Agenda - Council – February 24, 2010

Report - Standing Policy Committee on Property and Development – February 2, 2010

Item No. 9 Zoning Memorandum By-law
eFile EZ-DAZ

On February 17, 2010, Executive Policy Committee laid the matter over to its meeting on March 17, 2010, to enable the Winnipeg Public Service to undertake additional stakeholder consultation, and to report back on the legal implications of requiring vendors to have a current Zoning Memorandum prior to offering a property for sale.

Report - Standing Policy Committee on Property and Development – February 2, 2010

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On February 17, 2010, Executive Policy Committee laid the matter over to its meeting on March 17, 2010, to enable the Winnipeg Public Service to undertake additional stakeholder consultation, and to report back on the legal implications of requiring vendors to have a current Zoning Memorandum prior to offering a property for sale.

Further on February 17, 2010, the Executive Policy Committee received a communication dated February 12, 2010, from James Fielder, Solicitor, in opposition to the proposed Zoning Memorandum By-law.

STANDING COMMITTEE RECOMMENDATION:

On February 2, 2010, the Standing Policy Committee on Property and Development concurred in the recommendation of the Winnipeg Public Service with the following amendment:

- Amend Recommendation 5. by deleting the date “March 29” and replacing it with “June 7.”

and forwarded the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

ISSUE: **To enact a By-Law to require that purchasers of residential property apply to obtain a Zoning Memorandum.**

Critical Path: **Standing Policy Committee on Property and Development – Executive Policy Committee - Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
J. Saj	D. Joshi	M Ruta	G Laubenstein

RECOMMENDATIONS

1. That a By-law (Appendix A - draft attached) be enacted to require that purchasers of residential properties apply for a Zoning Memorandum within 60 days of the date of registration of the certificate of title in the Winnipeg Land Titles Office unless the vendor has obtained one within the previous 12 months of that date. (Inter-spousal transfers would be exempt from this requirement.)

2. That the By-law also requires that owners of newly built residential dwellings obtain a Zoning Memorandum before the dwelling is occupied.

3. That the Planning, Development and Building Fees By-Law 77/2009 be amended to establish a fee of $180.00 for a Zoning Memorandum for existing housing and a fee of $100.00 for new homes.

4. That the Zoning Memorandum should include a statement of the property's compliance with the relevant Zoning By-Law based upon a review of a Building Location Certificate (BLC) issued within the previous twelve months.

5. That this By-law should take effect on March 29, 2010.

6. That annual funding in the amount of $301,000 for 5 additional staff and associated costs to operate the Residential Zoning Memorandum Program be approved as a condition of implementation.

7. That this program be reviewed and a report be presented to the Standing Policy Committee on Property and Development within 18 months of the program implementation.

8. That the proper officers of the City of Winnipeg do all things necessary to implement the foregoing.

IMPLICATIONS OF THE RECOMMENDATIONS

Consultation

There has been consultation and input with the Winnipeg Real Estate Board, Manitoba Land Surveyors, Manitoba Home Builders' Association, and the Manitoba Bar Association on this proposal. All parties have indicated their support for the recommendations contained within this report.

Regulatory

With the exception of inter-spousal transfers, purchasers of residential property as defined by the By-law will be required to apply for a Zoning Memorandum within 60 days of the date of registration of certificate of title with the Winnipeg Land Titles Office unless a zoning memorandum has been issued for that property within the previous 12 months. All owners of newly built residential property as defined by the By-law will be required to obtain a Zoning Memorandum before the dwelling is occupied.

By ensuring that regular surveys are conducted of properties in the City, the program will help ensure that the City meets its responsibility to maintain and restore the survey infrastructure. This program will also assist the City in enforcing zoning by-laws, and will thereby enhance the City's ability to ensure that development is carried out in an orderly and safe manner consistent with building and zoning by-laws and policies adopted by Council that are intended to protect and enhance the integrity of the City's residential neighbourhoods.

The program will provide a greater incentive for residential property owners to obtain the required permits and approvals prior to undertaking new construction since owners who do not obtain the permits risk that construction will be located inappropriately on the property and that a zoning memorandum will reveal it's non-compliance to a prospective purchaser.

Benefits of Requiring Residential Zoning Memorandums

- Improve the City's ability to ensure that development is carried out in an orderly and safe manner, consistent with zoning by-laws and policies by allowing the City to identify and deal with points of non-compliance with the City's zoning and building by-laws;
- Inform purchasers of actual violations of the zoning by-law that they will be responsible for after their purchase;
- Inform purchasers of construction that may have taken place without approvals;
- Ensure the City's survey infrastructure is maintained through more frequent surveys.

Since prospective purchasers of residential property will be informed of actual or possible violations of by-laws through the zoning memorandum process, homeowners will have more of an incentive to obtain permits and comply with by-laws prior to conducting renovation projects and selling their houses.

Human Resource

Implementation of the program is contingent upon the addition of 4 CUPE positions at levels similar to CUPE Technician 2 classification, and 1 CUPE Clerk B.

Other resources will be reassigned or temporarily hired until a program review will clarify which additional, if any, permanent resources will be required.

Financial

An additional current budget amount estimated to be $ 301,000 for new positions that includes salaries, benefits and overhead is required. (A requirement for additional resources may be identified when a review of the program is carried out within 18 months of its implementation.) Increased fees resulting from the Residential Zoning Memorandum program will cover the costs associated with new staff positions and will also provide additional revenue to enhance existing permit and inspections services.

Due to an increase in survey activity, there will be more requests from land surveyors to restore missing survey monuments. Assuming that 5% of the time, survey monuments will be missing, the approximate cost for restoring them would be $425,000. Under provincial legislation, the City is responsible for these costs; however, the Province currently supports the restoration of survey monuments by reimbursing the City 50% of the replacement costs. Presently, the Province has $180,000 budgeted for this purpose and a review is needed with the Province in order to continue funding for their share of the costs.

HISTORY

Zoning By-law Compliance

The City of Winnipeg currently provides zoning memorandums upon request, typically to solicitors acting for purchasers of residential properties. A zoning memorandum is an analysis of a Building Location Certificate (BLC), provided by a land surveyor, to determine whether the location of all structures on a property are in compliance with the applicable zoning by-law.

Although zoning memorandums are not mandatory, prior to the mid-1980's, virtually all residential real estate transactions for the re-sale of property resulted in an application for a zoning memorandum. This was due to the fact that mortgagees invariably insisted on a zoning memorandum as a condition of the mortgage. The result was that zoning violations were identified by the City and corrected routinely, whenever property was purchased.

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. (See Appendix B)

Impact of declining applications for Zoning Memorandums

Diminished ability to ensure orderly and safe development

Without the information provided by BLC's, thousands of residential transactions over the past two decades have not been reviewed by the City for compliance with its zoning by-laws. The declining use of zoning memorandums has significantly diminished the City's ability to ensure that development is carried out in an orderly and safe manner that is consistent with zoning by-laws and policies adopted by Council that are intended to protect and enhance the integrity of the City's residential neighbourhoods.

Zoning memorandums also contribute to the identification of major construction such as new additions, decks or accessory structures that might have occurred on property without building permits by comparing the BLC to past permit records. While enforcement of the building codes through permits and inspections has the important effect of protecting homeowners from unscrupulous contractors and damage to their property, its fundamental purpose is to serve the public interest by ensuring that the life, health and safety of residents and visitors are properly protected in residential premises. Any issues or risks associated with the construction are passed onto prospective purchasers often without their knowledge. (See Appendix C for recent examples.)

Deterioration of Winnipeg's survey infrastructure

The decline in zoning memorandums has also negatively impacted the survey infrastructure in the City. Unless a purchaser requests a zoning memorandum, there is no reason to engage a surveyor to provide a BLC. Consequently, there are significantly fewer surveys now conducted within the City of Winnipeg than 20 years ago, resulting in the gradual deterioration of the condition of survey monuments which are the foundation of the survey infrastructure.

The survey infrastructure forms the basis for the quiet possession of land currently enjoyed by the citizens of Winnipeg. All real estate transactions, property holdings, easements, and other interests in land associated with real property, geographical information systems and our entire street right-of-way network is based on this infrastructure. Loss of monumentation (the precise physical positioning of the survey posts) will result in uncertainty in the definition of property boundaries.

There are approximately 55,000 outline survey monuments in the City of Winnipeg. The cost of replacing one survey monument currently ranges from $600 to $1,000. Consequently, the survey infrastructure is a valuable asset, worth $33 to $55 million. The longer the survey infrastructure goes unused, which is increasingly the case as fewer BLC's are commissioned, the more extensive the deterioration becomes and the more complicated it is to determine where the property boundaries are.

If deterioration is extensive, the land surveyor cannot reasonably ascertain where the property limits are, and a Special Survey is then required to rectify the problem. Special Surveys are costly due to the amount of effort required to properly determine the location of the boundary lines. The Surveys Act provides that the local municipality can be required to pay the costs of

remedying the loss or dislocation of survey monuments. If a Special Survey is required for a large area, the costs to City taxpayers could be significant.

If the current trend of fewer zoning memorandums being issued continues, the result will be a deterioration of Winnipeg's survey fabric, which will eventually result in costs to property owners resulting from property disputes and litigation and to City taxpayers for restoration of the survey fabric.

Zoning Memorandum Application Process

Applications for a zoning memorandum would be submitted by the property owner, or authorized agent, to the City's Zoning and Permits Branch as they are currently. The Public Service would commit to the issuance of a zoning memorandum within 5 working days of the receipt of a completed application in order to facilitate the timely completion of real estate transactions. BLC's up to one year old will be accepted as will updates to older BLC's that are re-certified by a land surveyor also within one year.

It is expected that the market will require that the vendor obtain a zoning memorandum prior to selling the house; however, if the vendor does not do so, the purchaser must submit an application within 60 days subsequent to the date of transfer of property ownership in the Winnipeg Land Titles Office, or one year prior thereto. Discussions with the Winnipeg Real Estate Board have suggested that realtors will adjust their practices to ensure that zoning memorandums are required through conditions of purchase offers and that vendors will be advised to acquire them prior to listing of the property or very early in the sales process.

Once the application has been processed, a zoning memorandum would be issued to the applicant, identifying any outstanding un-resolved issues of non-compliance with applicable by-laws and regulations. If there are specific items of non-compliance, information would be provided to the applicant outlining those items along with instructions for filing the appropriate applications, such as a variance, to bring the property into compliance.

Owners of residential properties that do not have a zoning memorandum application within the time frames set out, would first be sent a notice outlining the new requirements and be granted an additional 60 days to file an application. Should the application not be filed within that time limit, fines and penalties would be applied and further enforcement action may be necessary as outlined in the attached proposed by-law; however a six month "grace period" will occur during the first year of the program to facilitate the transition process.

The proposed fees of $100.00 for new residential construction and $180.00 for existing homes are based upon an estimate of the average time and resources required to review and issue a Zoning Memorandum within five days and represent the Department's commitment toward full cost recovery for services provided. A comparison of the proposed fees to other Cities for a similar service is provided in Appendix D.

FINANCIAL IMPACT

Financial Impact Statement **Date:** January 5, 2010

Project Name: **First Year of Program** **2010**

Residential Zoning Memorandums

	2010	2011	2012	2013	2014
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	$ 225,750	$ 307,020	$ 313,160	$ -	$ -
Less: Incremental Revenue/Recovery	1,125,000	1,530,000	1,560,600	-	-
Net Cost/(Benefit)	$ (899,250)	$ (1,222,980)	$ (1,247,440)	$ -	$ -
Less: Existing Budget Amounts	(100,000)	(100,000)	(100,000)	-	-
Net Budget Adjustment Required	$ (799,250)	$ (1,122,980)	$ (1,147,440)	$ -	$ -

Additional Comments: Direct costs in 2010 represent the estimated $301,000 in staff costs prorated for the March 29 effective date while for 2011 and 2012, the amounts reflect the full $301,000 inflated by 2% annually. Revenues in 2010 are based on estimated new home sales of 1,500 and existing home sales of 7,500 and the $100 and $180 proposed rates respectively. The amount has been prorated for the March 29 implementation date. Revenues in 2011 and 2012 represent the $1.5 million estimate inflated by 2% annually.

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

CONSULTATION

In preparing this Report there was consultation with:

Internal Consultation

Legal Services

External Consultation

Winnipeg Real Estate Board
Manitoba Land Surveyors
Manitoba Bar Association
Manitoba Home Builders' Association

SUBMITTED BY

Department	Planning, Property and Development
Division	Development and Inspections
Prepared by	Martin Grady
Date:	January 7, 2010
File No.	O:\Reports Directive\Development and Inspections\Zoning and Permits\Admin REPORT Zoning Memorandums Nov 09.doc

Appendix A: Proposed Residential Zoning Memorandum By-Law

THE CITY OF WINNIPEG

BY-LAW NO.

A By-law of THE CITY OF WINNIPEG to require that purchasers of residential properties obtain zoning memorandums.

THE CITY OF WINNIPEG, in Council assembled, enacts as follows:

Short title

1 This By-law may be cited as the Zoning Memorandum By-law.

Definitions

2 In this By-law

"building location certificate" means a document certified by a Manitoba Land Surveyor that includes a sketch showing the dimensions of the land and the location of any buildings and other structures on the property together with a written report outlining the details of the property.

"designated employee" means an employee of the City of Winnipeg who has been authorized by the Director to enforce or administer all or part of this By-law;

"Director" means the Director of Planning, Property and Development for the City of Winnipeg or designate;

"Manitoba Land Surveyor" means an individual who has received a commission to practise as a surveyor of lands and is registered under *The Land Surveyors Act*;

"owner", in relation to real property, means a person who is the owner of a freehold estate in the real property, and includes

(a) a person who is an owner, with another person as joint tenant or tenant in common, of a freehold estate; and

(b) a real owner, as defined in subsection 1(1) of *The Municipal Assessment Act*;

"property" means a "lot, zoning" as defined by the Winnipeg Zoning By-law and the Downtown Winnipeg Zoning By-law;

"residential property" means property that contains

(a) a single-family dwelling;

(b) a two-family dwelling; or

(c) a multi-family dwelling without shared exit facilities;

"zoning memorandum" means a document issued by the Director that contains a statement about whether the size and location of the buildings and other structures on a residential property, as shown on a building location certificate submitted as part of an application, constitute a contravention of the Winnipeg Zoning By-law or the Downtown Winnipeg Zoning By-law.

Obligation on purchaser to obtain zoning memorandum

3(1) Subject to this By-law, the owner of residential property or the owner's agent must submit an application for a zoning memorandum within 60 days after the registration of the transfer of title to the property at the Winnipeg Land Titles Office.

3(2) Subsection (1) does not apply if a zoning memorandum has been issued in respect of that residential property within one year prior to the registration of the transfer of title at the Winnipeg Land Titles Office.

3(3) The owner of a newly-constructed single family dwelling, two-family dwelling or multiple family dwelling must submit an application for a zoning memorandum before the dwelling is occupied.

Application for zoning memorandum

4(1) Subject to subsection (2), an application for a zoning memorandum consists of:

(a) a completed application form which provides the street address of the residential property and other information reasonably required to prepare and issue a zoning memorandum;

(b) a building location certificate certified no more than one year prior to the application; and

(c) payment of an application fee in an amount set out in the Planning, Development and Building Fees By-law No. 77/2009.

4(2) An application for a zoning memorandum in respect of a newly-constructed single family, two family or multiple family dwelling on a residential property consists of:

(a) a completed application form which provides the street address and other information reasonably required to prepare and issue a zoning memorandum;

(b) a building location certificate certified after the shell of every building on the property has been constructed; and

(c) payment of an application fee in the amount set out in the Planning, Development and Building Fees By-law No. 77/2009.

Exemption for inter-spousal transfers
5(1) In this section

"common-law relationship" means the relationship between two adults who, not being married to each other, are cohabiting with each other in a conjugal relationship;

"inter-spousal transfer" means the transfer of title of real property during the spousal relationship or as part of a settlement resulting from the termination of the relationship

(a) from one spouse to the other spouse;

(b) from one spouse to the two spouses as joint tenants or tenants in common; or

(c) from the two spouses as joint tenants or tenants in common to one spouse;

"spousal relationship" means the relationship of two adults who are married to one another or are in a common law relationship;

"spouse" means an adult who is married to or in a common law relationship with another spouse.

5(2) Subsection 3(1) does not apply to an inter-spousal transfer if the person or persons to whom subsection 3(1) applies files with a designated employee a statutory declaration declaring under oath that

(a) he or she is a spouse within the meaning of this section; and

(b) the transfer of real property is an inter-spousal transfer within the meaning of this section.

Owner must apply for zoning memorandum
6(1) No person other than an owner of the residential property for which a zoning memorandum is sought or another person with the consent of the owner may apply for a zoning memorandum in respect of that property.

6(2) The owner of residential property or another person with the consent of the owner may apply for a zoning memorandum at any time.

Issuance of zoning memorandum
7 A designated employee must issue a zoning memorandum upon receipt of a complete application.

Monetary penalty for non-compliance
8(1) Subject to this section, a monetary penalty in the amount of $150.00 is hereby imposed on the owner of residential property who contravenes subsection 3(1) by failing to apply for a

zoning memorandum within 60 days after a transfer of title in respect of the property has been registered at the Winnipeg Land Titles Office.

8(2) Subject to this section, a monetary penalty in the amount of $75.00 is hereby imposed on the owner of residential property who contravenes subsection 3(3) by failing to apply for a zoning memorandum within 60 days after a final inspection of a newly-constructed dwelling on the property has taken place.

8(3) Subsections (1) and (2) do not apply to owners of residential properties if

(a) a transfer of title in respect of the property has been registered at the Winnipeg Land Titles Office between March 29, 2010 and October 30, 2010; or

(b) a final inspection of a newly-constructed building on the property has taken place between March 29, 2010 and October 30, 2010.

8(4) A monetary penalty in the amount of $150.00 is hereby imposed on the owner of residential property who does not apply for a zoning memorandum within 120 days after the registration of the transfer of title in respect of the property at the Winnipeg Land Titles Office if the registration has taken place between March 29, 2010 and October 30, 2010.

8(5) A monetary penalty in the amount of $75.00 is hereby imposed on the owner of residential property who does not apply for a zoning memorandum within 120 days after a final inspection of a newly-constructed dwelling has taken place on the property if the inspection has taken place between March 29, 2010 and October 30, 2010.

Director's power to waive monetary penalty

9 The Director is hereby authorized to waive all or part of a monetary penalty imposed by section 10 where the Director is satisfied that the applicant acted reasonably in the circumstances.

Penalties for contravention of By-law

10(1) A person who contravenes section 3 but who applies for a zoning memorandum within 90 days after a transfer of title has been registered at the Winnipeg Land Titles office is guilty of an offence and is punishable upon summary conviction by a fine in the amount of $150.00.

10(2) A person who contravenes section 3 and who fails to apply for a zoning memorandum within 90 days after a transfer of title has been registered at the Winnipeg Land Titles office is guilty of an offence and is punishable upon summary conviction by a fine in the amount of $500.00.

10(3) A person is guilty of an offence under this By-law for each day that the person is in contravention of this By-law.

10(4) A person who executes a false declaration under subsection 5(2) is guilty of an offence and is punishable upon summary conviction by a fine in the amount of no less than $5000.00.

Voluntary payment of penalties
11(1) A person to whom subsection 10(1) applies may pay $100.00 plus applicable court costs to the Provincial Judges Court prior to the date for appearance before a justice set out in the offence notice alleging the contravention and thereafter will not be prosecuted for the offence.

11(2) A person to whom subsection 10(2) applies may pay $300.00 plus applicable court costs to the Provincial Judges Court prior to the date for appearance before a justice set out in the offence notice alleging the contravention and thereafter will not be prosecuted for the offence.

Consequential amendment to Planning, Development and Building Fees By-law
12 Section 69 of the Planning, Development and Building Fees By-law is repealed and the following is substituted:

> ***Zoning memorandum for residential properties***
> *69 The following fee is imposed for an application required under the Zoning Memorandum By-law*
>
> | | | |
> |---|---|---|
> | *(a)* | *for a residential property containing an existing building* | *$180.00* |
> | *(b)* | *for a residential property containing a newly-constructed building* | *$100.00* |

Effective date
13 This By-law comes into force on March 29, 2010.

DONE AND PASSED, this day of , 2009.

_____
Mayor

_____
City Clerk

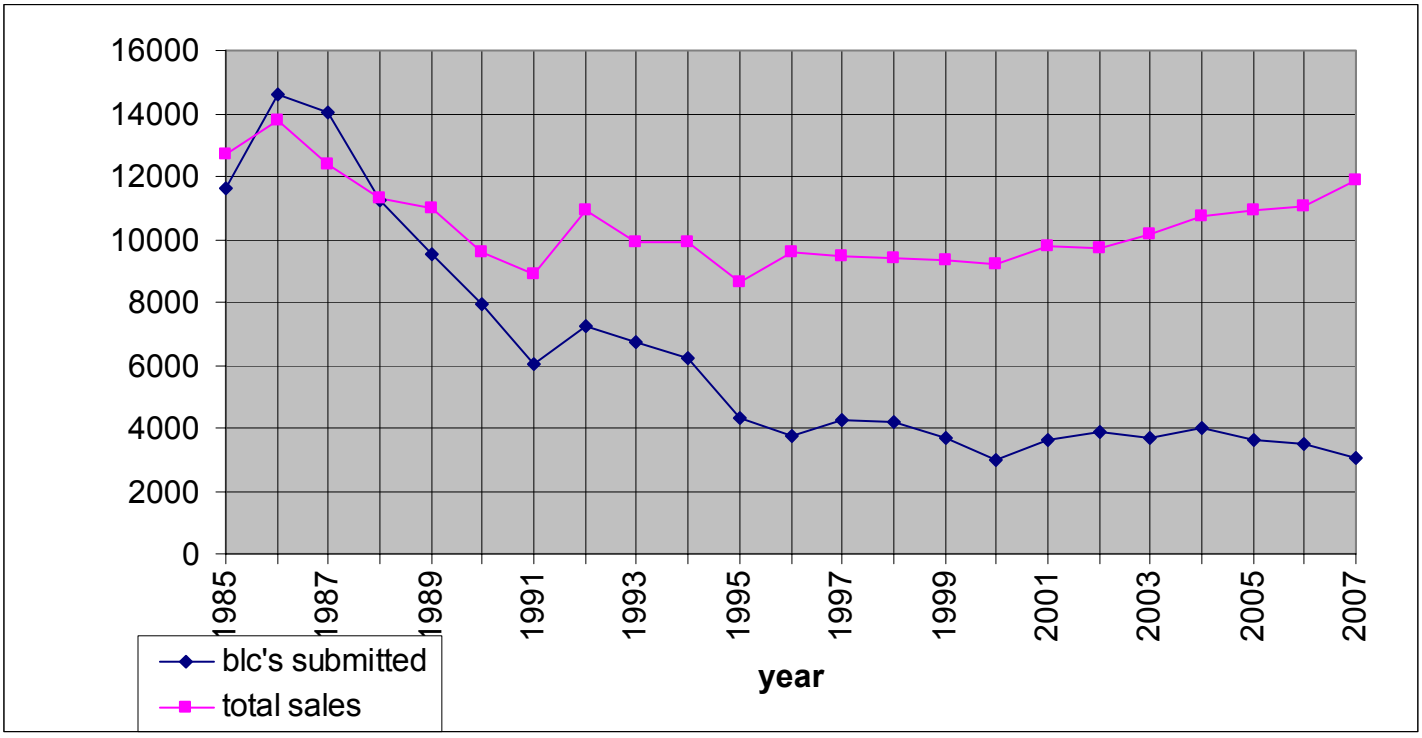
Approved as to content:

_____
Director of Planning, Property and Development

Approved as to form:

_____
For Acting City Solicitor/Manager of
Legal Services

Appendix B: The Declining Use of Zoning Memorandums



Appendix C: Issues Resulting from the Declining Use of Zoning Memorandums

The following is a recent example of the impact that property transactions can have on a purchaser that is unaware of construction that was done without proper permits and approvals:

> The owner of an existing single family home decides to improve his property and put on a major addition, including a sunroom. Due to what he perceives as considerable cost savings, he contracts a "handyman" rather than an experienced contractor. He also proceeds to do the work without City permits and inspection services as he is persuaded by the contractor that these represent a needless expense, will result in delays and allow the City to raise the property's assessment and taxes.
>
> Soon after the project is complete, the owner is transferred out of the City and sells the property to a young couple. The addition and sunroom were major selling features. However, the immediate neighbour does not like the look or the position of the sunroom as the rear corner comes right up to his fence. He calls the City to complain and an inspector attends the property and issues an Order requiring the owner to obtain the required permits and zoning approvals. The new owners claim they didn't know the addition was build without City approvals and therefore should not be held accountable for the activities of the previous owner. They are advised that, as the owners, they are responsible.
>
> Frustrated, the new owners now apply for the permits but are advised they need "as built drawings" under an engineer's seal. They hire an engineer who reports the structure is substantially non compliant with the Building Code and structurally unsound. Repairs will cost more that the initial estimates the previous owner received from more reputable contractors. In addition the sunroom does not comply with the Zoning By-Law requirements for minimum setbacks from the neighbour's property line and an application for a variance of these rule is likely to be unsuccessful.
>
> They have no choice but to remove the sunroom and initiate repairs to bring the addition into compliance with the building code. The want to sue the previous owner and the contractor but this is too costly and complicated.

This same scenario is often repeated for other types of construction projects including decks, accessory buildings, garages and pools. Although many of these issues are eventually resolved without the need for removal or repair, there is always significant costs, frustration and delays in obtaining the necessary permits and zoning approvals that become the responsibility of the new owner.

Appendix D: Proposed Zoning Memorandum Fee Comparison

Proposed Fees for a Zoning Memorandum:

New Home - $100.00
Existing Home - $ 180.00

Zoning Memorandum Fees in Other Cities

Brampton	$100.00
Calgary	$186.00
Edmonton	$400.00
Hamilton	$150.00
Kitchener	$150.00
Mississauga	$150.00
Ottawa	$200.00
Toronto	$175.00