Minute No. 268
Report – Standing Policy Committee on Property and Development – February 2, 2010

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

COUNCIL DECISION:

Council concurred in the recommendation of the Executive Policy Committee and adopted the following:

1. That the matter of the proposed Zoning Memorandum By-law be filed.

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

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

DECISION MAKING HISTORY:

Moved by Councillor Steeves,

That the recommendation of the Executive Policy Committee, that the item be filed, be adopted.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On March 17, 2010, the Executive Policy Committee did not concur in the recommendation of the Standing Policy Committee on Property and Development and submitted the following to Council.

1. That the matter of the proposed Zoning Memorandum By-law be filed.

Further on March 17, 2010, the Executive Policy Committee received submissions from the following:

- Lorne Weiss, President – Elect, Manitoba Real Estate Association
- Don Cook, Chairperson of Civic and Legislative Affairs, Winnipeg Realtors
- James Fielder, Solicitor

On February 17, 2010, the 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 from James Fielder, Solicitor, a communication dated February 12, 2010, 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 and recommended to the Executive Policy Committee and Council:

1. That the draft By-law identified as Appendix A to the report of the Winnipeg Public Service dated January 7, 2010, be enacted, to require 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.)

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

DECISION MAKING HISTORY (continued):

STANDING COMMITTEE RECOMMENDATION (continued):

2. That the By-law also require 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 No. 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 the Zoning Memorandum By-law should take effect on June 7, 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 be authorized to do all things necessary to implement the intent of the foregoing.

ADMINISTRATIVE REPORT

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

Critical Path: **Executive Policy Committee - Council**

AUTHORIZATION

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

RECOMMENDATIONS

1. That the draft By-law, attached hereto as Appendix A , be enacted to require that owners of single family and two family residential properties obtain a Zoning Memorandum prior to the transfer of their property being registered at the Winnipeg Land Titles Office and that owners of newly built residential dwellings obtain a Zoning Memorandum before the dwelling is occupied.

2. 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, a fee of $100.00 for a Zoning Memorandum for new homes and a fee of $100.00 for a re-certified Zoning Memorandum.

3. That the Zoning Memorandum include a statement of the property's compliance with the relevant Zoning By-Law based upon a review of a Building Location Certificate issued or re-certified within the previous twelve months.

4. That older Building Location Certificates and older Zoning Memorandums be permitted if no changes have been made to the property.

5. That exception be made for inter-spousal transfers and transfers that are technical in nature.

6. That this By-law take effect on February 21, 2011.

7. That annual funding in the amount of $332,000 for 5 additional staff and associated costs to operate the Residential Zoning Memorandum Program be approved as a condition of implementation.

8. 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.

9. That the Proper Officers of the City of Winnipeg do all things necessary to implement the foregoing.

IMPLICATIONS OF THE RECOMMENDATIONS

The bylaw will place the principal obligation to obtain a Zoning Memorandum on the vendor of a property, who will face a monetary penalty of $500 and a minimum fine of $2000 for failure to comply. Every attempt will be undertaken to locate and pursue legal action against the vendor to achieve compliance. However from a legal perspective, only the owner of the property can be held responsible for compliance. As such, a lesser obligation will also be imposed on a purchaser to ensure that the vendor has obtained a zoning memorandum before the transfer. Purchasers are also able to pay a lower fine through an early payment option. Finally, the Director is authorized to waive all or part of the monetary penalties if the purchaser or vendor acted reasonably and imposing the penalty would be unfair.

For the benefit of property owners who have not made changes to their property since a Building Location Certificate (BLC) or Zoning Memorandum was last issued, BLCs as old as the March 1, 2008 enactment date of the Zoning By-Law or five years (whichever is more recent) will be acceptable provided the owner signs a Statutory Declaration confirming that there have been no changes to buildings or structures on the property. Submitting a false Statutory Declaration is punishable by a minimum $5000 fine. In addition, a reduced cost option will be available for property owners with older Zoning Memoranda who swear a Statutory Declaration that they have not made changes to their property since the Zoning Memorandum was issued.

The enactment date of the proposed By-law has been deferred to February 21, 2011 to provide an opportunity for stakeholders to educate, prepare for, and make necessary process changes to accommodate the new requirements. This will also allow for continued stakeholder communication and involvement in the implementation of the Zoning Memorandum program.

HISTORY

At its meeting of February 17, 2010, the Executive Policy Committee considered Item No. 9 of the Report of the Standing Policy Committee on Property and Development dated February 2, 2010 and directed the Public Service to:

1. Undertake additional stakeholder consultation; and
2. Report back on the legal implication of requiring vendors to have a current Zoning Memorandum prior to offering a property for sale.

The Public Service has held five meetings with various industry stakeholders and has consulted with the Legal Services Division of the Corporate Support Services Department with respect to

requiring vendors to obtain a zoning memorandum. These consultations have resulted in the following amendments to the By-law proposed by the Report considered by the Executive Policy Committee on February 17, 2010:

1. Clarification that a Zoning Memorandum will not be required for multi-family houses and that the By-law only applies to single-family or two-family residences.

2. Expansion of the circumstances in which Building Location Certificates (BLC) will be accepted. The following BLCs will now be accepted:
    - BLCs that have been issued or re-certified by a surveyor within one year of the date of the request for a zoning memorandum; or
    - BLCs that are older than 1 year AND are dated after March 1, 2008 or within the past 5 years (whichever is more recent), AND is accompanied by the submission of a sworn Statutory Declaration by the owner verifying there have been no changes to the buildings or structures on the site AND is supported by evidence available to the City.
    - For properties with a newly-constructed home, a BLC must have been issued after the shell of the building has been erected.

3. The By-law now places the primary onus on the vendor to obtain a zoning memorandum prior to transferring the property. Every attempt will be undertaken to locate and pursue legal action against the vendor to achieve compliance. However from a legal perspective, only the owner of the property can be held responsible for compliance. As such, a lesser obligation will also be imposed on a purchaser to ensure that the vendor has obtained a zoning memorandum before the transfer. The purchaser will also be required to ensure that the vendor gets a zoning memorandum before possession. The fines and monetary penalty for the vendor will be significantly higher than for the purchaser. In addition, the purchaser can avoid the monetary penalty by applying for a zoning memorandum within 60 days of taking possession of a property.

4. Exemptions to the requirement to obtain a zoning memorandum have been expanded to include:
    - inheritance from one spouse to another;
    - transfers to give effect to a change of name;
    - transfers to change the form of tenure from tenancy in common to joint tenancy or to fractional interests or from joint tenancy to tenancy in common or to fractional interests;
    - for the purpose of facilitating a scheme of subdivision where the transfer is from the registered owners to a trustee, or from a trustee back to the registered owners, and the owners' proportion of beneficial ownership in the land is unchanged after each transfer;
    - transfers that are necessary to correct errors;
    - transfers as part of the distribution of the property of a corporation upon dissolution or winding up and the transferee is a corporation which immediately prior to the dissolution or winding up of another corporation held all of the issued shares of that other corporation;

5. Concerns were raised about the June 7th enactment date of the bylaw being insufficient to allow for communication and education of stakeholder members. To address this concern the implementation date of the bylaw has been moved to February 21, 2011.

In all other respects, the proposed By-law is substantively the same as the one proposed in Item 9 of the Report of the Standing Policy Committee on Property and Development dated February 9, 2010.

FINANCIAL IMPACT

Financial Impact Statement **Date:** March 11, 2010

Project Name: **First Year of Program** **2011**

Residential Zoning Memorandums

	2011	2012	2013	2014	2015
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	$ 276,667	$ 338,640	$ 345,413	$ -	$ -
Less: Incremental Revenue/Recovery	1,250,000	1,530,000	1,560,600	-	-
Net Cost/(Benefit)	$ (973,333)	$ (1,191,360)	$ (1,215,187)	$ -	$ -
Less: Existing Budget Amounts	(125,000)	(125,000)	(125,000)	-	-
Net Budget Adjustment Required	$ (848,333)	$ (1,066,360)	$ (1,090,187)	$ -	$ -

Additional Comments: Direct costs in 2011 represent the estimated $332,000 in staff costs prorated for the February 21 effective date while for 2012 and 2013, the amounts reflect the full $332,000 inflated by 2% annually. Revenues in 2011 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 February 21 implementation date. Revenues in 2012 and 2013 represent the $1.5 million estimate inflated by 2% annually. Although the budget adjustment is positive with respect to the residential zoning memo, these amounts are included in the cost recovery plans of the Development Applications, Building Permits & Inspections Service.

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

CONSULTATION

In preparing this Report there was consultation with:

Internal Consultation

Legal Services Department

External Consultation

Winnipeg Realtors
Manitoba Land Surveyors
Law Society of Manitoba
Manitoba Home Builders Association

SUBMITTED BY

Department	Planning, Property and Development
Division	Development and Inspections
Prepared by	Martin Grady
Date:	March 11, 2010
File No.	O:\Reports Directive\Development and Inspections\Zoning and Permits\Admin REPORT Zoning Memorandums March 2010 (ver 4).doc

THE CITY OF WINNIPEG

BY-LAW NO.

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

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 or re-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*;

"newly-constructed dwelling" means a single family or two family dwelling that has never before been occupied but does not include an addition to an existing dwelling or an existing building that has been renovated for use as a single family or two family dwelling;

"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; or

(b) a two-family dwelling;

"transfer" includes a direction in a Real Property Application, deed, grant from the Crown or other instrument, whereby any land is granted, assigned, conveyed, or otherwise transferred but does not include a transmission, request, mortgage or caveat;

"valid building location certificate" means a building location certificate that meets the standards set out in section 5;

"zoning memorandum" means a document issued by a designated employee 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 to obtain zoning memorandum

3(1) Subject to this By-law, the owner of a residential property must not transfer the property unless, within one year prior to the date the transfer is registered at the Winnipeg Land Titles Office, a zoning memorandum has been issued or re-issued with respect to the property.

3(2) Subject to this By-law, except in the case of a newly-constructed single family or two family dwelling on a residential property, the purchaser of a residential property must not take possession of the property unless, within one year prior to the date the transfer is registered at the Winnipeg Land Titles Office, a zoning memorandum has been issued or re-issued with respect to the property.

3(3) The owner of a residential property must not occupy or allow to be occupied a newly-constructed single family, or two family dwelling on the property unless a zoning memorandum has been issued or re-issued with respect to the property.

Application for zoning memorandum

4(1) A complete application for a zoning memorandum consists of:

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

(b) a valid building location certificate; 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) A complete application for a zoning memorandum to be re-issued consists of the items set out in subsection (1) and

(a) a zoning memorandum that was issued since March 1, 2008 or five years prior to an application for a zoning memorandum, whichever is the most recent; and

(ii) a Statutory Declaration in a form acceptable to the designated employee, sworn by the owner of the property, declaring that no change that is governed by the applicable zoning by-law has been made to the property since the zoning memorandum was issued or last re-issued.

Building location certificate

5(1) A building location certificate in respect of a newly-constructed single family or two family dwelling is valid if it has been certified by a Manitoba land surveyor after the shell of every building on the property has been constructed.

5(2) A building location certificate other than in respect of a newly-constructed single family or two family dwelling is valid

(a) if it has been certified or re-certified by a Manitoba land surveyor within one year prior to an application for a zoning memorandum; or

(b) if

(i) it has been certified or re-certified by a Manitoba land surveyor since March 1, 2008 or five years prior to an application for a zoning memorandum, whichever is the most recent; and

(ii) it is accompanied by a Statutory Declaration in a form acceptable to the designated employee, sworn by the owner of the property, declaring that no change that is governed by the applicable zoning by-law has been made to the property since the building location certificate was certified or last re-certified.

5(3) For greater certainty, for the purposes of subsection (2), a building location certificate has been re-certified if it has been signed by a Manitoba land surveyor certifying that he or she has verified that no change to the property that is governed by the applicable zoning by-law has been made to the property since the building location certificate was certified or last re-certified. A building location certificate may be re-certified more than once.

Issuance of zoning memorandum

6(1) A designated employee must issue a zoning memorandum if

(a) the applicant submits a complete application, and;

(b) in the case of a building location certificate that falls under clause 5(2)(b), there is no evidence sufficient to persuade the designated employee that the Statutory Declaration is inaccurate.

6(2) A designated employee must re-issue a zoning memorandum if

(a) the applicant submits a complete application for a zoning memorandum to be re-issued; and

(b) there is no evidence sufficient to persuade the designated employee that the Statutory Declaration is inaccurate.

6(3) If the designated employee cannot issue or re-issue a zoning memorandum because there is evidence sufficient to persuade the designated employee that the Statutory Declaration is inaccurate, the designated employee must issue a zoning memorandum if the applicant submits a complete application for a zoning memorandum, including a building location certificate that meets the requirements of clause 5(2)(a) and the applicable fee for the new application.

Exemptions

7(1) In this section

"common-law partner" of a person means another person who, not being married to the person, is cohabiting with him or her in a conjugal relationship and

(a) has so cohabited with the person for a continuous period of at least one year, or

(b) is the parent of a child of the person,

and, for the purpose of clause (a), persons who have been cohabiting with each other in a conjugal relationship are deemed to continue to cohabit in that relationship throughout any period of separation unless it is a period of at least 90 days throughout which they were not cohabiting because of a breakdown of their conjugal relationship;

"former spouse" of a person means another person who was a spouse of the person and is no longer a spouse of the person;

"fractional interest in land" means a legal interest, an equitable interest or a beneficial interest in land that is a part, share, portion or fraction of a whole legal, equitable or beneficial interest in the land;

"inter-spousal transfer" means the transfer of title of residential property

(a) by a person, or by the executor or administrator of a person's estate, to the person's spouse or former spouse;

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

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

"spouse" of a person means another person who is married to or is a common-law partner of that person.

7(2) Subject to subsection (3), section 3 does not apply in the case of a transfer of residential property

(a) that is an inter-spousal transfer;

(b) if the transferor and the transferee are the same person or persons and the sole purpose of the transfer is

(i) to give effect to a change of name; or

(ii) to change the form of tenure from tenancy in common to joint tenancy or to fractional interests or from joint tenancy to tenancy in common or to fractional interests;

(c) for the purpose of facilitating a scheme of subdivision where the transfer is from the registered owners to a trustee, or from a trustee back to the registered owners, and the owners' proportion of beneficial ownership in the land is unchanged after each transfer;

(d) made to correct an error in a previous transfer; or

(e) as part of the distribution of the property of a corporation upon dissolution or winding up and the transferee is a corporation which immediately prior to the dissolution or winding up of another corporation held all of the issued shares of that other corporation;

7(3) The exemptions in subsection (2) are not applicable unless a person to whom section 3 applies provides to a designated employee a sworn Statutory Declaration in a form acceptable to the designated employee that the transfer to which section 3 would otherwise apply falls within one of the categories set out in subsection (2).

Monetary penalty for non-compliance

8(1) Subject to this section, a monetary penalty in the amount of $500.00 that is in addition to a fine is hereby imposed on the owner of residential property who contravenes subsection 3(1).

8(2) Subject to this section, a monetary penalty in the amount of $150.00 that is in addition to a fine is hereby imposed on the purchaser of residential property who contravenes subsection 3(2).

8(3) Subject to this section, a monetary penalty in the amount of $75.00 that is in addition to a fine is hereby imposed on the owner of residential property who contravenes subsection 3(3).

8(4) The monetary penalties imposed by subsections (2) and (3) do not apply if the person against whom they are imposed applies for a zoning memorandum within 60 days of taking possession of a property or occupying a dwelling, as the case may be.

8(5) The Director is authorized to waive all or part of a monetary penalty imposed by this section if the Director is satisfied that the person against whom the monetary penalty is imposed acted reasonably and applying the monetary penalty would be unfair in the circumstances.

Fines for contravention of By-law
9(1) The owner of a residential property who contravenes subsection 3(1) is guilty of an offence and is punishable upon summary conviction by a fine in the amount of no less than $2000.00.

9(2) The purchaser of a residential property who contravenes subsection 3(2) is guilty of an offence and is punishable upon summary conviction by a fine in the amount of no less than $500.00.

9(3) The owner of a property who contravenes subsection 3(3) is guilty of an offence and is punishable upon summary conviction by a fine in the amount of no less than $500.00.

9(4) A person who executes a false Statutory Declaration under this By-law is guilty of an offence and is punishable upon summary conviction by a fine in the amount of no less than $5,000.00.

Voluntary payment of penalties
10 A person to whom subsection 9(2) or 9(3) applies may pay $200.00 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
11 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 zoning memorandum for a residential property containing an existing building $180.00*
>
> *(b) for a re-issued zoning memorandum for a residential property containing an existing building $100.00*
>
> *(c) for a zoning memorandum for a residential property containing a newly-constructed building $100.00*

Effective date
12 This By-law comes into force on February 21, 2011.

DONE AND PASSED, this day of , 2010.

_____
Mayor

_____
City Clerk

Approved as to content:

_____
Director of Planning, Property
and Development

Approved as to form:

_____
For City Solicitor/Manager of
Legal Services

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 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

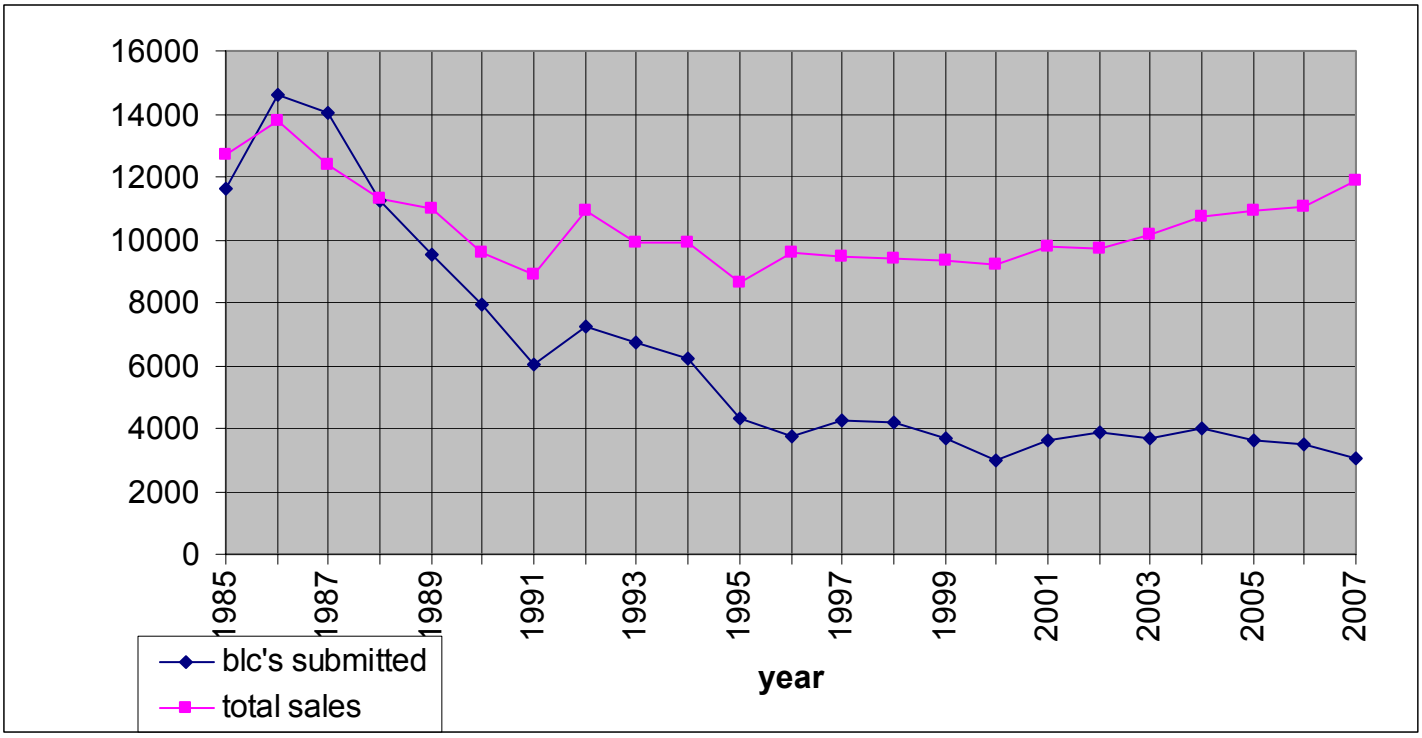
Approved as to content:

_____
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