PG33.14.3

CORRA

Confederation of Resident & Ratepayer Associations in Toronto

June 8, 2014

Deputy Mayor Norm Kelly and Members of Council
Toronto City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Atten: Ms. Marilyn Toft
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Dear Deputy Mayor Norm Kelly and Members of Council

PG33.14: Implementing a Local Appeal Body for Toronto
Public Consultations Comments and Guiding Principles
To be Considered at Council Meeting No. 52 – June 10th and 11th, 2014

CORRA, the Confederation of Resident and Ratepayer Associations in Toronto, is writing to inform Members of Council of our position with respect to Planning and Growth Management Committee (PGMC)'s proposed recommendations concerning the establishing and implementing of a Local Appeal Body for Toronto.

CORRA Executive attended three of the 6 public consultations (initially 4 consultations were scheduled with 2 more added afterwards) and received feedback from residents / ratepayers and their groups who attended the various sessions. At CORRA's general meeting in March 2014, CORRA council supported a motion reinforcing the findings of the consultations:

> Not to support the approval of a Local Appeal Body (LAB) as presented but rather to fix the Committee of Adjustment and to reform the Planning Act.

BUSINESS CASE

It was clear to CORRA, residents, and the general public who attended the consultations that the benefits for the estimated annual costs of $2,000,000 to fund the operations of the LAB was not evident.

The key decision points:

1. Number of Appeals

The four Committee of Adjustment (COA) Panels in Toronto consider approximately 2000 – 3000 applications annually of which 10% of the decisions are appealed. The LAB would consider about 300 appeals annually. Of these appeals no further information was provided and question about the appeals remained unanswered.

For example; Were the majority of the COA appeals moved by the applicant or by residents or their associations? And the problem of what the LAB would solve?

2. LAB Appeal Fee
A major sticking point is the estimated hearing cost of $6700 representing the LAB appeal fee. In contrast to the appeal fee of $125 requested by the OMB.

3. LAB Hearing Officer Cost
The minimal costs of LAB hearing officers/members estimated at about $58,000 on a part-time basis versus full time OMB Board Member earning salaries of $104,000 to $145,000 annually.

4. LAB Annual LAB Operating Cost
The annual projected cost of $2,000,000 is not reliable as it does not include the indirect or ongoing capital costs. Also if the aim is to establish a truly independent LAB, these costs have not been incorporated.

In summary, at an appeal cost of $6700, the ability to appeal would be inaccessible under the LAB for ordinary citizens. The remuneration amount for the LAB members would not attract the calibre of individuals needed. The part-time nature of the position would impinge on the impartiality and may present conflicts of interest. The annual projected cost of $2,000,000 is not reliable and may be substantially more once the governance and administration of the LAB is more fully articulated and after considering expectations (such as access, independent decision making based on the fact, law, policy and legislation that is procedurally fair) of all who have reason to have a COA decision appealed.

For these reasons, CORRA could not support establishing the LAB as presented.

COMMITTEE OF ADJUSTMENT (COA):

While the City has the authority to establish a LAB, the public consultations indicated that the LAB would not solve the issues of Committee of Adjustment. With the 4 COA panels considering 2000 – 3000 applications annually, it was the COA that residents and the public wanted fixed.

Currently, the Committee of Adjustments is not discharging its obligations under the Planning Act. These responsibilities include:

- Not meeting minimum notice requirements,
- Not deciding applications in accordance to the 4 tests as mandated by the Planning Act
- Not providing minutes that record what was said during the public hearing
- Not providing written reasons for the decisions made
- Occasionally not forwarding dull file contents to the OMB upon appeal

Operations where due process/procedural fairness may be affected:

- Not allowing the review of full file contents prior to the hearing
- Inconsistent hearing proceedings
- Minor variance applications are decided on the mandatory 4-tests as set out in the Planning Act of which the onus is on the applicant to demonstrate but the applicant is often allowed to forego this requirement

Other Areas of concern:

- The selection and calibre of the COA panel members
- COA hearing panels hear bout 30-40 hearings every two weeks in one day
- COA have become less independent and appear to be subsumed by the City's Planning Department

One of the more critical departures, for example, is providing written decisions or at minimum for COA the reasons for a decision. The habit of articulating reasons for a decision will lead to better panel decisions, provide for a body of explanations which would assist in making future decisions more comprehensible and predictable and lead to a well-developed approach to the interpretation of the legislation governing minor variance applications.

How then can it be said that the City is capable of operating an independent LAB when the Committee of Adjustment no longer operates as intended and legislated?

CORRA asks that reforming the Committee of Adjustment from a governance and administrative perspective be a priority to ensure the Committee operates as intended by the Planning Act and if the City manager is the appropriate Official that a report be brought forward to Executive Committee with notice.

AMENDING THE PLANNING ACT:

The requirements and the decision making process in considering minor variance and consent applications are governed by the Planning Act and all clauses should be considered as they will affect, COA, OMB and any future LABs (for municipalities granted the authority).

An area of deep-seated concern as already noted is the test of "minor", one of the mandatory 4-tests of the Planning Act – what exactly is "minor"?

The legislation does not define what is "minor" as the Planning Act covers all municipalities across the province. The case law indicates that a flexible approach be taken to determine if a variance is minor, "relating the assessment of the significance of the variance to the surrounding circumstances and to the terms of the existing by-law". In Vincent v. DeGasperis, supra, the Court observed that "minor" involves consideration of both size and impact.

The following is an example of how listing the 4 tests and incorporating the interpretive words from the Divisional Court decision for test one and test two aid in clarifying Section 45 (1) of the Planning Act where the 4-part test is cited:

A variance must:

1. Be minor with respect to both size and importance, which includes impact; or
2. Be desirable in the public interest and/ir planning context, in the opinion of the committee, for the appropriate development or use of the land, building, or structure; or
3. Maintain, in the opinion of the committee, the general intent and purpose of the zoning by-law; and
4. Maintain, in the opinion of the committee, the general intent and purpose of the official plan.

It is worth emphasizing that the onus rests with the applicant seeking the variances to demonstrate to the COA/OMB/LAB panel members such tests have been satisfied. Those opposing the application need only show that one of the 4 tests are not met for the application to fail – this is currently not happening at COA public hearings.

DUE PROCESS:

CORRA notes that PGMC recommendation for PG33.14 removes Staff Recommendations 1-3, yet Recommendation #2 addressing the 8 guiding principles have been referred to Council for approval on Council agenda.

Also Council Decisions PG6.5 and PG9.11 and the subsequent formation of a PGMC LAB - subcommittee (PG16.15) to produce a report on the feasibility of a LAB that did not materialize. Instead, the Chair of PGMC placed a letter on the day of the December 4, 2013 PGMC agenda requesting public consultation. CORRA received 2-days notice of the May 6, 2014 staff report. Below are the links for Council's reference:

> Council Consideration on July 12, 2011:
> PG6.5: Enhancing the Transparency and Accountability of the Committee of Adjustment
> http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.PG6.5
>
> In this council decision the following direction adopted:
> No. 4: City Council request the Chief Planner and Executive Director of City Planning to report back to the Planning and Growth Management Committee on the feasibility of establishing an appeals board for Committee of Adjustment applications.
>
> Council Consideration on February 6, 2012 of PG9.11:
> http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.PG9.11
>
> In this council decision the following direction adopted:
> No. 8: City Council request the Working Group to report back in the first quarter of 2012 to the Planning and Growth Management Committee with a draft proposal for the establishment and implementation of the Panel and to seek public comment on the proposal.
>
> Planning and Growth Consideration on June 18, 2012 (not referred to Council)
> PG16.15: To Establish Subcommittee of Planning and Growth Committee
> http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.PG16.15

CORRA has written on a number of occasions with respect to receiving Notice for all interested parties, in particular resident/ ratepayer associations to be included and to participate in the decision making process of establishing a Local Appeal Body that is independent and fair. CORRA's intent was to ensure broader representation to enrich the dialogue.

CORRA is concerned with the due process of this issue and it does not bode well for the establishing of a LAB when a key component of the consideration is developing an

independent and fair administrative due process for the adjudication of appeals of Committee of Adjustment decisions.

In summary CORRA asks,

1. That recommendations no. 1 and 2 and 3 be removed. In particular that the approval of the not be made ahead of the City Manager's report as requested in amended recommendation no. 4.

2. That recommendation no 4 as amended by City Manager in his supplementary report be approved with a further amendment to add Notice be given to residents / ratepayers and their associations when a full business case that incorporates the governance and administrative functions is returned to Executive Committee.

3. That recommendation no. 5 be amended to have the City Manager to give consideration to:
   - Establishing a public interest mandate for the LAB;
   - Establishing an independent LAB such that the administrative and adjudicative functions are independent from the City.

4. That recommendation no. 6 be expanded to seek Planning Act reform with respect to a comprehensive review of sections pertaining to minor variance applications with input from residents / ratepayers and their associations. And in considering exactly what "minor" is deference to court decisions would be helpful.

5. That recommendation no. 7 be expanded to reflect a contracted long-term commitment if funding is to be provided by the Province.

6. That recommendation no. 8 be amended to consider the use of resident-based community advisory panels.

CORRA regularly meets and communicates with some the most active front line Association Executives who have direct knowledge of these matters – defending law and OP policy before Committee of Adjustment and the OMB -- and we would welcome and look forward to the opportunity to engage and improve the land use decision making process.

Respectfully submitted,

Eileen Denny

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