Agenda - Executive Policy Committee - July 20, 2005

Report - Standing Policy Committee on Property and Development - July 5, 2005

Item No. 24 Encroachment Agreement - Devon Estates Ltd. for Parking Purposes - Public Drain Plan 9191, 1415 Henderson Highway File ED(33)

STANDING COMMITTEE RECOMMENDATION:

On July 5, 2005, the Standing Policy Committee on Property and Development concurred in the administrative recommendation and submits the following to Council:

1. That an Encroachment Agreement in favour of Devon Estates Ltd. for parking purposes over Public Drain Plan 9191, shown as "Subject City Property" on Misc. Plan No. 11351, be approved in accordance with the terms and conditions outlined in the report from the Director of Planning, Property and Development dated June 20, 2005, the Agreement to provide for such other terms and conditions as are deemed necessary by the Director of Planning, Property and Development and the City Solicitor/Manager of Legal Services to protect the City's interests.

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

Agenda - Executive Policy Committee - July 20, 2005

Report - Standing Policy Committee on Property and Development - July 5, 2005

DECISION MAKING HISTORY:

STANDING COMMITTEE RECOMMENDATION:

On July 5, 2005, the Standing Policy Committee on Property and Development concurred in the administrative recommendation and submitted the matter to the Executive Policy Committee and Council.

Re: **Proposed Encroachment Agreement in Favour of Devon Estates Ltd – For Parking Purposes – Public Drain Plan 9191, 1415 Henderson Highway.**
East Kildonan - Transcona Community
North Kildonan Ward

For submission to: **Standing Policy Committee on Property and Development**

Original report signed by: **Director of Planning, Property and Development**

Report date: June 20, 2005

1. That Council approve an Encroachment Agreement in favour of Devon Estates Ltd. for parking purposes over Public Drain Plan 9191, shown as "Subject City Property" on Misc. Plan No. 11351, attached, in accordance with the terms and conditions outlined herein; the Agreement to provide for such other terms and conditions as are deemed necessary by the Director of the Planning, Property and Development Department and by the City Solicitor/Manager of Legal Services to protect the City's interests.

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

REPORT SUMMARY

Key Issues:

- The Planning, Property and Development Department has negotiated proposed terms and conditions of an Encroachment Agreement in favour of Devon Estates Ltd. for parking purposes over Public Drain Plan 9191, shown as "Subject City Property" on Misc. Plan No. 11351, attached.
- The Subject City Property is consided a public right-of-way; therefore, any license or permit for the land is addressed under the City's Encroachment By-law No. 692/74.
- This report seeks approval of the Encroachment Agreement as negotiated.

Implications of the Recommendation(s):

General implications:

X	**None**
	For the organization overall and/or for other departments
	For the community and/or organizations external to the City of Winnipeg
	Involves a multi-year contract

Comment(s):

-

Policy implications:

X	**No**
	Yes

Comment(s):

-

Environmental implications:

X	**No**
	Yes

Comment(s):

- There are no environmental implications associated with the recommendations of this report

Human resources implications:

X	**No**
	Yes

Comment(s):

-

Financial implications:

X	**Within approved current and/or capital budget**
	Current and/or capital budget adjustment required

Comment(s):

-

REASON FOR THE REPORT:

Council has the authority to permit or license the use of public right-of-way.

The Planning, Property and Development Department (the Department) has negotiated the terms and conditions of an Encroachment Agreement in favour of Devon Estates Ltd. for parking purposes over Public Drain Plan 9191, shown as "Subject City Property" on the attached Misc. Plan No. 11351. This report seeks Council's approval to the proposed Encroachment Agreement.

HISTORY:

In 1966, the RM of North Kildonan purchased the Subject City Property from the owner of 1415 Henderson Highway for the development of a land drainage sewer. At that time, the owner was permitted to place a caveat on the Subject City Property's title respecting a lease agreement for parking purposes for a period of 21-years and at an annual rental rate of $1.00.

In 1973, title to 1415 Henderson Highway was issued in the name of Devon Estates Ltd. and the parking lease was assigned to Devon Estates Ltd. Subsequently, the City agreed to several term extensions of the parking lease. The parking lease is due to expire in 2006.

In 2004, Devon Estates Ltd advised the Department it would like to extend the term of the parking lease and continue to use the Subject City Property under the terms and conditions of the original lease. The Department responded that the terms and conditions of the original lease were no longer acceptable and a new agreement would have to be negotiated under the City's Encroachment By-law No. 692/74.

In the fall of 2004, Devon Estates Ltd. submitted an Encroachment Application to the Department's Zoning and Permits Branch for the proposed use of Subject City Property for parking purposes.

The application was circulated to various City departments and public utilities for consideration and comments. No objections were received for the proposed use of Subject City Property.

The City's Designated Officer – Encroachments requested that the Department negotiate the terms and conditions of an Encroachment Agreement pursuant to 4(1)(d) of the City's Encroachment By-law No. 692/74.

DISCUSSION:

The Department has concluded its negotiations with Devon Estates Ltd. The proposed terms and conditions are consistent with other such Encroachment Agreements for similar uses. The terms and conditions agreed upon for the proposed lease are as follows:

Use:	Parking purposes only.
Term:	An initial ten (10) year term commencing immediately upon Council's approval of the said Encroachment Agreement, together with two (2) further options to renew for five (5) years each.
Rental:	$5,000.00 per annum, plus GST, subject to a rental rate adjustment at the end of the fifth-year, end of the tenth year of initial 10-year term and at the end of each 5-year renewal option. The said rental at no time shall exceed a 5% increase from the previous rental review and nor shall the rental be less then the previous term's rental.
Taxes:	Devon Estates Ltd. shall be responsible for payment of all municipal taxes, school taxes, local improvements, license fees, business tax, etc. which may be charged in respect of the use and occupation of the Subject City Properties. (Estimated Taxes for 2005 are ± $3,600.00).
Insurance:	General Liability Insurance of at least $2,000,000.00, naming the City of Winnipeg as additional insured and containing a cross-liability clause.

Cancellation:	180 days written notice by either party, provided however the City may only cancel pursuant to this clause if the Subject City Property is required for a public use or utility, or if Devon Estates Ltd. is in default notice is effective immediately.
Other:	The development and maintenance of the Subject City Land will be performed at the sole cost, expense and effort of Devon Estates Limited, including, obtaining all permits required to develop, occupy and utilize subject property for its intended use. The City's Water and Waste Department to have unrestricted access to the Subject City Property for repairs to its land drainage sewer. The Proposed Encroachment Agreement is subject to final approval by the City of Winnipeg's Council, or its delegated authority and Senior Management of Imperial Oil Ltd.

Financial Impact Statement

Date: June 16, 2005

Project Name:

Proposed Encroachment Agreement in Favour of Devon Estates Ltd – For Parking Purposes – Public Drain Plan 9191, 1415 Henderson Highway.

First Year of Program 2005

	2005	2006	2007	2008	2009
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
External	-	-	-	-	-
Grants (Identify)	-	-	-	-	-
Reserves, Equity, Surplus, Other	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	3,581	8,600	8,600	8,600	8,600
Net Cost/(Benefit)	$ (3,581)	$ (8,600)	$ (8,600)	$ (8,600)	$ (8,600)
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ (3,581)	$ (8,600)	$ (8,600)	$ (8,600)	$ (8,600)

Additional Comments:

Leasing Revenue is calculated at $5,000.00 (annual rent) + $3,600.00 (Tax Equiv., 2005 rates) = $8,600.00 (Gross Annual Rent). No consideration given for future Tax Equiv. changes. Rental revenue in 2005, based on a August 1, 2005 commencment date (adjusted accordingly)

"Original signed by"
Mike McGinn, CA
Manager of Finance

6360

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

By way of the Encroachment Application process this item was circulated to:

The area Councillor

Public Works Department

Water and Waste Department

Manitoba Telecom Services

Centra Gas/Manitoba Hydro

Winnipeg Police Services

Fire Paramedic Service

THIS REPORT SUBMITTED BY:

Planning, Property and Development Department
Division: Real Estate
Prepared by: Stewart Anderson
PPD File #: 4905 Vol. 2

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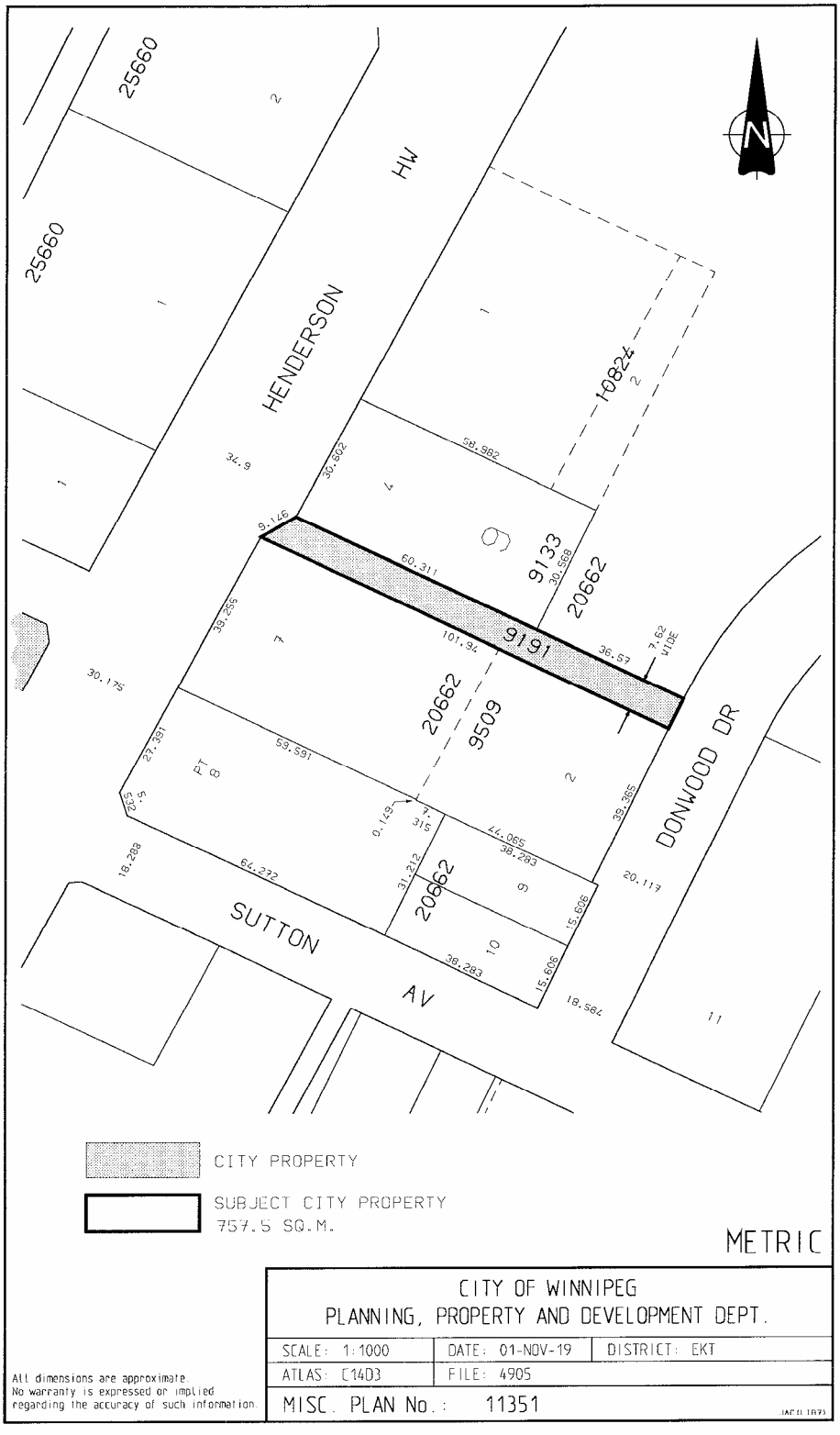
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HENDERSON
HW
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DONWOOD DR
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AV
CITY PROPERTY
SUBJECT CITY PROPERTY
757.5 SQ.M.
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
SCALE: 1:1000
DATE: 01-NOV-19
DISTRICT: EKT
ATLAS: C14D3
FILE: 4905
MISC. PLAN No.: 11351
All dimensions are approximate.
No warranty is expressed or implied
regarding the accuracy of such information.