

# DECISION AND ORDER

**Decision Issue Date**      Wednesday, August 14, 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): Yanan Wang

Applicant: Alex Boros

Property Address/Description: 38 Lorraine Dr

Committee of Adjustment Case File Number: 19 121264 NNY 18 MV (A0168/19NY)

TLAB Case File Number: 19 161165 S45 18 TLAB

**Hearing date:**      Friday, August 09, 2019

**DECISION DELIVERED BY S. Gopikrishna**

## REGISTERED PARTIES AND PARTICIPANTS

Appellant	Yanan Wang
Appellant's Legal Rep.	Simon Van Duffelen
Owner	Lo Wong
Applicant	Alex Boros

## INTRODUCTION AND BACKGROUND

On May 8, 2019, the North York Panel of the Committee of Adjustment refused an application filed by Yanan Wang, owner of 38 Lorraine Drive, requesting minor variances, at the Subject Property, located in Ward 18, in the City of Toronto. On June 6, 2019, the COA's decision was appealed to the Toronto Local Appeal Body (TLAB), which scheduled a Hearing on September 12, 2019.

A Motion was then brought forward by Mr. Simon Van Duffelen, lawyer for the Appellant, requesting that the Hearing be postponed to a later date, because of his unavailability on September 12, 2019. On July 15, 2019, Member Ted Yao issued a Decision approving the Motion, resulting in the Hearing being moved to September 30, 2019.

It is important to note that as of the deadline to file for Party, or Participant status of July 8, 2019, only the Appellant had registered as a Party.

On July 24, 2019, Mr. Jason Davidson, a lawyer with the City of Toronto, brought forward a Motion, requesting relief from the Rules to enable the City to elect for Party status in the Appeal respecting 38 Lorraine Dr. This Motion was accompanied by an affidavit, sworn by Mr. Michael Mahoney, another lawyer with the City of Toronto. On August 2, 2019, Mr. Van Duffelen, sent an email to the TLAB, which requested that the date for submission of Witness Statements be extended to August 23, 2019, and indicated that the City supported the extension of the date for submission of Witness Statements. On the same day, Mr. Davidson responded on behalf of the City, indicating the latter's support of the requested extension, in order to pursue Settlement negotiations.

## **MATTERS IN ISSUE**

- 1) Can the Motion brought forward by the City, requesting Party Status be heard in writing?
- 2) Can the City's request for Party Status be approved, notwithstanding its missing the deadline to register as a Party, or a Participant.
- 3) Can the deadline for exchanging Witness Statements, be extended to August 23, 2019, as per the Appellant's request dated August 2, 2019?

## **JURISDICTION**

The City's Motion relies on TLAB's 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.

## **EVIDENCE**

The Motion brought forward by the City of Toronto acknowledges that it missed the deadline for election of status, and offers reasons for the same. The Motion states that the City Solicitor received notice from Councillor Filion's office of the latter's intention to direct the City to oppose the Appeal only after the deadline had passed. It then states that the earliest opportunity for the City Solicitor to receive instructions was after the July 16, 2019 meeting of the City Council, where Councillor Fillion's Motion, respecting 38 Lorraine Dr., could be considered, and approved.

The Motion then states that the City looks forward to assisting the TLAB in making an informed decision, through providing planning advice from a professional land use planner. It asserts that the City's request for being allowed to elect as a Party is in the public interest, and that any prejudice to other Parties is eclipsed by public interest. Lastly, it states that hearing the Motion in writing would be an efficient, and cost effective method, of making a Decision on the Motion.

The accompanying affidavit from Mr. Mahoney affirms the same information.

On August 2, 2019, Mr. Van Duffelen emailed the TLAB to ask for an "extension of time for the submission of witness statements to August 23, 2019, for the purpose of continuing our discussions aimed at resolution of the issues between the parties", and stated that "We understand that Mr. Davidson will confirm his consent to our request upon receipt of this email, which will hopefully eliminate the need for a formal motion".

On the same day, Mr. Davidson confirmed the City's support for the request through an email which stated "The City supports the extension in hopes of reaching a settlement."

## **ANALYSIS, FINDINGS, REASONS**

I find the Motion brought forward by the City to be comprehensive, both from a content, and procedural perspective, because it lists the requisite TLAB Rules have been relied on, followed by convincing reasons for relief from the Rules- the intention of the Motion is clear, which is to that the City wants to elect for Party status.

I note that the Appellant has not objected to the City's Motion, and agree with the City's submission that information, in the form of evidence from a professional planner, would significantly assist the TLAB, with the decision making process. The City's involvement in this Appeal, will ensure that public interest is protected, and reinforced, either by way of a Settlement, or a contested proceeding.

Lastly, the complexity of the questions before the TLAB are such that hearing the matter in writing is an efficient, and expeditious process, for making a Decision on this Motion.

On the basis of this reasoning, I find that the Motion can be heard in Writing, and that relief can be provided from the Rules, to enable the City to elect Party status, in these proceedings.

While the TLAB is supportive of efforts between Parties to arrive at a Settlement, I must state my lack of satisfaction with the very informal process followed by the Appellant, by way of Response to the Motion. Rules 17.9, and 17.10 of the Rules discuss the Forms to be filled out, and the format of the expected Response.

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The Response provided by way of email from the Appellant, is not consistent with either Rule listed above; and the lack of adherence to the format takes on a more significant meaning, because the original relief sought in the Motion, is effectively modified, and expanded upon, in the Appellants' Response. These concerns are not alleviated by the imprecise nature of the language used by the Appellants- in the email dated August 2, 2019, they state an extension is needed *"for the purpose of continuing our discussions aimed at resolution of the issues between the parties"*. The italicized phrase may be logically interpreted as resulting in a Settlement, but is not synonymous with it. The reference to a Settlement was not clear to me, until I read Mr. Davidson's reply, *"The City supports the extension in hopes of reaching a settlement."*

While Parties have brought forward Motions by way of mutual consent in other cases, they have argued that an accompanying affidavit is not necessary, because the credibility of the request is not in contention. The methodology of submitting an informal email, and modifying the original relief requested, is not recommended, because it bends the Rules, to the extent of breaking them, even if the intention is not in question.

Even if the Motion is on consent, it is important that the relief be stated in precise, and comprehensible language, so that the TLAB can make an informed decision. Consent between the Parties does not preclude the need for clear and comprehensible explanation; it is not advisable to assume that the TLAB will rubber stamp Motions by virtue of the Parties being in mutual agreement.

The prospect of Settlement, and its impact on efficient use of the TLAB's resources, is the sole reason why I approve the relief requested in extending the date of exchange of Witness Statements to August 23, 2019, notwithstanding the aforementioned concerns about the appropriateness of the procedure.

I do not regard my providing relief from the Rules in this Motion to be precedent setting, and strongly encourage Parties to adhere to the Rules in procedural matters, on a go forward basis.

In conclusion, all the components of the requested relief by the City, and the Appellant have been granted. In other words, I agree to grant the following relief: namely hearing the Motion in writing, allowing the City to elect for Party status, and extending the filing deadline to August 23, 2019, for exchanging Witness Statements, where appropriate.

## **DECISION AND ORDER**

1) The Motion put forward by the City, dated July 24, 2019, requesting that the Motion be heard in writing is granted.

2) The City of Toronto is granted Party Status in the Appeal respecting 38 Lorraine Drive, scheduled to be heard on September 30, 2019.

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3) The date for exchanging Witness Statements, as requested by the Parties, is now extended to August 23, 2019.

So orders the Toronto Local Appeal Body

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S. Gopikrishna  
Panel Chair, Toronto Local Appeal Body