Agenda - Council - September 24, 2008

Report - Standing Policy Committee on Property and Development - September 2, 2008

Item No. 18 Encroachment Agreement - Lagimodiere Boulevard Public Right-of-Way - Kildonan Crossing Shopping Centre Ltd.
(St. Boniface Ward)
File ED(35)

STANDING COMMITTEE RECOMMENDATION:

On September 17, 2008, 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 Agreement be approved in favour of Kildonan Crossing Shopping Centre Ltd., for continued vehicular parking purposes and the maintenance of two (2) pylon signs on the Lagimodiere Boulevard Public Right-of-Way at Regent Avenue West, shown as 'Leased Area" on Misc. Plan No.7282/3, in accordance with the terms and conditions outlined on Schedule 'A' to the report form the Director of Planning, Property and Development dated July 28, 2008; the Agreement to provide for such other terms and conditions as are deemed necessary by the Director of Planning, Property and Development and by the City Solicitor/Manager of Legal Services to protect the City's interest.

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 - September 2, 2008

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 17, 2008, 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 September 2, 2008, 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 Agreement in favour of Kildonan Crossing Shopping Centre Ltd. for Vehicular Parking and the Maintenance of Two Pylon Signs on the Lagimodiere Boulevard Public Right-of-Way

FOR SUBMISSION TO: Standing Policy Committee on Property and Development

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

REPORT DATE: July 28, 2008

RECOMMENDATION:

1. That Council approve an Encroachment Agreement in favour of Kildonan Crossing Shopping Centre Ltd., for continued vehicular parking purposes and the maintenance of two (2) pylon signs on the Lagimodiere Boulevard Public Right-of-Way at Regent Avenue West, shown as 'Leased Area" on Misc. Plan No.7282/3 attached, in accordance with the terms and conditions outlined on 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 interest.

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 terms and conditions of an Encroachment Agreement in favour of Kildonan Crossing Shopping Centre Ltd. for continued vehicular parking purposes and the maintenance of two (2) pylon signs on the Lagimodiere Boulevard Public Right-of-Way at Regent Avenue West.

- The Public Works Department has no objection to the continuation of this lease.

- The Corporate Finance Department, Risk Management Branch, reviewed the insurance requirements for this proposed encroachment and their comments have been incorporated into the proposed terms and conditions.

- 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
( ) Involves a multi-year contract
Comment(s):

Policy Implications
(x) No
( ) Yes
Comment(s):

Regulatory Implications
(x) None
( ) Eliminates or reduces regulatory impact
( ) Proposes regulatory impact
Comment(s):

Environmental Implications
(x) No
( ) Yes
Comment(s):

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):

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 Kildonan Crossing Shopping Centre Ltd. for vehicular parking purposes and the maintenance of two (2) pylon signs on the Lagimodiere Boulevard Public Right-of-Way at Regent Avenue West. This report seeks Council's approval to the proposed Encroachment Agreement.

HISTORY:

In 1989, Council approved the use of a portion of the Lagimodiere Boulevard Public Right-of-Way identified as "Leased Area" on the attached Misc. Plan No. 7282/3 for vehicular parking purposes in conjunction with the adjoining retail shopping centre commonly known as the Kildonan Crossing Shopping Centre. Subsequently, Council approved the erection and maintenance of two (2) pylon identification signs within the Leased Area in 1993.

In 1995, Council approved a Leave and License Agreement for the Leased Area for a five (5) year term. This Leave and License Agreement established an annual rent rate of $7,516.00, plus an amount equivalent to realty taxes. In November 2000, Council approved the renewal of a Leave and License Agreement at an annual rent rate of $14,000.00, plus GST, plus an amount equivalent to realty taxes, without option for renewal. The tenancy currently remains in an over-holding position.

DISCUSSION:

RioCan Real Estate Investment Trust, agent acting on behalf of Kildonan Crossing Shopping Centre, recently advised that it is agreeable to entering into an Encroachment Agreement for the "Leased Area", as identified on the attached Misc. Plan No. 7282/3, for a five (5) year term, with the option to renew for a further five (5) year term.

While the owners of the Shopping Centre have expressed an interest in purchasing the site, the Public Works Department has indicated that this site is not surplus to the City's needs as it may be required for future street widening. The Public Works Department has no objections to entering into an Encroachment Agreement under the terms and conditions negotiated herein.

The Corporate Finance Department, Risk Management Branch, reviewed the insurance requirements for this proposed encroachment and their comments have been incorporated into the proposed terms and conditions attached hereto as Schedule "A".

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 in favour of Kildonan Crossing Shopping Centre. Both parties concur that the proposed terms and conditions are fair and reasonable.

In summary, the terms and conditions of the Encroachment Agreement (Schedule 'A' attached) agreed to by RioCan Real Estate Investment Trust, agent acting on behalf of Kildonan Crossing Shopping Centre., are as follows:

Use:	*For the purpose of vehicular parking and the maintenance of two pylon signs in conjunction with the Licensee's adjoining shopping Centre and not for any other purpose except with the prior written consent of the City.*
Term:	*Five (5) years, commencing on April 1, 2006 and expiring on March 31, 2011*
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 than the previous term's rental rate.* *The Option to Renew shall be subject to a rental increase, which shall be based on compounding the annual increase in the CPI over the term of the lease, and which shall at no time be less than the current rent.*
Rent Rate:	*For the Years 2006 and 2007: $14,000 per annum, plus GST.* *For the Years 2008, 2009 and 2010: $22,000 per annum, plus GST* *Plus a one time administration fee of $500.00.*
Realty taxes:	*Licensee responsible for all municipal taxes, school taxes, local improvements, etc.*
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:	*90 days written notice by either party*

The Planning, Property and Development Department has negotiated a rental rate of $14,000 in the first 2 years, and a new proposed rent rate of $22,000 in the following 3 years, representing an increase of approximately 50%. The Department is of the opinion that the negotiated terms and conditions are fair and reasonable given current market conditions.

Financial Impact Statement

Date: July 11, 2008

Project Name:

First Year of Program **2008**

Encroachment Agreement in favour of Kildonan Crossing Shopping Centre for vehicular parking purposes and the maintenance of two pylon signs

	2008	2009	2010	2011	2012
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	20,500	22,000	22,000	5,500	-
Net Cost/(Benefit)	$ (20,500)	$ (22,000)	$ (22,000)	$ (5,500)	$ -
Less: Existing Budget Amounts	(14,500)	(22,000)	(22,000)	(5,500)	-
Net Budget Adjustment Required	$ (6,000)	$ -	$ -	$ -	$ -

Additional Comments: Revenues for 2008 reflect a $14,000 encroachment prorated for three months and a $22,000 fee prorated for nine months plus a one time $500 administration fee. This will result in revenues in excess of budget for 2008 of $6,000. Revenues for 2009 and 2010 reflect a $22,000 encroachment fee while the 2011 amount is $22,000 prorated for three months. No estimate of the revenues for the renewal term have been included in this FIS but, per the terms of the agreement, is will not be less that $22,000 per annum.

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

6280

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

- Public Works Department
- Corporate Finance
- Internal Services, Legal Services Division

External Consultation With:
N/A

THIS REPORT SUBMITTED BY:

Department Planning, Property and Development
Division Real Estate Division
Prepared by: Sara Cianflone
PPD File No. 4435

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600
1631
1
PANET RD
2
5371
17.0
WIDE
122.511
PT
49
PT
48
1651
1639
1631
1615
7.0
15.0
REGENT AV W
LAGIMODIERE BV
1600
Applicant's Property
Leased Area 1895.7 sq.m. +/-
METRIC
Date: 2007-SEPT-14
District: EKT
File: TR 4435
Scale: 1:1250
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. 7282 / 3

Schedule "A"

Proposed Terms and Conditions
City Owned Property located at the
North West Corner of Regent Avenue West and Lagimodiere Boulevard
(Shown as "Leased Area" on attached Misc. Plan No. 7282/3)

Use:	For the purpose of vehicular parking and the maintenance of two pylon signs in conjunction with the Licensee's adjoining shopping Centre and not for any other purpose except with the prior written consent of the City.
Term:	Five (5) years, commencing on April 1, 2006 and expiring on March 31, 2011
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 than the previous term's rental rate. The Option to Renew shall be subject to a rental increase, which shall be based on compounding the annual increase in the CPI over the term of the lease, and which shall at no time be less than the current rent.
Rent Rate:	For the Years 2006 and 2007: $14,000 per annum, plus GST. For the Years 2008, 2009 and 2010 - $22,000 per annum, plus GST Plus a one time administration fee of $500.00.
Realty Taxes:	Tenant responsible for all municipal taxes, school taxes, local improvements, etc.
Insurance:	Commercial General Liability Insurance in the amount of at least $2,000,000.00, inclusive, adding The City of Winnipeg as additional insured, containing a cross-liability clause and the Lessee shall not cancel, or cause any such policy or policies to lapse without minimum fifteen (15) days prior written notice to the City.
Cancellation:	90 days written notice by either party
Other:	The Tenant understands and agrees that it is leasing the "Leased Area" on Misc. Plan No. 7282/3 is on an "as is" basis in connection with the Licensee's operation of a shopping mall and for no other purpose. The development and maintenance of the Leased Area will be performed at the sole cost, expense and effort of the tenant, including, obtaining all permits required to develop, occupy and utilize the Leased Area for its intended use and without the Lessee first obtaining prior written authority of the City to erect any additional building or structure, nor making any alterations to the existing roadway.

Schedule "A"

The Tenant shall be responsible for all operating expenses in connection with the use and occupation of the Leased Area including, but not limited to; license fees, business taxes, garbage removal, snow removal, security, etc.

The Tenant understands and agrees that employees, agents and servants of the City have a right of access to enter the said land, with or without equipment, for any purpose, including viewing the state of repair. In the event that the lands require repair, the Lessee will perform at its sole cost, expense and effort required repairs within ten (10) days of written notice provided by the City.

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

The registered owner, as named below, agrees to enter into an appropriate Lease Agreement with the City embodying the terms and conditions named herein and in a form satisfactory to the City Solicitor/Manager of Legal Services.

Final terms and conditions of the proposed lease are subject to the final consideration and approval of City Council or its delegated authority.

I John Ballantyne, of RioCan Real Estate Investment Trust, authorized agent acting on behalf of Kildonan Crossing Shopping Centre Ltd, hereby agree to enter into a lease agreement with the City of Winnipeg for the use of the property identified as "Leased Area" on the attached Misc. Plan No. 7282/3 and in accordance with the terms and conditions as outlined herein.

Agent for Kildonan Crossing Shopping Centre Ltd. **Date** July 8, 2008

Please review and confirm the following Agent Contact Information:

John Ballantyne
RioCan Property Services
495- 36th Street NE, Suite 257
Calgary, Alberta
T2A 6K3
Tel: (416) 866-3097
Email: jballantyne@riocan.com

Schedule "A"


PANET RD
REGENT AV W
LAGIMODIERE BV
PT 49
PT 48
17.0 WIDE
122.511
Applicant's Property
Leased Area 1895.7 sq.m. +/-
METRIC
Date: 2007-SEPT-14
District: EKT
File: TR 4435
Scale: 1:1250
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CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 7282 / 3