



**STAFF REPORT
ACTION REQUIRED**

Council Direction to Retain Outside Planners at the Ontario Municipal Board (OMB)

Date:	August 12, 2015
To:	Planning and Growth Management Committee
From:	City Solicitor
Wards:	All Wards
Reference Number:	

SUMMARY

As requested by Committee, this report sets out the internal practices around retaining external planning experts, consultants and lawyers to support Council's directions, describes how City lawyers are assigned to OMB appeals, and lists the outside consultants, lawyers and planners retained by the City over the past three years on planning related appeals to the OMB.

RECOMMENDATIONS

The City Solicitor recommends that:

1. Planning and Growth Management Committee receive this report for information.

Financial Impact

The recommendations in this report have no financial impact.

DECISION HISTORY

At its meeting on February 24, 2015, Planning and Growth Management Committee requested the City Solicitor and the Chief Planner and Executive Director, City Planning, to report to the May 14, 2015 Planning and Growth Management Committee meeting with a report that includes:

- a. a review of the current internal policies around retaining external planning experts to support Council's decisions and directives;
- b. advising on how lawyers are assigned to Ontario Municipal Board appeals;
- c. advising on the protocol for retaining outside consultants, lawyers and planners; and
- d. providing the list of approved outside consultants, lawyers and planners and advise how often this list is revised and on the number of occasions each was retained over the past three years.

Item PG2.12 adopted, as amended, by Planning and Growth Management Committee at its meeting on February 24, 2015 is found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.PG2.12>

ISSUE BACKGROUND

On occasion City Council may take a position on a development application that is not supported from a City staff perspective. The professional City staff advice may be in a wide range of fields including land use planning, urban design and transportation planning. In those situations it is necessary for the City Solicitor to retain outside consultants in order to support Council's position at the Ontario Municipal Board and provide evidence under oath at the hearing.

COMMENTS

Current Internal Policies Regarding the Retention of External Planning Experts

Where it is necessary to retain an outside planner for an OMB Hearing, it has been the long standing practice of Legal Services to consult with up to three professional planners to determine if a planner can provide evidence under oath to support the position of City Council. Professional Planners are governed by rules of professional conduct and cannot take on files where they cannot support Council's position under oath. If after consulting with three planners, none of them can take the retainer because they do not agree with the position of City Council, then Legal Services will cease the search for an outside planner and will attend the the OMB Hearing without a planning witness.

There are several reasons why Legal Services will not consult with more than three planners on a retainer. Most importantly, if three planners have refused the retainer on its merits, it is fairly certain that the case simply does not have the necessary planning merits to be successful. Secondly, it is time consuming for an outside planner to review a file for the purpose of determining whether he or she can support City Council's position. Currently, Legal Services is not charged for this service. Planning consultants may start to charge the City for their cost of reviewing the application and the planning documents

if more than three planners were consulted. Thirdly, there is also the time and resources it takes for City lawyers to prepare packages for the consultants to review and consult with them. It is not a good use of staff resources to continue the search for an outside planner once three planners have declined a retainer based on the planning merits of the case.

How Lawyers are Assigned to OMB Appeals?

City lawyers are assigned to development applications (Official Plan Amendments, Zoning By-law Amendments, Subdivisions) at the time the applications are circulated to Legal Services by City Planning. Assignments are made by the Director of Planning and Administrative Tribunal Law based on the nature of the application and the experience of the lawyer. In some cases, the City lawyer may already have experience with other development applications in the same part of the City as the new application and is therefore fully aware of the relevant planning documents and policies that apply to the new application, as well as the case law dealing with similar applications. In the event the application is at some point appealed to the OMB, that same lawyer is generally also responsible for handling the appeal. In more complex cases, a junior lawyer may also be assigned to the file to assist the senior lawyer and to provide training for the junior lawyer.

In the case of minor variance and consent decisions by the Committee of Adjustment, a City lawyer will be assigned by the Director of Planning and Administrative Tribunal Law at the time the Ward Councillor indicates an intention to request City Council direction to send Legal Services to the OMB on an appeal of the decision(s). Once again, the assignment is made based on the nature of the application and the experience of the lawyer. With respect to OMB Hearings on Committee of Adjustment appeals, given the high volume of cases and often early hearing dates, the assignment of lawyer will also depend on the availability of City lawyers to take on the hearing.

Protocol for Retaining Outside Consultants, Lawyers and Planners

Outside planners and other consultants are sought out by the assigned City lawyer on the file and the retainer is reviewed and signed by the Director of Planning and Administrative Tribunal Law. The key criteria is to find a reputable planner or other consultant who is best able to support Council's position at the OMB. Those planners and other consultants may have specialized expertise in certain types of applications and/or experience in certain areas of the City.

The retention of an outside lawyer to act for the City on a planning related matter at the OMB is occasionally necessary where the matter is complex and would otherwise demand a large amount of a City lawyer's time over an extended period of time. The retention of outside lawyers to assist in the appeals of the Official Plan Amendments arising from the City's five year review of the Official Plan is an example of the type of file where an outside lawyer would be retained. In such cases, the outside lawyer will work with a City lawyer on the file who provides oversight and City staff liaison. Outside lawyers are retained by the City Solicitor and are usually paid for out of the client division's budget for the project.

Occasionally, an outside solicitor may need to be retained due to a conflict situation arising, such as when a City Councillor is the owner of a property that is the subject matter of the OMB Hearing.

List of Approved Outside Consultants, Lawyers and Planners

There is no formal list maintained by Legal Services of approved outside consultants, lawyers and planners. Rather, over the years, City lawyers have worked with many planners and other consultants who have established good reputations as witnesses before the OMB. City lawyers attend many hearings and have an opportunity to view and evaluate witnesses on the stand under examination. In this way, City lawyers are able to judge which consultants may be appropriate witnesses for the City in a future matter. Further, in consultation with the Director of Planning and Administrative Tribunal Law and other lawyers in Legal Services, the file lawyer will seek out the most appropriate consultant, taking into account the type of application, issues involved and location of the proposed development.

Under this practice, the pool of outside consultants is constantly changing and the City lawyer is not locked into only selecting a consultant from an approved list.

With respect to the retention of outside lawyers, the City Solicitor, in consultation with the client division and the City lawyer assigned to the file, will similarly select the outside solicitor who is the "best fit" for the file, or an Invitation to Provide Legal Services will be sent to a number of lawyers with expertise in planning law. The responses are reviewed and interviews may take place in consultation with Planning staff, after which a successful lawyer is selected and retained.

Attached as Attachment "1" to this report is a list of outside planners and other consultants who have been retained by the Legal Services over the past three years on development related matters. With respect to outside lawyers retained by Legal Services over the past three years on development related matters, there are only three. Andrew Biggart of Ritchie, Ketcheson, Hart & Biggart was retained in 2012 with respect to the appeals of the Employment Land Policies under the Official Plan Review. That work is continuing. In 2012, Chris Barnett of Davis LLP was retained with respect to the appeals of the Heritage Policies under the the Official Plan Review. That work is also continuing. In 2012, 2013 and 2014, Bruce Ketcheson of Ritchie, Ketcheson, Hart & Biggart was retained to assist in the appeals of the Central Waterfront Secondary Plan. That work is now completed.

This report has been prepared in consultation with City Planning.

CONCLUSION

This report responds to a request for information by Planning and Growth Management Committee under Item PG2.12.

CONTACT

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SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENTS

Attachment 1 - List of outside consultants by year, 2012-2014

Attachment 1

Outside Consultants by year, 2012-2014

(number in brackets indicates number of files consultant retained on within the year)

2012	<p>Action Planning Consultants (7) AIMS Environmental (1) Bray Heritage (1) Dillion Consulting Ltd. (1) Dolan, William J. (1) Donald E. Roberts Ltd. (1) Jera Investments Inc. (1) Malone Given Parsons Ltd. (1) Martin Rendl Associates (1) Michael S. Manett Planning Services (5) PMG Planning Consultants (2) Sorenson Gravely Lowes (1) Weston Consulting Group (1)</p>
2013	<p>Action Planning Consultants (4) Brook McIlroy Inc.(1) Clayton, Frank A. (1) Dolan, William J. (1) Golder Associates Ltd. (1) HCG Engineering (1) Macaulay Shiomi Howson Ltd. (1) Martin Rendl Associates (1) Michael S. Manett Planning Services (2) Michael Spaziani Architect Inc. (2) Miller, Marilyn (1) PMG Planning Consultants (3) Sorenson Gravely Lowes (1) The Butler Group Consultants (1) Urban Forest Innovations Inc. (1) Urban Strategies Inc. (1) Walker, Nott, Dragicevic Associates Ltd.(1) Weston Consulting Group (1)</p>
2014	<p>Action Planning Consultants (2) David F. Crowley and Associates Ltd. (1) De Ruyter, Julius (3) J.C. Williams Group Ltd. (1) PMG Planning Consultants (1) R.E. Millward & Associates Ltd. (2) The Butler Group (2) The Planning Partnership Ltd. (1) Urban Strategies Inc.(2) Weston Consulting Group (2)</p>