Minute No. 185
Report – Standing Policy Committee on Property and Development – March 3, 2009

Item No. 3 Development Agreement Amendment - Four-Mile Road – Pre-Payment for Future Asphaltic Roadway Surfacing (St. Vital Ward) File DASZ 16/90

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submits the following to Council:

1. That Development Agreement AG 19/90 be amended by deleting Paragraph 1 in its entirety and replacing it with the following:

"1. Roadway Upgrading

a. It is acknowledged that each lot purchaser paid, prior to the issuance of a Building Permit for its respective lot within the Planned Area, its share of the cost of upgrading Four Mile Road abutting its lot to RR-2 standards (i.e. asphaltic concrete surface). The payment for each lot was made at the rate applicable at the time payment was made.

It is further acknowledged that each lot purchaser has indicated its preference that Four Mile Road not be surfaced with asphaltic concrete, but remain a granular surfaced roadway.

It is agreed that each lot purchaser shall be reimbursed the difference between the cost of upgrading the granular roadway surface to an asphaltic concrete surface and the cost of oiling and gravelling the granular roadway surface in perpetuity (i.e. two-thirds of the amount paid), as follows:

Lot 1 (Address #124) 188.7' x $58.00 = $10,944.60 (Paid Aug 91) x 2/3 = $7,296.40
Lot 2 (Address #112) 178.5' x $60.00 = $10,710.00 (Paid Sep 97) x 2/3 = $7,140.00
Lot 3 (Address #100) 199.9' x $60.00 = $11,994.00 (Paid May 00) x 2/3 = $7,962.67
Lot 4 (Address # 88) 179.6' x $60.00 = $10,776.00 (Paid Aug 99) x 2/3 = $7,184.00
Lot 5 (Address # 76) 179.6' x $61.15 = $10,982.54 (Paid July 94) x 2/3 = $7,321.69
Lot 6 (Address # 64) 179.6' x $60.00 = $10,776.00 (Paid Sep 92) x 2/3 = $7,184.00
Lot 7 (Address # 58) 179.6' x $60.00 = $10,776.00 (Paid July 92) x 2/3 = $7,184.00
Lot 8 (Address # 40) 179.6' x $58.00 = $10,416.80 (Paid Aug 91) x 2/3 = $6,944.53

It is also agreed that no interest shall be payable on the amounts to be reimbursed.

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b. The rate charged per foot includes the Developers' share of the cost of any gravelling and two applications of a dust palliative.

c. The Developers acknowledge that the appropriate timing for the application of any gravel and any dust palliative will be as determined by the City.

d. It is understood and agreed that the payments made constitute only payment in full for two applications of gravel and a dust palliative."

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:

Moved by Councillor Fielding,

That the recommendation of the Standing Policy Committee on Property and Development be concurred in and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION:

On March 3, 2009, the Standing Policy Committee on Property and Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On February 2, 2009, the Riel Community Committee submitted the matter to the Standing Policy Committee on Property and Development without recommendation.

On January 12, 2009, the Riel Community Committee laid over the matter to the meeting on February 2, 2009.

INTER-OFFICE MEMORANDUM

Planning, Property and Development Department

Development and Inspections Division, Land Development Branch
Main Floor, 65 Garry Street

Date: December 1, 2008

To: Marc Pittet, Community Clerk

From: Shirley Matile, Land Development Engineer

RE: **Amendment to Development Agreement AG 16/90 – Four-Mile Road – re Pre-Payment for Future Asphaltic Roadway Surfacing**

FILE: AG 16/90 (PLEASE QUOTE WHEN REPLYING)

Attached, for consideration by the Riel Community Committee at its January 12, 2009 meeting, is the report of the Administrative Co-ordinating Group, dated December 1, 2008, recommending the refunding of the difference between the pre-paid cost of asphalting the roadway surface and the cost of maintaining the existing granular surface in perpetuity to the current owners of the lots created under DASZ 16/90.

"original signed by S.M. Matile"
S. M. Matile, P.Eng.

cc: D. Emerson, P.Eng., Public Works Dept.
F. Mazur, P. Eng., Water & Waste Dept.
D. Overby, Planning and Land Use
Councillor G. Steeves
K. Lalor, Planner
J. Veitch, Planner
J. Gareau

/sm
att.

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RE: AMENDMENT TO DEVELOPMENT AGREEMENT AG 16/90 – FOUR-MILE ROAD – RE PRE-PAYMENT FOR FUTURE ASPHALTIC SURFACING

FOR SUBMISSION TO THE MEMBERS OF THE RIEL COMMUNITY COMMITTEE

"original signed by S.M. Matile"
S.M. Matile, P. Eng.
Chair
Administrative Co-ordinating Group

December 1, 2008

RE: AMENDMENT TO DEVELOPMENT AGREEMENT AG 16/90 – FOUR-MILE ROAD RE PRE-PAYMENT FOR FUTURE ASPHALTIC SURFACING

Recommendation

It is recommended that Development Agreement AG 19/90 be amended by deleting Paragraph 1 in its entirety and replacing it with the following:

1. Roadway Upgrading

a) It is acknowledged that each lot purchaser paid, prior to the issuance of a Building Permit for its respective lot within the Planned Area, its share of the cost of upgrading Four Mile Road abutting its lot to RR-2 standards (i.e. asphaltic concrete surface). The payment for each lot was made at the rate applicable at the time payment was made.

It is further acknowledged that each lot purchaser has indicated its preference that Four Mile Road not be surfaced with asphaltic concrete, but remain a granular surfaced roadway.

It is agreed that each lot purchaser shall be reimbursed the difference between the cost of upgrading the granular roadway surface to an asphaltic concrete surface and the cost of oiling and gravelling the granular roadway surface in perpetuity (i.e. two-thirds of the amount paid), as follows:

Lot 1 (Address #124) 188.7' x $58.00 = $10,944.60 (Paid Aug 91) x 2/3 = $7,296.40
Lot 2 (Address #112) 178.5' x $60.00 = $10,710.00 (Paid Sep 97) x 2/3 = $7,140.00
Lot 3 (Address #100) 199.9' x $60.00 = $11,994.00 (Paid May 00) x 2/3 = $7,962.67
Lot 4 (Address # 88) 179.6' x $60.00 = $10,776.00 (Paid Aug 99) x 2/3 = $7,184.00
Lot 5 (Address # 76) 179.6' x $61.15 = $10,982.54 (Paid July 94) x 2/3 = $7,321.69
Lot 6 (Address # 64) 179.6' x $60.00 = $10,776.00 (Paid Sep 92) x 2/3 = $7,184.00
Lot 7 (Address # 58) 179.6' x $60.00 = $10,776.00 (Paid July 92) x 2/3 = $7,184.00
Lot 8 (Address # 40) 179.6' x $58.00 = $10,416.80 (Paid Aug 91) x 2/3 = $6,944.53

It is also agreed that no interest shall be payable on the amounts to be reimbursed.

b) The rate charged per foot includes the Developers' share of the cost of any gravelling and two applications of a dust palliative.

c) The Developers acknowledge that the appropriate timing for the application of any gravel and any dust palliative will be as determined by the City.

d) It is understood and agreed that the payments made constitute only payment in full for two applications of gravel and a dust palliative.

The original Paragraph 1 is shown below in italics, with the recommended replacement Paragraph 1 comprising additions in **bold** and deletions in ~~strikethrough~~):

1. Roadway Upgrading

*a) **It is acknowledged that each lot purchaser paid** ~~The Developers shall~~, prior to the issuance of a Building Permit for ~~each~~ **its respective** lot within the Planned Area, ~~pay their~~ **its** share of the cost of upgrading Four Mile Road abutting ~~that~~ **its** lot to RR-2 standards **(**i.e. asphaltic concrete surface**)**. The payment for each lot ~~shall be~~ **was** made ~~in then dollars equal to the following amounts calculated in 1991 dollars:~~ **at the rate applicable at the time payment was made.***

~~*Lot 1 188.7' x $58.00 = $10,944.60*~~
~~*Lot 2 178.5' x $58.00 = $10,353.00*~~
~~*Lot 3 199.9' x $58.00 = $11,594.20*~~
~~*Lot 4 179.6' x $58.00 = $10,416.80*~~
~~*Lot 5 179.6' x $58.00 = $10,416.80*~~
~~*Lot 6 179.6' x $58.00 = $10,416.80*~~
~~*Lot 7 179.6' x $58.00 = $10,416.80*~~
~~*Lot 8 179.6' x $58.00 = $10,416.80*~~

~~*The Developers agree that the City may file appropriate caveats in the Land Titles Office to record the Developers' covenant to pay the above amounts. Any payment required by this agreement to be made to the City in 1991 dollars shall, if paid during 1992 or later, be adjusted by the City Treasurer to the then equivalent sum in accordance with the then current Statistics Canada Cost of Living Index and paid to the City in that equivalent amount.*~~

It is further acknowledged that each lot purchaser has indicated its preference that Four Mile Road not be surfaced with asphaltic concrete, but remain a granular surfaced roadway.

It is agreed that each lot purchaser shall be reimbursed the difference between the cost of upgrading the granular roadway surface to an asphaltic concrete surface and the cost of oiling and gravelling the granular roadway surface in perpetuity (i.e. two-thirds of the amount paid), as follows:

Lot 1 (Address #124) 188.7' x $58.00 = $10,944.60 (Paid Aug 91) x 2/3 = $7,296.40
Lot 2 (Address #112) 178.5' x $60.00 = $10,710.00 (Paid Sep 97) x 2/3 = $7,140.00
Lot 3 (Address #100) 199.9' x $60.00 = $11,994.00 (Paid May 00) x 2/3 = $7,962.67
Lot 4 (Address # 88) 179.6' x $60.00 = $10,776.00 (Paid Aug 99) x 2/3 = $7,184.00
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Lot 8 (Address # 40) 179.6' x $58.00 = $10,416.80 (Paid Aug 91) x 2/3 = $6,944.53

It is also agreed that no interest shall be payable on the amounts to be reimbursed.

b) *The rate charged per foot includes ~~the Developers' share of the cost of upgrading the roadway to an asphaltic concrete surface to the satisfaction of the Commissioner of Works and Operations and~~ the Developers' share of the cost of any gravelling and two applications of a dust palliative.*

c) *The Developers acknowledge that the appropriate timing for the application of any gravel and any dust palliative ~~as well as the appropriate timing for carrying out the upgrading work together with related future works~~ will be as determined by the City.*

d) *It is understood and agreed that ~~although the current policy of the City is to replace pavements when required as an expense of the City at large, this Agreement does not constitute any commitment that such policy will be continued indefinitely and~~ the payments made constitute only payment in full for ~~the cost of initial asphalt roadway construction plus~~ two applications of gravel and a dust palliative ~~prior to such initial construction; it being the intent of this Agreement that the said payment plus interest accumulated to the date the work is carried out should approximately equal the then cost of that work but that no adjustment of that payment will be made in respect to interest or inflation rates or actual cost~~.*

Reason

Jules Gareau, on behalf of the current residents of the lots on Four-Mile Road created under DASZ 16/90, has requested the refunding of the monies pre-paid for their lots for the future asphaltic surfacing of Four-Mile Road, which they do not want. On November 5, 2008, he sent the attached facsimile transmission, signed by 100% of the purchasers of the lots created under DASZ 16/90, requesting that the City of Winnipeg initiate an amendment to Development Agreement AG 16/90.

(This submission followed his submission of a petition, signed by no one, on June 13, 2008, to the City Clerk's Department, for the asphalting of Four Mile Road, from the east limit of St. Anne's Road to the south limit of Prairie Grove Road; his appearance at the September 15, 2008 meeting of Community Committee, at which the Committee concurred in the Winnipeg Public Service recommendation that the Local Improvement project not be advertised; his September 16-18, 2008 e-mail correspondence with the Land Development Branch, asking whether interest would be included in any refund recommendation; and his filing, on September 22, 2008, of a Small Claim, in the Court

of Queen's Bench, against the City of Winnipeg, for $10,000 "plus pre-judgment interest and costs", for the refunding of the pre-payment he made for the asphalting of Four Mile Road.)

The City is not obliged to reimburse these funds. However, Public Works has indicated that there is no immediate or foreseeable requirement for the asphaltic surfacing of Four Mile Road.

Because the recommended reimbursement represents a change to the original conditions for the development of this property, the only mechanism available to Council to enable a change is an amendment to Development Agreement AG 16/90.

There is precedent for such an amendment.

Commencing in 1980, all subdivision applications to create two-acre lots in South St. Vital were treated the same: the applicants were required to make a contribution, based on the current local improvement rate (now $60 per frontage foot), toward the future surfacing of the roads with asphalt. (Four-Mile Road Development Agreement AG 16/90 was executed in 1991.)

In 1992, the residents of Christie Road, which had been developed from 1985 to 1990 under nine different Servicing Agreements, unanimously agreed that they did not want Christie Road paved with asphalt – even though the pavement had already been guaranteed or paid for. It was agreed, at that time, that monies for the perpetual maintenance of the granular surface should be retained, and Council approved an amendment to the Development Agreement to refund to the Developers the difference between the costs of asphalt pavement and gravel maintenance – without interest.

Since 1992, payment of the cost of upgrading/maintaining the gravel surface in perpetuity (currently $20 per foot), rather than surfacing with asphalt, has been a requirement of all RR-2 (2-acre) developments on existing gravel roads.

In the absence of the Developer with whom the City made the contractual obligation (we understand that Mr. Kim has passed away, and the whereabouts of his partners are unknown), given that AG 16/90 "shall be binding upon all parties hereto and their respective successors and assigns", and given that at least two of the roadway surface upgrading contributions were made directly by the current land owners (Jules Gareau and Kutz Consulting) and that the remaining contributions would have been made either directly or indirectly by the current lot purchasers, it is recommended that reimbursement be made directly to the current lot owners.

It is further recommended that, as in the case of the Christie Road reimbursement, interest NOT be added to the reimbursement, given that the account into which the funds were paid is not an interest-bearing account.

(Should Council choose to include interest in the reimbursements, the amounts owing, based on the City's overnight funding rate from the month of payment to November, 2008, compounded annually, would be as follows:

Lot 1	(#124)	2/3 x $10,944.60 (Paid Aug 91) =	$7,296.40 +	$7,730.30 =	$15,026.70
Lot 2	(#112)	2/3 x $10,710.00 (Paid Sep 97) =	$7,140.00 +	$3,645.19 =	$10,785.19
Lot 3	(#100)	2/3 x $11,994.00 (Paid May 00) =	$7,962.67 +	$2,694.18 =	$10,656.85
Lot 4	(# 88)	2/3 x $10,776.00 (Paid Aug 99) =	$7,184.00 +	$2,770.00 =	$ 9,954.00
Lot 5	(# 76)	2/3 x $10,982.54 (Paid July 94) =	$7,321.69 +	$5,617.96 =	$12,939.65
Lot 6	(# 64)	2/3 x $10,776.00 (Paid Sep 92) =	$7,184.00 +	$6,654.68 =	$13,838.68
Lot 7	(# 58)	2/3 x $10,776.00 (Paid July 92) =	$7,184.00 +	$6,769.52 =	$13,953.52
Lot 8	(# 40)	2/3 x $10,416.80 (Paid Aug 91) =	$6,944.53 +	$7,357.51 =	$14,302.04
			$58,217.29 +	$43,239.34 =	$101,456.63

Should Council choose to include interest in the reimbursements, also, anyone making such a request in the future may take the position that the City has set a precedent of paying interest.)

THIS REPORT SUBMITTED BY:

Administrative Co-ordinating Group
File No. AG 16/90
December 1, 2008

"original signed by S.M. Matile"
S. M. Matile, P. Eng., Chair
Land Development Branch

"original signed by D. Emerson"
D. Emerson, P. Eng.
Public Works Department, Transportation Division