

**TOWN OF INGERSOLL  
Clerk's Report**

**DEVELOPMENT FEES – THIRD PARTY APPEALS**

June 14, 2010  
Report No. C-107/10

**PURPOSE:**

The purpose of this report is to seek Council approval to adopt a policy for recovering a portion of costs associated with Ontario Municipal Board Hearings..

**Background**

Historically, the Town has supported planning applications including all costs associated with OMB Hearings. Since 2000, the town has expended approximately \$75,000 solely on legal fees for miscellaneous matters going to the Ontario Municipal Board on third party appeals. The Town initiated an Official Plan Amendment for the designation of lands situated on Clark Rd and incurred legal costs of over \$100,000.00.

Town Council and the Committee of Adjustment are the two bodies that render planning decisions on behalf of the municipality and their decisions can be appealed to the Ontario Municipal board under the following scenarios:

- Council or Committee approves an application and a third party appeals;
- Council or Committee refuses an application and the applicant appeals;
- Council or Committee fails to act on an application within the legislative time frames established by the Planning Act.

Present policy has the town assuming all costs if a planning application is appealed whether if the appeal is instigated by the Town or by a third person. If this report is approved, the applicant of the planning amendment would assume all costs associated with the Board Hearing.

**Discussion**

Planning Amendments to the Zoning By-law or Minor Variances can be appealed to the Ontario Municipal Board by filing the applicable forms and the prescribed fee. The Town attends before the OMB on all zoning and minor variance matters when deemed necessary in order to defend the decision of the legislative body.

In researching the practice of area municipalities, some request an additional flat fee if the matter is forwarded to the OMB and others provide wording on the application guide that has the applicant or owner providing legal assistance and presentation to the OMB and to further assume all costs imposed by the OMB.

The Township of Zorra recommended a policy that differentiates between site-specific and policy/major issues being:

#### *Site Specific third Party Appeals*

*In instances where third parties have appealed an approved decision of Council or the Committee, the municipality and the applicant shall share a solicitor of the municipality's choosing. Should the applicant not wish to share a solicitor, a municipal solicitor shall still represent the municipality at the hearing. In this instance, the municipal solicitor will take a non-participatory role in the hearing and will appear only to ensure that the contents of the Township's By-law and the various limitations involved are maintained.*

*In instances, where the municipality and the applicant share a solicitor, the municipality shall contribute \$1,000 towards the legal fees. All legal fees exceeding \$1,000 and other expenses shall be the responsibility of the applicant. Upon receipt of the notice of hearing, the applicant will be required to deposit \$1,000 with the municipality. The Zoning By-law Amendment Application and the Minor Variance Application will be amended to include a clause whereby the applicant agrees to pay all expenses beyond the first \$1,000 of legal expenses.*

#### *Policy or Major Issue Appeals – Third Party*

*Where there is an appeal of an approved decision of Council or the Committee that could potentially have an impact on Town policies or major issues, the municipality and the applicant shall share a solicitor of the municipality's choosing. Should the applicant not wish to share a solicitor, a municipal solicitor shall still represent the municipality at the hearing. In this instance, the municipal solicitor shall take a participatory role in the hearing. The applicant shall still be required to contribute towards the municipality's legal defense. The Zoning By-Law Amendment Application and the Minor Variance Application will be amended to include a clause whereby the application agrees to pay a deposit of \$10,000 towards the Township's legal/consulting fees.*

*In instances where the municipality and applicant share a solicitor, the municipality will fund 50% of the total expenses with an upset limit of \$5,000. The applicant will be responsible for expenses above and beyond this amount.*

#### *Appeal Launched by Applicant*

*In the case where an applicant appeals on the grounds that Council or the Committee failed to act upon an application, or refused to approve the application, it is*

*recommended that the Township attend before the Board on all zoning and minor variance matters. In the event that legal counsel requires the assistance of a planner, engineer, or other officials, and in the event that other consultants or evidence such as traffic studies, market studies, etc are required from outside experts, the Township Council be first approached to approve any such expenditure.*

The County of Oxford requires the owner/applicant to execute an area on the application form agreeing to support the application, provide assistance in the preparation and presentation of the application before the Ontario Municipal Board and pay all costs of the County's legal costs associated with the OMB Hearing.

Council may elect to amend the planning applications requiring full payment of legal costs.

Recommendation:



As the Town is represented at all OMB Hearings to maintain the integrity of the Town's By-laws, perhaps the town should assume a portion of the legal expenses but the applicant should be responsible for the majority of the costs incurred as a result of a Hearing.

The policy adopted by the Township of Zorra addresses the situations that the Town of Ingersoll has encountered and is a fair policy.

Therefore, Administration is recommending that the Town of Ingersoll adopt the attached policy to recover/limits expenses for OMB Hearings.

Respectfully submitted

Elaine Clark

				<b>POLICY</b>	
<b>POLICY AND PROCEDURAL MANUAL</b>					
<b>POLICY NO.</b>		<b>PAGE NO.</b>	<i>1 of</i>		
<b>AUTHORITY</b>		<b>APPROVAL DATE</b>			
		<b>EFFECTIVE DATE</b>			
		<b>LAST REVISION DATE</b>			
<b>SUBJECT</b>	<b>ONTARIO MUNICIPAL BOARD HEARING COST SHARING</b>				

**PURPOSE**

Recover/limit expenses for Ontario Municipal Board Hearings.

**SCOPE**

To address Site Specific Third Party Appeals and Policy or Major Issue Appeals by Third Party or Appeal Launched by the Applicant

**POLICY**

**Site Specific third Party Appeals**

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