Toronto Local Appeal Body

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INTERIM DECISION AND ORDER

Decision Issue Date Monday, February 28, 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): CITY OF TORONTO (MICHAEL MAHONEY)

Applicant(s): JON CARLOS TSIFILIDIS

Property Address/Description: 1882 LAWRENCE AVE E

Committee of Adjustment File

Number(s): 20 208824 ESC 21 MV (A0250/20SC)

TLAB Case File Number(s): 21 164042 S45 21 TLAB

Hearing date: Friday, January 28, 2022

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY TLAB Panel Member S. Gopikrishna

REGISTERED PARTIES AND PARTICIPANT

Appellant	City of Toronto
Appellant's Legal Rep.	Michael Mahoney
Applicant	Jon Carlos Tsifilidis

INTRODUCTION AND BACKGROUND

Jon Carlos Tsifilidis is the Applicant for 1882 Lawrence Ave E, located in Ward 21 (Scarborough Centre) of the City of Toronto. He applied to the Committee of Adjustment (COA) for the approval of variances, that would “permit the construction of a second storey addition (for office uses) to the existing commercial building (currently used for vehicle sales) and for the operation of vehicle sales and vehicle repair.”

The COA heard the application on May 18, 2021, and approved the same in its entirety. The City of Toronto appealed the COA's decision to the Toronto Local Appeal Body (TLAB) - the exact date of the Appeal is not known to me because the City's Appeal to the TLAB seems not to have been included on the TLAB Website. The TLAB set a date to hear the Appeal on January 31, 2022.

Notwithstanding the TLAB's establishing a date for hearing the Appeal, no Witness Statements were submitted by the Applicants or the Appellants.

On January 28, 2022, I was made aware by the TLAB Staff about an email sent by Mr. Michael Mahoney, a lawyer for the City of Toronto, where he apologized for the "late communication", and that the Parties were in negotiations, "though no agreement had been reached". Mr. Mahoney also stated that he was prepared to attend the Hearing if the TLAB wanted to proceed with the Hearing scheduled for January 31, 2022. I instructed the Staff to write to the Parties acknowledging the communication, as well as my preference to meet with the Parties, as originally scheduled, on the morning of January 31,2022.

The Hearing held on the morning of January 31, 2022, was attended by Mr. Mahoney on behalf of the City of Toronto, and Mr. Jason Atout on behalf of the Applicant. Mr. Mahoney provided an update on the status of the negotiations, and stated that the Applicant was represented by "an Agent", and in response to a question from me, informed me that the Agent (who was not named) was not a lawyer or a planner. Mr. Mahoney added that while the Parties had not reached a Settlement yet, he was fairly confident that a Settlement could be reached. When asked how long did he expect for the Parties to reach a Settlement, Mr. Mahoney said that it could take around "one and half months".

I thanked Mr. Mahoney for the explanation, and informed the Parties that I would give them up to two months from the date of the Hearing to arrive at a Settlement.

I then explained my expectations about the Proceeding to the Parties, and emphasized that since the Appeal to the TLAB, is e considered to be a Hearing *de novo*, the burden of lay with the Applicants. Given that the burden of proof lay with the Applicants, it would be reasonable to expect them to provide evidence either through an Expert Witness, or a Witness, about how their proposal satisfied the four tests under Section 45.1 of the Planning Act.

In response to a question from Mr. Atout about the onus lying with the City, because "given that they are the Appellants", and he is the "Respondent", I stated that the TLAB did not use an "Appellant" vs. "Respondent" language to distinguish between the Appellants, and the Applicants, in Appeals they are not one and the same.

I explained the concept of a Hearing *de novo*, and stated what such a Hearing meant, was that "for all practical purposes, the hearing before the COA had not taken place." The TLAB would not take into consideration any of what took place before the COA, for the purposes of making findings on the Appeal. Consequently, the Applicants would

have to present compelling reasons to demonstrate that their proposal satisfied the four tests under Section 45.1, and that other Parties could ask questions of the Applicant.

In response to another question from Mr. Atout about what would happen if a Settlement could not be reached, I explained how a "contested proceeding" worked –

- The Applicant could present their evidence-in-chief through the means of a Witness or Witnesses, who would be cross-examined by the Agent (s) for the Appellants, followed by a re-examination by the Applicants' Witness, by their Agent.
- After the Applicants presented their case, the Appellants would be given a chance to present their case by way of an Examination-in-Chief, featuring their Witness or Witnesses. These Witnesses could be cross-examined by the Opposing Parties, before they are Re-examined by their own Agent.
- Lastly, the Applicants would be given a chance to "Reply" to issues identified by the Opposition, but which had not been addressed by them in their Examination-in-Chief.

Mr. Atout stated that he found the discussion to be "very helpful".

In response to my comments about the onus lying with the Applicants, Mr. Mahoney stated that the City granted its lawyers "discretion" to facilitate the collection of evidence in support of an Application, even if they had originally appealed the COA's decision. I acknowledged Mr. Mahoney's perspective, and said that from an Adjudicator's perspective, it was important that "fulsome evidence be presented" in support of the proposal, for it to be approved by the TLAB.

I added that notwithstanding the above, it was important to appreciate that "the onus lies with the Applicant". I stated that while I was cognizant of, and respected the City's "discretion" to present evidence in support of an Appeal, it was also important that the City identify the circumstances under which it exercised the discretion "in a crystal-clear fashion" in the interests of public interest. Mr. Mahoney said that he "agreed" with my observations.

I adjourned the Hearing by reminding the Parties that they would be given two months to reach a Settlement, and that I expected to be informed about the progress in the Hearing, in order to determine what needed to done by the TLAB, to schedule a Settlement Hearing, or a Contested Proceeding, where a Settlement Hearing was not possible.

MATTERS IN ISSUE

The main question before the TLAB is to determine what steps need to be taken, and by whom, to complete this Proceeding.

JURISDICTION

The TLAB relies on its Rules of Practice and Procedure ("the Rules) to determine how to proceed with a Proceeding.

ANALYSIS, FINDINGS, REASONS

The TLAB encourages Parties to arrive at a Settlement where possible, because this results in a "win-win" situation for the Parties.

In this case, given that I was assured by the City that substantial progress has been made, and that a Settlement could be expected within a "month and a half", I find that it would be reasonable to give the Parties time till **March 31, 2022**, to finalize their Settlement, which can then be brought forward to the TLAB for approval. However, I would sincerely appreciate an update from the Parties by **March 15,2022**, about whether they expect to go forward by way of a Settlement, or a Contested Proceeding.

This information will help inform my setting updated deadlines for submission of documents to the TLAB, such that everybody, including myself, would have reasonable time to review the documents, before the Hearing.

In case of a Settlement, I would like to reiterate my preference for a conventional Hearing, where the Applicants present their case, and demonstrate that their proposal meets the four tests under Section 45.1 of the Planning Act. I would like to add that the Applicants have the ability to provide evidence at the Hearing, where they have to, either through an Expert Witness (who has recognized professional qualifications and certification in the discipline of planning), or a Witness, who can speak to the compatibility between the proposal, and the Planning Act, even if they don't have the qualifications to be recognized as an "Expert" by this Tribunal.

While I am cognizant, and respectful of an approach, different from the conventional, where the Appellant presents evidence on behalf of the Applicant, because a Settlement has been reached, I believe that the circumstances under which the Appellants take on the role of the Applicant, should be explained in a crystal clear fashion. While I appreciate that the City's lawyers have the discretion to make such a decision about what may be described as the "reversal of roles between the Applicant and the Appellant", I find that the discretion has to be exercised in a judicious fashion, such that the reasoning can be made accessible, and explicable to the community at large- the comprehensibility, and accessibility of the reasoning by the community, are the embodiment of accountability, which enriches and reinforces public interest.

INTERIM DECISION AND ORDER

1. The Parties are directed to provide an update to the TLAB about whether they expect to proceed by way of a Settlement, or Contested Proceeding, by March 15, 2022.

2. The Parties are given time till March 31, 2022, to finalize their Settlement, should one be possible.

3. The TLAB will be in touch with the Parties on March 31, 2022, to identify a Hearing date, which will help determine other deadlines pertinent to the Hearing

The TLAB may be spoken to if there are any issues with the deadlines.

So orders the Toronto Local Appeal Body

X 

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body