



REGIONAL MUNICIPALITY OF WATERLOO ADMINISTRATION AND FINANCE COMMITTEE MINUTES

Tuesday, May 8, 2012
11:28 a.m.

Regional Council Chamber
150 Frederick Street, Kitchener, Ontario

Present were: Chair T. Galloway, L. Armstrong, J. Brewer, T. Cowan, D. Craig, R. Deutschmann, J. Haalboom, R. Kelterborn, G. Lorentz, *C. Millar, J. Mitchell, K. Seiling, S. Strickland, *J. Wideman, and *C. Zehr

Members absent: B. Halloran

DECLARATIONS OF PECUNIARY INTEREST UNDER THE MUNICIPAL CONFLICT OF INTEREST ACT

K. Seiling declared a pecuniary interest on item 4(b), CR-RS-12-023, Proposed Draft Policy for Reimbursement for Municipal Conflict of Interest Act Legal Opinion Expenses, for the reason of standing to financially benefit from the report's recommendation in consideration of his ongoing declared conflict related to the Rapid Transit project due to two of his adult children who own residential properties within the proposed corridor.

D. Craig declared a pecuniary interest on item 4(b), CR-RS-12-023, Proposed Draft Policy for Reimbursement for Municipal Conflict of Interest Act Legal Opinion Expenses, for the reason of standing to financially benefit from the report's recommendation in consideration of his ongoing declared conflict related to the Rapid Transit due to his son owning property within the area of a proposed station on the rapid transit system.

Public Hearing of Development Charges Complaint under Subsection 20(4) of the *Development Charges Act, 1997*

- i. Report F-12-032, Development Charges Complaint – Activa Holdings Inc.

The Committee received the report and deferred consideration of its recommendation until after hearing from the complainant and Regional staff.

*C. Millar and C. Zehr entered the meeting at 11:30 a.m.

- ii. Opening Address – Region of Waterloo (Calvin Barrett)

Calvin Barrett, Director, Financial Services/Development Financing, provided an opening address to the Committee on behalf of Regional staff.

*J. Wideman entered the meeting at 11:34 a.m.

C. Barrett's address outlined the history of the development charges (DCs) complaint in question and explained the position of Regional staff, including:

- The Region had passed its development charges by-law under the *Development Charges Act* (DC Act), as have the area municipalities and school boards;

- Description of the process for administering DCs, including close involvement with the area municipality to ascertain the nature of the development to calculate DCs;
- General overview of the DC complaint process;
 - Under the DC Act, the complaint must assert that the DC was incorrectly calculated, or that an error occurred in the application of DC bylaw. After hearing from the complainant and Regional staff, Council may dismiss the complaint or adjust the DCs to be charged;
 - If Council dismisses the complaint, the complainant may appeal that decision to the Ontario Municipal Board;
- History of the DCs on the development in question, including:
 - Region provided certification of the DCs on January 9, 2012 for the development;
 - Developer paid DCs under protest within the specified period, and subsequently the DC complaint was received by the Region within the prescribed period;
- Staff analysis of the legal grounds and considerations of the DC complaint
 - The Region charges DCs on all development in the Region, subject to any exemptions or redevelopment allowances;
 - Region and area municipalities provide for exemptions under their respective DC by-laws, and not all exemptions are identical;
 - The Region categorizes its DCs into two groups, residential and non-residential;
 - Those categories are further subdivided, with the non-residential category being defined as all development that is neither residential nor farming, and was established with the intent of avoiding debate as to whether the use is specifically commercial, industrial, institutional, or other use.
 - Complainant asserts that the accessory building does not fall under the categories specified in the DC by-law, and notes that the city and school board did not impose DCs for the accessory building;
 - Given that the Complainant asserts that the building is not residential, Regional staff interpret the building's classification as non-residential;
 - Prior to its repeal in 1999, the Region did have an exemption for accessory use, which was replaced at that time with a new definition of Accessory building which was narrowed to deal with utility outbuildings;
 - The Complainant appears to be attempting to widen the Region's current definition of the exempt accessory building towards the pre-1999 definition;
 - The building's initial use as a sales centre is commercial in nature and thus would fall under the non-residential category under the Region's DC by-law;
- The Region has a history of charging DCs for mixed use developments containing residential and non-residential uses, with proportionate application of residential and non-residential DCs based on the ratio of uses within the development; and
- The Complainant's observation of inconsistency between the Region and the City and school boards does not appropriately reflect the varying definitions of accessory use between the respective DC by-laws of those bodies, or absence thereof in the case of the school boards.

Based on staff's analysis of the development, the building in question can be appropriately categorized under the Region's DC by-law as non-residential, which would demand that a DC be levied on the building. Based on that understanding, staff recommends that the Committee dismiss the DC complaint.

The Committee ascertained from C. Barrett the manner in which the Region receives information from the area municipality on a development in question, and how from that information the Region calculates and certifies the DC to be levied on the development. C. Barrett observed that the Region does not include specifics as to the exact nature of the non-residential aspects of the development, and that the Region would not necessarily be aware if any information was absent from the form submitted by the area municipality. He noted that

Regional staff has reviewed the last five years of multi-unit dwelling DC applications, and in some cases there have been non-residential aspects within the development for which the Region has levied non-residential DCs, and no instances where the Region did not charge for any known non-residential aspects of the developments. He observed that the Region would likely benefit from obtaining more detailed information on developments in the future.

The Committee clarified with C. Barrett that, in the past 13 years since the narrowing of the definition of an accessory building, the Region cannot positively state that DCs have been levied for pools or common areas in condominium developments because Regional staff have not requested that level of detail from area municipalities, and that the Region has historically been totally dependent for information on those developments from the area municipalities. The Region would only request clarification of the information submitted by the area municipality in instances where information appears to be missing. No such clarification would be undertaken to determine the exact components of the development, or to specifically determine the presence of pools or common areas in developments where those amenities would likely exist. C. Barrett observed that the area municipalities are the partners of the Region and school boards in the business of issuing building permits and levying DCs, and that the area municipality may collect more information about the development than would be requested by the Region or school boards.

The Committee obtained detail on the DC administration process, noting the DCs are payable only when a building permit is issued by the area municipality, that the Region's definition of accessory building has been in place for approximately 13 years, and that the definition in the by-law had been in place prior to the submissions and approvals granted for the development in question.

iii. Opening Address – Activa Holdings Inc. (Jennifer Voss)

Jennifer Voss, Manager of Planning, Activa Holdings Inc., provided an opening address to the Committee on behalf of the Complainant, which included:

- J. Voss appeared before the Committee on February 28 and at that time spoke to the recreational amenities within the building in question, and requested that the Region dismiss and refund the DCs;
- At that meeting, the Committee directed that any disagreement with DCs should be handled as appropriate under the DC Act, which includes a complaint procedure;
- Following review of the staff report on the DC complaint submitted, Activa retains the opinion that the DCs charged on the building in question are inappropriate;
 - The amenities are not unlike those of a single-detached homeowner enjoying a backyard pool or other related recreational features in their backyard, except that there is one building to service the whole condominium complex;
 - Activa is presently building a condominium development in the Laurelwood area of Waterloo which contains within the building complex many similar amenities as the building in question, and no non-residential DCs were levied for those spaces;
 - Similar condominium developments from other developers with similar amenities have not been charged non-residential DCs for those spaces, including the RED condominiums, The42 condominiums, and the Bauer lofts;
- The Region's DC form provided to local municipalities does not contain appropriate questions to indicate the nature of the development in consideration of calculating DCs;
 - The form does not ask questions nor has any category for common spaces, home theatres or other similar amenities;

- The definition of non-residential use which was changed in 1999 to avoid having to differentiate such common areas and amenities has not been consistently applied;
 - The reason for charging DCs on the building in question is because it is a standalone accessory building, and the same amenities within the condominium building with the other units would not be charged the non-residential DC;
- The Region has not asked for or otherwise collected information on recreational spaces within new apartment buildings;
 - The DC form only asks for the number of units and the internal commercial space;
 - If the Region intended to levy DCs on recreational facilities, it would be expected that those details would be included on its forms following the amendment of the definition of accessory use;
 - The intent was never to charge on recreational facilities, which has been demonstrated in other developments where such facilities were within the building and not charged non-residential DCs;
- Application of the interpretation of “other” use needs to be consistent, with all forms of residential housing and related recreational amenities being treated equally, and DCs for recreational facilities should not only be levied on the multi-residential homeowner;
- Regional staff has taken a narrow literal definition of ‘accessory’ in the DC by-law, and have failed to take into consideration the intent of the terms ‘accessory’ and ‘non-residential’ in the DC background study;
- Disagree with staff’s assertion in their report that Complainant acknowledges that the building is a non-residential use;
 - Asserted instead that the building is only allowed to be constructed because it is accessory to the residential development and would not be permitted on a standalone basis;
- If recreational space is to be charged non-residential DCs, then the same interpretation should be made for all residential recreational amenities occurring in either a single or multi-residential setting;
- Since DCs have not been collected for recreational spaces in apartments or single detached lots since 1999, the inferred intent of the DC by-law was to collect the non-residential DCs for commercial, industrial or institutional uses;
- The development will generate \$2.5 million in DCs outside of any DCs for the accessory building, which would more than adequately pay for the growth including the recreational amenities in question;
- The Region’s DC background study only contemplates industrial, commercial and institutional uses when forecasting the employment over the 10 year period of the DC by-law that will generate a need for additional services;
 - The DC background study sets out the expected net capital costs for the period, and allocates 100% of the non-residential charge to commercial, industrial or institutional uses, with the balance allocated to residential use;
 - Collection for other uses not contemplated in the DC background study would imply that the Region is collected for more than 100% of eligible net capital costs;
- The DC background study did not contemplate collecting for non-residential uses outside of commercial, industrial and institutional use, and the building in question does not fall into any of those subcategories.

J. Voss asserted that if the Region intends to collect DCs for amenity space, then any such collection should occur after a review of the DC by-law to allow those charges to be widely communicated. J. Voss requested that the Region consider that the DC is not warranted and to refund the DCs paid already for the building in question.

The Committee obtained a description of the building in question, with J. Voss noting the building is 15,000 square feet over two storeys and describing the building's amenities and uses.

The Committee asked J. Voss whether the DC by-law is inconsistent with the background study, and she responded that the DC by-law is ambiguous because the DCs required from the background study projected requirements only for residential, commercial, industrial and institutional development, leaving ambiguity with no other growth accounted for in the study and compounded by inconsistent application of the DC by-law.

J. Voss was not aware of examples where developments with a pool had been levied a DC on the pool space. She was interested to know what non-residential DCs have been applied to mixed use development, as she would assume those were for commercial uses.

J. Voss affirmed that all the exceptions to DCs being charged for amenity space noted in her presentation were for developments located in the City of Waterloo.

iv. Committee Discussion

The Committee debated the merits of the evidence and arguments of Regional staff and the Complainant, which included:

- The DC complaint points to an apparent error in the application of the DC by-law, to the benefit of those for which DCs were inadvertently forgone in the past;
- DCs that are appropriately identified should be levied despite previous errors in doing so;
- The Region's present definition of accessory use was available to the developer, and the entire development would have been governed by the DC by-law containing the current definition;
- The Region should review and improve its DC forms going out to area municipalities, given the ambiguity that has been demonstrated;
- There exists a fairness issue in having not charged for similar such facilities inside buildings;
 - The Region must examine its DC by-law to clarify charges for recreational facilities;
 - The Region needs to be more proactive in obtaining relevant information through its forms
- This situation demonstrates that the Region needs to consult with the City of Waterloo with regard to the building information submitted on its forms;
- The Committee needs to be considered in approaching this situation and much conduct due diligence in assessing changes to its DC policies or application of the DC by-law;
- The size and use of the building suggests that a DC is appropriate; and
- Varying opinions as to whether the DC should be maintained or refunded.

The Committee specifically observed that the demonstrated inconsistencies in the collection of DCs need to be rectified, and directed staff to investigate the matter.

v. Closing Address – Region of Waterloo (Calvin Barrett)

No closing address provided.

vi. Closing Address - Activa Holdings Inc. (Jennifer Voss)

J. Voss asserted the importance of consistency in the Region's collection of DCs, and emphasized that the area municipalities provide only the information requested on the Region's

forms. She highlighted that the form makes no reference to recreational amenities as being non-residential development, and contrasted the Region encouraging intensification in its development against the perceived penalizing of multi-residential homeowners for having amenities which would not occur for single residential homes.

J. Voss expressed curiosity at the specific non-residential DCs collected in the past, and suggested that most non-residential DCs charged would have been for commercial, industrial and institutional uses. She emphasized that the DC background study did not demonstrate the intent to collect DCs for accessory uses.

With regard to the apparent inconsistencies in application of the DC by-law, J. Voss hypothesized that staff in the area municipalities may not be taking into consideration the non-residential definitions and exemptions within the Region's DC by-law for recreational facilities, as it differs from those in those municipalities. As well, the DC exemptions for similar such developments in the downtown cores of Cambridge and Kitchener may also help to explain the higher volume of notable exceptions coming from Waterloo.

vii. Recommendation of Committee

C. Zehr requested a recorded vote.

MOVED by K. Seiling

SECONDED by J. Brewer

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.

CARRIED

Yeas: L. Armstrong, J. Brewer, D. Craig, R. Deutschmann, T. Galloway, J. Haalboom, R. Kelterborn, G. Lorentz, J. Mitchell, K. Seiling, S. Strickland, C. Zehr

Nays: T. Cowan, C. Millar, J. Wideman

Craig Dyer, Chief Financial Officer, noted that Finance staff will review the form sent to area municipalities for development charges, and the matter will be discussed at the upcoming meeting of area treasurers.

REPORTS – Chief Administrative Officer

Mike Murray, Chief Administrative Officer, introduced C. Dyer to the Committee and welcomed him to the Region.

a) CA-12-007, External Communications – Program Review Update 2012

Received for information.

M. Murray provided a short overview of the report, which provides an update on the progress of implementing the program review's findings. He noted the example of a handout with the Region's 'Corporate Key Messages' which has arisen from the program review; copies of this handout were provided to the Committee, and are [attached](#) to the original minutes.

REPORTS – Corporate Resources

b) CR-RS-12-023, Proposed Draft Policy for Reimbursement for Municipal Conflict of Interest Act Legal Opinion Expenses

MOVED by J. Wideman
SECONDED by S. Strickland

Conflicts:
D. Craig
K. Seiling

THAT the Regional Municipality of Waterloo approve the Policy for Reimbursement for Municipal Conflict of Interest Legal Opinion Expenses as set out in Appendix "B" to Report CR-RS-12-023, dated May 8, 2012.

CARRIED

c) CR-CLK-12-005, Consent Agendas

Gary Sosnoski, Commissioner, Corporate Resources, noted that the report seeks the direction of the Committee as to whether staff should further examine implementing consent agendas.

Members of the Committee expressed varying opinions and observations on consent agendas, including:

- Consent agendas are used in some area municipalities, with varying degrees of success, and can assist in speeding up meetings;
- Little apparent opportunity or necessity to speed up meetings of Regional Council and Committees;
- Council needs to differentiate between matters of governance and administrative matters, and consent agendas allow Councillors to focus their attention on the reports and substantive issues that most require the attention;
- Consent agendas allow Councillors to focus their attention on the reports and substantive issues that most require the attention of Councillors;
- Reducing the visibility of reports with placement on the consent agenda would be out of tune with recent initiatives to improve transparency via meeting webcasting and broadcast on Rogers;
- Proponents of free-standing public health units assert that those units run by Regional Council do not provide sufficient attention to public health reports, and adding those reports to a consent agenda would add credence to their arguments;
- With consent agendas, Councillors will receive more exposure to 'hard' services such as engineering and construction matters, which runs contrary to the notion that Councillors are expected to be fully attuned to 'soft' services such as cultural planning and social services;
- Use of consent agendas implicitly delegates some Council responsibilities to staff; and
- In practice, Councillors can easily request for certain items from the consent agenda to be considered separately.

Chair T. Galloway noted that any future report on implementing consent agendas would specify the required amendments to the Region's procedural by-law.

MOVED by J. Wideman
SECONDED by S. Strickland

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.

CARRIED

Kris Fletcher, Regional Clerk, indicated that staff aims to bring forward the report before the end of June, 2012.

OTHER BUSINESS

- a) Council Enquiries and Requests for Information Tracking Sheet was received for information.
- b) J. Haalboom requested information from staff regarding the visible cracks and other structural issues at the Governor's House and Gaol. A response to this query will be brought forward at the May 16th Council meeting.

NEXT MEETING – May 29, 2012

ADJOURN

MOVED by J. Wideman
SECONDED by L. Armstrong

THAT the meeting adjourn at 12:53 p.m.

CARRIED

COMMITTEE CHAIR, *T. Galloway*

COMMITTEE CLERK, *M. Grivicic*

The following key messages were developed in conjunction with the 2011-2014 Strategic Plan. In order to reinforce the Region's brand and ensure consistency, please use these messages whenever you communicate with the public or the media. (E.g. quotes in media releases, wording in publications, quotes in presentations and media interviews, wording for web pages, etc.)



Corporate Key Messages

- The Region of Waterloo is committed to:
 - creating an inclusive, thriving and sustainable community;
 - maintaining harmony between rural and urban areas; and
 - fostering opportunities for current and future generations.
- The Region of Waterloo is dedicated to providing excellent public service by understanding and meeting the needs of all those we serve.
- The Region of Waterloo practices high standards of ethical behavior and believes in earning trust and confidence through open and transparent government.
- Regional Council has developed five focus areas that, after extensive consultation with the public, will ensure Regional programs and services meet the needs of our community. They are: Environmental Sustainability; Growth Management & Prosperity; Sustainable Transportation; Healthy & Inclusive Communities and Service Excellence.
- The Region of Waterloo offers programs and services that make a positive difference every day.




Focus Areas

Growth Management and Prosperity

- 
- The Region of Waterloo manages growth to foster thriving and productive urban and rural communities.
 - Waterloo Region is one of the fastest growing and prosperous areas in Ontario. It is the fourth largest urban area in Ontario and the 10th largest in Canada.
 - Waterloo Region is distinguished by having access to three renowned post-secondary institutions, innovative research centres and world class talent.
 - Waterloo Region is a vibrant community that is globally competitive, supports a diverse and prosperous economy, preserves heritage and promotes arts and culture.
 - Our balance of urban and rural lifestyles; skilled labour force; innovative institutions; proximity to major North American markets; transportation networks and diverse ethnic makeup contribute to the continued success of this area.

Service Excellence

- 
- The Region of Waterloo's dedicated staff deliver excellent and responsive services that inspire public trust.
 - The Region of Waterloo strives to understand and meet the needs of all those we serve.
 - The Region of Waterloo is committed to inclusion and promoting diversity in Regional programs and services.
 - The Region of Waterloo collaborates with community partners and engages citizens to foster open, transparent and accountable municipal government.
 - The Region provides good value for taxpayer dollars.



Environmental Sustainability

- The Region of Waterloo is committed to protecting and enhancing the environment.
- The Region of Waterloo considers the environment in all of its decisions.



Sustainable Transportation

- The Region of Waterloo continues to develop greater, more sustainable and safe transportation choices.
- The Region of Waterloo transportation system offers accessible and affordable choices.
- The Region of Waterloo is committed to enhancing active forms of transportation such as walking, cycling and transit.



Healthy and Inclusive Communities

- The Region of Waterloo's programs foster healthy, safe, inclusive communities.
- The Region of Waterloo plans and provides programs and services to respond to the changing and diverse needs of the community.
- The Region of Waterloo is committed to creating opportunities for people to develop to their full potential at all stages of life.



Community and Organizational Facts

- Waterloo Region is the fourth largest urban area in Ontario. The region is made up of three urban municipalities: Cambridge, Kitchener and Waterloo, and four rural townships: North Dumfries, Wellesley, Wilmot and Woolwich.
- The Region of Waterloo services more than 550,000 residents. With a projected growth increase of 200,000 over the next 20 years, Waterloo Region is considered one of the fastest-growing and prosperous areas in the province.
- Home to a globally recognized technology sector and world class post secondary institutions, Waterloo Region residents have exceptional access to universities, colleges and research centres. Celebrating our heritage and diversity generates a vibrant arts and culture scene while strong environmental values inspire us to protect and enhance our green spaces. From this, Waterloo Region continues to earn its reputation as a forward-thinking community and an attractive place to live, work and raise a family.
- The Region of Waterloo provides more than 60 per cent of municipal services to a growing population of 550,000 people. We are committed to creating an inclusive, thriving and sustainable community through innovative leadership and a range of services such as: public health, social services, planning, heritage, water supply, regional roads, waste management, ambulance service, rural libraries, public transit, community housing, emergency planning, Provincial Offences Courts and airport services.
- We make a difference every day through:
 - A 16-member elected Council representing all cities and townships within the region.
 - 3,200 skilled, dedicated and service-oriented employees.
 - Providing 60 per cent of municipal services in the community.
 - Partnerships with business, academia, municipal government and diverse community groups.
- The Region of Waterloo delivers programs and services through seven departments and a Chief Administrator's office. They are: Public Health; Social Services; Planning, Housing and Community Services; Transportation and Environmental Services; Human Resources; Corporate Resources and Finance.