

# **LABS**

November 1, 2012  
Presentation to  
LAB Sub-Committee of PGMC

# Legislative Background

- Council requested Province to give us powers to establish a LAB
- Powers lodged in City of Toronto Act as Section 115
- Subject to Ontario Regulation 552/06

# Legal Principles

- Rules and principles found in case law and statutes including the Statutory Powers Procedure Act and Planning Act respecting the OMB and similar quasi-judicial tribunals would apply to the LAB
- The LAB would have to operate completely independently and at arm's length from City Council, its committees, members of Council and City Staff

# Legal Principles

- The LAB would be required to hold hearings of appeals
- The LAB would be required to adopt procedural rules – where the subjects to be covered by the rules, but not the actual rules, are prescribed under S. 115 (7)

# Legal Principles

- Like the OMB, the LAB would be required to make findings on the merits of the development proposal and would be empowered to dismiss an appeal or make any decision that the Committee of Adjustment could have made.
- Under S. 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 the LAB: once created - it could not be abolished.

# Legal Principals

- In other words, while Council could choose the LAB members and set the appeal fees, it is the LAB itself that would have to establish its rules and procedures
- The procedural rules adopted by the LAB could not affect the substantive rights of appellants under the Planning Act

# Some Appeal Related Facts

- City receives around 300 C of A appeals on an annual basis
- Over 80% of the appealed applications are for low-rise residential properties; 4% commercial, 3% mixed-use, 3% residential high-rise, 2% residential mid-rise , 2% residential and 3% other
- Highest level of appeals are in the former City of Toronto (40%), followed by North York (29%),

# Some More Appeal Facts

- 87% of C of A decisions are approved and 10% refused
- 60% of the applications refused, are appealed to the OMB
- 74% of the time the OMB overturns the C of A's decision
- Cost of lodging a appeal with the OMB is \$125.



# Issues to Consider

- The need for complete transparency & no perception of conflict
- Where would the LAB be “lodged”
- Organizational placement of support staff – and who would take carriage of overall administrative/budgetary operations
- What would the “Relationship Framework” with the City look like

# Issues to Consider

- Would the LAB aim for complete cost recovery in its operations?
- What are the options and what are the constraints?

# Issues to Consider

- Evaluating the key reasons for establishing a LAB can help inform the way the LAB should look and operate

Reasons:

Reduce OMB's sphere of influence?

Save money and staff resources by not going to the OMB?

Simply improve (faster, cheaper, better) neighbourhood dispute resolution process?

# Questions and Answers

- Could the City establish a LAB that has several different panels either geographically or by appeal type?

*Yes and no*

- Could the LAB provide for mediation as an operation as well as other prehearing procedures?

*Yes*

# Questions and Answers

- Would the LAB be required to adopt the OMB's rules of procedure?

*Yes and no*

- Could City Council impose rules of procedure?

*No*

- Could conditions forming part of a C of A decision be appealed without an appeal being made with respect to the variance or consent that has been granted?

*No*

# Questions and Answers

- Does the legislation give the City the authority to limit appeals of C of A decisions to Council and the applicant only?

*No*

- Would the LAB be able to refuse to hear an appeal on the same grounds that the OMB can refuse to hear an appeal?

*Yes*

- Does council have power to grant variances to zoning by-laws and reserve parts of the variance-granting power to itself?

*No*

# Questions and Answers

- What could be done to preclude hearings de novo by a LAB?

*Nothing*

- Could a LAB send an appealed matter back to the C of A because of subsequent changes made to the application?

*No*

- Could Legal Services provide advise of legal services of any kind to the LAB?

*No*

# What the 2010 Report Said

- 5 members
- 5 hearings per panel member per month (70 hearing days per year per member)
- Members part time
- Chair full time
- 90 day turn around
- \$350 per diem for hearings, business meetings and mandatory training
- Additional \$300 per written decision



# What the 2010 Report Said

- \$3,000 annual retainer to cover expenses
- No compensation for pre-hearing prep
- Chair would receive an additional retainer of \$30,000
- Panel members total remuneration/support staff salaries and benefits / :ega; counsel / Office operating expenses / rent / contingency costs – total \$1,866,452 (2010)
- Start-up costs \$34,050

# Recovery Options

- Legislatively application fees for the Lab could only be set to cover the cost of processing the appeal applications
- If the number of appeals of C of A decisions declined in any given year, net operating costs would be affected
- Once created, the city's local appeal body for local planning decisions could not be abolished
- Complete cost recovery estimated at \$6,000 per application