

## Background for TLAB

David Godley <mhairig@pathcom.com>

Tue 2017-04-18 10:05 AM

To: Toronto Local Appeal Body <TLAB@toronto.ca>;

Cc: Susan Garossino <Susan.Garossino@toronto.ca>;

Hello Hsing,

I am submitting my previous memo for the April 19 TLAB meeting which is intended as background information and not for discussion unless a member wishes.

I am still not sure if my original memo was circulated to each member of the Committee, although I note it went to the chair.

If my memo is ineligible for circulation to TLAB Committee members I will send it to each member of Council for their information.

David

Greetings from Long Branch

Again, I was impressed with the second the Toronto Local Appeal Board (TLAB) business meeting on February 23rd 2017. My previous commentary is at the end of this email.

### Early Disclosure Issue

After your session I had a brief meeting with David Marshall about "Early Disclosure" which is "appealing". He advised me to write.

The idea, contained in the draft Rules and Procedures document, is that a hearing be set up as soon as possible after an appeal is received and not more than 100 days ahead.

All parties and participants would have 30 days to submit their evidence on line and experts would have an extra 15 days.

There would then be a "silence" on new submissions with the opportunity for those involved for reaching a consensus.

### Written Representation

Together with paperless processes, early disclosure could lead the way to digitally written hearings which in general will be much easier for the general public who have full time jobs and will not have to attend hearings.

These are members of the public which have been almost frozen out of the process and who, according to the Official Plan, should be shaping their own neighbourhood. The system exists for the public interest.

I have supported written representation for smaller hearings in the past after experience of the English approach. As mentioned no additional approval is needed for TLAB to use such a method.

### My Angle

I write a monthly Update about Long Branch Conservation; copies are on the website "preservedstories.com". I am a retired planner who served on the Committee of Adjustment.

The rest of the time I spend helping those in the community understand the process and issues and write letters to help the general public mostly in Long Branch.

I used to attend Committee of Adjustment hearings and OMB hearings on a pro bono basis but now am overwhelmed with local issues and keeping up with the evolving planning situation. The hearings are also involve a huge commitment of time.

I do not intend to be an expert witness again. In any case I have run out of suits!

While I am fully conversant with the broader level of planning, as a Neighbourhood Planner, I am coming at this from a neighbourhood planning perspective and the public's participation. (see attached)

### Fresh Approach and Branding

I would hope that TLAB would distance itself as much as possible from the toxicity of the OMB. Informality and greater equality would be objectives in order to avoid the intimidating court experience and be fully accessible.

We have meetings using these objectives in Long Branch where the Committee of Adjustment defer a matter for a community meeting at the request of the Councillor or others.

These meetings might be up to 30 people in rings around a "kitchen table". Everyone is educated about the facts and viewpoints. Everyone has a chance to speak and issues fall out of the conversation. It takes about 2 hours. A decision could theoretically be made if an adjudicator were present.

The big difference from the OMB is that no lawyers are involved! Lawyers escalate the length of time and cost exponentially. And the OMB is probably the most legalistic planning body in North America with its de novo hearings, basically considering

applications twice. As you know the Province has proposed appellate OMB hearings.

I applaud TLAB's efforts to promote mediation.

### Challenges of Early Disclosure

For genuine minor variances early disclosure may well work according to the proposed time table.

Perhaps minor variances will be limited to say 20% density (representing small in size as ruled by the Divisional Court in "De Gasperis".)

De Gasperis Divisional Court Decision, Justice Matlow, From Municipal Planning Law, FALL 2005.

Variances must be small in nature.

"The likely impact of a variance is often considered to be the only factor which determines whether or not it qualifies as minor, but in my view, such an approach incorrectly overlooks the first factor, size. Impact is an important factor, but it is not the only factor. A variance can, in certain circumstances, be patently too large to qualify as minor **even if it likely will have no impact whatsoever on anyone or anything.** (my emphasis)

Under draft Provincial legislation municipalities will be allowed to define "Minor".

For euphemistic minor variances (also known by me as zoning amendments) I think the timing is too tight and there will be matters to iron out in the process. It is imperative TLAB starts out with successes.

For example the City Legal Department has taken over a month to try to hire an outside planner. Nearly all "planning" planners (as opposed to "development" planners) have now been gobbled up by the development industry!

And the outside planner cannot simply drop everything to concentrate on one hearing. For those who are paid well and work in an office environment it may be feasible to respond in a timely fashion. For the general public I am concerned that his

will be a further barrier, perhaps major, to participation. I also think the date for the hearing should be after consultation with those interested to ensure all can participate. The public's say needs to be promoted and an adjudication body needs to bend over

backwards to ensure balanced input as well as balanced decisions.

It will be difficult to forecast party or participant status ahead for the public. This partially depends on how the City Planning and Legal Departments approach the issue.

No analysis or rationale is given in the Planning comments to the Committee of Adjustment (COA) other than the four tests are met (despite this being a legal requirement). Many people do not know whether they will be attending or participating in

whatever capacity even when they do attend a hearing. I have always changed my evidence when I hear what the development planner has to say so I can address points raised. This would not work if the Development Planner does not submit until after the

30 day limit.

Another example is that the notice requirement at the local level are for the genuine minor variances or "adjustments" - applications following the Toronto definition "Small changes or exceptions to existing land use or development restrictions contained in

the zoning bylaw are called minor variances." By nature these would have minimal impact.

COA notices arrive about 2 weeks before a hearing. If a person is "out of town" for 3 weeks they may get to the letter (and if they understand it), be already into the 30 days before they have sought advice.

Many people work and have no time to deal with such a matter even if they are severely impacted. Many people do not have access to computers and sometimes people have computers which break down!

I hope that the fairness issue does not turn into a political football.

Also the current technology at COA does not allow people to read notes and figures on plans and maps. Before there were large scale plans on large sheets to inspect at their office. Technology needs to be improved to the level of the City's "development

applications" site where you can zero in on details of the plans and maps.

#### What is Wrong with the current system

The OMB is highly discriminatory against the public and strongly pro development industry aided by the "smart suits and smart talkers". Partly this is due to the system and partly to the lack of understanding planning, specifically the difference between

land use planning and urban design.

Currently there is no urban design input into issues in the neighbourhood. Most issues are exclusively urban design rather than land use. So it is like plumbers dealing with dentistry. No reasonable person test is applied. Unsurprisingly we get incorrect

decisions and stupid results which include all the soldier houses approved by the OMB. Long Branch soldier houses, are 3 storey approximately double density on approximately 25 feet frontage.

We all know that minor has been bent out of all proportion to reality, do not correlate with the Official

Plan or Zoning bylaw, never mind "minor" and desirable for the public interest. And we know that the appeal process, certainly relating to Long Branch, is spurious. This is the reason for TLAB's existence.

The dark shadow of the OMB is cast on the COA and Planning Department. On some occasions the decisions of COA appear to be based on what the OMB would do or substituting their own views for the legal and planning framework.

The Planning Department are in a bind because they do not want their planners to spend all their time at the OMB.

To show the scope of the issue in Long Branch as an example, I submit the following:







Proposal for 9 Meaford. 100 similar houses have already been given approval in Long Branch in the last 5 years in similar contexts. One out of every eight Toronto appeals to the OMB are for tiny Long Branch. The OMB overrule the COA 70% of times on

severances. The Planning Department also adjust their advice based on what the OMB might do and freely admit this. Their advice on what is an appropriate density has risen from 10 to 20 % a decade ago to around 50% 5 years ago, up to 100% last years

and we now see support for a tripling of density for a soldier house. The public are substantially dependent on the Planning Department who thankfully have opposed the worst development proposals in the past. However the public need their

independence to put planning back on the straight and narrow.

#### Fair Hearings

The aim of the TLAB should be to restore the balance between factions. The Planning Act emphasises fair as does the mission and mandate of the OMB.

In this regard I would support TLAB adopting the mission and mandate of the OMB.

Although the TLAB is handed all the functions of the OMB, the operation of the rules and procedures can be quite different. The OMB used to side with planning in an effort to prevent municipalities from bias.

### Other Issues

The hearings are intended to take place at the TLAB offices now being renovated at Orchard Park Drive in the Eglinton and Yonge area. This is a more inaccessible place than OMB downtown, from the west and Long Branch.

I would hope that some hearings would be at Etobicoke Civic Centre to aid accessibility to the public and City planners.

It was stated at TLAB that draft decisions would be reviewed from the point of view of legality, facts and conciseness. It is also important for decisions to be as consistent as possible. An oft repeated refrain is that the outcome of OMB hearings is

dependent on the choice of chair. While consistency may be difficult to achieve at the OMB it should be easier with a smaller mandate and smaller issues.

Many people refuse to even consider going to the OMB because they find the court like setting intimidating (and the journey is less than invigorating.)

That is why I would oppose standing on the Chair's arrival and calling for order.

While I see the "courtesan"'s point about elevating the position of Chair, I think the members of TLAB can handle the challenging job of both order and comprehension together.

As for witnesses I think patience is a virtue. My experience is that it is usually the Chair who behaves in an unseemly and autocratic manner!

The hearing officer's have all the power because they make the decision.

Witnesses will be in a very foreign environment, fearful of attack from opposition and nervous because this is their one chance for saving their little piece of environment.

Parties will fear costs. We desperately need to have a people friendly atmosphere at hearings.

Witnesses will veer of track, try to give unhelpful testimony. But it is essential that they feel that they are being listened too after the probable bruising they have to endure.

### Conclusion

The greatest breakthrough would be consistency in interpreting "minor" in accordance with the dictionary definition.

If TLAB have a sea change from the OMB's approach, I think the expedited method of processing with early disclosure would work.

I believe TLAB should proceed cautiously on Early Disclosure and not make it mandatory. Maybe have a pilot using genuinely small variances.



That being said I am anxious for TLAB to start as quickly as possible because I think it will improve the planning process.

My hope is that TLAB actually reintroduce planning. With the OMB we only have "development management" which skirts legal requirements and misconstrues issues.

I provide these musings with the hope that they might be of help to TLAB.

Good wishes for all your future deliberations.

David