

Section I – Items for Board of Directors Action

TO: Chair and Members of the Board of Directors
Friday, January 29, 2021 Meeting

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

RE: LOCAL PLANNING APPEAL TRIBUNAL

KEY ISSUE

Authorization to appear before the Local Planning Appeal Tribunal (LPAT) and Toronto Local Appeal Body (TLAB) 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 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 Board approved Living City Policies for Planning and Development in the Watersheds of the Toronto and Region Conservation Authority (LCP) requires 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. TRCA is currently a Party to twenty-six (26) LPAT or TLAB appeals across our jurisdiction. TRCA is actively trying to settle appeals but is often in the position of awaiting a resubmission by applicants or resolution of land use or density issues tied to an appeal. There are nine (9) new or recently activated LPAT appeals, including one in Durham Region, three (3) in the Region of Peel, three (3) in the City of Toronto, and two (2) in York Region discussed in this report.

Procedures applying to the LPAT were revised under the recent Bill 108 (More Homes, More Choice Act), and are now akin to the former Ontario Municipal Board process including hearings de-novo. This change due to Bill 108 is expected to result in an increased number of appeals over that of the previously 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).

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

Item 7.8

assisting municipal partners by providing technical review advice through existing Memorandums of Understanding (MOU's) with partner municipalities.

Recently passed Bill 229 applies limitations on the ability for a Conservation Authority to appeal certain applications made under the Planning Act or to be added as "Parties" to an appeal, except where an appeal is made under or an issue is related to a prescribed natural hazard risk. However, this section of Bill 229 has yet to be proclaimed and therefore staff continue to pursue Party status on matters of importance to our mandate and/or our Memorandums of Understanding with our municipal partners including those relating to natural heritage and water until such time as the relevant section of Bill 229 is proclaimed.

"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 LPAT, 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 written 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. Participants cannot otherwise participate in the proceedings, and cannot ask for costs, adjournments or request a review of the decision.

In most cases, TRCA seeks Party Status and Development and Engineering Services (DES) staff 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 law firms that TRCA has retainer agreements with. In all cases, TRCA staff and legal counsel will continue to work with Parties to the hearing to resolve TRCA's issues, scope TRCA's involvement and to reduce external legal fees to the greatest extent possible. TRCA is also investigating sharing counsel for hearings where the municipality and TRCA as Parties are aligned. 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

Item 7.8

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.

RATIONALE

Attachment 1 includes a summary of each appeal organized by municipality. Staff is requesting authorization to appear before the Tribunal as a Party for each of 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 make all reasonable 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. External legal counsel will be retained as required to ensure TRCA's interests are protected and addressed. TRCA staff and 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.ca

For Information contact: Steve Heuchert, extension 5311

Emails: steve.heuchert@trca.ca

Date: January 29, 2021

Attachments: 1

Attachment 1: Chart of Appeals