



**STAFF REPORT
ACTION REQUIRED**

Follow-Up Report on a Local Appeal Body (LAB) for Toronto

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|---------------|---------------------|
| Date: | February 24, 2016 |
| To: | Executive Committee |
| From: | City Manager |
| Wards: | All |

SUMMARY

At its meeting of June 30, 2015, Executive Committee considered a report from the City Manager, *Implementation of a Local Appeal Body (LAB) for Toronto*. The Committee referred the report to the City Manager to report further on a number of additional matters including a review and consultation on establishing a mediation program related to Committee of Adjustment decisions prior to an appeal being heard by the appeal authority as well as an update on related legislative initiatives. This report responds to Executive Committee's request.

Mediation Program

City staff undertook research and consultation with key stakeholders related to a mediation program for land use planning disputes related to minor variance and consent applications. While research shows limited experience with using mediation for land use planning disputes, in general, mediation has been demonstrated to be an effective tool for resolving disputes between parties outside of the formal legal or adjudicative process.

Given the general benefits of mediation as a means of resolving disputes, a pilot program to test the impact of mediation with respect to appeals of Committee of Adjustment decisions is recommended.

Update on Legislative Initiatives

The Province of Ontario recently approved amendments to the *Development Charges Act* and the *Planning Act* through Bill 73: *Smart Growth for Our Communities Act, 2015*, including changes intended to improve the decision-making and effectiveness of Committees of Adjustment. The Province has not yet announced an in-force date for these changes.

City Council requested a range of legislative amendments to the *City of Toronto Act, 2006* that will impact the LAB including authority for the City to dissolve or change a LAB and recover

the costs of a LAB through the application planning process. It is anticipated that legislative amendments to COTA will be introduced in spring 2016. It is unknown whether the Province will make the changes requested by City Council.

Implementing a Local Appeal Body for Toronto

City Council at its June 2014 meeting, approved the establishment of a LAB for Toronto 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 Ontario Municipal Board (OMB) would remain responsible for conducting hearings on 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.

As instructed by City Council, this report recommends the governance structure, administrative structure, office space requirements, as well as an appeal fee, needed to move forward with the implementation of LAB. The governance and associated implementation details are substantively the same as provided in the report to Executive Committee in June 2015 with the exception of the appeal fee. City staff reviewed the appeal fee and recommend an appeal fee of \$500 rather than \$1000 to ensure reasonable access to persons seeking adjudication.

The implementation of the LAB requires one-time operating costs (\$0.561 million in start-up costs to equip and fit-out office space), \$1.689 million gross and \$1.517 million net in ongoing annual operating costs to operate the LAB, as well as \$1.577 million in capital costs for the construction of the office space and hearing rooms.

In addition to the above costs, an additional \$0.050 million will be required for a Mediation Pilot Project in the North York District that will address disputes on minor variance and consent applications.

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.

RECOMMENDATIONS

The City Manager recommends that:

1. City Council adopt the Local Appeal Body Governance Structure in Attachment 1;
2. City Council direct that a separate Toronto Municipal Code Chapter be established for the Local Appeal Body substantially as provided for in Attachment 2 of this report and authorize the City Solicitor to bring forward a By-law implementing the Local Appeal Body once the following activities have been completed to the satisfaction of the City Manager, in consultation with the City Solicitor:
 - a. The LAB Members including a Chair have been appointed by City Council;
 - b. Appropriate space has been secured, equipped and furnished, to accommodate the LAB;
 - c. Orientation and training of Members and staff has been completed; and
 - d. A draft Procedural By-law and draft policies, practices and procedures have been prepared for the LAB's consideration.
3. City Council approve a \$500 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 3 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 2016 operating budget from the Non Program Account for the implementation of the LAB of \$1.536 million gross and \$1.479 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 \$1.0 million in 2016 and \$0.577 million in 2017; funded from a contribution to capital of \$0.391 million and a contribution of \$1.186 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 to enable Local Appeal Body hearings for consideration by 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 Appointment Committee, to short-list, interview and recommend candidates directly to City Council for appointment to the Local Appeal Body;
10. City Council approve a one-year Mediation Pilot Project in the North York District with respect to minor variance and consent applications and request the City Manager, in consultation with the Director of Court Services, to report back to Planning and Growth Management Committee on the effectiveness of the pilot project in reducing matters appealed to the appeal authority; and
11. City Council approve the transfer from the Non Program Account of the 2016 Operating Budget for the Mediation Pilot Project of \$0.050 million gross and net to Court Services Operating Budget.

Implementation Points

Local Appeal Body

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 October 2016 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 Appointment 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 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 mid to late 2017. 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 key by-laws and policies for the LAB's consideration when appointed. A draft Procedure By-law has been drafted for the LAB's consideration modelled on the Procedure By-law of the Ontario Municipal Board. Court Services will 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 LAB 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 operating 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:

| Item | Cost Estimate (\$000's) |
|-------------------------------------|--------------------------------|
| 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 |
| Total | \$1,577.0 |

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 a cash flow of \$1.0 million in 2016 and \$0.577 million in 2017; funded from a \$0.391 million contribution to capital from the 2016 Operating Budget, with the remaining \$1.186 million funded 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 \$0.560 million (\$0.524 million in 2016 and \$0.037 million in 2017).

Funding is available in the 2016 Operating Budget (funding for LAB start up and operations in 2016 of \$1.529 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 \$0.171 million, resulting in an annual net operating budget requirement of \$1.517 million.

| Item (\$000s) | Full Ongoing Operating Cost | 2016 Operating Impact | 2017 Incremental Impact | 2018 Incremental Impact |
|---|-----------------------------|-----------------------|-------------------------|-------------------------|
| Staffing (Salaries & Benefits) | \$552.0 | \$184.0 | \$368.0 | |
| Member (Remuneration) | \$350.0 | \$175.0 | \$175.0 | |
| Overhead & Legal | \$625.0 | \$208.3 | \$416.7 | |
| Occupancy for Space | \$161.6 | \$53.9 | \$107.7 | |
| Sub-Total Ongoing Gross Expenditures | \$1,688.6 | \$621.2 | \$1,067.4 | |
| Start Up Costs | N/A | \$523.5 | (\$486.5) | (\$37.0) |
| Contribution to Capital | N/A | \$391.5 | (\$391.5) | |
| Total Gross Expenditures | N/A | \$1,536.2 | \$189.4 | (\$37.0) |
| Revenue | \$171.5 | \$57.2 | \$114.3 | |
| Net Expenditures | \$1,517.1 | \$1,479.0 | \$75.1 | (\$37.0) |

The 2016 Operating Budget includes funding of \$1.529 million net for initial LAB start-up and operations in 2016.

In 2017 additional funding above current approved levels will be required within the Operating Budget in the amount of \$0.075 million, in 2018, there is an incremental savings of \$0.037 million resulting from the completion of the temporary project coordinator position to set up the LAB.

Mediation Pilot Project

It is recommended that in addition to the above costs, \$0.050 million will be required in 2016 for a Mediation Pilot Project in the North York District that will address disputes on minor variance and consent applications.

Of the \$1.529 million in net funding included in the 2016 Operating Budget for initial LAB start-up and operation costs, \$0.050 million will be allocated to Court Services to administer the Mediation Pilot Project.

Transfer of Approved Budget

It is recommended that the 2016 Operating Budget of \$1.586 million gross and \$1.529 million net be transferred as follows:

- \$1.536 million gross and \$1.479 million net to the 2016 Court Services Operating Budget for implementation of the Local Appeal Body; and
- \$0.050 million gross and net to the 2016 Court Services Operating Budget for implementation of the Mediation Pilot Project.

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

DECISION HISTORY

City of Toronto Act, 2006 (COTA)

At its October 2015 meeting, City Council adopted the report, *Five Year Review of the City of Toronto Act, 2006* and authorized the City Manager to submit the requested amendments to COTA to the Minister of Municipal Affairs and Housing and for the Mayor and City Manager to negotiate changes as required.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EX8.1>

Bill 73, Smart Growth for Our Communities Act, 2015

On May 14, 2015, Planning and Growth Management Committee 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>

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>

Local Appeal Body

At its meeting of June 30, 2015 Executive Committee referred the June 16, 2015 report ("Implementation of a Local Appeal Body (LAB) for Toronto") to the City Manager and requested that he report further on a review and consultations with ratepayer organizations, industry and other key stakeholders on establishing a mediation program related to Committee of Adjustment decisions. The Executive Committee also requested that the City Manager report on provincial legislative amendments that may have implications for the Local Appeal Body.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EX7.7>

In July 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>

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>

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>

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>

ISSUE BACKGROUND

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

A LAB 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 Plans 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.

A LAB 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 June 30, 2015 meeting, Executive Committee considered a report from the City Manager, *Implementation of a Local Appeal Body (LAB) for Toronto* that responded to City Council's direction to bring forward a report in order to implement a LAB including its composition, members' role and qualifications, eligibility for appointment, remuneration and the recruitment process. The report also recommended an appeal fee and sought authority to enter into a Lease with the Toronto Public Library Board for the LAB and commence renovations upon execution of the Lease.

Executive Committee referred the report back to the City Manager and requested he report further on a mediation program for Committee of Adjustment decisions, an update on the various legislative initiatives and an appeal fee where the costs can be recovered through the planning application process. This report responds to Executive Committee's request.

1. Review and Consultation on a Mediation Program

Mediation is an Alternative Dispute Resolution (ADR) tool where a third party helps disputing parties to reach a voluntary, mutually acceptable solution on some or all of the issues in dispute. Mediation is typically held in private and participation is voluntary, it is commonly used in fields such as family law, workplace disputes and the insurance industry.

Background research demonstrates that mediation can be an effective tool for resolving disputes in that it can reduce overall costs and timelines and increase the likelihood of a settlement. Mediation can also help parties identify issues, encourage flexibility for parties to consider different options, provide an opportunity for enhanced communication and for parties to be heard. Several studies concluded that even when mediation did not produce satisfying outcomes for the participants, many felt satisfied with the mediation process and would participate in mediation in the future.

A. Mediation for Land Use Planning Disputes

There is limited use of mediation programs for land use planning disputes across jurisdictions prior to an appeal and limited literature or experience with this type of program. Where mediation has, or is being used for land use planning disputes, there is some evidence that it has been beneficial in reducing costs and overall timelines.

Four (4) jurisdictions that use or have used mediation as part of their land use planning process (prior to an appeal to their relevant planning board) were identified and evaluated including Calgary (undertook a pilot program in 1998 and then discontinued it), Albuquerque, New Mexico, Berkeley, California and Denver, Colorado. Each program operated somewhat differently. Two of them were part of a broader alternative dispute resolution program provided

by a community-based not-for-profit organization and not limited to land use planning. Municipal planning staff generally had no role or a limited role in the mediation process and all jurisdictions relied on third party mediators.

Anecdotal reports show that these land use mediation programs can result in shortened timelines and can pre-emptively address issues and help bring about consensus amongst divisive parties. Among the challenges identified included the identification of parties, interests and issues may take substantial preliminary work to clarify the dispute; and, that mediation may be most suited to larger and more controversial projects.

B. Mediation in the Current Land Use Planning Process

Currently, there is no formal mediation program as part of the Committee of Adjustment process. Applicants are encouraged to consult with neighbours and where necessary, to try to address any issues prior to formally making an application to the Committee of Adjustment. At the hearing, Committee members may suggest that the applicant and any party present who objects to the application, leave the room and try to resolve the dispute prior to the Committee hearing the application.

The Ontario Municipal Board has a formal mediation program as part of its adjudicative process. Similarly, the LAB will be required to consider mediation as part of its Rules of Procedure.

C. Consultation on Mediation Program

City staff consulted on a possible mediation program with the Building Industry and Land Development Association (BILD), and ratepayer association members of the Confederation of Resident and Ratepayer Associations in Toronto (CORRA) and the Federation of North Toronto Residents Association (FONTRA).

Varying opinions were raised at the meeting with BILD including concerns with additional time and cost it may add to the current land planning process, and many suggested that mediation may be more suitable for large and complex applications rather than consents and minor variances.

Representatives of the ratepayer groups who were consulted agreed that improvements to communication between parties is important and that more opportunities to create dialogue between applicants and neighbours would be beneficial. Many of the comments focused on concerns regarding the Committee of Adjustment process, and building on the current system that encourages early dialogue between different parties. This could involve creating a more formal mediation element as part of the Committee of Adjustment process. Opinions varied on how mediation could work for Committee of Adjustment applications, particularly with respect to the timing of mediation (before or after a Committee of Adjustment decision) and identifying the relevant parties in the matter to be mediated.

With respect to the Committee of Adjustment process, many of the comments reflected similar concerns expressed in earlier public consultations, including:

- the role of the Committee of Adjustment in an increasingly complex environment due to development pressures;
- Committee of Adjustment members' understanding of cumulative impacts of variances on a neighbourhood;
- not allowing changes or modifications to be made to applications before the hearing after the application has been made;
- improving the information provided in public notices and increasing the notice period;
- ensuring consistency in decision-making across Committee of Adjustment panels; and
- the role of Residents Associations in the Committee of Adjustment application and appeal process.

These concerns and suggestions are being addressed as part of the Chief Planner's broader efforts to improve the Committee of Adjustment decision-making process.

D. Pilot Project on Mediation for Committee of Adjustment Decisions

Based on an evaluation of the feedback received from stakeholder consultations and best practices relating to the merits of introducing alternative dispute resolution as a means of resolving disputes in a less adversarial, more timely and ultimately more cost effective manner for all parties concerned, staff are seeking City Council approval to introduce a one-year Mediation Pilot Project as part of the North York Committee of Adjustment Panel's decision-making process. The pilot would evaluate the benefits of mediation in resolving disputes relating to minor variance and consent applications adjudicated by the Committee of Adjustment Panel, prior to an appeal of the Committee of Adjustment decision being heard by the appeal authority. The intent of the pilot would be to ascertain if fewer matters would be appealed.

Staff recommend that two mediation options be considered, the first being mediation that takes place before the Committee of Adjustment decision has been made and the second, after the Committee of Adjustment decision has been made. Participation in the Mediation Pilot Project would be voluntary and at no cost to the applicant or the other affected parties disputing the application.

Court Services will coordinate the Mediation Pilot Project to ensure that it is operated independently from the City's current land use planning process.

Other key aspects of the proposed Mediation Pilot Project include:

Scope

- The option for mediation will be extended to all minor variance and consent application types.
- Minor variance and consent matters related to the same application will be considered together for mediation purposes.

Timing

- Mediation occurring prior to a decision being made by the Committee of Adjustment would be triggered when the Committee has deferred making a decision in favour of the opportunity for mediation to take place. The matter would return to the Committee for another hearing after the mediation had concluded. It should be noted that the mediation will not fetter the authority of the Committee to refuse a minor variance if it fails to meet the tests set out in the *Planning Act*, notwithstanding parties may have mediated a settlement.
- Mediation occurring after the Committee of Adjustment decision (whether the decision approved the application or refused it) would be triggered by the applicant or other affected parties requesting mediation prior to the matter being heard by the appeal authority.

In this instance, the mediation would take place before or after an appeal to the appeal authority of the decision was launched (the mediation window being the legislated 20 day post-decision period that the applicant or other person or body has to file their appeal along with the legislated 15 day withdrawal period after the last day for filing a notice of appeal);

- Mediated settlements that varied the original application under dispute would return to the Committee for a new hearing.
- Mediation could occur weekly or bi-monthly, following the Committee of Adjustment hearing at the North York Civic Centre, and with the assistance of outside professionals who would be retained by the City to participate in mediation.

Process

- Any new documents created for a mediation would remain confidential unless that confidentiality was waived.
- Mediation would occur on a “without prejudice” basis and a position taken in mediation could not be held against that party outside of mediation.
- Nothing would prevent a party to a mediation from formalizing or adjusting their position outside of the mediation, based on what was learned through mediation, so long as the details/documents discussed and disclosed during mediation remained confidential.
- All mediated settlements would require simple yet formalized Minutes of Settlement drafted by the participating parties with the assistance of the mediator.
- The mediator could decide on the mediation style. For example, mediation could involve face-to-face negotiation or shuttle diplomacy (where the parties separate into rooms and pass messages through the mediator/facilitator). Breakout sessions on issues can also work to get past impasses.

Parties Involved

- Mediation would include the applicants and other affected parties, including their agents.

The City Manager, in consultation with Court Services, will report back on the outcomes of the Mediation Pilot Project to Planning and Growth Management Committee in the third quarter of 2017.

E. Pilot Project Resources and Remuneration

The mediation session would be facilitated by an external professional planner and an accredited mediator, both of whom would be recruited and remunerated in accordance with established City hiring and remuneration policies.

A temporary part-time administrative assistant is recommended to be retained to assist with scheduling and co-ordinating the mediation meetings and liaising with existing Committee of Adjustment staff around matters such as the giving of notice.

Court Services will establish a roster of professional mediators, ensuring their familiarity with North York's planning context and experience in mediating land-use planning matters.

Remuneration levels for senior land use planning professionals and professional mediators were reviewed as part of the due diligence for the implementation of the Mediation Pilot Project. The recommended remuneration for mediators considering the role and qualifications of members will be:

- \$800 per diem for a full day (6 hours) of mediations – the \$800 represents the average combined per diems of the professional planner and mediator; and
- a cap of \$2,000 per person for the professional planner and mediator to attend training sessions and the pilot assessment review.

Based on the estimated case volume of 100 potential applications requiring mediation annually in North York, requiring an estimated 1.5 hours on average per mediation, the remuneration will be approximately \$40,000 annually plus \$4,000 for training and the pilot assessment. In addition a salary of approximately \$6,000 for a part-time temporary administrative assistant to assist with scheduling and co-ordinating with Committee of Adjustment Staff is included in the cost of the Mediation Pilot Project.

F. Estimated Costs for Mediation Pilot Project

Total estimated costs for the Mediation Pilot Project will be capped at \$50,000. Mediation as part of this pilot project will be undertaken on a first come, first served basis. Depending on demand, the mediation pilot project may end prior to a year being completed. Once the funding has been used, the pilot project will end and an evaluation completed and the results reported to the Planning and Growth Management Committee.

Estimated Costs for Mediation Pilot Project

| Item | Cost Estimate (\$000s) |
|----------------------------------|-------------------------------|
| Mediator Remuneration | \$40.0 |
| Administrative Support | \$6.0 |
| Training and Assessment of Pilot | \$4.0 |
| Total | \$50.0 |

2. Update on Legislative Initiatives Related to a LAB

There are a number of legislative and operational initiatives currently underway that may impact the land use planning process including a LAB. These initiatives are summarized below and include Bill 39 – *Planning Statute Amendment Act, 2014*, Bill 73 – *Smart Growth for Our Communities Act 2015* and the Five-Year Review of the *City of Toronto Act, 2006*.

A. Bill 39 – Planning Statute Law Amendment Act, 2014

Private Member Bill 39 (MPP Milczyn) proposes amendments to the *City of Toronto Act, 2006* and to the *Planning Act* related to a LAB. One of the proposed amendments is to provide authority to the City of Toronto to dissolve the LAB as currently the City may establish a LAB but not dissolve or change it. City Council also requested this amendment as part of the five-year review of the *City of Toronto Act, 2006*. Bill 39 also proposes to enable the City to charge a surcharge for processing development applications to offset the cost of a LAB and to clarify 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 in late 2014 and was referred to the Standing Committee on General Government.

B. 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 to amend the *Planning Act* and *Development Charges Act*. Bill 73 – *Smart Growth for Our Communities Act, 2015* received royal assent in late 2015 but has not yet been proclaimed into law. Some of the legislative changes relate to minor variances and are intended to provide additional guidance to local Committees of Adjustments during their decision-making process.

These amendments include:

- application of Provincially prescribed criteria as well as criteria established by a municipal council with respect to minor variance decisions; and

- two-year freeze on minor variance applications following the approval of any privately initiated site-specific zoning by-law amendment, unless a municipal council declares by resolution, that such an application or class of applications is permitted to apply.

These changes may improve the quality of Committee of Adjustment decisions but it is premature to determine, what impacts, if any, these changes will have on a Local Appeal Body. The Chief Planner will be reporting to the February 24, 2016 meeting of Planning and Growth Committee on the key changes resulting from Bill 73.

C. Review of the City of Toronto Act, 2006

City Council adopted the report, *Five-Year Review of the City of Toronto Act, 2006 (COTA)*, at its October 2016 meeting, that authorized the City Manager to submit requested amendments to COTA for submission to the Province of Ontario and authorized the Mayor and City Manager to negotiate any details as required. The COTA review process is ongoing and legislative amendments are anticipated in spring 2016.

The City's requested amendments include, among other matters, authority for the City of Toronto to dissolve or change a LAB and to recover the fees to operate a LAB through the land use planning application process. Currently COTA prohibits the City from dissolving or changing a LAB once Council has implemented it. If City Council proceeds with implementation of the LAB, the City does not have the authority to dissolve or change it once it is established. While the City has requested the authority to dissolve or change the LAB, it is unknown at this time if the Province will amend COTA to provide this authority.

There were additional COTA amendments requested by City Council related to land use planning intended to provide enhanced authority to City Council over land use planning decisions and providing increased flexibility by enabling the City to zone with conditions and implement inclusionary housing. A number of the proposed COTA amendments were requested by the City as part of the review of Bill 73 – *Smart Growth for Our Communities Act, 2015* and did not materialize. The review of COTA provides the City with an additional opportunity for the City to negotiate legislative improvements to land use planning for Toronto.

D. Review of the Ontario Municipal Board

The Province of Ontario will be undertaking a review of the operations, practices, procedures and reporting requirements of the Ontario Municipal Board (OMB) with a view to improving 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.

3. Implementation of a Local Appeal Body

City Council at its meeting in July 2014 made the decision to implement a LAB and requested the City Manager to report back on the governance and administrative details to operationalize it. Executive Committee considered this report at its June 30, 2015 meeting and referred the item back to the City Manager to report further on additional matters.

This report provides the additional information that was requested and resubmits the governance, administrative and fee structure in order to operationalize the LAB. The governance and administrative structure are largely the same as the June 30 report considered by Executive Committee, with the exception of the appeal fee, which is discussed in more detail in Section 5 of this report.

It should be noted that in the event that City Council adopts this report to move forward with implementing a LAB for Toronto, the City does not currently have authority to change or dissolve the LAB once implemented or recover the costs of the LAB through the planning application process. The City has requested these legislative changes related to the LAB as part of the five-year review of COTA.

The principles City Council adopted at its meeting in July 2014 that are included in Attachment 4 to this report, were considered 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 Procedures 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 LAB including with respect to the application of the Code of Conduct and related policies.

Preliminary estimates suggest that the LAB will hear approximately 343 appeals of minor variance and consent applications on an annual basis, and that the 343 appeals will require 250 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 2015 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 343 appeals would generate 445 hearing days for the LAB, including both adjudication and mediation hearings. This figure was used a basis for estimates provided in this report with respect to composition, space and budgetary requirements. Attachment 5 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 343 applications appealed per year will be monitored going forward.

4. Governance Structure of the Local Appeal Body

The governance structure for the LAB is discussed below and summarized in Attachment 1 to this report and is consistent with the governance structures of similar land use bodies and other related administrative tribunals. The governance structure supports the independence and arm's length nature of the LAB is critical for the LAB to effectively carry out its mandate and includes the establishment of a separate Toronto Municipal Code Chapter for the LAB substantially as set out in Attachment 4 to this report.

A. Composition

This report recommends that the LAB be composed of seven members, including a Chair, and similar to the OMB, 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 LAB.

C. Role and Qualifications of Members

It is important that LAB 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 LAB 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 LAB annually. The recommended qualifications, set out in Section 6 of Attachment 1, 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 1, 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 1.

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 LAB, 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 343 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 LAB 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 LAB 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.

5. 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, through by-law, can establish fees for the LAB. 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 LAB 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.

Seven (7) fee options were evaluated including:

1. A flat fee of \$125 (the same appeal fee as the OMB) which would require a 98% operating cost subsidy;
2. A flat fee of \$500 which would require a 92% operating cost subsidy;
3. A flat fee of \$1000 which would require a 85% operating cost subsidy;
4. A flat fee of \$6900 which achieves full operating cost recovery;
5. 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;

6. 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
7. 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 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 250 estimated annual cases/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 4, 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 5, 6 and 7 is also not recommended as differential fees based on the type of applicant raise 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

The report, *Implementation of a Local Appeal Body for Toronto*, considered by Executive Committee at its June 30, 2015 meeting, recommended an appeal fee of \$1000. There were a number of communications submitted to Executive Committee expressing concern with the proposed fee and suggesting it may be a barrier to access to adjudication for many applicants, particularly residents.

The City Manager considered these comments and this report recommends that the fee to appeal a minor variance or consent decision to the LAB be set at \$500 per appellant (rather than \$1000) 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 is generally consistent with appeal fees in related administrative tribunals and considers access to the LAB adjudication process rather than cost recovery as the most important principle. It is recognized that a fee of \$500, 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.

For clarity, the appeal fee of \$500 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 \$500, not \$1000, 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.

6. Administrative Support

The LAB 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 LAB and coordinate its start-up over the next several months.

7. 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 3. 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 appropriate City staff to ensure an expeditious construction period. It is anticipated that the premises will be ready for LAB occupancy by mid to late 2017. Construction costs for the other short-listed sites were in the same order of magnitude.

Estimated One-time Capital Construction Costs

| Item | Cost Estimate (\$000s) |
|-------------------------------------|------------------------|
| 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 |
| Total | \$1,577.0 |

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 \$1.0 million in 2016 and \$0.577 million in 2017; funded from a

contribution to capital of \$0.388 million and a contribution of \$1.189 million from the Capital Financing Reserve.

8. 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 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 |
| Total | \$560.5 |

One-time start-up costs are estimated to be \$0.560 million (\$0.524 million in 2016 and \$0.037 million in 2017). Funding is available in the 2016 Operating Budget (LAB funding in 2016 of \$1.529 million net) for these one-time start-up cost requirements.

9. 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 \$0.171 million, resulting in an annual net operating budget requirement of \$1.517 million.

Estimated Annual Operating Costs

| Item | Cost Estimate (\$000s) |
|---------------------------------------|-------------------------------|
| Staff Costs Including Benefits | |
| Supervisor (1) | \$130.0 |
| Court Clerks (4) | \$345.0 |
| Support Assistant (1) | \$77.0 |
| Total Staff Costs | \$552.0 |
| | |
| Members | |
| Chair | \$101.0 |
| Members (6) | \$249.0 |
| Total Member Costs | \$350.0 |

| Item | Cost Estimate (\$000s) |
|--|-------------------------------|
| Overhead Costs | |
| Office Costs (IT services, translation service, office supplies, etc.) | \$425.0 |
| Legal Costs | \$200.0 |
| Total Overhead Costs | \$625.0 |
| Occupancy Costs for Space | \$161.6 |
| Total Gross Expenditure | \$1,688.6 |
| Revenue (\$500 per hearing) | \$171.5 |
| Net Expenditure | \$1,517.1 |

The 2016 Operating Budget includes funding of \$1.529 million net for initial LAB start-up and operations in 2016.

Additional funding above current approved levels will be required within the 2017 Operating Budget in the amount of \$0.075 million, in 2018, there is an incremental savings of \$0.037 million resulting from the completion of the temporary project coordinator position to set up the LAB.

10. Conclusion

This report responds to Executive Committee's request for information on a review and consultation for establishing a mediation program related to Committee of Adjustment decisions, as well as an update on a number of legislative initiatives. It also recommends details on the governance and administrative structure of a Local Appeal Body (LAB).

Research and consultation on mediation for land use planning disputes was undertaken and a Mediation Pilot Project, at a total cost of \$50,000 is recommended. The pilot program will test the impact of mediation with respect to appeals of Committee of Adjustment decisions. Once the Mediation Pilot Project is complete, an assessment will be made and the City Manager, in consultation with Court Services, will report the results to the Planning and Growth Management Committee.

The report provides an update on related legislative initiatives. The Province of Ontario recently approved amendments to the *Development Charges Act* and the *Planning Act* through Bill 73. The in-force date for these changes has not yet been announced. City Council requested amendments to the *City of Toronto Act, 2006*, including authority to dissolve or change a LAB and to recover LAB costs through the application planning process. It is uncertain whether the Province will make these requested changes. If these changes are not made, the City will not have the authority to dissolve or change the LAB once implemented.

The governance and administrative structure, office space and budgetary requirements, as well as an appeal fee, needed to move forward with the implementation of LAB are recommended in this report. The governance and associated implementation details are substantively the same as provided in the report to Executive Committee in June 2015 with the exception of the appeal fee. City staff reviewed the appeal fee and recommend an appeal fee of \$500 rather than \$1000 per

hearing. The LAB will require one time start-up and ongoing operating costs as well as capital costs for construction of the office space and hearing rooms. These costs are detailed in the report.

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SIGNATURE

Peter Wallace
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ATTACHMENTS

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

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.

Attachment 2**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. |

Attachment 3

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 (estimated to be May 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. |

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.

Attachment 5

Committee of Adjustment Appeal Activity 2009-2015

| | | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2009-2015 Average |
|-------|--------------------|------|------|------|------|------|------|------|----------------------|
| East | Minor variance | 12 | 19 | 25 | 23 | 33 | 28 | 50 | 27 |
| | Consent | 5 | 4 | 6 | 11 | 7 | 6 | 15 | 8 |
| | Total | 17 | 23 | 31 | 34 | 40 | 34 | 65 | 35 |
| | % of total appeals | | | | | | | | 10.2% |
| North | Minor variance | 50 | 74 | 102 | 177 | 103 | 141 | 158 | 115 |
| | Consent | 11 | 14 | 16 | 37 | 13 | 34 | 16 | 20 |
| | Total | 61 | 88 | 118 | 214 | 116 | 175 | 174 | 135 |
| | % of total appeals | | | | | | | | 39.4% |
| South | Minor variance | 79 | 98 | 105 | 101 | 114 | 113 | 131 | 106 |
| | Consent | 7 | 14 | 12 | 9 | 20 | 17 | 13 | 12 |
| | Total | 86 | 112 | 117 | 110 | 134 | 130 | 144 | 118 |
| | % of total appeals | | | | | | | | 34.4% |
| West | Minor variance | 18 | 40 | 40 | 49 | 51 | 57 | 64 | 46 |
| | Consent | 5 | 4 | 10 | 9 | 11 | 8 | 12 | 8.4 |
| | Total | 23 | 44 | 50 | 58 | 62 | 65 | 76 | 54.4 |
| | % of total appeals | | | | | | | | 16.0% |
| Total | Minor variance | 159 | 231 | 272 | 350 | 301 | 339 | 403 | 294 |
| | Consent | 28 | 36 | 44 | 66 | 51 | 65 | 56 | 49 |
| | TOTAL | 187 | 267 | 316 | 416 | 352 | 404 | 459 | 343 |