

Clause No. 13 in Report No. 6 of the Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on March 27, 2014.

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ANNUAL REPORT ON USE OF DELEGATED AUTHORITY FOR REPRESENTATION IN MATTERS BEFORE THE ONTARIO MUNICIPAL BOARD – 2013

Committee of the Whole recommends adoption of the recommendation contained in the following report dated February 27, 2014 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 2013 on the use, by the Regional Solicitor and the Commissioner of Finance, 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. The annual report is required as part of the delegation of authority to the Regional Solicitor and Commissioner of Finance.

3. BACKGROUND

Delegated authority to fund external legal services for OMB matters

Since 2008, Council has delegated to the Regional Solicitor the authority to retain external legal services for OMB matters, including matters associated with appeals of the Regional Official Plan (“ROP”) and amendments to the ROP. The Commissioner of Finance is authorized to transfer funds from the Tax Stabilization Reserve in order to pay the invoices for external legal services retained through the use of the Regional Solicitor’s delegated authority. A report is submitted annually outlining the use of these delegated authorities. This report is the annual update for the year 2013.

4. ANALYSIS AND OPTIONS

Six matters before the OMB in 2013 were handled by external counsel

Internal counsel continue to handle the majority of planning and development related appeals to the OMB. Accordingly, the Regional Solicitor was only required to use the delegated authority to retain external counsel to represent the Region on the following matters:

- Regional Official Plan and ROP Amendments No. 1, 2 & 3
- Richmond Hill Official Plan (2010)
- Vaughan Official Plan (2010)
- David Dunlap Observatory – Town of Richmond Hill
- Tesmar Holdings Inc. – City of Vaughan
- Seaton Community Plan – City of Pickering

External counsel was retained in accordance with the retainer agreements established with three law firms for legal services in 2013- 2015 as approved by Council in November 2012.

Phase 1 of the Regional Official Plan hearing concluded in June 2013 and the decision is pending

The first phase of the OMB hearing for the remaining ROP Appeals took place between January and May 2013. It involved 25 hearing days. A decision from the OMB has not yet issued on the Phase 1 hearing. It is anticipated that the next phase of the ROP hearing will commence in 2014; however, the timing of this next phase will not be determined until the decision from the first phase of the hearing has issued.

Appeals of development applications are handled internally

Matters handled by internal counsel involve appeals of development applications, which are appealed for non-decision at the local level, where there is a Regional interest related to policy issues or implementation matters, as well as appeals of the development charges bylaw and appeals of development charge payment complaints. In 2013, internal counsel was responsible for managing approximately 40 files, where the Region is involved as a party to an appeal before the OMB. In addition, internal counsel handled appeals of new local official plans and secondary plans including:

- Official Plan for the Town of Aurora (2010)
- Official Plan for the Town of East Gwillimbury (2010)
- Sutton/Jackson's Point Secondary Plan – Town of Georgina

Expenditures for external legal services will likely increase in 2014 assuming the next phase of the ROP hearing proceeds

OMB matters anticipated to be handled by external counsel in 2014 include the following appeals:

- Regional Official Plan and ROP Amendments No. 1, 2 & 3
- Richmond Hill Official Plan (2010)
- Vaughan Official Plan (2010)
- Tesmar Holdings Inc. – City of Vaughan

While the local OP matters are not expected to result in extensive use of external counsel, the ROP appeal will require significant expenditures for external legal services as the next phase of the hearing proceeds. It is expected that the need for external legal services for planning and development matters will decrease significantly in 2015, by which time the ROP hearing should be concluded.

Link to Key Council-approved Plans

The efficient use of external counsel through established retainer agreements 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 has provided invoices for services rendered in 2013 in the amount of \$979,694 inclusive of disbursements and HST, of which \$746,516 was for the ROP/ROPA matters. The Commissioner of Finance has transferred funds in that amount from the Tax Stabilization Reserve to pay these invoices.

External legal services are provided pursuant to retainers agreements with three law firms that resulted from a competitive procurement process. These agreements include favorable hourly rates for the provision of all external legal work including representation in matters before the OMB.

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

The use of delegated authority in retaining external counsel allows the Regional Solicitor to manage external legal resources in an effective and efficient manner, and ensures access to external resources as required to protect and promote the Region's interests in matters before the OMB.

For more information on this report, please contact Gabriel Szobel, Senior Counsel Planning and Development Law, at Ext. 71433.

The Senior Management Group has reviewed this report.