Case No. PL180803

LOCAL PLANNING APPEAL TRIBUNAL

IN THE MATTER of subsections 34(11) of the Planning Act, R.S.O. 1990, c. P.13, as amended;

AND IN THE MATTER of an appeal from Council's refusal to approve an application by Two Sisters Resorts Corp. for an amendment to the Town of Niagara-on-the-Lake Zoning By-law to permit a hotel and conference centre development at 144 and 176 John Street, Niagara-on-the-Lake, in the Regional Municipality of Niagara (the "Subject Lands")

LPAT Case Number:	PL180803
LPAT File Number:	PL180803
Municipality:	Niagara-on-the-Lake
Property Location:	144-176 John St. E.
Applicant/Appellant:	Two Sisters Resorts Corp.

RESPONDING CASE SYNOPSIS ("RCS") ON BEHALF OF THE TOWN OF NIAGARA-ON-THE-LAKE

DATED: January 25, 2019

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Abbreviations for Documents filed with the Tribunal:

ACS	Appellant's Case Synopsis
AR	Appeal Record
EBR	Existing By-law Record
EMR	Enhanced Municipal Record
PAR	Proposed Amendment Record
RAR	Responding Appeal Record
RCS	Responding Case Synopsis

PRELIMINARY MATTERS

POSTPONMENT PENDING THE RAIL DECK CASE DECISION

1. The Tribunal should only consider the Non-Decision Record in deciding this appeal. The Non-Decision Record consists of the Enhanced Municipal Record ("EMR"), the Existing By-law Record ("EBR") and the Proposed Amendment Record ("PAR"). The Tribunal should not consider new evidence/opinions contained in Affidavits filed as part of any Appeal Record. "New" refers to evidence/opinions not found in the Non-Decision Record.

Reference: EMR
EBR and PAR
Responding Appeal Record ("RAR") Vol. 2, Tabs B and C

2. The LPAT Decision dated October 25, 2018 (PL180210) was the 1st Decision under the new Bill 139 regime ("the Rail Deck Case Decision"). Among other matters, the Rail Deck Case Decision stated the following case to the Divisional Court:

1. Since the terms "examine" and "cross-examine" have different meanings under the *Statutory Powers Procedure Act*, does the term "examine" as used in subsection 42(3)(b) of the *LPAT Act* and section 3 of O.Reg. 102/18 preclude the ability of a party to cross-examine a witness?
2. With respect to a hearing pursuant to subsections 38(1) and 38(2) of the *LPAT Act*, do the principles of natural justice and procedural fairness allow the parties an opportunity to ask questions of a witness called and examined by the Tribunal?
2.a. If the answer to Question 2 is "yes", are their questions limited to matters arising from the questions asked by the Tribunal?
3. With respect to a hearing pursuant to subsections 38(1) and 38(2) of the *LPAT Act* and where the Tribunal directs production of affidavits pursuant to subsection 33(2)(c) therein, does the limitation in subsection 42(3)(b) of the LPAT Act and in section 3 of O.Reg. 102/18 prevent the cross-examination of an affiant before a hearing and the introduction of a cross-examination transcript in a hearing?
3.a If the answer to Question 3 is "no", can the evidence obtained in cross-examination be referred to in submissions in a hearing?

In addition, the Divisional Court will be asked to consider a 4th question (although it is unclear whether the Court will, in fact, consider the question):

Does the LPAT have jurisdiction to require the parties to provide additional evidence to the Tribunal?

Reference: Craft Acquisitions Corp v Toronto (City) – LPAT PL180210 -- October 25, 2018; Responding Case Synopsis ("RCS") Tab 1
Craft Acquisitions Corp v Toronto (City) (29 November 2018), Toronto 723/18 (Ont. Div. Ct); RCS Tab 2

3. The Town understands that the Divisional Court has set April 25, 2019 to hear the Tribunal's stated case. The Divisional Court's Decision will inform the appropriate adjudication of this appeal. In the event a decision is not made before the scheduled Case Management Conference, this appeal should be postponed pending the Divisional Court's Decision.

LIMITATIONS ON FACTUAL REVIEW

4. The Appellant's Case Synopsis ("ACS") and its review of the facts does not contain the required references from the combined records (EMR or Appeal Record ("AR")) by volume, tab, page and line number. This omission has hampered the Town's ability to specifically agree with or dispute the facts identified by the Appellant as required by the LPAT Rules. In these circumstances, the Town summarizes all relevant facts in paragraphs 11-34 of this RCS.

Reference: Rule 26.13 e and 26.13 (2) – LPAT Rules, RCS, Tab 4

OVERVIEW OF TOWN'S POSITION

FAILURE OF THE EXISTING BY-LAW TEST

5. After holding a hearing, the Tribunal shall dismiss the appeal unless it determines that the existing part or parts of the by-law that would be affected by the appeal are inconsistent with a policy statement issued under Section 3(1), fail to conform with or conflict with a provincial plan or fail to conform with an applicable official plan ("Existing By-law Test").

Reference: *Planning Act*, Section 34(11.0.0.0.2) and (26), RCS Tab 5

6. The Appellant's case fails the Existing By-law Test. The Non-Decision Record contains no opinion evidence of any kind that addresses this Test. As such, the appeal must be dismissed. Even if the Tribunal rules that the Non-Decision Record may be supplemented with new opinion evidence after the filing of the

appeal, the Affidavits of Paul Lowes and Leah Wallace filed by the Appellant fail to demonstrate the required inconsistency/non-conformity of the Existing By-law.

7. While there is no onus on the Town (or any other party) to demonstrate the consistency/conformity of the Existing By-law with provincial policy and the Official Plan, the Existing By-law Record clearly and unequivocally establishes the consistency/conformity of the Existing By-law. In 2011, following a comprehensive public process, the Town passed Official Plan Amendment 51 ("OPA 51") and Zoning By-law 4316T ("Existing By-law") to permit a hotel and conference centre. The approved hotel and conference centre is appropriate development for the historic Rand Estate. The Existing By-law is consistent with and conforms to all relevant provincial and municipal policy documents. This conclusion is supplemented by the Affidavit of Eric Withers.

FAILURE OF THE PROPOSED AMENDMENT TEST

8. After holding a hearing, the Tribunal shall dismiss the appeal unless it determines that the amendment that is the subject of the application is consistent with policy statements issued under subsection 3(1), conforms with or does not conflict with provincial plans and conforms with applicable official plans.

Reference: *Planning Act*, Section 34(11.0.0.0.2) and (26), RCS Tab 5

9. The Appellant's case fails the Proposed Amendment Test. The Non-Decision Record, on its own, or as supplemented by the Affidavits of Paul Lowes and Leah Wallace, fails to demonstrate the required consistency/conformity of the Proposed Amendment.

10. The Non-Decision Record as supplemented by the Affidavits of Eric Withers and Marcus Letourneau, demonstrates the inconsistency/lack of conformity of the Proposed Amendment. The new hotel and conference centre proposal in no way remedies any inconsistency or non-conformity of the Existing By-law. The Appellant has not demonstrated that the Proposed Amendment is consistent with

and conforms with all relevant provincial and municipal policy documents. The evidentiary deficiencies that preclude a consistency/conformity determination include:

a. no evidence confirming the capacity of the existing receiving sanitary sewer infrastructure from John Street East to the William Street pumping station to accommodate flows
b. no evidence of an updated Traffic Impact Study investigating lower cost alternatives to a roundabout to mitigate traffic impacts
c. no evidence of the confirmation of Species-at-Risk trees and the identification of appropriate mitigation
d. no evidence of the outcome of the Conservation Review Board "CRB" process regarding designation and the identification of heritage attributes
e. no evidence of an updated Heritage Impact Assessment ("HIA") informed by the CRB process, Municipal Heritage Committee ("MHC") comments and the proposed roundabout assessment
f. no evidence of a Stage 3 Archeological Assessment
g. no evidence of Urban Design Committee input and respect for Parks Canada input regarding height limits

THE FACTS

THE PROPOSAL AND THE RAND ESTATE

11. The Proposed Amendment permits a 145-room hotel and conference centre. It establishes site-specific performance standards to accommodate the proposed development, including height, coverage, setbacks, floor area, and others.

Reference: Draft Zoning By-law Amendment, RAR Vol 2 at Tab 17

12. The Subject Lands (144 and 176 John Street East) are part of the Rand Estate. The Rand Estate is comprised of a series of contiguous properties that were associated with people and families of historical significance, including the family of Calvin Rand, himself a contributor to the founding of the Shaw Festival. 144

John Street East hosts two buildings known as the "Sheets/Devonian House" and the "Coach House". 176 John Street East is occupied by a building known as "Randwood", along with a brick gazebo located to the front of the property and a wooden pergola or gazebo located to the rear. The properties are bound to the north and west, generally following the street line of John Street East and Charlotte Street, by a brick and stone wall.

Reference: Affidavit of Eric Withers, RAR Vol 3 at Tab 1, par. 12 and 14 at p. 2323-2324

13. The properties contain mature trees and vegetation as well as landscaping features -- a concrete pond with sculpture is located to the north of Randwood. The landscape on the properties is associated with the firm of Dunnington-Grubb, an important early landscape architecture firm in Canada.

Reference: Affidavit of Eric Withers, RAR Vol 3 at Tab 1, par. 13 at p. 2323

14. As a result of their importance in the field of landscape architecture, their association with significant historical figures in Niagara-on-the-Lake, and the presence of structures of architectural and historical value, the properties have been understood locally to be of cultural heritage significance. Their designation under the Ontario Heritage Act has been anticipated since at least 2011.

Reference: Affidavit of Eric Withers, RAR Vol 3 at Tab 1, par. 15 at p. 2324

15. On June 11, 2018, the Town resolved to initiate the designation process under the *Ontario Heritage Act* in relation to the subject lands and two (2) adjoining properties. The Notices of Intention to Designate are currently the subject of proceedings before the CRB. The CRB will determine whether the properties meet the criteria listed in Ontario Regulation 9/06 of the *Ontario Heritage Act*, and if so, which elements of the property are to be included in the list of key heritage attributes contained in the designation by-laws. The Town will then make the final decision as to the form and content of the designation by-laws. The CRB 1st Prehearing Conference took place on December 14, 2018.

Reference: Affidavit of Eric Withers, RAR Vol 3 at Tab 1, par. 16-18 at p. 2324-2325
Affidavit of Marcus Letourneau, RAR Vol 3 at Tab 2, par. 26 and 27 at p. 2366
Notices of Intention to Designate, RAR Vol 2 at Tab 25
Two Sisters Resorts Corp. v. Niagara-on-the-Lake (Jan 7, 2019), RCS, Tab 3

THE 2011 APPROVAL

16. OPA 51 and the Existing By-law established the principle of commercial land use on the Subject Lands for a hotel (106 rooms), conference centre, artist's studio(s) and learning centre, art gallery, restaurant, outdoor patio, and accessory buildings and structures. It consisted of 3 storey additions to the Randwood House as well as the construction of an events pavilion (1.5 storeys), artist centre (1.5 storeys) and Seed House (1 storey).

Reference: Affidavit of Eric Withers, RAR Vol 3 at Tab 1, par. 23 at p. 2327
OPA 51, RAR, EBR Tab 1
Existing By-law, RAR, EBR Tab 2

17. The review process for the 2011 Approval was extensive.

Reference: Affidavit of Eric Withers, RAR Vol 3 at Tab 1, par. 24(a)-(j) at p.2327-2330

18. Between the date the application was submitted on June 14, 2010 to the Town's approval on December 12, 2011, the application underwent detailed review by the Municipal Heritage Committee ("MHC") and the Urban Design Committee ("UDC") as required by the Town Official Plan. It underwent an urban design peer review and was the focus of a non-statutory open house and two statutory public meetings.

Reference: Affidavit of Eric Withers, RAR Vol 3 at Tab 1, par. 45(a) at p. 2340
Brook McIlroy Peer Review, RAR Vol 2 at Tab 6
MHC Staff Report and Meetings Minutes (Aug 9, 2011), RAR Vol 2 at Tab 7
MHC Meeting Minutes (Sept 13, 2011) and Council Minutes (Sept 19, 2011), RAR Vol 2 at Tab 8
Public Meeting Minutes (Sept 26, 2011), RAR Vol 2 at Tab 9
Public Meeting Minutes (Nov 28, 2011), RAR Vol 2 at Tab 10

19. The application was supported by a Heritage Impact Assessment that was generally supported by Town planning staff and the MHC. The MHC expressed general support for the proposed design subject to revisions to be addressed with the MHC's involvement at the site plan approval stage. The proposal was viewed as a good adaptive reuse of existing buildings and the proposed new buildings were considered to be appropriate in relation to the existing buildings and the designed landscape.

Reference: Affidavit of Eric Withers, RAR Vol 3 at Tab 1, par. 45(b) at p. 2340

20. The design was generally supported by the UDC.

Reference: Affidavit of Eric Withers, RAR Vol 3 at Tab 1, par. 45(c) at p. 2341

21. All circulated agencies were satisfied.

Reference: Affidavit of Eric Withers, RAR, Vol 3 at Tab 1, par. 45(d) at p. 2341

22. The applications were supported by staff report CDS-11-099. Planning staff recommended approval and included a Provincial Policies Chart itemizing consistency with the PPS. There was no appeal.

Reference: Affidavit of Eric Withers, RAR Vol 3 at Tab 1, par. 45(e) at p. 2341
Staff Report CDS-11-099 (Dec 5, 2011), RAR Vol 2 at Tab 11, p. 1374 and 1375

THE PROPOSED AMENDMENT

23. The Appellant contends that the Proposed Amendment "is strictly to facilitate a different arrangement of built form on the site than that contemplated in 2011". This is a complete mischaracterization. To the contrary, the Proposed Amendment intensifies the 2011 Approval in significant ways. The Proposed Amendment permits a maximum of 250 seats "for each restaurant" whereas the 2011 Approval limited restaurant uses to a maximum of 200 seats total, increases the number of hotel rooms from 106 to 145, increases the maximum floor area for the spa from 185.5 sq. m to 1,691 sq. m and increases the maximum building height from 17.35 m to 21.95 m to facilitate a 6 storey hotel instead the 3 storeys contemplated in 2011.

Reference: ACS, par. 4 and 14
Affidavit of Eric Withers, RAR Vol 3 at Tab 1, par. 26 at p. 2331
Lowes Planning Justification Report, EMR, Tab 15, par. 11-12

24. The original Proposed Amendment was reviewed by MHC. Review comments were extensive. The HIA was not updated in response to this review. The revised Proposed Amendment has not been reviewed by MHC.

Reference: Affidavit of Eric Withers, RAR Vol 3 at Tab 1, par. 30-31 at p. 2333
MHC Staff Report and Meeting Minutes (Feb 13, 2018), RAR Vol 2 at Tab 20
Council Meeting Minutes (April 16, 2018), RAR Vol 2 at Tab 21

25. The original Proposed Amendment was reviewed by UDC. UDC recommended a number of peer reviews be undertaken including an urban design peer review.

None have been conducted. The revised Proposed Amendment has not been reviewed by UDC.

Reference: Affidavit of Eric Withers, RAR Vol 3 at Tab 1, par. 28 at p. 2333
UDC Staff Report and Meeting Minutes (Jan 23, 2018 and Feb 27, 2018), RAR Vol 2 at Tab 19

26. A public open house was held on January 25, 2017. No statutory public meetings have been held.

Reference: Affidavit of Eric Withers, RAR Vol 3 at Tab 1, par. 29 at p. 2333

OUTSTANDING ISSUES

27. As a result of the public process undertaken before the appeal date, several and significant internal department and external agency concerns remain unaddressed.

28. The Town Operations Department is not satisfied that there is sufficient sanitary servicing capacity for the proposed hotel and conference centre. The Appellant has not confirmed capacity.

Reference: Affidavit of Eric Withers, RAR Vol 3 at Tab 1, par. 36(a) at p. 2336
Town Operations Dept. Peer Review letters (Jan 31, 2018 and August 31, 2018), RAR Vol 2 at Tab 18, p. 1907-1908 and 1950-1951

29. The Town Operations Department would like the Appellant to investigate lower-cost alternatives to the proposed roundabout to mitigate traffic impacts. The Appellant has not done so.

Reference: Affidavit of Eric Withers, RAR Vol 3 at Tab 1, par. 36(b) at p. 2336
Town Operations Dept. Peer Review letters (Jan 31, 2018 and August 31, 2018), RAR Vol 2 at Tab 18, p. 1906 and 1949

30. The Ministry of Natural Resources and Forestry has requested additional information related to the protection of Species-at-Risk trees under the *Endangered Species Act, 2007* in relation to the Butternut, Eastern Flowering Dogwood and Red Mulberry. The Appellant has not provided this information.

Reference: Affidavit of Eric Withers, RAR Vol 3 at Tab 1, par. 36(c) at p. 2336
Ministry of Natural Resources and Forestry letter (Aug 29, 2018), RAR Vol 2 at Tab 18, p. 1941

31. The Region of Niagara requires that a Stage 3 Archeological Assessment be completed prior to the passing of the Proposed Amendment, be the subject of a

holding provision or be the subject of a site plan condition. MHC planning staff requested that the Stage 3 Archeological Assessment be conducted prior to the passing of the Proposed Amendment. Mr. Marcus Letourneau, heritage planner, agrees. In Mr. Letourneau's opinion, the Subject Properties have archaeological resources and areas of archaeological potential that have not been sufficiently analyzed. There is overlap between areas of the proposed development and areas where the limits of identified archaeological sites are not yet known. Mitigation may impact the siting of the development.

Reference: Affidavit of Eric Withers, RAR Vol 3 at Tab 1, par. 36(e) at p. 2337
Affidavit of Marcus Letourneau, RAR Vol 3 at Tab 2, par 31(b) at p. 2368
Region of Niagara letters (March 20, 2018 and Sept 14, 2018), RAR Vol 2 at Tab 18, p. 1927 & 1957
MHC Support Staff letter (July 30, 2018), RAR, Vol 2 at Tab 8, p. 1939

32. An updated Heritage Impact Assessment ("HIA") has not been received that considers MHC's extensive review, considers the proposed roundabout and reflects the outcome of the CRB process.

Reference: Affidavit of Eric Withers, RAR Vol 3 at Tab 1, par. 36(d) at p. 2336
Affidavit of Marcus Letourneau, RAR Vol 3 at Tab 2, par 31(a) at p. 2368

33. In reviewing the HIA, Parks Canada expressed concern about height:

> Parks Canada does have a concern with regards to the broader impact of increasing the maximum building height and would recommend that the impact of the proposed amendment be considered from a broader perspective. More specifically, the cumulative impacts on the sight lines and the requirement to protect the elements which define the historic military landscape, and the local heritage neighbourhoods that contribute to the strong sense of place for the sites managed by Parks Canada, and by others, should be carefully considered.

Parks Canada remains concerned about any height over 4 storeys.

Reference: Affidavit of Eric Withers, RAR Vol 3 at Tab 1, par. 27(g) at p. 2332
Parks Canada letters (Jan 9, 2018 and Feb 22, 2018), RAR Vol 2 at Tab 18, at p.1915-1921

34. Various requested technical revisions to drawings, plans and reports have not been provided.

Reference: Affidavit of Eric Withers, RAR Vol 3 at Tab 1, par. 36(g) at p. 2337
Review Comments, RAR Vol 2 at Tab 18

THE ISSUES

THE PLANNING ACT SECTION 2 TEST

35. The Appellant does not address the *Planning Act* Section 2 Test.

36. Section 2 of the *Planning Act* requires the Tribunal to have regard to matters of provincial interest. Matters of ecology, cultural heritage, archeology, transportation, sewage services and built form are relevant to this appeal.

Reference: *Planning Act*, Section 2, RCS Tab 5

37. Section 2 (a) requires the Tribunal to have regard to "the protection of ecological systems, including natural areas, features and function". The Appellant has not confirmed the presence of Species-at-Risk trees on the subject lands nor has it identified appropriate mitigation of impacts. Without this information, the Tribunal cannot conclude that the Proposed Amendment has sufficient regard to matters of ecology.

38. Section 2(d) requires the Tribunal to have regard to "the conservation of features of significant architectural, **cultural**, **historical**, archaeological or scientific interest." The CRB process addressing designation under the Ontario Heritage Act is not complete. The results of that process will inform the identification of the cultural and historical features to be conserved. Without this information, the Tribunal cannot conclude that the Proposed Amendment has sufficient regard to the matter of conserving cultural and historical features.

39. Section 2(d) requires the Tribunal to have regard to "the conservation of features of significant architectural, cultural, historical, **archaeological** or scientific interest." A Stage 3 Archaeological Assessment has not been completed. There is overlap between the location of buildings and areas where the limits of identified archaeological resources are not yet known. The results of the Stage 3 Archaeological Assessment may affect building location. Without it, the Tribunal cannot conclude that the Revised Proposed Amendment has sufficient regard to matters of archaeological conservation.

40. Section 2(f)) requires the Tribunal to have regard to "the adequate provision and efficient use of communication, **transportation, sewage** and water **services** and waste management systems". The capacity of the receiving sanitary system to accommodate the proposed development has not been confirmed. The Traffic Impact Statement has not been updated to investigate lower cost alternatives to the proposed roundabout. Without this information, the Tribunal cannot conclude that the Proposed Amendment has sufficient regard to the adequate provision and efficient use of sewage services or transportation.

41. Section 2(r) requires the Tribunal to have regard to "the promotion of built form that is well-designed, encourages a sense of place, and provides for public spaces that are of high quality, safe, accessible, attractive and vibrant". The MHC and UDC have expressed concern with the design of the proposed hotel and conference centre and have not yet provided further comment on the revised design. Recommended peer reviews have not been conducted. The CRB process is not complete. Parks Canada is concerned with heights over 4 storeys and the impact on the historic military landscape and the local heritage neighbourhoods that contribute to the strong sense of place for the sites managed by Parks Canada and others. Without this information, the Tribunal cannot conclude that the Proposed Amendment has sufficient regard to the matter of built form.

Reference: (Par. 36-41): Affidavit of Eric Withers, RAR Vol 3 at Tab 1, par. 38-43 at p. 2338-2339
(Par. 40 and 41): Affidavit of Marcus Letourneau, RAR Vol 3 Tab 2, par. 30 and 31 at p. 2368

THE EXISTING BY-LAW TEST

42. After holding a hearing, the Tribunal shall dismiss the appeal unless it determines that the existing part or parts of the by-law that would be affected by the appeal are inconsistent with a policy statement issued under Section 3(1), fail to conform with or conflict with a provincial plan or fail to conform with an applicable official plan.

Reference: *Planning Act*, Section 34(11.0.0.0.2) and (26), RCS Tab 5

43. The Non-Decision Record in no way addresses the Existing By-law Test. Mr. Lowes Planning Justification Reports (November 15, 2017 and July 2018) do not refer to the test nor do they opine on it. This omission is fatal to the appeal. Absent this evidence in the Non-Decision Record, the Tribunal cannot determine that the Existing By-law is inconsistent with a policy statement issued under Section 3(1), fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan.

Reference: Non-Decision Record, RAR Vol 2 Tabs B and C
Lowes Planning Justification Report (Nov 15, 2017), EMR, Tab 15
Lowes Planning Justification Report (July 2018), EMR, Tab 35 and AR Tab D, Exhibit 3 at p. 62

44. The Non-Decision Record as supplemented by the Affidavit of Mr. Lowes and Ms. Wallace fails to demonstrate the required inconsistency/non-conformity of the Existing By-law. Mr. Lowes does refer to the Existing By-law Test for the 1st time in his Affidavit included in the ACS. However, no where does he refer to the Existing By-law Record ("EBR") or analyse it. He baldly asserts inconsistency and non-conformity absent any planning context for his opinion. These bald assertions are insufficient evidence for the Tribunal to conclude that the Existing By-law is inconsistent with a policy statement issued under Section 3(1), fails to conform with or conflict with a provincial plan or fails to conform with an applicable official plan.

Reference: Existing By-law Record, RAR Vol 2 Tab B

45. Ms. Leah Wallace worked for the Town as a heritage planner in 2011. She, among others, was an author of the Staff Recommendation Report supporting the 2011 Approval. Cultural heritage conservation was addressed in the report. In a chart addressing consistency with the PPS, she opined that the Existing By-law was consistent with the PPS:

The change of use will not affect heritage resources and will conserve a significant cultural heritage landscape. The property will be designated under Part IV of the Ontario Heritage Act. Any alterations in the future will require a heritage permit.

Reference: Staff Recommendation Report – RAR Vol 2, Tab 11, p. 1372 and 1375.

46. Years later, as the heritage consultant for the Appellant, Ms. Wallace addresses the Existing By-law in her affidavit. She speaks to its "enhanced consistency and conformity with the Provincial Policy Statement" (par. 17) and that it is "more respectful to the heritage resources than the prior approvals" (par. 40). No where does Ms. Wallace opine that the Existing By-law is inconsistent with a policy statement issued under Section 3(1), fails to conform with or conflict with a provincial plan or fails to conform with an applicable official plan.

Reference: Affidavit of Leah Wallace, par 17 and 40, Tab E at p. 193 and 201.

47. The Existing By-law is consistent with policy statements issued under Section 3(1), conforms with or does not conflict with a provincial plan and conforms with applicable official plans. Consistency/conformity was determined by a comprehensive *Planning Act* process in 2011. The Existing By-law was supported by a Staff Recommendation Report (Ms. Wallace being one of the authors) that included a Provincial Policies Chart confirming consistency with the PPS. There was no appeal.

Reference: Affidavit of Eric Withers, RAR Vol 3, Tab 1 par. 45(a)-(e) at p. 2341

48. There have been no changes to provincial policy, the Official Plan or the physical/planning context to warrant any other conclusion in respect of the Existing By-law.

THE PROPOSED AMENDMENT TEST

49. After holding a hearing, the Tribunal shall dismiss the appeal unless it determines that the amendment that is the subject of the application is consistent with policy statements issued under subsection 3(1), conforms with or does not conflict with provincial plans and conforms with applicable official plans.

Reference: *Planning Act*, Section 34(11.0.0.0.2) and (26), RCS Tab 5

Provincial Policy Statement ("PPS")

50. The Tribunal has insufficient evidence before it to conclude that the Proposed Amendment is consistent with the PPS.

51. Section 2.6.1 of the PPS directs that significant built heritage resources and significant cultural heritage landscapes shall be conserved. The nature and extent of significant built heritage resources and/or cultural heritage landscape on the properties, including the nature of the cultural heritage value or interest of the same, is before the CRB for determination. Until that process is complete, the measures for the protection and management of the resources on the properties cannot yet be adequately determined. Archaeological sites have been identified on the subject lands based on the Stage 1 and 2 Archaeological Assessments. A Stage 3 Archeological Assessment has not yet been completed the results of which may affect the siting of the development. Until a Stage 3 Archeological Assessment is completed, conservation cannot be assessed.

Reference: Affidavit of Eric Withers, RAR Vol 3 Tab 1, par. 49(a) at p. 2342-2343
Affidavit of Marcus Letourneau, RAR Vol 3 Tab 2, par. 35(a) and 36 at p. 2371-2372

52. Section 1.6.6.1 of the PPS requires that planning for sewage and water services shall be in accordance with section 1.6.6.2 of the PPS. Section 1.6.6.2 itself identifies municipal sewage services and municipal water services as the preferred form of servicing for settlement areas. The Proposed Amendment proposes that the new hotel will be serviced by a sanitary force main connecting to the existing sanitary sewer on John Street East. However, as the capacity of the existing receiving sanitary infrastructure to accommodate flows from the hotel has not be confirmed, serviceability is undetermined. Only once the serviceability has been confirmed can the Proposed Amendment achieve consistency with this policy.

Reference: Affidavit of Eric Withers, RAR Vol 3 Tab 1, par. 49(b) at p. 2343

The Growth Plan

53. The Tribunal has insufficient evidence before it to conclude that the Proposed Amendment conforms with the Growth Plan.

54. Section 4.2.7 of the Growth Plan directs that cultural heritage resources, which include built heritage resources, cultural heritage landscapes and archaeological resources, shall be conserved. The properties contain built heritage resources and cultural heritage landscapes as defined by the Growth Plan. In addition, the property contains archaeological resources as defined by the Growth Plan. Further archaeological assessment is required that may affect the siting of the development. Heritage Designation issues are before the CRB. That process will determine the exact nature and extent of significant built heritage resources and/or cultural heritage landscape on the properties, including the nature of the cultural heritage value or interest. Until this information is available for consideration, the Tribunal cannot conclude conformity with the Growth Plan.

Reference: Affidavit of Eric Withers, RAR Vol 3 Tab 1, par. 52(a) at p. 2345
Affidavit of Marcus Letourneau, RAR Vol 3 Tab 2, par. 39 at p. 2374

Regional Official Plan ("OP")

55. The Tribunal has insufficient evidence before it to conclude that the Proposed Amendment conforms with the Regional OP policies for the following reasons:

Policy 10.C.2.1.1 of the Regional OP directs that significant built heritage resources and cultural heritage resources shall be conserved. Policy 10.C.2.1.5 directs that a heritage impact assessment is required for development on lands or adjacent to lands containing built heritage resources and cultural heritage landscapes. Policy 10.C.2.1.13 directs that archaeological resources shall be conserved prior to development. For the reasons outlined in the foregoing analysis of the related PPS and Growth Plan policies in respect of cultural heritage and archaeological resources, the Tribunal cannot conclude conformity with the Regional OP.

Reference: Affidavit of Eric Withers, RAR Vol 3 Tab 1, par. 55(a)-(c) at p. 2346-2347
Affidavit of Marcus Letourneau, RAR Vol 3 Tab 2, par. 41(a)-(c) at p. 2375-2376

Town OP

56. The 2011 Approval included site specific OPA 51. The Tribunal has insufficient evidence before it to conclude that the Proposed Amendment conforms with the Town OP and OPA 51.

57. The development contemplated by the applications is intensification as defined by the Town OP and for the purposes of sections 6A - 2.4, 6A - 4.1, and 6A - 4.3 of the Town OP.

Reference: Affidavit of Eric Withers, RAR Vol 3 Tab 1, par. 57(a) at p. 2349

58. As implemented by the PPS, the Growth Plan, and the Regional OP policies, negative impacts to designated heritage areas and heritage resources, as considered by Section 6A - 4.3 of the Town OP, cannot be conclusively determined until the CRB process is finalized, a revised heritage impact assessment is submitted in support of the revised applications, and the revised assessment peer-reviewed by a qualified person.

Reference: Affidavit of Eric Withers, RAR Vol 3 Tab 1, par. 57(b) at p. 2349

59. Section 6A - 4.3 of the Town OP directs that intensification is to be consistent with the character of the Built-up Area. Section 6A - 4.3 further provides urban design guidelines applicable to areas where there are no secondary plans in effect, which include the subject lands. The urban design guidelines note that the "bulk, mass and scale of new development shall fit the context within which it is located". At its January 23, 2018 and February 27, 2018 meetings, the UDC provided comment on the first design of the proposed development. The Minutes of the meetings are contained in the Responding Appeal Record, Vol 2 at Tab 9. The UDC recommended peer reviews related to various subject matters including urban design. Once the heritage matters are addressed, an urban design peer-review should be undertaken, and the UDC should have the opportunity to review the revised design, if any, and provide additional comments to further inform decision making in respect of conformity with the urban design policies of the Town OP.

Reference: Affidavit of Eric Withers, RAR Vol 3 Tab 1, par. 57(c) at p. 2349

60. Section 6A – 7.3 of the Town OP provide that "municipal sewage services and water services are required for the servicing of development in the Town's settlement areas". As ability of the existing receiving sanitary sewer infrastructure to accommodate flows from the proposed development has yet to be determined, as evidenced by the Town Operations' Department's request for a "comprehensive sanitary capacity review" in its August 31, 2018 comments, the serviceability of the subject lands for the increased intensity of land use proposed by the Proposed Amendment (as opposed to the Existing By-law) is still undetermined. Only once the serviceability has been confirmed for the increased intensity of land use can the Proposed Amendment achieve conformity to this policy.

Reference: Affidavit of Eric Withers, RAR Vol 3 Tab 1, par. 57(d) at p. 2350

61. Section 10.3.6 of the Official Plan contains the site-specific policies for the Subject Lands. Section 10.3.6.3 of the Town OP notes that the MHC is to be consulted with respect to the final design of the proposed development. Section 10.3.6.3 of the Town OP requires that Council have regard for the opinion of the MHC in respect of design in its decision-making. This has not happened. The MHC should have the opportunity to review the revised design, if any, and provide additional comments to further inform decision-making in respect of the Proposed Amendment.

Reference: Affidavit of Eric Withers, RAR Vol 3 Tab 1, par. 57(e) at p. 2350-2351

62. Sections 18.3 (4) and 18.4 (6) of the Town OP specify the criteria for evaluating proposals that have the potential to impact cultural heritage resources and establish the advisory role of the Local Architectural Conservation Advisory Committee (LACAC), now the MHC, in the review of development applications, where an application is likely to impact heritage resources. The MHC has expressed concern related to the design of the proposed development and the likely impact to heritage resources on the property. Until the exact nature of the elements of cultural heritage value or interest on the subject lands and adjacent lands have been established through the CRB process, it is not possible to

assess the impact that the proposed development will have on the cultural heritage on the subject lands and on adjacent lands. Once the cultural heritage resources have been confirmed, a revised Heritage Impact Assessment should be provided and peer reviewed by a qualified person before a decision is made on the Proposed Application.

Reference: Affidavit of Eric Withers, RAR Vol 3 Tab 1, par. 57(f) at p. 2351

RELEVANT AUTHORITIES

TAB

1. *Craft Acquisitions Corp v Toronto (City)* – LPAT PL180210 -- October 25, 2018
2. *Craft Acquisitions Corp v Toronto (City)* (29 November 2018), Toronto 723/18 (Ont. Div. Ct)
3. *Two Sisters Resorts Corp. v. Niagara-on-the-Lake (Town)* – CRB1822-1825 – January 7, 2019

TEXT OF STATUTES AND POLICIES

TAB

4. Local Planning Appeal Tribunal Rules of Practice and Procedure - Rule 26.13 e and 26.13 (2)
5. *The Planning Act*, R.S.O, 1990, c. P. 13, as amended - Sections 2, 34(11.0.0.0.2), 34(11.0.0.04), 34(26)
6. Provincial Policy Statement 2014 – Sections 1.6.6.1, 1.6.6.2, 1.7.1, 2.0, 2.6, and 6.0
7. The Growth Plan for the Greater Golden Horseshoe 2017 – Sections 1.1, 4.2.7 and 7.
8. Niagara Region Official Plan 2014 – Policies 10.C.2.1.1, 10.C.2.1.5, 10.C.2.1.13 and 15
9. Town of Niagara-on-the-Lake Official Plan 2017 – Sections 6.30, 6A-2.4, 6A-4.1, 6A-4.3, 6A-4.4, 6A-7.3, 10.3.6, 18.3(4) and 18.4(6)

ORDER SOUGHT

63. The appeals should be dismissed:

a) The Appellant's case fails the Existing By-law Test. The Non-Decision Record contains no opinion evidence of any kind that addresses this Test. As such, the appeal must be dismissed. Even if the Tribunal rules that the Record may be supplemented with new opinion evidence after the filing of the appeal, the Affidavits of Paul Lowes and Leah Wallace filed by the Appellant fail to demonstrate the required inconsistency/non-conformity of the Existing By-law.

b) The Appellant's case fails the Proposed Amendment Test. The Non-Decision Record, on its own, or as supplemented by the Affidavits of Paul Lowes and Leah Wallace, fails to demonstrate the required consistency/conformity of the Proposed Amendment.

TIME ESTIMATE FOR SUBMISSIONS

64. It is estimated that 75 minutes will be required for the oral submissions of the Town in the event that an oral hearing is ordered by the Tribunal.

All of which is respectfully submitted,

January 25, 2019

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

ISSUE DATE: October 25, 2018 **CASE NO(S).:** PL180210

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 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	CRAFT Acquisitions Corp. and P.I.T.S. Development Inc.
Appellant:	Canadian National Railway Company and Toronto Terminals Railway Company Ltd.
Subject:	Proposed Official Plan Amendment No. OPA 395
Municipality:	City of Toronto
LPAT Case No.:	PL180210
LPAT File No.:	PL180210
LPAT Case Name:	Canadian National Railway Company v. Toronto (City)

Heard: Case Management Conference — September 20-21, 2018, in Toronto, Ontario

APPEARANCES:

Parties	**Counsel**
City of Toronto	B. O'Callaghan, K. Matsumoto, A. Moscovich, and N. Muscat
CRAFT Acquisitions Corporation and P.I.T.S. Development Inc.	I.T. Kagan and K. Jennings

Canadian National Railway Company and Toronto Terminals Railway Company Ltd. A.M. Heisey and M. Krygier-Baum

DECISION BY JAMES McKENZIE, SUSAN de AVELLAR SCHILLER, AND SARAH JACOBS AND ORDER OF THE TRIBUNAL

INTRODUCTION and CONTEXT

[1] On December 5, 2017, the City of Toronto Council ("City") adopted Official Plan Amendment No. 395 ("OPA 395" or "Amendment") to create Rail Deck Park, a significant new park and multi-functional open space in Downtown Toronto. Responding to the anticipated effect of substantial population growth and low levels of parkland in the downtown area (as compared to the rest of the city), the Amendment establishes a new secondary plan for the area situated between Bathurst Street (west) and Blue Jay Way (east), on the south side of Front Street. The park's name derives from the fact that it will be located on an engineered platform covering a stretch of the Union Station rail corridor traversing the downtown area. Identified as a "once-in-a-generation opportunity," preliminary budgeting estimates a total cost of $1.665 billion to construct Rail Deck Park.

[2] Two appeals have been filed against OPA 395 pursuant to subsection 17(24) of the *Planning Act*. The first appeal is collectively filed by CRAFT Acquisitions Corporation ("CRAFT") and P.I.T.S. Developments Inc. ("P.I.T.S."). The second is collectively filed by Canadian National Railway Company ("CN") and Toronto Terminals Railway Company Ltd. ("TTR"). These four interests are the Appellants. The Appellants have property interests within the area affected by the Amendment: CN and TTR own developable air rights above 27 feet above the top-of-rail elevation within the Union Station rail corridor; and CRAFT and P.I.T.S., pursuant to an agreement of purchase and sale with CN and TTR, are under contract to purchase those air rights to develop above the rail tracks. The Appellants have concurrently appealed private applications under other sections of the *Planning Act* to advance their development aspirations.

[3] Given recent changes to planning legislation (discussed below), their private application appeals and the appeals of the Amendment are considered mutually exclusive despite the fact they relate to roughly the same area.

[4] On April 3, 2018, Bill 139 was proclaimed. Among other things, it enacted the *Local Planning Appeal Tribunal Act, 2017* ("*LPAT Act*"). The *LPAT Act* fundamentally changes the manner in which specific categories of planning appeals under the *Planning Act* are to be dealt with in a hearing. Those categories, defined in subsections 38(1) and 38(2) of the *LPAT Act*, include any appeal relating to (1) a municipal decision approving or refusing to approve an official plan or zoning by-law, (2) a municipal decision approving or refusing an amendment to an existing official plan or zoning by-law, (3) the lack of a municipal decision approving or refusing an amendment to an existing official plan or zoning by-law, and (4) the lack of a municipal decision granting or refusing the approval of a plan of subdivision. The appeals of OPA 395 fall in the second category above. Other changes include (1) continuing the Ontario Municipal Board as the Local Planning Appeal Tribunal ("Tribunal"), (2) repealing the *Ontario Municipal Board Act* and replacing it with the *LPAT Act*, (3) amending the *Planning Act* to prescribe specific tests for the disposition of appeals in the above-noted categories, and (4) removing participatory rights and restricting other rights of parties and participants in hearings dealing with those specific categories of planning appeals. For all other matters under the *Planning Act* and the numerous statutes and regulations from which the Tribunal derives jurisdiction, the hearing process remains a traditional one, with full participatory rights.

[5] The *LPAT Act* also directs the Tribunal to convene a Case Management Conference ("CMC") for the above-noted categories of planning appeals and itemizes matters to be addressed therein. The requirement to convene a CMC codifies a long-standing and continuing practice of using the prehearing conference process tool to case manage and organise complex appeals. The appeals filed against OPA 395 are the first to proceed to a CMC under the new regime introduced by Bill 139.

[6] This decision implements the results of the Tribunal's consideration of the itemized matters relevant to the appeals at this time as well as other matters arising in connection with the appeals. With respect to itemized matters not specifically addressed in this decision, counsel have been directed to confer and to advise the Tribunal whether any further action is necessary.

PARTIES and PARTICIPANTS

[7] The statutory parties in this matter are:

- City of Toronto
- CRAFT Acquisitions Corporation
- P.I.T.S Developments Inc.
- Canadian National Railway Company
- Toronto Terminals Railway Company Ltd.

[8] Pursuant to subsections 40(1) and 40(4) of the *LPAT Act*, the participants are:

- Metrolinx – the provincial government agency responsible for public transit and transportation infrastructure in the Greater Toronto and Hamilton Area, and the owner of the ground and air space up to 27 feet above the top-of-rail elevation.

- Grange Community Association Inc. ("Grange") – a community organisation representing local and city-wide interests of residents in the Grange neighbourhood bounded by College Street (north), Queen Street (south, University Avenue (east), and Spadina Avenue (west).

[9] Subsection 42(1) of the *LPAT Act* stipulates that parties are the only persons who can participate in an oral hearing of an appeal described in subsection 38(1), (which includes an appeal made under subsection 17(24) of the *Planning Act*).

Participants cannot take part in an oral hearing. This is a significant departure from the opportunity a participant enjoyed before the proclamation of Bill 139 and continues to enjoy in the hearing of an appeal falling outside of the categories described in subsection 38(1). Despite their status in this case, Metrolinx and Grange acknowledge the restriction on their participation in the hearing. They have each, moreover, provided an undertaking to be available at the hearing to answer questions or otherwise be of assistance to the Tribunal.

HEARING and ORDER OF PROCEEDINGS

[10] The *LPAT Act* has profoundly changed the complexion of a hearing before the Tribunal to determine the merits of any appeal in the categories described in subsections 38(1) and 38(2) — especially regarding the means by which evidence may be obtained from and/or through a witness (addressed below). Given the significance of what Rail Deck Park represents and the magnitude of what is at stake in the consideration of the appeals, it is essential that the Tribunal have the benefit of *viva voce* land use planning evidence. An oral hearing will facilitate that opportunity.

[11] A hearing is scheduled for five consecutive days, beginning at **10:00 a.m.** on **Monday, May 27, 2019,** at:

Local Planning Appeal Tribunal,
655 Bay Street, 16th Floor,
Hearing Room 16-1,
Toronto ON M5G 3E1

[12] A procedural order is not required in this matter.

ISSUES FOR THE HEARING

[13] The Issues List for the hearing is appended to this decision as Attachment No. 1.

[14] The Tribunal's *Rules of Practice and Procedure* require statutory parties to each file an appeal record and case synopsis addressing issues for a hearing. In this case, during the CMC, counsel were directed to confer for the purpose of producing an issues list reflecting meaningful substance based on their respective materials. The result is the appended list.

VIVA VOCE EVIDENCE and WITNESSES

[15] Again, given the magnitude of what Rail Deck Park represents, the Tribunal will exercise its power to examine each party's respective land use planner(s) in the hearing, pursuant to subsection 33(2) of the *LPAT Act*. According to subparagraph (d) thereunder, the Appellants are directed to produce Mr. Ian Graham; and the City is directed to produce Mr. Joe Berridge, Ms. Lynda MacDonald, Ms. Heather Oliver, and Mr. Paul Mulé. This direction includes a requirement to have the planners present on the first day of the scheduled hearing. Each witness is to bring with them and to have in their possession all documents material to the issues for the hearing and on which they relied to formulate their professional planning opinion(s) on the issues. If they have not already done so, each planner is also required to execute an Acknowledgment of Expert's Duty form and provide that to the Tribunal at the outset of their testimony.

[16] In connection with the Tribunal's decision to call and examine the professional planners, counsel advised, on consent, that a court reporter will be retained and present for the oral evidence portion of the hearing. In the event the parties have a change of heart prior to the scheduled hearing, the Tribunal orders that a qualified verbatim reporter attend for the purpose of recording the testimony of each planning witness, in accordance with Rule 26.25 of its *Rules of Practice and Procedure*. The cost of the reporter and the production of transcripts to be provided to the Tribunal shall be borne by the parties.

[17] In terms of the order in which the hearing will proceed — with respect to the sequence that witnesses will be examined by the Tribunal and that submissions will be received by the Tribunal pursuant to subsection 42(3) of the *LPAT Act* and section 2(1) of O.Reg. 102/18 — the Tribunal will first complete all witness examinations and will then receive counsel submissions. Subject to further refinement (including the potential for modification) by the Tribunal to facilitate the efficient and efficacious examination of witnesses, the sequence will be as follows: the Appellants' witness will be examined first, followed by the City's witnesses; then, the Appellants' submissions will be received, followed by the City's submissions.

[18] Counsel for the Appellants have requested a limited right of reply for submissions following the City's submissions. Subsection 2(1)(a) of O.Reg. 102/18 includes no distinction with respect to how prescribed time available to a party for its submissions is to be allocated. In this case, consistent with the convention of an initiating party having a right of reply, the Appellants may, if they wish, reserve some amount of that prescribed time for reply submissions.

MEDIATION

[19] In recognition of the success of the mediation program instituted by the Tribunal's predecessor, the Ontario Municipal Board, and the longstanding and ongoing practice of canvassing opportunities for mediation in prehearing conferences, the Tribunal is now required by subsection 39(2) of the *LPAT Act* in a CMC to discuss opportunities for settlement, including the possible use of mediation. The success of any mediation initiative depends on many things. Consistent with the widely-accepted principle that participation in mediation is a voluntary activity, first among those things is ensuring that each party provides its representatives with a clear mandate and parameters for negotiation in the event mediation is to be pursued.

[20] In the present case, all counsel have indicated a readiness to consider mediation, subject to a number of contextual factors. First, given the fall scheduled municipal election, Mr. O'Callaghan explained that, while he is prepared to recommend mediation to his client, he cannot be in a position to receive a mandate and instructions from Council before its initial meetings following the election, likely sometime in late January or February, 2019. Second, Messrs. Kagan and Heisey reported that, while their respective clients are generally supportive of mediation, they too cannot be in a position to secure a mandate and instructions without first knowing the parameters for mediation set out by Council. The Tribunal understands and, taking into account the scheduled hearing dates set out above, directs the following related schedule for the ongoing consideration of mediation:

- Council is to consider the possibility for mediation and provide direction to Mr. O'Callaghan by a date such that he will report to the Tribunal and the other parties, no later than March 1, 2019, whether the City is willing to enter mediation and, if so, an indication of the general parameters within which the City is prepared to mediate; and then,

- in the event the City is prepared to mediate, the Appellants will have one week to consider mediation and the parameters for doing so indicated by the City, and will report to the City and the Tribunal, no later than March 8, 2019, whether the terms are such that they too are prepared to mediate; and then

- in the event all parties indicate willingness to mediate, the Tribunal will convene a meeting between March 8 and 22, 2019, with the parties to address a schedule and logistics for mediation, including any reconsideration of the May 2019 hearing dates; or,

- in the event any of the parties determine that mediation is not viable and the May 2019 hearing dates are confirmed, all materials for the hearing are to be submitted to the Tribunal no later than April 23, 2019.

[21] Shortly following the issuance of this decision, the Tribunal will issue a separate Order and Notice of Postponement to suspend the applicable timeline set out in subsection 1(1) of O.Reg. 102/18 for disposing of the appeals. That Order will invoke the reason set out in subsection 1(2)1.i. to suspend the timeline, effective the date of this decision.

STATING A CASE TO THE DIVISIONAL COURT

[22] Following the Tribunal's decision to call and examine the professional planners engaged in this matter, counsel jointly submitted an oral application to have the Tribunal exercise its powers under subsection 36(1) of the *LPAT Act* to "state a case in writing for the opinion of the Divisional Court upon a question of law." That application was accompanied by a long list of suggested questions for the Court's consideration and opinion. The basis for the joint application follows.

[23] The *LPAT Act*, in subsection 42(3)(b), stipulates that "no party or person may adduce evidence or call or examine witnesses" at an oral hearing relating to the categories of planning appeal described in subsections 38(1) and 38(2). As noted, this includes the appeals of OPA 395 made under subsection 17(24) of the *Planning Act*. Calling or examining witnesses at a hearing, moreover, is further controlled by regulation. O.Reg. 102/18, in section 3, provides that "no party or person may call or examine witnesses prior to the hearing of such an appeal."

[24] The elimination of a party's right to adduce evidence or to call or examine witnesses has led to considerable uncertainty in the wake of the Tribunal's decision to itself call and examine planning witnesses in this case. Counsel emphatically

expressed a genuine confusion about each party's ability to access natural justice and procedural fairness rights.

[25] Every appealed planning matter is important to each of the parties involved. When the sheer magnitude of what is at stake in the appeals of OPA 395 is considered through the combined lens of this axiom and the removal of a party's right to adduce evidence or to call or examine witnesses, the profundity of the confusion and the weight of its related burden are palpable and understandable. Engaging the ability to test the logic or challenge the veracity of a professional opinion believed prejudicial to one's interests has long been the *sine qua non* of pursuing one's planning goals in a hearing the Tribunal is obligated to hold under the *Planning Act*. The Tribunal can certainly appreciate, then, why the parties seek the Court's opinion on the subject of examining witnesses.

[26] In making their application, the parties submitted a number of questions for the Tribunal's consideration. Given their collective angst about proceeding without the ability to directly engage witnesses, the panel has undertaken a careful deliberation to distill their initial suggestions, lay bare the essence of their apprehensions, and capture in the following questions what it finds are the key challenges regarding the limitations set out in the *LPAT Act* and O.Reg. 102/18. The questions for an opinion from the Divisional Court are:

1. Since the terms "examine" and "cross-examine" have different meanings under the *Statutory Powers Procedure Act*, does the term "examine" as used in subsection 42(3)(b) of the *LPAT Act* and section 3 of O.Reg. 102/18 preclude the ability of a party to cross-examine a witness?

2. With respect to a hearing pursuant to subsections 38(1) and 38(2) of the *LPAT Act*, do the principles of natural justice and procedural fairness allow the parties an opportunity to ask questions of a witness called and examined by the Tribunal?

2.a. If the answer to Question 2 is "yes," are their questions limited to matters arising from the questions asked by the Tribunal?

3. With respect to a hearing pursuant to subsections 38(1) and 38(2) of the *LPAT Act* and where the Tribunal directs production of affidavits pursuant to subsection 33(2)(c) therein, does the limitation in subsection 42(3)(b) of the *LPAT Act* and in section 3 of O.Reg. 102/18 prevent the cross-examination of an affiant before a hearing and the introduction of a cross-examination transcript in a hearing?

3.a. If the answer to Question 3 is "no," can the evidence obtained in cross-examination be referred to in submissions in a hearing?

[27] The Tribunal grants the parties' joint application to state a case.

[28] The Tribunal's reasons for stating a case follow.

[29] First, the questions are squarely and purely questions of law, thereby satisfying the statutory prerequisite set out in subsection 36(1). They engage the very essence of statutory interpretation relating to a party's ability to access its natural justice and procedural fairness rights in a hearing, and likely would, if answered by the Tribunal, attract a correctness standard of review were answers ever challenged. They reveal, moreover, a genuine confusion about whether there is a conflict between the *LPAT Act* and the *Statutory Powers Procedure Act*.

[30] Second, it is plausible that the Tribunal will avail itself of the right to call and examine witnesses in complex cases where experts have been engaged. In cases, for example, where experts are on near equal footing with respect to their experience, reputation, qualifications, and the quality of the documentation of their analysis and conclusions, how is the Tribunal to draw meaningful distinctions between opinions as a basis for its analysis of such evidence? It is only by the Tribunal itself calling and

examining witnesses that the underpinnings for an expert opinion can be truly accessed and scrutinised as a component of establishing a preference of evidence (upon which a decision might then be based). The issues, ambiguity, and confusion underlying the questions transcend the Rail Deck Park appeals and will arguably manifest in every case where the Tribunal elects to call and examine witnesses. Guidance, therefore, is needed to safeguard transparency, consistency, and predictability.

[31] Third, the parties are *ad idem* and consent to having the questions stated to the Divisional Court. While that on its own is not a sufficient basis for stating a case, it nonetheless has significant bearing on the Tribunal's decision for the simple reason that there is no daylight between the parties regarding how they believe the questions ought to be answered. This is a situation unique from the facts in jurisprudence established by the Tribunal's predecessor, the Ontario Municipal Board, on stating a case to the Divisional Court. In those cases, the parties shared the interest of having a case stated, but differed on how they each wanted the question(s) answered. In this case, the parties' consent is based on <u>both</u> process (having the Court's opinion) and subject (access to question a witness), grounded in the shared belief that having the Court's guidance provides the best opportunity for the fair, just, and expeditious resolution of the merits of the appeals.

[32] Finally, the core of these questions involves the participatory rights of persons in hearings conducted by the Tribunal under its new governing legislation, and the nature of these novel questions falls outside of the Tribunal's many home statutes. The questions also transcend the substantive matter the Tribunal is charged with addressing in the course of adjudicating appeals and the specialised knowledge it applies when doing so. In this case, the Tribunal is required to determine whether OPA 395 is consistent with the Provincial Policy Statement and whether it conforms to the Growth Plan for the Greater Golden Horseshoe. If the Amendment is and does, it comes into full force and effect; if it is not or does not, it will be returned to Council for further consideration. The Court's guidance will establish whether — and, if so, inform how —

the Tribunal may, through questioning by others, access evidence from a witness as additional input to its deliberations and ultimate determination.

[33] Stating a case on the first appeals coming to a CMC is consistent with the modern view of administrative tribunals. Tribunals are showing themselves capable of taking on novel questions of administrative law, and this maturation will continue. Action premised on the modern view, however, must be balanced with modesty. After all, the modern view should not be construed as so modern that it represses a genuinely felt need for guidance, as is the case here.

[34] Nor is stating a case an indication that this Tribunal is acting prematurely or relying too quickly on the discretion to do so. Through its deliberations on the joint application, the panel engaged in a critical interrogation of the first questions submitted by the parties to ensure that the questions the Tribunal is submitting to the Divisional Court are not merely interesting questions of law. They are challenging questions of law that engage fundamental legal considerations which cut to the very core of a party's ability to marshal a case in appeals made in those categories described in subsections 38(1) and 38(2) of the *LPAT Act*. There will always be a view that tribunals must take on difficult legal questions, and appropriate cases for doing so will appear from time to time. This case, however, is not one of them because it represents the first time that restrictive procedures codified in new legislation are being operationalised. Naturally, seeking guidance makes sense.

[35] Shortly following the issuance of this decision, the Tribunal will issue a further and separate Order and Notice of Postponement to suspend the applicable timeline set out in subsection 1(1) of O.Reg. 102/18 for disposing of the appeals. This Order will be distinct from the Order suspending the timeline for the purpose of mediation, and will invoke the reason set out in subsection 1(2)1.ii. to suspend the timeline, effective the date of this decision. A separate order is deemed necessary to accommodate for the likely scenario that the stated case may proceed at a different pace than that for the consideration of mediation.

[36] Upon receipt of the Court's opinion, the Tribunal will convene a teleconference call with the parties to assess whether the assigned hearing duration remains appropriate.

ORDER

[37] The directions set out in this decision are so ordered.

[38] This panel is seized, subject to the Tribunal's ability to effectively manage its hearings calendar with available resources. The Tribunal may be spoken to regarding the ongoing case management of this matter.

"James McKenzie"

JAMES McKENZIE
ASSOCIATE CHAIR

"Susan de Avellar Schiller"

SUSAN de AVELLAR SCHILLER
VICE-CHAIR

"Sarah Jacobs"

SARAH JACOBS
MEMBER

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

ATTACHMENT 1

LOCAL PLANNING APPEAL TRIBUNAL

Tribunal d'appel de l'aménagement local

PROCEEDING COMMENCED UNDER subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Case Number:	PL180210
File Number:	PL180210
Municipality:	City of Toronto
Municipal Numbers:	17 152929 STE 20 OZ
Property Location:	Railway Corridor between Bathurst Street and Blue Jays Way
Appellants:	CRAFT Acquisitions Corporation and P.I.T.S. Developments Inc. (collectively "P.I.T.S.") The Toronto Terminals Railway Co. Ltd ("TTR") and Canadian National Railway Company ("CN")

ISSUES LIST

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1. Is OPA 395 consistent with the following policies in the Provincial Policy Statement 2014, as required by section 3(5) of the Planning Act?
    a. Policy 1.1.1 (a, b & e)
    b. Policy 1.1.3, 1.1.3.1, 1.1.3.2, 1.1.3.3, 1.1.3.4, 1.1.3.6
    c. Policy 1.3.1 (a, b, c & d)
    d. Policy 1.4.3 (b, d & e)
    e. Policy 4.7

2. Does OPA 395 conform to the following policies in the Growth Plan 2017, as required by section 3(5) of the Planning Act and section 14(1) of the Places to Grow Act?
    a. Policy 2.2.1.2 (c)(i-iv)

b. Policy 2.2.1.3 (b & c)
c. Policy 2.2.1.4 (a & c)
d. Policy 2.2.3.1 (a-d)
e. Policy 2.2.3.2(a)
f. Policy 2.2.4 (1, 3c, 6, 9a-c)
g. Policy 2.2.6.1 (a-d)

3. Does OPA 395 have regard to the following matters of provincial interest as required by section 2 of the Planning Act?
    a. Section 2(j)
    b. Section 2(k)
    c. Section 2(l)
    d. Section 2(n)
    e. Section 2(p)

4. Does OPA 395 conform to the following policies of the City of Toronto Official Plan?
    a. Railway Lands West Secondary Plan
        i. Policy 6.1
        ii. Policy 6.2
        iii. Policy 6.7
        iv. Policy 10.1
        v. Policy 10.3 and 10.3.1
        vi. Policy 10.3.2

    b. Railway Lands Central Secondary Plan
        i. Policy 10.5.1
        ii. Policy 10.6, 10.6.1, 10.6.2

5. Should the Tribunal refuse to approve OPA 395 based upon the *Nepean* principle?

CITATION: Craft Acquisitions Corp. v. Toronto (City), 2018
DIVISIONAL COURT FILE NO.: 723/18
DATE: 20181129

ONTARIO

SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

BETWEEN:	
CRAFT ACQUISITIONS CORP. AND P.I.T.S. DEVELOPMENT INC.	*David Winer, Ira Kagan,* and *Kristie Jennings*, for the Applicants
Applicants	
– and –	
CITY OF TORONTO, CANADIAN NATIONAL RAILWAY AND THE TORONTO TERMINALS RAILWAY	*Kelly Matsumoto*, *Brendan O'Callaghan*, *Nathan Muscat*, and *Kirsten Franz*, for the Respondent City of Toronto
Respondents	*Alan Heisey*, for the Respondent Canadian National Railway And The Toronto Terminals Railway
	Stanley Floras for the Local Planning Appeal Tribunal
	HEARD at Toronto by Teleconference: November 29, 2018

THORBURN J. (Teleconference)

[1] A conference call took place with all parties at 2 pm on Thursday, November 29, 2018.

[2] The Local Planning Appeal Tribunal ("LPAT") issued a written decision by which it seeks a statutory Stated Case to have a panel of the Divisional Court answer the following three questions:

(1) Since the terms "examine" and "cross examine" have different meanings under the *Statutory Powers Procedure Act*, does the word "examine" prevent a party from cross examining a witness?

(2) Do the principles of natural justice and procedural fairness allow the parties on a hearing pursuant to sections 38(1) and (2) of LPAT, an opportunity to ask questions

of a witness called and examined by the Tribunal? If yes, are their questions limited to matters arising from questions asked by the Tribunal?

(3) Where the Tribunal directs production of affidavits pursuant to subsection 33(2)(c), does the limitation in section 42(3)(b) of the LPAT Act prevent the cross examination of an affiant before a hearing and the introduction of a cross examination transcript in a hearing? If not, can the evidence obtained in cross examination be referred to in submissions in a hearing?

[3] The City seeks to add a fourth question, which is:

> Does the LPAT have jurisdiction to require the parties to provide additional evidence to the Tribunal? (The City cites s. 33(2) of the *LPAT Act*, for an appeal under s. 38(1), given the more restricted nature of appeals under ss. 38(1) and (2), as set out in Rule 26 of the LPAT's Rules of Practice and Procedure and O. Reg. 102/18).[1]

[4] The City takes the position that this fourth question is a threshold question that must be answered in order to answer the other three questions.

[5] It was agreed that a single judge of the Divisional Court does not have jurisdiction to determine whether this fourth question should be added.

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[1] Pursuant to Rules 26.12(e) and 26.15(c), the parties must provide an Appeal Record that,

> ... may contain a copy of any document or part of any document that is contained in the municipal record or, in the alternative to avoid duplication, the Appellant may reference any document or part of a document contained in the municipal record that they intend to rely on. At a minimum, the appeal record shall contain:
>
> ...
>
> e) an affidavit by a person, or persons, setting out the material facts associated with the application, and where the person can be qualified to offer opinion evidence on a matter, that person's opinion with respect to the matters in issue in relation to the appeal of the decision or non-decision, along with a signed copy of the acknowledgment form attached to the Rules, and the person's résumé supporting their qualification to present opinion evidence.

Rule 26.24 sets out the Tribunal's power to require a party to produce documentation or a witness as follows:

> **Requiring the Attendance of a Witness**
> In addition to its other powers in the conduct of a hearing, the Tribunal may require the attendance at the hearing of any person whose affidavit or declaration formed part of the appeal record or the responding appeal record, or whose report or submission formed part of any record filed, and the Tribunal may examine any such person(s). The Tribunal may also require that any party produce documentation that the Tribunal may find relevant, and to appear before the Tribunal to answer any questions related to that documentation.

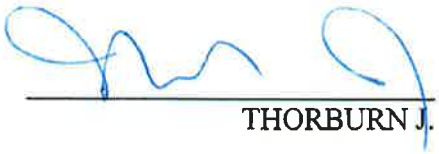
[6] It is up to the panel hearing the Stated Case to decide whether this issue must be addressed to answer the above three questions and if so, how that is done.

[7] The City has given early notice of its intention to ask the panel to consider this issue and the argument that in the City's view, this threshold question must be addressed in considering the three questions set out above. The parties agree that the City will raise the issue before the panel in this context.

[8] To preserve its rights, the City filed a Notice of Motion for Leave to Appeal the LPAT's decision not to include this question in its Stated Case. Counsel have agreed that the City's motion will be adjourned *sine die* on consent. This decision reflects the fact that the City has raised this issue but will address it in a different context.

[9] The Stated Case will be heard on April 25, 2019. The panel will decide how to answer the three questions and whether this threshold issue must be addressed in order to do so.

[10] The panel hearing the matter should be alerted to the fact that the appeal is scheduled to proceed before the LPAT on May 27, 2019 and as such, reasons should be provided as soon as possible so as to enable the LPAT proceeding to proceed on May 27th if at all possible.



THORBURN J.

Date of Reasons: November 29, 2018

Date of Release: December 11, 2018

Conservation Review Board
Commission des biens culturels

Ontario

ISSUE DATE: January 07, 2019

CASE NO(S).: CRB1822
CRB1823
CRB1824
CRB1825

PROCEEDING COMMENCED UNDER subsection 29(5) of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended

Owner/Objector:	Two Sisters Resorts Corp.
Subject:	Notice of Intention to Designate
Property Address:	144 John Street East
Legal Description:	Lot 144 RCP 692 Niagara
Municipality:	Town of Niagara-on-the-Lake
CRB Case No.:	CRB1822
CRB Case Name:	Two Sisters Resorts Corp. v. Niagara-on-the-Lake (Town)

PROCEEDING COMMENCED UNDER subsection 29(5) of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended

Owner/Objector:	Two Sisters Resorts Corp.
Subject:	Notice of Intention to Designate
Property Address:	176 John Street East
Legal Description:	Lot 144 RCP 692 Niagara
Municipality:	Town of Niagara-on-the-Lake
CRB Case No.:	CRB1823
CRB Case Name:	Two Sisters Resorts Corp. v. Niagara-on-the-Lake (Town)

PROCEEDING COMMENCED UNDER subsection 29(5) of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended

Owner:	Solmar (Niagara 2) Inc.
Objector:	Two Sisters Resorts Corp.
Subject:	Notice of Intention to Designate
Property Address:	200 John Street East

Legal Description:	Lot 145 RCP 692 Niagara Except Pt 1 to 9, 30R8436
Municipality:	Town of Niagara-on-the-Lake
CRB Case No.:	CRB1824
CRB Case Name:	Two Sisters Resorts Corp. v. Niagara-on-the-Lake (Town)

PROCEEDING COMMENCED UNDER subsection 29(5) of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended

Owner:	Solmar (Niagara 2) Inc.
Objector:	Two Sisters Resorts Corp.
Subject:	Notice of Intention to Designate
Property Address:	588 Charlotte Street
Legal Description:	Lot 156 RCP 692 Niagara; Part Lot 145 RCP 692 Niagara Part 1 to 9, 30R-8436; S/T RO718339, S/T RO413742, T/W RO413742 (PT 13, 30R1792 Except Pt 5, 30R8436)
Municipality:	Town of Niagara-on-the-Lake
CRB Case No.:	CRB1825
CRB Case Name:	Two Sisters Resorts Corp. v. Niagara-on-the-Lake (Town)

Heard: December 14, 2018 by telephone conference call

APPEARANCES:

Parties	**Counsel**
Two Sisters Resorts Corp. and Solmar (Niagara 2) Inc.	Sara Premi and Thomas Richardson
Town of Niagara-on-the-Lake	Callum Shedden, Brent Harasym, and Scott Snider
SORE Association	Patrick Little

ORDER OF THE BOARD DELIVERED BY DANIEL NELSON

Background

[1] This is a procedural order of the Conservation Review Board ("Review Board") arising from pre-hearing conferences ("PHCs") in respect of objections by Two Sisters Resorts Corp. and Solmar (Niagara 2) Inc. ("Objectors") to Notices of Intention to Designate issued by the Town of Niagara-on-the-Lake ("Municipality") for the properties at:

- 144 John Street East (CRB 1822)
  - Owned by Two Sisters Resorts Corp.
- 176 John Street East (CRB1823)
  - Owned by Solmar (Niagara 2) Inc.
- 200 John Street East (CRB1824)
  - Owned by Two Sisters Resorts Corp.
- 588 Charlotte Street (CRB1825)
  - Owned by Solmar (Niagara 2) Inc.

[2] All of the above-referenced properties are located in the Town of Niagara-on-the-Lake, Ontario ("properties").

[3] The properties are fragments of the original Rand or Randwood Estate.

[4] The Objectors are related companies with shared counsel.

Concurrent Hearings

[5] Given the overlapping parties and counsel, the Review Board orders any PHCs and/or hearings related to these four proceedings are to be held concurrently unless otherwise ordered.

Additional Party

[6] The community group known as SORE Association (Save our Randwood Estate) ("SORE") sought party status in these proceedings. Counsel for the Objectors objected to the addition of SORE as a party. The Municipality consented to its addition.

[7] Rule 21.03 of the Review Board's *Rules of Practice and Procedure* ("Rules") sets out the criteria by which the Review Board may add a party. In essence, it must be shown that:

- SORE has a genuine interest in the issues arising from the designation of these properties;
- SORE will be able to make a useful and different contribution to the understanding of these issues; and,
- The addition of SORE as a party does not cause any delay or prejudice to an existing party.

[8] The Municipality was satisfied that SORE met all the criteria to be added as a party. In its view, SORE (and its members, before incorporation) have had a long interest in the preservation of the properties. The Municipality noted that SORE has retained its own heritage expert, ERA Architects ("ERA").

[9] The Objectors did not appear to dispute that SORE has a genuine interest in the issues but were concerned about the legal status of the organization. It was not clear, to the Objectors, whether or not SORE was incorporated and, therefore, would not necessarily have internal mechanisms to allow it to speak with one voice in submissions, particularly in any settlement discussions. They were also concerned about this potential lack in internal structure as it related to what appears, to the Objectors, some disagreement between the Municipality and SORE's experts regarding

the heritage attributes of the property. Counsel for the Objectors conducted corporate searches and were unable to find SORE's letters patent.

[10] On the other hand, the Objectors acknowledged that it would be more efficient for SORE to represent the many interested persons in these matters and, perhaps, in their view, rein in some of the public's animosity regarding the project, at least among those who are members of SORE.

[11] Counsel for SORE was able to confirm that SORE was incorporated federally at the PHC. The Review Board asked that SORE's counsel share the Certificate of Incorporation with the parties and this was done later the same day by email to the parties and the Review Board, which confirmed that SORE was incorporated on November 9, 2018. This certificate set out the purpose of the corporation, which is "to ensure the responsible care, maintenance, use, and development of the Rand Estate in Niagara-on-the Lake".

[12] By subsequent letter sent to the Review Board, dated December 17, 2018, counsel for the Objectors noted that SORE's head office, as set out in the certificate, is the office of the SORE's counsel and that the only director listed, Bryce Murray, is a lawyer in the same firm. In addition, they are concerned that the objects of SORE do not specifically include representing ratepayers or members of the public of Niagara-on-the-Lake.

[13] With respect, the Review Board finds none of these subsequent submissions to be compelling. Mr. Murray, the named director, may only be a first director of the corporation; it is not uncommon for an organization's solicitor to act as such until the proper directors are elected. However, even if this is not the case, Mr. Murray may still act as a director regardless of his affiliation or location. There is no requirement for an interested party to reside in the particular municipality where a designated property exists. Nor must SORE specifically represent ratepayers or members of the public of

Niagara-on-the-Lake; rather, it appears to represent members of the public who are interested in the historic preservation of the properties, wherever located, which is not inappropriate.

[14] Counsel for SORE, in his submissions at the PHC, also noted that the organization maintains an active website on the preservation of the properties with many unique visitors. In addition, counsel for SORE provided his commitment that if SORE was added as a party, they will have internal mechanisms set up to authorize counsel to settle matters on its behalf.

[15] It is clear to the Review Board that SORE easily meets the first criterion: it has a genuine interest in the proceedings. The Review Board also finds the argument that SORE can better represent and manage the strong community interest in the proceedings, instead of many people seeking individual participant status, compelling. As this is a very early stage in the proceeding, there is no prejudice or delay caused by its addition either.

[16] The remaining question is whether SORE would make a useful and different contribution to the proceedings. It has retained ERA Architects, which is a well-known firm in the area of heritage preservation in this province. As the ERA correspondence submitted before the PHC shows, ERA has already been involved in analyzing the property as it relates to the criteria set out in Ontario Regulation 9/06 and in reviewing the submissions of the Objectors and the Municipality. This may provide both useful and different expert analysis of the property, different from both the Objector and the Municipality. Additionally, as a focal point for persons interested in the designations, it can potentially present a variety of alternate perspectives.

[17] For these reasons, the Review Board finds that:

- SORE does have a genuine interest in the proceedings;

- SORE will make a useful and different contribution to the understanding of the issues arising from these proceedings;
- there is no prejudice or delay in adding SORE as a party,

and, as a result, orders that SORE be added as a party.

[18] The Review Board further orders that SORE provide written confirmation, signed by the president or other officer of the corporation, that it has duly appointed a named representative (whether its counsel or otherwise) who has authority to settle, on behalf of the organization, any matter arising from these proceedings and that such appointment was made in accordance with its bylaws. Such written confirmation shall be submitted to the Case Coordinator before the date of any Pre-hearing Settlement Conference ("PHSC").

Pre-hearing Settlement Conference

[19] The Objector "earnestly" requests the involvement of the Review Board in settlement, which means that a PHSC would need to be organized pursuant to Rule 19.

[20] The Municipality and SORE are open to both formal or informal settlement discussions.

[21] Pending the scheduling of a PHSC, the Review Board suggested that the parties pursue informal settlement discussions between the parties. The Review Board would schedule regular PHCs so that the parties can provide updates on the progress of such discussions.

[22] The Case Coordinator is directed to canvas the parties for dates for a second PHC at the end of January 2019, for the purposes of:

- the Parties providing an update on any informal settlement discussions; and,
- the Review Board providing an update on the scheduling of a PHSC with a different Member of the Review Board.

[23] The Review Board may vary or add to this Order at any time, either on request or as it sees fit, and may do so by an oral ruling or in writing.

"Daniel Nelson"

DANIEL NELSON
MEMBER

TAB 4

LOCAL PLANNING APPEAL TRIBUNAL
RULES OF PRACTICE AND PROCEDURE

INITIATING PROCEEDINGS UNDER SUBSECTIONS 17(24), (36) AND (40), 22 (7), 34(11) AND (19) AND 51(34) OF THE *PLANNING ACT*

26.13 **Contents of the Appellant's Case Synopsis** An Appellant shall file an Appellant's case synopsis in the following form:

(1) The Appellant's case synopsis shall consist of:

a) the Appellant's name and contact information;
b) where an application is the subject of an appeal, a summary of the application;
c) a statement of the decision made by the council or the approval authority or a statement that no decision has been taken in time following a complete application;
d) the nature of the appeal and a list of the issues raised in the appeal relating to questions of consistency with a policy statement issued under section 3(1) of the *Planning Act* and conformity or conflict with a provincial plan, or with an applicable official plan;
e) a detailed review of the facts as referenced from the combined records (the municipal or appeal records), the sections of the subject policies or plans, as the case may be, and the arguments, or opinions that address the issues raised;
f) a listing of relevant authorities as may be available (statutes, case law and applicable Tribunal cases) and an analysis or explanation of how the authorities inform the issues;
g) the text of all relevant excerpted provisions of provincial planning policies, planning instruments, statutes, regulations or by-laws cited;
h) a statement of the order or other resolution sought from the tribunal; and
i) in the event that an oral hearing is afforded by the tribunal, an estimate of the amount of time needed for oral submissions, which in total shall not exceed 75 minutes for each party.

(2) References to the municipal record or appeal record shall be by volume, tab, page and line number, where applicable. Paragraphs shall be numbered consecutively throughout the case synopsis.

TAB 5

PLANNING ACT

R.S.O. 1990, CHAPTER P.13

SECTION 2

Provincial interest

2 The Minister, the council of a municipality, a local board, a planning board and the Tribunal, in carrying out their responsibilities under this Act, shall have regard to, among other matters, matters of provincial interest such as,

(a) the protection of ecological systems, including natural areas, features and functions;

(b) the protection of the agricultural resources of the Province;

(c) the conservation and management of natural resources and the mineral resource base;

(d) the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest;

(e) the supply, efficient use and conservation of energy and water;

(f) the adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems;

(g) the minimization of waste;

(h) the orderly development of safe and healthy communities;

(h.1) the accessibility for persons with disabilities to all facilities, services and matters to which this Act applies;

(i) the adequate provision and distribution of educational, health, social, cultural and recreational facilities;

(j) the adequate provision of a full range of housing, including affordable housing;

(k) the adequate provision of employment opportunities;

(l) the protection of the financial and economic well-being of the Province and its municipalities;

(m) the co-ordination of planning activities of public bodies;

(n) the resolution of planning conflicts involving public and private interests;

(o) the protection of public health and safety;

(p) the appropriate location of growth and development;

(q) the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians;

(r) the promotion of built form that,

(i) is well-designed,

(ii) encourages a sense of place, and

(iii) provides for public spaces that are of high quality, safe, accessible, attractive and vibrant;

(s) the mitigation of greenhouse gas emissions and adaptation to a changing climate.

SECTION 34

Basis for appeal

(11.0.0.0.2) An appeal under subsection (11) may only be made on the basis that,

(a) the existing part or parts of the by-law that would be affected by the amendment that is the subject of the application are inconsistent with a policy statement issued under subsection 3 (1), fail to conform with or conflict with a provincial plan or fail to conform with an applicable official plan; and

(b) the amendment that is the subject of the application is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and conforms with applicable official plans.

Notice of Appeal

(11.0.0.0.4) A notice of appeal under subsection (11) shall,

(a) explain how the existing part or parts of the by-law that would be affected by the amendment that is the subject of the application are inconsistent with a policy statement issued under subsection 3 (1), fail to conform with or conflict with a provincial plan or fail to conform with an applicable official plan; and

(b) explain how the amendment that is the subject of the application is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and conforms with applicable official plans.

Powers of L.P.A.T.

(26) Subject to subsections (26.1) to (26.10) and (26.13), after holding a hearing on an appeal under subsection (11) or (19), the Tribunal shall dismiss the appeal.

Notice re opportunity to make new decision — appeal under subs. (11)

(26.1) Unless subsection (26.3), (26.6), (26.7) or (26.9) applies, on an appeal under subsection (11), the Tribunal shall notify the clerk of the municipality that it is being given an opportunity to make a new decision in respect of the matter, if the Tribunal determines that,

(a) the existing part or parts of the by-law that would be affected by the amendment that is the subject of the application are inconsistent with a policy statement issued under subsection 3 (1), fail to conform with or conflict with a provincial plan or fail to conform with an applicable official plan; and

(b) the amendment that is the subject of the application is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and conforms with applicable official plans.

Same — appeal under subs. (19)

(26.2) Unless subsection (26.3), (26.8) or (26.9) applies, if, on an appeal under subsection (19), the Tribunal determines that a part of the by-law to which the notice of appeal relates is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan,

(a) the Tribunal shall repeal that part of the by-law; and

(b) the Tribunal shall notify the clerk of the municipality that it is being given an opportunity to make a new decision in respect of the matter.

Powers of L.P.A.T. — Draft by-law with consent of parties

(26.3) Unless subsection (26.9) applies, if a draft by-law is presented to the Tribunal with the consent of all of the parties specified in subsection (26.11), the Tribunal shall approve the draft by-law except for any part of it that is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan. 2017, c. 23, Sched. 3, s. 10 (14).

Notice to make new decision

(26.4) If subsection (26.3) applies and the Tribunal determines that any part of the draft by-law is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan, the Tribunal shall notify the clerk of the municipality that it is being given an opportunity to make a new decision in respect of the matter.

Rules that apply if notice received

(26.5) If the clerk has received notice under subsection (26.1), clause (26.2) (b) or subsection (26.4), the following rules apply:

1. The council of the municipality may prepare and pass another by-law in accordance with this section, except that clause (12) (b) does not apply.
2. The reference to "within 150 days after the receipt by the clerk of the application" in subsection (11) shall be read as "within 90 days after the day notice under subsection (26.1), clause (26.2) (b) or subsection (26.4) was received".

Second appeal, subs. (11) — failure to make decision

(26.6) On an appeal under subsection (11) that concerns the failure to make a decision on an application in respect of which the municipality was given an opportunity to make a new decision in accordance with subsection (26.5), the Tribunal may amend the by-law in such manner as the Tribunal may determine or direct the council of the municipality to amend the by-law in accordance with the Tribunal's order.

Second appeal, subs. (11) — refusal

(26.7) Unless subsection (26.9) applies, on an appeal under subsection (11) that concerns the refusal of an application in respect of which the municipality was given an opportunity to make a new decision in accordance with subsection (26.5), the Tribunal may amend the by-law in such manner as the Tribunal may determine or direct the council of the municipality to amend the by-law in accordance with the Tribunal's order if the Tribunal determines that,

(a) the existing part or parts of the by-law that would be affected by the amendment that is the subject of the application are inconsistent with a policy statement issued under subsection 3 (1), fail to conform with or conflict with a provincial plan or fail to conform with an applicable official plan; and

(b) the amendment that is the subject of the application is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and conforms with all applicable official plans.

Second appeal — subs. (19)

(26.8) Unless subsection (26.9) applies, on an appeal under subsection (19) that concerns a new decision that the municipality was given an opportunity to make in accordance with subsection (26.5), the Tribunal may repeal the by-law in whole or in part or amend the by-law in such manner as the Tribunal may determine or direct the council of the municipality to repeal the by-law in whole or in part or to amend the by-law in accordance with the Tribunal's order, if the Tribunal determines that the decision is inconsistent with policy statements issued under subsection 3 (1), fails to conform with or conflicts with provincial plans or fails to conform with an applicable official plan.

Draft by-law with consent of the parties

(26.9) If, on an appeal referred to in subsection (26.7) or (26.8), a draft by-law is presented to the Tribunal with the consent of all of the parties specified in subsection (26.11), the Tribunal shall approve the draft by-law as a zoning by-law except for any part of it that is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan.

Same

(26.10) If subsection (26.9) applies and the Tribunal determines that any part of the draft by-law is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan, the Tribunal may refuse to amend the zoning by-law or amend the zoning by-law in such manner as the Tribunal may determine or direct the council of the municipality to amend the zoning by-law in accordance with the Tribunal's order.

Specified parties

(26.11) For the purposes of subsection (26.3) and (26.9), the specified parties are:

1. The municipality.
2. The Minister, if the Minister is a party.
3. If applicable, the applicant.
4. If applicable, all appellants of the decision which was the subject of the appeal. 2017, c. 23, Sched. 3, s. 10 (14).

Effect on original by-law

(26.12) If subsection (26.3) or (26.9) applies in the case of an appeal under subsection (19), the by-law that was the subject of the notice of appeal shall be deemed to have been repealed. 2017, c. 23, Sched. 3, s. 10 (14).

Non-application of s. 24 (4)

(26.13) An appeal under subsection (11) shall not be dismissed on the basis that the by-law is deemed to be in conformity with an official plan under subsection 24 (4).

1.6.6 Sewage, Water and Stormwater

1.6.6.1 Planning for sewage and water services shall: a) direct and accommodate expected growth or development in a manner that promotes the efficient use and optimization of existing: 1. municipal sewage services and municipal water services; and 2. private communal sewage services and private communal water services, where municipal sewage services and municipal water services are not available; b) ensure that these systems are provided in a manner that: 1. can be sustained by the water resources upon which such services rely; 2. is feasible, financially viable and complies with all regulatory requirements; and 3. protects human health and the natural environment; c) promote water conservation and water use efficiency; d) integrate servicing and land use considerations at all stages of the planning process; and e) be in accordance with the servicing hierarchy outlined through policies 1.6.6.2, 1.6.6.3, 1.6.6.4 and 1.6.6.5.

1.6.6.2 Municipal sewage services and municipal water services are the preferred form of servicing for settlement areas. Intensification and redevelopment within settlement areas on existing municipal sewage services and municipal water services should be promoted, wherever feasible.

1.7 Long-Term Economic Prosperity

1.7.1 Long-term economic prosperity should be supported by:
d) encouraging a sense of place, by promoting well-designed built form and cultural planning, and by conserving features that help define character, including built heritage resources and cultural heritage landscapes;

2.0 Wise Use and Management of Resources

Ontario's long-term prosperity, environmental health, and social well-being depend on conserving biodiversity, protecting the health of the Great Lakes, and protecting natural heritage, water, agricultural, mineral and cultural heritage and archaeological resources for their economic, environmental and social benefits.

2.6 Cultural Heritage and Archaeology

2.6.1 Significant built heritage resources and significant cultural heritage landscapes shall be conserved.

2.6.2 Development and site alteration shall not be permitted on lands containing archaeological resources or areas of archaeological potential unless significant archaeological resources have been conserved.

2.6.3 Planning authorities shall not permit development and site alteration on adjacent lands to protected heritage property except where the proposed development and site alteration has been evaluated and it has been demonstrated that the heritage attributes of the protected heritage property will be conserved.

2.6.4 Planning authorities should consider and promote archaeological management plans and cultural plans in conserving cultural heritage and archaeological resources.

6.0 Definitions

Adjacent lands: means

d) for the purposes of policy 2.6.3, those lands contiguous to a protected heritage property or as otherwise defined in the municipal official plan.

Archaeological resources: includes artifacts, archaeological sites, marine archaeological sites, as defined under the Ontario Heritage Act. The identification and evaluation of such resources are based upon archaeological fieldwork undertaken in accordance with the Ontario Heritage Act.

Areas of archaeological potential: means areas with the likelihood to contain archaeological resources. Methods to identify archaeological potential are established by the Province, but municipal approaches which achieve the same objectives may also be used. The Ontario Heritage Act requires archaeological potential to be confirmed through archaeological fieldwork

Built heritage resource: means a building, structure, monument, installation or any manufactured remnant that contributes to a property's cultural heritage value or interest as identified by a community, including an Aboriginal community. Built heritage resources are generally located on property that has been designated under Parts IV or V of the Ontario Heritage Act, or included on local, provincial and/or federal registers.

Conserved: means the identification, protection, management and use of built heritage resources, cultural heritage landscapes and archaeological resources in a manner that ensures their cultural heritage value or interest is retained under the Ontario Heritage Act. This may be achieved by the implementation of recommendations set out in a conservation plan, archaeological assessment, and/or heritage impact assessment. Mitigative measures and/or alternative development approaches can be included in these plans and assessments.

Cultural heritage landscape: means a defined geographical area that may have been modified by human activity and is identified as having cultural heritage value or interest by a community, including an Aboriginal community. The area may involve features such as structures, spaces, archaeological sites or natural elements that are valued together for their interrelationship, meaning or association. Examples may include, but are not limited to, heritage conservation districts designated under the Ontario Heritage Act; villages, parks, gardens, battlefields, mainstreets and neighbourhoods, cemeteries, trailways, viewsheds, natural areas and industrial complexes of heritage significance; and areas recognized by federal or international designation authorities (e.g. a National Historic Site or District designation, or a UNESCO World Heritage Site).

Development: means the creation of a new lot, a change in land use, or the construction of buildings and structures requiring approval under the Planning Act, but does not include:
a) activities that create or maintain infrastructure authorized under an environmental assessment process;
b) works subject to the Drainage Act; or
c) for the purposes of policy 2.1.4(a), underground or surface mining of minerals or advanced exploration on mining lands in significant areas of mineral potential in Ecoregion 5E, where advanced exploration has the same meaning as under the Mining Act. Instead, those matters shall be subject to policy 2.1.5(a).

Heritage attributes: means the principal features or elements that contribute to a protected heritage property's cultural heritage value or interest, and may include the property's built or manufactured elements, as well as natural landforms, vegetation, water features, and its visual setting (including significant views or vistas to or from a protected heritage property).

Protected heritage property: means property designated under Parts IV, V or VI of the Ontario Heritage Act; property subject to a heritage conservation easement under Parts II or IV of the Ontario Heritage Act; property identified by the Province and prescribed public bodies as provincial heritage property under the

Standards and Guidelines for Conservation of Provincial Heritage Properties; property protected under federal legislation, and UNESCO World Heritage Sites.

Significant: means

e) in regard to cultural heritage and archaeology, resources that have been determined to have cultural heritage value or interest for the important contribution they make to our understanding of the history of a place, an event, or a people.

Criteria for determining significance for the resources identified in sections (c)-(e) are recommended by the Province, but municipal approaches that achieve or exceed the same objective may also be used.

While some significant resources may already be identified and inventoried by official sources, the significance of others can only be determined after evaluation.

TAB 7

GROWTH PLAN FOR THE GREATER GOLDEN HORSESHOE (2017)

1.1 The Greater Golden Horseshoe

Urban sprawl can degrade the region's air quality; water resources; natural heritage resources, such as rivers, lakes, *woodlands*, and *wetlands*; and *cultural heritage resources*

4.2.7 Cultural Heritage Resources

1. Cultural heritage resources will be conserved in order to foster a sense of place and benefit communities, particularly in strategic growth areas.

2. Municipalities will work with stakeholders, as well as First Nations and Métis communities, in developing and implementing official plan policies and strategies for the identification, wise use and management of cultural heritage resources.

3. Municipalities are encouraged to prepare archaeological management plans and municipal cultural plans and consider them in their decision-making.

7. Definitions

Archaeological Resources

Includes artifacts, archaeological sites, marine archaeological sites, as defined under the Ontario Heritage Act. The identification and evaluation of such resources are based upon archaeological fieldwork undertaken in accordance with the Ontario Heritage Act. (PPS, 2014)

Built Heritage Resource

A building, structure, monument, installation or any manufactured remnant that contributes to a property's cultural heritage value or interest as identified by a community, including an Aboriginal community. *Built heritage resources* are generally located on property that has been designated under Parts IV or V of the Ontario Heritage Act, or included on local, provincial and/or federal registers. (PPS, 2014)

Conserved

The identification, protection, management and use of *built heritage resources*, *cultural heritage landscapes* and *archaeological resources* in a manner that ensures their cultural heritage value or interest is retained under the Ontario Heritage Act. This may be achieved by the implementation of recommendations set out in a conservation plan, archaeological assessment, and/or heritage impact assessment. Mitigative measures and/or alternative development approaches can be included in these plans and assessments. (PPS, 2014)

Cultural Heritage Landscape

A defined geographical area that may have been modified by human activity and is identified as having cultural heritage value or interest by a community, including an Aboriginal community. The area may involve features such as structures, spaces, archaeological sites or natural elements that are valued together for their interrelationship, meaning or association. Examples may include, but are not limited to, heritage conservation districts designated under the Ontario Heritage Act; villages, parks, gardens, battlefields, mainstreets and neighbourhoods, cemeteries, trailways, viewsheds, natural areas and industrial complexes of heritage significance; and areas recognized by federal or international designation

authorities (e.g., a National Historic Site or District designation, or a UNESCO World Heritage Site). (PPS, 2014)

Cultural Heritage Resources

Built heritage resources, *cultural heritage landscapes* and *archaeological resources* that have been determined to have cultural heritage value or interest for the important contribution they make to our understanding of the history of a place, an event, or a people. While some *cultural heritage resources* may already be identified and inventoried by official sources, the significance of others can only be determined after evaluation. (Greenbelt Plan)

TAB 8

Niagara Region Official Plan 2014

10.C.2.1 Built Heritage Resources, Cultural Heritage Landscapes and Archaeological Resources

Policy 10.C.2.1.1 Significant built heritage resources and cultural heritage landscapes shall be conserved using the provisions of the Heritage Act, the Planning Act, the Environmental Assessment Act, the Funeral, Burial and Cremations Act and the Municipal Act.

Policy 10.C.2.1.5 Where development, site alteration and/ or a public works project is proposed on or adjacent to a significant built heritage resource(s) or cultural heritage landscapes , a heritage impact assessment will be required. The findings of the assessment shall include recommendations for design alternatives and satisfactory measures to mitigate any negative impacts on identified significant heritage resources.

Policy 10.C.2.1.13 Development and site alteration shall only be permitted on lands containing archaeological resources or areas of archaeological potential if the significant archaeological resources have been conserved by removal and documentation, or by preservation on site. Where significant archaeological resources must be preserved on site, only development and site alteration which maintain the heritage integrity of the site will be permitted.

15. Definitions

Adjacent - means for the purposes of Cultural Heritage, those properties immediately abutting built heritage resources or a locally identified Cultural Heritage Landscape.

Archaeological Resources include artifacts, archaeological sites and marine archaeological sites. The identification and evaluation of such resources are based upon archaeological fieldwork undertaken in accordance with the **Ontario Heritage Act**.

Areas of Archaeological Potential are areas with the likelihood to contain archaeological resources. Criteria for determining archaeological potential are established by the Province, but municipal approaches that achieve the same objectives may also be used. Archaeological potential is confirmed through archaeological fieldwork undertaken in accordance with the **Ontario Heritage Act**.

Built Heritage Resources means one or more significant buildings, structures, monuments, installations or remains associated with architectural, cultural, social, political, economic or military history and identified as being important to a community. These resources may be identified through designation or heritage conservation easement under the Ontario Heritage Act, or listed by local, provincial or federal jurisdictions.

Cultural Heritage Landscapes means a defined geographical area of heritage significance which has been modified by human activities and is valued by a community. It involves a grouping(s) of individual heritage features such as structures, spaces, archaeological sites and natural elements, which together form a significant type of heritage form, distinctive from that of its constituent elements or parts. Examples may include, but are not limited to, heritage conservation districts designated under the **Ontario Heritage Act**; and villages, parks, gardens, battlefields, mainstreets and neighbourhoods, cemeteries, trailways and industrial complexes of cultural heritage value.

Conserved means the identification, protection, use and/or management of cultural heritage and archaeological resources in such a way that their heritage values, attributes and integrity are retained. This may be determined through a Conservation Plan or heritage impact assessment as approved by the local municipality.

Development means the creation of a new lot, a change in land use, or the construction of a building or structure, requiring approval under the **Planning Act**. It includes the construction of new, or significant expansion of existing, public utilities or infrastructure but does not include works subject to the **Drainage Act**.

Site Alteration means the removal of topsoil and activities such as filling, grading and excavation that would change the landform, grade of the land and natural vegetative characteristics of the land, but does not include the reconstruction, repair or maintenance of a drain approved under the **Drainage Act.**

TAB 9

Town of Niagara-on-the-Lake Official Plan 2017

6.30 SERVICING POLICIES
(1) GENERAL POLICIES

a) New development will be limited by the available capacities of services. Where within any Urban Boundary full municipal services are not available it is a policy of this Plan that development may be restricted

SECTION 6A: GROWTH MANAGEMENT POLICIES

2.4 Built-up Area and Built Boundary

Planned Function
The Built-up Area is the limit of existing development within the urban areas of Virgil and the Old Town as defined by the Province of Ontario in April, 2008. All growth and development which will occur within the Built-up Area is considered to be intensification and will count towards the achievement of the Town's intensification target.

Delineation of the Urban Area Boundary and Built-up Area
The Urban Area Boundary and the boundary of the Built-up Area are delineated on Schedule "I1" to I-5" of this Plan. When the Town undertakes a municipal comprehensive review of the Official Plan, the Urban Area Boundary will be reviewed and updated according to the Growth Management Policies of this Plan and in collaboration with the Region. The Region of Niagara is responsible for determining urban area boundaries and is the approval authority for boundary expansions. The Province of Ontario is responsible for reviewing and updating the Built Boundaries within the Greater Golden Horseshoe.

4. INTENSIFICATION

4.1 General Intensification Policy

The Town supports intensification and infilling within appropriate areas throughout the Built-Up Area in accordance with Land Use Compatibility, urban design and other applicable land use compatibility criteria of this Plan. The Town also supports forms of infilling that use the existing built form, including garden suites and accessory dwelling units, where the proposed development and reuse is consistent with the land use compatibility of this Plan.

4.3 Strategy

The majority of the Town's intensification will be encouraged in specific Intensification Areas, and with infilling in other locations in the Built-Up Area where the development is consistent with the land use compatibility, Urban Design and other applicable policies of this Plan and where development will not negatively impact designated heritage areas, heritage resources and estates lots. The Town also supports the intensification through providing for the potential for second dwelling units within a detached house, semi-detached house or townhouse located in an area where residential use is permitted provided the development is consistent with the applicable residential policies of this plan and meets requirements of the Ontario Building Code and Fire Code and provided that sufficient public services are available

4.4 Intensification Objectives

Built-Up Area Intensification Policies
The Town will support appropriate infilling and intensification within the limits of the Built-Up Area. The following policies apply:

h) The Town will ensure that intensification and redevelopment is consistent with the heritage and character of the Built-up Area. Urban design guidelines for the Built-up Area may be prepared and used as a tool to achieve compatible built form with intensification and redevelopment.

Urban Design
The Town has an Urban Design committee that reviews all subdivision applications, all large site plan applications and Official Plan or zoning amendment applications. In addition, the Town reviews all planning applications from an urban design perspective. The Town will continue to refer Official Plan applications to the Urban Design Committee for review and recommendations.

In addition, the Town will continue to prepare Urban Design Guidelines as part of the preparation of Secondary Plans. In the interim, the following urban design guidelines apply to intensification proposals in Virgil and the Old Town. (Development within the urban area boundary of St. Davids, Queenston and Glendale shall be in accordance with its approved Secondary Plan and urban design guidelines for these communities).

...
d) Bulk, mass and scale of new development shall fit the context within which it is located.

7. INFRASTRUCTURE

7.3 Water and Wastewater Services

Urban Growth on Full Municipal Services
The provision of water and wastewater services is a shared responsibility with the Region; however, the Town is responsible for local water and wastewater services in the municipality. Municipal sewage services and water services are required for the servicing of development in the Town's settlement areas. Stormwater management strategies shall be based on current, innovative, best practices and are subject to the approval of the municipal Public Works and Community & Development Services Departments.

Expansion of any existing sewage treatment plant operated by the Region of Niagara is subject to an appropriate Environmental Assessment. No amendment to this plan is required for expansion of an existing facility.

Phasing Strategy
The review of all developments will consider the implications of increased servicing demands which may include upgrading of watermains, sanitary sewers and storm sewers and potential implications relating to development charges and that any identified needs and will be undertaken with input from the Region of Niagara to also ensure there is alignment with respect to Regional infrastructure requirements.

The approval of specific development applications shall be governed by the following principles:

i.) avoidance of scattered or "leap frog" development;
ii.) sequential development of neighbourhood facilities;
iii.) provision of community facilities and services;
iv.) provision of schools and parks;
v.) sequential construction of collector roads and access to arterial and boundary roads;
vi.) sequential construction of sanitary sewer and watermain extension and electrical distribution system;
vii.) adequacy of storm drainage; and,
viii.) protection of the environment and significant natural resources.

As a means of managing residential growth, the Town will require that subdivision agreements address phasing of development to the satisfaction of the Town.

The development of Queenston Quarry residential units and recreational amenities will take place in a phased manner, with the residential units abutting Melrose Drive and Townline Road being Phase 1. Phase 1 is also restricted to 2.06//sec of sanitary sewer flows. Development exceeding 2.0611sec of sanitary sewer flows will be Phase 2 and will occur once all servicing needs have been addressed to the satisfaction of all approval authorities.

The Cannery lands in St. Davids will be developed for residential purposes in two phases. Phase 1 will be the lands on the east side of Four Mile Creek Road and Phase 2 will be the lands on the west side of Four Mile Creek Road.

SECTION 10: COMMERCIAL

10.3.6 GENERAL COMMERCIAL (RANDWOOD ESTATE)

1. In the General Commercial (Randwood Estate) designation the following land uses shall be permitted:

   Main Uses
   Hotel
   Spa
   Arts and Learning Centre
   Conference Centre
   Restaurant

   Secondary Uses
   Accessory buildings and structures.

2. At site plan approval stage, the property shall be designated under Part IV of the Ontario Heritage Act.

3. The final design and plans of any additions or new buildings shall be subject to approval by the Municipal Heritage Committee.

4. Sufficient landscaping, buffers, and setbacks shall be provided to minimize the impact on abutting residential uses.

5. No terraces or balconies above the second storey shall be oriented toward abutting properties. Any terraces or balconies shall be oriented toward the interior of the property.

6. All access to parking areas shall be oriented or designed in such a way that there shall be no impact of vehicular lights on abutting residential properties.

7. There shall be no negative impact on abutting properties as a result of lighting in parking lots, driveways, walkways, or other outdoor recreation and amenity spaces.

8. There shall be adequate building separation from adjacent residential uses.

9. A tree preservation plan prepared by a qualified professional and shall be submitted with a site plan application.

10. The boxwood hedge within the buffer area adjacent to the western property line shall remain and be properly protected and preserved to insure its continued growth. At site plan stage measures to mitigate construction impacts to protect the boxwood hedge will be required.

18.3 HERITAGE POLICIES

(4) Criteria for Assessing New Development

Where a planning application has been received that proposes new development in the municipality, the Planning & Development Services Department for the Town shall include LACAC as a commenting agency to be given an opportunity to review the application and provide comments. The comments from all circulated agencies shall form part of the required planning report prepared by the Town. The review by LACAC shall address the following:

a) The impact of the development on existing heritage resources
b) The proposed building design and its effect on the historic character of abutting properties and the streetscape

18.4 GENERAL HERITAGE CONSERVATION POLICIES

(6) Council, with the advice of LACAC, will regulate and guide alterations and additions to heritage resources. Council may also request comments from LACAC for any development within a Heritage District, proposed expansion area or where it is believed that a development may impact on heritage resources.