

ABCD

City of Windsor

**Post Construction Review of
WFCU Centre Project**

KPMG LLP

July 27, 2011

This report contains 68 pages

Private and confidential

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1 Introduction

KPMG LLP ("KPMG") was retained by the Audit Committee of the City of Windsor ("the Committee") on the authority of City Council to provide assistance to the City of Windsor's Auditor General's Office ("AGO") in completing its review of the WFCU Centre construction project (the "Project").

The WFCU Centre construction project began with approval in 2006 and a ground breaking ceremony on January 21, 2007. There was an open house tour on October 4, 2007 and the Project was completed in or around December 2008. It is a multi-purpose arena and recreational facility located at 8787 McHugh Street in Windsor, Ontario.

In January 2010 City Council ("Council") asked the AGO to undertake an audit of the WFCU Centre during 2010. As at August 2010 the AGO reported that its fieldwork was fifty percent complete. In November 2010, the AGO advised Council the WFCU Centre audit report would be available for review by the end of March 2011 and would be before the Committee in April 2011. However, the audit was delayed and in order to expedite the process, in May 2011 KPMG was retained to assist with the completion of the audit.

1.1 Mandate

We were requested to perform and report on the following:

- Review the working papers prepared to date by the AGO
- To the extent necessary, test the conclusions formed by the AGO. This testing may include interviews of AGO staff, City staff and re-performance of certain procedures
- Further audit analysis to complete the audit plan previously presented to the Audit Committee
- Prepare a written report with our findings, conclusions and recommendations

The scope of our review was to include the processes and activities leading up to and the construction of the WFCU Centre. We were not requested to review the operations of the WFCU Centre.

2 Summary of Key Findings

2.1 Project Charter

From a high level review the project team appears to have fulfilled their responsibilities. The goals, benefits and critical success factors of the Project as well as the Project scope changes outlined in the Project Charter were substantially met.

2.2 Sole Source

The WFCU base construction Project was sole sourced to PCR Contractors Inc. Based on our review, it appears the decision to sole source to PCR was reasonable based on a consideration of the City's By-Laws and other factors.

2.3 Budget / Actual Project Expense

Based on the scope of review and subject to the restrictions and assumptions outlined in this report, we summarize the Council approved budget in comparison to actual Project expenses and recoveries as follows:

Table 1				
WFCU Centre Project				
Summary of Budgets, Actual Costs/Recoveries and Projections				
Description		Final Budget 2/19/2007	Actual Costs/ (Recoveries) to 3/31/2011	Projected Total Costs/ (Recoveries)
Total Project Costs	\$	69,588,080	71,976,168	72,384,159
Total Recoveries		(4,666,693)	(5,637,605)	(11,254,734)
Net Project Costs	\$	64,921,387	66,338,563	61,129,425

Details are outlined on Schedule 6 (Tab B)

2.3.1 Variance

As at March 31, 2011, total project costs were higher than budgeted by approximately \$2.4 million and net project costs were approximately \$1.4 million over budget. This was mainly as a result of approved spending on unbudgeted items, partially funded by a grant from the Province of Ontario. If all recoveries netted against the project are received, the reported net project cost to Windsor taxpayers is expected to be approximately \$61.1 million which is approximately \$3.8 million under budget. However, we have concerns about project costs being offset with certain recoveries and it appears that some project costs have been excluded.

If we adjust for those costs that appear to have been excluded and those that have been offset, the projected net project costs are estimated to be \$62.7 million, which is approximately \$2.23 million below the Final Budget. Achieving these net project costs is dependent upon the actual receipt of certain recoveries. We note that this budget underage is partially due to \$2 million of a \$4 million provincial grant not being spent, but allocated to reduce the net cost to the City.

2.3.2 Excluded Costs

We noted the following items were in effect excluded from the reported net project cost:

- There was an unbudgeted expense of \$635,000 for fit-up of suites which was offset by suite rental revenue from the WFCU Centre over two years (refer to Schedule 6 and related notes for further information). Including revenues which are operational in nature to offset Project expenses made the City's net project costs appear lower than actual. We note the decision to offset was for the purpose of funding the extra costs.
- Elevation costs of \$621,000 were incurred (to raise the WFCU Centre by one meter) and offset by a recovery of the same amount. The recovery related to a transfer from funds set aside by the City for the extension of McHugh Street. This represented payment for clay and other fill excavated from the Project site. Although these amounts were included in the budget, it understates the total Project cost. We are uncertain whether the amount paid represents fair value.
- Approximately \$60,000 related to landscaping was excluded which has resulted in an understatement in the costs of the Project.
- Expenses related to the upkeep of properties held for disposition (of which the sale proceeds are offset against project costs) of approximately \$195,000 were excluded from project costs.
- Demolition and other costs of disposition related to the above noted properties have been estimated by Administration at \$240,000. These costs, \$79,000 of which has already been incurred, have not been included in the actual or projected project costs. We understand when the properties are sold, these costs will be offset against the proceeds and included in net project costs.

2.3.3 Presentation of Budget

Some items included or excluded from the Project budget have the tendency to reduce the clarity of the reporting of Project costs, including the following:

- Recoveries of \$2.154 million were included in the Final Budget related to sale of identified properties made redundant by the new facility. The receipt of these recoveries is dependent on the actual sale and price of the properties. Based on our understanding from Administration, the sale of City property could take a number of years (refer to section 16 for further information).
- Potential recoveries of \$922,013 were included in the Final Budget (increased by an additional \$430,000 in the projected total recoveries) relating to building permit and development charge revenue which would not accrue to the Project. This understates the total cost of the Project as well as the funding required.
- Land costs of \$1.375 million were included in the final cost of the Project which represents a cash payment made as part of a land transfer deal (refer to section 14 for further information). To acquire the property, the City also transferred a Riverside property to the seller. The \$2 million value attributed to this property was not included in the Project Cost.

2.3.4 Other Credits to the Project

Reported actual net project costs were lower than budgeted mainly as a result of the following:

- Actual financing cost (interest) was lower than budgeted by \$3.5 million. Although the initial plan was to borrow funds from a financial institution, the City internally financed the majority of the Project at its investment rate, which is a lower rate than historical projects. This reduction in financing costs had a significant impact on the actual Net Project Costs
- A Provincial Grant of \$4 million was received on April 3, 2007 which was applied to this project. This recovery had not been included as part of the Final Budget as it was unknown at the time whether any funding would be received

2.4 Land Transfer

The land acquired for the project site was exchanged for a City property on Riverside Drive, a cash outlay and a donation receipt. The values attributed to the properties in the exchange appeared to be based on Administration's analysis and knowledge of property values rather than independent property appraisals.

The Land transfer, particularly the disposal of the City's Riverside site at a value of \$2 million did not meet the procedural requirements of Amended By-law 12209 for the following reasons:

- It was not declared surplus
- No current market appraisal was prepared (two were required). However, there was an independent appraisal from 2002.
- There was no official notice to the public of the proposed sale prior to the sale. We note that although there was no official notice, the land transaction was publicized in the Windsor Star.

An appraisal on the acquired property was performed after the transaction on behalf of the seller for purposes of supporting the donation receipt. Based on our review of the information available, the values attributed to the exchanged properties appear reasonable.

2.5 Parking

The original plan for parking lot spaces was 2,500 for the WFCU Centre. According to the final site plan of the WFCU Centre there were 1,931 parking spaces to be built (including reserved and handicapped spaces). Although actual spaces were less than originally planned, it appears actual spaces built met the zoning bylaw for the facility. According to Administration, one of the reasons for the decrease in spaces available was an initiative to encourage the use of transit.

2.6 City Labour Costs

We understand certain City employees performed work on behalf of the WFCU Project and their wages were not attributed to the cost of the Project. Based on the City's current applicable policy, historical accounting for labour and the fact that City labour costs were not included in the budget, it appears reasonable that these costs were excluded. Refer to subsection 19.3 for further discussion on this matter.

2.7 McHugh Street Extension

In the construction of the WFCU Centre, there was a requirement to expand McHugh Street for access purposes. This had a cost of approximately \$8.7 million. The cost of this extension was excluded from the Project since it was already approved in the City plans in 2004, was included in the Infrastructure Services Plan guideline budget in 2005 and was simply done in advance by approximately two to three years. Although there may have been some opportunity cost in expediting the construction of McHugh Street, it appears reasonable that it was excluded from WFCU Project costs.

2.8 Hotline Calls

Throughout and subsequent to the construction of the WFCU Centre, the AGO received hotline calls with respect to concerns about the accounting for the WFCU Project Costs or City policies. We have received information as contained in the "hotline log" maintained by the AGO and have considered these calls in our review. In addition, we have been advised by the lawyer for an AGO staff member on leave that there were two undocumented hotline calls. We have requested information on these calls from the staff member's lawyer, if any, but have not received any further information at the date of this report.

2.9 Conclusion

Overall it appears the project team fulfilled its responsibilities and the goals of the WFCU Project were substantially met. The processes put in place by Administration and Council appeared to support the decision to sole source PCR and for site selection. However, the land transfer of the City's Riverside site did not meet the procedural requirements of the Amended By-law 12209. Parking spaces at the WFCU Centre, although lower than initially planned met the applicable zoning bylaw.

Administration's projection of net City project costs is that costs will be below budget by approximately \$3.8 million. However, if we adjust for those costs that appear to have been excluded and those that have been offset, the projected net project costs are estimated to be approximately \$2.2 million below the Final Budget. Achieving these net project costs is dependent upon the actual receipt of certain recoveries. We note that this budget underage is partially due to \$2 million of a \$4 million provincial grant not being spent, but allocated to reduce the net cost to the City.

The decision to exclude McHugh Street construction costs and City labour from the WFCU Project appeared reasonable.

3 Restrictions

We understand that our report is intended to assist the Audit Committee of the City of Windsor in understanding the process and results of the WFCU Centre construction project. We understand it will be provided to City Council in respect of the indicated purpose only and we consent to that use. It is not to be used in whole or in part by anyone other than the City of Windsor for any purpose.

We will not assume any responsibility or liability for any costs, damages, losses, liabilities, or expenses as a result of circulation, publication, reproduction, use of or reliance upon our report. Comments in our report are not intended, nor should they be interpreted to be, legal advice or opinion.

We have relied upon the completeness, accuracy and fair presentation of all the information obtained (the "Information"). Our calculations and comments are conditional upon the completeness, accuracy and fair presentation of such Information. Subject to the exercise of professional judgment and procedures discussed in this report, KPMG has not independently verified the accuracy or fair presentation of any of the Information. Should additional information be provided to us after the date of this report, we reserve the right, but will be under no obligation, to review this information and adjust our report and calculations.

4 Scope of Review

4.1 Information Reviewed

Our comments in this report are based on our review of the following information:

- PCR proposals, contracts and change orders #1 to #125
- WFCU Centre Project Charter, attached as Appendix A to the LiveLink Report to the WFCU Centre Steering Committee, dated May 21, 2008
- Livelink Report #11375 re: Arena and Recreation Complex Analysis Report, dated September 19, 2006, presented to Council October 4, 2006
- Analysis of City of Windsor Arena and Recreation Complex Report dated September 19, 2006, prepared by PricewaterhouseCoopers LLP, dated September 28, 2006
- Minutes of the Steering Committee and Executive Committee of the Project from November 2006 to September 2009
- Project Ice Track Proposal dated June 5, 2006 and subsequent letters of revision and updates
- Greater Windsor Recreation & Sports Centre Cost review – Executive Report, dated November 2, 2006, prepared by curran mccabe ravindran ross ("cm2r"), chartered quantity surveyors/construction cost consultants/project managers
- Selected invoices and other supporting documents related to expenses of the WFCU project from 2006 to 2011
- Internal Project Budget/Cost Tracking Analysis Excel Workbook as at March 31, 2011, referred to as "7064900-GWRSC Project Summary_New Mar 31,2011", prepared by Andrew Daher, Financial Planning Administrator – Engineering & Corporate Projects (WFCU Project Accountant)
- General Ledger detail from the City's Peoplesoft system as required to select a random sampling of invoices between 2006 and 2011 which related or may have related to the WFCU Project
- Proposed Multiplex Recreation Facility Preliminary Economic Impact Letter to the City of Windsor from Malone Given Parsons Ltd., dated May 31, 2006
- Summary Appraisal Report of the Vacant Lands, South Side Riverside Drive West, Windsor, Ontario, prepared by Ray Bower Real Estate Appraisal Services Inc., as at May 13, 2002
- Facility Licence Agreement between the Windsor Spitfires Inc. ("Spitfires") and the Corporation of the City of Windsor, dated October 23, 2006.
- Agreement of Purchase and Sale between the Corporation of the City of Windsor (Buyer) and Farhi Holdings Corporation (Seller) dated October 24, 2006 (proposal), for the purchase and sale of part of 1600 Lauzon Road, Windsor, County of Essex.
- Agreement of Purchase and Sale between the Corporation of the City of Windsor (Buyer) and Farhi Holdings Corporation (Seller) dated November 3, 2006 (and Amendments thereto), for the purchase and sale of part 1600 Lauzon Road, Windsor, County of Essex

- Excerpts from Dillon Consulting Report (with respect to disposition of certain City properties), dated May 11, 2006
- Transfer/Deed of Land, Vacant Land at Riverside Drive West & Bruce Avenue, Windsor, Ontario, ("the Riverside Property") Province of Ontario, May 5, 2011
- Retrospective full Narrative Appraisal of 8787 McHugh Street, Windsor, Ontario as at August 31, 2007, prepared for Farhi Holdings Corporation, prepared by Metrix Realty Group, London, Ontario
- Municipal Property Assessment Corporation (MPAC) values for property at Riverside Drive, Windsor for 2002 to 2010
- Agreement between The Corporation of the City of Windsor and L.P. Meyer & Associates (Windsor) Limited with respect to Peer Review/City Advocate Consulting for the EERC, dated March 14, 2007
- Log of hotline calls as related to the WFCU as compiled by the AGO
- East End Arena Traffic Impact Study, prepared by Administration, dated April 18, 2007
- City of Windsor By-Law 12209, effective May 15, 1995 and Amendments per Schedule A effective October 13, 2006
- City of Windsor By-Law 247, 2007, effective December 17, 2007
- City of Windsor - Purchasing By-Law No. 400-2004
- Audit working papers and notes related to the AGO's internal audit of the WFCU Centre

In addition, we have received correspondence from or discussed this matter with the following individuals:

- Florence Lee-St. Amour, Auditor, AGO
- Todd Langlois, Auditor General, AGO
- Onorio Colucci, Chief Financial Officer & City Treasurer (Executive Committee ("EC") Member, WFCU Project)
- Andrew Daher, Manager of Operating Budget Control and Financial Administration (previously Financial Planning Administrator – Engineering & Corporate Projects and WFCU Project Accountant)
- Don Sadler, Executive Director-Parks & Facility Operations (WFCU Project Manager)
- Helga Reidel, CAO, City of Windsor (Chair of the EC, WFCU Project)
- Michael Palanacki, Executive Director-Operations (EC Member, WFCU Project)
- Michael Stamp, Property Supervisor
- Mario Sonogo, City Engineer (previously Chief Building Official)
- Doug Sweet, Manager, Arenas and WFCU Centre
- Alan Halberstadt, Councillor, City of Windsor
- His Worship Eddie Francis, Mayor, City of Windsor

4.2 Limitations

In providing our comments, calculations and analysis, we have necessarily relied on information provided by, and representations made by Administration of the City of Windsor. We accept no responsibility or liability for any losses suffered by any parties as a result of our reliance on this information.

We were not requested to review the operations of the WFCU Centre. Therefore we have not analyzed revenues and expenses or the operating results of the WFCU Centre since its opening. We have not reviewed operating contracts in place with the exception of the Naming Rights that were involved with the construction of the Project. We understand an audit of the operations will be done as a separate project by the AGO.

Our comments in this report are subject to any modification or alteration that may be caused by future information received from any other sources in the future.

5 Terms of Reference

Throughout our report we use terms defined as follows:

Administration – Represents a collective of City Staff. Refers to events, actions and/or decisions made at the level of, with knowledge of, but by a combination of involvement of City staff in junior positions, management, senior management and/or the then-CAO. The key factor being that senior management and/or the then-CAO were involved in the process.

Administration Reports – are reports prepared by City of Windsor Administration to the Mayor and Members of City Council presented at City Council meetings. The reports address Administration's analysis and recommendations on the subject matter at hand. For reference purposes these reports normally refer to a LiveLink Report # unless it had been prepared for purposes of an in-camera portion of a Council Meeting.

Council or City Council – The group of elected officials of the City of Windsor with the following responsibilities (as defined under the Municipal Act, 2001 and other related laws):

- a) to represent the public and to consider the well-being and interests of the municipality
- b) to develop and evaluate the policies and programs of the municipality
- c) to determine which services the municipality provides
- d) to ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;
 - d.1) to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;
- e) to maintain the financial integrity of the municipality

City – refers to the City of Windsor/ The Corporation of the City of Windsor

CM – Minutes from a City Council Meeting

CR – represents Council Resolutions as resulting from Council Meetings. CR's are referenced by a number followed by the year the resolution was made

Debt Reduction Funding – funding assigned by the City to pay for certain projects. This differs from financing which results in interest payments

East End Recreation Complex or East Windsor Recreation Complex (EERC) – see WFCU Centre

ERCA – Essex Region Conservation Authority (ERCA) was established in 1973 to manage the natural resources of the Essex Region in partnership with their member municipalities including the City of Windsor, County of Essex and the Township of Pelee Island

Executive Committee of the EERC/("EC") – The Executive Committee was proposed by Administration and reported to Council on November 27, 2006 in the East End Recreation Complex Project Structure Report dated November 22, 2006. Members were as follows:

- Helga Reidel – GM of Corporate Services – Project Sponsor
- Michael Duben – General Manager of Client Services
- Dev Tyagi – General Manager of Public Works
- Onorio Colucci – Chief Financial Officer & City Treasurer

- Jan Wilson – Executive Director of Recreation
- Harry Turnbull – Executive Director of Information Technology
- Cheryl Horrobin – Manager of Corporate Projects

Expression of Interest – a special procedure for generating competing offers from different bidders looking to obtain an award of business activity in works, supply, or service contracts

Final Budget – the budget for the Project as finalized and approved by Council Resolution in the Council Meeting on February 19, 2007

Greater Windsor Recreation & Sports Centre (GWRSC) – see WFCU Centre

Lear Site/Arena Site – 8787 McHugh Street - the site at which the WFCU Centre is located. Prior to acquisition by the City of Windsor, it was owned by Farhi Holdings

LiveLink Report – see Administration Reports

Preliminary Budget – the budget for the Project as approved at the October 4, 2006 Council Meeting

RFP/Request for Proposal – an early stage in a procurement process, issuing an invitation for suppliers, often through a bidding process, to submit a proposal on a specific commodity or service

Riverside Site/Riverside Drive – the site which was owned by the City of Windsor that was exchanged as part of a payment for the Lear Site.

Steering Committee of the EERC/("SC" or "CSC"). Sometimes referred to as the Council Steering Committee. The Steering Committee was appointed by the Striking Committee (see below) on January 8, 2007 and adopted by Council at its meeting held January 15, 2007 (M11-2007). Members appointed were as follows:

- Mayor E. Francis,
- Councillor D. Brister,
- Councillor J. Gignac,
- Councillor P. Hatfield,
- Councillor F. Valentinis.

Striking Committee – this is made up of all the members of Council but meeting as a Striking Committee as opposed to Council for the purpose of appointing members for the SC of the Project, etc.

WFCU Centre Project Charter/("Project Charter") – defines the scope and establishes the framework and overall approach for a specific project.

WFCU Centre – Windsor Family Credit Union Centre. Refers to the entire four pad arena complex. Prior to the inception of the project and the naming rights it was referred to as the East End Recreation Complex ("EERC") and later the Greater Windsor Recreation & Sports Centre ("GWRSC"). Reference to the Project, EERC, WFCU Centre or GWRSC are used interchangeably.

6 General Background

Based on our review of minutes, documents and discussions with representatives of the City and the WFCU Centre Project, we understand the following:

- On May 27, 2005 a decision to explore a new arena was made by City Council and Mayor Francis was authorized to discuss with representatives of Windsor Raceway Inc. (WRI) and other interested parties
- On July 4, 2005, Farhi Holdings Corporation purchased approximately eighty acres of land at 1600 Lauzon Road which included a Lear Corporation factory
- On August 8, 2005 the Mayor and Administration were directed by Council to continue negotiations with WRI
- On February 6, 2006 Administration presented Council with a letter from WRI advising it was not in a position to move forward with the arena development
- On March 3, 2006 six alternative scenarios were presented at a City Council strategic planning session and motions were passed to cost out two of the scenarios
- On April 27, 2006, a special Council meeting was held to present the two scenarios selected for costing and a motion was passed that Council approve a four pad multiuse sportsplex
- After the April 27 meeting, WRI submitted an interest in proceeding with the construction operation of an OHL rink and an auxiliary rink pad
- On or about July 6, 2006 PCR Contractors Inc. made an unsolicited expression of interest ("EOI") regarding the opportunity to partner with the City in the construction of the arena complex
- On September 29, 2006, the WRI proposal was withdrawn. On the same day, the Town of Tecumseh announced it had reached an agreement with Ice Track Corporation to build an arena complex, horseracing and slots facility
- On October 4, 2006 a LiveLink Report was presented to Council with an analysis of the WRI and PCR proposals, however at this time it was noted that WRI withdrew its proposal for the construction of the arena. It was recommended by Administration that Council approve the PCR Contractors Inc. guaranteed fixed price of \$47.92 million subject to certain conditions, and it was approved through CR 481/2006. A preliminary budget (which noted exclusions of certain costs such as land and financing) was approved on the same date.
- On October 10, 2006, Council authorized Administration to negotiate with the owners of potential arena sites. Administration was able to negotiate conditional Agreements of Purchase and Sale on two potential sites
- The proposed lease agreement with the Windsor Spitfires was outlined in an October 23, 2006 in-camera Administration Report to special meeting of Council. The lease agreement of the same date was signed as a binding agreement between the City and the Spitfires.
- In November 2006, the City entered into an Agreement with Farhi Holdings Corporation to acquire 40 acres of land on the Lear Site as the location for the GWRSC in exchange for a City owned property on Riverside Drive, a credit of \$1.5 million and a donation receipt of \$500,000.

- On November 2, 2006, CR539/2006 authorized execution of the construction contract with PCR Contractors for \$47.92 million.
- Construction was expected to begin as early as January 2007 and take 20 months to complete
- There was a groundbreaking ceremony on January 21, 2007
- The Letter of Intent between PCR and the City was dated January 31, 2007
- On February 19, 2007 Council approved the GWRSC net project budget of \$63,171,387 with an additional overall project contingency of \$1,750,000 for a total budgeted cost to City of Windsor taxpayers of \$64,921,387. This final budget was approved through CR 86/2007.
- The total \$64.9 million net project cost was to be fully paid off by 2010 via the City's debt reduction funding
- During Construction and prior to the City's debt reduction funding, financing for the Project was originally expected to be via Bankers Acceptance Notes. However, for the most part it was internally financed by the City.
- On February 5, 2007 the City wrote to the Ministry of Health Promotion to request assistance from the Province of Ontario to make an investment in the community. On April 3, 2007 a provincial grant of \$4 million was received
- The final contract between PCR and the City was dated June 27, 2007
- On September 24, 2007, under CR373/2007, Council approved the proposal from the WFCU to purchase the naming rights of the GWRSC to be named the "WFCU Centre" for a fee of \$1.62 million plus taxes
- At the one year mark from Council's original approval, October 4, 2007 an open house tour of the WFCU Centre facility was held
- The community portion of the WFCU Centre was opened in September 2008 and the entire WFCU Centre opened in December 2008
- The last Project Executive Committee meeting was held on February 19, 2009 and the closing Project Steering Committee meeting was held on September 14, 2009
- The AGO's post-construction audit of the WFCU Project began in 2010. KPMG was retained in May 2011 to assist the AGO in the completion of the audit

7 By-Law History – Dealings with Real Property

7.1 By-Law 12209 Amended for Schedule A

This by-law came into effect on May 15, 1995, was amended on October 13, 2006 by attaching Schedule "A" (under CR 532/2006) and was repealed on December 17, 2007. Under by-law 12209 (with amendment) the procedures for sale of City owned real property included the following:

7.1.1 Surplus Lands:

"The disposal of any real property interest requires a report to City Council that contains a recommendation to declare the property surplus. Council's intention to dispose of the real property interest must be approved at an open meeting of Council"

7.1.2 Appraisal:

" ... at least one appraisal estimating the current market value of the property will be obtained. Real property will be sold or leased at current market value or higher..."

It also notes that "where the estimated value is \$500,000 or greater, a second appraisal will be obtained".

7.1.3 Public Notice

"...before any such real property is disposed of there has been public notification per By-law No. 46-2003 of the proposed sale before its sale."

7.1.4 Public Register

"The City Clerk shall establish and maintain a public register listing and describing all real property owned or leased by the Corporation..."

7.1.5 Certificate of Compliance

"As part of the completion of any sale of real property, the City Clerk may, if requested, issue a Certificate of Compliance.

7.2 CR 296-2004

This came into effect in 2004 and was rescinded when by-law 247-2007 was passed on December 17, 2007. CR 296-2004 included the following:

- (II) That Administration be authorized to determine whether there are any municipal uses for various City-owned properties and if there are no municipal uses that they can be sold.
- (III) That Administration be directed to inform Council about inquiries from private property owners inquiring whether the City would be interested in purchasing their property after Administration has reviewed the inquiry to determine whether there is a municipal use
- (IV) That Administration be authorized to list properties deemed surplus to the needs of the City, for sale on the Multiple Listing Service (MLS) of the local real estate board....

7.3 By-Law Number 247-2007

This By-Law was passed on December 17, 2007 and repealed By-law 12209. At this time CR296-2004 was also rescinded.

With respect to this By-Law we note the following:

7.3.1 Notifications of Authority

- The disposal of any Real Property requires a report to Council
- The disposal of any Real Property must be authorized by Council in a open session
- Before the sale or other disposition of any Real Property is completed, notice of intent to dispose must be given to the Public – with noticed in the "Civic Corner" published in the Windsor Star
- If any private property owner offers Real Property to the City for sale, City Real Estate staff shall determine whether there is a municipal use and bring a report to Council
- Shall be Council Communication of all Real Property to be sold in advance of any advertisement of sale

7.3.2 Property Values

- For all Real Property with an estimated value of \$50,000 or more at least one appraisal will be obtained
- For all Real Property with an estimated market value of \$500,000 or more, at least two appraisals will be obtained
- Real Property shall be sold or leased at Current Market Value...

7.3.3 Method of Sale

- The City shall engage real estate companies to market its Real Property for sale.
- All Surplus Real Property to be disposed of or sold shall be listed on the MLS of the local Real Estate Board...

8 Pre-Construction Phase

8.1 Decision to Explore New Arena

- We understand based on a strategic planning session held on May 27, 2005 City Council passed a resolution that Administration proceed to explore building an ice arena that would seat a minimum of 3,500 people to accommodate major spectator events and that Mayor Francis be authorized to discuss with representatives of Windsor Raceway Inc. ("WRI") and other interested parties
- On August 8, 2005 City Council passed a resolution (CR480/2005) that the Mayor and Administration be directed to continue negotiations during the next 120 days with WRI in accordance with the nine criteria outlined in the report of CAO dated July 29, 2005 "Update – Arena Proposals"
- On February 6, 2006 Administration presented Council with a report and letter from WRI indicating WRI was not in a position to move forward with the arena development

8.2 Arena Objectives

On March 3, 2006 City Council held a strategic planning session and six alternative scenarios to proceed with an ice arena complex were presented. This analysis took into consideration the following objectives:

- A net gain of two community ice-pads
- An improved OHL facility
- A requirement for additional recreation space in East area of Windsor
- Opportunity to consolidate existing facilities without a loss in recreation space

Based on these discussions, motions were passed to cost out two of the scenarios and report for Council's consideration.

8.3 Arena Alternatives and Interested Parties

On April 27, 2006 a special meeting of Council, Administration presented the two scenarios agreed to on March 3, 2006. Scenario A included a renovation of the Windsor Arena and Scenario B included the development of a four pad recreation complex. As a result of this meeting, a motion was passed (M104-2006) that Council approves in principle Scenario B as the preferred option for an arena. This included the following:

- a four pad multiuse sportsplex including OHL rink and recreation centre
- relocate two single pads and recreation space
- continue Adie Knox as a single pad
- accommodate recreation space as identified in the East Riverside Secondary Plan
- convert the Windsor Arena to a community rink.

After the April 27, 2006 meeting, WRI submitted an interest in proceeding with the construction and operation of an OHL rink and an auxiliary rink pad that could be used for community purposes. This WRI proposal was considered in combination with a scaled down facility for the east area of the city that included two rink pads and a recreation centre. The scaled back concept assumed that the use of the auxiliary pad at the raceway would mirror the uses originally outlined for the 4 pad complex and would allow for the realignment and consolidation of two single pad arenas with a net gain of two pads within the community as well as the consolidation of community recreation space.

On May 31, 2006 a preliminary economic impact opinion letter was received from Malone Given Parsons Ltd. This letter outlined the general impacts of a multiplex recreational facility including employment and transportation, food & beverage and accommodation revenues.

A Letter of Intent dated June 5, 2006 from WRI was received entitled "Letter of Intent – Project Ice Track". Various updates and changes were received to update this LOI. This revised proposal included the original Westside portion at the Windsor Raceway as well as a City Owned facility that would include two NHL size ice pads and other ancillary community components ("East Side Facility").

On or about July 6, 2006 PCR Contractors Inc. made an unsolicited EOI regarding the opportunity to partner with the City in the construction of the arena complex in East Windsor in accordance with Scenario B.

On July 19, 2006, PCR submitted a preliminary project summary and overview for the "East Windsor Recreation & Sports Centre".

On August 3, 2006 a letter from Project Ice Track (WRI) was received stating it wished to remove the East Side Facility component from its June 5, 2006 proposal. It stated a CR had not authorized the City to proceed with negotiations for the East Side Facility. Their doing so would be in contravention to Purchasing By-Law Number 400-2004.

A letter dated August 31, 2006 from PCR confirmed the construction cost for the proposed facility would be a guaranteed fixed cost of \$47.92 million.

The September 19, 2006 LiveLink Report to be presented to Council and the Mayor on October 4, 2006 outlined an analysis of the WRI proposal (or "Project Ice Track") and PCR proposal (or "East End Recreation Complex" or "EERC"). We understand this report was made available to the public on September 22, 2006. The report acknowledges the following:

- cost of land is required under all scenarios but no site has been selected, therefore cost was undetermined at that time.
- the project would largely pre-commit the City's debt reduction levy until 2010. This assumes no new projects are funded from this source until after 2010 and the maximum that would be available from debt reduction levy funding would be approximately \$74.9 million from 2008 to 2010. Therefore if the project was approved, it should be done on the basis that it is the highest priority.
- that any of the Scenarios would require Sole Sourcing and approval of the Project would likely require Council to exercise authority over the current Purchasing By-Laws.

The September 19, 2006 report outlines a comparative financial analysis with respect to the capital cost and operating results of Project Ice Track, the PCR proposal and the estimated cost of a four Pad Complex with the Recreation Centre (going to tender). It comes to the following financial conclusions:

- "the most cost advantageous avenue for the City to pursue over the long-term is Scenario C (PCR – 4 Pad Complex). This is due to its annual positive net operating positions".
- "In the short-term, Scenario A (Project Ice Track) will be the most cost advantageous option for the City, due to its lower initial capital investment requirement, which would free up capital for other City initiatives"

A letter dated September 28, 2006 was received from NORR interested in putting forth a proposal ("Norr Letter").

By letter dated September 29, 2006, Project Ice Track withdrew its proposal as set out in the June 5, 2006 letter of intent to construct an arena on the lands at Windsor Raceway. The letter stated that after review of the September 19, 2006 Report, it became clear "there was not a fit between Project Ice Track and the City of Windsor's priorities"

An October 2, 2006 letter from Concorde Contracting Inc. requested Council endorse a competitive process to decide a suitable partner for development ("Concorde letter")

A letter dated October 3, 2006 was received from Project Ice Track discussing a PWC independent analysis of costs and alludes to the alleged bias of the writers of the Arena Report and lack of tender process. The PWC report outlines a pro-forma cost of capital suggesting it is making adjustments to make the Project Ice Track proposal more comparable and to include costs omitted in the PCR Proposal review. The PWC Report increased the cost of the PCR proposal by approximately \$9 million to account for required land at a cost of \$300,000 per acre for 33 acres. In addition, PWC added an additional \$3.75 million for a parking lot based on 2,500 spaces at \$1,500/space. It also added in financing costs that had not yet been considered of approximately \$3.3 million. PWC estimated the total cost of the PCR proposal at approximately \$70 million. PWC also discusses operational items.

This PWC letter was provided to Council for its consideration at the October 4, 2006 Council Meeting as evidenced by CR481/2006 which stated "that the letter from Project Ice Track dated October 3, 2006 regarding an analysis of the City of Windsor Administration Report on the arena proposals be noted and filed".

At that same meeting Council accepted the PCR proposal subject to certain conditions. The PCR Contract and sole sourcing is discussed further in Section 11.

9 WFCU Project Charter

The WFCU Centre Project Charter ("Project Charter") includes an overview of the goals, objectives, risks, strategies and rationale for the WFCU Centre Project. It provides an implementation strategy and deliverables, roles and responsibilities. We note that the Project Charter was put forward at the SC Meeting dated May 21, 2008. The Administration Report explains that due to the nature of the project, the charter was not completed at the beginning of the project.

We note that although the Project Charter was not complete until later in the process the November 27, 2006 Council meeting based on November 22, 2006 Administration Report (LiveLink Report #12515) provided guidance. That report discussed the project scope and exclusions and outlined the composition and specific responsibilities of the SC, Arbitrator, EC and the Working Team. That meeting resulted in CR560/2006 – to approve the East End Arena Recreation Complex project structure and terms of reference as proposed by management. The City Clerk was directed to bring the issue of SC composition forth to the Striking Committee.

The Project Charter details further the roles and responsibilities of the Project team, the goals and benefits of the Project, critical success factors, and Project scope changes. Our assessment of performance against these goals and criteria are contained in the following subsections.

9.1 Project Team

Outlined on Schedule 1 (Tab A) is the WFCU Project structure as approved under CR560/2006 on November 27, 2006 with additional notations and changes that occurred during the Project.

The Project Charter outlines the roles and responsibilities of the Project team which we have detailed in Schedule 2. These roles and responsibilities were originally reported to Council on November 27, 2006 in the East End Recreation Complex Project Structure Report ("EERC Structure Report") dated November 22, 2006.

In addition to the responsibilities noted in the Project Charter, the EERC Structure Report included suggested meeting frequencies.

9.1.1 Steering Committee

The EERC Structure Report suggested the following for SC meetings:

- Meetings to be held at key stages of decision making throughout the Project
- Subject to development of a project plan, it is anticipated that the Steering Committee will meet monthly or at the call of the chair upon advice of the Project Sponsor or Project Manager between January 2007 to September 2008

Based on our review of the minutes, it appeared the SC had 29 meetings between January 12, 2007 and September 14, 2009. Generally meetings took place every month up until February 24, 2009, with one final meeting on September 14, 2009.

9.1.2 Executive Committee

The EERC Structure Report suggested the following for EC meetings:

- Meetings to be held at key stages of decision making throughout the Project
- There will be weekly meetings in the initial stages of the Project and less frequently if so determined by the Project Sponsor/Chair

A review of the EC minutes indicated there were 67 meetings between November 1, 2006 and February 19, 2009. Generally the EC met every week until July 2007 at which time they began meeting on a bi-weekly basis. In January and February 2009, one meeting a month was held.

From a high level review the Project team appears to have fulfilled their responsibilities and had meetings according to plan. See Schedule 5 for exceptions noted.

9.2 Assessment of Goals and Benefits

The Project Charter outlines goals and benefits of the Project which are detailed in Schedule 3. Some of these goals were originally reported to Council on November 27, 2006 in the EERC Structure Report.

Refer to Schedule 3 for our commentary on the achievement of goals of the Project. From a high level review, it appears the goals and benefits were achieved.

9.3 Assessment of Critical Success Factors

The Project Charter outlines critical success factors of the Project. Schedule 4 outlines these critical success factors and our comments on the achievement of these factors of the Project. In summary it appears the critical success factors were met.

9.4 Assessment of Scope Change

The Project Charter outlines the scope change process which was used to define requests for project and work plan changes.

Schedule 5 outlines the list of changes to scope or allocations, the responsibility for the change and the approval level required. Some of these approval levels were originally reported to Council on November 27, 2006 in the EERC Project Structure Report.

The change process was substantially followed as depicted in the Project Charter with the exception of issues noted in Schedule 5.

9.5 Conclusion

From a high level review the project team appears to have fulfilled their responsibilities. The goals and benefits and critical success factors of the Project as well as the Project scope changes outlined in the Project Charter were substantially met.

10 WFCU Project Budget, Actual and Projected Costs

10.1 Summary

Schedule 6 (Tab B) outlines the detail of the WFCU Project budget, actual costs to March 31, 2011 and final projected costs as summarized in the table below:

Table 2					
WFCU Centre Project					
Summary of Budgets, Actual Costs/Recoveries and Projections					
Description		Preliminary Budget 10/4/2006 (Note)	Final Budget 2/19/2007	Actual Costs/ (Recoveries) to 3/31/2011	Projected Total Costs/ (Recoveries)
Total Project Costs	\$	59,401,160	69,588,080	71,976,168	72,384,159
Total Recoveries		(4,666,693)	(4,666,693)	(5,637,605)	(11,254,734)
Net Project Costs	\$	TBD	64,921,387	66,338,563	61,129,425

Note: The Administration report summarizing the Preliminary Budget indicated that its cost estimates at that time were not the final expected total costs. It was noted that land and financing costs were excluded, so the net project cost was still to be determined at that date. Total City Net Project Costs were noted as "TBD" or "to be determined".

A description of the detailed Budget and Project costs are outlined at Tab B and summarized below. Specific areas requiring further analysis and comments are outlined in Sections 11 to 19. In summary we note the following:

- Actual Project costs to March 31, 2011 were higher than the Final Budget by approximately \$2.4 million mainly as a result of additional fit-up costs which related to programming upgrades, energy efficiencies, the WFCU signage and the sound system. Many of these additional expenses were approved by the relevant committees and Council because additional funding was made available from a \$4 million government grant
- Total recoveries assigned to the Project were higher than budget by approximately \$1 million as at March 31, 2011 and are projected to be approximately \$6.6 million higher than budget. Recoveries include revenues from naming rights (which were higher than expected), and a \$4million provincial grant that was not included in the budget. The projected recoveries also include the disposition of three City properties (that were closed and replaced by the WFCU) and the potential redevelopment and building permit fees which may be received on those properties by the City (not WFCU)
- As at March 31, 2011, the City's total Project costs were higher than budgeted by approximately \$2.4 million and net Project costs were approximately \$1.4 million over budget. If all recoveries netted against the Project are received, the reported net Project cost is expected to be approximately \$61.1 million which is approximately \$3.8 million under budget. However, we have concerns about Project costs being offset with certain recoveries and it appears that some of the Project costs have been excluded. If we adjust for those costs that appear to have been excluded and those that have been offset, the projected net Project costs are estimated to be \$62.7 million which is approximately \$2.23 million below

the Final Budget. Achieving these net project costs is dependent upon the actual receipt of certain recoveries. We note that this budget underage is partially due to \$2 million of a \$4 million provincial grant not being spent, but allocated to reduce the net cost to the City.

KPMG testing performed on the existence, presentation and completeness of the Final Budget and actual costs are discussed in ss. 10.6 below.

10.2 Preliminary Budget

The preliminary partial project budget presented to Council on October 4, 2006 detailed PCR's estimated fixed cost contract as well other costs and recoveries for an estimated preliminary net project cost of approximately \$54,734,000.

The budget description indicated that various project costs had not yet been estimated such as financing, the land purchase and roadwork related costs.

10.3 Final Budget

The final project budget was approved on February 19, 2007 (based on Administration LiveLink Report #12652 dated February 14, 2007). The budget estimated net Project cost to taxpayers to be approximately \$64,921,000 and was approved by CR86/2007. Per this resolution, Council:

- Approved the net project budget of \$63,171,387 inclusive of all projected costs and specific project contingencies. This included project costs of approximately \$67,838,000 and offsetting revenue/recoveries of approximately \$4,667,000.
- Approved an overall project contingency of \$1,750,000 in addition to the above
- Designated PCR as the constructor for the Project and approved the assignment to PCR of components of the fit-up and site servicing works subject to tendering by the City of Windsor

This \$64.9 million net project cost was approved to be funded by the City's debt reduction fund over the years 2008 to 2010. Prior to the full \$64.9 million being paid by the City, financing was required (for further information on financing, please refer to Section 15)

It was noted that the overall net project budget was consistent with the preliminary budget identified on October 4, 2006 except that it now included the interim financing costs, land costs and site servicing cost based on the site selected. In addition it noted the overall project contingency of \$1,750,000 was recommended to mitigate against unforeseen expenditures and design changes that could result in operational savings during the life of the Project. Expenditures from this contingency were only to be undertaken based on prior approval from the SC. It was noted that management fees paid to PCR to act as the constructor for the fit-up and site servicing would range from 3% to 7% and have been included in the respective budgets. Although PCR was to be the constructor, at the date of the Final Budget the City intended to tender the work under the City's Purchasing Bylaw separately and assign those contracts to PCR for onsite coordination and management.

10.3.1 Building Permit and Development Charge Revenue

The Administration Report noted that recoveries of \$922,013 included in the budget related to the potential recovery of building permit and development charge revenue. This was based on the probable redevelopment on disposed City property as estimated by Dillon Consulting.

The Report identified that this amount would not be credited to the project directly and additional debt reduction funding of \$922,013 would be needed to fund the Project. Although this expected revenue was not going to be attributed to the Project it was netted against expenses in determining the \$64.9 million that was required for debt reduction funding. We understand Administration included this recovery to advise council that there was a corporate offset that would reduce the net costs to City taxpayers to the \$64.9 million.

We note while the total net cost calculated in the Administration Report is correct, the way this recovery was included in the Final Budget as an offset made the actual project cost and the actual projected funding appear lower than required. Refer to Tab C for a copy of the final approved budget as attached to the Project Charter. It would be preferable to clearly disclose total project costs and the amount to be funded before deducting expected recoveries.

10.3.2 Overall Project Contingency

The rules for spending the approved overall project contingency of \$1,750,000 were outlined in CR560/2006 as follows:

- The SC can approve changes to budget allocations within total project budget and greater than \$150,000 including use of specific contingency budget items greater than \$150,000 and above the cumulative limit of the executive committee
- The EC can approve changes to budget allocation within overall project budget and less than \$150,000 including use of specific contingency budget items below \$150,000 to a maximum total use of up to 50% of the specific contingencies
- The CSC will need to approve any draws from the overall project contingency

10.4 Actual to March 31, 2011

Actual project costs to March 31, 2011 were approximately \$71,976,000 which was \$2,388,000 more than the Final Budget approved by Council.

Revenue/recoveries to March 31, 2011 were approximately \$5,638,000 which was \$971,000 more than expected in the Final Budget.

Net project cost to March 31, 2011 has been reported as approximately \$66,339,000, \$1,417,000 more than the Final Budget approved by Council. However, the City still expects further recoveries.

10.5 Projected Net Costs at Completion of WFCU Project

As at the date of this Report, projected costs to completion of the Project were expected to be approximately \$72,384,000 which is \$2,796,000 higher than approved by Council in the Final Budget. We note that a number of these extra costs were approved and funded from a portion of the provincial grant received.

Revenue/recoveries are expected to be approximately \$11,255,000 which is \$6,588,000 greater than the Final Budget. If these recoveries are received, the net project cost will be \$3,792,000 less than the Final Budget. However, we note that there is risk in whether and when certain of the recoveries estimated will actually be received.

Revenue/recoveries expected to be realized after March 31, 2011 is approximately \$5,617,000 which includes the following:

- \$1,352,000 of building permit and development charges recoveries
- \$2,154,000 for the disposal of identified properties
- \$989,000 of WFCU naming right revenues
- \$1,122,000 of fundraising initiatives (non-WFCU naming rights).

The building permit and development charge recoveries as well as the recoveries from sale of the three identified properties are dependent on the actual sale (and sale price) of the properties noted in section 16. Based on discussions with Administration, we understand historically the sale of City property can take a number of years.

Detailed discussion of the project costs and recoveries in comparison to budget are outlined in the Notes to Schedule 6 (Tab B). Further comments on specific items are outlined in Sections 11 to 19.

10.6 Existence, Presentation and Completeness of WFCU Project Costs

10.6.1 KPMG Methodology and Procedures

Invoice Testing

Objective: To ensure the capital expenditures recorded as part of the WFCU project existed and related to the Project as well as to ensure they were allocated to the appropriate category of the budget.

Procedure: We selected all expense transactions that were \$500,000 or greater to test as well as a random selection of 20 expense transactions below \$500,000. For each item selected, we obtained and reviewed the supporting documentation (i.e. invoice, payment certificate, calculation) to determine if the item was appropriately allocated to the correct budgeted line item of the Project.

Results: Appropriate support was provided for all transactions requested and no issues of misallocation were noted.

Change Order Approval

Objective: To ensure all change orders were approved by the appropriate Committee.

Approvals Required: Per the Administration Report #12652 provided to Council on February 19, 2007, approval was required by the SC for all Project change orders with expenditures over \$150,000. The Executive Committee was authorized to approve change orders with expenditure under \$150,000. Any expenditure to be funded out of the overall contingency budgeted line item was to be approved by the Council Steering Committee.

Procedure: We examined all SC and EC minutes and checked whether the signed change orders had been approved by the appropriate Committee.

Results: It appears the change orders were approved by the appropriate committee with exceptions noted in Schedule 5. Included in exceptions was a change order for approximately \$5,957,000 which Administration requested approval from Council, however per Council minutes it appeared the report was "received for information" by the SC, but it was not noted in the minutes as approved. Administration believes this to be a typographical error and that the approval was made.

10.6.2 Completeness testing

Objective: To ensure completeness of WFCU Centre Project Expenditures

Procedure and Results: KPMG randomly selected eight suppliers out of the listing of vendors who performed services or sold goods to the City in relation to the WFCU project. We obtained general ledger detail of all payments made to these suppliers from the beginning of the construction of the WFCU Centre in January 2007 to May 2011. We segregated and totaled all payments with "WFCU" or "GWRSC" or any other payment description which appeared to relate to the WFCU Centre Project. We compared these totals to the total by vendor allocated to the WFCU Centre Project (based on the detailed invoice listing provided) and noted no reconciliation issues. Out of the eight vendors selected, only six had additional expenses which were not WFCU related. We selected two random invoices for each of these vendors which were not allocated to WFCU and reviewed the invoice to ensure the amount did not in fact relate to WFCU, since it was not recorded as such. All invoices reviewed that were not allocated to the WFCU Project appeared to relate to non-WFCU projects and were therefore properly excluded from the Project.

We reviewed the expenses charged to the WFCU Centre operations for the years 2008 to 2010. We did not note any items of a capital nature that should have been charged to the WFCU construction project.

In addition, based on information contained on hotline calls and review of minutes, follow-up on certain apparent expenses of the Project was performed. We noted some additional expenses that were excluded from the actual project costs as noted in this report. This includes \$60,000 in landscaping costs and \$195,000 related to the upkeep of properties held for disposition.

11 PCR Contract

11.1 PCR Approval and Conditions

The Council Meeting on October 4, 2006 discussed the September 19, 2006 Administration Report (LiveLink #11375). Minutes from this meeting note the following:

- PCR stated construction could start as early as 2007 and take 20 months to complete.
- Various residents expressed concerns over sole sourcing and fixed price by PCR suggesting there would be cost overruns anyway. In addition, there was a request to divulge the proposed location for the PCR proposal.
- Representatives of the Windsor Spitfires recommended approval of the PCR proposal as it "encompasses many of the principles adhered to by the Windsor Spitfires organization, and that the new arena facility is needed in the City of Windsor and that the team would like to remain in the City"

A further Administration Report dated October 4, 2006 (Livelink #12272), presented to Council on the same date, noted the withdrawal of the WRI proposal for the construction of the arena at Windsor Raceway. It noted that this proposal was no longer an option for City Council to consider and should be withdrawn as an option for the September 19, 2006 Report. It therefore recommended Council approve the PCR Contractors Inc. guaranteed fixed price proposal at \$47.92 million subject to certain conditions. It noted the Norr Letter and Concorde Letter and suggested that neither proposal gave Council a detailed viable alternative to the proposal as outlined in the September Administration Report which was consistent with the direction of City Council at its Special meeting of April 27, 2006.

Based on this analysis and recommendation, on October 4, 2006, by CR 481/2006 council approved PCR's guaranteed fixed price proposal for \$47.92 million for construction of the EERC subject to the following six conditions:

- 1 Obtaining land for the complex
- 2 Obtaining a signed binding lease agreement for the Windsor Spitfires
- 3 That Administration undertakes their due diligence in the review of the offer of PCR Contractors Inc. for the purpose of finalizing the design, equipment and fixed final price including engagement of construction cost analysis by a licensed quantity surveyor, commissioned by the City of Windsor
- 4 That the original Administration Report dated September 19, 2006 be received for information
- 5 That Administration be directed to negotiate an agreement with PCR for the construction of the EERC for an amount not to exceed \$47,920,000 in form satisfactory to the City Solicitor, in technical content to the General Manager of Public Works and the General Manager of Client Services and in financial content to the Chief Financial Officer and City Treasurer, and that the Chief Administrative Officer and City Clerk be authorized to sign the agreement
- 6 That Administration prepare a report for Council consideration, preferably within thirty days. From the Administration Report dated September 19, 2006 (discussed at the above Council meeting) it appeared this Administration Report was to address the

details of the respective negotiations related to each of the following processes for City Council's final approval as follows:

- "That Administration **BE AUTHORIZED** to enter into negotiations for the acquisition of the required lands in the east end of the city for the purpose of the development..."
- "That Administration **UNDERTAKE** their due diligence in the review of the offer of PCR Contractors Inc. for the purpose of finalizing the design, equipment, and fixed final price for the construction of the Recreation Complex on the East Windsor lands to be acquired"

11.2 Meeting Conditions of PCR Approval

The six conditions of approval appear to have been met as summarized in the following table and detailed further below:

Table 3 Conditions of PCR Approval	
Condition	KPMG Commentary
Acquisition of land	An Agreement of Purchase and Sale was dated November 3, 2006
Spitfires lease agreement	A lease agreement with the Spitfires was signed on October 23, 2006 with subsequent amendments.
Due diligence	Cm2r performed an independent review and concluded PCR's proposal of \$47.2 million was fair market value for the Project.
Report Received for Information	The September 19, 2006 report was received for information by Council on October 4, 2006.
Direction to negotiate agreement with PCR	On November 6, 2006, through CR 539/06, Council approved representatives of the City to sign the PCR Contract.
Administration reports discussing the acquisition of land and the due diligence review	Administration provided a report to Council (in camera) dated October 10, 2006 which addressed land acquisition alternatives. On November 6, 2006 an Administration Report was provided to Council which addressed the due diligence review of PCR.

11.2.1 Acquisition of Land

An Agreement of Purchase and Sale between the Corporation of the City of Windsor and Farhi Holdings Corporation was signed and dated November 3, 2006. The property acquired for the GWRSC was a portion of the former Lear Site (Part of 1600 Lauzon Road, Windsor). It was acquired in connection with a land exchange with Farhi whereby the City would obtain 40.99 acres of the Lear Site from Farhi in exchange for:

- The City owned Riverside Site (approximately 53,000 square foot property located at the southeast corner of Riverside Drive West and Bruce Avenue)
- \$1.5 million credit to be used by Farhi with the City at its own discretion. If not used within a year, the City would pay the outstanding balance to Farhi
- \$500,000 donation receipt from the City meant to represent that five of the forty acres were donated by Farhi to the City

On December 18, 2006 Council met and discussed an Administration Report (LiveLink Report 12524) dated November 27, 2006. This report confirmed City Council approval of the

acquisition of approximately 40 acres from the rear of the improved property at 1600 Lauzon Road. It also noted the transaction was scheduled to close January 31, 2007 and Administration was proceeding with the necessary survey, environmental and geotechnical testing on the 40 acre Lear Site and City owned Riverside Site to be exchanged with Farhi Holdings Corporation.

A Council Meeting on January 15, 2007 discussed an Administration Report (LiveLink #12572) dated January 9, 2007 which noted the archaeological, geo-technical and environmental assessments were completed on the Lear site and Riverside Drive site. It concluded the agreement of purchase and sale with Farhi could proceed.

As a result of time lines, final site plan approval was to be coordinated between the CSC for the EWRC and the delegated approval authority without returning to Council. This Council meeting resulted in CR25/2007 which included the site plan approval of the EWRC as it relates to the proposed building envelope structure be approved as Map #SPC 002/07-1 and 2 dated January 2007. In addition it included the authorization of the CSC for the EWRC to approve the remainder of the recreation complex site (i.e. elevations, access, parking areas, lighting, landscaping, screening, etc.)

Further details of this Land Exchange are outlined in Section 14

11.2.2 Spitfires Lease Agreement

The proposed lease agreement with the Windsor Spitfires was outlined in an October 23, 2006 in-camera Administration Report for a special meeting of Council. The lease agreement of the same date was signed as a binding agreement between the City and the Spitfires.

We understand this original lease agreement was discussed and amended as follows:

- In the March 26, 2007 EC minutes it was noted that the lease with the Spitfires was flexible, allowing for an opening date of the complex up to September 1, 2009.
- In the minutes of the June 11, 2007 meeting of the EC, it was noted that a meeting with the Spitfires may lead to a renegotiation and it may cost \$625,000 to fit out the suites which were not budgeted. It was later noted that the City's and the Spitfires' portion of the first year of suite sales will be directed to fund the fit-out of the suites.
- An In-Camera Meeting and Administration Report dated September 10, 2007 recommended amendments to the License Agreement with the Spitfires for lease of the GWRSC be approved. The Report noted the amendments were operational and included a chart outlining revisions. These amendments also included that the completion of construction would be no later than January 1, 2009.
- A further Administration Report (LiveLink #13466) dated April 29, 2008, presented to Council on May 5, 2008 discussed the lease agreement with the Windsor Spitfires. This report noted the following:
 - The Windsor Spitfires had been long-term tenants at the Windsor Arena and had demonstrated a commitment to the Windsor community by agreeing to a 20 year lease with the WFCU Centre
 - At its in-camera meeting of October 23, 2006, City Council approved the key terms of a new license agreement with the Windsor Spitfires
 - At its in-camera meeting of September 10, 2007, City Council approved a number of amendments to the license agreement including housekeeping items, language

clarification, opportunities to maximize revenue generation in the food and beverage area and clarification of responsibilities with suite sales and fit-ups

- When it was determined that the WFCU facility would include additional entertainment events, it was determined to be in the best interests of the City and the Windsor Spitfires to amend the lease agreement to allow third party expertise in event management and food and beverages to become involved.

This report outlined the changes between the existing agreement with the Windsor Spitfires at the Windsor Arena and the approved agreement at the WFCU Centre. It was noted that the change in agreements would benefit the WFCU Centre with capital of \$900,000 and annual operating gains/savings of \$735,200. The \$900,000 capital resulted from the Spitfires investment in the Jumbo Tron Video (main scoreboard and video screens within the spectator bowl) at a value of approximately \$800,000 and \$100,000 in upgrades to the dressing room area. It was noted that the WFCU Centre has the right to use the Jumbo Tron for non-Spitfire events.

11.2.3 Due Diligence – Independent Review (Refer also to ss 11.4)

The due diligence condition was addressed at a November 6, 2006 In-Camera Council Meeting based on Administration Report dated October 31, 2006 (Livelink Report# 12472 SR/8880). Cm2r discussed its cost review of the PCR proposal and concluded that the proposal of \$47.2 million excluding GST was fair market value for the Project given the scope included and the budgetary allowances for "fit-up costs" and "site servicing costs" are reasonable. Cm2r did note that if the Project was delayed the cost may increase by 5% to 7%. The cm2r report dated November 2, 2006 outlining its findings was provided.

This meeting resulted in CR539/2006 – authorizing the Chief Administrator and City Clerk (subject to successful acquisition of land, securing bridge financing and PCR providing a 50% performance bond) to execute the construction contract with PCR for a fixed price sum of \$47.92 million (+GST).

We note the January 15, 2007 CM held discussions regarding Administration Report (LiveLink #12577) dated January 9, 2007 with respect to interim bridge financing for the GWRSC. This meeting resulted in CR26/2007 which included authorization and approval for the City Treasurer to borrow temporary financing for the Project for the construction phase of the Project by way of bankers acceptance draws.

11.2.4 Administration Report Received

The Administration Report dated September 19, 2006 was received for information on October 4, 2006.

11.2.5 Administration Direction to Negotiate

On November 2, 2006, CR539/2006 authorized execution of the construction contract with PCR Contractors for \$47.92 million. The final contract with PCR, dated June 27, 2007 was signed under the same CR.

Prior to the final contract, under CR571/2006, Administration signed a Letter of Intent dated January 31, 2007 with PRC for the construction of the EERC for a fixed price of \$47.92 million.

11.2.6 Administration Report

It appears that Administration met this criteria in that it prepared (within 30 days from October 4, 2006) reports dated October 10, 2006 (in camera) and October 31, 2006 for Council consideration that addressed the land acquisition and due diligence respectively.

The October 5, 2006 report addressed land acquisition alternatives for the purpose of the development of the recreation complex. This discussion established criteria for the site (outlined further under section 14.1). In addition, acquiring a site under an expression of interest and direct contact were discussed as well as the pros and cons of each approach. Based on the site criteria, three potential private sites were identified and analyzed as well as one city owned property. This meeting resulted in M247-2006 authorizing Administration to proceed with the direct negotiations with prospective arena site property owners.

The Administration Report dated October 31, 2006 addressed the due diligence review of PCR which was presented to Council on November 6, 2006. This report reiterated the cm2r comments which concluded PCR's proposal of \$47.92 million was a fair market value for the Project and the City's budget for Fit-up Costs and Site Service Costs were reasonable.

11.3 Sole Source

The decision to use PCR was a decision to sole source a vendor since there was not a tendering process in place for the Project. Sole sourcing by the City must be done in compliance with Purchasing By-Law No. 400-2004.

The series of events that led to PCR obtaining the Arena contract were as follows:

- On or about July 6, 2006 PCR made an unsolicited EOI regarding the opportunity to partner with the City in the construction of the arena complex in East Windsor in accordance with the City's requirements for a 4-pad recreation complex.
- PCR noted it had been involved in a similar project in 1999 with a private developer in Port Huron, Michigan. Architectural drawings were complete and components were manufactured. However, due to financial issues with the developer, the project did not proceed. This left the drawings and building components available for use. The September 2006 report suggested cost savings in the area of design since preliminary drawing and specifications were already complete. In addition it noted architectural fees and required time would be lower. Tendering costs are reduced. In addition, certain components were already in PCR's possession and not subject to inflationary prices.
- An August 31, 2006 letter from PCR confirmed the construction cost for the proposed facility would be a guaranteed fixed cost of \$47.92 million.
- It was noted in the September Administration Report that additional costs over and above PCR's guaranteed construction price included site service, fit-ups, legal fees, landscaping and the construction of a parking lot bringing the total project cost to \$59.4 million.
- The September Report analyzed the PCR proposal as well as others. The October 4, 2006 Council meeting resulted in a CR 481/2006 council approved "PCR Contractors Inc. guaranteed fixed price proposal for \$47.92 for construction of the east end complex" subject to six conditions. One of these conditions was to have an independent party analyze PCR's proposal.

- A letter of intent was signed by the City and PCR on January 31, 2007
- The final contract between PCR and the City was signed June 27, 2007.

11.3.1 **Purchasing By-Law No. 400-2004**

Section 32 of the By-Law specifically applies to Sole Source purchasing:

Sole Source Purchase

Subsection 32 (1) states:

"A Sole Source purchase may be used for the purchasing of goods and/or services for Contracts of any Contract value, in the following circumstances:

(g) Where goods are offered for sale by Tender, auction or negotiation such purchase will be deemed to be a Sole Source purchase and the CAO/City Manager may authorize the submission of a Bid or the conduct of negotiations where the CAO/City Manager determines the purchase to be clearly in the best interest of the City of Windsor"

(i) Where a public/private partnership exists".

Section 32 (2) states:

"The award of any Sole Source purchase Contract having a Contract value in excess of \$150,000 shall require Council approval."

11.3.2 **Meeting Conditions of Purchasing By Law**

The conditions specified under sole source purchasing (Section 32) appear to have been met as follows:

Section 32 (1)

Administration's LiveLink Report 12272 recommended approval of PCR's \$47.92 million guaranteed fixed price proposal subject to certain conditions. This report was signed by the CAO indicating that he did make the recommendation. This report did not specify it would be a sole source purchase. However, on Page 2 of that report under "Financial Matters", it did refer to the September 19, 2006 report (#11375 to Council on Oct. 4/06 and received it for information) which discussed sole sourcing and included the following wording:

- "If Council wishes to proceed with either proposal, Council approval may be required for awarding a Sole Source purchase."

Section 32 (2)

This condition was met as there was council approval as indicated by CR481/2006.

11.3.3 Pros and Cons of Sole Source

In addition to a review of the sole source section of the purchasing by-law, we reviewed documentation to determine how the sole source decision was based and whether pros and cons of the sole sourcing option were analyzed by Council. It appears that Council performed its due diligence and sufficiently analyzed its options based on the following:

- On August 8, 2005 an Administration Report (#11487) discussed the pros and cons of sole source purchasing which are summarized in the table below.

Table 4 Sole Sourcing Analysis
<p>Pros:</p> <ul style="list-style-type: none"> - simpler process - reduce timelines - deliver a product that meets the expectations of the community and city council - transfer of project design and management responsibilities to the project proponent
<p>Cons:</p> <ul style="list-style-type: none"> - may not achieve the best deal/ no competitive bidding process - less transparent - may be less cost effective - may be limitations to achieving desired outcomes since motives of private sector and municipal government may not be aligned

- On February 6, 2006 an Administration Report to Council noted that an arena with Windsor Raceway Inc. was not going to happen.
- On March 3, 2006 Council held a Strategic Planning session which included six scenarios presented by administration. Council directed administration to cost and report on two scenarios.
- On April 27, 2006 a special Council meeting was held for Administration's presentation on two scenarios, as directed by Council on March 3, 2006. Council approved in principle "Scenario B" for an arena (4 pad multiuse sportsplex) by motion M104-2006.
- The October 4, 2006 LiveLink Report #11375 to Council quoted parts of the purchasing by-law on a sole source purchase, and mentioned that Council approval was required for awarding a sole source purchase over \$150,000 (to either Windsor Raceway or PCR). Tendering was briefly mentioned on page 14 and included, "...Council is cautioned that, except in the case of a fixed price, pre-tendered agreement, significant increases in costs could result once the projects are tendered."
- The October 4, 2006 Administration Report #12272 to Council recommended approving PCR, however it did not specify that Council was being asked to make a sole source decision. The report recommendations also mentioned the unsolicited interest of two other parties, who did not provide any detailed proposals (one of those parties included NORR, who had previously designed a downtown arena for the city). Also, the report mentioned that Project Ice Track disputed Administration's September 19, 2006 financial analysis, based on Project Ice Track's commissioned September 28, 2006 PWC report (sent to

Council members). Report #12272 also mentioned the September 29, 2006 receipt of Project Ice Track's withdrawal of its proposal.

- A presentation provided by Council Services as part of the October 4, 2006 Council meeting material included one slide that said the purchasing by-law 400-2004 permitted sole source purchasing, "...when goods are offered through negotiation and are determined to be in best interest of City."

11.3.4 Business decision

We performed an analysis to determine if the proposal by PCR at the time of the decision to sole source was sufficient to support a prudent business decision for the sole source award.

The PCR information provided to Council for the October 4, 2006 Council Meeting included:

- Estimated (main bowl) maximum spectator viewing capacities for hockey (6,469) and concerts (7,943)
- Project team members contact information and experience in past projects
- Building/facility overview
- List of owner and contractor responsibilities for the facility construction
- Items to note page mentioned that PCR's architectural floor plans, elevations and renderings were currently being amended to accommodate City requirements
- August 18, 2006 PCR confirmed that all of the City's August 8, 2006 preliminary requirements were accommodated within its design with no additional costs
- 288,000 proposed square footage to include 1 spectator rink, 3 auxiliary rinks and a community centre
- Exterior illustration, detailed floor plans and other building views
- List of cost savings/ advantages

It would appear there was sufficient detail for the City to award the contract to PCR as confirmed by the independent review outlined below.

11.4 Independent Review

As discussed earlier, in order to meet the third condition for the approval of the PCR proposal (per CR481/2006), the City was required to retain a licensed quantity surveyor to perform a construction cost analysis. To meet this condition the City retained cm2r and Brodel Management for an independent quantity cost survey, cost analysis, review of scope of the project and recommend a structure for the ongoing management of the project.

11.4.1 Cm2r Report Conclusion

Cm2r summarizes its findings as follows:

- "Area measurement calculations prepared by both PCR and cm2r reflect the same building and size"
- "Overall, PCR's Design Build proposal (August 31, 2006) of \$47,920,000 excluding GST is a fair market value for the project, given the scope included (a 6,500 seat OHL standard arena; shelled suites, concession and restaurant spaces; three community rinks, a shelled Community Centre with change rooms and washrooms and showers fully fitted out)"

- "We have also reviewed the budget \$ allowances included in the Summary of Capital Costs (from the City of Windsor) for the "Fit-up Costs" and also the "Site Servicing Costs". Based on our analysis and on the verbal clarifications of scope by the City of Windsor, we believe the budgets are reasonable for these two components of the overall project."

Further narrative notes the following:

Fit-Up Costs

Fit-up costs include:

- furniture and recreation equipment
- systems such as signage and card access
- equipment upgrades such as energy efficiency packages and a generator
- upgrades to items such as locks, suites, seating and acoustics

In addition, it was noted that a separate allowance for landscaping was included to be performed by the City's Parks and Recreation Department.

Cm2r notes that given some of the scope indicated may be financed by the OHL Spitfires, the total allowance (including management fee and profit) appears reasonable.

Site Servicing Costs

It is noted that the City has made an estimate in its budget for site servicing costs of \$5.3 million (including the contingency portion).

The cm2r report notes the City of Windsor requires 2,500 surface parking spaces including site servicing costs. Cm2r concluded the City's budget estimate was reasonable for the preliminary scope of work.

11.5 Conclusion

The WFCU base construction project was sole sourced to PCR Contractors Inc. The decision to sole source appears reasonable based on our review and consideration of:

- The City's By-Laws
- Administration's alternative site analysis
- The cm2r independent review of PCR's proposal

Prior to approving PCR, Council met the six conditions it had set out including acquiring land and a lease agreement with the Spitfires.

12 Fit-up costs and Site Servicing

On February 19, 2007 CR86/2007 required that all fit-up and site servicing works for the Project be assigned to PCR, subject to tendering by the City of Windsor in accordance with its purchasing by-law.

12.1 Purchasing By-Law

Under the purchasing by-law fit-up and site servicing costs would be subject to the following process:

- Any contract with a value of \$2,500 or less could be single sourced
- For any contract with a value of between \$2,501 and \$50,000 a minimum of three quotes would have to be solicited
- All contracts with a value of over \$50,000 would be subject to a full tendering process in accordance with the Purchasing by-law

12.2 Tendering Requirements

The purchasing by-law requirement for tendering under section 15(1) states that:

A Request for Tender shall be used for purchases exceeding \$50,000 where all of the following criteria apply:

- Two or more sources are considered capable of supplying the requirement
- The requirement is adequately defined to permit the evaluation of Tenders against clearly defined criteria
- The market conditions are such that Tenders can be submitted on a common pricing basis and
- Best value for the city can be achieved by an Award selection made on the basis of the lowest Bid that meets Specification.

12.3 Exception to Tendering

An Administration Report prepared by Ms. Valerie Critchley (Manager of Purchasing and Risk Management) on the tendering issue dated June 5, 2007 was presented to the SC on June 7, 2007 with respect to the above noted matter.

This report noted that flexibility could be found in the Purchasing By-law in section 5(4) which states:

- "No provision of this by-law precludes the CAO/City Manager, General Manager, Department Head or the Manager of Purchasing and Risk Management from recommending an Award to Council where:
 - In the opinion of the CAO/City Manager, General Manager and/or Department Head, it is in the best interest of the City of Windsor to do so, or

- It is a matter of purchasing procedure and in the opinion of the Manager of Purchasing and Risk Management, it is in the best interest of the City of Windsor to do so.

It was noted during the SC Meeting of June 7, 2007 that:

"due to issues of timing and cost, difficulties to conduct a full tendering process for every element of the fit-up works proved very daunting. Administration developed a purchasing protocol for the fit-up works which is within the boundaries of the City's Purchasing By-law 400-2004, while providing the flexibility required to complete this project in the most timely and cost-effective manner. The City's Purchasing By-law allows some discretion in terms of the requirement to tender works with a value greater than \$50,000 and allows Administration to recommend any award of contract, where such award will be in the best interests of the City."

Rather than the City proceeding with the tendering process, the Administration Report recommended that all of the fit-up and site servicing works for the GWRSC outside of the fixed price contract with PCR be assigned to PCR with the following conditions:

- PCR must register a request for quote
- PCR must obtain at least three quotes and accept the quote with the lowest price while meeting all specifications related to the request for quote
- The City maintain the right to be present at the opening of quotes, right to review all quotes, right to perform work using its own in-house labour and resources and the right to require full request for tender as set out in section 15 of the City's purchasing by-law 400-2004

It does not appear that this revision to CR 86/2007 was explicitly discussed by Council. However, we note the June 7, 2007 SC minutes were received by Council in its meeting of July 3, 2007. In addition it does appear to follow the purchasing by-law and fall within the scope of the SC. In addition, the Administration Report was signed by the appropriate representatives of the City.

12.4 Conclusion

Initially Council had decided that the City would tender for all fit-up and site-servicing for the Project. However, due to timing, the tendering process was assigned to PCR. This assignment appears to fall within the purchasing By-Law and was approved by the SC.

13 Architectural Advocacy (Professional Consultant) – LP Meyer

On December 13, 2006 the City issued a request for proposal N. 174-06 with respect to peer review/city advocate consulting services for the EERC. According to the RFP, the purpose of retaining a consultant was to provide the City of Windsor with a qualified professional to act as its advocate through the construction process and perform:

- a peer review with respect to the architectural, site services, structural, mechanical, electrical and refrigeration design of the Sportsplex.
- non-resident construction project review with respect to the construction of Sportsplex

The scope of work performed by the consultant was to include;

- project fulfillment – act as the City's agent and monitor and report on the developer and agents overall construction compliance
- invoice payment auditing
- cost control
- review of construction schedule and shop drawings
- 100 hours of professional services to assist with additional material and fit-out design review

In response to this RFP, L.P. Meyer provided a Technical and Cost proposal dated December 22, 2006 for a lump sum fee of \$144,000 + GST. Based on this proposal, an agreement between the City and L.P. Meyer was signed on March 14, 2007.

13.1 Conclusion

Retaining an independent professional consultant provided extra assurance to the City that the work was progressing along as planned and that PCR invoices were reasonable based on work performed. Our review of the PCR invoices and change orders indicated they had been reviewed and approved by LP Meyer.

14 Land Purchase

14.1 Site Criteria

The October 10, 2006 Council Meeting (in camera) discussed Administration's (In Camera) Report of October 5, 2006 which set out the EERC site criteria as follows:

Table 5 Site Selection Process Criteria	
Item	Criteria
Location	East of Jefferson Boulevard West of Town of Tecumseh South of Wyandotte Street North of E.C. Row Expressway
Size	35 to 40 acres need to provide parking for up to 2,500 cars, 6500 seat main bowl with restaurant 3 auxiliary rinks and community centre
Services	Should be fully serviced or at cost of \$2.5 million
Zoning	Not critical
Price	View in conjunction with other 4 criteria. Critical to overall business case

It was noted that Administration would set out in a later report the property value ranges representative of the market value for various land use categories.

Based on the site criteria, Administration came up with 3 alternative privately owned locations, considered one city owned property as well as potential expropriation. Each location was analyzed against the above site criteria.

This meeting resulted in M243-2006 authorizing Administration to proceed with the direct negotiations with prospective arena site property owners.

14.2 Site Selection

A November 6, 2006 (In-Camera) Council Meeting for the purpose of selecting one of the proposed sites for the EERC reviewed the Administration Report of November 2, 2006. This report noted that Agreements of Purchase and Sale had been prepared (as offers) for selected sites.

The report provided a comparative analysis between the Lear site and a Catherine Street site. The conclusion of the report appeared to lean towards the Catherine Street Site because it offered a better ingress/egress as well as the potential for greater economic spin-off. It also provided the ability to expand the area of the site by up to 17 additional acres. However, it also

noted that the Lear site could possibly be developed to tie into the existing parkland/recreation facilities east of Little River.

The site selected by Council was the Lear site. The minutes of this meeting note that one councilor voted against the decision, and one councilor abstained from voting due to a conflict of interest. We understand the mayor did not vote.

The estimated cost of the Lear Site as outlined in the Administration Report was \$3.6 million (\$2.1 million + \$1.5 million) to the City (including opportunity cost) as follows:

- A value attributed to the City's Riverside property of \$2.1 million which would be transferred to the owner of the Lear Site,
- Providing a credit to the owner of \$1.5 million to be used with the City within one year at the Vendor's discretion
- A \$500,000 donation receipt subject to appraisal reports. Although this provides a benefit to the owner, it is not an out of pocket cost to the City.

We understand the Lear site was chosen over the Catherine Street property because:

- The Catherine Street land required the City to convey some Brighton beach property which was being considered for a detention centre. We understand the Brighton beach property was later sold to the federal government for a potential bridge crossing
- The Catherine Street land would require the City to expropriate certain property, while the Lear site could be purchased without expropriating private property.
- It was thought that the Lear site was closer than the Catherine Street site to the Riverside Arena which would be closed when the new complex was opened. However, we note the Lear site was only marginally closer.

14.3 Lear Site / Riverside Land Exchange

14.3.1 Summary of Transaction

The Lear Site was acquired under an agreement between the City and Farhi. The transaction is summarized as follows and detailed below:

Table 6	
WFCU Project Land Acquisition	
Agreement Dated November 3, 2006	
Description	Value
Riverside property	\$ 2,000,000
Credit to Fahri	1,500,000
Donation receipt to Fahri	500,000
Attributed Value to Lear Site	\$ 4,000,000

In addition, there were further costs to the land deal including an estimated \$300,000 cost for cleanup at the Riverside Property (budgeted separately) as well as property taxes of \$105,000 given up on the Riverside Property since Farhi was not to take ownership until April 2010.

We note the Final Budget and actual costs appears lower than actual as it only included the expected outlay of cash/credit to Farhi and excluded the value of the Riverside Property conveyed to Farhi. We note while the total net cash outlay calculated in the Administration Report is correct, not including the value of the Riverside Property given up made the total project cost appear lower than actual. It would be preferable to clearly disclose total project costs before deducting expected recoveries.

14.3.2 Purchase and Sale Agreement

The purchase and sale agreement between Farhi (seller) and the City (buyer) was signed on November 3, 2006. We note that although the agreement was dated November 3, 2006 (prior to the November 6, 2006 Council decision) it contained a condition that the offer was "conditional upon CAO and/or City Council approval".

The agreement outlined the purchase and sale of (Part of 1600 Lauzon Road described legally as 129B, 192, 133 Concession 1 (Lear property) summarized as follows:

- Lot size approximately 40 acres
- Conditional upon obtaining a Phase II Environmental Study report

The Buyer agrees to pay the balance as follows:

- In lieu of a cash payment, the buyer will convey the following property to the seller
 - the City's Riverside property (approximately 53,000 square feet)
 - the buyer will perform a Phase II Environment Study report
- A \$1.5 million credit to be used by the Seller with the City at its own discretion. If the seller did not use the full credit within one year of the closing date, the buyer would pay the amount outstanding. We note this credit was reduced by \$125,000 to \$1.375 million (as agreed between the buyer and seller) based on clean up requirements at the Lear site as determined by the environment study.
- A \$500,000 donation receipt to account for 5 of the 40 acres donated by the seller to the buyer.

We note that no values were attributed to the Lear Site or the Riverside Property in the purchase agreement. However, based on an appraisal of the Lear Site conducted after the transaction closed, the implied value of the Lear Site and the Riverside Property was \$4 million and \$2 million respectively. For further comments on these values see subsections 14.4 and 14.5.

14.3.3 Approvals

On December 18, 2006, Council [based on Administration Report (LiveLink Report 12524) dated November 27, 2006] confirmed its approval of the acquisition of approximately 40 acres the Lear Site. The Administration Report also noted the transaction was scheduled to close January 31, 2007 and that Administration was proceeding with the necessary survey, environmental and geotechnical testing on the Lear Site and Riverside Property.

The December 18, 2006 Council Meeting resulted in CR571/2006 that approval be given to enter into Consent to Enter (the Lear Site) with Farhi prior to the finalization of the land transfer. In addition that approval be given to enter into a letter of intent with PCR in advance of signing of the full contract so that PCR could commit its resources to the project to finalize

the contract drawings necessary for the construction contract. These approvals were made in order to expedite the project and meet the timelines.

We are aware of a call to the AGO's whistleblower line alleging the mayor exerted undue influence over the negotiation of the land transfer with Farhi. We found no evidence to support this allegation.

14.4 Riverside Property

14.4.1 Transaction Value

We understand the \$2.0 million value attributed to the City's Riverside property was based on negotiations and Administration's estimate of the property's value. No formal independent appraisal of the property was prepared for negotiations or as at the date of the transaction. We understand from Administration that because of the accelerated timetable, there was no time to perform an independent appraisal which normally takes between 6 to 8 weeks to complete.

14.4.2 Indication of Value

As an indication of the value of the Riverside property we note the following:

- The City acquired the Riverside property (approximately 53,000 square feet) as part of a larger parcel (77,200 square feet) from the Art Gallery of Windsor on October 8, 1999 for \$2 million. On a proportionate basis this would indicate the value of the Riverside Property to be approximately \$1.37 million in 1999.
- The MPAC assessed values for the full 77,200 square feet parcel was \$1.221 million in 2003, \$1.269 million in 2006 and \$910,000 in 2009 -2011.
- A May 13, 2002 appraisal by Ray Bower Appraisal Services Inc. concluded the market value of the Riverside property (approximately 53,000 square feet) to be in the range of \$2.6 to \$2.8 million. However, based on different appraisal approaches the value ranged between \$2.1 million to \$3.2 million. The high end of the range represented commercial use although Administration believed the eventual use would be residential.

We understand from Administration that an analysis was performed on the value of the Riverside Property and given their experience in land transactions and the 2002 appraised value, they believed a value of \$2 million attributed to the property was reasonable. Based on our review of the above information, discussions with Administration, the fact that the City acquired the property at \$1.37 million (pro-rata) in 1999 and the arm's length nature of the land swap transaction, the \$2 million attributed value in 2006 appears reasonable.

14.4.3 By-Laws and Policies of Disposition of Property

In 2006 and early 2007 when the land transfer took place, the land transactions would have fallen under CR 296-2004 and Amended By-Law 12209 (outlined in Section 7) which included the relevant requirements of the Municipal Act at the time.

We note that Resolution 296-2004 was rescinded and By-law 12209 was repealed when By-Law 247-2007 "Dealings with Real Property Policy" passed December 17, 2007.

CR 296-2004

Based on CR296-2004, it would appear that Administration had the authority to determine whether a City property could be sold and authorized to list it on MLS. Since the land was conveyed in order to secure property acquired for the EERC, the property was not listed on MLS. It was determined to be exchanged for additional property for municipal use rather than determining that the Riverside property had no municipal use.

By-Law 12209

Based on our review of Amended By-Law 12209 and the process of the land exchange of the Riverside Property we note the following:

Surplus Lands

This Riverside Property was not officially declared surplus. We understand since the closing was delayed for three years, it did not have to be declared surplus at the time. In 2007, Section 268 of the Municipal Act that required a resolution to declare land to be surplus prior to selling was repealed. Therefore Administration believes that as at the actual date of closing, a resolution to this effect was not required.

However, since the purchase and sale agreement for the land exchange was dated November 3, 2006, it would appear that the City should have declared this Riverside Property as surplus in order to meet the procedural conditions of the By-Law.

Appraisal

The Amended By-law 12209 states that a procedural condition for selling City owned Property includes obtaining at least one appraisal estimating the current market value of the property. It further states that where the estimated value is \$500,000 or greater, a second appraisal will be obtained.

Although an independent appraisal of the Riverside Property was available dated 2002, the City does not appear to have met the conditions of the By-law. A 2002 appraisal would not be considered "current market value". In addition since the property had a value greater than \$500,000, a second appraisal was required.

We understand from Administration that typically an independent recent appraisal would be performed. However, there was not sufficient time to have an appraisal done prior to the transaction. We note Administration could have had an independent appraisal done after preliminary negotiations (as did Farhi on the Lear site) to finalize the exchange values between the two properties but did not consider it necessary.

Public Notice

There was not an official notice to the public of the proposed sale (before the sale) of the Riverside Property.

However, Administration believed that this Project and the land transaction was under enough public scrutiny by the media that sufficient details of the transaction were available to the public. Typically all lands for sale by the municipality are listed on MLS but this property was

designated for a specific transaction and not available to the public. Council directed Administration to use the Riverside property for exchange purposes to acquire the land for the EERC Project.

Certificate of Compliance

There was no certificate of compliance with respect to the Riverside Property. We understand from Administration that there are very few requests for these certificates. In addition, this transaction did not close until 2011 and it is not a requirement under the new by-law 247-2007.

14.4.4 Riverside Clean up

As the owner of the Riverside property, the City is responsible for site clean-up. This includes the cost of removing concrete footings that remained from former buildings on that site. On January 11, 2007, the cost to perform cleanup work on both the Lear and Riverside site was estimated by Smith Contracting Inc. to be approximately \$300,000. The cost to remove rubble at Riverside was included in the budget at \$300,000.

It was later agreed the work at the Riverside Site would be done at the time Farhi was developing the property so that the removed fill did not need to be replaced with new fill. This would result in a lower cost to the City.

Farhi was to take ownership of the Riverside Property in April 2010 but did not take ownership until May 5, 2011. At the date of this report, site cleanup had not been initiated. A current estimate of the cost and timing of it has not yet been determined.

However we note the cost was estimated in the Final Budget at \$300,000 and the City does not believe it will exceed that cost. We understand the City's current estimate of its expected actual cost is \$180,000, with the difference from the Final Budget resulting from fill not required.

14.4.5 Property Taxes

As part of the land transfer deal, Farhi was not to take ownership of the Riverside Property until April 2010. This meant that it would not be responsible for property taxes for 3 years which we understand amounted to an opportunity cost to the city of \$105,000 (3 x \$35,000).

Although Farhi did not take ownership of the property until May 2011 an agreement was signed that it would be responsible for the property taxes from the April 2010 date until it took title, including interest on the amount owing.

14.5 Lear Site Value

14.5.1 Transaction Value

In the land transfer agreement with Farhi, a value of \$4 million was attributed to the Lear Site. No appraisal on the Lear Site was initiated by the City of Windsor prior to the land exchange.

The signed agreement of purchase and sale dated November 3, 2006 excluded the price per acre (of both the Riverside property and Lear Site) but made reference to the conveyance of the Riverside property, a \$1.5 million credit within the City to the seller as well as a \$500,000 donation receipt in exchange for a donation of 5 of the 40 acres.

14.5.2 Indication of Value

Based on our review of documents we understand the following:

- Administration's initial offer on the Lear site was \$75,000 per acre or \$3 million (40 acres x \$75,000) according to an Agreement of Purchase and Sale between the City of Windsor (Buyer) and Farhi Holdings Corporation (Seller) dated October 24, 2006. We understand from Administration this offer was not accepted and Farhi requested \$100,000 per acre.
- The Lear site (40.99 acres) was valued retrospectively at \$4 million by Metrix Realty Group as at August 31, 2007 ("Metrix Appraisal"). This appraisal was requested by Farhi Holdings in order to support the value for its donation receipt of \$500,000.
- From information contained in the Metrix Appraisal Farhi purchased a larger parcel (84.74 acres) of the Lear site (which included the 40.99 acres subsequently sold to the City) on July 4, 2005 from Lear Corporation Canada Ltd. for \$8 million. The price paid by Farhi was an average of \$94,406 per acre. This would indicate the value of the 40.99 acres acquired by the City increased by approximately \$130,000 (3.4 percent) from the date Farhi acquired it. It is uncertain if the quality of the entire parcel of land differed on an acre by acre basis.

We understand Administration reviewed the price of \$100,000 per acre and based on experience accepted it to be reasonable.

14.5.3 By-Laws and Policies on Acquisition of Land

Appraisals

At the date (2006 and early 2007) the Lear Site was negotiated and acquired, we understand from Administration there were no legislative requirements to obtain an appraisal when the City acquired private property. Even after 2007 there is no requirement in the Municipal Act to obtain an appraisal when private property is acquired.

We note that By-Law 247-2007 now requires the City to obtain an independent appraisal for properties valued at over \$50,000.

CR 296-2004

With respect to the acquisition of private property, this CR outlines the following:

"That Administration be directed to inform Council about inquiries from private property owners inquiring whether the City would be interested in purchasing their property after Administration has reviewed the inquiry to determine whether there is a municipal use"

The acquisition of the Lear Site for municipal use and the process of thereof was communicated at various Council Meetings.

Amended By-Law 12209

This Amended By-law 12209 deals with the sale of City owned lands only.

14.5.4 Site Clean-up

Based on a Phase 2 Environmental Report, the City determined there would be a Lear site cleanup cost of approximately \$125,000. The City agreed to perform the cleanup in exchange for a reduction in Farhi's credit from the City by \$125,000.

An amendment (to the purchase agreement) dated January 17, 2007 reduced the credit of \$1.5 million to \$1,375,000 to account for the cleanup.

We also note the Lear site had a former storm detention pond in place from when the Lear operation was manufacturing. The City had an evaluation of the sediment in the settling pond and as a result the City did not purchase it from the owner and built the project around it. We understand this pond was excluded in the actual transaction and exchange value of the property.

14.5.5 McHugh Street

In the decision to acquire the Lear Site, it was noted that an extension of McHugh Street would be required at a cost of approximately \$3.5 million. This cost was discussed but not considered as a cost of the WFCU Project as the infrastructure of McHugh Street was already in City Plans but would be accelerated by approximately two to three years.

As early as 2000 by CR 921/2000, it was stated that "Council consider the extension of roads to the East Riverside Planning District as a high priority in the capital works budget". This was confirmed by CR638/2004 where the City approved the phasing plan for the East Riverside Area. The Infrastructure Services Plan guideline for 2005 budget included obtaining land and constructing the McHugh Street extension as well as engineering and construction of the McHugh bridge. We understand this infrastructure was requested as a result of the growth in the East Riverside Planning District. As part of the 2005 budget process, the Public Works Department submitted requests for \$1.6 million in 2007 and \$2.3 million in 2009 for the first phases. In addition the 2005 budget submission included an unspecified request for an additional \$7 million for 2010 for the East Riverside Planning District project.

We note that the EC Meeting of February 5, 2007 noted the budget for McHugh Street was \$8.2 million which included a second contract bridge across Little River. We understand the final net cost to the City of McHugh Street was approximately \$8.7 million and that the variance from budget was reported to City Council on April 6, 2011.

14.6 Conclusion

Based on our review of minutes, purchase and sale agreements, appraisals and discussions with Administration we believe that a reasonable assessment of potential sites for the EERC was performed and Council held adequate discussions in coming to its decision to acquire the Lear Site.

The Land transfer, particularly the disposal of the Riverside site at a value of \$2 million did not meet the procedural conditions of the Amended By-law 12209 for the following reasons:

- It was not declared surplus
- No current market appraisal was prepared (two were required). However, an independent appraisal was available from 2002.

- There was no official notice to the public of the proposed sale prior to the sale

We understand that based on Administration's analysis and knowledge of property values, it believed the exchange value was reasonable at \$2 million. The \$4 million value attributed to the Lear Site was supported by an appraisal after the transaction occurred to support a donation receipt to Farhi of \$500,000. In our view the exchange values attributed to the properties appear reasonable. We note that since a portion of the Lear Site was donated to the City, the "out-of-pocket" cost to the City was \$3.5 million.

15 Project Financing

15.1 Debt Reduction Funding

Based on the Final Budget, the net Project cost to City taxpayers was estimated at approximately \$64.9 million. This included a budget for financing interest of \$5 million (\$2.7 during construction, \$1.5 million after construction and an \$800,000 contingency).

It was agreed (as noted in the Livelink Report #12577 approved in the January 15, 2007 CM) that permanent financing would come from the debt reduction fund as follows:

- 2008 - \$15 million;
- 2009 - \$31.6 million,
- 2010 - \$18.3 million

This would allow the entire arena project to be fully paid by 2010. However, interim financing would be required.

15.2 During Construction

The January 15, 2007 Council Meeting, based on an Administration Report (LiveLink #12577) dated January 9, 2007 discussed interim bridge financing for the GWRSC. The report indicated, as presented to Council on November 27, 2006, RFP 165-06 for interim financing had been issued on November 17, 2006. Administration noted that it had received six proposals and four met the criteria of the RFP. Administration recommended funding for the construction phase be financed by bankers acceptance notes issued by Toronto Dominion Bank (TD) which offered the lowest rate at 4.45%.

It was recommended the term loan agreement for post construction be postponed.

This meeting resulted in CR26/2007 which included authorization and approval for the City Treasurer to borrow temporary financing for the construction phase of the Project by way of banker's acceptance draws. In addition, it was authorized that the temporary construction borrowing be repaid by a fixed rate bank loan at completion of the Project and entire project costs to be fully repaid by the debt reduction fund by 2010.

15.3 Post Construction

The Administration Report (LiveLink #14074) dated April 6, 2009 presented to Council April 20, 2009 outlined its recommendation with respect to the WFCU Centre fixed rate bank loan bridge financing. Based on the recommendations, Council, under CR127/2009:

- Accepted as information that consistent with CR26/2007, Administration was finalizing financing for the WFCU Centre via a fixed rate bank loan from TD in the amount of \$18.3 million to be repaid from the City's debt reduction funds in February 2010
- Authorize Administration to transfer the 2009 debt reduction fund contribution in the amount of \$31.6 million to the WFCU Centre project account

We understand the TD loan was utilized for the Project rather than having it internally financed for cash flow purposes. The last scheduled payment for debt reduction funding was paid on February 19, 2010 for \$18.3 million directly to TD Bank.

As at March 31, 2011 approximately \$1.3 million remained internally financed by the City. This loan remains outstanding since many of the budgeted recoveries for the Project such as the disposition of the three City properties and revenues from naming rights have not yet been fully received.

15.4 Interest Payments and Rates

The Final Budget and actual interest expenses of the Project are detailed below:

Table 7 Interest Expense - Budget to Actual 2007 to 2011			
	Final Budget	Actual to 31-Mar-11	variance
2007	990,000	244,000	746,000
2008	2,306,000	905,000	1,401,000
2009	1,530,000	258,000	1,272,000
2010	132,000	25,000	107,000
2011	-	3,000	(3,000)
	4,958,000	1,435,000	3,523,000
rounded	5,000,000	1,435,000	3,565,000

We note that the budget for financing was based on an interest rate of 5% with the expectation that the loans would be from TD Bank. The rate at the time for TD Bank was 4.45%. However, given expectations that the rate could increase, interest in the budget was slightly increased and a contingency was added.

However, rates declined and the Project borrowed most of the money internally from the City as opposed to a financial institution. Only two banker's acceptances were financed at the beginning of the Project until there was an \$18.3 million loan from TD in 2009. The interest rate used internally was based on what a one year investment would have made as opposed to what it would have cost to borrow funds. This led to an even further reduction in interest paid by the Project.

In addition, on April 3, 2007 a provincial grant was received in the amount of \$4 million. This grant was not included in the budget and therefore reduced the expected need for financing and interest.

15.4.1 Internal City Financing

No formal policy exists on internal financing by the City.

We understand from Administration that the interest rate used historically by the City for calculating internal financing charges on deficit projects was the prime rate. However, we also understand that at the time debt financing was to be obtained for this WFCU Project, the City had cash on hand available for financing (in the Capital Reserves). According to

Administration, this cash on hand would have otherwise been invested in short-term investments and would not have been used to pay off long-term debt held by the City (which had specific fixed terms of repayment). Therefore, the interest rate used internally was based on what a short term investment would have made as opposed to what it would have cost to borrow funds. This rate declined from the initial 4.5% to 0.3% as at March 31, 2011.

Administration's decision to follow this approach for internal financing was made because it would result in a positive cash flow savings to the City. The Capital Reserves received the same interest it would have received had it invested the funds and there was an interest saving to the WFCU Project.

15.5 Conclusion

Interest charges to the Project were lower than budgeted by approximately \$3.5 million as a result of the following:

- Low interest rates. Rather than obtaining financing from a financial institution as budgeted, the Project was substantially financed internally by the City. This financing was based on short term investment rates as opposed to borrowing rates.
- Provincial Grant for \$4 million was received in April 2007 which reduced the amount of financing required.

16 Recoveries from Closure of Replaced Complexes

16.1 Disposition of Properties

The Final Budget of the WFCU Centre included offsets expected to be received on the eventual closure and sale of the properties referred to as Riverside Recreation and Memorial Centre, Adstoll Arena and Edward Street Neighbourhood Centre of approximately \$2.2 million.

The initial estimates were based on a May 11, 2006 Dillon Consulting report which provided redevelopment scenarios for the three sites. We understand from Administration that draft appraisals of these properties as at the date of this report exceed the above-noted values. However, these recent appraisals are not directly comparable as the Riverside appraisal was expanded to include residential lot development on possible surplus lands not contemplated in the original estimate.

The closure of the facilities was to be possible as the activities were to be moved to the new WFCU Centre. Therefore the City believed the recoveries from these properties should be offset against Project costs. We understand, as budgeted, the proceeds from the eventual sale of the three noted properties is planned to offset the construction costs of the WFCU Centre.

We note that the November 27, 2006 CR (based on the Administration Report November 22, 2006) excluded the decommissioning and sale of these three properties from the mandate of the WFCU SC. Parks and Recreation and Planning had undertaken responsibility for these properties reporting to Council.

16.2 Policies/By-Laws - Disposition of City Property

The Administration Report (LiveLink Report 13198) dated November 26, 2007 presented to Council on January 21, 2008 in discussing the three properties for disposition, noted that there are policies with respect to the disposition of City-Owned Parkland. The Report provided direction about when it is appropriate to dispose of city-owned parkland and/or recreation facilities, and the public consultation process that should precede the sale. This included the policy that the net proceeds from the sale of parkland be used only for the purposes of acquiring additional land for park or other public recreational purposes.

When it was initially contemplated that these three properties be disposed it would have fallen under by-law 12209 and CR 296-2004. However, Resolution 296-2004 was rescinded and By-law 12209 was repealed when By-Law 247-2007 "Dealings with Real Property Policy" passed December 17, 2007. The actual disposition of these three properties must therefore follow By-Law 247-2007.

16.2.1 Meeting Disposal Requirements

It appears that Administration is performing the appropriate steps/policies required for disposal of these three properties as follows:

Use of the Proceeds

The proceeds from the sale of the three noted properties will be put towards the construction costs of the WFCU Centre which serves the community as a regional recreational facility and additional parkland.

Public Consultation

It appears that Public Consultation process has been met based on the following:

- Administration Report (LiveLink#14075) dated April 28, 2009 presented to Council on May 11, 2009 discussed the public consultation sessions with respect to disposition of the three properties. This resulted in CR163/2009 which included the direction that Administration prepare EOI to gauge private sector interest regarding the future development of the three sites.
- Administrative (In Camera) Report presented to Council on February 8, 2010 discussed that after internal debate Administration agreed that rather than go through the process of the issuance of EOI it may be a better gauge of private sector interest to dispose of the properties on the open market based upon each site's appraisal market value calculated on its highest best use. All offers on the sites would be brought back to Council for its consideration and direction. This Council meeting resulted in an amendment to CR163/2009 and administration was directed to obtain independent property appraisals for each site and be brought back to Council for review.
- An Administration Report (LiveLink #15046 SR2011) dated January 11, 2011 presented to Council February 7, 2011 reported on the EOI with respect to the disposition. This report noted that an EOI No. 127-10 to gauge private sector interest in the three sites was advertised in the Windsor Star on Saturday, July 24, 2010 and closed on August 25, 2010. Five proponents picked up the EOI and one was submitted. This submission was based on renting rather than purchasing the facility and was not consistent with the WFCU Centre financing plan. Therefore the proposal was not recommended and it was suggested the three properties be listed on MLS. Once the appraised market values are known, Council would provide direction to Administration on the disposal of the sites.

Appraisals

- The February 7, 2011 Council Meeting resulted in CR61/2011 directing Administration to dispose of the three sites within the requirements of the Property Disposal By-law 247-2007, obtain independent property appraisals for Council review prior to listing on MLS. In addition Administration was directed to tender out the demolition of the Riverside Recreation and Memorial Centre so the building could be demolished before the site was listed on MLS. Administration noted that funding for the demolition would be through the sale proceeds of the property.

16.2.2 Current Status

At the date of this report, we understand Administration had recently received further independent draft appraisals on these properties. As noted above, the recent appraisal was higher than that contained in the Final Budget.

We understand the results of these draft appraisals will be taken to Council for direction on the disposal of these sites.

16.3 Redevelopment of the Properties

The Dillon Consulting Report also included estimates of potential building permit fees and development charges that could be generated by the redevelopment of the disposed three City properties.

Based on these estimates, the Final Budget included potential recoveries of \$922,013 as an offset against the Project costs. However, it was acknowledged these recoveries (if received) would not accrue to the Project and that debt reduction funding for the full amount would be needed to fund the Project. We understand Administration included this recovery to advise council that there was a corporate offset that would reduce the net costs to City taxpayers.

We note that in the calculation of the expected net Project costs to completion, the potential building permit fees and development charge revenues expected to be received by the City (but not the Project) was estimated at \$1.4 million.

As previously noted, the way these expected recoveries are included in the Final Budget understates the net project costs and understates the debt reduction funding required for the Project by the same amount. It would be preferable to clearly disclose total project costs and the amount to be funded before deducting expected recoveries.

16.4 Upkeep Costs of Properties

Since the three Properties have not yet been disposed, there are ongoing upkeep costs as well as non-recurring costs.

We understand that \$156,000 of these expenses were transferred from the Capital Expenditure Reserve Fund to the Recreation's Operating Accounts as per CR135/2010 per April 12, 2010 Council Meeting. A further amount of approximately \$39,000 was transferred from the Capital Expenditure Reserve fund to Legal operating account (ID #0122960) per CR156/2011 dated May 3, 2011.

It would appear that since the expected proceeds from disposition of these properties (\$2.2 million) and potential redevelopment revenues (\$1.3 million) are being offset against the costs of the WFCU Project, the ongoing upkeep should be expensed to the Project. By not including these expenses, understates the cost of the Project by approximately \$195,000.

16.5 Costs of Disposition

We understand the expected costs of disposition of these three properties including demolition has been estimated at \$240,000. As at the date of this report, approximately \$79,000 had been incurred. For accounting purposes, these costs were set up under a separate project. The intention is to offset the disposition costs against the proceeds from sale and apply the net amount to the net Project costs. It would appear that since the expected proceeds from disposition of these properties (\$2.2 million) are already offset against the costs of the WFCU Project, the costs of disposition should also be included. By excluding these expenses, the cost of the Project appears to have been understated by the estimated \$240,000.

16.6 Conclusion

Disposition of these three properties has been included in the Final Budget as an offset to Project Costs at approximately \$2.2 million. Recent appraisals would suggest this value remains appropriate. However, it is uncertain when these properties will be sold.

The process that has been followed by Administration and Council in the disposition of these three properties appears to abide by the By-Law 247-2007.

We note that the Final Budget and estimated net projected costs of the Project were offset by an additional \$0.9 million and \$1.4 million respectively of revenue from potential building permit fees and development charges that could be generated when these properties are sold. These fees will be received corporately and not to the Project. The manner in which these revenues were deducted against Project costs in the Final Budget reduces the usefulness of the financial information.

In addition, upkeep expenses of approximately \$195,000 and disposition costs of \$240,000 related to these properties has been excluded from the costs of the Project. Since the revenue from the sale of the properties is included as an offset to Project costs it would appear that the expenses should also be included.

17 Naming Rights

17.1 The Centre

17.1.1 Naming Policy

In the April 10, 2007 Council Meeting, based on the Administration Report (LiveLink #12493), March 6, 2007, Council approved the policy "Naming/Renaming or Dedicating of Municipal Property, Buildings and Park Elements" (CR144/2007). This policy outlines the steps to ensure proper consideration and consistency in its application.

Under the approved policy, with respect to purchased naming rights, the following additional considerations apply:

- "the significance of the contribution made relative to the construction and/or operating costs of the item being named
- the significance of the contribution relative to the market valuation of the naming opportunity
- Results of a value assessment
- The benefits to and obligations of both the purchaser and the City
- The duration of the naming including a specific sunset clause associated with the length of time that the name will be used
- Whether the naming agreement can be renewed if a further gift or sponsorship is received
- Demonstrated public support for the sale of naming rights of the facility"

The policy requires the following procedures with respect to purchased naming rights be performed:

- "an asset analysis and value assessment to determine the value of the naming rights
- A risk/benefit analysis
- Demonstrated public support of the sale of naming rights for the municipal property
- A publicly advertised request for expressions of interest to purchase the naming rights, which will include a list of the benefits to and obligations of the selected purchaser
- Signage, branding, publicity and advertising must conform to all applicable federal and provincial statutes and all applicable municipal bylaws and policies
- Processes must balance the need for information to be freely available and directly accessible to the public with potential requirements for confidentiality in negotiations
- Negotiation of a written contract in form and content acceptable to the City Solicitor containing full details of the agreement for sale of the naming rights to include indemnification and termination clauses"

17.1.2 Expression of Interest

The naming rights were discussed in the special in-camera meeting held September 10, 2007. The related In-Camera Administration Report was presented to Council on September 10, 2007 and noted the following:

- A call for EOI was issued May 28, 2007 and advertised in the Windsor Star, Globe and Mail, Detroit Free Press, Hockey News International Association of Assembly Managers Newsletter and City of Windsor Website. It was also sent by direct mail to relevant City Vendors. The closing date, after extension was July 31, 2007
- An evaluation committee reviewed the submissions to determine whether they met the criteria outlined in the EOI and the Naming Policy
- It was determined that the WFCU meet all the criteria outlined in the EOI and the Naming Policy. In addition, the financial submission component was within the expected range
- The monetary contribution was agreed at \$1,620,000. The expected related costs were \$350,000 for signage. Therefore the net amount of revenue to the Project would be \$1,270,000. The final budget had included naming rights revenue of \$1.5 million, net of related costs. It was expected that name rights revenue from other components of the facility would allow the revenue budget to be met
- In this September 10, 2007 in camera meeting, Council approved the recommendation contained in the confidential report from the Executive Director of Recreation, GM of Community and Protective Services and City Solicitor respecting naming rights for the East End Arena Complex for proceeding to Council in its next regular meeting. Based on handwritten notes there appeared to be a discussion on comparable fees for naming rights in the range of \$1 million to \$1.5 million.

17.1.3 WFCU Contract

In the Administration Report (LiveLink #13036) dated September 13, 2007 presented to Council September 24, 2007 it was recommended that the proposal from the WFCU to purchase the Naming Rights of the Great Windsor Recreation and Sports Centre to be named the "WFCU Centre" be approved. This was approved under CR373/2007.

The WFCU Naming Rights 10 year contract was dated December 23, 2009 and was to be effective from February 1, 2009 to January 31, 2019. A summary of the contract includes the following:

- The agreed fee was \$1.62 million plus taxes for the Naming Rights to the Facility and the Main Arena Bowl with such Naming Rights and Facility as agreed
- There were to be 4 payments of \$40,500 per year for 10 years
- There was to be a surcharge of \$2 per transaction (for non customers) on a minimum of 2 ATM's supplied by WFCU. A portion of this surcharge would go to the WFCU Centre
- The City of Windsor would be responsible for inventory including large exterior signs on building (3); parking lot signs, WFCU kiosk
- WFCU gets the right to use facility two times per year at no cost

- WFCU gets a suite license with the annual license fee waived (we understand from the In-Camera Council Meeting on September 10, 2007 the City would normally receive \$77,500 over a ten-year period which is half of the proceeds for the sale of a suite)
- The WFCU Suite is required to purchase 14 season tickets and 4 – 14 tickets for other events. VIP parking as per the standard suite license agreement

17.2 Other Naming Rights

Administration Report (LiveLink #14669) dated April 26, 2010 presented to Council on May 3, 2010 discussed the naming rights agreements for facilities within the WFCU Centre. This Report notes that Naming Rights for facilities within the WFCU Centre are allocated to the capital project to offset the cost of construction of the complex and form part of the business plan.

The total committed sponsorship is \$1,110,000 excluding the WFCU Naming Rights and the Pepsi Sponsorship (later contracted at \$600,000) as following:

Table 8			
WFCU Centre - Naming Rights			
Effective from January 1, 2009 to December 31, 2018			
Sponsor	Facility		Committed Value
Optimists Clubs of Windsor	Community Centre	\$	350,000
Greenshield Canada	Community Rink #1		170,000
The Windsor Star	Community Rink #2		170,000
AM800 CKLW	Community Rink #3		170,000
The Collavino Group	Reception Hall		120,000
Jamieson Laboratories	Seniors' Centre		100,000
Festival Tent & Party Rentals	Event Chairs		30,000
Total		\$	1,110,000

Payment terms between the sponsors vary.

CR172/2010 approves these sponsorships within the WFCU Centre for Naming Rights over a ten year period effective January 1, 2009 to December 31, 2018.

17.3 Conclusion

In securing naming rights contracts, it appears that the City adequately followed the steps as outlined in CR144/2007 - Naming/Renaming or Dedicating of Municipal Property, Buildings and Park Elements".

18 Provincial Grant

The CAO of the City of Windsor wrote to the Ministry of Health Promotion (MHP) on February 5, 2007 to request for assistance from the Province of Ontario to make an investment in the community in the range of \$8 to \$10 million.

The City received \$4 million of funding on April 3, 2007 from the MHP by direct deposit. KPMG confirmed this grant with the MHP and was provided with an undated letter (stamped as authorized on March 29, 2007) to Mayor Francis from the MHP which stated "We are pleased to provide you with a grant in the amount of \$4,000,000 to assist the City of Windsor in continuing to serve the people of the province". Attached to this letter was a description of the City's plans for the Arena. MHP confirmed this was a "MHP Enhance the Quality of Life Grant" that had no conditions or restrictions and no repayment was expected. In addition there was no requirement for the City to provide follow up with the MHP as to project status or other.

After receipt of the \$4 million government grant Administration prepared a report to the SC Committee dated April 20, 2007. It suggested that the funds received would act as financing for the Project and would reduce the amount of interest the Project would need to pay. In addition, it suggested that the \$4 million be used to reduce the last payment due in 2010 from the debt reduction fund at the discretion of Council. This report was discussed by the SC on May 3, 2007. We note that debt reduction funding of \$64.9 million was not reduced for any portion of the provincial grant. The full amount was put toward the Project because not all budgeted recoveries had been received.

The Minutes of the EC dated July 17, 2007 suggested that the \$4 million Provincial Grant be used for aesthetic enhancements as approved by the steering committee.

The October 4, 2007 Minutes of the SC discuss the fact that it does not have the authority to decide how the \$4 million is to be spent. The decision to spend the funding needs to be approved by City Council. At that meeting it was suggested that \$1,034,253 of the \$4 million be assigned to the budget for fit-up costs of the Centre for events outside of OHL Hockey, and further, that the remaining \$2,000,000 be used to reduce the City's overall net project cost.

Administration Report (LiveLink #13114) dated October 18, 2007 to be presented to Council on November 5, 2007 addressed the business case in using the Provincial Grant funding for the WFCU

This Report indicated the following:

- On August 13, 2007, the SC approved an expenditure of \$950,000 (excluding bonding \$15,474) to complete upgrades to the Concourse common area, washrooms and community centre common area designed to minimize annual maintenance costs. Upgrades included porcelain tiles, tile bases, prefinished ceilings, light revisions, fire protection, ceilings, polished coloured concrete and wet tiles in the washrooms. This was approved by Council to be funded out of the \$4 million grant.
- On October 4, 2007, the SC approved \$1,034,253 of the \$4 million Provincial Grant be assigned as a budget for fit-up costs of the Centre for events outside of OHL Hockey and that the remaining \$2 million be assigned to reduce the overall net city project costs. The SC requested a business case for the event fit-ups be presented for Council consideration. Benefits to the expanding the type and scope of events that can be held at the WFCU Centre were explored in the October 18, 2007 Administration Report. The break even point for this

investment was calculated at 16 additional events per year. (Note: KPMG did not review this analysis as it is considered operational)

CR437/2007 states that City Council supports the recommendation of the SC and assigns \$1,034,253 of the \$4 million of Provincial Grant funding to the WFCU Centre to pay for those expenditures. In addition, City Council assigned the remaining \$2 million to reduce the net City funding contribution of \$64.9 million to the Project. The redirection of the \$2 million was to take place at such time all required funding contribution had been received.

The February 28, 2008 SC meeting approved an expenditure in the amount of \$151,163.80 for electronic ballasts as a charge to the Provincial Grant for electronic lighting. The electronic ballasts are new to the sports industry. The 1000-watt fixtures will be replaced with 600-watt units with a dimming capacity of fifty per cent. It is estimated that energy consumption can be reduced by up to fifty per cent for lighting. Another advantage of dimming is that in the spectator bowl, the light lumens can be lowered and not shut the fixtures off, or if they are shut off, they will re-strike in four minutes as opposed to fifteen minutes for a typical coil and core ballast.

19 Other Matters

19.1 Landscaping

During our review of SC meeting minutes, it was noted that some landscaping work was to be performed by the City's Parks and Recreation Department. We understand the cost of this landscaping work performed was not attributed to the WFCU project and therefore actual costs of the Project have been understated. This cost, which included planting by outside companies and the actual trees, was estimated by Administration as approximately \$60,000.

The EC Minutes of July 3, 2007 discuss public art outside the recreation complex. The approval by the EC and SC was subject to cost estimates and affordability within the arena budget. It was suggested that perhaps Parks and Recreation could place a topiary in the designated area and the possibility of managing costs through a fundraising initiative or within the Parks and Recreation budget was discussed. We understand this work did not proceed, likely as a result of the ongoing maintenance costs that would be incurred for the topiary.

19.2 Parking

19.2.1 Initial Parking Plans

An in-camera Administration Report dated October 5, 2006, which was discussed at a Council meeting on October 10, 2006 noted site criteria for the multi-purpose arena. One of the criteria was that the site needed to be approximately 35 to 40 acres. It stated the size was "dictated by the need to provide parking for up to 2,500 cars". It also noted that a traffic study was in process to address access and parking needs of the EERC.

The initial PCR Proposal and the review done by cm2r suggest that the size and seating in the complex required 2,500 parking spots.

19.2.2 Actual Parking Spaces

Based on our review of the WFCU Centre Website and the Site Layout and Pavement Plan of the EERC, the following parking spots are available at the WFCU Centre:

Table 9		
WFCU Centre		
Allocation of Parking Spots		
Lot (Per Site Plan)	Description	Spots
A	Community Lot	311
B	General Use Parking	506
C	Lot 1 - Reserved Parking	204
D	Lot 2 - Reserved Parking	359
E	General Use Parking	484
F	Parking behind Centre	29
Handicapped	Handicapped	38
		1,931

The WFCU website indicates the following:

- There are over 1,000 free parking spaces including 43 accessible spaces
- there is a pay per use lot just steps from the main entrance which is open for all events
- the WFCU Centre has partnered with Transit Windsor to provide the WFCU Centre Park 'N Ride - a shuttle service to the WFCU Centre dropping you off right outside the main gate

There appears to be a general understanding that the WFCU Centre does not have enough parking spaces for "sold out events".

19.2.3 Revisions to Parking Spaces

On February 5, 2007, the Site Development Committee presented to the EC Committee that a transportation study indicated 2,200 parking spots were required for this facility. However, M. Sonogo, Chief Building Official at the time (currently City Engineer) stated the minimum number of spots would be 1,140 but a more practical number would be in the range of 1,800 to 2,000. In the March 8, 2007 meeting of the SC, Don Sadler advises that the number of parking spots has been reduced to 1,950 spots. Mr. Sadler stated the reason for the reduction was an initiative to encourage the use of transit.

We were provided with a traffic study prepared by Administration dated April 18, 2007. It is uncertain if this was an updated summary of the study referred to in the meeting of February 5, 2007. This April 2007 study indicated 2,000 parking spaces would be adequate.

In the May 3, 2007 SC meeting Mr. Sadler discusses the plan for 1,940 parking spots. Mr. Sadler acknowledges there will not be enough parking spots for the volume of people expected to attend the Complex. Mr. Sadler recognized that alternative modes of transportation would be required such as Transit Windsor or shuttle buses.

Between February and May 2007, the Windsor Essex County Environment Committee (WECEC) meeting minutes expressed its concern over the size and run off (into Little River) of the planned parking lot at the GWRSC. Although it does not appear to be expressly stated, we understand the WECEC concerns contributed to the reduction in the number of parking spaces on the site. They wanted less paved area as a result of the run off.

19.2.4 Regulations

The September 10, 2007 Minutes of the GWRSC discussed and approved the Site Plan (SPC-002/07) as recommended by the Site Plan Approval Officer as set out in the report dated April 26, 2007. It notes that the City has received approval and permit from the Essex Region Conservation Authority (ERCA) for the site plan. This site plan discusses parking space regulations and notes that all places of entertainment, recreation, assembly require 1 parking space per 36 square meters of Ground Floor Area (GFA). The GWRSC GFA was included in the site plan at 20,514 square meters. The plan noted the required parking spaces would therefore be 570 spots (20,514 square meters/36 square meters). We note this information agrees to zoning bylaw 8600 paragraph 24 (3)(c)(xiv) which states the number of required parking spots for the facility is one space per 36 square meters of GFA.

Per the written site plan the provided parking was to be 1,947 spots. It concluded there were 1,377 surplus parking spots. However the map attached to the site plan, indicated the required parking was 1 space per 18 square meters of GFA. Therefore, on the map it was concluded that the required parking spots were 1,140. It would appear that Administration used a higher number of parking spots per GFA than required under the zoning bylaw.

19.2.5 Overflow Parking

In the December 1, 2008 SC meeting, (minutes of which were received by Council on December 8, 2008) the parking overflow issue was discussed and the following was noted:

- "Mr. Farhi owns and will operate the overflow parking lot
- Requirement that Mr. Farhi purchase a business license to operate a parking lot. Recommend that the City pay the \$183 license fee for a parking permit.
- Mr. Farhi will operate the parking lot through a private parking company. He will maintain liability insurance on the lot.
- Mr. Farhi requests that the City sand and plough the lot during the 2008-2009 winter season
- When asked if Mr. Farhi will revenue share with the City, no response was received.
- Mr. Farhi will charge \$5.00 to park in his lot – 1,000 parking spots are available
- Free parking is available at the WFCU Centre
- Project Manager advises that there are 1,852 parking spaces available at the WFCU Centre
- Transit Windsor has developed a regular bus route to the Arena site
- Mr. Farhi does not require an agreement with the City. He will operate a private parking lot on private property"

The Project Manager advised there would be enough spaces allocated to accommodate visitors going to the community centre and community rinks so they would not have to pay for parking.

We understand from Administration the City continues to plow and sand/salt the overflow lot owned by Farhi as part of negotiations which took place between Mr. Sadler and Mr. Farhi. In return, Farhi committed that the lot would be made available exclusively as overflow parking for all events at WFCU Centre. We understand this was a verbal agreement and no written contract was put in place. City Parks and Facility Operations plow the WFCU lots and the overflow lot at the same time. As an indication of annual cost to the City, we understand for the 2010/2011 winter the City plowed and salted the Farhi lot six times at an approximate cost of \$1,100.

We understand that the verbal agreement was an operational decision for the purpose of securing the parking lot for use by patrons of the WFCU Centre. We believe there should be a written contract outlining the arrangement between the WFCU Centre and Farhi with respect to the overflow parking lot.

19.2.6 Conclusion

It appears that the initial number of parking spaces at the WFCU was planned at 2,500. However due to the size and set up of the WFCU Centre as well as pressure from environmentalists, the number of parking spaces was reduced to approximately 1,900. Based on the size of the building, the parking regulation appears to be met.

The overflow parking lot owned by Farhi which charges customers \$5 per vehicle continues to be plowed by the City under a verbal agreement. We understand this arrangement secures the parking exclusively for the WFCU Centre. It would appear a written contract should be in place outlining responsibilities of each party.

19.3 City Labour Costs

KPMG noted the Arena project budget did not allow for the cost of labour that might be attributed to City employees working on the Project. Accordingly no labour expenses for City employees were allocated to the actual costs of the WFCU Project.

Although no employee labour was budgeted for or accounted for, we understand City employees did perform work on the WFCU Project, including the Project Manager, Operations Department, Information Technology Department and the Geographic Information System (GIS) Department.

19.3.1 Employee Labour Policy

At the time the Arena project began in 2006, we understand there was no City policy regarding the allocation of employee labour to projects such as the WFCU. We also understand that historically, the City did not separately record or attribute all employee labour to all Capital projects.

Since the date of the Project, new accounting regulations required the City to set out a policy which included considerations for City Labour (see below).

19.3.2 Tangible Capital Asset Policy (TCA Policy)

Historically, accounting regulations were such that cities were not required to capitalize assets. Effective for years ended December 31, 2009, Public Sector Accounting Board (PSAB) made changes to its accounting requirements (Section 3150) and Cities were required to capitalize assets and have TCA Policies.

In compliance with PSAB 3150, on January 10, 2011, the City of Windsor's TCA Policy was approved by Council. This policy specifically addresses the issue of City employee labour costs and outlines the circumstances in which employee costs will and will not be attributed to Capital Projects. Included in the cost of TCA are the following:

- "Costs of internal staff seconded to a project which results in a TCA where their regular duties are backfilled"
- "Costs of internal staff whose primary duties are to provide services relating to capital projects (for example, engineering services).

Costs of staff who are assigned to participate in projects as part of their normal range of duties and who are not specifically seconded and backfilled would not be included in the cost of TCA (for example, technology or finance staff who are not backfilled). These overhead type costs are only included in the cost of capital project in the event that external funding of the project allows for their recovery; they will be recorded in a separate general ledger account and excluded for the cost of TCA."

KPMG Comments

If this TCA policy had been in place at the time of the WFCU project, it would appear that no employee labour costs would have been attributed to the Project since we understand no employees were backfilled or seconded to the Project. In addition, prior to the TCA Policy, we understand the City did not historically attribute all City labour costs to all Capital Projects.

We understand that the AGO did a preliminary estimate of some of the main identified groups of City employee labour that could be attributed to the WFCU project if it had been City Policy. The AGO estimated that cost to be a minimum of approximately \$500,000 based on employees salaries (excluding benefits) and time attributed to the Project.

However, based on current TCA policy, the City's historical accounting for projects and the fact that the budget did not account for employee labour costs, it appears reasonable not to have attributed these costs to the actual project costs.

19.4 Hotline Calls


Throughout and subsequent to the construction of the WFCU Centre, the City received hotline calls with respect to concerns about the accounting for the WFCU Project Costs or City policies. We have received information as contained in the "hotline log" as maintained by the AGO and have considered these calls in our review. In addition, we have been advised by the lawyer for an AGO staff member on leave that there were two undocumented hotline calls. We have requested information on these calls, if any, from the staff member's lawyer but have not received this information at the date of this report.

20 Recommendations

Based on our review, analysis and findings we have the following recommendations:

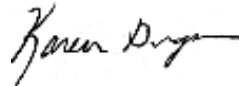
- Caution should be taken to ensure all By-Laws are followed. Specifically ensure that all procedural conditions as outlined under By-Law Number 247-2007 – Dealings with Real Property are met
- Operational revenue should not be used to offset project construction costs simply because items were not accounted for in the budget. While this appears to be a funding decision rather than a cost issue, this treatment tends to understate the total capital cost of a project to the taxpayers
- City property exchanged as part of the acquisition of land for a project should be considered a cost of the land attributed to the project
- To increase the usefulness of the Budget, future budgets should be presented in a manner which allows for the separate identification of the total project costs, total recoveries and then calculates the net project costs so that complete project costs are apparent. Revenue that will not be attributed to a project should be excluded from the budget, or clearly disclosed separately from project costs
- A formal policy should be developed to address interest rates charged on internally financed projects
- An attempt should be made to complete project charters at inception of a project
- A written contract between the City and Farhi with respect to the overflow parking at the WFCU Centre should be obtained to ensure both parties' obligations are understood and met

Administration's responses to these recommendations are outlined at Tab D.



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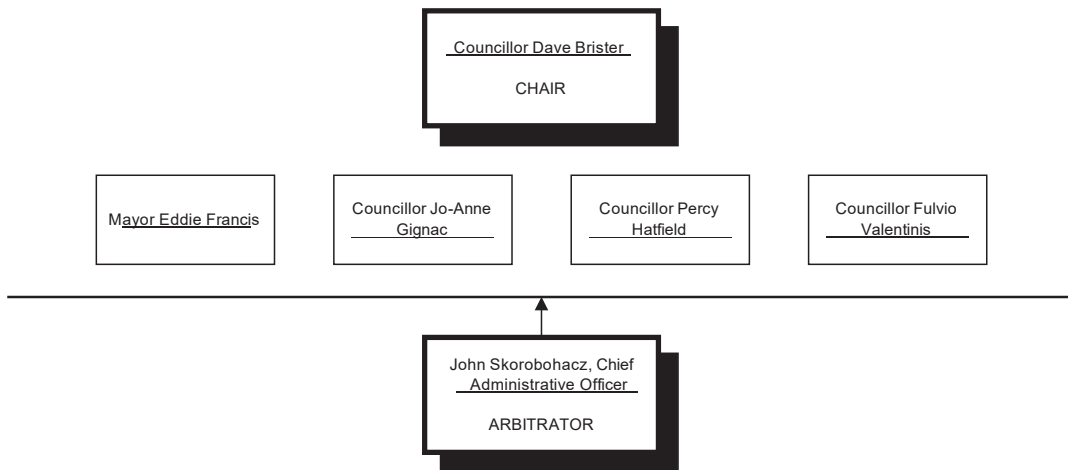
TAB A

WFCU ARENA PROJECT STRUCTURE

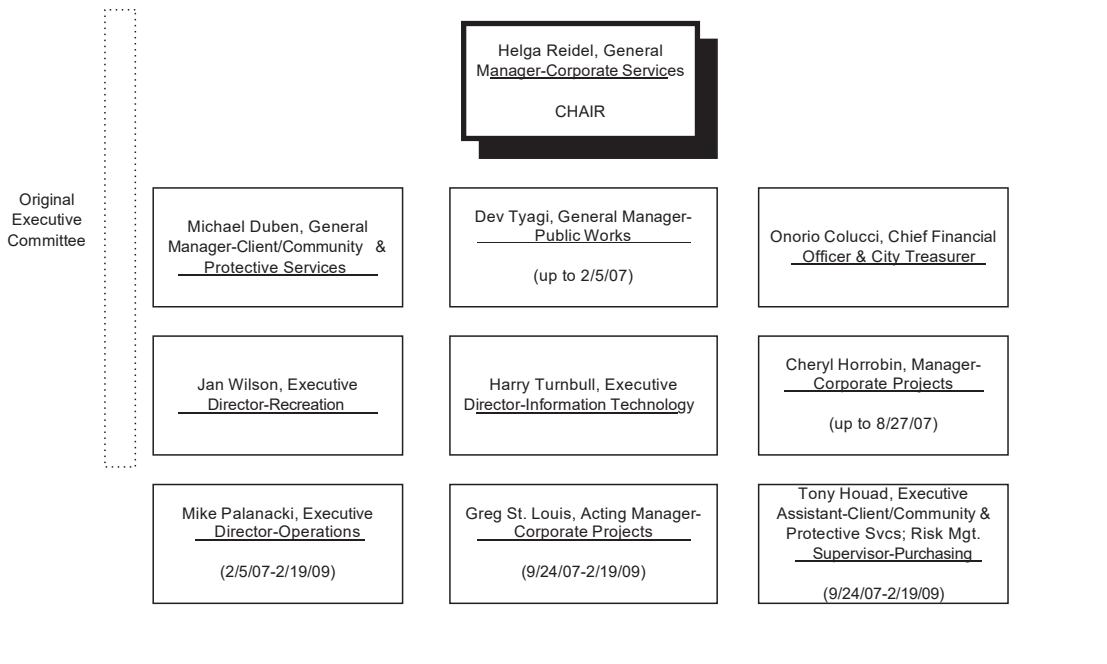
CR 560/2006 (11/27/06): Approved the Project Structure set out in Report #12515.

STEERING COMMITTEE

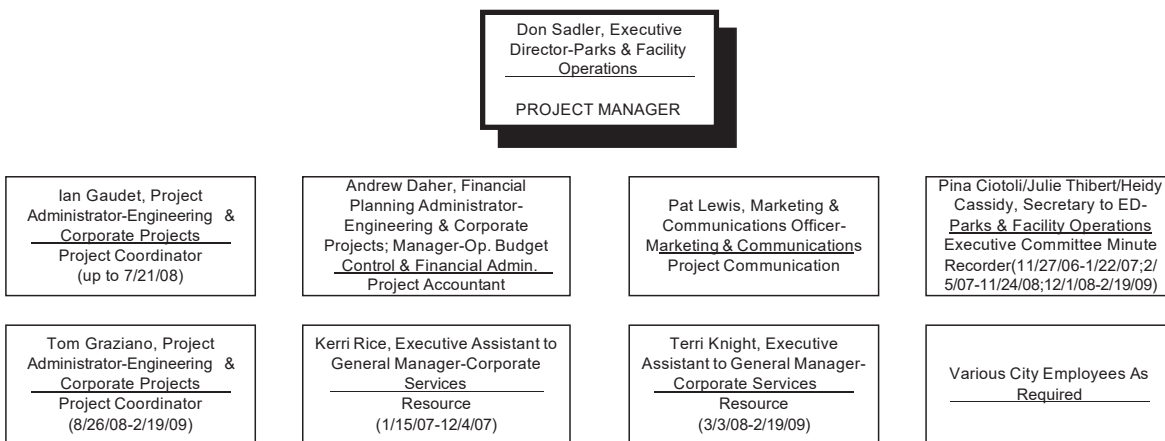
M19-2007 (1/29/07): Adopted the Report of the Striking Committee, which approved Steering Committee members on 1/8/07.



EXECUTIVE COMMITTEE



WORKING TEAM



The Corporation of the City of Windsor

WFCU Centre Project Charter

Resources, Role and Responsibilities

Role	Responsibility
Steering Committee	<ul style="list-style-type: none"> • Receive progress reports on construction activity and to monitor performance • Receive monthly financial report of budget versus actual expenditures • Review and recommend changes to City Council as needed in respect of the total project budget • Address any issue that has major implications to the success of the project • Recommend to City Council the financing strategy for the project • Recommend to City Council the overall operating strategy - post completion • Ensure all City by-laws including the Purchasing By-Law are adhered to • Approve and recommend to City Council a comprehensive public relations/ communications plan
Arbitrator	<ul style="list-style-type: none"> • Settle disputes and act as final arbitrator should the Executive Committee not reach a resolution. • Approve of all reports to Steering Committee and City Council • Provide guidance to Project Sponsor
Project Sponsor	<p>The Project Sponsor oversees the business management and project management issues that arise outside the formal business of the Steering Committee. The Sponsor also provides support and ensures that the necessary resources both financial and human are available to the project. Specific responsibilities include:</p> <ul style="list-style-type: none"> • Call and chair executive committee meetings • Demonstrate corporation's overall commitment to the project • Secure project funding/ financing • Remove major barriers to progress • Approval of all reports to Steering Committee and City Council • Co-sign change orders and all instructions/contracts to contractors/consultants/ vendors (with Project Manager) • Review weekly project account analysis prepared by project accountant • Ensure monthly reports to city council on progress and budget are delivered • Ensure monthly reports on progress and budget to Steering Committee are delivered

The Corporation of the City of Windsor

WFCU Centre Project Charter

Resources, Role and Responsibilities

Role	Responsibility
Executive Committee	<ul style="list-style-type: none"> • Receive and approve project progress/status reviews • Review and approve detailed work plan for project • Review and approve detailed monthly financial report (budget versus actual) • Ensure project direction is consistent with departmental and tenant needs • Review and resolve business issues • Oversee implementation of detailed work plan • Recommend changes to within budget allocations over \$150,000 to the Steering Committee • Recommend any additional budget approvals to the Steering Committee (subsequent to approval of final budget) • Authorize all interior specifications and fit outs recommended by the Project Manager • Report writing as assigned by Project Manager or Executive Committee • Maintain minutes of all meetings, general records and other resources
Project Manager	<p>The Project Manager is responsible for organizing the project into one or more sub-projects, managing the day-to-day aspects of the project, developing the detailed work plan, responding to media requests for information, resolving planning and implementation issues, and monitoring progress and budget. Various functional controls need to be reviewed and monitored on a regular basis. This includes cost, time, conflict and quality controls. Specific responsibilities include:</p> <ul style="list-style-type: none"> • Call and chair working team meetings • Present detailed work plan/ timeline for all elements of the project to the Executive Committee for approval • Responsibility for the overall execution of the project and co-ordination of all activities • Ensure all project components are in compliance with the City of Windsor's Purchasing By-law • Coordinate work on legal agreements • Plan each phase to ensure project team members work effectively • Monitor progress to ensure successful completion of each phase and milestone • Identify and manage project risks and scope and escalate to the Executive Committee • Ensure proper communication with project team and external communications • Establish relationship with vendors and co-ordinate • Responsible for day- to-day activities • Co-approval of change orders or instructions to contractors (with Project Sponsor) • Co- approval of progress draws for payment release (with Project Coordinator) • Co-approval of all project invoices (with Project Coordinator)

The Corporation of the City of Windsor

WFCU Centre Project Charter

Resources, Role and Responsibilities

Role	Responsibility
Project Coordinator	<ul style="list-style-type: none"> • Co-chair or alternate chair to ad hoc working sub-committee meetings • Report writing as assigned by Project Manager or Executive Committee • Working along with Client Services Parks technical staff, provide on site services to ensure project fulfillment • Co-approval of progress draws for payment release (with project manager) • Co-approval of all project invoices (with Project Manager)
Project Accountant	<ul style="list-style-type: none"> • Provide fiscal responsibility for the project including tracking project expenditures • Report on budgets • Provide weekly account analysis to Project Sponsor • Review account allocations for appropriateness • Review invoices for appropriate approvals • Track holdbacks
Project Legal Resource	<ul style="list-style-type: none"> • In conjunction with Project Manager, advise and structure all project contracts • Ensure all conditions lifted and contracts are presented for approval of appropriate parties with Council approval as needed • Track all contracts ensuring appropriate adherence to contractual commitments
Project Purchasing/Risk Resource	<ul style="list-style-type: none"> • Provide immediate advice on purchasing by-law requirements • Assist in expediting these processes placing high priority on the timing requirements of this project • Manage insurance certification (Builders Risk/WSIB etc) • Ensure appropriate adherence to the Purchasing By-law
Project Communication	<ul style="list-style-type: none"> • Event planning • Media releases • General communication
Client Technical Resource	<ul style="list-style-type: none"> • Provide technical review of shop drawings related to functionality of the recreation spaces in the building • Liaise with the Project Coordinator and Project Manager on items that require adjustments within the design of the complex • Act as advocate for the Recreation Department by forwarding changes and suggestions to the Project Manager and the Executive Committee through the Director of Recreation • Prepare specifications and tender documents for fit ups particular to the complex that are outside the scope of the General Contractor

The Corporation of the City of Windsor

WFCU Centre Project Charter

Resources, Role and Responsibilities

Role	Responsibility
Tenant Satisfaction	<ul style="list-style-type: none">• Provide information on operational needs from Departmental perspective• Provide information on stakeholder and community needs• Ensure functionality of the facility from an operational standpoint• Coordinate with the Client Technical Resource and Project Manager in communicating client and stakeholder needs that can be translated into the required specifications and drawings
Other	<ul style="list-style-type: none">• Property area• Building and Development Services• GIS area• Public Works Engineering/ Traffic Engineering

The Corporation of the City of Windsor		
Assessment of WFCU Centre Project Charter		
Goals and Benefits		
Objective	Measurement	KPMG Comments
Acquisition of land and building construction including adherence to timelines, quality and budget	<ul style="list-style-type: none"> • In accordance with contracts with PCR and other suppliers • Regular monitoring of budget and timeline to completion • Mitigation or funding of budget variances approved 	<p>This objective appears to have been met. Project was complete in December 2008, in line with the original timeline.</p> <p>Budget was monitored regularly as evidenced by a review of Council, EC and SC minutes</p>
Provide on site parking, site work and servicing	<ul style="list-style-type: none"> • In accordance with PCR and other suppliers • Public Works review and verification • Minimum of 1800 parking spaces 	Objective appears to have been met. However we note that the initial plan was for 2,500 parking spaces. See Section 19.2 of the report for further discussion on Parking.
Project communications and public relations	<ul style="list-style-type: none"> • Monthly or quarterly communications with stakeholders • Regular updates to media as to project progression 	We understand this objective was met and that there were regular updates to the media.
Project documentation and accounting	<ul style="list-style-type: none"> • Monthly updates to Executive Committee • Variances identified and mitigating actions approved 	Based on a review of EC Minutes these objectives appear to have been met.
Project fit out and furnishing	<ul style="list-style-type: none"> • In accordance with construction specifications and Steering Committee direction 	Based on a review of SC Minutes these objectives appear to have been met.
Tenant satisfaction (hockey teams and community groups)	<ul style="list-style-type: none"> • Spitfires • Senior's Centre • Catering 	We believe this to be an operational objective which has not been reviewed, as it is outside the scope of our review of the Project.
Ability to attract popular entertainment and shows.	<ul style="list-style-type: none"> • Agreement with public relations or promotional company to promote facility and/or development of promotional plans 	We believe this to be an operational objective which has not been reviewed as it is outside the scope of our review of the Project.

The Corporation of the City of Windsor		
Assessment of WFCU Centre Project Charter		
Critical Success Factors		
Critical Success Factor	Plan to Achieve	KPMG Comments
Adherence to project budget	Ongoing monitoring of budget to actual amounts spent with Executive and Steering Committees. Action taken when needed if forecasted amounts indicate problems. Resources available and the ability to draw on interdepartmental resources as needed.	Based on a review of EC and SC minutes it did appear the budget was monitored on an ongoing basis. Detailed commentary on the budget variances are outlined under Section 10 of this Report.
Adherence to project timeline	Regular project health checks to evaluate work completed to date. Notification of any possible delays to Executive and Steering Committees on a timely basis.	Based on a review of the SC minutes there did appear to be ongoing discussions related to the key milestones and deadlines referred to as the "monthly project update". This update identified any foreseen deviations from the project schedules and deadlines. For example it referred to the potential issues related to a pending strike and the impact it would have on the Project timeline.
Timely resolution of issues	Procedure for issue resolution and scope change defined in the Charter.	See Schedule 5 for a review of the Scope Changes defined by the Charter
Project support from community and stakeholders	Issue regular media updates as project progresses and evaluate feedback received. Ongoing meetings and discussions with stakeholder groups.	We understand regular media updates were provided. In addition we understand the following took place: <ul style="list-style-type: none"> - a ground breaking ceremony in January 2007 - an open house on October 2007 - a grand opening in December 2008
Accessibility of Complex	Identify accessibility needs and build them into project plans. Consult with WAAC and other groups for input and follow up.	We understand these objectives have been met.
Functionality of Complex	Identify the various goals for each component and consult with the stakeholders affected for input and expectations. Use comparison facilities for research purposes and to gain knowledge.	We believe this to be an operational item and therefore have not assessed this CSF in our review of the WFCU Project.

The Corporation of the City of Windsor

Assessment of WFCU Centre Project Charter

Scope Change

Activity	Responsibility	Activity Description	KPMG Comments
Changes to overall project budget	City Council	All requests for increases to the project budget will be brought before City Council	Appears there were no increases to the overall budget of \$64.9 million
Draws from Project Contingency	Steering Committee	The Council Steering Committee will need to approve all draws from the overall project contingency	Appears the SC approved all draws from the overall project contingency except for two which were approved by the EC (for a total value of approximately \$98,000). It appears these EC minutes were provided to the SC for review, no comments regarding these items were noted in the SC minutes.
Changes within the budget allocation greater than \$150,000	Project Manager, Project Team	All requests for items valued greater than \$150,000 will be approved by the Steering Committee	<p>Appears all allocations to the budget of \$150,000 or more (through change orders) were appropriately approved by the SC with the exception of the following:</p> <ul style="list-style-type: none"> - One item for approximately \$5,957,000 was "received for information" by the SC, but not noted in the minutes as "approved." In the administrative report provided to Council, it was requested that the amount be approved out of the site servicing category. According to Administration, the wording of "received for information" in the minutes was likely an oversight and it should have read "approved." - It appeared another item was approved to be partially allocated to the provincial grant expenditure and partially funded by the contingency categories but was instead included in programming upgrades for approximately \$146,000. This change in allocation was based on the professional judgement of the Project Accountant. <p>Additionally, an expense of approximately \$551,000 was approved but the minutes did not note which category the expenditure should be recorded in, the Project Accountant allocated the funds using professional judgement.</p>

The Corporation of the City of Windsor
 Assessment of WFCU Centre Project Charter
 Scope Change

Activity	Responsibility	Activity Description	KPMG Comments
Changes within the budget allocation less than \$150,000	Project Manager, Project Team	All requests for items valued less than \$150,000 will be approved by the Executive Committee	<p>Appears all allocations to the budget less than \$150,000 (through change orders) were appropriately approved by the EC with the exception of the following:</p> <ul style="list-style-type: none"> -a \$38,000 expense was noted in a meeting, however the decision of approval was to be deferred to another date. It did not appear to have been approved at a later date. - an expense item was approved to the appropriate category but the amount was not noted in the minutes. The actual amount for the change order was \$89,500. - an expense item of \$56,000 had approval ratified since work had already been started before it was approved due to time sensitivity of the decision - an expense item of approximately \$59,000 was approved but the minutes did not note which category the expenditure should be recorded in. The Project Accountant allocated the funds using professional judgement. - there was a change order of \$25,200 but no approval could be located in our review of the EC minutes. <p>It should be noted that change orders noting credits to the project were not expected to be approved by the EC.</p>
Request for change in scope	Project Manager, Project Team	All change requests will be brought before the Executive Committee for deliberation or referral to the Steering Committee	Appears there were no requests for change in scope brought to the EC or the SC.

TAB B

City of Windsor					
WFCU Centre Project					
Summary of Budget to Actual Expenditures					
	Preliminary Budget 10/4/2006	Final Budget 2/19/2007	Actual Costs/ (Recoveries) to 3/31/2011	Projected Total Costs/ (Recoveries)	Variance Budget vs. Total Costs
Direct Construction Costs:					
Base Construction Costs	\$ 48,000,000	47,920,000	47,920,000	47,920,000	-
Site Servicing Costs	5,000,000	6,299,145	7,064,191	7,064,192	(765,047)
Contingency on Site Servicing	300,000	629,915	629,915	629,915	-
Fit-up Costs	4,429,200	4,429,200	8,215,186	8,215,186	(3,785,986)
Contingency on fit-up costs	442,920	442,920	285,181	288,509	154,411
Building Permits	396,900	396,900	430,126	430,126	(33,226)
Development Charges	532,140	-	-	-	-
Bonding Fee	300,000	500,000	500,000	500,000	-
Architectural Advocacy	-	200,000	199,281	199,281	719
Direct Construction Costs	59,401,160	60,818,080	65,243,880	65,247,209	(4,429,129)
Other Costs:					
Pre-Construction Due Diligence	TBD	250,000	250,000	250,000	-
Land Purchase Cash Outlay	TBD	1,400,000	1,375,000	1,375,000	25,000
Land Cost - Excavation of Rubble	TBD	300,000	-	300,000	-
Building Elevation Cost	TBD	621,000	621,000	621,000	-
Building Elevation Cost - Recovery	TBD	(621,000)	(621,000)	(621,000)	-
Closing & Land Transfer Fees	TBD	70,000	69,129	69,129	871
Financing - During Construction	TBD	2,700,000	1,298,509	1,298,509	1,401,491
Financing - Post Construction	TBD	1,500,000	136,238	201,491	1,298,509
Financing - Contingency	TBD	800,000	-	-	800,000
Naming Rights Costs	-	-	10,716	10,716	(10,716)
Expenditures Funded by Provincial Grant	-	-	1,920,214	1,920,212	(1,920,212)
Total Other Costs	-	7,020,000	5,059,806	5,425,057	1,594,943
Project Costs (Before Overall Contingency)	TBD	67,838,080	70,303,686	70,672,266	(2,834,186)
Overall Project Contingency	-	1,750,000	1,672,482	1,711,893	38,107
Total Project Costs	TBD	69,588,080	71,976,168	72,384,159	(2,796,079)
Revenue/Recoveries:					
Recoveries - Building Permits & Dev Charges	(922,013)	(922,013)	-	(1,352,139)	430,126
Additional Recoveries	-	-	(811,099)	(811,099)	811,099
Miscellaneous Offsets	(3,744,680)	(3,744,680)	-	(2,154,000)	(1,590,680)
Naming Rights - WFCU	-	-	(445,500)	(1,434,242)	1,434,242
Provincial Grant	-	-	(4,000,000)	(4,000,000)	4,000,000
WFCU Fundraising Initiatives	-	-	(381,006)	(1,503,254)	1,503,254
Total Recoveries	(4,666,693)	(4,666,693)	(5,637,605)	(11,254,734)	6,588,041
Net Project Costs	\$ TBD	64,921,387	66,338,563	61,129,425	3,791,962

1 Notes to Schedule 6

1.1 Base Construction Costs

1.1.1 Preliminary Budget

PCR Contractors Inc. provided a letter dated July 6, 2006 to Council which proposed an approximate cost of \$48 million for the base construction costs of a 4-Pad recreation complex. PCR noted that once the price estimate was finalized it would be a guaranteed fixed price. Additional costs over and above PCR's guaranteed construction price include site servicing, fit ups, legal fees, landscaping and the construction of a parking lot.

1.1.2 Final Budget

Council approved the PCR Contractors Inc. guaranteed fixed price proposal at \$47.92 million for construction of the EERC building. We understand the Executive Director of Parks & Facility Operations reviewed the functionality of the design, amenities, allowances, electrical/HVAC system and the quality of the trim and finishes and considered it adequate.

1.1.3 Actual Costs to March 31, 2011

Actual Costs to March 31, 2010 for base construction costs amounted to \$47.92 million which was consistent with budgeted costs.

1.1.4 Projected Total Costs to Completion

There are no further costs expected. Therefore, projected total cost is equal to actual costs to March 31, 2011 and the Final Budget.

1.2 Site Servicing Costs

1.2.1 Preliminary Budget

We understand site servicing costs were initially estimated at \$5 million by the Deputy City Engineer. This cost included \$2 million for parking expenses and was considered a preliminary estimate subject to change.

1.2.2 Final Budget

The budget for site servicing was adjusted upward from the original budget by \$1.3 million to approximately \$6.3 million. This included estimated costs for bringing services from the road to the arena, the parking lot, and all other related infrastructure and landscaping expenditures on site. We understand this estimate was reviewed by the Executive Director of Parks & Facility Operations and the Executive Director of Operations and was considered to be sufficient.

1.2.3 Actual Costs to March 31, 2011

Actual site servicing costs to March 31, 2011 was \$7.06 million, approximately \$765,000 over the final budgeted amount. We understand the reason for the increase in cost included the price escalation of oil and other miscellaneous unexpected costs which were not included in the Final Budget.

1.2.4 Projected Total Costs to Completion

Projected total site servicing costs remain at \$7.06 million, consistent with actual costs to March 31, 2011.

1.3 Contingency on Site Servicing

1.3.1 Preliminary Budget

Contingency costs were initially estimated as \$300,000 for site servicing. We understand the contingency level was based on the City of Windsor: 400 City Hall Square Project Review Report by Brodel Management dated December 2005 which stated that contingencies should be 10 percent or less on a new building construction initiative. Therefore, a contingency of 10% was selected on the \$3 million site servicing costs (\$5 million less \$2 million parking).

1.3.2 Final Budget

The Final Budget included a site servicing contingency of approximately \$630,000 based on 10% of the overall Site Servicing budget of \$6.3 million. We understand this amount was considered to be sufficient by the Executive Director of Parks & Facility Operations and by the Executive Director of Operations.

1.3.3 Actual Costs to March 31, 2011

The actual contingency costs on site servicing totaled to \$630,000, the same as the final budget.

1.3.4 Projected Total Costs to Completion

There are no further costs expected. Therefore, projected cost is the same as actual costs to March 31, 2011 and the Final Budget of \$630,000.

1.4 Fit-up Costs

1.4.1 Preliminary Budget

We understand the initial estimated fit-up costs of approximately \$4,429,000 were based on Parks & Recreation preliminary estimates. These expenses were outlined in a separate supporting schedule provided to Council In Camera.

1.4.2 Final Budget

The total fit-up budget of \$4,429,000 did not change from the Preliminary Budget. The detail of this budget was provided in the Final Budget notes as follows:

Table 1	
Final Recommended Budget	
Fit-up Costs	
Building Envelope	\$ 1,097,200
Energy Efficiencies	885,000
Security, Communication, AV & Media	600,000
Recreation Complex Programming Upgrades	1,427,000
Furniture, Fixtures, & Equipment	420,000
	\$ 4,429,200

However, it was noted that although the total budget did not change, there had been some changes to the allocations within the fit-up costs from what was estimated as part of the Preliminary Budget. According to the notes to the Final Budget, the \$600,000 initially budgeted out of fit-up costs for a Jumbo Tron was saved since it would be paid by the Spitfires instead (under its Lease with the City), rather than a cost of the Project.

It was also noted that costs for the rear addition of \$660,000 as well as an upgrade to the precast concrete panels from the metal siding of \$388,000 were included in the final budget, but not in the preliminary budget.

We understand the remainder of these additional costs (above the \$600,000 savings on the Jumbo Tron) had been reallocated from other budgeted items within the fit-up costs category.

We understand the budget for fit-up costs was reviewed by the Executive Director of Parks & Facility Operations, Executive Director of Recreation, and the Project Coordinators and was considered to be sufficient.

1.4.3 Actual Costs to March 31, 2011

Actual Fit-up costs to March 31, 2011 were approximately \$8.2 million as outlined below:

Table 2	
Actual Costs to March 31, 2011	
Fit-up Costs	
Building Envelope	\$ 1,468,497
Energy Efficiencies	1,781,959
Security, Communication, AV & Media	1,012,024
Recreation Complex Programming Upgrades	3,456,026
Furniture, Fixtures, & Equipment	496,680
	\$ 8,215,186

Fit-up costs were over budget by approximately \$3.8 million. However the contingency on fit-up costs (see below) was under budget by approximately \$142,000. It appears a portion of the \$3.8 million costs over budget should have been allocated to the fit-up contingency account.

Building Envelope

Actual costs to March 31, 2011 for building envelope totaled approximately \$1.47 million which is approximately \$370,000 over the final budget. The additional cost related to unbudgeted "WFCU Centre" signage which was approved by the Steering Committee. The costs for signage were considered to be "funded" by revenues from naming rights (refer to Section 1.19).

Energy Efficiencies

Actual costs to March 31, 2011 for energy efficiencies totaled approximately \$1.78 million which is approximately \$890,000 over the final budget. It appears this cost was over budget as a result of higher expenditures than anticipated on the HVAC and plumbing systems and the electrical and lighting.

Security, Communication, AV and Media

Actual costs to March 31, 2011 for security, communication, AV and media was approximately \$1.01 million, approximately \$410,000 over the final budget.

Approximately half of the \$1.01 million expenditure was for the sound system and the other half was for items such as telephone, wireless internet, cabling and consulting fees. We understand expenses incurred were over budget on both the sound system and the other equipment noted above.

It is noted that approximately \$600,000 of this cost was expected to be "recovered" through a 10 year Pepsi naming rights agreement. The planned offset of the Pepsi agreement against the sound system was noted on page 13 of the Administrative report #12652 presented to Council on February 19, 2007. We understand in considering the approval for the costs above budget, Administration ensured funds would be available to cover the costs as a result of unbudgeted revenues from a Pepsi naming rights agreement (this recovery is recorded as part of WFCU Fundraising Initiatives which are discussed further in ss. 1.26).

Recreation Complex Programming Upgrades

Actual costs to March 31, 2011 for programming upgrades totaled approximately \$3.46 million which is approximately \$2.03 million over the Final Budget. This additional cost was for fit-out of suites, concession, restaurant and kitchen revisions, gypsum board/acoustic ceilings as well as other smaller items. These items were not included as part of the original budget but were considered to be necessary as construction progressed.

The additional cost of the fit-out of suites was approximately \$635,000. This was offset by a recovery of \$644,000 (calculated based on a budgeted amount for fit-out of suites of \$637,500 plus approximately \$6,500 of estimated interest to account for financing of the suite fit-out cost) under the "additional recoveries" (discussed below in ss. 1.23). Therefore the additional cost of suite fit-ups had no impact on the net project costs.

Furniture, Fixtures, and Equipment

Actual costs to March 31, 2011 for furniture, fixtures and equipment totaled approximately \$497,000 which is approximately \$77,000 over the final budget, as more furnishings were required and costs were higher than originally anticipated.

1.4.4 Projected Total Costs to Completion

There are no further costs expected.

1.5 Contingency on fit-up costs

1.5.1 Preliminary Budget

Contingency costs were estimated at approximately \$430,000 or 10% of fit-up costs. We understand the contingency level was based on the City of Windsor: 400 City Hall Square Project Review Report by Brodel Management dated December 2005 which stated that contingency should be 10% or less on a new building construction initiative.

1.5.2 Final Budget

Contingency on fit-up costs did not change from the original budgeted amount of \$430,000 which was 10% of the fit-up costs.

1.5.3 Actual Costs to March 31, 2011

Total contingency on fit-up costs to March 31, 2011 amounted to approximately \$285,000.

1.5.4 Projected Total Costs to Completion

A further \$3,000 expense is expected on contingency fit-up costs resulting in a total project cost of approximately \$288,000. This appears to be under budget by approximately \$142,000. However, it should be noted that many fit-up cost line items noted above were over budget, therefore there was no actual savings in the fit-up cost contingency.

1.6 Building Permits

1.6.1 Preliminary Budget

The estimated building permits cost was approximately \$397,000, which we understand was provided by the Public Works Department.

1.6.2 Final Budget

The budgeted cost of the building permit did not change from the preliminary estimate provided to Council. We understand the Chief Building Official based this estimate on 294,000 square feet at a rate of \$1.35/square foot. It was noted that although this is a cost to the project, the Building and Development department of the City will realize this building permit revenue. Therefore it is not a cost to the municipality.

1.6.3 Actual Costs to March 31, 2011

The actual cost of the building permit was approximately \$430,000 which was \$33,000 higher than budget. The additional cost was due to an increase in square footage than originally anticipated due to the addition of a docking zone to the WFCU Centre.

1.6.4 Projected Total Costs to Completion

There are no further expected costs.

1.7 Development Charges

1.7.1 Preliminary Budget

We understand the estimated development charges of approximately \$532,000 (which was initially grouped with building permits) was estimated by the Public Works Department.

1.7.2 Final Budget

The final budget re-evaluated the development charges and determined it to be \$ nil. This was based on By-law #280-2004, Section 3(2). Per the By-law, development charges do not apply to land that is owned by and used for the purposes of the City of Windsor.

1.7.3 Actual Costs to March 31, 2011

No development charges were incurred to March 31, 2011.

1.7.4 Projected Total Costs to Completion

No development charges are expected to be incurred.

1.8 Bonding Fee

1.8.1 Preliminary Budget

We understand the estimated bonding fee of \$300,000 was provided by Parks & Recreation based on experience with past capital projects.

1.8.2 Final Budget

The budgeted bonding fee increased to \$500,000 from the preliminary budget. It included a \$391,000 fixed contract price based on a quote received from Masters Insurance Ltd. and \$109,000 for the assignment of the fit-up and site servicing works to the general contractor. We understand this amount was considered sufficient by the Executive Director of Parks & Facility Operations.

1.8.3 Actual Costs to March 31, 2011

The actual bonding fee cost to March 31, 2011 was \$500,000 which is consistent with the final budget.

1.8.4 Projected Total Costs to Completion

There are no further costs to complete expected. Therefore the bonding fee was on budget.

1.9 Architectural Advocacy

1.9.1 Preliminary Budget

No amount had been budgeted for this item.

1.9.2 Final Budget

Architectural Advocacy was budgeted at a cost of \$200,000 to hire an architectural consultant to review the design of the Arena and sign-off on progress draws as well as consultation assistance with tendering fit-ups for the facility. Although not originally budgeted, these expenditures were determined to be critical by the Executive Committee and project manager.

We understand this budget was reviewed by the Executive Director of Parks and Facilities Operations who considered it to be sufficient.

1.9.3 Actual Costs to March 31, 2011

The actual architectural advocacy cost was approximately \$199,000 as of March 31, 2011 consistent with the Final Budget of \$200,000. This includes fees paid to LP Meyer and GS Inspection Consultants.

1.9.4 Projected Total Costs to Completion

There are no further costs expected.

1.10 Pre-Construction Due Diligence

1.10.1 Preliminary Budget

The cost had not yet been budgeted as at October 4, 2006.

1.10.2 Final Budget

Pre-construction due diligence was estimated at \$250,000 (see following section for detail) to reflect consulting and administrative costs necessary to complete Council's directions to develop and quantify the scope and budget for the EERC project. This amount was originally allocated to Riverside Arena Twinning, and on November 6, 2006 was approved by Council to be allocated to the EERC.

1.10.3 Actual Costs to March 31, 2011

The total cost allocated to the project for pre-construction due diligence was \$250,000 which was consistent with the final budget. The \$250,000 cost is detailed in the following table:

Table 3		
Pre-Construction Due Diligence Detail		
Description	Budgeted Amount	Actual Amount
Travel expense	\$ 1,000	803
Consulting service - external	40,000	36,477
Advertising	2,000	1,058
Other professional - external	3,400	3,370
Business meeting expense	800	154
Registration costs	15	15
Design and plan consulting	100,000	109,411
Construction contracts	102,785	98,712
Total	\$ 250,000	250,000

1.10.4 Projected Total Costs to Completion

There are no further costs expected. Therefore total cost is consistent with the Final Budget of \$250,000.

1.11 Land Purchase Cash Outlay

1.11.1 Preliminary Budget

It was noted that the cost of land for the EERC had not yet been estimated as at October 4, 2006.

1.11.2 Final Budget

Land purchase cost was budgeted at \$1,400,000 in the form of a credit against future development. The land (Lear Property) was obtained by the City through an exchange of City owned property. It was noted that, although not a direct cost to the project, there was an opportunity cost of approximately \$2.5 million relating to the value of City land (the Riverside Property) that was part of the exchange. We note the Riverside Property was later attributed a value of \$2 million when it was exchanged for the Lear Property. The transparency of the budget has been reduced as a result of not including the opportunity cost of land as part of the final budgeted net project cost.

See Section 14 of this report for further discussion on the land exchange.

1.11.3 Actual Costs to March 31, 2011

A cash payment of \$1.375 million was made to Fahri as part of the exchange of City owned property noted above, \$25,000 below the Final Budget. We note the original cash outlay was to be \$1.5 million which was reduced by \$125,000 as a result of clean up required at the Lear Site (which was the responsibility of the former owner). The City agreed to perform the clean up for a reduction in the cash payment. The costs incurred for this clean up of the Lear Site have been included as construction costs of the Project. (See Section 14 of this report for further discussion)

1.11.4 Projected Total Costs to Completion

There are no further land costs expected.

1.12 Land Cost – Excavation of Rubble

1.12.1 Preliminary Budget

The cost had not yet been estimated as at October 4, 2006.

1.12.2 Final Budget

The budget provided for \$300,000 to cover excavation of rubble at the City owned Riverside Property as part of the land exchange deal. The cost of the work was expected to be incurred in 2010 at the time of excavation (when Fahri was to take ownership of the Riverside Property). We understand the Executive Director of Parks and Facilities Operations believed the budgeted amount to be sufficient.

1.12.3 Actual Costs to March 31, 2011

As of March 31, 2011, no costs had been incurred for excavation of rubble as Fahri had not yet taken ownership of the Riverside Property and excavation had not yet been performed.

1.12.4 Projected Total Costs to Completion

The expected costs to excavate the rubble remain at \$300,000 which is consistent with the Final Budget.

1.13 Building Elevation Cost

1.13.1 Preliminary Budget

The cost had not yet been estimated as at October 4, 2006.

1.13.2 Final Budget

A decision was made to raise the building elevation by one meter so that it would be above the flood plains. The cost was budgeted at \$621,000.

We understand excavation at the Lear Site for the Project provided clay and fill which was used in the construction of the McHugh Street extension (the bridge). Therefore, the City agreed to cover the \$621,000 of the elevation cost which was the approximate amount expected to be saved on the clay and fill (which they would have otherwise had to purchase externally).

1.13.3 Actual Costs to March 31, 2011

The actual building elevation cost was \$621,000 to March 31, 2011, consistent with the final budget.

1.13.4 Projected Total Costs to Completion

There are no further expected costs. Therefore the elevation was completed on budget.

1.14 Building Elevation Cost - Recovery

1.14.1 Preliminary Budget

The cost, and therefore the recovery, had not yet been estimated as at October 4, 2006.

1.14.2 Final Budget

The building elevation cost recovery was estimated at \$621,000 to offset the cost of the building elevation noted above. The cost was recovered from the City as part of the McHugh Street extension. Refer to the preceding subsection for further information regarding this cost and recovery.

1.14.3 Actual Recoveries to March 31, 2011

The actual building elevation cost recovery was \$621,000 as of March 31, 2011 consistent with the Final Budget.

1.14.4 Projected Total Recoveries to Completion

There are no further recoveries expected.

1.15 Closing & Land Transfer Fees

1.15.1 Preliminary Budget

The cost of closing and land transfer fees had not yet been estimated as at October 4, 2006.

1.15.2 Final Budget

Budgeted closing costs and land transfer fees were estimated to be \$70,000. This included \$8,000 for land survey costs and final closing costs and \$62,000 for land transfer tax. We understand the Senior Property Agent considered this budget to be sufficient.

1.15.3 Actual Costs to March 31, 2011

Closing and land transfer fees totaled approximately \$69,000 to March 31, 2011 which was \$1,000 less than the Final Budget.

1.15.4 Projected Total Costs to Completion

There are no further costs expected. Therefore, the total cost is consistent with actual costs to March 31, 2011 and the Final Budget.

1.16 Financing – During Construction (See also Section 15 of the Report)

1.16.1 Preliminary Budget

The cost had not yet been estimated as at October 4, 2006.

1.16.2 Final Budget

Based on projected timing of cash outflows and an expected interest rate of 5%, the projected temporary financing costs during construction were estimated to be \$2.7 million. We understand

this amount had been reviewed and considered suitable by the Chief Financial Officer and City Treasurer. It was noted, that factors such as timing of cash flows and interest rates could have a significant impact on this estimate. At the date of budget, financing during construction was expected to be in the form of Banker Acceptance notes.

1.16.3 Actual Costs to March 31, 2011

Actual financing costs during construction amounted to approximately \$1.3 million up to March 31, 2011. This was below budget by approximately \$1.4 million. Instead of obtaining financing through Banker Acceptance notes as planned, we note that significant funds were borrowed internally from the City of Windsor. The savings arose from much lower interest rates charged than budgeted. This is discussed further under Section 15 of this Report.

1.16.4 Projected Total Costs to Completion

As the Project is complete, no further financing during construction are to be incurred. Financing after completion of the Project is considered under Financing - Post Construction (below).

1.17 Financing – Post Construction (See also Section 15 of Report)

1.17.1 Preliminary Budget

This financing cost had not yet been estimated as at October 4, 2006.

1.17.2 Final Budget

Based on projected timing of cash outflows and the expected interest rate of 5%, the projected temporary financing costs for post construction was estimated to be \$1.5 million. We understand this amount was considered suitable by the Chief Financial Officer and City Treasurer. It was noted that factors such as timing of cash flows and interest rates could have significant impact on this estimate

It was noted that post construction interest cost estimates would be charged to the City's operating budget, as per regular Municipal accounting practices. Therefore, the \$1.5 million would not be a direct cost to the project. However, it was included and accounted for in the Project budget.

1.17.3 Actual Costs to March 31, 2011

Post construction financing costs up to and including March 31, 2011 were approximately \$136,000 significantly under budget. The savings arose from much lower interest rates charged than budgeted. Funding was expected to be in the form of Banker Acceptance notes but instead was internally financed by the City.

1.17.4 Projected Total Costs to Completion

Post construction financing costs are expected to be approximately \$201,000 in total by the time the loans are paid back. This amounts to a savings from the final budget of \$1.3 million. Similar to the savings on financing costs during construction, the cost savings arose from much lower interest rates charged than budgeted and internal financing by the City instead of obtaining financing through Banker Acceptance notes as planned and budgeted.

1.18 Financing - Contingency

1.18.1 Preliminary Budget

The contingency had not yet been estimated as at October 4, 2006.

1.18.2 Final Budget

The financing contingency was budgeted at \$800,000 and was included to mitigate interest rate increases and/or changes to the timing of project draws. We understand this contingency had been reviewed by the City Treasurer and was considered sufficient given current interest rate projections and current projections of the timing of construction payments.

1.18.3 Actual Costs to March 31, 2011

There were no financing contingency costs incurred to March 31, 2011 which resulted in an \$800,000 saving from the final budget.

1.18.4 Projected Total Costs to Completion

There is not expectation of additional financing costs to be applied to the contingency. Therefore, projected total costs is consistent with actual costs to March 31, 2011 of \$ nil.

1.19 Naming Rights Costs

1.19.1 Preliminary Budget

The costs attributed to naming rights had not been accounted for in the Preliminary Budget.

1.19.2 Final Budget

The cost had not been accounted for in the Final Budget.

1.19.3 Actual Costs to March 31, 2011

Actual naming right costs to March 31, 2011 were approximately \$11,000 and had not been included as part of the final budget.

1.19.4 Projected Total Costs to Completion

There are no further costs expected.

1.20 Expenditures Funded by Provincial Grant (See also Section 18 of Report)

1.20.1 Preliminary Budget

No estimate of expenses to be funded from the Provincial Grant had been estimated since the potential grant itself had not been budgeted.

1.20.2 Final Budget

No estimate of expenses to be funded from the Provincial Grant had been estimated since the potential grant itself had not been budgeted.

1.20.3 Actual Costs to March 31, 2011

The City received \$4 million as a Provincial Grant (see Section 1.25 below). Expenditures funded from this Grant as of March 31, 2011 totaled \$1.92 million. This included approximately \$966,000 on upgrades to the common areas and bathrooms, \$560,000 on fit up of the WFCU Centre for events outside of OHL Hockey, and \$394,000 on various other purchases such as the event deck, staging, storage, curtains, lighting and scoreboards. This expenditure had not been estimated at the time the budget was finalized.

1.20.4 Projected Total Costs to Completion

There is no expectation of further expenses to be funded by the provincial Grant

1.21 Overall Project Contingency

1.21.1 Preliminary Budget

This contingency had not yet been estimated as at October 4, 2006.

1.21.2 Final Budget

The overall project contingency expenditure was budgeted as \$1.75 million. This contingency had been suggested by Administration to allow Council greater flexibility to fund unexpected expenditures and/or possible upgrades that would result in operational savings not yet identified, but may be desired, as the project construction was underway. The use of this contingency budget was to be approved at the discretion of the Steering Committee.

1.21.3 Actual Costs to March 31, 2011

The actual cost allocated to the overall project contingency to March 31, 2011 was \$1.67 million. This included costs to upgrade the fire protection system, additional retail space, mezzanine addition, additional bonding and insurance fees, additional electrical and communication work, additional painting of ceilings, sealing of decorative block, purchase of seating, functional adjustments, floor seating and chairs.

Refer to Project Charter Section 9 of the Report for KPMG's testing of overall project contingency approvals by the SC.

1.21.4 Projected Total Costs to Completion

The total projected overall contingency costs are estimated to be \$1.71 million, slightly above actual to March 31, 2011. Overall this represents a savings from the Final Budget of approximately \$40,000.

Revenue/Recoveries

1.22 Recoveries – Building Permits & Development Charges (See also Section 16 of Report)

1.22.1 Preliminary Budget

Building Permit and Development Charges Recoveries (to the City) of approximately \$922,000 were budgeted in relation to the three City properties to be disposed (Riverside Arena, Adstoll Arena and Edward Community Centre). Dillon Consulting estimated these one-time recoverable amounts based on probable redevelopment of the three properties.

1.22.2 Final Budget

There was no change to the Preliminary Budget of \$922,013. It was noted that if redevelopment did not occur or only partially occurred, the estimated amount of recoveries would significantly change. It was noted that many factors could impact this estimated recovery such as changes in Council or community direction and market conditions.

The Final Budget also noted that Building Permit and Development Charge revenue would accrue corporately and not as a direct credit to this Project. Therefore, additional Debt Reduction funding of approximately \$922,000 would be required to fund the project.

Including these potential recoveries in the project budget (which won't be attributed to the Project) has an effect of reducing the transparency of the budget. The net project cost was estimated after contingent recoveries without total project costs (before recoveries) identified.

1.22.3 Actual Recoveries to March 31, 2011

No recoveries had been received up to March 31, 2011 relating to building permits and development charges.

1.22.4 Projected Total Recoveries to Completion

Projected total recoveries from building permits and development charges are expected to be approximately \$1,352,000.

The additional \$430,000 above the Final Budget was included to offset the building permit fees of \$430,000 which are described in ss. 1.6 above. We understand the recovery was recorded to show the net cost to the taxpayer since the building permit fees were paid corporately to the City of Windsor and therefore were not in fact a net cost of the project. Since this recovery was not recorded as part of the Final Budget but the related cost was, the transparency of the budget has been reduced.

1.23 Additional Recoveries

1.23.1 Preliminary Budget

Additional recoveries were not included on the preliminary budget.

1.23.2 Final Budget

Additional recoveries were not included on the final recommended budget.

1.23.3 Actual Recoveries to March 31, 2011

Actual additional recoveries amounted to approximately \$811,000 by the end of March 2011. These recoveries include the following:

- Suite fit-out repayment of approximately \$644,000 which was used to "offset" suite fit-out expenses (mentioned above in the programming upgrades subsection 1.4.3). We understand that this amount was estimated to be recovered over two years with 50% of the Spitfires and 50% of the City of Windsor suite fit-out revenue, suite license initiation fees and ticket surcharges. The suite fit-out repayments were transferred to this project from the operating budget through a manual journal entry as the monies were received
- Tree planting revenue recovery of approximately \$120,000 of which \$70,000 was received from ERCA and \$50,000 was transferred from the McHugh Street capital project to cover a portion of the landscaping costs (included in site servicing).
- A grant for the WFCU Great Lakes Sustainability Fund of \$40,000
- An amount from Dobrich – Power Teck Hockey of \$7,000.

These amounts had not been included as part of the Final Budget.

1.23.4 Projected Total Recoveries to Completion

There are no further recoveries expected. Therefore, total additional recoveries are approximately \$811,000, none of which were budgeted.

1.24 Miscellaneous Offsets (See also Section 16 and 17 of the Report)

1.24.1 Preliminary Budget

We understand miscellaneous offsets of \$3.745 million include the following:

- The expected revenue from the disposal of three City properties (Adstoll Arena, Riverside Arena and Edward Street Centre) of \$2.245 million as estimated by Dillon Consulting in their Redevelopment Analysis (May 2006).
- Estimated revenues from naming rights of \$1.5 million. We understand these revenues were estimated for the naming rights to the Centre (versus other naming rights throughout the building) based on recent industry trends for naming rights.

1.24.2 Final Budget

Miscellaneous offsets were budgeted to be the same as the Preliminary Budget at approximately \$3.745 million and were comprised of the sale of the identified properties (as noted above). Refer to section 16 of the Report for more information regarding the sales of the properties.

It was noted that many factors such as market conditions or changes in the planned redevelopment of the sites could significantly impact the estimated recovery from the sale of the identified properties.

We understand revenue from the naming rights were estimated by the Executive Director of Parks and Facilities Operations. However, it was noted that there was considerable uncertainty as to the amount and timing of the naming rights revenues. These funds were expected to be recovered over a number of years and would have impact on cash outflows and financing costs as well as require additional upfront debt reduction funding. Refer to section 17 of the Report for more information regarding the naming rights.

As outlined at Tab C, the Final Budget determined "Net Project Costs" including the offsetting revenue and recoveries. The Final Budget did not include a subtotal of total project cost before recoveries which has limited the transparency of the budget.

1.24.3 Actual Recoveries to March 31, 2011

Under the Actual Recoveries as at March 31, 2011, the Final Budget of \$3.745 million was allocated between "miscellaneous offsets" (which only included the expected revenues from the three City properties) and naming rights. No recoveries had been received to March 31, 2011 relating to the sale of the identified properties mentioned above. For recoveries relating to naming rights see Section 1.26 and 1.27 below.

1.24.4 Projected Total Recoveries to Completion

The recovery related to the sale of the three City properties is expected to be \$2,154,000, which is \$91,000 less than the Final Budget. This estimate was based on appraisals performed; refer to Section 16 of the Report for further details on these properties and appraisals.

1.25 Provincial Grant

1.25.1 Preliminary Budget

The provincial grant was not included in the Preliminary Budget

1.25.2 Final Budget

This expected Grant was not included in the Final Budget. However, the budget comments under "Miscellaneous Offsets" noted that a request was made to the Province, through the Ministry of Health Promotion. It was noted that a grant equivalent to approximately 13% of the cost of the Project (similar to recent grants provided to other municipalities) in the amount of \$8 to \$10 million was requested.

We understand the approval status and amount of the grant was unknown at the time of the Final Budget and therefore was not included as a recovery. Refer to section 18 of the Report for further details relating to the Provincial Grant.

1.25.3 Actual Recoveries to March 31, 2011

The actual provincial grant received in April 2007 was \$4 million.

1.25.4 Projected Total Recoveries to Completion

There are no further grants expected. The fact that this grant was not budgeted provided extra funding to the Project.

1.26 WFCU Fundraising Initiatives

1.26.1 Preliminary Budget

No fundraising revenues were included in the Preliminary Budget.

1.26.2 Final Budget

No fundraising revenues were included in the Final Budget.

1.26.3 Actual Recoveries to March 31, 2011

Actual recoveries to March 31, 2011 from fundraising initiatives totaled approximately \$381,000. This included funds received for naming rights from various companies (excluding WFCU).

1.26.4 Projected Total Recoveries to Completion

Total projected recoveries from fundraising initiatives for the Project were estimated at approximately \$1,503,000. This includes all the naming rights revenue (excluding the WFCU naming rights) up to 2010 plus the present value of the remaining expected revenue from 2010 to 2018. The fundraising initiatives were not estimated as part of the Final Budget and therefore reduced the net costs of the Project. These non-WFCU naming rights are discussed in subsection 17.2 of the Report (note the total amount of naming rights revenue will differ since the value recorded in the Project includes a present value discount for future payments).

1.27 Naming Rights – WFCU (See also Section 17 of the Report)

1.27.1 Preliminary Budget

The naming rights recovery was included as part of the miscellaneous offsets recovery at \$1.5 million, refer to section 1.24 above.

1.27.2 Final Budget

The naming rights recovery was included as part of the miscellaneous offsets recovery at \$1.5 million, refer to section 1.24 above.

1.27.3 Actual Recoveries to March 31, 2011

A 10 year contract with the WFCU for naming rights on the Centre provided actual revenues from up to March 31, 2011 of approximately \$446,000.

1.27.4 Projected Total Recoveries to Completion

The total revenue expected from the WFCU naming rights has been projected to approximately \$1,434,000. This includes the \$446,000 already received and a further \$988,000 to be received between April 1, 2011 and the end of the contract. This revenue has been reduced by a present value factor to account for the time value of money.

Included in the "miscellaneous offsets" in the Final Budget, naming rights recoveries accounted for \$1.5 million. Therefore, the recovery is estimated to be \$66,000 less than the amount reported in the final budget. We note however, under the contract with WFCU, the City had to pay for WFCU signage which cost approximately \$409,000 and was not part of the Final Budget. Therefore the net revenue from WFCU naming rights would be \$1,025,000, approximately \$500,000 less than expected.

TAB C

1.3 Budget/Financials

See # Comment Below	Description	Preliminary Budget As Reported to Council October 4, 2006	Final Recommended Budget February 2007	Difference
1	Base Construction Costs	\$ 48,000,000	\$ 47,920,000	(80,000)
2	Site Servicing Costs	5,000,000	6,299,145	1,299,145
3	Contingency on Site Servicing	300,000	629,915	329,915
4	Fit-up Costs	4,429,200	4,429,200	-
	Contingency on fit-up costs	442,920	442,920	-
5	Building Permits	396,900	396,900	-
6	Development Charges	532,140	-	(532,140)
7	Bonding Fee	300,000	500,000	200,000
8	Architectural Advocacy	-	200,000	200,000
	Sub-Total	\$ 59,401,160	\$ 60,818,080	\$ 1,416,920
	<u>Revenue/Recoveries</u>			
9	Additional Recoveries From Building Permits and Development Charges	(922,013)	(922,013)	-
10	Miscellaneous Offsets	(3,744,680)	(3,744,680)	-
	Sub-Total	\$ (4,666,693)	\$ (4,666,693)	\$ -
	Net Total Prior to Other Costs	\$ 54,734,467	\$ 56,151,387	\$ 1,416,920
11	Pre-Construction Due Diligence	TBD	250,000	250,000
12	Land Purchase Cash Outlay	TBD	1,400,000	1,400,000
13	Land Cost - Excavation of Rubble	TBD	300,000	300,000
14	Building Elevation Cost	TBD	621,000	621,000
15	Building Elevation Cost - Recovery	TBD	(621,000)	(621,000)
16	Closing & Land Transfer Fees	TBD	70,000	70,000
17	Financing - During Construction	TBD	2,700,000	2,700,000
17	Financing - Post Construction	TBD	1,500,000	1,500,000
18	Financing - Contingency	TBD	800,000	800,000
	Sub-Total	\$ -	\$ 7,020,000	\$ 7,020,000
	Net Project Costs (Before Overall Contingency)	TBD	\$ 63,171,387	\$ 8,436,920
19	Overall Project Contingency *	-	1,750,000	1,750,000
	Net Project Costs	TBD	\$ 64,921,387	\$ 10,186,920

TAB D

WFCU Post Construction Review	
KPMG Recommendations and Administration Comments	
KPMG Recommendations	Administration Comments
Caution should be taken to ensure all By-Laws are followed. Specifically ensure that all procedural conditions as outlined under By-Law Number 247-2007 - Dealings with Real Property are met	Administration agrees with this recommendation. However, it is important to note that Council did approve the transaction in its entirety notwithstanding very tight timelines largely related to the competing Tecumseh/Ice Track announcements and the related potential to lose \$1.5 million in annual slots revenue funds. It is also noteworthy that some of the items of noncompliance relate to legislative requirements which have since been removed from the legislation.
Operational revenue should not be used to offset project construction costs simply because items were not accounted for in the budget. While this appears to be a funding decision rather than a cost issue, this treatment tends to understate the total capital cost of a project to the taxpayers	The costs for the suite fit ups were properly recorded as expenditures in the project accounts. The related suite rental revenues were shown in the accounts as recoveries of costs from non tax revenues to indicate that the suite fit up costs were self funded from the incremental revenues from suite rental revenues made possible by the suite fit ups. This is consistent with the City's normal practice to concentrate on highlighting the net costs to the taxpayer. Administration will strive to improve the presentation to ensure the data is properly interpreted.
City property exchanged as part of the acquisition of land for a project should be considered a cost of the land attributed to the project	There were notes on all publically reported documents highlighting this issue and disclosing how the transaction would be accounted for in the project. It is important to note the costs of the project to the taxpayer would not have been any different had the \$2 million value of the City's land been included as a cost in the project accounts. This is so because the \$2 million value of the City land exchanged would have been recorded as a revenue in a City reserve fund. Therefore, the nominal higher project costs in the project accounts would have been offset by an equal increase in a City reserve fund, leaving the net costs to the taxpayer at the same amount as currently reported.
To increase the usefulness of the Budget, future budgets should be presented in a manner which allows for the separate identification of the total project costs, total recoveries and then calculates the net project costs so that complete project costs are apparent. Revenue that will not be attributed to a project should be excluded from the budget, or clearly disclosed separately from project costs	Administration agrees.
A formal policy should be developed to address interest rates charged on internally financed projects	Administration agrees.
An attempt should be made to complete project charters at inception of a project	Agree to extent resources allow and sufficient information and project detail has been developed.
A written contract between the City and Farhi with respect to the overflow parking at the WFCU Centre should be obtained to ensure both parties' obligations are understood and met	Administration agrees.