

REVIEW REQUEST ORDER

Review Issue Date: Thursday, December 12, 2019

PROCEEDING COMMENCED UNDER section 53, subsection 53(19) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): CHARLOTTE SHEASBY-COLEMAN

Applicant: EKP DESIGNS INC

Property Address/Description: 15 STANLEY AVE

Committee of Adjustment Case File Number: 17 251936 WET 06 CO, 17 251938 WET 06 MV, 17 251943 WET 06 MV

TLAB Case File Number: 18 126898 S53 06 TLAB

Decision Order Date: Friday, September 14, 2018

DECISION DELIVERED BY DINO LOMBARDI

REVIEW REQUEST NATURE AND RULE COMPLIANCE TO INITIATE

This is a request for review (Request/Request for Review) pursuant to Rule 31 of the Rules of Practice and Procedure (Rules) of the Toronto Local Appeal Body (TLAB) made on behalf of Ms. Georgette Nunes (Requestor), a Party and co-owner of 15 Stanley Avenue (subject property).

The Request consists of an affidavit (Form 10) sworn by Elliott Cheeseman, a Student-at-Law with Russell Cheeseman, Barrister and Solicitor, retained by the Requestor, sworn on March 15, 2019. The extensive Affidavit includes the following five attachments:

- **Exhibit A** – September 14, 2018 Final Decision (the Decision) for the subject property issued by Chair Lord;
- **Exhibit B** – A screen shot of the TLAB website page (Opportunities);
- **Exhibit C** – Includes a number of documents as follows:

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- *Notice of Motion for Leave to Appeal to the Ontario Supreme Court of Justice (Divisional Court)*, dated October 1, 2018, filed by Ms. Nunes (the Moving Party);
- *Factum of the Moving Party*, dated October 31, 2018; and
- An 80-page *Response of the Respondent (Response) and Factum of Ms. Charlotte Sheasby-Coleman*, filed with the Ontario Supreme Court of Justice (Divisional Court), dated November 30, 2018.

A well-prepared ‘factum’ of some 38 paragraphs (15 pages) accompanied the Request (Submission).

The Owner/Requestor, Ms. Nunes, had sought approval for a severance of the subject property into two lots and associated variances to construct a new detached residential dwelling with an attached garage on each of the lots created.

On March 8, 2018, the Committee of Adjustment (COA) approved the consent and variance applications, subject to conditions. Ms. Charlotte Sheasby-Coleman, the Appellant in this matter, appealed the COA decision to the TLAB and a Hearing date of September 4, 2018 was set to hear the appeal.

While the matter before the COA included variance applications under Zoning Bylaw 569-2013 (new By-law) those variance matters were not appealed, and the Applicant’s position appeared to be that the approved variances are ‘final and binding’. What was before the TLAB was only the severance appeal.

The Hearing took a full day and consisted of testimony from eight individuals, including two expert witnesses, one a land use planner and the other qualified to give expert arboriculture evidence. Subsequently, in a decision (Decision) dated September 14, 2018, TLAB Chair Lord allowed the appeal, refused the application for consent to sever and set aside the decision of the COA.

The Requestor now seeks a review, in respect of the following:

- a. *Pursuant to Rule 31.3 of the TLAB Rules, that the TLAB permit the review to proceed notwithstanding that this request is filed more than thirty (30) days after the Decision;*
- b. *Pursuant to Section 35 of the Local Planning Appeal Tribunal Act, 2017 S.O. 2017, c. 23, Sched. 1, and Rule 31 of the TLAB Rules, a review of the Decision and a hearing of the matter before a different member of TLAB.*

The TLAB recently (May 6, 2019) adopted revised TLAB Rules of Practice and Procedure (New Rules). The New Rules were crafted and perfected following a lengthy public process, and those Rules now apply to all proceedings brought before the TLAB after May 6th. As the subject application was commenced prior to this May 6th date, this Review Request is being conducted under the regulations of the previous iteration of the Rules (Old Rules) antecedent the original appeal application was submitted to the TLAB by the Applicant.

Service is a condition precedent to a validly constituted Request, but only on Parties as outlined in Rule 31.3. There is no obligation on a Party or Participant to respond to a Review. However, by service and posting on the TLAB website, all Parties and Participants are on Notice that the Decision has been challenged. The Rules do not prohibit the right to contribute to that consideration. However, it is to be noted that, because of the initial election made, a Participant cannot initiate a Review as a Participant enjoys only prescribed and limited privileges within the current Rules of the TLAB, at the original Hearing.

The Request was not filed in a timely fashion which is the first relief being sought by the Requestor. However, the Request was served in accordance with Rule 31 as it then existed. Pursuant to TLAB Rule 31.3, service of a Review request is required on all Parties and must be filed with the TLAB within thirty (30) days of the Final Decision or final order, unless the Tribunal directs otherwise.

The grounds for relief and the available remedies under Rule 31.6 are below recited, under the heading 'Jurisdiction'. Notwithstanding, there is a significant and somewhat complex context to this matter antecedent this Review Request requiring a broader explanation which I provide in the following section.

BACKGROUND

This single consent matter came before the TLAB as part of a larger story related to Stanley Avenue. The Appellant, Ms. Sheasby-Coleman, is also an appellant in a separate proceeding applicable to an adjacent property at 11 Stanley Avenue wherein both severance and variance appeals were before the TLAB in a Hearing heard on September 14, 2018. The Appellant is the owner and resident at 9 Stanley Avenue, adjacent to 11 Stanley Avenue. As a result of a previous Motion for consolidation, my colleague, Member Gopikrishna, agreed with Mr. Cheeseman, counsel to both applicant owners, that the appeals on 11 and 15 Stanley Avenue should remain for separate consideration and not be consolidated.

With respect to 11 Stanley Avenue, Mr. Cheeseman, on behalf of the applicant, filed a Request for Review of decision issued by Member Yao, dated January 23, 2019, setting aside the COA decision on appeal and refusing the severance and associated variances for that property.

In a subsequent and recent Review Request decision, the TLAB dismissed that Request and confirmed Member Yao's decision.

As noted previously, the entire Hearing for 15 Stanley Avenue was completed on September 4, 2018. In Chair Lord's Decision, he allowed Ms. Sheasby-Coleman's appeal, and refused the severance requested by the Applicant. In arriving at his Decision, the Member highlighted at page 3 (Exhibit A, p. 3), under the 'Matters in Issue' section, that:

"In its simplest expression, the matters in issue at this Hearing relate to the merits of the consent requested for lot division of the subject property.

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Parsed more expressly, much of the evidence focussed on Official Plan conformity, primarily in respect of the application criteria in section 51(24) of the Planning Act related to applicable 'Neighbourhoods' Official Plan policy considerations, including policies relating to urban forestry.

*Throughout, almost every witness, including the Applicant's planner, spoke to issues of built form, urban design and dwelling types, some using photography. While instructive, little adherence was given to avoiding the evidence on those aspects germane to the variance matters **as they were not before the TLAB, not having been appealed in this circumstance.**" (my emphasis added)*

In his comprehensive Decision consisting of some 20 pages, Chair Lord addressed a number of issues but reiterating that although he found it clear that from the original application form the request for severance and resulting variances were tied together, he was charged only with an appeal in respect of the consent to sever requested, granted by the COA.

He generally accepted the planning evidence presented by the Applicant's expert land use planner, Mr. Cieciora, as "thorough" and "complete," noting that in terms of lot patterns, "*lot frontage and lot area, while the proposed lots are the smallest in the immediate stretch of Stanley Avenue, they fall within a size category that is reflective of lots comprising a significant percentage of the Study Area...*" (Exhibit A, p. 13) Further, he noted that on the frontage criteria alone there was no reliable evidence that that pattern was comprised solely of historical lots of record that preceded the By-law.

The Member also stated that he accepted the planner's planning opinion analysis of all the relevant considerations dealt with in his evidence, including that all aspects of the criteria in section 51(24) of the *Planning Act* were satisfactorily addressed, with three exceptions. Those three exceptions relate to Mr. Cieciora's opinion (namely, the lack thereof) on the application of provincial policy, Official Plan conformity and restrictions on the subject property.

As the Chair writes on page 14 of the Decision, "*These generally arise from one common theme: the protection of the environment and its contribution to the physical character of the area and in particular the Urban Forest, here inclusive of mature private and public trees placed in jeopardy as a consequence of lot division and proposed construction.*" (Exhibit A, p. 14)

It is with respect to these exceptions where Chair Lord rejects the planner's opinion evidence, suggesting that the planner did not respond adequately to the themes, above recited. He states on page 17 of the Decision (Exhibit A) "*..., I find it entirely inconceivable that the subject matter of provincial and local policy compliance with the environmental implications of the applications could have escaped the planners (sic) attention. Whether or not this element was inadvertently avoided, willfully ignored, or simply neglected is no answer to the duty that was acknowledged as incumbent upon the expert giving of evidence.*"

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Chair Lord also found ‘ancillary issues’ (Exhibit A, p. 19) that were raised but that he found not determinative, i.e., the predominant character of adjacent and nearby residences (since OPA 320 was not in force at the time), and the issue of precedence as it relates to possible future severance applications in the neighbourhood. Additionally, not determinant was the fact that the proposed lots would be undersized in respect of zoning by-law frontage considering that the Chair wrote, “*it is apparent on the evidence, that over time, significant numbers of smaller frontages have become or are representative of the physical character of the area.*” (Exhibit A, p. 20)

In the end, Chair Lord allowed the appeal filed by Ms. Sheasby-Coleman and refused the application for consent.

At this junction in the matter, and in consideration of filing a possible Review Request of that Member’s Decision, Ms. Nunes, then, apparently, retained additional legal counsel, in the form of Zaid Sayeed, her ‘lawyer-of-record’ in the Divisional Court appeal of the Decision. The Affidavit asserts that prior to the commencement of the appeal Mr. Zayeed inquired in respect of the TLAB process for requesting a review of a final decision and was advised by TLAB staff that “*all requests for review are heard only by the Chair.*” (Affidavit, para. 5)

Given that Chair Lord was also the Member who issued the Decision in this matter Mr. Sayeed made the supposition that the only route for review was to appeal directly to the Divisional Court. He made this determination because the proceeding concerned a decision by the Chair himself, and that only the chair could conduct reviews of decisions.

However, as a result of various inquiries of the TLAB undertaken by both Mr. Sayeed and Mr. Cheeseman in January 2019, counsel became aware that a TLAB Vice-Chair had been appointed with the responsibility of delegated authority from the Chair to undertake review requests of decisions issued by the Chair. In addition, Mr. Zayeed also became aware of a decision issued by the TLAB Chair that had been reviewed by a regular Member prior to the appointment of a Vice-Chair (Review Decision for 629 Rushton Road issued by then Member McPherson).

In the result, he concluded that a review before the TLAB of the Decision was possible.

Therefore, on February 13, 2019, Mr. Sayeed sought and obtained leave from the Divisional Court on consent to stay the hearing of the Appeal until the request for review of the Decision could be heard by the TLAB, without comment as to whether Ms. Nunes could be entitled to seek such an appeal.

The Review Request

Subsequently, the Applicant submitted a Review Request on March 15, 2019, seeking of the TLAB two matters previously recited but reiterated below in abbreviated form:

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- *The permission from the TLAB to allow this review to proceed notwithstanding that the request is filed more than thirty days after the final Decision; and*
- *A request for a review of the Decision of Chair Lord and a rehearing of the matter before a different Member of the TLAB.*

The Requestor asserts the following grounds for Review in the Affidavit, which I summarize briefly, below.

I. Request for Time Extension to File for Review

The Affiant asserts that Mr. Sayeed inadvertently, in a sense, misunderstood the ability of the TLAB to review a decision issued by its Chair, Member Lord, and proceeded to file the Request for Review late, after filing a Motion to the Divisional Court for Leave to Appeal the TLAB Decision but after obtaining leave from the Divisional Court on consent to stay the hearing of the Appeal.

The Affiant further argues that TLAB Rule 31.3 permits such a Review Request and that allowing this to proceed would cause no prejudice to Ms. Sheasby-Coleman on the basis that the original application concerns a development proposed by Ms. Nunes and therefore any delay to the application accrues only to the Applicant.

Furthermore, the Affiant asserts that the Notice of Motion for Leave to Appeal acts, de facto, substantially on the same basis as this Request for Review. The Requestor's contention is that it was commenced within 15 days of receipt of the Decision and given the fact that Ms. Sheasby-Coleman filed a response to the Divisional Court (Exhibit C) she was made aware of the basis of the appeal within the 30-day time period required pursuant to TLAB Rule 31.3.

II. Request for Review

The Affiant asserts that *"the Chair proceeded to misunderstand the focus of the Hearing, conflating the isolated appeal of the severance with the appeal of the variances which the appellant Ms. Sheasby-Coleman had specifically chosen not to appeal."* (Affidavit, para. 13)

The argument proffered is that this conflation played a role in the Chair's consideration of both the issues contributing to various errors with respect to the assumed facts and the role of witnesses.

These errors are identified in the Affidavit as follows:

- A. Conflating a Severance Appeal with a Variance Appeal;
- B. Accepting Purported Expert Testimony Without Proper Qualification of an "Expert" Witness;
- C. Environmental Evidence was Misunderstood;
- D. Treating Bare Memorandum as Arborist Reports;
- E. Refusing to Consider Evidence that Section 813 of the Municipal Code Ensured Official Plan Policy; and

- F. Making the Finding, Mistakenly, that No Conditions were Imposed on the Variance Approvals.

Ms. Sheasby-Coleman's Response to the Request for Review

The Appellant filed a Response to the Request for Review with TLAB on April 17, 2019. That Response focusses exclusively on the issue of the late submission of the Request and the fact that it was filed by the Requestor "*more than 30 (30) days after the Decision.*" (Response, p. 1) In essence, Ms. Sheasby-Coleman submits that the Applicant failed to exercise the remedy of review regarding final decision available at the TLAB to a party and instead chose to appeal directly to the Divisional Court.

As a result, she asserts that the Request for Review fails to meet the requirements of TLAB Rule 31, most specifically 31.7, which sets out specific grounds for a review and fails to present 'compelling' reasons and evidence attached to those grounds.

MATTERS IN ISSUE

The Request raises three primary issues and fundamental issues:

1. Is the Request eligible to be addressed under 31?
2. Can TLAB Rule 2 be applied to determine whether the Request for Review submitted in this matter can be considered a perfected Request?
3. If eligible, what is the appropriate approach to a remedy under Rule 31?

JURISDICTION

Below are the TLAB Rules applicable to a request for review:

31.4 A Party requesting a review shall do so in writing by way an Affidavit which provides:

- a) the reasons for the request;
- b) the grounds for the request;
- c) any new evidence supporting the request; and
- d) any applicable Rules or law supporting the request.

31.6 The Local Appeal Body may review all or part of any final order or decision at the request of a Party, or on its own initiative, and may:

- a) seek written submissions from the Parties on the issue raised in the request;
- b) grant or direct a Motion to argue the issue raised in the request;

- c) grant or direct a rehearing on such terms and conditions and before such Member as the Local Appeal Body directs; or
- d) confirm, vary, suspend or cancel the order or decision.

31.7 The Local Appeal Body may consider reviewing an order or decision if the reasons and evidence provided by the requesting Party are compelling and demonstrate grounds which show that the Local Appeal Body may have:

- a) acted outside of its jurisdiction;
- b) violated the rules of natural justice and procedural fairness;
- c) made an error of law or fact which would likely have resulted in a different order or decision;
- d) been deprived of new evidence which was not available at the time of the Hearing but which would likely have resulted in a different order or decision; or
- e) heard false or misleading evidence from a Person, which was only discovered after the Hearing, but which likely resulted in the order or decision which is the subject of the request for review.

31.8 Where the Local Appeal Body seeks written submissions from the Parties or grants or directs a Motion to argue a request for review the Local Appeal Body shall give the Parties procedural directions relating to the content, timing and form of any submissions, Motion materials or Hearing to be conducted.”

CONSIDERATIONS AND COMMENTARY

I have now carefully reviewed the Request, the Final Decision, and the extensive filings on the TLAB website including the support materials by or on behalf of the witnesses. Additionally, I have reviewed in detail the Appellant’s Response to the Applicant’s Request for Review of the TLAB Decision, and the March 15, 2019 Affidavit in support of the Request which includes the Notice of Motion for Leave to Appeal and the Factum of the Moving Party.

I have also attended on the site and the surrounding neighbourhood.

The Request is sufficiently clear as to the associated allegations so as to permit each of these to be considered in turn although I note there is some overlap in the stated grounds.

I turn to the Affidavit and the Review Request submitted on behalf of the Applicant.

It is clear that a Request for Review is a right provided to a Party to challenge a TLAB decision. That challenge has several caveats that relate to the purpose of the

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Review and the grounds upon which it is pursued. It is the Submissions that attempt to explain or connect the grounds, as previously recited, to the basis of the Review raised by the Affiant.

The foregoing Rules restrict the scope of inquiry afforded a Review; the public interest sought to be addressed by the Rule is to permit the TLAB to have a sober second look at a Decision in light of the defined criteria on the types of errors that, if they occurred, might be afforded relief through the expedient remedies available to the reconsideration.

However, a Review is not an open invitation to simply challenge a decision with which one disagrees. Rather, there must appear a demonstrable error in the categories identified that warrants relief of the variety provided by the Rule. The Tribunal remedies include requesting additional material or ordering a new Hearing and are ultimately specified in Rule 31.6: “*confirm, vary, suspend or cancel*” the original decision, if the eligible grounds are met in a compelling way.

The Request before the TLAB seeks a review, in respect of Decision, and a rehearing of the matter before a different Member.

The specific grounds upon which the Review Request is being sought overlaps to a certain degree and, as above recited, the Affiant highlights two separate reasons which relate correspondingly to b) and c) in the Grounds for Review under Rule 31.7. I address each below in the order they are presented in the Affidavit.

The first request is for an extension of the time to apply for a Review Request. I must address this request initially as it is integral to determining whether I am then required to consider the second request which seeks a review of the Final Decision issued by Chair Lord in this matter.

I. Request for Extension of Time to Apply for a Review

As previously recited, the Affiant has submitted that the TLAB Panel made an error of fact and law which, had it decided *correctly* (the Affiant’s word), would likely have resulted in a different decision. I note at the outset that the Applicant fully engaged in an appeal and Hearing wherein the Notice of Hearing identified that the TLAB conducted its affairs under a strict regime and, therefore, there can be no argument for a lack of awareness of the TLAB Rules of Practice and Procedure.

Rule 31.3 requires that a Review Request be made within 30 days of the Decision and that there be service on all Parties to the Hearing. Rule 31.4 outlines the contents to be submitted to the TLAB in a Review Request.

31.4 “A Party requesting a review shall do so in writing by way of an Affidavit which provides:

- a) The reasons for the request;
- b) The grounds for the request;
- c) Any new evidence supporting the request; and
- d) Any applicable Rules or law supporting the request.

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The TLAB can afford relief on suitable grounds.

I must deal with the requests as outlined in the above 'Matters in Issue' section.

With respect to the tardiness of the filing, the Affiant asserts that Applicant's solicitor, Mr. Sayeed, inquired in respect of the TLAB process for requesting a Review of a final *prior* (my emphasis) to the commencement of the Review Request Appeal and was advised by TLAB staff that all review requests of a decision are heard only by the Chair.

As the subject Decision was issued by Chair Lord, on September 14, 2018, Mr. Sayeed made an independent assumption after apparently speaking with TLAB staff and after reviewing "*all TLAB decisions then available online and noted that no decisions had been reviewed by anyone other than the TLAB Chair*" (Affidavit, p. 3) that the only route for review was an appeal directly to the Divisional Court.

Upon further investigation, the Affiant submits the Applicant's solicitors spoke with the now TLAB Supervisor, Angela Beppe, in January 2019 who confirmed that no TLAB Vice-Chair had been appointed and therefore concluded that there was no other Panel Member who could review a decision issued by the Chair. However, on January 24, 2019, the Affidavit confirms that Mr. Sayeed learned from one of his colleagues that a Vice-Chair had indeed been appointed as of January 1, 2019 and this information was confirmed by TLAB staff.

The Affiant asserts that with this relevant information in hand and following "*a further review of **subsequently** (his emphasis) reported TLAB decisions, including a decision in which the TLAB Chair's decision was reviewed by a regular member, he had come to the opinion that a review before TLAB was a possibility.*" (Affidavit, p. 3)

The Affiant further notes that on February 13, 2019, Mr. Sayeed sought and obtained leave from the Divisional Court on consent to stay the hearing of the Appeal until the review could be heard by the TLAB. On March 15, 2019, he filed the requisite Affidavit and supporting material to the TLAB for the Review Request.

I find this timeline particularly troubling as the Review Request was filed approximately six months after the TLAB issued Chair Lord's Decision. I note that from the September 14, 2018 posting of the Decision to January 2019, almost four months, it appears from the facts attested to in the Affidavit that neither Mr. Sayeed nor Mr. Cheeseman actually filed a Review Request with the TLAB in any formal manner.

While the Affiant submits that an inquiry to the TLAB made by counsel resulted in Mr. Sayeed being advised "*that all requests to review are heard only by the Chair,*" (Affidavit, p. 2) it is somewhat unrealistic to believe that TLAB staff would not have known that other Members can, and have reviewed decisions issued by the Chair given examples of such reviews in 2018.

Regardless, upon an inquiry from a Party or Participant regarding the process for a Review Request of a Final Decision, the conventional TLAB protocol is that staff would not provide the level of detail regarding the process alleged by the Affiant. TLAB staff typically directs that a Party review the Tribunal's Rules of Practice and Procedure

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to understand and determine the procedure for requesting a review of a final decision or order. Any subsequent questions dealing with which TLAB Member would undertake that review would require that query to be included in correspondence from the Party to the TLAB. That would be forwarded to the TLAB Chair for direction.

I note that Ms. Nunes filed a Notice of Motion for Leave to Appeal to the Divisional Court on October 1, 2018 (Exhibit C) only two weeks after the Decision was issued and posted on the TLAB website. I agree with Ms. Sheasby-Coleman's assertion in her Response that, *"The lapse of time between the filing of the Applicant's Notice of Motion for Leave to Appeal...on October 1, 2018 and enquiries made more than three months later by Mr. Cheeseman to confirm the basis for it to be filed in the first place, also strains credulity."* (Response, p. 1)

There were examples available upon inquiry from TLAB staff, or by a simple search of the TLAB website, of decisions issued by the Chair reviewed by other Panel Members. Of particular note is the review decision of Chair Lord written by former Member Laurie McPherson for 629 Rushton Road, dated October 2, 2018, which I highlighted parenthetically above.

Also, of note is a review request decision issued by Member Yao of another Panel Member, dated November 27, 2018, which would also have been known to TLAB staff.

As to the issue of the appointment of a TLAB Vice-Chair, the Affiant (Mr. Cheeseman) asserts that *"Angela Bepple, a member of TLAB staff, advised me directly that only the Vice Chair reviews decisions of the Chair. I reviewed the TLAB website myself and confirmed the results of Mr. Sayeed's research, as the website still indicated, at that point, that no Vice Chair had been appointed."*

In fact, the election of the Vice Chair was an item on the December 5, 2018, TLAB Business Meeting Agenda and the election and thereby appointment of the Vice Chair took place at that Meeting on December 5th. As a result, all TLAB staff were fully aware that a Vice Chair was officially in place as of January 1, 2019 and anyone inquiring would have been apprised of this fact.

I find it implausible that upon inquiry of TLAB staff that this information would not have been disseminated to applicants, parties or the general public.

Therefore, I must conclude that the Applicant's explanation as to why they bypassed the TLAB Review Request process unconvincing and I agree with Ms. Sheasby-Coleman that that is further undermined by paragraph 16 (c) of the Applicant's October 1, 2018 Notice of Motion for Leave to Appeal where it is argued that the questions of law raised in the Notice *"...are of sufficient importance to merit the attention of The Divisional Court because they will raise issues that will affect...c. The jurisdiction of the TLAB with respect to, effectively, constituting its own appeals."* (Exhibit C, p. 6)

I note that it is the responsibility of the Party, in this case Ms. Nunes, to determine whether to pursue one or both of the routes noted above, a Review Request

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of the Decisions and/or a 'Leave to Appeal'. The issues in dispute and the remedies available may overlap. Since both routes are time limited and must be applied for, the decision can have significant consequences as evidenced in the subject matter before the TLAB.

The attitudinal approach of the courts, generally, has been to expect that a Party is to exhaust all available, effective remedies before convening formal consideration by the Divisional Court. In practical terms, this often involves delaying a properly constituted judicial consideration on a requested Leave Appeal application, pending the result of any administrative (TLAB) Review Request.

I find that Applicant's eagerness to file a Leave to Appeal at the Divisional Court, which is still open, and to then file a Review Request after what I considered an unreasonable period of time, post deadline, to file, shows an attempt to, in colloquial terms, 'ride two horses', which although not inherently disallowed suggests more a failure to exercise the remedy of review available of the TLAB Rules.

Furthermore, I find that a Review Request that is largely six months past due of the requisite deadline for reasons that I do not find compelling and persuasive can be considered to be in '*substantial compliance*' with the Rules as set out specifically in the Grounds for Review section of Rule 31.7.

Rather, I am of the opinion that this Request is an attempt by the Applicant to re-litigate the matters that were canvassed, and decided by the well-prepared and engaged presiding Member, Chair Lord, following a fulsome Hearing during which detailed evidence was provided and following vigorous cross-examination of numerous witnesses.

In my Review Request decision for 119 Harewood Avenue, which Ms. Sheasby-Coleman attached to her Response to the Applicant's Request for Review, I wrote about this very point.

"With respect to the issue of whether the filing is in substantial compliance with the requirements of the TLAB Rules, I do not believe that an unperfected Request that is largely one week overdue for reasons that are not compelling and persuasive can be considered to be in 'substantial compliance' with the Rules...Moreover, I believe the integrity of the TLAB decision making process is impinged if Requests for Review are allowed without respect for the time frame and obligations of Rule 31."

For the above reasons, I find that the request to permit the subject Review Request has not been justified. I do not believe that the Requestor has provided appropriate justification to warrant a rehearing of this matter and I am of the opinion that the TLAB has performed its function of addressing the consent requested.

As such, with respect to the second request from the Requestor that the TLAB undertake a review of Chair Lord's Decision and allow a rehearing of the matter before a different TLAB Member, I find no reason to consider this request given the justification, above recited.

DECISION AND ORDER

The Request for Review is dismissed; the Decision of the TLAB dated September 14, 2018 is confirmed.

X 

Dino Lombardi
Panel Chair, Toronto Local Appeal Body