Agenda – Council - June 18, 2008

Report - Executive Policy Committee – June 11, 2008

Item No. 9 Expropriation Settlement – Favor Property, 109 Pioneer Avenue and Vacant Land - East Yards Project (Fort Rouge-East Fort Garry Ward) File GL-4

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On June 11, 2008, 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 owner's remaining claim in the amount of $739,983.00 for due compensation for the expropriation of 109 Pioneer Avenue and parking area, shown as "Land Expropriated by By-law No. 4729/87" on Misc. Plan Number CCFR 6962, at a sum of $425,000.00 plus interest, 50% of said costs to be funded by the Province of Manitoba.

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

Agenda – Council - June 18, 2008

Report - Executive Policy Committee – June 11, 2008

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On June 11, 2008, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

RE: **Proposed Expropriation Settlement**
Favor Property, 109 Pioneer Avenue & Vacant Land
East Yards Project
City Centre/Fort Rouge

FOR SUBMISSION TO: Executive Policy Committee

ORIGINAL REPORT SIGNED BY: Director of Planning Property and Development

REPORT DATE: June 5, 2008

RECOMMENDATION:

1. That the City Solicitor/Manager of Legal Services be authorized to settle the owner's remaining claim in the amount of $ 739,983.00 for due compensation for the expropriation of 109 Pioneer Avenue and parking area, shown as "Land Expropriated by By-Law No. 4729/87" on the attached Misc. Plan Number CCFR 6962, at a sum of $425,000.00 plus interest, 50% of said costs to be funded by the Province of Manitoba.

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 4729/87, enacted October 21, 1987, the City expropriated the Subject Property for the purpose of the East Yards Project.

Negotiations for the due compensation are now complete, and the owner has agreed to a proposed settlement.

Fifty percent of the funding is the responsibility of the Province of Manitoba.

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): The account number for the East Yards Project is 003-181000-630621-63980101EX, A, which constitutes an existing Planning, Property and Development Capital account. Fifty percent of the funding is the responsibility of the Province of Manitoba.

Report

REASON FOR THE REPORT:

Under the City Organization By-Law 7100/97, settlement of an expropriation claim exceeding $250,000.00 requires approval of City Council.

HISTORY:

Council enacted By-Law No. 4729/87 to enable the expropriation of the Favor property on behalf of the Policy Committee of the Winnipeg Core Area Initiative (W.C.A.I.). This expropriation was required to assist the W.C.A.I. in the assembly of lands for the completion of an exchange of lands between the Forks Renewal Corporation and the Canadian National Railway.

Originally the Province of Manitoba had initiated an expropriation of the property but due to legal action by the owners it had to be abandoned on September 3, 1987. City Council approved Expropriation By-Law 4729/87 in October of that year, and confirmed the expropriation on November 12, 1987.

The City took possession of the Subject Property on

- July 1, 1988 (South of Pioneer, Pt. Lots 5, 6-8);
- April 1, 1989 (parking area lots 4-11 Plan 4327);
- July 5, 1989 (109 Pioneer, not including Pt. Lot 7 South of Pioneer).

The property was originally owned by Mr. and Mrs. Favor. Initial negotiations were difficult, and were resumed in recent years after the death of one of the owners. In 2004, the remaining owner agreed to accept an advance of the amount of the City's original offer of $1,493,000.00 plus statutory interest and legal fees to date.

In 2005, the City received the owner's formal appraisal report and in February 2007, the City received remaining details of their claim for business disturbance, moving costs, storage of materials and special equipment used in the operation of the ceramics business.

Negotiations to finalize this matter continued with Mr. Favor (and his daughters) which concluded in the proposed settlement.

DISCUSSION:

The subject property is now encompassed in part by the Winnipeg Goldeye's Baseball Stadium and the parking area on the south side of Pioneer Avenue. The remainder was taken up in public street.
The particulars of the Subject Property are as follows:

1	Address	109 Pioneer Avenue & Vacant land (parking area)
	Ownership	David and Nettie Favor
	Legal Description	(as shown on attached Misc. Plan CCFR 6962)

Parcel One:
Lots 1, 2 & 3, Plan 4327, RL 3 St John
Lot 7, Plan 3137

Parcel Two
South ½ Lot 5, lot 6/8, Plan 3137, RL 2 St John

Parcel Three
Lots 4/11, Plan 4327, RL 3 St John

Parcel Four
Easterly 25 feet of Lot 7, Plan 3137, RL 2 St John

The following illustrates the Favor claim and proposed settlement amount:

Claim for Due Compensation:	$1,715,000.00
Claim for Disturbance/moving	$ 517,983.00
Total Claim	$2,232,983.00
Minus Advances	$1,493,000.00
Owners Remaining Claim	$ 739,983.00
Proposed Settlement Amount	$ 425,000.00
Statutory Interest on Outstanding Balance	$ 769,780.00
Total Cost	**$1,194,780.00**
City's Share at 50%	$ 597,390.00

After a detailed review of the appraisals and the disturbance claim, the Public Service offered an all inclusive settlement sum of $425,000, as opposed to the owner's claim of $739,983.00, plus any outstanding interest or legal/appraisal costs. The owners have agreed to the City's proposed settlement.

The alternative to the settlement proposal would be to proceed to a hearing before The Court of Queen's Bench. Litigating this matter at The Court of Queen's Bench potentially exposes the City to considerable financial risk and additional expense. The

City would be responsible for all parties' costs, including court costs and additional legal and appraisal fees, as well as internal human resource and administrative costs.

The Planning, Property and Development Department and the Legal Services Division have determined that the proposed settlement is fair and reasonable and is of the opinion that it would be in the City's best interests to settle the due compensation in the above-stated amount. The settlement will allow immediate payment of the claim, thus eliminating further interest costs.

Funding is to be shared by the Province of Manitoba under the remaining balance of the Core Area Initiative Trust fund; therefore, the Land Management Services of the Province of Manitoba have been advised of the settlement proposal and are in agreement with same.

Financial Impact Statement

Date: May 22, 2008

Project Name:

First Year of Program **2008**

Proposed Expropriation Settlement - Favor Property, 109 Pioneer Avenue & Vacant Land
East Yards Project

	2008	2009	2010	2011	2012
Capital					
Capital Expenditures Required	$ 1,194,780	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	1,194,780	-	-	-	-
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	$ -	$ 52,302	$ 52,302	$ 52,302	$ 52,302
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ -	$ 52,302	$ 52,302	$ 52,302	$ 52,302
Less: Existing Budget Amounts	-	52,302	52,302	52,302	52,302
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Capital expenditures consist of the $425,000 remaining settlement amount plus statutory interest for a net payment to the Favors of $1,194,780, of which 50% is to be funded by the Province (net cost to the City being $597,390). In addition, short-term financing charges of $23,896 and corporate admin fees of $11,948 apply and are offset by corporate recoveries. Direct costs beginning in 2009 represent debt & finance charges on the 2008 capital expenditure and will be charged to the current budget of P, P & D.

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

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

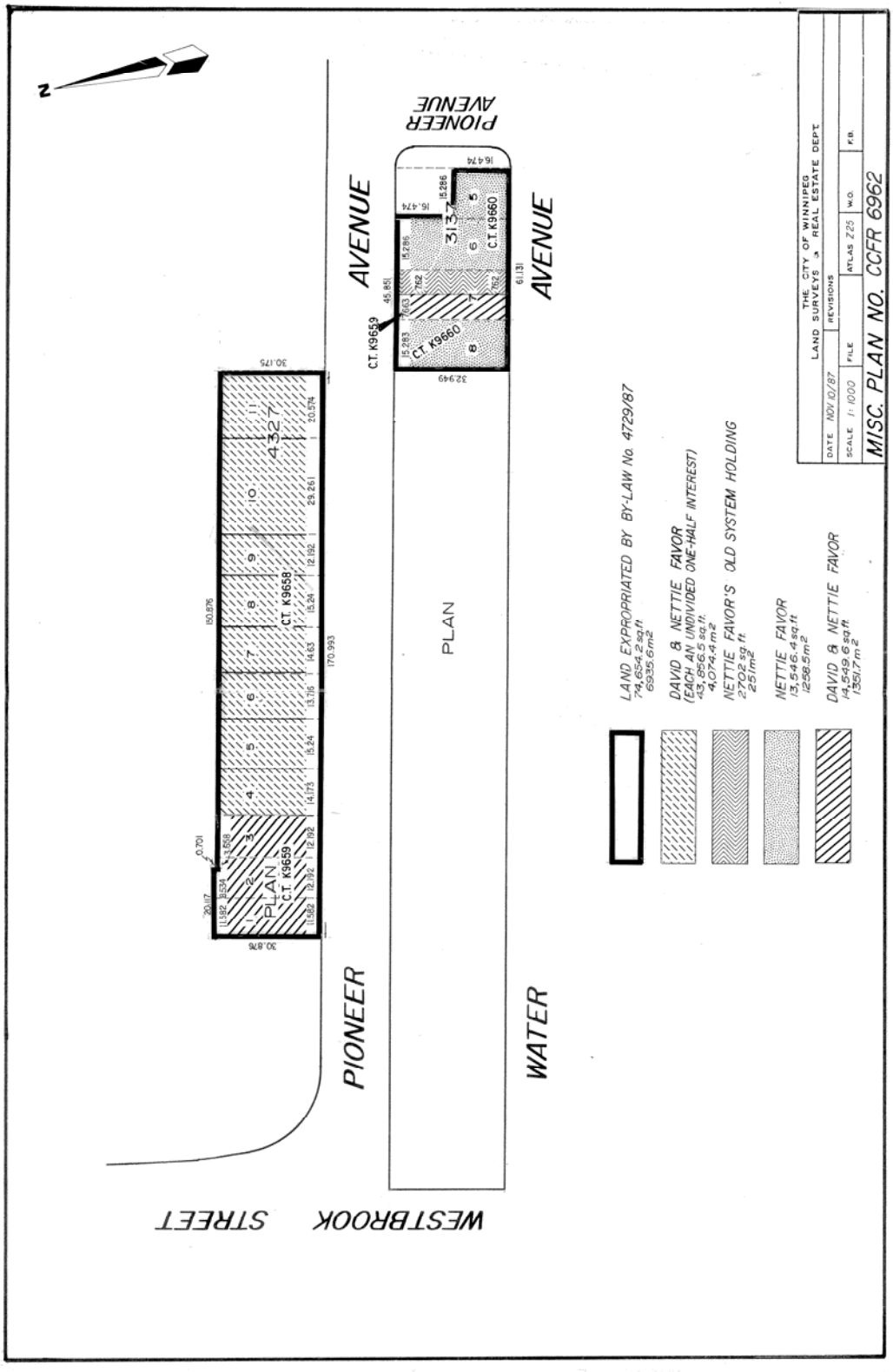
Corporate Services, Legal Services

External Consultation With:

The Province of Manitoba, Land Development Services was consulted and is in agreement with the proposed settlement.

THIS REPORT SUBMITTED BY:

Department	Planning Property and Development
Division	Real Estate Division
Prepared by:	Peter R. Gregg, AACI
PPD File No.	5775/A4 V2


N
PIONEER AVENUE
AVENUE
AVENUE
C.T. K9659
C.T. K9660
C.T. K9658
PLAN
PLAN
WATER
PIONEER
WESTBROOK STREET
LAND EXPROPRIATED BY BY-LAW No. 4729/87
74,654.2 sq.ft.
6935.6m2
DAVID & NETTIE FAVOR
(EACH AN UNDIVIDED ONE-HALF INTEREST)
43,856.6 sq.ft.
4,074.4 m2
NETTIE FAVOR'S OLD SYSTEM HOLDING
2702 sq ft
251m2
NETTIE FAVOR
13,546.4 sq ft
1258.5m2
DAVID & NETTIE FAVOR
14,549.6 sq.ft.
1351.7 m2
THE CITY OF WINNIPEG
LAND SURVEYS & REAL ESTATE DEPT
DATE NOV 10/87
REVISIONS
SCALE 1: 1000
FILE
ATLAS Z25
W.O.
P.B.
MISC. PLAN NO. CCFR 6962