

# Toronto Local Appeal Body

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## Rules of Practice and Procedure

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Effective Date: May 6, 2019  
Revised: June 23, 2023

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<b>Toronto TLAB Forms</b>	<b>Form Number</b>
Notice of Appeal	Form 1
Notice of Hearing	Form 2
Applicant's Disclosure	Form 3
Notice of Intention (Election) to be a Party or a Participant	Form 4
Authorized Representative	Form 5
Acknowledgement of Expert's Duty	Form 6
Notice of Motion	Form 7
Notice of Response to Motion	Form 8
Notice of Reply to Response to Motion	Form 9
Affidavit	Form 10
Request to Summons	Form 11
Witness Statement	Form 12
Participant's Statement	Form 13
Expert's Witness Statement	Form 14
Notice of Non-compliance	Form 15
Notice of Proposed Dismissal	Form 16
Notice of Mediation	Form 17
Notice of Prehearing	Form 18
Responding Witness Statement	Form 19
Reply to Responding Witness Statement	Form 20
Responding Expert's Witness Statement	Form 21
Reply to Responding Expert's Witness Statement	Form 22

## **INTRODUCTION**

These Rules have been adopted by the Local Appeal Body (hereafter, "TLAB" or "the TLAB") pursuant to the Statutory Powers Procedure Act. These Rules apply to Proceedings brought before the TLAB under subsections 45(12) and 53(14), (19) and (27) of the Planning Act, pursuant to section 115 of the City of Toronto Act.

The TLAB is committed to a paperless process and these Rules have been drafted to give effect to this commitment to the greatest extent possible.

The TLAB may publish Practice Directions which provide additional directions to be followed in Proceedings. Practice Directions are available at the TLAB's Website: [www.toronto.ca/tlab](http://www.toronto.ca/tlab).

The TLAB publishes Forms which are available at the TLAB's Website: [www.toronto.ca/tlab](http://www.toronto.ca/tlab).

## 1. GENERAL

### Application

- 1.1 These Rules apply to the TLAB established on May 3, 2017, and come into force and effect in accordance with Rule 2.9.

### Definitions

- 1.2 In these Rules the following words or phrases, including any singular, plural or tense change as the context may require, have the following meaning:

“Affidavit” means written evidence under oath or affirmation, using Form 10;

“Appeal” means an appeal to the TLAB;

“Applicant” means any Person who has made an application to the Committee of Adjustment under Section 45 or Section 53 of the Planning Act;

“Appellant” means a Person who brings an Appeal;

“Case File” means the referral number, name or nomenclature used by the TLAB to identify a Proceeding brought before it;

“Chair” means a person appointed by Council to act as the Chair of the TLAB and who may delegate such matters to the Vice Chair or other Member, as the Chair determines;

“Costs” means an amount of money a Party is ordered to pay to another Party for the expenses incurred by that Party associated with the hearing before the TLAB, including legal fees, expert fees, and disbursements, not including any claim for economic loss or any other form of damage.

“Council” means the body politic constituted and empowered pursuant to the City of Toronto Act, 2006, S.O. 2006, c. 11, Sched. A;

“Days” means calendar days;

“Document” includes data and information recorded or stored by any means;

“Electronic Hearing” means a Hearing held by conference telephone call or some other form of electronic technology allowing Persons simultaneously to hear or hear and see one another;

“Email” means messages distributed by electronic means from one device user to one or more recipients via a network;



“Exchange” means to pass between or amongst Parties, Participants, Persons, and the TLAB, as may be directed by these Rules;

“File” means to send or deliver a Document to the TLAB in accordance with these Rules;

“Final Decision” means the decision made by the TLAB following the Hearing of evidence and submissions. A Final Decision does not include a Decision or Order on Costs.

“Form” means a Document required by the TLAB for the Filing of certain Documents and available on the TLAB’s website;

“Hearing” means the stage in a Proceeding when the TLAB hears evidence and submissions and includes an Electronic Hearing, an Oral Hearing and a Written Hearing;

“Holiday” means Saturday or Sunday and the statutory Holidays of New Year’s Day, Family Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, Boxing Day, and any special Holiday proclaimed by the Governor General or the Lieutenant Governor in Council. Where New Year’s Day, Canada Day, Christmas Day, Boxing Day or Remembrance Day fall on a Saturday or Sunday, the following Monday is a Holiday. Where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are Holidays, and where Christmas Day falls on a Friday, the following Monday is a Holiday;

“Mediation” means mediation as described in these Rules;

“Member” means a member of the TLAB;

“Motion” means a request that the TLAB make a decision or issue an order at any stage in a Proceeding;

“Moving Party” means a Person who makes a Motion to the TLAB;

“Oral Hearing” means a Hearing at which Persons attend before the TLAB in person;

“Participant” means a Person who is a participant under Rule 13;

“Party” means a Person who is a party under Rule 12;

“Person” includes a corporation, and the entities included within the meaning of a person in the Statutory Powers Procedure Act;

“Practice Direction” means practice directions issued by the TLAB from time to time;

“Proceeding” means a matter at any stage before the TLAB;

“Public Document” means a publication accessible on the List of Public Documents maintained by the TLAB on its Website;

“Representative” means a Person who acts for a Party or Participant in a Proceeding and is authorized under the Law Society Act, or is otherwise authorized by law to represent a Party or Participant in a Proceeding;

“Responding Party” means a Person answering an Appellant or Moving Party;

“Rules” means these Rules of Practice and Procedure;

“Rules of Civil Procedure” means the Rules in effect for the Superior Court of Justice for Ontario;

“Review” means a review pursuant to Rule 31;

“Service” means to serve a Document or any other thing upon another Party, Participant, other Person or the TLAB, in accordance with these Rules;

“Vice Chair” means a Member who is appointed pursuant to the procedural by-law by a majority vote of Members as the Vice Chair of the TLAB and thereafter performs such additional duties as assigned to him or her by the Chair or as set out in the procedural by-law;

“Written Hearing” means a Hearing held by the Exchange of Documents; and

“Website” means the website maintained by or on behalf of the TLAB at [www.toronto.ca/tlab](http://www.toronto.ca/tlab).

## **2. APPLICATION OF THE RULES**

### **Interpretation of these Rules**

- 2.1 The TLAB is committed to fixed and definite dates. These Rules shall be interpreted in a manner which facilitates that objective.
- 2.2 These Rules shall be liberally interpreted to secure the just, most expeditious and cost-effective determination of every Proceeding on its merits.
- 2.3 The TLAB may exercise any of its powers under these Rules or applicable law, on its own initiative or at the request of any Person.

- 2.4 Where any of these Rules or any order issued by the TLAB conflicts with any statute or regulation, the provisions of the statute or regulation prevail.
- 2.5 The TLAB's Forms are part of these Rules and to the extent there is any inconsistency, these Rules prevail.

#### **Matters Not Dealt with by the Rules**

- 2.6 Excluding communications between Parties and TLAB staff that is merely of an administrative nature only, all communications with or from the TLAB in relation to any proceeding must be copied to, or be made in the presence of, all other Parties.
- 2.7 Where procedures are not provided for in these Rules the TLAB may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate matters before it in a just, expeditious and cost-effective manner.
- 2.8 The TLAB may issue Practice Directions from time to time which are posted on the TLAB's Website.
- 2.9 These Rules shall be interpreted in a manner which facilitates the introduction and use of electronic Filing and the use of digital communication and storage media.
- 2.10 Any amendment to these Rules comes into force upon its publication on the TLAB's Website, unless the TLAB directs otherwise.

#### **Compliance with the Rules**

- 2.11 Substantial compliance with the requirements of these Rules is sufficient.

#### **Relief and Exceptions to the Rules**

- 2.12 The TLAB may grant all necessary exceptions to these Rules, or grant other relief as it considers appropriate, to enable it to effectively and completely adjudicate matters before it in a just, expeditious and cost-effective manner.

#### **Failure to Comply with the Rules or Procedural Order**

- 2.13 Where a Party or Participant to a Proceeding has not complied with a requirement of these Rules or a procedural order, the TLAB may:
- a) grant all necessary relief, including amending or granting relief from any procedural order on such conditions as the TLAB considers appropriate;
  - b) adjourn the Proceeding until the TLAB is satisfied that there is compliance;
  - c) order the payment of costs; or

- d) refuse to grant the relief in part or whole.

### **Quorum of Members**

- 2.14 Each Hearing will be presided over by a panel composed of at least one Member.

### **Expiry of Member's Term during Hearing**

- 2.15 If the term of a Member presiding over a Hearing ends or expires before a decision or determination in a Proceeding is given, the term of the Member shall be deemed to continue, but only for the purpose of participating in the Proceeding to its conclusion and issuing a decision therein in accordance with the Rules and for no other purpose.

### **Vacancy in Membership**

- 2.16 Any vacancy in the Membership of the TLAB shall be filled as soon as possible.
- 2.17 If a Member presiding over a hearing resigns from the TLAB before a decision or determination in that Proceeding is given, the Chair may appoint another Member to complete the Proceeding, and issue a decision.

## **3. FORMS, FORMAT, FILING, SERVICE AND DOCUMENTS**

### **Forms**

- 3.1 All Persons shall use, fill out and complete TLAB Forms, unless the TLAB directs otherwise. Where no Form is available or applicable for any contemplated communication, Service, Filing or other such action, the following must be included in the Document:
  - a) the name of all known Parties and Participants in the Proceeding;
  - b) the name of the Person Filing the Document and if applicable, that Person's Representative;
  - c) the Email address, mailing address and telephone number of the Person Filing the Document, and if applicable, the same information for the Person's Representative; and
  - d) the Case File number, if available.

### **Format of Documents**

- 3.2 Every Document in a Proceeding, including visual evidence, shall be in electronic format, unless the TLAB directs otherwise. Acceptable electronic format includes Documents in PDF, unless the TLAB directs otherwise. Documents shall be in typed format, or, if hand-written, shall be legible.

### **Filing, Service and Exchange by Email**

- 3.3 Where any Document is required to be Served, Filed or Exchanged with or on the TLAB or any another Party, Participant or other Person, it shall be Served, Filed or Exchanged by Email, unless a statute, or these Rules provide otherwise, or another method is directed to be used by the TLAB, and shall be sent:
- a) to the Representative of the intended Party or Participant, if any;
  - b) where the Party or Participant does not have a representative, directly to the Party or Participant;
  - c) where the Party or Participant is a corporation and is not represented, to the corporation directly and to the attention of an individual with apparent authority to receive the Document; or
  - d) where Served on the TLAB, a local board or commission, or any department, ministry or agency of the federal, provincial or municipal government, to an individual with apparent authority to receive the Document.

### **Service, Filing or Exchange before 11:59pm or Deemed Next-Day**

- 3.4 Service, Filing or Exchange of a Document by Email is effective the Day sent, unless sent after 11:59 p.m., in which case the Document is deemed to have been sent on the next Day.
- 3.5 All Emails shall include the TLAB's Case File number in the subject line, if available, and indicate the type of matter and provide full identification of the sender and intended recipient.

### **Proof of Service by Email**

- 3.6 All Documents which are required by these Rules, or required by order, to be Served, Filed or Exchanged shall be simultaneously electronically carbon copied ("Cc.") to the TLAB and all Persons are required to consult the TLAB's website, as required under Rule 15.

## **Copies of TLAB Documents and Digital Recordings**

- 3.7 Any Person may examine any Document Filed with the TLAB, or request a copy and receive same, after paying the required fee, unless a statute, a court order, an order or Practice Direction of the TLAB, or these Rules, provide otherwise.
- 3.8 Any Person may request an audio copy of a TLAB Hearing which has been digitally recorded, and receive same, after paying the required fee, unless a Statute, a Court Order, an Order or Practice Direction of the TLAB, or these Rules, provide otherwise.

## **4. TIME**

### **Time Calculation**

- 4.1 Time shall be calculated in accordance with these Rules, unless the TLAB directs otherwise.
- 4.2 Where an action is to be done within a specified number of Days, the Days are counted by excluding the first Day and including the last Day.
- 4.3 When the time for doing an act expires on a Holiday the act may be done on the next Day that is not a Holiday.

### **Extension or Reduction of Time**

- 4.4 The TLAB may on its own initiative, or, on a Motion by a Party, extend or reduce a time limit provided by these Rules on such conditions as the TLAB considers appropriate.
- 4.5 The TLAB may exercise its discretion under Rule 4.4 before or after the expiration of a time limit and with or without a Hearing.
- 4.6 Nothing in this section alters or amends a time limit established by statute.

## **5. FEES**

### **Filing and Other Applicable Fees**

- 5.1 The TLAB shall post a fee schedule on its Website.
- 5.2 Appeal fees shall be payable to the City of Toronto by certified cheque or solicitor's cheque.

5.3 All other fees required by these Rules or by an order of the TLAB shall be paid by debit or credit card.

## **6. DIRECTED NOTICES**

### **Directed Notices**

6.1 In addition to any notice requirement prescribed by law or these Rules the TLAB may direct a Party to give notice of a Proceeding to any Person and may direct the method of providing notice.

## **7. INITIATING A PROCEEDING**

### **Form of Appeal to the TLAB**

7.1 An Appeal to the TLAB shall be Filed within the prescribed period by Filing a Form 1 with the Secretary-Treasurer of the Committee of Adjustment for the City of Toronto.

7.2 A complete Form 1 must provide all of the information requested in every section of the Form and must set out the reasons and grounds which form the substance of the Appeal.

7.3 The Appellant shall pay the required fee at the time the Appeal is Filed.

## **8. ADMINISTRATIVE SCREENING**

### **Administrative Screening**

8.1 The Local Appeal Body may not process an Appeal if:

- a) Form 1 is incomplete;
- b) Form 1 was submitted without the required fee for commencing a Proceeding;
- c) Form 1 was submitted after the prescribed time for commencing a Proceeding; or
- d) there is some other technical defect in the submitted Form 1.

### **Notice of Administrative Screening**

- 8.2 The TLAB shall give a Person who has submitted a Form 1 a Notice of Non-compliance under Rule 8.1, using Form 15, which includes:
- a) the reasons the TLAB will not process the submitted Form 1; and
  - b) the requirements for resuming processing of Form 1, if applicable.
- 8.3 Except in the case of Rule 8.1(c), where requirements for resuming processing of Form 1 apply, processing shall be resumed if the Person complies within 5 Days from the date of notice with the requirements set out in the notice given under Rule 8.2.
- 8.4 After the expiry of the time period provided in Rule 8.3, the TLAB shall refer the matter for adjudicative screening under Rule 9.

### **Notice of Appeal Deemed Filed on Original Date**

- 8.5 If a documentary or technical defect set out in a notice provided under Rule 8.2 is corrected the notice of Appeal is deemed to have been properly Filed on the Day it was first submitted rather than on the Day the defect was cured.

## **9. ADJUDICATIVE SCREENING**

### **Adjudicative Screening by Member**

- 9.1 In the case of an Appeal under subsection 45(12) of the Planning Act the TLAB may propose to, or upon Motion, dismiss all or part of a Proceeding without a Hearing on the grounds that:
- a) the reasons set out in Form 1 do not disclose any apparent land use planning ground upon which the TLAB could allow all or part of the Appeal;
  - b) the Proceeding is frivolous, vexatious or not commenced in good faith;
  - c) the Appeal is made only for the purpose of delay;
  - d) the Appellant has persistently and without reasonable grounds commenced Proceedings that constitute an abuse of process;
  - e) the Appellant has not provided written reasons and grounds for the Appeal;
  - f) the Appellant has not paid the required fee;



- g) the Appellant has not complied with the requirements provided pursuant to Rule 8.2 within the time period specified by Rule 8.3;
- h) the Proceeding relates to matters which are outside the jurisdiction of the TLAB;
- i) some aspect of the statutory requirements for bringing the Appeal has not been met; or
- j) the submitted Form 1 could not be processed and the matter was referred, pursuant to Rule 8.4, for adjudicative screening.

9.2 In the case of an Appeal under section 53 of the Planning Act the TLAB may propose to, or upon Motion, dismiss all or part of a Proceeding without a Hearing on the grounds that:

- a) the reasons set out in Form 1 do not disclose any apparent land use planning ground upon which the TLAB could give or refuse to give the provisional consent or could determine the question as to the condition Appealed to it;
- b) the Appeal is frivolous, vexatious or is not commenced in good faith;
- c) the Appeal is made only for the purpose of delay;
- d) the Appellant has persistently and without reasonable grounds commenced Proceedings that constitute an abuse of process;
- e) the Appellant did not make oral submissions at a public meeting or did not make written submissions to the Committee of Adjustment for the City of Toronto before a provisional consent was given or refused and, in the opinion of the TLAB, the Appellant did not provide a reasonable explanation for having failed to make a submission;
- f) the Appellant has not provided written reasons for the Appeal;
- g) the Appellant has not paid the required fee;
- h) the Appellant has not complied with the requirements provided pursuant to Rule 8.2 within the time specified by Rule 8.3;
- i) the Proceeding relates to matters that are outside the jurisdiction of the TLAB;
- j) some aspect of the statutory requirements for bringing the Appeal has not been met; or
- k) the submitted Form 1 could not be processed and the matter was referred, pursuant to Rule 8.4, for adjudicative screening.

- 9.3 Where the TLAB proposes to dismiss all or part of an Appeal under Rule 9.1 or 9.2 it shall give Notice of Proposed Dismissal, using Form 16, in accordance with the Statutory Powers Procedure Act, and to such other Persons as the TLAB may direct.
- 9.4 A Person wishing to make written submissions on a proposed dismissal shall do so within 10 Days of the giving of Notice under Rule 9.3.
- 9.5 Upon receiving written submissions, or, if no written submissions are received in accordance with Rule 9.4, the Local Appeal Body may dismiss the Appeal or make any other order.
- 9.6 Where the TLAB dismisses all or part of an Appeal, or is advised that an Appeal is withdrawn, any fee paid shall not be refunded.

## **10. NOTICE OF HEARING**

### **TLAB shall give Notice of Hearing**

- 10.1 The TLAB shall give a Notice of Hearing to the Applicant, the Appellant, the Secretary-Treasurer of the Committee of Adjustment for the City of Toronto and to such other Persons as the TLAB may direct, using Form 2.
- 10.2 The TLAB shall determine the format, date, time and location of the Hearing.

## **11. APPLICANT'S DISCLOSURE**

### **Whether or not Applicant is Appellant, Applicant Must Disclose**

- 11.1 Whether or not an Applicant is an Appellant, an Applicant shall disclose any intended revisions or modifications to the application that was made to the Committee of Adjustment for the City of Toronto.
- 11.2 The Applicant shall File using Form 3 an Applicant's Disclosure, including text and plans, with the TLAB not later than 20 Days after a Notice of Hearing is Served.

## **12. PARTIES**

### **Party Election**

- 12.1 Persons who receive a Notice of Hearing from the TLAB and who wish to be a Party, and Persons entitled by law to be a Party, shall disclose their intention to be a Party to the TLAB.

12.2 Persons who wish to be a Party shall File their Notice of Intention to be a Party or a Participant, using Form 4, with the TLAB not later than 30 Days after a Notice of Hearing is Served. Thereafter, a Party shall comply with the Rules relating to Parties and comply with any other directions given by the TLAB pertaining to Parties. An Appellant is not required to File a Form 4.

12.2.1 An Appellant is a Party, despite Rule 12.2.

12.3 The TLAB may name Persons to be Parties for all or part of a Proceeding on such conditions as it considers appropriate. A Party to a Proceeding is not a Participant to a Proceeding.

12.4 In deciding whether a Person's status as a Party to a Proceeding should be denied, at any time, the TLAB may consider, among other things:

- a) whether the Person's interests may be directly and substantially affected by the Proceeding or its result;
- b) whether the Person has a genuine interest, whether public or private, in the subject matter of the Proceeding; and
- c) whether the Person is likely to make a relevant contribution to the TLAB's understanding of the issues in the Proceeding.

12.5 A Party who wishes to relinquish his or her status as a Party shall do so by Serving a notice on all known Parties and Participants and Filing same with the TLAB at the earliest possible date. If any other Party Serves an objection on all known Parties and Participants and Files same with the TLAB within 5 Days of the Service of a notice to relinquish, the Party seeking to relinquish his or her status must bring a Motion.

### **Role of a Party**

12.6 A Party to a Proceeding before the TLAB may participate fully in the Proceeding and this includes the following:

- a) bring, Serve and File Motions;
- b) be a witness and call evidence in the Proceeding, provided they comply with all the requirements in Rule 16 pertaining to Parties;
- c) call witnesses in the Proceeding;
- d) receive copies of all Documents Served or Filed in the Proceeding;
- e) cross-examine witnesses in the Proceeding;
- f) make submissions in the Proceeding;

- g) participate in any Mediation; and
- h) claim costs and be subject to a cost award.

### **13. PARTICIPANT**

#### **Participant Election**

- 13.1 Persons who receive a Notice of Hearing from the TLAB and who wish to be a Participant shall disclose their intention to be a Participant to the TLAB.
- 13.2 Persons who wish to be a Participant shall File a Notice of Intention to be a Party or a Participant, using Form 4, with the TLAB not later than 30 Days after a Notice of Hearing is Served. Thereafter, a Participant shall comply with the Rules relating to Participants and comply with any other directions given by the TLAB pertaining to Participants.
- 13.3 The TLAB may name Persons to be Participants for all or part of a Proceeding on such conditions as it considers appropriate. A Participant to a Proceeding is not a Party to a Proceeding.
- 13.4 In deciding whether a Person's status as a Participant to a Proceeding should be denied, at any time during a Proceeding, the TLAB may consider whether the Person's connection to the subject matter of the Proceeding is remote and may also consider, among other things, the criteria listed in Rule 12.4.
- 13.5 A Person who may otherwise qualify as a Party may request Participant status.
- 13.6 A Participant who wishes to relinquish his or her status as a Participant shall do so by Serving a notice on all known Parties and Participants and Filing same with the TLAB at the earliest possible date.

#### **Role of a Participant**

- 13.7 A Participant in a Proceeding may:
  - a) be a witness provided they comply with all the requirements of Rule 16 pertaining to Participants;
  - b) be cross-examined by the Parties;
  - c) ask clarifying questions of witnesses, with the approval of the TLAB; and
  - d) make an oral statement to the TLAB at a time set for such a statement and in accord with the Filed Participant Witness Statement.

- 13.8 A Participant to a Proceeding may not:
- a) call witnesses and cross-examine witnesses;
  - b) bring Motions, except a Motion to seek Party status;
  - c) participate in Mediation, unless permitted to do so by the TLAB;
  - d) make opening and closing submissions; and
  - e) claim costs.

## **14. REPRESENTATIVES**

### **Parties and Participants may be Represented**

- 14.1 A Party or Participant may be represented by a Representative. Representatives must confirm authorization to act for a Party or Participant by either indicating on Form 1 that he or she is duly authorized, or by Filing a Form 5. If authorization changes, the Party, Participant or newly authorized Representative shall immediately notify the TLAB and all other Parties of such changes in representation by Serving and Filing a Form 5.
- 14.2 Where a Party or Participant has a Representative all communications shall be through the Representative.

### **Representatives Permitted to call Witnesses**

- 14.3 A Representative may call witnesses and give evidence in accordance with the Rules.

### **Representative may not be an Expert in same Proceeding**

- 14.4 An expert witness cannot be a Representative in the same Proceeding.

## **15. REQUIREMENT TO CONSULT WEBSITE FOR LIST OF PARTIES AND PARTICIPANTS**

### **Duty to Consult Website to identify Parties and Participants for Service**

- 15.1. All Parties and Participants shall consult the TLAB's Website in order to determine the Parties and Participants for the purpose of all Service requirements provided in these Rules.

### **All Parties and Participants Required to Regularly Consult Website**

- 15.2 All Parties and Participants are required to regularly consult the TLAB's Website during the course of a Proceeding.

## **16. DISCLOSURE**

### **Disclosure May be Ordered at any Stage**

- 16.1 In addition to the Rules for the Filing, Service, Exchange and disclosure of evidence and Documents, the TLAB may, at any stage in a Proceeding, make orders for:
- a) the discovery of a Party under Rule 18;
  - b) the Exchange of witness statements and reports of expert witnesses;
  - c) the provision of particulars;
  - d) the Exchange of a list of issues; and
  - e) any other form of disclosure.

### **Disclosure of Documents**

- 16.2 Parties and Participants shall Serve on all Parties a copy of every Document they intend to rely on or produce in the Hearing, except:
- a) any Document previously Filed with the Committee of Adjustment;
  - b) any Public Document listed on the TLAB's List of Public Documents; and,
  - c) any Document previously Filed by a Party or Participant,
- and File same with the TLAB not later than 60 Days after a Notice of Hearing is Served.
- 16.3 Where a Party or Participant fails to disclose Documents in accordance with Rule 16.2 the TLAB may on objection disallow the Document to be entered as evidence and may make such other orders as it deems appropriate in the circumstances.

### **Party Witness Statement**

- 16.4 If a Party intends to call a witness the Party shall Serve a witness statement on all other Parties and File same with the TLAB, using Form 12, not later than 60 Days

after a Notice of Hearing is Served. A Party Witness Statement shall include, where applicable:

- a) a short written outline of the Person's background, experience and interest in the Appeal;
- b) a list of the issues they will discuss and a written outline of that Person's intended evidence;
- c) the date; and
- d) the full legal name, Email address and full mailing address of the witness.

### **Response to Party Witness Statement**

- 16.5 If any Party needs to respond to a Party Witness Statement a Responding Party shall Serve on all Parties a Responding Party Witness Statement using Form 19 and File same with the TLAB not later than 75 Days after the Notice of Hearing is Served.

### **Reply to Response to Party Witness Statement**

- 16.6 If a Party needs to reply to new issues, facts or Documents raised in the Responding Party Witness Statement a Replying Party shall Serve on all Parties a Reply to Responding Party Witness Statement using Form 20 and File same with the TLAB not later than 85 Days after the Notice of Hearing is Served.

### **Participant Witness Statement**

- 16.7 Participants shall serve a Participant Witness Statement on all Parties and File same with the TLAB, using Form 13, not later than 60 Days after a Notice of Hearing is Served. A Participant Witness Statement shall include full disclosure in accordance with the Rules, and:
- a) a written outline of that Participant's intended evidence; and
  - b) the date.

### **Expert Witness Statement**

- 16.8 Parties shall Serve an Expert Witness Statement on all Parties and File same with the TLAB, using Form 14, not later than 60 Days after a Notice of Hearing is Served.

## **Response to Expert Witness Statement**

- 16.9 If a Party needs to respond to an Expert Witness Statement a responding Party shall Serve on all Parties a Responding Expert Witness Statement using Form 21 and File same with the TLAB not later than 75 Days after the Notice of Hearing is Served.

## **Reply to Response to Expert Witness Statement**

- 16.10 If a Party needs to reply to new issues, facts or Documents raised in the Responding Expert Witness Statement a Replying Party shall Serve on all Parties a Reply to Responding Expert Witness Statement using Form 22 and File same with the TLAB not later than 85 Days after the Notice of Hearing is Served.

## **Expert's Duties**

- 16.11 An expert engaged by or on behalf of a Party who is to provide opinion evidence in a Proceeding shall acknowledge his or her duties as an expert in writing by executing an Acknowledgement of Expert's Duty, using Form 6. An expert witness' duties include:
- a) providing opinion evidence that is fair, objective and non-partisan;
  - b) providing opinion evidence that is related only to the matters that are within the expert's area of expertise; and
  - c) providing additional assistance to the TLAB as may reasonably be required to determine a matter in issue.
- 16.12 The duties of an expert provided in Rule 16.11 prevail over any obligation owed by an expert to the Party on whose behalf he or she is engaged.

## **Contents of Expert Witness Statement**

- 16.13 An Expert Witness Statement shall include:
- a) the expert's name, address and area of expertise;
  - b) the expert's qualifications, employment and educational experiences in his or her area of expertise;
  - c) the instructions provided to the expert in relation to the Proceeding;
  - d) the nature of the opinion being sought and, where there is a range of opinions given, a summary of the range and the reasons for the expert's opinion within that range; and



- e) the expert's reasons for his or her opinion, including a description of the factual assumptions, research and any Documents relied upon by the expert in forming his or her opinion.

## **17. MOTIONS**

### **Date by which Motions will be Heard**

- 17.1 No Motion, except a Motion brought under Rule 28, shall be heard later than 15 Days before the Hearing, unless the TLAB orders otherwise.

### **Consent adjournments Excepted Unless TLAB Directs Otherwise**

- 17.2 Where a Party has obtained from the TLAB an adjourn-to date and all Parties consent to an adjournment request and all Participants have been notified of the request no motion is necessary and the TLAB may issue a revised Notice of Hearing.

### **Notice of Motion**

- 17.3 A Motion in a Proceeding shall be made by Notice of Motion, using Form 7. The TLAB may require a Motion to be held by Electronic Hearing.

### **Date for Motion**

- 17.4 A Motion shall be heard by Oral Hearing and the Moving Party shall obtain from the TLAB a Motion date prior to Service of the Notice of Motion, unless the TLAB directs otherwise.

### **TLAB may Require Motions to be in Writing or Electronically**

- 17.5 The TLAB may require a Motion to be held in writing upon such terms as the TLAB directs.
- 17.6 Where a Motion in writing is requested by a Party and where the TLAB agrees, the TLAB will provide the Moving Party with a date by which the Motion is to be Served. The Moving Party and any Responding Parties shall thereafter comply with the Rules (Rules 17.8-1712) relating to the Service and Filing of any needed responses or replies.

### **Content of Motion Material**

- 17.7 A notice of Motion to be heard by Oral Hearing, Electronic Hearing or in writing shall:

- a) if it be an Oral Hearing, state the date and time and location of the Motion;
- b) if it be an Electronic Hearing, state the date and time of the Motion;
- c) state the precise relief sought;
- d) state the reasons and grounds to be argued, including a reference to any statutory provisions or Rules to be relied on;
- e) list and attach the Documents to be used in the Motion;
- f) be accompanied by an Affidavit setting out a brief and clear statement of the facts upon which the Moving Party will rely; and
- g) state the names and contact addresses of the Responding Parties or their Representatives and all Persons to whom the Notice of Motion is to be given.

#### **Service of Notice of Motion**

- 17.8 A Moving Party shall Serve a Notice of Motion on all Parties and Participants and File same with the TLAB at least 15 Days before the date the Motion is to be held by Oral Hearing or by Electronic Hearing, unless the TLAB directs otherwise.

#### **Notice of Response to Motion and Service**

- 17.9 If a Party needs to respond to a Motion a Responding Party shall Serve on all Parties and Participants a Notice of Response to Motion, using Form 8 and File same with the TLAB at least 7 Days before the Date the Motion is to be held by Oral Hearing or by Electronic Hearing, unless the TLAB directs otherwise.

- 17.10 A Notice of Response to Motion shall:

- a) state the Responding Party's response, including a reference to any statutory provisions or Rules to be relied on;
- b) list and attach the Documents to be used in the response to Motion; and
- c) be accompanied by an Affidavit setting out a brief and clear statement of the facts upon which the Responding Party will rely.

#### **Notice of Reply to Response to Motion and Service**

- 17.11 If a Moving Party needs to reply to new issues, facts or Documents raised in the Notice of Response to Motion the Moving Party shall Serve on all Parties and Participants a Notice of Reply to Response to Motion, using Form 9, and File same with the TLAB at least 4 Days before the date of the Motion is to be held by Oral Hearing or by Electronic Hearing, unless the TLAB directs otherwise.

17.12 A Notice of Reply to Response to Motion shall:

- a) only address new issues, facts and Documents raised in the Notice of Response to Motion;
- b) state the Moving Party's reply, including any reference to any statutory provisions or Rules to be relied on;
- c) list and attach the Documents to be used in the Reply to Response to Motion; and
- d) be accompanied by an Affidavit setting out a brief and clear statement of the facts upon which the Moving Party will rely.

## **18. DISCOVERY**

### **Order for Discovery**

- 18.1 The TLAB may make an order for discovery for a Party to obtain relevant and necessary information from any Person.
- 18.2 A Motion for an order for discovery, using Form 7, shall be by Written Hearing, unless the TLAB directs otherwise, and shall be Served on all Parties and Filed with the TLAB.
- 18.3 A Notice of Motion for discovery shall be accompanied by an Affidavit. The Affidavit in support of the Motion for discovery shall set out the efforts made to obtain the desired information and the reasons which demonstrate the information sought is both relevant and necessary to the disposition of the issues in the Proceeding.
- 18.4 An order for discovery shall only be issued if the Party seeking an order for discovery has already requested the information sought and it has been refused or no answer has been received from the other Party, and the TLAB is satisfied there is good reason to order discovery.
- 18.5 On a Motion for discovery the TLAB may order:
- a) any Person to provide an Affidavit containing a list of relevant Documents in their possession and a list of Documents for which privilege is claimed;
  - b) the delivery of some or all of the Documents;
  - c) an oral examination or cross- examination of any Person or Party;
  - d) an examination for discovery by written questions;
  - e) the inspection and testing of property;

- f) the examination of a witness before the commencement of a Proceeding;
- g) any other form of discovery; and
- h) conditions concerning the timing, scope and duration of discovery.

### **Rules of Civil Procedure Apply to Discovery**

- 18.6 If an order for discovery is granted the TLAB may make any further order or give any direction necessary for the discovery process. The TLAB may refer to, vary or order that portions of the Rules of Civil Procedure, pertaining to discovery, apply.

## **19. SETTLEMENT**

### **Settlement before Final Determination**

- 19.1 The TLAB is committed to encouraging Parties to settle some or all of the issues by informal discussion, Exchange and Mediation.
- 19.2 Parties who arrive at a settlement shall Serve the terms of the proposed settlement on all other Parties and Participants and File same with the TLAB at the earliest possible date.
- 19.3 The TLAB shall give notice to all Parties and Participants of the date, time and location of the settlement Hearing, and shall thereafter conduct an expedited settlement Hearing on the terms of the proposed settlement.
- 19.4 Where no Person at the Hearing opposes the proposed settlement or where the TLAB rejects an objection the TLAB may issue an order giving effect to the settlement and any necessary amendments.

## **20. MEDIATION**

### **Date by which Mediation shall be Held**

- 20.1 No Mediation conducted by the TLAB shall be held later than 15 Days before the Hearing, unless the TLAB directs otherwise.

### **Mediation**

- 20.2 Where the TLAB is satisfied there is good reason to believe one or more of the issues in dispute may be resolved through Mediation the TLAB may, on notice to any Participants, direct the Parties, and such other Persons as the TLAB may

direct, using Form 17, to attend non-binding Mediation. Mediation shall be confidential.

- 20.3 The TLAB shall set the location, date and time of any Mediation to be conducted and direct how notice of the Mediation will be given to the Parties.

#### **TLAB appoints Member as Mediator**

- 20.4 If Mediation is to be conducted, the TLAB will appoint a mediator who is a Member of the TLAB and the mediator may make use of any appropriate dispute resolution techniques to assist the Parties in resolving some or all of the issues in dispute.

#### **Member to Preside at Hearing with Parties' Consent**

- 20.5 A Member who conducts a Mediation in which one or more of the issues have not been resolved may not preside over any Hearing relating to those unresolved issues unless all of the Parties consent and the Member agrees.

#### **Mediation and Settlement Discussions Confidential**

- 20.6 Any information or Documents provided or Exchanged during a Mediation and any discussions or exchanges relating to the resolution of issues or offers to settle are and shall remain confidential and shall not be disclosed by any Person or entered as evidence by any Person in the same or any other Proceeding. Any notes of a Mediation made by a Member shall remain confidential and shall not be released to any Person or admitted into evidence in any Proceeding.
- 20.7 Nothing in Rule 20.6 affects the disclosure of the settlement terms and conditions that are proposed to be approved by the TLAB.
- 20.8 Nothing in Rule 20.6 affects the obligations of Parties and Participants to make disclosure as otherwise required by these Rules.
- 20.9 A Member who participates in Mediation is not competent or compellable in any Proceeding to give evidence or produce Documents regarding the Mediation.

### **21. PREHEARING CONFERENCES**

#### **Date by which Prehearing shall be Held**

- 21.1 No prehearing shall be held later than 15 Days before the date of the Hearing, unless the TLAB directs otherwise.

**A Prehearing may be conducted only if there is Good Reason to do so**

21.2 The TLAB shall not conduct a prehearing unless the TLAB is satisfied there is good reason to do so.

**A Prehearing may be Oral, Electronic or in Writing**

21.3 A prehearing may be by Oral Hearing, Electronic Hearing or Written Hearing.

**Parties must be Prepared for Prehearing**

21.4 The TLAB is committed to ensuring all Parties involved in a prehearing are focused and prepared to fully and definitively address those matters outlined in Rule 21.6.

**If Prehearing, TLAB shall Give Notice**

21.5 In the event the TLAB directs a prehearing be held it shall give notice of the location, date and time for same, using Form 18.

**Matters to be Dealt with in a Prehearing**

21.6 A prehearing may include settlement discussions, Motions or other procedural issues, in order to:

- a) identify the Parties and Participants and determine or resolve the issues raised by the Appeal;
- b) identify facts or evidence the Parties may agree on or upon which the TLAB may make a binding decision;
- c) obtain admissions that may simplify the Hearing;
- d) provide directions to the Parties;
- e) discuss the possible use of Mediation or other dispute resolution processes;
- f) estimate the length of the Hearing and encourage the Parties to agree upon the date for any further procedural steps;
- g) discuss issues of confidentiality, including any need to hold a part of the Hearing in the absence of the public or to seal Documents; and
- h) deal with any other matter that may assist in a fair, cost-effective, and expeditious resolution of the issues.

### **Member who Conducts Prehearing may make Orders**

- 21.7 The Member conducting a prehearing conference may make any orders necessary to give effect to those matters provided for in Rule 21.6.

### **Member who Conducts Prehearing May or May Not be Seized**

- 21.8 A Member who conducts a prehearing may or may not remain seized of the Proceeding.

### **No Further Prehearing unless Compelling Reason Shown**

- 21.9 The TLAB is committed to reducing the time and cost of Proceedings and it is expected that, in the event a prehearing is held, no other or further prehearing will be held unless there is a compelling reason to do so. In considering whether any further prehearing may be directed the TLAB may weigh, among other things, the time and cost of conducting a further prehearing against the advantages of a further prehearing.

## **22. CONSOLIDATION**

### **Consolidating Proceedings or Hearing Matters Together**

- 22.1 The TLAB may order that Proceedings be consolidated, heard at the same time or heard one after the other, or stay or adjourn any Proceeding until the determination of any other proceeding.

### **Effect of Consolidation**

- 22.2 When two or more Proceedings are consolidated the:
- a) statutory procedural requirements for any of the original separate Proceedings apply, where appropriate, to the consolidated Proceeding;
  - b) Parties to each of the original separate Proceedings are Parties to the consolidated Proceeding; and
  - c) evidence to be presented in each of the separate Proceedings is evidence to be presented in the consolidated Proceeding.

### **Effect of Hearing Proceedings Together**

- 22.3 When two or more Proceedings are heard together but not consolidated the:
- a) statutory requirements for each Proceeding apply only to that particular Proceeding and not to the others;

- b) Parties to the Hearing are Parties to their individual Proceedings only and not Parties to the other Proceedings; and
- c) unless otherwise ordered by the TLAB, evidence in the Hearing is only evidence in each Proceeding to which it could apply.

### **TLAB may Reverse Consolidation**

- 22.4 The TLAB may separate Proceedings that have been consolidated or matters heard together at any time if it determines that the Proceedings have become unduly complicated, delayed or repetitive or a Party is unduly prejudiced.

## **23. ADJOURNMENTS**

### **Hearing Dates Fixed**

- 23.1 Proceedings will take place on the date set by the TLAB and provided in the Notice of Hearing, unless the TLAB orders otherwise.

### **Request for Adjournment must be on Motion**

- 23.2 A Party shall bring a Motion to seek an adjournment, unless the adjournment is on consent in accordance with Rule 17.2.

### **Considerations in Granting Adjournment**

- 23.3 In deciding whether or not to grant a Motion for an adjournment the TLAB may, among other things, consider:
- a) the reasons for an adjournment;
  - b) the interests of the Parties in having a full and fair Proceeding;
  - c) the integrity of the TLAB's process;
  - d) the timeliness of an adjournment;
  - e) the position of the other Parties on the request;
  - f) whether an adjournment will cause or contribute to any existing or potential harm or prejudice to others, including possible expense to other Parties;
  - g) the effect an adjournment may have on Parties, Participants or other Persons; and
  - h) the effect an adjournment may have on the ability of the TLAB to conduct a



Proceeding in a just, timely and cost-effective manner.

### **Powers of the TLAB upon Adjournment Motion**

23.4 On a Motion for adjournment the TLAB may:

- a) grant the Motion;
- b) grant the Motion and fix a new date, or where appropriate, the TLAB may schedule a prehearing on the status of the matter;
- c) grant a shorter adjournment than requested;
- d) deny the Motion;
- e) direct that the Hearing commence or continue as scheduled, or proceed with a different witness, or evidence on another issue;
- f) grant an indefinite adjournment if the request is made by a Party and is accepted by the TLAB as reasonable and the TLAB finds no substantial prejudice to the other Parties or to the TLAB. In this case the Moving Party must make a request that the Hearing be rescheduled or the TLAB may direct that the Moving Party provide a timeline for the commencement or continuance of the Proceeding;
- g) convert the scheduled date to a Mediation or prehearing conference; or
- h) make any other appropriate order including an order for costs.

## **24. HEARINGS**

### **Form of Hearing**

24.1 The TLAB may hold an Electronic Hearing, an Oral Hearing or a Written Hearing..

### **Hearing to be Oral**

24.2 Unless the TLAB directs or these Rules provide otherwise, Hearings shall be by Electronic Hearing.

### **Objection to an Electronic Hearing**

24.3 A Party who objects to an Electronic Hearing shall bring a Motion no later than 5 Days after the due date for Service of the Notice of Intention to be a Party or Participant.

### **Factors Considered for Holding Electronic Hearing**

- 24.4 The TLAB may consider any relevant factors in deciding to hold an Electronic Hearing, including:
- a) the convenience to the Parties and the TLAB;
  - b) the likelihood of the process being less costly, faster and more efficient;
  - c) whether it is a fair and accessible process for the Parties;
  - d) the desirability or necessity of public participation in, or public access to, the TLAB's process;
  - e) whether the evidence or issues are suitable for an Electronic Hearing;
  - f) whether credibility may be an issue or the extent to which facts are in dispute;  
or
  - g) whether an Electronic Hearing is likely to cause significant prejudice to any Party or Participant.

### **Objection to a Written Hearing**

- 24.5 A Party who objects to a Written Hearing shall bring a Motion within 5 Days of Service of the notice of Written Hearing.

### **Factors Considered for Holding a Written Hearing**

- 24.6 The TLAB may consider any relevant factors in deciding to hold a Written Hearing, including:
- a) the convenience to the Parties and the TLAB;
  - b) the likelihood of the process being less costly, faster and more efficient;
  - c) whether it is a fair and accessible process for the Parties;
  - d) the desirability or necessity of public participation in or public access to the TLAB's process;
  - e) whether the evidence or legal issues are suitable for a Written Hearing;
  - f) whether credibility may be an issue or the extent to which facts are in dispute;  
or

- g) whether a Written Hearing is likely to cause significant prejudice to any Party or Participant.

### **Procedure for Exchange of Documents in Written Hearing**

- 24.7 If a Hearing proceeds as a Written Hearing the Appellant shall Serve on all Parties and Participants and File with the TLAB all evidence and submissions within 30 Days after the TLAB's notice of Written Hearing is Served.
- 24.8 Parties and Participants who need to respond to the Appellant's submissions shall Serve on all Parties and Participants and File with the TLAB all responding submissions and evidence within 20 Days of Service of the Appellant's submissions.
- 24.9 If the Appellant needs to reply to the other Parties' and Participants' submissions the Appellant shall Serve and File a copy of the reply with the TLAB within 10 Days of receipt of the responding submissions. The reply shall be limited to any new evidence and new submissions in the responses.
- 24.10 Following the expiry of the time for any reply submissions the TLAB shall make its decision.

### **Evidence in a Written Hearing must be by Affidavit**

- 24.11 Evidence in a Written Hearing must be by way of Affidavit and any Documents and relevant portions of public Documents to be relied on shall be attached to the Affidavit.

## **25. COMPELLING ATTENDANCE OF A WITNESS BY SUMMONS**

### **Who may Summons a Witness**

- 25.1 A Party who wishes to compel a Person in Ontario to attend before the TLAB to appear as a witness may Serve a summons on that Person to attend any Proceeding before the TLAB to:
  - a) give relevant and admissible evidence under oath or affirmation; and
  - b) produce any relevant and admissible Document or thing.

### **How to Obtain a Summons**

- 25.2 A Party who wishes to summons a witness shall make a request in writing and File same with the TLAB, using Form 11.

### **When Summons will Issue**

- 25.3 A Party requesting a summons shall set out in a Request to Summons the issues and evidence the witness is intended to address and explain the relevance of that evidence to the issues in dispute. If the requested information is contained in the Request to Summons, the summons shall be signed and issued by the Chair and sent to the requesting Party for Service upon the Person to be summoned.

### **Serving and Filing a Summons**

- 25.4 A summons shall be Served on the witness by personal Service no later than 30 Days before the time for attendance, unless the TLAB directs otherwise.
- 25.5 Attendance money shall accompany a summons when Served on a witness, in accordance with the Rules of Civil Procedure.
- 25.6 A Party who has Served a summons upon a witness shall immediately Serve a copy of the Request to Summons, the summons and all Documents and correspondence related thereto upon every Party and File same with the TLAB.

### **Motion to Quash a Summons**

- 25.7 Any Person who is Served with a summons may move to quash the summons and seek an award of costs in accordance with these Rules.

### **Attendance of Summoned Witness**

- 25.8 A summoned witness shall attend a Hearing of the TLAB at the time and place stated in the summons or as otherwise arranged with the Party Serving the summons. A witness shall bring with them all Documents and things within their possession, as required by the terms of the summons.

## **26. INTERPRETER**

### **Where Interpreter Required**

- 26.1 Where an interpreter is required the Party calling the witness, or the Party or Participant making submissions, shall provide an interpreter, except as required by the Accessibility for Ontarians with Disabilities Act.

## **27. CONDUCT OF PROCEEDINGS**

### **Proceedings to be Public**

- 27.1 All TLAB Proceedings shall be public, unless the TLAB orders otherwise.

- 27.2 Subject to the Statutory Powers Procedure Act and any other applicable law the TLAB may hold an Oral Hearing or Electronic Hearing or part of a Hearing in the absence of the public, with such Persons in attendance as the TLAB may permit and with such conditions as it may impose.

### **Procedure at a Proceeding**

- 27.3 A Member presiding at a Proceeding shall control the conduct of that Proceeding, including the order of presentation of evidence and submissions, and may limit further examination or cross-examination of a witness where the Member is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the matters at issue.
- 27.4 A Member may stipulate the time permitted for any Proceeding or part of a Proceeding.

### **Media Coverage - Photographic, Audio or Video Recording**

- 27.5 No Person shall take or attempt to take a photograph, motion picture, video recording, or other recording capable of producing visual or auditory representations by electronic means, or otherwise, at any Proceeding of the TLAB, unless the presiding Member authorizes such recording, on such terms or conditions as the presiding Member may direct.

### **Withdrawal of Approval**

- 27.6 If any authorization to record is granted under Rule 27.5 the TLAB may withdraw permission to record temporarily or permanently.

### **Proceedings Recorded**

- 27.7 All Proceedings of the TLAB are digitally recorded by the TLAB. A copy of same may be requested by any Person and received by any Person in accordance with Rule 3.8.

### **Transcripts**

- 27.8 If a Party produces a transcript or partial transcript of a Proceeding, the Party must notify the TLAB, and the other Parties to the Proceedings, that it has done so. The Party must File the copy of the transcript with the TLAB within 5 Days of the date of that Party's receipt of the transcript.
- 27.9 Transcripts or partial transcripts shall be transcribed and certified by a qualified court reporter.

## **28. COSTS**

### **Who May Request an order for Costs**

- 28.1 Only a Party or a Person who has brought a Motion in the Proceeding may seek an award of costs.
- 28.2 A request for costs may be made at any stage in a Proceeding but in all cases shall be made no later than 30 Days after a written decision is issued by the TLAB.

### **Member Seized to Consider Costs Order**

- 28.3 The Member who conducts or conducted the Proceeding in which a request for costs is made shall make the decision regarding costs.

### **Submissions Respecting Costs**

- 28.4 Notwithstanding Rule 17.4 all submissions for a request for costs shall be made by written Motion and Served on all Parties and Filed with the TLAB, unless a Party satisfies the TLAB that to do so is likely to cause the Party significant prejudice.
- 28.5 Submissions for a request for costs shall address:
- a) the reasons for the request and the amount requested;
  - b) an estimate of any extra preparation or Hearing time, and a breakdown of all associated rates, fees and disbursements, caused by the conduct alleged to attract costs and specifically any of those matters outlined in Rule 28.6;
  - c) copies of supporting invoices for expenses claimed or an Affidavit of a Person responsible for payment of those expenses verifying the expenses were properly incurred; and
  - d) attach an Affidavit in which the Party swears the costs claimed were incurred directly and necessarily.

### **Considerations for Costs Award**

- 28.6 Notwithstanding the TLAB's broad jurisdiction to award costs the TLAB is committed to an approach to awarding costs that does not act as a deterrent to Persons contemplating becoming a Party or continuing to be a Party to a Proceeding. In determining whether to award costs against a Party the TLAB may consider the following:
- a) whether a Party failed to attend a Proceeding or to send a Representative when properly given notice, without giving the TLAB notice;

- b) whether a Party failed to co-operate with others or the TLAB, changed a position without notice or introduced an issue or evidence not previously disclosed;
- c) whether a Party failed to act in a timely manner;
- d) whether a Party failed to comply with the TLAB's Rules or procedural orders;
- e) whether a Party caused unnecessary adjournments, delays or failed to adequately prepare for a Proceeding;
- f) whether a Party failed to present evidence, continued to deal with irrelevant issues, or a Party asked questions or acted in a manner that the TLAB determined to be improper;
- g) whether a Party failed to make reasonable efforts to combine submissions with another Party with similar or identical issues;
- h) whether a Party acted disrespectfully or maligned the character of any person connected with the Hearing; or
- i) whether a Party presented false or misleading evidence.

### **Threshold relating to Costs**

- 28.7 In all cases a Member shall not order costs unless the Member is satisfied that the Party against whom costs are claimed has engaged in conduct, or a course of conduct, which is unreasonable, frivolous, vexatious or in bad faith.

### **Interest on Award of Costs**

- 28.8 Costs bear interest at the same rate as provided in the Courts of Justice Act.
- 28.9 In no case, where a Party has brought a Motion requesting an award of costs against a Party or Parties in a Proceeding, shall an award of costs be greater than:
- 100% of disbursements
  - 90% of planners' or analogous professionals' fees; and
  - 60% of the fees of a legal representative.

## **29. DECISIONS AND ORDERS**

### **Issuing a Decision or Order**

- 29.1 An order may be contained in the decision and issue as a decision and order of the TLAB. Where an order issues after a written decision, the TLAB will issue the appropriate order, and where a decision is orally given it is not effective until the issuance of the written decision.

#### **Condition Imposed by the TLAB Must be Satisfied**

- 29.2 Subject to subsection 45(9) and 53(41) of the Planning Act a condition imposed in a TLAB decision shall be satisfied by the date and in the manner ordered by the TLAB. If a condition is not satisfied, and subject to the terms or order or any statutory requirements, subject to any statutory requirements, the TLAB may on its own initiative, or by Motion, require the Parties to re-attend before it.

#### **Effective Date of TLAB Decision**

- 29.3 A TLAB decision or order is effective on the issue date provided in the decision or order.

### **30. CORRECTING MINOR ERRORS IN DECISIONS AND ORDERS**

#### **Correcting Minor Errors**

- 30.1 The TLAB may at any time and without prior notice to the Parties correct a technical or typographical error, error in calculation or similar minor error made in a Decision or order. There is no fee if a Party or Participant requests such corrections.
- 30.2 Where any Party, after giving notice to all Parties, requests a clarification with respect to the meaning or intent of a decision the TLAB may provide such clarification.

### **31. REVIEW OF FINAL DECISION OR FINAL ORDER**

#### **A Party may Request a Review**

- 31.1 A Party may request of the Chair a Review of a Final Decision or final order of the TLAB.

#### **Chair May Designate Any Member**

- 31.2 The Chair may in writing designate any Member to conduct the Review and make a decision in accordance with the Rules.



### **Review Request does not Operate as a Stay**

- 31.3 A Review shall not operate as a stay, unless the Chair orders otherwise. A Party requesting that a Final Decision or final order be stayed shall do so at the same time the request for Review is made.

### **No Motions Except with Leave**

- 31.4 No Motion may be brought with respect to a Review except with leave of the Chair.

### **Deadline for, and Service of, Review Request**

- 31.5 A Review request shall be provided to all Parties and the TLAB by Service within 30 Days of the Final Decision or final order, unless the Chair directs otherwise.

### **Contents of a Review Request**

- 31.6 A Party's request for Review shall be entitled "Review Request" and shall contain the following:
- a) a table of contents, listing each document contained in the Review Request and describing each document by its nature and date;
  - b) an overview of the Review Request not to exceed 2 pages that identifies the grounds listed in Rule 31.17 that apply;
  - c) if the Review Request includes grounds based upon Rule 31.17 (c), a list of all alleged errors of fact or law;
  - d) a concise written argument contained in numbered paragraphs. The Review Request shall provide, avoiding repetition, the concise written arguments regarding each listed matter from Rule 31.17 in the same order and include the following:
    - i. the applicable section of the Planning Act or other legislative basis, if any, for the argument advanced;
    - ii. the wording of the applicable policy, By-law or authority, if any, in support of the argument advanced;
    - iii. the applicable transcript or other evidence and exhibit attachments, if any, in support of the argument advanced;

- iv. a clear demonstration of how in the case of grounds asserted under Rule 31.17 c), d) and e), each would likely have resulted in a different Final Decision or final order;
- v. copies of the referenced case law and authorities; and
- vi. a statement as to the requested remedy.

### **Review Request not to Exceed 20 Pages**

- 31.7 Excluding the table of contents, case law and transcripts, by-laws, exhibits and other supporting Documents, the Review Request shall not exceed 20 pages, double spaced, and written in 12-point font.

### **Transcripts**

- 31.8 If any Party wishes to refer to any oral evidence presented at the Hearing and if that oral evidence is contested and wishes to present it to the TLAB and a recording thereof is available, any Party may request an audio copy of the TLAB hearing and the relevant portion of the proceeding shall be transcribed and certified by a qualified Court Reporter, and provided to all Parties and the TLAB by service forthwith and at the requesting Party's sole expense.

### **Administrative Screening**

- 31.9 The TLAB shall, upon the filing of a request for Review, review it for compliance and advise the Parties if:
- a) it does not relate to a Final Decision or final order; or
  - b) it was not received within 30 Days after the Final Decision or final order was made, unless the Chair directs otherwise; or
  - c) it failed to provide the requisite fee.

### **Response to Review Request**

- 31.10 Despite Rule 31.9, if a Party needs to respond to the Review Request the Responding Party shall by Service on all Parties and the TLAB provide a Response to Review Request no later than 20 Days from the Date of Service pursuant to Rule 31.5, unless the Chair directs otherwise.

## **Contents of a Response to Review Request**

31.11 A Responding Party's response to Review Request shall be entitled "Response to Review Request" and shall contain the following:

- a) a table of contents, listing each document contained in the Response to Review Request and describing each document by its nature and date;
- b) an overview of the Response to Review Request not to exceed 2 pages that contains specific reference to the Review Request's overview;
- c) a concise written argument contained in numbered paragraphs, giving a response to each argument in the Review Request, and include the following :
  - i. the applicable transcript or other evidence and exhibit attachments, if any, in support;
  - ii. any other applicable legislation, policy documents, By-laws or other material that is not provided for in the Review Request; and
  - iii. any other applicable authorities and copies thereof; and
  - iv. a statement as to the remedy requested.

## **Response to Review Request not to Exceed 20 Pages**

31.12 Excluding the table of contents, case law and authorities, transcripts, by-laws, exhibits and other supporting Documents, a Response to Review Request shall not exceed 20 pages, double spaced, and written in 12-point font.

## **Responding Party Not to Raise New Issues**

31.13 A Responding Party shall not raise any issues beyond those issues raised in the Review Request.

## **Reply to Response to Review Request**

31.14 If the Requesting Party needs to reply to a Response to Review Request, that Party shall provide by Service on the Parties and the TLAB a Reply to Response to Review Request not to exceed 5 pages, double spaced, and written in 12-point

font and no later than 5 Days from the Date of Service pursuant to Rule 31.10, unless the Chair directs otherwise.

### **Contents of a Reply to Response to Review Request**

31.15 A Reply to Response to Review Request shall contain the following:

- a) a reply to facts, matters and Documents raised in the Response to Review Request;
- b) list and attach the Documents used in the Reply to the Response to Review Request relating to those matters addressed in the Reply, including any case law or authorities raised in support.

### **Chair Authority**

31.16 Following the timeline for the Service on all Parties and the TLAB of any Review Request, Response to Review Request and Reply to Response to Review Request, the Chair may do the following:

- a) seek further written submissions from the Parties;
- b) confirm the Final Decision or final order and dismiss the Review Request, with reasons;
- c) cancel the Final Decision or final order, with reasons, and, where appropriate, direct a de novo Oral Hearing before a different TLAB Member.

### **Grounds for Review**

31.17 In considering whether to grant any remedy the Chair shall consider whether the reasons and evidence provided by the Requesting Party are compelling and demonstrate the TLAB:

- a) acted outside of its jurisdiction;
- b) violated the rules of natural justice or procedural fairness;
- c) made an error of law or fact which would likely have resulted in a different Final Decision or final order;
- d) was deprived of new evidence which was not available at the time of the Hearing but which would likely have resulted in a different Final Decision or final order; or

- e) heard false or misleading evidence from a Person, which was only discovered after the Hearing, but which likely resulted in the Final Decision or final order which is the subject of the Review.

**No Further Review Permitted**

31.18 A Review decision may not be further reviewed by the TLAB.