Minute No. 368
Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – May 7, 2018

Item No. 3 Amendment to the Land Exchange Agreement of Lands East of St. John Ambulance Way (St. James - Brooklands - Weston Ward)

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and adopted the following:

1. That the City reimburse St. John Council for Manitoba Inc. for the subdivision and rezoning application fee and land dedication fees/costs arising out of the land exchange agreement approved by Council on September 24, 2014, upon evidence that the said application has been submitted and completed and all requirements of the subdivision and rezoning as imposed by Council or its delegated authority have been satisfied.

2. That the City enter into, execute and deliver an Amending Agreement with St. John Council for Manitoba Inc. and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement Recommendation 1 (the "Ancillary Agreements") and in accordance with the terms and conditions set out in Schedule "A".

3. That the authority be delegated to the Chief Administrative Officer to negotiate and approve the terms and conditions of the Amending Agreement and the Ancillary Agreements, in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

4. 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 – May 7, 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 May 15, 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 May 7, 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: Proposed Amendment to the Land Exchange Agreement of Lands East of St. John Ambulance Way

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

AUTHORIZATION

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

EXECUTIVE SUMMARY

On September 24, 2014, Council approved a land exchange between the City of Winnipeg and St. John Council for Manitoba Inc. (the "Proponent") for $1.00. The City will transfer Parcels C and D ("City Land") in exchange for the Proponent's Parcels A and B - "Land to be Acquired for Road Opening" ("Proponent's Land") which are identified on the attached Misc. Plan 14108/12.

The land exchange will enable the City to complete the acquisitions necessary for the Empress Street Reconstruction/Rehabilitation and Empress Overpass Bridge Rehabilitation Project (the "Project").

It is noted that the land exchange agreement was contingent upon the completion of a development application by the Proponent (DASZ 1/2014), which was approved just prior to the land exchange agreement. The Proponent was unable to satisfy the conditions of DASZ 1/2014 and the development application expired. The Proponent has indicated that they cannot afford to pay the development application fees for a second time and therefore, the land exchange agreement remains incomplete.

The Public Works Department wishes to ensure the Project commences in the 2019 construction season and is supportive of reimbursing the Proponent for the costs of a subdivision and rezoning application and land dedication fees/costs. The reimbursement will be facilitated by an Amended Land Exchange Agreement ("Amending Agreement") which amends the original land exchange agreement.

By reimbursing the costs outlined above, the City will avoid the need to expropriate the Proponent's Land and ensure the Project commences during the 2019 construction season. Potential expropriation costs and costs due to delays in construction are considered to be greater than the cost of reimbursement.

RECOMMENDATIONS

1. That the City reimburse St. John Council for Manitoba Inc. for the subdivision and rezoning application fee and land dedication fees/costs arising out of the land exchange agreement approved by Council on September 24, 2014, upon evidence that the said application has been submitted and completed and all requirements of the subdivision and rezoning as imposed by Council or its delegated authority have been satisfied.

2. That the City enter into, execute and deliver an Amending Agreement with St. John Council for Manitoba Inc. and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement Recommendation 1 (the "Ancillary Agreements") and in accordance with the terms and conditions set out in Schedule "A".

3. That the authority be delegated to the Chief Administrative Officer to negotiate and approve the terms and conditions of the Amending Agreement and the Ancillary Agreements, in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

4. 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

Council approval is required to approve the Amending Agreement related to the land exchange agreement that was approved on September 24, 2014.

IMPLICATIONS OF THE RECOMMENDATIONS

There are no regulatory, human resources or other implications associated with this report.

Each party will acquire the other's property for $1.00 as was agreed to in the original Land Exchange Agreement that was approved by Council on September 24, 2014. The City will pay for the subdivision and rezoning application and land dedication fees/costs of the Proponent's development application.

If the City is unable to acquire the property via an Amending Agreement, the City may need to consider expropriation. An expropriation will result in increased costs to the City and delay the Project.

HISTORY/DISCUSSION

In 2011, the Proponent expressed interest in acquiring the City Land for consolidation with their adjacent holding at 1 St. John Ambulance Way for the purpose of constructing a 3 story office building. As outlined on Schedule "B" to this report, the City Land consists of a right-of-way (Parcel C) and part of the residual lands left over from a 1959 Council approved lane diversion project (Parcel D).

During this time, the Public Works Department indicated the need to acquire the Proponent's Land to realign St. John Ambulance Way (Parcel B) and open a right-of-way to accommodate a turnaround (Parcel A).

The opening and closings to facilitate the land exchange identified above were approved by Council on March 20, 2013. Council approved the public lane opening and closing and public street opening as shown on the attached Misc. Plan 14391/1 identified as Schedule "C". The approval also declared a portion of the lane to be closed as surplus to the City's needs. The Planning, Property and Development Department entered into negotiations to exchange the City Land for the Proponent's Land for $1.00.

The road closings approved by Council indicated that easements are required by the Water and Waste Department, Manitoba Hydro, MTS and Shaw Cablesystems. Ownership of an existing 300mm catch basin and lead within the lands being sold will be handed over to the Proponent at the time of sale.

The Proponent is required to enter into an access easement agreement with Winnipeg Regional Health Authority located at 1476 Portage Avenue (formerly owned by St. James Presbyterian Church). The access easement agreement will provide and permit continued unimpeded access along and across a portion of Parcel C as shown on the attached Misc. Plan 14108/12 identified on Schedule "B".

The intended redevelopment of the Proponent's Land required a subdivision and rezoning and as a result, DASZ 1/2014 was approved by Council on April 30, 2014.

On September 24, 2014, Council concurred in the recommendation of the Standing Policy Committee on Property and Development and adopted the following:

1. That the City owned property on the east side of St. John Ambulance Way, shown as Parcel D identified on Schedule "B" be declared surplus to the City's requirements.

2. That approval be given for the exchange of the City Owned Land: Parcels C and D for land owned by St. John Council for Manitoba Inc. shown as Proposed Acquisition:

Parcels A and B identified on Schedule “B”, in accordance with the terms and conditions of the attached Land Exchange Agreement.

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

Within the ensuing months the survey work was started for DASZ 1/2014, but the conditions of the Council approval were not fulfilled by the Proponent and the application expired. Due to the expiration of DASZ 1/2014, the Land Exchange Agreement could not be completed. In order to complete the Land Exchange Agreement, a new development application is required. The Proponent has indicated that they cannot afford to pay the development application fees for a second time and submitted an official request to the City Clerks Department to have the second subdivision and rezoning fee waived.

On February 7, 2017, the Assiniboia Community Committee did not allow for the waiver of fees and the item was received as information.

As the Public Works Department still requires the Proponent’s Land for the Project, they are supportive of the Proponent being reimbursed for the subdivision and rezoning application and land dedication fees/costs. In exchange, the Proponent agrees to submit and complete a new development application which will allow for the Land Exchange Agreement to be completed. In exchange for the subdivision and rezoning application and land dedication fees/costs reimbursement, the Proponent will pay for all survey work required for the Project which is related to the Proponent’s Land.

As a result of the proposed changes as stated above, the City and Proponent will need to enter into an Amending Agreement.

By reimbursing the costs, the City will avoid the need to expropriate the Proponent’s Land and ensure the Project commences during the 2019 construction season. Potential expropriation costs and costs due to delays in construction are considered to be greater than the cost of reimbursement.

The Department is recommending that the Chief Administrative Officer negotiate and approve the terms and conditions of the Amending Agreement and the Ancillary Agreements, in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

FINANCIAL IMPACT

Financial Impact Statement

Date: April 6, 2018

Project Name:

First Year of Program 2018

Proposed Amendment to the Exchange of Lands East of St. John Ambulance Way

	2018	2019	2020	2021	2022
Capital					
Capital Expenditures Required	$ 40,000	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	40,000	-	-	-	-
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	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	1,259	-	-	-	-
Net Cost/(Benefit)	$ (1,259)	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	(1,259)	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Capital expenditures consist of estimated rezoning and land dedication costs of $38,741 + short-term financing charges and corporate admin fees of $1,259. The latter amount is offset by an equal recovery in the current budget of the Corporate Finance Department. Sufficient budget is available in Public Works' 2017 Regional Street Renewal capital budget.

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

CONSULTATION

This Report has been prepared in consultation with:

Public Works Department
Legal Services Department (as to legal issues)

OURWINNIPEG POLICY ALIGNMENT

N/A

SUBMITTED BY

Department: Planning, Property and Development
Division: Real Estate and Land Development
Prepared by: Joedi Pruden
Date: April 10, 2018
File No: 29/387 V.3

Attachments:

Schedule “A” – Proposed Terms of the Amending Agreement

Schedule “B” – Misc. Plan 14108/12

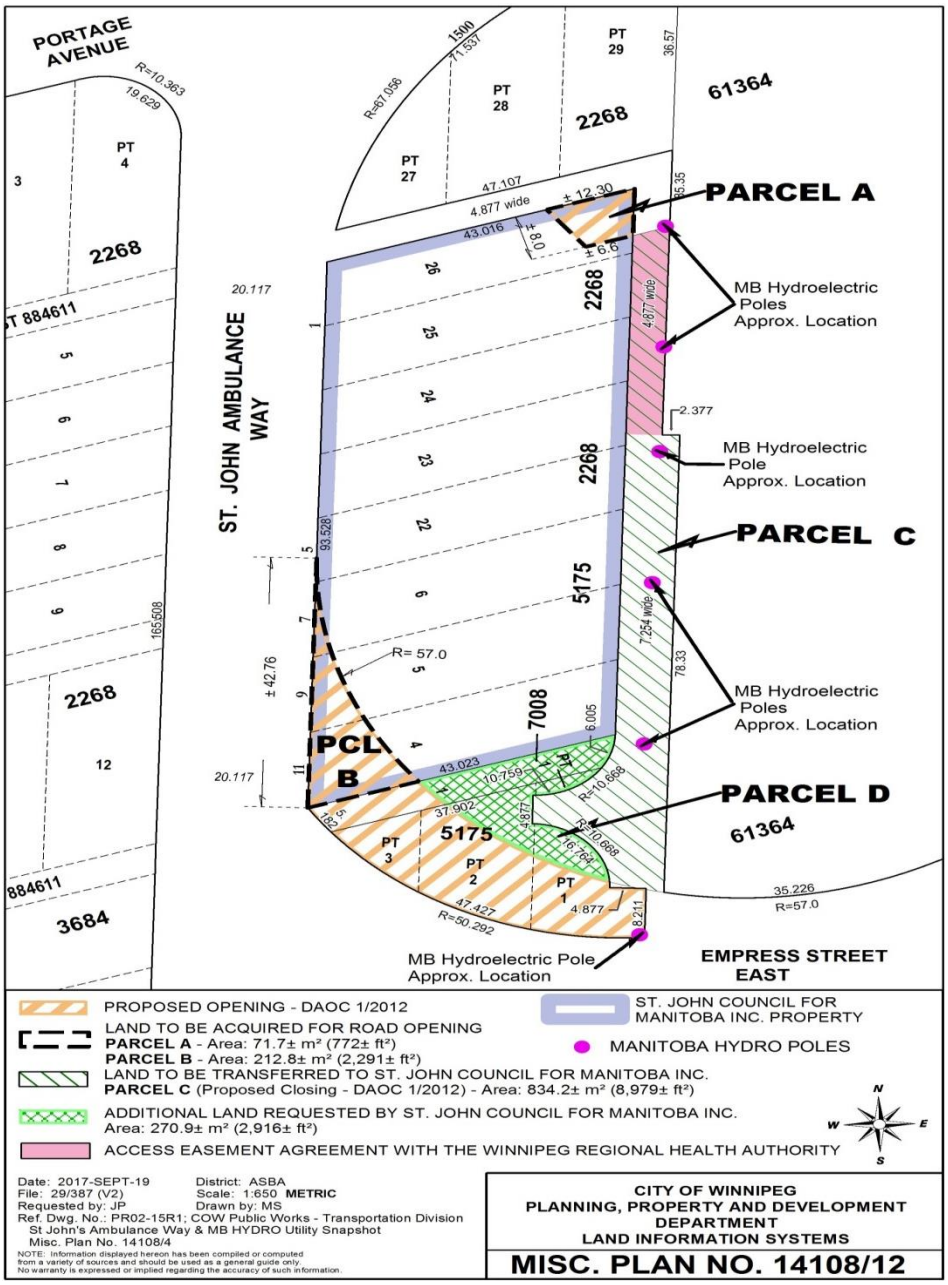
Schedule “C” – Misc. Plan 14391/1

Schedule “A”

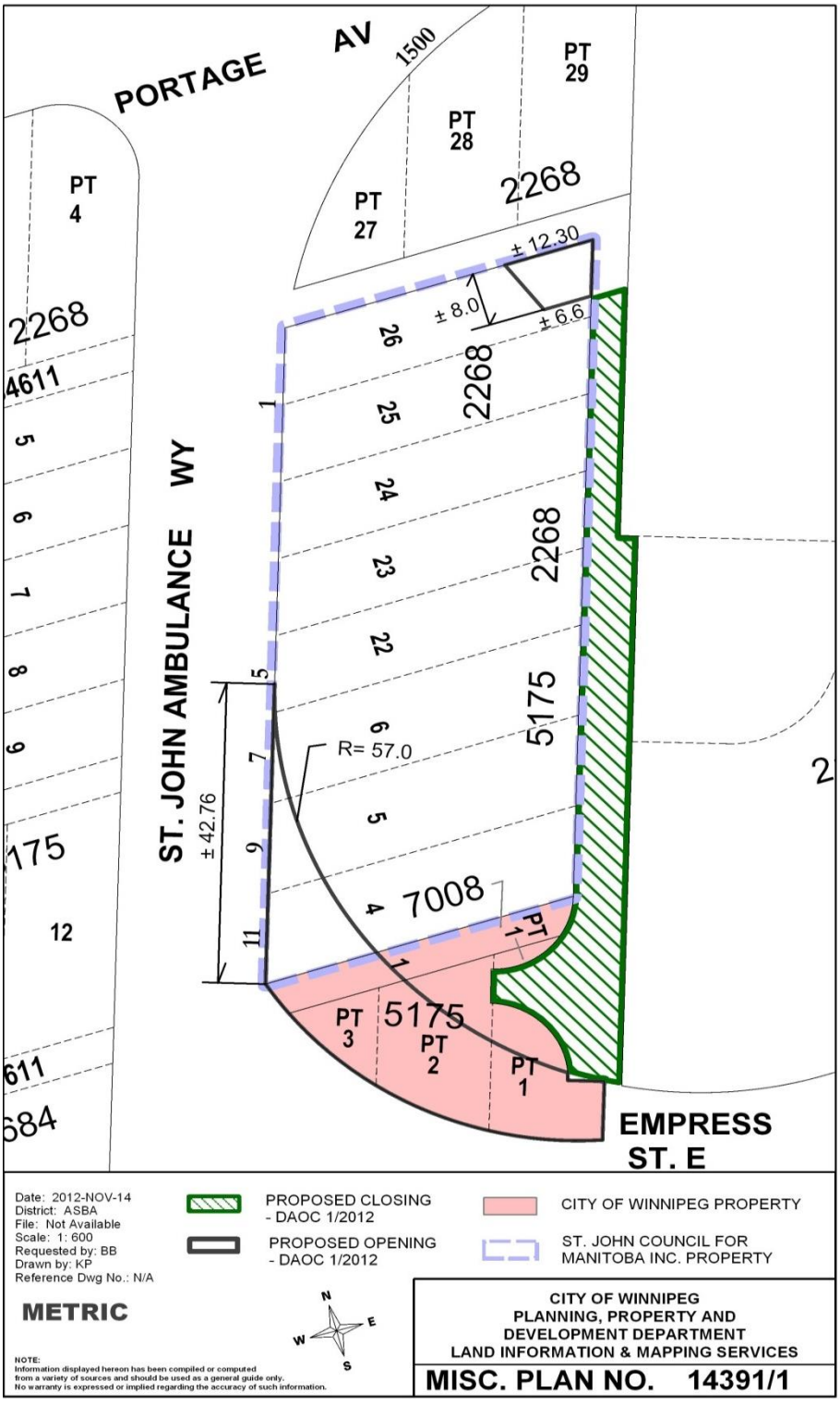
The salient terms and conditions of the proposed Amending Agreement are as follows:

- Within 30 days immediately following the date of closing, possession and adjustments or such other date mutually agreed to by the parties and approved by the Director of the Planning, Property and Development Department, the Proponent agrees to submit or cause to have submitted a complete subdivision and rezoning application (DASZ) at its expense. Subject to Council approval, the City will reimburse the Proponent the subdivision and rezoning application and land dedication fees/costs upon evidence that the said complete application has been submitted and all requirements of the subdivision and rezoning as imposed by Council or its delegated authority have been satisfied.
- The survey works to close and transfer Parcels C and D to St. John Council and to open Parcels A and B as a public right-of-way as described in clause 14 of the original 2015 Land Exchange Agreement shall be submitted to The Property Registry (Winnipeg) by the Proponent by June 1, 2018 or such other date mutually agreed to by the parties and approved by the Director of the Planning, Property and Development Department.
- The date of closing, possession and adjustments shall be 30 days immediately following the date that both the plan of opening and closing DAOC 1/2012 and the plan of easement for the 10 metre wide easement for a watermain have been completed and approved for registration by The Property Registry (Winnipeg) and the City and the date on which Council enacts the opening and closing by-laws or such other date mutually agreed to by the parties and approved by the Director of the Planning, Property and Development Department.
- The Proponent shall enter into an access easement agreement with the Winnipeg Regional Health Authority on property located at 1476 Portage Avenue to provide and permit current unimpeded access over a portion of Parcel C.
- The expansion of St. John Ambulance Way will directly affect 11 St. John Ambulance Way (owned by the Proponent). Within 30 days after the Plan of Opening and Closing and Plan of Easement have been completed and approved for registration by The Property Registry (Winnipeg) and the City, or such other date mutually agreed to by the parties in writing and approved by the Director of the Planning, Property and Development Department, St. John agrees to apply for an Encroachment Permit to allow their one storey building presently located at 11 St. John Ambulance Way (hereinafter called the “Building”) to encroach within the right-of-way (currently Parcel B on Schedule “B”) until no later than March 31, 2019. St. John agrees to apply for a demolition permit and demolish the Building on or before March 31, 2019.

Schedule “B”


PORTAGE AVENUE
ST. JOHN AMBULANCE WAY
EMPRESS STREET EAST
PARCEL A
PARCEL B
PARCEL C
PARCEL D
MB Hydroelectric Poles Approx. Location
MB Hydroelectric Pole Approx. Location
MB Hydroelectric Poles Approx. Location
MB Hydroelectric Pole Approx. Location
PROPOSED OPENING - DAOC 1/2012
LAND TO BE ACQUIRED FOR ROAD OPENING
PARCEL A - Area: 71.7± m² (772± ft²)
PARCEL B - Area: 212.8± m² (2,291± ft²)
LAND TO BE TRANSFERRED TO ST. JOHN COUNCIL FOR MANITOBA INC.
PARCEL C (Proposed Closing - DAOC 1/2012) - Area: 834.2± m² (8,979± ft²)
ADDITIONAL LAND REQUESTED BY ST. JOHN COUNCIL FOR MANITOBA INC.
Area: 270.9± m² (2,916± ft²)
ACCESS EASEMENT AGREEMENT WITH THE WINNIPEG REGIONAL HEALTH AUTHORITY
ST. JOHN COUNCIL FOR MANITOBA INC. PROPERTY
MANITOBA HYDRO POLES
Date: 2017-SEPT-19
File: 29/387 (V2)
Requested by: JP
District: ASBA
Scale: 1:650 METRIC
Drawn by: MS
Ref. Dwg. No.: PR02-15R1; COW Public Works - Transportation Division
St John's Ambulance Way & MB HYDRO Utility Snapshot
Misc. Plan No. 14108/4
NOTE: Information displayed hereon has been compiled or computed from a variety of sources and should be used as a general guide only. No warranty is expressed or implied regarding the accuracy of such information.
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT
LAND INFORMATION SYSTEMS
MISC. PLAN NO. 14108/12

Schedule “C”


PORTAGE AV
1500
PT 29
PT 28
PT 27
PT 4
2268
± 12.30
± 8.0
± 6.6
26
25
24
23
22
6
5
4
1
5
7
9
11
ST. JOHN AMBULANCE WY
± 42.76
R= 57.0
5175
7008
PT 1
PT 3
PT 2
PT 1
EMPRESS ST. E
Date: 2012-NOV-14
District: ASBA
File: Not Available
Scale: 1: 600
Requested by: BB
Drawn by: KP
Reference Dwg No.: N/A
METRIC
PROPOSED CLOSING - DAOC 1/2012
PROPOSED OPENING - DAOC 1/2012
CITY OF WINNIPEG PROPERTY
ST. JOHN COUNCIL FOR MANITOBA INC. PROPERTY
N
E
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CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14391/1