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ANNUAL REPORT ON USE OF DELEGATED AUTHORITY FOR REPRESENTATION IN MATTERS BEFORE THE ONTARIO MUNICIPAL BOARD - 2011

The Finance and Administration Committee recommends the adoption of the recommendation contained in the following report dated January 27, 2012, from the Regional Solicitor.

1. RECOMMENDATION

It is recommended that this report be received for information.

2. PURPOSE

This report provides the annual update for 2011 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 (“OMB”) from the Tax Stabilization Reserve.

3. BACKGROUND

York Regional Council has delegated the authority to fund the retention of external legal services for OMB 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 OMB matters to an upset limit of \$250,000 per matter. The Regional Treasurer was authorized to transfer funds from the Tax Stabilization Reserve up to a maximum of \$250,000 per matter in order to pay the invoices for any external legal services retained through the use of the Regional Solicitor’s delegated authority. York Regional Council also required that a report be submitted annually outlining the use of these delegated authorities.

At its meeting of September 23, 2010, Regional Council delegated to the Regional Solicitor the authority to retain external legal services for matters associated with the Regional Official Plan (“ROP”) and amendments to the ROP. The costs associated with defending the ROP and the amendments to it, were estimated to be significantly higher than the demands forecast in 2008, and therefore the need for resources exceeded the scope of the authority from 2008.

This report is the annual update for the year 2011.

4. ANALYSIS AND OPTIONS

While the majority of OMB matters are handled internally, staff balance the caseload between internal and external resources

Despite increasing workload and scheduling pressures, the internal Planning and Development Law counsel continued to handle the majority of OMB matters internally in 2011. Accordingly, the Regional Solicitor was only required to use the delegated authority to retain external counsel to defend the Region's position regarding the following appeals:

- Regional Official Plan and Regional Official Plan Amendment Nos. 1, 2 and 3
- Aurora 2C East and 2C West and Aurora Official Plan Amendment 73
- Vaughan Official Plan Amendment 637
- David Dunlap Observatory appeals – Town of Richmond Hill
- Richmond Hill Official Plan Appeals
- East Gwillimbury Official Plan Appeals
- Seaton Community appeals

The Region has retained the firm of Borden Ladner Gervais LLP to defend the first five listed appeals and WeirFoulds LLP to defend the East Gwillimbury Official Plan Appeal. The Region retained the firm of Rueter Scargall Bennett LLP on the Seaton Community Appeals in order to ensure continuity on the file, which was previously handled by internal Planning and Development law counsel. These retainers are in accordance with the overall retainer approved by Regional Council in 2009.

The Planning and Development Law group continued to handle the majority of the Region's OMB matters in-house in 2011, representing the Region on the following appeals:

- West Hill Redevelopment Company Limited – Town of Aurora
- King Cole Holding Limited – Town of East Gwillimbury
- Aryeh Construction Limited – Town of Markham
- Clearway Holdings Limited – Town of Richmond Hill
- Haulover Investments - Town of Richmond Hill
- Major Mac. 404 Realty Inc. - Town of Richmond Hill
- Torview Properties Inc. – Town of Richmond Hill
- Intracorp Projects Acquisitions Limited – Town of Richmond Hill
- 2036767 Ontario Inc./2022988 Ontario Inc. – Town of Whitchurch-Stouffville

In 2011, Regional staff have also begun the process of defending fifty one appeals to the ROP and nine appeals to ROPA-s 1, 2 and 3. This process has involved five pre-hearing conferences, a series of procedural motions, and seven days of mediation of a number of

issues. As a result of this work, the number of appeals to the ROP has been reduced to thirty-five, minutes of settlement have been executed with two appellants, and minutes of settlement are in process of negotiation with eight other appellants.

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

Demand for service from the Planning and 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 plans and policies, and the resulting increase in the complexity and duration of OMB hearings;
- The non OMB related duties of the Planning and Development Law lawyers; and
- The adoption of local official plans by a number of the area municipalities within the Region, and the appeals of these plans to the OMB

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 Transportation Services and Community Planning, Finance, the office of the CAO, Environmental Services and York Region Rapid Transit Corporation.

Representation in Development Charges related work shifted from external counsel to internal staff in 2011 and has engaged significant staff resources

Historically development charge matters, including appeals of the bylaw and of complaints regarding the collection of development charges have been handled by external counsel. Commencing in 2010, this work has been gradually shifted in-house to ensure that the Region develops appropriate and consistent corporate knowledge of the Development Charges Bylaw and its application within the Region to allow internal staff to address complaints and appeals.

The Finance Department has commenced the review process leading up to the 2012 Development Charge Bylaw and Legal Services will continue to have to outsource some OMB matters in order to allow internal counsel to support the bylaw review. Legal Services has worked extensively with the Finance Department in its consultations with

the development industry leading up to the adoption of the new development charge bylaw, and the drafting of the new bylaw.

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. Over the course of the past year, Regional staff have also had to defend over fifty appeals to the ROP and ROPA-s 1, 2 and 3, details of which is set out in Section 7 of this report.

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

There are currently a number of OMB matters which have been or will shortly be scheduled for 2012 including the following:

- The ROP and Regional Official Plan Amendment Nos. 1, 2 and 3
- Sanmike Developments in the Town of Richmond Hill
- Appeal of the Town of Richmond Hill Official Plan

- Appeals of the Town of East Gwillimbury Official Plan
- Appeals of the City of Vaughan Official Plan
- The OMB hearing involving the Seaton lands in the Region of Durham
- Tesmar Holdings in the City of Vaughan
- King Cole Holdings Limited in the Town of East Gwillimbury
- Mary Lake Estates in King Township
- Corsica Developments (David Dunlop Observatory) in the Town of Richmond Hill
- Reviews and appeals of the OMB decisions in the Aurora 2C private appeals and Official Plan Amendment 73 in the Town of Aurora
- 2036767 Ontario Inc. and 2022988 Ontario Inc. in the Town of Whitchurch-Stouffville
- 2012 Development Charge Bylaw Appeals

These matters will be divided between internal and external legal counsel, as appropriate.

Following an extensive review of service demands, staff estimate that the Region may require up to \$500,000 of external legal services over the next year in order to meet the overall demand for Planning and Development law support. These hours are in addition to the complement of staff in the Planning and Development Law section of Legal Services.

Ten additional days of mediation for the ROP that have already been scheduled for January of 2012, and further attendances at the Board are anticipated throughout the year, along with additional work with the remaining appellants to resolve outstanding issues.

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 York Regional Council to receive instructions in a timely manner, especially during the summer hiatus.

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.

Link to Key Council-approved Plans

The efficient use of external counsel through favourable rates furthers the Strategic Priority Area, set out in the Region's strategic plan, of managing the Region's finances prudently.

5. FINANCIAL IMPLICATIONS

External counsel have rendered invoices for services rendered in 2011 in the amount of one million one hundred and sixty eight thousand four hundred and sixty nine dollars and thirty six cent (\$1,168,469.36) inclusive of disbursements and HST. The Regional Treasurer has transferred funds in that amount from the Tax Stabilization Reserve to pay these invoices.

The Region has secured favourable hourly rates with external law firms through a retainer agreement covering the period 2010-2012. Throughout 2012 the Regional Solicitor will re-examine the need for external legal services and will re-negotiate the retainer agreement accordingly.

6. LOCAL MUNICIPAL IMPACT

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

7. CONCLUSION

External counsel was retained to handle these matters and have currently rendered accounts in the amount of one million one hundred and sixty eight thousand four hundred and sixty nine dollars and thirty six cent (\$1,168,469.36). The Regional Treasurer has accordingly used his delegated authority to transfer funds from the Tax Stabilization Reserve to cover these costs.

Despite the extensive workload handled by in-house counsel, the use of external counsel is required to handle the growing number of OMB hearings. The use of delegated authority in retaining external counsel allows the Regional Solicitor to be responsible to the workload demands in a cost-effective manner.

For more information on this report, please contact Gabriel Szobel, Senior Counsel Planning and Development Law, at Ext. 1433.

The Senior Management Group has reviewed this report.