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January 26, 2024

Our File Number: 4218-001

The City of Calgary

Attn: Jill Floen

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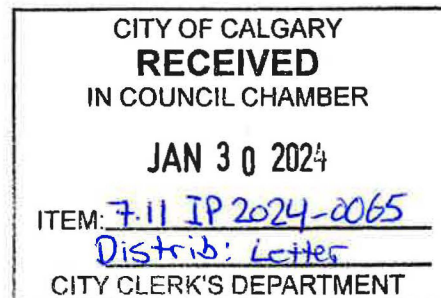
Via email

Infrastructure and Planning Committee

P.O. Box 2100, Stn. M

800 Macleod Trail

Calgary, Alberta T2P 2M5



Dear Sir or Madam:

**Re: Disposition of 1630 90 Ave SW and 8945 14 Street SW
PLAN 8311942; BLOCK 3 and 4**

I am counsel for Palliser-Bayview – Pumphill Community Association.

This letter is a request that Council adjourn the January 30, 2024 consideration of any resolution disposing of the subject property, PLAN 8311942; BLOCK 3 and 4 (the “**Property**”). The lands in question here compose the Public Park referred to in the City’s November 2, 2023 section 70 Revised Public Notice. Those lands were subject to an agreement that they be maintained a public park “in perpetuity”.

The request is predicated on procedural fairness and the need for (as yet undisclosed) relevant records and information in the City’s possession prior to the January 10, 2024 recommendation by the Infrastructure and Planning Committee (the “**Committee**”) to dispose of the Property.

My client’s members oppose the Property’s disposition. In order to properly articulate their opposition to the sale, they need to know the following information:

1. The sale price for the Property;
2. The contractual terms and conditions in any agreement for sale (i.e. a copy of the agreement for sale);
3. The appraisals relied upon to ascertain fair market value of the Property;
4. Any other information relied upon to ascertain fair market value of the Property;
5. Whether the determination of fair market value is 2019 fair market value or today’s fair market value of the Property;
6. If Council is disposing the Property for less than today’s fair market value, its reasons for doing so;

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7. The agreement between The City of Calgary and the project proponent setting out the standards for development for the Property;
8. All records and communications related to or relied on by the City in respect of the 2015 Notice of Motion and decision to designate the Property as “surplus” and
9. Traffic Impact Assessments and other expert reports concerning proposed land use redesignation and development of the Property.

The basis for my client’s request for this information is considered below.

1. Sale Price for the Property

My client seeks this information to understand whether the property is being disposed for fair market value.

My client has its own information and assessment for fair market value. In order to properly articulate whether The City of Calgary is disposing the Property for fair market value, it first needs to know the sale price.

2. Contractual Terms and Conditions

The terms and conditions to dispose the property are material to ascertaining fair market value.

My client needs to see the proposed agreement. Without that document, my client does not have the ability to properly argue whether The City of Calgary is in fact disposing the Property for fair market value.

3. Appraisals

My client requires the appraisals upon which Council’s opinion of fair market value is based. My client should have the right to review those appraisals, contest the assumptions and premises listed therein and produce competing appraisals for the Property.

4. Other Information Relied Upon for Fair Market Value

If Council is relying upon any other information to ascertain fair market value for the Property, that information should be disclosed. Failure to disclose that information, like the failure to disclose the appraisal(s), prevents my client from knowing the case it has to meet to argue that The City of Calgary is not obtaining fair market value for the Property.

Section 70 of the *Municipal Government Act* does authorize disposition of municipal land at less than fair market value. However, whether The City of Calgary is doing so in this instance, as well as how much under fair market value the proposed disposition is, are material considerations to Council’s decision.

5. 2019 Fair Market Value or Today’s Fair Market Value

Administration’s report of January 10, 2024 to the Committee states:

On 2019 May 27, after lengthy collaboration and negotiations with the owner of the Shopping Centre, Administration reported back to Council with the proposed terms and conditions of the proposed sale, which were authorized through UCS2019-0642.

From this statement, my client understands that the sale price for the Property was set on May 27, 2019, with USC2019-0642. My client needs to understand whether that is in fact the case; the date for fair market value is relevant and material to Council's decision to dispose of the Property.

6. Reasons for Disposing the Property for Less than Fair Market Value

As noted above, section 70 of the *Municipal Government Act* authorizes a disposition at less than fair market value.

If Council is considering a disposition at less than fair market value, my client has a right to understand why. The agenda package produced for the January 10, 2024 Committee meeting fails to provide any documentation outlining a basis for a disposition at less than fair market value. That information needs to be provided so that my client can respond and make submissions to the Committee and/or Council as to whether Council should approve the sale.

7. Historical Agreements Relating to this Property

In its report to the Committee, Administration referenced the Caveat registered, not on the Property, but on adjacent lands:

In 2023 August, Administration was notified of an agreement registered on title to the Shopping Centre lands, regarding the use and maintenance of the Property (the "Agreement"). In the Agreement the Property is referred to as "Park Land", and goes further to say, "the City undertakes to utilize the Park Lands only for park purposes", creating ambiguity as to the Property's designation.

Administration analyzes the referenced agreement from a standpoint of whether the property ought to receive further notice, pursuant to section 70 of the *Municipal Government Act*. Regardless of whether that is the correct provision to use, and not section 674 or 674.1 for example, is an issue for another day.

What is material is that there appears to be a history of agreements upon which Administration was unaware. Those historical agreements need to be provided so as to understand the extent of The City of Calgary's commitments to the Property. My client requires those agreements to be able to make full submissions to the Committee.

8. Designating the Property Surplus

The Property was designated 'surplus' following a 2015 motion. The reasons for designating the Property 'surplus' is potentially material to ascertaining fair market value because it denotes the Property's highest and best use and its proper designation. My client seeks access to that information.

9. Traffic Impact Assessment

Traffic impact assessments relating to the Property are material to ascertaining the Property's highest and best use, affecting the land use designations (and therefore the fair market value) of the Property. Please provide this information.

Conclusion

My client seeks an adjournment of Council's consideration of any resolution to dispose the Property. That decision should only be made after my client has had full access to the above captioned records.

I am aware of at least two previous requests for the above captioned records, made on October 25 and November 4, 2023. Those requests were ignored or otherwise refused by The City of Calgary.

Administration often references the *Freedom of Information and Protection of Privacy Act* as a basis for failing to disclose this information. However, section 3(c) of that Act provides full answer to whether these documents can be withheld from my client:

Scope of this Act

3 This Act

...

(c) does not limit the information otherwise available by law to a party to legal proceedings,

This process is adjudicative in nature, and my client has a right to procedural fairness throughout. Withholding documents on the presumptive application of the *Freedom of Information and Protection of Privacy Act* is incorrect.

We trust this matter can be resolved at this stage so as to put the full records before Council and to allow the parties to make full submissions.

Sincerely,

WILSON LAYCRAFT

per:

Richard E. Harrison
Barrister & Solicitor