

# DECISION AND ORDER

**Decision Issue Date** Monday, May 31, 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): CITY OF TORONTO

Applicant(s): GLADKI PLANNING ASSOCIATES

Property Address/Description: 2 CHAMPAGNE DRIVE

Committee of Adjustment File

Number(s): 21 104192 NNY 06 MV

**TLAB Case File Number(s): 21 122447 S45 06 TLAB**

**Last submission date: May 28<sup>th</sup>, 2021**

**DECISION DELIVERED BY JUSTIN LEUNG**

## REGISTERED PARTIES AND PARTICIPANTS

Name	Role	Representative
Gladki Planning Associates	Applicant	
Champagne Centre Ltd	Owner/Party	Signe Leisk/Jennifer Evola
City of Toronto	Appellant	Adrienne DeBacker

## **INTRODUCTION AND BACKGROUND**

This is a Motion filed on May 14, 2021 by Signe Leisk and Jennifer Evola, legal representatives from Cassels Brock & Blackwell LLP, on behalf of Champagne Centre Ltd. The Committee of Adjustment (COA), on February 11, 2021, had approved 2 Variances which acted to increase the area permitted to be used for retail, personal service and office space and to legalize and recognize the existing parking situation at this subject property. Subsequently, the City of Toronto elected to Appeal the COA's Decision to the Toronto Local Appeal Body (TLAB). The Appellant is represented by City Solicitor Adrienne deBacker. The other Parties to the matter are the two lawyers, as mentioned earlier, and Lew Pliamm of Champagne Centre Ltd.

The Motion requests that the TLAB allow a delay in disclosure dates, that are stipulated by *TLAB Rules*. The Applicant's two lawyers, Ms. Leisk and Ms. Evola, state that this request is being made as the traffic engineer who they had intended to present as an Expert Witness is experiencing a sudden medical condition. As a result of this, this person is no longer able to continue to execute their duties as an Expert Witness in this Appeal matter. Due to this unexpected situation, the Applicant's lawyer requests an extension in the disclosure dates so that they may proffer a new Expert Witness and also have sufficient time to submit disclosure documents prior to the scheduled Hearing.

The Motion to amend the deadlines to submit materials to the TLAB was considered in written form on May 31, 2021.

## **MATTERS IN ISSUE**

Would amending TLAB procedural deadlines, as outlined in this requested Motion, act to harm or prejudice others? In addition, could it act to negatively impact the Appellant?

## **JURISDICTION**

The TLAB may hear Motions by way of written submissions, in accordance with Rule 17.5 of the Rules of Practice and Procedure.

The TLAB, as per Extension or Reduction of Time Rules 4.4, 4.5 and 4.6 of the *TLAB Rules of Practice and Procedure* (May 6, 2019), is free to extend or reduce a time limit on such conditions as the TLAB considers appropriate.

## **EVIDENCE**

Evidence was provided to the Tribunal in the form of a legal document *Motion Record for Champagne Centre Ltd.* This document contained an Affidavit by Maddie D. Brown which affirms the material contained herein is accurate.

As had been previously outlined, the Applicant's lawyers state that an Expert Witness had initially retained to provide testimony relating to traffic engineering, Dan Cherepacha of Read, Vorhees & Associates. However, during the course of preparing material to submit in relation to this Appeal, Mr. Cherepacha notified the Applicant's lawyers that he was now facing serious health issues. As such, Mr. Cherepacha indicated that he did not believe he could continue to discharge his duties as an Expert Witness here.

Due to this, the Applicant's lawyer now must look to engage a new Expert Witness to provide testimony in the field of traffic engineering. They argue that this testimony is necessary in that:

"...significant prejudice would be suffered by the Champagne Centre if it were not able to file expert parking evidence. The absence of this expert evidence could significantly impact the final decision and final order as the TLAB would not hear the evidence of an expert in parking, which is the subject matter of one of the requested variances, and the other experts retained by the Champagne Centre would not be able to utilize the parking expert's work to inform their opinions."<sup>1</sup>

The Applicant's lawyers further outline that 2 other Expert Witnesses, in land use planning and land economics, respectively, would also be presented to the TLAB to provide evidence on this matter. As had been commented upon in the previously cited statement, it is argued by the Applicant's lawyers that the absence of a traffic engineer's testimony could act to impede their ability to present their arguments, in support of the Variance requests, in a judicious and factual manner to the Tribunal. They further opine that the testimony of a traffic engineer is pertinent as it would act to inform and guide the 2 other Expert Witnesses and the testimony that they would provide as well. As such, they request an extension in the deadline to submit disclosure documents, with recommended revisions to those deadlines provided in the Motion request submitted to the TLAB.

The Applicants' lawyers indicate that they have communicated with the City Solicitor who has acknowledged the situation and has raised no objections to this Motion request. In furtherance to this, the City Solicitor on May 25, 2021 submitted a *Notice of Response to Motion* relating to this matter. They responded that they were cognizant of this issue and didn't raise objections with the potential granting of this Motion request.

## ANALYSIS, FINDINGS, REASONS

In considering the Motion and its associated Affidavit and attached Exhibits, I find that the request to revise the submission deadlines for filing documents relating to this Appeal to be reasonable and appropriate. This can be attributed to the facts which have been submitted. It is understandable that certain unforeseeable and unfortunate 'life' events, such as a serious medical condition, can act to inhibit the participation of certain persons in an Appeal matter. These can be of a sudden and unexpected nature which can act to disrupt the Appeal process. However, the *TLAB Rules* are crafted to allow for exceptions to be made in certain circumstances, at the discretion of the presiding member.

With regards to the relevancy of testimony proffered by a traffic engineer, it is noted that one of the Variance requests specifically relates to a reduction in required parking spaces on this subject property. As such, it would be reasonable to surmise that evidence as provided by a traffic engineer may act to illuminate on this Variance request and also in relation to the parking standards and current parking conditions on the site.

In terms of public interest and whether it is upheld by permitting this Motion request, it is noted that it has been proposed by the Applicant to alter the submission deadlines to June 2021. It is noted that besides the Appellant, the only other Parties to this matter is Champagne Centre Ltd (Applicant) and their legal representatives. No other Parties and Participants have been actively participating in this Appeal. It is noted that, when this Variance Application was at the COA stage, that there were no other interested parties (residents or property-owners) who had participated. As such, it is reasonable to deduce that this Appeal matter is proceeding with the current Parties that have been identified. With this, the TLAB finds that the extension in the disclosure document submission deadlines should not act to inhibit these Parties to prepare for the July 2021 Hearing date.

To provide context to this Motion request, it is pertinent to assess previous case law which had circumstances which emulate the current situation. In a Motion Decision, dated May 30, 2019, for 1982 Islington Avenue (TLAB Case File NO 18 131764 S45 04 TLAB), the City Planner, who was the Expert Witness for land use planning, suddenly required parental leave. As such, the City of Toronto (City), which was a Party to the matter, requested that the City Planner here be substituted by another Planner and that a revised *Expert Witness Statement* be provided, with permission to amend *TLAB Rules* relating to the submission of such disclosure materials. Member S. Gopikrishna, in his Motion Decision, allowed this request and further opined that:

“Given the above, and the lack of objection from the Appellants, I rule that the City can substitute Ms.Covello, with Mr. Lieu, their Expert Witness, in the area of land use planning, for the remainder of the Appeal respecting 1982 Islington Ave. Mr. Lieu may adopt Ms. Covello’s statement, and as indicated in Paragraph 25 of

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<sup>1</sup> Cassels, Brock & Blackwell LLP. *Motion Record of Champagne Centre Ltd.* May 2021, pp. 9

his Affidavit, dated April 30, 2019, he may submit Ms. Covello's Statement to the TLAB, under his signature, at his earliest convenience."<sup>2</sup>

While the circumstances may not be entirely similar to this Appeal matter, it is noted that both Expert Witnesses, with the subject Appeal and with that of 1982 Islington Avenue, due to personal circumstances, were not able to continue to discharge their duties. In both instances, the other Parties to the matter have not objected to the Applicant's request to allow an extension in deadlines relating to the filing of documents due to the sudden departure of their Expert Witness. With the matter at hand, the Expert Witness had not yet provided *viva voce* evidence to the Tribunal so the issues of cross examination of the Witness, as seen in the Appeal matter of 1982 Islington Avenue, are not pertinent here. The ability of all the Parties to participate, and potentially cross examine the new Expert Witness here will also not be adversely impacted.

The Tribunal also recognizes that the Applicant's lawyers, in their Motion request, has provided amended disclosure deadline for the filing of certain documents to the TLAB. As had been referenced previously in this document, the Appellant has expressed no objection to those proposed new deadlines. In review of the Motion request, I also find these new deadlines to be reasonable to the circumstances at hand and their imposition here will not impede the July 2021 scheduled Hearing date from proceeding in an expeditious and fair manner.

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<sup>2</sup> City of Toronto *Decision and Order: 1982 Islington Avenue*. May 2019, pp. 3

## DECISION AND ORDER

The Motion is allowed, and the following submission deadlines have been revised to:

- Document Disclosure due no later than May 31, 2021
- Witness Statement (Form 12) due no later than May 31, 2021
- Response to Witness Statement (Form 19) due no later than June 14, 2021
- Reply to Response to Witness Statement (Form 20) due no later than June 21, 2021
- Participant Statement (Form 13) due no later than May 31, 2021
- Expert Witness Statement (Form 14) due no later than May 31, 2021
- Response to Expert Witness Statement (Form 21) due no later than June 14, 2021
- Reply to Response to Expert Witness Statement (Form 22) due no later than June 21, 2021
- Notice of Motion (Form 7) due no later than June 28, 2021

X

*Justin Leung*

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Justin Leung  
Panel Chair, Toronto Local Appeal Body  
Signed by: Leung, Justin