

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



ISSUE DATE: April 23, 2021

CASE NO(S): PL200044

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

Appellant:	Frank De Luca
Subject:	By-law No. BL2019-131
Municipality:	City of Niagara Falls
LPAT Case No.:	PL200044
LPAT File No.:	PL200044
LPAT Case Name:	De Luca v. Niagara Falls (City)

Heard: April 7, 2021 by video hearing

APPEARANCES:

Parties

Counsel*/Representative

Frank De Luca

Self-represented

City of Niagara Falls

Tom Halinski*

Habitat for Humanity Niagara

Thomas A. Richardson*

MEMORANDUM OF ORAL DECISION DELIVERED BY T. PREVEDEL ON APRIL 7, 2021 AND ORDER OF THE TRIBUNAL

[1] The matter before the Tribunal is an appeal pursuant to subsection 34(19) of the *Planning Act* brought by Frank De Luca (“Appellant”) regarding the passage by the City of Niagara Falls (“City”) of a zoning by-law amendment relating to the lands located at

7154 Adams Avenue and 6680 Hawkins Street (“subject lands”). The proposed zoning by-law amendment would facilitate a residential development proposed by Habitat for Humanity Niagara (“Applicant”).

[2] The Tribunal held two previous Case Management Conferences (“CMC”), on December 2, 2020 and December 17, 2020.

[3] The hearing of this appeal was intended to take place over the course of three days. The conduct of the hearing was governed by a Procedural Order issued on January 8, 2021.

[4] At the outset of the Hearing, Mr. Richardson made an oral submission to the Tribunal expressing his concerns regarding the Appellant’s failure to comply with the requirements of the Procedural Order.

[5] The Appellant did not cooperate in preparing a Joint Document Book prior to the deadline of March 26, 2021, despite repeated requests by both Mr. Richardson and Mr. Halinski.

[6] The Appellant did not provide any input to the Hearing Plan before the stated deadline of March 26, 2021.

[7] The Appellant did not provide witness statements to the Tribunal or other Parties as required by the Procedural Order and the Appellant now confirms he will not be calling any witnesses or making submissions.

[8] Mr. Halinski shares the concerns raised by Mr. Richardson. He further stated that in light of the fact that the Appellant was self-represented, he was treated with some flexibility and given the benefit of the doubt. However, the Procedural Order is quite clear in its conditions, none of which were complied with by the Appellant.

[9] Mr. Richardson, with the concurrence of Mr. Halinski, requested that the Tribunal

consider dismissing this appeal without a hearing on the basis that the Procedural Order had not been complied with, no witnesses are being called, and the Appellant does not intend to present any land use planning evidence to support his appeal.

[10] The Tribunal asked Mr. De Luca to respond to the concerns expressed by counsel. Mr. De Luca confirmed that he did not intend to call any witnesses or make submissions. He told the Tribunal he just wanted the ability to cross-examine all of the expert witnesses brought forward by the Applicant and the City with respect to the Issues List provided in the Procedural Order.

DISPOSITION

[11] For context: the Appellant Form indicated that four expert witnesses would be called; a traffic safety engineer, a real estate appraiser, a land use planner and a municipal law lawyer.

[12] On February 10, 2021, the Tribunal was advised by the Appellant that he would be calling three witnesses; a real estate agent and two retired residents from the local neighbourhood.

[13] On April 6, 2021, the Tribunal was informed that the Appellant would not be calling any witnesses. That same day he submitted 98 separate documents to the Case Coordinator in a disorganized fashion. One of the documents was a Freedom of Information request compilation of 259 pages of emails pertaining to a Committee of Adjustment decision at the time of the purchase of the subject lands by Habitat for Humanity Niagara.

[14] The Tribunal undertook a cursory review of the submitted documents prior to the hearing and did not find any planning evidence in the documents that would be of use in the determination of his appeal.

[15] These documents generally related to bonussing of subsidized housing and land

compensation issues, and included previous Tribunal decisions; MM140018 dealing with land compensation in downtown Toronto, and PL140636 dealing with a zoning by-law amendment for Habitat for Humanity in Toronto which was approved by the Tribunal.

[16] Some of the subject matter of these documents was raised by the Appellant and extensively dealt with at the previous CMC's, and determined by the Tribunal not to be land use planning matters relevant to this appeal.

[17] The agreed statement of facts prepared by the expert planning witnesses and submitted to the Tribunal indicates that the proposed zoning by-law amendment has regard for Section 2.1 of the *Planning Act*, conforms to the Provincial Planning Statement 2020, conforms with the Growth Plan for the Greater Golden Horseshoe 2019, and the Regional and City Official Plans.

[18] The expert witnesses have agreed that there are no land use planning concerns with the application, and no evidence is being provided by the Appellant to dispute this.

[19] The Tribunal's *Rules of Practice and Procedure* sets out in Rule 1.7 that:

The Tribunal expects compliance with these Rules and adherence to Tribunal orders arising from the application of these Rules, by all parties and participants to its proceedings. If a party or participant to any of its proceedings has not complied with a requirement of these Rules or a Tribunal order, such as a procedural order and any requirement included therein, then the Tribunal has the discretion to determine the consequences of non-compliance and may grant necessary relief or exercise any of its powers authorized by the legislation or regulation.

[20] The Appellant has confirmed that he will not be calling any planning evidence to support his appeal and has failed to comply with the Procedural Order.

ORDER

[21] The Tribunal orders that the appeal is dismissed.

"T. Prevedel"

T. PREVEDEL
MEMBER

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Local Planning Appeal Tribunal

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