

PROCEDURAL DECISION

Decision Issue Date Thursday, December 20, 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): 1930211 ONTARIO INC

Applicant: AMBIENT DESIGNS LTD

Property Address/Description: 70 THIRTY SIXTH ST

Committee of Adjustment Case File Number: 17 178263 WET 06 CO, 17 178270 WET 06 MV, 17 178271 WET 06 MV

TLAB Case File Number: **17 278198 S53 06 TLAB, 17 278201 S45 06 TLAB, 17 278202 S45 06 TLAB**

Hearing dates: July 26, Dec 7, 12, 2018

PROCEDURAL DECISION DELIVERED BY T. Yao

APPEARANCES

Name	Role	Representative
1930211 Ontario Inc (Lori Li, Andrew Bilicki)	Owner	Russell Cheeseman
T.J. Cieciora City of Toronto	Expert Witness Party	Sarah Amini
Max Dida	Expert Witness	
Long Branch Neighbourhood Association	Participant	Christine Mercado, Judy Gibson
David Godley, 401 Lake Promenade	Participant	
Ben Puzic, Kathy Puzic, 75 Thirty-Sixth St	Participants	

Donna Donald, Alexander Donald, Participants
65 Thirty-Sixth St

Barry Kemp, 65 Thirty-Sixth St Participant

Sheila Carmichael, Fraser Carmichael Participants
72 Thirty-Sixth St,

PROCEDURAL DECISION

These are reasons for my procedural decision to allow Long Branch Neighbourhood Association to make submissions when this case resumes in May 2019. Mr. Cheeseman objected to Long Branch Neighbourhood Association on the basis of Rule 13.8, which states:

Rule 13.8 A Participant to a Proceeding may not:

- a) call witnesses and cross-examine witnesses;
- b) bring Motions, except a Motion to seek Party status;
- c) participate in Mediation, unless permitted to do so by the Local Appeal Body;
- d) make opening and closing submissions; and
- e) claim costs.

On July 30, 2018, I allowed the participant LBNA to call and cross examine witnesses. Ms. Gibson has called five witnesses: herself, Mr. Donald, Mr. Godley, Ms. Carmichael, and Mr. Puzic. They have tried not to duplicate each other's evidence. Ms. Gibson has cross examined 1930211 Ontario Inc.'s planning witness and the City's arboriculture witness. Mr. Cheeseman has filed 1204 pages of evidence and other persons have filed an equivalent amount. For cross examination to be of the greatest assistance, it should be accompanied by submissions. Otherwise witnesses would be put in the position of giving both evidence and argument, since it is their only chance to speak to the decision-maker. I think having separate submissions is the preferable procedure.

Long Branch Neighbourhood Association's election as a participant, dated February 25, 2018, states Ms. Gibson is its representative. Long Branch Neighbourhood Association is an association and also a corporation and cannot act by other than a representative or agent. The TLAB Rules make no distinction between a person licensed by the Law Society and other persons authorized by law to represent that participant.

"Representative" means a Person who acts for a Party or Participant in a Proceeding and is authorized under the Law Society Act, or is otherwise authorized by law to represent a Party or Participant in a Proceeding;

"Represent" is not defined but has the common meaning of acting for someone before a tribunal, which would include making submissions.

Decision of Toronto Local Appeal Body Panel Member: T. Yao
TLAB Case File Number: 17 278198 S53 06 TLAB, 17 278201 S45 06 TLAB, 17 278202 S45 06 TLAB

This case involves a ratepayer group with persons speaking on its behalf, and with Ms. Gibson and Ms. Mercado attending throughout, even at the Committee of Adjustment before Mr. Cheeseman was retained. LBNA has made numerous filings and read the documents filed on behalf of 1930211 Ontario Inc. Their involvement is different from a resident who attends only briefly to make her position known and for whom it may not be appropriate to allow submissions.

On Feb 26, 2018, LBNA filed its Election to be a Participant (Form 4). The following is Part 2.

Part 2: Person's/Representative's Information		
First Name Judy		Last Name Gibson
<input type="checkbox"/> Check this box if First Name and Last Name do not apply to you because you have either a registered Birth Certificate or Change of Name Certificate bearing a Single Name. Provide your name below.		
Single Name		
Corporation Name or Association Name (Association must be incorporated) Long Branch Neighbourhood Association		
Position Title (if applicable) Vice Chair		Email longbranchnato@gmail.com
Street Number 11	Street Name Atherton Crescent	Suite/Unit Number
City/Town Toronto	Province ON	Postal Code M8W 2Y2

TLAB does not explain to the public how to fill out the document. Part 2 starts off with a box "Person's/Representative's Information" and later has a box "Corporation Name or Association Name". It is possible to interpret this as requesting a Participant Association to fill out both boxes, as it did, with the "representative" in one box and the name of the Corporation in the other. There is no instruction that if the Participant is a corporation/association, the person/representative box should not be filled out. A reader could conclude the Participant Long Branch Neighbourhood Association was making the election and in so doing was "represented" by Judy Gibson, Vice Chair.

Part 4 of Form 4 contains the actual election.

Decision of Toronto Local Appeal Body Panel Member: T. Yao
TLAB Case File Number: 17 278198 S53 06 TLAB, 17 278201 S45 06 TLAB, 17 278202 S45 06 TLAB

Part 4: Notice of Intention to be a Participant	
I wish to give notice of my intention to be a Participant to the above referenced TLAB Case File Number.	
Participant First Name	Participant Last Name
Christine	Mercado
<input type="checkbox"/> Check this box if First Name and Last Name do not apply to you because you have either a registered Birth Certificate or Change of Name Certificate bearing a Single Name. Provide your name below.	
Participant Single Name	
Corporation or Association Name of Participant (Association must be incorporated)	
Long Branch Neighbourhood Association	
Authorized Signature	Date (yyyy-mm-dd)
Christine Mercado <small>Digitally signed by Christine Mercado Date: 2018.02.26 09:19:52 -05'00'</small>	2018-02-25

Part 2 and Part 4 have a similar layout . After reading both Parts, a reasonable inference is that the Association/corporation was advising the TLAB that it would be represented by both Judy Gibson and Christine Mercado, and Ms. Gibson would be the lead contact. This is what happened. Ms. Gibson and Ms. Mercado sat together during the entire hearing working together on LBNA’s behalf, without objection from Mr. Cheeseman.

Neither Ms. Gibson nor Ms. Mercado has filed Form 5 "Authorized Representative". It is not surprising that lay persons are not cognizant of the law of associations and corporations, but I think that there is sufficient indication that they are representing the Association. However, the parameters for participant representation are not unbounded; it would be unreasonable for a participant, who only attended part of the hearing, to expect to give submissions on a portion of the evidence.

The TLAB Rules and s. 28 of the *Statutory Powers Procedure Act* say that substantial compliance with a rule is sufficient. Accordingly, I consider LBNA has done enough to be considered to have filed Form 5 and is to be treated as a representative under the Rules, and such representative may make submissions.

Mr. Cheeseman asked for written reasons for this interim decision. These are the reasons.

X



Ted Yao
 Panel Chair, Toronto Local Appeal Body
 Signed by: Ted Yao