Minute No. 391
Report - Standing Policy Committee on Property and Development – May 4, 2010

Item No. 3 **Closing of the dell within 400 South Drive**
(Fort Rouge-East Fort Garry Ward)
File DAC 2/2010

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development and adopted the following:

1. That the street closing as shown on Misc. Plan No. 13759 be approved and that the land be declared surplus to the City's needs.

2. That policy of September 17, 1980, regarding the retention of all street ends providing access to rivers be waived.

3. That the Director of Legal Services and City Solicitor be instructed to prepare the necessary by-law for submission to Council to effect the street closing in accordance with Misc. Plan No. 13759, subject to the approval of the terms and conditions of the conveyance of the land by the Director of Planning, Property and Development and by Council.

4. That no development shall occur on the subject property prior to the approval of plans by the City Centre Community Committee.

5. 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 – May 4, 2010

DECISION MAKING HISTORY:

Moved by Councillor Steeves,

That the recommendation of the Standing Policy Committee on Property and Development be adopted by consent.

Carried

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, did not concur in the recommendation of the City Centre Community Committee, and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On May 4, 2010, the Standing Policy Committee on Property and Development did not concur in the recommendation of the City Centre Community Committee, concurred in the recommendation of the Winnipeg Public Service, with the following amendment, namely:

- Add the following Recommendation 4. and renumber the remaining Recommendations accordingly:

  "4. That no development shall occur on the subject property prior to the approval of plans by the City Centre Community Committee"

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

COMMUNITY COMMITTEE RECOMMENDATION:

On April 13, 2010, the City Centre Community Committee did not concur in the recommendation of the Winnipeg Public Service and recommended to the Standing Policy Committee on Property and Development that the street closing under File DAC 2/2010 be rejected.

PUBLIC HEARING SUMMARY

File: DAC 2/2010

Before: City Centre Community Committee
Councillor Smith, Chairperson
Councillor Gerbasi
Councillor Orlikow

Public Hearing: April 13, 2010
Council Chamber
Council Building, 510 Main Street

Applicant: Taylor McCaffrey LLP (Timothy Kurbis)

Premises Affected: The Dell within No. 400 South Drive

Exhibits Filed:

1. Report from the Real Property Officer dated March 30, 2010
2. Inspection Report
3. Communication dated April 7, 2010, from Audrey Benningen and Barb Degen, in opposition to the application
4. Communication dated April 12, 2010 from Jan Schneider, in opposition to the application
5. Communication dated April 11, 2010 from S. Brian, Susan, Aidan and Luke Penner, in opposition to the application
6. Communication dated April 13, 2010 from Iris Allen, in opposition to the application
7. Communication dated April 13, 2010 from Rhonda Bruchanski, in opposition to the application
8. Communication dated April 12, 2010 from D.J. Nieman, in opposition to the application
9. Communication dated April 12, 2010 from Brian and Anne Dudmundson, in opposition to the application
10. Communication dated April 13, 2010 from John Brewster, in opposition to the application
11. Communication dated April 12, 2010 from Gwen Groff, in opposition to the application
12. Communication dated April 13, 2010 from Andrew C. Alkier, in opposition to the application
13. Communication dated April 13, 2010 from G. R. Barrie Webster, in opposition to the application

14. Communication dated April 13, 2010 from David Houston, in opposition to the application
15. Presentation submitted by Dr. Gene Degen and Barb Degen in opposition to the application
16. Communication from David Houston in opposition to the application
17. Communication dated April 13, 2010, from G.R. Barrie Webster in opposition to the application

REPRESENTATIONS:
In Support:

Stephen Johnson
Timothy Kurbis, Taylor McCaffrey LLP

In Opposition:

Andrew C. Alkier
Iris Allen
Audrey and Grant Benningen
John Brewster
Rhonda Bruchanski
Ross and Vivian Cameron
Barbara Degen
Gene Degen
Helen Anne Friesen
H. Marliese Friesen
Jerry Friesen
Gwen Groff
Brian and Anne Gudmundson
David Houston
Peter Husband
K. Lynda Loewen
D.J. Nieman
S. Brian, Susan, Aidan and Luke Penner
Carmen Schroeder
Corey Schroeder
Jan Schroeder
Margaret Schroeder
Jock and Emily Warriner
G.R. Barrie Webster

For Information:

Bill Jost

For the City:

Mr. B. Boyachuk, Real Property Officer, Planning, Property and Development Department

Exhibit "1" referred to in File DAC 2/2010

ADMINISTRATIVE REPORT

ISSUE: TO SEEK COUNCIL APPROVAL FOR DAC 2/2010 – PROPOSED CLOSING OF THE DELL WITHIN NO. 400 SOUTH DRIVE

CRITICAL PATH: CITY CENTRE COMMUNITY COMMITTEE – STANDING POLICY COMMITTEE ON PROPERTY AND DEVELOPMENT - EXECUTIVE POLICY COMMITTEE - COUNCIL

AUTHORIZATION

Author	Department Head	CFO	CAO
B. Buyachok	N/A	N/A	N/A

RECOMMENDATIONS

1. That the proposed street closing as shown on Misc. Plan No. 13759 be approved and that the land be declared surplus to the City's needs.

2. That Council waive its policy of September 17, 1980, regarding the retention of all street ends providing access to rivers.

3. That the City Solicitor/Manager of Legal Services be instructed to prepare the necessary by-law for submission to Council to effect the street closing in accordance with Misc. Plan No. 13759, subject to the approval of the terms and conditions of the conveyance of the land by the Director of the Planning, Property and Development Department and by Council.

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

IMPLICATIONS OF THE RECOMMENDATIONS

Policy implication: Council will be required to waive its policy regarding the retention of street ends providing public access to rivers. As the land is not used for that purpose, and considering that access to the river is available through the public park a short distance away, the administration is recommending the closing of the public street.
There are no regulatory, environmental, human resource or general implications associated with the recommendations.

All costs associated with the street closing are the responsibility of the applicant. There are no financial implications for the City of Winnipeg.

HISTORY

The Planning, Property and Development Department has received a request from Mr. Timothy Kurbis of Taylor McCaffrey LLP, representing St. John's Ravenscourt School, to close and purchase "The Dell" so identified on the attached copy of Misc. Plan No. 13759. St. John's Ravenscourt wishes to acquire the right-of-way as an addition to their adjoining property for the long term interests of the School's planning and development.

"The Dell" was opened by Plan No. 1829 and registered in the Winnipeg Land Titles Office in June of 1912. The purpose of this right-of-way was to provide the area residents with access to the Red River for recreational purposes. In February of 1952, The Rural Municipality of Fort Garry passed By-law No. 3142 closing the portion of South Drive adjoining "The Dell" and vesting the property in the name of St. John's Ravenscourt School. The street closing was subsequently registered as Plan No. 5388 in the Winnipeg Land Titles Office. For reasons unknown, "The Dell" was excluded from the street closing and remains as a legally opened right-of-way.

While City policy is to retain street ends providing the public with river access, the absence of a specific pathway and the number of mature trees within the thoroughfare indicates that the area has not been used for this purpose in many years. Moreover, given the location of the thoroughfare within the School site, the area is not commonly thought of as an access point to the river by the public in any event. Access to the Red River is available through the public park immediately north of the School property.

CONSULTATION

In preparing this Report there was consultation with:

Internal Consultation:

N/A

External Consultation:

Manitoba Hydro, Centra Gas, MTS Allstream and Shaw Cablesystems

SUBMITTED BY

Department: Planning, Property and Development
Division: Development and Inspections
Prepared by: Bohdan Buyachok, Real Property Officer
Date: March 30, 2010
File No.

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APPENDIX "A"

Reason for the Recommendations

All street closings require the consideration of the Community Committee.

Administrative Approval

The proposal has been considered by all affected City departments and public utilities. There are no administrative objections or conditions to the street closing.

City Policy Regarding Street Ends Providing Access to a River

On September 17, 1980, Council directed that all street ends providing access to rivers be retained by the City. In the event that the sale of a street end is recommended, Council must approve the terms of the sale, and further, Council must waive this policy.

The administration is recommending the sale of this street end for the following reasons:

1. The land serves no apparent public purpose, and its location within property owned by St. John's Ravenscourt School essentially eliminates public access to the river.
2. The street exists only in a legal context as a designation of land as public right-of-way.
3. Access to the river is provided by the public park located immediately north of St. John's Ravenscourt School property.

Easements

There are no services within the closing area. No easements will be required.

Transfer of Jurisdiction Over Public Rights-of-Way

The street must be legally closed before it may be sold. Title to all public rights of way in Manitoba is vested in the name of the Province. The registration in the Winnipeg Land Titles Office of a closing by-law removes the public right of way status from the land and vests the ownership of the property in the City's name. The City is not entitled to dispose of the land until this has been done.

Aerial View of Subject Closing



Miscellaneous Plan

