Agenda - Council - September 29, 2004

Report - Standing Policy Committee on Property and Development – September 7, 2004

Item No. 26 Extension of Time to provide for the Enactment of the Necessary Subdivision By-law - Subdivision of land located on the north side of McIvor Avenue, east of Ranch Road File DAS 28/2000

STANDING COMMITTEE RECOMMENDATION:

On September 22, 2004, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submits the following to Council:

1. That the time to provide for the enactment of the subdivision by-law under File DAS 28/2000 be extended to July 21, 2006.

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 - September 7, 2004

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 22, 2004, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On September 7, 2004, the Standing Policy Committee on Property and Development concurred in the administrative recommendation and submitted the matter to the Executive Policy Committee and Council.

Re: Extension of Time to Provide for the Enactment of the Necessary Subdivision By-Law Under File No. DAS 28/00 – Subdivision of land located on the North Side of McIvor Avenue, East of Ranch Road

For submission to: Standing Policy Committee on Property and Development

Original report signed by: Director of Planning, Property and Development

Report date: July 14, 2004

Recommendation(s):

1. That the Standing Policy Committee on Property and Development consider this request to vary its May 6, 2003 directive and allow an application in this instance for an extension of time and,

2. That if Committee allows this application, that the Standing Policy Committee on Property and Development recommend to Council that an extension of time for DAS 28/00 be approved to July 21, 2006 to provide for the enactment of the Subdivision By-law.

REPORT SUMMARY

Key Issues:

An Extension of Time previously granted allowed for the preparation of the subdivision by-law by April 25, 2004, which did not occur.

The May 6, 2003 directive of the Standing Policy Committee on Property and Development requires that applications for extensions of time must be approved prior to the expiry date.

Ongoing Queen's Bench action between applicant; Sanderson & Associates Inc., Stephanie Shkrumeda and current registered owner, Arlt Homes Ltd. has prevented proceeding with the preparation of the subdivision by-law to date.

An Extension of Time is required to proceed with the preparation of the subdivision by-law, otherwise a new DAS application would have to be made.

Implications of the Recommendation(s):

General implications:

X	None
	For the organization overall and/or for other departments
	For the community and/or organizations external to the City of Winnipeg
	Involves a multi-year contract

Comment(s):

Policy implications:

[X] **No**

[ ] **Yes**

Comment(s):

Environmental implications:

[X] **No**

[ ] **Yes**

Comment(s):

Human resources implications:

[X] **No**

[ ] **Yes**

Comment(s):

Financial implications:

[X] Within approved current and/or capital budget

[ ] Current and/or capital budget adjustment required

Comment(s):

REASON FOR THE REPORT:

Consideration by the Standing Policy Committee on Property and Development is required to determine whether circumstances warrant a departure, in this instance, from its May 6, 2003, directive which states that "the time frame for enactment of the By-law approved by Council is twenty-four months, with any requests for extensions of time to be submitted within that said time frame…". That directive requires that, regardless of the circumstances, applicants whose time limits for completing certain steps in the application process have expired must start the whole approval process from the beginning with a new application.

If Standing Policy Committee on Property and Development favorably considers a departure from its May 6, 2003 directive in this instance and allows for an application for an extension of time, then Council approval is required to extend the time limit to provide for the enactment of a Subdivision By-law.

HISTORY:

On April 25, 2001 Council adopted Clause 3 of the report of the Standing Policy Committee on Property and Development which clause recommended approval of the plan of subdivision as shown on Schedule "A" dated May 4, 2004.
Recommendation III contained in the said report stipulates "That in the event this application is not proceeded with expeditiously and the by-law is not enacted within twenty-four (24) months after adoption of this report by Council, the matter shall be deemed to be concluded and shall not be proceeded with unless Council extends that time".

An extension of time was applied for and granted to April 25, 2004 however to date the by-law has not been enacted.

There is presently ongoing Queen's Bench action between Sanderson & Associates Inc., Stephanie Shkrumeda and the current registered owner, Arlt Homes Ltd.

The Applicant applied for an extension of time on April 24, 2004. However the by-law had not been enacted within the required 24-month time frame and therefore the time limit expired on April 25, 2004.

DISCUSSION:

The solicitor for the now registered owner of the above referenced subdivision, Mr. Walter Thiessen, D'Arcy & Deacon, 1200 - 330 St. Mary Avenue, Winnipeg, Manitoba, R3C 4E1 is requesting a two-year extension of time in order to complete the necessary subdivision requirements. Mr. Thiessen has indicated that the matter is before the Courts but cannot indicate when the matter will be concluded. The matter before the Courts is the question of who actually is entitled to ownership of the land. Mr. Sanderson was the original applicant for the subdivision, however, Mrs. Shkrumeda indicates that there was a breach of contract between her and Mr. Sanderson and therefore she was entitled to sell her land to Arlt Homes and Mr. Pauls. Arlt Homes is the current registered owner of the portion of land he purchased from Mrs. Shkumeda, and Mr. Sanderson is now contesting this sale. Therefore prior to a by-law being prepared and the mylars being released for registration, the courts will have to determine who is the rightful owner of the land.

Mr. Thiessen, representing Arlt Homes, made an application for an Extension of Time on April 24, 2004. He was subsequently apprised by the Planning, Property and Development Department, that although his application was made prior to the time limit expiring, that an approval could not be obtained in time to meet the stipulations in the original Council approval for extensions. Therefore a new subdivision application would have to be applied for as per the May 6, 2003 instructions of the Standing Policy Committee on Property and Development.

Mr. Thiessen is requesting that the Standing Policy Committee on Property and Development consider varying their directive in this instance as the application was made prior to the expiration date and his client is very anxious to proceed with the subject subdivision as expeditiously as possible once the matter is resolved successfully through the courts.

The Administration has reviewed the request for the extension of time and is of the opinion that if the Standing Policy Committee on Property Development is prepared to vary from the May 6, 2003 directive, then approval of the subject extension of time would be acceptable in view of the fact that the City's interests remain secure and circumstances leading to the original approval remain unchanged.

Financial Impact Statement

Date: July 12, 2004

COMMENTS:

This report recommends that the Standing Policy Committee on Property and Development consider the request for an extension of time and further recommends to Council that an extension of time for DAS 28/00 be approved to July 21, 2006 to provide for the enactment of the Subdivision By-law. There is no financial impact to the City with respect to this recommendation.

"Original Sign By"
Mike McGinn, CA
Manager of Finance

IN PREPARING THIS REPORT, THERE WAS CONSULTATION WITH AND CONCURRENCE BY:

Councillor Mark Lubosch - stated he had no objection to an extension of time being granted in order to finalize and register the subject plan of subdivision.
This report submitted by:

Planning, Property and Development Department
Division: Development Inspections
Prepared by: C. Torpey
PPD File #: DAS 28/00

Document name: o:\reports directive\development and inspections\land development\00das28-rpt.doc

By-Law No. _____

_____

Atlas Sheet No. **T30**

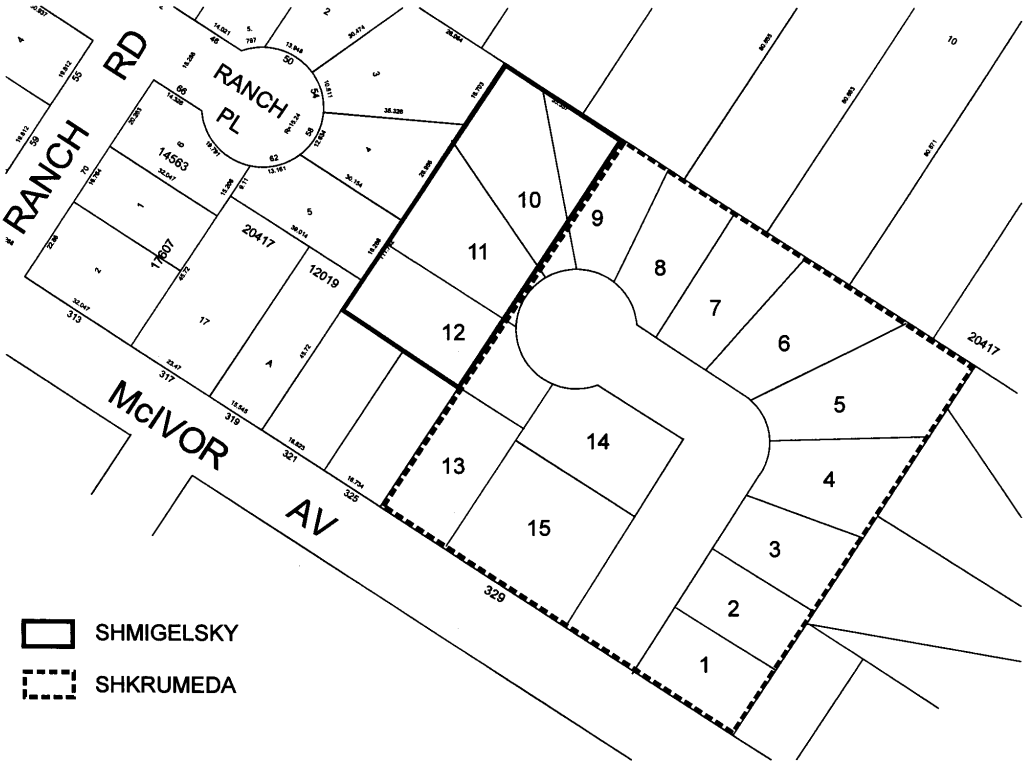
N

EAST KILDONAN TRANSCONA COMMUNITY

File No. **DAS 28/00**

Explanation

An application for the approval of the plan of subdivision shown outlined below.



THIRD READING : _____ EFI

ZONING AGREEMENT : YES ☐ NO ☐ CA

SCHEDULE "A" FOR THE REPORT TO THE STANDING POLICY COMMITTEE ON PROPERTY AND DEVELOPMENT FOR FILE NO. DAS 28/00

DATED: MAY 4, 2004