

DECISION AND ORDER

Decision Issue Date Friday, February 16, 2018

PROCEEDING COMMENCED UNDER subsection 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant(s): EDWARD MACDONELL

Applicant: HOMELAND

City of Toronto Representative: ALEXANDER SURIANO

Property Address/Description: 46 PALOMINO CRES

Committee of Adjustment Case File Number: 17 196039 NNY 24 MV

TLAB Case File Number: 17 243226 S45 24 TLAB

Hearing date: **Friday, February 09, 2018**

DECISION DELIVERED BY T. Yao

INTRODUCTION

This is a motion for adjournment by Edward Macdonell.

BACKGROUND

The owner of 46 Palomino Cres, William G Tynkaluk, obtained 10 variances at the Committee of Adjustment on September 14, 2017. A neighbour, Edward Macdonell, (42 Palomino Cres) filed an appeal and on October 17, 2017 the TLAB sent a notice of hearing for Feb 27, 2018. In its Notice the TLAB set out a number of deadlines:

Nov 1, 2017	Applicant Disclosure	none filed
Nov 6, 2017	Notice of Intention to be a party	City (Mr. Suriano), Nov 6, 2017

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Nov 6, 2017	Notice of Intention to be a Participant	Murray Kroach, Nov 6, 2017 Marilyn Flanagan, Nov 8, 2017 Jim Avery, Nov 8, 2017
Nov 16, 2017	Document Disclosure	9 documents by Mr. Suriano, Nov 17, 2017; 11 documents by Ms. Stewart, Nov 17, 2017
Dec 1, 2017	Witness Statement ¹ and Participant's Statement	none, although Ms Stewart has filed letters to the Committee of Adjustment from Mr. Macdonell, Dr. Kroach, Ms. Kerbel, and Ms. Kitchell
Dec 1, 2017	Expert Witness Statement	Mr. Romano, Dec 4, 2017
Jan 15, 2018	last date to file Notice of Motion	Mr. Macdonell filed his motion Feb 9, 2018

MATTERS IN ISSUE

Has the motion been properly brought? Should the hearing of Feb 27, 2018 be adjourned and if so, to what date? If the hearing is adjourned, what other matters should be clarified so that the hearing will proceed smoothly?

EVIDENCE

Mr. Macdonell's affidavit states that Feb 27, 2018, he, the appellant, will be out of the country; that Participant Dr. Kroach will also be out of the country; and Participant Mr. Avery is scheduled for surgery that day.

At the time of this Order, no one has responded to the motion.

ANALYSIS, FINDINGS, REASONS

The motion was returnable Feb 12, 2018, apparently contrary to Rule 16.6, which requires the hearing of the motion be heard 15 days after service. Staff gave Mr. Macdonell the motion hearing date because it appeared there might be a medical emergency and the responding parties should have as much advance notice as possible if the Feb 27 hearing date were to be adjourned. Staff requested Mr.

¹ Rule 16.4 requires a party to serve witness statements (using Form 12), containing a short written outline of their intended evidence. Rule 16.5 deals with Participant Statements and also requires a short written outline of the Participant's evidence.

Macdonell also seek an order to abridge the notice period for responding parties (Rule 2.10). This was not done but by dealing with the adjournment request, I am giving permission to shorten notice timelines.

The motion was served on 12 persons, including opposing persons Mr. Romano and Homeland². It was not served on Alexander Suriano, notwithstanding that the City of Toronto is a party by virtue its Notice of Intention filed November 6, 2017. It was not served on Amber Stewart, Mr. Tynkaluk's lawyer, although that may be excused because Ms. Stewart has not filed an authorized Representative Form (Rule 14.1). The City has not indicated that it will call any witnesses.


I accept that the Appellant Mr. Macdonell and two of his witnesses are unavailable for the Feb 27, 2018 hearing date and that it would be unfair to have a hearing, even though it is likely that Mr. Macdonell could have brought his motion much earlier had the timelines in the TLAB Notice of Hearing of October 17, 2017 been observed.

I feel the fairest thing is to convert the hearing into to a Prehearing Conference (Rule 23.4 g). The panel that day may:

1. Set a new date for hearing.
2. Enquire if any documents or statements need to be filed.
3. Clarify if other matters might be subject of a motion.
4. Deal with any other matter mentioned in Rule 21 (Prehearing Conferences).

DECISION AND ORDER

The hearing for Feb 27, 2018 is cancelled. In its place the TLAB will set up a Telephone Conference call for 9:00 AM, Tuesday Feb 27, 2018 for a Prehearing Conference. A fresh notice of this Conference call will be sent out, which will give the particulars of how to dial in.

X 

Ted Yao
Panel Chair, Toronto Local Appeal Body
Signed by: Ted Yao

² Mr. Macdonell states on page 6 of the Notice of Motion that he served the Notice and supporting materials on Mr. Romano on Feb 9, 2018. Mr. Romano states by email Feb 20, 2018, he never received the Notice of Motion and his first knowledge of the motion was this decision. (This footnote added Feb 20 2018 to this previously issued Decision.)