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REPRESENTATION IN MATTERS BEFORE THE ONTARIO MUNICIPAL BOARD

The Finance and Administration Committee recommends the adoption of the recommendations contained in the following report, November 12, 2008, from the Commissioner of Finance and Commissioner of Corporate Services:

1. RECOMMENDATIONS

It is recommended that:

1. The Regional Solicitor be delegated the authority to engage external legal services up to \$250,000 per matter.
2. The Regional Treasurer is delegated the authority to transfer funds in the amount of up to \$250,000 from the Tax Stabilization Reserve per matter.
3. A report is to be forwarded to Council annually outlining any use of this delegation of authority.

2. PURPOSE

This report seeks Council's approval to delegate authority to the Regional Solicitor and the Regional Treasurer in respect of external legal services required for matters before the Ontario Municipal Board.

3. BACKGROUND

Currently the majority of the Region's legal representation before the OMB is provided in-house

At the present time, the majority of the Region's legal representation before the Ontario Municipal Board ("OMB") is provided by in-house counsel employed within the Legal Services Branch. The current complement of OMB counsel consists of two lawyers, the Senior Counsel Planning and Development Law and the Associate Counsel II Planning and Development Law. Development charges matters, including appeals of the by-law and complaints regarding the collection of development charges are handled by external counsel.

The OMB's jurisdiction impacts many areas of Regional governance

The OMB has jurisdiction over more than one hundred pieces of provincial legislation governing municipal activities such as planning, finance and infrastructure and environmental planning. Accordingly, the main client departments whom the Planning and Development counsel within the Legal Services Branch serve, include, Planning, Finance, Transportation Services, Environmental Services and Rapidco.

OMB work represents only a portion of the duties of the Region's Planning and Development lawyers

Representation before the OMB accounts for only one-half of the duties of the Planning and Development Law lawyers within the Legal Services Branch. The other half of their duties is more solicitor-type work and includes the negotiating, drafting and review of development charge, development charge credit, development charge deferral and site plan agreements and the researching and provision of legal opinions on issues raised by Council and staff. These solicitor-type duties are very labour intensive and require extensive meetings with staff and stakeholders and are often subject to aggressive deadlines.

4. ANALYSIS AND OPTIONS

The amount and duration of OMB matters has increased dramatically

Over the past three years, the number and average duration of OMB matters in which the Region has been involved has risen dramatically. The average duration of OMB hearings is now three to six weeks. This can be attributed to the rapid and extensive growth of the Region and to the proliferation and complexity of new Provincial legislation affecting the planning regime in Ontario – the *Oak Ridges Moraine Conservation Act 2001* and the Oak Ridges Moraine Conservation Plan, the *Places to Grow Act* and the Growth Plan, the *Greenbelt Act* and Plan and the *Source Water Protection Act*.

This pattern is continuing; the Province has just enacted the *Lake Simcoe Protection Act* and is developing the Lake Simcoe Protection Plan. All of these Acts require municipal compliance which affects the community, infrastructure and financial planning of the Region. The issues raised by these Plans are interrelated, complex and often contradictory. As a result, the number of appeals and consequently, the number of hearings, can be expected to continue to increase. The complexity of the issues generally requires the greater involvement of experts which increases the duration of the hearings and the preparation time required therefore.

Recent amendments to the Development Charges By-law have given rise to a number of appeals and complaints. Currently, one appeal is scheduled for eight weeks of hearing in 2009 and there are six outstanding complaints that have yet to be scheduled for hearing.

Scheduling conflicts and increased workload have made it impossible to maintain current level of service in-house

Due in part to increased workload and in part to scheduling conflicts, the current complement of Planning and Development Law lawyers cannot continue to provide the high level of service to which client departments are accustomed and expect. To maintain current levels of service, it will be necessary to assign some matters to external counsel. Staff have also recommended the addition of a Law Clerk in the 2009 budget to support the workload of current Solicitors.

A third party review has taken place and they recommend the use of external legal counsel to meet the demands for service in the Planning and Development practice area

A recent review of the Legal Services Branch by Catalyst Consulting, a firm specializing in law firms and in-house legal departments, confirmed that there is currently a shortfall between demand for legal services and the capacity of the current staffing resources in several areas including Planning and Development. Catalyst estimates an increase of 10% per year in demand for service in this area. Despite this growth, Catalyst does not recommend that the Region staff for peaks in this practice area as the nature of OMB work is highly unpredictable. Rather, they recommend that the shortfall in Planning and Development Law be addressed through external counsel, particularly in light of the favourable arrangements in place with the Region's external retainer. They also suggest that volumes of work should be monitored to determine whether there is justification for hiring an additional Planning and Development lawyer in the future.

Authority to draw from the reserve fund as required would ensure that matters are referred to external counsel in a timely manner

Scheduling conflicts related to hearings often arise quickly and require immediate response to ensure the provision of adequate legal services. It is often difficult to place a matter before Council to receive instructions in a timely matter, especially during the summer hiatus. Staff therefore recommend that Regional Council delegate authority to the Regional Solicitor to engage external legal counsel up to \$250,000 per matter and delegate authority to the Regional Treasurer to transfer funds in the amount of \$250,000 per matter from the Region's Tax Stabilization Reserve, for Legal Services. Staff propose to report back to Regional Council in 2009 regarding the status of any draws on the reserve and potential additional future funding requirements.

5. FINANCIAL IMPLICATIONS

Given the uncertainty about the number of hearings and extent of legal support that may be required, funding for the activities noted in this report have not been included in the

Region's operating budget historically. Staff are reluctant to include an on-going amount in the budget when these types of requirements don't necessarily occur annually. Accordingly, it is recommended that funds be drawn on an as-required basis from the Region's Tax Stabilization Reserve with the joint approval of the Regional Solicitor and Regional Treasurer. This will ensure funding for related legal activities and support required during the remainder of 2008 and throughout 2009 without creating additional pressure on the Regional budget for 2009.

6. LOCAL MUNICIPAL IMPACT

There is no local municipal impact however, the local municipalities benefit from the Region's participation in matters before the Ontario Municipal Board.

7. CONCLUSION

Due in part to increased workload and in part to scheduling conflicts, the current complement of Planning and Development Law lawyers cannot continue to provide the high level of service to which client departments are accustomed and expect. Therefore, it is recommended that Regional Council delegate authority to the Regional Solicitor and Regional Treasurer to engage external legal counsel as required to meet demands for matters before the OMB.

For more information on this report, please contact Joy Hulton, Regional Solicitor at Ext. 1417.

The Senior Management Group has reviewed this report.