

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON MUNICIPAL AFFAIRS

Monday, March 12, 1990

TIME — 10 a.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. Edward Helwer (Gimli)

ATTENDANCE - 11 — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Ducharme, Ernst, Hon. Mrs. Oleson

Messrs. Burrell, Carr, Mrs. Charles, Messrs. Doer, Helwer, Kozak, Taylor, Ms. Wasylycia-Leis

WITNESSES:

Mr. David King, Private Citizen

Mr. Trevor Thomas, City of Winnipeg Law Department

MATTERS UNDER DISCUSSION:

Bill No. 62—The City of Winnipeg Amendment Act (3)

* * * *

* (1005)

Mr. Chairman: Will the committee on Municipal Affairs come to order? The committee last met on March 6, 1990, to consider Bills Nos. 61 and 62. Bill No. 61 has passed with certain amendments. Today, we will be considering the remaining clauses of Bill No. 62, The City of Winnipeg Amendment Act (3).

When this committee last met, we were considering the amendment of Mr. Taylor, which was ruled out of order at that time. The ruling of the Chair was challenged and defeated, and the amendment was left standing. We did not vote on the amendment. The committee rose shortly after the amendment was discussed.

At this time, I would like to inform the Members of this committee that there are a number of people who are interested in speaking to the Bill this morning. I would have to remind all Members that once clause-by-clause considerations of a Bill has begun a committee does not hear from the public. If it is the will of the committee to hear from additional presenters, the committee will have to introduce a motion to hear from these presenters.

What is the will of the committee with regard to hearing from interested parties, and how shall we proceed with clause by clause? Mr. Ernst.

Hon. Jim Ernst (Minister of Industry, Trade and Tourism): Mr. Chairman, because of the significance

of some of the amendments that were proposed the other evening, which were not part of the Bill, which were deemed under normal Rules of the House not part of the Bill nor in order in fact, although the committee did overturn your ruling in that case, it is my view that if there are interested members of the public who wish to advise the committee, we ought to hear them. I would move that we so do.

Some Honourable Members: Agreed.

Mr. Chairman: Could you give me something in writing, Mr. Ernst, to that effect, now?

Perhaps while he is writing this up, if it is the will of the committee, if we agree with his motion to hear the presenters, then we will ask the presenters to please come forward.

Mr. David King is the first one. Okay. Do you have a written submission, Mr. King?

Mr. David King (Private Citizen): No, if I may just make a verbal submission, Mr. Chairman. I do, however, have a sketch that might be of some assistance to the committee when I do make my verbal presentation.

Mr. Chairman: Would you like that distributed now?

Mr. King: Yes, if I may.

Mr. Chairman: Please proceed, Mr. King.

* (1010)

Mr. King: Mr. Chairman, my name is David King. I am with the law firm of Taylor, McCaffrey, Chapman. I am appearing on behalf of a company known as Steer Holdings Ltd. My client, the president of that corporation, Mr. Steve Hrousalas, is also in attendance. I am here today basically just to comment on one section of the proposed amendment to The City of Winnipeg Act, which is Section 624(1).

Mr. Chairman, my client operates the restaurant in the City of Winnipeg known as Rae & Jerry's. As you may be aware, there has been, for some period of time, a development proposed for the west half of that site, as shown on the enclosed sketch. My client was proposing to erect an office building on that site. However, on the 14th of November, 1989, the Minister of Environment, Mr. Glen Cummings, issued an order to my client saying that no work could go on with respect to that site without an environmental review.

Over the past year, negotiations have been going on with the City of Winnipeg with respect to the acquisition of that land. My client and I both believe that an offer will soon be received from the City of Winnipeg which will hopefully be satisfactory to both my client and the

City of Winnipeg. Once that offer is received from the property department, it must then go to the Finance and Administration Committee, and then presumably, subsequently, to council if it is approved.

My client's concerns with respect to this particular section are basically as follows: We question why it is necessary, first of all, to proceed with the section. You already have in place The Environment Act, on which the Minister has made a decision that we cannot proceed without a study, at least, on that site. We also submit that by passing this piece of legislation you are interfering with city control over their own development. Now, I appreciate that is perfectly within the prerogative of the Legislature, but you are interfering with city control.

Most importantly, from my client's point of view, this section could, and I emphasize could, impact upon lengthy negotiations between the city and my client. Those negotiations have been carried on in good faith by both sides, and we submit that it would be inappropriate at this time to pass a section which may adversely impact upon the negotiations and thereby cost my client thousands of dollars.

Now, with respect to the wording of the legislation itself, the section says, and I quote: The city shall not, in its own capacity or as an authority under The Rivers and Streams Act, issue a permit. If the city cannot issue a permit, there is nothing in this section I would submit, Mr. Chairman, that says who can, or in conjunction with who, can the city issue a permit. If this process is not clearly spelled out, in our opinion, then it could—and I emphasize again could—equate to an expropriation of my client's property, because he then may not be able to do anything. We want to know how we go about getting a permit if we reach that stage. With respect to 624.1(2), this section does not apply to us, because we do not have a building permit. However, if a permit had been issued or if a permit had been issued to someone else, then we would suggest that this section does equate to expropriation without compensation. Why should this occur?

* (1015)

In conclusion, Mr. Chairman, we submit that we really do not think that this particular amendment is appropriate, because there is already adequate protection in place. There is The Rivers and Streams Act; there are The Environment Act, The City of Winnipeg Act, the Winnipeg Rivers and Streams Authority, all of whom may have some direct input into whatever my client does. If you decided to go ahead with this amendment or some variation thereof, we suggest that perhaps it would be more appropriate to delay and deal with any amendments that you might be making under Part 20 of The City of Winnipeg Act. Finally, we would suggest that if you decide to proceed with this then we would respectfully request that an amendment occur to the proposed amendment to outline the process by which my client could get a building permit at some point in time if the City of Winnipeg does not have the authority.

We would suggest perhaps that an appropriate process would require the prior involvement of the

Minister of Environment (Mr. Cummings). So, if the Minister made an order and the city issued a permit, then fine, everything would be in order. It is really important for my client that this committee and the Legislature do not take hasty action which could interfere with the ongoing negotiations and, therefore, adversely impact on my client. Mr. Chairman, on behalf of my client, I would like to thank the committee for the opportunity to make this presentation. Thank you.

Mr. Chairman: Thank you, Mr. King. Are there any questions to Mr. King? Just a minute, Mr. King—Mr. Doer.

Mr. Gary Doer (Leader of the Second Opposition): Yes, I would agree with you that Section 20 is a more appropriate place to deal with this issue. Unfortunately, the Legislature was promised in November of 1988, a revision of Section 20 in the, quote: next Session of the Legislature.

As you can see from the three Bills, one which was passed, and the two that are before us, we do not have a proposal on Section 20 dealing with these issues. Therefore, we are dealing with other sections of the Bills, the City of Winnipeg Act rather than the appropriate section, Section 20. That being the case, and you asked us to delay, this is our only opportunity in the next period of time to deal with the principle of this issue as opposed to Section 20, that may or may not come in some time in the future, may or may not deal with this issue.

You mentioned a process of negotiations, and we are dealing with the principle in terms of rivers and streams obviously, and the proposed amendment dealing with the principle. How do you feel that the principle of us protecting environmentally our rivers and streams to the public clashes with the principle of fair compensation for a private citizen holding private land, obviously adjacent to or over top of that concern?

Mr. King: Mr. Chairman, of course, we do not have any objection to what The Rivers and Streams Act says. If The Rivers and Streams Act supplies to my client, we would, of course, follow that process. Basically, what I say is—I go back to Section 624.1(1) and it says that the city shall not in its own capacity, or as an authority under The Rivers and Streams Act, issue a permit.

I am just asking, if the city cannot issue it, then how can we get a permit? Who do we have to see? Whose prior authority do we have to get for that? We will follow whatever, we will go jump whatever hurdles we have to jump, whether it is the environment or whatever, but we just want to know the process.

Mr. Doer: Yes, thank you very much. I understand your concern. Obviously the amendment takes discretion away from the city and is much more specific in terms of prohibition on this type of property, of this kind of development.

I guess my further question is: can you propose a way of us dealing on the one hand with the principle of public access to a limited resource, and the other hand, the absolute necessity of fair compensation for

any private landholder being adequately compensated for that principle being injected in the Act? I guess I am trying to say, if we were to proceed with an amendment that did limit the ability of the city to zone this area, what type of amendment would you see, or your client see generally, to deal with the other part of that equation and that is fair compensation?

* (1020)

Mr. King: I would suggest it is not a question of zoning because the land is already zoned commercial and what we want to do with it. Really, I suggest it comes down to a methodology by which something happens. If Mr. Taylor's amendment says that my client has to go and get an environmental impact study and has to be approved by the Minister of Environment (Mr. Cummings) or whatever, we understand that, and that would be fine by us. All we are saying is, if you want to go ahead with it, at least spell out the process which my client must follow, so at some point in time, if he jumps over all the hurdles, he could do his development.

Mr. Doer: If we were to proceed with a similar amendment or the amendment proposed, you would not see any other amendments that would deal with the issue of—given that we are strengthening or making it much more difficult to proceed with the development by this proposed amendment, you would not see any strengthening or further amendment dealing with the other side of that equation as compensation?

Mr. King: I do not see that, Mr. Chairman, because Mr. Taylor's proposal, his second section, really deals with if a permit is issued. We do not have a permit issued, and as long as we have a process by which we could ultimately develop this land, if we had gone over all the hurdles, and as long as the city could not possibly argue that there is some absolute bar from developing that land. If it is difficult, that is fine to maybe develop it. As long as the city cannot come back to us and say you can never develop this land, then that would be our concern.

Mr. Chairman: Thank you, Mr. King.

Mr. Doer: By making this much more difficult in the proposed amendment, it is obviously having an impact on the value. You are saying it is having an impact on negotiations.

Mr. King: We are not saying it has an impact on the negotiations. We are currently waiting on the property department of the City of Winnipeg; we are expecting any day an offer back from them. That offer will be going then to the various authorities. We just do not want to be in a situation where the city could come back and say, well, we have had the negotiations, but now the property is worth a lot less. That is all.

Mr. Doer: We do not have a couple of days either. That is the unfortunate part of this, because we are in the twilight of a Legislative Session that has probably gone on longer than some people want, and not as long as some of us would like to keep it going. We should be honest with you and your client on that reality.

If you understand the will of the Legislature to make these properties more available to the public as opposed to private development, and that is obviously the will, you saw the negotiations that went on a couple of years ago to take over this land, another development in an adjacent area, and that was eventually successful through negotiations. But you had situations where Ministers were paddling down the river to prove it was under The Rivers and Streams Act, and all kinds of bizarre ways of showing, I guess if one could use it, bizarre ways of expressing a public interest of having this type of land in public access and making it very difficult for private development.

I guess my question is, if we cannot rely on some subsequent amendment on Section 20—and we feel quite frankly, as legislators, as Members of Opposition Parties, that we cannot because we feel that commitment has been broken to proceed with Section 20—how do we deal with the other side of that issue? That is, on the one hand, the value of the property to the public, and the other hand is the value of the property to your client.

Is there any other option of us balancing those two principles off in terms of compensation given that we are making the land more restrictive? I guess that is where I am heading. In other words, by giving the land to the public, I do not want to disentitle your client to the value of that land. I am looking for another option here if there is one.

* (1025)

Mr. King: Mr. Chairman, it is difficult for me to answer that question. You have to appreciate the fact that while this amendment impacts right now upon my client, I guess I am also looking down the road when there may be other properties. I would suggest really that the only way that can be fairly dealt with is if there is a process spelled out so that a permit at some point in time, if the client jumps through all the hoops, can—we know the process, and if it is the Minister of Environment plus the city or something along those lines, I think that is probably the only alternative.

Mr. Doer: I keep going back to this. If our goal in this Legislature is to make it much more difficult to get a permit, and that is clearly where we are heading, and you are saying spell out the process for the permit and make it clear that it is still possible, is there another way for us to be going? Our goal is different than your goal. Your goal is to make it possible to get a permit; our goal is to make it much more impossible to be getting a permit. Let us be honest about that. I guess the other issue becomes compensation. Is there another way of looking at getting fair compensation for your client and other clients in the future when our goal is to keep that land for the public?

Mr. King: Mr. Chairman, I guess the only thing that you could do really is spell out the fact that if anybody is adversely impacted by this piece of legislation, then they can come along to use The Expropriation Act or whatever; or if it is the equivalent of expropriation, use that approach.

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Mr. Harold Taylor (Wolseley): Mr. Chairperson, to Mr. King, you did say earlier that you did not have a building permit, and as such, part of the amendment as stated would not then apply. You did go on to say that you felt that The Rivers and Streams Act could apply for what the intent of the amendment is that I proposed. Did I understand you correctly there?

Mr. King: Not quite correctly. I have not come to a firm conclusion, a legal conclusion as to whether it in fact does apply. I just said that there are a number of authorities, pieces of legislation that may apply to this situation. I just do not know whether The Rivers and Streams Act does apply.

(Mr. Burrell, Acting Chairman, in the Chair)

Mr. Taylor: Mr. Acting Chairperson, to Mr. King, I would give him a point, having worked with this Act quite extensively. It is a very old Act, almost 40 years old, and only a small portion of it remains in force, the part that applies to Winnipeg itself. The other two-thirds has been replaced some 15 years back for the rural areas with a new Water Resources Act, the water conservation district piece of legislation.

The Act that remains, the portion that remains for Winnipeg, relates to two things. It relates to not putting obstructions in the water courses, and it pertains to not damaging of the banks particularly by putting loadings on them of various sorts. Those are really the only two general provisions that are there, and that is part of the problem and also part of the motivation to see something rather more clear.

The Member for Concordia (Mr. Doer) mentioned to you as well that we had been waiting for replacement legislation, because the goal has been, since The City of Winnipeg Act review was done in 1985-86, to see modern legislation either attached to The City of Winnipeg Act, linked to it or actually as a portion, a section of The City of Winnipeg Act which would modernize the legislation completely. We do not have anything like that and it is not just on the horizon. I would throw that out to you, that The Rivers and Streams Act, the remaining portion, does not permit this sort of thing, nor does, as far as we know, the Rivers Management Committee which is a newly named committee at the city. It was not given any powers either that would allow for this sort of thing. I am hoping that clarification will help you.

* (1030)

Mr. King: Mr. Acting Chairman, I appreciate what Mr. Taylor is saying. I know that The Rivers and Streams Act says 300 feet within a waterway and this sort of stuff. You get into technical questions of whether this is a waterway, whatever, so I appreciate what he is saying about The Rivers and Streams Act. I guess all I am saying is that there are pieces of legislation in effect, particularly The Environment Act, and the Environment Minister has made an order that could cover off the need for an amendment if it was the will of the committee not to go ahead at this time.

Mr. Taylor: I wonder if Mr. King was aware that the intent solely of this amendment was to preclude the

construction of buildings over waterways quite deliberately as a means of preserving them. It did not put in question the ownership of the land on either side. It very much was saying, as the goal being preservation of a natural water body, that this amendment would not change ownership or what somebody can do on the banks of the creek, because that would still be the right of the owner or owners to do in the future as they saw fit and with the approval of the normal authorities. It did preclude the building over, of other than driveways or roadways, that sort of thing, walking paths.

Mr. King: I appreciated what the significance of the particular amendment was. You obviously get into the questions of, what is the ordinary water course, especially on Omands Creek, when it is dry half the year. So there are lots of interesting arguments about what an owner can do. I guess ultimately though we just did not want to be in a position where my client's ability to deal with his property was totally removed.

Mr. Taylor: Yes, Mr. Acting Chairperson, I just wanted to get an understanding of what Mr. King, and through him his client, understood the rights were on that land. The thing that I looked at is that today we have protection in place on a number of items.

In doing a review of the legislation, and there are a number of pieces of legislation that do apply, my understanding is that any owner along a body of water such as this, and I do not mean to point the finger at your client, that the person who has land on a body of water like this, does not have the right to automatically take volumes of water. They do not have the right to divert or channel the water. They do not have the right to dam it, although we have a few beavers that attempt that from time to time on that water course. They have no right to obstruct the flow in any way, and they have no right to alter the banks or weaken them.

That is my understanding of the restrictions that do exist in that this would be a sixth restriction in the sense of, yes, you can do what you want on the sides, but you cannot obstruct it from view. That is the capping point on this one. I wondered if you were clear on that.

Mr. King: We were clear, Mr. Acting Chairman. We just basically, as I reiterate, wanted to spell out what the process was to get a permit and then make sure that this section in no way removed my client's right to compensation if in fact it was the equivalent of an expropriation.

The Acting Chairman (Mr. Burrell): Thank you. Are there any more questions? If not, then we will go to the second presenter, Mr. Trevor Thomas, City of Winnipeg Law Department.

Mr. Trevor Thomas (City of Winnipeg Law Department): Mr. Chairman, I am not making a presentation on that last matter as I think you are aware.

Last Thursday, we discovered that the former Section 355(4) of The City of Winnipeg Act had not been re-enacted when the Act was re-enacted last Christmas

I guess in English and French. That is, I discovered it. It was known to the assistant city solicitor. He had discussed it with your Legislative Counsel, and somebody wrongly advised him that this section was no longer required.

It was enacted in 1979 to deal with a number of old agreements which the city inherited from Metro, which had inherited them from area municipalities.

The one in question is an old agreement with the Town of Tuxedo which basically required the Town of Tuxedo to service certain privately owned lands as well as some of its own and levy all of the costs against that land on a square-foot or frontage basis and it then had the power to do so. Under The City of Winnipeg Act in 1979 the city did not have the power to levy on that basis. It had to levy at pooled rates, and had it done so, there would have been a shortfall of well over a million dollars which would have to have been absorbed by the city and that would simply have put money into the pockets of the landowners and increased their land value. So this legislation allowed us to complete the agreement the way it was written. About two-thirds of the land was developed; one of the owners went into financial difficulties and development was suspended, and the receiver now wants to continue.

In the absence of this section we would again have the argument over whether the city taxpayers would have to subsidize the servicing costs which again would put a large chunk of money into the hands of the developers with no benefit to the ultimate purchasers. We are simply asking that this section which was dropped really at the city's fault, be put back in so that we can finish this agreement.

Hon. Gerald Ducharme (Minister of Urban Affairs): Mr. Acting Chairman, this has just come forward from the city. I was briefed early this morning. I was to take it that when we did go to you and when we made the initial changes the city had agreed to it. However, they discovered that there were lands that this would apply to, so that is why you would at least like it to be brought in now and we would probably be taking it out, maybe when we are reviewing again later on in a year from now or something.

Mr. Thomas: It can be taken out probably about a year from now, assuming this development is finished and it is expected to be done this summer.

The Acting Chairman (Mr. Burrell): Mr. Thomas or Mr. Ducharme, who is on here?

Mr. Ducharme: I do have an amendment that could be reviewed by the committee. I do not have any problems with it because it does solve your problem that I know you are faced with now. I will be bringing forward the amendment when we get to it later on in the meeting.

The Acting Chairman (Mr. Burrell): Any more questions? We are now circulating the legal opinion that Mr. Ernst requested at the last meeting.

Is it the will of the committee to take a few minutes to study this?

An Honourable Member: Five minutes.

The Acting Chairman (Mr. Burrell): Sure, a five-minute recess.

* (1040)

RECESS

(Mr. Chairman in the Chair)

Mr. Chairman: Okay, we will bring the committee back to order. When we last met, we were dealing with the amendment of Mr. Taylor. Is it the will of the committee to deal with this amendment now? Okay. Mr. Taylor.

Mr. Taylor: I would ask if legal counsel, Mr. Chairperson, would circulate a subamendment to the amendment which is of the same intention. However, there is a clarification that I think the Member for Charleswood (Mr. Ernst) in particular will be pleased to see that does clarify the situation. We just received this a few minutes ago, so I would ask that be reviewed.

* (1050)

Mr. Chairman: Okay, I will read the amendment. That Bill 62 be amended—this is moved by Mr. Taylor,

THAT Bill 62 be amended by adding the following after section 34:

Section 624.11 added

34.1 The following is added after section 624:

Buildings spanning water courses

624.1(1) Notwithstanding any provision of this Act or The Rivers and Streams and Streams Act or any by-law, resolution or regulation, no permit shall be issued by or on behalf of the city or council under this Act or as an authority under The Rivers and Streams Act for the construction or placement in the city of a building or structure which would span a water course, other than a highway, a utility or a building or structure exempted from this section by regulation.

Regulations by L.G. in C.

624.1(2) The Lieutenant Governor in Council may make regulations exempting buildings and structures or classes of buildings or structures from subsection (1).

Retroactive effect

624.1(3) Where, before the coming into force of this section a permit is issued and is subsisting for the construction of a building or structure which spans a watercourse, other than a highway, a utility or building or structure exempted by regulation from subsection (1) the permit is deemed to be cancelled.

(French version)

Il est proposé que le projet de loi 62 soit amendé par adjonction, après l'article 34, de ce qui suit:

Adjonction de l'article 624.1

34.1 La Loi est modifiée par adjonction, après l'article 624, de ce qui suit:

Construction en travers d'un cours d'eau

624.1(1) Malgré toute autre disposition de la présente loi, de la Loi sur les cours d'eau ou d'un arrêté, d'une résolution ou d'un règlement, aucun permis pour l'érection ou la mise en place d'un bâtiment ou d'une construction qui enjambrerait un cours d'eau, à l'exclusion d'une route ou d'un service public ou d'un bâtiment ou d'une construction soustrait à l'application du présent article par règlement, ne peut être délivré par la Ville ou le conseil municipal, ou en leur nom, en vertu de la présente loi ou aux termes de la Loi sur les cours d'eau.

Règlements

624.1(2) Le lieutenant-gouverneur en conseil peut, par règlement, soustraire des bâtiments et des structures ou des catégories de bâtiments et de structures à l'application du paragraphe (1).

Effet rétroactif

624.1(3) Est réputé annulé le permis qui, avant l'entrée en vigueur du présent article, est délivré et est en vigueur relativement à l'érection d'un bâtiment ou d'une construction qui enjambe un cours d'eau, à l'exclusion d'une route ou d'un service public ou d'un bâtiment ou d'une construction soustrait à l'application du paragraphe (1) par règlement.

Mr. Taylor: Yes, Mr. Chairperson, in that we have a little bit different amendment before us by moving that subamendment, I am picking up on a suggestion by the Member for Concordia (Mr. Doer) that we have a short recess to look at the implications of this. I think that would be beneficial to all Members, particularly also in that we have a couple of other matters of correspondence also pertaining to this. I would move that we see a 25- to 30-minutes recess so that we can go over this and then come back and then deal with it I think a little better informed.

Mr. Chairman: What is the will of the committee? Mr. Ernst and then Mr. Doer.

Mr. Ernst: I have no problem with the recess. However, a recess of that length, I think, is going to cause us some difficulties. I would say 10 or 15 minutes would be adequate time to deal with it. Perhaps Mr. Taylor would change his motion accordingly.

Mr. Doer: Yes, I would have no problem with us recessing. I think the Chair will get the will of the committee. I have no problem for a short recess. I would also ask, during that period of recess, perhaps the Government should look at the issue we raised in questioning, that if we were to proceed on the one hand with the regulation, should there not be another anticipated amendment dealing with the whole issue of where "right" is expropriated without compensation, it could be deemed as confiscation of property, whether there should be any other anticipated amendment on this, pursuant not only to the questions I had but also

on page two of the legal opinion—just to circulate it to us.

Mr. Chairman: Okay, so is it the will of the committee that we take a, say—

Mr. Doer: I do not know what the Minister's feelings on that are—

Mr. Chairman: —ten- or fifteen-minute recess? Just a minute, Mr. Minister, would you like to add some—

Mr. Ducharme: I will make my remarks at the time of the amendment before the committee.

Mr. Ernst: Mr. Chairman, perhaps then we could reconvene at 11:10.

Mr. Chairman: Or five after, or 15 minutes, would that be sufficient?

Mr. Ernst: 11:10.

Mr. Chairman: 11:10. Okay, committee recess.

RECESS

Mr. Chairman: Okay, we will bring the committee back to order to deal with the amendment of Mr. Taylor. We will deal with the original amendment which was proposed on March 6th, first. What is the will of the committee, here?

Mr. Taylor: Yes, Mr. Chairperson, I would respectfully ask leave of the committee to withdraw the original amendment.

Mr. Chairman: Okay, according to Beauchesne's 696, "After the question on an amendment has been proposed from the Chair, that amendment can be withdrawn only with unanimous consent at the request of the Member who moved it." Do we have unanimous consent? Agreed? Okay, agreed. The first amendment is withdrawn by unanimous consent.

The second amendment that Mr. Taylor introduced this morning would become the amendment to the clause. Is that the will of the committee?

Mr. Taylor: I have to formally move it.

Mr. Chairman: Okay, yes, you have to formally move it.

Mr. Taylor: Mr. Chairperson, I would move that the motion which was circulated to us just before the recess become the motion which would replace the one which was just removed by leave, and that there be one section added which would be 624.1(4): "and compensation shall be paid to the holder of the permit according to law," —French version: "une indemnité doit être versée au titulaire du permis conformément à la loi"—which will allow for if there should not be any problem with value involved in this thing.

Mr. Ernst: Seeing as how the original motion which was introduced after a ruling by yourself, that it was out of order, has now been withdrawn from the

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committee, I would ask your ruling on whether the new motion is in order before the committee.

Mr. Chairman: The new amendment with the added would be out of order, the same as the old one was, because it is out of scope, so I would have to rule the amendment out of order. Okay, the amendment is out of order. Mr. Doer.

Mr. Doer: I understood the Member for Wolseley (Mr. Taylor) was going to challenge that ruling.

Mr. Taylor: Yes, Mr. Chairperson, I can see that we have the old tricksters at work on the other side of the table here, and I would—

Mr. Chairman: Point of order, the Honourable Minister.

Mr. Ducharme: I did advise the Member, when he said he was going to be bringing that in, that we would go through the procedure. I said to him at the time that would have to be reintroduced the same way we reintroduced the other one the other night. To say that there are tricksters, I disagree with him.

Mr. Chairman: Okay, that is not a point of order.

Mr. Chairman: Mr. Ernst.

Mr. Ernst: On a point of order, the Member for Wolseley (Mr. Taylor) is clearly impugning motives. The fact of the matter is there are rules put into place for the governing of affairs before the committee. Mr. Chairman, we should, quite frankly, abide by those rules. To suggest for a minute there is tricksterism or something going on is clearly out of order, one that the Member for Wolseley should apologize for, because that is not the case at all. We are simply trying to follow the rules of the committee.

Mr. Chairman: Thank you, Mr. Ernst.

* (1120)

Mr. Chairman: Mr. Taylor.

Mr. Taylor: Mr. Chairperson, I will continue now that everybody has gotten that off their chest.

Mr. Chairman: I would just like to advise you, Mr. Taylor, would you please stick to the point and try not to stray from -(interjection)- The word "trickster" is verging on unparliamentary language, so would you like to withdraw the statement, Mr. Taylor?

Mr. Taylor: Not unless you are saying that it is unparliamentary, Mr. Chairperson. We will go on from here. I am not making anything more of the issue. I would like to—

Mr. Chairman: I just caution you. Please continue then.

Mr. Taylor: Thank you, Mr. Chairperson, the fact of the matter is that the motion has the same intent of the motion that was proposed before committee the other day. It has, however, had the benefit of refinement by legal counsel. It has had the benefit as well of looking at the legal opinions that were brought before this committee today and has had one additional change put in place as I mentioned, which is 624.1(4).

I think it also dealt with concerns, for example, that in one of the legal opinions about the CN trestle in The Forks area, and the opinion has been in that is already covered in general as a walking course, that the bridge itself is fine. Any small construction changes to it can be covered by Order-in-Council, which is not a statute solution. Therefore, no further amendment is required there.

The issue of regulation, we have also had advice on, Mr. Chairperson, which deals with the fact that power wires, telephone wires, that sort of thing strung over creeks are not structures and, therefore, are not included in the issue of underground utilities. The issue of utilities being in a pipe under the creek would again not be covered, because what we are talking about is whether you build over the creek and hide it from view.

So with that sort of a comment and the fact that in our recess the Legal Counsel was able to go over these matters means that by taking that little breather and by redrafting the amendment in the fashion that it has been, we have I think been prudent and covered off all the points that have been fairly brought before the committee and as concern.

It is with that intent that I sincerely request the support of the other Members of this committee so that we can put in this rather forward-looking amendment, Mr. Chairperson, and amend The City of Winnipeg Act and protect the remaining water courses from being built over. Thank you.

Mr. Doer: We would support the motion to challenge the ruling of your decision, sir. Without anything personal, I do not understand the rationale of having read Speakers' decisions prior to this on amendments and Private Members' Bills. The latitude allowed Members of this Legislature—we think it is inconsistent with the rights of Members of this Legislature to have it ruled out of order. Therefore, with the greatest of respect, we disagree with your decision and would support the challenge to the ruling that has been made by the Member for Wolseley (Mr. Taylor). If I have heard him correctly, he has challenged the ruling.

Mr. Chairman: Okay, before we can vote on the ruling of the Chair, we must await the copy of the amendment that has included the last clause of Mr. Taylor.

We have the completed amendment with the added section. The ruling of the Chair has been challenged. All those in favour of sustaining the ruling, please raise your hands.

Clerk of Committees (Ms. Bonnie Greschuk): One, two, three, four.

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Mr. Chairman: All those against.

Madam Clerk: One, two, three, four five, six.

Mr. Chairman: The ruling of the Chair has been defeated. Okay, we will deal with the amendment then, with the bottom portion. Shall the amendment pass? Mr. Ernst.

Mr. Ernst: In regard to the amendment, the subamendment or whatever, other kinds of amendments that have come forward out of the Members opposite this morning, Mr. Taylor, it is clearly a motivation by the Liberal Party to attack a particular piece of property in the City of Winnipeg. Mr. Chairman -(interjection)-

Mr. Chairman: Mr. Ernst has the floor.- (interjection)-

Mr. Ernst: Well, if it is okay for you, it should be okay for me.

Mr. Chairman: Okay, Mr. Taylor, on a point of order.

Mr. Taylor: Yes, it is only moments ago that the Member for Charleswood (Mr. Ernst) talked about Members on this side imputing motive and not using correct terminology.

Having worked for years on issues like this, I really take exception to his comment that this piece of legislation, this amendment, is aimed at a single piece of property. Nothing could be further from the truth. He very well knows that.

The fact is we do not want to see the City of Winnipeg, either themselves or through private ownership, building over and losing the water courses in this city forever, as we have had in the case of eight creeks already. For the Minister to make that sort of comment, given his background at City Hall, I really find it very exceptional and objectionable.

Mr. Chairman: A dispute of the facts is not a point of order.

Mr. Ernst: Mr. Chairman, thank you. As I indicated, it is to me clearly aimed at one property, that of the delegation this morning, Steer Holdings Limited, I believe. It is still, in my view, notwithstanding the amendments that have been made, tantamount to expropriation without compensation.

The fact that there is no prohibition anywhere, rather no requirement anywhere for instance, to have an Order-in-Council passed by the provincial Cabinet to have a building permit issued in the City of Winnipeg. For anyone who knows the system and knows how those kinds of things operate, it is ridiculous to have an Order-in-Council required to exempt any particular property.

Mr. Chairman, notwithstanding the protestations of the Member for Wolseley (Mr. Taylor), the fact of the

matter is it is my view that it is still tantamount to expropriation without compensation. Certainly you were, I think, correct in having the matter ruled out of order in the first place. Rules were established for these committees for good reason, to prevent, hopefully, bad legislation, to prevent easily drafted amendments that are irrelevant to the Bill before us.

It is not just that. All you need to do is review the legal opinion to find that there are all kinds of other concerns that are raised by that, some of which we are not even sure of, because the draft of the legal opinion is not a time to conduct significant research.

* (1130)

Mr. Chairman, I have certainly and my colleagues, I am sure, have no problem in dealing with the question of the City of Winnipeg planning jurisdiction, either for rivers and streams or for other areas of the city. The Minister has indicated that we will be bringing forward legislation for Part 20 of The City of Winnipeg Act, the planning legislation, at the next Session of the Legislature, dealing with those particular issues. Clearly, this is where that ought to come, so it is then dealt with in context and in conjunction with all of the other planning sections of The City of Winnipeg Act.

Mr. Chairman, as I indicated, I was of the view that this clearly was aimed at one particular piece of property. My honourable friends from the third Party had a similar problem to face some years ago with an adjacent piece of property. They dealt with it the way it should have been dealt with and it should still be dealt with, and that is either negotiate with the owner or expropriate the property, one of the two. Those are the ways that you deal with this so that everybody's rights are protected. I am amazed that Members of the Liberal Party would come forward with an amendment such as this to virtually scoop the rights of property owners. Quite frankly, it does not matter whether it is this one or any other one; it is still scooping the rights of a property owner in my view. That is unfair and quite frankly I suspect we will be in court as soon as legislation such as this ever was passed. Notwithstanding, it is obviously the way to have dealt with it, and it really relates to the other option.

Now, Mr. Chairman, the last subamendment dealing with Section 624.1(3) adding compensation in the case of a building permit having been issued clearly does not deal with the question of compensation dealing with where a building permit has not been issued. In my view, Mr. Chairman, that is really taking away the rights of an individual, the rights of a property owner and becomes expropriation without compensation. I think that is a very, very unfair way to deal with things. I will not support this position as advanced by the Member for Wolseley.

Mr. Doer: Mr. Chairperson, clearly the Member for Charleswood, the Minister (Mr. Ernst), has clearly stated that the best place to deal with this is in Part 20 of The City of Winnipeg Act, dealing with planning, and that would come forward in the next Session of the Legislature. If the Minister will read the statements from the Minister of Urban Affairs (Mr. Ducharme), he will

read in November of '88, if I recall correctly, and I think I could pull the exact page out if I had five minutes, that we were told last year when we were dealing with parts of The City of Winnipeg Act that Section 20 dealing with planning would come forward in the next Session of the Legislature. The next Session of the Legislature is here. It has been here for a while. We have had three Acts of the Legislature dealing with The City of Winnipeg Act. We are dealing with 61 and 62 now. We have already dealt with another Act earlier. Clearly, we are dealing with amendments in sections of the Act that deal with the public interest but in the areas of dealing with the public interest in not the most appropriate way. I would absolutely concede that we should be dealing with amendments to the planning sections of Section 20 and we should have Section 20 of The City of Winnipeg Act before us now. We do not. So what do we do about it?

Certainly when we were in Government we did negotiate a settlement at Omands Creek with one part of the property. We have a situation where we have one part of the Omands Creek area as a park; then we have another part of the property that is subject to private development; and we have another part of the property in a park again going on to the Assiniboine River. That is a very, very potentially negative situation, Mr. Chairperson, and I would suggest it is not consistent with the public interest to have a park, a private development and then a park again leading into the Assiniboine River in that particular area. We did have tremendous public consultation. The Minister knows that there was a consultation process set up by Urban Affairs, not by the politicians, but by Urban Affairs, with the last development and tremendous citizen participation in the area talking about some of the wildlife features in that area, talking about the real little jewel that we have in that particular area of the city in the middle of the asphalt that we have between downtown and Polo Park, a nice little pastoral jewel that we have. We cannot blow that in terms of the public.

If anybody looks through the many, many presentations made in the last set of public hearings, it is absolutely clear what the public interest is for that section of land and that area of the city. Mr. Chairman, let there be no question about the public intent that we are responsible for carrying out.

In terms of this amendment, there is the exemption clause by Lieutenant-Governor-in-Council, but it does specify a principle dealing with The Rivers and Streams Act that we support.

The other side of that principle, Mr. Chairman, the fair compensation for private owners, I am concerned about. I raised that in my questions to the presenters at this committee. When we dealt with private developers before, even though we had a bias against their holdings jeopardizing the public interest, we did negotiate a fair market value trade-off. I believe it was with Martin Brothers in the former setting, to prevent a six-storey apartment block going in from there. I do believe negotiations are the best way of dealing with it. The problem is, we are going to be out of this Session perhaps in days, we do not have Section 20 of the Act,

so we are in essence expressing the public interest in this area in an ad hoc way, I would admit. It is very important that we deal with it now, because we may have no other opportunity. I think we have to believe that we will have no other opportunity, because we have not had it before. I would like to see this amendment passed.

I would also like the Government to deal with the questions I have been raising about the compensation issue. How best do we deal with the other principle? The one principle is public access to streams, parkland and pastoral kinds of green settings in our province and in our city. That is the one principle, and that is in this Bill.

If there are any inadequacies, as the Member for Charleswood (Mr. Ernst) has indicated, in terms of value for the property, both in terms of the proposed Sub (4) of the amendment from the Member for Wolseley (Mr. Taylor) or if there is another option, I have an open mind. It is never our intent to take away the value of property from private owners in midstream.

So, if this does not do it, then we are open for the Government coming back with an amendment. We can pass this amendment that speaks to the public will on the rivers and streams. If it is inadequate in dealing with compensation, and if the Government feels it is inadequate, as the Member for Charleswood stated, let us deal with that part of the issue as well, because you know I would rather pass the two sides of the equation, not just the one side.

We will support the amendment. It does not prohibit the Government, Lieutenant-Governor-in-Council, from making an exemption to this or an exemption quite frankly to the situation developed in the trestle over The Forks, which I would agree would come into a questionable area under the legal interpretation we received. I think the Government—we should not go either/or.

If we agree with the principle of rivers and streams, let us look at another amendment or possible option that the Government can come forward with to deal with the other principle. That is that a person should not lose value on their property based on public interest. I think it is the public interest to protect it, and I think it is also the Government's interest to look at something else.

I do not see our having to cobble this thing together in the next half hour. If we can deal with one amendment and the Government go back and look at the other side of that equation, I would rather do it right than just do it quickly. So let us deal with this principle and we will support it, but I challenge the Government to come back with the other part of that equation as articulated by the Member for Charleswood (Mr. Ernst). I think we can speak to both principles in this section. I think that is in the public interest and we should do it.

Mr. Ducharme: First of all to the Members, I cannot support the amendment put forward from the Member for Wolseley (Mr. Taylor). We have been criticized as not bringing forward Part 20 of the Act. We did bring

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forward Bill No. 32, which is 100 pages, and anyone who saw that evening and the discussions in regard to new things put on the agenda, in their own mind will realize why you cannot bring forward the total Act. We had full intentions of bringing forward Part 20. However, dealing with the additional zone people, we felt we could not bring in changes to planning without at least dealing with the additional zone people.

At the time, additional zone people had been advised by us; they had been consulted several times. However, they were not satisfied with the type of amendments that were considered by the previous administration or even by consultation with this particular Government or the previous Government. We suggested that to show good faith we would form a Winnipeg Regional Planning Committee, which we have done, and to deal with all problems around the city and with the City of Winnipeg, including now, for the first time in history, the City of Winnipeg, sitting down with these people. They were very satisfied that we would be bringing in the next Session, which probably would deal with probably another 90 pages of legislation dealing with the zoning.

This Minister is committed, and I addressed that. I showed both Members, both critics the agenda, the paper, I would be bringing in at the next Session and that is the obligation, but to bring in an amendment that is dealing with additional zones, I feel that it has shown today, in the last couple of days, what happens when you bring in an amendment at the last minute.

I am going to have to eat those words in a few minutes because I am going to be requesting the staff bring in one for the City of Winnipeg. However, it is a stand pat type of one that was in before, so it is not a new type of legislation we are asking to be brought in. It is one that was there before and they are saying, stay status quo, report it on the books for at least another year and withdraw it a year down the road.

We, at this Government, have probably shown we have no problems with the principles. We have supported the riverfront and river problems that we have. Our Environment Minister (Mr. Cummings), when it was requested from the group that an environment impact study be done, had no problems with that at the time. We have brought forward other White Paper dealing with riverfronts and we will continue to do so. However, to deal with this part of the legislation, when we can deal with it, when we bring in Part 20, I feel at this time I cannot support.

* (1140)

Mr. Chairman: Okay. Are we ready for the question? All those in favour of the amendment proposed by Mr. Taylor on Section 34(1), Section 624(1) to 624(3), shall the clause pass? Mr. Taylor.

Mr. Taylor: A point of order, that was 621.1(4) not (3).

Mr. Chairman: Oh sorry—pardon me. It is Section 624(1).

Mr. Taylor: You are correct, Mr. Chairperson, I apologize.

Mr. Chairman: -(interjection)- Right, okay, but under Section 624 it says .11, that should be only 624.1. There is a typo error there.

Mr. Chairman: All those in favour of the proposed amendment, please say yea. All those against, nay. In my opinion the nays have it.

Mr. Taylor: Yes, Mr. Chairperson, I would like to challenge that interpretation of the vote. Yeas and nays.

Mr. Chairman: All those in favour of the amendment, please raise their hands.

Madam Clerk: One, two, three, four, five, six.

Mr. Chairman: All those against?

Madam Clerk: One, two, three, four.

Mr. Chairman: The amendment has passed. Mr. Doer.

Mr. Doer: I would ask the Minister now, now that we have dealt with that amendment, given the fact that he says he is not opposed to the principle, and we have dealt with the principle, the Member for Charleswood (Mr. Ernst) has raised the other part of the principle: Is the Minister satisfied the other part dealing with compensation is adequately covered in this Bill, and is he looking at another amendment pursuant to the presentations made by legal counsel here and the intervention by the Member for Charleswood?

Mr. Ducharme: To the Member for Concordia (Mr. Doer), he knows where we stand on the amendment. We are Government. We will have to deal with some type of solution to the amendments put forward by this committee and we will deal with it in some way or other.

Mr. Doer: I understand the Minister will deal with it and I respect that. Will he be looking at bringing in another amendment to clarify that position in terms of the manner in which he is going to deal with that issue?

Mr. Ducharme: Not at this committee; not at this time.

Mr. Doer: Does the Minister then expect to at some point this morning adjourn the committee, and we will come back again so that we could look at that issue, raise it appropriately in the public presentation?

Mr. Ducharme: I at this time would feel that we should deal with the Act, deal with the way the amendments dealt with now and, if further amendments are required to deal with the matter of compensation, et cetera, I will bring forward that type of amendment at a later time in the next Session.

Mr. Ernst: Mr. Chairman, the Member for Concordia (Mr. Doer) cannot jump in the water and then expect the Government to throw him a life jacket. He made his own bed; he is now going to have to lie in it. He

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voted for the amendment. Clearly, he had an opportunity to vote against the amendment, but he chose not to. He cannot hide behind the question of broad principles and so on and not accept the ramifications of voting for that amendment. Clearly, I outlined during my address to the motion what the options were. He chose to take his own options and, if he cannot live with those options, then he should not expect the Government to be forced now into trying to doctor up what he put in place together with his colleagues from the Liberal Party. So let not the Member for Concordia seek out that life jacket now that he is drowning in the water.

Mr. James Carr (Fort Rouge): That is ridiculous. A principle that we consider important has now been passed by this committee and it will be part of the legislation. Let me also put Members on this side on the record to say that if the Government believes that it has an amendment which is capable of answering the concerns expressed by the Member for Charleswood (Mr. Ernst) that we are prepared to deal with that. We are prepared to deal with it in the context of this committee either today or tomorrow if the Government needs a day to consult itself on how it can best be handled.

We are gratified that the principle we believe to be in the public interest has passed this committee. We are saying at the same time that if the Government believes it has a principle that it wishes to see better expressed in this legislation, let it not say that it will not get the co-operation of the Liberal Members of this committee to deal with it as soon as today or tomorrow or the day after that.

Mr. Doer: Mr. Chairman, there is a case of two Omands Creek settings going on here. One is the one that was succeeded by our Government where we negotiated a settlement, dealt with it, had it in the public interest, and turned it over to a public lands. The other tale of this city is the tale of the Tories' city where they sat back and did nothing, promised a Section 20, did nothing, et cetera, et cetera. If anybody needs a life jacket, and it may be the wrong term to use dealing with rivers and streams because I do not think we should trivialize the importance of rivers and streams in our community, it is the Government. These things should be dealt with not in a stubborn, partisan way. We should not get our backs up against each other.

If we are dealing with two principles and one amendment deals with one principle and we can, if it is possible, deal with the other principle, I think that improves upon this provision. It does not change the principle at all which we totally support; that is why we voted accordingly. I believe that because the Government has not proceeded with Section 20, because the Government has broken its promise on Section 20. I have Hansard here if the Members would like to read it from when they made promise to deal with Section 20 in the next Session of the Legislature in November of '88.

Because they were unable to negotiate a settlement and did not take the time to anticipate this problem and deal with it effectively in a pro-active way, we are left with passing pieces of legislation in principle. Having

said that, I believe if it is possible to deal with the compensation issues raised today in a better way. Maybe it is not, but if it is, then the Government should act accordingly. We are saying to the Government that we are not stubborn. We are not pig-headed. We have an open mind and we will look at an appropriate amendment if it comes forward.

Mr. Ducharme: It is unfortunate that the Member for Concordia (Mr. Doer), who is the previous Urban Affairs Minister, would have the attitude that you deal with Section 20 before you deal with the people in the additional zones. That is very, very unfortunate that he has that attitude. We sat down with those people and we felt that he could not deal with them, with Section 20, before the people in the additional zones were dealt with. He knows very well that section was not being very successful in regard to the way it was laid out and the way it is now. He keeps talking about a promise to bring forward part 20. I have explained to him the problems that we were faced with when my staff and my administration started dealing with these people. He thinks that Section 20 was written already, and he is absolutely wrong. The section was not written already, and the section will be dealt with, and it was not written already in regard to dealing with Part 20.

Sure I mentioned that we deal with it. This is part of dealing with planning. It is to deal with the additional zone people, so I want that very clear for the record that you have to deal with the people on the additional zones because they felt that they were not dealt with properly. This was the solution of dealing with them.

* (1150)

Mr. Chairman: Okay. We will continue. We passed Clauses 34 and 34(1).

Ms. Judy Wasylycia-Leis (St. Johns): Yes, I would like to move an amendment.

Mr. Chairman: Is it after 34(1)?

Ms. Wasylycia-Leis: Yes.

Mr. Chairman: Before Clause 35? It will be Clause 34(2) or whatever?

Ms. Wasylycia-Leis: No, it would be after Section 5 and it deals with a new matter, so if you want to do 35 first. I do not know the proper procedure.

Mr. Chairman: Is it after Section 35 or before?

Ms. Wasylycia-Leis: 5(1).

Mr. Ducharme: Maybe I could suggest to the Member that I will be introducing a motion before we deal with 45, and we will deal with it at the same time.

Ms. Wasylycia-Leis: As long as we deal with it.

Mr. Ducharme: I have one to deal with right after 43 to clear up part of the way Bill 62 is written, and then

I will be introducing a new one at the city's request, the one that they brought forward earlier today.

Ms. Wasylycia-Leis: Okay. That is good.

Mr. Chairman: Okay, so we will go to Clause 35. Can we deal with Clauses 35 to 39—pass; Clauses 40 to 43, inclusive—pass. The Honourable Minister.

Mr. Ducharme: Mr. Chairman, I know that I will probably have to have leave to introduce this, but it is—not to introduce this one. I would move:

That Section 44 of the Bill be amended

(a) in the proposed section 686, by adding “but subject to sections 687 and 688,” after “Notwithstanding the provisions of this or any other Act.”;

(b) by adding the following after the proposed section 686:

Winnipeg development plan continued

687 Notwithstanding the repeal of provisions in this Act relating to the additional zone, the Winnipeg development plan, as defined in Part 20, is deemed to be a development plan adopted under The Planning Act in any part of a municipality that was in the additional zone, and is subject to the provisions of that Act.

Development permissions

688 Where, before the repeal of provisions in this Act relating to the additional zone, council grants under section 637 a development permission that is subject to conditions, the development permission is deemed to be a conditional approval under subsection 64(2) of The Planning Act, and is subject to the provisions of that Act.

(French version)

Il est proposé que l'article 44 du projet de loi soit amendé par:

(a) insertion, après “ou de toute autre loi”, à l'article 686 proposé, des termes “mais sous réserve des articles 687 et 688.”;

(b) adjonction, après l'article 686 proposé, de ce qui suit:

Prorogation du plan directeur de Winnipeg

687 Malgré l'abrogation des dispositions de la présente loi relatives à la zone périphérique, le plan directeur de Winnipeg au sens de la partie 20 est réputé être un plan directeur adopté en vertu de la Loi sur l'aménagement du territoire pour toute partie de la municipalité située dans la zone périphérique et est assujéti aux dispositions de cette loi.

Permission d'aménagement

688 Si, avant l'abrogation des dispositions de la présente loi relatives à la zone périphérique, le conseil municipal accorde une permission d'aménagement subordonnée à certaines conditions aux termes de

l'article 637, la permission d'aménagement est réputée être une approbation conditionnelle visée au paragraphe 64(2) de la Loi sur l'aménagement du territoire et est assujéti aux dispositions de cette loi.

Mr. Ducharme: The rationale, of course, is to make sure that, when we are dealing with this particular part of the Act, Section 688 provides that the policies related to land use in the additional zone, found and plan Winnipeg, are to continue to guide the use of land in the additional zone until the municipality amends or repeals these policies through the development plan process outlined in The Planning Act.

Then this Section 688 that I am changing ensures that where the City of Winnipeg approved the development application such as a zoning or subdivision, but if the developer has not yet met all the conditions of the approval prior to the enactment of Bill 62, the developer will not be required to submit a new development application. It is to deal with the ones that are in suspense at the present time.

Mr. Taylor: I think I understand what the Minister is proposing, but would it be fair to say that by this amendment what you are saying is that municipalities that have opted out of the additional zone would have a plan on record that they would refer to? Is that the intent?

Mr. Ducharme: Until they adopt their own plan, they would still be governed by this.

Mr. Taylor: Okay, thank you, Mr. Chairperson.

Mr. Richard Kozak (Transcona): Could the Minister detail for us any or all tax impacts on the ratepayers of the City of Winnipeg implied in this amendment?

Mr. Ducharme: There should be none.

Mr. Chairman: The amendment to Clause 44 proposed by Mr. Ducharme in both English and French—pass; Clause 44 as amended—pass.

Now, shall we deal with the amendment of Ms. Wasylycia-Leis? Shall we go back and deal with that amendment?

An Honourable Member: We are still with 4—

Mr. Chairman: No, because No. 45 will be coming.

An Honourable Member: Yes, because I have another one too.

Ms. Wasylycia-Leis: I move in both—

Mr. Chairman: Just a minute. Can we have them distributed? Okay, Ms. Wasylycia-Leis.

Ms. Wasylycia-Leis: I move, in both English and French,

THAT the following be added after section 5:

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Subsection 212(1) rep. and sub.

5.1 Subsection 212(1) is struck out and the following is substituted:

212(1) Notwithstanding sections 772 to 777 of The Municipal Act, council may by by-law prescribe the rate of penalties to be added to taxes remaining due and unpaid.

(French version)

Il est proposé que le projet de loi soit amendé par adjonction, après l'article 5, de ce qui suit:

Remplacement du paragraphe 212(1)

5.1 Le paragraphe 212(1) est remplacé par ce qui suit:

212(1) Malgré les articles 772 à 777 de la Loi sur Les municipalités, le conseil peut, par arrêté, fixer le taux de la pénalité à ajouter aux taxes exigibles.

Mr. Chairman: With the advice of legal counsel here, I would have to rule this amendment out of order because it is out of scope. It does not deal with matters relating to the Bill.

Ms. Wasylycia-Leis: With all due respect, I challenge your ruling.

Mr. Chairman: All those in favour of the ruling.

Some Honourable Members: Aye.

Mr. Chairman: All those against.

Some Honourable Members: Nay.

Mr. Chairman: In my opinion, the Yeas have it.

Ms. Wasylycia-Leis: I would ask for Yeas and Nays.

Mr. Chairman: Okay, all those in favour of the ruling, please, your hands.

Madam Clerk: One, two, three, four.

Mr. Chairman: All those against.

Madam Clerk: One, two, three, four, five.

Mr. Chairman: The ruling of the Chair has been defeated.

Mr. Doer: I think this is an excellent amendment. It deals with the unpaid taxes in the City of Winnipeg. It is actually very consistent with a lot of the philosophy of Members opposite. I am quite surprised that they would disagree with that. I have always heard them give me speeches about the elected representatives of the City of Winnipeg should have the rights to make very major decisions like this. Actually, I think it is very consistent with many of the speeches I have read over the years from the Minister and the Member for Charleswood (Mr. Ernst), where the city should be given

the power to determine the interest rates that should be paid.

Actually, I think this just clarifies the intent of The City of Winnipeg Act to begin with, because I believe that was there already when we amended The City of Winnipeg Act. Clearly, if they can collect more taxes—first of all, I expect that they will be able to deal with the issue of ability to pay unpaid taxes. I think they are elected, and they are pretty mature about these things. So I think it is consistent with the Member for Charleswood's and the Minister's philosophy on this stuff. I am sure they will support it.

Mr. Chairman: Okay, ready for the question—Mr. Carr.

Mr. Carr: Just a word, Mr. Chairperson. We are in favour of the amendment for many of the same reasons. In conversations we have had in the past with the Member for Charleswood (Mr. Ernst) in particular, this amendment is consistent with the philosophy that the elected councillors of the City of Winnipeg ought to be in a position to make these kinds of decisions. We will support the amendment.

Mr. Ernst: Mr. Chairman, so that it not remain on the record that the Government side would be not supporting this amendment, because we will. The problem that we were not supporting was the abuse of the Chair which has been rampant throughout the sitting of this committee.

* (1200)

Mr. Ducharme: Yes, Mr. Chairman, again it could have been handled another way. It could have been handled by regulation, and also I did consult with the City of Winnipeg. As mentioned by the Member for Charleswood (Mr. Ernst), I did bring it up with the city. If they would have felt strongly against this as a result of the motion put forward the other night, and I at least thank the Member for bringing it forward so at least I could bring it up with the city because, as you know, it is not the type of thing you want to bring up to the city without having them come forward. They have not come back to us with any way—they came back to us on the other one that they felt more strongly on. I have no problems with it.

Mr. Chairman: On the proposed amendment proposed by Ms. Wasylycia-Leis, shall the amendment pass? Pass. That is clause 5.1—pass. The Honourable Minister.

Mr. Ducharme: I would ask for leave to introduce a motion that I asked to be circulated. I would ask your indulgence for a minute. I will circulate both, because one would have to follow the other one.

I move

THAT the Bill be amended by adding the following after section 6:

Subsection 364(5) added

6.1 The following is added after subsection 346(4):

Special assessments under old agreement

346(5) Notwithstanding any other provision of this Part, where before January 1, 1972 an area municipality

entered into an agreement with owners, or persons entitled to be owners, of land within an area municipality that provided for the construction of a local improvement, and for a manner of levying special assessments in respect of the local improvement that was different than the manner required under this Part, but which would have been valid if The City of Winnipeg Act, S.M. 1971, chapter 105, had not been enacted, the city may, to the extent necessary to comply with the agreement, levy special assessments, including interest at a rate not exceeding the rate levied by the city in respect of other local improvements during the year, for the local improvement in the manner provided by the agreement; and the provisions of this Part that are not inconsistent with the provisions of the agreement apply, with such modifications as the circumstances require; and the city is deemed to have had this power from the date of the agreement.

(French version)

Il est proposé que le projet de loi soit amendé par adjonction, après l'article 6, de ce qui suit:

Adjonction du paragraphe 346(5)

6.1 La Loi est modifiée par adjonction, après le paragraphe 346(4), de ce qui suit:

Cotisations spéciales aux termes d'une entente antérieure

346(5) Par dérogation à toute autre disposition de la présente partie, lorsqu'une municipalité locale a, avant le 1er janvier 1972, conclu une entente avec des propriétaires ou des personnes ayant droit d'être propriétaires de biens-fonds dans une municipalité locale, laquelle entente prévoyait la construction d'une amélioration locale ainsi qu'un mode d'imposition de cotisations spéciales à l'égard de l'amélioration locale qui différerait du mode prévu par la présente partie, mais qui aurait été valide n'eût été de l'édiction de la loi intitulée "The City of Winnipeg Act, chapitre 105 des "Statutes of Manitoba, 1971", la Ville peut, dans la mesure nécessaire à l'observation de l'entente, imposer des cotisations spéciales, y compris des intérêts à un taux ne dépassant pas le taux perçu par la Ville en ce qui concerne les autres améliorations locales au cours de l'année, relativement à l'amélioration locale en question et selon le mode prévu par l'entente. Les dispositions de la présente partie qui sont compatibles avec les dispositions de l'entente s'appliquent, compte tenu des adaptations de circonstance. La Ville est réputée avoir eu ce pouvoir à compter de la date de l'entente.

Mr. Ernst: Is it within the rules of the committee to accept it as distributed, rather than having the Minister read it all? Can we dispense with the reading?

Mr. Chairman: Is it the will of the committee to accept it as read? (Agreed) And the second part?

Mr. Ducharme: The second part,

THAT section 45 be struck out and the following substituted:

Coming into force

45(1) Subject to subsection (2), this Act comes into force on a day fixed by proclamation.

Retroactive provision

45(2) Section 6.1 is retroactive and is deemed to have come into force on December 22, 1989.

(French version)

Il est proposé que l'article 45 soit remplacé par ce qui suit:

Entrée en vigueur

45(1) Sous réserve du paragraphe (2), la présente loi entre en vigueur à la date fixée par proclamation.

Disposition rétroactive

45(2) L'article 6.1 est réputé être entré en vigueur le 22 décembre 1989.

The reason why I am bringing the first motion, Mr. Chairman, is, as you know, the city made their presentation this morning. We just heard about it on Friday. We had asked them, or circulated to them before, what we proposed to change before in the previous Bills, asked them if they had any problem, and they said at the time, no.

You heard the presentation today saying that they would like to hold back those provisions at least for a year because there are some lands in an area that would be subject to the old agreement. We are not introducing new legislation. They are asking us to at least hold pat and have the same legislation that was in force before under this 6.1 at least until they clear up their lands in that area.

Mr. Chairman: Again, I would have to rule these amendments out of order because they are out of scope and not dealing with the matters at hand. What is the will of the committee?

Mr. Ernst: Mr. Chairman, the Minister, when introducing those amendments asked, by leave of the committee, that he could introduce those amendments. I gathered since no one said there was not leave, that there was; therefore, I suggest that committee had granted leave for those amendments to be introduced.

Mr. Chairman: I am afraid you have to challenge the ruling of the Chair.

Mr. Ernst: Mr. Chairman, let me ask then the question. I appreciate your willingness to be consistent, but is it not within the power then of the committee to grant leave for introduction of amendments?

An Honourable Member: . . . unanimous.

Mr. Chairman: Yes, leave could be granted by unanimous consent. Is it the will of the committee, by unanimous consent, that the amendments be introduced?

Some Honourable Members: Agreed.

Mr. Chairman: Is it agreed by everyone? Is it agreed? I did not hear if it was agreed by everyone.

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An Honourable Member: It is agreed.

Mr. Chairman: Order, please. Order. Let us try and get to this business. Is this agreed by everyone? Agreed. Okay, then we can vote on the amendments.

Mr. Kozak: Once again, Mr. Chairman, with regard to the second amendment, I must ask the Minister, what impact—and I know there are impacts on the ratepayers of the City of Winnipeg—would be felt owing to the second amendment he has introduced?

Mr. Ducharme: If we did not introduce it, there could be a tax implication with the City of Winnipeg taxpayers.

Mr. Chairman: We will deal with the amendment 6.1 as presented by the Honourable Mr. Ducharme. Shall the amendment pass—pass.

Okay, we will go to 45(1) and 45(2)—Mr. Taylor.

Mr. Taylor: I have an amendment to it.

Mr. Chairman: To 45?

Mr. Taylor: To 45, yes.

Mr. Chairman: Just a minute. Mr. Doer, did you have a question on—

Mr. Doer: No, that is it. I believe it will be a similar amendment in terms of the enactment date of various provisions.

Mr. Chairman: Okay.

An Honourable Member: I was going to read it out while they are making the copies of that, if it is any help.

Mr. Chairman: Can someone indicate what this does? Mr. Taylor, could you please explain this? Maybe what this amendment does without reading it, what it does, and then we will have an idea what is what here?

Mr. Taylor: The intent of the motion is that Bill 62 will come into force as soon as it receives Royal Assent as opposed to awaiting proclamation.

Mr. Doer: I think that would be appropriate unless the Minister can—otherwise we would have to delineate certain sections but certainly for example the issue of interest rates for unpaid taxes, it is obviously a crucial time now in the City of Winnipeg. There is a considerable amount of taxes unpaid and if the city can use that extra leverage or flexibility to help our citizens get less of a tax increase this year, we would certainly want that leverage and flexibility to be available as soon as possible, not defer it to another budget year. Certainly the principle of passing the Bill upon Royal Assent I think is preferable for purposes of budget setting, et cetera now.

Mr. Ducharme: The Member for Concordia could change that one on the interest to read right now;

however, you know he could read that that one come into force at a certain date. However, there are sections in regard to the Bill that we have to deal with and we have to deal with in consultation. I am suggesting to him not to have the total Bill come forward on proclamation.

Mr. Taylor: Yes, for the Minister, I apologize. The coming into effect on Royal Assent was not of the whole Act. It was of Sections 5.1 and 34.1. Sorry to have misled the committee. It was not my intention.

Mr. Chairman: Is it the will of the committee that we take a five-minute recess here as requested by the Minister? Five-minute recess.

* (1210)

RECESS

Mr. Chairman: Okay, we will bring the committee back to order. We will deal with the amendment proposed by Mr. Taylor. It is a subamendment of Mr. Taylor of Clause 45. Shall the subamendment pass? All those in favour of the subamendment, please say yea. All those against. In my opinion, the nays have it. Mr. Taylor.

Mr. Taylor: Mr. Chairperson, I think we know which way it is going to go. I would ask for Yeas and Nays, please.

Mr. Chairman: All those in favour of the subamendment, please raise their hands.

Madam Clerk: One, two, three, four, five.

Mr. Chairman: All those against.

Madam Clerk: One, two, three, four.

Mr. Chairman: The amendment is passed.

We will also deal with the amendment of Mr. Ducharme. Clause 45 as amended. Shall the clause pass—pass. You have another amendment?

Mr. Ducharme: I move

THAT Legislative Counsel be authorized to change all section numbers and internal references necessary to carry out the amendments adopted by this committee.

(French version)

Il est proposé que le conseiller législatif soit autorisé à changer tous les numéros d'articles ainsi que les renvois nécessaires pour l'adoption des amendements faits par le présent comité.

Mr. Chairman: Shall the clause pass—pass; shall the Preamble pass—pass; shall the Title pass—pass.

Shall the Bill as amended pass—Mr. Doer.

Mr. Doer: Mr. Chairman, just before we pass the Bill totally, the invitation is still open to the Minister to come

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back to us if he feels something else is necessary dealing with the point raised by the Member for Charleswood (Mr. Ernst). I just want that clearly on the record. We are willing to come back another time if he feels there is something else that should be added to deal with the other issues. I would rather come back for 20 minutes and deal with that issue. If the Minister would like to take 24 hours and look at that, we are willing to meet morning, noon or night to deal with that issue. I think we should do that, or at least take a look at it, and only deal with that one point. I would recommend that to the Minister, but that is his call.

Mr. Carr: Let me reiterate that we are prepared to reconvene this committee before the end of the Session.

We are prepared to leave the Bill open in order to deal with any amendments that the Government may want to bring forward on the subject that was discussed at length here this morning.

Mr. Ducharme: All I can say to Members is, I thank you for the invitation.

Mr. Chairman: Is it the will of the committee that the Bill be reported? Agreed.

Committee rise.

COMMITTEE ROSE AT: 12:20 p.m.

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