

DECISION AND ORDER

Decision Issue Date. Tuesday, June 26, 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): ROBERT ULICKI

Applicant: LEA WILJER

Property Address/Description: 459-461 SACKVILLE ST

Committee of Adjustment Case File Number: 17 253383 STE 28 MV (A1167/17TEY)

TLAB Case File Number: **18 150889 S45 28 TLAB**

Motion Hearing date: Tuesday, June 26, 2018

DECISION DELIVERED BY S. Makuch

APPEARANCES

Ian Flett – Solicitor for the applicant/appellant Robert Ulicki

Matthew Longo – Solicitor for the City of Toronto

Jane Pepino – Solicitor for Hasan Uran, Blaine Pearson, and Patricia Milne

INTRODUCTION

This is a motion by the appellants for an adjournment sine die of a hearing scheduled to commence on August 17, 2018. The notice of hearing is dated May 9, 2018

BACKGROUND

As of the date of this decision there appear to be 15 confirmed parties and 10 participants, although 32 persons were served with notice of the motion. The City is a party represented by the City Solicitor. Three other opposing parties are represented by one legal counsel. The notice of motion itself is not signed or dated, but was filed with TLAB on June 11, 2018. Before the notice was filed an extra day was administratively allocated for the hearing of the matter in order to ensure that the large number of parties and participants could heard.

MATTERS IN ISSUE

The fundamental matter in issue is whether there is reason to adjourn the hearing sine die, scheduled to commence on August 17, 2018 and continue on August 20, 2018, and to set new disclosure dates a result of the adjournment. This is based on the following requests in the appellant's solicitor's (Mr. Flett) notice of motion:

1. An adjournment of the hearing of this matter sine die;
2. Setting a date in August, 2018 in consultation with counsel of record in this matter for a prehearing conference to allow for a progress report by way of telephone conference call and,
 - a. Setting hearing dates for this matter on such dates as counsel shall advise and the Local Appeal Body may allow;
 - b. Setting the dates for compliance with Rules 11, 16, 16.4, 16.5, 16.6 and 17 as counsel shall advise and Local Appeal Body may allow;
3. An order requiring the Appellant to provide the final report from its traffic consultants to all parties no more than 10 days following the Applicant's receipt of that report; and
4. Such other relief as counsel may advise and the TLAB may allow.

Requests 2-4 are dependant on the granting of the adjournment sine die.

JURISDICTION

There is no doubt whatsoever TLAB has discretion to adjourn hearings under its rules. In my opining in doing so there must be adequate reason(s) for granting the request and no significant prejudice to the parties and participants involved.

EVIDENCE

The reasons provided for the request are found in the notice of Mr. Flett and an affidavit of Lea Wiljer, Architect for the appellants. No request was made to provide oral evi-

dence. The written reasons may be summarized as follows. At the Committee of Adjustment hearing of this matter on April 11, 2018 it became clear that traffic volume, parking and pick up and drop off for the proposed use of a day care centre was a major concern of those objecting to the application. The adjournment sine die would allow sufficient time to determine the appropriate parameters of the traffic study; to conduct traffic studies to address these issues; to share the information in the studies; and to allow for alternate dispute resolution as the City had authorized the City solicitor to negotiate a settlement of the matter.

The City did not object to the request provided a traffic study is undertaken. The three parties represented by one legal counsel also consent to the adjournment to provide time for the studies to be undertaken and for alternative dispute resolution if warranted.

ANALYSIS, FINDINGS, REASONS

There is no doubt that the parties who have responded to the request do not find they are prejudiced by the adjournment. However, there are numerous non-represented parties and participants who have not responded and may not understand the meaning of an adjournment sine die. I am reluctant, when there is such wide spread interest in the matter, to adjourn the hearing to no known date. This could cause confusion and result in citizens losing faith in this legal process. There is the risk, therefore, of prejudice to the TLAB process.

I might be willing to disregard that risk if there was demonstrated prejudice to the appellant in proceeding with the hearing on August 17, 2018. I do not find such prejudice based on the evidence submitted. The appellants were made aware, by their own admission, of the traffic issues which they faced on April 11, 2018. They give no reasons as to why they did not at that time retain a traffic consultant or at least at the date of filing their appeal or when the City authorized settlement discussions based on a satisfactory traffic study on May 22, 2018. No reason was given as to why on June 11, 2018, when the architect's affidavit was sworn they still had not retained a consultant.

Nor have they given any reason as to why the traffic study cannot be completed for disclosure before the hearing. There is no evidence from a retained consultant, and their architect states that they are retaining a consultant and that they are not sure of the parameters of the traffic study. In my view the scope of the study is clear and narrow: the impact of a day care centre on the site with respect to traffic volume, parking, drop off and pick up. There was no evidence that such a study could not be completed in a timely manner. The appellants request time to conduct studies and engage in alternate dispute resolution but give no reasons as to why the current schedule is inadequate or how much time is necessary. In my view an alternate resolution to this dispute may be sought even while the date for the hearing remains unchanged. TLAB encourages such a resolution until a decision is rendered and indeed would be prepared to assist the parties in seeking such a solution should they so desire. The August 17, 2018 date does not discourage such a resolution and could be transformed into a settlement hearing if appropriate.

As a result I do not see adequate reasons for granting an adjournment sine die of the hearing date and do see the risk of prejudice to the legal process if an adjournment is

granted. In order to ensure that the traffic study can be completed and reviewed by all parties and participants before August 17, 2018, I am prepared to alter disclosure dates as set out below.

DECISION AND ORDER

The request for an adjournment sine die is denied and hearing will commence at 9:30 am on August 17, 2018. Current disclosure dates are replaced with the following:

All documents, including any traffic studies must be filed on or before, August 3, 2018.

All party, participant and expert witness statements must be filed on or before August 10, 2018.

X 

S. Makuch

Panel Chair, Toronto Local Appeal