

Ontario Land Tribunal, Case PL180376, Final Hearing (virtual), October 25 to November 5, 2021
Dale Chipman, Adjudicator

OPENING AND CLOSING STATEMENTS

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OPENING STATEMENT, October 25, 2021

“This is NOT just an ordinary city street. I wonder what danger there is of spoiling it?”

Those words? Spoken by Ontario Municipal Board member W. L. Greenwood, when tasked with adjudicating an appeal on River Road in 1962. Fast forward six decades ... His concerns echo loudly — in THIS case.

My name is Debra Jackson-Jones. I represent the group Citizens for Responsible Development as well as my neighbours and fellow citizens of Niagara Falls who are opposed to this development. We are opposed *because* ... River Road is not just an ordinary city street. It has long been the centre of controversy with an equally long history of **citizen advocacy — fighting to preserve its natural and cultural heritage**. And that is what this case is about.

We still hold true ... the 1983 independent study by Walker, Wright, Young and Associates that concluded — the low density residential neighbourhood should be preserved. — A recommendation ENDORSED by the Niagara Parks Commission at the time — in order to preserve the “scenic qualities associated with River Road and the Niagara River Parkway.”

True to the guiding principle of the provincial Growth Plan for the Greater Golden Horseshoe ... **to protect what is valuable** ... We stress the importance of that scenic River Road and Niagara Parkway — the continuous corridor that links our two great lakes ... as central to both our worldwide image and **sense of identity**. And ask the tribunal to duly consider the impact of over-developing — on this unique landscape.

FULL truth be known? As people who live here and pay taxes ... We find it bewildering — that this case is even before a tribunal.

Our taxes pay people to create our Official Plans ... And we elect officials whose mandate it is — to adhere to those plans. Our city planners and elected officials have spoken ... This development does not conform — to the city’s Official Plan ... And yet ... here we are.

At our last virtual meeting on August 31st... at the request of the appellant, our five concerns were removed from the Issues List — as it was felt they were covered in the city's list. Our decision to retain our party status and continue to be part of this process was not borne of malice — but of genuine concern over the future stability of the Niagara Gorge ... the safety of our homes ... and ultimately our lives.

So we are grateful — for this chance — to voice our concerns.

We trust — that our Regional Official Plan's objectives to **"conserve Niagara's distinctive character"**, and **"prevent site alterations that will have negative environmental impacts or pose hazards to life or property"** ... will be respected. And that Ontario's Provincial Policy Statement **"to prevent site alterations that will have negative environmental impacts or pose hazards to life or property"** ... will be given utmost consideration — when ruling on this development.

We will likely hear expert witnesses say they "don't expect" there to be issues with the stability of the gorge face ... nor will century old homes in the area experience any structural failures ... A lot of "I don't expect" ... "our studies show there will be no effects" ... and "nothing amiss — is anticipated." At no point will those experts say with **100 percent assurance** ... that the gorge face will not experience a failure ... or say **definitively** — that our homes or neighbourhood will be safe ... and that we, ourselves, will be safe.

Instead, we are expected to be placated by the successes of "Big Becky" and Grandview Plaza. But our familiarity with the "Big Becky" hydro tunnel project ... and the 630 million dollar cost overrun — due to **faulty geo-tech studies** ... has shaken our confidence — that this project can be achieved without incident.

And the excavation to make Grandview Plaza more accessible? Was 620 metres from the closest residence — not 12, as this project is.

One need only look to the recent building collapse in Florida, with the horrendous loss of life ... to see that experts — could not have foreseen the total failure of that structure ... And if you look directly across the Niagara Gorge from this proposed development ... you can see the ruins of the Schoellkopf Power Station that was destroyed in 1956 when the gorge wall collapsed, resulting in the death of one person. I'm sure the engineers and builders of that structure did not foresee its destruction. When asked ... the experts will tell you that the causes of that collapse had nothing to do with what is proposed on this side of the international border. But the same geological processes that went into creating the rock structure on the U-S side of the gorge ... also went into the creation of the rock structure on this side of the border. That same potential for collapse exists — potentially greater ... with the use of blasting. To this day ... the edge of the gorge above that fatal rock fall of 1956 ... is still off limits. A somber reminder — not to be ignored.

Design-wise? In the Expert Witness Statements of Planner Ryan Guetter and Architect Michael Spaziani ... We find opinions based on relationship to possible future projects — rather than the

established historic neighbourhood that actually currently exists. Much focus on how “Building B **generally** complies with the 45 degree angle ... and how step backs reduce the **perceived** height of a condo tower ...” Scarce mention of the residential community setting and character.

We believe Mr. Spaziani is indulging in artistic exuberance when describing this project as an “entrance gateway”... when the international Rainbow Bridge just one block over is already — just that. As for Mr. Guetter’s belief ... that the public realm design elements of a parkette and artificial water feature — in front of a condo tower — will enhance the natural landscape?

We citizens maintain ... you cannot enhance what is already perfect. — Oakes Garden Theatre and Queen Victoria Park ... are a block and two away. — And a 180 degree turn of your head ... gives you a view of one of the most spectacular natural water features and rock formations on our planet. THAT is the REALITY — in this case.

In short? Guidelines for development at all levels were established to provide a framework in general—but River Road cannot be classified in general terms. It is not Main Street Saskatchewan. It is a world-renowned destination — the stuff of myth and mystery, the subject of great art and setting for great literature. A natural wonder that deserves protection and has motivated generations of citizens to mobilize and defend it against exploitation. The 2009 OMB decision of seven stories ... should be upheld and considered a WIN for any developer — as it already exceeds the limits of what should be built on this land.

CLOSING STATEMENT, November 5, 2021

This has been a case of illusion. Dominated by talk of phantom towers — 60 and 61 storeys tall — looming large — in almost every drawing — every vista — every argument in support of the proposed development before this tribunal.

The problem with those two towers? Is two-fold:

They don’t exist — anywhere but on paper ...

And they are **absurd outliers**. So over-the-top tall they make surrounding structures — appear deceptively short — by comparison. And pose — as precedents — of absurd scale.

Yes... Zoning for 60 & 61 storey towers was approved in 2012 — by council and staff ... **But** on tourist commercial land — **not residential**. And there has been NO action, no progress on the planning file — in the 9 years since.

Yet? We sat through 5 days of testimony in relation to these phantom towers. Hearing how well the plans before us now ... transition ... to what may never exist. And the reasons — are clear.

Height-wise? It's a developer HOW TO — case study: Discover an absurd outlier ... Use it as your precedent ... And Presto! Your OWN outlier ... looks MINOR — by comparison.

Policy-wise? With respect to compliance with our Official Plan? It's a clever sleight of LAND — to shift focus from the fact THIS development is on **residential** property. Supposed to blend with the character of existing homes. And transition to the real RESIDENTIAL neighborhood it actually SITS IN ... NOT — phantom towers — that MAY appear — in the tourist commercial district.

Make no mistake — we the people? Were furious — those absurd outliers were ever approved. But there is ONE thing — THAT developer got RIGHT! ALL PARKING — ABOVE GROUND — NO BLASTING. Our number ONE concern ... in THIS case.

The proposed development itself? Has been a shape-shifter.

— **Appealed** to LPAT on the basis of non-decision as 21 and 12 stories

— A no-show at council — as 16 and 10, ... Rejected — as 34 and 10

— Finally appearing at this Tribunal ... as 29 and 10 storeys ...

Which we were told to see as 26 and 7 — from a different angle.

Now you see it ... now you don't. As if the illusion ... were the reality.

But as Mr. Bryce confirmed- Measured at River Road and John? Per actual policies in place for this site? They ARE — 29 and 10. BOTH too tall.

Special Policy 60? Allows 7 storeys — on this site.

The tower proposed? More than 4 times — the allowed.

A football field tall. Nearly twice the height of the Horseshoe Falls. **In a low-rise early 20th century residential neighbourhood.**

An absurd outlier — in its OWN right!

Mr. Guetter said this project would support intensification — and offer alternative living options. **But SO would a 7 storey apartment building** — as approved by the OMB in 2009!

Another illusion — in this proposal? Is HOW the heights are measured.

A confusing case of he-said-he said — over splitting the deck ... and levitation.

On the John Street side?

We learned ... the adjacent parcel of land was recently bought. . . to shift the 45 degree angular plane further back.

Reset the base-line — so a taller tower would fit under the plane. One gets the impression ... that if enough new parcels were purchased ... The whole development — could be made to disappear.

But as Mr. Bryce stated ... New developments are supposed to **BLEND** with the existing residential neighborhood — **not REPLACE** it.

On the Philip Street side? Proposed use of an imaginary line through the adjacent property — to shift the base-line away from an inconvenient closer corner. And on both sides? Angular plane measurements taken from 2 metres above ground — levitating the plane — to add storeys.

We were told by Ms. Baker ... That previously approved proposals for this site — had used that vantage point. To which Mr. Ahmad replied ... it was used — in **certain** circumstances

For we the people? This whole part of the presentation ... was an eye opener! How can guidelines and policies to **protect** us ... be that PRONE to **bending**!

If the developer gets his way? Susie Ong — living in her home on that adjacent property on Philip Street and welcoming B&B visitors? Will be robbed of sunshine — for hours a day.

The rest of us? Will lose an hour to an hour-and-a-half of morning sun. In developer speak? Fleeting - minor - negligible **shadow impact**.

From the football-field-high tower — **overlooking** us — at the foot of our street. On River Road.

And why? For what? Housing? That could be built anywhere.

THIS is about every developer's dream: location - location - location.

River Road. The higher? The better the view.

Had this development been proposed for any of the places zoned for its scale? I doubt very much we would be here.

But, IF it is the decision of the tribunal to allow this project to proceed?

As far as height is concerned? However many storeys are approved?

We the people IMPACTED by it ... ask for an end of the measurement illusion. One structure — one starting point. No imaginary lines. No levitation.

Mr. Guetter - stated - in his opinion ... that this proposed development would offer the residents “protection from the proposition of taller buildings.”

Which prompted me to ask a question I now submit to you, Madame Chair... Is it not the adherence to Official Plans and zoning bylaws that actually offer that protection? And does that protection not cease to exist when they are compromised ... ignored ... or overruled?

That ... is what’s at stake here. And rests on your decision.

Mr. Bryce reminded us “It is the municipality’s responsibility — to direct growth and ensure compatibility — with surrounding areas ...” And Mr. Guetter agreed ... that just as there has been evolution of thinking in design ... there has been evolution of growth patterns.

Beyond that? A lot of confusion over this area.

— **Conjuring false ideas** — of it being a planned gateway site.

— **Implying** this residential area is undergoing some sort of transition to tourism commercial mixed use.

When in fact? Rooms for Tourists and B&Bs have historically defined the culture of this district. And **BY LAW** ... They are accessory to **PRIMARY** residences only.

After focusing extensively on commercial zoning design guidelines ...

Mr. Spaziani admitted ... he “may have mis-spoke” in referring to B&Bs as emerging commercial — in what he called our “stable neighbourhood.” Any neighbor in **COMPLIANCE** with the **LAW**...

Could have dispelled that myth — before “mis-spoken.”

We believe Mr. Spaziani to be a man of obvious professional integrity and vision. He understands how important the view to the gorge is to those of us living here ... And fully supports the current proposal — with all the changes he made. Admittedly beautiful plans. Just too grand a scale — for this site.

But his connection to this project ... will disappear — after this tribunal.

At which point? His design changes — the public realm elements he insisted on? Could also disappear ... Or MORPH — again.

So what we saw? Could bear little resemblance to what is built if this is approved!

What Mr. Spaziani did confirm design-wise? Was that it would be possible — for all parking ... to be above ground. To avoid blasting.

Item number one — on our citizens’ wish list. And final focus — of my submission.

We heard how Mr. Telesnicki ... The geo-technical expert — rock scientist ... of vast experience and connection to this project ... will also disappear — after this tribunal. We thank him ... For his diligence ... His respectful submission of facts — without losing us ... And his professional courteous responses — to my layperson's questions. Residents' concerns were heard ... And assurances given ... But I am afraid those concerns still exist — based on what we learned and didn't learn — from Mr. Telisnicki's testimony.

— He could not say what exists underground beyond the four boreholes.

— Told us NO inspection of the century homes adjacent to and nearby the site would be done until just before excavation — to prove pre-blasting condition. — Why? In case of **damage** claims?

— And River Road traffic and pedestrians would have to be rerouted to protect them. **Protect them from what?** And what about those of us on the other two streets fronting the development?

We appreciated Madame Chair's questions.

— About 'blow back' of blasting — how far back would it go?

— And would blasting be required — for new water mains?

Because our 100+ year-old homes ... have basement walls of rock left over from excavating. And these random rubble stone foundations will be relying on a lot of "ifs" ... **if** this proposed development is approved.

If the study conclusions were right ...

If the blasting is done correctly ...

If the gorge face remains stable ...

A full-time observer of this Tribunal — watching from her home 3 blocks northwest and uphill of the proposed development site ... Submitted a Participant Statement citing concern over blasting 3 storey's for parking, given the fact that sewer line replacement work involving blasting actually caused cracks in her foundation and walls. So - with all due respect - Madame Chair ... I am sure you will understand ... Hearing the geo-tech expert glibly say, "Closing doors would do more damage than blasting" ... put a crack in the credibility of his assurances — for that participant ... and ALL of us!

Mr. Telesnicki told us his primary concern for rock failure by blasting? Is the gorge overhang. Well, that rock continues under River Road, and the subject site, and our entire neighborhood. So we the people still believe less excavation would mean less potential for harm — to both our homes and the gorge. And given that the gorge is home to vibration-sensitive bats ... We ask this tribunal to err on the side of caution in its decision — to protect us all.

ILLUSION - by definition ... is a thing presented in such a way as likely to be wrongly perceived or interpreted. Citizens for Responsible Development – sincerely hope, Madame Chair, you will see through the illusions in this case – to the bottom-line realities.

The reality of the neighborhood is ... people LIVE there. Full time.

And River Road IS ... NO ordinary street.

It's a scenic route - because of what's on both sides.

To the east? The gorge and river.

To the west? Character homes - in a heritage residential neighborhood.

OPA 86 - Removed the land on this site from the Clifton Hill Tourist Subdistrict — for a reason. To keep it residential. We ask that policies and guidelines respecting what that entails be upheld.

This site needs to be developed — but properly. In context.

Intensification is good — we need it.

But to change the zoning and alter our city's Official Plan — to this extent? To allow intensification to this level – in this neighborhood?

In the opinion of the people who live here?

Would impact — what we have — too greatly.

- We the people hold hope ... for the best-case scenario: That the existing zoning will be left as is - To keep our neighborhood in character — on a human scale.
- If it is decided this development may proceed? We ask for consideration of two meaningful changes: Elimination of blasting — by moving parking — above ground ... And true - fair - thoughtful reduction in the number of storeys.

In the people's opinion? Great building - wrong location — unless you live in it.

Great view - if you do! But there is far more at stake here ... than the view. **On this far from ordinary street.**