

# DECISION AND ORDER

**Decision Issue Date**      Thursday, February 08, 2018

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

Appellant(s): FARHAN KASSAM

Applicant: KATE COOPER

Property Address/Description: 216 – 218 BATHURST ST & 5 ROBINSON ST

Committee of Adjustment Case File Number: 17 128847 STE 19 MV (A0304/17TEY)

TLAB Case File Number: 17 274561 S45 19 TLAB

**Hearing date:**      Tuesday, April 03, 2018

**DECISION DELIVERED BY** Ian James Lord

## INTRODUCTION

This matter involves a Motion to the Toronto Local Appeal Body (the 'TLAB') brought on or about February 2, 2018 by the City of Toronto ('City') in respect of the above noted property address (the 'subject property').

The City Motion in several parts is reported to be supported by the appellant; there are several other parties and interests.

A TLAB Notice of Hearing has been sent scheduling the Hearing of this matter on April 3, 2018. An intervening date of March 6, 2018 has been set for a Mediation, requested by some of the parties.

The Notice of Hearing set exchange dates for the disclosure of evidence and the service and filing of Witness Statements and Experts Reports and Witness Statements. These dates have now passed and the Hearing process is well in train.

*Rule 2.1* of the *Rules of Practice and Procedure* of the TLAB identifies that Hearing dates are set.

The Motion is scheduled to be heard February 22, 2018; service has been perfected.

## **BACKGROUND**

This matter engages a multi-party dispute on applications refused by the Toronto and East York Panel of the City's Committee of Adjustment ('COA'). The matter involves application for minor variances to convert an existing two-storey commercial building fronting onto Bathurst Street into a hotel containing 30 suites, by constructing a south side one-storey addition and a rear staircase addition in the Committee of Adjustment Application A0304/17TEY respecting 216-218 Bathurst Street (the "Decision"). As identified in the Decision, the existing one storey townhouse/rowhouse fronting onto Robinson Street will be maintained.

The affidavit served with the Motion attests to multiple parties and participants.

## **MATTERS IN ISSUE**

The City Motion raises the following two Items:

1. The City of Toronto requests the following relief:

a. To adjust the Witness Statement, Participant Statement and Expert Witness Statement exchange deadlines as set out in the Notice of Hearing issued on December 22, 2017 to five (5) days after the mediation date to be set by TLAB, or such time that the TLAB deems appropriate after the mediation; and

b. Contingent on the relief sought in 1 (a), if the TLAB sets the exchange date less than twenty (20) days before the hearing is scheduled for April 3, 2018, that the hearing date be adjourned to a later date to accommodate the mediation, the hearing and exchange dates.

2. The City of Toronto requests that this motion be heard in writing pursuant to Rules 17.4, 24.1, and 24.6 of the TLAB's Rules of Practice and Procedure.

## JURISDICTION

I am to consider the City's request under *Rule 17*. The aspect of the request, in Item 2 of the relief sought, by implication but not necessity requires consideration under *Rule 24.6, 24.7-11*. While other *Rules* are invited to be engaged, their application may best await the larger considerations of administrative policy.

## EVIDENCE

Dealing with Item 2, first, the City asserts, with the represented consent of the appellant, that the relief of the written Motion hearing it requests is for reasons of convenience, lower cost and efficiency. That the Motion should be considered in writing to the time advantage of the parties and participants.

Indeed, all elements of the motion are procedural in nature.

The reply date for the Motion, following service, is February 15, 2018. As this date is somewhat off and the parties have yet to respond in any formal way, the full disclosure of positions is not yet apparent.

## ANALYSIS, FINDINGS, REASONS

Given the level of interest expressed in the subject matter of the appeal, it seems reasonable and prudent that the parties and participants bend every effort at disclosure, settlement, filing the requisite documentation and preparing for the opportunity to elaborate on their positions. Requiring an attendance to deal with a procedural Motion would not appear to be productive in that regard.

On the more substantive issues engaged by the relief requested in Items 1 a) and b), above, it is premature to comment while the period for response remains running. Reply's to the Motion, as previously stated, are due February 15, 2018.

Without a response or amending order, the obligations under the *Rules* remain outstanding and obligatory. This is consistent with the continuing approach of the TLAB, namely, that requests having the potential to delay a Notice of Hearing appointment require support and commentary by those affected. That opportunity period has not yet elapsed.

The City, properly, makes the case that to require adherence to the *Rules* can entrench positions unnecessarily and may lead to duplication or revisions in productions. Indeed, those consequences may well be the case but that is not for me to decide in advance and without the opportunity for those affected to weigh-in, should they wish. To date, the TLAB *Rules* related to disclosure have not been seen or served to deter mediation nor a resolution of some or all of the issues in a hearing.

The potential prejudice that may be seen to occur by persons disclosing their interests in a common respect for the *Rules* is not outweighed by unilaterally removing the right of persons to respond to requests for relief put by a party.

I am therefore not prepared at this juncture to unilaterally foreclose the right to address to the matters raised by the Motion. That includes my acceptance of the request for a written motion hearing.

I am informed that a mediation date of March 6, 2018 has been scheduled. I confirm the comment by City counsel on the Motion that the TLAB wholeheartedly supports efforts at settlement, both privately initiated and through mediation with a TLAB appointed Member, as is proposed.

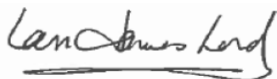
A mediated settlement, while not a guarantee of endorsement, is a preferable approach.

## DECISION AND ORDER

The request by the City that its Motion be heard on February 22, 2018 in writing is allowed . Pursuant to *Rule 17.4*, the Motion served on or about February 2, 2018 shall be considered based upon written submissions received no later than February 15, 2018.

No other alteration or variation in the scheduled hearing appointment of April 3, 2018, and its prerequisites, is made at this time.

X



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I. Lord  
Panel Chair, Toronto Local Appeal Body  
Signed by: Ian Lord