Agenda - Council - December 11, 2002

Report - Executive Policy Committee - November 20, 2002

7. Proposed Settlement of Due Compensation – Expropriation of the Carole Moss Property at 2582 Assiniboine Crescent for the Charleswood Bridge Project File GL-4 (Vol. 6)

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On November 20, 2002, the Executive Policy Committee considered this matter and recommends to Council:

1. That the City Solicitor/Manager of Legal Services be authorized to settle the due compensation for the expropriation of 2582 Assiniboine Crescent, shown as "subject property" on Misc. Plan No. 8977/6, at a sum of $324,887.92 plus statutory interest and legal fees reasonably incurred.

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

Re: Proposed Settlement of Due Compensation – Expropriation of the Carole Moss Property at 2582 Assiniboine Crescent for the Charleswood Bridge Project Assiniboia Community St. James Ward

For submission to: Executive Policy Committee

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

Report date: October 31, 2002

Recommendation(s):

That the City Solicitor/Manager of Legal Services be authorized to settle the due compensation for the expropriation of 2582 Assiniboine Crescent, shown as "subject property" on the attached Misc. Plan No. 8977/6, at a sum of $324,887.92 plus statutory interest and legal fees reasonably incurred.

REPORT SUMMARY

KEY ISSUES:

- The City's solicitor scheduled a hearing date with the Land Value Appraisal Commission (LVAC), for Wednesday October 30, 2002, which has been postponed on the basis that the Administration will recommend approval of the settlement proposal described in this report.
- The proposed settlement requires final approval by Council. It is well supported by the market value evidence and the provisions of the Expropriation Act.
- Arguments for a potentially greater settlement amount, plus costs for an LVAC hearing are avoided through this proposed settlement.

IMPLICATIONS

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: •

Policy implications

X	No (*There are no policy implications if the report is asking for a one-time decision.)*
	Yes *(There are policy implications if the recommendation(s) is/are asking for a*

decision that will be used to guide decisions over time.)

Comment: •

Financial implications

X	Within approved current and/or capital budget
	Current and/or capital budget adjustment required
	No financial implications

Comment: • Due to the owner having taken the advance on due compensation, the net sum of balances payable to the expropriated owner is $64,887.92, plus statutory interest estimated to be $36,400 to December 31, 2002, and reasonably incurred legal fees estimated to be approximately $15,000. There are adequate funds in the Public Work's capital account for the Charleswood Bridge Project.

REPORT

RECOMMENDATION(S):

That the City Solicitor/Manager of Legal Services be authorized to settle the due compensation for the expropriation of 2582 Assiniboine Crescent, shown as "subject property" on the attached Misc. Plan No. 8977/6, at a sum of $324,887.92 plus statutory interest and legal fees reasonably incurred.

REASON FOR THE REPORT:

Continuing negotiations toward the determination of due compensation have produced a proposed settlement for the subject property that exceeds $250,000 and, pursuant to Organizational By-Law 7100, as amended by By-Law 7234/98, this requires City Council approval.

HISTORY:

On October 20, 1993, Council passed By-Law 6243/93 expropriating lands required for the Charleswood Bridge Project, which included the 'subject property' shown on the attached Misc. Plan No. 8977/6.

On January 6, 1994, the City's Committee on Finance and Administration authorized the City Solicitor to submit a formal Offer of Compensation, under Section 16 of the Expropriation Act, at the sum of $260,000.00.

The City entered into possession of the property on October 5, 1994. On May 30,1994 the owner took an advance of $260,000 on the due compensation, but continued to reject the City's offer.

Negotiations were carried out intermittently until late in 2001 when the City recommenced settlement discussions with the owner. In early June 2002, due to the owner's reluctance to negotiate, a decision was made that the City's solicitor schedule a hearing at the Land Value

Appraisal Commission (LVAC). The hearing date was set by the LVAC for Wednesday, October 30, 2002.

DISCUSSION:

Subsequent to the setting down of a hearing date, the owner's solicitor provided a settlement proposal. After further negotiations, the parties now have a proposed settlement agreement.

The particulars of the subject property are as follows:

Address:	2582 Assiniboine Cr.
Ownership	Carole Moss
Legal Description	Lot 43 Plan 21036, St James
Lot Dimensions	96.4' x 232'
Type of Property	Single Family Residential Dwelling
Building Size	2596 square feet
Assessment ('93)	Land: $ 94,800
	Bldg: $137,000
	Total $231,000
Taxes	$6,416.18 (1993)
Zoning	"R1-5.5" Single Family Residential

The particulars of the proposed settlement are as follows:

Market Value (Special value of residence to owner, Sec 26(2)(b))	$295,000.00
5% residential allowance (Sec 26(2)(b)	$ 14,750.00
Allowance for blinds, drapes, etc	$ 7,500.00
Moving Costs	$ 2,500.00
Legal, survey and LTO fees on purchase of replacement home and disbursements	$ 5,137.92
Total	$324,887.92
Less: Advance paid May 30,1994	$260,000.00
Amount to be paid to the owner	$ 64,887.92

Plus: Statutory Interest from the possession date of October 5, 1994 to present and legal costs reasonably incurred. Appraisal costs were paid on July 23, 2002.

Due to the owner having taken her advance on due compensation, as provided in the Expropriation Act, the net sum payable is $64,887.92 plus statutory interest and legal fees. There are adequate funds in the Charleswood Bridge Expropriation account, WL 184, to cover the cost of this settlement proposal.

Both the Legal Services and Real Estate Divisions are of the opinion that the proposed settlement is well supported by appraisal and is negotiated in accordance with the appropriate provisions of the Expropriation Act. Accordingly, the Divisions are of the opinion that it is in the best interest

of the City to settle this outstanding expropriation case on the basis of the proposal as specified herein.

The alternative to the settlement as proposed herein would be to proceed to an LVAC hearing. Litigating this matter at the LVAC exposes both the City and the expropriated owner to considerable financial risk and, in the City's case, additional expense, for which the City will ultimately be fully responsible at law. In addition to the extra costs to be incurred through litigation, are the additional administrative costs of City resources to be expended due to the delay and litigation process. Both Divisions are of the opinion that the City should not expect to settle this matter at a cost appreciably less than as proposed herein.

Financial Impact Statement

Date: October 31, 2002

Project Name:

Proposed Settlement of Due Compensation - Charleswood Bridge Project - 2582 Assiniboine Cr.

First Year of Program 2002

	2002	2003	2004	2005	2006
Capital					
Capital Expenditures Required	$ 120,940	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	120,940	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ 120,940	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ 120,940	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$				
Current Expenditures/Revenues					
Direct Costs	$ 3,931	$ 11,489	$ 11,489	$ 11,489	$ 11,489
Less: Incremental Revenue/Recovery	4,652	-	-	-	-
Net Cost/(Benefit)	$ (721)	$ 11,489	$ 11,489	$ 11,489	$ 11,489
Less: Existing Budget Amounts	(721)	11,489	11,489	11,489	11,489
Net Budget Adjustment Required	$ (0)	$ 0	$ 0	$ 0	$ 0

Additional Comments:

The above amount includes the proposed due compensation amount of $64,887.92 plus Statutory Interest payable on $64,887.92 from the possession date of October 5, 1994 to the present; for a total amount owing of approximately $101,287.92; plus legal fees estimated at $15,000.00.

Gord Courage, Manager
Support Services Division

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

Both the Legal Services and the Real Estate Divisions participated in negotiating the proposed settlement of this outstanding expropriation.

THIS REPORT SUBMITTED BY:

Planning, Property and Development Department
Division: Real Estate
Prepared by: P.R. Gregg, AACI
PPD File #: 7111/22

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LAKE ST
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6564
ASSINBOINE CR
29.392
29.261
43
41
42
1
2
74.5±
75.1±
MORAY ST
29.261
21036
21036
6564
ASSINIBOINE RIVER
SUBJECT PROPERTY
2188.7 SQ.M. ±
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
SCALE: 1:750
DATE: 02-SEP-09
DISTRICT: ASBA
ATLAS: H8A2
FILE: 7111/22
MISC. PLAN No.: 8977/6
JAC