

MOTION DECISION AND ORDER

Decision Issue Date: Wednesday, July 27, 2022

PROCEEDING COMMENCED UNDER Section S53, 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): DANIELE IANNETTI

Applicant: DANIELE IANNETTI

Property Address/Description: 5 MARINA AVE

Committee of Adjustment Case File Number: 21 104970 WET 03 CO, 21 104973 WET 03 MV, 21 104974 WET 03 MV

TLAB Case File Number: 22 117387 S53 03 TLAB, 22 117392 S45 03 TLAB, 22 117393 S45 03 TLAB

Motion date: Wednesday, July 27, 2022

DECISION DELIVERED BY TLAB MEMBER G. SWINKIN

REGISTERED PARTIES AND PARTICIPANTS

Appellant /Applicant	DANIELE IANNETTI
Appellant's Legal Rep.	DAVID BRONSKILL
Party (TLAB)	PAUL JAMES TERRY
Party (TLAB)	CITY OF TORONTO
Party's Legal Rep.	CAMERON MCKEICH
Party's Legal Rep.	MARC HARDIEJOWSKI - CITY OF TORONTO
Party (TLAB)	J. GIBSON - LONG BRANCH NEIGHBOURHOOD
Party (TLAB)	LIBIN PAN
Participant	AMY BUTOISKE

Participant	PATRICIA LYNN STARKEY
Participant	TOM KASANDA
Participant	BLAIR MARIK
Participant	JOSEE QUENNEVILLE
Participant	DEBORAH THERESA TERRY
Participant	KEVIN KOMISARUK
Participant	A. CHOLES - LONG BRANCH NEIGHBOURHOOD
Participant	C. MERCADO - LONG BRANCH NEIGHBOURHOOD

INTRODUCTION

A Motion has been brought by the Long Branch Neighbourhood Association (“LBNA”), which incorporated non-profit community association has filed an election to have Party status in this appeal proceeding before the Toronto Local Appeal Body (the “Tribunal”). The proceeding stems from appeals brought on behalf of Daniele Iannetti (the “Owner”) with respect to the refusal of the Toronto Committee of Adjustment (the “Committee”) to grant the Owner’s request for consent to sever 5 Marina Avenue (the “Property”) and for zoning variance relief for the proposed construction on the two resultant parcels from that severance.

The Tribunal issued a Notice of Hearing with respect to these appeals on April 26, 2022. The Notice fixed the hearing date before the Tribunal as August 5, 2022. In accordance with its prescribed procedure, the Notice also set out dates for the filing of various Forms, most significantly document disclosure and witness statements, which in this instance fell on June 27, 2022.

Based upon the affidavit of Christine Mercado, who is Chair of the LBNA, the Owner has not filed any document disclosure nor any witness statements to this date.

The LBNA thus brings its Motion for the following Order dispensations of the Tribunal:

- a. For an oral virtual Prehearing conference according to TLAB Rule 21.3
The purpose of the Prehearing conference will be according to TLAB Rule 21.6 d), to provide directions to the Parties, dates for Applicant Disclosure and then the subsequent filing, exchange and disclosure of evidence ; and
- b. Adjourn the hearing currently scheduled for August 5, 2022 according to Rule 23.2 and 23.3 and poll the Parties for a new hearing date after allowing appropriate time for the Filing, Exchange, Disclosure and Responses of evidence and documents for this Proceeding.

BACKGROUND

As indicated above, the affidavit of Ms. Mercado sets out the critical background to the requested Motion. As it is very lucidly and clearly set out therein, the chronology of events from the time of issuance of the Tribunal's Notice of Hearing is herein lifted out into this Decision:

"On or about April 26, 2022, pursuant to Rule 10.1, a Notice of Hearing (Form 2) was issued by TLAB staff via email with the dates for filing submissions in accordance with the TLAB Rules.

According to the April 26, 2022 Notice of Hearing (Exhibit 1) the first submission, Applicant Disclosure as per Rule 11 (Form 3) was DUE no later than May 16, 2022. A Form 3 has not been provided yet by the applicant.

On May 26, 2022 - Notice of Intention to be a Party as per Rule 12 (Form 4) were submitted by the next-door neighbour, Mr. Paul Terry, the neighbour to the rear of the property, Mr. Libin Pan and the LBNA.

On May 26, 2022 - Notice of Intention to be a Participant as per Rule 12 (Form 4) was submitted to TLAB by 8 residents.

On June 23, 2022 – An email was received by all participating Parties, Participants and TLAB from Mr. Bronskill requesting a 2-week delay in the exchange of witness statements for the parties. Mr. Bronskill indicated he had been engaged in discussions with the City of Toronto regarding outstanding matters.

This was the first communication from the Applicant to the LBNA and neither the LBNA nor the other Parties were engaged in discussions with either the City or Mr. Bronskill regarding these matters.

June 24, 2022 – A message was received by all participating Parties and Participants from TLAB that the dates set on the Notice of Hearing are firm unless directed otherwise via a Decision from the presiding Panel Member. And that if Mr. Bronskill wanted to ask for due dates to be adjusted, the request must be made by Motion.

On June 27, 2022 – No Document Disclosure Witness Statement as per Rule 16.4 (Form 12) was submitted by Mr. Bronskill or the City by end of day. As TLAB Rules and the Notice of Hearing direct simultaneous exchange of Witness statements and Document Disclosure the remaining Parties and Participants (except for 2 Participants) did not file their documents or witness statements.

The LBNA attempted to contact the Applicant's representative twice during the weeks of June 27 and July 4, 2022 via both phone and email to clarify whether they were filing a Motion or what their intentions were. The LBNA did not receive a response from Mr. Bronskill to either of these forms of communication.

On July 7, 2022 Party Mr. Terry sent an email to Mr. Bronskill inquiring when he and his client intended to submit;

- a. Form 3,
- b. Document Disclosure,
- c. If Mr. Bronskill or his client would be filing a motion for deferral,
- d. What aspects of the proposal were being discussed with City staff. Mr. Terry received no answer to his email.

On July 11, 2022, the date that Mr. Bronskill had initially requested as the date for the exchange of witness statements, no document disclosure nor witness statements were received from Mr. Bronskill or the City by end of business day or by midnight pursuant to Rule 3.4. Consequently, the remaining Parties did not file to preserve the integrity of their case.

On July 11, 2022, multiple documents, potentially damaging the intended fairness provided by due process, adherence to submission dates and intervals filed by participants including;

Josee Quennville
Patricia Lynn Starkey
Amy Butoiske
Tom Kasanda
Kevin Komisaruk
Andy Choles

These submissions were made in good faith by the Participants, in concert, so in time with Mr. Bronskill's unauthorized 2-week deferral from June 27, 2022."

MATTERS IN ISSUE

The LBNA characterizes the issues as follows:

1. At this point in time, it is NOT possible for the normal procedures and processes to occur in a proper sequence or interval prior to the currently scheduled hearing date of August 5. The applicant has submitted NO MATERIALS, Witness Statements, Applicant Disclosure nor Documents as of

July 15, 2022.

2. The granting of the LBNA's Motion will allow the TLAB to conduct the proceedings in a manner that is just to all parties and in a timely way.
3. In the absence of a Form 3, the LBNA is unclear whether or not the applicant has made or is intending to make revisions or modifications to their original application.
4. The LBNA reserves the right to object to the acceptance of TLAB of any new plans to this hearing given that the deadline for Applicant Disclosure is well past.

JURISDICTION

Toronto Local Appeal Body Rules of Practice and Procedure:

2.1 The TLAB is committed to fixed and definite dates. These Rules shall be interpreted in a manner which facilitates that objective.

2.3 The TLAB may exercise any of its powers under these Rules or applicable law, on its own initiative or at the request of any Person.

2.13 Where a Party or Participant to a Proceeding has not complied with a requirement of these Rules or a procedural order, the TLAB may:

a) grant all necessary relief, including amending or granting relief from any procedural order on such conditions as the TLAB considers appropriate;

b) adjourn the Proceeding until the TLAB is satisfied that there is compliance;

c) order the payment of costs; or

d) refuse to grant the relief in part or whole.23.1 Proceedings will take place on the date set by the TLAB and provided in the Notice of Hearing, unless the TLAB orders otherwise.

23.2 A Party shall bring a Motion to seek an adjournment, unless the adjournment is on consent in accordance with Rule 17.2.

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.

23.4 On a Motion for adjournment the TLAB may:

- a) grant the Motion;
- b) grant the Motion and fix a new date, or where appropriate, the TLAB may schedule a prehearing on the status of the matter;
- c) grant a shorter adjournment than requested;
- d) deny the Motion;
- e) direct that the Hearing commence or continue as scheduled, or proceed with a different witness, or evidence on another issue;
- f) grant an indefinite adjournment if the request is made by a Party and is accepted by the TLAB as reasonable and the TLAB finds no substantial prejudice to the other Parties or to the TLAB. In this case the Moving Party must make a request that the Hearing be rescheduled or the TLAB may direct that the Moving Party provide a timeline for the commencement or continuance of the Proceeding;
- g) convert the scheduled date to a Mediation or prehearing conference; or
- h) make any other appropriate order including an order for costs.

Section 45(17) *Planning Act*

Dismissal without hearing

(17) Despite the Statutory Powers Procedure Act and subsection (16), the Tribunal may, on its own initiative or on the motion of any party, dismiss all or part of an appeal without holding a hearing if,

(a) it is of the opinion that,

(i) the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the Tribunal could allow all or part of the appeal,

(ii) the appeal is not made in good faith or is frivolous or vexatious,

(iii) the appeal is made only for the purpose of delay, or

(iv) the appellant has persistently and without reasonable grounds commenced before the Tribunal proceedings that constitute an abuse of process;

(b) the appellant has not provided written reasons for the appeal;

(c) the appellant has not paid the fee charged by the Tribunal; or

(d) the appellant has not responded to a request by the Tribunal for further information within the time specified by the Tribunal. 2017, c. 23, Sched. 5, s. 98 (5); 2019, c. 9, Sched. 12, s. 13 (2); 2021, c. 4, Sched. 6, s. 80 (1).

EVIDENCE

The evidence before the Tribunal on this Motion is solely that which is embodied in the affidavit of Christine Mercado in support of the Motion. The filed Notice of Motion material asserts that Mr. Bronskill was served with the Notice of Motion. There is no indication in the Tribunal's records that Mr. Bronskill has communicated directly with the Tribunal on the filing of material or adjustment to the hearing date. No Notice of Response to the Motion was filed by Mr. Bronskill.

ANALYSIS, FINDINGS, REASONS

The Tribunal here declares that it is troubled by the circumstances associated with the progress of this appeal and the failure on the part of the Appellant to file disclosure material and witness statements, and despite an initial expression of intention to communicate with the other Parties and Participants on that matter, to have neglected to do so. As suggested by Ms. Mercado, this lack of communication is unfair to the other persons involved in the appeals and undermines the integrity of the process.

At this juncture, and without any knowledge as to the Appellant's intentions, it is not tenable to believe that a proper hearing could be achieved by the Tribunal on August 5th. As such, in accordance with its authority to do so under Rule 23.4 (f) of its *Rules of Practice and Procedure*, the Tribunal will grant the adjournment on an indefinite basis.

The hearing will only be rescheduled at the instance of the Appellant by a Notice of Motion properly brought for that purpose and served upon all Parties and Participants of record, and filed with the Tribunal. Should such a further hearing date be scheduled by

the Tribunal, a fresh Notice of Hearing would issue with revised disclosure and witness statement filing dates.

However, given the Appellant's behaviour on the appeals to this point, the Tribunal hereby puts the Appellant on notice that it expects a written status report from counsel for the Appellant concerning the Appellant's filing failures to date and its intentions to proceed with the appeals and expected timeline with respect to the filing of any necessary project modification disclosure and associated document disclosure and filing of witness statements. This status report should be transmitted to the Tribunal and to the Parties and Participants of record within 60 days of issuance of this Decision.

The Appellant is hereby put on notice that failure to file the described status report will result in the Tribunal exercising its authority to, on its own initiative, dismiss the Appellant's appeals without further notice pursuant to the authority available to it under s.45(17)(d) of the *Planning Act*.

DECISION AND ORDER

The Tribunal will allow the Motion as to that branch which seeks an adjournment of the Tribunal hearing presently scheduled for August 5, 2022, the adjournment to be *sine die*, with the rescheduled date, if any, to be fixed upon Motion by the Appellant at a future date.

The Tribunal dismisses the Motion as to that branch which seeks the scheduling of a Pre-hearing conference before the Tribunal on the appeals at this time.

The Tribunal directs the Appellant to file and serve the status report referred to in this Decision within 60 days of the issuance of this Decision.

In the event that the Appellant no longer intends to pursue the appeals, the Tribunal expects the Appellant to withdraw the appeals on a timely basis.

X



G. Swinkin
Panel Chair, Toronto Local Appeal Body