

DECISION AND ORDER

Decision Issue Date Monday, June 25, 2018

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

Appellant(s): KATERINA FITSIALOS

Applicant: VLADIMIR ARENSHTAM

Property Address/Description: 79 LAWRENCE AVE E

Committee of Adjustment Case File Number: 17 270767 NNY 25 CO (B0071/17NY)

TLAB Case File Number: **18 144361 S53 25 TLAB**

Motion Hearing date: Tuesday, June 12, 2018

DECISION DELIVERED BY S. Gopikrishna

INTRODUCTION AND BACKGROUND

The Applicants/Appellants who own 79 Lawrence Ave E. applied to the Committee of Adjustment to authorize a severance and divide the property into two residential lots. The details of the severance are not listed here because they are not pertinent to the questions listed in the Motion before TLAB. No variances have been requested for the construction of new dwellings on the severed lots.

On Thursday, March 22, 2018, the North York Panel of the Committee of Adjustment (the "COA") refused the application for the consent to sever 79 Lawrence Ave E. through Committee of Adjustment Application No. B0071/17NY.

The applicant appealed the Decision to the Toronto Local Appeal Body on 13 April, 2018. The deadline to elect to be a Party elapsed on 17 May, 2018 as per the Notice of Hearing, at which point in time City Legal Staff had not received instructions to oppose the appeal to TLAB.

The Lawrence Park Ratepayer's Association (LPRA) elected for Party status on 17 May, 2018.

At the May 22, 23 and 24 and 28, 2018 meeting of Toronto City Council, City Council authorized the City Solicitor, to attend the Toronto Local Appeal Body ("TLAB") to uphold the Committee's Consent Decision.

Since the City Solicitor and City Staff did not receive instructions to oppose the appeal until an advanced stage in the disclosure process, the City missed the both the deadlines to elect to be a Party on May 17, 2018 as well as the deadline for document disclosure on March 28, 2018.

The purpose of the Motion put forward by the City is to request for relief from the Rules to elect for Party status as well as disclosure deadlines. The details of the Motion appear in the section below. The return date for the Motion was the 12th of June, 2018.

MATTERS IN ISSUE

The City of Toronto requests the following relief:

- a. To be granted Party Status to the TLAB Appeal for 79 Lawrence Avenue East;
- b. To be granted the opportunity to submit Document Disclosure and an Expert Witness Statement within two (2) weeks of the TLAB Decision and Order on this motion or such time that the TLAB deems appropriate; and
- c. To grant any other party an opportunity to reply to the City's Document Disclosure and Expert Witness Statement on such time that the TLAB deems appropriate.

JURISDICTION

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, which are recited below:

17.4 The Local Appeal Body may require a Motion to be held by Written Hearing or by Electronic Hearing upon such terms as the Local Appeal Body directs.

24.1 The Local Appeal Body may hold an Oral Hearing, Electronic Hearing or Written Hearing.

24.6 The Local Appeal Body may consider any relevant factors in deciding to hold a Written Hearing, including:

- a) the convenience to the Parties and the Local Appeal Body;
- b) the likelihood of the process being less costly, faster and more efficient;
- c) whether it is a fair and accessible process for the Parties;
- d) the desirability or necessity of public participation in or public access to the Local Appeal Body's process;
- e) whether the evidence or legal issues are suitable for a Written Hearing;
- f) whether credibility may be an issue or the extent to which facts are in dispute; or

g) whether a Written Hearing is likely to cause significant prejudice to any Party or Participant.

EVIDENCE

The affidavit submitted by Ms. Seija Molema dated 28 May, 2018, on behalf of the City, states that::

“At the May 22, 23 and 24 and 28, 2018 meeting of Toronto City Council, City Council authorized the City Solicitor, appropriate staff and outside consultants to attend the Toronto Local Appeal Body. Since the City Solicitor and City Staff did not receive instructions to oppose the appeal until an advanced stage in the disclosure process, the City missed the deadline for document disclosure on March 28, 2018.

At the time of filing this motion, the City had not missed the Expert Witness Statement deadline. However, it could not file witness statements by the deadline since it is still not a Party to the proceedings. The City requests for an opportunity to disclose its documentary evidence and its expert witness statement, concurrently and no later than two (2) weeks after the TLAB’s Order and Decision on this motion, or at such other time and in such other manner as the TLAB orders.”

The affidavit also recognizes that the appellant and the other parties require the opportunity to respond to the City’s documents and expert witness statement, and it will not prevent nor object to any party from filing further and complete disclosure or witness statements. It will also consent to any changes other parties may make to their documentary evidence and witness statements.

Based on the above, the City requests that the TLAB impose a deadline after the City’s required disclosure date identified by the TLAB or at such other time as the TLAB orders.

Pre-empting any assertion of prejudice the Appellants and other Party (Rate Payers Association) may make, the affidavit goes onto state that the filing of the City’s documentary evidence, witness statement and a reply witness statements by other parties and participants will give all parties sufficient time to prepare for the hearing. These deadlines, the City asserts, would not require a change to the hearing day fixed by the TLAB for August 10, 2018, while enabling the TLAB to adjudicate the planning issues in a just, expeditious, and cost effective manner, in accordance with the TLAB rules.

The City asserts that the prejudice to itself, if prohibited from participating in the hearing of this matter far outweighs the inconvenience to the applicant resulting from the City’s late involvement.

The affidavit ends with the reasoning for its request that the Motion be heard in writing- namely, that it is the most convenient and accessible method for all parties and the

TLAB, and this motion does not consider complex legal issues that would require an oral hearing.

The sole communication received from the Parties involved in this matter was an email submitted by Janet Griffin of the LRPA in support of the City's position and request for relief from the Rules. It is important to note that no submissions were made by the Appellants to oppose the Motion.

ANALYSIS, FINDINGS, REASONS

The Motion is in accordance with Rule 17.4 because Appellants can submit Motions to be heard in writing. I use Rule 21.4 to admit the written Motion, test the submitted evidence and arrive at a decision, which may then be conveyed to all Parties.

Rule 24.6 discusses various factors which have to be looked at before a decision can be arrived at. Applying the various components to Rule 24.6 to the evidence recited in the previous section, I find that:

a) The Motion satisfies parts a) and (b) of Rule 24.6 because written hearings are convenient and cost efficient where no complex legal matters are involved, as well as any lack of assertion to the contrary from other Parties . The written submissions are sufficient in this case because they outline the basis for the submission, list the reasons behind the late request and offer evidence in the form of an extract from the City's monthly council meetings to demonstrate the late instructions. This satisfies components (c) and (e) of Rule 24.6. Subrule (f) is not applicable to this decision because nobody has raised, nor addressed credibility concerns. The fact that other Parties have the right to responses on or before the 12th of June satisfies (d) because it demonstrates that the process is transparent and fair. The City recognizes the need for possible reply evidence is clearly stated in the affidavit, and therefore satisfies .

The lack of response from the Appellants, after an open and transparent process, is interpreted to mean that the other Parties don't feel prejudiced and have no objections to the City's electing for status after the last possible date. This important conclusion satisfies the component (g) of rule 24.6 which discusses prejudice to Parties. The importance of lack of submissions from the Parties asserting prejudice is doubly important for determination of the balance of prejudice given that there is no specific discussion in the City's affidavit of how it would be prejudiced if not allowed Party status, notwithstanding the assertion of being prejudiced.

Based on the discussion, I allow the Motion in its entirety and fix the following dates for exchange of documents:

- The City, and other Parties may submit documents by 10 July, 2018. Other Parties may submit documents responding to the City's documents within a two week period by 24 July, 2018.

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- This time line provides adequate opportunities to the Parties to familiarize themselves with submissions on other Parties and come prepared to argue their cases on 10 August, 2018. The hearing date is therefore not changed.

Lastly, I am not seized of this matter.

DECISION AND ORDER

Based on the analysis of evidence above, it is concluded that:

- a. The City is granted Party Status to the TLAB Appeal for 79 Lawrence Avenue East;
- b. The City is granted time till 10 July, 2018, and is granted the opportunity to submit Document Disclosure and an Expert Witness Statement, consistent with its request for an extension of two (2) weeks for making submissions based on the date of the TLAB Decision and Order on this Motion.
- c. Other Parties have until 24 July, 2018 to submit their Responses to the City's submissions.
- d. Notwithstanding the change in dates for document exchange, the actual hearing date of 10 August remains fixed and will not change.
- e. The undersigned TLAB Member is not seized for the oral hearing of this case.

So Orders the Toronto Local Appeal Body.

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body