

INTERIM DECISION AND ORDER

Decision Issue Date Wednesday, January 22, 2020

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), and Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): MAHDY GANDOVANI SHEIDAEI

Applicant: ALI SHAKERI

Property Address/Description: 14 Brookfield Rd.

Committee of Adjustment Case File: 18 266685 NNY 15 MV (A0841/18NY)

TLAB Case File Number: 19 119013 S45 15 TLAB

Hearing date: Tuesday, November 12, 2019

Wednesday, December 11, 2019 (teleconference)

DECISION DELIVERED BY S.GOPIKRISHNA

APPEARANCES

NAME	ROLE	REPRESENTATIVE
ALI SHAKERI	Applicant	
MAHDY GONDOVANI SHEIDAEI	Appellant	Amber Stewart
D. HUGH REDELMEIER	Participant	
STEPHEN MORSON	Participant	
YORK MILLS VALLEY ASSOCIATION	Participant	
CHRIS HEWAT		
SUSAN LIPCHAK	Participant	

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CHRISTINE ACCONCIA	Participant	
JACQUES KONIG	Participant	
TORONTO AND REGION CONSERVATION AUTHORITY STEVEN HEUCHERT	Participant	
DIANA SABINA BLANK	Party (TLAB)	
DOMENIC DIMANNO	Party (TLAB)	
DANIEL MIDA	Party (TLAB)	WILLIAM ROBERTS
JAMIE SAMOGRAD	Party (TLAB)	
CITY OF TORONTO	Party (TLAB)	MICHAEL MAHONEY
TERRY MILLS	Expert Witness	
SIMONA RASANU	Expert Witness	

INTRODUCTION AND BACKGROUND

The reasons for my granting an adjournment of the original Hearing scheduled for July 8, 2019, are discussed in my earlier Interim Decision dated July 29, 2019. This Hearing had to be adjourned because the Zoning Examiner's Notice was not available, and the Appellants had not made any submissions. When we adjourned, I directed that we would reconvene on November 14, 2019, and proceed to hear either hear a Settlement, or a contested proceeding. A total of three dates, from November 14, 2019, to November 16, 2019, were set aside for completing the Appeal.

On October 24, 2019, Michael Mahoney, the City of Toronto's (City) lawyer, submitted a Motion to the TLAB, pointing out that the Appellants, had failed to "mount a land-use planning ground", and asked that the Appeal be dismissed, because the Appellants had "failed to meet the requirements for evidentiary submission pursuant to the TLAB *Rules of Practice and Procedure*". The City requested for the Motion to be heard by way of writing, it requested that, in the alternate, the TLAB hold a hearing for this motion on the scheduled Appeal Hearing date of November 12, 2019.

The Appellants did not respond to the Motion from the City. On November 11, 2019, at approximately 11:30 AM on the day before the return Hearing date, the Appellants filed a Response opposing the Motion, and a Witness Statement after business hours. In addition, it is important to note that November 11, 2019, was a holiday for the City of Toronto because of Remembrance Day; the TLAB, and other City departments were closed. As a consequence, the TLAB did not receive the Response

till the morning of the Hearing. I did not have an opportunity to peruse the documents by the time the Hearing commenced.

The Appellants asked that the Motion be denied because they were “pursuing revisions to the plans in an effort to improve the application submitted to the TLAB, to address the concerns raised by the parties to the hearing”. They added that Applicant had also been working to obtain a final Zoning Notice from the City of Toronto, to confirm the variances required for the proposal, before listing the potential variances to be ruled on by the TLAB.

The submission of the Expert Witness is acknowledged herewith, but is not recited, nor analyzed, because the Decision addresses an administrative issue, as opposed to a planning matter.

MATTERS IN ISSUE

The only matter before me is whether to allow the City’s Motion to dismiss the Appeal, and any consequences that arise out of admitting, or dismissing the Appeal.

JURISDICTION

The TLAB follows its Rules of Practice and Procedure (“The Rules”) to make decisions on administrative matters.

EVIDENCE

I started the Hearing by asking Mr. Mahoney to speak to the Motion that had been brought forward by the City, seeking the dismissal of the Appeal. Mr. Mahoney spoke very briefly to his original Motion, but suggested that after a conference with the other Parties held before the commencement of the Hearing, he was, as he phrased it, willing to “pull back from the precipice”, and would not object to the Appellants’ Response asking for a second adjournment put forward by Ms. Stewart, Counsel for the Appellant.

Ms. Stewart began by apologizing for not responding earlier to the Motion, than November 11, 2019. She stated that the planner, Mr. Benczkowski, had just applied for the Zoning Notice, but had not been given any status update by the City, despite making “five attempts” to obtain an answer. She stated various reasons for not starting the process of seeking a Zoning Notice earlier, which are not repeated here- I deem the recitation to be unnecessary because they relate to personnel issues in her office.

She suggested that the prejudice caused to the other Parties could be remedied through an adjournment, allowing them to review the Expert Witness Statement filed by before the next Hearing.

Ms. Stewart argued that the Rules were to be interpreted “generously” to the benefit of the Parties, and referred to the City’s Motion, which had argued that the

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Motion should be dismissed because of the lack of “valid, land use planning reasons”. She then explained how Mr. Benczkowski’s Expert Witness Statement addressed the aforementioned shortcoming, before reiterating that the Appellants had been proactive before the Hearing, and in trying to address the neighbours’ concerns. After opining that the TLAB had always interpreted the Rules “generously” so as to hear the best possible evidence on a matter, before coming to a decision, Ms. Stewart stated that her client should not be “punished” for any delays that may have taken place as a result of lapses in follow up by other team members working for the Appellants, and concluded that an adjournment was in the public interest, and that the Motion to dismiss the Appeal, should itself be dismissed.

Mr. Roberts next spoke to the Motion- he started with a discussion of the specific components listed in my earlier Interim Decision, and Order, dated July 29, 2019, and how the Appellants had failed to address any of the components in the Decision. He spoke to the prejudice experienced by his client, both in terms of the costs of the appearances of the lawyer, and planner before the TLAB, and the impact of the uncertainty caused by the proceeding. Mr. Roberts said that his client was “very clear in his instructions” that he not consent to a further adjournment. He suggested that the Appellants be asked to “deposit money by the TLAB” in the range of \$ 3000- \$ 4000, which would be forfeited, should they repeat their actions” . He also suggested that a TLAB facilitated mediation would be preferable to “the Parties going off to do their thing”.

Ms. Stewart acknowledged that costs had been incurred, and that she was willing to meet with Mr. Roberts to understand how his clients could be compensated for the costs. She stated that a discussion between the Parties, was her preferred way of proceeding with the case, and that the TLAB could intervene, only if the discussions did not come to fruition. Mr. Roberts agreed with Ms. Stewart’s suggestion, and I encouraged the Parties to do their utmost to resolve the issue of costs that had arisen as a result of the adjournments.

Mr. Mahoney then responded to how the City was not “pleased” to support the Response requesting another postponement, but repeated how the City would “accede” to the request from the Appellants. He linked the change in the City’s position to upholding public interest. He reasoned that if the case were dismissed, it would then go back to the Committee of Adjustment, whereupon a second refusal would result in a second appeal being filed with the TLAB, thereby accomplishing little more than a circular journey, culminating once again at the TLAB. Mr. Mahoney stated that both he and the City planner assigned to the Appeal, were familiar with the file, as were the other lawyers and planners for the other Parties, and agreed that proceeding to hear the case under the circumstances, was a better use of the resources of all Parties, including the City.

I requested other Parties present to speak to the Motion, but did not hear from anybody.

I expressed my frustration at how the Hearing had been lengthened, for no ostensible reason other than the lack of action on the Appellants’ part. I suggested that if an adjournment was allowed, it would be important for the Parties to reconvene by way of teleconference before the holidays so that an update could be obtained about the status

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of the Zoning Notice. Mr. Roberts said that an informed decision could be made on how many days of hearing would be needed, only after getting the Zoning Notice.

I then announced my decision to adjourn the Hearing, but made it abundantly clear that doing so gave me “no satisfaction what so ever”. I told the Parties that they would be contacted by the TLAB staff for a teleconference in December, where an update could be obtained about the Zoning Notice, before a decision could be made about the number of days of Hearing needed to complete the disposition of the matter. I also vacated the dates of November 13, 2019, and November 14, 2019.

The TLAB scheduled a teleconference on December 11, 2019.

This teleconference was attended by the lawyers representing the Parties, including Ms. Stewart, and Messrs. Mahoney and Roberts, as well as Mr. Samograd, who had elected for Party status. Ms. Stewart stated that the Zoning Notice was expected “soon”, and that she would meet with the other Parties to see if a Settlement could be reached failing which the proceeding would move forward by way of a contested Hearing.

The Parties agreed that they could meet by way a teleconference on February 3, 2020, to get a status update, and decide how to proceed with the matter; the Hearing was then adjourned.

ANALYSIS, FINDINGS, REASONS

I begin by noting that the unusual trajectory of this case is a consequence of the lack of engagement by the Appellants. What is noteworthy about the their approach to the Appeal, up to the Hearing completed on November 12, 2019, is that it represents quite the opposite of best practices to be adhered by a Party in presenting its case, including not following through on instructions in my earlier Decision dated July 29, 2019. Not adhering to the deadlines specifically stated in an earlier TLAB Decision, the lack of communication, from the Appellants, raises serious concerns about the their attitude towards other Parties, and the TLAB. I reiterate what I said at the Hearing about silence not always being golden, because it can be interpreted to mean a wide spectrum of reactions, ranging from apathy, to downright contempt for others.

While I have no doubts about the sincerity of the numerous apologies tendered by Ms. Stewart throughout the Hearing, I find that many of the issues that she ascribed the delay to causing the delay on part of the Appellants, were preventable, and would have benefitted from a pro-active approach to obtaining the Zoning Notice, and communicating with the TLAB.

What was also very interesting was the City’s seeming volte-face, or willingness to “pull back from the precipice”, to use Mr. Mahoney’s words, in proceeding forward with their Motion to dismiss the Appeal. The City’s submission dated October 24, 2019, meticulously listed various efforts made by Mr. Mahoney to elicit a response from the Appellants, with a crystal clear explanation of why the Appeal ought to be dismissed. However, the City’s oral submission at the Hearing completed on November 12, 2019, was surprisingly conciliatory, leaving me with little more than the mere body of the

original Motion, minus the driving spirit- for all practical purposes, the Motion could have been withdrawn.

The Appellants technically negated the City's argument about the lack of land planning reasons by submitting a last minute Expert Witness Statement, even if the latter is not informed by a Zoning Examiner's Notice from the Zoning Examiner. The Appellants were technically correct by suggesting that the resulting prejudice to the other Parties, could be addressed by adjourning the case. However, the approach seems to resemble one of allowing a problem to be created, before proposing a solution to the same, rather than preventing the problem in the first place- I fail to understand the purpose of this exercise, more so when it involves vacating two Hearing dates, obtained months in advance.

I am not inclined to accept the argument about public interest being upheld by granting an adjournment, in order to prevent a possible circular journey back to the TLAB. The argument, when not embodying clairvoyance, amounts to the prevention of a very specific outcome of a probabilistic nature, namely a return journey back to the TLAB, notwithstanding numerous other outcomes. It is not in the public interest to premise a process on pessimism, and then seek to minimize losses, rather than taking an optimistic approach, and looking to maximize gains.

I, however, wish to commend the City, for its cooperating with the Appellants, in the hope of arriving at a Settlement. I empathize with Mr. Roberts' position, and can fully understand why his client instructed Mr. Roberts to not consent to another adjournment.

I granted the request to not dismiss the Appeal, solely because of the Moving Party's willingness to accede to the Appellants' request, which in my considered opinion, is tantamount to withdrawing the Motion to dismiss the Appeal, as opposed to a compelling argument, in support of continuation of the Appeal.

At the teleconference held on December 11, 2019, I learnt that a Zoning Notice was still to come. I hope that by the time of the upcoming teleconference, scheduled for February 3, 2020, the Zoning Notice would have been obtained, and that the Parties would have made a sincere effort to discuss the proposal, in the hope of arriving at a Settlement. Should a Settlement not be possible, the Parties should come prepared to discuss how much time should be set aside for a contested proceeding, noting that the four days set aside by the TLAB in 2019 to hear the case, were not utilized optimally. The onus of explaining how granting extra days of Hearing by the TLAB continues to be consistent with public interest, notwithstanding its earlier efforts to provide the best possible opportunities to complete a fulsome Hearing, lies with the Parties. A decision to support allocation of extra days for this case, requires a solid rationale, and should not be taken for granted, by the Parties.

INTERIM DECISION AND ORDER

1. A teleconference is scheduled for 11 AM on Feb 3, 2020 to obtain an update. The date and time is peremptory, and the teleconference requires attendance by the lawyers for the Parties.

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2. At the aforementioned teleconference, Parties are expected to provide an update about:
- a) The status of the Zoning Notice
 - b) The status of discussions, amongst the Parties, intended to arrive at a possible Settlement.
 - c) If the case has to proceed by way of a contested proceeding, how many more days are required to complete the Hearing.

It may be reiterated that the Parties should be prepared to discuss how granting extra Hearing dates for this case, given its history, is in the public interest.

So orders the Toronto Local Appeal Body

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body