Agenda - Council – May 19, 2010

Report - Standing Policy Committee on Property and Development – May 4, 2010

Item No. 12 Exchange of Lands with the Owners of 21 Iroquois Bay for City Land forming part of the Windsor Park Golf Course within the Macaw Park Development
(St. Boniface Ward)
eFile FI-2.4.4.1

STANDING COMMITTEE RECOMMENDATION:

On May 12, 2010, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submits the following to Council:

1. That the portion of City park lands adjacent to 21 Iroquois Bay, as outlined on Misc. Plan No. 13385/4 as Area A, be declared surplus to the City's requirements.

2. That approval be given for the exchange of the City-owned lands, shown outlined on Misc. Plan No. 13385/5 as "Area A" for lands owned by the owners of 21 Iroquois Bay, as shown in broken outlined as "Area B", in accordance with the terms and conditions of the Land Exchange Agreement contained in the Winnipeg Public Service report dated March 29, 2010.

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

Pursuant to Section 205(2) of The City of Winnipeg Charter, disposal of land owned or acquired by the City for park or cemetery purposes requires approval by two-thirds of all Members of Council.

Report - Standing Policy Committee on Property and Development – May 4, 2010

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 12, 2010, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On May 4, 2010, the Standing Policy Committee on Property and Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

ISSUE: **To Obtain Council Approval for a Proposed Exchange of Lands with the Owners of 21 Iroquois Bay for City Land forming part of the Windsor Park Golf Course within the Macaw Park Development**

For Submission to: **Standing Policy Committee on Property and Development Executive Policy Committee Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
R. Klassen	D. Joshi	N/A	P. Sheegl Deputy CAO

RECOMMENDATIONS

1. That Council declare the portion of City park lands adjacent to 21 Iroquois Bay, as outlined on the attached Misc. Plan No. 13385/4 as Area A, surplus to the City's requirements.

2. That subject to the approval of Recommendation No. 1, approval be given for the exchange of the City-owned lands, shown outlined on Misc. Plan No. 13385/5 as "Area A" for lands owned by the owners of 21 Iroquois Bay, as shown in broken outlined as "Area B", in accordance with the terms and conditions of the attached Land Exchange Agreement.

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

IMPLICATIONS OF THE RECOMMENDATIONS

No other Civic need for the subject property was identified.

The Planning, Property and Development Department have concluded its negotiations for the exchange of the subject City-owned property and the property owned by 21 Iroquois Bay as outlined on Misc. Plan No. 13385/5, and is recommending that the Exchange Agreement (attached) be approved. The Purchasers will be responsible for all costs associated with a plan of subdivision, subject to Council declaring the property surplus to the City's requirements.

Approval of at least two/thirds of the members of Council is required for all sales of property designated or acquired for park or cemetery purposes.

The owners of 21 Iroquois Bay will acquire the approximate area identified as "Area A" on Misc. Plan No. 13385/5 attached hereto, for consolidation with the residual portion of their adjoining holding at 21 Iroquois Bay for the sum of $6,300 DOLLARS, plus applicable Goods and Services Tax. The City will acquire the approximate area identified as "Area B" – Land to be conveyed to the City for the sum of $1,750.

The owners of 21 Iroquois Bay shall pay a fee of approximately $920.00 for the City to undertake the restoration of the ecologically significant natural area characterized by the planting of native shrubs and herbaceous species and bollard installation within "Area B".

HISTORY

The subject City-owned property was originally park and part of the Windsor Park Golf Course.

Adjacent property owners at 21 Iroquois Bay have expressed interest in purchasing the subject property subject to consolidation with their holding.

The lands obtained by the City are located on the edge of the Seine River and have been identified by the City as being valuable from an Environmental and use perspective. Acquisition of this land would protect the health and integrity of the river environment.

The Save Our Seine River Environment Inc. (SOS) have long been stewards for the river and share the City's interest in protecting environments on and adjacent to the river, and therefore support this land exchange.

FINANCIAL IMPACT

Financial Impact Statement Date: March 24, 2010

Project Name:

Proposed Exchange of Lands with the Owners of 21 Iroquois Bay and the City of Winnipeg

COMMENTS:

There are no material financial implications associated with this proposed exchange of lands.

"Original Signed By"
Mike McGinn, CA
Manager of Finance

CONSULTATION

In preparing this Report there was consultation with:

N/A

SUBMITTED BY

Department: Planning Property and Development
Division: Real Estate
Prepared by: Michelle Granger
Date: March 29, 2010
File No. 32/458/06

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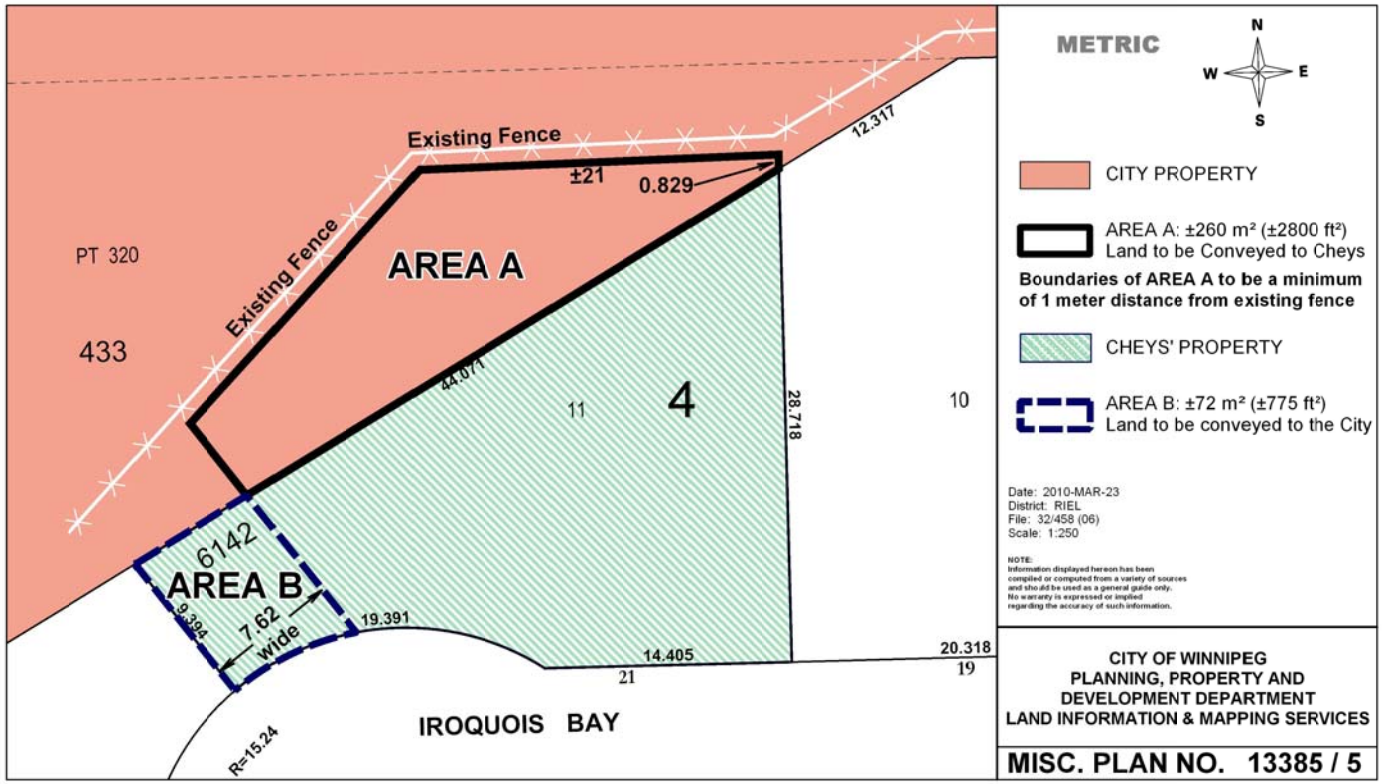

METRIC
N
W
E
S
Existing Fence
±21
0.829
12.317
PT 320
433
Existing Fence
AREA A
44.071
11
4
28.718
10
6142
AREA B
9.394
7.62
wide
19.391
14.405
21
20.318
19
IROQUOIS BAY
R=15.24
CITY PROPERTY
AREA A: ±260 m² (±2800 ft²)
Land to be Conveyed to Cheys
Boundaries of AREA A to be a minimum of 1 meter distance from existing fence
CHEYS' PROPERTY
AREA B: ±72 m² (±775 ft²)
Land to be conveyed to the City
Date: 2010-MAR-23
District: RIEL
File: 32/458 (06)
Scale: 1:250
NOTE:
Information displayed hereon has been compiled or computed from a variety of sources and should be used as a general guide only. No warranty is expressed or implied regarding the accuracy of such information.
CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13385 / 5

Proposed Terms and Conditions
Land Exchange of City Owned Lands and a Private Holding
Shown on the Attached Misc. Plan No. 13385/5

1. Whereas the CITY OF WINNIPEG (hereinafter called the "City") is the registered owner of the land shown shaded and outlined in a heavy black line and identified as "Area A" on Misc. Plan No. 13385/5 and COLIN ROBERT CHEYS and SHERI DAWN ANDERSON-CHEYS (hereinafter called the "Cheys") are the registered owners of the land shown hatched and outlined by a dotted line and identified as "Area B" on Misc. Plan No. 13385/5 attached hereto.

   The Chey's will acquire the approximate area identified as "Area A" on the attached Misc. Plan No. 13385/5 attached hereto and subject to Clause 14 below, for consolidation with the residual portion of their adjoining holding at 21 Iroquois Bay for the approximate sum of $6,300 DOLLARS, plus applicable Goods and Services Tax, representing a value of $2.25 per square foot. The City will acquire the approximate area identified as "Area B" – Land to be conveyed to the City for the sum of $1,750 subject to Clause 3 and 11 herein. The Chey's will pay a fee of approximately $920.00 for the City to undertake the restoration of the ecologically significant natural area characterized by the planting of native shrubs and herbaceous species and bollard installation within "Area B".

2. The City is prepared to convey said "Area A" to the Cheys for consolidation with the residual portion of their adjacent holding at 21 Iroquois Bay upon certain conditions as hereinafter set forth and the City wishes to acquire the approximate area identified as "Area B" on the attached Misc. Plan No. 13385/5 attached hereto and subject to Clause 16 below, for consolidation with the residual portion of its adjoining land identified as "City Property" on Misc. Plan No. 13385/5 for Parks purposes.

3. Each party agrees to convey "Area A" or "Area B", as the case may be, to the other, free and clear of any and all liens, encumbrances and leasehold interests, excepting any utility easement registered against title.

4. The City may register and maintain a caveat against "Area B" to ensure the performance of the covenants on the part of the Cheys herein set forth, and the Cheys agree to grant and do hereby grant to the City an interest in "Area B" according to the tenor of this agreement. The Cheys will not file any caveat or other encumbrance against "Area A" before the transfer of "Area A" to the Cheys.

5. The date for vacant possession (free of leasehold interest), payment of the purchase price and tax adjustments shall be arranged by mutual agreement, and shall not be later than ninety (90) days after the later of: the date of final approval by Winnipeg's City Council and/or its delegated authority and the date on which

Council enacts the by-law, rezoning and subdivision contemplated in Clause 11 herein.

6. The Cheys shall retain the existing grade levels and shall not dump any soils and/or materials upon any of the adjacent City-owned property including “Area B” to be conveyed to the City and the City-owned property located at 10 Des Meurons Street commonly known as the Windsor Park Golf Course resulting from the proposed residential renovation upon the adjacent holding at 21 Iroquois Bay.

7. The Cheys shall enter into an appropriate Landscape and Maintenance Agreement with the City of Winnipeg for “Area B” for the maintenance of the native shrubs and herbaceous species, sod and proposed fence and for the 1 meter area between the proposed “Area A” property line and the existing City-owned chain link fence.

8. The Cheys shall pay as an adjustment an amount equal to the total of such taxes, rates and charges which would have been levied or charged against “Area A” as though “Area A” had been entered on the assessment rolls of the City as City-owned, which adjustment shall be calculated from the closing date to and including the last day of the current taxation year.

10. The parties are providing no warranty or representation of any kind related to the condition of “Area A” or “Area B” or the ability to develop such lands. Each party shall accept from the other “Area A” or “Area B”, as the case may be, in an “as is” condition, and must rely upon its own investigations and must satisfy itself as to the suitability of the subject lands for its needs. Any error or discrepancy in the description or dimensions of the lands as contained herein shall not entitle the party to any compensation in respect thereof, nor will it entitle the parties (or either of them) to cancellation of this transaction.

11. The sale of “Area A” to the Cheys shall be subject to the provisions of the By-laws of the City of Winnipeg and all amendments thereto. Furthermore, the Cheys acknowledge and understand that any proposed use and development of the Lands may require applications for subdivision, rezoning, variances or conditional uses, amendments to Plan Winnipeg, which applications, resulting land dedication charges (if any) are to be at the sole cost and responsibility of the Cheys. Nothing in this agreement shall be construed as placing any duty or obligation upon the City to grant such subdivisions, rezonings, variances or conditional use orders and/or amendments to Plan Winnipeg when the Purchaser’s application for same is made to the City.

12. The sale of “Area A” to the Cheys is subject to the Cheys receiving approval from Council to rezone and subdivide the “Area A” lands to “R1-M” Residential, no later than 6 months from the Date of Approval, (unless extended in writing by the mutual consent of the Cheys and the City), failing which this agreement shall be null and void. All costs for the subdivision and re-zoning including but not limited

to application fees, dedication, permits, etc. are to be at the sole cost and responsibility of the Cheys.

13. If in the future the City determines that “Area B” is deemed surplus to its needs and available for sale, the Cheys will be so advised and offered the right of first refusal for said lands.

14. On or before closing, the Cheys shall provide the City with a Declaration as to Possession in the usual form.

15. No real estate commissions are payable in respect of these transactions.

16. The parties hereto agree, each with the other as follows:

    a. The exact boundaries and area of “Area A” and “Area B” shall be fixed and set by a plan which the Cheys hereby covenant and agree to, at their sole cost, effort and expense, cause to be prepared and registered at the Winnipeg Land Titles Office to properly secure title to “Area B” for the City and consolidation of “Area B” with the residual portion of the City-owned lands after conveyance of “Area B” to the City; and to properly secure title to “Area A” for the Cheys and consolidation of “Area A” and the adjoining residual portion of the Cheys holding at 21 Iroquois Bay after conveyance of “Area A” to the Cheys.

    b. The Cheys will obtain possession of “Area A” at its sole cost, effort and expense, which includes, without limiting the generality of the foregoing, obtaining their own Surveyor’s Building Location Certificates, Surveyor’s Staking Certificates and Zoning Memorandum and in connection therewith acknowledges and is aware that the City does not provide Declarations as to Possession.

    c. The Cheys hereby acknowledge and agree that they shall, at their sole cost, effort and expense, if “Area B” at closing, is subject to any existing mortgage(s), lien(s), builders’ lien(s), judgment(s) or any other encumbrance(s) excepting any utility easements, provide to the City at no charge to the City, all registerable discharges and any other required documentation together with payment of the cost to register same in the Winnipeg Land Titles Office, to fully discharge all such mortgage(s), lien(s), builders’ lien(s), judgments(s) or any other encumbrance(s) excepting any utility easements on title to “Area B” prior to conveyance to the City.

    d. The Cheys shall at their sole cost, effort and expense do all things as are necessary including but not limited to causing to be prepared and

registered at the Winnipeg Land Titles Office such documentation as may be required to ensure that “Area A” and the residual portion of the Cheys property known as 21 Iroquois Bay are consolidated so as to form a single and indivisible parcel. The Cheys hereby acknowledge that in complying with this obligation, they may be required to arrange for the discharge and re-registration of existing encumbrances against the Cheys property known as 21 Iroquois Bay or the registration of an amending agreement for the existing encumbrances.

17. The Cheys will permit the City, at the City’s discretion and expense, before the date of possession, to conduct or have conducted on its behalf an environmental assessment together with any soil testing and analysis required of “Area B”. The Cheys acknowledge and agree that should the City determine that there are environmental concerns or contamination, the City may elect to cancel the proposed sale of “Area A” and the Agreement contemplated herein. In the event that the Agreement contemplated herein shall be cancelled, the Cheys shall restore “Area A” to a condition suitable to the Planning, Property and Development and Public Works Departments.

18. The parties agree to enter into an appropriate Purchase/Sales Agreement, if required, that embodies the terms and conditions contained herein and any other such terms and conditions deemed necessary by the City Solicitor.

19. The Cheys agree to consent on a Real Owner Application form to add the City of Winnipeg as the Real Owner of “Area B” and the City shall consent on a Real Owner Application form to add the Cheys as the Real Owner of “Area A” on the Assessment Rolls of the City of Winnipeg.

20. The Cheys agree to declare whether or not they are “Registrants” for the purposes of the “Goods and Services Tax” and if so, to provide their G.S.T. Registration Number. If the Cheys have a G.S.T. Registration Number, then the Cheys will self-assess any tax payable by the Cheys on this transaction. If the Cheys do not have a G.S.T. Registration Number, the Cheys shall pay any tax payable on this transaction on or before the date for vacant possession.

21. The City (Goods and Services Tax Registrant No. R121682967) will self-assess any tax payable by it on this transaction.

22. None of the provisions of this agreement will merge with the conveyance of the Lands.

23. This proposal is a recommendation only and is subject to the final approval of City Council and/or its delegated authority.

We, COLIN ROBERT CHEYS and SHERI DAWN ANDERSON-CHEYS, being the duly registered owners of 21 Iroquois Bay, hereby consent to acquire Area “A” from the City of Winnipeg subject to the conveyance of Area “B” to the City of Winnipeg as identified on the attached Misc. Plan No. 13385/5 and in accordance with the proposed purchase price, terms and conditions as specified herein.

_____ _____

Colin Robert Cheys Date

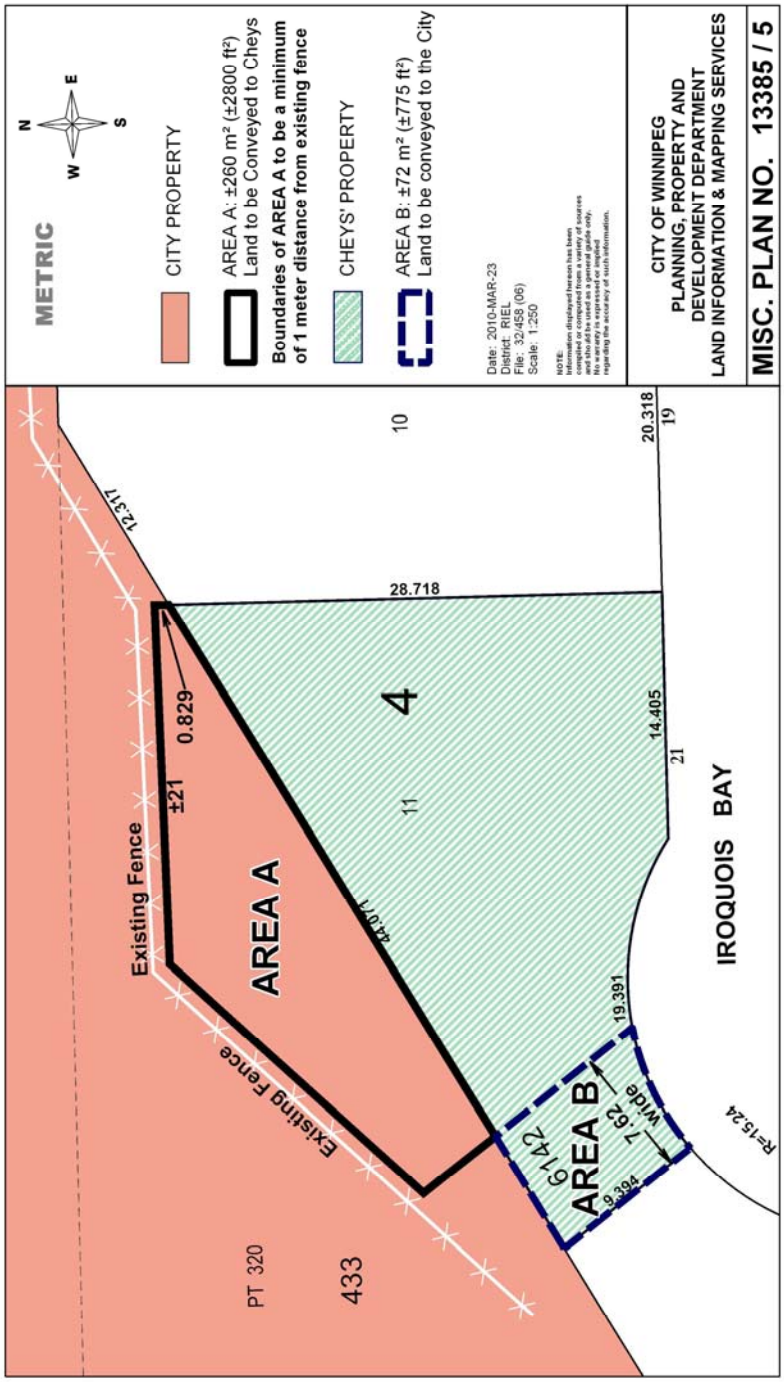
_____ _____

Sheri Dawn Anderson-Cheys Date

_____

GST Registrant Number

March 23, 2010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CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13385 / 5
AREA A
AREA B
Existing Fence
Existing Fence
IROQUOIS BAY
PT 320
433
4
11
10
12.317
28.718
20.318
19
14.405
21
19.391
9.394
R=15.24
44.071
±21
0.829
6142
7.62
wide

1