

DECISION AND ORDER

Decision Issue Date Tuesday, February 19, 2019

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): YEN PING LEUNG

Applicant: KEVIN CHENG

Property Address/Description: 787 DUNDAS ST W

Committee of Adjustment Case File Number: 17 255982 STE 19 MV (A1198/17TEY)

TLAB Case File Number: 18 213028 S45 19 TLAB

Hearing date: Wednesday, December 12, 2018

DECISION DELIVERED BY S. GOPIKRISHNA

APPEARANCES

Name	Role	Representative
Ms. Yin Pin Leung	Appellant	Mr. Kevin Cheng
Mr. John Provart	Party	

INTRODUCTION AND BACKGROUND

I believe that it would be useful to reproduce the final order from my earlier Decision of 21 December, 2018, to best capture the background, and the need to issue this Decision.

The Decision and Order dated 21 December, 2018, stated:

1. The Appellant has until 4:30 PM on 1 February, 2019, to report back to the TLAB about the extent of the progress made with the settlement process, and when the TLAB hearing can be completed, should the settlement be under way.

2. The TLAB will determine when to hear the Appeal, after it receives an update from the Appellant about the progress in the settlement process, as directed above. The TLAB may issue a peremptory hearing date on which the Appeal will be heard orally, as a contested proceeding if necessary, irrespective of the availability of any specific witness, or witnesses.

The email sent by Mr. Kevin Cheng, agent and son of the Appellant, Ms. Leung dated 23 January 2019, reported that the Appellants had contacted the offices of Councilors Cressy and Layton to see if they could facilitate a settlement, as discussed in the Order recited above. Mr. Cheng stated had not received any response from Councilor Cressy's office, while Councilor Layton's office referred the Appellants to the mediation services offered by St. Stephen's Community House (St. Stephen's), a non-profit organization. Mr. Cheng stated that he had contacted St. Stephen's and had provided them with consent on behalf of the Appellant to proceed with the mediation. Mr. Cheng also stated that he had been informed that the mediation could be completed by 22 March, 2019. On the basis of this information, he requested the TLAB to schedule a hearing such that it could be completed by 1 October, 2019.

On 30 January, 2019, TLAB received an email from Mr. John Provart, the Party in opposition to the Appeal, stating that he had been contacted by St. Stephen's for the mediation, and had advised them that he did not want to engage in the mediation process because of the "lack of confidence", and "years of difficult relations" with the Appellants. He reiterated his position from earlier submissions and hearings about his preference for the Appellants to either proceed to have their Appeal heard in a timely fashion, or withdraw their application.

On the same day, TLAB received another email from Mr. Cheng where he expressed his frustration about how Mr. Provart's turning down the mediation offer was "regretful", and represented a "waste of time and expense" of consultants, and elected public officials. The email then reiterated how TLAB encouraged mediation, and requested mediation by a third party or TLAB, as well as a Pre-hearing conference.

Mr. Cheng also offered to retain another expert in place of Mr. Yoon to expedite the TLAB facilitated mediation, if necessary.

MATTERS IN ISSUE

The only issue before me is whether, and when should the TLAB schedule a hearing with a peremptory date based on the progress reported by the Parties.

JURISDICTION

The TLAB's Rules were relied upon by way of jurisdiction.

ANALYSIS, FINDINGS, REASONS

Notwithstanding Mr. Cheng's interest in exploring mediation by the TLAB or other Parties, I would like to point out that Mr. Provart refused the same during the hearing held on 12 December, 2018. His refusing the invitation from St. Stephen's for Mediation is consistent with his refusing a similar invitation from TLAB at the aforementioned hearing, for reasons that have been stated and reiterated in earlier submissions.

Under these circumstances, I am left with no other choice than to reschedule a hearing before the TLAB, with a date deemed to be peremptory. I requested the TLAB staff to canvass dates with both Parties and understand that both are available to participate in a hearing scheduled for 30 May, 2019; I hope that the date would also be convenient for the Participant Ms. Krones.

Under the circumstances, it is assumed that the hearing will be a contested proceeding, unless the Parties advise TLAB otherwise. It may be emphasized that the hearing to be held on 30 May, 2019 will be held in person, and requires the attendance of the Parties in order to be able to give evidence.

The Decision below orders a peremptory hearing for 30 May, 2019, scheduled to start at 9:30 AM. The Notice of Hearing, to be issued by the TLAB, will provide details of the location of the hearing, and the deadlines for disclosure and submission of statements.

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1. The Appeal respecting 787 Dundas West, will be heard by the **TLAB at 9:30 AM on 30 May, 2019**. This date is peremptory, and the hearing will require attendance of the Parties in order to be able to give evidence. The hearing will proceed irrespective of issues of convenience of expert witness, who may be retained by the Parties.
2. The TLAB will issue a notice of hearing which will list final deadlines for submissions of witness statements.

So orders the Toronto Local Appeal Body.

X 

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body