Minutes – Executive Policy Committee – February 15, 2006

REPORTS

Minute No. 204 Red Tape Commission Report, Recommendation 15 – Development Agreements
File GG-5

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the administrative recommendation and requested its Ad Hoc Committee to Review Development Standards to lead a process toward achieving Recommendation 15 of the Red Tape Commission's Report, including directing the Administration to:

- Prepare and implement a work plan in collaboration with the Permits X-Press Industry Advisory Committee in order to achieve standardized development and servicing agreements; and

- Research best practices and investigate legal issues associated with delegation of authority to the Administration for approval of development and servicing agreements and development of an appeals process for same.

DECISION MAKING HISTORY:

Moved by Councillor De Smedt,

That the administrative recommendation be concurred in.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On November 16, 2005, the Executive Policy Committee granted an extension of time of ninety (90) days for the Administration to report back on the Red Tape Commission Report, Recommendation 15 – Development Agreements.

On July 20, 2005, the Executive Policy Committee referred to the Chief Administrative Officer for review and recommendation the following first phase recommendations of the Red Tape Commission, said report to be submitted to the Executive Policy Committee for consideration within 90 days, namely:

- Recommendation 15
  Negotiate as many standardized development and servicing agreements with the Urban Development Institute as possible. Once agreements are set, delegate execution of these agreements to the Winnipeg Public Service [Administration] based on negotiated parameters to govern their application.

Re: **Red Tape Commission Report: Recommendation 15 -- Standardized Development Agreements**

For submission to: **Executive Policy Committee**

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

Report date: February 1, 2006

Recommendation(s):

1. That the Ad Hoc Committee on Development Agreement Parameters lead a process toward achieving Recommendation 15 of the Red Tape Commission's Report.

2. Relative to recommendation 1, that the Administration be directed to prepare and implement a work plan in collaboration with the Permits X-Press Industry Advisory Committee in order to achieve standardized development and servicing agreements.

3. Relative to recommendation 1 and 2, that the Administration be directed to research best practices and investigate legal issues associated with delegation of authority to the Administration for approval of development and servicing agreements and development of an appeals process for same.

4. That the proper Officers of the City be authorized to do all things necessary to implement the intent of the aforementioned recommendations.

REPORT SUMMARY

Key Issues:

- On January 12, 2000, Executive Policy Committee approved the establishment of an Ad Hoc Committee, comprised of the Chairpersons of the Standing Committees on Fiscal Issues, Public Works and Property and Development, to review development standards.
- The City's Development Agreement Parameters provide guidelines for sharing the cost of servicing and infrastructure installation.
- The parameters have been the subject of some debate with the land development industry since their inception in the mid-1970's.
- The Development Agreement Parameters were last amended in 2002 in collaboration with the industry, represented by the Urban Development Institute.
- The 2005 Red Tape Commission report recommended that the process for negotiating infrastructure costs with the development industry be streamlined and standardized by creating standard development agreement templates, delegating authority for application of development agreements to the Director of Planning, Property and Development and finalizing updates to the Development Agreement Parameters.

- This report outlines the process and steps to achieve these objectives and a move forward strategy in collaboration with the industry.

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):

-

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):

-

REASON FOR THE REPORT:

On July 20, 2005, Executive Policy Committee received as information the Final Report of the Mayor's Red Tape Commission dated June 28, 2005. Further, the Executive Policy Committee referred to the Chief Administrative Officer for review and recommendation the following first phase recommendations of the Red Tape Commission, said report(s) to be submitted to the Executive Policy Committee for consideration within 90 days, namely:

Recommendation 15

> Negotiate as many standardized development and servicing agreements with the Urban Development Institute as possible. Once agreements are set, delegate execution of these agreements to the Winnipeg Public Service [Administration] based on negotiated parameters to govern their application.

HISTORY:

On November 23, 2004, the Mayor officially established a Red Tape Commission, chaired by Councillor Franco Magnifico, to review City operations and regulations in order to improve customer service while granting administrators more freedom to innovate.

The Red Tape Commission submitted a final report, dated June 28, 2005, containing 30 general recommendations, each with numerous more detailed sub-recommendations. Recommendation 15, as outlined above, contained the following sub-recommendations:

Recommendation 15.1

> In general, Council's role in applying and imposing development and servicing agreements (hereafter development agreements) should only be through the establishment of City policy, or through general instructions to public service representatives as the City develops a negotiating position under these recommendations.

Recommendation 15.2

> The City should immediately initiate formal negotiations with the Urban Development Institute, arranged through the auspices of a mediator agreed to by both the City and the Institute, with the goal of broadly standardizing development agreements. The objective of these discussions is to standardize, through negotiation, as many development agreement templates – including standard terms and conditions - as possible and then to delegate imposition of these agreements to the Director of Planning, Property and Development according to agreed-upon parameters, subject to appeal on the basis of Recommendation 15.3. It is understood that other business terms may still need to be open for negotiation under this model, but any negotiation should take place at the Public Service level. Negotiations should continue until a set deadline. Once that deadline is

reached, every template agreed to should be used until the next negotiation cycle, as per Recommendation 15.4.

Recommendation 15.3

Council should take any appropriate steps in law or regulation to create a distinct appeal process, paid for by the proponent, in which disputes arising from the application of the agreed-to parameters for standardized development agreements are resolved by a joint panel of industry and administrative representatives. Panels should be directed to select the solution proposed by either party that most closely matches the application of similar parameters in a comparative jurisdiction (for example, Calgary). This appeal process should be reviewed and improved after expiry of the first set of standardized agreement parameters.

Recommendation 15.4

On expiry of the agreement parameters reached through Recommendation 15.2, the same procedure should be used to renegotiate changes to the base set of parameters later. To ensure responsiveness, expiry and renegotiation of these agreements should happen at least once every three years.

DISCUSSION:

Development Parameters and Agreements

The Subdivision Standards By-law No. 7500/99 provides authority for the City to approve guidelines for City administrators and Developers to be used in formulating development conditions for consideration by Council and its relevant Committees. Development Agreement Parameters serve as guidelines for the City administration and the development industry in setting conditions for development for consideration by City Council. These Development Agreement Parameters express the general policy of the City. They are guidelines for the City's Administration and Developers in formulating development conditions for consideration by City Council and its relevant Committees through Development Agreements. Each development proposal is governed by its respective development agreement, not by these guidelines.

These parameters convey the general policy, as determined by Council, of the City toward new and infill development. The main purpose of the Development Agreement Parameters is to ensure that:

- All Developers pay for their equitable share of costs associated with development
- Development agreement obligations are consistent across all developments
- Development complies with City of Winnipeg's construction specifications

Development Agreement Parameters set out Council policy which is put into effect through contracts called Development Agreements. A recently developed "Guide to Understanding Development Agreement Parameters" has been provided in Appendix A.

Only an enactment of a by-law by Council or a development agreement signed by a Developer would impose an obligation for payment or reimbursement. Development Agreement Parameters are utilized by Administration to form the basis for all development agreements that are executed between the City and land developers.

In general there are two major types of Development Agreements:

1. **Servicing and Development Agreements**
   These Agreements are similar in nature and generally deal with the provision of services to the development and as such include requirements for services in the general area and within the rights-of-way adjacent to the private property rather than on-site. Servicing Agreements are utilized for rezoning or short-form subdivision applications where no new rights-of-way are being created and Development Agreements are used where there is a long-form subdivision involved that is creating new rights-of-way. These Agreements are administered as "contracts" between the City and a Developer or Owner and for the most part are not registered as caveats on the titles of the private property and as such the conditions do not "run with the land" but are the obligation of the person who signed the agreement.

2. **Zoning and Subdivision Agreements**
   These Agreements are similar in nature and deal with approval conditions to be imposed on the development within the private property such as use restrictions, height restrictions, yard requirements, landscaping, plan approvals, etc. The designation of the agreements as "zoning" or "subdivision" is based on what type of application they are associated with, whether a rezoning or subdivision. These Agreements are registered as caveats on the title for the property and the requirements "run with the land" regardless of ownership.

As per The City of Winnipeg Charter, agreements between the City and another party require the authorization of the City Clerk and the Mayor, therefore they are routed through Council for approval as the Mayor has no authority to make agreements on behalf of the City unilaterally. All contracts must be prepared by the Legal Services Division. Zoning and Subdivision Agreements are required to be registered as a caveat on the Certificate of Title for the properties, so that the conditions in the agreement "run with the land" and bind subsequent owners if the land is transferred.

History / Background

The City of Winnipeg and the Urban Development Institute collaboratively produced a set of Development Agreement Parameters that were first adopted by Council in the mid 1970's. A major review of the Parameters occurred in the late 1980's with City Council adopting a number of recommended amendments in 1989. On January 12, 2000, Executive Policy Committee approved the establishment of an Ad Hoc Committee, comprised of the Chairpersons of the Standing Committees on Fiscal Issues, Public Works and Property and Development, to review development standards. The objectives of the Committee were as follows:

1. To re-examine the standards that affect Development Agreements;

2. To consult with the private sector thereon; and

3. To work with the Administration to update the standards.

In June, 2002 a report entitled "Proposed 2002 Development Agreement Parameters", was submitted for consideration by Council. On July 17, 2002, Council adopted the recommended changes which represented the culmination of many meetings involving members of the Ad Hoc Committee, Urban Development Institute and the Administration. Although there were still issues that needed be discussed further, the revised Parameters were a significant improvement to the 1989 version in that they had been re-organized in a more logical format as well as updated to reflect the reality of today's economic climate. With respect to outstanding issues, the Urban Development Institute and the City of Winnipeg agreed to immediately review two of the parameters in particular.

In July, 2003, the City of Winnipeg and the Urban Development Institute jointly retained the services of Royal LePage Stevenson Advisors Limited in collaboration with Ernst & Young Corporate Finance Inc. and Stantec Consulting Ltd. to focus on the following:

1. To evaluate and review the City's current Developer Servicing Requirements / Costs / Paybacks parameters and procedures; more specifically, to recommend how and when servicing paybacks or reimbursements, including interest considerations, should be funded and provided to Developers for oversizing.

2. To evaluate and review the City's current Land Dedications Payments parameters and procedures; more specifically, to recommend how cash-in-lieu of land dedication should be calculated and imposed for various types of development applications.

In March of 2004, the consultant submitted the final report; which includes 15 recommendations on "Oversizing and Paybacks" and 10 recommendations on "Open Space Dedication and Cash In Lieu".

The final report was distributed to various Urban Development Institute members and City staff for review and comment. On June 29, 2004, the Project Steering Committee convened and reviewed the 15 "Oversizing and Paybacks" recommendations and were in agreement with all 15 recommendations. The Project Steering Committee further resolved that City staff would

conduct an internal review of the other 10 recommendations for "Open Space Dedication and Cash In Lieu", which was completed on August 4, 2004.

The report has not proceeded further due to other priorities established at the City of Winnipeg that might impact the recommendations.

Moving Forward

The adoption of the amendments to the Development Agreement Parameters in 2002 was expected to improve relations between the City and representatives of the land development industry and, ensure that all parties continue to contribute their fair share of the costs of City services and infrastructure. There are still various parameters that needed be discussed further with the Urban Development Institute, to the mutual satisfaction of both parties.

It is recommended that Council appoint the Ad Hoc Committee on Development Agreement Parameters to provide the overall leadership for this review. It is also recommended that Administration continue to work in consultation with the Permits X-Press Industry Advisory Committee and meet independently with the Urban Development Institute to confirm points of agreement and to identify points of disagreement. Based on this, Administration in collaboration with the Urban Development Institute should develop and implement a work plan to achieve standardized development and servicing agreements. Another recommendation is for the Administration to be directed to research best practices and investigate legal issues associated with delegation of authority to the Administration for approval of development and servicing agreements and the development of an appeals process when disputes arise from the application of standardized development and servicing agreements.

Issues and Challenges

Should Council direct the Administration to negotiate standardized development and servicing agreements with the Urban Development Institute, an initial assessment will need to be conducted on the following:

- Identification of changes to the Sub-division Standards by-law and/or The City of Winnipeg Charter in order to create a distinct appeal process, paid for by the proponent, in which disputes arising from the application of the agreed-to parameters for standardized development agreements are resolved by a joint panel of industry and administrative representatives.
- Process and terms of reference to establish a mediator agreed to by both the City and the Institute, with the goal of broadly standardizing development agreements.
- Need for and identification of a project manager and members of a multi-departmental team to work with the Urban Development Institute.

Objectives and Scope

The project will need to initially develop a work program and timeline acceptable to all stakeholders. The intent would be to deliver a clear set of deliverables with agreed to timelines that respect the time and involvement of the industry stakeholders. The work program would address two concurrent processes with clear roles and responsibilities. The concurrent processes would address the following:

Stream 1 of the project will examine the existing development parameters established and identify any areas of disagreement and any outstanding issues between the City of Winnipeg and the Urban Development Institute. The following steps will be performed:

1. Consultation with the Urban Development Institute on
    a. Existing rates
    b. Review and prioritize recommendations from Royal LePage report.
2. Overall agreement on existing parameters to mutual satisfaction.
3. Development of mediator process and role
    a. Timelines of project
    b. Agreement of deliverables to be produced
4. Develop schedule

Stream 2 of the project will examine approaches utilized for development agreements in other municipalities and address any legal issues. The task would be to identify strategies employed by other municipalities with the intent of determining best practices and methods. The following steps will be performed:

1. Research other jurisdictions (e.g. Calgary, Edmonton, Vancouver, etc.)
2. Investigate legal issues associated with the following:
    a. Delegated Authority to the Director of Planning, Property and Development
    b. Development of an Appeals process

The final report will combine the information collected in both streams and provide recommendations for standard development and servicing agreements in the City of Winnipeg to Executive Policy Committee.

Financial Impact Statement

Date: January 26, 2005

COMMENTS:

The recommendations, if approved, will be implemented within existing budgeted amounts. Therefore, there is no financial impact.

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

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

N/A

THIS REPORT SUBMITTED BY:

Planning, Property and Development Department
Division: Development and Inspections
Prepared by: Deepak Joshi, Manager of Development and Inspections
PPD File #:

Document name: o:\reports directive\development and inspections\manager of d&i\2006 reports\red tape recommendation 15 - jan 26.doc

APPENDIX A

