Minutes – Executive Policy Committee – September 21, 2016

REPORTS

Item No. 4 Consolidation/Registration of Land Assembly – Waverley Street at CN Mainline (Rivers) Grade Separation

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and recommended to Council:

1. That the Declaration of Expropriation made July 13, 2016 and corresponding By-law No. 89/2016, expropriating the following described lands for the Waverley Street at CN Mainline (Rivers) Grade Separation Project:

   Firstly: The lands taken for Works and shown as Parcels A and B on Plan Deposit 722/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 47 and 48 Parish of St Boniface hereto attached;

   Secondly: The lands taken for Land Drainage Sewer Easement and shown as Parcel A on Plan Deposit 742/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 50 Parish of St Boniface hereto attached;

   Thirdly: The lands taken for Temporary Work Space Easement and shown as Parcel A on Plan Deposit 723/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 47 Parish of St Boniface hereto attached;

   Fourthly: The lands taken for Land Drainage Sewer Easement as the same are shown as Parcel A and the lands taken for Temporary Work Space Easement as the same are shown as Parcel B on Plan Deposit 725/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL's 47, 48, 49 and 50 Parish of St Boniface hereto attached;

   Fifthly: The lands taken for Waverley Street to be Opened as the same are shown bordered on Plan Deposit 721/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 47 Parish of St Boniface hereto attached;

Sixthly: The lands taken for Hurst Way to be Opened as the same are shown bordered on Plan Deposit 718/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 20 and 21 Parish of St Boniface hereto attached;

Seventhly: The lands taken for Temporary Work Space Easement and shown as Parcel A on Plan Deposit 720/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 24 and 46 Parish of St Boniface hereto attached;

Eighthly: The lands taken for Taylor Avenue to be Opened as the same are shown bordered on Plan Deposit 719/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 46 Parish of St Boniface hereto attached;

Ninthly: The lands taken for Cambridge Street to be Opened as the same are shown bordered on Plan Deposit 724/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 46 Parish of St Boniface hereto attached;

Tenthly: The lands taken for Waverley Street to be Opened as the same are shown bordered on Plan Deposit 744/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 46 Parish of St Boniface hereto attached; and

Eleventhly: The lands taken for Waverley Street to be Opened as the same are shown bordered on Plan Deposit 647/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 46 and 47 Parish of St Boniface hereto attached,

be amended as follows:

A. by deleting “as Parcel A” after “and shown” in section 1, Secondly and Thirdly.

B. by replacing “Parcel A” and “Parcel B” with “Easement A” and “Easement B”, respectively, in section 1, Fourthly.

C. by adding “as amended” after Plan Deposit 718/2016 WLTO and deleting reference to River Lot “20” in section 1, Sixthly.

D. by deleting “as Parcel A” after “and shown” and deleting reference to River Lot “24” in section 1, Seventhly.

to provide that the lands described are as follows:

Firstly: The lands taken for Works and shown as Parcels A and B on Plan Deposit 722/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 47 and 48 Parish of St Boniface hereto attached,

Secondly: The lands taken for Land Drainage Sewer Easement and shown on Plan Deposit 742/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 50 Parish of St Boniface hereto attached,

Thirdly: The lands taken for Temporary Work Space Easement and shown on Plan Deposit 723/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 47 Parish of St Boniface hereto attached,

Fourthly: The lands taken for Land Drainage Sewer Easement as the same are shown as Easement A and the lands taken for Temporary Work Space Easement as the same are shown as Easement B on Plan Deposit 725/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL's 47, 48, 49 and 50 Parish of St Boniface hereto attached,

Fifthly: The lands taken for Waverley Street to be Opened as the same are shown bordered on Plan Deposit 721/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 47 Parish of St Boniface hereto attached,

Sixthly: The lands taken for Hurst Way to be Opened as the same are shown bordered on Plan Deposit 718/2016 WLTO as amended, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 21 Parish of St Boniface hereto attached,

Seventhly: The lands taken for Temporary Work Space Easement and shown on Plan Deposit 720/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 46 Parish of St Boniface hereto attached,

Eighthly: The lands taken for Taylor Avenue to be Opened as the same are shown bordered on Plan Deposit 719/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 46 Parish of St Boniface hereto attached,

Ninthly: The lands taken for Cambridge Street to be Opened as the same are shown bordered on Plan Deposit 724/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 46 Parish of St Boniface hereto attached,

Tenthly: The lands taken for Waverley Street to be Opened as the same are shown bordered on Plan Deposit 744/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 46 Parish of St Boniface hereto attached and,

Eleventhly: The lands taken for Waverley Street to be Opened as the same are shown bordered on Plan Deposit 647/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 46 and 47 Parish of St Boniface hereto attached,

2. That the Declaration of Expropriation dated July 13, 2016, as amended herein and thereby replaced by an Amended Declaration of Expropriation dated September 28, 2016, be confirmed.

3. 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.

DECISION MAKING HISTORY:

Moved by Councillor Orlikow,

That the recommendation of the Winnipeg Public Service be concurred in and forwarded to Council.

Carried

ADMINISTRATIVE REPORT

Title: Consolidation/Registration of Land Assembly – Waverley Street at CN Mainline (Rivers) Grade Separation

Critical Path: Executive Policy Committee - Council

AUTHORIZATION

Author	Department Head	CFO	CAO
J. Zabudney	J. Kiernan	M. Ruta	D. McNeil

EXECUTIVE SUMMARY

The Public Service is requesting that Holding #8, which is owned by The Manitoba Hydro Electric Board and cannot be expropriated, be removed from the plans of expropriation. Although negotiations are ongoing, these lands have not yet been acquired and therefore cannot be opened as road, which was intended to be done through the plans of expropriation (via Plan Deposit 718/2016 WLTO). As a result, Holding #8 must be removed from the expropriation process by removing it from Plan Deposit so as not to delay the expropriation process. In order to make this change, the legal description contained in the Declaration of Expropriation and By-law No. 89/2016, must both be amended.

The Public Service is also requesting some further minor changes, which are only technical in nature, be made to the Declaration of Expropriation and By-law No. 89/2016. The Property Registry has indicated that the legal description contained in the current Declaration of Expropriation and By-law No. 89/2016 must be amended in the manner outlined in Recommendation #1, in order to describe the expropriated lands in the format required by the Property Registry. This is a technical change to the legal description only and does not alter the actual lands being expropriated in any manner. In order to make the required changes, the legal description contained in the Declaration of Expropriation made July 13, 2016 and By-law No. 89/2016, must both be amended.

Confirming the amended Declaration of Expropriation and the corresponding By-law will allow the City to gain access to the expropriated lands and maintain existing construction timelines and costs as they relate to the Waverley Street at CN Mainline (Rivers) Grade Separation Project.

RECOMMENDATIONS

1. That the Declaration of Expropriation made July 13, 2016 and corresponding By-law No. 89/2016, expropriating the following described lands for the Waverley Street at CN Mainline (Rivers) Grade Separation Project:

   Firstly: The lands taken for Works and shown as Parcels A and B on Plan Deposit 722/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 47 and 48 Parish of St Boniface hereto attached;

   Secondly: The lands taken for Land Drainage Sewer Easement and shown as Parcel A on Plan Deposit 742/2016 WLTO, prepared by

Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 50 Parish of St Boniface hereto attached;

Thirdly: The lands taken for Temporary Work Space Easement and shown as Parcel A on Plan Deposit 723/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 47 Parish of St Boniface hereto attached;

Fourthly: The lands taken for Land Drainage Sewer Easement as the same are shown as Parcel A and the lands taken for Temporary Work Space Easement as the same are shown as Parcel B on Plan Deposit 725/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL's 47, 48, 49 and 50 Parish of St Boniface hereto attached;

Fifthly: The lands taken for Waverley Street to be Opened as the same are shown bordered on Plan Deposit 721/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 47 Parish of St Boniface hereto attached;

Sixthly: The lands taken for Hurst Way to be Opened as the same are shown bordered on Plan Deposit 718/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 20 and 21 Parish of St Boniface hereto attached;

Seventhly: The lands taken for Temporary Work Space Easement and shown as Parcel A on Plan Deposit 720/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 24 and 46 Parish of St Boniface hereto attached;

Eighthly: The lands taken for Taylor Avenue to be Opened as the same are shown bordered on Plan Deposit 719/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 46 Parish of St Boniface hereto attached;

Ninthly: The lands taken for Cambridge Street to be Opened as the same are shown bordered on Plan Deposit 724/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 46 Parish of St Boniface hereto attached;

Tenthly: The lands taken for Waverley Street to be Opened as the same are shown bordered on Plan Deposit 744/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 46 Parish of St Boniface hereto attached; and

Eleventhly: The lands taken for Waverley Street to be Opened as the same are shown bordered on Plan Deposit 647/2016 WLTO, prepared by Albert Gerhard Degner of the City of Winnipeg, Manitoba Land Surveyor, in part RL 46 and 47 Parish of St Boniface hereto attached,

be amended as follows:

a) by deleting "*as Parcel A"* after "and shown" in section 1, Secondly and Thirdly.

b) by replacing "*Parcel A"* and *"Parcel B"* with *"Easement A" and "Easement B",* respectively*,* in section 1, Fourthly.

c) by adding "*as amended*" after Plan Deposit 718/2016 WLTO and deleting reference to River Lot "20" in section 1, Sixthly.

d) by deleting "*as Parcel A*" after "and shown" and deleting reference to River Lot "24" in section 1, Seventhly.

to provide that the lands described are as follows:

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2. That the Declaration of Expropriation dated July 13, 2016, as amended herein and thereby replaced by an Amended Declaration of Expropriation dated September 28, 2016, be confirmed.

3. 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

Council approval is required in order for the Declaration of Expropriation made July 13, 2016 and By-law No. 89/2016 to be amended.

Council, the confirming authority, is required to confirm the Amended Declaration of Expropriation.

IMPLICATIONS OF THE RECOMMENDATIONS

The Public Service has not yet negotiated the acquisition of Holding #8 which is owned by The Manitoba Hydro Electric Board; therefore, it must be removed from the plan of expropriation by way of amendment to both the Declaration of Expropriation and By-law No. 89/2016 in order for the expropriation to proceed. The other amendments outlined in Recommendation #1 are also required in order for the Property Registry to accept the registration of the expropriation documents.

Provided that the amendments outlined in Recommendation #1 are approved, City Council as "Confirming Authority" under The Expropriation Act is now in a position to confirm the Amended Declaration of Expropriation, thereby finalizing the expropriation process.

Confirming the expropriation will allow the City to gain access to the expropriated lands and maintain existing construction timelines and costs as they relate to the Waverley Street at CN Mainline (Rivers) Grade Separation Project. Completion of the Waverley Street detour and the railway detour need to occur in the 2017 construction season in order to maintain the project schedule. Delays in acquiring these lands in time to complete the 2017 detour works may result in project delays of up to one year.

HISTORY

At its June 7, 2016 meeting, Standing Policy Committee on Property and Development, Heritage and Downtown Development considered and approved the Planning, Property and Development Department's report to initiate expropriation proceedings to acquire the land interests identified and needed for the Waverley Street at CN Mainline (Rivers) Grade Separation Project.

On June 15, 2016, Council concurred with the recommendation to initiate expropriation proceedings.

On July 13, 2016, Council approved the Declaration of Expropriation and By-law No. 89/2016 to commence expropriation proceedings.

In accordance with section 9(8) of The Expropriation Act of Manitoba, the Lieutenant Governor in Council, deeming it necessary or expedient in the public interest to do so, directed the confirming authority to make its order confirming a Declaration of Expropriation without an inquiry being conducted pursuant to an Order in Council dated July 27, 2016.

On July 29, 2016, the City was informed by the Province of Manitoba that a waiver of the expropriation inquiry hearing had been granted by the Lieutenant Governor on July 27, 2016.

Clause 7(3) of the Expropriation Act states that where land which cannot be expropriated (i.e. land owned by the Crown or a Crown Agency) but is acquired otherwise in conjunction with land that is being expropriated, the land may be shown on any plan forming part of the declaration of the land being expropriated.

The Manitoba Hydro Electric Board land included on Plan Deposit 718/2016 WLTO was expected to be acquired and thus was included in the plan of expropriation. The acquisition did not happen in the time frame required and therefore now must be removed from the plan in order for the expropriation to proceed.

FINANCIAL IMPACT

Financial Impact Statement **Date:** August 25, 2016

Project Name:

Expropriation of Lands – Waverley Street at CN Mainline (Rivers) Grade Separation

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

OURWINNIPEG POLICY ALIGNMENT

The Project and the required expropriations are consistent with the Transportation Master Plan. The Project aligns with Key Directions for the entire City.

SUBMITTED BY

Department: Planning, Property and Development
Division: Real Estate
Prepared by: Marlene Haderer, Senior Negotiator
Date: August 26, 2016
File No.: 9110/19

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Holding #8 – Removed from By-Law 89/2016

