

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



ISSUE DATE: November 05, 2019

CASE NO(S): PL180774

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 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Bryan Keenan
Subject: Proposed Official Plan Amendment No. OPA
127
Municipality: City of Niagara Falls
LPAT Case No.: PL180774
LPAT File No.: PL180774
LPAT Case Name: Keenan v. Niagara Falls (City)

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Bryan Keenan
Subject: By-law No. 2018-91
Municipality: City of Niagara Falls
LPAT Case No.: PL180774
LPAT File No.: PL180775

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Bryan Keenan
Subject: By-law No. 2018-92
Municipality: City of Niagara Falls
LPAT Case No.: PL180774
LPAT File No.: PL180776

Heard: July 25, 2019 in Niagara Falls, Ontario

APPEARANCES:**Parties****Counsel**

Bryan Keenan (the “Appellant”)

Robert Di Lallo

City of Niagara Falls (the “City”)

Tom Halinski

**MEMORANDUM OF ORAL DECISION DELIVERED BY JOHN DOUGLAS ON
JULY 25, 2019 AND ORDER OF THE TRIBUNAL**

CASE MANAGEMENT CONFERENCE DECISION AND ORDER - INTRODUCTION

[1] This Decision and Order is issued following the Case Management Conference (“CMC”) conducted pursuant to s. 33(1) of the *Local Planning Appeal Tribunal Act, 2017* (“LPATA”) and Rules 26.17 to 26.26 of the Tribunal’s *Rules of Practice and Procedure* (“Tribunal Rules”) for the Appeals brought in the above-referenced LPAT Case Files (the “Appeals”).

[2] The Appeals before the Tribunal have been brought pursuant to sections 17(24) and 34(19) of the *Planning Act* (“Act”). The City adopted City-wide Official Plan Amendment No. 127 (“OPA 127”) which adds definitions and policies to the Official Plan (“OP”) with respect to Vacation Rental Units (“VRU”) and Bed and Breakfasts (“B&B”) and passed the associated Zoning By-law No. 2018-91. (“ZBA”). The ZBA amends By-law No. 79-200 to permit VRUs with up to three bedrooms, as of right, in the Tourist Commercial, General Commercial and Central Business Commercial Zones. Council’s decision to adopt OPA 127 along with the B&B By-law and VRU By-law was appealed by three Appellants. Two of the Appeals have been withdrawn. Bryan Keenan is the sole remaining Appellant. The provisions of the OPA and ZBA as they affect Bed and Breakfasts are not in contention.

[3] The Tribunal briefly addressed Bill 108 and the expectation that it would be proclaimed and come into force in early fall 2019. The Tribunal explained that until Bill 108 is proclaimed the Tribunal is proceeding with a business-as-usual approach under

the Bill 139 Rules.

[4] The Affidavit of Service of the Notice of the CMC is marked and filed as Exhibit 1 to the hearing.

REQUESTS FOR PARTY STATUS

[5] In accordance with the Act, the Tribunal received written submissions and requests to participate in the hearing of the Appeals from the following persons or entities:

- (a) Dan and Debbie Ferro
- (b) Sharron and Cassey Goosens
- (c) Vince and Gail Urbanic
- (d) Janice and David Low
- (e) Marion Grabb Finkelstein and Steve Finklestein
- (f) Jeanette Purdy

[6] Of the persons requesting status to participate in the hearing only Dan and Debbie Ferro, and Janice and David Low were present. Given that Sharron and Cassey Goosens, Vince and Gail Urbanic, Marion Grabb Finklestein and Steve Finklestein, and Jeanette Purdy were not in attendance at the CMC, the Tribunal has not granted them status to participate in the hearing.

[7] With respect to appeals pursuant to s. 22(7) and s. 34(11) of the Act, s. 40 of LPATA sets out the criteria for being granted party status.

Participation by other persons, subs. 38 (1)

40 (1) If a person other than the appellant or the municipality or approval authority whose decision or failure to make a decision is being appealed wishes to participate in an appeal described in subsection 38 (1), the person must make a written submission to the Tribunal respecting

- whether the decision or failure to make a decision,
- (a) was inconsistent with a policy statement issued under subsection 3 (1) of the *Planning Act*;
 - (b) fails to conform with or conflicts with a provincial plan; or
 - (c) fails to conform with an applicable official plan.

Time for submission

- (2) The submission must be made to the Tribunal at least 30 days before the date of the case management conference.

Copy, certificate

- (3) The person must serve a copy of the submission on the municipality or approval authority whose decision or failure to make a decision is being appealed and file a certificate of service with the Tribunal in the form approved by the Tribunal.

Additional parties

- (4) The Tribunal may determine, from among the persons who provide written submissions, whether a person may participate in the appeal as an additional party or otherwise participate in the appeal on such terms as the Tribunal may determine.

[8] A submission was made to the Tribunal on June 20, 2019 by Dan and Debbie Ferro requesting status to participate in the hearing. The submission was made to the Tribunal on at least 30 days before the date of the CMC. However, their submission did not address the key tests required with respect to consistency with the Provincial Policy Statement 2014 (“PPS”), or conformity with the Growth Plan for the Greater Golden Horseshoe, 2019 (“Growth Plan”) and the City’s Official Plan, pursuant to s. 40(1) of the LPATA.

[9] A submission was made to the Tribunal on June 18, 2019 by Janice and David Low requesting status to participate in the hearing. The submission was made to the Tribunal on at least 30 days before the date of the CMC. However, their submission did not address the key tests required with respect to consistency with the PPS, or conformity with the Growth Plan and the City’s Official Plan, pursuant to s. 40(1) of the LPATA.

[10] Mr. Halinski was not opposed to the requests for status to participate by the Ferro’s or the Low’s. Mr. Di Lallo objected to both requests on the grounds that neither the Ferros nor the Lows had met the legislative tests set out in s. 40(1) of the LPATA.

[11] After hearing submissions from Mr. Di Lallo and Mr. Halinski, the Tribunal did not grant status to participate to either the Ferros nor the Lows.

MOTIONS

[12] The City submitted a Motion Request to the Tribunal requesting that the Tribunal issue an Order directing that:

- a) the Appeal be scoped to include only the policies and provisions of By-law 2018-92 (the “VRU By-law”) and OPA 127, as set out in the Notice of Appeal;
- b) An Order from the Tribunal approving and bringing into force By-law 2018-91 (the “B&B By-law), as adopted;
- c) An order abridging the time of service of this Motion, if necessary; and
- d) Such further and other relief as counsel for the City may request and as the Tribunal may permit.

[13] Mr. Di Lallo had no objection to the Motion.

MEDIATION AND SETTLEMENT

[14] As required by s. 39(2) of the LPATA, the Tribunal addressed with the Parties the opportunities for settlement and the possibility of mediation as a means to resolve the Appeals. Although there was some interest in mediation from the Appellant, the Tribunal understood that the City did not feel that this matter would benefit from mediation and instead asked for a hearing date to be set.

FACTS, ISSUES, ADMISSIONS, DISCLOSURE

[15] The Tribunal made inquiries with the Parties with a view to identifying the facts or evidence that might be agreed upon and identifying the issues arising in the Appeals.

[16] The List of Issues arising from the Appeals and the discussions between the Parties as reviewed by the Tribunal is set out in the following:

- i. Are the By-laws consistent with the PPS? More specifically, are the By-laws consistent with sections 1.1.1, 1.1.3, 1.2.6, 1.4.3 and 1.7.1 of the PPS?
- ii. Do the By-laws conform with the Growth Plan? More specifically, do the By-laws conform with sections 1.2.1, 2.2.2, 2.2.5, 3.2.3, 4.1 and 4.2.10 of the Growth Plan?
- iii. Do the By-laws conform to the Niagara Region Official Plan? More specifically, do the By-laws conform to Chapter 2 and sections 2.A.1, 3.A.2 and 3.D.5 of the Niagara Region Official Plan?
- iv. Do the By-laws conform to the City's Official Plan? More specifically, do the By-laws conform to sections 1.2.1, 1.2.4, 1.12 and 3.4 of the City's Official Plan?

[17] This List of Issues shall govern the hearing of the Appeals.

[18] The identification of an issue on the Issues List does not necessarily mean that all Parties agree that each issue, or the manner in which the issue is expressed, is appropriate or relevant to the determination of the Appeals by the Tribunal.

FORMAT OF HEARING

[19] Upon a review of the Municipal Record, the Synopses filed by the Appellant(s) and the City and the respective Records of the Parties, the Tribunal has determined that there shall be an oral hearing with the presentation of argument by the Parties on the date indicated herein.

[20] Since the hearing of this CMC, Bill 108 was proclaimed and came into force and effect on September 3, 2019. Given that a hearing date was set during the July 25,

2019 CMC the following provisions of Ontario Regulation (“O. Reg”) 296/19, which addresses Transition matters, applies:

Official plan, amendment, repeal or request — hearing scheduled

27. (1) This section applies in respect of an official plan, an amendment to it, a repeal of it or a request for an amendment to it if,

- (a) the official plan, amendment, repeal or request is the subject of an appeal under subsection 17 (24) or (36) or 22 (7) of the Act, notice of which was filed before September 3, 2019;
- (b) before September 3, 2019, the Tribunal has ordered a hearing mentioned in subsection (4) to be scheduled in respect of the appeal referred to in clause (a) of this subsection; and
- (c) the relevant condition set out in subsection (2) is met.

(2) The conditions referred to in clause (1) (c) are the following:

- 1. In the case of an appeal under subsection 17 (24) or (36) of the Act, the giving of notice under subsection 17 (23) or (35) of the Act, as the case may be, is completed,
 - i. before April 3, 2018 and,
 - A. the appeal is in respect of an official plan amendment adopted in response to a request under section 22 of the Act received after December 12, 2017,
 - B. the appeal is in respect of an official plan amendment adopted after December 12, 2017 that is not in response to a request under section 22 of the Act, or
 - C. the appeal is in respect of an official plan, or the repeal of an official plan, adopted after December 12, 2017, or
 - ii. on or after April 3, 2018 and before September 3, 2019.

(3) The official plan, amendment, repeal or request shall be continued and disposed of in accordance with section 2.1 and subsections 17 (24.0.1), (25), (36.0.1), (37), (44.7), (45), (46), (49) to (51) and (53) and 22 (7.0.0.1), (7.0.0.2), (7.0.2.1), (8), (11) to (11.1) and (11.3) of the Act, as they read on September 2, 2019, and as if subsections 17 (25.1), (37.1) and (44.3) to (44.6) of the Act were not in force.

(4) A hearing referred to in clause (1) (b) is a hearing at which evidence regarding the merits of the matters before the Tribunal is to be considered, and does not include a case management conference, pre-hearing conference, preliminary hearing, settlement conference, motion or other hearing event held to consider preliminary matters.

(5) For greater certainty, this section applies even if the hearing referred to in in clause (1) (b) is adjourned or rescheduled.

[21] Section 29 of the O. Reg. 296/19, which has similar wording to s. 27 set out above, applies with respect to the hearing of the appeal of VRU By-law.

[22] As noted by the Tribunal at the July 25, 2019 CMC, the hearing on the Appeals

of OPA 127 and VRU By-law will proceed under the Rules for Bill 139.

[23] The following shall be allocated time permitted for each of the Parties to present argument at the oral hearing, in the order indicated following the questioning of the witnesses as directed in this CMC Order:

Appellant, Bryan Keenan 75 minutes

City of Niagara Falls 75 minutes

DIRECTION BY THE TRIBUNAL—EXAMINATION OF WITNESSES

[24] Pursuant to s. 33(2) of the Act and Rules 26.23 and 26.24 of the Tribunal Rules, the Tribunal hereby directs that arrangements be made by the identified Parties for the production of the following persons at the hearing of the Appeals.

To be produced by the Appellant:

- Michael Sullivan

To be produced by the City:

- Alex Herlovitch

[25] Each of the witnesses to be produced for examination by the Tribunal shall attend with all written materials which he or she has in their possession which relate to the matters before the Tribunal in these Appeals.

[26] In the Affidavits of both witnesses provided in the records submitted by each Party, the Tribunal notes that both witnesses provided opinion evidence on the conformity of OPA 127 with the Growth Plan for the Greater Golden Horseshoe 2017. Since the preparation of their Affidavits, the Growth Plan 2019 came into effect. The witnesses shall come prepared to provide opinion evidence on the conformity of OPA 127 with the Growth Plan 2019.

HEARING DATE

[27] The hearing of the Appeals shall commence on **Wednesday, April 8, 2020**, commencing at **10:00 a.m. for two consecutive days** at:

**Council Chambers
Municipal Building (Niagara Falls)
4310 Queen Street
Niagara Falls Ontario**

ORDER

[28] No further notice will be given.

[29] This panel may be contacted for case management purposes.

[30] As requested by the City of Niagara Falls through their Motion Request, the Tribunal orders that:

- a) the appeal be scoped to include only the policies and provisions of the VRU By-law and OPA 127, as set out in the Notice of Appeal;
- b) By-law 2 No. 018-91 (the "B&B By-law), as adopted, be approved and brought into force.

NOTICE OF POSTPONEMENT

[31] Due to the length of time between the CMC and the hearing date, pursuant to s. 1(2)1.ii of O. Reg. 102/18 of the LPATA, in the opinion of the Tribunal it is necessary to postpone the time frame provided for in order to secure a fair and just determination of the Appeals. A Notice of Postponement, effective July 25, 2019, shall accordingly be issued by the Tribunal.

“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
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