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ANNUAL REPORT ON USE OF DELEGATED AUTHORITY FOR REPRESENTATION IN MATTERS BEFORE THE ONTARIO MUNICIPAL BOARD - 2009

The Finance and Administration Committee recommends the adoption of the recommendation contained in the following report dated January 13, 2010, from the Commissioner of Finance and the Regional Solicitor.

1. RECOMMENDATION

It is recommended that this report be received for information.

2. PURPOSE

The purpose of this report is to provide the annual update for 2009 on the use, by the Regional Solicitor and the Regional Treasurer, of the delegated authority to fund the retention of external legal services for matters before the Ontario Municipal Board from the Tax Stabilization Reserve.

3. BACKGROUND

Regional Council has delegated the authority to fund the retention of external legal services for Ontario Municipal Board matters from the Tax Stabilization Reserve

At its meeting of December 18, 2008, Regional Council delegated to the Regional Solicitor the authority to retain external legal services for Ontario Municipal Board (“OMB”) matters to an upset limit of \$250,000.00 per matter. The Regional Treasurer was authorized to transfer funds from the Tax Stabilization Reserve up to a maximum of \$250,000.00 per matter in order to pay the invoices for any external legal services retained through the use of the Regional Solicitor’s delegated authority. Regional Council also required that a report be submitted annually outlining the use of these delegated authorities.

This report is the annual update for the year 2009.

4. ANALYSIS

Despite increasing workload and scheduling pressures, internal counsel continue to strive to handle the majority of the Region's OMB matters internally and consequently the Regional Solicitor's use of the delegated authority was limited to one matter in 2009

Despite increasing workload and scheduling pressures, the internal Planning & Development Law counsel continued to handle the majority of OMB matters internally in 2009. This was possible due to a number of factors, including, the addition of the temporary full-time Associate Counsel I and temporary full time Law Clerk to the Planning and Development section, and the adjournment of a number of hearings to dates in 2010.

Accordingly, the Regional Solicitor was only required to use the delegated authority to retain external counsel to defend the Region's position regarding the appeal of ROPA 52 by the Province. Borden Ladner Gervais LLP ("BLG") was retained to handle this matter and to date, the Region has incurred a total \$11,904.90 in legal fees. The Regional Treasurer has accessed the Tax Stabilization Reserve to pay these invoices.

Despite its limited use to date, the reasons for the granting of the delegated authority remain valid and the authority should be maintained

Despite limited use of the delegated authority by the Regional Solicitor to date, the reasons for the granting of the delegated authority remain valid. Demand for service from the Planning & Development Law section continues to grow rapidly, driven by a number of factors:

- the OMB's jurisdiction over many areas of Regional governance;
- the shifting of development charges related work to in-house counsel;
- the increased number of Provincial plan and the resulting increase in the complexity and duration of OMB hearings; and
- the non OMB related duties of the Planning and Development Law lawyers

The OMB's jurisdiction impacts many areas of Regional governance creating demand for service from multiple client groups

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 section serve include Planning, Finance, Transportation Services, Environmental Services and York Region Rapid Transit Corporation.

Representation in Development Charges related work is shifting from external counsel to internal staff in 2010

Historically development charge matters, including appeals of the by-law and of complaints regarding the collection of development charges have been handled by external counsel. It is anticipated that the majority of this work will be shifted in-house commencing in 2010 to ensure that the Region develops appropriate and consistent corporate knowledge of the Development Charges By-law and its application within the Region to allow internal staff to address complaints and appeals. Given that Finance Department will be reviewing the Development Charge By-law in 2010, Legal Services will have to outsource some OMB matters in order to allow internal counsel to support the by-law review.

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 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.

The amount and duration of OMB matters has increased dramatically as a result of the growth in the Region and the proliferation and complexity of new Provincial legislation

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, the *Source Water Protection Act* and the *Lake Simcoe Protection Act* and 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 has increased and 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.

Staff anticipate the need for up to 1,000 hours of external legal services for Planning & Development matters in each of next three years

There are currently a number of OMB matters scheduled for 2010 including the appeals related to Times Developments in Downtown Markham, Aryeh Developments in Downtown Markham, Great Lands Developments in Richmond Hill, and the Aurora 2C West lands in Aurora. A number of the owners in these matters have also raised objections to the new Regional Official Plan and it is anticipated that a number of appeals will be filed in relation to that document and the anticipated ROPA as soon as the legislation permits.

Following an extensive review of service demands, staff estimate that the Region may require up to 1,000 hours of external legal services in each of next three years in order to meet the overall demand for Planning & Development law support. These hours are in addition to the complement of permanent and temporary staff in the Planning & Development Law section of Legal Services. If the temporary staff compliment is not maintained, the need for external legal services will increase.

Authority to draw from the reserve fund as required ensures 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 manner, especially during the summer hiatus and as a result of upcoming municipal election.

For these reasons, staff do not propose any changes to the Regional Solicitor's and Regional Treasurer's delegated authority to access the Tax Stabilization Reserve to retain external counsel for OMB matters.

5. FINANCIAL IMPLICATIONS

BLG has rendered invoices in the amount of \$11,904.90 and the Regional Treasurer has transferred funds in that amount from the Tax Stabilization Reserve to pay these accounts.

The Region has secured favourable hourly rates with external law firms through a retainer agreement covering the period 2010-2012. The Region could incur external legal costs in the range of \$300,000 to \$400,000 in 2010 depending upon the actual usage of services.

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

In 2009 the Regional Solicitor used her delegated authority to retain external legal services in relation to one matter, ROPA 52. BLG was retained to handle this matter and have currently rendered accounts in the amount of \$11,904.90. The Regional Treasurer has accordingly used his delegated authority to transfer funds from the Tax Stabilization Reserve to cover these costs.

Despite staff's success in minimizing the use of this authority, staff advise that the reasons for the delegation of these powers remain equally, if not more valid in 2010 and accordingly, staff do not anticipate recommending any changes to this policy.

For more information on this report, please contact Robert Miller, Senior Counsel Planning & Development, at Ext. 1404.

The Senior Management Group has reviewed this report.