TORONTO LOCAL APPEAL BODY TO DATE: THE PERKS AND THE PITFALLS

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In January 2007, Bill 51, *Planning and Conservation Land Statute Law Amendment Act, 2006*[2] and Bill 53, *Stronger City of Toronto for a Stronger Ontario Act, 2006*[3], came into force. These bills established municipalities' power to constitute and appoint a local appeal body for the hearing of appeals of: (a) minor variance decisions under subsection 45(12) of the *Planning Act*[4] (the "***Planning Act***"); and (b) consent decisions under subsections 53(14), (19) and (27) of the *Planning Act.*

Ten years after the passing of Bills 51 and 53, the City of Toronto (the "**City**") created the Province's first local appeal body, the Toronto Local Appeal Body (the "**TLAB**"), an independent quasi-judicial tribunal, pursuant to the *City of Toronto Act, 2006*[5] (the "***COTA***") and Chapter 141 of the Toronto Municipal Code (the "**Municipal Code**").

As of May 3, 2017, all appeals of decisions of the Committee of Adjustment relating to applications for consent and/or minor variance are appealable to the TLAB instead of the Ontario Municipal Board (the "**Board**" or the "**OMB**") unless:

a) a "related appeal" has been previously made to the Board and has not yet been finally disposed of; or

b) a "related appeal" is made to the Board together with the appeal to the TLAB.[6]

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[1] With special thanks to Guneev Bhinder, Student-at-Law at McMillan LLP, who took the lead in preparing the TLAB Decision Summary included with this paper at Appendix "E".
[2] Bill 51, Planning and Conservation Land Statute Law Amendment Act, 2006, 2nd Sess, 38th Parl, Ontario, 2005 (assented to 19 October 2006), SO 2006, c 23.
[3] Bill 53, Stronger City of Toronto for a Stronger Ontario Act, 2006, 2nd Sess, 38th Parl, Ontario, 2005 (assented to 12 June 2006), SO 2006, c 11.
[4] *Planning Act*, RSO 1990, c P.13.
[5] *City of Toronto Act, 2006*, SO 2006, c 11, Schedule A
[6] Section 115 of the *COTA*.

Pursuant to section 115 of the *COTA*, a "related appeal" is an appeal of a site plan application, official plan amendment, zoning by-law amendment, "H" hold symbol removal application, interim control by-law, plan of subdivision application or development permit that is in respect of the same subject matter as the minor variance or consent appeal that would otherwise be directed to the TLAB.

Pursuant to section 21.2 of the *Statutory Powers and Procedures Act*, R.S.O. 1990, c. S.22 (the "***SPPA***"), the TLAB has the power to review all or part of its own decision or order, and may confirm, vary suspend or cancel the decision or order. An appeal of TLAB's decision also lies to the Divisional Court, with leave of the Divisional Court, on question of law. As detailed below, to date, only a single request for review of a TLAB decision has been made. There has been no appeal of a TLAB decision to the Divisional Court.

The City identified a number of aspirations for the TLAB in its Staff Report dated May 6, 2014, including the following[7]:

> *"Having LAB members who are residents of Toronto and who understand the specific land-use and local planning context issues facing the City and its neighbourhoods, will result in better decision making.*
> …
>
> *The formation of the City's own LAB is an essential component to bringing some order and fairness to what has become a thoroughly discredited OMB process.*
> …
>
> *LAB practices and procedures could be made less formal and adversarial than current OMB practices.*
> …
>
> *LAB practices and procedures could reduce the amount of time and costs usually associated with the OMB and put measures in place to level the playing field and decrease the perception of unequal access (due in part to the lack of resources) to the appeal process, between developers and residents or ratepayer groups."*

[7] City Staff Report dated May 6, 2014 to Planning and Growth Management Committee re: Implementing a Local Appeal Body for Toronto – Public Consultation Comments and Guiding Principles

To this end, the *COTA* and the Municipal Code require the TLAB to:

a) establish and adopt its own rules of practice and procedure to govern its proceedings. TLAB hearings must be conducted in accordance with these rules of practice and procedure and the SPPA;
b) be composed of seven (7) members inclusive of a Chair;
c) ensure its members be responsible for conducting mediations, presiding over hearings and rendering a written decision on hearings based on the evidence presented in accordance with the TLAB Rules and the SPPA; and
d) appoint members pursuant to the City's Public Appointment Policy for a term of (4) years, or until successors are appointed.

The TLAB's first seven members were appointed by City Council on December 13, 2016. The first hearing before the TLAB was held on August 31, 2017.

As the TLAB approaches the end of its first year of existence and completes its first five months of hearings, the authors have undertaken a review of the TLAB's Rules of Practice and Procedure (the "**TLAB Rules**"); changes resulting from Bill 139, Building Better Communities and Conserving Watersheds Act, 2017 ("**Bill 139**"); and the issued decisions. This review has been done to determine whether any "lessons learned" can be extracted – both for the TLAB and its users going forward as well as for any other municipality (or provincial government) who may similarly be considering creation of a new administrative tribunal to achieve improved process, procedure and decision-making. "Tips and tricks" for practice before the TLAB have also been included by the authors at **Appendix "A"**.

The TLAB Rules of Practice and Procedure

A draft form of the TLAB Rules was considered at a TLAB business meeting[8] held on May 3, 2017. The TLAB Rules were adopted following the meeting and were made effective as of that date. Since then, the TLAB has also adopted 5 practice directions and has issued a public guide that provides some guidance on its practices and procedures.

The City of Toronto and the Ontario Bar Association's Municipal Law Section (the "**OBA**") made written submissions to the TLAB on the draft TLAB Rules. These written submissions raised concerns regarding the TLAB Rules including with respect to timing and procedural obligations not in place for similar hearings before the Board. Copies of the written submissions are attached hereto at **Appendix "B"** for the OBA's written submission and **Appendix "C"** for the City of Toronto's written submission.

The TLAB considered the submissions received at the public meeting and responded to the OBA's submission in writing indicating, among other things, the following regarding the TLAB Rules:

> *"TLAB recognizes there are many practical difficulties experienced in achieving its intentions. It has expressed an intention, following a period of practice experience, to entertain an identification of any such issues, hear public deputations on them, and adjust the practices as determined necessary and expedient*
>
> *...a Special Public Meeting to discuss the application of the Rules and Forms, following a period of trial practice, will be scheduled in the spring of 2018, with appropriate public notice*." [emphasis added]

A copy of the TLAB's written response to the OBA on the TLAB Rules is attached at **Appendix "D"** to this paper.

[8] Note: The TLAB holds business meetings to discuss items of interest, including its own Rules. These meetings are attended by a majority of the Members and are open to the public, providing a unique opportunity for the public to made deputations to the TLAB. See the TLAB's Procedural By-law 1 which guides public meeting practices (https://www.toronto.ca/wp-content/uploads/2017/10/8f7d-TLAB-Procedure-Bylaw.pdf)

The TLAB also responded to the City of Toronto's submission, acknowledging the concerns of the Planning Practice Group related to obtaining timely instructions to ensure effective participation in the TLAB's processes, but declining to adjust its rules. The TLAB noted that:

> *"…from the date of the decision of a Committee of Adjustment panel, a* minimum *of some seventy (70) days elapses before a disclosure deadline occurs under the TLAB Rules (20 day appeal period; 5 day period for receipt, processing and issuance of a Notice of Hearing; 45 days to document witness disclosure).*
>
> *Second, despite TLAB's assumption of party status for the City, no liability can accrue to the City should it determine by day 70 not to participate, as no step will have been taken upon which reliance can be imputed. Jurisprudence before the Ontario Municipal Board… ensures that no member of the public can hold the City accountable for not pursuing, or for withdrawing a position that an individual supports and hopes for assistance with from the City.*
>
> *In each case, the City is an independent decision maker and its decision to participate or not is wholly within the City's purview."*

A copy of the TLAB's written response to the City on the TLAB Rules is attached at **Appendix "E"** to this paper.

The TLAB holds business meetings to discuss items of interest, including its own Rules. Special meetings to consider single items of business may also be held by the TLAB[9]. Accordingly, special meetings to consider the TLAB Rules are scheduled for the spring of 2018, with written submissions on the existing TLAB Rules due by April 18, 2018 and comments on any revisions to the TLAB Rules due by May 15, 2018.

As detailed below, while interesting observations have been made, it is far too early in the TLAB's history to draw conclusions regarding its success in achieving the City's goals. As

[9] For more information see the TLAB's Procedural By-law 1 which guides public meeting practices (https://www.toronto.ca/wp-content/uploads/2017/10/8f7d-TLAB-Procedure-Bylaw.pdf).

the TLAB intends to revisit its rules in the spring of 2018[10], it is timely to now consider the TLAB Rules and how these have been implemented in practice.

What follows is analysis of the TLAB Rules with respect three key areas: Timing Obligations; Scheduling of Hearings & Adjournments; and Disclosures (Applicant's Disclosure, Document Disclosure and Witness Statements).

Timing Obligations

The TLAB issues a Notice of Hearing subsequent to the filing of an appeal. While there is no explicit rule regarding the timing of when this document is released, so far it appears to take the TLAB approximately 30 days from the date the notice of appeal is filed for this document to issue.

The Notice of Hearing contains the scheduled hearing date. It also contains a number of procedural filing deadlines that are nearly all set in relation to the date of issuance of the Notice of Hearing (the exception is motions). This is unlike the Board process, where any procedural requirements are typically set in relation to the hearing date.

Here are the deadlines that apply to all cases before the TLAB (unless modified by Motion):

- **Applicant's Disclosure (Rule 11)** - This is a requirement to disclose any intended revisions or modifications to the application that was made to the committee of adjustment. This includes revisions to the plans and/or variances requested. The filing deadline is no later than **15 days after the Notice of Hearing is served.**

[10] Note: The TLAB should be commend for this as it demonstrates a willingness to learn and grow through the experiences of both its stakeholders.

- **Notice of Intention to be Party or Participant (Rules 12 and 13) -** An election to be a party or participant must filed no later than **20 days after the Notice of Hearing is served**.

- **Document Disclosure (Rule 16.2) -** A requirement to disclose every document or relevant portion of a public document that a party intends to rely on no later than **30 days after the Notice of Hearing is served**.

- **Witness Statements / Participant Statements / Expert Witness Statements (Rule 16.4, 16.5, 16.6**) **-** In order to call evidence from a witness/expert witness or provide evidence as a participant, these statements must be filed no later than **45 days after the Notice of Hearing is served**.

- **Motions (Rule 17) -** The last day a motion may be heard is 30 days before the hearing date. A notice of motion needs to be filed 15 days prior to the motion hearing date.

Built into the above timelines is a 30 day 'quiet zone' immediately in advance of the scheduled fixed hearing date. In the TLAB's Public Guide the purposes of this is described as follows:[11]

> *"TLAB has built into its Rules a thirty (30) calendar day 'Quiet Zone' immediately in advance of the scheduled fixed hearing appointment. In the Quiet Zone, no filings, motions, or formal actions are to be brought or taken by the parties, participants or the tribunal. This period is intended for individual final hearing preparation. It is also a period for the parties to explore settlement or, in rare circumstances, to request and conduct mediation with a TLAB Member presiding. Hearing dates will remain fixed despite any such activity."*

[11] Toronto Local Appeal Body Public Guide, revised 15 August 2017, page 37.

The fixed deadlines noted above create some challenges in term of practice. For parties who may only learn of the TLAB hearing after the Notice of Hearing issues (such as a non-appellant party), there is the challenge of finding counsel and/or expert witnesses who are available to meet the fairly quick deadlines. In particular, the requirement to file expert witness statements within 45 days may not be achievable for all expert witnesses given existing matters they might be working on and the loss of time that may results from finding an appropriate expert. Also, an appellant party may be better-positioned to meet the witness statement filing deadline because they are likely to first know of the proceeding. This may raise issues of procedural fairness.

For applicants, a challenge is to consider whether any revisions are necessary to the plans and/or variances filed with the Committee well before a Notice of Hearing is issued. The 15-day deadline for the applicant's disclosure is not sufficient time to prepare revised plans and/or have those plans reviewed by the City's zoning examiner to obtain an updated PPR/zoning certificate.

In effect, the Rules require parties (and to a lesser extent participants) to prepare nearly their entire case within 45 days from the date the Notice of Hearing is served. This means that parties/participants are spending time and resources early on, following the filing of an appeal to prepare witnesses statements, lot studies, shadow studies, photos and/or other documents. The TLAB Rules indicate that the "Local Appeal Body is committed to encouraging parties to settle some or all of the issue by informal discussion, exchange and Mediation".[12] It is unclear what impact the above requirements have on settlement. On the one hand knowing the merits and drawbacks of each parties' case early on in the process may encourage early settlement. On the other hand, having spent considerable resources early on in the process, parties may become

[12] Rule 19.1 of the TLAB Rules of Practice and Procedure

entrenched in their position and therefore willing to risk the fairly modest additional cost of proceeding to the hearing for a decision on the appeal.

Upon review of the case law, the early filing requirement is being circumvented in some instances to encourage settlement. This is being done by the parties mutually agreeing to suspend the filing of the witnesses statements to engage in settlement discussions. The parties are then requesting the TLAB for new filing deadlines through a written motion. This appears to have occurred in a number of cases, including in *Fairglen Homes Ltd., Re*.

In ***Fairglen Homes Ltd., Re***, 2017 CarswellOnt 18481 (20 October 2017) - at the request of the appellant and on consent of the applicant party, the TLAB granted an adjournment at the commencement of a hearing in order to permit the parties to engage in settlement discussions failing which a subsequent hearing would occur. The TLAB considered Rule 23.3 of the TLAB Rules and found that the stated purpose of the adjournment - to explore the prospect of a settlement - in this case satisfied the conditions and requirements for adjournments. Also notable is that the Parties did not file witness statements in accordance with the deadlines set out in the Notice of Hearing because they were engaged in settlement discussion. The TLAB set new dates for witness statement exchange.

Scheduling of Hearings & Adjournments

The hearing date for a TLAB matter is fixed by the TLAB without any requirement for consultation with the parties or participants. There is nothing that prevents a party or participant from supplying dates convenient to their interest, however the TLAB does not guarantee any such submission can be accommodated. As a result, an adjournment of a hearing date may be

necessary because of scheduling conflicts with the availability of counsel or witnesses. There are, of course, other reasons why an adjournment may be required.

Rule 2.1 of the TLAB Rules states:

> *"2.1 The Local Appeal Body is committed to fixed and definite Hearing dates. The Rules shall be interpreted in a manner which facilitates that objective."*

This is a rule that was not present in the OMB's Rules of Practice and Procedure. It appears to require strict adherence to fixed hearing dates, but read in the context of other TLAB Rules, the requirement for fixed hearing dates is somewhat softened. For example, the TLAB Rules also say:

> *"2.2 The Rules shall be liberally interpreted to secure the just, most expeditious and cost-effective determination of every Proceeding on its merit.*
>
> *2.10 The Local Appeal Body 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."*

There are specific rules regarding adjournments, which provide some guidance on instances when the TLAB may find on motion that a hearing date may be adjourned:

> *"23.1 Proceedings will take place on the date set by the Local Appeal Body and provided in the Notice of Hearing, unless the Local Appeal Body orders otherwise.*
>
> *23.3 In deciding whether or not to grant a motion for an adjournment the Local Appeal Body may, among other things, consider:*
>
> *(a) the reason for an adjournment;*
>
> *(b) the interests of the Parties in having a full and fair Proceeding;*
>
> *(c) the integrity of the Local Appeal Body's process;*
>
> *(d) the timeliness of an adjournment;*
>
> *(e) the position of the other Parties on the request;*
>
> *(f) whether an adjournment will cause or contribute to any existing or potential harm or prejudice to others, including possible expenses to other Parties;*

> *(g) the effect an adjournment may have on Parties, Participants or other Persons; and*
>
> *(h) the effect an adjournment may have on the ability of the Local Appeal Body to conduct a hearing"*

In response to concerns raised by the Ontario Bar Association regarding the scheduling of hearings without consultation with the Parties, the TLAB indicated the following:

> *"It is hoped that the TLAB scheduling practice will become somewhat predictable given the uniformity of approach anticipated to the settling of Hearing dates and associated obligations*
>
> …
>
> *TLAB hearing room resources are limited, member appointments are part-time and the volume of appeals is unknown such that TLAB may not be able to respond to individual requests related to unavailability. Where possible, minor adjustment to Hearing dates may be accommodated in the case of clear conflict, but generally not after a Notice of Hearing appointment has been served and not then in the absence of a Motion."*

These comments were made prior to the TLAB having heard any cases. On 11 October 2017, the TLAB adopted Practice Direction No.2: Default Format for Specific Motion Hearing. This practice direction has simplified the request for obtaining an adjournment especially when considered with the standard forms for a Motion (Form 7: Notice of Motion and Form 10: Affidavit). Practice Direction No.2 provides as follows:

> *"Unless otherwise directed by TLAB, where a party requests a date to file a Motion for a Written or Electronic Hearing (telephone or video conference) or the adjournment of a Hearing Date, or both, TLAB will treat and require the request to be conducted as a written Motion. The Party will be provided with a date for a Written Hearing motion for service. In the case of a Hearing Date adjournment request, the TLAB shall supply alternative hearing dates and the parties shall indicate their availability for those dates, in the event that the Motion may be granted. The default form of hearing for these two specific Motion requests will not be Oral, as specified in Rule 17.3. The timeline for Motion responses outlined in the Rules for Motion will apply."*

So far there have been some interesting decisions from the TLAB regarding the granting of an adjournment. Here is a summary:

Naghavi, Re, 2017 CarswellOnt 20087 (7 December 2017) - the TLAB considered whether an adjournment should be granted as a result of a Notice of Motion occurring well within the 'Quiet Zone', the period established in the TLAB Rules for no proceedings and for sober consideration of settlement issues, possible mediation and final case preparation. The TLAB granted the motion for adjournment. The motion was brought by the City on consent of the applicant party because the City's planning witness was issued a summons to attend another TLAB hearing on the date of the subject hearing. An oral hearing on the motion was held. The TLAB referenced the Practice Direction regarding adjournment requests being made in writing and indicated the following at paragraph 16 of the decision:

> *"[A]djournment requests are to be decided by Written Hearing as a courtesy to the public and those involved more directly. Regrettably, both in respect of the response time and the imminent Hearing Date, this Practice Direction was ineffective in preventing inconvenience across the board requiring attendances by all parties…"*

Hatziantoniou, Re, 2017 CarswellOnt 12344 (8 August 2017); ***Escala Designs Inc., Re***, 2017 CarswellOnt 19503 (4 December 2017) - cases where the TLAB considered a written motion requesting an adjournment because of a scheduling conflict with counsel or an expert witness and the motion for adjournment was granted.

ATA Architects Inc., Re, 2017 CarswellOnt 12343 (9 August 2017) a case where the TLAB considered a written motion requesting an adjournment from the City because assigned counsel and the expert witness were not available on the scheduled hearing date having been assigned instead to an Ontario Municipal Board proceeding. The TLAB considered that where legal firms are fairly large, with many counsel who can step in to substitute for the responsible

solicitor, tribunals usually require that another solicitor appear on the date scheduled for the hearing of the appeal. However, the TLAB accepted that in this instance the unavailability of the City's representative prejudices the City's case because the assigned lawyer and planner had existing familiarity with the matter. The TLAB granted the Motion for adjournment.

Johnston Litavski Ltd., Re, 2017 CarswellOnt 20909- a motion brought by the applicant/appellant seeking an adjournment of the hearing because their counsel had a scheduling conflict on the date of the hearing. The notice of motion was filed shortly after the issuance of the Notice of Hearing. One of the parties (unrepresented) indicated they would be out of the country for employment following the scheduled hearing date and therefore opposed the motion. This party was supported in argument by other unrepresented parties. The TLAB refused to grant the adjournment and provided the following reasons at paragraph 14 of the decision:

> *"Considering the availability of parties when scheduling a hearing is arguably an issue of procedural fairness and natural justice, and involves an issue of the balance of convenience to the parties and the tribunal. Even though in this instance it is the availability of the solicitor for the party responsible for the appeal, other persons have the right to participate in TLAB appeals where possible, especially those with a demonstrable interest. Because it is many months yet until the date selected for the hearing, it does not seem unreasonable to this panel of the TLAB to require that the appellant, if it becomes necessary, select an alternative counsel. As well, there is the consideration that TLAB's mandate requires that hearing dates be expedited and advanced, so that administrative justice can be swiftly delivered."*

Drew Laszlo Architect Inc., Re, 2017 CarswellOnt 17335 (6 November 2017) a case where because of a miscommunication with the applicant's planner, a number of filing deadlines were missed and an adjournment of the hearing was necessary. The applicant was unrepresented and there were no parties or participants in opposition. The TLAB granted the request via written motion for the adjournment and set new filing dates.

Leblanc, Re, 2017 CarswellOnt 14332 (13 September 2017) The TLAB heard a motion for a written hearing to consider a request for dismissal of the appeal or a motion to adjourn the case because the applicant appellant failed to meet the disclosure obligations specified in the rules. The motion was brought the City. The TLAB found at paragraph 9 as follows:

> *"On the strength of the Affidavit served and filed by the City of Toronto on 31 August 2017 to support the request for a dismissal or an adjournment of the case, it would be appropriate to grant an adjournment as a courtesy. No prejudice nor hardship has been asserted."*

Disclosures (Applicant's Disclosure, Document Disclosure, Witness Statements)

The Applicant's Disclosure is required to be filed with the TLAB and the TLAB posts this on its website. There is no requirement to serve the Applicant's Disclosure on any parties (as these may not be known at the time) or any persons who received notice of the original application including to prescribed persons and agencies. Accordingly, any revisions to the application remain subject to subsection 45(18.1) and (18.1.1) of the *Planning Act*, which state:

> "(18.1) *On an appeal, the Municipal Board may make a decision on an application which has been amended from the original application if, before issuing its order, written notice is given to the persons and public bodies who received notice of the original application under subsection (5) and to other persons and agencies prescribed under that subsection*
>
> *(18.1.1) The Municipal Board is not required to give notice under subsection (18.1) if, in its opinion, the amendment to the original application is minor."*

The Applicant's Disclosure is to be filed digitally and the file size is limited to 10 MB or it will be rejected by the TLAB's servers. This limitation can create some challenges for filing certain sets of plans. There is additional guidance regarding what should be included in any

plans that are filed - which is detailed in the TLAB Public Guide. This list includes requirements such as the file should be in PDF format, be drawn to scale and should not have any layers.

The requirements for what must be included in a witness statement, participant statement or expert witness statement are not unlike the requirements for such statements that are filed with the Board. The one difference is rule 16.9 d), which states that the witness statement of an expert shall include:

> *"d) the nature of the opinion being sought and, where there is a range of opinions given, a summary of the range and the reasons for the expert's opinion within that range."* [emphasis added]

It is not clear what this rules requires.

It is notable that there is no requirement in the TLAB Rules for filing of a will say statement or outline of evidence for any summonsed witnesses. The TLAB has indicated a willingness to look at this as part of its review of the TLAB Rules. Although there are no rules regarding the filing of reply witness statements a request for filing of reply witness statements could be made to the TLAB on a case-by-case basis. It appears the TLAB did not include a rule regarding reply witness statements because it balanced disclosure requirements against ensuring the proceeding is cost effective and not overly litigious or intimidating.

Rule 16.2 and 16.3 state the following:

> *"16.2 Parties shall serve on all Parties a copy of every Document or relevant portion of public Documents they intend to rely on or produce in the Hearing and File same with the Local Appeal Body no later than 30 Days after a Notice of Hearing is served.*
>
> *16.3 Where a Party fails to disclose Documents in accordance with Rule 16.2 the Local Appeal Body may disallow the Document to be entered into evidence and may make such other orders as it deems appropriate in the circumstances."*

There are no rules regarding the disclosure of any additional document to be relied upon in reply to information put forward in a party's witness statement. There are also no rules requiring participants to disclosure documents prior to the hearing even though they may disclose documents at the hearing.

Under the TLAB Rules the definition of 'Document' is "Document includes data and information recorded or stored by any means". This definition on its face would imply that all conceivable forms and types of documents need to be disclosed on the Disclosure Date, including all original photos, studies, policies, public documents and reports, documents to be put to witnesses on cross examination and cases that may be put to the TLAB on closing arguments.

In practice, it appears parties at least in some cases have been exchanging original work on the witness statement exchange date as oppose to on the document disclosure date. The benefit of this is the expert has more time to prepare the documents. The drawback is that there is no ability to directly address the other parties' original work in the expert's witness statement.

In terms of requiring the disclosure of documents that are being put to a witness on cross-examination, the TLAB has indicated the following to the OBA:

> "*…the admissibility of documents is a common function of Hearing settings. TLAB has sought to ensure by its Rules that all relevant document disclosure is early, comprehensive, complete and available online to all with an interest.*
>
> *The Rules do not preclude absolutely the production of additional document, subject to the primary obligation test."*

It appears the practice before the TLAB thus far has been that documents may be put to a witness on cross-examination without prior disclosure. If challenged, it would be up to

the Member to admit the document. Arguments could be made regarding the importance of putting the document to the expert as well as raising issues regarding natural justice and procedural fairness.

There have been a number of instances where jurisprudence has not been disclosed prior to the hearing and this has not been raised as an issue at the hearing in terms of the cases admissibility for argument purposes.

Bill 139 – Building Better Communities and Conserving Watersheds Act, 2017

Bill 139 expands what a municipality may authorize a local appeal body to hear. The City of Toronto may now authorize the TLAB to hear:

(a) a failure to approve plans or drawings submitted in connection with a site plan application within 30 days after they are submitted to the municipality.

(b) a requirement imposed on a site plan application by a municipality or upper-tier municipality, or with any part thereof, including the terms of any agreement required.

(c) motions for direction to determine whether a matter is subject to site plan control and/or whether an application for consent is complete including whether it is reasonable for Council to require any non-prescribed information and materials.

The provincial government's stated intent for expanding the local appeal bodies' powers to include site plan matters is to move to "…a place where, by scoping out a significant number of issues and files that currently can be appealed to the OMB, we will put in place a more efficient system that shows deference to local decision-making and that will expedite getting

these projects into the community sooner". (Ontario, Legislative Assembly, Hansard, No. SP-25 (16 October 2017) at 530 (Hon. Bill Mauro)

Bill 139 also makes technical changes to the definition of related appeal to capture the instances where a local appeal body has been empowered by a municipality to hear the new matters that Bill 139 authorizes. Adjudication of disputes regarding whether a matter is a related appeal are to be made to the Local Planning Appeal Body.

The TLAB is currently empowered to hear all appeal of consent applications. Accordingly, the amendments Bill 139 makes to s.115(23) of *COTA* requires the TLAB to hear motions for direction regarding the completeness of a consent application.

Bill 139 has specific transition rules with respect to the application of the local appeal body provisions contained in the *Planning Act* and *COTA*. Overall, the proposition is that if an appeal (or motion for directions) is filed with respect to a matter that Council has authorized a local appeal body to hear, that appeal is transitioned with respect to s.8.1 of the *Planning Act* or s.115 of *COTA*, if the appeal is filed or made before the day on which a by-law authorizing the local appeal body to hear the appeal comes into force.

With an appeal of a consent application, conditions imposed on a consent application or any change to a condition imposed on a consent application, the relevant date is the date of notice of decision/ change of condition and whether it occurred prior to the day on which a by-law authorizing the local appeal body to hear the appeal comes into force.

For TLAB the transition provisions will effectively apply to any new powers that it is authorized to hear - i.e. powers pertaining to site plan appeals and/or motions for direction.

Review of TLAB Decisions

A summary of the TLAB decisions issued and available online as of January 12, 2018 has also been prepared by the authors and is included as **Appendix "F"** to this paper. A summary of the trends and findings of interest arising from this review as well as summaries of interesting TLAB decisions are found below.

Decision Statistics – TLAB

The following statistics[13] are provided by the TLAB on its website regarding cases heard and decisions issued as of December 4, 2017:

- 286 Cases (1 Hearing may involve 3 Cases, e.g. Consent and Minor Variances for Severed and Retained Lots)
- 172 Hearings
- 4 Created in Error
- 15 Withdrawn
- 1 Administrative Review, dismissed
- 37 Decisions Issued on 49 Cases
- 11 Decisions Outstanding in 24 Cases
- 88 Hearings Scheduled in 144 Cases
- 36 Hearings to be Scheduled in 49 Cases

Decision Statistics – Authors' Review

The following is a summary of the trends and findings of interest arising from the authors' review of TLAB decisions issued and available online as of January 12, 2018:

- **Appeals of Refusals by Applicants**: 62:
    - Appeals withdrawn/abandoned: 14
    - Appeals allowed: 33
        - 16 unopposed
        - 10 opposed by neighbours (no expert evidence called in opposition)
        - 1 opposed by City and neighbours – 195 Glenvale Blvd. (no expert evidence called in opposition)

[13] Available here: https://www.toronto.ca/wp-content/uploads/2017/12/8b77-TLAB-December-13-2017-Update-by-Administrative-Staff.pdf

        - 1 opposed by City – 2968-2970 Bayview Ave. (expert evidence called in opposition)
        - 4 settlements between Applicant and City
        - 1 settlement between Applicant and neighbours
    - Appeals dismissed: 3 (598 Soudan Ave., 116 Poplar Rd., 83-85 Sandown Ave. – opposed by City in all cases)
    - In process: 12

- **Appeals of Approvals by Neighbours**: 15

    - Application abandoned: 1
    - Appeals allowed: 3 (all in part)
    - Appeals dismissed: 5
    - In process: 6

- **Appeals of Approvals by City**: 7

    - Appeals allowed: 5 (4 settlements and 380 Birchmount Rd.)
    - Appeals dismissed: 1 (42 Gwendolyn Ave.)
    - In process: 1

- **Requests for Review**: 1

    - Dismissed: 1 (598 Soudan Ave.)

As illustrated by these statistics, most decisions of the TLAB have been decided in favor of the applicant with 39 out of 50 decisions approving the requested development permissions[14]. For instance, where residents alone have opposed an application (without support of the City), they have yet to find success at the TLAB. It is noteworthy, however, that no resident has called expert evidence in support of their position. It is also notable that where the City itself appeals approvals of the Committee of Adjustment, it has the highest success rate and settlement rate, with 4 out of 6 of such appeals resulting in settlement and only one such appeal resulting in a decision in favour of the applicant**.**

[14] Appeals in process or withdrawn/abandoned have not been included in these figures.

It is likely too early to draw any conclusions regarding trends in the decisions of the TLAB, but these early statistics would appear to indicate that, much like at the Board, legal representation and expert evidence in support of one's position have a significant influence on a party's likelihood of success before the TLAB as both the City and applicants are far more likely to appear before the TLAB with counsel and land use planning witnesses and all decisions of the TLAB to date have been in favour of either the City or an applicant.

Case Law Review

Below, the authors provide more detail on the cases in which the TLAB made decisions on appeals commenced by applicants and opposed by the City, as well as appeals commenced by the City.

195 Glenvale Blvd.[15] Appeal of refusal by Committee of Adjustment to authorize variances to construct a new two-storey home with an integral garage and a flat roof at 195 Glendale Boulevard. The existing home and the detached garage at the west side rear of the lot would be demolished. The elevation of the home would be somewhat raised to accommodate the integral garage. There would be several steps at the front porch area leading to the front door, with another set of steps in the interior leading to the living area. Thus the new construction could be described as a two and a half storey home when viewed from the street. The property was designated Neighbourhoods in the Official Plan, and is zoned R1A under the Leaside By-law (with a density limit of 0.45,) and RD (f9.0:a275;d0.45) in the City by-law (the same density). Variances were required under both By-law No. 569-2013 and Leaside By-law No. 1916 for lot coverage, height and floor space index or gross floor area. In addition, the projected build requires variances for a reduced front hall and front yard setback, and increased building

[15] Available here: https://www.toronto.ca/wp-content/uploads/2017/10/96f3-TLAB_17-175387-S45-26-TLAB_195-Glenvale-Blvd_Conditional-Approval_GBurton.pdf

length. The City and the Leaside Property Owners Association obtained party status and opposed the appeal at the TLAB.

Held: Appeal allowed. The TLAB agrees with the unchallenged expert testimony on behalf of the Applicant, that the proposed development will contribute a new home that is contextually appropriate and quite compatible with the existing residential uses. It will not appear oversized because of the technical increase in FSI under the old By-law – in fact it would look just the same from the street, at the recommended 0.71 FSI. It also respects and reinforces the character of already-constructed developments within the Neighbourhoods designation. Respecting the test of maintaining the general intent and purpose of the Official Plan and the Zoning By-law, it was difficult to categorize exactly what constitutes the "neighbourhood". This property is "on the crux" between two FSI requirements, 0.45 and 0.6 times the lot area. The recent, somewhat similar builds at 192 Glenvale and 337 Laird have not destabilized the neighbourhood. They are part of the neighbourhood now. There is continuing redevelopment in this very desirable and sought-after area of Leaside.

Respecting the standard that the variances be minor in nature, they are minor, both individually and cumulatively. No undue adverse impact would occur, as massing would be kept in an acceptable range, especially since there are no side or rear yard setback variances needed. The height increase is minor in the context of other approvals nearby. The proposal is consistent with the 2014 Provincial Policy Statement. The proposed variances will facilitate the ongoing regeneration of homes in the study area by permitting the development of a modern single-detached dwelling, which is compatible with the general height and scale of other existing and approved homes in the surrounding neighbourhood. Similarly, the proposal conforms with the applicable policies in the Growth Plan for the Greater Golden Horseshoe (2017), Policies 1.2.1,

2.2.1 and 2.2.2. The proposed variances will facilitate the ongoing regeneration of homes in the surrounding neighbourhood by permitting development of a new detached dwelling which is compatible with and reinforces the general height and scale of other existing and approved homes in the surrounding neighbourhood.

2968-2970 Bayview Ave.[16] Appeal of the refusal of the Committee of Adjustment of applications for consent to sever two lots to create four lots and associated minor variances to construct four single detached dwellings The two properties are located at 2968 and 2970 Bayview Avenue. The subject lands are designated *Neighbourhoods* in the City of Toronto Official Plan and are zoned RD (f12.0; a370) under Zoning By-law No. 569-2013 and R6 under North York Zoning Bylaw No. 7625 ("By-law 7625"). The proposed lots would have frontages ranging between 6.7 m and 7.1 m and lot areas ranging between 237.6 m2 and 248.05 m2. The proposed consents include easements for vehicular access. The minor variance applications for each lot would permit the development of a single detached residential dwelling on each lot. There are a total of 102 minor variances requested. The key issue is whether the creation of 4 undersized lots and the resulting development of four 3-storey detached dwellings (defined by the By-law as 4 –storey) are appropriate for the subject lands location on Bayview Avenue. Included in this issue is the relevance/applicability of the City's Urban Design Guidelines for townhouse development on the west side of Bayview Avenue.

The TLAB heard conflicting opinion evidence on behalf of the Applicant and the City.

Held: Appeal allowed. When considering the proposed lots, the TLAB must consider whether the lots would respect and reinforce the existing physical character of the

[16] Available here: https://www.toronto.ca/wp-content/uploads/2017/11/9769-TLAB_17-174552-S53-23-TLAB_17-174556-S53-23-TLAB_2968_2970-Bayview-Ave.pdf

neighbourhood and fit within their context as outlined in the Official Plan. In this regard, the TLAB made the following findings:

- The proposed lots are rectangular in form, have the required lot depth and have frontages within the range of other lots on the block. The TLAB agrees that when looking at the context of the subject lands, the proposed lot frontages and resulting areas provide an appropriate transition between the townhouses and the existing single detached lots and "fit" within the Neighbourhood.
- The TLAB agrees that the lots represent a modest form of intensification which is appropriate and implements the Official Plan and is consistent with the PPS and conforms to the Growth Plan. This Panel does not accept the proposition that the only forms of development appropriate along Bayview Avenue are either townhouse dwellings through a rezoning process or detached dwellings similar in size to existing lots along Bayview Avenue and internal to the Neighbourhood. The corridor is evolving with redevelopment and intensification and new development must fit within that evolving character. A permitted use with different standards can reasonably be considered through a consent and minor variance process subject to meeting the applicable tests.
- The TLAB does not agree that modest intensification can only be achieved through a rezoning process. The RD/R6 zone is the applicable zone for the proposed use and the consent and minor variance processes provide the opportunity for consideration of changes subject to meeting the criteria of the Planning Act. To find otherwise would offend the statutory right to make applications for relief from the zoning by-law within the permitted use category.

- The TLAB finds that Official Plan provides direction for consideration of such development proposals as outlined in Section 4.1.7. As such, each development application would be considered on its own merits within its context based on its relationship to adjacent development and the form of the development along Bayview Avenue, as well as the other applicable policies and guidelines.
- The TLAB has considered Section 51(24) of the Planning Act and finds that the proposed consents satisfy the criteria and that appropriate regard has been given to the criteria, subject to the conditions imposed by the City provided in Exhibit 19a. In addition the TLAB is satisfied that a plan of subdivision is not required. The TLAB is satisfied that there will be no adverse affect on the stability of the established neighbourhood internal to the subject lands and no adverse effect on the evolving character of Bayview Avenue.

With respect to the criteria under Section 45(1), the TLAB made the following findings:

- The various existing and approved townhouse developments along Bayview Avenue are all within the Neighbourhoods designation and no Official Plan Amendment was required as it was determined that the area had a mix of development which included townhouse units. This acknowledges that Bayview Avenue has a varied physical form.
- While the TLAB agrees that the Official Plan does not generally encourage intensification in Neighbourhoods, City Council, in approving the Bayview Avenue Guidelines, acknowledged that Bayview is an area identified for intensification. The evidence demonstrated that the form of development taking place along Bayview is

evolving into more intense development without requiring an Official Plan Amendment. The proposed variances respect and reinforce the existing physical character of the Bayview corridor. The development will not result in the destabilization of the internal neighbourhood. The TLAB finds that the intent and purpose of the Official Plan is maintained. In terms of the purpose and intent of the Zoning By-law, the lot frontages are within the range found along Bayview Avenue, albeit for a different form of dwelling unit.

The TLAB is satisfied that the variances, both individually and cumulatively, maintain the general intent and purpose of the standards set out in the Zoning By-laws. The TLAB is satisfied that the number of variances alone is not a determinative for minor. The TLAB is satisfied that there are no undue adverse planning impacts from the applications based on the plans and the conditions imposed prohibiting the upper level decks.

Bayview Avenue has been identified as a corridor suitable for intensification. When viewed within the locational context, the variances are supportive of a modest form of intensification on a major street. The built form and massing would be compatible with the immediate and broader neighbourhood context. The new housing would contribute to the housing stock and the range of housing in the area. The TLAB finds the variances appropriate for the desirable development of the land.

Finally, the TLAB was satisfied that the applications are consistent with the 2014 Provincial Policy Statement and conform to the 2017 Growth Plan.

598 Soudan Ave.[17] Appeal of refusal by Committee of Adjustment to authorize variances to permit a second storey addition over the existing first storey addition, with a flat roof, a rear deck and a front porch. Appellants had requested 11 variances, 7 from By-law 569-2013 and 4 from By-law 438-86. The property was located at the northwest corner of Soudan Avenue and Mann Avenue, in the Davisville Village neighbourhood. Zoned R (d.0.6)(x930) under By-law 569-2013 and R2 Z.06 under By-law 438-86. After an initial October 24, 2016 building permit was granted, construction began under it. Then applications were made to the Committee of Adjustment to approve amendments to the plans as they evolved. The original concept did not include the complete extension of the second storey to the rear of the structure, or the flat roof design. The City opposed, but did not call any planning evidence. The neighbouring residents and local neighbourhood association also opposed, but did not call any professional planning evidence.

Held: Appeal dismissed. The existing predominant built form governs when determining the prevailing character of the neighbourhood, for application of the OP tests. As this proposal was built, and added to physically and conceptually, it began to fail to meet the tests of complying with the general intent and purpose of the Official Plan and Zoning By-laws It becomes less desirable for the appropriate development of the narrow plot of land on which it sites. It loses "fit" with the surrounding neighbourhood. This is one of the most basic conceptions of what the general intent of the Official Plan neighbourhood designation is, and perhaps the most subjective. Despite the fact that many of the variances sought seem numerically minor, the proposal does not meet the test of maintaining the general intent and purpose of the Official Plan. Its projected size, especially the FSI, on this specific lot removes it

[17] Available here: https://www.toronto.ca/wp-content/uploads/2017/10/8ef6-TLAB_17-168128-S45-22-TLAB_598-Soudan-Ave_Refused_GBurton.pdf

from the category of predominant built form. Even when considering such provincial policies as the Grown Plan for the Greater Golden Horseshoe for the subject area, it does not meet the goals therein. One of these is that the proposed variances will facilitate the ongoing regeneration of homes in the surrounding neighbourhood, by permitting development of a new detached dwelling compatible with and reinforcing the general height and scale of other existing and approved homes in the surrounding neighbourhood. The FSI increase is too great on this corner lot to permit this goal to be met.

Review by TLAB of 598 Soudan Decision:[18] The Requestor raised three concerns with the TLAB decision.

- The Requestor identified that there were example properties exceeding the floor space index that had been requested by the Applicant at the Committee of Adjustment and TLAB. The Requestor pointed to an additional corner house within the planner's study area that was "missed" but had an FSI of 1.32. The TLAB found that a request for review is not an opportunity to either re-argue or challenge evidence recited in the absence of demonstrable and tangible error. Here, if there was an error or shortfall in the evidence, it did not stem from the Member.
- The Requestor took issue with the Member having accepted a submission by counsel for the City that "the existing predominant built form governs when determining prevailing character of the neighbourhood, for application of the Official Plan tests." TLAB held: it is clear that the policy test in the Official Plan is instructive of whether the application meets its general intent and purpose. That test is a built form that 'respects and reinforces

[18] Available here: https://www.toronto.ca/wp-content/uploads/2018/01/951c-17-168128-S45-22-TLAB_598-Soudan-Ave_Reviewed-by-ILord.pdf

the existing built form of the neighbourhood.' A reading of the Decision in its entirety makes it clear that built form, measured by lot characteristics, 'fit,' construction to date, FSI and a variety of applied criteria, were the reference points. It is on this diverse spectrum of considerations that the Decision finds the statutory test of conformity with the intent and purpose of the Official Plan is not met. There is sufficient identification of findings on this variety of built form and character assessment that those references amount to the reasons why the planners evidence was not preferred.

- The Requestor finally took issue with a statement in the decision that "its projected size, especially FSI, on this specific lot removes it from the category of predominant built form." TLAB held: that aspect of the Member's conclusion has to be read in the context of the earlier findings. The Member's reasons appropriately took into account the relevant criteria to assess Official Plan conformity, and found the application wanting. The deficiencies in scale, massing and built form, all reflected in the FSI increase sought, was found to simply not fit on the particular lot in a manner deemed compliant with the prevailing character of the area.

The TLAB concluded that it is simply too much of a reach to parse some words from the Decision and divorce them from their context. If the concern for the undue influence of one performance standard were pervasive throughout, rather than arriving through disjointed inference, there might be a basis to take the analysis and review a step further…. In the result, there is no error of fact or law which would likely have resulted in a different order or decision. The Member was not deprived of any new evidence which was not available at the time of the Hearing but which would likely have resulted in a different order or decision.

116 Poplar Rd.[19] Appeal of refusal by Committee of Adjustment to grant consent to sever and to authorize associated variances to permit construction of two single detached dwellings. The Property was located in the West Hill community of the former City of Scarborough. The parcels would each have a frontage of 8.305 m a depth of 45.76 m, and a lot area of 409.1 square metres. Neither the City nor the residents in opposition contested the minor variances for building length or reduced exterior side yards. The dispute related to the lot division and the resultant parcel dimensions, in particular whether the resultant permissible built form would maintain the policy of the Official Plan to respect and reinforce the character of the neighbourhood. The TLAB heard conflicting opinion evidence on behalf of the Applicant and the City.

Held: Appeal dismissed. The issues of lot area and frontages and their relevance need to be considered in context. As a matter of provincial policy they are identified only obliquely. There is no doubt that policy support exists for intensification, the protection of communities and the direction that local planning instruments provide more specific direction. It is instructive that the *Planning Act* in s. 51(24) (f) and (g), the Official Plan, Policy 4.1.5(b) and both zoning by-laws include lot area and frontages as criteria for examination in the evaluation of change. That evaluation is directed to be conducted in the context as to whether the change respects and reinforces the existing physical character of the neighbourhood. The statute also requires that TLAB have regard for the decisions of Council or the Committee on matters that touch upon the Applications. The planners in this case agreed that the prevalent characteristic of lot areas and frontages "on the ground" meet and exceed the standards in the by-laws. There are no distinguishing characteristics, history, or compelling public interest that warrant special

[19] Available here: https://www.toronto.ca/wp-content/uploads/2017/10/9796-TLAB_17-170515-S53-TLAB-et-al_116-Poplar-Rd_Refused_ILORD.pdf

consideration be given to the subject lands as distinct from any other similarly sized lot in the neighbourhood consisting of a minimum 12m frontage, 464 sq. m lot area, or greater. No evidence was called to differentiate the subject lands from its neighbours. While there is little doubt that the subject lands could physically carry the development of two detached dwellings, the issue is whether it is appropriate to accommodate the lot division and variances necessary at this location. Physical character is not respected and reinforced by a lot division with dimensions and parameters significantly different than the standards in effect. The proposed lots, in shape and dimension, are out of keeping with the physical character of the neighbourhood, are not characteristic and are contrary to the expressed policy intent of the City Official Plan, s. 4.1.5.

83-85 Sandown[20] These are appeals to the Toronto Local Appeal Board from a series of decisions of the Scarborough District Committee of Adjustment on May 11, 2017, refusing applications to sever and for variances to two properties located at 83 and 85 Sandown Avenue. The subject properties are currently developed and occupied as single detached one-storey dwellings. The dwellings face west and the lots are configured east/west, with the narrowest width dimension, lot frontage, on Sandown Avenue. The application for consent in respect of each of the subject properties was to sever each into four near identical parts to be combined together on a north/south axis to create four building lots fronting on Aylesworth Avenue to the south. Variances were sought to permit the construction on the reconfigured lots of four two-storey detached dwellings. The variances requested relate to lot coverage increases, maximum floor area increases, minimum lot area reductions, side lot line reductions from internal side lot

[20] Available here: https://www.toronto.ca/wp-content/uploads/2018/01/8d22-TLAB_17-170540-S53-36-TLAB_83_85-Sandown-Ave_Decision_ILord.pdf

lines, front yard parking location and access relief (westerly corner parcel only), side lot line setback reduction abutting a street (westerly corner parcel only), minimum lot depth reductions.

Held: Appeal dismissed. The applications on appeal for severance and associated variances present a somewhat unusual circumstance not often encountered. They call for the reorientation of an established lot pattern at a corner location by a ninety degree swing counter clockwise, to permit frontage on a different street. The orientation has consequences: permitting application for the creation of four lots from the previous two, as well as calling for departures from several performance standards in applicable zoning and the extension of public communal services.

The PPS and Growth Plan present no obstacle to the applications: they encourage intensification in proper locations that is transit supportive and makes use of available infrastructure. There is agreement that it is the Official Plan of the City that is the prime determinant of policy direction governing the applications and to which the consent applications must generally conform and that the variances must maintain its intent and purpose.

A purposive review of the Official Plan is required. It is instructive to always remember the context of the Official Plan, stated in Section 5.6 Interpretation, namely, that it is to be read as a whole, consistent with the applicable accepted standard for statutory interpretation to read the document liberally, in its ordinary and grammatical context and in its entirety, consistent with the objectives of the document and the intention of its legislative foundation.

The Official Plan is clear in its emphasis on protecting the continued stability of designated Neighbourhoods, including the one in which the subject properties are located… 'Stability' is focused on the physical built form of the existing physical character of the

neighbourhood, and includes such matters as buildings, streetscape and open space patterns. 'Existing', as indicated, encapsulates what is there now and what is planned to reinforce it.

It is the existing physical pattern of lots and the improvements constructed thereon that present a significant component of character of an area or neighbourhood that is to be 'respected and reinforced'. In common parlance, 'configuration' refers to the arrangement, in this case of lots or the lot pattern and the buildings thereon, in a particular form, figure or combination. Synonyms, some of which were used descriptively in evidence include: arrangement, layout, organization, appearance, structure and orientation. The existing physical character of buildings, streetscape and open space pattern in the vicinity of the subject properties is a configuration or orientation to an abutting street with opposing frontages on either side. Sandown Avenue demonstrates a historical and existing physical pattern of east/west oriented lots from north/south streets that are common to the neighbourhood. While exceptions exist, they either harbor obvious rationales of geography, open space proximity, major collector street functions, public infrastructure or individual circumstances whose formation predate the Official Plan. This conclusion is consistent with but independent of any special weight to be attributed to the recent policy clarification expressed in OPA 320.

380 Birchmount Rd.[21] Appeal by the City of Toronto from a Committee of Adjustment decision that approved the use of a Banquet Hall and Catering Facility. The Official Plan and Zoning By-laws do not permit these uses on the property. The subject property was located on the west side of Birchmount Rd. at the northwest corner of Mann Avenue. It is in the Oakridge Employment Area, and is designated "Core Employment Areas." There are several industrial

[21] Available here: https://www.toronto.ca/wp-content/uploads/2017/11/97e7-TLAB_17-198730-S45-35-TLAB_380-Birchmount-Rd_Refused_GBURTON.pdf

uses in the front portion of the one-storey building, and the use that is challenged, called the Grand Palace Convention Centre, is located in the rear portion of the building. The property is surrounded by employment uses. It is in an area zoned Industrial (M) under a By-law entitled Employment Districts Zoning By-law No. 24982 and Employment Industrial (E) under By-law 569-2013. The City took the position that the banquet hall use detracts from the designated and zoned purpose of the employment area in which it is located. The Applicant took the position that its six-year operation on the site is well supported by its patrons and creates no interference for the nearby employment or industrial uses.

Held: Appeal allowed. The new Core Employment Areas were not in force when the application for variance was made. Nevertheless, the new OP provisions from OPA 231 are both reflective of and reinforce the earlier protections for designated Employment Areas, and are therefore persuasive. Uses that do not support the designated employment uses are to be eliminated, and such applications refused. No matter the comparative size of the premises, its location is not permitted under the Official Plan or the zoning by-laws. The TLAB must respect the many expressions of the City's policies for this area. Indeed, it cannot grant a variance if on the evidence it is satisfied that the general intent and purpose of the official plan or the zoning by-laws are not maintained. While it is arguable that this use is minor from the quantitative perspective, it cannot be found to be minor in its potential impact.

42 Gwendolen Ave.[22] Appeal by the City of Toronto from a Committee of Adjustment decision which allowed the applicant's request for variances for the construction of a new two storey dwelling with an integral garage at 42 Gwendolen Avenue, located west of Yonge Street

[22] Available here: https://www.toronto.ca/wp-content/uploads/2017/11/9172-TLAB_17-197126-S45-23-TLAB_42-Gwendolen-Ave_Approved_GBurton-.pdf

and south of Sheppard Ave. The subject property was located on the north side of Gwendolen Avenue, in a neighbourhood of single family residential structures, both older and recently constructed or reconstructed. It is designated *Neighbourhoods* in the Official Plan, zoned R4 under By-law 7625, and zoned RD (f.12.0; a370) under By-law 569-2013. The requested variances were principally in the categories of increased lot coverage, building and first floor heights, building length, and reduced side yard setbacks. The City opposed the variances as being counter to the purpose of the *Neighbourhoods* designation in the Official Plan and of the zoning standards, especially the height and coverage provisions. The TLAB heard conflicting opinion evidence from the Applicant and the City.

Held: Appeal dismissed. There is a special circumstance and purpose for the height excess, for drainage of the roof. The height variance is not for exterior walls around the structure, but merely for the central peak and the single dormer window. The variance for coverage does require careful consideration, but it is not considered to be so beyond the by-law requirements that this carefully considered design should be rejected. The planned context of this active neighbourhood is changing as variances were granted in the past. They become part of the built fabric that the Plan seeks to maintain. This proposal will not extend the coverage or height beyond reasonable measurements in its context. Not only are the variances quantitatively minor in amount, they are qualitatively acceptable in having no perceptible impact on neighbouring properties. They need not be "consistent with" nearby numbers; the test is rather whether the changes will respect and reinforce the physical character of the neighbourhood.

APPENDIX “A”

Tips and Tricks for Practicing at the TLAB

See attached.

Tips and Tricks for Practicing at the TLAB

Appeal Filing and Requests for Status

- If you are representing the appellant and have more than one client (i.e., co-owners of the same property) consider filing the appeal in only one of their names. TLAB will charge an appeal fee of $300.00 for each named appellant.

- If you are representing a party, and have more than one client (i.e., co-owners of a neighbouring house that opposes the application), you will need to file a Form 4 Notice of Intention (election) to be party or participant and Form 5 Authorized Representative for each named party.

Document Disclosure

- If all parties are represented by Counsel, you may wish to come to an agreement between the parties on what documents will be disclosed with document disclosure and witness statement exchange (i.e. original work - lot studies, shadow studies, etc.)

- Where a party or participant fails to meet any disclosure obligations, write to them and copy the TLAB so that you can raise arguments that they were on notice to provide you the required documents and failed to do so without raising any justification for the failure.

- Have documents you intend to rely on, but which have not previously been disclosed (i.e., documents for cross-examination and case law) on your computer, and be prepared to add these documents to the USB keys of the TLAB and all parties, at the appropriate times in the hearing.

Settlement

- Consider early on in the proceeding whether there is a basis for settlement and raise this with the other parties before fees are spent on document disclosure, witness statements, etc.

- Where a settlement has been reached, notify the TLAB of the settlement as soon as possible by way of motion requesting a settlement hearing date.

Electronic Hearing and Materials

- Keep the number of electronic documents to be presented at the hearing to a minimum– e.g. 1 document disclosure PDF and 1 PDF for each witness statement.
    - Split into pieces for filing with TLAB by email (e.g., Document Disclosure Part 1 of 2). All attachments must not exceed 10MB in size.

- Bring USB keys for each party with a complete consolidation of all documents for use at the hearing

- In each PDF document: (i) include Tabs (or bookmarks) to easily jump from one document to the next within the document disclosure or to easily jump from one section of a witness statement to the next; and (ii) include a page number on each and every page (including the title page, index and tab pages) so that the PDF page number matches the document page number. In this way, for example, when the witness says “go to page 7”, the party can type in “7” at the top of the PDF document to get to this page.

- Bring a mobile wifi stick so that you have access to the internet during your hearing, in case you need any last minute information

- Consider visiting the TLAB's hearing room with your witness before the hearing, if it is your first appearance there, or your witness's first time testifying there.

- Arrive early with your witness to setup your electronic materials. However, not too early because the building opens at 8:00 a.m. and the TLAB offices open at 8:30 a.m. Consider whether it’s more efficient for the witness to control the electronic screen or Counsel.

- For examination and cross-examination, if you work better with paper, nothing is stopping you from working with paper yourself, provided the documents to which you are referring are in the electronic record.

- Remember that the proceedings are being recorded, and the recordings are publicly available after the hearing. The microphones may not be turned off during breaks in the proceedings. If you have something private to say, leave the hearing room.

APPENDIX “B”

Ontario Bar Association letter to the TLAB

See attached.

ONTARIO
BAR ASSOCIATION
A Branch of the
Canadian Bar Association

L'ASSOCIATION DU
BARREAU DE L'ONTARIO
Une division de l'Association
du Barreau canadien

May 2, 2017

BY EMAIL

Toronto Local Appeal Body
Ian Lord, Chair
40 Orchard View Boulevard
Second Floor, Suite 211
Toronto, ON M4R 1B9

Dear Mr. Lord and Toronto Local Appeal Body Members,

Re: Toronto Local Appeal Body Rules of Practice and Procedure

On behalf of the Municipal Law Section of the Ontario Bar Association (the "**OBA**"), I am writing to identify some comments and suggestions respecting the proposed Rules of Practice and Procedure of the new Toronto Local Appeal Body ("**TLAB**") in advance of the upcoming TLAB Business Meeting on May 3, 2017.

The OBA Municipal Law Section has approximately 300 lawyers who are leading experts in municipal and land use planning law matters representing proponents, municipalities, residents, developers, and other stakeholders. Though we represent a broad spectrum of clients with diverse and sometimes competing interests, our goal is to provide decision-makers with commentary that represents a balance of the various interests of our members and their clients. Members of the Section often advocate before municipal councils and committees, all levels of court in the Province of Ontario, and the various tribunals that comprise the Environment and Land Tribunals Ontario ("**ELTO**"), including the Ontario Municipal Board (the "**OMB**") and soon the TLAB.

The product of years of consultation and development, the City of Toronto's introduction of the TLAB represents the culmination of legislative provisions enacted under both the *Municipal Act, 2001* and *City of Toronto Act, 2006* intended to provide municipalities with greater involvement in the land use planning process. As the first municipality to make use of these provisions, we anticipate that the TLAB will be watched closely by other municipalities looking to determine whether establishment of a similar local appeal body may be desirable. Therefore, while the

TLAB will only deal with planning matters for lands in the City of Toronto, it may be setting a precedent for similar local appeal bodies across the Province.

Draft Rules of Practice and Procedure for the TLAB were published on March 31, 2017 (the "**Draft Rules**"). The TLAB has invited comments on the Draft Rules and it is anticipated that the Draft Rules, potentially with some modifications, will be adopted by the TLAB at its business meeting scheduled for May 3, 2017. The OBA Municipal Law Section recognizes the new and unique role that the TLAB will play in the land use planning process in the City of Toronto and also in the Province as the first local appeal body to be established. It is in recognition of this important function that we have prepared the following comments and suggestions regarding the Draft Rules which have been categorized into four categories and are summarized as follows:

1. *Timing Obligations*

   While the benefits of timely document disclosure are recognized and appreciated, the introduction of a very short time frame for the identification of parties and full preparation of a party's case may impact accessibility to the TLAB and the ability of parties to participate in the hearing process. Further, without revision to ensure clarity, the timing obligations imposed under the Draft Rules may impact the hearing process and potential for settlement, in particular, by restricting the time during which documents can be disclosed to implement such settlements.

2. *Procedural Obligations*

   The Draft Rules introduce new procedural obligations for the hearing of appeals of Committee of Adjustment decisions that may reduce accessibility and settlement opportunities, in particular, as added obligations translate to added costs. Additionally, it is submitted that all parties and participants, including summonsed witnesses, should be subject to the same obligations of document disclosure under the Draft Rules. Further, revisions to the Draft Rules to provide greater certainty and clarity regarding certain procedural obligations and practices would be of assistance, in particular to ensure that all procedural mechanisms are in place under the Draft Rules to ensure a fair hearing.

3. *Identification of Parties and Participants*

   The process by which another party may challenge a request for party or participant status or make submissions regarding the TLAB's denial of party or participant status is unclear. Therefore, amendment to the Draft Rules to clarify this process would be of assistance.

4. *Additional Comments*

   Additional comments regarding the scheduling of settlement hearings, filing fees and small typos have also been provided.

We thank you for this opportunity and are available to discuss any of the following comments in greater detail.

1. TIMING OBLIGATIONS

Short Time Period for Hearing Preparation

The Draft Rules introduce timing obligations that differ significantly from those in place at the OMB. These timing obligations are primarily tied to the service of the Notice of Hearing and relate to the timing for matters including the identification of parties and participants, the disclosure of evidence and the filing of witness statements. In particular, all filing and disclosure obligations are to occur within 45 days of the service of the Notice of Hearing. Thus, the Draft Rules require parties to identify themselves and prepare and put forward their full case far in advance of the hearing, which will presumably take place several weeks (or potentially months) after the completion of all filing obligations, although this is not clear.

The benefits of timely document disclosure are recognized and appreciated. In particular, early identification of the parties, participants and issues assists hearing preparation and facilitates settlement. It is also understood that the Draft Rules have intentionally provided for a "quiet zone" of 30 days prior to the hearing intended for individual final hearing preparation, document preparation for presentation and for the parties to consider the necessity to litigate the matters in issue. The introduction of a very short time frame for the identification of parties and participants, and full preparation of a party's case, however, may impact accessibility of the TLAB and the ability of parties to participate in the hearing process. The proposed timing obligations may be difficult for all parties to meet, including the City of Toronto, which must seek Council instructions and may also need to retain outside consultants. Similarly, ratepayers may be unable to confirm their desire to participate, retain consultants and prepare their full case within such a short time frame. Even the applicant, who will be in the best position to prepare their full case promptly, may have difficulty retaining any necessary consultants and preparing all deliverables within the short time frames provided. Further, the Draft Rules have generally imposed shorter time frames than at the OMB for the occurrence of events such as the filing of notices of motion and the summons of witnesses. Accordingly, with less time for completion, these requirements may be more difficult for parties to meet, potentially inhibiting their ability to fully participate in the hearing process.

Therefore, we respectfully request that the TLAB consider using the date of the hearing as the reference point for all disclosure deadlines (as opposed to the service of the Notice of Hearing), as this will improve the clarity and certainty of the process, and may allow parties more time to prepare their case and to meet all required deadlines. For example, instead of requiring application revisions, party/participant status requests, document disclosure and witness/participant statements to be declared/produced within 15, 20, 30 and 45 days of the service of the Notice of Hearing, respectively, each of these events could instead be required to occur by a certain number of days prior to the scheduled hearing date. Further, while it is appreciated that the TLAB wishes to implement a 30 day quiet zone prior to its hearings, the tying of timing deadlines to the date of the hearing would also prevent the occurrence of an extended quiet zone beyond 30 days which is currently a possibility under the Draft Rules.

Timing for Disclosure of Documents

Pursuant to Rule 16.2 parties must file all documents upon which they intend to rely on or produce at the hearing 30 days after service of the Notice of Hearing. Where a party fails to disclose documents in accordance with Rule 16.2, pursuant to Rule 16.3 the TLAB may disallow the document to be entered into evidence.

Again, while the importance of disclosure to ensuring a fair hearing process is recognized, without revision to ensure clarity, the timing for such disclosure as proposed under Rules 16.2 and 16.3 may negatively impact the hearing process. In particular, the Draft Rules do not establish circumstances under which additional documents may be added, amended or disclosed. For example, under the Draft Rules this disclosure of all documents occurs 15 days prior to the filing of witness statements. Parties, however, may not be in a position to identify all documents needed for the hearing prior to the filing of witness statements. New documents may be needed by a party to respond to previously unknown submissions of another party as revealed in the witness statements or to add documents to be relied upon by a witness appearing under summons. Additionally, where motions are heard and orders made by the TLAB prior to the hearing, including orders for disclosure, under the Draft Rules it does not appear that the parties will be permitted to update or add to previously filed documents. Further, where settlement has been reached, while Rule 19 provides for filing of documents related to the settlement, in particular in the case of partial settlement, it is unclear whether the parties may update or add to previously filed documents in support of such a settlement.

The application of Rules 16.2 and 16.3 to documents used by parties during cross examination is also unclear. Often documents used during cross examination are not introduced unless and until required in response to testimony elicited during the hearing itself. Therefore, an exception to the application of Rules 16.2 and 16.3 for documents properly introduced during cross examination

may be warranted to ensure this important facet of the hearing process is not inhibited, so as to ensure important principles of natural justice and procedural fairness are respected.

Impacts on Settlement Potential and the Quiet Zone

Settlements of appeals of Committee of Adjustment applications often occur in the weeks or days leading up to a hearing. Rules 11.1 and 11.2, however, provide that any intended revisions or modifications to the application must be disclosed 15 days after the Notice of Hearing has been served. No provision is made in the Draft Rules for revisions or modifications made to the application to facilitate settlement of the appeal in part or in whole. Additionally, while Rule 19.2 provides for service of settlement terms at the earliest possible date, as noted above, where settlement has been reached in whole or in part, given Rules 16.2 and 16.3 described above, it is unclear whether the parties may also update or add to previously filed documents in support of such a settlement.

Additionally, where the Draft Rules essentially require a party's full case to be prepared very early in the process and well in advance of the hearing, parties may be less motivated to enter into a settlement as the time and cost savings of such a settlement are much lower. For example, the time and costs required for preparation of witness statements constitute a material element of the time and costs associated with an appeal. Accordingly, parties may be more motivated to settle prior to the incurrence of this cost. Consequently, where this cost is incurred early in the hearing process, parties may be less likely to reach settlement. Facilitating settlement is identified as an objective of the TLAB and is in the public interest, including the interest of all parties to the appeals. Therefore, consideration of the impacts of the timing requirements on the potential for settlement is recommended.

With respect to the 30 day quiet zone, while it is understood from the TLAB's Public Guide that this time is "intended for individual final hearing preparation, document preparation for presentation and for the parties to soberly consider the necessity to litigate the matters in issue", in light of the timing obligations under the Draft Rules that require full case preparation, including all document disclosure, well in advance of the start of the quiet zone, it is unclear how these stated objectives would be achieved by the quiet zone.

Notice of Proposed Dismissal

It is unclear under Rule 9.4 how to determine when a Notice of Proposed Dismissal has been "received" by a party. Therefore, revision of this Rule to provide greater clarity would be of assistance. For example, as with similar deadlines under the Draft Rules, tying the deadline for written submissions to the date for service of the Notice of Proposed Dismissal would provide greater certainty in this regard.

Scheduling of Hearings

Under the Draft Rules hearing dates are intended to be "fixed and definite". Further, the wording of Rule 10.2 indicates that the parties' availability may not be considered in the scheduling of a hearing before the TLAB. While it is understood that not all scheduling requests can be accommodated and that the TLAB must have the final say in the scheduling of its own matters, in order to allow the parties to ensure their availability and that of their consultants for a hearing, it is hoped that, similar to the OMB, the TLAB will allow parties to identify their availability by email for the TLAB's consideration prior to scheduling.

Prior to the identification of all parties and issues, it is also unclear how the TLAB will determine the number of days required for a hearing or, where it is determined that insufficient or excess time has been scheduled, how a party may seek to amend the time previously set down for the hearing. Therefore, revision to the Draft Rules or the TLAB's Practice Guide to address such matters would be of assistance.

2. PROCEDURAL OBLIGATIONS

New Procedural Obligations

The Draft Rules introduce added procedural obligations for the hearing of appeals of Committee of Adjustment decisions. These procedural obligations include the requirement for filing of witness statements and participant statements in all cases (Rules 16.4, 16.5 and 16.6) and the potential for discoveries (Rule 18). As you know, there is currently no general requirement to exchange witness statements or participant statements for minor variance or consent appeals before the OMB. While the benefits of these documents in identifying issues and facilitating hearing preparation is acknowledged, these added requirements also introduce added costs for parties to these appeals. Where the cost of participation in a hearing process is increased, barriers to access may result. Therefore, when implementing the new rules, consideration and observation of the impacts of these new procedural requirements on parties' ability to access the TLAB is recommended.

Additionally, as set out in greater detail above, where added requirements are such that significant time and cost is invested in advance of the hearing itself, parties may be less motivated to reach settlement prior to the hearing.

Document Disclosure

Participants are not currently subject to Rules 16.2 and 16.3 even though they may put forward documentary evidence at the hearing (as necessarily implied by Rule 16.5, which requires

participants to file a list of every document upon which they intend to rely at the hearing). Therefore, it is respectfully submitted that if participants are intended to be able to put forward documentary evidence at the hearing, they should be subject to the same obligations of disclosure as parties.

Similarly, where a witness is required to appear under summons, an obligation to provide a form of witness statement and to disclose any documentation to be referenced would ensure that all persons to give evidence at the hearing are fairly required to file their materials in advance.

With respect to the parties' obligation to disclose documentary evidence under Rules 16.2 and 16.3, the TLAB may also wish to consider opportunities to provide for efficiencies in this process. For example, presumably most parties will include relevant excerpts from the *Planning Act*, Growth Plan for the Greater Golden Horseshoe, Provincial Policy Statement, 2014, the City of Toronto Official Plan and Zoning By-law No. 569-2013 (and, in many cases, the in-force zoning by-laws from the former municipalities) in their documents to be disclosed. Accordingly, the TLAB may consider providing that copies of such documents do not need to be filed with the TLAB so long as the sections or policies to be referenced are clearly identified by the parties at the time of document disclosure. Additionally, as documents to be filed are often very large and the Draft Rules seek to encourage electronic filing of documentation, provision in the Draft Rules for the filing of documents via link to an online server or file sharing site may be of assistance to both the TLAB and parties.

Expert Witness Statements

With respect to the contents of an expert witness statement as set out in Rule 16.9, it is unclear what is intended by the requirement for the expert to give a summary of the range of opinions and the reasons for the expert's opinion within that range. Revision to the Draft Rules or to the Public Guide to provide clarity would be of assistance in this regard.

Reply to Witness Statements

While Rules 16.4 and 16.5 provide for the filing of witness statements and expert witness statements, there is no provision under the Draft Rules for the filing of reply witness statements or, as noted above, for the added disclosure of documents to be relied upon in response to information put forward in a party's witness statements. As the ability to fully reply to another party's case is critical to a fair hearing process, it is respectfully submitted that amendment of the Draft Rules to allow for such response is appropriate.

Court Reporters

The Draft Rules do not currently include any provisions regarding when court reporters may be used at the TLAB. Therefore, the TLAB may wish to consider adding such a rule to provide clarity regarding what notice to the parties or permissions from the TLAB may be required for use of a court reporter.

Adjournment and Consolidation

The Draft Rules do not currently provide criteria for consideration by the TLAB upon a motion for adjournment or consolidation. Therefore, the TLAB may wish to consider amending the Draft Rules to include criteria to be considered by the TLAB during such proceedings.

Challenge of Affidavit Evidence

For written hearings, Rule 24.11 provides for the provision of evidence by way of affidavit, however, the process by which a party may challenge such affidavit evidence is unclear. In order to ensure a fair hearing process, provision should be made in the Draft Rules for cross examination on affidavit evidence, for example, upon request by a party within a specified period of time.

3. IDENTIFICATION OF PARTIES AND PARTICIPANTS

Pursuant to Rule 12 persons who wish to be a party must disclose their intention to be a party to the TLAB, and the TLAB may decide whether a person's status as a party to a proceeding should be denied at any time. Similar rules are established under Rule 13 with respect to participant status. Therefore, it appears that persons are granted preliminary or presumptive party status upon the declaration of this intention. The process by which another party may challenge a request for party or participant status or make submissions regarding the TLAB's denial of party or participant status, however, is unclear. For example, will the TLAB assess each status request on its merits at the outset and issue a form of decision prior to the filing of documents and witness statements or will the merits of a request for status only be considered if challenged by motion? Moreover, if party and participant status can only be challenged via motion, this would appear to place the onus on the moving party to demonstrate that the criteria for party or participant status have not been met. Therefore, amendment to the Draft Rules to clarify this process would be of assistance.

4. ADDITIONAL COMMENTS

Settlement Hearings

Rule 19.3 provides for the scheduling of a settlement hearing where settlement has been reached by the parties. It is unclear, however, under what circumstances the date and time of such a hearing would differ from that of the originally scheduled hearing. For example, presumably a new hearing date would not be set down where only partial settlement has been reached or where settlement has not been achieved with all parties. Additionally, where a new date has been set down for a settlement hearing, it is unclear how rules relating to document disclosure prior to the hearing would apply. In particular, as described above, most deadlines are tied to the date of service of the Notice of Hearing. Therefore, it is unclear whether a new Notice of Hearing would be issued by the TLAB for a settlement hearing or if the document disclosure rules would no longer apply as all documents relating to the settlement are to be filed pursuant to Rule 19. Revision of the Draft Rules to provide clarification in this regard would be of assistance.

Filing Fee

Pursuant to Rules 5.2 and 5.3, appeal fees are payable by certified cheque and all other fees are payable by debit or credit card. The TLAB's Public Guide further states that appeal fees may be paid by money order or in cash. We also request that the Draft Rules or Public Guide be revised to further allow fees to be paid by a cheque issued by a law firm, consistent with the practice adopted by the OMB.

Typos

We note the following small typos in the Draft Rules:

- In Rule 9.3 presumably the words "to the Appellant" should be added after the words "Notice of Proposed Dismissal".
- In Rule 16.4 the word "Board" should be replaced with "Body".
- The numbering under Rule 27 is incorrect, such that Rule 27.6 is missing.

Timing of Amendments

While it is understood that appeals from the Toronto Committee of Adjustment will be directed to the TLAB beginning on May 3, 2017 and that, accordingly, the Draft Rules may be adopted without amendment by the TLAB on May 3, 2017, it is further understood that the first hearings before the TLAB will not occur for several months. Therefore, if the TLAB intends to amend its

rules prior to the first hearings before the TLAB, we note that this may be effectively achieved with minimal impact to appellants through the implementation of amendments prior to the issuance of the first Notices of Hearing. This is because most timelines and obligations under the Draft Rules do not begin until the issuance of such a notice. Therefore, if desired, the TLAB may amend the Draft Rules with minimal impact to appellants by delaying the issuance of its first Notices of Hearing.

If the Draft Rules are to be implemented for a period of time prior to any amendment, however, we would ask that the TLAB consider making such amendments effective only for appeals filed after a specified date to ensure that the rules applicable to a hearing do not change mid-process.

Additionally, following application and use of the rules over the first several months, we hope that the TLAB will be willing to once again consult with stakeholders, including the OBA Municipal Law Section, to consider revisions or amendments to address any issues that may arise in practical application.

As you know, the OBA Municipal Law Section, together with the Ontario Professional Planners Institute, has scheduled an event for May 8th where the TLAB Chair, Mr. Lord, and TLAB member, Ms. Laurie McPherson, will provide a presentation and be available to answer questions about the TLAB. We look forward to this opportunity to hear more from the TLAB regarding its new process, including the Draft Rules.

We thank you for considering this letter and the important matters it identifies. We would be pleased to have members of our Executive meet with you and your staff to discuss any questions you may have.

We look forward to developing an ongoing relationship and dialogue between the OBA Municipal Law Section and the TLAB, recognizing that it is in our collective interest that this new tribunal operate in an efficient and effective manner, given the important role that it will play in the land use planning system within the City of Toronto.

Kind regards,

[*original signed by Mark R. Flowers*]

Mark R. Flowers, Chair
OBA Municipal Law Section

APPENDIX "C"

City of Toronto letter to the TLAB

See attached.

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Reply To: **Brian Haley**
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May 2, 2017

DELIVERED BY EMAIL TO

Chair and Members
Toronto Local Appeal Body
40 Orchardview Boulevard
2nd Floor, Suite 211
Toronto, Ontario M4R1B9

TLAB@toronto.ca

Re: Item No. TLAB 6.1
Toronto Local Appeal Body – Rules of Practice and Procedure

Dear Chair and Members of Toronto Local Appeal Body (TLAB).

Members of the City of Toronto's Planning and Administrative Tribunal Law section of the Legal Division (the "Planning Practice Group") routinely attend the Ontario Municipal Board (OMB) on appeals of Committee of Adjustment (the "Committee") decisions when directed to do so by City Council. With the creation of TLAB it will be these same lawyers attending Committee decision appeals to your tribunal. As such, members of the Planning Practice Group have reviewed the draft Rules of Practice and Procedure (the "Rules") and have some concerns regarding certain deadlines for filing materials currently proposed, and our ability to serve our client, City Council. The concerns can be summarized as follows:

- The inability to receive Council instructions to request party status on an appeal within 20 days of the issuance of the Notice of Hearing (Rule 12.2).

- The inability to meet the disclosure deadline for the service of documents within 30 days of the issuance of the Notice of Hearing (Rule 16.2), especially on occasions when the City must retain an outside planning consultant.

- The inability to meet the disclosure deadline for service of witness statements within 45 days of the issuance of the Notice of Hearing (Rule 16.4).

- The inability to meet the disclosure deadline for service of expert witness statements within 45 days of the issuance of the Notice of Hearing (Rule 16.6), especially on occasions when the City must retain an outside planning consultant.

The Committee is an independent arm of the City, and therefore a resolution of City Council is required for the City to either appeal a Committee decision (except for limited delegated authority to the Chief Planner), or to attend on an appeal of a Committee decision at the OMB or TLAB as a party either in support or opposition of the Committee decision. The inability for the City Solicitor to get timely instructions from Council due to the schedule of City Council meetings severely hinders the City's ability to meet the above noted time deadlines in the proposed Rules. A resolution may be as simple as pushing back the above noted deadlines by 30 days, and/or to tie the deadlines to the hearing date rather than the Notice of Hearing.

It is my understanding that at the upcoming May 3, 2017 meeting of TLAB the introduction and adoption of the draft Rules will occur as part of item TLAB 6.1. It is also my understanding that deputations may be made at TLAB meetings on any agenda item being considered. Nathan Muscat, a lawyer in the Planning Practice Group, will be attending to make deputations on the draft Rules to further outline our concerns.

Yours truly,

Wendy Walberg, City Solicitor

APPENDIX "D"

TLAB response to the Ontario Bar Association

See attached.

TORONTO

Chair: Ian James Lord

Court Services
Toronto Local Appeal Body

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June 21, 2017

DELIVERED BY EMAIL TO

Mark R. Flowers, Chair
Ontario Bar Association
Municipal Law Section
300-20 Toronto St.
Toronto, Ontario M5C 2B8
hwebb@oba.org

Re: Item No. TLAB 6.1
Toronto Local Appeal Body Rules of Practice and Procedure

Dear Mr. Flowers,

This will acknowledge with thanks correspondence received under date of May 3, 2017.

In reviewing and providing comments on TLAB Rules, the contributions received are incisive, helpful and entirely appropriate to be raised.

TLAB has considered these matters and felt it appropriate to respond below, as an aid to further and future consideration.

This response generally tracks the categories of commentary raised.

I. GENERAL ISSUES

1. Timing Obligations

In general, the timeframes established by the Rules, now adopted, reflected a direction in the constitution of TLAB that the decision making process be 'expeditious', timely and responsive to the interests of the citizenry, among other matters.

Further, that there be an enhanced awareness that settlements of issues are primarily the responsibility of the interested parties, aided where possible, and that consent dispositions arrived at on a consensual basis through mediation, private or public, is preferable to confrontation in a Hearing setting.

The timeframes were taken from a canvass of tribunal best practices in Ontario and were supported by TLAB, in part, on the perspective that decisions that are delayed are a denial of

administrative justice. While alternative dispute resolution is supported, with Rules provided to access same, TLAB's overall responsibility is to provide timely decisions on matters that come before it.

To that end, clear dates for deliverables were determined to be set from the outset of an appeal, rather than historical practice of attempting to achieve a consent Hearing date and thereafter working disclosure obligations back from that point.

Costs of participation in an appeal are a relevant consideration. Costs are incurred not only by Rules on disclosure, but also in the lack of clarity of procedures, opportunities for delay, uncertainty and unproductive or limited use procedural attendances.

A principal objective of the TLAB Rules is to remove uncertainty, promote disclosure, permit deliberative consideration of positions based on reliable information and expedite that consideration over established timeframes, for action and individual decision making.

The Rules express the view that the jurisdiction TLAB exercises warrants directed Hearing appointments, formalized disclosure, deliberative consideration of issues and Hearings of short duration proximate to the application, appeal and the relevant physical, temporal and economic environment.

2. Procedural Obligations

The Rules are specific as to their equal application to parties and participants with the objective of full disclosure at the earliest reasonable opportunity. To this end, applicants proposing revisions to their requested relief, gleaned following the decision of the Committee of Adjustment, must so disclose those changes forthwith on receipt of the Notice of Hearing.

Position statements of parties and participants, focused on issues of relevance, are to be exchanged based on the appeal grounds and this early disclosure of any revisions.

It is the expectation of TLAB that the benefit of this disclosure, while engaging more formal, on-line fillable Form documentation (with the potential of modest cost considerations), is far greater and usable as a structured discipline to enhance and encourage settlement discussions and a narrowing and focus on issues. It is intended that these objectives are accomplished without compromise to the obligations and any necessary determinations of a fair Hearing process.

TLAB recognizes there may be practical difficulties experienced in achieving its intentions. It has expressed an intention, following a period of practice experience, to entertain an identification of any such issues, hear public deputations on them, and adjust the practices as determined necessary and expedient.

3. Identification of Parties and Participants

On the jurisdiction afforded TLAB and with the stakeholders being generally readily identifiable, TLAB took the view in its Rules that the stakeholders themselves should be entitled to identify and elect, in the first instance, their desired status as a party or participant.

TLAB expects and considers that in the normal course, the applicant, the appellant(s) and the City are uncontested stakeholders of such stature to warrant party status.

Should objection be taken to the election made by any individual, the right to bring a Motion to challenge status exists.

The Rules contemplate the vehicle of a Motion to challenge the elected status, where that challenge is felt warranted. This self-elected status recognition was viewed as less cumbersome, less intimidating and more consistent with the reality of present practice. It occurs without compromise to the right of challenge.

4. Additional Comments

These matters are canvassed below.

II. SPECIFIC RESPONSES

1. TIMING OBLIGATIONS

Short Time Period for Hearing Preparation

The Notice of Hearing prescribes the due dates for responsibilities and the set Hearing date, generally 90 – 100 days out from the Notice, reflecting the timeliness principle. TLAB considered the amount of time set by the Rules in relation to practices of other administrative tribunals, the direction for expeditious Hearings and the fact that the date of the determination by the Committee of Adjustment starts effective notice of the potential for an appeal. This notionally provides additional time to consider one's position on the matters in issue and should not be considered lost time in an absolute sense.

TLAB has provided in the Rules and Forms that it has adopted, several provisions to help ensure the timeframes do not work a significant hardship on individuals with a genuine intent to pursue their areas of interest. The Forms are interactive, capable of completion on-line in many instances and in short order. There is no delay occasioned by surface delivery or mailings. Transmissions are electronic. Postings on the TLAB website will be expedited and are intended to occur within one business day of receipt. Those postings are effectively available instantly and to the world.

It is an excellent point that the City, potentially trading corporations and ratepayer/community groups may have delays in seeking instructions. TLAB was made aware of instances, in the municipal world, of some municipalities having standing instructions to deal with appeals from Committees of Adjustment, either in respect of subject areas, or performance standards, use categories, Ward responsibilities, planning Report positions or other criteria.

Speaking to this issue, The City solicitor indicated that practice considerations can be reviewed in the manner of seeking Toronto Council instructions, if difficulties are experienced. In practical terms, a significant period exists between the articulation of a Planning Report on a Committee of Adjustment application, the Committee decision, an appeal, the issuance of a TLAB Notice of Hearing and the first substantive disclosure date requiring a potential obligation of City representatives (or private interests) – likely in the order of 2-3 months.

It is important to TLAB that the identification of constraints in meeting the timelines be identified and documented. **An opportunity of practice experience and exposure is proposed with the concomitant promise to review the timelines based on the advice and representations received through a formal public canvass, likely in the spring of 2018**.

In jurisprudence afforded TLAB before the Ontario Municipal Board, the City has made it clear that its role is to independently assess and project the corporate interests and objectives of the City. It has represented that the City cannot be seen to directly or indirectly take or project a party position exclusively in the interest of some external group, or that the City's participation can be relied upon to continue if the City's interests are otherwise satisfied. To that end, TLAB does not anticipate a difficulty with the withdrawal of party status or engaging in settlement discussions, even if those events extend into a period where party status places obligations on the parties, in most circumstances.

The approach defined by TLAB in its Rules is to depart from practices that can create delay or uncertainty, or the prolixity of proceedings, or that contemplate the necessity of consensual dates, or that can require pre-hearing conferences generally for procedural matters, all in respect of jurisdictional subject matters of finite detail that generally can require relatively short consideration time on their merits, and that are cost sensitive to the parties and participants.

The period of the Quiet Zone is as below recited: a period for sober consideration as to the necessity or advisability of a Hearing, a period for private settlement discussion and a period for technical case presentation preparation.

TLAB also views this period as a response to the possibility that the timelines established can become overly prescriptive in individual hardship circumstances. In effect, this period requires that attention be paid early to use the most flexible of all devices, the Motion (whether written, oral or electronic), to resolve impasses or considerations of merit, without the necessary loss of the Hearing appointment. While Motions are not expected to be heard in the Quiet Zone, that period offers an opportunity for relief in circumstances that are warranted and where Motions are timely and early in the process.

Timing for Disclosure of Documents

The discussion of document disclosure is significant and may well warrant further review with practice experience. The disclosure obligation, while not confined to the applicant relative to revisions to plans proposed, is designed to identify –from the outset- the substances of the various cases to be met. All parties and participants with documents germane to their position are required to disclose these. Some may be from a common document pool, such as policies

or excerpts from provincial, City or other sources. These will be made accessible from the TLAB website.

Others will be a component of the file record imported from the appearance before a panel of the City's Committee of Adjustment.

Documents in the possession of a party or participant that are relevant to them will need to be disclosed at an early stage. Additional documentation that arises in response, on Motions or in affidavit attachments would need to be addressed, if challenged, in light of the early disclosure obligation. The admissibility of documents is a common function of Hearing settings. TLAB has sought to ensure by its Rules that all relevant document disclosure is early, comprehensive, complete and available on-line to all with an interest.

The Rules do not preclude absolutely the production of additional documentation, subject to the primary obligation test.

In the instance of a settlement, whether or not advanced through a Motion for an early Hearing, the Rules also do not preclude the introduction of related documentation. If they do, a review is warranted (but see below on relief from the Rules). Indeed, a comprehensive settlement package involving the parties brought on consent is an obligation and expectation on the parties that is both contemplated and encouraged.

A period of trial practice experience is recommended.

Impacts on Settlement Potential and the Quiet Zone

As described above, the receipt of settlement documentation, in part or whole, is an established practice that is supported and encouraged. TLAB recognizes that the areas of its jurisdiction often result in circumstances as between neighbours and interested parties that engender the most graphic, cogent and personal considerations over real property of all the planning instruments under the Planning Act.

It is for that reason that the TLAB Rules are express in the provision that relief from the strict application of the Rules, in circumstances such as consensual settlements between parties, will be entertained on their merits.

Ample provision is made in the Rules themselves to ensure that in proper circumstances, the goals of a just, fair and liberal approach to their application will ensure dispositions consistent with the objectives of TLAB, the statute, the rules of evidence, a fair hearing and all relevant considerations.

The case for full disclosure early in the procedures adopted by TLAB is described above, in the public 'Guide' and in other materials available on-line.

This disclosure and preparation is seen by TLAB to be far more proximate to the trial of the issues than in many practices previously in effect. The disclosure of the applicant's revisions to plans, the one documents disclosure of cases to be met, the one disclosure of witness opinion

evidence is all proximate to the Hearing date. Those exchanges and the period of the Quiet Zone, a period of 30 days to absorb this information, is not at this stage viewed as counter-productive, duplicative or contributory to unnecessary costs. Indeed, it is viewed, again at this stage, as an inducement to define, refine and disclose the substances of factual and opinion based positions on the merits and demerits of a clearly defined and disclosed proposal, for all parties and participants to assess.

The intention is to eliminate last minute revisions to plans, the need to harbour and keep on retainer expert witnesses in order that they might be needed or to be exposed to witnesses or issues never before contemplated or disclosed. These practices are inefficient, costly and lead to disputes.

TLAB took counsel on best practices and the ways and means to use the Rules and the timing constraints to reveal and enhance the potential for settlements and Hearing efficiencies. TLAB is aware of City efforts to encourage mediation and informal dispute resolution. TLAB's Rules provide for and support mediation to assist in the productive resolution of disputes.

Again, practice experience may expose benefits or flaws for which the differing objectives and concerns can fuel reconsideration.

The Quiet Zone is a passive period of inactivity intended to afford an opportunity for sober consideration as between interests. TLAB will assist initiatives to make this a productive period for discussion and dispute resolution, in the public interest. It is of substantive length to ensure such discussions can be effected with full knowledge of the matters, evidence, objectives and positions in issue.

A period of practice exposure will provide insight as to whether the provision of this space is constructive and productive.

Notice of Proposed Dismissal

This comment warrants further examination and consideration. In initial discussions and advice, this Form was envisaged – and may continue to apply – only in respect of appeals not properly instituted, i.e., are defective for timing, fees payment or the failure to survive Administrative or Adjudicative screening. Service of this documentation is a TLAB responsibility and would occur prior to the Notice of Hearing and therefore prior to any effective due dates under the Rules.

This Form may also be initiated by TLAB in clear circumstances where the grounds for appeal fail to disclose legitimate, genuine land use planning issues capable of varying the disposition by the Committee. That aspect can also and should more properly be addressed by Motion, in the normal course.

There is no intention to engage a relationship between the due dates of the Rules and the process of vetting the adequacy or otherwise of an appeal. This point may have been misunderstood and a further elaboration is invited.

TLAB expresses appreciation for the detailed and constructive comments received. A further opportunity for consideration as described in the public meeting of May 3, 2017 and herein is referred to and intended.

Scheduling of Hearings

It is hoped that the TLAB scheduling practice will become somewhat predictable given the uniformity of approach anticipated to the setting of Hearing dates and associated obligations. While there is nothing to prevent a stakeholder from supplying dates not convenient to their interest, TLAB does not guarantee any such submission can be accommodated. TLAB hearing room resources are limited, member appointments are part time and the volume of appeals is unknown such that TLAB may not be able to respond to individual requests related to unavailability. Where possible, minor adjustment to Hearing dates may be accommodated in the case of clear conflict, but generally not after a Notice of Hearing appointment has been served and not then in the absence of a Motion.

It is anticipated that a trial period may assist in further consideration of this issue. As matters before TLAB are limited by the jurisdiction afforded it, lengthy, complex Hearings are expected to be relatively rare. TLAB Staff and member monitoring of filings may serve to receive and identify instances where more time than that allocated by the Notice of Hearing are required.

OMB practice as a guide suggests that many matters can be adequately heard in one-half a day. At the outset, TLAB is proposing all appeals be allocated one full day Hearing time. It will adjust this with practical experience. Motions will receive half-day appointments, initially, whether oral or electronic.

Anticipation of multi-party, multi-day hearings is the responsibility of all stakeholders, and TLAB will endeavor to accommodate such requests. Where a party is aware of an instance where greater than one day is felt necessary, the request to TLAB Staff will be received, referred to a Member and assessed as to whether a Motion will be required.

2. PROCEDURAL OBLIGATIONS

New Procedural Obligations

As described more generally above, TLAB is aware that the added procedural exchange requirements represent a change from predominant past practices before the Ontario Municipal Board. TLAB has sought to balance the burden of these added methods of full disclosure, early, against the ability of the parties to have full knowledge, prepare and assess their respective positions and evidence and to encourage settlement. The added filings are a matter of practice in Hearings respecting different jurisdictions and are not unfamiliar to the professions. TLAB has attempted, in fulfilling the City mandate to provide all on-line services, to ensure that the public and the professions are not unduly inconvenienced by providing that the Forms themselves are clear, interactive and capable of convenient and immediate completion and electronic transfer to all parties and participants. It is the hope of TLAB that this will be a material aid to the public and to the professions in the electronic dissemination, receipt and

filing of all materials and documents that are to form a part of the TLAB proceeding, where that is required.

A period of practice experience and feedback from stake holders will assist in determining whether there is a net cost or benefit in both time and expense in the procedures adopted, including their role in the settlement of disputes.

Document Disclosure

Participants disclosure obligations, beyond statements and their content, is a request that can be put to TLAB for consideration as it is correct that it is not fully addressed to date. Form 13 does not require the specific disclosure of documentary evidence and consideration of its revision or otherwise is warranted, perhaps with practice experience.

TLAB took counsel on the detail of obligations attendant the possibly rare expectation of witnesses appearing under summons. The request for summons, Form 11, must disclose with sufficient detail the basis of the request. Whether the witness so summonsed by a party should be subject to closer scrutiny and obligations, including a witness statement and disclosure of documents are matters that TLAB can consider, perhaps with practice experience.

Large document references and disclosure are identified as having practical limitations and efficiencies. There is an excellent suggestion advanced and one that is under active consideration via an on-line 'library', DROPBOX or other storage and retrieval device. Parties are required to identify and download the extracts to which they intend to refer in any documentation, and file that electronically. Such extracts must be clearly referenced as to their consolidation date, indicated as to whether they are draft or under appeal and any other information germane to their status and weight.

As described above, a rudimentary library of common documents is available on the TLAB website. This is intended to be expanded. URL references, with experiences, may also aid access availability and limit document constraints.

Expert Witness Statements

TLAB would be grateful for assistance in the better articulation of this standard. What was sought to be communicated was the expectation of sufficient clarity. Namely, that a person affected would understand the implications of the expert's opinion. Further, that counsel and the author would comprehend the 'zone of risk' inherent in admissibility, or a failure to disclose or self -identify all relevant subject matter, documentation, etc.

Reply to Witness Statements

This is a request that can be put to TLAB for consideration. In the case of early full disclosure, the objective was to achieve a relatively expeditious and cost effective manner of disclosure, for the parties and participants to assess in their respective interests. As adopted, the Rules attempt to balance full disclosure without inviting an overly litigious or intimidating process. Unlike Motions, which do provide for the exchange and evolution (reply and responses) of the

discrete matters in issue, the pre-hearing procedures adopted to date do not require (but do not prevent) subsequent filings, except during the Quiet Zone. Nor, of course, are Motions for further and other particulars precluded should unclear filings, or an absence thereof, warrant more.

Court Reporters

A request for court reporter attendance directions can be put to TLAB for further consideration. However, all TLAB Hearings, including Motions, are to be Digitally Audio Recorded (DAR). The DAR recordings (or perhaps excerpts) are to be made available, possibly on request, although transcripts will not be prepared by TLAB. It is expected that the need for formal court reporters, traditionally limited, may be reduced even further by this form of record and its accessibility. Rule 27 provides a discretion in the member on a request for special recording services.

Adjournment and Consolidation

TLAB would be grateful for a further articulation of this consideration. The relevant criteria for adjournments and consolidation matters are well documented in statute and administrative law expressions. While the Rules attempt to provide for such requests without specification as to types of potential Motions, a revision, Practice Direction or other consideration is warranted following a period of trial practice.

Challenge of Affidavit Evidence

The right to challenge an affidavit or request further and other particulars is a request that can be put to TLAB for further consideration. If there are suggestions, these might be helpful to consider supplementing the vehicles to challenge affidavit evidence. Presently, challenges are not precluded, requests are not precluded and the device of a Motion requesting an order is available where the circumstances warrant TLAB intervention.

3 IDENTIFICATION OF PARTIES AND PARTICIPANTS

As above described, the determination to date has been to leave the obligations of choice of status to be left to the stakeholders. The Rules attempt to make it clear what those obligations are as well as the rights, privileges and limitations that come with the choice of status. In so doing, TLAB has articulated that the choice is to be made at the convenience of the individual and not be based on identified measures of importance, weighted status or other ponderable or imponderable criteria. Some stakeholders are presumed to be parties: the applicant; the appellant(s); the City, if it has filed Form 4. They may relinquish that status in accordance with the Rules and they need to be cognizant as to when that is attempted, as provision is made to challenge the release of party status in some circumstances if injury is alleged and accrued. TLAB, in effect, has reversed the onus of establishing party or participant status by making the same open equally to all and without a formal order, subject to challenge.

4. ADDITIONAL COMMENTS

Settlement Hearings

The request for a further elaboration on practices and disclosure Rules applicable to Settlement Hearings is a matter that can be put to TLAB for further consideration. The philosophy expressed by TLAB in the Public Guide and elsewhere is to encourage the settlement of disputes. TLAB intends to use its resources to encourage the settlement of disputes by the application of the Rules, the Forms, the offering of mediation services and the entertaining of Motions requesting early Hearing dates to effect a settlement where one has been reached. Where a settlement has been reached by the parties, provision exists for an earlier hearing date by way of a motion. If arising during the Quiet Zone, the matter will be heard on the scheduled date of the Hearing.

Filing Fee

Regrettably, Court Services has determined that City policy does not permit the payment of filing fees by law firm cheques.

Administrative corrections

Some comments were noted:

- In Rule 9.3 presumably the words “to the Appellant” should be added after the words “Notice of Proposed Dismissal”.
- In Rule 16.4 the word “Board” should be replaced with “Body”.
- The numbering under Rule 27 is incorrect, such that Rule 27.6 is missing.

TLAB will undertake these considerations. It is noted:

Form 16 on its face, is directed to the Appellant.

‘Board’ should read ‘Body’.

On Rule 27, counsel (Duxbury Law) will be contacted to ensure no omission occurred.

Timing of Amendments

TLAB will consider suggestions for minor modifications and accommodations in scheduling prior to a Notice of Hearing.

As earlier described, a Special Public Meeting to discuss the application of the Rules and Forms, following a period of trial practice, will be scheduled in the spring of 2018, with appropriate public notice.

Once again, the constructive contributions and observations of this and additional correspondence are welcomed and appreciated.

Except as provided in S.9 of the TLAB Procedures By-Law, TLAB as a committee of the whole has the obligation to meet only in open, public meetings, the Agendas for which are established in advance.

As practice experience demonstrates, suggestions on required practice directions are welcomed. As well, active participation in the upcoming Rules review is encouraged.

Sincerely,

2017-06-23

X 

Ian James Lord, Chair

Signed by: Ian Lord

On behalf of the Toronto Local Appeal Body

APPENDIX “E”

TLAB response to the City of Toronto

See attached.

TORONTO

Manager: Krisa Rhodes

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Toronto Local Appeal Body

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June 21, 2017

DELIVERED BY EMAIL TO

Wendy Walberg,
City Solicitor, City of Toronto
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55 John Street
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Toronto ON M5V 3C6
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Re: Item No. TLAB 6.1

Toronto Local Appeal Body – Rules of Practice and Procedure

Dear Ms. Walberg, Mr. Haley,

This will acknowledge with thanks receipt of your e-letter to the Toronto Local Appeal Body (TLAB) dated May 2, 2017. The TLAB considered the above matter at its meeting on June 14, 2017, at which counsel Nathan Muscat attended, addressed the members and responded to questions.

It is noted that the Planning Practice Group of the Legal Services Division expressed concerns relating to the application of TLAB Rules, under current practices, in achieving timely instructions on Committee of Adjustment panel decisions in which the City has an interest.

Specifically, TLAB Rules 12.2 (Request for Party Status), 16.2 (Document Disclosure); 16.4 and 16.6 (Witness Statements and Expert Witness Statements, respectively) are identified.

It is recited that a resolution of an additional 30 days might be sufficient to procure Council direction. Alternatively, consideration is requested to connect the timelines back from the Hearing date rather than forward from the Notice of Hearing.

In preparing its draft Rules, TLAB was conscious of Council's expectation to deliver timely, reasoned decisions in an atmosphere of local consideration in a cost efficient manner. TLAB counsel canvassed multiple tribunal jurisdictions with a view to achieving best practices, consistent with the expectation of improved service delivery and partly on the euphemism that 'delay is denial'.

Two concluding components of that advice and drafting provided for targeting Hearings from the receipt of an appeal. It was determined equitable that all parties, participants and interests know the date of any required Hearing and have discrete disclosure obligations defined from the outset, but with the

benefit of a timely all - electronic process. This is accomplished by establishing and identifying, by service of the Notice of Hearing, a document that specifies all required milestones to achieve an early outcome. TLAB wishes to improve on practices whereby Hearing dates are struck randomly, following prolonged prehearing procedures, or are 'adjusted' by canvass as to the convenience of counsel, parties or participants.

In this regard the Rules, now adopted, provide for a period of approximately 100 days from the Notice of Hearing issuance to the Hearing date.

The intent is to set in advance sufficient time for disclosure and preparation, without allowing the matter to languish or become embroiled in costly procedures that can delay a fair hearing on the merits, where required.

A period of practice experience was considered and the device of Motions, while not encouraged, are available for extreme circumstances necessitating adjustment to these set dates.

The second component was a careful consideration of the timing, disclosure and exchange obligations.

The periods chosen reflect best practices but are novel in sequence, timing and comprehensiveness.

The advice that TLAB accepted was to govern the process of applicant's disclosure and prehearing procedures on a relatively tight regimen, such that the issues, expenditures, preparation and attendance by or on behalf of the public is timely, fresh to the issues, economically efficient and applied equally to all coming within the ambit of the Hearing process.

This assessment included informal consideration of the practices of the City of Toronto, other municipalities, trading corporations and the public, as to ways and means by which instructions are sought and effected.

In his response to questions, Mr. Muscat was candid in an undertaking to explore the potential for alternative or expedited practices for obtaining instructions within the City of Toronto, where necessary beyond current delegated authority authorizing appeals.

For its part, the TLAB Rules are crafted on the assumption that 'Party' status is automatically ascribed to the Applicant (whether or not the Appellant), all Appellants, and the City of Toronto, and is confirmed by the Election Form. Indeed, under the TLAB Rules, Party and Participant status is elective; no longer does one have to apply for the approval of a particular category. However, anyone wishing to challenge an elected status has the opportunity and burden of a Motion to overcome the free election of the role an individual elects.

In practical terms for the City, this has two implications: first, it means that from the date of the decision of a Committee of Adjustment panel, a *minimum* of some seventy (70) days elapses before a disclosure deadline occurs under the TLAB Rules (20 day appeal period; 5 day period for receipt, processing and issuance of a Notice of Hearing; 45 days to document witness disclosure).

Second, despite TLAB's assumption of party status for the City, no liability can accrue to the City should it determine by day 70 not to participate, as no step will have been taken upon which reliance can be imputed. Jurisprudence before the Ontario Municipal Board, affirmed in Mr. Muscat's responses,

ensures that no member of the public can hold the City accountable for not pursuing, or for withdrawing, a position that an individual supports and hopes for assistance with from the City.

In each case, the City is an independent decision maker and its decision to participate or not is wholly within the City's purview.

On these reasons and others considered, TLAB respectfully at this time declines to adjust its Rules for timely disclosure and exchange. It expects that a period of practice, including the issues of any continuing concern that City counsel have expressed, will be documented and that the matters raised, if ongoing, can and will be revisited.

TLAB has expressed its intention to hold, on full Notice to stakeholders, an open public meeting on the operation, efficiency and conduct of it Rules, following a reasonable period of exposure and full operation.

This review is currently anticipated in the Spring, 2018.

Sincerely,

2017-06-23

X 

Ian James Lord, Chair

Signed by: Ian Lord

On behalf of the Toronto Local Appeal Body.

APPENDIX "F"

TLAB Decision Summary Table

See attached.

Summary of Toronto Local Appeal Body ("TLAB") Decisions Decisions available as of January 12, 2018

No.	TLAB File # and Address	Type of Decision	Notice of Hearing	Hearing Date	Decision Date	Days from Notice to Merits Hearing	Days from Notice to Issuance of Merits Decision	Days from Hearing Date to Decision	Nature of Appeal	Successful Party	Key Issues/Comments
1.	17 156134 S45 23 223 Florence Ave.	Merits	Jun. 1, 2017	Sep. 6, 2017	Sep. 14, 2017	97	105	8	Minor Variance Appeal of Approval by Neighbour	Applicant Appeal dismissed	Proposed residential demolition and re-build. Neighbour concerned with the building length and side wall height.
2.	17 160622 S45 31 66 Virginia Ave	Procedural	Jun. 1, 2017	Sep. 11, 2017 Jan. 11, 2018	Sep. 14, 2017 (Motion)	N/A	N/A	13 (Motion heard Sep.11, 2017)	Minor Variance Appeal of Approval by Neighbour	N/A	Summary judgment motion to allow neighbour's appeal dismissed. Motion also re: summoned witnesses and mediation.
					Jan. 3, 2018 (Motion)			14 (Motion heard Dec.20, 2017)			Decision regarding hearing status by telephone conference
3.	17 168128 S45 22 598 Soudan Ave.	Merits	Jun. 16, 2017	Sep. 15, 2017	Oct. 20, 2017	91	126	35	Minor Variance Appeal of Refusal	City Appeal dismissed	Alterations to approved building permit plans for a 2-storey detached building. Variances sought revised.

No.	TLAB File # and Address	Type of Decision	Notice of Hearing	Hearing Date	Decision Date	Days from Notice to Merits Hearing	Days from Notice to Issuance of Merits Decision	Days from Hearing Date to Decision	Nature of Appeal	Successful Party	Key Issues/Comments
		Review of TLAB Decision	June 16, 2017	Nov. 20, 2017	Jan. 3, 2018	N/A	N/A	**74**	Request for Review of TLAB Decision	Request for review dismissed.	A request for review is not an opportunity to either re-argue or challenge evidence recited in the absence of demonstrable and tangible error. There was no error of fact or law which would likely have resulted in a different order or decision. The Member was not deprived of any new evidence which was not available at the time of the Hearing but which would likely have resulted in a different order or decision.
4.	17 169773 S45 29 374 O'Connor Drive	Merits/ Settlement	Jun. 20, 2017	Sep. 22, 2017	Oct. 10, 2017	94	112	18	Minor Variance Appeal of Refusal	Settlement with City	Construction of a rear 2-storey addition, together with a partial 2-storey addition to the home. Settlement with the City.
5.	17 168331 S45 30 58 Lewis St.	Merits	Jun. 20, 2017	Sep. 1, 2017	Sep. 11, 2017	73	83	10	Minor Variance Appeal of Approval by Neighbour	Applicant Appeal dismissed	Rear addition to supportive housing.

No.	TLAB File # and Address	Type of Decision	Notice of Hearing	Hearing Date	Decision Date	Days from Notice to Merits Hearing	Days from Notice to Issuance of Merits Decision	Days from Hearing Date to Decision	Nature of Appeal	Successful Party	Key Issues/Comments
6.	17 174720 S45 25 17 174724 S45 25 175 Ranleigh Ave.	Merits	Jun. 21, 2017	Sep. 8, 2017	Oct. 13, 2017	79	114	35	Minor Variance Appeal of Refusal - unopposed	Applicant Appeal allowed	Purpose of variance to facilitate the construction of 2 new semi-detached dwellings with attached garages after demolishing the existing semi-detached dwellings.
7.	17 165404 S53 06 17 165406 S45 06 17 165408 S45 06 9 Thirty-Eighth Street	Procedural	Jun. 21, 2017 Nov. 22, 2017	Apr. 16-17, 2018	Aug. 8, 2017 (Motion)	N/A	N/A	11 (Motion brought on Jul. 28, 2017)	Minor Variance + Consent Appeal of Approval by City	N/A	Request for adjournment due to unavailability of counsel allowed.
					Sep. 21, 2017 (Motion)	N/A	N/A	1 (Materials filed on Sep. 20, 2017)			Request for relief for late filing – granted
					Nov. 22, 2017 (Motion)	N/A	N/A	9 (Nov. 13, 2017 hearing)			Adjourned resulting from late disclosure of revised plans allows

No.	TLAB File # and Address	Type of Decision	Notice of Hearing	Hearing Date	Decision Date	Days from Notice to Merits Hearing	Days from Notice to Issuance of Merits Decision	Days from Hearing Date to Decision	Nature of Appeal	Successful Party	Key Issues/Comments
8.	17 166521 S45 16 49 Carmichael Ave.	Merits	Jun. 22, 2017	Sep. 5, 2017	Sep. 12, 2017	75	82	7	Minor Variance Appeal of Refusal - unopposed	Applicant Appeal allowed	New dwelling – lot coverage, side wall height, first floor height above grade variances requested. Applicants were the only ones to appear at the appeal.
9.	17 165688 S45 29 10 Robin Hood Rd.	Merits	Jun. 22, 2017	Sep. 8, 2017	Sep. 28, 2017	78	98	20	Minor Variance Appeal of Approval by Neighbour	Applicant Appeal dismissed	Construction of new two-storey dwelling with a two-car garage.
10.	17 170515 S53 43 17 170516 S53 43 17 170517 S53 43 116 Poplar Road	Merits	Jun. 23, 2017	Sep. 12, 2017	Sep. 21, 2017	81	90	9	Minor Variance + Consent Appeal of Refusal	City Appeal dismissed	Fundamental to the dispute – requests generated by the lot division and the resultant consequences for parcel dimensions. In particular, whether those dimensions and the resultant permissible built form maintain the policy of the Official Plan to respect and reinforce the character of the neighbourhood.

No.	TLAB File # and Address	Type of Decision	Notice of Hearing	Hearing Date	Decision Date	Days from Notice to Merits Hearing	Days from Notice to Issuance of Merits Decision	Days from Hearing Date to Decision	Nature of Appeal	Successful Party	Key Issues/Comments
11.	17 160236 S53 29 17 160233 S45 29 17 160235 S45 29 263 Gamble Ave.	Procedural	Jun. 23, 2017	Sep. 25, 2017	Jun. 23, 2017 (Motion)	N/A	N/A	N/A (No hearing)	Minor Variance + Consent Appeal of Approval by City.	Settlement	Motion by owners to 1) conduct the motion in writing and 2) to adjourn the hearing date for another month – granted
		Merits/ Settlement			Oct. 3, 3017	94	102	8			Application to sever a lot into 2 equal sizes and build two replacement buildings. COA approved the severance and authorized the variances. Severance must meet the tests relating to Official Plan conformity and the dimensions and shapes of the proposed lots and as otherwise enumerated in s. 51(24). Revised list of variances produced after successful negotiations with the City (settlement)

No.	TLAB File # and Address	Type of Decision	Notice of Hearing	Hearing Date	Decision Date	Days from Notice to Merits Hearing	Days from Notice to Issuance of Merits Decision	Days from Hearing Date to Decision	Nature of Appeal	Successful Party	Key Issues/Comments
12.	17 174552 S53 23 17 174569 S45 23 17 174570 S45 23 17 174556 S45 23 17 174535 S45 23 17 174563 S45 23 2968-2970 Bayview Ave.	Merits	Jun. 26, 2017	Oct. 24, 2017	Nov. 24, 2017	120	151	31	Minor Variance + Consent Appeal of Refusal – opposed by City	Applicant (in part) Appeal regarding consent allowed in part; variances authorized	Whether the creation of 4 undersized lots and the resulting development of four 3-storey detached dwellings (defined by the By-law as 4 –storey) are appropriate for the subject lands location. Included in this issue is the relevance/applicability of the City's Urban Design Guidelines for townhouse development.
13.	17 175495 S45 23 241 Poyntz Ave.	Procedural	Jun. 27, 2017	Sep. 12, 2017	Sep. 25, 2017	N/A	N/A	N/A (No hearing)	Minor Variance Appeal of Approval by City.	City	Motion to allow the City's appeal and refuse the variances without a hearing before the TLAB. Applicant notified the City that they no longer wish to seek the variances and do not oppose the City's appeal – appeal allowed on consent
14.	17 174715 S45 25 57 Addison Cresc.	Merits	Jun. 27, 2017	Sep. 6, 2017	Sep. 18, 2017	71	83	12	Minor Variance Appeal of Refusal - unopposed	Applicant Appeal allowed	Increase in lot coverage.

No.	TLAB File # and Address	Type of Decision	Notice of Hearing	Hearing Date	Decision Date	Days from Notice to Merits Hearing	Days from Notice to Issuance of Merits Decision	Days from Hearing Date to Decision	Nature of Appeal	Successful Party	Key Issues/Comments
15.	17 174717 S45 16 110 Albertus Ave.	Merits	Jun. 28, 2017	Sept. 14, 2017	Sep. 27, 2017	78	91	13	Minor Variance Appeal of Refusal – opposed by neighbours	Applicant Appeal allowed	The main issue related to the length of the proposed dwelling.
16.	17 181621 S45 22 311 Chaplin Cresc.	Merits	Jun. 28, 2017	Nov. 16, 2017 Oct. 25, 2017 Sep. 19, 2017	Nov. 23, 2017	83	148	7	Minor Variance Appeal of Approval by Neighbour	Appellant Appeal allowed in part	New 3-storey detached dwelling with third floor front and rear balconies.
17.	17 181655 S45 20 750 Markham St.	Merits	Jun. 28, 2017	Sep. 14, 2017	Sep. 29, 2017	78	93	15	Minor Variance Appeal of Refusal - unopposed	Applicant Appeal allowed	To Legalize a former laneway garage used as residential accommodation.
18.	17 178838 S45 32 1912 Queen Street East	Procedural	Jun. 29, 2017	Dec. 18, 2017	Sep. 13, 2017 (Motion)	N/A	N/A	13 (Direction requested on Aug. 31, 2017)	Minor Variance Appeal of Refusal	N/A	Motion by City to have a written Hearing to consider a request for dismissal of appeal or direct a new deadline for the applicant to provide disclosure – Hearing adjourned

No.	TLAB File # and Address	Type of Decision	Notice of Hearing	Hearing Date	Decision Date	Days from Notice to Merits Hearing	Days from Notice to Issuance of Merits Decision	Days from Hearing Date to Decision	Nature of Appeal	Successful Party	Key Issues/Comments
					Nov. 27, 2017 (Motion)			N/A		N/A	Applicant still non-compliant with TLAB's directions. Motion by City on how to proceed given the circumstances – Applicant granted 2 more weeks to provide disclosure
19.	17 182687 S45 29 93 Kings Park Blvd	Merits	Jun. 29, 2017	Sep. 18, 2017	Oct. 18, 2017	81	111	30	Minor Variance Appeal of Refusal – opposed by neighbours	Applicant Appeal allowed	Construction of second storey. Presented revised proposal at hearing that reduced extent of variances.
20.	17 170192 S45 36 70 Park St.	Procedural	Jun. 30, 2017	Sep. 26, 2017	Aug. 8, 2017 (Motion)	N/A	N/A	N/A (No hearing)	Minor Variance Appeal of Approval by Neighbour	Appellant Appeal allowed in part	Motion for adjournment to another date
		Merits			Oct. 2, 2017	88	94	6			Variance challenged related to main wall height exceedance and the reduction in lot line setback. **N.B.:** The consent to sever part of the COA decision was not appealed
21.	17 170540 S53 36 17 170544 S45 36 17 170546 S45 36 17 170559 S53 36	Procedural	Jun. 30, 2017	Nov. 28, 2017	Sep. 19, 2017 (Motion)	N/A	N/A	4 (sought on Sep. 15, 2017)	Minor Variance + Consent Appeal of Refusal – opposed by City	City Appeal dismissed	Adjournment motion – granted

No.	TLAB File # and Address	Type of Decision	Notice of Hearing	Hearing Date	Decision Date	Days from Notice to Merits Hearing	Days from Notice to Issuance of Merits Decision	Days from Hearing Date to Decision	Nature of Appeal	Successful Party	Key Issues/Comments
	17 170560 S45 36 17 170561 S45 36 83-85 Sandown Ave.	Merits	Oct. 3, 2017		Jan. 2 (merits)	56	91	35			Merits related to reorientation of the established lot pattern for four new lots at a corner.
22.	17 188180 S45 27 31 Maple Ave.	Procedural	Jul. 7, 2017	Apr. 10-12, 2018	Nov. 27, 2017 (Motion)	N/A	N/A	0 (Heard Nov. 27, 2017)	Minor Variance Appeal of Refusal	N/A	Request for motions to be heard in writing granted. Reply submissions allowed into evidence. Substitution of one expert witness for another allowed with no obligation to submit a new witness statement. New deadlines for submissions and response to submissions established.
23.	17 188416 S45 31 31 Presteign Ave.	Merits	Jul. 7, 2017	Oct. 10, 2017	Oct. 16, 2017	95	101	6	Minor Variance Appeal of Refusal - unopposed	Applicant Appeal allowed	Construction of a new two-storey detached dwelling with a front covered porch, a rear ground floor deck and an integral garage.

No.	TLAB File # and Address	Type of Decision	Notice of Hearing	Hearing Date	Decision Date	Days from Notice to Merits Hearing	Days from Notice to Issuance of Merits Decision	Days from Hearing Date to Decision	Nature of Appeal	Successful Party	Key Issues/Comments
24.	17 174695 S45 23 47 McKee Ave.	Merits	Jul. 7, 2017	Oct. 6, 2017	Oct. 16, 2017	91	101	10	Minor Variance Appeal of Refusal - unopposed	Applicant Appeal allowed	COA had granted only some variances.
25.	17 179759 S45 27 68 McGill St.	Merits	Jul. 7, 2017	Oct. 12, 2017	Nov. 2, 2017	97	118	21	Minor Variance Appeal of Refusal – opposed by neighbours	Applicant Appeal allowed	Build in rear yard swimming pool and second-floor deck.
26.	17 182706 S53 44 17 182708 S45 44 17 182709 S45 44 69 Bobmar Rd.	Merits	Jul. 7, 2017	Oct. 10, 2017	Oct. 27, 2017	95	112	17	Minor Variance + Consent Appeal of Refusal – opposed by neighbours	Applicant Appeal allowed	The predominant issue – whether the severance and frontage variances will create undersized lots that are out of character with the neighbourhood.
27.	17 181904 S45 27 76 Asquith Ave.	Procedural	Jul. 7, 2017	Jan. 12, 2018	Oct. 3, 2017 (Motion)	N/A	N/A	31 (Requested on Sep. 22, 2017)	Minor Variance Appeal of Refusal	N/A	Motion to adjourn and to establish new deadline for disclosure – granted
					Dec. 8, 2017 (Motion)	N/A	N/A	1 (Motion on Dec. 7, 2017)			Motion for dismissal – dismissed
28.	17 184920 S45 05 112 Judge Road	Merits	Jul. 10, 2017	Oct. 12, 2017	Oct. 17, 2017	94	99	5	Minor Variance Appeal of Refusal - unopposed	Applicant Appeal allowed	Minor variances related to a conversion of an existing parking garage into office space.

No.	TLAB File # and Address	Type of Decision	Notice of Hearing	Hearing Date	Decision Date	Days from Notice to Merits Hearing	Days from Notice to Issuance of Merits Decision	Days from Hearing Date to Decision	Nature of Appeal	Successful Party	Key Issues/Comments
29.	17 187618 S45 28 738 Dundas St. E.	N/A	Jul. 11, 2017	Oct. 13, 2017	Oct. 25, 2017	N/A	N/A	N/A	Minor Variance Appeal of Refusal	N/A	Appeal abandoned
30.	17 181780 S53 35 17 181781 S45 35 17 181782 S45 35 17 181782 S45 35 149 Westbourne Av.	Merits	Jul. 13, 2017	Oct. 16, 2017	Dec. 19, 2017	95	159	64	Minor Variance and Consent Appeal of Refusal – opposed by neighbours	Applicant Appeal allowed	Divide the property into 2 almost identical properties and to construct a new 3-storey detached dwelling with an integral garage Whether severance and variances maintain the policy of the Official Plan to respect and reinforce the character of the neighbourhood
31.	17 193496 S53 23 17 193500 S45 23 17 193501 S45 23 145 Ellerslie Ave.	Merits	Jul. 14, 2017	Oct. 17, 2017	Dec. 15, 2017	95	154	59	Minor Variance + Consent Appeal of Refusal – opposed by neighbours	Applicant Appeal allowed	The owners sought to create two 37-foot lots
32.	17 192864 S45 25 200 Dawlish Ave.	Merits	Jul. 18, 2017	Oct. 26, 2017	Nov. 6, 2017	100	111	11	Minor Variance Appeal of Refusal - unopposed	Applicant Appeal allowed	COA amended variances for the FSI and GFA related to construction of a new 2-storey dwelling with a 2-car integral garage

No.	TLAB File # and Address	Type of Decision	Notice of Hearing	Hearing Date	Decision Date	Days from Notice to Merits Hearing	Days from Notice to Issuance of Merits Decision	Days from Hearing Date to Decision	Nature of Appeal	Successful Party	Key Issues/Comments
33.	17 187520 S53 36 40 Brooklawn Ave.	Procedural	Jul. 19, 2017 Nov. 24, 2017	Dec. 15, 2017	Nov. 24, 2017 (Motion)	N/A	N/A	35 (Motion heard on Oct. 20, 2017)	Consent Appeal of Approval by Neighbour	N/A	If an Adjournment can be granted in the interests of pursuing Settlement and deciding a new Hearing date to review the Settlement proposal or hold a contested Hearing in case the Settlement efforts are not successful – allowed
34.	17 194079 S45 16 1780 Avenue Rd.	Merits	Jul. 20, 2017	Oct. 19, 2017	Oct. 30, 2017	91	102	11	Minor Variance Appeal of Refusal - unopposed	Applicant Appeal allowed	Relief requested from the parking and loading standards set by By-law. Principle concern of the COA was the potential for traffic disruption and public safety.
35.	17 188929 S45 10 150 Sandringham Dr.	Merits	Jul. 20, 2017	Oct. 30, 2017	Nov. 7, 2017	102	110	8	Minor Variance Appeal of Refusal	Applicant Appeal allowed	Variance to construct a new detached 2-storey dwelling. Settlement achieved with neighbours.

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36.	17 196248 S53 23 80 Charleswood	Merits	Jul. 21, 2017	Oct. 31, 2017	Nov. 6, 2017	102	108	6	Minor Variance Appeal of Refusal - unopposed	Applicant Appeal allowed	COA allowed certain variances to permit construction of 1 new 2-storey dwelling unit, modified other variances and refused relating to side yard setbacks.
37.	17 200921 S45 19 311 Shaw St.	Merits	Jul. 24, 2017	Nov. 2, 2017	Nov. 14, 2017	101	113	12	Minor Variance Appeal of Refusal - unopposed	Applicant Appeal allowed	Construction of rear one-storey detached garage with a roof top patio accessed by a lane. Original proposal to accommodate a green roof redesigned due to City planning concerns
38.	17 195795 S45 15 313 Whitmore	Merits	Jul. 26, 2017	Nov. 6, 2017	Nov. 16, 2017	103	113	10	Minor Variance Appeal of Refusal - unopposed	Applicant Appeal allowed	Construction of 3-storey detached residence Variances amended to be in closer compliance with the by-law requirements.

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39.	17 198730 S45 35 380 Birchmount Rd.	Merits	Jul. 26, 2017	Nov. 8, 2017	Nov. 24, 2017	105	121	16	Minor Variance Appeal of Approval by City.	City Appeal allowed	Approval for use of property as Banquet Hall and a Catering Facility in an area zoned industrial and employment industrial. The City was of the view that the banquet hall use detracts from the designated and zoned purpose of the employment area in which is located.
40.	17 197126 S45 23 42 Gwendolen Ave.	Merits	Jul. 26, 2017	Nov. 3, 3017	Nov. 13, 2017	100	110	10	Minor Variance Appeal of Approval by City.	Applicant Appeal dismissed	Construction of a new 2-storey dwelling. The City opposed the variances as not maintaining the intent and purpose of the Neighbourhoods designation in the Official Plan and of the zoning standards, especially the height and lot coverage provisions.

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41.	17 194225 S45 18 302 Gladstone Av.	Merits	Jul. 26, 2017	Nov. 7, 2017	Dec. 20. 2017	104	147	43	Minor Variance Appeal of Refusal - unopposed	Applicant Appeal as revised allowed	Demolish existing garage and construct a new rear detached garage with sanitary facilities Revised variances requested
42.	17 197314 S45 23 90 Bevdale Rd.	Merits	Jul. 27, 2017	Nov. 9, 2017	Nov. 13, 2017	105	109	4	Minor Variance Appeal of Approval by City	Appeal allowed, subject to conditions Settlement with City	Demolition of existing dwelling and replacement with a 2-storey detached dwelling with internal garage. Settlement reached between the parties. Revised variances submitted.
43.	17 221529 S53 23 17 221530 S45 23 17 221531 S45 23 90 Johnston Ave.	Procedural	Jul. 27, 2017	Mar. 12, 2018	Oct. 25, 2017 (Motion)	N/A	N/A	N/A (Motion materials filed)	Minor Variance + Consent Appeal of Refusal	N/A	Adjournment granted
44.	17 197129 S45 23 23 Donnalyn Dr.	Procedural	Jul. 27, 2017	Nov. 14, 2017 (Written Settlement Hearing)	Oct. 20, 2017 (Motion)	110	155	18 (Requested Oct. 2, 2017)	Minor Variance Appeal of Approval by City	Appeal allowed in part Settlement with City	Request for written settlement hearing granted. Written settlement hearing to be heard on same day as originally scheduled hearing date.

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		Merits/ Settlement			Dec. 29, 2017 (Merits)			45			Demolish an existing dwelling and to construct a new 2-storey dwelling. Applicant and City of Toronto (Appellant) reached a settlement prior to the scheduled Hearing Date.
45.	17 191943 S45 11 0 Lippincott St. E.	Merits	Jul. 28, 2017	Nov. 21, 2017	Nov. 23, 2017	116	118	2	Minor Variance Appeal of Refusal - unopposed	Applicant Appeal Allowed	Construct a new detached dwelling with attached and integral garage.
46.	17 196350 S45 10 4246 Bathurst St.	N/A	Jul. 28, 2017	Nov. 22, 2017	Nov. 20, 2017	N/A	N/A	N/A	Minor Variance Appeal of Refusal	N/A	Appeal abandoned
47.	17 196981 S53 23 17 196996 S45 23 17 196988 S53 23 17 196998 S45 23 17 197002 S45 23 149 and 151 Estelle Ave.	Merits/ Settlement	Jul. 31, 2017	Nov. 24, 2017	Dec. 11, 2017	116	133	17	Minor Variance + Consent Appeal of Refusal	Applicant (in part) Appeal allowed for consent in part and variances	Proposed creation of three lots. Settlement achieved with the City.

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48.	17 168392 S45 13 112 Gardenview Cresc	Merits/ Settlement	Aug. 1, 2017	Nov. 16, 2017	Nov. 27, 2017	107	118	11	Minor Variance Appeal of Refusal	Appeal allowed in part. No third dwelling unit will be permitted Settlement with City	Variance to convert the existing attic into habitable space for a total of three residential units, and to add a third parking space.
49.	17 189246 S53 05 30 Athol Ave.	N/A	Aug. 1, 2017	Nov. 28, 2017	Oct. 12, 2017	N/A	N/A	N/A	Consent Appeal of Refusal	N/A	Appeal abandoned
50.	17 198509 S45 04 3 Downpatrick Cresc.	N/A	Aug. 4, 2017	Nov. 29, 2017	Nov. 27, 2017	N/A	N/A	N/A	Minor Variance Appeal of Refusal	N/A	Appeal abandoned
51.	17 200724 S53 15 1174 Glencairn Ave.	Merits	Aug. 4, 2017	Nov. 15, 2017	Dec. 21, 2017	103	139	36	Consent Appeal of Approval by Neighbour	Applicant Appeal dismissed	Consent to divide 1174 Glencairn Av. into two lots, for the purpose of the construction of a detached 2-storey dwelling on each.
52.	17 208623 S45 31 105 Binswood Av.	Merits	Aug. 8, 2017	Nov. 17, 2017	Dec. 20, 2017	101	134	33	Minor Variance Appeal of Refusal – opposed by neighbours	Applicant Appeal allowed	Construct a new dwelling – 2-storey, flat roofed, single detached dwelling with an integral garage

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53.	17 192143 S45 20 48 Admiral Rd.	Merits	Aug. 10, 2017	Nov. 30, 2017	Dec. 4, 2017	112	116	4	Minor Variance Appeal of Refusal - unopposed	Applicant Appeal allowed	Alter a 3-storey semi-detached dwelling by the construction of a rear 2-storey addition. Two matters in issue: 1) the merits of the variances sought; 2) the proposal to extend the building length of the subject property engendered concerns related to the party wall and its existing extension in the apparent vicinity of construction.
54.	17 204678 S45 25 50 Donwoods	N/A	Aug. 15, 2017	Dec. 5, 2017	Nov. 1, 2017	N/A	N/A	N/A	Minor Variance Appeal of Refusal	N/A	Appeal abandoned
55.	17 205654 S45 10 81 Westgate Blvd.	Procedural	Aug. 15, 2017	Mar. 13, 2018	Nov. 6, 2017 (Motion)	N/A	N/A	83	Minor Variance Appeal of Refusal	N/A	Whether hearing should be adjourned – allowed
56.	17 213453 S45 16 79 Felbrigg Ave.	Merits	Aug. 15, 2017	Dec. 7, 2017	Dec. 21, 2017	114	128	14	Minor Variance Appeal of Approval	Residents Association Appeal allowed	Variances to construct a new third storey addition over the existing dwelling, a 3-storey addition to the east portion of the dwelling in conjunction with 2, 3-storey additions to the rear of the existing dwelling

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57.	17 206167 S45 10 265 Searle Ave.	N/A	Aug. 17, 2017	Dec. 11, 2017	Nov. 21, 2017	N/A	N/A	N/A	Minor Variance Appeal of Refusal	N/A	Appeal abandoned
58.	17 206561 S45 25 21 Lower Links Rd	Merits	Aug. 17, 2017	Dec. 12, 2017	Jan. 8, 2018	117	144	27	Minor Variance Appeal of Refusal – opposed by neighbours	Applicant Appeal allowed	One-storey rear addition to a two-storey dwelling. The requested variances related to the length of the building
59.	17 196248 S53 23 17 196251 S53 23 17 196254 S53 23 17 196247 S53 23 17 196256 S53 23 40 Terrace Ave/	Procedural	Aug. 18, 2017	Dec. 8, 2017	Oct. 18, 2017 (Motion)	N/A	N/A	N/A (Motion materials filed)	Minor Variance + Consent Appeal of Refusal	N/A	Time requested to submit a revised witness statement. The reason for the request is to permit the two parties to engage in discussions and arrive at a mutually agreeable settlement – granted
60.	17 208355 S45 13 15 Nelles Ave.	Procedural	Aug. 21, 2017	Dec. 18, 2017	Nov. 14, 2017 (Motion)	N/A	N/A	13 (Motion heard on Nov. 1, 2017)	Minor Variance Appeal of Approval by Neighbour	N/A	Motion by Applicant to exclude certain documents filed or referenced – granted in part
61.	17 212585 S45 23 64 Avondale Ave.	Merits/ Settlement	Aug. 22, 2017	Dec. 21, 2017	Jan. 4, 2018	121	135	14	Minor Variance Appeal of Refusal	Appeal allowed. Settlement with City	Demolish old house and replace it with one in which "they will grow old, and which will reflect their passion for environmental sustainability"

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62.	17 175387 S45 26 195 Glenvale Blvd.	Merits	Aug. 25, 2017	Sep. 13, 2017	Oct. 6, 2017	19	42	23	Minor Variance Appeal of Refusal – opposed by City and neighbours	Applicant Appeal allowed	To construct a new 2-storey home with an integral garage and a flat roof
63.	17 207460 S45 24 28 Urbandale Ave.	Merits	Aug. 28, 2017	Dec. 14, 2017	Dec. 28, 2017	108	122	14	Minor Variance Appeal of Refusal - unopposed	Applicant Appeal allowed	Demolish older home with a side driveway and replace it with a newer design with integral double car garage.
64.	17 205190 S45 16 55 De Verde Gardens	N/A	Aug. 29, 2017	Jan. 12, 2017	Nov. 3, 2017	N/A	N/A	N/A	Minor Variance Appeal of Refusal	N/A	Appeal withdrawn
65.	17 227882 S45 30 89 Boultbee Ave.	Procedural	Sep. 11, 2017	Jan. 10, 2018	Dec. 12, 2017 (Motion)	N/A	N/A	N/A (Motion materials filed)	Minor Variance Appeal of Approval by Neighbour	N/A	Motion for written hearing and dismissal of appeal – denied
66.	17 224461 S45 27 512 Jarvis St.	Procedural	Sep. 18, 2017	Jan. 12, 15, 2018	Nov. 7, 2017 (Motion)	N/A	N/A	6 (Motion heard on Nov. 1, 2017)	Minor Variance Appeal of Refusal	N/A	Permission to extend time under the Rules – allowed
67.	17 232191 S45 01 16 Mosque Cresc.	Procedural	Sep. 27, 2017	Jan. 18, 2018	Nov. 6, 2017 (Motion)	N/A	N/A	5 (Motion heard on Nov. 1, 2017)	Minor Variance Appeal of Refusal	N/A	Motion to extend time for the filing of Applicants Disclosure materials - granted

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68.	17 221581 S45 25 23 Suncrest Dr.	Procedural	Sep. 29, 2017	Jan. 17, 2018	Jan. 2, 2018 (Motion)	N/A	N/A	0 (Motion heard on Jan. 2, 2018)	Minor Variance Appeal of Approval by Neighbour	N/A	Motion for adjournment granted
69.	17 239899 S45 17 609 McRoberts St.	Procedural	Oct. 4, 2017	Feb. 2, 2018	Dec. 4, 2017 (Motion)	N/A	N/A	6 (Motion in writing on Nov. 28, 2017)	Minor Variance Appeal of Refusal	N/A	Requesting new deadlines
70.	17 209455 S45 36 17 209457 S45 36 19 Linton Ave.	N/A	Oct. 4, 2017	Feb. 1, 2018	Dec. 14, 2017	N/A	N/A	N/A	Minor Variance Appeal of Refusal	N/A	Appeal abandoned
71.	17 243162 S45 26 34 Cameron Cresc.	N/A	Oct. 18, 2017	Feb. 26, 2017	Dec. 1, 2017	N/A	N/A	N/A	Minor Variance Appeal of Refusal	N/A	Appeal withdrawn
72.	17 220424 S53 05 17 216598 S45 05 17 216599 S45 05 56 Frances Ave.	Procedural	Oct. 27, 2017	Mar. 9, 2018	Oct. 27, 2017 (Motion)	N/A	N/A	N/A (Motion materials filed)	Minor Variance + Consent Appeal of Approval by Neighbour	N/A	Adjournment of original hearing date and rescheduling - granted

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73.	17 206112 S53 23 17 206113 S45 23 17 206114 S45 23 210 Horsham Ave.	Procedural	Nov. 8, 2017	Apr. 26, 2018	Dec. 14, 2017 (Motion)	N/A	N/A	7 (Motion heard on Dec. 7, 2017)	Minor Variance + Consent Appeal of Refusal	N/A	Whether a consent adjournment should be granted as a result of a Notice of Motion for an adjournment occurring well within the 'Quiet Zone', the period established in the Rules for no proceedings and for sober consideration of settlement issues, possible mediation and final case preparation – Adjourned
74.	17 183067 S45 32 5 Pine Cresc.	Procedural	Nov. 7, 2017	Jan 25, 2018	Sep. 20, 2017 (Motion) Oct. 20, 2017 (Motion) Nov. 7, 2017 (Motion)	N/A	N/A	2 (Motion heard on Sep. 18, 2017)	Minor Variance Appeal of Refusal	N/A	Motions related to: hearing date, top-of-bank delineation, and disclosing information.
75.	17 260813 S45 14 491 Parkside Dr.	Procedural	Nov. 20, 2017	Apr. 4, 2017	Dec. 18, 2017 (Motion)	N/A	N/A	19 (Motion brought on Nov. 29, 2017)	Minor Variance Appeal of Refusal	N/A	Motion requesting alternative hearing date refused

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76.	17 249169 S45 19 665 Shaw St.	Procedural	Nov. 21, 2017	Mar. 27, 2018	Nov. 21, 2017	N/A	N/A	N/A (No hearing)	Minor Variance Appeal of Refusal	N/A	Whether the appeal can be sent forward for scheduling based on the completeness of the updated application – earlier Notice of Dismissal set aside.
77.	17 255899 S45 15 51 Clovelly	N/A	Dec. 4, 2017	Mar. 20, 2017	Dec. 19, 2017	N/A	N/A	N/A	Minor Variance Appeal of Refusal	N/A	Appeal abandoned
78.	17 255786 S45 18 17 255788 S45 18 17 255789 S45 18 17 255791 S45 18 635-641 Lansdowne Ave	N/A	Dec. 7, 2017	Apr. 10, 2018	Dec. 19, 2017	N/A	N/A	N/A	Minor Variance Appeals of Refusal	N/A	Appeal abandoned
79.	17 188179 S45 31 2915 St. Clair Ave.	Procedural	Dec. 14, 2017	Feb. 28, 2017 (Motion Date)	Nov. 27, 2017 (Motion)	N/A	N/A	4 (Motion heard on Nov. 23, 2017)	Minor Variance Appeal of Refusal	N/A	Adjournment allowed.
80.	17 165253 S45 25 11 Forest Glen Cresc.	N/A	Not available online	Sep. 7, 2017	June 15, 2017	N/A	N/A	N/A	Minor Variance Appeal of Refusal	N/A	Appeal Abandoned
81.	17 157330 S45 23 131 Park Home Ave.	Merits/ Settlement	Not available online	Jun. 29, 2017	Jul. 7, 2017 (Motion)	Unavailable	Unavailable	8	Minor Variance Appeal of Approval by Neighbour	Settlement Appeal allowed in part	Motion to recognize a settlement

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82.	17 242676 S45 25 14 Berkinshaw Cresc.	Procedural	Not available online	Oct. 17, 2017 (Screening date)	Nov. 30, 2017	N/A	N/A	44 (from screening date)	Minor Variance Appeal of Approval by Neighbour	Appeal dismissed	Whether appeal is to be dismissed because of lack of compliance on Administrative Grounds.
83.	17 221626 S45 25 168 Cottonwood Dr.	N/A	Not available online	N/A	Oct. 12, 2017	N/A	N/A	N/A	Minor Variance Appeal of Approval by Neighbour	N/A	Applicant withdrew before scheduling of hearing date
84.	17 158006 S45 24 66 Forest Grove Dr.	N/A	Not available online	Sep. 5, 2017	Jun. 29, 2017	N/A	N/A	N/A	Minor Variance Appeal of Refusal	N/A	Appeal abandoned
85.	17 169043 S45 21 51 Helena Ave.	Merits	Not available online	Sep. 1, 2017	Sep. 25, 2017	N/A	N/A	24	Minor Variance Appeal of Refusal – opposed by neighbours	Applicant Appeal allowed	House set back further from the street than the majority of the houses.