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REPRESENTATION BEFORE THE ONTARIO MUNICIPAL BOARD IN REGIONAL OFFICIAL PLAN APPEAL MATTERS

The Finance and Administration Committee recommends the adoption of the recommendations contained in the following report dated September 8, 2010, from the Commissioner of Finance, the Commissioner of Corporate Services and the Commissioner of Planning and Development Services.

1. RECOMMENDATIONS

It is recommended that:

1. The Regional Solicitor be authorized to engage external legal services for matters associated with Regional Official Plan and/or Regional Official Plan Amendment.
2. The Commissioner of Planning and Development Services be authorized to engage external planning services for matters associated with Regional Official Plan and/or Regional Official Plan Amendment appeals.
3. The Commissioner of Finance and Regional Treasurer be authorized to transfer funds from the Tax Stabilization Reserve for costs associated with Regional Official Plan appeals.
4. The Province of Ontario be approached through a letter from the Regional Chair to assist the Region in the costs of defending the Provincial Plans through the York Region Official Plan. Such costs include in-kind support and witnesses, but also direct financial contributions to offset the costs to Regional taxpayers to defend Provincial Plans and policies.
5. A report is to be forwarded to Council annually outlining any use of this delegation of authority.

2. PURPOSE

This report seeks approval to delegate authority to the Regional Solicitor, Commissioner of Planning and Development Services and Regional Treasurer with respect to external legal and planning services required in relation to Regional Official Plan and ROPA 1, 2 and 3 appeals before the Ontario Municipal Board.

3. BACKGROUND

As a result of recent Places to Grow Conformity Exercise, it is expected that there will be a number of issues associated with the Regional Official Plan, the Urban Expansion Amendments (ROPA's 1, 2 and 3) and local Official Plan's related to growth leading up to 2031. It is anticipated that there will be an increase in Ontario Municipal Board workload associated with planning and legal matters, including a substantial increase in the potential number of hearings and there will be a need to secure services from outside legal counsel and expert consultants. This is in addition to current ongoing processes and legal work such as routine appeals and ongoing work programs usually related to specific geographic areas.

In December 2008, Regional Council delegated authority to the Regional Solicitor and Regional Treasurer to engage external legal resources for OMB matters and draw funds for these resources from the Tax Stabilization Reserve up to \$250,000 per matter. The costs associated with the Regional Official Plan appeals will be significantly higher than the demands forecasted in 2009, and therefore the need for resources will exceed the scope of current authority.

4. ANALYSIS AND OPTIONS

Authority to draw from the reserve fund as required ensures that matters are referred to external counsel in a timely matter

Due in part to increased workload and in part to scheduling conflicts, the current complement of Planning and Development Law lawyers cannot meet the demand for services, and as a result, the Region may be required to engage external legal services for OMB matters.

Similarly, the coordination of planning issues associated in the defence of the Regional Official Plan and the Urban Expansion Amendments (ROPA's 1, 2 and 3) will potentially be beyond the capacity of existing planning staff. The engagement of consultants and or contract staff may be necessary to coordinate, research, provide evidence and negotiate resolution of issues. The resources may be required over a multi year timeframe and additional resources may be required as additional changes are made to the Regional Official Plan over time.

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. The Regional Solicitor and Regional Treasurer continue to act under the authority delegated in 2008 to meet the demands for service. Staff propose to report back to Council as part of 2011 budget

regarding the status of monies drawn from the reserve and potential additional future funding and staffing requirements.

Approval of the Regional Official Plan will likely result in a significant number of appeals, and external resources will be required to represent the Region's interests

The York Region Official Plan was adopted by Regional Council in December 2009 and is anticipated to be approved, subject to modifications by the Ministry of Municipal Affairs and Housing, in August. Following the Minister's decision on the Plan, there is a 20-day appeal period, when stakeholders may appeal either site specific issues or general official plans matters, through the Ministry of Municipal Affairs and Housing to the Ontario Municipal Board (OMB).

In the months leading up to the adoption of the Official Plan, Regional staff received comments from a total of 105 separate development interests, as well as 16 members of the general public, 9 special interest groups and 28 agencies and other government levels.

Regional staff estimates that a significant number of these submissions may result in appeals of the Official Plan after the Minister's approval many of which will not result in negotiated settlements and will require a full hearing. In addition to this, the Region has initiated urban expansion amendments which are also likely to generate appeals once a decision is made. In addition, the East Gwillimbury, Markham, Vaughan official plans being prepared to meet Growth Plan conformity may generate additional significant appeals.

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. In these situations it is possible that the Region may need to retain ongoing services of expert witnesses or contract staff in Planning and in other fields to assist Regional staff negotiating settlements, in hearing preparation and evidence. The costs of these experts must also be factored into the overall hearing costs. Staff are reluctant to include on-going amounts in the budget when these types of requirements do not necessarily occur annually. Based on past experience, the average cost of a hearing of this magnitude before the Ontario Municipal Board including all external legal and consulting fees (both for the hearing days and for preparation) is approximately \$20,000 per day. Accordingly, it is recommended that funds be drawn on an as-required basis from the Region's Tax Stabilization Reserve with the approval of the Regional Solicitor, Commissioner of Planning and Development Services and Regional Treasurer. Staff have not proposed an upset limit on these draws as the costs of potential appeals of the Region's Official Plan are difficult to estimate.

In addition since many of the issues being defended though this Official Plan involve the Provincial Plans, including the Growth Plan and the Greenbelt Plan and Oak Ridges Moraine Conservation Plan, it is recommended that the Province of Ontario be requested to contribute to the costs of this defence, both in in-kind support and financially. A recommendation to this effect is included in this report.

6. LOCAL MUNICIPAL IMPACT

The Region has worked closely with area municipalities in preparation of both the Regional Official Plan and the urban expansion amendments. The Region will coordinate the defence of these documents with the area municipalities, as they have a direct influence on the area municipalities land Official Plan conformity processes and defence.

7. CONCLUSION

It is recommended that Regional Council delegate authority to the Regional Solicitor and Commissioner of Planning and Development Services to engage external legal and planning services for matters associated with Regional Official Plan appeals and to the Regional Treasurer to transfer funds from the Tax Stabilization Reserve for costs associated with Regional Official Plan appeals.

Further, it is recommended that the Province of Ontario be approached through a letter from the Regional Chair to assist the Region in the costs of defending the Provincial Plans through the York Region Official Plan. Such costs include in-kind support and witnesses and direct financial contributions to offset the costs to Regional taxpayers to defend Provincial Plans and policies.

For more information on this report, please contact Joy Hulton, Regional Solicitor at Ext.1417 or Bryan Tuckey, Commissioner of Planning and Development Services at Ext. 1500.

The Senior Management Group has reviewed this report.