

Ontario Land Tribunals

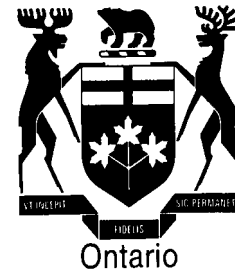
Local Planning Appeal Tribunal

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Toronto ON M5G 1E5
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Toll Free: 1-866-448-2248
Website: www.olt.gov.on.ca

Tribunaux de l'aménagement du territoire Ontario

Tribunal d'appel de l'aménagement local

655 rue Bay, suite 1500
Toronto ON M5G 1E5
Téléphone: (416) 212-6349
Sans Frais: 1-866-448-2248
Site Web: www.olt.gov.on.ca



PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: 5507 River Development Inc.
Subject: Request to amend the Official Plan - Failure of the City of Niagara Falls to adopt the requested amendment
Existing Designation: Residential and Special Policy Area
Proposed Designated: Special Policy Area
Purpose: To permit a 390-unit apartment building, with a 21 storey and a 12 storey tower and underground parking
Property Address/Description: 5471, 5491, 5507 River Rd, 4399, 4407, 4413, 4427
Municipality: City of Niagara Falls
Approval Authority File No.: AM-2017-011
LPAT Case No.: PL180376
LPAT File No.: PL180376
LPAT Case Name: 5507 River Development Inc. v. Niagara Falls (City)

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

Applicant and Appellant: 5507 River Development Inc.
Subject: Application to amend Zoning By-law No. 79-200 – Refusal or neglect of City of Niagara Falls to make a decision
Existing Zoning: Residential Apartment 5E Density (R5E-840), in part, Parking (P-841), in part, and Residential Single Family and Two Family (R2-2), in part
Proposed Zoning: Residential Apartment 5F Density (site specific)
Purpose: To permit a 390 unit apartment building, with a 21 storey and a 12 storey tower and underground parking
Property Address/Description: 5471, 5491, & 5507 River Rd, 4399, 4407, 4413, & 4427 John St
Municipality: City of Niagara Falls
Municipality File No.: AM-2017-011
LPAT Case No.: PL180376
LPAT File No.: PL180377

APPOINTMENT FOR HEARING BY VIDEO

The Local Planning Appeal Tribunal (“Tribunal”) will conduct a hearing by video for this matter.

This hearing will be held:

AT: 10:00 AM

ON: Monday May 31, 2021

**AT: <https://global.gotomeeting.com/join/334551693>
Access code: 334-551-693**

The Tribunal has set aside **15 day(s)** for this hearing.

The event will be held using the [GoToMeeting](https://global.gotomeeting.com/join/334551693) service. Parties and participants are asked to log into the video hearing <https://global.gotomeeting.com/join/334551693> at least **15 minutes** before the start of the event to test their video and audio connections. 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://global.gotomeeting.com/join/334551693) or a web application is available: <https://app.gotomeeting.com/home.html>. A compatible web browser for this service is Chrome.

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: Canada (Toll Free): [1 888 455 1389](tel:18884551389) or Canada: [+1 \(647\) 497-9391](tel:+16474979391). The access code is **334-551-693**.

This event date is firm – adjournments will not be granted except in the most serious circumstances, and only in accordance with the Tribunal’s *Rules of Practice and Procedure* (“Rules”, see Schedule C) on adjournments. If you do not attend the event, the Tribunal may proceed in your absence and you will not be entitled to any further notice of these proceedings.

This event is conducted under Rule 20 of the Tribunal’s Rules (see Schedule C). Rule 20.2 sets out how a party may object to the Tribunal conducting this event electronically. Any party may object to the Tribunal holding this event by video by filing an objection with the Tribunal’s Case Coordinator, which must be copied to the other parties, **within 7 days** of the date of this notice. All contact information is included in Schedule A.

SUBMISSION REQUIREMENTS

A party intends to refer to a document that is not in the Tribunal’s case file, the document is expected to be pre-filed, where possible, in paper copy and electronically with the Tribunal **at least 5 days** before the date of the event, unless another filing date is specified in a procedural order or in the Tribunal’s Rules. All pre-filed documents shall be served on the other parties electronically. All contact information is included in Schedule A.

Submissions **larger than 10MB** must be transferred to the Tribunal's Case Coordinator using an electronic file sharing link/service. Please see Schedule B for further submission requirements.

FURTHER DIRECTIONS

Tribunal proceedings are open to the public and all documents filed in a proceeding will be included in the Tribunal's public file (except those documents that may be deemed confidential in accordance with section 33(3) of the *Local Planning Appeal Tribunal Act, 2017*, as amended).

The Tribunal shall issue a disposition following the event that will set out the directions of the Tribunal. A copy of this decision may be obtained from the Tribunal's website (<https://olt.gov.on.ca/tribunals/lpat/e-decisions/>) by referencing the above case number.

Please see Schedule C for relevant excerpts from the Tribunal's Rules.

Pour recevoir des services en français, veuillez communiquer avec le Tribunal au (416) 212-6349, au moins 20 jours civils avant la date fixée pour l'audience.

We are committed to providing accessible services as set out in the *Accessibility for Ontarians with Disabilities Act, 2005*. If you have any accessibility needs, please contact our Accessibility Coordinator as soon as possible by emailing ELTO@ontario.ca. If you require documents in formats other than conventional print, or if you have specific accommodation needs, please let us know so we can make arrangements in advance.

DATED at Toronto, this 06th day of January, 2021.

Becky Fong
Registrar

SCHEDULE A

PLEASE NOTE:

During the Provincial Emergency Order, please check the Tribunal's website (<https://olt.gov.on.ca/covid-19/>) for information on service changes affecting how to submit documents to the Tribunal.

LIST:

Please provide materials in paper copy and electronically to the assigned Tribunal Case Coordinator Shane Taylor at Shane.Taylor@ontario.ca.

On the same day that documents are submitted to the Tribunal, electronic copies are to be submitted to:

The Clerk (Niagara Falls)
City of Niagara Falls
P.O. Box 1023 4310 Queen Street
Niagara Falls, ON
L2E 6X5
billmatson@niagarafalls.ca

Daniel Artenosi
Overland LLP
Yonge-Norton Centre 5255 Yonge Street, Suite 1101
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Kenneth Westhues
kwesthue@uwaterloo.ca

SCHEDULE B

INSTRUCTIONS FOR ELECTRONIC PRE-FILING SUBMISSIONS

Submission requirements to organize the video hearing

If a party intends to refer to a document at the video hearing (for clarity, any document that is not in the Tribunal's case file), the document is expected to be pre-filed, where possible, in paper copy and electronically with the Tribunal at **least 5 days** before the date of the video hearing and provided to all parties and participants. The deadline applies unless otherwise specified in the Rules or an established Procedural Order.

Submission emails **under 10MB** in size may be emailed directly to the assigned Tribunal Case Coordinator. Emails **larger than 10MB** must be transferred to the Tribunal's Case Coordinator using an electronic file sharing link/service to avoid sending documents across multiple email parts. Where appropriate, documents are to be submitted in .pdf format.

Naming convention

To assist the Tribunal and the adjudicator during the event, it is important that all submissions are **paginated and labelled appropriately** to clearly identify the content of each document. Where a document contains numerous sections, each section is to be indexed to a table of contents.

Parties are asked to adhere to the following naming convention: **case number_party role_ document type_ date of hearing event**.

For example: PL123456_Applicant_Notice of Motion_Jan 1, 2020

Please see Rules 7.1 and 7.2 for the standard document submission requirements.

SCHEDULE C

EXCERPT FROM LOCAL PLANNING APPEAL TRIBUNAL'S *RULES OF PRACTICE AND PROCEDURE*, ON DOCUMENTS, EXHIBITS, FILING, SERVICE, ROLES OF PARTIES, ADJOURNMENTS AND ELECTRONIC HEARINGS. THE FULL DOCUMENT IS AVAILABLE ON THE TRIBUNAL'S WEBSITE.

RULE 7

DOCUMENTS, EXHIBITS, FILING, SERVICE

7.1 Form of Documents Unless otherwise directed by the Tribunal, every document filed or introduced by a party or participant in a proceeding shall be legible and prepared on letter size paper (8 ½" x 11"), except for large documents such as plans or surveys, and, where bound together with other documents, shall have each page numbered consecutively, throughout the entire text or within tabs, including any graphic content. Wherever possible, an electronic copy of the document must also be filed with the Tribunal, identically numbered as the paper document.

7.2 Other Exhibits Large graphic or other such types of visual evidence should not be glued to foam or other boards. They shall be on paper and be removed from the boards following the hearing event, and folded to 8 ½" x 11". Three-dimensional models must be photographed, and the photographs must be introduced with the model. Visual evidence must be reviewed by the other parties before the hearing event or by an earlier date if set out in a procedural order.

7.3 Copies of Documents for Parties and the Municipal Clerk A party who intends to introduce a document as evidence at a hearing event shall provide a copy of the document to all the parties at the beginning of the proceeding or by an earlier date if that is required by the terms of a procedural order or otherwise directed by the Tribunal. If the document is an official plan, those parts of the plan to be referred to at the hearing event should be distributed to the parties, and a copy of the entire plan must be made available to the Tribunal Member(s). If the Tribunal orders that the clerk of the municipality keep copies of documents for public inspection, they do not need to be certified copies, unless a party objects that they are not authentic copies.

7.4 Prefiling of Witness Statements and Reports If a hearing is expected to last more than 5 days, the Tribunal may require that parties calling expert or professional witnesses serve on the other parties and file with the clerk of the municipality any expert witness statements and reports prepared for the hearing, at least 30 days in advance of the commencement of the hearing, unless otherwise directed by the Tribunal. The Tribunal may in its discretion, or at the request of a party, also make this prefiling order for hearings expected to last fewer than 5 days. The expert witness statement must contain:

- (a) an executed acknowledgment of expert's duty form (attached to these Rules) and expert's qualifications;
- (b) the issues the expert will address, their opinions on these issues, the reasons that support their opinions and their conclusions; and
- (c) a list of the reports or documents, whether prepared by the expert or by someone else, that the expert will refer to at the hearing.

The expert's complete report may be filed instead of this statement if it contains the required information.

An expert may not be permitted to testify if this statement or report is not served on all parties and filed with the clerk of the municipality when so directed by the Tribunal.

7.5 Duty of the Expert Witness It is the duty of every expert engaged by or on behalf of a party who is to provide opinion evidence at a proceeding under these Rules to acknowledge, either prior to (by signing the acknowledgment form attached to the Rules) or at the proceeding, that they are to:

- (a) provide opinion evidence that is fair, objective and non-partisan;
- (b) provide opinion evidence that is related only to the matters that are within the expert's area of expertise;
- (c) provide such additional assistance as the Tribunal may reasonably require to determine a matter in issue; and
- (d) acknowledge that these duties prevail over any obligation owed by the expert to the party by whom or on whose behalf he or she is engaged.

7.6 Other Witnesses The Tribunal may also require that a witness who is not presenting expert evidence provide a witness statement. A witness statement should contain (a) a short written outline of the person's background experience, and interest in the matter, (b) a list of the issues that they will discuss, and (c) a list of reports that they will rely on at the hearing. The Tribunal may decline to allow the witness to testify if this statement is required by the Tribunal and has not been provided to the other parties.

7.7 Participant Statements A person who wishes to participate in a proceeding as a participant, shall file a written participant statement that sets out their position on the matter and issues of the proceeding, together with an explanation of their reasons in support of their position. A participant may only make submissions to the Tribunal in writing unless participant status was conferred by the Tribunal in a procedural order that was issued prior to September 3, 2019. In that case, the person conferred participant status may make an oral submission to the Tribunal and be cross-examined by parties on the content of their oral submission or the content of their written participant statement pursuant to the procedural order. In all circumstances, the Tribunal may direct a participant to pre-file their statement in advance of a hearing event with the Tribunal and all of the parties to the proceeding.

7.8 Amendment of Documents Documents filed with the Tribunal can only be amended with the consent of the parties or by a Tribunal Order. The Tribunal may require that the person requesting an amendment do so by way of a motion under Rule 10.

7.9 Copies of Tribunal Documents A person may examine any document filed with the Tribunal and copy it after paying the Tribunal's fee, unless a statute, a Court Order, a Tribunal Order or these Rules provide otherwise. Persons, including participants in the proceeding wishing to review expert witness statements and reports, may also do so at the Clerk's office when the Tribunal directs that witness statements or reports are to be filed at the municipality.

7.10 Return of Exhibits Exhibits of all types introduced at a hearing will be kept for

180 days after the Tribunal decision issues. The person introducing an exhibit may ask for its return after this time, and it may be given back if the Tribunal agrees. If no such request is made, the exhibit becomes the property of the Tribunal and may be archived.

7.11 Service by Personal Service or Electronic Service Where any document is required to be served or filed, including the one commencing a proceeding or a motion or providing notice, it shall be served by personal service, registered mail or electronically (unless a statute or the Tribunal requires another method of service) and shall be sent to:

- (a) the party's representative, if any;
- (b) where the party is an individual and is not represented, to that party directly, where that party has provided an address for service and/or an e-mail address;
- (c) where that party is a corporation and is not represented, to the corporation directly, to the attention of an individual with apparent authority to receive the document;
- (d) where served on or filed with a local board or commission, or any department, ministry or agency of the federal, provincial or municipal government, to an individual with apparent authority to receive the document; or
- (e) where served on or filed with the Tribunal, to the Registrar, or assigned administrative staff.

Subject to Rule 7.11, if a document is served by e-mail, then service is effective on the date of service.

7.12 If Served Electronically After 4:30 p.m. Any document served electronically after 4:30p.m. is deemed to have been served on the next business day.

7.13 Proof of Electronic Service A confirmation printout received by the sender is proof of the full transmission and receipt of the electronic service.

RULE 8

ROLE AND OBLIGATIONS OF A PARTY

8.1 Role and Obligations of a Party Subject to Rule 8.2 below, a person conferred party status to a proceeding before the Tribunal may participate fully in the proceeding, and by way of example may:

- (a) Identify issues raised in a notice of appeal for the approval of the Tribunal;
- (a) Bring or respond to any motion in the proceeding;
- (b) Receive copies of all documents and supporting information exchanged, relied upon or filed in connection with any hearing event conducted in the proceeding;
- (c) Present opening and closing submissions at the hearing;
- (d) Present and examine witnesses and cross-examine witnesses not of like interest;
- (e) Claim costs or be subject to a costs award when ordered by the Tribunal; and
- (f) Request a review of a Tribunal decision or order as set out in Rule 25.

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

8.3 Non-Appellant Party A party to a proceeding which arises under any of Subsections 17(24) or (36), Subsection 34(19) or Subsection 51(39) of the *Planning Act* who is not an Appellant of the municipal decision or enactment may not raise or introduce a new issue in the proceeding. The non-Appellant party may only participate in these appeals of municipal decisions by sheltering under an issue raised in an appeal by an Appellant party and may participate fully in the proceeding to the extent that the issue remains in dispute. A non-Appellant party has no independent status to continue an appeal should that appeal be withdrawn by an Appellant party.

8.4 Common Interest Class Where the Tribunal is of the opinion that more than one party is of common interest with another party or other parties, the Tribunal may, on its own initiative or on the request of any party, appoint a person of that class of parties to represent the class in the proceeding.

RULE 17

ADJOURNMENTS

17.1 Hearing Dates Fixed Hearing events will take place on the date set unless the Tribunal agrees to an adjournment. Adjournments will not be allowed that may prevent the Tribunal from completing and disposing of its proceedings within any applicable prescribed time period.

17.2 Requests for Adjournment if All Parties Consent If all of the parties agree, they may make a written request to adjourn a hearing event. The request must include the reasons, a suggested new date, and the written consents of all parties. However, the Tribunal may require that the parties attend in person or convene an electronic hearing to request an adjournment, even if all of the parties consent. The consenting parties are expected to present submissions to the Tribunal on the application of any prescribed time period to dispose of the proceeding.

17.3 Requests for Adjournment without Consent If a party objects to an adjournment request, the party requesting the adjournment must bring a motion at least 15 days before the date set for the hearing event. If the reason for an adjournment arises less than 15 days before the date set for the hearing event, the party must give notice of the request to the Tribunal and to the other parties and serve their motion materials as soon as possible. If the Tribunal refuses to consider a late request, any motion for adjournment must be made in person, at the beginning of the hearing event.

17.4 Emergencies Only The Tribunal will grant last minute adjournments only for unavoidable emergencies, such as illnesses so close to the hearing date that another representative or witness cannot be obtained. The Tribunal must be informed of these emergencies as soon as possible.

17.5 Powers of the Tribunal upon Adjournment Request The Tribunal may,

- (a) grant the request;
- (b) grant the request and fix a new date or, where appropriate, the Tribunal will schedule a case management conference on the status of the matter;
- (c) grant a shorter adjournment than requested;
- (d) deny the request, even if all parties have consented;
- (e) direct that the hearing proceed as scheduled but with a different witness, or evidence on another issue;
- (f) grant an indefinite adjournment, if the Tribunal finds no substantial prejudice to the other parties or to the Tribunal's schedule and the Tribunal concludes the request is reasonable for the determination of the issues in dispute. In this case a party must make a request, or the Tribunal on its own initiative may direct, that the hearing be rescheduled or resumed as the case may be;
- (g) convert the scheduled date to a mediation or case management conference;
- (h) issue a Notice of Postponement, in the event the proceeding is an appeal of a Planning Act matter subject to O. Reg. 102/18 under LPATA; or
- (i) make any other appropriate order.

RULE 20

ELECTRONIC HEARINGS

20.1 Hearing Events by Teleconference or Videoconference The Tribunal may hold a hearing event by electronic hearing for the determination of any issue in the proceeding. Where the Tribunal directs that a hearing event be held by electronic hearing, the Tribunal may direct a party to make the necessary arrangements and to give notice of those arrangements to the Tribunal and other parties.

20.2 Objection to the Electronic Format A party who objects to a hearing event being held as an electronic hearing shall notify the Tribunal and all other parties of its objection within the time period specified in the notice of the electronic hearing. The objecting party shall set out the reasons why the electronic hearing is likely to cause the objecting party significant prejudice and may refer to the matters set out in Rule 20.5.

20.3 Response to Notice of Objection The Tribunal may request a written response from other parties to the objection of an electronic hearing within a time period set out by the Tribunal.

20.4 Procedure When Objection is Received If the Tribunal receives an objection to hold a hearing event by electronic hearing, it may:

- (a) accept the objection, cancel the electronic hearing, and schedule an oral or written hearing; or,
- (b) if the Tribunal is satisfied, after considering any responding submissions and the factors included in Rule 20.5, that no significant prejudice will result to a party, then the Tribunal will reject the objection and proceed with the electronic hearing.

20.5 Factors the Tribunal May Consider The Tribunal may consider any relevant factors in deciding to hold a hearing event by electronic hearing, such as,

- (a) the convenience to the parties and the Tribunal;
 - (b) the likelihood of the process being less costly, faster, and more efficient;
 - (c) whether it is a fair and accessible process for the parties;
 - (d) the desirability or necessity of public participation in or public access to the Tribunal's process;
 - (e) whether the evidence or legal issues are suitable for an electronic hearing; (f) whether credibility may be an issue and the extent to which facts are in dispute;
- or
- (f) whether an electronic hearing is likely to cause significant prejudice to any party or participant.

20.6 Directions for the Electronic Hearing The Tribunal may direct the arrangements for the electronic hearing or designate an approved location for videoconference to protect the integrity of the hearing process, including the security and confidentiality of evidence.

20.7 Videoconferences The Tribunal shall pre-approve all arrangements for conducting a hearing event by videoconference, including the pre-filing and exchange of motion materials, documents, written submissions or any visual and written evidence,

and the locations for the conference. If a party or participant intends to request that the Tribunal accept any information, statement or material as an exhibit at a videoconference, such information, statement or material shall be prefiled with the Tribunal and provided to all parties or participants in accordance with the Tribunal's directions for conducting a hearing event by videoconference.

20.8 The View of the Camera A party's representative or a witness in a videoconference shall be in view of the camera, with minimal visual obstructions, in the course of their presentations or submissions to the Tribunal. Where a witness is being examined or crossexamined, there shall be a split screen view of both the witness and the person conducting the examination or cross-examination. Any document that may be referred to by parties or their witnesses shall be visible and legible to the Tribunal and all other parties to the conference, either by the camera or by referring to a copy of the document exchanged in accordance with the Tribunal's directions.

February 25, 2020