

June 15, 2017

**DELIVERED BY EMAIL TO**

Wendy Walberg,  
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**Re: Item No. TLAB 6.1**

**Toronto Local Appeal Body – Rules of Practice and Procedure**

Dear Ms Walberg, Mr. Haley,

This will acknowledge with thanks receipt of your e-letter to the Toronto Local Appeal Body (TLAB) dated May 2, 2017. The TLAB considered the above matter at its meeting on May 3, 2017, at which counsel Nathan Muscat attended, addressed the members and responded to questions.

It is noted that the Planning Practice Group of the Legal Services Division expresses concerns relating to the application of TLAB Rules, under current practices, in achieving timely instructions on Committee of Adjustment panel decisions in which the City has an interest.

Specifically, TLAB Rules 12.2 (Request for Party Status), 16.2 (Document Disclosure); 16.4 and 16.6 (Witness Statements and Expert Witness Statements, respectively) are identified.

It is recited that a resolution of an additional 30 days might be sufficient to procure Council direction. Alternatively, consideration is requested of connecting the timelines back from the Hearing date rather than forward from the Notice of Hearing.

In preparing its draft Rules, TLAB was conscious of Council's expectation to deliver timely, reasoned decisions in an atmosphere of local consideration in a cost efficient manner. TLAB counsel canvassed multiple tribunal jurisdictions with a view to achieving best practices, consistent with the expectation of improved service delivery and partly on the euphemism that 'delay is denial'.

Two concluding components of that advice and drafting provided for targeting Hearings from the receipt of an appeal. It was determined equitable that all parties, participants and interests know the date of any required Hearing and have discrete disclosure obligations defined from the outset, but with the benefit of an all - electronic process. This was accomplished by establishing and identifying, by service of the Notice of Hearing, a document that specifies all required milestones to achieve a timely outcome. TLAB wishes to improve on practices whereby Hearing dates are struck randomly, following prolonged

prehearing procedures or are adjusted by canvass as to the convenience of counsel, parties or participants.

In this regard, the Rules, now adopted, provide for a period of approximately 100 days from the Notice of Hearing issuance, to the Hearing date.

The intent is to set in advance sufficient time for disclosure and preparation without allowing the matter to languish or become embroiled in costly procedures that can delay a fair hearing on the merits, where required.

A period of practice experience was considered and the device of Motions, while not encouraged, are available for extreme circumstances necessitating adjustment to these set dates.

The second component was a careful consideration of the timing, disclosure and exchange obligations.

The periods chosen reflect best practices but are novel in sequence, timing and comprehensiveness.

The advice that TLAB accepted was to govern the process of applicant's disclosure and prehearing procedures on a relatively tight regimen, such that the issues, expenditures, preparation and attendance by or on behalf of the public is timely, fresh to the issues, economically efficient and applied equally to all coming within the ambit of the hearing process.

This assessment included informal consideration of the practices of the City of Toronto, other municipalities, trading corporations and the public as to ways and means by which instructions are sought and effected.

In his response to questions, Mr. Muscat was candid in an undertaking to explore the potential for alternative or expedited practices within the City of Toronto, where necessary beyond current delegated authority authorizing appeals.

For its part, the TLAB Rules are crafted on the assumption that 'Party' status is automatically ascribed to: the Applicant (whether or not the Appellant); all Appellants and the City of Toronto. Indeed, under the TLAB Rules, Party and Participant status is elective; no longer does one have to apply for the approval of a particular category. However, anyone wishing to challenge an elected status has the opportunity and burden of a Motion to overcome the free election of the role an individual elects.

In practical terms for the City, this has two implications: first, it means that from the date of the decision of a Committee of Adjustment panel, a *minimum* of some seventy (70) days, elapses before a disclosure deadline occurs under the TLAB Rules (20 day appeal period; 5 day period for receipt, processing and issuance of a Notice of Hearing; 45 days to document witness disclosure).

It is acknowledged that a modestly shorter disclosure period exists should the City chose to be an appellant; however, that decision to appeal must be made with 20 days of the Committee of Adjustment panel decision and is not one that would appear to be in issue with the Rules.

Second, despite TLAB's assumption of party status for the City, no liability can accrue to the City should it determine by day 70 not to participate, as no step will have been taken upon which reliance can be imputed. Jurisprudence before the Ontario Municipal, Board affirmed in Mr. Muscat's responses, ensure that no member of the public can hold the City accountable for not pursuing a course of action that an individual supports and hopes for assistance from the City.

In each case, the City is an independent decision maker and its decision to participate or not is wholly within the City's purview.

On these reasons and others considered, TLAB respectfully at this time declines to adjust its Rules for timely disclosure and exchange. It expects that a period of practice, including the issues of concern that City counsel have expressed, will be documented and that the matters raised, if ongoing, can and will be revisited.

TLAB has expressed its intention to hold, on full Notice to stakeholders, an open public meeting on the operation, efficiency and conduct of its Rules, following a reasonable period of exposure and full operation.

This review is currently anticipated in the Spring, 2018.

Sincerely,

Ian James Lord, Chair

On behalf of the Toronto Local Appeal Body.