

Ontario Land Tribunals

Local Planning Appeal Tribunal

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LOCAL PLANNING APPEAL TRIBUNAL – VIDEO HEARING GUIDE

Effective: July 2, 2020

General

This Guide applies to all electronic hearing events held using video conference technology (“video hearings”) under Rule 20 of the Local Planning Appeal Tribunal’s (“Tribunal”) *Rules of Practice and Procedure* (“*Rules*”). This Rule provides that the Tribunal may direct a video hearing on its own initiative or on the parties’ request. This Guide is intended to facilitate an efficient hearing event and it describes the expectations of all parties or persons who participate in a video hearing.

This Guide does not amend the *Rules* nor limit the Tribunal’s statutory powers, including the Tribunal’s statutory power to organize hearing events. Any directions of a Tribunal Member in a specific case prevail over this Guide.

Video hearings can reduce costs and increase the accessibility of Tribunal proceedings. At the same time however, the Tribunal recognizes that not every case is suitable for a video hearing. Rule 20.2 allows a party to object to a video hearing, and the Tribunal will consider and dispose of an objection filed under this Rule. Accessibility or accommodation requests may be dealt with by the Accessibility Coordinator at elto@ontario.ca.

A video hearing is a hearing event and the *Rules* apply. The conduct of a hearing by video does not change the obligations of witnesses and counsel to conduct themselves in accordance with the rules of professional conduct of their applicable professions. Counsel are reminded that the Law Society of Ontario’s *Rules of Professional Conduct* (in particular Rule 5.4.2) for communication with witnesses continue to apply during both examination in chief and cross examination.

Unless otherwise stated in a procedural order or direction by the Tribunal, a video hearing is open to the public. Anyone wishing to observe a video hearing should write to the Tribunal’s case coordinator/planner, citing the case number, to obtain the details of the hearing.

It is important for all persons who participate in a video hearing to recognize their obligation to prepare well in advance of the hearing event. Successful management of a video hearing requires all parties to take additional steps prior to a hearing and it also requires the cooperation of all parties prior to and during the hearing. This Guide addresses parties’, counsel, participants, and witnesses general obligations in preparation of a video hearing. Please refer to the LPAT GoToMeeting Tip Sheet available on the Tribunal’s webpage

(<https://olt.gov.on.ca/tribunals/lpat/>) for specific information and instructions regarding how to attend a video meeting using the GoToMeeting platform.

Like any other hearing event, a person, or party who fails to attend can expect the Tribunal to proceed in their absence and determine their rights and obligations.

Third Party Platform Providers

The Tribunal recognizes that the parties to certain cases may wish to agree upon and obtain the services of an approved suitable third-party platform provider (such as Arbitration Place or a court reporting service) and assume all associated costs or enter into a cost-sharing agreement to facilitate the video hearing. The Tribunal will not take part in the parties' process or discussion with respect to the details of a cost-sharing arrangement. The Tribunal may give specific directions with respect to the scope and nature of the services obtained, when it deems necessary to do so.

Technical Requirements

The Tribunal conducts video hearings using the GoToMeeting online meeting platform. All individuals appearing at the video hearing should access and set up the desktop application well in advance of the event to avoid unnecessary delay. Alternatively, the GoToMeeting link can be opened in the Google Chrome browser with no application installation required. At a minimum, those appearing at the video hearing should have a computer (or smart phone or tablet), a microphone, a video/web camera, and an internet connection with sufficient bandwidth to support video hearings. The Tribunal will provide a call-in number for participants lacking the required technology so they can participate in or observe the hearing by telephone.

GoToMeeting does not currently support a “breakout room” function. Parties and counsel are expected to make their own arrangements for their confidential discussions when on break from a video hearing. In the rare circumstances where a Tribunal Member needs to talk to counsel *in camera*, the Member may recess the hearing and request the parties and participants to temporarily disconnect from the video hearing.

Best Practices for a Video Hearing

- Avoid background noises that might disrupt the video hearing: set up in a quiet space. Turn off notifications or silence other electronic devices. Keep your microphone muted when you are not speaking. If possible, use a headset with a built-in microphone.
- Make sure the primary device you are using to join the meeting is fully charged and plugged in.
- Make sure all the documents that you may rely on in the hearing are easily accessible.

- Log in to the hearing 15 minutes early to allow Tribunal staff finish setting up the video hearing and identify the parties, counsel, and participants.
- Remember that the camera does not always capture hand gestures or nonverbal cues, so it is important to verbalize all communication.
- Use the *raise hand* function as outlined in the LPAT GoToMeeting Tip Sheet available on the Tribunal's webpage to indicate to the Member that you wish their attention, for example to make an objection.
- Do not disconnect from the video hearing during breaks – instead, simply turn your video camera and microphone off.

Preparing for Your Video Hearing

Successful management of a video hearing requires parties to take additional steps prior to a hearing as well as cooperation between the parties prior to and during the hearing.

Generally speaking, parties are required to:

- Ensure they, including their counsel and witnesses, acquire and test the required hardware and software.
- Attempt to limit the issues before the Tribunal at the video hearing (e.g. by identifying issues that can be dealt with through written submissions).
- Cooperate with the parties to identify agreed facts and issues.
- Discuss whether there is a need to deviate from this Guide (e.g. is there a need for accommodation?).
- Ensure all materials are filed electronically in advance of the event and as hard copies in accordance with the Tribunal's electronic submission requirements as outlined in a notice or procedural order, and the Tribunal Member's directions.
- Ensure that the documents filed electronically are accessible and can be shared during the video hearing.
- File hard copies of all electronically filed documents (except those that will be used for cross-examination) to the Tribunal case coordinator/planner which are to be relied upon in advance of the hearing.
- Instruct and prepare their witnesses for a video hearing (please see the guidelines for witnesses below).

Please note that a Tribunal Member may determine that additional or fewer preparatory steps are necessary.

Seeking Status at a First Hearing Event

Persons other than the appellant(s), applicant, municipality or approval authority who wish to participate in the proceeding, either as a party or as a participant, are expected to file a

Party Status Request Form or Participant Status Request/Participant Statement Form to outline their interest in the proceeding within the timeframe outlined in the Notice.

The Party Status Request Form and Participant Status Request/Participant Statement Form are available on the Tribunal's website (<https://olt.gov.on.ca/tribunals/lpat/forms/>) and are to be used to assist with the preparation of the request.

Filing

Video hearings need to be efficient and well organized. Parties and counsel are expected to cooperate and ensure efficiency in evidence in chief. To this end, parties will be expected to file a Statement of Agreed Facts and Issues and a joint document book.

All documents, with the exception of cross examination documents, must be filed electronically and in hard copy. Hard copies of documents must be filed at least 15 days before the video hearing and electronic copies must be filed at least 5 days before the video hearing, unless directed otherwise by the member.

Electronically filed documents should be labelled in accordance with the Tribunal's naming convention:

case number_party role_ document type_date of hearing event

For example: PL123456_Applicant_Notice of Motion_Jan 1, 2020

Where appropriate, documents are to be submitted as searchable PDFs. All document books, including joint document books, and books of authorities should include hyperlinks to the various tabbed documents if available. Pages should be numbered sequentially.

Citations of case authorities, primary and secondary sources should include hyperlinks to the cited document. Links to case authorities on CanLII should be primarily used, using Westlaw or LexisNexis Advance only where the case is not available on CanLII.

Parties are also encouraged to submit a condensed book containing excerpts from authorities to which they will refer to in an oral argument in PDF format. The condensed book should reference and preserve all original page numbering and indicate the source of each excerpt or document to ensure the ability to cross-reference and avoid confusion.

Documents for cross examination may be filed only electronically and should be filed password protected. Counsel will be expected to provide the password during the course of the cross examination when counsel wants to introduce the document.

Specific filing directions for a proceeding, including a list of documents to be filed by each party and their respective filing timelines, will be provided in the Procedural Order, or the Appointment for Hearing by Video in cases where a CMC is not required before the hearing.

Witnesses

Witnesses are expected to conduct themselves in every respect as if they are in an in-person hearing. Witnesses should make their best efforts to be alone. Witnesses may not seek or receive assistance, through any means, including electronic means, from any third party, including but not limited to their client or their client's legal counsel, during the course of cross-examination or re-examination.

All documents on which a witness will rely at the hearing, including expert witness statements and affidavits, must be pre-filed in accordance with electronic submission requirements as outlined in a notice or procedural order, and the Tribunal Member's directions. Expert witnesses are required to sign and file the Tribunal's Acknowledgment of Expert's Duty Form.

Witnesses must be ready to join the hearing at the time they are assigned. When a witness is providing evidence, the camera and microphone must be on at all times and the camera should be positioned so that the Member and parties can clearly see the witness, including their whole face.

Witnesses are encouraged and may be directed to display copies of the documents they refer to using the video conferencing screen sharing functionality and may make references to the electronic document book. Witnesses are expected to have hard copy and digital copies of their witness statements, affidavits or other materials related to the appeal for their own reference.

Recording of Video Hearings Requires Permission of Tribunal

Members of the public may take notes of the hearing event. However, audio and video recording of the hearing event is not permitted unless you obtain the Tribunal's permission in accordance with the Tribunal's *Rules*.

Changes to this Guide

The Tribunal may amend or alter this Guide without notice or further consultation.