

DECISION AND ORDER

Decision Issue Date Thursday, September 21, 2017

PROCEEDING COMMENCED UNDER subsection 53(19) and 45 (1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): CITY OF TORONTO

Applicant: ATA ARCHITECTS INC, ATA ARCHITECTS INC

Counsel or Agent: L. BISSET (City of Toronto); B. KETCHESON (Party)

Property Address/Description: 9 Thirty Eighth Street

Committee of Adjustment Case File Number: 16 113489 000 00 CO, 16 113498 000 00 MV, 16 113499 000 00 MV

TLAB Case File Number: 17 165404 S53 06 TLAB, 17 165406 S45 06 TLAB, 17 165408 S45 06 TLAB

Hearing date: Monday, November 13, 2017

DECISION DELIVERED BY G. BURTON

Parties

City of Toronto

Roobuilt Ltd

ATA Architects

Ronald Gordon Jamieson

Counsel

Laura Bisset

Sara Amini

Cigdem Iltan

Bruce C. Ketcheson

Self-Represented

Participants

David Godley

Carolyn Glenn

INTRODUCTION

This is a decision on a motion filed by the appellant City of Toronto requesting to file an expert report past the date required in the TLAB Notice of Hearing.

BACKGROUND

On May 24, 2017, the City of Toronto appealed to the Toronto Local Appeal Body (TLAB) from the decisions of the Committee of Adjustment (COA) which had authorized the consent and variances in these matters. The Notice of Hearing in this matter issued June 21, 2017, containing the dates for the hearing of the appeal and for filing of the evidence with the TLAB. By its decision of August 11, 2017, the TLAB granted an adjournment of the hearing until November 13, 2017 for the reasons set out in the decision. The filing and exchange dates and related matters as set out in the Notice of Hearing remained fixed and unaltered.

The date given in the Notice of Hearing for filing of Expert Witness Statements was August 8, 2017. One of the City expert witnesses, Mr. Max Dida of the Urban Forestry Department, was unable to meet this date because of a vacation. The Appellant City then brought a formal motion to be extend the time for filing. The TLAB determined to conduct this motion by written submissions, to be filed by September 20, as permitted under its Rule 17.4. Submissions on the request to extend the filing time were received from the applicant, Roozbilt Ltd. Should the City be granted the extension, the applicant requests the right to respond by filing their own arborist report and attendant Witness Statement.

THE ISSUE

Permission of the TLAB is required to extend any time required by its Rules. Both Mr. Dida's Expert Report and any reply report from applicants were late by those Rules. Rule 16.6 requires that such statements be filed "not later than 45 days after a Notice of Hearing is filed." This is the requirement from which the City requests relief, as it expired on August 8.

In response, Roozbilt requests that it also be allowed to file an Expert's Report to counter that of the City. An extension of the filing time would also be required for that report.

**Decision of Toronto Local Appeal Body Panel Member: G. BURTON
TLAB Case File Number: 17 165404 S53 06 TLAB and related**

Timelines have to be interpreted in the context of the TLAB Rules, which are different from those of the Committee of Adjustment or the Ontario Municipal Board so that hearings can proceed expeditiously. The TLAB Rules encourage electronic filing, fixed hearing dates (Rule 2.1), and the fairly rapid setting of fixed hearing dates. However, as indicated in the TLAB's decision to adjourn the hearing date until November 13, there is occasionally a good reason to extend those timelines.

ANALYSIS, FINDINGS, REASONS

The TLAB finds that this is a case in which the motion should be granted, and the time for filing of Mr. Max Dida's Expert Witness Report should be extended. In fact this motion is somewhat moot, as the requisite filings were made on August 29, 2017. Nonetheless the time extension is granted, for greater certainty.

Similarly, the applicant Roozbuilt should be given (albeit an abbreviated) time within which to file an expert witness statement in Form 14, and also file Form 6, the Acknowledgement of Expert's Duty. Since the Report to which they wish to respond has been on the file since August 29, I would expect that an extension of the filing date to September 27, 2017, as requested in their Notice of Response to Motion, would be fair to both parties.

In the Notice of Hearing, approximately two months was provided after the filing of expert statements and the then hearing date. The parties remain in virtually the same position as at that time. However, the applicant must have some time to consider and respond by its own expert. This can be somewhat reduced because it has had two detailed reports from Mr. Dida to the COA, filed by the City on August 29, 2017.

DECISION AND ORDER

The TLAB grants the City's request for relief for a late filing. Responses to the Report filed on August 29th, if any, shall be filed by September 27, 2017. If further difficulties are encountered, any party may request a teleconference on agreed proposed dates.

 Recoverable Signature

X 

Gillian Burton
Chair, Toronto Local Appeal Body
Signed by: Gillian Burton