Minute No. 455
Report – Standing Policy Committee on Property and Development – April 15, 2014

Item No. 22 **Approval for the Acting Chief Administrative Officer to negotiate and approve "Enter to Construct" Agreements, in order to facilitate construction of the Polo Park Infrastructure Improvements Project – East of St. James Street**
(St. James-Brooklands Ward)

COUNCIL DECISION:

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

1. That the City enter into an "Enter to Construct" agreement authorizing the City to enter upon properties on the east side of St. James Street between Maroons Road and Ellice Avenue, and properties adjacent to St. Matthews Avenue east of St. James Street to Empress Street for the purposes of commencing construction on the Polo Park Infrastructure Improvements Project pending the expropriation or the purchase and sale of said property by or to the City.

2. That the Acting Chief Administrative Officer be authorized to negotiate and approve the terms and conditions of the "Enter to Construct" agreement, which shall include:

   A. the grant of a release and indemnity in favour of the property owner;

   B. an undertaking that the City will, at its sole cost, effort and expense, return the property to its original condition in the event that the transfer of title to said property to the City is not finalized;

   C. such other terms and conditions deemed necessary by the City Solicitor / Director of Legal Services to protect the interests of the City.

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

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DECISION MAKING HISTORY:

Moved by Councillor Browaty,

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

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On April 23, 2014, 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 April 15, 2014, 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

Title: **To request Council approval for the Acting Chief Administrative Officer to negotiate and approve "Enter to Construct" Agreements, in order to facilitate construction of the Polo Park Infrastructure Improvements Project – East of St. James Street.**

Critical Path: **Standing Policy Committee on Property and Development, Executive Policy Committee, Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
J. Zabudney	B. Thorgrimson	N/A	D. Joshi, A-CAO

RECOMMENDATIONS

1. That the City enter into an "Enter to Construct" agreement authorizing the City to enter upon properties on the east side of St. James Street between Maroons Road and Ellice Avenue, and properties adjacent to St. Matthews Avenue east of St. James Street to Empress Street for the purposes of commencing construction on the Polo Park Infrastructure Improvements Project pending the expropriation or the purchase and sale of said property by or to the City.

2. That the Acting Chief Administrative Officer be authorized to negotiate and approve the terms and conditions of the "Enter to Construct" agreement referred to in Recommendation #1, including
   - the grant of a release and indemnity in favour of the property owner;
   - an undertaking that the City will, at its sole cost, effort and expense, return the property to its original condition in the event that the transfer of title to said property to the City is not finalized;
   - such other terms and conditions deemed necessary by the City Solicitor / Director of Legal Services to protect the interests of the City.

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

REASON FOR THE REPORT

On February 26, 2014, Council approved the Expropriation of Lands – Polo Park Infrastructure Improvements Project. Stage 1 of that project, which required the partial acquisition of six properties from four different owners, projected that all works on the east side of St. James Street between Maroons Road and Ellice Avenue and St. Mathews Avenue east of St. James Street to Empress Street would be completed by September 2014.

In order to meet this deadline, due to the shortness of the construction season, Public Works has advised that immediate access to construct on the land interests identified in the February 26, 2014 report is required.

Council approval is required to allow the Chief Administrative Officer to negotiate and approve "Enter to Construct" Agreements for these properties, pending final agreements with respect to the purchase or expropriation of the land.

IMPLICATIONS OF THE RECOMMENDATIONS

There are no regulatory or human resource implications associated with the report.

There are direct financial implications associated with this recommendation.

First, there are financial risks accruing to the City. "Enter to Construct" agreements would normally require the party seeking entry to release the property owner from liability associated with the entry and construction and to indemnify the property owner with respect to any harm or damage that may result. In addition, the party seeking entry would normally be required to undertake, at its sole expense, to restore the property to its original condition in the event that the anticipated transfer of the property does not take place. These terms and conditions pose a financial risk to the City.

That being said, the financial risk associated with an "Enter to Construct" Agreement in this situation is very low, largely because the likelihood of the City obtaining title to the property through purchase or expropriation is very high.

On the other hand, the risks to the City in delaying entry and construction must also be considered. These include the highly negative impacts on the proposed project schedule. Although the Public Service continues to negotiate with all property owners for proposed settlements, at this time, settlements are unlikely to be obtained to meet current construction schedules.

HISTORY

The 2013 Capital Budget adopted by Council on January 29, 2013 included funding for the Polo Park Infrastructure Improvements Project totaling $30,000.000.00

The 2014 Capital Budget adopted by Council on December 17, 2013, included an additional amount of $10,000,000.00 in Provincial Funding for a total Project Budget of $40,000,000.00

On February 26, 2014, Council approved the Expropriation of Lands – Polo Park Infrastructure Improvements Project. The Administrative Report identified those land interests identified and required that are located east of St. James Street.

Stage 1 of the Polo Park Infrastructure Improvements Project requires the relocation, modification and addition of several utilities, including Manitoba Hydro, Manitoba Telecom Services, Shaw Cable, Teraspan, Bell, as well as Watermain and Sewer work. Much of the utility work requires relocation onto the lands to be acquired. This work must be completed in advance of the roadwork for each street location in order to prevent service outages.

Acquiring permissions to enter and construct in advance of purchase or expropriation therefore is crucial to undertaking planned utility relocations and revisions. A number of utility providers have committed resources to the current schedule. Failure to obtain permissions could lead to the loss of these resources which will delay subsequent construction. Loss of lead time will lead to cost increases to address additional required resources to deliver the relocations and revisions in a compressed work schedule. If the work is delayed too much, project work will be extended an additional season leading to cost implications due to construction inflation.

Public Works advises that there is sufficient project budget to restore the properties to their former condition in the event that the City does not take possession of the properties.

FINANCIAL IMPACT

Financial Impact Statement Date: April 7, 2014

Project Name:

To request Council approval for the Acting Chief Administrative Officer to negotiate and approve "Enter to Construct" Agreements, in order to facilitate construction of the Polo Park Infrastructure Improvements Project – East of St. James Street

COMMENTS:

There is potential financial impact associated with the recommendations contained in this report: 1) the requirement to compensate property owners for any harm or damage to their property and the costs associated with restoration of property to its original condition in the event that the anticipated transfer of the property does not take place and, 2) increased costs due to construction inflation resulting from delays to the proposed project schedule.

However, the risk associated with # 1 above is very low, largely because the likelihood of the City obtaining title to the property through purchase or expropriation is very high. The risk associated with # 2 above will be mitigated by the successful negotiation and approval of "Enter to Construct" Agreements.

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

CONSULTATION

In preparing this report there was consultation with:

Legal Services as to legal issues
Public Works

SUBMITTED BY

Department/:	Planning, Property and Development/Real Estate Division
Division:	Public Works/ Engineering
Prepared by:	Barry Lucyk and Lester Deane, P. Eng.
Date:	April 8, 2014
File No.	

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