

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



**ISSUE DATE:** January 13, 2025

**CASE NO(S).:**

OLT-22-002321

**PROCEEDING COMMENCED UNDER** subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

|                  |                                  |
|------------------|----------------------------------|
| Appellant:       | Northgate Land Corp.             |
| Subject:         | Proposed Official Plan Amendment |
| Municipality:    | City of Waterloo                 |
| OLT Case No.:    | OLT-22-002321                    |
| Legacy Case No.: | PL130028                         |
| OLT File No.:    | OLT-22-002321                    |
| Legacy File No.: | PL130028                         |
| OLT Case Name:   | Northgate v. Waterloo (Region)   |

**PROCEEDING COMMENCED UNDER** subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

|                               |                                                                                     |
|-------------------------------|-------------------------------------------------------------------------------------|
| Applicant and Appellant:      | 1017081 Ontario Limited                                                             |
| Subject:                      | Proposed Plan of Subdivision – Failure of the Region of Waterloo to make a decision |
| Property Address/Description: | Part of Lot 28 GERMAN COMPANY TRACT (Plan 58R et. al.                               |
| Municipality:                 | Region of Waterloo                                                                  |
| Municipality File No.:        | 30T-17401                                                                           |
| OLT Case No.:                 | OLT-22-002327                                                                       |
| Legacy Case No.:              | PL180119                                                                            |
| OLT File No.:                 | OLT-22-002327                                                                       |
| Legacy File No.:              | PL180119                                                                            |
| OLT Case Name:                | 1017081 Ontario Ltd. v. Waterloo (Region)                                           |

**PROCEEDING COMMENCED UNDER** subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

|                          |                      |
|--------------------------|----------------------|
| Applicant and Appellant: | 1017081 Ontario Ltd. |
|--------------------------|----------------------|

|                               |                                             |
|-------------------------------|---------------------------------------------|
| Subject:                      | Proposed Plan of Subdivision – Failure the  |
|                               | Region of Waterloo to make a decision       |
| Purpose:                      | To permit the creation of a new residential |
|                               | neighbourhood with parks and protected open |
|                               | space                                       |
| Property Address/Description: | Part of Lot 28 GERMAN COMPANY TRACT         |
|                               | (Plan                                       |
|                               | 58R et. al.)                                |
| Municipality:                 | Region of Waterloo                          |
| Municipality File No.:        | 30CDM-17409                                 |
| OLT Case No.:                 | OLT-22-002327                               |
| Legacy Case No.:              | PL180119                                    |
| OLT File No.:                 | OLT-22-002330                               |
| Legacy File No.:              | PL180120                                    |

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

|                               |                                                    |
|-------------------------------|----------------------------------------------------|
| Applicant and Appellant:      | Gabriel Groff and 1017081 Ontario Ltd.             |
| Subject:                      | Application to amend Zoning By-law No. 1418        |
|                               | (now, Zoning By-law No. 2018-50) – Neglect of the  |
|                               | City of                                            |
|                               | Waterloo to make a decision                        |
| Existing Zoning:              | "Agricultural (A)"                                 |
| Proposed Zoning:              | "G 1 - Green 1- Environmental"; "G2 - Green 2 -    |
|                               | Parks and Other Municipal Facilities"; "FR -       |
|                               | Flexible Residential"; "MD3 - Medium Density 3";   |
|                               | "MR6 - Multiple Residential - Six"; "MXR - Mixed   |
|                               | use                                                |
|                               | residential", "SD - semi-detached"                 |
| Purpose:                      | To permit the development of 614 - 835 dwelling    |
|                               | units, including single-detached dwellings, street |
|                               | fronting town houses, multiple residential blocks  |
|                               | and                                                |
|                               | mixed use development                              |
| Property Address/Description: | S/W Corner of Conservation Dr. & Beaver Creek      |
|                               | Rd.                                                |
| Municipality:                 | City of Waterloo                                   |
| Municipality File No.:        | Z-17-14                                            |
| OLT Case No.:                 | OLT-22-002327                                      |
| Legacy Case No.:              | PL180119                                           |
| OLT File No.:                 | OLT-22-002328                                      |
| Legacy File No.:              | PL171494                                           |

**PROCEEDING COMMENCED UNDER** subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

|                               |                                                                                               |
|-------------------------------|-----------------------------------------------------------------------------------------------|
| Applicant and Appellant:      | 1455136 Ontario Limited                                                                       |
| Subject:                      | Proposed Plan of Subdivision – Failure of the Region of Waterloo to make a decision           |
| Purpose:                      | To permit the creation of a new residential neighbourhood with parks and protected open space |
| Property Address/Description: | Part Of Lot 28 GERMAN COMPANY TRACT                                                           |
| Municipality:                 | Region of Waterloo                                                                            |
| Municipality File No.:        | 30T-17402                                                                                     |
| OLT Case No.:                 | OLT-22-002314                                                                                 |
| Legacy Case No.:              | PL180121                                                                                      |
| OLT File No.:                 | OLT-22-002314                                                                                 |
| Legacy File No.:              | PL180121                                                                                      |
| OLT Case Name:                | 1455136 Ontario Ltd. v. Waterloo (Region)                                                     |

**PROCEEDING COMMENCED UNDER** subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

|                               |                                                                                               |
|-------------------------------|-----------------------------------------------------------------------------------------------|
| Applicant and Appellant:      | 1455136 Ontario Limited                                                                       |
| Subject:                      | Proposed Plan of Subdivision – Failure of the Region of Waterloo to make a decision           |
| Purpose:                      | To permit the creation of a new residential neighbourhood with parks and protected open space |
| Property Address/Description: | Part of Lot 28 GERMAN COMPANY TRACT                                                           |
| Municipality:                 | Region of Waterloo                                                                            |
| Municipality File No.:        | 30T-17410                                                                                     |
| OLT Case No.:                 | OLT-22-002314                                                                                 |
| Legacy Case No.:              | PL180121                                                                                      |
| OLT File No.:                 | OLT-22-003784                                                                                 |
| Legacy File No.:              | PL180122                                                                                      |

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

|                          |                                                                                              |
|--------------------------|----------------------------------------------------------------------------------------------|
| Applicant and Appellant: | 1455136 Ontario Limited                                                                      |
| Subject:                 | Application to amend Zoning By-law 1418 – Neglect of the City of Waterloo to make a decision |
| Existing Zoning:         | Agricultural 'A'                                                                             |

|                               |                                                                                                                                                                                                                                     |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Proposed Zoning:              | “G 1 – Green 1 – Environmental”; “G2 – Green 2 – Parks and Other Municipal Facilities”, “FR – Flexible Residential”; “MD3 – Medium Density 3”, “MR6 – Multiple Residential – Six; MXR – Mixed use residential: ”SD – semi-detached” |
| Purpose:                      | To permit the creation of a new residential neighbourhood with parks and protected open space                                                                                                                                       |
| Property Address/Description: | Part Of Lot 28 GERMAN COMPANY TRACT                                                                                                                                                                                                 |
| Municipality:                 | City of Waterloo                                                                                                                                                                                                                    |
| Municipality File No.:        | Z-17-15                                                                                                                                                                                                                             |
| OLT Case No.                  | OLT-22-002314                                                                                                                                                                                                                       |
| Legacy Case No:               | PL180121                                                                                                                                                                                                                            |
| OLT File No.                  | OLT-22-003783                                                                                                                                                                                                                       |
| Legacy File No.:              | PL171495                                                                                                                                                                                                                            |

**Heard:** November 14, 2024 in writing

## **APPEARANCES:**

### **Parties**

Northgate Land Corp.  
 Gabriella Groff  
 1017081 Ontario Limited  
 1455136 Ontario Limited

City of Waterloo (“City”)

### **Counsel**

Robert Howe and Rodney Gill

Steven O’Melia

## **DELIVERED BY K.R. ANDREWS AND ORDER OF THE TRIBUNAL**

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[Link to Order](#)

## **INTRODUCTION**

[1] On June 9, 2023 the Tribunal issued a decision (the “Decision”; see: [1455136 Ontario Ltd. v Waterloo, 2023 CanLII 50968 \(ON LT\)](#)) approving, in part, the

applications for approval of Draft Plans of Subdivision proposed by the Appellants (Northgate Land Corp., hereinafter referred to as “Northgate”, and Gabriella Groff and 1017081 Ontario Limited, collectively hereinafter referred to as “Kartway”), a joint application for approval of a Vacant Land Condominium comprised of blocks from both Draft Plans of Subdivision (the “VLC”), and amendments to the City of Waterloo Zoning By-law No. 2018-050 to implement the proposed development (the “ZBA”).

[2] The Decision made certain findings that required revisions to the Draft Plans of Subdivision and VLC, and conditions of draft plan of subdivision approval proposed by the City and the Region of Waterloo, and the ZBA. The Decision withheld the Tribunal’s order pending the submission of revised documents implementing the Decision.

[3] The parties have since informed the Tribunal that they have reached a consensus in respect of the form of a draft ZBA, to provide to the Tribunal for final approval, except in respect to the following:

1. The appropriate zoning to be applied to Block 5, Stage 4 (formerly Block 1, Stage 5 at time of hearing) to reflect the Tribunal’s Decision (see: paragraphs 5-8; 27-61 of the Decision).

[4] The parties have also since informed the Tribunal that they have reached a consensus in respect of most of the changes to the conditions of approval of the Draft Plans of Subdivision required to implement the Decision, except with respect to the following:

1. The scope/wording of the easement in favour of the Appellant over Block 6, Stage 4, which is to be conveyed to the City pursuant to Condition 1.2.16 (Northgate) (see: paragraphs 145-146 of the Decision); and
2. The wording of City Specific Subdivision Condition 3.15 (Northgate) and City

Specific Subdivision Condition 3.11 (Kartway), including references thereto, regarding the conveyance of road widenings, reserves, sanitary pumping station blocks and temporary construction easements to the City to permit the City to construct the infrastructure improvements that are needed to support the new development (see: paragraphs 111-114 of the Decision).

### **Purpose and scope of present hearing**

[5] The Parties have now come to the Tribunal to seek direction concerning the above unresolved issues, insofar as they are seeking clarity with respect to the Tribunal's intended findings in relation to each of the above issues. It is important to note that the merit hearing has concluded, including as it relates to substantive submissions from the parties. To this extent, the Tribunal will not consider any such submissions from the parties regarding what it could or should have decided almost 19 months ago. The present hearing is only about what the Tribunal did decide and providing clarity regarding same.

### **What is the appropriate zoning to be applied to Block 5, Stage 4 to reflect the Tribunal's Decision?**

[6] On this point, the Appellant submits that the Decision did not direct any particular change to the zoning of Block 5, Stage 4, so the *status quo* should remain. At the time of the Decision and currently, Zone Change Application ("ZC") zoning was/is in place. As explained by the parties, this zoning was applied by the City to lands with active rezoning applications when its current Zoning By-law No. 2018-050 was enacted in 2018 (this was the case with the subject lands). The ZC zoning retains the existing permitted uses of the subject lands and allows for the processing of a zone change application that may be made in the future for the lands. In the present case, the ZC zone allows for the continued use of the lands for agricultural purposes.

[7] Alternatively, the Appellant requests that the block be zoned agricultural or a Future Determination (FD) zone be applied, which will similarly allow the continued existing use of the lands.

[8] By contrast, the City submits that Block 5, Stage 4 should be rezoned Conservation (OS3), permitting only:

- Beekeeping, subject to compliance with the *Ontario Bees Act*
- Conservation Lands, meaning natural resource areas including woodlots, wetlands, grasslands, water courses, and related environmental buffers
- CITY, REGIONAL, and GRCA flood and erosion control infrastructure
- Parkland, Trails, and Pathways
- Restorative, scientific, and educational uses solely related to the natural and environmental resources and systems on the LOT – includes woodland, wetland, grasslands, water course, fish, and wildlife management and conservation.

[9] The City takes the position that the Tribunal denied all development of this block, and so the OS3 designation is the most appropriate designation to now apply to it. Additionally, the City takes the position that ZC zoning is only meant to apply to lands with active rezoning applications, and it would be inappropriate and confusing to continue to apply such a designation to these lands, which are no longer subject to a ZBA application.

[10] To be clear, the Decision does not deny all potential development of Block 5, Stage 4; it only refused the particular application that was before it at the time. It further did not approve any other zoning changes for this block as part of the Decision, be it OS3 or otherwise. Consequently, the *status quo* remains pending any further action by either party to change the zoning from what currently applies. This is to say that the Tribunal accepts the Appellant's primary position on this point, and the ZC zoning shall

remain.

**What is the appropriate scope/wording of the easement in favour of the Appellant over Block 6, Stage 4, which is to be conveyed to the City pursuant to Condition 1.2.16 (Northgate)?**

[11] The parties are in general agreement with respect to the implementation of the Decision concerning the conveyance of land to the City and implementation of an easement over Block 6, Stage 4 in favour of the Appellant, except with respect to the scope/wording of the easement in terms of what kinds of access are to be provided to the Appellant.

[12] The Appellant takes the position that, since any future development of Block 5, Stage 4 remains undetermined, the wording should be sufficiently broad to allow a reasonable scope of possibilities. Consequently, the Appellant suggests that the easement provide for the following:

**[A]ccess across Block 6, Stage 4 by pedestrians, vehicles, machinery, equipment and materials, and for the installation and maintenance of utilities and services [...] to Block 5, Stage 4.**

[13] The City meanwhile takes the position again that any future development of Block 5, Stage 4 has been effectively denied, including as it relates to the formerly proposed roadway with utilities and services, and so the scope of the easement should correspondingly be limited. Consequently, the City suggests that the easement should only provide the following:

**[A]ccess [across Block 6, Stage 4] for pedestrians and vehicles to [Block 5, Stage 4].**



[14] To be clear once again, the Tribunal did not decide to deny all potential future development of Block 5, Stage 4, and so the Tribunal did not contemplate limiting the scope of the easement as the City suggests. Furthermore, the City did not make submissions at the hearing requesting such a limited scope of the easement, as part of its request to have the land conveyed to them with an easement in favour of the Appellant. The Tribunal therefore did not contemplate such a narrowly scoped easement, as the City suggests. This is to say that the Tribunal again accepts the Appellant's position, and the condition of approval of the Draft Plans of Subdivision shall implement the wording/scope of the easement suggested by the Appellant.

**What is the appropriate wording of City Specific Subdivision Condition 3.15 (Northgate) and City Specific Subdivision Condition 3.11 (Kartway) regarding the conveyance of road widenings, reserves, sanitary pumping station blocks and temporary construction easements to the City to permit the City to construct the infrastructure improvements that are needed to support the new development?**

[15] On this point, the Tribunal was clear in the Decision that it is unreasonable to impose a condition on the Appellants which requires the Appellants to provide a property interest over its lands for the benefit of a third party, and that it will be up to the Appellants, the City and the other interested landowners in the District to come to an agreement in relation to the conveyance of these lands and associated cost sharing.

[16] Of the parties' opposing suggestions on how to implement this finding, the Tribunal finds that the Appellants' wording is more reflective of the Decision. It reads as follows:

**Prior to the first registration for Draft Plan of Subdivision 30T-17401, the Owner, the City and other owners in the Beaver Creek Meadows District benefiting from the reconstruction of Beaver Creek Road and Conservation Drive and proposed pumping station in Draft Plan of Subdivision 30T-17401**

**will make arrangements regarding the conveyance of lands required for that infrastructure and associated cost sharing.**

[17] The Tribunal finds that the City's alternative wording has the effect of compelling the Appellant to come to a certain agreement as dictated by the City. The City argues that this is necessary or an agreement cannot be reached and the development cannot proceed.

[18] On this point, the Tribunal declines to comment on the prospects of an agreement. However, the Tribunal confirms that the Decision does not have the effect of compelling the parties to come to a specific agreement. Furthermore, it is not the role of the Tribunal to wade into the business affairs or negotiations of the parties or third parties regarding this issue.

[19] This is to say that the Tribunal again accepts the Appellant's position, and the condition of approval of the Draft Plans of Subdivision shall implement the above wording, as suggested by the Appellant.

[20] This is the Order of the Tribunal.

*"K.R. Andrews"*

K.R. ANDREWS  
MEMBER

### **Ontario Land Tribunal**

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