

DECISION AND ORDER

Decision Issue Date Thursday, April 04, 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): HAMIDREZA KAMALI

Applicant: ARCICA INC

Property Address/Description: 163 CORTLEIGH BLVD

Committee of Adjustment Case File: 18 122410 NNY 16 MV

TLAB Case File Number: 18 180922 S45 16 TLAB

Original Hearing date: Tuesday, October 16, 2018

DECISION on a MOTION DELIVERED BY G. BURTON

INTRODUCTION AND BACKGROUND

This is a decision on a Motion brought by one of the Parties to a former appeal to the Toronto Local Appeal Body (TLAB) concerning 163 Cortleigh Blvd in Toronto. In its decision of November 20, 2018, the TLAB approved the subject application for a new dwelling on the parcel. Ms. Christine Tekker, a Party to the appeal, recently brought a Motion requesting amendment of that decision, for the reasons set out below.

MATTERS IN ISSUE

1. Is the information disclosed in required TLAB filings in any way confidential?
2. If confidentiality has not been claimed in advance, is information disclosed in a hearing nonetheless subject to confidentiality, so that it should not be mentioned in a decision of the TLAB?

JURISDICTION

The TLAB has authority to alter or amend an Order, both under the general power to grant relief from its Rules (Rule 2.11), and also under Rule 30.1, Correcting Minor Errors.

EVIDENCE

Ms. Tekker brought a Motion (dated 2018) but filed with TLAB on March 7, 2019.

This is her Motion:

“As a neighbourhood resident interested in our community and as a registered party, I participated in the Proceedings for TLAB Case 18 180922 S45 16 TLAB. To register to participate and as part of the proceedings I provided my home address. My husband also registered. Recently, I was alerted that when my name was 'googled' that TLAB has published a document which discloses my home address and marital status on the internet given that the "Decision and Order" document includes my personal and private information and was then posted online. I believe this contradicts my privacy rights, plus for security reasons, I am requesting that the document be removed (the decision has already been made and provided to the parties) or be edited to reflect my status as a City of Toronto resident (remove my home address from references and also remove reference to my marital status to the other registered party, the document will need to be edited in a number of places). I contacted that TLAB as soon as I became aware of this and was told that I would need to submit this form for consideration, and hope that the personal information that I have provided as part of this process will also not be made publicly available.....

I believe that the content which includes my home address, my marital status, naming of my husband is a personal security problem and also a contradiction of my privacy rights.

I would ask that this report be removed from the public domain immediately. Further, my personal information herein from this request should not be disclosed.”

ANALYSIS, FINDINGS, REASONS

Unfortunately for the Mover of this Motion, the Motion itself is also now a matter of public record. It has been filed, and so was posted on line by the TLAB on March 7, 2019, as it must be. The TLAB Rules require that requests to seal (keep a document confidential) or for privacy or non-release of personal information be made by way of Motion, and such a Motion needs to be made very early in the TLAB's process. I regret that I cannot now amend public filings or decisions after the fact.

In this case, I remember Ms. Tekker herself in the hearing stating that the other Party (already listed in TLAB files as Robert Tekker, of the same address), would not attend that day. She herself made this public. I gave no consideration to retaining it as private, since she made no such request. She also refers to the person in question in her (now public) Motion material.

It is to be noted that the proceedings of the TLAB are open to the public, and are digitally audio recorded in a manner available to the public.

Almost every one of the TLAB Forms, which are the method by which persons interact with the TLAB, contain this statement in the second paragraph:

“Information, including completed forms, disclosure documents and statements, you disclose to the Toronto Local Appeal Body (TLAB) in relation to a TLAB appeal is an adjudicative record that is a public record available to parties, participants and the general public. As stated in Section 27 of the Municipal Freedom of Information and Protection of Privacy Act, the provisions protecting individual privacy in Part 2 of that Act do not apply to any information collected in the TLAB’s prescribed forms and associated filings for appeals.”

In order to participate in TLAB hearings, a person is generally required to provide their address. This must normally be available, not only for communication purposes if an email address is unavailable or unresponsive, but also may be necessary in order to demonstrate a person’s legal interest (or lack of same) in the appeal. The Member may require the address in order to assess such interest, if it is challenged. If the person provides a Witness or Participant Statement as required by the Rules. or even if not, with the Member’s permission the person presents oral evidence as the Mover of this Motion did, the Member must also know the nature of that person’s interest. If too far away geographically, for example, that person may be refused the status of Party or Participant. A Party’s address is almost inevitably provided in decisions of the TLAB, since it is usual that the person’s property is directly affected by the proposal. That is why they take part in the appeal. It is almost without exception a necessary component of the decision.

As in all things, there may be exceptional circumstances where disclosure is withheld in the initial stages as, for example, documents are requested to be held under seal or discussed only *in camera*. The Motion Rule is the appropriate method to consider those matters in advance. However, once the Party or Participant discloses information that they later request to be held in confidence, the TLAB, its Members and Staff cannot redact the public record. I regret the finality of this fact.

With the warning on all TLAB Forms, it should be clear to all persons that it is the responsibility of the person submitting materials that will normally be filed on line, to take appropriate action to protect against the release of information that is personal and is not to be disclosed. The Party or Participant would need to provide clear and compelling evidence in a prehearing Motion to support a request for confidentiality or anonymity.

I do not believe it to be of any benefit at this stage, well after the issuance of the decision, to amend it to remove the references that Ms. Tekker requests as to her status and address. I could not remove the reference to her address, for the reasons above. She has again publicly revealed the question of her status by filing her Motion. Even if there were a provable benefit to her to alter references in the decision, unfortunately it

cannot be done. If the decision is reissued as amended, it would only in my view once again bring additional attention to the matters she wishes to keep private. It would have to be delivered to the Parties and Participants, and filed again on the TLAB public file (as of course will this decision on the Motion).

DECISION AND ORDER

The Motion is denied, and the TLAB decision of November 20, 2018 in this appeal is confirmed.

X 

G. Burton

Panel Chair, Toronto Local Appeal Body