Minute No. 162
Report - Standing Policy Committee on Property and Development - January 10, 2005

Item No. 12 Amendment to Development Agreement AG 40/85 - St. Anne's Road in the vicinity of Southglen Boulevard
File DASZ 40/85

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development and adopted the following:

1. That Development Agreement AG 40/85 (Fin. No. 6506) with 71512 Manitoba Inc. be amended to permit the Developer to proceed with the upgrading of St. Anne's Road in the general vicinity of Southglen Boulevard with due consideration to the existing and proposed obligations as noted in the administrative report dated December 6, 2004, with the following amendments:

   A. Delete the words "abutting the Schedule "B" Planned Area (approximate length 620 metres)" from the Comments column and insert "as provided in the original Development Agreement." in Items 1 and 2 of the Outstanding Obligations Table.

   B. Delete the words "abutting the Developer's (Schedule "B") Planned Area (approximate length 620 metres)" from the Comments column and insert "as provided in the original Development Agreement" in Item 6 of the Outstanding Obligations Table.

   C. Insert the words "within thirty (30) days of total completion" into the Comments column following the words "...reimburse the Developer" in Items 7 and 8 of the Outstanding Obligations Table.

   D. Add the words "All obligations with respect to transitions and channelization are to be as provided in the original Development Agreement" into the Comments column in Item 9 of the Outstanding Obligations Table.

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COUNCIL DECISION (continued)

E. It shall be understood that the security (Letter of Credit in the amount of $516,000.00) presently in place for the St. Anne's Road obligations under Development Agreement AG 40/85 shall be sufficient to provide security for the contract covered by this proposed addendum. The security needs for the contract shall be seven and a half percent (7.5 %) of the contract value for Builders Lien requirements plus ten percent (10%) of the contract value for the warranty requirement.

And further, it is agreed that upon substantial completion of the contract the letter of credit shall be allowed to be reduced to the combined amount of the security requirements and further reduced to the warranty amount upon the expiration of the Builders Lien period and shall remain in place at that amount until the expiration of the two year warranty period.

2. That subject to Council authorization by the passage of this clause, up to $2,077,000.00 be included in the 2006 Capital Estimates to reimburse 71512 Manitoba Inc. for a portion of the works to upgrade St. Anne's Road to a four lane divided roadway from a point approximately ninety (90) metres south of Novavista Drive to a point approximately two hundred (200) metres south of Southglen Boulevard, with interest payable on the amounts owing to the developer from the date of total completion until the date of payment at the City's prime borrowing rate.

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

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DECISION MAKING HISTORY:

Moved by Councillor De Smedt,

That the recommendation of the Standing Policy Committee on Property and Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On January 19, 2005, the Executive Policy Committee concurred in the recommendations of the Standing Policy Committee on Property and Development, the Standing Policy Committee on Public Works and the Riel Community Committee and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On January 11, 2005, the Standing Policy Committee on Public Works concurred in the recommendation of the Standing Policy Committee on Property and Development dated January 10, 2005, and submitted the matter to the Executive Policy Committee.

On January 10, 2005, the Standing Policy Committee on Property and Development concurred in the recommendation of the Riel Community Committee with the following amendments, namely:

- Delete Recommendation 2 in its entirety and substitute the following:

  "2. That subject to Council authorization by the passage of this clause, up to $2,077,000.00 be included in the 2006 Capital Estimates to reimburse 71512 Manitoba Inc. for a portion of the works to upgrade St. Anne's Road to a four lane divided roadway from a point approximately ninety (90) metres south of Novavista Drive to a point approximately two hundred (200) metres south of Southglen Boulevard, with interest payable on the amounts owing to the developer from the date of total completion until the date of payment at the City's prime borrowing rate.

- Delete Recommendation 3 in its entirety,

and submitted the matter to the Executive Policy Committee and Council.

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DECISION MAKING HISTORY (continued):

COMMUNITY COMMITTEE RECOMMENDATION:

On December 14, 2004, the Riel Community Committee concurred in the administrative recommendation with the following amendments, namely:

- That the following be added to the end of Recommendation 1:

  "with due consideration to the existing and proposed obligations as noted in the administrative report dated December 6, 2004, with the following amendments:

  A. Delete the words "abutting the Schedule "B" Planned Area (approximate length 620 metres)" from the Comments column and insert "as provided in the original Development Agreement." in Items 1 and 2 of the Outstanding Obligations Table.

  B. Delete the words "abutting the Developer's (Schedule "B") Planned Area (approximate length 620 metres)" from the Comments column and insert "as provided in the original Development Agreement" in Item 6 of the Outstanding Obligations Table.

  C. Insert the words "within thirty (30) days of total completion" into the Comments column following the words "...reimburse the Developer" in Items 7 and 8 of the Outstanding Obligations Table.

  D. Add the words "All obligations with respect to transitions and channelization are to be as provided in the original Development Agreement" into the Comments column in Item 9 of the Outstanding Obligations Table.

  E. It shall be understood that the security (Letter of Credit in the amount of $516,000.00) presently in place for the St. Anne's Road obligations under Development Agreement AG 40/85 shall be sufficient to provide security for the contract covered by this proposed addendum. The security needs for the contract shall be seven and a half percent (7.5 %) of the contract value for Builders Lien requirements plus ten percent (10%) of the contract value for the warranty requirement.

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DECISION MAKING HISTORY (continued):

> And further, it is agreed that upon substantial completion of the contract the letter of credit shall be allowed to be reduced to the combined amount of the security requirements and further reduced to the warranty amount upon the expiration of the Builders Lien period and shall remain in place at that amount until the expiration of the two year warranty period.

- That Recommendation 3 be added:

  3. That the recommendation of the Riel Community Committee be forwarded to the Standing Policy Committee on Public Works and the Standing Committee on Fiscal Issues for information and discussion during the 2006 Capital Estimate deliberations,

and submitted its recommendation to the Standing Policy Committee on Property and Development, the Standing Policy Committee on Public Works and the Standing Committee on Fiscal Issues.

ADMINISTRATIVE REPORT

RE: PROPOSED AMENDMENT TO DEVELOPMENT AGREEMENT AG 40/85 (FIN. #6506) WITH 71512 MANITOBA INC. RELATIVE TO THE ACCELERATED UPGRADING OF ST. ANNE'S ROAD IN THE VICINITY OF SOUTHGLEN BOULEVARD

FOR SUBMISSION TO: RIEL COMMUNITY COMMITTEE

ORIGINAL REPORT SIGNED BY: C. Torpey, P. Eng., Planning, Property & Development Division

REPORT DATE: December 6th, 2004

RECOMMENDATION(S):

1) That Development Agreement AG 40/85 (Fin. #6506) with 71512 Manitoba Inc. be amended to permit the Developer to proceed with the upgrading of St. Anne's Road in the general vicinity of Southglen Boulevard, and
2) That up to $2,077,000 be committed in the 2006 Capital Estimates to reimburse 71512 Manitoba Inc. for a portion of the works to upgrade St. Anne's Road to a four lane divided roadway from a point approximately 90 metres south of Novavista Drive to a point approximately 200 metre south of Southglen Boulevard.

REPORT SUMMARY:

Key Issues:

Implications of the Recommendation(s):

General Implications:

- [X] None
- [ ] For the organization overall and/or other departments
- [ ] For the community and/or organizations external to the City
- [ ] Involves a multi-year phase in process

Comments:

Policy Implications:

[X] No
[ ] Yes

Comments:
Environmental Implications:

[X] No
[ ] Yes

Comments:
Human Resource Implications:

[X] No
[ ] Yes

Comments:

Financial Implications:

[X] Within approved current and/or capital budget
[ ] Current and/or capital budget adjustment needed

Comments:
Approval of this recommended addendum to agreement AG 40/85 will commit Council to reimburse 71512 Manitoba Inc. for the City share in the estimated amount of $2,077,000 in the 2006 Capital Program.

REASON FOR THE REPORT:

The Developer under Development Agreement AG 40/85 (Fin. #6506) with the City has requested approval to proceed with the subject upgrading of St. Anne's Road, and Council authorization is required for Administration to enter into an amendment to the said Agreement. Furthermore, it is requested that Council commit to reimburse the Developer from 2006 capital an estimated amount of $2,077,000 for these Developer's works which are outside his Development Agreement obligations.

HISTORY:

Development Agreement AG 40/85, dated February 5, 1986 between the City and 71512 Manitoba Inc., among other obligations, requires the Developer to participate in the funding of costs incurred by the City in the construction of street pavement improvements in St. Anne's Road in the general vicinity of Southglen Boulevard abutting the Developer's Planned Area.

The Development Agreement (Clause 5 b.2), Section 1, Schedule "C") also obligates the Developer to fund or construct works at the St. Anne's/Southglen Boulevard intersection prior to the issuance of building permits for the Developer's commercial zoned C2 site at the north west corner of St. Anne's Road and Southglen Boulevard (extending from Southglen Boulevard to Compark Boulevard).

The Development Agreement further recognizes that, on the date of the Agreement execution, the Developer could not foresee the ultimate development of the commercial site nor predict it's date of development consequently Clause 5 b.5) (Section 1, Schedule "C") provides an option for the Developer to enter into an addendum to the Agreement to construct all the above mentioned works and seek reimbursement from the City for all those portions of the works outside his Agreement obligations. Clause 5 b.5) reads as follows:

"5 b.5) It is agreed that notwithstanding paragraph 5 b.4) the Developer and the City may negotiate inclusion in an addendum executed under paragraph 5 b.2) provision for the Developer accelerating construction of that four-lane cross-section or some portion thereof together with related lighting and landscaping subject to reimbursement of its costs by the City as agreed on in that addendum."

The addendum allows the Developer to control the timing of the St. Anne's improvements to suit his commercial site development needs without waiting for the City to initiate the improvements based on neighbourhood development needs.

The Public Works Department has recently been notified by ND Lea, the consultant acting on behalf of the Developer, that development plans for the commercial site are in the process of being finalized, and that the Developer, 71512 Manitoba Inc., is requesting that he be allowed to upgrade St. Anne's Road during the 2005 construction season.

DISCUSSION:

Construction of the bridge over the Seine River at Southglen together with the second phase of the Royalwood Development has warranted a need for the City to initiate planning of the St. Anne's Road improvements. Accordingly, the City five-year Capital Program contemplates budget approval and construction of the St. Anne's Road upgrade in 2006. Nevertheless, this timing is unsuitable for the Developer who recognizes that without the proposed St. Anne's pavement in place constructing only those works to service the commercial site in 2005 and tying into the existing St. Anne's roadworks will inevitably result in a substantial amount of Developer installed "throw-away" works. Instead, the Developer proposes to construct all the ultimate required roadworks in St. Anne's and tie the required commercial development roadwork into the ultimate required St. Anne's Road pavements. The Developer is agreeable to front-end the cost of the St. Anne's Road works from approximately 90 metres south of Novavista drive to 200 metres south of Southglen Boulevard provided that he is reimbursed all costs outside his original Development Agreement obligations.

The Public Works department has no objection to the Developer's proposal provided that the Developer enters into an addendum to the original Development Agreement (in accordance with the aforementioned Clause 5 b.5) specifying the Developer's revised obligations and recognizing that the City's reimbursement to the Developer, for works outside his original development obligations, will require a Council commitment to this reimbursement from the City's 2006 Capital Budget.

It should be noted that other Developers abutting this portion of St. Anne's Road are obligated to pay their fair share of the St. Anne's Road improvements proposed for this addendum. These funds will be collected and used to supplement the identified $2,077,000 from the 2006 Capital in the reimbursement payment to 71512 Manitoba Inc.

It is further noted that standard cost reimbursement practice under Development Agreements is to exclude any interest payments to Developers when reimbursements are made within the one-year period following completion of the works.

The following table outlines the works to be constructed by the Developer under the original agreement and the proposed addendum together with comments relative to cost sharing:

Outstanding Obligations Under the Existing Development Agreement and The Proposed Amendment

ITEM OF WORK	COST SHARING COMMENTS
1. Four lanes of pavement in St. Anne's Road from the existing permanent pavement approximately 90 meters south of Novavista Drive to a point approximately 200 metres south of Southglen Boulevard	▪ Proposed Amendment requires the Developer to construct and initially fund all the works. ▪ Ultimately the Developer's obligation is the cost for one lane of pavement 4 metres wide abutting the Schedule "B" Planned Area (approximate length 620 metres) as per the original Development Agreement. ▪ City's responsibility is to reimburse the Developer the cost difference between the Developer constructed pavement and the Developer's original Agreement obligation.
2. Boulevard landscaping and tree planting in St. Anne's Road for the same limits as the above mentioned pavement in Item 1.	▪ Proposed Amendment requires the Developer to construct and initially fund all the works. ▪ Ultimately the Developer's obligation is the cost for the boulevard landscaping and tree planting in the west boulevard abutting these Schedule "B" Planned Area (approximate length 620 meters) as per the original Development Agreement. ▪ City's responsibility is to reimburse the Developer the cost difference between the Developer constructed boulevard works and the Developer's original Agreement obligation.
3. Land Drainage Works associated with the proposed pavement construction between the above limits noted for the street pavement in Item 1. It is further noted that land drainage sewer mains exist in St. Anne's road and only local land drainage extensions and appurtances will be required to drain the proposed pavement.	▪ Proposed Amendment is for the Developer to initially construct and fund all the works. ▪ Ultimately the Developer's obligation will be only for a proportionate share of the land drainage works as per the original Development Agreement. The proportionate share will be calculated based on the Developer's share of the street pavement in item 1 above, on a pavement area basis. ▪ City's responsibility is to reimburse the Developer the net difference between the cost of the works and the Developer's original Agreement obligation.

4. Street lighting for the proposed street pavement noted in the above item 1.	▪ Proposed Amendment is for the Developer to construct and initially fund all the necessary works. ▪ Ultimately the Developer's obligations will be the proportionate share of the street lighting works, as per the original Development Agreement, which share shall be calculated based on his lands abutting the St. Anne's Road right-of-way. ▪ City responsibility is to reimburse the Developer the net difference between the cost of the works and the Developer's obligation.
5. Any utility relocation necessitated by the proposed pavement construction between the limits stated in item 1 above.	▪ Proposed Amendment is for the Developer to construct and fund all the works. ▪ Ultimately the Developer's obligation is the cost of a proportionate share of the work, as per the original Development Agreement, which share shall be calculated based on his lands abutting the St. Anne's Road right-of-way. ▪ City's responsibility is to reimburse the Developer the net difference between the cost of the work and the Developer's obligation.
6. Construction of sidewalks on both sides of St. Anne's Road between the same limits as item 1.	▪ Proposed Amendment is for the Developer to construct and initially fund all the works. ▪ Ultimately the Developer's obligation is the cost of the sidewalk on the west side abutting the Developer's (Schedule "B") Planned Area (approximate length 620 metres) as per the original Development Agreement. ▪ City's responsibility is to reimburse the Developer the cost difference between the Developer constructed sidewalk and the Developer's original Agreement obligation.
7. Installation of traffic control signals at the intersection of Southglen Boulevard and St. Anne's Road.	▪ The existing Development Agreement obligates the Developer to initially fund this work. ▪ The City's responsibility is to reimburse the Developer a share of this cost as received from other benefiting Developers. It is noted this reimbursement is now a call against Development Agreement #11587 (DASZ 19/00) (the Developer of Royalwood).

8. Intersection works in St. Anne's Road at Southglen (Clause 5 b.1) Section 1 Schedule "C").	▪ Developer's cost obligation in accordance with the original Agreement is for: - median opening - northbound left-turn storage lane - street turnout - channelization • Developer shall also construct works required for the east side of the intersection: - southbound left-turn storage lane - east side channelization • The City's responsibility is to reimburse the Developer a share of this cost as received from other benefiting Developers. It is noted this reimbursement is now a call against Development Agreement #11587 (DASZ 19/00) (the Developer of Royalwood).
9. Vehicular access to the Developer's Commercial Site (Clause 5 b.2) Section 1, Schedule C).	▪ Developer's cost obligation in accordance with the original Agreement is for: - auxiliary lanes, transitions and channelization in St. Anne's Road - installation and/or relocation of street lights on the west side of St. Anne's Road - installation and relocation as required of municipal services and related structures telephone power and gas - installation of overhead and other signing as required - any related works

Financial Impact Statement **Date:** **December 6, 2004**

Project Name:

PROPOSED AMENDMENT TO DEVELOPMENT AGREEMENT #6506 (DASZ 40/85) WITH 71512 MANITOBA INC. RELATIVE TO THE ACCELERATED UPGRADING OF ST. ANNE'S ROAD IN THE VICINITY OF SOUTHGLEN BOULEVARD

COMMENTS:

Subject to Council approval in 2005, reimbursement payments by the City to the Developer will be included in the proposed 2006 Capital Forecast in the amount of $2,077,000. By aproval of this addendum to AG 40/85, Council is committing to approve $2,077,000 in the 2006 Capital for a developer payback.

Manager of Finance & Administration

Approved by Divisional Accounting Technician:

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

Public Works Department and Water and Waste Department

THIS REPORT SUBMITTED BY:

Department	Planning, Property & Development
Division:	Development and Inspections
Prepared by:	C. Torpey, P. Eng..... 986-3945
Processed by:	K. Ross 986-4141
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