Agenda – Council – January 27, 2016

STANDING POLICY COMMITTEE ON PROPERTY AND DEVELOPMENT,

HERITAGE AND DOWNTOWN DEVELOPMENT

MOTIONS

Moved by Councillor ,
Seconded by Councillor ,

WHEREAS

(a) Pursuant to its By-law No. 33/2015, The City of Winnipeg ("the City") authorized the expropriation of the lands described therein for the purpose of construction of the Southwest Transit-Way (Stage 2) and Pembina Highway Underpass Project, in the City of Winnipeg, in Manitoba, and executed a Declaration of Expropriation dated March 25, 2015;

(b) Notice of the intended expropriation was served by the City upon all owners of the lands intended to be expropriated, and was published in a newspaper having general circulation in the locality in which the said lands are situate, pursuant to section 1 of Schedule "A" to The Expropriation Act;

(c) Notices of objection to the intended expropriation were served upon the City by some of the said owners, pursuant to section 3 of Schedule "A" to The Expropriation Act;

(d) The City requested the Minister of Justice to appoint an inquiry officer;

(e) The Minister of Justice on July 30, 2015 appointed an inquiry officer pursuant to section 4(2) of Schedule "A" to The Expropriation Act, and an inquiry was conducted on August 4, 6, 7, 10, 11, 12, 25, and September 2 and 4, 2015;

(f) The inquiry officer obtained an Order dated August 14, 2015 from The Honorable Justice Dewar of the Manitoba Court of Queen's Bench that the time for the Confirming Authority to make an order with respect to the Declaration of Expropriation is extended to October 29, 2015; and

(g) The inquiry officer obtained an Order dated October 7, 2015 from The Honorable Justice Rempel of the Manitoba Court of Queen's Bench that the time for the Confirming Authority to make an order with respect to the Declaration of Expropriation is extended to January 31, 2016.

Standing Policy Committee on Property and Development, Heritage and Downtown Development – Motions (continued):

AND WHEREAS the inquiry officer submitted his report to the City on November 16, 2015, wherein he stated that in his opinion the intended expropriation is fair and reasonably necessary for the achievement of the objectives of the City, subject to the following recommendations:

1. 1679 Pembina Highway (Holding 22 and 23):

"The Objector and the City have reached an agreement of principle that the new Active Transportation Path can be accommodated by an easement being granted to the City that would parallel the owner's property lines. In the circumstances, This Inquiry Officer would find that it is not fair and reasonably necessary for a fee simple taking and that the issue be resolved by an easement as outlined and such a taking would be found to be fair and reasonably necessary and would satisfy the tests of public versus private interests."

2. 850 Pembina Highway (Holding 35):

"In the present circumstances, this Inquiry Officer finds that the proposed taking of a fee simple is not fair and reasonably necessary and that the taking, by way of an easement, would be appropriate and that the City amend its Declaration of Expropriation to reduce the taking to an easement taking that would allow the City to construct and maintain the retaining walls."

3. 1833 Pembina Highway (Holding 38):

"It is this Inquiry Officer's opinion that the City has failed to examine and pursue options, failed to do due diligence concerning the taking and has not satisfied the onus that it is fair or reasonably necessary in the circumstances for the taking, and has failed to establish the taking would balance the private versus public interests. The proposed taking is denied.

This Inquiry Officer would urge the City to explore alternate sites and/or arrange a meeting with the City, the Objector, and Manitoba Hydro."

4. West of Pembina Highway (Holding 39):

"This Inquiry Officer is of the opinion that the proposed taking of a fee simple interest is not fair and reasonably necessary, but the taking of an easement upon the lands would be fair and reasonably necessary and would satisfy the City's objectives and meet the amount of the taking. There is no evidence before this Inquiry Officer that an easement would not be sufficient."

AND WHEREAS The Expropriation Act provides that Council of the City shall consider the report of the inquiry officer, and where Council makes an order confirming the intended

Standing Policy Committee on Property and Development, Heritage and Downtown Development – Motions (continued):

expropriation which is not in accordance with the opinion of the inquiry officer, Council shall state its reasons for making the order.

AND WHEREAS The City of Winnipeg has purchased all the lands contained within Certificate of Title numbers 1260308/1, 1407684/1 and 1862651/1 (Holdings 15, 16 and 17) thereby making them not required for the expropriation and said lands have been removed from Plan Deposit 2137/2014. The City of Winnipeg desires that Holdings 15 (971/973 Chancellor Drive), 16 (967/969 Chancellor Drive), and 17 (963/965 Chancellor Drive), which have already been settled, approved by Standing Policy Committee on Property and Development and transferred into the City's name, be removed from the expropriation confirmation.

AND WHEREAS instruments Numbers 1579777/1 and 1579780/1 are registered against Certificate of Title numbers 1260308/1, 1407684/1 and 1862651/1 and are no longer appurtenant to the expropriation;

AND WHEREAS instrument 4539390/1 has been registered against Certificate of Title number 1606395/1 and said instrument is now part of the encumbrances against the expropriated lands;

AND WHEREAS The City of Winnipeg requires part only of the lands contained within Certificate of Title number 1517845/1 and said land is contained within the lands taken for Works and shown as Parcel A on Plan Deposit 0002/2015 WLTO prepared by Donald Neil Bourgeois of the City of Winnipeg, Manitoba Land Surveyor. The City of Winnipeg desires that Holdings 22 and 23 (1679 Pembina Highway) be reduced in size from the original taking sizes of 5,700sq.ft.+/- and 26,716+/- sq., respectively to 5,601sq.ft.+/- and 9,754 sq.ft.+/-, respectively as per Plan Deposit 0002/2015.

AND WHEREAS The City of Winnipeg desires that the lands taken for Pembina Highway as show on Plan Deposit 0001/2015 WLTO prepared by Donald Neil Bourgeois of the City of Winnipeg, Manitoba Land Surveyor be amended to lands taken for Works.

AND WHEREAS under The Expropriation Act Council of the City may confirm the Declaration with such modification thereof as it considers proper;

Standing Policy Committee on Property and Development, Heritage and Downtown Development – Motions (continued):

AND WHEREAS it is advantageous that the City proceed with the expropriation of the lands described in By-law No. 33/2015 with the following exceptions:

a) to delete parcel B from the lands described in Section 1, Thirdly;
b) to delete instruments 1579777/1 and 1579780/1 from the encumbrances listed in section 2;
c) to add instrument 4539390/1 to the encumbrances listed in section 2;
d) to delete Section 1, Fifthly and renumbering the balance of the section accordingly;
e) to amend Section 1, (the Original) Thirteenthly to replace "Pembina Highway" with "Works".

THEREFORE BE IT RESOLVED that the Declaration of Expropriation made March 25, 2015, executed pursuant to By-law No. 33/2015 and expropriating the following lands:

Firstly,
The lands taken for Markham Road and Southpark Drive as shown on Plan Deposit 2119/2014 WLTO, prepared by Donald Neil Bourgeois, of the City of Winnipeg, Manitoba Land Surveyor,

Secondly,
The lands taken for Chancellor Drive as shown on Plan Deposit 2122/2014 WLTO, prepared by Donald Neil Bourgeois, of the City of Winnipeg, Manitoba Land Surveyor,

Thirdly,
The lands taken for Works and shown as parcels A and B on Plan Deposit 2137/2014 WLTO, prepared by Donald Neil Bourgeois, of the City of Winnipeg, Manitoba Land Surveyor,

Fourthly,
The lands taken for Works and shown as parcel A on Plan Deposit 0002/2015 WLTO, prepared by Donald Neil Bourgeois, of the City of Winnipeg, Manitoba Land Surveyor,

Fifthly,
All of the land contained within Lot 5, Plan 22602 WLTO,

Sixthly,
The lands taken for Works and shown as parcels A and B on Plan Deposit 0144/2015 WLTO, prepared by Kenneth Max Yerex, of the City of Winnipeg, Manitoba Land Surveyor,

Seventhly,
The lands taken for Seel Avenue as shown on Plan Deposit 0142/2015 WLTO, prepared by Kenneth Max Yerex, of the City of Winnipeg, Manitoba Land Surveyor,

Standing Policy Committee on Property and Development, Heritage and Downtown Development – Motions (continued):

Eighthly,
All of the land contained within Lots 17, 18, 19 and 20 in Block 56, Plan 276 WLTO,

Ninthly,
All of the land contained within Lots 9 and 10 in Block 6, Plan 1295 WLTO,

Tenthly,
The lands taken for Works and shown as parcel A on Plan Deposit 0054/2015 WLTO, prepared by Donald Neil Bourgeois, of the City of Winnipeg, Manitoba Land Surveyor,

Eleventhly,
The lands taken for Works and shown as parcel A on Plan Deposit 0036/2015 WLTO, prepared by Donald Neil Bourgeois, of the City of Winnipeg, Manitoba Land Surveyor,

Twelfthly,
The lands taken for Works and shown as parcels A, B and C on Plan Deposit 0141/2015 WLTO, prepared by Kenneth Max Yerex, of the City of Winnipeg, Manitoba Land Surveyor,

Thirteenthly,
The lands taken for Pembina Highway as shown on Plan Deposit 0001/2015 WLTO, prepared by Donald Neil Bourgeois, of the City of Winnipeg, Manitoba Land Surveyor,

Fourteenthly,
The lands taken for Works and shown as parcel A on Plan Deposit 0035/2015 WLTO, prepared by Donald Neil Bourgeois, of the City of Winnipeg, Manitoba Land Surveyor,

Fifteenthly,
The lands taken for Works and shown as parcel A on Plan Deposit 0055/2015 WLTO, prepared by Donald Neil Bourgeois, of the City of Winnipeg, Manitoba Land Surveyor,

Sixteenthly,
The lands taken for Works and shown as parcel A on Plan Deposit 0143/2015 WLTO, prepared by Kenneth Max Yerex, of the City of Winnipeg, Manitoba Land Surveyor.

> The lands described in section 1 are expropriated free of encumbrances, except for Instrument Numbers: 1579780, 1579777, 1579772, 1877561, 221134, 187579, 187580, 194482, 195046, 229301, 256931, 207405, 2495910, 2513473, 165092, 197495, 2324928, 4321570, 175024, 175025, 179180, 1988949, 3529771, 209786, 2069730, 2198952.

Standing Policy Committee on Property and Development, Heritage and Downtown Development – Motions (continued):

The lands described above except:

a) mines, minerals and named substances which are excepted from or not included in the Certificate of Title of the registered owner of the surface under The Real Property Act or are not owned by the owner of the surface under The Registry Act; and

b) reservations in favour of the Crown as excepted from the Title of the owner of the surface, or to which Title is subject by implication under the provisions of The Real Property Act.

BE AMENDED to provide that the lands described are as follows:

Firstly,
The lands taken for Markham Road and Southpark Drive as shown on Plan Deposit 2119/2014 WLTO, prepared by Donald Neil Bourgeois, of the City of Winnipeg, Manitoba Land Surveyor,

Secondly,
The lands taken for Chancellor Drive as shown on Plan Deposit 2122/2014 WLTO, prepared by Donald Neil Bourgeois, of the City of Winnipeg, Manitoba Land Surveyor,

Thirdly,
The lands taken for Works and shown as parcel A on Plan Deposit 2137/2014 WLTO, prepared by Donald Neil Bourgeois, of the City of Winnipeg, Manitoba Land Surveyor,

Fourthly,
The lands taken for Works and shown as parcel A on Plan Deposit 0002/2015 WLTO, prepared by Donald Neil Bourgeois, of the City of Winnipeg, Manitoba Land Surveyor,

Fifthly,
The lands taken for Works and shown as parcels A and B on Plan Deposit 0144/2015 WLTO, prepared by Kenneth Max Yerex, of the City of Winnipeg, Manitoba Land Surveyor,

Sixthly,
The lands taken for Seel Avenue as shown on Plan Deposit 0142/2015 WLTO, prepared by Kenneth Max Yerex, of the City of Winnipeg, Manitoba Land Surveyor,

Seventhly,

All of the land contained within Lots 17, 18, 19 and 20 in Block 56, Plan 276 WLTO,

Standing Policy Committee on Property and Development, Heritage and Downtown Development – Motions (continued):

Eighthly,
All of the land contained within Lots 9 and 10 in Block 6, Plan 1295 WLTO,

Ninthly,
The lands taken for Works and shown as parcel A on Plan Deposit 0054/2015 WLTO, prepared by Donald Neil Bourgeois, of the City of Winnipeg, Manitoba Land Surveyor,

Tenthly,
The lands taken for Works and shown as parcel A on Plan Deposit 0036/2015 WLTO, prepared by Donald Neil Bourgeois, of the City of Winnipeg, Manitoba Land Surveyor,

Eleventhly,
The lands taken for Works and shown as parcels A, B and C on Plan Deposit 0141/2015 WLTO, prepared by Kenneth Max Yerex, of the City of Winnipeg, Manitoba Land Surveyor,

Twelfthly,
The lands taken for Works as shown on Plan Deposit 0001/2015 WLTO, prepared by Donald Neil Bourgeois, of the City of Winnipeg, Manitoba Land Surveyor,

Thirteenthly,
The lands taken for Works and shown as parcel A on Plan Deposit 0035/2015 WLTO, prepared by Donald Neil Bourgeois, of the City of Winnipeg, Manitoba Land Surveyor,

Fourteenthly,
The lands taken for Works and shown as parcel A on Plan Deposit 0055/2015 WLTO, prepared by Donald Neil Bourgeois, of the City of Winnipeg, Manitoba Land Surveyor,

Fifteenthly,
The lands taken for Works and shown as parcel A on Plan Deposit 0143/2015 WLTO, prepared by Kenneth Max Yerex, of the City of Winnipeg, Manitoba Land Surveyor.

The lands described in section 1 are expropriated free of encumbrances, except for Instrument Numbers: 1579772/1, 1877561/1, 221134/1, 187579/1, 187580/1, 194482/1, 195046/1, 229301/1, 256931/1, 207405/1, 2495910/1, 2513473/1, 165092/1, 197495/1, 2324928/1, 4321570/1, 175024/1, 175025/1, 179180/1, 1988949/1, 3529771/1, 209786/1, 2069730/1, 2198952/1, 4539390/1.

The lands described above except:

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c) mines, minerals and named substances which are excepted from or not included in the Certificate of Title of the registered owner of the surface under The Real Property Act or are not owned by the owner of the surface under The Registry Act; and

d) reservations in favour of the Crown as excepted from the Title of the owner of the surface, or to which Title is subject by implication under the provisions of The Real Property Act.

AND BE AMENDED to replace the original Plan Deposits 2137/2014, 0002/2015 and 0001/2015 WLTO with revised versions which:

- removes Holdings 15 (971/973 Chancellor Drive), 16 (967/969 Chancellor Drive), and 17 (963/965 Chancellor Drive) from the expropriation confirmation, as per revised Plan Deposit 2137/2014;
- reduces the size of the original takings of Holdings 22 and 23 (1679 Pembina Highway) from 5,700sq.ft.+/- and 26,716+/- sq., respectively to 5,601sq.ft.+/- and 9,754 sq.ft.+/-, respectively, as per revised Plan Deposit 0002/2015;
- changes the lands taken for "Pembina Highway", as show on Plan Deposit 0001/2015 WLTO prepared by Donald Neil Bourgeois of the City of Winnipeg, Manitoba Land Surveyor, to lands taken for "Works."

BE IT FURTHER RESOLVED that the Declaration of Expropriation dated March 25, 2015, as amended herein and thereby replaced by an Amended Declaration of Expropriation dated January 27, 2016, is hereby confirmed.

BE IT FURTHER RESOLVED that Council's reasons for proceeding with the expropriation of a fee simple interest in the property located at 1679 Pembina Highway (Holding 22 and 23), rather than an easement interest, which in the opinion of the Inquiry Officer is fair and reasonably necessary for the achievement of the City's objectives, are as follows:

- The Public Service does not endorse the Inquiry Officer's recommendation for 1679 Pembina Highway (Holding 22 and 23). At the inquiry hearing, the City agreed to an easement for Holdings 22 and 23 rather than a taking on condition that the easement could be negotiated in time. The parties were unable to negotiate and complete an easement agreement in time for Holdings 22 and 23 to be removed from the expropriation prior to confirmation by Council. The City did reduce the size of the takings for each Holding to a much smaller area but due to time constraints had to move forward with the reduced takings rather than an easement. Once construction of the Active Transportation Path is complete, the City intends to sell all of the land from Holdings 22 and 23 back to the property owner, subject to the City having secured an easement in perpetuity on these

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lands. The easement to be granted to the City by the owner of Holdings 22 and 23 will be further reduced from the areas included in the takings. The easements will be at the very minimum size possible in order to accommodate the safe utilization of the Active Transportation Path.

BE IT FURTHER RESOLVED that Council's reasons for proceeding with the expropriation of a fee simple interest in the property located at 850 Pembina Highway (Holding 35), rather than an easement interest, which in the opinion of the Inquiry Officer is fair and reasonably necessary for the achievement of the City's objectives, are as follows:

- The Public Service does not endorse the Inquiry Officer's recommendation for 850 Pembina Highway (Holding 35). Public Works advises that the expropriated land required is for construction of a retaining wall. The retaining wall will be situated within the expropriated land. The City's contractor will design the type of retaining wall that will be constructed as well as determining the area required within the expropriated land to stage the construction. As a minimum, the City must ultimately own the land that contains all components of the retaining wall and obtain a permanent easement for maintenance, rehabilitation, and reconstruction over the balance of the land. After completion of construction, a determination will be made whether some of the land can be sold back and/or an easement negotiated.

BE IT FURTHER RESOLVED that Council's reasons for proceeding with the expropriation of the property located at 1833 Pembina Highway (Holding 38), which in the opinion of the Inquiry Officer is not fair and reasonably necessary for the achievement of the City's objectives, are as follows:

- The Public Service does not endorse the Inquiry Officer's recommendation for 1833 Pembina Highway (Holding 38).The Inquiry Officer stated, "It would appear that the Objector is in fact correct in submitting that there was inadequate consultation or investigation of the placement of the proposed pumping station. At the time, there was no adequate discussion with the Objector, or it appears, any site visits. This Inquiry Officer did attend at 1833 Pembina Highway and the Capri Motel, and examined the properties. Whilst mindful that this Inquiry Officer is not a property evaluator, one can easily observe the buildings on the Capri Motel site which could be used for the placement of the pumping station, are old, run down, and do not appear to be maintained. A visit to the site may well have affected the placement of the pumping station."

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- The table below outlines the position of the Public Service:

1833 Pembina Highway (Holding 38)	***The Capri Hotel Location***
The affected property is an existing parking lot which impacts 6 resident parking spots.	The affected property includes a minimum of 3 and possibly 4 hotel buildings, each building housing 2 units. In total 6 to 8 hotel units would be demolished resulting in a loss of income to the business.
The affected property will require the relocation of the above parking spots. At the inquiry evidence was given by the owner that arrangements had already been made with Manitoba Hydro for parking sites within Hydro lands to accommodate both future apartment expansion and the above noted impacted parking spots.	The affected property would lose parking spots associated with the 8 units mentioned above.
The affected property has no existing utilities that are impacted.	The affected property has existing sewer, water, site lighting and power that would be impacted and removal of this infrastructure would be required.
The pump station at the affected property is located in a parking lot and therefore does not significantly impact existing residents.	The pump station at the affected property would be within 1-2 meters of adjacent motel units which could create noise disturbance for hotel clients.
The length of the required access road from Plaza Drive to the pump station and the length of the Outfall from the pump station to the Lot 16 Drain are minimal.	The length of the required access road from Plaza Drive to the pump station and the length of the Outfall from the pump station to the Lot 16 Drain would be approximately 75 meters longer than the proposed 1833 Pembina site, increasing the costs.

- In summary, it is the position of the Public Service that the expropriation of the 1833 Pembina Highway location is less costly to the City and has less impact on the expropriated parties than expropriation of the Capri Hotel location is likely to have on its interested parties.

BE IT FURTHER RESOLVED that Council's reasons for proceeding with the expropriation of a fee simple interest in the property located west of Pembina Highway (Holding 39), rather than an easement interest, which in the opinion of the Inquiry Officer is fair and reasonably necessary for the achievement of the City's objectives, are as follows:

- The Public Service does not endorse the Inquiry Officer's recommendation for the property west of Pembina Highway (Holding 39). Public Works advises that the expropriated land required is for construction of a retaining wall, active transportation path switchback ramp, and embankment slope. The City's contractor will be designing the configuration and type of retaining wall, switchback ramp and slopes that will be constructed as well as determining the area required within the expropriated land to stage the construction. As a minimum, the City must ultimately own the land that contains the above-mentioned components for maintenance, rehabilitation, and reconstruction. After completion of construction, a determination will be made whether some of the land can be sold back to the property owner and/or an easement can be negotiated.

Therefore, it is in the City's best interests to make and confirm the Amended Declaration of Expropriation