



Ontario Association of Architects

VIA E-MAIL

March 31, 2016

City of Toronto Councillors  
City Hall  
100 Queen St. W.  
Toronto, ON M5H 2N2

Dear Members of Council,

As the self-regulating body, the Ontario Association of Architects (OAA) is dedicated to promoting and increasing the knowledge, skill and proficiency of its members, and to governing the practice of architecture and administering the *Architects Act* in order that the public interest may be served and protected.

The OAA previously submitted a written deputation to the Planning and Growth Management Committee on May 28, 2014, and a submission to the LAB Consultation on March 26, 2014. The OAA also opposed Bill 20 when it came before the Standing Committee for Finance and Economic Affairs. While this deputation will largely reflect what has already been expressed, we do want to directly comment on the newest proposal before you including:

**1. Support for the Ontario Municipal Board (OMB)**

- The OAA opposes the creation of the Local Appeal Body (LAB)
- The OAA recommends the City focus on improving and strengthening the OMB

**2. Reducing Fees and Cost-Recovery**

- The fee associated with an appeal at the LAB should be reduced from \$500
- Fees must be considered relative to the total cost of applying for a minor variance
- The City should not try to recoup costs through charges in the planning process

**3. Improving the Planning Process**

- The City would be best served by focusing on improving its planning process and updating the as-of-right envelope
- Many appeals mistake the fundamental planning purpose behind the OMB (and the LAB, if enacted), and would continue to do so
- The City should not use or view the Committee of Adjustment (and the LAB, if enacted) as a political tool

**4. Creating a Fully Independent Appointments and Operating Process**

- The City must respond to City Staff and OAA recommendations to ensure without question that the appointments and operation of a LAB are fully grounded in planning and insulated from any local or political interference.

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As always, the OAA remains committed to working with the City on issues relating to built form. Like the City, we hold our legislated duty to serve and protect the public interest to be paramount. In that light, we believe that creating the LAB is not in the best interests of the public and will not result in better built form; that improvements to the planning process to reduce the need for this appeal body better serve the public interest and will boost economic growth.

Should the City choose to proceed anyway, we believe that the governance and financial structure must be transparent and accessible so that the best interests of the public are ensured.

Sincerely,

A handwritten signature in black ink, appearing to read 'Toon Dreessen', written over a large, stylized, circular flourish.

Toon Dreessen, Architect  
OAA, FRAIC, AIA, LEED AP  
President

## **In-depth Responses:**

### **1. Support for the Ontario Municipal Board (OMB)**

The OAA supports the OMB and opposes any efforts to be exempt from, or erode, the OMB—a position we have consistently maintained with the City of Toronto and the Province on the whole. This is not to say that the OMB is not due for a review and that no improvements can or should be made, both notions which the OAA tentatively supports. The OAA also notes the City's own Chief Planner's support for the OMB and opposes the creation of a LAB.

The OAA recommends that parties should be constructively focusing their efforts on improving and strengthening the OMB, not on eroding it and setting up costly and parallel structures which may only serve to confuse the public. The Province has announced an upcoming review of the OMB (as well as clarification to minor variances) which would provide the City with this opportunity sometime in the near future. This opportunity was recently stressed by Councillor Di Giorgio, who voted against this item at Executive Committee.

### **2. Reducing Fees and Cost-Recovery**

As many Councillors have pointed out, including during Executive Committee earlier this month, the LAB will perform a function that already exists in the OMB, though at a significant multi-million dollar cost to the City and an application fee that's been set at four times the amount for the OMB. The City currently proposes a 92% operating cost subsidy.

City staff made further comments at the recent Executive Committee meeting that they have requested changes to the *City of Toronto Act* that would allow the City to recoup costs in the future through the planning process. Given the significant financial strain that is already imposed by the City's planning process, we wish to make ourselves expressly clear that we would be steadfastly opposed to burying this cost elsewhere in the planning process. If the City remains intent on proceeding, it should be fully budgeted and not fall on the shoulders of residents and applicants.

In an earlier submission, we stressed that a fee should be set at a rate that will not restrict access to this process. The current desire to set a fee at \$500 (some Councillors have pushed for higher) responds not to a sound rationale, but rather the prohibitive financial cost to the City mentioned above. Despite comments made by City staff, the OAA maintains that a \$500 fee could represent a barrier to access—particularly when combined with the minor variance process on the whole.

In January 2012, fees associated with minor variances for residential dwellings were \$1756.65. Year after year, fees are typically increased in the range of a few percent. However, fees today currently sit at \$3410.73, representing nearly a 200% increase less than five years. While \$500 may not seem like a significant burden on its own, taken cumulatively, the total cost associated with a minor variance can quickly become daunting—particularly when relative to something that could be as small as a resident putting a deck onto their house.

### **3. Improving the Planning Process**

Setting aside fees, the OAA has repeatedly expressed concern over the "local" nature of this appeal body. There often appears to be a fundamental misunderstanding of how the Committee of Adjustment (COA) and OMB decisions are made within City Council, residents, and ratepayer groups. These parties tend to describe a frustration with their voice not being heard, but these arguments are often not based on planning.

COA and OMB decisions are not based on emotions, morals, or biases. By their very nature, decisions are centered on planning documents and planning rationales. This remains the reason that the OAA continues to support the OMB. The OAA is troubled to have again heard comments during the Executive Committee meeting that demonstrate this fundamental misunderstanding of these two quasi-judicial bodies, and of the intent behind a LAB.

This misunderstanding also appears to intersect with a frustration that is mistakenly addressed towards the appeal process, but in fact is a result of frustration towards an ineffective planning process. While the City may not appreciate the comment, Minister McMeekin recently suggested that 'if municipalities did their jobs properly when creating planning documents, there would be no need for the Ontario Municipal Board.'

As we have repeatedly recommended to the City, including in our opposition and OMB appeal over Zoning Bylaw 569-2013, the City needs to take action to reduce the number of variances required by updating its planning documents and changing the as-of-right envelope. Were the City to be appropriately zoned, we are confident the number of Committee of Adjustment hearings would be reduced, thereby reducing the number of appeals at the OMB (or the LAB, if enacted). In this vein, the OAA would reiterate feedback contained in the original staff report: "Some participants also felt that improving the COA, prior to LAB implementation, could potentially reduce the overall number of appeals filed and subsequently the need to establish a LAB."

Architects have repeatedly commented on the City's unofficial objective to force everything through COA, an accusation that some City staff and politicians have generally acknowledged. This was never the intention behind the COA, so the end result of many parties being frustrated is not surprising given the inappropriate way the process is being used.

The City of Toronto (and many municipalities) should first focus on partnering with stakeholders to address the root cause of this issue—an outdated and inefficient planning process—instead of its byproducts: COA appeals. This would achieve a far more desirable outcome for everyone involved.

#### **4. Creating a Fully Independent Appointments and Operating Process**

Finally, the OAA wants to focus on the appointment process for LAB members. While responding to a question from Councillor Fragedakis, City Staff stressed concerns to Executive Committee:

Staff: One of the things we had to be very careful about in this report with the Local Appeal Body Governance Design is that City Council also appoints the Committee of Adjustment members and will be appointing the LAB members, which they will be hearing the appeals coming from the Committee of Adjustment and directing legal and planning staff to defend those appeals in front of the LAB so...I suppose it does sound a little circular, but we were really trying to insulate it and make sure it had arm's length independence.

While the corporate appointment process was held as the model for the LAB, Councillor Davis suggested that this process is also politicized, reiterating how it is "exceptionally important that we figure out an arm's length, transparent, and accountable process." This point was echoed by a number of Councillors, who stressed a need for more thought and consideration.

On a related note, the OAA was compelled to intervene last year over the City's appointments to the COA, after Councillors willfully circumvented the City's own policy to appoint members that should otherwise have been ineligible. This action remains of great concern to the OAA. This kind of politicization should not be happening at the COA, and absolutely cannot happen if the City proceeds with establishing a LAB.

As a result, the appointment and composition of these panels remains one of the OAA's most fundamental concerns. As this is a quasi-judicial adjudicative tribunal, Councillors must commit to the LAB being fully grounded in planning and insulated from any local or political interference. This recommendation was present in the original staff report, which stressed the need for a clear focus on planning principles and the elimination of outside interference so as to maintain an independent and unbiased planning and appeals process.