

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



ISSUE DATE: October 10, 2018

CASE NO(S): PL180082

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(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Jeff Hodgart
Appellant:	Alexis Leino
Appellant:	Desirée Narciso
Appellant:	Westhaver Boutique Residences Inc.
Subject:	By-law No. BL 1452-2017
Municipality:	City of Toronto
OMB Case No.:	PL180082
OMB File No.:	PL180082
OMB Case Name:	Hodgart et al. v. Toronto (City)

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Jeff Hodgart
Appellant:	Alexis Leino
Appellant:	Desirée Narciso
Appellant:	Westhaver Boutique Residences Inc.
Subject:	By-law No. BL 1453-2017
Municipality:	City of Toronto
OMB Case No.:	PL180082
OMB File No.:	PL180083

Heard: August 30, 2018 in Toronto, Ontario

APPEARANCES:**Parties****Counsel**

City of Toronto

Thomas Wall

Westhaver Boutique Residences Inc.

Jason Cherniak

Desirée Narciso

Leo Longo

Alexis Leino

Sarah Corman

DECISION DELIVERED BY S. TOUSAW AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] The City of Toronto (“City”) passed Zoning By-law Amendments (“ZBA”) to regulate the short term rental of residential premises across the City. The ZBA received three appeals to the Local Planning Appeal Tribunal (“Tribunal”) and this hearing was convened to hear the merits of the appeals.

[2] Prior to the hearing, Counsel for Westhaver Boutique Residences Inc. (“Westhaver”) filed motions requesting an adjournment of the hearing and requesting that six additional parties be added to the hearing. The motions are addressed under separate headings below.

[3] At the hearing, the Tribunal granted Participant status to the following persons: Francis Spark, Shimon Gewing, Eileen Denny as President of the Teddington Park Residents Association Inc., George Mazomenos, Weiwei Gao and Wayne Murdock.

ADJOURNMENT

[4] On its adjournment request, Westhaver argues that it had difficulty arranging legal and planning assistance to prepare fully for the hearing, and that two days are

insufficient to complete the hearing given that all three appellants intend to call witnesses, and that part of the first day is taken up by the hearing of these motions.

[5] The City has no objection to the request for an adjournment based on Westhaver's second ground, being that two days are not sufficient to complete these proceedings. Similarly, the other two appellants, Desirée Narciso and Alexis Leino, consent to an adjournment.

[6] The Tribunal considers Westhaver's difficulty in arranging legal and planning advice to not constitute an emergency as contemplated by Rule 17.04 of the Tribunal's *Rules of Practice and Procedure*. However, with consent of the Parties, the Tribunal agrees that a longer hearing will be required, whether or not new parties are added to the proceedings by way of the second motion.

[7] The Tribunal issued an oral decision at the hearing allowing the adjournment. New dates were established for a five day hearing as set out in the Order below. The Parties agreed to various procedural matters and the City agreed to provide a Procedural Order ("PO"), including an Issues List ("IL"), within four weeks, which is now attached to this Decision.

[8] The Parties also agreed to participate in a Telephone Conference Call ("TCC") on a date to be set by the Tribunal to finalize any procedural matters and to confirm the PO and IL. This Member will remain seized of the file for the TCC.

ADDITIONAL PARTIES

[9] Party status is requested by six companies that are in the business of renting out residential properties on a short term basis: Whitehall Suites Inc., Red Maple Suites Inc., Royal Stays Inc., Livingsuites Toronto Inc., IHM Limited, and Premium Suites Inc. (collectively, the "Companies").

[10] The Companies argue that they are eligible appellants under s. 34(24.2)1 of the *Planning Act* (“Act”) because, although they did not make submissions directly at a public meeting or file written submissions directly to the Council, they did so indirectly through an organization called Home-Sharing Service Providers (“HSSP”). Each of the Companies is a member of HSSP except for Premium Suites Inc. HSSP made oral submissions at a public meeting on the ZBA on behalf of its members.

[11] If the above ground is found insufficient, the Companies argue that there are reasonable grounds to add them as Parties under s. 34(24.2)2 of the Act. With reference to *1137528 Ontario Ltd. v. Oakville (Town)* [2010] O.M.B.D. No. 770, the Companies argue that all six “obvious factors” for considering Party status are satisfied.

[12] The factors established by former Vice-Chair S.J. Stefanko in the above referenced Decision are paraphrased as follows: whether a similar appeal to the same instrument has already been filed; whether the public interest will be advanced; whether prejudice would be suffered by another party; whether the person has a direct interest in the matter; whether a multiplicity of proceedings can be avoided; and whether the historical background to the issue supports the request.

[13] In step with these factors, the Companies argue that:

- their issues are the same as Westhaver’s issues, and the Companies will shelter under the Westhaver appeal;
- the public interest is served by ensuring that the city-wide ZBA is tested against the Companies’ 90 rented units, collectively, in comparison to fewer than 10 units operated by the existing three Parties;
- there is no prejudice to the City, especially now that the hearing is one year away, and the other Parties take no position on the motion;
- the Companies have a direct interest in the ZBA, which, in its current form would make their existing rental units non-conforming and would prevent similar new rental units in the market;

- a multiplicity of hearings can be avoided by adding these Parties and thereby avoiding potential parallel proceedings to the Superior Court of Justice; and
- the background to the motion is that the Companies expected HSSP to represent their interests fully, including lodging an appeal to the ZBA, which HSSP failed to do without disclosing same to its member Companies.

[14] The City opposes the motion on the basis that the parties did not make oral or written submissions, and argues that the Companies' connection with HSSP is not independently verified. The City confirms that it gave statutory notice of the ZBA and contends that HSSP provided no reasons for why it failed to lodge an appeal. The City has no objection to the Companies being granted Participant status, which, in its view, allows the same information to be presented to the Tribunal. The City's responding motion materials and oral argument did not address the six factors outlined by the Companies.

[15] The Tribunal will not rely on s. 34(24.2)1 of the Act in its consideration of party status. The evidence is incomplete on the relationship of the Companies with HSSP and the direction given to HSSP by the Companies. At least one of the Companies requesting party status was not a member of HSSP. Thus, the Tribunal cannot conclude that the Companies "made oral submissions at a public meeting" as argued by the Companies.

[16] However, pursuant to s. 34(24.2)2 of the Act, the Tribunal is of the opinion that there are reasonable grounds to add the Companies as Parties in these proceedings. The Tribunal agrees with the Companies that the often cited "obvious factors" are met in these circumstances. The Companies have the same issues as Westhaver, this city-wide ZBA is an important matter of current public policy, no prejudice is found, the Companies' direct interest in the matter is clear, parallel hearings can be avoided, and the background to the request is sufficient to establish the Companies' genuine intent to be involved in this planning issue, even though the role of HSSP is murky and the Companies' follow-up at the time of the appeal period was flawed.

[17] The Tribunal will grant Party status to each of the Companies, which shall be sheltered under the Westhaver appeal, and their evidence coordinated with the evidence of Westhaver.

ORDER

[18] The Tribunal orders that Participant status is granted to Francis Spark, Shimon Gewing, Eileen Denny as President of the Teddington Park Residents Association Inc., George Mazomenos, Weiwei Gao and Wayne Murdock.

[19] The Tribunal orders that the Westhaver motion for adjournment is granted and the hearing will commence at **10 a.m. on Monday, August 26, 2019** for five days at:

**Local Planning Appeal Tribunal
16th Floor, 655 Bay St.
Toronto, Ontario**

[20] The Tribunal orders that the Companies' motion to add Parties is granted and Party status is granted to Whitehall Suites Inc., Red Maple Suites, Inc., Royal Stays Inc., Livingsuites Toronto Inc., IHM Limited, and Premium Suites Inc., all subject to being sheltered under the appeal of Westhaver Boutique Residences Inc.

[21] A Pre-Hearing Conference ("PHC") will be held by TCC and will commence at **9 a.m. on June 4, 2019** Individual(s) are directed to call **416-212-8012** or Toll Free **1-866-633-0848** on the assigned date at the correct time. When prompted, enter the code **4779874#** to be connected to the call. If assistance is required at any time, press '0' for the operator. It is the responsibility of the person(s) participating in the call to ensure that they are properly connected to the call and at the correct time. Questions prior to the call may be directed to Graham Frank, the Tribunal's Case Coordinator, at 416-326-3047.

[22] No further notice will be given.

[23] This Tribunal Member will remain seized for the PHC, but not for the hearing.

"S. Tousaw"

S. TOUSAW
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Environment and Land Tribunals Ontario

Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248



Local Planning Appeal Tribunal
Procedural Order

ISSUE DATE: October 10, 2018

CASE NO(S). PL180082
PL180083

PROCEEDING COMMENDED UNDER s. 34(19) of the Planning Act

Applicant(s)/Appellant(s):	Alexis Leino, Desiree Narciso, Westhaver Boutique Residences Inc.
Subject	
Property Address/Description	By-law 569-2013 as amended, By-law 1452 and 1453-2017
Municipality:	Toronto
Municipal File No.:	
LPAT Case No.:	PL180082
LPAT File No.:	PL180083
LPAT Case Name:	<i>Hodgart et al v. Toronto (City)</i>

1. The Tribunal may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

Organization of the Hearing

2. The hearing will begin on August 26, 2019, at 10:00 a.m. at 655 Bay Street, in the City of Toronto.

3. The length of the hearing will be about 5 days.

4. The parties and participants identified at the prehearing conference are:

Parties: Alexis Leino, Desiree Narciso, and Wethaver Boutique Residence Inc.

Participants: Francis Spark, Shimon Gewing, Eileen Denny, George Mazomanos,
Weiwei Gao and Wayne Murdock

5. The Issues are to be finalized by April 26, 2019

The draft issues to be addressed at the hearing are set out in Attachment 1.

There will be no changes to this list unless the Tribunal permits, and a party who asks for changes may have costs awarded against it.

6. Any person intending to participate in the hearing should provide a telephone number to the Tribunal as soon as possible (*preferably before the prehearing conference.*) Any such

person who will be retaining a representative should advise the other parties and the Tribunal of the representative's name, address and phone number as soon as possible.

Requirements Before the Hearing

- 7.** Expert witnesses in the same field shall have a meeting before the hearing to try to resolve or reduce the issues for the hearing. The experts must prepare a list of agreed facts and the remaining issues to be addressed at the hearing, and provide this list to all of the parties and the municipal Clerk.
- 8.** A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal, the other parties and to the Clerk a list of the witnesses and the order in which they will be called. This list must be delivered on or before May 27, 2019
- 9.** An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section [11]. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Tribunal may refuse to hear the expert's testimony.
- 10.** Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence, as in section [11].
- 11.** On or before June 27, 2019, the parties shall provide copies of their [witness and] expert witness statements to the other parties and to the Clerk of the City of Toronto.
- 12.** On or before August 16, 2019, the parties shall provide copies of their visual evidence to all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
- 13.** Parties may provide to all other parties and file with the Clerk a written response to any written evidence on or before July 26, 2019.
- 14.** A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal.
(see Rule 10 of the Tribunal's Rules with respect to Motions, which requires that the moving party provide copies of the motion to all other parties 15 days before the Tribunal hears the motion.)
- 15.** A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Tribunal at least 7 days before the hearing that the written evidence is not part of their record.
- 16.** Documents may be delivered by personal delivery, email, facsimile or registered or certified mail, or otherwise as the Tribunal may direct. The delivery of documents by fax shall be governed by the Tribunal's Rules (Rule 7) on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
- 17.** No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rule 17 applies to such requests.

This Member is [not] seized.

So orders the Tribunal.

BEFORE:

Name of Member

)
)
)

Date:

TRIBUNAL REGISTRAR

ATTACHMENT TO SAMPLE PROCEDURAL ORDER

Purpose of the Procedural Order and Meaning of Terms

The Tribunal recommends that the parties **meet to discuss this sample Order before the prehearing conference** to try to identify the issues and the process that they want the Tribunal to order following the conference. The Tribunal will hear the parties' comments about the contents of the Order at the conference.

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not represented by a lawyer, you should prepare by obtaining the Guide to the Local Planning Appeal Tribunal, and the Tribunal's Rules, from the Tribunal Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-327-6800, or from the Tribunal website at _____.

Meaning of terms used in the Procedural Order:

Party is an individual or corporation permitted by the Tribunal to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an **unincorporated group** wishes to become a party, it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorisation from the party.

NOTE that a person who wishes to become a party before or at the hearing, and who did not request this at the prehearing conference, must ask the Tribunal to permit this.

Participant is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Tribunal on all or some of the issues in the hearing. Such persons may also be identified at the start of the hearing. The Tribunal will set the time for hearing this statement. **NOTE** that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can. If a participant does not attend the hearing and only files a written statement, the Tribunal will not give it the same attention or weight as submissions made orally. The reason is that parties cannot ask further questions of a person if they merely file material and do not attend.

Written and Visual Evidence: **Written evidence** includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material. **Visual evidence** includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing.

Witness Statements: A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing. An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness'

opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing. A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the participant will address and a short outline of the evidence on those issues; and a list of reports, if any, which the participant will refer to at the hearing.

Additional Information

Summons: A party must ask a Tribunal Member or the senior staff of the Tribunal to issue a summons. This request must be made before the time that the list of witnesses is provided to the Tribunal and the parties. (See Rule 13 on the summons procedure.) If the Tribunal requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Tribunal is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.

The order of examination of witnesses: is usually direct examination, cross-examination and re-examination in the following way:

direct examination by the party presenting the witness;

direct examination by any party of similar interest, in the manner determined by the Tribunal;

cross-examination by parties of opposite interest;

re-examination by the party presenting the witness; or

another order of examination mutually agreed among the parties or directed by the Tribunal.

Attachment 1

DRAFT ISSUES LIST

City of Toronto Issues

1. Are short-term rentals, as regulated by by-laws 1452-2017 and 1453-2017, an appropriate land use in residential zones and the residential component of mixed use zones?
2. Is the requirement for short-term rentals to be the principal residence of the short-term rental operator, in by-laws 1452-2017 and 1453-207 appropriate?
3. Is the principal residence requirement for short-term rentals in dwelling units, as well as secondary suites, appropriate?
4. Do the by-laws conform with the City's Official Plan?
5. Do the by-laws meet the test for 'good planning'?
6. Do the by-laws have regard for matters of provincial interest?
7. Are they consistent with the Provincial Policy Statement, 2017?
8. Do they conform with the Growth Plan, 2017?

Issues List of the Appellants Leino and Westhaver Boutiques et al.

1. Are By-laws 1452-2017 and 1453-2017 (the "Short-Term Rental By-laws") consistent with the purposes of the *Planning and Conservation Land Statute Law Amendment Act, 2006*, s.15(10) ("*Planning Act*") as set out in Section 1.1 of the *Planning Act*?
2. Do the Short-Term Rental By-laws have appropriate regard for the matters of provincial interest as set out in Section 2 of the *Planning Act*, including (l) and (p)?
3. Are the Short-Term Rental By-laws consistent with the Provincial Policy Statement, 2014 pursuant to Section 3 of the *Planning Act*, including sections 1.3.1(a) and (b), 1.7.1 (a), (g)?
4. Are the Short-Term Rental By-laws consistent with the policies of the City of Toronto Official Plan, including sections 3.5.1-1(h), (i),(j),?
5. Do the Short-Term Rental By-laws as drafted represent good planning?

6. What are the likely economic impacts of the Short-Term Rental By-laws as drafted?
7. What is the likely impact of the Short-Term Rental By-laws on the availability of the range of short and long-term housing options required in the City of Toronto?
8. Is there a legitimate planning rationale for the requirement that the rental operator be the principal resident of the unit being rented?
9. Is there a legitimate planning rationale for the ban on operating a short-term rental in the secondary suite of a landowner's principal residence?
10. Are the existing short-term rentals operated prior to the passing of the Short-Term Rental By-laws in the City of Toronto an appropriate land use within their existing neighbourhood context and under applicable land use policies and regulations related to use and building type?
11. Were short-term rentals either defined and/or regulated under the City's zoning by-laws prior to the enactment of the Short-Term Rental By-laws?
12. Prior to the enactment of the Short-Term Rental By-laws, was the "living accommodation" which was permitted in the zoning by-law definition of "dwelling unit" of ZBL 569-2013 (and its predecessor by-law) in any way qualified or require a minimum period of time or length of stay?
13. Does the City of Toronto have sufficient hotel-room supply to support long-range travel and visitation forecasts for the Toronto-area market?
14. Do the short and longer-term rentals of the residential units owned or managed by the appellants, for which they are not the principal residents of the units being rented, compete with standard hotel/motel units or tourist homes?
15. Should the use of the subject units being rented, including single detached homes (with one or more separate units, individually or combined within the dwelling being rented) and semi-detached dwellings with one or more rental units and apartments (condos) within multi-unit buildings including high-rise apartments, be considered as residential land use, as provided for in the City of Toronto Official Plan?
16. Do the nature of the personal stays at the subject units being rented for short and longer-term rentals differ from those provided by standard hotel/motel units or tourist homes?
17. Are the short and longer-term rental units owned or managed by the

appellants located in Permitted Building Types and Permitted Uses in Residential Zones in the City of Toronto Zoning By-laws?

18. Is there a proper planning basis for the imposition of a 28 consecutive day minimum for a rental period under the proposed By-law?
19. Will the nature of the short-term and longer-term rental units owned or managed by the appellants, who are not the primary residents of the units, have measurable impact on housing availability or affordability in the City of Toronto?
20. Do the short-term and longer-term rental units, owned or managed by the appellants, who are not the primary residents of the units, support the Official Plan objectives of providing a full range of housing that makes efficient use of and replenishes existing housing stock by providing for short-term rental accommodation within residential neighbourhoods for users with specific needs that are not provided by other forms of rental accommodation, including hotels, motels and guest homes or tourist homes?
21. Does the nature of the short-term and longer-term rental units, owned or managed by the appellants, who are not the primary residents of the units, maintain a high-quality product in desirable residential neighbourhoods that clearly provides for reinvestment, maintaining and replenishing housing stock in those neighbourhoods?
22. Will the short-term and longer-term rental units, owned or managed by the appellants, who are not the primary residents of the units, destabilize or change the established character of a neighbourhood in which they are located as a result of the operator not being the primary resident of the unit?
23. Will an owner's absence as a resident of a unit have an impact on the maintenance of the unit to sufficient standards within the neighbourhood?
24. Will the short-term and longer-term rental of units, owned or managed by the appellants, who are not the primary residents of the units, have a negative impact on community character, or create nuisance or safety issues within the community where they are located?
25. Will the number of short-term and longer-term rental units, owned or managed by the appellants, who are not the primary residents of the units, have a measurable impact on keeping long-term housing units available and affordable within the City?
26. Is a business operation that provides for short and longer-term rentals within dwelling units in residential neighbourhoods, for users that require regular residential home accommodations, including kitchens, washing facilities,

multiple bedrooms, washrooms and common areas and outdoor or other related amenity space for the use of families a legitimate land use?

27. Do the Short-Term Rental By-laws as drafted fall outside the scope of the jurisdiction of the City of Toronto as provided by the *Planning Act* to regulate land use?
28. Do such uses provide for necessary diversity to meet the needs of the modern travelling public, people who are temporarily without long-term residence, business people that require longer stays for business and personal reasons that are not being met by other forms of short or longer-term rental accommodation?
29. Is it necessary to limit the tenure of the subject rental units to a principal owner resident since there is no difference in the land use being carried out and this restriction would eliminate multiple unit owners carrying on a legitimate businesses?
30. Do the Short-Term Rental By-laws prejudice those who are living in precarious or non-conventional circumstances and who cannot commit to long-term residential leases?
31. Is the short and longer-term rental unit operated from time-to-time out of the secondary suite of the appellant Alexis Leino's primary residence at 295 Mortimer Avenue a permitted land use under applicable land use laws and regulations?
32. In the event the Board allows the appeal in whole or in part, what are the appropriate amendments to the Short-Term Rental By-laws?

Issues List of Appellant Desiree Narciso

1. Were STRs either defined and/or regulated under the city's zoning by-laws prior to the enactment of BL 1452-2017 & BL 1453-2017?
2. Prior to the enactment of BL 1452-2017 & BL 1453-2017, was the "living accommodation" which was permitted in the zoning by-law definition of "dwelling unit" of ZBL 569-2013 (and its predecessor by-law) in any way qualified or require a minimum period of time or length of stay?
3. Prior to the enactment of BL 1452-2017 & BL 1453-2017, and to date, has the rental of the existing dwelling units at 107 Gladstone Avenue for short periods of time caused any negative land use impacts on abutting or adjacent properties?