



**CITY OF HAMILTON**  
**CITY MANAGER'S OFFICE**  
**Legal Services Division**

<b>TO:</b>	Chair and Members Planning Committee
<b>COMMITTEE DATE:</b>	September 19, 2014
<b>SUBJECT/REPORT NO:</b>	Funding of External Consultants for OMB Appeals: Strathcona Secondary Plan (Ward 1), Ancaster-Wilson Street Secondary Plan (Ward 12) & Approval of Funding Sources until January 2015 (City Wide) (LS14040)
<b>WARD(S) AFFECTED:</b>	Ward 1, Ward 12 and City Wide
<b>PREPARED BY:</b>	Lia Magi ext. 4708
<b>SUBMITTED BY:</b>	Janice Atwood-Petkovski City Solicitor City Manager's Office
<b>SIGNATURE:</b>	

**RECOMMENDATION**

(a) That respecting the appeal to the Ontario Municipal Board of the Strathcona Secondary Plan (OPA No. 11) by Glenn Hamilton, Council authorize that the amount required to retain external consultants be funded from the Tax Stabilization Reserve (110046).

(b) That respecting the appeal to the Ontario Municipal Board of the Ancaster-Wilson St. Secondary Plan (OPA No. 24) relating to 121 Fiddler's Green Rd., Council authorize that the amount required to retain external consultants be funded from the Tax Stabilization Reserve (110046).

(c) That if any additional appeals require external consultants to be retained prior to the January 13, 2015 Planning Committee, that the amounts required to retain such consultants also be from the Tax Stabilization Reserve (110046), up to a maximum of \$100,000 per retainer.

(d) That staff report back to the January 13, 2015 Planning Committee if any external consultants are retained and funded in accordance with recommendation (c).

## **EXECUTIVE SUMMARY**

Legal Services has received two appeals to the Ontario Municipal Board where external consultants are required to defend Council's adopted position, where that position was contrary to the staff recommendation. This report seeks approval of the recommended funding sources for those retainers.

Additionally, staff are seeking advance approval of funding sources for any new appeals that require the retainer of external consultants prior to the January 13, 2015 Planning Committee, and to report back if any such retainers are executed.

***Alternatives for Consideration – See Page 4***

## **FINANCIAL – STAFFING – LEGAL IMPLICATIONS (for recommendation(s) only)**

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 the Ontario Municipal Board ("OMB"): Strathcona Secondary Plan ("OPA 11") by Glenn Hamilton, and the Ancaster-Wilson Street Secondary Plan ("OPA 24") regarding 121 Fiddler's Green Road. 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.

Additionally, staff are seeking advance approval of funding sources to deal with the retainer of outside consultants required to defend a Council position on appeal until the January 13, 2015 Planning Committee. It is recommended that staff report back to Planning Committee if any such retainers are entered into during this period.

## **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) Strathcona Secondary Plan (OPA 11):

Council approved an amended Strathcona Secondary Plan in October 2013. Four appeals were filed with the OMB, one of which was by Mr. Glenn Hamilton. Mr. Hamilton's appeal affects 0.41 ha of land located on the south side of York Blvd. between Strathcona Ave. and Inchbury St. The site comprises 14 properties of which Mr. Hamilton owns one, each containing an existing single-detached or semi-detached dwelling. In summary, the subject lands were proposed to be Low Density Residential 3 ("LDR3") and were also subject to the requirements of Area Specific Policy E. The Area Specific Policy permitted additional height and density through a zoning by-law amendment, if certain criteria were met. The high-density policies could be applied to permit heights of 2-10 storeys, increased densities and apartment buildings. Council deleted Area Specific Policy E, and the lands remained LDR3. Mr. Hamilton is seeking to restore the original staff recommendation. Consequently, staff require an external planning consultant who supports the Council position to provide evidence at the OMB to defend Council's position.

A hearing date has not been scheduled. The consultant has prepared a cost estimate and work schedule for an expected two-day hearing in the amount of approximately \$15,000 to \$20,000.

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

### 2) Ancaster-Wilson Street Secondary Plan (OPA No. 24):

Council approved the Ancaster-Wilson Street Secondary Plan on July 11, 2014. Two appeals have been filed, one is by the owner of the property at 121 Fiddler's Green Road. At Council, an amendment was approved which redesignated the owner's property, along with 127 and 131 Fiddler's Green Road and 11, 19, 25 and 33 Douglas Road, from Low Density Residential 3 ("LDR3") to Low Density Residential 1 ("LDR1"). Given that staff recommended an LDR3 for this property, Legal staff require an external planning consultant who supports the Council position on the appropriateness of the LDR1 to provide evidence in support of that position before the OMB.

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A hearing date has not been scheduled. The appellant has estimated the need for a one-day hearing, whereas Legal staff estimate up to two days may be required. Legal staff have not yet retained a planning consultant in this matter nor has a budget been prepared; however, given the estimated length of the hearing, the costs 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).

3) Advance Approval of Funding Sources through January 13, 2015:

Occasionally, Council adopts a contrary position to staff on a particular matter and that decision is appealed to the OMB. Given the requisite independence of professional staff and their opinions, Legal staff are required to retain external consultants to defend Council's position on the appeal. Explicit Council approval is required to authorize Finance to draw on the identified accounts. Legal staff are asking for authorization to pay any new retainers that are required prior to January 13, 2015 from the identified accounts, and to report back on any such retainers.

**ALTERNATIVES FOR CONSIDERATION**

In the alternative, staff could be directed to identify a different funding source for any or all of the identified appeals.

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.*

**Strategic Objective**

- 2.1 Implement processes to improve services, leverage technology and validate cost effectiveness and efficiencies across the Corporation.