Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – May 10, 2016

Item No. 4 Closing – Station Road, West of Pembina Highway (South Winnipeg - St. Norbert Ward) File DAC 4/2016

COUNCIL DECISION:

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

1. That the street closing under File DAC 4/2016 be rejected.

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – May 10, 2016

DECISION MAKING HISTORY:

Moved by Councillor Orlikow,

That the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 11, 2016, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and the Riel Community Committee, and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On May 10, 2016, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendation of the Riel Community Committee and submitted the matter to the Executive Policy Committee and Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On May 2, 2016, the Riel Community Committee concurred in the recommendation of the Winnipeg Public Service, and recommended to the Standing Policy Committee on Property and Development, Heritage and Downtown Development that the street closing under File DAC 4/2016 be rejected.

PUBLIC HEARING SUMMARY

File:	DAC 4/2016
Before:	Riel Community Committee Councillor Lukes, Chairperson Councillor Allard Councillor Mayes
Public Hearing:	May 2, 2016 Council Building, 510 Main Street
Applicant:	Eugene Heinrichs
Premises Affected:	Station Road, West of Pembina Highway
Exhibits Filed:	1. Report from the Real Property Officer dated April 11, 2016 2. Inspection Report

REPRESENTATIONS:

In Support:

Eugene Heinrichs
Vernon Bohr

In Opposition:

Sharon Cianflone
James Cianflone
Robert Roehle
Norm Gousseau

For Information:

Nil

For the City:

Richard Mahé, Planner, Planning, Property and Development Department
Kim Raban, Land Development Administrator, Planning, Property and Development Department
Bohdan Buyachok, Real Property Officer, Planning, Property and Development Department

Exhibit "1" referred to in File DAC 4/2016

ADMINISTRATIVE REPORT

Title: **DAC 4/2016: PROPOSED CLOSING OF STATION ROAD, WEST OF PEMBINA HIGHWAY**

Critical Path: **RIEL COMMUNITY COMMITTEE – STANDING POLICY COMMITTEE ON PROPERTY AND DEVELOPMENT, HERITAGE AND DOWNTOWN DEVELOPMENT – EXECUTIVE POLICY COMMITTEE – COUNCIL**

AUTHORIZATION

Author	Department Head	CFO	CAO/COO
M. Pittet	J. Kiernan	N/A	N/A

RECOMMENDATIONS

1. That the proposed street closing under File No. DAC 4/2016 not be proceeded with.

REASON FOR THE REPORT

All street and lane openings and closings require Council approval.

EXECUTIVE SUMMARY

The proposed closing and acquisition of Station Road is to form an addition to the property holding at No. 3525 Pembina Highway, owned by BMH Management Ltd. The applicant's intention is to use the closed right of way as private access to a proposed development at the rear of his property consisting of two storey office and self-storage buildings. The building adjoining the proposed closing at No. 3511 Pembina Highway contains a loading and person door facing Station Road. The owner of this property has objected to the proposed closing and indicated they are not amenable to entering into cross access agreements with the applicant if Station Road is to be closed.

IMPLICATIONS OF THE RECOMMENDATIONS

There are no policy, regulatory, environmental, human resource or general implications associated with the recommendation.

The report recommendation is that the proposed closing not be proceeded with. There are no financial implications for the City of Winnipeg.

HISTORY

In December of 2011, the Planning Property and Development Department received a request from BMH Management Ltd. to open the extension of Station Road processed under application DAO 12/2011 in conjunction with subdivision application DAPS 12/2011. The opening and subdivision boundaries are shown on the attached copy of Misc. Plan No. 14199/2. The requirement for the opening stemmed from conditions in the original subdivision agreement for the subject property processed under application DASSF 543/97 which stated that no building permits were to be issued on the land until the owner entered into a Servicing Agreement with the City for the legal and physical opening of a turnaround at the terminus of Station Road. The agreement further stated that no turnaround would be required if all of the land or portions thereof were consolidated with the adjoining properties.

When the application for DAPS 12/2011 was originally made, consolidation of the new parcels was not contemplated. The opening of the extension of Station Road was to provide the adjoining parcels with frontage on a public street, thereby satisfying zoning requirements.

The report prepared by the Winnipeg Public Service for the opening was considered by the Riel Community Committee on March 5, 2012 and subsequently approved by Council on April 25, 2012. At its meeting held on January 30, 2013, Council passed By-law No. 15/2013 for the opening of Station Road.

In January of 2014, the Planning, Property and Development Department received a request from BMH Management Ltd. to withdraw opening application DAO 12/2011 as they were in the process of applying for a Consent Application to consolidate the parcels within DAPS 12/2011 with properties fronting on Pembina Highway.

The report prepared by the Winnipeg Public Service for the repeal of By-law No. 15/2013 was considered by the Riel Community Committee on March 10, 2014 and subsequently approved by Council on April 30, 2014. At its meeting held on May 27, 2014, Council repealed By-law No. 15/2013 opening Station Road.

Discussion

The Planning, Property and Development Department has received a request from BMH Management Ltd. to close and purchase Station Road so identified on the attached copy of Misc. Plan No. 14180/1.

It is the applicant's intention to consolidate the right of way, once closed, with his existing holding for a proposed development consisting of a two storey office building at the rear of No. 3525 Pembina Highway and a two storey self-storage building at the rear of Nos. 3485 – 3511 Pembina Highway. Rather than upgrade existing Station Road to accommodate this development, the applicant has proposed to close and purchase the right of way and use it as private access to the site.

The right of way was opened as "Public Road" by Municipality of Fort Garry By-law No. 305 and Plan No. 2613 in 1920, providing access to the former station grounds of St. Norbert. In 2012, Council passed By-law No. 11/2012 renaming the right of way to its present designation.

In addition to providing access to the rear of the applicant's property, Station Road also provides loading and person door access to the building at No. 3511 Pembina Highway as well as ingress/egress to the adjoining parking area at this address. Although the applicant has indicated his willingness to enter into cross access agreements, his neighbour is not amenable to this arrangement and has indicated opposition to the closing proposal in an email received by the Planning, Property and Development Department on April 1, 2016.

Because of the potential for injurious affect, the report's recommendation is for the closing proposal not to proceed. This is further discussed in Appendix "A" of this report.

CONSULTATION

In preparing this Report there was consultation with:

Internal Consultation:

There was consultation with the affected Civic departments.

External Consultation:

Manitoba Hydro, Centra Gas, MTS Inc., Shaw Cablesystems and Bell Canada.

Imperial Oil, Fiber, Norscan, Rogers Communications, Telus and TeraSpan did not respond to the request for comment on this application.

OURWINNIPEG POLICY ALIGNMENT

N/A

SUBMITTED BY

Department: Planning, Property and Development
Division: Land Development, Geomatics and Land Information Services
Prepared by: Bohdan Buyachok, Real Property Officer
Date: April 11, 2016
File No. DAC 4/2016

Attachments

Appendix “A” – Administrative Comments

Appendix “B” – Miscellaneous Plans and Aerial View

O:\Reports Directive\Land Development, Geomatics and Land Information Services\Geomatics\DAC 4.16 RPT_Station

V:\development applications\daoc\dev application2016\dac_2016\final_report\dac4.16rpt

APPENDIX "A"

The proposal has been considered by all affected City departments and public utilities. Administrative objection and conditional comments follow:

Administrative Objection

Geomatics Branch

Under Section 140(1)(c) of the City of Winnipeg Charter, if access from a public street to a parcel of land is removed, the City must provide another convenient means of access to the parcel or compensate the owner and occupant of the parcel for the loss of access. There is no other access from Station Road that can be provided, and the City is not in position to compensate the owner at No. 3511 Pembina Highway. Due to injurious affect, the Geomatics Branch opposes the proposed street closing.

Administrative Comments

Urban Planning Division

Noting the building at No. 3511 Pembina Highway currently has an approach and access fronting on Station Road, it is preferred that the closing only proceed following the submission of written consent form the owners of No. 3511 Pembina Highway. Should this be achieved, the Urban Planning Division has no objection to the proposed closing subject to the following:

- Station Road should be registered on a separate parcel through a plan of survey;
- The following Caveats should be registered on the new parcel:
    - That no buildings and/or structures be permitted.
    - That an access easement agreement, satisfactory to the owners of No. 3511 Pembina Highway for continued, unimpeded access for No. 3511 Pembina Highway be registered as a caveat against the title issuing for the new parcel/private road.

Public Works Department

The Public Works Department has no objections to the closing of Station Road subject to either the applicant entering into a cross access easement agreement with No. 3511 Pembina Highway, to the satisfaction of No. 3511 Pembina Highway, or alternatively, if the property owners of No. 3511 Pembina Highway concur to not enter into a cross access easement agreement, they shall submit written correspondence indicating so to the City.

If the subject closing is successful, in order to retain and/or modify the existing street turn-out on Station Road as a private approach, the applicant must make application to the Public Works Department for private access approval.

Plan Examination

The building at No. 3511 Pembina Highway has an overhead door and a window: two unprotected openings facing Station Road. Adjacent to a public right of way, the limiting distance required for unprotected openings and wall fire ratings can be measured to the center line of the street.
With the elimination of this street, the limiting distance must now be measured to the shared property line, a reduction of approximately 11m, which would probably put the existing building into non-compliance for spatial separation. This may also apply to the building at No. 3525 Pembina Highway as well, unless Station Road property is consolidated into the larger property.

If the closing is to proceed, the applicant will be required to submit a complete calculation by a design professional of the south exposed building face area of No. 3511 Pembina Highway and the north exposed building face area of No. 3525 Pembina Highway, including all window openings, doors, overhead doors, and wall construction, to ensure that the new property limit of the proposed Station Road closing does not place the existing buildings at Nos. 3511 and 3525 Pembina Highway in contravention of the Manitoba Building Code. The calculations are to be submitted to the Plan Examination Branch, under seal, for review and approval.

Transit Department

If the adjacent business at No. 3511 Pembina Highway is not in favour of the closing, Transit will not support the closing proposal. For an access agreement to work, there is a need for adjacent properties to see it as mutually beneficial and co-operative, so that access/loading/parking occur as they should. There is the potential for the agreement not to be followed if there is animosity between adjacent businesses, and the potential for this to create an ongoing series of complaints requiring City resources to resolve/mediate. It is recommended that the developer find an alternate solution for expansion of No. 3525 Pembina Highway rather than closing Station Road.

Zoning Branch

If the closing is to proceed, the closing area will be required to be consolidated with the applicant's adjoining property as a parcel of land.

Easements

Manitoba Hydro, Centra Gas Manitoba Inc., MTS Inc. and Shaw Cablesystems have identified services within the closing area.

Should this application be approved, easements will be required for these existing facilities. No permanent structures will be allowed within the easement area.

Any removal or relocation of existing facilities as a result of the proposed street closing will be at the expense of the applicant.

Transfer of Jurisdiction Over Public Rights-of-Way

Should this application be approved, the street must be legally closed before it may be sold. Title to all public rights of way in Manitoba is vested in the name of the Province. The registration in the Winnipeg Land Titles Office of a closing by-law removes the public right of way status from the land and vests the ownership of the property in the City's name. The City is not entitled to dispose of the land until this has been done.

APPENDIX "B"

Aerial View of Subject Closing



Miscellaneous Plan: DAC 4/2016



Miscellaneous Plan: DAO 12/2011

