Report – Executive Policy Committee - February 7, 2007

Item No. 2 Amendment to the Heritage Conservation Tax Credit Legal Agreement for the Former Northern Electric Building, 65 Rorie Street/140 Bannatyne Avenue
File G-3.1.5

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On February 7, 2007, the Executive Policy Committee concurred in the administrative recommendation and submits the following to Council:

1. That the Council Decision of July 26, 2006 be amended by deleting Clause 7, namely:

   "7. That the owner satisfy the requirement that the project fulfill functions not likely to be displaced from other parts of the city".

2. That the Chief Administrative Officer be authorized to finalize and approve the terms and conditions of all agreements required to implement matters as directed by Council.

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

Report – Executive Policy Committee - February 7, 2007

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On February 7, 2007, the Executive Policy Committee concurred in the administrative recommendation and submitted the matter to Council.

RE: REQUEST FOR AN AMENDMENT TO THE HERITAGE CONSERVATION TAX CREDIT LEGAL AGREEMENT FOR THE FORMER NORTHERN ELECTRIC BUILDING, 65 RORIE STREET/140 BANNATYNE

FOR SUBMISSION TO: Executive Policy Committee

ORIGINAL REPORT SIGNED BY: Director of Planning, Property & Development

REPORT DATE: January 29, 2007

RECOMMENDATION:

1. That Council deletes Item 7 from Council's adopted report of July 26, 2006, namely:
   That the owner satisfy the requirement that the project fulfill functions not likely to be displaced from other parts of the city.
2. That the Chief Administrative Officer be authorized to finalize and approve the terms and conditions of all agreements required to implement matters as directed by Council; and,
3. That the Proper Officers of the City do all things necessary to effect the intent of the foregoing.

Report Summary

Key Issues:

- The owners of the property, 140 Bannatyne Ltd, have requested an amendment to their Heritage Conservation Tax Credit legal agreement advising that their first mortgage lender is concerned that Item 7 may disqualify a tenant and limit the lease rate and occupancy of the property.
- The Administration is undertaking a review of the Heritage Conservation Tax Credit program criteria and procedures and will be reviewing the evaluation standards.
- The Administration recommends that the Legal Agreement be amended as per the owner's request.
- Based on the information provided to the Administration by the owner of the property, at the present time it appears that the owner has satisfied the requirement that the project fulfills functions not likely to be displaced from other parts of the city.

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

(X) Involves a multi-year contract

Comment(s):

- Heritage Conservation Tax Credits may be allocated over a maximum ten-year period.

Policy Implications

() No

(x) Yes

Comment(s):

- The City Council-approved policy regarding displacement of activities from other parts of the city will be reconsidered in an upcoming review of the HCTC Program.

Regulatory Implications

(X) None

( ) Eliminates or reduces regulatory impact

( ) Proposes regulatory impact

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):

Report

REASON FOR THE REPORT:

On November 6, 2006, 140 Bannatyne Ltd., the owners of the property, advised that they were unable to agree with Clause 13(f) of their legal agreement and requested that the agreement be amended.

On January 9, 2007, the owners of the property further advised that the first mortgage lender for the development, Assiniboine Credit Union, is concerned that a tenant may be disqualified under Clause 13(f) of the Legal Agreement and may limit the availability of the Heritage Conservation Tax Credit during its 10-year term. (Letter attached)

City Council retains sole responsibility for amending conditions for the approval of a Heritage Conservation Tax Credit incentive.

HISTORY:

On July 26, 2006, City Council concurred in the recommendation of Executive Policy Committee and adopted a report which awarded 140 Bannatyne Ltd, a Heritage Conservation Tax Credit of up to $1.9 million to redevelop the property located at 140 Bannatyne Avenue.
Item 7 recommended:

> *That the owner satisfy the requirement that the project fulfill functions not likely to be displaced from other parts of the city.*

DISCUSSION:

The Heritage Conservation Tax Credit Program (HCTC)
The HCTC incentive strategy was adopted by City Council in 1998 on a pilot basis for three years with a review during the third year. The purpose of the program was to assist a limited number of projects selected for their ability to:

- *increase property assessment values; and*
- *fulfill functions not likely to be displaced from other parts of the city.*

City Council at its meeting held on February 25, 1998, adopted Clause 4 of the Report of the Executive Policy Committee dated February 18, 1998, which established the Heritage Tax Credit Bylaw No. 7155/98 and the following recommendation:

1. That the "Proposed Heritage Tax Credit Program", adopted by Council on December 12, 1996, be amended and approved, as outlined in Schedule A.1, and including as follows:

A. That Council, in determining whether to grant up to 50% of eligible costs in tax credits, consider the criteria specified in Professor Fenton's recommendation:

" it would seem that the City should undertake the credit scheme only on a limited trial basis perhaps three or four structures in the first several years. The structures, most likely buildings, would be selected on their ability to generate increases in their own assessed value per dollar of rehabilitation investment, on their ability to increase the assessed values in the surrounding area and on their ability to fulfill functions not likely to be displaced from the suburbs."

The owner of the property, 140 Bannatyne Limited, is concerned that at some time during the period of the 10-year Heritage Conservation Tax Credit a tenant may move into the building that may not fit into the City's interpretation of being a project that fulfills functions not likely to be displaced from other parts of the city, resulting in the tax credit being cancelled. This scenario adds uncertainty to the project causing the lender to ask for the reconsideration of the clause.

In his report, **EXAMINATION OF THE HERITAGE CONSERVATION TAX-CREDIT PROPOSAL FOR THE CITY OF WINNIPEG, PHASE A Report #1: Tax Revenue Impact Analysis,** Dr Robert Fenton, a Professor in the Department of Economics at the University of Winnipeg, developed the criteria to be used for an evaluation of three or four buildings to be awarded incentives. He wanted the City to be cautious so that there would be an early determination "through the medium of assessed value changes, would tax revenue increases in heritage buildings be gained only at the cost of tax revenue decreases elsewhere in the City? " An informal administrative monitoring does not prove this qualifier to be of major concern.

The Planning, Property and Development Department are undertaking an analysis of the Heritage Conservation Tax Credit Program criteria and procedures and will be reviewing the evaluation standards.

Based on the information provided to the Administration by the owner of the property, at the present time it appears that the owner has satisfied the requirement that the project fulfills functions not likely to be displaced from other parts of the city.

Financial Impact Statement Date: January 23, 2007

Project Name:

REQUEST FOR AN AMENDMENT TO THE HERITAGE CONSERVATION TAX CREDIT LEGAL AGREEMENT FOR THE FORMER NORTHERN ELECTRIC BUILDING, 65 R0RIE STREET/ 140 BANNATYNE AVENUE

COMMENTS:

The primary recommendation contained in this report is that Council deletes Item 7 from Council's adopted report of July 26, 2006, namely: That the owner satisfy the requirement that the project fulfill functions not likely to be displaced from other parts of the city.

There are no direct financial implications associated with this recommendation.

"Original Signed By"
Mike McGinn, CA
Manager of Finance

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

Legal Services

External Consultation With:

N/A

Attachment:



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THIS REPORT SUBMITTED BY:

Department: Planning, Property and Development
Division: Planning and Land Use/Office of the Director
Prepared by: Giles Bugailiskis \ Jim Paterson
PPD File No. _____

Document name: O:\Reports Directive\Planning and Land Use\Heritage\2007 Reports\65Rorie amendment.doc

140 BANNATYNE LTD.

2600 Seven Evergreen Place, Winnipeg, Manitoba R3L 2T3 *Tel: 475-9090 Fax: 452-5505*

January 9, 2007

Mr. Jim Paterson
Manager of Economic Development
Planning, Property and Development Department
3rd Floor, 65 Garry Street
Winnipeg, Manitoba, R3C 4K4

Dear Jim:

Re: Heritage Tax Credit (HTC) – 65 Rorie Street/140 Bannatyne
Agreement with 140 Bannatyne Ltd.

We are pleased to elaborate on the reasons outlined in our November 6, 2006 letter for the requested amendment to the proposed HTC Agreement for the above-captioned.

The first mortgage lender for the development, Assiniboine Credit Union, is concerned that a tenant may be disqualified under Clause 13(f) and limit the availability of the HTC during its 10 year term to 2019. The lender is further concerned that the unavailability of a qualified tenant anytime during the term of the HTC may limit the lease rate and/or the occupancy of the building. Restrictions on tenancy are unacceptable to all lenders interested in providing first mortgage financing to this exciting project.

We trust this information will allow you to approve the requested modification to the Agreement.

Yours truly,

140 BANNATYNE LTD.

per ARNI C. THORSTEINSON

ACT/mm