

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



ISSUE DATE: April 28, 2021

CASE NO(S): PL200464

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:	Go-To Niagara Falls Chippawa Inc.
Subject:	Application amend Zoning By-law No. 79-200 - Refusal of Application by the City of Niagara Falls
Existing Zoning:	Residential Low Density, Grouped Multiple Dwellings (R4-324), in part, and Neighbourhood Commercial (NC-397), in part as amended by By-law No. 1996-56
Proposed Zoning:	Site Specific Residential Apartment 5B Density (R5B)
Purpose:	To permit the construction of a 4 storey, 77-unit apartment building
Property Address/Description	4210 Lyon's Creek Road
Municipality:	City of Niagara Falls
Municipality File No.:	AM-2018-011
LPAT Case No.:	PL200464
LPAT File No.:	PL200464
LPAT Case Name:	Go-To Niagara Falls Chippawa Inc. v. Niagara Falls (City)

Heard: March 26, 2021 by video hearing

APPEARANCES:

Parties

Counsel*/Representative

Go-To Niagara Falls Chippawa Inc. J. Meader*

City of Niagara Falls

P. Maloney*

Paul Krowchuk

self-represented

**MEMORANDUM OF ORAL DECISION DELIVERED BY HUGH S. WILKINS ON
MARCH 26, 2021 AND ORDER OF THE TRIBUNAL**

[1] Go-To Niagara Falls Chippewa Inc. (“Appellant”) appealed the refusal by the City of Niagara Falls (“City”) of a zoning by-law amendment relating to the property located at 4210 Lyon’s Creek Road (“subject property”).

[2] On March 26, 2021, the Tribunal held a Case Management Conference at which it addressed the identification of Parties and Participants, the identification of issues, the preparation of a draft Procedural Order, the setting of hearing dates, and opportunities for settlement discussions.

[3] Paul Krowchuk requested Party status. He lives and works close to the subject property and has been involved in the process from the start, including involvement at the public meeting and City Council sessions. His concerns relate to traffic, density, height, privacy, and compatibility issues. Neither of the statutory Parties opposed his request. The Tribunal found that there are reasonable grounds to add Mr. Krowchuk as a Party and that his presence is necessary to enable the Tribunal to adjudicate effectively and completely on the issues. The Tribunal granted him Party status as requested.

[4] Several individuals who live in the vicinity of the subject property requested Participant status. They have traffic, road safety, parking, infrastructure, flooding, height, density, compatibility and other related concerns. None of the Parties objected to these requests for status. The Tribunal granted Participant status to:

- Raymond Arsenault
- Susanne Bernier

- Mark Bocchinfuso
- John Brucato
- Donald Ede
- Danielle Garbutt
- Paul and Theresia Groot
- Shannon Groot-Kostuk
- Stanlee Hickey
- Robert Judge
- Kim Kohnle
- Margaret Louko
- Alex and Michele Mason
- Shelagh MacKay
- Gertrude Misk
- Sarah Morningstar
- Michael Quinn
- Rebecca Robertson
- Gerald St. George
- Ernie Spadzinski
- Reinhold and Margarete Spadzinski
- Lorie Weltz

[5] The Parties, including Mr. Krowchuk, stated that they had exchanged issues lists and would work together to prepare and file a final issues list and draft Procedural Order with the Tribunal. Subsequent to the CMC, the Parties filed, on April 27, 2021, a draft Procedural Order and consolidated Issues List, which the Tribunal has reviewed and approves.

[6] All of the Parties expressed an interest in engaging in settlement discussions, which the Tribunal encouraged. If the Parties decide to pursue mediation, the Tribunal urges them to promptly contact the Tribunal Case Coordinator and make a request for Tribunal-assisted mediation.

[7] The Tribunal scheduled a six-day appeal hearing.

ORDER

[8] The Tribunal approves the draft Procedural Order and Issues List appended as Attachment 1 to this Order and Decision.

[9] The Tribunal orders that the hearing of the appeal will commence by video hearing on **Monday, September 20, 2021 at 10 a.m. Six days** have been set aside for the hearing.

[10] Parties and participants are asked to log into the video hearing at least **15 minutes** before the start of the event to test their video and audio connections:

<https://global.gotomeeting.com/join/665057245>

Access code: **665 057 245**

[11] Parties and participants are asked to access and set up the application well in advance of the event to avoid unnecessary delay. The desktop application can be downloaded at [GoToMeeting](https://app.gotomeeting.com/home.html) or a web application is available:

<https://app.gotomeeting.com/home.html>.

Persons who experience technical difficulties accessing the GoToMeeting application or who only wish to listen to the event can connect to the event by calling into an audio-only telephone line: (Toll Free): [1 888 299 1889](tel:18882991889) and [+1 \(647\) 497-9373](tel:+16474979373) . The access code is **665 057 245**.

[12] Individuals are directed to connect to the event on the assigned date at the correct time. It is the responsibility of the persons participating in the hearing by video to ensure that they are properly connected to the event at the correct time. Questions prior to the hearing event may be directed to the Tribunal's Case Coordinator having carriage of this case.

[13] There will be no further notice.

[14] This Member is not seized.

"Hugh S. Wilkins"

HUGH S. WILKINS
MEMBER

If there is an attachment referred to in this document,
please visit www.olt.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

Ontario Land Tribunals

Local Planning Appeal
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ATTACHMENT 1

ISSUE DATE: April 28, 2021

CASE NO(S): PL200464

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990,

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To permit the construction of a 4 storey, 77 unit apartment
Building

Property Address/Description:
Municipality:
Municipality File No.:
LPAT Case No.:
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LPAT Case Name:

4210 Lyon's Creek Road
City of Niagara Falls
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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 **September 20, 2021** at 10 a.m.
3. The parties' initial estimation for the length of the hearing is **6** 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 **Schedule 1**.

5. The issues are set out in the Issues List attached as **Schedule 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 **Schedule 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 25, 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 **June 22, 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 **September 3, 2021**.
11. 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 13 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.
12. 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 13 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.
13. On or before **July 22, 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 22 below.

14. On or before **July 22, 2021** a participant shall provide copies of their written participant statement to the other parties in accordance with paragraph 22 below. A participant cannot present oral submissions at the hearing on the content of their written statement, unless ordered by the Tribunal.
15. On or before **September 3, 2021**, the parties shall provide copies of their visual evidence to all of the other parties in accordance with paragraph 22 below. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
16. On or before **August 23, 2021**, the parties shall provide copies of their reply witness statements and expert's reply witness statements, if any, to the other parties and to the LPAT case co-ordinator and in accordance with paragraph 22 below.
17. The parties shall cooperate to prepare a joint document book which shall be shared with the LPAT case co-ordinator on or before **September 6, 2021**.
18. 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.
19. 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.*
20. 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.
21. The parties shall prepare and file a preliminary [hearing plan](#) with the Tribunal on or before **September 6, 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.
22. All filing shall be electronic and in hard copy. 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*.

23. 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.

BEFORE:

Name of Member: Hugh S. Wilkins

Date: April 28, 2021

TRIBUNAL REGISTRAR

SCHEDULE 1**PARTIES AND PARTICIPANTS****Parties:****1. Go-To Niagara Falls Chippawa Inc. (representative)**

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2. City of Niagara Falls (representative)

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3. Paul N. Krowchuk

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Participants:

	Name	Address	Tel No:	Email
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21.	Gerald St. George	8699 Sodom Road		Gstgeorge1@cogeco.ca
22.	Robert Judge			rbjudge@hotmail.com

SCHEDULE 2**ISSUES LIST****City of Niagara Falls**

- 1) Is the proposed Zoning By-law amendment consistent with the Provincial Policy Statement as it relates to intensification and redevelopment that accommodates existing building stock within the area and the availability of suitable existing infrastructure?
- 2) Is the proposed Zoning By-law amendment consistent with the Provincial Policy Statement in providing an appropriate range and mix of housing options and densities?
- 3) Does the proposed Zoning By-law amendment conform to, or not conflict with, the Growth Plan for the Greater Golden Horseshoe as it relates to principles of managing growth, encouraging intensification within the Built-Up Area and achieving a compact urban form?
- 4) Does the proposed Zoning By-law amendment conform to the Region of Niagara Official Plan as it relates to intensification and the relationship with managing growth and housing?
- 5) Does the proposed Zoning By-law amendment conform to the City of Niagara Falls' Official Plan as it relates to the accommodation of growth through intensification, general intensification policies and housing?
- 6) Does the increase in height proposed in the Zoning By-law amendment conform to the City of Niagara Falls' Official Plan policies requiring a suitable and well designed development?
- 7) Does the proposed development conform to Policy 1.15 of the City of Niagara Falls' Official Plan related to the integration of the proposed development into the surrounding neighbourhood?
- 8) Does the proposed Zoning By-law amendment conform to the City of Niagara Falls' Official Plan policies related to the urban design?
- 9) Does the proposed development result in a built form that is of an appropriate scale and intensity?

Paul N. Krowchuk

- 1) Can the sewage and water infrastructure support this proposed development and what adverse effects will it have on neighbouring properties in Chippawa regarding said infrastructure?
- 2) Is there sufficient fire protection and stations to deal with fires at the proposed development?
- 3) Will the proposed development cause traffic congestion and such issues in the neighbouring streets?
- 4) Is the petition submitted relevant to this proposed development?

- 5) Is it appropriate to re-zone the property as requested (R5B) which is the highest density permitted?
- 6) Is the proposed development compatible with the neighbourhood landscape and existing land uses, housing mix, and adjacent land use as per the Official Plan?
- 7) Does the proposed development confirm with the City of Niagara Falls Official Plan regarding being compatible with adjacent land use designations and natural resources?
- 8) Is the site suitable for the proposed use, as is stipulated in the Official Plan?
- 9) Should exceptions to setback and height requirements be permitted?
- 10) Is there a need for this much density given the current housing inventory?
- 11) Does policy 1.3.1 of the Official Plan require the proposed development to be in proximity to commercial areas? If so, does the proposal conform to this policy?
- 12) Was the Niagara Falls City Council decision on this matter appropriate under all circumstances?

SCHEDULE 3

ORDER OF EVIDENCE

1. Go-To Niagara Falls Chippawa Inc.
2. City of Niagara Falls
3. Paul N. Krowchuk
4. Go-To Niagara Falls Chippawa Inc. in Reply, if any

ATTACHMENT 4**SUMMARY OF FILING DATES**

EVENT	DATE
List of Witnesses	May 25, 2021
Expert Witness Meetings	June 22, 2021
Participant Statements	July 22, 2021
Witness and Expert Witness Statements	July 22, 2021
Reply Witness Statements	August 23, 2021
Agreed Statement of Facts & Remaining Issues	September 3, 2021
Visual Evidence	September 3, 2021
Hearing Plan	September 6, 2021
Joint Document Book	September 6, 2021
LPAT Hearing Commences	September 20, 2021