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June 11, 2014

Chair and Members
Executive Policy Committee
The City of Winnipeg
510 Main Street
Winnipeg MB

Re: Executive Policy Committee – 9:00 a.m. Wednesday, May 11, 2014

Reports:
8. Open Government Initiative - Improvements to the Freedom of Information and Protection of Privacy Act Process

Standing Policy Committee on Downtown Development, Heritage and Riverbank Management – June 5, 2014
1. Establishment of the "Live Downtown - Rental Development Grant Program"

I am appearing as a private citizen to speak briefly in favour of Report #8 regarding FIPPA, and in opposition to certain of the recommendations of the Downtown SPC regarding the Report on the proposed Downtown Rental Development Grant Program

8. Open Government Initiative - Improvements to the Freedom of Information and Protection of Privacy Act Process

I am in favour of improving the City's FIPPA process, but I do wonder about the timing of this proposal. The City commissioned Duboff Edwards to prepare the attached Report of the City of Winnipeg Freedom of information and Protection of Privacy Act (FIPPA) Working Group, regarding the Audit Report of the Manitoba Ombudsman, which had been published in February of 2012. The commissioned Report was received on February 19, **2013**. I wonder why a City which is really committed to open government would not release the commissioned Report until now, more than a year later.

The Edwards Working Group had expressed the hope that its Report would have been considered by EPC within three months, by the end of May, 2013,

The term "Open Government Initiative" appearing on the Administrative Report is a new one at this City Hall. For a template for a Local Open Government Directive, based on President Barack Obama's 2009 U.S Open Government Directive, see http://opengovernmentinitiative.org/ . Yes, the City has created an open data portal on its website for Neighbourhoods of Winnipeg (NOW), but this is just a small step towards the achievement of a truly open government.

Following the recommendations of the Edwards Working Group, the Administration is now recommending:

a) Creation of a centralized FIPPA office, except for "investigative" inquiries of the Winnipeg Police Service;
b) The posting of the texts of all FIPPA requests on the City's website.
c) The addition of two new FIPPA staff members, at an annualized cost of about $200,000, instead of the four staff recommended by Edwards;
d) Centralized responsibility for FIPPA, to be assigned to the Chief Administrative Officer:

I would add that:

e) Given the large increase in FIPPA requests, the City should follow Edwards' recommendation and authorize the hiring of **four** dedicated FIPPA staff now. Otherwise, the more centralized procedure may become a bottleneck, constraining the responsiveness of the City instead of improving it.
f) Answers to FIPPA requests should also be posted on the City website.
g) In addition, it would be extremely helpful if the CAO and FIPPA staff would provide advice to City staff which would enable them to respond positively and directly to citizen's requests for most information, without having to go through the Access to Information (ATI) Request procedures.

So you may understand how this all looks to citizens outside City Hall, I am attaching the following documents:

1) Letter dated April 16, 2014, from the Office of the Mayor, agreeing to provide me with a "Complete copy of the external legal opinion obtained by Mayor Sam Katz and read to City Council at its meeting on December 11, 2013, during debate about Item #6 – Office of the Ethics Commissioner."
2) The document in question - Letter dated December 10, 2013, from Robert Gabor of Aikins MacAulay & Thorvaldson LLP.
3) My FIPPA Complaint and letter to the Manitoba Ombudsman dated March 11, 2014, with my original FIPPA Application for Access, and the initial refusal of access written on behalf of the Mayor's Office on January 10, 2014.

It took me four months to obtain a copy of the letter used by the Mayor in Council debate, and then only with the intervention of the Manitoba Ombudsman.

For your information, I am also attaching copies of two further Applications for Access to six specific City documents, submitted May 22 and May 29, which I hoped to obtain or at least review prior to the "public hearing" held by SPC on Infrastructure Renewal and Public Works on June 3rd, regarding the Southwest Rapid Transit Corridor and Pembina Highway Underpass project.

I have received no response yet.

Finally, I am enclosing a copy of the Ombudsman's reply to Colin Craig's appeal of the City's refusal to provide access to traffic studies related to the new Fire Paramedic Station at Route 90 and Portage Avenue.

In the end, the Ombudsman found that the City had the discretion to withhold certain information:

6.0 Access Analysis
7.0 Traffic Analysis
8.0 Conclusions and Recommendations

And the City chose to exercise that discretion, and withhold those sections of the Stantec Report.

Note that FIPPA did not prevent the City from releasing the complete Stantec Report. The Ombudsman said only that the City has the discretion to withhold the three chapters.

A truly "Open Government" would not take refuge in a legal "discretion" to keep secret a publicly-funded study on a significant policy issue in this way.

And by the way, the external legal opinion obtained by the Mayor indicates that City Council does have the authority to create the Office of Ethics Commissioner and assign him all of the duties desired. All that the Ethics Commissioner will be missing is the ability to use the investigative powers under Part V of *The Manitoba Evidence Act*. But since the City Auditor already has those powers, and may authorize another person to use those powers, provided that the investigation relates to the duties and functions of the City Auditor, then the Ethics Commissioner may be authorized by the City Auditor to undertake the necessary investigations pursuant to a special audit ordered by City Council.

As I suggested earlier, if you really want an ethics commissioner, you can have one now.

Standing Policy Committee on Downtown Development, Heritage and Riverbank Management – June 5, 2014

1. Establishment of the "Live Downtown - Rental Development Grant Program"

I objected to the placing of this complicated and significant program proposal on the agenda of the Downtown SPC with less than the required 96 hours' notice, after ordinarily vigilant citizens had already checked the agenda and determined whether or not they should attend that meeting. I would have preferred that the Committee hear a presentation from city staff and CentreVenture, discuss the merits of the proposed program, and then lay the matter over for a final decision at its next meeting, after the public has had an opportunity to hear about it and provide comments on it.

I understand that Councillor Browaty voted against the proposal as presented, but that the other three members of the Committee still voted in favour of the recommendations without amendment. Perhaps there will be some amendments today.

I had and still have a number of questions and comments:

1. Program objective:
    a. Is the City's objective really, as stated in Appendix A, #1, "to facilitate the better and higher use of **surface parking lots** (SPL) in the Downtown, by incenting the development of newly constructed (preferred) or repurposed/additions to existing buildings for purpose-built rental units in strategic locations of the Downtown, as outlined in the map attached."
    b. I do note that:
        i. One of the stated objectives of the Downtown BIZ is to "eliminate surface parking lots."
        ii. Complete Communities – Direction One states the City should: "Develop a downtown parking strategy to facilitate the redevelopment of surface parking lots in defined areas in support of residential and mixed-use development."

    But there is no "downtown parking strategy" in this Administrative Report, and you should note that there was no reported consultation with the Winnipeg Parking Authority, which I believe is the City's authority on such matters.

    According to the Parking Authority's 2014 Business Plan, approved by Council in December, the Winnipeg Parking Authority and The Forks North Portage Partnership together manage about 20% of the surface parking lots downtown:

Facilities under WPA management and/or administration

On-Street Areas	Paystations	Stalls	Remarks
Downtown	280	1612	
HSC/St. B	76	556	
Exchange	175	907	
Other	100	659	includes Selkirk Ave., West End, Exchange N of Pacific, Post Office & RCMP 'D' division locations

Parking Structures	Type	Stalls	Remarks
Millennium Library	Underground	483	

Surface Parking Lots		Stalls	Remarks
Publicly Available	7	870	operated at market rates
Civic Employee Parking	56	3465	operated on cost recovery basis
Other	26	2020	no cost recovery on operations

Presumably, the publicly-owned surface parking lots are not the focus of this redevelopment program.

The program proposal provides a two-year bonus grant equal to about $1,500 per unit, at least 12 years in the future, if the development uses a privately-owned surface parking lot for a site. Is there any evidence that such an "incentive" will have any effect on the owners of surface parking lots in the downtown?

b) On the other hand, if the objective is really to encourage the development of newly constructed (preferred) or repurposed/additions to existing buildings for purpose-built rental units in strategic locations of the Downtown, then let's say so, and be prepared to subsidize the desired types of residential rental development based on bids or other methods for determining what is really required to trigger such developments. No evidence of such analysis has been provided here.

2. Geographic area.
   a. The boundaries of the Downtown and the SHED are defined. The map included in Appendix A indicates the concept, but is not precise. Since the SHED is excluded, the map should show two "Strategic Locations" on either side. A specific description of the boundaries of the Strategic Locations should be provided, in words and measurements if necessary.
   b. For the 4-year bonus grant, what is meant by "fronting or adjacent to strategic location boundary." Is the line shown a boundary, or not? This should be clarified.

3. Residential component:
    a. A complex must be 80% residential, excluding structured parking area. Is that 80% of the gross floor area of the proposed building, or 80% of the cost of construction, or what?
    b. If at least 10% of the developed residential units must be "affordable," as defined by the Province, I wonder if someone could explain how that equates to a requirement of only 5% of the units being at or below median market rent, for a five year period.

4. Community Revitalization Tax Increment Financing Act
    a. Does the City's proposed program require applicants to qualify their individual properties under Manitoba Regulation 178/2010, which designates specific assessment roll numbers for the application of the provisions of the Community Revitalization Tax Increment Financing Act?
    b. Or could a developer just apply for the City's proposed Rental Development Grant alone?
    c. Has the City or the Province consulted with the Winnipeg School Division regarding the proposed plan to forego the incremental school special levy income, which will amount to approximately $14.3 million if the incremental municipal taxes are $12.7 million over 20 years?

5. Proposed Municipal Grant
    a. If the estimated average annual grant per unit is $705 in 2017-2018, then it is assumed that the average incremental residential assessments (excluding land assessment) will be about $117,160 (based on 2014 residential portioning of 45% and municipal mill rate of 13.372). Is that a reasonable cost of construction for rental housing in downtown Winnipeg in 2015-2017, or should it be much higher?

6. Overall Viability and Cost
    a. Using a 100-unit project as an example, how would the overall costs and financing look, considering the effects of the Provincial 8% Rental Housing Construction Tax Credit, the City Rental Development Grant estimated at $705 per unit annually, and the Provincial Community Revitalization Grant estimated at $797 per unit annually – with at least 10% units rented as "affordable housing"?

    b. What evidence does the City have to determine the size of the "economic gap related to construction?" Is there any evidence that a two-year bonus incremental tax grant of $1,502 per year will mean that structured parking becomes feasible? Has there been any consultation with the development industry as to whether or not the proposed program will actually work?

c. Has this proposal been referred to the Housing Steering Committee of Council for review and comment, especially as to the priority of this program in relation to other promised housing programs?

We should keep in mind that this proposed program for just 900 units in 2014 and 2015, with as few as 10% or 90 units required to be "affordable," will cost the City and the Winnipeg School Division about $1.4 million per year for 20 years, or about $28 million.

Can anyone explain how this program will help to implement the City's newly adopted housing policy? It would appear that the proposed 900 units downtown will exhaust all of the City resources intended to increase the number of rental units throughout the City, as per the "Implementation Plan" recently adopted by Council.

□ Facilitate purpose-built rental development: Create programming that will facilitate the development of 750 new rental units in the City of Winnipeg.

I believe this program needs much more work before Council is asked to approve it.

Thank you.

David M. Sanders MA LLB
River Heights-Fort Garry

DMS/bm

Addenda – Sanders June 5, 2014

Province of Manitoba - Finance

Rental Housing Construction Tax Credit

Budget 2013 introduced a new tax credit equal to 8% of the capital cost of new rental housing construction in Manitoba. The credit is intended to offset Manitoba sales tax payable by landlords on new rental housing construction; it will stimulate the construction of rental housing and increase the quantity of affordable rental housing units. Eligible landlords must be residents of Manitoba or have a permanent establishment in Manitoba, and can operate on either a for-profit or not-for-profit basis – including rental housing co-operatives.

Eligible projects include the construction of five or more new residential rental units. New rental units include existing non-residential properties being converted into residential units, in which case capital costs related to the acquisition and conversion of the property are eligible for the credit. The maximum credit is set at $12,000 per eligible rental unit. At least 10% of the units on an eligible project must be affordable housing units for the unit type.

The Rental Housing Construction Tax Credit will be claimable by filing an income tax return with the Canada Revenue Agency. The credit is earned on a project when it becomes available for rental and the affordable housing criteria are met. Eligible not-for-profit projects will receive a fully refundable tax credit in the year in which the credit is earned, as qualifying units are rented. The tax credit on for-profit projects will be non-refundable, claimable over a minimum of five years, and capped annually by the amount of Manitoba income tax payable by the landlord. For-profit and not-for-profit landlords will be required to file an annual attestation for five years identifying the affordable units, the monthly rents assessed on those units, and the total new rental units constructed.

Manitoba Housing and Community Development

2014 Affordable Housing Rental Program Income Limits

Household without children	**$48,622**
Family Household (families with children or dependants)	**$64,829**

2014 Affordable Housing Rental Program Rents - No Utilities Included

Community	Studio	1 Bedroom	2 Bedroom	3 Bedroom	4+ Bedroom
	How are the number of bedrooms I may be eligible for determined?*				
Winnipeg and Catchment	$500	$689	$899	$1,039	$1,250

2014 Affordable Housing Rental Program Rents:

Examples of what your monthly rent may be under the Affordable Housing Rental Program:

Example #1:

- If you are a family with two (2) dependant children (one (1) boy & one (1) girl)
  - You would be eligible for three (3) bedrooms*
  - Your location is in Steinbach
  - Your total yearly combined household income is $50,000.00 before taxes
- Your monthly Affordable rent would be $1,066.00 per month where utilities are included in the rent or $954.00 per month where the utilities are not included in the rent and billed separately.

Example #2:

- If you are a senior couple who are both 55 years of age or over
  - You would be eligible for one (1) bedroom*
  - Your location is in The Pas
  - Your total yearly income is $35,000.00 before taxes
- Your monthly Affordable rent would be $643.00 per month where utilities are included in the rent or $560.00 per month where the utilities are not included in the rent and billed separately.

*** How are the number bedrooms I may be eligible for determined?**

The National Occupancy Standards are our guidelines. These standards set the following requirements:

- Not less than one and not more than two persons may occupy a single bedroom.
- Parents and children do not use the same bedroom.
- Single persons 18 and over have a separate bedroom.
- Children five and over do not share a bedroom with another person of the opposite sex.

C.C.S.M. c. C166

The Community Revitalization Tax Increment Financing Act

(Assented to October 8, 2009)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

INTRODUCTORY PROVISIONS

Definitions

1 The following definitions apply in this Act.

"community revitalization levy" means the levy imposed under subsection 11(1) on a community revitalization property. (« taxe de revitalisation urbaine »)

"community revitalization property" means real property that is designated by regulation as a community revitalization property. (« propriété visée par un projet de revitalisation »)

"current assessment roll" means the assessment roll that precedes the assessment roll being prepared by an assessor under subsection 9(3) or (4) of *The Municipal Assessment Act*. (« dernier rôle d'évaluation »)

"designation date", in relation to a community revitalization property, means the date on which the regulation designating the property comes into force. (« date de désignation »)

"education support levy" means a levy imposed under section 184 of *The Public Schools Act* by the council of a municipality to raise part of the annual revenues of The Public Schools Finance Board. (« taxe d'aide à l'éducation »)

"fund" means the Community Revitalization Fund established in section 15. (« Fonds »)

"incremental assessed value" of a community revitalization property means the incremental assessed value as determined under section 9. (« valeur fiscale additionnelle »)

"minister" means the minister appointed by the Lieutenant Governor in Council to administer this Act. (« ministre »)

"pre-designation assessed value" of a community revitalization property means the pre-designation assessed value as determined under section 8. (« valeur fiscale antérieure »)

"school taxes" means the education support levy and the special levy. (« taxes scolaires »)

"special levy" means the levy imposed under section 188 of *The Public Schools Act* by the council of a municipality to raise the amount that is set out in the statement referred to in section 187 of that Act. (« taxe spéciale »)

Definitions in Municipal Assessment Act and City of Winnipeg Charter apply

2 Terms and expressions that

(a) are used but not defined in this Act; and

(b) are defined

(i) in *The City of Winnipeg Charter*, or

(ii) in *The Municipal Assessment Act*;

have the same meaning in this Act as they have in those Acts. If a term or expression is defined in or under both those Acts, the definition in *The City of Winnipeg Charter* applies to community revitalization properties situated in the city.

Application of other Acts

3 Unless this Act or the regulations provide otherwise, *The Municipal Act*, *The Municipal Assessment Act* and *The City of Winnipeg Charter* apply to the assessment and taxation of community revitalization properties under this Act.

DESIGNATING COMMUNITY REVITALIZATION PROPERTIES

Designation

4(1) The Lieutenant Governor in Council may, by regulation, designate real property as a community revitalization property if it is satisfied that

(a) significant improvements to the property are to occur; and

(b) it is in the public interest that the improvements be made.

Designation of properties in close proximity

4(2) A regulation under subsection (1) may also designate as a community revitalization property real property that is in close proximity to the real property that is to be improved.

Consultations

4(3) Before recommending that the Lieutenant Governor in Council designate a property as a community revitalization property, the minister must consult with the council of the municipality and the school board of the school division in which the property is located.

Designation period

5(1) A designation as a community revitalization property expires on the earliest of the following:

(a) December 31 of the 25th year of the designation period;

(b) December 31 of an earlier year prescribed by regulation;

(c) December 31 of the year in which the designation is revoked.

Renewal

5(2) A designation may be renewed at any time before it expires, but the total designation period of a property cannot exceed 25 years.

Revocation

5(3) The Lieutenant Governor in Council may, by regulation, revoke a designation made under section 4.

Municipality and school board to be notified

6 The minister must notify a municipality and a school board when a community revitalization property situated in the municipality or school division is designated or its designation expires or is revoked.

ASSESSMENT

Amending the assessment roll

7 When a community revitalization property is designated, the assessor must amend the current real property assessment roll to allocate the property's assessment into two portions, of which

(a) one is attributable to the property's pre-designation assessed value, as determined under section 8; and

(b) the other is attributable to its incremental assessed value, as determined under section 9.

Determining pre-designation assessed value

8(1) The pre-designation assessed value of a community revitalization property is

(a) subject to subsection (2) and until the first general assessment after its designation date, its assessed value as entered on the current real property assessment roll; and

(b) for each general assessment after its designation date, its assessed value as determined under subsection (3).

Changes to pre-designation assessed value

8(2) The municipality must amend the pre-designation assessment entered on the current real property assessment roll if that assessment is changed as a result of

(a) an order of a board of revision, the Municipal Board or a court;

(b) an amendment made by an assessor under subsection 14(1) or (2) of *The Municipal Assessment Act*;

(c) an agreement entered into under section 15.1 of *The Municipal Assessment Act* that changes the assessment of the property; or

(d) a change in the applicable tax roll under section 300 or 326 of *The Municipal Act* or section 340 or 341 of *The City of Winnipeg Charter*.

Change to pre-designation assessed value for general assessment

8(3) For the purposes of a general assessment, the assessor must change the property's pre-designation assessed value by a rate that is equal to the average rate of change, since the last general assessment, in the assessed value of properties that are in the same class or classes and in the same municipality as the community revitalization property.

Determining incremental assessed value

9(1) The incremental assessed value of a community revitalization property that is designated under subsection 4(1) is determined as follows:

(a) if, after its designation date, improvements are made to the community revitalization property, then the incremental assessed value is the difference between its assessed value, including the improvements, and its pre-designation assessed value;

(b) if, after its designation date, the community revitalization property becomes ineligible for an exemption from taxation for school purposes, then the incremental assessed value is the assessed value of the assessable property on the current assessment roll.

Incremental assessed value of property in close proximity

9(2) The incremental assessed value of a property that is in close proximity to a community revitalization property designated under subsection 4(1) is the difference between its assessed value and its pre-designation assessed value.

Exemption re school taxes

10 The incremental assessed value of a community revitalization property is exempt from taxation for school purposes.

COMMUNITY REVITALIZATION LEVY

Community revitalization levy

11(1) In each year, a municipality must impose the community revitalization levy on the portioned value of the incremental assessed value of each community revitalization property situated in the municipality.

Levy in lieu of school taxes otherwise payable

11(2) The community revitalization levy is to be imposed and is payable in lieu of school taxes that would be payable in respect of the property if it had not been designated as a community revitalization property.

Levy rate

11(3) The rate of the community revitalization levy must equal the total of the following tax rates imposed by the municipality on real property located in the same school division as the community revitalization property:

(a) if applicable, the tax rate imposed by the municipality in respect of the education support levy;

(b) the tax rate imposed by the municipality in respect of the special levy.

Levy collection and priority

11(4) The community revitalization levy is to be collected in the same manner, and with the same priorities,

(a) in the case of a community revitalization property situated in the city, as a real property tax imposed under *The City of Winnipeg Charter*;

(b) in the case of a community revitalization property situated in any other municipality, as a real property tax imposed under *The Municipal Act*.

Liability to pay levy

12(1) Each person in whose name a community revitalization property is assessed is liable to pay the community revitalization levy in respect of the property.

Joint liability

12(2) If the community revitalization levy is payable by two or more persons, payment by one of them on account of the levy discharges the liability of the others for the levy to the extent of the payment.

Levy amount remitted to the province

13 Each year, a municipality must, at the same time it remits the special levy to school divisions under section 189 of *The Public Schools Act*, remit to the Minister of Finance the amount of the community revitalization levy in respect of all community revitalization properties situated in the municipality.

Municipality's calculation of school taxes

14 In calculating school taxes under *The Public Schools Act*, the total school assessment is to be determined without reference to the incremental assessed value of the community revitalization properties situated in the municipality.

COMMUNITY REVITALIZATION FUND

Fund established

15(1) A fund to be known as the "Community Revitalization Fund" is hereby established.

Purpose of fund

15(2) The purpose of the fund is to promote and support significant improvement projects in order to

(a) revitalize communities or neighbourhoods;

(b) encourage economic development;

(c) enhance social and cultural development;

(d) preserve heritage properties.

Control and supervision of fund

15(3) The fund is under the control and supervision of the minister, and is to be deposited with the Minister of Finance and held in trust in a separate account in the Consolidated Fund.

Credits to fund

15(4) The amounts remitted to the Minister of Finance by a municipality under section 13 (community revitalization levy) are to be credited to the fund.

Investment of excess money

15(5) If the balance to the credit of the fund is more than the amount that is required for immediate purposes, the Minister of Finance may invest the excess. All earnings from the investment must be credited to the fund.

Payments from fund

15(6) On the requisition of the minister, the Minister of Finance may make a grant from the fund from amounts credited to the fund for a community revitalization property, for a purpose mentioned in subsection (2), to

(a) the person in whose name the community revitalization property is assessed;

(b) an occupier of the community revitalization property;

(c) the municipality in which the community revitalization property is situated; or

(d) a person or organization carrying on activities or projects that are consistent with the purposes of the fund and that are in the same community or neighbourhood as the community revitalization property.

Use of grants

15(7) The minister may requisition a grant only if it is to be used for a purpose agreed to by the municipality in which the community revitalization property is situated.

Audit

15(8) The accounts and transactions of the fund must be audited annually by an auditor, who may be the Auditor General. The cost of the audit is an administrative expense of operating the fund.

Reporting

15(9) The minister must include in each annual report of the minister's department a financial statement of the fund and a report on the use of grants made from the fund in the year and what those grants achieved.

REGULATIONS

Regulations

16(1) The Lieutenant Governor in Council may make regulations

(a) designating real property as a community revitalization property;

(b) amending or revoking a designation made under clause (a);

(c) prescribing the year in which a designation expires;

(d) respecting the application of any provision of *The Municipal Act*, *The Municipal Assessment Act*, *The Public Schools Act* or *The City of Winnipeg Charter*, with or without modification, to a community revitalization property or a community revitalization levy, or both;

(e) respecting any other matter necessary or advisable to carry out the intent and purpose of this Act.

Retroactive effect

16(2) A regulation made under clause (1)(a) or (b) may be given retroactive effect. But it may not come into force on a date before January 1 of the year in which it was made.