Minutes - Executive Policy Committee - September 17, 2008

Minute No. 453
Report - Standing Policy Committee on Downtown Development - September 9, 2008

Item No. 1 Riverside Park Management Inc. - Amendment to the Lease Agreement for the use of Parcel 4 (Fort Rouge-East Fort Garry Ward) E-File FI-2.2(32)

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submits the following to Council:

1. That the Lease Agreement between Riverside Park Management Inc. and the City of Winnipeg dated April 15, 2005 be amended by reducing the Leased Lands to the northerly half of Parcel 4 as shown on Misc. Plan 11119/10, and that the City enter into an access agreement for the surrendered lands in accordance with the report dated July 3, 2008 from the Acting Director of Planning, Property and Development.

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:

Pursuant to The Municipal Conflict of Interest Act, His Worship Mayor Katz refrained from entering the discussion and voting on the following matter, because of a potential conflict of interest, and was not present at the meeting.

In the absence of the Chairperson, Acting Deputy Mayor Steeves assumed the Chair.

Moved by Councillor Swandel,

That the recommendation of the Winnipeg Public Service be concurred in and forwarded to Council.

Carried

Councillor Wyatt asked to be recorded as having voted against the above motion, in accordance with Rule 47(7) of The Procedure By-law No. 50/2007.

Mark Newman, Fillmore Riley LLP, submitted a communication dated September 17, 2008 in support of the Riverside Park Management Inc. - Amendment to the Lease Agreement for the use of Parcel 4.

STANDING COMMITTEE RECOMMENDATION:

On September 9, 2008, due to a tie vote, the Standing Policy Committee on Downtown Development submitted the matter to the Executive Policy Committee and Council without recommendation.

Further, on September 9, 2008, the Standing Policy Committee on Downtown Development received a submission from Mark Newman, Fillmore Riley LLP Barristers and Solicitors, which has been placed on file in the City Clerk's Department.

On July 8, 2008, the Standing Policy Committee on Downtown Development laid the matter over to its meeting on September 9, 2008, and requested the Chief Administrative Officer to attend the meeting to clarify how the City will offset the reduced revenue that would result from the approval of the amendment to the subject lease agreement.

RE: Riverside Park Management Inc. - Proposed Amendment to the Lease Agreement for the use of Parcel 4
City Centre Community
Fort Rouge Ward

FOR SUBMISSION TO: Standing Policy Committee on Downtown Development

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

REPORT DATE: July 3, 2008

RECOMMENDATIONS:

1. That the Lease Agreement between Riverside Park Management Inc. and the City dated April 15, 2005 be amended by reducing the Leased Lands to the northerly half of Parcel 4 as shown in the attached Misc. Plan 11119/10 and that the City enter into an access agreement for the surrendered lands in accordance with the discussion herein.

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:

- As part of the July 2002 Canwest Global Park Report, Council approved a recommendation regarding the provision of interim parking for the Baseball Stadium utilizing Parcels 3, 4 and 5 pending the evolution of plans and development at the Forks and until such time as the area's global parking issues were resolved upon terms and conditions which were feasible to the Tenant. In accordance with the Council Direction, the Planning, Property and Development Department entered into a lease agreement for the use of Parcel 4 for the period July 1, 2001 through September 30, 2005 at a rate of $1.00 per annum plus realty taxes.

- On November 23, 2005, Council concurred in the recommendation of the Standing Policy Committee on Downtown Development, dated October 31, 2005, to approve a renewal of the parking lot lease agreement for Parcel 4 for a term of three years commencing on October 1, 2005.

- The lease renewal was developed in accordance with the following leasing parameters: (a) Council Direction in July 2002 for the leasing of Parcel 4 (b) the terms and conditions for the July 2001 through October 2005 lease agreement (c) to allow vehicle parking only on a gravelled parking lot with a six month cancellation provision; and (d) that the Tenant was to provide access to the City for various events to held in the Downtown or at the Forks at no cost.

- At the time of finalizing the terms and conditions for the renewal of the lease agreement, the Property Assessment Department was completing a reassessment of Parcel 4. The estimates of land value and tax impositions were provided to the Tenant. The Tenant

agreed to the proposed terms and conditions for the lease and relied on the right to appeal the valuation in the future if required.

- Notwithstanding the fact that the Tenant entered into the lease agreement with the City on the basis that the Tenant would be responsible for all realty taxes payable with respect to the leased lands, it was not until December 2007 that the Manitoba Municipal Board issued a decision setting the 2006 market value of the property that an issue arose with respect to the magnitude of tax liability.

- The Tenant paid the realty taxes owing for 2006 ($91,648.50 plus GST) and 2007 ($76,889.97 plus GST) in full based on the tax assessment as determined by the Board of Revision for the land.

- The Tenant has advised that it is not feasible to operate the parking lot with the final assessed value of $3.7 million and annual realty taxes of approximately $184,000 plus GST.

- Approximately $233,000 in additional tax payments was recognized as revenue in 2006, 2007 and 2008 and is currently included in the Department's Accounts Receivable. The adjustment of Accounts Receivable to reflect the intent of Council may require additional mill rate support as no provision for this adjustment is included in the Department's 2008 current budget.

- As required by legislation, real property for the purposes of taxation is to be valued at its highest and best use. In its decision of December 2007, the Municipal Board set the 2006 assessed value of the parcel at $ 3.69 million. However, the leasing parameters do not allow the Tenant to use or develop the property for any use other than a grade level graveled parking lot and is subject to the City use for specific events. The City could amend the standard lease with respect to the payment of real property taxes to acknowledge this situation in this case.

- The Tenant would only be responsible for the realty taxes that would normally be associated with the rights conveyed to them as part of the lease. Notwithstanding same, for the purpose of taxation, the property must be valued in fee simple (unencumbered rights).

Implications of the Recommendation(s):

General Implications

( ) None

(x) 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):
The Public Service is attempting to resolve the realty tax and financial issue related to the Lease Agreement.

Policy Implications

(x) No

( ) Yes

Comment(s):
This report identifies several alternatives and provides for a recommendation regarding an optimum interim realty tax solution.

Regulatory Implications

(x) None

( ) Eliminates or reduces regulatory impact

( ) Proposes regulatory impact

Environmental Implications

(x) No

( ) Yes

Human Resources Implications

(x) No

( ) Yes

Financial Implications

(X) Within approved current and/or capital budget

( ) Current and/or capital budget adjustment required

Comment(s):
Approximately $223,000 in tax payments recognized as revenue in 2006, 2007 and 2008 currently included in the Department's Accounts Receivable being charged to expense. The Department will endeavor to offset this adjustment of Accounts Receivable to reflect the intent of Council within its existing approved operating budget. However, as $223,000 represents a significant portion of the Department's "discretionary" expenditure budget, a request for an additional appropriation may yet be required should the Department by unable to achieve offsetting expenditure reductions.

Report

REASON FOR THE REPORT:

The Planning, Property and Development Department is seeking approval of the proposed lease amendment to the terms and conditions of the Lease Agreement with Riverside Park Management Inc. dated April 15, 2005 for the use of Parcel 4 associated with the operation of Canwest Global Stadium.

HISTORY:

At its meeting held on July 17, 2002, Council considered a comprehensive report regarding various leasing matters at the Canwest Global Stadium and amongst other things, approved Recommendation 3 as follows:

> "That the request for an amendment of the Master Lease Agreement to include the lands identified as Parcels 3, 4 and 5 as shown on Misc. Plan 11119/4 not be approved, but that, Chief Administrative Officer be delegated authority to approve such interim parking leases in favour of Riverside Park Management Inc. as may be feasible, in her discretion to facilitate parking on city-owned lands during the Provencher Bridge and Approach Roadways construction.

As a result, the Planning, Property and Development Department entered into a three year lease agreement with Riverside Park Management Inc. for the use of Parcel 4 in accordance with the following terms and conditions:

Owner:	City
Tenant:	Riverside Park Management Inc.
Location:	South of Water Avenue, west of Waterfront Drive
Use:	Vehicle Parking
Zoning:	C
Term:	4 years 3 months commencing July 1, 2001, expiring September 30, 2005
Area:	See attached Misc. Plan 11119/4 – "Parcel 4"
Rent:	$1.00 annum
Realty Taxes:	Tenant to pay realty taxes (Municipal and School)
Insurance:	Tenant to provide Comprehensive General Liability in the amount of $2.0 Million dollars including all necessary endorsements, as well as, all property policies and endorsements as yet to be determined.
Tenant Responsibilities:	To pay all costs for the operation and maintenance of the parking lot and to provide access for city events upon notification by the City.

As part of the lease renewal process, the Tenant requested an estimate of annual realty taxes from the Planning, Property and Development Department. The Property Assessment Department provided a preliminary estimate of value at $12.00/sq. ft. by e-mail dated August 17,

2005. Because the final valuation occurs at the time of placing an executed lease agreement on the Assessment Roll, the estimate was subject to further review and evaluation. This information was verbally provided to the Tenant's Tax Consultant and subsequently acknowledged in his letter dated September 9, 2005 and it was understood that under the terms of the lease, that the Tenant could appeal any change in value.

At its meeting held on October 31, 2005, the Standing Policy Committee on Downtown Development considered an administrative report regarding the renewal of lease agreement with Riverside Park Management Inc. for the interim use of Parcel 4 and approved the following:

"1. Subject to Council concurrence, that the proposed terms and conditions for a lease agreement between the City and Riverside Park Management Inc. be approved, in accordance with the terms and conditions contained herein.

2. That the Proper Officers of the City be authorized to implement the intent of the foregoing."

The proposed terms and conditions of the lease agreement, which were the same as the initial lease, are as follows:

Site Identification:	Shown as "Parcel 4" on Misc. Plan No. 11119/4
Lessee:	Riverside Park Management Inc.
Term:	Three (3) years commencing October 1, 2005
Purpose:	Vehicle parking
Zoning:	C
Size:	5.95 acres
Rental:	$1.00 per year, plus applicable GST.
Added Rent:	Municipal and school taxes, plus applicable GST.
Insurance:	Comprehensive General Liability $2.0 Million, cross liability, City to be added as an additional insured
Lessee Resp:	All operating costs, utilities and site maintenance
Cancellation:	Six (6) months written notice by either party

On November 23, 2005 Council concurred with the Standing Policy Committee on Downtown Development's recommendation to renew the lease.

In 2006, The Tenant appealed the assessment for Parcel 4 to the Board of Revision, which appeal was heard on November 30, 2006. The Board reduced the assessed value from $3.96 million to $1.63 million.

The Assessment and Taxation Department subsequently appealed the Board of Revision ruling to the Municipal Board. By decision dated December 19, 2007, the Municipal Board increased the assessed value from $1.63 million to $3.69 million.

DISCUSSION:

A) Background:

At its meeting held on July 17, 2002, Council considered a comprehensive report regarding all matters related to the Canwest Global Stadium and adopted Recommendation No. 3 which was

intended to facilitate interim parking and provided delegated authority to the Chief Administrative Officer to approve interim parking leases upon terms and conditions that were feasible. The City and Riverside Park Management Inc. entered into a lease agreement for the use of Parcel 4 situated south of Water Avenue and west of Waterfront Dr., which is identified on the attached Misc. Plan 11119/4.

In accordance with the Council Direction, a lease agreement for the use of Parcel 4 was negotiated on the basis of $1.00 per annum plus realty taxes. At that time, the land was assessed at a value of $1.55 million and the realty tax imposition was determined to be feasible for a lease agreement which restricted the use of the land to parking.

At its meeting on October 31, 2005, the Standing Policy Committee on Downtown Development considered various alternatives for the use of Parcel 4 and subsequently approved a renewal of the Parcel 4 parking lot lease agreement in favour of Riverside Park Management Inc. for a three year term commencing on October 1, 2005. The leasing parameters were developed in accordance with the following:

- Council Direction in July 2002 for the leasing of Parcel 4;
- The terms and conditions for the July 2001 through October 2005 lease agreement;
- To allow vehicle parking only on a gravelled parking lot with a six month cancellation provision; and,
- Required the Tenant to provide access to the City for various events to be held in the Downtown or at the Forks at no cost.

On November 23, 2005 Council concurred with the Standing Policy Committee on Downtown Development's recommendation to renew the lease.

It should also be noted that the "lease" did not provide for the full development of the leased lands for parking purposes by allowing surface improvements or electrification of the parking stalls. As such, this impacted the Tenant's ability to rent spaces and resulted in a capacity utilization of less than 50% of the parking lot.

B) Parcel 4 Lease Negotiations 2005:

As part of the negotiations for a new lease agreement in 2005, the Tenant's Tax Consultant was advised of the following: (1) that the leased lands were being re-assessed with a preliminary value of $12.00 sq. ft. (2) that the tenant would have an opportunity to appeal the valuation, and (3) the final value and determination of annual impositions would be subject to completing an update to the tax roll. The Tenant subsequently executed the lease agreement for Parcel 4.

As a result of the Municipal Board decision in December 2007, the Tenant was requested to pay an additional $184,000 plus GST in realty taxes ($92,316.26 plus GST for 2006 and $92,842.84 plus GST for 2007). In addition, the Tenant will be requested to pay an additional $69,632.13 (9/12 of $92,842.84) plus GST for 2008) The Tenant advised the City that it was not feasible to operate the parking lot if required to pay the realty taxes based on the new assessed value.

C) Departmental Comments:

Parcel 4 is one of several City-owned properties located in proximity to and lying within the planning boundaries of the Forks. While resolving various Canwest Global Stadium issues culminating in the Council approved July 17, 2002 report, it was agreed that the Tenant would be allowed to use Parcel 4 on an interim basis pending the evolution of development plans for the subject property and resolution of global parking issues and plans to accommodate parking at the Forks.

Because the assessment valuation process requires that the property be valued in a fee simple (unencumbered rights) method at the property's highest and best use and that the lease rights approved by the City were restricted to permit only vehicle parking, the Tenant has been placed in a situation wherein they are required to pay the full amount of realty taxes on the leased lands but cannot develop the lands to their full potential (eg. a high rise apartment complex) under the terms of the lease agreement.

At the same time, the City has been made aware that as a result of the Human Rights Museum Project, the Forks North Portage Partnership will be losing a significant amount of the existing gravel parking lot spaces north of the Festival Stage and as such, they are very interested in using Parcel 4. The Department is currently involved in a stakeholder's process and a plan for the City lands is being determined.

Given Council's direction in July 2002 to enter into a lease and Council's November 2005 decision to renew the lease to facilitate parking for the stadium and the Tenant's position with respect to the feasibility of operating the parking lot, the Winnipeg Public Service reviewed various alternatives to address this matter which are outlined as follows:

1) Request Payment of Realty Tax Arrears due to Reassessment – the City could require the Tenant to pay the additional impositions of $254,791.23 plus GST pursuant to the executed lease agreement. Although this is in keeping with the terms of the lease, it would result in the Tenant operating the parking lot at a substantial loss each year. This would not be in keeping with the intent of the Council Direction in 2002.

2) Cancel Taxes - Council could approve the cancellation of realty taxes on this occupancy pursuant s.347 of the City of Winnipeg Charter. The Winnipeg Public Service does not encourage the use of this provision as a means of solving outstanding realty tax issues.

3) Refund Municipal portion of Realty Taxes - Currently, the Tenant pays the school portion of realty taxes and receives an annual credit/ refund for the municipal portion of realty taxes paid each year on the main stadium holding. Council could agree to provide the same tax treatment to Parcel 4. However, this would be in conflict with the tax treatment of other parking lot leases with Riverside Park Management wherein they do not receive a refund of the municipal portion for the annual realty taxes.

4) Amend the Parking Lot Lease for Parcel 4 - Given that Parcel 4 is an unimproved gravel parking lot without electrical service, the demand for parking is less than 50% of the site potential. As such, the amount of the leased land could be reduced by 50%. The associated annual realty tax liability would then be reduced by 50% making the operation of the parking lot feasible to the Tenant.

Approximately $223,000 in tax payments recognized as revenue in 2006, 2007 and 2008 currently included in the Department's Accounts Receivable being charged to expense. The Department will endeavour to offset this adjustment of Accounts Receivable to reflect the intent of Council within its existing approved operating budget. However, as $223,000 represents a significant portion of the Department's "discretionary" expenditure budget, a request for an additional appropriation may yet be required should the Department by unable to achieve offsetting expenditure reductions.
Although this alternative will address the tax issue, the Tenant has requested that it be allowed to use the surrendered lands for parking on game days, evenings or nights during the baseball season. The Winnipeg Public Service supports this request and is prepared to enter into a separate temporary access agreement to facilitate daytime, afternoon or evening baseball games. The Tenant would pay a rental fee for its temporary use of the surrendered lands including retroactive rental charges for 2006 and 2007. The terms of the Access Agreement will provide for appropriate insurance, access and security.

This alternative will also provide an opportunity to make the surrendered lands available to the Forks North Portage Partnership or other parties to replace parking lot capacity due to the loss of existing gravel surface parking at the Forks due to the development of the Human Rights Museum.

The Winnipeg Public Service has reviewed the above and determined Alternative No.4 to be the most practicable solution.

Financial Impact Statement

Date: June 27, 2008

Project Name:

First Year of Program **2008**

Riverside Park Management Inc. - Proposed Amendment to the Lease Agreement for the use of Parcel 4

	2008	2009	2010	2011	2012
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
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	$ 223,000	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ 223,000	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	223,000	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: The Planning, Property and Development Department will endevour to offset the adjustment of Accounts Receivable to reflect the intent of Committee regarding the 2006, 2007 and 2008 tax payments within the existing approved operating budget. However, as $223,000 represents a significant portion of the Department's "discretionary" expenditure budget, a request for an additional appropriation may yet be required should the Department by unable to achieve offsetting expenditure reductions.

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

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With:
Chief Financial Officer
City Assessor
Legal Services Division (as to legal issues)

External Consultation With:
n/a

THIS REPORT SUBMITTED BY:
Department Planning, Property and Development
Division Real Estate
Prepared by: Wayne A. Bollman
PPD File No. 7933 A V9

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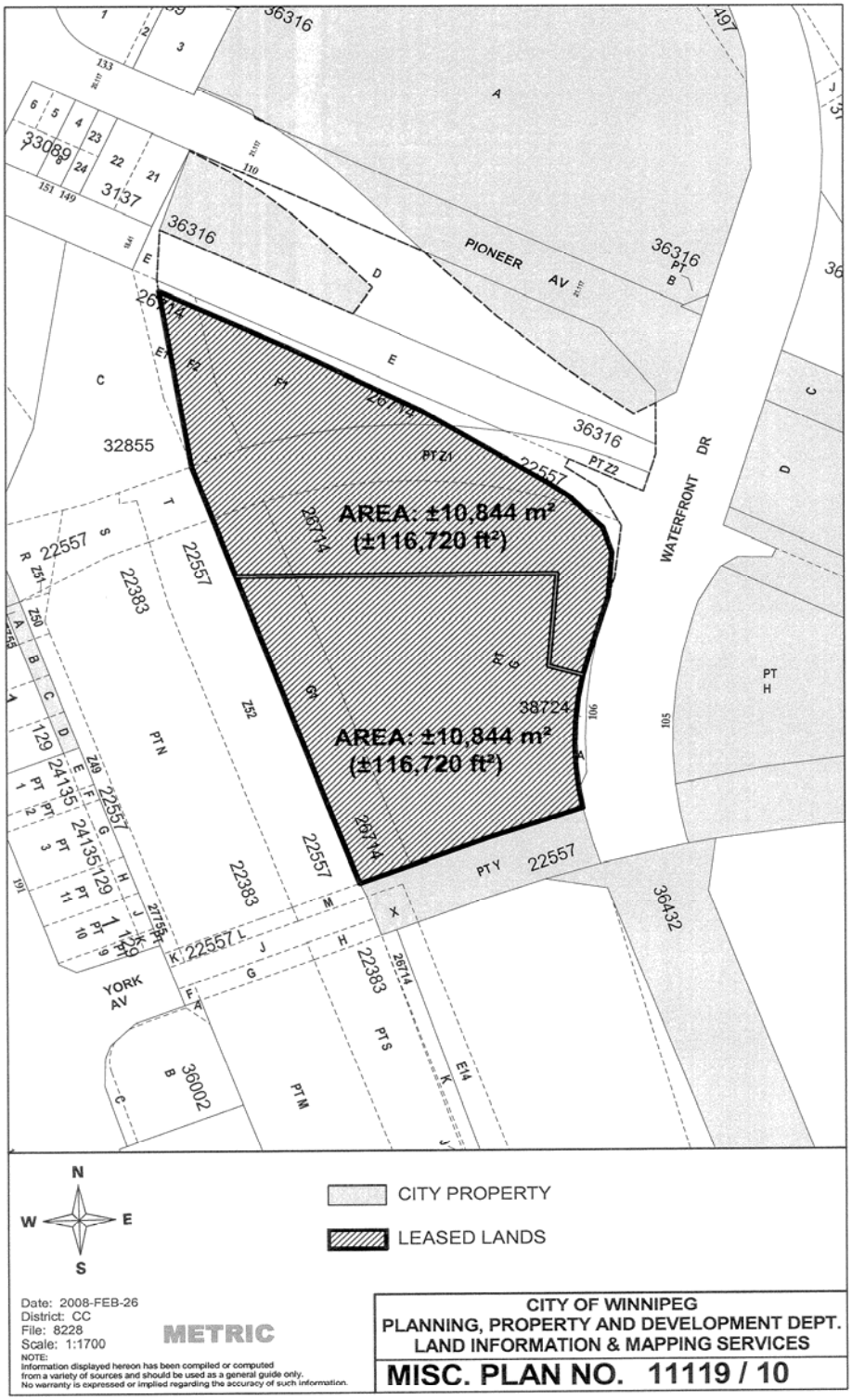
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(±116,720 ft²)
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PIONEER AV
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MISC. PLAN NO. 11119 / 10