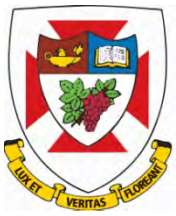
Preliminary Notes: Charleswood Drainage Situation

1985

The Institute of Urban Studies



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PRELIMINARY NOTES: CHARLESWOOD DRAINAGE SITUATION
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The Institute of Urban Studies is an independent research arm of the University of Winnipeg. Since 1969, the IUS has been both an academic and an applied research centre, committed to examining urban development issues in a broad, non-partisan manner. The Institute examines inner city, environmental, Aboriginal and community development issues. In addition to its ongoing involvement in research, IUS brings in visiting scholars, hosts workshops, seminars and conferences, and acts in partnership with other organizations in the community to effect positive change.

PRELIMINARY NOTES

CHARLESWOOD DRAINAGE SITUATION

Draft
September, 1985

FOREWORD

In August 1985, the Institute of Urban Studies agreed to review the background to two questions raised by a controversy over a City of Winnipeg initiative to install a land drainage system as a local improvement in the 'gravel road' areas of Charleswood. This controversy was part of a broader set of issues concerning Charleswood's pattern of development and municipal servicing.

The notes which follow were prepared in a very short time frame and must be considered as preliminary in nature. Fuller treatment and analysis would require more extensive review of a number of matters - e.g., a comparative review of local improvement legislation across Canada; a review of the history and rationale of the local improvement mechanism for municipal servicing and taxation; a review of pertinent court cases; more detailed analysis of Charleswood's drainage and road situation (including reports prepared for the former municipality and more contemporary reports done by the City of Winnipeg); analysis of the use of the city's deferment policy; more extensive interviewing of knowledgeable parties than was undertaken for this paper; and more detailed analysis of different proposals or options to address the Charleswood situation.

Debbie Lyon

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1.0 INTRODUCTION

These notes are concerned with two elements of a current controversy over plans by the City of Winnipeg to install trunk and lateral drainage sewers as local improvements in designated portions of Charleswood.

One element -- the various equity issues associated with the situation -- is complicated. It also essentially is political since current legislation, city policy and practices all contain discretion as to whom is deemed to benefit from local improvements and thus should be responsible for the costs.

A second set of issues involves the requirements and processes for an adverse petition in the event that a municipality proceeds on its own initiative with a local improvement. The general requirements and processes under the City of Winnipeg Act appear to be consistent with other relevant local improvement legislation in Manitoba and Ontario. However, this was the first time in Winnipeg that a mail-in ballot was used (at least since 1972). The research for this paper did not encompass efforts to determine whether there were technical violations of legislative requirements or processes which could constitute grounds for challenging the city in court.

2.0 LOCAL IMPROVEMENTS - PRINCIPLES AND PRACTICES

- Local improvements are public improvements, the physical location and benefits of which are confined to a particular locality. Legislation may vary as to what is defined as a local improvement, and what a municipality's statutory powers are to undertake such works.

- According to Rogers (1), several Canadian legislatures have adopted the principle that works which benefit a few residents are to be paid for by them, whereas those which benefit the municipality as a whole are to be paid for by the municipality out of general funds. The distribution of costs is based on the theory that owners of property affected by the work receive special benefits in excess of the benefits accruing to the general public. Thus, a tax is imposed by special rates on the lands being benefited, with the extent of the burden determined by the special advantages accruing to the property. However, Rogers asserts that works such as a network of streets and a sewerage system which benefit the municipality generally can scarcely be classified as local improvements. In particular, under the Ontario Local Improvements Act (at least in the early 1970s), works involving improvements over a sizeable area taking in several streets,

and for the general benefit of a district, apparently could not be considered a local improvement. (2) Again under the Ontario legislation, a municipal council could adopt the 'local improvement system' requiring that all works which could be undertaken as local improvements be so undertaken, thus preventing a council from paying for these out of general funds. If a council did not adopt this system, there was nothing to prevent it from executing a work other than as a local improvement and paying for it out of general revenues. (3)

- The two common methods of initiating local improvements are: (a) a petition by affected owners, and (b) an initiative of a municipal council which owners may oppose through an adverse petition. Statutory provisions vary. In Ontario, for example, a petition under (a) has to be signed by at least two-thirds of the persons assessed as owners, representing at least one-half of the assessed value of lots (excluding buildings) to be specially taxed under the local improvement process. A municipal council has veto power over a petition (i.e., councils are not obliged to give effect to a petition from owners). Under (b), for an adverse petition to be 'sufficient' signatures must be obtained from a majority of owners representing at least one-half of the value of the lots liable for assessment. The counter petition has to be submitted within one month of the first public notice of the council's intent. If an adverse petition is deemed sufficient, council is forbidden from proceeding with the project or a similar work on the initiative plan for two years. (4)

- Provisions for public notices, petitions, hearings and appeals may vary among legislative jurisdictions. In terms of notice and hearings, a general rule is that since assessment is considered a judicial act the parties affected must have notice and be allowed to be heard. It appears that if proof of service and publication can be supplied, the courts will consider this conclusive -- although publication/service in a manner not authorized may have an effect on proceedings. (5)

- Local improvements generally are assessed on an equalized basis against abutting properties. However, provisions generally are made to assess owners of non-abutting properties where it is deemed they derive certain advantages. Other allowances for inequities may be contained in the legislation, as well as discretion for a council to have part of the costs of a work borne by the municipality as a whole.

- Under Ontario legislation, a municipality has discretion as to whether to pay for renewal of a work, or to share the costs with owners, or to have owners pay for the entire cost -- even if the municipality is under the 'local improvement system'. However, the duty of repair and maintenance of a completed work is the municipality's. (6)

- According to Rogers, local improvement clauses are considered remedial legislation and are to receive such large and liberal construction by the judiciary as will attain the objective of of a municipality's exercise of its statutory powers under the legislation. The exercise of these powers is considered quasi-judicial in character; the courts have no authority to control the exercise of such powers unless there has been a manifest excess of jurisdiction or clear evidence of bad faith. Moreover, a failure to follow procedures to the letter may not be cause for successful action, if it is deemed that no substantial injustice has been done or there is an absence of formalities which are not essential to the validity of the proceedings.(7)

- Under the Municipal Act of Manitoba, sections of interest for comparative purposes with the City of Winnipeg Act include:

  - Section 619 provides that where a municipality is authorized to undertake a work as a local improvement, it may also undertake and carry on as a local improvement the equipping, maintenance, repair and reconstruction thereof.

  - Under Sections 621 and 622, a local improvement may proceed through a petition to council or by council on its own initiative. Key requirements for a petition to initiate a local improvement are that it contain the signatures of at least one-half of the assessed owners representing at least one-half of the value of all lands to be benefited. The requirements are the same for a counter petition in a case where a council proceeds on its own initiative. However, Section 622 (10) provides that where a petition is signed by at least 300 owners, but these do not constitute one-half of affected owners, a council shall hold a hearing to decide whether to proceed with the local improvements by-law and, if so, under what terms.

  - The legislation appears to provide two opportunities for hearings on a local improvements by-law -- at the council level prior to first reading and at the Municipal Board level after first reading. Section 622 outlines requirements for public notices of these hearings/stages in the process.

- Section 627 provides the discretion for a municipality to share the costs of a work through general funds where it is of the view that the improvement benefits the municipality at large or generally, and if it would be inequitable to raise the whole cost by special local taxes.

- As with the Ontario legislation, a council is not bound to act on a sufficient petition from owners who wish to undertake a local improvement. A council shall not proceed with a local improvement for two succeeding years in instances where petitions of objection meet the requirements of sufficiency. (8)

3.0 LOCAL IMPROVEMENTS - WINNIPEG

- It is only in recent years that storm water run-off/urban drainage were integrated into regional planning in Winnipeg, with a focus on the problems of pollution and basement flooding.(9) The Greater Winnipeg Sanitary District was formed in the 1930s to construct and operate a sewage disposal plant and collection system for the City of Winnipeg and adjacent municipalities. Under the Metropolitan Corporation of Greater Winnipeg, the district's duties were taken over by the waterworks, waste and disposal division which also assumed greater powers and regional responsibilities. In terms of land drainage, however, Metro's responsibilities were limited to dealing with storm water introduced to the sanitary sewer system in areas where combined sewers were used. Otherwise, storm water drainage was the responsibility of area municipalities and, in some cases, provincial drainage districts. (10) In 1970, the Local Government Boundaries Commission recommended that surface water and main storm drains should be a responsibility of the regional government. (11) The commission urged that the provision of main storm water interceptors continue to be financed through (a) developers including these costs in the price of land, or (b) establishing local improvement districts with the costs to be levied against the particular area of development. The commission argued that if the regional government assumed the costs of the interceptors, inequities would be created between developers as any new developments would face less direct costs. As well, growth might be inhibited since the rate and direction of development would be dependent on the state of the government's finances and priorities. During the 1970s, urban drainage became a critical element in the timing and scope of development since most areas close to

drainage outlets already were developed. As growth extended further from these outlets, systems required more lead time for construction and were more costly. (12) The waterworks, waste and disposal division moved quickly to develop regional land drainage plans to integrate drainage into other regional services and the city's planning framework. There were three main thrusts of this activity: the 'catching up' of drainage facilities with other required city services for current development; the development of regional drainage plans (including preservation of outlets); and rationalization of drainage criteria (including a manual, guidelines for impoundments, a cost-sharing policy between developers and the city, and other measures).

- The capital costs of water, sewer and similar services generally have been financed through user charges (user rates, development agreements, district and frontage levies). Plan Winnipeg continues this approach. In the case of land drainage works, Section 71 of the plan requires that such works be financed on the basis of a user-pay principle applied to benefiting properties. (13) In a pre-Plan Winnipeg study, it was suggested that the costs and benefits of water and waste services should be reviewed to ensure the methods of assigning costs were commensurate with the benefits obtained and adequately took into account the fact that all services build in a large capacity for future lands which are as yet undeveloped and do not contribute to user fees. It was argued there was merit in charging these lands a fee in accordance with the capacity-to-serve built into present-day facilities. (14)

- The benefits issue in relation to land drainage systems was addressed by Metro in the 1966 version of the Greater Winnipeg Development Plan. Metro noted at the time that there were some intermunicipal studies and discussions on land drainage but these were impeded by the high costs of drainage systems and questions about the sharing of costs. Metro noted that in contrast to a sanitary sewer system which is of general benefit to the whole community (through reduced river pollution), a drainage system benefits only the catchment area that it serves. Costs, therefore, should be carried by the area receiving the benefit. However, because catchment areas do not coincide with political boundaries, there was a need for an alternative option to provide a system that could not always be provided on a municipal basis alone. Metro suggested that the catchment areas should pay the larger part of the cost, but that an argument also could be made that there was some limited general or Metro benefit from controlled flows of storm water and the contribution of an adequate drainage system to the reputation of the Metro area as a place to live and work. (15)

- None of the contacts made during the preliminary research on the Charleswood issue were aware of any specific consideration or undertaking re this municipality's service situation upon unification in 1971-72. The provincial government's paper on the proposed reorganization (1970) cited as one problem the wide disparity in the quality and level of services between municipalities in Greater Winnipeg, a fact frequently not revealed in the levies made for these services. Among other things, the proposed reorganization presupposed region-wide standards of services, to the extent feasible and desirable. The transition was to be allowed sufficient time to occur in an orderly fashion and enable the new municipal council to determine when and if it would take on additional responsibilities. (16) It also was argued by provincial government representatives that amalgamation was not being pursued to save money necessarily, but to increase the effectiveness of area-wide planning and the distribution of services -- i.e., to the government, the main issue was the quality of services provided. (17) Associated with this position on services was the intent to equalize municipal mill rates. Charleswood was among the municipalities to be affected by a net increase in mill rate.

3.1 Legislation and Policies

- Part X of the City of Winnipeg Act contains some 50 detailed sections on the initiation, costing and funding of local improvements. (18) Relevant sections include the following:

  - The definitions of what constitute local improvements include the reconstruction or renewal of the specified works. The section (352) also is permissive in that costs may be levied in whole or in part against the land benefited.

  - The city has the discretion to determine what land will be benefited by a work; what portion, if any, of the cost of the work will be assumed by the city at large; and whether non-abutting land shall be assessed any portion of the cost of the work. The share of costs borne by the city at large is not to exceed four-sevenths of the whole cost except as provided for in the legislation. A decision about the city's share of the cost, if any, is to be based on the opinion of the majority of the whole council as to whether a local improvement benefits the city at large or generally, and whether it would be inequitable to raise the whole of the cost by local special assessments. (See Sections 370 and 383.)

- Council has the discretion to defer or remit the payment of the whole or part of a special assessment in respect of any land benefited by the local improvement (Section 399).

- The legislation contains specific provisions concerning assessments of exceptional properties (e.g., corner lots, land unfit for building purposes, exempt or partially exempt land).

- Provision is made for additional assessment should the first assessment for a local improvement prove insufficient (Section 392).

- Under Section 381, an appeal process is defined covering assessments on any land other than that fronting on the local improvement. The process is to occur prior to proceeding with the work or the passing of a by-law making an assessment.*

- The legislation emphasizes uniform rates for local improvements throughout the city (with allowances for special cases). However, in the case of trunk storm sewers, the rate must be uniform for the lands to benefit within a defined special assessment district but need not be uniform with other special assessments levied elsewhere in the city for construction of trunk drainage systems (see Sections 353-355). In addition, there is provision for assessing some lands at a greater rate than others within an area owing to a greater benefit to be derived (Sections 376 and 389).

- Owners may petition or city council may initiate a local improvement. Where owners petition, they need to obtain the signatures of those representing at least three-fifths of the frontage (as defined in the act) to be benefited. The city is required to mail a notice of the filing of such a petition to owners of land to be benefited who have not signed the petition. This notice is to be sent prior to receipt of the petition by council. Upon receipt of the petition by council, and satisfactory evidence of notice to non-signers, council may within the succeeding two years proceed with the work without further notice. Where council initiates a local

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* This applies to the Charleswood situation. The city had sought a legislative amendment to prevent delays due to this process. The amendment was too late for the last session of the legislature, however.

improvement, a sufficient adverse petition must contain the signatures of owners representing at least three-fifths of the total frontage or area to be assessed. The petition must be submitted within one month of the publication of council's intent. If the petition is successful, the work shall not proceed as a local improvement and no second notice with respect to the same improvement shall be given by council within two years thereafter. (See Sections 372-377.)

- With respect to city-owned lands, the city is regarded as an owner who is entitled to petition for or against the work but has refrained from doing so (Section 373(4)). According to information presented to council in 1984, 127 of the 2,002 acres affected in Charleswood were city-owned. (19)

- In 1978, council approved an 11-point policy on deferment of local improvement assessments, spurred in part by a situation which arose on Kilkenny Drive. Among the policy's provisions:

  - Some nine types of local improvements are covered including land drainage sewers.

  - Applications for deferment should clearly indicate specific reasons why the owner would experience hardship and the property assessed would not benefit directly from the proposed improvement. Among the suggested conditions which would justify deferment are: "privately-owned property adversely and unfairly affected by housing or other development authorized by the City of Winnipeg" and "double frontage lots which have the potential for additional development but which is not planned or contemplated".

  - An owner is permitted at any time to pay the deferred levy at the original cash cost or the commuted value of the levy outstanding on terms no less favourable than those current for all other owners.

  - There are provisions for reactivation of the deferred levies at the same cash value or amortized cost as required in the original assessment by-law. This could occur with subdivision or resubdivision of the land, or rezoning, or granting of a variance changing land use.

It was noted in the report to council that the ability of owners to pay the deferred levies on the basis of the original assessment by-law would leave the city at large with responsibility for the interest lost on those levies.(20)

- A 1979 policy concerning the construction, regrading, re-gravelling and maintenance of granular surface roadways had significant implications for Charleswood due to the extent of such roadways in the area. The policy and associated by-law were subject to unsuccessful court challenges by the Charleswood Homeowners Association. Among the provisions:

  - In terms of construction/reconstruction of granular roads, the city was encountering limited success in its general efforts to have financing supported as a local improvement. It was argued, however, that the burden of these works should not be borne solely by the city at large since city funding of works directly benefiting private property is contrary to the philosophy of local improvements. Council's compromise was that existing unimproved rights-of-way in Winnipeg are to be constructed to all-weather granular surface standards as a local improvement. For properties zoned agricultural, the maximum assessable frontage for a single property is limited to 300 feet, with the city at large funding the balance of the cost.

  - In terms of maintenance and regrading/regravelling of existing granular roadways, council decided to end a policy in which the city at large was responsible for maintenance in perpetuity. Instead, such roadways constructed as a local improvement are to be maintained at the expense of the city at large for a maximum of three years following completion of construction. Beyond this point, the city is to do only those works necessary to keep the roads passable (basic grading only). Restoration of the roadways to the original local improvement construction standard must be done as a new improvement. (21)

- Time restrictions on this preliminary research did not permit detailed study of how local improvements have been handled in areas which might face similar circumstances as Charleswood, albeit on a much smaller scale. There is one example which readily illustrates the discretionary nature of council decision-

making on local improvement issues, although there may be differences of view as to what, if any, parallels may be drawn with the Charleswood situation. In 1977, a municipal election year and a year in which extensive basement flooding had been experienced during heavy rains, council approved a combined and separate sewer relief program, estimated to cost some $59 million and to be funded wholly by the city at large. The recommendations to the council from the executive policy committee were for a 12-year program at $5 million per year to be financed on the basis of 50 per cent city at large and 50 per cent levied against drainage districts. Amendments made during debate on the program accelerated the timing and annual expenditures ($10 million over six years), and placed the full burden on the city at large. Some 75 per cent of expenditures were to be directed to combined sewer districts (i.e., the inner city and pre-1960s suburban development). The older combined sewers, in particular, were incapable of coping with the rapid storm water run-off associated with the impervious nature of contemporary urban development. Basement flooding and discharges of untreated storm water/sewage resulted during wet weather. (22)

4.0 CHARLESWOOD - BACKGROUND NOTES

- Formed out of Assiniboia as a separate municipality in 1913, Charleswood essentially was a rural/rural-residential area up to the 1960s. Prior to 1925, small developed residential areas were scattered throughout the municipality. Between 1925 and 1950, development occurred between Roblin Boulevard and the Assiniboine River. South of Roblin, linear housing development took place on streets such as Haney, Oakdale and Fairmont. Some concentrated development occurred in the Varsity View-Lynbrook area of Charleswood East; to the west in Roblin Park (Pepperloaf Crescent), there was a post-Second World War project under the Veteran's Land Act. Development there was on five-acre sites with minimal federal servicing. Population grew slowly prior to the war (701 in 1911; 1,934 in 1941), but by 1951 had jumped to 3,680 and by 1961, to 6,243. In contrast to other suburbs in the Winnipeg area, Charleswood's development was more of a semi-rural nature spread over a wide area with houses on large lots and a significant level of agricultural activity (farming, market gardening, mink ranching). The municipality had an extremely low population density relative to others in the Winnipeg area; it also had a very fragmented land ownership pattern. (23) This fragmented ownership situation may have contributed to the leap-frog nature of the Westdale

development which began in the mid 1960s under a development agreement with the municipality on raw land south of Roblin and just east of the Perimeter Highway.

- Charleswood installed a sanitary sewer system to service existing development in 1962. Ratepayers previously opposed a proposal for a combination sanitary and storm drainage system. The sewer system was put in as both a local improvement and on a district or area charge basis. Owners were given one year to make their individual connections; if they did not, the municipality gave notice that it would install the connections at the owners' expense if the owners did not comply within another six months. In the late 1960s, the municipality was engaged in a study of its storm drainage situation, but apparently was deterred from action due to the costs of a drainage system. As of 1970, all areas except Westdale and Paradise Drive were drained by ditches instead of sewers. The lack of storm drainage facilities was considered the only drawback to urban-type development. (24)

- During the Metro era, much of Charleswood north of Wilkes and east of the Perimeter was perceived as a prospective urban expansion area. Planners recognized the desire of many existing residents to preserve the area's rural-residential character. At the same time, developers were beginning to assemble land parcels. The availability of large sections of undeveloped land, plus the anticipated municipal storm drainage service, were expected to spur urban residential development. (25) Consistent with Metro's policy of contiguous development, and with the need to stage the installation of a storm drainage system, the planners urged that comprehensive residential development be encouraged beginning in specified northern areas of Charleswood East and moving progressively south and west. Infill development was to be encouraged as well as new subdivisions.

- Three types of development appear to have occurred in Charleswood since the 1960s: infill development in the gravel-road areas served by water and sewer; some small, infill-like subdivisions which may or may not be fully serviced; and full-service subdivisions under development agreements. At least one developer, Qualico, extended the drainage system from Eldridge and Laxdal to Beiko to service the southern part of its development near Assiniboine Forest. There are existing developed properties along the route that have not yet tapped into that service; Qualico will be reimbursed when they do.* This kind of front-ending of services

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* Apparently, Laxdal residents successfully petitioned against installation of catchbasins in association with the Qualico drainage sewer.

could be a disincentive to development. There apparently is a lot of land where development is becoming more difficult and normally would not occur because of this front-ending situation. At the same time, developers are continuing to be active in consolidating Charleswood properties. As they acquire larger holdings, they may be more prepared to front-end service costs.

- It has been suggested in media reports of the current controversy in Charleswood that the ditch drainage system is adequate during heavy rains and there is no need for a storm sewer system. However, the ditch drainage apparently is not sufficient during the spring melt. As a result, granular roads get saturated and, in the freezing/melt processes, are subject to extensive damage. In addition, there apparently have been long-standing safety concerns re children playing and walking in the granular road areas (due to the absence of sidewalks and the depth of some of the ditches). These concerns cannot be allayed with the current servicing situation in these areas.

5.0 CHARLESWOOD - LOCAL IMPROVEMENT PLANS

- The issue of the maintenance of Charleswood's granular roads was active through to 1983-84 as a result of a court case and subsequent appeals launched by the Charleswood Homeowners Association. During these years, both the road and drainage issues also were the subject of proposals/reports to the committee on works and operations and meetings of Charleswood property owners. Also in 1983, the provincial legislature passed certain amendments to the City of Winnipeg Act concerning the establishment of special assessment levy districts in which a trunk storm water drainage system could be constructed and the costs levied on benefiting lands at a uniform district rate.

- In August 1984, council approved a land drainage program for Charleswood consisting of the following components:

    - The trunk sewer system, estimated to cost $12.5 million for areas north and south of Ridgewood Avenue, was to be financed by a surcharge on developable or vacant lands (estimated to recover $7.98 million) and successful implementation of a by-law creating a special assessment levy district to raise the remaining $4.54 million (to be distributed as follows: $1.63 million from unserviced developed areas; $2.62 million from developable/vacant areas; and $.29 million from city property). The city

would be required to finance up to $7.98 million of this cost until all or a portion of the total could be recovered as development proceeded on the vacant lands. The surcharge (estimated at $1,500 per lot) was to be increased over time to offset the city's carrying charges and keep pace with rising construction costs.

- Lateral sewers were to be constructed within existing developed areas through successful implementation of a by-law to undertake the works as a local improvement (estimated cost: $4.25 million based on the prevailing city-wide rate of $18 per frontage foot). The works were predicated on the trunk system proceeding; in addition, it was assumed portions of the ditch system would remain to convey water to catchbasins on the lateral or trunk systems.

- The city at large was to be responsible for roadway oiling along the roads where drainage sewers were constructed in the year immediately following the sewer construction (estimated cost: $1.03 million over the five-year installation program). Thereafter, council's policy of requiring this work to be done as a local improvement was to be reinstituted for the affected lands. (26)

- In March 1985, council rescinded this proposed program after legal officials raised questions about the city's ability to impose a special lot surcharge. An alternative financing proposal was sought to provide the trunk system at a cost to home owners similar to that proposed in August 1984. The new financing/development arrangement approved by council included the following components:

  - The special assessment district would be formed, subject to successful implementation of the by-law, with all lots deemed to be benefiting from the trunk drainage system to be assessed an estimated uniform rate of 6.7 cents per square foot. Existing residential lots are considered benefiting to a depth of 150 feet. The city at large will be responsible for the front-end costs of the trunk system for depths beyond the 150-foot mark. Recovery would occur if and when these lots are subdivided at a rate of the then equivalent square-foot levy. The estimated cost of the work to be funded by the special district levy is $5.4 million.

- Another $5.3 million in drainage works are estimated to be the responsibility of developers who will now be expected to fund and construct storm water retention lakes and drainage conduits to serve their subdivisions in the special assessment district. They also will be expected to include additional capacity for adjacent unsubdivided lands or to pay the city a trunk service rate in lieu of a land drainage capacity installed by others.

- Lateral sewers are to be proceeded with as local improvements, assessed at a rate of $18 per frontage foot. Lands benefiting are those fronting on existing sewers and watermains in the special assessment district. The estimated cost is $4.4 million.

- The city at large is to fund the cost (an estimated $1.08 million) of restoring the oiled surface gravelled roadways on each street following installation of land drainage trunk and lateral sewers, subject to reinstatement of council's policy on these works as local improvements once the restoration is completed. (27)

- It should be noted that a substantial portion of the special assessment district is located south of the Ridgewood corridor, an area which is subject to disagreement between the city and provincial urban affairs department as to the placement of the urban limit line in Plan Winnipeg. (See Map 1.) Thus, the proposed program outlined above is conditional on the resolution of this difference.

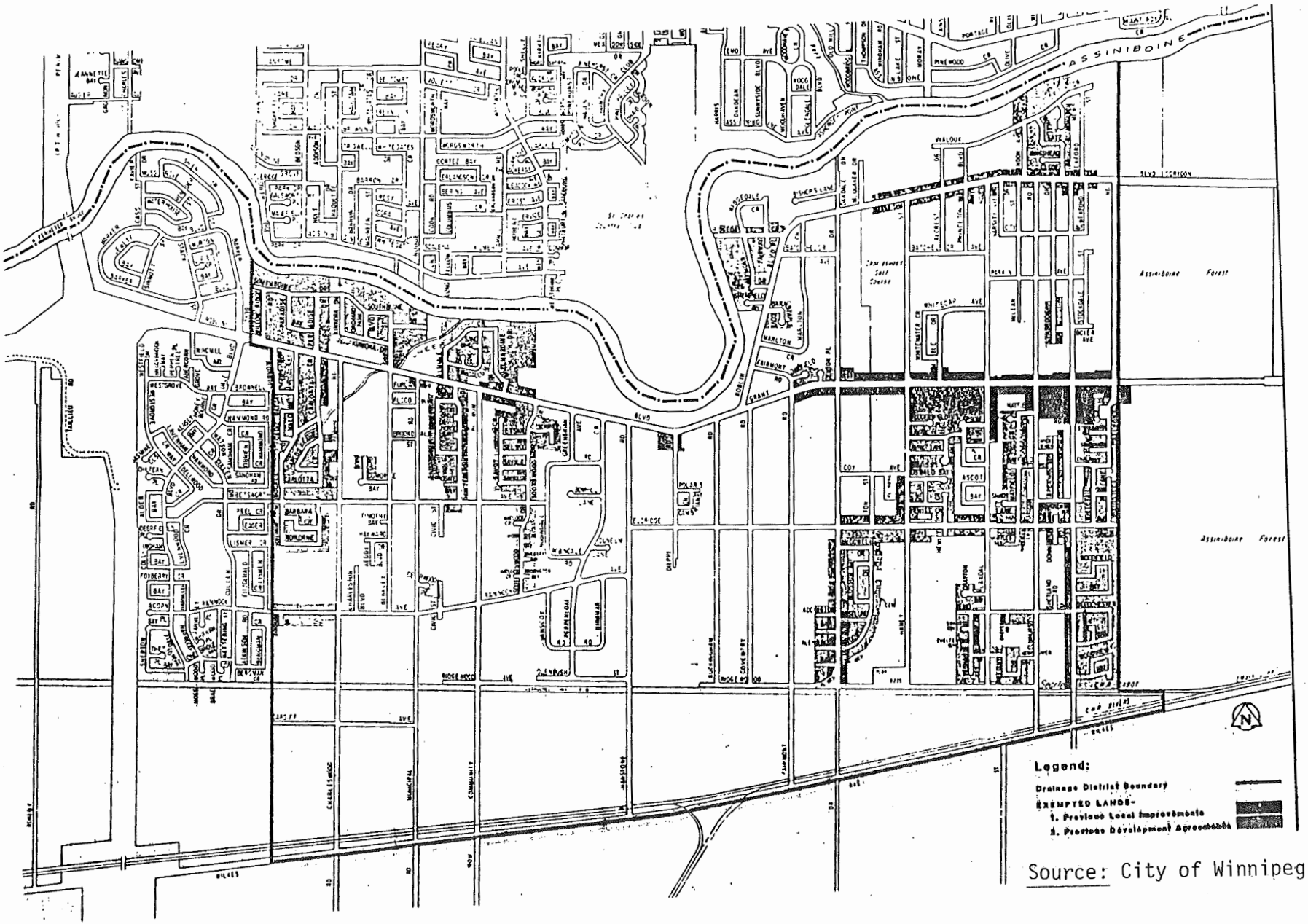
- It should also be noted that the March 1985 program is to occur over a four-year period and that final costs could differ from those estimated above. In addition, the 1985 program in aggregate is estimated to cost $1.6 million less than that proposed in 1984.

- Lands previously assessed for trunk and/or lateral drainage sewers, or lands already so serviced and paid for under development agreements, are excluded from the above program.

- Information presented to council in March indicated the 1985 program would mean a marginal increase in costs for the trunk sewer system for affected owners on presently subdivided lots.

MAP 1

Charleswood Drainage District and Exempt Land



Source: City of Winnipeg

- By proceeding with a special assessment district, within which the 6.7 cents per square foot levy will apply to benefiting developed and vacant lands, it is estimated the Charleswood owners will be paying about 40 per cent less than if the trunk and lateral sewer program were to proceed under the city's uniform rates. The aggregate charge for trunk and lateral sewers under those rates would be $48 per frontage foot whereas the program for Charleswood apparently amounts to the equivalent of approximately $28 per frontage foot.

- Since this program was a city-initiated local improvement/special assessment district, the process is subject to legislative provisions for an adverse petition from owners. The legislation is not precise about the form of such a petition. The city's practice has been to provide a 'formal petition' [if so requested] which lists the affected owners and facilitates subsequent confirmation of whether the petition is 'sufficient'. Property owners, of course, may develop their own, informal petitions as well. Because of the magnitude of the Charleswood program, the city concluded that petitions circulated by residents would not be a feasible option within the one-month time limit to raise an adverse petition. It opted for two mail-in ballots -- one for the trunk sewer proposal requiring an adverse petition from owners of at least three-fifths of the total area to be assessed, and one for the lateral system, requiring an adverse petition from owners of at least three-fifths of the frontage of lands to be assessed.

- It should be noted that to expedite the advertising and appeal process in Charleswood, and to enable the city to levy assessments as work is completed, a number of amendments to the City of Winnipeg Act were proposed in March. However, they were not processed during the last session of the legislature. (28)

6.0 PROCESS ISSUES

In general, the process under the City of Winnipeg Act for an adverse petition against a local improvement seems consistent with the Municipal Act of Manitoba and Rogers' outline of the Ontario legislation in the early 1970s. There are differences in the criteria for a 'sufficient' petition but any changes here would require legislative amendment. There seems to be the additional hearing process in the Municipal Act at the first reading stage of the by-law. The provisions of the City of Winnipeg Act appear to be far more detailed and complex than those of the Municipal Act.

In short, the negative-response petitioning appears to be a common procedure in those instances where a local improvement is initiated by a council. Whether it is 'undemocratic' is subject to differences of opinion as to how the state should be able to exercise its statutory powers and how the exercise of these powers is to be controlled. It may be argued that:

- The city has the authority to initiate a local improvement and does not appear to be required to provide a rationale for this exercise of authority.

- It may be inferred that the city has deemed the works to be necessary and that, to proceed in a comprehensive and planned way, council should take the initiative. (This touches on questions of equity and who is benefiting.)

- By proceeding with the work as a local improvement, council has exercised its discretionary authority to determine that it is the affected property owners who will benefit from the proposed works.

- It is 'democratic' to permit owners to vote on the council's intent since they will bear the costs of the improvements -- and, in fact, it provides a more direct form of democratic control than occurs with many other types of taxation.*

- The use of negative responses or veto power is not alien to western democratic systems.

- Differences of view may arise as to the strategic implications of requiring a 'no' as opposed to a 'yes' petition. Both approaches require mobilization of owners. Additional research would be required on voting behaviour and strategies to determine whether one type of approach has certain relative advantages over another and, if so, what biases might be introduced. Another question is whether a referendum approach in which all eligible owners 'petitioned' or 'voted' would be more appropriate.

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* The Ontario legislation provides for defined instances where a council may proceed with a local improvement on a two-thirds vote without reference to owners at all but, in some cases, subject to municipal board approval.

- The departure from practice in the Charleswood case is the use of a mail-in ballot as a 'petition'. The number of owners involved, as well as the extent of the area, also were unique. These factors would seem to have strategic implications for mobilizing owners to react -- e.g., would it be easier to mobilize owners on a street-by-street basis rather than area-wide?

- The Charleswood case also was complicated in that two ballots were required -- one for all owners affected by the special assessment district levy (i.e., owners of developed and undeveloped land) and one for those in developed areas to be assessed on a frontage basis for lateral storm sewers. However, two 'petitions' also would have been required had opponents gone door-to-door or in other ways sought signatures. Again, the issue may be a strategic one since local improvement legislation appears to place considerable onus on owners to be self-informed and to respond appropriately to the publication of official notices. In this case, Charleswood residents received an additional and individualized form of notification of council's intent. Moreover, the drainage issue is a long-standing one involving a relatively high profile (i.e., public meetings in 1983 and 1984, a related court case, and council motions on the subject in August 1984 and March 1985). It may be useful to refer to Rogers' comments about the approach of the courts to these process-type issues (see page 3 above).

- If there is a question about the 'democratic' nature of the process and criteria involved in this case, it may relate to the legislative criteria for 'sufficiency' since these relate only to the amount of assessable land which petitioning owners represent. If there are only a few owners holding large parcels, they would appear to have an advantage compared to a situation under the Municipal Act and Ontario legislation where the criteria include a specific number of owners, as well as a specific land area. This question would be relevant primarily to the petition on the trunk sewer system which would involve owners of undeveloped lands.

- There may be an argument that the city should have engaged in two sequential processes -- proceeding first to test opinion on the trunk system. This, however, would have had certain disadvantages re communication of information, mobilization of owners and comprehensive planning/financing.

It may also be noted that the tendency in municipal legislation has been to remove ratepayer powers to vote directly on money or other matters and that there is a general disinclination in the Canadian political system, in contrast to the American as an example, to encourage direct democracy. In this context, local improvement provisions may be considered an anomaly -- one that presumably rests on the theory of benefits (and associated distribution of costs) applied to such improvements.

7.0 EQUITY ISSUES

These issues are very complicated and can be argued on many levels. What follows is a preliminary exploration only. On the basis of this preliminary review, it is suggested that the situation facing the Charleswood residents who oppose the proposed drainage system essentially is political which requires that:

- they clearly define their objectives (e.g., do they not want any system, or do they wish to redistribute some costs to the city at large?)

- they be able to muster sufficient community support and consensus in Charleswood

- they be able to muster sufficient political support across the city to reverse or amend council's intended course of action

- they be able to muster provincial support, at least insofar as the Ridgewood South issue (urban limit line) is concerned.

This author is not able to comment on whether any technical grounds may exist for a court challenge, or whether the legal perceptions of 'equity' are significantly different from other perceptions.

In terms of local improvement legislation and policy, the key political factor is the level of discretionary authority given to municipalities to determine who benefits and how costs shall be distributed. This is especially evident in the Charleswood situation where council has initiated the local improvements, and where, given the scale of the situation, council can hardly be considered a neutral or disinterested party as to the outcome. It may be useful to pursue the legislation and/or precedents to which Rogers refers in his suggestion that there is a factor of scale beyond which improvements can no longer be considered 'local' improvements (refer to pp. 1-2 above). It may also be interesting to explore the history of local

improvement legislation to determine its underlying rationale and the appropriateness of this rationale to contemporary urban development.

There are apparent inequities or inconsistencies in local improvement legislation and policies in Winnipeg. For example, the emphasis on uniform rates would appear to be inequitable for those areas which are less expensive to service. The deferment policy (see page 8 above) contains a subsidy by the city at large, the trade-off being the administrative ease with which the policy could be implemented as opposed to some alternative to recover the foregone interest. It is the view of some that a requirement for original construction of a work to be done as local improvement, but the practice of renewal or reconstruction to be done by the city at large, is inconsistent, if not inequitable.

More research would be required to determine whether the legislation and policies have been applied equitably by the city. The sewer relief program (see pp. 9-10) and the extensive streetscaping under the Core Area Initiative, especially in areas of residential development, provide examples of the discretion which can be applied to what is considered a 'local improvement'. In the case of the former, an argument can be made that the city at large benefits from the prevention of outflows of sewage into the rivers during heavy rains. At the same time, substantial private benefit accrues to those who escape future basement flooding (in addition to various compensation programs which may have been offered during the periods of extensive basement flooding which occurred in the past in the city). In this case, scale (both physical and political) probably was a determining factor in council's decision to have the costs borne entirely by the city at large.

In terms of Charleswood's position vis-à-vis Winnipeg, the consensus seems to be that the area's servicing situation is unique. It also is cumulative in nature, reflecting historical and contemporary development patterns, and past decisions (or lack of decisions) by governments and ratepayers.

- Until Unicity, land drainage planning and decision-making were subject to fragmentation. The potential for inequities arising out of this situation was recognized by the metropolitan government and the Local Government Boundaries Commission (see pp. 4-5). For Charleswood, the semi-rural, non-contiguous nature of development, and the fragmentation of land ownership, were additional impediments to resolution of the problems.

- Since the Metro era at least, Charleswood has been considered a key area for more dense forms of urban/suburban development. Metro planners acknowledged the impediments posed by the

drainage situation (see p. 11). However, Metro apparently lacked the authority to act directly and, in its 1970 plan for the area, appeared to rely on the study then underway under Charleswood's auspices to develop an appropriate solution. At the time of unification, it appears that no special consideration was accorded to the Charleswood situation. While expectations may have been raised with the equalization of municipal mill rates and the province's emphasis on the quality of services, the 1970 proposals on reorganization seemed to assign considerable discretion to the new unified council in determining regional standards of services (see p. 6). Additional research would be required to assess whether the pattern of development which has been permitted since unification has adversely and unfairly affected privately-owned property in Charleswood. If so, owners might be eligible for deferment of local improvement levies under the city's 1978 policy (see p. 8).

- Given long-standing policy to change the nature and direction of development in Charleswood, it would appear both government and ratepayers have squandered time which could have been used to ease the transition for the older developed areas lacking full services. Owners who have resisted local improvement initiatives are vulnerable to the suggestion that they are 'free riders'; i.e., they are attempting to minimize their costs while capitalizing into the increased values of their properties the impact of development around them. Government is vulnerable to the suggestion that it has failed to acknowledge a broader or more general benefit accruing to the city as a whole as a result of the policy change concerning the character of development in Charleswood.

- It may be asked, as it was by Metro in 1966 (see p. 5), whether there is some general benefit to rationalization of the drainage systems in Charleswood and, therefore, greater equity in having the city at large bear something more than the costs of road restoration following construction of the proposed trunk and lateral sewers. Similarly, if development indeed is currently impeded by the drainage situation, is there a general benefit to the city to relieve that impediment; or, given the controversy over the urban limit line, is it in the city's interest not to encourage development in Charleswood (e.g., to scale down its proposed improvements)?

- It may be argued that the city's policy on the maintenance and renewal of granular roads fails to acknowledge Charleswood's unique situation and the implications of the long-standing

policy to intensify the area's residential development.

- It would appear the proposals for financing the trunk and lateral sewers have the effect of providing Charleswood with some relief relative to what the costs per frontage foot would be under the city's uniform rates for both types of work. Whether any inequity exists in this situation would depend on what the actual costs of providing these works are in Charleswood and what costs have been entailed under development agreements.

In summary, it may be argued that both government and ratepayers have not followed through on the repercussions of the Metro policy designating Charleswood as an area of urban expansion. Enforcement of the policy appears to have been limited to development agreements and subdivision approvals adjacent to older areas of development. Moreover, government's main response to the costs of raising the standard of services in the older areas has been to add to the types of services subject to local improvement levies.

A compromise to the current situation might build on the city's deferment policy, in which the city at large would recognize some responsibility for the situation that has developed in the older areas of Charleswood and thus provide some relief to owners in those areas. This relief should be subject to some form of recapture, however -- i.e., the city would receive some reimbursement upon subdivision, rezoning, zoning variances and/or sale of the subject properties. This assumes the improvements would be capitalized in the value of the property and recoverable in the marketplace, as is assumed under development, zoning and other similar agreements. Such an approach may require a more comprehensive plan for servicing the affected areas -- i.e., to involve other hard services besides drainage and road restoration. Such an approach should help overcome equity concerns that may arise between owners of the older properties and those in new subdivisions in Charleswood, and between owners and owner-developers.

In terms of the situation between owners and owner-developers, council's August 1984 improvement proposal appeared to place the major portion of financial responsibility for the trunk drainage system on developable lands. The March 1985 proposal apparently does this as well although the aggregate figures were not presented to council in a form that makes the cost distribution readily identifiable. In this context, concerns that residents of the older areas of Charleswood are in some way subsidizing future development appear to be incorrect. In addition, it appears as though the March 1985 proposal will place more responsibility on developers for front-ending of certain drainage system costs than did the August 1984 proposal.

8.0 SUMMARY

- In terms of process, the requirement for an adverse petition on a council-initiated local improvement is consistent with other relevant Manitoba and Ontario legislation. The departure in the Charleswood case was the use of the mail-in ballots or petitions which, in a strategic sense, may have had implications for mobilization of opposition but, in a formal sense, appears to have been an additional and individual form of notice beyond that required in legislation. On the surface, it does not appear the city could be accused of acting in bad faith or exceeding its jurisdiction.

- The equity issue is complicated and has only been explored in a preliminary way. An argument may be advanced that the city should exercise its discretion and absorb a greater proportional share of the costs of the proposed works, and/or build on its deferment policy to provide some relief to affected homeowners. This essentially would be a political decision and would be dependent on the intensity of support the Charleswood case could develop. It may also be dependent on whether this matter will bring the urban limit line issue to the forefront again.

FOOTNOTES

1. Ian MacF. Rogers, The Law of Canadian Municipal Corporations, Second Edition (Toronto: The Carswell Co. Ltd., 1973), pp. 883-884.

2. Ibid., pp. 883-884, 887-888.

3. Ibid., pp. 885, 887.

4. Ibid., pp. 893-899.

5. Ibid., p. 898.

6. Ibid., p. 912-913.

7. Ibid., pp. 883-884, 890-892.

8. Manitoba, Legislative Assembly, Municipal Act, Part XI.

9. James F. MacLaren Ltd., Water and Waste: A Background Paper On Water Polution (sic) Control, Water Supply, Land Drainage and Solid Waste Disposal in the City of Winnipeg (Winnipeg: Winnipeg Tri-Level Committee on Urban Affairs, 1978), p. 4.

10. Metropolitan Corporation of Greater Winnipeg, Development Plan 1966 (Winnipeg: The authors, 1966), pp. 97-98.

11. Manitoba, Local Government Boundaries Commission, Provisional Plan for Local Government Units in the Greater Winnipeg Area (Winnipeg: The authors, September 1970), p. 74.

12. James F. MacLaren Ltd., op.cit., pp. L1-L4.

13. Winnipeg, City Council, By-Law No. 2960/81, A By-law of the City of Winnipeg to Establish the Greater Winnipeg Development Plan for the City of Winnipeg and the Additional Zone, Second Reading: October 19, 1983 (Winnipeg: The authors, 1981).

14. James F. MacLaren Ltd., op.cit., pp. 9-10.

15. Metropolitan Corporation, op.cit.

16. Province of Manitoba, Proposals for Urban Reorganization in the Greater Winnipeg Area (Winnipeg: The authors, December 1970), pp. 4, 34.

17. Tom Axworthy, The Future City: The Politics of Innovation, Report No. 2 (Winnipeg: IUS, 1972), pp. 43, 56.

18. Manitoba, Legislative Assembly, City of Winnipeg Act, Part X.

19. Winnipeg, City Council, Minutes, August 15, 1984, p. 2151.

20. Winnipeg, City Council, Minutes, December 20, 1978, pp. 318-320.

21. Winnipeg, City Council, Minutes, April 18, 1979, pp. 1159-1162.

22. James F. MacLaren Ltd., op.cit., pp. 5, S4-S5, S8-S9, S16, L5-L8.

23. Metropolitan Corporation of Greater Winnipeg, Charleswood Detailed Area Plan (draft), (Winnipeg: Metropolitan Corporation, Planning Division, December 1970).

24. Ibid., p. 12.

25. Ibid., pp. 11-12.

26. Winnipeg, City Council, Minutes, August 15, 1984, pp. 2149-2154.

27. Winnipeg, City Council, Minutes, March 6, 1985, pp. 1010-1013.

28. Winnipeg, City Council, Minutes, March 27, 1985, pp. 1123-24, 1138-1140.