

DECISION AND ORDER

Decision Issue Date **Tuesday, June 9, 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): ROBERT ULICKI

Applicant: LEA WILJER

Property Address/Description: 459-461 SACKVILLE ST

Committee of Adjustment Case File Number: 17 253383 STE 28 MV

TLAB Case File Number: **18 150889 S45 28 TLAB**

Hearing date: Friday, June 14, 2019

DECISION DELIVERED BY STANLEY MAKUCH

APPEARANCES

Name	Role	Representative
Lea Wiljer	Applicant	
Sherry D'Costa Correia	Owner	
Robert Ulicki	Primary Owner/Appellant	Ian Flett
City of Toronto	Party	Matthew Longo
Jane Pepino	Party's Legal Rep	
Paul Stagl	Expert Witness	
Alun Lloyd	Expert Witness	

**Decision of Toronto Local Appeal Body Panel Member: S. MAKUCH
TLAB Case File Number: 18 150889 S45 28 TLAB**

Name	Role	Representative
Michael Tedesco	Expert Witness	
David Sajecki	Expert Witness	
Ryan Sankar	Expert Witness	
Kassel Prince	Expert Witness	
Saius Jaskus	Party	
Patricia Brubaker-Poulin	Party	
Judy Woodin	Party	
Glen Woodin	Party	
David Cole	Party	
Colette Hegarty	Party	
Gary Hill	Party	
Lillian Maniscole	Party	
Lorraine Mackenzie	Party	
Michael Butler	Party	
Patricia Milne	Party	
Shauna Macdonald	Party	
Robert Jerrard	Party	
Nara Jung	Party	
Alexandra Vandelle-Gillespie	Party	
Gregory Turcot	Party	
Trudy Macneill	Party	
Douglas Woodall	Party	
Abdurrahman Al-Hesayan	Party	
Patrick Robertson	Party	

**Decision of Toronto Local Appeal Body Panel Member: S. MAKUCH
TLAB Case File Number: 18 150889 S45 28 TLAB**

Name	Role	Representative
Jason Van Bruggen	Party	
Russell Goodfellow	Party	
Deirdre Sadler	Party	
Gabrielle Mcintire	Party	
Thomas Keeling	Party	
Howard Bortenstein	Party	
Mark Angelis	Party	
Katherine Tozer	Party	
Blaine Pearson	Party	
Caroline De Angelis	Party	
Alastair Dadds	Party	
Hasan Uran	Party	
Erin Blair	Party	
Jane Roffey	Party	
Mark Alboino	Party	
Jutta Polomski	Party	
Jim McNamara	Party	
Charles Fahlenbock	Party	
Kenneth Mathieson	Participant	
Beverley Jenkins	Participant	
Elizabeth Reynolds	Participant	
Johanne Laperriere	Participant	
Louise Garfield	Participant	
Brandeis Jolly	Participant	

**Decision of Toronto Local Appeal Body Panel Member: S. MAKUCH
TLAB Case File Number: 18 150889 S45 28 TLAB**

Name	Role	Representative
Susanne Hudson	Participant	
Christina Best	Participant	
Randy Brown	Participant	
Judy Lu	Participant	
Sara Josselyn	Participant	
Thorben Wiedilz	Participant	
Rosemary Macklem	Participant	
Maggie O'Connor	Participant	
Marc Cote	Participant	
Catherine Steinmann	Participant	
Jocelyn Richardson	Participant	
Ronan Rogers	Participant	
Lee Anne Rogers	Participant	
Janice Williams	Participant	
Douglas Wilson	Participant	
Lindsay Matheson	Participant	
Derek Sweeney	Participant	
Allen Zhang	Participant	
Christopher Wirth	Participant	
Alexandra Conliffe	Participant	
Linnea Obern	Participant	

Introduction

This is an Order directing that the hearing of this matter shall be an Electronic Hearing and, further, setting out the guidelines for the hearing of closing arguments in this matter on June 29, 2020, and June 30, 2020, if necessary.

Background

On November 4, 2019, I issued an Order directing the manner in which closing argument would be heard respecting this matter. The purpose of the Order was to ensure that all participants and parties who wished to present closing argument had the opportunity to do so, provided the argument was relevant, based on the evidence presented, and not repetitive. The Hearing was then subsequently adjourned on December 11, 2020, at the request of one of the parties and further postponed because of the COVID -19 Emergency.

The purpose of this order is to: amend my previous Orders, and to direct that the hearing of closing arguments be conducted electronically, and commence on June 29, 2020. June 30, 2020 is also available if all arguments have not been heard on June 29, 2020. The Hearing will be held on line using Cisco Webex. As indicated in my previous Order, a detailed procedure respecting the presentation of closing arguments is set out below at the request of counsel because of the large number of parties and participants.

Matters in Issue

The only matter in issue is the manner in which closing argument should be heard, given that the Hearing is to be conducted using Cisco Webex rather than to be conducted in person as originally ordered.

Jurisdiction

TLAB has jurisdiction to direct that a hearing be conducted as an Electronic Hearing under its Rules of Practice and Procedure, Rule 24. TLAB has wide discretion to make that determination and may consider any relevant factors in so doing. TLAB also has authority under its Rules to determine the procedure to be followed at a hearing.

Evidence

In making the determination of whether to hold an Electronic Hearing I considered the following:

All parties and participants were canvassed by TLAB staff as to their views respecting an Electronic Hearing and only three parties responded. One of those had a concern regarding child-care during the Hearing, which would be an issue regardless of the form of the hearing.

Another was prepared to proceed with an Electronic Hearing although preferred not to. The third had a concern regarding his computer and the use of Cisco Webex, which the

City mandates be used for electronic hearings, but also was prepared to proceed with an electronic hearing, if required.

With respect to how the Electronic Hearing should be conducted the concerns originally raised are still relevant. Legal counsel suggested and subsequently agreed that closing arguments should be heard in an organized manner and on a limited basis. Suggestions included time limits for parties and participants who were not represented, the filing of written arguments, and advance notification that written argument is to be presented.

Analysis, Findings and Reasons

I find that it is appropriate to hold an Electronic Hearing. This Hearing commenced in December 2018 and has experienced a great deal of delay. I believe this matter should be concluded without further delay. I find that no party will be prejudiced and that closing argument is particularly suitable for an Electronic Hearing as no new evidence will be presented and no witnesses will be called.

I also find that it is important for the efficient and fair presentation of argument that certain guidelines be in place. It is appropriate that some time limit be placed on the arguments. It is also acceptable that arguments be submitted in writing, subject to the caveat that the argument is not simply a repeat of the evidence one has presented at the Hearing. It is useful to know in advance who will be presenting written argument and for parties to have an opportunity to review the argument.

Decision and Order

My Orders of November 4, 2019 and December 11, 2019 are amended as follows:

Closing argument will be heard electronically on June 29, 2020. June 30 2020 is also available to continue the Hearing if that is necessary.

1) All person should review the attached Cisco Webex Resource Guide attached as Appendix 1 prior to the Hearing.

2) All persons, not represented by legal counsel, and wishing to present oral argument must file Notice of such an intention with TLAB on or prior to June 15, 2020.


3) All oral presentations by persons not represented by legal counsel, should limit their presentations to approximately fifteen minutes when possible, and not simply repeat the evidence presented at the Hearing, or the arguments of others.

4) All persons, not represented by legal counsel, wishing to submit written argument instead of oral arguments must file their written argument with TLAB on or before June 22, 2019. Reply to written arguments may be filed on or before June 28, 2020.

**Decision of Toronto Local Appeal Body Panel Member: S. MAKUCH
TLAB Case File Number: 18 150889 S45 28 TLAB**

5) Legal counsel should file an overview of their oral argument on or before June 26, 2020. Their oral arguments should be limited to approximately one hour.

6) The order of presentation will be: appellant's counsel, the City's counsel, counsel for parties in opposition, followed by the oral presentation of unrepresented parties and participants in order of filing notification on or before June 15, 2020.

X 

S. Makuch
Panel Chair, Toronto Local Appeal

APPENDIX 1

CISCO WEBEX RESOURCE GUIDE

EFFECTIVE ELECTRONIC HEARING VIA WEBEX

A successful electronic hearing is contingent upon steps taken before, during and after the hearing. Below are some best practices that should be followed to ensure your electronic hearing is smoothly run and effective for all participants.

Meeting Etiquette

- Dress appropriately. Dress as if you are attending the hearing in person.
- Arrive early to your electronic hearing. Show up at least 15 minutes early to address and resolve any potential technical issues. Please test your software, speakers, and microphone.
- Be flexible and expect a degree of informality.
- Come prepared. Familiarize yourself with pre-filed documents and their location; be prepared to access and share documents and files you will depend on ahead of the meeting to avoid disruptions or delays
- Find a private, well lit, and quiet room. Participants should find a room that is free of distractions, interruptions, and telephone calls.
- One person speaks at a time. Be direct and frame questions to specific speakers.
- Mute your microphone. When you join the hearing, your microphone will be muted automatically. Do not unmute your microphone unless requested or required to speak.
- The Electronic Hearing will be facilitated by Staff, acting as the Host; providing assistance to the Chair (including marking, recording, and downloading Exhibits) and the participants.
- Unmute your microphone. When you are ready to speak, remember to unmute your microphone and speak clearly and slowly.
- To object, respond or comment, raise your hand using the "raise hand" Webex icon function. Wait for acknowledgement or respectfully interrupt the proceeding when appropriate to do so.
- Chat function is restricted. Any use of the Chat Function will be displayed for everyone to view
- No speaker phone. For quality audio, avoid using the speaker phone function, on either a landline or mobile, to prevent feedback and audio disruptions.
- Be personable as you would in person.
- Stay focused and avoid multi-tasking.
- Be open, honest and respectful.
- Have a notepad available for undertakings and reminders
- Have a phone or email available in case you get disconnected
- No audio or visual recording. You are not permitted to audio or video record any portion of a remote hearing. The Tribunal will maintain an official recording of the proceeding. To request a copy, contact the administrative staff.

WebEx Controls (displayed at the bottom of the WebEx window)

