

February 21, 2017

## What to Expect from Toronto's Local Appeal Body – Knowns and Unknowns

In January 2007 the Province of Ontario's Bill 51, *Planning and Conservation Land Statute Law Amendment Act, 2006*<sup>1</sup> and Bill 53, *Stronger City of Toronto for a Stronger Ontario Act, 2006*,<sup>2</sup> came into force. These bills first established municipalities' power to constitute and appoint a local appeal body (a "**LAB**") for the hearing of appeals of minor variance decisions under subsection 45(12) of the *Planning Act*<sup>3</sup> (the "**Planning Act**") and consent decisions under subsections 53(14), (19) and (27) of the *Planning Act*.

Now, ten years after the passing of Bills 51 and 53, the City of Toronto (the "**City**") is poised to launch the Province's first LAB pursuant to the *City of Toronto Act, 2006*<sup>4</sup> (the "**Toronto Act**"). The product of years of consultation and development, the introduction of this new appeal body represents the culmination of legislative provisions intended to provide municipalities with greater involvement in the land use process and comfort with resultant decisions. As noted by the Executive Chair of the Environment and Land Tribunals Ontario, Bruce Krushelnicki, at the OBA's Institute for Municipal Law held February 10, 2017, introduction of the City's LAB

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<sup>1</sup> Bill 51, *Planning and Conservation Land Statute Law Amendment Act, 2006*, 2nd Sess, 38th Parl, Ontario, 2005 (assented to 19 October 2006), SO 2006, c 23.

<sup>2</sup> Bill 53, *Stronger City of Toronto for a Stronger Ontario Act, 2006*, 2nd Sess, 38th Parl, Ontario, 2005 (assented to 12 June 2006), SO 2006, c 11.

<sup>3</sup> *Planning Act*, RSO 1990, c P.13.

<sup>4</sup> *City of Toronto Act, 2006*, SO 2006, c 11, Schedule A.

is anticipated to remove hundreds of cases a year from the Ontario Municipal Board's ("OMB") roster, providing significant relief to the scheduling pressure currently being experienced.

As the Province's most recent review of the land use planning process in Ontario continues, however, participants will be watching closely to see how the LAB (the product of a similar review undertaken ten years ago) will impact the land use planning process and, in particular, how it will differ from the OMB.

## TRANSITION

The LAB remains on track to be operational by the spring of 2017. In an email, City of Toronto solicitor Mark Crawford advised that the LAB is expected to become operational after the March 28 and 29, 2017 meeting of City Council. At this meeting, it is expected that City Council will confirm the date upon which all appeals of Committee of Adjustment decisions will be directed to the LAB. Presumably, hearings before the LAB will then commence in the weeks following this date with one hearing expected to be held per day.

Hearings before the LAB will be held at a new facility being prepared at 40 Orchard View Boulevard. Until this new facility is up and running, however, the first LAB hearings will be held in temporary spaces to be secured by the City.<sup>5</sup>

## APPEAL FEE AND OPERATION COSTS

With start-up costs of \$2.138 million<sup>6</sup> and an anticipated \$1.689 million in annual gross operating costs,<sup>7</sup> an appeal fee of \$1000 per appeal was originally recommended to City Council.<sup>8</sup> To ensure reasonable access to persons seeking adjudication, however, this

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<sup>5</sup> City Manager, *Follow-Up Report on a Local Appeal Body (LAB) for Toronto* by Peter Wallace, EX13.1 (Toronto: City of Toronto, 24 February 2016) [Follow-Up Report].

<sup>6</sup> This is comprised of \$0.561 million in start-up costs to equip and fit-out office space and \$1.577 million in capital costs for the construction of the office space and hearing rooms. See Follow-Up Report. See also Acting City Manager, *Implementation of a Local Appeal Body (LAB) for Toronto* by John Livey, EX7.7 (Toronto: City of Toronto, 16 June 2015) [Implementation Report].

<sup>7</sup> *Ibid.*

<sup>8</sup> *Implementation Report*, *supra* note 6.

recommended fee was reduced by City staff to \$500 in a Staff Report dated February 24, 2016 and further reduced by City Council to \$300 per appeal on March 31, 2016. This matches the appeal fee to the OMB which was increased to \$300 from \$125 on July 1, 2016. Consequently, this appeal fee does not appear unreasonable and should not operate as a barrier to access. Nevertheless, with an initial recommendation of a \$1000 fee per appeal, it is unclear how this change to \$300 will impact the LAB's financial viability by increasing the annual operating costs incurred by the City for its operation.

## BUSINESS MEETINGS

Different from the OMB, the LAB's business meetings will all be public and the same rules that apply to City Council meetings will also apply to the LAB under the Toronto Act. Consequently, it appears that members of the public will be able to make written or oral submissions to the LAB. Agendas and meeting minutes for the LAB's business meetings will be posted online. The impact of this more public and open format on the LAB's operations is unknown, however, it introduces an interesting potential for public participation to shape the LAB's daily operations. For example, draft rules of practice and procedure for the LAB will be considered at the LAB's meeting in March 2017. With this open meeting format, presumably submissions regarding these rules may be made by members of the public to the LAB. Therefore, unlike at the OMB, the public may be able to directly shape the policies and procedures that govern the LAB's operations on a day to day basis.

## RULES OF PRACTICE AND PROCEDURE

Similar to the OMB, the LAB will conduct all hearings *de novo*. As noted above, draft rules of practice and procedure for the LAB and the conduct of these hearings are being prepared and will be considered at the LAB's business meeting in March 2017. While similarities to the OMB's rules of practice and procedure are anticipated, given the LAB's narrower mandate that is limited to appeals of Committee of Adjustment decisions, it will be interesting to see how rules and policies specifically directed to the efficient

operation of these (typically) shorter and simpler hearings may be incorporated.

## ONLINE MATERIALS

The details regarding all LAB appeals and scheduled hearings will be published online. LAB decisions will be distributed both by email and online. Parties will also have the option of paying a fee to obtain certified copies of the LAB's orders.

## LAB MEMBERS

On December 13, 2016 City Council appointed the first seven LAB members, adopting the recommendations of the LAB's Nominating Panel without amendments. The seven members will serve at the pleasure of Council for a 4 year term that will end December 13, 2020. Ian Lord, an experienced planning and development lawyer will act as Chair of the LAB. As at the OMB, the LAB's members come from a variety of experience and backgrounds and include a former civil litigator, Susan Bryson, a former Committee of Adjustment member, Sabnavis Gopikrishna, and a professional planner, Laurie McPherson. It is expected that one LAB member will preside alone over each hearing.

## MEDIATION PROGRAM

In addition to establishing the LAB, this month the City is launching its pilot mediation program for resolution of disputes on minor variance and consent applications. Similar to mediation at the OMB, it is hoped that this mediation program will supplement the LAB by providing an alternative mechanism for resolving disputes arising out of Committee of Adjustment decisions. Unlike the OMB, however, the mediation pilot program has no direct connection to the City's LAB. In particular, LAB members will not act as mediators. At the OMB, a key element to the success of its mediation program is the credibility and weight given by parties to the opinion of the mediator as an OMB member who presides over OMB hearings. As a presiding (or former) OMB member, the OMB's mediators are particularly well positioned to advise each party on their likelihood of success if they

were to proceed to a hearing. This direct connection and consequent authority goes a long way to moving the parties towards middle ground. As a result, it will be interesting to observe how this lack of direct connection impacts the success of mediations conducted under the City's pilot program.

Another distinguishing feature of the City's pilot mediation program is the ability of parties to participate in mediation prior to a hearing before the Committee of Adjustment. Specifically, where the Committee of Adjustment Chair determines that a matter may benefit from mediation, parties (including the applicant) will be invited to participate in the program. This feature of the pilot program provides a unique opportunity for resolution of parties' issues at the front end with the added benefit of potentially lowering the number of appeals that proceed to the LAB following a Committee of Adjustment's decision.

With the first mediation program beginning on February 9, 2017 in North York followed by Toronto and East York on February 15, 2017, Scarborough on February 16, 2017 and Etobicoke and York on February 23, 2017,<sup>9</sup> it should be fully up and running well in advance of the first hearings before the LAB. Assigned a preliminary budget of only \$50,000, however, the number of mediations that will be held and long-term viability of the program remain unknown.

## CONCLUSION

The City has undertaken to become the first municipality in Ontario to make use of the powers to establish a LAB first granted by the Province in 2006. While the exact mechanics of the LAB and the long-term impacts on land use planning are unknown, it is certain that the implementation of the City's LAB will be closely watched by participants in Ontario's land use planning process. While there are many similarities between the LAB and the OMB, it is particularly in its differences that the LAB may offer interesting insights into the

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<sup>9</sup> City of Toronto, "Committee of Adjustment (COA)" (13 February 2017), online: <<http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=ed2552cc66061410VgnVCM10000071d60f89RCRD>>.

potential for change and evolution in Ontario's land use planning regime. Only time will tell.

by Annik Forristal

For more information on this topic, please contact:

Toronto      [Annik Forristal](#)      416.865.7292      [annik.forristal@mcmillan.ca](mailto:annik.forristal@mcmillan.ca)

[a cautionary note](#)

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