

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** August 18, 2021

**CASE NO(S):** PL180774

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

Appellant:	Bryan Keenan
Subject:	Proposed Official Plan Amendment No. OPA 127
Municipality:	City of Niagara Falls
OLT Case No.:	PL180774
OLT File No.:	PL180774
OLT Case Name:	Keenan v. Niagara Falls (City)

**PROCEEDING COMMENCED UNDER** subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Bryan Keenan
Subject:	By-law No. 2018-92
Municipality:	City of Niagara Falls
OLT Case No.:	PL180774
OLT File No.:	PL180776

**Heard:** November 5, 2020 by video hearing

**APPEARANCES:**

**Parties**

City of Niagara Falls

Bryan Keenan

**Counsel**

T. Halinski

R. Di Lallo

**DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER AND ORDER OF THE TRIBUNAL**

---

[1] This decision deals with a dispute regarding the appropriate as-of-right zone locations for certain Short-Term Accommodation (“STA”) used as Vacation Rental Units (“VRU”).

[2] The City of Niagara Falls (“City”) adopted Official Plan Amendment No. 127 (“OPA 127”) adding definitions and policies for two forms of STA. The two types of STA that are the subject of OPA 127 are VRU and Bed and Breakfast (“B&B”) accommodations. The City also adopted two implementing zoning by-laws, one for VRU and one for B&B.

[3] Bryan Keenan (“Appellant”) appealed all three matters to this Tribunal. This proceeding dealt only with the appeal of OPA 127 and the appeal of By-law No. 2018-92 (“By-law”) regarding VRU. This By-law amends By-law No. 79-200 to permit VRU, with up to three bedrooms, as-of-right in the following commercial zones: Tourist commercial, General Commercial and Central Business Commercial zones, subject to compliance with applicable regulations. By contrast, B&Bs are permitted in a much broader range of zones, including as-of-right in several Residential zones and subject to any applicable regulations.

[4] The Tribunal had the benefit of affidavit evidence from two qualified land use planners. The Tribunal had two Affidavits of Alex Herlovitch, one sworn November 20, 2018 and a supplementary Affidavit sworn October 23, 2020. The Tribunal also had two Affidavits of Michael Sullivan, one sworn October 30, 2018 and a supplementary Affidavit sworn October 26, 2020.

## ISSUES, ANALYSIS AND FINDINGS

[5] There are five formal issues in this proceeding:

1. Are OPA 127 and the By-law consistent with the Provincial Policy Statement 2020 (“PPS 2020”)?
2. Do OPA 127 and the By-law conform with the Growth Plan for the Greater Golden Horseshoe 2019 (“Growth Plan 2019”)?
3. Does OPA 127 conform with the Region of Niagara Official Plan (“ROP”)?
4. Does OPA 127 conform with the policy regime of the City Official Plan (“OP”)?
5. Does the By-law conform to the OP, as modified by OPA 127?

[6] Underlying the submissions and evidence of the Appellant is one consistent theme: VRU should be permitted as-of-right in Residential zones. The City disagrees strongly with this position.

[7] The as-of-right permission for VRU is in what are essentially commercial zones. VRU can locate in Residential zones, but that requires a zoning by-law amendment and an official plan amendment.

[8] Tourism is an important component of the City’s economy. STA is one important component of tourism. The City has drawn a distinction between VRU and B&B to recognise the unique characteristics of each while maintaining the residential character of residential neighbourhoods. In doing so, the City is recognising the differences in the nature and activities of different zones. A B&B requires the owner to live on the

premises; a VRU does not. As such, the City sees the VRU as a business more akin to traditional commercial interests and sees the B&B as more akin to a home occupation type of activity.

[9] The Appellant asserts that VRU is still accommodation and is appropriate for residential areas. The Appellant does not suggest removing any as-of-right permissions for VRU in commercial zones.

[10] The City contends that conversion of residential dwellings to accommodate VRU removes residential stock from available accommodation for residents, and instead adds it to accommodation for the travelling public. This description was not in dispute in these proceedings. The result of any such conversion, however, was in dispute.

[11] In addition to supporting a vibrant tourist industry, the City has the responsibility to ensure housing availability to accommodate current and future growth with a range and mix of housing for its current and future residents. This requirement is found in the list of matters of provincial interest in s. 2 of the *Planning Act* ("Act"), the PPS 2020, the Growth Plan 2019, the ROP and the OP. It is not new nor is it a requirement unique to the City.

[12] The City has tied its assessment of how it implements this responsibility with its analysis of how neighbourhoods evolve and exhibit a residential character. Phrased another way, where the different elements of that range and mix of housing locate both affects and is tied to the nature and character of the neighbourhoods in which those elements rest.

[13] VRU are rarely new builds. They are commonly conversions of existing residential accommodation. The City's analysis concludes that the conversion of residential to VRU generally conflicts with the City's ability to provide zones to accommodate residential dwellings for current and future residents by removing accommodation that would otherwise be available for residents rather than the travelling

public. Important to the Tribunal in this matter, the City does contemplate the possibility that a particular proposal for a VRU may be appropriate in a particular Residential zone. The City simply requires that it be examined on a case-by-case basis through an official plan amendment and a zoning by-law amendment. This approach is not a ban; it is a careful and prudent analysis enabling the City to balance several competing ambitions.

### **The Provincial Planning Instruments**

[14] The initial affidavits filed in these proceedings contained expert planning opinions of each land use planner regarding the instruments before the Tribunal. They were sworn at the time that the PPS 2014 and the Growth Plan 2017 were in effect.

[15] Section 3(5) of the Act requires the Tribunal to make its decision on a planning matter consistent with the Provincial Policy Statement in effect at the time of the decision. It also requires that the Tribunal's decision conforms or does not conflict with a provincial plan in effect at the time of the decision.

[16] In this case, the PPS 2020 and the Growth Plan 2019 came into effect prior to the hearing. The Tribunal directed these two planners to file the supplementary Affidavits, setting out whether their expert professional opinions had been altered by the policies contained either in the PPS 2020 or the Growth Plan 2019. Each planner's supplementary Affidavit indicated that the planner's expert professional opinion had not changed.

#### *Provincial Policy Statement 2020*

[17] The PPS 2020 encourages long-term economic prosperity and the balancing of the need to provide a range and mix of housing with the desirability of maintaining the vitality of downtowns and supporting sustainable tourism development. OPA 127 and the By-law permit VRU, as-of-right, in the City's downtown. The City's planning analysis concludes that this would add vitality to the downtown, which is within walking distance

from major transit facilities. Locations that permit VRU as-of-right have easy access to tourist facilities and support the City's ambition of a sustainable tourism industry that is so important to the City's economic prosperity.

*Growth Plan for the Greater Golden Horseshoe 2019*

[18] The Growth Plan 2019 also emphasizes the provision of a range and mix of housing options to serve different sizes, incomes and ages of households as part of the continuing work to achieve complete communities.

[19] Permitting VRU as-of-right in certain zones, including the Tourist Commercial zone, implements the stated intent of VRU to respond to a market demand for tourist accommodation. The Tribunal notes that the Tourist Commercial zone is designated Tourist Commercial and considered to be an employment area. The City's approach enables the further development of VRU while supporting the City's tourist industry.

**The Municipal Planning Instruments**

[20] OPA 127 must conform to the ROP and to the policy regime of the OP. The By-law must conform to the OP as modified by OPA 127.

*The Niagara Region Official Plan*

[21] The ROP recognizes the importance of tourism as a core component of the Region's economy. The Tribunal agrees with the City that VRU serve the travelling public and represent another accommodation option that supports tourism.

[22] The ROP, like the PPS 2020 and the Growth Plan 2019, also recognizes the importance of providing a range and mix of housing for the range and mix of households resident in a municipality. Like the provincial planning instruments, the ROP also asks municipalities in the Region to balance the desirability of a strong tourism sector with the accommodation needs of present and future residents.

*The City of Niagara Fall Official Plan*

[23] The OP echoes the now-familiar theme of the need to provide a range and mix of housing that is affordable, accessible and appropriate for a full range of households' resident in the City. With the VRU serving generally the travelling public rather than resident households, the case-by-case consideration of a VRU application in a Residential zone enables the City to fine tune the fit of that particular application to the character and needs of a Residential neighbourhood.

**Regard for Matters of Provincial Interest**

[24] Section 2 of the Act requires the Tribunal to have regard to matters of provincial interest as set out in this section of the Act. The Tribunal has done so and finds that OPA 127 and the By-law have had regard for the matters of provincial interest, particularly s. 2(h) on the orderly development of communities; s. 2(j) on the adequate provision of a full range of housing; 2(k) on the adequate provision of employment opportunities; s. 2(l) on the protection of the financial and economic well-being of the City; and s. 2(p) on the appropriate location of growth and development.

**Regard for the City of Niagara Falls Decision**

[25] Section 2.1 of the Act requires the Tribunal to have regard to the decision of the City Council and any information and material the Council considered in making its decision.

[26] In addition to the affidavit evidence in this matter, the Tribunal also considered the reports and communications before the City Council, as set out in the municipal record filed by the City when the appeal was forwarded to the Tribunal.

[27] The Tribunal notes that OPA 127 and the By-law were adopted by the City Council. The materials before the City were consistent with the information and opinions presented in the affidavits.

[28] The Tribunal finds that the City's approach in this matter provides a reasonable and appropriate balance that meets the requisite statutory tests and responds appropriately to the issues raised by the Appellant in these proceedings.

[29] The Tribunal finds that OPA 127 is consistent with the PPS 2020, conforms to the Growth Plan 2019, conforms to the ROP and conforms to the policy regime in the OP. The Tribunal finds that the By-law is consistent with the PPS 2020, conforms to the Growth Plan 2019, conforms to the ROP and conforms to the OP as modified by OPA 127.

## **ORDER**

[30] The Tribunal orders that the appeals of Bryan Keenan are dismissed.

[31] The Tribunal modifies the City of Niagara Falls Official Plan by Official Plan Amendment 127 and, as so modified, is approved.



[32] The Tribunal amends the City of Niagara Falls By-law No. 79-200 in accordance with By-law No. 2018-92.

*“Susan de Avellar Schiller”*

SUSAN de AVELLAR SCHILLER  
VICE-CHAIR

**Ontario Land Tribunal**

Website: [www.olt.gov.on.ca](http://www.olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.