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March 26, 2025

BY EMAIL

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Dear Mayor Gillingham and Councillors,

Re: Tochal Development Group Inc.
Our File: 24044

As many of you are already aware, I represent the owner of the lands that are the subject of DASZ 9/2024 as well as the notice of motion moved by Councillor Wyatt and seconded by Councillor Schreyer at the February meeting of Council. I write with respect to that motion.

Background

City Council has twice declined to pursue acquiring my client's lands in the past number of years:

- (a) In April 2018, Riel Community Committee indicated its desire to acquire these lands. The Public Service was asked to investigate but the matter was ultimately referred to the 2020 Budget Review and was not pursued; and,
- (b) In November 2023, Riel Community Committee's desire to acquire these lands was rejected by SPCPPD and that rejection was endorsed by EPC and Council in 2024.

When the Riel Community Committee, SPDPPD, EPC and Council considered DASZ 9/2024, none of those bodies suggested that my client's lands were somehow required for City purposes and/or should be acquired by the City. You will recall that the Public Service's recommendation was to authorize a residential development on my client's lands that would double the population of St. Norbert as doing so was consistent with OurWinnipeg2045 and Complete Communities Direction Strategy 2.0.

During the recent hearing before the Municipal Board, the City did not assert that my client's lands were somehow required for City purposes and/or should be acquired by the City.

Extraordinary Breadth of the Proposed Expropriation

The motion calls for the expropriation all of "the privately held lands known as the Lemay Forest" and specifically includes a private residence located at 823 Lemay Avenue.

To be clear, there is no such thing as the "Lemay Forest". The "Lemay Forest" is nothing more than a phrase that has recently begun to be used by a handful of individuals to capture not just the lands owned by my client,

but also the lands owned by the Laureate Academy to the east and the Behavioural Health Foundation (“BHF”) to the west.

823 Lemay Avenue is one of the many private residences located along the north of Lemay Avenue. If that particular residence is part of the so-called “Lemay Forest”, then the entirety of the north side of Lemay Avenue east of Rue Landry is as well.

The motion seeks to expropriate not just my client’s lands, but the privately owned lands to the east, the west and south. The breadth of the proposed expropriation is extraordinary.

Potential Expropriation is Unlawful Because it Violates the City’s Promise to Negotiate First

The Supreme Court of Canada has stated that “The expropriation of property is one of the ultimate exercises of governmental authority. To take all or part of a person’s property constitutes a severe loss and a very significant interference with a citizen’s private property rights.”¹

On the City’s website, the following representation is made to private land owners: “We acquire land in two ways: an agreement with the owner (preferred method); or land is taken without the owner’s approval by expropriation (last resort).” Notwithstanding this representation to private land owners that the City will negotiate first and only expropriate as a last resort:

- (a) On January 27, 2025, the Public Service raised the prospect of a land exchange;
- (b) On February 3, 2025, I sent an email to the Public Service stating “With respect to potential land exchange, we are not aware of the City owning any lands with similar value and development potential – if there the City does own such lands, please provide details so we can consider same”;
- (c) On March 20, 2025, I sent an email to the Public Service stating “We continue to await the requested details (if any) and can advise as to any limitations (aside from value, obviously) once we have those details”; and,
- (d) Despite the passage of nearly two months, the Public Service has failed to provide any details to my client whatsoever with respect to City owned lands that could form part of the Public Service’s proposed land exchange.

My client has relied upon the representation contained on the City’s website that negotiation would take place prior to expropriation. The City cannot move forward with any proposed expropriation until those promised negotiations occur.

Potential Expropriation is Unlawful Because it Violates *Charter* and Procedure By-law

The City can only expropriate lands in accordance with sections 204 and 205 of the *Charter*. As previously communicated to the members of SPCPPD and the Public Service, the proposed expropriation is not authorized by those provisions.

Those seeking to expropriate my client’s land (as well as the Laureate Academy, BHF and the entire north side of Lemay Avenue) are attempting to prevent my client from lawfully cutting down privately owned trees on

¹ [*Toronto Area Transit Operating Authority v. Dell Holdings Ltd.*](#) [1997] 1 S.C.R. 32 at para. 20

privately owned land. The City has no interest in preserving those trees because ***the City has expressly authorized my client to cut them all down*** and Council has not passed a bylaw preventing the removal of privately owned trees from privately owned land.

Leaving aside the accuracy of assertions regarding their applicability to my client's lands, the City has no power whatsoever to expropriate lands for purposes relating to federal legislation and/or regulations. I also note that Council did not designate my client's lands as being "sensitive lands" in Complete Communities Direction Strategy 2.0 despite extensive engagement and consultation with each member of Council and residents across the City.

Council's decision to become a signatory to the Montreal Pledge does not expand either the scope of its jurisdiction or the permissible purposes for which expropriation can be pursued.

Section 205(4)(a) of the *Charter* is the successor to old section 147(3) and it has no application.

In any event, the Public Service has no power whatsoever to expropriate lands. City Council must follow the three-reading process mandated by the *Charter* and the Procedure By-law to adopt a bylaw for the purposes of making a legally effective Declaration of Expropriation.

Monetary Value of My Client's Lands

The Public Service can provide guidance to you on the value of the privately owned lands to the east, the west and the south of my client's lands that the motion seeks to expropriate.

The preamble of the motion suggests that the market value of my client's fully serviced lands is between \$1,000 - \$10,000 per acre (or between \$23,000 and \$230,000). This is incorrect for several reasons:

- (a) First, on January 2, 2025, an unsolicited offer was made by staff of the Manitoba Habitat Conservancy ("MHC") to purchase the lands excluding 823 Lemay for \$5.25 million;
- (b) Second, MHC made that unsolicited offer after receiving an appraisal that valued the lands excluding 823 Lemay at \$250,000 per acre (ie, in excess of \$5.7 million);
- (c) Third, this does not take into account the value of the residence located at 823 Lemay. While not indicative of market value, 823 Lemay is currently assessed at \$436,000; and,
- (d) Fourth, the landowner appealed the rejection of DASZ 9/2024 and the Municipal Board is required to release its decision in mid-April. I note that the pending release of the Municipal Board's decision resulted in EPC's decision to layover the SPCPPD matter relating to my client's property.

The MHC offer was criticized for being too low² and my client concurs with that assessment. In any event, I trust that the MHC appraisal valuing the lands excluding 823 Lemay at \$250,000 per acre has already been shared with each member of Council by the Mayor's office and/or Councillor Chambers. If not, a copy can be obtained directly from Stephen Carlye at MHC or MHC's realtor Brett Intrater.

In the unlikely event that the City actually has the funds to compensate my client for the market value of these lands, I note that the City has yet to satisfy the \$5 million judgment made against it by Justice McCarthy in the

² <https://www.cbc.ca/news/canada/manitoba/manitoba-habitat-conservancy-offer-lemay-forest-1.7422721>

Parker Lands misfeasance litigation.

Justice McCarthy's decision may also provide some helpful guidance as Council contemplates attempting to unlawfully take my client's land.

Additional Concerns

I would be remiss if I did not also draw to your attention that some of those encouraging you to unlawfully take my client's land are directly involved or supportive of efforts to incarcerate Mr. Yahyapour and Mr. Wintrup. Those efforts also expose City staff involved in maintaining the grounds of the City's three cemeteries (and potentially all municipally owned grounds) to the risk of being prosecuted, fined and/or incarcerated pursuant to *The Cemeteries Act*.

Winnipeg's housing crisis will not be solved by imprisoning housing advocates (and their professional planners) and unlawfully taking their lands. Threats of incarceration cannot be tolerated as a mechanism to intimidate a private land owner into giving up their land. My client therefore respectfully requests that members of Council:

- (a) Immediately cease any and all collaboration with those directly involved or supportive of efforts to incarcerate Mr. Yahyapour and Mr. Wintrup;
- (b) Vote against the motion seeking to unlawfully expropriate my client's lands; and,
- (c) Work with my client to develop these lands in a manner consistent with OurWinnipeg2024 and Complete Communities Direction Strategy 2.0.

Yours truly,

HILL SOKALSKI LLP

Per:



Kevin D. Toyne

KDT/km