

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: August 14, 2020

CASE NO(S).: PL171452

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	445 Adelaide Street West Inc.
Subject:	Application to amend Zoning By-law No. 438-86 - Refusal or neglect of the City of Toronto to make a decision
Existing Zoning:	RA - (Re-Investment Area)
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit an 11-storey non-residential building
Property Address/Description:	445, 447, 449 & 451 Adelaide Street West
Municipality:	City of Toronto
Municipality File No.:	16 207248 STE 27 OZ
OMB Case No.:	PL171452
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OMB Case Name:	445 Adelaide Street West Inc. v. Toronto (City)

PROCEEDING COMMENCED UNDER subsection 12(1) of the *Local Planning Appeal Tribunal Act*, 2017, S.O. 2017, c. 23, Sched. 1, and Rule 17.05 of the Tribunal’s Rules of Practice and Procedure

Request by:	City of Toronto
Request for:	Adjournment of a hearing event

Heard: January 16, 2020 by Telephone Conference Call

APPEARANCES:

Parties

City of Toronto

Counsel/Representative*

Joanna Wice, Daniel Elmadany

445 Adelaide Street West Inc.	Kim Kovar, Maggie Bassani
TSCC 1984	Dieter Riedel*
Joseph and Sawa Musa	Amber Stewart
Garment District Neighbourhood Association	Anne Marie Strapp*, Valerie Eggerston*
N. Alfred Apps	David Tang

**MEMORANDUM OF ORAL DECISION DELIVERED BY SHARYN VINCENT ON
JANUARY 16, 2020 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] The City of Toronto brought a Motion seeking an Adjournment of a multiple week hearing scheduled to commence on February 18, 2020. The request was heard on January 16, 2020, the day before the scheduled exchange of witness statements, and an oral decision was given at that time which dismissed the request, complete with the supporting rationale and findings of the Tribunal given, and as more particularly set out in this written Decision. The only Respondent to the motion was 445 Adelaide Street West Inc.

BACKGROUND

[2] The hearing before the Tribunal on the merit of the proposed redevelopment of the property subject of appeal, brought against Council's failure to make a decision, is scheduled to commence on February 18, 2020. The application to amend the zoning by-law was filed in August of 2017, and includes the properties known municipally as 445, 447, 449 and 451 Adelaide Street West, which are currently developed with a two-and-a-half storey detached dwelling adapted to commercial use at 445, and 447, 449, and 451 Adelaide Street West, which comprise the easterly 3 of 4, two-storey rowhouse units, occupied by four commercial tenants and three residential tenants.

[3] None of the properties were listed or designated at the time of the application and as the development concept was premised on the removal of the structures on the four assembled properties, the application was supported by a Heritage Impact Assessment (“HIA”) prepared by ERA Architects Inc. that concluded that the properties did not merit individual designation under Part IV of the *Ontario Heritage Act* (“OHA”).

[4] The HIA responded to the By-law passed in December 2016 by the City, which placed a one-year prohibition on the demolition of buildings or structures on properties identified in the By-law as having potential to be contributing properties within a future Heritage Conservation District (“HCD”), and within the year, the City enacted a By-law creating the King-Spadina HCD, which encompassed the subject property, and with attracted multiple appeals, including that by 445 Adelaide Street West Inc.

[5] Pursuant to the HCD Plan, the City listed a total of 94 properties within the plan area, including the subject lands, on the Heritage Register, thereby further restricting demolition.

[6] The appeal before the Tribunal was subject of three Prehearing conferences commencing in October of 2018. At the second prehearing, having received the requisite draft procedural order, the Tribunal scheduled a four-week hearing, set to commence February 18, 2020.

[7] The Procedural Order was finalized and issued, on consent, incorporating two standard provisions prescribing a deadline by which any revised plans or drawings related to any revisions to the proposal to be sought at the hearing are to be provided to all Parties, and that failure to meet the deadline may be grounds to request an adjournment; and secondly, the provision that no adjournment delays will be granted before or during the hearing, except for serious hardship or illness. The Tribunal’s *Rules of Practice and Procedure*, Rule 17, applies to such requests.

[8] The Responding Motion Record elaborates that the final Procedural Order incorporates an Issues List comprised of 53 issues to be addressed, 20 of which specifically relate to questions of heritage planning and conservation.

[9] Directly on point, through Issue 19, a two-step process is contemplated by having the *Planning Act* appeal dealt with first, and the OHA matters being dealt with after the Tribunal renders its decision on the Appeal.

[10] A revised proposal was filed in accord with the deadline, which continued to propose the demolition of all of the existing buildings on the subject property.

[11] Similarly, in accordance with the Procedural Order, on December 13, 2019, the Parties filed notice of the witnesses to be called: the City intending to call two heritage witnesses; one or two urban designers and one planner. 445 Adelaide Street West Inc. indicated intent to call one heritage witness, one planner and one transportation engineer. Five other non-expert witnesses were to be called by the other Parties.

[12] Later in December, on the 17 and 24 respectively, Council resolved to state its intention to designate properties at 445, 447, 449, 451 and 453 Adelaide Street West (453 not being part of the subject property) under Part IV, Section 29 of the OHA, and published Notice of Intention to Designate.

[13] 445 Adelaide Street West Inc., did not, and confirmed through Counsel during submissions, that it did not intend to file an objection with the Conservation Review Board.

THE ISSUE

[14] Despite the process contemplated by the Procedural Order, and the specific direction from Council to Legal Counsel in April of 2018, to request that the Tribunal withhold the issuance of its Order in the event the appeal is allowed in whole or part until a Heritage Easement Agreement and Conservation Plan are secured against the site, the

City now seeks to have the matter adjourned *sine die* to allow for the determination of a heritage demolition permit application(s) pursuant to s. 34 or 34.1 of the OHA, should the City proceed to designate the properties on the subject lands. This submission is premised on the assertion that such a determination is a condition precedent to the determination of the Planning Appeal matter, an assertion which 445 Adelaide Street West Inc. disputes.

[15] The City advances the Motion for Adjournment suggesting that if the hearing before the Tribunal were to precede the consideration by the Conservation Review Board, the proposal would 'leap frog' the required consideration under the OHA contrary to the scheme of the OHA. The City offers a potential timeline of approximately one-year's delay, into the winter of 2020/21, to allow the matter to come back before the Tribunal as being a reasonable resolution.

[16] Counsel for 445 Adelaide Street West Inc. responds that such an adjournment represents significant prejudice to the Applicant, arguing that "there are no changed circumstances to warrant consideration of an adjournment at this time" and that the City could have addressed the issue any time since November of 2017 when the appeal was filed, rather than waiting until December of 2019 via email, particularly as a sequencing process had been contemplated and incorporated into the final Procedural Order issued in November of 2018.

FINDINGS AND ANALYSIS

[17] The Tribunal heard from both Counsel and had reviewed all of the materials filed in support and responding to the Motion, and having done so, dismissed the Motion.

[18] The Tribunal is not persuaded, as was the City's contention, that the public interest would be better served if the approvals pursuant to the respective Acts were sequenced such that the considerations under the OHA were first determined, or that Council's ultimate discretion would be somehow fettered if the appeal under the *Planning Act* were

to proceed. Council had clearly directed Legal Counsel and staff with respect to appearing before the Tribunal to oppose the proposal in 2018.

[19] There are interests held by the other three Parties as reflected in the 33 issues beyond the heritage issues, which are properly before the Tribunal, and of no concern to the Conservation Review Board.

[20] The eleventh-hour Notice of Intention to Designate could be construed as being launched to frustrate the appeal rights of 445 Adelaide Street West Inc., particularly in light of the fact that the properties of potential heritage interest are protected from demolition or alteration and are certainly protected while the scheduled matter is heard and decided.

[21] The prejudice of delay to 445 Adelaide Street West Inc. is, however, considerable and does not arise out of any emergency or hardship contemplated by the Tribunal's *Rules of Practice and Procedure*.

[22] The Motion to Adjourn is therefore dismissed.

[23] So orders the Tribunal.

“Sharyn Vincent”

SHARYN VINCENT
ASSOCIATE CHAIR

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Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

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