

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



**ISSUE DATE:** February 10, 2016

**CASE NO(S):** PL150820

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Niagara Falls Facility Inc.
Subject:	Application to amend Zoning By-law No. 79-200 - Refusal of Application by City of Niagara Falls
Existing Zoning:	Residential Low Density, Grouped Multiple Dwellings (R4-815) with site specific provisions
Proposed Zoning:	Residential Low Density, Grouped Multiple Dwellings (R4-815) with amended site specific provisions
Purpose:	To permit to increase the number of living units in a proposed retirement home and to increase the building height by one storey
Property Address/Description:	7901, 7913 & 7933 Thorold Stone Road
Municipality:	City of Niagara Falls
Municipality File No.:	AM-2015-004
OMB Case No.:	PL150820
OMB File No.:	PL150820
OMB Case Name:	Niagara Falls Facility Inc. v. Niagara Falls (City)

**Heard:** January 12, 2016 in Niagara Falls, Ontario

**APPEARANCES:**

**Parties**

**Counsel**

Niagara Falls Facility Inc.

T. A. Richardson

City of Niagara Falls

K. L. Beaman

**DECISION DELIVERED BY J. V. ZUIDEMA AND ORDER OF THE BOARD**

---

## INTRODUCTION

[1] A first pre-hearing conference was held with respect to an application made by Niagara Falls Facility Inc. (“Appellant”) to rezone its property located at Thorold Stone Road (“subject property”) in the City of Niagara Falls (“City”) to permit a previously approved retirement home to have an increased number of building units and building height.

[2] Background materials contained in the Board’s file shows that a retirement home with up to 83 units and two-four storeys was permitted on the subject property. The Appellant seeks to increase the amount of units permitted by 35 and to increase the permitted height by a partial one storey (3.2 metres).

[3] The subject property is currently zoned Residential Low Density, Grouped Multiple Dwellings (R4-815) with site specific provisions.

[4] Council for the City refused the application and the Appellant appealed that decision pursuant to s. 34(11) of the *Planning Act*, stating that notwithstanding the recommendation by City Staff the application was refused by Council.

[5] The appeal also indicates that the proposed amendment conforms to the Official Plan, provides additional housing for seniors, meets the Provincial Policy Statement and Growth Plan policies which require forty percent of all residential development to occur from intensification. According to the Appellant, the proposed development exceeds the standard setback requirements and parking requirements, and it is not anticipated to have impacts from shadow or overlook.

[6] Planning Staff had recommended that the rezoning be approved and specific concerns of local neighbouring residents be referred back to staff for further review.

[7] The retirement home had been previously approved by Council in 2008.

[8] The Board heard from the Participants that their issues collectively were: loss of privacy, noise, traffic and traffic safety. The Participants were made aware of their obligations under the Procedural Order which is appended to this decision as Attachment 1 and will govern the proceedings.

[9] Aside from the two parties (the Appellant and the City), the Participants are as follows:

1. Walter Pollowy
2. Mildred Anzures
3. Phyllis Liu
4. Alicja and Richard Szatkowski

[10] No other person attended to seek status.

[11] The Board scheduled the hearing for the following dates: **May 3, 4, 5 and 6, 2016 with the start time of 10:30 a.m. at:**

**Municipal Building  
Niagara Falls City Hall  
4310 Queen Street  
Niagara Falls, ON**

[12] There will be no further notice and I am not necessarily seized of this matter.

*“J. V. Zuidema”*

J. V. ZUIDEMA  
VICE-CHAIR

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Ontario Municipal Board**

A constituent tribunal of Environment and Land Tribunals Ontario  
Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

## ATTACHMENT 1

Case No. PL150820

### ONTARIO MUNICIPAL BOARD

Applicant and Appellant: Niagara Falls Facility Inc.  
Subject: Application to amend Zoning By-law 79-200 – Refusal of Application by City of Niagara Falls  
Existing Zoning: Residential Low Density, Grouped Multiple Dwellings (R4-815) with site specific provisions  
Proposed Zoning: Residential Low Density, Grouped Multiple Dwellings (R4-815) with amended site specific provisions  
Purpose: To permit to increase the number of living units in a Proposed retirement home and to increase the building Height by one storey  
Property Address/Description: 7901, 7913 and 7933 Thorold Stone Road  
Municipality: City of Niagara Falls  
Municipality File No.: AM-2015-004  
OMB Case No.: PL150820  
OMB File No.: PL150820  
OMB Case Name: Niagara Falls Facility Inc. v. Niagara Falls (City)

### PROCEDURAL ORDER

The Board orders that:

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

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

2. The hearing will begin on **Tuesday, May 3, 2016 at 10:30 a.m.** at the **Municipal Building, Council Chambers, City of Niagara Falls, 4310 Queen Street, Niagara Falls, Ontario.** All parties and participants shall attend the first day of the hearing.

3. The length of the hearing will be four (4) days. The length of the hearing may be shortened as issues are resolved or settlement is achieved.

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

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

6. The order of evidence is listed in Attachment 3 to this Order. The Board may limit the amount of time allocated for opening statements, evidence in chief (including the qualification of witnesses), cross-examination, evidence in reply and final argument. The length of written argument, if any, may be limited either on consent or by Order of the Board.

**Requirements Before the Hearing**

7. All parties and participants (or their representatives) shall provide a mailing address, email address, and telephone number to the Board. Any such person who retains a representative (legal counsel or agent) subsequent to the prehearing conference must advise the other parties and the Board of the representative's name, mailing address, email address and phone number.

8. A party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other parties and to the municipal Clerk a list of the witnesses and the order in which they will be called. This list must be delivered at least 45 calendar days before the hearing. For expert witnesses, a party is to include a copy of the curriculum vitae and the area of expertise in which the witness is proposed to be qualified.

9. 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.

10. An expert witness shall prepare an expert witness statement that shall include: an acknowledgement of expert's duty form, the area(s) of expertise, any reports prepared by the expert, and any other reports or documents to be relied on at the hearing. 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.

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

12. 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 and his or her area of expertise, as in section 13.

13. On or before April 1, 2016, the parties shall provide copies of their witness and expert witness statements to the other parties. The parties shall prepare a Joint Document Book to be filed with the Board on the first day of the hearing. A paper copy of any document proposed to be entered into evidence or relied upon shall be provided at the hearing unless ordered otherwise by the presiding Member.

14. On or before April 22, 2016, the parties shall provide copies of their visual evidence to all of the other parties. If a model is proposed to be used, the Board must be notified before the hearing. All parties must have a reasonable opportunity to view it before the hearing.
15. Parties may provide to all other parties a written response to any written evidence within 7 days after the evidence is received.
16. A person wishing to change written evidence, including witness statements, must make a written motion to the Board in accordance with the Board's Rules 34 to 38.
17. A party who provides the written evidence of a witness to the other parties must have that witness attend the hearing to give oral evidence, unless the Board and the parties are notified at least 7 days before the hearing that the written evidence is not part of their record.
18. Documents may be delivered in person, by courier, by facsimile or registered or certified mail, or email, or otherwise as the Board may direct. The delivery of documents by fax and email shall be governed by the Board's Rules 26 to 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.
19. 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.

## ATTACHMENT 1

### List of Parties and Participants

#### Parties:

##### Niagara Falls Facility Inc.

Sullivan Mahoney LLP  
Lawyers  
40 Queen Street  
P.O. Box 1360  
St. Catharines, ON L2R 6Z2

Thomas A. Richardson  
Telephone: (905) 688-2207  
Facsimile: (905) 688-5814  
Email: [tarichardson@sullivanmahoney.com](mailto:tarichardson@sullivanmahoney.com)

##### City of Niagara Falls

Kenneth Beaman, Legal Counsel  
4310 Queen Street  
Niagara Falls, ON L2E 6X5  
Telephone: 905-356-7521 x. 4242  
Facsimile: 905-371-2892  
Email: [kbeaman@niagarafalls.ca](mailto:kbeaman@niagarafalls.ca)

#### Participants:

Walter Pollowy  
3937 Cardinal Drive  
Niagara Falls, ON L2H 3C7  
Email: [pollowy64@gmail.com](mailto:pollowy64@gmail.com)

Mildred Anzures  
3936 Cardinal Drive  
Niagara Falls, ON L2H 2W2  
Email: [mildredanzures@gmail.com](mailto:mildredanzures@gmail.com)

Phyllis Liu  
3914 Cardinal Drive  
Niagara Falls, ON L2H 2W2  
Email: [lphyliid@yahoo.com](mailto:lphyliid@yahoo.com)



Richard and Alicja Szatkowski  
7994 Oakridge Drive  
Niagara Falls, ON L2H 2W1  
Email: [alicja153@gmail.com](mailto:alicja153@gmail.com)

## **ATTACHMENT 2**

### **ISSUES LIST**

1. Is the building height increase appropriate?
2. Will the building height increase result in a loss of privacy?
3. Will the building height increase result in shadow impacts?
4. Is the site access on Cardinal Drive appropriate?
5. Is the proposed parking adequate?
6. Will the increase in retirement home suites result in traffic impacts?
7. Will the increase in retirement home suites result in unacceptable noise impacts?

### **ATTACHMENT 3**

#### **Order of Evidence:**

Niagara Falls Facility Inc.

Any parties or participants supporting Niagara Falls Facility Inc.

Responding party - City of Niagara Falls

Any parties or participants supporting the City of Niagara Falls

Reply – Niagara Falls Facility Inc.