

MOTION DECISION AND ORDER

Decision Issue Date Friday, April 22, 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: **Wednesday, April 20, 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

The details of the Introduction and Background to the Appeal respecting 1144 Davenport Road appear in my earlier Motion Decision and Order released on March 23, 2022 and is consequently not repeated here. It may be noted that the earlier Motion was heard in writing by on March 15, 2022, and the relevant highlights of the Order, providing direction to the Parties was separately sent out by way of an email on the same day.

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It is important to note that there was some overlap between the relief requested by the Appellant in her Response to the first Motion, dated March 7, 2022 and the second Motion, brought forward on March 15, 2022. The repetition could have been caused by my Decision respecting the first Motion not being released until March 23, 2022, more than a week after the Appellant brought forward her second Motion.

Consequently, the Operative Part from my first Order is repeated below

- 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.
- 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 file respecting 1144 Davenport Road, and may be used for evidentiary purposes for this Proceeding.

Given that specific components of the relief sought in the second Motion are addressed in the form of the Decision cited above, there is no need to recite those components of relief, nor revisit the Decision. The only components of the request relief recited below, and addressed by way of this Motion Decision, are the hitherto unaddressed, or "new" components.

In her Motion submitted on March 15, 2022, the Appellant, Ms. Helena Grdadolnik stated that she would not be able to attend the Hearing respecting 1144 Davenport, scheduled by the TLAB for April 1, 2022, because she had been informed on March 10, 2022, that she would have to have surgery on April 1, 2022. After explaining why the surgery could not be performed on any other day despite her best efforts, Ms. Grdadolnik stated that she been advised by her doctor that she would require a month to recover from the surgery. In order to complete the Proceeding, she presented the following options to the TLAB:

- (a) The Hearing be postponed for four weeks, and rescheduled for a later date
- b) That the Appeal be Heard in Writing, without any evidence provided by way of an oral Examination-in-Chief, Cross Examination, and Reply
- (c) The Hearing be postponed for at least two weeks in order to enable Ms. Grdadolnik's Partner, Mr. David Victor Barton Colussi, (who also lives at 1157 Davenport Road) represent her at the Hearing

In their Response to the Motion, the Counsel for the Applicants, Mr. Michael Foderick referred to TLAB's Rules 23.2 and 24.6 to substantiate their preferences, and made the following submissions:

- There are no objections raised by the Applicant to the requested postponement of the Hearing scheduled for April 1, 2022, as long as the matter could be heard on, or before May 13, 2022
- The Applicant did not want to proceed by way of a Written Hearing, because of the significant work, and hardship involved in converting their Witness' evidence from on oral form to a written form. Mr. Foderick also highlighted the importance of how they would not be afforded an opportunity to test the Appellant's evidence by way of Cross-Examination, should the Hearing proceed by way of Writing.

MATTERS IN ISSUE

The main question to be answered by way of this Decision is how to proceed to complete this Hearing, with specific reference to:

- a) The Hearing be postponed for four weeks, and rescheduled for a later date
- b) That the Appeal be Heard in Writing, without any evidence provided by way of an oral Examination-in-Chief, Cross Examination, and Reply
- (c) TLAB postpone the meeting for at least two weeks in order to enable Ms. Grdadolnik's Partner, Mr. David Victor Barton Colussi, to represent her at the Hearing

JURISDICTION

The TLAB relies on its Rules of Process and Procedure ("the Rules") to make decisions on administrative issues. The Applicants (and Respondents to this Motion) relied on Sections 23.2 and 24.6 of the Rules in support of their submissions.

ANALYSIS, FINDINGS, REASONS

With respect to the first option suggested by the Appellant about postponing the Hearing scheduled for April 1, 2022 by four weeks, it is important to note that the Applicants did not object to the Appellant's request to postpone the Hearing, as long as it can be completed within a reasonable period, preferably on or before May 13, 2022. On the basis of the information provided by the Appellant in the Affidavit accompanying the Motion regarding her availability, I find that she would be able to participate in a Hearing after May 1, 2022. In other words, this Option about postponing the Hearing by four weeks looks acceptable to both sides, as long as the TLAB can identify a date in May 2022 to schedule a Hearing.

The second option suggested by the Appellant involves a Hearing by way of Writing- I agree with the Appellant's concerns about the complex and onerous task of

converting the Expert Witness' evidence, which they clearly prefer to give by way of a *viva voce* examination, into a written document for the purposes of a Hearing in Writing. If this option is what the TLAB recommends, I agree that the resulting Statement would have to be comprehensive enough to anticipate, and answer any questions that can be asked of the Witness by the opposing Party. I also find that this approach would deprive me, as the Presiding Member, of an opportunity to ask questions of either side, and inform myself fully in order to arrive at an informed and well-supported Decision.

As a result, I find that it would not be advisable to complete this Proceeding through a Hearing in Writing.

Lastly, the Appellant also brought forward the Option of postponing the Hearing by two weeks, in order to enable her husband, Mr. Colussi, "to represent her" at a Hearing. On the basis of the information provided to me, I don't know what the "representation" would manifest itself- would Mr. Colussi give evidence on Ms. Grdadolnik's behalf, or would he act as her Agent, and cross-examine Mr. Dror, the Applicants' Expert Witness? For Mr. Colussi to provide evidence, it would be appropriate for him to submit a Witness Statement on the basis of his concerns and knowledge, for which the appropriate legal steps would have to be taken, even if he wanted to "adopt" Ms. Grdadolnik's Witness Statement, as submitted to the TLAB. While Mr. Colussi can ask questions of Mr. Dror on behalf of Ms. Grdadolnik, the latter may be at a disadvantage since no evidence can be given on behalf of the Appellant if this process were followed.

I note that the Applicants have not expressed an opinion regarding this Option, and would prefer not to pursue the same, amidst the cumulative confusion of insufficient information about what the representation entails, the possibility of further Motions to enable Mr. Colussi provide evidence on Ms. Grdadolnik's behalf, and the possibility of strategic disadvantages to the Appellants.

As a result, I find that the best way of proceeding with this Hearing would be to postpone the Hearing by a minimum of four weeks, and complete the same through a videoconference, at the earliest possible occasion in May 2022. After checking with the TLAB Staff, I found that May 31, 2022 would be the earliest date on which we can hold a Hearing, and instructed the Staff to issue a Notice of Hearing to this effect. I understand that the new Hearing Notice was sent to the Parties on April 4, 2022.

I take this opportunity to wish Ms. Grdadolnik a speedy and full recovery from her surgery, and commend both Ms. Grdadolnik and Mr. Foderick on their fair-mindedness, and being amenable to complete the Proceeding in a manner that is efficient, and fair to both side.

MOTION DECISION AND ORDER

- 1) The Appeal respecting 1144 Davenport Road will proceed by way of an Oral Hearing, conducted by way of a videoconference on a Webex platform. A

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Hearing Notice, dated April 4, 2022, has been circulated to the Parties stating that the Appeal will be heard at 9:30 AM on May 31, 2022.

So orders the Toronto Local Appeal Body

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body