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Dear Councillors and Members of EPC

RE: Draft Zoning By Law Amendments.

Last week the Property and Development Committee recommended a proposed by-law to require that a Zoning Memorandum, be obtained by the purchaser, on all property sales and land transfers in the City of Winnipeg at a cost of a $180 fee for application, based on a current $500 site survey (average cost factor). This proposed by-law is being reviewed by the Executive Policy Committee on Feb 17 and is before council on Feb. 24.

The background report on this proposal indicates that this has become necessary since "The introduction of title insurance to Manitoba in the late 1980's and the willingness of mortgagees to rely on title insurance as an alternative to zoning memorandums, resulted in a significant decline in the practice of obtaining zoning memorandums over the last 20 years, to the point where in 2007 and 2008, less than 30% of these transactions resulted in a zoning memorandum being issued."

Title Insurance is now an important and valuable part of the property conveyancing, real estate and mortgage lending industry. Title insurance protects new and existing homeowners, as well as lenders, against losses as a result of title defects. It provides protection against issues such as real estate title fraud or forgery, unpaid liens, encroachment issues, construction liens, defects in title, and costs arising from building code violations. It also allows property transactions to close in as little as one day.* A zoning memorandum merely confirms the site placement of structures and their relationship to existing property lines.

Leadership of the City of Winnipeg is trusting the argument that since it was common practice 20 years ago, for home purchasers to wait for survey and zoning and pay for verified zoning memorandums in order to secure mortgages on their property, it will again be tolerated by the public as an acceptable user fee. No study has been completed on how this antiquated procedure will delay the closing of property transactions for at best 2 weeks, and likely for an average of four to six weeks during high volume spring, summer and fall property transaction seasons.

On February 16, the city leaders will release its 2010 budget for public review. This is the budget civic leaders will carry into the fall election, with the main cornerstone being no increase in civic property taxes. There appears to be great pressure by the current leadership to see this revenue generating by-law passed ASAP, even with its existing faults, to enhance a balanced budget for this campaign year, on the back of the currently active real-estate market.

Consider these arguments on how the currently drafted by-law is flawed. If it is enacted as is, it will cause a great deal of disruption and confusion in the spring and summer real-estate market, creating very tangible grievances, that Winnipeg property owners will become very vocal about very quickly.

- We understand what the City of Winnipeg is trying to do. We spend everyday trying to educate homeowners, business owners, corporations and governments how important it is to protect property title.

- From our perspective, whenever public officials consider these kinds of changes especially where the changes are going to add directly to the cost of homeownership, it makes sense that those most affected – in this case homeowners – be consulted. It sounds like people feel that this has not happened in Winnipeg.

- The costs proposed by the new by-law are in the range $600-$700. Our customers in Winnipeg pay less than half to be covered against the issues the city is trying to address. Isn't that the purpose of consumer protection, to provide the best possible protection to the consumer for the most reasonable price, and in an efficient and timely manner?

- If this by-law passes, consumer choice will be diminished. How is a solution that adds more cost to the consumer with less protection better than a one-time fee with protection against issues like unpaid liens, defects in title, real estate fraud, and costs arising from pre-existing building code violations make sense? Over 12,000 real estate transactions are expected to take place this year alone.

- In comparison to adjacent communities with lower tax rates, this by-law will make Winnipeg homeownership so regulated and expensive for comparable properties, that the city will continue to loose it's citizens, and new construction investment, to surrounding communities that see the benefit to new family homeownership free from property registration fee based charges and encumbrances which may even affect the market value of Winnipeg properties overall.

- The proposed by-law cannot help but affect the manner in which a real estate transaction can close. Rather than creating an efficient cost effective method of closing a transaction, the city has added a level of complexity unique in Manitoba. This will result in additional time and effort being expended by legal professionals in order to obtain and verify the documents required in a timely manner. If it remains as is, financial institutions may also be forced to delay or refuse to advance mortgage proceeds in a timely manner. Such delays or difficulties only adds needless expense to the property transaction, without any corresponding increase in value or benefit to the participants.

- Land transfers from parents to children or other family members are not exempted from this by-law. What does a city zoning memorandum contribute to this type of transaction? With the increased cost of homes for first time buyers some parents have invested in their children's first home purchase, and should not be penalized with irrelevant fees to later transfer the property within the family.

- 12% of last years MLS listings were condos. Condo buyers are not exempted from having to register a property survey to obtain a zoning memorandum, unless there is a shared exit.

- Zoning memorandums are only valid for one year, and can only be renewed with a re-certified survey. The timing of a purchase and sale may result in a doubling of fees in such a short time period.

- Property buyers may need to obtain variances, at their own expense on any pre-existing items revealed thru the zoning survey, that the city was not aware of previously, in order to gain a valid zoning memorandum, costs and closing delays will necessary create increased financial outlays in these cases. In the example in the draft by-law package such an occurrence would have been covered by title insurance.

- If property buyers fail to obtain a zoning memorandum within 60days of ownership, they will be subject to a $150 penalty fee for each day they remain in non-compliance.

- In a marketplace where a growing number of citizens are electing to sell a property privately, no provisions have been made for public education on how these new property by-law requirements will effect a real estate transaction.

- No mechanism is in place to address how the sudden increase in demand for property surveys in the Winnipeg market will not result in delays of surveys in the coming construction season, and increased fees for surveyors, to complete the work. The number of employees hired to date seems to be based on a lower volume time period. The busy season could double or even triple the volume as the economy continues to recover.

- Buyers who are purchasing a newly constructed home in the city will still have to register a zoning memorandum, showing zoning compliance, even though the developers would have had the construction reviewed and approved by the City Planning, Property and Development Office.

- It is unclear what legal authority the municipality has to pass a by-law which is attempting to affect the transfer of titles.

- And finally, the affect on employment clearly has not been fully considered. In Winnipeg there are approximately 100 people providing related services whose jobs will be diminished or even lost.

*As you may or may not be aware several major companies including First Canadian Title, Stewart Title, Chicago Title, and TitlePlus offer title insurance in Canada. For a **one-time premium** as little as $200, a title insurance policy stays in effect for as long as the insured retains an interest in the property. This is real tangible consumer protection that has existed for over the past decade in the Winnipeg market.

In closing, we are seeking your support in this matter to ensure that all options for consumers are reviewed and considered. I look forward to further discussion with you on this matter.

Yours truly,

TUPPER & ADAMS

Per:
James Fielder