

Establishing a Local Appeal Body for Committee of Adjustment Decisions - Status Report

Date:	September 25, 2008
To:	Planning and Growth Management Committee
From:	Chief Planner and Executive Director of City Planning
Wards:	All
Reference Number:	Pg080062

SUMMARY

At its meeting of June 5, 2008, Planning and Growth Management Committee directed the establishment of a Councillor-Staff Working Group to develop the structure for an Appeal Panel to hear appeals of Committee of Adjustment decisions on Minor Variance and Consent Applications and to report back to PGM Committee by October 2008.

The purpose of this report is to provide a brief background regarding Local Appeal Bodies (LABS) as they pertain to the City of Toronto and to advise the Committee that the establishment of the Councillor-Staff Working Group is underway. It is anticipated that a final report regarding this matter will be completed in Spring 2009.

Financial Impact

This status report has no financial impact.

DECISION HISTORY

On June 5, 2008, PGM Committee directed the establishment of a Councillor-Staff Working Group to develop the structure for an Appeal Panel to hear appeals of Committee of Adjustment decisions on Minor Variance and Consent Applications; such Working Group to be comprised of the Chair and the Co-Chair of the Planning and Growth Management Committee, and any other interested Committee Members, and any staff deemed appropriate by Deputy City Manager Richard Butts. The Committee requested the Council-Staff Working Group to consider the following:

- a) the staff and financial resource requirements for the establishment of such an Appeal Panel
- b) the fee structure for Appeals
- c) the structure and size of the Appeal Panel; and
- d) qualifications and criteria for appointment of members to the new Appeal Panel,

and to report to PGM Committee by October 2008.

The Executive Committee and the Budget Committee are to be kept apprised of the work of the Councillor-Staff Working Group so as to be able to plan for the new Appeal Panel's implementation.

ISSUE BACKGROUND

On December 12, 2005, the Province introduced Bill 51, *Planning and Conservation Land Statute Law Amendment Act, 2005* as part of its ongoing efforts to reform land use planning in Ontario and redefine its relationship with Ontario municipalities. The Bill also contained a number of key reforms to the Ontario Municipal Board. Bill 51 received third reading and Royal Assent on October 19, 2006 and took effect January 1, 2007.

On May 23, 2006, City Council adopted a report from the Chief Planner advising Council of the contents and implications of Bill 51 and 53, *Stronger City of Toronto for a Stronger Ontario Act, 2005* as they pertain to land use planning matters, including the shifting role and scope of the OMB. Included as part of Council's recommendations was the specific recommendation that there be a local appeal body option for the City for disputed Committee of Adjustment decisions. This was premised on the notion that:

- a) Committee of Adjustment matters are entirely local in nature and as such should not be subject to review by a Provincial body; and
- b) Establishment of a local appeal body for Committee of Adjustment matters within the City of Toronto demonstrated the City's commitment towards further reducing the scope of the OMB's decision - making sphere of influence.

City Council also received a report, dated April 12, 2006, from the Chief Planner, which provided an overview of anticipated cost implications associated with operating a local appeal body (LAB) for local land use planning matters.

An assessment of costs stemming from the report indicated that gross costs for the LAB could hover just over one million dollars annually and the net costs per hearing would be just over \$2,700. The report was based on assumptions informed by:

- a) the legislative parameters set by the Province;
- b) governance models for quasi-judicial bodies or administrative tribunals;
- c) budgetary requirements, practices, function and workloads of the City's Committees of Adjustment and Municipal Licensing Tribunal; and

- d) the Province’s Ontario Municipal Board and the average number of Committee of Adjustment and consent decisions appealed per year.

The City of Toronto’s powers to establish a local appeal body or “LAB” ultimately came through direct enabling legislation in Bill 53, the *Stronger City of Toronto for a Stronger Ontario Act, 2005* and its related regulations.

All other municipalities across the Province were given similar powers through Bill 51, however their powers are conditional on the given municipality demonstrating to the Province that they have the capability to undertake this function, while the City’s powers are automatic.

COMMENTS

Section 115 of the *City of Toronto Act*, allows the City, by by-law, to appoint one appeal body for local land use planning matters, composed of such persons as the City considers advisable, subject to certain by-laws being constituted and prescribed terms and qualifications, including eligibility criteria and restrictions. Prescribed terms are set out in *Ontario Regulation 552/06*.

Section 115 states that the City cannot appoint anyone to the appeal board who is a City employee, a member of City Council, a member of the Committee of Adjustment or Land Division Committee or a member of a “prescribed” class as addressed in the regulation. This restriction was put in place to avoid the perception of conflict.

In assessing the nature and composition of a City LAB and in evaluating costs associated with setting up and operating a LAB, the Working Committee would need to address issues such as:

1. Where the City’s LAB could be lodged in order to be perceived as being completely “transparent” in its decision-making,
2. Whether the LAB could aim for complete cost recovery and revenue neutrality in its operations, similar to the Toronto Licensing Tribunal, and
3. Whether the costs to the City of establishing a LAB can be justified in terms of strategic outcomes, namely a reduction of the OMB’s sphere of influence on the City’s city-building process.

More than 3,500 City-wide applications were adjudicated by the Committee of Adjustment in 2007, of which approximately 300 were appealed to the Ontario Municipal Board. Previous analysis has indicated that there could be significant staff and financial resource implications associated with the establishment of a local Appeal Panel for this number of appeals and that a fee structure for appeals would likely not be able to replicate the \$125 dollar application fee currently required by the Ontario Municipal Board.

Nonetheless, the legislation and regulation pertaining to the establishment of a local appeal body is permissive in nature and as such, would allow the City to be innovative in expediting and streamlining its local “appeal” process.

NEXT STEPS

Planning staff have met with the Chair of Planning and Growth Management Committee to discuss details surrounding the establishment of the Councillor-Staff Working Group, the Group’s tentative timetable for reporting back to PGM and its proposed mandate and work schedule.

On October 2, 2008, as a first step in this process, an information session will be held for members of the Planning and Growth Management Committee in order to determine which Committee members have an interest in being part of the Working Committee and to also, gauge from those present at this meeting, what the salient aspects of the work program surrounding this matter, should be. It is anticipated that a Final Report with the Working Committee’s recommendations, could be completed by Spring 2009.

CONTACT

Barbara Leonhardt
Director, Policy and Research
City Planning Division
Tel No: (416) 392-8148
Fax No: (416) 392-3821
E-mail: bleonha@toronto.ca

SIGNATURE

Gary Wright
Chief Planner and Executive Director
City Planning Division

P:\2008\Cluster B\PLN/pg080062