Minute No. 533
Report – Executive Policy Committee – September 27, 2016

Item No. 1 Settlement of Claim - Banquet Barons Inc. ("Banquet Barons") and the City of Winnipeg (the "City") (the "claim")

COUNCIL DECISION:

Council concurred in the recommendation of the Executive Policy Committee and adopted the following:

1. That the City Solicitor / Director of Legal Services be authorized to enter into a settlement of the claim by:
   - Paying the sum of $800,000 to Banquet Barons;
   - Requiring a Notice of Discontinuance of the claim; and
   - Requiring a Release from Banquet Barons.

2. That, subject to approval of Recommendation 1, an additional appropriation to the 2016 Planning, Property and Development Department's operating budget of up to $800,000 be approved.

3. 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 27, 2016

DECISION MAKING HISTORY:

Moved by His Worship Mayor Bowman,
That the recommendation of the Executive Policy Committee be adopted.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 27, 2016, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

ADMINISTRATIVE REPORT

Title: **Settlement of claim between Banquet Barons Inc. ("Banquet Barons") and the City of Winnipeg (the "City") (the "claim")**

Critical Path: **Executive Policy Committee - Council**

This report contains confidential information which is subject to solicitor-client privilege.

AUTHORIZATION

Author	Department Heads	CFO	CAO
D. A. M. Pambrun	K. L. Boryskavich John Kiernan	M. Ruta	D. McNeil

RECOMMENDATIONS

1. That Council authorize the City Solicitor to enter into a settlement of the claim by:
    - Paying the sum of $800,000 to Banquet Barons;
    - Requiring a Notice of Discontinuance of the claim; and
    - Requiring a Release from Banquet Barons.
2. That, subject to approval of Recommendation # 1, an additional appropriation to the 2016 Planning, Property and Development Department's operating budget of up to $800,000 be approved.
3. 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 an amount over $250,000 must be approved by Council in accordance with the City's Organization By-law.
- Approval is required for an additional appropriation to the Planning, Property and Development Department's 2016 operating budget.

EXECUTIVE SUMMARY

The Legal Services Department, with the concurrence of Planning, Property and Development, is recommending settlement of an outstanding claim by paying to Banquet Barons the sum of $800,000. The City of Winnipeg has conceded liability in the claim and has successfully negotiated the proposed settlement amount, which represents a reasonable payment to avoid the time, costs and risks of further litigation. Since there is no existing budget with which to fund the proposed settlement amount, an

additional appropriation to the Planning, Property and Development Department's 2016 operating budget is requested.

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 significant 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

The Claim involves lands on the west side of Pembina Highway, near the intersection of Bishop Grandin. Prior to 1984, all the lands in question were owned by Jim Brousseau. These lands were bisected into Lots 5 and 6 by the Drain Plan Land owned by the City.

In 1980, the City leased the Drain Plan Land to Jim Brousseau to provide access to Lot 6 and to provide it with parking. The lease prohibited Jim Brousseau from registering a caveat against the Drain Plan Land.

In 1984, Jim Brousseau subdivided Lot 6 and sold the westernmost portion of it to Michael Brousseau (the "Parcel"). As a result, the Parcel was landlocked. The City approved the subdivision and creation of the Parcel on the condition that Jim Brousseau assign his rights in the Drain Plan Land to Michael Brousseau so that there would be access to the Parcel. He did so with the City's consent. Legal Services sent a letter to Michael Brousseau indicating that no formal agreement was necessary to effect the City's instructions and indicating that the City consented to the "subletting" of Jim Brousseau's rights in the Drain Plan Land to Michael Brousseau.

In 1986, Jim Brousseau sold the remaining lands to Lakeview and assigned his lease of the Drain Plan Land to Lakeview, with the City's consent. Lakeview obtained financing for the purchase from North American Life (later Manulife) and used as security the assignment of the Drain Plan Land, not being aware that Jim Brousseau had already assigned his rights in the Drain Plan Land to Michael Brousseau. Ultimately, Lakeview defaulted on its mortgage and Manulife sued the City on the basis that it had not received a first charge against the Drain Plan Land but "shared" it with Michael Brousseau, on the basis that Jim Brousseau had assigned his rights in the Drain Plan Land to both Michael Brousseau and Lakeview, both times with the consent of the City.

The trial and appeal of that action took place in 2006 and 2008 respectively and in the result, the City was found liable in negligent representation in the approximate amount of $6.5 million. The trial judge made several negative findings against the City, concurred in by the Court of Appeal, in respect of its conduct in recognizing that after having assigned his rights in the Drain Plan Land to Michael Brousseau, Jim Brousseau had nothing left to assign to North American Life/Manulife but proceeded to do so anyway and the City consented to that arrangement and did not communicate this to either Michael Brousseau or to North American Life/Manulife. There now remains outstanding the claim in which Michael Brousseau is suing the City claiming that the fact that the City negligently consented to

Jim Brousseau assigning rights in the Drain Plan Land in which he no longer had an interest reduced the value of the Parcel.

DISCUSSION

As a result of instructions previously provided, the City conceded liability in the claim and investigated the likely resulting damages for the purposes of entering into settlement discussions with Michael Brousseau. Michael Brousseau obtained an expert report on the quantum of damages, in which the damages were quantified as ranging from $899,000 to $3,324,000. The City also received an expert report on the quantum of damages.

Legal Services entered into negotiations with Michael Brousseau and the parties were able to agree on the all-inclusive sum of $800,000 to settle the claim, subject to Council approval. An additional appropriation approved by Council would be required to fund the settlement. Accordingly, Legal Services recommends that the City settle the claim as follows:

- Paying the sum of $800,000 to Banquet Barons;
- Requiring a Notice of Discontinuance of the claim; and
- Requiring a Release from Banquet Barons.

It is the view of Legal Services and the Planning, Property & Development Department that this settlement is in the best interests of the City.

Additional Appropriation

The Planning, Property and Development Department's 2016 approved operating budget does not include provision for this proposed settlement. As at the date of this report, the Department cannot estimate with reasonable certainty what amount, if any, of its 2016 operating expenditures budget may be available for the purpose of funding a portion of the proposed settlement amount. As such, the additional appropriation request is for the full $800,000.

The Department will include the proposed settlement amount in its 2016 Operating Budget Forecast submissions to Standing Policy Committee on Finance. Should actual 2016 operating costs, excluding the proposed settlement amount, be less than budgeted, the budget adjustment required *may be* less than the $800,000 additional appropriation requested. However, given the inherent uncertainty involved, it is prudent for the Department to request at this time an additional appropriation for the full amount of the proposed settlement.

FINANCIAL IMPACT

Financial Impact Statement

Date: March 24, 2016

Project Name:

Settlement of claim between Banquet Barons Inc. ("Banquet Barons") and the City of Winnipeg (the "City") (the "claim")

First Year of Program 2016

	2016	2017	2018	2019	2020
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ 800,000	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ 800,000	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ 800,000	$ -	$ -	$ -	$ -

Additional Comments: Direct costs in 2016 represent the proposed settlement amount. There is no existing budget amount to fund the proposed settlement. As such, an additional appropriation is requested.

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

CONSULTATION

In preparing this report there was consultation with:

Corporate Finance

OUR WINNIPEG POLICY ALIGNMENT

Not Applicable

SUBMITTED BY

Department: Legal Services and Planning, Property and Development
Prepared by: Denise A. M. Pambrun
Date: June 15, 2016