

ISSUE DATE:

May 27, 2010



PL090885

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Canadian Niagara Hotels Inc.
Appellant: Harvey Gordon
Subject: By-law No. 2009-139
Municipality: City of Niagara Falls
OMB Case No.: PL090885
OMB File No.: PL090885

APPEARANCES:

Parties

City of Niagara Falls

Hospitality Resorts Inc.

Canadian Niagara Hotels Inc.

Counsel

K. L. Beaman

E. P. Lustig

N. J. Pepino

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. V. ZUIDEMA
ON MAY 14, 2010**

A Telephone Conference Call was convened to address a settlement which had been reached amongst the parties. The Affidavit of Ken Mech had been provided on consent. It was marked as Exhibit "1". His opinions were not challenged and the Board accepted them as a basis to allow the appeal in part in order to implement the Minutes of Settlement reached amongst the parties. Those Minutes were filed as Exhibits 2(a) and 2(b).

Specifically Mr. Mech opined that the settlement and proposed draft by-law represented good and proper planning, was in the public interest and was consistent with and conformed to, as the case may be, with both the Provincial Policy Statement and the Growth Plan for the Greater Golden Horseshoe. He recommended approval of

proposed draft By-Law 2009-139. This document was entered as Exhibit 3 and is attached to this decision.

The parties requested that the Board withhold its Order until confirmation that the Site Plan Agreement, as referenced in the Minutes of Settlement, had been executed.

THEREFORE THE BOARD DETERMINES that the appeal is allowed in part and that By-law 2009-139 which is appended hereto and marked as Attachment "1" is approved. The Board will withhold its Order until it is advised by the City that the Site Plan Agreement as noted above has been executed.

In this respect, the Board can be spoken to when necessary.

"J. V. Zuidema"

J. V. ZUIDEMA
VICE-CHAIR

ATTACHMENT "1"CITY OF NIAGARA FALLS**By-law No. 2009 - 139**

A by-law to amend By-law No. 79-200 to permit the construction of a 56 storey hotel, including a convention centre and a parking structure, to permit a portion of the required parking to be provided off site and to repeal By-law Nos. 2007-01 and 2007-02.

WHEREAS the City's Official Plan contains policies to ensure the creation of a high-quality built form and urban environment in the City's tourist districts and to provide the opportunity to approve zoning by-law amendments which permit increases in building heights in return for improvements to the public realm as authorized by Section 37 of the *Planning Act*;

AND WHEREAS, pursuant to Section 37 of the *Planning Act*, the Council of a local municipality may, in a by-law passed under Section 34 of the *Planning Act*, authorize increases in the height or density of development otherwise permitted by the existing by-law that will be permitted in return for the provision of such facilities, services or matters as are set out in the amending by-law;

AND WHEREAS, Subsection 37(3) of the *Planning Act* provides that, where an owner of land elects to provide facilities, services or matters in return for an increase in the height or density of development, the municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services or matters;

AND WHEREAS the owner of the lands hereinafter referred to has elected to provide the facilities, services and matters as are hereinafter set forth;

AND WHEREAS the increase in the height of development permitted hereunder, beyond that otherwise permitted on the aforesaid lands by By-law No. 79-200, is to be permitted in return for the provision of facilities, services and matters set out in this by-law and to be secured by one or more agreements between the owner of such lands and the Corporation of the City of Niagara Falls (hereinafter referred to as the "City");

AND WHEREAS the City has required the owner of the aforesaid lands to enter into one or more agreements dealing with certain facilities, services and matters in return for the increase in height in connection with the aforesaid lands as permitted;

AND WHEREAS Subsection 34(5) of the *Planning Act* provides that the Council of a local municipality may prohibit the use of land or the erection of buildings or structures until such municipal services as may be set out in a by-law passed under Section 34 of the *Planning Act* are available to service the land, building and structures;

AND WHEREAS the facilities, services and matters secured under the aforesaid agreements are municipal services;

AND WHEREAS City Council has held a Public Meeting to consider these matters, including an increase in height;

AND WHEREAS City Council has adopted Official Plan Amendment No. 56, which permits the development of a hotel to a maximum height of 172 metres and a convention centre subject to a satisfactory architectural design and the provision of facilities, services or matters under an agreement executed pursuant to Subsection 37(3) of the *Planning Act*.

THE COUNCIL OF THE CORPORATION OF THE CITY OF NIAGARA FALLS ENACTS AS FOLLOWS:

1. The Lands that are the subject of and affected by the provisions of this by-law are described in Schedules 1 and 2 and Appendices "A", "B", "C" and "D" of this by-law and shall be referred to in this by-law as the "Lands". Schedules 1, 2, 3 and 4 and Appendices "A", "B", "C" and "D" are a part of this by-law.
2. The Lands shall be identified as four parcels, known as Parcels TC-878, TC-879, P-880 and P-881.
3. The purpose of this by-law is to amend the provisions of By-law No. 79-200, to permit the use of the Lands in a manner that would otherwise be prohibited by that by-law. In the case of any conflict between a specific provision of this by-law and any existing provision of By-law No. 79-200, the provisions of this by-law are to prevail.
4. Notwithstanding any provision of By-law No. 79-200 to the contrary, the following uses and regulations shall be the permitted uses and regulations governing the permitted uses on and of the Lands.
5. The permitted uses shall be:
 - (a) For Parcel TC-878, the uses permitted in an TC zone.
 - (b) For Parcel TC-879, the uses permitted in a TC zone and required parking for uses located on Parcel TC-878.
 - (c) **For Parcel P-880, required valet parking for uses located on Parcel TC-878.**
 - (d) **For Parcel P-881, parking for persons employed for uses on Parcel TC-878, but not for required parking for uses on Parcel TC-878.**
6. The regulations governing the permitted uses on Parcel TC-878 shall be:
 - (a) Deemed lot the whole of Parcel TC-878 shall be considered one lot
 - (b) Minimum lot area the whole of Parcel TC-878, save and except for any part which may be required to be dedicated for the purpose of road widenings
 - (c) Location of the various components of the building or structure on the land, their maximum height and maximum number of storeys and minimum yards prior to any dedication for the purpose of road widenings refer to plan Schedules 3 and 4, attached to and forming part of this by-law and clause (d) of this section

- (d) Maximum height of building or structure and maximum number of storeys inclusive of storeys containing mechanical equipment
- (i) Building A as shown on the plan Schedule 3 attached hereto 172 metres, as measured from the Geodetic Survey of Canada elevation 194.47 metres, and a maximum of 56 storeys of which 52 storeys may contain a place of occupancy and which shall include the roof feature as required by clause (e) of this section and is subject to section 10 of this by-law
 - (ii) Building B as shown on the plan Schedule 3 attached hereto 104 metres, as measured from the Geodetic Survey of Canada elevation 194.47 metres, and a maximum of 32 storeys which shall include the roof feature as required by clause (e) of this section and is subject to section 10 of this by-law
 - (iii) Building C as shown on the plan Schedule 3 attached hereto 48 metres, as measured from the Geodetic Survey of Canada elevation 194.47 metres, and a maximum of 15 storeys which shall include the roof feature as required by clause (e) of this section and is subject to section 10 of this by-law
- (e) Roof feature
- (i) Building A as shown on the plan Schedule 3 attached hereto shall have a roof feature which has a minimum height of 14 metres above the top storey and may have a maximum of four storeys. The roof feature shall be a distinct architectural element of the building and shall not contain a place of occupancy
 - (ii) Building B as shown on the plan Schedule 3 attached hereto shall have a roof feature which has a minimum height of 14 metres above the top storey and may have a maximum of four storeys, of which two storeys may contain a place of occupancy. The roof feature shall be a distinct architectural element of the building

- (iii) Building C as shown on the plan Schedule 3 attached hereto shall have a roof feature which has a minimum height of 5 metres above the top storey and may have a maximum of two storeys. The roof feature shall be a distinct architectural element of the building and shall not contain a place of occupancy
- (f) Maximum lot coverage 100%
- (g) Maximum gross floor area 153,100 square metres
- (h) Minimum number of parking spaces
- (i) for the complex without a convention centre 795 parking spaces, plus 2 bus parking spaces
- (ii) for the complex with a convention centre 796 parking spaces, plus 2 bus parking spaces
- (iii) for a hotel 0.8 parking space for each hotel unit
- (iv) for ancillary restaurants none for a restaurant having less than 300 seats, 1 parking space for every 15 seats for a restaurant having greater than 300 seats
- (v) for ancillary retail stores none
- (vi) for a convention centre none for any room less than 1,400 square metres, 1 parking space for every 66 square metres in a room greater than 1,400 square metres
- (vii) bus parking space substitution the 2 required bus parking spaces substitute for 40 parking spaces
- (viii) for all other uses in accordance with clause (a) of section 4.19 of By-law No. 79-200
- (i) Minimum perpendicular length of a parking space 5.9 metres
- (j) Minimum width of a parking space 2.6 metres
- (k) Minimum perpendicular width of a manoeuvring aisle 6.0 metres

- (l) Parking structure the hotel shall include a parking structure providing a minimum of 30% of the parking spaces required by clause (h) of this section, on the TC-878 lands
- (m) Parking stacker spaces parking spaces required by clause (h) of this section may be provided by means of parking stackers within the required parking structure, each parking stacker module accommodating no more than two parking spaces that are accessed by a manoeuvring aisle that conforms to the minimum dimensions specified in clauses (i), (j) and (k) of this section
- (n) Minimum vertical dimension of a parking level designed to accommodate parking stacker spaces 3.4 metres
- (o) **Tandem parking** **required parking spaces may be provided in tandem in the manoeuvring aisle**
- (p) Location of parking
 - (i) a maximum of 102 required parking spaces that cannot be provided on Parcel TC-878 shall be provided on Parcel TC-879
 - (ii) a maximum of 388 required parking spaces that cannot be provided on Parcel TC-878 shall be provided on Parcel P-880
 - (iii) **573 required parking spaces plus 2 required bus parking spaces shall be provided on Parcel TC-878 if a convention centre does not exist on Parcel TC-878**
 - (iv) **416 required parking spaces plus 2 required bus parking spaces shall be provided on Parcel TC-878 if a convention centre exists on Parcel TC-878**

- (q) **Valet parking** **all required parking spaces for the uses permitted on Parcel TC-878 on the same parcel or Parcel TC-880 shall be permitted only by valet**
- (r) Minimum number of loading spaces 4, in accordance with the dimensions contained in section 4.20.1 of By-law No. 79-200
- (s) Maximum floor area for all retail stores 1,000 square metres
- (t) Maximum floor area for each retail store 400 square metres
- (u) Maximum number of seats in all restaurants 2,150
- (v) The balance of regulations specified for a TC use.

7. The regulations governing the permitted uses on Parcel TC-879 shall be:

- (a) Minimum perpendicular length of a parking space 5.9 metres
- (b) Minimum width of a parking space 2.6 metres
- (c) Minimum perpendicular width of a manoeuvring aisle 6.0 metres
- (d) Minimum number of parking spaces 102, which may be provided in tandem
- (e) Minimum landscaped open space a 3 metre wide strip along and between any surface parking area and the Stanley Avenue, Murray Street and Main Street road allowances, save and except for a maximum of 2 driveway entrances
- (f) The balance of regulations specified for a TC use.

8. The regulations governing the permitted uses on Parcel P-880 shall be:

- (a) Minimum perpendicular length of a parking space 5.9 metres
- (b) Minimum width of a parking space 2.6 metres
- (c) Minimum perpendicular width of a manoeuvring aisle 6.0 metres

- (d) Maximum number of parking spaces 388, which may be provided in tandem
- (e) Minimum landscaped open space a 6 metre wide strip along and between any surface parking area and the Robinson Street, Allendale Avenue and Main Street road allowances, save and except for a maximum of 3 driveway entrances

a 6 metre wide strip along and between any surface parking area and any lot under a residential or institutional zone, save and except for properties used for electrical transmission purposes

9. The regulations governing the permitted uses on Parcel P-881 shall be:

- (a) Minimum perpendicular length of a parking space 5.9 metres
- (b) Minimum width of a parking space 2.6 metres
- (c) Minimum perpendicular width of a manoeuvring aisle 6.0 metres
- (d) Maximum number of parking spaces 270, which may be provided in tandem
- (e) Minimum landscaped open space a 6 metre wide strip along and between any surface parking area and the Robinson Street and Allendale Avenue road allowances, save and except for 1 driveway entrance

a 6 metre wide strip along and between any surface parking area and any lot under a residential or institutional zone, save and except for properties used for electrical transmission purposes
- (f) Minimum fencing along and adjacent to any property used for residential purposes a close-board type fence with a minimum height of 1.8 metres

10. For the purpose of this by-law, "roof feature" means a distinct architectural element erected above the top storey of the hotel tower component and shall not contain a place of occupancy or be used for commercial purposes, unless otherwise permitted by this by-law, but shall be provided for the purposes of enhancing the design of the hotel and may enclose any roof mounted mechanical equipment, mechanical penthouses, or other similar elements. Notwithstanding section 4.7 of By-law No. 79-200, and except for any flagpoles, or other similar decorative roof features, decorative cupolas not exceeding 4.5 metres in width and 6 metres in height, and radio,

telephone, television or telecommunications towers or antennae, no water tank, elevator or other mechanical penthouse shall have a height greater than the roof feature.

11. The owner of Parcels TC-878 and TC-879 is required, pursuant to subsection 37 (3) of the *Planning Act*, to enter into one or more agreements with the City in order to secure the facilities, services and matters referred to in section 12 of this by-law and such agreements are to be registered on title.
12. The height of the building or structure permitted by section 6 of this by-law shall only be permitted subject to compliance with the conditions set out therein and in return for the owner of Parcels TC-878 and TC-879 providing the following facilities, services and matters to the City namely:
 - (a) a contribution of \$1,200,000 in cash to the City, to be used for a new arena project that is beyond what would otherwise be provided under the provisions of the *Planning Act* or the *Development Charges Act*, in accordance with an agreement entered into pursuant to section 6 of this by-law;
 - (b) streetscape improvements to the street frontages along Stanley Avenue, Fallsview Boulevard, Main Street and Murray Street adjoining the subject lands described in section 1 of this by-law, inclusive but not necessarily limited to sidewalks, street trees, street furniture, street lighting and landscaping, not covered by development charges and 2 % parkland dedication, as detailed in the City's Tourist Area Streetscape Master Plan and the City's Urban Design Guidelines; and
 - (c) the provision of an architectural design for the hotel, convention centre and parking structure including, but not limited to, surface articulation, exterior materials, roof structure, pedestrian scale uses, and design of the public realm satisfactory to the Architectural Peer Review Panel and the Director of Planning and Development, in accordance with an agreement entered into pursuant to section 11 of this by-law.
13. No building or structure shall be erected until such time as the facilities, services and matters required by an agreement entered into pursuant to section 11 of this by-law are provided.
14. For the purposes of this by-law:

“parking stacker” means a mechanical motor vehicle parking device in which two parking spaces are provided with one positioned above the other and accessed by a manoeuvring aisle as provided for in clause (m) of section 6 of this by-law.

“storey” means a storey or a half storey as defined in sections 2.54 and 2.55 of By-law No. 79-200.

“top storey” means the uppermost storey of a building save and except for any storeys provided within the roof feature.
15. **Should the owner or occupant of Parcels TC-878 and TC-879 have the licence for the use of Parcel P-880 terminated by the owner thereof, the owner or occupant of Parcels TC-878 and TC-879 shall provide the necessary required parking spaces in another location that is appropriately zoned and acceptable to the City of Niagara Falls.**
16. All other applicable regulations set out in By-law No. 79-200 shall continue to apply to govern

the permitted uses on the Lands, with all necessary changes in detail.

17. No person shall use the Lands for a use that is not a permitted use.
18. No person shall use the Lands in a manner that is contrary to the regulations.
19. The provisions of this By-law shall be shown on Sheets C4, C5, D4 and D5 of Schedule "A" of By-law No. 79-200 by renumbering the lands from 752 and 754 to 878, in part, and from 753 to 879, in part, and by redesignating the Lands from I and numbered 754, in part, and TC and numbered 754, in part, to P and numbered 880, in part, and from R2, in part, and TC, in part, to P and numbered 881, in part.
20. Section 19 of By-law No. 79-200 is amended by deleting sections 19.1.752, 19.1.753 and 19.1.754.
21. By-law Nos. 2007-01 and 2007-02 are repealed.
22. Section 19 of By-law No. 79-200 is amended by adding thereto:
 - 19.1.878 Refer to By-law No. 2009-___.
 - 19.1.879 Refer to By-law No. 2009-___.
 - 19.1.880 Refer to By-law No. 2009-___.
 - 19.1.881 Refer to By-law No. 2009-___.

Passed this day of , 2010.

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DEAN IORFIDA, CITY CLERK

.....
R. T. (TED) SALCI, MAYOR

First Reading: , 2010
Second Reading: , 2010
Third Reading: , 2010

APPENDIX "A"

FIRSTLY

Pt Range 14-16 Pl 1 As In RO585864, Except Pt 1, 59R7271, T/W RO770333; Niagara Falls, being all of PIN 64377-0105

SECONDLY

Pt Ranges 16 & 17 Pl 1 As In RO754194 & RO773864 Except Pts 2, 3 4 & 5, 59R12018 & Pt 1, 59R13426; S/T RO770333; Niagara Falls, being all of PIN 64377-0171

THIRDLY

Pt Range 14-16 Pl 1 Pt 1, 59R6575; S/T RO770333; S/T Easement Over Pt Range 14, Being Pt 2 59R13979 In Favour Of Pt Range 13-15 Pl 1; Pt Dixon St, Buchanan St, Pl 1 Being Fallsview Blvd (Formerly Buchanan St, Formerly Buchanan Ave) As Closed By RO430946 & RO97685 As In RO777941, As In SN243725; T/W Easement Over Pt Of Ranges 14 & 15 Pl 1, Pt Of Buchanan Avenue, Plan 1, Being Fallsview Boulevard (Formerly Buchanan Street, Formerly Buchanan Avenue) As Closed By RO430946 & RO97685, Pts 1 & 4 59R13979 As In SN243726; Niagara Falls, being all of PIN 64377-0106

FOURTHLY

Pt Range 14 Pl 1 As In RO773864; S/T Easement Over Pt Range 14 Pl 1, Being Pt 3 59R13979 In Favour Of Pt Range 13-15 Pl 1; Pt Dixon St, Buchanan St, Pl 1 Being Fallsview Blvd (Formerly Buchanan St, Formerly Buchanan Ave) As Closed By RO430946 & RO97685 As In RO777941, As In SN243725; T/W Easement Over Pt Of Ranges 14 & 15 Pl 1, Pt Of Buchanan Avenue Pl 1, Being Fallsview Boulevard (Formerly Buchanan Street, Formerly Buchanan Avenue) As Closed By RO430946 & RO97685, Pts 1 & 4 30R13979 As In SN243726; Niagara Falls, being all of PIN 64377-0107

APPENDIX "B"

Pt Stanley St Pl 1 Stamford As Closed By By-law BL8; Pt Range 17 Pl 1 Stamford as in ST11632 & ST11633 (Firstly), Except RO178426 & BB69923, Niagara Falls, being all of PIN 64351-0113


APPENDIX "C"

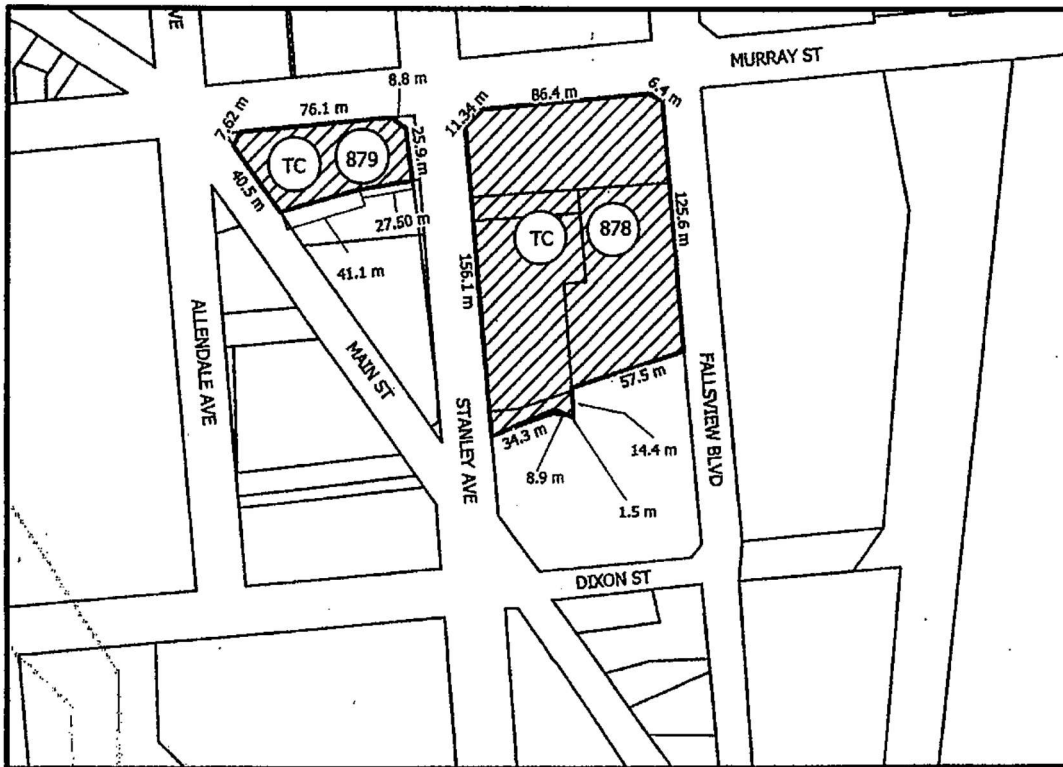
Part Lt 3 s/s Robinson Street Pl 653; Pt Range 20 Pl 1 Stamford; Pt Range 21 Pl 1 Stamford as in NF1399 Except NF55274; S/T Easement as in NF55274; Pt Lt 25 Range 19 W of Allan St Pl 653 as in NF17084 Except RO739877; Pt Lt L E/S Portage Rd Pl 653; Pt Lot 24 E/S Portage Rd S of Ferry St Pl 653 as in NF46544; Except Pts 2, 15, 16, SN104737, Niagara Falls, being all of PIN 64350-0220

APPENDIX "D"

**LTS 1-5 W/S ALLEN ST PL 653 VILLAGE OF NIAGARA FALLS; LTS 13-20 PL 271; LANE
PL 271 LYING S OF PEER ST; GLADSTONE AV PL 271 (AS CLOSED BY AA47840)
LYING S OF THE WLY EXT OF THE NLY LIMIT OF LT 13 PL 271; PT LTS 9-12 & PT LT
40 PL 271 VILLAGE OF NIAGARA FALLS; PT LT 2 N/S ROBINSON ST PL 653 VILLAGE
OF NIAGARA FALLS AS IN AA57322 & NF1399; EXCEPT PT 1, SN104735; NIAGARA FALLS**

SCHEDULE 1 TO BY-LAW No. 2009-139

Subject Land 



Amending Zoning By-law No. 79-200

Description: See Appendices "A" and "B"

Applicant: Hospitality Resorts Inc.

Assessment #s: 272503000806000
272503000817500
272503000817401


272503000817900
272507000312300
272503000817950



1:NTS

AM-2009-008

SCHEDULE 2 TO BY-LAW No. 2009-139

Subject Land 



Amending Zoning By-law No. 79-200

Description: See Appendices "C" and "D"

Applicant: Hospitality Resorts Inc.

Assessment #s: 272504000106000



1:NTS

AM-2009-008