



INFORMATION REPORT

TO: Chair and Members of the General Issues Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: June 5, 2013	
SUBJECT/REPORT NO: Comprehensive Legal Services Report LS13015 (City Wide)	
SUBMITTED BY: Janice Atwood-Petkovski City Solicitor	PREPARED BY: Janice Atwood-Petkovski Ext 4636
SIGNATURE:	

Council Direction: A comprehensive Legal Services report be provided annually.

Information:

Following an Operational Review of Legal Services conducted by an external consultant, a decision was made by Council in 2005 to reorganize Legal Services in order to in-source more of the work with a view to controlling costs. While Legal Services, in 2010, provided a litigation report summarizing files closed in 2009 and outcomes, there has not been a comprehensive document provided to Council outlining the services provided by the Legal Services Division. This Report presents the first comprehensive overview of the Legal Services Division since the reorganization in 2005.

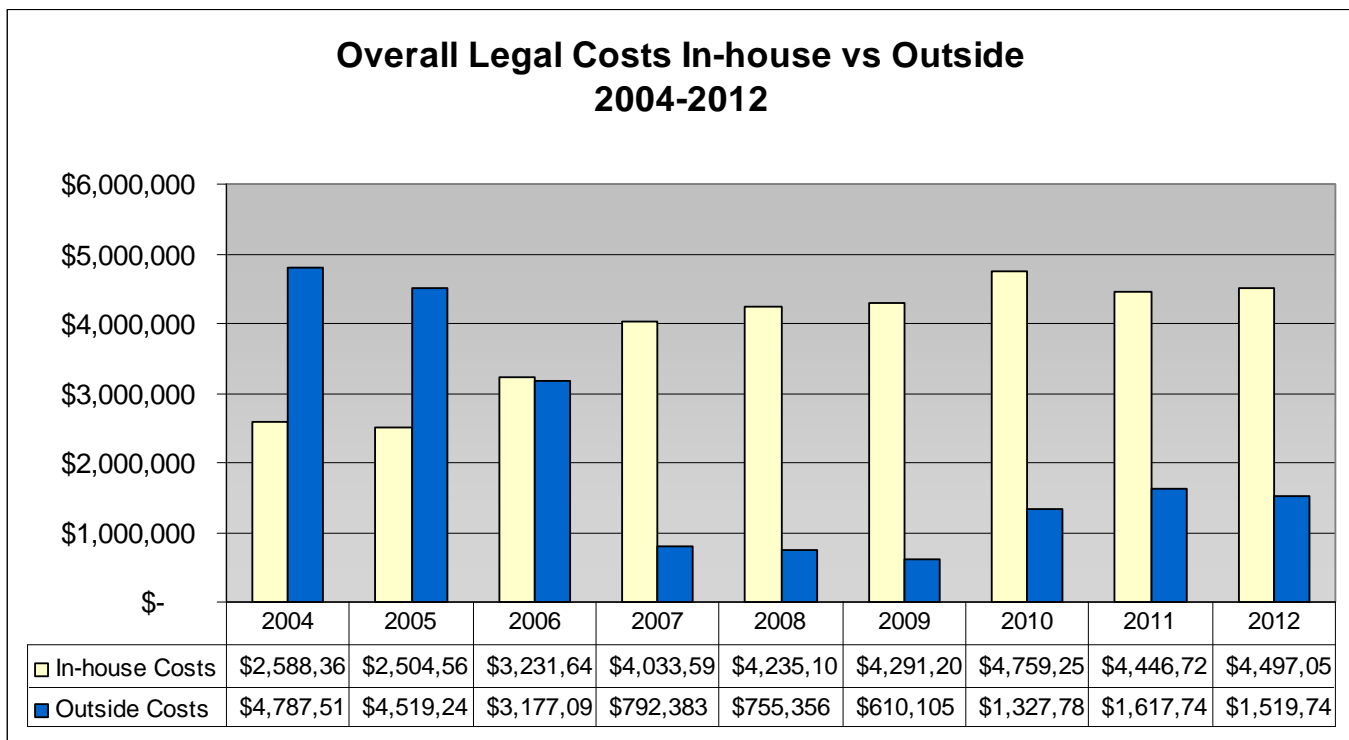
The City's Legal Services Division is a full-service legal department, comprised of lawyers, law clerks, legal assistants and prosecutors, that provides a full range of legal services to the City. Subject matter expertise includes municipal law, planning and development law, environmental law, litigation, real estate law, public health law, administrative law, privacy law, procurement law, corporate and commercial law. The Legal Services Division advises and represents the City and Council, as well as City departments and agencies. The division mandate is to provide timely, accurate, relevant and strategic legal advice and representation to support Council and the City's various portfolios, departments and agencies on corporate objectives, legislative compliance, strategic initiatives, general administrative and operational issues, policy changes and risk management.

Overall Legal Services Costs Effectively Controlled

As noted, following an operational review in 2005, the division was organized into two practice areas, the Dispute Resolution Section, and the Commercial/Development/Policy Section. Additional staff were recruited to expand Legal Services' capacity to handle more of the work in-house which has been effective in reducing the need for outsourcing and in controlling overall costs.

Ontario Municipal Benchmarking Initiative ("OMBI") is an initiative which provides municipal performance statistics and data, enabling municipalities to benchmark and compare their performances. In 2011, the most recent year for which comprehensive OMBI results are available, Hamilton's Legal Services in-house lawyers delivered 34,065 hours of legal advice and services with an operating cost per in-house Lawyer of \$121/hour. An hourly rate which is at the lower end of the range (\$106-169/hour) reported by other large/comparable Ontario municipalities in OMBI.

Overall, the legal costs of the Legal Services Division have been reduced from \$7.4 M in 2004 and have stabilized at \$6 M annually. The following tables reflect the Legal Services Division overall costs from 2004 (pre-reorganization) to December 2012:



	Salary & Benefits	Outside Counsel Paid by Division	Outside Legal Counsel Paid by Client Groups	Short-term Contract Lawyers** Paid by Client Groups	Total Legal Spend
2004	\$ 2,588,361	\$ 825,864	\$ 3,961,655		\$ 7,375,880
2005	\$ 2,504,561	\$ 1,037,302	\$ 3,481,946		\$ 7,023,809
2006	\$ 3,231,645	\$ 797,015	\$ 2,380,076		\$ 6,408,736
2007	\$ 4,033,598	\$ 315,623	\$ 476,760		\$ 4,825,981
2008	\$ 4,235,105	\$ 215,709	\$ 539,647		\$ 4,990,461
2009	\$ 4,291,202	\$ 197,763	\$ 412,342		\$ 4,901,307
2010	\$ 4,443,569	\$ 517,118	\$ 810,665	\$ 315,690	\$ 6,087,042
2011	\$ 4,089,373	\$ 573,418	\$ 1,044,330	\$ 357,351	\$ 6,064,472
2012	\$ 4,166,994	\$ 291,653	\$ 1,228,093	\$ 330,060	\$ 6,016,800

** Hiring a short-term Contract lawyer rather than retaining outside legal counsel for specific short-term projects provides the Client Groups with significant savings over the cost of retaining outside legal counsel.

Dispute Resolution Section

The Dispute Resolution Section advances and defends the City's interests in both civil and administrative litigation, including Provincial Offences prosecutions, insurance defence, breach of contract, debt collection, human rights and a host of other matters involving administrative tribunals.

Disputes, and litigation, can originate from a myriad of circumstances, linked to many legislative requirements and fact situations. Municipal liability for roads and sidewalks, and winter maintenance issues, environmental regulation and spill response, municipal water and waste water infrastructure, municipal property and occupiers' liability for publicly owned facilities such as recreational facilities and other lands are significant sources of litigation in all municipalities. Litigation also arises in the context of contracts, construction, and collections. The City, to carry out its statutory duties and protect its rights to operate and legislate also engages in administrative litigation.

Litigation File Activity

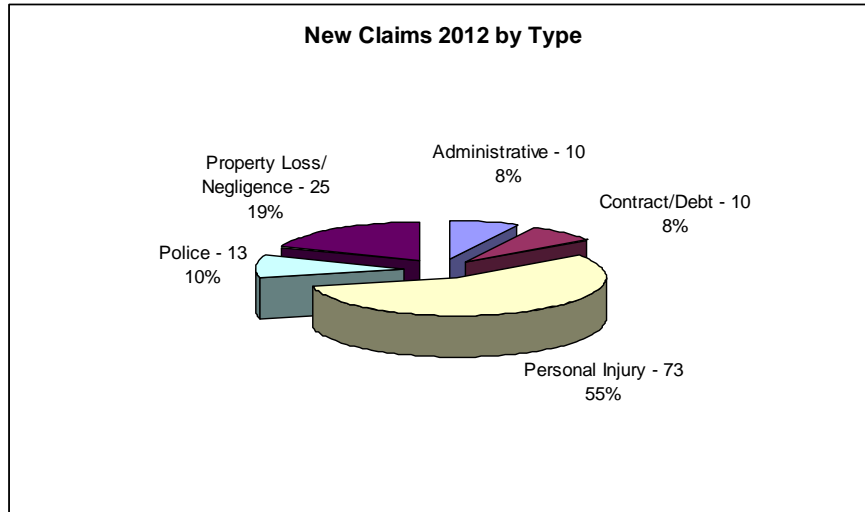
New Litigation Files in 2012:

The year 2012 was an average year for receipt of new litigation files, with receipt of 131 files (these numbers do not include OMB files or POA matters below the Court of Appeal).

Year	New Litigation Files
2005	120
2006	119
2007	150
2008	179
2009	164
2010	189
2011	141
2012	131

Where the City is plaintiff, it is generally pursuing debt or contract damages.

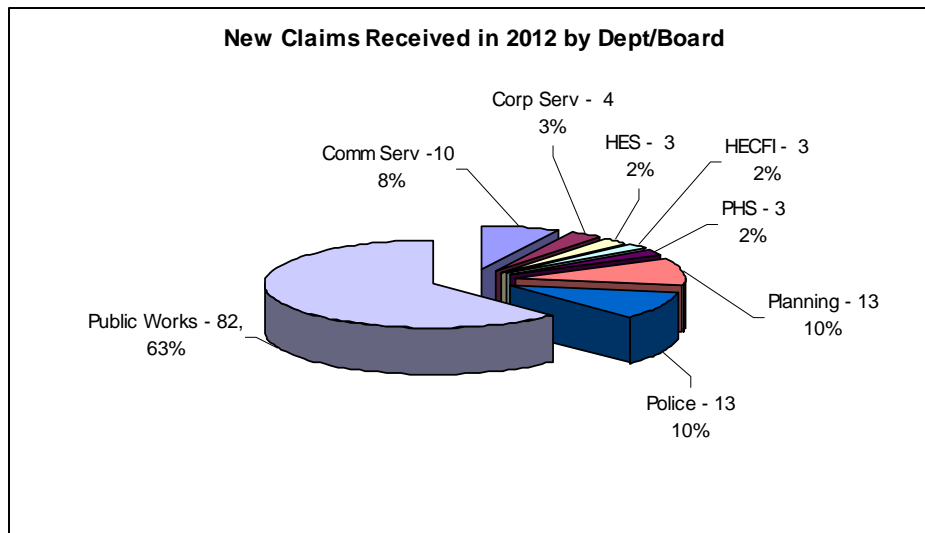
Source or Target of Litigation for files received in 2012, by Type of Action



(Fig. 1)

The City both brings and defends legal actions for various departments, including litigation to enforce statutory requirements.

Source or Target of Litigation for files received in 2012, by Department



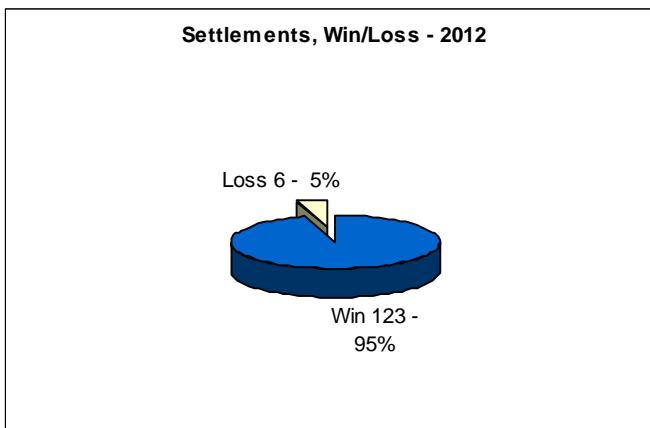
(Fig. 2)

The majority of new files in 2012 were claims against the City for personal injury or property loss. Of the approximate 110 new files of this sort, eleven involved motor vehicle accidents, and twelve involved ice or snow. The remainder are mainly falls alleged on City property or minor property losses.

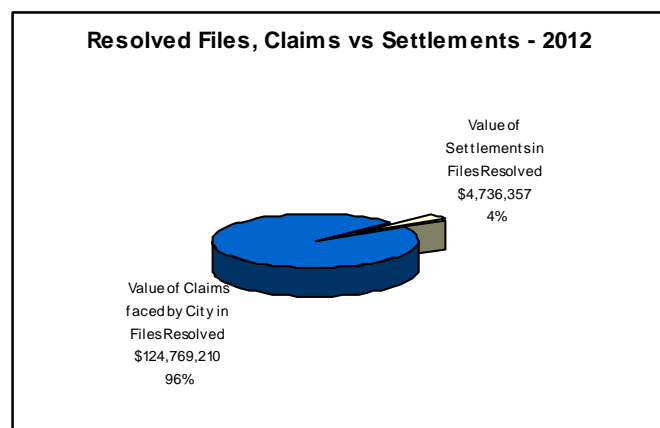
Litigation Files Concluded in 2012:

The City concluded 133 litigation files in 2012, primarily through settlement. As a result 2012 was an active year for settlements and claim payments, though the majority of claims are resolved without any contribution by the City. Settlements are counted as wins in the following figure, as these settlements achieve certainty of liability without further costs or risks involved in the much higher claims, and again because the City is often escaping from the litigation without contributing to a settlement. Of the concluded files, approximately 100 involved personal injury or property loss, eighteen involved alleged motor vehicles accidents, and the remainder alleged personal injury (mainly falls) or minor property loss. Twelve claims alleged ice or snow as part of the causation.

Win, Settlement/Loss for files resolved in 2012



(Fig. 3)



(Fig. 4)

Again the City was primarily a defendant in claims resolved. In those cases where the City is plaintiff, it is often seeking payment of a debt or damages, or enforcement of statutory rights. While debtors often cannot be located or are unable to pay debts, Legal Services assisted in the collection of \$262,321 in 2012.

The majority of claims against the City arise from its property holdings, operations and facilities, reflected by the number of claims for Public Works, Community Services (Recreation/Culture), Police, Planning and HECFI. Approximately one half of the 25 Planning files involved claims against Building Services for loss or negligence, but the City only paid \$6,000 in total towards claims and was awarded \$4,000 in costs. Twenty-eight of the files resolved were commenced in the Small Claims Court. The remainder of files were in tribunals and higher courts, including matters before the Ontario Court of Appeal and a leave motion seeking an appeal to the Supreme Court of Canada.

Provincial Offences Act Activity (POA)

Pursuant to the ‘downloading’ of POA prosecutions in 2000, the City’s Prosecution unit handles almost 60,000 court appearances on charges per year. Staff ensure continuous operation of 2 full time courts and one part time court as well as appeals and office duties. The majority of charges involve offences under the Highway Traffic Act, the Building Code Act, Fire Protection and Prevention Act, and other various municipal by-laws.

Following industry “best practice” to employ paralegal staff wherever feasible, a staff of paralegal prosecutors, under the direction of an Assistant City Solicitor, handles proceedings to enforce City by-laws, and prosecute certain categories of charges laid under the Highway Traffic Act, pursuant to the Provincial Offences Act.

The following table represents the volume and disposition of POA and Municipal Prosecutions handled in 2012:

	2008	2009	2010	2011	2012
CHARGES:					
Charges All Enforcement Agencies	63,119	74,162	88,020	88,575	97,474
Police Charges	52,012	57,780	67,301	68,253	82,496
MLE/AC/BLDG. ET AL Charges	476	816	1,227	1,545	1,077
Red Light Camera	no data	7,224	11,413	9,729	13,523
DISPOSITION:					
Trial Requests	4,683	6,222	9,023	9,075	7,314
First Attendance/Early Resolution	no data	no data	2,778	3,201	9,204
Summons to Witness	no data	no data	1,954	1,693	1,642
Applications for Adjournment	no data	no data	806	865	686
Title Searches	no data	no data	no data	534	528
Property Standards Registrations	13	9	14	13	16
Property Standards Discharges	11	17	10	11	23
Corporate/Business Name Searches	no data	no data	no data	68	63
Charter Motions (includes 11(b))	26	6	6	17	24
Court Events	44,971	46,417	57,424	60,101	61,284
Avg. Court Appearances To Disposition	2.3	2.3	2.3	2.1	2.5
FINE REVENUE (GROSS):	\$6.9 M	\$7.4 M	\$9.1 M	\$9 M	\$10.6 M

Commercial/Development/Policy Section (“CDP”)

The other practice group, Commercial/Development/Policy (“CDP”) provides broad and diverse core legal services to support day-to-day operations as well as priorities of the City in such areas as planning and development, economic development initiatives, water and wastewater, waste management, roads, public works and infrastructure, affordable housing, fire, emergency response services, transit and transportation, library services and taxation. Lawyers in this group provide advice to Public Health Services and Community Services in regard to the implementation of various programs and projects, both independent initiatives and those in collaboration with agencies such as local school boards, universities, colleges and not-for-profit organizations. Lawyers in this group advise, negotiate and draft agreements in regard to public-

private partnerships, third party agreements, commercial and industrial re-development ventures, purchasing and procurement, environmental issues, construction contracts, among other matters. The CDP Section provides advice on agreements through which the City secures and disburses substantial funding from higher levels of government, which in 2012 exceeded \$43 million.

In 2012, the CDP lawyers were engaged in a variety of significant projects including the Pan-Am Agreements, the Tiger-Cats License for the new Pan Am Stadium, HECFI and Public-Private Partnership Agreements with Global Spectrum and Carmen’s, the Bulldog’s License Agreement, the Mohawk Transit Hub Agreement, RFP for the Integrated Library System, the Residential Protective Plumbing Program , the Randle Reef Contaminated Sediment Remediation Project, the purchase of the Lister block building and the expropriation of the City Motor Hotel among others.

Procurement represents a significant body of work which the CDP Section supports through drafting, interpretations, advice and legal opinions. In addition, a lawyer participates on the Procurement Advisory Committee, a staff level committee which meets bi-weekly to review potential revisions to the Procurement Policy and implementation of the recommendations from the Purchasing Review conducted by the National Institute on Governmental Purchasing. Some of the larger RFPs which Legal Services has provided support on include the Waste Transfer and Disposal Operations System, the Waste Collection Services Contracts, several large IS procurements, and the Woodward Avenue Wastewater Treatment Plan Expansion Professional Engineering Consultant RFP. The following table reflects the volume and value of construction-related contracts drafted, reviewed and concluded over the past several years:

Year	# Contracts	Value
2006	24	\$ 12,115,211
2007	50	\$ 34,192,979
2008	32	\$ 26,667,217
2009	63	\$ 45,628,673
2010	70	\$191,174,388
2011	74	\$ 24,452,238
2012	81	\$ 81,786,204

Lawyers in the CDP Section support the diverse needs of the Planning and Economic Development Department on a variety of real estate transactions including acquisitions of property for such projects as community centres, road construction and repair, municipal redevelopment of surplus properties, and public-private partnerships. They are also involved in the sale or disposal of surplus City properties so as to maximize revenues to the City. In addition, this group negotiates and drafts easements, encroachments, covenants, leases and offers to lease, and processes expropriations.

Files and Values of Real Estate Matters Handled in 2012		
Acquisition (purchase):	28	- Total purchase prices: \$44,032,981.00
Disposition (sale):	28	- Total sale prices: \$ 4,074,671.00
Tax Sales:	6	
Expropriations:	1	- Total paid: \$ 99,769.37
Leases:	18	
Licence Agreements:	16	
Title Issues/pending:	54	
Encroachments:	36	
Patio Agreements:	9	
Road Closings:	12	

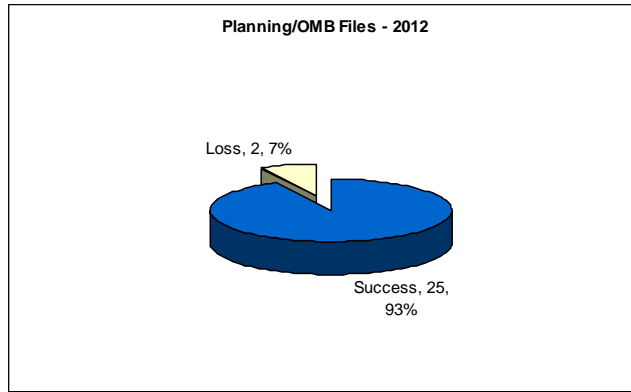
Lawyers in this section provide advice and support to the Planning and Economic Development Department on interpretation of the legislation, by-laws, and a wide variety of planning-related matters including official plan and zoning documents, draft plans of subdivision and condominium, site plan applications, disputes involving cash-in-lieu of parkland, development charges, and other fees and tariffs.

2012 was an active year for subdivision and condominium development. A higher volume in common element condominiums and phased subdivision growth was experienced.

	Subdivision Matters	Condominium Matters
2011	62	50
2012	26	21

Lawyers represent the City before the Ontario Municipal Board or other tribunals and courts including contested development applications, zoning by-law and official plan appeals, committee of adjustment application appeals, expropriations, and any other land-use related disputes. Appeals may be made by landowners seeking development approvals which have been refused by Council or where Council has not made any decision within the prescribed time provided under the Planning Act. Appeals may also be filed by individuals and public bodies, and may also be filed against City-initiated official plans/amendments, zoning by-laws and heritage districts. These matters frequently extend over a period of many months involving extensive preparation of witnesses, mediations and pre-hearings and negotiations, in advance of presentation of evidence and arguments at the OMB or other tribunals.

A number of major City initiatives have resulted in files at the OMB, including over the past couple of years, the Development Charges By-law, the Urban Hamilton Official Plan, and the 'Setting Sail' Secondary Plan. In 2012, there were 27 planning appeal files to the OMB, resulting in 25 matters successfully argued and/or settled, and 2 matters unsuccessfully argued at the OMB. To date, for 2013, there are 84 days scheduled at the OMB. The attached Appendix "A" sets out the 2013 Hearings currently scheduled.



Support to Council, Committees, Agencies

Legal Services provides support to Council and Standing Committees, as well as to a variety of sub-committees and staff advisory committees, including Governance Sub-Committee, Accountability and Transparency Committee, Portfolio Management Committee, Procurement Advisory Committee and Development Review Team. In addition, Legal Services provides support to Licensing Tribunal and Property Standards Committee, when they adjudicate on appeals. Legal advice and guidance is also provided as required to Library Services and the Board of Health.

Appendix "A"

2013 Hearing/Pre-hearing/TCC Dates

Matter ID	Address/description	OMB Case Number(s)	Hearing Type	Hearing Date	# Days Scheduled
02-0216	UHOP	PL11033, PL090779, PL101381	Pre-Hearing	January 10, 11, 2013	2
05-0399	Airport Employment Growth Development	CI-05-F	Hearing	January 14, 2013 to February 1, 2013	15
12-1170	8226 Whitechurch Rd- Minor Variance GL/A - 12:163	PL121081	Hearing	Feb 4/13	1
12-0899	231 York Rd- Official Plan Amendment No. OPA-11-019 Zoning Application No. ZAC-11-066	PL120995	Hearing	Feb 5-8	4
12-1140	Fair Street, Ancaster- OMB-Appeal of Committee of Adjustment approval of severance applications AN/B-12:76-77-78-respecting Block 102 of Plan 62M-1116	PL121234	Hearing	February 14, 15,2013	2
12-1109	24 Brock Street, Dundas- Zoning Application No. ZAC-09-010	PL121211	Pre-Hearing	March 4, 2013	1
12-0581	121 Augusta - Lynwood Charlton Appeal - Zoning Bylaw ZAR-11-034 - refused by the municipal Planning Act Section 34(11)	PL120529	Hearing	March 25 - April 9	8
02-0216	Urban OP (Textural Amendments)	PL11033, PL090779, PL101381	Pre-Hearing	April 11, 12, 2013	2
12-0767	250 Fifty Rd & 347 Fifty Rd et al (Foothills of Winona)- Stoney Creek Zoning By-Law Amendment: No.: 3692-92, ZAC-11-042, OPA 11-005 &25T201107	PL120721	Hearing	April 15 - 26, 2013	7
12-0486	Spencer Creek Ltd.- Proposed Official Plan Amendment and Zoning By-law Amendment Affecting Lands Located at 2555 Creekside Drive Dundas (PED12058) Ward 13 Appellant: Altera Spencer Creek		TCC	April 18, 2013	1

OUR Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.

OUR Mission: WE provide quality public service that contribute to a healthy, safe and prosperous community, in a sustainable manner.

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Matter ID	Address/description	OMB Case Number(s)	Hearing Type	Hearing Date	# Days Scheduled
12-0124	130 West 34th St. -Minor Variance-HM/A-12:202 relief from the City of Hamilton's zoning by-law 6593	PL121418	Hearing	April 24, 2013 – adjourned – to be rescheduled	1
12-0728	1311 Highway #8 -Consent SC/B-12:07 and Minor Variance SC/A-12:31	PL120515 & PL120516	Hearing	May 6 - 7, 2013	2
12-1020	Waterdown Bay Inc. -Zoning by-law 90-145-Z (Flamborough)	Z060176/S070002	Hearing	May 9, 2013	1
12-1020	Waterdown Bay Inc. Zoning By-law 90-145Z (Flamborough)	Z060176/S070002	Prehearing	July 16, 2013	1
12-0743	Ancaster Secondary Plan (OPA 143) -Appeal of Official Plan No. 143-Ancaster-By Law 12-133 Ancaster Wilson Street Secondary Plan	[PL120783	Pre-Hearing	May 17, 2013	1
12-1109	24 Brock Street -Zoning Application No. ZAC-09-010	PL121211	Pre-Hearing	June 11, 2013	1
02-0216	Urban OP (Textural Amendments)	PL11033, PL090779, PL101381	Hearing	June 17-July 15, 2013	20
02-0216	Urban OP (Textural Amendments) Mondolez/Auburn Issues	PL11033, PL090779, PL101381	Hearing	October 16-November 1, 2013	13
12-0129	Guyatt Road -Consent GL/B-11:96	PL120075	Submissions	September 20, 2013	1
Total Days at OMB					84

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