Agenda – Council – October 25, 2017

Report – Executive Policy Committee – October 11, 2017

Item No. 6 Settlement Instructions concerning Court of Queen's Bench Action CI 15-01-99341, Pakosh v. The City of Winnipeg – an Application to Quash By-law amendments made concerning a development application for 2090 Henderson Highway

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On October 11, 2017, the Executive Policy Committee did not concur in the recommendation of the Winnipeg Public Service and submitted the following to Council:

1. That the proposed settlement concerning Court of Queen's Bench Action CI 15-01-99341, Pakosh v. The City of Winnipeg – an Application to Quash By-law amendments made concerning a development application for 2090 Henderson Highway, not be proceeded with.

Report – Executive Policy Committee – October 11, 2017

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On October 11, 2017, the Executive Policy Committee did not concur in the recommendation of the Winnipeg Public Service and submitted the following to Council:

1. That the proposed settlement concerning Court of Queen's Bench Action CI 15-01-99341, Pakosh v. The City of Winnipeg – an Application to Quash By-law amendments made concerning a development application for 2090 Henderson Highway, not be proceeded with.

On July 12, 2017, the Executive Policy Committee laid over the matter for up to 120 days.

ADMINISTRATIVE REPORT

Title: Settlement Instructions concerning Court of Queen's Bench Action CI 15-01-99341, Pakosh v. The City of Winnipeg – an Application to Quash By-law amendments made concerning a development application for 2090 Henderson Highway

Critical Path: Executive Policy Committee - Council

AUTHORIZATION

Author	Department Head	CFO	CAO
D. Ferguson	K. Boryskavich	N/A	D. McNeil

EXECUTIVE SUMMARY

The City of Winnipeg is currently defending an Application in Court of Queen's Bench, in which the applicants (the Pakoshs who reside at 2094 Henderson Highway, being the property to the immediate north of 2090 Henderson Highway) seek to quash amendments to the North Henderson Highway Secondary Plan By-law and the Winnipeg Zoning By-law passed by Council in the fall of 2015 (By-law Nos. 43/2015 and 103/2015) in order to facilitate a condominium development at 2090 Henderson Highway by 4247079 Manitoba Ltd. (the "Developer").

The Notice of Application filed by the Pakoshs alleges that during the development approval process, "the Council and Appeal Committee committed errors of law, exceeded their jurisdiction and breached procedural fairness" in passing the by-law amendments. This allegation relates to an assertion of failure on the part of the City to follow the process set forth under the Development Procedures By-law for reviewing and approving development applications.

None of the aforementioned allegations have been proven in court.

The parties to the Application (the Pakoshs and the City), together with the developer of 2090 Henderson Highway, have entered into settlement discussions to resolve the Application short of a Court hearing, and a proposed settlement has been agreed to by the Pakoshs and the Developer, subject to Council approval, as follows:

(i) Council will rescind its September 30, 2015 approval of a proposed amendment to the North Henderson Highway Secondary Plan (development application no. SPA 1/2015) and a proposed plan of subdivision and a proposed rezoning (development application no. DASZ 14/2015);

(ii) Council will repeal the amendments to the North Henderson Highway Secondary Plan By-law and the Winnipeg Zoning By-law (By-laws 43/2015 and 103/2015, respectively);

(iii) The Pakoshs will discontinue their Application in the Court of Queen's Bench against the City on a without costs basis;

(iv) Thereafter, the Developer will be at liberty to file a new development application for a condominium development at 2090 Henderson Highway, after a 30 day consultation period with the Pakoshs.

RECOMMENDATIONS

1. That Council rescind its September 30, 2015 approval of:
   (i) a proposed amendment to the North Henderson Highway Secondary Plan (development application no. SPA 1/2015); and

   (ii) a proposed plan of subdivision and a proposed rezoning (development application no. DASZ 14/2015).

2. That Council repeal By-laws 43/2015 and 103/2015.

3. That the proper officers of the City do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

The proposed settlement of Court of Queen's Bench File No. CI 15-01-99341 requires Council to rescind previous Council approvals and repeal By-law Nos. 43/2015 and 103/2015.

IMPLICATIONS OF THE RECOMMENDATIONS

The proposed settlement resolves on-going litigation involving the City. Both the Developer and the Pakoshs are in agreement with the proposed settlement.

HISTORY/DISCUSSION

This matter concerns a development application by 4247079 Manitoba Ltd. (the Developer") relating to a residential property with municipal address 2090 Henderson Highway.

In 2012, the Developer purchased 2090 Henderson Highway with the intention of building a condominium development. At the time, the property contained a single family residence, and the property was zoned "R1-E" residential single family estate. As a result, the Developer required amendments to (i) the City's Zoning by-law, reclassifying the property to "RMF-S" residential multi-family small district; and (ii) the City's North Henderson Highway Secondary Plan by-law reclassifying the property from "low density residential" to "medium density residential".

In 2012, the Developer applied to the City for the foregoing amendments, and the proposed development was approved by Council.

The Pakoshs, who reside at the property to the immediate north of 2090 Henderson Highway, then filed a lawsuit challenging the by-law amendments in the Court of Queen's Bench, and were successful in quashing the by-law amendments because the development application considered by the East Kildonan Transcona Community Committee did not have the final site plan drawings. The Developer was granted leave to make a new development application to the City.

In 2014, the Developer did re-apply, with a slightly different condominium plan (slightly more units with a bigger foot print on the property). Again, the proposed development was approved by Council, resulting in By-law Nos. 43/2015 and 103/2015, which amended the Zoning By-law and the North Henderson Highway Secondary Plan By-law to allow the development to go forward.

The Pakoshs once again have challenged the by-law amendments in the Court of Queen's Bench. The Notice of Application filed by the Pakoshs alleges that during the development approval process, "the Council and Appeal Committee committed errors of law, exceeded their jurisdiction and breached procedural fairness" in passing the by-law amendments. This allegation relates to an assertion of failure on the part of the City to follow the process set forth under the Development Procedures By-law for reviewing and approving development applications.

None of the aforementioned allegations have been proven in court.

With the involvement of the Developer, settlement discussions have taken place, and the proposed settlement has been agreed upon by all parties, including the Developer.

FINANCIAL IMPACT

Financial Impact Statement

Date: June 9, 2017

Project Name:

Settlement Instructions concerning Court of Queen's Bench Action CI 15-01-99341, Pakosh v. The City of Winnipeg – an Application to Quash By-law amendments made concerning a development application for 2090 Henderson Highway

Comments:

There are no financial implications related to recommendations of this report.

(Original signed by R. Hodges)
Ramona Hodges
Manager of Finance (Campus)
Corporate Finance Department

CONSULTATION

This Report has been prepared in consultation with Planning, Property and Development:

OURWINNIPEG POLICY ALIGNMENT

Not Applicable

SUBMITTED BY

Department: Legal Services
Prepared by: Darryl Ferguson
Date: July 6, 2017
File No: CL5/2015 (56)