

Long Branch Neighbourhood Association

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TLAB Deputation – Comments from the Long Branch Neighbourhood Association

Dear Members of the Toronto Local Appeal Board:

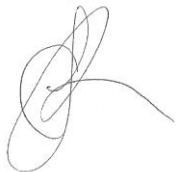
The Long Branch Neighbourhood Association (LBNA), held their AGM Oct 23, 2017 where members, elected a Board of Directors, ratified the bylaws and agreed to support the mission statement of the LBNA:

To Protect, Celebrate and Enhance the Neighbourhood of the Village of Long Branch

Prior to our official launch in October, the Association and a core group of Long Branch residents have been actively participating in the COA Public Hearings and OMB Appeals for over 5 years and have recently expanded our interests to participate in the Toronto Local Appeal Board appeals. Our comments are based on the Guiding Principles of TLAB and the objective of it being an improvement on the OMB.

With our collective experience, we believe that our Association is well versed to comment on the changes the TLAB brings to the appeal process.

Sincerely,



Christine Mercado
Chair,
Long Branch Neighbourhood Association

Principle 1. Disputes between neighbours can become contentious and every effort should be made to ensure timely resolution, emphasizing alternative dispute resolution, within the framework that finality is a hallmark of administrative justice.

TLAB seems to have escalated the contentiousness of disputes between neighbours. We are now seeing applicants who anticipate a negative ruling at the COA bring their lawyers to represent them at a COA hearing, rather than an agent, and then immediately file an appeal.

Principle 2. Justice delayed is justice denied. A lengthy interval between an appeal and an appeal decision serves no party or participant. People lose interest, events change, memories fade, reasons of convenience intercede and delay has procedural consequences and incurs unnecessary expense.

In our experience, there is no constraints to TLAB format to ensure the hearing is heard within the shortened time frame. A typical appeal which the consent and variances are appealed for a Long Branch property was given two days at the OMB. In observing the hearings, there was no stream lining of evidence and the same presentation formula was applied by Representatives for a two-day hearing. The time constraints for TLAB appeals and filings are proving to be, so far, to the detriment of the Long Branch Neighbourhood.

It was our understanding that TLAB was to be a more accessible appeal process for residents. We have experienced exactly the opposite.

As an example, at a recent one day hearing. The applicant's lawyer, who appealed the COA decision, still consumed the entire day to present the evidence from her 2 witnesses. The PPS was discussed at great length when it is understood that the PPS is drilled down through the Official Plan.

After the day sitting in this hearing for 7 hours, a Participant stated they were unavailable for the 2nd day of the hearing and were prepared to present. The applicant's lawyer said she had to leave for another meeting and could not stay. This does not show respect for other people's time nor the time allocated for the hearing. This strategic move if applied effectively can quash participants testimony as their schedules are not required to be considered for scheduling an adjournment.

The process is being spearheaded by legal teams, not by the impacted residents. Participant status is only valuable when presenting evidence, it has no value in the mediation process because legal teams are making decisions and are not compelled to consult participants. This is no different than the OMB. Party status to a resident is of questionable value as they gain more input in the schedule but lose their rights as an "expert" witness, most impacted in these matters. Changing status from Participant to Party, is deadline sensitive for no obvious reason. Appeals in Long Branch have been dropped after the deadline to Appeal has passed. Participants should be offered the right of refusal to register as a Party before an Appeal is dropped and should be consulted during mediation.

In Long Branch, most appeals are about consents. Combining the cost of consents and variances together in the application it now triples the cost of the appeals, putting them out of reach of many residents. Especially since groups of residents may be dealing with 3-5 such applications in a year. This is presents as fostering injustice instead of the principal expressed here of Justice.

Principle 3. Every person with an interest is provided the opportunity to participate within the statutory scheme including TLAB's Rules of Practice and Procedure, limited only by relevance and repetition.

In its current form, it is found to be much more confusing for people to participate in the TLAB process. Residents are typically lay people. When industries commonly produce material for the average person, geared to a Grade 6 level the TLAB's Rules of Practice and Procedure are challenging for people with Advance University Degrees to interpret if your degree is not in the field of law or Public Policy.

The number of forms and the requirements and timings for submissions is not clear at all. Even residents who had been through one TLAB hearing and were preparing for a second hearing were unclear on the proper procedure on submitting the numerous forms and dates. This material should be written, keeping in mind that a person should only participate in this process once in their life and should not become an expert.

Principle 4. Moving to an all electronic format, while requiring the potential of a learning curve for parties, participants, the public and the Members, can dramatically advance exposure, timeliness, connectivity, and cost reduction by providing instantaneous file access without the need for paper deliveries, repetitive attendances, reproduction costs, witness meetings, delays, challenges and other risks associated with multiple pre-hearing processes.

We support moving to an electronic format. However, the material on the site not organized well and onerous to navigate through to find submissions. There should be folders created to simplify it. For example materials can be organized by;

- Party, Participant and Expert Witness,
- COA material,
- TLAB Appeal,
- forms and;
- Motions and decisions.

At the hearing, the screens in the hearing room need to be much larger and screens visible to all participants and observers, not just the Members and the Parties. In attending numerous hearings, participants were not able to read the material on the screens from their vantage point, parties could not find the files or the sections in the files, much time was wasted in passing connections back and forth and struggling with equipment malfunctions.

The submission requirements are not realistic considering the material is photographic in nature.

- The limitation of file size is unrealistic as some material such as The City of Toronto Urban Forestry Strategic Plan is already in a pdf but exceeds the file size limit. An individual would have to own a professional copy of Adobe Acrobat to break this document up to fit the file size requirement.
- TLAB needs to have a mechanism to upload documents and submit them other than via email. It is very time consuming to send files via email. This Association has the experience of sending 15 emails to accommodate the TLABs file size limitations. Google and Drop box are examples of services that would better accommodate this.
- The reason for not accepting video evidence is unclear. Some evidence could be presented in a more effective manner that is more impactful than still photos or written word. For example, when showing a walking tour of the neighbourhood, a short video is much more compelling and less onerous than submitting 100 still photos.

If this Board wishes to embrace the all electronic format, it should invest in the expertise, hardware and processes to do it properly.

Principle 5. Early disclosure of Applicant’s revisions are required. Appeals before the OMB revealed many modifications to plans and variances sought at the late stage of Hearing commencement. Parties and participants who had prepared their positions based on the material before the Committee of Adjustment were faced with changed circumstances and settlements not revealed. This dislocation of effort and resources, angst and cost is remedied by the mandatory requirement of an Applicants’ Disclosure up front, early and while the matter is fresh in the minds of those interested.

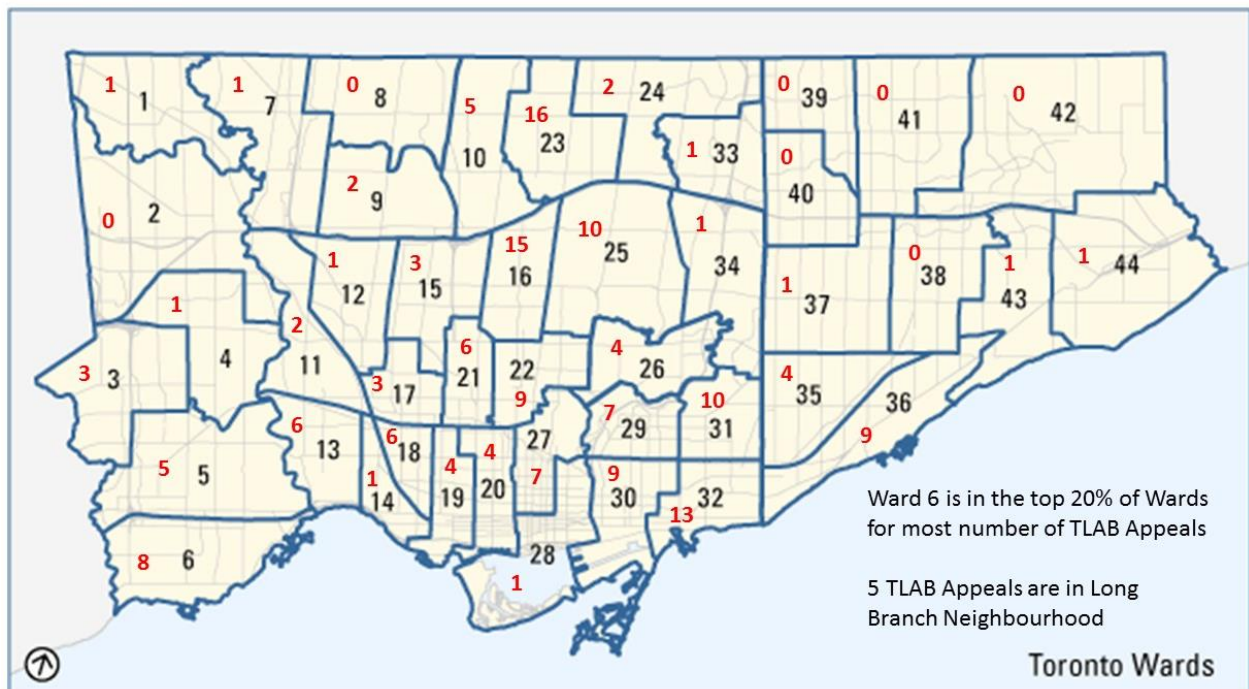
Although early disclosure of revisions are required, it is common practice at OMB and now TLAB hearings where revisions are presented the morning of the hearings. This does not give participants sufficient notice of the changes. Nor are they consulted or explained. We have not experienced any change with TLAB compared to OMB with this regard. Parties have also come to a resolution in the absence of the Participants. Changes to the plan had been made prior to the meeting, presented the morning of the hearing and the concerns of Participants who wrote in letters and were not able to attend were not given any weight in the decision making. These are two examples where the participants are discounted in the TLAB process.

Principle 6. The Rules provide for the online filing and service of Motions that can request any form of relief and any form of Hearing, written, oral or electronic; Members are open and free to grant relief in warranted circumstances made known to all concerned, even where not presented on consent. Although there are many Forms and Rules, there is flexibility to ensure that individual hardship can be addressed and eliminated in the context of a process that is open to all.

Because the schedule of the participants is not a factor, they often scramble to meet the submissions deadline only to find parties have made motions for adjournment TLAB after consideration has postponed the hearing. In one occasion, residents found out the day after that the deadline had been extended by two months. It would have been preferable to have this information at least a week prior to the deadline.

Principle 7. Hearing premises are fixed relatively central to the geography of the municipality accessible by public transit.

TLAB Appeals by Ward – as of March 12, 2018



Long Branch is in the south west corner of Toronto. This Deputation could not be in a more inconvenient location- out in Scarborough. The TLAB hearings at Yonge and Eglinton take over 90 minutes to travel to via TTC from Long Branch, and the York facilities take over an hour to get to by car. The choice of these two locations stick to the letter of the above statement, but not the intent. Why are the Etobicoke Civic Centre facilities not being used for TLAB hearings in Etobicoke? That would be a far preferable location for south Etobicoke residents.

Long Branch is experiencing more TLAB appeals than many neighbourhoods. We are in the top 20% of communities for TLAB appeals (see map on previous page). The volume of appeals that often involve the same people should justify a more thoughtful choice of premises to hold hearings.

Long Branch Neighbourhood Association

Mission and Objectives



Mission Statement

**To Protect, Celebrate and Enhance
the Neighbourhood of the Village of Long Branch**

Objectives

1. To strongly advocate for good land use planning that serves to reinforce the predominant characteristics and the intent of the original plan for Long Branch.
2. To promote measures that enhance the aesthetic, safety, security, environmental and economic viability of Long Branch.
3. To celebrate the identity and history of Long Branch, reflecting the diversity of its residents and their activities.
4. To stimulate economic and commercial sustainability of Long Branch and the lakeshore.
5. To maintain ongoing awareness of issues concerning Long Branch and its citizens, and to communicate these to residents.
6. To represent Long Branch at all levels of government and public sector for the purpose of influencing political action and service delivery affecting Long Branch.
7. To drive collaborative initiatives and engage with business associations and the private sector for the purpose of growing the social and economic life of Long Branch.
8. To oppose measures which threaten the objectives of the Corporation.