincial heritage conservation easement.)

In this light, a case could be made that while local municipalities are left to manage the bulk of cultural heritage property protection across the province, powers in the Act are available for the Minister to be involved. Based on the testimony of expert witnesses, it could be argued that few sites across the province warrant provincial involvement more than the DDO site. The Board recommends that the Town continue with its designation process and contemplate this enhanced level of significance when undertaking to itemize the description of the significant attributes of the property.

## **7. Weighing of Witness Testimony**

One issue raised by both the Town and owner is the ability of non-heritage experts to provide perspective on the application of Ontario Regulation 9/06 as it speaks to heritage attributes.

The Board reviews the credentials and experience of all participants of a hearing and assigns a weighting to evidence and argument based on this review. In this way, a relative scale is created by the Chair of a hearing to assist in weighing evidence in developing a recommendation report. This process follows a common sense approach using the powers afforded to Board members from the Statutory Powers Procedure Act. It is also specific to each case before the Board.

The Board does not agree with the suggestion by some parties that the perspective of non-heritage experts should be ignored, but rather undertakes its usual practice of weighing all evidence and the credentials and experience of those who presented that evidence. The Board does agree that there is a difference in value in the application of Ontario Regulation 9/06 between an experienced heritage expert compared to someone without this knowledge and perspective. As noted, the Board has the power to employ its own internal practice of weighing evidence, the result of which is transparently seen in its final recommendation report.

## **8. Sharing of Information and Meeting of Experts**

Counsel for both the Town and owner made references to the practice of the Naturalists not having their various expert witnesses communicate with other prior to the hearing. This was demonstrated during cross-examination when each witness was questioned on this point, including any collaboration or sharing of resources in the writing of their respective reports. This questioning was raised to better understand how common resources, such as historical documentation and analysis, as well as themes were shared among the various reports submitted by the Naturalists. While the concept of independence is very important in giving expert testimony, and the Board notes that the common themes and message contained in each expert report prepared by the Naturalists was uncharacteristic of independently authored studies. There is a strong sense that the expertise of each witness was carefully focused by some central force within the Naturalists. Testimony was given that historical analysis and other resources were shared among the Naturalist experts, not directly, but through their central client. While there is nothing wrong in this conduct, it does raise the prospect of a reasonable apprehension of bias, which is the subtle point likely being positioned by counsel for the owner.

All experts completed their reports and attended the hearing while either under retainer or some form of commitment to their respective party. It could be argued that this could allow one to raise a reasonable apprehension of bias against any of the witnesses. The Board understands and appreciates the professionalism of the expert witnesses and does not feel that there was a situation of any clear case of bias. Having said this, the Board does agree that the inclusion of historical analysis and common themes into non-heritage expert reports by the Naturalists is likely not a best practice. It is the Board's conclusion that this issue does not require any further action outside of the Board's own ability to weigh all applicable evidence. The Board notes that a best practice would be for all parties to foster better communication between witnesses, as was sought in having the special meeting of all party witnesses prior to the hearing. The three heritage experts, in particular, could have found value in sharing perspective on certain issues prior to the hearing. However, it is not within the Board's mandate to compel specific action or force process in how experts conduct themselves professionally prior to appearing before the Board.

## **9. David Dunlap Observatory Property Considered a Park**

The position of the Naturalists is that the subject property has layers of significance as a farmstead and observatory, and also through its use as a park. In fact, where the property is commonly referred to by the Town and owner as the David Dunlap Observatory, all written submissions and most oral presentations by the Naturalists refer to the property as the David

Dunlap Observatory and Park. It is important to look more closely at this assertion of the property being used as a park, as it could be a factor in determining the boundaries of a cultural heritage landscape.

References were made by the Naturalists to the DDO and Park, but it initially was not clear what this reference to “park” meant. The current David Dunlap Observatory Park is located on the panhandle land (Parts 2 and 3). The Naturalists characterize all of Part 1 as a park, given its use by the public while operating as an observatory. The Board believes that the Naturalists’ reference to park is likely a blend of both locations.

In an attempt to show associative value between Parts 1, and Parts 2 and 3, evidence was provided to demonstrate the north-south axial design of the DDO Park developed by the municipality. Other references to this park located on the panhandle were incidental. Much of the focus with respect to the term “park” was placed on the public use of the lands surrounding the observatory. The Naturalists presented an argument that the remainder of Part 1, outside of the DDO precinct, was significant through its use as a park. This was echoed by their witness Dr. Tom Bolton, who as former Associate Director of the DDO noted that substantial numbers of people visited the property each year, with close to 30,000 visitors per year in the earlier years, to roughly 4,000 visitors recently. When asked whether he believed the out-of-province visitors were coming to see the great telescope or the grounds away from the DDO precinct, Dr. Bolton noted that he felt that some came to see the grounds. To further this case, the Naturalists noted the public access to the grounds, the establishment of walking paths, and that the empty field in the northeast corner of the property is a landmark for being an open area in the middle of a developed residential community.

The Town and owner both provided evidence and argument that Part 1 of the property had not been used as a park. An important insight is that most park environments in Ontario are public lands allowing universal access. The subject property is completely fenced with no trespassing signs posted. The long term property caretaker, Mr. Ritter, stated that the public were allowed to enter the property, but access was controlled by the chain-link fence and gate. The public could be on the property during daylight hours, but were not permitted to picnic and could not be in the area close to Elms Lea. This was to protect the privacy of the DDO Director who resided in Elms Lea. While dirt paths have worn over time, no trails were officially kept and the large numbers of people who visited and toured the DDO, as referenced by Dr. Bolton, were not shown the property outside of the DDO precinct area as part of their tour.

While there are large open spaces of former farm fields, including the northeast portion of the property that was maintained by UofT staff to control noxious weeds, there was never any structured open space, such as a sports field. Special events were held at the DDO, but there was no reference to any such events taking place specifically on the lands outside of the DDO precinct area.

The Last Will and Testament of Jessie Dunlap, who donated the property to UofT, makes reference to her intention that the property be used as an observatory and park. There is no evidence that this vision of the property operating as a park was ever realized. Another reference to the establishment of a park is made in the 1931 journal *Nature*, which notes that

the observatory would be “erected on a suitable site near Toronto, in the midst of a large acreage which will be converted into a park, to be known as the David Dunlap Park.”

Through the evidence provided, it seems that while the intention may have been to establish a park on the property, UofT never undertook to realize this vision. Conversely, UofT limited public access by erecting the fence with no trespassing signs and a gate. No evidence was submitted to demonstrate any efforts being made at any time to pressure UofT to implement the park concept as a term of the donation of the property by Jessie Dunlap.

The Board is not convinced that this property ever operated as a truly public space, or that the land outside of the DDO precinct was cultivated into a park at any point in time. While the availability of open space in the middle of a heavily developed part of Richmond Hill may hold a lot of value for local residents as a park, this is not rooted in cultural heritage value or interest or associated with either the farm or observatory layers being evaluated under Ontario Regulation 9/06.

## **Discussion**

### **Scope of Inquiry**

For the purpose of these proceedings, it is agreed that the subject property is defined as only encompassing Part 1, Plan 65R-29959, of the David Dunlap Observatory property, therefore excluding any direct evaluation of Parts 2 and 3, Plan 65R-29959, also known as the panhandle lands.

### **Agreed Significance of the DDO Property**

It has been previously articulated in proceedings before the Board that the municipality has the onus of showing diligence in ensuring that the reasons given to protect a property under the Act are as well researched and accurate as possible. While this is true of any property, adherence to these principles is arguably even more important when dealing with a special property that holds significance that is recognized far beyond the boundaries of the local community.

In this case, the three heritage experts, representing three different approaches to the conservation of this property, agree that the David Dunlap Observatory property is “wonderful,” “exceptional,” and displays the “highest significance.” The case would seem to be much less complex with such strong agreed statements of fact among the parties, all of which concur that the Observatory building (which houses the great telescope), the Administration building (Beaux Arts-styled grand building), Elms Lea (19<sup>th</sup> century brick residence), and a “precinct” of land that ties these three structures together warrant protection. These structures are such strong examples of significant built heritage, as identified in the various reports submitted that it would be hard for anyone to justify a contrary position. What this leaves is the balance of the property, which is a complex layering of structures, landscapes, and natural elements that has evolved through use as a farm and an observatory.

## **Cultural Heritage Landscape Approach**

As noted in analysis earlier in this report, in practice, the statutory provision of the Act for seeking the protection of a property for cultural heritage reasons is first delegated to the local municipality. The use of the original two heritage studies encompassing the main structures, as well as the recent study assessing any potential cultural heritage landscape on the property shows great diligence and effort on the part of the Town of Richmond Hill as the municipality with jurisdiction in this matter. The development of the Notice of Intention to Designate shows the level of detail, historical and investigative rigor, and clear language that is ideally expected for a property of this significance.

Even given the time constraints forced upon the Town from the sale of the property by UofT, the Town engaged in public consultation and crafted a well-reasoned approach that offers the creation of a cultural heritage landscape encompassing roughly the western half of the subject property. Extensive evidence and perspective were given by Mr. Scheinman in his justification for choosing the boundaries in defining this area, with most discussion surrounding his choice of location for the western boundary, or the “blue line” referred to in his report (Ex 2A page 28). Mr. Scheinman lists sixteen cultural heritage elements identified on the property (he added the pumphouse as number sixteen during testimony – Ex. 2A page 28) and demonstrates that the primary justification in determining the footprint of his cultural heritage landscape is to include the greatest number of these listed cultural elements. He notes that while the UofT Shelterbelt planting and the pumphouse are not included in this area, he does not see this as a problem. When asked by the Chair whether these elements justified an expansion of his cultural heritage landscape boundary, or the creation of a second cultural heritage landscape located on the eastern portion of the property, Mr. Scheinman noted that they did not.

Fundamentally, the approach of the Town is to capture those areas of significance related to the use of the property as a farmstead and as an observatory. The Marsh family farmstead is represented by the farmhouse known as Elms Lea, the original laneway to Yonge Street, an orchard, hardwood row, and planted spruce and maple trees. The land evolved with the establishment of the DDO which resulted in the creation of the Observatory and Administration building, the renovation of Elms Lea, the creation of the approach road, the radio shack, the special purpose UofT Department of Forestry Nursery plantings, the building of the caretaker's house, and the formal landscaping within the DDO precinct.

The Town determined that the eastern portion of the DDO property does not substantially contribute to the cultural heritage value or interest of the property, and thus is not included in the cultural heritage landscape. Mr. Scheinman notes in his report that a case could be made for the preservation of the natural resources in the eastern portion of the property, including the German Mills sub watershed, by using available tools such as conservation authority or watershed management. Natural features are outside the governance of the Act and therefore the scope of the Board's enquiry, unless they are considered to hold cultural heritage value or interest in some association with human intervention on the land.

In all, the Town proposes that the bylaw be based on the existing Notice, with some modifications stemming from the hearing process. The cultural heritage landscape defined by

the “blue line” boundary formulated in Mr. Scheinman’s report, was modified at the hearing by moving the upper portion of the blue line slightly to the east to better capture the full extent of the Department of Forestry plantings.

The Board would like to express its appreciation of the professionalism and great skill of Mr. Ketcheson, counsel for the Town, who not only communicated a clearly reasoned case, but also helped foster a very facilitative and constructive environment among the parties.

The approach of the Naturalists is to leverage their extensive research and historical analysis to insert a higher level of detail and more exhaustive listing of attributes in the bylaw than appear in the current Notice; and to define the cultural heritage landscape as all of Part 1.

### **Content of the Designation Bylaw**

The terms “exhaustive” and “detail” were raised numerous times in examination of witnesses in relation to the requirement of the Act to provide a property description and a statement of cultural heritage value or interest and description of the heritage attributes. As stated earlier through analysis, it is the Board’s position that the content of a designation bylaw must meet the requirement of the Act and should serve as an effective, long term management tool for the property. After this, the standard is set by Council as the bylaw enforcer. The Board is of the opinion that the current Notice can transfer, with modifications resulting from this hearing, to the designation bylaw.

The Board must commend the Naturalists for their extensive undertaking to document the history and physical presence of this property. Their request to have some of their submitted evidence archived with an appropriate body to serve this site over the long term is acknowledged. The Board recommends that the Town ensure this information is retained and made available to staff and the public, with any required permission.

### **Summary Positions of the Parties**

When the Board analyzes the Statement of Significance in Mr. Dilse’s report (Ex 13C s.6), it is clear that the bulk of all analysis and description is dedicated to the core buildings located in the DDO precinct, with a relatively brief reference to the radio shack, gatehouse and carport, naturalized parkland across the site, and the former farm. A case is made demonstrating the significance of elements of the DDO property in the application of Ontario Regulation 9/06, however, the Board is left with the perspective that a very strong case has been established for the DDO precinct area, but a less compelling case has been made for other elements of the property, including the eastern fields and plantings, the pumphouse, and the overall eastern portion of the property. It seems that the primary purpose of employing the non-heritage experts was to highlight the significance of the non-DDO precinct areas, as Mr. Dilse’s report focused mostly on the attributes of the DDO precinct.

It is the Board’s opinion that the evidence and perspective of these non-heritage experts falls short of strengthening the case for defining the significance of the eastern portion of the property. Specifically, the Board considers that the pumphouse is a utilitarian building that does

not contribute much to the cultural heritage value of the main Observatory, even though it did provide water for the buildings.

The shelterbelt plantings are an interesting element, as they were planted for a utilitarian function, to be transplanted to the areas surrounding the Observatory. Due to the Second World War, the transplanting process was halted for a series of years until the trees were too large to be transplanted, and thus the area was left to naturally evolve. While there was a purpose to the planting of these trees, the Board does not find sufficient historical or associative value to consider this grouping of trees as a heritage attribute under Ontario Regulation 9/06. The fact that the original purpose for these trees was not completely executed, in what could be cast as a failure of the transplanting plan, also adds to the argument against protecting the shelterbelt plantings.

The former Vanderburgh farm fields are briefly noted in analysis by the Naturalists, and Mr. Shevchuk asserts that the main field is a landmark as defined by Ontario Regulation 9/06. It is true that for anyone who drives along Bayview Avenue on a regular basis, the open field forms a landmark relative to the continuous residential development that lines the street. In terms of contextual value under Ontario Regulation 9/06, the Board does not accept that the open field is a landmark within the spirit of supporting or linking to the cultural heritage value or interest of the property. None of the other natural features listed, the springs, marsh, watershed, and various trees have proven cultural heritage value or interest as defined by the Act and Ontario Regulation 9/06.

In all, the proposal of the Naturalists is well researched and a very thorough attempt to compel protection of all of Part 1 as a cultural heritage landscape. However, behind the text, the extensive archives of photos and other historical research (seemingly ready for display in a museum), and the uncharacteristically common themes that tie together reports prepared by independent experts, the Board finds that the Naturalists do not present a case for heritage conservation that truly differentiates itself from the Town's proposal. The Board recognizes the case to protect all of Part 1 through a cultural heritage landscape, and also understands other benefits in keeping the entire parcel of property intact, but does not believe that the Ontario Regulation 9/06 test has been met to justify such an outcome.

The Observatory Hill Homeowner's Association participated as a party and used their status to question witnesses and make a final statement, but otherwise did not present a case to the Board. They argued a similar position to that of the Naturalists, seeking the creation of a cultural heritage landscape for all of Part 1, but they also wanted the panhandle (Parts 2 and 3) included in this area (this is to the best of the Board's understanding). Their representative, Ms. Duggal, must be commended for her commitment and courage to be the lone party representative of this position. The Board appreciated Ms. Duggal's thoughtful questions, her passion for her community and the protection of the DDO, and her ability to quickly learn Board procedures. As a true representative of the public interest, the OHHA are committed to protecting the DDO property.

Given that little substantive argument was raised to support their goal of conservation, the OHHA effectively operated as a seat for local citizen interests to be involved in questioning all

experts. While the OHHA did attempt to raise issues of a reasonable apprehension of bias against two heritage experts, the Board notes that a similar reasonable apprehension of bias exists for the OHHA as this group's residential community backs onto the vacant eastern portion of the DDO property. The Board cannot accept the OHHA argument that the cultural heritage value or interest of Part 1 can be extended to include Parts 2 and 3, at least during this proceeding.

The current property owner proposes an approach that also defines a cultural heritage landscape, but one that more specifically details significance around the DDO precinct and has more tightly defined boundaries surrounding this core area of significant heritage attributes. While also employing a heritage expert, this evidence did not include any formal analysis and the creation of a report. Mr. McClelland instead relied upon more casual assertions, as outlined in the witness statement, and testimony at the hearing that relied almost exclusively on peer reviewing the work of the other two heritage experts. The Board did find that the tough and thoughtful cross-examination methods of the owner's counsel, Mr. Bronskill, extracted useful information from this witness.

The owner proposes the development of a cultural heritage landscape that encompasses at least four areas that are represented by red boxes on their map found as Ex 25C. These areas are referred to as the entrance, the Observatory area, the way to Elms Lea, and Elms Lea. There was also a discussion concerning the treatment of the radio shack, depicted by the white box on this same map, but no definitive case was proposed concerning the radio shack. Rather, Mr. McClelland referred to not knowing how to deal with the radio shack.

The fundamental difference between this approach and that proposed by the Town is the setting of boundaries. The owner's approach excludes all property to the west of these boxed areas, as plotted on their map, and does not include a relatively large portion of additional land to the east of the main DDO precinct boundary that includes the UofT Department of Forestry research plantings (planted on the same north-south axial alignment as can be seen in the orientation of buildings and landscaping in the DDO precinct). The owner, with support from the Town, stated that many of the natural elements found outside of the DDO precinct would be dealt with through other appropriate processes, outside of the Board's scope. For example, archaeological fieldwork would be commissioned if any development plan was submitted for the property, and the natural elements would be assessed through other natural conservation bodies.

While never specifically mentioned at the hearing, the owner is a residential developer, presumably with the agenda to define what is reasonable to protect under the Act, versus what is left open to the prospect of a development plan. While such issues as future use and development fall outside of the scope of the Act, the province of Ontario has stated through the Act, and through Policy 2.6.1 of the Provincial Policy Statement of the Planning Act, that significant built heritage resources and significant cultural heritage landscapes shall be conserved.

The many statements from the public added further context for the Board to understand what role the DDO property plays in the hearts and minds of the community. It also highlighted the

relative importance of the observatory itself, in comparison to the layer of farming significance, in truly establishing the bond between the subject property and the local, national, and international community.

## **Board Recommendations**

### **Marsh Farmstead**

The Board acknowledges the importance of the Marsh farmstead, however minimal historical and associative or contextual argument was given to demonstrate its significance as a farm. While there are numerous examples of farm properties being protected across Ontario, these would usually be significant for a connection to some event, person, or achievement, and/or the current state would demonstrate more integrity as a farmstead than the Marsh farm does on this property. The Elms Lea dwelling and the area of land directly surrounding it, including remnant orchards and other tree plantings, does maintain some integrity both in association with the farm use and as the residence of the director of the observatory. In the Board's opinion, these warrant protection. No other sufficient case was presented to demonstrate the significance as a farmstead of any other portions of the subject property, including the Vanderburgh farm that existed at some point on the northern portion of the subject property.

### **David Dunlap Observatory**

The Board considers that any significance outside of the area directly surrounding Elms Lea was established in the 1930s when the decision was made to locate the David Dunlap Observatory on the subject property.

The siting of the observatory on the natural knoll has significance as the knoll is the primary reason why this site was chosen. In this way, the knoll where the main DDO precinct is established is very important. The Board also accepts the perspective that the view of the southwest corner of the subject property, which is much lower in elevation, is important in showcasing the existence of the knoll. This viewscape has significance. These must be captured in concise language in any bylaw, as opposed to the general reference to site topography and grading currently employed in the Notice. The Board recommends that Council amend this language to specifically reference the topography of the knoll upon which the observatory precinct sits, as well as the topography to the south, southwest, and west of the observatory precinct that helps establish a visual connection to the existence of this knoll and the precinct.

The Board concurs with the conclusions of the parties on the significance of the Observatory building, the Administration building, Elms Lea, and the land directly connecting these structures, which combined has been referred to as the DDO precinct. The Board is very supportive of the approach proposed by the Town to protect the interiors and exteriors of these main structures. There must be diligence taken to ensure that any errors or omissions that were agreed upon by all parties during the hearing are captured in revised language for any future bylaw, as is listed in Ex 7. Specifically, it was agreed that from Ex 7 all four errors listed on page 1 (except the third error should list a 5000 pound motor), all five errors on page 2, and the

first two of the four listed errors on page 3 are all to be corrected for bylaw purposes.

The Board acknowledges the impact that the curved entrance road, bordered by mature trees, has on visitors. The significance of the curvature of this road, Donalda Drive, relates to maintaining a buffer of space between entering vehicles and the telescope, while keeping vehicles pointed in a direction that minimizes any headlight pollution from affecting the operation of the telescope. While vast historical analysis demonstrates the importance of David Dunlap and Dr. Chant, the donation of land was actually the decision of and executed by Jessie Donalda Dunlap, and thus the naming of this entrance road after this important historical figure in the establishment of the DDO is significant.

The Board is less convinced of the significance of the caretaker's residence, also referred to as the gatehouse, and its associated carport. This post-modern styled structure seemed to play a utilitarian role and its design does not complement the other architectural styles on the property. The case to determine the significance of these structures is not compelling, and thus the Board recommends that the Town remove its reference to the Caretaker's Residence (gatehouse) and the carport in any designation bylaw.

The radio shack is the structure that housed important equipment both during the Second World War and then for important radio astronomy discovery. While there is no known design or physical value, there is historical or associative value within the context of the DDO site. The Board is aware that the large antennae used to conduct this radio astronomy are no longer present on the property. The question becomes whether this structure lacks integrity without them, and whether its use to house equipment renders the building to that of more of a utilitarian function. After very careful contemplation (and admittedly a few changes in opinion), the Board finds that the radio shack is a significant cultural heritage attribute, given its use for international radio astronomy research, and the fact that it was a manned structure for the purposes of this research. Therefore, the Board agrees that the radio shack should be protected. While the condition of a structure is not within Regulation 9/06, the Board notes that the ability of the Town to protect this structure may be compromised by the asbestos-based cladding on the building.

The pumphouse is considered by the Board to be a purely utilitarian building. While it is interesting that its use was to supply water to the main buildings within the DDO precinct, the Board is not convinced that this role carried enough importance to deem this a heritage attribute. Also, while a case was made to demonstrate the significance of the pumphouse, less of a case was made to highlight the water pipe that was laid roughly 1.3km from this building to the observatory precinct buildings. The Board does not see the pumphouse or the water pipe as having cultural heritage significance.

While archaeological potential was raised by the Naturalists, insufficient information was available as only a Stage One assessment has been undertaken. The Board agrees that the current state of archaeological enquiry does not add value to the proceedings, but does reinforce that there are other tools, outside of the scope of the Board's mandate, to assess and protect archaeological resources. One such tool under planning is the requirement for an archaeological assessment upon the application for any potential development plan on the subject property.

The tree nursery located in the east portion of the property, also referred to as the shelterbelt plantings, is an interesting situation. The trees were planted as part of an envisioned plan to transplant as a buffer around the observatory building. All historical analysis depicts that the Second World War (1939-1945) interfered with this plan and the trees were left to grow until they were of a size that transplanting was not realistic. The Board struggled with the fact that this nursery does represent a carefully planned historical planting, but it also represents a failed vision as the trees should not have remained in this position. Much of the Board's experience with significant plantings has involved specific plantings by historically significant people or for specific purposes, all with an intention of creating a presence or legacy in that original location. In this case, it was never the intention to create a natural legacy in this location, but rather around the observatory. As such, the Board is less convinced that this planting area maintains a strong historical or contextual significance. There was some evidence presented about the need to block light and noise pollution from increased traffic along Bayview Avenue, and it could be argued that the failed nursery plan ultimately served this purpose, in part. However, this was not convincingly argued at the hearing. Also, while not a prerequisite, the great distance between this planting area and the main DDO precinct does diminish any contextual connection that could exist. The Board therefore recommends that this nursery area not be identified as a heritage attribute.

The other main area to be contemplated is the line of trees identified as research plantings by the UofT Department of Forestry. This line runs from the north to the south property lines, with a break in the middle, in an area just west of where Mr. Scheinman's blue line is depicted in Fig. 18 of his report (Ex 2A page 28). Little is known about these plantings and no specific research findings could be found by the parties. The Board theorizes that different species were planted, using different planting practices, to bring further use of the parts of this UofT-owned property not used in operating the observatory. There does not seem to be any connection between these plantings and the observatory, as was confirmed in testimony by observatory staff. While there is little known about the research, it seems rational that these plantings were intended to remain in their current location, rather than be transplanted like the other plantings referenced earlier. The Board notes this from the planting plan that was presented as evidence, but also from the careful planting of these trees along a line that perfectly aligns with the north-south axial line so important and carefully contemplated in the DDO precinct area. The Board sees the adherence to this axial line as a very important connection to the observatory, and the fundamental trait that truly raises the significance of these plantings. After careful contemplation, the Board finds that this axial line brings a strong associative and contextual significance to these plantings. Given the topography of the knoll and how the DDO precinct is carefully framed by strategic plantings, the Board finds these research tree plantings that follow an axial planting line to also be a boundary of an important viewscape from the main DDO precinct. Therefore, the Board recommends that the two clusters of research tree plantings, also referred to as attribute number 11 in Mr. Scheinman's report (Ex 2A Fig 18, page 28), be protected.

In all, the approach taken by all parties was the creation of a cultural heritage landscape that best grouped the various significant attributes identified on the subject property. The Board agrees with this approach and undertook great analysis and debate in contemplating a

recommendation for defining the boundaries of a cultural heritage landscape. In light of the Board's analysis outlined in this report, it is clear that the owner's proposal too narrowly defines the area of protection, as it is the Board's opinion that such a plan would lead to encroachment and thus a dilution of the integrity of the significant cultural heritage value or interest of the property. On the other end of the spectrum, the Board feels that the proposal of the Naturalists is more of a blanket approach to conservation, without sufficient evidence or argument to justify the inclusion of many portions of the property. While the Town's proposal seems to fit comfortably in the middle of these two extremes, the Board does not fully endorse their approach as it was presented.

Given the analysis outlined in this report, the Board recommends that a cultural heritage landscape be created to encompass the entire western portion of the property, with boundaries of the lot line on the west, south, and north. With respect to the location of a boundary line to the east, the Board recommends that a line be located and properly surveyed for clarity at least 150 metres east of the most eastern portion of the research tree planting line, and extend from the north to south lot lines in a way that follows the north-south axial line found in the tree plantings. This boundary line will lie further east of the blue line depicted by Mr. Scheinman. The 150-metre requirement is intended to be a sufficient buffer zone to protect these plantings and other surrounding land from any potential future use of the eastern portion of the subject property that falls outside of the recommended cultural heritage landscape.

In this way, the Board is recommending an approach that does closely match that proposed by the Town, with a modification to increase the size of the cultural heritage landscape. Also, while Mr. Scheinman modified his line during the hearing, the Board's proposed boundary maintains a straight line following the north-south axial line from the north to south property lines. This is contrary to Mr. Scheinman's modified curved line. For clarity, looking at any aerial photo of the site (the Board relies on Exhibit 8 along with Figure 8 in Mr. Scheinman's report) the planting area can be seen along the north property line near the location of the blue line. Additional trees found just east of the blue line in this area have not thrived as well as the trees planted further west. The Board recommends that the Town determine a surveyed line that starts about 150 metres east of the boundary of these additional trees, from the original research planting plan, and extend this line straight down to the southern property line following the north-south axial line found in the planting plan. This would represent the eastern boundary for a cultural heritage landscape, including the significant plantings, their contribution to the precinct viewscape, and a buffer from any future use of the lands east of this line.

In all, the Board feels confident that the creation of this cultural heritage landscape represents the optimal application of Ontario Regulation 9/06 and most closely aligns with the spirit of cultural heritage property conservation in Ontario.

The Board has no jurisdiction to comment on any future use of the site, the operation of the telescope and the observatory in general, or any other issue that falls outside of the Act.

The Board would also like to highlight the earlier comments in this report concerning the surprisingly strong significance of the panhandle, Parts 2 and 3, from the limited amount of evidence presented in support of Part 1. The Board recommends that Council take steps to

properly assess the significance of the panhandle for any future application to more formally protect that property.

In all, the Board believes that the DDO precinct area, including the various viewsapes, topography, and elements found in the recommended cultural heritage landscape, represents an exceptional example of Ontario's cultural heritage. In terms of any recommendation on specific wording of a bylaw, outside of what has already been conveyed in this report, the Board suggests that the Town's current approach is appropriate and that some further consultation with resources such as the Trust may be appropriate in finalizing some of the language and treatment in turning the Notice into a bylaw. The Board refrains from delving specifically into recommended language and detail on specific interior and exterior elements in this case, given its confidence in the Town's current approach.

While the Board feels that the Town has done a good job of exercising its mandate under the Act, this does not mean that the Province cannot participate more actively and apply the criteria of Ontario Regulation 10/06 in this area of overlapping jurisdiction. In fact, there is nothing under statute that would restrict the Minister from exercising the powers under the Act to recognize this property as a site of provincial significance. While a situation of "double designation" is rare, this is likely a property that supports such contemplation. As noted earlier, such involvement would represent additional control, protection and other opportunities to the land owner beyond that available under the municipal process alone.

### **Board Recommendation**

Based on the evidence heard, the Board has concluded that the proposed Statement of Cultural Heritage Value and Description of Heritage Attributes for the subject property is to be moderately modified to capture a larger cultural heritage landscape and any other recommendation outlined in this report. In all, the Board commends the municipality's proposed approach, and is supportive with some recommended modifications. For this reason, the Board recommends that the Council of the Town of Richmond Hill proceed with the protection of the property known as 123 Hillsvie Drive (David Dunlap Observatory) under s.29 of the Ontario Heritage Act, R.S.O. 1990, c.O.18, as amended 2006.

The Board recognizes that the final decision in this matter rests with the Council of the Town of Richmond Hill.

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



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Peter A.P. Zakarow, Chair  
May 19, 2009



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Karen Haslam, Member  
May 19, 2009

## **Schedule 1**

### **Exhibits List**

- Exhibit 1: Affidavit of Notice of Hearing, submitted by the Board
- Exhibit 2: Town of Richmond Hill Document Book, submitted by the Town
- Exhibit 2A: Scheinman Report with Colour photos, submitted by the Town
- Exhibit 2B: Scheinman Interiors Report with Colour photos, submitted by the Town
- Exhibit 3: Reference Plan map, submitted by the Town
- Exhibit 3A: Smaller aerial photo of Dunlap Observatory, submitted by the Town
- Exhibit 4: Witness Statement of Mr. Scheinman, submitted by the Town
- Exhibit 5: Supplementary Document Book (Naturalists), submitted by the Naturalists
- Exhibit 6: Heritage Expert List of Agreements, submitted by the Town
- Exhibit 7: Inventory of Errors and Omissions of Description of Heritage attributes, submitted by the Naturalists
- Exhibit 8: Colour aerial photo of Dunlap Observatory property, submitted by the Naturalists
- Exhibit 9: Designating Heritage Properties – Ontario Heritage Tool Kit, submitted by the Town
- Exhibit 10: As Found Photography record, submitted by the Naturalists

- Exhibit 11: Curriculum Vitae of Dr. T. Bolton, submitted by the Naturalists
- Exhibit 12: Cultural Heritage Landscapes – PPS Infosheet, submitted by the Naturalists
- Exhibit 13A: Witness Statement of Mr. Dilse, submitted by the Naturalists
- Exhibit 13B: Curriculum Vitae of Mr. Dilse, submitted by the Naturalists
- Exhibit 13C: Heritage Report of Mr. Dilse, submitted by the Naturalists
- Exhibit 14: Cities of Canada extract, submitted by the Naturalists
- Exhibit 15: The Cold Light of Dawn extract, submitted by the Naturalists
- Exhibit 16A: Volume I – Photo Album of Dr. Chant, submitted by the Naturalists
- Exhibit 16B: Volume II – Photo Album of Dr. Chant, submitted by the Naturalists
- Exhibit 17: Memorial Scrapbook Photo Album, submitted by the Naturalists
- Exhibit 18: Astronomy in the University of Toronto, submitted by the Naturalists
- Exhibit 19A: Witness Statement for Mr. Poulton, submitted by the Naturalists
- Exhibit 19B: Resume of Mr. Poulton, submitted by the Naturalists
- Exhibit 19C: Archaeological Assessment Report by Mr. Poulton, submitted by the Naturalists
- Exhibit 19D: Copy of Ministry of Culture Letter on Stage 1 Archaeological Assessment, submitted by the Naturalists

- Exhibit 20: Archaeological Resources PPS Infosheet, submitted by the Naturalists
- Exhibit 21: Heritage Resources Report by Mr. Hunter, submitted by the Naturalists
- Exhibit 22A: Witness Statement for Mr. Shevchuk, submitted by the Naturalists
- Exhibit 22B: Cultural Heritage Landscape Assessment Report by Mr. Shevchuk, submitted by the Naturalists
- Exhibit 23: Curriculum Vitae of Mr. Fraser, submitted by the Naturalists
- Exhibit 24: Larger Version of Planting Map, submitted by the Naturalists
- Exhibit 25A: Witness Statement of Mr. McClelland, submitted by the Owner
- Exhibit 25B: Curriculum Vitae of Mr. McClelland, submitted by the Owner
- Exhibit 25C: Cultural Setting Map, submitted by the Owner