November 6, 2020

Standing Policy Committee on Property and Development,
Heritage, and Downtown Development
City Hall
Council Building
510 Main St.
Winnipeg, MB R3B 1B9

Dear Members of the Committee:

RE: *Fulton Grove Subdivision (DASZ 12/2018)*
Review of ADMINISTRATION REPORT DATED NOVEMBER 2, 2020

The purpose of this Report is to provide a synopsis on the detailed review of the Administrative Report dated November 2, 2020 for File DASZ 12/2018 Fulton Grove Subdivision and Rezoning located in the Parker Lands.

The Courts afforded this review and submission directly to Standing Policy Committee under 2020 MBQB 141 ***6165347 Manitoba Inc. et al. v. The City of Winnipeg, et. al.***

The key takeaways to the Applicants review of the Public Service administrative report are as follows.

The Public Service;

1. Is not taking into account all the information detailed in paragraph 71 of Justice Grammond's October 5, 2020 decision.
2. Is withholding information that resolves issues they have identified as a reason for rejection.
3. Is not considering their own internal documents concerning their handling of the DASZ and SP applications, and present a misleading picture of the Public Service's conduct and handling of these applications.

This review of the Administration Reports focuses on the ***significant*** omissions, misstatements and factually incorrect evidence the Administration is putting forth as their publicly available professional opinions on this specific development and the planning documents associated with this development, namely, the *Parker Lands Secondary Plan* and the *Parker Lands PDO-2*.

This review does not include, at this time, an analysis of the minor errors or spelling, grammar etc. contained within Administrative Reports.

Internal City of Winnipeg documents are available which would provide a different context to the administrative report on the DASZ application but these documents cannot yet be used in this process by the applicant because they were made available to the applicant in the misfeasance lawsuit brought by the applicant against the City and four senior members of the Planning, Property & Development Department.

The applicant has requested the City's consent to have documents made available for the applicant's use in this process to allow members of Council a proper context to their review of this administrative report but the City's lawyers refused. In simple words, important information is available but cannot yet be used without the City's consent. The applicant feels this information is relevant to the recommendations contained within the Public Service's administrative reports. The applicant will provide these internal documents in the event that it becomes able to do so in advance of November 16, 2020.

Attachment A is a summary of Attachment B. Attachment A focuses on the six (6) 'key' reasons for the recommendation of rejection by the Public Service. The applicants position is that these reasons for rejections are unfounded especially if Council had an opportunity to view the withheld information ordered by Judge Grammond and the information the Public Service refuses to disclose to Council and the public at large.

Attachment B is a table that provides a detailed review, paragraph-by-paragraph of the Administrative Report on this matter. Supplementary documents are included to substantiate findings and statements. The administrative reports key reasons, for rejection are either without foundation in fact, and/or are related to information withheld or not available to Council.

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LIST OF ATTACHMENTS

ATTACHMENT A - Applicant Report, Review of ADMINISTRATION REPORT File DASZ 12/2018 dated November 2, 2020.

ATTACHMENT B – TABLE 1: Detailed Review of ADMINISTRATION REPORT DATED NOVEMBER 2, 2020.

ATTACHMENT C - Side Walk, Public Road and Block Analysis of the *Fulton Grove Subdivision*

ATTACHMENT D – FILE DASZ 24/2019 January 30, 2020 Council Minutes.

ATTACHMENT E – Centralized Park Locations with Dimensions (Two pages).

ATTACHMENT F - InfraCor Letter dated October 20, 2020.

NOTE: References are made to the attachments in *Attachment A – Report* and/or *Attachment B - Table*.

ATTACHMENT A: Applicant Report on the Detailed Review of ADMINISTRATION REPORT File DASZ 12/2018 dated November 2, 2020.

Significant omissions, misstatements and false statements

1. Missing Critical Information: Sidewalks

The Public Service is not taking into account the documents listed in paragraph 71 of the October 5, 2020 decision as instructed by Justice Grammond. This paragraph states that the Public Service will revise the administrative reports to take into account the information described in paragraph 71.

The Public Service is again not providing in their Report information they deem critical regarding this development. And they again are using the absence of this critical information as one of their main reasons to recommend rejection.

The Public Service is recommending the rejection due to the absence of sidewalks: *All streets in this area should have sidewalks* [see 4th bulleted point, PAGE 28 under *Summary*].

The Public Service is neglecting the concept plan and subdivision plan that the Public Service was provided on October 29, 2018 that illustrate at least one-sidewalk or pathway connection per side of each public road in the low-density residential area with the new lots. **All streets in the Low-Density Mixed Housing Area have sidewalks.**

- The Administration Report is recommending rejection under 'Summary [4th bulleted point, PAGE 28]' based on the absence of sidewalks on the streets in the low-density area [west side].

- The Applicant requested on October 26, 2020 the Public Service provide the sidewalk and AT pathway connection details the Administration normally provides to developers such as the location and type of pathway [AT vs. Sidewalk].

- On another file, the Administration actually drew up a map showing where all the sidewalks will be located and placed it in the Administration Report and further provided in that ACG Report all the construction details including a description of where the sidewalks and AT paths are to go on the residential streets. (see *ATTACHMENT D – FILE DASZ 24/2019 January 30, 2020 Council Minutes).*

- These details are NOT in this Administration Report, and the existence of sidewalks and pathway connections on all streets in the concept plan is not acknowledged in the Administration Report. However, the Administration claims ‘‘walkability’ is a concern and recommends rejection on the very basis of their disinclination to provide the information regarding sidewalks and AT pathway connections that are proposed in the Fulton Grove development.

- The concept plan that the Public Service was provided on October 29, 2018 illustrates at least one-sidewalk or pathway per side of each public road in the low-density residential area: **all streets in the Low-Density Mixed Housing Area have sidewalks.**

- ATTACHMENT C - Side Walk, Public Road and Block Analysis of the Fulton Grove Subdivision is a supplementary report with a breakdown of the details on a street-by-street, block-by-block, sidewalk-by-sidewalk, lot-by-lot of the concept plan and subdivision plan that illustrates **all streets in the Low-Density Mixed Housing Area have sidewalks.**

2. Missing Critical Information: Rear Public Lanes

The Public Service is not taking into account the documents listed in paragraph 71 of the October 5, 2020 decision as instructed by Justice Grammond. This paragraph states that the Public Service will revise the administrative reports to take into account the information described in paragraph 71.

The Public Service is again not providing information they deem critical in their analysis of the DASZ application. This withheld information from their report was submitted on October 29, 2018. The Public Service is again using the absence of critical information as one of their main reasons to recommend rejection.

The scenario the Public Service is stating here regarding the potential issue of driveways crossing sidewalks simply is not pervasive within the Fulton Grove Low-Density Mixed Housing Area, and this is not due to the lack of sidewalks since **all streets in this area have sidewalks**.

The Public Service is neglecting significant information here: **only six (6) out of the 187 lots [3.2% of the lots] have a driveway crossing a sidewalk in a location no sidewalk exists on the opposite side of the public road unimpeded. All streets in the Low-Density Mixed Housing Area have sidewalks.**

ATTACHMENT C - Side Walk, Public Road and Block Analysis of the Fulton Grove Subdivision is a supplementary report with a breakdown on the details on a street-by-street, block-by-block, lot-by-lot, sidewalk-by-sidewalk, of the concept plan and subdivision plan SUBMITTED October 29, 2018 that illustrates **all streets in the Low-Density Mixed Housing Area have sidewalks with a vast majority having at least one side of the street unimpeded with driveways.**

- The Administration Report is recommending rejection under 'Summary [4th bulleted point, PAGE 28]' based on streets not having rear public lanes due to concerns that multiple driveways will negatively affect walkability of pedestrians.

- The Applicant has purposefully designed the plan of subdivision with a lot layout to have only single-loaded front driveways on one side of the street instead of double loaded front driveways with the exception of houses backing onto Hurst Way and the CN rail tracks.

- This allows locating sidewalks on every street with the least number of driveways crossing the sidewalk **only six (6) out of the 187 lots [3.2% of the lots] have a driveway crossing a sidewalk in a location no sidewalk exists on the opposite side of the public road unimpeded.**

- The subdivision plan that the Public Service was provided on October 29, 2018 illustrates there is no residential street that is double loaded with front driveways, with the exception of the two (2) streets with residential lots backing on to the rail tracks and Hurst Way. All the other streets with front driveways are single loaded meaning one side of the street has driveways and the other side with the sidewalk does not have driveways.

- The concept plan that the Public Service was provided on October 29, 2018 illustrates each public road having at least one sidewalk or pathway that is un-interrupted by front driveways from the proposed new lots. **Only six (6) driveways [3.2 %] out of 187 lots cross a sidewalk** and these lots occur on a road the Public Service supports having front driveways.

3. <u>TOD PDO does not 'fix density' to prevent variances.</u>

The Public Service flags this as **<u>the key reason</u>** in not recommending the TOD PDO zoning and instead recommends the 'RMU' - Residential Mixed-Use, 'RMF-M' - Residential Multiple Family Medium and the 'RMF-S'- Residential Multiple Family Small zoning districts. [3RD PARAGRAPH, PAGE 21.]

The Public Service is omitting significant information: **density cannot be 'fixed' permanently under any Zoning District, PDO or RMF; nor can additional density simply appear here on the ground without any additional approvals.**

The *Charter* ensures the same process is afforded to all land owners, and the same process is provided to all decision makers (current and future) to review, consider and decide; and the same oversight is provided for all zoning districts.

- There is nothing inherent in the 'RMU' - Residential Mixed-Use, 'RMF-M' - Residential Multiple Family Medium or the 'RMF-S'- Residential Multiple Family Small, the three (3) zones the Public Service recommends, that will address their persistent concern' regarding potential variances.

- There is nothing in any version of the *Charter* that affords the City of Winnipeg Public Service the right to fix density limits here that cannot be exceeded through an approved variance application for 'RMU' - Residential Mixed-Use, 'RMF-M' - Residential Multiple Family Medium or the 'RMF-S'- Residential Multiple Family Small.

- There is nothing in any version of the *Charter* that affords the City of Winnipeg Public Service greater oversight over one zoning district (i.e. RMF) compared to another zoning district (i.e. TOD PDO).

- There is nothing in any version of the *Charter* that affords the City of Winnipeg Public Service greater planning oversight over one particular Applicant compared to another land owner.

- There is nothing in any version of the *Charter* that affords the City of Winnipeg Public Service greater abilities to restrict the rights of future Councils from considering amendments to regulations over the current Council: a future Council can replace or amend Plan Winnipeg, replace or amend Secondary Plans, discharge or amend Zoning By-laws, discharge or amend Zoning Caveats, and grant or reject variances of the Zoning By-law.

- There is nothing in any version of the *Charter* that affords the City of Winnipeg the legal ability to permanently place a 'hard cap' on density – to fix density – on a property that prevents a landowner the ability to seek amendments to such regulations, or prevents the current or a future Council from considering such requests.

- The *Charter* under §275(2)(a) only allows for the refusal to process a variance application to a public hearing, if it is inconsistent with Plan Winnipeg or an approved Secondary Plan, and does not afford the RMU zone superior rights to refuse the same type of application under the TOD Zone.

This means that the *Charter* affords the rights of all landowners to bring forward a variance to increase density under the RMF and RMU zones, the same as under a TOD zone.

This means that the *Charter* affords the right of all current and future Councils the same oversights over all zoning districts, to either approve or reject the variances.

The same mechanism the City has used to place density restrictions and provide oversight on other developments approved in Winnipeg, are being used here to ensure oversight and restrictions are in place for Council to monitor this development. The new information submitted OCTOBER 29, 2018 includes a revision to the Parker Lands PDO that states:

*7. The minimum residential density for the entire Planned Area of PDO-2 PARKER LANDS shall be **1300 dwelling units.***

*8. The maximum residential density for the entire Planned Area of PDO-2 PARKER LANDS shall be **1920 dwelling units.***

For the Winnipeg Public Service to persistently suggest that different zoning districts provide different or have superior rights of oversight – that one zoning district can 'fix density' permanently and stop all variances compared to another zoning district - is ***factually incorrect.***

4. <u>6970 Dwelling units: the TOD PDO does not align with the Development Concept.</u>

The Public Service is again not taking into account the documents listed in paragraph 71 of the October 5, 2020 decision as instructed by Justice Grammond. This paragraph states that the Public Service will revise the administrative reports to take into account the information described in paragraph 71.

The Public Service has on a number of occasions falsely stated, and continues to erroneously suggest, that the application and this development will contain 6970 dwelling units, unabated and unimpeded, due to the proposed TOD PDO zoning tool unable to 'fix density'.

The Applicant has pointed these misstatements out to the Public Service on multiple occasions, yet these false statements persists to mislead Council.

The Public Service is omitting significant information: The Proposed Concept Plan submitted October 29, 2018 for DASZ 12/2018 shows 1918 dwelling units, and is less than the maximum 1920 dwelling unit expressed in Section 8. of the Parker Lands PDO also submitted October 29, 2018.

- The Administration Report is recommending rejection of the proposed TOD zoning district on the erroneous belief this zoning does not align with the associated Development Plan Concept submitted with their DASZ application. [2nd bulleted point, PAGE 28].

- The Public Service on a number of occasions falsely stated and continues to suggest the Applicant and this development will be 6970 dwelling units, unabated and unimpeded.

- The new information submitted October 29, 2018 includes a revision to the Parker Lands PDO that states:

> *8. The maximum residential density for the entire Planned Area of PDO-2 PARKER LANDS shall be **1920 dwelling units.***

- This is the same mechanism the City has used to place density restrictions and provide oversight as other developments approved in Winnipeg.

- The new information submitted October 29, 2018 includes the Parker Lands Concept Plan for Fulton Grove showing **1918 dwelling units**.

- The new information submitted October 29, 2018 includes a plan of subdivision for 187 lots with dimensions fitting only low-density dwelling structures.

- The Proposed Concept Plan submitted October 29, 2018 for DASZ 12/2018 has **less than the maximum 1920 dwelling unit expressed in the Parker Lands PDO**

- The City routinely applies legally enforceable restrictions to cap the density and provide oversight on developments associated with the requested zoning district

including in PDOs. This is such a common occurrence at the City of Winnipeg that the continued suggestion by the City Planners that the Applicant here is seeking 6970 dwelling units or the proposed TOD PDO zoning will allow 6970 dwelling units, unabated and unimpeded, is ***factually incorrect***.

5. <u>Content issues with the PDO.</u>

The Public Service is recommending rejection on the basis the PDO needs 'adjustments' in order to provide clarity for future development proposals coming forward for approval in the development area. [3rd bulleted point, PAGE 28].

The Public Service have identified within the TOD PDO, the following content issues as the adjustments:

A. Allowing 6970 dwelling units, unabated and unimpeded.
B. Not having appropriate oversight.
C. Allowing Commercial Uses throughout the entire site.
D. Allowing low-density residential near the BRT Station.
E. Reducing parking to 0.75 stalls per unit instead of 1.5 parking stalls per unit.
F. Requiring Conditional Uses for all buildings without ground floor commercial uses.
G. Requiring variances for the yards of all buildings.
H. Inconsistency in residential density between the proposed zoning district (6,970 units) and the proposed PDO (1,920 units).

A. Allowing 6970 dwelling units, unabated and unimpeded.

- A false statement as summarized under #3 and # 4 of this document.

B. Not having appropriate oversight.

- A false statement as summarized under #3 and # 4 of this document.

C. Allowing Commercial Uses throughout the entire site.

- A misleading statement.
- The Public Service is omitting significant information: namely, the policies of the Secondary Plan as pointed out by Mr. Platt in previous communications: there is **no policy** in the Secondary Plan **enabling** commercial, institutional and educational uses outside the first 400 metres of the Rapid Transit Station.
- As such, there is no ability to have commercial, institutional and educational uses outside the first 400 metres of a Rapid Transit Station, unless an amendment is made to the policies of the Secondary Plan and the amendment is accepted by Council.

D. Allowing low density near the BRT Station.

- A misleading statement.
- The Public Service is omitting significant information, namely, the policies of the Secondary Plan. Mr. Platt confirms within the Platt/Smith Administration Report of July 31, 2018 for SP 1/2018 that:

> *It could also be argued that policy 3.3.2.6 (residential density shall radiate out from the Transit Station) would only allow for low density [sic] residential uses to be developed farther away from the station, and high density [sic] residential uses to be development [sic] closer to the station (see page 25).*

- As such, **there is no ability to allow subdivisions of lots for low-density within the first 400 metres of a Rapid Transit Station,** unless an amendment is made to the policies of the Secondary Plan and the amendment is accepted by Council**.**

E. Reducing parking to 0.75 stalls per unit instead of 1.5 parking stalls per unit.

- A false and misleading statement.
- The Parker Lands TOD PDO is 50% [0.75 stalls per unit] of the typical 1.5 parking stalls per unit requirement as recommended by the City of Winnipeg Planners in the *Winnipeg Zoning By-law*.
- Mr. Platt filed an affidavit in a court action in 2018 that says the Parker Lands is a good candidate site for "Transit-Oriented Development" (page 4, para 11, Affidavit of James Platt (Mandamus)).
- *Winnipeg Zoning By-law 200/2006* typically requires 1.5 parking stalls per dwelling unit for multiple family dwellings. (see *Parking Category 3, TABLE 5-9: General Accessory Parking Requirements*).
- The City of Winnipeg Planners recommend that parking be 0.75 parking stalls per dwelling unit in TOD:

> *The proposed amendment would reduce minimum parking allocations* ***by 50% for TOD*** *districts.* [emphasis mine] (see page 10, *Administration Report dated October 26, 2016 for File DAZ 214/2016 - Text Amendment – Winnipeg Zoning By-law 200/2006*).

- *Winnipeg Zoning By-law 200/2006* parking requirements for the TOD Zone is 50% of the typical requirement, or 0.75 parking stalls per dwelling unit under *Section 171 – Adjustments to Parking, subsection 6.*

F. Requiring Conditional Uses for all buildings without ground floor commercial uses.

- This is a false statement.
- The Applicant has pointed this out to the Public Service on multiple occasions, yet this incorrect statement persists to mislead Council.
- The Applicant points to Administration Report dated October 26, 2016 for *File DAZ 214/2016 - Text Amendment – Winnipeg Zoning By-law 200/2006* to incorporate a new "TOD" Transit-Oriented Development zoning district in *Winnipeg Zoning By-law 200/2006* states on page 11:

  The proposed use table (see Schedule "A") permits multi-family above the first floor ***plus a wide array of commercial, service, employment, and public uses.*** [emphasis mine].

- The Applicant points the Winnipeg Public Service and Council to *Winnipeg Zoning By-law 200/2006*, under Section 67.1, specifically to the absence of any regulation that demands a landowner to install commercial services on the ground floor of buildings.
- *Winnipeg Zoning By-law 200/2006* does not require commercial on the ground floor of buildings in the TOD Zone or the C2 Zone.
- *Winnipeg Zoning By-law 200/2006*, under Section 67.1 requires land-uses other than dwelling units on the ground floor, said land-uses are not solely commercial:
  - Dwelling units on the ground floor will require a conditional use.
  - Ground Floors may be used for *Public and Institutional; Cultural and Entertainment; Commercial Sales and Service;* and any parking facility appropriately screened.
  - *Commercial Sales and Service* absent from the ground floor **does not require** conditional uses.
- The City of Winnipeg, as a matter of practice, has permitted lobbies, common rooms, amenity spaces, utility rooms, garbage rooms, parking, bike rooms, etc. that are associated with residential buildings to be permitted on the ground floor without a conditional use.

G. Requiring variances for the yards of all buildings.

- A false statement.
- The Applicant has pointed this out to the Public Service on multiple occasions, yet this incorrect statement persists.
- The author in this Administrative Report fails to inform the Committee that in *Winnipeg Zoning By-law 200/2006* the requirements for the TOD, RMU, RMF-M, and RMF-L Zoning Districts all have the same maximum setback of 20 feet for interior side yards.
- The Concept plan submitted with the DASZ application does not indicate yard measurements of any of the buildings. Yet, the author of this Administrative Report has the same extraordinary ability to distinguish dimensions on concept drawings when none are given by 'eyeballing it' as Messrs. Michael Robinson and Braden Smith who said in their 2018 Report:

  Based on the plans submitted, it appears as if every apartment building and townhouse building will require a variance because they will not meet these setbacks. (See page 21 Administration Report File DASZ 12/2108)

- The author of this Administrative Report fails to mention that Council has routinely concurred with the Public Service to approve residential subdivisions and rezonings <u>without any building plans or design drawings for structures</u>.
- The author of this Administrative Report fails to inform Council that the City of Winnipeg as a matter of practice requires applicants to provide the exact yard dimensions on drawings at the time of construction permit applications when any building requiring yard variances – irrespective of the RMU, RMF-M, RMF-L, or TOD Zoning Districts – the applicants can avail themselves to the process for variances as provided for and outlined in the *Charter.*

H. Inconsistency in residential density between the proposed zoning district (6,970 units) and the proposed PDO (1,920 units).

- A false statement as summarized under #3 and # 4 of this document.

6. <u>Lack of Pedestrian Connection Across the CN Rail Tracks.</u>

The Public Service states:

> *The density proposed by the Applicant may be supportable if the site was connected by a pedestrian/cycling bridge across the CN rail line to adjacent amenities to the north* [see 7th PARAGRAPH, PAGE 24]

The applicant is unable to properly respond this misleading statement because the City has refused to allow the applicant to use relevant internal City documents in this process.

- On November 13, 2018 during the Public Hearing for File DASZ 12/2018 the Public Service confirmed that the railways will not deal with Private Developers regarding rail crossings. Thus, the obligation is on the Public Service to contact CN to make such a crossing happen. (see pages 98 and 99, *Public Hearing Transcript DASZ Application*).

- City of Winnipeg Planner Michael Robinson confirmed at the Public Hearing on November 13, 2018 that he had no communication with CN on this matter; had made no attempts to communicate with CN on this matter; and made no commitment to any future attempts at communicating with CN on this matter. (see pages 98 and 99, *Public Hearing Transcript DASZ Application*).

- On October 26, 2020 the Applicant asked if the Public Service held any communication with CN regarding a pedestrian/cycling connection from the site across the railroad tracks to Grant Park. The applicant is waiting for a definitive answer to this question.