

June 2, 2020

SENT BY EMAIL: NAZMA.RAMJAUN@ONTARIO.CA

Local Planning Appeal Tribunal
655 Bay Street, Suite 1500
Toronto, ON M5G 1E5

Attention: Nazma Ramjaun, Case Coordinator, Planner

Dear Ms. Ramjaun:

Re: LPAT Case Number: PL180898 – Township of Lake of Bays – Request for Mediation

I act for the Lake of Bays Association (“LOBA”) and the Lake of Bays Heritage Foundation (“LBHF”), in this matter. I am writing to you today to request that the Tribunal undertake a mediation of the issues raised in these appeals, under Rule 18 of the Tribunal’s *Rules of Practice and Procedure*.

As you know, this case involves five appeals: 1) the Township of Lake of Bays’ failure to make a decision on an application for an Official Plan Amendment; 2) the Township’s failure to make a decision on an application to amend the Development Permit By-law; 3) the Town of Huntsville’s failure to make a decision on an application to amend the zoning by-law to permit a landing area at 3933 South Portage Road; 4) the Town of Huntsville’s failure to make a decision on an application to amend the zoning by-law to permit a landing area at 4215 South Portage Road; and 5) the District Municipality of Muskoka’s failure to make a decision on an application for a draft plan of subdivision.

These matters were before Member Hodgins on November 20, 2019 for the first Case Management Conference. Member Hodgins delivered an oral decision on that day, followed by a written memorandum. My clients, along with Kelly Zytaruk, were granted Party status. Fourteen persons were granted Participant status. A second CMC was conducted by telephone conference on February 27, 2020. The Parties have agreed upon a Procedural Order, including a List of Issues.

Sometime in March 2020, the Parties began to discuss the subject of mediation. On April 9, 2020, I indicated to Mr. Margaritis, counsel (along with Mr. Melling) for the applicant, Langmaid’s Island Corporation (“LIC”), that both my clients would be willing to participate in mediation, subject to the details. Two of the details I raised with Mr. Margaritis were who was to conduct the mediation and the costs. On May 6, 2020, in speaking with Messrs. Melling and Margaritis. I learned that LIC was proposing a private mediator, James McKenzie, and that the mediation was to be done virtually. They would require LOBA/LOBH to pay one-third of the costs of the mediation. For the reasons set out below, on May 13, 2020, I declined the invitation to participate in the private mediation.

While I fully understand that the other Parties are free to engage in any form of mediation they choose, with or without my clients, I do believe that, in the circumstances, a mediation that includes all the Parties and is led by the Tribunal, would be preferable.

H.G. ELSTON

Barrister & Solicitor | Integrity Commissioner

I say this for two reasons:

1. A mediation overseen by a public body, such as the Tribunal, will be seen to be an objective and balanced exercise, with a focus on good planning and the public interest. A mediation conducted under the auspices of the LPAT provides comfort that the mediator, as public servant, is familiar with the public policy aspects of municipally led planning and the importance of the protection of the public interest. Moreover, when the mediator is a member of LPAT his or her opinion on the strengths and weaknesses on each side are more likely to be accepted by the parties, leading to a greater chance of a resolution.
2. Mediation works best with two or more parties of a similar nature, with the same or similar objectives, which is not the case here. It has less value (and chance of a satisfactory result) when the parties are a mix of residents, public bodies, and a private-sector developer. That said, this imbalance is significantly alleviated if the mediator is associated with a provincial body and is a public official.

In addition to the intrinsic differences between a mediation before a private mediator and a public authority, it is only by way of a successful mediation, which resolves all issues for all parties that a lengthy hearing can be avoided. In other words, it would seem to be not only in the Parties interests that the mediation be overseen by the LPAT, but also in the Tribunal's interest.

Thank you for your consideration of this request. I would be pleased to answer any questions or to provide any further background, which the Tribunal may require. Perhaps a further TCC would be in order.

Yours very truly,



H.G. Elston

c.c. Kelly Zytaruk
John Ewart, solicitor for the Township of Lake of Bays and the Town of Huntsville
Jamie Clow, District Solicitor
Michael Melling and Andy Margaritis, solicitors for LIC