

**Re: EX13.1**

# **Establishing a Local Appeal Body for Toronto**

**Presentation to Executive Committee  
March 9, 2016**

# City Council Decision

- In July 2014, City Council approved the establishment of a Local Appeal Body (LAB) to hear minor variance and consent appeals of Committee of Adjustments' decisions.
- In June 2015, the report "Implementation of a Local Appeal Body (LAB) for Toronto" was considered by the Executive Committee.
- That report recommended the governance, administrative, office space requirements and an appeal fee for the LAB.
- The Committee referred the report back to staff and requested that the City Manager report back on a number of additional matters, including consultations on establishing a Mediation Program and updates on a number of legislative initiatives that may have an impact on the LAB.

# Mediation Pilot Project

# Benefits

- Mediation can be an effective tool for resolving disputes by:
  - Helping parties identify issues.
  - Encouraging flexibility for parties to consider different options.
  - Providing an opportunity for enhanced communication and for parties to be heard.
  - Reducing overall costs and timelines.
  - Increasing the likelihood of a settlement.

# Consultation

- City staff held focus groups with industry representatives and ratepayer association representatives to discuss possible mediation options.
- In general, participants felt that opportunities for increased communication would be helpful in resolving disputes, and this could be achieved by a more formal mediation program (although opinions varied on the best approach to implementing mediation).
- Many comments focused on improving the Committee of Adjustment process, and reflected similar concerns expressed in earlier public consultations.

# Mediation Pilot Project

- A Mediation Pilot Project for up to one year is recommended for the North York District.
- Using mediation to resolve disputes related to minor variance and consent applications adjudicated by the Committee of Adjustment is a new program for the City.
- The North York District was selected as it has the highest rate of appeals of Committee of Adjustment decisions of minor variance and consent applications in the City.
- When complete, the pilot will be evaluated and results reported to Planning and Growth Management Committee.
- It is recommended that the benefits and effectiveness of the program be assessed before considering City-wide implementation.

# Mediation Pilot Project

## Key Elements

- Extended to all minor variance and consent applications.
- Mediation is voluntary and can take place before or after Committee of Adjustment decision has been made.
- Cost for pilot to be capped at \$50,000 and will run for up to a year.
- Sessions would be facilitated by an external professional planner and an accredited mediator.
- Court Services Division would be responsible for administering the pilot project.

# Update on Legislative Initiatives



# Bill 73

- *Smart Growth for Our Communities Act*, received Royal Assent on Dec 3, 2015, amended the *Planning Act* and the *Development Charges Act*, including:
  - Enabling the province and local municipalities to further define what constitutes a minor variance.
  - Limiting minor variance applications for a 2-year period, following a privately initiated zoning amendment unless Council has declared by resolution that an application is permitted.
- Changes may improve quality of Committee of Adjustment decisions, but premature to determine what, if any, impacts they will have on a LAB.
- The in-force date for these changes has not been announced.

# City of Toronto Act 5 Year Review

- As part of the Province's 5-year review of the *City of Toronto Act, 2006*, Council endorsed amendments that will impact the LAB:
  - Request that the City have the authority to dissolve or make changes to the LAB once established.
  - Request that the City be able to recover costs associated with the LAB through planning application fees.
- Currently, the City does not have the authority to dissolve or change it once it is established. It is unknown at this time if the Province will amend COTA to provide this authority.

# Private Members Bill – Bill 39

- Private Members Bill 39 (MPP Milczyn), proposes to:
  - Provide the City authority to dissolve a LAB after it has been established
  - Provide clarity around LAB fees (i.e. fees cannot be appealed, etc.)
  - Strengthen mediation requirements
- The Bill was referred to Standing Committee after Second Reading on Nov 20, 2014.

# LAB Implementation

# Authority and Mandate

- The *City of Toronto Act* (COTA) provides authority to establish a City of Toronto LAB for local land use planning matters.
- A LAB's mandate is to hear appeals of minor zoning variance and consent (e.g. lot severance/lot addition) applications.
- The hearings are “De Novo” – considered without regard to Committee of Adjustments' decision or previous evidence.
- A LAB has all the powers of the Ontario Municipal Board (OMB) and must comply with prescribed regulation and City by-laws on governing practices and procedures.

# Membership

- 6 part-time Members and a full time Chair.
- In addition to adjudicative responsibilities, the Chair will also have administrative duties.
- Assumes 1 Member per hearing/mediation.
- The recruitment process will be transparent, objective and impartial in accordance with the City's Public Appointments Policy.
- A 3 Member Selection Panel will be appointed by City Council on recommendation of the CAC to interview, shortlist and recommend appointment of LAB members directly to City Council.

# Fees and Administration

- A \$500 application fee is recommended. The fee would be per appeal not per separate application.
- Administrative support is required to carry out the mandate and operations of a LAB, including management of applications, reviews, organizing and supporting hearings.
- Court Services Division is recommended to provide administrative support given the division's experience with courts and the Licensing Tribunal.
- Recommended that LAB be housed at 40 Orchard View, Northern District library space, 2<sup>nd</sup> floor.

# Estimated Costs

## Capital Construction and Start Up Budget

Item	Cost
Office Renovations	\$1,592,000
<i>Furniture, Fixtures and Equipment</i>	\$375,000
Contingency @10%	\$170,500
<b>Total</b>	<b>\$2,137,500</b>

## Annual Operating Budget

Item	Cost
Staff, including benefits	\$552,000
Member Remuneration	\$350,000
Office Costs (paper, supplies, equipment)	\$425,000
Occupancy Costs	\$161,600
Legal Costs	\$200,000
<b>Total</b>	<b>\$1,688,600</b>



# Recommendations

1. City Council adopt the Local Appeal Body Governance Structure in Attachment 1 of the report, *Follow-up Report on Local Appeal Body (LAB) for Toronto* (“report”).
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 the 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.

# Recommendations (continued)

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.

# Recommendations (continued)

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 Local Appeal Body 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.

# Recommendations (continued)

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.

# Recommendations (continued)

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.
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.