



STAFF REPORT ACTION REQUIRED

Establishing a Local Appeal Body for Committee of Adjustment Decisions – Staffing and Cost Implications

Date:	July 15, 2010
To:	Planning and Growth Management Committee
From:	Chief Planner and Executive Director, City Planning Division
Wards:	All
Reference Number:	Pg10054

SUMMARY

At its meeting of June 5, 2008, the Planning and Growth Management Committee directed the establishment of a Councillor-Staff Working Group to develop the structure for an appeal body or panel to hear appeals of Committee of Adjustment decisions on minor variance and consent applications and to report back to the PGM Committee.

Several Working Group meetings were held and an analysis of best practices conducted by City Planning in conjunction with other city staff, including staff from Legal Services, the City Manager's Office and Facilities Management, in consideration of this matter.

The purpose of this report is to provide the PGM Committee with an overview of cost and staffing implications associated with establishing and operating a local appeal panel to hear appeals of Committee of Adjustment decisions that would be suitable for further examination and implementation by the incoming Council.

RECOMMENDATIONS

The Chief Planner and Executive Director, City Planning recommends that:

1. The Planning and Growth Management Committee receive the report's findings and advise Council of these findings with the intention of having Council determine next steps to follow with regard to making a decision as to whether to

proceed with implementing a local appeal body for Committee of Adjustment minor variance and consent decisions.

Financial Impact

There are no immediate financial implications associated with this report. However, there would be future year financial impacts, in the event that Council chose to proceed with establishing and operating a local appeal body for Committee of Adjustment decisions, including different financial implications related to Council choosing either complete or partial cost recovery through local appeal body application fees.

Further to the findings in this report, the one-time start-up costs of establishing a local appeal body would be in the order of \$261,050. Gross operating costs are estimated to be \$1,866,452 per year (2010 dollars). The gross operating costs include \$287,250 in panel members remuneration; \$656,752 in support staff salaries and benefits; \$147,000 for legal counsel; \$532,000 for the office operating expenses, including rent and \$243,450 in contingency costs. Full cost recovery of the operating costs would be achieved through application fees of \$6,200 per application, based on the receipt of at least 300 appeal applications per year. Council could also give consideration to having these application fees incorporate the \$261,050 in start-up costs of establishing a local appeal body.

In the event that Council chose to proceed with establishing this appeal body, all cost estimates would be reviewed and considered as part of the 2011 (or future year) operating budget process.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

On June 5, 2008, the 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; such Working Group to be comprised of the Chair and the Co-Chair of the Planning and Growth Management Committee, 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 and to report to PGM Committee by October of 2008:

- 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.

The Committee also requested that the Executive Committee and the Budget Committee 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.

An interim report regarding this matter was submitted to PGM Committee for its meeting of October 14, 2008. The report is available online at:

www.toronto.ca/legdocs/mmis/2008/pg/bgrd/backgroundfile-15995.pdf

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 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 Bill 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 Ontario Municipal Board (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 decision-making sphere of influence.

City Council also received an information report, dated April 12, 2006, from the Chief Planner, which provided a high level overview of anticipated cost implications associated with operating a local appeal body for local land use planning matters. The report was based on assumptions informed by:

- a) legislative parameters set by the Province;
- b) governance models for quasi-judicial bodies and administrative tribunals;
- c) budgetary requirements, practices, function and workloads of the City's Committees of Adjustment, the Municipal Licensing Tribunal and other local boards;
- d) Ontario Municipal Board practices, procedures and budget; and
- e) average number (and type) of Committee of Adjustment minor variance and consent decisions appealed per year.

The City of Toronto's powers to establish a local appeal body ultimately came through direct enabling legislation in the *City of Toronto Act, 2006*, and its related regulations.

This legislation gave the City of Toronto the authority to establish a local appeal body to deal with appeals of minor variances and consents, leaving the Ontario Municipal Board

to continue hearing appeals on official plan, zoning, site plan control, subdivision and development permit matters.

Section 115 of the *City of Toronto Act, 2006*, 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 being adopted, including eligibility criteria and restrictions. The prescribed terms are set out in *Ontario Regulation 552/06*.

Section 115 states that at minimum the City cannot appoint anyone to the appeal body who is a City employee, a member of City Council, a member of the Committee of Adjustment or a member of a “prescribed” class (as determined by Council). These restrictions have been put in place to avoid the perception of conflict.

COMMENTS

This report provides an updated overview and discussion of the costs associated with implementing a local appeal body, further to the report dated April 12, 2006, from the Chief Planner, referred to above. For the most part, information provided in the 2006 report, remains relevant today.

The number and nature of appeals are an important consideration in determining the number of board or panel members required to hear appeals, anticipated length and complexity of appeal hearings, meeting formats and support staff requirements. Information around the number of and nature of appeals was presented to the Working Group for discussion. Generally, more than 3,500 City-wide applications were heard by the Committee of Adjustment in 2007, of which approximately 300 were appealed to the Ontario Municipal Board. In 2008 the number dropped to about 2200, with under 300 appeals, and in 2009 the application and appeal numbers dropped even more. However, applications and the number of appeals have fluctuated up and down over the years, with downturns in the economy and development activity reducing the overall number of applications and subsequent appeals received. Appeals have generally remained constant at under 10 percent of the given year’s total number of applications.

As will be detailed below, this report uses 300 appeals per year and one day hearings, with some allowance for multi-day hearings, as a reasonable marker in assessing costs (gross and net) and staffing requirements.

The Planning and Growth Management Committee requested that the report specifically address the following matters and provide findings for:

Qualifications and criteria for appointments of local appeal body members

Section 115 of the *City of Toronto Act*, enables the City of Toronto, by by-law, to appoint one appeal body for local land use planning matters, such as minor variance applications and consents, 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 being addressed.

The local appeal body is authorized to hear appeals under specified provisions of the *Planning Act*, and would have all the powers and duties of the OMB under that Act, for these types of appeals.

Like the Ontario Municipal Board, the local appeal body would be required to make findings on the merits of the given minor variance and/or consent application and would be empowered to dismiss an appeal or make any decision with regard to the application that the Committee of Adjustment could have made. The rules of procedure to be adopted by the local appeal body could provide for mediation as an option, as well as for other prehearing procedures such as exchanging witness lists and witness statements.

The legislation 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 a member of a “prescribed” class, that is anyone that Council chooses to identify through a local by-law as not being suitable for the appointment.

The prescribed terms are set out in *Ontario Regulation 552/06*. They state that the local appeal body (not the City) must:

- establish rules of practice and procedure to govern its proceedings, which rules deal with, at minimum, the following matters: Application of rules; representatives and notice to representatives; timing of proceedings; how proceedings are commenced; notice; documents, exhibits, filing and service; discovery; motions and forms; settlement before hearing; compelling attendance of witnesses by summons; consolidated hearings; adjournments; mediation; pre-hearing conferences; the manner in which hearings are held; quorum and panels; effect of expiry of member’s term during hearing; vacancies on the appeal body; and decisions and orders;
- make its rules of practice and procedure available to the public; and
- produce an annual report on its operations, including audited financial statements and make this annual report available to the public.

Procedural rules and practice direction adopted by the local appeal body cannot affect the substantive rights of appellants under the *Planning Act*.

The local appeal body could set a standard or code of conduct for itself that supplements the Code of Conduct adopted by Council for Members of Adjudicative Boards in the City of Toronto. The local appeal body would also have to conduct itself in accordance with the *Statutory Powers Procedure Act*, the *Municipal Conflict of Interest Act* and the *Municipal Freedom of Information and Protection of Privacy Act*.

The appointments process for local appeal body members has to be fair and objective. In this regard, the City has a Council adopted “Public Appointments Policy” governing

appointments to City agencies, boards, commissions and corporations and nominations to external special purpose bodies. The Policy provides:

- a framework aimed at ensuring that the most suitable candidates are selected and appointed as board members,
- a guide for Council Members and City staff involved in the selection process to ensure consistency, integrity, and fairness in administering the process, and
- basic eligibility requirements for persons seeking an appointment with regard to their place of residence and minimum age and also restrictions affecting former members of Council and relatives of Council members.

It also provides information about the City's process for anyone who may be interested in applying through a companion document entitled "Board-Specific Processes and Requirements for Public Appointments". This document provides detailed information on a number of existing board positions. An assessment of qualifications for an appeal body for local land use planning matters would be informed by the City's Public Appointments Policy.

To make informed decisions, each local appeal body member would be expected to:

- review materials filed with each appeal application;
- conduct individual site inspections of the subject property or properties;
- review evidence and witness statements;
- determine parties to and participants in the hearings;
- adjudicate over all public hearings scheduled for them, including a briefing session prior to the hearing; and
- prepare written decisions in a form that restates the salient evidence given at the hearing and provide a clear rationale for the decision.

The local appeal body Chair, would be responsible for:

- management of the hearing process including assignment of hearing officers and oversight of the adjudicative process;
- attending hearings when required;
- ensuring fair and timely public hearings;
- addressing matters concerning the operation and conduct of the appeal body members;
- reviewing written decisions made by appeal body members for consistency;
- abiding by the "relationship framework" established with the City;
- liaising with assigned City staff regarding both administration and governance issues;
- ensuring that members attend mandatory training sessions;
- seeking additional training opportunities for members to enhance their adjudicative skills; and
- representing the local appeal body in the media and at public events.

In addition to general eligibility requirements set out in the City's Public Appointments Policy, members could collectively bring the following skills and expertise to the local appeal body:

- demonstrate a strong interest in the complexities and challenges of city building;
- bring an understanding of the diverse neighbourhoods and communities across the city;
- have knowledge in one or more areas of: law, planning, architecture, government, economic development, community development, land development, or citizen advocacy, but not act as an agent for applicants before the appeal body;
- demonstrate decision-making, communication, and mediation skills to facilitate an open and fair hearing process;
- have adjudication, and /or mediation and conflict resolution skills and public speaking and organizational skills to be able to chair public hearings and maintain order in conflict situations;
- demonstrate computer literacy;
- have an ability to write clear and concise decisions; and
- once appointed, understand the importance of operating independently and at arm's length from City Council, its Committees, members of Council and those city staff, including legal staff, who provide advice and/or support to the Committee of Adjustment and to City Planning's development approvals process.

The positions require a commitment from each member to spend the time needed for preparation, in-depth hearings and the issuance of written decisions. A single matter may require hearing testimony from not only the applicant, but also from a number of civilian expert and City staff witnesses, all of which is done under oath and is subject to cross-examination.

Like members of other quasi-judicial adjudicative boards or bodies, local appeal body members, would be required to successfully complete SOAR (Society of Ontario Arbitrators and Regulators) training within six months of being appointed.

Structure and size of the local appeal body

Term of appointments and limits on length of service

Members would have to be appointed for a fixed term and could only be removed for cause before the end of that term. Because of the need to preserve independence, courts have set the standard for dismissal of a member of a quasi-judicial tribunal very high.

As is the case with Committee of Adjustment panel members, the term of appointment for the local appeal body could coincide with the term of Council, (with members continuing to serve until their successors were appointed).

As the City recognizes the importance of engaging as many residents as possible and infusing new perspectives from time to time, the limit on length of service for any citizen member has generally been 2 consecutive terms on the same board. However, given the level of complexity and expertise required to set-up and operate a local appeal body for

local land use matters, there may be merit to having Council extend the limit on length of service to 3 consecutive terms. By way of comparison, the Ontario Municipal Board has no limits on the length of service of its 25 full-time salaried members.

It should be noted that due to the high cost and time commitment of recruiting and selecting board members, the City's policy has been to not encourage staggered terms. Gradual turnover can be achieved by the nominating panel ensuring that there is a balance of new members and returning incumbents recommended for each term.

Governance model and a relationship framework with the City

Based on governance models highlighted through the City Manager's review of ABCCs in 2006; discussions held with informed city staff, and a review of Ontario Municipal Board rules and practices, the following principles have been identified to guide the implementation of a local appeal body and its members and staff - accessibility, transparency, fair and consistent outcomes, competency, ethical behaviors, independent and timely decision-making, and codification of decisions. The local appeal body's decisions would have to withstand judicial review. As mentioned previously, its rules of practice and procedure would also fall within the scope of *The Statutory Power Procedures Act* and its members would be bound by *The Municipal Conflict of Interest Act*.

Under Section 145(3) (f) of the *City of Toronto Act*, the general authority of the City to change or dissolve a local board would not apply to this local appeal body. Once it was created, it could not be abolished.

In recent years, the Courts have shown greater deference to administrative tribunals and their decisions. This is based not only upon the expertise of the tribunal, but also upon its independence from outside influences. While the City's local appeal body for local land use planning matters could be constituted and appointed by by-law at the pleasure of Council, it would need to make its decisions independently, unfettered by Council. This capacity for independent decision-making is especially important because unique in the creation of this local appeal body is the fact that Council would continue to appoint Committee of Adjustment panel members, but also undertake to appoint the local appeal body members. Council would also continue to be able to appeal Committee of Adjustment decisions and instruct the City's legal staff to argue its position before the local appeal body. The local appeal body would also need to maintain an arms-length relationship with the City's Committee of Adjustment and its support staff, as well as City Planning Division staff and those Legal Services staff who provide advice to Committee of Adjustment support staff and represent Council at appeal hearings of Committee of Adjustment decisions.

In order for the local appeal body to be seen by the public as being independent from the City, the local appeal body would require dedicated support staff, an operating budget, workspace, meeting rooms and independent legal counsel. Jurisdictionally, it could be attached to a City Division such as Court Services and be informed by a "relationship framework" with that Division and the City as a whole, or it could operate as a

completely separate and independent, self-administered and self-contained entity. Operating as a completely independent entity would place the local appeal body in the position of being both a hearing panel and overseer of administrative support to the appeal body, a model that other City boards and agencies have moved away from since amalgamation.

There are likely to be operating expense efficiencies and opportunities for more consistent and professional service from the local appeal body attributed to having a relationship agreement with the City. In this regard, City Council has already approved a number of relationship frameworks clarifying the relationship between the City of Toronto and a specific agency, board or commission. Each framework sets out City Council's delegation of authority, expectations and requirements for the respective board. In the case of the local appeal body for local planning matters, this relationship would be formed with City Divisions that have carriage of governance issues (the City Manager's Office) and with performing the types of functions associated with quasi-judicial tribunals and their support staff, such as Court Services.

The budget for the local appeal body could be prepared and submitted for Council approval by city staff, on the understanding that the local appeal body's costs would continue to be recovered through the appeal application fees. City staff could consult the Chair of the local appeal body during the preparation of the appeal body's annual financial statements and report, to ensure that the local appeal body had adequate resources to operate effectively. The local appeal body manager/secretary-treasurer and other support staff could be employees of the City. This administrator could be responsible for providing all administrative support to the local appeal body and making all necessary arrangements for hearings, but not be a party to the hearing. Support staff to the local appeal body could work co-operatively with the appeal body members, but have a reporting relationship to a City Division identified for this purpose.

Hearing details

Ontario Municipal Board hearings for minor variance and/or consent appeals have varied in length from half a day to four days for complex appeals that have a strong public interest, involve numerous participants and expert witnesses. The majority of hearings, however, occur within a one to two day period. The OMB assigns one panel member to hear appeals of minor variance and consent decisions. Support staff are not present at these hearings.

Hearings held by the OMB are less formal than a court proceeding but more formal than a committee or council meeting. For example, when evidence is given, the appellant must swear or affirm to tell the truth and other parties may ask questions (cross-examine the witness). The witness must prove that all evidence, including written documents and photographs, is valid before it can be admitted as evidence. If the hearing is complex, it may involve lawyers, many witnesses and long presentations. In addition to local residents and concerned citizens, parties sometimes call expert witnesses in land use planning and other areas to speak about an issue. All witnesses are placed under oath.

Again, the length of a hearing depends on the complexity of, or public interest in, the matter.

Member composition and workload

Based on the parameters discussed earlier in this report, including the assumption that there would be approximately 300 appeals filed, some of which could potentially require more than a one day hearing, it would appear reasonable to base assumptions on having five part-time paid panel members, including the Chair, with a case load of approximately 60 hearings per year, (5 hearings per panel member per month), some of which would require a multi-day hearing. Estimates of the total number of hearing days would include adding additional days for longer hearings as follows: 300 hearing days plus 50 additional days to accommodate longer hearings. Preparation time and decision-writing time would also be added into the equation, as would the mandatory training sessions and business meetings that would take place throughout the year. The appeal body chair would assume additional ongoing responsibilities outlined earlier in this report.

The local appeal body's workload will be informed by the fact that each hearing is a hearing "de novo", meaning that the appeal application before the given local appeal body member will be examined as though it had not already been considered and either approved or denied by the Committee of Adjustment. The issuance of a written decision based on the hearing, will also be a requirement.

Membership composition would be premised on the ability to schedule an appeal within a "reasonable" timeframe determined to be 90 days or less. And one that reflects the current waiting times for hearings related to appeals of Committee of Adjustment decisions held by the Ontario Municipal Board.

As noted previously, the enabling legislation provides that it would be up to the local appeal body and not the City, to impose rules of procedure. The rules could provide for flexibility in determining how hearings would proceed, within the limits required by statute and common law as to what constitutes a "hearing". Rules of procedure to be adopted by the appeal body could provide for mediation as an option, as well as for other prehearing procedures such as exchanging witness lists and witness statements. Providing for different hearing options, such as mediation, could affect the overall amount of time spent on each application and the total number of formal hearing days per year. For the purposes of this report, however, the following assumptions have been made:

- qualified and trained part-time citizen appointees;
- One panel member per hearing (with some allowance for exceptions during special circumstances such as new member trainee periods);
- Total case load of 300 appeals per year divided amongst the five panel members (60 hearings per member) and based on one day hearings (with some built in allowance for multi-day hearings);
- assumption of 70 hearing days per year per member to accommodate for pre-hearings and multi-day hearings;

- additional time requirements to accommodate case preparation and site visits, decision writing, mandatory training and periodic business meetings, generally as follows: 60 days per member for decision writing; 60 days per member for case preparation and site visits; 12 days set aside for business meetings and 5 days for mandatory training;
- additional administrative, budgetary and organizational responsibilities for the Chair, translating to around another 30 days; and
- incurred expenses (such as mileage, parking, emergency child care costs).

Member Remuneration and Expenses

Assessing the costs of implementing a local appeal body for this report has been done in the context of the City's citizen remuneration and expense reimbursement policies. Various rates of citizen remuneration for City Agencies, Boards, Commissions and Corporations (ABCCs) were reviewed, as were remuneration rates for citizens serving on Provincial agencies, boards and commissions, including the Ontario Municipal Board. Lastly, an informal survey was conducted with a number of law and planning professionals with regard to perceptions of acceptable remuneration against the backdrop of a commitment to performing a community or public service.

A key difference between the City and the Ontario Municipal Board, is that Council primarily appoints citizens to its boards who perform their "public service" duties on a part-time basis. The OMB, on the other hand, is a quasi-judicial body devoted to hearing appeals under various statutes, by full time, salaried members who conduct hearings during normal business hours. Full time annual OMB member salaries range from \$93,050 to \$106,350 and Vice-Chairs from \$115,000 to \$131,450.

Annual rates of remuneration vary at the City of Toronto, with the Build Toronto Corporation and the Toronto Parking Authority citizen board members receiving \$500 per meeting, and the Police Services Board, Toronto Licensing Tribunal and Committee of Adjustment members receiving \$350 per meeting / hearing. By way of a further comparison, Provincial board members serving on the Environmental Review Tribunal or the Human Rights Tribunal receive \$398 per diem.

For the purposes of this report, remuneration for the local appeal body for local land use matters has been based on a per diem of \$350 for pre-hearings and hearings, business meetings and mandatory training days attended. Members would also receive an additional \$300 per each written decision released at the conclusion of their hearing. An annual retainer of \$3,000 would cover off expenses such as mileage, parking and emergency child care. Hearing preparation and any necessary site visits would be the responsibility of each panel member and would not result in additional compensation being paid beyond the \$350 for pre-hearings and hearings attended. The Chair, given the added duties, would receive an additional annual retainer of \$30,000. In all probability, the Chair's duties would elevate this position to full time status.

Remuneration summary for local appeal body members

- members annual remuneration of \$51,450 based on \$350 per diem for 70 hearing days, 12 business meetings and 5 mandatory training days; 60 days for decision writing at \$300 per written decision and \$3,000 for expenses;
- the Chair's annual remuneration of \$51,450 with an additional \$30,000 in compensation for additional duties (such as, managing the hearing process and related rules and procedures; dealing with matters relating to member conduct; reviewing the written decisions; preparing the annual report, etc.), for a total of \$81,450; with
- total annual remuneration for the appeal body members, including the Chair, of \$287,250

Support Staff Requirements, Salaries and Benefits

Staff would provide support services including meeting management, hearing scheduling support and case management of appeals, including: intake of applications and fees; processing subpoena requests; gathering and packaging hearing materials for panel members; co-ordinating the receipt of evidence and of witness statements; preparing and distributing agendas; fulfilling notice requirements; tracking decisions; assisting with the preparation of an annual report and financial statements; executing an ongoing communications strategy, including a web site, and more.

The skills and work processes needed to support the local appeal body would be based in part, on skills demonstrated by the City's Committees of Adjustment staff. It is proposed that the appeal body support staff would include the following staff complement: 1 manager / secretary-treasurer; 1 project manager (who would assist the manager in a supervisory capacity); 3 application technicians and 3 administrative assistants. These support staff could be City employees, embedded in a City Division, such as Court Services. Salaries and benefits (just under 25% of salary costs) for support staff would be based on the City's mid-range 2010 salary levels.

Salary and benefits summary for support staff

- Manager / Secretary-Treasurer (Salary Grade 8) \$110,450
- Project Manager (Salary Grade 7.5) \$94,450
- Application Technicians (Wage Grade 10) \$59,150 times 3 = \$177,450
- Support (administrative) Assistants (Wage Grade 6) \$47,684 times 3 = \$143,052
- total salaries of \$525,402 and total benefits of \$131,350; with
- Total salaries and benefits for support staff of \$656,752 per annum

Legal Counsel

The local appeal body would need to consult with or receive advice from legal counsel, although the exact frequency of requiring such advice is difficult to estimate. Outside legal counsel could be retained by the local appeal body for this purpose or alternatively legal counsel could be hired by the City to advise the appeal body. Currently the City's Legal Services Division solicitors provide advice to city staff attached to the Committee of Adjustment and these same solicitors represent Council, when directed to do so, at OMB hearings dealing with appeals of Committee of Adjustment decisions. Therefore,

any solicitor hired by the city, as a city employee, to advise the local appeal body, would have to have an arms-length relationship with Legal Services Division to avoid the perception of conflict. Purchasing of legal services on a retainer basis by the local appeal body, would be the more common service model to follow, however, finding a local law firm interested in providing legal services might be difficult to do, as it would likely preclude the firm's involvement with any City of Toronto Committee of Adjustment related work.

In any case, a full-time experienced (2010 mid-range Salary Grade 9) solicitor's salary with benefits is estimated at \$147,000. This amount could be used as the basis for determining annual outside legal counsel costs as they pertain to the local appeal body.

On the assumption that a portion of the appeals would require some legal advice, the cost of legal counsel could total around \$147,000 per year. Outside legal counsel costs could rise in the event of an appeal, with leave, to Divisional Court, of a local appeal body decision, on a point of law, or for other reasons. (Appeals to Divisional Court are generally costly, requiring the use of additional legal resources. The likelihood of leaves to appeal to Divisional Court, to test the legal parameters of Section 115 of the *City of Toronto Act*, would probably be greater in the period following the inception of the local appeal body).

Operating expenses

Office supplies, equipment and other on-going business related services

Gleaned from reviews of industry standards, discussions with Committee of Adjustment and Facilities Management staff, it is estimated that office supplies and equipment (including replacement of obsolete equipment); paper; labels; postage and courier services; newspaper ads; marketing and public relations activities; business cards; translation and sign language services; servicing of equipment; equipment rentals (printers, photocopiers, fax machines, scanners, desk top phones, cell phones); IT related costs such as comprehensive web updates or license renewal of software programs; cleaning services and security; and mandatory staff training could amount to \$300,000 per year. Operating expenses have been calculated to include the cost of mandatory training for local appeal body members in the per annum amount of \$1500 per member.

Rent

On the understanding that the costs of renting office and meeting space will be the responsibility of the local appeal body and that dedicated city owned space is not currently available to accommodate the local appeal body needs, office and meeting space would have to be located somewhere in the City close to public transit and public parking. Space requirements would include: office space for support staff; touch down space for local appeal body members; an office for the local appeal body Chair; several hearing/conference rooms of different sizes to accommodate the possibility of different sized hearings occurring simultaneously; an additional meeting room that could be used for staff meetings or mediation sessions; a reception / front counter area; a public waiting area; filing and general storage area; mail room; small library space; break or lunch room

and washrooms for staff and the public. Space requirements would decrease or increase depending on the nature of the office space (individual offices or open concept); amount of amenity and ancillary space; proximity of office space to windows, inclusion of parking spaces, etc. Renting within a Class A building in the downtown would be costlier than locating outside the downtown, with rents ranging from \$55 per square foot (gross) in the downtown to \$35 per square foot (gross) outside the downtown. For the purposes of this report, rent has been based on \$40 per square foot, likely precluding the local appeal body from being located in a Class A building in the downtown, but allowing it to be located in Class B space around the edges of the central business district or within a Class A building in one of the City’s Centres, such as North York.

Summary of operating costs

- office supplies and expenses \$300,000 per year
- requirement for dedicated hearing space that can accommodate more than one hearing at a time and a need for hearing rooms of different sizes, including one that can accommodate up to 20 persons
- adjacency of support staff and members’ work space to hearing rooms
- accessible and secure location close to public transit and public parking
- total office, hearing and ancillary space requirement of 5800 square feet
- rent based on \$40 per square foot
- yearly rent of \$232,000
- total operating expenses of \$532,000 per year

Contingency cost and other expenses

The operating budget below, includes a contingency cost line item of 15 percent of the total operating budget, or \$243,450, to account for “uncertainties” (such as unexpected increases in legal fees or office operating expenses), associated with operating the local appeal body.

Although this level of detail is not addressed in this report, in determining annual office operating expenses over the longer term consideration would need to be given to annual cost of living increases; office equipment renewal or replacement timelines and potential costs to the City of providing general liability insurance for the local appeal body members. (The City does have an indemnification policy which could likely be extended to provide directors insurance coverage for the members).

Local appeal body annual operating budget (estimate in 2010 dollars)

Panel members remuneration	\$287,250
Support staff salaries and benefits	\$656,752
Legal counsel	\$147,000
Office operating expenses (excluding rent)	\$300,000
Rent (gross)	\$232,000
Contingency Costs	\$243,450
Total	\$1,866,452

Note: This chart excludes the initial start-up costs of \$261,050 (detailed below)

Start-up costs

Set-up costs for the local appeal body would include locating, leasing and likely upgrading or finishing office space; creating a work space, common areas and hearing rooms environment including purchasing and installing furniture; computers; and other office equipment. The local appeal body members would also need to be provided with items such as protective clothing (work boots and hard hats) and digital cameras for site visits. Start-up costs are estimated at \$100,000.

There are also project management fees that need to be taken into account. These fees include managing the organizational aspects of the project itself, such as co-ordinating the nomination process with the City Manager's Office and establishing a relationship framework with the City; co-ordinating the hiring of support staff; providing initial advice and direction to the local appeal body Chair around the establishment of required rules, procedures, code of conduct, fees by-law; preparation of application materials; fee intake procedures and marketing materials. Project management could be done by city staff experienced in this area, and seconded for this purpose, or by outside management consultants. Either way, the costs associated with setting up the local appeal body are estimated to be equivalent to the annual salary plus benefits of a project manager level city employee (mid-range Salary grade 7.5) or \$117,000. There are also project management fees associated with negotiating lease agreements, liaising with the landlord, and constructing and designing the physical work space. Project management fees generally represent ten percent of the start-up costs noted above, or \$10,000. It would also be prudent to add contingency costs to these start-up costs of \$34,050. Total start-up costs are estimated to be at \$261,050.

Cost recovery options and the local appeal body application fee structure

The Ontario Municipal Board charges \$125 per person per appeal. An additional fee of \$25 applies to each additional consent appeal and to each additional variance appeal filed by the same appellant. It should be noted that the OMB's fee schedule has not varied over a long period of time.

In order to contemplate complete cost recovery, the City's local appeal body for local planning matters would be faced with application fees in the range of \$6200 per application. This fee is based on the average number of appeals received each year (300) and the annual operating costs (estimated to be in the order of \$1,866,452). The fee could also be increased to include a surcharge over a given period of time to recover the City's start-up costs of establishing the local appeal body. (The enabling legislation to establish a local appeal body for local land use matters was not accompanied by any offers by the Province for transitional funding). Additionally, any number of other variables could impact fees, including a drop in the number of appeal applications received in a given year. Partial cost recovery could also be an option, should Council choose to subsidize a portion of the local appeal body fees from the property tax base.

Section 69 (1) of *The Planning Act*, which governs the tariff of fees for the local appeal body, clearly states that Council may establish a tariff of fees for the processing of applications made in respect of planning matters, which tariff shall be designed to meet only the anticipated cost to the processing of each type of application provided for in this tariff. This means that Council, in establishing its fee schedule, cannot look at increasing Committee of Adjustment application fees, for instance, to subsidize the cost of the local appeal body application fees. Council should also be made aware of the fact that any person who is required to pay a fee for the processing of their application may pay the amount of the fee under protest and thereafter appeal to the OMB against the levying of the fee. (At its hearing the OMB can dismiss the appeal or direct that a refund be made to the appellant in such amount as the Board determines as per Section 69 (3) of the *Planning Act*).

Although Council is within its right to establish fees to cover the anticipated costs of operating a local appeal body, which are substantially higher than those which have been historically in place at the Ontario Municipal Board, these fees may have natural justice implications, by having an impact on who is financially able to lodge an appeal and subsequently on the overall number and types of minor variance and consent related appeals filed.

A review of the City's Planning fees indicates a range in base fees from a zoning by-law amendment fee of \$6,051 to minor variance fees that ranges from \$560 to \$2,178. These fees however, do not represent full cost recovery for City Planning or other City Divisions involved in the development review and approval process. In assessing expectations with regard to a local appeal body application fee of over \$6,000, it can be argued that this appeal fee will likely encourage full hearings "de novo" to justify the cost to the applicant of the appeal. It can also be viewed as an inevitable and necessary first step, albeit its cost to the City's citizens, of moving away from the Ontario Municipal Board's sphere of influence towards increased local self-determination. Should Council choose to proceed with establishing a local appeal body, a more detailed analysis could be done of the merits of distinguishing, from a fees perspective, the different appeal application types. The fee schedule for appeal applications could contemplate, for instance, the reduction of fees for applications appealing decisions surrounding technical type consents or for minor variances dealing with additions and alterations to existing dwellings with three units or less, while raising fees for other minor variance related appeals. However, any form of graduated fees, in the absence of predictability surrounding the type of appeals filed, will always have a degree of uncertainty attached to them from the cost recovery perspective. Council could also give consideration to having application fees incorporate the \$261,050 in start-up costs of establishing a local appeal body.

CONCLUSION

This report finds that a local appeal body which would hear appeals of Committee of Adjustment and consent decisions could be established to include qualified and trained part-time citizen appointees, chosen through the City's Public Appointments Policy. Council could not appoint anyone to the appeal board who is a City employee; a member of City Council; a member of the Committee of Adjustment or a member of a "prescribed" class, that is anyone Council identified through a local by-law as not being suitable for the appointment.

The appeal body could assign one panel member per hearing. Its total case load of 300 appeals per year could be divided amongst five panel members (60 hearings per member based on one day hearings with some built in allowance for multi-day hearings). An assumption of 70 hearing days per year per member would accommodate for pre-hearings and multi-day hearings. The members would require additional time for case preparation and site visits, decision writing, mandatory training and periodic business meetings. Additional administrative, budgetary and organizational responsibilities for the Chair would be recognized and remunerated. The term of appointment for the local appeal body could coincide with the term of Council,

Each hearing held by the local appeal body would be a hearing "de novo", meaning that the appeal application before the given local appeal body member would be examined as though it had not already been considered and either approved or denied by the Committee of Adjustment. The issuance of a written decision based on the hearing, would be a requirement.

In order for the local appeal body to be seen by the public as being independent from the City, the local appeal body would require dedicated support staff, an operating budget, workspace, meeting rooms and independent legal counsel. Jurisdictionally, it could be attached to a City Division such as Court Services and be informed by a "relationship framework" with that Division and the City as a whole.

The local appeal body (not Council) would have to establish its own rules of practice and procedure to govern its proceedings. This model would be informed by the Ontario Municipal Board's rules of practice. The local appeal body would be required to produce an annual report with audited financial statements.

The members annual remuneration would be based on \$350 per diem for 70 hearing days, 12 business meetings and 5 mandatory training days; 60 days for decision writing at \$300 per written decision and \$3,000 for expenses. The Chair would receive additional remuneration of \$30,000 compensating a host of additional duties.

Operating expenses for the full year, based on 2010 dollars, would be as follows:

Panel members remuneration	\$287,250
Support staff salaries and benefits	\$656,752
Legal counsel	\$147,000
Office operating expenses (excluding rent)	\$300,000
Rent (gross)	\$232,000
Contingency Costs	\$243,450
Total	\$1,866,452

Additional costs in the amount of \$261,050 would be incurred on a one-time basis to start the local appeal body up.

Legislatively, application fees for the local appeal body could only be set to cover the cost of processing the appeal applications. If the number of appeals of Committee of Adjustment decisions declined in any given year, net operating costs would be affected. Also, once created, the City's local appeal body for local planning decisions could not be abolished, without further amendment to the *City of Toronto Act*.

It is within this context that Council would need to carefully weigh the benefits of operating a local appeal body at a cost of approximately \$1.8 million per year. Council would also need to determine its best options with regard to cost recovery, which in applying the complete cost recovery option, would bring local appeal body fees to over \$6,000 per application. Partial cost recovery could also be an option, if Council chose to subsidize a portion of the local appeal body fees from the property tax base.

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