Minutes – Executive Policy Committee – February 11, 2020

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – February 3, 2020

Item No. 6 Acquisition of 120 Softley Road (Transcona Ward)

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and submitted the following to Council:

1. That per the City Auditor's report, attached as Schedule C, the requirement for the Independent Fairness Commissioner to conduct a compliance review of the proposed acquisition of 120 Softley Road be waived.

2. That subject to concurrence of Recommendation 1, that the proposed Terms and Conditions (attached as Schedule A) for the acquisition of private property located at 120 Softley Road, identified as "Subject Property" on Misc. Plan No. 15244, for $255,000.00 plus G.S.T. be approved.

3. That subject to concurrence of Recommendation 1, that the City enter into, execute and deliver a Purchase and Sale Agreement with the owner of 120 Softley Road, and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing (the "Ancillary Agreements").

4. That subject to concurrence of Recommendation 1, that authority be delegated to the Chief Administrative Officer to negotiate and approve the terms and conditions of the Purchase and Sale Agreement and 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.

5. That any rental revenue produced by a lease on the Subject Property be deposited into the Water and Waste Department's Landfill Rehabilitation Reserve.

6. 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 – February 3, 2020

DECISION MAKING HISTORY:

Moved by Councillor Mayes,

That the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development be concurred in and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION:

On February 3, 2020, 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 Acquisition of 120 Softley Road

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	P. Olafson, Interim CFO	M. Ruta, Interim CAO

EXECUTIVE SUMMARY

On December 12, 2017, Council approved the 2018 Capital Budget which provided funding to the Water and Waste Department for Miscellaneous Land Acquisitions. The funding can be used to acquire closed landfill sites or land within close proximity to landfill sites.

The private property located at 120 Softley Road, identified as “Subject Property” on Misc. Plan No. 15244, attached hereto as Schedule B, is vacant industrial land that is being sold. The Public Service recommends acquiring the Subject Property for $255,000.00 plus G.S.T. to ensure proper risk management of a privately held former City landfill site.

The Water and Waste Department was consulted and supports the proposed acquisition.

RECOMMENDATIONS

1. That, per the City Auditor’s report, attached as Schedule C, the requirement for the Independent Fairness Commissioner to conduct a compliance review of the proposed acquisition of 120 Softley Road be waived.

2. That, subject to concurrence of Recommendation 1, that the proposed Terms and Conditions (attached as Schedule A) for the acquisition of private property located at 120 Softley Road, identified as “Subject Property” on Misc. Plan No. 15244,for $255,000.00 plus G.S.T. be approved.

3. That, subject to concurrence of Recommendation 1, that the City enter into, execute and deliver a Purchase and Sale Agreement with the owner of 120 Softley Road, and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing (the “Ancillary Agreements”).

4. That, subject to concurrence of Recommendation 1, that authority be delegated to the Chief Administrative Officer to negotiate and approve the terms and conditions of the Purchase and Sale Agreement and 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.

5. That any rental revenue produced by a lease on the Subject Property be deposited into the Water and Waste Department's Landfill Rehabilitation Reserve.

6. 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

The Policy for the Sale, Acquisition, Rental, Leasing and Management of Properties, adopted by Council on July 18, 1979, authorizes the Standing Policy Committee on Property and Development, Heritage and Downtown Development to approve the terms and conditions of acquisitions that form part of a Council approved land acquisition program.

On December 13, 2016, Council approved the 2017 Capital Budget which provided funding to the Water and Waste Department for Miscellaneous Land Acquisitions.

Council approval is required to waive Council Policy such as the requirement for the Independent Fairness Commissioner to conduct a compliance review.

IMPLICATIONS OF THE RECOMMENDATIONS

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

The Water and Waste Department has advised there is adequate funding for the acquisition in the Capital Budget. The City is a G.S.T. registrant and will self-assess, where applicable.

Should the Subject Property be leased to a third party (e.g. site storage), rental revenue is recommended to be redirected into the Water and Waste's Landfill Rehabilitation Reserve for closure and post-closure landfill needs for all active and closed landfills maintained under the responsibility of the City, including the purchase of land in close proximity to landfill sites.

HISTORY/DISCUSSION

The Subject Property forms part of the closed St. Boniface Landfill Site, which extends on either side of Lagimodiere Boulevard, north of Dugald Road. The closed landfill area is largely held by the City to effectively manage the environmental risk associated with landfill sites. The Subject Property is one of a few privately held properties within the boundaries of the St. Boniface Landfill Site.

The Water and Waste Department has a Capital Budget that can be used to acquire closed landfill sites or land within close proximity to landfill sites when they become available.

The Subject Property was listed for sale in August of 2017 and the Real Estate Branch (the "Branch") was instructed to secure the land on behalf of the Water and Waste Department.

The City engaged an appraiser to estimate the market value of the Subject Property. The appraisal assumed a highest and best industrial storage use, based on the adjacent uses, environmental land constraints and the City's methane gas policy. The appraised value ranged between $100,000 and $420,000.

On January 14, 2019, the Branch made an offer of $150,000.00 to the owner of the Subject Property. The City's offer was rejected and subsequently increased to $175,000.00. The City's second offer was also rejected and countered by the owner at $300,000.00. The City did not accept this counteroffer.

The City continued negotiations and the owner proposed a purchase price of $255,000.00. This proposed purchase price falls within the appraised market value range and is supported by the Water and Waste Department.

It is noted that the Real Estate Transaction Management Framework indicates that a Phase I Environmental Site Assessment ("ESA") should be completed on certain acquisitions. In this instance, an ESA is unnecessary because the City is knowingly accepting contaminated land which is monitored by the Water and Waste Department.

Should the proposed acquisition be approved, the transaction is expected to close in January or February 2019.

FINANCIAL IMPACT

Financial Impact Statement

Date: December 9, 2019

Project Name:

First Year of Program **2020**

Proposed Acquisition of 120 Softley Road

	2020	2021	2022	2023	2024
Capital					
Capital Expenditures Required	$ 263,288	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	263,288	-	-	-	-
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	8,288	-	-	-	-
Net Cost/(Benefit)	$ (8,288)	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	(8,288)	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Capital expenditures consist of the proposed acquisition price of $255,000 + short-term financing charges and corporate admin fees of $8,288. The latter amount is offset by an equal recovery in the current budget of the Corporate Finance Department. No estimate of asset management overheads, if applicable, is included nor is an estimate of rental revenue that might arise from ownership of the property.

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

CONSULTATION

This Report has been prepared in consultation with:
Legal Services Department (as to legal issues)
Water and Waste Department – Solid Waste Services

OURWINNIPEG POLICY ALIGNMENT

Sustainable Water and Waste

Policy 6: Continue monitoring and restoration of landfill sites:
- Monitor active and closed landfills and undertake measures necessary to mitigate harmful by-products of waste decomposition
- Restore completed landfills for recreational or other appropriate uses

Complete Communities

Direction 4: Major redevelopment sites will provide for complete communities with significant levels of mixed use, high density development, with strong urban design and attractive parks, places and open spaces.

WINNIPEG CLIMATE CHANGE PLAN ALIGNMENT

Land Use: Facilitate Compact, Complete Development and Increase Density

4.4 Support Redevelopment of Former Commercial and Industrial Lands into Active Use
(Primary Responsibility: Planning, Property and Development Department)

Explore opportunities for the City of Winnipeg to take a more direct role in advancing public redevelopment of brownfield sites. This may include developing City-owned lands, assembling land for resale, partnering on development, or using City funds to leverage private investment

SUBMITTED BY

Department: Planning, Property and Development
Division: Real Estate and Land Development
Prepared by: Tyler Miller
Date: December 11, 2019

Attachments:
Schedule A – Terms and Conditions
Schedule B – Misc. Plan 15244/1
Schedule C – Auditor's Report - Review of proposed acquisition of 120 Softley Road

SCHEDULE A

Proposed Terms & Conditions to Acquire Privately Owned Land, Shown As "PROPOSED ACQUISITION", on Misc. Plan No. 15244

1. Deloitte Restructuring Inc., in its capacity as receiver of R. Litz & Sons Company Limited, and not in its personal capacity, (the "Vendor) agrees to convey its right, title and interest in the lands shown as "PROPOSED ACQUISITION" on Misc. Plan No. 15244, attached hereto as Schedule "B" as identified by Certificate of Title No. 2301377/1(the "Subject Property") to The City of Winnipeg (the "City") on the proposed terms and conditions contained herein and for the proposed purchase price of **Two Hundred Fifty-Five Thousand Dollars ($255,000.00)** plus applicable taxes.

2. The City agrees to use reasonable best efforts to have the transaction considered by the City's Council, or its delegated authority, as soon as practicably possible following the date on which the Vendor agrees to the terms and conditions contained herein, and the City agrees that time shall be of the essence in this regard.

3. The Subject Property to be conveyed to the City free and clear of any registered liens, encumbrances or leasehold interests (including new or existing tenancy agreements), excepting any utility easements registered against the Subject Property.

4. The Vendor does not warrant zoning compliance nor lack of easements nor encroachments; the City will be entitled to conduct its own inspections to determine any deficiencies. The City will be deemed to have accepted the Subject Property unless written notice of any deficiency is provided to the Vendor's solicitor within five (5) days of acceptance of the Agreement of Purchase and Sale executed by the City and the Vendor (the "Offer"). The City accepts all encroachments on or over the Subject Property and shall not hold the Vendor responsible with respect to same.

5. The City acknowledges and agrees that there are no representations and/or warranties with respect to urea formaldehyde foam insulation, radon gas, the fitness, condition, zoning or lawful use of the Subject Property and agrees to accept the Subject Property in an "as is" condition and subject to any outstanding work orders or notice of infractions as of the date of closing and subject to the existing municipal or other governmental by-laws, restrictions or orders affecting its use including subdivision agreements and easements.

6. The City acknowledges that the Vendor is making no representations and/or warranties whatsoever with respect to the Subject Property including, but not limited to, any and all representations and/or warranties contained in the Offer. The City acknowledges that it has relied entirely upon its own inspection and investigation with respect to quantity, quality and value of the Subject Property.

7. The City acknowledges that any fixtures and chattels that are on the Subject Property are to be taken by it at its own risk completely, without representation or warranty of any kind from the Vendor as to the ownership or state of repair of any such fixtures and

chattels. The City accepts any rental arrangements that may exist with respect to chattels or fixtures and shall assume all responsibility for same, whether or not same are in arrears.

8. The date of vacant possession and adjustment of taxes to be 30 days from the date of final approval by the City's Council, or its delegated authority, or on such other mutually acceptable date as agreed upon in writing by the parties and approved by the City's Director of Planning, Property and Development.

9. The Vendor is responsible for providing vacant possession free of any tenants.

10. Each party shall be responsible for their own legal fees.

11. The City shall be responsible for any registration fees and taxes required to register such documents in the Winnipeg Land Titles Office.

12. Commissions related to the sale of the Subject Property, if any, will be the sole responsibility of the Vendor.

13. The Subject Property, until possession is delivered to the City, shall remain at the sole risk and responsibility of the Vendor.

14. The Vendor agrees to enter into an appropriate Purchase and Sale Agreement with the City in a form and embodying the within terms and conditions and any other such terms and conditions as deemed necessary by the Director of Legal Services/City Solicitor and agreed to by the parties. It is further acknowledged that the said Purchase and Sale Agreement may be filed as a Caveat against the title to the Subject Property pending conveyance of the Subject Property to the City.

15. The Vendor agrees that the Subject Property will not be conveyed, disposed of or encumbered in any manner whatsoever, except subject to this agreement and that monies payable in respect of this agreement will only be paid at such time as all the required conveyance documents, consents, discharges or other evidence required are provided by the Vendor.

16. The Vendor agrees to declare whether or not it is a "Registrant" for the purposes of the Goods and Services Tax and, if so, to provide their G.S.T. Registration number to the City on request.

17. The City (Goods and Services Tax Registrant No. R121682967) will self-assess any tax payable on the acquisition of the Subject Property.

18. The Vendor acknowledges and agrees that the proposed terms and conditions contained herein, are subject to the approval of the City's Council, or its delegated authority, and are not binding until such time as that approval is obtained.

Deloitte Restructuring Inc., in its capacity as receiver of R. Litz & Sons Company Limited, and not in its personal capacity hereby agree(s) to enter into a Purchase and Sale Agreement for the sale of the Subject Property to The City of Winnipeg in accordance with the proposed purchase price and terms and conditions specified herein.

Per: *Original Signed by 'Brent Warga'*
Name: Brent Warga
Title: Senior Vice-President
Deloitte Restructuring Inc. as receiver
for R. Litz & Sons Company Ltd. and
not in its personal capacity

I am authorized to bind the Corporation

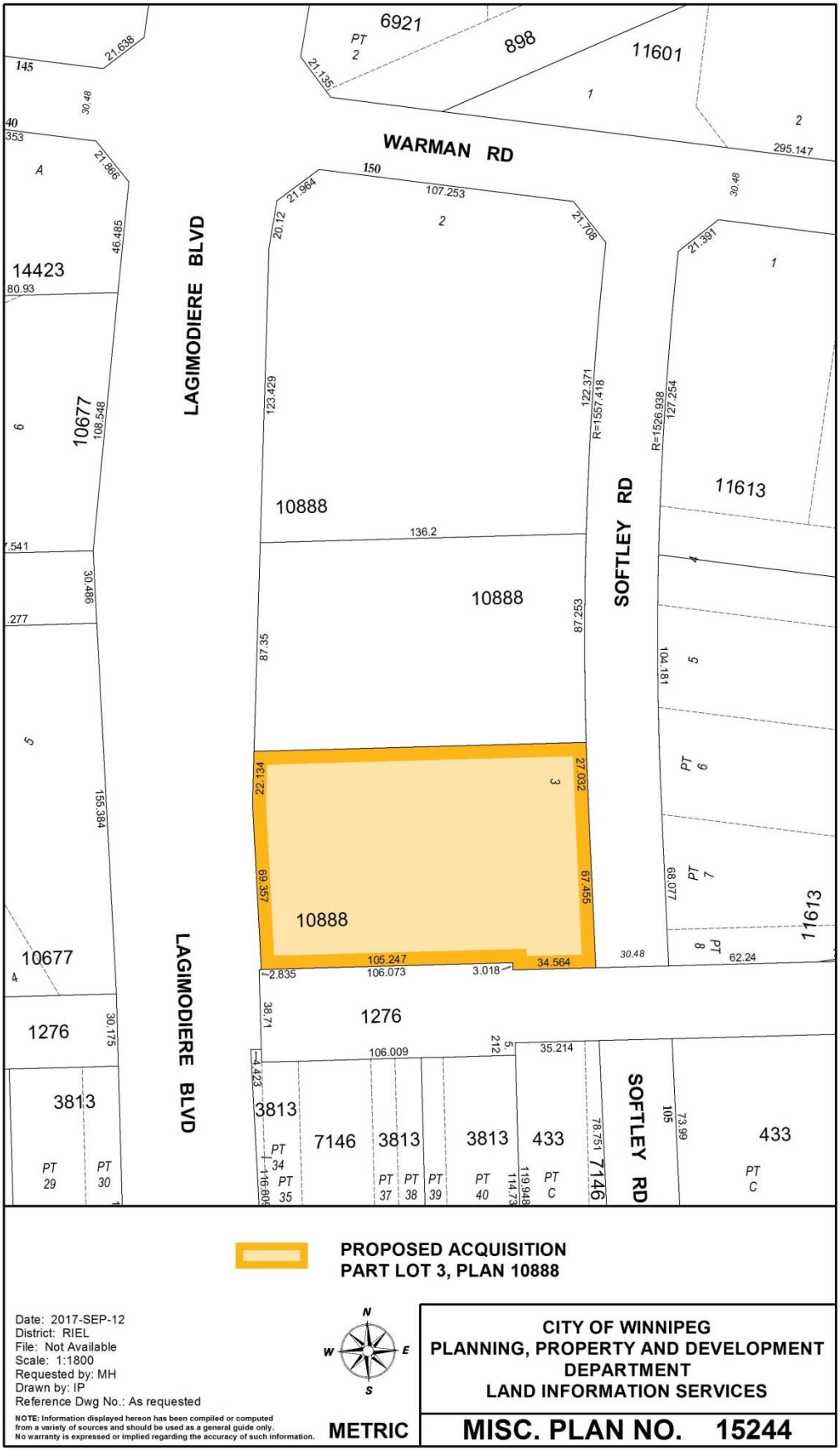
Nov. 12, 2019
Date

Per: _____
Name:
Title:

I am authorized to bind the Corporation

_____
Date

Schedule B


WARMAN RD
LAGIMODIERE BLVD
SOFTLEY RD
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SOFTLEY RD
6921
PT 2
898
11601
14423
10677
10888
10888
10888
11613
11613
10677
1276
1276
3813
3813
7146
3813
3813
433
433
7146
PROPOSED ACQUISITION
PART LOT 3, PLAN 10888
Date: 2017-SEP-12
District: RIEL
File: Not Available
Scale: 1:1800
Requested by: MH
Drawn by: IP
Reference Dwg No.: As requested
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.
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT
LAND INFORMATION SERVICES
MISC. PLAN NO. 15244