

# DECISION AND ORDER

**Decision Issue Date** Monday, December 16, 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): MICHELE GONSALVES

Applicant: ARC DESIGN GROUP

Property Address/Description: 16 ANSON AVE

Committee of Adjustment Case File: 19 155522 ESC 20 MV (A0137/19SC)

**TLAB Case File Number: 19 219581 S45 20 TLAB**

**Hearing date:** Wednesday, January 08, 2020

**DECISION DELIVERED BY T. YAO**

## APPEARANCES

NAME	ROLE	REPRESENTATIVE
Michele Gonsalves	Appellant	
Shila and Shake Nur Islam	Parties/Owners	Andy Margaritis
City of Toronto	non-Party seeking Party status	Jason Davidson
Colleen T. Rumball	Party	
Janet May	Party	
Mark Gonsalves	Participant	
Maria Tsirtsimpis	Participant	
Anthony Vallant	Participant	
Dorothy Belins	Participant	
Juliana Harsanji	Participant	
Josephine Fernandes	Participant	
Lawrence Fernandes	Participant	
Patrick Rumball	Participant	

Rocco Rana	Participant
Pasquale Panzarino	Participant
Susan Bunt	Participant
Ramanan Ramachandran	Participant

## **DECISION**

By notice of motion dated approximately November 28, 2019, the City of Toronto requests that it be added as a party because the City Solicitor was not able to obtain instructions until the Council meeting of November 26-27, 2019. Election ought to have been made about 38 days ago (Oct 21, 2019) and as of the Motion date, there are about an equal number of days before the hearing on January 8, 2020.

The motion is opposed by Mr. Margaritis (acting for the Islam family) in a Notice of Response dated December 9, 2019. It alleges:

- There is no jurisdiction under Rule 17.6 since only a party can bring a motion;
- that Councillor Crawford was made aware of the election deadline of October 21, 2019 and ought to have brought a motion to Council for its meetings of either October 2-3 or 29-30, 2019;
- “unequivocal lack of reasoning” in the City’s materials;
- failure to keep up to date with Applicant’s late revisions;
- that this is not a “David and Goliath” case; and
- the City’s entry will lengthen the hearing, particularly since the City has not clarified whether its witness will be an expert or non-expert.

In argument, Mr. Margaritis cited the *Studio K* case, which purportedly supports his position that a late election should be denied. I propose to deal first with Rule 17.6, then with the *Studio K* reasoning, and then the other issues.

### **Rule 17.6**

Rule 17.6 states that where a motion in writing is requested by a Party, and where the TLAB agrees, a *motion date* will be provided by staff. I do not see this as denying jurisdiction, otherwise no one could ever become a party after the deadline. If this was the intention of the Rules, they would have said so explicitly.

Rather, I find Rules 12.3 and 12.4 deal with this situation and I find that the TLAB has jurisdiction to grant the relief the City requests.

12.3 The TLAB may name Persons to be Parties for all or part of a Proceeding on such conditions as it considers appropriate. A Party to a Proceeding is not a Participant to a Proceeding.

12.4 In deciding whether a Person's status as a Party to a Proceeding should be denied, at any time, the TLAB may consider, among other things:

- a) whether the Person's interests may be directly and substantially affected by the Proceeding or its result;
- b) whether the Person has a genuine interest, whether public or private, in the subject matter of the Proceeding; and
- c) whether the Person is likely to make a relevant contribution to the TLAB's understanding of the issues in the Proceeding.

I am prepared to accept that the City meets the enumerated criteria in a), b) and c) since it represents a public interest, is substantially affected and is likely to make a relevant contribution to the TLAB's understanding of the issues in the proceeding.

### ***Studio K*<sup>1</sup>**

Paragraph 70 of the Motion states:

. . . in *Studio K Architects Inc.*, [citation omitted]. .the TLAB did consider a very late request for Party status, much like the current matter at hand, and determined that it would not be prudent to grant Party status at this time as the other Parties would not have time to consider the proposed materials prior to the Hearing.

*Studio K* is not like the present situation nor is the result there what Mr. Margaritis seeks. The motion before TLAB Member Mr. Tassiopolis was brought on July 18, 2019, and sought an order granting Mr. Pompili, who had made no election, an Order granting *either* Party or Participant status. Although the decision denied "party status", it did indeed grant Mr. Pompili "participant status." Thus, the decision does not support the principle that a person who has failed to make a timely election must necessarily be excluded from the hearing. I find that the overarching Rule 2.2, which promotes "the just most expeditious and cost-effective determination" of the merits governs, and that the TLAB should err on the side of inclusion rather than exclusion.

The timing is also different from this case. Mr. Tassiopolis issued his decision on August 14, 2019, which was two days before the hearing of August 16, 2019. He ordered that Mr. Pompili serve a witness statement "on August 15, 2019 or before the commencement of the hearing on August 16, 2019." That is to say, the responding party might have had less than a day to consider Mr. Pompili's witness statement. In this case, the City is attempting to allow Mr. Margaritis much more time, as I will set out in the next paragraph.

### **Disclosure and going forward**

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<sup>1</sup> This case may be found on the free TLAB website as *54 Westhampton Dr.*

**Decision of Toronto Local Appeal Body Panel Member: T. YAO**  
**TLAB Case File Number: 19 219581 S45 20 TLAB**

On December 13, 2019, the City asked that the TLAB release an immediate decision on its motion, and also advised it had been ready to serve its witness statement on December 13 but was prevented from so doing because the TLAB also set this date of Dec. 13 as the deadline to respond to the City's motion. (In fact, Mr. Margaritis beat this deadline by four days.) Mr. Margaritis replied to Mr. Davidson's email as follows:

Dear TLAB –

I'm not quite sure why Mr. Davidson has decided to provide additional rationale for his request outside of the confines of his Notice of Reply to Response, which he filed today. With that said, we kindly refer the TLAB to Mr. Davidson's reference below that explicitly confirms that my client will be prejudiced by the City's request, notwithstanding the City is trying to "reduce" that prejudice.

Thank you,

Andy Margaritis

I do not agree that Mr. Davidson's earlier email is "an additional rationale" nor do I find the other allegations and arguments in the Response to Notice of Motion meritorious. Time is of the essence. I am prepared to allow the City to become a party. It should file a witness statement by 5 pm, Friday, December 20, 2019, a condition which I consider "appropriate.". This leaves Mr. Margaritis eight business days to deal with the statement, which is far more time than ordered in *Studio K*.

I agree with Mr. Margaritis that another day may be needed and invite him, in consultation with Mr. Davidson, to seek another day on the TLAB calendar to mark as committed to this hearing.



**X**

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Ted Yao  
Panel Chair, Toronto Local Appeal Body