

Update Week 2002-32

Planning

*Case Name:*

**Beefeater (Niagara) Ltd. v. Niagara Falls (City)  
Committee of Adjustment**

**Beefeater (Niagara) Limited and C.I. Burland Properties Limited have appealed to the Ontario Municipal Board under subsection 45(12) of the Planning Act, R.S.O. 1990, c. P.13, as amended, from a decision of the Committee of Adjustment of the City of Niagara Falls which granted an application by Canadian Niagara Hotels numbered A-06/2002 for variance from the provisions of By-law 5335, as amended, respecting 5875 Falls Avenue OMB File No. V020116**

[2002] O.M.B.D. No. 554

File Nos. PL020247, V020116

Ontario Municipal Board

**J.R. Mills**

Oral decision: July 8, 2002

Filed: July 26, 2002

(4 paras.)

**COUNSEL:**

N.J. Pepino, E. Costello, for Canadian Niagara Hotels Inc.

P.A. Pingue, for City of Niagara Falls.

N. Perfetto/T. **Takishita**, for C.I. Burland Properties Limited, Beefeater (Niagara) Limited.

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MEMORANDUM OF ORAL DECISION DELIVERED BY J.R. MILLS AND ORDER OF THE BOARD:--

**1** As will be seen by the Minutes of Settlement (Exhibit 1) filed with the Board during the second day of the hearing (Attachment 1 to this decision), the main issue to be adjudicated was the noise levels that might emanate from the proposed new Z-force ride on the applicant's lands. As it turned out the parties were able to resolve the noise problem which is reflected in Exhibit 1.

**2** The Board accepts the uncontradicted evidence of the applicant's planner that the variances applied for can meet the four tests of Section 45(1) of the Planning Act provided the Minutes of Settlement (Exhibit 1) are complied with.

**3** The Board therefore allows the appeal in part and will authorize the variances requested and attach the Minutes of Settlement (Exhibit 1) as a condition thereto. The Board so orders.

**4** The parties (except the City) also filed an Agreement (Exhibit 2) - Attachment 2 to this decision, to try and curtail the litigation between them in the future. Although the Board welcomes the Agreement, it has no authority to enforce it.

J.R. MILLS, Member

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ATTACHMENT "1"

ONTARIO MUNICIPAL BOARD

Beefeater (Niagara) Limited and C.I. Burland Properties Limited have appealed to the Ontario Municipal Board under Subsection 45(12) of the Planning Act, R.S.O. 1990, c. P.13, as amended from a decision of the Committee of Adjustment of the City of Niagara Falls which granted an application by Canadian Niagara Hotels NO. A-06/2002 for variance from the provisions of the By-Law 5335, as amended, respecting 5875 Falls Avenue.

Approval Authority File No.: A-06/2002

O.M.B. File No.: V020116

Minutes of Settlement between the City of Niagara Falls, Canadian Niagara Hotels Inc. and Beefeater (Niagara) Limited and C.I. Burland Properties Limited

1. City of Niagara Falls agrees that the relevant provisions contained herein will form part of the amended Site Plan Agreement to be entered into between Canadian Niagara Hotel ("CNH") and the City of Niagara Falls (the "City").
2. The City of Niagara Falls agrees to issue a permit subject to compliance with the Building Code Act for the extension of the wall, such extension is shown as marked on the Site Plan of the properties attached. CNH shall construct the wall in accordance with said building permit.
3. Compressor room doors shall be outfitted with proper sound seals to the full perimeter and with automatic door closers. This facility is not to be operated with the doors open.
4. The air intakes for the compressor room to be on a façade with no view, either complete or partial, to the C.I. Burland properties (the "Burland property").
5. Any future development to occur on the Burland property will be commensurate with the design and quality of construction on the CNH site.
6. CNH will provide to Burland a copy of the TSSA Permit when issued and, if required by Burland's insurers, a copy of renewals, if requested.
7. All air venting on the ride to be mitigated to achieve and maintain a maximum instantaneous sound level of 64 decibels with a tolerance of 3 decibels at the closest edge of the nearest existing motel room overlooking the space identified as rooftop patio on the Burland property on the Site Plan of the properties attached hereto.
8. HGC is to provide written details of noise control criteria and mitigation measures to Valcoustics Canada Limited prior to installation of the Z-Force ride.
9. Within fifteen (15) business days of the installation of the Z-Force ride HGC shall do a final on-site construction review and confirm the proper implementation of the noise control criteria and mitigation measures, and that the acoustics objectives have been satisfied, or identify the steps to achieve such objectives, which steps shall be pursued by CNH expeditiously and acting reasonably, and which steps and action taken thereon shall be confirmed, in writing, to Valcoustics Canada Limited.
10. Any outdoor loud speakers or musical sound systems on the Z-Force ride shall not be placed any higher than the wall around the Z-Force ride, which speakers or systems shall be directed internally to the ride and CNH property. This does not preclude the placement of speakers on the ground level of the attraction.
11. Any outdoor loud speakers or musical sound systems on the amusement ride on the carousel location shall be placed no higher than the roofline of the existing structure.

Canadian Niagara Hotels Inc.

C.I. Burland Limited

City of Niagara Falls

by its solicitor

SECRETARY TREASURER

Dated:

July 9, 2002

[Quicklaw note: Ambient Sound Levels drawing, could not be reproduced online. Please see paper copy.]

## ATTACHMENT "2"

### AGREEMENT

The parties to this agreement acknowledge that they have informed one another of the following foreseen developments on their respective sites and that further developments may occur on their lands that are not presently foreseen:

1. applications which may include a height variance for an amusement ride on the CNH site to replace the carousel, provided any music which might be associated with the ride is not projected from the top of the roofline of the existing structure as shown on the Site Plan of the properties attached;
2. the development of a high-rise hotel and observation tower on the CNH site above the casino as shown on the Site Plan of the properties attached;
3. an application to permit the covering of the presently occupied rooftop garden on the conference center with a tent structure of 100 by 200 feet;
4. the redevelopment of a portion of the Burland property - specifically the addition of up to 4 storeys of hotel/motel or related uses of that portion of the property shown hatched on the Site Plan of the properties attached;
5. the development, at or below grade, of an amusement attraction or restaurant on the Burland property site - specifically the portion of the property shown in a heavy dark line on the Site Plan of the properties attached;
6. the construction of a roof to the second story rooftop patio as shown on the Site Plan for the properties attached; and
7. provided that the design and quality of construction of the development on the Burland property is commensurate with the design and quality of the construction on the CNH property

The parties acknowledge that they will not appeal to the Ontario Municipal Board with respect to the above disclosed proposals but also acknowledge that any other application may be pursued by either party as permitted under the relevant legislation.

The parties further acknowledge that the agreements herein will run for 5 years from the date of this agreement, recognizing the unique & ever changing nature of development in Niagara Falls.

Canadian Niagara Hotels Inc.

C.I. Burland Properties  
Limited

Dated:

July 9, 2002

SECRETARY TREASURER

qp/s/qlcct