Minute No. 595
Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – September 19, 2017

Item No. 8 **Request to Amend Servicing Agreement Conditions for File DAZ 208/2013 (AG 208/2013) – 851 Tache Avenue (St. Boniface Ward)**

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 Developer's request to amend the Servicing Agreement conditions approved under file DAZ 208/2013 be denied.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – September 19, 2017

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 September 20, 2017, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On September 19, 2017, 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 September 11, 2017, the Riel Community Committee concurred in the recommendation of the Winnipeg Public Service and forwarded the matter to the Standing Policy Committee on Property and Development, Heritage and Downtown Development.

On June 12, 2017, the Riel Community Committee laid over the matter to its meeting on September 11, 2017.

On February 6, 2017, the Riel Community Committee laid over the matter to its meeting on June 12, 2017.

On December 5, 2016, the Riel Community Committee laid over the matter to its meeting on February 6, 2017.

On June 6, 2016, the Riel Community Committee laid over the matter to its meeting on December 5, 2016.

On May 2, 2016, the Riel Community Committee laid over the matter to its meeting on June 6, 2016.

ADMINISTRATIVE REPORT

Title: **REQUEST TO AMEND SERVICING AGREEMENT CONDITIONS FOR FILE DAZ 208/2013 (AG 208/2013) – 851 TACHE AVENUE**

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

RECOMMENDATION

That the Developer's request to amend the Servicing Agreement conditions approved under file DAZ 208/2013 be denied.

REASON FOR THE REPORT

Council authority is required to amend Council's instructions.

EXECUTIVE SUMMARY

The developer is requesting that his requirement to pay for existing and future servicing in street rights of way adjacent to his project be deleted. The Winnipeg Public Service cannot support this request in that it is contrary to protocol established by the Development Agreement Parameters and compromises the principles established by Our Winnipeg.

IMPLICATIONS OF THE RECOMMENDATIONS

If the recommendation is concurred in, the Servicing Agreement for file DAZ 208/2013 will be processed pursuant to Council's Instructions dated October 23, 2013.

HISTORY/DISCUSSION

On October 23, 2013 Council approved rezoning application DAZ 208/13 to rezone the land at 851 Tache Avenue to an "RMFM" Residential Multi-Family Medium District subject to a number of conditions including Clause 1.A.

> **1.A.** That the Developer be required to enter into a Servicing Agreement with the City containing all the conditions outlined in Schedule B, the report of the Administrative Coordinating Group dated May 22, 2013.

On March 21, 2016 the Developer requested that Clause 1.A. be struck from Council's Decision. The Winnipeg Public Service cannot support the developer's request;

1. The request contravenes the collaborative guidelines for development set out by the City's Development Agreement Parameters (adopted by Council July 17, 2002), and,

2. It compromises the Our Winnipeg strategy that enables the intensification of land-uses through the development application process (Policy Plate O1-1A – DIRECTION 3:).

The Servicing Agreement is required to ensure that the developer pays its' share of services installed or to be installed by the City or others in Tache Avenue and Rue Hebert abutting the subject property.

In his letter request the developer states: *"The Servicing Agreement is unfairly penalizing my development project".* To the contrary, the Servicing Agreement is required to enable the project to proceed, by providing servicing that will allow the intensification of land use being requested by this application.

It is recommended that the Developer's request to amend the Servicing Agreement conditions approved under file DAZ 208/2013 be denied.

FINANCIAL IMPACT

N/A

CONSULTATION

N/A

OURWINNIPEG POLICY ALIGNMENT

In accordance with OurWinnipeg policies, intensification of land-uses through the development application process is supported when a full range of municipal services is provided.

SUBMITTED BY

Department: Planning, Property and Development
Division: Land Development, Geomatics and Land Information Systems
Prepared by: K.T. Raban, P.Eng, Land Development Branch
Date: April 18, 2016

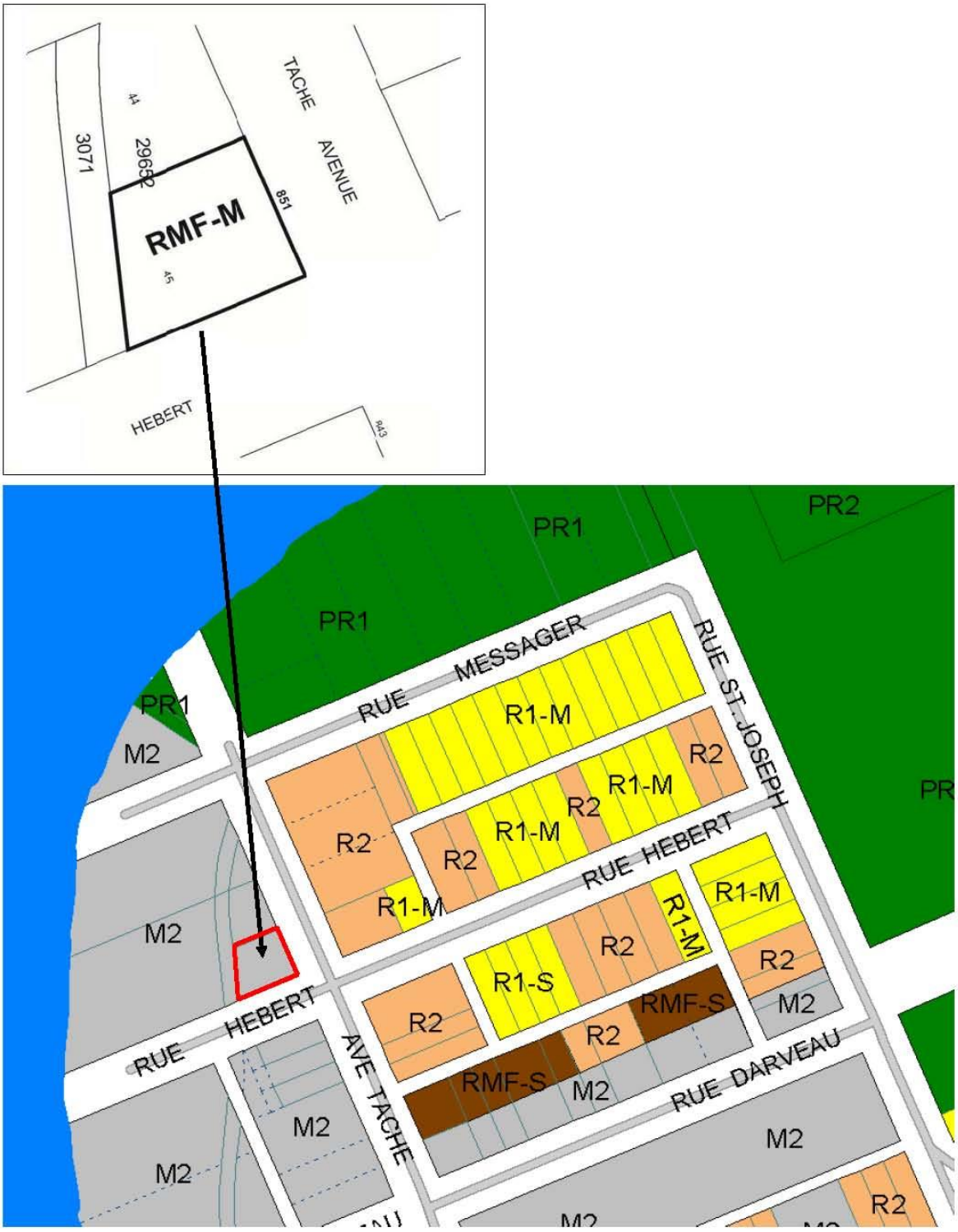
File No. AG / DAZ 208/2013

Appendix “A” – Subject Property - DAZ 208/2013
Appendix “B” – Schedule B – Report of the Administrative Coordinating Group dated May 22, 2013
Appendix “C” – Developer request letter
Appendix “D” – Development Agreement Parameters Introduction
Appendix “E” – Our Winnipeg Strategy

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APPENDIX "A" – SUBJECT PROPERTY - DAZ 208/2013



APPENDIX "B" – SCHEDULE B – REPORT OF THE ADMINISTRATIVE COORDINATING GROUP

SCHEDULE B

REPORT OF THE ADMINISTRATIVE CO-ORDINATING GROUP – May 22, 2013

RE: PROPOSED REZONING OF LAND LOCATED AT 851 TACHE AVENUE - DAZ 208/2013

It is recommended that the approval of DAZ 208/2013, if granted, be subject to the applicant entering into a Servicing Agreement addressing the following items:

1. The Developer shall, upon execution of the Servicing Agreement, prepay to the City its share of the cost of the following services along the full length of the subject property abutting Tache Avenue, to be installed by the City and/or others in the future:
   a) a 10.0m by 200mm in thickness portland cement concrete pavement and all related works;
   b) 1.5m in width by 100mm in thickness portland cement concrete sidewalk;
   c) ornamental street lighting and;
   d) boulevard landscaping (sod);

   all as determined by the Director of Public Works.
   (2013 Rate = $360.42 per frontage foot)

2. The Developer shall, upon execution of the Servicing Agreement, prepay to the City its share of the cost of the following services along the full length of the subject property abutting Hebert Street, to be installed by the City and/or others in the future:
   a) a 7.5m by 150mm in thickness portland cement concrete pavement and all related works;
   b) 1.5m in width by 100mm in thickness portland cement concrete sidewalk;
   c) ornamental street lighting and;
   d) boulevard landscaping (sod);

   all as determined by the Director of Public Works.
   (2013 Rate = $360.42 per frontage foot)

3. The Developer shall, upon execution of the Servicing Agreement, prepay to the City its share of the cost of land drainage sewer along the full length of the subject property abutting Tache Avenue, to be installed by the City and/or others in the future; all as determined by and to the satisfaction of the Director of Water and Waste.

   (2013 Rate = $40.00 per frontage foot)

4. The Developer shall pay to the City, upon execution of the Servicing Agreement, $1,650.00 + GST to defray the City's administration and related costs associated with the preparation and implementation of the Servicing Agreement.

THIS REPORT SUBMITTED BY:

Administrative Co-ordinating Group
File No. DAZ 208/2013
May 22, 2013

"Original Signed by R.R. Deighton, P.Eng."
R.R. Deighton, P. Eng.,
Land Development Branch

"Original Signed by C. Desjardine, P.Eng."
Public Works Department, Transportation Division

"Original Signed by F.C. Mazur, P.Eng."
F. C. Mazur, P. Eng.
Water & Waste Department

APPENDIX "C" – DEVELOPER REQUEST LETTER

LE 851 Taché Ave.

March 21, 2016

City of Winnipeg
K.T. (Kim) Raban
Land Development Administrator
Land Development Branch
Main Floor, 65 Garry Street
Winnipeg, Manitoba
R3C 4K4

Re: DAZ 208/2013[c/r DAV 109813/2013D] Minute No. 657 Report – Executive Policy Committee – October 16, 2013, Item No. 1

Dear Mr. Raban,

Thank you for the Council Minutes of October 23rd, 2013 regarding the Rezoning of 851 Taché Ave. As per your email of March 18, 2016. I have reviewed it clause by clause to identify items I wish to have amended and explain in this letter why.

The present condition of 851 Taché Ave. is such that it is not living up to its full potential according to the North Saint-Boniface Secondary Plan, nor according to my own plans. The Secondary Plan encourages higher density development on Taché Ave and the removal of industrial uses (i.e.: M2 Zoning) is encouraged, however in this case, I am living in my house at 851 Taché and when this house goes beyond repair I would not be allowed to re-build another house on M2 zoning. My plan is to build a 6 unit project, for which I have already received approval subject to the Servicing Agreement but the terms of the Servicing Agreement are preventing the project from beginning or coming to fruition. The service agreement is unfairly penalizing my development project.

The problematic clause is Clause 1-A as follows:

Re: *Clause1-A: That the Developer be required to enter into a Servicing Agreement with the City containing all the conditions outlined in Schedule B, the report of the Administrative Coordinating Group dated May 22, 2013.*

It is requested that Clause 1-A be stricken from Council's Decision. The reasons are:

- That in comparison to other properties/development projects in proximity to 851 Taché, this clause is injurious only to mine. This is because the other projects have had access to direct and indirect subsidies (i.e.: through lower land purchase price) and in some cases have the appropriate zoning. Whereas in the case of our project @ 851 Taché Ave. these servicing costs must be re-captured through the sale price of each unit, putting the project at an obvious disadvantage from the start by over $10K per unit.

- In the course of the re-development of Pointe-Hebert as a whole, the developer was subsidized with reduced land purchase prices up front on the understanding that they would cover the costs associated with upgrading the roads. Likewise, a grant from Building Communities was used to upgrade St. Joseph St. These contributions by the City made development viable for a major developer. In this case, the Servicing Agreement is rendering Project 851 Taché Ave. non-viable for a small developer.

LE 851 Taché Ave.

- There is another project, currently under construction directly across 851 Taché Ave, located @ the NW corner of Hebert St & Taché Ave. is not subject to a Servicing Agreement costs just because a zoning change is not required. It appears that there are different rules for different developers. If I were to build a duplex exactly the same as the one presently being built we would have to charge $32K more a door more in order to recover the cost of the Service Agreement which throws me out of the marketplace. Again making the project non-viable.

- According to a Public Works drawing on road conditions in the area forwarded to the ward Councilor in mid December 2015, Taché Ave. and Hebert Street are deemed to be in fair condition. Assuming this is correct, there ought to be no need at this time to upgrade the existing services for this project.

- The existing neighboring properties are still zoned M2 and in the case of 105 Hebert St. The City of Winnipeg permitted the landowner to expand their industrial use onto a once vacant piece of land adjacent to my north property line. The land is severed by the former spur line in which the City of Winnipeg owns and now permits the owner access via City owned land to access this newly created storage yard. This has negatively impacted the value of my property.

- In addition we will need to recapture the costs of demolition and the costs of relocating a hydro pole from the sale of the units. This equates to approx 4 k per unit. In order to recover these costs, we will have to increase the sale price and in a competitive market could still put us in a disadvantage.

If the goal of the re-development is to bring all properties to best use under the North St. Boniface Secondary Plan, then direct or indirect assistance from the City of Winnipeg should be offered to all of its developers, not just some. Removing Clause 1-A would allow me to take my current unviable 6-unit project (due to the Servicing Agreement requirement) to a viable project that will be beneficial for the City of Winnipeg.

By removing Clause 1-A and therefore the Servicing Agreement from Council's Decision, Project 851 Taché would become viable and I could look forward to living in it. As it stands, if for whatever reason my house becomes no longer livable, I would not be able to reconstruct a single family dwelling without rezoning the land. Therefore the right to live there would be lost. What is needed is for the City of Winnipeg to rescind the Servicing Agreement clause. Doing so will encourage this project to come to fruition and encourage adjacent land owners to convert their M2 designation to a residential zoning designation.

We look forward to be included in the next scheduled Riel Community Committee meeting.

Thank You,

Real Rioux
Developer/Owner/Resident

851 Taché Ave
Winnipeg Manitoba
R2H 2C7
Cell 204-981-4809

APPENDIX "D" – DEVELOPMENT AGREEMENT PARAMETERS INTRODUCTION

Winnipeg

CITY OF WINNIPEG

DEVELOPMENT AGREEMENT PARAMETERS

ADOPTED BY CITY COUNCIL:

JULY 17, 2002

(1) INTRODUCTION

a) These Development Agreement Parameters express the general policy of the City. They are guidelines for the City's Administration and Developers in formulating development conditions for consideration by City Council and its relevant Committees. Each development will be governed by its respective development agreement, not by these guidelines although experience indicates the Development Agreement Parameters will be followed with few exceptions.

The purposes of the Development Agreement Parameters are to ensure that all parties pay their equitable share of the costs of development, that development agreement obligations are consistent for all developments and that development occurs in accordance with current City of Winnipeg construction specifications.

b) Development agreements will deal within the limits of City powers to make cost recoveries for the works provided by the City or by an initial Developer. The City can only make its best efforts within the limits of its powers. Each councillor's duty to vote as they decide cannot legally be restricted by an agreement. For example, where a future cost recovery depends on a majority vote of Council to enact a by-law levying local improvement charges or approving a subdivision and imposing development conditions, including cost recoveries, that majority vote will determine what the City attempts to recover within the upper limit of what lawfully can be recovered. Obviously, only the development agreement signed by a subsequent Developer can impose an obligation for payment, and not these Development Agreement Parameters or the original development agreement with the initial Developer calling for attempted cost recoveries.

1989: Sections 1 and 2

APPENDIX "E" – OUR WINNIPEG STRATEGY

01-1a OURWINNIPEG'S APPROACH TO CITY BUILDING

DIRECTION 3: PROMOTE COMPACT URBAN FORM AND MANAGE THE EXTENSION OF MUNICIPAL SERVICES FOR NEW GROWTH.

ENABLING STRATEGIES:

- Define 'full range of municipal services' as piped water, piped wastewater, piped land drainage, and an urban standard roadway.
- Enable the intensification of land-uses through the development application process only when a full range of municipal services is provided.
- Promote the extension of municipal services such as piped water, piped waste water, piped drainage and urban standard roadway, only in an environmentally-sound, economically and timely manner.
- Fulfil requests to extend servicing to private property through the Local Improvement process only where it can be demonstrated that there is a net financial benefit to the City of Winnipeg.
- Enable the consideration of sustainable alternatives for the traditional full range of municipal services that are proven by the developer and approved by the City of Winnipeg as providing a comparable level of service and safety in an environmentally-sound and economical manner.
- Support the preparation of detailed planning studies for New Communities through the local area planning process, where warranted, to ensure the coordination of municipal infrastructure with proposed land-uses; and the future development of adjacent lands with a full range of municipal services.
- Allow the possible subdivision or conversion of land in un-serviced areas where a statutory secondary plan establishes minimum parcel sizes, and appropriate servicing criteria.
- Support new developments that are contiguous with existing developments to minimize the spatial use of land and the extension of services.