

ISSUE DATE:

**May 8, 2012**



PL110524

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

Paletta International (1990) Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the City of Niagara Falls to redesignate land at 4825 Pettit Avenue from Industrial to Residential with a Special Policy Area to permit a future development  
OMB File No.: PL110524

Paletta International (1990) Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 79-200 of the City of Niagara Falls to rezone lands respecting 4825 Pettit Avenue from L1 to R3 and R5D to permit a future development  
OMB File No.: PL110521

**APPEARANCES:**

**Parties**

**Counsel**

Paletta International (1990) Inc.

S. Snider

City of Niagara Falls

K. L. Beaman

**MEMORANDUM OF ORAL DECISION DELIVERED BY SUSAN de  
AVELLAR SCHILLER ON APRIL 12, 2012, AND ORDER OF THE BOARD**

This was the first pre-hearing conference in this matter.

Paletta International (1990) Inc. (Paletta) wishes to redevelop a vacant parcel in the City of Niagara Falls (City). The subject site was occupied previously by an industrial use. Paletta wishes to develop the site for residential uses.

No additional interests appeared to seek party status.

The City advised the Board that it does not contest the Paletta proposal on the basis of a conversion of employment lands and conversion of employment lands is not an issue for the hearing of the merits.

The City then advised the Board that it will raise three broad issues for the hearing:

1. Form of the development, which will include questions of height, setbacks and massing;
2. Density; and
3. Traffic, which will include access to the site and impacts on the pedestrian realm.

Several members of the public were in attendance. Sixty-seven of those in attendance requested a copy of this decision and have been added to the mailing list in these matters.

Eleven members of the public have been added as participants in these proceedings, and they are:

- Mr. Mark Stirtzinger
- Mr. Allan Calder
- Mr. Terry Campbell
- Dr. Robert Nicol
- Ms. Hania Wojtowicz
- Ms. Sandra McDougall
- Mr. Vincent Hockton
- Mr. Hal Brown
- Mr. Sandro Elia
- Mr. Victor Panczuk
- Mr. David Lint

All those listed, except Mr. Lint, appeared in person to seek participant status.

Mr. Lint was unable to attend but contacted the Board, via a message left with the municipality, to indicate that he could not attend in person but wished to be added to the list of those who would address the Board in this matter.

The Board interpreted this message as being a request for participant status, and added Mr. Lint accordingly.

Although a very large number of people were in attendance, only a small handful had ever attended or otherwise been involved in a Board hearing. The Board spent more than two hours explaining Board process and procedure and answering questions from those in attendance in an effort to ensure that those attending fully understood the hearing process and their responsibilities as either participants or parties to these proceedings.

A participant asked if the Board would provide mediation assistance.

The Board reviewed the process for requesting mediation, including the importance of a mediation assessment, and noted that mediation requests had to be filed in writing and by a party or parties.

The Board advised that the Board does not accept mediation requests from participants. The Board also noted that there is nothing to prevent a participant from working with a party or parties to see if matters could be narrowed or resolved.

The procedural order to govern these proceedings is attached to this decision as Attachment "1".

The hearing will commence:

**Monday, March 4, 2013**  
**11 a.m.**  
**Council Chambers, City Hall**  
**4310 Queen Street**  
**Niagara Falls, Ontario**

No further notice is necessary.

This panel of the Board will assist in case management matters but is not necessarily seized of the hearing of the merits.

So Orders the Board.

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER  
VICE-CHAIR

PL110524



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## ATTACHMENT 1

### PROCEDURAL ORDER

1. The Board may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

#### **Organization of the Hearing**

2. The hearing will begin on Monday, March 4, 2013 at 11:00 a.m. in the Council Chambers of the City of Niagara Falls, 4310 Queen Street, Niagara Falls, Ontario.

3. The length of the hearing will be about 10 days.

4. The parties and participants identified at the pre-hearing conference are listed in Attachment 1 to this Order.

5. The Issues are set out in the Issues List attached as Attachment 2 to this Order. There will be no changes to this list unless the Board permits, and a party who asks for changes may have costs awarded against it.

6. Any person intending to participate in the hearing should provide a telephone number to the Board as soon as possible. Any such person who will be retaining a representative should advise the other parties and the Board of the representative's name, address and phone number as soon as possible.

#### **Requirements Before the Hearing**

7. Expert witnesses in the same field shall have a meeting before the hearing to try to resolve or reduce the issues for the hearing. The experts must prepare a list of agreed facts and the remaining issues to be addressed at the hearing, and provide this list to all of the parties and the municipal Clerk.

8. A party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other parties and to the Clerk a list of the witnesses and the order in which they will be called. This list must be delivered at least 60 calendar days before the hearing.

9. An expert witness shall prepare an expert witness statement which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. The expert witness statement must include a copy of an executed Acknowledgment of Expert's Duty form, found at Attachment 3 to this Order. Copies of

this must be provided as in section [12]. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Board may refuse to hear the expert's testimony.

10. A witness or participant must provide to the Board and the parties a participant statement at least 30 calendar days before the hearing, or the witness or participant may not give oral evidence at the hearing.

11. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence, as in section [12].

12. On or before 45 calendar days before the hearing, the parties shall provide copies of their witness and expert witness statements to the other parties and to the Clerk of the City of Niagara Falls.

13. On or before 45 calendar days before the hearing, the parties shall provide copies of their visual evidence to all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.

14. Parties may provide to all other parties and file with the Clerk a written response to any written evidence within 7 days after the evidence is received.

15. A person wishing to change written evidence, including witness statements, must make a written motion to the Board.  
*(see Rules 34 and 35 of the Board's Rules, which require that the moving party provide copies of the motion to all other parties 10 days before the Board hears the motion.)*

16. A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Board at least 7 days before the hearing that the written evidence is not part of their record.

17. Documents may be delivered by personal delivery, facsimile or registered or certified mail, or otherwise as the Board may direct. The delivery of documents by fax shall be governed by the Board's Rules [26 – 31] on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.

18. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Board's Rules 61 to 65 apply to such requests.

**This Member is not seized.**

**So orders the Board.**

"Susan de Avellar Schiller"

SUSAN de AVELLAR SCHILLER  
VICE CHAIR

**Attachment 1**

**List of Parties:**

Paletta International (1990) Inc.	Scott Snider Solicitor Turkstra Mazza Associates 15 Bold Street Hamilton ON L8P 1T3
City of Niagara Falls	K. L. Beaman City Solicitor City of Niagara Falls P.O. Box 1023, 4310 Queen Street Niagara Falls ON L2E 6X5

**List of Participants:**

Mr. Hal Brown  
6561 Burdette Drive  
Niagara Falls ON L2E 5H4

Mr. Allan Calder  
4997 Pettit Avenue  
Niagara Falls ON L2E 7B8

Mr. Terry Campbell  
6377 Bracken Street  
Niagara Falls ON L2E 5J5

Mr. Sandro Elia  
4852 Petit Drive  
Niagara Falls ON L2E 6L6

Mr. Vincent Hockton  
6815 Cropp Street  
Niagara Falls ON L2E 7E4

David Lint  
6541 Burdette Drive  
Niagara Falls ON L2E 5H4

Sandra McDougall  
5062 University Avenue  
Niagara Falls ON L2E 7B7

Dr. Robert Nicol  
7059 Woodington Road  
Niagara Falls ON L2J 2C5

Mr. Victor Panczuk  
5035 University Avenue  
Niagara Falls ON L2E 7B2

Mr. Mark Stirtzinger  
4687 Pettit Avenue  
Niagara Falls ON L2E 6L4

Ms. Hania Wojtowicz  
6460 Bracken Street  
Niagara Falls ON L2E 5J4



**Attachment 2**

**Issue List:**

1. What is the appropriate form of development, including:
  - a. Massing
  - b. Height
  - c. Setbacks?
2. What is the appropriate density for this development?
3. Have issues of traffic been addressed appropriately, including:
  - a. Vehicular street traffic
  - b. Access
  - c. Impacts on the pedestrian realm?