Toronto Local Appeal Body

40 Orchard View Blvd, Suite 211
Toronto, Ontario M4R 1B9

Telephone: 416-392-4697
Fax: 416-696-4307
Email: tlab@toronto.ca
Website: www.toronto.ca/tlab

REVIEW REQUEST ORDER

ADDENDUM

Review Issue Date: Monday, June 04, 2018

PROCEEDING COMMENCED UNDER section 53, subsection 53(19), section 45, subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant(s): BRENTLANE DEVELOPMENTS INC

Applicant: RICHARD WENGLE ARCHITECT INC

Property Address/Description: 49 & 51 SPRINGMOUNT AVE

Committee of Adjustment Case File Number: 17 168004 WET 17 CO, 17 168020 WET 17 MV, 17 168021 WET 17 MV, 17 168022 WET 17 MV

TLAB Case File Number: **17 256606 S53 17 TLAB, 17 256610 S45 17 TLAB, 17 256612 S45 17 TLAB, 17 256613 S45 17 TLAB**

Decision Order Issue Date: Thursday, March 29, 2018

DECISION DELIVERED BY Ian James Lord

BACKGROUND

As a result of matters raised by counsel for both the applicant and appellant City in respect of 49-51 Springmount Avenue, clarification is advisable, necessary and required to my Decision and Order issued Monday, May 28, 2018.

I consider the requests to be for minor corrections under Rule 30.1. Despite this, explanations for the revisions are warranted.

ERRORS WARRANTING CORRECTION

Issue 1: Factual Error.

In conducting the review under Rule 31 of an Order and Decision requested by the applicant/appellant, I had solicited input from the parties and the participants to the proceeding then under review.

In response, the participant had provided advice that the appellant principal, Mr. Daniel Shields, had not been present at the hearing of the appeal initiated by Brentlane Developments Inc., before Member McKuch.

I had accepted that information as for the truth of its content, despite the information not being received under oath or affirmation.

I am since advised by the solicitor for the applicant/appellant that Mr. Shields "was in attendance for the entire hearing on March 14, 2018."

I accept that a correction is warranted and that the offending paragraph that references the issue of attendance be redacted. I do so, below, by strikeout and apologize for the inconvenience that has arisen by the miscommunication of the advice.

Issue 2: Scope of New Hearing Clarification

In the Direction, Decision and Order of the review, I had concluded that a new hearing was appropriate and should be conducted expeditiously. In that regard, I gave directions as to the issuance of a new Notice of Hearing setting out several express directions. These included a right in the applicant/appellant to provide any further document disclosure or revisions to the plans and for the parties and participants to provide any revisions felt appropriate to their individual filings or witness statements.

My intended purpose was to set the matter afoot as a complete new Hearing. By the order to expunge the earlier decision, I intended that the entire record preceding that event and any revisions or additions be allowed, subject to disclosure.

The City has raised the concern that the Decision and Order, as drafted, unduly advantaged the applicant/appellant and could be interpreted to include a prohibition on the scope of proceedings applicable to other parties and participants.

The City wishes to add a witness; a participant has indicated a desire to elevate their status to that of a party.

While I can understand an objection by the applicant/appellant to facing potentially new obstacles, my intention was and is to afford the Member hearing this appeal an unfettered scope as an originating proceeding. I had anticipated that the passage of time to date may have resulted in changes to the new proceeding.

Changed circumstances are neither an evolution nor new consideration to the direction of the intention expressed: namely, that a new Notice of Hearing be issued in furtherance of a full opportunity for the interests involved to fully reveal their respective positions. This is the sentiment the TLAB envisages for all Hearings: a preference for full and timely disclosure; sober consideration and settlement - or decision.

In the review itself, I had previously rejected the request that the new Hearing be held to the status quo ante. Not only would that be an artificial construct and potentially contrary to the best evidence rule, but it could also inhibit the parties and participants from addressing any matter relevant to each. This would be contrary to Rule 2.2 of the TLAB "to secure the just, most expeditious and cost-effective determination" of the

matter, and potentially inhibit the possibility of settlement. I did not support such a limitation then and I do not support it now.

The error identified in the expression of that intent warrants attention and its clarification follows.

CORRECTING DECISION AND ORDER

The Decision and Order issued May 28, 2018 is corrected as follows:

1. By redacting therefrom the second full paragraph on page 5, as found in strike-out, below:

> ~~I was advised the Requestor was not himself present at the hearing, a fact neither admitted nor denied in his affidavit. If the Requestor was not present throughout, submissions as to the conduct of the hearing would amount to hearsay at best. It raises the question of how an affiant can swear an affidavit not based on own observation and not reported to be based upon information and belief.~~

2. By replacing paragraph 4 of the Decision and Order with the text and additional words added in bold lettering, below:

"4. The Notice of Hearing shall only specify dates for the following, such that all existing filings may be brought forward, as is or modified, to respect that:

a) The Applicant /Appellant shall disclose any further or other revisions to the plan, proposal, undertaking or variances sought and associated Witness Statements, including revisions arising by virtue of the status of By-law 569-2013, not less than thirty (30) days prior to the Hearing Date;
b) **Full particulars of any new party or participant, any new document disclosure, any new Witness Statements of any kind and** revisions to any other documentation by a party or participant shall be disclosed not less than **twenty five (25)** prior to the Hearing Date;
c) The Hearing Date;
d) A Motion brought within ten (10) days prior to the Hearing Date shall be heard at the outset of the Hearing.

X 

Ian James Lord

Chair, Toronto Local Appeal Body

Signed by: Ian Lord