

# DECISION AND ORDER

**Decision Issue Date**      Wednesday, October 02, 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): BABAK HAJI GHASSEMI

Applicant: ALAVI SEYED MOEINEDDIN

Property Address/Description: 139 HILLHURST BLVD

Committee of Adjustment Case File: 19 108286 NNY 08 MV (A0053/19NY)

**TLAB Case File Number: 19 136202 S45 08 TLAB**

**Hearing date:**      Monday, September 09, 2019

**DECISION DELIVERED BY S. KARMALI**

## APPEARANCES

NAME	ROLE	REPRESENTATIVE
SEYED MOEINEDDIN ALAVI	Owner	
BABAK HAJI GHASSEMI	Appellant	MARTIN MAZIERSKI
SARAH VAIDYANATHAN	Party (TLAB)	
HAROLD SMITH	Party (TLAB)	
LYN FELDMAN	Party (TLAB)	ROBERT KLOTZ
CITY OF TORONTO	Party (TLAB)	ADERINSOLA ABIMBOLA
FRANCO ROMANO	EXPERT WITNESS	
YISHAN LIU	EXPERT WITNESS	

## **INTRODUCTION**

1. The oral hearing did not proceed because of emergent preliminary matters.
2. Robert Klotz, who is the legal representative for at least one of the parties, requests an adjournment of today's hearing for medical reasons. Mr. Klotz shares he has not had an opportunity to review the appellant's late filing of disclosure.
3. Martin Mazierski, who is the appellant's legal representative, filed four disclosure items with the TLAB on September 9, 2019. These items include parts of expert witness statements, revised plans, and additional variance provisions. Mr. Mazierski states the original application has been amended, and he has not yet received a new zoning notice in respect of the revised plans.
4. Harold Smith, who appears to be a party, filed late disclosure with the TLAB on September 5, 2019. The items of this disclosure include a supplementary witness statement, a city staff report, as well as a planning board decision. Mr. Smith has elected to be a party as well as an expert witness according to the application filings.

## **ISSUES**

5. Should Mr. Klotz's oral motion to request an adjournment be granted?
6. If an adjournment is granted, should the late filing of disclosure by Mr. Mazierski and Mr. Smith be accepted by the TLAB?
7. If an adjournment is granted, what preliminary matters are there in respect of the (late) amended application?
8. If an adjournment is granted, in what singular role does Mr. Smith wish to proceed?

## **JURISDICTION**

9. The TLAB rules govern the issues raised above.

## **EVIDENCE**

10. The evidentiary record is the online application filings, and the hearing room discussion about the preliminary matters, which occurred on the date of the scheduled hearing.

## **ANALYSIS, FINDINGS, AND REASONS**

11. I asked Mr. Klotz to provide me with a medical note. Mr. Klotz provided me with a note from a physician. I observed the particulars of the note and returned it back to him.
12. I broadly asked those who appeared at the scheduled hearing if there was any person who opposed Mr. Klotz's request for an adjournment. There were no opposing remarks.
13. Mr. Mazierski stated an adjournment is the best course of action because he has not received a new zoning notice regarding the appellant's amended plans.
14. The request for an adjournment is consented to by the parties.
15. I find that Mr. Klotz was unable to proceed on the scheduled hearing date for valid medical reasons.
16. On the issue of the late filing of disclosure, Mr. Mazierski stated the expert witness statements he submitted late was by accident. He explained he was remiss to not copy the TLAB on an email in which the statements were attached by the Witness Statement deadline of June 10, 2019. He stated the other parties on the mailing list received the statements by the aforementioned deadline.
17. I find Mr. Mazierski made an honest mistake in respect of these items of disclosure to the TLAB.
18. Mr. Mazierski admitted the revised plans and additional provisions were in fact items of late disclosure. I find the reasons for this late disclosure lacking in substance. It is unclear to me the reasons for the last-minute change in proposal.
19. Mr. Smith also filed late disclosure. I asked Mr. Smith why his disclosure was submitted late. Mr. Klotz intervened and said he represents Mr. Smith too. The record does not reveal Mr. Smith has completed a Form 5 – Authorized Representative designating Mr. Klotz as his representative. While I cannot find TLAB Rule 14 on Representatives has been followed, I accept there is a representative-party relationship between Mr. Klotz and Mr. Smith. I expect Mr. Smith to submit Form 5 to the TLAB by October 15, 2019.
20. Mr. Klotz and Mr. Smith had a moment to discuss an answer to my question about Mr. Smith's filing of late disclosure. Mr. Klotz stated Mr. Smith spent the summer reviewing the matter and did not know his obligation to serve and file disclosure. Mr. Klotz stated he encouraged Mr. Smith to deliver the disclosure as to avoid further delay.
21. I find the reasons for late disclosure as provided by Mr. Smith lacking in substance. The Notice of Hearing for the scheduled hearing indicated the deadlines for

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disclosure. The TLAB Public Guide also communicates full, timely disclosure is required.

22. The TLAB's processes must be respected to preserve its institutional integrity. Document disclosure must be strictly followed to help render a fair and efficient proceeding.
23. The parties have consented to an adjournment of the scheduled hearing. It would appear the scheduled hearing has turned into a format akin to a pre-hearing meeting in which the parties can decide on documents that should be exchanged and to understand and determine the procedures before and during an actual hearing. I accept the aforementioned late disclosure from the parties given the circumstances of this case.
24. Mr. Mazierski states the application before the TLAB has been amended. He further states the application has been scaled back. Mr. Mazierski informed the parties he will obtain a zoning notice to verify the variances resulting from the amended application. He anticipates receiving this zoning notice by October 15, 2019. He requests the appellant's expert witness, Franco Romano, be authorized to comment on the zoning notice and submit such comments to the TLAB.
25. Ms. Abimbola, who represents the City of Toronto, raised the point that if Mr. Romano is authorized to comment on the pending zoning notice, his commentary should be limited to new variances which may be triggered by the City's zoning examiner's review. Mr. Mazierski did not oppose this point.
26. Apart from the submitted revised plans, I do not know the exact particulars of the amended application in statement form. I, therefore, cannot presently opine whether such an amendment would constitute an exception to the obligation of recirculating a new notice of hearing based on an amended application.
27. As I am seized on this matter, I will review the amended application to determine whether written notice be given to the persons and public bodies who received the notice of the original application.
28. Ms. Abimbola, Mr. Klotz, and Mr. Mazierski agree that once the zoning notice and the limited expert witness commentary is received by October 15, 2019, Ms. Abimbola and Mr. Klotz will have until Friday November 15, 2019 to submit their responses. Mr. Mazierski will have until Friday November 22, 2019 to submit his reply to the responses.

29. According to the online application filings, Mr. Smith would like to be a party as well as an expert witness concerning the substantive matter. Mr. Mazierski correctly noted an expert witness cannot be qualified where he or she has a vested, partisan interest in the matter. Mr. Klotz stated he would like to provide the TLAB with an answer about Mr. Smith's exact role by November 15, 2019.

30. I read aloud Part 4 of the Acknowledgment of Expert's Duty (Form 6), which states in part:

I acknowledge it is my duty to provide evidence in relation to this proceeding as follows:

1. to provide opinion evidence that is fair, objective and non-partisan;
2. to provide opinion evidence that is related only to matters that are within my area of expertise; and
3. to provide such additional assistance as the TLAB may reasonably require to determine a matter in issue.

I acknowledge that the duty referred in this part (Part 4: Acknowledgement) prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

31. I reminded all of the parties to become familiar with the TLAB Rules.

32. The TLAB encourages Parties to also assess settlement options, including mediation that can be TLAB sponsored, and to ensure a timely disposition of matters on appeal to the TLAB.

## **DECISION AND ORDER**

33. The request for an adjournment of the scheduled hearing is granted.

34. The oral hearing will take place on Tuesday December 17, 2019 and Thursday December 19, 2019 and, if required, on Thursday January 23, 2020.

35. By Tuesday October 15, 2019, Mr. Mazierski will provide a zoning notice in respect of the amended application, as well as commentary from the appellant's expert witness. The commentary is limited to explaining changes to the initial application and any additional variances triggered by the zoning examiner's review.

36. By Tuesday October 15, 2019, I expect Mr. Smith to submit Form 5 – Authorized Representative to the TLAB.

37. I will review the amended application and decide on whether written notice be given to the persons and public bodies who received the notice of the original application.

38. By Friday November 15, 2019, Ms. Klotz and Ms. Abimbola will provide their respective responses to the amended application.
39. By Friday November 15, 2019, having regard to the TLAB Rules, Mr. Klotz will notify whether Mr. Smith will be a party or an expert witness in the matter.
40. In all other respects, the requirements of the Notice of Hearing and obligations under the TLAB *Rules* remain unaltered.

X



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Sean Karmali  
Panel Chair, Toronto Local Appeal Body