Agenda – Executive Policy Committee – July 2, 2019

REPORTS

Item No. 8 Proposed Expropriation Settlement of the Polo Park Infrastructure Improvement Project – 1688 St. Matthews Avenue (Holding #1) (St. James Ward)

WINNIPEG PUBLIC SERVICE RECOMMENDATION:

1. That the proposed expropriation settlement (the terms and conditions of which are attached hereto as Schedule A) to be made to the owner and tenant of 1688 St. Matthews Avenue (identified as "Proposed Acquisition" on Misc. Plan No. 14460, attached hereto as Schedule B) be approved at the negotiated amount of $568,550.00 plus applicable G.S.T. and P.S.T. (excluding interest, legal and appraisal fees).

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

ADMINISTRATIVE REPORT

Title: Proposed Expropriation Settlement of the Polo Park Infrastructure Improvement Project – 1688 St. Matthews Avenue (Holding #1)

Critical Path: Executive Policy Committee - Council

AUTHORIZATION

Author	Department Head	CFO	CAO
M. Pittet	J. Kiernan	P. Olafson, Interim CFO	M. Jack, Acting CAO

EXECUTIVE SUMMARY

On May 27, 2014, Council approved an expropriation for the Polo Park Infrastructure Improvement Project – Westside of St. James (the "Project"). The expropriation allowed for the extension of St. Matthews Avenue from Century Street to St. James Street.

The property located at 1688 St. Matthews Avenue (Holding #1) was affected by the expropriation. The expropriation resulted in a loss of parking, a loss of parking lot circulation, lost fencing and the loss of a pylon sign. In order to mitigate the Project impacts, the Public Service recommends an expropriation settlement with the property owner and tenant in the amount of $568,550.00 plus G.S.T. and P.S.T. (as applicable) and excluding interest, legal and appraisal fees (i.e. statutory costs).

Should Council approve the Public Service recommendation, the property owner and tenant will sign a Release and Quit Claim that would eliminate the City's expropriation liability related to Holding #1.

The Public Works Department was consulted on the proposed settlement and concurs with the recommendation.

RECOMMENDATIONS

1. That the proposed expropriation settlement (the terms and conditions of which are attached hereto as Schedule A) to be made to the owner and tenant of 1688 St. Matthews Avenue (identified as "Proposed Acquisition" on Misc. Plan No. 14460, attached hereto as Schedule B) be approved at the negotiated amount of $568,550.00 plus applicable G.S.T. and P.S.T. (excluding interest, legal and appraisal fees).

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

According to Section 4 of the City Organization By-law 7100/97, The Executive Policy Committee has jurisdiction in the following area:

(13) The approval of settlement of:
- (a) claims against the City;
- (b) claims brought by the City;
- (c) claims arising out of expropriations (excluding interest and legal and appraisal fees) exceeding $100,000.00 and up to a maximum of $250,000.00.

As the proposed expropriation settlement outlined in Schedule A exceeds the authority of the Executive Policy Committee, Council approval is required.

IMPLICATIONS OF THE RECOMMENDATIONS

There are no regulatory, environmental, operational, human resource or other implications associated with this report.

The Public Works Department has advised there is adequate funding for the settlement in capital account 003-181000-180604-1803000213-PROPERTY.

The G.S.T. and P.S.T implications of the settlement are as follows:

Claim	Compensation	G.S.T.	P.S.T.	Total
Market Value of Land	$445,000.00	Self-Assessed	N/A	$445,000.00
Market Value of the Land (Advance)*	$55,000.00	Self-Assessed	N/A	$55,000.00
Injurious Affection	Incl. Above	Incl. Above	N/A	$0.00
Damages (approach application)*	$775.00	$38.75	$0.00	$813.75
Damages (paving, fencing)	$54,075.00	$2,703.75	$0.00	$56,778.75
Damages (pylon sign)	$13,700.00	$685.00	$1,096.00	$15,481.00
Interest	$31,679.21	N/A	N/A	$31,679.21
	$600,229.21	$3,427.50	$1,096.00	$604,752.71

*Compensation has been paid to Claimant through a previously approved Advance Agreement

Net Payment	$544,454.21	$3,388.75	$1,096.00	$548,938.96

Payment of statutory interest has been calculated up to August 31, 2019.

HISTORY/DISCUSSION

On May 27, 2014, Council approved the expropriation to acquire the land interests needed for the Polo Park Infrastructure Improvement Project – Westside of St. James (the “Project”). The Project resulted in eight expropriations and three acquisitions which allowed for the extension of St. Matthews Avenue from Century Street to St. James Street. One of the affected properties was 1688 St. Matthews Avenue (Holding #1) which operates as a service garage with used car sales.

On March 25, 2015, Council confirmed the expropriation and approved the associated by-law. Statutory Offers of Compensation for the Project were subsequently approved by the Standing Policy Committee on Property and Development. The property owner of Holding #1 accepted an advance payment of $55,000 in September 2016. The advance payment represented the market value compensation for the land expropriated – a total of 1,522 square feet +/- on the south side of St. Matthews Avenue. The market value compensation was based on an external appraisal, which considered Holding #1 to have a highest and best commercial use based on its surrounding commercial development, frontage, access and visibility.

The advance payment for Holding #1 did not resolve the expropriation claim and the property owner's appraisal indicated a significantly higher value due to a change in use of the property (i.e. the existing use was no longer viable due to the expropriation). The property owner and the tenant both filed a claim at the Land Value Appraisal Commission on May 2, 2017. The property owner has indicated that the expropriation caused the following injurious affection and damages to the property:

- Loss of seven parking stalls
- Loss of parking lot circulation
- Loss of fencing
- Loss of a pylon sign

The Public Service recommends an overall settlement of $568,550 (plus applicable G.S.T., P.S.T. and statutory costs). The expropriation has resulted in lost parking and has adversely impacted onsite vehicular circulation. To mitigate the parking/circulation issue, the Public Service recommends compensation for injurious affection in the amount of $500,000. Additional compensation in the amount of $50,055 will cover the cost of a newly paved area to replace a few of the lost parking stalls and a new approach to Kensington Avenue. Construction of a new wood fence and relocation of the existing pylon sign will cost another $18,495.

It is important to note that interest is a statutory cost pursuant to The Expropriation Act, in addition to other reasonable costs related to the expropriation (e.g. legal fees, appraisal, etc.).

Should Council approve the Public Service recommendation:

- Completion of the Project construction will occur, as the City agreed to delay construction in front of Holding #1 until a settlement is reached;
- The property owner and tenant will sign a Release and Quit Claim that will eliminate the City's expropriation liability related to Holding #1 (anticipated to be signed in July or August 2019);
- The Project will only have two remaining expropriation claims, both of which are under review by the Land Value Appraisal Commission.

Public Works was consulted and concurs with the recommendation.

The expropriation predates the Real Estate Transaction Management Framework. As a result, several requirements of the Framework are not included in the file documentation (e.g. appraisal requisition, appraisal review memo, letter of engagement, etc.).

FINANCIAL IMPACT

Financial Impact Statement

Date: May 23, 2019

Project Name:

First Year of Program **2019**

Proposed Expropriation Settlement of the Polo Park Infrastructure Improvement Project – 1688 St. Matthews Avenue (Holding #1)

	2019	2020	2021	2022	2023
Capital					
Capital Expenditures Required	$ 624,407	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	624,407	-	-	-	-
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	19,654	-	-	-	-
Net Cost/(Benefit)	$ (19,654)	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	(19,654)	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Capital expenditures consist of the proposed settlement amount plus short-term interest charges and corporate admin fees of $19,654. The latter amount is offset by an equal recovery in the current budget of the Corporate Finance Department.

"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 (for preparation of administrative report and terms and conditions)
The Public Works Department (preparation of administrative report)

OURWINNIPEG POLICY ALIGNMENT

N/A

SUBMITTED BY

Department: Planning, Property and Development
Division: Real Estate and Land Development
Prepared by: Gord Chappell, Real Estate Administrator
Date: June 3, 2019

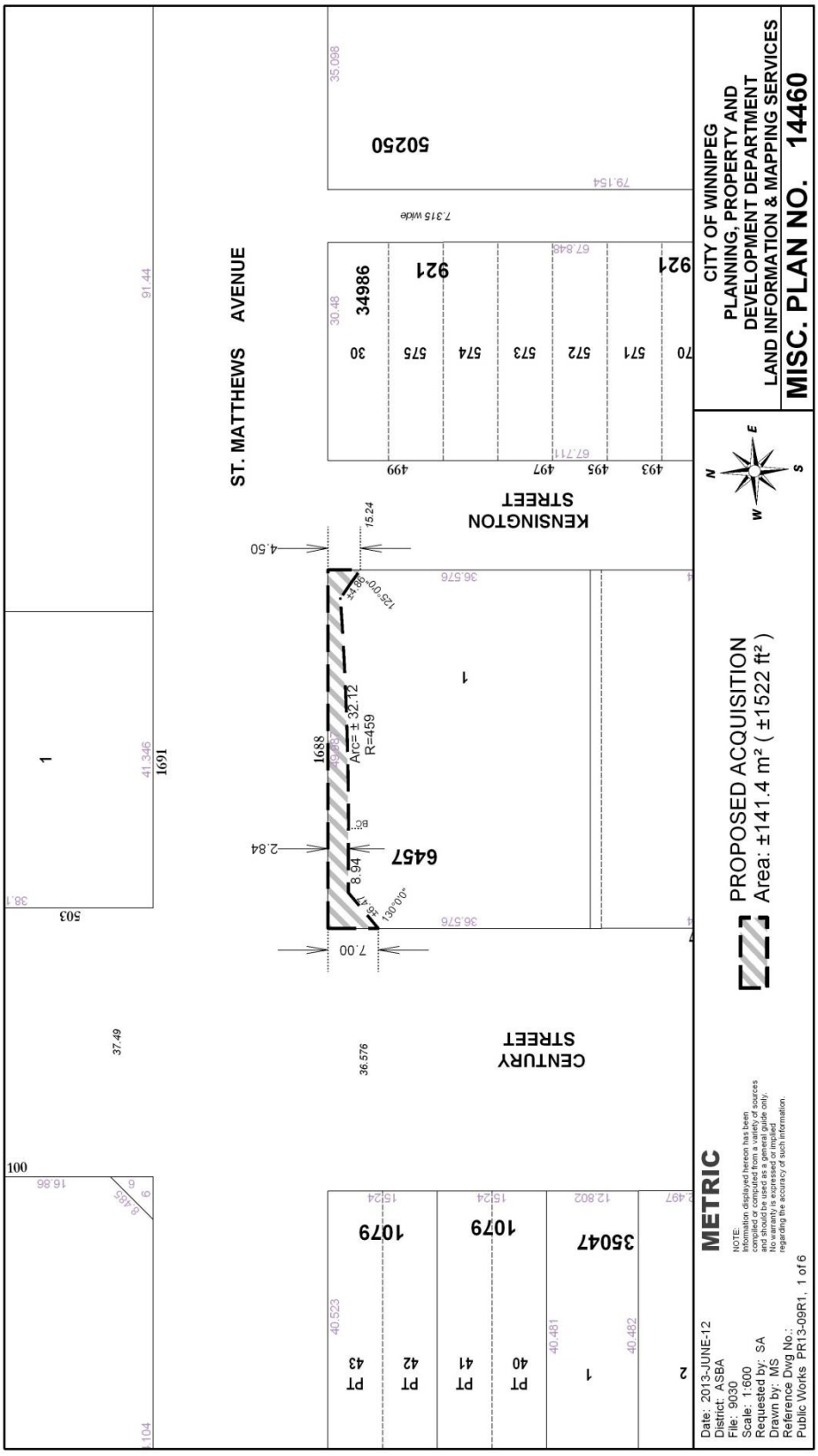
Attachments:

Schedule A – Terms and Conditions
Schedule B – Misc. Plan 14460

SCHEDULE A

Property:	Holding #1
Address:	1688 St. Matthews Avenue
Misc. Plan No.:	14460
Claimants:	Property owner and tenant of 1688 St. Matthews Avenue
Compensation:	Market Value of Land - $500,000.00 plus G.S.T. Injurious Affection - Included in market value amount Damages (approach application) - $775.00 plus G.S.T. Damages (paving) - $49,280.00 plus G.S.T. Damages (fencing) - $4,795.00 plus G.S.T. Damages (pylon sign) - $13,700.00 plus G.S.T. and P.S.T. Total Compensation: $568,550.00 plus applicable G.S.T. and P.S.T.
Advance Payments: (included above)	$55,000.00 in September 2016 (Offer of Compensation) $775.00 in January 2019 (approach application)
Statutory Costs:	$31,679.21 (interest) plus other reasonable costs related to the expropriation (legal fees, appraisal, etc.)
Claimant Obligations:	Execute a Release and Quit Claim, withdraw their claim at the Land Value Appraisal Commission, divide the compensation between the property owner and tenant

SCHEDULE B



CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14460
PROPOSED ACQUISITION
Area: ±141.4 m² (±1522 ft²)
METRIC
Date: 2013-JUNE-12
District: ASBA
File: 9030
Scale: 1:600
Requested by: SA
Drawn by: MS
Reference Dwg No.:
Public Works PR13-09R1, 1 of 6
ST. MATTHEWS AVENUE
KENSINGTON STREET
CENTURY STREET
50250
34986
921
6457
1688
1691
1079
35047
Arc= ± 32.12
R=459