

# DECISION AND ORDER

**Decision Issue Date**      Tuesday, July 23, 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, July 23, 2019

**DECISION DELIVERED BY Ian James LORD**

## APPEARANCES

| Name                             | Role           | Representative      |
|----------------------------------|----------------|---------------------|
| Contempo Studio                  | Applicant      |                     |
| City of Toronto                  | Appellant      | Aderinsola Abimbola |
| Ken O'Brien                      | Appellant      |                     |
| Artan Selmani                    | Party/Owner    | Amber Stewart       |
| Long Branch Neighbourhood Assoc. | Party          | Judith Gibson       |
| Alan Young                       | Expert Witness |                     |
| Franco Romano                    | Expert Witness |                     |
| Max Dida                         | Expert Witness |                     |
| Serg Litvinov                    | Expert Witness |                     |

| Name              | Role        | Representative |
|-------------------|-------------|----------------|
| Alexander Donald  | Participant | Appellant      |
| Donna Donald      | Participant |                |
| Roberta Jordan    | Participant |                |
| Ruth Weiner       | Participant |                |
| David Matoc       | Participant |                |
| Christine Mercado | Participant |                |
| Ron Jamieson      | Participant |                |
| John Macdonald    | Participant |                |

## **INTRODUCTION**

By Pre-Hearing Decision and Order (Revised) issued January 24, 2019 (PHC), a hearing date was set for July 23, 24 and 25, 2019, essentially on consent.

By Notice of Motion (Form 7) with supporting affidavit (Form 10) received by the Toronto Local Appeal Body (TLAB) on July 22, 2019, counsel for the City of Toronto (City), Mr. M. Longo requested an adjournment.

The request was with the consent of all Parties.

## **BACKGROUND**

Mr. Longo identified the basis of the adjournment request to be the very recent indisposition of counsel of record for the City, Ms. Abimbola.

## **MATTERS IN ISSUE**

The absence of counsel due to a recent and unavoidable circumstance is the basis of the request, on consent, to adjourn a three (3) day scheduled sitting.

## **JURISDICTION**

The TLAB Rules, Rule 2 and the Motion Rules permit the consideration of relief despite non-compliance with the time specified obligations of Parties in circumstances warranting such, at the discretion of the Member.

## **EVIDENCE**

The Notice of Motion (despite its inadvertent reference to the Rules of the Local Planning Appeal Tribunal (LPAT) and the supporting Affidavit of Ms. Sara Simoes attest to the solicitors unavailability based on a medical condition and medical advice.

The Affidavit supplies consent and agreement in writing by the Parties to an adjournment.

All Parties or their Representatives were present to confirm consent as the Hearing was convened without the timely ability of the TLAB to respond to the Motion request for an administrative rescheduling, or teleconference Hearing.

## **ANALYSIS, FINDINGS, REASONS**

An adjournment in the circumstances is open to be favourably considered where the Parties consent and waive the associated inconvenience and expense.

The City has expressed its appreciation for the accommodation.

The TLAB respects the agreement reached. At the same time, it has an obligation to complete the appeal process in a deliberative and timely manner.

The TLAB canvassed with the Parties the following matters:

1. Rescheduling to a set of dates of three (3) day duration, to be considered peremptory. In this case, 'peremptory' means that counsel and the Representatives are to ensure that they or their replacement is available to attend and conduct the Party's obligation at the Hearing.
2. Available dates in 2019 for reconvening, the mechanism to address and, failing agreement, the settling by the TLAB of a rescheduled Hearing.
3. The closure of filings as of July 23, 2019, except for the consolidation or reformatting for convenience, power point and reference purposes of documents previously filed, by a specific date.
4. Directions on the calling of evidence in chief, given the volume of filed materials, the presence of four (4) Parties and multiple Participants.

5. A request by Mr. Alexander (Sandy) Donald to be acknowledged as the Representative of the Appellant, Ken O'Brian, during the latter's absence, with associated rights. Mr. Donald advised the requisite 'Representative' Form 5 had been filed with the TLAB.

Counsel were heard on the above noted matter and following substantive oral determinations made.

## **DECISION AND ORDER**

The City request for an adjournment is granted.

The Parties shall have a period of one-week, to 4:30 pm on July 30, 2019, to advise the TLAB on an agreement as to rescheduling for a three (3) day sitting on any of the following dates: November 26, 28, and December 17, 18, 19, 2019.

If the Parties fail to agree or to advise the TLAB as requested, the TLAB shall provide all Parties alternative dates in the new year, 2020, together with a one-week period to advise of an agreement, failing which the TLAB will set dates for reconvening.


The rescheduled dates set shall be considered peremptory.

Filings in respect of the appealed matters are closed as July 23, 2019; the Parties and Participants are at liberty to reorganize for convenience existing filings, for reference, or Power Point presentation, all in PDF format to the TLAB on or before 4:30 pm on October 4, 2019.

In order to accommodate completion of the evidence in a three (3) day sitting, even with extended hours, the following time limits shall be enforced: for Parties, a two hour time limit on evidence in chief for each of two identified principle witnesses, with power to transfer; for Participants, a one hour time limit on evidence in chief. Participants, including those to be called from the Long Branch Neighbourhood Association, are requested to consolidate spokespersons, avoid repetition and marshal topics by individual, where possible.

Cross examination may be curtailed on the rules of evidence, relevance and repetition grounds.

The request for Mr. Donald to stand in the place of Mr. O'Brian during that Party's absence or instruction is recognized. On such occasions, Mr. Donald will have the Party status to call evidence, ask questions and make submissions in the place and stead of Mr. O'Brian. As a Participant, Mr. Donald shall be entitled to call and give evidence but not make submissions, subject always and in all circumstances to the rules of evidence, relevance and the avoidance of repetition.

X 

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