

Leaside Property Owners Association Incorporated

**1601 Bayview Avenue, P.O. Box 43582
Toronto ON M4G 3B0**

Submission to the Toronto Local Appeal Body

Background

The Toronto Local Appeal Body was created through a by-law enacted by City Council in March 2017 with an effective date of May 3, 2017. The first hearing was on August 31 2017.

In July 2014 City Council approved eight Guiding Principles which became the basis for implementing the TLAB. The eight principles included one principle related to practice and procedures as follows:

5. Practices and Procedures – the LAB will determine its own hearing practices and procedures in accordance with relevant legislation such as the Statutory Powers Procedures Act and the City of Toronto Act.

As such the TLAB was not provided with much substantive direction as to the practices and procedures despite the public's concerns about the OMB procedures and practices which were documented in the May 6 2014 report following public meetings.

The LPOA

The LPOA has been and is currently involved in several TLAB appeal cases as follows:

195 Glenvale Boulevard:

- Appeal by applicant of refusal by CofA of variances.
- LPOA was Party (on behalf of neighbours), with lawyer retained but no professional planning witness
- City was Party with lawyer but no planner
- Appeal allowed

1755-1757 Bayview Avenue

- Appeal by applicant of CofA refusal of variances
- LPOA is Party, with lawyer and planner retained
- City is a Party (further to earlier withdrawal)
- In process – mediation underway

248 Sutherland Drive

- Appeal by applicant of refusal by CofA of variances
- LPOA and neighbours are Participants (no lawyer or planner retained)
- In process

LPOA comments

- The LPOA supports in principle the attached concerns regarding TLAB Process and Adjudication matters raised by Robert Holland, LL.B, LL.M, (who was legal counsel retained by the LPOA in the 195 Glenvale Boulevard case). The LPOA presents these for consideration by TLAB without putting forward a view at this time as to how they may be resolved.
- In the majority of cases it is simply unrealistic to expect a residents association to retain both a lawyer, and expert planner, to address the “weight” and professionalism issue spoken to by Robert Holland. It is apparent that the imbalance in financial resources, is repeated in case after case, meaning that there is a systemic problem that needs to be addressed and corrected by the TLAB.
- The LPOA supports in principle the City Solicitor’s report of April 4, 2018 that recommends that City Council request that the TLAB amend its Rules of Practice and Procedure to:
 - a. collapse the pre-hearing requirements for participants into one step,
 - b. adopt a new rule requiring respect, courtesy and civility, and
 - c. keep the principles of access to justice and effective public participation in the forefront during its review of the Rules of Practice and Procedure

Respectfully submitted,

Geoff Kettel for

Geoff Kettel and Carol Burtin-Fripp
Co-Presidents
April 6, 2018

Attachment

TLAB vs OMB - Process and Adjudication Improvements

The first and most obvious issue:

The onerous scheduling and complexity of the preparations required by TLAB for its newly-established hearings give *out-of-character* building proposals a conspicuously unfair advantage over the opposition of neighbours for 2 reasons:

- a) residents in opposition typically cannot afford a lawyer and a planner to manage their hearing preparations, and
- b) failure to meet TLAB's hearing preparation requirements and tight deadlines will *inevitably* result in a complaint by the lawyer for the Applicant urging TLAB to reject the late-arriving or inadequate opposition submissions, or, if those non-compliant opposition submissions are accepted by TLAB, the Applicant's lawyer will necessarily succeed in convincing TLAB to minimize the evidentiary value of those submissions by reason of the Applicant's alleged inability to deliver a proper response to those submissions at the TLAB hearing.

The second, less conspicuous, but *even more* punitive, issue:

TLAB treats the evidence of opposition witnesses who do not qualify as planning "experts" in the same arbitrary and manifestly unfair manner as that adopted by the OMB.

The problem here relates to *the weight* attached to the evidence of a registered planner representing the Applicant compared to *the weight* attached to the evidence of a resident in opposition who is *not* a registered planner.

In fact, the problem surpasses *the weight* issue because both the OMB, *and now TLAB*, attach Zero Value to the "opinion" evidence of a resident in opposition who does not qualify as an "expert" planner.

As we know, the OMB, *and now TLAB*, consider the evidence of a planning "expert" who stands alone as an "expert" at the hearing, as uncontested (not merely paramount) based on the arbitrary and unrealistic assumption that the evidence provided by a registered planner on behalf of an Applicant is "objective", and not *tilted* in favour of the Applicant client.

It is well known, and widely understood by those involved in OMB hearings, and now TLAB hearings, that the subjective opinion evidence submitted by the Applicant's "expert" planner is NOT strictly "objective" because the Applicant would never retain a planner who is not prepared to give evidence in support of the Applicant's building proposal.

Robert M. Holland, LL.B, LL.M
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