

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



**ISSUE DATE:** April 04, 2024

**CASE NO(S).:** OLT-23-001132

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

Appellant:	Christine Vestervelt
Subject:	By-law No. 2023-434
Description:	To rezone the Subject Property from "RU" (Rural Countryside) to "O1P" (Parks and Open Space Zone, Hydro Corridor Subzone)
Reference Number:	D02-02-23-0065
Property Address:	5134 Piperville Road
Municipality/UT:	Ottawa/Ottawa
OLT Case No.:	OLT-23-001132
OLT Lead Case No.:	OLT-23-001132
OLT Case Name:	Vestervelt v. Ottawa (City)

**PROCEEDING COMMENCED UNDER** subsection 19(1) of the *Ontario Land Tribunal Act*, 2021, S.O. 2021, c. 4, Sched. 6

Request by:	City of Ottawa
Request for:	Request for Dismissal Without a Hearing

**Heard:** February 9, 2024 in writing

**APPEARANCES:**

**Parties**

Christine Vestervelt

City of Ottawa

**Counsel / Representative\***

Self-represented\*

Timothy Marc

**DECISION DELIVERED BY C.I. MOLINARI AND ORDER OF THE TRIBUNAL**

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[Link to Order](#)

**INTRODUCTION AND BACKGROUND**

[1] This Decision and Order determines a Written Motion to Dismiss (“Motion”) filed by the City of Ottawa (“City” / “Moving Party”) in relation to an appeal (“Appeal”) filed by Christine Vestervelt (“Appellant” / “Respondent”) against the decision of the City to approve Zoning By-law Amendment No. 2023-434 (“ZBL 434”) to the City Zoning By-law 2008-250 (“ZBL 250”) in order to satisfy a condition of provisional consent (“Consent”) affecting the property known municipally as 5134 Piperville Road.

[2] The Consent was granted on December 16, 2022, in order to allow the creation of a vacant parcel of land for a future public utility (“Severed Lot”). Condition 1 of the Consent required the Severed Lot to be rezoned to prohibit residential uses and to implement an appropriate zoning for the intended use.

[3] An application for a Zoning By-law Amendment (“Application”) was submitted to the City on July 14, 2023, to amend the zoning of the Severed Lot under ZBL 250, from ‘RU (Rural Countryside)’ to ‘O1P (Parks and Open Space Zone, Hydro Corridor Subzone)’ in order to prohibit all uses apart from a utility installation, which is currently a permitted use, and agriculture. The Application was deemed complete on August 14, 2023.

[4] The City engaged in public notification and consultation as required under the *Planning Act* (“Act”). A City staff report recommended approval of the Application and on October 5, 2023, the City Agriculture and Rural Affairs Committee recommended City Council to approve the Application. On October 11, 2023, City Council approved ZBL 434, following which the Appellant filed the Appeal on November 6, 2023.

**THE APPEAL**

[5] The grounds for the Appeal submitted as part of the Appeal record include the following topics:

- Abuse of process;
- Inconsistency with the Provincial Policy Statement, 2020 (“PPS”);
- Inconsistency with the public interest.

[6] It is noted that the claim of an abuse of process was based on allegations that the City did not meet notice requirements as per City policy and the Respondent did not receive requested documents. This ground of appeal is not a land use planning issue, is not a matter that can be adjudicated by the Tribunal and is more appropriately a matter to be addressed between the Respondent and the City.

[7] Grounds of appeal related to inconsistency with the PPS and the public interest are land use planning matters that can be adjudicated by the Tribunal. The grounds of appeal related to inconsistency with the PPS are explained by the Respondent as being related to the following policies:

- Policy 1.1.1 c) in that it will not lead to “avoiding development and land use patterns which may cause environmental or public health and safety concerns”;
- Policy 1.6.8.6 related to consideration to be given to significant resources in Section 2: Wise Use and Management of Resources of the PPS when planning for corridors and rights-of-ways for electricity transmissions; and
- Section 3.0 Protecting Public Health and Safety regarding directing development “away from areas of natural or human-made hazards where there is an unacceptable risk to public health or safety or of property damage, and not create new or aggravate existing hazards”.

[8] No further explanation was provided in the Appeal as to how ZBL 434 is inconsistent with the noted PPS policies or the public interest.

## THE MOTION

### Moving Party

[9] The City brought a Motion served pursuant to s.34(25) of the Act, seeking an Order of the Tribunal “dismissing the Appeal without a hearing” and “[s]uch further and other relief as the Tribunal may deem just”.

[10] The grounds for the Motion are summarized as follows:

- The Appellant objects to the presence of a municipal transformation station in her neighbourhood and raised concerns about public health and safety related to a “Hydro Corridor Subzone (O1P) in the middle of a rural residential area”;
- The allegations are vague, unsubstantiated, and are not valid land use planning grounds. A municipal transformation station is a permitted use on the Severed Lot as the current RU zoning permits utility installations on rural lands;
- While the Appellant makes some attempts to supplement the grounds of appeal with bare allegations regarding the insufficiency of public consultation, and inconsistency with the PPS and the public interest, the grounds are irrelevant to an appeal under s. 34(19) and/or are unsupported by the evidence;
- The Tribunal is entitled to look behind the stated reasons for the appeal to determine whether the Appeal is authentic, whether it raises issues that could affect a full hearing, and whether it raises issues worthy of the adjudicative process. In this case, the Appeal is not based on any valid land use planning grounds. Instead, it is based on the Appellant’s personal opposition to the proposed development and an assortment of unsubstantiated allegations; and
- The Appeal should be dismissed without a hearing, pursuant to s. 34(25) of the Act.

[11] The materials before the Tribunal on the Motion include:

- Motion Record of the Moving Party, which included the Notice of Motion, and the Affidavit of Luke Teeft sworn on December 15, 2023, with Exhibits;
- Reply to Response to Motion;
- Book of Authorities of the Moving Party;
- Affidavit of Service filed by the Moving Party for the service of the Motion material on December 15, 2023; and
- Curriculum Vitae and Acknowledgement of Experts Duty of Luke Teeft signed and dated December 15, 2023.

## **Respondent**

[12] The Respondent filed a Response to the Motion (“Response”) seeking that no order be granted pursuant to s. 34(25) of the Act dismissing the Appeal without a hearing, ZBL 434 “be repealed in whole”, and “[s]uch further and other relief as the Honourable Tribunal may deem just”.

[13] In the Response, the grounds for the Appeal were expounded and are summarized as follows:

- Abuse of process related to public consultation;
- Abuse of process related to denial of requested information and misinformation;
- Inconsistency with the PPS related to:
  - avoiding development and land use patterns which may cause environmental or public health and safety concerns;
  - promoting development and land use patterns that conserve biodiversity;
  - misinformation in the Environmental Impact Statement and in the Environmental Study Report and personal observations related to

- species at risk;
- errors related to whether there is a wildlife travel corridor on the Severed Lot;
- false assurances that there are no negative effects of electromagnetic radiation from a transformer station; and
- a potential safety concern related to the danger of the proposed municipal transformer station (“MTS”) “catching on fire/exploding”; and
- Inconsistency with the public interest related to:
  - a potential decrease in property values; and
  - a disregard for, and misrepresentation of, public opinion.

[14] In the Response, the Respondent did not provide grounds in support of her request for “no Order ... dismissing the Appeal without a hearing be granted” and for ZBL 434 to “be repealed in whole”, or an indication if she would be calling any witnesses, expert or otherwise.

## LEGISLATIVE FRAMEWORK

[15] The Act and the *Ontario Land Tribunal Act* (“OLTA”) establish criteria for the consideration of dismissing an appeal without a full hearing of the merits.

[16] The Moving Party brought the Motion pursuant to s. 34(25) of the Act:

### **Dismissal without hearing**

(25) Despite the *Statutory Powers Procedure Act* and subsection (24), the Tribunal may, on its own initiative or on the motion of any party, dismiss all or part of an appeal without holding a hearing if any of the following apply:

1. The Tribunal is of the opinion that,
  - i. the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the Tribunal could allow all or part of the appeal,
  - ii. the appeal is not made in good faith or is frivolous or vexatious,
  - iii. the appeal is made only for the purpose of delay, or

- iv. the appellant has persistently and without reasonable grounds commenced before the Tribunal proceedings that constitute an abuse of process.
- 2. The appellant has not provided written reasons for the appeal.
- 3. The appellant intends to argue a matter mentioned in subsection (19.0.1) but has not provided the explanations required by that subsection.
- 4. The appellant has not paid the fee charged by the Tribunal.
- 5. The appellant has not responded to a request by the Tribunal for further information within the time specified by the Tribunal.

[17] The OLTA also provides for dismissals under s. 19(1):

**Dismissal**

**19 (1)** Subject to subsection (4), the Tribunal may, on the motion of any party or on its own initiative, dismiss a proceeding without a hearing,

- (a) if the party who brought the proceeding has not paid any fee required to be paid under this Act;
- (b) if the party who brought the proceeding has not responded to a request by the Tribunal for further information within the time specified by the Tribunal;
- (c) if the Tribunal is of the opinion that the proceeding has no reasonable prospect of success;
- (d) in any circumstance listed in subsection 4.6 (1) of the *Statutory Powers Procedure Act*; or
- (e) in any circumstance provided for under any other Act.

[18] It is clear from the wording of s. 34(25) of the Act and s. 19(1) of the OLTA that the grounds in each section are disjunctive within and between the sections, and that the Moving Party need only establish one of the grounds to succeed on the Motion.

[19] With reference to the Tribunal, Local Planning and Appeals Tribunal and Ontario Municipal Board Decisions provided by the Moving Party, the Tribunal accepts as follows:

- The Respondent must demonstrate that there are “genuine, legitimate and authentic planning reasons” warranting a hearing on the merits (*Toronto (City) v East Beach Community Assn.*, 1996 CarswellOnt 5740 (OMB);
- Raising apprehensions by citing provisions of the PPS or an Official Plan does not constitute a legitimate land use planning ground (*Davidson v McKellar (Township)*, 2021 CarswellOnt 9824 (OLT);

[20] From the decisions cited, it is clear that the Appellant has a responsibility to demonstrate at the Motion Hearing that there are sufficient and legitimate planning grounds that underlie the Appeal, and to show an indication of evidence to be brought before the Tribunal that could sustain the Appeal at a Merit Hearing.

## **ANALYSIS AND FINDINGS**

[21] The Tribunal has carefully considered the material before it as well as the submissions of the Parties and finds that the Motion should succeed for the reasons that follow.

[22] The imbalance of the Moving Party's professional staff against the apprehensions of the Respondent, without an indication of the support of opposing expert witnesses, is sufficient to find that the Appeal can be dismissed on the basis that the proceeding has no reasonable prospect of success as provided for in s. 19(1)(c) of the OLTA.

[23] In addition, it is noted that the MTS use is a permitted use on the Severed Lot and the Application serves to further restrict the permitted uses to prohibit residential uses.

[24] Further, although it is not the opinion of the Tribunal that the Appeal was not made in good faith or is frivolous or vexatious, the Respondent may not understand that the use to which she is opposed was a permitted use on the Severed Lot before the Application was considered and approved by the City. The Tribunal finds that this apparent misunderstanding of the purpose and intent of the Application is significant and fatal to the Appeal by rendering the Appeal without apparent land use planning grounds to which the Moving Party could form a basis to respond. In this respect, the Tribunal is left without a clear understanding of the Respondent's pursuit of the Appeal or how the Respondent envisioned to advance her position at a hearing of the merits.

[25] The Tribunal finds that it is also significant that the Respondent provided no indication if any expert evidence would be presented. Without expert evidence, the

Tribunal would be then left with uncontroverted evidence from the Moving Party's experts, in support of the Application.

[26] It is also the Tribunal's finding that it is not necessary to determine whether the Respondent is merely raising the apprehension or concern of possible planning grounds or merely deploying planning language. As mentioned, the use she is opposed to is a permitted use and the Application is not a vehicle to permit the use, but to further restrict uses on the Severed Lot. Further, the approval of the Application is supported by professional staff of the City.

[27] The Tribunal finds that the reasons set out in the Respondents' Appeal Form and the Response do not disclose any apparent land use planning grounds upon which the Tribunal could allow all or part of the Appeal and the proceedings have no reasonable prospect of success based on the findings above.

[28] The Tribunal therefore exercises its authority to dismiss the Appeal. The Tribunal does so with due consideration of all submissions and aspects of the approval and subsequent appeal of ZBL 434.

## **ORDER**

[29] **THE TRIBUNAL ORDERS** that the Motion is granted and the appeal by Christine Vestervelt is dismissed.

*"C. I. Molinari"*

C. I. MOLINARI  
MEMBER

## **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.