

9

ANNUAL REPORT ON USE OF DELEGATED AUTHORITY FOR REPRESENTATION IN MATTERS BEFORE THE ONTARIO MUNICIPAL BOARD - 2010

The Finance and Administration Committee recommends the adoption of the recommendation contained in the following report dated January 28, 2011, from the Commissioner of Finance and the Regional Solicitor.

1. RECOMMENDATION

It is recommended that this report be received for information.

2. PURPOSE

This report provides the annual update for 2010 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, York 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.

This report is the annual update for the year 2010.

4. ANALYSIS AND OPTIONS

Despite increasing workload and scheduling pressures, internal counsel continue to strive to handle the majority of the Region's OMB matters internally whenever possible

Despite increasing workload and scheduling pressures, the internal Planning and Development Law counsel continued to handle the majority of OMB matters internally in 2010. 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 in 2009. The 2011 Corporate Services budget includes a request to confirm both positions as permanent, full-time employees.

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
- Regional Official Plan Amendment 52 and Vaughan Official Plan Amendment 637

The Region has retained the firm of Borden Ladner Gervais LLP ("BLG") to defend these appeals.

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 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; 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 2011

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. Of the three appeals to the 2010 DC Bylaw, two were handled and settled by in-house legal staff. The third is currently being handled by in-house staff with assistance from outside counsel. Mr. Brad Teichman of McCarthy Tétrault LLP has been retained to assist in-house counsel on that matter based on his expertise and experience defending appeals to the previous development charge bylaw.

At its meeting held on September 23, 2010, at Clause 3 of the Private Report of the Finance and Administration Committee, Regional Council authorized the retainer, if necessary, of Mr. Teichman and these costs are not funded by the Tax Stabilization Reserve. 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.

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 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 2011 including the following:

- Regional Official Plan and Regional Official Plan Amendment Nos. 1, 2 and 3
- Shops on Steeles in the Town of Markham
- Vaughan Official Plan Amendment 637
- Haulover Investments Ltd. in the Town of Richmond Hill
- Sanmike Developments in the Town of Richmond Hill
- Clearway Holdings in the Town of Richmond Hill
- Corsica Developments (David Dunlop Observatory) in the Town of Richmond Hill
- 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
- 2010 Development Charge Bylaw Amendment Appeals

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 the next two years in order to meet the overall demand for Planning and Development law support. These hours are in addition to the complement of permanent and temporary staff in the Planning and Development Law section of Legal Services. If the temporary staff complement 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 York Regional 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

External counsel have rendered invoices for services rendered in 2010 in the amount of \$124,030.81. On a per file basis these costs are as follows:

- Regional Official Plan and Regional Official Plan Amendment Nos. 1, 2 and 3 (\$31,503.24)
- Aurora 2C East and 2C West and Aurora Official Plan Amendment 73 (\$64,651.17)
- Regional Official Plan Amendment 52 and Vaughan Official Plan Amendment 637 (\$27,876.40)

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. The Region could incur external legal costs in the range of \$300,000 to \$400,000 in 2011 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 OMB.

7. CONCLUSION

In 2010 the Regional Solicitor used her delegated authority to retain external legal services in relation to the following matters:

- 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

- Regional Official Plan Amendment 52 and Vaughan Official Plan Amendment 637

External counsel was retained to handle these matters and have currently rendered accounts in the amount of \$124,030.81. The Regional Treasurer has accordingly used her 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 2011 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 and Development, at ext. 1404.

The Senior Management Group has reviewed this report.