

# DECISION AND ORDER

**Decision Issue Date** Monday, December 10, 2018

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), and Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): NAZNIN CHOWDHURY

Applicant: CANTAM GROUP LTD

Property Address/Description: 59 CLETA DR

Committee of Adjustment Case File: 18 140711 ESC 35 CO, 18 140716 ESC 35 MV, 18 140717 ESC 35 MV

TLAB Case File Number: **18 181672 S45 35 TLAB, 18 181676 S45 35 TLAB, 18 181681 S53 35 TLAB**

**Motion Hearing date:** Wednesday, November 14, 2018

**DECISION DELIVERED BY G. BURTON**

## REGISTERED PARTIES AND PARTICIPANTS

NAME	ROLE	REPRESENTATIVE
NAZNIN CHOWDHURY	Owner/Appellant	AMBER STEWART
CANTAM GROUP LTD	Applicant	
CITY OF TORONTO	Party (TLAB)	ADERINSOLA ABIMBOLA
KASIA CZAJKOWSKI		
BRUNA NIGRO	Expert Witness	

## INTRODUCTION

This is a Motion for an Adjournment of the Toronto Local Appeal Body (TLAB) hearing of this Appeal, scheduled for November 14, 2108. The Motion was filed on October 29, 2018. It was considered in written form on the original hearing date.

## **BACKGROUND**

The owner of the property, Ms. Naznin Chowdhury, had appealed on June 19, 2018 from decisions of the Committee of Adjustment, Scarborough Panel. These decisions, dated May 31, 2018, had refused both a consent to sever into two lots and variances for proposed dwellings on the severed lots. The land is located in Scarborough Southwest, in the Kennedy Park Community.

In its Notice of Hearing, the TLAB had provided the hearing date of November 14, 2018, together with the required pre-filing dates for documents, as provided in the TLAB Rules. Most of these deadlines were to be in August 2018. The last of these was the final date given for Notices of Motion, being October 01, 2018.

On July 4, 2018, the City of Toronto had filed a Notice of Intention to be a Party to the appeal.

The now-solicitor for the appellant, Ms. Amber Stewart, filed a Notice of Motion on October 29, 2018. In it she requested an adjournment of the hearing date, for the reasons set out below.

## **MATTERS IN ISSUE**

Does the late hiring of a professional representative and a planning witness justify an adjournment of required TLAB filing dates and the hearing date?

## **JURISDICTION**

The TLAB Rules of Practice and Procedure (Rules), Rule 2.10 provides that the Local Appeal Body may grant all necessary exceptions to the Rules, or grant other relief as it considers appropriate, to enable it to effectively and completely adjudicate matters before it in a just, expeditious and cost effective manner. Rule 23.4 b) permits the TLAB, on a Motion for and adjournment, to grant the Motion and fix a new date [for the hearing].

By Rule 16.1 (b), the TLAB may, at any stage of a proceeding, make an order for the exchange of witness statements and reports of expert witnesses.

## **EVIDENCE**

Ms. Stewart's Motion was supported by the affidavit of Shani Ben-Izhak, sworn October 26, 2018. It stated that the property owner, Naznin Chowdhury, retained Amber Stewart Law as counsel only on October 19, 2018. The owner had retained Mr. Jonathan Benczkowski to provide land use planning evidence on October 10, 2018.

Ms. Stewart stated in the Motion that because the TLAB had issued the Notice of Hearing [much earlier] on July 10, 2018, all filing deadlines had passed prior to their retention. Thus no materials had yet been filed by the appellant.

Ms. Stewart had corresponded with the City's counsel, Derin Abimbola, respecting the City's views on an adjournment. The City has agreed, she stated, that it would be preferable to adjourn the hearing to permit additional time to file the necessary material, and to permit the City to file reply material if necessary. On that basis, the City has consented to an adjournment of this matter. The new hearing date would preferably consider the availability of both counsel.

Ms. Stewart undertook to observe the new filing deadlines provided in a new Notice of Hearing.

On November 8, 2018, Ms. Abimbola filed a Notice of Response to Motion. It stated that the City took no position on adjourning the hearing to permit the Appellant additional time to file the necessary material. However, the City did consent to an adjournment, but only on the condition that the City is permitted to respond to the Appellant's future materials by supplementing its prefiled Expert Witness Statement and Document Disclosure.

## **ANALYSIS, FINDINGS, REASONS**

The hiring of the professional representatives occurred well after the final filing date of October 1, 2018 as required in the Notice of Hearing. This is not in itself unheard of – an appellant may realize after discussions with City staff, or as in this case, the announced participation of the City in the appeal, that professional representation would assist. This is to be discouraged, however, since additional party and TLAB staff time must be devoted to addressing the resulting Motion, Notice of Hearing and revisions to prepared documents such as expert witness statements.

The City had long before filed all documents required in virtual compliance with the dates set out by TLAB in the Notice of Hearing. It has, however, agreed to accommodate the appellant here and refile where necessary.

## **DECISION AND ORDER**

The Motion is granted and the hearing of this appeal is adjourned, to be heard on Monday, May 13, and Tuesday, May 14, 2019, as required, at 9:30 A.M., **2nd Floor, Suite 253**, 40 Orchard View Boulevard, Toronto, ON. The hearing room will be announced in a new Notice of Hearing.

The revised exchange dates and related matters as set out in the new Notice of Hearing will govern.

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181681 S53 35 TLAB**

The City is afforded the right of Reply evidence, as requested. In the event of any changes to the Rules, those in effect on the date hereof shall prevail.

The Parties are instructed to advise the TLAB at the earliest opportunity upon any resolution of the matters, all in accordance with Rule 19.

X 

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G. Burton  
Panel Chair, Toronto Local Appeal Body