

**OLT-21-001728: Similarities to and differences from OMB-PL120425**

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To: Zwarycz, Tamara (MAG) <Tamara.Zwarycz@ontario.ca>

Cc: Rocky Vacca <rvacca@sullivan-mahoney.com>; Tom Halinski <thalinski@airdberlis.com>; Naomi Mares <nmares@airdberlis.com>; dljacksonjones1@gmail.com <dljacksonjones1@gmail.com>; writeon@sympatico.ca <writeon@sympatico.ca>; John Garrett <j.garrett@sympatico.ca>

Bcc: Anne Westhues <awesthue@hotmail.com>

 1 attachments (16 KB)

OLT-21-001728VEALSimDiff.docx;

Dear Ms. Zwarycz:

To save time at next week's hearing of this case, please find attached a one-page listing of five similarities and ten differences between it and an OMB case in 2012, *Veal v. City of Niagara Falls*.

I referred to the *Veal* case ten months ago, in May 2022, when the Tribunal was trying to decide how many days to set aside for the hearing of the present case. I said this case was in great part a replay of the *Veal* case.

Mr. Vacca sent you an unqualified, categorical, absolute reply. He said "the statement that this case is a replay of that case is entirely false."

Now in an email to the Tribunal on 13 March 2023, Mr. Vacca asserts that the OMB case of 2012 has no relevance to the current proceeding, and that he intends to raise this objection at the start of the hearing on 30 March.

I hope the attached listing of factual similarities and differences between the two cases will permit Mr. Vacca to make his objections more specific, and will be helpful to the Tribunal in arriving at a sound decision about how much and what kind of relevance the case of *Veal v. City of Niagara Falls* has to the present case.

Respect and kind regards to the Tribunal, Parties and Participants,

Kenneth Westhues

Appellant

**Similarities and differences** between the present case, OLT-21-001728, and an OMB case in 2012, PL120425, Veronica Veal v. City of Niagara Falls

K. Westhues, Appellant, 22 March 2023

### Similarities

1. As in the Veal case, a single-detached dwelling in a residential zone of Niagara Falls is proposed to be spot-zoned for vacation rental – 4080 Hickson Avenue in 2012, 5411 River Road now.
2. As in the Veal case, the dwelling has been used illegally as vacation rental for more than five years and has been the subject of complaints from neighbouring residents.
3. As in the Veal case, the City supports the spot-zoning.
4. As in the Veal case, the neighbour immediately adjacent has appealed to the provincial tribunal and is self-represented.
5. Rocco Vacca and Andrew Bryce play the same roles in both cases, Mr. Vacca as Counsel for the Applicant and Mr. Bryce as expert witness for the City, and I, too, have been involved in both cases, as witness for the Appellant in 2012 and now as Appellant myself.

### Differences

1. The rezoning application for 4080 Hickson Avenue was made by the owners, while the application for 5411 River Road is made by the lessee, John Pinter, owner of a business called “Niagara Historic Inns and Vacation Rentals.”
2. The 2012 application was for one property, 4080 Hickson Avenue, while the present application was initially for a “hybrid inn” composed of six properties, all of which were eventually dropped from the application except for 5411 River Road, now proposed for vacation rental.
3. The applicants for 4080 Hickson Avenue did not run any other nearby tourist establishments, while the applicant for 5411 River Road is associated with past, current, or planned tourist businesses, legal or illegal, at six additional nearby properties: 4465 Eastwood, 5287, 5359, 5395, 5401 and 5427 River Road.
4. The City consistently supported the proposal to approve 4080 Hickson Avenue for commercial use as tourist accommodation, while in the case of 5411 River Road, the City changed from disapproving the proposal in February 2021 to approving it in August 2021.
5. The OLT generally gives more weight to the *Provincial Policy Statement* now than its predecessor, the OMB, did in 2012, and the *PPS* now makes housing a higher priority.
6. In 2012, the City’s *Official Plan* was silent about vacation rentals, so that spot-zoning 4080 Hickson Avenue for vacation rental did not require an *Official Plan* Amendment (OPA), only a Zoning By-law Amendment (ZBA). Since 2021, the *Official Plan* (OPA 127) includes a general restriction of vacation rentals to commercial zones, so that spot-zoning 5411 River Road for vacation rental requires both an OPA and a ZBA.
7. Unlike in 2012, the *Official Plan* now also includes (OPA 127) a list of criteria to be considered if a dwelling in a residential zone is proposed to be approved, by OPA and ZBA, for vacation rental.
8. Among the new criteria listed in the *Official Plan* is compliance with the requirements of the City’s new B&B and vacation rental licensing by-laws, 2021-57 and 2021-99.
9. Unlike 4080 Hickson Avenue, 5411 River Road is in what the *Official Plan* defines as the “River Road Satellite District,” the only residential area of the City in which the *Official Plan* explicitly states that “no commercial uses shall be permitted” (S. 4.2.38).
10. Unlike in the Veal case, the Applicant in the present case has hired an expert planning witness (Mr. Butler), and the City is represented by outside counsel (Mr. Halinski and Ms. Mares).