Report of the Standing Policy Committee on Property and Development dated November 1, 2001

Proposed Sale of a portion of the Pandora Avenue West right-of-way and City-owned Adjacent Lands – East Kildonan-Transcona Community

File DAC 20/2001
[c/r DAC 5/2001, DASZ 24/2001]

5. The Standing Policy Committee on Property and Development has been advised that the Planning, Property and Development Department is in receipt of proposed terms and conditions for the purchase of the area highlighted as "proposed closing" and "subject City property" on Misc. Plan Nos. 11105/5 and 11105/7. As Council has not yet authorized the proposed street closure in its entirety, the proposed terms of sale will require Council approval.

The particulars of the subject property are as follows:

Location:	The west-end of Pandora Avenue West at Regent Avenue West
Registered Owner:	The City of Winnipeg
Legal Description:	Part of Parcel C, and Parcel D, Plan 25240 and a portion of the Pandora Avenue West right-of-way
Certificate of Title No.:	1161032 (Part of Parcel C & Parcel D, Plan 25240)
Zoning:	"A-5" Agricultural; "R1-5" Residential
Site Size/Area:	Part of Parcel C, and Parcel D – 12,986.25 square metres (139,784 square feet); Pandora Avenue West right-of-way – 4,771 square metres (51,355 square feet)
Property Description:	The subject City property is located directly south of the applicant's property at 1486 Regent Avenue West. The property to be sold contains a portion of the Pandora Avenue West right-of-way and lands further south up to the single-family homes located on Trudell Bay. Located at 1262 Pandora Avenue West is a single family home that is included in the sale. The home is occupied by a tenant.

The subject City property, not including the subject portion of the Pandora Avenue West right-of-way, was acquired in a number of stages in the 1970's and early 1980's. The lands were assembled for the proposed Eastern Thoroughfare, which was to provide an alternate traffic route to connect downtown to the Transcona area. The Public Works Department have confirmed that this proposed traffic route has been cancelled and the lands are now surplus to City requirements.

On February 27, 2001, the Planning, Property and Development Department received a request from Frontier Toyota Ltd. to purchase a portion of the Pandora Avenue West right-of-way and the adjacent City lands to the south. Frontier Toyota would like to increase the size of their site highlighted as "Applicant's Property" on Misc. Plan 11105/5 to expand their car dealership.

The initial request from Frontier Toyota was to purchase all of Parcel C, Plan 25240. The request was reviewed by the Real Estate Division's Land Enhancement Program and it was determined that the sale of all of Parcel C would negatively impact the future development of the remaining City lands to the south-west. It was determined that Parcel C should be sub-divided to ensure the remaining City lands would be developable. The Land Enhancement Program in consultation with the Ward Councillor and the District Planner have prepared a number of potential residential development scenarios for the remaining City lands. The remaining City lands are approximately 19.2 acres and offer good potential

as a future residential sub-division. (Drawings labelled "Potential Sub-Division I and II" illustrate potential development scenarios for the remaining City lands.)

The Planning and Land Use Division of the Planning, Property and Development Department indicated that they would support the proposed development of the subject lands for commercial use. The only area of concern is that a landscape buffer be installed at the southern portion of the site to protect the residents along Trudell Bay. The District Planner indicated that the design and type of buffer would be a condition placed on the rezoning of the site. The applicant will be required to apply to rezone the site as it is currently zoned "A-5" Agriculture and "R1-5" Residential.

The proposed closing is advantageous to the residents along Pandora Avenue West, as it would significantly reduce the amount of commercial traffic on Pandora Avenue West driving to and from the Frontier Toyota site. The area residents have expressed concern over the years at the amount of traffic on Pandora Avenue West generated by the customers and employees of Frontier Toyota. The construction of a cul-de-sac at the east end of the closed street will eliminate access to the Frontier Toyota property from Pandora Avenue West and result in traffic patterns more suitable to a residential neighbourhood.

The proposed street closing application was circulated to all affected City Departments. The Water and Waste Department advised that they would require an easement over the most southerly fifteen (15) metres of the proposed closing for a wastewater sewer and water main. The Water and Waste Department have requested that the easement agreement state that no structures are to be located within the easement area. In addition, easements will be required for Manitoba Hydro, MTS Communication Inc. and Centra Gas Manitoba for the maintenance of its underground services located in the area to be closed.

On July 17, 2001, the East Kildonan-Transcona Community Committee indicated no objections to declaring the "subject City property" as outlined on Misc. Plan 11105/5 as surplus to City requirements and offering the subject property for sale to Frontier Toyota. At the same Community Committee meeting an application for a proposed street closing under File DAC 5/2001 was recommended for approval. The closing approval was to be subject to a "cul-de-sac type turnaround be located and situated on the applicant's property, and not in front of 1251 Pandora Avenue West". The home owner located at 1251 Pandora Avenue West appeared at the meeting and had concerns that the proposed turn around was to be located in front of his property. Frontier Toyota at the meeting agreed to have the turnaround located further west and not in front of 1251 Pandora Avenue West.

Upon further review and consideration Frontier Toyota decided they would like to have the turnaround located as per Misc. Plan No. 11105/5. This would locate the turnaround in front of 1251 Pandora Avenue West. Frontier Toyota was seeking to have the decision of the Community Committee amended to obtain the necessary approvals to have the turnaround located as per Misc. Plan No. 11105/5. In view of the foregoing, in August 2001, the Planning, Property and Development Department recommended that the Standing Policy Committee direct the closing back to the East Kildonan-Transcona Community Committee to further review the matter. The land sale is subject to Frontier Toyota obtaining the necessary approvals to locate the turnaround as per Misc. Plan No. 11105/5.
On August 9, 2001, the Planning, Property and Development Department received the terms and conditions for the sale and purchase of the closed right-of-way and adjacent City lands. The principle terms and conditions are as follows:

Purchaser: Frontier Toyota Ltd.

Principles:	Marcel and Val Thompson
Proposed closing:	Thirty (30) days following the latter of the approval of the rezoning or thirty (30) days following the enactment of the closing by-law.
Purchase Price:	$440,000.00
Deposit:	$44,000.00

In addition to the City's standard terms and conditions for the sale of City lands and closed rights of way, the following conditions are contained in the Offer to Purchase:

- The purchaser is to consolidate the certificate of title of the subject lands with the title(s) to the applicant's adjacent lands.

- The purchaser at its sole cost and effort is to relocate the existing turnaround. The design and specifications are subject to the approval of the Director of Public Works.

- The purchaser will have sixty (60) days from the Date of Approval to obtain estimates for the cost of the relocated turn-around. If the costs are not acceptable to the purchaser, the purchaser has the ability to cancel the sale.

- The purchaser acknowledges that the property being acquired includes the single-family home at 1262 Pandora Avenue West and that a tenant occupies the home. Any termination notice to the tenant must be done in accordance with The Residential Tenancies Act.

- The purchaser acknowledges that there is an abandoned wastewater sewer located in the subject lands and that the purchaser accepts full responsibility for any and all costs or liability related to the abandoned wastewater sewer.

- The purchaser has 180 days to apply and secure the necessary re-zoning and/or conditional use variances to permit the construction and operation of an automobile dealership for the sale, repair and service of vehicles upon terms and conditions satisfactory to the purchaser. All dedication fees payable are the responsibility of the purchaser.

- The purchaser at its sole cost and effort will apply to sub-divide Parcel C, Plan 25240 as per Misc. Plan. No. 11105/5.

- The sale is subject to the Purchaser obtaining the necessary approvals to close the portion of Pandora Avenue West as outlined on Misc. Plan No. 11105/5. The Department recommended that the Standing Policy Committee direct the closing application back to the East Kildonan-Transcona Community Committee to approve the changes as requested by the Purchaser for the relocated turnaround.

In addition to the negotiated terms and conditions, the purchaser has requested that they retain the interest earned on their deposit. Given the amount of the deposit and that the closing will be delayed until the subject site is rezoned, the Planning, Property and Development Department would support the payment of interest on the deposit. The deposit will be placed in an interest bearing trust account and all interest earned will accrue to the benefit of the Purchaser. The City has allowed the payment of interest in prior transactions.

There are no commissions payable on the sale of this property to Frontier Toyota Ltd .

The offer of $440,000.00 is supported by the appraisal that was completed on the subject property.

The sale of a portion of the Pandora Avenue West right-of-way is subject to the approval of the road closing by Council and the successful enactment of the required by-law to effect the road closing. The Planning, Property and Development Department recommended that subject to the approval of the closing and enactment of the by-law, that the subject City lands be declared surplus. The Department also supports the sale of subject City lands to Frontier Toyota Ltd. for the following reasons:

- The Offer received is well supported by the appraised value of the property
- The sale will result in the property going on the Tax Roll.
- The closing of the subject portion of the Pandora Avenue West right of way will alleviate the traffic concerns for the residents on Pandora Avenue West.

On September 6, 2001, the Standing Policy Committee on Property and Development considered the foregoing, and laid over the matter pending recommendation by the East Kildonan-Transcona Community Committee on a proposed subdivision and rezoning application under File DASZ 24/2001.

On October 30, 2001, the Standing Policy Committee on Property and Development concurred in the October 9, 2001 recommendation from the East Kildonan-Transcona Community Committee that the street closing under File DAC 20/2001 be approved, subject to the following conditions:

1. That the location and dimensions of the turnaround be modified to relocate the new western limit of Pandora Avenue West twenty-five (25) feet further west.
2. That the Public Works Department be instructed to install traffic calming devices in Pandora Avenue, west of Starlight Drive and that a "Dead End Street" sign be installed at Starlight Road facing westbound traffic.
3. That the paved surface at the new Pandora Avenue West turnaround be located as close to the west boundary of the right-of-way as possible.

The Standing Policy Committee also recommended that the City Solicitor/Manager of Legal Services be instructed to prepare the necessary by-law for submission to Council to effect the closing in accordance with Misc. Plan No. 11105/5. (Refer to Clause 1 of the Report of the Standing Policy Committee on Property and Development dated October 30, 2001)

On October 30, 2001, the Standing Policy Committee on Property and Development also concurred in the October 9, 2001 recommendation of the East Kildonan-Transcona Community Committee, and recommended that the proposed plan of subdivision and rezoning application under File DASZ 24/2001 be approved, subject to terms and conditions. (Refer to Clause 2 of the Report of the Standing Policy Committee on Property and Development dated October 30, 2001)

On November 1, 2001, the Standing Policy Committee on Property and Development was advised that as a result of the East Kildonan-Transcona Community Committee's October 9, 2001 recommendations, the following amendments to the proposed terms and conditions of sale are required:

<u>Amendment to Site Definition and Site Size to be sold</u>
The East Kildonan-Transcona Community Committee recommended the modification of the proposed closing by relocating the new western limit of Pandora Avenue West twenty-five (25) feet further west. As a result of this revision the site area of the proposed street closure will be reduced from 51,355

square feet to 48,933 square feet. The recommended revised definition of the proposed street closure and of the reduced site size is now shown on Misc. Plan No. 11105/7. Therefore it will be necessary to amend the Offer to Purchase by substituting all references to Misc. Plan No. 11105/5 with Misc. Plan No. 11105/7.

Amendment to the Proposed Sale Price

The reduction in the site area will result in a reduction in the proposed sale price. The revised proposed price will be $434,427.00. As a result it will be necessary to amend the Offer to Purchase by substituting all references to the proposed price of $440,000.00 with the proposed price of $434,427.00.

Request by Frontier Toyota to amend proposed Clause 23 of the Offer to Purchase

The Planning, Property and Development Department is in receipt of a letter from Frontier Toyota which requests the City to delete the covenant in Clause 23 of the Offer to Purchase which requires the Purchaser to be "responsible for all dedication fees that may be payable."

In its letter, Frontier Toyota supports its request by advising that it has experienced difficulties over the long term by reason of the City's 1992 widening of Regent Avenue and alteration of the traffic movements in its vicinity. Frontier states that:

- its on-site functionality has been restricted for customer and service purposes;
- neighbourhood traffic is using its site as a pass-through from Regent Avenue West to Pandora Avenue west;
- there is increased traffic along Pandora Avenue West to the detriment of those residential properties;
- there is an increase in vehicle damage both on its lot and on Regent Avenue West by way of accidents directly in front of its property.

Furthermore, Frontier Toyota advised that

- It did not fully comprehend the implications of the proposed Clause 23;
- the purchase of this property is vital to enable its continued occupation and operation at this location;
- it is purchasing more property than it absolutely requires and will need to incur the associated holding costs for an indefinite period of time;
- its total land assembly costs to enable this project were not anticipated;
- if it were not for the Frontier project, the City's land would "have relatively low-value, in comparison, to any other purchaser";
- it has already expended significant costs in pursuing the rezoning application;
- a significant amount of the land to be purchased from the City will be utilized for a cul-de-sac, drainage swale, and a berm with fencing and landscaping along the boundary with the residential properties. Frontier has estimated the cost of these improvements to be in excess of $100,000.00.

The Planning, Property and Development Department had the following observations and comments relative to the Frontier Toyota letter and request:

1. The City did in fact expropriate land from this property for the widening of Regent Avenue West. The matter of the negotiation and payment of "due compensation" has been settled and no further compensation is owing.

2. The size and shape and location of the Frontier Toyota property appears to be problematic to the efficient operation of a business such as this.

3. The Department believes that the matter of the responsibility of the payment of "dedication fees" in Clause 23 had been fully disclosed and discussed.

4. It agrees with Frontier that the shape and location of the City's lands render those lands problematic for other uses and that a sale to Frontier as part of a larger assembly for consolidation into the Frontier property would represent its highest and best use. Indeed, it is on the basis of this very reason that the Department defined this parcel of land for sale purposes.

5. The total of all land assembly and rezoning costs, inclusive of the administrative costs and of the improvement costs pursuant to the subdivision/rezoning application hearing process, as stated in the October 15, 2001 letter is approximately $804,000.00 ($3.33 per square foot overall). This estimate does not include payment of the estimated dedication fees.

6. The Department originally appraised the value and negotiated the sale of these city-owned surplus lands at this location based on a value estimate for lands assembled for commercial sites at a somewhat higher value than land limited to residential use, but, also somewhat lower than the low end of the value range for rearage commercial property.

7. The Department has now estimated the dedication costs to rezone the assembled lands from "A-5" and "R1-5" to "C3-1" at an amount of $25,730.00. When this cost is added to Frontier's land assembly costs of $804,000.00 Frontier's overall cost then becomes $829,730.00 for an overall rate of $3.44 per square foot, which rate is, in the Department's opinion, representative of the low end of the value range for "C3-1" zoned rearage lands in this vicinity. Consequently, the Department does not support the deletion of the covenant within Clause 23, which requires Frontier to pay the dedication fees.

8. Should the Standing Policy Committee on Property and Development decide to approve Frontier's request to amend Clause 23, then the Department advised that Frontier should still be required, at the very least, to pay the dedication fees as are applicable to the rezoning of non-City-owned property, which is also included in the subdivision/rezoning application (File DASZ 24/2001). The portion of the dedication attributed to the privately owned properties purchased by Frontier Toyota is $5,789.00 (excluding G.S.T.).

On November 1, 2001, the Standing Policy Committee on Property and Development concurred with the Planning, Property and Development Department's recommendation to remove from further consideration its previous recommendation that the proposed street closing be directed back to the East Kildonan-Transcona Community Committee to approve the changes requested by the Purchaser with respect to the location of the new turnaround, inasmuch as the Community Committee has given consideration to a second street closing application (under File DAC 20/2001), and a subdivision and rezoning application (under File DASZ 24/2001) at its public meetings held on September 11 and October 9, 2001.

The Standing Policy Committee on Property and Development also concurred in the Planning, Property and Development Department's recommendation that the October 15, 2001 request of Frontier Toyota Ltd. to amend Clause 23 of the Offer to Purchase to delete the requirement to pay dedication fees, be denied.

The Standing Policy Committee on Property and Development therefore recommends that subject to the approval of the road closing by Council, and the enactment of the road closing by-law:

I. That the area highlighted as “proposed closing” and “subject City property” on Misc. Plan No. 11105/7 be declared surplus to the City’s requirements.

II. That the proposed sale to Frontier Toyota Ltd. at a price of $434,427.00 be approved in accordance with the negotiated terms and conditions, with the deposit of $43,442.70 being placed in an interest bearing account with any and all interest earned thereon to accrue to the benefit of the purchaser.

III. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing, including the execution of any documents related thereto.

Copies of the documents referred to in the above clause are on file in the office of the City Clerk.