

# DECISION AND ORDER

**Decision Issue Date**      Friday, November 02, 2018

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

Appellant(s): ANNE JAMES

Applicant: LIMA ARCHITECTS INC

Property Address/Description: 211 HOLBORNE AVE

Committee of Adjustment Case File: 17 264838 STE 31 MV

TLAB Case File Number: **18 166551 S45 31 TLAB**

**Motion Hearing date:**      Friday, November 09, 2018

**DECISION DELIVERED BY D. LOMBARDI**

## REGISTERED PARTIES AND PARTICIPANTS

| NAME                | ROLE      | REPRESENTATIVE |
|---------------------|-----------|----------------|
| JADE ESTATE INC.    | OWNER     |                |
| LIMA ARCHITECTS INC | APPLICANT |                |
| ANNE JAMES          | APPELLANT |                |

## INTRODUCTION

This is a decision in response to a written motion by the Appellant, Anne James, for a request for an adjournment of the hearing of the above referenced matter and a further order setting a new rescheduled Hearing Date.

## BACKGROUND

The Hearing Date scheduled for this matter was set for November 9, 2018, and the Motion was for an adjournment due to an illness of the Appellant as well as other extenuating circumstances relating to the Appellant's family.

Pursuant to the Toronto Local Appeal Body's (TLAB) Rules of Practice and Procedure (Rules), and specifically Rule 10.1, the TLAB gave Notice of Hearing using Form 2 and setting the hearing date for November 9, 2018. In its Notice the TLAB set out a number of deadlines:

|                      |  |  |
|----------------------|--|--|
| <b>Aug 2, 2018</b>   | <i>Applicant Disclosure</i>                          | <i>none filed</i>                                  |
| <b>Aug 7, 2018</b>   | <i>Notice of Intention to be a Party</i>             | <i>none filed</i>                                  |
| <b>Aug 7, 2018</b>   | <i>Notice of Intention to be a Participant</i>       | <i>none filed</i>                                  |
| <b>Aug 17, 2018</b>  | <i>Document Disclosure</i>                           | <i>none filed</i>                                  |
| <b>Sept 4, 2018</b>  | <i>Witness Statement/Participant's<br/>Statement</i> | <i>none filed</i>                                  |
| <b>Sept 4, 2018</b>  | <i>Expert Witness Statement</i>                      | <i>none filed</i>                                  |
| <b>Sept 25, 2018</b> | <i>last day to file Notice of Motion</i>             | <i>Ms. James filed her motion<br/>Oct 27, 2018</i> |

## MATTERS IN ISSUE

There are a number of questions I must address as part of this Motion request. Has the motion been properly brought? Should the hearing of November 9, 2018 be adjourned and, if so, should the TLAB consider the three alternate dates in early 2018 suggested by the Appellant? If the hearing is adjourned, what impact will it have on the owner of the subject property (211 Holborne Avenue) and the Applicant (Lima Architects Inc.)?

## JURISDICTION

Pursuant to the TLAB Rules, particularly, Rules 2.10, 4.4, 4.5, 17 and 23, the hearing can be adjourned and a new hearing date set.

In deciding whether to grant whether to grant an adjournment, the TLAB may consider, among other things:

- The reason for the adjournment;
- The timeliness of an adjournment;

- The position of the other Parties on the request;
- Whether an adjournment will cause or contribute to any existing or potential harm or prejudice to others; and
- The effect an adjournment may have on the ability of the TLAB to conduct a Proceeding in a just, timely and cost effective manner.

## **EVIDENCE**

On October 27, 2018, the Appellant, Ms. Anne James, filed a Notice of Motion (Form 7) with the TLAB requesting an order to adjourn the hearing scheduled for November 9, 2018 of the appeal hearing for 211 Holborne Avenue. Ms. James also filed an Affidavit (Form 10) on the same date attesting to the grounds for requesting the adjournment as outlined in the Notice of Motion.

The Notice of Motion requests an adjournment of the hearing date, primarily due to an on-going family health crisis as well as the Appellant's own poor health. She proposed the following dates for consideration in setting a new hearing date:

1. *Friday, January 4, 2019*
2. *Friday, January 18, 2019*
3. *Friday, February 15, 2019*

Ms. James stated in her Motion that she has been overwhelmed physically, mentally, and emotionally with a continuing health crisis involving a member of her immediate family. As the sole caregiver in this situation, Ms. James advised that she has been struggling with multiple health issues herself, all of which have impacted her ability and capacity to prepare for the November 9, 2018 hearing.

She also noted that her ability to prepare for the scheduled hearing has been complicated by the fact that there is a new owner of the subject property who does not appear on the *List of Appellants, Parties, Participants and Legal Representatives* recorded on the TLAB's website related to this matter.

Ms. James confirmed that she is attempting to contact the new owner to discuss her reasons for filing her appeal and has suggested that adjourning the November 9, 2018 hearing and rescheduling the hearing to a new date sometime in January, 2019 as requested may facilitate further communication with the new owner and possibly lead to settlements discussions in the interim.

At the time of the Order, no one had responded to the Motion.

## **ANALYSIS, FINDINGS, REASONS**

I note that neither the Applicant nor the Appellant have submitted or filed with the TLAB any of the documents required as part of this appeal application. Only the

**Decision of Toronto Local Appeal Body Panel Member: D. Lombardi**  
**TLAB Case File Number: 18 166551 S45 31 TLAB**

Appellant has filed a Notice of Motion document requesting an adjournment; however, even that filing was submitted approximately 30 days after the requisite due date.

While the Motion contains what I perceive as legitimate reasons for granting an adjournment, the lack of any filing in this matter and the tardiness of the only material filed (the Notice of Motion) with the TLAB by the Appellant is troubling.

I accept that the Appellant, Ms. James, would have difficulty in present her case at the TLAB on the November 9, 2018 hearing date, as that is less than one week away. I also accept that it would be unfair to have a hearing, even though it is likely that Ms. James could have brought a motion much earlier had the timelines in the TLAB Notice of Hearing of July 18, 2018 been observed.

In light of the fact that it appears that there is a new owner of the subject property and that new filings may be forthcoming from both the Appellant and the Applicant, I feel the fairest thing to do is to adjourn the hearing as requested and extend the requisite exchange dates to reflect a new hearing date possibly in either January or February, 2019.

Based on the documents filed in support of this Motion, I find that the new dates may facilitate the parties engaging in potential, without prejudice, settlement discussions, and will also enable the TLAB to effectively and completely adjudicate this matter in a just, expeditious, and cost effective manner.

## **DECISION AND ORDER**

The Motion for Adjournment is granted. TLAB staff is requested to canvas the Parties for a new Hearing Date on the dates including on the dates fput forward by the Appellant: January 4, 2019; January 18, 2019; or, February 15, 2019.

The TLAB staff is requested to issue a new Notice of Hearing (Form 2) that reflects the new Hearing Date once it is set and extend the requisite exchange dates to all full thirty (30) days in advance of the new scheduled Hearing. Staff are also to ascertain the address and name particulars of the new owner and add that to the List available on the TLAB website, as appropriate.

The Hearing scheduled for November 9, 2018 is cancelled and no appearances or attendance is required. A Notice to that effect is to be posted on the TLAB Website.

The undersigned Member is not seized for the hearing in order to facilitate timely rescheduling.

X 

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Dino Lombardi  
Panel Chair, Toronto Local Appeal Body