Minute No. 57
Report – Executive Policy Committee – December 3, 2014

Item No. 3 Amendment to The City of Winnipeg Charter – Compliance with Manitoba Building Code and City Zoning By-laws

COUNCIL DECISION:

Council concurred in the recommendation of the Executive Policy Committee and adopted the following:

1. That the Province of Manitoba be requested to amend The City of Winnipeg Charter, The Real Property Act or some other statute to

   A. allow registration at the Property Registry of agreements that restrict the use of land or permit a neighbouring property's access to land in order to allow neighbouring property to comply with Manitoba Building Code and Winnipeg zoning by-law requirements;

   B. provide that their registration at the Property Registry may not be discharged without the City's consent;

   C. provide that such agreements are binding on successors in title; and

   D. provide that this applies to all such agreements already registered.

2. 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 His Worship Mayor Bowman,

That the recommendation of the Executive Policy Committee be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On December 3, 2014, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

ADMINISTRATIVE REPORT

Title: ***The City of Winnipeg Charter*** **amendments to allow registration of "spatial separation agreements" and similar agreements that will allow a method of compliance with Manitoba Building Code and City zoning by-laws.**

Critical Path: **Executive Policy Committee - Council**

AUTHORIZATION

Author	Department Heads	CFO	CAO
S. Dueck H. Dick	B. Thorgrimson K. Boryskavich	n/a	M. Jack A/COO

RECOMMENDATIONS

1. That Council request that the Province of Manitoba amend *The City of Winnipeg Charter, The Real Property Act* or some other statute to

   (a) allow registration at the Property Registry of agreements that restrict the use of land or permit a neighbouring property's access to land in order to allow neighbouring property to comply with Manitoba Building Code and Winnipeg zoning by-law requirements;

   (b) provide that their registration at the Property Registry may not be discharged without the City's consent;

   (c) provide that such agreements are binding on successors in title; and

   (d) provide that this applies to all such agreements already registered.

2. 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

Clause 3(1)(e) of the City Organization By-law provides that only Council can determine policies affecting inter-governmental relations, including requests for legislation.

IMPLICATIONS OF THE RECOMMENDATIONS

The proposed legislative change will primarily affect three situations regularly dealt with by the City:

1. **Spatial Separation Agreements:** The Building Code requirement of spatial separation between buildings and the restrictions on the proximity of property lines is intended to inhibit the spread of fire from one building to another. The Code imposes construction requirements for the exposing building face based on the limiting distance (the distance from the exposing building face to a property line, the center line of a street or an imaginary line between two buildings on the same property). These construction requirements affect the number and size of windows and doors, the material and construction of the wall and cladding, and the fire resistance rating of the wall assembly. For example, walls that are within a limiting distance of 1.2m (e.g. 4' to a property line) are not allowed to have any unprotected openings.

   These Code requirements can create challenges for some projects involving new or existing buildings situated within these 'set-back' areas where economics and functionality make meeting the prescriptive Code requirements impractical.

   One solution proposed by the Code that the City has periodically employed is a "spatial separation agreement" in which the owner of the adjacent property (Property B) agrees to establish a "no build zone" for the portion of the limiting distance which cannot be achieved on the subject property (Property A). This agreement effectively moves the property line for the application of the Code. The owner of Property B is prohibited from building within the required limiting distance for the now-existing building on Property A so that the required distance between the two buildings is maintained. Such an agreement ensures that the intent of the Code is met while avoiding the expense and/or limitations on development that strict Code compliance would entail.

   The fact that the two adjacent properties are owned by the same person does not eliminate the Building Code requirements and the same issues apply.

2. **Exits onto thoroughfares**: A similar situation exists respecting the Building Code's requirements that an exit must lead from the floor area it serves to an open public thoroughfare. In some cases, due to the configuration of properties, this requirement

cannot be met. Again, one solution that the City has allowed is for the owner of the property on which the building is being constructed to enter into an easement agreement with the owner of the neighbouring property to allow for access through the neighbouring property onto a public thoroughfare.

3. **Cross Access Agreements**: The City's two zoning by-laws prohibit the establishment of any use on a parcel of land that does not abut a public street. However, in some instances, it is desirable to create lots that do not comply with this rule. An example would be larger sites with multiple buildings on separate lots such as a shopping center. In these instances, a variance of the zoning rule is typically granted but with a requirement for the registration of cross access agreements to ensure that the parcels are able to gain access to a public street through adjacent properties.

As noted, historically, the City of Winnipeg has accepted these sorts of agreements involving the owners of adjacent properties as a valid method of compliance with the Building Code. Not only are these agreements an effective means of meeting Building Code requirements, in the case of spatial separation agreements, they are in fact endorsed by the Building Code, which reads:

> *The authority having jurisdiction* (in this case, the City) *may also address limiting distances through legal agreements with the parties involved that stipulate that the limiting distance be measured to a line that is not the property line. Such agreements would normally be registered with the titles of both properties.*

However, in order to be effective as mechanisms to enforce the Building Code and zoning by-laws, these agreements must not only be binding on both property owners, they must bind subsequent property owners. This means that the two owners cannot be allowed to agree between themselves to abrogate the agreement. To ensure that this doesn't happen, the City has required that the City be made a party to these agreements and that they be filed at the Property Registry (Winnipeg Land Titles Office). This ensures that future owners of both properties are aware of these agreements, and that the City is notified if anyone tries to remove the agreement from the title.

The City's current practice is supported by property owners and developers because it allows development to take place in a way that meets the needs of property owners of adjacent titles without jeopardizing fire safety, exit abilities, and zoning requirements. The City's practice concerning these is particularly important for the development of downtown properties due to the high density of that area and the fact that many buildings are located near or at property lines.

Recently, the Property Registry has challenged the long-standing practice of having these agreements registered. The Property Registry has indicated that it does not have the authority

to accept agreements of this nature with the City as a party because the City does not hold an interest in the land. In the absence of a statutory authorization to register these agreements, the Property Registry has advised the City that it will no longer accept registration of these agreements. While the Property Registry is still willing to accept easement agreements between the two property owners, as noted above, the City would have no ability to restrict the removal of these caveats, and these agreements would become ineffectual as a means of enforcing code and zoning compliance.

Accordingly, if the City's longstanding practice is to continue, it is necessary to have the Province enact legislation to authorize the registration of the three types of agreements noted above. One of the features of this statutory authorization must be that these agreements cannot be discharged from the Property Registry without the City's consent. Otherwise, the two property owners could quietly agree between then to abrogate the agreement, removing the restriction and allowing construction of a building that would result in a violation of the Building Code or zoning by-laws.

In addition to allowing registration of these agreements, it is important that the legislation ensure that they are binding on future owners of the properties. That way, the transfer of title does not obliterate the restriction being imposed on one of the properties.

Finally, it is important that all the documents that have been filed at the Property Registry pursuant to the City's long-standing practice on this issue in the belief that they would bind both property owners should be validated so that they cannot be discharged or ignored by property owners in the future.

HISTORY

Recommendation 14.2 of the Red Tape Commission recommended that the City "Request that the Province of Manitoba amend the City of Winnipeg Charter to provide the City with clear legislative authority to register spatial separation agreements by way of caveats against the titles of affected properties." This recommendation accomplishes that Recommendation.

FINANCIAL IMPACT

Financial Impact Statement **Date:** October 14, 2014

Project Name:

The City of Winnipeg Charter amendments to allow registration of "spatial separation agreements" and similar agreements that will allow a method of compliance with Manitoba Building Code and City zoning by-laws.

COMMENTS:

There are no financial implications associated with these recommendations.

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

CONSULTATION

In preparing this report there was consultation with:

SUBMITTED BY

Department: Planning, Property and Development and Legal Services Department
Prepared by: Stan Dueck and Harold Dick
Date: October 20, 2014
File No.;

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