Agenda - Executive Policy Committee – September 19, 2007

Report - Standing Policy Committee on Property and Development – September 4, 2007

Item No. 11 Sale - north of 1575 - 1579 Seel Avenue – Elm Park Properties Limited
(River Heights–Fort Garry Ward)
File FI-2.4(32)

STANDING COMMITTEE RECOMMENDATION:

On September 4, 2007, the Standing Policy Committee on Property and Development concurred in the administrative recommendation and submits the following to Council:

1. That the City-owned property shown outlined on Misc. Plan No. 13161 be declared surplus to the City's requirements.

2. That the sale of the City-owned property shown outlined on Misc. Plan No. 13161 in favour of Elm Park Properties Limited for the purchase price of $33,750.00, be approved in accordance with the terms and conditions of the Offer to Purchase dated July 24, 2007.

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

Agenda - Executive Policy Committee – September 19, 2007

Report - Standing Policy Committee on Property and Development – September 4, 2007

DECISION MAKING HISTORY:

STANDING COMMITTEE RECOMMENDATION:

On September 4, 2007, the Standing Policy Committee on Property and Development concurred in the administrative recommendation and submitted the matter to the Executive Policy Committee and Council.

RE: Proposed Sale of City-owned property North of 1575/1579 Seel Avenue – Elm Park Properties Limited
City Centre Community
River Heights – Fort Garry Ward

FOR SUBMISSION TO: Standing Policy Committee on Property and Development

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

REPORT DATE: August 17, 2007

RECOMMENDATION:

1. That Council declare the City-owned property shown outlined on Misc. Plan No. 13161, attached, surplus to the City's requirements.
2. That subject to the approval of Recommendation No. 1, the sale of the City-owned property shown outlined on Misc. Plan No. 13161, attached, in favour of Elm Park Properties Limited, for the purchase price of $33,750.00, be approved in accordance with the terms and conditions of the attached Offer to Purchase, dated July 24, 2007.
3. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report Summary

Key Issues:

- The Planning, Property and Development Department is in receipt of an Offer to Purchase from Elm Park Properties Limited.
- Elm Park Properties Limited intends to consolidate the subject City property shown outlined on Misc. Plan No. 13161 with its adjacent holding to accommodate an additional storage area.
- The Planning, Property and Development Department is recommending the terms and conditions of sale be approved.

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): The City's standard terms and conditions of sale include provisions to protect the City's interests in the event that environmental contamination is discovered.

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 Planning, Property and Development Department is in receipt of an Offer to Purchase the City-owned property shown outlined on Misc. Plan No. 13161. Council approval is required to declare the property surplus to the City's requirements. Approval by the Standing Policy Committee on Property and Development is required for the proposed terms and conditions of sale.

HISTORY:

The subject City-owned property shown outlined on Misc. Plan No. 13161 forms part of a former spur track. The rails have been removed and spur track is no longer active.

Details of the subject City property are as follows:

Location:	West side of Fennell Street, north of 1575/1579 Seel Avenue
Legal Description:	Part Lots 6/7, Block 2, Plan 6206
Certificate of Title:	836245
Roll Number:	Part 03071505000
Assessed Value:	Not Apportioned
Zoning:	"MP2" - Industrial District
Size:	1254.2m² (13,499.8 sq. ft.)

The Planning, Property and Development Department has determined that there is no City requirement for the subject City-owned property.

DISCUSSION:

The Planning, Property and Development Department has received an Offer to Purchase from Elm Park Properties Limited. The purchaser advises that it intends to consolidate the subject property with its adjacent holding to accommodate an additional storage area.

The Department supports the proposed sale of the subject City property for the following reasons:

1. The property will be placed on the tax roll at the closing of the sale.
2. The Purchaser will be responsible for all costs related to a Plan of Survey for consolidation of the subject City-owned property with the Purchaser's adjoining lands.
3. The proposed purchase price of $33,750.00 is supported by an internal appraisal.
4. The Ward Councillor has no objections to the sale of the property.
5. The sale will eliminate the liability for the City associated with holding this property.

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

N/A

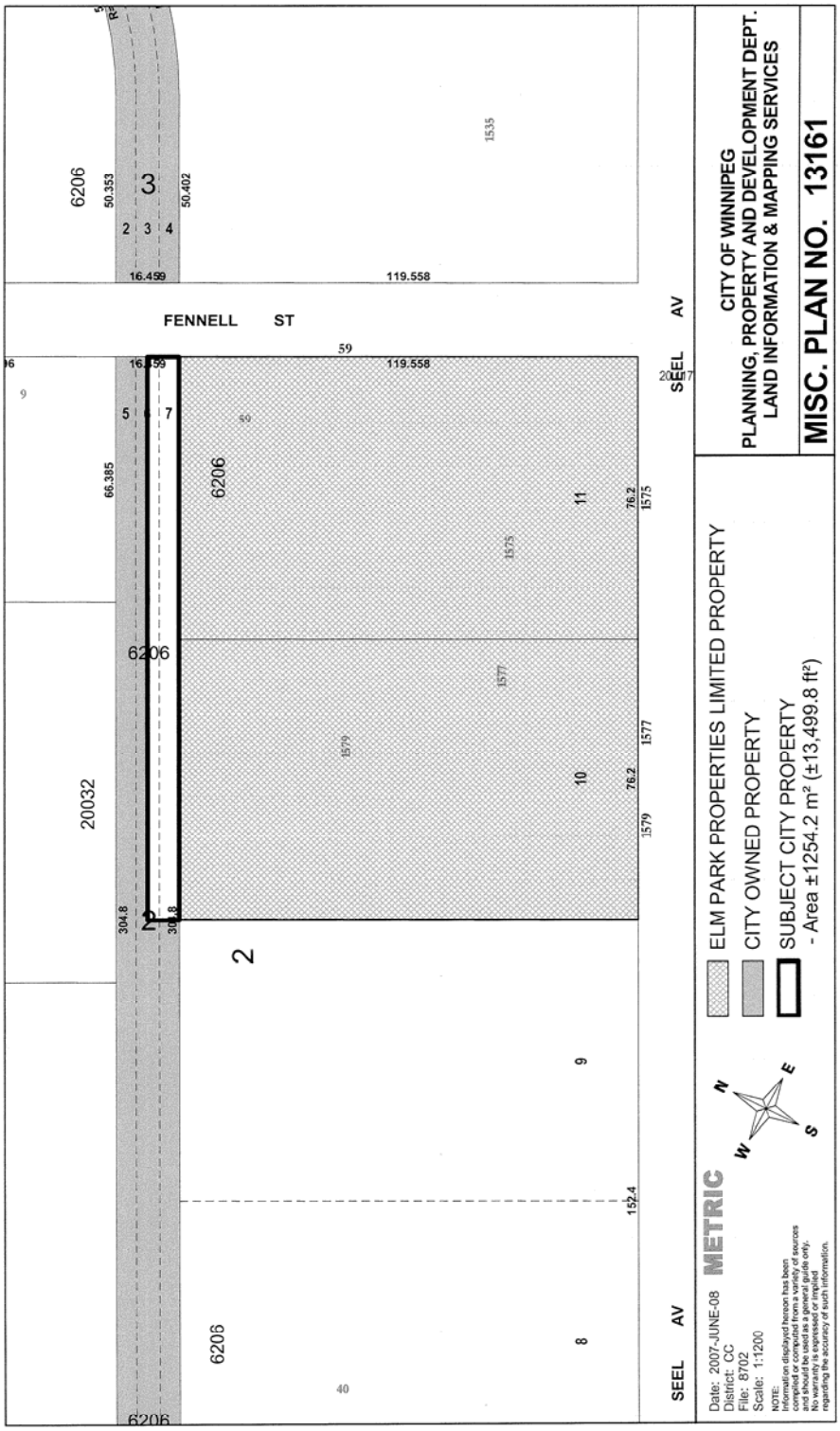
External Consultation With:

N/A

THIS REPORT SUBMITTED BY:

Department: Planning, Property and Development
Division: Real Estate
Prepared by: Barry Lucyk
PPD File No. 8703

O:\Reports Directive\Real Estate\Sales\(bl) sale N. of1575-59 Seel.doc


CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13161
ELM PARK PROPERTIES LIMITED PROPERTY
CITY OWNED PROPERTY
SUBJECT CITY PROPERTY
- Area ±1254.2 m² (±13,499.8 ft²)
Date: 2007-JUNE-08
District: CC
File: 8702
Scale: 1:1200
METRIC
FENNELL ST
SEEL AV
SEEL AV
6206
20032
119.558
16.459
50.353
50.402
66.385
304.8
152.4
76.2
1575
1577
1579
1535
40

File: 8702

INDUSTRIAL /COMMERCIAL

OFFER TO PURCHASE

The Undersigned (hereinafter called "the Purchaser") hereby offers to purchase from The City of Winnipeg (the "City") subject to the City declaring the following lands as surplus:

North of 1575-1579 Seel Avenue, Winnipeg, Man. shown outlined as "Subject City Pr operty" on Misc. Plan No. 13161 attached hereto,

(hereinafter called the "Lands")

for the sum of $ 33,750.00 cash, and upon the following terms and conditions:

1. (1) Attached to this Offer is the Purchaser's certified cheque payable to "The City of Winnipeg" in the amount of $ 5,062.50, and represents an amount equal to fifteen (15%) percent of the purchase price which the Purchaser tenders by way of deposit, and which sum shall be applied to the purchase price if the sale is approved by the City's Standing Policy Committee on Property and Development and/or City Council (in the event that Council approval is required), hereinafter called the "Dat e of Approval". The Purchaser agrees to pay the balance of the purchase price, interest and adjustments on or before the date of closing.

(2) If the Purchaser fails to pay the balance of the purchase monies, interest and adjustments on or before the date of closing as in sub-clause (1) above provided, the City may, at its option, cancel the sale and retain the deposit as liquidated damages.

2. (1) The date of closing, possession and adjustments shall be one hundred and twenty (120) days following the date that Clause 9 herein has been satisfied, or later as mutually agreed to.

(2) The Purchaser agrees to pay as an adjustment an amount equal to the total of such taxes, rates and charges which would have been levied or charged against the Lands as though the Lands had been entered on the assessment rolls of the City as privately owned and subject to taxation, which adjustment shall be calculated from the date of adjustments to and including the last day of the current taxation year.

(3) The Purchaser shall pay interest in lawful money of Canada on all monies remaining outstanding and payable to the City as of the date of adjustments, which interest shall be calculated at the rate per annum equivalent to the prime lending rate in force by the City's Banker at the date of adjustments plus one (1%) percent, computed from the date of adjustments to and including the date all such monies and interest as aforesaid have been fully paid to the City.

3. Goods and Services Tax

(1) The Purchaser agrees to pay to the City all Goods and Services Tax applicable on the sale of the Lands or, if the Purchaser is a registrant under the Goods and Services legislation, the Purchaser shall advise the City in writing of its registration number. The Goods and Services Tax is to be paid, or the registration

number provided, to the City on or before the date of closing or the date the balance of monies is paid to the City, whichever is the earlier.

(2) If the Purchaser fails to pay the Goods and Services Tax or fails to provide its registration number as prescribed in sub-clause (1) of this Clause, the Purchaser agrees that all of the Purchaser's rights and interests in respect of the Lands shall, at the City's sole discretion, be fully ended without notice or any formality and all monies paid to the City by the Purchaser shall be retained by the City free from every claim.

4. The Purchaser will obtain possession of the Lands at the Purchaser's own expense.

5. The Purchaser will accept Title to the Lands subject to all exceptions, reservations and encumbrances expressed or implied in the City's Title.

6. The sale of the Lands to the Purchaser shall be subject to the provisions of the By-laws of the City of Winnipeg and all amendments thereto. Furthermore, the Purchaser acknowledges and understands that its proposed use and development of the Lands may require applications for re-zoning, variances or conditional uses, and amendments to Plan Winnipeg, which applications and resulting land dedication charges (if any) are to be at the sole cost and responsibility of the Purchaser.

7. The Purchaser agrees that the City may register and maintain a caveat against the Lands to ensure the performance of the covenants on the part of the Purchaser herein set forth, and the Purchaser agrees to grant and does hereby grant to the City an interest in the Lands according to the tenor of this Offer.

8. Upon approval of the sale by the City, the Purchaser agrees to make application to the City Assessor (in form set out in Exhibit "A" attached) to have the Purchaser's name added to the Assessment Roll of the City as the Real Owner in respect of the Lands.

9. The Purchaser agrees that in the event the Purchaser, at its sole cost, conducts or causes to be conducted an Environmental Site Assessment of the Lands, it shall:

(1) ensure that all work done in connection with such Environmental Site Assessment is completed no later than ninety (90) days from the Date of Approval, and

(2) maintain the Lands in safe condition at all times during the conduct of any work done in pursuance of this Clause 9; and

(3) restore the Lands to the same condition as prior to its entering in or upon same in pursuance of this Clause 9; and

(4) indemnify and save harmless the City from and against all damages and claims arising out of or in any way attributable to the conduct of any such Environmental Site Assessment; and

(5) provide copies of any such Environmental Site Assessment of the said Lands to the City for its own use, at no cost to the City not later than ninety (90) days from the Date of Approval.

AND in the event it is determined as a result of said Environmental Site Assessment, that contamination levels exceed Provincial Environmental Standards for the intended use of the Lands and documentation to that effect is produced to the City within ninety (90) days following the Date of Approval, the City, at its sole option, shall be entitled to:

take remedial action to bring the contamination levels to within the Provincial Environmental Standards;

OR

cancel the sale and return all monies paid in respect of the proposed sale by the Purchaser to that date, PROVIDED that the Applicant shall have first satisfied all conditions of this Clause 9.

AND FURTHER if the City has not been advised of any non-compliance of the Lands to Provincial Environmental standards within 90 days from the Date of Approval, the Purchaser agrees to complete its purchase as herein contemplated and to indemnify the City against any and all claims arising from or in any way connected with the existence of contaminants of any kind at the Lands.

10 (1) The Purchaser acknowledges that the City is not providing any warranty as to the environmental condition of the Lands.

(2) The Purchaser agrees that it will rely solely upon its own investigations in determining the degree of contamination, if any, existing on and within the Lands and the extent of contamination, if any.

(3) The Purchaser shall indemnify and save harmless the City from and against all claims, costs and damages arising from or in any way connected with the existence of contaminants of any kind in or on the Lands.

(4) It is understood and agreed that the terms, conditions and covenants contained in this Clause 10 shall not merge but shall survive closing.

11. The Purchaser acknowledges and agrees that notwithstanding any other terms, conditions or provisions in this agreement that:

(1) The City has given no representations or warranties with respect to the Lands or with respect to the value thereof or with respect to the Purchaser's intended uses or development or redevelopment thereof or with respect to the environmental condition of the Lands;

(2) The Purchaser has inspected or investigated the Lands, the title thereto, the permitted encumbrances, any tenancies and all other matters material to the Purchase and the proposed use of the Lands and that it is relying solely upon its own independent inquiries and investigations and the advice of its own consultants and there are no representations, warranties, guarantees, conditions, collateral agreements, covenants and agreements except those expressly set forth herein;

(3) The Purchaser agrees that it is purchasing the Lands on an "as is", "where is" basis, and is purchasing the lands based entirely on its own examinations without any representation by or on behalf of the City or any agent of the City. The Purchaser acknowledges that it has relied entirely upon its own inspection and investigation with respect to quantity, quality and value of the Lands;

(4) Any information supplied to the Purchaser by the City or its agents or representatives is and was supplied without any representation or warranty, and that the responsibility for verification of any such information shall be the responsibility of the Purchaser; and

(5) The Lands are deemed to be taken by the Purchaser at the Purchaser's own risk with all faults and imperfections whatsoever. The Purchaser agrees with the City that the application of "Buyer Beware" shall apply to the offer in the strictest meaning.

12. (1) The Purchaser agrees that the sale of the Lands shall be subject to any easement which may be required by a public utility, including, but not limited to the Manitoba Hydro, MTS Allstream Inc., Centra Gas, or The City of Winnipeg, for the maintenance of existing and future facilities together with the right to enter upon the Lands at any time, with or without equipment for said purposes and subject to

the owner covenanting not to erect or cause to be erected upon the easement area any building or structure without the prior written consent of the public utility or The City of Winnipeg requiring such easement. The Purchaser shall assume any and all costs for any relocation of utility distribution facilities.

(2) The Purchaser to enter into agreements satisfactory to the said utilities or The City of Winnipeg.

(3) The Purchaser acknowledges that the City may grant the easements before the Transfer of Land issues.

13. In consideration of the sale of the Lands by the City to the Purchaser, the Purchaser covenants and agrees as follows:

(1) The Purchaser shall, at the Purchaser's sole cost, effort and expense, do all things as are necessary, including but not limited to causing to be prepared such documentation as may be required to ensure that the Lands to be conveyed by the City and the Purchaser's adjoining property shown cross hatched as "Elm Park Properties Limited Property" and legally described as: Lots 10 and 11, Block 2, Plan 6206 (and contained in certificate of titles 1368186 and 1368190), are consolidated by a Plan of Survey so as to constitute two indivisible parcels. The Purchaser does hereby acknowledge that in complying with this obligation it may be required to arrange for the discharge and re-registration of existing encumbrances against the Purchaser's pro perty described herein.

(2) This agreement shall run with the Lands and the Purchaser's adjoining property and shall bind the Purchaser, its successors and assigns and its successors in title.

(3) To pay the applicable Land Titles Office registration fees and Land Transfer Tax in respect thereto.

14. Time shall be of the essence of this Offer.

15. The Purchaser will not file any caveat or other encumbrance against the Lands before the transfer of the Lands to the Purchaser.

16. The word "Purchaser" shall have a plural meaning in the event that more than one party is making this offer, and the masculine shall mean the feminine or neuter as the case may be.

17. The Purchaser acknowledges and agrees that sale of the Lands by the City is subject to the approval of City Council or its delegated authority.

18. The Purchaser is hereby advised that soil conditions in Winnipeg are of the glacial till variety which are composed of Lacustrine Clays with Silt Intrusions. The Purchaser shall be responsible for any increased costs of development due to this random stratification.

19. The Purchaser acknowledges that the Lands are presently zoned " MP-2" Industrial District.

20. No commission is payable by the City on the sale of the Lands.

The full, true and correct name of the Purchaser is as follows:

Elm Park Properties Limited
Name (Please Print) Address

Purchaser's Registrat ion No. (G.S.T.)

IN WITNESS WHEREOF the Purchaser has signed this document in

N. VAN., BC, this 24th day of JULY 2007

Witness Authorized Signature

ILLIAS BJARNSON PRESIDENT
Name and Title of Authorized Signature (Please print)

Witness Authorized Signature

Name and Title of Authorized Signature(Please print)

ACCEPTED this _____day of _____, A.D., 2007

THE CITY OF WINNIPEG

Per: _____

Director of Planning, Property and Development Department

Approved as to details: Approved as to form:

Planning, Property and Development, for City Solicitor/Manager of Legal Services

V:\barry\8702OtterFennell\ElmParkPropertiesoffer.doc

EXHIBIT "A"

For information purposes only, not to be filled out with the Offer to Purchase

Real Owner Application

To the City Assessor

_____ Roll No. _____
(Name of Municipality)

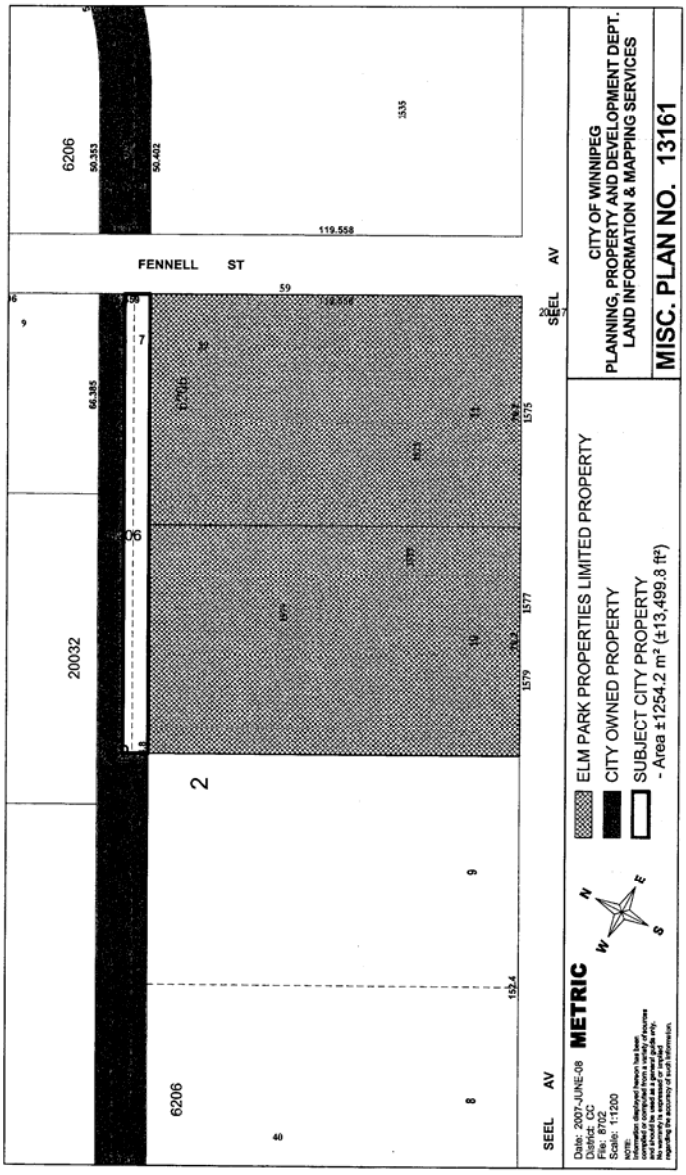
1. I/We_____
(Print Full Name)
request that my/our name(s) appear in the Assessment Roll of the City of Winnipeg in respect to the following property, pursuant to Section 12(1) of "The Municipal Assessment Act", Cap. M 226 S.M..
2. Description of Properties: (Give description of all property in respect of which you wish your name to appear).

Part of Lot or Section	Lot or Section	Block or Township	Plan or Range	Interest in Property

3. Mailing Address_____
4. Place of Residence_____
5. Name and Address of Registered Owner_____
(Print)
_____
(Print)
6. Description of building on property:
Dwellings _____
Other Buildings _____
7. Date of Purchase _____ 8. Purchase Price_____

Date: _____ 2007 _____
(Signature of Applicant)

Office of the City Assessor
The City of Winnipeg _____
(Signature of Registered Owner)


FENNELL ST
SEEL AV
SEEL AV
6206
6206
20032
2
ELM PARK PROPERTIES LIMITED PROPERTY
CITY OWNED PROPERTY
SUBJECT CITY PROPERTY
- Area ±1254.2 m² (±13,499.8 ft²)
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13161