Tupper & Adams

BARRISTERS & SOLICITORS

Main Office::
201 – 90 Garry Street
Winnipeg, MB
R3C 4H1

Please address your reply to:
130 Scott Street
Winnipeg, Manitoba
R3L 0K8

Telephone: (204) 940-1300
Fax: (204) 940-1302

Please Reply to: James Fielder
File Number:

March 17, 2010

Dear Councilors and Members of EPC

RE: Revised Draft Zoning By Law Amendments.

Last month, 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 publication, based on a current $500 site survey. .

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."

The intent of this communication is to highlight some key areas of consideration related to this matter.

- City Administration has suggested that implementation of the City of Winnipeg Zoning Memorandum bylaw will provide greater consumer protection. This protection can be argued as neither protection nor prevention since issues can still arise and there is no means for consumers to resolve the issues without being out of pocket in some form.
- City Administration also indicated that they had contacted stakeholders who had an interest in the bylaw for their input yet we are aware that not all stakeholders have been contacted. In particular the Province of Manitoba has not been contacted or consulted (confirmed as of March 16, 2010)
- The form of Offer to Purchase is one that has been approved provincially. We are unclear as to how the City can overlay a new form of application that may not be supported **in law**, especially where the result seems to be taxation of a real estate transaction, or the absolute prohibition of a sale without the certificate having been obtained. This is far beyond the scope of the City's by-law power and the Province must be consulted
- We have learned that the primary reason the City Administration's is rushing the bylaw is to promote the hiring of local Land Survey graduates currently attending

the Red River Community College. We are concerned that the City of Winnipeg's policy to rush a bylaw into existence to promote one industry or profession against the interest of another industry or profession and in the end, it is the consumer that bears the cost in the absence of consumer choice.

- The City Administration has redrafted the by-law to place the requirement on the vendor, but if you accept the fact that you are trying to restrict the sale of a property by placing monetary penalties (see sec. 8(1) of the proposed by-law, sec 8(2) of the proposed by-law and fines sec 9(1) of the proposed by-law and sec 9(2) of the proposed by-law, as well as placing monetary penalties for the filing of a false affidavit (again the City must explore the ability to levy a fine for the filing of a false statement which is criminal in nature and which again is out of the jurisdiction of the City)
- City Administration has provided a varying cost perspective on the impact of this bylaw. In one instance they indicate there will be five new positions created. Then they say they will move staff from other areas to process the applications during the summer period. They have yet to provide answers as to where staff are to be moved from, and if they plan to move the staffing from the permit area, what result will that have on an already backlogged and overloaded system that the Mayor promised would be streamlined and made more efficient so that taxpayers are not subject to delays of 4 – 6 weeks for building permits. City Administration has yet to provide adequate review of the delays that other areas may face in the permit and zoning departments and based on the short building season and the probable increase in delays it is no wonder that taxpayers fail to get building permits for renovations as they cannot obtain them in a timely manner. We are concerned that the introduction of a further level of complexity in the real estate transaction is being pursued when existing deficiencies are being overlooked.

Risk Implication of bylaw

- Consider that there is no exemption for non-arm's length transactions (i.e. a parent giving property to child, although transmissions to an estate are exempt the transfer to the beneficiaries are not, therefore creating a type of Succession Duty for the City of Winnipeg)
- Even though the homeowner may have followed all the rules, and behaved as a responsible member of the community from start to finish, paid the increase tax assessment levelled on the property for these improvements, no credit is given under this bylaw for following the rules and in fact the total approach of this by-law is to create a breach of law situation.
- Now consider how easy it still will be for a disreputable person to flip a property for profit under this bylaw. Such matter has not been addressed and leaves us again with a problem, where is the consumer protection.

Some final points of consideration are as follows:

- The taxpayers of Winnipeg have been well served by the introduction of title insurance. Title insurance policies have corrected various types of title defects over the years. If the City wishes to introduce consumer protection then allow the consumer to choose the level of protection they wish to obtain.
- The City Administration's attempt to bring properties into compliance should not fall on the backs of the taxpayers who are selling properties. This is not an appropriate solution when we could explore the matter further to create a fair, equitable and consumer friendly method by which this can be accomplished. It is

imperative that the City Administration not rush this matter just so that Surveyors can hire people for the real estate season.

- The Law Reform Commission examined the issue of the degradation of the survey fabric and it was determined that the introduction of title insurance has not caused this to occur. In fact the Law Reform Commission went on to say that the survey fabric is not a responsibility of vendors and purchasers but is a responsibility of the society as a whole to maintain the infrastructure.
- Many stakeholders in this matter have not supported the City Administration's report and many others were not even consulted. It appears that several stakeholders have written to the Mayor to express concerns about this new bylaw and its potential to impact real estate transactions in a negative manner. Rather than creating another hurried and ill considered project like the recent garbage collection in North West Winnipeg, isn't it the responsibility of you as our elected representatives to look at these matters not only from a revenue generating point of view, but from the standpoint of whether or not the bylaw is a solution that is in the best interest of your constituents, is cost effective and efficient
- Finally let us consider the issue of the current notice given by the Registrar-General of Manitoba, currently this notice states "Personal Information which you provide is being collected under the authority of The Real Property Act and The Registry Act for the purpose of registering interests in land. Information in this registry system is also disclosed to municipalities for updating records of ownership for the purpose of forwarding property tax assessment notices. PERSONAL INFORMATION IS PROTECTED BY THE FREEDOM OF INFORMATION AND THE PROTECTION OF PRIVACY ACT." (emphasis is mine)
- The City currently receives information by way of a bulk or volume download, which is specifically prohibited by The Freedom of Information and Protection of Privacy Act (see sec 17 of the Act). Such download is currently done pursuant to an agreement but unless the agreement allows the City to access the information for other purposes then I submit you will have to have provincial approval or risk an investigation by the Ombudsman and if found to be in contravention of the Act the City would be subject to not only penalties under the Act but a class action suit on behalf of all parties who obtained the Building Location Certificate and Zoning Memorandum pursuant to the information so disclosed.

Again this is not the time to rush this by-law to completion, if this is to be a workable situation we must make it work according to law, not according to whim

Respectfully submitted

James Fielder