Minute No. 75
Report - Standing Policy Committee on Property and Development – November 27, 2007

Item No. 10 Encroachment Lease Agreement - 1717 Waverley Street – McNaught Pontiac Buick Cadillac Ltd. and Ranjoy Sales and Leasing (River Heights - Fort Garry Ward) File FI-2.2(32)

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submits the following to Council:

1. That an Encroachment Lease Agreement be approved in favour of McNaught Pontiac Buick Cadillac Ltd. and Ranjoy Sales and Leasing for the development of a vehicle display area, shown outlined and identified as "Leased Area" on Misc. Plan No. 11748/5, in accordance with the proposed terms and conditions and any other terms and conditions as are deemed necessary by the Director, Planning, Property and Development 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.

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DECISION MAKING HISTORY:

Moved by Councillor Swandel,

That the recommendation of the Standing Policy Committee on Property and Development be concurred in and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION:

On November 27, 2007, the Standing Policy Committee on Property and Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

RE: **Proposed Encroachment Lease Agreement at 1717 Waverley Street – McNaught Pontiac Buick Cadillac Ltd. and Ranjoy Sales and Leasing**
City Centre Community
River Heights - Fort Garry Ward

FOR SUBMISSION TO: The Standing Policy Committee on Property and Development

ORIGINAL REPORT SIGNED BY: Director of Planning, Property and Development

REPORT DATE: November 16, 2007

RECOMMENDATION(S):

1. That Council approve an Encroachment Lease Agreement in favour of McNaught Pontiac Buick Cadillac Ltd. and Ranjoy Sales and Leasing for the development of a vehicle display area, shown outlined and identified as "Leased Area" on Misc. Plan No. 11748/5, attached, in accordance with the proposed terms and conditions and any other terms and conditions as are deemed necessary by the Director, Planning, Property and Development 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:

- McNaught Pontiac Buick Cadillac Ltd. made application to the Planning, Property and Development Department (Zoning and Permits Branch) to use a portion of Waverley Street as shown on Misc. Plan 11748/5 for the purpose of car display associated with its adjacent business.

- The terms and conditions for the proposed Encroachment Lease Agreement have been determined by the Planning, Property and Development Department in accordance with policy, practice and similar agreements throughout the City, the most comparable agreement being located across the street from the subject property.

- The applicant has accessed and developed the right-of-way without the appropriate authority in place and is now seeking to legalize the existing encroachment.

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

( ) Involves a multi-year contract

Policy Implications

(X) No

( ) Yes

Regulatory Implications

(X) None

( ) Eliminates or reduces regulatory impact

( ) Proposes regulatory impact

Environmental Implications

(X) No

( ) Yes

Human Resources Implications

(X) No

( ) Yes

Financial Implications

(X) Within approved current and/or capital budget

( ) Current and/or capital budget adjustment required

Report

REASON FOR THE REPORT:

Council has the authority to permit or license the use of a public Right-of-Way.

The Planning, Property and Development Department has negotiated the terms and conditions of an Encroachment Lease Agreement in favour of McNaught Pontiac Buick Cadillac Ltd. and Ranjoy Sales and Leasing to maintain a vehicle display area within the Bishop Grandin Boulevard/Waverley Street West Right-of-Way.

This report seeks Council's approval of the proposed Encroachment Lease Agreement.

HISTORY:

On October 30, 2002, PP&D's Zoning and Permits Branch advised its Real Estate Division that McNaught Pontiac Buick Cadillac and Ranjoy Sales and Leasing (hereinafter referred to as McNaught Pontiac) had applied for permission to establish a vehicle display in a 5,161 square meter area encroaching onto the northwest corner of Waverley Street and Bishop Grandin Boulevard (see attached Schedule A). The Real Estate Division was requested to negotiate the rental rate and terms and conditions of an Encroachment Lease Agreement pursuant to Section 4(1)(c) of the City of Winnipeg Encroachment By-law No. 692/74. McNaught Pontiac chose not to enter into an agreement at that time.

In July 2007, the PP&D became aware that McNaught Pontiac was again using the right-of-way for car display. The Public Service met with McNaught Pontiac to discuss the use of the right-of-way and was advised that they would be willing to enter into an appropriate agreement with the City.

In August of 2007 a review of market rates in the subject area was performed to determine the market rent rates for the proposed Encroachment Lease Agreement.

On September 20th, 2007 McNaught Pontiac agreed to enter into an Encroachment Lease Agreement comprising an area of 10,950 sq. ft. as shown on Misc. Plan 11748/5 attached.

The Department has determined that the encroachment application dated October 2, 2002 is still valid.

On October 2, 2007, the PP&D forwarded to McNaught Pontiac the revised proposed terms and conditions. McNaught Pontiac formally accepted the proposed Terms and Conditions on October 22, 2007.

PP&D (Real Estate Division) is aware that McNaught Pontiac had, in 2002-2003, performed development work within the subject area (i.e. land grading, sodding, elevated display pads, underground electrical wiring) without authority and prior to entering into a formal agreement with the City for the use of the land. Grading and sodding would normally be the responsibility of the City.

DISCUSSION:

By virtue of the Encroachment Lease Agreement as proposed, McNaught Pontiac will have exclusive rights to the subject property for the term of the agreement. It was McNaught Pontiac's decision to develop the subject property for landscaping and "limited" vehicle display purposes. However, McNaught Pontiac can expand its development of the subject property in a similar manner as done by Dan Murray Chev Olds on the Leased City right-of-way lands situated across the street, providing an amendment to the agreement with the City is requested and approved.

There is a recognized benefit to the City in the amount of saved maintenance costs of this part of Waverley Street right-of-way over the life of the agreement as well as the tax revenue that will be generated.

The proposed Encroachment Lease Agreement had been circulated as a result of the application for an encroachment.

The proposed Terms and Conditions of the Encroachment Agreement are as follows:

Use:	*For the purpose of a vehicle display area, in conjunction with adjoining business operation and for no other purpose without the prior written consent of the City.*
Initial Term:	*Five (5) year term, commencing on October 1, 2007.*
Renewal Option:	*One five (5) year option, subject to a rental rate review at the end of the initial five (5) year term, which rental rate shall at no time be less then the previous term's rental rate and subject to there being no default of the agreement by the Tenant.*
Initial Rental: (Unit Rent, Utilities & Maintenance)	*$2,190.00 per annum, plus GST, and an administration fee of $500.00 plus GST*
Realty Taxes:	*The tenant is responsible for paying all realty taxes, which shall be billed directly to the tenant by the City.*
Other Fees, Licenses, Taxes	*All license fees, business tax, etc. which may be charged in respect of the use and occupation of the Leased Area.*

etc:

Insurance: The Tenant shall provide and maintain the following insurance coverage at all times during the duration of the contract.

(1) Commercial general liability insurance, in the amount of at least two million dollars ($2,000,000.00) inclusive, with The City of Winnipeg added as an additional insured, such liability policy to also contain evidence of cross-liability, non-owned automobile liability, and products and completed operations;

All policies shall be taken out with insurers licensed to and carrying on business in the Province of Manitoba;

And deductibles shall be borne by the Tenant;

And the Tenant shall not cancel, materially change, or cause any such policy or policies to lapse without minimum fifteen (15) days prior written notice to the City of Winnipeg;

And the Tenant shall file with the City a Certificate of Insurance in a form satisfactory to the City Solicitor;

And the City shall have the right to alter the limits and/or coverages as reasonably required from time to time.

Cancellation: *90 days written notice by the City, or immediately upon the tenant being in default of the proposed terms and conditions of the Encroachment Lease Agreement.*

Other: *The maintenance of the "Leased Area" and the "Area to be Maintained" will be performed at the sole cost, expense and effort of the tenant, in order to occupy and utilize the Leased Area for its intended use.*

The limits of the encroachment area are consistent with what has been identified on Misc. Plan Number 11748/5 (attached) as the "Leased Area".

The tenant takes the Land on an "as is" basis.

All tenant improvements to be performed at the sole cost, expense and effort of the tenant, subject to prior approval by the City.

Any 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.

Gordon McNaught, Sr., on behalf of McNaught Pontiac Buick Cadillac Ltd., and with the full knowledge and permission of Ranjoy Sales and Leasing, agrees to enter into an appropriate Encroachment Lease Agreement with the City embodying the terms and conditions and in a form satisfactory to the City Solicitor/Manager of Legal Services.

The proposed terms and conditions are subject to final approval by the City of Winnipeg's Council, or its delegated authority.

The Department recommends that the terms and conditions as proposed herein be approved in order to provide consistency with existing practice and policy and to negate an unacceptable precedent.

Financial Impact Statement

Date: October 30, 2007

Project Name:

First Year of Program **2007**

Encroachment Lease Agreement at 1717 Waverley Street – McNaught Pontiac Buick Cadillac Ltd. and Ranjoy Sales and Leasing

	2007	2008	2009	2010	2011
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	1,048	2,190	2,190	2,190	2,190
Net Cost/(Benefit)	$ (1,048)	$ (2,190)	$ (2,190)	$ (2,190)	$ (2,190)
Less: Existing Budget Amounts	(1,048)	(2,190)	(2,190)	(2,190)	(2,190)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2007 consist of the annual rental amount of $2,190 prorated for the October 1 commencement date plus a one-time lease admin fee of $500. Revenues from 2008 onward represent the annual rental amount for the full year. No municipal tax revenues have been included in this analysis as they are immaterial in nature.

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

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

Public Works Department

Corporate Services Department – Legal Services Division

External Consultation With:

N/A

THIS REPORT SUBMITTED BY:

Department: Planning Property and Development Department
Division: Real Estate Division
Prepared by: Kelly Udell
PPD File No. 4423-1

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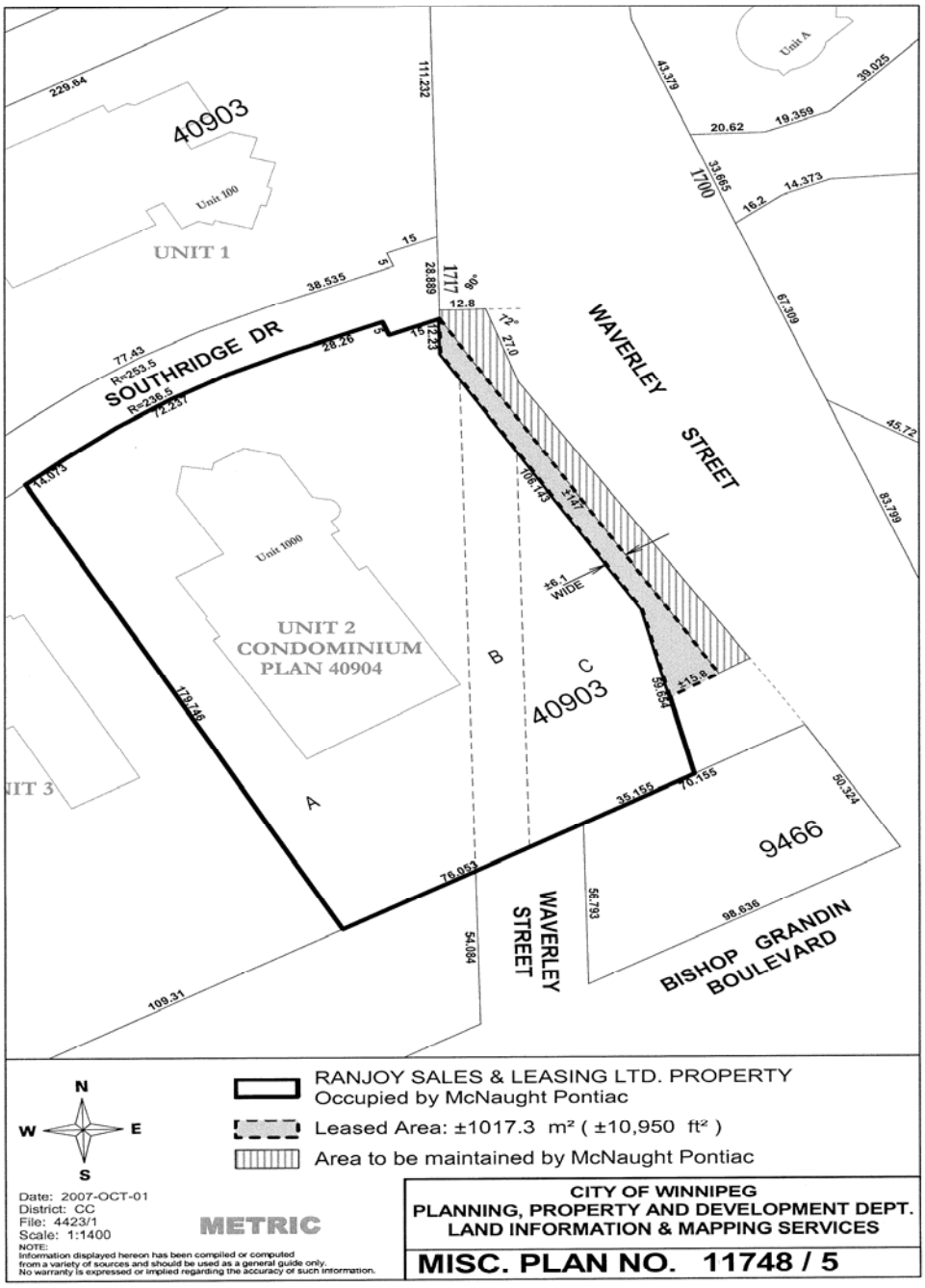
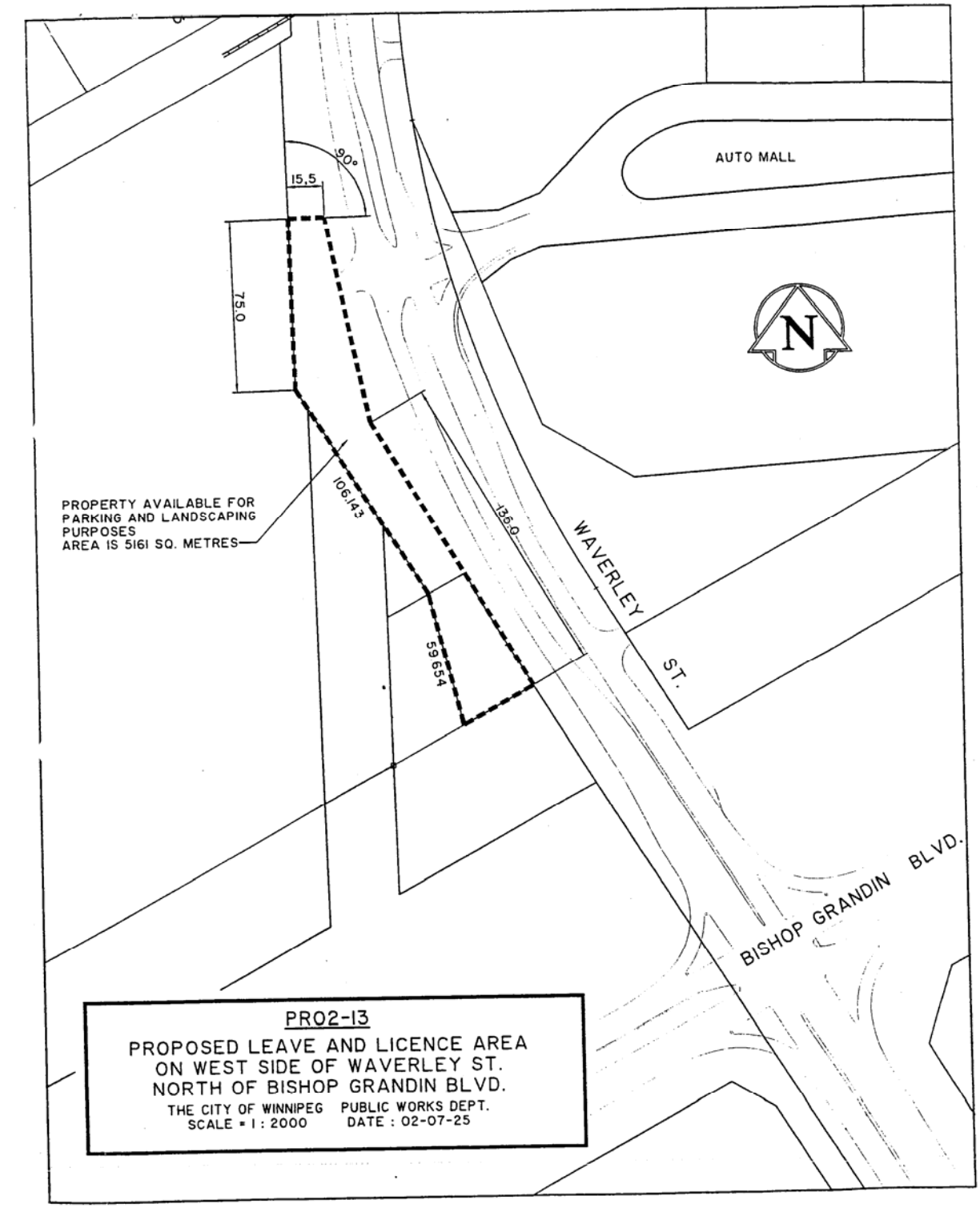


40903
Unit 100
UNIT 1
SOUTHRIDGE DR
WAVERLEY STREET
Unit 1000
UNIT 2
CONDOMINIUM
PLAN 40904
A
B
C
40903
9466
BISHOP GRANDIN BOULEVARD
WAVERLEY STREET
Unit A
1700
1717
N
S
E
W
RANJOY SALES & LEASING LTD. PROPERTY
Occupied by McNaught Pontiac
Leased Area: ±1017.3 m² (±10,950 ft²)
Area to be maintained by McNaught Pontiac
Date: 2007-OCT-01
District: CC
File: 4423/1
Scale: 1:1400
METRIC
NOTE:
Information displayed hereon has been compiled or computed from a variety of sources and should be used as a general guide only. No warranty is expressed or implied regarding the accuracy of such information.
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 11748 / 5

SCHEDULE A


AUTO MALL
90°
15.5
75.0
N
PROPERTY AVAILABLE FOR
PARKING AND LANDSCAPING
PURPOSES
AREA IS 5161 SQ. METRES
106.143
135.0
59654
WAVERLEY
ST.
BISHOP GRANDIN BLVD.
PR02-13
PROPOSED LEAVE AND LICENCE AREA
ON WEST SIDE OF WAVERLEY ST.
NORTH OF BISHOP GRANDIN BLVD.
THE CITY OF WINNIPEG PUBLIC WORKS DEPT.
SCALE = 1 : 2000 DATE : 02-07-25