



## STAFF REPORT ACTION REQUIRED

### Implementation of a Local Appeal Body (LAB) for Toronto

<b>Date:</b>	June 16, 2015
<b>To:</b>	Executive Committee
<b>From:</b>	Acting City Manager
<b>Wards:</b>	City-wide

#### SUMMARY

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At its meeting of July 8 to 11, 2014, City Council directed the City Manager to report further on the implementation of a Local Appeal Body (LAB) and this report responds to that direction.

A Local Appeal Body for Toronto will replace the function of the Ontario Municipal Board (OMB) to adjudicate Toronto-based appeals of Committee of Adjustment decisions pursuant to section 45 of the *Planning Act* (related to minor variances) and section 53 of the *Planning Act* (related to consents). The OMB remains responsible to hear appeals related to Official Plan and Zoning By-law amendments, site plan applications and decisions related to subdivisions. If there are related appeals with the OMB and the LAB, the OMB rather than the LAB has jurisdiction to hear all matters. The Province of Ontario provides authority to the City to establish a LAB but has not provided authority for the City to change or dissolve a LAB once City Council has created it by By-law.

As instructed by City Council, this report recommends the governance, administrative, office space requirements and an appeal fee to move forward to implement a Local Appeal Body for Toronto. The implementation of the LAB requires both one-time capital costs and ongoing operating costs. One-time capital costs of \$1.577 million will be required to construct office space and hearing rooms, \$0.561 million in one-time start-up costs will be required to equip and fit-out office space, and an estimated \$1.689 million in annual gross operating cost requirements.

Upon adoption of this report, implementation will commence including:

- Recruiting and appointing members and a chair to the LAB;
- Securing and readying space for the LAB to operate;
- Drafting required by-laws and policies for the LAB's consideration; and
- Training and orientation of administrative staff and LAB members.

This report also discusses a number of legislative and City Planning policy initiatives that may have an impact on the LAB implementation and caseload and its business practices. These

initiatives include legislative changes proposed by private member's Bill 39 (*Planning Statute Law Amendment Act*) and Bill 73 (*Smart Growth for Our Communities Act*). As well, there are policy and operational reviews anticipated to commence that may impact the LAB including the provincial review of the operations, practices, procedures and reporting requirements of the Ontario Municipal Board, and City Planning's continued improvements to the Committee of Adjustment. In making the decision to move ahead with implementing a LAB for Toronto, City Council should give due consideration to these legislative and policy initiatives, and their potential impact on ongoing LAB requirements. Of particular concern is the inability of the City to dissolve or change the LAB once it is established.

## RECOMMENDATIONS

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The City Manager recommends that in order to implement the Local Appeal Body as instructed by City Council:

1. City Council adopt the Local Appeal Body Governance Structure summarized in Attachment 3 to this report;
2. City Council authorize a new Toronto Municipal Code Chapter for the Local Appeal Body substantially as outlined in Attachment 4 to this report and authorize the City Solicitor to bring forward the necessary bill to give effect to the new Chapter and the Implementing By-law for the Local Appeal Body, as required under the *City of Toronto Act 2006*, once the LAB members, including a Chair have been appointed by City Council and when the following activities have been completed to the satisfaction of the City Manager, in consultation with the City Solicitor:
  - a. Appropriate space has been secured, equipped and furnished, to accommodate the LAB;
  - b. Orientation and training of Members and staff has been completed; and
  - c. A draft Procedural By-law and draft policies, practices and procedures have been prepared for the LAB's consideration.
3. City Council approve a \$1000 appeal fee per appellant per hearing, to appeal a minor variance and/or consent decision of the Committee of Adjustment to the Local Appeal Body, and the City Solicitor be authorized to amend Toronto Municipal Code, Chapter 441, Fees and Charges concurrently with a By-law implementing the Local Appeal Body;
4. City Council approve a Lease between the City of Toronto (as Tenant) and the Toronto Public Library Board (as Landlord) for premises at 40 Orchard View Boulevard, for use by the Local Appeal Body, substantially on the terms and conditions as set out in Attachment 5 to this Report, and on such other additional or revised terms and conditions as may be mutually agreeable to the Chief Corporate Officer and the City Librarian, in a form acceptable to the City Solicitor, with the Chief Corporate Officer administering and managing the Lease on behalf of the City, including the provisions of any consents, approvals, waivers and notices, including notice of termination, provided that the Chief

Corporate Officer may, at any time, refer consideration of such matter to City Council for its determination and direction, and the Lease be subject to Toronto Public Library Board approval;

5. City Council authorize the Court Services Division to provide administrative support to the Local Appeal Body and coordinate its implementation;
6. City Council approve the transfer of the 2015 operating budget for the implementation of the LAB of \$1.050 million gross and \$1.0 million net to the Court Services Operating Budget, as well as an increase in the Court Services approved staff complement by 6 permanent positions, increasing the complement from 282 to 288 positions;
7. City Council approve the creation of a capital project entitled *Local Appeal Body Facility Renovations* with a total project cost of \$1.577 million as part of the Court Services Capital Program with annual cash flows of \$0.432 million in 2015 and \$1.145 million in 2016; funded from a contribution to capital of \$0.432 million and a contribution of \$1.145 million from the Capital Financing Reserve;
8. City Council authorize the City Manager in consultation with the City Solicitor and the Director of Court Services, to prepare the necessary draft policies, practices and procedures, including preparation of a draft Procedure By-law, to enable Local Appeal Body hearings for consideration of the Local Appeal Body prior to the commencement of its first hearing;
9. City Council establish a Local Appeal Body Nominating Panel, composed of three citizen members appointed by City Council on recommendation of the Civic Appointments Committee, to short-list, interview and recommend candidates directly to City Council for appointment to the Local Appeal Body;
11. City Council request the Province of Ontario to amend Subsection 145(3) of the *City of Toronto Act, 2006* to provide authority for the City of Toronto to change or dissolve a Local Appeal Body; and
12. City Council request the Province of Ontario to amend Subsection 69(1) of the *Planning Act* to permit the establishment of minor variance and consent application fees inclusive of the estimated costs of processing appeals to the Local Appeal Body.

## **Implementation Points**

Implementation of a Local Appeal Body (LAB) for Toronto will commence upon City Council's approval of this report. Key activities to implement the LAB are summarized below and must be completed prior to its first hearing. It is anticipated that the LAB will be able to commence hearings by December 2015 at the earliest.

### *Recruitment and Appointment Process*

The City Clerk will begin the process to recruit members including the establishment of a LAB Nominating Panel of three citizens, appointed by City Council on recommendation of the Civic Appointments Committee, to recommend LAB members to City Council for appointment. The LAB Nominating Panel will recommend appointment of members and a Chair to the LAB directly to City Council for approval once completed.

### *Lease Execution, Construction and Facility Readiness*

The Chief Corporate Officer, on behalf of the City, will approve the terms of the Lease with the Toronto Public Library Board to occupy the space at 40 Orchard View Boulevard on behalf of the LAB and pursuant to the Terms and Conditions substantially set out in Attachment 5 to this report, and commence the required facility renovations.

It is anticipated that the space at 40 Orchard View Boulevard will be ready for occupancy by the end of 2016. In the interim, the Chief Corporate Officer will seek appropriate temporary space for the LAB to operate for its first 12 to 18 months until the permanent space is ready.

### *Operational Readiness*

The City Manager, in consultation with the City Solicitor and Director of Court Services, will draft the Procedure By-law and other key by-laws and policies for the LAB's consideration when appointed. Court Services will also commence operational readiness, in consultation with the City Manager's Office, and coordinate overall implementation.

The City Solicitor will bring forward an implementation by-law to City Council pursuant to Subsection 115 of the *City of Toronto Act, 2006* to give effect to the Local Appeal Body when the following activities are completed:

- City Council has appointed members and a Chair to the LAB;
- Appropriate space has been secured, equipped and furnished to accommodate the LAB's operations;
- A draft Procedural By-law and draft policies, practices and procedures have been prepared for the LAB's consideration; and
- Orientation and training of Members and staff is complete.

### **Financial Impact**

The implementation of a LAB will require funding for one-time capital and start-up costs as well as ongoing operational costs.

### ***Capital Cost Estimates***

Capital funding required for construction of the office space and hearing rooms for the LAB is estimated at \$1.577 million as reflected in the table below:

<b>Item</b>	<b>Cost Estimate (\$000's)</b>
Consultant Fees and Building Permit	\$175.0
Renovation/Construction Costs	\$1,100.0
Security Equipment	\$50.0
Contingency	\$133.0
Project Management Fee	\$119.0
<b>Total</b>	<b>\$1,577.0</b>

It is recommended that a capital project entitled *Local Appeal Body Facility Renovations* with a total project cost of \$1.577 million be created as part of the Court Services Capital Program with annual cash flows of \$0.432 million in 2015 and \$1.145 million in 2016; funded from a contribution to capital of \$0.432 million and a contribution of \$1.145 million from the Capital Financing Reserve.

### ***One-Time Start-Up Cost Estimates***

One-time start-up costs for the LAB, including office equipment, furniture, computer and communications related fit-out costs as well as a project coordinator to oversee the initial implementation of the LAB during the first year of operations, are estimated to be \$0.561 million (\$0.474 million in 2015 and \$0.086 million in 2016).

Funding is available in the 2015 approved Operating Budget (LAB funding in 2015 of \$1.0 million net) for these one-time start-up cost requirements.

### ***LAB Annual Operating Cost Estimates***

It is estimated that the annual gross operating cost of the LAB will be \$1.689 million, including \$0.552 million total staff costs, \$0.350 million for member costs, \$0.625 million for overhead costs to operate the office, including legal costs and \$0.162 million for occupancy costs at 40 Orchard View Boulevard. Estimated revenues for the LAB under the recommended fee structure are \$0.245 million, resulting in an annual net operating budget requirement of \$1.444 million. The table below identifies the full operating impact of the implementation of a LAB from 2015 to 2017:

Item (\$000s)	Full Ongoing Operating Cost	2015 Operating Impact	2016 Incremental Impact	2017 Incremental Impact
Staffing (Salaries & Benefits)	\$552.0	\$46.0	\$506.0	
Member (Remuneration)	\$350.0	\$29.2	\$320.8	
Overhead & Legal	\$625.0	\$68.8	\$556.3	
Occupancy for Space	\$161.6	\$0.0	\$161.5	
<b>Sub-Total Ongoing Gross Expenditures</b>	<b>\$1,688.6</b>	<b>\$143.9</b>	<b>\$1,544.6</b>	
Start Up Costs	N/A	\$474.2	(\$387.8)	(\$86.3)
Contribution to Capital	N/A	\$431.9	(\$431.9)	
<b>Total Gross Expenditures</b>	<b>N/A</b>	<b>\$1,050.0</b>	<b>\$724.9</b>	<b>(\$86.3)</b>
<b>Revenue</b>	<b>\$245.0</b>	<b>\$50.0</b>	<b>\$195.0</b>	
<b>Net Expenditures</b>	<b>\$1,443.6</b>	<b>\$1,000.0</b>	<b>\$529.9</b>	<b>(\$86.3)</b>

The 2015 Operating Budget includes approved funding of \$1.050 million gross and \$1.0 million net for initial LAB start-up and operations in 2015. The level of funding approved for 2015 is adequate for all 2015 funding requirements however an additional \$0.530 million in operating costs will be required to sustain full ongoing operation costs.

In 2016 additional funding above current approved levels will be required within the Operating Budget in the amount of \$0.530 million, and \$1.145 million within the Capital Budget. All 2016 funding requirements will be reviewed and considered as part of the 2016 Budget process. In 2017, there is an incremental savings of \$0.086 million resulting from the completion of the temporary project coordinator position to set up the LAB.

### *Transfer of Approved Budget*

It is also recommended that the approved operating budget for the implementation of the LAB of \$1.050 million gross and \$1.0 million net be transferred to the Court Services Operating Budget.

The Deputy City Manager & Chief Financial Officer has reviewed the report and agrees with the financial impacts.

## **DECISION HISTORY**

At its meeting of July 8-11, 2014, City Council approved the establishment of a Local Appeal Body (LAB) and directed the City Manager to report to Executive Committee on the governance, administration and fees to implement the LAB and requested the City Manager to give consideration to a minimum fee for all applicants, and a fee at least equal to the fee paid to the Committee of Adjustment for appeals initiated by Committee of Adjustment applications.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.PG33.14>

In July 2011, City Council directed enhancements to the Committee of Adjustment, and requested the Chief Planner report on the feasibility of establishing an appeals board:  
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.PG6.5>

In June 2012, the Planning and Growth Management Committee established a Subcommittee of four of its members to develop a structure, relationship framework and implementation plan for a LAB and requested that the Subcommittee report to PGM on its findings:  
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.PG16.15>

Matters considered by the Subcommittee, in November and December 2012, are found at:  
<http://app.toronto.ca/tmmis/decisionBodyProfile.do?function=doPrepare&meetingId=6985#Meeting-2012.PZ1>

On December 4, 2013, Planning and Growth Management Committee requested the Chief Planner to initiate a public consultation process on the implementation of a LAB, and requested a report back on the results of the public consultation and with recommendations on implementation:  
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.PG29.19>

On December 16, 2013, City Council adopted a report from the Chief Planner containing recommendations for legislative change regarding the Province's review of the land use planning and appeal system. This included recommendations related to the creation of a LAB and expanding the powers of a LAB:  
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.PG29.16>

At its meeting of June 10 to 12, 2015, City Council adopted a report from the Chief Planner regarding proposed amendments to the *Planning Act* through Bill 73, *Smart Growth for Our Communities Act, 2015*, introduced by the Province on March 5, 2015:  
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.PG4.3>

## ISSUE BACKGROUND

The *City of Toronto Act, 2006* provides authority for the City to establish a Local Appeal Body to hear appeals under section 45 of the *Planning Act* (minor variances) and under section 53 of the *Planning Act* (consents). A Local Appeal Body replaces the function of the Ontario Municipal Board for hearing appeals of the decisions of the Committee of Adjustment and where there are no related appeals filed with the Ontario Municipal Board (OMB) for which the OMB has jurisdiction. The Ontario Municipal Board remains responsible for hearing appeals related to Official Plan amendments and Zoning By-law amendments, site plan applications and plans of subdivision.

A Local Appeal Body administers and conducts hearings, hears evidence and renders decisions on the appeals before it based on the merits of the application of the four tests of the *Planning Act*, which include for minor variance applications, that the variance is minor in nature, is appropriate development for the property, meets the general intent and purpose of the Official Plan and meets the general intent and purpose of the Zoning By-law.

In adjudicating and making determinations on minor variance and consent appeals, the LAB has all the powers and duties of the OMB under section 115 of COTA and the relevant provisions of the *Planning Act*. Similar to the OMB, appeals of decisions made by the LAB would be to Divisional Court, with permission of the Divisional Court, on a question of law.

The *City of Toronto Act, 2006* provides that although the City has the authority to establish a LAB, it does not have the authority to dissolve or change a LAB once it has been established.

A Local Appeal Body is required to adopt its own rules of practice and govern hearings pursuant to the *Statutory Powers Procedure Act* that, among other matters, reinforces the independence of administrative tribunals.

## COMMENTS

At its July 8 to 11, 2014 meeting, City Council authorized the implementation of a Local Appeal Body for Toronto and directed the City Manager to report back on the governance structure, administrative support and fee structure for the LAB.

This report responds to City Council's direction and recommends the governance structure of the Local Appeal Body including its composition, members' role and qualifications, eligibility for appointment, remuneration and the recruitment process. The report recommends that City Council establish an appeal fee of \$1000 and authorize Court Services to provide the administrative support to the Local Appeal Body. Lastly, the report seeks authority to enter into a Lease with the Toronto Public Library at 40 Orchard View Boulevard for the LAB and commence renovations upon execution of the Lease.

The City Manager considered the principles City Council adopted at its meeting of July 8 to 11, 2014 which are included in Attachment 1 to this report, in developing the governance, administration and fee structure of the LAB. The principles are intended to guide implementation, support the LAB's independence and ensure its effectiveness in meeting its mandate. Research, benchmarking and a case law review was also undertaken of similar land use and administrative tribunals related to composition, member qualifications, remuneration and fees.

The LAB will operate as an independent decision-making body free from influence by other parties, and will need to maintain an arm's-length relationship with City staff and City Council. While the LAB will be constituted and appointed by by-law at the pleasure of City Council, it will need to make decisions independently. This capacity for independent decision-making is especially important because of the fact that Council will continue to appoint Committee of Adjustment members, will appoint LAB members and will also continue to be able to appeal Committee of Adjustment decisions, and instruct Legal staff to argue positions before the LAB.

In addition to the *Statutory Powers Procedure Act*, the LAB will conduct itself in accordance with additional legislation and policies governing operations and conduct, including the *Municipal Conflict of Interest Act* and the City's Code of Conduct for Members of Adjudicative



Boards. The City's Integrity Commissioner has jurisdiction over the Local Appeal Body including with respect to the application of the Code of Conduct and related policies.

Preliminary estimates suggest that the LAB will hear approximately 325 appeals of minor variance and consent applications on an annual basis, and that the 325 appeals will require 245 separate hearings as some of the appeals will be heard together (consent and variance) in relation to the same project. The estimated number of applications appealed is based on the average number of appeals from 2009 to 2014 and is slightly higher than the preliminary estimate of 300 annual appeals identified in the 2014 report.

At an average rate of approximately 1.3 hearing days per application appealed, it is anticipated that 325 appeals would generate 425 hearing days for the LAB, including both adjudication and mediation hearings. This figure was used as a basis for estimates provided in this report with respect to composition, space and budgetary requirements. Attachment 2 summarizes appeal activity by district and type of appeal. As appeal activity has trended upwards over the past few years, the estimated average volume of 325 applications appealed per year will be monitored going forward.

## **1. Governance Structure of the Local Appeal Body**

The recommended governance structure for the Local Appeal Body is discussed below and summarized in Attachment 3 to this report and is consistent with the governance structures of similar land use bodies and other related administrative tribunals. The recommended governance structure supports the independence and arm's length nature of the LAB critical in order that the LAB can effectively carry out its mandate. This report also recommends that City Council establish a Toronto Municipal Code Chapter for the Local Appeal Body substantially as set out in Attachment 4. A separate Toronto Municipal Code Chapter for the LAB is consistent with the separate Toronto Municipal Code Chapters established for other City quasi-judicial and administrative tribunals.

### **A. Composition**

This report recommends that the Local Appeal Body be composed of seven members, including a Chair, and similar to the Ontario Municipal Board, that hearings be adjudicated by a single Member. A part time appointment for LAB Members and a full time appointment for the LAB Chair are recommended based on the composition and estimated caseload.

Based on the estimated caseload, this assumes approximately 77 hearing days per Member. Caseload volumes will be monitored closely during the first few years of implementation and the City Manager will bring forward composition amendments to reflect caseload volumes if required.

### **B. Eligibility**

The LAB members will be required to meet the eligibility requirements pursuant to the City's *Public Appointments Policy* and restrictions set out in the *City of Toronto Act, 2006*. The Act provides that the City shall not appoint a City employee, Member of City Council, a land

division committee, or member of a committee of adjustment or planning advisory committee member to the Local Appeal Body.

### **C. Role and Qualifications of Members**

It is important that Local Appeal Body members are experienced and skilled adjudicators and mediators to help ensure high quality hearing decisions that protect the public interest. This is particularly important for the LAB as it is responsible to hear appeals from the Committee of Adjustment decisions and the LAB decisions are final unless appealed to Divisional Court on a point of law.

The Local Appeal Body members, including the Chair, will be responsible for presiding over appeal hearings and conducting mediations. They will also be required to write hearing decisions and attend at least three business meetings of the Local Appeal Body annually. The recommended qualifications, set out in Section 6 of Attachment 3, will ensure that LAB members have the necessary skills and expertise to discharge their duties in an effective manner.

### **D. Role and Qualifications of the Chair**

In addition to the responsibilities and duties of LAB members, the Chair will be responsible to ensure hearings are fair and effective, that LAB decisions are of high quality and consistent and that the LAB holds regular business meetings as required. The Chair will also prepare an annual report to City Council, and coordinate operational activities including liaising with Court Services.

The Chair needs to be an effective leader. The Chair will be expected to ensure the hearing process is independent, effective, fair, professional and respectful, and that hearing outcomes are consistent, well written and rational. In addition to the recommended member qualifications discussed above and outlined in Attachment 3, the Chair will be required to demonstrate additional expertise and skills in order to perform this role effectively including well-developed leadership and administrative skills. The recommended qualifications for the LAB Chair are set out in Section 7 of Attachment 3.

### **E. Member Remuneration**

Remuneration levels for members of other land use planning bodies and related administrative tribunals in a range of other jurisdictions were reviewed as part of the due diligence for the implementation of the LAB. Remuneration varies significantly across bodies and jurisdictions from approximately \$400 to \$700 per diem rate. The remuneration of OMB members is a per diem of \$398 for part time members. The per diem rate for Toronto's Committee of Adjustment and Licensing Tribunal members is \$350.

The recommended remuneration for members of the Local Appeal Body, generally consistent with related bodies and tribunals, and considering the role and qualifications of members is:

- \$500 per diem for full day hearing or mediation;
- \$250 for a ½ day hearing or mediation;
- \$200 for a written decision; and
- \$200 for attendance at a business meeting.

In addition, the report recommends the Chair be remunerated an additional amount of \$60,000 annually for the administrative duties associated with the position. Based on the estimated case volume of 325 applications appealed annually, the recommended remuneration will be approximately \$42,000 per member annually and approximately \$101,000 for the Chair annually.

#### **F. Recruitment**

The recruitment process for the Local Appeal Body needs to be transparent, objective and promote impartiality. The proposed recruitment process includes City Council appointing three citizen members to a Nominating Panel on recommendation of the Civic Appointments Committee.

The Nominating Panel will be responsible to review the applications, short list and interview applicants and recommend preferred candidates for member appointment and the appointment of a Chair directly to City Council. Outreach and advertising will be conducted to attract qualified candidates to submit applications and a search firm may support the Nominating Panel in its work.

#### **G. Term**

The term for Local Appeal Body members will be subject to the term requirements of the City's Public Appointments Policy which provides for terms of 4 years until successors are appointed, served at the pleasure of City Council.

## **2. Fees for the Local Appeal Body**

City staff undertook a review and analysis of fees for land use bodies and related administrative tribunals including a case law review to identify fee options for the LAB. The analysis also considered legislative authorities and limitations in setting fees pursuant to the *City of Toronto Act, 2006* and the *Planning Act*, the City's User Fee Policy and principles of natural justice. Although fees for a LAB are not subject to the City's User Fee Policy, the general principles articulated in the Policy were considered in the analysis.

Pursuant to subsection 115(8) of the *City of Toronto Act, 2006*, City Council, by by-law, can establish fees for the Local Appeal Body. The *Planning Act*, Subsection 69(1) prohibits the City from recovering the cost of the LAB through planning application fees.

Appeal Fees should not prevent access to an appeal body and where they do, could be viewed as a barrier to justice. The basic rights of citizens to appeal may be found to be infringed upon if an appeal fee causes undue hardship to the person seeking adjudication. The role of the Local Appeal Body is to resolve disputes between parties and high fees that may prevent such resolution of disputes or appeals of decisions would be at odds with the basic function of the tribunal.

Six (6) fee options were evaluated including:

1. A flat fee of \$125 (the same appeal fee as the Ontario Municipal Board) which would require a 98% operating cost subsidy;
2. A flat fee of \$1000 which would require an 85% operating cost subsidy;
3. A flat fee of \$6900 which achieves full operating cost recovery;
4. A differential fee whereby applicants pay the Committee of Adjustment application fee (which varies from \$1500 to \$4300 depending on type of application) and neighbours pay a \$125 appeal fee which would require a 74% operating cost subsidy;
5. A differential fee whereby applicants pay 1.5 times the Committee of Adjustment application fee (which varies from \$2200 to \$6500 depending on type of application) and neighbours pay \$125 which would require a 62% operating cost subsidy; and
6. A differential fee whereby applicants pay the Committee of Adjustment application fee (which varies from \$1500 to \$4300 depending on type of application) and neighbours pay a stepped fee depending on type of application, which would require a 74% operating cost subsidy.

In conducting the review of fee options, the fact that some appeals are associated with the same project and will be adjudicated concurrently, (such as a consent decision with two related minor variance application appeals), was also considered. The fee options and related subsidy projections described above are based on an individual appellant's fee being charged on a per project appealed basis (rather than applied on each appealed application or decision individually), for 245 estimated annual hearings.

Fee option 1 reflects the OMB's current appeal fee of \$125, which has not been reviewed or adjusted in almost twenty-five years, and represents an operating subsidy of 98%. This fee option is not recommended particularly given the City currently is not able to recover LAB costs through planning application fees and the fee has not been adjusted in many years to reflect even basic inflation. Fee option 3, a flat fee of \$6900 to achieve full operating cost recovery, is not recommended as it is high and may be viewed as a barrier to seeking adjudication. A differential fee contemplated in fee options 4, 5 and 6 is also not recommended as differential fees based on the type of applicant raises legal implications related to access to justice. A differential fee structure has not been identified in use in any related administrative tribunal in Canada.

#### **A. Recommended Appeal Fee**

This report recommends Option 2, that the fee to appeal a minor variance or consent decision to the LAB be set at \$1000 per appellant on a per project appealed basis and that the fee be included in the Toronto Municipal Code, Chapter 441, Fees and Charges. The recommended fee balances a range of considerations including access to the LAB adjudication process, legislative constraints and ease of implementation, while providing some cost recovery.

For clarity, the appeal fee of \$1000 will be for each appellant and will be applied on a per hearing basis (rather than on each individual appealed application or decision). For example, an appeal of a consent application with two related minor variance applications for the same overall

project would have a total appeal fee of \$1000, not \$3000, applied on a project basis for each appellant filing an appeal. In addition only one fee would be paid for a project by each appellant, rather than a separate mediation fee and hearing fee, for example.

It is recognized that a fee of \$1000, while affordable to many, may still provide access issues for those without the ability to pay, and that the fee structure should not prohibit prospective appellants from accessing the LAB appeal process. The LAB will need to consider circumstances when they may waive or reduce appeal fees in their Rules of Procedure.

### **3. Administrative Support**

The Local Appeal Body requires administrative and hearing support in order to operate effectively including support related to:

- processing of appeals and hearings;
- scheduling hearings and assembling required materials;
- preparing notices and orders;
- meeting management support for hearings and mediations;
- administrative support for the LAB's business meetings and annual report preparation; and
- preparing its annual budget proposal for inclusion in the City's annual budget process.

This report recommends that City Council authorize Court Services to provide administrative and hearing support to the LAB. Court Services already provide this service to the Courts and the Toronto Licensing Tribunal and are well suited to assume this responsibility.

The Director, Court Services in consultation with the City Manager, will lead the implementation of the Local Appeal Body and coordinate its start-up over the next several months.

### **4. Facility Requirements of the LAB**

A review of location and facilities options was undertaken based on estimated space and operational needs of the LAB. It is anticipated a facility of at least 5,500 square feet for hearing, mediation, administration and file storage is required in a central location that is accessible by subway and has public parking in the area. Facilities staff undertook a property search across City and agency owned assets (including the Civic Centres) and third party buildings based on the requirements and several sites were short-listed for additional due diligence including site visits, rent and occupancy cost analysis and construction requirements to ready the space.

A centralized operational model in which LAB hearing facilities, member areas and office support functions are consolidated at one location, with an appropriate arrangement to encourage independence of operations, is preferred to a multi-location model that would significantly increase costs and reduce administrative efficiencies. Appeal application intake, however, could potentially occur at multiple locations.

This report recommends that City Council authorize a Lease between the City as Tenant and the Toronto Public Library Board as Landlord at 40 Orchard View Boulevard substantially on the terms set out in Attachment 5. The key terms include a Lease term of five years with two options to renew for an additional five years each, and at a cost of \$18 per square foot rentable area with a 2% annual inflation cost for a total annual cost of \$162,000.

Although the space recommended at that location is larger than the estimated space requirements of the LAB, it is the preferred option due to location, subway access and cost. The larger space of 7500 square feet usable space will enable a separate office area for the members, which supports the LAB’s independence and separation from the City administration. The additional space will also provide improved file storage.

Given that the Toronto Public Library owns the property, the cost of \$18 per square foot and \$162,000 annually reflects occupancy and maintenance costs only. The Orchard View Boulevard location was the only City or agency owned facility that the property search identified. A term of five years with an option to renew for an additional two five-year terms is recommended given that the LAB is a new body, caseloads are uncertain and legislative requirements could change in the future.

**A. Construction Costs and Timing**

Facilities staff assessed cost and time estimates for the required renovation and construction to outfit LAB space with hearing rooms, office space, public reception and file viewing areas, meeting rooms and related facilities.

The construction cost estimate for 40 Orchard View Boulevard is approximately \$1.577M, which includes an estimated \$175 per square foot renovation cost taking into consideration the specialized nature of the space including requirements to soundproof hearing and mediation rooms, and includes a project management fee for overseeing and coordinating all aspects of the procurement, construction and fit-out of the space. Facility Services staff estimate that construction will take approximately 12-18 months and will work with the LAB group and other appropriate City staff to ensure an expeditious construction period. Construction costs for the other short-listed sites were in the same order of magnitude.

**Estimated One-time Capital Construction Costs**

<b>Item</b>	<b>Cost Estimate (\$000s)</b>
Consultant Fees and Building Permit	\$175.0
Renovation/Construction Costs	\$1,100.0
Security Equipment	\$50.0
Contingency	\$133.0
Project Management Fee	\$119.0
<b>Total</b>	<b>\$1,577.0</b>

It is recommended that a capital project entitled *Local Appeal Body Facility Renovations* with a total project cost of \$1.577 million be created as part of the Court Services Capital Program with annual cash flows of \$0.432 million in 2015 and \$1.145 million in 2016; funded from a

contribution to capital of \$0.432 million and a contribution of \$1.145 million from the Capital Financing Reserve.

## 5. Start-Up Costs for the LAB

In addition to construction costs, one-time start-up costs are also required to set up the LAB. These include furniture, fixtures and equipment consisting of such items as furniture/work stations, equipment costs (computers, telephones), a filing system, cabling, hub equipment and signage, and a project coordinator to oversee the initial implementation of the LAB for a 12-month period estimated to commence in August 2015.

### Estimated One-time Start-up Costs

Item	Cost Estimate (\$000s)
Furniture, Fixtures and Equipment (7,500 sq.ft. at \$50 per sq.ft.)	\$375.0
Contingency at 10%	\$37.5
Project Coordinator (for 12 months)	\$148.0
<b>Total</b>	<b>\$560.5</b>

One-time start-up costs are estimated to be \$0.561 million (\$0.474 million in 2015 and \$0.086 million in 2016). Funding is available in the 2015 approved Operating Budget (LAB funding in 2015 of \$1.0 million net) for these anticipated 2015 one-time start-up cost requirements.

## 6. Annual Operating Budget for the LAB

It is estimated that the LAB's gross annual operating costs will be \$1.689 million. Operating costs include total staff costs (\$0.552 million), member costs (\$0.350 million), overhead costs to operate the office (\$0.625 million, also including legal costs) and occupancy costs (\$0.162 million) for the LAB's office/hearing room space at 40 Orchard View Boulevard.

Estimated revenues for the LAB under the recommended fee structure are \$0.245 million, resulting in an annual net operating budget requirement of \$1.444 million.

## Estimated Annual Operating Costs

Item	Cost Estimate (\$000s)
<b>Staff Costs Including Benefits</b>	
Supervisor (1)	\$130.0
Court Clerks (4)	\$345.0
Support Assistant (1)	\$77.0
<b>Total Staff Costs</b>	<b>\$552.0</b>
<b>Members</b>	
Chair	\$101.0
Members (6)	\$249.0
<b>Total Member Costs</b>	<b>\$350.0</b>
<b>Overhead Costs</b>	
Office Costs (IT services, translation service, office supplies, etc.)	\$425.0
Legal Costs	\$200.0
<b>Total Overhead Costs</b>	<b>\$625.0</b>
<b>Occupancy Costs for Space</b>	<b>\$161.6</b>
<b>Total Gross Expenditure</b>	<b>\$1,688.6</b>
Revenue (\$1,000 per hearing)	\$245.0
<b>Net Expenditure</b>	<b>\$1,443.5</b>

The 2015 Operating Budget includes approved funding of \$1.050 million gross and \$1.0 million net for initial LAB start-up and operations in 2015. The level of funding approved for 2015 is adequate for all 2015 funding requirements however an additional \$0.530 million in annualized operating costs will be required in 2016 to sustain full ongoing operation costs.

It is anticipated that the LAB will commence operations in December 2015. One month of operating costs at \$0.144 million gross and \$0.094 million net will be funded from the approved 2015 Operating Budget. The remaining 2015 balance is to be allocated as \$0.474 million toward one-time start-up costs and \$0.432 million as a contribution to capital.

In total, additional funding above current approved levels will be required in 2016 within the Operating Budget in the amount of \$0.530 million and within the Capital Budget at \$1.145 million. All 2016 funding requirements will be reviewed and considered as part of the 2016 Budget process.

## 7. Current Legislative Initiatives Related to A LAB

There are a number of legislative and operational initiatives currently underway, and summarized below, to improve the planning review and approvals process that may impact the operation and fees of a LAB, as well as the volume of appeals of Committee of Adjustment decisions.



In making the decision to move ahead with implementing the LAB, Council should give consideration to these significant additional matters and their potential to impact ongoing LAB requirements. Of particular concern is the inability of Council to dissolve or change the LAB once it has been established by by-law which may be addressed through the private member's Bill 39. The report also recommends that City Council request the Province of Ontario to provide authority to the City to dissolve or change the LAB.

**A. Bill 73 - *Smart Growth for Our Communities Act, 2015***

The Province undertook a review of the land use planning and appeal system in Ontario along with a review of the development charges system in October 2013 resulting in the Minister of Municipal Affairs and Housing introducing Bill 73. Bill 73 proposes to amend the *Planning Act* and *Development Charges Act*.

Among other matters proposed in the Bill, Bill 73 intends to give greater weight to Council decisions for planning applications on Official Plan and Zoning amendments, and to codify the outcomes of public consultation during the planning approvals process.

The key changes include:

- A regulation to be created which would enable municipalities to clarify what constitutes a minor variance;
- Limitations for a two-year period for minor variances following the enactment of any privately-initiated zoning by-law amendment, unless Council passes a resolution permitting the minor variance to proceed; and
- A requirement that City Council and the Committee of Adjustment include a brief written explanation in their notice of decision of the effect of written and oral submissions had on their decision.

Bill 73 proposes certain *Planning Act* amendments that could potentially impact the number and type of Committee of Adjustment applications and number and type of Ontario Municipal Board appeals. These changes could also have an impact on the type and number of appeal applications to Toronto's Local Appeal Body. The Bill has received second reading. Standing Committee dates have not yet been set.

City Council considered and adopted a report from the Chief Planner, *Planning Act – Proposed Amendments Introduced through Bill 73, Smart Growth for Our Communities Act, 2015* at its June 10 to 12, 2015 meeting.

**B. Bill 39 –*Planning Statute Law Amendment Act, 2014***

Private Member Bill 39 (P. Milczyn) proposes amendments to the *City of Toronto Act, 2006* and to the *Planning Act*, that if approved will affect the LAB.

One of the key proposed amendments is to provide authority to the City of Toronto to dissolve the Local Appeal Body. Currently, the City has authority to establish a LAB but does not have authority to dissolve or change it. Bill 39 also proposes to enable the City to charge a surcharge for processing development applications to cover or offset the cost of a LAB and to clarify that

there can be no appeal of fees established under the *Planning Act*, and that there can be no appeal of LAB fees. Finally, Bill 39 proposes an amendment to Ontario Regulation 552/06 under COTA strengthening the requirements for mediation and related procedures.

Bill 39 received second reading (on November 2014) and has been referred to the Standing Committee on General Government. In the event that Bill 39 is enacted, including authority for the City to include a surcharge in fees related development applications, the City will need to review its planning application fee structure including the appeal fee for the LAB.

### **C. Provincial Operational Review of the Ontario Municipal Board**

The Province of Ontario will undertake a review of the operations, practices, procedures and reporting requirements of the Ontario Municipal Board with a view to improve their role within the broader land use planning system. The Province will consult with municipalities, stakeholders and the public about key issues and improvements. It is premature to identify the potential impacts of this review on Toronto's land use planning approval process.

### **D. Committee of Adjustment Improvements**

The Chief Planner is currently undertaking a range of operational improvements to the Committee of Adjustment with a view to increasing its effectiveness and decision-making. City Council adopted a report on this matter in March of this year that identified a number of initiatives for implementation in the 2014 to 2018 term.

The measures to improve Committee of Adjustment operations include public notice improvements; electronic submission of applications, which will facilitate online access to project information; other web communication enhancements; and a more active, ongoing program of member training on topics suitable for Committee members' function and adjudicative role.

Further requests to staff arising from that Report include an annual review and additional training for Committee of Adjustment members, and a further report in 2015 on a range of other potential enhancements including notices, public participation and communication, and feedback from residents' associations/ neighbourhood groups on additional improvements.

In addition, City Council has requested the Chief Corporate Officer to pilot audio-visual recordings of Committee of Adjustment meetings in two locations in the fourth quarter of this year. The various enhancements currently underway may improve the quality of Committee of Adjustment decisions and the number of applications appealed over time.

## **8. Conclusion**

A wide range of implementation matters for the Local Appeal Body related to governance, finances, fees, administration, and leasing/fit-out of space for the Local Appeal Body are discussed in this report.

The report recommends a governance structure comprised of 7 members including a Chair, sets out the qualifications and eligibility for members and the Chair, and recommends remuneration

levels and a recruitment method that includes the creation of a 3-member Nominating Panel comprised of citizens.

This report sets out the budget implications for the Local Appeal Body inclusive of one time start-up costs and the initial full-year operating budget requirement. Application fee options were examined and a \$1,000 appeal fee per appellant per hearing is recommended. With this appeal fee the Local Appeal Body will require a high degree of tax-supported funding.

The fit-out and location of the Local Appeal Body are discussed in this report. It is recommended that the location of the Local Appeal Body be in the Yonge-Eglinton area at the Northern District Library at 40 Orchard View Boulevard. The recommended Lease terms are outlined in Attachment 5 to this report. The renovation of the space is expected to take 12 to 18 months.

The Court Services Division is recommended as the administrative/hearing support for the Local Appeal Body. Court Services is well suited to provide support and currently administer both the Courts and the Toronto Licensing Tribunal. Six City staff, including a Supervisor, will provide the required support. Legal services for the Local Appeal Body will be obtained externally.

At the time the Local Appeal Body is operationally ready the City Solicitor will bring forward the implementing by-law to give effect to the Local Appeal Body so the processing and hearing of appeals can commence.

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## **SIGNATURE**

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John Livey  
Acting City Manager

## **ATTACHMENTS**

- Attachment 1 - Guiding Principles for LAB Implementation
- Attachment 2 - Committee of Adjustment Appeal Activity
- Attachment 3 - Board Governance Structure for Toronto's Local Appeal Body
- Attachment 4 – Local Appeal Body Municipal Code Provisions
- Attachment 5 – Terms and Conditions for 40 Orchard View Boulevard

## Guiding Principles for LAB Implementation

1. **Appointment** – Members will be appointed using a fair and impartial recruitment process where the most qualified candidates are appointed by City Council.
2. **Qualifications** – Members will have adjudicative experience, familiarity with land use planning and planning law, ability to make sound, balanced decisions and be free of conflicts of interest.
3. **Remuneration** – Members will be remunerated at a level that ensures they are able to effectively perform their role.
4. **Oversight and Accountability** – The LAB will operate as an independent decision-making body free from influence by outside parties, and subject to appropriate legislation and policies.
5. **Practices and Procedures** – The LAB will determine its own hearing practices and procedures in accordance with relevant legislation such as the *Statutory Powers and Procedures Act* and *COTA*.
6. **Structure and Relationship with the City** – The LAB will be structured to provide efficient and timely due process with administrative support from the City.
7. **Costs of Implementing and Maintaining a LAB** – The City will provide adequate start-up and ongoing operational funding to the LAB to ensure that it functions effectively and independently.
8. **Appeal Filing Fees** – In establishing fees for the LAB, Council will be guided by the legislation, the City's User Fee Policy and principles of natural justice.

## Committee of Adjustment Appeal Activity 2009-2014

		2009	2010	2011	2012	2013	2014	2009-2014 Average
<b>East</b>	Minor variance	12	19	25	23	33	28	23
	Consent	5	4	6	11	7	6	7
	Total	17	23	31	34	40	34	30
	% of total appeals							9.2%
<b>North</b>	Minor variance	50	74	102	177	103	141	108
	Consent	11	14	16	37	13	34	21
	Total	61	88	118	214	116	175	129
	% of total appeals							39.8%
<b>South</b>	Minor variance	79	98	105	101	114	113	102
	Consent	7	14	12	9	20	17	13
	Total	86	112	117	110	134	130	115
	% of total appeals							35.5%
<b>West</b>	Minor variance	18	40	40	49	51	57	43
	Consent	5	4	10	9	11	8	8
	Total	23	44	50	58	62	65	50
	% of total appeals							15.6%
<b>Total</b>	<b>Minor variance</b>	<b>159</b>	<b>231</b>	<b>272</b>	<b>350</b>	<b>301</b>	<b>339</b>	<b>275</b>
	<b>Consent</b>	<b>28</b>	<b>36</b>	<b>44</b>	<b>66</b>	<b>51</b>	<b>65</b>	<b>48</b>
	<b>TOTAL</b>	<b>187</b>	<b>267</b>	<b>316</b>	<b>416</b>	<b>352</b>	<b>404</b>	<b>324</b>

## Governance Structure for Toronto's Local Appeal Body

### 1. Mandate

The Local Appeal Body is an independent quasi-judicial tribunal that hears appeals of Committee of Adjustment decisions for minor zoning variances and land severances (consents).

The Local Appeal Body is a local board of the City established under the *Planning Act* and the *City of Toronto Act, 2006*. The Local Appeal Body assumes all the powers and authority of the Ontario Municipal Board for hearing appeals to Committee of Adjustments decisions for minor variance and consent applications. Local Appeal Body hearings will be conducted in accordance with the *Statutory Powers Procedure Act*.

### 2. Member Responsibilities

LAB members are responsible to:

- Review materials filed with each application they hear;
- Conduct site inspections of the subject property to assess the impacts the proposal may have on the surrounding area;
- Conduct mediations;
- Preside over hearings and render a written decision based on the evidence presented;
- Attend business meetings of the Local Appeal Body; and
- Attend training sessions.

### 3. Chair Responsibilities

In addition to the member responsibilities identified in Section 2, the Chair of the Local Appeal Body is responsible to:

- Ensure that hearing practices of the Local Appeal Body are fair and effective;
- Ensure quality and consistency of Local Appeal Body decisions;
- Act as the lead representative and spokesperson for the Local Appeal Body;
- Obtain external legal advice as needed;
- Prepare the Annual Report to City Council on the Local Appeal Body activities;
- Chair the Business Meetings of the Local Appeal Body;
- Liaise with City staff on administrative support matters;
- Coordinate member training and professional development; and

- Lead the response to information and privacy related matters respecting the Local Appeal Body

#### **4. Board Size and Composition**

The Local Appeal Body consists of seven members, including a Chair. Each hearing is conducted by one member.

#### **5. Eligibility Requirements**

Citizen members are eligible for appointment to the Local Appeal Body, and eligible to remain on the Local Appeal Body after appointed, if they satisfy the eligibility requirements for appointment as set out in the City's *Public Appointments Policy*. Former Council Members who served in the immediately preceding term of Council are ineligible for appointment.

The LAB members will be required to meet the eligibility requirements pursuant to the *City of Toronto Act, 2006*. The Act provides that the City shall not appoint a City employee, Member of City Council, a land division committee, or member of a committee of adjustment or planning advisory committee member to the Local Appeal Body.

A member of the Local Appeal Body cannot act as an agent for applicants before the Committee of Adjustment, Local Appeal Body and other City administrative tribunals and would be required to resign from the Local Appeal Body before doing so. Individuals who act as agents for applicants are not eligible for appointment.

#### **6. Member Qualifications**

Local Appeal Body members shall have the following skills and expertise:

- Experience in adjudication and mediation;
- Knowledge and experience with land use planning and planning law;
- Excellent listening skills and ability to analyze complex evidence;
- Sound judgement, tact, fairness and decorum;
- Ability to write clearly and concisely;
- Demonstrated high ethical standards and integrity;
- Ability to work under pressure to ensure timely hearing decisions; and
- Respect for access to justice, diversity and accommodation.

#### **7. Chair Qualifications**

In addition to Member Qualifications the Chair shall also exhibit

- Demonstrated leadership and administrative skills;

- Highly developed chairing and facilitation skills;
- Demonstrated ability to work effectively with others;
- Knowledge of access to information and privacy legislation; and
- The ability to effectively represent the Local Appeal Body and communicate with City Council, City committees, the media and the general public.

## **8. Citizen Appointments Process**

The Chair and the Members are recruited through the following process. Applicants will need to indicate whether they are applying for recruitment as a member or as Chair.

City Council, on the recommendation of the Civic Appointments Committee, will approve the selection of a Nominating Panel of three citizens and their Terms of Reference. The Nominating Panel will review applications, determine which candidates are to be interviewed, conduct the interviews and assessments, and make a recommendation to City Council on which members and a Chair should be appointed to the Local Appeal Body.

A search consultant may be used to recruit applicants for the Member and Chair positions. The City Clerk may administer a written test to help assess the competencies of the candidates to be used by the Nominating Panel.

## **9. Hearings**

Hearings are subject to notification requirements of the *Planning Act* and any Procedure By-law requirements that the Local Appeal Body may adopt. Hearings are open to the public.

## **10. Remuneration**

### **Members**

\$500 per diem for full day hearing or mediation

\$250 for a ½ day hearing or mediation

\$200 for a written decision

\$200 for attendance at a business meeting

### **Chair**

In addition to receiving the remuneration for a member, the Chair shall receive \$60,000 annually for performing their duties as Chair.



## Local Appeal Body Municipal Code Provisions

Subject	Provision
Creation of Committee	The Local Appeal Body is constituted by the City of Toronto
Mandate	<p>The Local Appeal Body is an independent quasi-judicial tribunal that hears appeals of Committee of Adjustment decisions for minor zoning variances and land severances (consents).</p> <p>The Local Appeal Body assumes all the powers and authority of the Ontario Municipal Board for hearing appeals to Committee of Adjustment decisions for minor variance and consent.</p>
Procedures	The Local Appeal Body must establish its own Procedure By-law adopted at a Business Meeting. Local Appeal Body hearings are conducted in accordance with the Procedure By-law and the <i>Statutory Powers Procedure Act</i> .
Board Composition	The Local Appeal Body consists of seven members, including a member who acts as the Chair.
Member Responsibilities	Local Appeal Body members are responsible for conducting mediations, presiding over hearings and rendering a written decision on hearings based on the evidence presented.
Term	The term of Local Appeal Body members is subject to the City's Public Appointments Policy and is 4 years, or until successors are appointed.
Staff Support	The Court Services Division administers the Local Appeal Body.

**Terms and Conditions for Lease of 40 Orchard View Boulevard**

Landlord:	Toronto Public Library Board
Tenant:	City of Toronto (for use of the Local Appeal Body)
Address:	40 Orchard View Boulevard
Area:	8,975 square feet of Rentable Area (7,500 square feet of Usable Area) on the second floor, being suites 211, 215, 253 and 256
Term:	A term of five (5) years, with two (2) options to renew for an additional five (5) years each
Commencement:	To be finalized after City Council approves staff report and construction is completed (estimated to be October 1, 2015)
Fixturing Period:	The Tenant shall have three months of the term free of Gross rent for the purpose of undertaking the Tenant's work including demolition, renovation and installing fixtures/furniture, etc., with Gross rent anticipated to commence January 1, 2016.
Rent	Gross rate of \$18.00 per square foot (Rentable Area) to be escalated on an annual basis of 2% per year based on inflation. Annual amount to be \$161,550. Total maximum cost of the Agreement will be \$2,793,752, based on a maximum 15-year commitment. There will be no extra costs associated with utilities, tenant's proportionate share, operating costs or realty taxes.
Options:	Two (2) options to renew for an additional five (5) years each, with 6 months' notice
Tenant's work:	Tenant will undertake capital improvements of approximately \$1.577 million, based on 7,500 square feet Usable Area.
Termination Clause:	By the Tenant only with six month written notice
First Right of Refusal	The Landlord covenants and agrees that the Tenant shall have the first right of refusal to lease any additional useable space in the building adjacent to any portion of the Premises that becomes available at commencement of the tenancy, renewal and or extension thereof.

## Overholding

In the event that the Tenant remains in occupation of the premises at the expiration of the lease or any renewal or extension thereof, the Tenant shall remain as a month to month tenant at the rent and on the same terms and conditions immediately preceding the expiration of the lease or any renewal or extension thereof. This would include the provision of a 2% annual increase that commences January 1 of each year.