

# PITFALLS AND PRATFALLS

And other Aspects

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# TOPICS

1. New Kid on the Block
2. Rules
3. Jurisdiction
4. Conduct and Service Delivery
5. Anatomy of a Proceeding
6. Scheduling
7. Hearings
8. Decisions and Orders
9. TLAB Image

# 1. New Kid on the Block

- Eyes on: public; applicants; professional community; councillors; OMB; municipalities; media
- Paperless world
- Access and 'Citizens Guide'
- Staff resources
- Communications
- Goal oriented service tribunal
- Co-operation
- Conflicts

## 2. Rules

- Early disclosure
- Fixed appointments
- Preparedness requirements
- Runway clearance
- Forms

# 3. Jurisdiction and their Scope

- The ***Planning Act***
- Section 45 (12) delivers six distinct authorizations of jurisdiction under s. 45
- Section 53 (14), (19) and (27) deliver three consent-related areas of jurisdiction.
  - (Underlining emphasizes statutory tests; \* denotes no direction given)
  - 1) S. 45(1) –authorize variances to s. 34 and s.38 by-laws for land, building or structure that are minor, desirable for the appropriate development or use, and if general intent and purpose of the by-law and official plan are maintained (the 'Four Tests').
  - 2) S. 45(2) (a) (i) – *enlargement or extension* of a building or structure of a continuing legal non-conforming use\*, or
  - 3) for the *enlargement or extension* of a building or structure for a use that is similar or more compatible to permitted uses
  - 4) S. 45(2) (a) (ii) – *permission for the use* of land, building or structure that is similar to the purpose or more compatible with the by-law than a continuing legal non-conforming use
  - 5) S. 45(2) (b) – permit uses *generally* defined of land, building or structure for any purpose that conform with uses permitted in the by-law.
  - 6) S. 45(3) – minor variances from any specified by-law that implements an Official Plan on subsection (1) terms (the 'Four Tests').

# 4. Conduct and Service Delivery

- Courtesy Firmness and Independence
- Site Visit
- Minimal intervention
- Access to Legal Counsel
- Year-end reporting to Council
- Avoidance of: conflict; familiarity; grounds for judicial review: 'Grounds' include:
  - Unreasonableness
  - Improper delegation /sub-delegation
  - Unauthorized discretion
  - Bad faith
  - Improper purpose
  - Excess of jurisdiction; exceeding the scope of the delegated power
  - Unconstitutionality: Charter and division of powers (Constitution Act, 1982)
  - Breach of natural justice/SPPA
  - Illegality, ultra vires
  - Failure to follow a statutory condition precedent
  - Unauthorized discrimination

# 5. Anatomy of a Proceeding

- The one hundred (100 +/-) day 'candle'
- Stage 1: the Appeal
- Stage 2: Notice of Hearing, disclosure and motions
- Stage 3: the Hearing, Decision and Order

# 6. Scheduling

- *Timeline* deliverables
- Assignments for Hearings
- Notice of Hearing: (Form 2) with Schedule of dates:
  - \_\_\_\_\_ Applicants identification of Revisions, post Committee (Form 3)
  - \_\_\_\_\_ Party/Participant disclosure (Form )
  - \_\_\_\_\_ Authorized Representative (Form )
  - \_\_\_\_\_ Appellants support materials\*
  - \_\_\_\_\_ Respondents support materials\*
  - \_\_\_\_\_ Participants Statements
  - \_\_\_\_\_ Reply materials
  - \_\_\_\_\_ Last date for any Notice of Motion (Forms), mediation initiation
  - \_\_\_\_\_ Last date for TLAB Notice of electronic or written hearing
  - \_\_\_\_\_ Hearing: settlement; electronic; written. Default is a 'Oral Hearing'.

\*'materials' includes witness statements, affidavits (Form 10), documents, experts attestations (Form )



# 7. Hearings

- Principles of administrative law
- Statutory and common law rules of natural justice
- Administrative matters
- Order and sequence of evidence
- Qualifications of Witnesses
- Rulings: status; conflicts; qualifications; admissibility; disclosure
- Chambers
- Adjournments
- Unrepresented persons
- Councillors in attendance
- Media
- Special Issues: easements; heritage categories; public and private lanes; property rights

## 8. Decisions and Orders

- Rules
- Decision format: FILEO (Facts, Issues, Law/Policy, Evidence, Outcome)
- Structure: Introduction; Relief sought; Applicable tests/considerations; Merits and demerits support; Analysis; Disposition
- Conditions
- Contingent Orders

## 9. TLAB IMAGE

- Accessibility and contemporary institution
- Performance and self-appraisal by members
- Standard of excellence in service, conduct, the administration of justice, disposition reasoning and self-control, co-operation
- Chairs responsibilities: liaison; spokesperson; members complaints; conduct complaint investigations; Decision review for clarity, quality, issues of legality (not judgement, merit or factual determinations); Reviews; assignments; attendances at sittings of members; reporting
- Consideration of the public and the public interest