The Need for Greater Transparency in the COA Process

A Case Study with Recommendations

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Ontario Bill 23

- **Passage of Bill 23 in Ontario in December 2022 eliminated the right for “third-party” appeals of COA decisions.**

- **Under this regulatory framework, it is essential that Toronto’s COA process be**
  - **transparent,**
  - **deemed as fair by all parties**

- **KPMG recommendations are a major step towards this.**

Files A95/16EYK, A96/16EYK, B11/16EYK

- **Application to sever 9 Thirty Eighth Street and build 2 oversized homes.**
  - **Heard by EY COA May 4, 2017**
  - **City Planning recommended refusal**
  - **Urban Forestry recommended refusal**
  - **Councillor Grimes recommended refusal**
  - **11 residents wrote letters of objection**
  - **7 residents appeared at the hearing to recommend refusal.**
  - **The applicant's case: "All the variances are minor"**

Files A95/16EYK, A96/16EYK, B11/16EYK

- **The Etobicoke/York COA Panel *unanimously* approved this severance with the following rationale:**

It is the decision of the Committee of Adjustment to authorize this variance application for the following reasons:

- The general intent and purpose of the Official Plan is maintained.
- The general intent and purpose of the Zoning By-law is maintained.
- The variance(s) is considered desirable for the appropriate development of the land.
- In the opinion of the Committee, the variance(s) is minor.

- **This decision fails to explain the rationale behind delivering a different decision than recommended by the City's professional staff or the impact of concerns expressed by residents.**

Files A95/16EYK, A96/16EYK, B11/16EYK

- The Chair of the COA panel, at the conclusion of this hearing, made the following comments to his fellow panel members:
  - "..this was precedent-setting"
  - "There's hardly any lot-splits in the south part of Long Branch"
- The above is extracted from the video recording of the hearing.

Files A95/16EYK, A96/16EYK, B11/16EYK

- **The same text for the basis of this decision is used on virtually *every* approval by a COA panel across the City of Toronto.**

- **This is boilerplate text, not a sufficient explanation.**

- **Toronto COAs use corresponding boilerplate text for COA refusals.**

The Planning Act – Section 45 (8)

(8.1) The decision of the committee, whether granting or refusing an application, shall be in writing, shall be signed by the members who concur in the decision and shall,

a) set out the reasons for the decision; and

b) contain a brief explanation of the effect, if any, that the written and oral submissions mentioned in subsection (8.2) had on the decision. 2015, c. 26, s. 29 (3).

Written and oral submissions

(8.2) Clause (8.1) (b) applies to,

a) any written submissions relating to the application that were made to the committee before its decision; and

b) any oral submissions relating to the application that were made at a hearing. 2015, c. 26, s. 29 (3).

Files A95/16EYK, A96/16EYK, B11/16EYK

- **The Decision on these files fails to disclose the COA panel's rationale for their decision.**
- **It also contravenes Section 45 Clause 8 of *The Planning Act RSO 1990,* which governs COA Decisions.**
- **This is true not only of the above decision, but of *ALL* COA decisions in the City of Toronto.**

Fallout from the COA Decision

- **I had to appeal the decision at the TLAB.**
- **The TLAB panel member supported the COA's decision, despite well-documented evidence from City Planning that should have indicated otherwise.**
- **I submitted a Request for Review of the TLAB panel member's decision**
- **The Review overturned and reverses the original TLAB decision order.**

Fallout from the COA Decision

- **The Applicant filed notice of Leave to Appeal of the TLAB Review Decision to the Divisional Court.**
- **I had to engage a lawyer with specialized experience in municipal law to represent me at Divisional Court**
- **On April 4, 2022, the Divisional Court panel upheld TLAB's Review Decision.**
- **My legal fees exceeded $50,000 for this – none of this being tax deductible.**

Recommendation 1

- **Establish a separate stream for consent applications**
  - **Heard only in evening sessions to facilitate resident participation**
  - **Longer-duration presentations by Applicants and Residents – i.e., more than 5 minutes**
  - **Require more evidence-based presentations by all**

Rationale

- **At TLAB**
  - **Hearings on consent applications typically exceed 3 days.**
  - **Testimony by Applicants' expert planning witnesses typically are a full day or more.**
  - **Panel chairs seem more interested in a fair result, backed by articulated analysis of testimony, than processing as many applications in a given time period for expediency's sake.**

- **Perhaps consent applications should simply bypass COA and go straight to TLAB.**

Recommendation 2

- **Consent applications should bypass COA and go straight to TLAB.**

Rationale

- **At TLAB**
  - **All hearings are de novo – basically treated as a new hearing of an application**
  - **There is no review of COA decisions for fairness or consistency with regulations in place (eg., OP, Bylaws, GPGGH)**
  - **The mindset is one of thoroughness of evaluation, not expediency**
  - **Time is made to allow for more fulsome presentation of evidence and debate.**
  - **The TLAB format better enables residents to fully articulate their concerns than the COA process.**
  - **TLAB written decisions are thorough and transparent.**

Recommendation 3

- **Please accept and adopt the recommended changes proposed in the KPMG report.**