Minute No. 195
Report – Executive Policy Committee – February 9, 2005

Item No. 4 **Foxwarren Lake Fence – Land Dedication Reserve**
File EP-2

COUNCIL DECISION:

Council concurred in the recommendation of the Executive Policy Committee and adopted the following:

1. That Council rescind its decision of July 21, 2004.

2. That funding to a maximum of $30,000.00 be allocated from the Lord Selkirk-West Kildonan Land Dedication Reserve for the construction of a six (6) foot chain link fence along the entire length of the berm in the Foxwarren Lake development, including the installation of bollards to close off the ends, as outlined in Option 3 in the report from the Director of Planning, Property and Development dated December 9, 2004.

3. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report – Executive Policy Committee – February 9, 2005

DECISION MAKING HISTORY:

Moved by His Worship Mayor Katz,
That the recommendation of the Executive Policy Committee be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On February 9, 2005, 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 February 1, 2005, the Standing Policy Committee on Property and Development recommended to the Executive Policy Committee:

1. That Council rescind its decision of July 21, 2004, with respect to Item 7 of the Report of the Executive Policy dated July 14, 2004.

2. That funding to a maximum of $30,000.00 be allocated from the Lord Selkirk-West Kildonan Land Dedication Reserve for construction of a six (6) foot chain link fence along the entire length of the berm, including the installation of bollards to close off the ends, as outlined in Option 3 in the report from the Director of Planning, Property and Development dated December 9, 2004.

COUNCIL:

On July 21, 2004, Council concurred in the recommendations of the Executive Policy Committee and the Lord Selkirk-West Kildonan Community Committee and adopted the following:

1. That funding to assist with the cost of constructing a chain link fence on the north side of the Foxwarren Lake development in the amount of $5,278.00 to provide additional security and to protect the playground from Canada geese walking their young from Foxwarren Lake, through the playground and across residential properties to feed in the wetlands, be allocated from the Lord Selkirk-West Kildonan Land Dedication Reserve.

Re: Proposed Foxwarren Lake Fence

For submission to: Standing Policy Committee on Property and Development

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

Report date: December 9, 2004

Recommendation(s):

That Administration be provided with clarification and further direction with respect to the Council motion of July 21, 2004 which in part states:

1. The cost of constructing a chain link fence on the north side of the Foxwarren Lake development in the amount of $5,278 to provide security and to protect the playground from Canada geese walking their young from Foxwarren Lake, through the playground and across residential properties to feed in the wetlands, be allocated from the Lord Selkirk-West Kildonan Land Dedication Reserve.

REPORT SUMMARY

Key Issues:

- Foxwarren Lake Residents Association requested funding assistance for the construction of a 5-foot chain link fence on the north edge of the sound attenuation berm that backs on to their property.
- Council approved $5,278 for the construction of a chain link fence to be funded from the Lord Selkirk-West Kildonan Land Dedication reserve.
- If the fence is constructed by the Foxwarren Lake Residents Association in the public right-of-way, the residents would be required to obtain Encroachment Agreements or Licences.
- The City could construct the fence in the public right-of-way and retain ownership of it; this option would require some additional funding as well as provision for on-going maintenance.

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:

Clarification of the motion, which was recommended to Executive Policy Committee by the Lord Selkirk-West Kildonan Community Committee and approved by Council on July 21, 2004, and which provided financial support to the Foxwarren Lake Residents Association for the construction of a fence, is required. Approval of an Encroachment Agreement may also be required.

HISTORY:

Development Agreement (AG 14/87) specified that a 6-foot uniform wood fence be constructed, by the developer, along the rear property line of the lots backing onto the Public Road identified on Misc. Plan No. 12366/2. Council subsequently deleted this requirement on July 12, 1989.
A letter (Attached as Appendix A) from Foxwarren Lake Residents Association to Councillor O'Shaughnessy contained the following significant points:

- The residents association requested funding assistance for the construction of a chain link fence on the north side of the Foxwarren Lake development;

- They stated that the fence is intended to enclose the east half of the existing city owned berm to curtail the illegal ATV, dirt bike, and snowmobile activity;

- They proposed that the fence should be installed on the north side of the berm and run from 184 Foxwarren Drive to 35 Malanchuk Place being 570 feet in length and located 100 feet to the rear of the lot lines for a total fence length of 770 feet;
- They requested 50% funding from the City or $3,324.46 for construction of the fence;
- They included a quote from Boundary Fencing Co. to install 770 feet of chain link fence 5 feet in height for a cost of $5,278 taxes included, gates extra;

At its meeting of July 6, 2004 the Lord Selkirk-West Kildonan Community Committee recommended to Executive Policy Committee that:

1. The cost of constructing a chain link fence on the north side of the Foxwarren Lake development in the amount of $5,278 to provide security and to protect the playground from Canada geese walking their young from Foxwarren Lake, through the playground and across residential properties to feed in the wetlands, be allocated from the Lord Selkirk-West Kildonan Land Dedication Reserve.
2. The Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

The Executive Policy Committee and Council concurred in the above recommendations at their respective meetings on July 14, 2004 and on July 21, 2004.

DISCUSSION:

It appears from the above motion, when considered together with the letter from the Residents Association, that the intent was for the City of Winnipeg to contribute 100% towards the cost of the fence ($5,278.00) to be constructed and owned by the Foxwarren Lake Residents Association and that the fence be constructed in the public right-of-way, identified as “Option 1 ” in Misc. Plan No. 12366/2.

If this is the intent, either an encroachment agreement or encroachment license is required in accordance with the Encroachment By-Law No. 692/74. Each individual encroachment agreement would require the final approval of Council and would be allowed to remain in place at the pleasure of Council. Through this report, Administration is seeking clarification and possible further direction.

The stated desire by the Residents Association is to enclose the public right-of–way from 184 Foxwarren Drive to 35 Malanchuk Place inclusive, a distance of 570 feet. They also state that they wish to locate the fence on the north side of the berm, and indicate that this is 100 feet to the rear of their property lines. Administration, based on analysis of maps, has calculated these distances to be 650 feet and 70 feet respectively. This results in a revised total length of fence of 790 feet. Assuming a linear extrapolation from the estimate that has been provided, this would increase the cost of the fence to $5,415.

Option 1. Fence Constructed by residents in City right-of-way (Interpreted as the intent of Council direction)

If it was the intent of the Council direction that the fence would be owned and constructed by the residents, each homeowner would be required to submit an encroachment application with the City's Zoning & Permits Branch. Right for encroachment can be provided either by an Encroachment Agreement or Encroachment License. Since the Encroachment Agreement provides essentially the same benefits as an Encroachment License at less than 10% of the cost to the residents only an encroachment agreement will be considered.

The application fee is $153. The application would be circulated to the Streets Maintenance Division and Traffic Signals Branch of the Public Works Department as well as the Zoning and Permits Branch of the Planning, Property and Development Department for concurrence. The proposal would be considered an encroachment of a "commercial or unusual nature" and would be forwarded to the Real Estate Division to negotiate terms and conditions consistent with a Landscape and Maintenance Agreement. The negotiated terms and conditions would need to be approved by the Standing Policy Committee on Property and Development and ratified by Council.

It should also be noted, that as long as the fence is owned by the residents, that an encroachment would be required regardless of whether or not each of the homeowners extend their personal fence up to the proposed fence, as the property within City right-of-way would now be used exclusively by each of the residents.

The Foxwarren Lake Residents Association is able to make one application, thereby saving each resident from being charged the application fee, however, the City's practice has been only to accept such an application if the residents association is incorporated.

Regardless of whether the Residence Association makes one application or if individual applications are made by each homeowner, each affected homeowner would be charged $1.00, plus an amount equivalent to realty taxes (approximately $125 per year), plus GST, per year. Each homeowner must agree to an encroachment agreement otherwise the fence will not be continuous, which would defeat the purpose of erecting it as well as increasing the difficulty of maintaining the right-of-way.

The subject fence within the right-of-way would constitute a risk for the City. It is recommended that the homeowners would have to provide proof of insurance and that the encroachment agreements contain a clause to indemnify the City. The City's Risk Management Branch should be consulted regarding required liability limits.

Once the terms and conditions of the agreement have been determined and agreed upon, the Real Estate Division would forward a report to the Standing Policy Committee on Property and Development for consideration and, with their concurrence, to Council for final consideration.

Option 2. Fence constructed on resident's private property

If the fence were constructed on the residents own property, as identified in Misc. Plan no. 12366/2 as Option 2, there would be no requirement for encroachment agreements.

The public right-of-way provides space for a sound attenuation berm. In fully developed neighbourhoods, these right-of-ways often are used as recreational space. Closing the right-of-way for the sole use and enjoyment of the properties that back on to this public space will establish precedents that could have an adverse impact on the City of Winnipeg. In particular, the neighbours to the south west of 148 Foxwarren Drive who also back on to this right-of-way, but who do not benefit from the proposed fence, may request similar treatment or complain that they have been restricted from accessing the potentially closed off right-of-way.

Locating the proposed fence on the resident's own property would avoid potential safety issues. Construction of a 5-foot fence around the berm could constitute a danger for motorized off-road vehicles, which may collide with the fence, especially once the fence is covered by snow. This risk may be increased because the right-of-way will remain open to the southwest and may continue to be used by motorized off-road vehicles.

Option 3. City of Winnipeg construct and own fence in public right-of-way

The concern regarding resident safety caused by the use of the berm by unauthorized motorized recreational vehicles is key to this issue. This issue might be best resolved in the following way. The City could construct and maintain a suitable fence at the top of the berm and along the entire length of the berm, as illustrated in Misc. Plan No. 12366/2 as Option 3. The ends of the berm could be closed off in such a way as to restrict access to motorized recreational vehicles but not pedestrians, i.e. the installation of bollards.

While it appears that this was not the intent of Council, in the above arrangement an encroachment would not exist and thus the residents would not need to apply for either an Encroachment Agreement or License so long as they did not erect any structures within the road right-of-way. This option would avoid establishing a potentially troublesome precedent where residents are allowed to exclusively utilize public land for no cost. Fencing the entire berm would remove the motorized recreational vehicle nuisance from the entire berm not just the northeast half. Locating the fence on the top of the berm would make the fence more visible, especially in winter. This would significantly reduce the danger of motorized recreational vehicles colliding with the fence, thus reducing potential liability for the City.

The Public Works Department would support this option if the capital costs required to construct the fence and the funding to support annual maintenance were added to the current and capital budgets respectively. The construction of a 4 foot tall and a 6 foot tall fence has been estimated at $40 per metre and $65 per metre respectively. Public Works recommends against a 5 foot fence because that would be a special order and thus likely to be more expensive and would not

be as visible as a 6 foot fence. A 6 foot fence along the entire length of the berm, including bollards to close off the ends is estimated to cost $26,000. The Lord Selkirk-West Kildonan land Dedication reserve fund has adequate funding available for this project. The Ward Councillor has indicated that he is supportive of utilizing this funding source for this project. A motion from the Lord Selkirk-West Kildonan Community Committee to Executive Policy Committee and Council would be required for authorization of the additional funding.

Maintenance costs for the fence could reach $2,000 if a vehicle strikes the fence once or twice annually. It is important to note that maintenance of the fenced in road right-of-way would have to be the responsibility of the residents because it would be impossible for the City's maintenance equipment to access the area.

The Administration is therefore seeking further clarification and direction from the Standing Policy Committee on Property and Development relative to this matter.

Financial Impact Statement

Date: November 23, 2004

Project Name:
Proposed Foxwarren Lake Fence - OPTION# 1

First Year of Program 2005

	2005	2006	2007	2008	2009
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
External	-	-	-	-	-
Grants (Identify)	-	-	-	-	-
Reserves, Equity, Surplus, Other	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ 5,577	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	4,905	4,743	4,743	4,743	4,743
Net Cost/(Benefit)	$ 672	$ (4,743)	$ (4,743)	$ (4,743)	$ (4,743)
Less: Existing Budget Amounts	5,278	-	-	-	-
Net Budget Adjustment Required	$ (4,606)	$ (4,743)	$ (4,743)	$ (4,743)	$ (4,743)

Additional Comments:

The direct costs of $5,577 consist of the $5,415 revised estimated cost for a 790 foot fence plus a 3% GST component, the latter of which is offset by a recovery of an equal amount by Corporate Finance. Funding of $5,278 from the Land Dedication Reserve Fund for the fence was approved by Council on July 21, 2004. The incremental revenue/recovery amount includes $2,601 in encroachment application fees and $2,142 in equivalent to property tax amounts. These amounts are assumed to remain constant from 2006 to 2009 and beyond. The net budget adjustment in 2005 is $137 less (i.e. difference between revised cost of $5,415 and budget approved by Council of $5,278).

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

Financial Impact Statement

Date: November 23, 2004

Project Name:

Proposed Foxwarren Lake Fence - OPTION # 2

First Year of Program 2005

	2005	2006	2007	2008	2009
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
External	-	-	-	-	-
Grants (Identify)	-	-	-	-	-
Reserves, Equity, Surplus, Other	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ 5,577	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	162	-	-	-	-
Net Cost/(Benefit)	$ 5,415	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	5,278	-	-	-	-
Net Budget Adjustment Required	$ 137	$ -	$ -	$ -	$ -

Additional Comments:

The direct costs of $5,577 consist of the revised estimated cost of $5,415 for a 790 foot fence plus a 3% GST component, the latter of which is offset by a recovery of an equal amount by Corporate Finance. Funding of $5,278 from the Land Dedication Reserve Fund for the fence was approved by Council on July 21, 2004. Additional funding of $137 would be required.

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

Financial Impact Statement

Date: November 23, 2004

Project Name:
Proposed Foxwarren Lake Fence - OPTION # 3

First Year of Program 2005

	2005	2006	2007	2008	2009
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
External	-	-	-	-	-
Grants (Identify)	-	-	-	-	-
Reserves, Equity, Surplus, Other	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ 26,780	$ 2,060	$ 2,060	$ 2,060	$ 2,060
Less: Incremental Revenue/Recovery	780	60	60	60	60
Net Cost/(Benefit)	$ 26,000	$ 2,000	$ 2,000	$ 2,000	$ 2,000
Less: Existing Budget Amounts	5,278	-	-	-	-
Net Budget Adjustment Required	$ 20,722	$ 2,000	$ 2,000	$ 2,000	$ 2,000

Additional Comments:

The direct costs of $26,780 in 2005 consist of the revised estimated cost of $26,000 for a 1,200 foot fence and bollards plus a 3% GST component, the latter of which is offset by a recovery of an equal amount by Corporate Finance. Funding of $5,278 from the Land Dedication Reserve Fund for the fence was approved by Council on July 21, 2004. An additional $20,722 would be required. Annual maintenance costs are projected to be approximately $2,000/year ($60 GST component charged to Public Works would be recovered by Corporate Finance), beginning in 2006. Additional funding would be required to offset these costs.

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

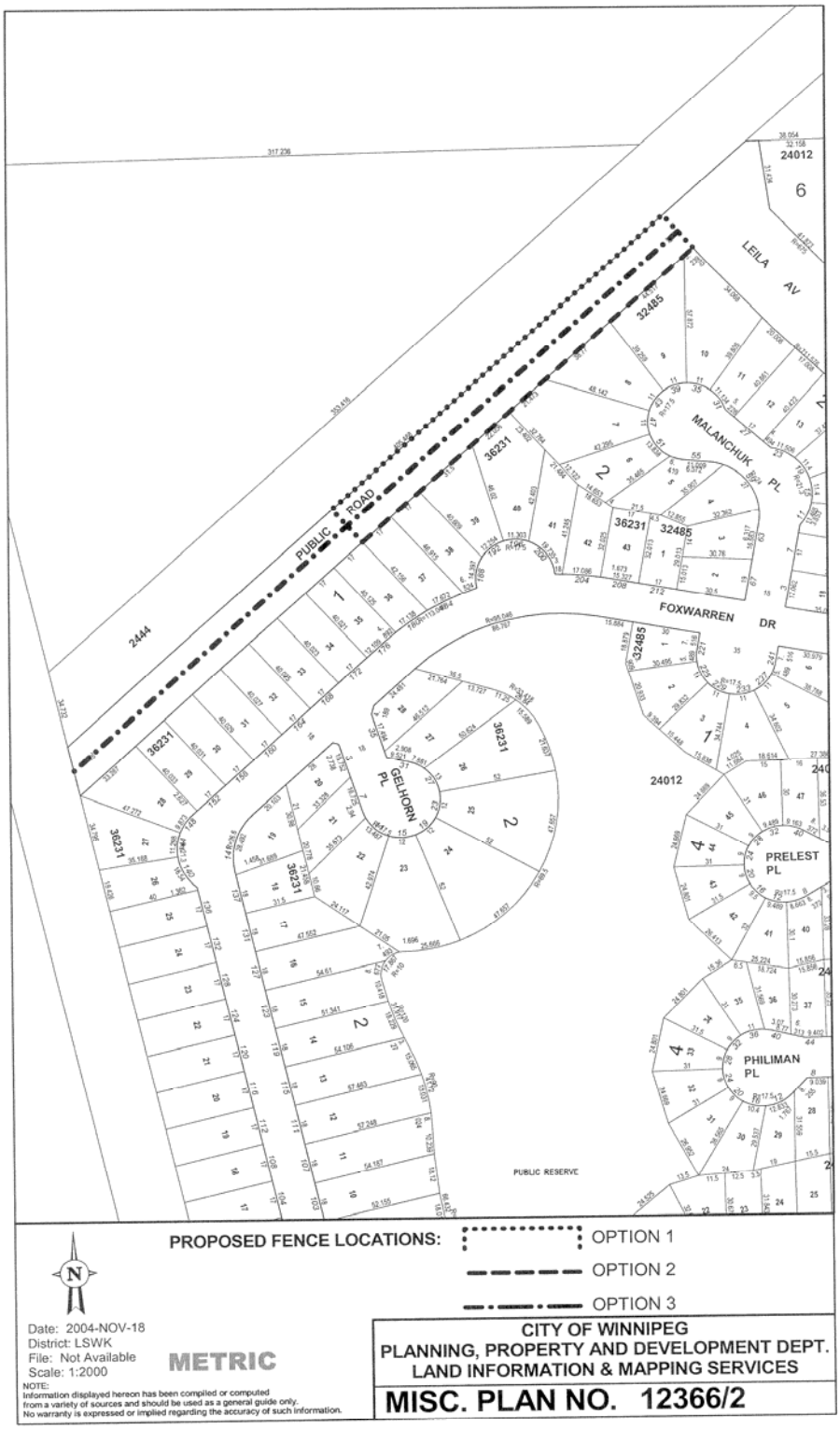
IN PREPARING THIS REPORT, THERE WAS CONSULTATION WITH AND CONCURRENCE BY:

Transportation Division of the Public Works Department
Zoning and Permits Branch of the Planning, Property and Development Department

THIS REPORT SUBMITTED BY:

Planning, Property and Development Department
Division: Planning and Land Use
Prepared by: Kevin E. Nixon, Park Strategic Planner
PPD File #: 3.321

Document name: 0:\Reports Directive\Planning and Land Use\Parks, Riverbanks and Community Initiatives\Kevin Nixon\Foxwarren Fence IHM draft2.doc


PUBLIC ROAD
2444
317.236
LEILA AV
MALANCHUK PL
FOXWARREN DR
GELHORN PL
PRELEST PL
PHILIMAN PL
PUBLIC RESERVE
24012
32485
36231
PROPOSED FENCE LOCATIONS:
OPTION 1
OPTION 2
OPTION 3
Date: 2004-NOV-18
District: LSWK
File: Not Available
Scale: 1:2000
METRIC
NOTE:
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CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 12366/2