

# DECISION AND ORDER

**Decision Issue Date**      Wednesday, August 14, 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): RCS DEVELOPMENTS INC

Applicant: STUDIO K ARCHITECTS INC

Property Address/Description: 54 WESTHAMPTON DR

Committee of Adjustment Case File: 18 267276 WET 01 MV (A0919/18EYK)

**TLAB Case File Number: 19 125032 S45 01 TLAB**

**Hearing date:**      Tuesday, August 06, 2019

**DECISION DELIVERED BY JOHN TASSIOPOULOS**

## APPEARANCES

NAME	ROLE	REPRESENTATIVE
RCS DEVELOPMENTS INC	OWNER/ APPELLANT	RITCHIE KETCHESON HART & BIGGART LLP
SAEID KOHRANGI	OWNER	
STUDIO K ARCHITECTS INC	APPLICANT	
CITY OF TORONTO	PARTY	ADERINSOLA ABIMBOLA CITY OF TORONTO
FRANCO ROMANO	EXPERT WITNESS	
ALLISON SMITH	EXPERT WITNESS	

## **INTRODUCTION**

This is a decision on a Motion filed on July 18, 2019 by Ms. Luisa De Berardinis of 46 Westhampton Drive, who is an interested neighbour with respect to this Appeal. The Motion requests that the TLAB grant Mr. Ludovico Pompili either Party or Participant status at the TLAB appeal hearing for the Committee of Adjustment (COA) decision for 54 Westhampton Drive. The COA refused the minor variances for a proposed new triplex building on the property. The Applicant appealed the decision to the TLAB on March 12, 2019. The TLAB Notice of Hearing was issued on April 3, 2019, which indicated April 23, 2019 as the deadline for Notice of Intention to appear as a Party or Participant. This deadline was missed because, as stated in the Motion by Ms. De Berardinis, they and the residents of Westhampton Drive “*were not aware of recent changes to filing deadlines Revised Rules of Practice and Procedure which came into effect on May 6, 2019.*” Furthermore, they explained that the Party or Participant status request was to allow for an individual, Mr. Pompili, to represent them and surrounding neighbours of interest whom they indicated in an attachment to the Motion that included signatures from 31 individuals and approximately 17 specific addresses, all located on Westhampton Drive.

Luisa De Berardinis’s Motion requested the following relief:

1. TLAB grant the Mr. Ludovico Pompili Party or Participant status to the TLAB appeal on behalf of all the signatory neighbours attached to the Motion;
2. Mr. Ludovico Pompili be granted the opportunity to present the concerns of the residents at the hearing.

## **BACKGROUND**

The site is located on the north side of Westhampton Drive and west of Islington Avenue. The site is flanking residential dwellings to the east and west and backs onto Monogram Place, a road to the north. It is designated Neighbourhoods in the Official Plan and zoned Residential Multiple (RM) pursuant to City of Toronto By-law 569-2013. The proposal is to demolish the one-storey single detached dwelling and to construct a new triplex on the subject property which would require 3 variances to By-law 569-2013 to permit the proposed development.

Ms. De Berardinis asks that Mr. Pompili be granted Party or Participant status at the TLAB appeal and the opportunity to represent their and their surrounding neighbours concerns at the hearing. A Notice of Response to this Motion was submitted by the Appellant’s Representative, Christina Kapelos, July 26, 2019 asking that the Motion either be dismissed or alternatively to grant Mr. Ludovico Pompili Participant status only and that they submit their Participant Statement and any documentation to be relied upon during the hearing, to TLAB, prior to the hearing.

The Motion and Notice of Response to Motion were considered in written form on the date provided, August 6, 2019. This is authorized by TLAB's Rule 17.4, 24.1 and 24.6 of the TLAB Rules of Practice and Procedure.

## **MATTERS IN ISSUE**

The issue to be determined is whether granting Mr. Pompili Party or Participant status is unduly prejudicial to the Appellant's presentation of their case and, if not granted, would the TLAB forego a relevant contribution to the TLAB's understanding of the issues in the hearing that may be provided by the representative of the local Residents? If the answer is that granting Party or Participant status is not prejudicial and that the representative may provide for a further understanding of the Residents planning concerns regarding the TLAB appeal, then the representative should be granted Party or Participant status and the opportunity to present their concerns at the hearing. At the same time, the other Parties to the matter must also be given the opportunity and time to review and reply to any document disclosure.

Furthermore, does granting Party or Participant status eschew the deadline requirements as outlined in the TLAB's Rules of Practice and Procedure and potentially create a precedent for similar future Motions for late requests for Notice of Intention to be a Party or Participant?

## **JURISDICTION**

The TLAB may hear Motions by way of written submissions, in accordance with Rule 17.5 of the Rules of Practice and Procedure. The TLAB, as per Rule 2.11 (Relief and Exception to the Rules), is free to grant relief from the rules "*as it considers appropriate, to enable it to effectively and completely adjudicate matters before it in a just, expeditious and cost effective manner.*" Furthermore, Rules 4.4 and 4.5 permits the TLAB to extend the time limit provided by the rules.

## **ANALYSIS, FINDINGS, REASONS**

The principal argument in favour of granting Mr. Pompili status is that it does not prejudice the Appellant's ability to proceed with their appeal while at the same time ensures that the TLAB gains a broader understanding of the planning issues from the perspective of the Residents on Westhampton Drive. Furthermore, in reviewing the COA file with respect to this Appeal, I noted that many Residents who are signatories on the Motion requesting that Ludovico Pompili be given status at the hearing had also submitted individual letters of objection at the COA hearing. To not permit the Residents' concerns to be expressed regarding this Appeal, through Mr. Pompili would appear unfair since their objections to the variances being sought in this appeal had been expressed previously through letters of objection. Their opposition to the

proposed development is not “last minute” and disruptive but rather consistent with previous submissions.

Having said this, I do not accept the explanation in the Motion from Luisa De Berardinis that the reason for late submission was due to Westhampton Drive Residents not being aware of recent changes to filing deadlines in the Revised Rules of Practice and Procedure, which came into effect on May 6, 2019. The deadline for filing of a Notice of Intention to be a Party or Participant has increased from 20 days to 30 days providing more relief, not less, with respect to submission deadlines. Regardless, the deadline for submission was based on the Rules of Practice and Procedure adopted in 2017, since the Notice of Hearing was issued on April 3, 2019. Although the TLAB's Rules 4.4 and 4.5 indicate that the TLAB may extend time limits as it considers appropriate and may exercise its discretion before or after the expiration of a time limit, it is imperative that submission deadlines are adhered to by Participants and Parties to ensure clarity in proceedings and to permit timely review of documents associated with the hearing.

In considering the application of Rules 4.4 and 4.5, with respect to this Motion, I am more inclined to consider the fact that many signatories to the Motion requesting status for Mr. Pompili at the hearing had also previously expressed opposition to the proposed development. In addition, they have selected one individual to represent their concerns and opposition to the Appeal rather than requesting individual status at the hearing. By doing this, the potential impact to the hearing schedule should be minimal and be accommodated.

Turning to Notice of Response to Motion, filed by the Appellant's Representative, there is a request to dismiss the Motion for Party or Participant status or alternatively that Mr. Pompili only be granted Participant status at the hearing and that he submits a Participant Witness Statement and *“any documentation he intends to rely upon in advance of the hearing on a date to be chosen by the TLAB.”* I have considered the request to dismiss the Motion as requested but as stated above, based on Rules 4.4 and 4.5 regarding extending time limits and the fact that the request has been made from Residents who have previously also expressed interest in this matter, I find dismissing the request for status at the hearing would be unfair and not in the public interest. However, with respect to the alternative request that Mr. Pompili only be granted Participant status, I am inclined to concur with the request. In addition, Rule 13.4 indicates that when deciding whether a Participant status should be denied that criteria outlined in Rule 12.4 should also be considered. Rule 12.4 c) notes that consideration should be made *“whether the Person is likely to make a relevant contribution to the TLAB's understanding of the issues in the Proceeding.”* I believe a Representative presenting the neighbouring residents concerns would provide a relevant contribution to my understanding of the issues in the proceeding.

Party status at this point with so little time left before the hearing is not prudent especially since the other Parties would not have time to consider the disclosure of documents prior to the hearing. Furthermore, Party status would permit Mr. Pompili to cross examine the Expert Witnesses of the Parties which will affect the time schedule and compromise the adherence to a one-day hearing. For this reason, Mr. Pompili will

only be granted Participant status, as generally outlined in Rule 13, at the hearing. Mr. Pompili is advised to inform himself of the rights and responsibilities of a Participant and Representative, if that role is presumed. The role of the Participant as outlined in Rules 13.7 and 13.8. As a Participant Mr. Pompili will also be expected to submit a Participant Witness Statement (Form 13) with a written outline of his intended evidence (Rule 16.7) and any documents he will rely upon during the hearing to TLAB in advance of the hearing on August 16, 2019, if he proposes personally to give evidence. Under the new Rules, as an appointed Representative, which I take to be the essence of the request and the rationale behind my decision, there are certain organizational and attendant rights and responsibilities as well.

I have considered the Motion and the Notice of Response to Motion with respect to: conducting a just and timely proceeding; whether granting Participant status and extending the time limit will cause potential harm or prejudice to the Appellant; all in accepting the Motion in favour of granting the Mr. Ludovico Pompili Participant status as a Representative in this matter.

Under the (new) TLAB Rules there is a conscious recognition that it is in the public interest to have procedures marshalled with a view to efficiency. In that regard, there is merit in the appointment of a Representative who can lead the evidentiary exposition of multiple interests. If the Representative intends to give testimony in person, the Rules require that the individual disclose the nature, extent and content of that intention and as a lay citizen may give evidence. A Participant cannot speak for other Participants without authorization as demonstrated under the Rules.

## **DECISION AND ORDER**

The Motion is allowed, Mr. Ludovico Pompili shall be permitted to appear as a Participant to this matter and shall serve on the TLAB and the Parties a Participant Witness Statement (Form 13) with a written outline of his intended evidence and any documents he will rely upon during the hearing, to TLAB on August 15, 2019 or before the commencement of the hearing on August 16, 2019. Given the compressed timeline in providing this Decision and the disclosure of Participant documents, should the Parties to the hearing require additional time to review Mr. Pompili's statement and documents, consideration will be given at the start of the hearing.

X

---

John Tassiopoulos  
Panel Chair, Toronto Local Appeal Body