

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



**ISSUE DATE:** November 07, 2019

**CASE NO(S):** PL190226

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 51(39) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant:	Luigino Maruca
Appellant:	Pentecostal Assemblies of Canada
Subject:	Proposed Plan of Subdivision
Property Address/Description:	5140 Kalar Rd & Former MTO Lands
Municipality:	City of Niagara Falls
Municipal File No.:	26T-11-2017-004
LPAT Case No.:	PL190226
LPAT File No.:	PL190226
LPAT Case Name:	Maruca v. Niagara Falls (City)

**PROCEEDING COMMENCED UNDER** subsection 51(53) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Motion By:	Centennial Developments (Niagara) Inc.
Purpose of Motion:	Request for an Order Dismissing the Appeal
Appellant:	Luigino Maruca
Subject:	Proposed Plan of Subdivision
Property Address/Description:	5140 Kalar Rd & Former MTO Lands
Municipality:	City of Niagara Falls
Municipal File No.:	26T-11-2017-004
LPAT Case No.:	PL190226
LPAT File No.:	PL190226
LPAT Case Name:	Maruca vs. Niagara Falls (City)

**Heard:** November 1, 2019 in Niagara Falls, Ontario

**APPEARANCES:**

<b><u>Parties</u></b>	<b><u>Counsel/Representative*</u></b>
Luigino Maruca	Nicolino Maruca
Pentecostal Assemblies of Canada	J. Patrick Maloney
City of Niagara Falls	David Nelligan

**MEMORANDUM OF ORAL DECISION DELIVERED BY JOHN DOUGLAS ON  
NOVEMBER 1, 2019 AND ORDER OF THE TRIBUNAL**

---

**INTRODUCTION**

[1] This was a hearing in the matter of a motion request to dismiss an appeal of the City of Niagara Falls (the “City”) Council’s decision to approve a draft Plan of Subdivision for lands known municipally as 5140 Kalar Road and former Ministry of Transportation lands (the “subject property”).

[2] On April 9, 2019, City Council approved a draft Plan of Subdivision submitted by the Pentecostal Assemblies of Canada (the “Applicant”) to permit an 86-lot residential development on the subject property. On April 30, 2019, City Council passed Zoning By-law No. 2019-50, the associated site specific zoning by-law amendment (“ZBA”) for the subject lands. On May 1, 2019, Luigino Maruca (the “Appellant”) appealed the decision of the City to approve the draft plan of subdivision pursuant to section 51(39) of the *Planning Act* (the “Act”) to the Local Planning Appeal Tribunal (the “Tribunal”). There were no appeals made with respect to Council’s approval of the ZBA for the subject lands, which is now in full force and effect.

[3] On August 19, 2019, the Tribunal received an email from Counsel for the Applicant requesting the Tribunal dismiss the appeal. The Tribunal received a hard copy of a Notice of Motion from the Applicant on October 17, 2019. The relief requested in the Notice of Motion included:

1. An Order of the Tribunal pursuant to subsection 51(53) of the Act, as amended, dismissing the appeal by Luigino Maruca of the decision by Council of the City to approve a draft plan of subdivision to permit an 86 lot residential development on the subject property without holding a hearing;
2. Cost of this motion;
3. Such further and other relief as counsel may request and this Tribunal may permit.

[4] The Tribunal received a Notice of Response to the Motion by email from the Appellant on October 31, 2019.

[5] At the beginning of the hearing, Nicolino Maruca, the son of the Appellant, advised the Tribunal that he had spoken with Counsel for the Applicant and Counsel for the City prior to the hearing and they had reached an agreement. He advised the Tribunal that his father, Luigino Maruca, was withdrawing his appeal and it was his understanding, based on his discussions with Counsel, that no costs would be requested.

[6] Patrick Maloney and David Neligan advised the Tribunal that their respective clients were pleased with the withdrawal of the appeal and no costs would be sought.

## **ORDER**

[7] Given the agreement between the parties, the appeal is withdrawn, the motion to dismiss is granted, no costs are awarded and the file is closed.

*“John Douglas”*

JOHN DOUGLAS  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Local Planning Appeal Tribunal**

A constituent tribunal of Tribunals Ontario – Environment and Land Division  
Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248