

# RULING

**Decision Issue Date**      Friday, January 04, 2019

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

Appellant(s): CHARLOTTE SHEASBY-COLEMAN

Applicant: VICTOR HIPOLITO

Property Address/Description: 11 STANLEY AVE

Committee of Adjustment Case File Number: 17 267606 WET 06 CO, 17 267617 WET 06 MV, 17 267618 WET 06 MV

TLAB Case File Number: **18 135459 S53 06 TLAB, 18 135460 S45 06 TLAB, 18 135463 S45 06 TLAB**

**Hearing date:**      Wednesday, December 19, 2018

**RULING DELIVERED BY T. YAO**

## APPEARANCES

Name	Role	Representative
Giuseppina Deo	Party/Owner	Russell Cheeseman
Theodore Cieciura	Expert Witness	
Charlotte Sheasby-Coleman	Appellant	
Max Dida	Witness	
David Godley	Witness/Participant	
Michael Smith	Witness	
Nancy Ditchfield	Participant	
Erika Aucoin	Participant	

**Decision of Toronto Local Appeal Body Panel Member: T. YAO**

**TLAB Case File Number: 18 135459 S53 06 TLAB, 18 135460 S45 06 TLAB, 18 135463 S45 06 TLAB**

Craig Goodman	Participant
Jim Farrell	Participant
Ulrich Fekl	Participant
Rosalie Wang	Participant
Douglas Dron	Participant
Aiden Coleman	Participant
Barbara Radecki	Participant
Marion Jenson	Participant
Raoul Coleman	Participant

The background to this motion is somewhat unusual and complicated.

Sara Nunes (15 Stanley) and Giuseppina Deo (11 Stanley) both obtained permission from the Committee of Adjustment to sever their respective 50-foot properties into 25-foot lots. The two properties are side by side, and the two severances created a row of four 25-foot lots. Both decisions were appealed by Charlotte Sheasby-Coleman, owner of 9 Stanley Ave. Ms. Nunes's case, 15 Stanley, was scheduled first and was heard before TLAB Chair Lord. Ms. Deo's case, 11 Stanley, was scheduled before me at the TLAB.

Just prior to the commencement of the 11 Stanley hearing, Mr. Cheeseman, lawyer for Ms. Deo, obtained a copy of the just-released decision of Mr. Lord. Mr. Cheeseman asked for an adjournment to be permitted to file an arborist's report that he had commissioned but did not serve on Ms. Sheasby-Coleman.

He said:

Subsequent to the Committee's decision, an arborist's report was prepared for the purpose of going to the City's alternative process, I'm going to call it side-by-side process under the Trees By-law, to deal with the health of the trees and the impact. As the Board knows, to remove any tree, or injuring a tree in the City of Toronto, one has to apply for a permit. And we went through that before Mr. Lord, [ Interchange establishing that the ultimate decision is City's Council's] . .

But Mr. Lord seems to put considerable weight on the fact that an arborist's report wasn't prepared. But in this case an arborist's report has been prepared, because we expect it will have to go through the Tree By-Law process, and this owner chose to do that. We did

**Decision of Toronto Local Appeal Body Panel Member: T. YAO**  
**TLAB Case File Number: 18 135459 S53 06 TLAB, 18 135460 S45 06 TLAB, 18 135463 S45 06 TLAB**

not file the arborists report, sir, as part and parcel of this hearing, because it hadn't been completed until after the dates for filing had been set. So, sir, given the decision of Mr. Lord which affects the property directly next door and speaks to certain evidence that he would have liked to have seen, that we weren't aware of, that Ms. Sheasby-Coleman hasn't seen the decision, I'm sure when she reads it, she will be glad to read it and understand how the decision was rendered.

But today sir what I rise to do is ask the Board to allow me an adjournment to reschedule this hearing. This hearing was not going to finish today anyway, with the witnesses that are to be coming forward, and we know that, because we did have a motion on this file. Ms. Sheasby-Coleman brought a motion to put the two matters together, that motion was fully argued, the decision of the TLAB was to keep them apart, two separate owners, two different matters, because on 15 Stanley [Nunes], the minor variances weren't appealed, . . .so it was just the severance. And as I say I've only had about two minutes to review the decision very very quickly. I've got some concerns with it and I'll have to look at those, but in the interim sir, I would like the **opportunity for a motion to adjourn, to bring a motion to allow me to introduce some further evidence, an arborist's report that I haven't disclosed to anybody**, I'm quite prepared to do so, given the decision of Mr. Lord, in this case.

At this point I asked Mr. Cheeseman why he had not served the report notwithstanding the deadline. His answer was "Because in our opinion, sir, it had no relevance before the Board".

All parties were ready to proceed and were unusually well prepared, since they had just undergone the similar hearing before Mr. Lord. I ordered that the hearing for 11 Stanley proceed on September 14, 2018.

As Mr. Cheeseman anticipated, we did not complete the hearing the first day. On the second hearing day, December 19, 2018, Mr. Cheeseman announced that he had filed his arborist's report on the TLAB website and wished permission under the Rules to use it as part of his case. Ms. Sheasby-Coleman objected, saying in effect that this was "accomplishing by the back door what couldn't be done by the front door". She also had seen a copy of the report and stated that the date of the report later than the September 14, 2018 date when Mr. Cheeseman asserted that the arborist's report was already prepared. Mr. Cheeseman replied that the report had been prepared but final revisions were made after September 14, 2018. I accept his explanation. However, Ms. Sheasby -Coleman has already called the City's arborist. In my view, it would be unfair to allow the second arborist's findings to be introduced after the City's arborist has testified and who has been cross examined by Mr. Cheeseman.

Accordingly, this arborist will not be permitted to be called as a witness and information in the report cannot be evidence in this hearing.

Mr. Cheeseman asked for written reasons for this ruling and these are the reasons.

X

*Ted Yao*

---

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