

DECISION AND ORDER

Decision Issue Date Thursday, July 21, 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: Wednesday, July 6, 2022

Deadline Date for Closing Submissions/Undertakings: July 11, 2022

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

On July 6, 2022, I met with the Parties involved with 1882 Lawrence Ave to complete the discussion regarding two issues which had been identified at the previous Hearing, held on May 2, 2022- the first being such that the Applicants wanted to withdraw their Application, such that they could reinstate their application a later date, without encountering any challenges. At that Hearing, the City initially disagreed with my suggestion that the issue could be resolved if the Application could be withdrawn on a "without prejudice to the Applicants" basis, to help them begin a new Application, when

possible. I instructed the Parties to have a discussion between themselves about the issue could be resolved, but received no update. As stated in my earlier decision, dated May 24, 2022, the main reason behind having to hold another Hearing on July 6, 2022, was to have a discussion on how best to close the file, taking into consideration, the Applicant's desire to reopen the Application without encountering any challenges, in case they wanted to re-open the Application.

At the Hearing held on July 6, 2022, the City of Toronto (the "Appellant"), was represented by Mr. Mahoney, while the Applicants were represented by Messrs. Juma, and Atout.

At the beginning of the Hearing, I pointed out that a review of the withdrawal decisions by the TLAB demonstrated that:

- Irrespective of whether the Applicant was the Appellant, or not, from the TLAB's perspective, it was important that the Appellant withdraw their Appeal, which would then be acknowledged by the TLAB, in the form of a "Withdrawal Decision".
- When the Appellant was not the Applicant, and the latter expressed a desire to not proceed with the Application, it was still necessary for the Appellant to consent to withdrawing their Appeal, resulting in the TLAB's issuing a Decision, which recognized that the Appeal had been withdrawn, and "considered abandoned". The use of the word "abandoned" certainly restricted, if not precluded the Applicant's ability to reinstate the Application.

Mr. Mahoney drew my attention to a few decisions issued by the LPAT (Local Planning Appeal Tribunal), and the TLAB, where the Decision recognized that the Applicants' decision to withdraw the Application, when they were not the Appellants, and "allowed" the Appeal, which meant that the decision made by the COA was null and void. However, this Decision explicitly stated that there would be "no prejudice basis" to the Applicants' interests, allowing the Applicants to reinstate their Application, before the COA, when needed. Mr. Mahoney specifically discussed how the doctrine of *Res Judicata* would not prevent a re-hearing of this case, because the Appeal was being dismissed for administrative reasons, as opposed to a consideration of the planning merits; he emphasized that the doctrine of "*Res Judicata*" applied only in Appeals which had been dismissed on the basis of the lack of planning merits in the Application.

Mr. Juma stated the Applicants' preference for their application being "struck off the record", as opposed to allowing the Appeal, as per the preference of the City. They explained the challenges of explaining the "allowing of an Appeal", and the consequent negation of the COA decision, to a third party looking to buy the Property from them. They emphasized how a buyer, unfamiliar with the language of Decisions made by the TLAB, may conclude that the property was not developable on the basis of the Decision, and therefore not buy the property. Mr. Juma discussed the importance of ensuring that the decision state very clearly that the TLAB's allowing the Appeal, "had nothing to do with the planning merits of the Application".

I thanked the Parties for their attendance, and asked the City to send in the decisions cited earlier in the Hearing, and asked the Applicants to send in submissions by July 11, 2022, with suggestions regarding the language.

Mr. Mahoney submitted copies of Decisions made by the TLAB, and the LPAT, reflecting the City's preference for admitting the Appeal, and the consequent negation of the COA decision, without prejudice to the future development of the Site. Mr. Juma sent in a submission, with suggestions about how the Appeal could be ruled upon.

ANALYSIS, FINDINGS, REASONS

After reviewing the Decisions cited by the City, it is evident that if the Appeal were allowed, then the decision made by the COA would have to be set aside- from the perspective of a legally "neat" solution, this solution is ideal, because it allows the TLAB to close the file, with no loose ends.

There are two questions arising from this solution, seen from the perspective of the Applicants:

- ***Are the Applicants' ability, and rights to develop the Site, circumscribed or compromised, in any fashion?***

The answer to both the concerns about circumscription, or compromise of rights to developing the Site, is an unequivocal "no", because the Decision and Order, clearly includes the expression "Without prejudice to the interests of the Applicants for the future development of the Site". This means that this Decision does not interfere, or impact any future applications to develop this Site, including applications which request relief from the Zoning By-law, in the form of an application to the COA. It is important to reiterate that the doctrine of *Res Judicata* does not apply to any efforts to develop the Site on a go forward basis, because the Appeal that resulted in this Proceeding before the TLAB was allowed on administrative grounds, as opposed to planning merits.

- ***How will the Decision to allow the Appeal be interpreted by any future buyer, or community member, who is not familiar with how Appeals are processed by Tribunals?***

While I am sympathetic to the Applicants' concern about how "Allowing the Appeal" could be interpreted by a future buyer, or even community members, who are not familiar with legal terminology, or how Appeals are processed, I find that the issue with this question is not related to the process of Decision making, but one of comprehension and optics.

The answer to the previous question should make it crystal clear that there are no impediments to future development of this Site. The Applicants may encourage any reader who has doubts about the implication of the expressions "*no prejudice to future*

development of the Site", to this Section in the Decision to resolve their doubts, and emerge reassured that they can apply to the COA for the approval of variances to develop this Site.

Interestingly, I find the submission made by the Applicants on July 11, 2002, are consistent with the idea of allowing the Appeal, followed by the inclusion of the phrase "without prejudice", to ensure that they, (or a different owner) can develop the Site down the road, when necessary. The Applicants' agreement with the language suggested by the Appellants, is, to borrow from Shakespeare, a case "All's well that ends well".

The Applicants also requested me to ensure that all materials submitted to the TLAB by the Parties with respect to this Appeal, be removed from the TLAB Website. Given that there was no objection to this request from the City, I have included a paragraph in the Order below ordering the TLAB Staff to remove all materials, pertinent to this Appeal, from the TLAB Website.

DECISION AND ORDER.

1. The Appeal respecting 1882 Lawrence Ave E., is allowed, and the decision made by the COA on May 12, 2021 is set aside. The Appeal has been allowed for administrative reasons, without any reference whatsoever to the planning merits of the Application, which means the doctrine of *Res Judicata* cannot be applied to prevent development of this Site in the future.
2. This Decision and Order is without prejudice to a subsequent application to the Committee of Adjustment on the Subject Property
3. TLAB staff are directed to remove all materials submitted to the TLAB by the Applicant and Appellant, with respect to the Appeal at 1882 Lawrence Ave E. from the TLAB's website

So orders the Toronto Local Appeal Body

X 

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body