



INFORMATION REPORT

TO:	Mayor and Members of the General Issues Committee
COMMITTEE DATE:	June 17, 2015
SUBJECT/REPORT NO:	Annual Comprehensive Legal Services Report LS15016(City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Janice Atwood-Petkovski 905-546-2424 ext. 4636
SUBMITTED BY:	Janice Atwood-Petkovski City Solicitor City Manager's Office
SIGNATURE:	

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

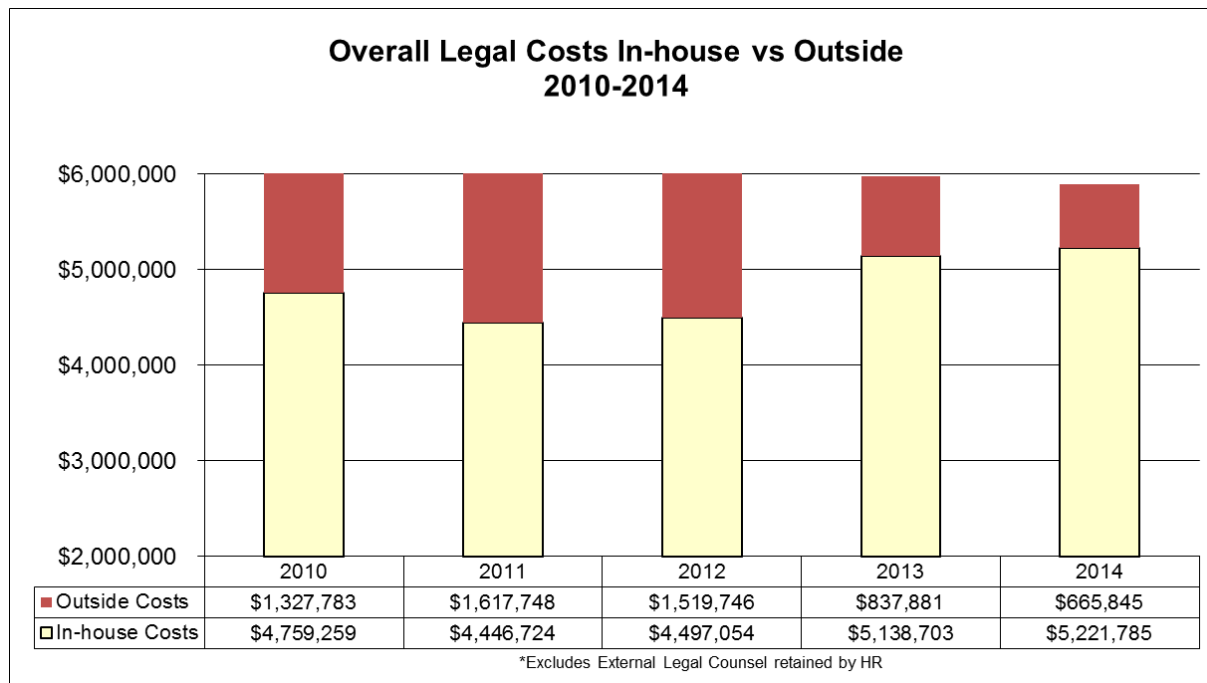
Information:

The City's Legal Services Division is a full-service legal department, comprised of lawyers, law clerks, legal assistants and prosecutors that provide 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, construction 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.

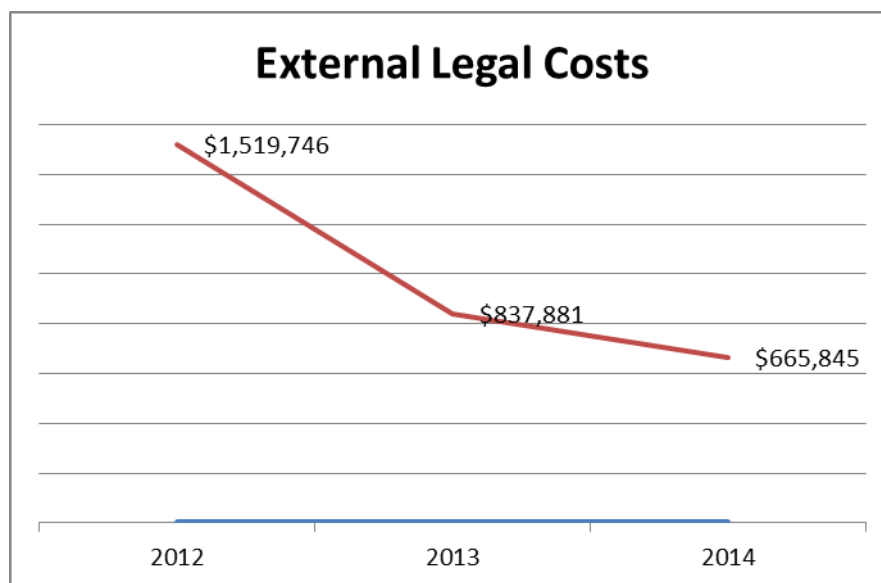
Legal Services Works To Effectively Control City's Legal Costs

The division is organized into two practice areas, the Dispute Resolution Section, and the Commercial/Development/Policy Section. Although there will always be a need to retain outside legal counsel from time to time – to provide specific expertise or handle sudden surges in demand experienced by the client departments due to specific large projects – ideally, the goal is to increase Legal Services' capacity to handle more of the work in-house. This effectively reduced the City's reliance on outsourcing, and helps in controlling overall legal costs to the City.

Overall, the legal costs of the Legal Services Division are stable at approximately 6M annually. The following table reflects overall costs from 2010-2014:



The following chart shows how Legal Services is reducing its reliance on External lawyers and doing more of the work in-house:



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	Total Legal Spend	Salary and Benefit Costs	Outside Counsel Costs
2010	\$ 6,087,042	\$ 4,759,259	\$ 1,327,783
2011	\$ 6,064,472	\$ 4,446,724	\$ 1,617,748
2012	\$ 6,016,800	\$ 4,497,054	\$ 1,519,746
2013	\$ 5,976,584	\$ 5,138,703	\$ 837,881
2014	\$ 5,887,630	\$ 5,221,785	\$ 665,845

***hiring in-house/contract lawyers has allowed Legal Services to increase its capacity for handling legal matters internally and reduce its reliance on outside counsel.

Dispute Resolution Section

The Dispute Resolution Section advances and defends the City's interests in civil and administrative litigation, insurance defence, breach of contract, recovery of debts and damages, employment matters and a host of other situations involving administrative tribunals. In Provincial Offences matters Legal staff carries out the role of prosecutor to meet contractual obligations under a Memorandum of Understanding with the Province, and in municipal charges.

Disputes and litigation can originate from a myriad of circumstances, linked to legislative requirements, operations and varied fact situations. Municipal liability for roads, sidewalks, winter maintenance, environmental regulation and spill response, municipal water and waste water infrastructure, and occupiers' liability for publically owned facilities such as recreational facilities and other lands are all significant sources of litigation in all municipalities. Litigation also arises in the context of contracts, construction, and collections. The City engages in other administrative litigation to carry out its statutory duties and to protect its rights in administrative proceedings commenced by other agencies and individuals. Note that it is staff in Legal Services other section, Commercial Policy and Development, who appear before the OMB.

Litigation File Activity

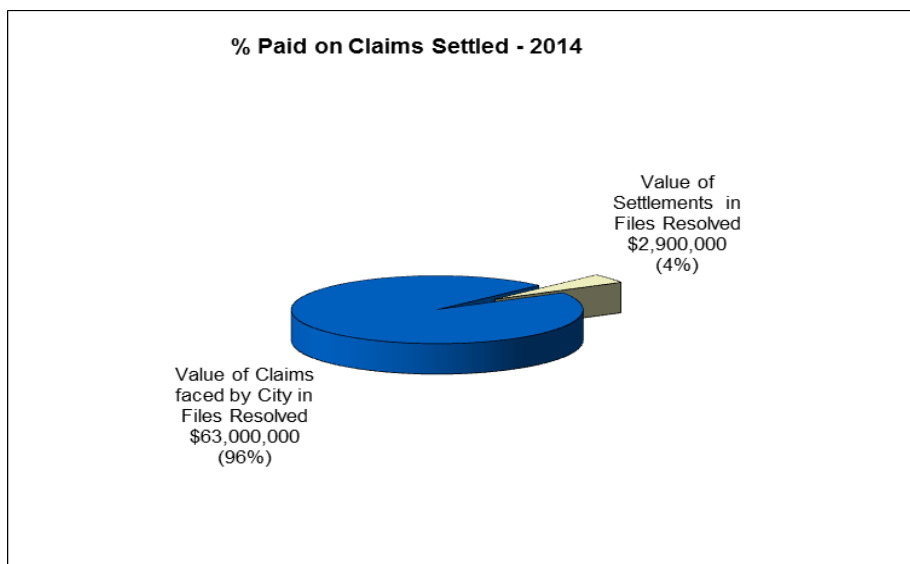
Litigation Files in 2014:

In 2014 there were 169 new civil actions started involving the City, with one-quarter started by the City to recover damages and debts. Litigation claims against the City totalling \$63 Million were resolved for \$2.9 Million through trials, mediations and negotiated settlement, and there were no significant losses in court proceedings.

Year	New Litigation Files Opened	Litigation Files closed
2010	189	not tracked
2011	141	not tracked
2012	131	133
2013	164	208
2014	169	144

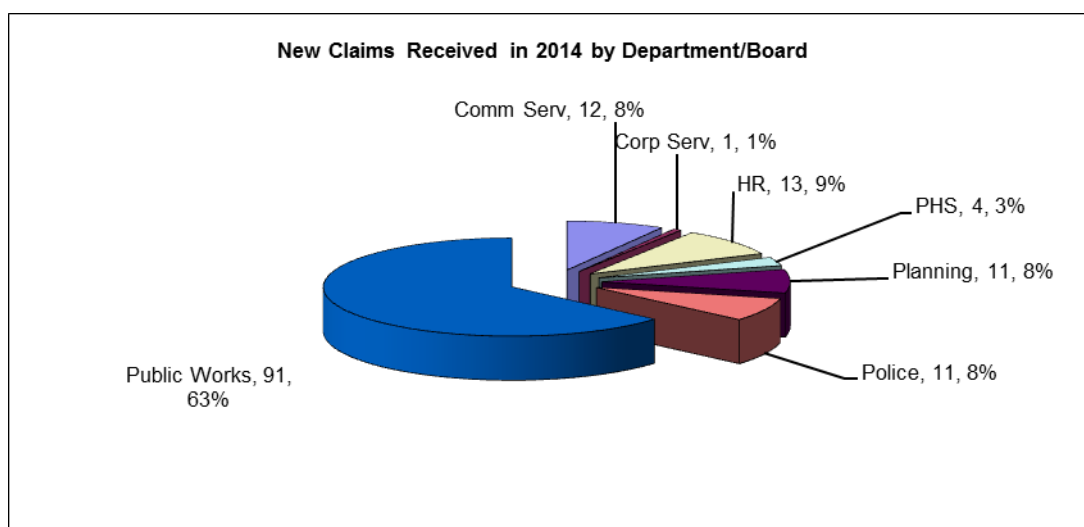
Dispute Resolution staff resolved 144 civil matters during the year in and out of court and gave priority to resolving older claims. Litigation file activities in 2014 included 11 mediations, 26 pre-trials, 45 motions and status hearings, 95 days in examinations for discovery, and 7 days in trials and hearings. In those cases where the City is the plaintiff, it is often seeking payment of a debt or damages, or enforcement of statutory rights. Legal Services assisted in the collection of \$885,000 for debts and damages in 2014, the majority in one-time payments, and some debts being repaid by instalments.

Litigation files were concluded primarily through settlement, including alternative dispute resolution such as by mediation. As a result 2014 was an active year for settlements. Close to half of the claims against the City were concluded by Legal Services in and out of court without the City making any payment. Settlements achieve certainty of result without the risks and costs involved in taking a matter to trial. Many cases have no need to proceed to a trial as again the City is often resolving litigation with little or no contribution to the settlement.



Litigation files normally have the City as a defendant/respondent, which was the case in 73% of new litigation files opened by Legal Services in 2014. The sources of new litigation against the City are mainly from use of City property, streets, water and sewer services, or arise out of City operations, most of which fall under the Public Works Department in the chart below. Personal injury claims were slightly in the majority of new claims against the City in 2014, as compared to property damage and economic loss claims. The City also saw more files opened in 2014 in relation to workplace safety insurance benefits and attributed to Human Resources in the chart below where Legal Services is attempting to assist in limiting outside counsel costs. The majority of new claim files against the City involved court matters in the Superior Court. The claims against the City were most often in relation to property damages and personal injury involved in roadway motor vehicle collisions and falls which files are counted under Public Works in the chart below. The large majority of files involved court proceedings, but litigation also included tribunal matters (not counting appeal matters before City's internal Licensing and Property Standards tribunals).

Approximately 27% of new claim files in 2014 involved the City taking legal action, seeking damages, debt recovery or the enforcement of statutory duties. Almost all the new files attributed to Community Services operations are collection proceedings brought by the City under its obligation to pursue recovery of social benefit overpayments to ineligible persons.



Provincial Offences Act Activity (POA)

Since 2000, the City's Prosecutions team have helped the City to meet obligations under a Memorandum of Agreement (MOA) with the Province. The team handled almost 60,000 court appearances on charges in 2014 and over 13,000 Early Resolution meetings. In those roles prosecutors have extensive dealings with the public who come to court as witnesses, victims and defendants in charges. Prosecution staff assist in continuous operation of two full time courts and one part time court, conduct Early Resolution meetings and calls, attend appeals and complete office duties that include review of municipal charges. Following industry "best-practice" to employ paralegal staff wherever feasible, the City employs a team of paralegal prosecutors under the direction of an Assistant City Solicitor. The Prosecution team provides feedback to enforcement officers on charges to help them understand court needs and

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outcomes. Prosecutors provided five training sessions to various enforcement groups in 2014, on their roles in court. Effective management of limited court resources helps the City meet their obligations and maintain POA revenues under the Memorandum of Understanding with the Province. The majority of POA charges involve offences under the Highway Traffic Act and related provincial statutes. Municipal charges include the Building Code Act, Fire Protection and Prevention Act, Health Promotion and Protection Act, Smoke Free Ontario Act and a large variety of municipal by-laws.

The following two tables represent the volume and disposition of POA and Municipal Prosecutions work in 2014:

<i>POA/Municipal Prosecution Performance Metrics</i>							
	2008	2009	2010	2011	2012	2013	2014
CHARGES(informations/tickets filed)							
# Charges All Enforcement Agencies	63,119	74,162	88,020	88,575	97,474	99,266	94,647
# Police Charges	52,012	57,780	67,301	68,253	82,496	82,498	78,229
# MLE/AC/BLDG. ET AL Charges	476	816	1,227	1,545	1,077	1,199	1,569
#Red Light Camera	no data	7,224	11,413	9,729	13,523	15,569	14,133
DISPOSITION:							
# Trial Requests	4,683	6,222	9,023	9,075	7,314	6,648	7,272
# First Attendance/Early Resolution	no data	no data	2,778	3,201	9,204	13,673	13,512
# Disclosure Requests	no data	no data	4,459	no data	no data	5,888	5,874
# Summons to Witness	no data	no data	1,954	1,693	1,642	1,358	1,562
# Applications for Adjournment	no data	no data	806	865	686	749	737
# Title Searches	no data	no data	no data	534	528	247	255
# Property Standards Order Registrations	13	9	14	13	16	20	17
# Property Standards Discharges	11	17	10	11	23	11	24
# Corporate/Business Name Searches	no data	no data	no data	68	63	105	110
# Charter Motions (includes 11(b))	26	6	6	17	24	81	157
# Training Events						4	5
# Prosecution/Prosecutor Complaints			-	1		-	-
# Court Events	44,971	46,417	57,424	60,101	61,284	65,875	64,057
Average Crt. Apprs. To Disposition	2	2	2	2	3	3	3
FINE REVENUE (GROSS):	\$6.9 M	\$7.4 M	\$9.1 M	\$9 M	\$10.6 M	\$11.0 M	\$11.3M

*Some numbers above rely on provincial data which does not separate municipal work from other Ministry or Crown work, but the vast majority in each category is attributable to municipal court work or court administration.

	2011	2012	2013	2014
CHARGES:				
Animal Control	794	369	760	819
Municipal Law Enforcement	466	464	436	439
Building	30	19	26	113
Fire	54	52	61	19
Red Light Camera	9,729	13,523	15,569	14,133
Public Health	237	173	224	177

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, facilities, energy, affordable housing, fire, emergency response services, transit and transportation, clerks, finance 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, and hiring agreements, among other matters.

In 2014, the CDP lawyers were engaged in a variety of significant projects for the City, including the Junos, the Service Line Warranty Program, the Management Agreement with the Hamilton Port Authority, the Pan Am Games, the new Tim Horton's Field, the BikeShare program, the acquisition of the former Dominion Glass property for a new sports park in the Pan Am Precinct and the Hamilton Farmer's Market.

Procurement represents a significant body of work which the CDP Section supports through drafting, interpretations, advice and legal opinions. Such services occur at various stages of the procurement process as well as when disputes arise after the contract is in place. In addition, support is provided to the Procurement Advisory Committee which in 2014 worked on further implementation of the recommendation for the Purchasing Review conducted by the National Institute of Governmental Purchasing. The following table reflects the volume and value of construction-related contracts drafted, reviewed and concluded over the past 5 years.

Procurement Contracts		
Year	# Contracts	Value
2010	70	\$ 191,174,388
2011	74	\$ 24,452,238
2012	81	\$ 81,786,204
2013	94	\$ 70,824,535
2014	68	\$ 50,763,077

CDP lawyers also handle and respond to construction liens that are made against City on construction-related contracts by parties who are claiming that they have not been paid. Most construction liens are resolved without the City having to become actively involved in court Proceedings.

Construction Liens		
Year	# of Liens	Value
2014	60	\$ 4,788,633

In addition to the work that the CDP lawyers do involving construction-related contracts, they also provide services for many other contractual matters, including such matters as the negotiation and procurement of the CRM – Customer Relations and Knowledge Management Software System, the Professional-Consultant Services roster, the Housing Reporting Software, loan agreements for the various City loan programs as well as numerous lease and licence agreements

In the legal services they provide to the City, CDP lawyers also draft and advise on both the interpretation and enforcement of by-laws. These by-laws cross all departments and their operations and include such diverse issues as fees and charges, lobbyist registry, property standards, licensing, development charges, sale of land and sewer use.

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			
Year		2013	2014
Acquisitions (purchase):		14	28
Total Purchase Price:		\$5,441,043	\$17,021,901
Disposition (sale):		30	25
Total Sale Price:		\$3,027,108	\$1,482,410
Tax Sales:		6	7
Active Expropriations:		8	3
Leases:		12	14
Licence Agreements:		18	10
PW Matters (Major):		6	9
Title Issues/pending:		69	79
Encroachments/Patio Agreements:		38	30

*Additionally, several files were opened in 2014 or earlier with a lot of work performed on them in 2014 but they were aborted or have not yet closed.

Road/Alley closures are included in the sales and Title Issues/pending matters

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.

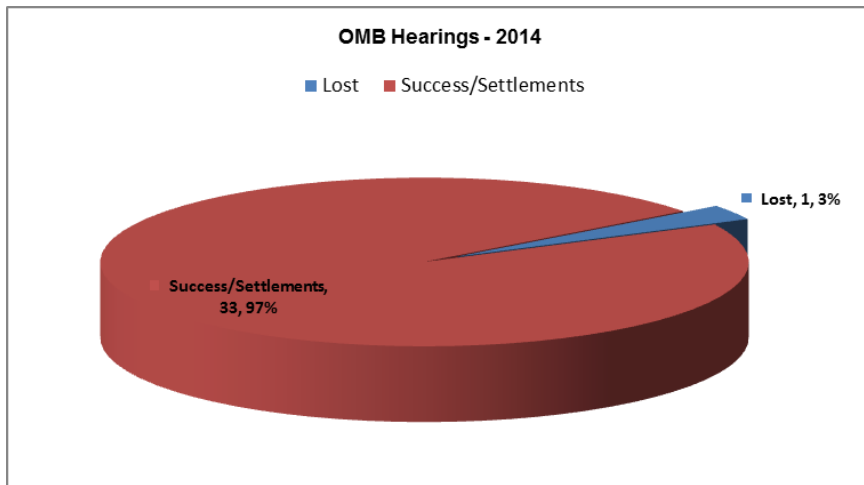
The following table indicates new subdivisions and condominium matters which arose in 2013 and 2014. Those numbers do not include any ongoing matters which originated in previous years for developments that are still in progress.

	Subdivision Matters	Condominium Matters
2013	12	16
2014	15	8

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 heritage districts. These matters frequently extend over a period of many months involving the extensive preparation of witnesses, mediations and pre-hearings and negotiations, in advance of presentation of evidence and arguments at the OMB or other tribunals.

CDP lawyers were involved in a number of important planning and development-related matters in 2014, including the completion of OMB approvals for the employment policies of the Urban Hamilton Official Plan (UHOP), the completion of all required development agreements and related material for the commencement of Phase 1 construction of the Connaught condominium project and the finalization of the OMB approval for the Waterdown Bay zoning and plan of subdivision appeals which pave the way for substantial residential development for approximately 9,000 people when fully built out.

In addition, in 2014, CDP lawyers were involved in other OMB matters. In particular, there were 34 planning appeal files to the OMB, resulting in 33 matters successfully argued and/or settled and 1 matter unsuccessfully argued at the OMB. To date for 2014, there are 95 days scheduled at the OMB. The attached Appendix "A" sets out the 2014 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, HR Policy Review Team and Development Review Team. In addition Legal Services provides support to the Licensing Tribunal and Property Standards Committee, when they adjudicate on appeals. Legal advice and guidance is also provided as required to Library Services, Hamilton Renewable Power Inc. and the Board of Health.

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**2015 Hearing/Pre-hearing/TCC Dates
Appendix "A" LS15016**

Matter ID	Address/description	OMB Case Number(s)	Hearing Type	Hearing Date	# Days Scheduled
13-0842	899 Nebo Rd. re: UHOPA appeal		Prehearing	Jan. 7/15	1
13-0842	899 Nebo Rd.	PL130701	Hearing	Jan. 12/15	15
13-0966	Fruitland Winona Secondary Plan	PL140601	Prehearing	Feb. 2/15	2
13-1262	Shoppers Drug Mart: 41, 45, 47, 49, 55 and 59 Head Street; 22 and 24 Dundurn Street North; 620, 622 and 624 King Street West (Hamilton)	PL131066 PL140104 PL131067	Hearing	Feb. 4/15	8
02-0216	UHOP	PL110331, PL090779, PL101381	TCC	Mar. 2/15	1
02-0216	UHOP	PL110331, PL090779, PL101381	Prehearing	Mar. 3/15	1
14-0844	153 Wilson/121 Fiddlers (Ancaster Wilson Street Secondary Plan)	PL140938	Prehearing	March 4/15	1
02-0216	UHOP	PL110331, PL090779, PL101381	Hearing	March. 6	1
14-0051	18-22, 24 and 28 King Street East	CRB1402	TCC	March. 10	1
14-0708	70 Barton St., Waterdown	PL140659	Hearing	Mar. 11	3
14-0845	Flamborough Power Centre	PL140892	Prehearing	March. 16	1
14-0335	307 and 325 Fiddlers Green Road	PL140316	TCC	March. 17	1
14-0951	Development Charge By-Law 14-153	DC140011	Prehearing	March. 24	1
08-0320	100 Cumberland	LC140044	Hearing	March. 25	1
14-0846	560 Grays Road	PL140936	Hearing	March. 26	2
14-0859	215 Dundas Street East	MM140061	Hearing	March.	2
15-0069	25 Barnesdale Ave. S.	PL141395	Hearing	March. 31	
14-0847	93-103 Locke St.	PL140830	Hearing	April. 1	1
14-0057	Strathcona Secondary Plan (UHOP No. 11)	PL131090	Prehearing	April. 10	1
15-0068	15 Lockport Way	PL141426	Hearing	April. 27	1
02-0216	UHOP	PL110331, PL090779, PL101381	Hearing	May. 7/15	2
14-1069	Appeal of By-Law 14-238 (House Keeping Amendment to By-Law 05-200) - Appeal of OPA #31	PL141206	Hearing	May. 12	3
14-0376	West Harbour (NEN)	PL140314	Mediation	May. 20	1
14-0335	307 & 325 Fiddler's Green (Highgate Holdings)	PL140316	Hearing	May. 25	5
14-0709	1 St. James	CRB1404	Hearing	June. 2	3
13-0966	Fruitland Winona Secondary Plan	PL140601	Prehearing	June. 8	2
	3105 Fletcher Road	PL150224	Prehearing	July. 2	1
14-0844	Ancaster Wilson Street Secondary Plan	PL140938	Prehearing	July. 6	1
14-0951	Development Charges	DC140011	Prehearing	July. 20	1
14-0708	70 Barton	PL140659	Hearing	August. 26	3
13-0258	Ponderosa	PL050179	Prehearing	September. 15	1
15-0056	893, 897 & 903 West 5th Street	PL141433	Hearing	September. 24	2
14-0844	Ancaster Wilson Street Secondary Plan	PL140938	Hearing	October. 7	3
14-0057	Strathcona Secondary Plan (UHOP No. 11)	PL131090	Prehearing	October. 15	1
13-0966	Fruitland Winona Secondary Plan	PL140601	Hearing	Nov. 3	15
14-0051	18-22, 24 and 28 King Street East	CRB1402	Prehearing	Dec. 3	1
02-0216	UHOP - DiCenzo	PL110331, PL090779, PL101381	Hearing	Dec. 7	5
Total					95

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