

MOTION DECISION AND ORDER

Decision Issue Date Monday, May 30, 2022

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

Appellant(s): DAVID STERN

Applicant: ROBERT STERN

Property Address/Description: 91 LAKE PROMENADE

Committee of Adjustment Case File Number: 21 226726 WET 03 MV (A0526/21EYK)

TLAB Case File Number: **21 246317 S45 03 TLAB**

Motion Hearing date: Friday, May 27, 2022

DECISION DELIVERED BY C. Kilby

REGISTERED PARTIES AND PARTICIPANT

Appellant	D. Stern
Appellant's Legal Rep	I. Flett
Applicant	R. Stern
Party	A. Hutka
Party's Legal Rep.	A. Hora
Participant	A. Choles
Participant	C. Mercado

INTRODUCTION

Andrea Hutka requests an adjournment of the hearing of this appeal, currently scheduled for June 1, 2022 (**Hearing**). Ms. Hutka requests more time to retain a land use planning expert who can provide evidence in support of her position at the Hearing.

BACKGROUND

David Stern appealed to the Toronto Local Appeal Body (**TLAB**) from the Committee of Adjustment's refusal of his request for seven variances from the City of Toronto harmonized zoning by-law 569-2013 (**Appeal**). Mr. Stern seeks variances in order to construct a new two-storey front addition and rear deck at 91 Lake Promenade (**Application**). Ms. Hutka lives adjacent to 91 Lake Promenade and opposes the Application.

The Committee of Adjustment denied the Application on November 30, 2021. The Notice of Hearing for this Appeal was issued on February 28, 2022, setting a Hearing date of June 1, 2022. On May 12, 2022, Ms. Hutka filed a motion in writing seeking an adjournment of the Hearing (**Motion**). The Appellant opposes this request.

A review of the case file posted online at the City of Toronto Application Information Centre reveals that Ms. Hutka filed her Notice of Intention to be a Party, as well as this Motion, within the timelines set out in the Notice of Hearing.

EVIDENCE

Ms. Hutka filed a Notice of Motion with an accompanying affidavit dated May 12, 2022. Mr. Stern filed a Notice of Response to Motion and an accompanying affidavit of his son Robert Stern dated May 20, 2022. Ms. Hutka submitted Reply materials dated May 24, 2022.

One reason for Ms. Hutka's adjournment request is that she has been unable to find a planner who is available to provide expert evidence on June 1, 2022. Ms. Hutka asks the TLAB to adjourn the Hearing for an unspecified amount of time so that she may "continue to search for a planner" whom she anticipates she will retain "as soon as I can find one with availability." There is limited detail given as to when Ms. Hutka spoke to planners, how many she consulted, and what dates are suitable for these planners to submit filed and oral evidence. The Notice of Motion requests rescheduling the Hearing to a date in November as an alternative to an adjournment without a fixed date. Mr. Stern's affidavit says that delaying the Hearing to a November date would cause anxiety and concern for himself and the Appellant.

Ms. Hutka's affidavit also cites a Freedom of Information (**FOI**) request she has submitted to the Toronto and Region Conservation Authority (**Authority**). Until she has

received the information requested, she feels she cannot present a complete response to the Appeal. Mr. Stern counters that the Authority has not objected to the Application and that any permits required are granted by the Authority and not TLAB.

Ms. Hutka also indicates that the Appellant brought multiple proposals before the Committee of Adjustment. I was unable to verify this claim based on the evidence in the Motion record, and I assign it little weight. Mr. Stern's affidavit discusses "different iterations of the project that attempted to respond to the Member's comments", which may be intended to address the allegation of multiple applications, but it is difficult to be certain. In any case, what is relevant is the Application before the TLAB and the information filed in support of that particular proposal.

Ultimately, Ms. Hutka feels that it would be unfair to refuse this Motion. She describes the effort she has made to respond to the Application across various venues. She denies that the Appellant would be prejudiced by an adjournment. Mr. Stern asserts that the Appellant is anxious to begin construction of a home that will accommodate his desire to age in place, and any delay in the Hearing date will add to this anxiety. His submission is that granting an adjournment would result in an unfairness because Ms. Hutka would have more time than what is provided for under the Notice of Hearing to consider and respond to materials already filed.

ANALYSIS AND REASONS

Jurisdiction

I have jurisdiction to hear and rule on this Motion under the TLAB Rules of Practice and Procedure (**Rules**). I rely in particular on Rules 2,17 and 23.

Rule 23.1 says that "Proceedings will take place on the date set by the TLAB and provided in the Notice of Hearing, unless the TLAB orders otherwise." There is a presumption that the dates set by the TLAB are fixed, which promotes certainty. The TLAB has the authority to change the dates set for an appeal, however, if a Party brings a motion. Rule 23.3 lists considerations for a Panel Member to weigh when considering granting an adjournment:

23.3 In deciding whether or not to grant a Motion for an adjournment the TLAB may, among other things, consider:

- a) the reasons for an adjournment;
- b) the interests of the Parties in having a full and fair Proceeding;
- c) the integrity of the TLAB's process;
- d) the timeliness of an adjournment;

- e) the position of the other Parties on the request;
 - f) whether an adjournment will cause or contribute to any existing or potential harm or prejudice to others, including possible expense to other Parties;
 - g) the effect an adjournment may have on Parties, Participants or other Persons;
- and
- h) the effect an adjournment may have on the ability of the TLAB to conduct a Proceeding in a just, timely and cost-effective manner.

Although raised in the Motion materials, the relative merits of the Parties' positions are irrelevant to this Motion. Similarly, any other properties owned, or variance applications made, by the Appellant are not relevant to this Motion or the Appeal.

Analysis

Rule 2.1 states that the TLAB is committed to fixed and definite dates. Ms. Hutka's request for an adjournment challenges this principle, particularly since she has had notice of the deadlines in this Appeal since at least March 25, 2022, when she elected Party status.

As the immediate neighbour to 91 Lake Promenade, however, Ms. Hutka has an important interest in this Appeal. She refers to having to live with the consequences of the TLAB's ultimate decision on the Application. Despite the absence of detail, I am satisfied with Ms. Hutka's sworn evidence as to her attempts to prepare for the Hearing, including by seeking out potential expert witnesses and information from the Authority.

While the TLAB's Rules do not require a Party to retain an expert land use planner, Ms. Hutka is entitled to pursue the option for the Hearing, particularly where the Appellant will rely on expert evidence.

It is unclear from the Motion record what information the Authority will provide to Ms. Hutka and whether it has any bearing on the issues in this Appeal. It is also unclear whether the FOI request was the only way to obtain that information. Ms. Hutka has not specified when she made the FOI request nor how the information she seeks relates to the four tests for variance approval under section 45(1) of the *Planning Act*. Mr. Stern has alluded to other means of obtaining information relating to the Authority and perhaps Ms. Hutka will try those avenues should the FOI request fail to come through in time.

In terms of timeliness, this adjournment request was made very close to the Hearing date, but within the timelines set out in the Notice of Hearing. Unfortunately, Ms. Hutka did not seek an adjournment as soon as she was aware that she would not

be able to comply with the April 29, 2022 deadline for filing Expert Witness Statements set out in the Notice of Hearing, but she was not beyond the deadline set by the TLAB to seek this relief. The Appellant rightly points out that Ms. Hutka has not asked for an extension of time to file her evidence, having missed the relevant dates. Nevertheless, under Rule 2.3, the TLAB may exercise any of its powers under these Rules or applicable law on its own initiative, and I will do so.

The prejudice cited by the Appellant resulting from an adjournment is increased anxiety, possible delay in proceeding with construction, and unfairness in terms of additional time for Ms. Hutka to respond to his expert's evidence. I find that while these are negative impacts, they do not prejudice the Appellant's ability to present his case to the TLAB.

Rather, I find Ms. Hutka is more likely to be prejudiced by the refusal of an adjournment than the Appellant would be if an adjournment is granted, particularly in light of her proximity to 91 Lake Promenade. Therefore, an adjournment will be granted.

Length of Adjournment

Ms. Hutka asks for an adjournment with either no fixed Hearing date or a date six months from the original Hearing date so that she may prepare her response to the Appeal. There is no evidence before me to support an adjournment of this length, and Mr. Stern is clear that the longer the delay, the more negative the impact to the Appellant.

Ms. Hutka's evidence is that she has contacted several planners who can support her position but who are not available on June 1, 2022. On this basis, I find her suggested time frame unwarranted as I am not convinced that she needs several more months to complete the task of retaining an expert witness. In order to achieve a just, timely and cost-effective Hearing, I find that granting an adjournment to the week of July 25, 2022 will suffice for the purposes of finalizing an expert witness retainer and allowing Mr. Stern to respond to any evidence filed by Ms. Hutka.

Furthermore, no additional adjournments will be granted should Ms. Hutka not be able to retain an expert land use planner or meet the filing deadlines set out below.

DECISION AND ORDER

The Motion is granted and the Hearing originally scheduled for June 1, 2022 is adjourned to date(s) during the week of July 25, 2022 to be set in consultation among the TLAB and the Parties. TLAB staff will issue a new Notice of Hearing with the following deadlines:

Expert Witness Statement to be filed no later than June 30, 2022

Response to Expert Witness Statement to be filed no later than July 15, 2022

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Reply to Response to Expert Witness Statement to be filed no later than July 22, 2022.

Should the dates set out herein conflict with the schedules of any of the Appellant or his representatives, the TLAB will endeavour to find suitable dates as close as possible to those set out above.

If any difficulties arise in the implementation of this Decision and Order, the TLAB may be spoken to on notice to all Parties and Participants.

X 

Enter Panel Member Name Christine Kilby
Panel Chair, Toronto Local Appeal Body