

August 31, 2017

Ms. Angela Bepple
Toronto Local Appeal Body
40 Orchard View Boulevard, Suite 211
Toronto, ON M4R 1B9

Re: Public Consultation on the Toronto Local Appeal Body

Dear Angela:

This document provides my views on the performance of the Toronto Local Appeal Body (TLAB) and will form the basis for my oral presentation on April 18th.

Based on my experience with two TLAB hearings, I have the following recommendations:

1. TLAB should, as part of the procedure, review the decision that led to an appeal being filed with TLAB.
2. Members of the Committees of Adjustment should be eligible to be called as witnesses to a TLAB hearing
3. Hearing officers should ensure Parties – especially those with legal credentials – respect the time allotted for a TLAB hearing.

1. Review of Decisions

The presence and prominence of the word “Appeal” in TLAB’s name suggests there will be some measure of review and examination of a decision made by a body of lower jurisdiction – in this case, a Committee of Adjustment. If this is not the case, the use of the word “Appeal” in TLAB’s name is misleading to the public.

Our elected officials are promoting TLAB and other appeal bodies in the province as a way of eliminating de novo hearings, such as how OMB hearing were characterized.

According to the Guiding Principles for the TLAB, published June 14, 2017, its mandate is as follows:

- 3.1 The TLAB is an independent, quasi-judicial tribunal that hears appeals of Committee of Adjustment decisions for minor zoning variances and land severances (consents).

While the Ministry of the Attorney General of Ontario defines an appeal as “*A request made to a higher court, tribunal or authority for the review of a decision.*” Most other provinces express it as an “*Examination by a higher court of the decision of a lower court or tribunal. The higher court may affirm, vary or reverse the original decision*”

In *Terry v Saskatchewan*, Justice Sherstobitoff of the Saskatchewan Court of Appeal deferred to these words to define an appeal:

"A proceeding undertaken to have a decision reconsidered by a higher authority; esp., the submission of a lower court's or agency's decision to a higher court for review and possible reversal."

My experience with Committees of Adjustment has been limited to the Etobicoke/York Committee of Adjustment. I have read many of their decisions and attended several hearings and I find they fail to provide the residents any kind of explanation of the logic behind their decisions or how, in their opinion, the applicant's proposal met the four tests of a consent proposal as stipulated in *The Planning Act*.

My understanding is that Committees of Adjustment in all jurisdictions in the Province are supposed to explain in their decisions that the four tests had all been given consideration to provide important background details for appeal hearings such as this. In the case of the Etobicoke York panel and their review of consent applications, they may mention the four tests and mention, in their decisions that the application had passed all four, but they fail to provide reasons why an application passed – or failed – the four tests.

Therefore, I believe a TLAB hearing should set out, at the beginning of the hearing, to review the reason why the hearing is being held and to examine and attempt to understand the logic and the process behind the Committee of Adjustment's decisions.

Currently there is no mechanism to assure accountability on the part of Committees of Adjustment for their decisions and the system of *de novo* hearings only serves to perpetuate this. In the case of the OMB, the only apparent mechanism for accountability for their decisions was appeal to the Superior Court of Ontario (as in *Vincent v. de Gasperis*), and the cost of going this route is beyond the means of most citizens.

When the reasons for approving or denying an application are unclear, I believe it inflates the number of appeals to be heard, which represent an unnecessary outlay of taxpayer dollars.

2. Committee of Adjustment Members as Witnesses

As an appointed arm of the civic government, the Committee of Adjustment needs to be held accountable for their actions. They have demonstrated a consistent pattern of behaviour in allowing large variances on multiple severance applications in the Long Branch neighbourhood, so this is not an isolated instance.

As noted above, the EY Committee of Adjustment's decisions fail to explain how they arrived at the decisions they reached. What is more puzzling to us, as residents, is why some applications are refused while others passed when the circumstances appear to be identical.

I feel there is a lack of accountability on the part of the Committees of Adjustment and, were the members found themselves subject to be summoned as witnesses and to be subject to cross-examination, it probably will mean they will put more thought into their decisions and support these with facts.

3. Respect for Time Constraints

On December 7, 2017, I attended the TLAB hearing for 38 Thirty Sixth Street. The presiding member was Mr. Ian Lord, who had allocated one day for the hearing.

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Counsel for the Applicant, Ms. Mary Flynn Guglietti opened the day with nearly an hour's worth of procedural issues, she spent from 10 am to nearly 2:30 pm with a single witness - the planner she had engaged. The planner's testimony consisted mostly of reading passages from various pieces of legislation – all of which had been filed prior to the hearing – and which added no value to the presentation of the case. Testimony on a planner's analysis of the neighbourhood is more germane to the issue at hand.

She then had her next witness, an arborist, on the stand from 2:30 until nearly 4:30 pm.

At 4:30, Ms. Flynn-Guglietti requested the hearing be adjourned because she “had another important meeting to get to”

Ms. Flynn-Guglietti's monopolization of the hearing demonstrated contempt for the neighbours who attended and who had hoped to make presentations that day. I personally find that unprofessional, given she was aware at the outset that only a single day had been allocated for the hearing.

I believe she should have been cautioned by the presiding member for taking too much time to present her case and have a time limit imposed on her.

Apart from the above suggestions, the things I have found about TLAB that I find refreshing are the sense of urgency in delivering decisions, the process of discovery and sharing of information among the parties and the paperless hearing approach (i.e., all documents are electronic).

Respectfully yours,

Ronald G. Jamieson, P.Eng.
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Cc: Mr. Mark Grimes – City of Toronto
Long Branch Neighbourhood Association