Agenda - Executive Policy Committee - June 22, 2005

Report - Standing Policy Committee on Downtown Development - June 9, 2005

Item No. 2 Acquisition for Intersection Improvements - Part of 191 Main Street at York Avenue
File FI-2(32)

STANDING COMMITTEE RECOMMENDATION:

On June 9, 2005, the Standing Policy Committee on Downtown Development concurred in the administrative recommendation and submits the following to Council:

1. That the acquisition of part of 191 Main Street shown as "Proposed Opening" on Misc. Plan No. 12408/1 be approved at a purchase price of $5,000.00 and in accordance with the terms and conditions as specified on Schedule "A1".

2. That the acquisition of the 4.25± metre by 1.0± metre easement shown as "Proposed Easement" on Misc. Plan No. 12408/1 be approved at a price of $500.00 and in accordance with the terms and conditions as specified on Schedule "B".

3. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Agenda - Executive Policy Committee - June 15, 2005

Report - Standing Policy Committee on Downtown Development - June 9, 2005

DECISION MAKING HISTORY:

STANDING COMMITTEE RECOMMENDATION:

On June 9, 2005, the Standing Policy Committee on Downtown Development concurred in the administrative recommendation and submitted the matter to the Executive Policy Committee and Council.

On October 14, 2004, the Standing Policy Committee on Public Works concurred in the administrative recommendation contained in the report dated October 6, 2004 from the Public Works Department, namely, that the Director of Planning, Property and Development Department be authorized to negotiate the acquisition of properties required for intersection improvements and residential lane improvements.

Re: Proposed Acquisition for Intersection Improvements
Part 191 Main Street at York Avenue
City Centre Community
Fort Rouge – East Fort Garry Ward

For submission to: **Standing Policy Committee on Downtown Development**

Original report signed by: **Director of Planning, Property and Development**

Report date: May 24, 2005

Recommendation(s):

1. That the proposed acquisition of part of 191 Main Street shown as "Proposed Opening" on Misc. Plan No. 12408/1 be approved at a purchase price of $5,000.00 and in accordance with the terms and conditions as specified on the attached Schedule "A1".

2. That the proposed acquisition of the 4.25± metre by 1.0± metre easement shown as "Proposed Easement" on Misc. Plan No. 12408/1 be approved at a price of $500.00 and in accordance with the terms and conditions as specified on the attached Schedule "B".

REPORT SUMMARY

Key Issues:

- On October 12, 2004, the Standing Policy Committee on Public Works concurred in the Public Works Department's recommendation as contained in its report dated October 6, 2004, for the Director of Planning, Property and Development to be authorized to negotiate the acquisition of the subject property.
- The City requires the subject property in order to accommodate a westbound to northbound right-turn cut-off island, which forms part of the intersection improvements proposed at York Avenue and Main Street.
- This acquisition will ensure possession of the subject property in order to accommodate construction of the proposed works during the 2005 or 2006 construction season.
- This acquisition will also eliminate the need to acquire the subject property by way of an expropriation, which is a time-consuming and costly process.
- The subject property is required for a project that is not part of an annual capital program and is not included in the Five Year Capital Forecast.
- The City also requires a perpetual easement in order to regularize a 2-foot high stacked block retaining wall and sub-drain pipe with associated appurtenances installed outside of the street right-of-way, which works formed part of the York Avenue Underpass project that was approved by Council on December 11, 1996.

Implications of the Recommendation(s):

General implications:

X	**None**
	For the organization overall and/or for other departments
	For the community and/or organizations external to the City of Winnipeg
	Involves a multi-year contract

Comment(s):

-

Policy implications:

X	**No**
	Yes

Comment(s):

-

Environmental implications:

X	**No**
	Yes

Comment(s):

- No environmental issues are anticipated. However, as a precaution, the proposed transaction contains terms that protect the City's interests regarding environmental matters.

Human resources implications:

X	**No**
	Yes

Comment(s):

-

Financial implications:

X	**Within approved current and/or capital budget**
	Current and/or capital budget adjustment required

Comment(s):

- In a report dated October 6, 2004 submitted to the Standing Policy Committee on Public Works, the Public Works Department stated that there are sufficient funds in the Land Acquisition for Future Transportation Purposes Account to undertake this acquisition, and that the above mentioned acquisition has been cash flowed in previous years.

REASON FOR THE REPORT:

Since the subject property is required for a project that is not part of an annual capital program and is not included in the Five Year Capital Forecast, Council approval is required of the proposed acquisition of part of 191 Main Street shown as "Proposed Opening" and the proposed acquisition of the "Proposed Easement" at a purchase price of $5,000.00 and $500.00 respectively, and in accordance with the terms and conditions as negotiated and specified on the attached Schedule "A-1" and Schedule "B".

HISTORY:

At its meeting held on October 12, 2004, the Standing Policy Committee on Public Works concurred in the Public Works Department's recommendation as contained in its report dated October 6, 2004, namely, that the Director of Planning, Property and Development be authorized to negotiate the acquisition of the subject property required for intersection improvements.

Ensuing negotiations by the Real Estate Division with the owner's representative has produced an agreement to sell the subject property and also to grant an easement to the City. The particulars of the subject property and negotiated settlement are as follows:

Proposed Purchase Price:	Proposed Opening Land - $5,000.00
Proposed Purchase Price:	Proposed Easement Land -$500.00
Location:	Part 191 Main Street – North side of York Avenue East side of Main Street
Legal Description:	Part Lot 9, Block 1, Plan 129 shown as "Proposed Opening" and Part Parcel K, Plan 27755 shown as "Proposed Easement" on Misc. Plan No. 12408/1, attached.
Ownership:	Just For The Halibut Holdings Ltd. c/o John Mulvaney, Vice President, Real Estate and Development, Earl's Restaurants, Suite 108B – 949 Third Street West, North Vancouver, BC, V7P 3P7
Certificate of Title No.:	Part 1580458
Zoning:	M - Multiple-Use Sector
Site Size/Area:	Proposed Opening –12.5 square metres (134.55 square feet)
	Proposed Easement – 3.93± square metres (42.3± square feet)

Description of Property:	The property requirement forms part of the front entry to the Earl's restaurant and is improved with paving stone sidewalk. The easement area forms part of the side and rear yard and is improved with a 2-foot high stacked block retaining wall and a 150mm sub-drain pipe with associated appurtenances.

DISCUSSION:

Following extensive negotiations conducted by the Real Estate Division, the owner's representative, namely, the Vice President of Real Estate and Development for Just For The Halibut Holdings Ltd. (Earl's Restaurant) confirmed in an e-mail dated April 19, 2005, that the owners are in agreement to sell the subject property and also to grant an easement to the City, in accordance with the proposed purchase price, terms and conditions as negotiated and specified on the attached Schedule"A-1" and Schedule "B".

Proposed Opening Land

Negotiations produced the owner's agreement to the proposed purchase price of $5,000.00 or a rate of $37.16 per square foot. This rate reflects the estimated market value of the subject property as supported in a market analysis. In addition, the proposed terms and conditions of purchase identified in Schedule "A-1" are acceptable conditions in the proposed purchase of a privately owned parcel of land by the City.

By proceeding with the proposed acquisition of the subject property based on the proposal as recommended herein and the terms and conditions as accepted by the property owner, the City will be in possession of the subject property in order for a right turn cut-off island to be installed to force westbound right-turning traffic to yield to those making the eastbound left. This island is intended to make it easier for pedestrians to cross Main Street and York Avenue and to make it clearer that westbound traffic must turn at Main Street.

This proposed agreement will also eliminate the need for this property to be expropriated by the City, which is a time-consuming and costly process.

According to the Public Works Department, the construction of the intersection improvements is proposed to occur during the 2005 or 2006 construction season.

Proposed Easement Land

The owner initially recommended that the City pay "fair market value" for the subject easement. However, continued negotiations produced the owner's agreement to accept the City's easement price of $500.00 which is based on City policy when acquiring easements for various purposes and small property acquisitions such as lane and street corner cuts, etc.

By proceeding with the proposed acquisition of the perpetual easement based on the proposal as recommended in Schedule “B”, the City will be in a position to regularize the improvements that were installed on private property rather than within the street right-of-way.

The Public Works Department advised the Real Estate Division that when the York Avenue Underpass was opened to traffic, it was necessary during construction to add a 2-foot high stacked block retaining wall to match the grade along the property line. This stacked block wall was added at the back of the sidewalk and located outside the street right-of-way. In addition, a 150mm sub-drain pipe is located behind the stacked block retaining wall and is there to drain away any groundwater that might affect the stability of the retaining wall.

This proposed easement is required to permit the City, its successors and assigns to maintain and operate in, under and upon the subject Easement Area, in accordance with the terms and conditions as specified on the attached Schedule “B”, which conditions are acceptable in the proposed acquisition of an easement by the City.

Summary

The Public Works and Planning, Property and Development Departments are both of the opinion that it would be in the best interests of the City to conclude this matter on the basis of the proposals as specified herein.

The Public Works Department has advised that adequate funding for this proposed land acquisition and the proposed easement is available in the Land Acquisition for Future Transportation Purposes Account.

Financial Impact Statement

Date: May 16, 2005

Project Name:

Proposed Acquisition for Intersection Improvements - Part 191 Main Street

First Year of Program 2005

	2005	2006	2007	2008	2009
Capital					
Capital Expenditures Required	$ 10,815	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	10,815	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
External	-	-	-	-	-
Grants (Identify)	-	-	-	-	-
Reserves, Equity, Surplus, Other	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ 973	$ 973	$ 973	$ 973
Less: Incremental Revenue/Recovery	315	-	-	-	-
Net Cost/(Benefit)	$ (315)	$ 973	$ 973	$ 973	$ 973
Less: Existing Budget Amounts	(315)	973	973	973	973
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments:

In a report dated October 6, 2004 submitted to the Standing Policy Committee on Public Works, the Public Works Department stated that this acquisition is to be funded from the Land Acquisition for Future Transportation Purposes Account. The capital expenditure of $10,815 consists of the total purchase price of $5,500 for the land and easement, estimated legal costs of $1,500 and survey costs of $3,500, $210 in short-term financing charges, and an admin fee of $105. The latter two of these amounts are offset by an equal recovery in Corporate Finance's budget. The $973 charge to the current budget represents debt & finance charges on the capital expenditure.

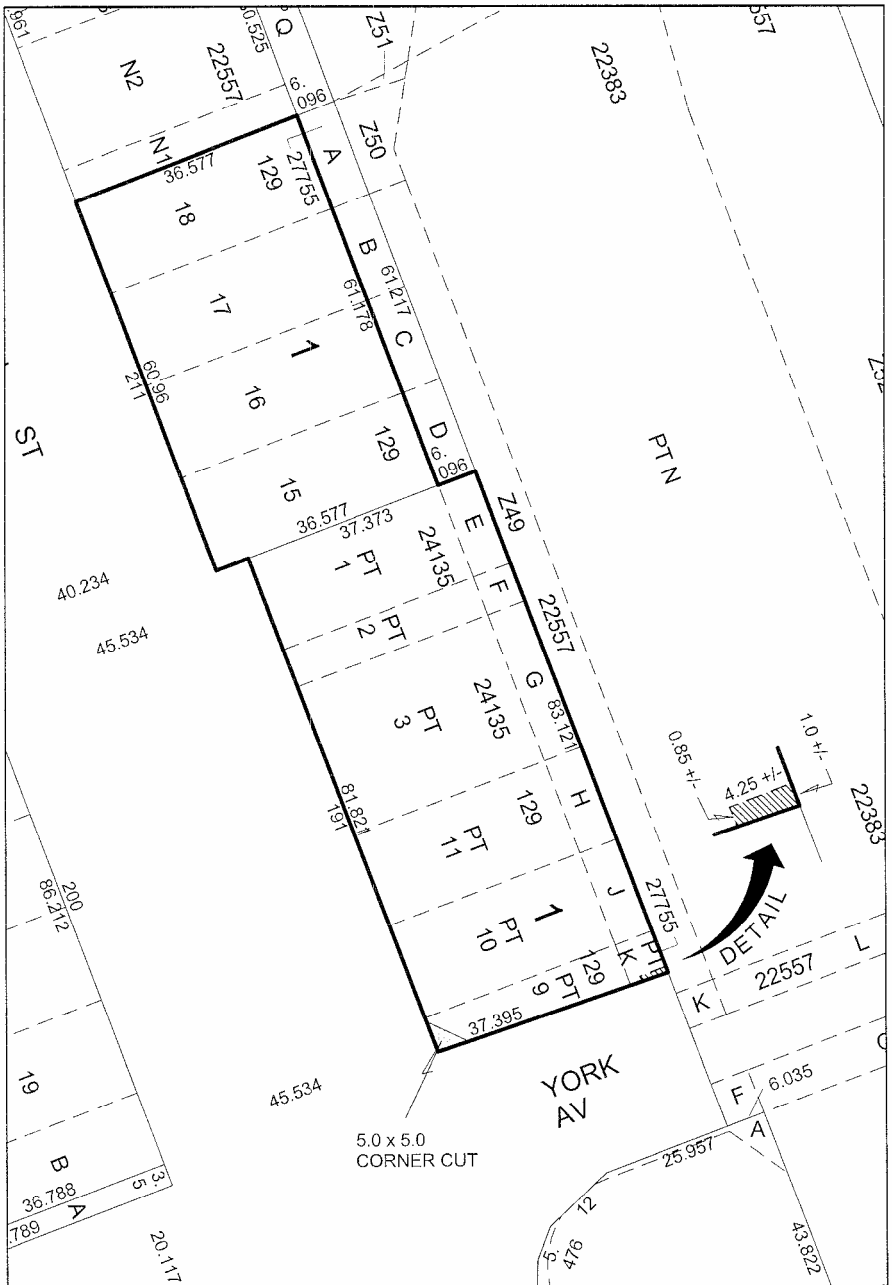
"Original signed by"
Mike McGinn, CA
Manager of Finance

IN PREPARING THIS REPORT, THERE WAS CONSULTATION WITH AND CONCURRENCE BY:

The Public Works Department.

THIS REPORT SUBMITTED BY:

Planning, Property and Development Department
Division: Real Estate Division
Prepared by: Maria Haddock, Senior Negotiator
PPD File #: 8019/1



Just for the Halibut Holdings Ltd. property

Proposed Opening Area = 12.5 sq.m.

Proposed Easement Area = 3.93 sq.m.+/-

Date: 2005-FEB-14
District: CC
File: 8019 / 1
Scale: 1:750

METRIC

NOTE:
Information displayed hereon has been compiled or computed from a variety of sources and should be used as a general guide only.
No warranty is expressed or implied regarding the accuracy of such information.

CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES

MISC. PLAN NO. 12408 / 1

SCHEDULE "A-1"

PROPOSED PURCHASE AND SALE –
NORTH-EAST CORNER OF YORK AVENUE AND MAIN STREET
PART LOT 9, BLOCK 1, PLAN 129

Proposed terms and conditions for the acquisition of 12.5 square metres (134.55 sq.ft.) of the property situated on the North-East corner of York Avenue and Main Street and legally described as Part Lot 9, Block 1, Plan 129:

1. A proposed purchase price of Five Thousand ($5,000.00) Dollars for the subject property shown shaded and identified as "Proposed Opening- Area=12.5 sq.m." on the attached Misc. Plan No. 12408/1.

2. The subject property is to be conveyed to the City free and clear of any and all liens, charges, encumbrances and leasehold interests, excepting any utility easements registered against the title to the subject property.

3. The date for vacant possession, payment of the purchase price and tax adjustments shall be arranged by mutual agreement following approval of the City's Standing Policy Committee on Property and Development and/or its delegated authority.

4. The City to attend to the survey work required by the Winnipeg Land Titles Office in order to dedicate the subject property as Street Right-of-Way at no cost to the Vendor, including plan preparation and costs of registration.

5. The City agrees to absorb reasonable legal fees and disbursements incurred by the Vendor in the negotiation and finalization of this transaction, subject to a Statement of Account of the services rendered being submitted to the City.

6(a) The Vendor permits the City, at its discretion and expense, prior to possession, to conduct or have conducted on its behalf, an environmental assessment together with any soil testing and analysis required.

6(b) The City acknowledges and agrees that in the event the City conducts an environmental audit and/or soil testing of the Vendor's land, the City shall:

(i) ensure that all work done in connection with the testing is completed no later than the possession date;

(ii) maintain the Vendor's land in a safe condition at all times during the conduct of any work done;

(iii) restore the Vendor's land to the same condition as prior to its entering in or upon the same;

(iv) indemnify and save harmless the Vendor from and against all damages and claims arising out of or in any way attributable to the conduct of the testing.

6(c) The Vendor further acknowledges and accepts that should the City determine that there are environmental concerns or contamination, it may elect to cancel the proposed purchase.

7. The property, until possession is delivered to the City, shall remain at the risk and responsibility of the Vendor.

8. The Vendor agrees to grant to the City, its successors and assigns, in perpetuity the full right and easement to construct, install, maintain and operate in, under and upon the land shown as "Proposed Easement- Area=3.93 sq.m.±" on the accompanying Misc. Plan No. 12408/1; required to regularize the stacked block retaining wall and the 150mm subdrain pipe with associated appurtenances installed and placed on the said land. Please refer to the attached Easement Agreement identified as Schedule "B".

9. The Vendor agrees to enter into an appropriate Purchase and Sale Agreement with the City embodying the within terms and conditions and in a form satisfactory to the City Solicitor/Manager of Legal Services and its own solicitor. It is further acknowledged that the said Purchase/Sale Agreement will be filed as a Caveat against the Vendor's title pending conveyance of the subject property to the City.

10. The Vendor agrees:

    (a) that the subject property will not be conveyed, disposed of or encumbered in any manner whatsoever, except subject to this agreement;

    (b) that the monies payable in respect of this agreement will only be paid at such time at all the required conveyance documents, consents, discharges or other evidence required are provided by the Vendor.

11. The Vendor agrees to consent on a Real Owner Application Form to add the City of Winnipeg as the Real Owner of the referenced property on the Assessment Rolls of the City of Winnipeg.

12. The Vendor agrees to declare whether or not it is a "Registrant" for the purposes of the "Goods and Services Tax" and if so, to provide its G.S.T. Registration Number.

13. The City (Goods and Services Tax Registrant No. R121682967) will self-assess any G.S.T. tax payable by the City on this transaction.

14. This proposal is a recommendation only and is subject to the final approval of the City's Standing Policy Committee on Property and Development and/or its delegated authority.

SCHEDULE "B"

1. Proposed Easement Price of FIVE HUNDRED ($ 500.00) DOLLARS, plus the applicable Goods and Services Tax.

2. A vacant possession date to be the date of final approval of this proposal by the City's Standing Policy Committee on Property and Development and/or its delegated authority.

3. The Vendor grants and conveys to the City of Winnipeg, its successors and assigns, in perpetuity the full right and easement to construct, install, lay, maintain and operate in, under and upon the land shown as "Proposed Easement Area" on the attached Misc. Plan No. 12408/1; required to regularize the stacked block retaining wall and 150mm subdrain pipe with associated appurtenances installed and placed on the said land.

4. The Vendor grants and conveys to the City for every such purpose, the right of access over and across the "Proposed Easement Area" at all times by its servants and employees or other persons acting with its authorization.

5. The Vendor covenants and agrees that the Vendor will not erect or permit the erection of any buildings or other structure in, over or upon the "Proposed Easement Area" or any part thereof without the prior written permission of the City of Winnipeg, Chief Administrative Officer.

6(a) The stacked block retaining wall and 150mm subdrain pipe with associated appurtenances installed and placed on the said "Proposed Easement Area" shall be and remain the property of the City notwithstanding that they may be attached to the land.

6(b) The City agrees and undertakes to maintain the retaining wall and subdrain pipe with associated appurtenances in good working order, acting reasonably.

7. The City agrees and undertakes, upon completion of the work to leave the land in as good condition as prior to the commencement of any work done in connection with such construction, maintenance, repair or replacement, and to indemnify the Vendor against any suits, actions, claims or demands arising out of such work; and the ongoing maintenance and care of such work upon its completion.

8. The City hereby covenants and agrees to be responsible for damage to the land and buildings thereon owned by the Vendor, and any other person being on the land with the consent, expressed or implied, of the Vendor, arising out of the negligence of the City's servants or employees or other persons acting with its authorization including but not limited to independent contractors hired by the City in the construction, maintenance, repair and/or replacement of the work.

9. The Vendor covenants and agrees with the City that the easement and rights hereby granted shall run with the land and shall enure to the benefit of the City, its successors and assigns and shall be binding upon the Vendor and the Vendor's successors in title of the land or any part thereof.

10. The Vendor hereby acknowledges and agrees that the City shall be entitled to register a caveat against the title to the said land by virtue of this Agreement thereby registering its interest thereunder.

11. Upon discontinuance of the use of the "Proposed Easement Area" and of the exercise of the rights hereby granted, the City shall withdraw any caveat filed against the said land by virtue of this Agreement and without cost to the Vendor, shall remove the facility no longer required, and restore the "Proposed Easement Area" to the same condition as far as it is practicable so to do, as the same were in prior to the entry and the use thereof.

12. The Vendor agrees to declare whether or not it is a "Registrant" for the purposes of the Goods and Services Tax and if applicable, to provide its G.S.T. Registration Number.

13. The City (Goods and Services Tax Registrant Number R121682967) will self-assess any tax payable on this transaction.

14. This proposal is a recommendation only and is subject to the final approval of the City's Standing Policy Committee on Property and Development and/or its delegated authority.