



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

**Status of Appeal of MOE Approval Issued to New Sabby
Concrete & Supplies, 32 Caledonia Road**

Date:	March 4, 2010
To:	Etobicoke York Community Council
From:	City Solicitor
Wards:	Ward 17
Reason for Confidential Information:	This report is about litigation that affects the City and contains advice that is subject to solicitor-client privilege.
Reference Number:	

SUMMARY

This report responds to the request made by the Etobicoke York Community Council at its January 12, 2010 meeting for an update on the status of the City's appeal to the Environmental Review Tribunal in relation to New Sabby Concrete and Supplies Inc. ("New Sabby") operation of a concrete batching facility.

In 2009, New Sabby applied for and received a certificate of approval ("C of A") from the Ministry of Environment ("MOE"). The City obtained leave to appeal the MOE's decision to issue a C of A to the Environmental Review Tribunal (the "Tribunal") on the single issue of whether New Sabby's operations are compliant with applicable noise level requirements.

The City, New Sabby, and the MOE participated in a mediation held on March 3, 2010 to discuss the potential terms upon which the parties could agree to resolve the City's appeal.

The confidential attachment to this report contains legal advice from the City Solicitor with respect to the status of the proceedings before the Tribunal.

RECOMMENDATIONS

It is recommended that:

1. Etobicoke York Community Council receive the confidential legal advice set out in Attachment 1; and
2. The information contained in Attachment 1 remains confidential.

FINANCIAL IMPACT

The recommendations of this report will have no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

At its meeting on April 29 and 30, 2009, City Council adopted clause EY26.32 of the Etobicoke York Community Council and directed the City Solicitor “to retain outside environmental consultants” and to take such measures as necessary to oppose the issuance of a C of A by the MOE to New Sabby.

<http://www.toronto.ca/legdocs/mmis/2009/ey/decisions/2009-04-21-ey26-dd.htm>

At its meeting on January 26 and 27, 2010, City Council, in adopting the recommendations in EY33.46 from the Etobicoke York Community Council, authorized the City Solicitor, in consultation with the City Manager and the Executive Director, Municipal Licensing and Standards, to:

1. retain and instruct expert consultants to assist in preparing and presenting the City's position in relation to its appeal to the Tribunal; and
2. take all necessary steps to advance the City's position before the Tribunal, including settling the appeal where reasonable to do so.

<http://www.toronto.ca/legdocs/mmis/2010/cc/decisions/2010-01-26-cc45-dd.htm>

The City Solicitor's December 16, 2009 report is at:

<http://www.toronto.ca/legdocs/mmis/2010/ey/decisions/2010-01-12-ey33-dd.htm>

ISSUE BACKGROUND

Previous Report From the City Solicitor Regarding New Sabby and the Appeal

A summary of New Sabby's operations at 32 Caledonia Road and the basis upon which the City received leave to appeal the decision of the MOE has been set out in the City

Staff report for information on Appeal re MOE Approval Issued to New Sabby

Solicitor's report dated December 16, 2009, which is available at <http://www.toronto.ca/legdocs/mmis/2010/ey/bgrd/backgroundfile-25827.pdf>.

Preliminary Hearing and Mediation at the Environmental Review Tribunal

The Tribunal held a preliminary hearing in this matter on February 3, 2010. Representatives of the City, the MOE, and New Sabby were in attendance. A resident from the area also attended and sought standing to participate in the hearing as a participant. Councillor Palacio also filed a written request for standing as a participant in the hearing itself. Individuals with participant status are not parties who participate in mediation.

On March 3, 2010, the City, MOE and New Sabby participated in a mediation. Discussions are ongoing. The specific discussion at the mediation is confidential.

CONTACT

Michele A. Wright, Solicitor, Legal Services Division, Litigation
Tel: (416) 397-5342; Fax: (416) 397-1765; e-mail: mwright4@toronto.ca

SIGNATURE

Anna Kinastowski
City Solicitor

ATTACHMENTS

Attachment 1 – Confidential – Status of Appeal of MOE Approval Issued to New Sabby Concrete & Supplies, 32 Caledonia Road