

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



ISSUE DATE: June 09, 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, and 5507 River Road
4399, 4407, 4413, and 4427 John Street

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, and 5507 River Road
4399, 4407, 4413, and 4427 John Street

Municipality: City of Niagara Falls

Municipality File No.: AM-2017-011

LPAT Case No.: PL180376

LPAT File No.: PL180377

Heard: June 3, 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 DAVID BROWN ON JUNE 3, 2020 AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] The matter before the Tribunal is an appeal by 2486489 Ontario Inc. (the "Applicant") from the failure of the City of Niagara Falls (the "City") to make a decision within the statutory timeframes on applications for an Official Plan Amendment ("OPA") and a Zoning By-law Amendment ("ZBA") with respect to the lands located on the westerly side of River Road known municipally as 5471, 5491 and 5507 River Road, 4399, 4407, 4413 and 4427 John Street and the closed part of River Lane (the "Subject

Lands"). The proposal is to develop the site with two apartment towers and an ancillary underground parking structure.

[2] The hearing is a Case Management Conference ("CMC") conducted pursuant to s. 33(1) of the *Local Planning Appeal Tribunal Act, 2017* in respect of this matter. The hearing arose out of an Order of the Tribunal issued January 28, 2020 with the direction to refine the Procedural Order and Issues List, identify the number of witnesses to be called, and determine the number of days required for the hearing of a contested appeal. The CMC was conducted by way of a telephone conference call.

[3] In advance of the CMC, Daniel Artenosi provided a draft Procedural Order ("DPO") and Issues List for the Tribunal's consideration.

CASE MANAGEMENT CONFERENCE

[4] Mr. Artenosi provided a brief update on the progress of the matter since the last CMC. He explained that the Applicant proposed mediation however, the City was not willing to participate in mediation. Mr. Artenosi advised that the Parties have been making progress creating a DPO and Issues List which was provided to the Tribunal.

[5] Mr. Artenosi reviewed the DPO which utilizes the Tribunal's standard format. Mr. Artenosi reviewed the Summary of Key Dates contained in the DPO. Mr. Artenosi advised that it is anticipated that there will be eleven witnesses called between the Applicant, the City, and the Niagara Parks Commission ("NPC"). The other two parties have indicated that they do not intend to call any witnesses. Mr. Artenosi advised that it is expected the hearing will require 15 days.

[6] Mr. Artenosi reviewed the Issues List with the Tribunal. He directed the Tribunal to the opening paragraph of the Issues List document noting that while the Issues List has included the issues provided by the various Parties, the inclusion of these issues does not mean that all parties agree that the issues are germane to the appeal or

appropriate land use planning matters to be considered by the Tribunal. The Tribunal noted Mr. Artenosi's comments and proceeded to review the issues.

[7] With respect to the City's Issue 6, the Tribunal confirmed with Mr. Halinski that this issue is two matters, one being in respect to an Archaeological Assessment and the second being an Environmental Site Assessment and Record of Site Condition.

[8] In reviewing the NPC issues, the Tribunal requested that like issues be grouped together for ease of organization of the issues. The Tribunal, in reviewing Issue 16, questioned the necessity of including the adjective "uncomfortable" in front of wind conditions and it was recommended that this is not necessary.

[9] Mr. Artenosi advised that he is working with the NPC to identify the specific policies that are applicable to enable him to ensure that the evidence is appropriate in respect of the NPC Issue 14. To this end, Mr. Artenosi proposed that a final DPO should be completed within 30 days and recommended that this timeframe be included in the Tribunal's decision.

[10] Turning to the issues of Kenneth Westhues, the Tribunal requested that Mr. Westhues consider some revisions to the wording of the issues to better frame the matter before the Tribunal and enable the Applicant, the City or the NPC to respond to the issue.

[11] With respect to Issue 1 from Mr. Westhues, it is recommended that the wording be revised as follows;

1. Does the application provide sufficient planning justification to amend the Official Plan and Zoning By-law to permit the proposed: heights, density, building setbacks and impact on the surrounding low-density area?

[12] With respect to Issue 2, after some discussion with respect to the provincially mandated residential intensification targets, it is recommended that the wording be revised as follows;

2. Does the proposal support the provincially mandated targets for residential intensification contained in the Niagara Region Official Plan or unjustifiably exceed these targets?

[13] With respect to Issue 3, it is recommended that the wording be revised as follows;

3. Is the proposed development compatible with the existing neighbourhood as required by Part 2, Section 1.15 of the Official Plan with respect to; height, density, and architectural and design?

[14] With respect to Issue 4, it was suggested that this issue is very similar to Issue 1. Mr. Westhues requested that this issue be maintained separate and it is recommended that the wording be revised as follows;

4. Does the application provide sufficient planning justification to amend the Official Plan and Zoning By-law to permit the proposed development and the compatibility with the adjacent low-density residential area.

[15] With respect to Issue 5, after discussion with Mr. Westhues and input from Mr. Artenosi, it is recommended that the wording be revised as follows;

5. Given the proximity of the property to the Niagara Gorge, has the applicant completed a geotechnical report including a slope stability the satisfactorily addresses slope stability issues?

[16] With respect to Issues 6 and 7, it is recommended that the wording be revised to combine the two issues into one as follows;

6. Does the applicant's Environmental Impact Assessment, adequately address the impact of the proposed development on the Niagara Gorge specifically as it relates to the high-rise towers and excavation depth required to accommodate the proposed parking structure?

[17] With respect to Issues 8 and 9, Mr. Artenosi submitted that these issues are related to the processes at the City and are not matters for the Tribunal's consideration as they relate to the merits of the applications.

[18] Mr. Westhues responded that the history of the applications and the Subject Lands are relevant considerations. He submitted that issues with the City process impact the Tribunal's ability to properly and fully consider the matter. He expressed concerns that Mr. Artenosi is attempting to restrict the evidence that is being placed before the Tribunal. Mr. Westhues advised that he has reviewed numerous decisions of the Tribunal that speak to process and it should be a consideration for this matter.

[19] Mr. Halinski advised that it is not clear what the issues are that Mr. Westhues is attempting to articulate. Mr. Halinski submitted that process is not a relevant consideration for the Tribunal and if the issue is that of Provincial interest, the Tribunal is bound to review the matter with regard to s. 2.1 of the *Planning Act*. This is a statutory requirement and not necessary to include as an issue.

[20] In response to questions from the Tribunal, Mr. Westhues advised that he does not agree with the manner in which the City handled this matter and he wishes to bring these items to the attention of the Tribunal so that the Tribunal might review and offer a comment or opinion on the actions of the City.

[21] The Tribunal advised Mr. Westhues that what he is seeking is not the mandate of the Tribunal.

[22] In this matter, the Tribunal is authorized to consider the applications for OPA and ZBA in respect to the Subject Lands. That consideration will involve the Tribunal

reviewing the evidence submitted by the Parties and the written statements provided by the Participants. The Tribunal will then determine whether the proposed OPA and ZBA:

- Has regard for matters of provincial interest as set out in s. 2 of the *Planning Act*,
- Is consistent with the Provincial Policy Statement, 2020 ("PPS"),
- Conforms to, or is not in conflict with, the A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019,
- Conforms with the Regional Municipality of Niagara and the City's Official Plan, and
- In consideration of the above statutory requirements, represents good planning.

[23] Accordingly, the Tribunal finds that the issues identified as Issue 8 and Issue 9 on Mr. Westhues's Issues List shall be struck from the list as these are matters that are not relevant land use planning matters for adjudication by the Tribunal.

[24] Mr. Westhues asked if he could get a response to his letter in respect of filing additional materials to be added to the Tribunal's Municipal Record.

[25] The Tribunal in response to Mr. Westhues's letter dated May 4, 2020 addressed to the Tribunal advised that he is welcome to file such information and documentation as he deems relevant or appropriate with the Tribunal at the hearing of the merits of the appeals. At that time the admissibility of the submissions can be assessed by the Presiding Member of the Tribunal.

[26] With respect to the Issues List provided by the Citizens for Responsible Development (Niagara Falls), the Tribunal reviewed the list with the Party and

recommended that they consider revising the Issues 2. through 4. to more accurately identify the issue and secure the type of response they are seeking. After discussion, the recommended revisions are as follows:

2. Does the applicant's traffic impact study adequately address the anticipated increase in traffic resulting from the proposed development and include specific reference to the City's ability to widen the surrounding roads to accommodate any increase in traffic and impact of the tourist related traffic volumes generated by the proximity to the international border crossing?
3. How does the applicant justify the shadow impacts that would be created by the proposed development with respect to the adjacent residential neighbourhood and the Niagara Gorge as appropriate?
4. Given the proximity of the property to the Niagara Gorge, has the applicant completed a geotechnical report including a slope stability that satisfactorily addresses slope stability issues?

[27] With respect to Issue 5, Mr. Arsenosi expressed his opposition to the issue as the matters itemized are not land use planning matters, but construction related and typically addressed by the Ontario Building Code or by way of Site Plan Agreement.

[28] Debra Jackson-Jones responded that the excavation and construction activities will generate and impact on the homes in the area as they are constructed on shale bedrock and the vibrations will impact the structural integrity of the older homes that dominate the community. Ms. Jackson asked how the issue of an assurance that their homes will not be negatively impacted is advanced.

[29] After discussion on the matter, it was suggested that the issue could be reworked to include reference to the PPS and the City's OP. The Tribunal directed Ms. Jackson to review the City's Issues List for some guidance as to how to rephrase the issue.

DECISION

[30] The Tribunal directs that a revised DPO and Issues List be submitted to the Tribunal on or before **Friday, July 3, 2020**.

[31] The Tribunal directs that Issue 8 and Issue 9 on the draft Issues List provided by Mr. Westhues be struck from the list.

[32] The Tribunal sets this matter for a 15-day hearing. As a result of the Provincial Emergency Order, the Tribunal is not scheduling in-person hearings at this time. The Tribunal will notify the Parties and Participants of a hearing date as soon it is able to do so.

[33] The Member is not seized of this matter.

[34] Subject to scheduling, the Member may be spoken to for assistance in case management issues arising from this Order.

[35] This is the Order of the Tribunal.

"David Brown"

DAVID BROWN
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
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