




CITY OF HAMILTON
CITY MANAGER'S OFFICE
Legal Services Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	August 11, 2015
SUBJECT/REPORT NO:	Funding of External Consultant(s) for an Ontario Municipal Board Hearing Regarding 228 Seneca Avenue (Glanbrook) – Appeal of Refusal of Rezoning Application – LS15023 (Ward 11)
WARD(S) AFFECTED:	Ward 11
PREPARED BY:	Dennis Perlin Solicitor 905-546-2424, Ext. 4708
SUBMITTED BY:	Janice Atwood-Petkovski City Solicitor City Manager's Office
SIGNATURE:	

RECOMMENDATION

- (a) That the City Solicitor be authorized to retain such External Consultants as may be necessary to provide expert advice and evidence to the Ontario Municipal Board respecting the applicant/owner's appeal to the Ontario Municipal Board of Council's refusal to pass a Zoning By-Law Amendment permitting a second dwelling unit in the accessory garage building on Spalding at 228 Seneca Avenue (Glanbrook).
- (b) That the amount required to retain any such external consultants be funded through the Tax Stabilization Reserve, account 110046.

EXECUTIVE SUMMARY

The owner of 228 Seneca Avenue (Glanbrook) has appealed to the OMB Council's refusal to pass a Zoning By-law Amendment to permit a permanent second dwelling unit at 228 Seneca in the accessory garage on Spalding at the corner of Spalding and Seneca. (See Planning Committee Report 15-001 adopted by Council on January 21, 2015)

City Planning Staff's advice and position on the Application before Council differed somewhat from the position taken by Council and therefore outside expert advice and

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evidence will be necessary to support Council's decision before the OMB. Thus the above Recommendations.

Alternatives for Consideration – See Page 3

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

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

Staffing: N/A

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

HISTORICAL BACKGROUND

For 35 years there has been a detached accessory building created for the purpose of a garage for the single detached home at 228 Seneca Avenue, Glanbrook. 228 Seneca is a corner lot at Spalding and Seneca and the detached accessory structure is on the Spalding side. We are informed that in 2011 the owners of 228 Seneca illegally converted the detached accessory garage to a dwelling unit and moved in and permitted their children to occupy the home. On discovery of the illegal conversion, the owners were given an Order by the City to bring the accessory structure into compliance with law or demolish the structure; i.e. "legalize" the dwelling unit occupancy or return it to a garage or demolish it. On April 19, 2013, the owners submitted a rezoning application to the City to legalize the use of that accessory structure as a second dwelling unit at 228 Seneca. On January 13, 2015, Planning Committee denied the Application and Council confirmed that decision on January 21, 2015.

Council's decision has been appealed to the Ontario Municipal Board ("OMB"). Legal staff has identified a need to retain external consultant(s) 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 budgets. 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 preparation of this report.

ANALYSIS AND RATIONAL FOR RECOMMENDATIONS

When the matter was before the Planning Committee on January 13, 2015, there was a Planning Staff Report PED14146(a) recommending Council permit the second dwelling unit at 228 Seneca in the Accessory Structure but only on a temporary basis; i.e. 3 years at a time and subject to certain changes “onsite” pursuant to a Development Agreement, all pending the completion of the “Second Unit” Study to be undertaken across the City pursuant to UHOP at some time in the future. However, Council was not supportive of the Applicant’s application prior to the completion of a Second Unit Study for the area and due to the Applicant simply doing the conversion without first getting the proper approvals for same. In any case, the Applicant did not agree with the Staff recommendations as to Temporary or conditions. Thus, as stated above, the application was denied.

The applicant/appellant appealed Council’s decision to the OMB and a hearing has been scheduled for September 9, 2015 (2 days).

External consultant expertise, primarily planning, is required because Council’s decision differed from the staff recommendation which was somewhat positive in the applicant’s favour even on a temporary basis before a Second Unit Study applicable to the Area was done. As stated, the initial need is an external planning consultant and after canvassing the names on the City’s Supplier List the least expensive retainer was for \$7,700.00 (plus HST and disbursements). That is expected to be the Cost of the External Planner. A contingency of \$3,000.00 is also being set in case the hearing is extended beyond the scheduled two days and/or other consultant expertise becomes needed.

In consultation with Finance, Legal Services is recommending that the outside expertise required be funded through the Tax Stabilization Reserve 110046.

ALTERNATIVES FOR CONSIDERATION

In the alternative, staff could be directed not to attend the hearing of this appeal to defend Council’s position or to do so without outside expertise retained. In either situation, the OMB would likely hear uncontested expert evidence from the applicant/appellant, and Council’s refusal decision would not likely 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