

DECISION AND ORDER

Decision Issue Date Friday, February 19, 2021

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): Samuel Earl Anslem

Applicant: Franco Romano

Property Address/Description: 18 Herne Hill

Committee of Adjustment Case File Number: 20 129173 WET 02 MV (A0132/20EYK)

TLAB Case File Number: **20 193816 S45 02 TLAB**

Written Motion Hearing Date: Wednesday, February 17, 2021

DECISION DELIVERED BY A. Bassios

APPEARANCES

NAME	ROLE	REPRESENTATIVE
FRANCO ROMANO	APPLICANT	
LIZ YUE CHENG	OWNER	CHRISTINA KAPELOS
SAMUEL EARL ANSLEM	APPELLANT	
STEVE VELLA	PARTICIPANT	

INTRODUCTION AND BACKGROUND

This matter arises by way of a Motion from Ms. Christina Kapelos on behalf of Liz Yue Cheng seeking an Order from the Toronto Local Appeal Body (TLAB) to the following effect:

1. An order dismissing the within Appeal without a hearing pursuant to TLAB Rule 9.1 and section 45(17) of the Planning Act;
2. In the event the relief sought in paragraph 1 is not granted, an order granting an exception to Rule 16.2 and 16.5 to extend the time to deliver the Document Disclosure and Witness Statements at the earliest date permitted by TLAB pursuant to Rule 2.10; and
3. Such further and other relief as counsel may request and the TLAB may permit.

The Motion was heard as an electronic Hearing (via WebEx) on February 17, 2021. In attendance were: Christina Kapelos, legal representative for the Owner/Applicant; Franco Romano, Applicant; Samuel Anslem, Appellant; and Steve Vella, Participant.

On August 27, 2020, the Committee of Adjustment (COA) issued its decision approving, with conditions, variances to construct a new detached dwelling with an attached garage at 18 Herne Hill, the subject property. On September 15, 2020, Mr. Samuel Anslem filed a Notice of Appeal to the Toronto Local Appeal Body (TLAB). The TLAB has set a return Hearing date of May 6, 2021 to hear the Appeal.

On February 05, 2021, Ms. Kapelos filed a *Notice of Motion* as outlined above, to be heard by electronic Hearing on February 17, 2021.

At the commencement of the Motion Hearing, Ms. Kapelos advised the TLAB that the Motion to Dismiss was brought before the TLAB because of the lack of planning grounds having been identified in the TLAB Form 1 (Appeal) filed by Mr. Anslem. Ms. Kapelos advised that having seen what could be considered genuine planning concerns set out in the response materials of the Appellant, she has been instructed not pursue a contested Motion for Dismissal at this time. She asserted that it should not have been necessary to bring a Motion to understand planning concerns in this matter and that her client reserves her rights to bring a Motion for costs.

MATTERS IN ISSUE

The matter of the Motion to Dismiss having been set aside, the setting of revised submission dates, the second part of the filed Motion, remained at issue. In addition, Ms. Kapelos wished to establish what Mr. Vella's interest and involvement was in the matter, given that he resides a fair distance from the subject property.

JURISDICTION

TLAB Rules 17.1 to 17.12 govern, *inter alia*, the filing of Notices of Motion, contents of Motion Material and timelines for Notices of Response and Reply. TLAB Rules 16.1 to 16.13 govern Disclosure and the timelines for filing of documents, including Witness Statements, responses and replies.

EVIDENCE

Mr. Vella identified his interest in the matter regarding the subject property as a concern for “heritage trees” in general. Mr. Vella does not live in the neighbourhood of the subject property. He asserts that his interest in this matter is that this application parallels his own concerns on a separate matter where his own neighbour, he asserts, has a development application before the COA that will impact Mr. Vella’s heritage tree. He identifies a concern that how heritage trees are considered in one hearing will affect how they are treated in others as well. I confirmed with Mr. Vella that his statements, written and oral, in this matter would have to clearly identify his interest in the matter regarding the subject property and that his written and oral statements, should he file them, would be confined to the issue of the tree. Mr. Anslem stated that he has had help and support from Mr. Vella in understanding the proceedings of the TLAB.

Ms. Kapelos, legal counsel for the Owner, continues to have concerns with Mr. Vella’s participation in this matter. Mr. Vella resides more than 9 km away from the subject property and his interest in the matter, as contemplated under the Planning Act, is in her opinion questionable. Ms. Kapelos stated a concern that allowing the inclusion of Mr. Vella’s issues could “open the floodgates” for issues beyond the ambit of an Appeal on a specific property to be inappropriately inserted into the matter. The implication for the costs and required extended Hearing time was noted.

Revised dates for submissions as set out in the *Notice of Hearing* were agreed to by all Parties and are stipulated in the Order below.

ANALYSIS, FINDINGS, REASONS

The revised dates for submissions in this matter were set with the consent of all present. A revised *Notice of Hearing* will be issued with the reset submission dates.

It was established that Mr. Vella is not the Appellant’s representative; he has elected to seek Participant status in this matter. I advised Ms. Kapelos that I was not prepared to rule on the matter of Mr. Vella’s participation in the Hearing of the Appeal regarding the subject property as an adjunct to the Motion currently before me – the Motion filed to seek dismissal without a Hearing and to revise submission dates. To my mind, it would not be fair to adjudicate this question of Mr. Vella’s participation without proper notice and the opportunity for Mr. Anslem and Mr. Vella to prepare. It remains open to the

Appellant to address concerns regarding Mr. Vella's participation in this matter via separate submissions to the TLAB.

DECISION AND ORDER

TLAB staff are directed to issue a revised *Notice of Hearing* identifying required submission dates as below:

- **Revised Applicant Disclosure due** no later than **March 05, 2021**;
- **Notice of Intention to be a Party** no later than **March 10, 2021**;
- **Notice of Intention to be a Participant** no later than **March 10, 2021**;
- **Document Disclosure due** no later than **March 24, 2021**;
- **Witness Statement due** no later than **March 24, 2021**;
- **Response to Witness Statement due** no later than **April 07, 2021**;
- **Reply to Response to Witness Statement due** no later than **April 14, 2021**;
- **Participant Statement** no later than **March 24, 2021**;
- **Expert Witness Statement due** no later than **March 24, 2021**;
- **Response to Expert Witness Statement due** no later than **April 04, 2021**;
- **Reply to Response to Expert Witness Statement due** no later than **April 14, 2021**;
- **Notice of Motion due** no later than **March 17, 2021**.

If difficulties arise regarding this Decision and Order, the TLAB may be spoken to.

X



A. Bassios
Panel Chair, Toronto Local Appeal Body