

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



ISSUE DATE: February 28, 2020

CASE NO(S): PL180937

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:	Bart and Lacey Gajda
Subject:	By-law No. BL 112/2018
Municipality:	City of Thunder Bay
OMB Case No.:	PL180937
OMB File No.:	PL180937
OMB Case Name:	Gajda v. Thunder Bay (City)

Heard: February 18, 2020 in Thunder Bay, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Bev and John McCrae

R. Larson*

Bart and Lacey Gajda

Self-represented

City of Thunder Bay

M. Grimaldi*
J. Khoury-Hanna (student-at-law)

**MEMORANDUM OF ORAL DECISION DELIVERED BY C.J. BRYSON ON
FEBRUARY 18, 2020 AND ORDER OF THE TRIBUNAL**

BACKGROUND

[1] The City of Thunder Bay (“City”) passed Zoning By-law amendment No. 112-2018 (“ZBA”) to authorize the development of several types of dwelling structures on an irregular lot at 1457 John Street Road by Bev and John McRae (“Applicants”).

[2] Bart and Lacey Gajda (“Appellants”), as adjacent property owners, appealed the ZBA pursuant to the Bill 139 *Planning Act*, R.S.O. 1990, c. P. 13 (“*Planning Act*”). The Appeal was governed by the Bill 139 *Local Planning Appeal Tribunal Act*, S.O. 2017, c. 23 (“LPATA”) hearing process scheme. At that time, the Appellants were represented by the Local Planning Appeal Support Centre (“LPASC”) and filed an expert planning opinion affidavit from Matt Alexander of LPASC as part of their Appeal Record. The City filed a contrasting expert planning opinion affidavit of Grant Mason in its Responding Appeal Record. The Appeal Record and Responding Appeal Record were filed in the proceedings as Exhibits 2 and 4, respectively, at the first Case Management Conference held on May 30, 2019.

[3] On September 3, 2019, the *Bill 108, More Choices, More Homes Act*, S.O. 2019, c. 9 came into force, amending both the *Planning Act* and LPATA. The amendments to the *Planning Act* allowed the Appellants to file a new notice of appeal with expanded grounds of appeal. The Appellants took advantage of this opportunity to file a new notice of appeal on October 3, 2019. The hearing of the appeal was then scheduled for hearing by order of the Tribunal issued on November 20, 2019, allowing the matter to proceed to a traditional oral hearing under the Bill 108 LPATA hearing process scheme on February 18 and 19, 2020 in Thunder Bay, Ontario. The parties were now permitted to call and cross-examine witnesses at the hearing on the merits and to make oral submissions for consideration by the Tribunal in addition to its consideration of the written materials and submissions filed on record under the 139 LPATA and *Planning Act* schemes.

[4] In January 2020, the Appellants requested a summons from the Tribunal to have Mr. Alexander attend the hearing by phone in regard to his filed affidavit and as their sole expert planning witness. The request was denied. They re-submitted the request immediately upon receiving notice of the denial, but it was again denied. At this hearing event, Mr. Gajda informed the Tribunal that Mr. Alexander was willing to attend the hearing voluntarily but only by telephone for he resides in Toronto, Ontario and the LPASC is no longer active. The Tribunal advised Mr. Gajda that he did not require a summons for voluntary attendance of a witness but only leave of the Tribunal and arrangements to be made for Mr. Alexander's attendance by telephone.

[5] At this stage of the hearing event, the City brought forward a motion without notice, seeking to dismiss the appeal for lack of planning evidence. The motion was denied for lack of notice and that expert planning opinion evidence is not required for an appeal to progress to a hearing on the merits (*Wilson v. Pickering (City)* [2010] O.M.B.D. No. 793, *North End Neighbours v. Hamilton (City)*, 2017 CanLII 19974 (ON LPAT)). More importantly, the Appellants do have expert planning opinion evidence on record in these proceedings. The issue is that Mr. Alexander is not present to give oral testimony in that regard or to be subject to cross-examination by the other parties and any questions of the Tribunal.

[6] The City then agreed that since the affidavit of Mr. Alexander is on record for the proceedings that he should be available for cross-examination and it had no objection to his voluntary attendance by telephone in the circumstances. The Applicants took no position on the motion and did not object to the voluntary attendance of Mr. Alexander by telephone. They only expressed a desire for a timely hearing.

[7] Given the Local Planning Appeal Tribunal *Rules of Practice and Procedure* allow for electronic hearings, in whole or in part, the evidence of Mr. Alexander is the only expert planning opinion evidence for the Appellants, that that evidence stands in direct contrast to that of Mr. Mason for the City, upon which both the City and the Applicants rely, and that his attendance by telephone would be upon the consent of the parties, the

Tribunal adjourned the hearing to allow for Mr. Alexander's oral testimony, to the extent of his opinions in his affidavit as found in Exhibit 2, cross-examination thereon and any questions the Tribunal may have of him in this regard.

[8] The parties were directed to consult on the earliest available dates for reconvening of the hearing, including arrangements for telephone access for Mr. Alexander to testify on the first day of the reconvened hearing, and then to arrange for scheduling of the new hearing dates through the case coordinator. There is no need for a new Procedural Order for the reconvened hearing as all requirements therein were met in anticipation of this hearing event.

ORDER

[9] The directions in this Decision are so ordered.

[10] The hearing is adjourned.

[11] This Member is not seized.

[12] There will be no further notice.

"C.J. Bryson"

C.J. BRYSON
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

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