

# INTERIM DECISION AND ORDER

**Decision Issue Date**      Friday, November 29, 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): CHRISTOPHER MICHAEL ARNTS

Applicant: ROBERT ABRAHAMS

Property Address/Description: 27 Duart Park Rd.

Committee of Adjustment Case File: 19 105127 STE 19 MV (A0041/19TEY)

**TLAB Case File Number: 19 180472 S45 19 TLAB**

**Hearing date:**      **November 4, 2019**

**DECISION DELIVERED BY S. GOPIKRISHNA**

## APPEARANCES

Name	Role	Representative
Ginessa Lynn Arnts	Owner	
Robert Abrahams	Applicant	
Rose Marie Jones	Party (TLAB)	Phil Pothen
Christopher Michael Arnts	Appellant	Robert Abrahams

## INTRODUCTION AND BACKGROUND

The background of this case, and the history of the Appeal to the Toronto Local Appeal Body (TLAB), is discussed in my Decision dated October 18, 2019. The purpose of this Decision is to discuss what happened at the Hearing held on November 4, 2019, and to issue instructions for the upcoming teleconference scheduled for December 13, 2019.

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It may also be noted that the Appellants retained Mr. Christopher Tzekas, a lawyer, between the time of my issuing the interim Decision on October 18, 2019, and the Hearing held on November 4, 2019.

At the Hearing, I also learnt that the Appellants had requested the TLAB to summons the City's Planning Witness on this file, Ms. Kasia Kmiec, and that this request was refused through an email dated October 24, 2019.

## **MATTERS IN ISSUE**

The Matters in issue are:

- 1) Confirmation of dates for Hearing the Appeal respecting 27 Duart Park Road by way of teleconference, and for a contested proceeding in case no Settlement is reached
- 2) Instructions for the teleconference scheduled for December 13, 2019

## **JURISDICTION**

### **Provincial Policy – S. 3**

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area ('Growth Plan').

### **Minor Variance – S. 45(1)**

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

## **EVIDENCE**

At the Hearing held on November 4, 2019, I was advised by Mr. Tzekas, and Mr. Pothen, the lawyers for the Appellants and the Opposition respectively, that a Settlement had been reached in principle. My understanding was that after the Opposition reviewed updated documents to be submitted by the Appellants to reflect the formers' concerns about the tree separating the houses, the final Settlement could be signed. Mr. Pothen emphasized to me that the Settlement would be signed only if the Appellants' revisions corresponded to all their concerns, raised by his client, Ms. Jones. Mr. Tzekas proposed that we could continue with the Hearing, and that the Appellants' architect Mr. Abrahams could evidence based on COA decisions, concerning

properties, in the vicinity of the proposal. I dissuaded the Parties from proceeding with the Hearing if the evidence, would be restricted only to COA decisions. I suggested that a teleconference could be convened, where the Appellants could present fulsome planning evidence about the Appeal, with respect to higher level policies, and the statutory tests under Section 45.1. I have provided the reasons, in the Analysis Section.

Speaking to Mr. Pothen's earlier concerns about what would happen if his clients could not settle with the Appellants, I suggested that dates be identified, on the Parties could meet face to face for a contested proceeding. I emphasized the need to submit an Expert Witness Statement, a week before the teleconference date, if the matter were settled.

I informed the Parties that the TLAB Staff would be in touch with them to determine dates for the teleconference and the contested proceeding, and adjourned the Hearing.

## **ANALYSIS, FINDINGS, REASONS**

On November 27, 2019, I was informed that the Parties would be ready for a teleconference on December 13, 2019, and that the alternate date, for a contested proceeding would be March 11, 2020.

There are two important issues that need to be discussed in this Decision, by way of analysis, and instruction for the Hearing.

I take this opportunity to remind Parties that even in the case of a Settlement, the TLAB's position is that fulsome evidence be presented by the Appellants/Applicants, and analyzed, to see if a proposal can be approved. The fact that a case has been settled does not lower the minimum threshold, the evidence needs to meet, for the Appeal to be approved. Towards this purpose, a review of the COA decisions by way of evidence is inadequate, because asking for an approval of one's proposal, based on the approval of other applications in the neighbourhood, can be distilled into the saying about "what is good for the goose is good for the gander." While the logic of the saying may be irrefutable, it cannot be applied here, because the reasoning for the COA's approval of other exemplars in the community in this case is not accessible, with the result that there is no determination of how something was determined to be good for the goose, in the first place.

I would therefore encourage the Appellants to forward an Expert Statement, with adequate detail, about how the proposal satisfies the higher level Provincial Policies, and the tests under Section 45.1, by 4 PM on December 6, 2019.

Given my experiences with the difficulty in trying to locate pertinent and relevant arguments in submissions made in conjunction with the ruling on the Written Motion that had to be ruled on earlier in this case, I think it is important to emphasize the obvious, and point out the need for the Witness Statement to have sufficient detail about the topics listed in the previous paragraph. It is important that the submissions provide the Adjudicator with cogent, and pertinent information- specifically, it is important that the submissions be not reduced to a game of hide and seek, where the

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Adjudicator is tasked with finding the proverbial needle in a haystack.. I hope that under Counsel's advice and guidance, the submissions will meet the requisite standard.

The Decision and Order below essentially confirms the dates for the teleconference and the in person hearing- the dates are peremptory. The Appellants are also required to submit a Witness Statement by the end of day on December 6, 2019, that speaks to the planning issues, as discussed in the "Jurisdiction" Section of this Decision.

**INTERIM DECISION AND ORDER**

- 1) The Appeal respecting 27 Duart Park Road will be heard by teleconference at 1 PM on December 13, 2019. If the Matter cannot be settled, as of December 13, 2019, it will be heard by way of an in person, contested hearing on March 11, 2020. The dates are peremptory. A Hearing Notice has been circulated to this effect
- 2) The Appellants should submit a Witness Statement, by the end of the day ( i.e. 4 PM) on December 6, 2019, which may be relied upon, for evidentiary purposes at the Hearing scheduled for December 13, 2019.

So orders the Toronto Local Appeal Bod

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S. Gopikrishna  
Panel Chair, Toronto Local Appeal Body