



Minutes: June 14, 2024

Toronto Local Appeal Body Business Meeting No. 46

Meeting Date: Friday, June 14, 2024, 9:30 a.m.

Location: Remote Meeting - Electronic

Toronto Local Appeal Body - Public Business Meeting – June 14, 2024

Chair: Dino Lombardi

Contact: Claire Holloway, Acting Supervisor, Tribunal Operations

Phone: 416-392-4697

Toronto Local Appeal Body Panel Members

Dino Lombardi (Chair)

Ana Bassios (Vice-Chair)

Stanley Makuch

John Tassiopoulos

Ted Yao

Carissa Wong

Gerald Swinkin

Ron Kanter

Trevor Kezwer

Blair Martin

Anthony Brown

Brian Gallagher

Yeta Herscher

Bruce Mullock

Land Acknowledgement for Toronto

"We acknowledge the land we are meeting on is the traditional territory of many nations including the Mississaugas of the Credit, the Anishnabeg, the Chippewa, the Haudenosaunee and the Wendat peoples and is now home to many diverse First Nations, Inuit and Métis peoples. We also acknowledge that Toronto is covered by Treaty 13 with the Mississaugas of the Credit."

Introduction of Newly Appointed TLAB Members by the Chair

Yeta Herscher

Anthony Brown

Brian Gallagher

Bruce Mullock

Confirmation of Minutes – Business Meeting, December 12, 2023.

Dino Lombardi (Chair)	yes
Ana Bassios (Vice-Chair)	yes
Stan Makuch	yes
Ted Yao	yes
Carissa Wong	yes
Gerald Swinkin	yes
Ron Kanter	yes
John Tassiopoulos	yes
Blair Martin	yes
Trevor Kezwer	yes
Yeta Herscher	Abstain
Brian Gallagher	Abstain
Bruce Mullock	yes
Anthony Brown	yes

Declaration of Interest under the *Municipal Conflict of Interest Act*

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46.1 – INFORMATION

Summary

At the December 12, 2023, Toronto Local Appeal Body (TLAB) Business Meeting, the TLAB undertook to elect a Vice-Chair for a one-year term for 2024. Unfortunately, while the acclamation of the former Vice-Chair for another term was confirmed at that Business Meeting pursuant to the Procedure By-law, a procedural step was missed by the TLAB.

Rule 7.4 of the TLAB's Procedure By-law requires a motion to confirm the election results:

(4) Confirmation of Election Results

Vice-Chair election results shall be confirmed by the Chair through a motion.

The acclamation of the current TLAB Vice-Chair to another term pursuant to Appendix A, article F of the Procedure By-law was not part of the Minutes of the December 12, 2023, meeting. As a result, a Motion is required and must be adopted at the June 14, 2024, Business Meeting in order to confirm the acclamation of Ana Bassios as the Vice-Chair for 2024.

Motion to be considered:

THAT the TLAB confirm the acclamation of Member Ana Bassios as the TLAB Vice-Chair for a one-year term, commencing on January 1, 2024.

Moved by Member Makuch, Seconded by Member Tassiopoulos (Carried).

Dino Lombardi (Chair)	Y
Ana Bassios (Vice-Chair)	Y
Stanley Makuch	Y
John Tassiopoulos	Y
Ted Yao	Y
Carissa Wong	Y
Gerald Swinkin	Y
Ron Kanter	Y
Trevor Kezwer	Y
Blair Martin	Y
Bruce Mullock	Y
Yeta Herscher	Y
Anthony Brown	Y
Brian Gallagher	Y

46.2 – INFORMATION

Amendment to Rule 21.8 of the Toronto Local Appeal Body’s Rules of Practice and Procedure regarding the Seizure of a Member who Conducts a Prehearing Conference and the addition of a new Rule 21.8.1.

Summary

The current language of Rule 21.8 is as follows:

“Member who Conducts Prehearing May or May Not be Seized

21.8 A Member who conducts a prehearing may or may not remain seized of the proceeding.”

The Rule, as currently worded, does not outline the manner in which a Member will or will not remain seized on an appeal matter following presiding over a Prehearing Conference. The proposed additional wording to the Rule will add clarity to how that is to be determined as will a new Rule 21.8.1.

Motion to be considered:

“THAT the TLAB adopt the amended Rule 21.8 as revised, and new Rule 21.8.1:

21.8 *Subject to Rule 21.8.1, a Member who conducts a prehearing may remain seized of the Proceeding. Where a Member who conducted a prehearing remains seized of the Proceeding, the Member or TLAB will advise the Parties and Participants that they remain seized prior to the Hearing.*

21.8.1 *A Member who conducts a prehearing at which the Parties attempt to settle issues shall not preside at the Hearing relating to the matter unless all of the Parties consent and the Member agrees.*

Speakers:

Blair Martin

- If adopted, the Motion would allow people to “shop” for a hearing.

Ron Kanter

- The default position should be that the Member presides at the Hearing unless the Parties object.

Carissa Wong

- agrees with Member Kanter.

Anthony Brown

- depends on the nature of the prehearing, procedural type matter or something else;
- should not be some a sort of default position.

Scott Nowoselski

- want to align with the Statutory Powers and Procedure Act
 - “shall” is the most appropriate language to use.
- legal language reflects the condition on the Rule of mediation in the TLAB’s Rules of Practice and Procedure.

Vice Chair Bassios

- submitted that the TLAB should accept the advice of the Tribunal’s Legal Counsel to stick with the statute’s language

Member Kezwer

- the Rule should be amended, and he agrees with Legal Counsel’s recommendation to follow the Statutory Powers and Procedure Act

Moved by Vice Chair Bassios, Seconded by Member Makuch (Carried).

Dino Lombardi (Chair)	Y
Ana Bassios (Vice-Chair)	Y
Stanley Makuch	Y
John Tassiopoulos	Y
Ted Yao	A
Carissa Wong	A
Gerald Swinkin	Y
Ron Kanter	N
Trevor Kezwer	Y
Blair Martin	Y
Bruce Mullock	Y
Yeta Herscher	N
Anthony Brown	N
Brian Gallagher	Y

46.3 – INFORMATION

Proposed amendments to Rule 31 – Review of Final Decision or Final Order - of the Toronto Local Appeal Body's Rules of Practice and Procedure, specifically, Rule 31.7 (Review Request not to Exceed 20 Pages) and Rule 31.12 (Response to Review Request not to Exceed 20 Pages).

Summary

Currently, both Rules 31.7 and 31.12 include the same wording regarding the maximum number of pages permitted for a Review Request. The language of each Rule is provided below:

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

While the length of the actual Review Request document is capped, the Rules do not limit the size of an addendum document that might be attached to the Review Request. This is problematic for the Reviewer, given that some submissions received by the TLAB can reach 1,000 pages or more, in size.

A Review Request is not an opportunity for a Party to re-litigate an appeal matter, and review request submissions should not require the Reviewer to have to examine documents that are excessive in size.

The TLAB proposes to amend Rules 31.7 and 31.12 by adding language to cap the size of any addendum package to a Review Request to no more than 500 pages in total.

Motion to be considered:

"THAT the TLAB adopt the following revised Rules 31.7 and 31.12:

Review Request not to Exceed 20 Pages

31.7 Excluding supplemental documents including the table of contents, excerpts from by-laws, exhibits and other supporting Documents, which shall not exceed 100 pages in length, the Review Request shall not exceed 20 pages, double-spaced, and written in 12-point font. Case law and transcripts are not limited.

Response to Review Request not to Exceed 20 Pages

31.12 Excluding supplemental documents including the table of contents, excerpts from by-laws, exhibits and other supporting Documents, which shall not exceed 100 pages in length, a Response to Review Request shall not exceed 20 pages, double-spaced, and written in 12-point font. Case law and transcripts are not limited."

Member Yao

- number shouldn't be 100
- Court of Appeal – question of fact – appeal book, exhibit book, and factum
- by Notice of Motion – it does not use a quantitative limit, it uses a qualitative limit – portion of a document if a document is relevant

Chair Lombardi

- The TLAB Chair undertakes the majority of review requests and has found lately that the submission filings accompanying review requests have exceeded 1000 pages or more in some cases.

- Large submissions are seen as simply attempts to re-litigate an appeal decision where the Review Requestors are not happy with the final decision
- The TLAB is starting to see Motions by Parties to file Review Request submissions of more than the 20 page limit

Member Kanter

- He has noticed that legal representatives have found ways to exceed the 20-page limit that is noted in Rule 31
- the key is to establish a limit; beyond that threshold, it becomes onerous, and the Reviewer has to then review all documents to determine if they are relevant

Vice Chair Bassios

- The TLAB has very experienced people submitting review requests and also lay people who submit, and it is their first time having contact with planning documentation
- It is, therefore, difficult for the Reviewer to sort through 200 pages or more to determine what is relevant

Moved by Member Kanter, Seconded by Member Martin (Carried).

Dino Lombardi (Chair)	Y
Ana Bassios (Vice-Chair)	Y
Stanley Makuch	Y
John Tassiopoulos	Y
Ted Yao	Y
Carissa Wong	Y
Gerald Swinkin	Y
Ron Kanter	Y
Trevor Kezwer	Y
Blair Martin	Y
Bruce Mullock	Y
Yeta Herscher	Y
Anthony Brown	Y
Brian Gallagher	Y

46.4 – INFORMATION

Proposed Amendments to the wording of the Toronto Local Appeal Body's Rule 31 (Review of Final Decision or Final Order) and the Public Guide, to expand notice of a request to review a Member's Final Decision or Final Order to Participants in an Appeal Matter.

Summary

In 2022, the TLAB received correspondence from the Federation of North Toronto Residents Association (FoNTRA) suggesting changes to its Rules of Practice and Procedure. In response, Member Yao suggested changes to the Rules to reflect those highlighted by FoNTRA and, subsequently, at its February 2023 Business Meeting, the TLAB adopted most of those changes.

However, one Rule change, 'Participants should be entitled to be notified of Review Requests' was not considered.

As a result, Member Yao proposes amending parts of Rule 31 to expand notice of a Review Request to include Participants. Giving Participants ‘notice’ of a Review Request is consistent with the TLAB’s general rules about transparency and citizen participation.

The Public Guide would also be amended to reflect this ‘notice’ provision.

Motion to be considered:

“THAT the TLAB amend Rule 31 of its Rules of Practice and Procedure and its Public Guide as follows, to reflect expanding the ‘notice’ requirement for Review Requests to Participants (the additional proposed language is highlighted for illustration purposes only):

Deadline for, and Service of, Review Request

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

Transcripts

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

Administrative Screening

31.9 The TLAB shall, upon the filing of a request for Review, review it for compliance and advise the Parties and Participants if:

- a) it does not relate to a Final Decision or final order; or
- b) it was not received within 30 Days after the Final Decision or final order was made, unless the Chair directs otherwise; or
- c) it failed to provide the requisite fee.

Public Guide

I don’t agree with the TLAB’s decision – can I ask that it be reviewed?

For the TLAB to consider a review of a decision, you need to prove that it made an error that, if known, may have changed the decision resulting from the hearing. The availability of a request to review a final Decision and Order of a TLAB Member (Review Request) engages an internal reconsideration and administrative process. It is mostly for Parties, who must comply with the provisions of Rule 31 of the TLAB Rules of Practice and Procedure. Although Participants cannot request a review, they will receive notice of any request by a Party. The review process is by written motion; typically, there is no oral hearing.”

Member Yao

- In support of the Motion, he submitted that a Review Request tells story. He noted that in one case, a Review Request was filed with the TLAB and the Requestor was waiting for a reply from neighbourhood association representative, didn’t even know that a review request had been submitted.

Chair Lombardi

- supports Member Yao's Motion
- Participants in a matter should be aware that a review request has been filed
- if the reviewer decides that the final decision should be cancelled, it would be wise that the Participants would have the knowledge of the review request, can contact staff and ask staff, etc.

Member Swinkin

- Member Swinkin confirmed he could support the replacement language of the amended Motion as long as the original Motion is off the table

Moved by Member Yao, Seconded by Member Tassiopoulos (Carried).

Dino Lombardi (Chair)	Y
Ana Bassios (Vice-Chair)	Y
Stanley Makuch	Y
John Tassiopoulos	Y
Ted Yao	Y
Carissa Wong	Y
Gerald Swinkin	Y
Ron Kanter	Y
Trevor Kezwer	Y
Blair Martin	Y
Bruce Mullock	Y
Yeta Herscher	Y
Anthony Brown	Y
Brian Gallagher	Y

46.5 - CHAIR'S UPDATE

Summary

- A. Overview - Chair's Presentation to the Ontario Association of Committees of Adjustment and Consent Authorities (OACA) Annual Conference on June 3, 2024.
- B. Overview - TLAB Chair's 2023 Annual Report.

Member Kanter

- Requested that the Chair, through TLAB Staff, share Chair's 2023 Annual Report

- C. Planning legislation - Update

- a. Bill 185 - The Cutting Red Tape to Build More Homes Act, 2024.
Member Gallagher – confirming it is in effect
- b. Draft Provincial Planning Statement (PPS)
- c. Expanding Housing Options in Neighbourhoods (EHON) - Major Streets Study
 - i. OPA 727 & ZBA

Member Kanter – very prescriptive

- can the TLAB provide educational program like we have done with multiplexes

Member Wong

- likes the idea of an educational proposal
- Asked the Chair to share the synopsis with the Members. Chair Lombardi agreed to do so.

Motion to be considered:

“THAT the TLAB accept the Chair’s update:

Moved by Member Gallagher, Seconded by Vice Chair Bassios (Carried).

Dino Lombardi (Chair)	Y
Ana Bassios (Vice-Chair)	Y
Stanley Makuch	Y
John Tassiopoulos	Y
Ted Yao	Y
Carissa Wong	Y
Gerald Swinkin	Y
Ron Kanter	Y
Trevor Kezwer	Y
Blair Martin	Y
Bruce Mullock	Y
Yeta Herscher	Y
Anthony Brown	Y
Brian Gallagher	Y

46.7 – PRESENTATION ON ZONING BY-LAW 474-2023 (MULTIPLEXES) (IN-CAMERA)

Summary

The Toronto Local Appeal Body will move into a closed session to receive a presentation for Member education and training purposes as permitted by Subsection 11(1)(f) of the Toronto Local Appeal Body’s Procedure By-law 1-2017.

Motion for consideration:

“THAT the Toronto Local Appeal Body move into a closed session to receive a presentation for Member education and training purposes as permitted by Subsection 11(1)(f) of the Toronto Local Appeal Body’s Procedure By-law 1-2017.”

Moved by Chair Lombardi, Seconded by Member Wong (Carried).

Dino Lombardi (Chair)	Y
Ana Bassios (Vice-Chair)	Y
Stanley Makuch	Y
John Tassiopoulos	Y
Ted Yao	Y
Carissa Wong	Y
Gerald Swinkin	Y
Ron Kanter	Y
Trevor Kezwer	Y
Blair Martin	Y
Bruce Mullock	Y

Yeta Herscher	Y
Anthony Brown	Y
Brian Gallagher	Y

Motion for consideration:

“THAT the TLAB move back to the public session:

Moved by Member Swinkin, Seconded by Chair Lombardi (Carried).

Dino Lombardi (Chair)	Y
Ana Bassios (Vice-Chair)	Y
Stanley Makuch	Y
John Tassiopoulos	Y
Ted Yao	Y
Carissa Wong	Y
Gerald Swinkin	Y
Ron Kanter	Y
Trevor Kezwer	Y
Blair Martin	Y
Bruce Mullock	Y
Yeta Herscher	Y
Anthony Brown	Y
Brian Gallagher	Y

46.9 – CLOSING BUSINESS & REMARKS

Next scheduled business meeting scheduled for September 26, 2024, and it will be a Professional Development session.

Scribe Technical – Lisa Orchard will be the presenter of the curated training workshop

- Ms. Orchard is a planner by profession but works in the communication field

Adjournment

1:15pm.