

Submitted by  
Councillor Lindsay Duby

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land use planning

## PROPOSED CITY OF TORONTO LOCAL APPEAL BODY

*Importance of independent decision makers in  
appeals respecting land use planning matters*

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The City of Toronto is poised to be the first municipality in Ontario to establish a local appeal body to replace the Ontario Municipal Board (OMB) with respect to appeals of committee of adjustment decisions. It has often been popular to argue for the abolition of the OMB as the solution to any and all concerns with planning and development in Ontario. However, any reconsideration of an alternative process must consider the importance of an independent appeal body in ensuring that planning decisions are based upon accurate land use planning evidence, and independent from local politics - which may inappropriately favour local resident opposition over the interests of individual land owners or the broader community.

While there may be a benefit to having decision makers appointed locally, to ensure a better understanding of the local community, significant questions arise as to how to structure such an appeal body to ensure that these decision makers will be independent and free from bias, as required by law.

### **Toronto Establishes Councillor - Staff Working Group**

On June 5, 2008, the City of Toronto Planning and Growth Management Committee voted to establish a Councillor-Staff Working Group to develop the structure for a local appeal panel. This council-appointed appeal panel would replace the OMB with respect to appeals of committee of adjustment decisions in the City of Toronto.

The working group was tasked with considering the staff and financial requirements of such an appeal body, the associated fees, its structure and size, and the qualifications and criteria of its members. The working group is to report back to the Planning and Growth Management Committee in October 2008.

The *City of Toronto Act, 2006* grants the city the power to pass a by-law to establish a local appeal body for appeals respecting applications for minor variances to the zoning by-law and consents to sever land. Recent amendments to the *Planning Act* give other municipalities in Ontario similar authority, with the added requirement that they have an updated official plan and zoning by-law.<sup>1</sup> As a result, the find-

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<sup>1</sup> While this article focuses on the *City of Toronto Act, 2006*, the provisions of the *Planning Act* respecting the establishment of local appeal bodies are virtually identical.

mings of the working group will be of importance to all municipalities in Ontario.

### Good Planning Must Prevail

While minor variance and consent applications are often considered to be of little importance or not of provincial significance, unlike other types of planning applications, they can nevertheless have a significant impact on individual property rights, as well as the larger community. Such applications may range from building an addition to a house to accommodate a growing family, to large scale development, such as a high rise condominium. However, at the committee of adjustment, applications do not go through the same vigorous com-

munity consultation or planning staff review as other planning decisions. There is often no planning report, no formal evidence provided, no cross-examination, and only brief submissions of the parties provided to assist the committee of adjustment in making its determination.

As a result, such decisions are often influenced by local politics, neighbour objections, and inaccurate evidence, rather than good planning. In this system, an appeal to an independent, unbiased decision maker is essential to ensure that the municipality, the community, and the land owner have full opportunity to present and test the planning merits of the case, and that good planning prevails. This role is currently fulfilled by the OMB.

### Ensuring independence of Appeal Body

Pursuant to the *City of Toronto Act 2006*, the city is entitled to appoint the members of the local appeal body, with the only limitation being that they not include city councillors, employees, or committee of adjustment members. At present, there are no prescribed qualifications for such members. However, it is a rule of law that administrative tribunals making decisions that affect the rights of opposing parties must be, and be perceived to be, independent, free from influence, and unbiased when making such decisions.

As a result, the city must ensure that it establishes a body where the

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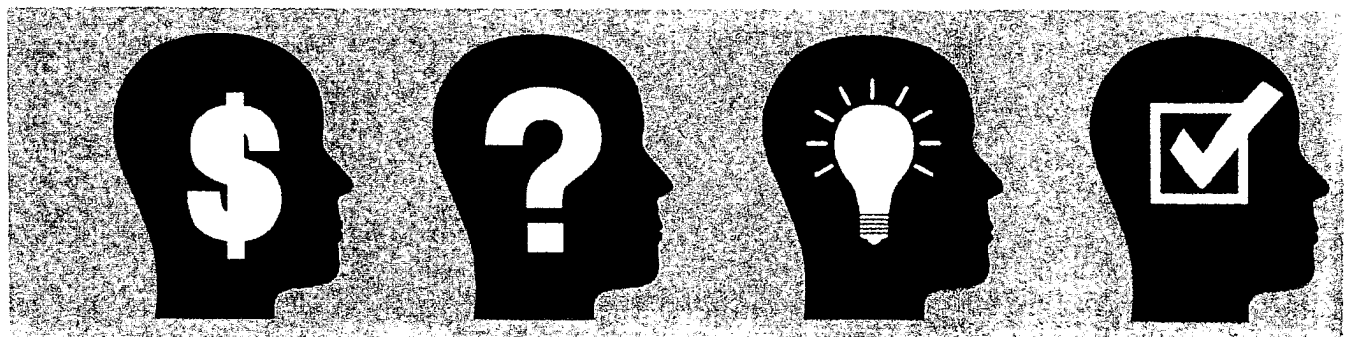
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decision makers are not biased or perceived to be biased in favour of the position of the city or the local councillor. This is particularly important in consideration of such matters as salary and appointment of members. The city may wish to consider appointing an independent panel that will in turn deal with such matters as salary and appointment of members, to ensure that the members of the appeal body do not feel pressure to favour the position of council as a result of council's ability to determine their salary or appoint them. The city should also consider how the administrative staff, including legal counsel, will be independent from council. For example, if the appeal board requires legal or planning advice, it

would be inappropriate for this to be provided by a city solicitor or planning staff.

While there may be benefits to having appeal body members locally appointed, it will be necessary to consider how "local" an appeal body member should be before he or she may be too closely involved to remain independent. There is a tension between having sufficient local knowledge, and remaining independent. For example, a member from the former municipality of North York may not have sufficient local knowledge respecting an appeal from the former municipality of Scarborough, however, someone who resides in the same neighbourhood as lands subject to appeal, who may have significant

local knowledge, may not be seen as independent and unbiased.

#### No Control by City

In addition to the need to ensure that the members of the appeal body and its administration are truly independent from the city, there is an additional concern that the city can exercise no control over how the appeal body will evaluate an appeal, or the tests that it is to apply in reaching its decisions. Such matters are governed by the *Planning Act* in exactly the same manner as if the appeal was before the OMB. Any appeal would still be a new hearing, without the need to have any regard to the decision of the committee of adjustment. The *Planning Act*

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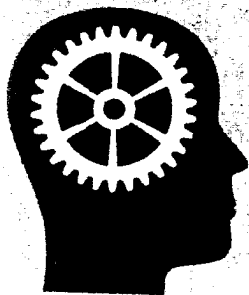
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would require the local appeal body to have regard to a decision made by a municipal council, and the material that council considered in making that decision. However, minor variance and consent applications do not generally go before council unless a resolution is brought before council seeking direction as to whether the city should appeal or appear as a party to an appeal of a committee of adjustment decision. Therefore, the city will have little direct control over the merits of a decision of the appeal body, and one has to question the

efficacy of such a body to provide greater local control over planning.

Therefore, the need to ensure that any appeal body created is independent from council, unbiased, and renders decisions in accordance with the tests under the *Planning Act*, it appears that the only benefit of creating a local appeal body is to have its members be appointed by council, presumably to have local decision makers with a clearer understanding of local and community issues. While this may indeed be an important goal, the City of Toronto and other municipalities who may be considering exercising this power to estab-

lish a local appeal body, should think very carefully before making any final determination. The benefits of having local decision makers must be weighed against the potentially very significant cost of establishing and administering the local appeal body in a manner that ensures its independence from council. Municipalities should also be aware that, the power granted under the *City of Toronto Act, 2006*, and parallel sections of the *Municipal Act, 2001*, contain a catch: if the municipality creates a local appeal body, it cannot change its mind later



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