



Hamilton

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

<b>TO:</b>	Chair and Members Planning Committee
<b>COMMITTEE DATE:</b>	June 14, 2016
<b>SUBJECT/REPORT NO:</b>	Funding of External Consultant(s) for an Ontario Municipal Board Hearing Regarding 449 Stone Church Road West – Appeal of Refusal of Rezoning Application – ZAC-15-007 (Ward 8), LS160016
<b>WARD(S) AFFECTED:</b>	Ward 8
<b>PREPARED BY:</b>	Patrick MacDonald Solicitor 905-546-2424 x4708
<b>SUBMITTED BY:</b>	Janice Atwood-Petkovski City Solicitor City Manager's Office
<b>SIGNATURE:</b>	<i>Debbie Edwards</i>

**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 for a change in zoning from the "B" (Suburban Agriculture and Residential, etc.) District to the "DE-3/S-1721" (Multiple Dwellings) District, Modified, for lands know as 449 Stone Church Road West (Ward 8).
- (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 449 Stone Church Road West has appealed to the OMB Council's refusal to pass a Zoning By-law Amendment for a change in zoning from the "B" (Suburban Agriculture and Residential, etc.) District to the "DE-3/S-1721" (Multiple Dwellings) District, Modified, for lands know as 449 Stone Church Road West. (See Planning Committee Report 15-012 adopted by Council on August 14, 2015)

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

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

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

**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**

The subject property is located on Stone Church Road West, west of Garth Street. The subject lands are currently occupied by a one-storey single detached dwelling which will be demolished to accommodate the proposed development. On December 19, 2014, the owner submitted a rezoning application to the City to change the zoning of the subject lands from the "B" (Suburban Agriculture and Residential, etc.) District to the "DE-3/S-1721" (Multiple Dwellings) District, Modified. The purpose of the application is to replace the existing one-storey single detached dwelling with a multiple dwelling with 12 three and a half story units, each with separate individual at-grade entrances, 18 parking spaces located within a partially below-grade lower level parking structure, at-grade amenity space, and a roof top terrace for each unit. On August 11, 2015 Planning Committee denied the application and Council confirmed that decision on August 14, 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**

Staff in Corporate Services (Finance), and in the Planning and Economic Development Department have been consulted in preparation of this report.

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**ANALYSIS AND RATIONALE FOR RECOMMENDATION**

When the matter was before the Planning Committee on August 11, 2015, there was a Planning Staff Report PED15110 recommending Council permit the rezoning application. However, Planning Committee recommended denial of the application, on the following basis:

- (a) The proposal is not consistent with the Provincial Policy Statement and does not conform with the Growth Plan of the Greater Golden Horseshoe and Urban Hamilton Official Plan, as it is overdevelopment of the site and is therefore intensification which is not appropriate or compatible with its surrounding areas;
- (b) The proposal is not in keeping with the character and streetscape of the area in terms of size, massing, height, setbacks and built form;
- (c) The proposal will have adverse impacts on the surrounding area by virtue of the added traffic from such an overdevelopment creating additional traffic safety and congestion problems which is already a major concern in the surrounding area; and
- (d) The proposal does not have an acceptable housing mix, it is much too oriented to townhouses and should have a much higher proportion of single detached residential units.

Council confirmed Planning Committee's recommendation of denial at its meeting on August 14, 2015.

The applicant/appellant appealed Council's decision to the OMB. No hearing date has been scheduled, as the number of hearing days required to hear the appeal is dependent on the number and expertise of the City's proposed witnesses.

External consultant expertise is required because Council's decision differed from the staff recommendation which was in favour of granting the owner's application. In order to support the grounds for denial described above, one (1) external consultant will be required. Based on prior OMB hearings, staff estimates that the hearing of this matter will require 3-5 days. Based on quotes received, staff estimates that a planning expert will cost approximately \$10,000 to \$15,000 for a three-day hearing (which includes all necessary preparation). This is an estimate only, as the total cost may be higher or lower depending on the scope of issues and the conduct of the hearing.

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

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**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*