

COUNCIL AGENDA

Consolidated as of March 4, 2016



Council Chambers, City Hall, 1 Carden Street

DATE Wednesday, March 9, 2016 5:00 p.m.

Please turn off or place on non-audible all cell phones, PDAs, Blackberrys and pagers during the meeting.

Disclosure of Pecuniary Interest and General Nature Thereof

Elected Officials and Roles on Boards and as Shareholder

External legal counsel from Borden Ladner Gervais, LLP will speak to this item.
(Presentation Attached)

RECOMMENDATION:

That the March 9, 2016 presentation regarding Elected Officials and Roles on Boards and as Shareholder, be received.

AUTHORITY TO MOVE INTO CLOSED MEETING

THAT the Council of the City of Guelph now hold a meeting that is closed to the public, pursuant to The Municipal Act, to consider:

C-2016.14 CAO Performance Objectives

Section 239 (2) (b) personal matters about identifiable individuals

CLOSED MEETING

OPEN MEETING

Closed Meeting Summary

ADJOURNMENT

Directors' Duties

Presentation to Guelph City Council

March 9, 2016

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Corporate Governance – Overview

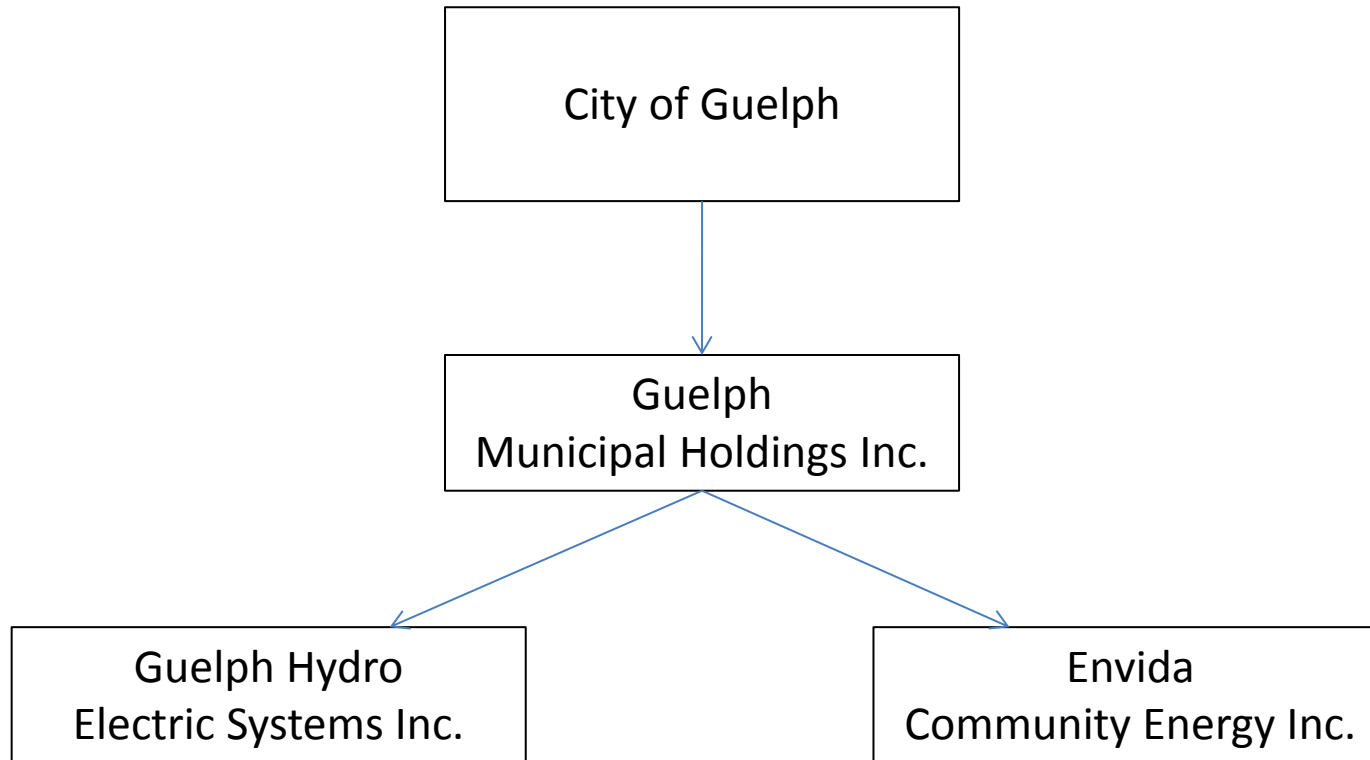
1. Corporate Governance Fundamentals for an Ontario Business Corporation (“**OBCA**”) corporation
2. Roles and Duties of Directors
3. Corporate governance for Local Distribution Company (“**LDC**”) Boards
4. Municipal councillors serving on LDC Boards

Guelph - Corporate Structure

City of Guelph has three OBCA corporations:

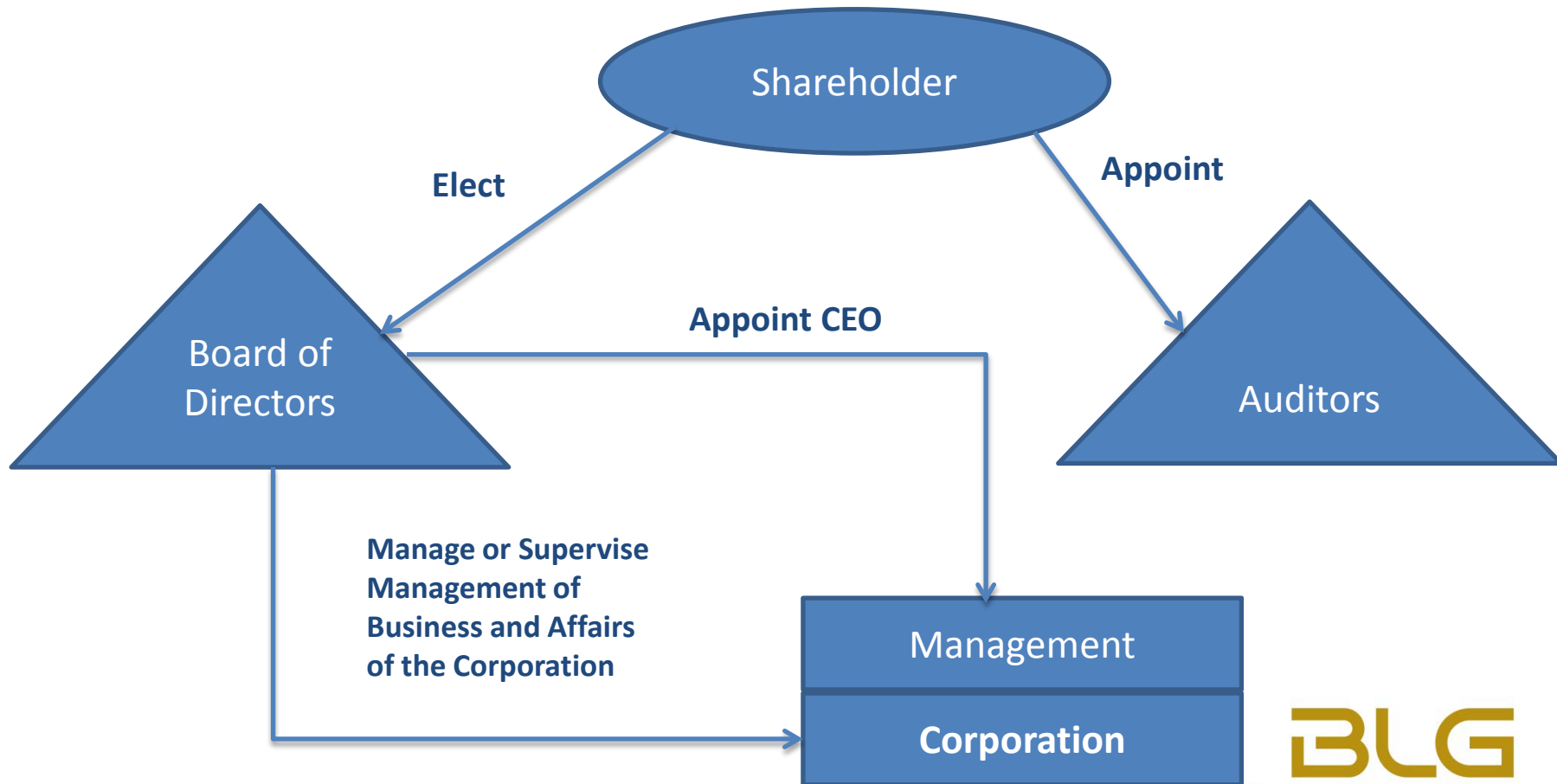
- Guelph Municipal Holdings Inc. (“**GMHI**”)
- Guelph Hydro Electric Systems Inc. (“**GHESI**”)
- Envida Community Energy Inc. (“**ENVIDA**”)

Guelph – Corporate Structure



Corporate Governance Fundamentals

Governance Model



Roles and Duties

ROLES

i. Shareholders

- LDC's have generally only one shareholder or a small number (one municipality or several municipalities)
- The shareholder is the Municipality acting through Council and not individual members of Council
- GMHI's shareholder is the City
- GMHI is the shareholder of GHESI and Envida

ii. Directors

- Elected by the shareholder(s) to oversee management of the corporation
- Can be removed by the shareholder in accordance with OBCA procedures

iii. Officers

- Operate the corporation on a day-to-day basis

Roles and Duties

- **Shareholders are responsible for:**
 - Electing directors
 - Appointing auditors
 - Approving fundamental changes

Roles and Duties

Directors are responsible for:

- Managing, or supervising the management of, the business and affairs of the corporation
- Developing and overseeing the implementation of the corporation's strategic direction
- Supervising the performance of officers
- Monitoring results and evaluating risks and control mechanisms

Roles and Duties

- **Under the OBCA:**
 - Shareholders can withdraw the powers of directors and exercise those powers directly through a unanimous shareholder declaration (“**USA**”)
 - If a USA restricts or withdraws the powers of the directors, the shareholder assumes liability for such acts and directors are relieved of their liability to the same extent

Roles and Duties

Officers are responsible for:

- Day to day operations of the corporation
- Business lines or functions and reporting to chief executive officer

Roles and Duties

Legal Responsibilities of Directors and Officers

- Directors are fiduciaries at common law
- Directors and officers have a similar duty under the OBCA to:
 - Act honestly and in good faith with a view to the best interests of the corporation; and
 - Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances
- Directors and Officers have personal liability under a number of federal and provincial statutes, e.g. environmental, employment and tax statutes.

Roles and Duties

Business Judgment Rule

- Directors are protected by the business judgment rule if a director acts in good faith, was reasonably well-informed and reasonably believed his/her action was on the Corporation's best interests

“Directors and officers will not be held to be in breach of the duty of care ... if they act prudently and on a reasonably informed basis. The decisions they make must be reasonable business decisions in light of all the circumstances about which the directors or officers know or ought to have known...perfection is not demanded...”

[Supreme Court of Canada 2004]

Rules and Duties

As Fiduciaries directors are held to a high standard

- Loyalty
 - Duty to act in the best interests of the Corporation and not in his/her own interest
 - honesty
 - good faith
 - best Interests of the Corporation
 - exercise independent judgment
- Confidentiality
 - Confidential information which could be disclosed to the directors may include competitive profit margins, new products or services, relationship with strategic parties, customer information, business opportunities, acquisitions and new initiatives
 - Must keep confidential information learned as a director
 - The information belongs to the Corporation
 - Respect for board decisions

Rules and Duties

- **Avoid Conflicts (of interest and duty)**
 - Director cannot use corporation information for his/her personal interest
 - Director cannot appropriate a corporate opportunity for the benefit of the director or a third party
 - Directors and officers must be vigilant in recognizing potential conflicts between the multiple roles they may hold – acting in one interest may result in a breach of fiduciary duty to another

Roles and Duties

Conflicts of Interest

- Directors and officers must comply with s. 132 of the *OBCA* (which sets out disclosure requirements in respect of potential conflicting interests when a corporation is considering a material contract or transaction)
- Where a director has a conflict of interest with respect to a contract or transaction, the director cannot attend any part of a board meeting in which such contract or transaction is discussed and cannot vote on any resolution to approve the same (save in limited circumstances)

Corporate Governance for LDC Boards

Ontario Energy Board

- Regulates licensed electricity distributors
- There has been growing recognition of the importance of corporate governance in the LDC sector
- In the 2012 Report, *Renewing Ontario's Electricity Distribution Sector: Putting the Consumer First*, the Ontario Distribution Sector Review Panel stated:

“given the importance of electricity distribution to the province’s economy, it is important that the Boards’ of Directors of the regional distributors display a high standard of corporate governance.”

Corporate Governance for LDC Boards

Ontario Energy Board

Director Independence

- Section 2.1.2 of the *Affiliate Relationships Code* requires:
 - A utility shall ensure that at least one-third of its Board of Directors is independent from any affiliate
- OEB Compliance Bulletin provides guidance with respect to “independent”
 - Following persons would not be considered independent:
 - A shareholder, director, officer or employee of an affiliate
 - Where the affiliate is a municipality, the mayor, a member of the municipal council, a member of a “local board” as defined in the *Municipal Act, 2001* or an employee of the municipality
 - An employee of the distributor

Corporate Governance in Electricity

Ontario Energy Board

- The Board has initiated a policy consultation on corporate governance focusing on:
 - Organizational Structure
 - Corporate Governance practices
- The Board is seeking details on distributors' Board of Directors and how they operate
 - OEB goal to improve consumer and investor confidence in LDC's by encouraging strong governance policies
 - OEB preparing a report to identify best practices and governance expectations to be released later this spring

Municipal Councillors Serving on LDC Boards

- As directors are subject to the same duties of loyalty and care as non-councillor directors
- Duty to act in the best interest of the Corporation
- Conflicts may arise
 - If goals of the LDC and its municipal shareholder differ
 - If obligations as a municipal councillor differ from the obligations as an LDC director

Municipal Councillors Serving on LDC Boards

- If conflicts cannot be avoided
 - Municipal councillor may not participate in LDC decision
 - Municipal councillor may dissent if councillor does participate in decision
 - Municipal councillor must preserve confidentiality of information received as a director
 - Resignation as a director

Conclusion

- Serving as a municipal councillor and a director of an LDC does not automatically create a conflict
- All LDC directors must act honestly, in good faith and in the best interests of the corporation
- Balancing dual loyalties may pose challenges if conflicts arise
 - Avoiding conflicts before they become an issue
 - Seeking advice can be helpful