Agenda - Council – December 15, 2010

STANDING POLICY COMMITTEE ON PROPERTY AND DEVELOPMENT

MOTIONS

Moved by Councillor Browaty,
Seconded by

WHEREAS

(a) Pursuant to its By-law No. 70/2010, The City of Winnipeg ("the City") authorized the expropriation of the lands described therein for the purpose of the Disraeli Freeway Renewal Project and executed a Declaration of Expropriation dated June 23, 2010;

(b) Notice of the intended expropriation was served by the City upon all owners of the lands intended to be expropriated, and was published in a newspaper having general circulation in the locality in which the said lands are situate, pursuant to section 1 of Schedule "A" to The Expropriation Act;

(c) Notices of objection to the intended expropriation were served upon the City by some of the said owners, pursuant to section 3 of Schedule "A" to The Expropriation Act;

(d) The City requested the Minister of Justice to appoint an inquiry officer; and

(e) The Minister of Justice on September 23, 2010 appointed an inquiry officer pursuant to section 4(2) of Schedule "A" to The Expropriation Act, and an inquiry was conducted on September 27, 28, 29 and 30, 2010.

AND WHEREAS the inquiry officer submitted his report to the City on October 20, 2010, wherein he stated that in his opinion the intended expropriation is fair and reasonably necessary for the achievement of the objectives of the City, subject to the Declaration of Expropriation being amended to reduce the amount of land being expropriated from the property located at 120 Higgins Avenue from the full parcel to only a 1.1 metre wide strip.

AND WHEREAS The Expropriation Act provides that Council of the City shall consider the report of the inquiry officer, and where Council makes an order confirming the intended expropriation which is not in accordance with the opinion of the inquiry officer, Council shall state its reasons for making the order.

Standing Policy Committee on Property and Development – Motions (continued):

AND WHEREAS it is advantageous that the City proceed with the expropriation of the lands described in By-law No. 70/2010 with the following exceptions:

- to reduce the amount of land being expropriated from the property located at 120 Higgins Avenue from the full parcel to a 1.8 metre wide strip; and
- to eliminate the proposed expropriation of a portion of the property located at 541 Waterfront Drive.

THEREFORE BE IT RESOLVED that the Declaration of Expropriation made June 23, 2010, executed pursuant to By-law No. 70/2010 and expropriating the following lands:

Firstly: The lands taken for Works and shown as Parcels A, B, and C on Plan Deposit 406/2010 WLTO, prepared by Albert Gerhard Degner, of the City of Winnipeg, Manitoba Land Surveyor;

Secondly: The lands taken for Works and shown as Parcel A on Plan Deposit 411/2010 WLTO, prepared by Albert Gerhard Degner, of the City of Winnipeg, Manitoba Land Surveyor;

Thirdly: The lands taken for Works and shown as Parcels A, B, C, D and E on Plan Deposit 415/2010 WLTO, prepared by Albert Gerhard Degner, of the City of Winnipeg, Manitoba Land Surveyor; and

Fourthly: The lands taken for Works and shown as Parcels A, B and C on Plan Deposit 430/2010 WLTO, prepared by Albert Gerhard Degner, of the City of Winnipeg, Manitoba Land Surveyor.

The lands described above are expropriated free of encumbrances, except for part of the lands fourthly described, being Parcel C on Plan Deposit 430/2010 WLTO which is expropriated subject to Centra Gas Manitoba Inc. Certificate of Judgment No. 3216804 WLTO, registered in the Winnipeg Land Titles Office on November 14, 2005.

The lands described above except:

a) mines, minerals and named substances which are excepted from or not included in the Certificate of Title of the registered owner of the surface under The Real Property Act or are not owned by the owner of the surface under The Registry Act; and

b) reservations in favour of the Crown as excepted from the Title of the owner of the surface, or to which Title is subject by implication under the provisions of The Real Property Act.

Standing Policy Committee on Property and Development – Motions (continued):

BE AMENDED to provide that the lands thirdly described are as follows:

> Thirdly: The lands taken for Works and shown as Parcels A, B, C and D on Plan Deposit 415/2010 WLTO, prepared by Albert Gerhard Degner, of the City of Winnipeg, Manitoba Land Surveyor,

AND BE AMENDED to replace the original Plan Deposit 415/2010 WLTO with a revised version which:

- reduces the amount of land being expropriated from the property located at 120 Higgins Avenue from the full parcel to a 1.8 metre wide strip; and

- eliminates the proposed expropriation of a portion of the property located at 541 Waterfront Drive.

BE IT FURTHER RESOLVED that the Declaration of Expropriation dated June 23, 2010, as amended herein and thereby replaced by an Amended Declaration of Expropriation dated December 15, 2010, is hereby confirmed.

BE IT FURTHER RESOLVED that Council's reasons for proceeding with the expropriation of a 1.8 metre wide strip of land from the property located at 120 Higgins Avenue instead of a 1.1 metre strip which in the opinion of the Inquiry Officer is fair and reasonably necessary for the achievement of the City's objectives, are as follows:

- Before the Inquiry the Winnipeg Public Service had engaged a surveyor to prepare the revised version of Plan Deposit 415/2010 which provides for expropriation of a 1.8 metre wide strip of land from the property located at 120 Higgins Avenue.

- The Winnipeg Public Service is in discussions with the owner of the property located at 120 Higgins Avenue in an effort to accommodate both the City's land needs for the Disraeli Freeway Renewal Project and the interests of the owner.

- The outcome of those discussions will likely affect the precise dimensions of land to be expropriated, which may or not be a 1.1 metre wide strip.

- Under the Expropriation Act, where at any time before the City pays due compensation to the owner of expropriated land, if any part of the land is found to be unnecessary for the City's purposes, the City shall notify the owner, who may elect to take back the portion of the land which is unnecessary for the City's purposes and has the right to compensation for consequential damages, or may require the City to retain the land and pay due compensation for it.

Standing Policy Committee on Property and Development – Motions (continued):

- To postpone confirmation of the entire expropriation proceeding could have significant implications for the City, including possibly affecting the construction schedule.

- Therefore, notwithstanding the possible consequences of having to abandon the expropriation of a small portion of the land located at 120 Higgins Avenue, it is in the City's best interests to make and confirm the Amended Declaration of Expropriation.