

# DECISION AND ORDER

**Decision Issue Date**      Thursday, July 11, 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): DEAN JASON PODOLSKY

Applicant: NOUSHIN MOZAFFARI

Property Address/Description: 393 HARBORD ST

Committee of Adjustment Case File: 18 240930 STE 19 CO, 18 240943 STE 19 MV, 18 240945 STE 19 MV

**TLAB Case File Number: 19 131196 S53 11 TLAB, 19 131199 S45 11 TLAB, 19 131200 S45 11 TLAB**

**Motion Hearing date:**      Tuesday, June 11, 2019

## DECISION DELIVERED BY JOHN TASSIOPOULOS

### APPEARANCES

Name	Role	Representative
Noushin Mozaffari	Applicant	
Robin and Lewis Developments	Owner/Primary Owner	
Dean Podolsky	Appellant	Amber Stewart
City of Toronto	Party	Michael Mahoney/Marc Hardiejowski
Franco Romano	Expert Witness	
May Wang	Expert Witness	
Allan Miley	Expert Witness	
John Riddle	Participant	

## **INTRODUCTION AND BACKGROUND**

This is a decision on a Motion filed on May 24, 2019 by City of Toronto Solicitor, Marc Hardiejowski. The Motion requested that the TLAB grant the City of Toronto Party status to the TLAB appeal for the Committee of Adjustment (COA) decision for 393 Harbord Street, dated March 6, 2019. The COA refused a consent to sever the parcel and the related minor variances for proposed two four-storey semi-detached dwellings on the resulting lots. The Applicant appealed the decision to the TLAB on March 26, 2019 and at that time the City Solicitor had not received instruction to oppose the appeal. The TLAB Notice of Hearing was issued on April 12, 2019, which indicated May 13, 2019 as the deadline for document disclosure. This deadline was missed because the City Solicitor only received instruction to proceed with opposing the appeal at the City Council meetings of May 14 and 15, 2019. Marc Hardiejowski's Motion requested the following relief:

1. TLAB grant the City of Toronto Party status to the TLAB appeal;
2. City of Toronto be granted the opportunity to submit Document Disclosure and an Expert Witness Statement by June 10, 2019 or later date that the TLAB deems appropriate;
3. To grant any other Party an opportunity to reply to the City's Document Disclosure and Expert Witness Statement at such time that the TLAB deems appropriate.

## **BACKGROUND**

The site is located on the south side of Harbord Street and east of Ossington Avenue. The site is flanking a public laneway to the west, and to the east it abuts the rear yards of three lots fronting onto Roxton Road. It is designated Mixed Use Areas in the Official Plan and zoned Commercial-Residential pursuant to City of Toronto By-law 569-2013. The proposal is to sever the subject property into two residential lots and to build two four-storey semi-detached dwellings that require 11 variances to By-law 569-2013 and 4 (Part 1) and 3 (Part 2) variances to By-law 438-86 to permit the proposed dwellings on the resulting lots.

The City of Toronto asks that it be granted Party status to the TLAB appeal and the opportunity to submit Document Disclosure and an Expert Witness Statement. There were no responses filed to this Notice of Motion which was submitted prior to the deadline of June 28, 2019. A City of Toronto Expert Witness Statement was submitted to TLAB on June 7, 2019.

The Motion was considered in written form on the date provided, June 11, 2019. This is authorized by TLAB's Rule 17.4, 24.1 and 24.6 of the TLAB Rules of Practice and Procedure (May 6, 2019).

## **MATTERS IN ISSUE**

The preliminary issue to be determined is whether granting the City of Toronto Party status is unduly prejudicial to the Appellant's presentation of their case and if not granted would the TLAB forego the potential for a more complete understanding of the planning issues of this proceeding that the City's Expert Witness testimony may provide. If the answer is that granting Party status is not prejudicial and that the City's Expert Witness may provide for a more comprehensive understanding of planning issues regarding this TLAB appeal then the City must be granted Party status and be granted the opportunity to submit Document Disclosure and an Expert Witness Statement by June 10, 2019 or a later date. At the same time, the other Parties to the matter must also be given the opportunity to reply to the City's Document Disclosure.

## **JURISDICTION**

The TLAB may hear Motions by way of written submissions, in accordance with Rule 17.5 of the Rules of Practice and Procedure. The TLAB, as per Rule 2.10 (Relief and Exception to the Rules), is free to grant relief from the rules "*as it considers appropriate, to enable it to effectively and completely adjudicate matters before it in a just, expeditious and cost effective manner.*" Furthermore, Rules 4.4 and 4.5 permits the TLAB to extend the time limit provided by the rules.

## **ANALYSIS, FINDINGS, REASONS**

The principal argument in favour of granting the City of Toronto Party status and the opportunity to submit Document Disclosure and an Expert Witness Statement is that it does not prejudice the Appellant's ability to proceed with their appeal while at the same time ensures that the TLAB gains a more complete understanding of the planning issues regarding the appeal. This panel accepts the City Solicitor's explanation that they were unable to meet the deadline indicated in the Notice of Hearing for Document Disclosure by May 13, 2019 because they had not received instruction to attend the hearing from City Council until the May 14 and 15, 2019 meeting.

The TLAB's Rules 4.4 and 4.5 indicate that the TLAB may extend time limits as it considers appropriate and may exercise its discretion before or after the expiration of a time limit. Furthermore, Rule 16.1 indicates that disclosure of documents may be ordered at any stage in a proceeding.

I have considered the Motion with respect to: conducting a just and timely proceeding; whether granting Party status and extending the time limit for Document Disclosure and the Witness Statement will cause potential harm or prejudice to the other Party (the Appellant); that a Witness Statement has been filed by the City of Toronto by June 10, 2019 and that responses were not filed to this Notice of Motion; all in accepting the Motion in favour of granting the City of Toronto Party status and Document Disclosure in this matter.

## **DECISION AND ORDER**

The Motion is allowed, the City of Toronto shall be permitted to appear as a Party to this matter and the Expert Witness Statement of May Wang, Assistant Planner at City of Toronto, submitted June 7, 2019 will be permitted for submission to the hearing.

Given the delay in providing this Decision, any further Document Disclosure by the City of Toronto should be submitted to TLAB no later than July 22, 2019. The other Party to the hearing, the Appellant, is provided the opportunity to reply to the City's Document Disclosure and Expert Witness Statement and should be submitted to TLAB no later August 5, 2019.

**X**

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John Tassiopoulos  
Panel Chair, Toronto Local Appeal Body

