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DELIVERED BY EMAIL TO

Chair and Members
Toronto Local Appeal Body
40 Orchardview Boulevard
2nd Floor, Suite 211
Toronto, ON M4R1B9

TLAB@toronto.ca

**Re: Toronto Local Appeal Body: Public Consultation
Review of Rules of Practice and Procedure (the "Rules")**

Dear Chair and Members of Toronto Local Appeal Body (TLAB):

The City would like to thank the TLAB for the opportunity to participate in the Public Consultation and review of the TLAB Rules of Practice and Procedure (the "Rules' Review"). As you know, members of the Planning and Administrative Tribunal Law section of the City of Toronto Legal Services Division (the "Planning Practice Group") have considerable experience attending on appeals of Committee of Adjustment (the "Committee") decisions at the TLAB and with its Rules.

We appreciate the opportunity to share some of our thoughts and propose suggestions that we believe would resolve some of our concerns and better enable the Planning Practice Group to serve its client, City Council. The Planning Practice Group's comments and suggestions for the Rules' Review are outlined below:

Timelines

- The Relevant Rules
 - Requirement to make party status election on an appeal within 20 days of the issuance of the Notice of Hearing (Rule 12.2).
 - Disclosure deadlines for the service of documents within 30 days of the issuance of the Notice of Hearing (Rule 16.2) and for service of expert witness statements within 45 days of the issuance of the Notice of Hearing (Rule 16.6).
- The Concerns
 - The Committee is an independent arm of the City, and therefore a resolution of City Council is required (except for limited delegated authority) for the City to either appeal a Committee decision or attend on an appeal of a Committee decision at the TLAB as a party either in support or opposition of the Committee decision. The inability for the City Solicitor to get timely instructions from Council due to the schedule of City Council meetings severely hinders the City's ability to meet the above noted deadlines in the Rules.
 - It is difficult to meet the disclosure deadline for the service of documents within 30 days of the issuance of the Notice of Hearing and for the service of expert witness statements within 45 days of the issuance of the Notice of Hearing, especially on occasions when the City must retain an outside planning consultant.
 - Further, the early disclosure deadlines has led to front ending the case preparation, often months before the hearing, and has in some instances negatively impacted settlement opportunities.
 - As cases are made early in the process, more costs accrue, case strengths are exposed and positions become cemented, which has the effect of making settlement less desirable.
- Proposed Solution
 - The following small refinements to the rules relating to disclosure and timing would alleviate the above concerns for the Planning Practice Group:
 - Firstly, we believe that the disclosure timelines should be generally tied to the Hearing Date. This would extend deadlines for disclosure and preserve a longer time for settlement discussions.
 - However, the Planning Practice Group does see the value in tying the identification of the parties to the Notice of Hearing, which would set the stage for a period of settlement discussions amongst the parties, while giving the Planning Practice Group time to obtain instructions from City Council.

- For clarity, the Planning Practice Group would propose the following Hearing Timeline, based on the TLAB's proposed Hearing Date 100 days out from the Notice of Hearing :
 - Party & Participant Election – 30 days after Notice of Hearing issuance
 - Applicant's Disclosure – no later than 60 days before Hearing
 - Document Disclosure – no later than 30 days before Hearing
 - Witness Participant Statements (and potentially Participant Election) – no later than 30 days before Hearing (same as Document Disclosure, above)
 - Last day to file Motions – no later than 15 days before Hearing
- Effectively, we have proposed to keep early identification of the parties to the proceedings to help frame settlement discussions. This proposal carves out a "Settlement Period", before significant costs are borne by the Parties, resulting in entrenched positions. This Settlement Period is effectively a minimum of 30-40 days from Party Identification to Witness Statements. This will allow for discussions that will hopefully result in revised plans, with the consent of at least some of the interested persons, thereby allowing for revised plans later in the process.
- The Planning Practice Group appreciates that the filing and timing obligations can become onerous for participants. To ensure that participants have more time to review the proposal, assess their interest and lessen the procedural obligations for participants, the TLAB can consider moving the Participant Election from the Party Identification deadline to the filing of Witness/Participant Statements filing date. It should be noted, however, that a consequence of delaying this election may be that participants and applicants have limited opportunity to engage in settlement discussion earlier in the process.
- The Planning Practice Group proposes to collapse Document Disclosure and the filing of Participant and Witness Statements into one filing. The Planning Practice Group's experience with the Rules thus far is that the Document Disclosure is typically an exercise of filing already public documents including the Committee of Adjustment file as well as regulatory documents such as the PPS, the Growth Plan, the Official Plan and relevant Zoning By-laws.

Document Disclosure Rules

- The Rules
 - Rule 16.2 requires "Parties serve all parties every Document or relevant portions of public Documents they intend to rely on or produce in the Hearing..."
 - The definition of Document is "includes data and information recorded or stored by any means".

- The Concerns
 - While some references to Document in the Rules flow through the definition of Document, the definition of what is a Document for the purpose of Document Disclosure and the disclosure process has caused confusion amongst parties and within the Planning Practice Group and we propose some clarification.
 - We have experienced considerable duplication of disclosure of the same documents by the interested parties to a proceeding resulting in confusion, difficulty in navigating document files and questions about the fullness of disclosure.
 - With the large documents being disclosed, this has resulted in a number of email transmissions and large compendiums of pdf files.
- The Proposed Solution
 - Document should be defined to reference public Documents and the Committee of Adjustment file and should exclude original work that requires the witness statement's context to be interpreted. Further, a definition of Committee of Adjustment File and Document Database should be added.
 - Require Document Disclosure only for materials not included in the Committee of Adjustment file or Document Database.
 - As has been the practice of some parties, we recommend that the Rules clarify that simply referencing the Documents already on file (i.e. through an index or list of documents), is enough to satisfy the requirement of Document Disclosure. If a party intends to rely on additional documents not on file or part of the Document Database, then that party would need to provide the document through the Document Disclosure.

Other proposed changes to the Rules

- Disposition of Procedural Matters
 - The Planning Practice Group has experienced hearings being scheduled on dates when witnesses or counsel are not available and that availability has been communicated to the TLAB. The Planning Practice Group suggests that where parties have consented, the Rules should allow for adjournments without a formal motion being filed. This rule should also provide for allowing adjournments on consent for other procedural matters including to continue settlement discussions, for example.
- Scheduling
 - While this matter is not strictly within the Rules, the Planning Practice Group respectfully requests that the TLAB consider scheduling hearings for more than one day on matters that are, in the opinion of the parties, complex and/or are estimated to require more than one day to hear the matter based on witnesses,

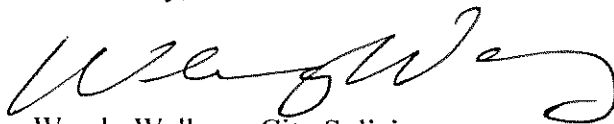
participants and the depth of the cases to be called. This can be addressed by adding an estimated hearing time on the appeal form.

- Settlement Hearings
 - When settlements are reached among all parties, the Planning Practice Group has been required to file formal motions to advise of the settlement and to request the TLAB hear the matter expeditiously. In the spirit of encouraging settlements early in the process, we recommend a rule that would exempt the requirement of a formal motion to allow hearings to proceed in writing or via teleconference hearing when settlements are achieved on consent of all parties. This would streamline settlements through conversions of hearings to written hearings or telephone conferences, at the request of the parties. The parties could file settlement plans, a revised list of variances, conditions of authorizing the variances and affidavit opinion evidence on the tests. The Rule would then default to a written hearing or telephone conference, unless motioned or requested by a party.

- Lastly, the Planning Practice Group is committed to civility and courteous practice in all of the proceedings it attends. To enshrine this principle in the Rules, we would support the recommendation of City Council and propose adding a rule respecting civility, courtesy and respect, much like in the rules of practice for the Human Rights Tribunal, which reads:
 - Civility, Courtesy And Respect
 - "All persons participating in proceedings before or communicating with the tribunal must act in good faith and in a manner that is civil, courteous and respectful of the tribunal and other participants in the proceeding."

The Planning Practice Group remains committed to the continued success of the TLAB and remains available to discuss this submission and the suggested revisions with you, contextualizing our comments and the proposed changes.

Yours truly,



Wendy Walberg, City Solicitor