Toronto Local Appeal Body

40 Orchard View Blvd, Suite 211
Toronto, Ontario M4R 1B9

Telephone: 416-392-4697
Fax: 416-696-4307
Email: tlab@toronto.ca
Website: www.toronto.ca/tlab

DECISION AND ORDER

Decision Issue Date Tuesday, August 04, 2020 and amended Thursday September 10, 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): TEUTA GUCI

Applicant: SAM SPAGNUOLO

Property Address/Description: 111 Gough Avenue

Committee of Adjustment Case File: 18 107807 STE 29 MV (A0082/18TEY)

TLAB Case File Number: 19 147891 S45 14 TLAB

Review Request date: Thursday, June 18, 2020

DECISION DELIVERED BY TED YAO

Party		**Lawyer**
The City of Toronto	Requesting Party	Marc Hardiejowski
Ted Hanlan	Requesting Party	
Teuta Guci	Responding Party	Amber Stewart

DECISION

The Review Requests are allowed. In particular, the Decision discloses that an interpretation was made of the intent of the zoning by-law that was unreasonable and not supported by the Decision's own analysis. This was an error of law, compelling and had it not been made it is likely that a different result would have occurred. A hearing before a different TLAB Member is ordered.

Background

The City and Mr. Hanlan request I review a Decision granting five variances to the owner of 111 Gough, Ms. Guci. She wishes to tear down her Gough Avenue house, replacing it with a new one and in so doing will remove an existing laneway garage and create a new integral garage, within the new house. The Zoning By-law requires car owners with properties with access to a laneway drive their cars to and from their property using the laneway, not the street, Gough Avenue. Ms. Guci's justification for the variance is that she will not create new curb cuts but reuse the existing one on the sidewalk in front on Gough Avenue. She also expresses her view that street access is safer.

Preliminary matter - Time limits

On June 30, 2020, I wrote to the parties and expressed concern that Mr. Hanlan was a few days late on a reading of Rule 31.5, which requires the Review Request be served within 30 days of the Final Decision. Mr. Hanlan replied that he was assured by TLAB staff that a Request would be honoured if served before July 3, 2020, which he did. I also reminded Ms. Stewart of the 20 day deadline for her Response, which she met.

Ms. Stewart very fairly acknowledged that Mr. Hanlan's Review Request is not late by virtue of suspension of time limits under TLAB provisions relating to Covid-19[1]. TLAB Rules 2.11 and 31.5 permit me to extend the time in any case and I would have done so since it was within the July 3, 2020 deadline. Accordingly, I will consider all time limits have been met.

Grounds advanced in the Review Requests

Although the phrase "error of law" is used in the decision, it has nothing to do with the appeal to the courts on an error of law under the *City of Toronto Act*. . This is a remedy generated under the Rules adopted by the TLAB May 6, 2019. Prior to being assigned to Reviewer, there is a complex administrative screening process. However,

[1] We are aware that the Province subsequently enacted Ontario Regulation 149/20 to provide that orders made under subsection 7.1(2) of the *Emergency Management and Civil Protection Act* do not apply with respect to the *Planning Act*, the regulations, or s. 114 of the *City of Toronto Act, 2006*. However, the authority of the TLAB to conduct a review of its own Decision is established under the *Statutory Powers and Procedures Act*. The time for submitting a request to review is established under the *Rules*, which are authorized under Ontario Regulation 552/06 (made under the *City of Toronto Act, 2006*) and the Municipal Code. The provisions of O .Reg. 149/20 did not operate to exempt steps taken under the TLAB's Rules from the suspension under O .Reg. 73/20. We also acknowledge Mr. Hanlan's Memorandum indicating that the publications of the TLAB (including auto replies to emails) indicate that all TLAB rule requirements have been suspended during this period.

this is not an "appeal", and my jurisdiction arises out of an internal TLAB process under Rule 31.25:

> 31.25 In considering whether to grant any remedy or make any other order the TLAB shall consider whether the reasons and evidence provided by the Requesting Party are **compelling** and demonstrate the TLAB:
>
> c) made an **error of law** or fact which would likely have **resulted in a different Final** Decision or final order;

I note this is a three part test; that in addition to being an error of law, the error must be "compelling," that is, it must be non-trivial and consequential, and have likely led to a different result.

The Decision Maker in this case was required to either authorize or not authorize the five variances according to s. 45(1) of the *Planning Act:*

> **45** (1) The committee of adjustment, . . .may, . . .authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure,. . . as in its opinion is desirable for the appropriate development or use of the land, building or structure**, if in the opinion of the committee the general intent and purpose of the by-law and of the official plan, . . .are maintained.**

The tests are mandatory. An applicant is not entitled to a variance. The tests must all be met; if a single one is not; the variance must be denied.

The general purpose and intent analysis must be applied to three relevant provisions of the zoning and Official Plan. I place them in text boxes to make it clear where one ends, and another begins:

Zoning By-law 569-2013

10.5.80.40 Access to Parking Space

. . .

Parking Space Access on a Lot

3. In the Residential Zone category, vehicle access to a parking space on a lot **must:**
(A) **be from the lane**, if the lot abuts a lane;
(B) be from a flanking street that is not a major street on the Policy Areas Overlay Map, if the lot does not abut a lane; and
(C) in all other cases, may be from the street on which the lot fronts. (my bold)

Official Plan 3.1.2.2

New development will locate and organize vehicle parking, vehicular access to minimize their impact on the property and on surrounding properties and to improve the safety and attractiveness of adjacent streets.

a) using shared services areas where possible within development block(s) **including public and private lanes**, driveways and service courts; (my bold)

b) consolidating and minimizing the width of driveways and **curb cuts across the public sidewalk**; and

e) **limiting surface parking** between the front face of a building and the public street or sidewalk;

Official Plan 4.1.5
Development . . .will **respect and reinforce** the existing **physical character** of the neighbourhood, including in particular:
a) **patterns** of streets, blocks and **lanes,.** . . .
b)
. . . **massing**, scale . . of nearby residential properties;

The City of Toronto alleges:

1. The Decision Maker consulted the TLAB website and found another Gough property, 14 Gough, outside of the study area;
2. That there was no specific examination of the intent of the Official Plan and zoning by-law or that the tests were "misapplied"; specifically, the provision of the by-law that allowed Ms. Guci to dispense with a laneway garage.
3. That its planner's (Ms. Hong's) evidence was ignored, particularly her testimony concerning the pattern of houses with laneway access and rear garages.

Mr. Hanlan's grounds are similar: relevant evidence was not considered (paragraphs. 84, 89, 93, and 96), that the Decision Maker relied on irrelevant evidence (pars. 85, 86, 90 and 102), and failed to apply the four tests under the *Planning Act* (pars. 86, 92, 94, 95 and 98).

Specifically, with respect to zoning regulation 10.5.80.40 (3)(A), the City states:

> 60. Nor did the Decision Maker consider the Laneway Regulation's use of the verb **"must"** (i.e. necessary) to describe when laneway access is to be used. Rather, the Decision Maker stated:
>
> > … while there is a rear laneway which a garage could be located, the Zoning By-law does not implicitly restrict a front facing garage from being proposed here. (City factum)

There were other matters raised by Mr. Hardiejowski and Mr. Hanlan that were either inconsequential or should not be adjudicated by me in the light of the order for a new hearing. These include:

- the reporting of the Decision in *Novae Res Urbis;*
- whether Mr. Hanlan was prejudiced by a change in design during the hearing;
- whether Cruikshank Avenue properties should be compared to Gough Avenue ones;
- whether the Decision contained sufficient explanation for "quantitative" variances.

Ms. Stewart's Response to the Review Request on behalf of Ms. Guci is that the "the TLAB favoured the evidence of Mr. Romano." At paragraphs 13 to 16, she states that a Review Request should not be an attempt to re-argue the evidence. Paragraphs 24 to 36 deal with the "Alleged Substantive Considerations." In paragraph 25, she states that the City does not raise any allegation of flawed recitation of the policies or evidence. This is true, but not in a good way; the Decision does not recite **any** policies. While many points of evidence are recited, the Decision recites only one piece of Mr. Romano's testimony, leaving the source of evidence in its conclusions undocumented. She agrees that both planners give evidence on parking and access, but only states there was evidence that the Decision Maker **could** have used to come to his or her conclusion.[2] In short, while Ms. Stewart defends the result, she is more circumspect as to the adequacy of the reasoning process. In any event, I have to evaluate the grounds by examining the Decision itself.

I will now deal with Mr. Hardiejowski's first ground for the City, to dispense with it, before moving on to the more difficult issues.

---

[2] Once again, we reiterate that the primary concern of the City is that the Chair did not properly assess the direction in policy 3.1.2.2 that new development will consolidate and minimize the width of driveways and curb cuts. From the substantial recitation of the evidence raised about the proposed parking solution, the site's existing condition, and the findings an analysis in respect of that evidence, it is clear that the Chair considered the evidence relating to the effect of the proposal on street parking, access, the width of driveways, and curb cuts. [The Chair] clearly found that the proposal would not require a new curb cut and would not introduce a new ingress/egress to Gough Avenue. (Guci factum par. 31)

14 Gough Ave

In my opinion, the Decision Maker's consulting this other TLAB written decision was not an error in law and in any case, it appears that the Decision Maker only relied on it for assessing the non-garage related variances. The Decision states that the 14 Gough Ave case "involved a potential settlement," the property had three stories instead of two, and lacked a front facing garage; so, the Decision Maker was aware of the distinguishing characteristics. Under s. 16 of the *Statutory Powers Procedure Act* there is a wide latitude for a tribunal member to be able to consider matters within the tribunal's expertise, which includes its own decisions[3]. I find that this is not an error of law.

Matters in Issue

Based on the Requests and Response I find there are two matters in issue:

1. Whether the Decision Maker misapprehended the intent and purpose of the policy documents, particularly the Zoning provision 10.5.80.40 (3)(A) (set out in full in the first box on page 3);
2. Whether the reasoning process in applying the statutory tests was inadequate, incomplete or faulty.

I answer the first "yes" and the second "likely". The first issue is easy to get one's arms around; the Reviewer can read the original text and see if the interpretation is reasonable. The second is more difficult because the Reviewer must integrate evidence with the Decision's conclusion.

For example, OP 3.1.2.2 says "minimize impact using public lanes, where possible." Since there is an existing laneway garage, it would seem that it is possible to use this laneway to minimize impact, but the word "minimize" means the Decision Maker is required to canvass other parking solutions, such as re-use of an existing curb cut, to compare and assess their relative impact. Mr. Romano stated he photographed 22 properties, of which 3 had lane access, and 4 had an integral garage (without mentioning whether they were laneway properties). Ms. Hong stated that of five integral garage properties, none were on a laneway. This is evidence the Decision Maker was in the best position to assess; however, this evidence was not repeated in the Decision and this failure formed a component of the City's ground #3.

The threshold for reviewable error of law

[3] 16. A tribunal may, in making its decision in any proceeding, (a) take notice of facts that may be judicially noticed; and (b) take notice of any generally recognized scientific or technical facts, information or opinions within its scientific or specialized knowledge.

Ms. Stewart cited four other TLAB Reviews in which the Review was dismissed. They show that there is a high bar, even to establish "error." In *610 Soudan*, the reasons were "replicable," that is, apparently reasonable. The other three turned on whether it was reasonable to accept a certain witness's evidence; the Reviewers cited the superior knowledge of the person whose judgement was respected (the TLAB member's own observation in *33 Fernwood Park*[4], the Plan Examiner in *574 Hillsdale*[5] and the City arborist in *135 John*[6]).These four examples give the Decision Maker latitude, and do not require a rehearing where reasonable processes are evident. However, if an unreasonable interpretation of a critical element is made, a rehearing is appropriate, as demonstrated in the *Romlek Enterprises*[7] case.

Justice Swinton said, "At issue in this appeal is the **reasonableness** of the Board's decision to grant the variances." The facts were that the owners of a Highway Commercial Zoned site at Old Kingston Road and Morrish Road in Scarborough wished to construct a 90 unit retirement home, where only a hotel and similar uses were permitted. The zoning was "decades old." The Committee of Adjustment refused the application "because the variances did not meet the general intent and purpose of the zoning by-law, as the Highway Commercial zone is not intended to provide for residential uses in a mixed use building."

Additionally, the proposal would greatly surpass the Official Plan density limit of 37 dwelling units per hectare (268 units per hectare proposed) and the zoning gross floor area limit of 40% times lot area (205% proposed). Romlek appealed to the Ontario Municipal Board, which reversed the Committee of Adjustment decision and the City in turn appealed to the Divisional Court, with leave on a question of law. Thus, I am asked

---

[4] The Reviewer said, "While he might well have been more rigorous in the description and expression of his findings, it is clear the Member was alert to the considerations and **addressed the Official Plan criteria"** (bolded in original). The original Member said, ""Moreover, my view of the neighbourhood leads me to conclude that, whether a second unit is located above or beside another unit on the same lot or on another lot, makes no significant difference to that character".

[5] "The Reviewer said, "(The plan examiner) did issue an interpretation after the Zoning Notice was issued, providing what I consider a thorough explanation which confirmed that the 2nd Zoning Notice issued by the City was correct".

[6] The Reviewer said, "I find that there is a discrepancy on how Dr. Dida (City arborist) refers to an as-of-right building envelope and how the Applicant characterizes an as- of-right building envelope in applications that include requests both consent and minor variance. Dr. Dida stated that Urban Forestry considers the consent and variance applications together. In such applications, there is no as-of-right building envelope which would have existed for single unsevered lots."

[7] *Toronto (City) v. Romlek Enterprises, 2009 CanLII 27819 (ON SCDC)*

to review an appeal from the Committee of Adjustment, not unlike that of the Divisional Court, although I cannot interpret the law and merely applying a rule based process.

The Court said, "That level of density is clearly incompatible with the density permitted by the Secondary Plan." In the end, Romlek's appeal of the Committee of Adjustment decision was set aside.

How the Court dealt with the intent of the zoning bylaw is relevant here, since the same issue is advanced by the Requesters. The Court noted that the overall standard of review would be reasonableness, that is, the Court would be deferential to the OMB's expertise in the area of land use planning. Notwithstanding, the Court did not hesitate to make clear findings of a planning nature, including the finding for itself what the "apparent" intent of the zoning by-law" was . It rejected Romlek's planning argument that a retirement home residential use was "akin" to a hotel.[8] Finally, on the very matter at issue, it required the Decision Maker, the OMB, to come to its own independent judgment and not rely on the evidence of expert witnesses:

> In the present case, the Board failed to give reasons explaining why the variances granted were properly considered minor. It proceeded on the basis that it could accept the opinion evidence of the respondents' planner to that effect and treat this issue as a factual matter to be decided on the basis of expert evidence. As indicated above, that in itself is an error, as it was the Board's duty to interpret the Official Plan and by-law instruments.

It is also to be noted that the Divisional Court did not itself rehear the case. It was only assessing the reasonableness of the decision to the extent that it disclosed an error of law based on the facts and reasoning within the decision before it.

Decision and its analysis of the integral garage issue

I now turn to the Decision itself. After identifying the issues as the garage design and whether the proposal is consistent with stable neighbourhoods policies (OP 4.1.5), the Decision Maker recounts the evidence; mostly that of Ms. Hong, not Ms. Guci's

---

[8] [37] Moreover, the Board reasoned that while residential uses were not permitted, hotel and motel uses were permitted, and the residential use was "akin" to the permitted hotel and motel use.
[38] Those conclusions are unreasonable, given the wording of the by-law and its apparent intent and purpose. First, in determining whether a proposed minor variance maintains the general purpose and intent of the zoning by-law, the Board must consider the existing by-law, regardless of its age. Therefore, by giving less weight to the zoning by-law because it was adopted in 1972, the Board erred in law. Second, by the terms of s. 45(1) of the Act, the compatibility of the variance with the general intent and purpose of the zoning by-law is a separate consideration from compatibility with the intent and purpose of the Official Plan. Therefore, the Board erred in weighing one against the other and giving greater weight to the Official Plan. (The complete text of the decision on the Zoning By-law's intent and purpose is found in an endnote.)

planner Mr. Romano. There is also reference to Ms. Stewart's submissions that "an integral garage was not prohibited." This Evidence section is summarized as follows:

- Ms. Hong stated that just over 40 dwellings in this section of Gough Avenue use the laneway for access and parking.
- One of Ms. Hong's reasons for not supporting an integral garage is to reduce pedestrian-automobile conflicts.
- "Provincial policies were afforded proper consideration," (Ms. Hong considered Provincial Policies, a statutory requirement for justifying or denying a variance).
- She [Ms. Hong] opines that the prevailing character of the area is front porches with front facing windows.
- Ms. Hong stated that City policies require that the parking be located by access off the rear lane.
- Ms. Hong stated that "the Official Plan Amendment (OPA) 320 provides criteria to assess the appropriateness of a proposal for in its geographic and immediate context."
- Mr. Hanlan stated that the laneway servicing the subject property is in good repair and used by a majority of residents to park their vehicles.
- Mr. Romano stated that parking of commercial vehicles on the lot for business related uses is already prohibited (on a residential lot) but if the TLAB wanted, a condition to restrict such parking could be imposed.
- Ms. Guci explained that the reason why she was proposing a front facing integral garage was due to safety concerns in constructing a rear facing garage onto a laneway as she is a single mother.

The Decision then moves to consider the applicability of OPA 320, which was not in force when Ms. Guci's application was submitted to the Committee of Adjustment. Mr. Romano's Witness Statement states:

> OPA 320 came into force after the applications were filed. Nevertheless, the proposal meets the general intent and purpose of OPA 320 (par. 28)

Accordingly, it seems Mr. Romano has "signed off" on the Clergy and OPA 320 issues and the Decision did not need to deal with this. I do not find the Decision turned on this in any event or that this part of the Decision displays any error of law that would have affected the result.

The Error of Law

We now come to the place where I find an error of law occurred. The Decision reads:

> Page 8, par. 3) Although the subject property does abut a rear facing laneway**, this does not directly imply, through any requisite policies or legislation, that this**

> **property must have a rear facing garage**. Although such policies exist, it is noted that they are not devised to prohibit alternative driveway or related garage design for this area. (my bold)

In coming to this conclusion, the Decision does not state what the 'requisite policies" are. The Decision Maker may be referring to s. 10.5.80.40 (3)(A) of the Zoning By-Law, which states:

> . . .vehicle access to a parking space on a lot **must:(**A) be from the lane, if the lot abuts a lane; (please see page 3 for full text),

I find the plain words of this can only mean that for 111 Gough, which abuts a lane, vehicle access to a parking space must be from the lane.

Below is the plan examiner's specification of the variance to be obtained.

> Chapter 10.5.80.40.(3)(A), By-law 569-2013
> Vehicle access to a parking space on a lot that abuts a lane must be from the lane. In this case, vehicle access to the integral front integral garage will be **from a street**. (page 3 of Decision)

The specification is headed by a precise reference to the zoning regulation because the Plan Examiner wants the reader to be able to double check his or her work.

I believe the Decision Maker may have been influenced by the evidence of Mr. Romano, who stated in his affidavit at par. 28a:

> 28a There is a distinction in the Zoning By-laws regarding **integral garages** and **vehicular access**. An integral garage is permitted as-of-right on the Subject Site, and complies with the zoning; no variance is sought for the vehicle entrance through the main front wall of the dwelling.

So, if Ms. Guci had wished to have a garage with no vehicle access from the street, the by-law would permit it. I think such evidence is not useful and Mr. Romano does make it clear a few lines down, that as a practical matter, a garage with an entrance from a street (and not a laneway) was a "live issue":

> (last sentence of par. 29) . . .Contrary to the suggestion of Ms. Hong in paragraph 52, all parties acknowledged and understood that the variance for access from the street is required, and that variance was discussed extensively over the course of the hearing.

A second source of confusion was the discussion about the effect of lot width. There are many narrow lots in the Gough Ave area and if a lot is too narrow, an integral garage is not permitted because there is no room for a front door.

> If the lot were less than 7.6 m, a variance to section 10.10.80.40[9] would also be required. (Mr. Romano Affidavit, par. 29)

At some point there was also a discussion between the Member and Ms. Stewart where she assured the Decision Maker there was "no prohibition":

> (The initial word "I" is Decision Maker speaking, at page 5, par. 7) I inquired if integral garages are prohibited in this area. Ms. Stewart responded that any lot with a frontage of 7.6 metres or greater can have an integral garage, and this subject property would qualify as such.

Ms. Stewart's answer was correct, but incomplete; an integral garage is not prohibited on a lot 7.6 m or greater as long as the lot is **also not serviced by a laneway. That is the clear wording of the bylaw.** The Decision Maker asked if integral garages are "prohibited," which is a word not used in either s. 10.5.80.40.(3)(A) or 10.10.80.40. So, to be fair to Ms. Stewart, I do not find her answer was calculated to mislead; it was the Decision Maker who was asking a question about lot size without specifying the full context of the question.

At this point the Decision repeats the earlier error: a misstatement about the restrictions in the zoning by-law:

> *(Decision, page 8, par. 5) In reviewing the evidence which had been presented to the tribunal, the contention as presented by the appellant that a front facing garage is permitted on this subject property* ***due to it meeting prescribed lot frontage requirements*** *demonstrates that, while there is a rear laneway which a garage could be located, the Zoning By-law* ***does not implicitly restrict a front facing garage from being proposed here.***

It seems to me that the Decision Maker did not carefully read the zoning by-law and only heard the part about no variance needed to pierce the front wall of the building. Of course, the plain words require as well that **access** not be to the street but to the laneway and no-one would pierce a front wall unless it was to get street access. Then the Decision Maker misinterpreted Ms. Stewart's submissions about an "as-of-right" garage in the lot width context; not noting there was a big caveat, it was only "as-of-right" so long as the house, (as some Gough houses are), **not abutting a lane.**

To return to the Decision, the Decision Maker concluded the requirements for granting a variance are satisfied by these factors:

---

[9] 10.10.80.40 Access to Parking Space (1) Garage Entrance in Front Wall Not Permitted on Certain Lots Despite regulation 10.5.80.40(1), if a lot in the R zone has a lot frontage of 7.6 metres or less, a vehicle entrance through the front main wall of a building, other than an ancillary building, is not permitted.

- safety concerns of the family,
- no additional curb cut;
- no new ingress and reuse of the existing driveway;
- two new vehicles on Gough being capable of "absorption" by the local street.[10]

"Intent" is not mentioned in coming to this conclusion. The Decision concludes, noting that similar homes were "nearby," and the new building could "coexist." These observations may have been in support of the "respect and reinforce" OP test[11].

To sum up, the Requesters' first ground is established. The Decision Maker mistakenly indicated in the Decision that the zoning by-law does not obligate laneway properties to have access only from a laneway.

Adequacy of Reasons

I now turn to the second ground: whether the reasons were adequate as a whole. Paragraph 44 of Mr. Hardiejowski's factum: "The Decision Maker does not **consider and apply** Policies 3.1.2.2 (a) (b) and (e), which provides, *inter alia*, that new development proposals are to minimize street-facing parking and utilize existing infrastructure; in this case, the laneway." Ms. Stewart's replies in par. 30: ". . . it is clear that the Chair **considered** the evidence relating to the effect of the proposal on street parking access, the width of driveways, and curb cuts." It may be that there was consideration, but this consideration must be supported by findings, and a reasoning process that the proposal meets the intent of the relevant policies. It is not sufficient to note evidence without making findings.

---

[10] *Page 9, par. 1) In terms of the existing streetscape, as there is already a driveway access for this property,* ***an additional curb cut will not need to be sought from the City.*** *With this, the tribunal would surmise that there would not be additional constraints on the existing street parking allocation****. The existing driveway would also not act to introduce a new ingress/egress to Gough Avenue.*** *As such, contentions that the traffic situation in this area would be negatively impacted do not appear to have merit.* ***The possible introduction of two vehicles (one parked in the garage and the other on the driveway)*** *are not assessed to substantially alter the traffic patterns for this area.* ***This local street should be able to absorb these changes with minimal intrusion.*** (my bold)

[11] (Decision Maker speaking, at page 8, par. 4, first half) *The property-owner contends that their proposal for an integral garage is partly due to* ***safety concerns*** *for their family. It is noted that through the disclosure documents which had been provided to the tribunal, although integral garages* ***would not be identified as a common design feature*** *of the area, it is evident they are* ***seen on nearby streets*** *of Cruikshank Avenue and Gertrude Place rear lanes. These examples illustrate that integral garage designed homes have been constructed and can act to* ***co-exist*** *with the existing neighbourhood fabric*. (my bold)

Here the Decision Maker described the **evidence**[12] but omitted any mention of the curb cut facts on which she or he ultimately relied. The **argument** of the parties is missing, as well as a recitation of the zoning and Official Plan clauses. The *Planning Act* requires an independent judgement as to intent; Justice Swinton observed that coming to this opinion by treating it as a factual dispute between experts was itself an error of law. In other words, a full and detailed explanation is necessary.

The Decision Maker said:

> With the evidence as provided to me, the tribunal prefers the arguments as presented to it by the appellants representatives.

This is not sufficient explanation to support the finding that the general intent and purpose of the zoning by-law and Official Plan are maintained. This concludes the analysis of the second ground raised by the Requesters.

I conclude that the other Rule 31.25 tests are met. The error of misinterpreting the zoning provision led the Decision Maker to underestimate the task of ascertaining the intent and purpose of OP 3.1.2.2. Mr. Romano is documented to have argued that by virtue of s. 24(1) of the *Planning Act*, all zoning by-laws must be in conformity with the Official Plan. This is true, but the correct conclusion from s. 24(1) should have been to understand that Official Plan policy 3.1.2.2 guided the drafter of the zoning provision 10.5.80.40.(3)(A). The two have to be read together. Therefore, an error was made with respect to ascertaining the intent of the Official Plan and perforce the "minor" and "desirable" tests.

I need find only one reviewable error. It is likely that errors were made in each of the other three of the "four tests", highly suggestive that the variance would not have been granted, which is a different result. As for being compelling, I find that for a

---

[12] Some of this language comes from *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board),* 2011 SCC 62, [2011] 3 S.C.R. 708. This case states that reasons may be incomplete and are "organic". However, the situation here is quite different from *Nurses' Union*, which was an interpretation of a collective agreement. In this case, the owner is seeking a privilege that can only be granted if the four tests are met; there is an onus on the owner not present on either the government or the union, and the Court is silent about how detailed the analysis has to be for the arbitrator. Here, the Court has said that a tribunal has to make a "a **careful and detailed analysis of each application to the extent necessary** to determine if each variance sought satisfies the requirements of each of the four tests. " (my bold), paragraph 20, *Vincent v. DeGasperis,* 2005 CanLII 24263 (ON SCDC), [2005] O.J. No. 2890 (Div. Ct.)

[1]

Decision Maker not to undertake the full statutory task mandated in the *Planning Act* is a compelling reason to order a rehearing.

These are sufficient for me to find that all three branches of the Rule 31.25 tests are satisfied— errors of law, are compelling and if they had not happened, there would likely have been a different decision.

DECISION AND ORDER

I order a new hearing before a different TLAB Member.

The hearing will be de novo[13]. I would request that a new Notice of Hearing issue from the TLAB. The parties and participants may rely on material already filed and file supplementary material, if that is their wish. Nothing in this decision should be considered as restraining the different TLAB Member from coming to any conclusion she or he may decide after hearing the evidence. If anything is unclear, would the parties please email the TLAB at tlab@toronto.ca.

X

Ted Yao
Panel Chair, Toronto Local Appeal Body

[13] "De novo » is Latin for "new".
https://www.attorneygeneral.jus.gov.on.ca/english/glossary/?search=d#results