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VIA E-MAIL

February 26, 2016

(From the office of **DAVID W. DEMILLE**)

Crowe Valley Conservation
70 Hughes Lane
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Attention: Tim Pidduck

Dear Sir:

**Re: Weighted Voting
Our File No. 02834**

Further to our earlier telephone conversations, I understand that questions have arisen with respect to the concept of "weighted voting" and to what matters weighted voting applies. The basic principle with respect to voting for Conservation Authorities is set out in Section 16 (1) of the **Conservation Authorities Act** which states that each member of an Authority is entitled to one vote on each issue. The basic principle therefore is that for any decision or issue before the Board, each member of the Authority has one vote with respect to that matter or issue unless otherwise provided for.

Ontario Regulation 139/96, which appears to have been enacted pursuant to Section 27 (16) of the **Conservation Authorities Act**, permits weighted voting with respect to establishing non-matching levies. The initial question is what costs or expenses are included in a non-matching levy and the second issue is whether weighted voting is required for the approval of non-matching levies. Unfortunately, there is no definition of "non-matching levy" in either the Act or any of the Regulations that would indicate just what a non-matching levy may be.

Some assistance with respect to defining a non-matching levy is provided in the Joint Protocol between AMO and ACAO Pertaining to Non-Matching Discretionary Municipal

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Funding of Watershed Programs which I understand is a protocol that was agreed upon between the AMO and the ACAO. The Protocol indicates that non-matching levies are “discretionary” levies made by Conservation Authorities against their member municipalities. The Protocol indicates that its purpose “is to set out a process to provide more clarity than Ontario Regulation 139/96 yet be non-prescriptive in nature.”

The Protocol indicates that there are distinct categories of levies including levies for general program costs, levies for special benefitting project costs, and costs associated with capital expenditures. For program costs (i.e. general program costs) matching provincial dollars are available and the levies are therefore determined by a simple majority decision of the members of the Conservation Authority. However, “where municipalities underwrite program costs completely there is provision for a more enhanced form of approval and consultation” which is through the process of weighted voting.

It should be noted that this Protocol is only a Protocol and that the members of any Conservation Authority can agree to establish their own budgeting procedures and processes.

In 1997 the Ministry of Natural Resources (MNR) also published its Policies and Procedures for the Administration of the Municipal Regulation for Non-matching Levy under the Conservation Authorities Act. The MNR Policy provides that a non-matching levy is a levy made where no provincial grants are involved. The policy goes on to state that “where provincial grants are provided the legislation clearly defines how municipal levies are to be addressed”.

Based on the Protocol and the MNR Policy, a non-matching levy is a levy where no provincial grant money is provided for that portion of the budget. In other words, if all of the money for a particular portion of the budget comes from the member municipalities and is therefore completely discretionary, the municipalities may be given more say with respect to how that levy is determined. Where the Municipalities are providing all of the money for a particular portion of the budget, the funds for that portion of the budget would be a non-matching levy and weighted voting would be available for that particular portion of the budget.

With respect to the Crowe Valley Conservation Authority, it is my understanding that the Conservation Authority receives a grant from the province that is intended for the core programs the Conservation Authority provides including administration expenses, flood forecasting and warning and plan input and review. The money received from the Ministry for these programs is a contribution or grant by the Province towards the administration costs of the Conservation Authority.

The **Conservation Authorities Act** provides three separate statutory procedures for the raising of funds from member municipalities.

First of all, Sections 24, 25 and 26 apply to the raising of money for specific projects. A project is defined as a work undertaken by the Authority for the furtherance of its objectives. Where a project has been approved, the Conservation Authority in question prepares a Statement of Apportionment in which it apportions the costs of the project among the member municipalities and provides each Municipality with a Notice of Apportionment indicating what that Municipality's contribution will be for the project.

Section 25 goes on to provide that in determining the apportionment among the member municipalities, the Authority has to determine the apportionment of the total benefit of any project for each of the participating municipalities. In other words, some municipalities may not receive as much of a benefit for a particular project as other municipalities and consequently the apportionment of the costs for that project may be different depending on the benefit received by each municipality.

Each municipality has a right of appeal with respect to this Notice of Apportionment to the Ontario Municipal Board. The Ontario Municipal Board may then determine what the proper apportionment should be. The Legislation is clear that once the apportionment is determined, the member municipalities are required to pay their share of the costs as determined by the Conservation Authority or the Ontario Municipal Board as the case may be.

Conservation Authorities may also raise funds by way of levies from member municipalities pursuant to Section 27 of the Act. Section 27 (2) of the Act provides that the Conservation Authority is to determine the maintenance costs for each year. Maintenance costs are defined as those expenditures required specifically in relation to the operation or maintenance of a project, i.e. a particular work undertaken by an authority for the furtherance of its objectives. Section 27 (2) goes on to provide that the total maintenance costs for the Conservation Authority are then to be apportioned to the participating municipalities according to the benefit to be derived by each municipality.

Ontario Regulation 139/96 was enacted pursuant to Section 27 (16) of the Act and applies to situations where non-matching levies exist. If the Minister provides funding for the maintenance of a particular project, the non-matching provisions in Ontario Regulation 139/96 do not apply because it is not a non-matching situation. However, if the Minister does not provide any grants or funds for maintenance costs as that term is defined in the Act, then the non-matching provisions in Ontario Regulation 139/96 may be available.

The last statutory mechanism for the raising of funds for member municipalities is found in Section 27 (3) of the Act which requires the Conservation Authority each year to determine the administration costs for the year and to apportion those costs to the participating municipalities. The amount apportioned to each municipality is then levied as against that Municipality.

Administration costs are defined as all costs incurred by the Conservation Authority save and except for the capital expenses and the maintenance costs of projects.

Ontario Regulation 670/00 provides the framework for determining the apportionment of the administration costs for the purposes of the levy. Administration costs are apportioned among the participating municipalities on the basis of the ratio that each participating municipality's modified assessment is to the Authority's total modified assessment. There is no provision made for determining the benefit each municipality receives with respect to administration costs. Administration costs are to be shared by the Municipalities based on their proportion of the modified assessment in relation to the total modified assessment for the Conservation Authority.

It is my understanding that the Conservation Authority receives funding from the Minister each year for general operations and programs. These would be general program costs which are administration costs. Consequently, the Conservation Authority is receiving grants or funding from the Ministry for administration costs. Any levy for administration costs would not be a non-matching levy. Accordingly, the weighted voting provisions in Ontario Regulation 139/96 would not apply to this category of costs or expenses.

Weighted voting is only provided for pursuant to Ontario Regulation 139/96 and it is only available for non-matching levies which arise when there is no funding provided for a particular portion of the budget by the Minister and the Municipalities are responsible for all of the funding for that particular portion of the budget. In our view, this will generally only be applicable where maintenance costs are involved.

Section 1 (1) of Ontario Regulation 139/96 provides that a non-matching levy means a levy approved by a weighted majority of members at a meeting for which 30 days notice was provided to the affected municipalities. This indicates that not all the member municipalities would be involved in this particular levy. Affected municipalities would be those municipalities which receive some benefit from a particular project. Apportioning costs for the project among member municipalities based on the benefit that each municipality receives is provided for in Section 27 (2) which deals with maintenance costs.

We would note that Section 2 of Ontario Regulation 670/00 which deals with the apportionment of maintenance costs also provides that the apportionment of the maintenance costs of the participating municipalities will be based to some extent on the basis of the benefit received by each municipality. This is the same language that is used in determining maintenance costs that are referable to a specific project.

Section 1 (1) of Ontario Regulation 139/96 would not apply to administration costs as defined because all municipalities have to pay a share of the administration costs based on the apportionment provided for in Ontario Regulation 670/00. This apportionment is based solely on each municipality's percentage of the total assessment.

Section 3 of Ontario Regulation 139/96 provides that the total of non-matching levies for any project or activity may not exceed the total cost of the project or activity. This clearly refers to a project or activity provided for in Sections 24 and Section 25 of the Act (applicable costs for projects) and Section 27 (2) which provides for maintenance costs which are defined by the Act as expenditures required specifically in relation to the operation or maintenance of a project.

Section 3 of Ontario Regulation 139/96 simply provides that the total of non-matching levies levied against each member municipality for a particular project or activity cannot exceed the total cost of that project or activity. Clearly, this refers to maintenance costs and not administration costs.

In short, a non-matching levy is a levy for that portion of the Conservation Authorities budget for which no provincial grants are provided. This will generally entail maintenance costs as defined in the Act. Weighted voting should only apply where the Province does not provide any funding for a project or activity.

In this particular case, it is our understanding that the Ministry provides funding for general operations and programs which are administration costs. Consequently, any amounts levied against municipalities for administration costs are not non-matching levies and the weighted voting provisions of Ontario Regulation 139/96 would not apply.

Finally, Section 2 of Ontario Regulation 139/96 provides that a non-matching levy may be levied by Conservation Authorities against participating municipalities. This provision has to be read together with the definition of non-matching levy found in Section 1 (1) of Ontario Regulation 139/96. While an argument can be made that implementing a non-matching levy by way of weighted voting is permissive rather than mandatory because of the use of the word "may" in Section 2, the better interpretation is probably that the Conservation Authority may impose a non-matching levy that is to be approved by a weighted majority of members. In other words, if a non-matching levy is imposed, it should be approved by a weighted majority of members.

If you have any comments or questions, please do not hesitate to contact me.

Yours very truly,

TEMPLEMAN MENNINGA LLP



DAVID W. DEMILLE

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