

DECISION AND ORDER

Decision Issue Date: Tuesday, August 8, 2017

PROCEEDINGS COMMENCED UNDER subsections 53(19) and 45(1) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant(s): CITY OF TORONTO
(SARA AMINI, CIGDEM ILTAN, LAURA BISSET)
Applicant(s): ATA ARCHITECTS INC
Subject(s): 53 and 45(12)
Property Address/Description: 9 THIRTY EIGHTH ST

TLAB Case File Number(s): 17 165404 S53 06 TLAB (Consent)
17 165406 S45 06 TLAB (MV Part 1)
17 165408 S45 06 TLAB (MV Part 2)

DECISION DELIVERED BY: G. BURTON

Parties

City of Toronto

Roobuilt Ltd
ATA Architects

Counsel

Laura Bisset
Sara Amini
Cigdem Iltan

Bruce C. Ketcheson

Participants

David Godley
Carolyn Glenn
Ronald Gordon Jamieson

INTRODUCTION AND BACKGROUND

On May 24, 2017, the City of Toronto appealed to the Toronto Local Appeal Body (TLAB) from the decisions of the Committee of Adjustment (CoA) which had authorized the consent and variances in these matters. In the course of its scheduling, the TLAB assigned the hearing date of October 13, 2017. This is about one month later than is usual. The scheduling goal is to provide expedited hearings where possible, usually about three months after receipt of the appeal.

The Notice of Hearing in this matter issued June 21, 2017. Prior to the issuance of the Notice, one of the solicitors for the Appellant City had notified the TLAB of their availability to attend a hearing over the next few months. Staff were informed that both solicitors of record, and their intended planning witness, were not available from October 10 to October 30, 2017. They would be attending separate appeals at the Ontario Municipal Board. Staff explained to them that the date assigned for the hearing, October 13, 2017, was even one month later than would usually be assigned. A large hearing room was not available prior to that date which would accommodate the expected audience.

The Appellant City then brought a formal motion to be heard July 28, 2017, to adjourn the established hearing date of October 13. In its Direction of July 20, 2017, the TLAB decided to hear this motion in written form, as permitted under its Rule 17.4. Submissions on the adjournment motion were received from the appellant, the applicant, and two of the participants, Mr. David Godley and Mr. Ronald Jamieson.

THE ISSUE

The issue to be determined is whether the stated hearing date should govern, or whether there should be some latitude extended to the appellant City. It could then be represented by the solicitors assigned to the file, and by the responsible planning witness, rather than to assign other staff to the appeal. Where legal firms are fairly large, with many counsel who can step in to substitute for the responsible solicitor, tribunals usually require that another solicitor appear on the date scheduled for the hearing of an appeal.

The counter argument, as presented by the City in paragraph 14 of its Motion request, is that scheduling the hearing on a day that the appointed City representatives are not available prejudices the City's ability to call its case. As stated therein: "Considering the availability of parties when scheduling a hearing is fundamentally an issue of procedural fairness and natural justice, particularly when it is the availability of the party responsible for triggering the appeal process." Rule 23.4 of the TLAB's Rules of Practice and Procedure requires that the tribunal consider, among other matters, whether an adjournment would affect the interest of the parties in having a full and fair proceeding (clause b).

It appeared upon the City's further inquiry of the TLAB staff that there is only one room that could accommodate the large number of anticipated Parties and/or Participants to this hearing, and that it is available only a few times a month. This was the reason for the assigned hearing date of October 13, which is, as mentioned, already one month later than the TLAB's scheduling goals would have it.

ANALYSIS, FINDINGS, REASONS

This panel of the TLAB is persuaded by the City's argument that it, the sole appellant in this matter, would be prejudiced should none of the assigned counsel, nor its planning witness, be able to be present on the date provided. As stated in paragraph 12 of the Notice of Motion filed by Laura Bisset (July 7, 2017), " Solicitors are assigned to TLAB hearings at the discretion of the Director, Planning and Administrative Tribunal Law. Files are assigned based on solicitor availability, capacity and subject area interest and/or expertise." As well, as explained in paragraph 13, the responsible City Planner appears to be essential to a complete review by TLAB on the appeal. Staff Planners review CoA applications and draft Staff Reports based on their own independent, objective analysis of a development proposal. They also perform a thorough review of all applicable background documents. This evaluation, already conducted in this matter for the CoA application, could be invaluable in assessing the merits of the applications and appeal.

This panel agrees with the appellant's argument that the unavailability of the party's representatives in this circumstance prejudices the City's ability to call its case. Matters before other tribunals have involved a direction to find a substitute representative, usually where the party requesting the adjournment has caused significant delay. This is not such a case. I agree that on occasion, failing to consider the availability of parties when scheduling a hearing can raise the issue of procedural fairness and natural justice, especially when it is the appellant's representatives who are unavailable.

Although TLAB's mandate requires that hearing dates be expedited so that administrative justice can be swiftly delivered, the City points out quite rightly that there is also a timing issue with respect to available TLAB hearing rooms. The reason that the October 13 hearing date was assigned (rather than one month earlier) was ostensibly that a large hearing room would be needed. However, under TLAB's rules 12 and 13, potential parties and participants would not self-identify as such until AFTER the Notice of Hearing issues. Thus TLAB cannot know accurately what size of room will be necessary at the time when the Notice is sent. This reasoning led to unfair consequences in this case. In the future, when TLAB physical facilities are fully developed, this should not be a problem.

There is evidence in the submissions on this Motion that both the applicant in this matter, and two of the participants of record, Mr. Godley and Mr. Jamieson, consent to a revised hearing date of November 13, 2017.

DECISION AND ORDER

The hearing of this appeal is adjourned, to be heard on November 13, 2017 at 9:00 A.M., Suite 211 (2nd Floor) - 40 Orchard View Boulevard, Toronto, ON, in TLAB Hearing Room 1.

The Hearing exchange dates and related matters as set out in the Notice of Hearing remain fixed and unaltered.


The hearing scheduled for October 13, 2017 is cancelled, and no appearances or attendances are required.

Correction Issued Thursday, August 10th, 2017:

In its Decision on the Motion for Adjournment in the above-noted matter, issued August 8, 2017, Mr. Ronald Gordon Jamieson was wrongly identified as a Participant. In fact, he is a Party to this appeal. Wherever he is shown as a Participant, he should be listed as a Party, both for service and participation in the hearing of November 13, 2017. This will be confirmed at the hearing.

Issued on the Direction of Panel Member G. Burton, Chair.

 Recoverable Signature

X 

G. Burton

Chair

Signed by: Gillian Burton