Report - Executive Policy Committee - November 14, 2007

Item No. 12 Expropriation Settlement - Kenaston Grade Separation Project - 977 Kenaston Boulevard (Charleswood-Tuxedo Ward) File GL-4

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On November 14, 2007, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submits the following to Council:

1. That the City Solicitor/Manager of Legal Services be authorized to settle the claim for compensation for expropriation of the lands identified on Misc. Plan No. 9178/37 as Subject Property comprised of 5.946 ha.+/- (14.694 ac +/-) ("Subject Property") for:
   - $299,000.00;
   - certain other consideration outlined below; and
   - statutory interest on the $299,000.00 and payment of the expropriated owners' legal and appraisal costs (required by law).

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

Report - Executive Policy Committee - November 14, 2007

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On November 14, 2007, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

RE: **Expropriation Settlement - Kenaston Grade Separation Project**
977 Kenaston Boulevard
Assiniboia Community
Charleswood-Tuxedo Ward

FOR SUBMISSION TO: **Executive Policy Committee**

ORIGINAL REPORT SIGNED BY: **Jim Paterson, FCSLA, A/Director of Planning, Property and Development**

REPORT DATE: **November 7, 2007**

RECOMMENDATION:

1. That the City Solicitor/Manager of Legal Services be authorized to settle the claim for compensation for expropriation of the lands identified on the attached Misc. Plan No. 9178/37 as Subject Property comprised of 5.946 ha.+/- (14.694 ac +/-) ("Subject Property") for:

    - $299,000.00;
    - certain other consideration outlined below; and
    - statutory interest on the $299,000.00 and payment of the expropriated owners' legal and appraisal costs (required by law).

2. 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:

- Pursuant to By-law 182/2004, enacted December 15, 2004, the City expropriated the Subject Property to facilitate construction of the Kenaston Grade Separation Project.

- Negotiations for compensation for the expropriation are now complete, and the owners have agreed to a proposed settlement, which requires Council's approval.

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

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): The account number for the Kenaston Grade Separation Project is 003-181000-180604 – Project #1805000703 (Public Works), which contains sufficient funds for this settlement of due compensation.

Report

REASON FOR THE REPORT:

Under the City Organization By-law, settlement of an expropriation claim in an amount exceeding $250,000.00 requires Council's approval.

HISTORY:

In October 2004, the Planning, Property and Development Department began negotiations for the acquisition of properties considered necessary for the Kenaston Grade Separation. It soon became apparent that purchase agreements could not be reached with all property owners in time for the start of construction in 2005. Therefore, Council instructed the City Solicitor to commence expropriation proceedings.

Council enacted expropriation By-Law No. 182/2004 and made a Declaration of Expropriation on December 15, 2004, and confirmed the Declaration of Expropriation on April 27, 2005. Legal Services registered the Declaration of Expropriation and Confirming Order at the Winnipeg Land Titles Office on May 19, 2005. Thus, the City expropriated certain lands, including the Subject Property, considered necessary for the Kenaston Grade Separation Project. The Public Works Department started construction of the grade separation immediately upon possession of the expropriated lands. The City took possession of the Subject Property on June 27, 2005.

DISCUSSION:

The Subject Property was part of a parcel of land located at the southwest corner of Wilkes Avenue and Kenaston Boulevard ("the Parent Property"). At the time of expropriation the Parent Property was undeveloped except for the northeast corner. There was a private approach to the Parent Property, with median opening, off Kenaston. There were no private approaches off Wilkes.

After constructing the grade separation, the City closed Wilkes just east of McCreary Road. To replace this portion of Wilkes the City opened the Sterling Lyon Parkway ("SLP") on the Subject Property and on other expropriated lands. SLP bisects the remainder of the Parent Property into a north parcel and south parcel.

For safety reasons the City relocated access to the remainder property from Kenaston to SLP. The expropriated owners expressed a desire for restoration of access to the remainder off Kenaston. They also noted that prior to the expropriation the Parent Property had frontage only on one side of Wilkes, but after expropriation the remainder has frontage on two sides of SLP.

After lengthy negotiations between the Winnipeg Public Service and the expropriated owners, the owners have agreed to settle their claim for compensation for $299,000.00 plus the following other consideration:

- The Public Works Department will provide the owners with a letter stating that it supports in principle there being three additional private approaches off SLP to the remainder property (one to the north parcel and two to the south parcel;
- The City provided a private approach giving southbound access off Kenaston to the remainder property north of SLP;
- The City built a railway crossing over the CN rail line. (The owners must maintain the crossing to CN's requirements and enter into a crossing agreement with CN);
- The City built catchbasins adjacent to SLP. (The owners must enter into an agreement with the City under which they will own the catchbasins and be responsible for their maintenance);
- The City will agree that in the event the owners or successors apply for rezoning or subdivision of the remainder property, the City will not seek recovery of the cost of acquiring the Subject Property from the owners by expropriation or the cost of other works it provides under the settlement; and
- Any frontage fees (which would have been based on one side of Wilkes) will be limited to the amount of such fees based on only one side of SLP and will be apportioned equally between the north and south parcels of the remainder property.

The City is also required by law to pay statutory interest on the $299,000.00 from the possession date, as well as to pay the owners' legal and appraisal costs.

The Public Service has determined that the proposed settlement is fair and reasonable, and recommends settling the compensation claim on the terms described above as being in the City's best interests. The settlement will allow immediate payment, eliminating further interest costs. If the parties were to litigate this matter at the Land Value Appraisal Commission ("LVAC"), the City would be responsible for all litigation costs, including LVAC charges and additional legal and appraisal fees, as well as internal human resource and administrative costs.

Financial Impact Statement

Date: November 2, 2007

Project Name:

Expropriation Settlement - Kenaston Grade Separation Project
977 Kenaston Boulevard

First Year of Program **2007**

	2007	2008	2009	2010	2011
Capital					
Capital Expenditures Required	$ 338,506	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	338,506	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ 28,773	$ 28,773	$ 28,773	$ 28,773
Less: Incremental Revenue/Recovery	6,637	-	-	-	-
Net Cost/(Benefit)	$ (6,637)	$ 28,773	$ 28,773	$ 28,773	$ 28,773
Less: Existing Budget Amounts	(6,637)	28,773	28,773	28,773	28,773
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Capital expenditures in 2007 include the $299,000 settlement amount + $32,869 in statutory interest costs (from the aquistion date of June 27, 2005 to November 30, 2007, the assumed payment date) + $6,637 in short-term financing costs, the latter amount being offset by an equal corporate recovery. Direct costs in 2008 onward represent the debt & finance charges on the 2007 capital expenditure and will be charged the current budget of the Public Works Department.

"Original signed by"
Mike McGinn, CA
Manager of Finance

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

Legal Services Division
Public Works Department

External Consultation With:

N/A

THIS REPORT SUBMITTED BY:

Department	Planning, Property and Development
Division	Real Estate
Prepared by:	Karen Cann
PPD File No.	7813/9A V2

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WILKES AV
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KENASTON BV
KENASTON BV
KENASTON BV
STERLING LYON PW
STERLING LYON PW
ROTHWELL RD
ROWSON CR
PARK PL E
PARK PL E
PARK BV S
HOPWOOD
COLERAIN
HOPWOOD
AMBLESIDE BV
PARK
DUMFRIES
DUMFRIES PL
ERINVIEW PL
City Property
Parent Property
Subject Property
METRIC
Date: 2007-NOV-2
District: ASBA
File: 7813 / 9A
Scale: 1:7500
NOTE:
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CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 9178 / 37