

File Nos. CI17-01-05956
CI17-01-05957
and CI17-01-05958

File No. CI17-01-05956

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

BETWEEN:

LADCO COMPANY LTD. applicant,

- and -

THE CITY OF WINNIPEG, respondent,

APPLICATION UNDER: *The City of Winnipeg Charter, S.M. 2002, c. 39; The Constitution Act 1867 and The Court of Queen's Bench Act S.M. 1988-89 c.4*

File No. CI17-01-05957

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

IN THE MATTER OF: **The City of Winnipeg Charter Act, City of Winnipeg By-law 127/2016 and Section 92(2) of the Constitution Act 1867**

BETWEEN:

**RIDGEWOOD WEST LAND CORP.,
and SAGE CREEK DEVELOPMENT CORPORATION** applicants,

- and -

THE CITY OF WINNIPEG, respondent.

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

IN THE MATTER OF: City of Winnipeg By-law 127/2016, as amended and passed on October 26, 2016, *The City of Winnipeg Charter S.M. 2002, c. 39 and subsections 92(2) and (9) of the Constitution Act, 1867*

BETWEEN:

**URBAN DEVELOPMENT INSTITUTE (MANITOBA DIVISION)
AND MANITOBA HOME BUILDERS' ASSOCIATION INC.,**
applicants,

- and -

THE CITY OF WINNIPEG,
respondent.

**AFFIDAVIT OF JOHN TYLER MARKOWSKY
AFFIRMED THE 5th DAY OF MARCH, 2019**

KRISTA L. BORYSKAVICH
Director of Legal Services and City Solicitor
3rd Floor, 185 King Street
Winnipeg, Manitoba R3B 1J1

DEREK M. OLSON
Telephone: 986-2285
Facsimile: 947-9155

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WINNIPEG CENTRE**

BETWEEN:

LADCO COMPANY LTD.

applicant,

- and -

THE CITY OF WINNIPEG,

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APPLICATION UNDER: *The City of Winnipeg Charter, S.M. 2002, c. 39; The Constitution Act 1867 and The Court of Queen's Bench Act S.M. 1988-89 c.4*

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The City of Winnipeg Charter Act, City of Winnipeg By-law 127/2016 and Section 92(2) of the Constitution Act 1867

BETWEEN:

**RIDGEWOOD WEST LAND CORP.,
and SAGE CREEK DEVELOPMENT CORPORATION**

applicants,

- and -

THE CITY OF WINNIPEG,

respondent.

File No. CI17-01-05958

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

IN THE MATTER OF: **City of Winnipeg By-law 127/2016, as amended and passed on October 26, 2016, *The City of Winnipeg Charter S.M. 2002, c. 39 and subsections 92(2) and (9) of the *Constitution Act, 1867****

BETWEEN:

**URBAN DEVELOPMENT INSTITUTE (MANITOBA DIVISION)
AND MANITOBA HOME BUILDERS' ASSOCIATION INC.,**
applicants,

- and -

THE CITY OF WINNIPEG,
respondent.

AFFIDAVIT OF JOHN TYLER MARKOWSKY

I, **JOHN TYLER MARKOWSKY**, of the City of Winnipeg, in the Province of Manitoba,

AFFIRM THAT:

1. I am the City Economist, in the Office of the Chief Administrative Officer of the City of Winnipeg (the "City"). I have personal knowledge of the facts herein deposed to by me, except when stated to be based on information and belief, and where so stated I verily believe them to be true.

2. Attached hereto and marked as **Exhibit "A"** is a copy of my *Curriculum Vitae*.

3. I make this affidavit in response to the applications filed by the Applicant Ladco Company Limited ("**Ladco**"), the Applicant Ridgewood West Land Corp. ("**Ridgewood Corp.**"), the Applicant Sage Creek Development Corporation ("**Sagecreek Corp.**"), the Applicant Urban Development Institute (Manitoba Division) ("**UDI Manitoba**") and the Manitoba Home Builders' Association Inc. ("**MHBA**") (**hereinafter referred to collectively as the "Applicants"**) seeking a number of remedies which include but are not limited to seeking an order of certiorari to quash the Impact Fee By-Law No. 127/2016 (**the "By-law"**).

4. In preparing this affidavit, I have reviewed the following:
- (a) the affidavit of Mike Moore, sworn November 28, 2017 (**the "Moore Affidavit"**);
 - (b) the affidavit of Eric Vogan, affirmed November 29, 2017 (**the "First Vogan Affidavit"**);

- (c) the affidavit of Alan Borger, sworn February 27, 2018 (**the “Borger Affidavit”**);
 - (d) the affidavit of Michael Carruthers, sworn April 11, 2018 (**the “Carruthers Affidavit”**);
 - (e) the affidavit of Tony Balaz, affirmed April 12, 2018 (**the “Balaz Affidavit”**);
 - (f) the affidavit of Ken Braun, affirmed April 12, 2018 (**the “Braun Affidavit”**); and
 - (g) the affidavit of Eric Vogan, affirmed December 1, 2018 (**the “Second Vogan Affidavit”**)
- (collectively, the “Affidavits”).**

5. On October 26, 2016, Winnipeg’s City Council enacted the By-law, a copy of which is attached hereto as **Exhibit “B”**. The By-law imposed a regulatory fee, called the Impact Fee, on new developments within the City. The Impact Fee is imposed at the time a building permit is taken out. As stated in the Administrative Report, at page 14 of the Council decision, “The goal of the impact fee [...] imposed by the By-law is to assist the City in paying for the costs associated with managing and

accommodating growth in Winnipeg thereby reducing the need for these costs to be paid for by taxpayers.” The Council Decision, including the Administrative Report, is attached hereto as **Exhibit “C”**.

6. Although the Administrative Report recommended that the Impact Fee be imposed at varying levels on residential, office, commercial, industrial, and public and institutional properties, Council decided to introduce the Impact Fee in phases. In Phase One, Council imposed a fee only on residential properties in New and Emerging Communities identified in the OurWinnipeg Plan By-Law No. 67/2010 (**“OurWinnipeg”**) at half the rate recommended in the Administrative Report and imposed no Impact Fee at all on the other categories of properties. Council’s resolution contemplated expansion of the Impact Fee to non-residential properties in New and Emerging Communities in Phase 2 no earlier than November 1, 2019 and to all uses in other parts of the city in Phase 3.

7. Many Canadian and Manitoba municipalities have implemented various forms of regulatory fees to recover the costs associated with growth to the municipality as a whole. The name and form of regulatory fee varies from municipality to municipality and the enabling legislation

behind each regulatory fee varies in prescriptiveness and rigor.

8. While regulatory fees vary in terms of name, form and enabling legislation, the fees all ensure that the costs associated with growth to the municipality as a whole are paid for by those who benefit from growth rather than taxpayers generally.

9. Prior to the enactment of the By-law the City relied primarily on property tax revenues to recover the costs associated with growth to the City as a whole.

10. The By-law was enacted on October 26, 2016 and imposes a regulatory fee, referred to as the Impact Fee, on new development within the City. As stated at page 14 of Council Minute No. 604 dated October 26, 2016 (the "**Council Decision**"), "[t]he goal of the impact fee... imposed by the By-law is to assist the City in paying for the costs associated with managing and accommodating growth in Winnipeg thereby reducing the need for these costs to be paid for by taxpayers".

11. The Administrative Report dated September 1, 2016 (the "**Admin Report**"), which was included in and forms a part of the Council Decision, recommended, among other things, that Council establish fee

amounts per square meter of gross floor area in five fee categories as follows:

- (a) Non-Residential Uses in the amount of
 - (i) \$226.51 per m² for Office Uses;
 - (ii) \$152.91 per m² for Commercial and Retail Uses;
 - (iii) \$94.08 per per m² for Public and Institutional Uses;
and
 - (iv) \$61.16 per m² for Industrial Uses; and
- (b) Residential Uses in the amount of \$109.45 per m².

12. Notwithstanding the recommendations of the Admin Report, Council made a policy decision to implement the Impact Fee in three phases. In accordance with the Council Decision, in the first phase of implementation of the Impact Fee (**"Phase One"**), the Impact Fee will only apply to those areas of Winnipeg identified either as a "New Community" as defined in OurWinnipeg or as an "Emerging Community" as described in Complete Communities, and the amount of the Impact Fee is \$54.73 per m² for residential development, representing a 50%

reduction from the amount recommended in the Admin Report, and \$0.00 for each of the remaining 4 categories outlined in the Impact Fee By-law – office, commercial, industrial, and public and institutional, representing a 100% reduction from the amount recommended in the Admin Report.

13. In accordance with the Council Decision, in the second phase of implementation (**“Phase Two”**), Council may consider implementing Impact Fee rates in respect of the remaining 4 categories in the areas to which the Impact Fee applies in Phase One no earlier than November 1, 2018, and in the third phase of implementation (**“Phase Three”**), Council may consider implementing the Impact Fee in all other areas of the City no earlier than November 1, 2019. As of the date of this affidavit, Phase Two and Phase Three have not been implemented.

14. Before enacting the By-law, the City commissioned a study by Hemson Consulting Ltd. ("**Hemson**") to examine the City's growth-related costs and revenues and to calculate potential fees that could be utilized to finance the costs associated with growth. Following Hemson's study, Hemson produced the following reports for the City:

- (a) Review of Municipal Growth Financing Mechanisms (the "**First Report**"); and
- (b) Determination of Regulatory Fees to Finance Growth: Technical Report (the "**Second Report**")

(collectively, the "**Hemson Reports**").

What Are Impact Fees And Why Are They Necessary?

15. The City of Winnipeg is growing and changing at an exceptional rate. From 1990 to 2000, Winnipeg grew by less than 13,000 people over the entire decade. From 2000 to 2010, this population growth more than doubled to 35,000 over the decade. Then, in just seven years, from 2010 to 2017, Winnipeg's population growth more than doubled to 80,100. Based on current population forecasts, Winnipeg is on track to grow by over 120,000 people in the decade between 2010 and 2020,

which is nearly one order of magnitude faster than during the 1990's. This population growth is expected to continue toward 1,000,000 residents by the year 2040. This exceptional growth has and will pressure the City to adapt the scale and nature of public goods and services.

16. As Winnipeg's population increases, so does the demand for the entire range of public goods and services provided by the City, including parks and open spaces, community services, solid waste, public works, transit, fire & paramedic services, police, water, and waste water. Growth increases the demand on existing public goods and services as well as the demand for new public goods and services. Growth increases demand for capital as well as operating expenditures, including but not limited to expenditures related to maintenance and expansions of existing roadways, construction of new roadways, and the building and staffing new fire halls, libraries, and recreation complexes.

17. By way of example, the costs associated with the Chief Peguis Trail expansion from Main Street to Route 90 (the "Expansion") were estimated at the time of the Hemson Report to be approximately \$380 million. A high percentage of these costs can be attributed to growth

since the project would not be required without new development. Without revenue generated from the Impact Fee, to fund the Expansion the City would aim to obtain approximately \$150 million in debt financing at a cost of debt of around 6%, over a 30 year term. Included in this estimate is an assumption that some of the project - approximately \$230 million - would be funded by grants and subsidies received from other levels of government, and other recoveries, which are by no means guaranteed. A 6% cost of debt would mean the need for an incremental \$9 million dollars in operating revenue annually for 30 years. In order to fund this project using property tax revenue, approximately 5,000 new homes, paying an average of \$1,750 in municipal property taxes per year for 30 years, would need to be added to the City, and this property tax revenue would need to be used exclusively to fund the Expansion. In order to fund this one project with city-wide property tax revenues, property tax rates would need to be increased by approximately 1.7%. If other levels of government did not contribute funding to this infrastructure and the entire \$380 million were debt-financed, this would more than double these estimates.

18. To manage and accommodate the level of growth experienced by Winnipeg in recent years, the City has many by-laws and policies in place to ensure not only that new development takes place in a way that is appropriate, but that buildings meet minimum standards of safety and quality, that infrastructure is planned and built thoughtfully, and that the City provides appropriate levels of civic services to accommodate new growth, including solid waste collection, libraries, recreation facilities, and transit, police and fire response services.

19. The provision of public goods and services costs money and requires a mechanism to fund them. Under *The City of Winnipeg Charter*, S.M. 2002, c. 39 (the “**Charter**”), the City has several funding options, including taxes and user fees. Because of my position as City Economist, I am familiar with the various options available to the City to generate revenue.

20. The Impact Fee places more of the burden of costs associated with growth on those who cause the need for, or benefit from, the Regulatory Scheme.

21. The costs associated with growth increase at a greater rate than property tax revenue. By contrast, revenue from regulatory fees that are tied to growth closely parallels the rate of increase of the costs associated with growth – as growth accelerates, revenue from growth also accelerates, assisting the City in paying the costs associated with growth. The reverse would also be true – as growth decelerates, so too would the costs associated with growth and the associated revenue.

22. As of December 31, 2018, the City has collected \$16,527,055.81 in Impact Fees. Attached hereto and marked as **Exhibit "D"** is a copy of Item No. 6 of the Report of the Standing Policy Committee on Finance dated February 11, 2019.

23. The projected revenues associated with the Regulatory Scheme do not exceed the projected costs associated with growth to the City as a whole.

Industry Consultation

24. The City conducted numerous stakeholder engagement sessions. The City invited to both the first and second stakeholder meetings a broad range of individuals from the community representing a broad range of interests, including representatives from

- (a) the Urban Development Institute;
- (b) the Manitoba Home Builders' Association;
- (c) the Winnipeg Construction Association;
- (d) Winnipeg Realtors Association;
- (e) the Social Planning Council;
- (f) the Association of Manitoba Municipalities;
- (g) the Canadian Taxpayer Federation;
- (h) the Winnipeg Chamber of Commerce;
- (i) the Partnership of the Manitoba Capital Region; and
- (j) the Manitoba Professional Planners Institute.

25. Based on feedback and demand for additional consultation, the City accommodated additional consultations directly with Eric Vogan and with the Winnipeg Construction Association.

Impact Fee Costs Determination

26. Similar to the process described at page 641 of British Columbia's publication, *Development Cost Charges: Best Practices Guide* (the "**BC Guide**"), which is attached as Exhibit "O" to the First Vogan Affidavit, the City and senior staff from Hemson began the process of determining the costs associated with growth to the City by assembling a list of capital infrastructure projects that could be attributed at least in part to growth (the "**List**"). The List was based on City department capital planning documents, including but not limited to the Transportation Master Plan, the City's Capital Budget and the City's unfunded list.

27. The next step in determining the percentage of the costs of projects that can reasonably be attributed to growth is described in Chapter 6 of the BC Guide. This step involves deducting grants and other forms of financial support from other levels of government, as well as any contributions made or construction carried out by developers, from the cities costs of the project.

28. Next, using similar methodology to that recommended in Chapter 6 of the BC Guide as outlined in paragraph 28 herein, the City worked with Hemson to determine the percentage of each project on the List that could be attributed to growth.

29. Determining the amount of the cost of a project that should be attributed to growth is difficult and is generally why municipalities retain experts and consultants for assistance.

30. These growth-related studies are generally reexamined every three to five years to take into account changes in the rate of growth, the number or types of projects required to accommodate that growth and the costs of those projects.

31. In response to paragraph 88 of the First Vogan Affidavit, I am unaware of any project that has been included in the List and has been completely funded by a developer.

32. In response to allegations in the Affidavits, in particular in paragraph 88 of the First Vogan Affidavit, the City did take into account actual or anticipated contributions by other levels of government when determining the costs of the various capital projects that could

reasonably be attributed to growth.

Studies that conclude that “growth pays for growth”

33. I have had an opportunity to review some of the studies referred to in the Affidavits and note that they are based on highly speculative assumptions projected over lengthy periods of time. As a result, their conclusions are tenuous at best.

34. For example, the NDLea Cost Benefit Report concerning Waverley West, which is attached as Exhibit “K” to the Borger Affidavit, uses an 80 year projection to determine the benefits expected to accrue to the City from that development - an exceptionally long time frame for a financial analysis. Eighty years ago - the beginning of World War II - it would have been extremely difficult to predict the many changes that have taken place in the intervening years. In addition, this study does not appropriately account for inflation. Not appropriately accounting for inflation has a massive effect on the projected benefits and costs set out in the study, especially over a period of 80 years. By using the Bank of Canada Inflation Calculator, an item that cost \$100 in 1939 (which was 80 years ago) would cost \$1,757 in 2019, representing a 1657% increase in price, or a 3.65% annual inflation.

35. Similarly, pages 18 and 19 of the NDLea Report provides some assumptions on which the Report's predictions and modeling is based. It states: "Our research suggests that compared to the City at large or compared to some of the older neighborhoods, it will cost significantly less to provide basic services to the residents of a new subdivision such as Waverley West" and that "Policing and fire protection are not as significant in newer developments due to socio-economic conditions".

36. Statements like this are problematic for several reasons. First, these statements make assumptions about the socio-economic status of people who will reside in these subdivisions which may or may not reflect reality. Second, even if the assumptions are accurate when a subdivision is developed, there is no way of knowing how long the assumption will continue to be true. The areas of the city that require the most police and fire services were once newly developed themselves. Thirdly, assumptions such as these fail to account for the possibility that, even if residents of newer neighborhoods utilize some City services less than other neighbourhoods, they may utilize other services more. For example, residents of newer neighbourhoods may need less police services but evidence suggests that they make lengthier

commutes on public roads. The NDLea Report underestimates the extent to which access to essential public services like police and fire is required by newer developments like Waverley West. This Report also underestimates the extent to which city-wide provision of public services benefits all residents of the city including residents of Waverley West. Policing in one part of the City benefits all residents, for example. Therefore, these assumptions are misleading with respect to the provision of and divisibility of public services and public goods.

37. There is an even more fundamental flaw in the NDLea Report's logic. The Report and others suggest that new development more than pays for itself due to the property taxes paid by properties in the new development. Counting property taxes in new developments as a benefit treats taxes as if they were fees and implies that paying a certain level of tax paid warrants a commensurate level of City services. Any excess of taxes over services is described as "subsidizing" the rest of the City. In short, these studies assumptions fundamentally misrepresent the way revenue is used to fund city services.

38. This philosophical approach diverts sharply from the philosophy that has served as the basis for traditional approaches to municipal finance. The traditional philosophy considers that taxes are the price one pays for living in a well-governed city and that this price should – in general – be based on one’s ability to pay. In exchange, the relevant government is responsible for providing infrastructure and services for the common good – infrastructure and services that are available to everyone in the city. Accordingly, property taxes are based on property values – a proxy for one’s ability to pay – and are used to fund a basket of goods and services used by residents and businesses throughout the city.

39. In any event, even if off-site infrastructure costs as well as maintenance and operating expenses for new infrastructure and services have traditionally been paid for by the City, they are still directly related to the new development.

2005 Hemson Report

40. In response to the Affidavits citing the report that Hemson prepared in 2005, I note that that report was prepared 14 years ago, using assumptions which are no longer valid, including assumptions


relating to population growth.

41. I make this affidavit *bona fide*.

AFFIRMED before me)
at the City of Winnipeg)
in the Province of Manitoba,)
this 15th day of March, 2019.)
)
)
)



A Barrister and Solicitor in
and for the Province of Manitoba



JOHN TYLER MARKOWSKY

This is **Exhibit "A"** referred to in the
Affidavit of John Tyler Markowsky affirmed
before me this 15th day of March, 2019.

A handwritten signature in blue ink, consisting of a stylized 'J' followed by several loops and a long horizontal stroke.

A Barrister and Solicitor in and for the Province of
Manitoba.

John (Tyler) Markowsky, Economist

Winnipeg, MB, Canada

WORK EXPERIENCE

Guest Lecturer, University of Winnipeg

WINNIPEG, MANITOBA – 2018

- Lectured on City of Winnipeg economy and municipal finance to Master of Public Administration class

City Economist, City of Winnipeg

WINNIPEG, MANITOBA – 2016 -

- Manage Economic Research Office
- Responsible for content within City of Winnipeg Community Trends and Financial Trends reports.
- Responsible for various macro and microeconomic forecasts of Winnipeg and the City of Winnipeg including population, housing, gdp, construction inflation, impact fee revenue, and others
- Responsible for macroeconomic and microeconomic aspects of internal leadership course
- Conducted geospatial economic impact analysis of a major sporting event using DiD model and high-frequency payment card data
- Intervened on behalf of City of Winnipeg at Manitoba Hydro rate application at the Public Utilities Board (PUB) of Manitoba
- Member of several committees, including PEAC Support, Reconciliation Leadership Team, Impact Fee Working group.

Senior Economist, Manitoba Hydro

WINNIPEG, MANITOBA – 2013 – 2016

- Assisted in negotiation of financial impact disputes with several First Nations and the MMF by developing economic impact model;
- Collaborated within inter-disciplinary team as senior economist involved in preparation of multi-billion dollar investment analysis;
- Reported to senior management and executive, as well as externally to PUB and interveners on issues related to population, including immigration policy (provincial nominee program), forecast cross validation, and other various demographic trends;
- Reported to executive on any major changes to Bank of Canada lending rate, inflation expectations, foreign exchange, population including Provincial Nominee Program, or other major macroeconomic or political-economic issues;
- Managed staff and external consultants on research and reporting of long-run historical forecast variance (30 year cross-validation), for the purpose of determining impact forecast uncertainty;
- Contributed to socio-economic impact analysis of Wuskwatim and Keeyask projects (pre and post-project impact analysis);
- Various other finance-related research on discount rate (traditional and social), and return on equity.

Senior Economic Analyst, Manitoba Hydro

WINNIPEG, MANITOBA - 2011 - 2013

Promoted to Senior Economist in January 2013, upon retirement of incumbent. See above for description and accomplishments.

Security Practice Lead, Compugen

2008 - 2011

Involved in information security projects for various clients.

Risk Analyst, Seccuris (Hitachi)

2003 - 2007

Involved in information security projects for various clients.

EDUCATION

M.Sc, Finance, Economic Policy

University of London – Expected date of graduation (TBD)

BA, Economics (Minor - History)

University of Manitoba – 2008

Pre-Masters Coursework; Deans Honours List

Continuing Education and Certification:

2017: Coursework in Master of Business Administration, University of Manitoba (Operations, Critical Thinking)

2015: FERC Energy Economics, Manitoba Hydro

2015: Principles of Negotiation, Manitoba Hydro

2013: Statistical Forecasting: Principles and Practice – Professor Rob J Hyndman, Monash University, Australia

2010: GSEC, Toronto, Canada

2010: CISSP, Washington DC, USA

2009: Foundstone, Palo Alto CA, USA

INVITED SPEAKING

2019 – Financial Management Institute – Navigating Uncertainty (co-presenter with Prof. Aaron Moore, Ph.D)

2018 – MABE/CABE Annual Outlook –Winnipeg Labour Market and Land Use

2017 – MABE/CABE Annual Outlook – Our Winnipeg is Changing

2017 – Financial Management Institute of Canada National Conference – The Provincial Nominee Program and Winnipeg

PROFESSIONAL ACTIVITIES

2013 - Present: Director, Manitoba Association of Business Economists (MABE)

2003-2005: Founder & President, University of Manitoba Economics Students Association

This is **Exhibit "B"** referred to in the
Affidavit of John Tyler Markowsky affirmed
before me this 15th day of March, 2019.

A handwritten signature in blue ink, consisting of stylized initials and a surname, positioned above a horizontal line.

A Barrister and Solicitor in and for the Province of
Manitoba.

This document is an office consolidation of by-law amendments which has been prepared for the convenience of the user. The City of Winnipeg expressly disclaims any responsibility for errors or omissions.

CONSOLIDATION UPDATE: MAY 24, 2018

THE CITY OF WINNIPEG

BY-LAW No. 127/2016, as amended

A By-law of The City of Winnipeg to impose fees on new development to assist with the costs associated with accommodating and managing growth and development.

WHEREAS subsection 5(1) of *The City of Winnipeg Charter* defines the purposes of The City of Winnipeg as follows:

- (a) To provide good government for the city;
- (b) To provide services, facilities or other things that council considers to be necessary or desirable for all or part of the city;
- (c) To develop and maintain safe, orderly, viable and sustainable communities; and
- (d) To promote and maintain the health, safety and welfare of the inhabitants;

AND WHEREAS accommodating and managing growth and development so that it is safe, orderly, viable and sustainable and so that it promotes and maintains the health, safety and welfare of the inhabitants requires urban planning, zoning and land use restrictions, enforcement of building codes and the creation of a variety of infrastructure and services, including (but not restricted to) transportation, sewer, water, land drainage, recreation and police, fire, paramedic and emergency services;

AND WHEREAS to date, the costs to The City of Winnipeg of accommodating and managing growth and development have been only partially paid through development agreements, zoning agreements and fees for the permits and approvals required to develop and construct buildings;

AND WHEREAS the Council of The City of Winnipeg has determined that the costs of accommodating and managing growth should be more fully paid for by the individuals and businesses directly benefitting from growth and development;

AND WHEREAS clause 210(1)(b) of *The City of Winnipeg Charter* provides as follows:

210(1) *The city may, if authorized by council, establish*

...

- (b) *fees, and the method of calculating and the terms of payment of fees, for*
 - (i) *applications,*
 - (ii) *filing appeals under this Act or a by-law,*

- (iii) *permits, licences, consents and approvals,*
- (iv) *inspections,*
- (v) *copies of by-laws and other city records including records of hearings, and*
- (vi) *other matters in respect of the administration of this Act or the administration of the affairs of the city.*

AND WHEREAS subsection 6(1) of *The City of Winnipeg Charter* provides as follows:

- 6(1) *The powers given to council under this Act are stated in general terms*
- (a) *to give broad authority to council to govern the city in whatever way council considers appropriate within the jurisdiction given to it under this or any other Act; and*
 - (b) *to enhance the ability of council to respond to present and future issues in the city.*

AND WHEREAS the imposition of fees under subsection 210(1) of *The City of Winnipeg Charter* promotes the purposes of the City of Winnipeg and enhances the ability of Council to respond to present and future issues in the City, as set out in subsection 5(1) and clause 6(1)(b) of the *The City of Winnipeg Charter*.

NOW THEREFORE the City of Winnipeg, in Council assembled, enacts as follows:

Short title

1 This By-law may be cited as the Impact Fee By-law.

Definitions and interpretation

2(1) In this By-law

Accessory structure means a building or structure that is located on the same zoning lot as, and is subordinate or incidental to, a principal building, and includes an outbuilding, garage, gazebo, utility building, play structure, sign and structures supporting a sign, garbage enclosure, awning, fence, racking, storage unit or container, deck, antenna, canopy, marquee, satellite dish, mechanical penthouse, hot tub, fountain, water barrel, pond and swimming pool, but does not include an attached secondary suite or a detached secondary suite;

Affordable housing means any dwelling unit provided for persons of low or moderate income where the total shelter cost of the dwelling unit represents 30% or less of the median household total income for private households, as defined by Statistics Canada for the City of Winnipeg;

Attached secondary suite has the same meaning as "secondary suite, attached" in the Winnipeg Zoning By-law;

Basement has the same meaning as in the Neighbourhood Liveability By-law;

Building means any building used or intended to be used to support or shelter any use or occupancy;

Building permit means a permit issued pursuant to the Winnipeg Buildings By-law;

City means The City of Winnipeg continued under the Charter;

Change in use means a change of the use of a particular zoning lot under either the Winnipeg Zoning By-law or the Downtown Winnipeg Zoning By-law;

Charter means the "*The City of Winnipeg Charter*";

Commercial and Retail Uses means a development that falls within the following use categories, depending on the applicable zoning by-law:

(a) under the Winnipeg Zoning By-law:

- (i) Recreation and Entertainment, Indoor;
- (ii) Recreation and Entertainment, Outdoor;
- (iii) Accommodation;
- (iv) Animal Sales and Service;
- (v) Food and Beverage Service;
- (vi) Personal Services;
- (vii) Retail;
- (viii) Restricted; and
- (ix) Private Motor Vehicle Related, and

(b) under the Downtown Winnipeg Zoning By-law:

- (i) Commercial Sales & Service;
- (ii) Private Motor Vehicle-Related;
- (iii) Cultural and Entertainment, except Cultural centre, Gallery, and Museum; and
- (iv) Restricted;

Common area, with respect to a mixed use development, means the portion of the total floor area which

(a) connects; or

(b) is used by

two or more areas within the development that fall into different fee categories;

Construction means the erection, placement, alteration, renovation, extension, or relocation of any building or part of a building for which a building permit is required;

Conversion, with respect to a building, means a change in use of all or part of the building under either the Winnipeg Zoning By-law or the Downtown Winnipeg Zoning By-law with the result that all or part of the building falls under a different fee category after the change in use;

Designated employee means the Director and any employee of the City to whom the Director has delegated a duty or authority under this By-law;

Detached secondary suite has the same meaning as "secondary suite, detached" in the Winnipeg Zoning By-law;

Development means construction, conversion, or both construction and conversion;

Development permit means a permit authorizing a development issued under either the Downtown Winnipeg Zoning By-law or the Winnipeg Zoning By-law;

Director means the Director of Planning, Property and Development for the City of Winnipeg;

Dwelling has the same meaning as in the Neighbourhood Liveability By-law;

Dwelling unit has the same meaning as in the Neighbourhood Liveability By-law;

Expansion means, with respect to a building, an increase in floor area of the building;

Fee category means one of the five fee categories set out in subsection 4(2);

Floor area means the sum of the gross horizontal areas of the several floors of all buildings on a zoning lot, measured from the exterior faces of exterior walls, or from the centre line of partitions, except:

(a) with respect to residential development:

(i) any accessory structure;

(ii) any basement, and

(iii) any part of the dwelling unit that is not habitable throughout the year, including porches and sun rooms;

(b) with respect to non-residential development:

(i) any space within the building used as a parking area or a loading area;

Impact fee means a fee applicable to a development which is imposed pursuant to clause 3(1)(b);

Industrial Uses means a development that falls within the following use categories, depending on the applicable zoning by-law:

- (a) under the Winnipeg Zoning By-law:
 - (i) Industrial Service;
 - (ii) Manufacturing and Production;
 - (iii) Warehouse and Freight Movement; and
 - (iv) Waste and Salvage, and
- (b) under the Downtown Winnipeg Zoning By-law:
 - (i) Light Industrial;

Mixed use development means a development which contains more than one fee category;

Office Uses means a development that falls within the following use categories, depending on the applicable zoning by-law:

- (a) under the Winnipeg Zoning By-law:
 - (i) Office, and
- (b) under the Downtown Winnipeg Zoning By-law:
 - (i) Office;

Principal building has the same meaning as in the Neighbourhood Liveability By-law;

Public and Institutional Uses means a development that falls within the following use categories, depending on the applicable zoning by-law:

- (a) under the Winnipeg Zoning By-law:
 - (i) Community Facilities;
 - (ii) Education;
 - (iii) Park and Park-Related;
 - (iv) Other Public and Institutional;
 - (v) Cultural Facilities;

- (vi) Transit and Transportation; and
- (vii) Utility, and
- (b) under the Downtown Winnipeg Zoning By-law:
 - (i) Public and Institutional;
 - (ii) Cultural and Entertainment – Cultural Centre, Gallery, and Museum only;
 - (iii) Park and Park-related; and
 - (iv) Transportation, Utility, & Communications;

Renovation, with respect to residential development, has the same meaning as in the Winnipeg Building By-law;

Replacement, with respect to a building, means the demolition or removal of a building and the construction of another building on the same zoning lot within 5 years following the demolition or removal;

Residential development means the development of dwelling units;

Zoning lot has the same meaning as “lot, zoning” in the Winnipeg Zoning By-law;

Fee imposed

3(1) Every person who is issued a building permit or a development permit must pay to the City

- (a) the applicable fee or fees set out in the Planning, Development and Building Fees By-law; and
- (b) an Impact Fee in accordance with this By-law.

3(2) The Impact Fee must be paid prior to the issuance of any building permit or development permit for the development in respect of which the Impact Fee applies.

3(3) For greater certainty, where both a building permit and a development permit are issued in respect of a development, only one Impact Fee is payable under clause 3(1)(b).

3(4) Where the Impact Fee in respect of a development:

- (a) has been paid;
- (b) has not been refunded by the City; and
- (c) the development authorized by the building permit or development permit applicable to that development has not been completed,

the Impact Fee paid shall be credited towards any subsequent Impact Fee payable under this By-law in respect of a building permit or development permit issued for the land on which the original development was located within 5 years of the date the initial Impact Fee was paid.

Impact Fee calculation

4(1) Subject to subsection (3), the Impact Fee payable in respect of a development is the product of the total floor area that is being constructed or converted multiplied by the fee per square metre established by Council for the fee category applicable to the development.

4(2) For the purposes of subsection (1), the following fee categories are hereby established:

- (a) Residential Uses;
- (b) Office Uses;
- (c) Commercial and Retail Uses;
- (d) Public and Institutional Uses; and
- (e) Industrial Uses.

4(3) Subject to subsection 6(1), where all or part of an existing building is being converted, expanded or replaced, the amount of the Impact Fee payable is the difference between the amount of the Impact Fee applicable to the converted, expanded or replacement building less the amount of the Impact Fee that would have been payable for the existing building prior to its conversion, expansion or replacement if the Impact Fee determined in accordance with current rates were applicable to it. Where the difference is \$0.00 or less, no Impact Fee is payable and no refund shall be issued.

Mixed use development

5(1) The Impact Fee payable in respect of mixed use development shall be calculated separately for the floor area of the development that falls within each fee category in accordance with subsection 4(1).

5(2) For the purposes of subsection (1), common areas within mixed use development shall be attributed proportionately to each fee category based on the proportion of the floor area of the entire development that falls within each fee category.

Exemptions

6(1) Notwithstanding subsection 4(1), no Impact Fee is payable in respect of residential development on land where

- (a) one or more existing dwelling units are being renovated, expanded or, replaced; and
- (b) there is no increase in the total number of dwelling units on that land.

6(2) Notwithstanding subsection 4(1), no Impact Fee is payable in respect of dwelling units which the following organizations have entered into a written agreement with the City, under such terms and conditions deemed necessary by the Director of Legal Services and City Solicitor to protect the interests of the City, to provide as affordable housing for a period of no less than 10 years:

- (a) Winnipeg Housing Rehabilitation Corporation;
- (b) The Manitoba Housing and Renewal Corporation;
- (c) The Government of Canada or the Province of Manitoba; or
- (d) any organization that has been approved to receive funding from the Government of Canada or the Province of Manitoba under an affordable housing program, as determined by that government.

Withdrawals of and changes to permits

7(1) Where an Impact Fee has been paid and the building permit or development permit to which the Impact Fee is applicable is voluntarily withdrawn prior to its expiration pursuant to the Winnipeg Building By-law, the person who paid the Impact Fee is entitled to a refund of the entire Impact Fee paid, less an administration fee established by Council.

7(2) Where, after being issued, a building permit or development permit is amended in a way that results in an increase in floor area or a change in the fee category applicable to all or part of the development, the person to whom the building permit or development permit has been issued must pay an additional Impact Fee which reflects the increase of floor area or change in fee category, as the case may be. The additional Impact Fee is the difference between the Impact Fee payable in respect of the development authorized by the amended permit less the Impact Fee that either was paid or would have been payable in respect of the development authorized by the original permit. Where the difference is \$0.00 or less, no Impact Fee is payable and no refund shall be issued. The additional Impact Fee, if any, must be paid prior to the issuance of the amended building permit or development permit.

Powers of designated employees

8 Designated employees have authority to conduct inspections and take steps to administer and enforce this By-law or remedy a contravention of this By-law in accordance with the Charter and, for those purposes, have the powers of a designated employee under the Charter.

Director review

9(1) Upon payment of a refundable application fee established by Council, a person may apply to the Director for a review of the application or interpretation of this By-law by a designated employee.

9(2) An application under subsection (1) must be submitted within 14 days following the date the Impact Fee in respect of a development is paid.

9(3) The requirement in subsection 3(1) to pay the Impact Fee as determined by a designated employee prior to a building permit or development permit being issued is not suspended because an application for a review has been made.

9(4) In conducting a review, the Director must give the applicant an opportunity to explain the basis for his or her conclusion that this By-law was misapplied or misinterpreted. This may be done in person, by telephone, in writing or by any other media determined by the Director to be appropriate.

amended 39/2018

9(5) Where an application is made under subsection (1), the Director must make a decision with respect to the application within 90 days following the date the application is received and must notify the applicant of his or her decision in accordance with the Charter.

9(6) Where, after conducting his or her review, the Director determines that the designated employee erred in the application or interpretation of this By-law, resulting in an incorrect Impact Fee being paid or applied, the Director may refund all or part of the application fee and may also refund the Impact Fee paid in respect of a development in order to correct the error.

Appeals

10(1) An appeal

- (a) from a decision of the Director in respect of issuing, granting, suspending or cancelling, or refusing to issue or grant, a licence, permit, approval or consent under this By-law; or
- (b) any other matter for which an appeal is authorized by *The City of Winnipeg Charter*

may be made to the Standing Policy Committee on Property and Development, Heritage and Downtown Development.

amended 112/2017

10(2) An appeal must not be accepted until an appeal fee in an amount established by Council is paid. The appeal fee may be refunded by the Standing Policy Committee on Property and Development, Heritage and Downtown Development if the committee considers that the appeal has been made in good faith and has merit.

amended 112/2017

10(3) The requirement in subsection 3(1) to pay the Impact Fee as determined by a designated employee prior to a building permit or development permit being issued is not suspended because an appeal has been made.

Development without paying fee an offence

11 The owner of land must not permit development in respect of which an Impact Fee is payable to occur on the land prior to the Impact Fee being paid.

Penalties for non-compliance

12(1) Any person who contravenes any section of this By-law is guilty of an offence and liable upon conviction to a fine in the amount of:

- (a) not less than double the amount of the applicable Impact Fee for a contravention of subsection 3(1) or section 11; and
- (b) not less than \$5,000.00 for any other contravention.

12(2) Where development in respect of which an Impact Fee is payable occurs prior to the Impact Fee being paid, the owner of the land on which development has taken place must pay to the City:

- (a) the Impact Fee; and
- (b) a monetary penalty, that is in addition to a fine under subsection (1), for the contravention of this by-law in an amount equal to the Impact Fee.

Address for service

12.1(1) Where a notice, order or other document is required to be given to, sent to or served on a person under this By-law, the notice, order or other document may be sent to that person:

added 39/2018

- (a) by way of registered mail:
 - (i) where the person is an applicant, at the address provided by the person to the designated employee in the person's application for a development permit or a building permit;
 - (ii) where the person is the owner of real property, at the address maintained by the tax collector for the purposes of issuing the tax notice for that property; or
 - (iii) in all other situations, the last known address for the person; or
- (b) where the person has provided the designated employee with an email address, by way of electronic mail, subject to subsection (2).

12.1(2) Where a notice, order or other document is sent to a person under clause (b), the person shall be deemed to have received the notice, order or other document on the date on which a delivery receipt for the electronic mail has been received by the designated employee.

added 39/2018

Transition

13(1) The Impact Fee applies only to those areas identified on Map 1, and further depicted in detail on Maps 2 to 11, inclusive, all attached as Schedule "A".

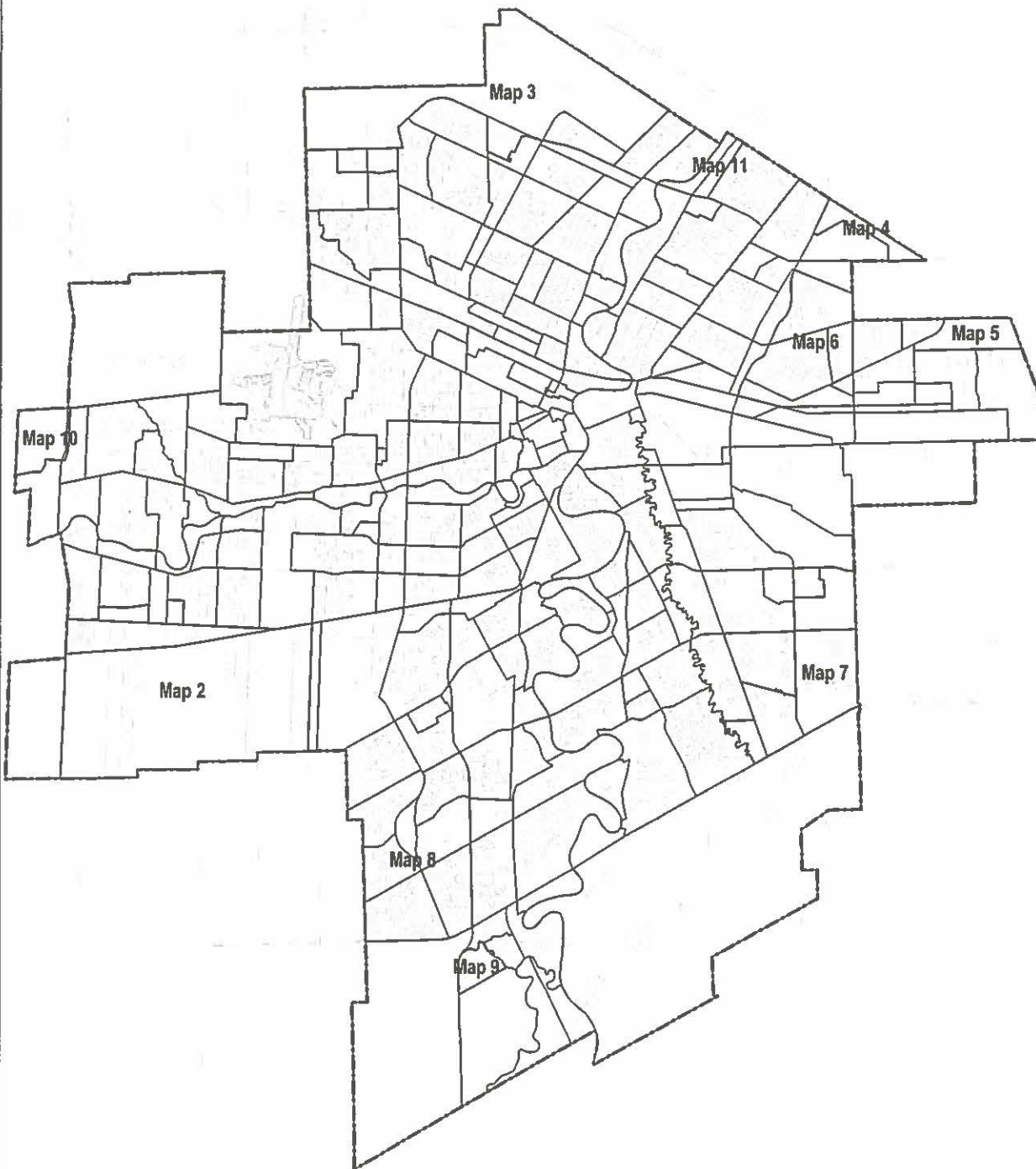
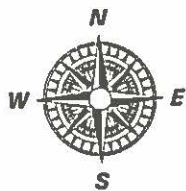
13(2) Notwithstanding subsection 3(1), no Impact Fee is payable at the time a building permit or development permit is issued if

- (a) an application for the building permit or development permit is made prior to May 1, 2017;
- (b) the building permit or development permit is issued within 6 months following the date of the application, or such later date as determined by the Director to be reasonable in the circumstances; and
- (c) the construction of the development begins, or the conversion of the development takes place, prior to January 1, 2018.

amended 112/2017

13(3) Notwithstanding that a development meets the criteria set out in clauses (2)(a) and (b), a building permit or development permit that has been issued in respect of the development expires when a designated employee determines and provides notice to the permit holder that the development does not meet the requirement set out in clause (2)(c). A new permit in respect of that development is required and is subject to payment of the Impact Fee.

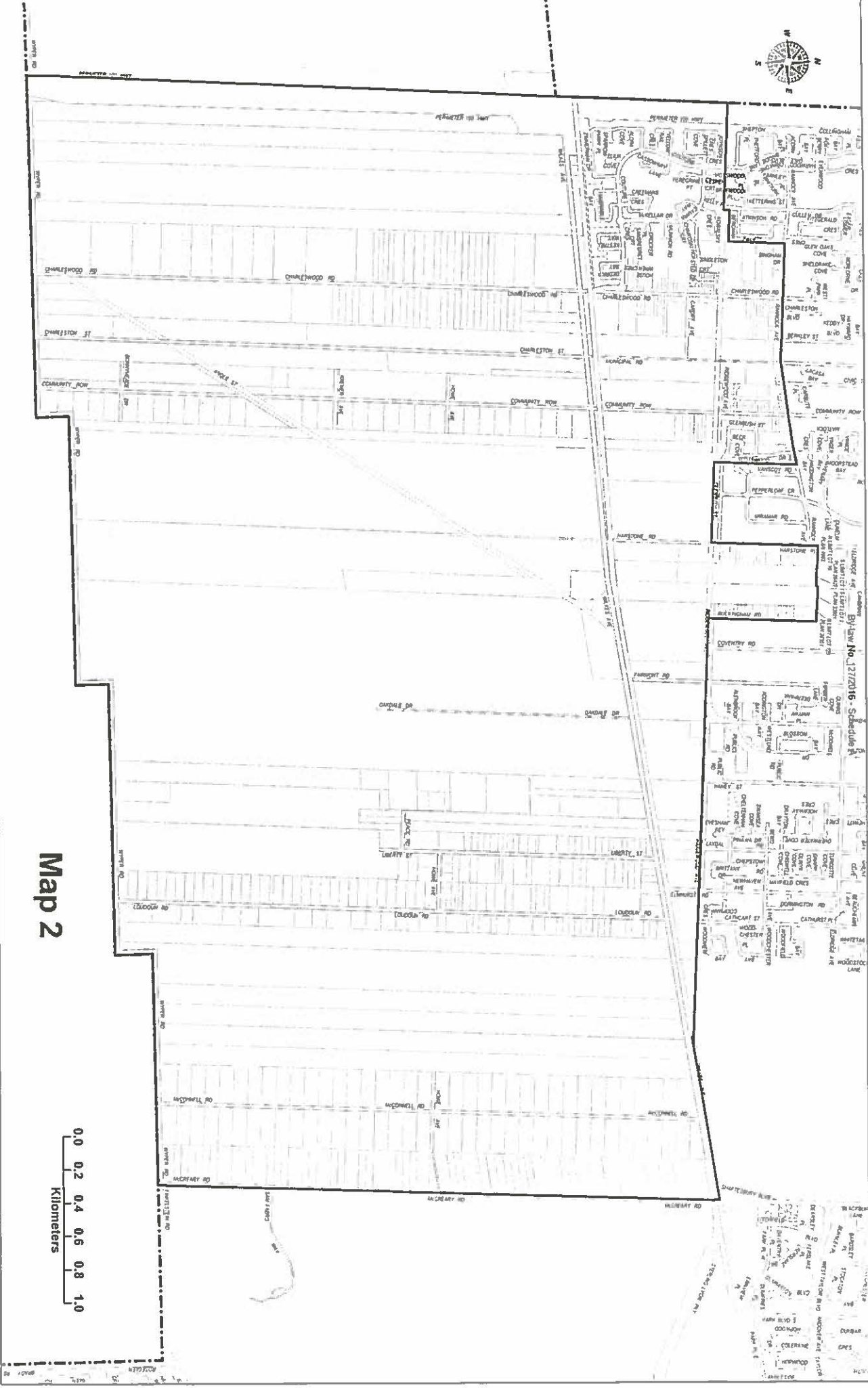
DONE AND PASSED, this 26TH day of October, 2016.

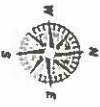


Map 1



Map 2

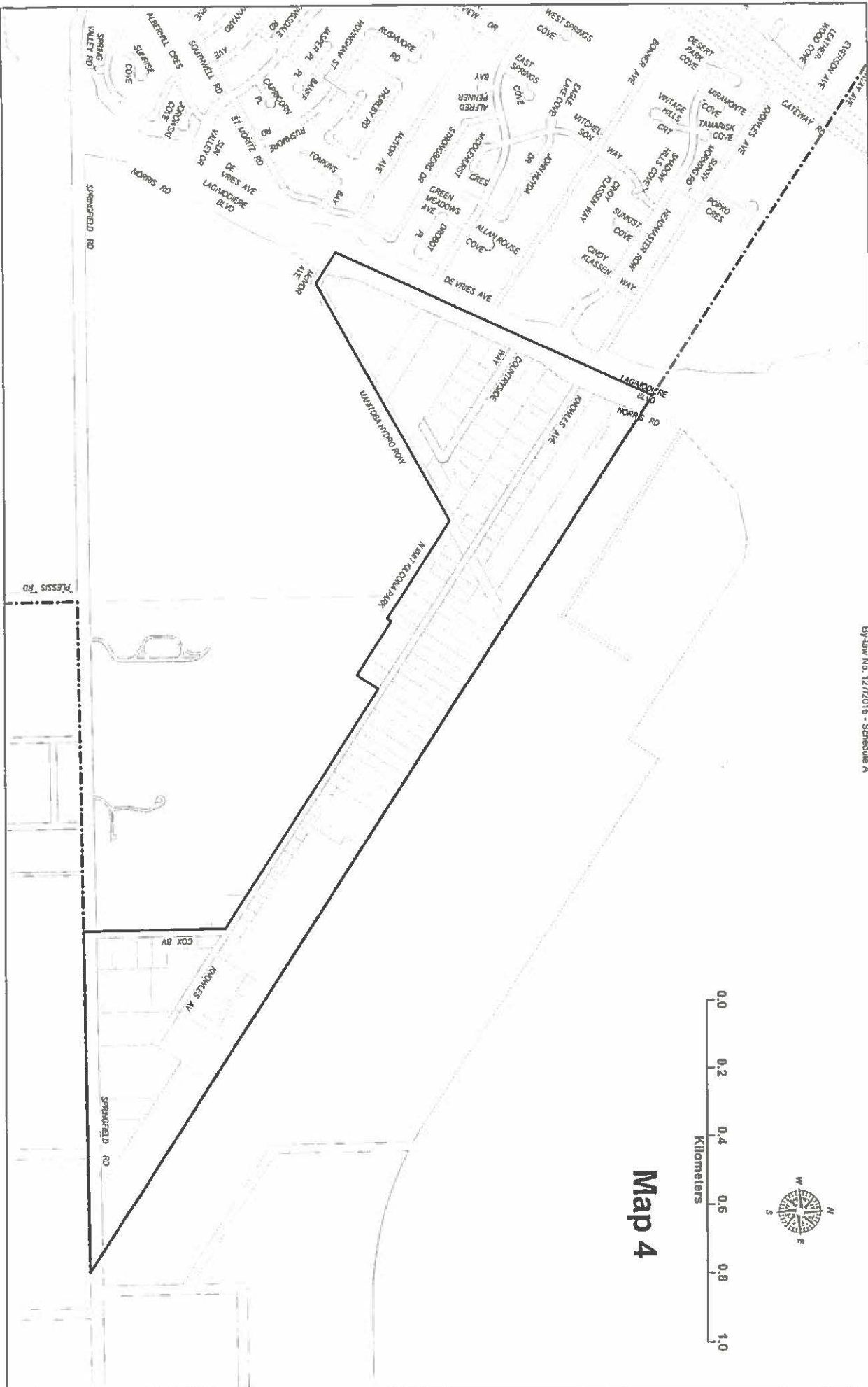




Map 3

By-law No. 1272016 - Schedule A





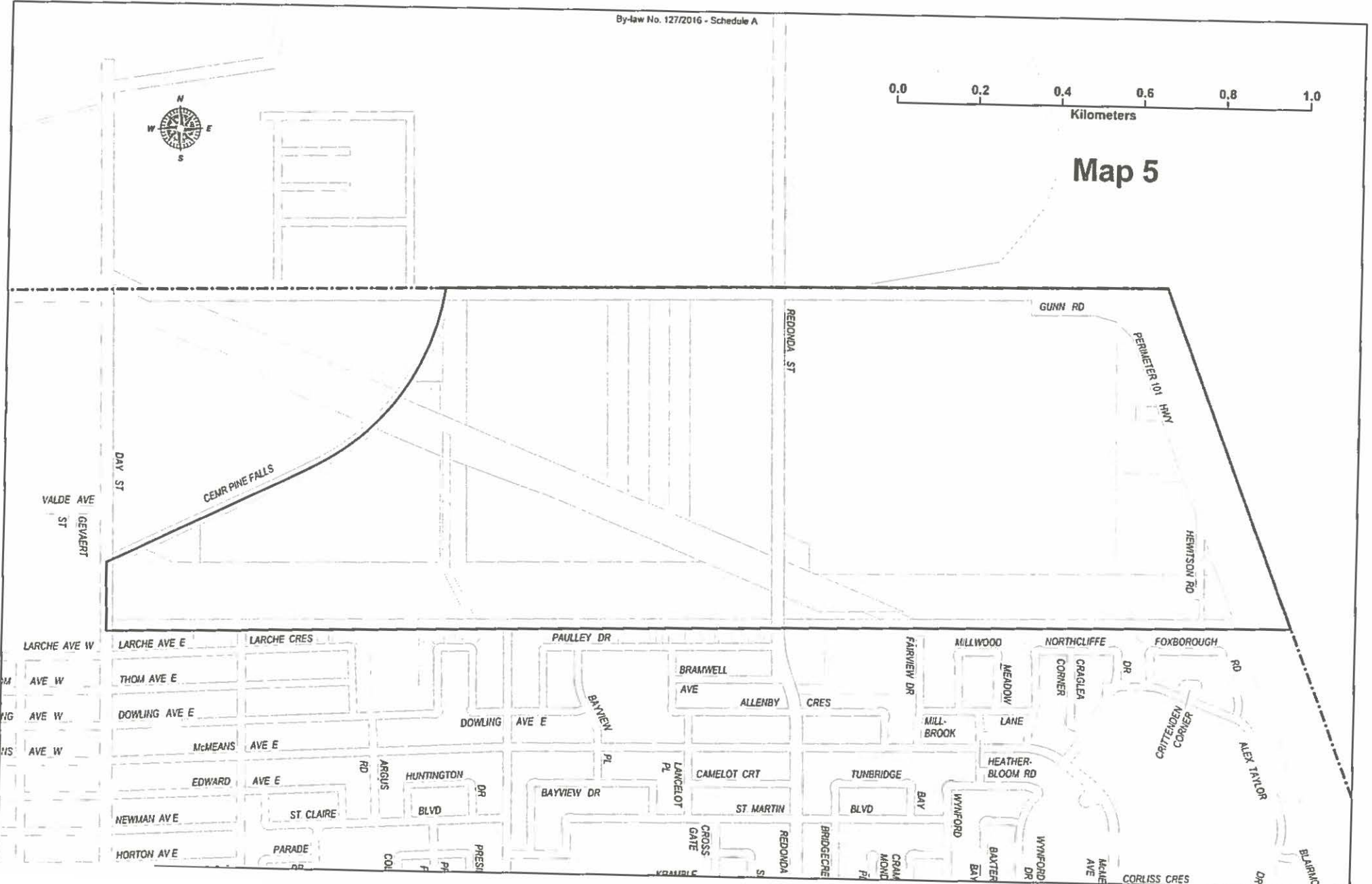
By-Law No. 1272016 - Schedule A

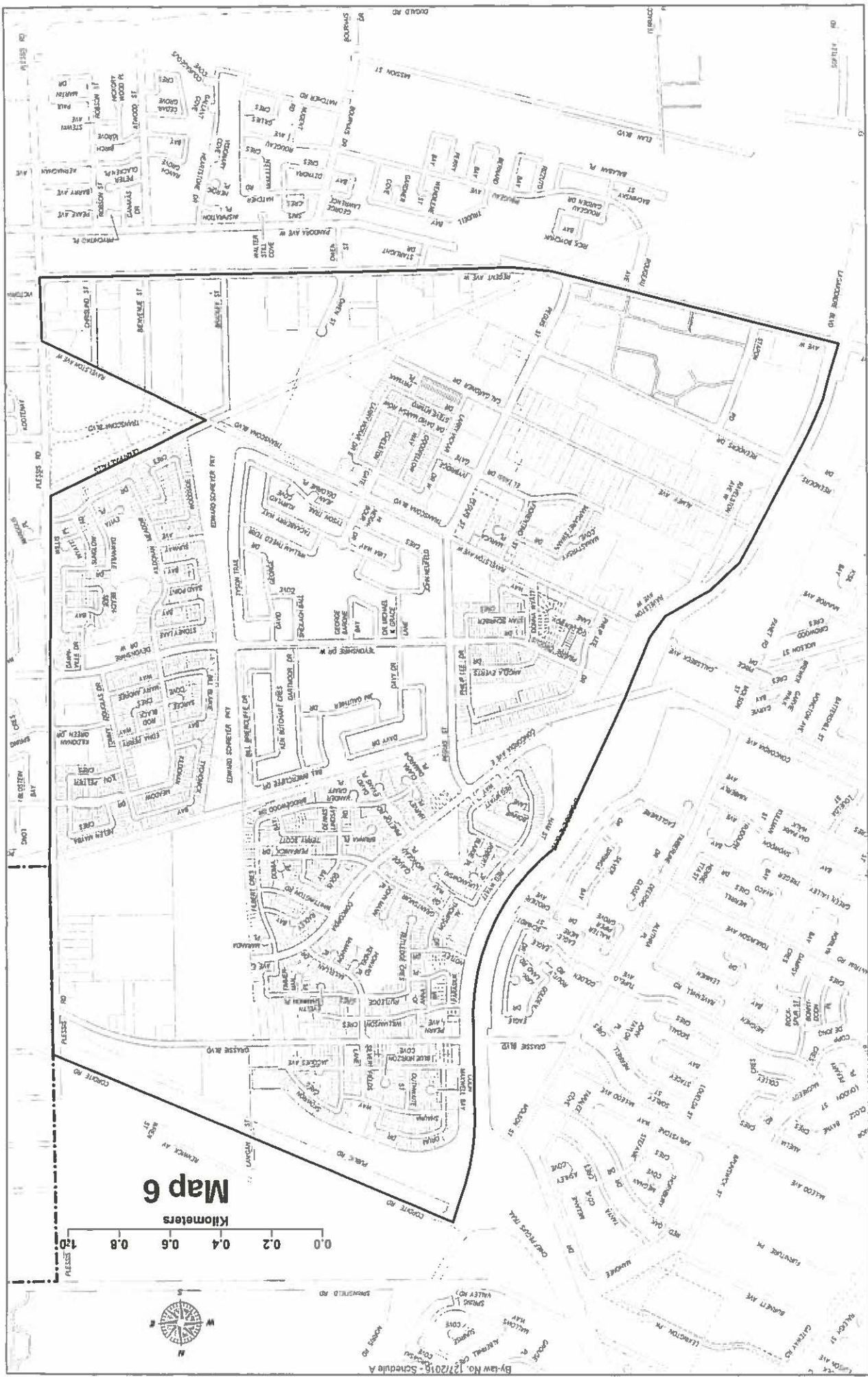


Map 4



Map 5



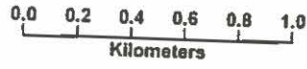
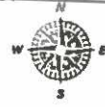


Map 6

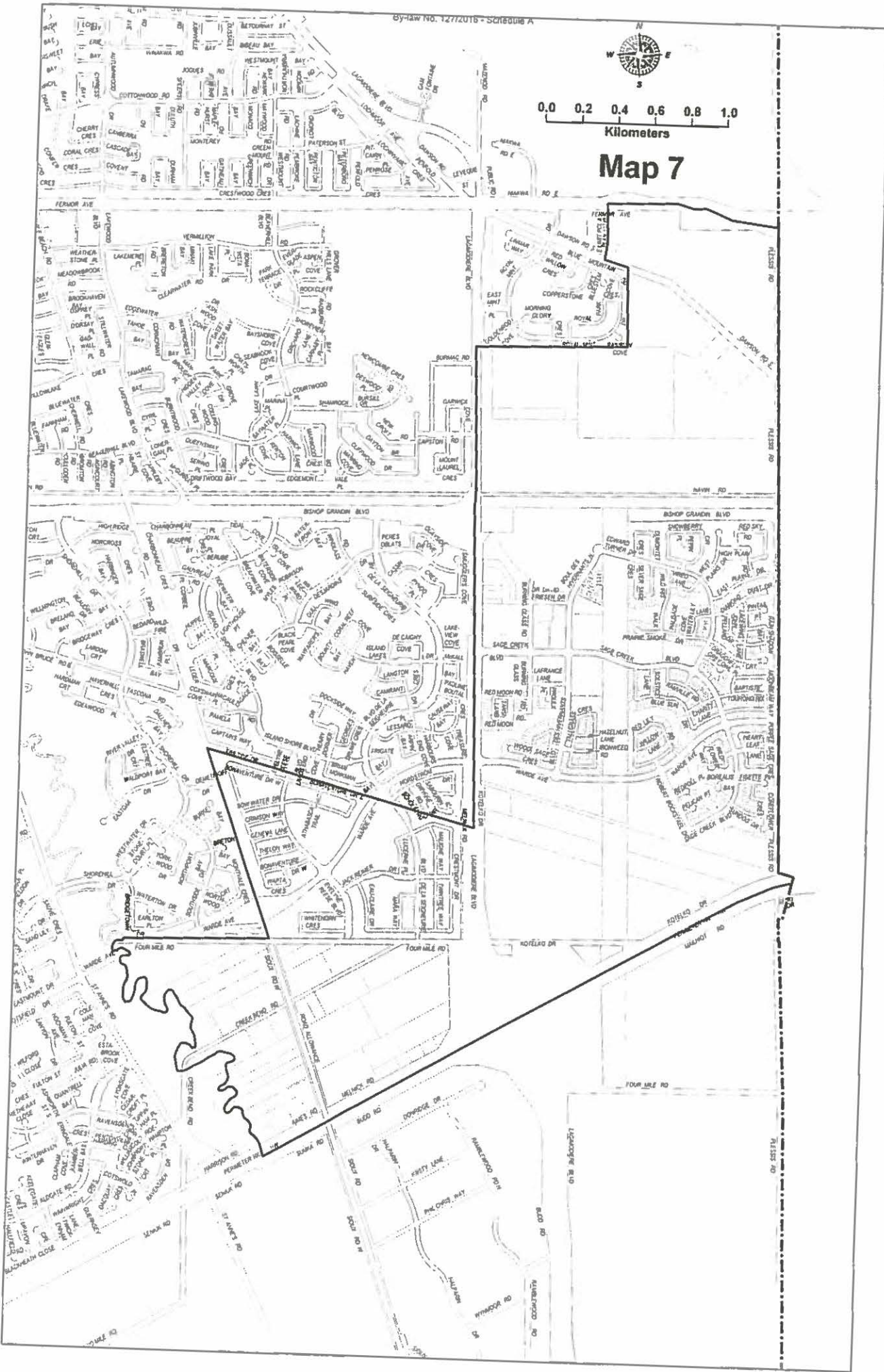
Kilometers

0.0 0.2 0.4 0.6 0.8 1.0 1.2



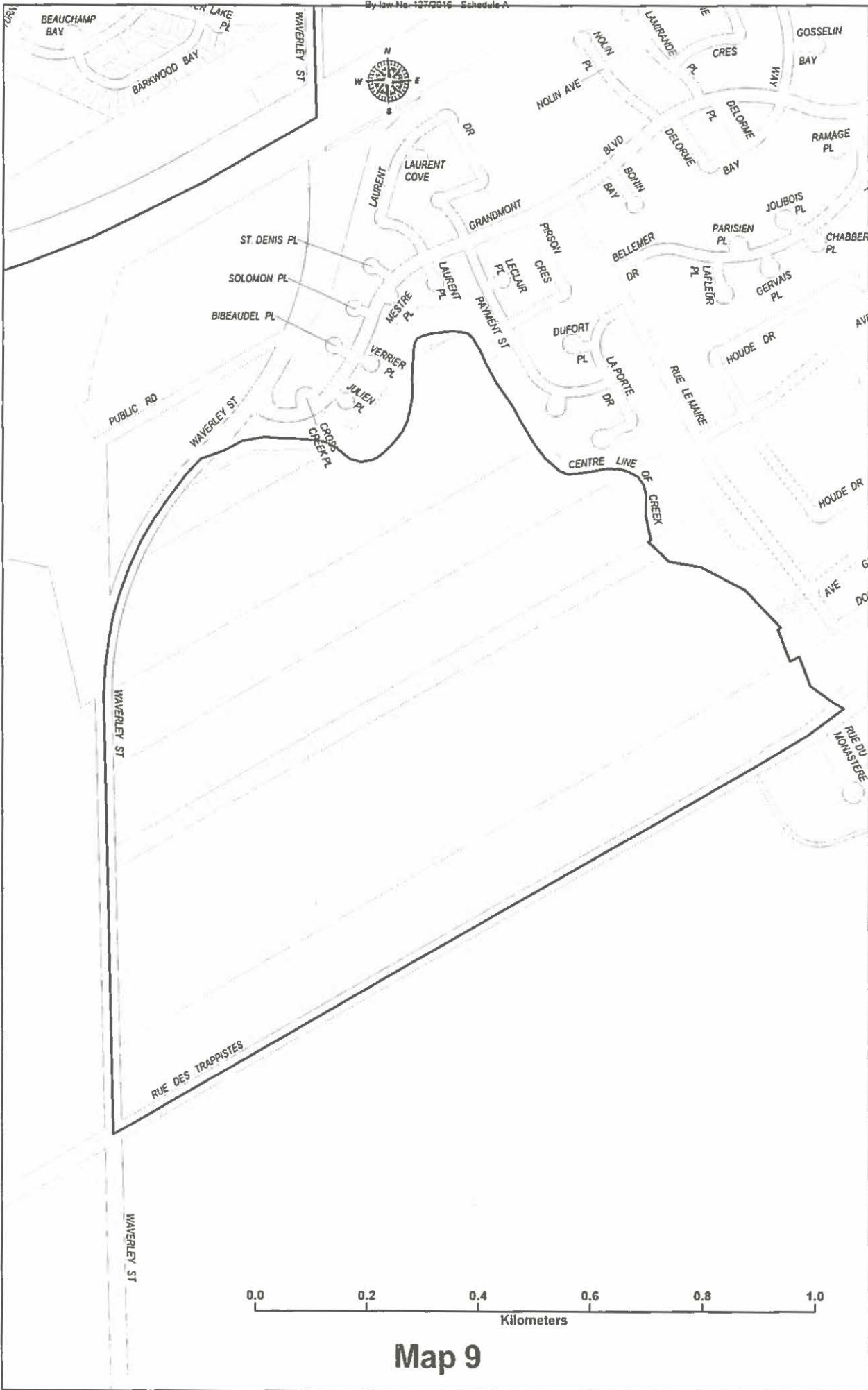


Map 7





Map 8

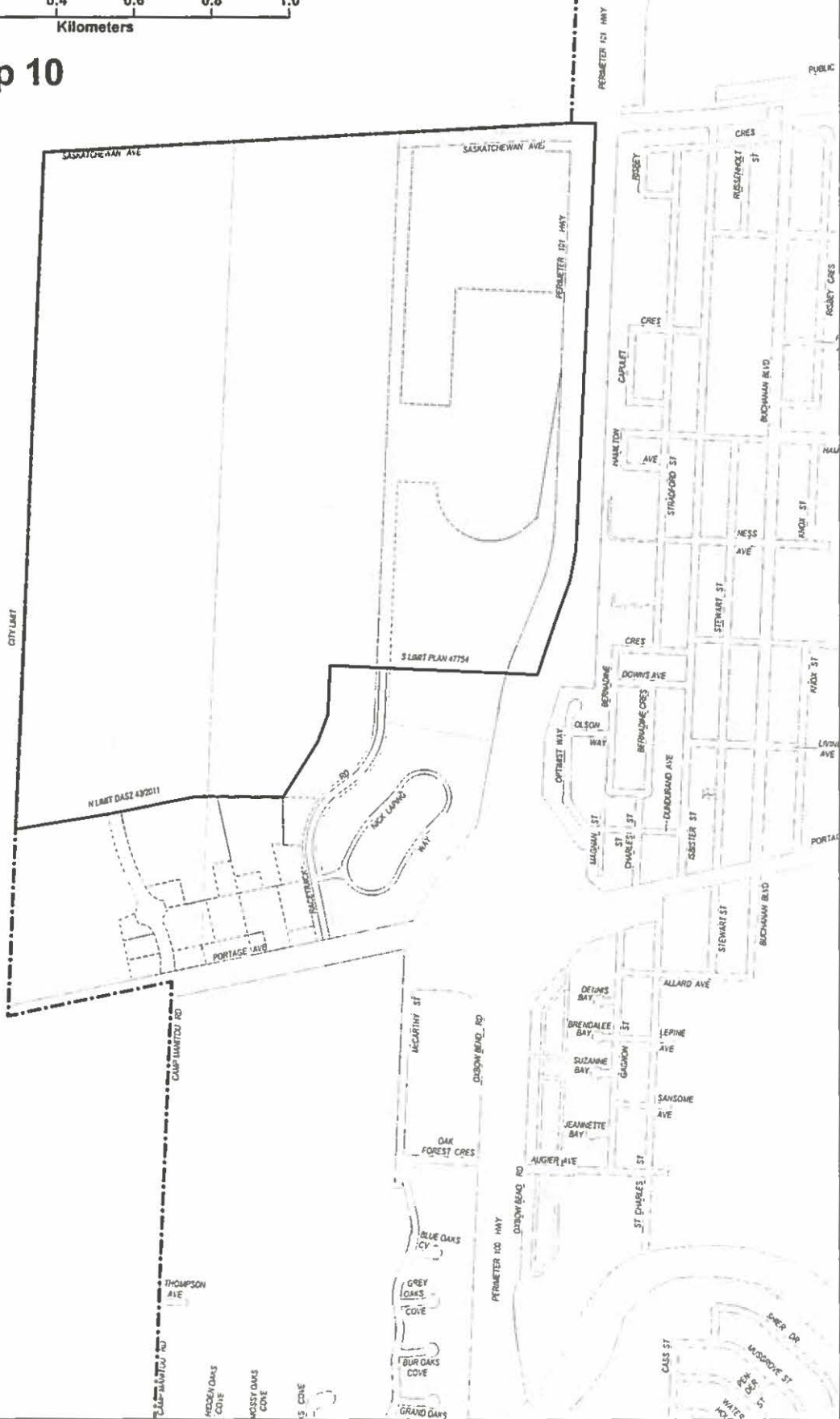


Map 9



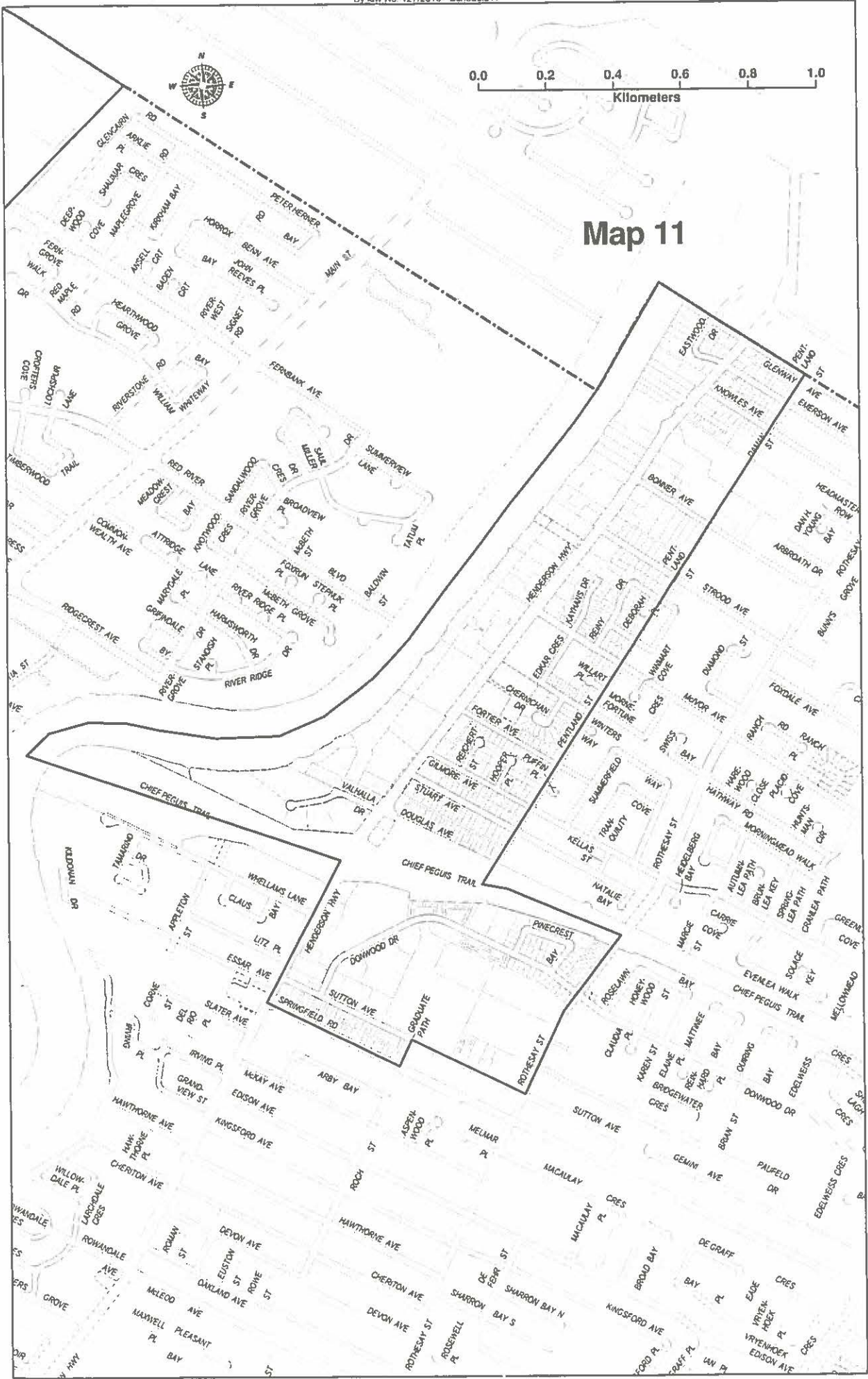
0.0 0.2 0.4 0.6 0.8 1.0
Kilometers

Map 10





Map 11



This is **Exhibit "C"** referred to in the
Affidavit of John Tyler Markowsky affirmed
before me this 15th day of March, 2019.

A handwritten signature in blue ink, consisting of a stylized 'J' followed by a series of loops and a long horizontal stroke extending to the right.

A Barrister and Solicitor in and for the Province of
Manitoba.

Minute No. 604

Report – Executive Policy Committee – October 19, 2016

Item No. 5 Implementation of an Impact Fee

COUNCIL DECISION:

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

1. That an Impact Fee Working Group be established as per the “Impact Fee Working Group Terms of Reference” to ensure long-term, ongoing collaboration and consultation with industry and community stakeholders which will review market trends, exemption options and provide recommendations to the Ad Hoc Committee on Development Standards and the “Impact Fee Working Group Terms of Reference” (draft attached) be included in the report and attached as Appendix E.
2. That the “Phase One: Impact Fee Implementation Plan” (attached) be attached to the report as Appendix D.
3. That the recommendations set out in the Report be replaced with the following:
 - “1. That the reports prepared by Hemson Consulting Ltd., Review Of Municipal Growth Financing Mechanisms and Determination Of Regulatory Fees To Finance Growth: Technical Report, dated August 31, 2016 (attached as Appendices A and B) be received as information.
 2. That the Impact Fee By-law (draft attached as Appendix C) which will apply an impact fee effective May 1, 2017, for residential development in New Communities and Emerging Communities as set forth in Our Winnipeg and Complete Communities, outlined in bold in Appendix D be enacted, and that for the purposes of the Impact Fee By-law, the following be established:
 - A. that the fee amounts increase on January 1 of each year by the rate of construction inflation for the previous year as determined by the Chief Financial Officer, and that the annual increase be capped at 5% per year;
 - B. an administration fee for refunds in the amount of \$100.00;
 - C. an application fee for Director review in the amount of \$100.00; and
 - D. an appeal fee in the amount of \$250.00.

Report – Executive Policy Committee – October 19, 2016**COUNCIL DECISION (continued):**

3. That the following be established as Phase One of the Impact Fee Implementation Plan: effective May 1, 2017 as fee amounts per square meter of gross floor space in the following five categories for residential development in New and Emerging Communities, as identified in OurWinnipeg and outlined in bold in Appendix D:
 - A. Residential: \$54.73 per m²
 - B. Office: \$0.00 per m² -
 - C. Commercial: \$0.00 per m²
 - D. Industrial: \$0.00 per m²
 - E. Public and Institutional: \$0.00 per m²

4. That Council, with recommendations from the Working Group, may consider rates for implementation for the following:
 - A. non-residential uses in New and Emerging Communities as identified in OurWinnipeg and outlined in bold in Appendix D no earlier than November 1, 2018 – Phase 2
 - B. All uses in all other areas of the City no earlier than November 1, 2019-Phase 3

5. That the Impact Fee Reserve Fund be established as follows:
 - A. All funds generated by the impact fee are to be deposited into the Fund, and that the fees collected by each area as outlined on the map in Appendix D be recorded and that Councillors be allowed access to the area information on an ongoing basis with accumulative totals;
 - B. The purposes of the Fund are:
 - i. to fund capital projects approved by Council recommended by the Chief Financial Officer with consideration given to the input provided by the Working Group;
 - ii. to pay the costs of administering the Impact Fee By-law and Reserve Fund.

6. That the Winnipeg Public Service report to Council every 24 months with the results of a review of the impact fee, which must include consideration of recommendations provided by the Working Group and alignment of the impact fee with OurWinnipeg.”

Report – Executive Policy Committee – October 19, 2016

COUNCIL DECISION (continued):

4. That the draft Impact Fee By-law (Appendix C to the Report) be changed:
 - A. To reflect the content of the altered Report recommendations set out above
 - B. To exempt from application of the fee building or development permits issued within 6 months of receipt of application made prior to May 1, 2017, at the discretion of the Director of Property and Development, where construction begins or conversion takes place by November 1, 2018.
5.
 - A. That the Map in Appendix D of Item No. 5 of the Report of the Executive Policy Committee dated October 19, 2016 be replaced with Map 1 attached to the adopted motion proposed by Councillors Orlikow and Morantz.
 - B. That Map 1 and Map 6 of Schedule “A” to By-law No. 127/2016 be replaced with the maps attached to the adopted motion and identified as Map 1 and Map 6, respectively, and the map attached to this motion and identified as Map 11 be added as Map 11 to Schedule “A” to By-law No. 127/2016 to
 - exclude the 1500 Plessis Road Major Redevelopment Site; and
 - show the area within The North Henderson Highway District Plan as approved in By-law No. 1300/76 and the portion of the area within the Henderson Highway Corridor Secondary Plan as approved in Bylaw No. 3215/82 that falls within the Recent Communities policy plate.
 - C. That Subsection 13(1) of By-law No. 127/2016 be amended by replacing “Maps 2 to 10” with “Maps 2 to 11” to reflect the addition of Map 11 to Schedule “A”.
6. That the Proper Officers of the City of Winnipeg be authorized to do all things necessary to implement the intent of the foregoing.

Report – Executive Policy Committee – October 19, 2016

DECISION MAKING HISTORY:

Moved by His Worship Mayor Bowman,

That the recommendation of the Executive Policy Committee be adopted.

In amendment,

Moved by Councillor Orlikow,

Seconded by Councillor Morantz,

WHEREAS the Winnipeg Public Service prepared an Administrative Report entitled “Implementation of an Impact Fee” (the Report), which was presented to and considered by the Executive Policy Committee on September 21, 2016;

AND WHEREAS, at its meeting of September 21, 2016, the Executive Policy Committee laid the matter over “to allow Councillor Orlikow to proceed with further discussions with stakeholders, including Members of Council, industry, and the Winnipeg Public Service”,

AND WHEREAS, at its meeting of October 19, 2016, the Executive Policy Committee passed a motion (the “Motion”) that included a recommendation to Council which contemplated restricting the application of the Impact Fee for Phase One: Impact Fee Implementation Plan to “New Communities and Emerging Communities as set forth in Our Winnipeg and Complete Communities”;

AND WHEREAS Emerging Communities are a subset of the Recent Communities policy plate set out in the Complete Communities Direction Strategy;

AND WHEREAS Major Redevelopment Sites are not identified as being included in the Recent Communities policy plate set out in the Complete Communities Direction Strategy;

AND WHEREAS Maps 1 and 6 of Schedule “A” to By-law No. 127/2016, which appears on the Agenda for enactment at Council’s meeting of October 26, 2016, include the 1500 Plessis Road Major Redevelopment Site;

AND WHEREAS none of the maps forming Schedule “A” to By-law No. 127/2016 include the area within The North Henderson Highway District Plan as approved in By-law No. 1300/76, nor the portion of the area within the Henderson Highway Corridor Secondary Plan as approved in Bylaw No. 3215/82 that falls within the Recent Communities policy plate;

Report – Executive Policy Committee – October 19, 2016

DECISION MAKING HISTORY (continued):

AND WHEREAS, based on the stated intention of the Motion to apply to New Communities and Emerging Communities, the 1500 Plessis Road Major Redevelopment Site should not have been included in Maps 1 and 6 of Schedule “A” to By-law No. 127/2016, and the area within The North Henderson Highway District Plan and the portion of the area within the Henderson Highway Corridor Secondary Plan that falls with the Recent Communities Policy Plate should have been included;

NOW THEREFORE BE IT RESOLVED that

1. That the Map in Appendix D of Item No. 5 of the Report of the Executive Policy Committee dated October 19, 2016 be replaced with Map 1 attached to this motion.
2. That Map 1 and Map 6 of Schedule “A” to By-law No. 127/2016 be replaced with the maps attached to this motion and identified as Map 1 and Map 6, respectively, and the map attached to this motion and identified as Map 11 be added as Map 11 to Schedule “A” to By-law No. 127/2016 to
 - exclude the 1500 Plessis Road Major Redevelopment Site; and
 - show the area within The North Henderson Highway District Plan as approved in By-law No. 1300/76 and the portion of the area within the Henderson Highway Corridor Secondary Plan as approved in Bylaw No. 3215/82 that falls within the Recent Communities policy plate.
3. Subsection 13(1) of By-law No. 127/2016 be amended by replacing “Maps 2 to 10” with “Maps 2 to 11” to reflect the addition of Map 11 to Schedule “A”.

In amendment,

Moved by Councillor Orlikow,
Seconded by Councillor Wyatt,

WHEREAS the City of Winnipeg wishes to provide certainty;

AND WHEREAS the City of Winnipeg encourages accountability;

AND WHEREAS THE City of Winnipeg has developed the Impact Fee for consistency throughout Winnipeg;

THEREFORE BE IT RESOLVED that the annual fee increase by construction inflation be capped at 5% per year.

Report – Executive Policy Committee – October 19, 2016

DECISION MAKING HISTORY (continued):

AND BE IT FURTHER RESOLVED that the City of Winnipeg record the fees collected by each area as outlined on the map in Appendix D, and allow Councillors access to the area information on an ongoing basis with accumulative totals.

The amendment moved by Councillor Orlikow and Seconded by Councillor Wyatt was put.

Councillor Gillingham called for the yeas and nays, on the amendment moved by Councillor Orlikow and Seconded by Councillor Wyatt, which were as follows:-

Yea: His Worship Mayor Bowman, Councillors Allard, Browaty, Dobson, Eadie, Gerbasi, Gilroy, Mayes, Morantz, Orlikow, Pagtakhan, Schreyer and Wyatt. 13

Nay: Councillors Gillingham, Lukes and Sharma. 3

and the amendment Moved by Councillor Orlikow and Seconded by Councillor Wyatt was declared carried.

The amendment moved by Councillor Orlikow and Seconded by Councillor Morantz was put.

Councillor Gillingham called for the yeas and nays, on the amendment moved by Councillor Orlikow and Seconded by Councillor Morantz, which were as follows:

Yea: His Worship Mayor Bowman, Councillors Allard, Eadie, Gerbasi, Gilroy, Mayes, Morantz, Orlikow, Pagtakhan, and Wyatt. 10

Nay: Councillors Browaty, Dobson, Gillingham, Lukes, Schreyer, and Sharma. 6

and the amendment moved by Councillor Orlikow and Seconded by Councillor Morantz was declared carried.

The motion for the adoption of the item, as amended, was put.

Councillor Gillingham called for the yeas and nays, which were as follows:

Yea: His Worship Mayor Bowman, Councillors Allard, Eadie, Gerbasi, Gilroy, Mayes, Morantz, Orlikow, Pagtakhan, and Wyatt. 10

Nay: Councillors Browaty, Dobson, Gillingham, Lukes, Schreyer, and Sharma. 6

Report – Executive Policy Committee – October 19, 2016

DECISION MAKING HISTORY (continued):

and the motion for the adoption of the item, as amended, was declared carried.

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On October 19, 2016, the Executive Policy Committee passed the following resolution:

WHEREAS for more than a decade the City of Winnipeg has reviewed, analyzed, consulted and discussed options to create and implement ways to pay for increasing demands due to growth, without placing complete reliance for funding solely on property tax revenues;

AND WHEREAS during the planning of the 2016 Budget, the City contemplated growth-related fees and through discussion with Winnipeg's local development and homebuilder industry, a one-year delay was determined to be required to study the relationship between growth-related costs in Winnipeg and funds were allocated in the 2016 Budget to conduct this study externally;

AND WHEREAS the results of the study conducted and completed by Hemson Consulting Inc, published September 1, 2016, concluded that growth in Winnipeg is not funding its fair share of growth related costs;

AND WHEREAS the Winnipeg Public Service presented its report Implementation of an Impact Fee to Executive Policy Committee September 21, 2016, at which time the Executive Policy Committee laid the matter over for additional consultation with Council and industry stakeholders to be led by the Chair of Property and Development, Heritage and Downtown Development, Councillor Orlikow;

AND WHEREAS meetings with more than 40 stakeholders have been held by the Chair of Property, Development, Heritage and Downtown Development over the past weeks;

AND WHEREAS through consultation and collaboration with industry and Council members, no fees will be applied to building permits for 6 months, a phased-in approach of reduced rates, based on categories, along with developing a process to build-in ongoing, meaningful consultation with industry stakeholders has been determined;

Report – Executive Policy Committee – October 19, 2016

DECISION MAKING HISTORY (continued):

EXECUTIVE POLICY COMMITTEE RECOMMENDATION (continued):

THEREFORE BE IT RESOLVED that the Executive Policy Committee recommend that Council concur with the Implementation of an Impact Fee report (the “Report”), as considered by Executive Policy Committee on September 21, 2016, subject to the following amendments and Recommendations:

1. That an Impact Fee Working Group be established as per the “Impact Fee Working Group Terms of Reference” to ensure long-term, ongoing collaboration and consultation with industry and community stakeholders which will review market trends, exemption options and provide recommendations to the Ad Hoc Committee on Development Standards and the “Impact Fee Working Group Terms of Reference” (draft attached) be included in the report and attached as Appendix E.
2. That the “Phase One: Impact Fee Implementation Plan” (attached) be attached to the report as Appendix D.
3. Replacing the recommendations set out in the Report with the following:
 - “1. That Council receive the reports prepared by Hemson Consulting Ltd., Review Of Municipal Growth Financing Mechanisms and Determination Of Regulatory Fees To Finance Growth: Technical Report, dated August 31, 2016 (attached as Appendices A and B) as information.
 2. That the Impact Fee By-law (draft attached as Appendix C) which will apply an impact fee effective May 1, 2017, for residential development in New Communities and Emerging Communities as set forth in Our Winnipeg and Complete Communities, outlined in bold in Appendix D be enacted, and that for the purposes of the Impact Fee By-law, the following be established:
 - A. that the fee amounts increase on January 1 of each year by the rate of construction inflation for the previous year as determined by the Chief Financial Officer;
 - B. an administration fee for refunds in the amount of \$100.00;
 - C. an application fee for Director review in the amount of \$100.00; and
 - D. an appeal fee in the amount of \$250.00.

Report – Executive Policy Committee – October 19, 2016

DECISION MAKING HISTORY (continued):

EXECUTIVE POLICY COMMITTEE RECOMMENDATION (continued):

3. That Council establish the following as Phase One of the Impact Fee Implementation Plan: effective May1, 2017 as fee amounts per square meter of gross floor space in the following five categories for residential development in New and Emerging Communities as identified in OurWinnipeg and outlined in bold in Appendix D:
 - A. Residential: \$54.73 per m2
 - B. Office: \$0.00 per m2 -
 - C. Commercial: \$0.00 per m2
 - D. Industrial: \$0.00 per m2
 - E. Public and Institutional: \$0.00 per m2

4. That Council, with recommendations from the Working Group, may consider rates for implementation for the following:
 - A. non-residential uses in New and Emerging Communities as identified in OurWinnipeg and outlined in bold in Appendix D no earlier than November 1, 2018 – Phase 2
 - B. All uses in all other areas of the City no earlier than November 1, 2019-Phase 3

5. That Council establish the Impact Fee Reserve Fund as follows:
 - A. All funds generated by the impact fee are to be deposited into the Fund;
 - B. The purposes of the Fund are:
 - i. to fund capital projects approved by Council recommended by the Chief Financial Officer with consideration given to the input provided by the Working Group;
 - ii. to pay the costs of administering the Impact Fee By-law and Reserve Fund.

Report – Executive Policy Committee – October 19, 2016

DECISION MAKING HISTORY (continued):

EXECUTIVE POLICY COMMITTEE RECOMMENDATION (continued):

6. That the Winnipeg Public Service report to Council every 24 months with the results of a review of the impact fee, which must include consideration of recommendations provided by the Working Group and alignment of the impact fee with OurWinnipeg.”
4. Changing the draft Impact Fee By-law (Appendix C to the Report):
 - A. To reflect the content of the altered Report recommendations set out above
 - B. To exempt from application of the fee building or development permits issued within 6 months of receipt of application made prior to May 1, 2017, at the discretion of the Director of Property and Development, where construction begins or conversion takes place by November 1, 2018.
5. That the proper officers of the City of Winnipeg be authorized to do all things necessary to implement the intent of the foregoing.

and submitted the matter to Council.

Further on October 19, 2016, the Executive Policy Committee received from Justin Swandel, Terracon Development Limited, a PowerPoint Presentation titled “Questions All Councillors Should Be Able to Answer”, in opposition to the matter.

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 21, 2016, the Executive Policy Committee laid over the matter to allow Councillor Orlikow to proceed with further discussions with stakeholders, including Members of Council, industry, and the Winnipeg Public Service.

Further on September 21, 2016, the Executive Policy Committee received submissions with respect to the matter from the following:

- Tom Thiessen, Executive Director, BOMA Manitoba, submitted a communication dated September 20, 2016

Report – Executive Policy Committee – October 19, 2016

DECISION MAKING HISTORY (continued):

EXECUTIVE POLICY COMMITTEE RECOMMENDATION (continued):

- Tim Comack, Ventura Land Company Inc., Ventura Developments Inc., submitted a value listing of 369 Stradbrook, and a copy of a communication dated September 13, 2016 from Tacium Vincent & Associates in relation to the proposed fee
- Justin Swandel, submitted Taxed Supported Summaries of the 2008 – 2016 Adopted Operating Budgets, a comparison of Annual Capital Spending across Eight Canadian Municipalities, a page of the Capital Project Summary of the 2014 Adopted Capital Budget, and a copy of City of Toronto’s 2014 – 2023 Capital Budget and Plan.

ADMINISTRATIVE REPORT

Title: Implementation of an impact fee

Critical Path: Executive Policy Committee – Council

AUTHORIZATION

Author	Department Head	CFO	CAO
Georges Chartier	Mike Ruta	Mike Ruta	Doug McNeil

RECOMMENDATIONS

- 1) That Council receive the reports prepared by Hemson Consulting Ltd., Review Of Municipal Growth Financing Mechanisms and Determination Of Regulatory Fees To Finance Growth: Technical Report, dated August 31, 2016 (attached as Appendices A and B) as information.
- 2) That Council enact the Impact Fee By-law (draft attached as Appendix C), which will impose an impact fee and will take effect on January 1, 2017.
- 3) That, for the purposes of the Impact Fee By-law, Council establish the following :
 - a) fee amounts per square meter of gross floor space for the following five fee categories:

	Non-Residential Uses				Residential Uses
	Office	Commercial and Retail	Public and Institutional	Industrial	
Fee Amount (per m ²)	\$226.51	\$152.91	\$94.08	\$61.16	\$109.45

and that the fee amounts increase on January 1 of each year by the rate of construction inflation for the previous year as determined by the Chief Financial Officer;

- b) an administration fee for refunds in the amount of \$100.00;
- c) an application fee for Director review in the amount of \$100.00; and

- d) an appeal fee in the amount of \$250.00.
- 4) That Council establish the impact fee Reserve Fund, as follows:
- a) All funds generated by the impact fee are to be deposited into the Fund;
 - b) The purposes of the Fund are:
 - i) to fund capital projects to the extent that they are determined by the Chief Financial Officer to be growth-related; and
 - ii) to pay the costs of administering the impact fee By-law and Reserve Fund;
 - c) The Chief Financial Officer is the manager of the Fund; and
 - d) The purpose of the fund may only be changed by a 2/3 majority vote of Council.
- 5) That the Winnipeg Public Service report to Council within 24 months of implementation to provide an update on the impact of the impact fee which will include a review evaluating the alignment of the impact fee to the *OurWinnipeg* policy.
- 6) That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

The City of Winnipeg's 2016 Budget authorized an expenditure of \$250,000 to "study and review smart growth funding options, including a regulatory growth fee." Following a request for proposals process, Hemson Consulting Ltd. (Hemson) was awarded a contract to conduct the growth study for the City. Hemson prepared two reports entitled Review Of Municipal Growth Financing Mechanisms and Determination Of Regulatory Fees To Finance Growth: Technical Report (Hemson's Reports), copies of which are attached as Appendices A and B, respectively, for Council's information.

Based on the analysis provided by Hemson's Reports, a by-law creating a new financial mechanism to fund growth is being proposed (draft attached as Appendix C), which requires enactment by Council before it can be implemented. In addition, a new reserve fund is being proposed, which only Council can approve.

EXECUTIVE SUMMARY

Over the last decade, the City of Winnipeg (Winnipeg) has experienced significant growth in population, which in turn has resulted in new housing, businesses, jobs and a vibrant community with many opportunities. In the next decade, Winnipeg is expected to continue experiencing robust growth, which will require significant investment in community services, transit, transportation, police and protection services, water and waste, and other areas.

The City of Winnipeg Charter identifies the purposes of the City of Winnipeg as including the development and maintenance of safe, orderly, viable and sustainable communities, and the promotion and maintenance of the health, safety, and welfare of the inhabitants. *OurWinnipeg* establishes a vision for Winnipeg that promotes a socially, economically and environmentally sustainable city that offers a high quality of life that current citizens expect and that prospective citizens will value. The proposed impact fee will help position Winnipeg to achieve this vision and ensure that future growth and change is supported by adequate investment in the required infrastructure. Some key findings from Hemson's Reports include:

- In Winnipeg "Growth does not pay for growth";
- Winnipeg is one of the few cities in Canada that has not implemented an infrastructure-related growth charge of some nature;
- New development could be assessed the fee at the time a building permit is issued; and
- There are examples of municipalities who have implemented exemptions or discounts in some form.

Unlike most major Canadian cities, the City of Winnipeg (the City) does not currently impose any fee designed to recover the costs of infrastructure external to new development from developers, builders or property owners who are engaged in development. The City's legislative authority to impose fees under Part 6 of *The City of Winnipeg Charter* (the Charter) differs from that of most other major Canadian cities and other Manitoba municipalities who have been given specific legislative authority in their planning legislation to impose development cost charges or "DCCs".

However, under the *Charter*, the City has broad authority to impose fees for a variety of purposes, including applications, permits, licenses, consents, approvals, and other matters in respect of the administration of the Charter and the affairs of the City. Furthermore, the *Charter* states that the powers of the City are stated in general terms to give broad authority to Council to govern the city in whatever way Council considers appropriate within the jurisdiction given to it under the Charter or other legislation, and to enhance the ability of Council to respond to present and future issues in the city.

The Winnipeg Public Service has concluded that these and other empowering provisions in the *Charter* grant Council the authority it requires to enact the Impact Fee By-law (the By-law) proposed in this Report, a draft of which is attached to this report as Appendix C. The goal of the impact fee (the Fee) which would be imposed by the By-law is to assist the City in paying for the costs associated with managing and accommodating growth in Winnipeg thereby reducing the need for these costs to be paid for by taxpayers.

In this regard, the City has prepared the By-law which includes the following:

- Fee collected at the time a building or development permit is issued;
- Fee calculated per square metre on all residential and non-residential new construction. The fee amount will vary based on the following 5 categories:
 - (i) Residential: \$109.45
 - (ii) Office: \$226.51

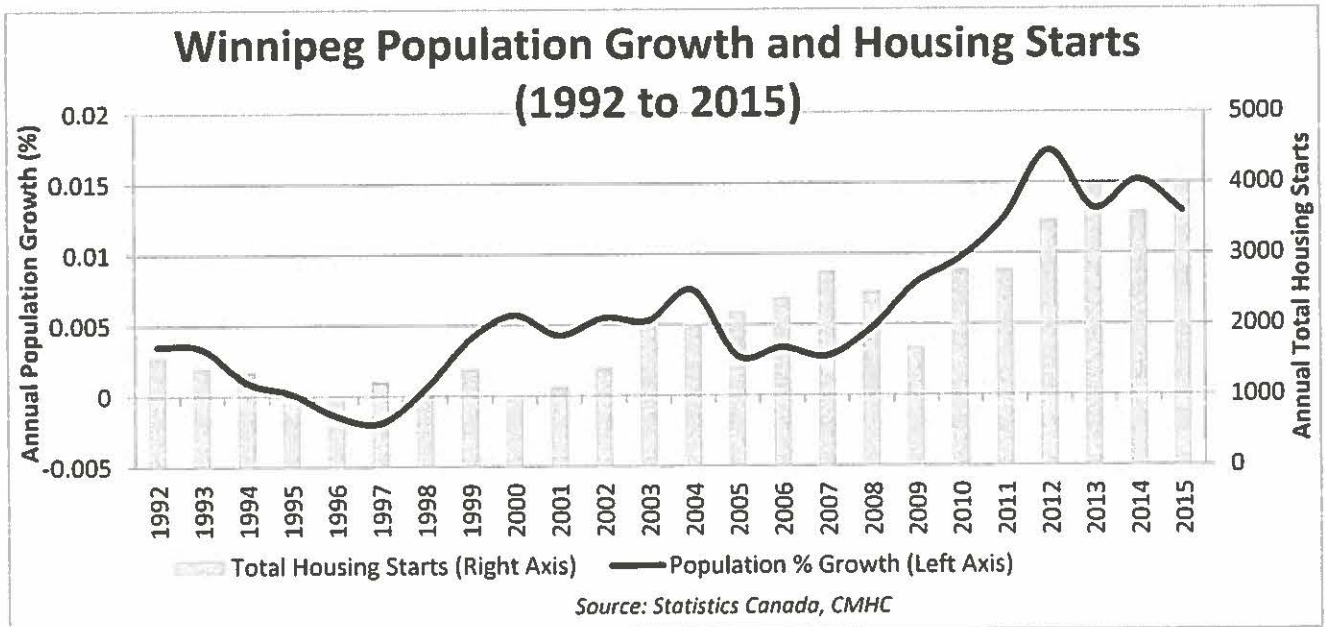
- (iii) Commercial/Retail: \$152.91
- (iv) Industrial: \$61.16
- (v) Institutional: \$94.08;
- Exemptions relating to affordable housing and home renovations;
- Hearing body for appeals; and
- In force and effect January 1, 2017.

To provide some context in respect of the above, the residential square metre fee amount proposed above calculated for an 1,800 square foot home (167 square metres) (representing the average new build dwelling size) would result in an impact fee of \$18,303.

The impact fee revenue collected will be deposited into the impact fee Reserve Fund and used to fund capital projects to the extent to which the Chief Financial Officer (CFO) has determined that they are related to growth. A 2/3 majority vote of Council would be required to change the purpose of the Reserve Fund.

IMPLICATIONS OF THE RECOMMENDATIONS

Since 2005, the population of the City of Winnipeg has grown by more than 70,000 people, which has translated into more than 30,000 new housing starts. According to the Conference Board of Canada, this strong growth is anticipated to continue over the next several decades, with the City's population anticipated to increase from 718,000 in 2015 to 923,000 in 2040. Growth provides many benefits to our community but also has a significant impact on the City's operating and capital costs and revenues.



If the recommendations of this report are concurred in, the Public Service will operationalize the impact fee program. This program will better position City Council to invest in services and infrastructure to accommodate growth and change. More specifically, a number of benefits include:

- Fairness and Equity – the burden of paying general infrastructure shifts from the general public to those who require, benefit from and use the infrastructure.
- City Building – the impact fee program is rooted in the City's existing policy framework, including *OurWinnipeg* – our city's long-range development plan – and will support the efficient allocation of scarce resources and encourage infrastructure investment consistent with the City's goals and objectives for community building and sustainability.
- Sustainability – the impact fee program builds on the concept of the 3 pillars of sustainability (social, economic and environment) and the belief that current generations should capitalize on existing and future assets without placing a burden on, or impacting future generations, or the environment.
- Diversification – the impact fee program provides for a more diversified stream of revenues for the City and reduces the reliance on property taxes. Reliable alternative funding sources promote fiscal stability and the orderly provision of infrastructure.

HISTORY/DISCUSSION

Background

Winnipeg has gone through a period of growth that has impacted the City's operating and capital costs and revenues. Annual population growth rates in Winnipeg have increased from an average of approximately 0.5 per cent between 2002 and 2005 to approximately 1.5 per cent between 2012 and 2015. Population growth is expected to remain relatively strong over the coming decades, with Winnipeg's population anticipated to increase from 718,400 in 2015 to 922,600 in 2040.

Recent population growth is also reflected in housing development, with annual growth rates reaching nearly 3 per cent in recent years. In 2015, there was a total of 291,900 households in Winnipeg. This number is expected to grow to 391,900 by 2040.

This growth requires significant capital and operating investment. The City's planning policy framework recognizes the need to plan for this growth while supporting sustainability and economic growth. Currently, the majority of city-wide capital costs are funded through property taxes. Further, the City has frequently frozen or reduced property tax rates since the late 1990s, resulting in tax rates that are significantly lower than comparable Canadian municipalities.

As a result of limited revenues and competing capital funding priorities, the City is experiencing a deterioration of existing infrastructure and a growing city-wide infrastructure deficit. The infrastructure deficit is expected to reach a total of \$7.4 billion by 2018, including \$3.6 billion in development-related infrastructure deficit. The majority of the development-related deficit relates to transportation infrastructure.

As illustrated, growth is placing pressure on public infrastructure and services and on City Council to invest in additional capacity to accommodate growth. With relatively strong

population growth and development expected to continue well into the future, funding new infrastructure for expanded City services will continue to be a challenge.

Studying Growth

For more than a decade, the Public Service has studied innovative financial mechanisms to support growth management, without raising property taxes. In 2005, the City completed the Financing Infrastructure Related to Land Development study and in 2013 the City conducted a study on Growth Development Charges.

On May 27, 2016 Hemson was awarded a contract to conduct a growth study for the City. The general scope of the work undertaken by Hemson includes the following:

- Determination of growth-related costs and revenues:
 - Define best practice methodology to assess growth-related City of Winnipeg costs and revenues;
 - Compare past growth-related cost and revenue reviews conducted on the City of Winnipeg against best practice methodology; and
 - Following best practice methodology, carry out a new analysis to determine City of Winnipeg growth-related costs (operating and capital expenditure; current and expected) and growth-related revenues.

- Determination of a growth financing implementation framework:
 - Define best practice by researching growth finance models used in other Canadian or international cities;
 - Apply those best practices to the City of Winnipeg and prepare recommendations for the implementation of a model for financing growth including rules and procedures for administration.

Hemson conducted industry consultations as part of its process on July 19, 2016 and August 18, 2016.

Hemson's Reports

The chart above illustrates actual population growth which has a direct correlation to new construction. Winnipeg has experienced continued population growth which results in increased demand for new construction and increases pressure for new and improved infrastructure. Other jurisdictions across Canada have found that the introduction of legislative charges has not impacted growth.

Currently the City depends on property taxes and fees to pay for infrastructure improvements. However, property taxes and fees have not kept pace with demand for services as noted above in reference to the significant infrastructure deficit that Winnipeg faces.

Hemson prepared two reports which are attached in Appendices A and B. A summary of the contents of Hemson's Reports follows:

- (i) Use of funds
 - Reserve funds or accounts should be established for each service adopted under a regulatory fee by-law.
 - It is recommended that Council adopt the development-related capital forecast included in this study, subject to annual review through the City's normal capital budget process. Projects may be removed, added or substituted as long as they are development-related.

- (ii) Timing of payment
 - It is proposed that the regulatory fee be collected at building permit issuance or development permit issuance. These are common collection points in other municipalities.

- (iii) Indexing of fees
 - It is recommended that the City establish a by-law policy for the indexing of fees once they are established.
 - Indexing is commonly done annually (and in some cases semi-annually) in other communities using construction cost indices.

- (iv) Updating of by-law
 - It is recommended that Council update the by-law as needed for changes relating to the application of charges, definitions, exemptions and discounts.
 - The regulatory fees may be commonly updated at three to five year intervals or when there are significant changes to the capital plan or development forecast.

- (v) Public Communication
 - It is recommended that City advertise the adoption of the regulatory fee by-law including the applicable fees.
 - The regulatory fees and rules should be included within a pamphlet that can be posted on the City's website and made available at Planning, Property and Development offices.

- (vi) Discounts and exemptions
 - This section includes examples of exemptions and discounts that Council may wish to consider. Exemptions and discounts result in revenue losses that are typically recovered through tax or utility rates. It is expected that

the City may refine its discount and exemption policy over time following the initial adoption of a regulatory fee.

- The most common land-use exemptions used across Canada are for government buildings. This may include
 - Federal, provincial and municipal buildings, including agencies, boards and commissions;
 - Public schools; or
 - Exemptions for universities and colleges
- Other land-use exemptions or discounts that could be considered are:
 - for non-profit organizations. This may include land uses such as places of worship and affordable housing.
 - economic development incentives. Some municipalities reduce fees within a defined area to encourage investment. Typically, this may include the downtown area of a community where growth has been slow to occur.
 - some municipalities also choose to reduce charges for industrial development, the rationale being that it is more of a “footloose” sector than residential, office and retail uses, making it thereby more sensitive to fees and charges.

(vii) Phase-ins

- The phase-in of regulatory fees is commonly advocated by the building industry when significant increases in charges are proposed.
- As with other discounts, phase-ins result in revenue losses that have to be made up through other revenue sources.

In consideration of the above observations the Public Service is recommending the following:

The Impact Fee By-law

1. Legal Authority

For Winnipeg, the function of managing and accommodating growth and development is fundamental. Section 5 of the Charter specifies that the purposes of the City include developing and maintaining safe, orderly, viable and sustainable communities, and promoting and maintaining the health, safety, and welfare of the inhabitants. The function of managing and accommodating growth and development is integral to fulfilling these purposes.

In order to ensure that new development takes place in a way that is orderly, viable and sustainable within the broader municipality, the City, like other cities throughout Canada, creates, applies and enforces rules in its zoning by-laws governing the uses to which various properties may be put as well as dimensional restrictions on development taking place on properties (e.g. restrictions on the size of buildings, mandatory setbacks and building heights). In order to ensure that the construction that is a necessary part of development results in buildings that promote and maintain the safety, health and welfare of occupants, the City

enforces building codes, another type of regulation. The City also acts in other ways in order to accommodate and manage growth and development. The City engages in the planning and construction of infrastructure to support the new residents and businesses in the new developments – streets, roads, alleys, sewer and water, libraries, recreation facilities, police and fire stations, etc. – both on and off-site. This infrastructure is also necessary to create safe, orderly, viable and sustainable communities and to promote and maintain the health, safety, and welfare of the inhabitants. Together, all of these elements constitute a comprehensive regulatory regime or system to manage and accommodate growth to ensure that it is safe, orderly, viable and sustainable.

Obviously, this regulatory regime or system is expensive. Some of the costs of managing and accommodating growth are currently recovered by the City, through various permit and approval fees as well as through development and zoning agreements. For example, developers typically pay for most of the costs of infrastructure within a development and sometimes boundary roads through development agreements and zoning agreements. Fees for permits and approvals are designed to recover the costs of providing administration and enforcement of that aspect of this system.

However, as Hemson's Reports make clear, not all of the costs of this regulatory system are currently being recovered by the City from the developers, builders or residents/occupants who most directly benefit from the new growth or development. In particular, the costs of off-site infrastructure necessary to support growth are not being recovered by the City.

As noted above, the authority given to the City in its planning legislation differs from that enjoyed by other municipalities in Canada and in Manitoba. Other municipalities have the authority to impose charges, often referred to as Development Cost Charges (DCCs), as part of the development process to recover the costs of managing and accommodating growth. When Council previously requested legislative changes from the Province of Manitoba (the Province), the Province advised that the City had sufficient existing statutory authority to recover the costs of growth.

Since then, the Public Service has reviewed existing City powers – other than Development Cost Charges – that could be used to recover the costs of managing and accommodating growth to the extent that they are currently tax-supported. One such power is the City's authority to impose fees. More recent judicial interpretation of the powers of governments to impose fees has demonstrated a greater willingness to recognize the legitimacy of fees to defray the costs of comprehensive regulatory systems, broadly defined.

As a result, the Public Service has concluded the powers currently available to the City in Part 5 of Charter to impose fees, and especially sections 209 and 210, can be used to support the proposed By-law to manage and accommodate growth. This authority is separate and distinct from any power to impose Development Cost Charges through planning legislation, which would be contained in Part Six of the Charter, and it does not depend on the Province to make any legislative changes or to provide any approvals. A Fee imposed under Part 5 would allow the City to recover more of the costs of managing and accommodating growth and development incurred by the City. And it would do so without the need to resort to increased taxes on

Winnipeggers in general. In other words, the Public Service's opinion is that, if Council wants to do so, it has the legal authority to impose a regulatory fee of the kind proposed in this Report to ensure that growth more fully pays for the costs of growth.

2. impact fee

This Report recommends the introduction of an impact fee through a new by-law (draft attached as Appendix C). The specifics of the impact fee set out in the attached draft By-law are as follows:

(a) Framework of the fee

- The fee would be imposed on the basis of the gross floor area of buildings;
- A different charge per square metre would be imposed in each of five fee categories – residential, office, retail and commercial, public and institutional, and industrial;
- For the purposes of the By-law, garages, decks, porches, 3-season sun rooms, gazebos, and basements would be excluded when calculating the fee for residential development;
- The fee would be imposed on any development, including construction and/or a conversion from one of the five fee categories to another because of a change in the building's use under one of the City's two zoning by-laws.

(b) Replacements, expansions and conversions of buildings

- If a new building replaces a building that was demolished within the previous 5 years no fee would be imposed except to the extent that the new building extends the square footage or involves a conversion to a different, higher priced fee category. Similarly, if part of a building is demolished and rebuilt within 5 years, so long as both are in the same fee category, no fee would be imposed except to the extent that the rebuilt floor space exceeds the floor space it is replacing.
- As a general rule, if a building is expanded, the fee is only payable on the floor area being added. However, the fee would not be applicable at all to an expansion of a residential building unless additional dwelling units are being added
- If all or part of a building is converted to a new fee category, the fee would only be charged to the extent that the new fee category results in a higher fee (ie. the notional fee that would be applied to the existing building or part thereof is subtracted from the fee applicable to the new build or conversion)
- Where a mixed use building is being built or converted, the floor area of the common areas will be assigned to each fee category in proportion to that fee category's share of the entire building. (e.g. if a building is 20% retail and 80% residential, the common areas will be treated as 20% retail and 80% residential.)

(c) Discounts and exemptions

- An exemption would be provided to the following organizations in respect of dwelling units that they agree to provide as affordable housing for at least 10 years.
 - Winnipeg Housing Rehabilitation Corporation;
 - The Manitoba Housing and Renewal Corporation;
 - any level of Government; or

- o any organization who has been approved to receive funding from the Government of Canada or the Province of Manitoba under an affordable housing program.
- (d) Time of payment
- The fee is imposed – and must be paid – before a building permit or development permit can be issued (but not at time of application).
 - If a building or development permit is amended after it has been issued, an additional fee must be paid to reflect additional square footage or a higher fee category that the amended permit is allowing. Again, this must be paid before the permit is issued.
- (e) Refunds
- If a permit is voluntarily withdrawn by the permit holder before it expires (e.g. if the project doesn't proceed), the entire fee is refunded less an administrative fee set by Council.
- (f) Penalties for non-compliance
- A monetary penalty in the amount of the impact fee applicable to that development is imposed for a failure to pay the fee prior to beginning the development. Effectively, this means that the person then has to pay twice the fee – once for the fee and once for the monetary penalty.
 - In addition, the City could prosecute the offender for violating the By-law. The fine for proceeding with construction or conversion of a building without paying the fee is twice the amount of the applicable fee.
- (g) Reviews and Appeals
- Anyone subject to the fee can have the actions or decisions of City employees applying the By-law reviewed by the Director of PP&D upon payment of a refundable fee set by Council
 - Any appeal specified in the *Charter* would be heard by Executive Policy Committee. Again, a refundable fee set by Council would apply.

In large part, the structure of the impact fee proposed in this Report corresponds to the recommendations of the Hemson Report. In addition, the fee categories set out in the By-law and the amount of the proposed fee in each category have been determined on the basis of the data supplied in Hemson's Reports.

The recommended fees per square metre for the five fees effective January 1, 2017 are as follows:

Residential	\$109.45
Office	\$226.51
Commercial/Retail:	\$152.91
Industrial:	\$ 61.16
Institutional	\$ 94.08

These fees would rise by the rate of construction inflation, as determined by the Chief Financial Officer. This increase would take place on January 1 of each year, unless Council had established a new fee within the previous 12 months.

The proposed fees for refunds, applications for review by the Director, and appeals to Executive Policy Committee, are based on the estimated costs of administration of each of these functions.

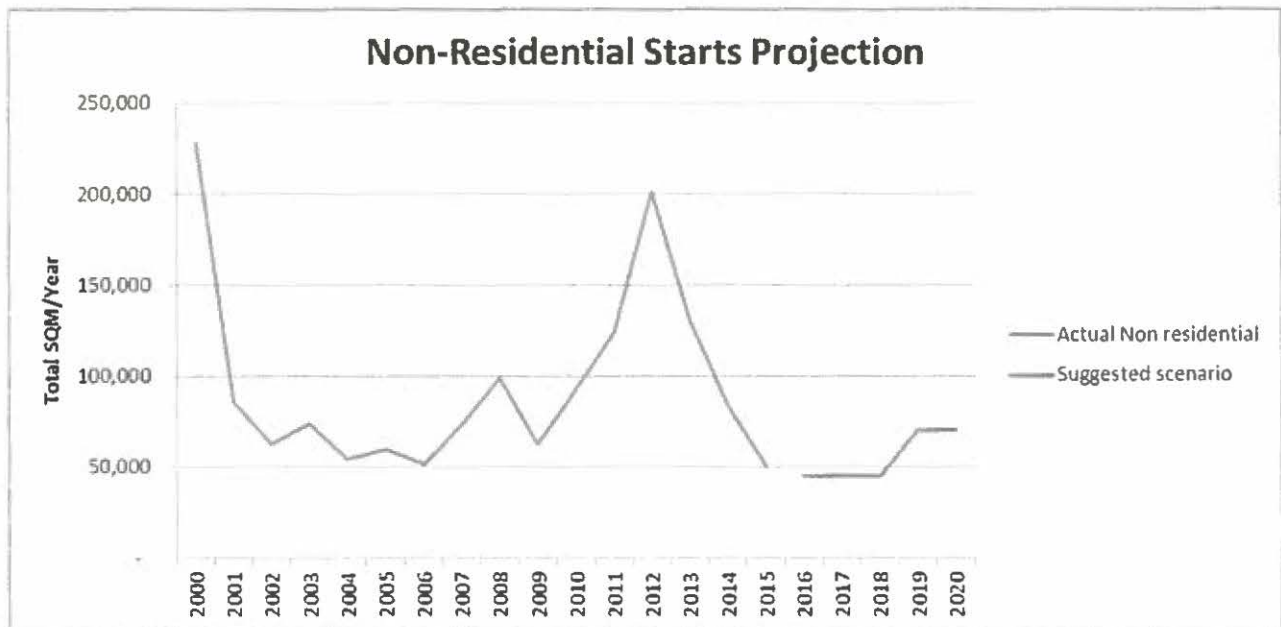
Financial Implications

As noted above, the Public Service recommends adopting the above impact fees to be charged commencing on January 1, 2017. Projected revenue is a function of expected development and the charge per unit. Proceeds will vary year by year depending on development activity.

Revenue Assumptions



- Based on the above chart setting out past and projected residential starts, on a conservative basis the Public Service estimates it will collect \$30.7m of residential fee revenue in 2017. Based on 2015 actual results, residential fee revenue would have been \$49.7m.



- The above chart sets out past and projected non-residential starts. On a conservative basis the Public Service estimates it will collect \$4.4m of fee revenue in 2017. Using 2015 actual results, fee revenue on non-residential starts would have been \$4.9m.

Using the estimates above total residential and non-residential revenue on a conservative basis may be in the range of \$35.1m. Of this total, \$6.8m would relate to Utility capital and the balance or approximately \$28.3m would apply to tax-supported capital.

Impact fee Reserve

This Report recommends that all funds generated through the impact fee should be deposited into the proposed impact fee Reserve Fund. The purpose of this reserve fund is twofold:

- to fund capital projects to the extent that they are determined by the Chief Financial Officer to be growth-related and
- to pay the costs of administering the impact fee By-law and reserve fund.

It is also recommended that the Chief Financial Officer be appointed as manager of the reserve fund.

The primary purpose of the reserve fund is to pay all costs of eligible capital works, including financing charges. As manager of the reserve fund, the Chief Financial Officer would determine which, and to what extent, capital works were eligible for funding. Infrastructure would be eligible only to the extent that the work is determined by the Chief Financial Officer to be growth-related (e.g. aligned with the management and accommodation of growth and development). There are well-developed formulae and analysis tools for making this determination.

Funds from the Reserve Fund would also be used to pay the costs of administration of the impact fee By-law and the impact fee Reserve Fund, including the funding required for new full-time equivalent positions.

It should be noted that the establishment of a reserve fund for funds generated by the impact fee is not required by law, as it is for development cost charges in some other Canadian cities and municipalities. It is being proposed in this Report to provide transparency as to the use of funds generated by the impact fee.

This recommendation differs from the recommendations of the Hemson Reports in that it proposes the creation of a single reserve fund rather than the creation of individual reserve funds for each type of infrastructure. This is being done to make administration of the reserve fund more efficient, flexible and straightforward. If, at the review in 24 months' time, individual reserve funds are determined to be preferable, the change can be made at that time.

Resources

Additional staff will be required to administer the program. An estimate of FTE's required for this purpose both in Property Planning and Development and Corporate Finance will be included in deliberations concerning the 2017 budget process if this report is adopted by Council.

Other

It should be noted that exemptions or discounts added beyond those included in this report will reduce the amount of City revenue available by assessment of the Fee.

In reference to the City's debt strategy, improved Revenue will allow the City to increase its borrowing capacity for future capital projects.

Review Period

As with any new initiative, issues and problems are likely to arise which were not anticipated at the outset. A 24 month review period will give the Public Service a reasonable opportunity to observe the operation of the impact fee and to identify opportunities for improvement.

In addition, a 24 month period will give the public, Council and the Public Service an opportunity to consider how to integrate policy priorities into the By-law.

Summary

Adoption of the impact fee will be transformative and will provide a significant opportunity to ensure that growth does pay for growth without affecting existing property owners. It recognizes the principal that growth creates the need for new infrastructure throughout Winnipeg.

FINANCIAL IMPACT**Financial Impact Statement****Date: September 2, 2016**

Project Name: Implementation of an impact fee**COMMENTS:**

Collection of the impact fees will be accounted for through the impact fee Reserve. Expenditures from the reserve will be identified by Corporate Finance and publicly disclosed on an annual basis. Additional staff will be required to administer this program and these FTE's will be identified in the 2017 budget process.

(Original signed by R. Hodges)

Ramona Hodges

Manager of Finance (Campus)

Corporate Finance Department

CONSULTATION

Consultation with:

- a) Legal Services (as to legal issues)
- b) Property Planning and Development
- c) Hemson Consulting Ltd,
- d) Fire/Ambulance
- e) Community Services
- f) Public Works
- g) Water and Waste
- h) Corporate Finance

OURWINNIPEG POLICY ALIGNMENT

The impact fee program is rooted in the City's existing policy framework, advancing policy directions in *OurWinnipeg* (By-Law 67/2010) and its four direction strategies (*Complete Communities* [By-Law 68/2010], *A Sustainable Winnipeg*, *Sustainable Water and Waste*, and *Sustainable Transportation*) along with the *Transportation Master Plan*.

OurWinnipeg policy directions are reflected through some of the impact fee program's key principles:

Fairness and equity – *OurWinnipeg* commits to providing equitable access to municipal programs, services and facilities. One way to achieve this is for everyone to pay their "fair share" of the costs of new infrastructure and services (03-1, p.74).

City Building – To build "A City that works", *OurWinnipeg* commits to growth management objectives, ensuring "land use, transportation and infrastructure planning efforts are aligned to identify where growth will be accommodated and how it will be serviced" (*OurWinnipeg* p.27). Other key directions for the entire city involve sustainable asset management, integrating transportation with land use, developing more complete communities, and providing sustainable wastewater management.

Sustainability – Direction related to the three sustainability pillars (social, economic and environmental) are found throughout *OurWinnipeg* and its direction strategies. *OurWinnipeg* also provides specific direction to develop and implement tools to support sustainability (02-1, p. 67).

Diversification – *OurWinnipeg* notes that the City must re-think regulation and taxation from the viewpoint of fostering economic growth (01-3, p.50). The 'basics' matter; public safety, water quality, wastewater and transportation infrastructure and public amenities are essential, but attractiveness and better-than-average services are integral to achieving a high quality of life and attracting economic development at a global scale. Diversification of City income streams is

an important way to increase quality of services and add to the general attractiveness of the City.

In its section on prosperity, *OurWinnipeg* calls the City to provide efficient and focused civic administration and governance (Direction 1), and demonstrate visionary civic leadership and commitment to sustainable long-term planning (Direction 5). Policy decisions, programs and services, budget allocation and development activity must all be monitored and evaluated from a long-term sustainability perspective (01-3, p.51). The proposed program responds to this call for visionary leadership that considers current realities but plans for a prosperous future.

SUBMITTED BY

Department:
 Division:
 Prepared by: Tyler Markowsky
 Date: September 1, 2016
 File No.

Attachments:
 Appendix A - Review of Municipal Growth Financing Mechanisms
 Appendix B - Regulatory Fee to Finance Growth – Background Study
 Appendix C - Impact Fee By-Law



Appendix A
 -Comparative Practic



Appendix B - Hemson
 - Winnipeg Regulator



Appendix C - Impact
 Fee By-law - 2016 09

This is **Exhibit "D"** referred to in the
Affidavit of John Tyler Markowsky affirmed
before me this 15th day of March, 2019.

A handwritten signature in blue ink, appearing to be 'J. Tyler Markowsky', written over a horizontal line.

A Barrister and Solicitor in and for the Province of
Manitoba.

Minutes – Standing Policy Committee on Finance – February 11, 2019

REPORTS

**Item No. 6 Impact Fee Reserve Fund – Report for the Period October 1 to
December 31, 2018**

STANDING COMMITTEE DECISION:

The Standing Policy Committee on Finance concurred in the recommendation of the Winnipeg Public Service and received the report as information.

Minutes – Standing Policy Committee on Finance – February 11, 2019

DECISION MAKING HISTORY:

Moved by Councillor Nason,

That the recommendation of the Winnipeg Public Service be concurred in.

Carried

ADMINISTRATIVE REPORT

Title: Impact Fee Reserve Fund – Report for the Period October 1 to December 31, 2018

Critical Path: Standing Policy Committee on Finance

AUTHORIZATION

Author	Department Head	CFO	CAO
M. McGinn	M. Ruta	M. Ruta	D. McNeil

EXECUTIVE SUMMARY

During the period October 1 to December 31, 2018, 265 permits were issued that resulted in impact fees of \$2,498,987.54 being paid, which involved 5 of the 10 'Maps' or geographic areas as laid out in the table below. Since its implementation effective May 1, 2017 to the reporting date of December 31, 2018, 1,778 permits have been issued totaling \$16,527,055.81.

Map	As at December 31, 2018		As at September 30, 2018		During Reporting Period	
	Permits Issued	Impact Fee	Permits Issued	Impact Fee	Permits Issued	Impact Fee
Impact Fee-Map 2 - Wilkes	140	1,412,597.74	117	\$ 1,177,499.62	23	\$ 235,098.12
Impact Fee-Map 3 - Old Kildonan	442	4,163,380.60	372	3,513,880.13	70	649,500.47
Impact Fee-Map 6 - Transcona West	221	1,844,569.69	186	1,542,470.74	35	302,098.95
Impact Fee-Map 7 - South St. Boniface	340	3,123,326.12	306	2,791,146.51	34	332,179.61
Impact Fee-Map 8 - Waverley West	633	5,981,206.86	530	5,001,096.47	103	980,110.39
Impact Fee-Map 11 - North Henderson	2	1,974.80	2	1,974.80	0	-
Total	1,778	\$ 16,527,055.81	1,513	\$ 14,028,068.27	265	\$ 2,498,987.54

RECOMMENDATIONS

1. That this report be received as information.

REASON FOR THE REPORT

At its November 3, 2016 meeting, Standing Policy Committee on Finance directed the Public Service to provide quarterly reports on the Impact Fee Reserve Fund balance, the first report being for the period ending June 30, 2017. This report covers the period October 1 to December 31, 2018.

IMPLICATIONS OF THE RECOMMENDATIONS

As this report is to be received as information only, there are no implications associated with the recommendation.

HISTORY/DISCUSSION

On October 26, 2016, Council concurred in the recommendation of the Executive Policy Committee, as amended, and adopted the following:

That the Impact Fee Reserve Fund be established as follows:

- A. *All funds generated by the impact fee are to be deposited into the Fund, and that the fees collected by each area as outlined on the map in Appendix D be recorded and that Councillors be allowed access to the area information on an ongoing basis with accumulative totals;*
- B. *The purposes of the Fund are:*
 - i. *to fund capital projects approved by Council recommended by the Chief Financial Officer with consideration given to the input provided by the Working Group;*
 - ii. *to pay the costs of administering the Impact Fee By-law and Reserve Fund.*

During the period October 1 to December 31, 2018, 265 permits were issued that resulted in impact fees of \$2,498,987.54 being paid. Since its implementation effective May 1, 2017 to the reporting date of December 31, 2018, 1,778 permits have been issued totaling \$16,527,055.81, involving 6 of the 10 'Maps' or geographic areas as laid out in the table below.

All amounts have been credited to the Impact Fee Reserve Fund. The table below provides a breakdown of the number of permits and related impact fees by map/geographic area.

Map	As at December 31, 2018		As at September 30, 2018		During Reporting Period	
	Permits Issued	Impact Fee	Permits Issued	Impact Fee	Permits Issued	Impact Fee
Impact Fee-Map 2 - Wilkes	140	\$ 1,412,597.74	117	\$ 1,177,499.62	23	\$ 235,098.12
Impact Fee-Map 3 - Old Kildonan	442	4,163,360.60	372	3,513,880.13	70	649,500.47
Impact Fee-Map 4 - Kilcona Park	0	0.00	0	-	0	0.00
Impact Fee-Map 5 - Transcona North	0	0.00	0	-	0	0.00
Impact Fee-Map 6 - Transcona West	221	1,844,569.69	186	1,542,470.74	35	302,098.95
Impact Fee-Map 7 - South St. Boniface	340	3,123,326.12	306	2,791,146.51	34	332,179.61
Impact Fee-Map 8 - Waverley West	633	5,981,206.86	530	5,001,096.47	103	980,110.39
Impact Fee-Map 9 - Trappistes	0	0.00	0	-	0	0.00
Impact Fee-Map 10 - Red River Ex	0	0.00	0	-	0	0.00
Impact Fee-Map 11 - North Henderson	2	1974.30	2	1,974.30	0	0.00
Total	1,778	\$ 16,527,055.81	1,513	\$ 14,028,068.27	265	\$ 2,498,987.54

See Appendix 1 for a view of Maps 2 to 11 within the context of a map of the City of Winnipeg.

FINANCIAL IMPACT

Financial Impact Statement

Date: January 2, 2019

Project Name:

Impact Fee Reserve Fund – Report for the Period October 1 to December 31, 2018

COMMENTS:

There are no financial implications associated with this report.

"Original Signed By"

Mike McGinn, CPA, CA

Manager of Finance

CONSULTATION

This Report has been prepared in consultation with:

N/A

OURWINNIPEG POLICY ALIGNMENT

N/A

SUBMITTED BY

Department: Planning, Property and Development
Division: Financial Services
Prepared by: Mike McGinn
Date: January 22, 2019
File No:

Attachments:

Appendix 1 – Maps 2 to 11

APPENDIX 1

