

## DECISION AND ORDER

**Decision Issue Date**      Friday, November 24, 2017

PROCEEDING COMMENCED UNDER subsection 53 (19) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): JANICE PAGE

Applicant: FAIRGLEN HOMES LIMITED

Subject(s): 53(19)

Property Address/Description: 40 BROOKLAWN AVE

Committee of Adjustment Case File Number: 15 128219 000 00 CO

TLAB Case File Number: **17 187520 S53 36 TLAB**

**Hearing date:**      Friday, October 20, 2017

**DECISION DELIVERED BY S. Gopikrishna**

### INTRODUCTION AND BACKGROUND

1. Fairglen Homes Limited (Fairglen) applied to the Committee of Adjustment (COA) for Consent to sever the property at 40 Brooklawn Ave in Ward 36 of the City of Toronto into two residential lots .
2. The COA heard the Application on 1 June, 2017 and approved the Application with Conditions related to payment of taxes and Forestry Conditions.
3. On 26 June 2017, Janice Page , resident at 38 Brooklawn appealed to the TLAB for a hearing *de novo* regarding COA's decision to consent to the severance at 40 Brooklawn Ave. On 19 July 2017, the TLAB issued a Notice of Hearing.

**Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna  
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Dawne Way at 23 Gradwell Driv and Farrell McDonald of 36 Eastville Ave elected to be Participants on 8 August and 11 August, 2017 respectively.

4. TLAB set up a hearing on 20 October 2017 to hear the case. At my request as the Presiding member, the TLAB staff canvassed Parties to see if the hearing could start at 11 AM instead of 9 AM. Fairglen and Janice Page agreed to the requested change for a 11 AM start. Consequently, on 16 October, 2017 a new Notice of Hearing was provided with a start time of 11 AM on 20 October, 2017.
5. On the morning of 20 October 2017, I was advised by TLAB staff that a certain Kim Smith had come to TLAB at 9 AM and wanted to attend the Hearing since she had elected to be a Participant. When informed about the 11 AM start, Ms. Smith stated that she had not been notified about the change in time for hearing the matter
6. The TLAB Staff checked submissions for election as Parties and Participants for 40 Brooklawn but couldn't trace Ms. Smith's election for Participant status. Ms. Smith was informed about the unavailability of her paperwork. Ms. Smith left the office after requesting to be contacted at 11 AM when the hearing started.

## **MATTERS IN ISSUE**

7. The main issue at the commencement is if an Adjournment can be granted in the interests of pursuing Settlement and deciding a new Hearing date to review the Settlement proposal or hold a contested Hearing in case the Settlement efforts are not successful.

## **JURISDICTION**

8. The following sections are reproduced from TLAB rules:

### **Settlement before Final Determination**

19.1 The Local Appeal Body is committed to encouraging Parties to settle some or all of the issues by informal discussion, exchange and Mediation.

19.2 Parties who arrive at a settlement shall serve the terms of the proposed settlement on all other Parties and Participants and File same with the Local Appeal Body at the earliest possible date.

### **Considerations in Granting Adjournment**

23.3 In deciding whether or not to grant a Motion for an adjournment the Local Appeal Body may, among other things, consider:

- a) the reasons for an adjournment;

- b) the interests of the Parties in having a full and fair Proceeding;
- c) the integrity of the Local Appeal Body's process;
- d) the timeliness of an adjournment;
- e) the position of the other Parties on the request;
- f) whether an adjournment will cause or contribute to any existing or potential harm or prejudice to others, including possible expense to other Parties;
- g) the effect an adjournment may have on Parties, Participants or other Persons; and
- h) the effect an adjournment may have on the ability of the Local Appeal Body to conduct a Proceeding in a just, timely and cost effective manner

## **EVIDENCE**

9. The hearing commenced at 11 am on 20 October, 2017. In attendance were Janice Page, the Appellant and Amber Stewart, Counsel, David McKay, Expert Land Use Planner and John Perciasepe, the owner of Fairglen as the Applicants/Respondents.

10. After the Parties identified themselves, Ms. Stewart started off by saying that they were working with the Appellant to settle the matter. I then informed the Parties about Ms. Smith's appearance earlier that day and told them that we needed to resolve her issue as a Participant before proceeding further.

11. Ms. Hsing Yi Chao, the Supervisor of TLAB telephoned Kim Smith on the latter's phone number. I introduced myself and informed that TLAB had not received her Application electing to be a Participant. In response to a question from Ms. Chao, Ms. Smith stated that she had submitted Form 4 electing to be a Participant. Ms. Hsing Yi Chao requested her to resend the email where she submitted Form 4.

12. I informed Kim Smith that I had to ask the other Parties if they had any issue with Ms. Smith's being recognized as a Participant. Ms. Page recognized Ms. Smith and stated that she lived on Brooklawn Avenue. Ms. Stewart stated that she didn't have an objection but wanted to know where Ms. Smith lived. Ms. Smith stated she lived at 7 Brooklawn Ave.

13. I then made a decision about admitting Ms. Smith as a Participant and informed her that she would have to submit paperwork demonstrating that she had requested Participant status before the appropriate deadline.

14. Ms. Stewart reiterated that both sides were discussing a Settlement. She said that she was aware that Ms. Page was going to request for an adjournment and that the Applicant was supportive of the request. The Parties had not filed Witness Statements because they were pursuing discussions for a Settlement. Ms. Stewart also stated that an outside date could be set for exchanging statements in case the efforts to settle were not successful.

15. Ms. Page agreed that she was open to pursuing a Settlement though she wasn't sure at that stage if a Settlement could be reached. She stressed that she had been attempting to have the matter settled for quite some time. I agreed to the Adjournment in order to allow the Parties an opportunity to settle the matter.

16. The question of when to hold the next Hearing was then discussed. Ms. Stewart suggested that if a mutually agreeable date could be chosen in the near future, then they could attempt to settle by that date, failing which they could exchange statements with the expectation of a different Hearing date for a contested hearing.

17. Ms. Page disagreed with the two stage approach and stated her preference for setting on a Hearing date as well as a date for filing statements before the Hearing date assuming that Settlement weren't successful. She said that she had been attempting to pursue Settlement for 2 months and didn't want the matter to drift any further.

18. I suggested that the Parties set up a date to exchange Statements or agree to a Settlement proposal followed by a Hearing date at which the Settlement proposal could be presented or a contested proceeding be held if the former were unsuccessful. Ms. Stewart stated her preference for deciding on a Hearing date and then work backwards to establish a date for exchanging Statements. I stated that I had no objection to Ms. Stewart's approach.

19. We then discussed what time frames were reasonable for the Parties to have discussions and see if they could arrive at a Settlement. Both Parties stated that December, 2017 would be reasonable.

20. Ms. Page stated that she and the Participants would be available between 6 -14 December, 2017. Ms. Stewart advised and she and Mr. McKay were available for 13 December. However, 13 December 2017 turned out to be the date for TLAB's Business Meeting which meant that no Hearings can be held on that day. After checking schedules, we found that 15 December 2017 was convenient for everybody with the exception of one Participant who would not be available that day. Ms. Page asked if a Statement could be submitted on behalf of the Participant who would not be present on December 15, 2017. I advised her that Participant s filing Statements was fairly standard and that they could definitely file the Statement.

21. Ms. Page suggested that she wanted to have a discussion about the date for exchanging of Witness Statements and have that included in the Decision to be issued. Ms. Stewart stated that they could have the discussion after the Hearing and advise TLAB about a mutually agreeable date for exchanging Statements.

22. I ended the hearing by setting a Hearing for 9 AM on 15 December, 2017 and informed the Parties that I would issue the Decision after being informed about the mutually agreed upon date for Witness Statements in case we had to proceed to a contested Hearing. I also reiterated that Kim Smith had to submit paperwork demonstrating that she had elected to be a Participant before the appropriate deadline for the hearing that had just concluded.

23. I was subsequently informed by TLAB Staff that the Parties had agreed that the deadline to exchange Statements was 4 December 2017.

## **ANALYSIS, FINDINGS, REASONS**

24. While not mandatory, the TLAB encourages parties to settle some or all issues prior to the Hearing where possible, as stated in Rule 19.1 of TLAB's Rules. The stated purpose of the Adjournment request is to explore the prospect of a Settlement. Such attempts are consistent with TLAB's efforts to make hearings efficient and less resource intensive.

25. Granting this Adjournment satisfies conditions and requirements for Adjournments as discussed in Rule 23.3. The Settlement proposal may be presented at this Hearing failing which it becomes a contested proceeding.

26. Should attempts at Settlement not be successful, Parties are provided with a deadline of 4 December 2017 to exchange Witness Statements. Should it be necessary for Parties to exchange statements, it would be reasonable to grant Participants another week till 11 December to review the Statements and submit their Statements electronically, if needed. No prejudice nor hardship has been asserted.

## **DECISION AND ORDER**

27. The adjournment requested by Parties at the Hearing on 20 October 2017 to attempt Settlement for the Appeal at 40 Brooklawn Avenue is allowed.

28. A hearing date for 15 December, 2017 has been set to hear the Settlement proposal if one is reached, failing which a contested proceeding will be held on that date to adjudicate the Appeal.

29. Parties have a deadline of 4 December 2017 to exchange Witness Statements if a Settlement can't be reached. Participants will be given a deadline of 11 December 2017 to submit Statements, if needed

X 

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S. Gopikrishna  
Panel Chair, Toronto Local Appeal Body