Minute No. 28
Report - Executive Policy Committee - November 20, 2002

Item No. 8 Proposed Settlement of Due Compensation - Main/Norwood Bridges Project Part Dominion Shopping Centre Property - 43 Marion Street - Riel Community - File GL-4 (Vol. 6)

COUNCIL DECISION:

Council concurred in the recommendation of the Executive Policy Committee and adopted the following:

1. That the City Solicitor/Manager of Legal Services be authorized to settle the due compensation in the expropriation of the subject property at 43 Marion Street at an amount of $343,000.00 plus statutory interest calculated from the possession date of July 1, 1995 to the date that payment is made with the payment to be made no later than December 31, 2002.

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

Report - Executive Policy Committee - November 20, 2002

DECISION MAKING HISTORY:

Moved by His Worship Mayor Murray,
That the Executive Policy Committee recommendation be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On November 20, 2002, the Executive Policy Committee concurred in the administrative recommendation.

Re: Proposed Settlement of Due Compensation – Main/Norwood Bridges Project
Part Dominion Shopping Centre Property – 43 Marion Street
Riel Community
St. Boniface Ward

For submission to: Executive Policy Committee

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

Report date: November 12, 2002

Recommendation(s):
That the City Solicitor/Manager of Legal Services be authorized to settle the Due Compensation in the Expropriation of the Subject Property at 43 Marion Street at an amount of $343,000.00 plus statutory interest calculated from the possession date of July 1, 1995 to the date that payment is made with the payment to be made no later than December 31, 2002.

REPORT SUMMARY

KEY ISSUES:

- The subject property as described in this report was expropriated in 1993 for the purpose of the Main/Norwood Bridges Project.

- Protracted negotiations have now resulted in a settlement of this outstanding expropriation. This report requests Council to approve the proposed settlement herein.

- Approval of this proposed settlement will remove the potential for the City to incur the additional costs of litigation and the possibility of an award adverse to the City's interests; and also will produce a Release and Quit Claim for this expropriated property.

- Furthermore, with this settlement, the number of outstanding expropriation matters on the Main/Norwood Bridges Project will be reduced to only one (1) remaining after settlement of the expropriation dealt with in this report. (Note: originally thirty-seven (37) properties were expropriated.

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: Adequate funding is available in Work Order No. WL 183 to finance a due compensation settlement of the subject property in accordance with the principles as recommended in this report.

REPORT

RECOMMENDATION(S):

That the City Solicitor/Manager of Legal Services be authorized to settle the Due Compensation in the Expropriation of the Subject Property at 43 Marion Street at an amount of $343,000.00 plus statutory interest calculated from the possession date of July 1, 1995 to the date that payment is made with the payment to be made no later than December 31, 2002.

REASON FOR THE REPORT:

Continuing negotiations towards the determination of Due Compensation have produced a proposed settlement that, pursuant to Organization By-Law 7234/98, requires City Council approval since this settlement of claim exceeds $250,000.00.

HISTORY:

Council, on October 21, 1993, approved Expropriation By-Law No. 6244/93 for the Main/Norwood Bridges Project. This Expropriation was subsequently "Confirmed" by Council on February 21, 1994.

On January 6, 1994, the former Committee on Finance and Administration approved the amount of the formal Offer of Compensation for this expropriation and authorized the City Solicitor to submit an Offer of Compensation in the amount of $214,800.00 for the portion of property required at 43 Marion Street.

This amount represented only the estimated market value of the portion of land required from the owner's holding; it being understood that the final Due Compensation would be determined by negotiation and application of the Expropriation Act of Manitoba.

Over the years, the expropriated owner's representative asked for the entitlement to an Advance on Due Compensation but chose to neither accept nor cash the City's cheque in the amount of the Offer of Compensation of $214,800.00.

Continuing negotiations by both the Real Estate and the Legal Services Divisions have now produced a proposed settlement with the expropriated owner's representative. The particulars of the subject property and the proposed settlement are as follows:

Address:	Part 43 Marion Street – North Side of Marion/Goulet Streets, East of St. Mary's Road
Legal Description:	Part Parcels 1/5, Plan 5879; Part Parcel A, Plan 11665 (as shown on Misc. Plan No. SBSV 8370, attached)
Ownership:	Royal Canadian Properties Limited c/o Bruce S. Hamilton, President 800 – 240 Graham Avenue, Winnipeg, Manitoba, R3C OJ7
Certificate of Title Nos.:	Part A 74180; Part C 36353
Land Area Expropriated:	1,662.7 m2 (17,897 square feet)
Zoning:	"C-2" Commercial District
Roll Numbers:	Part 917700; Part 929130
Assessment:	Not apportioned
Property Description:	The property requirement formed part of a paved Shopping Centre site and was improved with a Domo Gas Bar, an identification sign and approaches. The affected Domo Gas Bar was relocated by the City at a cost of $300,000.00 plus the cost of relocating the affected privately-owned improvements to the limits of the new property line. The property requirement potentially affected approximately 15 parking stalls, which were available for customer parking.

DISCUSSION:

The expropriated owner's representative rejected, as a final settlement, the City of Winnipeg's Offer of Compensation in the amount of $214,800.00 and recommended a counter offer in the amount of $395,000.00 plus statutory interest payable from the date of possession of July 1, 1995 to the date that payment is made, with the payment to be made no later than December 31, 2002.

The basis of the owner's claim for compensation was a higher amount for the market value of the land expropriated and an argument concerning disturbance damages and injurious affection to the residual site following the City's expropriation.

In a final attempt at a negotiated settlement of the due compensation for this expropriation before proceeding to have the matter decided by the Courts, the Real Estate Division proposed a final "without prejudice" all-inclusive offer of settlement in the amount of $343,000.00 plus statutory interest calculated from the possession date of July 1, 1995 to the date payment is made.

The Real Estate Division's proposed increased settlement represents an increase in the market value component based on an independent appraisal and includes a contribution to costs incurred by the expropriated owner as provided for under The Act.

In a letter dated October 31, 2002, the expropriated owner's representative confirmed acceptance to settle this outstanding expropriation on the basis of the City's recommended all-inclusive proposal of $343,000.00 plus statutory interest as specified herein, subject to such payment being received by the expropriated owner prior to December 31, 2002.

The alternative to the settlement as proposed herein would be to proceed to the Courts. However, litigating this matter would expose the City to considerable financial risk. The Real Estate Division is of the opinion that the City should not expect to settle this matter at a cost appreciably less than as proposed herein.

Accordingly, this proposed settlement will eliminate the risk of a litigated award at a potentially higher amount for all items, including the estimated market value of the lands taken and potential damages to the remaining lands; plus a claim on additional entitlements under the Expropriation Act; plus additional legal and appraisal expenses; and additional statutory interest costs and administrative costs due to the delay and litigation process.

Therefore, the Real Estate Division of the Planning, Property and Development Department, the Legal Services Division of the Corporate Services Department and the Public Works Department are all of the opinion that it would be in the best interest of the City to settle this outstanding expropriation on the basis of the proposal as specified herein.

This proposed settlement represents the owner's settlement of all items of claim. Furthermore, with this settlement, the number of outstanding expropriation matters on the Main/Norwood Bridges Project will be reduced to one (1) remaining following approval of the settlement as recommended herein.

This acquisition and its costs are to be funded from Capital Account No. 01-118117-340199 WL 183.

Project Name: **First Year of Program** 2002

PROPOSED SETTLEMENT OF DUE COMPENSATION - MAIN/NORWOOD BRIDGES PROJECT - PART DOMINION SHOPPING CENTRE - 43 MARION STREET

	2002	2003	2004	2005	2006
Capital					
Capital Expenditures Required	$ 528,320	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	528,320	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ 528,320	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ 528,320	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$				
Total Additional Debt Required	$				
Current Expenditures/Revenues					
Direct Costs	$ 17,170	$ 50,190	$ 50,190	$ 50,190	$ 50,190
Less: Incremental Revenue/Recovery	20,320	-	-	-	-
Net Cost/(Benefit)	$ (3,150)	$ 50,190	$ 50,190	$ 50,190	$ 50,190
Less: Existing Budget Amounts	(3,244)	50,190	50,190	50,190	50,190
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments:

The above amount includes the proposed due compensation amount of $343,000.00 plus statutory interest on $343,000.00 from the possession date of July 1, 1995 to the date that payment is made; to be no later than December 31, 2002, for an estimated total amount owing of approximately $508,000.00 plus admin charges. To this date, the expropriated owner has not taken his entitlement to an Advance on Due Compensation.

Gord Courage, Manager
Support Services Division

IN PREPARING THIS REPORT, THERE WAS CONSULTATION WITH the Legal Services Division AND CONCURRENCE BY both the Legal services division and the public works department.

THIS REPORT SUBMITTED BY:
Planning, Property and Development Department
Division: Real Estate Division
Prepared by: Maria Haddock, Senior Negotiator
PPD File #: 7616/30

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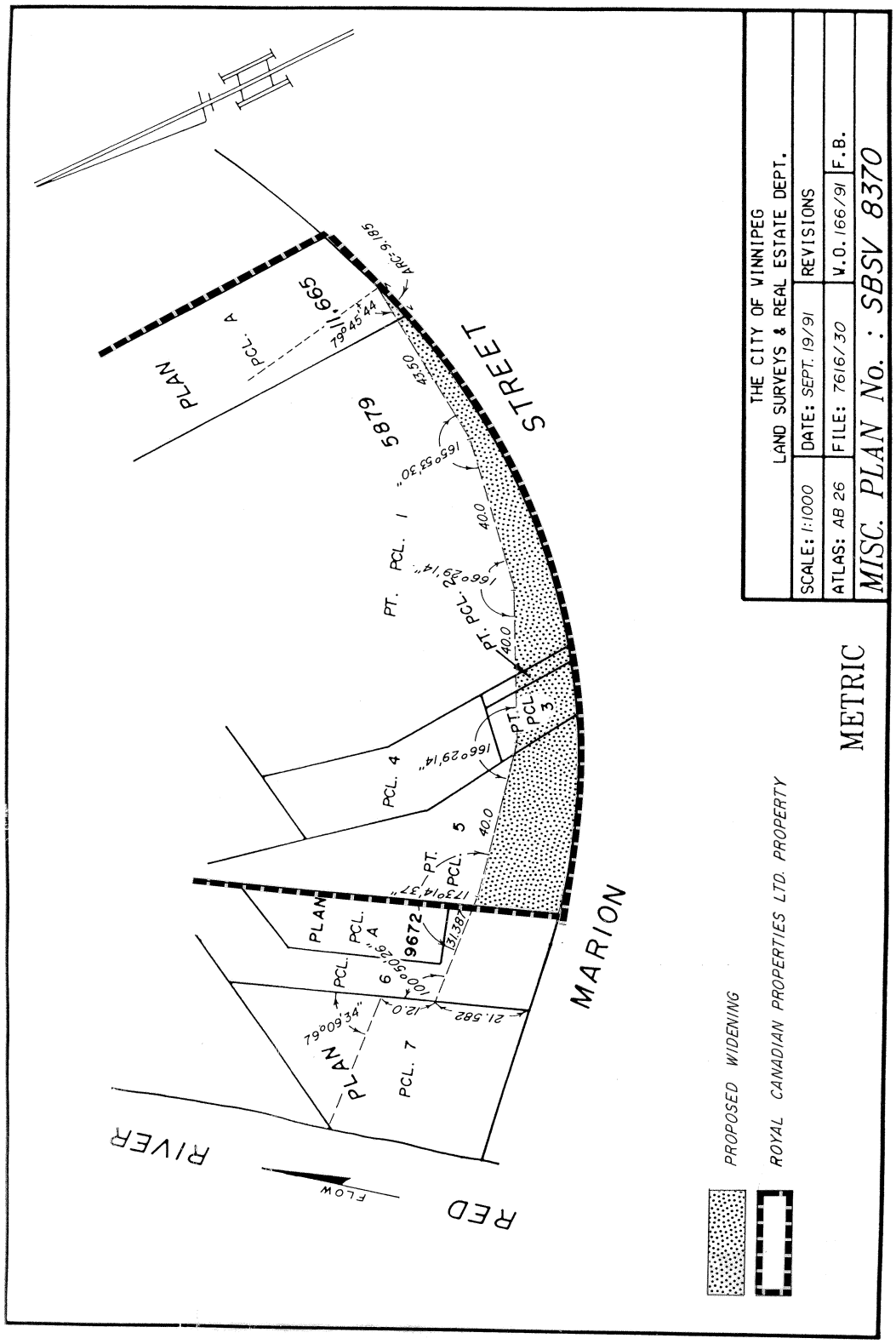
THE CITY OF WINNIPEG
LAND SURVEYS & REAL ESTATE DEPT.
SCALE: 1:1000
DATE: SEPT. 19/91
REVISIONS
ATLAS: AB 26
FILE: 7616/30
W.O. 166/91
F.B.
MISC. PLAN No. : SBSV 8370
METRIC
PROPOSED WIDENING
ROYAL CANADIAN PROPERTIES LTD. PROPERTY
RED RIVER
MARION STREET
FLOW
PLAN
PCL. A
11.665
5879
PT. PCL. 1
PT. PCL. 2
PT. PCL. 3
PCL. 4
PT. PCL. 5
PCL. 6
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12.0
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