Agenda – Council – September 30, 2015

Report – Executive Policy Committee – September 23, 2015

Item No. 10 Settlement of claims between Donald B. Holdings Ltd. (formerly known as Dutch Maid Ice Cream Inc.) and 2858097 Manitoba Ltd. Inc. ("DBH") and the City of Winnipeg (the "City") (the "claims")

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 23, 2015, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the following to Council:

1. That approval be given to the City entering into a settlement of the claims by:

    A. Paying the sum of $350,000 to Donald B. Holdings Ltd. (formerly known as Dutch Maid Ice Cream Inc.,) and 2858097 Manitoba Ltd. Inc. (DBH);

    B. Requiring Notices of Discontinuance of the claims;

    C. Requiring an exchange of Releases by all parties;

    D. Requiring DBH to convert the rooming house at 494 Wardlaw to a single family or two-family dwelling so as to comply with the applicable zoning by-law or sell 494 Wardlaw within one year of the settlement, failing which the City may either sue on the breach of the settlement agreement for its damages or on a consent judgment in the amount of $25,000.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report – Executive Policy Committee – September 23, 2015

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 23, 2015, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

ADMINISTRATIVE REPORT

Title: **Settlement of claims between Donald B. Holdings Ltd. (formerly known as Dutch Maid Ice Cream Inc.,) and 2858097 Manitoba Ltd. Inc. ("DBH") and the City of Winnipeg (the "City") (the "claims")**

Critical Path: **EPC - Council**

AUTHORIZATION

Author	Acting Department Head	CFO	CAO/COO
Denise A. M. Pambrun	Krista L. Boryskavich	M. Ruta	M. Jack COO

RECOMMENDATIONS

1. That Council approve the City entering into a settlement of the claims by:
    - Paying the sum of $350,000 to DBH;
    - Requiring Notices of Discontinuance of the claims;
    - Requiring an exchange of Releases by all parties;
    - Requiring DBH to convert the rooming house at 494 Wardlaw to a single family or two-family dwelling so as to comply with the applicable zoning by-law or sell 494 Wardlaw within one year of the settlement, failing which the City may either sue on the breach of the settlement agreement for its damages or on a consent judgment in the amount of $25,000.
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

- Settlement of claims against the City in the amount over $250,000 must be approved by Council accordance with the City's Organization By-law.

IMPLICATIONS OF THE RECOMMENDATIONS

- Legal Services, with the concurrence of the Planning, Property and Development Department, recommends that this settlement be approved.
- The issues in this matter will be contentious, requiring several weeks of litigation and out-of-pocket costs.
- Settlement of the claim will remove the risks of litigation.
- The settlement amount represents a reasonable payment to avoid the time, costs and risks of litigation.

HISTORY

- In the 1990s, DBH was the owner of 9 properties in the Osborne Village area which it operated as rooming houses, all of which had rooming house licences (the "properties").
- In the early 1990s, DBH was required to renovate the properties in order to comply with life safety requirements in various City by-laws. During that process, DBH alleges that City employees represented to it that if it did so and brought the properties into compliance with City by-laws respecting life-safety issues, it would continue to receive rooming house licences as it had for several years.
- In 1997, it became evident to the City that it had issued rooming house licences to DBH in respect of the properties in error as none of the properties was in compliance with Zoning By-law 200/2006 in respect of any of the properties. Accordingly, the City refused to issue further rooming house licences.
- DBH filed an application for a zoning variance with the City with respect to one of the properties (494 Wardlaw) and was partially successful. The Variance Order was then appealed by neighbours to the City's Appeal Committee, which allowed the appeal. The result was that 494 Wardlaw, and by implication all of the properties, were not in compliance with the zoning by-law and there not entitled to rooming house licences.
- DBH filed a Notice of Application and a Statement of Claim in the Court of Queen's Bench in 2003, seeking a declaration that it was entitled to rooming house licenses for the properties and for damages. Its basis for doing so was its reliance on the City's negligent misrepresentation that its compliance with life safety requirements would entitle it to rooming house licences.
- In 2003, the City advised DBH that it would not proceed with prosecution of breaches of the zoning by-law arising out of the use of the properties as rooming houses pending the outcome of the court proceedings.
- Between 1997 and the present, DBH disposed of all of the subject properties except for 494 Wardlaw which it continues to operate as a rooming house in contravention of the zoning by-law.

DISCUSSION

- In 2011, Legal Services advised the Director of Planning, Property and Development that the City had considerable exposure in the action and recommended that attempts be made to settle the matter.

- Several options were explored including a possible purchase of 494 Wardlaw. No consideration was given to permitting 494 Wardlaw to continue to operate unlawfully as a rooming house, despite the request of DBH to that effect.
- Ultimately, the parties have been able to agree on a potential settlement as recommended above.
- Accordingly, Legal Services recommends that the City settle these outstanding actions as follows:
    - Paying the sum of $350,000 to DBH;
    - Requiring Notices of Discontinuance of the claims;
    - Requiring an exchange of Releases by all parties;
    - Requiring DBH to convert the rooming house at 494 Wardlaw to a single family or two-family dwelling so as to comply with the applicable zoning by-law or sell 494 Wardlaw within one year of the settlement, failing which the City may either sue on the breach of the settlement agreement for its damages or on a consent judgment in the amount of $25,000.
- It is the view of Legal Services and the Planning, Property & Development Department that this settlement is in the best interests of the City.

FINANCIAL IMPACT

Financial Impact Statement **Date:** July 7, 2015

Project Name: **First Year of Program** **2015**

Settlement of claims between Donald B. Holdings Ltd. (formerly known as Dutch Maid Ice Cream Inc.,) and 2858097 Manitoba Ltd. Inc. ("DBH") and the City of Winnipeg (the "City") (the "claims")

	2015	2016	2017	2018	2019
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Cash-to-Capital	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Developer Contribution	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ 350,000	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ 350,000	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	350,000	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Direct costs represent the proposed settlement amount. There is sufficient Council-approved budget to fund this expenditure. Funding of $350,000 was accrued in 2014 in the Planning, Property and Development Department's year-end payables; account distribution 001-221020-631407.

"Original signed by"
Mike McGinn, CA
Manager of Finance

CONSULTATION

In preparing this report there was consultation with:

Marc Pittet, Acting Director, Planning, Property and Development

SUBMITTED BY

Department: Legal Services Department
Prepared by: Denise A. M. Pambrun
Date: July 7, 2015
File No. CL.5/2003(26) and CL.5/2003(32)