MEDIA RELEASE: IMMEDIATE

REGIONAL MUNICIPALITY OF WATERLOO
CONSOLIDATED
COUNCIL AGENDA

Wednesday, June 27, 2012
Closed Session 6:30 p.m.
WATERLOO COUNTY ROOM
Regular Meeting 7:00 p.m.
REGIONAL COUNCIL CHAMBER
150 Frederick Street, Kitchener, ON

*Denotes Item(s) Not Part of Original Agenda

1. MOMENT OF SILENCE

2. ROLL CALL

3. MOTION TO GO INTO CLOSED SESSION

THAT a closed meeting of Council be held on Wednesday, June 27, 2012 at 6:30 p.m. in the Waterloo County Room in accordance with Section 239 of the Municipal Act, 2001, for the purposes of considering the following subject matters:

   a) receiving of legal advice and opinion that is subject to solicitor-client privilege related to an agreement
   b) proposed or pending acquisition of land in the City of Kitchener
   c) proposed or pending acquisition of land in the City of Kitchener
   d) personal matters about identifiable individuals and labour relations

4. MOTION TO RECONVENE IN OPEN SESSION

5. DECLARATION OF PECUNIARY INTEREST UNDER THE MUNICIPAL CONFLICT OF INTEREST ACT

6. PRESENTATIONS

   a) 2012 Ontario Senior of the Year Award – Mrs. Alma Alder

   b) Mike Murray Re: Employee Awards for Values Excellence Recipients

7. PETITIONS

8. DELEGATIONS

   a) Prasad Samarakoon, President, & Kimbe MacMaster, Manager Marketing, Grand River Public Bike Share Re: Public Bike Share Initiative

   * b) Lucy Casacia, Cities Manager GTHA and Pan Am Program Manager, Siemens Canada, Re: PS-120619 Item #7 (E-12-064, Stage 1 Light Rail Transit: Vehicle Procurement)
c) Call for Delegations:
   i) By-law to Amend By-law 12-001, as amended, being a By-law to Establish Fees and Charges for the Regional Municipality of Waterloo (Grand River Transit fares, U-Pass, International Travel Clinic)  
      - Item 21 b)  
   ii) By-law to Amend By-law 10-030, being the Region's Sign By-law (Size of Election Signs)  
      - Item 21 c)  
   iii) By-law to Amend By-law 04-069, as amended, being the Region's Taxi-cab Meter By-law (Accessible Taxis, Tariff Card)  
      - Item 21 d)  
   iv) Revisions to Notice Policy 07-02  
      - Item 12 Committee Reports c)  

9. MINUTES OF PREVIOUS MEETINGS  
   a) Closed Audit – June 6, 2012  
   b) Licensing & Retail – June 6, 2012  
   c) Closed Council – June 6, 2012  
   d) Council – June 6, 2012  
   e) Closed Committee – June 19, 2012  
   f) Planning & Works – June 19, 2012  
   g) Administration & Finance – June 19, 2012  
   h) Community Services – June 19, 2012  

10. COMMUNICATIONS  
   * a) City of Cambridge, Re: P&H Milling & Fountain/King Street Environmental Assessment Process  

11. MOTION TO GO INTO COMMITTEE OF THE WHOLE TO CONSIDER REPORTS  

12. REPORTS  
   Finance Reports  
   a) F-12-046, P2012-18 Wheelchair Accessible Mini Bus  
   b) F-12-047, T2011-107 Microsoft Enterprise Licensing for The Region of Waterloo  
   c) F-12-048, T2012-007 Belmont Avenue Raw Watermain Upgrade (Glasgow Street to Gage Avenue), City of Kitchener  
   d) F-12-049, T2012-008 Frederick Street Improvements – Lancaster Street to Bruce Street, City of Kitchener  
   e) F-12-050, T2012-011 Well House K1A And K2A and Infrastructure Upgrades, City of Kitchener  
   f) F-12-051, T2012-121 Chemical Lab Hood Upgrade Construction  
   g) F-12-052, P2011-56 Proposal or the Design, Supply, Installation and Commissioning of Photovoltaic Systems – Phase 2
Committee Reports

a) Licensing & Retail – attached & marked RS-120606

b) Planning & Works - attached & marked PS-120619

* Closed Planning & Works – attached & marked CPS-120619

c) Administration & Finance - attached & marked FS-120619

   CR-CLK-12-011, Revised Notice Policy # 07-02
   THAT the Regional Municipality of Waterloo approve the revised Notice
   Policy # 07-02 as set out in report CR-CLK-12-011 dated May 29, 2012

d) Community Services - attached & marked SS-120619

Chief Administrative Officer

Regional Chair

Regional Clerk

13. OTHER MATTERS UNDER COMMITTEE OF THE WHOLE

a) CR-RS-12-047, Authorization to Expropriate Lands (2nd Report) Known
   Municipally as 100 Victoria Street North and 157 Weber Street West for
   Weber Street West Grade Separation and Road Improvements (College
   Street to Guelph Street) in the City of Kitchener

b) SS-12-031, Immigration Partnership - Waterloo Region

14. MOTION FOR COMMITTEE OF THE WHOLE TO RISE AND COUNCIL RESUME

15. MOTION TO ADOPT PROCEEDINGS OF COMMITTEE OF THE WHOLE

16. MOTIONS

17. NOTICE OF MOTION

a) TAKE NOTICE THAT I, Councillor Jane Mitchell, intend to introduce the
   following motion at the Council Meeting on June 27, 2012:

   THAT Regional Council reconsiders approving the Policy for Reimbursement
   for Municipal Conflict of Interest Legal Opinion Expenses as set out in

   Copy of Report CR-RS-12-023 attached for reference

18. UNFINISHED BUSINESS

19. OTHER BUSINESS

20. QUESTIONS

1194175
21. **ENACTMENT OF BY-LAWS – FIRST, SECOND & THIRD READINGS**

* a) A By-law to Limit Tax Decreases for Properties in the Commercial, Industrial and Multi-Residential Classes in the 2012 Taxation Year  
   *(Note change in By-law title)*

b) A By-law to Amend By-law 12-001, as amended, being a By-law to Establish Fees and Charges for the Regional Municipality of Waterloo (Grand River Transit fares, U-Pass, International Travel Clinic)

c) A By-law to Amend By-law 10-030, being the Region's Sign By-law (Size of Election Signs)

d) A By-law to Amend By-law 04-069, as amended, being the Region's Taxi-cab Meter By-law (Accessible Taxis, Tariff Card)

e) A By-Law to Expropriate Certain Lands for the reconstruction of Weber Street West between College Street and Guelph Street, (Regional Road 8), in the City of Kitchener

f) A By-law to Confirm the Actions of Council – June 27, 2012

22. **ADJOURN**
June 20, 2012
File: Council – June 18, 2012

Regional Municipality of Waterloo
P.O. Box 9051 – Station C
150 Frederick Street
Kitchener, Ontario
N2G 4J3

Attention: Ms. Kris Fletcher

Dear Ms. Fletcher:

Re: P & H Milling & Fountain/King Street Environmental Assessment Process

Please be advised that Cambridge City Council at its meeting held on Monday, June 18, 2012 approved the following:

THAT Cambridge Council approve the recommendations of the Cambridge Municipal Heritage Advisory Committee from its meeting of May 17, 2012 as contained in Appendix “A”;

AND THAT Cambridge Council authorize the City Clerk to publish the Notice of Intention to Designate the properties municipally known as 101 and 149 King Street West as recommended in Staff Reports P/12-34 and P/12-35;

AND THAT Cambridge Council authorize the City Clerk to publish the Notice of Intention to Designate the mill complex known as P & H Milling at 140 King Street West subject to the conditions as outlined in the MHAC recommendation of May 17, 2012;

AND THAT Cambridge Council allow for the future issuance of a demolition permit of the heritage building located at 126 King Street West subject to the requirements as set out in the MHAC recommendations of May 17, 2012, including the requirements for architectural measured drawings and advertising the sale and salvaging of significant architectural features as shown in the photos attached to this report;

AND THAT Cambridge Council authorize staff to advise the Conservation Review Board of the City’s intention to withdraw the request for designation of 126 King Street West at such time as the recommendations in the MHAC minutes of May 17, 2012 have been met including the requirement for obtaining an approved site plan to ensure the relocation of the loading docks to significantly reduce truck turning movements on King Street West;
AND THAT Cambridge City Council request the Region amend their approved Environmental Assessment plans for this section of King Street West to shift the road widening southerly onto the property known as 126 King Street West; remove and/or reduce the 3.5 metre multi-use trail and replace it with a sidewalk as well as adjust the bus jump queue lane to reduce the impact on the heritage properties located at 101 and 149 King Street West;

AND THAT Cambridge Council direct staff to continue negotiating with the Region and landowners of 126, 101 and 149 King Street in order to achieve a compromise that minimizes to the greatest extent possible the impact of the proposed road widening on the heritage resources located in this area;

AND FURTHER THAT Cambridge Council authorize staff to file a Part II Order to the Ministry of the Environment prior to the 30 day deadline as set out in the EA process, if there is no agreement among the parties as to an approved plan for the road alignment including its geometrics, widenings and land takings.

This is a formal request to the Region, that I be notified of the Notice of Decision with respect to the Fountain/King Street Environmental Assessment Process.

Yours truly,

Alex Mitchell

AM:sw

cc: Janet Babcock, Commissioner of Planning Services
TO: Regional Chair Ken Seiling and Members of Regional Council  

DATE: June 27, 2012  

FILE CODE: F18-40  

SUBJECT: P2012-18 WHEELCHAIR ACCESSIBLE MINI BUS  

RECOMMENDATION:

THAT the Regional Municipality of Waterloo accept the proposal of Overland Custom Coach (2007) Inc. for the supply of two (2) Wheelchair Accessible Mini Buses in the amount of $201,296.18 including all applicable taxes.

SUMMARY:

Nil

REPORT:

Proposals were called for the supply of two (2) Wheelchair Accessible Mini Buses and were opened in the presence of C. Whitlock, L. Smith and D. Schmidt.

The following proposals were received:

<table>
<thead>
<tr>
<th>Company</th>
<th>Location</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crestline Coach Ltd.</td>
<td>Saskatoon, SK</td>
<td>$192,660.48</td>
</tr>
<tr>
<td>Overland Custom Coach (2007) Inc.</td>
<td>Thorndale, ON</td>
<td>$201,296.18</td>
</tr>
</tbody>
</table>

Advertisements for this proposal were placed in The Record, the Region’s web-site and the Ontario Public Buyers Association website. Four vendors downloaded the bid document from the Region’s website, however only two bids were received.

Bids were evaluated on the following criteria: compliance to specification, delivery, completion of bid and price. The bid submission from Overland Custom Coach (Inc.) received the highest overall score therefore staff is recommending the purchase of two Wheelchair Accessible Mini Buses from Overland Custom Coach (Inc.).

This purchase replaces two units due to age, condition and mileage. Both vehicles are 2006 Fords, with 270,000 kilometers. The combination of age and mileage necessitates additional mechanical repairs to ensure reliability and safety.

CORPORATE STRATEGIC PLAN:

Award of this contract meets the Corporate Strategic Plan objective to “develop, promote and integrate active forms of transportation” under Strategic Focus Area 3 to “develop greater, more sustainable and safe transportation choices.”
FINANCIAL IMPLICATIONS:

P2012-18 $ 201,296.18
Less: Municipal Rebate of 86.46% of HST (18,412.68)
Total $ 182,883.50

The approved 2012 GRT Capital Budget includes $190,000 for this purchase to be funded from the GRT MobilityPlus Vehicle Replacement Reserve. The unspent funds will remain in the Reserve for future use.

The final date of acceptance for this proposal is July 12, 2012.

OTHER DEPARTMENT CONSULTATIONS/CONCURRENCE: Nil

ATTACHMENTS: Nil

PREPARED BY: C. Whitlock, Director, Procurement and Supply Services

APPROVED BY: C. Dyer, Chief Financial Officer
TO: Regional Chair Ken Seiling and Members of Regional Council  
DATE: June 27, 2012  
FILE CODE: F18-30  
SUBJECT: T2011-107 MICROSOFT ENTERPRISE LICENSING FOR THE REGION OF WATERLOO  

RECOMMENDATION:

THAT the Regional Municipality of Waterloo accept the tender of SHI Canada ULC for Microsoft Enterprise Licensing for a two year period in the amount of $956,206.80 including all applicable taxes; with the option to extend for a further three (3) year period.

SUMMARY: Nil

REPORT:

Tenders were called for Microsoft Enterprise Licensing for the Region of Waterloo.

This tender is to maintain approximately 2,100 Microsoft licenses for the use of Microsoft Office plus additional applications such as server licenses for the Information Systems Technology Division.

The Microsoft Licensing Agreement and support from the respective system manufacturers provides staff with access to technical support, product upgrades and/or service releases and keeps systems operational.

The following tenders were received:

SHI Canada ULC Orangeville, ON $956,206.80  
Dell Canada Inc. North York, ON $957,862.64  
ONX Enterprise Solutions Cambridge, ON $966,337.54

Staff recommends awarding the tender to SHI Canada ULC for $478,103.40 per year, for a two year term totalling $956,206.80. There is an option to extend the agreement for a further three years subject to price negotiation.

CORPORATE STRATEGIC PLAN:

This recommendation supports Focus Area 5.3 of the Corporate Strategic Plan and aligns with the objective to ensure Regional programs and services are efficient and effective and demonstrate accountability to the public.

FINANCIAL IMPLICATIONS:

T2011-107 $956,206.80  
Less: Municipal Rebate of 86.46% (11.24% of 13%) (95,112.97)  
Total $861,093.83
The Region’s 2012 approved operating budget provides $1,233,583 for maintenance and support of various computer software licenses including Microsoft Enterprise. To-date, $490,401.86 has been spent or committed leaving a balance of $743,181.20 to cover Year 1 of the contract ($430,546.91). Sufficient funds will be included in the 2013 base budget to cover Year 2 of this contract.

OTHER DEPARTMENT CONSULTATIONS/CONCURRENCE: Nil

ATTACHMENTS: Nil

PREPARED BY: C. Whitlock, Director, Procurement & Supply Services

APPROVED BY: C. Dyer, Chief Financial Officer
TO: Regional Chair Ken Seiling and Members of Regional Council

DATE: June 27, 2012

FILE CODE: F18-30

SUBJECT: T2012-007 BELMONT AVENUE RAW WATERMAIN UPGRADE (GLASGOW STREET TO GAGE AVENUE), CITY OF KITCHENER

RECOMMENDATION:

THAT the Regional Municipality of Waterloo accept the tender of Network Sewer & Watermain Ltd. for the Belmont Avenue Raw Watermain Upgrade (Glasgow Street to Gage Avenue), City of Kitchener at a total price of $581,509.09 including all applicable taxes;

AND THAT the Regional Municipality of Waterloo advance $600,000 for this project (04070) from 2013 to 2012 to be funded from the Water and Regional Development Charges Reserve Funds.

SUMMARY: Nil

REPORT:

Tenders were called for the Belmont Avenue Raw Watermain Upgrade (Glasgow Street to Gage Avenue), City of Kitchener and opened in the presence of B. Khan, J. Borovicka and L. Buitenhuis.

The following tenders were received:

Network Sewer & Watermain Ltd. Cambridge, ON $ 581,509.09
Sierra Construction Woodstock, ON $ 676,180.47
Terracon Underground Ltd. Brantford, ON $ 676,740.95
Brantford Engineering & Construction Limited Brantford, ON $ 716,679.90
Steed & Evans Ltd. Heidelberg, ON $ 754,840.00
J-AAR Excavating Limited London, ON $ 757,851.45
Elgin Construction St. Thomas, ON $ 881,922.87
Avertex Utility Solutions Inc. Orangeville, ON $ 887,656.81
Amico Infrastructure (Oxford) Inc. Woodstock, ON $1,044,572.00
Bel-Air Excavating & Grading Ltd. Cambridge, ON $1,155,018.20

The work for this contract includes the upgrading of approximately 540 m length of 300 mm diameter raw watermain to 450 mm diameter watermain.

Background

The existing raw watermain located along Gage Avenue, Belmont Avenue and Glasgow Street, transports raw water that is pumped from four production wells to the Strange Street Pumping Station (PS). This watermain has experienced failures in the past and is currently scheduled for replacement. The replacement watermain diameter will be increased from 300 mm to 450 mm to allow for increased capacity and to reduce head losses.
The Gage Avenue section was constructed in 2009. The Glasgow Street section will be constructed in two sections in conjunction with the City of Kitchener Glasgow Street road and infrastructure upgrades scheduled for 2013 and 2014.

There are currently no plans to upgrade the road structure on Belmont Avenue; therefore the installation of this section of watermain is scheduled to be constructed in 2012 to avoid conflict with the Glasgow Street road and infrastructure upgrades scheduled for 2013 and 2014.

During watermain construction on Belmont Avenue, the two northbound lanes will be closed for traffic while the two southbound lanes will carry two-way traffic. Access to properties on Belmont Avenue will be maintained at all times.

**Construction Schedule**

Subject to Council approval, construction is scheduled to commence in July 2012 with completion expected in the middle of October 2012.

**CORPORATE STRATEGIC PLAN:**

Award of this contract meets the Corporate Strategic Plan Objective to “develop, optimize and maintain infrastructure to meet current and projected needs” under Strategic Focus Area 2 to “manage growth to foster thriving and productive urban and rural communities.”

**FINANCIAL IMPLICATIONS:**

- T2012-007 $581,509.09
- Engineering – Regional 30,000.00
- Materials Inspection & Testing during Construction 10,000.00
  
  **Sub-total** $621,509.09

Less: Municipal Rebate of 86.46% of HST (11.24%)
  
  **(58,836.83)**

  **Total** $562,672.26

The approved 2012 Water Ten Year Capital Program includes a budget of $66,000 in 2012 and $600,000 in 2013 for upgrading the Belmont Avenue watermain (project #04070) from Glasgow Street to Gage Avenue to be funded from the Water and the Regional Development Charge Reserve Funds. To avoid conflict with the Glasgow Street road and infrastructure upgrades, it is recommended to advance the 2013 budget for a total 2012 budget of $666,000. Based on the low tender result, the net cost of this work is $562,672.26, which is within the $666,000 total project budget for this contract. The cost of work is $103,327.74 (approximately 15.5%) under budget. This under spending is attributable primarily to a general industry-wide shortage of watermain work being tendered in 2012, which has resulted in the receipt of ten bids for this tender and very competitive pricing. The surplus funds will be available for future phases of this project.

The final date of acceptance for this tender is August 3, 2012.

**OTHER DEPARTMENT CONSULTATIONS/CONCURRENCE:** Nil

**ATTACHMENTS:** Nil

**PREPARED BY:** C. Whitlock, Director, Procurement & Supply Services

**APPROVED BY:** C. Dyer, Chief Financial Officer
TO: Regional Chair Ken Seiling and Members of Regional Council

DATE: June 27, 2012  FILE CODE: F18-30

SUBJECT: T2012-008 FREDERICK STREET IMPROVEMENTS – LANCASTER STREET TO BRUCE STREET, CITY OF KITCHENER

RECOMMENDATION:

THAT the Regional Municipality of Waterloo accept the tender of Steed & Evans Ltd. for Frederick Street Improvements – Lancaster Street to Bruce Street, City of Kitchener in the amount of $1,424,930.00 including all applicable taxes;

AND THAT the Regional Municipality of Waterloo approve an increase in project costs of $30,021.20 gross and $0.00 net to facilitate the work undertaken on behalf of the City of Kitchener;

AND FURTHER THAT the Regional Municipality of Waterloo approve an increase in project costs of $13,898.31 gross and $0.00 net to facilitate the work undertaken on behalf of the Ministry of Transportation.

SUMMARY: Nil

REPORT:

Tenders were called for Frederick Street Improvements – Lancaster Street to Bruce Street, City of Kitchener and were opened in the presence of M. Halloran, K. Brisbois and L. Buitenhuis.

The following tenders were received:

- Steed & Evans Ltd.  Heidelberg, ON  $1,424,930.00
- E&E Seegmiller Ltd.  Kitchener, ON  $1,535,629.32
- Capital Paving Inc.  Puslinch, ON  $1,594,910.80
- Sierra Construction Ltd.  Woodstock, ON  $1,662,260.24
- Coco Paving Inc.  Petersburg, ON  $1,799,192.58

The work under this contract includes full depth roadway reconstruction, replacement of sections of storm sewers, partial depth road rehabilitation with asphalt replacement, concrete curb and gutter repairs and replacements, concrete sidewalk repairs and replacement and the installation of two pedestrian refuge islands. Following the reconstruction, the road will be re-marked from East Avenue easterly to Bruce Street; the current four lanes will be re-marked to include 2 through lanes (one in each direction), 2 bike lanes and turn lanes.

Also included within the limits of this contract are portions of asphalt replacement on behalf of the Ministry of Transportation and portions of sidewalk replacement on behalf of the City of Kitchener.

This project is proposed to be constructed in two stages: Stage 1 involves all north side works from Bruce Street to Lancaster Street and Stage 2 involves all south side works from Bruce Street to Lancaster Street. Construction of Stage 1 (north side) is proposed to start on August 7th, 2012 and
proceed until mid September 2012. Stage 2 works will follow immediately after completion of Stage 1 works. All work is anticipated to be completed by mid October 2012.

Traffic Restrictions

Frederick Street will remain open for westbound traffic (into the downtown Kitchener core) and will be closed to eastbound traffic for the duration of these construction works. Traffic will be detoured via Weber Street, Victoria Street and Bruce Street for the eastbound direction. Access to local residences, businesses and local intersection roadways will be maintained to the greatest extent possible but will need to be restricted when construction activities are occurring directly at these accesses and side streets. In addition, two separate weekend road closures (one between East Avenue and Lancaster Street and the other between Edna Street and Lancaster Street) will be implemented to undertake the necessary full depth milling and paving works. The narrowness of the existing roadway does not permit traffic to be maintained during these works.

CORPORATE STRATEGIC PLAN:

Award of this contract is in accordance with the Region’s public tendering practices and meets Focus Area 5 - Service Excellence of the Region’s Corporate Strategic Plan and specifically Strategic Objective 5.3 which is to ensure all Regional programs and services are efficient, effective and accountable to the public. In addition, implementation of this contract achieves Focus Area 2 - Growth Management and Prosperity of the Corporate Strategic Plan and specifically Strategic Objective 2.2 which is to optimize the use of existing infrastructure and ensure it is adequately maintained.

FINANCIAL IMPLICATIONS:

Costs are shared as follows:

| Region of Waterloo – Transportation Division | $1,383,952.14 |
| City of Kitchener | 27,765.34 |
| Ministry of Transportation | 13,212.52 |
| **Total** | **$1,424,930.00** |

Region of Waterloo Transportation Division Costs

| T2012-008 | $1,383,952.14 |
| Engineering – Regional | 185,000.00 |
| Utility Relocations – Kitchener Wilmot Hydro & Bell Canada | 58,760.00 |
| Consulting – Geotechnical, Material Inspections & Testing | 56,500.00 |
| Detours, Signing and Line Painting | 35,000.00 |
| Preconstruction Property Inspections | 14,068.50 |
| Advertising & Printing | 2,000.00 |
| **Sub-total** | **$1,735,280.64** |
| Less: Municipal Rebate of 86.46% of HST | (150,521.87) |
| **Total** | **$1,584,758.77** |

The Region of Waterloo’s approved 2012 Ten Year Transportation Capital Program includes a total budget of $2,720,000 in 2012 for the Frederick Street Improvements project (#5250 & #5542) to be funded from the Roads Rehabilitation Capital Reserve Fund. Based on the low tender result, the actual cost of this work is $1,135,241.23 (approximately 41.7%) under the budget sources due to competitive pricing resulting from reduced activity in the local road building sector in 2012. Additionally, 15% of the project length has been deferred until 2017 for traffic management reasons.
Surplus funds will remain in the Roads Rehabilitation Reserve Fund and will be available for other capital projects.

City of Kitchener Costs – Share of Sidewalk Replacement

T2012-008 $27,765.34
Engineering – Regional 4,000.00
Consulting – Geotechnical, Material Inspections & Testing 1,130.00
Sub-total $32,895.34
Less: Municipal Rebate of 86.46% of HST (2,874.14)
Total $30,021.20

Staff from the City of Kitchener has advised they can fund these works and have asked the Region to proceed.

Ministry of Transportation Costs – Share of Pavement Replacement on Expressway Overpass Structure

T2012-008 $13,212.52
Engineering – Regional 2,000.00
Sub-total $15,212.52
Less: Municipal Rebate of 86.46% of HST (1,314.21)
Total $13,898.31

Staff from the Ministry of Transportation has advised they can fund these works and have asked the Region to proceed.

The final date of acceptance for this tender is August 7, 2012.

OTHER DEPARTMENT CONSULTATIONS/CONCURRENCE: Nil

ATTACHMENTS: Nil

PREPARED BY: C. Whitlock, Director, Procurement & Supply Services

APPROVED BY: C. Dyer, Chief Financial Officer
REGION OF WATERLOO
FINANCE DEPARTMENT
Procurement & Supply Services Division

TO: Regional Chair Ken Seiling and Members of the Regional Council
DATE: June 27, 2012
FILE CODE: F18-30

SUBJECT: T2012-011 WELL HOUSE K1A AND K2A AND INFRASTRUCTURE UPGRADES, CITY OF KITCHENER

RECOMMENDATION:

THAT the Regional Municipality of Waterloo accept the tender of Finnbilt General Contracting Ltd. for the construction of Well Houses K1A & K2A and Infrastructure Upgrades, City of Kitchener at a total price of $1,668,529.75 including all applicable taxes;

AND THAT the Regional Municipality of Waterloo advance $122,286.97 for this project (04017) from 2015 to 2012 to be funded from the Water and Regional Development Charges Reserve Funds.

SUMMARY: Nil

REPORT:

Tenders were called for Well Houses K1A & K2A and Infrastructure Upgrades, City of Kitchener and were advertised in The Record, the Daily Commercial News and on the Region’s website and were opened in the presence of C. Melitzer, K. Brisbois and A. Dooling.

The following tenders were received:

Finnbilt General Contracting Ltd. Stratford, ON $1,668,529.75
Mettko Construction Inc. Toronto, ON $1,684,265.00
K & L Construction (Ontario) Ltd. London, ON $1,711,719.48
Sierra Construction (Woodstock) Ltd. Woodstock, ON $1,825,672.00
Kiwi-Newton Construction Guelph, ON $1,890,073.25

The work of this contract will replace two existing wells and well houses (K1 & K2) with two new well houses (K1A & K2A) and associated service utilities. This contract includes:

- Two new Well Houses to be constructed around new production wells K1A and K2A;
- Demolition of existing Well Houses K1 and K2 including well decommissioning;
- New well pumps and associated discharge piping, valves and instrumentation;
- New underground electrical service and fibre communication service;
- Investigation of existing raw watermain and provision for replacement;
- All services and controls required to integrate the Wells into the Region’s Water Supply System.

Subject to Council approval, construction is scheduled to commence in July 2012 with completion expected by Spring 2013.
CORPORATE STRATEGIC PLAN:

Award of this contract meets the Corporate Strategic Plan Objective to “develop, optimize and maintain infrastructure to meet current and projected needs” under Strategic Focus Area 2 “growth management and prosperity.”

FINANCIAL IMPLICATIONS:

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
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<tbody>
<tr>
<td>T2012-011</td>
<td>$1,668,529.75</td>
</tr>
<tr>
<td>Engineering – Consultant</td>
<td>169,000.00</td>
</tr>
<tr>
<td>Engineering – Regional</td>
<td>55,000.00</td>
</tr>
<tr>
<td>Electrical Services provided by K-W Hydro</td>
<td>30,000.00</td>
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<tr>
<td>Software Development Services and Testing</td>
<td>20,000.00</td>
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<tr>
<td>Geotechnical Inspection and Material Testing</td>
<td>15,000.00</td>
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<td><strong>Sub-total</strong></td>
<td><strong>$1,957,529.75</strong></td>
</tr>
<tr>
<td>Less: Municipal Rebate of 86.46% of paid HST (11.24%)</td>
<td>(189,242.78)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,768,286.97</strong></td>
</tr>
</tbody>
</table>

The approved 2012 Water Ten Year Capital Program includes a total budget of $2,246,000 for Greenbrook System Upgrades (project #04017), including $1,646,000 in 2012 and 2013 for this project, and $600,000 for future work in 2015 and 2016. This work will be funded from the Water and Regional Development Charges Reserve Funds.

The estimated total project cost of $1,768,286.97 is $122,286.97 (7.4%) greater than the total project budget of $1,646,000, yet within the expected range of estimating accuracy (+/-10%) provided for years 2012 and 2013. Tender results may have been higher due to provisional work to replace underground watermains if found to be in poor condition (estimated at $120,000). Region staff recommends that $122,286.97 be advanced from year 2015 in order to fund the Well Houses K1A & K2A and Infrastructure Upgrades Project.

The final date of acceptance for this tender is August 7, 2012.

OTHER DEPARTMENT CONSULTATIONS/CONCURRENCE: Nil

ATTACHMENTS: Nil

PREPARED BY: C. Whitlock, Director, Procurement & Supply Services

APPROVED BY: C. Dyer, Chief Financial Officer
TO: Regional Chair Ken Seiling and Members of Regional Council

DATE: June 27, 2012           FILE CODE: F18-30

SUBJECT: T2012-121 CHEMICAL LAB HOOD UPGRADE CONSTRUCTION

RECOMMENDATION:

THAT the Regional Municipality of Waterloo accept the tender of Trade-Mark Industrial Inc. for the Chemical Lab Hood Upgrade Construction in the amount of $558,959.02, plus alternative price items in the amount of $117,002.46 for a total price of $675,961.48 including all applicable taxes.

SUMMARY: Nil

REPORT:

Tenders were called for the Chemical Lab Hood Upgrade Construction for 100 Maple Grove Road in Cambridge and were advertised in The Record, on the OPBA website and on the Region’s website. The tenders were opened in the presence of J. Leeson, J. Madaleno and J. McCarty.

The following tenders were received:

- Trade-Mark Industrial Inc., Kitchener, ON: $558,959.02
- Reids Heritage Construction Ltd., Cambridge, ON: $637,150.50

The work of this contract includes the replacement of eleven (11) ventilation extraction hoods and work to upgrade the storage room. The prices as shown in the recommendation above consist of alternate prices which include the replacement of three (3) more hoods. Additionally, the work includes the demolition of five (5) hazardous storage cabinets. The majority of the hoods are over 20 years old and are at the end of their life-cycle.

Seven (7) bidders attended the mandatory site visit; however only two (2) bids were received. One contractor who did not submit a bid indicated they were unable to complete the work due to their workload restrictions; another called after the tender saying that they had missed the mandatory walk through and therefore could not bid on the project. This project involves the installation of specialized equipment which must meet extensive testing and performance measures along with the handling of hazardous materials; and that installation was to be completed after regular business hours. This may have been a deterrent to contractors.

The addition of the alternative price item does not change the order of the bidders. The same general contractor is the low bidder for both the base contract and the alternative price item.

CORPORATE STRATEGIC PLAN:

The construction of the Chemical Lab Hood Upgrade will support Focus Area 2 of the Corporate Strategic Plan “Growth Management and Prosperity” to develop, optimize and maintain infrastructure to meet current and projected needs.
FINANCIAL IMPLICATIONS:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract T2012-121 Base Bid</td>
<td>$558,959.02</td>
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<tr>
<td>Contract T2012-121 Alternative Price Items</td>
<td>117,002.46</td>
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<tr>
<td>Consulting Services</td>
<td>89,000.00</td>
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<tr>
<td>Regional Engineering and Internal Fees (not subject to HST)</td>
<td>30,000.00</td>
</tr>
<tr>
<td>Sub-total</td>
<td>$794,961.48</td>
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<tr>
<td>Less: Municipal Rebate of 86.46% of HST (11.24%)</td>
<td>(76,089.97)</td>
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<tr>
<td>Total</td>
<td>$718,871.51</td>
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</table>

The approved 2012 Wastewater Capital Program includes $1,100,000 for various Environmental Enforcement and Lab Services Capital upgrades (project #08801) to be funded from the Wastewater Reserve Fund. Of the total budget, $850,000 was allocated for the Chemical Lab Hood Upgrade Construction. The cost of the chemical lab hood and storage room upgrades (net of the HST rebate) is $131,128.49 below the estimated cost for this work. These remaining funds are planned for other lab equipment purchases and unforeseen work related to this project.

The final date of acceptance for this tender is August 13, 2012.

OTHER DEPARTMENT CONSULTATIONS/CONCURRENCE:

Staff from Environmental Enforcement and Lab Services, and Facilities Engineering was consulted in the preparation of this report.

ATTACHMENTS: Nil

PREPARED BY:  C. Whitlock, Director, Procurement & Supply Services

APPROVED BY:  C. Dyer, Chief Financial Officer
REGION OF WATERLOO
FINANCE DEPARTMENT
Procurement & Supply Services Division

TO: Regional Chair Ken Seiling and Members of Regional Council

DATE: June 27, 2012      FILE CODE: F18-40

SUBJECT: P2011-56 PROPOSAL FOR THE DESIGN, SUPPLY, INSTALLATION AND COMMISSIONING OF PHOTOVOLTAIC SYSTEMS – PHASE 2

RECOMMENDATION:

THAT the Regional Municipality of Waterloo accept the proposal of RESCo Energy Inc. for the Design, Supply, Installation and Commissioning of Photovoltaic Systems – Phase 2 in the amount of $1,586,204.11 for 1990 Ottawa Street South, Kitchener and 34 Manitou Drive, Kitchener including all applicable taxes;

AND THAT the Regional Municipality of Waterloo accept the proposal of RESCo Energy Inc. for the Design, Supply, Installation and Commissioning of Photovoltaic Systems – Phase 2 in the amount of $1,721,074.74 for 990 Erb Street West, Waterloo and 1037 Elgin Street North, Cambridge including all applicable taxes, subject to Ontario Power Authority (OPA) contracts offered to the Region that are acceptable to the Commissioner of Corporate Resources.

SUMMARY: Nil

REPORT:

In June 2010, Council approved the renewable energy initiative to install $16 million of rooftop solar photovoltaic (PV) systems on several Region-owned buildings.

Proposals were called for the P2011-56 Design, Supply, Installation and Commissioning of Photovoltaic Systems – Phase 2 for seven (7) locations. The RFP required separate prices for each location so that staff could determine the feasibility of each possible installation. Based on various parameters such as overall cost, operating costs over the 20 year contract, cost per kilowatt, size of system, applicable Feed-In-Tariff (FIT) rates and site specific conditions, staff recommends proceeding with the following four (4) locations which provide a sound business case.

The following two (2) locations were selected under existing Ontario Power Authority Contracts as follows:

(a) Mannheim Water Services facility at 1990 Ottawa Street, Kitchener;
(b) Parkway Water Services facility at 34 Manitou Drive Kitchener.

The following two (2) locations were selected as feasible and are subject to a contract offer for such works from the Ontario Power Authority at any point on or before December 31, 2012:

(a) The Erb Street Water Services facility at 990 Erb Street West, Waterloo;
(b) The Turnbull Water Treatment Plant at 1037 Elgin Street, Cambridge.
The technical submission envelopes were opened in the presence of D. Kester, T. Pedlar and T. Lumgair. The proposals were evaluated using pre-determined quality and cost criteria, including compliance with specifications, experience with similar types of installations, references, innovations, safety record, warranty and timing/delivery.

Five bids were received; however, only the following vendors were shortlisted.

- SolarCity, Toronto, Ontario: $3,429,354.61
- Black & McDonald Ltd., Stoney Creek, Ontario: $4,779,801.29

The proposal submitted by RESCo Energy Inc. received the highest overall score and was the lowest cost for the four (4) selected sites. It is the opinion of staff that this is a competitive price as compared to other proposals received as well as previous bids received for the Photovoltaic (PV) systems.

The work associated with this contract includes the design, supply, installation and commissioning of roof mounted PV systems at the above four Regional facilities.

The Region has received contracts from the Ontario Power Authority (OPA) under the Feed In Tariff (FIT) program under the original FIT rates for 1990 Ottawa Street and 34 Manitou Drive.

Subject to Council approval, the Region will also enter into agreements with RESCo for 990 Erb Street and 1037 Elgin Street upon acceptable contract offers made to the Region by the OPA either under original FIT rates, or revised FIT rates in accordance with the overall threshold approved by Council on December 6, 2011, Report CR-FM-11-025 to ensure a solid business case.

Staff will report back to Council with an update when the revised FIT rules are published and come into effect. The timeline for release and the effective date of the new FIT rules is presently unknown.

**CORPORATE STRATEGIC PLAN:**

Successful implementation of energy reduction programs and producing renewable sources of energy support the Corporate Strategic Plan in Strategic Focus Area 1 “Environmental Sustainability” - Protect and enhance the environment. This initiative is a direct result of one of the key actions in Focus Area 1 - Research and pilot alternate energy sources in Regional Facilities.

The Ontario Power Authority’s Feed-In-Tariff program aligns naturally with the Region’s values of Innovation and Collaboration by setting the groundwork for innovative solutions to Ontario’s electricity supply challenges. It also promotes collaboration between various stakeholders including local distribution companies, municipalities, the greater business community and the solar technology industry.
FINANCIAL IMPLICATIONS:

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<thead>
<tr>
<th>Contract P2011-56</th>
<th>$3,307,278.85</th>
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<tr>
<td>Regional Engineering</td>
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<td>Contract Administration</td>
<td>21,854.20</td>
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<td>Advertising</td>
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<tr>
<td>Printing</td>
<td>500.00</td>
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<tr>
<td><strong>Sub-total</strong></td>
<td><strong>$3,380,633.05</strong></td>
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Less: Municipal Rebate of 86.4615% of HST (11.24%)

<table>
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<tr>
<th>(331,294.68)</th>
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</table>

**Total**

<table>
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<tr>
<th>$3,049,338.37</th>
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</table>

The capital project Renewable Energy Initiative, Solar Photovoltaic (project 90142) was approved for $16 million (Report CR-FM-10-012 dated June 8, 2010) to be funded from debentures and provincial grants. A total of $4,844,438 has been committed to-date.

Within the Renewable Energy Initiative capital project, an amount of $4,590,000 was earmarked for installing PV systems at the four locations recommended for completion. This component of the project is $1,540,661.63 under budget. The lower cost of this proposal can be attributed to various factors including the gradual decrease in PV system costs since the implementation of the original Feed-In-Tariff (FIT) program in Ontario; ease of installation and access at these locations; scale of the installation at these locations and an available workforce and surplus materials due to the delay in the OPA processing applications and finalizing the rules and rates under the new FIT program. The remaining budget will be available for completing the remainder of PV installations associated with the Region’s Renewable Energy Initiative, Solar Photovoltaic.

The final date of acceptance for this proposal is June 30, 2012.

OTHER DEPARTMENT CONSULTATIONS/concurrence:

Staff from all impacted program areas have been consulted to discuss inclusion of facilities in this initiative.

ATTACHMENTS: Nil

PREPARED BY: C. Whitlock, Director, Procurement & Supply Services

APPROVED BY: C. Dyer, Chief Financial Officer
THE REGIONAL MUNICIPALITY OF WATERLOO
LICENSING AND RETAIL COMMITTEE

Summary of Recommendations to Council

The Licensing and Retail Committee recommends as follows:

1. THAT the Regional Municipality of Waterloo provide notice in accordance with the Notice Policy to amend Taxi-cab Meter By-law 04-069 as amended, to increase the number of Accessible Taxi-cab Owner licences from fifteen (15) to sixteen (16);

   AND THAT Taxi Brokers be advised that it is the Region’s intent to award this additional license to City Cabs - 421532 Ontario Limited, of Kitchener, Ontario to meet their immediate need.

June 6, 2012
THE REGIONAL MUNICIPALITY OF WATERLOO
PLANNING AND WORKS COMMITTEE

Summary of Recommendations to Council

The Planning and Works Committee recommends as follows:


2. THAT the Regional Municipality of Waterloo support in principle the concerns of the respect to the issue of commercial fill operations in Ontario, as described in Report No. P-12-075, dated June 19, 2012:
   a) Request the Province, through the Ministry of the Environment, to work with municipalities to consider guidelines, regulations and a Provincially regulated approval process to govern the quality of fill imported to a receiving site other than for the purposes of Brownfield redevelopment; and
   b) Forward a copy of this report to the Provincial Minister of the Environment, local Members of Provincial Parliament and Area Municipalities.

3. THAT the Regional Municipality of Waterloo approve the following regarding implementation of the Grand River Transit (GRT) high school term pass as described in Report No. P-12-080, dated June 19, 2012:
   a) Implement a fare increase from $230.00 to $235.00 per 5 month term (from $46 to $47 per month) for the 2012-13 academic year beginning in September 2012 and reduce the time of use to weekdays before 6 p.m;
   b) Introduce an upgraded student pass for use after 6 p.m. weekdays, weekends and holidays at a cost to the student of $45.00 per term ($9 per month);
   c) Jointly promote the upgraded student pass with the school boards; and
   d) Amend the Region’s Fees and Charges By-law No. 12-001 with respect to the approved 2012 GRT high school term pass


5. THAT the Regional Municipality of Waterloo enter into a Consultant Services Agreement with Delcan Corporation of Kitchener, Ontario to provide consulting engineering services for the detailed design, contract administration and construction inspection for the rehabilitation of the Fountain Street Bridge over the Grand River at an upset fee limit of $425,455.00 plus applicable taxes for the detailed design phase, with contract administration and construction inspection to be paid on a time basis. [E-12-063]
6. THAT the Regional Municipality of Waterloo direct and authorize the Regional Solicitor to take the following actions with respect to the expropriation of further lands required for the construction of Stage 1 of the Rapid Transit Project on King Street West, at the City of Kitchener, in the Regional Municipality of Waterloo as detailed in Report CR-RS-12-040 dated June 19, 2012:

1. Complete application(s) to the Council of The Regional Municipality of Waterloo, as may be required from time to time, for approval to expropriate land, which is required for the Rapid Transit Project Stage 1 and described as follows:

   Fee Simple Partial Taking

   a) Part of Lot 21 Plan 413 and Part of Lot 29 Subdivision of Lot 15 German Company Tract designated as Part 1 Plan 58R-17451, City of Kitchener, Regional Municipality of Waterloo

2. Serve notice of the above application as required by the Expropriations Act;

3. Forward to the Chief Inquiry Officer any requests for a hearing that may be received;

4. Attend, with appropriate Regional staff, at any hearing that may be scheduled;

5. Discontinue expropriation proceedings or any part thereof, in respect of the above described lands, or any part thereof, upon the registration on title of the required documentation to complete a transaction whereby the required interest in the lands is conveyed; and

6. Do all things necessary and proper to be done, and report thereon to Regional Council in due course.

7. THAT the Regional Municipality of Waterloo take the following actions regarding the procurement of light rail vehicles for the rapid transit project, pursuant to report E-12-064, dated June 19, 2012.

   a) authorize staff to negotiate with Metrolinx to use their existing contract with Bombardier for the delivery of light rail vehicles; and

   b) direct staff to report back to Council following the completion of negotiations and prior to executing the light rail vehicle procurement contract.

8. THAT the Regional Municipality of Waterloo approve the revised 2012 Transportation Base, System Expansion, and Airport Capital Budgets as per Report E-12-069 dated June 19, 2012.

9. THAT the Regional Municipality of Waterloo authorize the Commissioner of Transportation and Environmental Services to execute an agreement ("the RLC Agreement") with Her Majesty the Queen in Right of Ontario as represented by the Minister of Transportation with respect to the administration of the red light camera program as described in Report E-12-071 dated June 19th, 2012 with the form and content of such agreement to be to the satisfaction of the Regional Solicitor;
AND THAT the Director, Transportation, of the Regional Municipality of Waterloo be authorized to sign such annual declarations as may be required to be submitted to the Ministry of Transportation in accordance with the RLC Agreement.

10. THAT the Regional Municipality of Waterloo accept the proposal of ESRI Canada for a 10-year Automated Vehicle Location/Global Positioning System (AVL/GPS) and Salt Management System, as detailed in Report E-12-072 dated June 19, 2012, subject to the proposal being approved by all other participating municipalities.

11. THAT the Regional Municipality of Waterloo:

   a) Increase the contract of TRY Recycling by 4,500 tonnes at $61.13 per tonne for a total of $275,085 plus applicable taxes for the pilot shingle diversion and recycling program for 2012, to be funded from the Waste Management Reserve Fund; and

   b) Approve in principle the addition of a permanent shingle diversion and recycling program in 2013, subject to approval during the 2013 budget process. [E-12-070]

June 19, 2012
THE REGIONAL MUNICIPALITY OF WATERLOO
PLANNING AND WORKS COMMITTEE

Summary of Closed Recommendations to Council

The Planning and Works Committee recommends as follows:

1. THAT the Regional Municipality of Waterloo approve, enter into an Agreement for, and execute all documentation related to, the acquisition of land for road improvements to Weber Street West described as Part Lot 8, Plan 373 as in Instrument Number A113991 except 166857, PIN 22331-0098 (LT), being 349 Weber Street West, City of Kitchener, Regional Municipality of Waterloo from Shahram Ahrari for the sum of $400,000.00, plus associated acquisition costs, subject to documentation satisfactory to the Regional Solicitor.

June 19, 2012
THE REGIONAL MUNICIPALITY OF WATERLOO
ADMINISTRATION AND FINANCE COMMITTEE

Summary of Recommendations to Council

The Administration and Finance Committee recommends as follows:

1. THAT the Regional Municipality of Waterloo endorse the Diversity and Inclusion Strategy as presented in Attachment #1 to report CA-12-008, dated June 19, 2012.

2. THAT the Regional Municipality of Waterloo approve the policy statement for the following Human Resources policy:

   Hot Work and Permit System (HR IV-29) (#1067295v7) [CA-HR-12-003]


4. THAT the Regional Municipality of Waterloo accept the proposal of Bank of Nova Scotia for Banking Services at a cost of $0 per year and for Credit and Debit Card Merchant Services at an estimated cost of $134,000 per year (based on recent volume and total dollar transactions) for a five (5) year term with an option to renew for one additional three (3) year term and one additional two (2) year term. [F-12-043]

5. THAT the Regional Municipality of Waterloo approve the following actions regarding Employee Parking as outlined in Report F-12-044, dated June 19, 2012:

   1. Require employees to pay to use employer provided parking at work sites located in the Urban Growth Centres or within 500 meters of the Urban Growth Centres in Kitchener, Waterloo and Cambridge and sites outside the Urban Growth Centres where there is a fair market value for parking;

   2. Charge such employees a rate sufficient to cover the Region’s costs to provide employee parking at such locations;

   3. Reimburse employee parking costs for those days on which such employees are required to use their personal vehicles to travel on Regional business;

   4. Provide a notice period and implement a phase-in approach with 50% of the rate effective July 1, 2013; and 100% of the rate effective July 1, 2014.

6. THAT the Regional Municipality of Waterloo enter into a renewal agreement for the Community Policing Partnerships Program with Her Majesty the Queen in Right of Ontario by its Ministry of Community Safety and Correctional Services effective April 1, 2012 to March 31, 2014 as described in Report CR-RS-12-034, dated June 19, 2012.

7. THAT the Regional Municipality of Waterloo enter into a renewal agreement for the “Safer Communities – 1,000 Officers Partnership Programme” with Her Majesty the Queen in Right of Ontario by the Minister of Community Safety and Correctional Services effective April 1, 2012 to March 31, 2014 as described in Report CR-RS-12-036, dated June 19, 2012.
8. THAT the Administration and Finance Committee approve the minutes of the Audit Committee dated June 6, 2012.

9. THAT the Consolidated Financial Statements for the Regional Municipality of Waterloo for the fiscal year ending December 31, 2011 be approved.

June 19, 2012
TO: Chair Tom Galloway and Members of the Administration and Finance Committee
DATE: May 29, 2012
FILE CODE: C01-01
SUBJECT: REVISED NOTICE POLICY # 07-02

RECOMMENDATION:

THAT the Regional Municipality of Waterloo provide the public with notice, in accordance with the Notice Policy, of the proposed revisions to the Notice Policy # 07-02 as set out in report CR-CLK-12-011 dated May 29, 2012, and bring the amended policy to the June 27, 2012 Council meeting for final approval;

AND THAT the Regional Municipality of Waterloo request the Association of Municipalities of Ontario (AMO) to lobby for a review of the prescribed notice requirements, taking into consideration the various pieces of legislation and regulations in an attempt to streamline the process and provide some autonomy for municipalities in providing public notice.

SUMMARY:

In accordance with the Notice Policy, Council and Administrative Services undertook a review of the Policy. Staff has identified three major areas for improvement: utilize some of the Region’s social media tools to reach a broader audience for matters of a general interest; allowing greater flexibility in what newspapers public notices are placed in; and bringing statutory notices into the Policy.

REPORT:

The Region’s current Notice Policy was adopted by Council on December 12, 2007 with a provision that it be reviewed each term of Council for efficiency. Council and Administrative Services undertook this review on the basis of increasing efficiency, effectiveness of meeting the target audience, transparency and access for the community and stakeholders; as well as expanding on cost effective methods of providing notice to the public where possible. The current Notice Policy requires notice to be given by direct delivery, newspaper public notices, the Region’s website, and email. The Region has established social media outlets such as Facebook, Twitter, RSS feeds, and Email subscriber service. There is value in making use of these tools as supplementary methods to keep the public informed about issues that may impact them.

Since the focus is on informing the appropriate audience, an opportunity has been identified to streamline the process for the required public notices which would have all newspaper public notices being placed through the Regional Clerk’s Office. This would also include statutory public notices, which are currently not captured under the Notice Policy. The benefits of this
would be to reduce advertising costs, improve consistency and conformity as well as a single contact to manage the various notice requirements suggested in this report.

Upon approval of the recommendation in this report, the required 21 days notice for the proposed revisions to the Notice Policy will be given. The revised Notice Policy will then be brought back directly to the June 27, 2012 Council meeting for an opportunity for public input and if possible, final approval that evening.

A survey was completed through Corporate Communications on how the public wants to receive notice and it showed the citizens’ preference is for direct delivery. However this is not always the most cost efficient method for those broader matters that affect a large portion of the Region. Direct delivery will still be utilized for specific areas when and where it is appropriate and manageable.

**Legislative Notice**

Some legislation such as the *Planning Act, Expropriations Act, Environmental Assessment Act, and Development Charges Act*, still contain prescribed forms required for municipal notice and these public notices can be very detailed, lengthy and costly when placed in multiple newspapers. In 2006, the *Municipal Act* was amended requiring municipalities to establish their own notice policies. This has given municipalities greater flexibility and autonomy in making decisions about notice, taking into consideration changes in technology and local needs.

In this regard, staff suggests that the Association of Municipalities of Ontario (AMO) be requested to lobby for a review of the prescribed notice requirement, taking into consideration the various pieces of legislation and regulations in an attempt to streamline the process, and provide some autonomy for municipalities in providing public notice.

**Notice Classes**

The Class system of the Notice Policy was reviewed and staff believes that the Classes provide appropriate parameters for the different types of notices that the Region provides. An additional Class 5 is recommended to bring the prescribed Statutory notice requirements under the umbrella and direction of this Policy. There is an opportunity with these types of notices to capture a broader audience. The streamlining of these public notices with the current policy would allow for the use of social media and the Region’s website to augment the newspaper notices and utilize advertising dollars more wisely. As an example, the Form 1 notice required under the *Expropriations Act* is very detailed and lengthy but is prescribed in the legislation.

**Website**

The Public Notices page on the Region’s website currently includes electronic copies of newspaper public notices, but it is the goal that with these revisions to the Notice Policy and streamlining, that this webpage would encompass more notices and function as a one-stop shop for citizens looking for information. Council and Administrative Services has been working on the design of this page to improve readability and flow of information.

The website is equipped with an RSS Feed which provides a summary list when new information is added to the website. Over the last five months there have been approximately 18,883 hits on the RSS feed. Staff will work toward improving the information accessed through the RSS Feed.
An email subscription for Council/Committee Agendas and Minutes was implemented by the Regional Clerk at the beginning of this year with great interest from staff and members of the public. This initiative has realized print savings and should be used for notices under this Policy. Staff would look at ways to promote awareness of this service. Currently there are 25 external subscribers, not including staff. As an alternative, staff is considering establishing a separate subscription service for public notices.

**Newspaper**

The Notice Policy provides that public notices be placed in a newspaper that is of sufficiently general circulation in the specific area at the discretion of the Department Head in order to meet the target audience. The proposed amendment will allow for public notices to be placed in newspapers at the request of the Department Head in consultation with the Regional Clerk or designate. This may also include the establishment of pointer notices to direct people to the Region’s website and the use of other newspapers to augment the existing public notice. All of this information will be captured in the Public Notice Manual being developed, including how the target audience is determined. There are multiple methods of advertising that can be considered for reaching the appropriate audience.

**Open Data**

At the end of last year, the Region launched an Open Data initiative with significant interest from the community and stakeholders. Council Services is working to take the information on the Region’s website Public Notices page and make it available through the Open Data catalogue to share with the public in the coming months.

**Social Media**

Currently, the Region has Facebook and Twitter pages which are managed by Corporate Communications. The Region’s Facebook page has approximately 600 likes and its Twitter feed has over 3,000 followers. A simplified and plain language post of a notice would be made on the Facebook and Twitter pages about one or two days prior to the meeting or event. The post would provide a link to the applicable notice on the Region’s website where more detailed information would be found.

As citizens become more aware and reliant on technology, staff has recognized that there are opportunities for the Region to continue to expand on the technology used to keep citizens informed. As the community looks to alternative electronic ways to get their information, newspaper readership decreases. However, the Region acknowledges that not all residents in the community have access to the internet in their homes. Staff is exploring various additional methods of providing notice and has identified social media tools and alternatives to giving notice which would not eliminate any existing method, but would add more options for residents. Staff will experiment and evaluate the use of new formats of giving notice such as social media outlets and the Notice Policy will be brought back to Council for further review at the same time as the comprehensive public participation plan report will be presented.

**Display Boards**

Where appropriate, display boards, including, road or property signage should be used for notices that are specific to an area. The timing and placement of such signs would be at the
discretion of the Department Head in consultation with the Regional Clerk. The details on this process will be worked out as part of the Public Notice Manual.

Implementation Process

A Public Notice Manual will be developed to provide more detailed information about the process and guidelines for staff in processing public notices in accordance with the Notice Policy. Topics to be covered will include definitions, statutory advertising procedures, use of social media and additional notice methods.

CORPORATE STRATEGIC PLAN:

The recommendation for the revised Notice Policy falls under Strategic Focus Area #5, Service Excellence: to engage and involve the public in decisions that impact the community and to ensure Regional programs and services are efficient and are open and transparent to the public.

FINANCIAL IMPLICATIONS:

Some savings have been realized as staff no longer requires printed agendas. Staff anticipates additional cost savings with a change to newspaper advertising but this will be determined at the end of the year.

OTHER DEPARTMENT CONSULTATIONS/CONCURRENCE:

All Departments will be affected by this change in Notice Policy. Corporate Communications was consulted in the preparation of this report.

ATTACHMENTS:

1. Draft Revised Notice Policy

PREPARED BY: Jessica Reid, Council/Committee Support Specialist
Lee Ann Wetzel, Manager, Council & Administrative Services/Deputy Clerk

APPROVED BY: Kris Fletcher, Director, Council & Administrative Services/Regional Clerk
Gary Sosnoski, Commissioner, Corporate Resources
POLICY STATEMENT

In recognition of the emphasis placed on transparency and accountability measures within the Municipal Act, the Region of Waterloo believes citizens should be made aware of the business of the municipality. In order to keep citizens informed, the Region will provide notice based on the following:

- development of a class system that identifies the circumstances of when notice will be provided;
- establishment of notice formats and notice methods that provide consistent, accessible and readable information;
- development of minimum notice time periods;
- development of alternate forms of notice that meets citizens’ needs.

OPERATING PRINCIPLE

The notice provisions are based on the following principles:
- citizens should be aware what, when and where the business of the municipality is being discussed;
- citizens should be aware when the business being discussed will have an impact on them;
- adequate time should be provided to citizens so they can make submissions.

The following principles apply to the notice:
- be provided in a timely manner in accordance with the scope and magnitude of the issue;
- be distributed to the broadest possible audience;
- should be given in a variety of manners and forms, including but not limited to social media, display boards, radio and television;
- provide credible, accessible information in a usable format that is easy to understand while being open, inclusive and respectful to all citizens;
- take into consideration directly delivered notice for those individuals who are directly impacted.
OPERATING DETAILS

Notice Format
A common format has been developed for giving notice which ensures consistency and includes the following information:

- date, time, location, contact information, summary of what notice is being given, how to obtain additional information, how to register to speak at a meeting (if appropriate), accessibility information and privacy considerations.

Newspaper Public Notice

All newspaper public notice requisitions are to be forwarded to the Clerk’s office with the appropriate requisition for placement to ensure cost efficiency, conformity and consistency. The format for notices may be amended as required to meet accessibility needs such as font size, etc. All language in notices should be written to the Canadian Press Standards at a Grade 8 reading level. The only exception to this will be when a legislated prescribed form must be used.

Individual departments establish their own standards related to informal notice not captured in the scope of this policy and collecting information from the public for matters such as disruption to service, minor road construction/repairs, etc.

Emergency Provision

If a matter or situation arises that, in the opinion of the Chief Administrative Officer, in consultation with the Regional Chair, is considered to be of an urgent or time sensitive nature, or could affect the health and well-being of the residents of the Region of Waterloo, or if a state of emergency is declared, or is so directed by a Provincial Ministry, the notice provisions may be waived and best efforts should be made to provide as much notice as is reasonable under the circumstances.

NOTICE CATEGORIES

General Guidelines:
- all references to days are calendar days, not business days.
- direct delivery includes hand delivery, pre-paid first class mail, facsimile and email.
- notice can be provided through multiple channels including, on the Region’s website - Public Notices webpage, newspapers, radio, television, direct mailing, location signs, and social media outlets.
- The Regional Clerk shall determine the newspaper of sufficiently general circulation, in consultation with the appropriate Department Head, if necessary.
- Social media outlets includes but is not limited to the Region’s RSS feed, Region of Waterloo Facebook page, and Twitter feed.

Class 1 – Standard Council/Committee Operating Process (minimum 3 days notice)
This class refers to the normal operations of the Region of Waterloo when notice is provided of upcoming Committee/Council meetings.

The foundation for this class of notice is the publication of the annual Schedule of meetings and updates to the Schedule. The Schedule is available on the Region’s website and is distributed
in electronic or hard copy upon request. The schedule shows the time and date for each regular Council and Committee meeting and notice of any change to the schedule will be provided a minimum of 3 days in advance.

Notice of Council/Committee meetings where the business of the municipality is being discussed is provided through the development of agendas. Notice shall be provided a minimum of 3 days in advance of the meeting by:

- posting of the agenda and supporting information including staff reports to the Region's website and email subscriber service;
- direct delivery to affected individuals where they have requested to be notified of an upcoming meeting or when required by legislation; and
- posting on social media outlets, one or two days prior to meeting.

A hard copy of the agenda for every Council and Committee meeting can also be obtained from the citizen kiosk located at 150 Main Street, Cambridge, 99 Regina Street, Waterloo, or the Clerk’s Office at 150 Frederick St., Kitchener.

Notice requirements do not apply to revised or consolidated agendas.

Class 2 – Defined or Specific Issues (minimum 14 days notice)
The issues associated with this class of notice are more specific and affect a smaller, more contained population. These notice provisions will take into consideration the difference between communities of interest, area municipalities and specific user groups. There are cases where the broad general notice may still be required but some discretion is necessary. Notice is to be more flexible and directed at affected individuals. As an example, the notice provision will apply to the following but may not be limited to:

- sale of minor parcels of land;
- controlled access by-laws and amendments;
- road renaming, highway closing by-laws;
- consultation on localized road repairs where a Class Environmental Assessment is not required;
- licensing hearings.

A minimum of 14 days notice is required utilizing the following methods:

- direct delivery or pre-paid first class mail to affected parties, that may include, but are not limited to:
  - affected land owners/occupants and abutting land owners/occupants within a radius defined by legislation and/or in consultation with the appropriate Department Head and Regional Clerk;
  - license holders;
  - stakeholders;
- posting of notice on the Region’s Public Notice webpage and email subscriber service;
- subscriber email to each municipal Clerk within the Region;
- at the request of the Department Head and at the discretion of the Regional Clerk or designate, public notice in a newspaper that is of sufficiently general circulation in the specific area;
- when newspaper public notice is used, posting will also be done with social media outlets, one or two days prior to the meeting;
• where appropriate, display boards should be placed along roadways in specific areas. Timing of these placements will be at the discretion of the Regional Clerk in consultation with the appropriate Department Head.

Class 3 – Major Issues (minimum 21 days notice)
The issues associated with this class have a significant impact on the community. This notice shall meet the broadest audience as the topics may be of interest to the Region as a whole. It is important to allow sufficient time for the public to respond to these major issues. Notice provisions will apply to the following:
  • consulting with the public on the development of new and amending Council policies under the Municipal Act;
  • consulting with the public on the development of new regulatory by-laws and amendments to those regulatory by-laws that affect general population i.e. amendment to pesticide or smoking by-laws;
  • amendments to procedural by-law;
  • proposed changes to governance structure (e.g. change of municipality name, change in size of Council);
  • approval of fees and charges by-law, including GRT fees;
  • sale of land containing buildings or the sale of land where a building permit could be acquired;
  • approval of the budget and any amendments resulting in an adjustment to the levy.

A minimum of 21 days notice is required utilizing the following methods:
  • public notice in a newspaper that is of sufficiently general circulation in the specific area in advance of meeting and/or passing of By-law, etc.;
  • posting of notice on the Region’s Public Notice webpage in advance and email subscriber service;
  • posting on social media outlets, one or two days prior to meeting;
  • subscriber email to each municipal Clerk within the Region.

Class 4 – Planned Service Disruptions (minimum 24 hours notice)
Departments shall be responsible for establishing processes to deal with planned service interruptions. Notice of the disruption should include information about the reason for the disruption, its anticipated duration and a description of any available alternate services. A minimum of 24 hours is required utilizing the following methods:
  • direct delivery or pre-paid first class mail to affected parties, that may include, but are not limited to, affected land owners/occupants, abutting land owners/occupants, license holders, stakeholders;
  • posting of the information in a conspicuous place or on the premises as applicable;
  • posting of notice on the Region’s Public Notice webpage in advance and email subscriber service;
  • consideration should be given on whether to notify the appropriate area municipality;
  • posting on social media outlets, one or two days prior to service disruption.

Class 5 – Other Legislatively Prescribed Statutory Notices
These advertisements may include but are not limited to requirements under the Development Charges Act, Environmental Assessment Act, Expropriations Act, Planning Act. The minimum
number of days in advance required for public notice will be completed as prescribed in the legislation as follows:

- as required, direct delivery, pre-paid first class mail or registered mail to affected parties
- if newspaper public notice is required, placement in a newspaper that is of sufficiently general circulation in the specific area;
- posting the notice on the Region’s Public Notice webpage and email subscriber service;
- posting on social media outlets should also be utilized where appropriate and in consultation with the Regional Clerk and appropriate Department Head;
- alternative forms of notice that meets citizens' needs should be considered for this class.

RESPONSIBILITIES

All Regional staff are responsible for adhering to the parameters outlined in this policy and for ensuring appropriate application of the notice policy.

MONITORING/CONTRAVENTIONS

The Regional Clerk shall be responsible for receiving complaints and/or concerns related to this policy. Upon receipt of a complaint and/or concern, the Regional Clerk will consult with the Regional Solicitor and notify Regional Council and the Chief Administrative Officer as required.

POLICY REVIEW

The Notice Policy will be reviewed for effectiveness once per term of Council by the Office of the Regional Clerk. Any required amendments will be brought back to Committee/Council once notice is given and the public has an opportunity to comment on any revisions.

SEE ALSO:

Accountability and Transparency Policy #07-01
Municipal Act
Planning Act
Expropriations Act
Environmental Assessment Act
Development Charges Act
Public Notice Manual
THE REGIONAL MUNICIPALITY OF WATERLOO
COMMUNITY SERVICES COMMITTEE

Summary of Recommendations to Council

The Community Services Committee recommends as follows:

1. THAT the matter of a Physical Activity Charter for the Region of Waterloo be referred to staff and that staff be directed to prepare a report.

2. THAT the Regional Municipality of Waterloo endorse the Region of Waterloo Public Health Humidex Advisory and Smog Advisory Response Protocol as outlined in Report PH-12-024.

3. THAT the Regional Municipality of Waterloo endorse the Waterloo Region Sexual Health Youth Strategy as outlined in Attachment 1 of Report PH-12-027 dated June 19, 2012.

4. THAT the Regional Municipality of Waterloo endorse the recommendations and proposed actions of the Rent Supplement Program Review 2011-2012 as noted in Report CA-12-006.1/P-12-053.1 Appendix 1, dated June 19, 2012.

5. THAT the Regional Municipality of Waterloo approve the proposed implementation of a one-date chronological system for Region of Waterloo’s Community Housing Coordinated Access waiting list applicants;

AND THAT the Regional Municipality of Waterloo approve the proposed amendments to the Housing Programs Administrative Guide policy 6.10 – Placement on Provider Waiting Lists by Access Sites, as identified in Attachment B of Report P-12-083, dated June 19, 2012.

6. THAT the Regional Municipality of Waterloo not renew its contracts for employment placement with Lutherwood and the KW Multicultural Centre effective December 31, 2012;

AND THAT all Employment Placement & Development Services be provided through internal programming within Employment and Income Support, Social Services;

AND FURTHER THAT an additional 2 full time equivalent positions be approved effective January 1, 2013 for Employment and Income Support as outlined in report SS-12-024, dated June 19, 2012.

7. THAT the Regional Municipality of Waterloo enter into a Memorandum of Understanding with the Waterloo Region District School Board for delivery of Youth Development Programs for 8 – 12 year old children as outlined in report SS-12-025;

AND THAT the Regional Municipality of Waterloo amend service agreements with KW YMCA, YMCA of Cambridge, KW YWCA, YWCA of Cambridge, Jacob Hespeler Child Care Centre, Creative Beginnings Child Care Centre and Conestoga College as outlined in report SS-12-025 dated June 19, 2012.
8. THAT the Regional Municipality of Waterloo enter into a Fee Subsidy Service Agreement effective September 1, 2012 with the YMCA of Cambridge, head office located at 161 Roger Street, Waterloo ON N2J 1B1 as outlined in report SS-12-027, dated June 19, 2012.

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9. THAT the Regional Municipality of Waterloo approve a revised rate for funerals of $2,830 plus applicable taxes effective January 1, 2012;

AND THAT funeral rates be included in the discretionary benefits review as outlined in report SS-12-028, dated June 19, 2012.

10. THAT the Regional Municipality of Waterloo amend By-law 12-001, being a By-law to Establish Fees and Charges for the Regional Municipality of Waterloo, to remove the Pre-School (<3.75 hours) and Toddler (<3.75 hours) rates for Children’s Services Division effective July 1, 2012 as outlined in Report SS-12-030 dated June 19, 2012.

June 19, 2012
TO: Chair Ken Seiling and Members of Regional Council

DATE: June 27, 2012

FILE CODE: L07-90

SUBJECT: AUTHORIZATION TO EXPROPRIATE LANDS (2ND REPORT) KNOWN MUNICIPALLY AS 100 VICTORIA STREET NORTH AND 157 WEBER STREET WEST FOR WEBER STREET WEST GRADE SEPARATION AND ROAD IMPROVEMENTS (COLLEGE STREET TO GUELPH STREET) IN THE CITY OF KITCHENER

RECOMMENDATION:

THAT Council of the Regional Municipality of Waterloo, after consideration of the Report of the Inquiry Officer received May 23, 2012 reporting on a Hearing of Necessity conducted under the Expropriations Act (the “Inquiry”) attached as Schedule "A" to Report CR-RS-12-047 dated June 27, 2012, approve the expropriation of the following lands for the purposes of reconstruction of Weber Street, as detailed in Report CR-RS-12-047, described as follows:

Full Taking:

a) Part Lot 16, Plan 374, Part Lot 19, Subdivision of Lot 3, German Company Tract, being Parts 1 and 2, on Reference Plan 58R-5402, City of Kitchener, P.I.N. 22319-0177 (LT) (100 Victoria Street North); and
b) Part Lot 320, Plan 376, City of Kitchener, P.I.N. 22319-0094 (LT) (157 Weber Street West)

Hereinafter referred to collectively the “Subject Lands” and shown on Schedule “B” and “B-1” to Report CR-RS-12-047, for the following reasons:

(a) The Region of Waterloo seeks to achieve the following objectives in the taking of the Subject Lands:
   a. to widen Weber Street from 2 lanes to 4 lanes to provide north/south capacity improvements to accommodate future growth and reduce delays for vehicles and transit;
   b. to construct a grade separation at the crossing of the CN Rail corridor, which will provide improvements to accommodate increases in rail traffic movements and reduce traffic delays and conflicts at the existing level railway crossing; and
   c. to enhance facilities for transit, cyclists and pedestrians and to reduce traffic collisions;
(b) The reconstruction of Weber Street (College Street to Guelph Street) including a grade separation at the CN Rail crossing, and widening of Weber Street from 2 lanes to 4 lanes (the “Weber Street Improvements”) in accordance with the Recommended Design Concept determined through the Municipal Class Environmental Assessment undertaken by Regional staff was approved by Council of the Region of Waterloo at its meeting on June 29, 2011;
(c) Although the Weber Street Improvements could be accommodated without a full taking of the Subject Lands with a different design concept than was approved, it is fair, sound and reasonably necessary to acquire the Subject Lands in order to:
a. Provide an alignment that results in property impacts primarily on one side of Weber Street, being the west side;

b. Provide for a temporary road and detour during construction of the grade separation to permit traffic to continue to flow on Weber Street without impacting additional properties; and

c. To minimize adverse/unacceptable traffic impacts on adjacent streets such as King Street that would result if no temporary road and detour were provided during construction;

AND THAT Regional Council cause its decision to approve the expropriation of the Subject Lands and its reasons therefore to be served upon the parties to the Inquiry, together with a copy to the Inquiry Officer;

AND THAT the Region pay costs in the amount of $200.00 to each of the 9 parties to the Hearing of Necessity;

AND THAT the Regional Chair and Regional Clerk be authorized to certify the said approval of expropriation of the Subject Lands in accordance with the Expropriations Act;

AND FURTHER THAT the Regional Solicitor be instructed to:

(a) Register a plan of expropriation in the proper land registry office pertaining to the Subject Lands;

(b) Serve the appropriate parties with a Notice of Expropriation, an Offer of Compensation and Appraisal, and a Notice of Possession in respect of the Subject Lands; and

(c) Do all other things necessary and proper to be done in order to complete the expropriation of the Subject Lands or acquire the interest through negotiated settlement and report to Regional Council in due course.

SUMMARY:

NIL

REPORT:

In connection with the construction of improvements to Weber Street West (College Street to Guelph Street) and a grade separation at the CN Rail crossing, the Region proposes to expropriate the Subject Lands being a single-family dwelling at 157 Weber Street West, Kitchener and a commercial plaza at 100 Victoria Street North, Kitchener. A site map depicting the Subject Lands is attached as Schedule “B” to this Report. Under the Expropriations Act, an owner of lands (which is defined to include a tenant) may request that a hearing be held by a provincially-appointed Inquiry Officer to consider whether the proposed expropriation is “fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.” The owners of 157 Weber Street West and 8 commercial tenants of the plaza at 100 Victoria Street North (collectively referred to as the “owners”) made such a request and the Inquiry was held on April 20, 2012 with follow-up submissions on May 4, 2012. The Report of the Inquiry Officer received May 23, 2012, is attached as Schedule “A” to this Report for consideration by Regional Council.

Pursuant to the requirements of the Expropriations Act, Regional Council must consider the Report of the Inquiry Officer and approve, not approve or approve with modifications the proposed expropriation of the Subject Lands. The decision of Regional Council and written reasons for its decision must be served on all parties and the Inquiry Officer within 90 days of receipt of the Report of the Inquiry Officer. To meet this time requirement, Regional Council must make a decision before August 21, 2012.
At the Inquiry, Regional staff presented evidence that a full taking of the Subject Lands was required to implement the preferred design concept (Design Concept B-Modified) recommended through the Municipal Class Environmental Assessment undertaken for this project and approved by Regional Council on June 28, 2011. The evidence included a summary of the Region’s objectives to be achieved through the acquisition of the Subject Lands for the Weber Street Improvements, a description of the Municipal Class Environmental Process that was undertaken to determine the preferred design concept, and the evaluation of alternative design concepts. The evidence given by Regional staff was the only evidence presented to the Inquiry Officer.

The owners did not object to the widening of Weber Street. The Inquiry Officer summarized the objections of the owners as follows:

1. The notice to them regarding changes by the Expropriating Authority to its preferred alternative design concept after Public Consultation Centre #2 of November 30, 2010 was inadequate and/or unfair;
2. That there was a design for widening Weber Street which was better than the preferred alternative identified by the Region; and,
3. The Region gave insufficient consideration of leasehold interests affected by the proposed expropriation.

With respect to the owners’ first objection, the Inquiry Officer found that the preferred Design Concept B-Modified (which was substantially the Design Concept B-Modified approved by Council) was presented to the public at Public Consultation Centre #2 on November 30, 2010 and that the changes to the design concept made following November 30, 2010 were “fine tuning” as described by Regional staff in evidence. In any event, the Inquiry Officer found that the notice provided to the owners during the municipal class environmental process was adequate and, further, that the owners had the opportunity to call witnesses and submit evidence at the Hearing of Necessity regarding alternatives to redress any prejudice that may have occurred during the environmental assessment process in that regard. The owners did not take that opportunity.

At the hearing, the owners’ legal counsel made submissions that another of the 4 alternate design concepts identified in the Municipal Class Environmental Assessment process (Design Concept C – A/B) is the preferred alternative and that alternative did not require a full taking of the plaza at 100 Victoria Street North. This submission was based on cross-examination of the evaluation matrix prepared as part of the Municipal Class Environmental Assessment process alone. Throughout the hearing it remained the opinion and evidence of the Region that Design Concept B-Modified, approved by Regional Council, was the preferred design concept. The Inquiry Officer was not prepared to find that the Region’s choice of design and the required expropriations for its implementation is not reasonably defensible based solely on the evaluation matrix.

As part of the Municipal Class Environmental Assessment the acquisition cost of properties for each alternative was estimated. This estimate did not include relocation costs for tenants of the plaza at 100 Victoria Street North or any other tenants displaced by any of the 4 alternative design concepts. There was no evidence of estimated costs related to tenant relocations for either the approved Design Concept B-Modified or the Design Concept C-A/B preferred by the owners. Based on the evidence of a rough analysis of the number of tenants affected by those 2 design concepts the Inquiry Officer found that the relocation costs difference between the two alternatives would not be great.

The Inquiry Officer concluded that the proposed expropriation of the Subject Lands is reasonably defensible. Pursuant to the provisions of the *Expropriations Act* the Inquiry Officer recommended that costs in the amount of $200.00 be paid to each of the 9 parties to the hearing.
Following the issuance of the Report of the Inquiry Officer, legal counsel for 8 tenants of 100 Victoria Street North sent correspondence to the Inquiry Officer requesting corrections of what they believed to be misstatements of evidence in the Report. A copy of the letter from Miller Thomson LLP, dated May 25, 2012, is attached as Schedule “C” to this Report for Regional Council’s information. The Inquiry Officer responded to the correspondence by letter dated June 18, 2012, a copy of which is attached to this Report as Schedule “D”.

Regional staff responds to the concerns expressed by legal counsel for the 8 tenants of 100 Victoria Street North in their correspondence as follows:

1. The full taking of 100 Victoria Street North is required primarily because of the detour road to be constructed to allow traffic to continue on Weber Street West during construction of the grade separation. It is also required because the approved Design Concept B-Modified results in the removal of the Weber Street access to the property, the internal driveway to the upper parking lot and a portion of the plaza building which would result in substantial impacts to the property. Given that the preferred Design Concept B-Modified, as approved by Regional Council, provided for the widening to occur primarily to the West it was logical to utilize lands already required or impacted by the Project. While there is no mandatory requirement to provide a detour road for this Project the retention of uninterrupted traffic on Weber Street during construction of the grade separation was considered a matter of prime importance to the Project Team during the Municipal Class Environmental Assessment. At the hearing Regional staff confirmed this recommendation. As noted in the Environmental Study Report for the Project the ramifications of fully closing Weber Street for any significant length of time, was considered both impractical and detrimental to the existing transportation network and local community. This evidence was confirmed by the Inquiry Officer in his letter of June 18, 2012. The proposed detour road that passes through the 100 Victoria Street North property was included in the Environmental Study Report as part of the construction staging.

2. As noted in the Inquiry Officer’s Report Design Concept B-Modified was presented to the public at Public Consultation Centre #2 and this concept included the removal of the internal driveway of the plaza, the Weber Street access and a portion of the plaza building. The changes that followed after November 30, 2010 are what was described as “fine tuning” and not the impact to 100 Victoria Street North.

3. As noted in the Report of the Inquiry Officer, there were no estimates of costs associated with the relocation of tenants included in the cost estimates for any of the alternative design concepts nor was there an accounting of the number of tenants affected by any of the alternative design concepts. It was noted in submissions at the hearing that there are difficulties in determining the number of tenants that may be affected by a project as whether or not a property is tenanted is not necessarily public information. Estimating the costs to relocate tenants poses greater difficulty as such assessments require detailed information about the tenancy that is not public or requires the cooperation and landlords and/or tenants. The Municipal Class Environmental Assessment process provides public notice of several opportunities for parties who may be affected by a proposed undertaking to obtain information, make inquiries and give notice of concerns or objections. As noted by the Inquiry Officer the hearing of necessity affords another opportunity for parties to present evidence and argument in support of their concerns.

4. The Expropriations Act gives owners (including tenants) the right to request a hearing of necessity. The Act also provides the Inquiry Officer can recommend an award of costs not to exceed $200 to be paid to a party to the inquiry. The parties to this proceeding retained legal counsel to represent their interests and make submissions to the Inquiry Officer. The costs incurred by the parties for representation would most likely exceed this maximum amount. Regional staff recommends that the costs of $200.00 to each of the 9 parties recommended by the Inquiry Officer be paid.
CORPORATE STRATEGIC PLAN:

One of the focus areas of the Corporate Strategic Plan is to develop greater, more sustainable and safe transportation choices.

FINANCIAL IMPLICATIONS:

Transportation and Environmental Services staff advises that the 2012 Transportation Capital Program includes $11,135,000 in 2012 for this project to be funded from the Development Charge and Roads Capital Levy Reserve Funds. There is sufficient allowance in the current budget for this property acquisition and demolition of the building.

OTHER DEPARTMENT CONSULTATIONS/CONCURRENCE:

Transportation and Environmental Services staff have been consulted in the preparation of this Report

ATTACHMENTS

Schedule “B” and “B-1” – Sketches of the Subject Lands
Schedule “D” – Letter from Inquiry Officer, dated June 18, 2012

PREPARED BY:  Fiona M. McCrea, Solicitor Property

APPROVED BY:  Gary Sosnoski, Commissioner Corporate Resources
REPORT OF VICTOR L. FREIDIN, Q.C.
INquiry Officer

In the matter of the proposed expropriation of land by the Regional Municipality of Waterloo for approval to expropriate land being Part of Lot 394, Plan 376, being Part 1 on Reference Plan 58R-17282, Part of Lot 16, Registered Plan 374, being Parts 1 and 2 on Reference Plan 58R-17285; Part of Lot 8 and 9, South side of Weber Street and West side of College Street, Plan 401, being Part 1 on Reference Plan 58R-17284 and Part 1, on Reference Plan 58R-17378; Part of Lot 17, Registered Plan 374, being Part 1 on Reference Plan 58R-17283; Part of Lot 3, Plan 131, being Part 1 on Reference Plan 58R-17363; Part of Lot 5, Plan 400, being Parts 2, 3, 4 and 5 on Reference Plan 58R-17363; Part of Lot 2 Municipal Complied Plan of Subdivision of Lot 16 German company Tract and part of Lot 19, Municipal Complied Plan of Subdivision of Lot 3, German Company Tract, being Part 1 and 2 on Reference Plan 58R-17281; Part of Lot 17, Registered Plan 374, being Part 1 on 58R-17354; Part Lot 16, Plan 374, Part Lot 19, Subdivision of Lot 3, German company, Tract, being Parts 1 and 2, on Reference Plan 58R-5401; Part Lot 19, Subdivision of Lot 3, German company Tract, Part Lot 221, Plan 376, being Part 1, or Reference Plan 58R-11148; Part Lot 81, Plan 376; Part Lots 1 to 5, Plan 389, being Parts 1 to 5 on Reference Plan 58R-6324; Part of Lot 320, Plan 376; Part Lots 8 and 9, Plan 389 except Part 1 on Reference Plan 58R-13446; Part Lot 80, Plan 376; Part Lot 267, Plan 376; Plan Lots 4 and 8, Plan 389; Part Lot 320, Plan 376; Part Lot 267, Plan 376, Part Lot 69, Street and lanes; Part Lot 155-156; Plan 376, Part Lot 45, Street and lanes; Part Lot 155, Plan 376, all in the City of Kitchener, Regional Municipality of Waterloo, for the purposes of road improvements to Weber Street West (Regional Road 8).

Re: 157 Weber Street West, Kitchener, Ontario
Re: 100 Victoria Street, Kitchener, Ontario

Hearing Date: Friday, April 20, 2012
REPORT OF VICTOR L. FREIDIN, Q.C.
INQUIRY OFFICER

IN THE MATTER OF THE proposed expropriation of land by the Regional Municipality of Waterloo for approval to expropriate land being Part of Lot 394, Plan 376, being Part 1 on Reference Plan 58R-17282, Part of Lot 16, Registered Plan 374, being Parts 1 and 2 on Reference Plan 58R-17285; Part of Lot 8 and 9, South side of Weber Street and West side of College Street, Plan 401, being Part 1 on Reference Plan 58R-17284 and Part 1, on Reference Plan 58R-17378; Part of Lot 17, Registered Plan 374, being Part 1 on Reference Plan 58R-17283; Part of Lot 3, Plan 131, being Part 1 on Reference Plan 58R-17363; Part of Lot 5, Plan 400, being Parts 2, 3, 4 and 5 on Reference Plan 58R-17363; Part of Lot 2 Municipal Complied Plan of Subdivision of Lot 16 German company Tract and part of Lot 19, Municipal Complied Plan of Subdivision of Lot 3, German Company Tract, being Part 1 and 2 on Reference Plan 58R-17281; Part of Lot 17, Registered Plan 374, being Part 1 on 58R-17354; Part Lot 16, Plan 374, Part Lot 19, Subdivision of Lot 3, German company, Tract, being Parts 1 and 2, on Reference Plan 58R-5401; Part Lot 19, Subdivision of Lot 3, German company Tract, Part Lot 221, Plan 376, being Part 1, on Reference Plan 58R-11148; Part Lot 81, Plan 376; Part Lots 1 to 5, Plan 389, being Parts 1 to 5 on Reference Plan 58R-6324; Part of Lot 320, Plan 376; Part Lots 8 and 9, Plan 389 except Part 1 on Reference Plan 58R-13446; Part Lot 80, Plan 376; Part Lot 267, Plan 376; Plan Lots 4 and 8, Plan 389; Part Lot 320, Plan 376; Part Lot 267, Plan 376, Part Lot 69, Street and lanes; Part Lot 155-156; Plan 376, Part Lot 45, Street and lanes; Part Lot 155, Plan 376; all in the City of Kitchener, Regional Municipality of Waterloo, for the purposes of road improvements to Weber Street West (Regional Road 8).

INTRODUCTION

The Hearing of Necessity for the above noted matter was held in the Council Chambers, Regional Municipality of Waterloo (hereinafter referred to as "the Region"), 125 Frederick Street, on April 20, 2012.

The Region was represented by legal counsel, Ms. Fiona McCrea. The hearing was requested by Duane and Caroline Wolfe, the owners of 157 Weber Street West, Kitchener. They were represented by legal counsel, Mr. Eric Davis. A hearing was also requested by eight commercial tenants, each of whom occupy separate units within a strip plaza located at 100 Victoria Street which is on the northwest corner of the intersection of Victoria Street and Weber Street. They were represented by legal counsel, Mr. Steven O'Melia. All those requesting the Hearing of Necessity will collectively be referred to herein as the landowners. The legal owner of 100 Victoria Street (the landlord) did not request a Hearing of Necessity and was not involved in the hearing. The only witness at the hearing was Mr. Peter Linn, a civil engineer employed by the Region.
OBJECTIVE OF THE EXPROPRIATING AUTHORITY

The Region has proposed expropriation of all of the land at 100 Victoria Street, and 157 Weber Street in the City of Kitchener. The objective of the Expropriating Authority is stated in paragraph 1 of the Notice of Grounds as follows:

"The objective which the Region wishes to achieve is to acquire ownership of certain lands, including the Subject Lands, to construct improvements to Weber Street (Regional Road No. 8) between College Street and Guelph Street, to widen Weber Street from 2 lanes to 4 lanes and construct a grade separation at the crossing of the CN Rail corridor, which will provide capacity improvements for existing and future traffic demands and to enhance facilities for transit, cyclists and pedestrians."

Approval pursuant to the Environmental Assessment Act was obtained for the preferred alternative identified in an Environmental Study Report (ESR) prepared by Stantec Consulting Ltd. dated July 21, 2011. The ESR was marked Exhibit 2A at the hearing. Four volumes of supporting material (Volumes 1 to 4) were marked Exhibits 2B, 2C, 2D, and 2E respectively.

Mr. Linn testified that expropriating 100 Victoria Street was necessary in order to widen Weber Street as described in the preferred alternative (Option B modified). He said that to implement this design, it was necessary to remove a good portion of the commercial building on that property in order to permit the construction of the underpass under the CN tracks which cross Weber Street. That evidence was not challenged in cross examination of Mr. Linn or in submissions made by counsel for the landowners. I therefore accept that evidence.

Mr. Linn also testified that regardless of which Design Concept was chosen, traffic would have to be detoured around the excavation for the railway underpass. He testified that the detour would have to cross 100 Victoria Street and that part of the building on that property would have to be removed for that to occur- hence the need for a full taking. This evidence was not challenged at the hearing and I therefore accept it.

There was no evidence regarding when a detour crossing 100 Victoria Street was first identified as necessary. I reviewed the ESR, including the four appendixes, to see what they said, if anything, about a detour at this location. I did not find any specific reference to a detour crossing 100 Victoria Street, or that a full taking of 100 Victoria Street was required for that purpose. For example, Item 11 of the ESR Executive Summary, paragraph 6.11 at p. xi refers to the detour between Wellington Street and Victoria Street. It states, in part, that "the preliminary Weber Street detour roadway is provided in this report and is subject to further review at the detailed design stage."

In Volume 1 of 4, section 15, it states that "due to the extent of excavations and heavy construction required at the CN underpass structure (Victoria to Wellington), it is anticipated that Weber Street may be closed for an extended period of time. Should this occur, alternate detour arrangements will be determined and the public will be advised accordingly". I was not shown, nor was I able to find a figure or diagram that depicts the detour through 100 Victoria Street, or commentary to that effect.
CONCERNS OF THE LANDOWNERS

The landowners did not object to the widening of Weber Street. Their position was:

(a) The notice to them regarding changes by the Expropriating Authority to its preferred alternative design concept after PCC #2 of November 30, 2010 was inadequate and/or unfair;

(b) That there was a design for widening Weber Street which was better than the preferred alternative identified by the Region; and,

(c) The Region gave insufficient consideration of leasehold interests affected by the proposed expropriation.

(a) Was Notice of the Preferred Alternative Adequate?

Once the decision was made to widen Weber Street, four Design Concepts were considered as alternative ways of doing so. The alternative design concepts were initially described in the ESR as Alternatives A, B, C, and CAB. The preferred alternative identified by the Region was Design Concept B-Modified. Unfortunately, in various places in the ESR, the phrase Alternate B is used when it is clear that the authors are referring to Alternative Design Concept B-Modified. I believe that use of these two terms when referring to the same design concept is the major cause of the confusion and/or uncertainty described herein.

The environmental assessment of the undertaking included two Public Consultation Centres (PCC), one on April 15, 2010, and one on November 30, 2010. They were followed by two public meetings held by the Region. One was held on March 8, 2011, and the second one was held on June 21, 2011.

The landowners made submissions that notice of the meetings of March 8, 2010 and June 21, 2011 were not adequate. They did so based on the premise that Design Concept B-Modified (which involved the expropriation of 100 Victoria Street) was not presented at PCC#2 held on November 30, 2010. As a result, they submitted that notice of the public meetings of March 8, 2011 and June 21, 2011 should have expressly stated that the preferred alternative identified at the PCC#2 on November 30, 2010 (which they believed did not show an expropriation of 100 Victoria Street) had changed. Counsel for the landowners submitted that without such express notice, they were justified in assuming that the Region’s preferred alternative had not changed and that no expropriation of 100 Victoria Street was being proposed.

The landowners, except for Mr. and Mrs. Wolfe, were not involved in the meeting of March 8, 2011 or June 21, 2011. Although no evidence was given in this regard by the landowners, it was implied that they would have been actively involved in the meetings of March 8, 2011 and/or June 21, 2011 if they were aware that such a change had been made.

At the end of the evidence at the hearing, there was uncertainty regarding when Alternate Design Concept B-Modified (which involved the expropriation of 100 Victoria Street) was first presented to the public.
Because of this concern, I asked counsel for the Regional Municipality to provide additional information regarding when Alternate Design Concept B-Modified was first presented and what it said, if anything, about 100 Victoria Street. I also asked if Design Concept B-Modified was ever subjected to an evaluation matrix like the one identified in Appendix E1 to the report of the June 21, 2011 meeting.

In response, the Region produced a drawing which they advised was on display at PCC#2 on November 30, 2011. It clearly shows the northwest part of the intersection of Weber Street and Victoria Street being widened primarily on the west side of Weber Street. It is entitled "Preferred Design Concept B-Modified (no median option shown)". It also identified 100 Victoria Street as a "full property acquisition".

The drawing was accompanied by a letter from the Region's solicitor to me dated May 4, 2012. A memo dated May 3, 2012 from Mr. Peter Linn was attached to that letter and advised that Design Concept B-Modified was first introduced to the public at PCC #2 on November 30, 2010.

Prior to the production of this drawing, the earliest date I noted on a Figure which depicted Design Concept B-Modified was April 22, 2011 -- after the Public Input Meeting of March 8, 2011, and more importantly from the landowner's perspective, after the PCC #2 of November 30, 2010. In the absence of Mr. Linn's clarification, it is not surprising that some people believed that Design Concept B-Modified was not presented at PCC #2.

It is apparent from the above, that the landowners assumptions regarding when Design Concept B-Modified was introduced, and upon which they based their submissions regarding the adequacy of notice, were incorrect. As indicated above, such confusion is understandable, and I therefore do not make this comment in a critical manner. I must admit that I too was left with some uncertainty in this regard before receiving Mr. Linn's memo in response to my request, and reviewing the ESR in more detail than the oral evidence given at the hearing.

Corroborating Evidence of November 30, 2010 Production

It was my perception that some question regarding the date upon which Design Concept B-Modified was introduced continued to exist notwithstanding the production of the drawing pursuant to my request. For that reason, I refer to some portions of the ESR which are consistent with Mr. Linn's evidence, and which was not referred to in the oral evidence.

First, in Volume 1 of 4 to the ESR at page 11 of the section dealing with PCC #2, paragraph 3 refers to "Alternative Alignment Option B" At page 12 of that section, the ESR states that "the details of the Preferred Design Concept are presented on large scale plans at this Public Consultation Centre Meeting".

Second, in that part of the document dealing with PCC #2, there is a document entitled "Public Consultation Centre #2 - The Preferred Design Concept". That document states, in part, that:

"Based on the various issues, constraints and opportunities associated with this project, the Project Team hereby present the "Preferred Design Concept" as Alternate Design
Concept B-Modified" (emphasis mine). Key components of this preferred concept, which is displayed on the accompanying alignment drawing, include the following... 

Major improvements would occur in the alignment and lane configuration at the Weber Street/Victoria Street intersection".

Third, the illustrations on the following page entitled "Renderings" show that after the underpass is built and Weber Street is widened, the plaza no longer exists. The Aerial View of the Potential Bridge Underpass found three pages later also does not show the plaza at 100 Victoria Street after construction.

**Reasons for Confusion/ Uncertainty regarding introduction of Design Concept B-Modified**

The following excerpts in the ESR were somewhat confusing and may have played some part in the uncertainty regarding the presentation of Design Concept B-Modified.

First, in Appendix E to the report of the March 8, 2011 meeting of the Region of Waterloo Planning and Works Committee, four alternate design concepts were identified and subjected to an analysis pursuant to a matrix described in Appendix "E". Because the matrix did not refer to Design Concept B-Modified, but to Design Concept B only, I, and perhaps others assumed that Design Concept B-Modified had not been developed or shown to the public prior thereto.

Second, page 2 of the report of March 8, 2011 meeting the references to Design Concept B (modified) reads as if the presentation of this design at the March 8, 2011 meeting will be the first time that design was to be discussed in a public forum. This may have been a contributing factor to someone believing that Design Concept B-Modified was not presented at PCC#2 of November 30, 2010.

Third, on June 21, 2011, what was referred to at the hearing as Alternate Design Concept B (modified) was recommended at a meeting of the Planning and Works Committee. Page 2 of that report states, in part, that the Recommended Design Concept endorsed by the Project Team for consideration by Council is "Design Concept B - Widening towards the West including a parallel service road east of Weber Street only."

At page 14 of the June 21, 2011 report the following appears immediately below the heading "Recommended Design Concept".

"Following consideration of the opinions expressed at the Public Input Meeting, Design Concept B has been refined by the Project Team. This refined Design Concept is now recommended for consideration by Regional Council."

Appendix "H" to the June 21, 2011 report is an aerial view of the Weber Street Corridor Study (the last page of Volume 1 of 4) is entitled "Recommended Preferred Alternative Alignment, Option "B" and is dated April 2011. In terms of the intersection of Victoria Street and Weber Street, it is the same as the depiction of Alternative Design Concept B-Modified depicted in Figure 2 attached to the ESR Summary. Even at this stage, the authors of the ESR were using both "Design Concept B" and "Design Concept B-Modified" when referring to the same thing i.e. the Region's preferred alternative.
Conclusion Regarding Adequacy of Notice

I have taken time to provide the above detail because the timing of the first presentation of Design Concept B-Modified was critical to the landowners' submission on the adequacy of notice.

After considering all of the above, I find that Design Concept B-Modified was introduced on November 30, 2010. I also find that the changes to it after that date did not fundamentally alter that proposal. The changes were referred to as "fine tuning" by Mr. Linn.

As a result, the landowners' concerns regarding the adequacy of notice for the March 8, 2011 and June 21, 2011 meeting were based on a misunderstanding that Design Concept B-Modified was not presented at PCC #2.

Even if Design Concept B-Modified had not been introduced until March 2011, I would have concluded that the notice to the landowners by publication in a local newspaper was sufficient notice. I do not accept the landowners' submission that because there was no specific reference in those notices to a change in the Region's preferred alternative (assuming there was such a change) that it would have been reasonable for them to assume that no changes had been made since November 30, 2010 and that their continued participation in the EA process was therefore not required or advisable.

Finally, the landowners had the opportunity to question the manner in which alternatives were considered by the Expropriating Authority at this Hearing of Necessity. In my view, the opportunity to call evidence and to make submissions regarding alternatives, including introducing evidence about new alternatives, sufficiently addresses any prejudice that may have occurred during the EA process in that regard.

As an aside, if I had found that notice provided to the landowners during the EA process was inadequate, the question would arise whether such inadequacy would support a recommendation that the proposed expropriation was not fair, sound and reasonably necessary as contemplated by section 7(5) of the Expropriations Act. Query whether relief for any alleged lack of notice during the EA process is a matter to be resolved as part of the EA process only? I leave the answer to that question to another day.

(b) Landowners' Preferred Alternative

The four alternate design concepts described in the matrix evaluation were A, B, C, and CAB.

The landowners submitted that Alternate Design Concept CAB is the preferred alternative. They established during cross examination of Mr. Linn that a number of changes should be made to the evaluation matrix in Appendix E-1 to the June 21, 2011 report as it relates to Design Concept B. Counsel for the tenants at 100 Victoria submitted that with those modifications, Alternate Design Concept CAB became the preferred alternative and should replace Design Concept B-Modified.
The onus at a Hearing of Necessity is on the Expropriating Authority is to establish that its choice, and the expropriation required to implement it, are reasonably defensible. The onus is, however, not one of perfection.

Where, as in this case, there is at most a slight difference between the Expropriating Authority's preferred alternative and the alternative put forward by the landowners based on the matrix evaluation alone, I am not prepared to find the Expropriating Authority's choice of design and associated expropriation is not reasonably defensible. In addition, the choice of the preferred alternative by the Region was not based solely on assigning a mark to each criteria considered as part of the matrix evaluation. Rather, the opinion of those considering alternatives also came into play, and therefore a subjective element was involved.

In Parkin and the Queen, (1977), 13 LCR 306 (a case dealing with the alignment of the St. Thomas expressway), Mr. Justice Cory commented on the test against which an Inquiry Officer should assess the evidence. He stated at page 315 as follows:

"the test suggested by Mr. Morden, that is to say, having regard to the objectives of the expropriating authority is this expropriation reasonably defensible, is in my opinion one that can and should be considered and applied by an Inquiry Officer".

In the Court of Appeal decision of that case reported 14 LCR 327, the court stated at page 331 that when applying the test described in section 7(5) of the Expropriations Act, "it is not necessary that each of the words "fair, sound and reasonably necessary" be treated separately in all cases."

c) Consideration of Leasehold Interest

There was no difference in the estimated construction costs of the various alternatives. (ESR- Table 6.1 at page 6.62). The cost of acquisition of properties related to each alternative was estimated during the Environmental Assessment. Alternative B acquisition cost was estimated at $51,500,000.00. Alternative CAB acquisition cost was estimated at $56,560,000.00 (ESR - Table 6.1).

No estimate was made of relocation costs which might be payable by the Region to the tenants of 100 Victoria Street. Mr. Linn admitted that if such costs were added to the cost of Alternative B, the ultimate cost of Alternative B would increase. It is clear that to reasonably compare relocation costs of the two alternatives, there would have to be an estimate of the tenants displaced by Alternative CAB as well.

There was considerable discussion regarding the number of tenants that would be displaced by Option B versus Option CAB. The number of tenants affected by each of these two alternatives could not be determined in a precise manner. No estimate of costs related to any such differences was led. Based on the rough analysis conducted during the cross examination for Mr. Linn, I find that the relocation cost difference between the two alternatives in question would not be great. No estimate of costs related to any such differences was led.

During cross examination, Mr. Linn testified that the Region did not consider the viability of the plaza, but that looking at such viability "may have been worth investigating" if
cost was a factor to consider. Mr. Linn did speak to the tenants’ lawyers in that regard because but did not follow up with that lawyer(s) or the tenants because the landlord had told him not to do so. Mr. Linn took the landlord’s comment as a threat of possible litigation should the Region pursue such discussions further.

Whether or not Mr. Linn should have pursued discussions with the tenants notwithstanding the landlord’s comment, the landowners could have led evidence in this regard. No such evidence was given.

RECOMMENDATION

Based on all of the above, it is my opinion that the proposed expropriation of the lands of the parties to this hearing is reasonably defensible. In coming to this conclusion, I have considered both the public interest and the private interests of the landowners.

COSTS

The Expropriations Act, s.7(10) states:

"The Inquiry Officer may recommend to the approving authority that a party to the inquiry be paid a fixed amount for the parties costs of the inquiry not to exceed $200.00 and the approving authority may in its discretion order the expropriating authority to pay such costs forthwith."

Mr. O'Melia represented eight tenants in the strip plaza at 100 Victoria Street. He asked that I recommend payment to each of his clients of the $200.000 specified. Mr. Davis did not make a similar request. I note, however, that a specific request is not a precondition to such a recommendation by an Inquiry Officer.

The onus in a Hearing of Necessity is on the Expropriating Authority to satisfy the Inquiry Officer that the test imposed by section 7(5) of the Expropriations Act is met. Due to such onus, almost all Expropriating Authorities will present expert evidence including, but not limited to, evidence of planners and engineers.

The ability of landowners to participate in Hearings of Necessity is hampered due to the inability of an Inquiry Officer to recommend more than $200.00 for costs as described. For example, the costs for a landowner to retain its own expert witnesses and to retain legal counsel may prevent a full response to the proposed expropriation. Jurisdictions such as Alberta provide that a landowner’s costs of a Hearing of Necessity be paid by the Expropriating Authority “unless the inquiry officer determines that special circumstances exist or justify the reduction or denial of costs”.

I have no jurisdiction to recommend more than $200.00 per party. However, it is my opinion that section 7(10) of the Expropriations Act should be given a liberal interpretation in favour of persons whose property is being expropriated. For that reason I recommended a grant to each of the tenants represented by Mr. O'Melia and $200.00 in tota to Mr. and Mrs. Wolfe.
May 22, 2012

ALL OF WHICH IS RESPECTFULLY SUBMITTED

__________________________
VICTOR L. FREIDIN, Q.C.
INQUIRY OFFICER
LIST OF EXHIBITS

Exhibit 1 - CV of Peter Linn
Exhibit 2A - Environmental Study Report, July 2011
Exhibit 2B - Environmental Study Report, July 2011, Appendix 1 of 4
Exhibit 2C - Environmental Study Report, July 2011, Appendix 2 of 4
Exhibit 2D - Environmental Study Report, July 2011, Appendix 3 of 4
Exhibit 2E - Environmental Study Report, July 2011, Appendix 4 of 4
Exhibit 3 - Road Network Map (retained by Region)
Exhibit 4 - Excerpts from Region of Waterloo, Regional Official Policies Plan (September 2006 Consolidation)
Exhibit 5 - Excerpts from Region of Waterloo, Regional Transportation Master Plan, Final Report (April 1999)
Exhibit 6 - Excerpts from Region of Waterloo, Regional Transportation Master Plan, (Moving Forward 2031)
Schedule “B”

Subject Lands:
157 Weber St W
City of Kitchener

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THIS IS NOT A PLAN OF SURVEY
May 25, 2012

Delivered Via Email: vfreidin@rogers.com

Victor L. Freidin
Barrister & Solicitor
99 Moore Avenue
Toronto ON M4T 1V7

Dear Mr. Freidin:

Re: Expropriations Act – Request for Hearing – Regional Municipality of Waterloo
Expropriation of 157 Weber Street West, Kitchener, being Part Lot 320, Plan 376,
City of Kitchener PIN: 22319-0094 (LT)
Owners: Duane & Caroline Wolfe

Re: Expropriations Act – Request for Hearing – Regional Municipality of Waterloo
Expropriation of 100 Victoria Street North, Kitchener, being Part Lot 16, Plan 374,
Part Lot 19, Subdivision of Lot 3, GCT, being Parts 1 & 2 on Reference Plan 58R-
5402, City of Kitchener PIN: 22319-0177 (LT)
Tenant: Bill Jermyn operator of “Waterloo Engraving”
Tenant: Anne Correia operator of “Press Box Sports Lounge”
Tenant: Gopesh Purohit operator of “Cash Shop”
Tenant: Young-Soon Kim operator of “Best Cuts Unisex Hair Salon”
Tenant: Choonseo Park operator of “Victoria Convenience”
Tenant: Wai Kuen Choi operator of “King Wok Chinese Food Inc.”
Tenant: Douglas Friesen operator of “Quality Connect Services”
Tenant: Dejan Stojicic operator of “KW Granite Countertops”

We have received your Report relating to the Hearing of Necessity held on April 30, 2012 in
connection with the above-noted matters. Following our review of the Report, we believe that
the following misstatements of evidence need to be corrected before the Report is placed on a
public agenda by the Region of Waterloo:

1. At page 2 of the Report, it is stated that “Mr. Linn also testified that regardless of which
Design Concept was chosen, traffic would have to be detoured around the excavation
for the railway underpass.” Mr. Linn stated in cross examination that such a detour
was desirable, but not mandatory. He also agreed that there were a number of roads
within reasonable proximity (King Street and Margaret Street) that will serve as north-
south arteries whether or not a detour is constructed. The Report correctly notes that
there was not any specific reference to a detour or that a full taking of 100 Victoria Street was required for that purpose in the Environmental Study Report (the “ESR”).

This detail is important because, as noted later in the Report, not all of the options required the expropriation of the tenancy interests at 100 Victoria Street. For the two highest ranked options (CAB and B), it was only the detour that caused the need for those takings, and this was not studied in the ESR. While this may not ultimately change the Region’s position on the expropriation, we believe that it is important that Regional Council be aware that a detour is not mandatory as stated in the Report and that the expropriation of the tenancy interests could be avoided under other the two most preferred options if a detour is not pursued. This is a key point from our clients’ perspective.

2. At page 6 of the Report, it is indicated that design concept B-modified did not fundamentally alter the proposed taking of land. This does not accord with the evidence at the Hearing. As noted above, design concept B (without the temporary road) did not require the taking of the eleven tenancy interests at 100 Victoria Street, whereas alternative B-modified did require that taking because it “pinched off” the internal driveway on the property. From our clients’ perspective the difference is absolutely fundamental and cannot possibly be described as “fine tuning”.

3. At page 8, the first full sentence is incorrect. It reads as follows: “Mr. Linn did speak to tenants’ lawyers in that regard because but did not follow up with that lawyer(s) or the tenants because the landlord had told him not to do so.” The sentence is internally inconsistent and not in accordance with the evidence. We suggest that it should read as follows: “Mr. Linn did speak to the landlord in that regard but did not follow up with the tenants because the landlord had told him not to do so.” To be clear, the tenants were not represented by a lawyer or lawyers at the time and Mr. Linn admitted that the tenancy interests were given no regard.

You will recall that Mr. Linn also testified that the tenancy interests were given no regard because he believed that the environmental assessment process requires that they be given no regard and that only fee simple interests be taken into account. We had submitted in closing that there was no such provision and that tenancy interests obviously had to be considered. The Region’s counsel undertook to provide you with any statutory backing for Mr. Linn’s assertion, if one was available. Such backing has not been provided, and we can again confirm that no such provision exists.

We respectfully submit that this is a flaw in the process which should at least be considered by Regional Council when it is exercising its power of expropriation. Eleven tenancy interests are being expropriated at 100 Victoria Street following a process in which those interests were given absolutely no regard. Whether this was because of a perceived threat of litigation by a landlord or because of an incorrect interpretation of the Environmental Assessment Act does not matter.

4. We thank you for recommending that the Region pay $200 to each of the nine parties who requested the Hearing of Necessity. We think that this recommendation is fair and appropriate given the magnitude of this matter. However, as a clarification we believe that the sentence on page 8 that states “Mr. Davis did not make a similar
request." should be removed. Given the lateness of the day and the fact that Mr. Davis and I are from the same firm, I made a request for the $1,800 (i.e. 9 x $200) that you have recommended, and this included a request made on behalf of the Wolves. This point does not affect the outcome or the recommendation, but it is a correction that we would appreciate being made at the same time that the necessary correction is made at the top of page 8.

We are copying Mrs. McCrea on this correspondence and are confident that she will agree that our comments with respect to the evidence at the Hearing are correct. We ask her to confirm that the Report will not be placed on a Council agenda until these points can be corrected.

Yours truly,

MILLER THOMSON LLP
Per: ____________________________

Steven J. O'Melia
SJOM/lms

Fiona McCrea, Region of Waterloo (via email: fmccrea@regionofwaterloo.ca)
Eric Davis, Miller Thomson LLP (via email: edavis@millerthomson.com)
June 18, 2012

Fiona M. McCrea
Region of Waterloo
Corporate Resources - Legal Services
150 Frederick Street
Kitchener, Ontario N2G 4J3
email: fmcerea@regionofwaterloo.ca

Mr. Steven O'Melia
Miller Thomson LLP
295 Hagey Blvd., Suite 300
Waterloo, Ontario N2L 6R5
email: somelia@millerthomson.com

Dear Sir / Madam:

Re: Expropriations Act - Request for Hearing - Regional Municipality of Waterloo
Expropriation of 157 Weber Street West, Kitchener, being Part Lot 320, Plan 376, City of Kitchener PIN 22319-0094 (LT)
Owners: Duane & Caroline Wolfe

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Tenant: Choonseo Park operator of “Victoria Convenience”
Tenant: Wai Kuen Choi operator of “King Wok Chinese Food Inc.”
Tenant: Douglas Friesen operator of “Quality Connect Services”
Tenant: Dejan Stojicic operator of KW Granite Countertops

I have reviewed the correspondence generated by counsel after my Report was released. I am not prepared to make any comments on that correspondence except to item No. 1 of Mr. O'Melia’s letter to me of May 25, 2012.
-2-

Although Mr. Linn acknowledged that roads other than Weber Street would provide north south arteries if Weber Street was closed (and in that sense a detour around the grade separation was not “mandatory”), he testified that such alternatives were unacceptable. His evidence was that the Region wanted to maintain traffic along Weber Street during construction of the grade separation, and in those circumstances, the only reasonable place to have such a detour was to the west of Weber Street.

Yours very truly,

Victor Freidin

cc: Eric Mr. Eric Davis
Miller Thomson
Email: edavis@millerthomson.com

Todd Sherman
Chief Inquiry Officer
Email: Todd.Sherman@ontario.ca
TO: Regional Chair Ken Seiling and Members of Regional Council  
DATE: June 27, 2012  
FILE CODE: A34-01  
SUBJECT: IMMIGRATION PARTNERSHIP – WATERLOO REGION  

RECOMMENDATION:  
THAT the Regional Municipality of Waterloo approve entering into an agreement with the Ontario Ministry of Citizenship and Immigration under the Local Immigration Partnership, dated June 21, 2012, in a form satisfactory to the Commissioner of Social Services and the Regional Solicitor;  
AND THAT the Regional Municipality of Waterloo approve the addition of 1.0 Temporary Full Time Equivalent effective August 1, 2012 for Social Planning, Policy and Program Administration Division;  
AND FURTHER THAT the Regional Municipality of Waterloo increase the 2012 Operating Budget for Social Planning, Policy and Program Administration by $30,300 and $0 net Regional Levy as outlined in Report SS-11-049.  

SUMMARY:  
The Immigration Partnership is comprised of a broad range of stakeholders including employers, service providers, immigrants, municipal government representatives, healthcare providers, and other representative groups. The mandate of the Immigration Partnership is to help facilitate successful settlement and integration of immigrants and refugees in Waterloo Region by creating and enhancing partnerships in a comprehensive local Immigration Partnership and implementing collaborative strategies through coordination, information sharing, problem-solving and implementing strategies for change. To this end, the work of the Immigration Partnership is organized under three pillars: Settle, Work, and Belong.  

REPORT:  
In 2006, The Regional Municipality of Waterloo (the “Region”) received funding to develop an immigration portal in Waterloo Region. The purpose of the immigration portal is to improve newcomer access to municipal information or services, promote a municipality as a destination for newcomers to Canada, provide an improved focus on immigrant or newcomer needs regarding settlement and/or employment opportunities at the local level, and to provide a tangible benefit to both newcomers to Canada and the municipality. The Region partnered with numerous community stakeholders on the development of the immigration portal and has sustained the portal since its inception in 2008.  

Since the establishment of the immigration portal in Waterloo Region in 2008 a number of shifts have occurred related to immigration policy and planning initiatives. One of these shifts has been towards the integration of services and supports in order to create a system that is easy for immigrants to access and navigate. Specifically, in 2011 the Immigration Partnership was
established and the Waterloo Region Immigrant Employment Network (WRIEN) was fully integrated within the Immigration Partnership. In June 2011, in line with the shift towards integration, the immigration portal Steering Team (which is comprised of staff from the Region and the Waterloo Public Library) and the Immigration Partnership made a decision to integrate the immigration portal, WRIEN’s web-site, and the proposed Immigration Partnership web-site. This integration allowed for the creation of one web-site in Waterloo Region focused on immigration-related information. The benefits of centralized access have been demonstrated in the way face to face services are offered and it was agreed that centralized access would be equally as beneficial for consumers in a virtual environment. The immigration portal is seen as the ideal platform upon which to enhance employment information and to create further partnerships and integration between the community and immigrants. The Immigration Partnership was asked by the Portal Steering team to act as a lead with respect to the immigration portal project.

Since June 2011, the Portal Steering Team, in collaboration with the Communications Committee of the Immigration Partnership, has been working on a phased project to build an integrated immigration portal. The Region has provided significant in-kind resources to build the site on its new platform. The first phase consisted of migrating all of the content from the immigration portal and WRIEN web-site onto the newly created site. This amalgamated site was launched in June 2012 (www.immigrationwaterlooregion.ca). The second phase will consist of the implementation of recommendations from an evaluation that was completed on the immigration portal in January 2012 and recommendations that emerge through the Immigration Partnership systems planning initiatives.

In April 2012, the Ontario Ministry of Citizenship and Immigration, Immigration Policy Branch, invited Municipalities to apply for funding to develop or enhance existing portals. The Region submitted an application to enhance the newly amalgamated immigration portal. Notification was received in June 2012 that MCI would support the proposal submitted by the Region.

CORPORATE STRATEGIC PLAN:

The report supports the Region’s Corporate Strategic Plan Focus Area 4: Healthy and Inclusive Communities and Strategic objective 4.8 (to) Partner with the community to improve programs and services for immigrants and refugees. Access to coordinated on-line information about settlement programs and services will assist immigrants, refugees, service providers and community members. The report also supports the Region’s Corporate Strategic Plan Focus Area 2: Growth Management and Prosperity: Manage growth to foster thriving and productive urban and rural communities, specifically through a diverse, innovative and globally competitive economy. Talent attraction is a key component of this strategic objective and immigration is seen as a key driver in this process. The enhanced web-site will act as an attraction tool for potential immigrants and a retention tool for those who have chosen Waterloo Region as their new home.

FINANCIAL IMPLICATIONS:

The province has approved funding of $48,500 for the period April 1, 2012 to March 31, 2013. Of the total, $30,300 will be spent in 2012 and the balance in the first quarter of 2013. The approved funding is 100% provincial and does not require Regional contribution.
If approved, the funding will be allocated as follows:

<table>
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<th>Description</th>
<th>Amount</th>
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<tr>
<td>Staffing Costs – 1.0 Temporary Full Time Equivalent</td>
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<td>Net Regional Cost</td>
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</tbody>
</table>

OTHER DEPARTMENT CONSULTATIONS/CONCURRENCE:

Legal Services has been consulted regarding the development of the legal agreement. Finance provided support in reviewing project financial reporting requirements. Human Resources provided support regarding staffing requirements.

ATTACHMENTS

NIL

PREPARED BY: Lynn Randall, Director, Social Planning, Policy and Program Administration
Arran Rowles, Manager, Immigration Partnership

APPROVED BY: Michael Schuster, Commissioner, Social Services
TO:  Chair Tom Galloway and Members of the Administration and Finance Committee

DATE:  May 8, 2012FILE CODE:  L08-20

SUBJECT:  PROPOSED DRAFT POLICY FOR REIMBURSEMENT FOR MUNICIPAL CONFLICT OF INTEREST ACT LEGAL OPINION EXPENSES

RECOMMENDATION:


SUMMARY:  Nil.

REPORT:

The Municipal Conflict of Interest Act (the “MCIA”) imposes legal obligations on Ontario municipal councillors with respect to pecuniary interests and participation in matters being considered by their respective municipal councils. In instances in which a councillor has a non-exempt pecuniary interest in a matter, the councillor is required by the MCIA to disclose the pecuniary interest and the general nature thereof prior to any consideration of the matter at the meeting of Council and is prohibited from:

(a) Taking any part in the discussion of the matter;
(b) Voting on any question in respect of the matter;
(c) Attempting, in any way, whether before, during or after the meeting, to influence the voting on any such question; and
(d) If the meeting is closed to the public, remaining at the meeting.

The MCIA does not provide a “black and white” code for compliance with its legal obligations and, indeed, it contains a number of terms and phrases that are not defined, such as “pecuniary interest”, which creates “grey areas” for interpretation. Moreover, there are no clear definitions of the exceptions in the MCIA, such as an interest which is “so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member.” Consequently, there is a large body of judicial caselaw interpreting the legislative provisions of the MCIA and Ontario municipal councillors have needed to seek legal opinions at times in order to determine their respective compliance with the MCIA. Obtaining such an opinion is a prudent step if uncertainty exists with respect to a councillor’s obligations under the MCIA and the exercise of the councillor’s “judgment” as referred to in the MCIA in determining whether or not to participate in a particular matter before Council. It is noted that due to Law Society of Upper Canada and insurance requirements, inhouse Regional lawyers are not permitted to provide such opinions to Councillors as their solicitor-client relationship is with the Regional Corporation and hence they are restricted to acting for the Regional Corporation only, as distinct from individual Councillors.

Given that MCIA compliance is mandatory and that there is a democratic interest in the proper representation of constituents, a number of Ontario municipalities such as the Regions of York and
Halton and the cities of Windsor, Kingston and Burlington have policies in place to provide for reimbursement for MCIA legal opinion expenses incurred by their respective municipal councillors. (See attached Appendix “A” to this Report containing a list of municipalities that responded to an informal survey by Regional staff on such policies.) Staff recommends that the Region of Waterloo implement a similar policy. A proposed policy for consideration by the Committee is attached as Appendix “B” to this Report.

Update on MCIA Legislative Reform

By joint submission dated August 29 2011, the Cities of Kitchener and Waterloo and the Region of Waterloo requested that the Minister of Municipal Affairs and Housing bring the issue of MCIA legislative reform forward for consultation with stakeholders such as the Association of Municipalities of Ontario (“AMO”). (See attached Appendix “C” to this Report.) AMO has established a staff working group to consider both the recommendations of the Cunningham Report (the Mississauga Judicial Inquiry) and the requests of the Cities of Kitchener and Waterloo and the Region of Waterloo. The Regional Solicitor has been invited to participate as a member of this working group. It is anticipated that the working group will report to the AMO Board with recommendations in early summer.

CORPORATE STRATEGIC PLAN:

The objective of appropriate participation of councillors in the consideration and decisions of matters by Regional Council is integral to the delivery of excellent and responsive services that inspire public trust and supports the essential democratic principle of representation of constituents.

FINANCIAL IMPLICATIONS:

A provision of $25,000 for the reimbursement of legal opinion costs incurred by councillors in connection with MCIA compliance may be accommodated within the allocation for financial expense in the approved 2012 operating budget and considered in subsequent years as part of the annual budget deliberations. Provision in the amount of $25,000 is based upon consideration of the informal survey of other municipalities and the number of members of Regional Council.

OTHER DEPARTMENT CONSULTATIONS/CONCURRENCE:

Finance staff has been consulted in the preparation of this Report.

ATTACHMENTS

Appendix “A”: Informal Survey of Municipalities – MCIA Legal Opinion Reimbursement Policies
Appendix “B”: Proposed Policy Regarding Reimbursement for MCIA Legal Opinion Expenses
Appendix “C”: Joint Submission to the Minister of Municipal Affairs and Housing of Cities of Kitchener and Waterloo and the Region of Waterloo dated August 29 2011

PREPARED BY: Debra Arnold, Director of Legal Services and Regional Solicitor

APPROVED BY: Mike Murray, Chief Administrative Officer
## Municipal Conflict of Interest Act - Legal Opinions

### Dec-2011

<table>
<thead>
<tr>
<th>Municipality</th>
<th>Reimburses for Legal Opinions</th>
<th>Does Not Reimburse for Legal Opinions</th>
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<tbody>
<tr>
<td>Burlington</td>
<td>√ (reasonable expenses)</td>
<td></td>
</tr>
<tr>
<td>Cambridge</td>
<td></td>
<td>√</td>
</tr>
<tr>
<td>Durham</td>
<td></td>
<td>√</td>
</tr>
<tr>
<td>East Gwillimbury</td>
<td>√ ($5,000 for 4 councillors/yr)</td>
<td></td>
</tr>
<tr>
<td>Halton</td>
<td>√ (reasonable expenses)</td>
<td></td>
</tr>
<tr>
<td>Hamilton</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kingston</td>
<td>√ ($1500/yr)</td>
<td></td>
</tr>
<tr>
<td>Kitchener</td>
<td></td>
<td>√</td>
</tr>
<tr>
<td>Markham</td>
<td></td>
<td>√</td>
</tr>
<tr>
<td>Mississauga</td>
<td>Pays for Integrity Commissioner Opinion</td>
<td></td>
</tr>
<tr>
<td>Newmarket</td>
<td></td>
<td>√</td>
</tr>
<tr>
<td>Oshawa</td>
<td></td>
<td>√</td>
</tr>
<tr>
<td>Ottawa</td>
<td>√ Councillor $36,089/yr office budget</td>
<td></td>
</tr>
<tr>
<td>Peel</td>
<td></td>
<td>√</td>
</tr>
<tr>
<td>Waterloo</td>
<td></td>
<td>√</td>
</tr>
<tr>
<td>Windsor</td>
<td></td>
<td>√</td>
</tr>
<tr>
<td>York</td>
<td>√ (reasonable expenses)</td>
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Appendix “B”

<table>
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<th>COUNCIL/LEGISLATED POLICY</th>
<th>Section #</th>
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<td>Approval Date:</td>
<td>Revision Date:</td>
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Title: Reimbursement for Municipal Conflict of Interest Act Legal Opinion Expenses

Responsibility: Council

Applies to: Council

POLICY STATEMENT:

The Region of Waterloo may reimburse individual councillors for expenses incurred to obtain legal opinions regarding his/her respective compliance with the Municipal Conflict of Interest Act in connection with any matter(s) before Regional Council, subject to the terms and conditions set out in the Operating Principles.

OPERATING PRINCIPLES:

- The councillor seeking reimbursement shall submit a written request to the Chief Administrative Officer providing the following information: (a) a description of the matter that is to be considered by Regional Council; and (b) a description of the potential pecuniary interest of the councillor that is of concern to the councillor.

- The Chief Administrative Officer, in consultation with the Regional Solicitor, shall as soon as reasonably practicable, review the request, determine eligibility of the request under this Policy and advise the councillor of such determination.

- In order to be eligible for reimbursement, the request must:
  (a) pertain to legal expenses incurred to obtain a legal opinion on or after the date that this policy comes into force;
  (b) be limited to one request per councillor per calendar year;
  (c) not exceed $5,000 in reimbursement in any one instance; and
  (d) pertain to a matter that is or will be imminently before Regional Council.

- Subject to meeting the eligibility requirements of this Policy and upon submission of a copy of the statement of account of the councillor’s solicitor together with a written statement by the solicitor confirming that the fees set out in the statement of account were incurred in connection with a legal opinion regarding the councillor’s compliance with the Municipal Conflict of Interest Act concerning a matter that is or will be imminently before Regional Council, reimbursement of the lesser of the actual amount of legal fees on the statement of account or $5,000 shall be provided to the councillor.

- Any reimbursements provided pursuant to this Policy shall be included and detailed in the annual statement of Council remuneration and expenses prepared by the Chief Financial Officer.
RESPONSIBILITIES

Council is responsible for adhering to the parameters of this policy and for ensuring appropriate application of delegated authority.

REVIEW PERIOD

This policy shall be reviewed once per Council term. Funding will be considered on an annual basis as part of budget deliberations.

MONITORING/CONTRAVENTIONS

The Regional Clerk shall be responsible for receiving complaints and/or concerns related to this policy. Upon receipt of a complaint and/or concern, the Regional Clerk shall notify Regional Council and the Chief Administrative Officer.

SEE ALSO:

Municipal Conflict of Interest Act, as amended
Municipal Act, 2001, as amended
Appendix "C"
Letter dated August 29, 2011 to Minister of Municipal Affairs and Housing

August 29, 2011

The Hon. Rick Bartolucci
Minister of Municipal Affairs and Housing
777 Bay Street, 17th Floor
Toronto, ON M5G 2E5

Dear Minister Bartolucci,

Thank you for taking time out of your busy schedule to meet with elected representatives from the Cities of Kitchener and Waterloo as well as the Region of Waterloo during the recent Association of Municipalities of Ontario conference.

We appreciated the opportunity to speak with you directly about the three recent motions passed by the Cities of Kitchener, Waterloo and the Region of Waterloo councils regarding the need to create a Municipal Conflict of Interest Commissioner. For your information, attached please find a summary document which outlines this important issue as well as the three recently passed motions.

As discussed during our meeting, we will share this information and issue with our partner municipalities as well as with the AMO executive. Following the upcoming provincial election, we encourage you to bring this issue forward for discussion during an upcoming MOU meeting.

Please feel free to contact us should you require additional information or if you have additional questions regarding this important issue. Once again, thank you for taking time to meet with us.

Sincerely,

Councillor Berry Urganovic
Kitchener – Ward 2

Councillor Frank Etherington
Kitchener – Ward 9

Councillor Diane Freeman
Waterloo – Ward 4

As per Jane Mitchell
Regional Councillor Jane Mitchell
Waterloo

As per Claudette Miller
Regional Councillor Claudette Miller
Cambridge
AMO 2011 Conference

Re: Meeting with the Hon. Rick Bartolucci, Minister of Municipal Affairs and Housing

Participants from Region of Waterloo municipal governments:
Councillor Berry Vrbanovic, City of Kitchener
Councillor Frank Etherington, City of Kitchener
Councillor Diane Freeman, City of Waterloo
Region of Waterloo Councillor Claudette Miller, Cambridge
Region of Waterloo Councillor Jane Mitchell, Waterloo

Issue/Request: Creation of a provincially funded Municipal Conflict of Interest Commissioner, through the Integrity Commissioner, to assist municipally elected officials in determining whether they have a conflict of interest in advance of municipal debate and to provide binding decisions.

Background: As is noted above, the stated issue for discussion is the creation of a provincially funded Municipal Conflict of Interest Commissioner through the Integrity Commissioner to assist municipally elected officials in determining whether they have a conflict of interest in advance of municipal debate and to provide binding decisions.

The Municipal Conflict of Interest Act (the MCIA) provides that if a member of a municipal Council has a direct or indirect pecuniary interest in any matter, then the member must, prior to any consideration of the matter at a Council meeting, disclose the interest and the general nature therefore, not take part in the discussion of or vote on any question in respect of the matter and shall not attempt to influence the voting on any such question at that time. The MCIA deems pecuniary interests of a member’s parent, spouse or child to be that of the member for the purpose of the MCIA.

However, the MCIA does include a number of exemptions from the above-noted requirement. One of these exemptions occurs if the member has a pecuniary interest in a matter which is “an interest in common with electors generally.” In addition, another exemption applies if the pecuniary interest of the member is ‘so remote or insignificant in its nature that it cannot be reasonably regarded as likely to influence the member.”

There are significant consequences for a member should a court find the member in contravention of the MCIA despite the vagueness of the direction within the act. The most serious of these consequences being that, should a court find that a member has contravened the MCIA, the court must declare the member’s seat vacant, may declare the member disqualified from seeking municipal office for up to seven years and may require restitution in the case of any improper financial gain by the member as a result of the participation in the matter in which the member had a pecuniary conflict of interest.

At this point, given the nature of the very fact-specific circumstances of court decisions dealing with “an interest in common with electors generally”, there are unfortunately no guiding principles in case law to assist in determining a member’s potential conflict of interest or lack thereof.

As a result, it is not possible for a member to obtain a conclusive legal opinion regarding a member’s
conflict of interest which would provide clear assurance that a member could participate in a matter and not face the potentially significant legal costs or penalties if a court determines he/she has contravened the MCIA.

Because of these potential penalties, understandably, members of council too often err on the side of caution and remove themselves from discussion or participation in a matter. By extension, the representation afforded to the citizens of the member’s ward is very likely lost from the public debate. This ultimately goes against the purpose of our democratic traditions and processes.

Because of these and other local challenges, recently, three separate motions were passed by the Cities of Kitchener, Waterloo and the Region of Waterloo councils regarding a request to create a Municipal Conflict of Interest Commissioner. These motions are included below for your perusal.

Specifically, this issue arose as the result of recent local debate and discussion regarding the Region of Waterloo’s Light Rail Transit project as a number of Kitchener city councillors and Region of Waterloo councillors had to declare a conflict of interest and excused themselves from the debate.

More broadly however, members of Council are faced with the option of seeking independent legal counsel at their own expense and/or making a judgment call regarding a potential conflict of interest. As is stated above, too often, they err on the side of caution and remove themselves from debates rather than face potential legal consequences or costly legal advice.

Since 2007, Members of Provincial Parliament have had access to a Provincial Conflict of Interest Commissioner in order to obtain conflict of interest rulings. In addition, Members of Parliament have access to the Office of the Conflict of Interest and Ethics Commissioner. The Cities of Kitchener, Waterloo and the Region of the Waterloo councils are recommending that the Ministry together with AMO investigate the creation of a Municipal Conflict of Interest Commissioner through the Integrity Commissioner’s office which would allow municipal officials to access independent, arms length and binding rulings.
Municipal Conflict of Interest Motions:

City of Kitchener Councillor Berry Vurbanovic's motion:
"WHEREAS the Municipal Conflict of Interest Act contains provisions related to conflicts of interest by elected officials who sit on municipal councils,

AND WHEREAS municipal elected officials are left to themselves and any legal advice they personally obtain to determine if they believe they have a potential conflict that contravenes the act,

AND WHEREAS even after obtaining legal advice municipal elected officials may still face a potential conflict of interest complaint and have to incur personal costs towards their defense of that complaint,

"BE IT RESOLVED that the City of Kitchener request the Ontario Ministry of Municipal Affairs to work in conjunction with the Association of Municipalities of Ontario to investigate the creation of a Municipal Conflict of Interest Commissioner who would consider potential conflicts in advance when requested by an individual municipal elected official and whose ruling would be binding and final on that elected official and

BE IT RESOLVED that as part of the investigation clarification of the intent of the definition of an interest in common with electors generally be provided as it relates to municipal Ward systems and individual Ward Councillors and further

BE IT RESOLVED that this motion be forwarded to the municipalities in Waterloo Region the Association of Municipalities of Ontario AMO the MPPs in Waterloo region and the Minister of Municipal Affairs."

Region of Waterloo Regional Councillor Carl Zehr's motion:
"WHEREAS the Municipal Conflict of Interest Act contains provisions related to conflicts of interest by elected officials who sit on municipal/regional councils;

AND WHEREAS municipal/regional elected officials are left to themselves and any legal advice they personally obtain to determine if they believe they have a potential conflict that contravenes the intent of the act;

AND WHEREAS circumstances may arise where the scope of a project may cause the Municipal Conflict of Interest Act to be interpreted resulting in a large number of elected official having either direct or indirect conflicts;

AND WHEREAS even after obtaining legal advice, municipal/regional elected officials may still face a potential conflict of interest complaint and have to incur personal costs towards their defense of that complaint;

BE IT RESOLVED that the Region of Waterloo requests the Ontario Ministry of Municipal Affairs to work in conjunction with the Association of Municipalities of Ontario to investigate the creation of a Municipal Conflict of Interest Commissioner who would consider potential conflicts in advance when requested by an individual municipal/regional elected official and whose ruling would be binding and final on that elected official; and further,

BE IT RESOLVED that this motion be forwarded to the municipalities in Waterloo Region the Association of Municipalities of Ontario AMO the MPPs in Waterloo region and the Minister of Municipal Affairs."

City of Waterloo’s Resolution passed by Council
Moved by Councillor Scian, seconded by Councillor Freeman:

"WHEREAS the Municipal Conflict of Interest Act contains provisions related to conflicts of interest by elected officials who sit on municipal councils;
AND WHEREAS municipal elected officials are left to themselves and any legal advice they personally obtain to determine if they believe they have a potential conflict that contravenes the intent of the act;

AND WHEREAS even after obtaining legal advice, municipal elected officials may still face a potential conflict of interest complaint and have to incur personal costs towards their defense of that complaint;

"BE IT RESOLVED that the City of Waterloo request the Ontario Ministry of Municipal Affairs to work in conjunction with the Association of Municipalities of Ontario to investigate the creation of a Municipal Conflict of Interest Commissioner, who would consider potential conflicts in advance when requested by an individual municipal elected official and whose ruling would be binding and final on that elected official; and,

BE IT RESOLVED that as part of the investigation, clarification of the intent of the definition of an "interest in common with electors generally" be provided as it relates to municipal Ward systems and individual Ward Councillors; and further,

BE IT RESOLVED that this motion be forwarded to the municipalities in Waterloo Region, the Association of Municipalities of Ontario (AMO), the MPPs in Waterloo Region and the Minster of Municipal Affairs."