

AGENDA
and Schedule "A"
to the minutes of the meeting of the
Windsor BIA Advisory Committee
held October 16, 2013
at 9:30 o'clock a.m.
Room 303, 400 City Hall Square East

1. **CALL TO ORDER**

2. **ADOPTION OF MINUTES**

Adoption of the minutes of the meeting held April 16, 2013 – *(previously distributed)*

3. **DECLARATIONS OF CONFLICT**

4. **BUSINESS ITEMS**

4.1 **Retail Business Development**

The report of the Manager of Urban Design dated April 9, 2013 entitled "Establishing the City-Wide Retail Development Corporation (or Municipal Services Corporation)" – *attached.*

4.2 **Street Level Planters Distribution and Floral Beautification**

4.3 **Street Cleaning**

4.4 **Parking Meters – Cost to be borne by Festivals & Events in the BIA's**

4.5 **Officers & Directors Insurance Liability with regards to events within a Business Association (Closed Roads and Open)**

4.6 **The Downtown Windsor BIA is requesting information relating to which other BIA's are subject to the following:**

- Streetscaping repayments
- Retroactive repayments for reassessed commercial properties

- Withholdings for property reassessments and readjustments
- Fees associated to required annual audits
- Paying for a portion or all of their annual hanging basket allotments
- Cleaning of sidewalks and streets within BIA boundaries

5. **NEW BUSINESS**

6. **ADJOURNMENT**

THE CORPORATION OF THE CITY OF WINDSOR
Office of the City Solicitor – Planning Department

**MISSION STATEMENT:**

"The City of Windsor, with the involvement of its citizens, will deliver effective and responsive municipal services, and will mobilize innovative community partnerships"

LiveLink REPORT #: 16199 SPL2013	Report Date: April 9, 2013
Author's Name: Neil Robertson	Date to Council: May 6, 2013
Author's Phone: 519 255-6543 ext. 6461	Classification #:
Author's E-mail: nrobertson@city.windsor.on.ca	

To: Mayor and Members of City Council

Subject: Establishing the City-Wide Retail Development Corporation (a Municipal Services Corporation)

1. RECOMMENDATION: City Wide: X Ward(s): _____

- I. That the Planning Department **BE DIRECTED** to prepare the required Business Case Study for the proposed Retail Development Corporation pursuant to the requirements of Section 6 of Ontario Regulation 599/06;
- II. That the proposed Objectives of the Retail Development Corporation, as described in Appendix 'A', **BE ADOPTED** for the purposes of inclusion in the required Business Case Study to be prepared;
- III. That the proposed Governance Framework of the Retail Development Corporation, as described in Appendix 'B', **BE ADOPTED** for the purposes of inclusion in the required Business Case Study to be prepared;
- IV. That a proposed Funding Model of the Retail Development Corporation, **BE DEVELOPED** for the purposes of inclusion in the required Business Case Study to be prepared; and
- V. That the proposed consultation process discussed in this report **BE ACCEPTED** to meet the public consultation requirements of Section 8 of the O.Reg.599/06.

EXECUTIVE SUMMARY:

This report addresses the potential establishment of a city-wide Retail Development Corporation, including an overview of the legislative context, discussion of possible benefits, and recommendations for moving forward with the creation of such an entity. The report also addresses how the proposed corporation would work with the City's existing Business

Improvement Associations and economic development functions. The report recommends the adoption of corporate objectives, a governance framework, and a consultation process—all of which would form the basis of the business case study including a funding model required by legislation.

2. BACKGROUND:

On April 13, 2012, Mayor Francis, in his annual State of the City address, introduced the concept of a Retail Development Corporation. In his address, the Mayor provided a brief description of what the primary responsibilities of the proposed Retail Development Corporation are to be. He stated:

Its primary responsibility will be to work with all of our BIA's as well as other areas to support the retention and attraction of new retail, entertainment, housing, institutional, and commercial ventures in and across our community districts.

We are doing all of this to become a more attractive community where people want to locate and in which companies want to invest...

...We are building. Building a diverse, modern, and progressive city.

Section 203 of Ontario's *Municipal Act*, 2001 permits a municipality to establish a corporation to "provide a system, service or thing that the municipality itself can provide." Furthermore, Ontario Regulation (O. Reg.) 599/06 provides the details to give effect to the policy established by the *Municipal Act*, including definitions, exemptions, and requirements for a Business Case Study and public consultation.

O. Reg. 599/06 also allows municipalities to designate the corporation as a "designated economic development corporation" if the corporation is being established for the sole purpose of providing one or more "economic development services" that are described below:

- (a) the promotion of the municipality for any purpose, including by the collection and dissemination of information and the development of economic development strategic plans,
- (b) the acquisition, development and disposal of sites in the municipality for residential, industrial, commercial and institutional uses,
- (c) provision of public transportation systems,
- (d) provision of residential housing,
- (e) provision of general parking facilities,
- (f) providing a counselling service to or encouraging the establishment and initial growth of small businesses operating or proposing to operate in the municipality,
- (g) undertaking community improvement consistent with a community improvement plan approved by the municipality under subsection 28 (4) of the Planning Act,

(h) improvement, beautification and maintenance of municipally-owned land, buildings and structures in an area designated by the municipality beyond the standard provided at the expense of the municipality generally, and promotion of any area of the municipality as a business or shopping area,

(i) provision of facilities for amusement or for conventions and visitors' bureaus,

(j) provision of culture and heritage systems.

Requirement to Prepare a Business Case Study

Under Section 6 of O. Reg. 599/06, the City is required to prepare and adopt a business case study before it can use its powers under Section 203 to establish a corporation. Recommendation I of this report is seeking Council approval to prepare the required Business Case Study, while Recommendations II through IV seek direction about some specific sections of the Business Case Study.

3. DISCUSSION:

The purpose of this report is to present Council with a detailed description of the proposed Retail Development Corporation (the Corporation). The report will provide some background/support material; outline the primary responsibilities; propose a governance model; and, highlight some of the potential benefits and risks associated with the proposed Retail Development Corporation. Finally, Administration is seeking Council's direction on a number of important matters pertaining to the next steps in the creation of the Retail Development Corporation.

The retail industry is primarily engaged in selling consumer goods and related services through stores directly to consumers. This broad definition encompasses a wide array of businesses which in some cases may be beyond the scope of the proposed corporation. However, for the purposes of this discussion, the focus will be on the retail establishments that are characteristically found in Windsor's BIAs and other commercial areas. These retail establishments can for the most part be classified into one of the three following retail segments:

SHOPPING RETAIL – Stores selling traditional consumer goods (e.g. clothing, jewellery, books, gifts) ranging from small independents to big box and department stores. This would include fashion and apparel.

SERVICE COMMERCIAL – Establishments selling frequently needed personal convenience items (e.g. prescription drugs, groceries and hardware) and services (e.g. barber shops, dry cleaners and banks), as well as other professional services (e.g. accountants, medical centres and law firms).

RESTAURANTS & ENTERTAINMENT – Sale of prepared food and beverage to be consumed on the premises and other entertainment venues (e.g. night clubs and movie theatres).

The Economic Base Theory is a generally accepted method for viewing and analyzing any local economy. The Economic Base Theory assumes that all local economic activities can be identified as either "basic" or "non-basic" activities. Simply put, the distinction between the two types of economic activities is that the basic sector is made up of local businesses that produce products and services for export outside of Windsor, while the non-basic is the production of goods and services for consumption inside the community.

The basic sector is considered by most that prescribe to the theory to be the “engine” that drives the local economy because it brings in outside investment and money into the local economy for circulation. Accordingly, the non-basic businesses will move into areas that have the disposable income levels needed to support them. Local businesses that fall into the basic sector are generally manufacturing a product for sale or export outside of the region (although some may be sold in the region). Consequently, a great deal of economic development resources are focused on developing and enhancing the basic sector as the means of strengthening and growing local economies. In fact, the City’s *Economic Revitalization Community Improvement Plan* (adopted February 14, 2011) is a good example of the Council’s efforts to strengthen and diversify Windsor’s basic sector.

In contrast, the non-basic sector is composed of those businesses that depend largely upon local business conditions. Retail is a good example of an economic activity or industry that is considered non-basic. A couple of more concrete examples include a local clothing store that sells its goods to local households and individuals, or a restaurant that caters to the surrounding neighbourhood and beyond.

Because of their dependence on local business conditions, retail businesses are more susceptible to the effects of an economic downturn. Like many cities across North America, Windsor’s BIA’s and primary commercial areas have seen their share of struggles, including:

- An inability to compete with retail prices offered in big box commercial stores resulting in an observed decline in small independently owned stores (i.e. the “Mom and Pop” stores);
- Extensive development of new retail space driven by lower opportunity costs to develop on lands on the urban fringe and larger consolidated parcel sizes that are attractive to developers (at the expense of the established urban areas);
- Factors such as crime, graffiti and physical deterioration that play a negative role in shaping a positive ‘sense of place’ required for the success of the businesses;
- The rapid increase in e-commerce opportunities allows consumers to shop from the home, reducing the need for consumers to visit the traditional bricks and mortar stores;
- Negative fluctuations in the retail market and the resulting vacant storefronts immediately affect the street environment and eventually weaken the vitality of the commercial district and surrounding neighbourhood;
- The national departmental chains are repositioning their product lines to survive in this highly competitive retail market, including carrying products that were once the bread and butter of local businesses;
- The arrival of the mostly US-based ‘Category Killer’ retail chains that primarily concentrate on one particular product category (e.g. home improvement, book sales, etc) and grab a lion’s share of that market and outperform their smaller independent competitors; and,

- The overall downturn in the global economy and resultant impact on Windsor's local economy (e.g. higher unemployment, lower incomes, declining population, etc).

Retail sales are an important economic indicator because consumer spending drives much of our local economy. The benefits of a strong retail sector include growth in employment, sales, and more consumer options locally. In addition, a strong retail sector is often considered by other firms and businesses that are looking at the possibility of locating in Windsor, including the national retail chains. This is also increasingly important to some basic sector businesses that are seeking an enhanced quality of life for their workforce.

There are also community-wide economic impacts of not having the right retail mix or products available in the local economy. It can lead to what is called "retail leakage", meaning people will go elsewhere to spend money on the products that they desire. This effect can be magnified in a border city like Windsor, where consumers may choose the cross-border option to fulfill their needs (and spend their money). As such, Windsor will benefit from a strategy that acknowledges and addresses the challenges facing local retailers, one that results in a more focused approach to solidifying and growing the city's retail base and strengthening the neighbourhoods that support it.

The Complete Neighbourhoods Concept

The Mayor's vision for the proposed Retail Development Corporation aligns nicely with the planning concept of "complete neighbourhoods". The term "complete neighbourhood" refers to a neighbourhood where residents have safe and convenient access to the goods and services that they need on a day-to-day basis. This includes a variety of housing options, retail and other commercial services, quality schools, public open spaces and recreational facilities, and civic amenities. All of these should be built at a human scale that is accessible to all and that support and promote a 'sense of place' that is authentic and enjoyable.

The City's Official Plan supports the strengthening and developing of Windsor's neighbourhoods as the foundation for all land use planning in the City. It is envisioned in the Official Plan that every neighbourhood will have a central area that provides the focus for services and activities where residents can meet their day-to-day needs within a convenient walking distance. Many of Windsor's retail/commercial areas are already organized into Business Improvement Associations (BIA's) that serve as multi-functional places that provide the venues and opportunities for people to shop, work, and socialize in close proximity to their home. They also function as the retail, social and entertainment centres for the neighbourhoods that surround them. Their ongoing vitality and prosperity has the potential to contribute significantly to the overall economic and social well-being of the entire community.

To implement the Official Plan's vision for Windsor's neighbourhoods, a Municipal Services Corporation (to be known as the Windsor Retail Development Corporation) is being proposed. Its mandate will be to focus on increasing the economic opportunities, stabilizing property values, and increasing assessment levels by facilitating and supporting the establishment of new and/or the expansion of existing retail businesses.

Municipal Services Corporation

Using the Mayor's vision as a guidepost, the City of Windsor proposes to exercise its authority under Section 203 of Ontario's *Municipal Act*, 2001 to incorporate the Windsor Retail Development Corporation under the *Business Corporations Act*, of which the City will be the sole shareholder. The proposed Corporation will be a "designated economic development corporation" pursuant to Section 9(1) of Ontario Regulation 599/06 "Municipal Services

Corporations". In accordance with the permitted activities listed for a designated economic development corporation, the Retail Development Corporation will serve the following economic development purposes:

- To develop retail development strategic plans that advance the municipality's goals and objectives for Business Improvement Areas and other commercial areas of the city;
- To promote Windsor's retail areas, in cooperation with the existing Business Improvement Associations, as desirable places to shop, eat and play;
- To support and facilitate the healthy and balanced growth of the local retail sector by identifying the key economic opportunities, economic drivers and embrace emerging opportunities to attract investment based on the community's strengths and competitive advantages that will result in the establishment of new retail, entertainment, and commercial ventures, as well as the expansion of existing businesses;
- To conduct demographic and economic research and analysis using available data to compile profiles of the local and regional economies, including the development of the framework for identifying products and services that are underrepresented in the market (for which there is a demand) and define the appropriate target populations and areas for these underrepresented businesses;
- To foster and cultivate a business-friendly environment that is supportive of the establishment and/or growth of retail businesses in Windsor's Business Improvement Areas and established commercial areas;
- To capitalize on a local neighbourhood's history, culture, and existing assets to support the creation of retail developments and business areas that are attractive to people because they contribute to the area's authentic and unique identity or 'sense of place';
- To support the establishment and on-going development of retail clusters and encourage businesses to take advantage of cluster-related synergies;
- To undertake strategic physical improvements, beautification and maintenance of public spaces (e.g. buildings, parks, rights-of way), amenities (e.g. public art pieces and gateways, etc) and services in Windsor's Business Improvement Areas and established commercial areas to enhance the shopping experience;
- To encourage the private sector to make investments in rehabilitating the existing building stock for the purposes of supporting retail development and portraying a positive image of a healthy urban environment in Windsor's Business Improvement Areas and established commercial areas;
- To undertake community improvement consistent with all applicable Community Improvement Plans approved by City Council under subsection 28 (4) of the *Planning Act* including, but not limited to, acquiring, holding, clearing, leasing and selling land in Windsor, as well as to direct and stimulate development through grant and/or loan

programs that support the municipality's goals and objectives for Business Improvement Areas and established commercial areas;

- To assist local businesses with applications for funding and incentives offered through the Southwestern Ontario Development Fund for viable projects that meet the fund's eligibility criteria and achieve the objectives of the Southwestern Ontario Development Fund and the Windsor Retail Development Corporation;
- To facilitate the acquisition, development and disposal of sites in Business Improvement Areas for retail and commercial uses;
- To manage, operate and/or dispose of any strategic municipal assets that are transferred to the Windsor Retail Development Corporation by the City of Windsor; and,
- To construct, operate, maintain or own one or more of the following facilities or institutions:
 - public parking facilities;
 - sports, entertainment or cultural venues; and,
 - any other "municipal capital facility" as defined by Ontario Regulation 603/06.

These bullet points are summarized in *Appendix 'A' – The Proposed Objectives of the Retail Development Corporation*. Recommendation II is asking Council to formally adopt the objectives outlined in Appendix 'A' (and above) as the official mandate of the Retail Development Corporation. These objectives will be included in the required Business Case Study should Council adopt Recommendation II of this report.

A Community Based Retail Development Corporation

Windsor's neighbourhoods each have their own character, scale and sense of place, as well as a range of retail opportunities, services and amenities. Often these are influenced by the different historical, demographic, socioeconomic, and geographic factors that make each one of them unique in the first place. However, they all contribute to the local economy in their own way, and to varying degrees.

While the geographic scope of the proposed Corporation will be the entire city, it will likely be necessary to adopt individual strategic plans for the different areas of the city based on the local community's retail base, history, culture, and assets. These strategic plans will have to acknowledge the broader retail structure currently functioning in the city, as well as, the individual differences of each retail area and neighbourhood(s).

In general, these strategic plans will evaluate the retail market and retail development opportunities in Windsor's BIAs and established commercial areas. In consultation with the BIAs and area businesses, the strategic planning process will provide the opportunity for reflection and to focus on the development of a unified vision and specific objectives for each of the retail areas. BIAs or other commercial areas can explore and evaluate many exciting opportunities. A few possibilities that the BIAs and commercial areas could consider, but are not limited to, include:

- Exploring the possibility of offering themed and/or aesthetically stimulating experiences that contribute to the already established unique “sense of place” of the BIA/neighbourhood;
- Development of niche markets, such as providing locally sourced retail and dining experiences;
- Developing a cluster-based strategy that focuses on enhancing the existing complement of goods and services offered in a particular commercial area; and,
- Focusing on the establishment of new retail, entertainment, and commercial ventures that are currently absent from the local retail landscape.

The proposed Retail Development Corporation will provide assistance with the strategic planning process as well as use the strategic vision to assist and support the BIA and/or commercial areas in a manner that is consistent with the stated objectives of the Corporation.

The proposed Corporation will also implement the recommendations for programs and policies that strengthen the retail climate and retail offerings based on the retail trade gap (i.e. retail demand that is not being met by the current businesses). The retail gap approach focuses primarily on what opportunities are being missed within an area and develops strategies to obtain or address them. However, there should be some type of direct benefit to the existing businesses, beyond the notion that "a rising tide lifts all boats" or the idea that improvements in the overall local economy will benefit the entire retail sector.

Although the Retail Development Corporation’s mandate will be to focus on increasing the economic opportunities, stabilizing property values, and increasing assessment levels by strategically investing in and supporting retail areas that are ripe for investment, this is not to say that the focus of investment will be all on attracting new businesses, but rather it will include existing businesses/property owners investing in and improving their properties. The most effective way to provide a direct benefit to existing (and new) businesses is to provide assistance through a Community Improvement Plan.

Undertaking Community Improvement

One of the specific activities the *Municipal Act* enables Municipal Services Corporations to carry out is “Community Improvement” consistent with a Community Improvement Plan (CIP) approved under subsection 28(4) of the *Planning Act*. Accordingly, the proposed Corporation will undertake community improvement consistent with all current and future Community Improvement Plans approved by City Council.

There are two other city-wide CIPs (the Economic Revitalization and the Brownfield Redevelopment CIPs) that have limited applicability to retail development, unless it is locating on a property that is or was environmentally contaminated. While the *Municipal Act* gives the Municipal Services Corporation similar powers (e.g. acquiring and disposing of land, etc) to the “Community Improvement” provisions of the *Planning Act*, a CIP is the only way that financial incentives can be offered. Therefore, if it is Council’s intention to be able to provide financial incentives to achieve the desired results, it will have to direct staff to begin the process of developing a CIP.

This may prove to be a useful tool for the Retail Development Corporation to fulfill its mandate in that it could be the entity designated to promote and administer any future incentive programs developed to assist retail businesses.

Working With the Existing BIA's

It is being recommended that the proposed Corporation be a standalone entity that will coexist with and support the existing BIA's. The primary difference between the two comes down to the scope of permissible activities.

A BIA is an association of property and business owners within a specified district who join together in beautification, promotion, and other marketing activities aimed at stimulating local business in that district. Specifically, Section 204 of the Ontario *Municipal Act* allows municipalities to designate an area as an "improvement area" that has the authority to:

- oversee the improvement, beautification and maintenance of municipally-owned land, buildings and structures in the area beyond that provided at the expense of the municipality generally; and
- promote the area as a business or shopping area.

While BIA's are limited to mostly beautification and marketing, the Background section of this report outlines the specific activities and actions a Municipal Services Corporation can undertake above and beyond the authority granted to BIA's. Additionally, the Retail Development Corporation's specific objectives are also outlined in this report. Given these additional powers, the Retail Development Corporation will work with the BIA's and other groups to fulfill its mandate of strengthening Windsor's retail sector.

Possible Benefits

The potential benefits of the City of Windsor establishing the Windsor Retail Development Corporation are summarized below and include:

- Allowing for the private and not-for-profit sector to share a common vision and direction for Windsor's Business Improvement Areas and established commercial areas. The Windsor Retail Development Corporation will rely on private and government funding, and use community-based strategies to invest in and revitalize areas of Windsor. It allows for a combination of private and public investment to achieve the desired objectives;
- The establishment of a corporation will create significant expertise in the area of retail development and strategic planning through the involvement and cooperation of experienced members of the community through the board, and senior management from the Corporation and city staff providing services to the Corporation. Additionally, staff and/or contract consultants with highly specialized expertise can be hired to suit development-specific needs and demands (e.g. real estate economics, development law, etc.);
- The Municipal Services Corporation model provides a healthy balance between considerable autonomy in problem-solving and expeditious decision-making that results from having a separate legal entity with a board and management to carry out municipal

objectives; and accountability, corporate responsibility, and reasonable controls through the role of the shareholder;

- City Council, as shareholder, will also be responsible for appointing the Board of the Corporation, providing additional overall influence on the Corporation;
- The City, as sole shareholder of the Corporation, may use a unanimous shareholder's declaration to affect the overriding policy to be followed by the Board of Directors of the Corporation and, to some degree, restrict the board's scope of authority;
- Responsibility can be focused solely on the business of pursuing and negotiating (often complex) development deals, whereby sensitive development negotiations can be worked out in a confidential environment until they are ready to be presented for public scrutiny and City Council approval; and,
- The municipality is able to impose special levies on properties pursuant to section 326 of the *Municipal Act* for the additional benefits (i.e. above and beyond what is generally received) provided by the Municipal Services Corporation.

The potential risks associated with the establishment of the proposed corporation are summarized in the "Risk Assessment" section of this report.

Governance of the Retail Development Corporation

The Municipal Services Corporation model provides a healthy balance between considerable autonomy in problem-solving and expeditious decision-making that results from having a separate legal entity with a board and management to carry out municipal objectives. The Municipal Services Corporation would be classified as a share capital corporation under the *Business Corporations Act* (Ontario) and is created by the filing of articles of incorporation with the Province of Ontario.

A governance model describes the roles that participants can assume and the process for decision making within the Corporation. In addition, it describes the ground rules for participation and the processes for communicating and sharing within the Corporation, and with Council and the broader community.

The proposed Corporation would have the capacity rights, powers and privileges of a natural person. However, the City, as sole shareholder of the Corporation, may use a unanimous shareholder's declaration to affect the overriding policy direction of the board of directors and somewhat define the scope of the board's authority. City Council, as shareholder, will also be responsible for appointing the Board of the Corporation, which would further provide guidance to the Corporation.

The establishment of a corporation will create significant expertise in the area of retail development and strategic planning through the involvement and cooperation of experienced members of the community through the board, and any senior management for the Corporation and city staff providing services to the Corporation. Additionally, individuals with highly specialized expertise can be hired or contracted for to suit development-specific needs and demands (e.g. land use planning, real estate economics, development law, etc.).

The by-laws of the Windsor Retail Development Corporation will set out how it is to be governed. For example, the first by-law prepared for the Windsor Retail Development Corporation should contain the provisions applicable to a business corporation as determined by the City of Windsor, which should include:

- the number of directors of the corporation;
- the term of office and removal of directors;
- the manner in which officers of the corporation are appointed;
- when meetings of shareholders take place and voting at shareholders' meetings; and
- borrowing powers and banking arrangements of the corporation.

The by-laws of the proposed Corporation will also provide for, among other things, the appointment of Directors and Officers. The City as the sole shareholder of the proposed Corporation will have the exclusive right to elect and remove the Directors, who will be responsible for the management of the business and affairs of the proposed Corporation. Pursuant to the *Municipal Act*, 2001, and its regulations, the Board of Directors will be required to adopt and maintain policies with respect to the acquisition, sale and other disposition of land; hiring of employees; and procurement of goods and services.

In exercising its exclusive right to elect and remove Directors, the City will establish a governance framework based on the following Corporate Governance principles:

- **Accountability:** First and foremost, the proposed Corporation should provide clear accountability to the City (as the sole shareholder) and its constituents. This means respecting the rights of shareholders and assisting them in their exercise of those rights, including effectively communicating relevant information that is understandable and accessible;
- **Disclosure and Transparency:** Similarly, the proposed Corporation should clarify and publicly disclose the roles and responsibilities of the Board and management, as well as implement procedures to independently verify and safeguard the integrity of the Corporation's financial reporting. Disclosure of material matters concerning the Corporation should be timely and balanced to ensure that Council has access to clear, factual information;
- **Role and Responsibilities of the Board:** The Board of the proposed Corporation should possess a range of specialized skills and depth of knowledge to effectively achieve the stated objectives of the Corporation. Additionally, the board should be of sufficient size and have the right level of commitment to fulfill its responsibilities and duties;
- **Clarity of Purpose:** The proposed Corporation must facilitate the implementation of clear and focused objectives that do not duplicate the work of others. In doing so, the proposed Corporation should recognize that they also have some measure of responsibility to all legitimate stakeholders in Windsor; and,
- **Integrity and Ethical Behaviour:** The Board of the proposed Corporation has a responsibility to make ethical and responsible decisions. To this end, the Corporation should develop a formal code of conduct for their Directors and executives that is consistent with the City's *Code of Ethics and Conflict of Interest* policies, and that promote ethical and responsible decision-making.

Staffing/Operating the Proposed Corporation

It will be the responsibility of the Board to approve staffing levels or contract services for the proposed Corporation based on available funding.

The staffing of the proposed Corporation provides the opportunity to enhance the local knowledge and expertise in the area of retail development and strategic planning. For example, staff or contracted service providers with specialized expertise can be hired to suit development-specific needs and demands (e.g. real estate economics, development law, etc.) of fulfilling the Corporation's stated objectives. Once an organization is up and running and has established funding sources beyond the municipal government sector, a staff complement of specialized positions (e.g. Planner/Development Coordinator and/or Marketing Coordinator) may be phased in over a period of 1 to 3 years depending on the needs and direction of the organization. The organization would need a Director/General Manager or would require support from the city.

As an interim measure, to avoid the hiring of permanent staff, Council may want to procure the services of a qualified consultant(s) from time to time on a project basis to undertake the various aspects of the initial development of the Corporation. In this regard, the merits of creating a more permanent structure could be evaluated prior to implementation.

It is also anticipated that City staff from different departments will act as resource to the Corporation providing a variety of support services.

Proposed Funding Model

The detailed funding model does not have to be finalized at this point in the process; however, Council should begin giving some thought to how it would like to fund this endeavour. The creation and management of an annual operation budget will be the responsibility of the Corporation's Board of Directors, and be subject to City Council's approval. The budget will have to cover the contractors and/or staffing and programming (e.g. marketing, special projects, business development, etc.) costs on an annual basis. It is estimated that the costs in the early start-up years of the Corporation can be as low as \$250,000 (1 General Manager/Director plus some programming costs) ranging to a high of \$800,000 (including programming) if a full staff complement is decided upon once the corporation is fully staffed and operational.

The City is permitted to impose a special levy on properties pursuant to Section 326 of the *Municipal Act* for the additional benefit received from the proposed corporation. Although it is a readily available source of revenue, having a city-wide special local municipality levy on all retail businesses (and possibly other property class categories that would benefit from the enhanced service) is not being recommended for the reasons outlined below:

- Businesses located in the existing BIA boundaries would have the additional levy added on top of their existing BIA levy. This may present a financial hardship or perception of a further burden to many of the businesses that this initiative is trying to assist;
- Using a geographic-based development approach may be perceived as a "winner takes all" situation, if it is perceived that all are contributing but only a few are benefiting. Given the expanded geographic scope (i.e. city wide), this direct benefit may be harder to justify and quantify in certain areas of the city that may not be getting their perceived proportionate share of the investments (including private sector investments or new businesses); and,

- The *Municipal Act* stipulates that a special local municipality levy be to cover the costs of the additional benefit (beyond what the City generally provides) derived from the corporation. The governing legislation for BIAs and Municipal Services allows for some similar services. Therefore, there is the risk of collecting more than one levy for similar services.

The discussion below outlines some of the possibilities and opportunities for funding the proposed corporation. Council's direction on this matter (per Recommendation IV) will be incorporated into the required Business Case Study.

The City of Windsor may also provide funds to the Corporation by way of an annual operating grant. These funds would be subject to annual approval from City Council and would be included in the City's annual operating budget. Project specific capital costs can also be budgeted for through the City's five-year capital budget.

The City may also be expected to support the Corporation having the authority to raise funds from the following sources:

- Corporate Sponsorship;
- Donations and private sector partnerships;
- Project-based or general marketing partnerships with other organizations (i.e. developers, other levels of government, community organizations, etc.) relating to matters within the mandated area; and,
- Project based Provincial and Federal government grants and loans.

Also, subject to Council approval, the Corporation is able to finance and carry debt for projects approved by the Board of Directors. Guarantees from the City will likely be required by certain financial institutions.

The Corporation could also raise capital through the leasing or selling of assets that have been transferred to the Corporation. However, the *Municipal Act* requires that if a municipality intends to transfer any assets to a corporation that it will have to adopt and maintain policies on asset transfers.

Municipal Assistance Offered to the Corporation

Pursuant to Section 15 of O. Reg. 599/06 the City is also able to provide assistance to the proposed corporation in the form of:

- giving, lending or selling any property of a municipality, including money;
- guaranteeing borrowing; and
- providing the services of employees of or persons under contract with a municipality.

The above noted assistance can be provided at less than fair market value. However, if the assistance is provided at less than fair market value, O. Reg. 599/06 requires the City Treasurer to prepare a statement of the value of any grant to the Corporation or an estimate of the fair market value of any other assistance provided.

4. RISK ANALYSIS:

The Windsor Retail Development Corporation model is tantamount to the delegation of authority of Council to the Corporation in the areas described as the "purpose" of the Corporation,

resulting in a reduction in the scope of oversight and approvals by Council. This can be mitigated in part through the appropriate use of a unanimous shareholder's declaration, as well as the by-laws of the Corporation; however, Council must consider in advance how much decision-making control it is willing to give the Corporation.

Additionally, the City may be required to provide the Corporation with seed capital to commence its operations, fund the ongoing operations, provide the other forms of assistance referenced in this report, as well as transfer any assets that it may require to deliver on its objectives. The proposed financial projections present a hypothetical model upon which the Corporation could operate. As this is new ground for the City, actual costs may vary significantly especially if decisions are made with regards to the transfer and maintenance of assets. Costs associated with these types of activities typically require ongoing operating and capital funding streams.

Windsor currently has nine Business Improvement Areas that have a narrowly focused mandate that is enabled by the *Municipal Act*. The mandate and objectives of the BIAs have many similarities with the proposed Corporation which presents the risk of having duplication of efforts and conflicting priorities, if the efforts of both entities are not coordinated. Additionally, some BIAs may be perceived as "winners", while others "losers" if it is perceived that they are not receiving their fair share of resources.

The *Municipal Act* stipulates that a special local municipality levy be created to cover the costs of the additional benefit (beyond what the City generally provides) derived from the corporation. The governing legislation for BIAs and Municipal Services allows for some similar services. Therefore, there is the risk of collecting more than one levy for services that are perceived as being the same.

The City of Windsor, along with its regional counterparts, is a funding partner of the Windsor Essex Economic Development Corporation (WEEDC). WEEDC is the lead economic development agency representing the Windsor-Essex region. It provides regional economic development services including business attraction, retention and expansion, small business and entrepreneurial development, and community development activities. The proposed Corporation's mandate could result in it delivering a number of similar services as WEEDC-, which could also present the risk of having a duplication of efforts and conflicting priorities if the Corporation's and WEEDC's roles and responsibilities are not clearly understood and differentiated.

There could also be the perception that the Corporation is too focused on new retail opportunities and not doing enough for the existing local businesses not part of the retail sector.

5. FINANCIAL MATTERS:

There are negligible financial impacts, beyond the staff time required to prepare the Business Case Study, directly associated with the recommendations made in this report. However, there are significant future financial considerations that are outlined by the funding model discussion contained within this report, including the ongoing operational funding for the proposed Corporation. There would also be incorporation and legal costs incurred which, if the project does not move forward would be an unrecoverable expense.

As an alternative, Council may want to consider a special levy against a specific property class as allowed under the *Municipal Act*. Council may also wish to provide specific direction with regards to funding at a later date once all budget information has been presented.

There is currently \$198,997 available as part of an ongoing BIA capital project (Dept ID 7069002) set aside as part of the 2013 Budget approval process. This funding is currently unallocated and available to provide the necessary start-up funding of the corporation. However there has not been an ongoing source of revenue to continue with operational expenditures. It is even more important then that Council consider the option of utilizing an external consultant from time to time on a pilot basis in order that the merits of a long-term strategy for the corporate structure can be evaluated and implemented in an expedient manner. Direction regarding a funding strategy may be provided by City Council at this time.

6. CONSULTATIONS:

The *Municipal Act* requires that the public be consulted about the proposal to establish the Corporation prior to adopting the Business Case Study. Upon the acceptance of the recommendations included in this report, it is Administration's intent to complete the required Business Case Study for an upcoming Council meeting where it will be tabled and available for public review until a subsequent Council meeting when Council will consider the formal adoption of the Business Case Study. All interested parties will be able to register as delegations for this meeting to make their views known to Council.

7. CONCLUSION:

It is recommended that a city-wide Retail Development Corporation be established to work with Windsor's Business Improvement Associations and economic development organizations to create complete and desirable neighbourhoods. This includes the development of strategic plans, sharing of research, facilitating development, supporting existing commercial areas, beautification of public spaces, fostering a business-friendly environment, managing strategic municipal assets, and encouraging private sector investment.

Recommendations set out in the report lay the groundwork for the creation of a business case study, which is required by legislation in the creation of a Municipal Services Corporation.



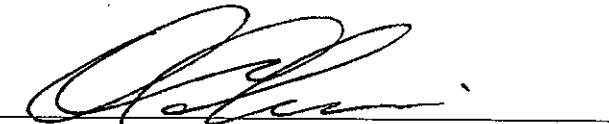
Neil Robertson
Manager of Urban Design



Thom Hunt
City Planner / Executive Director



George Wilkki
City Solicitor and Corporate Leader
Economic Development and Public Safety



Onorio Colucci
Chief Financial Officer/City Treasurer and
Corporate Leader Finance and Technology



Helga Reidel
Chief Administrative Officer

APPENDICES:

APPENDIX 'A' – The Proposed Objectives of the Retail Development Corporation

APPENDIX 'B' – The Proposed Governance Framework of the Retail Development Corporation

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Name	Address	Email Address	Telephone	FAX
Downtown Windsor Business Improvement Association c/o Debi Croucher (Acting Executive Director)	474 Ouellette Avenue Windsor, ON N9A 1B2	dwbia@downtownwindsor.ca	(519) 252-5723	(519) 252-6817
Ford City Business Improvement Association c/o Kerry Ippolito (Executive Director)	1029 Hickory Road Windsor, ON N8Y 3S2	kerryippolito@gmail.com	(519) 919-8827	(519) 253-6163
Walkerville BIA c/o Joan Charette (Coordinator)	1519 Wyandotte Street East Windsor, ON N9A 3L3	info@walkervilledistrict.com	(226) 346-9242	
Olde Riverside Town Centre c/o Bridget Scheuerman (Executive Director)	2334 Cypress Road Windsor, ON N8T 0A7	bscheuerman@cogeco.ca	(519) 962-6550	
Olde Sandwich Towne Business Association c/o Mary-Ann Cuderman (Chair)	3118 Sandwich Street Windsor, ON N9C 1A6	macuderman@cogeco.ca	(519) 258-0361	(519) 258-5209
Ottawa Street Business Improvement Area c/o Arnie Blaine (President)	1647 Ottawa Street Windsor, ON N8Y 1R2	karens4kids@hotmail.com	(519) 252-9521	(519) 973-3922
Pillette Village BIA c/o Greg Plante	4769 Wyandotte Street East Windsor, ON N8Y 1H8	greg@imaginativeimaging.ca	(519) 962-1500	
Via Italia / Erie Street BIA c/o Tessa Mancini Ruggirello	884 Erie Street East Windsor, ON N9A 3Y6	tmancini@gmail.com	(519) 999-1889	
Wyandotte Towne Centre BIA c/o Caroline Postma (Executive Director)	1380 Wyandotte Street East Windsor, ON N8Y 3E5	caroline.postma@hotmail.com	(519) 253-8826	(519) 971-0623

APPENDIX 'A' – The Proposed Objectives of the Retail Development Corporation

It is proposed that the City of Windsor incorporate a single corporation for the following economic development purposes:

- To develop retail development strategic plans that advance the municipality's goals and objectives for Business Improvement Areas and other commercial areas of the city;
- To promote Windsor's retail areas, in cooperation with the existing Business Improvement Associations, as desirable places to shop, eat and play.
- To support and facilitate the healthy and balanced growth of the local retail sector by identifying the key economic opportunities, economic drivers and embrace emerging opportunities to attract investment based on the community's strengths and competitive advantages that will result in the establishment of new retail, entertainment, and commercial ventures, as well as the expansion of existing businesses;
- To conduct demographic and economic research and analysis using available data to compile profiles of the local and regional economies, including the development of the framework for identifying products and services that are underrepresented in the market (for which there is a demand) and define the appropriate target populations and areas for these underrepresented businesses.
- To foster and cultivate a business-friendly environment that is supportive of the establishment and/or growth of retail businesses in Windsor's Business Improvement Areas and established commercial areas;
- To capitalize on a local neighbourhood's history, culture, and existing assets to support the creation of retail developments and business areas that are attractive to people because they contribute to the area's authentic and unique identity or 'sense of place';
- To support the establishment and on-going development of retail clusters and encourage businesses to take advantage of cluster-related synergies;
- To undertake strategic physical improvements, beautification and maintenance of public spaces (e.g. buildings, parks, rights-of way), amenities (e.g. public art pieces and gateways, etc) and services in Windsor's Business Improvement Areas and established commercial areas to enhance the shopping experience;
- To encourage the private sector to make investments in rehabilitating the existing building stock for the purposes of supporting retail development and portraying a positive image of a healthy urban environment in Windsor's Business Improvement Areas and established commercial areas;
- To undertake community improvement consistent with all applicable Community Improvement Plans approved by City Council under subsection 28 (4) of the *Planning Act* including, but not limited to, acquiring, holding, clearing, leasing and selling land in

Windsor, as well as to direct and stimulate development through grant and/or loan programs that support the municipality's goals and objectives for Business Improvement Areas and established commercial areas;

- To assist local businesses with applications for funding and incentives offered through the Southwestern Ontario Development Fund for viable projects that meet the fund's eligibility criteria and achieve the objectives of the Southwestern Ontario Development Fund and the Windsor Retail Development Corporation;
- To facilitate the acquisition, development and disposal of sites in Business Improvement Areas for retail and commercial uses;
- To manage, operate and/or dispose of any strategic municipal assets that are transferred to the Windsor Retail Development Corporation by the City of Windsor; and,
- To construct, operate, maintain or own one or more of the following facilities or institutions:
 - public parking facilities;
 - sports, entertainment or cultural venues; and,
 - any other "municipal capital facility" as defined by Ontario Regulation 603/06.

APPENDIX 'B' – The Proposed Governance Framework of the Retail Development Corporation

The Municipal Services Corporation will be classified as a share capital corporation under the *Business Corporations Act* (Ontario). The Corporation of the City of Windsor will be the sole shareholder of the proposed Corporation.

The proposed Corporation would have the capacity rights, powers and privileges of a natural person.

The City, as sole shareholder of the Corporation, will use a unanimous shareholder's declaration to affect the overriding policy direction of the board of directors and define the scope of the board's authority.

City Council, as sole shareholder, will also be responsible for appointing the Board of the Corporation, which would further influence the Corporation.

The by-laws of The Windsor Retail Development Corporation will set out how it is to be governed including the provisions applicable to a business corporation as determined by the City of Windsor, which will include:

- the number of directors of the corporation;
- the term of office and removal of directors;
- the manner in which officers of the corporation are appointed;
- when meetings of shareholders take place and voting at shareholders' meetings; and
- borrowing powers and banking arrangements of the corporation.

The by-laws of the proposed Corporation will also provide for, among other things, the appointment of Directors and Officers.

The City as the sole shareholder of the proposed Corporation will have the exclusive right to elect and remove the Directors, who will be responsible for the management of the business and affairs of the proposed Corporation.

Pursuant to the *Municipal Act*, 2001, and its regulations, the Board of Directors will be required to adopt and maintain policies with respect to the sale and other disposition of land; hiring of employees; and procurement of goods and services.

In exercising its exclusive right to elect and remove Directors, the City will establish a governance framework based on the following Corporate Governance principles:

- **Accountability:** First and foremost, the proposed Corporation should provide clear accountability to the City (as the sole shareholder). This means respecting the rights of shareholders and assisting them in their exercise of those rights, including effectively communicating relevant information that is understandable and accessible;
- **Disclosure and transparency:** Similarly, the proposed Corporation should clarify and publicly disclose the roles and responsibilities of the board and management, as well as implement procedures to independently verify and safeguard the integrity of the Corporation's financial reporting. Disclosure of material matters concerning the

organization should be timely and balanced to ensure that Council has access to clear, factual information;

- **Role and responsibilities of the board:** The board of the proposed Corporation should possess a range of specialized skills and depth of knowledge to effectively achieve the stated objectives of the Corporation. Additionally, the board should be of sufficient size and have the right level of commitment to fulfill its responsibilities and duties;
- **Clarity of purpose:** The proposed Corporation must facilitate the implementation of clear and focused objectives that do not duplicate the work of others. In doing so, the proposed Corporation should recognize that they also have some measure of responsibility to all legitimate stakeholders in Windsor; and,
- **Integrity and ethical behaviour:** The board of the proposed Corporation has a responsibility to make ethical and responsible decisions. To this end, the Corporation should develop a formal code of conduct for their directors and executives that is consistent with the City's *Code of Ethics and Conflict of Interest* policies, and that promote ethical and responsible decision-making.