MEDIA RELEASE: Friday, May 4, 2012, 4:30 p.m.

REGIONAL MUNICIPALITY OF WATERLOO
ADMINISTRATION AND FINANCE COMMITTEE
AGENDA

Tuesday, May 8, 2012
11:00 a.m.
(Time is approximate; meeting follows Planning and Works Committee)
Regional Council Chamber
150 Frederick Street, Kitchener, Ontario

1. DECLARATIONS OF PECUNIARY INTEREST UNDER THE MUNICIPAL CONFLICT OF INTEREST ACT

2. DELEGATIONS

   i. Report F-12-032, Development Charges Complaint – Activa Holdings Inc. 1
   ii. Opening Address – Region of Waterloo (Calvin Barrett/Debra Arnold)
   iii. Opening Address – Activa Holdings Inc. (Jennifer Voss)
   iv. Committee Discussion
   v. Closing Address – Region of Waterloo (Calvin Barrett/Debra Arnold)
   vi. Closing Address - Activa Holdings Inc. (Jennifer Voss)
   vii. Recommendation of Committee

4. REPORTS – Chief Administrative Officer
   a) CA-12-007, External Communications – Program Review Update 2012 23

   REPORTS – Corporate Resources
   b) CR-RS-12-023, Proposed Draft Policy for Reimbursement for Municipal Conflict of Interest Act Legal Opinion Expenses 32
   c) CR-CLK-12-005, Consent Agendas 42

5. INFORMATION/CORRESPONDENCE

6. OTHER BUSINESS
   a) Council Enquiries and Requests for Information Tracking Sheet 48

7. NEXT MEETING – May 29, 2012

8. MOTION TO GO INTO CLOSED SESSION
   THAT a closed meeting of the Planning and Works, Administration and Finance, and Community Services Committees be held on Tuesday, May 8, 2012,
immediately following the Administration and Finance Committee 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) proposed or pending disposition of land in the City of Cambridge
- b) receiving of advice subject to solicitor-client privilege related to a legal agreement
- c) personal matters about identifiable individuals – committee appointments
- d) receiving of advice subject to solicitor-client privilege related to a legal matter

9. **ADJOURN**
REGION OF WATERLOO
FINANCE
Financial Services and Development Financing

TO: Chair T. Galloway and Members of the Administration and Finance Committee

DATE: May 8, 2012 FILE CODE: F27-20

SUBJECT: DEVELOPMENT CHARGES COMPLAINT – ACTIVA HOLDINGS INC.

RECOMMENDATION:

THAT The Regional Municipality of Waterloo dismiss the Complaint of Activa Holdings Inc., dated March 21, 2012, attached as Appendix “A”, in relation to a building to be located at 267 Grey Silo Road, City of Waterloo, pursuant to Report F-12-032 dated May 8, 2012.

SUMMARY:

On March 21, 2012, Activa Holdings Inc. (the “Complainant”) submitted a complaint pursuant to the Development Charges Act, 1997 (the “DC Act”) relating to a Certification of Development Charges (“DC’s”) dated December 16, 2011, in the amount of $144,686.16 that arises from a 15,608 square foot non-residential building at 267 Grey Silo Road, City of Waterloo, with full services.

The DC Act sets out the process for a complaint to a municipality by a person required to pay a development charge. Council shall hold a hearing into the complaint and, after hearing the evidence and submissions, may dismiss the complaint or rectify an incorrect determination or error. The Complainant may further appeal Council’s decision to the Ontario Municipal Board. Council has delegated the hearing of DC complaints to the Administration and Finance Committee.

In October 2011, the Region received a Certification Request from the City for a building permit to construct a building (the “Building”) at 267 Grey Silo Road, City of Waterloo (the “Subject Property”). The request was for Non-Residential – New with full municipal services. The request included a description of the Building as follows: “Private Recreational facility for Grey Silo Condo owners only.” The Certification Request was subsequently amended in December 2011 based on the increased size of the planned building. The other provisions of the original request remained the same.

The Region completed a Regional Certification of Development Charges based on the second request. The certification applied the Non-Residential rate of $9.27 per square foot by 15,608 square feet for a Regional development charge of $144,686.16. On or about January 20, 2012, the Complainant paid this Regional development charge under protest and subsequently filed a complaint.

The Complaint has two legal grounds. First, that the Building is an Accessory Building in accordance with the DC By-law and is therefore exempt from development charges. Second, in the alternative, that Schedule A of the DC By-law, together with the intent of the Background Study for the DC By-law, narrows the By-law’s application of Non-Residential Use to industrial, commercial and institutional uses and that the Building is not one of those uses. Based on such, there is no applicable development charge for the Building.
The DC Act allows municipalities to enact by-laws for the collection of DC’s, which are in the form of a tax, to pay for future growth related municipal services. Municipalities are permitted to make policy decisions concerning how DC’s are imposed, including which types of development to charge DC’s and exemptions to allow.

The Region’s DC By-law, based on the policy decision of Council, imposes DC’s for all development in Waterloo Region, unless exempted. The DC By-law then classifies this development as either Residential Use or Non-Residential Use (or Mixed Use Development if a Residential Use and Non-Residential Use occur on the same property) and imposes the applicable development charge. The key is that all development, unless exempted, falls within one of these classifications. The Complainant acknowledges that the Building is a Non-Residential Use.

Accessory Building

The DC By-law includes an exemption for “Accessory Building” which is a building exclusively devoted to providing vehicle parking or utility services to the main use on the same site.

The Complainant contends that the Building meets the exemption for an Accessory Building because the plan for the Building is to use it as a “club house” for its residential development. The Complainant appears to be trying to widen the exemption so that it is akin to the former Accessory Use exemption, which was taken out of the DC By-law in 1999. Staff contends, however, that the Building does not meet the narrow exemption for an Accessory Building because the Building is clearly not for vehicle parking or utility services such as gas, hydro, plumbing etc.

Further, it should be noted that the Complainant’s immediate use of the Building is for a sales centre and office for its development. Staff contends that this further undermines the Complainant’s position that the Building should be exempt as an Accessory Building.

Policy Issues

The Complaint also contains three following grounds that are more policy in nature:

1) The Complainant contends that the Non-Residential Development Charges are only intended to collect charges to cover the costs for growth related employment and that development charges should not apply to the Building because it is not creating an increased need for services. The courts and the OMB have held that “a development charge is a type of tax, as distinct from a lot levy which is intended to pay for specific services for a specific development.”

This means that development charges are imposed to raise revenues to pay for overall growth related services. With this in mind, Council made the policy decision when it passed the DC By-law that “commercial, industrial, institutional or other use, except Farming, not included in the definition of Residential Use” would pay a Non-Residential Charge to pay for the overall services needed for growth related employment. Whether or not a specific development results in the need for increased services is not a factor in the determination of applicable development charges for such development.

2) The Complainant contends that the Region has not imposed a Residential or Non-Residential Charge for pool and common areas within apartment buildings and thus it is unfair to impose a Charge in this circumstance. In practice, the Certification Request, which is completed and provided to the Region by the local municipalities, does not contain information in relation to pools and common areas in apartment buildings. The Request Form sets out the number of units and any store space if located on the main floors of the building. For this reason, staff can
not comment on whether apartment buildings with pools and common areas have avoided paying the proper Non-Residential Charge. Staff acknowledges, however, that such is possible and that staff will need to alter the Request Form and communicate with the local municipalities to ensure that pools and common areas are properly charged.

Having said this, staff notes that the test, in order to provide a remedy to the Complainant under section 20 of the DC Act, is whether “the amount of the development charge was incorrectly determined” or “there was an error in the application of the development charge by-law,” in respect of this particular development, rather than any previous developments.

3) The Complainant contends that the City of Waterloo and school boards have not imposed development charges for the Building pursuant to their respective by-laws. This is correct. Staff has communicated with City of Waterloo staff regarding the City DC By-law. The City DC By-law includes a different definition of “accessory” use, which is the basis for the City to exempt the development from DC’s. The Region changed its definition of accessory use during the 1999 by-law review to the Accessory Building definition described above.

The school boards usually mirror the imposition of development charges of the local municipality in situations where there is a difference between the Regional DC By-law and the local municipality DC By-law.

Accordingly, the recommendation of staff is that the Region dismiss the Complaint based on the following grounds:

- The Building does not satisfy the exemption of an Accessory Building as defined in the DC By-law;
- The Building meets the definition of a Non-Residential Use which is “any commercial, industrial, institutional or other use, except Farming, not included in the definition of Residential Use;” and
- The Non-Residential Development Charges, as specified in Schedule A of the DC By-law, properly apply to the Building.

REPORT:

1. Introduction

On March 21, 2012, Activa Holdings Inc. (the “Complainant”) submitted a complaint to the Region (the “Complaint”) pursuant to section 20 of the Development Charges Act, 1997 (the “DC Act”). The Complaint relates to a Regional Certification of Development Charges dated December 16, 2011, pursuant to the By-law 09-024 of The Regional Municipality of Waterloo, A By-law to Establish Development Charges for The Regional Municipality of Waterloo (the “DC By-law”), in the amount of $144,686.16 that arises from the Complainant’s construction of a 15,608 square foot non-residential building at 267 Grey Silo Road, City of Waterloo, with full services. A copy of the Regional Certification of Development Charges is attached as Appendix “B” to this Report.

The purpose of this report is two-fold. First, this report provides an outline of the process that has been established by the DC Act and Council for the Complaint. Second, this report provides background in relation to the Complaint filed as well as the response of staff.

2. Process for a Complaint

Section 20 of the DC Act states as follows:
Complaint to council of municipality

20. (1) A person required to pay a development charge, or the person’s agent, may complain to the council of the municipality imposing the development charge that,

(a) the amount of the development charge was incorrectly determined;

(b) whether a credit is available to be used against the development charge, or the amount of the credit or the service with respect to which the credit was given, was incorrectly determined; or

(c) there was an error in the application of the development charge by-law.

Time limit

(2) A complaint may not be made under subsection (1) later than 90 days after the day the development charge, or any part of it, is payable.

Form of complaint

(3) The complaint must be in writing, must state the complainant’s name, the address where notice can be given to the complainant and the reasons for the complaint.

Hearing

(4) The council shall hold a hearing into the complaint and shall give the complainant an opportunity to make representations at the hearing.

Notice of hearing

(5) The clerk of the municipality shall mail a notice of the hearing to the complainant at least 14 days before the hearing.

Council’s powers

(6) After hearing the evidence and submissions of the complainant, the council may dismiss the complaint or rectify any incorrect determination or error that was the subject of the complaint. (emphasis added)

The key to this provision of the DC Act is that Council must find that there has been an incorrect determination or error in the application of the DC By-law before it grants the requested remedy.

Pursuant to Report F-09-062, dated June 16, 2009, Council delegated the power to hold a complaint hearing to this Committee. In holding such a hearing, this Committee should comply with principles of procedural fairness including providing the Complainant with an opportunity to provide representations at the hearing.

Section 22 of the DC Act provides that a complainant can appeal any decision of a Council to the Ontario Municipal Board.

The Region provided the Complainant 14 days notice of the hearing scheduled for May 8, 2012 pursuant to the notice requirements in the DC Act.
3. The Development

On or about November 8, 2010, the Region received a Regional/Educational Certification Request Form, pursuant to the Region’s DC By-law, that was completed by the City of Waterloo (the “City”). This request was based on the Complainant’s application for building permits to construct 249 single detached residential dwellings and 68 townhouse dwellings at 700 and 705 Woolwich Street North, City of Waterloo. This request was for Residential.

The Region issued a Blanket Residential Certification for this request that will amount to approximately $3.8 million depending on when the building permits are issued by the City. The rates are valid until December 31, 2012. The Region issues a Blanket Residential Certification to avoid a request and certification process for each individual building permit where a subdivision is constructed. As of April 30, 2012, the City has issued building permits to the Complainants for seven townhouse dwellings and 15 single detached dwellings.

On or about October 25, 2011, the Region received a Regional/Educational Certification Request Form that was completed by the City. This request was based on the Complainant’s application for a building permit to construct a 15,435 square foot building (the “Building”) at 267 Grey Silo Road, City of Waterloo (the “Subject Property”). The request was for Non-Residential – New with full municipal services. The request included a description of the Building as follows: “Private Recreational facility for Grey Silo Condo owners only.”

On or about December 14, 2011, the Region received a second Regional/Educational Certification Request Form for the Building. This second request was because the Complainant increased the size of the Building to 15,608 square feet. The other provisions of the original request remained the same.

On or about January 9, 2012, the Region completed a Regional Certification of Development Charges based on the second request. The certification applied the Non-Residential rate of $9.27 per square foot by 15,608 square feet for a Regional development charge of $144,686.16. On or about January 20, 2012, the Complainant paid this Regional development charge under protest.

A copy of the layout of the Building is attached as Appendix “C” to this report. It shows that the Building is a two storey structure that includes a pool area with change facilities, theatre area, wine cellar, laundry facilities, and meeting/lounge facilities with kitchen area. It also shows a sales centre, an office for a concierge, a room for treatment (assumed for massages) and two guest suites.

4. The Complaint

The Complaint is attached as Appendix “A” to this report. In general terms, the Complaint has two legal grounds. First, that the Building is an Accessory Building in accordance with the DC By-law and is therefore exempt from development charges. Second, in the alternative, that Schedule A of the DC By-law, together with the intent of the Background Study for the DC By-law, narrows the By-law’s application of Non-Residential Use to industrial, commercial and institutional uses and that the Building is not one of those uses. Based on such, there is no applicable development charge for the Building.

The Complaint also contains three grounds that are more policy in nature. First, that the Building will not give rise to any increased need for growth related services. Second, that the Region has not imposed Non-Residential Development Charges for pools and common areas in apartment buildings. Third, that the City of Waterloo and the school boards have not imposed development charges on the Building.
5. Response to the Complaint

5.1 Residential Use and Non-Residential Use

In general terms, the DC Act is a provincial statute that allows municipalities to enact by-laws for the collection of development charges, which are in the form of a tax, to pay for future growth related municipal services.

Subject to certain restrictions as set out in the DC Act, municipalities are able to make their own policy decisions concerning how they impose and collect development charges. For example, some municipalities only impose development charges for residential development while others impose development charges for all development. Some municipalities exempt universities, churches or hospitals from development charges while others do not.

The Region’s DC By-law, based on the policy decisions of Council, imposes development charges for all development in Waterloo Region, unless exempted. The DC By-law then classifies this development as either Residential Use or Non-Residential Use (or Mixed Use Development if a Residential Use and Non-Residential Use occur on the same property) and imposes the applicable development charge. The key is that all development, unless exempted, falls within one of these classifications.

Section 1 of the DC By-law defines the terms “Residential Use,” “Non-Residential Use” and “Mixed Use Development” as follows:

"Residential Use" means the use of land, buildings or structures as one or more Dwelling Units or Lodging Units, including a Farm dwelling;

"Non-Residential Use" means any commercial, industrial, institutional or other use, except Farming, not included in the definition of Residential Use;

"Mixed Use Development" means Development containing both Residential and Non-Residential uses;” (emphasis added)

Section 1 of the Development Charges By-law defines the terms “Dwelling Unit” and “Lodging Unit” as follows:

"Dwelling Unit" means one or more rooms occupied or designed for human habitation which include a separate, private entrance together with cooking and sanitary facilities for the exclusive use of the occupants thereof. A unit or room in a hotel or motel designed for human habitation shall not constitute a Dwelling Unit;

"Lodging Unit" means a room located within a Lodging House which:
  i. is designed to be occupied for human habitation by one resident;
  ii. is not normally accessible to persons other than the resident without the permission of the resident; and
  iii. may contain either cooking or sanitary facilities, but not both, for the exclusive use of the resident of the unit.
A unit or room in a hotel, motel, nursing or retirement home, group home, or hostel designed for human habitation shall not constitute a Lodging Unit;”
Residential Use is made up of the Dwelling Units or Lodging Units where individuals reside. Non-Residential Use is everything else with the exception of “Farming.” Thus, if the structure is not made up of Dwelling Units or Lodging Units where individuals reside (or Farming which is defined) then it is a Non-Residential Use. This “catch-all” definition for Non-Residential Use was intended to avoid prolonged debates about whether a use is industrial, commercial, institutional etc. Mixed Use Development is where there is both a Residential Use (i.e. the Dwelling or Lodging Units) and Non-Residential Use (i.e. any non-Unit structures) in the same building or property.

On this point, the Complainant does not contend that the Building is a Dwelling Unit or Lodging Unit where a Residential Use and Residential Development Charge applies. In turn, the Complainant acknowledges that the Building is a Non-Residential Use.

5.2 Accessory Building

The DC By-law also has exemptions for Residential Uses, Non-Residential Uses and Mixed Use Development which are either required by the DC Act (for example, the exemption for Crown development and schools) or provided based on the policy decision of Council (for example, the exemption for “brownfield” development).

At one time, the DC By-law had an exemption for an “Accessory Use” that was created by Council based on policy considerations. This term was defined as follows:

“Accessory Use” means a use which is subordinate to, and wholly devoted to a Residential Use, a Non-Residential Use, or Home Occupation;”

This exemption, however, was repealed by Council in 1999 and replaced with a more narrow exemption for “Accessory Building.” This term is defined as follows:

“Accessory Building” means a building or structure which is incidental, subordinate and exclusively devoted to providing vehicle parking or utility services to the main use situated on the same Site;”

The Region narrowed this exemption from Accessory Use to Accessory Building in 1999 after concluding that the definition of Accessory Use was frequently challenged respecting secondary buildings. The exemption was intended to deal with utility outbuildings such as mechanical equipment, etc. and was narrowed as a result.

The Complainant contends that the Building meets the exemption for an Accessory Building because the Complainant’s long term plan for the Building is to use it as a “club house” for its residential development. In making this argument, the Complainant appears to be trying to widen the exemption so that it is akin to the former Accessory Use exemption. Staff contends, however, that the Building does not meet the more narrow exemption for an Accessory Building because the Building is clearly not for vehicle parking or utility services such as gas, hydro, plumbing etc.

Further, it should be noted that the Complainant’s immediate use of the Building is for a sales centre and office for its development. Staff contends that this further undermines the Complainant’s position that the Building should be exempt as an Accessory Building.

5.3 Schedule A

The DC By-law has a Schedule A with Part I – Residential Development Charges and Part II – Non-Residential Development Charges. The top portion of Part II – Non-Residential Development Charges appears as follows:
“PART II - Non-Residential Development Charges ($ Per Square Foot of GFA*) (effective August 1, 2009 and in effect up to and including December 31, 2009)

<table>
<thead>
<tr>
<th>Service Category</th>
<th>Industrial/Commercial/Institutional</th>
</tr>
</thead>
<tbody>
<tr>
<td>City</td>
<td>Township</td>
</tr>
</tbody>
</table>

(emphasis added)

The Complainant contends that the heading of “Industrial/Commercial/Institutional” in the chart limits the definition of "Non-Residential Use" or narrows the imposition of Non-Residential Development Charges to those specific uses. The Complainant then contends that the Building is not Industrial, Commercial or Institutional and thus Non-Residential Development Charges do not apply to the Building. The Development Charges By-law does not contain a definition of “Industrial,” “Commercial” or “Institutional.”

Staff has two responses. First, the definition of "Non-Residential Use" clearly states that it includes “any commercial, industrial, institutional or other use, except Farming, not included in the definition of Residential Use”. Again, this “catch all” definition was used to avoid debates about whether a building is or is not of a commercial, industrial or institutional use. Further, the heading in the above chart was shortened for convenience only and there is nothing else in the By-law that would indicate any intention of the Region to limit the definition or application of “Non-Residential Use.” In fact, it would make no sense to create such an expansive definition of "Non-Residential Use" in the By-law and then narrow such in Schedule A by way of a heading especially when the By-law does not contain a definition of “Industrial,” “Commercial” or “Institutional.”

As a note, section 70 of the Legislation Act, which governs the interpretation of provincial legislation, states that headings in an Act or regulation are inserted for convenience only and are not part of it. While the Legislation Act does not specifically apply to municipal by-laws, it does provide some guidance. Section 70 of the Legislation Act states as follows:

“70. Tables of contents, marginal notes, information included to provide legislative history, headnotes and headings are inserted in an Act or regulation for convenience of reference only and do not form part of it.”

Second, even if the Complainant was correct in its contention, the Building appears to have a commercial element. In the short term, according to the Complainant, the Building will be used as a sales centre and office. The length of this use, which is commercial in nature, could be several years depending on how long it takes for the Complainant to sell all of its residential units. In the long term, according to the Complainant, the Building will be used as a “club house” for the residents. Staff note, however, that this “club house” facility will be 15,608 square feet in size with a two storey pool area with change facilities, theatre area, wine cellar, laundry facilities, meeting/lounge facilities with kitchen area, an office for a concierge, a room for treatment (assumed for massages) and two guest suites. This facility will need employees to operate and will be paid for through dues from the residents, thus resulting in a building that has a commercial nature.

Again, it should be noted that the word “Commercial” is not defined in the DC By-law or the DC Act. Further, the word is not tied in the DC By-law to the Planning Act or any zoning designation. This means that the current zoning for the Subject Property is irrelevant.
5.4 Intent of Development Charges

The Complainant contends that the Non-Residential Development Charges are only intended to collect charges to cover the costs for growth related employment from new industrial, commercial and institutional uses. The Complainant relies on the Background Study for the Development Charges By-law in this regard. The Complainant also contends that development charges should not apply to the Building because it is not creating an increased need for services.

The Ontario Court of Appeal and Ontario Municipal Board have held that “a development charge is a type of tax, as distinct from a lot levy which is intended to pay for specific services for a specific development” (Greater Toronto Airports Authority v. Mississauga (2000), 50 O.R. (3d) 641 and Waterloo (Regional Municipality) Development Charges By-law 04-049 (Re) [2005] O.M.B.D. No. 432.

This means that development charges are to raise revenues, in general, to pay for overall growth related development. With this in mind, Council made the policy decision when it passed the DC By-law that “commercial, industrial, institutional or other use, except Farming, not included in the definition of Residential Use” would pay a Non-Residential Charge to pay for the overall services needed for growth related employment. Whether or not a specific development results in the need for increased services is not a factor in the determination of applicable development charges for such development.

The reference in the Background Study to growth related employment and increased employment related buildings is the methodology used pursuant to the DC Act to calculate a Non-Residential Charge only. It does not narrow the principle that a development charge is a tax nor alter the definition of a Non-Residential Use or Non-Residential Development Charge in the DC By-law. Regardless, the Building with its sales office, concierge service, ongoing operation etc. will be creating employment and employment space in the City of Waterloo.

5.5 Past Regional Practice

The Complainant contends that the Region has not imposed a Residential or Non-Residential Charge for pool and common areas within apartment buildings and thus it is unfair to impose a Charge in this circumstance.

In practice, the Regional/Educational Certification Request Form, which is completed and provided to the Region by the local municipalities, does not contain information in relation to pools and common areas in apartment buildings. The Request Form sets out the number of units and any store space if located on the main floors of the building. For this reason, staff can not comment on whether apartment buildings with pools and common areas have avoided paying the proper Non-Residential Charge. Staff acknowledges, however, that such is possible and that staff will need to alter the Request Form and communicate with the local municipalities to ensure that pools and common areas are properly charged.

Having said this, staff notes that the test, in order to provide a remedy to the Complainant under section 20 of the DC Act, is whether “the amount of the development charge was incorrectly determined” or “there was an error in the application of the development charge by-law,” in respect of this particular development, rather than any previous developments.

5.6 The City of Waterloo and School Boards

The Complainant contends that the City of Waterloo and school boards have not imposed development charges for the Building pursuant to their respective by-laws. This is correct.
Staff has communicated with City of Waterloo staff regarding the City DC By-law. By-law No. 08-094 of the Corporation of the City of Waterloo includes the following definition:

“accessory” use means a use of land, building or structures, which is incidental and subordinate to the principal use of the lands, buildings or structures;

The City exempted the development from development charges based on this definition. As described previously, the Region changed its definition of accessory use during the 1999 by-law review.

The school boards usually mirror the imposition of development charges of the local municipality in situations where there is a difference between the Regional DC By-law and the local municipality DC By-law.

6. Recommendation

The recommendation of staff is that the Region dismiss the Complaint based on the following grounds:

- The Building does not satisfy the exemption of an Accessory Building as defined in the DC By-law;
- The Building meets the definition of a Non-Residential Use which is “any commercial, industrial, institutional or other use, except Farming, not included in the definition of Residential Use,” and
- The Non-Residential Development Charges, as specified in Schedule A of the DC By-law, properly apply to the Building.

CORPORATE STRATEGIC PLAN:

This report supports Focus Area 2 – “Growth Management and Prosperity” of the Corporate Strategic Plan and specifically Strategic Objective 2.2 – Develop, optimize and maintain infrastructure to meet current and project needs. Development charges provide an important source of funding for infrastructure needed to accommodate planned growth.

FINANCIAL IMPLICATIONS:

The definitions and exemptions included in the development charge by-law and the resulting effect on development charges assessed were considered during the 2009 development charge by-law review. Any change made to the definitions which expands the exemptions would result in reduced assessment and collection of development charges.

OTHER DEPARTMENT CONSULTATIONS/CONCURRENCE:

The Legal Services Division assisted in the preparation of this report.

ATTACHMENTS:

Appendix A – Complaint dated March 21, 2012
Appendix B – Regional Certification of Development Charges dated January 6, 2012
Appendix C – 267 Grey Silo Road, City of Waterloo – Proposed Building Layout

PREPARED BY: C. Barrett, Director of Financial Services and Development Financing
APPROVED BY: C. Dyer, Chief Financial Officer
March 21, 2012

Regional Municipality of Waterloo
Office of the Regional Clerk
150 Frederick Street, 2nd floor
Kitchener, Ontario, Canada N2G 4J3

Attention: Ms. Kris Fletcher, Regional Clerk

Dear Ms. Fletcher:

RE: Formal Development Charge Payment Complaint pursuant to Section 20 of the Development Charges Act

Please accept this letter as Activa Holdings Inc. (“Activa’s”) formal complaint pursuant to Section 20 of the Development Charges Act for the payment of $139,223.36 of development charges that the Regional Municipality of Waterloo has collected with respect to the private recreational facility (“club house”) for Activa’s proposed standard condominium plan on Blocks 318 and 319 of Plan 58M-506 in the City of Waterloo.

The purpose of the club house is to provide a recreational amenity facility to the residential units within the condominium to which the future condominium owners will have exclusive use. The club house facility will be owned by the unit owners of the condominium. The clubhouse is not a public use nor will it have an institutional, commercial or industrial zoning/component/use – it is strictly an accessory residential use building to the proposed residential condominium units to be constructed on Blocks 318 and 319 of Plan 58M-506.

The proposed club house should be considered an “Accessory Building” as defined in the Regional Municipality of Waterloo Development Charges By-law which states:

"Accessory Building" means a building or structure which is incidental, subordinate and exclusively devoted to providing vehicle parking or utility services to the main use situate on the same Site;

In this case, the “Site” is the proposed residential condominium development on Blocks 318 and 319 of Plan 58M-506. The common elements club house is to be incidental, subordinate and exclusively devoted to providing recreational amenities to the residents of the proposed condominium.

The common elements club house is an Accessory Use¹ to the residential development in the proposed condominium.

¹ As defined in the Development Charges By-law.
As noted in paragraph 3(4)(c)(v) of the by-law, there are no development charges payable with respect to Accessory Buildings. As this proposed structure is an Accessory Building to the proposed residential units, there should be no development charges payable on account thereof to the Regional Municipality of Waterloo.

The only use that is permitted on the property is residential and accessory uses to residential uses. Non-residential uses are only permitted where they are accessory to the primary use, being residential.

It should also be noted the City of Waterloo has not charged a development charge for this building. This would appear to be a clear recognition by the City of Waterloo of the accessory nature of this structure to the residential development. The School Boards had originally collected development charges but have since voluntarily refunded the full amount once a better understanding of Activa’s development was received. Both refunds have been received by Activa.

As the zoning does not permit non-residential uses unless accessory to a residential use it appears illogical that the Regional Municipality of Waterloo is seeking a development charge for this structure on the basis the building is, as noted in the attached email from Regional Staff dated December 28th, 2011:

"classified as non-residential, non-industrial..."

The Regional Municipality of Waterloo Development Charges by-law does not have any “non-industrial” definition or classification.

There is a definition of "Non-Residential Development" which means “the development of land for Non-Residential Use”.

“Non-Residential Use” is defined as “any commercial, industrial, institutional or other use, except Farming, not included in the definition of Residential Use”.

It would appear that the Regional Municipality of Waterloo is attempting to say the club house is an “other use”. That interpretation does not survive an analysis of the by-law or the background study to the by-law. Even if the interpretation survived such analysis the by-law imposes no charges on any Non-Residential Use unless the use is commercial, industrial or institutional. The by-law imposes no charges on any “other uses”. (See Schedule A to the by-law).

The “or other use” in the definition is tempered by the words that precede it, namely "commercial, industrial, institutional". The clubhouse facility has none of these characteristics.

It must be noted that the by-law itself, when establishing the development charge rates restricts itself to considering three non-residential uses. As noted throughout the by-law and the background study the only non-residential uses that are considered or relevant to the calculation of development
March 21, 2012

charges are industrial, commercial and institutional uses. There are no references anywhere to “other uses” in the by-law except in the definition of “Non-Residential Use”. Anywhere that non-residential uses are itemized in the by-law only these three uses (industrial, commercial and institutional uses) are mentioned.

The proposed building does not fall within any of the three listed categories.

The by-law states in paragraph 12.

Where a Development Charge is payable hereunder, but any matter as to calculation, manner or timing for payment thereof is not expressly provided for herein, such matters shall be determined in accordance with the Act and Regulations, where applicable by analogy to similar provisions hereof and in accordance with the general principles underlying the Act and this By-law

It is our opinion that the building does not in any way qualify as a “Non-Residential Use” pursuant to the by-law. However, if there is any doubt, the foregoing section of the by-law calls for an analysis of the general principles underlying the Development Charges Act (the “Act”) and the by-law.

The underlying philosophy of the Act is that new development that gives rise to a need for services that would not otherwise be required if that new development did not occur should pay for those services.

The general statement that “growth pays for growth” is the basic principle of the Act.

As noted at page 9 of the background study:

The Development Charges Act, 1997 (DCA), and its associated regulation (0. Reg. 82/98), allow municipalities in Ontario to recover growth-related capital costs from new development...

...This study identifies the growth-related net capital costs which are attributable to development that is forecast to occur in the Region. The costs are apportioned to types of development (residential and non-residential) in a manner that reflects the increase in the need for each service attributable to each type of development. The study therefore calculates development charges for each type of development.

The foregoing confirms that there needs to be a direct causal relationship between the proposed development and an increased need for services because of that development.
As noted in the following extract from page 16 of the background study, non-residential development charges are intended to address projected increases in employment and the building space needed to accommodate the increase.

...For the residential portion of the forecast, the total additional population that will result from the addition of new housing units is estimated. This “population in new units” determines the need for additional facilities and provides the foundation for the growth-related capital forecast.

The non-residential portion of the forecast estimates the amount of building space to be developed in the Region over the ten year period, mid-2009 to mid-2018. The forecast is based on the projected increase in employment and the anticipated amount of new building space required to accommodate the increase.

B. NON-RESIDENTIAL FORECAST IS FOR 1,713,072 SQUARE METRES OF ADDITIONAL GFA BETWEEN 2009 AND 2018

Non-residential development charges are calculated on a per unit of gross floor area (CFA) basis. Therefore, as required by the DCA, a forecast of future non-residential building space has been developed. As with the residential forecast, the GFA forecast covers the ten year period from mid-2009 to mid-2018. The forecast is based on a forecast of employment.

The club house is intended to provide amenities to the residents of the residential units of the proposed condominium. Instead of each home in the development having its own “backyard” or other small amenity area there is one large amenity area to service the residents of the condominium, namely the club house. The club house would not exist but for the presence of the residential development. The club house is an integral part of the residential development. In short the club house is only there to provide amenity space to the residents of the residential development. As noted, its presence would not be permitted under the zoning by-law but for the fact it is accessory to the residential development in the condominium.

The purpose of the club house is not to house or accommodate employees or production equipment as is the case in industrial, commercial and institutional development.

As the presence of the club house will not give rise to any increased need for services, charging a development charge that is designed to pay for growth related costs is not appropriate nor consistent with general principles underlying the Act and the by-law. The residential component of the development will generate, according to Activa’s calculation, $2,549,640 million in Regional development charges which will pay for the increased need for all services that this development will generate. These development charges imposed on the residential units will provide the appropriate return of development charges on account of the whole site including the proposed condominium’s club house.
While the by-law may include “other uses” in the definition of Non-Residential Uses it appears clear that there is no intention to charge development charges for “other uses” nor does the background study or the by-law address “other uses” either as to giving rise to a need for services nor as qualifying for any obligation to pay development charges.

The following extract from page 41 of the background study confirms that the only uses that are considered in the Non-Residential category are industrial, commercial/office and institutional. There is no reference to “other uses”.

2. Non-Residential Forecast

Non-residential development charges are calculated on a per unit of gross floor area (GFA) basis. Therefore, as required by the DCA, a forecast of future non-residential building space has been developed. As with the residential forecast, the GFA forecast covers the ten year period from mid-2009 to mid-2018. The forecast is based on a forecast of employment.

The employment forecast has been developed jointly with Region of Waterloo planning staff. The following factors have been used to convert the employment forecast into building space estimates

<table>
<thead>
<tr>
<th>Service Category</th>
<th>Industrial (including warehousing)</th>
<th>Commercial/Office</th>
<th>Institutional</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>85 $/m² per employee</td>
<td>35 $/m² per employee</td>
<td>50 $/m² per employee</td>
</tr>
</tbody>
</table>

It must also be noted that the operative part of the by-law that actually assigns a development charge against uses only assigns a charge against industrial, commercial and institutional uses. The heading of the relevant part of Schedule A is as follows:

**PART II - Non-Residential Development Charges ($ Per Square Foot of GFA) (effective August 1, 2009 and in effect up to and including December 31, 2009)**

<table>
<thead>
<tr>
<th>Service Category</th>
<th>Industrial/Commercial</th>
<th>Institutional</th>
</tr>
</thead>
<tbody>
<tr>
<td>City</td>
<td>Township</td>
<td></td>
</tr>
</tbody>
</table>

This restriction of consideration and applicability of charges to only industrial, commercial and institutional uses runs through the by-law and background study.

We also understand that if the facilities that are proposed to be provided in the club house were located within a residential building, the Regional Municipality of Waterloo would not impose development charges as was in the case of Activa’s Laurelwood condominium development. In this case because of the large number of proposed residential buildings it has been decided a stand-alone
facility is preferred to having the amenity located within one of the many proposed residential buildings.

It seems illogical that simply because the facilities will be in a stand-alone building performing the same function as if within a residential building, that the Regional Municipality of Waterloo is seeking development charges on account thereof when there would be no development charges sought in the latter case.

In summary there should be no development charges assessed against this common element club house as:

1. The proposed building qualifies as an “Accessory Building” under the definitions in the by-law. Accessory buildings are not subject to having to pay a development charge under the by-law.

2. The building is only allowed to be constructed because it is accessory to the residential development. The building’s construction would not be permitted on a stand-alone basis. This confirms that the building is an Accessory Building to the residential development as does the fact the City of Waterloo is not charging a development charge on its construction.

3. Both the Public and Separate School Boards have voluntarily refunded the development charges that they originally collected on the club house facility.

4. There is no category or definition of “non-industrial” buildings so the basis of the Regional Municipality of Waterloo position is that the building is an “other use” under the definition of Non-Residential Use. The clubhouse use is inconsistent with the types of uses that are listed as Non-Residential Uses and hence is not a use contemplated by “other use” in the definition.

5. Even if the clubhouse is an “other use” and qualifies as a “Non-Residential Use” (which is not the case in our opinion), there is no further discussion in the background study or the by-law as to such “other use” having any effect on the need for growth related services. “Other uses” are simply not mentioned again in the background study or by-law when analyzing the need for services or the amount of any applicable charges. There is no development charge rate for “other uses”.

6. On the assumption that all growth related charges are properly allocated to listed residential and qualifying Non-Residential Uses (commercial/industrial/institutional) there are no additional growth related charges remaining that can be properly allocated to “other uses”.

7. The charging part of the by-law (Schedule A) only imposes a charge on three specific uses (commercial/industrial/institutional). The by-law does not provide for a charge against any “other use” that may qualify as or be included in the definition of “Non-Residential Use”.

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8. The existence of the clubhouse will not give rise to any increased need for growth related services and hence imposing a development charge on its construction is not consistent with the Act nor the by-law nor the provisions of the related background study.

9. All growth related services that this development will generate will be paid through the collection of the residential development charges generating over $2.5 M in Regional Development Charges.

10. There would be no development charges sought if the facilities were part of a residential building. The Regional Municipality of Waterloo should not be seeking development charges simply because the same facilities are proposed to be in a stand-alone building performing the same function as if the same were part of a residential building.

We respectfully request that the Regional Municipality of Waterloo reconsider its position in imposing a development charge on the club house and direct staff to provide a full refund on the development charge paid on the Grey Silo condominium development’s private recreational facility.

Sincerely,

ACTIVA HOLDINGS INC.

Jennifer Voss, MCIP, RPP
Manager of Planning

cc: Calvin Barrett
From: Shane Fedy [mailto:SFedy@regionofwaterloo.ca]
Sent: December 28, 2011 1:35 PM
To: Paul Leveck
Subject: RE: 267 Grey Silo DC

Hi Paul, 267 Grey Silo Rd is classified as non-residential, non-industrial which has a 2011 rate of $8.92 per sq ft x 15,608 sq ft = $139,223.36.

Thanks,
Shane Fedy CMA
Financial Analyst Transportation/RDC
Region of Waterloo
PH: (519) 575-4757 x 3197
SFedy@regionofwaterloo.ca

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# Regional Certification of Development Charges

Only Valid Until December 31, 2012

**Received by Region of Waterloo:** January 6, 2012
**Response to Area Municipality:** Jan. 9/12

**Reference:** Replaces WAT-0057-11R

## Property Information

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<thead>
<tr>
<th>Field</th>
<th>Information</th>
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<tbody>
<tr>
<td>Street Address</td>
<td>267 Grey Silo Rd</td>
</tr>
<tr>
<td>Owner</td>
<td>Activa Holdings Inc</td>
</tr>
<tr>
<td>Assessment Roll #</td>
<td></td>
</tr>
<tr>
<td>Settlement Area</td>
<td>Waterloo</td>
</tr>
<tr>
<td>Plan / Tract / Conc.</td>
<td>Plan 58M-506</td>
</tr>
<tr>
<td>Lot / Block / Unit</td>
<td>Block 319</td>
</tr>
<tr>
<td>Reference Plan #</td>
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<td>Part(s)</td>
<td>----</td>
</tr>
</tbody>
</table>

## Development

RDC Calculation is Based on Building Permit # 11-002034
and is for a Maximum Development of:
15608 Square Foot Building
Non-Residential, Non-Industrial
Service: Full

## Allowances / Exemptions / Credits

<table>
<thead>
<tr>
<th>Allowance</th>
<th># of Units</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<td></td>
<td></td>
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<tr>
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<td></td>
</tr>
</tbody>
</table>

## Net Development

\[
\text{Net Development} = 15608 \times \$9.27 = \$144,686.16
\]

## Total Regional Development Charge

<table>
<thead>
<tr>
<th>Charge</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$144,686.16</td>
</tr>
</tbody>
</table>

Regional Certification: [Signature]
for Treasurer

Building Permit Issued On:  

Date Remitted to Region of Waterloo:  

Amount $
REGIONAL/EDUCATIONAL CERTIFICATION REQUEST FORM
(Non-Residential – New)

PROPERTY IDENTIFICATION
Address: 267 Grey Silo Rd
Roll Number:
Legal Description: PLAN 58M-506 BLOCK 319

OWNER INFORMATION
Name: Activa Holdings Inc
Address: 735 Bridge St W
City: Waterloo
Postal Code: N2V 2H1
Telephone Number: 519-886-9400

BUILDER INFORMATION
Name: Activa Holdings Inc
Address: 735 Bridge St W
City: Waterloo
Postal Code: N2V 2H1
Telephone Number: 519-886-9400

PROPOSED CONSTRUCTION
Permit Number: 11002034
Folder Type: Non Residential Building Permit
Sub Code: Assembly
Work Code: New
Units: 0
Storeys: 2
Gross Floor Area: 15608 ft²

SERVICES AVAILABLE TO THE SITE
Water: Municipal
Sewer: Sewer

DEMOLITION WITHIN PAST FIVE YEARS
Has there been a demolition in the last 5 years: No
Permit number of demolition:
Date of demolition permit:
Number of units demolished:
Gross floor area demolished:

DESCRIPTION
Private recreational facility for Grey Silo Condo owners use only.
TO: Chair Tom Galloway and Members of the Administration and Finance Committee

DATE: May 8, 2012

FILE CODE: M13-20

SUBJECT: EXTERNAL COMMUNICATIONS - PROGRAM REVIEW UPDATE 2012

RECOMMENDATION:

For Information

SUMMARY:

In 2009, a program review of the Region’s external communications was initiated as part of the regular internal audit process. This review was conducted with consulting services provided by Locomotion PR, to oversee a program review of the Region’s external communications. The findings and recommendations of the review were received by Council on June 29, 2010 (Report No. CA-10-005). The review focused on the processes used to prepare external communications for the public and assessed compliance with organizational guidelines and expectations. In addition, the review evaluated staffing, planning and the administration mechanisms used to produce external communications to confirm that they are appropriately aligned with and support the achievement of objectives defined in the Strategic Plan.

The review found that Corporate Communications and staff involved in external communications prepare and execute external communications using sound communications principles and processes and that Corporate Communications’ practices support the Region’s culture of “no-surprises”. In comparison to other upper-tier municipalities, staffing levels within Corporate Communications were low. The program review also indicated that Corporate Communications was well-positioned to build on its communications successes and improve its effectiveness by providing more strategic and proactive external communications rather than tactical and reactive messages.

Based on the findings of the review, it was concluded that external communications needed to be more aligned with the Strategic Plan and proactive to achieve the goal of effective and accessible communications about Regional programs and services. From the findings, a number of recommendations (19) were suggested to make the Region of Waterloo’s external communications practices more strategic, proactive, consistent and cost effective throughout the organization.

This report highlights the achievements and progress made toward the implementation of the 19 suggested items in the review.

BACKGROUND

Building awareness of the Region’s programs and services and building trust and confidence in the Region’s capabilities to both its internal and external audiences is a key goal of Corporate Communications. The division ensures the clear and consistent representation of the Region of Waterloo brand at all touch points within the community. Communications at the Region is based on a decentralized model with an integrated coordination function. This means that most communications staff are located in division or program areas. Corporate Communications staff (the Director of Corporate communications, and three full-time Communications Specialists) in the Chief
Administrative Officer’s Office coordinate the Region’s overall communications function, develop high-level external and internal corporate key messages and communications strategies, develop and implement corporate communications campaigns, centrally purchase radio, television and print advertising and provide support, advice and assistance to Departmental Communicators. Corporate Communications operates on an account model basis: Specialists are responsible for coordinating and supporting the communications needs of their assigned departments and are aligned with Regional standing committees.

The decentralized model ensures that accountability for program communications rests within departments, while presenting a consistent brand image to the community. It allows the Region to enjoy the fiscal benefits of a centralized model, while maintaining the specialization, enthusiasm and accountability of a decentralized model.

REPORT:

Based on the findings of the program review, the consultants made a number of recommendations. Overall, the primary recommendations can be summarized as follows:

- The Region’s external communications activities need to be more strategic and proactive to achieve the goal of effective and accessible communications regarding the Region’s programs and services.
- The current decentralized model should be strengthened in order to maintain and improve external communications. The role of both Corporate Communications and the divisional communicators should be clarified, strengthened and formalized.
- The Region needs to increase both staff and budgetary resources to better manage workload and address communications inequities within the organization.
- The Region should shift its focus from traditional media and consider newer media channels that capitalize on new technologies and reflect changing demographics.

A total of 19 specific recommendations were suggested.

The recommendations were grouped into three major themes that addressed:

1. The strategic organizational structure of external communications activities;
2. The processes used to develop and produce external communications;
3. The practices needed to manage and innovate within the areas of the organization that produce external communications.

The implementation status of each recommendation is outlined in Appendix A, and summarized in the following sections.

**Actions to improve organizational structure**

A review of strategic planning and communications functions was conducted by Tim Dobbie Assoc. in 2011. It was determined that the current alignment of services was appropriate; however, staffing levels were low in comparison to other municipalities of comparable size. As a result of the review, one additional Corporate Communications Specialist was recommended as part of 2011 Budget Process. Through the account model structure, Corporate Communications provides communications support to departments and divisions, especially those that lack dedicated communication resources. In order to address the lack of communications expertise in Social Services, Corporate Communications now provides office hours at Social Services (99 Regina) on a bi-weekly basis. Currently, the Corporate Communications account model is working well. As recommended in the program review, the Chief Administrative Officer will continue to monitor the organizational structure to ensure external communications activities remain efficient and effective.
Specifically, staff will review the implementation of the program review recommendations on an annual basis, to determine if additional organizational changes are needed.

**Actions to improve process**

One of the key recommendations from the review stressed that the current decentralized model be strengthened in order to maintain and improve external communications and that the role of both Corporate Communications and the Departmental communicators should be clarified, strengthened and formalized. As a result of this recommendation, a policy framework outlining “Corporate Communications Roles and Responsibilities” has been prepared, which clearly articulates Corporate Communications’ mandate, key organizational role(s) and important responsibilities within the organization’s structure and culture. This also clarifies the roles and responsibilities of Corporate Communications relative to Departmental Communications.

Corporate Communications has developed a Corporate Communications Master Plan. This Plan outlines Corporate Communications’ broad objectives for this term of Council (2011-2014) as well as more specific strategies and tactics. It will guide Corporate Communications as it communicates with the public and employees and ensure that consistency and efficiency of Region of Waterloo messaging is maintained.

In order to strengthen and manage the Region’s communications talent pool, Corporate Communications with the support of Human Resources has worked with the Departmental communicators and Senior Management to identify Core Communications Competencies. Corporate Communications is working collaboratively with Human Resources to coordinate and identify timely and relevant professional development for communications staff across the organization. Corporate Communications will work with Human Resources to provide Communications-based guidance and training sessions, (i.e.: Understanding and using Social Media.) A series of tip sheets, standards and best practices have been developed to provide practical tools for communications staff. This "toolkit" will be shared with key staff and posted on the Communications Portal.

**Actions to improve practices**

The Program review suggested that Corporate Communications develop specific practices to manage and innovate within the areas of the organization that produce external communications.

Corporate Communications has created, and is in the process of executing a Corporate Communications Master Plan. It’s over-arching goal of developing and telling the “Regional story” outlines Corporate Communications’ broad objectives for this term of Council (2011-2014) as well as more specific strategies and tactics. It will guide Corporate Communications as it communicates with the public and employees and ensure that the consistency and efficiency of Region of Waterloo messaging is maintained. This recommendation was reinforced by public input to the Region’s strategic plan. The public clearly wants more information on Regional programs and services.

To assist in telling the Regional story of “what the Region does”, Corporate Communications is in the process of producing a video about Regional program and services. This video will be edited into a series of commercials that will air locally on CTV, YouTube and other social media sites. A longer video will be available for presentations and as an introduction to the Region at speaking engagements.
Corporate Resources and Citizen Service are developing a public participation framework and related policies, tools and resources. Preliminary work has started with the review of best practices from other municipalities. The development of the framework, policies, tools and resources is anticipated for the fall of 2012. Once approved, the resources and tools will be tested in three to four initial pilots, evaluated and then released more broadly across the organization. An internal communication and training plan will also be required in order to achieve success.

With the cooperation of Information Technology, Corporate Communications has engaged eSolutions to automate the Communications Initiation form and link it to the external communications calendar and internal communications calendar (currently under development). This innovative new process will also include an evaluation component that will assist Communicators by triggering a series of questions that will help to gauge the effectiveness of external Regional communications plans and/or tactics.

As part of the review’s recommendations, it was suggested that the Region explore new ways to shift its focus from traditional media and consider emerging media channels that capitalize on new technologies and reflect changing demographics. To accomplish this, a social media strategy is being developed. The Region’s website and social media will be used as potential alternatives to traditional media. Corporate Communications is currently investigating more cost effective print options (ie: placing more print advertisement in community weekly papers).

Meeting tight deadlines of program areas is occasionally a barrier for communicators. In order to add graphic capacity to Corporate Publishing services, three local graphic designs firms have been selected to provide overflow support to Corporate Publishing.

As part of the review’s recommendations to explore revenue generating opportunities, a survey of Regional and large single-tier municipalities was completed. Corporate Communications will continue to pursue sponsorship opportunities.

**Actions related to Strategic Plan priorities**

**5.4 Retain, recruit and develop skilled, motivated and citizen-centred employees.**

Corporate Communications with the support of Human Resources has worked with Departmental Communicators and Senior Management to identify Core Communications Competencies. Corporate Communications is also working collaboratively with Human Resources to identify and coordinate timely and relevant professional development sessions for all communications staff. Social media training is one example.

**5.5 Improve awareness of Regional services and facilitate processes for public input and involvement.**

Corporate Resources together with, Corporate Communications, has implemented the webcasting and cable coverage of Council and Standing Committee meetings. A public awareness campaign to promote this new service in now underway.

An awareness campaign has been launched involving the production and airing of a video about Regional programs and services via local television, web and social media.

The social media strategy will continually enhance external communications, engage the public, demonstrate transparency and build trust.
Corporate communicator responsibilities are aligned with Regional standing committees and support those groups with less communication resources. This will help promote their programs and services externally.

Graphics overflow support has been established and will also help support more timely external communications as needed.

CORPORATE STRATEGIC PLAN:

Enhancing external communications, increasing public engagement and implementing actions to support the recruitment and retention of skilled, motivated and citizen-centred employees aligns with strategic objectives within the Service Excellence focus area.

FINANCIAL IMPLICATIONS:

Costs associated with the implementation of the program review are being accommodated within the existing budget for communications.

OTHER DEPARTMENT CONSULTATIONS/CONCURRENCE:

The Communicators Group represents all departments at the Region of Waterloo and continues to provide input and support for corporate communications processes and practices.

ATTACHMENTS:

Appendix A – Corporate Communications Review Recommendations and Updates

PREPARED BY: Bryan Stortz, Director of Corporate Communications

APPROVED BY: Michael L. Murray, Chief Administrative Officer
### Recommendations (Structure)

<table>
<thead>
<tr>
<th></th>
<th>Recommendations (Structure)</th>
<th>Update/Actions to date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Reorganize and refocus the strategic planning and communications function. Consider creating stronger functional and organizational alignment between Strategic Planning, Corporate Communications, Corporate Publishing, Citizen Service, and Emergency Planning.</td>
<td><strong>Review completed:</strong> Review of strategic planning and communications functions was conducted by Tim Dobbie Assoc. in 2011. It was determined the current alignment of services was appropriate.</td>
</tr>
<tr>
<td>2</td>
<td>Modestly increase the size and capacity of Corporate Communications and re-badge it. Corporate Communications is taxed to meet existing and anticipated strategic communications demands. Consider adding an administrative support position and an additional Corporate Communications Coordinator. Change the name of Corporate Communications to Strategic Communications.</td>
<td><strong>Completed:</strong> One additional Communications Coordinator was approved as part of 2011 Budget Process. The name of the division will remain Corporate Communications.</td>
</tr>
<tr>
<td>3</td>
<td>Address the communications resource equity issue.</td>
<td><strong>Ongoing:</strong> Through the account model Corporate Communications provides communications support to departments and divisions which lack dedicated resources. Corporate Communications has set up office hours at Social Services (99 Regina) on a bi-weekly basis.</td>
</tr>
<tr>
<td>4</td>
<td>Over time, continue to review the organizational structure to see if it still supports implementation of the review’s recommendations.</td>
<td><strong>Ongoing:</strong> The CAO will continue to monitor the organizational structure to ensure external communications activities remain efficient and effective. Specifically, staff will review the implementation of the program review recommendations annually, to determine if additional organizational changes are needed.</td>
</tr>
</tbody>
</table>

### Recommendations (Processes)

<table>
<thead>
<tr>
<th></th>
<th>Recommendations (Processes)</th>
<th>Update/Actions to date</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Clarify and strengthen the role of the Corporate Communications Division. Corporate Communications will benefit from a clearer and more authoritative and strategic mandate and processes to initiate, coordinate, and evaluate Regional external communications priorities and initiatives. A policy framework that provides a clear mandate focusing on strategic, proactive, managed, measured, and supportive communications activities across the organization should be developed and implemented.</td>
<td><strong>Completed:</strong> A policy framework “Roles Document” has been prepared, which clearly articulates Corporate Communications’ mandate, key organizational role(s) and important responsibilities within the organization’s structure and culture and clarifies the responsibilities of Corporate Communications relative to Departmental Communications.</td>
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</tbody>
</table>
| **6** | Implement a process whereby the Corporate Communications Division leads the development of an annual Region of Waterloo Communications Master Plan.  
This process will assist in aligning all external communications with the strategic plan, achieving more proactive communications by identifying, analyzing, and defining Regional communications needs, issues, and priorities. Standardized annual departmental plans should be managed through a communications planning framework that is flexible enough to accommodate issues and opportunities that arise during the year. |
| **Completed:** | Corporate Communications has developed a Corporate Communications Master Plan. This Plan outlines Corporate Communications' broad objectives for this term of Council (2011-2014) as well as more specific strategies and tactics. It will guide Corporate Communications as it communicates with the public and employees and ensure that consistency and efficiency of Region of Waterloo messaging is maintained. |
| **7.** | Strengthen and manage the Region of Waterloo’s communications talent pool more strategically.  
The selection, recruitment, retention, and development of high performing team members are an important part of an integrated strategy to achieve the best possible communications results. The experience, knowledge, and skill sets of staff performing external communications duties vary widely. Investing in existing talent and adding new team members with the knowledge and skills to generate high performance communications will assist in developing communications excellence across the organization. |
| **Completed:** | Corporate Communications with the support of Human Resources has worked with the Departmental Communicators and Senior Management to identify Core Communications Competencies.  
**Ongoing:** Corporate Communications is working collaboratively with Human Resources to coordinate and identify timely and relevant professional development for communications staff across the organization. For example: Social media training will be offered to Communicators. |
| **8.** | Foster communications excellence with coaching and resources.  
Corporate Communications is encouraged to take a lead role in fostering a culture of communications efficiency and effectiveness. |
| **Ongoing:** | A series of communications standards, guidelines and best practices have been developed, to provide practical direction and will be shared with Communicators’ as a “Communications Tool Kit” available to all staff as a reference. |
| **9.** | Formalize the role of the Communicators’ Group and support it more effectively.  
Develop clear “Terms of Reference” for this group that support and focus a proactive strategic orientation and purpose. Corporate Communications as steward of this team is encouraged to take advantage of its strategic value. Provide it with tools and guidance to foster the communications success of its members. |
| **Completed:** | Formal “Term of Reference” for the Communicators’ Group has been developed.  
The terms of reference outlines a schedule of regular monthly meetings. Members are given an opportunity to give input to the agenda for each meeting. A collaborative roundtable discussion is a permanent agenda item at every meeting. Minutes are taken and posted to the Communicators’ Portal. Sharing and collaboration through the Communicators’ Portal ensures that the Region’s decentralized communications model remains strategic, proactive, consistent and cost effective throughout the organization. |
<table>
<thead>
<tr>
<th></th>
<th>Adopt an account model within Corporate Communications.</th>
<th>Completed: Corporate Communications Coordinator responsibilities are aligned with Regional standing committees.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>This approach to workflow assigns a particular Division or program portfolio to a specific Corporate Communications Coordinator. This consistency of support nurtures a deeper understanding by corporate</td>
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<td></td>
<td>Refine workflow processes and procedures in Corporate Communications.</td>
<td>Completed: E-clipping service was launched in Aug. 2011.</td>
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<td></td>
<td>Ongoing: Corporate Communications is currently developing a system for automating the communications planning and approval process. A review of current workload/practices is ongoing to optimize capacity of current staff resources.</td>
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<td></td>
<td>Establish a process to identify and analyze communications spending.</td>
<td>Completed: Corporate Communications has developed account codes to better identify and breakdown the types of spending taking place. These procedures have been distributed throughout the organization and have been adopted. Quarterly reports using the new communications budget codes are produced and used to track and analyze overall communications spending.</td>
</tr>
<tr>
<td></td>
<td>Recommendations (Practices)</td>
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<td></td>
<td>Invest in more concerted, strategic and effective Region of Waterloo communications that establish clearly “what the Region does.”</td>
<td>Ongoing: Implementing actions identified in the Corporate Communications Master Plan for 2012, Corporate Communications is working with Prisma Light to produce a video on Regional programs and services. This video will be edited into a series of commercials (PSAs) which will air locally on CTV, YouTube and other social media sites. The full video will be available for presentations and as an introduction to the Region at speaking engagements.</td>
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<td>In order to provide an effective communications strategy for the Region, efforts must be focused on building resident trust and confidence.</td>
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<td>Develop, fund, and implement an annual plan to transform citizen engagement.</td>
<td>Ongoing: Corporate Resources, Citizen Service is developing a public participation framework and related policies, tools and resources. Preliminary work has started with the review of best practices from other municipalities. The development of the framework, policies, tools and resources is anticipated for the fall of 2012. Once approved, the resources and tools will be tested in three to four initial pilots, evaluated and then released more broadly across the organization. An internal communication and training plan on citizen engagement will also be developed. Corporate Communications has enhanced the website, helped implement and promote webcasting of Council and Committee meetings, and leveraged social media to increase engagement, accessibility and two-way communication.</td>
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<td>The plan should foster convenient and easy-to-access information, information sharing, and collaboration between the Region of Waterloo and its citizens. These types of interactive, intuitive, and user-friendly initiatives encourage and support access to information and service delivery and foster enhanced two-way communications that would enable the Region to gain feedback. Commonly referred to a Gov 2.0 or e-government, this approach to engagement is aligned with the Region of Waterloo’s commitment to transparency and to building trust and confidence.</td>
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<td>Require the inclusion of research, evaluation, and budget components in all Regional communications plans and activities.</td>
<td><strong>Ongoing:</strong> Research, evaluation and budget questions will be incorporated into the electronic communications planning template. This will facilitate the measurement, efficiency and effectiveness of communications plans.</td>
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<tr>
<td>15</td>
<td>Measuring communications “outcomes” is the key to successfully calibrating the Region’s communications effectiveness and efficiency. A requirement to provide a detailed budget and track costs for every Region of Waterloo communications plan will help determine the efficiency of external communications spending.</td>
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<tr>
<td>16</td>
<td>Develop an online automated process for capturing and recording Region of Waterloo communications project initiation and communications project approvals.</td>
<td><strong>Ongoing:</strong> With the cooperation of Information Technology, Corporate Communications has engaged eSolutions to automate the Communications Initiation form and link it to the external communications calendar and internal communications calendar (currently under development). The Communications Initiations form will also be linked to an online Strategic Communications Plan Generator, which is also in development with eSolutions.</td>
</tr>
<tr>
<td></td>
<td>An on-line, automated project management tool would improve efficiency, save time, and improve information-sharing and collaboration amongst the organization’s communications specialists.</td>
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<tr>
<td>17</td>
<td>Identify ways to shift communications spending from traditional media to new media.</td>
<td><strong>Ongoing:</strong> A social media strategy is being developed to use the Region’s website and social media accounts as potential alternatives to traditional media. Currently investigating more cost effective print options (i.e.: placing more print advertisement in community weekly newspapers).</td>
</tr>
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<td></td>
<td>By developing a plan to capitalize on new technologies and channels that reflect shifting demographics and preferences, the Region has the potential to achieve cost savings in communications budgets. Identified cost savings could be considered as a source to fund additional staff in Corporate Communications or to support program areas with little or no communications resources.</td>
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<tr>
<td>18</td>
<td>Implement a process or practice regarding the purchase of graphic design services secured outside of the Region of Waterloo Print Policy P2007-42.</td>
<td><strong>Completed:</strong> Three local graphic designs firms have been selected to provide overflow support to Corporate Publishing.</td>
</tr>
<tr>
<td>19</td>
<td>Develop corporate sponsorship marketing policy and guidelines.</td>
<td><strong>Ongoing:</strong> Survey of Regional and large single-tier municipalities completed. Will continue to pursue sponsorship opportunities.</td>
</tr>
</tbody>
</table>
TO: Chair Tom Galloway and Members of the Administration and Finance Committee

DATE: May 8, 2012

FILE 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>
</tr>
</thead>
<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>
<td></td>
</tr>
</tbody>
</table>
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 Urmovnic
Kitchener – Ward 2

Councillor Frank Etherington
Kitchener – Ward 9

Councillor Diane Freeman
Waterloo – Ward 4

Jane Mitchell
Regional Councillor Jane Mitchell
Waterloo

Claudette Miller
Regional Councillor Claudette Miller
Cambridge
AMO 2011 Conference

August 29, 2011

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 thereof, 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 Vrbanovic’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.”
TO: Chair Tom Galloway and Members of the Administration and Finance Committee

DATE: May 8, 2012

FILE CODE: C04-01

SUBJECT: CONSENT AGENDAS

RECOMMENDATION:

For Direction.

SUMMARY:

Staff were requested at the January 10, 2012 Administration and Finance Committee meeting to prepare a report on consent agendas.

A number of municipalities are using consent agendas, both for Committee and Council meetings. Sample consent agendas were reviewed from the following: Town of Aylmer, City of Brantford, City of Cambridge, Region of Niagara, City of Guelph, Town of Milton, City of Niagara Falls, City of Ottawa, Town of Pelham, City of Port Colborne, City of Waterloo, City of Welland, and Township of West Lincoln.

REPORT:

Consent agendas are used to deal with routine matters on the agenda similar to how Finance reports and Committee recommendations are now handled at the Regional Council meetings. Other potential items that could be included in a Council consent agenda are as follows:

- Approval of minutes
- Receiving of correspondence
- Reports for information
- Approval of Finance reports
- Approval of Committee recommendations
- Appointments to Committees

Items on the Standing Committee agendas that may be considered for a consent agenda could include those reports for information and some tender/request for proposal reports. These can be reviewed at the staff level coordinating committees prior to the finalization of the agendas. Approval of matters when Committee is acting as the Public Health Board or Library Board will continue to be listed as separate items and not be included in the consent process.

The purpose of consent agendas is to streamline the agendas for non-controversial matters by approving a number of items with one single motion and without discussion, typically with unanimous approval. If a member of Committee or Council wishes an item to be removed from the consent agenda, they need to request an item be taken separately. All items to be placed
on the consent agenda will be numbered, therefore making it easier to identify any to be removed from the consent agenda process. Every agenda item to be removed from the consent agenda will need to be identified by the councillor prior to it being removed from the consent agenda process. The Clerk’s office should be contacted in advance of the meeting to have items removed from the consent agenda. This contact will allow for reordering of the agenda and the ability to provide advance notice to the meeting chair. Even with items listed on a consent agenda, full reports will continue to be included in the agenda package for councillors’ review prior to the meeting. The role of each councillor in a consent agenda process is to ensure they have scrutinized all agenda items ahead of the meeting and are satisfied with the proposed consent agenda items. It will also be the responsibility of each individual councillor to declare a pecuniary interest on any related matters and request those items to be taken separately.

Additional time will be required by the Clerk’s Office in preparing agendas and discussing in advance with staff which items will qualify for the consent agenda. There will be an initial learning phase if consent agendas are implemented. Since Standing Committee and Council meetings are also now being webcast and some Council meetings are televised on Rogers, it is important keep in mind the people watching the meetings and how they may be confused by the consent agenda process and the fast movement through portions of the agenda. This is not unlike what currently happens at Council meetings with certain approvals such as Finance reports and Committee recommendations. Transparency and openness is an important consideration.

If Committee supports moving to a consent agenda for council and Standing Committees, the following motion could be considered:

“THAT staff be directed to bring a report back to implement the consent agenda process for Regional Council and Standing Committee meetings along with any necessary amendments to the Procedural By-law.”

As required in the Notice Policy, twenty-one days notice will need to be given prior to the proposed amendment to the Procedural By-law being approved.

CORPORATE STRATEGIC PLAN:

The recommendation for consent agendas falls under Strategic Focus Area #5, Service Excellence to ensure Regional programs and services are efficient and effective.

FINANCIAL IMPLICATIONS:

None.

OTHER DEPARTMENT CONSULTATIONS/CONCURRENCE:

All Departments will be affected by this move to Consent Agendas.

ATTACHMENTS:

Sample Council Consent Agenda
Sample Committee Consent Agenda

PREPARED BY: Lee Ann Wetzel, Manager, Council & Administrative Services/Deputy Clerk

APPROVED BY: Kris Fletcher, Director, Council & Administrative Services/Regional Clerk
SAMPLE COUNCIL CONSENT AGENDA

MEDIA RELEASE: Friday, March 16, 2012, 4:30 P.M.

REGIONAL MUNICIPALITY OF WATERLOO
COUNCIL AGENDA

Wednesday, March 21, 2012
Regular Meeting 7:00 p.m.
REGIONAL COUNCIL CHAMBER
150 Frederick Street, Kitchener, ON

1. MOMENT OF SILENCE
2. ROLL CALL
3. MOTION TO GO INTO CLOSED SESSION
4. MOTION TO RECONVENE IN OPEN SESSION
5. DECLARATION OF PECUNIARY INTEREST UNDER THE MUNICIPAL CONFLICT OF INTEREST ACT
6. PRESENTATIONS
7. PETITIONS
8. DELEGATIONS
9. CONSENT AGENDA ITEMS
Items on the Consent Agenda can be approved in one motion of Council to save time. Prior to the motion being voted on, any member of Council may request that one or more of the items be removed from the Consent Agenda and voted on separately.

MINUTES OF PREVIOUS MEETINGS

a) Council – February 30, 2012
b) Planning & Works – February 30, 2012
c) Administration & Finance – February 30, 2012
d) Community Services - February 30, 2012

COMMUNICATIONS

e) Social Housing Services Corporation (SHSC) re: SHSC Group Insurance Program

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Finance Reports

f) F-11-059, T2011-124 Grand River Transit (GRT) Strasburg Road Facility Expansion-Chandler Drive Realignment and Site Preparation 3

g) F-11-060, T2011-125 Operation Centre Fuel Tank Removal and Replacement at 100 Maple Grove Rd., Cambridge, ON 5

Committee Reports

h) Planning & Works - attached & marked PS-12-02-30 7

i) Administration & Finance – attached & marked FS-12-02-30 9

j) Community Services - attached & marked SS-12-02-30 11

REGULAR AGENDA RESUMES

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

11. REPORTS
   Chief Administrative Officer
   Regional Chair
   Regional Clerk

12. OTHER MATTERS UNDER COMMITTEE OF THE WHOLE

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

14. MOTION TO ADOPT PROCEEDINGS OF COMMITTEE OF THE WHOLE

15. MOTIONS

16. NOTICE OF MOTION

17. UNFINISHED BUSINESS

18. OTHER BUSINESS

19. QUESTIONS

20. ENACTMENT OF BY-LAWS – FIRST, SECOND & THIRD READINGS
   a) A By-law to Confirm the Actions of Council – March 21, 2012

21. ADJOURN
SAMPLE COMMUNITY SERVICES COMMITTEE
CONSENT AGENDA

MEDIA RELEASE: Friday, March 16, 2012, 4:30 p.m.

REGIONAL MUNICIPALITY OF WATERLOO
COMMUNITY SERVICES COMMITTEE
AGENDA

Tuesday, March 13, 2012
1:00 p.m.
Regional Council Chamber
150 Frederick Street, Kitchener

1. MOTION TO RECONVENE INTO OPEN SESSION

2. DECLARATIONS OF PECUNIARY INTEREST UNDER THE MUNICIPAL
CONFLICT OF INTEREST ACT

3. DELEGATIONS

4. CONSENT AGENDA ITEMS
   Items on the Consent Agenda can be approved in one motion of Committee to
   save time. Prior to the motion being voted on, any member of Committee may
   request that one or more of the items be removed from the Consent Agenda
   and voted on separately.

REPORTS – Public Health

a) PH-12-006/P-12-029, Smoke-Free Policy for New Leases and Transfers in
   Regionally-Owned Community Housing – Annual Update

REPORTS – Social Services

b) SS-12-005, Waterloo Region Energy Assistance Program Update

c) SS-12-009, Provincial Funding for Sunnyside Home

INFORMATION/CORRESPONDENCE

d) Memo: 2012 Elementary School Suspension Update
5. REPORTS – Public Health
   a) PH-12-005/CR-CLK-LIC-12-001, Water Pipe Smoking in Waterloo Region

REPORTS – Social Services
   b) SS-12-006, Request for Domiciliary Hostel Agreement Assignment and Amendment
   c) SS-12-007, Ontario Retirement Homes Act 2010
   d) SS-12-008, Sunnyside Home Funding for Behavioural Support Services

6. OTHER BUSINESS

7. NEXT MEETING – March 20, 2012

8. ADJOURN
<table>
<thead>
<tr>
<th>Meeting date</th>
<th>Requestor</th>
<th>Request</th>
<th>Assigned Department</th>
<th>Anticipated Response Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>26-Jan-10</td>
<td>Committee</td>
<td>Report on a policy related to development charge grants, exemptions and deferral requests, to include past history/practice, implications, and options.</td>
<td>Finance</td>
<td>2012</td>
</tr>
<tr>
<td>08-Jun-10</td>
<td>A&amp;F</td>
<td>Review current funding for the tax increment grant program, with full range of funding options.</td>
<td>Finance</td>
<td>2012</td>
</tr>
<tr>
<td>23-Nov-10</td>
<td>A&amp;F</td>
<td>Assess the application of the prequalification guidelines (both generals and sub contractors) and report back to A &amp; F after one year's experience</td>
<td>Finance</td>
<td>2012</td>
</tr>
<tr>
<td>10-Jan-12</td>
<td>A&amp;F</td>
<td>Consent agendas</td>
<td>Council Services</td>
<td>Spring 2012</td>
</tr>
<tr>
<td>28-Feb-12</td>
<td>A&amp;F</td>
<td>Process for calculating/appeal of development charges</td>
<td>Finance / Legal Services</td>
<td>Spring 2012</td>
</tr>
<tr>
<td>20-Mar-12</td>
<td>A&amp;F</td>
<td>Report maintaining the optional class for new multi-residential development, including revenue forecasts</td>
<td>Finance</td>
<td>Fall 2012/Winter 2013</td>
</tr>
</tbody>
</table>