

DECISION AND ORDER

Decision Issue Date **December 18, 2017**

PROCEEDING COMMENCED UNDER subsection 45(12) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant(s): MONICA MOLSON

Applicant: JOHNSTON LITAVSKI LTD

Property Address/Description: 491 PARKSIDE DR

Committee of Adjustment Case File Number: 17 181634 STE 14 MV

TLAB Case File Number: **17 260813 S45 14 TLAB**

Hearing date: Wednesday, April 04, 2018

DECISION DELIVERED BY G. Burton

INTRODUCTION

This is a motion brought on November 29, 2017 by the solicitor for the owner/appellant, Monica Molson and the applicant, Johnston Litavski Ltd. Ms. Eileen Costello seeks an adjournment of the hearing of this appeal on the date provided by the Toronto Local Appeal Body (TLAB), of April 4, 2018. The reason provided was that the solicitor, Ms. Eileen Costello, has a scheduling conflict on that date, and thus requests an alternative hearing date in the month of May, 2018. It was also requested that the motion be considered in written form, as permitted by the TLAB Rule 17.4. Therefore Ms. Costello was requested to serve all interested parties in the COA files with the Notice of Motion, with the direction that the motion would be by written submissions. The date directed for such responses was December 11, 2017.

BACKGROUND AND JURISDICTION

This appeal was properly filed on November 10, 2017. It appealed from a decision of the Committee of Adjustment which refused certain requested variances for the

Decision of Toronto Local Appeal Body Panel Member: G. Burton
TLAB Case File Number: 17 260813 S45 14 TLAB

development of a detached fourplex and detached garage at 491 Parkside Drive. The TLAB sent out its (usual) Notice of Hearing (Form 2) on November 20, 2017. This stated that the hearing date was April 4, 2018. This led to Ms. Costello's motion for a later hearing date.

The Notice of Hearing, in the normal course, also included certain dates for the required filings of the desire to become a party of participant in the hearing, exchanges of documents and other matters. Because these dates have taken on a greater significance after this motion was filed, they are set out here:

Applicant Disclosure as per Rule 11 (Form 3) **DUE** no later than December 05, 2017

- **Notice of Intention** to be a Party as per Rule 12 (Form 4) **DUE** no later than December 11, 2017 or

- **Notice of Intention** to be a Participant as per Rule 13 (Form 4) **DUE** no later than December 11, 2017

- **Document Disclosure** as per Rule 16 **DUE** no later than December 20, 2017

- **Witness Statement** as per Rule 16.4 (Form 12) **DUE** no later than January 04, 2018

- **Participant Statement** as per Rule 16.5 (Form 13) **DUE** no later than January 04, 2018

- **Expert Witness Statement** as per Rule 16.6 (Form 14) **DUE** no later than January 04, 2018

- **Notice of Motion** as per Rule 17 (Form 7) **DUE** no later than February 19, 2018

The Notice of Motion was served on everyone then shown on the TLAB's files as participants in the COA hearing process.

The date provided to Ms. Costello for the "hearing" of the written motion was December 14, 2017. This meant that submission of responses to her motion had to be filed with the TLAB by that date. However, this was only 3 days after the date of December 11, first underlined above, when interested persons had to decide if they wished to be parties or participants in the hearing.

The Notice of Motion for the adjournment was filed shortly after the Notice of Hearing of November 20. This left the potential parties somewhat confused in filing their choices of status in the hearing. This became clear in the November 30 email from a neighbour, Mr Wojciech Kosak, in which he asked if he was required to file a Notice of Intention to be a Party, Form 4, BEFORE he could respond to the Notice of Motion (Notice of Response to Motion, Form 8.)

In the end, four persons filed timely Notices of Intention to be a Party (Form 4). These were Paul Jurik on Dec. 7, Wojciech Kosak on December 6, Ang Matik on December 11, and Michael Harrison, also on Dec. 11. Linda C. Cook filed as a Participant on December 11, as did many others, but Ms. Cook also responded to the Motion, using Form 8.

Notices of Response to Motion, Form 8, were filed by Messrs Jurik, Kosak and Harrison prior to the return date of December 14. They had acquired party status by that date due to their prior filing of Form 4.

Mr. Kosak, who resides at 493 Parkside to the north, and is thus directly affected, will be out of the country for employment beginning May 1, 2018. He would not be available on the dates proposed by Ms. Costello, and therefore opposes the motion. He is supported in this argument by both Mr. Jurik and Mr. Harrison, and also by Ms. Cook.

MATTERS IN ISSUE

The issues to be determined are twofold, and interrelated:

- 1.) whether the fact that a main opponent of the appeal is out of the country on the date proposed by the person bringing the motion for adjournment should govern, and
- 2.) whether there should be some latitude extended to the Appellant/Applicant to be represented by the individual solicitor hired to represent its interests.

Mr. Harrison said this on the possibility of replacement counsel:

“Aird and Berlis is a sizeable law firm and should be able to supply replacement legal counsel, as there is more than sufficient time to bring another lawyer to adequately service their client.”

Where there are large legal firms, with many counsel who can step in to substitute for the responsible solicitor, it is usual to request that another solicitor appear on the date scheduled for the hearing if the one responsible cannot attend.

The counter argument is that scheduling the hearing on a day the chosen solicitor is not available prejudices the client’s ability to call its case.

ANALYSIS, FINDINGS, REASONS

Considering the availability of parties when scheduling a hearing is arguably an issue of procedural fairness and natural justice, and involves an issue of the balance of convenience to the parties and the tribunal. Even though in this instance it is the availability of the solicitor for the party responsible for the appeal, other persons have the right to participate in TLAB appeals where possible, especially those with a demonstrable interest. Because it is many months yet until the date selected for the hearing, it does not seem unreasonable to this panel of the TLAB to require that the appellant, if it becomes necessary, select an alternative counsel. As well, there is the consideration that TLAB’s mandate requires that hearing dates be expedited and advanced, so that administrative justice can be swiftly delivered.

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The hearing of this appeal will remain as fixed in the Notice of Hearing, April 4, 2018.

Decision of Toronto Local Appeal Body Panel Member: G. Burton
TLAB Case File Number: 17 260813 S45 14 TLAB

Due to the uncertainty and confusion arising under the exchange rules arising from the timing and disposition of this Motion, I am revising ONLY CERTAIN of the exchange and other dates by approximately ONE month, as follows:

- **Document Disclosure** as per Rule 16 **DUE** no later than **January 19, 2018**
- **Witness Statement** as per Rule 16.4 (Form 12) **DUE** no later than **February 5, 2018**
- **Participant Statement** as per Rule 16.5 (Form 13) **DUE** no later than **February 5, 2018**
- **Expert Witness Statement** as per Rule 16.6 (Form 14) **DUE** no later than **February 5, 2018**.

In all other respects, except as varied herein, the Notice of Hearing remains unchanged.

If there are difficulties, the TLAB may be spoken to.

X 

G. Burton

Panel Chair, Toronto Local Appeal Body