FULHAM & ASSOCIATES
Barristers & Solicitors

March 15, 2010

His Worship Mayor Sam Katz
City of Winnipeg
City Hall
Council Building
510 Main Street,
Winnipeg, MB. R3B 1B9

Dear Mayor Katz;

Re: Proposed City of Winnipeg Zoning Memorandum By Law

As you are undoubtedly aware, the Executive Policy Committee of the City of Winnipeg City Council will be meeting on March 17, 2010 to discuss, among other things, a proposed by law to require Zoning Memorandums, based upon current building location certificates.

We are certainly supportive of the city's efforts to replace survey monuments and are equally supportive of the city's efforts and programs designed to find new sources of income. However, we will be making presentation to the Committee in opposition to the by law. We are of the view the proposed by law is far beyond what is required and will impose costs on the citizens of Winnipeg far in excess of what is required to replace survey monuments and far in excess of the actual Zoning Memorandum fee.

We are pleased to enclosed for your review our submission and Executive Summary which will be presented to the Executive Policy Committee on March 17, 2010.

We would welcome any comments or questions you may have.

Yours truly,

Jeff J. Plantje

JJP/

Encl.

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Submission to the Executive Policy Committee of the City of Winnipeg In Opposition to the Proposed Zoning Memorandum By Law March 17, 2010

Executive Summary

The goals of replacing survey monuments, strengthening the survey fabric of the city and generating income for the City of Winnipeg are laudable, however, we feel the proposed by law is dramatically impractical and over reaching.

The following is a summary of the concerns to be presented to the Executive Policy Committee on March 17, 2010:

1. Insufficient quantity of Manitoba Land Surveyors to complete the required work in a timely manner resulting in extensive delays.
2. Insufficient quantity of City of Winnipeg support staff to process the enormous increase in Zoning Memorandum requests.
3. Increased interest expenses for purchasers of homes.
4. Increased interest expenses for vendors of homes who will have to obtain bridge financing for longer periods of time as they wait for the proceeds of their sale.
5. Increased cost to Winnipeg home buyers of an estimated $3.6 million dollars (based upon 2009 residential home sales numbers).
6. Suppression of consumer choice as title insurance may no longer be a viable option.
7. Imposition of expensive and, often, unnecessary remediation expenses the parties to a sale may not be able to afford.
8. "Cash grab" of over $1 million annually from the program.
9. Inaccuracies within the Administrative Report with regard to the statements about consulting the local stakeholders. The Bar Association and local real estate board were neither consulted nor approved of the proposed by law.

We hope that in discussion of this issue with your Council colleagues you will consider the foregoing and act in the best interest of Winnipeg homeowners, the Winnipeg real estate industry and, ultimately, the City of Winnipeg itself by taking the steps necessary to ensure this by law does not come to pass.

Respectfully submitted,

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Good Morning Your Worship, Councillors, Ladies and Gentlemen;

My name is Jeff Plantje.

I am a real estate lawyer. I have been practicing for almost 11 years. The vast majority of my experience is with residential and commercial real estate. I appear today to discuss the proposed new zoning memorandum by law and provide my views as a real estate industry member.

I am here this morning to talk about two subjects near and dear to all of us: time and money. Two things there never seem to be enough of. The proposed Zoning Memorandum By Law is going to cost all involved plenty of both.

The proposed Zoning Memorandum By Law will require purchasers of residential real estate to obtain a new zoning memorandum based upon a new building location certificate. Further, the fee for the new Zoning Memorandum will be $180.00 as opposed to the $56.00 currently charged for a Zoning Memorandum. It will be the same certificate. It will say the same thing as the existing Zoning Memorandums say. Yet, it will cost $124.00 more.

There are 8 points of concern I wish to touch upon.

There is a widespread concern that it may not be possible to physically achieve the purposes of the proposed by law given the quantity of qualified Land Surveyors in Manitoba. I am certainly not questioning the drive and hard work of the men and women of the Association of Manitoba Land Surveyors. We have a survey and title system in this province that is the envy of many other jurisdictions around the world. Land Surveyors are the only people permitted by law to provide an expert opinion on property boundaries. Years of training are required. It is not a shortage we can address quickly.

In Manitoba there are 52 members of the Association of Manitoba Land Surveyors.
Of that number 17 work in the public sector for organizations such as Manitoba Hydro, the Province of Manitoba, the Federal Government and 4 of them work for the City of Winnipeg.

That leaves 35 people. Of that remaining 35, 8 members are with firms in Brandon, Dauphin, Steinbach and Estevan, Saskatchewan. This brings the number of qualified land surveyors available down to 23 in the Winnipeg area.

In 2009 there were 7,266 homes sold in Winnipeg through the Winnipeg Real Estate Board members. Based upon 2009 numbers that amounts to 315 surveys per surveyor. There are only 240 working days in the years.

The preceding is also predicated on the absurd presumption that each and every one of the available surveyors dedicated themselves to working only on residential real estate surveys and stopped performing geomatic services, geographic information services, topographic services, commercial property services, mining services and the myriad of other work performed by Manitoba Land Surveyors.

It is inconceivable that despite the professionalism and hard work of Manitoba's land surveyors that they can provide the Building Location Certificates, which would be mandatory, in any sort of timely manner.

The wait time for a Building Location Certificate will, without hyperbole, be a period of months. Transactions will take months, not days or weeks to complete.

Interest expenses for purchasers will rise.

Vendors will be waiting far longer for their proceeds than they currently wait. If they need the proceeds of their sale to complete their next purchase they will be forced to pay interest on bridge financing, again, for months rather than days.

The proposed By Law will produce difficulties for residential mortgage lenders as well. If the possession date for a home sale is set for July 1, the lender will have to commit to having the money available for that date. Due to uncertainty as to the length of time required to obtain a BLC and Zoning Memorandum, the money may sit, awaiting release, for months. That's money the lender could effectively utilize elsewhere in the interim.

There is an axiom in the financial services industry that, essentially, says "capital hates uncertainty". There will be delays in funding with a combination of lawyers refusing to release monies or lenders refusing to advance them, until a Zoning Memorandum issues. Uncertainty and lengthy holdbacks further delay closing and drive up clients costs. Or in the alternative lawyers, lenders and others end up having to work for free and employers and bankers frown on that.

Presuming an average cost of $450.00 plus taxes, for a building location certificate, again based upon 2009 home sales of 7,266, that's an additional $3.6 million dollars which will have to be paid by Winnipeg consumers.

To suggest that consumers will only be paying an additional $180 is completely misleading. The ripple effects of the proposed by law are numerous and expensive.

The Administrative Report on the proposed by law, authored by Inspections Manager Julian Saj, advises that the current cost to the City of Winnipeg to replace missing survey monuments is approximately $212,500.00. This number is based upon an annual cost of $425,000.00 which is currently shared with the Province of Manitoba.

The Administrative Report goes on to indicate anticipated net revenues from the program of approximately $900,000.00 in the first year of operation and $1.2M in each subsequent year.

These numbers beg the question: What is the proposed use of the extra money? If $212,500.00 is used to replace missing survey monuments what is the planned use for the extra $1M which will be available in 2011 and 2012? The suggestion the proposed by law is a "cash grab" seems to be borne out in these numbers. It's certainly no secret the City of Winnipeg needs additional revenues. It bears enormous costs annually, often without adequate assistance from the other levels of government. That doesn't justify indirect taxation.

The proposed by law eliminates the ability of a Realtor to quickly close a transaction which limits their ability to market a property which may result in lost sales. Additionally, in the scenario of a vendor being transferred by their employer, they may have very little time to market their home. The inability to obtain the required BLC and Zoning Memorandum in a timely manner will prevent them being able to complete a sale and acquire a new home in their new city. One of the many

attractive features of Winnipeg is its affordable, vibrant housing market. The housing market is, by many accounts, the driving force behind the current economic recovery in Canada. It is the only market segment the Bank of Canada considered cooling off. The proposed by law will make it more attractive for potential home purchasers to consider other jurisdictions that do not impose burdens of this sort. Headingley, East and West St. Paul, Rosser, MacDonald, St. Clements and the other municipalities which adjoin the city will become just that much more attractive to home buyers and property developers.

Consumers are losing choice. Currently a purchaser can choose to obtain a Building Location Certificate and Zoning Memorandum or opt for title insurance, or even obtain both. Title insurance protects consumers against defects in title, fraud, forgery, and zoning non-compliance issues.

One of the claims made in support of the By Law is that it will help to eliminate unsafe or non-compliant structures. It won't. It will simply identify them. The challenge then becomes remedying the problem. If a problem with zoning arises and the purchaser is title insured the title insurance company will pay the costs associated with remedying the problem, something the purchaser may not be able to afford to do on their own. The protection afforded by title insurance can pay to remedy many of the problems identified in the Administrative Report. Costs the consumer often couldn't bear on their own.

If the proposed by law is permitted there will be little incentive for title insurance companies to continue to market their products in Winnipeg as the consumers looking to obtain title insurance will likely be the ones that could not obtain a clear Zoning Memorandum. To use an analogy; there's no sense insuring a burning building.

I do not speak on behalf of the title insurance industry and I have no vested interest in it. I do however have a tremendous interest in helping my clients achieve prompt, secure, worry free purchases and sales. Title insurance products help us do just that.

Four inspectors and one support staff person is insufficient. If we use the numbers in the Administrative Report it is suggested that four additional inspectors and one additional administrative support person can cope with producing 8,000 more Zoning Memorandum annually. That's 33 a day. 4 and half Zoning Memos per hour. Less than 15 minutes to examine a Building Location Certificate, compare the property to the Zoning By Laws and make a determination as to whether or not the property is legally compliant. A pace of that nature doesn't promote confidence in the accuracy of the work to be performed. That doesn't protect Winnipeg consumers.

My final concern is with respect to the methodology employed in presenting the proposed By Law to the public. Realtors and the Manitoba Bar were NOT consulted despite claims to the contrary by the City spokespeople. I certainly do not purport to speak for the Manitoba Bar Association however I can say that I was present at meeting of the Real Property Subsection of the Manitoba Bar Association, on February 10, 2010 and it quickly became abundantly clear the association had not been consulted prior to the release of the proposed by law. The statements in the Administrative Report and the local media that the Manitoba bar had been consulted and approved of the proposed by law are flat out inaccurate.

I am advised by colleagues on the Board of Directors of the Winnipeg Real Estate Board that they too were not consulted and did not approve of the proposed by law.

It is disconcerting, to say the least, that the members of the Standing Committee on Property and Development, this Committee and the local media were lead to believe that two important stake holder groups were involved with, and approved of, the proposed by law when that is simply not accurate.

In closing, I wish to simply remind the Committee that the true cost of the by law will not be simply $180 for a Zoning Memorandum. It will be millions of dollars in fees, interest costs, and expenses all of which must be borne by the consumers of Winnipeg. Additionally, enormous quantities of time will be wasted. Waiting for over burdened surveyors, waiting for inspectors, waiting for the Zoning memorandum to issue. Anyone that remembers the residential real estate transactions of the 1990's will recall delays, uncertainty and frustration. To take the city back to those times would be a mistake. The citizens of Winnipeg don't have the time for that and they don't want to spend their hard earned money on it.

Thank you and good morning.