Minute No. 140
Report - Standing Policy Committee on Property and Development - December 8, 2005

Item No. 1 **Acquisition - Rapid Transit Project - 3907806 Manitoba Ltd. - west of Osborne Street**
File FI-2(32)

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development, as amended by the Executive Policy Committee, and adopted the following

1. That the purchase of a portion of the subject property shown as "Proposed Acquisition 'C'" on Misc. Plan No. 11965/3, together with a Land Drainage Sewer Easement as also shown on Misc. Plan No. 11965/3, at an all-inclusive purchase price of $116,000.00, be approved in accordance with the terms and conditions outlined in the report from the Director of Planning, Property and Development dated December 7, 2005, with the following amendments:

    - Under "Unacceptable terms" delete the following words "However, the City is prepared to correct at its cost any structural damage attributable to the City that may occur during the future construction phase of the City's Transit works."

    - Under "Acceptable terms" add the following "3. The City is prepared to correct at its cost any structural damage attributable to the City that may occur during the future construction phase of the City's Transit works",

    and upon such other terms and conditions and in accordance with such other collateral and ancillary agreements deemed necessary by the City Solicitor/Manager of Legal Services and the Director of Planning, Property and Development to achieve the intent of the foregoing and to protect the City's interests.

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

Report - Standing Policy Committee on Property and Development – December 8, 2005

DECISION MAKING HISTORY:

Moved by Councillor De Smedt,

That the recommendation of the Standing Policy Committee on Property and Development, as amended by the Executive Policy Committee, be adopted.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On December 14, 2005, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development with the following amendment to the terms and conditions, namely:

- Under "Unacceptable terms" delete the following words "However, the City is prepared to correct at its cost any structural damage attributable to the City that may occur during the future construction phase of the City's Transit works."

- Under "Acceptable terms" add the following "3. The City is prepared to correct at its cost any structural damage attributable to the City that may occur during the future construction phase of the City's Transit works."

and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On December 8, 2005, the Standing Policy Committee on Property and Development concurred in the administrative recommendation, with the following amendment, namely:

- That Recommendation 1 be amended by adding the words "and in accordance with such other collateral and ancillary agreements" after the word conditions in the sixth line thereof,

and submitted the matter to the Executive Policy Committee and Council.

Further on December 8, 2005, Mark Olson, 3907806 Manitoba Ltd. submitted to the Standing Policy Committee on Property and Development a site plan and parking layout for the development of the subject property.

Re: Proposed Acquisition - Proposed Rapid Transit Project -
3907806 Manitoba Ltd. (Mark Olson) Property - West of Osborne Street
City Centre Community
Fort Rouge-East Fort Garry Ward

For submission to: **Standing Policy Committee on Property and Development**

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

Report date: December 07, 2005

Recommendation(s):

1. That a proposed purchase of a portion of the subject property shown as "Proposed Acquisition 'C'" on the attached Misc. Plan No. 11965/3, together with a Land Drainage Sewer Easement as also shown on the said Misc. Plan, at an all-inclusive purchase price of $116,000, be approved in accordance with the terms and conditions described herein and upon such other terms and conditions deemed necessary by the City Solicitor and the Director of the Planning, Property and Development Department to achieve the intent of the foregoing and to protect the City's interests.

2. That the Proper Officers of the City be authorized to do all things necessary in order to complete the intent of the foregoing.

REPORT SUMMARY

Key Issues:

- The owner of the "3907806 Manitoba Ltd." property, which is shown on the attached Misc. Plan No. 11965/3, is proceeding immediately to construct a call centre for a tenant. The portion of that property indicated as "Proposed Acquisition'C'" represents the maximum amount of land that the owner is prepared to make available for sale to the City for the future Rapid Transit Project.

- Pursuant to Council's decision of September 29, 2004 to not proceed with rapid transit at this time, the Transit Department prepared a BRT (Bus Rapid Transit) Wind Down Report. That report was discussed with the Mayor, the Chairs of the Standing Policy Committees of Council and Senior Administration on December 1, 2004. The direction received by the Transit Department was that the Planning, Property and Development Department continue negotiating for the required portion of the subject property.

- The Planning, Property and Development Department has attempted to acquire, firstly, the "Proposed Acquisition 'A'" and, secondly, the "Proposed Acquisition 'B'", both shown on the attached Misc. Plan No. 11965/2. During all past negotiations, the owner has consistently stated that he had no interest in selling only the portion of the property required for rapid transit purposes, but that the property could only be sold in its entirety. The owner placed the price of the entire holding at $8.00 per square foot or $1,544,224.00. The City's independent appraisal on the total subject property estimated the market value to be $1,160,000.00.

- The owner rejected the City's recommended offer of $1,160,000.00. On January 12, 2005, the owner submitted, for the City's consideration, a reduced counter offer of $1,447,672.00 ($7.50 per square foot), based on an independent appraisal that he had retained on the subject property. A few months later, the owner secured a call centre as a long-term tenant for the property.

- During the past several weeks, the Planning, Property and Development Department, the Transit Department and Transit's engineering consultants, have engaged the owner and the prospective tenant in renewed efforts at reaching an acceptable site planning and development solution. Attempts have been made to assist the owner and the tenant in redesigning the proposed development in order to accommodate the objectives of all parties.

Implications of the Recommendation(s):

General implications:

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

Comment(s):

- The proposed acquisition is essential to the proposal for a future southwest rapid transit project.

Policy implications:

X	**No**
	Yes

Comment(s):

-

Environmental implications:

X	**No**
	Yes

Comment(s):

-

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):

- Adequate funds for the proposed $116,000.00 purchase price and associated transaction closing costs, including allowances for land Transfer tax, net GST, finance administration charges and contingencies, is provided for within the Transit Department's Account No. 442 181000-420754-4220000103-PROPERTY CNOTH.

REASON FOR THE REPORT:

By this report, the Planning, Property and Development Department is seeking the approval of the Standing Policy Committee on Property and Development and Council to acquire the portion of the subject property, shown as "Proposed Acquisition 'C'" on the attached Misc. Plan No. 11965/3, together with a Land Drainage Sewer Easement as also shown on the said Misc. Plan, in accordance with the proposed purchase price, and terms and conditions as described herein and upon such other terms and conditions deemed necessary by the City Solicitor and the Director of the Planning, Property and Development Department to achieve the intent of the foregoing and to protect the City's interests.

HISTORY:

Pursuant to Council's decision of September 29, 2004 to not proceed with rapid transit at this time, the Transit Department prepared a BRT (Bus Rapid Transit) Wind Down Report. That report was discussed with the Mayor, the Chairs of the Standing Policy Committees of Council and Senior Administration on December 1, 2004. The direction received by the Transit Department was that the Planning, Property and Development Department continue negotiating for the required portion of the subject property.

The owner of the "3907806 Manitoba Ltd.", which property is shown on the attached Misc. Plan No. 11965/3, is proceeding to construct a call centre for a tenant. The portion of the subject property indicated as "Proposed Acquisition'C'" is the minimum amount of property required by the City for the Transit Department's South-west Rapid Transit Project. The Planning, Property and Development Department, the Transit Department and Transit's engineering consultants, have engaged the owner and the prospective tenant in renewed efforts at reaching an acceptable site planning and development solution to accommodate the needs of the owner, the tenant and the City. Attempts to cooperate with the owner and the tenant in redesigning the proposed development such that it accommodates the objectives of all parties has resulted in the proposal described in this report.

The particulars of the total subject property are as follows:

Proposed Purchase Price:	$116,000.000
Location:	West of Osborne Street, north of the Transit garage.
Legal Description:	Part Lot 2, Plan 38552 (shown as "Proposed Acquisition 'C'" on the attached Misc. Plan No. 11965/3)
Registered Owner:	3907806 Manitoba Ltd. c/o Mark Olson, President 2C – 2020 Portage Avenue Winnipeg, Manitoba, R3J 0K4
Certificate of Title No.:	1730418
Zoning:	"M2" Industrial District
Parent Parcel - Land Area:	±17930.7 m2 (±193,004 square feet)
Part Required - Land Area	+/- 890 m2 (+/-9,580.2 sq. ft.)
Land Drainage Easement	10 meters wide, shown on Misc. Plan No. 11965/3
Property Description:	Vacant land.

DISCUSSION:

The property owner has submitted a development proposal for the entire site, and takes the position that the only viable Transit property option that can be accommodated by their project is outlined on Misc. Plan 11965/3 as Proposed Acquisition "C". The City is prepared to purchase the 890 square metres (approximate) at the rear of the site, identified as Proposed Acquisition 'C' on the Miscellaneous Plan 11965/3 attached, for the price of $116,000.00, subject to the inclusion of a 10 metre wide land drainage sewer easement in favour of the City as also identified on Miscellaneous Plan 11965/3. In the interest of bringing this transaction to a timely conclusion, the Department is recommending a purchase price of $116,000.00 for the land. This price had initially been proposed for a land area approximately 3.5 times the land area contained in Plan C. However, the Proposed Acquisition 'C' represents the only alternative that is acceptable to the property owner.

The land area originally identified by Transit for acquisition, which is shown on Misc. Plan 11965/2, as Proposed Acquisition "A" is required to accommodate a tunnel structure under the Canadian National Railway Rivers Line. The reduced land area, shown as Proposed Acquisition "B", can facilitate construction of the tunnel, but additional costs of $750,000 to $1M would be incurred by the City for required retaining walls for the corridor. While the Proposed Acquisition "C" can also accommodate the Transit corridor tunnel, additional capital costs of approximately $2M would be expended by the City to physically extend the tunnel structure beyond the subject site.

The terms discussed with the owner are as follows:

Acceptable Terms:

1. *The City is prepared to purchase the 890 square metres (approximate) at the rear of the subject site, identified as Proposed Acquisition C on the Miscellaneous Plan 11965/3 attached, for the price of $116,000.00, subject to the inclusion of a 10 metre wide land drainage sewer easement, in favour of the City as identified on Miscellaneous Plan 11965/3. This translates into a price of $12.10 per sq. ft.*

   The City will grant an easement in perpetuity to the owner for accessory parking for his project. The design and location of any accessory parking shall be subject to the approval of the Director of Transit, which approval shall not be unreasonably withheld.

2. *The City is prepared to pay reasonable additional costs incurred as a result of redesign, to accommodate the Transit corridor, subject to being provided with an estimate of those justifiable costs and prior review of the actual costs.*

Unacceptable Terms:

1. *The City will not provide an indemnification for noise and vibration, particularly since the property is situated in close proximity to the CNR mainline. It is the Department's understanding that the call centre tenant's concern, regarding noise, relates to existing railway traffic and possibly noise created during the construction of the Transit corridor. The Department questions the need for a study dealing with buses traveling within a below-grade tunnel. However, the City is prepared to correct at its cost any structural damage attributable to the City that may occur during the future construction phase of the City's Transit works*

The Transit Department advised that the City's consultants reviewed the land drainage requirements for the area, taking into account the needs of both the busway and the development. When the busway was the only envisaged "development" through the Fort Rouge Yards, a low-cost drainage plan was assumed that included ditches and only minor upgrades to adjacent underground pipe systems. With more intensive development now planned for the Fort Rouge Yards and with higher drainage standards now in effect, a new land drainage plan will be needed that involves a piped system.

Given the current situation, the Transit Department has advised that it is in the City's best interests to acquire the Proposed Acquisition 'C' because it is essential for the future South-west Rapid Transit Project. The proposed easement will be required for drainage purposes.

When compared to an expropriation, which is often a time-consuming and costly process, the proposal presented herein is not unreasonable from a cost of business standpoint. This is particularly true if it could be claimed that the City's intervention directly resulted in the loss of the tenant. By proceeding with this proposed acquisition based on the proposal as recommended herein, the City will be in possession of the subject property in order to accommodate the proposed rapid transit project and required drainage facilities.

The owner has indicated that he is not prepared to grant the City an easement for the proposed land drainage sewer because the timing for construction of the Transit corridor has not been determined. This then could likely result in the paved accessory parking area being excavated at some future date. The owner argues that this would disrupt parking availability and site functionality.

The owner also takes the position that an indemnification is required, from the City, for potential noise and vibration. The Department is prepared to cost share in the noise and vibration study (estimated total cost $4,000.00) with the understanding that the City's contribution in no way is interpreted to imply any future obligation on the part of the City for noise mitigation. This noise/vibration issue is deemed to be more applicable to the C.N.R. Rivers Line than to the proposed Rapid Transit Busway.

Financial Impact Statement

Date: December 7, 2005

Project Name:

Proposed Acquisition - Proposed Rapid Transit Project –
3907806 Manitoba Ltd. (Mark Olson) Property - West of Osborne Street

First Year of Program 2006

	2006	2007	2008	2009	2010
Capital					
Capital Expenditures Required	$ 116,000	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	116,000	-	-	-	-
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	$ -	$ 10,440	$ 10,440	$ 10,440	$ 10,440
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ -	$ 10,440	$ 10,440	$ 10,440	$ 10,440
Less: Existing Budget Amounts	-	10,440	10,440	10,440	10,440
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments:

Funding for the $116,000 capital purchase is available in the Transit Department's Account No. 442 181000-420754-4220000103-PROPERTY CNOTH. Direct costs in 2007 onward represent debt & finance charges on the 2006 capital expenditure.

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

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

THE TRANSIT DEPARTMENT

LEGAL SERVICES DIVISION

THIS REPORT SUBMITTED BY:

Planning, Property and Development Department
Division: Real Estate Division
Prepared by: Ray Klassen, Vic Mikolayenko & Maria Haddock
PPD File #: 8434

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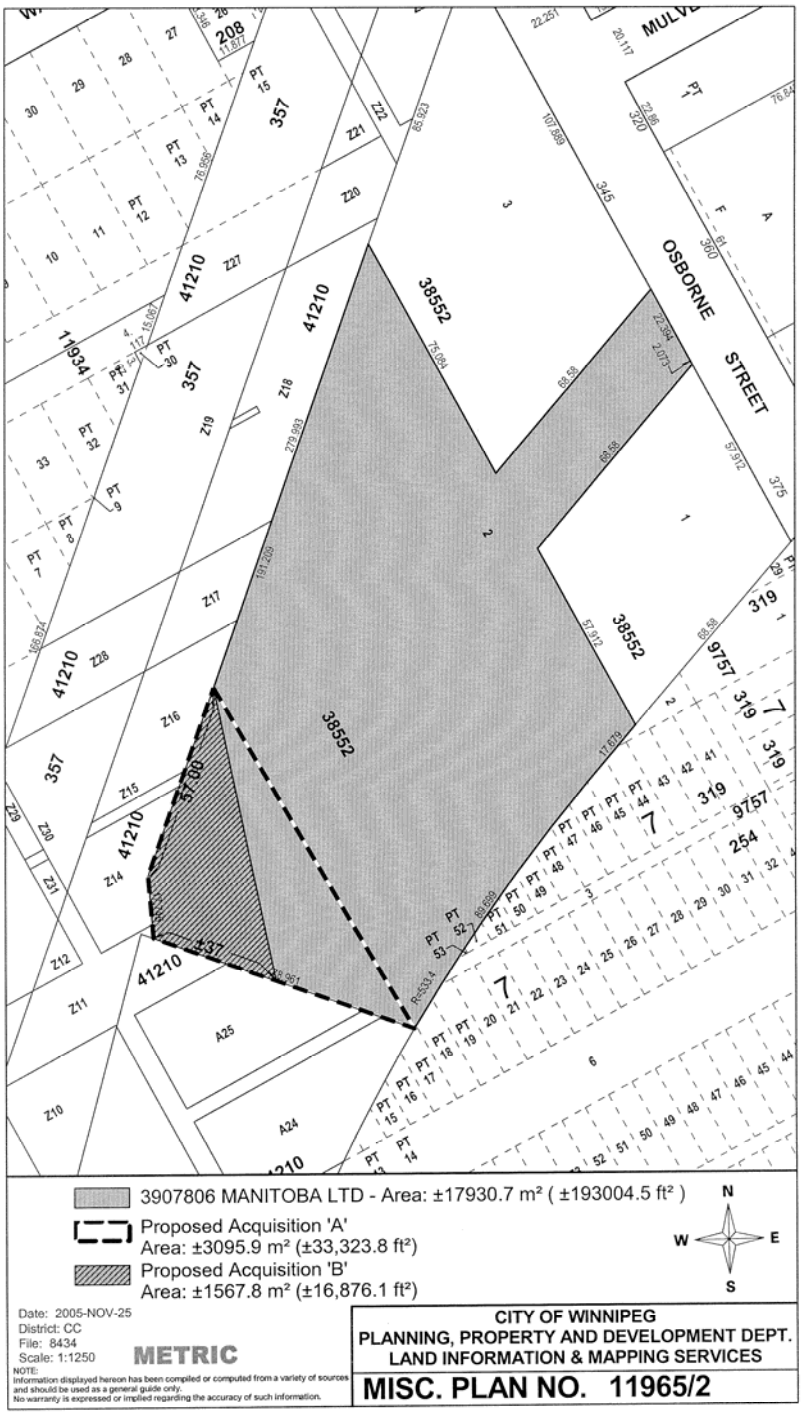
OSBORNE STREET
38552
41210
11934
357
3907806 MANITOBA LTD - Area: ±17930.7 m² (±193004.5 ft²)
Proposed Acquisition 'A'
Area: ±3095.9 m² (±33,323.8 ft²)
Proposed Acquisition 'B'
Area: ±1567.8 m² (±16,876.1 ft²)
N
W
E
S
Date: 2005-NOV-25
District: CC
File: 8434
Scale: 1:1250
METRIC
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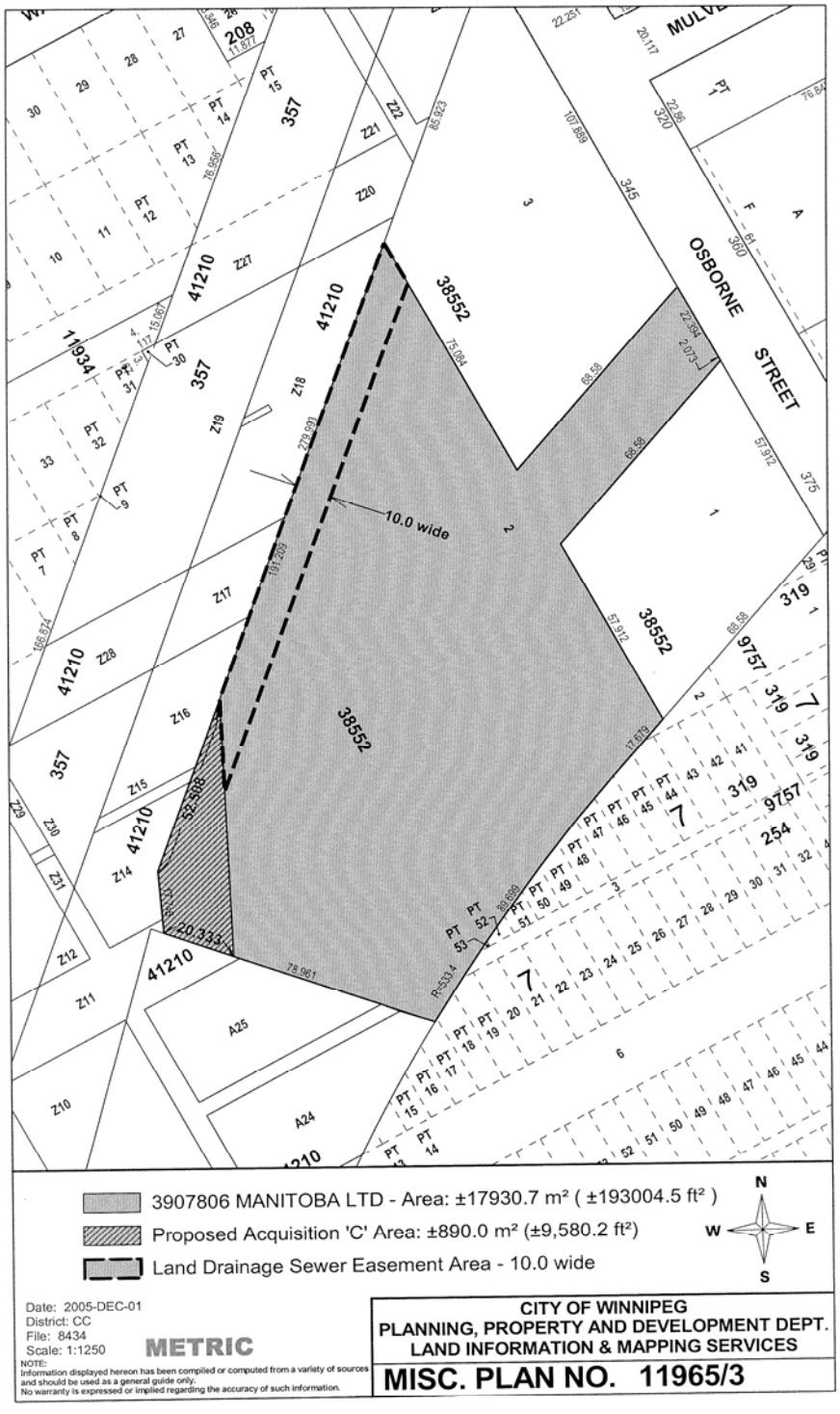
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 11965/2


OSBORNE STREET
10.0 wide
38552
41210
357
3907806 MANITOBA LTD - Area: ±17930.7 m² (±193004.5 ft²)
Proposed Acquisition 'C' Area: ±890.0 m² (±9,580.2 ft²)
Land Drainage Sewer Easement Area - 10.0 wide
N
W
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Date: 2005-DEC-01
District: CC
File: 8434
Scale: 1:1250
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CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 11965/3

Submission by Mark Olson, 3907806 Manitoba Ltd. - Standing Policy Committee on Property and Development - December 8, 2005 - Page 1 of 2



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