

Toronto Local Appeal Body – Chair's 2021 Annual Report

Date: June 20, 2022

To: Planning and Housing Committee

From: Director, Court Services

Wards: All

SUMMARY

Enacted on May 3rd, 2017, the Toronto Local Appeal Body (TLAB) is an independent, quasi-judicial tribunal established through City of Toronto Municipal Code Chapter 142, Local Appeal Body, the City of Toronto Act, and other provincial legislation. The TLAB has all the powers of the Ontario Municipal Board related to the hearing of appeals to Committee of Adjustment decisions for minor variance and consent applications under subsections 45(12), 53(14), 53(19) and 53(27) of the Planning Act.

TLAB Member responsibilities are outlined in Municipal Code Chapter 142 – Local Appeal Body. These responsibilities are associated with the adjudication process and include conducting mediations, presiding over hearings, and rendering a written decision on hearings based on the evidence presented in accordance with the TLAB's Rules of Practice and Procedure and the Statutory Powers Procedure Act. The Governance Structure approved by Council in 2016 stipulates that the Chair of the TLAB is responsible for preparing the Annual Report to City Council on the Tribunal's activities.

The TLAB is composed of ten members including the Chair, Vice-Chair, and eight Panel Members who are nominated by an impartial citizen-member nominating panel with recommendations for appointments submitted to City Council. City Council appoints Members of the TLAB for a four-year term of office. On April 6, 2022, City Council approved an increase in the TLAB's Member complement from ten to fourteen Members.

This report recommends that City Council receive the 2021 Annual Report from the TLAB Chair for information.

This report also provides additional staff comments and information related to the specific issues raised in the TLAB Chair's 2021 Annual Report's Recommendations.

RECOMMENDATIONS

The Director, Court Services recommends that:

1. City Council receive this report and the 2021 Annual Report from the Chair of the Toronto Local Appeal Body contained in Attachment 1 for information.

FINANCIAL IMPACT

There are no financial implications arising from this report.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting on April 6, 2022, City Council received a report from the Deputy City Manager which responds to City Council's direction for the City Manager to review and report back to Planning and Housing Committee on items 1, and 3a-c from Item PH23.13 and approved an increase in the TLAB Member composition from ten to fourteen part-time Members including a Chair and Vice-Chair. The link to City Council's decision is available at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.PH32.2>

At its meeting on June 8, 2021, City Council received for information the 2020 Annual Report from the Chair of the Toronto Local Appeal Body, from the Director, Court Services. City Council directed the City Manager to report back on items 1, and 3a-c as outlined in this report. The link to City Council's decision is available at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.PH23.13>

At its meeting on May 20, 2021, Planning and Housing Committee received a report from the City Manager which responds to City Council's direction for the City Manager to review and report back to Planning and Housing Committee on the recommendations in the Toronto Local Appeal Body Chair's 2019 Annual Report. The link to Planning and Housing Committee's decision is available at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.PH23.12>

The 2019 Annual Report from the Chair of the Toronto Local Appeal Body was received for information by Council on July 28 and 29, 2020. City Council directed the City Manager to review the recommendations in the TLAB 2019 Annual Report from the Director, Court Services and report back to the Planning & Housing Committee by the first quarter of 2021 on the feasibility of implementing the Chair's recommendations.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.PH15.4>

The 2018 Annual Report from the Chair of the Toronto Local Appeal Body was received for information by Council on May 14, 2019. The link to Council's decision is available at: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.PH5.7>

The 2017 Annual Report from the Chair of the Toronto Local Appeal Body was received for information by Council on June 26, 27, 28 and 29, 2018. The link to Council's decision is available at <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.PG30.10>

At its meeting on March 31, and April 1 2016, City Council adopted the Local Appeal Body Governance Structure in Attachment 1 to the report (February 24, 2016) from the City Manager, directed that a separate Toronto Municipal Code Chapter be established for the Local Appeal Body substantially as provided for in Attachment 2 to the report (February 24, 2016) from the City Manager, authorized the City Solicitor to bring forward a By-law implementing the Local Appeal Body once a series of activities were completed to the satisfaction of the City Manager, and established a Local Appeal Body Nominating Panel, composed of three citizen members appointed by City Council on recommendation of the City Clerk, to short-list, interview and recommend candidates directly to City Council for appointment to the Local Appeal Body. The link to Council's decision is available at: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX13.1>

COMMENTS

The Toronto Local Appeal Body Chair's Annual Report covers TLAB activities from January 1, 2021 to December 31, 2021.

The 2021 Annual Report includes the following sections:

- Executive Summary
- About the TLAB – Background
- Organizational Structure
- TLAB Operational Highlights
- Key Principles of the TLAB
- The TLAB Appeal Process
- Practice Directions
- Performance Metrics and Summary Statistics
- Going Forward: Recommendations

This report also provides additional staff comments and information related to the specific issues raised in the TLAB Chair's 2021 Annual Report's Recommendations.

Guiding Principles

At its March 31 and April 1, 2016 meeting, City Council approved the implementation of the Toronto Local Appeal Body (TLAB), including: the TLAB's governance structure; roles and responsibilities of the TLAB Chair and its Members; identification of Court

Services as having administrative responsibility for TLAB; and identification of eight Guiding Principles for TLAB implementation previously adopted by Council.

Staff identified from TLAB's implementation that it would be an ongoing process of working with its Members through a defined governance structure to adjust to the Tribunal's operational service requirements based on user demand for the TLAB service. Court Services staff regularly liaise with the TLAB Chair and Vice-Chair on administrative support matters, and work with relevant City divisions to address the issues identified by TLAB in a collaborative fashion.

The City remains committed to the continuing measures that encourage and support open and direct dialogue, issue problem solving, and operational support planning that helps to enable TLAB to meet its mandate. In keeping with the existing TLAB governance structure and Chair's identified responsibilities, the Chair continues to be able to request meetings to liaise with City staff on administrative support matters at any time. Court Services staff work with relevant City divisions to coordinate responses to any such requests once received.

The Guiding Principles for Implementation are one of the foundational documents of the TLAB. The Guiding Principles identify the operational principles and strategic priorities identified by Toronto residents and stakeholders in establishing a Local Appeal Body. The Guiding Principles are the result of a city-wide public consultation process mandated by City Council prior to providing its initial approval to proceed with the Local Appeal Body at its July 8, 2014 meeting. The link to City Council's decision is available at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.PG33.14>

A review of TLAB's Guiding Principles for Implementation is not recommended at this time. The TLAB's existing governance structure provides opportunities for continued constructive relationship development between the City and TLAB that respects the mandate of TLAB Members, while addressing the TLAB's ongoing operational needs, concerns and challenges.

Meetings with Public Appointments

The Public Appointments Secretariat will continue to meet with the Chair as needed and at their request. Before each recruitment, the Public Appointments Secretariat also consults the Chair to discuss the TLAB needs, emerging trends and issues as well as skills and qualifications that would be helpful in the next round of appointments.

The Chair is welcome to attend the public portions of the Toronto Local Appeal Body Nominating Panel meetings. However, the Public Appointments Policy states that while Council Members, City staff, board members and staff of agencies and corporations may encourage qualified applicants to submit applications to enrich the applicant pool, they may not provide references for nor endorse or recommend through the recruitment process any candidates that are being or will be considered by a nominating panel.

Public Appointment Recruitment Process

The Annual Report recommends that public appointments staff identify a member's intention to seek re-appointment one year in advance of the end of term, and maintain a

roster of on-call candidates so that vacancies can result in a replacement in active service within four months.

The Public Appointments office currently identifies a member's intention for reappointment in advance of a recruitment process to confirm their interest in seeking re-appointment. Typically, this occurs three to four months before a member's term expires.

Similar to all boards, committees, and tribunals, the application to serve as a member of the TLAB is always active on the Public Appointments website and staff have on-going outreach for all the City's opportunities. Additional targeted recruitment is done as vacancies arise to find highly-qualified candidates for these bodies.

Appointments are typically filled within four months of a position becoming vacant, either due to a term ending or a resignation. The timing of appointments depends on the availability of nominating panels, staff workload and the Council meeting cycle.

Identifying a member's interest in seeking re-appointment one year in advance of a term ending is of limited advantage as the member's availability, interest and other circumstances may change significantly over that timeframe. Staff would still need to contact members again three to four months in advance of their term ending to reconfirm interest as part of the standard process.

Subcommittees and Public Meetings

The TLAB is an independent quasi-judicial Tribunal that hears appeals of Committee of Adjustment decisions for minor variances and consents (land severances). Subject to City of Toronto Act, 2006 subsections 115(10) and (14), the Local Appeal Body assumes all the powers and authority of the Ontario Municipal Board related to the hearing of appeals to Committee of Adjustment decisions for minor variance and consent applications under subsections 45(12), 53(14), 53(19) and 53(27) of the Planning Act.

In keeping with Toronto Municipal Code Chapter 142 Section 3, the TLAB must establish and adopt its own rules of practice and procedure to govern its proceedings. The TLAB hearings are conducted in accordance with the rules of practice and procedure (Procedure By-law) adopted by the TLAB and the Statutory Powers Procedure Act.

Consistent with all City of Toronto Tribunals, TLAB must also adhere to the public open meeting provisions of the Municipal Act, 2001 Section 239 and the Statutory Powers Procedure Act Section 9. In Ontario legislation is clear that Tribunals should default to being open to the public except where the Tribunal is of the opinion that very specific circumstances exist to take it out of public session:

Oral, Written or Electronic hearing

- (a) matters involving public security may be disclosed; or
- (b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the

public interest outweighs the desirability of adhering to the principle that hearings be open to the public."

Electronic hearing

(a) it is not practical to hold the hearing in a manner that is open to the public.

TLAB may establish subcommittees provided they are done in accordance with its rules of practice and procedure, adhere to all legislation the TLAB must function in accordance with and abide by, and operate within the mandated roles, duties and responsibilities of TLAB Members. Any subcommittee created by TLAB is subject to open meeting provisions of the Municipal Act, 2001 Section 239 and the Statutory Powers Procedure Act Section 9.

Should TLAB implement a subcommittee(s) as part of its business operations, the City requires advance notice prior to implementation in order that the costs associated with such meetings are appropriately reflected in the annual budget submissions of Court Services, as the Division designated by Council to provide administrative support to the TLAB.

Tribunal Business Meetings

Court Services consults with the TLAB Chair annually to ensure budget submissions to Council meet the Tribunal's needs. During the consultation the TLAB Chair identifies the number of business meetings that are needed in a given year. This is an important part of the budget development process. If a request is made mid-year for an additional business meeting, Court Services determines if Council-approved budget is available to support the request.

To date, all business meetings including mid-year requests have been accommodated in the Court Services budget. As a result, a variety of business meetings for educational and public consultation purposes have always been supported and no business meetings have been refused. Table 1 below shows the number of business meetings that have been scheduled in each calendar year since the establishment of the Tribunal in 2017.

Table 1

	2017	2018	2019	2020	2021	2022
TLAB Business Meetings Scheduled	5	13*	4	6*	5	6 ^t

* In 2018, thirteen business meetings scheduled, three cancelled by the TLAB.

** In 2020, six business meetings scheduled, two cancelled by the TLAB.

^t In 2022, three business meetings held, and three are scheduled.

As outlined in Section 9.1 of the Guiding Principles for the TLAB and the City of Toronto, Court Services ensures that the budget submission to Council is sufficient to cover the TLAB's needs. The Chair is responsible for making the Tribunal's business

meeting needs known so that the request can be considered for approval by City Council through the budget process.

Administrative/operations meetings between the TLAB and Court Services Tribunal Staff ensure that the Tribunal's needs can be identified and met. Court Services responds to the needs of the TLAB, the public, and stakeholders. There is also a well-established open door policy in place with the Director, Court Services and the Manager, Court Operations – Tribunals to allow for ongoing communication on the TLAB's needs.

Court Services provides administrative support to two additional City Tribunals: the Toronto Licensing Tribunal and the Administrative Penalty Tribunal. Business meeting requests for Tribunals within Court Service's program have always been supported through the City's budget process.

The City's Budget Process

Court Services annual budget submission to City Council related to the TLAB program was included in the Chair's 2020 Annual Report and considered by Council at its meeting on June 8, 2021.

At its meeting on June 8, 2021, City Council directed the City Manager, in consultation with the Director, Court Services, the Chief Planner and Executive Director, City Planning and the City Clerk, to review and report back to the Planning and Housing Committee by the first quarter of 2022 on the feasibility of implementing the following: for the Toronto Local Appeal Body, its Chair to be represented and included in the preparation of the annual Toronto Local Appeal Body tribunal budget, in consultation with Court Services.

City Staff responded to this direction through Item PH32.2, a report that was considered by City Council at its meeting on April 6, 2022. In this report City Staff outlined that the current method of engagement with the TLAB Chair related to the annual budget and the ongoing operating funding by the City is consistent with the roles and responsibilities of City Staff and the TLAB Chair as per the Municipal Code Chapter 142 and the Governance Structure adopted by City Council. It is also consistent with the Guiding Principles approved by City Council that clarify the roles of TLAB, City Staff, and City Council in supporting the mandate of the TLAB.

At its meeting on April 6, 2022 City Council adopted the report without amendments.

Tribunal Administration

Court Services provides accessible, efficient, and effective front-line customer support for case management, court room and tribunal hearing room services to the public and a wide range of stakeholders that use the Provincial Offences Courts and three City Tribunals – the Administrative Penalty Tribunal, the Toronto Licensing Tribunal, and the Toronto Local Appeal Body. Court Services is the primary point of contact for the public when they are in need of information, assistance, and access to these services.

Court Services administers the TLAB as outlined in Municipal Code Chapter 142 – Local Appeal Body. This includes providing case management administrative

processes, hearing room services, financial administration, technology, support for procurement of goods and services, facilities support, and all customer services to the public and stakeholders. The division also coordinates and delivers orientation to new Tribunal Members and training to Members related to digital processes.

Court Services provides administrative support to the TLAB based on Chapter 142 of the Toronto Municipal Code. All Court Services Tribunal Staff that support the TLAB are trained on the appeals process, answer questions from the public through phone and email customer service channels, and provide coordination services. As a result, Court Services Tribunal Staff perform the role discussed and a dedicated position would be redundant.

CONTACT

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SIGNATURE

Susan Garossino
Director, Court Services

Attachment 1 – Toronto Local Appeal Body Chair's 2021 Annual Report