BILD
BUILDING A GREATER GTA
Building Industry and Land Development Association

November 15, 2016

Chair David Shiner and members of the Planning and Growth Management Committee
City of Toronto
100 Queen Street West
Toronto, ON
M5H 2N2

Dear Chair Shiner and members of the Planning and Growth Management Committee,

RE: PG 16.1: City of Toronto – Development Application Review Fee Update

On behalf of the members of the BILD Toronto Chapter, we kindly submit the following comments to you regarding agenda item PG 16.1, Development Application Review Fee Update, in advance of the November 16th Planning and Growth Management Committee meeting. The following comments are supplementary to our August 29th letter to City Planning staff during the review period and our October 25th letter that was submitted to the City of Toronto's Executive Committee.

BILD and its members watched the last Executive Committee meeting with great interest and we were very keen on reviewing staff's report back to this Committee based on the motion put forward by Councillor Shiner, Chair of the Planning and Growth Management Committee, to produce a comparison of the current and proposed fees (in comparison to other municipalities in Ontario, but excluding development charges), on how the additional revenue will be allocated between City divisions, on how the additional revenue increase will impact staffing levels and on the service level improvements that the additional revenue will provide.

Based on the motion directives, our members were very interested in obtaining greater clarity with respect to the allocation of funds between city divisions. Furthermore, our members are also interested in any additional information that may help them to further understand the deployment of this revenue within the service functions of City Planning.

Unfortunately this information was only made available the day before the meeting and did not allow for sufficient time to review the supplementary reporting with our membership. We understand that a presentation will also be made at the meeting which may provide further clarity on the transparency of the fees but in the absence of knowing what this information provides, we are recommending the following:

- Our membership believes that this item should be received for information, but not adopted, until the public and stakeholders have had an opportunity to review the supplementary information and listen to the accompanying presentation.
- Our members also seek greater transparency and granular details associated to the full cost recovery model as it relates to the allocation and deployment of these monies within the City Planning Division to allow for a clearer understanding of the fees and how they are calculated.

Additionally, our members recommend that there should be some consideration and incorporation of economies of scale with respect to the size of a development project. We are collectively aware of the fact that applications today are complex in nature, however much of the City's review takes place at the ground floor of a development project, with a review of the technical aspects of the development and how it is serviced. Our members have also expressed that reviewing functional servicing plans, traffic reports or other studies do not take more time the bigger the building becomes. Therefore, the taller a building proposal – the greater the disparity for required fees. There has been some recognition of this nuance with a tiered fee structure, but our members believe that it does not go far enough and that a limit should be placed on the collected funds – in the form of a fee cap.

Incorporating this type of change would be reflective of the legislation and case law that requires there to be a clear nexus between the application fee and the service provided. Our members are acutely aware that the Planning Act, Section 69(1) requires that the tariff of fees for planning applications "…shall be designed to meet only the anticipated cost to the municipality […] in respect of the processing of each type of application provided for in the tariff."

Case law also tells us that this nexus must be exhibited. For example, in *Minto (Island Park) Ltd. v. Ottawa (City)* (2002) (attached), that the OMB found that the Committee of Adjustment's method of establishing its fees was "not a true cost analysis […] It does not try to establish the "cost" of processing an application" (paragraph 9). Accordingly, the OMB ordered a partial refund of the fees collected. Similarly, in *Re Oakville (Town) Official Plan Amendment No. 194* (2002) (attached), the OMB agreed that it had a duty to consider whether the fee was reasonable, upon appeal. The appellant's witness calculated how the fee charged translated into "buying" nine months of staff time (paragraph 8). The OMB reasoned that "nine months of staff time is clearly an unreasonable amount of time to review the development of a 10 hectare site," and accordingly ordered a refund of fees (paragraph 11).

- We have been afforded the opportunity of more time to strengthen the nexus between the proposed development application fees and the associated services. Therefore, our members recommend that this relationship should be better reflected in the proposed changes and that the tiered fee structure should be refined after a determined threshold amount so that a limit could be placed on the collected funds – in the form of a fee cap.

As noted in past correspondence, BILD would like to underscore the importance of responsibly managing fees and costs imposed on new development, as these costs are ultimately reflected in the cost of new housing (paid by the new residents of the City) and in the cost of doing business for industrial or commercial employers (i.e. job-creators). The cumulative effect of taxes, fees and charges in the City of Toronto is of the utmost importance to our industry as we collectively strive to meet the goals and objectives of delivering affordable housing in the City of Toronto.

Thank you for the opportunity to submit these comments. If you have any questions or comments, please feel free to contact the undersigned.

Sincerely,

Danielle Chin MCIP RPP
Senior Manager, Policy & Government Relations

CC: *Gary Switzer, BILD Toronto Chapter Chair*
BILD Toronto Chapter members

2002 CarswellOnt 5890
Ontario Municipal Board

Minto (Island Park) Ltd. v. Ottawa (City)

2002 CarswellOnt 5890, 44 O.M.B.R. 193

Minto (Island Park) Limited has appealed to the Ontario Municipal Board under subsection 69(3) of the Planning Act, R.S.O. 1990, c. P.13, as amended, to protest against the levying of the fees in relation to twenty applications for consent to sever the lands known as 28 Lanark Avenue in the City of Ottawa

Edmond St. Armour Contracting (2000) Ltd. has appealed to the Ontario Municipal Board under subsection 69(3) of the Planning Act, R.S.O. 1990, c. P. 13, as amended, to protest against the levying of the fees in relation to eight applications for consent to sever the lands known municipally as 1510 Blair Road in the City of Ottawa

Minto Developments Inc. has appealed to the Ontario Municipal Board under subsection 69(3) of the Planning Act, R.S.O. 1990, c. P. 13, as amended, to protest against the levying of the fees in relation to eleven applications for consent to sever the lands known municipally as 181 Deerfox Drive and Strandherd Drive in the City of Ottawa

1248707 Ontario Limited has appealed to the Ontario Municipal Board under subsection 69(3) of the Planning Act, R.S.O. 1990, c. P. 13, as amended, to protest against the levying of the fees in relation to fifty-two applications for consent to sever the lands known municipally as 1126 Lola Street in the City of Ottawa

Owen Member

Judgment: November 12, 2002
Docket: PL020494, PL020662, PL020663, PL020783

Counsel: T. Marc, for Committee of Adjustment City of Ottawa
A. Cohen, for Minto (Island Park) Ltd., Edmond St. Armour Contracting (2000) Ltd., Minto Developments Inc. and 1248707 Ontario Ltd.

Subject: Public; Civil Practice and Procedure; Municipal

Related Abridgment Classifications
For all relevant Canadian Abridgment Classifications refer to highest level of case via History.
Municipal law

XVIII Planning appeal boards and tribunals
XVIII.2 Practice and procedure
XVIII.2.f Costs

Headnote

Municipal law --- Planning appeal boards and tribunals — Practice and procedure — Costs

Processing fee for multiple severance applications — Basis for determining fee — Committee of Adjustment dividing its costs by estimated number of severance applications — Committee failing to establish "cost" of processing application — Reduced scale of fees approved.

A Committee of Adjustment established a scale of fees for processing multiple severance applications, defined as a series of consents sought by one owner from one parcel of land with one official plan and one zoning designation.

The fee was $900 for each of the first five consents and $600 for each additional consent. An objector sought a reduction to $900 for the first consent only and $100 for each additional consent. The amount of $900 for the first consent was not in dispute.

Held: Fee reduced to $900 for the first consent and $100 for each additional consent.

Section 69 of the Planning Act, states that a fee must be designed to meet only the anticipated cost of processing each type of application, and that the fee may be reduced if council is satisfied that it would be unreasonable to require payment of the full amount. The method of determining fees used by the Committee of Adjustment did not meet this test, as the Committee did nothing more than divide its operating costs by the estimated number of consents (not stated, but presumably in a year). The correct method was to determine how much time was actually required to process the first and subsequent consents in a multiple application, and the costs in staff time and overhead that would be generated. Using this approach and applying the evidence of actual time spent and costs incurred, the board concluded that a fee of $900 for the first consent only and $100 for each additional consent was appropriate.

Table of Authorities

Statutes considered:

Planning Act, R.S.O. 1990, c. P.13
s. 69 — pursuant to

s. 69(1) — considered

s. 69(2) — considered

APPEAL under s. 69(3) of *Planning Act*, with respect to fees for processing multiple severance applications.

***Owen Member*:**

1 What is an appropriate fee to be charged for multiple consents? That is the issue before the Board on these appeals. The City of Ottawa's by-law imposing fees for planning applications currently has no reduced fee for multiple consents and the Committee of Adjustment charges the same $900.00 for every consent (as of the date of these applications). For these appeals, the Committee of Adjustment proposes a reduced fee structure of $900.00 for each of the first five multiple consents and $600.00 for each consent thereafter. There is some question whether the proposal put to the Board by Counsel for the Committee of Adjustment, of $900.00 for the first five and *$700.00* thereafter, was modified by the evidence of the witnesses Viau and MacLean. The Board's findings do not turn on which reduced fee is put forward by the Committee of Adjustment. The appellants, by their counsel, argue for a fee of $900.00 for the first of multiple consents and $100.00 for each consent thereafter. For the purposes of these appeals, multiple consents can be defined as a series of consents sought by one owner from one parcel of land with one zoning and Official Plan designation, in one application for which there is one notice of hearing, one hearing and one decision.

2 At the commencement of this hearing, Counsel for both parties advised the Board that there were three other appeals involving the same issue and they asked that the Board deal with all four appeals at this hearing applying the evidence and argument to each case. The Board agreed. The Minto (Island Park) involves 20 consents. Edmond St. Armour involves 8 consents. 248707 Ontario Limited involves 52 consents and Minto Developments Inc. involves 11 consents.

3 The Committee of Adjustment called Mr. Viau who provides financial advice and prepares the budget for the Committee of Adjustment. The appellants called a lawyer who is familiar with the preparation of consent applications.

In addition, two municipal officials, under summons, gave evidence, Mr Lindsay, Manager of Development Approvals, and Ms Maclean, Secretary of the Committee of Adjustment.

4 The City Council directed the Committee of Adjustment to ensure that the Committee of Adjustment operated on a full recovery basis and the budget was prepared accordingly. Mr. Viau established the fixed costs and the variable costs for the Committee of Adjustment, estimated the number of consents and variances that might be sought and arrived at the fee of $900.00 for each consent and $300.00 for each variance to achieve 100% cost recovery. His recommendation to the Committee of Adjustment was that the variable costs, which were about 33% of the budget, be waived for multiple consents. Hence, the fee for the additional consents would be $600.00. The Committee of Adjustment proposal is $900.00 for the first five consents and $600.00 for the additional consents. Mr. Cohen, Counsel for the appellants, took Mr. Viau through a series for calculations to arrive at the average hourly wage for the eight employees of the Committee of Adjustment when all fixed costs were calculated ($28.86) and when all budget costs were calculated ($42.82). Using these figures divided into the proposed new reduced fees for the Minto Island Park application of $13,500.00 as opposed to the original fee of $18,000.00 the result was 467 hours and 315 hours respectively of time spent on the application to justify the fee charged for processing the application. Similar substantial hours were attributable to the other applications using this method.

5 Mr. Lindsay took the Board through the fee by-law and all the applications covered by it. The fee for an Official Plan Amendment was $4000.00, for a zoning by-law amendment $3000.00, Plan of Subdivision 1-40 units including registration $9200.00, 41-250 units $14,800.00, Site plan control $2750.00, Plan of Condominium $5700.00, Part Lot Control for a Plan prior to 1996 $5250.00, for newer plans $1000.00. In his view, there is a need to balance the cost recovery and service to the ratepayers of the City. He estimated the above fees achieved only 30% to 35% cost recovery. These fees were not full cost recovery fees, as charges of that amount would have resulted in fees that, in Mr. Lindsay's opinion, would have discouraged development and been the highest fees in Canada. He agreed that the planning department did comment on all consent applications and had someone at the Committee of Adjustment meetings, but did not charge the Committee of Adjustment for that service. Mr. Lindsay stated that there had been a recommendation in a planning report on the issue of exemptions to part lot control by-laws that the consent process be streamlined and a special fee structure be established for multiple consents. At this time the cost of multiple consent applications favors the use of the part lot control exemption process to effect land division. In his view, it is better for the land division process to be a public process as it is for consents but is not for the exemption from part lot control. It was his opinion that for the vast majority of consent applications a minimal not a substantive number of hours work was involved, perhaps one to five hours.

6 Ms Melinz, a lawyer with the Soloway Wright firm, gave evidence of her experience in completing consent applications including multiple consent applications. Only one application form was completed with a schedule attached if it was for multiple consents. This was the preferred format of the Committee of Adjustment. Only one notice of hearing is sent and one decision issued by the Committee of Adjustment.

7 Ms MacLean reviewed the process of the Committee of Adjustment in processing applications for consent. There are only two steps that require additional work in the case of multiple consents: the individual entry of each parcel to be created into the Municipal Application Partnership (MAP) software program for the City; and the actual stamping of the individual deeds. She agreed there is an economy of scale in multiple consent applications, but the Committee of Adjustment had the Council directive to ensure full cost recovery. She agreed that for the Minto (Island Park) Limited's 20 consents that perhaps 13 hours were added to the usual process, less than one additional hour per consent. The decision to propose that the $900.00 fee be charged for the first five and the reduced fee thereafter was to cover the majority of cases of multiple consents and to discourage everyone from seeking a reduced fee.

8 Section 69(1) of the *Planning Act RSO.1990 C.p.13* permits Council to set a tariff of fees for the processing of applications of planning matters "*which tariff shall be designed to meet only the anticipated cost to the committee of adjustment...in respect of the processing of each type of application*" [1] . Section 69(2) permits the reduction of the fee by a

committee of adjustment if it "*is satisfied that it would be unreasonable to require payment in accordance with the tariff*". There is an appeal to this Board against the levying of fees under Section 69 of the *Planning Act*.

9 Based on the evidence heard, the Board finds that the method used by the Committee of Adjustment to establish fees to cover "only the anticipated cost to the Committee of Adjustment of processing each application" did not achieve this. It was not a true cost analysis. While perhaps understandable, the fee was calculated by simply dividing the *estimated* number of consents into the costs of running the Committee of Adjustment. In the Board's view, the flaw is that this fee depends entirely on the estimate of the number of consents. It does not try to establish the "cost" of processing an application. Nevertheless, there is no challenge to the basic fee of $900.00. The challenge is to the reasonableness of the proposed additional fee. The evidence is clear that the only additional work involved in the cost of processing multiple consents is the MAP entries and the deed stamping. For the Minto application this amounts to 13 hours in total for the 20 consents. This is less than an hour per consent. If one used the hourly calculation provided by Mr. Viau of $42.82, one would expect an additional charge of that amount. The appellants propose a fee for the additional consents of $100.00 per consent. The Board is persuaded by the argument of Mr. Cohen that this is reasonable. The Board finds this the amount would, as perhaps the original fee of $900.00 might, include certain costs such as the planning department input or the "over the counter" time and would be "reasonable" in all respects.

10 Accordingly, the Board finds that it would be unreasonable to require payment in accordance with the tariff and allows the appeals on each of these matters.

11 The Board orders that a refund payment be made to each appellant in the amount of $800.00 per consent save for the first of the multiple consent applications filed by each appellant.

Order accordingly.

Footnotes

1 Board emphasis

2002 CarswellOnt 5467
Ontario Municipal Board

Oakville (Town) Official Plan Amendment No. 194, Re

2002 CarswellOnt 5467, 45 M.P.L.R. (3d) 296, 45 O.M.B.R. 66

By-Ways Construction Inc., B. Osmond Scrap Metals Ltd., Vittorio Cambone and Augusto Cambone, Glenburnie School Inc. and others have appealed to the Ontario Municipal Board under subsection 17(24) of the Planning Act, R.S.O. 1990, c. P.13, as amended, from a decision of the Town of Oakville to approve Proposed Amendment No. 194 to the Official Plan for the Town of Oakville to redesignate existing Industrial Districts as Employment Districts to permit the establishment of a policy framework to guide future development

By-Ways Construction Inc., B. Osmond Scrap Metals Ltd., Vittorio Cambone and Augusto Cambone, Glenburnie School Inc. and others have appealed to the Ontario Municipal Board under subsection 34(19) of the Planning Act, R.S.O. 1990, c. P.13, as amended, against Zoning By-law 2001-007 of the Town of Oakville

By-Ways Construction Inc. has appealed to the Ontario Municipal Board under subsection 17(36) of the Planning Act, R.S.O. 1990, c. P.13, as amended, from a decision of the Regional Municipality of Halton to approve Proposed Amendment No. 163 to the Official Plan for the Town of Oakville to redesignate a portion of the QEW East Industrial District as the Mid-Town Core Employment Lands District to permit the establishment of a policy framework to guide future development

By-Ways Construction Inc. has appealed to the Ontario Municipal Board under subsection 69(3) of the Planning Act, R.S.O. 1990, c. P.13, as amended from the application fees paid under protest to the Town of Oakville for the processing of an Official Plan and zoning by-law amendment application with respect to Lots 1, 2 and 6 and Block A, Registered Plan 608 and Parts 1 & 2, Registered Plan 20R-6961

Emo Member

Judgment: December 10, 2002
Docket: PL010656, PL010678

Counsel: Douglas Carr for Town of Oakville
Scott Snider, Shelley Beth Kaufman for By-Ways Construction Inc.

Subject: Public; Municipal

Related Abridgment Classifications
For all relevant Canadian Abridgment Classifications refer to highest level of case via History.
Municipal law

XIII Planning
XIII.5 Miscellaneous

Headnote
Municipal law --- Planning — Miscellaneous issues

Owners applied to amend official plan and zoning by-law to allow development of "live-work" project — Municipal Act provides that municipality may establish tariff of fees for processing of applications — Municipality required

application fee of $41,325 — Owners appealed under s. 69(3) of Planning Act — Appeal allowed — Municipality was ordered to refund $34,825 — Fees were not reasonable — Fees in comparable municipalities ranged from $3,000 to $13,000 — Policy based fee of $4,000 would "buy" nine months' of planning staff time — Development was for 10-hectare site — Further fees would be payable later in approval process if amendments were allowed.

Table of Authorities

Cases considered by *Emo Member*:

Hancock v. Rideau (Township) (1993), 30 O.M.B.R. 444 (O.M.B.) — considered

Hancock v. Rideau (Township) (1994), 30 O.M.B.R. 444 (Ont. Div. Ct.) — referred to

Statutes considered:

Development Charges Act, R.S.O. 1990, c. D.9
Generally — referred to

Planning Act, R.S.O. 1990, c. P.13
Generally — referred to

s. 22(7)(c) — referred to

s. 34(11) — referred to

s. 69(1) — considered

s. 69(3) — considered

s. 69(4) — considered

APPEAL from application fees paid to process application in planning matter.

***Emo Member*:**

1 By-Ways seeks changes to the Town's planning documents that would permit the development of its lands on the east side of the Eighth Line and north of the Q.E.W. as a "Live-Work" project of some 414 units. Although By-Ways had appealed OPA 194 and Zoning By-law 2001-007 during their circulation period, it believed it needed to lodge 'private' appeals to better reflect the nature of its project. In order to bring these 'private' appeals to the Board, By-Ways sought to use the '90day' rule of subsections 22 (7,c) and 34 (11) of the *Planning Act* (Act). To have a valid application, from which the 90days could be measured, By-Ways was required to pay the Town an application fee of $41,325. By-Ways has appealed pursuant to subsection 69(3) of the Act seeking reimbursement of $34,825 ($41,325 minus $6,500). It is appropriate to cite subsections 69 (1), (3) and (4) for the record:

> 69 (1) The Council of a municipality, by by-law, and a planning board, by resolution, may establish a tariff of fees for the processing of applications made in respect of planning matters, which tariff shall be designed to meet only the anticipated cost to the municipality or a committee of adjustment or land division committee constituted by the council of municipality or to the planning board in respect of the processing of each type of application provided for in the tariff.

(3) Any person who is required to pay a fee under subsection (1) for the processing of an application in respect of a planning matter may pay the amount of the fee under protest and thereafter appeal to the Municipal Board against the levying of the fee or the amount of the fee by giving written notice of appeal to the Municipal Board within thirty days of the payment of the fee.

(4) The Municipal Board shall hear an appeal made under subsection (3) and shall dismiss the appeal or direct that a refund payment be made to the appellant in such amount as the Board determines.

2 Mr. Snider submitted the 1994 Board case of *Hancock v. Rideau (Township)* [(1993), 30 O.M.B.R. 444 (O.M.B.)] at 445 (member N.M.Katary), which has the additional attribute of a (1994) review by the Ontario Court (General Division), indexed as *Hancock v. Rideau (Township)* [(1994), 30 O.M.B.R. 444 (Ont. Div. Ct.)]; File No. 497/93 pertinent portions of which are excerpted herewith:

By the Court:-- In our opinion, the provisions of s.69(1) of the *Planning Act*, R.S.O. 1990, c. P.13, for the prescribing of a tariff of fees are not mandatory. A municipality can enter into an agreement for the recovery of the costs incurred in processing an application, even if no tariff has been prescribed.

. . .

Notwithstanding such agreement, the developer is entitled, in our opinion, to have the protection of a review by the Ontario Municipal Board of the levying and amount of any fee paid. It is the duty of the Board to consider whether any such fee is reasonable, despite the existence of an agreement to pay any and all fees, provided payment has been made by the developer under protest and timely notice of appeal has been given under s.69(3). With respect, we find that the Board erred in deciding that it had no jurisdiction in respect of 14 Church Street, and 48 and 50 Main Street.

(Board emphasis)

3 While the facts in *Hancock* relate more to whether a party having signed a site agreement, containing a clause requiring payment of certain fees, can bring an appeal pursuant to subsection 69(3), Mr. Snider submitted that in overruling the Board, the Court had essentially set the "test" for appeal under this subsection as being one of "reasonableness". Mr. Snider went on to submit that, unlike the *Development Charges Act*, in which the By-law can only be appealed in the first instance, in an appeal under section 69(3), a 'fees' by-law is always 'in play'. Mr. Carr did not take issue with this interpretation of the Court decision and the Board finds that the key determinant in a "fee" appeal is "reasonableness".

4 By-Ways led land-use planner Mark Bales while the Town presented (staff) planner Sally Stull, Lynn Gough, its former manager of long-range planning and Bill McKennan, its Assistant Director of Financial Planning. It was common ground that much of the By-Ways application fee arises as a result of the "formula" in (fees) By-law 1999-227 (successor to By-law 1998-240).

5 The Town's schedule of fees for various planning applications establishes a base fee of $2500 for "policy based' applications to amend the Official Plan and Zoning By-law. If however there are residential units involved, the base fee is $2,000 for each document change (OP & Zoning) together with a sliding scale (the formula) of $125 for each of the first 125 units; $100 for each of the next 75 units; $75 for each of the next 100 units and $50 for each unit thereafter. In the By-Ways situation, the formula results in a total of $28,825 and because the 'live-work' concept is also a 'non-residential' use, it has also attracted the 'non-residential' fee of $7 per 100 m^2 of site area (about 10 hectares), adding an additional $7,000. Finally, there is a charge of $1500 for advertising and public involvement.

6 Dealing with the fee by-law directly, By-Ways submits that its application seeking planning changes to permit 'live-work' units are 'policy-based' changes which should only attract the base fee of $5,000 ($2500 for each amendment) plus $1500 for public notification, and that preliminary site plans and unit lay-outs were only included to assist the Town in understanding this 'principle of use'. By-Ways fears that a subsequent application for condominium approval would

also attract a $28,825 (depending on the final number of units). While Ms Stull told the Board that "she would support that By-Ways only be charged $2000 when (and if) its condominium plan is presented for approval", she acknowledged that this would be a Council decision. It was also acknowledged that while the Town would prefer to review the entire 'package' (OPA, Zoning, Site Plan & Condo) at one time, this was not mandatory.

7 In support of By-Ways' position, planner Bales submitted two OP applications (exhibits D & E) for residential developments in North Oakville and pointed out that the Town had only charged the 'policy based' fee of $4000 ($2500 plus $1500) even though these amendments covered some 1400 acres and would probably include a large number of residential units. Ms Gough agreed that it was "counter-intuitive" when comparing the fee that By-Ways had to pay in comparison to that charged the two North Oakville development firms. It was pointed out that the North Oakville applications had been brought by the development firms so that they could bring appeals to the Board in a situation in which the normal processing of their projects had encountered a 'glitch'.

8 Mr. Bales presented the results of a survey (Exhibit C) he had conducted of planning fees charged by nine other GTA municipalities showing combined OP / Zoning application fees ranging from $3000 (Markham) to $13,000 (Milton). Using average planning (staff) salaries, Mr. Bales calculated that $4000 should "buy" By-Ways about five weeks of staff time to examine its "principle of use" applications while $39,000 ($41,325 minus $1500) could "buy" nine months of staff time. From this perspective, it was his opinion that the fee By-Ways had had to pay is not reasonable.

9 Much of the evidence of the Town's witnesses dealt with the history of planning fees and Council's goal that the fees provide a 70% recovery of direct costs, even though the Act would allow 100% recovery. Mesdames Gough and Stull pointed out that 'live-work' units, within the 'Employment lands' designation is a new concept, although such units are permitted within the Commercial designation, adjacent to the "GO" Station.

10 At this stage of the approval process, By-Ways is not seeking approval of a condominium and while its application included more site detail than normal, the Board agrees with Mr. Bales, that in promoting 'live-work' units, such a level of detail was appropriate. Should 'live-work' units on By-Ways' Employment lands ultimately be allowed in the Town's planning regime, the next step in the approval process would deal with condominium and/or site plan matters. As the Board understood the fees by-law, the cost of more detailed review of such matters would then be addressed.

11 As noted, the "test" is one of reasonableness and from both the survey of other GTA municipalities as well as the North Oakville example, it is my finding that the fee that By-Ways has been required to pay is not equitable. Mr. Bales evidence as to the amount of planning staff time that each amount would "buy" was not seriously challenged other than a caveat as to overhead and other related costs that the Town's by-law does not include for this or any application. Nine months of staff time is clearly an unreasonable amount of time to review the development of a 10 hectare site. I have carefully considered the *viva voce* evidence as well as the submissions of counsel and find that the fee that By-Ways was required to pay was not reasonable. Accordingly, the appeal is allowed and the Town is directed to refund $34,325 to By-Ways.

12 The Board so Orders.

Appeal allowed.

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