

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: January 28, 2020

CASE NO(S): PL180376

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: 5507 River Development Inc.
Subject: Request to amend the Official Plan – Failure of the City of Niagara Falls to adopt the requested amendment

Existing Designation: Residential and Special Policy Area
Proposed Designation: Special Policy Area
Purpose: To permit a 390 unit apartment building, with a 21 storey and a 12 storey tower and underground parking

Property Address/Description: 5471, 5491, & 5507 River Rd, 4399, 4407, 4413, & 4427 John St

Municipality: City of Niagara Falls
Approval Authority File No.: AM-2017-011
LPAT Case No.: PL180376
LPAT File No.: PL180376
LPAT Case Name: 5507 River Development Inc. v. Niagara Falls (City)

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

Applicant and Appellant: 5507 River Development Inc.
Subject: Application to amend Zoning By-law No. 79-200 – Refusal or neglect of City of Niagara Falls to make a decision

Existing Zoning: Residential Apartment 5E Density (R5E-840), in part, Parking (P-841), in part, and Residential Single Family and Two Family (R2-2), in part

Proposed Zoning: Residential Apartment 5F Density (site specific)

Purpose: To permit a 390 unit apartment building, with a 21 storey and a 12 storey tower and underground parking

Property Address/Description: 5471, 5491, & 5507 River Rd, 4399, 4407, 4413, & 4427 John St

Municipality: City of Niagara Falls

Municipality File No.: AM-2017-011

LPAT Case No.: PL180376

LPAT File No.: PL180377

Heard: January 10, 2020 by Telephone Conference Call

APPEARANCES:

Parties

Counsel/Representative*

2486489 Ontario Inc.

Daniel Artenosi and Natalie Ast

City of Niagara Falls

Tom Halinski

Niagara Parks Commission

Sarah Turney

Kenneth Westhues

Self-represented*

Citizens for Responsible
Development (Niagara Falls)

Dianne Munro* and Debra Jackson-Jones*

MEMORANDUM OF ORAL DECISION DELIVERED BY JOHN DOUGLAS ON JANUARY 10, 2020 AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This was the fourth Case Management Conference (“CMC”) conducted by Telephone Conference Call (“TCC”) in the matter of appeals to the Local Planning Appeal Tribunal (the “Tribunal”) by 2486489 Ontario Inc. (the “Applicant/Appellant”) pursuant to s. 22(7) and 34(11) of the *Planning Act* (the “Act”) for the refusal or neglect of the City of Niagara Falls (the “City”) to make decisions with respect to applications to amend the City’s Official Plan and Zoning By-law to facilitate development of lands

located at 5471, 5491, and 5507 River Road and 4399, 4407, 4413 and 4427 John Street (the “subject property”).

[2] The applications under appeal are intended to permit the development of 390 apartment units within a 21 storey tower and a 12 storey tower, with underground parking.

[3] The subject property is currently designated partially Residential and partially Special Policy Area in the City’s Official Plan (“OP”). The Special Policy Area designation permits a 119 unit apartment building up to seven storeys in height. The Official Plan Amendment (“OPA”) would designate the entire subject property as Special Policy Area.

[4] The subject property is currently zoned Residential Apartment 5E Density (R5E-840) in part, Parking (P-841) in part, and Residential Single Family and Two Family (R2-2) in part. The Zoning By-law Amendment (ZBA) proposes to amend Zoning By-law No. 79-200 so that the entire subject property is zoned Residential 5F Density which would permit the proposed development.

[5] In addition to the parties, two participants, Rita Vetere and Ken Crossman, joined the TCC.

[6] At the third PHC the parties were directed to exchange Issues Lists by December 13, 2019. The Applicant/Appellant was to draft a Procedural Order (“PO”), Issues List and Work Plan and provide copies to the other parties by December 20, 2019. The parties were also directed to file the draft PO and Issues List with the Tribunal by January 8, 2020. The Tribunal did receive a copy of the draft PO and Issues List but not a Work Plan. According to submissions, with the exception of the Work Plan, the directions set out in this paragraph were completed. Mr. Artenossi explained that a draft Work Plan could not be completed until the Issues List is finalized and the number of witnesses to be called by each party are identified.

[7] The Tribunal wants to ensure that the parties are using the current formats for Procedural Order and the Work Plan/Hearing Plan. The current formats should be available on the Tribunal's website. Alternatively, the parties may contact the Case Coordinator if they have any difficulties locating the current formats online.

[8] The Tribunal noted that the draft Issues List had been edited, using strikeout and highlighted comments showing issues that Mr. Artenossi thought should be removed from the list. During the TCC the Tribunal also expressed concerns regarding the Issues List noting that a number of concerns were outside the jurisdiction of the Tribunal to make a disposition on at a contested hearing.

[9] Additional clarification is required with respect to non-appellant parties and the Tribunal's *Rules of Practice and Procedure* (the "Rules"), in particular Rule 8.3 which states:

Rule 8.3 - Non-Appellant Party A party, who is not an Appellant in a proceeding, but is conferred party status by the Tribunal, may not raise or introduce new issues in the proceeding. A non-Appellant party may only participate in the proceeding by sheltering under an issue raised in an appeal by an Appellant party and may participate fully in the proceeding to the extent that issue remains in dispute. A non-Appellant party has no independent status to continue an appeal that is withdrawn by an Appellant party, or is otherwise resolved or determined by the Tribunal.

[10] The Tribunal noted at the hearing that the Issues List and the number of witnesses to be called assists the Tribunal in determining the number of days to be set for a hearing. The Tribunal asked the parties how many witnesses they planned to call if this matter proceeds to a contested hearing.

[11] The Applicant/Appellant and the City will have a better idea of how many witnesses they will be calling once the Issues List is finalized.

[12] Kenneth Westhues advised that he did not plan to call any witnesses. He plans to cross-examine the witnesses called by the other parties.

[13] The Citizens for Responsible Development (Niagara Falls) noted that retaining counsel and expert witnesses is expensive. They will have a better idea what witnesses they may call after they have had a chance to revisit their Issues List.

[14] The Tribunal reminded the non-appellant parties that party status comes with certain expectations, which includes putting a case forward which is supported by expert witnesses. The parties are expected to familiarize themselves with the Roles and Obligations of a Party. If they have not already done so, the non-appellant parties should review the Tribunal's Rules (particularly Rule 8) which are available on the Tribunal's website. If they require further assistance or information they may contact the Tribunal's Case Coordinator.

[15] Mr. Artenossi requested that the Tribunal set a date for a fifth CMC, and a date for a 10-day contested hearing in this matter. The Tribunal advised that it would not set a hearing date until the Issues List has been refined to the satisfaction of the Tribunal, and the Tribunal had a better idea of how many witnesses each party planned to call for a contested hearing. The Tribunal agreed to schedule a fifth Case Management Conference ("CMC") in this matter, the purpose of which will be:

- to refine the draft PO;
- to refine the Issues List;
- to identify the number of witnesses each party intends to call; and,
- to set a date for a contested hearing.

[16] Mr. Artenossi advised the Tribunal that negotiations are ongoing with the City in the hopes of reaching a settlement. He further advised that there may be an interest in mediation between the parties. The Tribunal advised the parties that if there is an interest in Tribunal-led mediation, they should make a formal request through the Tribunal's Case Coordinator.

[17] The Tribunal noted that the *Planning Act* and the *Local Planning Appeal Tribunal Act* (“LPATA”) had been revised through the proclamation of Bill 108 on September 3, 2019. Some of these changes affect the manner in which participants provide their evidence to the Tribunal, in particular s. 33.2 of LPATA:

Non-parties, written submissions only

33.2 Unless any general or special Act specifies otherwise, a person who is not a party to a proceeding before the Tribunal may make submissions to the Tribunal with respect to the proceeding in writing only. 2019, c. 9, Sched. 9, s. 5.

[18] The Tribunal advises the participants to read the PO carefully so they know the date by which their participant statements must be submitted to the parties and the Tribunal.

[19] The Tribunal scheduled a date for a fifth in-person CMC to commence at **10 a.m. on Tuesday, March 24, 2020**, to be held at:

**Municipal Building
Council Chambers
4310 Queen Street
Niagara Falls, ON L2E 6X5**

[20] Upon further consideration this panel is seized.

[21] No further notice to be given.

[22] The Tribunal orders as directed above.

“John Douglas”

JOHN DOUGLAS
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

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