

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



ISSUE DATE: January 29, 2020

CASE NO(S): PL190206

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

Applicant and Appellant: 10736198 Canada Inc.
Subject: Application amend Zoning By-law No. 79-200 –
Refusal of Application by the City of Niagara Falls
Existing Zoning: Residential 1E Density (R1E) zone
Proposed Zoning: Residential Low Density, Grouped Multiple
Dwellings (R4) zone, with site specific provisions
Purpose: To permit the development of 53 townhouse units
and a semi-detached dwelling
Property Address/Description: Vacant parcel between 2294 and 2472 Thompson
Road
Municipality: City of Niagara Falls
Municipality File No.: AM-2018-016
LPAT Case No.: PL190206
LPAT File No.: PL190206
LPAT Case Name: 10736198 Canada Inc. v. Niagara Falls (City)

PROCEEDING COMMENCED UNDER subsection 51(39) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 10736198 Canada Inc.
Subject: Proposed Plan of Subdivision
Property Address/ Description: Vacant parcel between 2294 and 2472 Thompson
Road
Municipality: City of Niagara Falls
Municipal File No.: 26CD-11-2018-08
LPAT Case No.: PL190206
LPAT File No.: PL190207

Heard: January 14, 2020 in Niagara Falls, Ontario

APPEARANCES:

Parties

Counsel

10736198 Canada Inc.

Rocco Vacca

City of Niagara Falls

David Neligan

**MEMORANDUM OF ORAL DECISION DELIVERED BY DAVID BROWN ON
JANUARY 14, 2020 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] The matter before the Tribunal is an appeal under s. 34(11) and s. 51(39) of the *Planning Act* from the City of Niagara Falls (the "City") refusal of an application for a Zoning By-law Amendment and an application for Plan of Subdivision by 10736198 Canada Inc., the Applicant and Appellant, in respect of the lands located at 2294 and 2472 Thompson Road (the "subject lands").

[2] The hearing is the first Case Management Conference ("CMC") conducted pursuant to s.33(1) of the *Local Planning Appeal Tribunal Act, 2017* in respect of this matter.

[3] The subject lands are located on the southerly side of Thompson Road east of Stanley Avenue comprising an area of 1.36 hectares. It is proposed to develop the lands with a 55-unit vacant land condominium which will include 53 row dwellings and two semi-detached dwellings.

[4] The Affidavit of Service was filed as Exhibit 1 confirming that notice of the CMC was properly given.

[5] In advance of the CMC, the Tribunal received numerous requests for party and participant status from interested persons. At the CMC, the interested persons questioned the difference between party and participant status. After some discussion, the following persons requested that the Tribunal grant them participant status in these

proceedings:

- John and Beth Bertone
- Luigi and Josephine Bertone
- Pat and Connie Bertone
- Rebecca Coleman
- John Confiant
- Diane Cyr
- Michelle Cyr
- Liza Delaney
- Wayne and Laura MacCarl
- Anthony Martino
- Troy Milinkovich
- Joan Moore
- Paul Moore
- Cindy Papineau
- Marc Pouliot
- Adele Richardson
- Miki Richardson
- Helen Sauer
- Diane Green

[6] The Tribunal had written correspondence from Tammy Riley and Rennie Taylor

requesting party status in these proceedings, however the individuals were not in attendance to speak to their requests.

[7] In response to the request for party status made by the absent persons, Mr. Vacca directed to the Tribunal to the Local Planning Appeal Tribunal Rules of Practice and Procedure (the "Rules") specifically Rule 8 entitled Role and Obligations of a Party. Rule 8.2 reads;

'The Tribunal may add or substitute a party to a proceeding when that person satisfies any applicable legislative tests necessary to be party and their presence is necessary to enable the Tribunal to adjudicate effectively and completely on the issues in the proceeding.'

[8] Mr. Vacca offered that the individuals have not met their obligations as set out in the Rules requiring their attendance at the proceeding.

[9] Further, Mr. Vacca explained the number of persons originally requesting party status have delayed the scheduling of this CMC. This has been a source of frustration for his clients. He then referred the Tribunal to Rule 19.1(j) which states;

'At the request of a party, on its own initiative or as may be required by LPATA, the Tribunal may direct parties to participate in a case management conference conducted by a Member...in order to ... (j) deal with any other matter that may assist in a fair, cost effective and expeditious resolution of the issues.'

[10] Mr. Neligan advised that the City takes no position on the request for party status of the two absent individuals and notes that Rule 19.7 gives the Tribunal the ability to proceed with the CMC in the absence of a party.

[11] In respect to the requests for participant status, Mr. Vacca expressed a concern with the significant number of participants and the potential for numerous lengthy submissions resulting in an unmanageably large list of issues. Mr. Vacca requested the written participant statements be limited in respect to the number of pages per individual submission or alternatively that the participants be directed to file one submission from all participants. He requested that written participant statements be filed a minimum of 45 days prior to the hearing.

[12] Mr. Neligan advised that he has no objections to the request by Mr. Vacca in respect to the terms described

[13] Mr. Vacca requested that the Tribunal set aside two days for a hearing on the merits of the appeal indicating that he plans to call three expert witnesses including the City Planner, under subpoena, that prepared the staff report. He also requested a further CMC and suggested that it might be conducted by way of a Telephone Conference Call.

[14] Mr. Neligan advised that the City plans to call a witness and suggested that a three-day hearing would be more appropriate.

[15] The Tribunal considered the submissions, grants participant status to the individuals listed above, sets a further CMC and a three-day hearing on the merits of the appeal for the reason set out below.

DECISION

[16] In respect to the requests for party status received from Tammy Riley and Rennie Taylor, the Tribunal received written requests from the individuals on December 19, 2019.

[17] A review of the Affidavit of Service (Exhibit 1) confirmed that both individuals were notified of the CMC hearing.

[18] Page 3 of Attachment 1 to the Affidavit of Service, the last paragraph on the page states:

The written status request will be reviewed and considered by the presiding Member at the CMC. It will also assist the Tribunal in organizing the hearing event. **Attendance by the requestor, or their representative, at the CMC is required for all status requests.**

[19] This statement finds its authority in Rule 8.2 and Rule 19.7 of the Rules.

[20] Rule 8.2 specifically sets out the obligations of a Party before the Tribunal. In this

instance, the Tribunal has not received any notification of the absence for either of the two individuals or justification for their request for party status.

[21] The Tribunal confers no status on Tammy Riley or Rennie Taylor in respect of these proceedings.

[22] The Tribunal grants participant status to the individuals listed above in paragraph 5.

[23] In respect to the form of the written participant statements as required pursuant to Rule 7.7 of the Rules, the Tribunal limits the length of individual written participant statements to not more than two pages in length exclusive of attachments. The pages are to be typed, single-sided, single-spaced, using a font size of 11 and a font type of either Arial or Courier. In the event that the participants wish to make one combined written participant statement the submission can be four pages in length exclusive of attachments. Similarly, the pages are to be typed, single-sided, single-spaced, using a font size of 11 and a font type of either Arial or Courier.

[24] The Tribunal recognizes that both the Appellant and the interested neighbours are entitled to a fair, cost-effective, and expeditious resolution of the issues and this is reinforced in Rule 19.1(j). The Procedural Order will include timelines for a process that will provide a clear path to resolution of this matter for the parties and the participants. The timeline for the submission of written participant statements will be reviewed at the next CMC.

[25] The Tribunal directs that a second CMC will be held by Telephone Conference Call scheduled for **Friday, March 13, 2020 at 9 a.m.** Individuals are directed to call **416-212-8012** or Toll Free **1-866-633-0848** on the assigned date at the correct time. When prompted, enter the code **8382919#** to be connected to the call. If assistance is required at any time, press '0' for the operator. Cellular telephones are not permitted to be used for the call. It is the responsibility of the persons participating in the call to ensure that they are properly connected to the call and at the correct time. Questions prior to the call may be directed to Tamara Zwarycz, the Board's Case Coordinator, at 416-326-6790.

[26] The Member is seized for case management purposes.

[27] There will be no further notice.

[28] The Tribunal sets a three-day hearing on the merits for **Wednesday, June 17, 2020, commencing at 10 a.m.** at the:

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

[29] Counsel for the City was directed to confirm forthwith the venue for the hearing to the Case Coordinator and the other party.

[30] There will be no further notice.

[31] The member is not seized of this matter.

[32] 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

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