Minute No. 807
Report - Standing Policy Committee on Property and Development – September 5, 2006

Item No. 5 **Amendment to Development Agreement AG 11/2005 - east of Main Street, north and south of Commonwealth Avenue**
File DASZ 11/2005

COUNCIL DECISION:

Council concurred in the recommendations of the Standing Policy Committee on Property and Development and adopted the following:

1. That Development Agreement AG 11/2005 not be amended by deleting the requirement for the Developer to pay a services fee in conjunction with the dedication of public open space.

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

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DECISION MAKING HISTORY:

Moved by Councillor De Smedt,

That the recommendation of the Standing Policy Committee on Property and Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 21, 2006, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development (which did not concur in the recommendation of the Lord Selkirk-West Kildonan Community Committee) and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On September 5, 2006, the Standing Policy Committee on Property and Development did not concur in the recommendation of the Lord Selkirk-West Kildonan Community Committee and recommended that Development Agreement AG 11/2005 not be amended and submitted the matter to the Executive Policy Committee and Council.

STANDING COMMITTEE RECOMMENDATION:

On July 4, 2006, the Standing Policy Committee on Property and Development laid the matter over to the meeting of the Committee scheduled for September 5, 2006.

On June 6, 2006, the Standing Policy Committee on Property and Development referred the recommendation from the Lord Selkirk-West Kildonan Community Committee to the Administration for report back to the meeting of the Committee scheduled for July 4, 2006.

COMMUNITY COMMITTEE RECOMMENDATION:

On May 23, 2006, the Lord Selkirk-West Kildonan Community Committee concurred in part in the request of Lombard North Group (1984) Ltd. and recommends to the Standing Policy Committee on Property and Development that favourable consideration be given to the following resolution, namely:

WHEREAS applications for rezoning and subdivision under Files DASZ 10/2005 and DASZ 11/2005 for lands located east of Main Street, north and south of Commonwealth Avenue were made by two different applicants Greenview Homes (Manitoba) Ltd. and Coral-Reef Holdings Ltd.;

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DECISION MAKING HISTORY (continued)

COMMUNITY COMMITTEE RECOMMENDATION (continued)

AND WHEREAS the two public hearings for the above-referenced applications were heard concurrently by the Lord Selkirk-West Kildonan Community Committee on June 14 and June 16, 2005;

AND WHEREAS the dedicated lands in DASZ 11/2005 do not have a servicing component as they do not front a street;

AND WHEREAS the Administration has advised that the servicing component of the cash in lieu of land dedication in DASZ 11/2005 would not have been charged had there been a single application;

NOW THEREFORE BE IT RESOLVED that the Lord Selkirk-West Kildonan Community Committee recommends to the Standing Policy Committee on Property and Development that Development Agreement AG 11/2005 be amended by deleting the requirement for the Developer to pay a services fee in conjunction with the dedication of public open space.

RE: Amendment to Development Agreement AG 11/2005 - east of Main Street, north and south of Commonwealth Avenue File DASZ 11/2005

FOR SUBMISSION TO: Standing Policy Committee on Property and Development

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

REPORT DATE: August 18, 2006

RECOMMENDATION:

That the recommendation of the Lord Selkirk-West Kildonan Community Committee not be concurred with.

Report Summary

Key Issues:

Lombard North (1984) Ltd. has asked that $68,337.60 or 65% of the cash value of the dedication payable under this application be waived.

The Administration has consistently applied the policy set out in the Development Agreement Parameters that require these funds to be paid and recommends that the recommendation of the Lord Selkirk-West Kildonan Community Committee not be concurred with.

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

( ) Involves a multi-year contract

Comment(s):

Policy Implications

(x) No
( ) Yes
Comment(s):

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:

The Standing Policy Committee on Property and Development has asked the Administration to report back on this matter.

HISTORY:

On June 6, 2006, the Standing Policy Committee on Property and Development referred the recommendation from the Lord Selkirk-West Kildonan Community Committee to the Administration for report back to the meeting of the Committee scheduled for July 4, 2006.

On May 23, 2006, the Lord Selkirk-West Kildonan Community Committee concurred in part in the request of Lombard North Group (1984) Ltd. and recommended to the Standing Policy Committee on Property and Development that favourable consideration be given to the following resolution;

RESOLUTION:

WHEREAS applications for rezoning and subdivision under Files DASZ 10/2005 and DASZ 11/2005 for lands located east of Main Street, north and south of Commonwealth Avenue were made by two different applicants Greenview Homes (Manitoba) Ltd. and Coral-Reef Holdings Ltd.;

AND WHEREAS the two public hearings for the above-referenced applications were heard concurrently by the Lord Selkirk-West Kildonan Community Committee on June 14 and June 16, 2005;

AND WHEREAS the dedicated lands in DASZ 11/2005 do not have a servicing component as they do not front a street;

AND WHEREAS the Administration has advised that the servicing component of the cash in lieu of land dedication in DASZ 11/2005 would not have been charged had there been a single application;

NOW THEREFORE BE IT RESOLVED that the Lord Selkirk-West Kildonan Community Committee recommends to the Standing Policy Committee on Property and development that Development Agreement AG 11/2005 be amended by deleting the requirement for the Developer to pay a services fee in conjunction with the dedication of public open space.

DISCUSSION:

The Resolution declares that;

"AND WHEREAS the Administration has advised that the servicing component of the cash in lieu of land dedication in DASZ 11/2005 would not have been charged had there been a single application;"

It is true that had there been one (1) application covering DASZ 10 and 11/05 there would not have been any cash charged to DASZ 11/05. At the time the whole issue of riverbottom forest acquisition was being dealt with. The Administrative Coordinating Group (ACG) was aware that the Developer of DASZ 10/05 should be compensated for overdedication as was done with Grandin Park Development Ltd. in Royalwood where the Bois des Esprits land in excess of the City's dedication entitlement was acquired at a cost of $65,000/acre.

However because there was no money available to pay for the excess land in River Ridge, the ACG deemed the servicing and landscaping component of the dedication as being fully satisfied. The Developer did not accept this as satisfactory compensation and pursued a proposal that certain Main Street servicing costs be forgiven in order to more adequately compensate the Developer. As such, approximately $430,000.00 compensation for this was achieved by The Lord Selkirk / West Kildonan Community Committee deleting the ACG's recommendation that the Developers pay toward the existing surface improvements in Main Street. Standing Policy Committee concurred in the proposal. DASZ 11/05 was also included in that arrangement. The result was that the developer of DASZ 11/05 was forgiven approximately $93,000 in costs that would normally have been collected for the Main Street services.

Development Agreement AG 11/05 amongst other things requires the Developer to pay dedication as follows;

b) The Developer shall prior to the issuance of building permits within the Planned Area, pay the following amount to fully satisfy the open space dedication requirements for the Planned Area:

i)	Landscaping	0.08 x 18.57 acres x $25,300.00/acre	$37,585.68
ii)	Services	0.08 x 18.57 acres x $46,000.00/acre	$68,337.60
iii)	G.S.T.	(7%) of i) and ii) above	$ 7,414.63
			$113,337.91

In this requested amendment, Lombard North (1984) Ltd. has asked that $68,337.60 representing 65% of the dedication payable be waived. The administration consistently applies the policy set out in the Development Agreement Parameters that require these funds to be paid and is not supportive of the Developer's request. This would not be equitable to other Developers that are required to pay their fair share.

The following Development Agreement Parameters are applicable;

(41) PUBLIC PARK RESERVES: SERVICES

a) The Developer shall install services in road allowances located adjacent to public park reserves in accordance with the following formula: 100 feet of serviced frontage for each acre of dedicated parkland

b) If land is not dedicated for public park purposes, the Developer shall provide a cash payment, prior to the release of subdivision mylars by the City, in accordance with the following procedures:

- the potential amount of public park dedication would be determined (i.e. 8% of the net area of the Development Application);
- relative to the potential amount of public park dedication determined in the procedure above, the potential amount of street frontage would be calculated based upon the "100 feet of frontage for each acre of dedicated parkland" formula;
- the potential amount of street frontage calculated in the procedure above, would be multiplied by the City's annual Local Improvements By-law rates for construction of services. The resulting figure would represent the Developer's cash payment.

(42) PUBLIC PARK RESERVES: IMPROVEMENTS

a) The Developer shall grade, level and sod the public park reserve and install irrigation equipment and land drainage systems including connection to mains in accordance with plans and specifications approved by the City.

b) If the land is not dedicated for public park purposes, the Developer shall provide a cash payment, prior to the release of subdivision mylars by the City, in accordance with the following procedures:

- the potential amount of public park dedication would be determined (i.e. 8% of the net area of the Development Application);
- the potential amount of public park dedication determined in the procedure above would be multiplied by the City's annual rates for installation of sodding, irrigation equipment and land drainage systems; as determined by the City.

The resulting figure would represent the Developer's cash payment.

The Administration is satisfied that there has been no inequity in the application of dedication and landscaping and servicing policy under Development application DASZ 11/2005 and recommends that the recommendation of the Lord Selkirk-West Kildonan Community Committee not be concurred with.

Financial Impact Statement Date: August 18, 2006

Project Name:

Amendment to Development Agreement AG 11/2005 - east of Main Street, north and south of Commonwealth Avenue File DASZ 11/2005

COMMENTS:

The recommendation in this report is that the Lord Selkirk-West Kildonan Community Committee's recommendation that $68,337.60, or 65%, of the cash value of the dedication payable under this application be waived not be concurred with. There are no 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:

N/A

External Consultation With:

N/A

THIS REPORT SUBMITTED BY:

Department: Planning, Property and Development
Division: Development and Inspections
Prepared by: K.T. Raban, Land Development Branch
PPD File #: AG 11/2005

Document name:

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URBAN AND REGIONAL PLANNING

PROJECT MANAGEMENT

URBAN DESIGN

PUBLIC CONSULTATION

LAND DEVELOPMENT

ECONOMIC FEASIBILITY ASSESSMENT

ENVIRONMENTAL ASSESSMENT

WATERFRONT DEVELOPMENT

TOURISM AND RECREATION STRATEGIES

GIS MANAGEMENT CONSULTING

May 12, 2006

Diane Timmins
Clerk
Lord Selkirk – West Kildonan Community Committee
City Hall
510 Main Street
Winnipeg, Manitoba

RE: City File DASZ 11/05 Subdivision Dedication

PURPOSE

I would like to appear as a delegation before the Lord Selkirk – West Kildonan Community Committee meeting May 23rd, 2006. The purpose of my delegation is to ask Community Committee support for the deletion of the riverbank forest open space servicing fees under subdivision application File No DASZ11/05. The rationale for our request is to seek consistency in the application of policy and to ensure equitable treatment between DASZ11/05 subdivision dedication requirements and our related subdivision approved under File: DASZ10 /05.

BACKGOUND

On June 29th, 2005 the Community Committee concluded its hearings for both the DASZ 10/05 and DASZ 11/05 subdivision applications (represented by our firm), approving both subdivisions. The Committee accepted the Plan changes proposed by the writer for DASZ 10/05, but further modified the DASZ 11/05 plan by deleting the roadway connection to the northerly lands, which also provided access to an isolated private river lot property on the east boundary of the site. The changed plan also eliminated 7 river lots from DASZ 11/05. The Plan adjustments were made to expand the amount of land dedicated to include the majority of the riverbank forest area within the public reserve. The Community Committee's recommendations were reviewed by Planning and Property Committee and approved by Council July 27th, 2005.

We understand the importance attached by the City to preservation of the site's riverbank forest. We are also grateful for the City's efforts to find ways to balance the preservation of riverbank forest with the financial impact the loss of developable lands had upon the economics of our projects.

Notwithstanding, all our efforts to balance interests there is not consistency between how the riverbank forest dedication is treated in DASZ 11/05 and

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related application DASZ 10/05. Both approvals state in regard to dedicating the riverbank forest area that:

"The Developer's responsibility for trail development within the river bottom forest area be limited to the cost of developing a low impact natural trail to be designed in consultation with and to the approval of the City naturalist and located below the elevation of the crest of the dike"

The above is the limit of the dedication responsibility for open space improvement costs under DASZ 10/05. Improvements such as landscaping (sodding) and servicing (infrastructure) typically associated with open space lands dedicated to the city are not required for the riverbank forest. The City's intent of course, is to minimize disruption and preserve the river bottom forest in its natural state. However, dedication requirements approved under DASZ 11/05 differ from DASZ 10/05. The inequity is found in the imposition of open space servicing fees in DASZ 11/05 under Council's approval which states:

" The Developer (of DASZ 11/05) shall dedicate the river bottom forest, as shown on revised Schedule "A" dated June 16th, 2005 as Public Open Space, the area of which is approximately 8% dedication of land within the proposed subdivision and shall pay cash dedication in lieu of landscaping and servicing that open space in accordance with City policy"

The intent of the landscaping and servicing fee policy is to indemnify the City against servicing costs when it takes dedication lands requiring landscaping (sodding) and fronting streets and/or services (where there are infrastructure costs). Clearly, the City's objectives for the Plan changes in DASZ 11/05 were to protect the riverbank forest, minimize "riverbank forest open space" impacts and to limit open space improvements to the development of a low impact trail. Servicing is not required and to include an open space servicing fee in DASZ11/05, regrettably appears to be a cash grab. We ask for consistency between how riverbank forest open space dedication is treated in both agreements. Consistency can be restored in the application of the City's development agreement policy by deleting the charge for riverbank forest open space servicing fee from DASZ 11/05.

We seek one further clarification from the Community Committee. This second request is to receive permission to use any portion of the riverbank forest open space landscape fee, not required for the construction of the low impact trail under DASZ 11/05, to support the landscape improvements under DASZ 10/05. These landscape improvements are expected to include the development of a

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walking trail connection between the proposed West Kildonan Collegiate on the westerly boundary of the site to the development's riverbank park, setting in place the opportunity to link the new with existing neighbourhoods with trail extensions to McBeth and Rivergrove Parks in the north, under subsequent development applications.

REQUEST

We ask the Community Committee to consider favourably our request and approval of:

1. Recommendation to Council to delete the payment of the open space "servicing fee" associated with the dedication of the riverbank forest under DASZ 11/05. Deletion of the open space "servicing fee" under DASZ11/05 ensures the City consistently applies its dedication policy where significant riverbank forest areas have been acquired as part of the development applications and the riverbank forest dedication requirements under development application DASZ 11/05 are equitable and consistent with City requirements under the related application DASZ 10/05 which does not require payment of the open space servicing fee; and a

2. Recommendation to Council adjusting the terms of DASZ 11/05 approval to include the use of any portion of the open space riverbank forest landscape fee, not required to construct the low impact trail within the planned area under DASZ 11/05, to be used to fund the landscape and related open space improvements within the planned area under DASZ 10/05.

Thank you for your consideration of my representations.

Yours truly,
Lombard North Group

David Palubeski, MCIP
President

Cc Ernie Carriere
Frank Derksen (DASZ 11/05)
Marcel Chartier (DASZ 10/05)

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