

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** September 29, 2021

**CASE NO(S):** PL180376

**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  
OLT Case No.: PL180376  
OLT File No.: PL180376  
OLT 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  
OLT Case No.: PL180376  
OLT File No.: PL180377

**Heard:** August 31, 2021 by Video Hearing

## **APPEARANCES:**

### **Parties**

### **Counsel\*/Representative**

5507 River Development Inc.

Denise Baker\*  
Micah Goldstein\*

City of Niagara Falls

Tom Halinski\*

Kenneth Westhues

Self-represented

Citizens for Responsible  
Development (Niagara Falls)

Debra Jackson-Jones

## **MEMORANDUM OF ORAL DECISION DELIVERED BY T. PREVEDEL ON AUGUST 31, 2021 AND ORDER OF THE TRIBUNAL**

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### **INTRODUCTION**

[1] The matter before the Tribunal is an appeal by 5507 River Development Inc. (the “Appellant”) 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 of the Merits for this appeal has been scheduled for October 25, 2021 for a total of ten days. This Hearing will be governed by a Procedural Order (“PO”) dated June 17, 2021, which includes an attached Issues List.

[3] There have been five previous Case Management Conferences (“CMC”) on this matter, dating back to October 2018 where the Parties have engaged in discussions and debate regarding the scoping of the Issues List.

[4] The purpose of this Hearing is to deal with a Notice of Motion brought forward to the Tribunal by the Appellant.

### **APPELLANT’S MOTION**

[5] The Appellant submitted a Notice of Motion (Exhibit 1) to the Tribunal on August 16, 2021, requesting:

- An Order striking Issue Nos. 1, 2, 3, 4 and 5 on the Issues List of Kenneth Westhues at Attachment No. 2 of the Procedural Order (“PO”) issued June 17, 2021, on the grounds that Mr. Westhues is not calling any evidence in relation to these issues and therefore, these issues should not be before the Tribunal;
- An Order striking Issue Nos. 1, 2, 3, 4 and 5 on the Issues List of Citizens for Responsible Development (Niagara Falls) (“CRD”) set out in the PO on the grounds that CRD are not calling any evidence in relation to the issues and therefore, these issues should not be before the Tribunal;
- An Order striking Issue No. 9 on the Issues List of the City set out in the PO on the grounds that the City and the Appellant have agreed it is not an issue for the upcoming Hearing;

- An Order striking Issue Nos. 10 (geological) and 11 (environmental) on the Issues List of the City on the grounds that the City is not calling any evidence by a qualified expert in relation to the issues and therefore, these issues should not be before the Tribunal;
- An Order striking that portion of the written evidence found in the Witness Statement of Andrew Bryce at paragraphs 11.1 to 11.5 inclusive and paragraphs 12.1 to 12.5 inclusive, which provides opinion on geological and environmental issues outside of Mr. Bryce's stated field of expertise, being land use planning; and,
- Such further and other relief as counsel may request and the Tribunal may permit.

[6] During Denise Baker's oral submission on behalf of the Appellant, she noted that both Mr. Westhues and the CRD have been involved in these proceedings for a number of years.

[7] Mr. Westhues, who lives in the vicinity of the Subject Lands, was granted Party status by Order dated December 14, 2018, raising height, density, environmental and geologic issues regarding the proposed development.

[8] CRD was granted Party status by Order dated June 10, 2019, raising issues with traffic, environmental conditions and community character.

[9] Ms. Baker stated that the PO issued on June 17, 2021, clearly stated the dates by which Witness Statements were to be filed. The two Parties noted above did not put forward experts to provide evidence with respect to the respective issues which they asked to be put on the Issues List attached to the PO. Moreover, both Mr. Westhues representing himself and Ms. Jackson-Jones representing CRD stated they would not be calling any evidence to address their issues.

[10] Ms. Baker reminded the Tribunal that on May 28, 2021, counsel for the Appellant wrote to the Tribunal and the other Parties in response to the Tribunal's earlier correspondence regarding adjourning the commencement of the hearing from August 9, 2021 to October 25, 2021. This correspondence stated:

that further to your adjournment notification you will recall that only the Applicant/Appellant and the City filed lists of witnesses that they intended to call at this Hearing and participated in the meetings to try to narrow/scope issues. As such and on that basis, it is expected that only the Applicant/Appellant and the City will be calling evidence in this Hearing.

[11] As neither Mr. Westhues nor the CRD wrote any response or made any objection to not being able to call evidence in the hearing, the Appellant was entitled to rely on the conduct of the former such that the Appellant should not be expected to devote its own resources to addressing issues not supported by evidence.

[12] Ms. Baker also reminded the Tribunal that the Parties were specifically told that expectations for the Hearing included putting a case forward, which is supported by expert witnesses.

[13] With respect to Issue Nos. 10 and 11 on the City's Issues List, Ms. Baker stated that the City initially did not intend to bring any expert witnesses regarding geologic or environmental issues. Instead, the City is relying on the Witness Statement of Mr. Bryce, who is a professional planner and has provided his opinion on geological and environmental issues based on concerns raised by the Niagara Parks Commission and the Niagara Peninsula Conservation Authority.

[14] Ms. Baker contends that Mr. Bryce does not have the technical expertise to provide expert opinion relating to Issue Nos. 10 and 11, rather he arrives at his opinions with respect to geological and environmental issues entirely on third party sources that address matters outside of his area of expertise.

[15] Furthermore, Ms. Baker stated to the Tribunal that neither the Niagara Parks Commission nor the Niagara Peninsula Conservation Authority have requested Party status for this proceeding.

### **CITY'S RESPONSE TO MOTION**

[16] The City submitted a Notice of Motion (Exhibit 3) to the Tribunal on August 24, 2021, requesting:

- An Order dismissing the request that the Tribunal strike Issue Nos. 9 (infrastructure), 10 (geological) and 11 (environmental) from the City's Issues List;
- An Order dismissing the request that the Tribunal strike paragraphs 11.1 to 11.5 inclusive and paragraphs 12.1 to 12.5 inclusive from the Witness Statement of Andrew Bryce dated June 29, 2021;
- An Order permitting the City to file an additional Witness Statement from its transportation witness, Matthew Bilodeau, to address the matter discussed in this Notice;
- In the alternative to paragraphs 1 and 2 above, an Order to amend issue nos. 10 and 11 as set out in paragraph 27 of the City's Notice of Response to Motion;
- In the further alternative, an Order permitting the City to revise its Witness List to include summonsed witnesses from the Niagara Parks Commission and the Niagara Peninsula Conservation Authority to further address Issue Nos. 10 and 11; and,

- Such further and other relief as counsel for the Moving Party may advise and the Tribunal may permit.

[17] Tom Halinski told the Tribunal that these same issues have been raised since the Tribunal issued its initial PO on July 8, 2020.

[18] The City's Issue Nos. 9, 10 and 11 have been on the Issues List since 2019. The Appellant did not raise concerns with them at the time nor at the CMC on June 3, 2020, when the Issues List was extensively discussed and vetted by the presiding Member.

[19] Mr. Halinski went on to point out that on May 13, 2021, in compliance with the initial PO, the land use planning experts retained by the City and the Appellant met via video hearing to try to resolve and reduce the issues for the Hearing and prepare a statement of agreed facts and issues. The City confirmed at this meeting that it did not intend to call expert witnesses in the fields of geology or ecology. The Appellant raised no concern with this statement at that time.

[20] He stated that Mr. Bryce's Witness Statement reflects the circulation comments received from the Niagara Peninsula Conservation Authority and the Niagara Parks Commission in the course of review and circulation of the applications.

[21] As an expert witness in the field of land use planning, Mr. Bryce provides his opinion and recommendation in respect of City Issue Nos. 10 and 11 in the context of determining appropriate conditions of approval in the event that the proposed development is approved by the Tribunal.

[22] Mr. Halinski stated that the opinion evidence that Mr. Bryce presents to the Tribunal falls within his area of expertise. A determination as to whether the conditions recommended by Mr. Bryce should be left to the Member hearing the appeals on the merits.

[23] Accordingly, Mr. Halinski argued that paragraphs 11.1 to 11.5 and 12.1 to 12.5 should not be struck from Mr. Bryce's Witness Statement.

### **MR. WESTHUES' RESPONSE TO MOTION**

[24] Mr. Westhues filed a Responding Motion (Exhibit 4) to the Tribunal on August 23, 2021, requesting that the Appellant's Motion to strike his five issues from the Issues List be denied.

[25] He made reference to Attachment 2 of the PO dated June 17, 2021, which lists the five questions that the Tribunal in its Decision dated June 9, 2020, accepted as legitimate for him to raise, five issues on, which it would allow him to present evidence.

[26] Mr. Westhues opined that the current motion, brought forward by the "new team of lawyers" was ill-timed and, if it were to be made at all, this should have been a year or two ago.

[27] In his written submission, Mr. Westhues takes issue with the concept of requiring expert witnesses to provide evidence to support his five questions. His expectation was to be able to address the Tribunal at the Hearing with his own non-expert evidence, citing several examples of the value of non-expert evidence.

[28] Mr. Westhues felt strongly that the Tribunal had made its position clear, that he was not required or expected to produce an expert witness or to submit expert evidence.

[29] Mr. Westhues made reference to the disposition of the Executive Chair in response to his review request, in which it was made clear that non-Appellant Parties are not required to call expert witnesses or have legal representation.



## **RESPONSE FROM CITIZENS FOR RESPONSIBLE DEVELOPMENT (“CRD”)**

[30] Ms. Jackson-Jones, representing CRD, responded formally to the Notice of Motion (Exhibit 5), but made no written submission.

[31] She re-iterated, like Mr. Westhues, that CRD did not intend to call any witnesses to support the questions on their Issues List. She made particular reference to the Executive Chair’s disposition in response to Mr. Westhues’ review request, in which it was confirmed that a non-Appellant Party is not required to call expert witnesses.

[32] Ms. Jackson-Jones went through a chronological review of her past involvement with the various pre-hearings, once again confirming that at no time did CRD ever plan on calling expert witnesses.

[33] On behalf of CRD, Ms. Jackson-Jones asked the Tribunal to deny the Appellant’s motion to strike the five issues on their list, and to be allowed to make a one-hour presentation to the Tribunal at the upcoming Hearing.

## **REPLY BY APPELLANT**

[34] In her oral response, Ms. Baker expressed her concern regarding the Witness Statement of Mr. Bryce as it relates to the third-party agencies and the concerns they raised during circulation of the initial application. She pointed out to the Tribunal that the Niagara Parks Commission, who initially requested Party status, have now withdrawn from the proceedings and that the Niagara Peninsula Conservation Authority were never at the table.

[35] Ms. Baker made reference to *Mclsaac v. MacKinnon*, 2019 ONSC 3114 in her Book of Authorities and in particular paragraph 15, which states:

A proposed expert must have demonstrated experience, through education, training and practice, in the specific subject matter of the proposed opinion.

A review of the relevant research literature on a subject matter “at the margins of the witness’s education, training and experience, or in a closely related field of study, does not render one an expert... Absent demonstrated experience, the court runs the risk that the proposed witness is not offering an independent opinion, but rather is merely relying on the opinions of others.

[36] With respect to the comments from both Mr. Westhues and CRD, Ms. Baker again emphasized that her client had no issues with the non-Appellant Parties calling evidence, but that the evidence needed to come from expert witnesses who should have filed Witness Statements in accordance with the PO.

[37] She stated that it would be prejudicial to the Appellant to have either of the two non-Appellant Parties bringing evidence to the upcoming Hearing, as they clearly stated, with no prior notice to the other Parties and no opportunity to prepare a response.

#### **MOTION RULING OF THE TRIBUNAL**

[38] After careful consideration of the written and oral submissions, the Tribunal makes the following ruling:

[39] With respect to Issue No. 9 of the City’s Issues List concerning transportation matters, the Tribunal agrees to strike this issue from the Issues List as the City and Appellant have consented to this, with the understanding that the approval of the proposed driveway alignment will be dealt with at the Site Plan stage.

[40] The Tribunal further notes that Issue No. 9 (c), which states “Does the development support the use of mass transit, including GO Trains, and active transportation?” will be addressed at the upcoming Hearing by the land use planning witnesses.

[41] The Tribunal does not agree with the removal of Issue Nos. 10 and 11 from the City's Issues List, and these issues need to be addressed at the upcoming Hearing of the Merits.

[42] Similarly, the Tribunal does not agree with striking paragraphs 11.1 to 11.5 and 12.1 to 12.5 from Mr. Bryce's Witness Statement for the same reasons as above.

[43] Ms. Baker has noted that the Appellant has engaged an expert witness in the field of geology and his Witness Statement will be filed and available for the upcoming Hearing.

[44] With respect to the issues on the non-Appellant Parties' Issue List, the Tribunal will agree to strike these ten issues.

[45] The Tribunal notes that the issues and concerns raised by both Mr. Westhues and the CRD have already been addressed through the issues raised by the City and will be supported by expert evidence through the City's witnesses at the Hearing.

[46] The Tribunal confirmed that the non-Appellant Parties did not require legal counsel in order to take part in the proceedings, and did not have an obligation to call evidence by experts.

[47] However, the Tribunal notes that if the non-Appellant Parties do not intend to bring evidence to support their concerns, there would be nothing before the Tribunal to adjudicate.

[48] The Tribunal pointed out to Mr. Westhues and Ms. Jackson-Jones that they would have every opportunity to provide an opening and closing statement to the Tribunal at the upcoming Hearing, and they would have the opportunity to cross-examine the witnesses brought forward by the Appellant and the City, in order to express their concerns to the presiding Member.

## **OTHER MATTERS**

[49] Ms. Jackson-Jones asked the Tribunal if she could downgrade her status to Participant, subject to confirmation from CRD. There was no objection to this request from the City or the Appellant, and she was asked to submit her Participant Statement by no later than September 14, 2021.

[50] The Tribunal raised the issue of potentially releasing some Hearing dates, given the fact that the number of witnesses has been reduced to five, three from the Appellant (land use planning, urban design and geology) and two from the City (land use planning and urban design).

[51] The Tribunal requested the Parties to discuss this matter off-line and advise the Case Coordinator as soon as possible with a revised estimate of hearing days and a finalized Hearing Plan. The Parties determined that ten days were still required and a Hearing Plan has been submitted to the Case Coordinator.

## **ORDER**

[52] The Tribunal Orders that Issue No. 9 will be removed from the City's Issue List, with the *proviso* that Issue 9 c) will be addressed by the land use planning witnesses at the upcoming Hearing.

[53] The Tribunal Orders that Issue Nos. 10 and 11 from the City's Issues List will not be removed.

[54] The Tribunal Orders that Issue Nos. 1 through 5 of Mr. Westhues' Issues List be struck.

[55] The Tribunal Orders that Issue Nos. 1 through 5 of the Issues List for CRD be struck.

[56] A Procedural Order was finalized and received by the Tribunal shortly after this CMC and is attached as **Schedule 1**. As such, it is in full force and effect.

[57] The Tribunal Orders that should CRD wish to downgrade to Participant Status, they are to submit a Participant Statement to the Case Coordinator by no later than September 14, 2021.

[58] This Member is not seized and will be available for case management purposes, schedules permitting.

*"T. Prevedel"*

T. PREVEDEL  
MEMBER

**Ontario Land Tribunal**

Website: [olt.gov.on.ca](http://olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

## SCHEDULE 1



### *Local Planning Appeal Tribunal* **Procedural Order**

**CASE NO(S).** PL180376

**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

## PROCEDURAL ORDER

1. The Tribunal may vary or add to the directions in this procedural order at any time by an oral ruling or by another written order, either on the parties' request or its own motion.

### Organization of the Hearing

2. The video hearing will begin on **October 25, 2021 at 10 a.m.** by using this link: <https://global.gotomeeting.com/install/146616349>. When prompted, enter the code **146-616-349** to be connected to the hearing by video. All parties and participants shall attend the first day of the hearing.
3. The length of the hearing is 10 days. The parties are expected to cooperate to reduce the length of the hearing by eliminating redundant evidence and attempting to reach settlements on issues where possible.
4. The parties and participants identified at the case management conference are set out in Attachment 1 (see the sample procedural order for the meaning of these terms).
5. The issues are set out in the Issues List attached as Attachment 2. There will be no changes to this list unless the Tribunal permits, and a party who asks for changes may have costs awarded against it.
6. The order of evidence shall be as set out in Attachment 3 to this Order. The Tribunal 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 the parties' consent, subject to the Tribunal's approval, or by Order of the Tribunal.
7. Any person intending to participate in the hearing should provide a mailing address, email address and a telephone number to the Tribunal as soon as possible – ideally before the case management conference. Any person who will be retaining a representative should advise the other parties and the Tribunal of the representative's name, address, email address and the phone number as soon as possible.
8. Any person who intends to participate in the hearing, including parties, counsel and witnesses, is expected to review the Tribunal's Video Hearing Guide, available on the Tribunal's website (<https://olt.gov.on.ca/tribunals/lpat/>).

## Requirements Before the Hearing

9. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal and the other parties a list of the witnesses and the order in which they will be called. This list must be delivered on or before May 3, 2021 and in accordance with paragraph 22 below. A party who intends to call an expert witness must include a copy of the witness' Curriculum Vitae and the area of expertise in which the witness is prepared to be qualified.
10. Expert witnesses in the same field shall have a meeting on or before May 17, 2021 and use best efforts to try to resolve or reduce the issues for the hearing. Following the experts' meeting the parties must prepare and file a Statement of Agreed Facts and Issues with the LPAT case co-ordinator on or before May 24, 2021.
11. In the event that the applicant is proceeding to the hearing with revised plans which they will ask to be considered by the LPAT, the applicant shall disclose the revised plan to all of the parties on or before May 28, 2021.
12. 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. Copies of this must be provided as in paragraph 14 below. 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 Tribunal may refuse to hear the expert's testimony.
13. 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 paragraph 14 below. A party who intends to call a witness who is not an expert must file a brief outline of the witness' evidence, as in paragraph 13 below.
14. On or before June 30, 2021 the parties shall provide copies of their witness and expert witness statements to the other parties and to the LPAT case co-ordinator and in accordance with paragraph 23 below.
15. On or before June 30, 2021 a participant shall provide copies of their written participant statement to the other parties in accordance with paragraph 23 below. A participant cannot present oral submissions at the hearing on the content of their written statement, unless ordered by the Tribunal.
16. On or before September 10, 2021, the parties shall provide copies of their visual evidence to all of the other parties in accordance with paragraph 23 below. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
17. Parties may provide to all other parties and the LPAT case co-ordinator a written response to any written evidence on or before August 13, 2021 and in accordance with paragraph 23 below.



18. The parties shall cooperate to prepare a joint document book which shall be shared with the LPAT case co-ordinator on or before September 24, 2021.
19. Any documents which may be used by a party in cross examination of an opposing party's witness shall be password protected and only be accessible to the Tribunal and the other parties if it is introduced as evidence at the hearing, pursuant to the directions provided by the LPAT case co-ordinator, on the day prior to the day the document is put to the witness in cross-examination.
20. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal. *See Rule 10 of the Tribunal's Rules with respect to Motions, which requires that the moving party provide copies of the motion to all other parties 15 days before the Tribunal hears the motion.*
21. A party who provides written evidence of a witness to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Tribunal at least 7 days before the hearing that the written evidence is not part of their record.
22. The parties shall prepare and file a [hearing plan](#) with the Tribunal on or before August 20, 2021 with a proposed schedule for the hearing that identifies, as a minimum, the parties participating in the hearing, the preliminary matters (if any to be addressed), the anticipated order of evidence, the date each witness is expected to attend, the anticipated length of time for evidence to be presented by each witness in chief, cross-examination and re-examination (if any) and the expected length of time for final submissions. The parties are expected to ensure that the hearing proceeds in an efficient manner and in accordance with the hearing plan. The Tribunal may, at its discretion, change or alter the hearing plan at any time in the course of the hearing.
23. All filings shall be electronic and in hard copy upon request. Electronic copies may be filed by email, an electronic file sharing service for documents that exceed 10MB in size, or as otherwise directed by the Tribunal. The delivery of documents by email shall be governed by the *Rule 7*.
24. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness or on the consent of the parties. The Tribunal's Rule 17 applies to such requests.

**This Member is [not] seized.**

**So orders the Tribunal.**

**SUMMARY OF KEY DATES**

<b><u>Date</u></b>	<b><u>Event</u></b>
May 3, 2021	List of witnesses and the order in which they will be called
May 17, 2021	Meeting of expert witnesses
May 24, 2021	Agreed Statement of Facts
June 30, 2021	Exchange of expert reports/witness statements, and evidence outlines for witnesses under summons
June 30, 2021	Exchange of participants statements
August 13, 2021	Exchange of reply evidence/statements
September 10, 2021	Exchange of visual evidence
August 20, 2021	Hearing Plan
September 24, 2021	Joint Document Book
October 25, 2021	Commencement of Hearing

**Attachment "1"****Parties****5507 River Development Inc. (2486489 Ontario Inc.)****WeirFoulds LLP**

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## **Attachment “2”**

The identification of an issue on these Issues Lists does not mean that all parties agree that such issue, or the manner in which the issue is expressed, is appropriate or relevant to the determination of the Tribunal at the hearing. The extent to which these issues are appropriate or relevant will be a matter of evidence and argument at the hearing.

### **Issues List of the City of Niagara Falls**

#### **Policy and Legislative Issues**

1. Are the proposed Official Plan and zoning by-law amendments consistent with the Provincial Policy Statement, in particular sections 1.1.1 (healthy liveable and safe communities), 1.1.2 (projected needs), 1.1.3 (settlement areas), 1.4 (housing), 1.6 (infrastructure and public service facilities) and 2.1 (protection of natural features)?
2. Do the proposed Official Plan and zoning by-law amendments conform to the Provincial A Place to Grow – Growth Plan for the Greater Golden Horseshoe, in particular sections 2.2.1, (managing growth), 2.2.2 (delineated built up areas), 2.2.6 (housing) 3.2 (policies for infrastructure to support growth) and 4.2.2 (natural heritage system)?
3. Do the proposed Official Plan and zoning by-law amendments conform to the Regional Policy Plan, in particular sections 2.1 and 2.7 (economic growth), 4.A.1 (growth management), 4.C.1 to 4.C.4 (residential intensification), 4.G (sustainable urban vision), 4.J (urban design), 7A to 7C (natural environment), 8.A and 8 B (servicing), 9.A, 9.E and 9.F (transportation including transit and active transportation) and 11.A (housing)?
4. Does the proposal conform to the intent and purpose of the policies in the City of Niagara Falls Official Plan, in particular;
  - a. Does the proposal conform to Part 4, Section 2.6.1 of the Official Plan in terms of meeting the general objectives of the Official Plan?
  - b. Does the proposal conform to the intent of Part 2, Section 1.15 of the Official Plan in terms of establishing an appropriate height as well as gradation of height and density from low rise buildings?
  - c. Does the proposal conform to the intent of Part 1, Section 3.1 and Part 4, Section 2.6 of the Official Plan in determining the need to establish a new area of intensification?
  - d. Does the proposal conform to Part 4, Section 2.6.6 of the Official Plan in demonstrating that municipal services, facilities and transportation infrastructure are adequate for the proposed use and its impact on community facilities and natural environment is mitigated?

5. Is the requested amendment to By-law 79-200, to change the zoning of the property to Residential Apartment 5F Density, and requested site specific departures from this zone to accommodate the proposed development, appropriate?
6. If the amendments are approved, should a holding (H) regulation, to prevent the development of the land until archaeological assessments have been completed and a Record of Site Condition filed with the Ministry of the Environment, Conservation and Parks, be included in the amending zoning by-law?

### **Built Form**

7. Does the proposal provide an appropriate form and transition in terms of height and massing, and appropriate setbacks to abutting low density residential uses, in accordance with Section 4a.6 of the Region of Niagara Model Urban Design Guidelines and in conformity to Section 1.15.5(iii) of the Official Plan?
8. Does the built form have an appropriate step back from public sidewalks, to minimize shadowing and massing impacts, in accordance with Section 4d.4 of the Region of Niagara Model Urban Design Guidelines?
9. Intentionally Deleted

### **Geological**

10. In conformity to Part 2. Section 11.2.21 and Part 4, Section 14.2.5 of the Official Plan,
  - a. Will the construction, including excavation and site preparation, have any impact on the integrity of the surrounding geology, including the Niagara Gorge?
  - b. What methods should be employed to ensure the construction and excavation does not impact on the structural integrity of surrounding residences?
  - c. Is a stable top of bank indicated to the satisfaction of the Niagara Peninsula Conservation Authority?

### **Environmental**

11. Is adequately demonstrated that the proposed development does not impact natural heritage features, significant wildlife habitat or species at risk, in conformity to Part 4, Section 2.6.6 of the Official Plan?

### **Section 37 Agreement**

12. If the amendments are approved should they be conditional on a Section 37 (bonusing agreement) being executed, collecting 1% of the value of construction costs for the project minus contributions already made, to be directed to one or more municipal capital projects?

**Attachment "3"****Order of Evidence**

1. 2486489 Ontario Inc. (Applicant/Appellant)
2. City of Niagara Falls
3. 2486489 Ontario Inc. (Applicant/Appellant), in reply

## Attachment to Sample Procedural Order

### Meaning of terms used in the Procedural Order:

**Party** is an individual or corporation permitted by the Tribunal to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an **unincorporated group** wishes to become a party, it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorisation from the party.

**NOTE** that a person who wishes to become a party before or at the hearing, and who did not request this at the case management conference (CMC), must ask the Tribunal to permit this.

A **participant** is an individual, group or corporation, whether represented by a lawyer or not, who may make a written submission to the Tribunal. A participant cannot make an oral submission to the Tribunal or present oral evidence (testify in-person) at the hearing (only a party may do so). Subsection 33.2 of the *Local Planning Appeal Tribunal Act* states that a person who is not a party to a proceeding may only make a submission to the Tribunal in writing. The Tribunal may direct a participant to attend a hearing to answer questions from the Tribunal on the content of their written submission, should that be found necessary by the Tribunal. A participant may also be asked questions by the parties should the Tribunal direct a participant to attend a hearing to answer questions on the content of their written submission.

A participant must be identified and be accorded participant status by the Tribunal at the CMC. A participant will not receive notice of conference calls on procedural issues that may be scheduled prior to the hearing, nor receive notice of mediation. A participant cannot ask for costs, or review of a decision, as a participant does not have the rights of a party to make such requests of the Tribunal.

**Written evidence** includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material.

**Visual evidence** includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing.

A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing.

An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness' opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing.

A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the participant wishes to address



*and the submission of the participant on those issues; and a list of reports, if any, which the participant wishes to refer to in their statement.*

### **Additional Information**

**Summons:** *A party must ask a Tribunal Member or the senior staff of the Tribunal to issue a summons. This request must be made before the time that the list of witnesses is provided to the Tribunal and the parties. (See Rule 13 on the summons procedure.) If the Tribunal requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Tribunal is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.*

**The order of examination of witnesses:** *is usually direct examination, cross-examination and re-examination in the following way:*

- *direct examination by the party presenting the witness;*
- *direct examination by any party of similar interest, in the manner determined by the Tribunal;*
- *cross-examination by parties of opposite interest;*
- *re-examination by the party presenting the witness; or*
- *another order of examination mutually agreed among the parties or directed by the Tribunal.*