

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



**ISSUE DATE:** March 18, 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:** March 13, 2020 by telephone conference call

**APPEARANCES:**

**Parties**

**Counsel**

10736198 Canada Inc.

Rocco Vacca

City of Niagara Falls

Tom Halinski

**MEMORANDUM OF ORAL DECISION DELIVERED BY DAVID BROWN ON MARCH 13, 2020 AND ORDER OF THE TRIBUNAL**

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**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 101736198 Canada Inc. (the “Applicant” and “Appellant”) in respect of the lands located at 2294 and 2472 Thompson Road (the “subject lands”).

[2] The hearing was conducted by way of a telephone conference call and is the second Case Management Conference (“CMC”) conducted pursuant to s. 33(1) of the *Local Planning Appeal Tribunal Act, 2017* in respect of this matter.

[3] In advance of the hearing, Rocco Vacca filed a draft Procedural Order (“DPO”) with the Tribunal. Mr. Vacca advised that he has reviewed the DPO with the City's counsel.

[4] The Tribunal reviewed the DPO and requested that Mr. Vacca revise the DPO to use the most current format available from the Tribunal. Specifically, the Tribunal noted paragraph 13 contained in the current sample procedural order format which reads,

On or before \_\_\_\_\_, a participant shall provide copies of their written participant statement to the other parties. A participant cannot present oral submissions at the hearing on the content of their written statement, unless ordered by the Tribunal.

[5] The Tribunal directed that a revised DPO be filed with the Tribunal for inclusion with this order.

[6] In reviewing the DPO, it was agreed by the Parties that the date for filing of a participant statement will be on or before **Friday, May 1, 2020**. The Tribunal noted that participants are to provide a copy of their statements with each of the parties.

[7] Tom Halinski, on behalf of the City, noted that the Order of the Tribunal issued on January 29, 2020, included specific direction in respect to the format of the participant statement.

[8] Mr. Vacca advised that he has been in discussion with the City in respect to creating the Issues List. This is to be completed by **Tuesday, March 31, 2020** as set out in the DPO. Mr. Vacca advised that the Appellant intends to call the City's Director of Planning under summons to testify in addition to his client's land use planner. In addition, Mr. Vacca advised that he may be calling a traffic expert in the event the Issues List identifies traffic as an issue arising from the participant statements.

[9] The Tribunal considered the submissions and directs that the revised DPO be provided forthwith for inclusion in the Tribunal's disposition.

## **DECISION**

[10] The Tribunal orders that the DPO be revised in accordance with the Tribunal's current practice with respect to participant statements and that the participant statements are to be provided to the parties on or before May 1, 2020.

[11] The revised DPO is appended to this order as Attachment 1.

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

[13] 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](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Local Planning Appeal Tribunal**

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# SCHEDULE 1

PL190206/PL190207

## LOCAL PLANNING APPEAL TRIBUNAL

### PROCEDURAL ORDER

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

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Subject: Proposed Plan of Subdivision  
Property Address/ Description: Vacant parcel between 2294 and 2472 Thompson Road  
Municipality: City of Niagara Falls  
LPAT Case No.: PL190206  
LPAT File No.: PL190207

The Tribunal orders that:

1. The Tribunal may vary or add to this Order at any time either on request or as it sees fit. It may amend this Order by an oral ruling or by another written Order.
2. The hearing will begin on June 17, 2020 at 10:00AM. All parties shall attend the first day of the hearing.
3. The length of the hearing will be 3 (three) days. The length of the hearing may be shortened as issues are resolved or settlement is achieved.
4. The parties identified at the prehearing conference are listed in Attachment 1 to this Order.

5. On or before March 31, 2020, the parties shall agree upon the issues which shall be attached as Attachment 2 to this Order. There will be no changes to this list unless the Tribunal permits it. A party who asks for changes may have costs awarded against it.
6. The order of evidence at the hearing will 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 consent or by Order of the Tribunal.
7. All parties and participants (or their representatives) shall provide a mailing address, email address, and telephone number to the Tribunal as soon as possible. Any such person who retains a representative (legal counsel or agent) subsequent to the prehearing conference must advise the other parties and the Tribunal of the representative's name, mailing address, email address, and telephone number as soon as possible.
8. A party who intends to call witnesses whether by summons or not, shall provide to the Tribunal and the other parties a list of witnesses and the order in which they will be called. This list must be delivered on or before April 15, 2020. For expert witnesses, a party is to include a copy of the curriculum vitae and the area of expertise in which the witness is proposed to be qualified.
9. An expert witness shall prepare an expert witness statement that shall include: an acknowledgement of expert's duty form, the area(s) of expertise, any reports prepared by the expert, and other reports or documents to be relied on at the hearing. Copies of this must be provided as in Section 12. 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.
10. A witness who is not an expert must provide to the Tribunal and the parties a witness statement on or before May 1, 2020, or the witness may not give oral evidence at the hearing.
11. 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 and his or her area of expertise on or before May 1, 2020.
12. On or before May 1, 2020, the parties shall provide copies of their expert witness statements and expert reports to the other parties.
13. On or before May 1, 2020, a participant shall provide copies of their written statement to the other parties. A participant cannot present oral submissions at the hearing or on the content of their written statement, unless ordered by the Tribunal.

14. The parties shall cooperate in the preparation of a Joint Document Book to be filed with the Tribunal on the first day of the hearing. The parties shall share the cost of the Joint Document Book. A paper copy of any document proposed to be entered into evidence or relied upon shall be provided at the hearing unless ordered otherwise by the presiding Member.
15. On or before June 1, 2020, the parties shall provide copies of their visual evidence to all of the other parties. If a model is proposed to be used, the Tribunal must be notified before the hearing. All parties must have a reasonable opportunity to view it before the hearing.
16. Any party may reply to an expert witness statement, expert report, outline of expert's evidence or witness statement, provided that such reply is provided to the Tribunal and all other parties on or before May 22, 2020.
17. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal in accordance with the Tribunal's Rule 10.
18. A person who provides the written evidence of a witness to the other parties must have that witness attend the hearing to give oral evidence, unless the Tribunal and the parties are notified on or before June 1, 2020 that the written evidence is not part of their record.
19. Documents may be delivered by personal delivery, email, facsimile, courier, or registered or certified mail, or otherwise as the Tribunal may direct. The delivery of documents by fax and email shall be governed by the Tribunal's Rules 7.10 to 7.13 on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
20. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rule 17 applies to such requests.

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

**So orders the Tribunal.**

## **Attachment 1**

### **Parties**

10736198 Canada Inc. - Represented by R. Vacca

Corporation of the City of Niagara Falls - Represented by T. Halinski

### **Participants**

- John and Bath 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



**Attachment 2**

**Issues List**

**Attachment 3**

**Order of Evidence**

10736198 Canada Inc.

Corporation of the City of Niagara Falls

Reply Evidence of 10736198 Canada Inc. (if any)