

DECISION AND ORDER

Decision Issue Date Thursday, May 30, 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): DIXIL PROPERTIES INC

Applicant: DOMUS ARCHITECTS

Property Address/Description: 1982 ISLINGTON AVE

Committee of Adjustment Case File Number: 17 265659 WET 04 MV (A0994/17EYK),
17 265553 WET 04 MV (A0993/17EYK)

TLAB Case File Number: 18 131764 S45 04 TLAB

Teleconference date: Wednesday, April 17, 2019

DECISION DELIVERED BY S. GOPIKRISHNA

APPEARANCES

NAME	ROLE	REPRESENTATIVE
DOMUS ARCHITECTS	APPLICANT	
DIXIL PROPERTIES INC	APPELLANT/OWNER	JOEL FARBER
MUSTAFA MASTER	PARTY (TLAB)	
BRIARCREST MANOR	PARTY (TLAB)	JONATHAN CHENG KELLY OKSENBERG
CITY OF TORONTO	PARTY (TLAB)	MATTHEW LONGO ELLEN PENNER
DAVID MILNE	PARTICIPANT	
SILVIA ESTEVEZ	PARTICIPANT	
GORDON GARFIELD BEATTY	PARTICIPANT	
KATHLEEN MARION BEATTY	PARTICIPANT	

URSULA MAHNKE	PARTICIPANT
MARIA BELLOMO	PARTICIPANT
BRUNO BELLOMO	PARTICIPANT
LINDA MILNE	PARTICIPANT
ROBERT ANSTIE	PARTICIPANT
NANCY LARIN	PARTICIPANT
SONIA MARY WERHUN	PARTICIPANT
JULIO ESTEVEZ	PARTICIPANT
RONALD BELLOMO	PARTICIPANT
ROCCHINA BELLOMO	PARTICIPANT
GRANT LAWSON	PARTICIPANT

INTRODUCTION AND BACKGROUND

The purpose of this Decision is to decide whether the City of Toronto (City) can substitute its Expert Witness, as stated, in its Motion, dated May 2, 2019. The reason for the substitution is that Ms. Vanessa Covello, who had commenced her Examination-in-chief on December 17, 2018, will be on parental leave, when the Hearing continues on July 26, 2019. The City's Motion indicated that Mr. Tony Lieu, an Assistant Planner with the City of Toronto's Planning Department, will substitute for Ms. Covello. It is important to note that in my Decision of May 7, 2019, I set a deadline of May 21, 2019, for the Appellants to file a Response to the Motion brought forward by the Moving Party.

MATTERS IN ISSUE

The questions before the TLAB are:

- a) Can the Motion to substitute the Expert Witness be heard in writing?
- b) Can the City substitute Ms. Vanessa Covello with Mr. Tony Lieu as its Expert Witness, for the purposes of providing expert evidence, in the area of land-use planning for the Appeal respecting 1982 Islington Ave?

The TLAB relies on its Rules of Practice and Procedure, to make Decisions. The City relied on Rules The City relies on Toronto Local Appeal Body Rules of Practice and Procedure, Rules 2.10, 4.4, 4.5, 12.1, 16.1, 16.2, 16.3, 16.6, 17, 24.1 and 24.6, to bring forward this Motion

EVIDENCE

The Motion brought forward by the City requests that the Motion be heard in writing, because a written hearing is"

- the most convenient method for all Parties, and the TLAB,
- provides an accessible process,

- and this motion does not consider complex legal matters

After indicating its desire to substitute Ms. Covello with Mr. Lieu as its Expert Witness, the City discusses the impact of the substitution on other Parties by stating that:

- a) the Applicant/ Appellant will not suffer any prejudice as a result of the requested substitution because Ms. Covello only provided an introduction and summary of the City's evidence at the December 17, 2018 hearing.
- b) The Appellant/Applicant will not suffer any disadvantage that may have arisen from having the presentation of the City's evidence split between two expert witnesses.
- c) Mr. Lieu will rely on the same evidence provided for in Ms. Covello's Expert Witness Statement and the Applicant will be afforded the same right to cross-examine Mr. Lieu on the City's substantive evidence.

In an affidavit accompanying the Motion, Mr. Lieu confirms that he has read Ms. Covello's Statement, in agreement with her findings, and will adopt the Statement. He adds that he can submit the text of Ms. Covello's Witness Statement under his name. I understand that Mr. Farber, Counsel for the Appellants, emailed the TLAB, to state that he had no objections to the Motion put forward by the City.

ANALYSIS, FINDINGS, REASONS

I am in agreement with the City's reasons for hearing this Motion in Writing, and hereby rule that the Motion will be hearing in Writing.

I am also in agreement with the City's reasoning for wanting to substitute its Witness. I note that Ms. Covello had just provided an introduction and summary of her evidence, at the Hearing held on December 17, 2018. Consequently, there is no prejudice caused to the Appellants, because the substitute Witness, Mr. Lieu, can be cross examined after completing his Examination in Chief.

Given the above, and the lack of objection from the Appellants, I rule that the City can substitute Ms. Covello, with Mr. Lieu, their Expert Witness, in the area of land use planning, for the remainder of the Appeal respecting 1982 Islington Ave. Mr. Lieu may adopt Ms. Covello's statement, and as indicated in Paragraph 25 of his Affidavit, dated April 30, 2019, he may submit Ms. Covello's Statement to the TLAB, under his signature, at his earliest convenience.

DECISION AND ORDER

1. The Motion brought forward by the City, dated May 2, 2019, respecting the Appeal at 1982 Islington Ave., may be heard in writing.
2. The Motion put forward by the City, dated May 2, 2019, requesting that their Expert Witness in the area of land use planning, Ms. Vanessa Covello, be substituted by Mr. Tony Lieu, in the Appeal respecting 1982 Islington Ave., is

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granted. Mr. Lieu will be the City's Witness in the area of land use planning for the remainder of this Hearing.

3. Mr. Lieu may adopt the Witness Statement submitted by Ms. Covello, dated October 26, 2018. He may submit the signed Witness Statement to the TLAB at his earliest convenience, but no later than June 10, 2019.

So orders the Toronto Local Appeal Body

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body