



Hamilton

CITY OF HAMILTON
City Manager's Office
Legal Services Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	July 8, 2014
SUBJECT/REPORT NO:	Funding of External Consultants for Appeals Regarding 18-28 King St. E., Hamilton (Ward 2), 307 & 325 Fiddler's Green Rd., Ancaster (Ward 12), 231 York Rd., Dundas (Ward 13) and 24 McDonald Ct., Flamborough (Ward 15) - LS14025
WARD(S) AFFECTED:	Wards 2, 12, 13, and 15
PREPARED BY:	Lia Magi, Solicitor, Legal Services (Ext. 4708)
SUBMITTED BY:	Janice Atwood-Petkovski City Solicitor City Manager's Office
SIGNATURE:	

RECOMMENDATIONS

- (a) That respecting the appeal to the Conservation Review Board of 18-28 King St. E., Hamilton, that Council authorize that the amount required to retain external consultants be funded through the Capital Reserve – Former City of Hamilton 108035;
- (b) That respecting the appeal to the Ontario Municipal Board of 307 and 325 Fiddler's Green Rd., Ancaster, that Council authorize that the amount required to retain external consultants be funded through the Capital Reserve – Former City of Hamilton 108035;
- (c) That respecting the appeal to the Ontario Municipal Board of 231 York Rd., Dundas, that Council authorize that the amount required to retain external consultants be funded through the Tax Stabilization Reserve 110046; and,
- (d) That respecting the appeal to the Ontario Municipal Board of 24 McDonald Ct., Flamborough, that Council authorize that the amount required to retain external consultants be funded through the Tax Stabilization Reserve 110046.

EXECUTIVE SUMMARY

Legal Services has received several appeals to administrative tribunals where staff are required to retain external consultants to defend Council's position, either because Council adopted a position contrary to the staff recommendation or because the appeals engage the need for specific expertise. This report seeks approval of the recommended funding sources for those retainers.

Alternatives for Consideration – See Page 4

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Approval of the staff recommendations will provide authority to fund the required retainers from the identified reserves.

Staffing: N/A

Legal: Approval of the staff recommendations would afford Legal staff the ability to retain and fund the external consultants required to defend Council's position on the identified appeals.

HISTORICAL BACKGROUND

The following matters proceeded to Council for a decision. Council's decision on these matters has been appealed, to either the Conservation Review Board ("CRB") or Ontario Municipal Board ("OMB"): 18-28 King St. E. (Gore Buildings), 307 and 325 Fiddler's Green Rd., 231 York Rd., and 24 McDonald Ct. Legal staff have identified a need to retain external consultants on each of these matters in order to defend Council's decision. The funding of retainers for external consultants on appeal is not a budgeted line item in either the Legal Services or Planning and Economic Development Department's budget. Historically, Council authorization has been sought to fund these retainers from the Tax Stabilization Reserve, or other reserve account, as identified by Finance.

RELEVANT CONSULTATION

The Finance, and Planning and Economic Development Departments have been consulted in the preparation of this report.

ANALYSIS AND RATIONAL FOR RECOMMENDATION

1) 18-28 King St. E.:

Upon considering a third party request to designate the properties under Part IV on the Ontario Heritage Act, Council designated the properties. Staff supported the designation request. External consultants are required in this matter because the appeal will engage specific expertise not possessed within the corporation, including an architect, structural engineer and senior heritage planner.

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No hearing date has been set to date; however, consultants have been retained in the interim in order to begin preparing. Based on the consultants' budgeted estimates, the total cost of these retainers is in the order of \$40,000.

In consultation with Finance, staff recommend that these retainers be funded through the Capital Reserve – Former City of Hamilton 108035

2) 307 and 325 Fiddler's Green Rd. (PED13183):

Staff supported a Zoning By-Law amendment application to allow a retirement home of not more than 100 units, and not more than 120 residents in a building not exceeding three storeys. Council approved a maximum of 80 residents in a building of not more than two storeys. The applicant appealed Council's decision to the OMB. An external planning consultant is required because Council's decision was contrary to the staff recommendation.

A hearing date has not been scheduled. A prehearing will be scheduled for the Fall 2014. The applicant has estimated the need for a five-day hearing, which may be overly generous. Legal staff are in the process of retaining a planning consultant in this matter. A budget has not yet been prepared, but can generally be expected to range from \$20,000-\$40,000 for a two- to five-day hearing for this matter.

In consultation with Finance, staff recommend that these retainers be funded through the Capital Reserve – Former City of Hamilton 108035.

3) 231 York Rd. (PED14044):

Staff supported a residential infill project for six semi-detached buildings, totalling twelve units. Council denied the application. The applicant appealed to the OMB. An external planning consultant is required because Council's decision was contrary to the staff recommendation.

A hearing date has not been scheduled. The appellant has estimated the need for a three-day hearing. Legal staff are in the process of retaining a planning consultant in this matter. A budget has not yet been prepared, but can generally be expected to range from \$20,000-\$50,000 for a two- to five-day hearing for this matter.

In consultation with Finance, staff recommend that these retainers be funded through the Tax Stabilization Reserve 110046.

4) 24 McDonald Ct. (PED14060):

Staff supported a Zoning By-law Amendment application to facilitate the severance of a lot for the creation of one additional single detached residential lot. Council denied the application. The applicant appealed to the OMB. An external planning consultant is required because Council's decision was contrary to the staff recommendation.

A hearing date has not been scheduled. The appellant has estimated the need for a one-day hearing. Legal staff are in the process of retaining a planning consultant in this matter. A budget has not yet been prepared, but can generally be expected to range from \$10,000-\$20,000 for a one- to two-day hearing for this matter.

In consultation with Finance, staff recommend that these retainers be funded through the Tax Stabilization Reserve 110046.

ALTERNATIVES FOR CONSIDERATION

In the alternative, staff could be directed to identify a different funding source for any or all of the identified appeals and report back to Committee with other options.

Additionally in the alternative, staff could be directed not to attend the hearings of these appeals to defend Council's position. In the City's absence, the tribunal would likely hear uncontested expert evidence from the appellant, and Council's decision would not be upheld.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN

Strategic Priority #2

Valued & Sustainable Services

WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner