

Section II – Items for Executive Action

TO: Chair and Members of the Executive Committee
Meeting #6/18, Friday, August 10, 2018

FROM: Carolyn Woodland, Senior Director, Planning and Development

RE: **LOCAL PLANNING APPEAL TRIBUNAL**
Request for Authorization to Appear, August 2018

KEY ISSUE

Authorization for staff to appear before the Local Planning Appeal Tribunal (LPAT), and if needed, retain legal counsel on 2018 LPAT appeals within the Toronto and Region Conservation Authority jurisdiction.

RECOMMENDATION

THAT authorization be given to Toronto and Region Conservation Authority (TRCA) staff to obtain Party status and/or Participant status, and if needed, retain legal counsel to protect TRCA's interests before the Local Planning Appeal Tribunal (LPAT) regarding the appeals described in Attachment 1;

THAT TRCA staff continue to work cooperatively with TRCA's municipal partners, the appellants, and other parties to ensure TRCA's interests are implemented as part of the LPAT process;

AND FURTHER THAT the Tribunal and all parties to the hearings be so advised.

BACKGROUND

Policy 7.5.2 (p) of The Living City Policies for Planning and Development in the Watersheds of the Toronto and Region Conservation Authority (LCP) states that, "TRCA staff obtain authorization from TRCA's Authority/Executive Committee to appear before tribunals on planning and development matters". Staff is seeking authorization to appear before the LPAT, and if needed, retain legal counsel on appeals within the TRCA jurisdiction.

Since the last staff report in April 2018, the Ontario Municipal Board (OMB) has been replaced with the LPAT through the enactment of Bill 139 (*Building Better Communities and Conserving Watersheds Act*). OMB reform resulted in an increase in the number of OMB appeals prior to the enactment of Bill 139, in part to grandfather the appeals under previous OMB / Planning Act rules. Other appeals are advancing under the new LPAT process.

TRCA staff is seeking either "Party" or "Participant" status in several appeals, as TRCA has an interest from a policy and regulatory perspective. In many cases, TRCA is assisting municipal partners by providing technical review advice through existing Memorandums of Understanding (MOU's).

"Party" status refers to a person or organization that requests full involvement in the hearing and is recognized by the Tribunal. Parties take part in the hearing by exchanging documents, presenting evidence, questioning witnesses and making submissions to the Tribunal. Parties may also request costs, adjournments or a review of the decision.

Item 9.1

“Participant” status refers to a person or organization that participates by making a statement to the Tribunal on some or all of the issues at a hearing. A Participant may attend all or only part of the proceedings. Participants are not required to make submissions to a municipal Council before becoming involved in a LPAT matter. When making a statement to the Tribunal, Participants must swear to tell the truth. They may be questioned by the Tribunal and other parties. Participants generally do not question witnesses and cannot ask for costs, adjournments or request a review of the decision.

In most cases, TRCA Planning and Development and Engineering Services staff represent the interests of TRCA during the LPAT process. However, in certain circumstances, TRCA retains legal counsel to ensure TRCA’s interests are protected and addressed during the course of the LPAT proceedings. Instances where TRCA would require legal counsel include bringing forward a motion to the Tribunal for consideration, when the hearing enters into formal adjudication, when TRCA needs to cross-examine experts representing other Parties, or when the appeal is complex involving legal matters where staff requires guidance. In all cases, TRCA staff and retained legal counsel will continue to work with Parties and Participants to the hearing in an attempt to resolve TRCA’s issues, scope TRCA’s involvement and to reduce legal fees to the greatest extent possible.

Certain appeals require significant resources to represent the interests of TRCA at LPAT. A key reason for this is an increase in the number of appeals and hearings and the length of time spent to complete these hearings. Hearings also require the involvement of several staff from multiple technical disciplines (i.e., planning, ecology, engineering, geotechnical engineering, hydrogeology, etc.) to represent the interests of TRCA. Appeals continue to be more technically complex as applications move into more sensitive landscapes. This trend of development being proposed within sensitive landscapes requires a multi-disciplinary and inter-departmental representation at LPAT hearings. Appeals with environmental and/or natural hazard issues can divert TRCA review efforts away from the standard review stream due to Tribunal imposed timelines, which are often short. Appeals at LPAT involve many of the same team members at TRCA involved in the technical review of applications, infrastructure studies and permit reviews. Also, through existing Memorandum of Understandings (MOUs) with municipalities, TRCA is expected to provide technical and scientific expertise in support of the environmental planning function of municipalities in LPAT processes. TRCA also represents the Provincial interest on the natural hazard policies of the Provincial Policy Statement (PPS) as part of larger government review agency teams. As a result, staff are expected to appear before the Tribunal to fulfill these roles and responsibilities for our municipal and government review agency partners. This situation of competing demands and workloads involving the same team members is currently being examined as part of a review of the TRCA Planning and Development review process.

RATIONALE

Attachment 1 includes a summary of each appeal organized by municipality. Staff is requesting authorization to appear before the Tribunal for these appeals and will continue to bring forward future requests as per the direction within TRCA’s LCP.

FINANCIAL DETAILS

Account Code 110-99 has been established to provide for TRCA’s legal services fees related to Planning and Development matters.

DETAILS OF WORK TO BE DONE

Staff will continue to represent the interests of TRCA during any mediation and scoping processes. Should the need arise, TRCA staff is requesting authorization of the Executive

Item 9.1

Committee to retain legal counsel to ensure TRCA's interests, as identified above, are protected and addressed. TRCA staff and retained legal counsel will continue to work with the Parties and Participants leading up to the hearing in an attempt to resolve TRCA's issues, and to reduce legal fees to the greatest extent possible.

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Attachments: 1