



November 8, 2018

RE: **Additional Feedback on Revised TLAB Rules of Practice and Procedure**

Dear Chair and Members of TLAB,

Further to our October 26 written submission and oral presentation at the October 29 Public Business Meeting, and Mr. Lord's open invitation at that meeting for continued stakeholder feedback, we are submitting a consolidated set of additional comments which we are pleased to acknowledge includes ideas and suggestions made by the Long Branch Neighbourhood Association, and the City's Legal Services department, fellow deputants at the Public Business Meeting.

1. The Review Process

We are disappointed with the review process adopted by the TLAB, both in its delayed public disclosure of the rationale and thinking behind the proposed revisions, and more fundamentally for its failure to adopt an inclusive, participative process for stakeholder engagement in review of the Rules.

The TLAB received extensive written and verbal comments from several stakeholders in the spring of 2018. The response from the TLAB has been to issue draft revised Rules with detailed line by line amendments. The proposed revisions were not accompanied (or preceded) by any communication describing the TLAB's directions and its thinking on the changes. At the TLAB's October 29 public Business Meeting Mr. Lord provided a verbal outline of the "principles" that led to the line by line changes. Up to that point stakeholders have had to infer the directions and the reasons for the changes.

A summary of the "principles" behind the October 22nd draft Rules document based on the verbal presentation, together with comments is shown in the below chart:

Revisions	Principle	FoNTRA Comment
Some due dates are shifted back from date of hearing notice	To allow more time at the front end for preparation and exchange	We support the City Legal Services recommendation to shift dates back from hearing date, not date of hearing notice.
Ensure that matters under consent (i.e., settlements) are dealt with expeditiously	To acknowledge that matters under consent (i.e., settlements) should be dealt with expeditiously	Partially Support – settlements should be conducted with all parties in the proceedings
Participants are allowed to ask “clarifying questions” of expert witnesses (but not cross-examine)	To recognize certain Practices designed to level the playing field	Support - represents a step in the desired direction
Establishes “right of reply” and “response to the reply” of expert witnesses statements. And results in four new forms	To recognize that disclosure does not necessarily end with the exchange. While not prohibited previously, now this is explicitly provided for	Do not support. Contrary to the desired direction, amounts to a further complication of the procedures and confusion to the public.

We feel that it would be desirable for the three key stakeholder groups (City, developers, and residents’ associations) to be engaged in a more collegial process concerning the review. We understand that the TLAB has singular authority to develop and approve its own Rules, and limited ability as an administrative tribunal to conduct public engagement process of the type that is regularly conducted by City Planning Division, but given the limited number of stakeholders and the narrow scope of the TLAB mandate there needs to be an effort made to do so. This may be able to be accomplished by Court Services, the City department responsible for provision of support to TLAB, with the assistance of the Public Engagement section of the City.

We recommend:

- **that the TLAB request the City to assist it with its stakeholder engagement process for Rules revisions**

2. The Scope of the Proposed Revisions

We are disappointed with the scope of the proposed revised Rules. From its submission to the City in support of the creation of the TLAB, to the current review of the Rules, FoNTRA has repeatedly expressed the same concerns about the following “balance of power” issues which serve as major barriers to effective participation by residents:

- the premium (“weighting”) placed on expert evidence by the tribunal,
- the high costs of hiring such expertise,
- the formal procedures of the hearings,
- the lack of understanding of the Toronto context by (prior OMB) Members, and their lack of visitation to the subject site.

Of these matters, only the fourth has been clearly addressed by the TLAB (although there is some question as to whether TLAB Members do always make site visits).

We recommend

- **that the following matters be addressed by the TLAB:**
 1. **Accessibility to the public - for example, by allowing for hearings to be held in the evening to improve accessibility for residents who work during the day¹. Teleconferences may be acceptable in certain, limited situations.**
 2. **Similarly, the TLAB in its scheduling needs to be cognizant of its overlapping stakeholder relationship with the Committees of Adjustment and ensure that the hearings do not conflict with Committee of Adjustment hearings in same City district ²**
 3. **Simplification of the proceedings (the opposite direction of certain of the proposed revisions) such as to remove the need for Motions (affidavit required) for straightforward issues, and allowing non-lawyer verification where affidavits are required.³**
 4. **Improved planning for hearing time/dates and reducing the time interval for Adjournment hearings⁴.**
 5. **Alternative Processes (Mediation) – The current adversarial process of the Board proceedings often gets in the way of residents being able to**

¹ Raised by the Long Branch Neighbourhood Association

² Ibid.

³ Ibid

⁴ Ibid.

adequately participate in a hearing. The mediation process must be independent and managed by suitably qualified professionals.

3. Systemic Flaws in the CofA/TLAB System need to be Addressed

As described in our earlier submission the problems (and the solutions) go beyond the TLAB: The TLAB is only part, although a pivotal part, of the “system” of committee of adjustment application, review, hearings and appeals for minor variances and consents. The numerous concerns with this system, such as: unfair CofA operational procedures, the need for greater planning attention and support to Neighbourhoods by City Planning, the need for effective character preservation/design guidelines for established neighbourhoods, and the need for review of the Zoning By-laws, remain.

We support the Long Branch Neighbourhood Association assertion, in dismissing the statement in the TLAB Annual Report that the TLAB “deals with disputes between neighbours”, that the TLAB rather deals with “developers and investors who do not have the same interests and values as the residents” and whose ambition is solely monetary, realised by obtaining the maximum height and massing without regard to the character of the local neighbourhood. As such the TLAB is considered by many as merely a formality in the approval process, and a cost of doing business.

The statistical data base of TLAB decided cases (since hearings began in September 2017) maintained by the South Eglinton Ratepayers and Residents Association tends to support the inference that while residents have some success at the CofA they tend to lose at the TLAB, and that this is due to the imbalance of resources between residents and investors/developers.

- Of the 292 cases decided, 190 cases were decisions by the Chair based on their determination of merit. The others were settlements or withdrawals of one or the other Party.
- Of the 190 TLAB merit decisions, 145 were appeals (all appellants were owners) of refusals by the CofA. Of the 145 refusals appealed, 131 (90%) were allowed i.e., the CofA decision was reversed.
- Of the 190 TLAB merit decisions, 45 were appeals of approvals by the CofA. Of the 45 appellants, 32 were neighbours, 7 were owners and 4 were the City of Toronto. Looked at another way, of the same 190 cases, there were only 21 reversals of the CofA decision, (either direction) for a 11% win rate. Of the 21 wins, 14 were owners.

It is apparent that the majority of cases involve owners appealing CofA decisions to refuse, and when they do appeal they almost always win.

We recommend:

- **That the TLAB request the City to initiate a fundamental review of the Committee of Adjustment/TLAB system for minor variance and consent decision-making with a view to addressing the balance of power issues.**
- **That the City implement the provision in Bill 73 Smart Growth for our Communities Act for municipalities to develop additional criteria (in addition to the “four tests”) in regulation as to what is “minor”. Such clarification would be helpful to the TLAB and would improve CofA decision-making. As well, Bill 73 requires that the CofA decisions are supported by written reasons. These changes should help focus consideration of appeals by the TLAB.**
- **That the City (in a separate organization from TLAB) should assist stakeholders by providing advice and support on appeal hearings and mediation. The province has recognized a similar need (at that level) with the creation of the Local Planning Appeal Support Centre (LPASC).**

The annual number of applications to the Committee and the number of appeals are huge and costly for the City, the applicants and residents, and have long lasting implications for the character of neighbourhoods across the city. We hope that the TLAB and the City will recognize the need for, and meet the objectives of increased fairness, openness and accessibility.

Yours truly,

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Long Branch Neighbourhood Association

The Federation of North Toronto Residents' Associations (FoNTRA) is a non-profit, volunteer organization comprised of over 30 member organizations. Its members, all residents' associations, include at least 170,000 Toronto residents within their boundaries. The over 30 residents' associations that make up FoNTRA believe that Ontario and Toronto can and should achieve better development. Its central issue is not *whether* Toronto will grow, but *how*. FoNTRA believes that sustainable urban regions are characterized by environmental balance, fiscal viability, infrastructure investment and social renewal.