

ATTACHMENT 1
TLAB Chair's 2022 Annual Report

CHAIR'S 2022 ANNUAL REPORT

Toronto Local Appeal Body



Dino Lombardi

Chair, Toronto Local Appeal Body

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I. Executive Summary

Mayor and Members of Council

July 14, 2023

City Manager

Court Services

I was given the honour of being appointed the Chair of the Toronto Local Appeal Body (TLAB) for a four-year term in December 2020. Each year, the TLAB Chair is required to prepare and present an Annual Report which provides a concise overview of the successes and accomplishments of the Toronto Local Appeal Body and its Members during the past operating year.

As in past years, I am pleased to inform City Council of the resilience of our Members and Court Services staff in continuing to deliver timely adjudicative services to the residents of the City of Toronto in 2022.

Members of the Toronto Local Appeal Body have continued to engage their responsibilities with determination and resolve providing for the fair, thorough, and timely resolution of appeals before it – all on proper principles of good community planning.

This is a significant achievement that ensures the Toronto Local Appeal Body's Hearings continue to be conducted expeditiously and effectively.

Accomplishments

Toronto Local Appeal Body Members have accomplished much in the face of the ongoing challenges in 2022 as the Tribunal and the City of Toronto have emerged from the COVID-19 pandemic.

Key accomplishments include:

- Successfully clearing the backlog of outstanding matters due to pandemic shutdowns.

- Rapidly adapting to and perfecting the technological aspects of delivering online adjudication via a 'remote' meeting platform with the continued support of administrative Court Services staff.
- Introducing and advancing continuous Tribunal improvement initiatives in response to public deputations and input from the public.
- Fostering an accessible forum for appeals

Emerging from the difficulties faced during the last two years, the Toronto Local Appeal Body has continued to find ways to meet the needs of the public we serve, while keeping the safety of City staff, its Members and the public top of mind. This, however, has not proven to be easy.

Challenges/Issues/Emerging Trends

As in previous years, the Toronto Local Appeal Body encountered operational issues and challenges in 2022 as it discharged its responsibilities as a local adjudicative land use appeals tribunal serving the residents of Toronto. In doing so, the Tribunal was also able to identify and address emergent trends and successfully implement solutions in its operation as an adjudicative land use appeals tribunal. These include:

- Continued turnover of Members
- Communication challenges with senior City staff.
- Mounting burdens on the TLAB Chair and Vice-Chair to support Members, give direction on policy and procedural matters and address complaints.
- The increasingly complex procedural demands of the appeal process, especially the rise in the number of Motions and Review Requests, and hearing schedules associated with individual hearing events.
- Ongoing constraints in meeting targeted service standards (decisions and hearing schedules) due to the 'part-time' nature of TLAB Members' appointment parameters and workload capacity.

However, the Toronto Local Appeal Body has continued to find more proficient approaches to addressing the needs of those that come before it, and we remain

committed to working towards finding and implementing further improvements to our service model to make the land-use dispute process more streamlined, effective, and accessible for the public.

Recommendations

The Toronto Local Appeal Body Chair's 2022 Annual Report advocates five (5) **Recommendations** to support its commitment to improving the services it offers to the public. These can be found at the end of the document in Section 10.

Although some of these recommendations are legacy items put forward by the Chair in previous Annual Reports, others are new. They can be summarized as follows:

- ✓ Enhancements to the Hearing process that provide clarity and consistency for the public.
- ✓ Further modifications to the TLAB's Public Guide as a communication document to assist the public in understanding the appeal process.
- ✓ Recognition of the demands and increased mandate of the Toronto Local Appeal Body's Chair (and Vice-Chair) as a result of an expanded Member complement.
- ✓ Enhancements to the decision-writing template to improve the quality and consistency of decisions issued by the TLAB, and the implementation of a legal search engine to assist the public and practitioners in more easily finding and accessing TLAB decisions.

I hope this Report is informative and its recommendations are considered as a component of future City governance.

Respectfully submitted,

X



Dino Lombardi
Chair, Toronto Local Appeal Body
Signed by: dlombar

ABOUT THE TORONTO LOCAL APPEAL BODY



II. About the Toronto Local Appeal Body

Background

The Toronto Local Appeal Body (TLAB) is an independent, quasi-judicial tribunal established through the City of Toronto Municipal Code Chapter 142, the *City of Toronto Act* (**COTA**), and other provincial legislation. Its genesis can be found in amendments to the *Planning Act*, 2006, which gave municipalities the authority to create such local appeal tribunals.

The TLAB formally commenced operations in February 2017 and plays a vital role in the City of Toronto's land-use planning process providing an independent public forum for the adjudication of land-use disputes related to applications under Sections 45 (variances) and 53 (consents) of the *Planning Act*.

In adjudicating and making determinations on variances and consent appeals, the TLAB has all the powers and duties of the OLT under section 115 of the City of Toronto Act (COTA) and the relevant provisions of the *Planning Act*. It replaces for identical statutory jurisdiction the Ontario Land Tribunal (OLT), formerly known as the Local Planning Appeal Tribunal (LPAT) and the Ontario Municipal Board (OMB) for these purposes, within the corporate limits of the City. The OLT remains responsible for conducting hearings on appeals related to Official Plan and Zoning By-law amendments, site plan applications and decisions related to subdivisions. If there are related appeals with the OLT and the TLAB, the OLT has jurisdiction to hear all matters.

The TLAB is responsible for adjudicating land-use planning appeals of decisions of the four panels of the City's Committees of Adjustment (Toronto & East York, Scarborough, North York, and Etobicoke & York) from intake to closure. Its key mandate is the disposition of appeals in an efficient, effective, open, and fair process to all stakeholders and it is in service to all persons with an interest in an appeal.

The TLAB conducts hearings, hears evidence, and renders decisions on the appeals before it based on the merits of the application of the four 'statutory' tests of the *Planning Act*: that the variance is minor in nature, is appropriate development for the property, meets the general intent and purpose of the Official Plan and meets the general intent and purpose of the Zoning By-law.

The TLAB has adopted its own rules of practice, known as the TLAB's *Rules of Practice and Procedure (Rules)*, which govern hearings under the *Statutory Powers Procedure Act* that, among other matters, reinforces the independence of administrative tribunals.

The TLAB promotes and encourages the early resolution of a multitude of matters using a variety of dispute resolution methods and issues decisions, orders and recommendations arising from pre-hearings and mediations, settlements and if required, a formal hearing.

Through its *Rules*, the TLAB encourages mediation amongst parties and the settlement of some or all of the issues in dispute in an appeal matter. The use of mediation by the Tribunal in land use planning disputes is seen as a basis for shortening timelines and pre-emptively addressing issues thereby reducing overall appeal costs.

III. Organizational Structure

Since its inception, the TLAB has been most closely connected with the City's Court Services Division. Court Services provides a broad range of administrative and support services to the public using the Provincial Offences Courts within the City as well as servicing other relevant City tribunals such as the Administrative Penalty Tribunal, Toronto Licensing Tribunal, and the Toronto Local Appeal Body.

Court Services oversees financial and administrative processes, technology, facilities support, frontline customer services, coordinating and delivering training to TLAB Members related to Tribunal digital processes. It has proven to be a helpful sounding board for issues identification and discussion and its Senior Management has assisted the TLAB Chair with arranging meetings of relevance to the Tribunal involving City interdivisional jurisdictions.

The TLAB Chair routinely engages in direct communications with Court Services, consulting on matters which impact the dimensions of the welfare of the Tribunal itself focussed primarily on existing and emerging administrative matters to ensure the efficient and effective day-to-day operation of the TLAB; and the TLAB's annual budget submissions. However, Court Services has no direct control over issues such as TLAB

Member appointments, the Chair's Annual Report, or the adjudication and rules of procedure of the TLAB.

While the TLAB Chair is in direct communication with Court Services on matters respecting Court Services staff or which go to the dimensions of the welfare of the Tribunal itself, it must be recognized that this expectation of open dialogue is tempered by the fact that Court Services is a City division from which the TLAB must demonstrate and retain autonomy.

TLAB Panel Appointments and Member Composition

The TLAB was originally constituted in 2017 with seven (7) Members including the Chair, appointed in a 'part-time' capacity. The inaugural group of Members was appointed to a four (4) year coterminous term of office by City Council, based on the recommendations made by the citizen-member Tribunal Nominating Panel following an extensive evaluation and interview process.

However, since that time the TLAB has experienced intermittent Member turnover typically through resignations, with corresponding reappointments through City Council.

In July 2018, Council authorized the appointment of a TLAB Vice-Chair with duties that commenced on January 1, 2019. Under its Procedure By-law 1-2017, the TLAB Vice-Chair is elected from its membership for a term of no more than one year, on a rotating basis. The TLAB has seen three Vice-Chairs selected from its Membership. The current Vice-Chair, Ana Bassios, was elected to a one-year term which commenced on January 1, 2022.

More recently, City Council increased the TLAB Membership complement to ten (10) in total. At its meeting on April 6, 2022, City Council adopted a recommendation put forward by the Deputy City Manager, Community and Social Services, in a report dated March 11, 2022, - *Response to City Council's Directions Arising from the Toronto Local Appeal Body Chair's 2020 Annual Report* – increasing the size of the TLAB from ten (10) Members to fourteen (14) Members, including the Chair and Vice-Chair. At the writing of this report, there are currently 12 active Members. There are two member

vacancies and two members continuing their work after the expiry of their terms pending the appointment of replacement members.

However, at the end of 2022, two Panel Members (Christine Kilby and Paula Turtle) resigned from the TLAB, temporarily reducing the Tribunal Member complement to twelve (12). In addition, the Member appointment terms of both John Tassiopoulos and Sean Karmali technically expired in December 2022.

Nonetheless, Council's adopted policy is that TLAB Members' terms are to continue beyond the appointment term's 'end date' until a successor is appointed. This, allows a TLAB Panel Member to maintain the role until Council appoints a new Member. Rule 2.15 of the *TLAB's Rules of Practice and Procedure* addresses situations in which a Member's term expires before an appeal matter on which that Member is seized is completed. The Rule states that:

"If a term of a Member presiding over a Hearing ends or expires before a decision or determination in a Proceeding is given, the term of that 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."

The TLAB Member appointment process within the City is conducted under the auspices of the Public Appointments Secretariat. Interested candidates are initially processed through that Secretariat and vetted by way of a Tribunals Nominating Panel appointed by City Council.

The Tribunal Nominating Panel conducts interviews and forwards a list of recommended TLAB Panel Members appointees for consideration and adoption. Typically, this process is conducted expeditiously and new appointments to the TLAB occur within months of a term ending or a resignation, depending on the schedule for City Council meetings.

However, a general municipal election occurred in 2022, which legislatively brought an end to the terms of members of some City Panels and Boards, including the Nominating

Panel for the TLAB. With a new term of Council, the City is required to conduct the recruitment for the Tribunal Nominating Panel, which conducts the selection and interview process. Unfortunately, this did not occur until 2023.

As a result, at the time of publication of this Annual Report, City Council had yet to appoint four (4) new TLAB Members to a four-year term, to replace the Members whose terms had expired or who had resigned, as cited above.

Therefore, although Members Tassiopoulos and Karmali continued in their roles into 2023, the TLAB Panel Member complement was reduced by two to twelve (12) Members due to the above-referenced resignations.

1. TLAB Chair & Vice Chair

Chair

The TLAB Chair is responsible for maintaining reputational integrity, Member discipline, liaison with all City Court Services staff and Tribunal external legal counsel and is tasked with reporting annually to Council via an Annual Report, among other duties. In addition to the general responsibilities as a Member of the TLAB, such as presiding over Hearings and drafting and issuing decisions and orders, the Chair has a Council approved mandate and continues to ensure:

The consistent application of the TLAB Rules, and the conduct of all Business Meetings per the City Procedures By-law applicable to the *TLAB and 'Roberts Rules for the Conduct of Meetings'*;

- Bringing interim and final decisions on Tribunal Policy to Business Meetings of the Tribunal for consideration and where necessary, ratification.
- Setting Business Meeting Agendas and final approval to the scheduling and content of Business Meetings.
- The delegation of responsibilities between Members, including ensuring a proportionate allocation of assignment opportunities, extra-services requests, the

distribution, and timely quality review of draft decisions (along with the Vice-Chair), and ensuring Member performance.

- The timely and accurate approval and publication of *Rules* updates, updates to Practice Directions, the sharing of procedural practices and reminders, the consultation on the update of the Public Guide, and the presentation and accuracy of the Tribunal's webpage and resource materials.
- Chair prioritizes training and education for Tribunal Members
- The sole liaison with the TLAB's external legal counsel and reviews and recommends all invoiced accounts of legal counsel.
- Administers the election of a Vice-Chair, annually, at the last Business Meeting of the year and, if the Tribunal's election process reveals no candidates, chooses an ensuing Vice-Chair.

It is important to note that while the TLAB Chair's appointment is also '**part-time**', the Chair is required to be accessible during normal business hours.

Biography

Dino Lombardi, Chair (effective December 14, 2020)

Dino Lombardi is a Registered Professional Planner (RPP) with over 30 years of diverse experience in land use planning both in the public and private sectors. Dino has held several progressively more responsible senior management positions managing complex planning and development projects and is a Full Member of the Ontario Professional Planners Institute (OPPI) and the Canadian Institute of Planners (CIP). He continues to be actively involved with both organizations, most recently having been appointed to OPPI's Discipline Committee.

Dino is also a Member of Lambda Alpha International, a worldwide, honorary land economics society, as well as having been the Editor of the Ontario Municipal Tribunals Report. He has an Advanced Certificate in Adjudication for Administrative Agencies, Boards and Tribunals from the Society of Ontario Adjudicators and Regulators (SOAR).

Dino was also honoured to have been elected the first TLAB Vice-Chair in 2019 and re-elected as Vice-Chair in 2020.

Vice Chair

The Vice-Chair is the Chair's 'designate' and may be delegated authority and duties normally associated with the Chair, in the Chair's absence or upon assignment. These duties include:

- Chairing the Business Meeting in the absence of the Chair
- Performing any duties of the operation of Business Meetings assigned to the Chair upon delegation
- Other duties as assigned by the Chair.

Biography

Ana Bassios (Appointed December 2019)

Ana Bassios is a City Planner with over thirty years of experience in the municipal sector. Ana Bassios has led large-scale public consultations, completed major municipal planning policy plans, (including a municipal Official Plan) and negotiated resolutions to contentious development applications. She is a former Commissioner of Planning in the GTA. A long-time resident, Ms. Bassios appreciates the uniqueness of each of Toronto's neighbourhoods and the desire of communities to have a say in how they change.

Ana was elected TLAB Vice-Chair for a one-year term at the December 10, 2021, Business Meeting.

Panel Members' Biographies

Sabnavis Gopikrishna (Re-appointed December 20, 2020)

Sabnavis Gopikrishna is the Executive Director of The Housing Help Centre, a non-profit organization which helps tenants access and sustain habitable housing. His passion for community building and planning has resulted in his volunteering for many non-profit organizations. He was formerly a Member of the City of Toronto's Committee

of Adjustment and was appointed in 2014 by the Province of Ontario to the Board of Directors of the Central East Local Health Integration Network.

Stanley Makuch (Re-appointed December 20, 2020)

Stanley Makuch, a Toronto lawyer and academic, has had an outstanding career in municipal, planning and development law. Called to the Bar in 1976 and now a John Bousfield Distinguished Visiting Professional at the University of Toronto, he has extensive experience before the Ontario Municipal Board, the Environmental Appeal Board, and the courts. As a professor of law and planning, he has served on many boards and commissions and published many influential municipal and planning articles and books.

Ted Yao (Re-appointed December 20, 2020)

Ted Yao, a descendent of a Chinese head-tax payer, has been a lawyer adjudicator for the Law Society Tribunal since 2012. He was an in-house municipal lawyer for several GTA municipalities, including the City of Toronto. Mr. Yao was a full-time member of the Ontario Municipal Board for over a decade. Subsequently, he has worked in private practice. Recently he has served on tribunals in Vaughan and Toronto, including chairing Toronto's first Sign Variance Committee.

Sean Karmali (Appointed December 2018)

Sean Karmali obtained his law degree from Osgoode Hall Law School. He also holds two Master's degrees, one in Political Science from the University of Toronto and the other in Public Policy from York University. Mr. Karmali has served on the City of Toronto's Committee of Adjustment panel for 7 years as a decision-maker and chair. He works in the public service where he has held progressive positions within various departments. Sean's skills include statutory interpretation, planning law, and ADR.

John Tassiopoulos (Appointed December 2018)

John Tassiopoulos is a senior urban designer within WSP Canada Group Ltd. with 19 years of experience. He is a graduate of the University of Toronto in Urban and Economic Geography and Political Science. He has experience in urban design and planning ranging from large to small-scale projects. He also serves as an instructor with the RAIC Syllabus program and as a member of the Vaughan Design Review Panel. He previously served as a member of the Toronto East York Committee of Adjustment (2009-2015).

Christine Kilby (Appointed December 14, 2020) ¹

Christine Kilby is a lawyer and accredited mediator with ten years of experience in commercial litigation, including construction and regulatory law. In her full-time alternative dispute resolution practice, she mediates civil and employment lawsuits and conducts workplace restorations, mediations, assessments, and investigations. She is a certified Workplace Fairness Analyst. She has called Toronto home since 2003 and is an active member of her community.

Carissa Wong (Appointed March 9, 2022)

Carissa Wong is a second-generation Torontonians, lawyer, and accredited mediator who is passionate about community, planning and the environment. She has published extensively on diverse participation in environmental decision-making and has assisted multi-party discussions on natural resource governance with First Nations in the Canadian north. She holds a Master of Environmental Management from Duke University and a certificate in Advanced Mediation from Harvard's Negotiation Institute.

¹ Member Kilby resigned as of December 31, 2022.

Gerald Swinkin (Appointed March 9, 2022)

Gerald Swinkin obtained his LL.B. from Osgoode Hall Law School. He was called to the Ontario Bar in 1979. After commencing his legal career as a staff lawyer in the Legal Department of the City of Mississauga, he moved into the private sector, ultimately becoming a partner with the national law firm Blake, Cassels and Graydon LLP, specializing in municipal/planning law. After retirement from practice, Gerald was appointed in August 2016 to the Ontario Municipal Board (now the Ontario Land Tribunal) and served 5 years.

Paula Turtle (Appointed July 22, 2022)²

Paula Turtle holds an undergraduate degree from Ryerson University and an LLB from Osgoode Hall Law School. After working for many years as a labour lawyer, she was a Vice-Chair at the Ontario Labour Relations Board from 2015 to 2020. She has served on the Board of WoodGreen Community Services and as a member of the Advocacy Committee of Cycle Toronto. She has a private practice as a mediator-arbitrator.

Ron Kanter (Appointed July 9, 2022)

Ron Kanter obtained an LL.B from U of T Law School, and an LL.M from Osgoode Hall. He served as a Toronto City Councillor and MPP, where he directed a provincial study balancing development and environmental protection. Ron subsequently practiced municipal and planning law at several Toronto law firms for more than 30 years, representing applicants, objectors, public entities, and community groups. He has also trained and practiced as a mediator, adjudicator, and arbitrator.

Trevor Kezwer (Appointed July 9, 2022)

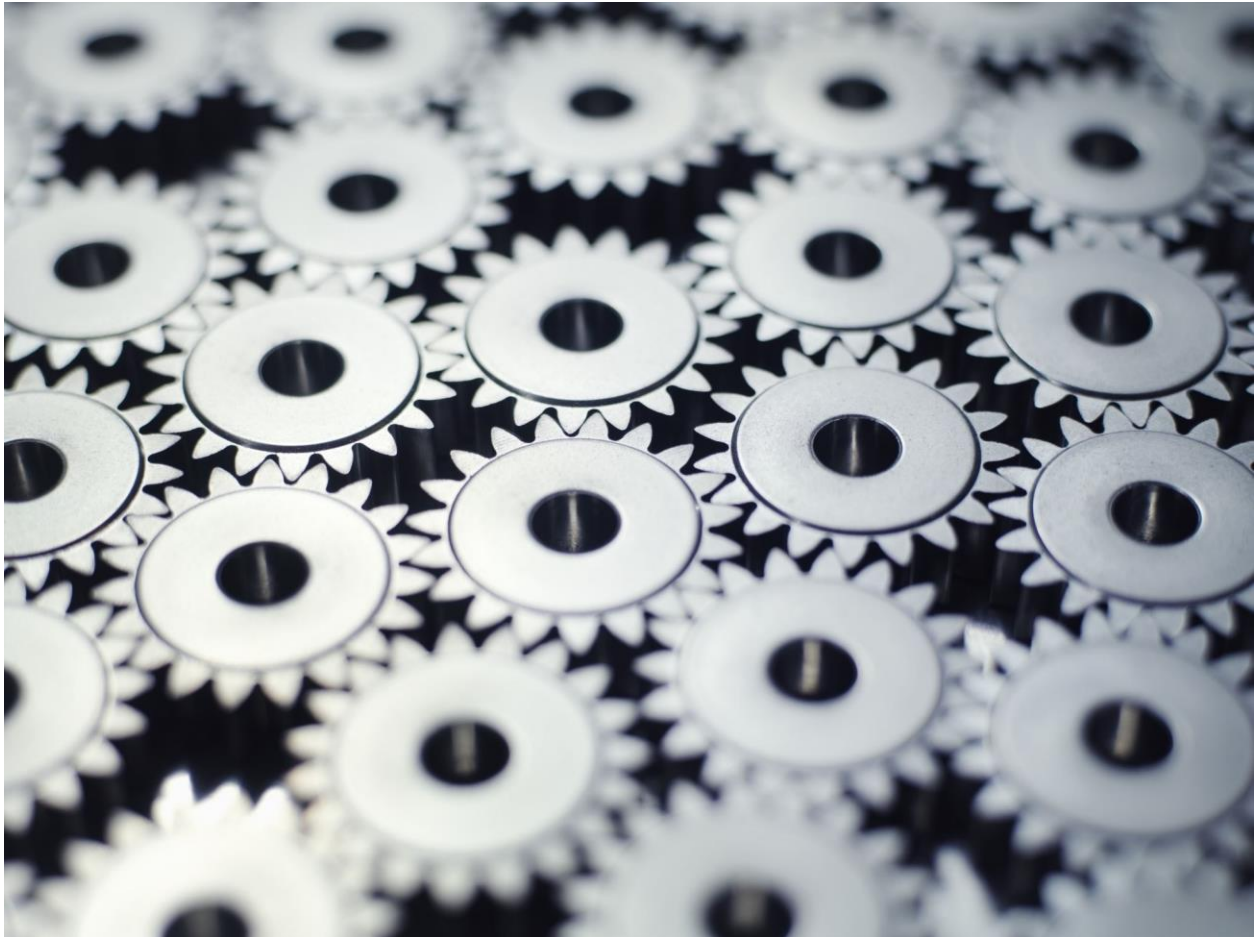
²Member Turtle resigned effective December 21, 2022.

Trevor Kezwer obtained his law degree from the University of Windsor. In addition, Trevor holds a Master's Degree in International Relations from McMaster University. Trevor has experience working for a municipality, including working with planning staff, and preparing for hearings before the Ontario Municipal Board (now known as the Ontario Land Tribunal). As a resident of Toronto, Trevor appreciates the impact that planning decisions have on local neighbourhoods.

Blair Martin (Appointed July 9, 2022)

Blair Martin is an accomplished real estate executive and city planner. During his professional career, he has appeared before appeal tribunals as an appellant, a defendant, as a public official, as a witness giving expert testimony and as a private landowner. He has both past and current not-for-profit Board of Director experience, as well as experience with local government ad-hoc committees. Blair is a past member of the Canadian Institute of Planners (MCIP), and a former Registered Professional Planner (RPP) in the Province of Ontario.

OPERATIONAL HIGHLIGHTS



III. Operational Highlights

The TLAB's Jurisdictional Authority

Since its inception in 2017, the TLAB has sat as the appellate jurisdiction of Committee of Adjustment decisions on minor variance and consent decisions.

Included in the appeal file stream are motions, mediations, settlement hearings and review requests, which are incapable of being scheduled in the normal ‘anatomy’ of a TLAB appeal timeline, and at times must be expedited. Review Requests continued to be filed in 2022 in the order of approximately one every month. All require decisions and several can result in ordering new Hearings which must be added to the Members’ schedules.

Based on the performance metrics prepared by Court Services staff and included in this Report, a consistent and stable Panel Member complement has served the TLAB well in addressing the workload of Committee of Adjustment appeals to the TLAB.

The passage of *Bill 23 – The More Homes Built Faster Act, 2022*, in October of 2022 may impact the appeal volumes of TLAB. The *Bill*, which received Royal assent on November 28, 2022, eliminated ‘third party’ appeals of Committee of Adjustment decisions, directly resulting in fewer parties in a matter being able to appeal Committee of Adjustment decisions to the TLAB.

Bill 23 – More Homes Built Faster Act, 2022

On October 25, 2022, the Honourable Steve Clark, Minister of Municipal Affairs and Housing introduced *Bill 23, More Homes Built Faster Act, 2022*, after a brief period of public consultation, the Bill received Royal assent on November 28, 2022.

The *Bill* resulted in changes to the policy-led planning and development system under which municipalities in Ontario work and represents the single most significant transformation of Ontario’s planning system.

Bill 23 resulted in a series of amendments to the *Planning Act (Act)* including the removal of previous entitlements in subsection 45(12) of the *Act* for ‘third parties’ to

initiate appeals of proceedings before the TLAB from municipal decisions of the Committee of Adjustment regarding consents and variances.

In this regard, the Bill included retroactive provisions that automatically dismissed appeals that had not already been scheduled for a hearing as of October 25, 2022, by the TLAB.

There are other provisions of the *Bill* that, while still vague in the legislation, will also be of interest, as the Government of Ontario provides further information and details. These provisions include increasing tribunals' powers to award costs against a party who loses a hearing, dismissing appeals based on undue delay, introducing service standards, delivery timelines for the issuance of decisions and orders, and priority criteria for tribunal scheduling.

The TLAB will continue to monitor the impacts of *Bill 23* on the Tribunal's operations, which will be more clearly understood in 2023. However, it is safe to conclude that the TLAB will be directly affected by the amendments to the *Planning Act* in the Bill, and these will undoubtedly become more evident in the coming years.

The TLAB's Mandate

The TLAB has several broad but important objectives that the Tribunal has attempted to maintain and enhance:

- a) City residents should be given the assurance that their views would be conscientiously considered in a reasonable period, on City premises and by people who are themselves residents of the City of Toronto.*
- b) To sharpen fair and workable 'Rules of Practice and Procedure (Rules)' that the TLAB could adopt and adhere to; and*
- c) Ensure the application of key fairness principles that the public could recognize and rely on.*

These objectives continue to be the foundational tenets of the TLAB's mandate and, along with a set of core *Tribunal Rules Principles* (see Attachment 1), these goals assure the public that the Tribunal's statutory mandate of a complete and first instance (*de novo*) consideration of the appeals before it is maintained.

The TLAB's mandate, as an independent, quasi-judicial adjudicative body dealing with land use planning appeals of decisions from the Committee of Adjustment, is to dispose of those appeals in an efficient, timely, effective, transparent, and fair process.

While the consequences associated with the COVID-19 pandemic in early 2020 tested this mandate, it is important to highlight that the TLAB was able to adapt quickly and proficiently to that unprecedented foundational challenge. Although this challenge has continued into 2022, the TLAB has never waived from efficiently fulfilling its mandate.

As highlighted in previous Annual Reports, the public health emergency resulting from this global pandemic necessitated the TLAB to take drastic actions concerning its operations. The TLAB has successfully converted all of its Hearings from 'in-person' hearing events at its three Hearing Rooms at 40 Orchard View Blvd. offices, to 'remote' hearings using the WebEx virtual meeting platform and has continued to do so in 2022.

In doing so, the TLAB was able to fulfill its mandate of hearing and disposing of appeal matters before it. The TLAB's rapid and effective adaptability to working remotely was due entirely to the structural processes put in place at the same time as the Tribunal's creation whereby its Rules require all materials to be filed electronically in a 'paperless' environment.

While the TLAB had hoped to return to 'in-person' Hearing events or at least transition into a 'hybrid' Hearing event model by 2022. The various emergency directives from the Province and the City, generally, prevented the TLAB's ability to resume in its entirety its normal practices of accommodating 'in-person' Hearings at its 40 Orchard View Blvd. offices. TLAB hearing rooms were ready for in-person hearing resumption after the lifting of the emergency orders in 2022.

As a result, TLAB Members have continued to undertake the majority of Hearing assignments primarily from their homes further burdening and challenging their technological capabilities and skills.

To assist Members in the 'new normal' required of the remote Hearings environment, Court Services staff undertook supplemental training sessions guiding 'virtual' Hearings using the City's WebEx platform and provided City issued laptops with required software to support TLAB members in adjudication of Appeals.

Therefore, Members continued to hear matters and were seen as exercising control to the highest standards of public health, safety, and judicial standards commensurate with the mandate to make decisions and conduct dispute resolution.

The Tribunal, its Members and Court Services staff are to be commended for overcoming these unanticipated impediments and time commitments which have allowed the TLAB to maintain hearing appeals during a particularly challenging and unprecedented period, as the City emerges from the pandemic.

The TLAB is, again, pleased to report to Council that a prolific body of administrative law has evolved from the TLAB through the conscientious decision writings of its Members. This jurisprudence is giving a growing basis of consistent interpretation of Council's policies and goals as expressed in its Official Plan and harmonized Zoning By-law.

Consistency in approach for the respect, reinforcement, and gradual evolution of City neighbourhoods worthy of preservation and protection, following the policy priorities set by Council, remains an essential element of City building that TLAB Members take very seriously in fulfilling their appointed duties.

The time commitment and dedication of TLAB Members in executing their responsibilities are exemplary and reflect each Member's accepted understanding that, as citizens of Toronto appointed by Council, they take pride in fulfilling their 'civic duty'.

IV. Business Meetings Highlights

1. Key Business Meeting Initiatives

The TLAB regularly convenes Business Meetings to discuss items of interest and to advance the business of the Tribunal. The TLAB's Business Meetings are open to all members of the public and they are encouraged to attend.

The TLAB is required to hold a minimum of two (2) Business Meetings annually, led by the Tribunal's Chair. The rules governing the Business Meetings are outlined in Section C (TLAB Business Meeting), Rule 8 in its Procedure By-law 1-2017. Notice of Business Meetings, together with the Agenda, are published on the TLAB website (www.toronto.ca/tlab) in accordance with City disclosure practices as well as Rule 8 (3) (a) & (b) of Procedure By-law 1-2017.

The TLAB actively responds to requests for constituent education from Councillors and external organizations; organizations interested in receiving information from a TLAB representative should arrange a session using the contact information listed on the last page of this Report.

In 2022, the TLAB Chair scheduled and held six Public Meetings on the following dates, with the assistance of Court Services staff:

- 1. Business Meeting 1- March 4th**
- 2. Business Meeting 2 - May 4th (Special Meeting)**
- 3. Business Meeting 3- June 15th**
- 4. Business Meeting 4- October 19th**
- 5. Business Meeting 5- November 30th (Member Professional Development)**
- 6. Business Meeting 6- December 16th**

The Business Meeting 5 on November 30th was scheduled as a half-day professional development session, with the purpose of providing Members with relevant and

essential annual training and education in various topics identified by the TLAB, as permitted by Rule 11 (1)(f) of Procedure By-law 1-2017.

The six Business Meetings held in 2022 represent an increase of one additional meeting than in 2021 and an increase of two from previous years and since the commencement of TLAB's operations in 2017. A seventh Business Meeting scheduled for September 16, 2022, was cancelled due to Member availability.

The following are highlights from those 2022 Business Meetings:

Public Accessibility to the TLAB

The TLAB's Public Guide

The TLAB believes that public input into the operation of the Tribunal and, correspondingly, the land use appeals process is fundamental to its function and legitimacy. The TLAB encourages such input and feedback and considers this a means of assisting it in keeping the Tribunal accessible to all.

In this regard, it is important to reiterate that all TLAB Hearings, as well as its Business Meetings, are open to the public. As a result, the Tribunal routinely receives deputations, both written and oral, from the public on various matters germane to the Tribunal at its Business Meetings and not related to any specific appeal matter before the TLAB. This public interest continued in 2022.

Continual focus on revisions made to the Public Guide is considered by both the Tribunal and the public as an important and influential contribution to educating the public about the appeal hearing process.

The Guide is especially invaluable to self-represented Parties and Participants engaged in an appeal before the Tribunal and to persons appearing before the TLAB for the first time.

In late 2021, the TLAB received and considered correspondence from the Federation of North Toronto Residents Association (FoNTRA), which provided the Tribunal with

cogent and relevant feedback from the public's perspective as to how to improve the practicality of the Guide.

The TLAB Members adopted three Motions at that Business Meeting, including receiving FoNTRA's and recommended Court Services staff bring forward a revision of the Public Guide for consideration at its next Business Meeting. The revised Public Guide draft was considered at the TLAB's Business Meeting 1 on March 4, 2022, at which the Members adopted a Motion recommending that Court Services staff revised the document to incorporate public input as well as comments from TLAB Members.

As a result, Court Services staff brought forward a revised version of the draft final Public Guide at the June 15, 2022, Business Meeting 3 at which the TLAB formally adopted the Public Guide, and the revised Guide was posted on the TLAB website.

Public Input Regarding Elimination of Rule 31 – *Request to Review Final Decisions*

TLAB Members discussed the question of whether to eliminate Rule 31 at its October 19, 2022, Business Meeting 4 and adopted a Motion to defer the item to its next Business Meeting. Additionally, the Motion recommended that Court Services staff post a Notice/Advisory on the TLAB's website and directly contact various stakeholders/interested parties to elicit public comment in this regard.

At its December 16, 2022, Business Meeting 6, the TLAB received correspondence from the Long Branch Neighbourhood Association (LBNA) in response to Agenda Item 40.3, the consideration by the TLAB of the elimination of Rule 31 (Review of Final Decision and Final Order) of its Rules of Practice and Procedure.

TLAB Members decided to retain Rule 31.

Public Input Regarding Bill 23 – *More Homes Built Faster Act, 2022*

The TLAB also received a deputation from the Co-Chair of FoNTRA, Geoff Kettel, at its December 16, 2022, Business Meeting 6 regarding Agenda Item 40.4 (Bill 23 – *More Homes Built Faster Act 2022*). Mr. Kettel spoke on behalf FoNTRA's member

associations and requested clarification as to whether the public could continue to elect status, either as a Party or Participant, at an appeal hearing before the TLAB.

In response, the TLAB adopted a Motion, put forward by the Chair, to schedule a Special Business Meeting in early 2023 to consider the impacts of Bill 23 on the TLAB's Rules or procedures. That Business Meeting intended to determine if Bill 23 would necessitate amendments to any of the Tribunal's Rules or procedures and then to communicate those changes to the public.

Formal Adoption of the Chair's 2021 Annual Report

Finally, the Chair considered the TLAB's 2021 Annual Report at the Tribunal's October 19, 2022, Business Meeting 4. The Annual Report was brought forward by the Chair in response to input from the public that the document be received for information by TLAB Members at a Business Meeting after it had been reported to the City's Planning and Housing Committee and received for information by Council.

The TLAB continues to view input from the public as essential to its core principles to keep its operations open and transparent. It is important to highlight that over the last number of years, The TLAB has implemented many improvements related to procedural complexity, perceived lack of natural justice and procedural fairness, and expanded opportunities for public engagement, including the introduction of a 'Local Knowledge Expert' in the appeal hearing process.

Furthermore, the TLAB has also introduced a strict protocol for hearing day extensions, reinforcement, and increased usage by the Tribunal of TLAB-led mediation, practice directions, etc.

The TLAB is committed to reviewing its Rules of Practice and Procedure and its Business Meeting protocols on an ongoing basis so that these practices continue to be effective mechanisms for residents to provide input to the Tribunal. The TLAB continues to review its rules and procedures to make them less complex and simpler in wording thereby removing major barriers to effective public participation.

The Virtual Environment/Access to Natural Justice

In 2022, the TLAB continued the practice of conducting its affairs remotely in a ‘virtual’ environment. In doing so, the TLAB held as paramount the safeguard of the health and well-being of Tribunal Members, Court Services staff who support the TLAB, stakeholders in the appeals process, and the general public. Tribunal appeals have continued to be heard by way of the WebEx video conference platform.

Most of Members continued to conduct hearings remotely in 2022. The TLAB’s office space and Hearing Rooms were made available for in-person Hearings if requested by a Member.

The TLAB’s goal continues to be to ensure minimal service disruptions to those who participate in its hearing process while at the same time keeping the public safe. To date, I can report that the Tribunal has received very few complaints regarding this ‘virtual’ working model and no Hearings were cancelled or rescheduled due to issues related to technology.

As an organization, the TLAB considers procedural fairness and natural justice as essential to its ‘*ethos*’. The COVID-19 pandemic has accelerated the pace at which the public is harnessing technology, and the TLAB strives to provide those who appear before the Tribunal with appropriate supports to allow active participation in the appeals process.

In this regard, the Tribunal has recommended improvements on the City’s TLAB webpages and online presence to help better communicate, prepare, and guide participants in advance of hearing events.

Continuous Service Improvements

In 2022, the TLAB continued its work to improve the service standards it provides to the public. In this regard, it adopted initiatives that harmonized and enhanced the Tribunal’s conventions, policies and protocols thereby resulting in more efficient Hearings,

Business Meetings and consulted with Court Services, the administrator of the TLAB, to ensure efficient and effective day to day operations of the TLAB.

a. TLAB Subcommittees

At its October 19, 2022, Business Meeting 4, the TLAB addressed a proposed revision to its Procedure By-law 1-2017 to allow the creation of ‘subcommittees’ as a means to augment its continuous service improvement initiatives considered last year.

For historical context, Tribunal Members at the Business Meeting 1 in 2020 initially identified and discussed an initiative to evaluate some elements of its performance using a feedback instrument such as a survey. That focus was expanded due to the input received by the Members from stakeholders who expressed strong support for consistent, anchored decision-making, based on City and provincial policy direction and the continuity of established administrative law principles, where applicable.

As a result, and after receiving deputations from the public and residents’ associations, the TLAB adopted a Motion at its December 2, 2020, Business Meeting to formally constitute an “Evaluation Subcommittee.” The Motion directed that the Subcommittee would consist of four (4) Tribunal Members and the group was to establish the purpose, methodology and design of a template for the evaluation of hearing events.

The Subcommittee met several times in 2021 to consider resident/stakeholder input and perspectives provided by way of written and oral deputations received in 2020 and provided updates to the Membership at each Business Meeting in 2021.

At the TLAB’s May 7, 2021, Business Meeting, the Subcommittee presented TLAB Members with a Memorandum recommending a ‘Continuous Service Improvement’ (CSI) initiative including ways to make the hearing process easier to understand, providing more cogent and clearer information about the TLAB to the general public, and fostering an environment that aims at consistency in decisions.

At its September 24, 2021, Business Meeting, the TLAB adopted a Motion related to the CSI initiative with the following action items for the Subcommittee:

- a. Create an outline for the mini handbook for Self-Represented Parties

- b. Develop a draft list of frequently asked questions.
- c. Continue to study how mediation can be encouraged, how it is best practiced, and what opportunities exist to become effective mediators.

Furthermore, the Subcommittee was also directed to continue to analyze the feedback and input received from the public regarding the Draft initiative.

Finally, the Subcommittee was directed to prepare a draft continuous service improvement work program, including an implementation plan and timeframe, and bring that forward to the second TLAB Business Meeting in 2022 for consideration by the Members.

In the interim, however, City staff advised the TLAB that the creation of subcommittees at the TLAB and, by association, the work to be undertaken by such subcommittees had been determined to be outside the public appointment mandate of Tribunal Members, even though the TLAB had struck two previous Subcommittees in the past with the knowledge of the City.

The first Subcommittee was established in August 2020 to review Rule 31 (Review Requests) of the TLAB's Rules of Practice and Procedure, while the second was the Continuous Service Improvement Subcommittee constituted in December 2020, referenced above.

The contemporary concerns regarding Subcommittees highlighted by Court Services staff relate primarily to the issue of open meetings as expressed in the Report for Action that accompanied the TLAB Chair's 2021 Annual Report, authored by the Director of Court Services. In that document, the author wrote the following on page 6:

"...the TLAB may establish subcommittees provided they are done in accordance with its rules of practice and procedure, adhere to all legislation the TLAB must function in accordance with and abide by, and operate within the Tribunal mandated roles, duties and responsibilities of TLAB Members. Any subcommittee created by

the TLAB is subject to open meeting provisions of the Municipal Act, 2001, Section 239 and the SPPA, Section 9.”³

It is important to note that TLAB business is conducted by way of its Business Meetings, a minimum of four (4) Meetings are scheduled annually by the Chair and represent the only opportunity for Members to conduct the business of the TLAB. These meetings are advertised, minuted with an agenda, and provide opportunities for the public to engage directly with the Tribunal through deputations, either oral or written or both.

TLAB Members understand that the Tribunal must adhere to and function within the parameters of the abiding legislation and that the moving and adoption of Motions must be conducted in a public meeting forum. This has been and continues to be how the TLAB conducts its business.

However, in light of the concerns highlighted by City Court Services staff regarding the enactment of Subcommittees, TLAB Members adopted a Motion in 2021 deferring indefinitely the continuous service improvement initiatives identified in late 2020.

The question of the validity and legitimacy of adjudicative tribunals such as the TLAB to accommodate informal meetings and subcommittee work has been and continues to be a subject of debate. The TLAB sought and received a legal opinion from its external legal counsel in this regard. This opinion confirmed that subcommittees could be constituted with certain restrictions and limitations, the most important being that subcommittees could not advance the business of the TLAB through the moving or adoption of Motions.

As a result, at its October 19, 2022, Business Meeting 4, the TLAB considered and adopted a Motion revising its Procedure By-law 1-2017, through the introduction of the term ‘Subcommittee’ and subcommittee work. These revisions responded to the matters highlighted by City Court Services staff regarding the creation of subcommittees by the TLAB and were adopted to enhance the Tribunal’s operation and function as an efficient and effective independent adjudicative body. The TLAB also adopted the revisions to

³ Report for Action, Director of Court Services, dated June 20, 2022, p. 6.

facilitate and continue the work of its Members to undertake the continuous service improvement initiatives that were deferred in 2021.

b) Harmonization of the TLAB's Conventions/Policies/Protocols

The TLAB addressed a number of its policies and protocols in 2022, mostly associated with providing clarity and transparency for the public regarding its rules and the appeal process.

I. Rule Revisions - The TLAB's Rules of Practice and Procedure

The TLAB adopted Motions related to various technical revisions to its Rules of Practice and Procedure. At its Business Meeting 4 on October 19, 2022, the Members approved new Rule 12.2.1, which clarified that an Appellant in a hearing matter before the TLAB is also a Party, despite Rule 12.2. Additionally, the TLAB recommended Court Services staff to amend the wording in its Public Guide accordingly to further clarify the automatic Party status for Appellants participating before the Tribunal.

At the same Meeting, the TLAB addressed the wording of Rule 24.3 (Objections to Electronic Hearings) which does not envision the election of Party or Participant status. The existing language of the Rule requires a Party to file a Motion before Party or Participant status is elected, which means that most persons intending to elect such status will not be aware of a Motion. As well, the TLAB Member tasked with addressing the Motion will not have had the benefit of full participation and response from interested Parties, which is procedurally unfair.

As a result, Rule 24.3 was amended to align with the language of Rule 17.1 (Motions), which requires a Motion to be filed after the election of status has passed.

Finally, the TLAB also adopted technical amendments to the wording in two of Form 4 (Notice of Intention (Election) to be a Party or Participant and Form 12 (Responding Expert Witness Statement, respectively,

At its December 16, 2022, Business Meeting 6, the TLAB addressed a matter first raised at a Business Meeting in 2021, regarding the MP4 or visual component of the DAR recording of a TLAB Hearing. Members highlighted concerns relating to matters of

privacy and permission with the release and use by the public of recorded TLAB ‘virtual’ Hearings.

As a result, the TLAB approved amendments to Rules 3.8 (Copies of TLAB Documents and Digital Recordings) and 31.8 (Transcripts), respectively, to further clarify the rules regarding the request for an ‘audio copy’ of the DAR recording of a TLAB Hearing.

II. Revisions to Procedure By-law 1-2017

The TLAB, upon its inception, adopted By-law 1-2017, being a comprehensive 29-paragraph compilation of procedural directions and Tribunal obligations. This is the location, applicable to Business meetings primarily, where the duties, rights, privileges, obligations and powers of the Members are specified.

The By-law provides direction for the conduct of and voting at Business Meetings that supplement *Roberts Rules* and makes formal provisions and procedures for public input.

In addition to the revisions to the Procedure By-law that the TLAB adopted relating to Subcommittees, the Members also approved technical amendments to its By-law at its October 19, 2022, Business Meeting. This included wording revisions to accommodate the participation of Members and to be counted towards quorum in Business Meetings electronically, to recognize the ‘virtual’ forum in which TLAB meetings are being conducted.

These technical amendments were further augmented by additional amendments addressed by Members at the December 16, 2022, Business Meeting 6. At that Meeting, the Members further clarified that the TLAB could hold a Business Meeting where some or all Members participate electronically, and no physical meeting is held. Members also adopted revisions to the Procedure By-law related to how an item can be introduced to the agenda and voting rights.

The Members also adopted amending language that reduced the timeline from at least five (5) business days prior to a Business Meeting to two (2) business days, to register

public deputations by written submission. This was adopted to recognize the additional time required by the public prior to the publication of the Business Meeting agenda to comfortably submit a deputation regarding an item on that agenda.

III. Practice Directions

The TLAB periodically issues Practice Directions that provide consistent guidance to Panel Members, the public and Court Service staff on matters of procedure. Practice Directions can offer a roadmap to the professions and the public as to how to approach and deal with a particular subject matter.

In 2022, the TLAB adopted Practice Direction Nos. 3 (Document Referencing) and 7 (Procedure for Late Document Filing), although the adoption of the former was simply an oversight from a Business Meeting.

Practice Direction No. 3 introduced the concept of a Common Document Book (CDB) to streamline and make more efficient the submission to the TLAB of large digital files representing documents that are commonly used and referred to by Parties in Hearings. The adoption of this Practice Direction at the March 4, 2022, Business Meeting 1 was intended to formally acknowledge the existence of this repository with the TLAB for the benefit of stakeholders and establish a specific protocol for its use.

Practice Direction No. 7 is intended to provide formal direction for Members and administrative Court Services staff in dealing with a procedure for the late filing of documents and submissions past the required filing due date as outlined in a Notice of Hearing (Form 2).

The TLAB has experienced situations in which prior to a Hearing but after the exchange dates for documents have elapsed, new documents appear. This is discouraged by the TLAB for reasons of procedural fairness and bias to Parties who have abided by the TLAB's Rules. Late filings are also discouraged by the TLAB as a basis for an adjournment request.

In this regard, Members have requested on numerous occasions advice from the TLAB Chair on an 'ad hoc' case-by-case basis which is an inefficient approach to providing

interlocutory procedural direction. Hence, the requirement for Practice Direction No. 7, which the TLAB adopted at its March 4th Business Meeting.

IV. Revisions to the TLAB's Decision Writing Template

The work product of a TLAB Member is the decision that each produces and that the Tribunal then issues. This jurisprudence forms the basis of communications to the public and constitutes the body of administrative law and jurisprudence that is regularly accessed by legal and planning practitioners and the public. Decisions of the TLAB are reported in Thompson Reuters publication: Ontario Municipal Tribunal Reports, a subscription reporter series compiling OLT, ARB and TLAB decisions chosen for significance. Select decisions are also often contained in the *Novae Re Urbis* (NRU) weekly publication.

Since its inception, the TLAB has established a generalized decision-writing template that Members are directed to use. Although it is recognized that each Member is entitled to and has their own writing style, the Tribunal has encouraged adherence to this template to protect and enhance the quality and consistency of its decisions.

TLAB decisions are required to be drafted with sufficient particularity that its findings and reasoning chain reflect an evidentiary, or other support base, for the conclusion and disposition of the matter.

In 2021, TLAB Members engaged professional development training in effective decision writing led by an instructor associated with the Society of Adjudicators and Regulators for Boards and Tribunals (SOAR). This training focused on the mechanics of adjudicative decision writing to improve Members' skills in this area. It also resulted in Members considering a recalibration of the decision template.

As a consequence, the TLAB recommended Court Services staff review of the current decision-writing template in 2022 to determine whether modifications or improvements to that template were necessary or warranted. At the March 4th Business Meeting, the Chair brought forward a draft of a proposed revised template resulting from historical comments from the public to gauge the Members' interest in recalibrating the template.

The goal of a revised, refreshed template was to assist Members in writing more concise, consistent, and easier-to-read decisions.

At its June 15th Business Meeting, the TLAB adopted, after consideration by the Members, the final draft revised template brought forward by the Chair and developed in consultation with the Vice-Chair and the TLAB's external legal counsel. The draft template reflected the key goals for effective decision writing - decisions that are issue-driven, point-first, and use plain language – in a uniform framework that could be read and understood by both the public and experienced practitioners.

V. TLAB Administrative/Operations Meetings

TLAB Chair's consultation meetings with Court Services staff continued in 2022, quarterly, with four (4) meetings conducted on February 17th (Meeting 1), June 29th (Meeting 2), October 7th (Meeting 3), and December 20th (Meeting 4).

It should be noted that Administrative/Operations Meetings can be a source of new assignment obligations to the TLAB Chair and Vice-Chair, having the effect of adding additional burdens to an already burgeoning workload for those two members.

However, these meetings are seen as essential to addressing evolving Tribunal issues and ensuring continual effective and efficient day to day operations of the TLAB.

Making TLAB Decisions More Accessible

In adopting revisions to its decision writing template at its June 15, 2022, Business Meeting, TLAB Members also discussed the possibility of making its decisions available via a public legal search engine such as the Canadian Legal Information Institute (CanLII). The Tribunal adopted a Motion recommending the Manager of Court Operations – Tribunals, in consultation with the Chair and Vice-Chair, to investigate this possibility.

This initiative was seen as materially advantageous to the TLAB and the public because decisions could be searched by way of various forms, all in advancing and constructing a body of administrative law.

As a result, the TLAB received an update from the Chair and Court Services staff at its October 19th Business Meeting, confirming that TLAB decisions could be made available on the CanLII website, searchable through various search inputs and that those decisions would be made available on the CanLII website as of January 1, 2023, for decisions dated January 1st and beyond, in addition to the City's online Application Information Centre (AIC).

It is anticipated that once launched that the public will welcome the convenience of accessing TLAB decisions through the CanLII search engine as well as the City's AIC website.

Decision Writing Timelines and Member Accountability

TLAB Members continue to appreciate that timely decision reporting is not just a service to the public as expected of the TLAB by City Council, but also serves to avoid the potential for 'decision backlog building' that can overwhelm and compromise the individual Member as well as the TLAB.

The TLAB's reputation has been premised on a fundamental goal of timely service to the public. TLAB is committed to responsiveness of the Members' decision process, but also the demeanour of conduct of hearings and the incisiveness and descriptive engagement by Members in the facts and appreciation of the evidence as demonstrated in thorough, well-written, and cogent decisions.

Nevertheless, the TLAB has seen a measurable increase over the last few years in the number of, and the delay in, issuing decisions regarding appeal matters. This increase in the number of pending Members' decisions that continue to be delayed beyond the service level threshold considered acceptable to the TLAB has contributed to a troubling trend, particularly since 2019.

A delay in the issuance of final decisions and/or final orders keeps interested Parties and Participants in regrettable suspension as to their future course of action and, in turn, impacts the established integrity of the TLAB.

Decision writing is the essential ‘end product’ of the appellant process, forms the basis of communication with the public and constitutes the body of administrative law and jurisprudence that is regularly accessed by legal and planning practitioners. TLAB Members understand their obligation to produce detailed, cogent, and concise decisions and orders that provide parties, participants, and the public with reasons for the outcome of an appeal matter.

Detailed final decisions and orders are prepared by Members following hours of consideration including access to online records and often requiring the Member to listen to significant portions of the Digital Audio Recording (DAR) of the Hearing and extensive editing of text, document assembly, and consultative syntax review by the Chair.

This is an extremely important matter to the Members as decision writing is the most intensive and time-consuming component of the appeal adjudicative process.

The TLAB’s targeted service standard for the disposition of an appeal matter, from the date an appeal is received to the issuance of a final decision, is 145 calendar days. In 2022, the TLAB is falling short of that standard. While there are obvious exceptions for complex appeals, appeals with multiple parties, appeal events engaging multiple days, instances of intervening holidays, review request delays, availability for accessibility reviews, signatures, dating and issuance, the matter of decisions that continue to be delayed beyond 1-2 months after the completion of a hearing was, again, a problematic trend this year.

In response to input from Panel Members, the TLAB undertook a review of its processes and procedures to understand and assess whether improvements could be incorporated into its operations in this regard. The results of this review determined that the complexity of the appeal process coupled with the acknowledgement that TLAB Members are appointed in a ‘part-time’ capacity, suggested that Member service

standards needed to be re-aligned to more accurately reflect the reality and responsibilities facing Members in drafting multiple decisions concurrently often in quick order.

The TLAB also formally supported a prescriptive remedy available to the TLAB Chair to encourage and foster appropriate conduct where a Member's 'backlog' of pending decisions reaches the dimension of risk at an unacceptable level. This remedy does not apply to delays that occur in decision issuance arising from complexity, multiple Party scenarios, intervening absences, schedules, or other reasonable circumstances, whether foreseeable or unforeseeable.

In 2022, the Chair was required to remind TLAB Members of their responsibilities to issue decisions and orders in a timely manner and within the targeted service standards established by the Tribunal. This included identifying, monitoring, and engaging with Members and engaging the actionable remedies, to address a number of pending/outstanding decisions and orders.

However, there is nothing in the constitution of the TLAB that provides the Chair with any special tools to either set additional standards of conduct or, in practice, enforce existing or perceived standards. As a consequence, the Chair, with the support of the Vice-Chair, must navigate between the personalities of the Members and, where necessary, seek to establish the commonality of group expectations articulated by consensus.

It is the job of the Chair to Ensure that hearing practices of the TLAB are fair and effective and ensure quality and consistency of TLAB decisions and through their qualification to provide leadership to the Tribunal and its members. Encouraging the maintenance of high standard especially in respect of hearing preparation and decision writing is key to the success of the tribunal.

The timely issuance by Members of pending or outstanding decisions beyond the targeted service standard established by the TLAB will continue to be an issue of concern for the Chair. Despite the actions available to the Chair, recited above, to foster appropriate Member conduct regarding a 'backlog' of decisions, the Chair is left to

choose to pull or push on the levers connected to performance, depending on the circumstances. Pulling Members to a consensus is more effective than attempting to push them in a direction for which there are no enforcement sanctions.

Nevertheless, TLAB Members generally have proven to be conscientious as they routinely have been prepared to invest the time, energy, and effort to attend on site investigations, prepare filing synopses and deliver significantly detailed decisions.

Member Professional Development

One of the key responsibilities of the Chair is the coordination of continuing education for Members as well as identifying Membership education and training opportunities. The professional development of Members is an integral part of the organization. The training of Members ensures ongoing knowledge and support to meet mandated responsibilities, and the most relevant knowledge in legislation and operational functions.

At the beginning of each new term of Members at the TLAB, the Chair is obligated to coordinate new Panel Member onboarding and tribunal-specific training sessions, which since 2020 have been conducted virtually. This training is done collaboratively with the assistance of various City departments.

As in previous years, specialized training was retained from the Society of Ontario Adjudicators and Regulators (SOAR). In 2022, the TLAB, contacted representatives of SOAR to tailor a professional development session regarding the topic of 'Mediation'. That training and education session was conducted at the TLAB's November 30, 2022, Business Meeting 5.

The Statutory Powers and Procedure Act (SPPA) permits tribunals to implement Alternative Dispute Resolution (ADR) processes to resolve an appeal proceeding or any issue arising in the proceeding. An ADR mechanism includes mediation, conciliation, negotiation, or any other means of facilitating the resolution of issues in dispute.

Additionally, the TLAB encourages mediation and the settlement of some or all the issues in dispute in an appeal matter through its Rules of Practice and Procedure, specifically Rules 19 (Settlement) and 20 (Mediation). TLAB-led mediation is conducted where the Tribunal is satisfied that there is good reason to believe one or more of the issues in dispute may be resolved through confidential, non-binding mediation.

In TLAB-led mediation, the customary role of the presiding Panel Member is to assist the affected parties, and especially lay citizens, in understanding and defining the matters in issue and the benefits of engaging in mediation.

One of the qualifications required, among others, of a Member appointed to the TLAB is a skillset or experience in mediation. As well, some current Tribunal Members expressed an interest in receiving additional training in this regard. As a result, the TLAB conducted a half-day training and education session on November 30th led by Shannon Moldaver, the principal of Shannon Moldaver Dispute Resolution Inc.

V. TLAB Milestones

March 4, 2022:	Toronto Local Appeal Body adopts amended wording to Condition 7 of the Standard Consent Conditions of Practice Direction 1.
March 4, 2022:	Toronto Local Appeal Body formally adopts Practice Direction No. 3 (Document Referencing) and corresponding revisions to the Notice of Hearing (Form 2).
June 15, 2022:	Toronto Local Appeal Body adopts revisions to the current version of its Public Guide.
June 15, 2022:	Toronto Local Appeal Body adopts revisions to its decision-writing template.
June 15, 2022:	Toronto Local Appeal Body adopts Practice Direction No. 7 (Late Filings), outlining the protocol for interlocutory relief for the late filing of disclosure documents.

- October 19, 2022: Toronto Local Appeal Body adopts amendments to its Procedure By-law 1-2017 to introduce the definition and recognition of the ability to form Subcommittees as part of its continuous service improvements initiative. Revisions were also adopted to allow Members to attend and cast votes at business meetings electronically.
- October 19, 2022: Toronto Local Appeal Body adopts technical revisions to its Rules of Practice and Procedure to address elected status (Rule 12.2.1) at hearings and the timeframe to object to electronic hearings.
- October 19, 2022: Toronto Local Appeal Body adopts clarifying revisions to Forms 4 (Notice of Intention to be a Party or Participant) and 12 (Responding to Expert Witness Statements).
- November 30, 2022: Toronto Local Appeal Body conducts a half-day Professional Development educational session on 'Mediation' for Members.
- December 16, 2022: Toronto Local Appeal Body adopts various amendments to both its Procedure By-law 1-2017 and Rules of Practice and Procedure to make the appeal process more efficient and more effective.
- December 16, 2022: Toronto Local Appeal Body considers the proposed elimination of Rule 31 (Review of Final Decision and Final Order) from its Rules of Practice and Procedure.
- December 16, 2022: Toronto Local Appeal Body elects a new Vice-Chair for a one-year term for 2023.
- December 16, 2022: Toronto Local Appeal Body receives an update from the Chair regarding the Government of Ontario's Bill 23 – *More Homes Built Faster Act, 2022*, and schedules a Special Business Meeting in early 2023 to discuss the impact of this legislation on the Tribunal.

See: Article IV for 2022 Business Meetings and Summary Statistics Schedule (Article IX) for performance metrics.

VI. Key Principles of the TLAB

The TLAB has established the following key set of principles that Panel Members have strived to enshrine into the Rules of Practice & Procedure governing how the TLAB operates:

- a) Disputes between neighbours can become contentious and every effort should be made to ensure timely resolution, emphasizing alternative dispute resolution, within the framework that finality is a necessary hallmark of administrative justice.
- b) Justice delayed is justice denied. A lengthy interval between an appeal and an appeal decision serves no party or participant. People lose interest, events change, memories fade, reasons of convenience intercede, and delay has procedural consequences and incurs unnecessary expense. The TLAB has established Rules which provide a regimented disclosure obligation on parties and participants.
- c) One-day Hearings (variances only) – two-day Hearings (for combined variance/consent matters) should be scheduled with the definitive timeline of the Rules, approximately 115 days from the Notice of Hearing to the Hearing Date.
- d) Every person with an interest is provided with the opportunity to participate within the statutory scheme including TLAB's Rules of Practice and Procedure, limited only by relevance and repetition.
- e) A Hearing Decision and Order should be issued within fourteen (14) business days of the close of the final sitting.
- f) Moving to an all-electronic format, while requiring a learning curve for parties, participants, the public and the Members, can dramatically advance exposure, timeliness, connectivity, and cost reductions by providing instantaneous file access without the need for paper deliveries,

repetitive attendances, reproduction costs, witness meetings, delays, challenges, and other risks associated with multiple pre-hearing processes.

- g) Early disclosure of the Applicant's revisions is required. In the past, practices revealed many modifications to plans and variances sought at the late stage of Hearing commencement. Parties and participants who had prepared their positions based on the material before the Committee of Adjustment were faced with changed circumstances and settlements not revealed. This dislocation of effort and resources, angst, and costs of 'trial by ambush' is remedied by the mandatory requirement of an Applicants' Disclosure up front, early and while the matter is fresh in the minds of those interested.
- h) The Rules provide for the online filing and service of Motions that can request any form of relief and any form of Hearing, written, oral or electronic. Members are open and free to grant relief in warranted circumstances made known to all concerned, even where not presented on consent. Although there are many Forms and Rules, there is flexibility to ensure that individual hardship can be addressed and eliminated in the context of a process that is open to all.
- i) Hearing premises are generally fixed, relatively central to the geography of the municipality and are accessible by public transit. The TLAB has accommodated 'in-person' Hearings at the four (4) municipal Civic Centres in Etobicoke, North York, Scarborough, and East York in the event of a large list of participants in attendance.
- j) The TLAB and all persons participating or communicating on any matters before it shall act in good faith and in a manner that is civil, courteous, and respectful to all. Tribunal Members facilitate hearing from all participants in the Hearing including the public and are expected to treat each with dignity and are in service to all persons with an interest in an appeal.

- k) Matters that have been given consent by parties are encouraged by Members to advance through TLAB-led mediation, agreement or settlement. This results in expedited Hearings conducted less formally and encouraged by all available means, subject to statutory requirements.

VII. The TLAB Appeal Process*

NOTE: The timelines noted herein apply to post-December 2, 2020; the revisions to the Rules contributed to different processes and requirements commencing on that date.

The process and timelines associated with filing an appeal and document submission are outlined in the TLAB Rules of Practice and Procedure available at:

https://www.toronto.ca/wp-content/uploads/2020/12/9590-Consolidated-Revised-Rules-of-Practice-and-Procedure_December-2-2020.pdf

The steps involved with the TLAB appeal process – the ‘anatomy of an appeal to the TLAB’ are outlined below.

Please refer to the Rules of Practice and Procedure for compliance purposes.

Step 1:	Appealing a Committee of Adjustment Decision
Submission Required:	Notice of Appeal (Form 1).
Due Date:	20 calendar days after the Committee of Adjustment Decision for minor variance appeals.
	20 calendar days from the Committee of Adjustment Notice of Decision issued for consent appeals.

Responsibility: The Appellant.

Step 2:	Notice of Hearing
Submission Required:	Notice of Hearing (Form 2).
Due Date:	5 calendar days (objective) after the receipt of a Notice of Appeal from the Committee of Adjustment.
	Full identification of timelines for procedural obligations.

Responsibility: TLAB Staff.

Step 3: Applicant's Disclosure of Revisions

Submission Required: Applicant's Disclosure of Revisions (Form 3).

Due Date: 20 calendar days after the Notice of Hearing is issued.

Responsibility: The Applicant.

Step 4: Identification of Parties and Participants

Submission Required: Notice of Intention to be a Party or Participant (Form 4).

Due Date: 30 calendar days after the Notice of Hearing is issued.

Responsibility: Parties and Participants.

Step 5: Document Disclosure

Submission Required: Any documentary evidence including photographs that will be presented at the TLAB hearing, in digital format.

Due Date: 60 calendar days after the Notice of Hearing is issued.

Responsibility: Parties and Participants.

Step 6: Submission of Statements

Submission Required: Witness Statement (Form 12), Participant's Statement (Form 13), and Expert's Witness Statement (Form 14).

Due Date: 60 calendar days after the Notice of Hearing is issued.

Responsibility: Parties (Form 12 and Form 14) and Participants (Form 13).
Responses and Replies are governed by Rule 16.

Step 7 (Optional): Filing a Motion.

Submission Required: Notice of Motion (Form 7).

Due Date: 15 days before the Motion and hearing date.

Responsibility: Parties.

Step 7A: Responding to a Motion.

Submission Required: Notice of Response to Motion (Form 8).

Due Date: 7 days before the motion date.

Responsibility: Parties.

Step 7B: Replying to Response to Motion.

Submission Required: Notice of Reply to Response to Motion (Form 9).

Due Date: 4 days before the motion date.

Responsibility: Party that filed the Notice of Motion.

VIII. Adopted Practice Directions

The following Practice Direction was adopted in 2022:

No. 7: Procedure for Late Document Filing (Approved June 15, 2022)

Stipulates the procedure for the filing of late documents after the filing dates as required by the TLAB's Rules of Practice and Procedure have passed.

PERFORMANCE METRICS & SUMMARY STATISTICS



IX. Performance Metrics & Summary Statistics

The TLAB has continued to review and reassess its internal operation on an ongoing basis, including performance and service standards. This continual reassessment is conducted on an annual basis, or when appropriate, and is considered with a view to identifying areas in which improvements and/or refinements can be implemented.

An aggregate statistical measurement for each year has been published in each of the Chair's Annual Reports underscoring and highlighting overall Tribunal performance. These statistics are a helpful reference point to TLAB Members in supporting the fundamental principle that the issuance of timely decisions is the essence of public service. These statistics are analyzed annually by the TLAB to not only understand but also gauge whether the appeals process is adhering to a set of self-imposed, targeted timing and service standards.

This yearly review assists Members in identifying opportunities for re-calibrating and optimizing the balance between service to and expectations of the public and the anticipated and actual time commitments required of its 'part-time' Members.

From time to time, these service standards require reconsideration to determine whether they remain realistic and practical both from a Members' and participants' point of view and the data are used by the TLAB to gauge whether re-calibration of service level standards is required.

The efficacy of the TLAB rests in part on its ability to deliver its Decisions and Orders in a timely fashion. Improvements to the TLAB are considered by its Members with the view of continuing to advance its core guiding principle that it is in service to dispose of appeals in an efficient, timely, effective, open, and fair process to all stakeholders.

Delayed decisions and decisions that involve postponements and adjournments adversely affect this statistical measure.

From the TLAB's perspective, a key performance metric remains the number of additional Hearing days required in an appeal matter. The TLAB is committed to disposing of appeals in a timely and expeditious manner and Members are encouraged to be judicious in the allocation of the TLAB's time concerning matters before it.

The fair and proportionate allocation of time conserves resources and ensures that the resources, time and energy of parties, participants and witnesses are efficiently deployed. The TLAB has heard repeatedly in deputations at its Business Meetings from a resident's perspective regarding the issue of Hearing extensions beyond the

timeframes established by the TLAB, which has become a concern for both residents and the TLAB.

The TLAB has continued to schedule hearing matters using a stable and consistent formula wherein ‘variance only appeals’ are typically scheduled for a one (1) day sitting and ‘combined variance/severance appeals’ for two (2) day sittings. In most circumstances, this has proven to be satisfactory to dispose of an appeal.

However, this standard is not always achievable due to various factors including the complexity of the issues in dispute (e.g., planning, heritage, the natural environment, architecture, etc.), how many parties and participants have elected status in a matter, and the calling and cross-examination of numerous witnesses, both expert and Party/Participant.

I am delighted to report that in 2022 the TLAB experienced a 22% decrease in average Hearing length, which represents a continued trend of significant decreases in the average length of Hearings. This decrease reflects, among other things, the continued refinement and acceptance of electronic hearing events at the TLAB as well as a concerted effort by Members to expedite Hearings to further reduce the attendance time commitments and cost requirements for residents.

This is a positive metric for all stakeholders.

1. Service Standards

A. Timely Receipt of Appeal File from Date the Appeal is filed to the date it is received by the TLAB

The timeframe from the date the Committee of Adjustment (COA) is made aware of an appeal to the date the appeal file is received by the TLAB, saw a slight increase of 6%, on average, between 2021 and 2022, from thirty-four (34) days to thirty-six (36). While informative, it must be noted that the TLAB has not established a targeted service standard for this component of the appeal process

because the ‘flow through’ of appeal packages from the Committee of Adjustment to the TLAB is the responsibility of the Committee’s Secretary-Treasurer.

Although Column A in the Performance Metrics Chart on page 53 reflects monthly totals ranging from 58 days in February to 15 days in December, the overall average is 36 days which is considered an acceptable timeframe.

B. Timely review and setting of Hearing Dates (15 business days target metric from the date TLAB receives an appeal from the Committee of Adjustment)

The average time from the time Court Services staff received an appeal package from the Committee of Adjustment (COA) to the date a Notice of Hearing (NoH) is issued was thirty-three (33) days, which represents a 58% increase from the 2021 average of fourteen (14) days, and a 55% increase from the targeted service standard of fifteen (15) business days.

However, an analysis of this metric at a more granular level highlights differences in processing times between the first half of 2022 and the second half of the year. For example, on average, it took more than forty-six (46) days in the early part of 2022 to issue an NoH whereas that number was reduced on average to less than 20 days in the last six months of the year. This can be attributed to the number of files forwarded by the COA to the TLAB as well as fluctuations in the administrative staffing complement supporting the TLAB.

Furthermore, the ‘Screening Time’ service standard was recalibrated in 2022 to fifteen (15) from the previously targeted standard of five (5) business days, to more accurately reflect the time required by the TLAB to ensure that the appeal package received from the COA includes all relevant documents and then to schedule a Hearing in the matter.

C. Timely Hearings scheduled (105 calendar days target metric from Notice of Hearing Issue date to Hearing Date)

Of the files received, appeal matters were scheduled by the TLAB, on average, ninety-nine (99) days from the day a Notice of Hearing was issued, which represents a slight decrease of 3% from the 2021 standard of 102 days. The TLAB's typical service standard was previously reported as 110-115 calendar days. However, that metric has now been updated to 105 days to reflect a more appropriate reality. This average does not include Adjournments, Continuations or Withdrawals which also impact scheduling parameters.

Since 2019, the TLAB's service standard in this regard has continued to steadily improve, with average scheduling times having decreased by 25 days to 99 days in 2022.

D. Timely issuance of Decisions (21 business days target metric from the date of Hearing or Motion to decision).

Of the decisions issued, the average time taken to issue a decision in 2022 was 90 business days, an increase of 43% over the 2021 average of 63 days. However, like 2021, the 2022 service standard average is skewed significantly higher by the decision 'turnaround' times in three particular months, those being January (135), March (188), and May (134), and by a small subset of pending decisions.

If the three months cited above are not included in the calculus, then the average time for the TLAB to issue a decision in 2022 was 60 days, which is significantly lower than the 90 day average.

Unlike the previous TLAB Chair's Annual Reports, the 2022 Annual Report now includes two different measurements for decision turnaround times: median and average, to better reflect actual turnaround time and to account for the small subset of pending decisions referenced above. The 'median' time it takes from the

completion of a Hearing to the date when the TLAB issues a decision is 34 calendar days, which is nearing the targeted service standard of 30 calendar days (21 business days) recently adopted by the TLAB.

The metrics support that TLAB continues to improve its service standard for turning around decisions.

E. Timely disposition of appeal matters. TLAB appeals are to be completed within 145 days as a target metric from the date the Notice of Appeal is received by the TLAB to the date the decision is issued.

Of the appeals that were completed, the average time taken to dispose of matters from the date the appeal file is received by the TLAB to the time a decision was issued was 326 days, which represents a slight increase of 7% from the 2021 average of 305 days. This average is approximately 181 days more than the targeted service standard of 145 days established by the TLAB for disposing of appeal matters, which is a troubling metric that the TLAB had hoped to reduce in 2022.

Again, as in the section above, the 'Median' has been incorporated in the Performance Metrics Chart in this Report. The Median time it takes to dispose of an appeal matter at the TLAB in 2022 was 224 calendar days. While still a considerable difference from the targeted service delivery standard of 145 days, the 2022 Median number confirms that the TLAB is continuing to improve on its service standards.

In 2022, the TLAB processed 260 appeal files received from the City's four Committee of Adjustment panels, which is an increase of 6% from the previous year (246).

Of the 260 appeals filed with the TLAB, 224 (86%) of the applications requested approval for variances while 36 (14%) included a request to sever a property and associated variance, representing increases of 3% and 24%, respectively, from 2021.

The total number of Hearings in 2022 also contributed to a corresponding 21% increase in application outcomes at the TLAB. A total of 376 decisions were issued by Members in 2022, an increase of 64 decisions from 2021, with 48% (179) being Final Decisions and Orders (a 24% increase from 2021).

Of the application outcomes before the TLAB, 75% of the applications were approved while 25% were refused. This ratio has been fairly consistent since the TLAB's inception in 2017, with approvals ranging between 70 to 75% over those six years.

Although pre-COVID-19, requests to review a Member's final decision and order engaged a significant amount of the Chair's and Vice-Chair's workload, that number decreased sharply to fifteen (15) in 2021. That number further decreased marginally in 2022, as the Tribunal received thirteen (13) requests for review. The TLAB projects that the number of review requests will likely remain at the 2022 level or be slightly lower in 2023.

It is important to underscore that the TLAB encourages Mediation and Settlement in its Rules as a means of resolving some or all the issues in dispute in a matter. Members utilize this alternative dispute resolution strategy to investigate whether Parties are open to discussing outstanding issues and concerns in a less formal conciliatory construct with the intent of reducing the cost and time associated with the appeal process. In 2022, there were a total of three (3) decisions stemming from two (2) mediations and one (1) settlement.

Mediation, whether directed by the TLAB or brought forward by Parties following private negotiations, advances the disposition of applications through expedited Settlement Hearings thereby reducing the length and time required to complete hearing matters.

Although mediation and settlements are not reflective of a large sample size within the performance metrics in this Report, the TLAB nevertheless continues to encourage Parties to explore mediation as a practical dispute resolution strategy.

2. Performance Metrics

Monthly data points are averages (or median where identified) for the month. (Notice of Hearing (NOH))

	A	B	C	D		E	
Month Appeal is commenced by the Appellant	Appeal Package Filing Time Date Filed with COA to Date Received By TLAB	Screening Time Date Appeal is Received by TLAB to Date a NOH is Issued	Scheduling Time NOH Issuance Date to First Scheduled Hearing Date	Decision Time Hearing/Final Submission Date to Decision Issued		Disposition Time TLAB In-Date to Date Final Decision is Issued	
				Avg.	Median	Avg.	Median
January ⁴	30	61	100	135	71	478	253
February	58	60	97	59	24	233	237
March	31	58	93	188	221	521	417
April	29	46	100	63	29	284	177
May	21	37	95	134	40	478	292
June	37	11	96	68	19	313	248
July	50	21	99	110	39	348	210
August	50	16	99	83	44	231	202
September	41	16	106	51	41	293	217
October	52	20	102	95	22	245	158
November	20	27	98	62	41	295	277
December	15	17	98	99	25	250	178
2021 Average	34	14	102	63		305	
2022 Average	36	33	99	90⁵	34	326	224
2021 vs 2022	Increase of 6%	Increase of 136 %	3% Decrease	Increase of 43%		Increase of 7%	
Targeted Service standard	N/A	15 business days	105 calendar days	21 business days		145 calendar days	

⁴ The numbers in rows 4 to 17 (i.e., January to 2022 Average) are calendar days.

⁵ Adjusted to account for a 3-business day turnaround time by administration*

3. Summary Statistics

Number of TLAB Appeal Files Received	2017	2018	2019	2020	2021	2022	2021 vs. 2022
Total Number of Appeals	314	419	279	227	246	260	Increase of 6%
Total Number of Motions	28	95	70	28	41	42	Increase of 2%
Total Number of Hearings	253	318	361	174	328	321	Decrease of 2%

Average Hearing Length (hours)		
2021	2022	2021 vs. 2022
3.73	2.92	Decrease of 22%

Appeal Type	2017	2018	2019	2020	2021	2022	2021 vs. 2022
Variance	267	346	246	194	217	224	Increase of 3%
Consent & Variances	54	73	33	33	29	36	Increase of 24%

Appeal Outcomes	2021	2022	%
Allowed	114	110	49%
Dismissed	75	115	51%
Total	189	225	100%

*Includes Withdrawals; Counts Multi-Part Appeal Files as One Outcomes

Application Outcomes	2021	2022
Approved	140	166
Refused	49	59
Total	189	225

*Referring to the outcome of the planning application

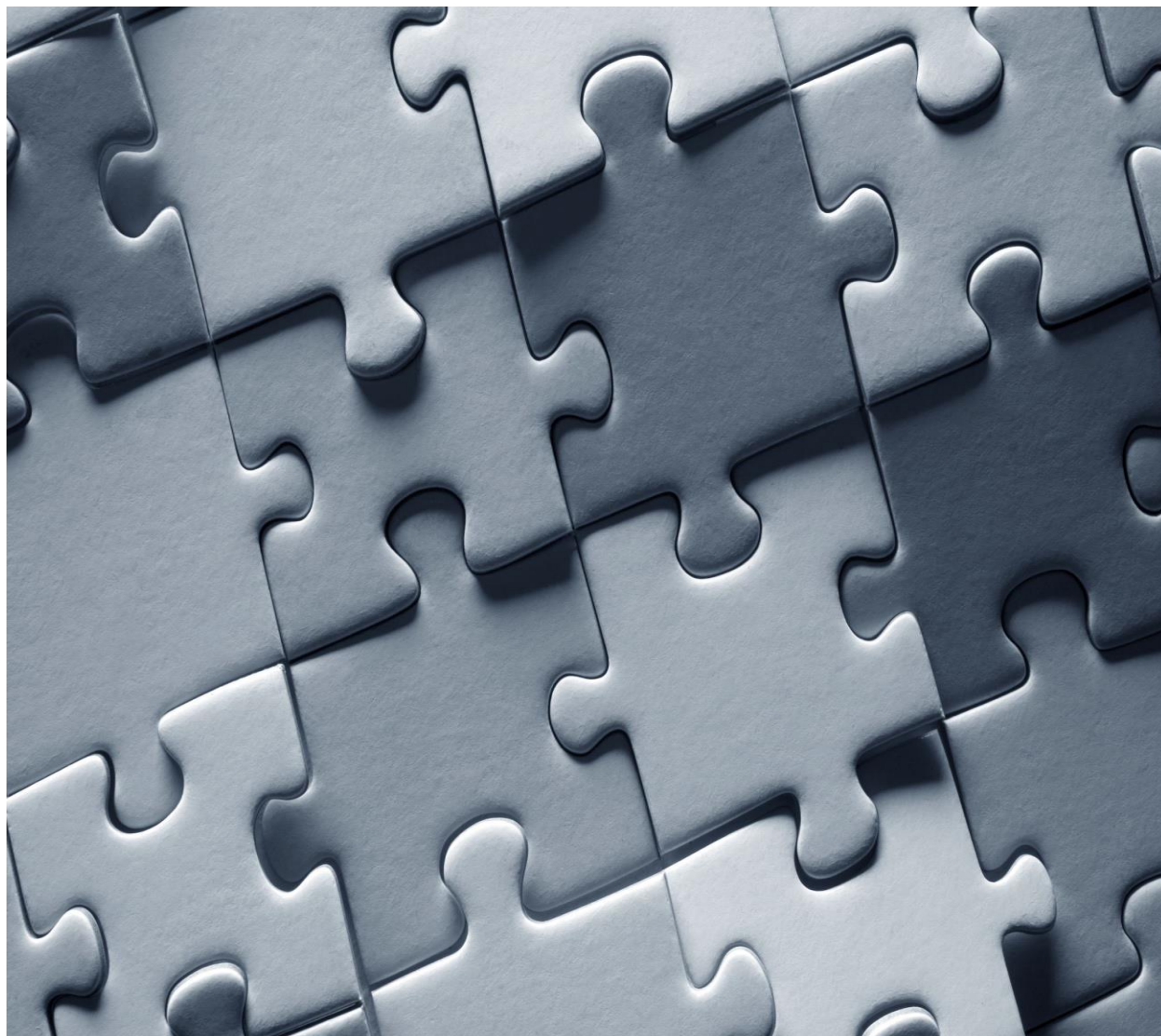
Review Request Disposition	2021	2022	% Difference
Review Request Dismissed - Decision Confirmed	11	9	
Granted - New Hearing	3	3	
Decision Varied	1	1	
Totals	15	13	Decrease of 2%

Decision Page Count - Average			
Type	2020	2021	2022
Final	11.6	11.7	10.8
Review Request	13.4	15	13.8

Decision Type	2021	% of Total	2022	% of Total	2021 vs. 2022
Final	145	46%	179	48%	Increase of 22%
Interim	37	12%	60	16%	Increase of 62%
Mediation	4	1%	2	0.5%	Decrease of 50%
Motion	41	13%	42	11%	Increase of 2%
Order	11	4%	27	7%	Increase of 145%
Review	15	5%	13	3%	Decrease of 13%
Revision	17	5%	8	2%	Decrease of 53%
Settlement	5	2%	1	0.3%	Decrease of 80%
Withdrawal	37	12%	44	12%	Increase of 19%
Total	312	100%	376	100%	100%

*This counts decisions issued. If a three-part file had a single decision issued, it is counted as a single decision, not three decisions.

EMERGING TRENDS, ISSUES AND RECOMMENDATIONS



X. Going Forward: Emerging Trends, Issues, and Recommendations

Although the Toronto Local Appeal Body has operated continually since early 2017, it is still a relatively new body to other quasi-judicial tribunals in Ontario in comparative terms. As such, annual reviews of activities by the Membership are necessary and integral to identify, investigate and address emerging issues, trends and problems requiring consideration by the Tribunal.

Since being appointed Chair in December 2020, I have continued to highlight ongoing Tribunal operational issues warranting further attention and consideration in my Annual Reports. On-going discussions with TLAB Members and Court Services Tribunal staff have been instructive in recording emerging and ongoing concerns and identifying methodologies to address the items highlighted.

As time passes and experience is gained, several issues previously identified in the preceding Chair's Annual Reports have been resolved and addressed constructively within the limitations of Court Services Staff advisors and budget guidelines applicable to the TLAB.

However, others have remained and reflect legacy recommendations from the TLAB Chair's previous Annual Reports, which I propose continue to require redress and reconsideration.

The remaining recommendation(s) listed below are issues that should be given due consideration.

I believe that all the recommendations submitted align with the governance structure outlined for the TLAB by the City which supports the independence and arms-length nature of the Tribunal, and I submit that they are critical for the TLAB to carry out its established mandate.

RECOMMENDATION

1. Implementation Fee for Review Requests of a TLAB Decision

This is a continuing legacy request made by the Tribunal.

An important service offering of the TLAB is the right of a Party who is felt to have been aggrieved by a Final Decision and Order, to request its review and reconsideration by the TLAB. This is a right offered under provincial enabling legislation and the TLAB has incorporated it within its *Rules of Practice and Procedure*, specifically Rule 31 – Review of Final Decision or Final Order.

A Review Request under Rule 31 engages a process for a full review of the original TLAB Decision and Order.

Increasingly, the right to access a Request for Review at the TLAB is being employed despite express criteria and limitations that it is not an attempt simply to reargue a case for a second or different decision. The purpose of a Review Request is to identify any errors, omissions of fact, law or natural justice that might have resulted in a different decision. The opportunity to question a TLAB Member's decision is governed only by the language of Rule 31.

A Review Request typically engages all the resources of the TLAB in processing: a site inspection; multiple considerations and voluminous submissions; and a possible Motion or Hearing. It requires the Chair or designate, to draft a written disposition, whether dismissed or allowed and in terms of Hearing dispositions, resources and consideration demands, is materially significant.

The TLAB has expended considerable time and resources of its Members, external legal counsel, and Court Services staff in formulating a Rule 31 that best accommodates this mandate. This effort has engaged several modifications of the Rule with the TLAB adopting the most current version in December 2020.

Currently, Council has no fee for invoking a Review Request pursuant to the guidelines in Rule 31. The lack of a required fee undermines the seriousness associated with filing a request to review a Member's Final Decision and Order and the Membership believes that it is ineffective in discouraging the filing of requests that may lack merit.

It is the TLAB's position that imposing an appropriate fee would act to cause Parties to 'pause' and give serious thought before considering whether a Review Request is valid and justifiable in the circumstances.

I note that in previous Annual Reports beginning in 2018, the TLAB Chair has brought forward the recommendation to implement a Review Request filing fee to be incorporated within the City's Charges, Fees and Levies By-law for Council's consideration. To date, City staff have not supported this recommendation, nor has Council adopted the Chair's recommendation to add a fee for this process.

In a City staff report considered by the Planning and Housing Committee on May 20, 2021, staff wrote the following:

"The addition of a new fee is not recommended at this time despite the potential reduction in the number of reviews requested. The TLAB was created to make appeals more accessible, and a new fee would negatively affect access to this process. Staff will monitor trends associated with review requests and consider whether a fee should be added in the future."

The TLAB believes that City Council should seriously reconsider implementing a Review Request filing fee given the time and effort required to undertake such an exercise including the diversion of Member capacity away from pending appeal cases, the cost to the City and Parties of the Review Request process, the speculative nature of the preponderance of requests, and the significant delay the process causes to the final resolution and disposition of cases before the TLAB.

TLAB Members do not believe that implementing such a fee would make the TLAB appeal process less accessible to the public given that the vast majority of Review Requests are filed by proponents.

Recommendation 1:

Council amend its Fees, Licenses and Charges By-law to incorporate a 'Review Request Fee' for the institution of a cost for a Review Request under Rule 31 of the Rules of Practice and Procedure of the Toronto Local Appeal Body.

2. Site Plan Approval Delegation

This is a continuing legacy request made by the Tribunal.

Consent and variance applications frequently if not routinely involve the review and approval of project Site Plans, elevations, massing, shadows and other features, functions and conditions of approval including subjects germane to the disputes with neighbours, residents associations, City Divisions (Heritage Services, Parks, Forestry, and Recreation, Transportation Services, and Engineering and Construction Services) and other interest groups.

The TLAB has made enhanced usage of the consent and variance 'conditions' power to achieve Official Plan goals of consistency, design, area character and site development objectives, based on local considerations.

Additionally, the passage by the Province of Bill 23 – More Homes Built Faster Act in November 2022, will have impacts on the operation of the TLAB. The elimination of 'Third Party' appeals will result in only the applicant, the Minister of Municipal Affairs and Housing, specified persons and public bodies (as those terms are defined in the Planning Act) including the City of Toronto, having the ability to appeal a decision of the Committee of Adjustment to the TLAB. Although the implications of this aspect of the

Bill on the TLAB require monitoring and its repercussions will become more evident in 2023, this may present City Council with an opportunity to consider delegating site plan approval jurisdiction to the TLAB.

Recommendation 2:

Council consideration be given to the delegation of site plan approval jurisdiction to the Toronto Local Appeal Body independent of whether or not severance, consent or variance jurisdictions are involved.

3. Request for an Increase to the TLAB Chair's Annual Stipend

This is a continuing legacy request made by the Tribunal.

The Chair is 'the glue that serves to hold the TLAB together'. In addition to the numerous duties and responsibilities outlined at the beginning of this Report, the City of Toronto requires the TLAB Chair to exhibit the following additional qualifications and skills (as outlined on the City's Public appointments page webpage @

<https://secure.toronto.ca/pa/decisionBody/381.do>

- Demonstrated leadership and administrative skills;
- Highly developed chairing and facilitation skills;
- Demonstrated ability to work effectively with others;
- Knowledge of access to information and privacy legislation; and
- The ability to effectively represent the TLAB and communicate with City Council, City committees, the media and the general public.

Additionally, the Chair is the Information and Privacy Head, holds responsibility for dealing with Member and public complaints, and is responsible for engaging with and providing instructions to the TLAB's external legal counsel on matters related to the Tribunal's operation.

The Chair acts as a resource for Members including the allowance of seeking legal counsel advice directly, on an issue of concern and where circumstances warrant, and ensures Member performance, respect and discipline, which are perhaps the most intangible of all aspects of the Chair's responsibilities to the TLAB.

The Chair is also responsible for the coordination of Member training and professional development, with the assistance of the Vice-Chair.

If there is a single obligation that warrants a greater appreciation for the TLAB Chair's responsibility to the Tribunal, it is cultivating Member respect and discipline. The TLAB and its Members gain respect from three sources: Hearing conduct; decision writing; and all Members' performances.

It is the job of the Chair, with the assistance of the Vice-Chair, to encourage its Members to maintain high standards of the TLAB's work, to discourage aberrations in decisions and hearing processes, and to continually seek to set additional standards of conduct or, in practice, to enforce existing or perceived standards. Consequently, the Chair must navigate between the personalities of the Members and, where necessary, seek to establish the commonality of group expectations articulated by consensus.

The administrative and operational responsibilities associated with the TLAB Chair's role, coupled with a full workload of assigned Hearings, can and often does result in a forty (40) hour work week, including weekend hours.

However, this has become more complicated and laborious with an ever-increasing complement of Panel Members.

As noted earlier in this Report, City Council increased the TLAB complement by an additional four (4) Members, to a total of fourteen (14) at its meeting in April 2022, which represents a doubling of the number of Members originally appointed in 2017.

At that time, Council calculated the Chair's annual stipend as part of the foundational discussions undertaken when the TLAB was first constituted. That annual stipend was

based primarily on the role and responsibilities of the Chair associated with a total Panel Member complement of seven (including the Chair).

However, in the six (6) years since the TLAB's inception in 2017, Council has increased the Member complement twice. First, in 2019, the number of Members increased from 7 to 10 Members, which included the introduction of the Vice-Chair, representing an increase of 43%. The second time was 2022 when the membership was increased again to a total of fourteen (14).

Although the total Panel Member complement of the TLAB has doubled since 2017, representing an increase of 100%, the Chair's annual remuneration has not increased correspondingly. Therefore, I submit to City Council that an increase in the panel complement must include a reconsideration of the TLAB Chair's annual stipend as well as that of the Vice-Chair.

To do otherwise would be unfair to the Chair and Vice-Chair, who are tasked with and work diligently to preserve the reputational integrity of the TLAB. Increasing the Chair's annual remuneration is critical to acknowledge the significant responsibilities of that role and the importance of succession planning for the TLAB, and also necessary to incentivize current and future TLAB Members to consider putting their names forward for consideration by City Council to assume this role.

Recommendation 3:

Council considers as part of the 2023 budget process retroactively increasing the annual stipend of the Toronto Local Appeal Body Chair, and that of the Vice-Chair, to reflect the corresponding expansion in the role and responsibilities associated with the increase in the number of TLAB Panel Member appointments since 2017.

4. Panel Member Appointments

The appointment of qualified TLAB Panel Members is most important to guarantee that the Tribunal meets its mandate of issuing jurisprudence in a cost-effective and timely manner. Furthermore, the retention of Members and Member recruitment contribute directly to the achievement of the performance and service threshold levels that it strives to provide to the public.

Council has established clear administrative processes to address ‘end of term’ replacements, the replacement of Members who resign from service, and succession considerations. Council has assigned the responsibility of recommending candidates to the Nominating Panel – Toronto Local Appeal Body, and that Panel’s vetting of potential candidates for appointment is crucial to maintaining the integrity and adjudicative skillset of the Tribunal.

At its inception, the TLAB Panel Member complement was composed of seven (7) Members including the Chair. This initial Member complement seemed to function well but following several resignations and a recommendation from the TLAB Chair (Ian Lord) in 2018, City Council increased the Membership to 10 ‘part-time’ Members.

In early 2022, Council, again, increased the TLAB Member complement by an additional four (4) Members to a total of fourteen (14), including the Chair and Vice-Chair, on the recommendation of the Deputy City Manager.

However, two Members advised the TLAB of their intentions to resign from their current Tribunal appointments in November of 2022, effective immediately. Both Members were early into their four-year terms, with one Member having only been appointed in July 2022. Additionally, the terms of two other Members came to an end in December 2022. It is understood that the process for appointments to replace those Members is anticipated to occur sometime in 2023.

The passage of *Bill 23* will impact the recommendation to increase the TLAB Panel Member complement approved by Council in early 2022. Although the impacts of *Bill 23*

on the TLAB are yet to be fully understood and may not be fully apparent until possibly 2024, nevertheless, the elimination of ‘third party’ appeals may potentially reduce the number of appeals that are heard by the TLAB. In turn, this may result in a reduction in the overall workload of the current Panel Member complement.

Therefore, in light of *Bill 23*, it may be prudent for Council to pause the TLAB Member nomination and appointments process at this time. Doing so would allow Council to step back and re-assess the overall TLAB Member size complement required to facilitate the TLAB’s successful operation. Of course, resignations and Members’ terms ending are components that must also be considered in this calculus.

Recommendation 4:

Council consider pausing the appointment in 2023 of new Panel Members to the Toronto Local Appeal Body until the City can undertake an impact analysis of recently passed Provincial legislation on the operation of the Toronto Local Appeal Body.

Alternatively, that Council consider filling only the vacancies of the two (2) Members whose appointment terms ended in 2022, to bring the total Toronto Local Appeal Body Panel Complement in 2023 to twelve (12) Members.

5. Decision Writing Remuneration

The drafters of the TLAB remuneration structure did an admirable job in anticipating some of the expectations of Council and Members. It anticipated a public appointments process wherein considerable weight is attributable to an applicant’s desire to contribute to the public service. In reality, however, this element is and should be weighed no differently than general applications to join the public service.

The TLAB job function is equivalent to adjudication by public bodies such as the Provincial Court system, the Ontario Land Tribunal (OLT), and other tribunals of the

Environmental cluster. As such, both selection and compensation packages should be adjusted to reflect the reality of experience.

Through the 2022 City budget process, Council approved a variable decision rate structure with a maximum of \$400 for Members who issue 'final decisions'.⁶ In the *Report For Action – Response to City Council's Directions Arising from the Toronto Local Appeal Body Chair's 2020 Annual Report*, dated March 11, 2022, to the Planning and Housing Committee, the Deputy City Manager wrote the following in support of the proposed varied decision rate remuneration, comparing the TLAB specifically to the Ontario Land Tribunal (OLT):

"...This structure reflects the level of effort required to produce decisions. The remuneration rates...align with provincial comparators,"⁷.

Currently, the OLT compensates its Members for issuing final decisions based on the number of hearing days required to complete that appeal matter and not a prescribed standard 'one size fits all' rate. For example, the base compensation rate is \$400 per day at the OLT and if a hearing matter requires five (5) hearing days, the Member's remuneration for the 'final decision' is \$2,000. This comprehensive rate reflects the magnitude and complexity of hearing an appeal matter that requires multiple days and one that likely includes numerous Parties, Participants, legal representatives and expert witnesses.

While it is acknowledged that since its inception, multiple minor adjustments have been made by Council to recognize eligible expenses, disbursement qualifications, etc., related to the Toronto Local Appeal Body, the remuneration to reflect the time demand responsibilities on Members in performing the expected level of service owing to the public in the form of decision writing requires further recognition and should 'align with its provincial comparators'.

⁶ Deputy City Manager's Report For Action – Toronto Local Appeal Body Variable Decision Rates, dated January 7, 2022.

⁷ Deputy City Manager's Report For Action – Response to City Council's Directions Arising from the Toronto Local Appeal Body Chair's 2020 Annual Report, p. 5.

Recommendation 5:

That Council amend the Toronto Local Appeal Body Variable Decision Rates for a 'Final Decision' to reflect a remuneration rate based on the number of Hearing Days in an appeal matter. The 'Final Decision' remuneration rate recommended is \$400 per Hearing Day to a maximum of five (5) Hearing Days.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

July 14, 2023

XI. Contact Information

General Inquiries:

Email: tlab@toronto.ca

Tel: (416) 392-4697

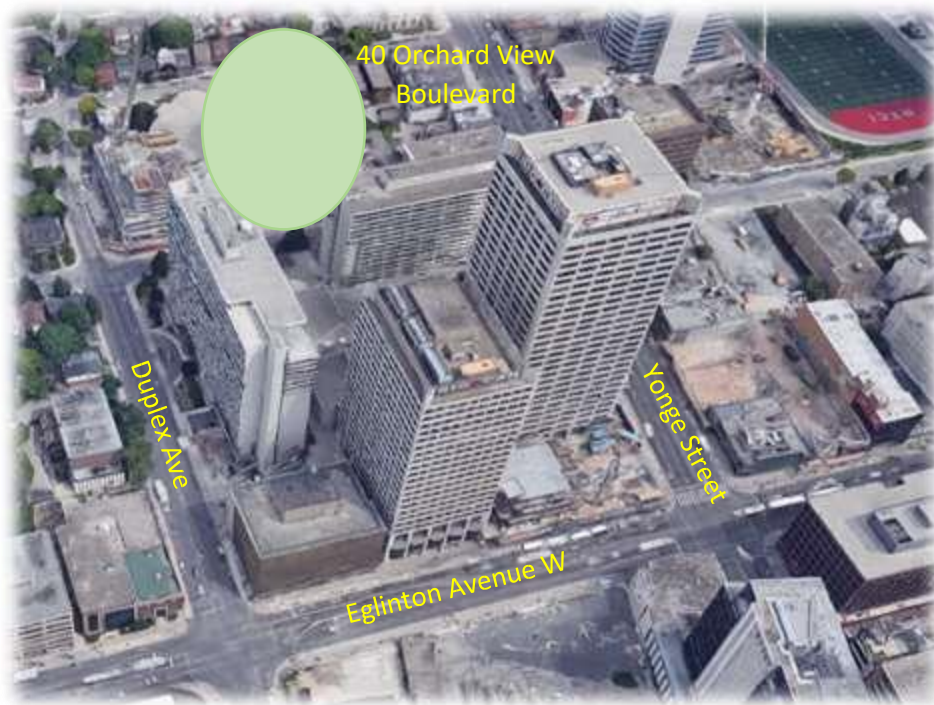
Fax: (416) 696-4307

Address:

40 Orchard View Boulevard

Second Floor, Suite 211

Toronto, ON,
MM4R 1B9



ATTACHMENT 2

**City Staff's Report for Action - TLAB Chair's 2022
Annual Report and New Arrangements for Legal
Support**

Toronto Local Appeal Body – Chair's 2022 Annual Report and New Arrangement for Legal Support

Date: September 14, 2023

To: Planning and Housing Committee

From: City Solicitor and Interim Director, Court Services

Wards: All

SUMMARY

Enacted on May 3rd, 2017, the Toronto Local Appeal Body (TLAB) is an independent, quasi-judicial tribunal established through City of Toronto Municipal Code Chapter 142, Local Appeal Body, the City of Toronto Act, and other provincial legislation. The TLAB has all the powers of the Ontario Land Tribunal related to the hearing of appeals to Committee of Adjustment decisions for minor variance and consent applications under subsections 45(12), 53(14), 53(19) and 53(27) of the Planning Act.

The TLAB is composed of fourteen members including the Chair, Vice-Chair, and twelve Panel Members who are nominated by an impartial citizen-member nominating panel with recommendations for appointments submitted to City Council. City Council appoints Members of the TLAB for a four-year term of office.

This report transmits the 2022 Annual Report from the TLAB Chair to City Council for information. It also recommends that the City Solicitor take over the provision of legal services to the TLAB with respect to providing advice on questions identified by TLAB Members, with respect to the administration of hearings, as part of their decision making duties, and providing advice on the development, review or revision of operational policies, practice directions and rules.

RECOMMENDATIONS

The City Solicitor and Interim Director, Court Services recommend that:

1. City Council assign the City Solicitor responsibility for the provision of legal services to the Toronto Local Appeal Body with respect to (1) providing advice on questions identified by Toronto Local Appeal Body Members, with respect to the administration of hearings, as part of their decision making duties, and (2)

providing advice on the development, review or revision of operational policies, practice directions and rules.

FINANCIAL IMPACT

There are no financial implications to the City arising from the recommendation in this report in 2023. To give effect to Recommendation 1, a budget amendment requesting transfer of approved base funding from Court Services to Legal Services to support the creation of one new full-time permanent position in Legal Services resulting in a zero net impact to the City will be presented for Council consideration and approval in 2024.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

The 2021 Annual Report from the Chair of the Toronto Local Appeal body was received for information by Council on July 19, 2022. The link to Council's decision is available at: <https://secure.toronto.ca/council/agenda-item.do?item=2022.PH35.8>

At its meeting on June 8, 2021, City Council received for information the 2020 Annual Report from the Chair of the Toronto Local Appeal Body, from the Director, Court Services. City Council directed the City Manager to report back on items 1, and 3a-c as outlined in this report. The link to City Council's decision is available at: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.PH23.13>

The 2019 Annual Report from the Chair of the Toronto Local Appeal Body was received for information by Council on July 28 and 29, 2020. City Council directed the City Manager to review the recommendations in the TLAB 2019 Annual Report from the Director, Court Services and report back to the Planning & Housing Committee by the first quarter of 2021 on the feasibility of implementing the Chair's recommendations. <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.PH15.4>

The 2018 Annual Report from the Chair of the Toronto Local Appeal Body was received for information by Council on May 14, 2019. The link to Council's decision is available at: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.PH5.7>

The 2017 Annual Report from the Chair of the Toronto Local Appeal Body was received for information by Council on June 26, 27, 28 and 29, 2018. The link to Council's decision is available at <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.PG30.10>

COMMENTS

The Toronto Local Appeal Body Chair's Annual Report covers TLAB activities from January 1, 2022 to December 31, 2022.

The 2022 Annual Report includes the following sections:

Executive Summary
About the TLAB – Background
Organizational Structure
TLAB Operational Highlights
Business Meeting Highlights
TLAB Milestones
Key Principles of the TLAB
The TLAB Appeal Process - Timelines
Adopted Practice Directions
Performance Metrics and Summary Statistics
Going Forward: Emerging Issues and Recommendations

New Arrangement for Providing Legal Services to the TLAB

The City's Legal Services Division currently provides in-house counsel to all City tribunals except the Toronto Local Appeal Body. The Toronto Local Appeal Body (TLAB) is an independent quasi-judicial tribunal established in 2017 under the City of Toronto Municipal Code Chapter 142, Local Appeal Body, the City of Toronto Act, and other provincial legislation. The TLAB has all the powers of the Ontario Land Tribunal related to the hearing of appeals of Committee of Adjustment decisions for minor variance and consent applications under subsections 45(12), 53(14), 53(19) and 53(27) of the Planning Act.

The TLAB has retained external legal counsel since 2017 to: (1) provide advice on questions identified by TLAB Members, with respect to specific hearings, as part of their decision making duties; (2) provide advice on the development, review or revision of operational policies, practice directions and rules; and (3) represent TLAB should it be a party to a specific court proceeding involving TLAB's jurisdiction, decision or process and representation is required.

This report recommends that the City Solicitor take over the provision of legal services with respect to items (1) and (2) above. External legal counsel would continue to be retained for any court proceedings and the City Solicitor would not provide advice on the merits of any case. Bringing these legal services in-house, now that the heavier workload of setting up the TLAB is complete, would be consistent with how legal support is provided to all other City tribunals and would result in improved support for the TLAB as well as the other tribunals. This change will require City staff to exercise its delegated authority to terminate the contract with the existing external legal service provider.

As a City tribunal, the TLAB requires legal counsel with knowledge and experience in administrative law. It also requires legal counsel with an understanding of the relationship between the City and its tribunals. This expertise is available in-house and, except for representing the TLAB in court proceedings, can be provided by Legal Services.

In-house counsel has extensive knowledge and experience in administrative law and have an in-depth understanding of the TLAB's place within the City. A net new position with Legal Services will provide the TLAB with efficient and effective legal support. Additionally, the position will bolster similar support provided by Legal Services to other City tribunals, including the newly created Multi-Tenant House Licensing Tribunal. Court Services currently allocates \$271,000 per year for the provision of external legal services for the tribunals in its portfolio. These include the Toronto Local Appeal Body, Administrative Penalty Tribunal, and Toronto Licensing Tribunal. The net new in-house position within Legal Services will provide these tribunals with legal services in respect of items (1) and (2) above.

On occasion, Legal Services is directed by Council to represent the City in proceedings before the TLAB. The division has appropriate protocols in place to ensure independence of the new position including that it will not be used to provide advice on the merits of any case.

CONTACT

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SIGNATURE

Philip Arhinson
Interim Director, Court Services

Wendy Walberg
City Solicitor

Attachment 1 – Toronto Local Appeal Body Chair's 2022 Annual Report

ATTACHMENT 3
City of Toronto Committee of Adjustment
Benchmarking Study

City of Toronto Committee of Adjustment Benchmarking Study

Independent Real Estate Intelligence

July 21, 2023

By: Alex Beheshti BA, BURPL



City of Toronto Committee of Adjustment Benchmarking Study

Prepared for:

BILD

Prepared by:

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July 21, 2023

EXECUTIVE SUMMARY

Altus Group Economic Consulting was retained by BILD to undertake a study of the City of Toronto's Committee of Adjustment ("COA") timelines for decisions on minor variances as part of a broader examination of the factors that may be contributing to housing affordability issues.

The study looks at the last eight (8) years (2015-2022) of minor variance application timelines using data from the City of Toronto's Open Data Catalog. This time range was chosen to overlap with the last two terms of COA appointments.

According to the City:

Every year, the Committee considers between 3000 and 4500 applications at over 90 hearings... The Committee of Adjustment is also often the first and only touchpoint many Torontonians will have with a development approval process...

Application volumes have increased from around 2,000 to 3,000 applications a year before 2010, to around 4,000 applications or more in recent years.

The COA is structured into four (4) districts that follow the former lower-tier municipal boundaries of the pre-amalgamated city. Generally, this report found that most of COA district timelines are around or slightly above the city-wide average that was reported in budgetary notes, except for the Toronto East York ("TEY") district. TEY has consistently had the longest timelines when compared to the City's other districts.

The total average decision timelines for typical applications between 2015 and 2022, irrespective of COA district, was 95 days across the entirety of the 8-year period. This is 65 days longer than the 30-day service standard required by section 45(4) of the *Planning Act* and 32 days longer than the 63-day (9 week) target for service standards set by the City. According to both this report's analysis and the City's own review and budgetary note statements, COA applications are neither meeting the City's target for service standard nor the standard set by the *Planning Act*.

Generally, the average approval rate has risen precipitously for all applications over the time period examined, however, new residential minor variances were roughly 3.1% below the overall average over the 2015-2022

period and Order to Comply (“OTC”) applications were 7.9% below the total average.

These results intuitively match expected decision-making outcomes given the sometimes-political nature of new housing and legalizing existing illegal homes or home features (decks, porches, garages, etc.) that OTC applications represent.

However, a high approval rate also shows that most intended minor variance requests conform to the City’s Official Plan and the overall intent of the zoning by-law, but there are specific provisions in the zoning by-law that are leading to a high degree of unnecessarily discretionary approvals rather than as-of-right allowances.

It should be kept in mind that the observed approval rates are only applicable to minor variances and do not include consent applications, which are not a subject of this report.

Based on qualitative interviews with land-use experts that have a long-standing familiarity with the COA, the high rate of approval was also reported to mirror their perceptions of decision-making results. The improving trend in approvals was attributed to better training of COA members and improved direction from staff. Unfortunately, without better records of COA decision making and staff direction or recommendations, it is not possible to verify this quantitatively.

Long timelines are not just an issue for the COA. Applications that are also appealed can significantly add to delays due to extensive timelines for decision making by appeal boards.

The average timeline for a minor variance application to receive a decision by the OLT/TLAB was 333 days (47.5 weeks) compared to 96 days (13.7 weeks) when a decision was solely rendered by the COA. Pursuing a decision by the OLT/TLAB represented a 247% increase in timelines compared to a decision being solely rendered by a COA panel.

Delays from Toronto’s COA and TLAB can add significant costs to the final price of a home. Based on Altus Group Cost Consulting insights, delays can add 8% to 14% to costs annually, or 2.7% to 3.5% on a quarterly (3 month) basis in additional construction related costs. These additional costs equate to about \$9 per square foot to \$19 per square foot annually, or approximately

\$21,000 to \$58,000. These additional construction costs exclude land and related financing costs.

To successfully improve decision timelines for minor variances, this report provides six (6) major recommendations that require action by both the Province and City:

1. **Require Staff to Approve Minor Variances** (Province);
2. **Fix Underlying Zoning Issues to Deal with Volume of Applications** (City);
3. **Make Cross Appointments to COA Panels** (City);
4. **Make Zoning By-laws Available Online** (City, although province should require this for all municipalities);
5. **Improve Data Transparency and Reporting** (City, although province should set terms of reference for this); and
6. **Monitor Parties to an Appeal** (City and Province);

It is evident by the City's own reporting - through budgetary notes, staff reports, and the TLAB Chair's Annual Report - that the COA has been experiencing an overwhelming volume of applications and application timelines are not meeting expectations. While the COVID-19 pandemic exacerbated decision making timelines, the COA and TLAB were both failing to meet application and appeal timelines well before the pandemic.

There is a high degree of risk that as the City implements housing reforms to allow more permissible built forms, this could create a flood of minor variances if sufficient attention is not given to development envelopes and other zoning matters. If pre-existing zoning issues are not fixed, the city could find itself in a scenario where it is committing additional resources just to maintain COA service levels, jeopardizing their efforts at improving them.

Without improving the efficiency of COA decision making timelines or adopting more as-of-right measures that would fix the need for a minor variance application in the first place, the City is seriously jeopardizing its future housing goals to see 285,000 homes built by 2031. Long-timelines act as a chokepoint for both homebuilding and renovations, which could become serious enough that it dissuades builders from constructing new homes, negatively affecting the affordability crisis.

Finally, everyday homeowners trying to add simple additions, such as decks, garages, additions, etc, will likewise be thwarted or find the process to be

overwhelming, taking away their confidence in City's delivery of planning services.

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1 INTRODUCTION

This section provides information on the scope of study, background on legislative policies, municipal regulations and procedures, composition of the Committee of Adjustment (“COA”), and outlines what a minor variance is for readers less familiar with planning practices in Ontario and at the City of Toronto.

1.1 SCOPE OF STUDY

Altus Group Economic Consulting was retained by BILD to undertake a study of the City of Toronto’s COA timelines for decisions on minor variances as part of a broader examination of the factors that may be contributing to housing affordability issues.

The study looks at the last eight years (2015-2022) of minor variance application timelines using data from the City of Toronto’s Open Data Catalog. This period of examination was chosen to overlap with the last two terms of COA appointments.

1.2 LEGISLATIVE BACKGROUND

The *Planning Act* (the “Act”) policies in relation to minor variance applications, such as those about creating a COA, what constitutes allowable appeals, etc., are extensive. The overview here represents a high-level review of the major policy elements and their importance to the minor variance application process.

A minor variance is a permission from a municipality for a property owner to obtain a building permit even though their plans do not exactly conform with the zoning by-law. For example, many homeowners have to seek a minor variance to be allowed to build a deck, alter a garage, etc., because the zoning either does not permit it or does not make it feasible to build (e.g. the development envelope is too small to allow for the deck).

A minor variance is different from a ‘rezoning’, which seeks to change either the designation of the land (e.g. from R1 single-detached only to R3 townhouses), or to make significant revisions to policies within the zoning by-law (e.g. increasing the allowable floor space index or height permission by a substantial amount). Section 45(1) outlines the four ‘tests’ a minor variance must meet, they are:

1. Is the application minor;
2. Is the application desirable for the appropriate development or use of the land, building or structure;
3. Does the application conform to the general intent and purpose of the Zoning By-law; and
4. Does the application conform to the general intent and purpose of the Official Plan.

It is important to note that an application must pass all four tests. In determining if an application is minor, the COA is required to look at both the proposed change in terms of size and impact in determining if it is 'minor'.¹ There are no specific thresholds to determine what is minor, rather it is a subjective determination that must be made by the COA in coming to a decision.

Given its contextual nature, a common complaint among land use planning experts about the first test is its subjective nature that can cause decisions to have a significant range of interpretation depending on the COA members overseeing the case or city staff members assigned with reviewing the application. However, without better data on decision making, more quantitatively based insights into this issue are not possible at the present.

It should be noted that a minor variance is not a 'special privilege' that requires an applicant to justify the relief being sought based on need or hardship², which is an issue that had been extensively litigated both within the Ontario Municipal Board ("OMB") and judicial appeals courts. As well, these factors cannot be used to justify overcoming a failure in any of the four tests. There have been notable cases of the COA rejecting minor variance applications despite it creating great hardship to individuals and potentially undesirable outcomes to society, such as the failure to legalize an existing illegal rooming house, which leads to residents of that home being evicted.

Section 44 of the Act empowers municipalities to create a COA comprised of at least three (3) or more people. This section of the Act also sets out the basic structure that the committee shall have, how appointments are made, who can be appointed, the requirement for a chair, etc.

¹ Vincent v. Degasperis, 2005 CanLII 24263 (ON SCDC)

² http://www.arblasterlaw.com/uploads/1/1/7/8/117887279/what_is_or_is_not_a_minor_variance_-_principles_and_cases_2017.pdf (page 5)

Section 45 outlines the Powers of Committee. Section 45(3) provides the statutory authority for a COA to grant minor variances, section 45(4) requires that a hearing on an application be held within 30 days after it has been received and section 45(12) of the Act allows for appeals of a COA within 20 days after the decision notice has been given. However, the ability for ‘third parties’ to make an appeal was recently limited by Bill 23 (see section 3.2 in this report for more details and discussion on this topic).

1.3 BACKGROUND TO THE COA

According to City Planning staff, the COA is:

... is an independent, quasi-judicial administrative tribunal that hears and decides on applications for minor variance, consent, and the extension or enlargement of legal non-conforming uses under the Planning Act. It is administered by the City Planning Division but is independent from City staff and City Council.

Although the Committee of Adjustment makes decisions on planning approvals for what are generally smaller scale development projects, it plays an important role in the redevelopment and renewal of Toronto's housing stock and facilitates a wide variety of commercial, institutional and industrial developments.

Every year, the Committee considers between 3000 and 4500 applications at over 90 hearings. The approvals granted by the Committee allow residents to accommodate changing household needs through renovations or new construction, facilitate gentle intensification in neighbourhoods, enable investment and the evolution of the city in other ways. The Committee of Adjustment is also often the first and only touchpoint many Torontonians will have with a development approval process, and allows applicants of all levels of experience to have small projects receive the necessary approvals for zoning compliance in a relatively quick and cost-effective manner.

Given the diversity of stakeholders and the sometimes conflictual nature of applications, there will always be some users unhappy with Committee decisions. While not everyone will get the outcome they want from the Committee, the public should generally have confidence in, and satisfaction with how the decision was reached. Stakeholders should walk away from their experience with the Committee of Adjustment confident that the process was fair, transparent, accessible, efficient, and adhered to the principles of natural justice.³

³ Planning and Housing Committee, Item - 2023.PH2.5, February 6th 2023, Report from the Chief Planner and Executive Director, City Planning on Committee of Adjustment - Consultant Review

The COA in Toronto is governed by Chapter 4 of the Toronto Municipal Code, which came into effect in June 2001 through By-law 569-2001, which has been amended as recently as September 2021. Chapter 4 sets out the creation, composition, authority, and other provisions governing the COA. As well, the COA has its own *Rules of Procedure*, which sets out specifics on how agendas are created, how hearings are to be conducted, etc.

Toronto's COA is comprised of 35 members structured into four (4) districts that follow the former lower-tier municipal boundaries of the pre-amalgamated city. Each district is comprised of one (1) or more panels that include five (5) members. Each panel is responsible to oversee appeals at hearings schedule for it.

Members of a COA, who are not members of a municipal council, hold office for the same term of the Council that appointed them. COA members who are also members of City Council (i.e., ward councillors) must be appointed annually.⁴

Three (3) members are required to achieve quorum. If one (1) member of a five (5) member panel is absent for any reason (i.e., sick, injured, etc.) and thus a panel consists of four (4) members, the chair of the panel is required to avoid voting where it would create a tie unless another member cannot vote due to a declared conflict of interest.

The four (4) districts are each constituted with the following number of members:

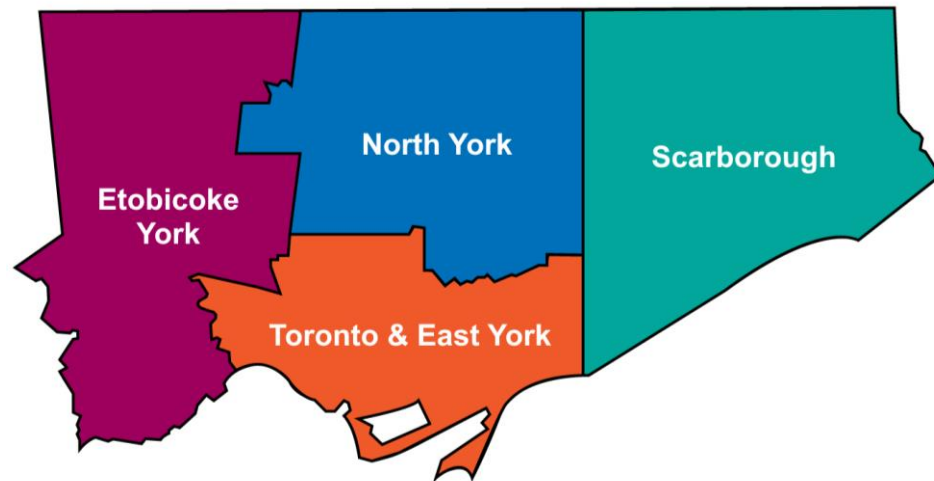
- 8 members on the Etobicoke York district;
- 10 members on the North York district;
- 5 members on the Scarborough district; and
- 12 members on the Toronto and East York district

Figure 1 provides a map with the boundaries of the four (4) districts.

⁴ See section 44 (3) of the Planning Act

Figure 1

City of Toronto Committee of Adjustment District Boundaries

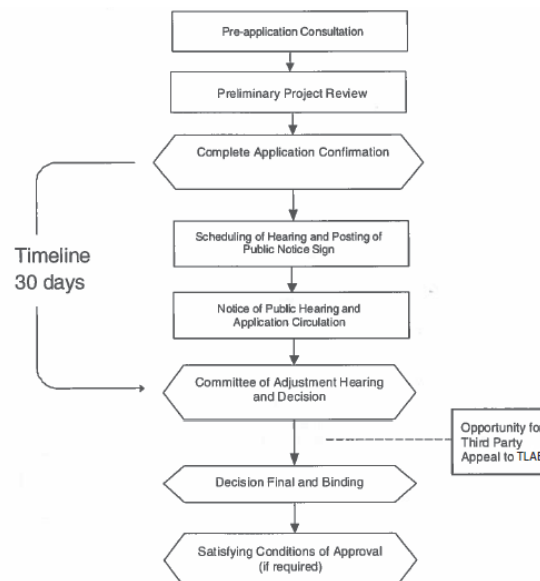


Source: City of Toronto

Figure 2 provides a process map for minor variance applications. It is taken from the City's guidance documents for minor variances. Note that third party appeals, which are displayed on the process map, are now restricted to specific persons (see section 3.2 for more details).

Figure 2

Minor Variance Development Guide



Source: City of Toronto

This report reviews aspects of the efficiency of the COA's operations - including an examination of how long a 'typical' application takes (see

Appendix Section 5.2 for more details on typical applications) and the rate at which they are approved to help inform recommendations for future improvements that are both specific to the City of Toronto and potentially adaptable for other municipal jurisdictions.

This report depends on both quantitative and qualitative investigations to provide a picture of the existing state of COA operations and outcomes. It depends on information made publicly available by the City, including open data, meeting minutes, staff reports, third-party reports, and other material sources. As well, this report depends on the knowledge and experience provided through interview of several land-use planning experts that have first-hand experience with the COA and its processes.

2 ESTIMATES OF TIMELINES AND APPROVAL RATE

This section provides City reported timelines as extracted from budget documents, as well as estimates of hearing timelines and approval rates based on the data provided by the City through its Open Data Portal.

2.1 CITY SELF-REPORTED DATA AND REMARKS

Through its budget documents, the City of Toronto has for numerous years reported COA timeline data. The City's annual reporting on COA matters stipulates that its measurement of timelines is based on the timeframe from the receipt of COA application to the hearing date.⁵

Although the City does not specify, it is likely their measurement is inclusive of all application types (consents, minor variances, etc) and all types of development (residential, non-residential, renovations, net new units, etc.). As well, the City presents its data as a City-wide aggregate and does not provide cross-tabulated breakdowns by COA district.

The City of Toronto should generally be commended for the level of transparency into COA operations that its budget notes provide in comparison with other municipal jurisdictions. A number of other major municipalities within the GTA budgets, and/or business plans, were reviewed as part of the background research for this report and it was found that they provided little to no information on key performance indicators ("KPIs") for their own COAs.

It is noted though that the City of Mississauga did provide the total volume of COA applications per year and the City of Vaughan provides percentages of COA application that were within prescribed timelines, although it makes no specific mention as to what those timelines are. Most other municipalities provided no guidance or assessment of COA performance.

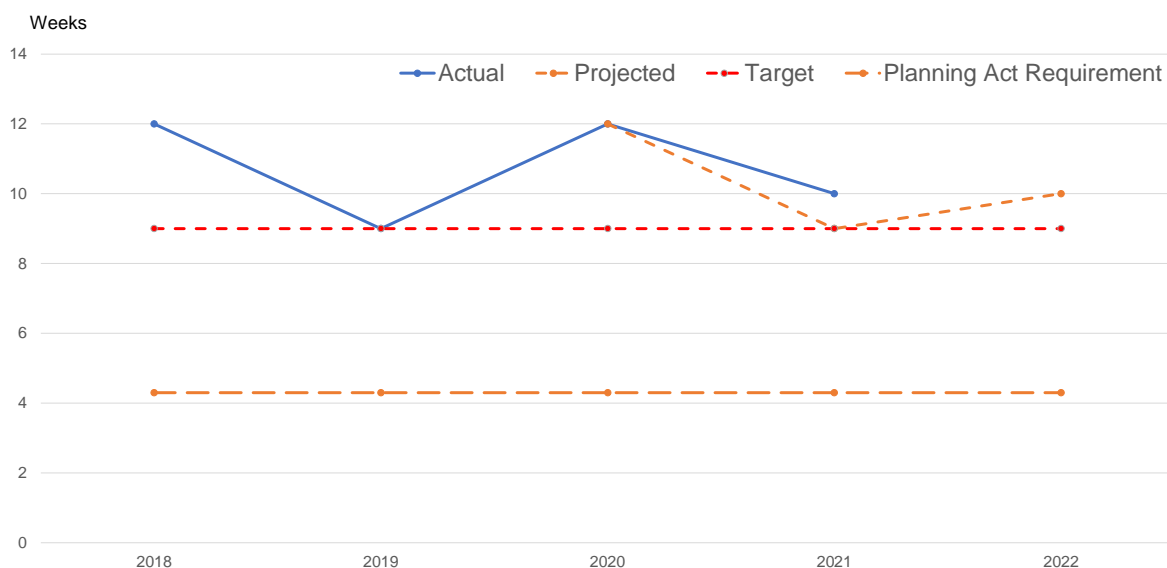
Figure 3 provides a time-series of actual, projected, and targeted timelines between 2018 and 2022 as extracted from the City's recent budgets.

The City only met its target timelines once (2019) but otherwise timelines for COA applications have been longer than the target or projected timelines. The target timelines are based on performance expectations set by the City,

⁵ City of Toronto Budgets 2020-2022

while projected timelines are forecasts of how the City expected to finish the year - the budgets provide data from Year-to-Date through October with projections being based on extending the prevailing trends at the time to end of the year.

Figure 3 **Reported Committee of Adjustment Timelines, City of Toronto, 2018-2022**



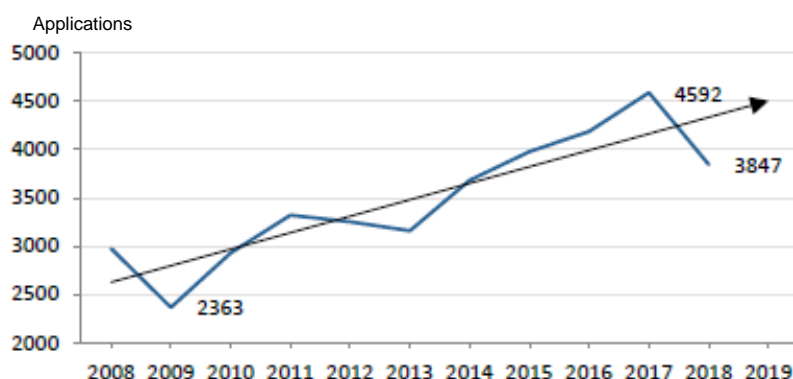
Source: Altus Group based on City of Toronto Budgets 2021-2023

It is important to emphasize that section 45 (4) of the *Planning Act* governing the Powers of Committee requires that a hearing on an application be held within 30 days after it has been received. A nine (9) week target is 63 days long, or 33 days longer than the service level required by the Act.

Much of the recent rise and then fall in timelines for COA applications, as reported by the City, can be attributable to the impacts of the COVID-19 pandemic and the disruptions involved in changes to work patterns. However, much of the longer-term issues with decision timelines exceeding both targeted and prescribed timelines can be attributed to the overall increase in the volume of COA Applications.

Figure 4 is an extracted chart from the City of Toronto's 2020 Budget and displays the total number of applications the COA received from 2008 to 2018. Total application volumes have risen from 2,000 to 3,000 applications in the late 2000s to 3,500 to 4,500 applications in more recent years.

Figure 4 Number of CoA Applications per year, City of Toronto, 2008-2019



Source: City of Toronto, Budget 2020

Figure 5 provides a breakdown of COA application by district for all application types between 2018 and 2021. The information from this chart was extracted from the Toronto Local Appeal Board (“TLAB”) Chairs Annual Report and provides more recent application volume data, as opposed to the City Budget that the previous chart was taken from.

The average annual volume of COA applications between 2018 to 2021 was just under 4,000 applications, with about 45% of them occurring on average in the Toronto East York district over the four (4) year period.

Figure 5 CoA Applications Per Year, by CoA District, all Application Types, City of Toronto, 2018-2021

District	2018	2019	2020	2021	Average 2018-2021
<i>Applications</i>					
Toronto East York	1,377	1,353	2,402	2,062	1,799
North York	940	845	798	1,029	903
Etobicoke York	1,038	788	636	756	805
Scarborough	492	406	461	541	475
Total	3,847	3,392	4,297	4,388	3,981
<i>Perecent of Total</i>					
Toronto East York	35.8	39.9	55.9	47.0	44.6
North York	24.4	24.9	18.6	23.5	22.8
Etobicoke York	27.0	23.2	14.8	17.2	20.6
Scarborough	12.8	12.0	10.7	12.3	12.0
Total	100.0	100.0	100.0	100.0	100.0

Source: Altus Group Economic Consulting based TLAB Chair's Annual Report 2018-2021

The budgets from 2018 to 2023 have continuously highlighted the volume level of COA applications as an important issue and warned about the

effectiveness and efficiency of the Committee of Adjustment and Community Planning under their 'Key Challenges and Risks' section within the budgetary notes. Below are excerpts of these statements from the various years.

High volume of Committee of Adjustment and Community Planning applications being received in past years with applications becoming increasingly complex. (2018 Budget)

High volume and complexity of Committee of Adjustment applications driving workload and operational challenges. (Budget 2019)

The number of CoA applications received in the last ten years has increased steadily, resulting in processing back-log issues. (Budget 2020)

Improve the effectiveness and efficiency of the Committee of Adjustment and Community Planning; harmonizing policies and practices. (Budget 2021)

Less effectiveness and efficiency of the Committee of Adjustment and Community Planning; harmonizing policies and practices (Budget 2022)

Effectiveness and efficiency in the Committee of Adjustment and Community Planning; harmonizing policies and practices. (Budgets, 2023)

The City's own data analysis and budget statements indicate that the effectiveness and efficiency of the COA have been an on-going issue.

2.2 ESTIMATES OF MINOR VARIANCE TIMELINES

2.2.1 Overview and Approach

Generally, the City's analysis presented in its budget documents does provide a good indication of service levels at the COA and largely corresponds to the observations found in our review of trends evident from the City's open data set. The findings in this report are within 2 to 4 weeks of the City's own reported average, with results showing the same directional indicators (i.e. application timelines are getting worse or better in the same years).

An important caveat to note is that the City's reported average is based on a City-wide measure for all application types, which includes consents, while this report specifically seeks to only look at minor variances.

As well, while this analysis uses data provided by the City, the way in which the City procedurally processes the raw data may differ from the procedures used in this report (see Appendix section 5.1 for further details).

The City may also not be using the exact same dataset it provides the public in its analysis, with its own data likely having more up-to-date information, on-going data maintenance to remove duplicates or erroneous entries, etc.

Finally, the 'in date' that the City provides in its open data is defined as "Date application received", which could be different than what it tracks as an actual 'complete application' date, which is legally when the 'clock' on applications begin per the requirements that are dictated in the *Planning Act*. This has the potential to skew results moderately by a few weeks.

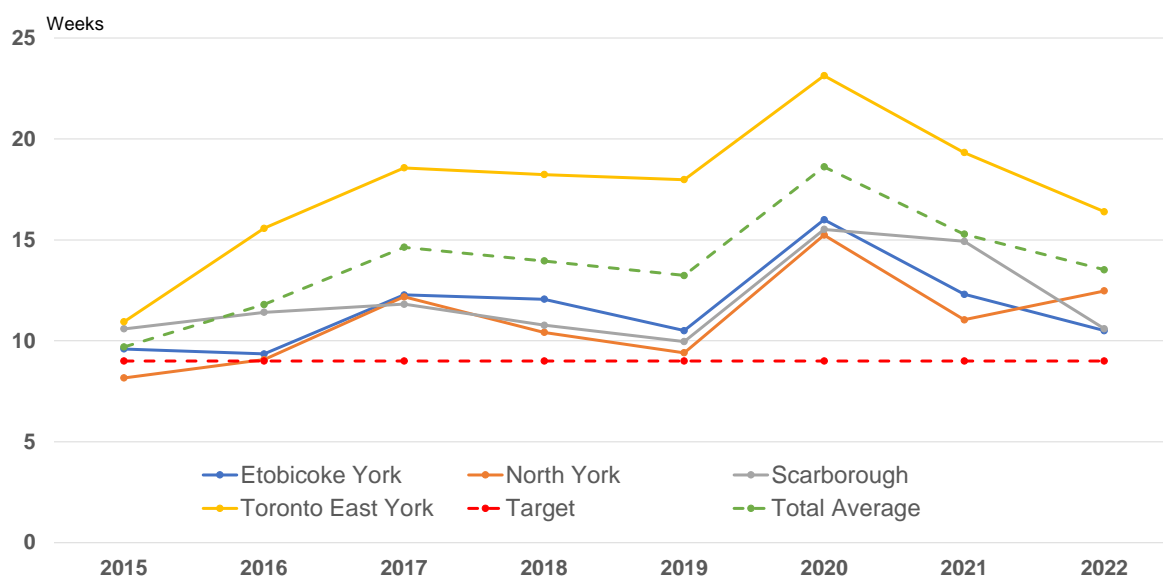
Despite cautionary note on the integrity of the data that is available, the value of the timeline analysis undertaken from this report includes the following:

- Confirming the City's findings regarding the direction the City's COA operations are going in;
- Highlight key trends in terms of geography, type of application, and other inefficiencies in how COA is used; and
- Assessing impacts of actions the City has taken to reform COA operations on the ability of the COA to become more efficient and promote more housing supply.

2.2.2 Timelines by District

Figure 6 shows timelines by COA district location for all application types between 2015 and 2022. Mirroring the same directional movement as reported in the City's budget, application timelines saw an improvement between 2018 and 2019, but timelines increased substantially with the onset of the COVID-19 in 2020.

Figure 6 Timelines for Minor Variances, all Application Types, by COA District, City of Toronto, 2015-2022



Source: Altus Group based on City of Toronto Open Data

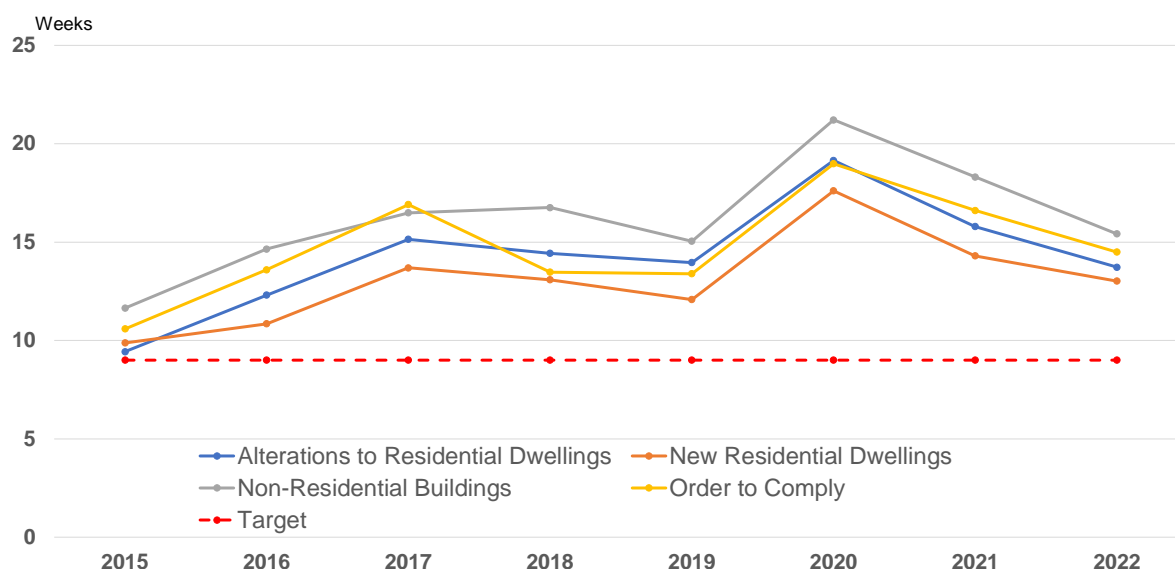
Generally, most of the COA district timelines are around or slightly above what the City reported in its budget notes, except for the Toronto East York (“TEY”) district. TEY has consistently had the longest timelines when compared to the City’s other districts. It should be noted that the City made major changes to the composition of COA between 2019 and 2021, such as adding additional members to the TEY district.

2.2.3 Minor Variance by Application Type

Figure 7 provides a timeline for minor variances by application types between 2015 and 2022 (see Appendix Section 5.2 for more information on definitions of application types and procedures used to create this data).

Processing times have improved since the peak achieved in the pandemic period of 2020, bringing timelines down to their previous levels seen in 2018. However, applications in 2022 still typically take 3-6 weeks longer than they did in 2015, the year with the shortest timelines in the dataset.

Figure 7 Timelines for Minor Variances, by Application Type, all COA Districts, City of Toronto, 2015-2022



Source: Altus Group based on City of Toronto Open Data

The gap in timelines between application types is generally very small and may not represent statistically significant differences. The results from the previous two analyses show that generally the district in which an application is submitted for review has a greater weighting on the final timeline than the application type being reviewed.

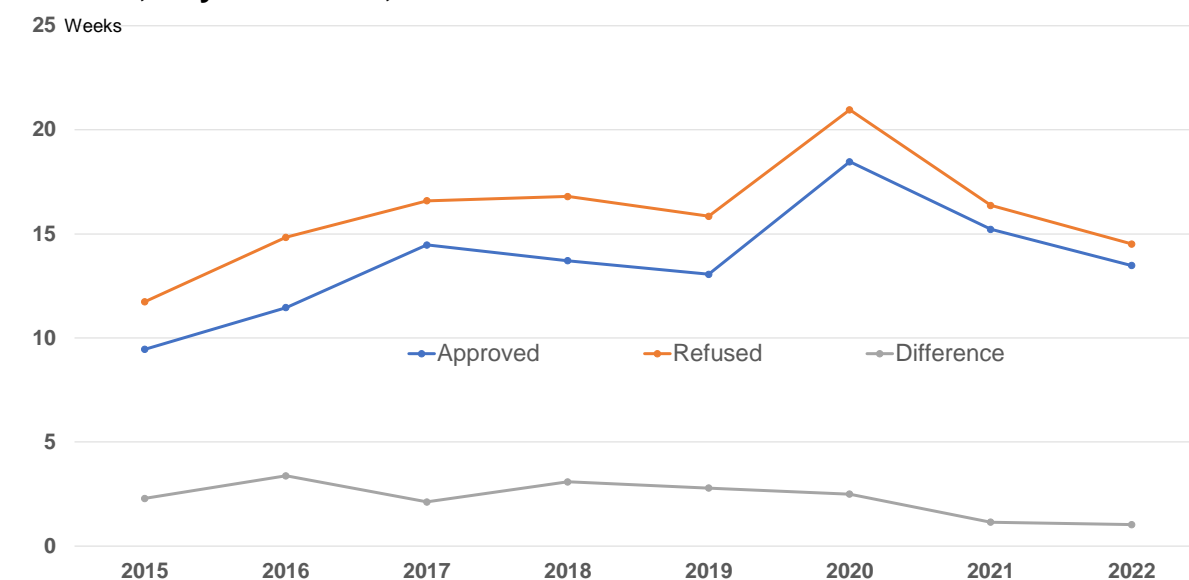
2.2.4 Minor Variance Timelines by Decision Outcomes

Figure 8 provides timelines for minor variances based on the decision rendered (approved or refused) for all application types and all COA districts between 2015 to 2022.

The timelines for applications to be approved or refused mirrors those established in previous analysis. However, applications that are refused consistently take between 1-to-3 weeks longer for a decision to be rendered by the COA, with the gap narrowing in more recent years.

However, the gap in timelines does not necessarily indicate a significant difference given its narrowness, and generally both approved and refused applications timelines take about the same amount of time to work through the process to a decision.

Figure 8 Timelines for Minor Variances, by Decision, all Application Types, all COA Districts, City of Toronto, 2015-2022



Source: Altus Group based on City of Toronto Open Data

2.2.5 Timelines for Decisions Referred to OLT/TLAB

Figure 9 provides timelines for a decision to be rendered between applications that are referred to the Ontario Lands Tribunal (“OLT”, formerly OMB)/ Toronto Local Appeal Body (“TLAB”) compared to all other applications that did not have a decision rendered by the OLT/TLAB.

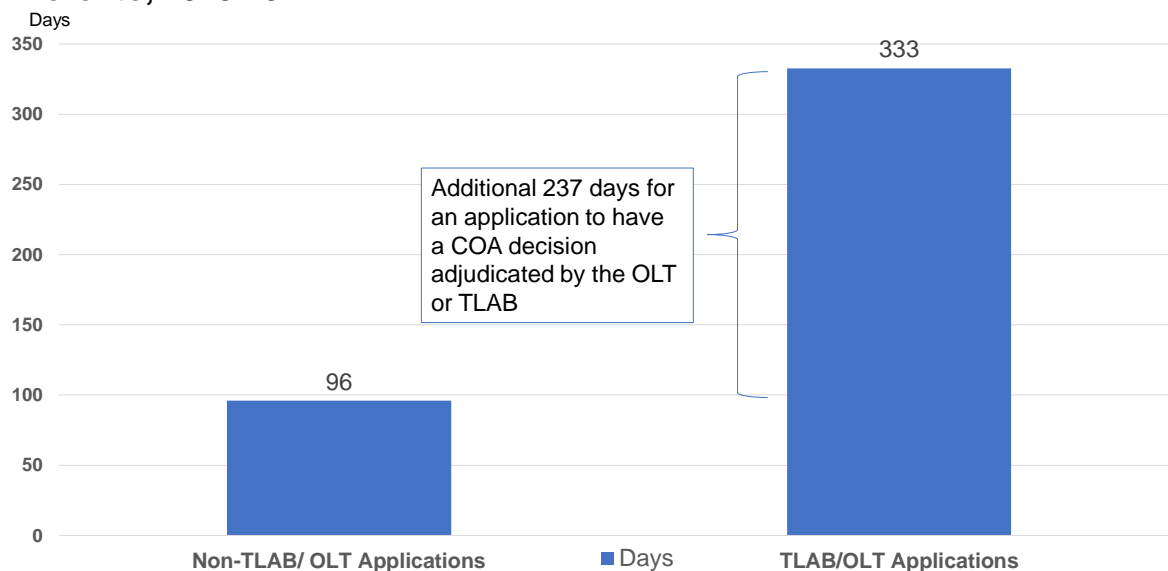
Most minor variance applications that are appealed in Toronto are adjudicated by TLAB, however, all minor variances appealed outside of Toronto are heard by the OLT. Typically, minor variances being adjudicated by the OLT for a matter located in Toronto only happens in exceptional circumstances, such as when a minor variance is part of an appeal of a site plan.

Prior to the establishment of the TLAB in 2017, the Ontario Municipal Board (“OMB” forerunner to the OLT) did hear minor variance and consent cases that were within the boundaries of the City of Toronto.

The average timeline for a minor variance application to receive a decision by the TLAB was 333 days (47.5 weeks) compared to 96 days (13.7 weeks) when a decision was solely rendered by the COA. Pursuing a decision by the TLAB represented a 247% increase in timelines compared to a decision being solely rendered by a COA panel.

Figure 9

Average Timelines for Minor Variances, Appealed Application Comparison, City of Toronto, 2015-2022



Source: Altus Group based on City of Toronto Open Data

2.2.6 Use of and Benefits of Virtual Hearings for COA Matters

Figure 10 shows the percentage of virtual hearings carried out for minor variance applications between 2015-2022. Before 2020, only a small fraction of hearings were held virtually, with no virtual hearings in 2018, and only 3.3% of hearings in 2019 being virtual. The pandemic induced a massive shift in the way the COA operates, with 100% of hearings being held virtually in 2021 for typical applications.

As work patterns have returned to 'normal' in 2022, there is little to no discernible difference when comparing to prevailing trends seen in pre-pandemic timelines as exemplified by timelines seen in 2018. While the application timeline benefits from virtual hearings may be moot, it is possible to conclude that they at least are not detrimental.

Figure 10

**COA Virtual Hearing Statistics,
City of Toronto, 2018-2022**

Year	Hearings Held Virtually	Decision Timelines
	Percent	Days
2018	0.0	98
2019	3.3	93
2020	97.1	130
2021	100.0	107

Source: Altus Group Economic Consulting
based on City of Toronto Open
Data

Through a qualitative investigation, based on interviews with land-use professionals, it has been noted that many expert witnesses and other regular participants of TLAB/OLT prefer virtual hearings over in-person hearings. Common themes about why virtual hearings were preferable included the convenience and time-savings of not having to travel to specific locations and avoidance of unproductive time spent waiting at the hearing location to await a case to be called by a panel. The time savings associated with virtual hearings also results in time-savings for those retaining experts, as well as frees up expert 'capacity' to be spent on other files.

An additional benefit for virtual hearings to COA members, and the COA's functionality in general, is the ability to have COA members work in multiple districts and multiple panels. Traditionally COA members were assigned to specific panels within specific districts. Later reforms in Toronto allowed members to be assigned to multiple panels within districts, allowing for the statutory quorum to be more easily met and hearing delays to be avoided.

Unfortunately, the data provided by the City on COA applications does not provide any insights on quorum issues and hearing delays to assess if virtual hearings have had a discernible positive impact.

The total average decision timelines for typical applications between 2015 and 2022, irrespective of COA district location, decision made, or application type, was 96 days across the entirety of the 8-year period. This is 66 days longer than the 30-day service standard required by section 45(4) of the *Planning Act* and 33 days longer than the 63-day (9 week) target for service standards set by the City. According to both this report's analysis and the City's own review and budgetary note statements, COA applications are

neither meeting the City's target for service standard nor the standard set by the *Planning Act*.

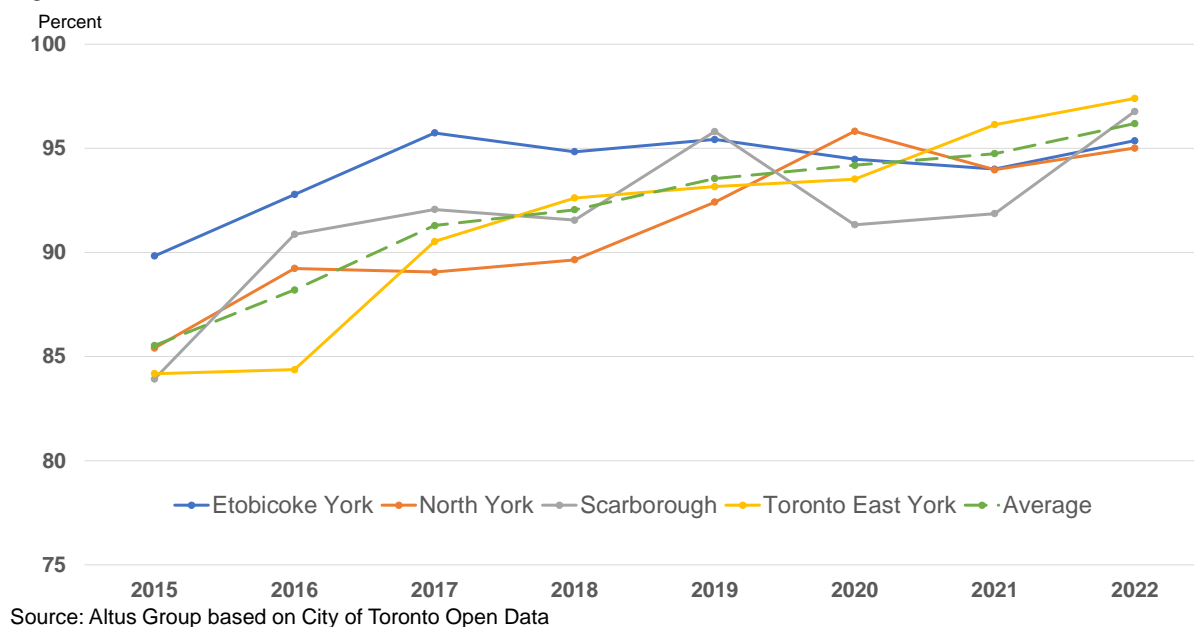
2.3 ESTIMATES OF MINOR VARIANCE APPROVAL RATES

This section of the report examines various cross tabulations of the approval rate, which is inclusive of applications that were approved with or without conditions but excludes applications where a decision was rendered by the OLT/TLAB.

2.3.1 Approval Rate by District

Figure 11 shows the approval rate by COA district. Etobicoke York led with the highest approval rate among all the districts until 2019, after which the gap between districts narrowed towards the overall average 96% in 2022. Without better data on reasoning behind COA decisions, it is not possible to definitively explain the increasing trend of approvals.

Figure 11 Approval Rate, all Application Types, by COA Districts, City of Toronto, 2015-2022



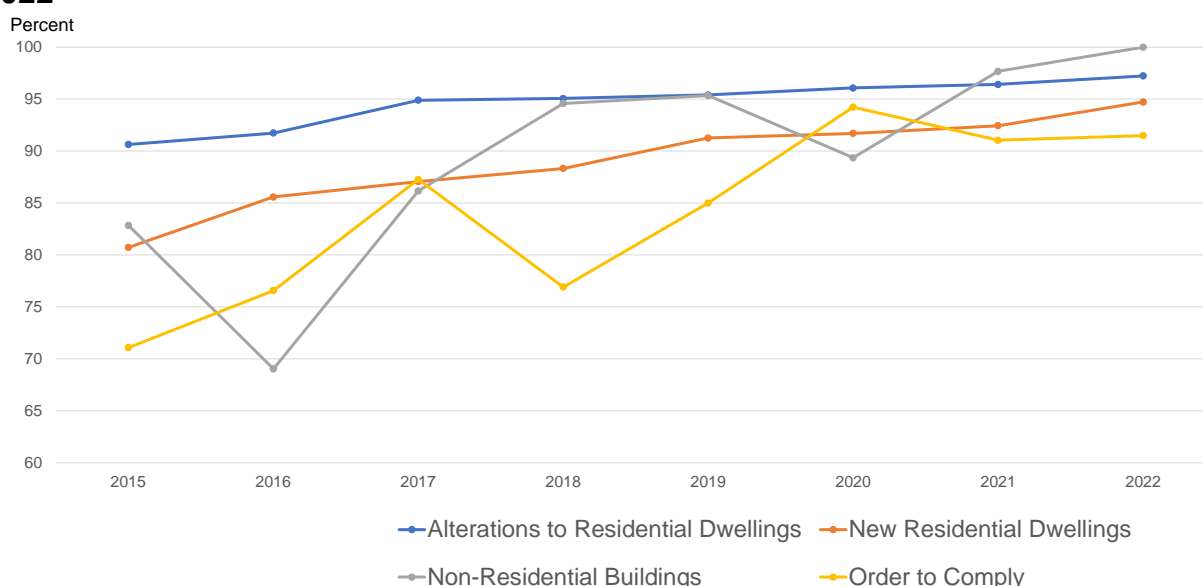
2.3.2 Approval Rate by Application Type

Figure 12 provides the approval rate by application type City-wide between 2015 and 2022. Generally, the approval rate for new residential minor variances was on average around 3.1% below the total average over the 2015-

2022 period and Order to Comply (“OTC”) minor variance applications were on average 7.9% below the total average.

These results intuitively match expected decision-making outcomes given the sometimes-political nature of new housing and legalizing existing illegal homes or home features (decks, porches, garages, etc.) that OTC applications represent.

Figure 12 Approval Rate, by Application Types, all CoA Districts, City of Toronto, 2015-2022



Source: Altus Group based on City of Toronto Open Data

It should be kept in mind that the observed approval rates are only applicable to minor variances and do not include consent applications, which are not a subject of this report.

2.3.3 Discussion Regarding Approval Rates

Based on qualitative interviews with land-use experts that have a long-standing familiarity with the COA, the high rate of approval was also reported to mirror their perceptions of decision-making results. The improving trend in approvals was attributed to better training of COA members and improved direction from staff. Unfortunately, without better records of COA decision making and staff direction or recommendations, it is not possible to verify this quantitatively.

While the data presented in this report indicates that most minor variance applications are eventually approved, it also indicates that policies within the zoning by-law may also be overly rigid.

A high approval rate shows that most intended minor variance requests conform to the City's official plan and the overall intent of the zoning by-law, but the zoning by-law's specific provisions lead to a high degree of unnecessarily discretionary approvals rather than as-of-right allowances.

Given the high approval rating for new residential dwellings by the COA, it would be beneficial for the City to explore how to replace certain minor variance approvals where decisions follow a consistent pattern on a certain subject matter. If such types of appeals could be fixed with changes to the underlying zoning, such that fewer minor variances would be required (or less often), it could help avoid both costly expenses for applicants and tying-up staff resources and expert capacity.

Analysing whether changes to zoning by-law provisions can create a smoother home building process is not unprecedented, with the City having undertaken such an exercise in 2021 as part of its laneway suite review (see section 3.6.3 for more details).

3 ANALYSIS AND COMMENTARY

This section provides commentary on observations on the COA from supplementary research conducted for this report.

3.1 LOCAL APPEAL BODIES AND THIRD-PARTY APPEALS

3.1.1 Overview

Toronto is unique in Ontario as the only municipality that has adopted a Local Appeal Body (“LAB”) to date, which a municipality is authorized to do under section 8.1 of the *Planning Act*. Regulations O. Reg. 551/06 set out the conditions for establishing a local appeal body, such as passing a specific by-law for the purpose, etc.

The City of Toronto’s Local Appeal Body formal existence began in May 2017 and is called the Toronto Local Appeal Body (“TLAB”). It hears cases related to both minor variances and consents (subdivision or aggregations of two or fewer parcels of land).

One advantage for a municipality in creating a LAB is that it can appoint members and arbitrators to oversee cases and appeals that are related to lands within its jurisdictional boundaries. A disadvantage is that the expenses occurred in running the board accrue to the municipality, which then must either recover the cost through appeal fees or make up the difference through the tax base. By contrast, cases heard by the Ontario Land Tribunal⁶ (“OLT”) are overseen by appointees made by the Province, with costs incurred to the Province to operate that entity.

With a high volume of minor variance applications, even small percentages of appeals can create a large volume of cases that takes up the TLABs time, staff resources, and additional expenses to the applicant and City.

3.1.2 Share of COA Applications Appealed to the Toronto Local Appeal Body (TLAB)

Figure 13 shows the percentage of appeal files between 2018 and 2021. Note, the figures being displayed includes appeals for both minor variances and consents.

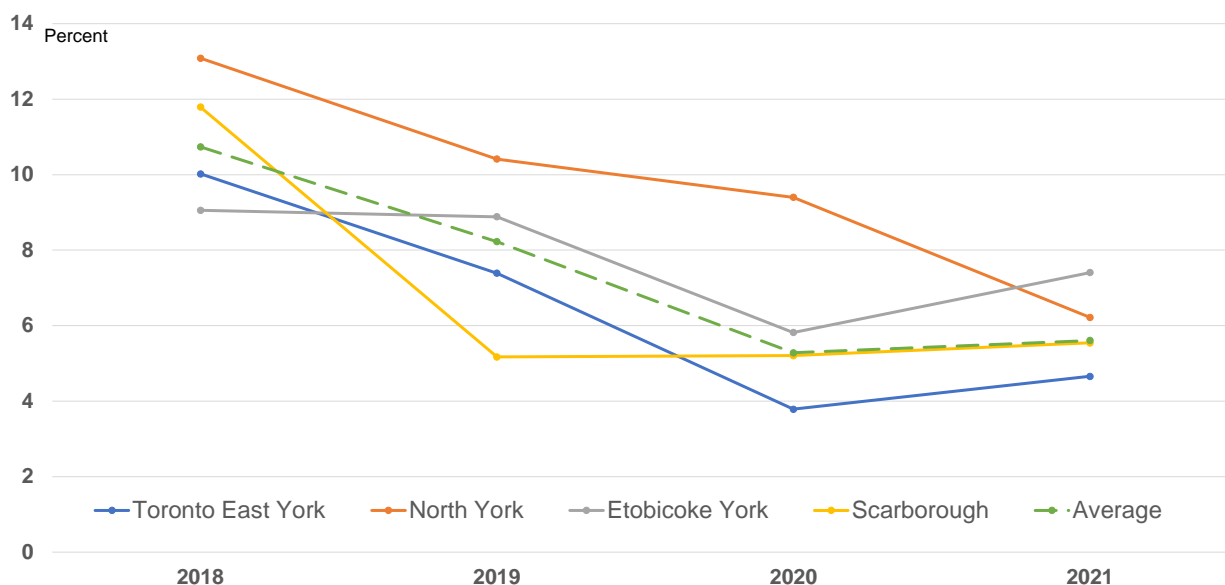
⁶ Formerly the Ontario Municipal Board “OMB” and Land Planning Appeal Tribunal “LPAT”

The percentage of appeal filings has dropped for two reasons. First, the volume of applications per year (denominator) has increased between 2018 and 2021. Second, the total number of appeals (numerator) has decreased substantially.

From 2018 to 2021, the average rate of appeal for total application filings dropped from 10.7% to 5.6%. These results generally track with the increasing approval rate for minor variances, which was found previously in this report, as a higher approval rate would be expected to lead to a lower number of appeals by applicants.

In 2018, the TLAB reported a total of 413 appeals, but by 2021 it reported only 246 appeals, a 40.4% drop in the number of appeals.⁷ The North York COA district has the highest proportion of TLAB appeals relative to the number of COA application for most years, although the proportion has fallen each year since 2018. The districts with the lowest rate of appeal are Toronto East York and Scarborough, which have remained below the average for all years within the time-series analysis.

Figure 13 TLAB Appeals as % of Filed Applications, by District, City of Toronto, 2018-2021



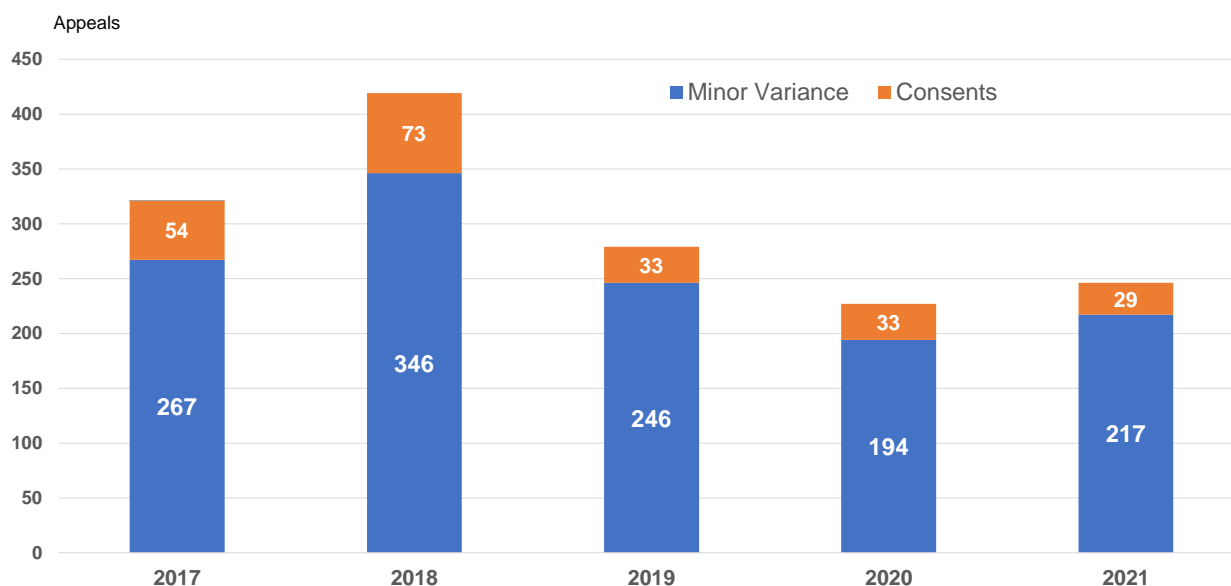
Source: Altus Group based on TLAB Chair's Report 2018-2021

⁷ The TLAB Chairs report for 2018 shows a minor discrepancy in its report with total of 419 appeals city-wide but only 413 appeals by district

3.1.3 Total Number of TLAB Appeals

Figure 14 shows the total number of appeals the TLAB received between 2018 and 2021 by application type (minor variance or consents). On average, minor variance applications made up around 85% of all appeals filed with the COA over the timespan examined.

Figure 14 TLAB Appeals, by Application Type, all Districts, City of Toronto, 2018-2021



Source: Altus Group based on TLAB Chair's Report 2018-2021

Despite the total number of appeals dropping between 2018 and 2021, the TLAB has reported that disposition time (the date an appeal is received by TLAB to the date that a decision is issued) has increased substantially. This is a recognized issue by the TLAB as noted in numerous annual reports:

...while the TLAB goal of disposition remains about one-third the time of the former provincial adjudication process, some slight slippage has occurred in TLAB's own 2018 service level. There were a number of factors at work in 2018 that contributed to this: Member departure; lengthy new appointments and training periods (6 months); increased workloads; variable Member availability; facilities disruption to permanent space; and, booking constraints for larger Hearing rooms. It is expected that in 2019 many of these issues will be resolved with Council's increase in the Member complement. (TLAB Chair's Annual Report 2018)

...while the TLAB goal for disposition remains about one-third the time of the former provincial adjudication process, some slippage has

occurred in TLAB's service level. There were a number of factors at work in 2019 that contributed: a Member departure; a replacement appointment and lengthy training period; increased workloads; long hearings, adjournments, variable Member availability; and, to a lesser extent, competing demands for hearing dates. (TLAB Chair's Annual Report 2019)

...while the TLAB goal for disposition remains about one-third the time of the former provincial adjudication process, some slippage has occurred in the Tribunal's service levels. There were several factors that contributed to the disruption in service levels, the most significant and detrimental being the COVID-19 pandemic and the unprecedented impact of the virus on City services. (TLAB Chair's Annual Report 2020)

...while the TLAB's goal for disposition remains about one-third of the time of the provincial adjudication process, some slippage has occurred in the Tribunal's service levels

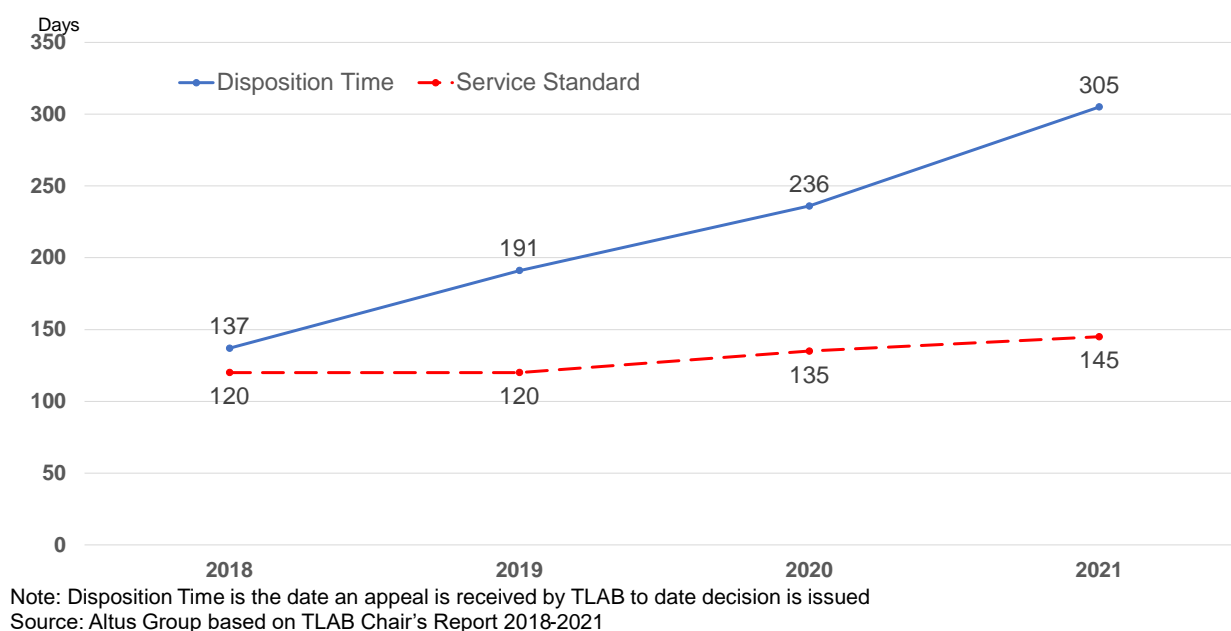
Several factors contributed to the disruption in the TLAB's service levels, the most significant and detrimental being the COVID-19 pandemic and the unprecedented impact of the virus on City services.

Other factors have contributed as well: a lengthy suspension of all Hearing matters in 2020; multiple extensions of that suspension period; a backlog of suspended Hearings and adjournments; resultant increased workload; variable Member and Court Services Tribunal staff availability; technological challenges related to virtual Hearing events; competing demands for Hearing dates on resumption of TLAB Hearings; and, to a lesser extent, a replacement appointment and lengthy training period. (TLAB Chair's Annual Report 2021)

3.1.4 Average Disposition Time

Figure 15 provides the average disposition time between 2018 to 2021. The average disposition time in 2018 was 137 days, increasing to 305 days by 2021 or 123%. The service standard expectation that the TLAB set for itself also increased from 120 days in 2018 to 135 days in 2020 and then 145 days in 2021, a 25-day increase between 2018 to 2021.

Figure 15 TLAB Disposition Time, all Application Types, all Districts, City of Toronto, 2018-2021



3.1.5 Appeals by Type of Appellant

The TLAB also only reported on 'Appellant Type' in its first two annual reports (2018 and 2019) for the years 2017 to 2019, after which this variable stopped being presented.

Figure 16 provides the percentage of appellant types out of the total number of appeals based on the TLAB's Chairs Report 2019. While it is not possible to know exactly how many appeals were committed by third parties (a subject matter to be discussed later in this section), the variables 'not applicant/owner' and 'multiple appellant types' likely are inclusive of these types of appeals, which will be referred to as 'third-party appeals' for the purposes of this analysis. Third parties are generally considered to be anyone who is not the applicant, or the City/Province.

The number of third-party appeals can fluctuate year-to-year, for the years where data is available, however, they made up between 40% to 67% of all appellants filing appeals to the TLAB. Richer data would help narrow exactly what kind of third parties are inclusive of this group, nevertheless, it is evident that a significant amount of the casework that the TLAB deals with originates from this class of appellant.

Figure 16

TLAB Appellant Type, all Application Types, all Districts, City of Toronto, 2017-2019

	2017	2018	2019
Appellant Type	Percent		
A. City of Toronto	6.9	9.9	4.7
B. Applicant/Appellant	30.3	49.3	28.7
C. Not Applicant/Owner	59.5	37.7	63.8
D. Multiple Appellant Types	3.3	3.1	2.9
Total	100.0	100.0	100.0
Third Party Share of Appeals (C+D)	62.8	40.8	66.7

Source: Altus Group Economic Consulting based on TLAB's Chair's Annual Report 2019

In addition to appeals by applicant type being dropped from recent TLAB Chair's annual reports, the TLAB also changed its reporting standards for its tracking of 'Appeal Outcomes' and 'Application Outcomes' variables between annual reports.

This change has limited the analysis in this report to volumetric examinations of TLAB operations, such as the number of appeals, how long do appeals take, who is appealing, etc., it is unfortunately not possible to quantitatively assess decision making. Had there been consistency in reporting, it could have shed light on decision making trends over the last four to five years. This makes it difficult to assess any trends beyond a period of two years with how decision-making outcomes may or may not have changed.

3.2 BILL 23 CHANGES TO THIRD-PARTY APPEAL RIGHTS

Regarding third-party appeals, pre-Bill 23, the *Planning Act* section 45(12) used to stipulate:

The applicant, the Minister or any other person or public body who has an interest in the matter may within 20 days of the making of the decision appeal to the Tribunal against the decision of the committee...[emphasis added]

The section now reads:

The applicant, the Minister or a specified person or public body that has an interest in the matter may within 20 days of the making of the decision appeal to the Tribunal against the decision of the committee... [emphasis added]

The *Planning Act* defines 'specified person' under section 1, which provides various legalistic descriptions of entities. In plainer language, the range of 'specified persons' includes:

- Utility companies (electricity, oil, and natural gas) that operate within a municipality, including Hydro One and Ontario Power Generation (“OPG”);
- Railway companies;
- Telecommunications infrastructure providers; and
- Fossil fuel storage companies.

Bill 23 did not remove third-party appeals for COA applications but did narrow the class of third parties to exclude members of the general public.

The reconsideration of third-party appeals was part of the Province’s *Housing Affordability Task Force Report* (2022). As well, the Human Rights Tribunal of Ontario noted that delays caused by appeals add costs to development and divert public funds away from other uses such as funding affordable and supportive housing:

The Commission heard that discriminatory NIMBY opposition delays or discourages affordable housing development, increases its costs and diverts public funds to costly appeals to the Ontario Municipal Board, when these funds could instead be used to create more affordable and supportive housing. It may cause housing providers to feel they need to make compromises to get affordable housing built, even when these compromises undermine the dignity or well-being of their residents. For example, the Commission heard that housing providers may be asked to install windows that cannot be opened by tenants, or that are frosted so that tenants cannot look at their neighbours. In some cases, people are exposed to harassment throughout the planning process, and end up feeling unwelcome once they move into their new neighbourhood for reasons relating to grounds listed in the Code.⁸

Without knowing the specific kind of non-owner or multiple appellants examined in the previous section of this report (e.g., electrical companies or a private citizen), it is not possible to estimate the impacts from Bill 23 on the TLABs caseload. Likely there will be some beneficial outcomes in terms of caseload and possibly disposition timelines, however, this will not be fully visible in the data until the 2023 TLAB Chair’s Annual Report is made public, likely to be released in 2024, and only if it reintroduces the appellant type data.

It is advisable for the TLAB to provide the appeals data underlying its Chair’s Annual Report in disaggregate form through the City’s Open Data

⁸ *Human rights and not-in-my-back-yard (NIMBY)*. Ontario Human Rights Tribunal

Portal so that members of the public may undertake additional analysis not presented in the report. This is also critical to understand how policies may be affecting various planning outcomes.

While the TLAB is specifically constituted to hear minor variance and consent applications, the OLT adjudicates land-use planning cases that can span issues from official plans and rezonings to development charges and more.

Figure 17 provides a breakdown of the LPATs caseload by application type from 2017 to 2021 before the tribunal was reconstituted into the OLT in late 2021. Minor variances and consents made up between 30% to 43% of all cases between 2017 and 2021, while cases dealing with consents were a smaller proportion of total cases as compared to minor variances, mirroring the results found in the examination of the TLAB.

Figure 17

LPAT Cases, by Application Type, by Fiscal Year, Province of Ontario, 2017-2021

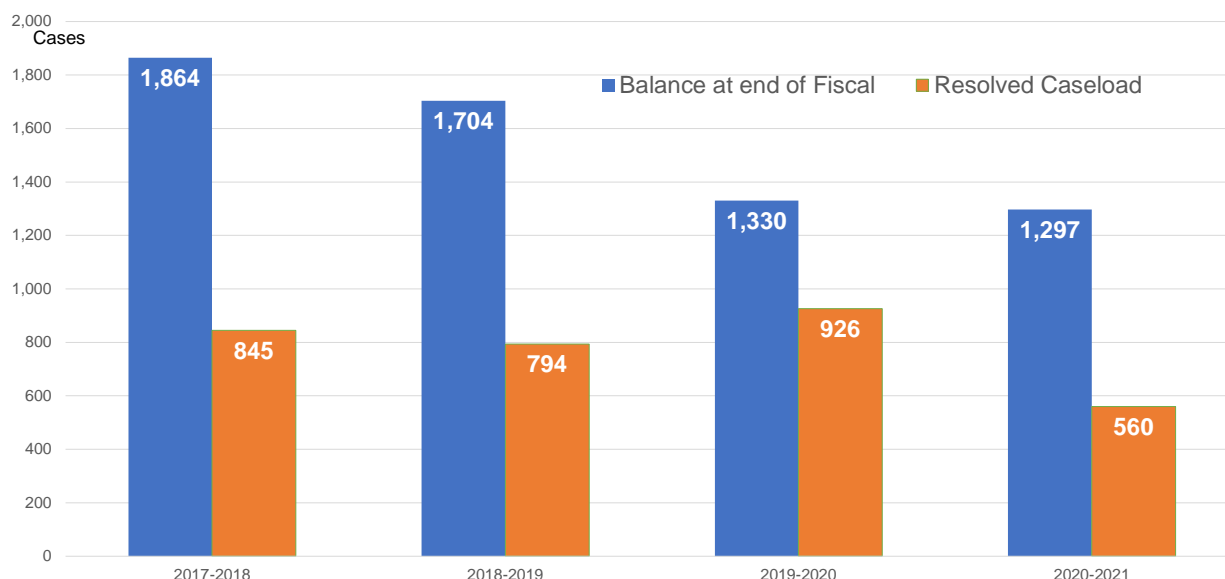
	<u>2017-2018</u>	<u>2018-2019</u>	<u>2019-2020</u>	<u>2020-2021</u>
	<i>Percent of Total</i>			
Minor Variances	20.3	23.4	25.1	20.1
Consents	<u>9.9</u>	<u>14.1</u>	<u>17.8</u>	<u>15.9</u>
Variances and Consents	30.2	37.5	42.9	36.0
All Others	69.8	62.5	57.1	64.0
Total	100.0	100.0	100.0	100.0

Source: Altus Group Economic Consulting based on OLT Annual Report 2020-2021

Figure 18 shows the caseload for the LPAT at the end of each of its fiscal years and the number resolved between 2017 to 2021. Before the LPAT was reconstituted in June 2021 into the OLT (a topic outside of this reports purview) there was a significant backlog of cases.

Like the TLAB and the COA, the LPAT efficiency decreased significantly in 2020-2021 due to impacts from COVID. Unfortunately, it is not possible to analyse any trend recovery as the OLT changed its reporting standards in its 2021-2022 Annual Report to better reflect its new organizational structure. As well, the OLT also did not report disposition times in a manner that allows for comparisons with the TLAB.

Figure 18

LPAT Caseload, Province of Ontario, 2017-2021

Source: Altus Group based on OLT Annual Report 2020-2021

Minor variances represent a substantial amount of work and resourcing expenses for all participants in the land-use planning process – City staff, land-use experts, appellants, and applicants. Bill 23’s narrowing of third-party appeals will likely bring much needed relief to the caseload burden for both the TLAB and the OLT, which should help improve disposition times for the remaining cases and allow for each entity to focus efforts on cases of a complex nature to reach decisions more quickly.

Unfortunately, the data necessary to track changes in trends from policy inducements is opaque at best, or non-existent at worse, with both the TLAB and OLT changing how they report aspects of their caseload from year-to-year. It is unlikely that the full scope of effects from Bill 23 will be possible to detect until 2024 or later.

One facet that should be explored in future reviews of TLAB operations is ‘parties to an appeal’. While third-party appeals have been narrowed to specific persons, persons who are not specified can still request to be a party of an appeal initiated by authorized persons (the applicant, City/Province, or specified persons). Persons or organizations granted the ability to be a party to an appeal have the ability raise issues and cross-examine expert witnesses.

While members of the public should have the ability to become a party to an appeal to raise legitimate land-use planning issues, this avenue of involvement should also not be allowed to be exploited for other purposes beyond legitimate and reasonable grounds. Parties to an appeal have been noted to not always raise substantive issues, fail to retain their own expert witnesses, and have attempted to use cross-examination as an opportunity to ask questions that are not related strictly to land-use planning, which delays or extends proceedings.

It is advisable that the TLAB monitor and provide regular reporting on parties to appeals to ensure that this avenue to address the tribunal is not exploited for purposes other than to address land-use planning issues. Should a substantive trend arise that demonstrates that persons wishing to be parties to an appeal has become more frequently used for non-land use planning purposes, then reforms to party status should be considered.

3.3 COST OF DELAY

Building on the cost of delay analysis that was previously reported in the 2nd Edition BILD Municipal Benchmarking Study, which focused on high-rise construction, Altus Group Cost Consulting has provided new insights for low-rise housing for this report.

Based on a model that incorporates various generic detached homes, which ranged in size between 1,850 square feet to 3,100 square feet, delays are estimated to add between 8% to 14% to home costs annually, or 2.7% to 3.5% on a quarterly (3 month) basis in additional construction related costs. These additional costs equate to \$9 per square foot to \$19 per square foot annually, or approximately \$21,000 to \$58,000. These additional construction costs exclude land and related financing costs.

Statistics Canada data shows that between Q1 2022 to Q1 2023 construction, the last twelve-months of most recently available data, costs for residential construction has increased in the Toronto Census Metropolitan Area by an average of 17.6%, including:

- 16.2% for high-rise apartments (more than five-storeys);
- 19.2% for low-rise apartment (less than five-storeys);
- 18.5% for townhouses; and
- 17.8% for single detached.

Statistics Canada data also shows that the highest increases in cost components for residential construction were:

- 17.6% Exterior improvements;
- 18.7% for masonry;
- 18.9% for metal fabrication;
- 21.5% for thermal and moisture protection;
- 22.1% for finishes;
- 22.9% for equipment;
- 25.0% for concrete;
- 26.3% for wood, plastics and composites; and
- 26.9% for Earthwork 26.9%.

3.4 APPLICATION PRE-SUBMISSION TIMELINES

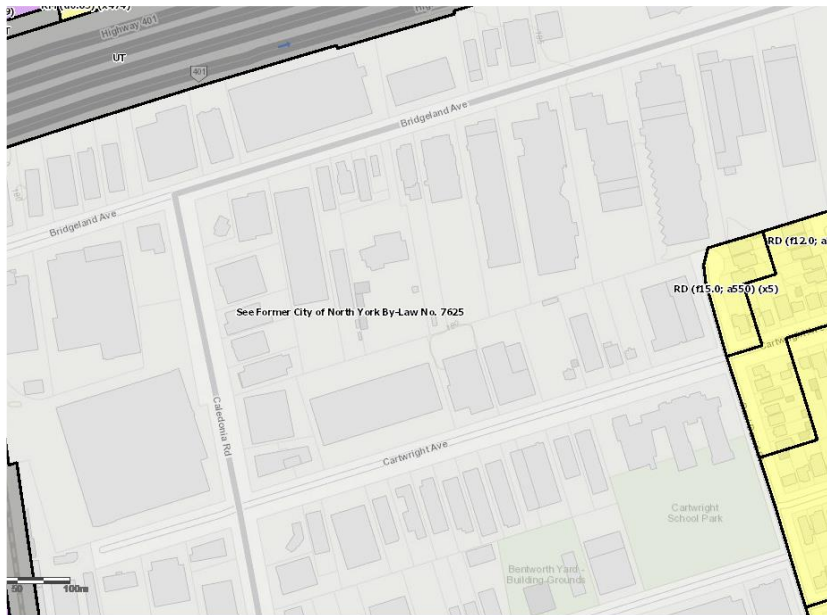
While this report's core focus is on timelines between an initial application submission and a COA hearing, this leaves out consideration for how long applications take to create. Providing some attention to this part of the application process has the potential to reveal additional frustrations applicants experience.

Unfortunately, there is no dataset that is able to track how long an application takes to create beyond polling land-use planning experts on their anecdotal estimates. However, it is possible to make some general observations of the application creation process and pinpoint sources of difficulties, such as the lack of access to zoning by-laws.

The City of Toronto makes its Zoning By-law 569-2013 available to be reviewed online by both text and an interactive map. However, this is not the only zoning by-law in effect in the City, with many of the former pre-amalgamation zoning by-laws concurrently still in effect.

Figure 19 is an extract from the City's Interactive Zoning By-law map hosted on their website. It shows a section of the City east of Keele St and south of Highway 401 where the City's Interactive Zoning By-law map stipulates that a person "see former City of North York By-law No. 7625", which is not available to be reviewed in its entirety anywhere online.

Figure 19 Example of Missing Zoning By-law Information



Source: Altus Group based on City of Toronto Zoning By-law Interactive Online Map

The City of Toronto only makes available former municipal by-laws through physical visits to one of its branch office locations. By not making pertinent information easily accessible, a person seeking to build a new home or to make alterations/renovations to an existing home has to physically appear before a City representative in order to get the information they require.

This arrangement not only expends an individual's time and efforts, or that of their representative (builder, planner, lawyer, real estate agent, etc.), but also staff resources necessary to fulfill each request.

The City of Toronto is not unique in lacking the availability of complete zoning information online. Other major municipalities in the GTA, such as the City of Markham, also do not provide complete zoning by-law information for lands within their jurisdiction. This is a situation that should be address by both individual municipalities and by the province to ensure that both builders and the public have readily available information on the laws and regulations that apply to their property.

3.5 END-TO-END REVIEW

3.5.1 Background and Summary of KPMG Report and Recommendations

In June 2020, the City Council directed City Planning to conduct an “End-to-End Review of the Development Review Process” in order to increase the capacity of the COA to clear up a backlog of applications caused by the COVID-19 service disruptions. To complete this task, the City retained the services of KPMG, a consultancy firm, in February of 2022, resulting in a report that was released in January 2023.

The report noted 16 challenges that the COA currently faces, broken up into the two categories of ‘challenges impacting public and applicant participation’ and ‘challenges impacting the overarching performance of the COA’. Figure 20 outlines 16 challenges that were identified in the KPMG report.

Figure 20

#	Challenges
1	Stakeholder misalignment on the purpose of the COA
2	Hearing lengths and unstructured agendas
3	Inconsistencies within and across public hearings
4	Technical challenges related to virtual hearing platform and associated procedures
5	Late-stage application revisions
6	Limited or technical public-facing information
7	One-size-fits-all speaking structure
8	No tenant notification
9	Unbalanced district workloads
10	Unmet legislative timelines and non-adherence to commenting deadlines
11	Unclear, inconsistent commenting practices
12	Notices of Decision

13	Staff turnover
14	Limited information and performance management
15	Disconnect between CoA and broader City objectives
16	Errors in zoning reviews.

KPMG's COA End-to-End Review Report provided 15 recommendations to improve the public hearing process for applicants and members of the public. They are summarized in the table below.

Figure 21

#	Recommendation
1	Develop and communicate a clear purpose statement to align stakeholders around a shared understanding of the COA
2	Improve existing and develop new public-facing communications and resources to enhance participation
3	Develop and promote an effective participation guide to empower applicants and members of the public
4	Regularly engage with applicants and members of the public outside of the public hearing process
5	Support equitable tenant participation in the public hearing process
6	Consider refreshing application requirements for minor variance and consent applications
7	Evaluate opportunities to provide more detailed reasons for COA decisions
8	Consider eliminating substantive revisions to applications following the distribution of the public notice
9	Address the technical challenges of the virtual public hearing process
10	Standardize hearing practices to improve transparency and predictability
11	Implement quarterly members' meetings for panelist training and professional development
12	Implement guidance directions to increase consistency within and across panels

13	Implement commenting guidelines to improve consistency and enable more effective participation
14	Establish KPIs to enable continuous improvement
15	Conduct a comprehensive review of the COA's service delivery model

In response to the release of the KPMG Report, staff noted that:

Some of KPMG's recommendations can be implemented relatively quickly, while others will take more time and significant further work. There are also recommendations that instruct staff to explore or investigate the feasibility and/or advisability of a potential improvement. For those recommendations, City Planning will undertake this exploratory work and will then determine whether and how to move forward. Staff will report back to the Planning and Housing Committee in Q1 2024 on the status and results of this work.⁹

In late February 2023, BILD submitted a memo to the City regarding Item 'PH.2.5 - Committee of Adjustment - Consultants Review' that noted focus should be given to recommendations 9 (technical challenges) and 13 (commenting guidelines to improve consistency and enable more effective participation).

3.5.2 Assessment of KPMG Report

The KPMG Report recommendations are very well-grounded and should substantively improve operational efficiency of the COA, if implemented. This will have positive impacts on decision timelines, but only at current application volume levels.

As well, the KPMG report noted several facets that this reported also highlighted previously, such as the uneven application timelines between COA districts, the lack of meeting prescribed timelines, and the need for better data to back key performance indicators ("KPIs").

However, the efficacy of KPMG's recommendations depends on how successfully the City is in ultimately implementing all its suggested recommendations, which will depend in part on what public oversight procedures it chooses to include in tandem.

⁹ Planning and Housing Committee, Item - 2023.PH2.5, February 6th 2023, Report from the Chief Planner and Executive Director, City Planning on Committee of Adjustment - Consultant Review

Staff should produce and communicate with the public specific deadlines for each recommendation and provide regular updates to council if they are off-track to meeting them. It is noted that staff already plan to report to council in Q1 2024 on the status of the work plan to implement the KPMG report recommendations, however, this work plan update should also include specified target implementation dates.

As well, its not sufficient for the COA to just incorporate KPIs without providing the public regular insights into them. The City should consider creating a COA Chair's Annual Report as a method to establish, track, and report on the KPIs so that the public has some insights it's operational efficiency trends.

In addition, the City should consider posting the underlying data behind the COA's KPIs to its Open Data Catalogue where it could benefit from additional analysis and insights provided to it from members of the public or professional planners outside of the public service.

Without accountability measure like public oversight working in tandem with KPIs, having KPIs in-itself will not necessarily help lead to improvements. As the KPMG report also noted, staff should setup a process to test and review the effectiveness of KPIs as part of a continuous improvement process. The testing of effectiveness should include public input from major stakeholders like the development industry.

One major risk to the success of improving COA decision timelines that the KPMG report did not assume as part of its analysis was the potential for substantially increasing application volumes in the near future. While many of the recommendations may improve the efficiency of the COA as it operates today with existing application volume levels, the COA could see little to no actual improvement in future reviews despite implementation of the recommended improvements because of potentially higher application volumes stemming from policy programs that the City is currently undertaking to increase permissibility for various housing forms.

The City must tackle both the speed at which it processes applications, which the KPMG report provided many noteworthy ideas for, and the ultimately the number of applications it receives, which is reflection of it's zoning by-law structure.

3.6 ZONING REFORM

3.6.1 Housing Action Plan

In December 2022, City Council adopted the Housing Action Plan for the 2022-2026 term of council. This included several adopted items instructing City Planning to begin working on Official Plan and Zoning By-law amendments to facilitate more permissible built forms.¹⁰ In March 2023, the Executive Council received the *Priorities and Work Plan* (the “Work Plan”) for the Housing Action Plan from City Planning. The Work Plan included several deliverable items, including city-wide zoning performance standards reviews for mid-rises, multiplexes, and other items.

While many of the required studies and reports have not yet been presented, the City initiated Housing Action Plan is an opportunity to both provide more housing opportunities to help address the affordability crisis and address chronic issues related to the COA’s operational efficiency.

3.6.2 The Case for Zoning Reform to Reduce Need for Commonly Requested Variances

While challenging to implement because it requires a great deal of planning work upfront, one of the most impactful ways that the City could address the issue of COA application volumes, and by connection decision timelines, is to focus on updating its zoning by-laws to eliminate commonly requested variances. Given the high approval rate of the COA, a great deal of work is created for both city staff and applicants simply by not having a zoning by-law that provides as-of-right permissions and instead requires discretionary reviews.

Figure 22 shows the units added through as-of-right building permits by zone type in the City of Toronto between 2011 and 2020. While the data presented only shows the units built by zone type, it is deducible to state that at least 67.2% (8,501) of the 12,641 homes built were of a single-detached form as this is the only housing type permitted in RD Zones.

While RD zoning takes up the most geographic space within the boundaries of the City, single-detached homes are only 23.3% of the total housing stock within Toronto according to the most recent 2021 census. Yet this housing

¹⁰ CC2.1 - 2023 Housing Action Plan

type is also the most common one to be built as-of-right compared to all the others.

Figure 22 Units Added through As-Of-Right Building Permits by Zone Type, City of Toronto, 2011-2020

Zone Type	Replacement Units		Intensification Unit		Total Units	% of Total Units that are Intensification
	Total	Percent	Total	Percent		
Residential Detached (RD)	7,414	83%	1,087	29%	8,501	13%
Residential Semi-Detached (RS)	158	2%	117	3%	275	43%
Less Permissive Subtotal	7,572	85%	1,204	32%	8,776	14%
Residential Townhouse (RT)	3	0%	11	0%	14	79%
Residential Multiple Dwelling (RM)	407	5%	368	10%	775	47%
Residential (R)	898	10%	2,178	58%	3,076	71%
More Permissive Subtotal	1,308	15%	2,557	68%	3,865	66%
Combined Total	8,880	100%	3,761	100%	12,641	30%

Source: City of Toronto Neighbourhood Change and Intensification Oct 2021

As the City seeks to update the permissible types of homes that can be built, if it does not ensure that the development envelopes are sufficient to facilitate as-of-right construction then there is a serious risk that it could cause a significant expansion of COA application volumes. The city is not without precedent in reviewing its zoning by-law to help alleviate COA Applications.

3.6.3 Implications from Laneway Suites for Multiplex Housing

In December 2021, City Council adopted zoning by-law amendments to help smooth the facilitation of laneway suites, which had been previously legalized in July 2019. The proposed changes came after a review from consultants Gladki Planning Associates, which were retained by the City. In the staff report on the proposed laneway changes, it was noted that:

The amendments are also being proposed to help facilitate as-of-right development and induce by-law compliance. Generally speaking, if by-law standards are more achievable, land owners are incentivized to avoid seeking excessive variances at the Committee of Adjustment.¹¹

Without providing an exhaustive list of specific zoning provision changes, Gladki Planning Associates noted in their report:

Generally, we find that the industry views the By-law as being well suited to allowing laneway housing in Toronto. While respondents

¹¹ Item - 2021.PH29.2

generally find the By-law to be supportive of the construction of laneway suites, they mention other factors including review times for building permit and Committee of Adjustment applications and interdepartmental processes as slowing the development of new laneway housing and contributing to uncertainty about the process on the part of property owners...

The zoning By-law generally allows for as-of-right development of laneway housing. The majority of building permit applications received (74%) do not require a minor variance for the same property...

Interviews conducted with expert respondents generally find inconsistent interpretations of the zoning By-law on the part of zoning examiners. Further, in reviewing matters with Toronto Building, Urban Forestry and Community Planning, respondents identify different levels of familiarity of the By-law and the laneway suite typology among staff as contributing to delays in the process...

Our review of Committee of Adjustment application identified five of the most common minor variance applications sought before the committee of adjustment.

The variances most often sought was relief from the 85% minimum landscaping requirement... Other variances included relief from rear yard setback, angular plane and height requirements...

The respondents note significant amounts of time required to process applications for minor variance and building permit. They note that it can be difficult for their clients to understand the approvals process and often do not fully comprehend the time or expense required to obtain full approvals at the outset of a project.

As noted by the Gladki report, most (74%) laneway homes could be built as-of-right without requiring a COA application. The number of COA applications and TLAB appeals generated by laneway suites was noted to be low, however, the overall number of laneways being proposed to be built was also small. For those laneway suites that did require a minor variance, it was noted to be a long and arduous process by applicants.

If multiplexes and other built-forms that the City is seeking to permit are built at the scale necessary to overcoming the housing affordability crisis, then achieving a similar 74% rate of as-of-right permissibility as laneway suites could result in an overwhelming amount of work directed at the COA and TLAB.

4 RECOMMENDATIONS AND CONCLUSION

This section provides specific steps that the Province, City, and agency's such as the CoA, TLAB, and OLT can take to improve outcomes on minor variance applications. Many of the recommendations are also applicable to other municipalities in many cases. Finally, this section provides concluding thoughts and reflections for this report.

4.1 RECOMMENDATIONS

The following recommendations are presented in a hierarchical order, with recommendations that have the potential to provide greatest benefits presented first.

4.1.1 Require Staff to Approve Minor Variances

The province should look to amend the *Planning Act* to allow/require municipalities to delegate to staff the approval of minor variance applications.

Under Bill 13 – *Supporting People and Business Act*, the province created Section 39.2 of the *Planning Act* to allow for delegation of minor approvals under Section 34 (Zoning by-laws) to “an individual who is an officer, employee or agent of the municipality”. This would allow staff to be the approval authority for such matters as the removal of holding symbols, temporary use by-laws, and/or minor textual changes that require a zoning by-law amendment.

However, because minor variances are not minor textual changes that require amendments to the zoning by-law but rather relief from the zoning by-law provisions, the minor variance process itself may not be able to be substitute using these provisions.

The province should provide additional clarity on allowances for minor variance delegation to staff and potentially requiring it. This proposed change would be similar to changes made to site plan approval delegation to staff, which were previously available as an option to municipalities but became mandatory under Bill 109 – *More Homes for Everyone Act*.

To date there has been no uptake on delegating minor variance approvals to staff using Section 39.2, with major municipalities such as Toronto, Mississauga, Vaughan, Markham, Oakville, Pickering, and others, continuing

to rely on COAs for minor variance approvals. It is not clear if the lack of uptake is due to a lack of clarity in the law, a lack of willingness, or both.

Providing and requiring staff to approve minor variances would help lower the caseload work for both the COA and the TLAB/OLT, while providing municipalities with more flexible land-use planning structural arrangements. A staff lead structure of planning approval could improve decision timelines significantly, removing a serious bottleneck in the current home construction process.

4.1.2 Fix Underlying Zoning Issues to Deal With Application Volume

While the KPMG Report provided many good recommendations, these will only addressing the existing volume of applications. Without dealing with the reasons why there is such a high inflow of COA applications, it is unlikely the City will be able to meet the legally required timelines without spending on more on staff resources, adding more panel members, and adding additional hearings times.

The City must ensure that it takes a two-pronged approach to zoning reform. First, it should examine the existing batches of COA applications to determine what it can do to eliminate ones that are unnecessary and repetitive. Second, it must ensure that any proposed reforms for additional built forms includes sufficient development envelopes that avoids triggering minor variances by working closely with stakeholders like the development industry.

There is a high risk that the City initialed Housing Action Plan could create an overwhelming amount of new work for the COA if sufficient development envelopes and other zoning considerations are not given. With a high approval rate for minor variances, there are clearly opportunities for improvements to the zoning by-law to create more as-of-right permissions and fewer discretionary decisions.

4.1.3 Make Cross Appointments to COA Panels

The City should consider making the ability for COA members to sit on panels between districts for the new COA term of office permanent. There is no provincial legislative requirement that COA members need to be assigned to a panel to live within the district that they work in. This is an arbitrary

policy created by the City with little to no evidence demonstrating that removing the requirement will adversely affect outcomes.

Based on the publicly available profiles, many COA members have listed experience moving between districts over subsequent terms with little to no issue. As well, pandemic response measures that were implemented to allow for more flexibility over member panel participation demonstrates that this policy is both feasible and has potential to improve the efficiency of the CoA's operations.

The City could continue the provision that a COA panel maintain a majority of assigned members who are appointed within the district. However, this policy should also be reconsidered in light of current decision timelines that neither meet the City set targets or legally prescribed requirements.

Finally, the City should consider right-sizing district panel sizes and resources to account for the lop-sided work loads that the Toronto East York district faces in comparison to the others, which was a challenge that was noted in the KPMG Report.

4.1.4 Make Zoning By-laws Available Online

While the City of Toronto has had a harmonized zoning by-law since 2013, this by-law does not cover all areas of the City. With the former amalgamated municipalities by-laws still in effect, those by-laws should be made available to the public in a way that meet modern accessibility expectations.

Not having all the zoning by-laws easily available can frustrate applicants and lead to poorer quality applications submitted to the City. As well, it raises the expense, time, and effort required to make otherwise simple requests to the COA for minor variances.

Although many of the former by-laws may not be in machine readable formats (i.e., CSV, JSON, etc.) having electronic documents (e.g. PDFs) is superior to the current total absence of availability. Long-term, the City should either consider finding ways to fully harmonize its zoning by-laws so there is only a single by-law in effect that is simple to understand and adhere to.

4.1.5 Improve Data Transparency and Reporting

The City should encourage the Chair of the COA to produce regular annual reports in a similar manner as the TLAB Chair's Annual Report. As well, both the COA and TLAB should make the disaggregate data that underpins their own analysis available to the public through the City's Open Data Catalogue.

The Province should potentially consider requiring municipal COAs to provide yearly reporting. It could assist in this endeavour by creating a term of references for COA report, specifying what needs to be reported and how. Additionally, the Province should encourage the OLT to provide better reporting on its own operations, such as on disposition timelines and providing at least 5-years of information in each yearly report so that trends can be easily identified.

4.1.6 Monitor Parties to an Appeal

Both the TLAB and OLT annual reports should, on a go-forward basis, provide data and analysis on the issue of parties to an appeal. While third-party appeals have been narrowed to specified persons by Bill 23 for minor variances, which is likely to help lessen the caseload burden on both tribunals, no changes have been made to persons wishing to be granted party status to an appeal filed by either the City, Minister, applicant, public body, or specified persons.

The TLAB allows for individuals outside of the appellant to be a party to an appeal or to be a participant. A party to an appeal is required to provide an issues list, expert witnesses, etc and in return is given the ability to cross-examine other expert witnesses. A participant to an appeal is able to simply address the tribunal.

Unfortunately, there are cases where a person applies to be a party to an appeal that wishes to raise issues that fall outside of land-use planning. This can lead to delays to proceedings, additional motions, more standby time as parties seek to come up with proper reasoning, all leading to longer disposition timelines and additional costs to both the tribunal (and ultimately taxpayers), as well as other participants in the hearing.

Should abuses of party to appeals be evident in trending data, then the Province should consider empowering the tribunal to be better equipped in

its authority to dismiss a party to an appeal that it finds is trying to participate on frivolous grounds.

4.2 CONCLUSION

It is evident by the City's own reporting - through budgetary notes, staff reports, and the TLAB Chair's Annual Report - that the COA has been experiencing an overwhelming volume of applications and application timelines are not meeting expectations. While the COVID-19 pandemic exacerbated decision making timelines, the COA and TLAB were both failing to meet application and appeal timelines well before the pandemic.

The analysis done in this report largely confirms the City's own examination of timelines, but with the additional observation that the COA is approving minor variance applications at a very high rate.

There is a high degree of risk that as the City implements housing reforms to allow more permissible built forms, this could create a flood of minor variances if sufficient attention to development envelopes and other zoning matters is not given. This could require the City to have to commit additional resources just to maintain COA service levels, jeopardizing the City's efforts at improving them.

Without improving the efficiency of COA decision making timelines or adopting more as-of-right measures that would fix the need for a minor variance application in the first place, the City is seriously jeopardizing its future housing goals. Long-timelines will throttle homebuilding or could create a serious chokepoint that dissuades builders from constructing new homes, all adding to expenses that negatively affect the affordability crisis.

Finally, everyday homeowners trying to add simple additions such as decks will likewise be thwarted or find the process to be overwhelming, taking away confidence in the City and increasing frustration with service level standards.

Appendix

5 APPENDIX

5.1 DATA MANAGEMENT

The analysis provided in this report depends on the City of Toronto Open Data Catalogue datasets for Committee of Adjustment Applications. The datasets that are available to the public include applications that were closed between 2001-2023, as well as active applications in the current year (March 7th 2023 as the last day the data was refreshed during the writing of this report). Each year of a closed application (e.g. 2015, 2016, 2017...) is provided with its own separate file, including a separate active applications file.

Closed application data includes all applications that were last updated within the specified year as denoted by the 'FINALDATE' column, including applications that appear outside of the base year of the file. For example, the 2015 closed application file includes data from applications with intake dates between 1999 to 2015.

It appears that any time City Planning updates an application within their database it triggers data to appear in a closed application year despite potentially being many years old. It is unclear why this is happening. It could potentially be a result of data migration from one system to another or for other reasons.

For the purposes of the analysis in this report, only applications with an intake date from 2015 to 2022 and where a decision has been rendered are included in the analysis for this report. This includes both active and closed applications, with active applications comprising of 3.4% of all observations in the final analysis dataset.

The datasets provided by the City include additional observations, such as for consent applications and blank applications, which were removed because the analysis in this report is solely focused on confirmed minor variances. As well, duplicates and other data hygiene issues resulted in a number of additional applications also being removed.

For active applications, only those that had a hearing date scheduled in the past and have a status of "Approved", "Approved with Conditions", "Closed", "Refused", "OMB Appeal", and "TLAB Appeal" were included in the final analysis.

It is not clear why these active applications had not been transferred to the closed dataset for 2023. In total, approximately 1,200 applications from the active list were highlighted for further analysis before additional reductions were applied to account for previously stated data organization and hygiene issues. This reduced the overall quantity of active applications in the analysis to 614 data points, which had intake dates that spanned 2015 to 2022.

Applications within the 'long-tail' of the distribution of observations were also removed because these typically represent applications with either had data integrity issues or reflect an unlikely circumstance that most applicant would face. For example, the long-tail applications that were removed had both extremely short decision hearing timelines (15 days) and extremely long (1,547 days) ones compared to the average or median application.

The raw data of minor variances with a positive timeline for hearings and an intake between 2015-2022 had a timeline average of 113 days (16.14 weeks). After removing duplicates and applications that did not have definitive decisions, the average application timeline fell to 106 days (15.1 weeks). Finally, removing the 'long-tails' of the distribution of observations lead to further reductions in the average timeline to 95 days (13.6 weeks) within the dataset, which represents the 'typical' minor variance application that was examined in this report.

In summary, the following steps were made when processing the data and removing applications from the initial unfiltered database provided by the city:

- Data that wasn't related to a minor variance type application (e.g. consents, etc) was removed;
- Applications that had an intake data which wasn't within the specified time period (e.g. those before 2015 or after 2022) were removed,
- Where the COA didn't make a definitive decision or no decision was listed the data was removed;
- Where the application was withdrawn, cancelled, or deferred the data was removed;
- Where there were duplicate applications (approximately 1,500) that had the same intake date, with the same address, and same hearing date, the duplicates were removed and replaced with a single record;

- Where there was anomalous data with negative days between the intake day and the hearing date were removed; and
- 5% of applications at each tail-end of the distribution of records was removed to produce a more “typical” sample average.
 - Applications in the extreme tails of the distribution are those that are abnormally long or short compared to all other applications.

Table 1 provides a breakdown of the 17,857 applications used in the final analysis by intake year.

Table 1

Final Dataset for Minor Variances	
Intake Year	Applications (n =)
2022	1,811
2021	2,418
2020	1,719
2019	1,813
2018	2,202
2017	2,780
2016	2,619
2015	2,495
Total	17,857

5.2 APPLICATION TYPE EXPLANATION

All best efforts were taken to interpret the data made available by City correctly. Unfortunately, they do not provide descriptions on their Open Data Portal for the data included within the dataset beyond those for column headings.

For example, the column heading ‘SUB_TYPE’ is defined by the city as simply ‘Application Sub Type’. However, the sub type column heading had six (6) different parameters in the cleaned up database but with no additional descriptive information provided, which includes:

1. Add/Alt to Existing Res \leq 3 units;
2. AddAlt to Res \leq 3 units with OTC;
3. All Other;
4. All other with OTC;
5. New Res dwellings \leq 3 units; and
6. New Res dwellings \leq 3 units OTC;

To better bucket the data for analysis, each parameter was examined to see what common application descriptions they included. From this, four (4) aggregated application groups were created, which includes:

- Order to Comply;
- New Residential Dwellings
- Alternations to Residential Dwellings; and
- Non-Residential Buildings;

The acronym ‘OTC’ means “Order to Comply”, which is when an existing structure was built before obtaining zoning permission from the City. This is not the same as a legal non-conform use, which is a use that pre-dates a new zoning designation and is permissible to remain. The *Order to Comply* application type was created by bucketing the three (3) OTC sub types - All other with OTC, AddAlt to Res \leq 3 units with OTC, and New Res dwellings \leq 3 units OTC.

Unsurprisingly, the most frequent general description of for an ‘OTC’ application is “to legalize...” an existing home or non-residential buildings and/or features (i.e. additions such as a porch, parking pad, etc to either residential or non-residential buildings). The OTC application type includes both residential and non-residential structures, although the bulk of these applications was for residential permissions. With only 494 observations within this application type, further refinement between residential and non-residential OTC applications would have created sample size issues.

New Residential Dwelling application type was created by using the ‘New Res dwellings \leq 3 units’ parameter. Generally, the descriptions for this block of

applications begins with “to construct a new...” residential building of some kind.

The *Alterations to Residential Dwellings* application type was created using the ‘Add/Alt to Existing Res <= 3 units’ sub type parameter. Generally, the description included for applications had “to construction a new...addition to an existing dwelling” or “to alter...to an existing dwelling”.

Finally, the *Non-Residential Buildings* application type was created using the ‘All Other’ sub type parameter. Generally, the description applications include “to construct...” or “to alter...” some form of non-residential buildings. Examples include childcare facilities, gas stations, office buildings, etc.

No distinction was made between new construction and alteration of non-residential buildings as the data is not easily separable. As well, with only 430 applications within the dataset for this application type, further bucketing would have created sample size issues.

ATTACHMENT 4
Toronto Local Appeal Body Revised Draft
Practice Direction No. 3.

Effective Date:

Number: 3 (Revised)

Practice Direction: Document Referencing

Direction:

TLAB staff will take note of official documents or others that are frequently submitted by parties and participants, and will compile a Common Document Base (CDB). This will be listed on the TLAB's website for use by the public. When parties or participants wish to refer to these in evidence, they should name the document, and provide the sections to which they will refer. These must be specific enough so that a reader can locate the document and find the exact text. This process will apply equally to expert witnesses and lay citizen references if so intend to be made or employed.

If the document or the relevant section is not found in the CDB, the user must provide a detailed reference to the Source, as well as reproduce and distribute the section(s) to be referred to. The Person offering the evidence must address its relevance and accuracy. The TLAB prefers references to the Common Document Base to full digital books.

The Common Document Base will be updated over time as staff identify additional documents of relevance, and a link to those updates will be included on the TLAB website.

Any documents that a party or participant intends to reference or rely upon and that is not already included in the Common Document Base should be assembled by the party or participant into a document collection or volume and filed with the TLAB as a PDF. Any collection of documents or volume filed by a party or participant shall not exceed 250 pages.

A party or participant may file multiple collections of documents or volumes as long as each collection or volume is separately and clearly titled and does not exceed 250 pages.

Any collection of documents or volume shall include a table of contents. Tabs may be used to separate the documents in any collection.

In oral or written submissions, a party or participant shall refer to the title of the document collection and provide the page number of the PDF file where the referenced material can be located.

Approved by the Toronto Local Appeal Body this [NTD: INSERT DATE].

Dino Lombardi, TLAB Chair