

INTERIM REVIEW REQUEST ORDER

Review Issue Date: Monday, January 27, 2020

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): 1884901 ALBERTA LIMITED

Applicant: SAJECKI PLANNING INC

Property Address/Description: 295 Belfield Road

Committee of Adjustment Case File Number: 18 136184 WET 01 MV (A0195/19EYK)

TLAB Case File Number: **19 161164 S45 01 TLAB**

Decision Order Date: Monday, October 21, 2019

DECISION DELIVERED BY Ian James Lord

REVIEW REQUEST NATURE AND RULE COMPLIANCE TO INITIATE

This matter involves the request to review (Review/Request) a Decision and Order of the Toronto Local Appeal Body (TLAB) issued October 21, 2019 (Decision) whereby Member T. Yao allowed an appeal refusing variances sought for 295 Belfield Road (subject property).

The Request was received by the TLAB November 20, 2019 and was submitted on behalf of 1282831 Ontario Limited by its counsel, Ms. J.M.Evola.

The Request was subject to an Administrative Review pursuant to Rule 31 of the *Rules of Practice and Procedure* (Rules) of the TLAB and reported as having no procedural issues. The Request qualified to be conducted pursuant to Rule 31 as it has existed after May 6, 2019, when the revised Rules were promulgated.

The Request was forwarded for Adjudicative Screening under Rule 31.15.

BACKGROUND

The Decision followed a two day Hearing in which the Member heard for two qualified land use planners. The Decision itself is 17 pages of narrative ending with a disallowance of all requested variances. The Committee of Adjustment (COA) had allowed four (4) variances applied for in conjunction with a site plan application which, on the submissions, was being held in abeyance pending the decision of the COA and the TLAB, on appeal.

The matter before the COA and on appeal was to recognize and maintain the use of the subject property by adding the allowance of 'public parking', a use not permitted in the applicable 'E' (Employment) zone category, by way of a temporary use variance (Application). The property at all material times to the Application was in use historically as a 'Vehicle Depot'. In 2018, circumstances saw the alteration of the use by the same occupant, using the trade name "Skyway Park", transferring to the subject property its full operation of vehicle parking, principally for users of the Toronto International (Pearson) Airport (Pearson).

While certain additional variances were included, principally related to setbacks, the Member encapsulated the issue before the TLAB as "the only issue is...the temporary use as a public parking lot" (Decision, pg.3).

Pursuant to Rule 31, Adjudicative Screening serves several purposes: to address matters raised in the Administrative Screening, if any; to address the matters listed in Rule 31.15 for the purpose of the determination as to whether there is a basis to propose dismissal of the Request, with its associated procedures; to address a request under Rule 31.3 where the Request includes that a stay be placed on the Decision.

There were no early responses to or submissions on aspects of the Request. Counsel for the Appellant, Mr. J. Cheng, is recorded as having made a number of intervening inquiries as to the status of the matter.

The City of Toronto (City) played no active part in the Decision.

This is an interim determination as to the Adjudicative Screening process.

JURISDICTION

Below are some of the TLAB Rules applicable to a request for review. They provide the framework under which the ultimate consideration of the Review is to proceed provided it survives the earlier screening processes.

"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

This Interim Decision does not address any of the substantive support provided for or contained in the Request, including its supporting affidavit.

The Request consists of the requisite materials filed pursuant to Rule 31.6, including Rule 31.6 e); namely “a statement as to the requested remedy”.

Paragraph 50 of the Request states:

“REQUEST FOR RELIEF

50. Pursuant to the grounds listed above, this Request for Review seeks the following:

- a. A Stay of the Decision until such time that the Chair of the TLAB renders a decision on the Request for Review and a final binding decision on the matter has been issued; and
- b. An Order rescinding the prior Decision, and directing that a new hearing be convened before a differently-constituted panel of the TLAB.”

In dealing with the relief requested under paragraph a., above, the Request reviewed the circumstances of the operation of the subject property. It asserts its prior use as a vehicle depot whereas the main ‘public parking’ operation was conducted from another site, at 60 Skyway Avenue.

The Member describes this latter definition and activity as “the “public” part (i.e., pickup and drop off) being conducted at 60 Skyway (Decision, pg. 2). Overflow went to the subject property although details as to the workings of that latter process is nowhere described. The Decision (and the Review materials) recite that in June, 2018, on a lease expiry or termination of 60 Skyway, Skyway Park transferred all its operations to the subject property.

In August of 2018, on a notice of zoning violation, Skyway Park sought a zoning review and brought the subsequent variance Application that was approved by the COA and refused on appeal, by the Decision.

Apart from what the Member described as a “no objections” report, the City took no objection on the Application either before the COA or the TLAB.

In my view this history recites an open and transparent example of reaction and counter-reaction to circumstances in the normal course of a business enterprise.

While the nuances of a relocation of the principle business activity may be interesting, the conduct has followed a normal and prescribed course of evaluation. The cross check of zoning enforcement has been placed on hold pending the disposition of the COA application process. Presumably, a public/private interest and service business has continued from the subject property pending the COA disposition, including the TLAB appeal and now the Review.

I see no basis to interfere with or during that hiatus. No compelling or any basis has been presented that would warrant an interference with the *status quo* pending the disposition of the Request.

The matter raised by the relief requested under paragraph b., above, is at the core of the Request. It requires a deliberative consideration of the merits of the Request, and opposing arguments, if any.

**Decision of Toronto Local Appeal Body Panel Member: I. LORD
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The Request poses, in some 49 paragraphs, a basis to examine the Decision premised upon three (3) alleged grounds of review, cited above under 'Jurisdiction', namely: violated the rules of natural justice and procedural fairness; and made an error of law or fact which would likely have resulted in a different order or decision.

I have read the Review Request, supporting Affidavit and materials in light of the review criteria cited in Rule 31.15 and find no basis to propose issuance of a 'proposal to dismiss'.

In my view, the Review should proceed for a fulsome consideration and to wherever that may lead.

DIRECTION (IF APPLICABLE)

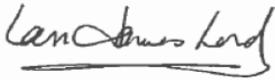
Rule 31 sets in chain a formal process that permits a Party to request a reconsideration of a TLAB Final decision and order while at the same time providing checks and balances to protect the sanctity of the TLAB decision making process and the rights of the parties.

In this case, a formal request is made for a stay in the operation of the Decision. I find that to be appropriate while the ultimate determination of a properly engaged administrative process remains outstanding.

In that no applicable criteria supports the need for a further intervening process to determine cause why the Review should not proceed, it is appropriate to issue a Notice of Review, pursuant to Rule 31.19, such that the matter can be advanced in a timely manner along the road to a final resolution.

INTERIM DECISION AND ORDER

1. The Decision of Member T. Yao dated October 21, 2019 is stayed. No action is to be taken to enforce the cessation of use or the Decision until the Review Request made pursuant to Rule 31 is finally determined or is withdrawn.
2. As a condition to and despite paragraph 1, Skyway Park and 1282831 Ontario Limited shall comply with the terms of the pending site plan application for the subject property to the satisfaction of the Office of the Chief Planner, Community Planning Division, City of Toronto.
3. TLAB Staff are directed to issue a Notice of Review pursuant to Rule 31.19 of the TLAB *Rules of Practice and Procedure* and are to include the City Solicitor.
4. This decision and order is without prejudice to any other action, application or activity that may be undertaken in relation to the matters hereunder consideration. If a difficulty arises in the implementation of this decision and order, the TLAB may be spoken to.



X

Enter Panel Member Name

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord