

Item 8.7.

Section I – Items for Board of Directors Action

TO: Chair and Members of the Board of Directors
Meeting #6/19, Friday, June 21, 2019

FROM: Sameer Dhalla, Director, Development and Engineering Services
Barbara Montgomery, Legal Counsel, Risk Management

RE: **LOCAL PLANNING APPEAL TRIBUNAL**
Request for Authorization to Appear, June 2019

KEY ISSUE

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

RECOMMENDATION

THAT authorization be given to Toronto and Region Conservation Authority staff to obtain Party or Participant status at the LPAT or TLAB and, if needed, retain external legal counsel to protect TRCA's mandate and other provincial and municipal interests related to TRCA's technical expertise 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 protected as part of the LPAT or TLAB process;

AND FURTHER THAT the LPAT or TLAB 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 Local Planning Appeal Tribunal (LPAT) or the Toronto Local Appeal Body (TLAB), and if needed, retain legal counsel on appeals within the TRCA jurisdiction. There are eight (8) new or recently activated LPAT appeals and one (1) new TLAB appeal, including one (1) in Durham Region, two (2) in the Region of Peel, five (5) in the City of Toronto, and two (2) in York Region discussed in this report. There is one additional appeal in Peel which will be the subject of a separate future report for Board of Directors action.

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 appeal procedures and hearing rules. Other appeals are advancing under the new LPAT process, but procedures applying to the LPAT are being revised under the recent Bill 108 (More Homes, More Choice Act). This is expected to result in an increased number of appeals over that of the existing LPAT process. In addition, in 2017 the City of Toronto Council passed Toronto Municipal Code Chapter 142 and created the TLAB. The TLAB is an independent quasi-judicial tribunal that hears appeals of Committee of Adjustment decisions for minor zoning variances and land severances (consents).

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TRCA staff is seeking either “Party” or “Participant” status in these appeals at LPAT or TLAB, 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) with partner municipalities.

“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.

Procedures and the level of effort varies whether the appeal is under the former OMB, new LPAT or TLAB rules. Parties may also request costs, adjournments or a review of the decision.

“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 an LPAT or TLAB 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 Development and Engineering Services (DES) and in-house legal counsel represent the interests of TRCA during the LPAT or TLAB process. However, in certain circumstances, TRCA retains external legal counsel to ensure TRCA’s interests are protected and addressed during the course of the LPAT or TLAB proceedings. In these cases, DES staff first engage TRCA’s in-house legal counsel. However, for complex and time-consuming cases, TRCA may retain external legal counsel from the four law firms that TRCA has retainer agreements with. In all cases, TRCA staff and legal counsel will continue to work with Parties and Participants to the hearing to resolve TRCA’s issues, scope TRCA’s involvement and to reduce external legal fees to the greatest extent possible. In most cases, settlements are reached with little or no additional cost beyond staff time.

Certain appeals require significant resources to represent the interests of TRCA at LPAT. A key reason for this extensive expenditure of effort 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. When development is proposed within sensitive landscapes our response often requires a multi-disciplinary and inter-departmental representation at LPAT or TLAB 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 or TLAB 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 or TLAB 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 is currently being examined as part of a streamlining review of the TRCA Development Planning and Permits process.

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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. In some cases, due to timing, staff will request retroactive authorization for appeals in which TRCA has obtained Party or Participant status. Staff will also take all effort to resolve TRCA's interests in the appeals, while supporting municipal partners.

Relationship to Building the Living City, the TRCA 2013-2022 Strategic Plan

This report supports the following strategies set forth in the TRCA 2013-2022 Strategic Plan:

Strategy 2 – Manage our regional water resources for current and future generations

Strategy 4 – Create complete communities that integrate nature and the built environment

Strategy 12 – Facilitate a region-wide approach to sustainability

FINANCIAL DETAILS

Account Code 110-99 has been established to provide for TRCA's legal services fees related to Development Planning and Permit matters. This account is funded by a small percentage of development application fees.

DETAILS OF WORK TO BE DONE

Staff and internal legal counsel will continue to represent the interests of TRCA during any pre-hearing, negotiation and mediation processes. Staff will retain external legal counsel as required to ensure TRCA's interests are protected and addressed. TRCA staff and retained legal counsel will continue to work with Appellants and Parties to resolve TRCA's issues in advance of a hearing.

Report prepared by: Steven Heuchert, extension 5311

Emails: steve.heuchert@trca.on.ca

For Information contact: Steve Heuchert, extension 5311

Emails: steve.heuchert@trca.on.ca

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Attachments: 1

Attachment 1: Chart of Appeals