

DECISION AND ORDER

Decision Issue Date Tuesday, April 24, 2018

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

Appellant(s): NICOLE CANEJO

Applicant: NICOLE CANEJO

Property Address/Description: 74 ROYAL YORK RD

Committee of Adjustment Case File Number: 17 147039 WET 06 MV (A0390/17EYK)

TLAB Case File Number: 18 111586 S45 06 TLAB

Motion Hearing date: Friday, April 20, 2018

Name	Role	Representative
Nicole Canejo	Appellant	Ron Kanter
City of Toronto	Seeking Party Status	Daniel Elmadany

DECISION DELIVERED BY T. YAO

The City brings this written motion to be granted party status.

ANALYSIS, FINDINGS, REASONS

Addition of the City as a party

William Douma, owner of 74 Royal York Road, through his agent Nicole Canejo, filed an application for 4 minor variances. The variances deal with front and side yard setbacks, building length and landscaped open space. None of the variances deal with parking or vehicular movements on or off the site or with an increase or decrease of the number of vehicles seeking to access the site from Lake Crescent. Mr. Douma wishes to convert the existing retail store to a daycare school. The Committee of Adjustment

refused his request, he appealed and so this matter comes before the TLAB. There are many letters of objection, both at the Committee and to the TLAB, and six individuals have filed an election for participant status.

On February 22, 2018, the TLAB set June 12, 2018 as the hearing date and March 14, 2018 as the last day to file for party status. The City did not instruct the City Solicitor to seek party status until its meeting of March 26, 27 and 28, 2018.

On January 3, 2018, the City's Transportation Services Division reviewed the proposal, as revised, and had no objections, subject to ten conditions. Mr. Kanter opposes the City's entry because he feels that the City has already spoken through its Transportation Services Division. The City of course speaks through Council.

Since planning decisions affect everybody, the TLAB may, in appropriate cases, be defer procedural fairness to the goal of a full hearing on the merits. In my decision *61 Cluny Drive* [February 22, 2018], the owner/applicant had already filed expert witness statements and sought to file further statements after the deadline had passed. Mr. B., a neighbour, who had already filed his own documents, resisted further filings, claiming the timelines should be respected. Mr. B's lawyer quoted the Court of Appeal case *1196158 Ontario Inc. v. 6274013 Canada Limited et al.*¹

[19] Timelines prescribed by the Rules of Civil Procedure or imposed by judicial orders should be complied with. Failure to enforce rules and orders undermines public confidence in the capacity of the justice system to process disputes fairly and efficiently. On the other hand, procedural rules are the servants of justice not its master. We must allow some latitude for unexpected and unusual contingencies that make it difficult or impossible for a party to comply. We should strive to avoid a purely formalistic and mechanical application of timelines that would penalize parties for technical non-compliance and frustrate the fundamental goal of resolving disputes on their merits. As Laskin J.A. stated in *Finlay v. Van Paassen (2010)*, 101 O.R. (3d) 390, [2010] O.J. No. 1097, 2010 ONCA 204, at para. 14, "the Rules and procedural orders are construed in a way that advances the interests of justice, and ordinarily permits the parties to get to the real merits of their dispute".

[20] The challenge posed in cases involving dismissal for delay is to find the right balance between, on the one hand, the need to ensure that the rules are enforced to ensure timely and efficient justice and, on the other, the need to ensure sufficient flexibility to allow parties able to provide a reasonable explanation for failing to comply with the rules to have their disputes decided on the merits.

¹ Indexed as: *1196158 Ontario Inc. v. 6274013 Canada Ltd.*, 112 O.R. (3d) 67

This is not a dismissal for delay but even in the Court case, the plaintiff had already been given a “lifeline”. If the City’s entry were refused, and were Mr. Douma’s appeal to succeed, it would be viewed by some, rightly or wrongly, as decided “on a technicality”. The concerns of participants are traffic, parking, and children’s safety. In my opinion, the public interest in having the resolution of this dispute seen as fair and authoritative calls for me to err on the side of a decision on the merits instead of one based on procedural rules. A second reason for doing so, is that the Transportation Services report is based on certain conditions being met to the satisfaction of the department². There is a valid interest in the City testing these conditions.

Should the City be allowed to file a late expert witness statement?

Parts b. and c. of the City’s “Relief Sought” state:

- b.** To be granted the opportunity to submit Document Disclosure and an Expert Witness Statement within one (1) [sic] of the TLAB Decision and Order on this motion or such time that the TLAB deems appropriate; and
- c.** To grant any other party [i.e. Mr. Douma] an opportunity to reply to the City’s Document Disclosure and Expert Witness Statement on such time that the TLAB deems appropriate.

There are two expert transportation planning reports in the TLAB file. Besides the City’s January 3, 2018 report, of Mr. Kanter has filed a Traffic Operations Assessment and Parking Supply Review³. Both are favorable to Mr. Douma. Mr. Kanter argues that his client would be severely prejudiced if the City could submit additional document disclosure and expert witness statements “well after the City has had an opportunity to review the Appellant’s material”.

It is unclear what role the City will play at the hearing, and what additional documentation it intends to rely on, if any. With the City’s typo, the timeline is also unclear. Accordingly, I am arranging a conference call for Monday April 30, 2018 at 8:30 a.m. to flesh out any additional time lines that may be necessary. I request staff to send notice of this conference call to all parties and participants.

² For example, 4. The site plan be revised to explicitly include, to the satisfaction of this Division, a staff parking schedule to accommodate on-site pick-up and drop-off activities, which is essentially similar to the November 2, 2017 site plan submitted to Traffic Planning, except that the schedule be revised such that the on-site pick-up and drop-off activity take place primarily within the parking lot accessed from Lake Crescent and that the two parking spaces that are accessed from Royal York Road be provided primarily for staff parking; i.e., minimal pick-up/drop-off activity for these two parking spaces;

³ “Expert Witness Statement Traffic Parking Report FINAL April 2018_Filed by R. Kanter”, on April 9, 2018

DECISION AND ORDER

The City of Toronto is given leave to file a Notice of Intention to be a Party. The remaining issues are reserved until I have heard oral submissions on April 30, 2018.

X

Ted Yao

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