Minute No. 163
Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – January 8, 2018

Item No. 12 Delegation of Authority to the Chief Administrative Officer to Administer Conforming Construction Agreements

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 Chief Administrative Officer (CAO) be delegated the authority to enter into 'conforming construction agreements' as permitted in recently enacted Provincial legislation and amendments to the City of Winnipeg Charter, The Planning Act and The Real Property Act.

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 – January 8, 2018

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 January 17, 2018, 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 January 8, 2018, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: Delegate authority to the Chief Administrative Officer to Administer Conforming Construction Agreements

Critical Path: Standing Policy Committee on Property and Development, Heritage and Downtown Development - Executive Policy Committee - Council

AUTHORIZATION

Author	Department Head	CFO	CAO
S. Dueck	J. Kiernan	N/A	D. McNeil

EXECUTIVE SUMMARY

In the years prior to 2014, the Public Service actively utilized what was commonly referred to as three-party spatial separation agreements to facilitate development when projects would otherwise only be compliant with Building Code and/or zoning regulations with such a voluntary agreement permanently constraining current and future property owners of the two affected properties.

In 2014, The Property Registry challenged the long-standing practice of having these agreements registered on title. Council then requested the Province to make legislative changes to facilitate these agreements. The Province responded with amendments to the City of Winnipeg Charter, The Planning Act, and The Real Property Act which came into effect in June 2017. As such, the City will again be able to enter into an agreement (Conforming Construction Agreement) with the property owner requesting an adjustment to the Building Code requirements and the neighbouring property owner. The City will also be able to register the agreement against title to the properties.

This provincial legislation grants the City the authority to enter into conforming construction agreements. However, to avoid the time delay and Public Service resources required to submit these individual reports for Council approval, delegation of authority to the CAO is requested. As such, this delegation would simply restore the pre-2014 status quo.

RECOMMENDATIONS

1. That the Chief Administrative Officer (CAO) be delegated the authority to enter into 'conforming construction agreements' as permitted in recently enacted Provincial legislation and amendments to the City of Winnipeg Charter, The Planning Act and The Real Property Act.
2. 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

Legislative changes to The City of Winnipeg Charter, The Planning Act and The Real Property Act allow Council to approve conforming construction agreements. To facilitate timely and efficient processing of agreements, and to avoid the administrative delay of requesting Council approval for each specific agreement, the Public Service would require delegated authority to approve and process these agreements.

IMPLICATIONS OF THE RECOMMENDATIONS

Delegated authority would simply restore the pre-2014 status quo associated with these types of agreements. Examples of these agreements are as follows:

1. An application for a building permit proposes a location close to or at a property line but with construction standards (windows or fire separation standards) that would become non-compliant if the adjacent property owner was to locate a future structure in close proximity. Both property owners agree to a spatial separation agreement (now 'conforming construction agreement') to be registered on title to allow the City to proceed with approving this permit application.
2. A lot split is approved or legally permitted, but the existing house or building is too close to the proposed property line given its current construction. As such, a conforming construction agreement binds the current owners (and future owners) of the newly created property to ensure that a wider than normally required side yard setback is honored to ensure that the existing building complies with code.
3. A building project proposes an exit onto a neighbouring property and both property owners agree to this spatial separation. A conforming construction agreement would permanently require the adjacent property owner to allow this exiting (e.g. door swing and egress space).

HISTORY/DISCUSSION

On December 10, 2014, Council approved a recommendation for the Public Service to request that the Province of Manitoba amend *The City of Winnipeg Charter, The Real Property Act* or some other statute to (a) allow registration at the Property Registry of agreements that restrict the use of land or permit a neighbouring property's access to land in order to allow neighbouring property to comply with Manitoba Building Code and Winnipeg zoning by-law requirements.

This proposed legislative change primarily affects three situations regularly encountered by the City:

1. **Spatial Separation Agreements:** The Building Code requirement of spatial separation between buildings and the restrictions on the proximity of property lines is intended to inhibit the spread of fire from one building to another.

2. **Exits onto thoroughfares**: A similar situation exists respecting the Building Code's requirements that an exit must lead from the floor area it serves to an open public thoroughfare. In some cases, due to the configuration of properties, this requirement cannot be met.
3. **Cross Access Agreements**: The City's two zoning by-laws prohibit the establishment of any use on a parcel of land that does not abut a public street. However, in some instances, it is desirable to create lots that do not comply with this rule. An example would be larger sites with multiple buildings on separate lots such as a shopping center. In these instances, a variance of the zoning rule is typically granted but with a requirement for the registration of cross access agreements to ensure that the parcels are able to gain access to a public street through adjacent properties.

Historically, the City of Winnipeg had accepted these sorts of agreements involving the owners of adjacent properties, as a valid method of compliance with the Building Code. Not only are these agreements an effective means of meeting Building Code requirements, in the case of spatial separation agreements, they are in fact endorsed by the Building Code, which reads:

> *The authority having jurisdiction* (in this case, the City) *may also address limiting distances through legal agreements with the parties involved that stipulate that the limiting distance be measured to a line that is not the property line. Such agreements would normally be registered with the titles of both properties.*

However, in order to be effective as mechanisms to enforce the Building Code and zoning bylaws, these agreements must not only be binding on both property owners, they must bind subsequent property owners. This means that the two owners cannot be allowed to agree between themselves to abrogate the agreement. To ensure that this doesn't happen, the City has required that the City be made a party to these agreements and that they be filed at The Property Registry (Winnipeg Land Titles Office). This ensures that future owners of both

properties are aware of these agreements, and that the City is notified if anyone tries to remove the agreement from the title.

The City's historic practice is supported by property owners and developers because it allows development to take place in a way that meets the needs of property owners of adjacent titles without jeopardizing fire safety, exit abilities, and zoning requirements. The City's practice concerning these is particularly important for the development of downtown properties due to the high density of that area and the fact that many buildings are located near or at property lines.

On or about 2014, The Property Registry challenged the long-standing practice of having these agreements registered. The Property Registry indicated that it does not have the authority to accept agreements of this nature with the City as a party because the City does not hold an interest in the land. In the absence of a statutory authorization to register these agreements, The Property Registry advised the City that it will no longer accept registration of these agreements.

Accordingly, for the City's longstanding practice to continue, it was necessary to have the Province enact legislation to authorize the registration of the three types of agreements noted above.

In 2017, the Province did pass this legislation. However, the legislation does not delegate the authority to engage in these agreements. In the absence of a specific delegation, approval to enter into each of these agreements would have to come from Council. In order to reduce delays and continue with the longstanding, pre-2014 practice of the Public Service processing these routine agreements as part of building or development permit approvals, Council would need to formally delegate this authority to the Public Service.

FINANCIAL IMPACT

Financial Impact Statement **Date:** December 13, 2017

Project Name:

Delegate authority to the Chief Administrative Officer to Administer Conforming Construction Agreements

COMMENTS:

There are no financial implications associated with this report.

"Original Signed By"
Mike McGinn, CPA, CA
Manager of Finance

CONSULTATION

This Report has been prepared in consultation with:
Legal Services (as to legal issues)

OURWINNIPEG POLICY ALIGNMENT

A significant number of residential lot splits occur within neighbourhoods identified as Areas of Stability.

Policy language within the OurWinnipeg Plan is as follows:

Areas of Stability are primarily understood as the residential areas where the majority of Winnipeggers currently live. Unlike Transformative Areas that will experience significant change over the coming years, Areas of Stability will accommodate low to moderate density infill development to support more efficient use of land, infrastructure and services as well as enhance housing choice and affordability. Infill in areas of stability will be supported with the intent of creating more complete communities.

When new development occurs in an Area of Stability, it should be contextually suitable and enhance and celebrate what makes the area unique. To that point, intensification should be accommodated within existing communities in a sensitive manner that recognizes the existing form and the character of its location.

SUBMITTED BY

Department: Planning, Property and Development
Division: Development and Inspections
Prepared by: R. Klassen
Date: December 13, 2017
File No:

o:\reports directive\development and inspections\manager of d&i\2017 reports\admin report - delegation of authority - conforming construction agreements.docx