

DECISION AND ORDER

Decision Issue Date Wednesday, May 08, 2019

PROCEEDING COMMENCED UNDER section 53, 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): LS INVESTMENTS INC

Applicant: LEMCAD CONSULTANTS

Property Address/Description: 135 MILTON ST

Committee of Adjustment Case File Number: 18 184031 WET 05 CO (B0058/18EYK), 18 184042 WET 05 MV (A0513/18EYK), 18 184104 WET 05 MV (A0512/18EYK)

TLAB Case File Number: 19 117682 S53 03 TLAB, 19 117683 S45 03 TLAB, 19 117684 S45 03 TLAB

Written Motion Date: Monday, May 06, 2019

DECISION DELIVERED BY T. YAO

City of Toronto	Moving Party	Michael Mahoney
LS Investments Inc	Responding Party	Matthew Di Vona
Participant	Eugenio Massa	
Participant	Zbigniew Puchalski	

This is a motion by the City of Toronto to add itself as a party even though the time for election to be a party has passed. The case involves an application for a severance and minor variances by LS Investments for 135 Milton Street, which is south of the Gardiner Expressway and east of Royal York Road.

The facts are similar to *74 Royal York Road*, a TLAB case also involving late application by the City of Toronto to elect to be a party and the time lines are also similar as set out below in Table 1.

Table 1. Date to-date Calculations		
	135 Milton Street	74 Royal York Road
Notice of Hearing	March 21, 2019 (0 days)	Feb 22, 2018 (0 days)
Deadline for election as Party	April 20, 2019 (21 days)	March 14, 2018 (21 days)
City instructs solicitor to attend	April 16, 2019 (27 days)	March 26, 2018 (33 days)
Motion	April 18 (29 days)	Not stated in decision but April 20, 2018 is mentioned (58 days)
Hearing as specified in Notice of Hearing	July 29, 2019 (131 days)	June 12, 2018 (111 days)

In *74 Royal York Road*, I permitted the City to become a party because there was a public interest in doing so. In that case the City was 12 days too late to elect whereas in this case, it is less than a week. There is still time for the City to retain a planning witness and for LS Investments to know the case the City will present by the time for the hearing. Two days have been set aside and the City should strive to preserve this appointment..

In *74 Royal York Road*, the proponent had objected. But it was my view that:

[T]he public interest in having the resolution . . . seen as fair and authoritative calls for me to err on the side of a decision on the merits instead of one based on procedural rules.

I do not have any Notice of Response to [this] Motion by Mr. Di Vona, representing LS Investments, but I assume his client is opposed, based on the positive planning report from Community Planning. In *74 Royal York* I said:

Mr. Kanter (the owner’s lawyer) opposes the City’s entry because he feels that the City has already spoken through its Transportation Services Division. The City of course speaks through Council.

In my view it is in the public interest for City Council to be a party because as a decision-making body under the *Planning Act*, it represents the wider community. This public interest has a bearing despite any position taken by its professional staff or even in cases where staff have failed to comment. For this appeal, prior comments are already part of the record.

The City should retain a planning witness and file any expert witness statement as soon as possible. I will arrange a conference call to monitor this process. I ask staff to canvass LS Investments and Mr. Mahoney for convenient time and a notice will be sent out for this call.

DECISION AND ORDER

The City is permitted to become a Party in this hearing, subject to a good faith effort in expeditiously providing disclosure to LS Investments and participation in the above-mentioned telephone conference.

X



T. Yao
Panel Chair, Toronto Local Appeal Body
Signed by: Ted Yao