

DECISION AND ORDER

Decision Issue Date Friday, February 11, 2022

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): CHRIS SAKKAS

Applicant: NOVA RIDGE (MANDERLEY) GP CORP

Property Address/Description: 1478-1496 KINGSTON RD

Committee of Adjustment Case File Number: 21 180352 ESC 20 MV (A0231/21SC)

TLAB Case File Number: 21 211971 S45 20 TLAB

Hearing date: Monday, February 07, 2022

DECISION DELIVERED BY *D. LOMBARDI, TLAB Chair*

REGISTERED PARTIES AND PARTICIPANT

Appellant	CHRIS SAKKAS
Appellant Legal Rep.	DAVID TANG
Applicant/Owner/Party	NOVA RIDGE (MANDERLEY) GP CORP
Party's Legal Rep.	MATTHEW DI VONA
Expert Witness	PAUL DEMCZAK
Expert Witness	CHRISTIAN CHAN
Expert Witness	ISMET MEDIC
Expert Witness	ANIL SEEGOBIN

INTRODUCTION AND BACKGROUND

On August 25, 2021, the Scarborough panel of the City of Toronto Committee of Adjustment (COA) approved a variance application for 1478-1496 Kingston Road (subject property) to permit the construction of an 11-storey building, containing 198 residential dwelling units and 486 square metres of commercial uses on the ground floor. On September 13, 2021, Chris Sakkas (Appellant) appealed the COA's decision to the Toronto Local Appeal Body (TLAB) and the Tribunal scheduled a Hearing for February 7, 2022, to hear the appeal.

Other than the Applicant/Owner, Nova Ridge (Manderley) GP Co., and the Appellant, there were no other Parties or Participants disclosed.

On February 2, 2022, the Applicant/Owner's solicitor, Matthew Di Vona, wrote on consent with the Appellant's solicitor to the TLAB advising that settlement discussions between the two Parties had reached an advanced state. However, he advised that due to technical issues an agreement had yet to be finalized. He further noted that once a settlement was finalized and subsequently memorialized, the Parties would advise the Tribunal accordingly and the Appellant was expected to withdraw the appeal.

Given these circumstances, Mr. Di Vona suggested that the Hearing scheduled for February 7th be cancelled to avoid the Parties having to make an unnecessary appearance at the Hearing.

MATTERS IN ISSUE

The only issue is whether the TLAB should proceed with the scheduled Hearing date set for February 7, 2022 and require the Parties to attend to update the presiding Member as to the progress made towards finalizing a settlement. Furthermore, at the Hearing, Mr. Sakkas could advise the Tribunal directly whether he intends to withdraw his appeal once a settlement is reached.

JURISDICTION

Under Rules 2.2, 17.2, and 23.2 of the TLAB's Rules of Practice and Procedure (Rules), the TLAB can adjourn a Hearing to a rescheduled date.

More specifically, Rule 2.2 permits the TLAB to liberally interpret the Rules to enable it to effectively and completely adjudicate matters in a 'just, expeditious, and cost-effective manner.' Additionally, Rules 17.2 and 23.2 allow the presiding Member to adjourn a scheduled Hearing on the consent of the Parties with service to all without the need for a formal Motion to seek such an adjournment.

ANALYSIS, FINDINGS, REASONS

There are numerous considerations that the TLAB must factor in deciding whether to cancel or grant an adjournment of an already scheduled hearing event. Those factors include, among others, the reasons for cancelling or adjourning a Hearing, the interests/position of the Parties, who has requested the cancellation/adjournment, how this might impact Participants and other Persons, the integrity of the TLAB process, and the timelines of the adjournment.

In this instance, while there are no Persons who elected Participant status in this matter, the request to cancel the scheduled February 7th Hearing came from Mr. Di Vona, the Applicant's representative with the consent of the Appellant's solicitor. In his email, Mr. Di Vona's submits that due to the advanced nature of settlement discussions between the two Parties, "*the Hearing on Monday may not need to proceed.*" He also suggests that the expected result of these discussions, if successfully in arriving at a settlement of the issues outstanding in the matter, would be the Appellant's withdrawal of the appeal.

Furthermore, Mr. Di Vona implies that a settlement is imminent, possibly over the weekend, and that once a settlement is reached, the Parties would "*advise the TLAB immediately...in order to avoid having to make an unnecessary appearance on Monday (Feb. 7th).*"

Even though Mr. Di Vona characterized settlement discussions between the Parties as 'advanced' and he seemed hopeful that a settlement was forthcoming, I was not prepared to cancel the February 7th Hearing as suggested for three reasons.

First, the request received by the TLAB was sent by the Applicant's legal representative and not the Appellant albeit with the consent of the Appellant's solicitor. And, while Mr. Di Vona noted this consent in his email, and the eventuality that a withdrawal of the appeal would follow, such a request must come directly from the individual who filed the appeal, in this case Mr. Sakkas, and not the Applicant.

Second, Mr. Di Vona implies that a settlement is imminent and is impending which he suggests will result in a withdrawal of the appeal. However, no such settlement was filed with the TLAB by the Hearing date and the Parties provided no additional information or further updates prior to the scheduled Hearing which would have caused me to reconsider my decision to request attendance on February 7th.

And third, although Mr. Di Vona stated that settlement discussions "*are advancing,*" it is not uncommon for such negotiations to break down resulting in a failure to achieve a settlement of the issues in dispute. Given this possible scenario, and the short timeframe between when TLAB staff notified the presiding Member of Mr. Di Vona's email correspondence and request to cancel the Hearing and the Hearing date (Friday afternoon – the last business day before the Hearing), I directed staff to advise the Parties that the Hearing would proceed as scheduled so that the presiding Member

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could hear from the Parties. This decision was also taken to protect the integrity of the TLAB hearing process which requires set hearing dates to be maintained.

On February 7th, the following Parties attended the virtual Hearing: Matthew Di Vona, representing the Owner/Applicant, Brett Llewellyn-Thomas, representing Nova Ridge, and Paul Demczak, the Applicant's planning expert. Also in attendance, were David Tang, the Appellant's legal counsel, and the Appellant's planning expert Christian Chan.

Mr. Tang provided a brief update on the status of settlement discussions noting that while the discussions were very much advanced as suggested by Mr. Di Vona, the details of the settlement had not yet been memorialized nor had a settlement agreement been executed. He did confirm, however, that the Parties had reached a resolution in principle of the issues in dispute and that an agreement was imminent. He agreed that upon the submission of a fully executed agreement, it was his understanding that his client would withdraw the appeal.

He requested that the TLAB adjourn the Hearing to allow the Parties to complete their settlement discussions but also asked that, out of an abundance of caution, the TLAB secure three (3) Hearing dates to hear a contested appeal if a settlement is not achieved.

He nevertheless also submitted that a settlement agreement could be finalized and filed within the week.

Mr. Di Vona concurred with the information provided by Mr. Tang and reiterated his client's position that the Hearing be adjourned to allow the Parties to finalize the settlement. He noted that discussions have been complicated by technical aspects related to the various consultants retained in this matter and agreed that an adjournment was appropriate at this juncture.

Considering the above, I am satisfied that the request from Mr. Tang to adjourn the Hearing is justified, and I find that the rescheduling of this matter on consent to a future date(s) will not cause or contribute to any existing or potential harm or prejudice to the Parties.

Therefore, I also direct that TLAB staff canvass the Parties to secure three (3) Hearing dates within the next two to three months in the event that a settlement is not achieved. I advised the Parties that if a settlement agreement is finalized and filed with the TLAB and the Appellant does not withdraw his appeal of this matter, that the first rescheduled Hearing date be considered for an expedited Settlement Hearing.

Finally, I find that adjourning the Hearing and scheduling new Hearing dates for either a contested appeal of the Application or an expedited Settlement Hearing will not impact the Tribunal's ability to conduct this proceeding in a just, timely and cost-effective manner as required by the TLAB's Rules.

DECISION AND ORDER

The Hearing of February 7, 2022, in this matter is adjourned on consent. The Member directs TLAB staff to canvas the Parties for dates for a three (3) day 'virtual' Hearing event for either a contested appeal in the event that a settlement is not reached, or for an expedited Settlement Hearing based on the terms of Settlement agreed to by the Parties and filed with the TLAB.

TLAB staff will issue new Notices of Hearing or a new Notice of Settlement Hearing, depending on the circumstances, but the filing/submission due dates contained in the previous Notice will remain the same.

In the event of an expedited Settlement Hearing, the Parties will file the terms of the proposed settlement with the TLAB at the earliest possible date but in advance of an expedited Settlement Hearing.

The terms of a proposed settlement will be filed with the TLAB prior to the scheduling of any expedited Settlement Hearing.

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

X



Dino Lombardi
Panel Chair, Toronto Local Appeal Body
Signed by: dlombar