

DECISION AND ORDER

Decision Issue Date Tuesday, October 09, 2018

PROCEEDING COMMENCED UNDER section 53, subsection 53(19), section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): DANIEL MOLINARI

Applicant: FRANCO ROMANO

Property Address/Description: 11 SHAMROCK AVE

Committee of Adjustment Case File Number: 17 279573 WET 06 CO, 17 279586 WET 06 MV, 17 279588 WET 06 MV

TLAB Case File Number: 18 177058 S53 06 TLAB, 18 177060 S45 06 TLAB, 18 177061 S45 06TLAB

Hearing date: Tuesday, October 09, 2018

DECISION DELIVERED BY Ian James LORD

APPEARANCES

Name	Role	Representative
Franco Romano	Applicant	
Daniel Molinari	Appellant/Owner	Daniel Artenosi*
City of Toronto Amini*	Party	Aderinsola Abimbola*/Sara
Long Branch Neighbourhood Assoc.	Party	Judy Witmer Gibson
Lori Penney	Participant	
Eduardo Fazari	Participant	
Kerry Pohling Khoo-Fazari	Participant	

**Decision of Toronto Local Appeal Body Panel Member: I. LORD
TLAB Case File Number: 18 177058 S53 06 TLAB,
18 177060 S45 06 TLAB, 18 177061 S45 06 TLAB**

Christine Mercado	Participant	
Name	Role	Representative
Pawel Podkowa	Participant	
Andy Choles	Participant	
Tony Marchesano	Participant	
Robin Hutchins	Participant	

(* Indicates counsel of record).

INTRODUCTION

These matter arise by way of appeals by the Applicant from three decisions of the Etobicoke and York Panel of the City of Toronto (City) Committee of Adjustment (COA) refusing an application for severance and associated lot variances in respect of 11 Shamrock Avenue (subject property).

Materials filed in respect of the interests of the three parties of record are extensive. I indicated I had attended the site, reviewed the materials in part and that matters of significance to the individual witness needed to be called attention to in order to form part of the evidentiary record.

A preliminary matter was sought to be addressed as relayed by the Applicant, with the support of counsel for the City.

BACKGROUND

At or near the eve of the Hearing and in advance of a long weekend, the Applicant/Appellant filed Motion materials on Form 7. The Motion was supported by the affidavit of Gregory Smith sworn October 4, 2018. Advice as to the Motion had been notified, discussed and served on the Parties.

The Motion materials are clear, thorough and substantial; no formal response or reply was provided by the City which indicated support, in part. The Long Branch Neighbourhood Association (LBNA) responded by e-mail in opposition.

The Motion requested the following substantive relief:

1. Relief from late filing and abridgement of dates for a conversion of the hearing sitting to a pre-hearing conference;

2. An adjournment to a date affording three consecutive Hearing days;
3. An admission and allowance of evidence and to allow for responses to visual materials prepared by the Applicants planner, Mr. Franco Romano;
4. Procedural directions to Party's and Participants to fulfill filing obligations.

MATTERS IN ISSUE

The LBNA objected to the granting of relief for the late filing of the Motion (and requested pre-hearing conference) and to the adjournment. The City sought clarification on the right to respond to the late filing by Mr. Romano but otherwise supported an adjournment affording more substantial Hearing time given the number of Parties and registered Participants.

JURISDICTION

The Toronto Local Appeal Body (TLAB) has remedial jurisdiction to grant relief where circumstances warrant. Rule 2.10 acknowledges permission to make exceptions where warranted to grant exceptions considered appropriate to enable the effective and complete adjudication of matters in a 'just, expeditious and cost effective manner'. Rule 4 contains provisions permitting the extension of time limits, with conditions determined appropriate.

EVIDENCE

The request for an adjournment originated with the Applicant/Appellant upon expressed concerns for the completeness of disclosure, particularly by the LBNA and the ability to complete the Hearing in a timely fashion in a one day sitting. The City agreed that interrupted proceedings were a disservice to those involved in efficiency, a replicable record, the inconvenience to witnesses and counsel as well as to timely consideration of the evidence by the TLAB.

It is noteworthy that there was no objection to the declared Parties.

The Applicant supported an adjournment to achieve finality of filings and their attribution to the witnesses of, in particular, the LBNA which opposes the Applications, allowing that such disclosure should have a full 60 days before the rescheduled Hearing to complete. As well, the request for three days of Hearing time was to ensure an adequate allowance to complete the evidence.

The Applicant requested an order that the LBNA file a Witness Statement and identify the witnesses it intended to call and their intended use and reference to some 86 or more documents pre-filed.

Decision of Toronto Local Appeal Body Panel Member: I. LORD
TLAB Case File Number: 18 177058 S53 06 TLAB,
18 177060 S45 06 TLAB, 18 177061 S45 06 TLAB

The relief requested was premised on the need for the exposure of evidence but not to prevent the opportunity of those with an interest to express themselves. A responsible work plan was requested and an adjournment and order would permit that to be accomplished.

A direction to consolidate the disparate evidentiary submissions was requested.

No prejudice was asserted and it was argued an adjournment had benefits that outweigh personal inconvenience and would allow the proper consideration of the evidence.

The City through Ms. Amini, as stated, supported the Motion, the three days and the absence of prejudice, adding only two concerns:

a) a disagreement with the suggestion that a Party (other than the onus imposed on the Applicant to prove its case) was expected to 'lead a case', arguably through a professional witness, to identify a witness list and to identify by disclosure every document to be accessed. Rather, the City said such a Party could elect to call a case entirely through cross-examination and argument and that disclosure was adequate provided the documents are disclosed in advance;

b) a period be allowed to examine and respond, as appropriate, to the late filing of Mr. Romano; without which its admission was opposed in the absence of a adjournment.

In opposition to some of the requested relief Ms. Gibson recited the application of the Rules, notably 17.1 and 2.1 that the relief not be granted. Several Participants had attended the day's proceeding in the expectation it would continue at a sacrifice to personal time. Moreover, the Notice of Hearing had specified weeks of opportunity to file documentation and new material from Mr. Romano did not meet that direction.

She advised as the LBNA 'Representative' of an intention to call 5-7 Participants all of whom have complied with the TLAB Rules and have filed elections and Participants Statements. She said 4 were present and prepared to proceed in an efficient and cost effective manner consistent with TLAB's practice to expedite decision making. She stated all the documents intended had been publically disclosed and on time; nothing further was intended.

In reply, Mr. Artenosi contended that in order to know the case to be met, the Participants should have identified evidence in respect of their Participants Statements, the matters and exhibits relied upon and provided greater particularity.

He would accept a four hour limit on professional evidence advanced by the City, provided the right of reply remained unlimited.

To use the balance of the day, he offered to hear from Residents who could not attend on a rescheduled Hearing.

ANALYSIS, FINDINGS, REASONS

The TLAB sets in its Notice of Hearing an expectation that prescribed dates will be respected by engaged individuals and that Hearings will occur on the Hearing Date so set. Adjournments, while a fact of life, are discouraged in preference for the timely resolution of disputes, especially those that are requested at the 'eleventh hour' and are not on consent.

In the circumstances extant, the request is made by the Applicant with the support of the City. It is these parties, calling professional evidence through prepared counsel with the expenditure of considerable associated resources that are adversely affected by dual preparation time on adjourned Hearings. This is not to say that members of the public are not prejudiced by an adjournment. Prejudice does occur to them frequently through the loss of business opportunities, personal time, time off work and the inconvenience occasioned by attendances where the advancement of the matter is limited. As such, prejudice cuts both ways and is not to be discounted.

That said, the matters raised require a disposition, granted orally.

Matters for Disposition

1. Relief for Filing.
2. Adjournment requested.
3. Admission of Romano response document: permission for late filed visual evidence.

I deal with each of these in turn, together with two additional matters raised in the submissions:

1. Relief for late Filing of Motion and Pre-Hearing Conference (PHC) Conversion

There are two aspects to this request: first, the adjournment Motion; second, PHC relief.

I am satisfied that the Parties made a genuine attempt at discussion of an adjournment, that the subject was considered in advance of the sitting and that no prejudice accrued from its consideration.

Adjournment request, even those made during the 'cooling off' period, the month prior to a Hearing Date, do occur, often on consent. Relief for the late filing of the Motion, is appropriate to grant.

TLAB makes a practice of a deliberative consideration of such requests, and has done so here. In the end result, while some direction is given as to the continued advancement of the Hearing, no Order is necessary to address the relief requested to create or constitute a formal Pre-hearing Conference setting, in accordance with the Rules.

2. Adjournment Requested

There are several aspects weighing upon whether a late adjournment Motion should be granted in the face of near peremptory Hearing Date appointments and the growing demand for Hearing time:

- a) **Consent.** here, there is the consent of 2 of the Parties, a fact that is significant but not determinative;
- b) **Purpose.** the purposes requested include the better identification of references. In the fact situation of this case, I equate the delivery of the Participants Statements as equivalent to the required Witness Statement of a Party. The LBNA has undertaken to call only those who have filed Participant's Statement in accordance with the Rules. As such, I find this adequate disclosure. The fact that these statements may not fully document intended document references, while problematic, is not a matter that warrants sanction or further direction. In some circumstances it is understandable that the details of expression are not same for lay Participants. Where this is perceived as problematic, a Motion for directions is appropriate. The request here is made for greater clarification.

I find on the admission of the Parties that the disclosure in this case is essentially complete – the document of Mr. Romano is the exception.

Since document disclosure is complete, I find it appropriate to ask the Participants intending to testify to become organized to avoid repetition and to ensure their references are concise, within the realm of lay citizen opinions and any materials accessed are of reliable origin.

Counsel, of course, remains free to object to their representations on grounds of the standard of proof, reliability, relevance and to weight attributable to lay (or expert) witnesses.

c) **Duration and Hearing Time:** in their submissions, the Parties identified:

- 1) 2 expert witnesses of planning expertise;
- 2) Participants can organize and be led via the Representative;

3) Need for a Work plan: however, filings are complete (subject to the Motion disposition related to Mr. Romano, below) and the request to consolidate multiple overlapping documentary references, all electronically accessible, may be a benefit;

4) Filings are *essentially* closed;

5) need for time limits on witnesses for equitable reasons.

In my view, the circumstances of this proceeding is not markedly different than those that come before the TLAB. With two professional land use planning witnesses and up to 7 or 9 lay citizen Participant witnesses, the Hearing should and can be completed in under two days.

I find a two consecutive days' appointment is adequate. The balance of this days sitting is inadequate.

On the need to consolidate documents, I find this to be an expense and effort that is not productive in this circumstance. Filings are essentially complete and their organization easily accessible electronically. While the TLAB sees great benefit in a common document record and is moving in that direction, it does not appear necessary to put the Parties together solely for this purposes, in this circumstance.

I am not prepared, as requested, to impose time limits on professional witnesses for this Hearing nor afford discriminatory benefit to Participants, without such limits. The conduct of the Hearing is for the Hearing Member who can track hearing time and fairness to the Parties and Participants with the passage of available time.

3. Admission of Romano Response Statement: Late Visual Evidence

On the admission of the visual exhibit documentation latterly prepared by the witness Romano, I am sympathetic to the concern expressed by the City that were the Hearing to proceed, then prejudice could accrue in the form of an inadequately prepared response. I accept that an adjournment adequately protects against that circumstance. I will allow the late filing by Mr. Romano and require that any responses thereto be filed and served on the Parties at least one week before the rescheduled date.

There were two other matters left to be addressed.

4. Responsibilities of a Party.

It was suggested that an onus rests on a Party to conduct a case with certain identified responsibilities. I agree that there are parameters, non-exclusive, incumbent on an individual or corporation that elects party status.

A Party,

- a) is obliged know and respect Rules of Practice and Procedure of the TLAB;
- b) is afforded important attributes of status: entitlements to call witnesses and conduct cross-examinations, beyond mere 'questioning'; to participate as-of-right in settlement discussions; has a guaranteed role to make submissions in the argument phase of a Hearing; and can be held liable for a cost award; further,
- c) is obliged to fulfill disclosure obligations.

For the TLAB, 'trial by ambush' is a thing of the past.

Here, no specific Order is required in the circumstances as the Parties assert full and complete preparation and compliance.

5. Offer to Hear Participants

In the normal course, an Applicant presents its case followed by those in support, those opposed and the Applicant be afforded a right of reply.

The offer by the Applicant to hear Participants present in the face of a rescheduled hearing is not unusual, somewhat generous and constitutes one of those exceptions to the normal practice.

It is the general expressed preference of this Member to follow the normal practice. This permits those engaged to hear the support base of the proponent and address it specifically, in part or whole, in own individual evidence.

To hear evidence in advance of a rescheduled sitting avoids this information flow, requires seizure by the Member of the Hearing and can cause the discontinuity of the hearing process which the Applicant and the City seek to avoid.

It was clear the Hearing could not be completed in the time set.

No Participant elected to proceed with their evidence in the face of an adjournment.

DECISION AND ORDER

The request for relief from the Motion filing requirements of the Rules is granted.

The Motion is granted in part.

Decision of Toronto Local Appeal Body Panel Member: I. LORD
TLAB Case File Number: 18 177058 S53 06 TLAB,
18 177060 S45 06 TLAB, 18 177061 S45 06 TLAB

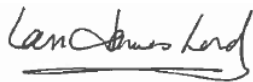
The Hearing is adjourned to be selected from dates provided by the TLAB to Counsel and Ms. Gibson. If an agreed date cannot be determined by close of business, Friday, October 12, 2018, a date will be appointed by the TLAB.

A two (2) consecutive day sitting appointment shall be provided for the consideration of these matters.

The late visual evidence filing by Mr. Romano supplied October 3, 2018 is allowed to be filed and served forthwith on the Parties and the TLAB, to the extent not already perfected. Responses to the posting and service of this material, if any, are due one (1) week prior to the rescheduled commencement of this Hearing.

This Member is not seized.

X



Ian Lord
Panel Chair, Toronto Local Appeal Body
Signed by: ilord