Minute No. 56
Report - Standing Policy Committee on Property and Development - November 14, 2006

Item No. 10 **Encroachment Agreement - River East Transcona School Division - Crossing Guard Shelter - Bennest Avenue Right-of-Way**
File ED(33)

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development and adopted the following:

1. That an Encroachment Agreement be approved allowing the River East Transcona School Division to reconstruct a crossing guard shelter within the Bennest Avenue Right-of-Way, shown as 'Encroachment Area' on Misc. Plan No. 9401/2, in accordance with the terms and conditions outlined on Schedule 'A' to the report from the Director of Planning, Property and Development dated September 29, 2006, 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.

Report - Standing Policy Committee on Property and Development - November 14, 2006

DECISION MAKING HISTORY:

Moved by Councillor Swandel,

That the recommendation of the Standing Policy Committee on Property and Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On November 29, 2006, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On November 14, 2006, the Standing Policy Committee on Property and Development concurred in the administrative recommendation and submitted the matter to the Executive Policy Committee and Council.

COUNCIL:

On January 25, 1995, Council adopted Clause 8 of the Report of the Committee on Finance and Administration dated January 3, 1995, with respect to an Agreement between the City of Winnipeg and Canadian Pacific Limited to install a Crossing Guard Shelter on the CPR Right of Way, which recommended that the City enter into a Land Use Agreement with Canadian Pacific Limited for the installation of a crossing guard shelter on the CPR right-of-way for the consideration of $1.00, payable annually.

RE: Proposed Encroachment Agreement in favour of the River East Transcona School Division for the Reconstruction of a Crossing Guard Shelter Encroaching onto the Bennest Avenue Right-Of-Way
East Kildonan/Transcona Community Committee
Elmwood-East Kildonan Ward

FOR SUBMISSION TO: Standing Policy Committee on Property and Development

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

REPORT DATE: September 29, 2006

RECOMMENDATION:

1. That Council approve an Encroachment Agreement in favour of the River East Transcona School Division to reconstruct a crossing guard shelter within the Bennest Avenue Right-of-Way, shown as 'Encroachment Area' on Misc. Plan No. 9401/2 attached in accordance with the terms and conditions outlined on the attached Schedule 'A'; 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 the River East Transcona School Division for the reconstruction of a crossing guard shelter.

- This report seeks approval of the Encroachment Agreement as negotiated.

- The crossing guard shelter has existed since 1995 and the Ward Councillor, Winnipeg Police Services, Transit Department, Public Works Department and the Community Services Department are in concurrence with the Encroachment Agreement.

- The River East School Division has agreed to assume responsibility for all costs associated with the operation of the shelter.

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 Agreement in favour of the River East Transcona School Division to reconstruct a crossing guard shelter within the Bennest Avenue Right-of-Way. This report seeks Council's approval to the proposed Encroachment Agreement.

HISTORY:

In 1970, the Canadian Transport Commission approved the construction of a crossing at grade for pedestrians over the CPR Main Line directly east of Hampstead Elementary School. The City of East Kildonan agreed to provide a watchman at the crossing during school hours and at times when children are going to and from school.

The crossing guard shelter is a used transit supervisor shelter that was donated by the Transit Department.

In 1987, following a request from the River East Transcona School Division, the hours were extended, with the School Division undertaking the associated additional costs. Since then, the City and the School Division have participated in a partnership to monitor the pedestrian traffic on a cost-sharing basis.

The crossing guard service at the pedestrian crosswalk, over the CPR tracks between Keenleyside Street and Hampstead School, is the only one that continues to be funded by the City. All expenses relative to the installation, including electrical hookup, were financed by a grant from the Manitoba/Winnipeg Community Revitalization Project and annual utility expenses have been borne by the Winnipeg Police Services.

In 1991, the City agreed to continue funding fifty percent of the costs, approximately $5,300.00 annually.

At its meeting held on January 25th, 1995, Council approved the then Finance and Administration Committee's recommendation that the City and Canadian Pacific Limited enter into a Land Use Agreement to install a crossing guard shelter on the CPR Right-of-Way.

A review of the site, by the then Land Surveys and Real Estate Department, revealed that the City, in fact, owned the subject property. Therefore, a land use agreement was not required.

DISCUSSION:

Mr. Craig McFeetors, on behalf of the River East Transcona School Division, submitted an encroachment application to the City's Zoning and Permits Branch to reconstruct a crossing guard shelter within the Bennest Avenue Right-of-Way.

This application was circulated to various City Departments and public utilities for consideration and comments. No objections were received for the proposed development and use of the subject Right-of-Way.

The River East School Division requested that the Winnipeg Police Service increase its portion of costs. However, the Winnipeg Police Service has stated that the provision of this service is not within the mandate of the Police Service and they have requested that the requirement to fund the utility charges be deleted.

Pursuant to Section 4(1)(d) of the City's Encroachment By-law No. 692/74, the Department has concluded its negotiations of an Encroachment Agreement with the River East Transcona School Division and both parties concur that the proposed terms and conditions are fair and reasonable. As well, the proposed terms and conditions are consistent with other such Encroachment Agreements.

In summary, the terms and conditions of the Encroachment Agreement (Schedule 'A' attached), agreed to by the River East Transcona School Division are as follows:

Term:	Annual continuing commencing September 1, 2006.
Purpose:	Installation of a crossing guard shelter.
Rental:	$65.00 per annum computed on the basis of the fees outlined in the City of Winnipeg Encroachment By-law No. 692/74 and amendments thereto plus an initial administrative fee of $250.00 and applicable GST. In the event that the By-law is amended, thereby changing the fees structure for encroachments, the rental paid under this agreement shall be adjusted accordingly.
Insurance:	Property and Liability insurance requirements have been updated by the Risk Management Branch staff as deemed appropriate to cover the scope, terms and conditions of the agreement.
Cancellation:	Six months (180 days) written notice.

Conditions: The development and maintenance of the Encroachment Area will be performed at the sole cost, expense and effort of the Licensee, including obtaining all permits required to develop, occupy and utilize the Encroachment Area for its intended use.

Licensee shall pay all utilities and operating expenses in connection with use of the premises.

The City shall have the right of access to the Right-of-Way at any time (24 hours a day, seven days a week) by its employees or other persons acting with its authorization, with or without equipment to maintain, operate, repair, inspect or rehabilitate any existing watermains, sewer lines, etc. located within the encroachment area.

Licensee shall not assign the agreement nor sub-let the premises without the prior written consent of the City.

The Licensee, upon the discontinuance of the use or termination of the Right-of-Way, shall within thirty (30) days, demolish and remove all improvements from the Right-of-Way, at its expense, and leave the premises in a neat, clean and level condition, free and clean of all material, debris and rubbish to the satisfaction of the Director of Public Works.

Any other terms and conditions as are deemed necessary by the Director of the Planning, Property and Development Department, the Director of Public Works and by the City Solicitor/Manager of Legal Services.

River East-Transcona School Division agrees to enter into an appropriate Encroachment Agreement with the City embodying the within terms and conditions and in a form satisfactory to the City Solicitor/Manager of Legal Services.

The proposed terms and conditions of the proposed Lease Agreement are subject to the final approval of the City's Standing Committees and Council and to the City Solicitor as to form and content.

Financial Impact Statement Date: September 27, 2006

Project Name:

Proposed Encroachment Agreement in favour of the River East Transcona School Division

COMMENTS:

The recommendation contained in this report is that Council approve an Encroachment Agreement in favour of the River East Transcona School Division to reconstruct a crossing guard shelter within the Bennest Avenue Right-of-Way. There are no material financial implications associated with this recommendation.

"Original Signed By"
Mike McGinn, CA
Manager of Finance

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

Winnipeg Police Services
Community Services Department
Transit Department
Public Works Department

External Consultation With:

THIS REPORT SUBMITTED BY:

Department	Planning, Property and Development Department
Division	Real Estate Division
Prepared by:	Maxine Clayton
PPD File No.	7890

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SEP-07-2006 12:36 PLANNINGPROP, DEVELOP 204 944 8476 P.02/04

SCHEDULE A

Proposed terms and conditions for Encroachment Agreement for the installation of a crossing guard shelter shown as 'Encroachment Area' on the attached Misc. Plan No. 9401/2

Use: Installation of a crossing guard shelter

Area: Shown and identified as 'Encroachment Area' on Misc. Plan No. 9401/2

Term: Annual Continuing, commencing September 1, 2006.

Rental: $65.00 per annum, plus GST, computed on the basis of the fees outlined in the City of Winnipeg Encroachment By-law No. 692/74 and amendments thereto, in event that the By-law is amended changing the fees charged for encroachments the rental paid under this agreement shall be adjusted accordingly, plus an initial administrative fee of $250.00 plus GST.

Insurance: Comprehensive General Liability Insurance of at least $2,000,000.00, naming City of Winnipeg as additional insured, policy to contain a cross-liability clause and provision to provide fifteen (15) days notice of cancellation/termination.

Cancellation: Six months (180 days) written notice

Conditions:

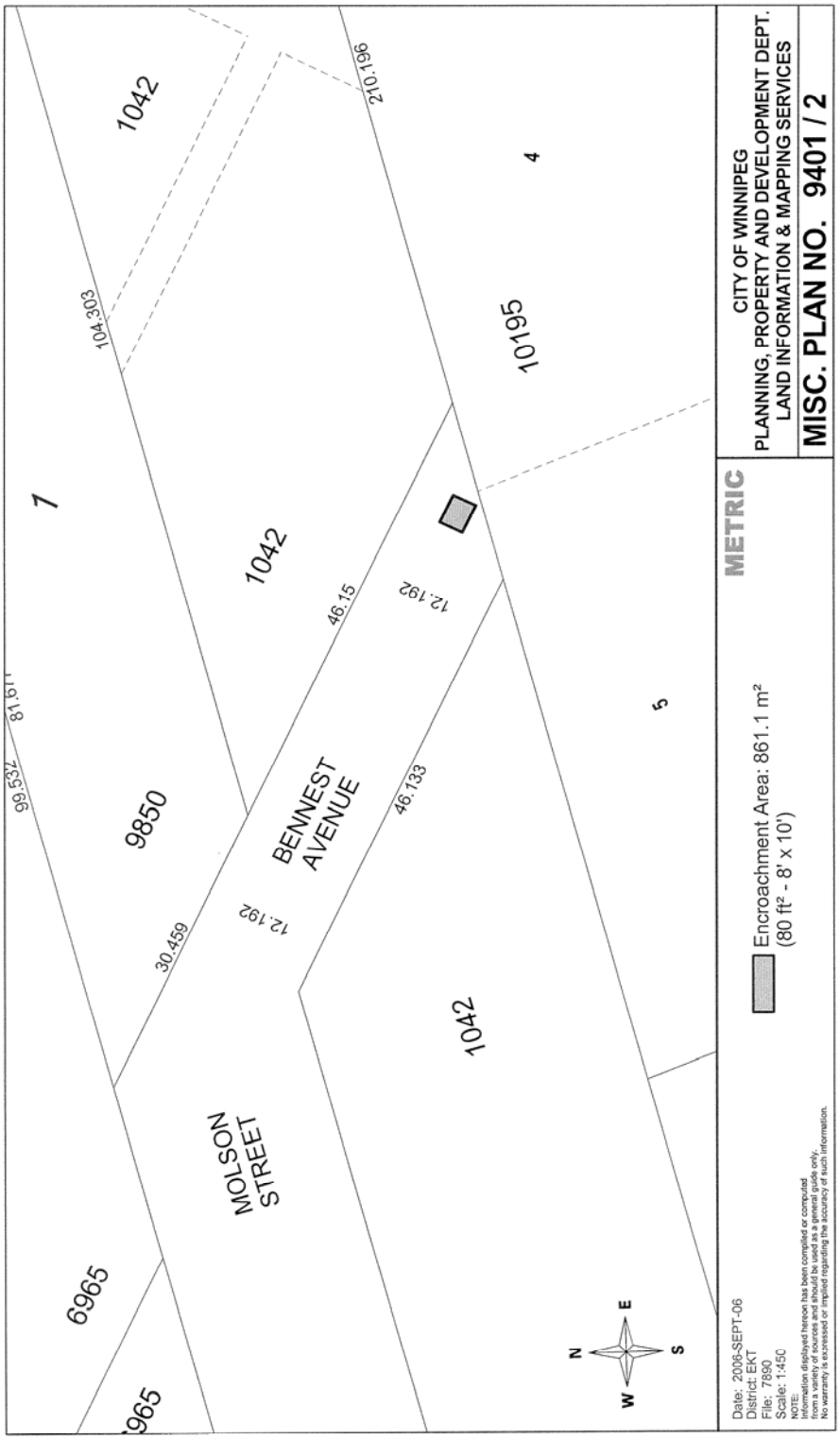
- The development and maintenance of the Encroachment Area will be performed at the sole cost, expense and effort of the Licensee, including obtaining all permits required to develop, occupy and utilize the Encroachment Area for its intended use.
- Licensee shall pay all utilities and operating expenses in connection with use of the premises.
- The City shall have the right of access to the right-of-way at any time (24 hours a day, seven days a week) by its employees or other persons acting with its authorization, with or without equipment to maintain, operate, repair, inspect or rehabilitate any existing watermains, sewer lines, etc. located within the encroachment area.
- Licensee shall not assign the agreement nor sub-let the premises without the prior written consent of the City.
- The Licensee shall, upon the discontinuance of the use of the right-of-way or termination, shall within thirty (30) days demolish and remove at its expense from the right-of-way all improvements and leave the premises in a neat, clean and level condition, free and clean of all material, debris and rubbish to the satisfaction of the Director of Public Works.

- Any other terms and conditions as are deemed necessary by the Director of Planning, Property and Development Department, the Director of Public Works and by the City Solicitor/Manager of Legal Services.
- River East-Transcona School Division agrees to enter into an appropriate Encroachment Agreement with the City embodying the within terms and conditions and in a form satisfactory to the City Solicitor/.Manager of Legal Services.
- The proposed terms and conditions of the proposed Lease Agreement are subject to the final approval of the City's Standing Committees and Council and to the City Solicitor as to form and content.

RIVER EAST TRANSCONA SCHOOL DIVISION hereby agree to enter into an Encroachment Agreement with the City of Winnipeg for the use of the property identified as 'Encroachment Area; on the attached Misc. Plan No. 9401/2 and in accordance with the terms and conditions as outlined herein on Schedule 'A'.

Marian

Sept 7/06
Date


CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 9401 / 2
METRIC
Encroachment Area: 861.1 m²
(80 ft² - 8' x 10')
Date: 2006-SEPT-06
District: EKT
File: 7890
Scale: 1:450
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.
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1042
10195
9850
6965
6965
BENNEST AVENUE
MOLSON STREET
210.196
104.303
99.532
81.677
46.15
12.192
46.133
12.192
30.459
1
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