



**Confederation of Resident & Ratepayer
Associations in Toronto**

March 30, 2016

Toronto City Council
City Hall, 100 Queen Street West
Toronto, ON M5V 2N2

Attention: Ms. Marilyn Toft
Email: clerk@toronto.ca

Dear Mayor John Tory and Members of Council:

EX13.1: Follow-Up Report on the Local Appeal Body (LAB)
City Council Meeting March 31st and April 1st, 2016

Without fear or favour on matters of public interest

CORRA, the Confederation of Resident and Ratepayer Associations in Toronto, is writing seeking Mayor Tory and Members of Council to simply receive and to not adopt the recommendations to agenda item EX13.1 concerning the Follow-Up Report on the Local Appeal Body (LAB) and the proposed by-law, for the following reasons:

1. The LAB Appeal Fee of \$500 remains high and inhibits fair access to justice:
The current appeal fee to have a Committee of Adjustment decision reconsidered by the Ontario Municipal Board (OMB) is \$125.00 per application. For a consent creating an additional lot and 2 developments requiring variances from the zoning by-law, the appeal cost for the OMB is \$275.00 (\$125 + \$125 + \$25). In both cases, the City's proposed LAB appeal fee to allow for fair access is far in excess of the established provincial bench mark and is not justified.
2. The Net Cost of Operating the LAB is very high and is an unfair burden on taxpayers:
For every appeal heard by the LAB, the full cost to taxpayers will be \$6900 per appeal minus the appeal fee. An appeal is not a discrete "product / service" to be priced individually. However a portion of the adjudicative cost should be recovered from applicants seeking to vary from the law or subdivide lands to reflect the private / public nature of the decision. Despite the high public burden, the benefits of implementing the LAB at this time has not been fully articulated.
3. The Proposed By-law is incomplete, insufficient and not transparent:
Passing a resolution to establish a LAB is not enough. Passing principles is not law. And proposing a by-law to set an appeal fee without disclosing the full extent of the implementing by-law is unclear and not transparent. Also, allowing for conditions /

recommendations to be amended by Committee or Council without further Notice is not administratively fair.

Establishing and implementing a local appeal body is exercising a new authority and requires commitment on the part of the Administration to the people of this city to ensure the goals of the LAB and its continued funding will be met today and in the future. This can only be exacted through the passage of a by-law that has sought feedback and support – an implementing by-law – that states in clear language what is to be done in order to establish a Local Appeal Body.

The minimum by-law requirements for all municipalities with the exception of Toronto according to the Planning Act s.8.1 (1) shall include but is not limited to:

- Specifying the powers to hear appeals under s. 45(12) and s. 53 (14), (19), and (27);
- Contain a detailed description of the process for appointing members and secretary to the local appeal body and the detailed list of the criteria the council will use in making the appointments;
- Contain details about the compensation of the members and secretary;
- Specify the term for which the members shall serve on a part-time or full-time basis;
- Specify the roles, powers and duties of the members, including the chair, and of the secretary;
- Establish the appeal fees
- Set out rules governing the practice and procedures before the local appeal body, dealing with, as a minimum, the matters listed in Schedule 1;
- Specify how this by-law will be made available to the public; and
- Set out requirements for financial and administrative reporting by the local appeal body and any requirements for the auditing of the local appeal body.

The City of Toronto under its own municipal act is lodged with its own responsibilities to establish a LAB based on its unique status, size and complexity and the expectation in establishing a local appeal body would at least encompass or have held to the minimum standards required by all other municipalities with the same authority under the Planning Act.

The City's proposed by-law fails to specify all of the above minimum requirements as intended by the Planning Act, it contains conditional and pending elements that are not known, is not comprehensive, does not provide for full disclosure and is therefore incomplete.

4. The Concern of LAB independence remains:

- The recommendations do not include a LAB secretary and this position is critical to the independent administrative role of managing the case load and the rules of practice and procedures of the LAB.
- The lack of an independent, dedicated solicitor for the LAB.

- The lack of specificity in the detailed criteria / qualifications that council will use in making the appointments of LAB members.
- The failure to incorporate the process and criteria / qualifications of LAB members in the by-law to reinforce the objectivity of such appointments.
- Expected separation of reporting and responsibility are not met by having a Chair responsible for adjudicating, administering the case work and the overall business operations of the LAB.
- The lack of rules and procedures under which the LAB will operate.
- The recommendation made by planning staff is not to have the LAB operate as a completely separate and independent, self-administered and self-contained entity despite the legislative intent to do so. The comparison to other City boards and agencies is misplaced [staff report of May 6, 2014, p. 18].
- In addition, the Committee of Adjustment is not seen by the public as an independent quasi-judicial body despite its authority to be independent and empowered to hear and decide.

To correct any lapse to ensure the LAB is and remains independent would require increases in the annual operating costs and would therefore suggest the base cost of the LAB on which projections are based may be too low.

5. How the LAB will operate is not disclosed

A draft procedural by-law and draft policies, practices and procedures have yet to be prepared and the method for disclosure to the public for review and consideration remains uncertain.

6. The Priority of Fixing the Committee of Adjustment ahead of Implementing the LAB has not been fulfilled:

During the 2014 consultations across the City, the residents, ratepayers, their groups and members of the public asked to have the Committee of Adjustment (COA) fixed prior to considering the LAB. The grievances involve the COA procedures, hearing and administrative processes resulting in dissatisfied outcomes not just the decisions but the experience itself.

The COA is a quasi-judicial body and it too is expected to provide hearings, operate independently and impartially, under fair procedures and to provide written decisions. The COA improvements to ensure the minimum legislated requirements are met remain outstanding.

Attached is CORRA's latest submission to PGMC on those matters for Council reference.

7. The City-Led Mediation Program is not supported by legislation:

This program was presented on the basis of a pilot-test case scenario. The research was inconclusive in the staff report on how effective a mediation program would be in land use disputes generally but more specifically at a local variance level. More than 80% of the applications heard by COA concern low rise residential housing.

The program allows for a formalized mediation before a hearing and / or after a COA decision. However, this type of mediation is not contemplated in the Planning Act. The LAB is permitted to consider mediation following a COA decision that is appealed because at this stage the parties to the matter would be known. This is not necessarily the case before a COA hearing or immediately after a COA decision.

With the COA not discharging its obligations under the Planning Act and measures to fix the COA not carried out, residents and their groups are left grappling for solutions when their communities bear the brunt of undesirable outcomes.

There is a need for a correction on all fronts, the City Administration, the Committee of Adjustment and any quasi-judicial body tasked with decisions that impact people's property rights, fair due process and legislated rights and responsibilities, to examine the with associated cost / benefit and that any amendment to the process be consistent with and not contrary to the legislated requirements.

8. The Uncertain Legislative Environment:

The consideration of establishing a LAB should not be dependent on changing legislation. Currently, once the LAB is established it cannot be unwound. This suggests that such an endeavor is a long-term decision and getting it right is critically important. Given the number of amendments across the variety of Acts, the City should exercise caution and not proceed in haste or in a piecemeal way.

The OMB currently has a new Lead Executive and he is tasked with reviewing to improve the Board's processes and procedures which will begin soon. It would be incumbent upon the City and its residents not to ignore these initiatives as it presents an opportunity to participate and advance comprehensive change to improve land use decision making for many.

9. Notice and Due Process:

Without Notice and proper due process at the earliest outset, the people of Toronto would be denied the opportunity to make robust law. CORRA continues to advocate full and proper notice on behalf of residents, ratepayers, and their groups and the general members of the public. This means:

Being provided with notice as to when a decision will be made; being provided with adequate information and time to understand and assess the proposed amendments; opportunities to make representations on public record; having concerns or objections considered prior to final report and / statutory meeting.

In this case, CORRA received only 6 days notice, or 4 business days to consider the report. And CORRA recognizes the updated detail was based on a preexisting structure and governance model as proposed by planning staff. However, the mediation program, not supported by legislation, was a new issue and inappropriately included in the LAB agenda. The issue should have proceeded to community council / planning and growth management committee with Notice to receive representations to consider the intended and unintended consequences, prior to committing funds and resources.

CORRA continues to be concerned with omnibus reports, nested agenda items and the inability to make views / concerns / objections known at the earliest outset and be considered in advance of formal decision making.

Summary:

CORRA continues to ask for the identification of concrete measures to improve the Committee of Adjustment and to honor full and proper due process for robust law making. The deciding bodies, City Council, the Committee of Adjustment and other quasi-judicial bodies also need a pragmatic re-examination to ensure their operations create the necessary checks and balances to bring clarity back to the decision-making and law-making.

The proposed by-law is not consistent with and does not meet the minimum legislated expectations for the City to exercise this power. The request to adopt the by-law is premature. The by-law recommending an appeal fee of \$500 without disclosing the full extent of the by-law and without further notice of future amendments is unfair. The future and committed funding is not assured and may jeopardize fair access. And the LAB governance model is fundamentally flawed and will not operate, independently, objectively and fairly as intended by the legislation and expected by the public.

CORRA asks Members of Council to do the right thing by not adopting the recommendations or the proposed by-law.

Respectfully submitted,

Eileen Denny

Eileen Denny, Chair
Confederation of Resident and Ratepayer Associations in Toronto

Attached: CORRA Letter dated February 23, 2015 – PG2.4 COA Continuous Improvement



**Confederation of Resident & Ratepayer
Associations in Toronto**

Monday February 23RD, 2015

Planning and Growth Management Committee
Committee Administrator, Nancy Martins
10th Floor West Toronto City Hall, 100 Queen Street West
Toronto, Ontario M5H 2N2

Sent via email: pgmc@toronto.ca

Dear Chair and Members of Planning and Growth Management Committee:

PG2.4: Committee of Adjustment Continuous Improvement
PGMC Meeting 2 – February 23RD, 2015

CORRA, the Confederation of Resident and Ratepayer Associations in Toronto, is an independent incorporated confederation representing its member resident and ratepayer groups (unincorporated and incorporated) from the north, south, east, and central areas of the City of Toronto.

CORRA is writing to request that

1. The Report NOT BE RECEIVED for Agenda Item PG2.4 as it is not complete; and
2. An updated Report be returned to Planning and Growth Management Committee when practicable to accommodate the inclusion of the following:
 - a) A complete "Committee of Adjustment (COA) Manual" for review allowing sufficient time to comment and participate meaningfully;

If there is a pre-existing COA Manual, then that should be made available to the public/Councillors for review; if there is not a preexisting manual then a draft copy of the manual should be made available for review and comment.
 - b) Identified discrete process improvements for approval with associated cost / benefit analysis;
 - c) Any proposed amendments are to be consistent with and not contrary to the legislated requirements;
 - d) Periodic monitoring with be required and reported to Council; and

- e) Any new By-laws or amendments to By-laws or Municipal Code related to the Committee of Adjustment, including a complete COA Manual, are to be brought forward with Notice.

The Committee of Adjustment is an important decision making quasi-judicial body as the amendments contemplated may impact individual property rights, fair due process, and legislated rights and responsibilities.

CORRA is requesting to be kept informed of the any decisions of this Committee or any other Committee and Council concerning the processes and matters related to the Committee of Adjustment.

Thank you,

Eileen Denny

Eileen Denny, Vice Chair

William Roberts, Chair

Confederation of Resident and Ratepayer Associations in Toronto

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