

# DECISION AND ORDER

**Decision Issue Date** Friday, January 08, 2021

PROCEEDING COMMENCED UNDER Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): SHIN YEONG KANG

Applicant: SOUVIK MUKHERJEE

Property Address/Description: 120 HENDON AVE

Committee of Adjustment Case File: 20 143409 NNY 18 MV

**TLAB Case File Number: 20 202821 S45 18 TLAB**

**Written motions filed on** December 21, 2020

**DECISION DELIVERED BY T. YAO**

## APPEARANCES

Name	Role	Representative
Souvik Mukherjee	Applicant/ Moving party with respect to Andrew Lee	
Shin Yeong Kang	Appellant	
City of Toronto	Moving party seeking party status	Jason Davidson
Andrew Lee	Participant	

## INTRODUCTION

The City brings this written motion to be granted party status. Mr. Mukherjee disagrees, and also seeks to nullify Mr. Lee's late election to be a participant. The chronology is as follows:

Sept 17, 2020 The Committee of Adjustment granted a variance to Mr. Mukherjee to permit a garage to be 5.69 m high, where 4.0 m is permitted.

**Decision of Toronto Local Appeal Body Panel Member: T. YAO**  
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- Oct 3, 2020 Shin Yeong Kang and Enjeong Kang appealed this decision to the TLAB.
- Nov 3, 2020 The TLAB sends a Notice of Electronic Hearing, specifying Dec. 2, 2020 as the deadline for Notice of Election to be a Party and Jan 4, 2021 as the date for document exchange.
- Dec 4, 2020 Andrew Lee files notice of Election to be a Participant.
- Dec 16, 17, 2020 City Council instructs the City Solicitor to appear at this appeal.
- Dec 21, 2020 Mr. Mukherjee files affidavit saying that he believes Mr. Lee's late filing "breaks the rules of procedural fairness." He also requests that his motion be heard electronically. I am treating this as a motion to be heard concurrently with the City's motion of the same date.
- Dec 21, 2020 Mr. Davidson, on behalf of the City, files Notice of Motion to be able to file the City's Notice of Election to be a Party and requests that the City's motion be dealt with as a written motion.
- Dec 29, 2020 Mr. Kang files affidavits in support of Mr. Lee's and City's Elections.
- Dec 29, 2020 Mr. Mukherjee files affidavit saying that Mr. Davidson should have obtained instructions from the Community Council meeting of Dec. 3, 2020, and that Councillor Filion's staff wrote to him to advise that "the councilor did not intend to take my application to TLAB despite [Mr. Mukherjee's giving Councillor Filion a 'heads up' in timely fashion.]"
- Jan 4, 2021 The City files Reply to Mr. Mukherjee's Response, rebutting the affidavit of Dec. 29, 2020.
- Jan 4, 2021 Mr. Mukherjee notes Mr. Lee has not filed anything in response to his motion.

**ANALYSIS, FINDINGS, REASONS**

First, I am denying Mr. Mukherjee's request for an electronic hearing and allowing the City's motion for written motions. The issues can be adequately addressed by the voluminous written materials filed.

The City's position is that it is a body with decision making authority and accountability (please see s. 1.1 of the *Planning Act*), and as such, it has a legitimate public interest in the wider planning implications of any planning decision. It also states it previously appeared in an earlier hearing on the same issue and this is supported by a reading of the decision of TLAB Member Takluder, October 25, 2019.

The following are similar motions by the City for relief against a late election, mostly caused by late instructions from Council. While not binding; they are persuasive. All decisions were in favour of the City.

Jan 10, 2018	1755 Bayview Ave	L. McPherson
Apr 24, 2018	74 Royal York Rd	T. Yao
May 8, 2018	135 Milton St	T. Yao
June 25, 2018	79 Lawrence Ave E	S. Gopikrishna
June 11, 2019	393 Harbord St	J. Tassiopolis
Sept 6, 2019	47 Strader Ave	J. Leung

In *74 Royal York Rd*, I said:

In my opinion, the public interest in having the resolution of this dispute 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.

Mr. Mukherjee is taking a technical view of the Rules, and in my view the TLAB Rules require me to overlook minor procedural defects. For example, Mr. Mukherjee has combined his Notice of Motion with his own affidavit and filed materials without an explanation of their relevance. These are minor faults and I consider a late Election to be of a similar nature.

Rules 2.10 and 2.11 state:

Compliance with the Rules

2.10 Substantial compliance with the requirements of these Rules is sufficient.

Relief and Exceptions to the Rules

2.11 The TLAB may grant all necessary exceptions to these Rules, or grant other relief as it considers appropriate, to enable it to effectively and completely adjudicate matters before it in a just, expeditious and cost-effective manner.

Mr. Mukherjee states that the admission of the City will "cause great prejudice" because the City's expert will have the benefit of viewing Mr. Mukherjee's own

documentation prior to filing their own. He states that I will be able to adequately test his application without the City's participation. I disagree. In order to adjudicate matters in a just, expeditious and cost-effective manner, I allow the City's motion and dismiss Mr. Mukherjee's motion with regard to the Dec. 2, 2020 deadline. I dismiss Mr. Mukherjee's motion to disallow the late filing of Mr. Lee's Election to be a Participant.

Because of the flurry of motions, no one has filed documentation pursuant to the January 4, 2021 deadline for document exchange, at least from my view<sup>1</sup> of the TLAB website. I set the following disclosure dates:

- **Document Disclosure** as per Rule 16 **DUE** no later than February 04, 2021
- **Witness Statement** as per Rule 16.4 (Form 12) **DUE** no later than February 04, 2021
- **Response to Witness Statement** as per Rule 16.5 (Form 19) **DUE** no later than February 18, 2021
- **Reply to Response to Witness Statement** as per Rule 16.5 (Form 20) **DUE** no later than February 26, 2021
- **Participant Statement** as per Rule 16.5 (Form 13) **DUE** no later than February 04, 2021
- **Expert Witness Statement** as per Rule 16.6 (Form 14) **DUE** no later than February 04, 2021
- **Response to Expert Witness Statement** as per Rule 16.9 (Form 21) **DUE** no later than February 18, 2021
- **Reply to Response to Expert Witness Statement** as per Rule 16.10 (Form 22) **DUE** no later than February 26, 2021
- **Notice of Motion** as per Rule 17 (Form 7) **DUE** no later than April 06, 2021.

## **DECISION AND ORDER**

The City is permitted to file its Notice of Election to be a party. The TLAB is directed to accept the late filing of Mr. Lee's election to be a Participant.

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<sup>1</sup> I am working from the public website and materials that may be submitted to staff may not be visible to me as staff are awaiting this Decision for guidance as to what may be filed.

X

*Ted Yao*

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Ted Yao  
Panel Chair, Toronto Local Appeal Body