Minute No. 281
Report – Standing Policy Committee on Property and Development – March 10, 2015

Item No. 20 **Expropriation of Lands – Polo Park Infrastructure Improvements Project – Westside of St. James Street (St. James-Brooklands-Weston Ward) File GL-4**

COUNCIL DECISION:

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

1. That the expropriation of lands for the Polo Park Infrastructure Improvements Project, approved at the May 27th, 2014 Council Meeting, be confirmed as outlined in the Declaration of Expropriation submitted on May 27, 2014, with the exception of Holding #5 which will be removed from the expropriation.

2. That the three recommendations proposed by the Inquiry Report not be endorsed.

3. That the Director of Legal Services/City Solicitor be instructed to initiate Manitoba Court of Queen's Bench proceedings, if required, to obtain an order extending the time under The Expropriation Act for Council to confirm the expropriation.

4. That the proper officers of the City be authorized to do all things necessary to implement the foregoing, including the preparation and execution of any necessary documents.

Report – Standing Policy Committee on Property and Development – March 10, 2015

DECISION MAKING HISTORY:

Moved by Councillor Orlikow,

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

Carried

(Councillor Gillingham asked to be recorded as having voted against the item in accordance with Rule 50.7 of the Procedure By-law)

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On March 18, 2015, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the matter to Council.

Mark Newman, Fillmore Riley LLP, submitted a presentation titled "Report of Property and Development Committee Item 20, March 18, 2015 Submission of Oxbow Holdings Ltd." with respect to the Expropriation of Lands – Polo Park Infrastructure Improvements Project – Westside of St. James Street, which is on file in the City Clerk's Office.

James A. Mercury, Aikins, MacAulay & Thorvaldson LLP, submitted a presentation titled - Agenda Item #20 – Proposed Expropriation of "Holding #1" for Polo Park Infrastructure Improvements Project – Westside of St. James Street" submitted on behalf of 0197468Manitoba Ltd. (Canada Auto).

Report – Standing Policy Committee on Property and Development – March 10, 2015

DECISION MAKING HISTORY:

STANDING COMMITTEE RECOMMENDATION:

On March 10, 2015, 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.

David Sanders, submitted a communication dated March 10, 2015 with respect to the Expropriation of Lands – Polo Park Infrastructure Improvements Project – Westside of St. James Street.

Jamie Mercury submitted an aerial image of Canada Auto Repair and Service with respect to the Expropriation of Lands – Polo Park Infrastructure Improvements Project – Westside of St. James Street.

Mark Newman submitted a communication dated March 10, 2015 with respect to the Expropriation of Lands – Polo Park Infrastructure Improvements Project – Westside of St. James Street, which is on file in the City Clerk's Office.

ADMINISTRATIVE REPORT

Title: **Expropriation of Lands – Polo Park Infrastructure Improvements Project – Westside of St. James Street**

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

AUTHORIZATION

Author	A/Department Head	CFO	CAO
J. Zabudney	M. Pittet	M. Ruta	M. Jack A/CAO

RECOMMENDATIONS

1. That the expropriation of lands for the Polo Park Infrastructure Improvements Project, approved at the May 27th, 2014 Council Meeting, be confirmed as outlined in the Declaration of Expropriation submitted on May 27, 2014, with the exception of Holding #5 which will be removed from the expropriation.

2. That the three recommendations proposed by the Inquiry Report not be endorsed.

3. That the Director of Legal Services/City Solicitor be instructed to initiate Manitoba Court of Queen's Bench proceedings, if required, to obtain an order extending the time under The Expropriation Act for Council to confirm the expropriation.

4. That the proper officers of the City be authorized to do all things necessary to implement the foregoing, including the preparation and execution of any necessary documents.

REASON FOR THE REPORT

On May 27th, 2014, Council approved to expropriate the land located west of St. James Street for the purpose of extending and widening St. Matthews Avenue and widening St. James Street for Polo Park Area Infrastructure Improvements (also known as Polo Park Phase II). The properties to be expropriated are identified on Misc. Plan 14543/2 (attached).

Eight of the expropriated parties (Group 111 Diversified Inc.; 0197468 Manitoba Ltd., 3264751 Manitoba Ltd.; Oxbow Holdings Limited, St. James Industrial Park, St. James Place Warehouse; Madison Holdings Ltd.; Imaginability Inc.) objected to the expropriation.

An inquiry hearing was held on October 1st, 2nd, 3rd, 23rd and November 17th, 2014 to determine whether the "*intended expropriation is fair and reasonably necessary for the achievement of the objective of the expropriating authority*" (The Expropriation Act, Schedule A, 6(2)). The inquiry hearing occurred based on the objections from the expropriated parties.

On January 30th, 2015, the Inquiry Officer completed the Inquiry Report which included a recommendation to the expropriating authority that changes be made to the expropriation (Inquiry Report attached).

If any of the Inquiry Officer recommendations are endorsed, the Public Service has advised that an extension of time will be required to have the plan of expropriation changed at Winnipeg Land Titles Office.
The Public Service requests that Holding #5, which is a Manitoba Hydro owned property, be removed from the expropriation confirmation. Although Holding #5 was included in the plan of expropriation, the City cannot expropriate land from a Crown Agency unless the Crown Agency gives its prior consent. The Public Service had intended to obtain the consent of Manitoba Hydro to include Holding #5 in the expropriation; however, it has been unable to finalize an agreement for this purpose at present time due to a Hydro plant in the vicinity that must be resolved first. The Public Service intends to finalize the acquisition of Holding #5 separately from the expropriation so that it will not be unnecessarily held up.

IMPLICATIONS OF THE RECOMMENDATIONS

Confirming the expropriation will allow the Public Service to maintain existing construction timelines and costs as they relate to the St. Matthews extension.

Not endorsing the Inquiry Officer's recommendations for Holding #1 and #8 will not affect the ability of the property owners to seek additional compensation through the LVAC.

The Inquiry Officer recommendation for Holding #3 should not be endorsed due to safety concerns and/or the recommendation does not follow City guidelines.

HISTORY

On May 27th, 2014, Council approved the administrative report titled "*Expropriation of Lands – Polo Park Infrastructure Improvements Project – Westside of St. James Street."*

On September 20th, 2014, a Notice of Public Hearing for the inquiry was published in the Winnipeg Free Press.

On September 29th, 2014, George Ulyatt was appointed as an Inquiry Officer by the Manitoba Minister of Justice.

On October 1, 2014, the public inquiry for Phase II of the Polo Park expropriations commenced, in order to determine whether or not the intended expropriation was reasonably fair and reasonably necessary for the achievement of the objective of The City.

On October 21, 2014, an Order was endorsed by the Manitoba Court of Queen's Bench granting the City an extension of time under The Expropriation Act to have the expropriation confirmed by March 30, 2015. This extension was necessary due to the length of time it took to conduct the Inquiry.

The position of the Public Service at the hearing was that the expropriation was fair and reasonable.

On January 30th, 2015, the Inquiry Officer completed the Inquiry Report which included a recommendation to the expropriating authority that changes be made to the expropriation (Inquiry Report attached).

The findings of the inquiry hearing were published on January 30, 2015 and the Inquiry Officer (as appointed by the Manitoba Minister of Justice) made three recommendations:

- Holding #1 should be a full taking rather than a partial taking;
- Holding #3 should have access issues addressed through the installation of traffic controls and a median cut; and
- Holding #8 should be a full taking rather than a partial taking.

The Inquiry Officer recommended full takings for Holding #1 and #8 based on the evidence of the property owners who indicated that the partial taking would negatively impact the commercial viability of the properties. The owner of Holding #3 indicated that the realignment would change/disrupt their existing access.

The Public Service does not endorse the Inquiry Officer's recommendation for Holding #1:

- There was no evidence (i.e. financial data) provided at the hearing to prove the affected property was no longer commercially viable as a result of the taking.
- The affected owner has the ability to forward their position at the Land Value Appraisal Commission (LVAC) for the purposes of compensation.
- A full taking would increase land acquisition costs and create a liability for the City due to the maintenance of an existing building on the property.

The Public Service does not endorse the Inquiry Officer's recommendation for Holding #3:

- Creating a median cut would disrupt eastbound traffic on St. Matthews Avenue and increase the risk of rear end collisions, since an eastbound storage lane cannot be accommodated due to the presence of a westbound left turn lane at this location.
- The median cut would also require eastbound traffic on St. Matthews Avenue to navigate through the westbound storage lane which could create collisions; the median cut would not align with Kensington Street, which could generate improper turning movements.
- Installing traffic controls at St. Matthews Avenue and Kensington Street would not meet City guidelines for signal control and would create safety issues, queuing issues and vehicle delay.
- Installing traffic controls at St. Matthews Avenue and Madison Street would not meet City guidelines, would unduly delay vehicle movements and could create safety issues.
- Installing pedestrian traffic control is deemed unnecessary since the St. Matthews Avenue extension will include creating sidewalks within the right-of-way (none existed before) and the site is within close proximity to an existing crossing (Route 90 and St. Matthews Avenue)

The Public Service does not endorse the Inquiry Officer's recommendation for Holding #8:

- There was no evidence (i.e. financial data) provided at the hearing to prove the affected property was no longer commercially viable as a result of the taking.
- The affected owner has the ability to forward their position at the Land Value Appraisal Commission (LVAC) for the purposes of compensation.
- A full taking would increase land acquisition costs and create a liability for the City due to the maintenance of an existing building.

FINANCIAL IMPACT

Financial Impact Statement **Date:** February 11, 2015

Project Name:

Expropriation of Lands – Polo Park Infrastructure Improvements Project – Westside of St. James Street

COMMENTS:

While there are no direct financial implications associated with the confirmation of expropriation proceedings, doing so will ensure that the City will acquire the property and incur settlement and ancillary costs. Such costs are not reasonably estimable at this time.

"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 as to transportation issues

SUBMITTED BY

Department: Planning, Property and Development
Division: Real Estate
Prepared by: Gordon Chappell
Date: February 12, 2015
File No.: 9030, 5605/114, 7139 V2, 5346 V3

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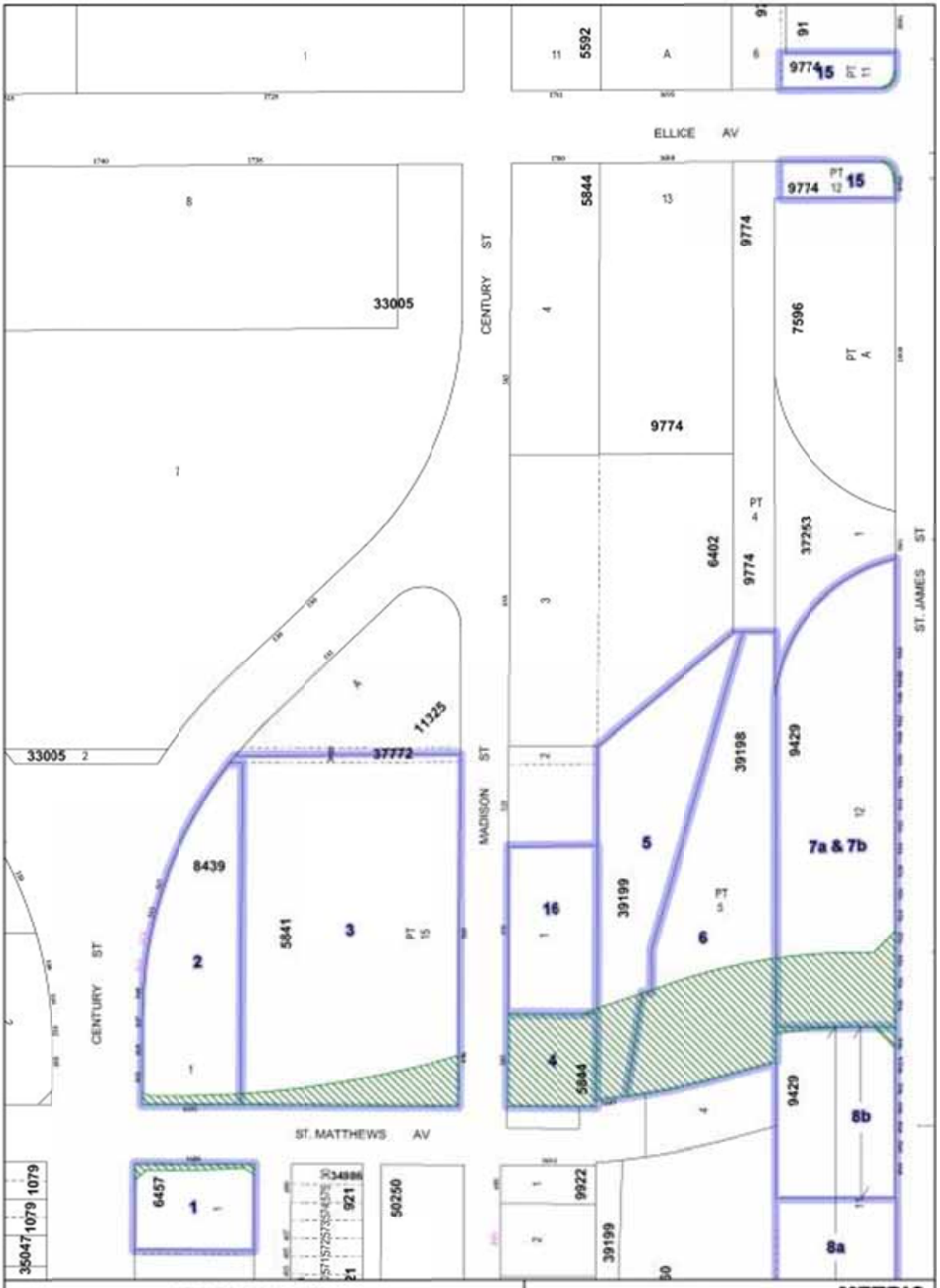
ELLICE AV
CENTURY ST
MADISON ST
ST. JAMES ST
ST. MATTHEWS AV
33005
37772
11325
8439
5841
5592
5844
9774
7596
6402
37253
39198
39199
9429
7a & 7b
8b
8a
6457
50250
9922
35047
1079
921
PROPERTY OWNERS
Holding No. | Owner | Holding No. | Owner
1 | 0197468 MANITOBA LTD. | 7a | OXBOW HOLDINGS LTD. (FREEHOLD)
2 | MID CANADA PRODUCTION SERVICES INC. | 7b | ST. JAMES PLACE WAREHOUSE LTD. (LEASEHOLD)
3 | GROUP III DIVERSIFIED INC. | 8a | OXBOW HOLDINGS LTD. (FREEHOLD)
4 | MADISON HOLDINGS LTD. | 8b | ST. JAMES INDUSTRIAL PARK (ELLICE) LTD. (LEASEHOLD)
5 | THE MANITOBA HYDRO-ELECTRIC BOARD | 15 | THE MANITOBA HYDRO-ELECTRIC BOARD
6 | OXBOW HOLDINGS LTD. |
PROPOSED ACQUISITION AREA
HOLDINGS
METRIC
Date: 2014-APRIL-14
District: ASBA
File: Not Available
Scale: 1: 1500
Requested by: RR & SA
Drawn by: KP & MS
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN No. 14543/2