

PRE-HEARING DECISION AND ORDER

(REVISED)

Decision Issue Date Thursday, January 24, 2019

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): KEN O'BRIEN, CITY OF TORONTO

Applicant: CONTEMPO STUDIO

Property Address/Description: 27 THIRTY NINTH ST

Committee of Adjustment Case File: 17 189182 WET 06 CO, 17 189185 WET 06 MV,
17 189186 WET 06 MV

TLAB Case File Number: **18 212117 S45 06 TLAB, 18 212123 S45 06 TLAB, 18 212129 S53 06 TLAB**

Hearing date: Tuesday, January 22, 2019

DECISION DELIVERED BY Ian James LORD

APPEARANCES

NAME	ROLE	REPRESENTATIVE
ARTAN SELMANI	OWNER	
CONTEMPO STUDIO	APPLICANT	
XHELADIN RESHITI	PRIMARY OWNER	
SHPENDIME RESHITI	ALTERNATE OWNER	
KEN O'BRIEN	APPELLANT	
CITY OF TORONTO	APPELLANT (CITY)	ADERINSOLA ABIMBOLA
ARTAN SELMANI	PARTY (TLAB)	AMBER STEWART
LBNA	PARTY	
CHRISTINE MERCADO	PARTICIPANT	
RUTH WEINER	PARTICIPANT	
DONNA SANDY DONALD	PARTICIPANT	
<u>ALEXANDER DONALD</u>	<u>PARTICIPANT</u>	
JOHN MACDONALD	PARTICIPANT	
RON JAMIESON	PARTICIPANT	
ROBERTA JORDAN	PARTICIPANT	
DAVID MATOC	PARTICIPANT	

INTRODUCTION

This is an appeal of a consent and severance approval, with conditions, by the Etobicoke York Panel of the City of Toronto (City) Committee of Adjustment (COA) in respect of 27 Thirty Ninth Street (subject property) located in the Long Branch community of the City.

Prior to the convening of the Hearing on the date above noted, counsel for the Applicant advised of a request for adjournment, with the consent of the City. The Toronto Local Appeal Body (TLAB) responded, by correspondence, that no adjournment would follow the late request but that an attendance would be required, without the necessity of professional witnesses, and the matter treated as Pre-hearing Conference under Rule 21.

Regrettably, because the request and response occurred with an intervening weekend, a number of Party witnesses and Participants attended, many of whom had not been consulted on the request nor were they informed of the conversion of the matter to a procedural consideration.

BACKGROUND

In convening the sitting, counsel were asked to address the matters under Rule 21, including the late request for an adjournment. Ms. Gibson, representing the Long Branch Neighbourhood Association (LBNA) spoke both on behalf of the LBNA and Mr. Ken O'Brien, Appellant.

This disposition addresses the matters raised and provides direction as to the requests made.

MATTERS IN ISSUE

While there were no formal Motion materials filed in support of an adjournment request, an oral request for adjournment was made by Ms. Stewart, supported by counsel for the City, Ms. Abimbola, with reasons and reference to the Rules. Ms. Gibson did not strenuously oppose the adjournment but dealt, as did counsel, with the matters to be addressed in Rule 21.

JURISDICTION

TLAB Rule 21 provides direction on matters to be considered on a Pre-Hearing Conference; it includes preconditions and permits Orders by way of disposition.

Matters to be dealt with in a Prehearing

21.6 A prehearing may include settlement discussions, Motions or other procedural issues, in order to:

- a) identify the Parties and Participants and determine or resolve the issues raised by the Appeal;
- b) identify facts or evidence the Parties may agree on or upon which the Local Appeal Body may make a binding decision;
- c) obtain admissions that may simplify the Hearing;
- d) provide directions to the Parties;
- e) discuss the possible use of Mediation or other dispute resolution processes;

- f) estimate the length of the Hearing and encourage the Parties to agree upon the date for any further procedural steps;
- g) discuss issues of confidentiality, including any need to hold a part of the Hearing in the absence of the public or to seal Documents; and
- h) deal with any other matter that may assist in a fair, cost-effective, and expeditious resolution of the issues.

EVIDENCE

Ms. Stewart explained the request for an adjournment premised on three principle grounds: the desirability of a consecutive time block of 3-4 days given the number of Parties, Participants and witnesses; late filings by some Parties; and the identification of an issue requiring that an Applicants' arborist report and witness statement is likely required.

She set the stage on the matters required to be addressed under Rule 21.6, as follows:

- a). the Parties and Participants are known; no new persons had surfaced.

(The TLAB notes that Mr. Ken O'Brien, who was present, had agreed for the purpose of this sitting that Ms. Gibson, on behalf of the LBNA, would represent his interests; further, Mr. Alexander (Sandy) Donald later spoke requesting an opportunity to make a presentation. Mr. Donald, inadvertently omitted, is now listed, above, as a Participant.)

Ms. Stewart identified two issues upon which further discussion to resolve or narrow matters may be warranted, should an adjournment period permit: urban forestry and built form.

She requested an opportunity to consider the filing of new evidence on and add a witness on matters respecting Urban Forestry.

She further requested an opportunity to work towards a more acceptable built form design, including the opportunity to file revised plans by a date determined appropriate by the TLAB.

- b). that the late timing of the request meant there were no facts or evidence that were available to be addressed or agreed upon.
- c). that there were no admissions that were available to simplify the hearing.

d). that directions were being requested on matters of new evidence and filings, including rights of response and reply, if necessary.

e). while noting that some discussions by way of informal mediation had occurred, there is no formal request being made given the acknowledged opposition to the proposed severance.

f). that four days would be appropriate to hear the matter and that available consecutive dates be canvassed with filings to be completed one-month before the convened Hearing date.

g). that there were no issues of confidentiality.

h). that there is a willingness to impose limits on the conduct of the Hearing, the Parties, Participants, witnesses and counsel, to ensure a just and expeditious, cost-effective disposition. She felt the Applicants case, with two professional witnesses, including cross-examination could require 1-11/2 days of hearing time.

Ms. Abimbola generally supported the above submissions to result in a 3-4 consecutive days of Hearing time noting three distinct Parties, the likelihood of 4 professional witnesses and seven Participants. The City supported firm deadlines for efficiency and cost-effectiveness and that this Member remain seized.

Ms. Gibson, representing the LBNA, noted the late request for an adjournment, the lack of consultation and that several members of the LBNA and the public were in attendance and inconvenienced. She agreed that despite procedural progress, adequate advance consideration of the interests of others might have been even more efficient via a conference call.

She acknowledged that the severance was not supported and that the matters in issue exceeded the two areas that were suggested where progress might be advanced: built form and forestry. Namely, she identified as additional issues green infrastructure, the consent, neighbourhood character and the statutory tests associated with the Applications.

She acknowledged the late filing of some documents as new evidence but claimed they were not new as they had been presented in other TLAB hearings involving the Applicant's witness. She spoke to the LBNA's calendar conflict dates, requesting equal time with other Parties, requesting four days of hearing time while expressing the view that that was excessive and difficult to ask of lay citizens to take off work or allocate as vacation time.

She requested that if the City were to withdraw, the LBNA be afforded the opportunity of additional time to replace the City witness with an alternate.

She also advised that on the issue of 'built form', there had been two occasions to address the matter, including an evening session and a private mediation pilot instance; she said no substantive changes had occurred.

She requested a ruling on the admissibility of the Long Branch Neighbourhood Design Guidelines and Official Plan Amendment 320, both of which are now in force.

Finally, she requested equal hearing time for the LBNA six witnesses, 3 of whom are immediate neighbours and 2 of whom are Board members with neighbourhood expertise.

She asked that one citizen present be offered the opportunity to give his evidence today.

In response, Ms. Stewart repeated the need to deal with efficiency and recent filings as several Parties and Participants had not been copied with filings, although they were now posted on the TLAB website. She suggested that setting a date certain for Participants to speak, including the prospect of an evening session, might help with the inconvenience and extent of time to deal with the matter.

ANALYSIS, FINDINGS, REASONS

The TLAB does not condone late requests for adjournments, including especially in the absence of materials in support. It notes that severance and variance matters are now regularly scheduled for two-day sittings and are expected to be concluded in that time frame, sometimes with written argument. This appointment was in the period set down for a one day proceeding and all the Parties are in agreement that the proposed one-day duration is inadequate to properly adjudicate the matter.

An oral disposition granting an adjournment to a date to be canvassed as between the four registered Parties, was established between mid-July and late August, 2019.

Given the anticipated length of the adjournment and premised on the desirability to have the best evidence presented, leave was also given to the introduction by the Applicant of urban forestry evidence. The TLAB notes, as previous Decisions have reflected, that where a matter affecting the natural environment is engaged by an application, including concerns expressed related to the urban forest and its componentry as an element of neighbourhood character, an Applicant is at risk to leave such consideration solely to the exercise of regulatory management under the City Tree's By-law. The TLAB has an independent obligation to consider matters of Official Plan conformity, including those affecting the environment. As such, Ms. Stewart is commended in recognizing the appropriateness of addressing this issue as the TLAB invites the best evidence available on matters in issue before it. Accordingly, it is appropriate to consider an adjournment premised on a consideration of the best evidence rule and its fair presentation.

An adjournment can also regularize the late filings of materials as otherwise a motion for their exclusion would entail resources that could be wasted.

A schedule for the exchange of new evidence and responding materials was raised and is dealt with in the disposition hereof.

It is realistic, on the agreement of the Parties, to recognize the Hearing of these appeals will exceed the one day allocated.

The TLAB is not disposed to granting four day appointments. The Parties and Participants are admonished that the conduct of the Hearing will be strictly controlled to be completed in 2-3 days. The Parties are encouraged to consult each other in the meantime, specifically as to whether matters pertaining to the urban forest and built form/architectural form can be addressed and the evidence thereon limited or reduced.

Ms. Gibson was advised that it is the obligation on any Party with an issue to be prepared to advance that issue at the Hearing; no adjournment can be anticipated simply as a result of the changed status of any Party or Participant.

The TLAB undertook to explore the possibility of video-conference for efficient evidence treatment; however, the offer of a particular appointment time for such evidence may also be appropriate. A justification of measures for such extraordinary consideration of evidence should be made as early as possible and can be dealt with at the sitting.

It will be for the Hearing itself to organize specific evidentiary periods for presentation, as appropriate. Mr. Donald will be afforded the opportunity to make his visual presentation, provided he meets the obligations of a Participant to disclose the nature of that presentation under the Rules of the TLAB and as set out herein.

On the matter of the Long Branch Urban Design Guidelines and Official Plan Amendment 320, both of these matters are now final and are appropriate evidentiary considerations at the Hearing of these appeals. The relevance of their consideration is a matter of weight tied in part to the application dates for the matters under appeal.

Finally, the TLAB is not able to consider formal evening sittings due to Staff and facility constraints.

DECISION AND ORDER

The prerequisites to a Pre-hearing conference are varied in order to give consideration to the matters in issue.

The Hearing scheduled for January 22, 2019 is adjourned, essentially on consent to: **July 23, 24 and 25, 2019.**

The Applicant and any other Party or Participant shall have until **June 10, 2019** to file any additional evidence determined appropriate, including full disclosure of particulars, plans and supporting Witness Statements as required by the Rules of the TLAB.

**Decision of Toronto Local Appeal Body Panel Member: I. LORD
TLAB Case File Number: 18 212117 S45 06 TLAB, 18 212123 S45 06 TLAB, 18
212129 S53 06 TLAB**

Responses only to new materials filed must be served and filed by **June 24, 2019**.

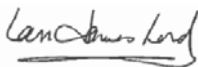
The Applicant is encouraged to engage the Parties in a discussion on urban forestry evidence and the issue of built form/architectural design, or otherwise, with a view to narrowing or eliminating the consideration of these areas of evidence. Such overtures and discussions are to be on a 'without prejudice' basis and only referenced factually as to whether they resulted in progress and the terms thereof, or no progress, in part of whole and as between any Party or Participant, as the case may be.

Continuing discussion thereafter is encouraged.

A confirming new Notice of Hearing is to be posted

This Member is not seized but may be available to hear the matters.

X



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