

INTERIM DECISION AND ORDER

Decision Issue Date Tuesday, June 02, 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: Monday, February 03, 2020

DECISION DELIVERED BY S.GOPIKRISHNA

APPEARANCES

**Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna
TLAB Case File Number: 19 119013 S45 15 TLAB**

NAME	ROLE	REPRESENTATIVE
ALI SHAKERI	Applicant	
MAHDY GONDOVANI SHEIDAEI	Appellant	AMBER STEWART
D. HUGH REDELMEIER	Participant	
STEPHEN MORSON	Participant	
YORK MILLS VALLEY ASSOCIATION CHRIS HEWAT	Participant	
SUSAN LIPCHAK	Participant	
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 the multiple adjournments granted in this case, are addressed in my Interim Decisions dated January 22, 2020 and March 27, 2020. The purpose of the Hearing held on March 30, 2020 was to:

- a) Obtain an updated list of Parties, or Participants, as a result of the circulation of the new Notice, as agreed upon at the Hearing held on February 3, 2020.

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- b) The status of discussions, amongst the Parties, about a possible Settlement.
- c) The number of days required to complete the Hearing, on the assumption that it would proceed on a contested basis.

The teleconference scheduled on March 30, 2020, began at 11:00 AM. The teleconference was attended by Ms. Amber Stewart, Counsel for the Appellant, Mr. Michael Mahoney, Counsel for the City, Mr. William Roberts, Counsel for Mr. Daniel Mida, Mr. Daniel Mida himself and Mr. Jamie Samograd- both Mr. Mida and Mr. Samograd elected to be Parties.

In response to the first question listed above (i.e. Question a), I was informed that Mr. David Austin, who resides at 9 Brookfield Road , had elected to be a Participant.

On the matter of the status of discussions respecting Settlement between the Parties, Ms. Stewart stated that she had circulated a new proposal to the other Parties “the previous Friday” (i.e. March 27, 2020). She apologized for the late submission, and added that there had no discussions between the Parties prior to the Hearing about the new proposal. She said that the new proposal provided significant “changes” from what had been proposed before by the Appellant. She added that the Appellants were in receipt of TRCA’s comments requesting more information, and that “getting back to TRCA would not require more than a day or two”.

Ms. Stewart stated that according to her estimate, it would take five days for the Hearing to be completed, on the basis of the “Work-Plan” that she had submitted earlier that morning, to help understand the reasoning for the time required for the completion of the Examinations, Cross-Examinations, and Re-Examinations of various Witnesses. “Given the length of time required to complete the Hearing”, Ms. Stewart asked if the TLAB could set up a Mediation session to facilitate Settlement discussions. She also drew attention to the possibility of using ZOOM as a platform to conduct the Mediation.

I thanked Ms. Stewart for suggesting Mediation, and said that it would be necessary for me to check with the TLAB staff, to see if such a Mediation session was feasible, from a technological perspective, as well as the identification of a different Panel Member, who was prepared to conduct the Mediation through ZOOM. I then asked the Parties to respond to Ms. Stewart’s proposal for Mediation.

Mr. Mahoney said that that he was “not sure” of the City’s perspective on the use of “third party technology”, especially if it had not been vetted by the TLAB, or the City, and expressed concerns about ZOOM’s ability to maintain and uphold the “without prejudice” nature of Settlement discussions would be satisfied by the use of a technological platform. However, he said that he did not have an objection “in principle”, and was “open” to the idea of Mediation via teleconference, subject to availability of information responding to his concerns.

Mr. Roberts said that he had not had an opportunity to speak to his client about the proposal for Mediation by way of ZOOM, and was consequently not prepared to commit immediately to the proposed solution. Mr. Samograd spoke briefly to the technological issues (e.g. bandwidth) posed by the platforms, and advised that these issues be factored into any decision made by the TLAB about the use of ZOOM.

I thanked the Parties for sharing their perspectives, and asked them to respond to the TLAB by April 12, 2020, and state if they were prepared to proceed with a TLAB facilitated Mediation using ZOOM, before I could make a decision about next steps.

In response to the next question about how many further days would be needed to complete the Hearing, Ms. Stewart pointed out that the Hearing involved six Parties, and eight Participants, and reiterated her earlier response about needing five days to complete the Hearing , and spoke to the reasoning behind her conclusion, with the help of the “Work-Plan” she had circulated that morning.

Mr. Mahoney stated that he was in “general agreement” with the Work-Plan, after prefacing his remarks about not having adequate opportunity to review the document in detail. Mr. Roberts pointed out that according to the document, his Witness would be cross examined on Days 2 (two) and 3 (three) of the Hearing, which would be “problematic. if the two Hearing dates were separated by weeks, or months”. I responded by saying that I was sensitive to the Mr. Roberts’ concern, and would try to address the scheduling issue as best as I could, when working with the TLAB staff.

By way of editorial comment, I had specifically asked the Parties to comment on the nexus between public interest and assigning more Hearing dates to the case when the TLAB had already assigned four Hearing dates to this case. The responses of the Parties to this this question are not recited here, because no decision is being made about the numbers of Hearing days required at this point in time.

Mr. Roberts asked if TRCA could complete its comments about the Appellants’ updated proposal by April 12, 2020, in order to enable the Parties to review the updated proposal in the light of TRCA’s comments. I asked the Appellants to confirm in their email, scheduled to be sent out on April 12, 2020, that the process of obtaining TRCA’s comments had been completed.

I thanked the Parties and Participants, and adjourned the Hearing, after listing the Actionable Items, which included:

- 1) A response from the Parties about their willingness to participate in a TLAB facilitated Mediation with ZOOM as the suggested platform.
- 2) Making a decision on whether such a Mediation was feasible, and make arrangements for one, where feasible, in consultation with the TLAB staff
- 3) Making a decision about assigning five(5) extra Hearing days to this case
- 4) An update from the Appellants, confirming that the TRCA had completed providing comments about the updated proposal. As stated earlier, TRCA was to

provide comments, after the Appellants responded to TRCA's initial questions asked after receiving the updated proposal on March 27, 2020.

I emphasized to the Parties that Items (1) and (4), listed above, had to be completed by April 12, 2020, before adjourning the Hearing.

I was subsequently advised by TLAB staff that Webex was the only platform supported by the City's Information Technology (IT) services, and that other platforms, including ZOOM, were not recommended. I therefore followed up with an email to the Parties on April 1, 2020, providing them with an update about our inability to use ZOOM on a go forward basis, and that only Actionable Item was an update about the TRCA's comments.

ANALYSIS, FINDINGS, REASONS

I reiterate that Mr. David Austin, who resides at 9 Brookfield Rd., has elected for Participant status in the Appeal respecting 14 Brookfield Rd.

As a result of the TLAB's advice about Webex being the only platform supported by the City's IT department, it is evident that the Mediation cannot proceed by way of ZOOM. Mediation remains a viable option; however, no decision is made at this point in time about the Mediation (i.e. when and how) , till more information can be obtained about the availability of a TLAB Panel Member, and the technological aspects involved in the Mediation.

Further, no decision is made at this juncture about assigning five more Hearing dates to this case. A decision will be made subsequently when the TLAB re-opens, and is able to schedule Hearing dates.

As stated in the discussion on March 30, 2020, the Appellants stated that they would respond to TRCA's comments about the updated proposal sent out on March 27, 2020 "within a day or two", enabling the TRCA to review the proposal, and comment on the same. I reiterate that I had asked the Appellants to confirm to the TLAB, by April 12, 2020, that the TRCA had completed providing comments about their updated proposal.

The TLAB staff advised me, that as of May 29, 2020, no communication had been received about the completion of obtaining comments from the TRCA. I therefore order the Appellants to confirm that the process of obtaining comments has been completed. Based on the discussion at the Hearing, it would be trite to state that the Appellants needed to provide clarification to the TRCA, before the requisite comments can be obtained.

Asking the Appellants to confirm that they have received comments from the TRCA, and ensuring that the process is complete, is key to enabling the other Parties to understand what the Appellants contemplate, and begin the process of Mediation. A specific order

to this effect is necessitated by the unfortunate pattern of the Appellants' submitting documents on the day previous to the Hearing, if not at the very commencement of the Hearing, thereby providing inadequate opportunities to the other Parties to respond meaningfully. It is important that the Appellants provide fulsome information to the other Parties and Participants, in order to enable the latter to review the proposal, and make informed decisions about how they wish to proceed with the matter.

INTERIM DECISION AND ORDER

1. Based on advice received from the City's Information Technology Services department, the TLAB will not be able to use ZOOM as a platform to proceed with facilitation of Mediation discussions between the Parties. A decision will be made later about how to use videoconferencing to facilitate Mediation.
2. The Appellants are asked to confirm that the process of obtaining comments from the TRCA with respect to the updated proposal has been completed, and that this information has been shared with the other Parties. The Appellants are given time till June 15, 2020, to confirm the same to the TLAB.

So orders the Toronto Local Appeal Body

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body