Agenda - Council - June 24, 2009

Report - Standing Policy Committee on Property and Development - June 2, 2009

Item No. 19 Acquisition of Auto Outlet Inc's Properties at 222 Pembina Highway / Negotiated Settlement – Madidal Realty Corporation (Pembina Chrysler Dodge Jeep) - Rapid Transit Corridor Project Phase I (Fort Rouge-East Fort Garry Ward) eFile FI-2(32)

STANDING COMMITTEE RECOMMENDATION:

On June 10, 2009, 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 the acquisition of the Auto Outlet Inc.'s properties shown as "Subject Property - Auto Outlet Inc." on Misc. Plan No. 13556, at the negotiated proposed purchase price of $5.75 million, be approved in accordance with the terms and conditions as outlined in Schedule "A", to the report of the Winnipeg Public Service dated May 29, 2009.

2. That subject to the approval of Recommendation 1, the proposed negotiated settlement outlined in the report of the Winnipeg Public Service dated May 29, 2009, with the Madidal Realty Corporation (Pembina Chrysler Dodge Jeep), that includes the conveyance of the property identified in Recommendation Number 1, be approved.

3. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing, including the execution of any documents related thereto.

Report - Standing Policy Committee on Property and Development - June 2, 2009

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On June 10, 2009, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On June 2, 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.

ADMINISTRATIVE REPORT

ISSUE: **Proposed Acquisition of Auto Outlet Inc's Properties at 222 Pembina Highway / Negotiated Settlement – Madidal Realty Corporation (Pembina Chrysler Dodge Jeep) - Rapid Transit Corridor Project Phase I**

For Submission to: **Standing Policy Committee on Property and Development**

Executive Policy Committee
Council

AUTHORIZATION

Author	Department Head	CFO	CAO
Ray Klassen	Deepak Joshi	M Ruta	A Robinson, Acting CAO

RECOMMENDATIONS

1. That the proposed acquisition of the Auto Outlet Inc.'s properties shown as "Subject Property – Auto Outlet Inc." on Misc. Plan No. 13556, at the negotiated proposed purchase price of $5.75 million, be approved in accordance with the terms and conditions as outlined in Schedule "A", attached.

2. Subject to the approval of Recommendation 1, that the proposed negotiated settlement outlined herein with the Madidal Realty Corporation (Pembina Chrysler Dodge Jeep), that includes the conveyance of the property identified in Recommendation Number 1, be approved.

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

IMPLICATIONS OF THE RECOMMENDATIONS

The purchase of Auto Outlet Inc.'s properties at 222 Pembina Highway and adjacent vacant land at Pembina Highway and Warsaw Avenue represents the most feasible and economic solution to settle the Madidal Realty Corporation acquisition at 300 Pembina Highway.

Acquisition of the Auto Outlet Inc's properties for $5.75 million negates the City's potential exposure to a settlement for the Madidal Realty Corporation (Pembina Chrysler) substantially in excess of the amount proposed.

Delays in settling the Madidal Realty Corporation acquisition in a timely fashion may result in the closing of a viable full service auto dealership and the loss of approximately 70 jobs.

HISTORY

On October 22, 2008, Council considered and approved the Winnipeg Transit Department's report entitled, "Southwest Rapid Transit Corridor – Stage 1", which identified sources of funding and engineering design for the SRTC – Stage 1.

On November 19, 2008, Council considered and approved the Planning, Property and Development Department's report requesting the authorization to negotiate the acquisition of all land interests for the SRTC – Stage 1.

In its initial meeting with Madidal Realty Corporation (Pembina Chrysler), the Planning, Property and Development Department (the Department) determined that the acquisition of required lands would have an injurious impact on Pembina Chrysler's ability to continue to operate at this location.

The acquisition of the required lands would result in Pembina Chrysler violating Chrysler Canada's dealership site area regulations and its dealership agreement. Chrysler Canada advised that should an acceptable resolve not be reached it would likely revoke Pembina Chrysler's dealership agreement, resulting in the closure of the viable full service car dealership and the potential loss of approximately 70 jobs.

The Department continued to explore all possible economically feasible solutions to resolve the Pembina Chrysler matter. To assist in the Department's efforts to find an acceptable solution, the City's Chief Administrative Officer authorized the Department to negotiate with third party property owners in its attempt to determine a resolve to this matter. The Department was further instructed that should the acquisition of the third party property be required to resolve this matter, the proposed acquisition(s) would require City Council's consideration and approval.

The Department contacted property owners on the north side of Warsaw Avenue to determine their willingness to sell their properties in this regard.

The owners of 479 and 491 Warsaw Avenue advised that they may consider the sale of their properties. Further negotiations pursued which did not result in a negotiated agreement for the proposed purchase of the properties.

The Department also contacted Auto Outlet Inc. (Autotown) at 222 Pembina Highway also the owner of the adjacent vacant land fronting on Pembina Highway and Warsaw Avenue, inquiring as to the availability to acquire the vacant land portion of its property.

Autotown advised that it required the vacant land to expand its current operation and was not prepared to sell just the vacant land portion of its property; however, it would consider the sale of its site at 222 Pembina Highway and the vacant land.

Upon further discussions with Autotown, it advised that a business opportunity had recently presented itself that would enable Autotown to relocate and further expand its current operation. Autotown further advised that timing was critical in order to ensure that its opportunity is not lost. Autotown agreed to begin negotiations for the proposed acquisition of its properties. Autotown further advised that, in this context, a final decision from the City was required no later than July 1, 2009.

The Department's negotiations with Autotown has resulted in a tentative agreement to acquire the Autotown properties for the proposed all-inclusive purchase price of $5.75 million and in accordance with the terms and conditions briefly outlined in the attached Schedule "A".

Particulars of the Autotown properties are:

Location:	222 Pembina Highway
Legal Description:	Lots 25 – 32 Blk 14 Plan 208
Certificate of Title:	2276456, 2276456, 2276459, et. el.
Registered Owner:	Auto Outlet Inc.
Realty Roll No.:	12021500000
Zoning:	"C2" – Commercial
Site Size:	3,470+/- m^2 (37,347 sq, ft.)
Description:	Improved with a 7,000 sq. ft. masonry brick building currently used a used car sales and service repair business.

Vacant Lands:

Location:	280 Pembina Highway & 493 – 507 Warsaw Avenue
Legal Description:	Part Lots 7 -9, Blk 14, Plan 208 & Lots 1 – 3, Plan 1234.
Certificate of Title:	234546, 2324548, 2324547, et. el.
Registered Owner:	Auto Outlet Inc.
Realty Roll No.:	12021468000, 12021469000, 1202147000, et. el.
Zoning:	"C2" – Commercial
Site Size:	1,864+/- m^2 (20,067 sq, ft.)
Description:	280 Pembina older wood frame building to be demolished, remainder site level graded vacant land.

The proposed purchase price of the properties was determined by using the formula contained in Autotown's partnership agreement, which among other things, outlines how the business would be valued should one partner wish to buy out the other.

After considerable negotiations Autotown agreed to the sale of its properties at the all inclusive purchase price of $5.75 million.

The proposed acquisition of the Autotown properties has been presented to Pembina Chrysler as a proposed acquisition settlement, which would result in conveyance of the Autotown properties to Pembina Chrysler in exchange for the required lands and a Release and Quit Claim.

Pembina Chrysler has advised that it is prepared to accept this proposal provided that the City agrees to pay all other compensable losses and costs similar to those under the Expropriation Act of Manitoba, i.e., legal fees, consultant fees, reinstatement costs, etc. In addition, Pembina Chrysler has indicated that settlement of the matter must be dealt with expeditiously in order to minimize the impact on its operations.

In consideration of the options presented within, the Department is of the opinion that it is in the City's best interest to acquire the Autotown properties to be used for settling the Pembina Chrysler acquisition. This option is the most viable option since it significantly reduces the City's exposure to an expropriation settlement with Pembina Chrysler.

This option is considered as the most feasible approach for resolving the Pembina Chrysler acquisition settlement, since it has the least disruption on the existing business and neighbourhood; and it significantly reduces the potential costs to the City. Furthermore, the land acquisition program for the Rapid Transit Corridor Project – Phase 1 will remain within budget.

The Department and Pembina Chrysler have agreed to this proposed settlement, in principle, and are currently working towards the terms and conditions of a formal settlement agreement.

The Winnipeg Transit Department has advised that adequate funding for the proposed negotiated settlement will be available under capital project number 442-181000-420755-4230010509-PROPERTY.

FINANCIAL IMPACT

Financial Impact Statement

Date: May 15, 2009

Project Name:

First Year of Program 2009

Settlement for the Rapid Transit Corridor Project Phase I – Madidal Realty Corporation (Pembina Chrysler Dodge Jeep)

	2009	2010	2011	2012	2013
Capital					
Capital Expenditures Required	$ 5,922,500	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	5,922,500	-	-	-	-
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	$ -	$ 503,413	$ 503,413	$ 503,413	$ 503,413
Less: Incremental Revenue/Recovery	172,500	-	-	-	-
Net Cost/(Benefit)	$ (172,500)	$ 503,413	$ 503,413	$ 503,413	$ 503,413
Less: Existing Budget Amounts	(172,500)	503,413	503,413	503,413	503,413
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Capital expenditures in 2009 consist of the $5.75 million proposed purchase price, $115,000 in short-term interest charges and a corporate administration fee of $57,500. The latter two amounts are offset by an equal recovery in the current budget of the Corporate Finance Department. Direct costs from 2010 onward represent debt & finance charges on the 2009 capital expenditure and will be charged to the current budget of the Transit Department (note: in determining debt & finance charges, it is assumed the City is to fund 100% of this proposed acquisition). Municipal realty taxes have not been considered in this analysis as the amount is not material.

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

CONSULTATION

In preparing this Report there was consultation with:

No consultation was required in preparing this report.

SUBMITTED BY

Department	Planning, Property and Development
Division	Real Estate
Prepared by:	Stewart Anderson
Date:	May 29, 2009
File No.	8435

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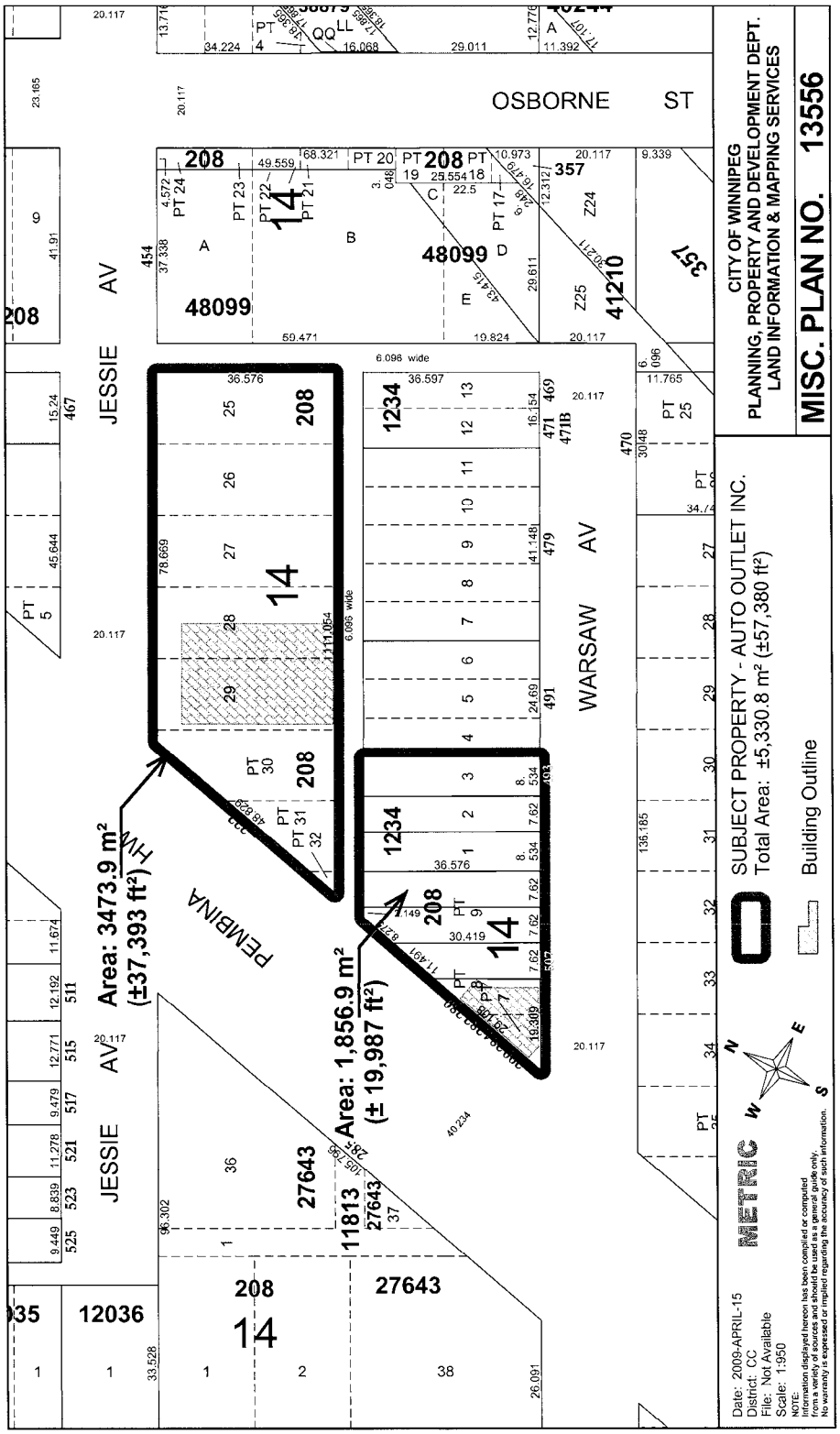

OSBORNE ST
JESSIE AV
PEMBINA HWY
WARSAW AV
Area: 3473.9 m² (±37,393 ft²)
Area: 1,856.9 m² (± 19,987 ft²)
SUBJECT PROPERTY - AUTO OUTLET INC.
Total Area: ±5,330.8 m² (±57,380 ft²)
Building Outline
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13556
METRIC
Date: 2009-APRIL-15
District: CC
File: Not Available
Scale: 1:950
NOTE:
Information displayed hereon has been compiled or computed from a variety of sources and should be used as a general guide only. No warranty is expressed or implied regarding the accuracy of such information.

SCHEDULE "A"

Proposed Terms & Conditions for the Acquisition of the Properties Owned by Auto Outlet Inc. Shown Outlined and Identified as Subject Property – Auto Outlet Inc. on Attached Misc. Plan 13556.

1. For the all inclusive purchase price of **FIVE MILLION, SEVEN HUNDRED AND FIFTY THOUSAND, ($5,750,000.00) DOLLARS** for the properties shown and identified as "Proposed Acquisition" on attached Misc. Plan 13556, (Subject Properties).

2. The proposed all inclusive purchase price to represent all costs, including but not limited to, property values, business value, appraisal fees, environmental site assessment, discharging of mortgage penalties, moving expenses, advertising, etc.

3. The purchase price does not include any portion of the operating business, i.e. inventory, name of business, clientele lists. etc.

4. The Subject Properties to be conveyed to the City free and clear of any liens, encumbrances, leasehold interests and contractual agreements, excepting any public utility easements registered against the title of the subject Properties or otherwise agreed to by the City.

5. The date of vacant possession, payment of the sale proceeds and adjustment of taxes to be 30 days or on a mutually acceptable date from the date of final approval by the city of Winnipeg Council, or its delegated authority.

6. The purchase price is to include all fixtures on the premises, including, but not limited to, electrical light fixtures, heating, plumbing and ventilation equipment and smoke detection equipment, etc.; all of which are represented by the Owners to be free and clear of encumbrances or liens and in good working order as of the date of possession. The owners agree to allow the city at its sole expense to undertake a pre-possession inspection of the fixtures or equipment to ensure they are in good working order.

7. The Owners covenant, warrant and represent to the Purchaser and it is a condition of the agreement that to the best of the Owners' knowledge:

    a) there are no outstanding orders, notices or similar requirements relating to the Subject Properties either issued by any building, environmental, fire, health, labour or police authorities or from any other federal, provincial, municipal authority and there are no matters under discussion with any such authorities relating to such orders, notices or similar requirements;

    b) no hazardous materials, wastes, pollutants or similar substances as those defined by current applicable laws and regulations and no other material intended for use or generated at the Subject Properties have been or are used, stored, treated or otherwise disposed of in violation of current applicable laws and regulations.

8. The Owners shall permit the City to at its discretion and expense, prior to the date of possession, to conduct or have conducted on its behalf an environmental assessment together with any soil testing analysis required. The Owner acknowledges and agrees that should the City determine that there are environmental concerns or contamination it may elect to cancel the proposed purchase/sale.

9. Commissions related to the sale of the Subject Properties, if any, are the sole responsibility of the Owners.

10. The City agrees to reimburse the Owners, reasonable independent reasonable legal costs related to the proposed purchase of the Subject Properties, subject to the prior review and approval of statement of accounts by the City Solicitor.

11. The Subject Properties, until possession is delivered to the City, shall remain at the risk and responsibility of the Owners. In the event of substantial damage to the Properties prior to possession being delivered, the City may elect to accept the proceeds of any insurance on the Properties and complete the purchase or alternatively, cancel the purchase.

12. The Owners agree to enter into an appropriate Purchase/Sale Agreement with the City embodying the within terms and conditions and in a form satisfactory to the City Solicitor. It is further acknowledged that said Purchase/Sale Agreement may be filed as a Caveat against the Owner's title to the Properties pending the transfer of land.

13. The Owners agree that the Subject Properties will not be conveyed, disposed of or encumbered in any manner whatsoever, except subject to this agreement.

14. That subject to Item # 17 herein, the Owners agree to consent on a Real Owner Application form to add the City of Winnipeg as the Real Owner of the Subject Properties on the Assessment Rolls of the City of Winnipeg.

15. The Owners agree to declare whether or not they are a "Registrant" for the purposes of the Goods and Services Tax and if so to provide their G.S.T. Registration number on request.

16. The City (Goods and Services Tax Registrant No. R121682967) will self-assess any tax payable on the acquisition of the Subject Properties.

17. This proposal is subject to the City of Winnipeg Council or its delegated authority approving the expropriation settlement with Madidal Realty Corp., owners of the property commonly know as 300 Pembina Highway, of which the Subject Property shall be a part thereof, by no later then July 1, 2009.

18. This proposal is further subject to final approval by the City of Winnipeg Council, or its delegated authority.

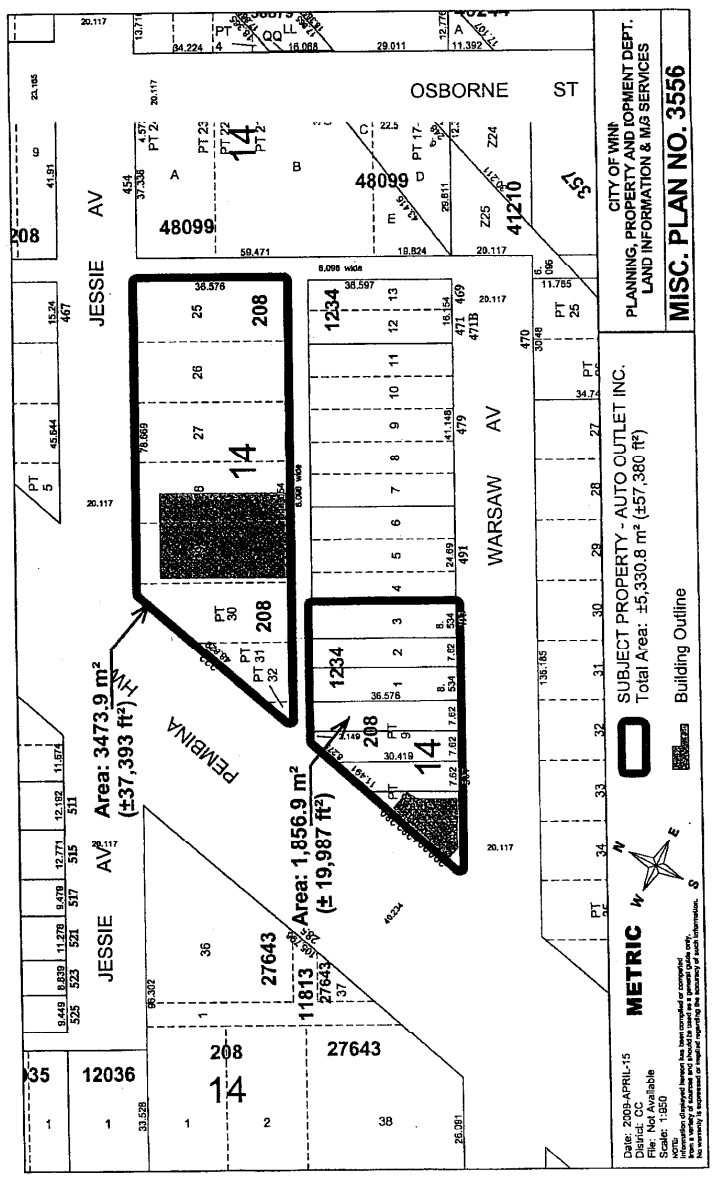
We, **Chris Dyck & Evan Titchtosky,** being duly authorized to act on behalf of Auto Outlet Inc., the registered owner of the Subject Properties, hereby agree to the sale of the Subject Properties to the City of Winnipeg in accordance with the purchase price and terms and conditions outlined herein.

_____ _____

Evan Titchkosky **Date**

_____ _____

Chris Dyck **Date**


CITY OF WINN
PLANNING, PROPERTY AND DEPT.
LAND INFORMATION & M/S SERVICES
MISC. PLAN NO. 3556
SUBJECT PROPERTY - AUTO OUTLET INC.
Total Area: ±5,330.8 m² (±57,380 ft²)
Building Outline
METRIC
Date: 2009-APRIL-15
District: CC
File: Not Available
Scale: 1:850
OSBORNE ST
JESSIE AV
WARSAW AV
PEMBINA HWY
Area: 3473.9 m²
(±37,393 ft²)
Area: 1,856.9 m²
(± 19,987 ft²)
48099
41210
27643
11813
12036
208
14
1234