

COMMITTEE OF THE WHOLE – DECEMBER 6, 2011

COMMUNICATIONS

Distributed November 25, 2011

	<u>Item No.</u>
C1. Mr. Marco Timpano, dated November 14, 2011.	Presentations and Deputations 8a)
C2. Mr. Dora Cohen-Machtinger, dated November 21, 2011.	Presentations and Deputations 8b)
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Please note there may be further Communications.

C 1

COMMUNICATION
CW - DECEMBER 6/11

ITEM # - Presentations & Deputations 82)

Subject: FW: Shark Fin Ban

-----Original Message-----

From: Marco Timpano [mailto:mtimpano@pathcom.com]
Sent: Monday, November 14, 2011 1:59 PM
To: Bevilacqua, Maurizio
Subject: Shark Fin Ban

Dear Mayor Bevilacqua:

As a long time resident of Vaughan. I would like to pursue a ban on the sale of Shark Fin in our fair city, following suit with Mississauga, Oakville and Toronto. Please let me know if there is anything in process with regards to this and if not what I would have to do to get this on Vaughan City council's table.

Thank you,

Marco Timpano
416-937-5533

C 2

COMMUNICATION
CW - December 6/11

Subject: FW: Private Member's Bill

ITEM # - Presentations & Deputations 8b)

From: Dora Cohen-Machtinger [mailto:doracohen119@hotmail.co
Sent: Monday, November 21, 2011 11:50 AM
To: Bellisario, Adelina
Subject: RE: Private Member's Bill

Dear Ms. Bellisario,

Thank you for your e-mail. I have not written my 5-minute deputation to City Council yet. It concerns the significant shortage of parking spaces for residents in my densely populated area (Disera Drive, North Park and surroundings). This problem has always existed but was not as obvious because people had been parking at the Walmart's private property for five years without getting their cars tagged or towed away. However, this changed in September 2011 and cars have since been ticketed. Under the Freedom of Information Act, I requested from the City of Vaughan a record of parking tickets issued overnight on private and public properties for the months of September and October 2011. It indicates the need for overnight parking spaces which I feel the City of Vaughan can provide since it allows overnight parking passes on the street five times per month at the cost of \$5 each time.

Is this sufficient information at the moment? I will be writing my deputation this week.

Please let me know at what time and what room I should be presenting myself on December 6, 2011. I thank you for your co-operation in this matter.

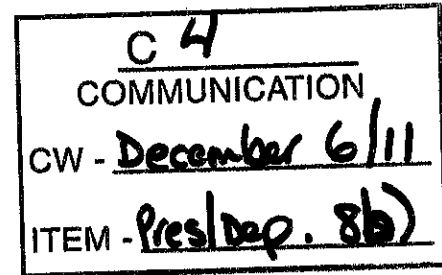
Sincerely,

Dora Cohen-Machtinger
(905) 597-1939

The Beverley & Vista of Thornhill City Centre

November 11, 2011

Ms. Dora Cohen-Machtinger
15 North Park Road, Apt. 1612
Thornhill, Ontario, L4J 0A1



Dear Ms. Cohen-Machtinger:

Thank you for your letter to the Boards of The Beverley and Vista dated 6th November 2011.

Unfortunately due to the packed Agenda for last night's meeting we were not able to extend an invitation to you to attend the meeting.

As per your request, the subject matter was discussed at the Shared Facilities Board Meeting last night.

It was unanimously agreed that the Board support for a Petition for Parking cannot be provided. It has always been in the Board's regulations that we would not support petitions of any kind so as not to be judgmental and set precedence's as we do receive a number of requests throughout the year.

The same regulation will not allow for any posting of Petitions, (or indeed advertising of any kind other than Social Committee functions, Management bulletins and the items for sale/rent/wanted (including parking spaces) to ensure no precedence's are set.

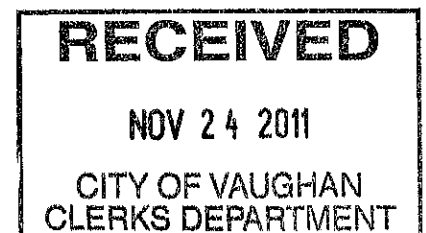
As far as providing a waiting list of residents requesting a parking space, unfortunately as a new list is placed on the bulletin boards, old lists are erased and hard copy destroyed so we can only provide you with the current list.

For your information, we have had many discussions on the parking issues, and as an entity we more than comply with Vaughan regulations for availability. By law we have to have a designated number of visitor parking spots always available, and we keep that in mind at all times.

Thank you for contacting us in this, and good luck in your endeavors.

Sincerely

The Beverley & Vista Shared Facilities Committee





Document Index – Access Request No. 2011-073

Doc No.	Description	Pages	Disclosure
1	Record of number of parking tickets issued overnight in September and October, 2011 on: Disera Drive North Park Road 700 Centre Street New Westminster Beverly Glen Boulevard Kingsbridge Circle Abbeywood Gate Leah Crescent Tova Place	1	Full
2	Record of number of parking tickets issued on private property in September and October, 2011 on: Disera Drive North Park Road 700 Centre Street New Westminster	1	Full

Records of Parking tickets issued overnight

	September		October	
Disera Drive	3	P26	5	P26
North Park Rd	28	P26	13	P26
700 Centre St	0	P26	0	P26
New Westminster	0	P26	0	P26
Beverley Glen Blvd	0	P26	0	P26
Kingsbridge Circle	0	P26	0	P26
Abbeywood Gate	0	P26	0	P26
Leah Cres	0	P26	0	P26
Tova Place	0	P26	0	P26

Records of Parking tickets issued on Private/Municipal Parking

	September		October	
New Westminster	8	PPP	3	PPP
Disera Drive	243	PPP	111	PPP
North Park Rd	87	PPP	86	PPP
700 Centre Street	0	PPP	0	PPP



memorandum

DATE: December 1, 2011
TO: Mayor and Members of Council
FROM: Janice Atwood-Petkovski
RE: **Deputation – Committee of the Whole Meeting – December 6, 2011**
Ms. Dora Cohen-Machtiger with respect to parking spaces for residents
(Disera Drive, North Park and surroundings)

C 5
COMMUNICATION
CW - December 6/11
ITEM - Deputation b)

Please find attached a memorandum providing information regarding the parking issues on Disera Drive, North Regent Road and surrounding area.

A handwritten signature in cursive script, appearing to read 'Janice Atwood-Petkovski'.

Janice Atwood-Petkovski
Commissioner of Legal and Administrative Services and
City Solicitor

Attachment

c Clayton D. Harris
City Manager

Jeffrey A. Abrams
City Clerk

DATE: December 1, 2011

TO: Janice Atwood-Petkovski
Commissioner of Legal and Administrative Services and City Solicitor

FROM: Rick Girard
Managing Supervisor, Enforcement Services

RE: Communication re: Deputation
Committee of the Whole Meeting - December 6, 2011

Parking Issues: Disera Drive, North Regent Road and surrounding area

Enforcement Services has responded to numerous parking complaints in the area. Enforcement of parking on Private Property is conducted by Private Security Companies hired by the property owner to enforce their parking regulations. Most offences are for vehicles parked in visitor's parking spaces with no permits.

The Deputant indicates in her e-mail that the City allows overnight parking passes on the street five times per month at the cost of \$5 each time. She is referring to Visitor Parking Permits which residents can purchase for their overnight visitors.

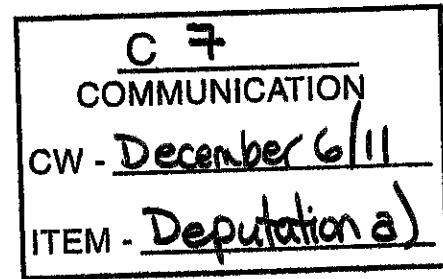
A check of our records for the area encompassing Disera Drive and North Park Road indicate the following:

Enforcement Services Dept.: Tickets issued for parking over night during September and October 2011 = **49**

Private Security Enforcement: Tickets issued for Parking on Private Property during Sept. and Oct. = **538**

A break down of the streets in the immediate area are shown in the table below.

ADDRESS	September 2011	September 2011	October 2011	October 2011
	Parking Overnight between 2 am and 6 am	Parking on Private Property	Parking Overnight between 2 am and 6 am	Parking on Private Property
Disera Drive	3	243	5	111
North Park Road	28	87	13	86
New Westminster	0	8	0	3
700 Centre St	0	0	0	0
Beverly Glen Blvd	0	0	0	0
Kingsbridge Circle	0	0	0	0
Abbeywood Gate	0	0	0	0
Leah Cres	0	0	0	0
Tova Place	0	0	0	0



From: Abrams, Jeffrey
Sent: Monday, December 05, 2011 10:41 AM
To: Bellisario, Adelina
Subject: Fw: Deputation

----- Original Message -----

From: Marco Timpano [mailto:mtimpano@pathcom.com]
Sent: Monday, December 05, 2011 10:33 AM
To: Abrams, Jeffrey
Subject: Deputation

Dear Mr. Abrams,

In regards to me deputation. I'd like to postpone to a later date. In order to gather more facts.

Thank you,

Marco Timpano.

Sent from Marco Timpano's iPhone

From: Bonsignore, Connie on behalf of Abrams, Jeffrey
Sent: Monday, December 05, 2011 11:34 AM
To: Bellisario, Adelina
Subject: FW: Written Deputation For Dec 6, 2011 COW
Attachments: DeputationLorello.pdf; MemoAtwoodPetkovski.pdf

C 8
COMMUNICATION
CW - December 6/11
ITEM - 26

Communication for CW tomorrow.

Connie Bonsignore

Administrative Assistant
Office of the City Clerk
Telephone: (905) 832-8585 Ext. 8280
Email Address: connie.bonsignore@vaughan.ca



From: Richard Lorello [mailto:rlorello@rogers.com]
Sent: Monday, December 05, 2011 11:09 AM
To: Abrams, Jeffrey
Cc: Carella, Tony; Racco, Sandra; Rosati, Gino; Shefman, Alan; Iafrate, Marilyn; Schulte, Deb; DeFrancesca, Rosanna; Di Biase, Michael; Bevilacqua, Maurizio; Atwood-Petkovski, Janice; Harris, Clayton; CarolineGrech; MichaelMcClymont
Subject: Written Deputation For Dec 6, 2011 COW

Mr. Abrams

Please see my attached deputation which addresses Item 26 of the December 6, 2011 Committee of the Whole meeting.

Thank you

Sincerely
Richard T. Lorello

Written Deputation for: Committee of the Whole: December 6, 2011 11:00am
With respect to Item 26: INSURANCE AND RISK MANAGEMENT – PREMIUM ANALYSIS

Richard Lorello
235 Treelawn Blvd PO 927
Kleinburg, Ontario, L0J 1C0
rlorello@rogers.com

This deputation addresses the tripling of insurance rates that amount to millions of dollars in increases and Ms. Atwood-Petkovski's letter to council of November 21, 2011.

Ms. Atwood-Petkovski's letter is attached. The facts derived from the letter are truly disturbing and warrant a full judicial review of the use of millions of taxpayer's dollars. I strongly urge this council to bring a judicial review to address the use of millions of taxpayer's dollars during the period of time between 2007 when insurance premiums were approx. \$1,300,000 and now, for the budgeted premium of \$3,600,000. This represents a 300% increase in insurance premiums.

Firstly, I wish to bring several court rulings to your attention that address the issue of use of insurance and what authority the City of Vaughan has within the Municipal Act, the Municipal Conflict of Interest Act, Municipal Elections Act and rulings on these matters.

The authority of city councils to use taxpayer money to cover expenses either directly or through insurance for legal expenses comes from Municipal Act (sec 227). This section is explicit.

There are conditions that the city must meet and the primary condition is that the expenses must be incurred during the course of employment for staff and while acting in the capacity of a council member.

The second condition in the case of conflict of interest applications are that the costs can only be awarded if the council member (or staff) was found not guilty, or not guilty through inadvertence or error. This is reflected in the Municipal Act s. 279, and s 14 of the Municipal Conflict of Interest Act.

Thirdly, the authority for expenditure of taxpayer money lies solely with council requiring a specific bylaw passed authorizing use the tax money. Until December of 2010, there was no indemnification by-law. Each case for indemnification until this time required a bylaw. Given there was no specific bylaw to address indemnification.

There are many decisions on using taxpayer money to pay legal expenses, either through insurance or directly and some of these decisions are outlined in para 33

to 37 of the *Holyday v. City of Toronto*, 2010 ONSC 3355, which is a recent case where legal issues were examined by the courts.

[33] The applicant relies on three cases in which the courts have held that a municipality can only reimburse a councillor or officer for expenses incurred in their capacity as councillors or officers. In *Rawana v. Sarnia (City)* [1996 CanLII 8201 \(ON SC\)](#), (1996), 30 O.R. (3d) 85 (Gen. Div.), MacFarland J. (as she then was) relied on s. 243(1) of the *Municipal Act*, R.S.O. 1990, c. M.45, a section similar to s. 222(2) of COTA. She held that the provision allowed reimbursement of legal costs incurred by councillors where the expenses were incurred while they acted in their capacity as members of council. However, the municipality had no authority to reimburse a councillor for expenses incurred while acting in a personal capacity (at p. 89).

[34] In that case, the councillor had been charged with a criminal offense after he attempted to enforce payment of a personal debt owing to him. He argued that he was only charged because he was a member of city council. Nevertheless, MacFarland J. held that he was not entitled to be indemnified for his legal costs, as he was not acting in an official capacity when he attempted to obtain repayment of the loan. This decision was upheld by the Court of Appeal ([reflex](#), (1997), 35 O.R. (3d) 640).

[35] Subsequently, in *Santa v. Thunder Bay (City)* [2003 CanLII 21828 \(ON SC\)](#), (2003), 66 O.R. (3d) 434 (S.C.), Pierce J. considered s. 279(1) of the *Municipal Act, 2001*, [S.O. 2001, c. 25](#), which deals with the power of a municipality to act as an insurer. It permits the municipality to pay damages or costs awarded against employees or members for expenses incurred by them arising out of acts or omissions done in their capacity as employees or members. Pierce J. concluded that the municipality had no power to reimburse the legal costs of a councillor arising from a compliance audit and a subsequent court application (see para. 54). This decision was upheld by the Court of Appeal ((2004), 49 M.P.L.R. (3d) 290).

[36] The most recent case is *Harding v. Fraser* [2006 CanLII 21784 \(ON SC\)](#), (2006), 81 O.R. (3d) 708 (S.C.), again a decision of Pierce J. In this case, the municipality sought to pay the legal expenses of the reeve, which were incurred in bringing an application under the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 to determine whether a member of council had a conflict of interest. Only an elector could bring such an application, and therefore, the municipality had no standing to do so. The municipality sought to rely on s. 107 of the *Municipal Act, 2001*, a grant power similar to s. 83 of COTA, in order to pay the reeve's legal expenses. However, the Court held that the City of Thunder Bay could not rely on that provision, because the municipal council had no authority to reimburse the reeve for legal expenses incurred outside the exercise of her office (at para. 34).

[37] Again, the decision was upheld by the Court of Appeal [2007 ONCA 235 \(CanLII\)](#), (2007 ONCA 235, 33 M.P.L.R. (4th) 76). The Court of Appeal observed that s. 107(1), as well as s. 444 of the *Municipal Act, 2001*, must be interpreted in light of the *Santa* decision, which held that "a municipality could only reimburse a member of council if it was for activity carried out in the course of the member's office" (at para. 4).

With this in mind, I wish to draw your attention to three serious situations where taxpayer funds have been used to pay legal expenses and that seemingly do not meet the criteria of the courts, nor of the Municipal Act, or other legislation.

The cumulative cost of these three situations alone approaches a million dollars and one of the expenditures has been identified by Ms Atwood-Petkovski as being one of the key reasons for the increase in insurance fees since 2009.

The three situations are:

- The payment of \$624,601 for three conflicts of interest applications, and;
- The payment of \$50,000 in costs to Eric Gillespie, for the Jackson election audit and when the cost award was substantially more than the invoices represented and when the money was used for other purposes, and;

- The payment of legal fees to appeal the IPC's decision on ordering the release of documents for the ex-employee John Zipay and where these expenses were admittedly indicated to be personal expenses.

Combined between these three situations alone, there have been likely up to a million dollars in payment made that do not seemingly meet the requirements of the litigations nor the terms of the insurance policy.

This situation is indeed serious, given this is taxpayer money and the funds have been disbursed outside of legal frameworks.

Conflict of Interest Charges

Ms Atwood-Petkovski indicates in her letter to council that three conflict of interest application legal costs were paid for two members of council. In that regard, there were three conflict of interest applications brought during the period of 2009 to 2011.

Mr Gino Ruffolo and Ms Lucia Milani both filed conflict of interest applications against Linda Jackson and an application was filed by me against Mr. Peter Meffe.

I have complete knowledge of the fees that arose from the Peter Meffe action as I was the applicant. The fees were presented in full to the courts, and they were represented to be approximately \$180,000. The courts awarded Mr Meffe approximately \$109,000 and I paid the amount in full. Am I to assume that the remaining \$71,000 or more in cost was reimbursed to Mr. Meffe by the City of Vaughan's insurance company?

Mr. Ruffolo's conflict action brought against Linda Jackson was also brought before the courts and Jackson was found to be not guilty. In this case, the decision was appealed and the appeal costs were \$10,000 and the courts ordered Ruffolo to pay \$6,000 of the costs.

The main court action also resulted in costs being awarded to Jackson and these costs were approximately \$36,000. The total of the costs requested were approximately \$80,000. These costs have yet to be confirmed.

The third conflict action was brought by Lucia Milani, however the action was withdrawn, after the voting public removed Ms Jackson as the Mayor. The conflict of interest never went to court.

The conditions, as stated in the insurance policy and in the two Acts (MAO and MCIA) are as follows:

- The courts must find that the defendants are not guilty, or guilty through inadvertence, or error
- The maximum payout for each conflict of interest is \$250,000
- The court awarded settlements have to be considered when the insurance payout are calculated, as payments outside of the costs would not be covered under the narrow exemption described in the Acts, unless specified by the courts as there can be no personal expenses paid from directly or through insurance

An excerpt from the conflict of interest insurance conditions:

13.8 MUNICIPAL CONFLICT OF INTEREST INSURANCE:

NAMED INSURED:

Corporation of the City of Vaughan and Vaughan Public Library Board

DESCRIPTION:

Provides reimbursement of legal fees and expenses incurred by the elected or appointed members of Council who are charged under the Municipal Conflict of Interest Act provided that a court finds (1) there has been no contravention, or (2) contravention has occurred by reason of inadvertence, remoteness or insignificance, or (3) contravention has occurred by reason of a bona fide error in judgment

LIMITS OF PROTECTION:

100% of Legal Fees and Disbursements up to \$250,000

POLICY COVERAGE AND CONDITIONS:

- Separate limit of insurance applies to this coverage
- No annual aggregate limit applies to this policy
- Coverage is extended to include any member of a Board, Commission, or Committee of the Insured as defined in the Municipal Conflict of Interest Act
- Coverage is also included for any subsequent proceedings under this Act
- Insured may select and instruct legal counsel with no intervention by the insurer

The action brought by Ms Milani was withdrawn, and the action never went to court. There was no finding. Under the legislation, and the insurance policy, according to the conditions listed in the insurance policy, no payment should have been made. By deductive reasoning even if both the Meffe and Ruffolo conflicts were awarded the maximum, the minimum amount of \$124,601 was paid for the Milani action. This seemingly would violate the Acts and the terms of the insurance policy, as there is no court ruling for which to determine Jackson was not guilty, or not guilty through error or inadvertence.

The courts have upheld that personal expenses cannot be paid using taxpayer funds or through insurance. Therefore payment of conflict of interest legal costs, damages or any other costs that exceed the legal costs less the cost awards would most likely be considered to be prohibited payments.

The recent court case brought by Doug Holyday of the City of Toronto needs to be examined closely, as, based on this ruling and the precedents listed in the ruling, any and all costs of the conflict of interest whether paid by insurance or directly by the Vaughan, have to be repaid.

A judicial review of the decision to pay the moneys has to be made by this council. The approval of triple insurance rates without first bringing a judicial review will bring problems in the future, should a resident bring a judicial review in the interim of these payments.

Payment of \$50,000 to Eric Gillespie for Election Finance court costs

I have brought this matter to your attention several times as have other members of the public and to date you have failed to respond or resolve this matter.

I have repeatedly asked for a copy of the court award and you have failed to provide this. I have a copy of the decision of Justice Favret and she did not award costs in her decision with respect to the Jackson compliance audit, and yet the Carella cost report provided to council by Ms Atwood-Petkovski incorrectly indicated there is a court cost award.

A review of the invoices to which the city awarded payment of \$50,000 outline the real use of the funds and that the \$50,000 exceeded the cost of the legal fees. The taxpayer money was used to pay for several unrelated legal expenses including a conflict of interest brought by Mr Ruffolo against former Mayor Jackson. These invoices have been provided to you more than once.

This payment is outside of the authority of a municipality and the amount needs to be repaid, given the above. Once again I am asking that if there is cost award by the courts, please provide it.

The payment of the \$50,000 needs also to be added to the \$624,601, as the apparent payment, in part, was ultimately used to pay for the conflict on interest brought against former Mayor Jackson by Ruffolo. This \$50,000 would go against the cap of \$250,000 per occurrence, and needlessly was paid directly by taxpayers, given the claim was also paid by insurance.

The Holyday rulings expressly stated the payment could NOT be made to voters being the applicants, and yet there is strong evidence that this is the case.

If this was the case then this money has to be repaid.

Appealing the IPC order to disclose Zipay's personal expenses

The City of Vaughan appealed the ruling of the IPC and now furthermore refuses to disclose the legal fees that taxpayers are underwriting for the court case.

I was present during the court proceedings and the City's lawyer's main argument against releasing the Zipay documents was the fact that receipts did not have to be disclosed because the expenses were personal in nature and were incurred outside of the Zipay's course of business duty as it is customary to

treat travel from home to work as a personal expense. The city policy also treats these expenses as personal.

The Acts and the rulings from the courts very specifically state that expenses cannot be paid for personal legal fees, if these fees were not incurred during employment. Using the defense of personal expenses then precludes the city from paying for the legal expenses of Zipay.

In addition to the court rulings, and the Municipal Act, the attached letter outlines a legal opinion sought for a similar circumstance. The advice from the external lawyer was that personal expenses could not be paid.

Whether the IPC appeal is won or not, the legal expenses MUST be repaid by Zipay in full.

If this was the case then this money must be repaid.

Increase in Premiums Do Not Reflect True Increase

The increase in premiums does not reflect the true cost to taxpayers. In addition to the premium, the taxpayers of Vaughan pay a deductible on a per claim basis. This amount is currently \$50,000 and Ms Atwood-Petkovski contemplated the premium be increased to \$100,000 for a savings of \$307,928. This would not be prudent given the increase in deductible payments are projected to be \$429,547.

Ms. Atwood-Petkovski goes further to analyze city of Hamilton's deductible payouts, and then further states City of Vaughan paid \$1,200,000 in deductibles. Using simply math, this represents 24 claims. I am not sure how Ms Atwood-Petkovski calculated the difference, however if the claims remain consistent in 2012, with 2011, the increase in deductible premiums would be \$1,200,000 not \$429,547.

City of Hamilton total cost is \$9.3 million and City of Vaughan is \$4.7 million a difference of \$4.6 million. Hamilton has transit, ambulance, police, water and waste water and public health, all roads, social services and long term care not to mention their population is approximately 200,000 more than Vaughan and number of civic properties is valued at (\$2.55 billion). Vehicles and equipment would also be much higher. Also, only the liability deductible is \$250,000, Hamilton has other deductibles for example the property deductible is at \$500,000. It is interesting to see that there are no losses shown for Vaughan on property. Perhaps there is savings in increasing this deductible, or perhaps Vaughan has failed to disclose other insurance premiums being paid for other insured properties and areas of Vaughan operations. Furthermore an actuarial study could assist when it comes to choosing a deductible.

In my initial correspondence Hamilton was provided as a reference and not an exact comparison to Vaughan. In her memo Ms. Atwood-Petkovski draws no comparison to municipalities such as Markham or Richmond Hill, both of which have similar services.

See Markham's insurance resolution below;

<http://www.markham.ca/markham/ccbs/indexfile/Agendas/2009/General/gc091214/Insurance%20Report%20to%20GC%20121409%20final.htm>

I would like to also draw your attention the recent AMO study on insurance. See the link below, especially in the area of benchmarking.

http://www.amo.on.ca/AM/Template.cfm?Section=Breaking_News_and_Policy_Updates1&Template=/CM/HTMLDisplay.cfm&ContentID=162922

The survey shows that municipal insurance costs went up by approximately 22% whereas in Vaughan's case insurance costs went up by 50%, and approximately 300% since 2007. This is not sustainable and must be addressed immediately.

Did the City participate in the AMO study? If we did not participate, why did we not? If we did participate, we would have access to the participant data. Apparently, the survey states that for communities greater than 75,000, \$7.71 per capita is spent on insurance. Vaughan has a population of 303,058. Therefore our premiums should be \$2,336,577 not \$3.6 million, and this should include all forms of insurance premiums paid by the city.

This council and previous councils and the taxpayers of Vaughan rely on the accuracy of the budgets placed before us. Studies like the CD Howe report points out that there is a serious problem with Vaughan budgets. The reaction from the Mayor was to take a stand against CD Howe and declared CD Howe to be inaccurate. There is no evidence of any inaccuracy in their report. The taxpayers of Vaughan have a right to know the detailed use of our tax dollars.

Disclosure

Proper disclosure of the payment of settlements has not been made. Ms. Atwood-Petkovski disclosed that there was a serious amount of money paid for conflicts of interest and this in turn played a large part in the 300% increase in insurance payments since 2007. Had Ms Atwood-Petkovski not decided to be so generous with the disclosure of the use of taxpayer money, the public would never know why the insurance premiums have increased 300% since 2007. Ms. Atwood-Petkovski is very inconsistent in her disclosures, and although I am pleased she disclosed the information in this case, the information and ALL details of settlements need to be made public. Given that Ms. Atwood-Petkovski has released the total amount of \$624,601, she must therefore then have the

details that make up the amount in her custody and control and these details need to be immediately disclosed and in any event prior to the authorizing of any increase in insurance payments.

Settlements using taxpayer money either directly or through insurance paid for using taxpayer money have to be made publicly available. Selective disclosure is highly suspect and not in the public interest.

There have been many ruling made by the IPC with regards to the proper disclosure of settlements. The City of Toronto ruling is one of the most recent and the City of Toronto was order to release all of their settlement information requested. Budgets and spending of taxpayer money has to be disclosed in most circumstances.

In summary, this deputation requests the following actions be taken:

- 1) Immediate disclosure of the settlements, starting with the break down of the \$624,601 outlined by Ms Atwood-Petkovski for the conflict of interest actions, and;
- 2) Initiate an emergency judicial review of the three payments listed above and repayment of the awards requested as part of the judicial review, and;
- 3) Placing the approval of the huge insurance premium on hold until such time as the judicial review has completed its work and;
- 4) Review of the people who authorized the payment of taxpayer funds where these payments constituted a violation of the respective legislation and;
- 5) A review of the invoices to which the city authorized \$50,000 payment for the Jackson compliance audit was applied to and repayment of the amount paid without a court order and;
- 6) A review of the legal costs pertaining to the personal expenses of Mr. John Zipay and immediate payment of all legal costs by Mr. Zipay to the taxpayers of Vaughan

Sincerely
Richard T. Lorello

FINANCE AND ADMINISTRATION COMMITTEE – NOVEMBER 21, 2011

COMMUNICATION

Distributed November 18, 2011

Item No.

C1	Commissioner of Legal and Administrative Services & City Solicitor “City of Vaughan Insurance Program”	1
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Please note there may be further Communications.

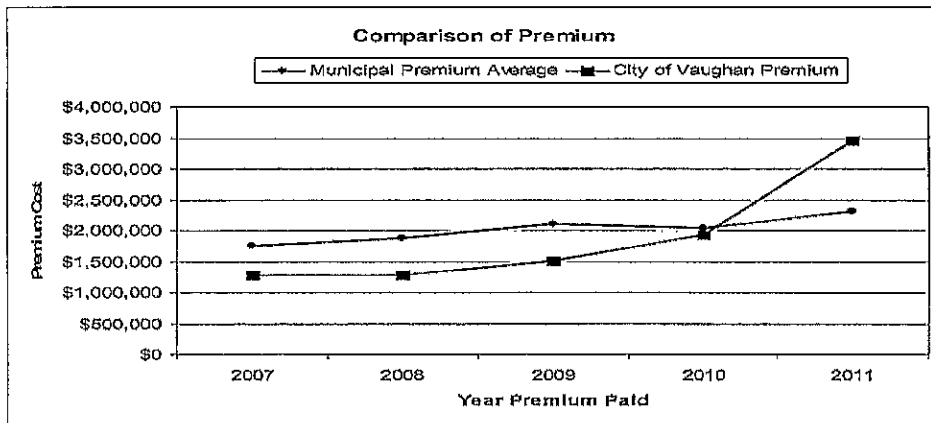


memorandum

FINANCE & ADMIN. CMTEE
COMMUNICATION C1
Date: Nov 21/11 ITEM NO. 1

DATE: NOVEMBER 21, 2011
TO: FINANCE AND ADMINISTRATION COMMITTEE
FROM: JANICE ATWOOD-PETKOVSKI
COMMISSIONER OF LEGAL AND ADMINISTRATIVE SERVICES & CITY SOLICITOR
JEFFREY A. ABRAMS, CITY CLERK
SUBJECT: ITEM 1, MEETING OF NOVEMBER 21, 2011
DRAFT 2012 BUDGET AND 2013-2014 OPERATING PLAN
CITY OF VAUGHAN INSURANCE PROGRAM

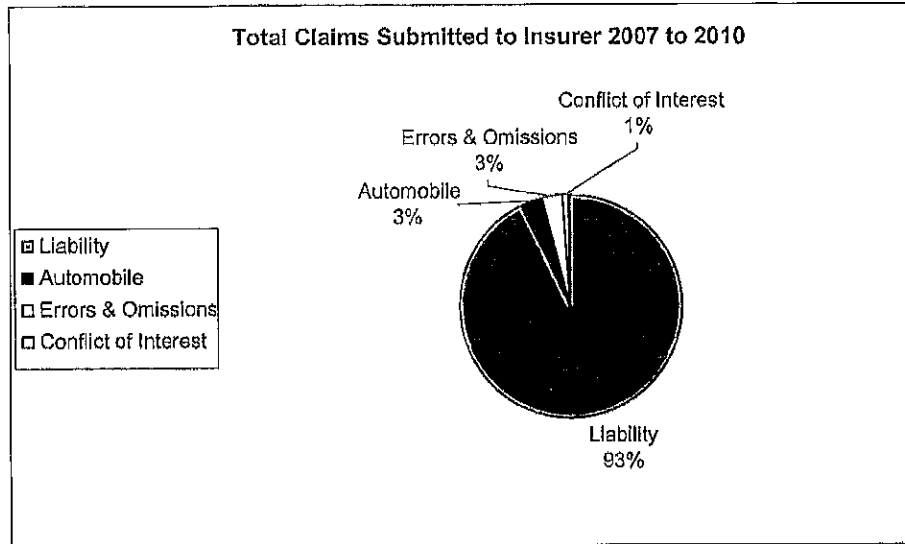
The rising cost of insurance is a significant contributor to municipal operating costs and many Ontario municipalities have experienced increased premiums in recent years.



Note: Liability exposure and the cost of insurance increases as a municipality's property, roadways, fleet etc. grow. For example, the total insured value of City of Vaughan Property and Fleet increased by 40.52% between 2010 and 2011 policy periods.

A comprehensive report on the City's insurance program will be brought to the December 6, 2011 meeting of Committee of the Whole as requested by Council, which report will facilitate a discussion on the steps that may be taken to control increasing insurance costs. This memorandum is being provided at this time so as to inform the Finance and Administration Committee's initial discussions on the 2012 City of Vaughan Operating Budget.

Insurance coverage costs to the municipality are composed of two parts: premiums, and deductible payouts. There are multiple types of coverages and the group described as liability coverage collectively makes up the bulk of Vaughan's insurance premium as liability claims received by the City represent 93% of claims. Specifically, claims from personal injury as a result of slip, trip and falls in or on municipal property made up 65% of the total claims submitted to the insurer for the years 2007 to 2010. The balance of claims were in the areas of Automobile, Errors and Omissions claims and Conflict of Interest, as noted in the following chart:



Prior to the most recent insurance RFP, staff explored methods to control increasing premium costs, including a deductible analysis which compared additional cost and premium savings to the municipality should the City move from a \$50,000 deductible to \$100,000.

The analysis indicated that there would be overall increased costs to Vaughan by changing its deductible to \$100,000. The higher deductible would provide a premium savings to the City in the amount of \$307,928, but the overall additional insurance costs to cover claims under the \$100,000 deductible would result in an increase of \$429,547. An increased deductible would not be financially prudent for the City.

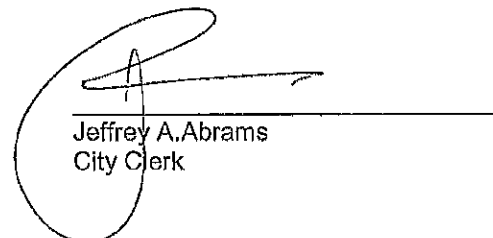
It has been suggested that the City of Vaughan insurance program does not perform favourably as compared to the City of Hamilton program. For example, despite its larger size and the nature of its operations, the City of Hamilton had a 2010 premium amount of \$3.7 million. Vaughan's 2011 premium is \$3.5 million. Note, however, that Hamilton's deductible payout for the period was \$5.6 million. Vaughan's was \$1.2 million for the same period with a \$50,000 deductible. Hamilton is in fact self-insuring with a deductible of \$250,000. The total insurance cost to Hamilton for this period is effectively almost \$9.3 million.

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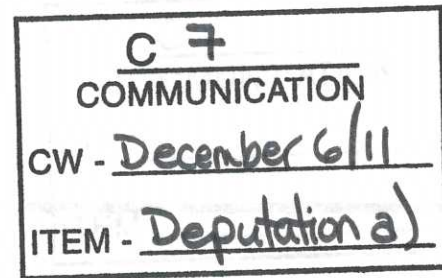
Some of the largest payouts by the City's insurer in 2010 arose from unfounded claims against then members of Council alleging conflicts of interest. Once the court found the claims and their appeals to be without merit and dismissed them, the insurer was obligated to reimburse the members of Council for their legal defense costs. For the years 2009 to 2011, the insurer paid out \$624,601.00, in solicitors' fees for legal costs in defending three unfounded conflict of interest claims against two then-sitting members of Council.



Janice Atwood-Petkovski
 Commissioner of Legal and Administrative Services &
 City Solicitor



Jeffrey A. Abrams
 City Clerk



From: Abrams, Jeffrey
Sent: Monday, December 05, 2011 10:41 AM
To: Bellisario, Adelina
Subject: Fw: Deputation

----- Original Message -----

From: Marco Timpano [mailto:mtimpano@pathcom.com]
Sent: Monday, December 05, 2011 10:33 AM
To: Abrams, Jeffrey
Subject: Deputation

Dear Mr. Abrams,

In regards to me deputation. I'd like to postpone to a later date. In order to gather more facts.

Thank you,

Marco Timpano.

Sent from Marco Timpano's iPhone

From: Bonsignore, Connie on behalf of Abrams, Jeffrey
Sent: Monday, December 05, 2011 11:34 AM
To: Bellisario, Adelina
Subject: FW: Written Deputation For Dec 6, 2011 COW
Attachments: DeputationLorello.pdf; MemoAtwoodPetkovski.pdf

<u>C 8</u> COMMUNICATION CW - <u>December 6/11</u> ITEM - <u>26</u>

Communication for CW tomorrow.

Connie Bonsignore

Administrative Assistant
 Office of the City Clerk
 Telephone: (905) 832-8585 Ext. 8280
 Email Address: connie.bonsignore@vaughan.ca



From: Richard Lorello [mailto:rlorello@rogers.com]
Sent: Monday, December 05, 2011 11:09 AM
To: Abrams, Jeffrey
Cc: Carella, Tony; Racco, Sandra; Rosati, Gino; Shefman, Alan; Iafrate, Marilyn; Schulte, Deb; DeFrancesca, Rosanna; Di Biase, Michael; Bevilacqua, Maurizio; Atwood-Petkovski, Janice; Harris, Clayton; CarolineGrech; MichaelMcClymont
Subject: Written Deputation For Dec 6, 2011 COW

Mr. Abrams

Please see my attached deputation which addresses Item 26 of the December 6, 2011 Committee of the Whole meeting.

Thank you

Sincerely
 Richard T. Lorello

Written Deputation for: Committee of the Whole: December 6, 2011 11:00am
With respect to Item 26: INSURANCE AND RISK MANAGEMENT – PREMIUM ANALYSIS

Richard Lorello
235 Treelawn Blvd PO 927
Kleinburg, Ontario, L0J 1C0
rlorello@rogers.com

This deputation addresses the tripling of insurance rates that amount to millions of dollars in increases and Ms. Atwood-Petkovski's letter to council of November 21, 2011.

Ms. Atwood-Petkovski's letter is attached. The facts derived from the letter are truly disturbing and warrant a full judicial review of the use of millions of taxpayer's dollars. I strongly urge this council to bring a judicial review to address the use of millions of taxpayer's dollars during the period of time between 2007 when insurance premiums were approx. \$1,300,000 and now, for the budgeted premium of \$3,600,000. This represents a 300% increase in insurance premiums.

Firstly, I wish to bring several court rulings to your attention that address the issue of use of insurance and what authority the City of Vaughan has within the Municipal Act, the Municipal Conflict of Interest Act, Municipal Elections Act and rulings on these matters.

The authority of city councils to use taxpayer money to cover expenses either directly or through insurance for legal expenses comes from Municipal Act (sec 227). This section is explicit.

There are conditions that the city must meet and the primary condition is that the expenses must be incurred during the course of employment for staff and while acting in the capacity of a council member.

The second condition in the case of conflict of interest applications are that the costs can only be awarded if the council member (or staff) was found not guilty, or not guilty through inadvertence or error. This is reflected in the Municipal Act s. 279, and s 14 of the Municipal Conflict of Interest Act.

Thirdly, the authority for expenditure of taxpayer money lies solely with council requiring a specific bylaw passed authorizing use the tax money. Until December of 2010, there was no indemnification by-law. Each case for indemnification until this time required a bylaw. Given there was no specific bylaw to address indemnification.

There are many decisions on using taxpayer money to pay legal expenses, either through insurance or directly and some of these decisions are outlined in para 33

to 37 of the *Holyday v. City of Toronto*, 2010 ONSC 3355, which is a recent case where legal issues were examined by the courts.

[33] The applicant relies on three cases in which the courts have held that a municipality can only reimburse a councillor or officer for expenses incurred in their capacity as councillors or officers. In *Rawana v. Sarnia (City)* 1996 CanLII 8201 (ON SC), (1996), 30 O.R. (3d) 85 (Gen. Div.), MacFarland J. (as she then was) relied on s. 243(1) of the *Municipal Act*, R.S.O. 1990, c. M.45, a section similar to s. 222(2) of COTA. She held that the provision allowed reimbursement of legal costs incurred by councillors where the expenses were incurred while they acted in their capacity as members of council. However, the municipality had no authority to reimburse a councillor for expenses incurred while acting in a personal capacity (at p. 89).

[34] In that case, the councillor had been charged with a criminal offense after he attempted to enforce payment of a personal debt owing to him. He argued that he was only charged because he was a member of city council. Nevertheless, MacFarland J. held that he was not entitled to be indemnified for his legal costs, as he was not acting in an official capacity when he attempted to obtain repayment of the loan. This decision was upheld by the Court of Appeal (reflex, (1997), 35 O.R. (3d) 640).

[35] Subsequently, in *Santa v. Thunder Bay (City)* 2003 CanLII 21828 (ON SC), (2003), 66 O.R. (3d) 434 (S.C.), Pierce J. considered s. 279(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, which deals with the power of a municipality to act as an insurer. It permits the municipality to pay damages or costs awarded against employees or members for expenses incurred by them arising out of acts or omissions done in their capacity as employees or members. Pierce J. concluded that the municipality had no power to reimburse the legal costs of a councillor arising from a compliance audit and a subsequent court application (see para. 54). This decision was upheld by the Court of Appeal ((2004), 49 M.P.L.R. (3d) 290).

[36] The most recent case is *Harding v. Fraser* 2006 CanLII 21784 (ON SC), (2006), 81 O.R. (3d) 708 (S.C.), again a decision of Pierce J. In this case, the municipality sought to pay the legal expenses of the reeve, which were incurred in bringing an application under the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 to determine whether a member of council had a conflict of interest. Only an elector could bring such an application, and therefore, the municipality had no standing to do so. The municipality sought to rely on s. 107 of the *Municipal Act, 2001*, a grant power similar to s. 83 of COTA, in order to pay the reeve's legal expenses. However, the Court held that the City of Thunder Bay could not rely on that provision, because the municipal council had no authority to reimburse the reeve for legal expenses incurred outside the exercise of her office (at para. 34).

[37] Again, the decision was upheld by the Court of Appeal 2007 ONCA 235 (CanLII), (2007 ONCA 235, 33 M.P.L.R. (4th) 76). The Court of Appeal observed that s. 107(1), as well as s. 444 of the *Municipal Act, 2001*, must be interpreted in light of the *Santa* decision, which held that "a municipality could only reimburse a member of council if it was for activity carried out in the course of the member's office" (at para. 4).

With this in mind, I wish to draw your attention to three serious situations where taxpayer funds have been used to pay legal expenses and that seemingly do not meet the criteria of the courts, nor of the Municipal Act, or other legislation.

The cumulative cost of these three situations alone approaches a million dollars and one of the expenditures has been identified by Ms Atwood-Petkovski as being one of the key reasons for the increase in insurance fees since 2009.

The three situations are:

- The payment of \$624,601 for three conflicts of interest applications, and:
- The payment of \$50,000 in costs to Eric Gillespie, for the Jackson election audit and when the cost award was substantially more than the invoices represented and when the money was used for other purposes, and:

- The payment of legal fees to appeal the IPC's decision on ordering the release of documents for the ex-employee John Zipay and where these expenses were admittedly indicated to be personal expenses.

Combined between these three situations alone, there have been likely up to a million dollars in payment made that do not seemingly meet the requirements of the litigations nor the terms of the insurance policy.

This situation is indeed serious, given this is taxpayer money and the funds have been disbursed outside of legal frameworks.

Conflict of Interest Charges

Ms Atwood-Petkovski indicates in her letter to council that three conflict of interest application legal costs were paid for two members of council. In that regard, there were three conflict of interest applications brought during the period of 2009 to 2011.

Mr Gino Ruffolo and Ms Lucia Milani both filed conflict of interest applications against Linda Jackson and an application was filed by me against Mr. Peter Meffe.

I have complete knowledge of the fees that arose from the Peter Meffe action as I was the applicant. The fees were presented in full to the courts, and they were represented to be approximately \$180,000. The courts awarded Mr Meffe approximately \$109,000 and I paid the amount in full. Am I to assume that the remaining \$71,000 or more in cost was reimbursed to Mr. Meffe by the City of Vaughan's insurance company?

Mr. Ruffolo's conflict action brought against Linda Jackson was also brought before the courts and Jackson was found to be not guilty. In this case, the decision was appealed and the appeal costs were \$10,000 and the courts ordered Ruffolo to pay \$6,000 of the costs.

The main court action also resulted in costs being awarded to Jackson and these costs were approximately \$36,000. The total of the costs requested were approximately \$80,000. These costs have yet to be confirmed.

The third conflict action was brought by Lucia Milani, however the action was withdrawn, after the voting public removed Ms Jackson as the Mayor. The conflict of interest never went to court.

The conditions, as stated in the insurance policy and in the two Acts (MAO and MCIA) are as follows:

- The courts must find that the defendants are not guilty, or guilty through inadvertence, or error
- The maximum payout for each conflict of interest is \$250,000
- The court awarded settlements have to be considered when the insurance payout are calculated, as payments outside of the costs would not be covered under the narrow exemption described in the Acts, unless specified by the courts as there can be no personal expenses paid from directly or through insurance

An excerpt from the conflict of interest insurance conditions:

13.8 MUNICIPAL CONFLICT OF INTEREST INSURANCE:

NAMED INSURED:

Corporation of the City of Vaughan and Vaughan Public Library Board

DESCRIPTION:

Provides reimbursement of legal fees and expenses incurred by the elected or appointed members of Council who are charged under the Municipal Conflict of Interest Act provided that a court finds (1) there has been no contravention, or (2) contravention has occurred by reason of inadvertence, remoteness or insignificance, or (3) contravention has occurred by reason of a bona fide error in judgment

LIMITS OF PROTECTION:

100% of Legal Fees and Disbursements up to \$250,000

POLICY COVERAGE AND CONDITIONS:

- Separate limit of insurance applies to this coverage
- No annual aggregate limit applies to this policy
- Coverage is extended to include any member of a Board, Commission, or Committee of the Insured as defined in the Municipal Conflict of Interest Act
- Coverage is also included for any subsequent proceedings under this Act
- Insured may select and instruct legal counsel with no intervention by the insurer

The action brought by Ms Milani was withdrawn, and the action never went to court. There was no finding. Under the legislation, and the insurance policy, according to the conditions listed in the insurance policy, no payment should have been made. By deductive reasoning even if both the Meffe and Ruffolo conflicts were awarded the maximum, the minimum amount of \$124,601 was paid for the Milani action. This seemingly would violate the Acts and the terms of the insurance policy, as there is no court ruling for which to determine Jackson was not guilty, or not guilty through error or inadvertence.

The courts have upheld that personal expenses cannot be paid using taxpayer funds or through insurance. Therefore payment of conflict of interest legal costs, damages or any other costs that exceed the legal costs less the cost awards would most likely be considered to be prohibited payments.

The recent court case brought by Doug Holyday of the City of Toronto needs to be examined closely, as, based on this ruling and the precedents listed in the ruling, any and all costs of the conflict of interest whether paid by insurance or directly by the Vaughan, have to be repaid.

A judicial review of the decision to pay the moneys has to be made by this council. The approval of triple insurance rates without first bringing a judicial review will bring problems in the future, should a resident bring a judicial review in the interim of these payments.

Payment of \$50,000 to Eric Gillespie for Election Finance court costs

I have brought this matter to your attention several times as have other members of the public and to date you have failed to respond or resolve this matter.

I have repeatedly asked for a copy of the court award and you have failed to provide this. I have a copy of the decision of Justice Favret and she did not award costs in her decision with respect to the Jackson compliance audit, and yet the Carella cost report provided to council by Ms Atwood-Petkovski incorrectly indicated there is a court cost award.

A review of the invoices to which the city awarded payment of \$50,000 outline the real use of the funds and that the \$50,000 exceeded the cost of the legal fees. The taxpayer money was used to pay for several unrelated legal expenses including a conflict of interest brought by Mr Ruffolo against former Mayor Jackson. These invoices have been provided to you more than once.

This payment is outside of the authority of a municipality and the amount needs to be repaid, given the above. Once again I am asking that if there is cost award by the courts, please provide it.

The payment of the \$50,000 needs also to be added to the \$624,601, as the apparent payment, in part, was ultimately used to pay for the conflict on interest brought against former Mayor Jackson by Ruffolo. This \$50,000 would go against the cap of \$250,000 per occurrence, and needlessly was paid directly by taxpayers, given the claim was also paid by insurance.

The Holyday rulings expressly stated the payment could NOT be made to voters being the applicants, and yet there is strong evidence that this is the case.

If this was the case then this money has to be repaid.

Appealing the IPC order to disclose Zipay's personal expenses

The City of Vaughan appealed the ruling of the IPC and now furthermore refuses to disclose the legal fees that taxpayers are underwriting for the court case.

I was present during the court proceedings and the City's lawyer's main argument against releasing the Zipay documents was the fact that receipts did not have to be disclosed because the expenses were personal in nature and were incurred outside of the Zipay's course of business duty as it is customary to

treat travel from home to work as a personal expense. The city policy also treats these expenses as personal.

The Acts and the rulings from the courts very specifically state that expenses cannot be paid for personal legal fees, if these fees were not incurred during employment. Using the defense of personal expenses then precludes the city from paying for the legal expenses of Zipay.

In addition to the court rulings, and the Municipal Act, the attached letter outlines a legal opinion sought for a similar circumstance. The advice from the external lawyer was that personal expenses could not be paid.

Whether the IPC appeal is won or not, the legal expenses MUST be repaid by Zipay in full.

If this was the case then this money must be repaid.

Increase in Premiums Do Not Reflect True Increase

The increase in premiums does not reflect the true cost to taxpayers. In addition to the premium, the taxpayers of Vaughan pay a deductible on a per claim basis. This amount is currently \$50,000 and Ms Atwood-Petkovski contemplated the premium be increased to \$100,000 for a savings of \$307,928. This would not be prudent given the increase in deductible payments are projected to be \$429,547.

Ms. Atwood-Petkovski goes further to analyze city of Hamilton's deductible payouts, and then further states City of Vaughan paid \$1,200,000 in deductibles. Using simply math, this represents 24 claims. I am not sure how Ms Atwood-Petkovski calculated the difference, however if the claims remain consistent in 2012, with 2011, the increase in deductible premiums would be \$1,200,000 not \$429,547.

City of Hamilton total cost is \$9.3 million and City of Vaughan is \$4.7 million a difference of \$4.6 million. Hamilton has transit, ambulance, police, water and waste water and public health, all roads, social services and long term care not to mention their population is approximately 200,000 more than Vaughan and number of civic properties is valued at (\$2.55 billion). Vehicles and equipment would also be much higher. Also, only the liability deductible is \$250,000, Hamilton has other deductibles for example the property deductible is at \$500,000. It is interesting to see that there are no losses shown for Vaughan on property. Perhaps there is savings in increasing this deductible, or perhaps Vaughan has failed to disclose other insurance premiums being paid for other insured properties and areas of Vaughan operations. Furthermore an actuarial study could assist when it comes to choosing a deductible.

In my initial correspondence Hamilton was provided as a reference and not an exact comparison to Vaughan. In her memo Ms. Atwood-Petkovski draws no comparison to municipalities such as Markham or Richmond Hill, both of which have similar services.

See Markham's insurance resolution below;

<http://www.markham.ca/markham/ccbs/indexfile/Agendas/2009/General/gc091214/Insurance%20Report%20to%20GC%20121409%20final.htm>

I would like to also draw your attention the recent AMO study on insurance. See the link below, especially in the area of benchmarking.

[http://www.amo.on.ca/AM/Template.cfm?Section=Breaking News and Policy Updates1&Template=/CM/HTMLDisplay.cfm&ContentID=162922](http://www.amo.on.ca/AM/Template.cfm?Section=Breaking%20News%20and%20Policy%20Updates1&Template=/CM/HTMLDisplay.cfm&ContentID=162922)

The survey shows that municipal insurance costs went up by approximately 22% whereas in Vaughan's case insurance costs went up by 50%, and approximately 300% since 2007. This is not sustainable and must be addressed immediately.

Did the City participate in the AMO study? If we did not participate, why did we not? If we did participate, we would have access to the participant data. Apparently, the survey states that for communities greater than 75,000, \$7.71 per capita is spent on insurance. Vaughan has a population of 303,058. Therefore our premiums should be \$2,336,577 not \$3.6 million, and this should include all forms of insurance premiums paid by the city.

This council and previous councils and the taxpayers of Vaughan rely on the accuracy of the budgets placed before us. Studies like the CD Howe report points out that there is a serious problem with Vaughan budgets. The reaction from the Mayor was to take a stand against CD Howe and declared CD Howe to be inaccurate. There is no evidence of any inaccuracy in their report. The taxpayers of Vaughan have a right to know the detailed use of our tax dollars.

Disclosure

Proper disclosure of the payment of settlements has not been made. Ms. Atwood-Petkovski disclosed that there was a serious amount of money paid for conflicts of interest and this in turn played a large part in the 300% increase in insurance payments since 2007. Had Ms Atwood-Petkovski not decided to be so generous with the disclosure of the use of taxpayer money, the public would never know why the insurance premiums have increased 300% since 2007. Ms. Atwood-Petkovski is very inconsistent in her disclosures, and although I am pleased she disclosed the information in this case, the information and ALL details of settlements need to be made public. Given that Ms. Atwood-Petkovski has released the total amount of \$624,601, she must therefore then have the

details that make up the amount in her custody and control and these details need to be immediately disclosed and in any event prior to the authorizing of any increase in insurance payments.

Settlements using taxpayer money either directly or through insurance paid for using taxpayer money have to be made publicly available. Selective disclosure is highly suspect and not in the public interest.

There have been many ruling made by the IPC with regards to the proper disclosure of settlements. The City of Toronto ruling is one of the most recent and the City of Toronto was order to release all of their settlement information requested. Budgets and spending of taxpayer money has to be disclosed in most circumstances.

In summary, this deputation requests the following actions be taken:

- 1) Immediate disclosure of the settlements, starting with the break down of the \$624,601 outlined by Ms Atwood-Petkovski for the conflict of interest actions, and;
- 2) Initiate an emergency judicial review of the three payments listed above and repayment of the awards requested as part of the judicial review, and;
- 3) Placing the approval of the huge insurance premium on hold until such time as the judicial review has completed its work and;
- 4) Review of the people who authorized the payment of taxpayer funds where these payments constituted a violation of the respective legislation and;
- 5) A review of the invoices to which the city authorized \$50,000 payment for the Jackson compliance audit was applied to and repayment of the amount paid without a court order and;
- 6) A review of the legal costs pertaining to the personal expenses of Mr. John Zipay and immediate payment of all legal costs by Mr. Zipay to the taxpayers of Vaughan

Sincerely
Richard T. Lorello

FINANCE AND ADMINISTRATION COMMITTEE – NOVEMBER 21, 2011

COMMUNICATION

Distributed November 18, 2011

Item No.

C1	Commissioner of Legal and Administrative Services & City Solicitor “City of Vaughan Insurance Program”	1
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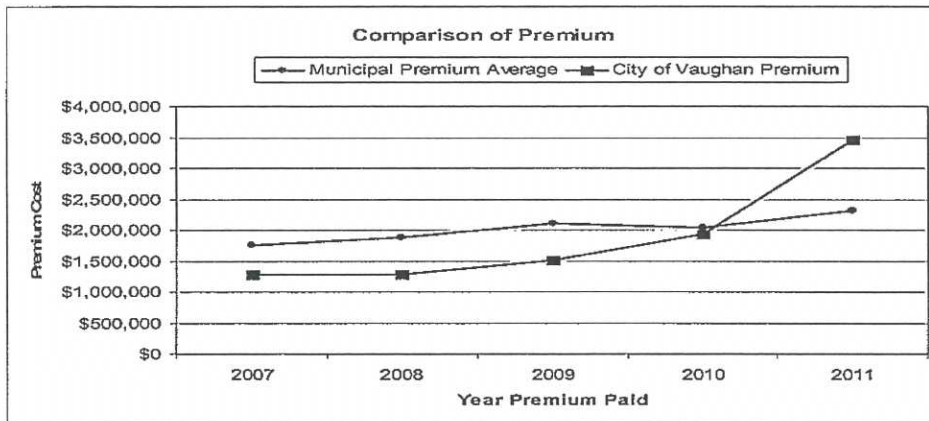


memorandum

FINANCE & ADMIN. CMTEE
COMMUNICATION C1
Date: Nov 21/11 ITEM NO. 1

DATE: NOVEMBER 21, 2011
TO: FINANCE AND ADMINISTRATION COMMITTEE
FROM: JANICE ATWOOD-PETKOVSKI
COMMISSIONER OF LEGAL AND ADMINISTRATIVE SERVICES & CITY SOLICITOR
JEFFREY A. ABRAMS, CITY CLERK
SUBJECT: ITEM 1, MEETING OF NOVEMBER 21, 2011
DRAFT 2012 BUDGET AND 2013-2014 OPERATING PLAN
CITY OF VAUGHAN INSURANCE PROGRAM

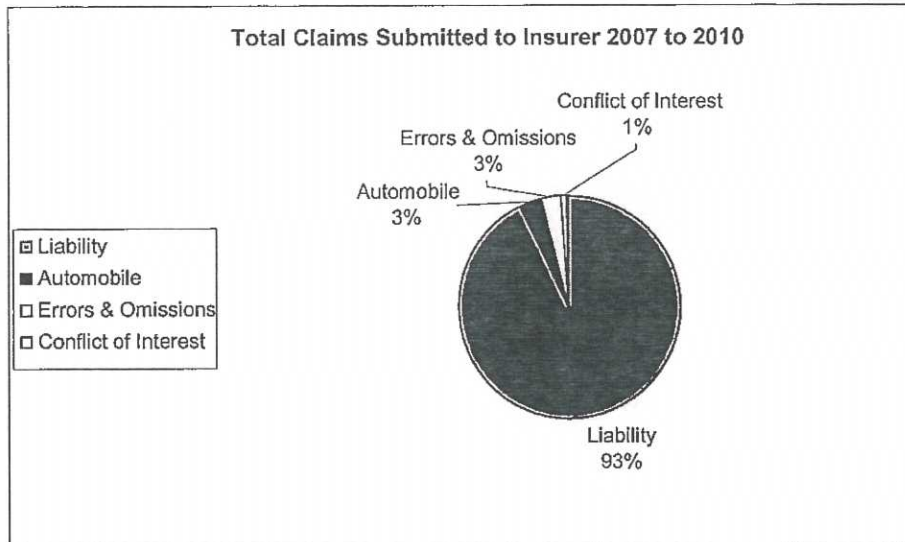
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Insurance coverage costs to the municipality are composed of two parts: premiums, and deductible payouts. There are multiple types of coverages and the group described as liability coverage collectively makes up the bulk of Vaughan's insurance premium as liability claims received by the City represent 93% of claims. Specifically, claims from personal injury as a result of slip, trip and falls in or on municipal property made up 65% of the total claims submitted to the insurer for the years 2007 to 2010. The balance of claims were in the areas of Automobile, Errors and Omissions claims and Conflict of Interest, as noted in the following chart:



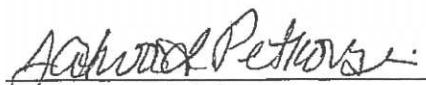
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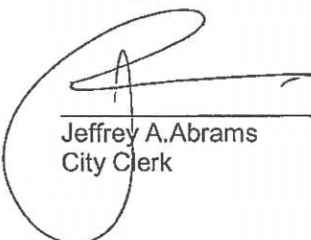
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It should be noted that in order to handle the volume of claims internally, Hamilton maintains a legal staff of 19 solicitors, 8 of whom handle the retained claims litigation. Hamilton's risk management group consists of an additional 5 staff.

Some of the largest payouts by the City's insurer in 2010 arose from unfounded claims against then members of Council alleging conflicts of interest. Once the court found the claims and their appeals to be without merit and dismissed them, the insurer was obligated to reimburse the members of Council for their legal defense costs. For the years 2009 to 2011, the insurer paid out \$624,601.00, in solicitors' fees for legal costs in defending three unfounded conflict of interest claims against two then-sitting members of Council.


 Janice Atwood-Petkovski
 Commissioner of Legal and Administrative Services &
 City Solicitor


 Jeffrey A. Abrams
 City Clerk



memorandum

DATE: December 6, 2011
TO: Mayor and Members of Council
FROM: Joseph Chiarelli
RE: **Insurance and Risk Management - Premium Analysis
Committee of the Whole December 6, 2011, Item 26**

<u>C 9</u> COMMUNICATION CW - <u>December 6/11</u> ITEM - <u>26</u>
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Option A set out in the recommendation of the Commissioner of Legal and Administrative Services & City Solicitor and the City Clerk in this matter, before Committee today as Item 26, provides that the current contract of insurance with Frank Cowan Limited ("FCC") can be renewed for an additional one year term subject to annual premium negotiations.

I have been advised that FCC is prepared to renew the present policy of insurance for the 2012-2013 policy term with no increase in premium, subject only to any increase in property value insured or an increase in the number of vehicles insured resulting in a pro-rata adjustment. The offer is conditional on there being no substantive change in risk exposure as measured against the City's 10 year claims history, as of the time of renewal.

Respectfully submitted,



Joseph Chiarelli,
Manager of Special Projects, Licensing & Permits and
Insurance – Risk Management

Bonsignore, Connie

From: Antony Niro [antony.niro@gmail.com]
Sent: Tuesday, December 06, 2011 9:10 AM
To: Clerks@vaughan.ca
Cc: lafrate, Marilyn; Bevilacqua, Maurizio; Di Biase, Michael; Schulte, Deb; Rosati, Gino; Carella, Tony; Shefman, Alan; Racco, Sandra; DeFrancesca, Rosanna; Greg Sorbara; Caroline Grech; Sandie Benitah; kvweekly@bellnet.ca; michele.mandl@sunmedia.ca; pdowhaluk@globeandmail.com; jgoddard@thestar.com
Subject: Committee of the Whole Item 38: Distribution of Proceeds for Mayor's 2011 Gala and Golf Classic

Attachments: Sorbara June 24 letter.pdf



Sorbara June 24 letter.pdf (62...

Dear Mr. Abrams,

C 10
COMMUNICATION
CW - December 6 / 11
ITEM - 38

Here are my comments for Council of Committee of the Whole December 6th 2011 Item 38 Distribution of Proceeds for Mayor's 2011 Gala and Golf Classic

Members of Council,

I applaud the Mayor's, Members of Council, volunteers, and supporters efforts to raise money to bring a hospital to Vaughan. We need it. I think giving \$200,000 to help bring a hospital to Vaughan is the right thing to do. What concerns me however, is who this money is being given to and for what purpose exactly. There should be a condition attached to this money that it not be provided to any organization that is a plaintiff in a litigation against any Vaughan resident.

To quote our MPP Greg Sorbara from his letter to Vaughan Council of June 24th, 2011

"The question therefore arises as to why the City would continue to vest the future, and the future value, of lands purchased with public funds in VHCC, a nonprofit organization controlled by a closed Board with no direct or indirect public accountability."

"The second issue relates to the make-up of the Vaughan Health Care Foundation. As you know the Foundation's mission is to raise millions of dollars over the next few years to support construction and furnishing of the Hospital. Its current status as an offshoot or subsidiary of the VHCC will dramatically compromise its ability to achieve its mission.

Increasingly, I am told by past and potential donors to the Foundation that they will not contribute while the Foundation's mission is compromised by its governance model and its dual commitment to Hospital funding and funding of other adventures contemplated by the VHCC."

In Summary,
The VHCC is a private company with a closed board and no direct or

indirect accountability to the public.

The VHCF is a subsidiary of the VHCC.

The VHCF can fund "adventures" contemplated by the VHCC.

What does money donated by residents of Vaughan to the VHCF intended for a hospital actually get used for?

These "adventures" of the VHCC are the focus of my deputation.

As you all know, the VHCC has contemplated an "adventure" by taking the extraordinary step of suing me because of my efforts at the past election under the banner of Time for Change Vaughan. This "adventure" in my opinion does absolutely nothing to bring a hospital to Vaughan yet may be funded by donations intended for a hospital.

As is my democratic right under the Charter of Rights and Freedoms of this great country, I expressed my very opinions during this past election that a change was needed in Vaughan, specifically at my Ward 1 level. I stated facts as documented publicly. My campaign was a very focused campaign fuelled by my own personal experiences with the then councillor. As soon as my advertisements went out, I received a liable notice from the then Councillor and the VHCC. The councillor later dropped his suit, however the VHCC continues its action. The then councillor whom lost his seat was then hired as a Vice President of the VHCC. It is my opinion that the VHCC's continued efforts to pursue a frivolous litigation against me using taxpayers and charitable money is at least partially a pursuit of that councillor attempting to exact revenge on me and Vaughan for not being re-elected.

The crux of this frivolous litigation against me surrounds my expressed opinions during election time that there may have been condos built on the hospital lands. I also know some of you attended a public meeting in the past where condos were in fact proposed on the site. I believe this very council just recently approved an amendment to the Official Plan for the Hospital Lands officially eliminated condos as a potential use on the Hospital Lands. I think the headline in the local paper was "Vaughan Condo Development Off Table". I commend this decision which further confirms my opinion during the election that condos were a real possibility on those lands. This proves the frivolousness of this lawsuit against me which serves absolutely no purpose.

I do plan on taking my similar concerns to Vaughan MP Mr. Fantino who has dedicated \$10 Million to the VHCC and I want to ensure that taxpayer money is not being used for frivolous adventures. This money must solely be used for the purpose of bringing a hospital to Vaughan.

To conclude, my request is that the Mayor and Vaughan Council add a condition to this resolution that the \$200,000.00 donated to the Vaughan Health Care Foundation not in turn be given to any organization that is a plaintiff in any litigation against any Vaughan Residents. Vaughan Council needs to make a statement that we need to get on with the business of getting a hospital to Vaughan and to stop with frivolous lawsuits that are an absolute waste of not only taxpayers money, but all the charitable money given to bring a hospital to Vaughan. Suing

residents does not bring a hospital to Vaughan. Vaughans corporate values are Respect, Accountability, and Dedication. In my opinion Vaughan cannot meet those values if the companies representing Vaughan don't meet those same values as the VHCC is clearly not.

-Antony.

Antony Niro P.Eng. Founder, Time for Change Vaughan



Greg Sorbara, M.P.P.
Vaughan

June 24, 2011

Hon. Maurizio Bevilacqua, Mayor
City of Vaughan
2141 Major MacKenzie Dr.
Vaughan, ON L6A 1T1

Dear Mayor Bevilacqua:

I am writing to update you on our collective progress toward the construction of the Vaughan Hospital on the City of Vaughan lands at Jane and Major MacKenzie (the Site). As well I wish to raise two issues that, I believe, require the urgent attention of the City.

As you know, the mandate for planning, developing, building and operating our new hospital in Vaughan has been given to York Central Hospital (YCH) by the Ministry of Health and Long-term Care (MOHLTC). YCH recently submitted its Stage One Submission for the Vaughan Hospital to the Ministry. I expect approval of that plan within the next short while. Equally important is the possibility that the Vaughan Hospital will be included in the medium term capital plan of the Ministry of Health. YCH has made a strong case for inclusion in the capital plan. I understand as well that the City has reached an agreement with YCH relating to custody over an appropriate site for the Hospital. All of this is very positive and demonstrates that, together, we can make significant progress.

The first issue I wish to raise concerns ownership and control of that part of the Site which is not required by the Hospital. In specific, what role if any, the Vaughan Health Campus of Care (VHCC) should play in the development of these surplus lands (comprising about 47 acres). As you know, the original model contemplated that the VHCC would act as an umbrella organization responsible for realizing the development of the Hospital and related health services on the Site. With that in mind the City purchased the Site and entered into an agreement with the VHCC.

As a practical matter, since the mandate for the Hospital development now rests with YCH, the model contemplated by the agreement between the City and the VHCC no longer is relevant or necessary for Hospital purposes. Nor does MOHLTC have any current interest in the development of the surplus lands for a bio-sciences cluster or other ancillary uses as contemplated by the VHCC. The question therefore arises as to why the City would continue to vest the future, and the future value, of lands purchased with public funds in VHCC, a non-profit organization controlled by a closed Board with no direct or indirect public accountability.

In my view the future value of these surplus lands should go either to the benefit of the future Hospital and its programs, or revert to the City for whatever public purpose the City deems appropriate. It is simply inconceivable that the VHCC should have care and control of these lands in the absence of any health related mandate regarding the Hospital.

At a minimum I believe the City should undertake its own independent planning and economic study to determine the best and most appropriate use for the lands. At the same time, while VHCC retains any ongoing interest in the lands, the City ought to require a change in governance such that members of City Council and/or their nominees form a majority of the Board of VHCC, and that the Chair of the VHCC be a member of City Council.

The fact is that anything short of such a model raises serious questions of transparency and accountability for public resources that will only increase with the passage of time.

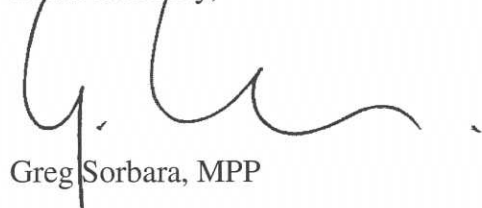
The second issue relates to the make-up of the Vaughan Health Care Foundation. As you know the Foundation's mission is to raise millions of dollars over the next few years to support construction and furnishing of the Hospital. Its current status as an offshoot or subsidiary of the VHCC will dramatically compromise its ability to achieve its mission.

Increasingly, I am told by past and potential donors to the Foundation that they will not contribute while the Foundation's mission is compromised by its governance model and its dual commitment to Hospital funding and funding of other adventures contemplated by the VHCC.

At a minimum, the City ought to require that the governance of the Foundation be recast so as to eliminate any direct link between it and the VHCC. That would be a positive first step in establishing the credibility needed to succeed with its important work.

At a time that is convenient, I would be pleased to discuss these issues further with you or members of your Council and indeed with members of VHCC or the Foundation. Meanwhile, please do not hesitate to contact me should you have any questions about the matters I have raised in this letter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'G. Sorbara', with a long horizontal flourish extending to the right.

Greg Sorbara, MPP

Cc.

Mr. Gino Rosati
Ms. Deb Schulte
Mr. Michael DiBiase
Ms. Marilyn Iafrate
Mr. Tony Carella
Ms. Rosanna DeFrancesca
Ms. Sandra Yeung-Racco
Mr. Alan Shefman
Mr. Clayton Harris

Mr. Altaf Stationwala
Ms. Dina Palozzi

Mr. Michael DeGasperis
Ms. Melinda Gorgenyi
Mr. Sam Ciccolini

Hon. Deborah Matthews
Mr. Saad Rafi

Mr. Lou Greenbaum
Mr. Quinto Annibale
Mr. Robert Bradbury
Mr. Robert Colelli
Dr. Robert Maggisano

Mr. Naseer Ahmad
Mr. Richard Barbaro
Mr. Max Ciccolini
Mr. Mario Ferri
Ms. Joyce Frustaglio
Ms. Rina Pillittieri
Ms. Marita Simbul-Lezon
Mr. Robert Baker

Bonsignore, Connie

From: Antony Niro TimeForChangeVaughan [antony.niro@timeforchangevaughan.ca]
Sent: Tuesday, December 06, 2011 9:30 AM
To: Clerks@vaughan.ca
Cc: lafrate, Marilyn; Bevilacqua, Maurizio; Di Biase, Michael; Schulte, Deb; Rosati, Gino; Carella, Tony; Shefman, Alan; Racco, Sandra; DeFrancesca, Rosanna; Caroline Grech; sandie benitah; kvweekly@bellnet.ca; Richard Lorello
Subject: Committee of the Whole Item 26: Insurance and Risk Management - Premium Analysis

<p>C 11 COMMUNICATION</p>
<p>CW - December 6/11</p>
<p>ITEM - 26</p>

Dear Mr. Abrams,

Here are my comments for Council of Committee of the Whole December 6th 2011 Item 26 Insurance and Risk Management - Premium Analysis

Members of Council,

Council passed a motion on October 18th that staff bring back a report regarding insurance "concerns raised in correspondences to Council" of that day. This report does not address the main concern that the \$150 Million lawsuit is making us uninsurable. There is no mention of this lawsuit in the report at all.

On pg 2 of the report is states that "the rate of premium is affected by a variety of factors including.... the claims history of the insured..." Then why was it not mentioned the single largest lawsuit on our books today?

Here is my question again: How much is this \$150Million dollar lawsuit affecting our insurance premium rates? If it is affecting us, why aren't we getting it settled so it is off our books. It is apparent that the graph on pg 4 directly correlates to the time we lost our last of 3 appeals to dismiss this lawsuit in court.

I do support option B for the record.

-Antony.

Antony Niro P.Eng.

Founder, Time for Change Vaughan

C12 - Communication
CW - December 6/2011
stem 40





C13
CW - December 6/11
Item 11
submitted by
Mr. Mario Jacobelli

The City of Vaughan
2141 Major Mackenzie Drive
Vaughan, Ontario
Canada L6A 1T1
Tel [905] 832-2281

September 26, 1995

Mr. Carlo Di Re
c/o Maxey Park Bocce Club
32 Willis Road
Woodbridge, Ontario
L4L 2S2

Dear Carlo,

**RE: Maxey Park Washrooms and Storage Facility
Tri-party agreement between
The City of Vaughan, Maxey Park Bocce Club and
Woodbridge Tennis Club
our file number P1-44-N4**

Please find enclosed a signed copy of the tri-party agreement between the City of Vaughan, Maxey Park Bocce Club and the Woodbridge Tennis Club for the construction of a washroom and storage facility at Maxey Park. Please retain this document for future reference.

I take this opportunity to thank you and the members of your club for your assistance in the construction of this new facility. Should you have any questions please call me at 832-8577 extension 8795.

Sincerely,

Domenic Lunardo, OALA
Director of Parks

copy to: Stacey Merritt, Director of Property and Facilities
John Leach, City Clerk
Gary McKay, Solicitor/Legal Services
John Salo, Manager, Parks Operations
Terry Twine, Supervisor, Parks Planning and Development

This Agreement made in triplicate this 5th day of July, 1995.

BETWEEN: THE CORPORATION OF THE CITY OF VAUGHAN
hereinafter called the "City"

-and-

Carlo Di Re

Pat Concordia

being individual members of the Maxey
Park Bocce Club, hereinafter called the
"members of the Bocce Club."

-and-

ANTHONY FRINO

MIGUEL PETRUCCI

being individual members of the Woodbridge
Tennis Club, hereinafter called the
"members of the Tennis Club."

WHEREAS the City owns Maxey Park, a municipal park located in the
community of Woodbridge, in the City of Vaughan;

AND WHEREAS members of both the Bocce Club and the Tennis Club want
to construct a one storey building in Maxey Park to provide public washroom facilities
and storage room space for the use of club members.

NOW THEREFORE this Agreement witnesseth that in consideration of the
sum of Two dollars of lawful money of Canada now paid by each of the parties

1. The City grants the members of the Bocce Club and the Tennis Club and any general contractor hired by those members, the right to enter onto Maxey Park and to construct a one storey building and its related services containing washroom facilities and storage rooms.

2. Members of both Clubs agree that the design and specifications of the proposed building and its related services will be supplied by the City to Club members and their general contractor and are to form part of the contract between the Clubs and the contractor. Members shall provide the City with a copy of the executed contract within 5 days of signing. All work is to be completed to City standards and in accordance with the drawing and specifications set out in Appendix "A" forming part of this Agreement. No change in specifications can be made unless the City's Director of Property and Facilities specifically agrees to such change.

3. The City shall contribute \$70,000.00 dollars toward the cost of building the washrooms and storage facility and related services. Payment by the City shall be as follows:

- i) A payment of \$35,000.00 will be made to the Clubs, upon substantial completion of the building and its related services.
- ii) A second payment of \$35,000.00 will be made by the City to the Clubs 45 days after final completion of the building and related services and after the day on which the City's Director of Property and Facilities, in writing, approves and accepts the work.

and bear any and all costs above the City's contribution. The parties expressly acknowledge that the City's contribution shall not exceed \$70,000.00.

6. The City agrees to give a permit to the respective Clubs, for a period of 5 years, to use storage rooms in the new building. At the end of the 5 year period, each Club shall have a right of first refusal to obtain a permit for a subsequent period the term of which shall be determined by the City.

7. The members of the Clubs will produce satisfactory evidence to the City that their general contractor has in force a Comprehensive General Liability Insurance Policy with limits not less than five million dollars inclusive per occurrence of bodily injury, death, and damage to property including loss of use thereof for any one occurrence. This policy shall include the City and the Metro Toronto Region and Conservation Authority as additional named insureds.

8. The members of the Clubs or their general contractor are responsible for obtaining all permits and certificates required to carry out the works; and without limiting the generality of the foregoing, the documentation to be obtained includes a building permit and a certificate of coverage of workmen from the Worker's Compensation Board.

9. City staff shall be allowed to inspect the building and its hook-up to municipal services at any stage of construction. The Clubs' members agree to complete all work no later than September 15th, 1995.

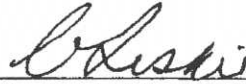
IN WITNESS THEREOF THE City affixed its corporate seal attested to by their hands of its duly authorized officers and the Clubs Members have, duly witnessed, affixed their signatures.

SIGNED, SEALED AND DELIVERED)

THE CORPORATION OF
THE CITY OF VAUGHAN




L.D. JACKSON, MAYOR



J.D. LEACH, CITY CLERK

VICTORIA LESKIE
MAXEY PARK BOCCIE CLUB

(Signature) 

Carlo Di Re

(Signature) 

Pat Concordia

(Signature)

(print name)

WOODBRIIDGE TENNIS CLUB

(Signature) 

(print name) ANTHONY FRINO

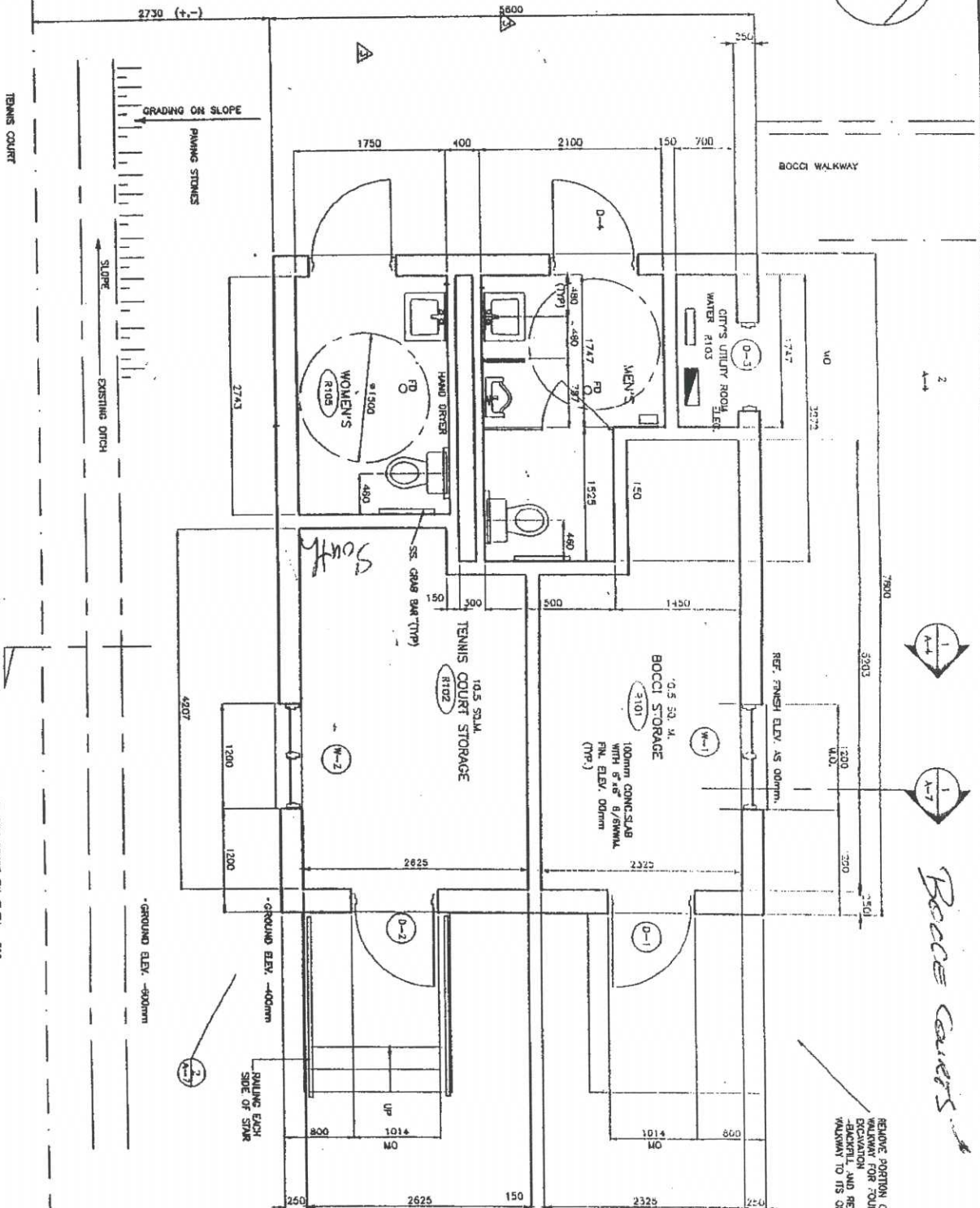
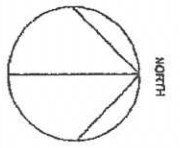
(Signature) 

Witness

Witness

Witness

Witness



TENNIS COURTS

BOCCE COURTS

REMOVE PORTION OF 3032 FOUNDATION FOR FOUNDATION BACKFILL AND RESTORE BC WALKWAY TO ITS ORIGINAL C

C14
CW -December 6/11
Item 20
submitted by
Darren Ouellette

18.0 in

391.8 in

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date: **November 29, 2011**
drawn by: **Darren Ouellette**

Drawing approved as is
With corrections

Signature _____

Tuesday, December 6, 2011

C15
CW - December 6/11
Deputation 10).

The Honourable Mayor Bevilacqua and Distinguished Members of Council,

My name is Dora Cohen-Machtinger. I have been residing for three years at 15 North Park Road, Apt. 1612 in Thornhill and have been a Vaughan resident for the past thirty years. I thank you for giving me the opportunity to present my deputation on a serious parking issue affecting me and a significant number of residents in my area.

The perception was that there was adequate parking five years ago as presented by the builder. In reality, this problem has always existed but was not an issue until the beginning of September 2011, since we were able to park overnight at Walmart's parking lot owned by Smart Centres. I contacted Smart Centres and learned that parking enforcement officers had not diligently done their job. I asked Smart Centres to allow us to park on their property in exchange for a monthly fee. They refused, stating that they had legal obligations to their tenants, some of which were tied to the City of Vaughan's by-laws.

Under the Freedom of Information Act, I obtained a record of penalty notices issued overnight on streets in my area as well as those issued on private/municipal parking for the months of September and October 2011. You should have a copy in front of you. You will notice that in September, 243 penalty notices were issued on Disera Drive and 87 on North Park Road for a total of 330. In October, 111 penalty notices were issued on Disera Drive and 86 on North Park Road for a total of 197.

I wanted to circulate a petition to further demonstrate the need for parking spaces. Unfortunately, the management of my building and surrounding buildings did not allow me to do so.

In a letter addressed to Councillor Alan Shefman by the Property Manager of my building, it is stated that the Condominium Corporations are not able to offer any solution to this matter although they have numerous outdoor parking spaces. This is because the outdoor parking spaces are designated as visitor parking spaces and both the Rules and Regulations of these buildings, as well as the City's by-laws hinder the possibility of renting them out to residents.

I spoke to a representative of Liberty Development who told me that there were a few parking spaces for sale at 7/15 North Park Road, 20/30 North Park Road and 50/60 Disera Drive. The cost is \$24,860 tax included. There are very few parking spaces for rent at 20/30 North Park Road at a monthly cost of \$135.60 tax included. However, since others and I do not live in these buildings, we are not allowed to rent a space. Besides, this fee appears to be a little steep.

My suggestions for resolving this issue are as follows. In the City of Vaughan, one may purchase five overnight parking permits per month at a cost of \$5 each and park on the street. I would like to see this extended to the remaining days of the month, but at a lower rate. This is the practice in the City of Toronto where people can park overnight on the street with permit at a cost of \$60 per six months.

Also, a portion of Smart Centres' parking lot, where people used to park illegally, is now practically empty at any time of the day or night. I would suggest that the City of Vaughan purchase from Smart Centres this portion of land and convert it into a paid parking lot.

Another option might be for the City of Vaughan to ease some of the by-laws it imposed on Smart Centres thus allowing the latter to reconsider its decision and perhaps grant paid parking permits.

.../2.

The current parking issue will not disappear in our densely populated area. If anything, it will be exacerbated by the construction of two new high-rise condominium buildings at North Park Road and New Westminster. The City of Vaughan is growing and so are the needs of its population. Condominium apartments are sold with one parking space and often, there are at least three cars per family. It is unfair that a vulnerable segment of Vaughan's population be hit with several penalty notices just I have been.

I have every confidence in the ability of our City of Vaughan's Members of Council to resolve this issue in a timely and satisfactory manner. I thank you for listening to my deputation.
