

MOTION DECISION AND ORDER

Decision Issue Date Wednesday, March 23, 2022

PROCEEDING COMMENCED UNDER section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): HELENA GRDADOLNIK

Applicant: MICHAEL FODERICK

Property Address/Description: 1144 DAVENPORT RD

Committee of Adjustment Case File Number: 20 193800 STE 09 MV (A0803/20TEY)

TLAB Case File Number: 21 235751 S45 09 TLAB

Motion Hearing date: **Tuesday, March 15, 2022**

DECISION DELIVERED BY S.GOPIKRISHNA

REGISTERED PARTIES AND PARTICIPANTS

Appellant	Helena Grdadolnik
Applicant/ Party's Legal Rep.	Michel Foderick
Party/ Owner	Percy Ellis Holdings Inc
Expert Witness	Mike Dror

INTRODUCTION AND BACKGROUND

Percy Ellis Holdings is the owner of 1144 Davenport Road, located in Ward 09 (Davenport) of the City of the Toronto. They applied to the Committee of Adjustment (COA) for the approval of variances to alter the existing two-storey mixed-use building, containing three dwelling units, by constructing a complete third and fourth storey addition, and adding two dwelling units, for a total of five dwelling units, while maintaining the commercial unit on the ground floor. The COA heard the Application on October 20, 2021, and approved the variances. Helena Grdadolnik, the owner of 1157

Davenport Road, appealed the Approval to the TLAB on November 9, 2021. On December 22, 2021, the TLAB issued a Notice of Hearing (the “Notice”) pursuant to Rule 10.1 of the TLAB’s Rules of Practice and Procedure, which identified a number of deadlines, including the submission of Witness Statements by February 21, 2022.

The Applicants state that they submitted the Witness Statement of their Expert Witness, Mike Dror to the TLAB, as well as the Appellant, Helena Grdadolnik, on February 21, 2022. The Motion material emphasizes that Counsel for the Applicant made numerous attempts to contact the Appellant, and have her submit a Witness Statement- apparently, their efforts to obtain a Witness Statement included contacting the TLAB to convince the Appellant to submit a Witness Statement . The Applicants state that they waited for ten days till March 3, 2022, before bringing forward the Motion that is now before the TLAB.

The Motion, dated March 3, 2022, asks for the following relief:

(a) an Order requiring Helena Grdadolnik to submit any witness statement(s) for this proceeding in accordance with Rule 16.1 of the TLAB’s Rules of Practice and Procedure, as required by the TLAB’s Notice of Hearing dated December 22, 2021, no later than one (1) week following the date that this motion is heard, and for the Applicant to be permitted one (1) week to file any Reply Witness Statement(s);

and/or,

(b) an Order excluding Helena Grdadolnik, and any other party who has failed to file a witness statement, from leading evidence or providing evidence as a witness for this proceeding as a result of their failure to submit a witness statement for this proceeding in accordance with Rule 16.3 of the TLAB’s Rules of Practice and Procedure;

and,

such further and other relief as counsel may request and the TLAB may permit

The Motion relies on Planning Act, R.S.O. 1990, c. P.13, as amended, section 8.1, and Subsections 45(12), 45(1), 45(2)(b) of the Planning Act, and Section 16.4 of the TLAB’s Rules

At 10:15 AM on March 7, 2022, Ms. Grdadolnik sent an email to the TLAB, and the Applicants apologizing for the delay in the submission of her Party Witness Statement, which as I understand, was submitted together with the email. She stated that she was “dealing with a personal health issue”, and added that she may have to undergo “an operation”, followed by a 4-6 weeks recovery. Ms. Grdadolnik stated that her having to address these health concerns was the underlying reason behind her inability to satisfy the submission deadlines. She requested that the TLAB accept the submission of her

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completed Witness Statement (Form 12), though it was submitted late. She also asked if she could submit a complete Form 19 in “Response to the Expert Witness Statement by Mike Dror”.

At 11:33 AM on March 7, 2022, the TLAB received an email from Mr. Michael Foderick, Counsel for the Applicants, stating that that the Applicants would not object to the late filing by the Appellant, if “given two weeks to file a Reply”, notwithstanding the “prejudice” caused by the late filing. At 11:41 AM, the same morning, the TLAB received an email from Ms. Grdadolink, agreeing to the suggestion by Mr. Foderick, stated above, followed by a request that she be given two weeks to respond to the Expert Witness Statement submitted by the Applicants. The TLAB also received another email from Ms. Grdadolnik, sent at 12:11 PM on March 8, 2022, repeating the earlier question about her ability to submit Form 19, by March 22, 2022

The file was forwarded to me by TLAB’s staff members on the afternoon of March 14, 2022. Given how much time had elapsed since the original emails sent by the Parties, and the time sensitivity of the Motion material, I reviewed the material quickly, and instructed TLAB’s staff members to send out an email to the Parties on the afternoon of March 15, 2022, stating that the following relief was granted:

- 1) *The relief requested by the Applicants is granted- in other words, the Applicants have until March 22, 2022 to respond to the Statement submitted by the Appellant on March 7, 2022.*
- 2) *The Statement sent in by the Appellant on March 7, 2022 will be included in the Record to be used for evidentiary purposes. The Appellant has until March 22, 2022 to submit a “Responding Witness Statement”, in addition to any other material that she has already submitted*

I prefaced the reminder of my remarks by stating that I did not have access to any of the Witness Statements, and was consequently not sure why Ms. Grdadolink needed to file a Response to the Expert Witness Statement, when she “presumably had access to the Expert Witness Statement, when filing her Statement on March 7, 2022” . On March 16, 2022, the TLAB’s staff forwarded an email from Ms. Grdadolink stating that she had submitted the documents listed below, followed by a question about the need to submit any further documents, or resend the same documents:

- Form 1 Appeal (November 2021)
- Form 12 Party Witness Statement (March 7, 2022 – two weeks late due to medical reasons)
- Form 19 Response to Expert Witness Statement (March 7, 2022)
- Form 8 Notice of Response to Motion, followed by Item 3 Medical Note (March 11, 2022) and Form 10 Affidavit (March 15, 2022)

MATTERS IN ISSUE

The matters before the TLAB, are whether to permit:

- The submission of a Witness Statement, submitted by the Appellant after the deadline for such a submission, and
- The submission of a Response by the Applicants, in response to the late submission of a Witness Statement by the Appellant
- The submission of a Response by the Appellant, in response to the Expert Witness Statement of the Applicants

JURISDICTION

The TLAB relies on its Rules of Process and Procedure (“the Rules”) to make decisions on administrative issues.

ANALYSIS, FINDINGS, REASONS

I note that the principal reason for the Applicants bringing forward the Motion dated March 3, 2022, which is to compel the Appellant to submit a Witness Statement by March 10, 2022, or to exclude all submissions by the Appellant if the aforementioned deadline were missed, has been resolved through the exchange of emails between the Parties on March 7, 2022. The Appellant submitted her Witness Statement the same day, accompanied by reasons explaining the delay. In response, the Applicants stated that they wouldn’t object to the late submissions, if given two weeks (until March 22, 2022) to respond to her Witness Statement, notwithstanding the “prejudice”. In response to this concession from the Applicants, the Appellant said that she would not object to the Response from the Applicants, provided she would be given two weeks (until March 22, 2022) to provide a response to the Applicant’s Expert Witness Statement.

In order to ensure a degree of clarity to the Parties, given the narrow time windows, between my receipt of the Motion material, and the deadlines, I reviewed the Motion material as quickly as I could, and sent out the highlights of my Ruling-to-be-issued by way of an email to the Parties on March 15, 2022- the highlights are not recited here because they are stated in the “Introduction and Background” Section.

By way of explaining my reasoning, I find that it would be reasonable to extend the deadline for submissions to the Appellant, because the delay was caused by her health situation. I herewith state my appreciation of the Appellant’s submitting her Witness Statement by March 7, 2022, notwithstanding any pressures caused by the upcoming surgery. I would like to commend the Applicants for their reasonable response to an amicable and mutually acceptable resolution of the submissions, based on their emails sent on the morning of March 7, 2022. As stated in the email sent out to the Parties on

March 15, 2022, both sides are given time till March 22, 2022 for the submissions of their Responses to each other's Witness Statements.

Based on the email sent to the TLAB by Ms. Grdadolink on March 16, 2022, I understand that she has already submitted her Response to the Applicant's Expert Witness Statement on March 7, 2022. I herewith find that her Response may be included in the Record pertaining to this Appeal, and may be used for evidentiary purposes for the Hearing to be held on April 1, 2022. As a result, the relief granted by way of the email to the Appellant for submitting their Response effectively becomes redundant- the relief stated below in the **Motion Decision and Order** Section is modified from what was stated in the email to the Parties sent on March 15, 2022, by allowing the Appellant's Response to the Applicant's Expert Witness Statement to be included in the Official Record pertinent to this Appeal. The Applicants will be given relief from the Rules to submit their Response by the end of day on March 22, 2022.

The relief resulting from the analysis presented in this Section, summarized above, is reiterated in the **Motion Decision and Order** below:

MOTION DECISION AND ORDER

- 1) The Applicants are given time till the end of day on March 22, 2022, to submit their Response to the Appellant's Witness Statement, submitted on March 7, 2022.
- 2) The Witness Statement, as well as the Response to the Applicants' Witness Statement, both of which were submitted by the Appellant on March 7, 2022, are included in the Official Record pertaining to the Appeal respecting 1144 Davenport Road, and may be used for evidentiary purposes for this Proceeding.

So orders the Toronto Local Appeal Body



X

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body