Minute No. 173
Report – Standing Policy Committee on Property and Development – January 8, 2008

Item No. 9 **Encroachment Agreement - 131 Provencher Holdings Ltd. for Parking Purposes at Centreville Encroaching onto the rue Dumoulin Right-Of-Way**
(St. Boniface Ward)
File ED(35)

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 in favour of 131 Provencher Holdings Ltd. for parking purposes within the rue Dumoulin right-of-way, shown as 'Encroachment Area' on Misc. Plan No. 12572, be approved in accordance with the terms and conditions outlined on Schedule 'A' contained in the report from the Acting Director of Planning, Property and Development dated December 19, 2007; the Agreement to provide for such other terms and conditions as are deemed necessary by the Acting Director of 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 – Standing Policy Committee on Property and Development – January 8, 2008

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 January 16, 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 January 8, 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 131 Provencher Holdings Ltd. for Parking Purposes at Centreville Encroaching onto the Rue Dumoulin Right-Of-Way
Riel Community
St. Boniface Ward

FOR SUBMISSION TO: Standing Policy Committee on Property & Development

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

REPORT DATE: December 19, 2007

RECOMMENDATION:

1. That Council approve an Encroachment Agreement in favour of 131 Provencher Holdings Ltd. for parking purposes within the Rue Dumoulin right-of-way, shown as 'Encroachment Area' on Misc. Plan No. 12572, 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 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 Encroachment Area is located between Tache Avenue and the Red River. A pumping station and appurtenances are located within the Encroachment Area.
- The Water & Waste Department advised that they would support entering into an Encroachment Agreement for a two (2) year term.
- The Public Works Department advised that the Encroachment Area is available for lease for a two (2) year term.
- The Corporate Finance Department, Risk Management Branch, reviewed the insurance requirements for this proposed occupancy and their comments have been incorporated into the proposed terms and conditions for a new lease.
- The Planning, Property and Development Department negotiated proposed terms and conditions of an Encroachment Agreement in favour of 131

Provencher Holdings Ltd. for parking purposes. 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 131 Provencher Holdings Ltd. for parking purposes within the Rue Dumoulin right-of-way. The report seeks Council's approval to the proposed Encroachment Agreement.

HISTORY:

On July 5, 2005, Council approved an Encroachment Agreement in favour of Rancho Realty Services (Manitoba) Ltd., on behalf of 131 Provencher Holdings Ltd., for the establishment of a parking area within the Rue Dumoulin right-of-way to be specifically used in conjunction with its property located at 131 Provencher Boulevard. The Encroachment Area accommodating 11 parking stalls is denoted on the attached Misc. Plan No. 12572. The aforementioned Encroachment Agreement expired on June 30, 2007.

Details of the City Property are as follows:

Location:	Rue Dumoulin Right of Way, South Side of Tache Avenue
Legal Description:	See attached Misc. Plan No. 12572
Size:	Land 14.326 m $^{\pm}$ x 21.336 m $^{\pm}$ = 305.7m$^{2\pm}$, (47 ft x 70 ft = 3,290 ft^2)

DISCUSSION:

Rancho Realty Services (Manitoba) Ltd, agent acting on behalf of 131 Provencher Holdings Ltd., the registered owner of 131 Provencher Boulevard located on the northeast corner of Tache Avenue and Provencher Boulevard, has expressed interest

in entering into a new Encroachment Agreement for the Encroachment Area identified on the attached Misc. Plan No. 12572 for a two (2) year term.

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 for parking purposes on the subject City-owned property with Rancho Realty Services (Manitoba) Ltd.

The terms and conditions of the proposed Encroachment Agreement agreed to by Rancho Realty Services (Manitoba) Ltd., agent acting on behalf of 131 Provencher Holdings Ltd. are as follows. (Details contained in the attached Schedule "A")

Term:	Two year term, commencing July 1, 2007.
Purpose:	Use for assigned parking only.
Rental:	$3,300.00 per annum plus GST
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 and provision to provide fifteen (15) days notice of cancellation/termination.
Cancellation:	The City of Winnipeg may cancel upon giving ninety (90) days notice if the City requires said lands for its own use. The City may cancel the lease immediately if the Tenant is deemed to be in default of any term(s) of the lease.
Other:	The development and maintenance of the encroachment area will be performed at the sole cost, expense and effort of 131 Provencher Holdings Ltd. including obtaining all permits required to develop, occupy and utilize the subject property for its intended use prior to the development of the parking.

The negotiated rental rate and purposed terms and conditions are consistent with other such leases in the surrounding area. The Department is recommending acceptance of this Encroachment Agreement.

Financial Impact Statement

Date: December 13, 2007

Project Name:

Proposed Encroachment Agreement in Favour of 131 Provencher Holdings Ltd. for Parking Purposes at Centreville Encroaching onto the Rue Dumoulin Right-Of-Way

First Year of Program 2007

	2007	2008	2009	2010	2011
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	1,900	3,300	1,650	-	-
Net Cost/(Benefit)	$ (1,900)	$ (3,300)	$ (1,650)	$ -	$ -
Less: Existing Budget Amounts	(1,900)	(3,300)	(1,650)	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments:

The proposed lease agreement would result in the City accruing $3,300 per annum over two years. The amount in 2007 has been adjusted to reflect a July 1, 2007 commencement date and a one time administrative fee of $250.00, while the amount in 2009 has been adjusted to reflect a June 30, 2009 termination date.

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

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

- Water and Waste Department
- Public Works Department
- Corporate Finance
- Internal Services – Legal Services Division

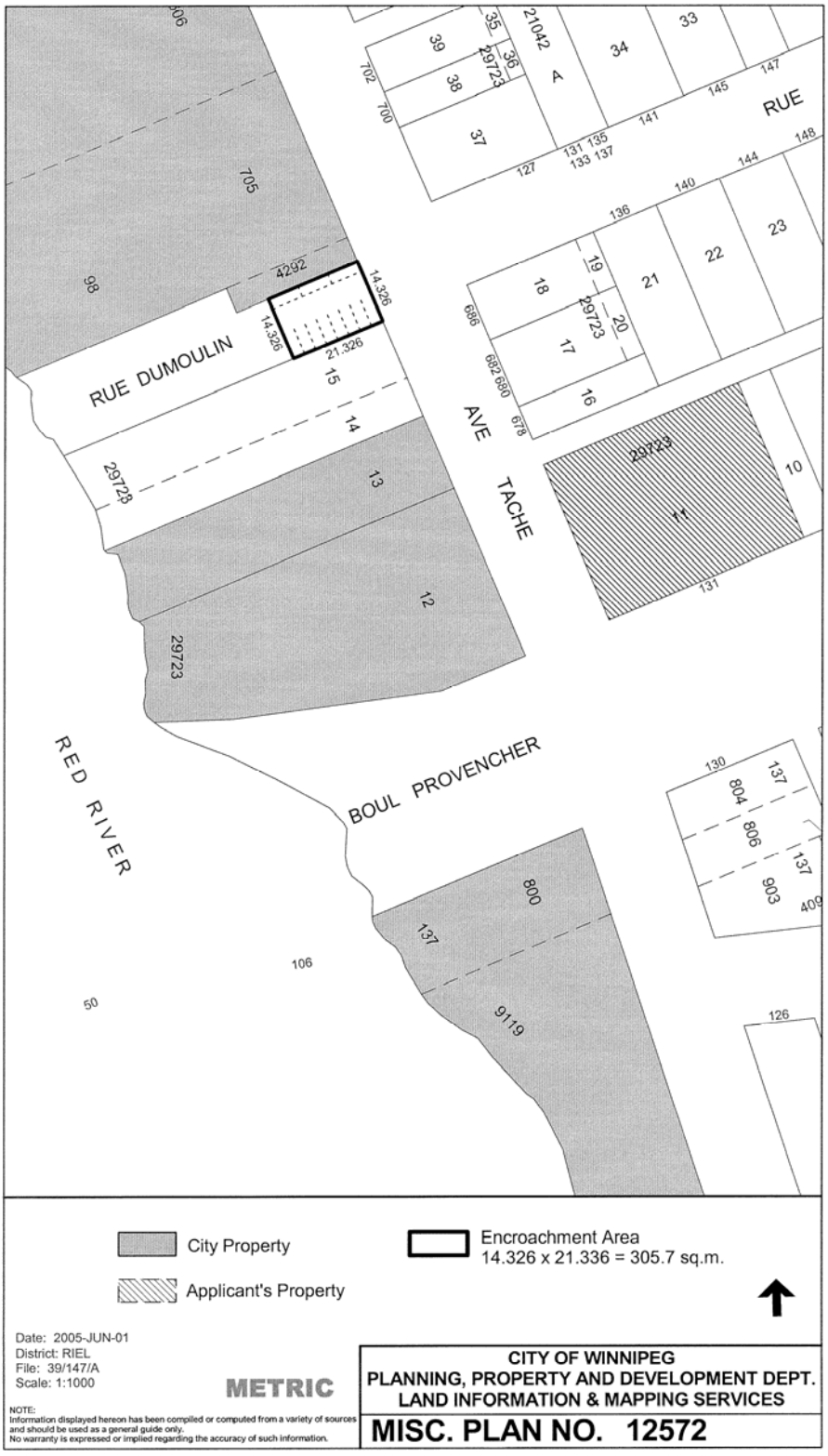
External Consultation With:

N/A

THIS REPORT SUBMITTED BY:

Planning, Property and Development Department
Division: Real Estate Division
Prepared by: Sara Cianflone
PPD File #: 4254/33 (V2)

Document name: o:\reports directive\real estate\leasing\(sc) rue dumoulin encroachment.doc


RUE DUMOULIN
AVE TACHE
RUE
BOUL PROVENCHER
RED RIVER
City Property
Applicant's Property
Encroachment Area
14.326 x 21.336 = 305.7 sq.m.
Date: 2005-JUN-01
District: RIEL
File: 39/147/A
Scale: 1:1000
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. 12572

Schedule "A"

Proposed Terms and Conditions
City Owned Property at Rue Dumoulin, South side of Tache Ave
(Shown As "ENCROACHMENT AREA" On Attached Misc. Plan No. 12572)

Use:	Assigned vehicular parking in conjunction with the business operations located at 131 Boulevard Provencher only. This use shall be limited to no more than eleven (11) light duty vehicles, and for no other purposes whatsoever.
Term:	Two (2) years commencing on July 1, 2007. Rental is subject to annual review by the City but in no event will it be less than that paid in the previous year.
Rent Rate:	$3,300.00 per annum, plus GST, plus a one time administrative fee of $250, plus applicable GST.
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.
City's Option To Cancel:	The City of Winnipeg may cancel upon giving ninety (90) days notice if the City requires said lands for its own use. The City may cancel the lease immediately if the Tenant is deemed to be in default of any term(s) of the lease.
Other:	The tenant understands and agrees that it is leasing the 'Encroachment Area' on Misc. Plan No. 12572 on an "as is" basis. The development and maintenance of the Encroachment 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 Encroachment Area for its intended use. The City shall have the right to access the encroachment area at any time (twenty four 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 existing water mains, sewer lines, the existing pumping station and appurtenances located within the encroachment area. The tenant shall not erect or permit the erection of any building or other structure, nor make any excavation or place fill upon the Encroachment Area. The tenant shall be responsible for all costs, utilities, and operating expenses in connection with the use and occupation of the Encroachment Area including, but not limited to; license fees, business tax, garbage

Schedule "A"

removal, snow removal (to be hauled away and not piled on site), security, etc. The tenant shall also be responsible for clean up of litter in the immediate area as a result of use and occupation of the Encroachment Area.

The tenant shall, without any compensation whatsoever, and whenever so requested, remove any vehicles and any improvements which it may have placed, installed, constructed or erected on the Encroachment Area in order to permit the City and/or the utilized unimpeded access to its own services either above or below ground.

The tenant shall not assign or sub-let this lease agreement.

Any other terms and conditions as are deemed necessary by the Director of the Planning, Property and Development Department, the Director of the Water and Waste 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 Encroachment 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.

Rancho Realty Services (Manitoba) Ltd., agent acting on behalf of 131 PROVENCHER HOLDINGS LTD., being the Owner of 131 BOULEVARD PROVENCHER, hereby agrees to enter into a lease agreement with the City of Winnipeg for the use of the City owned lands identified as "Encroachment Area" on Misc. Plan No.12572 attached, in accordance with the proposed terms and conditions as outlined herein on this Schedule "A".

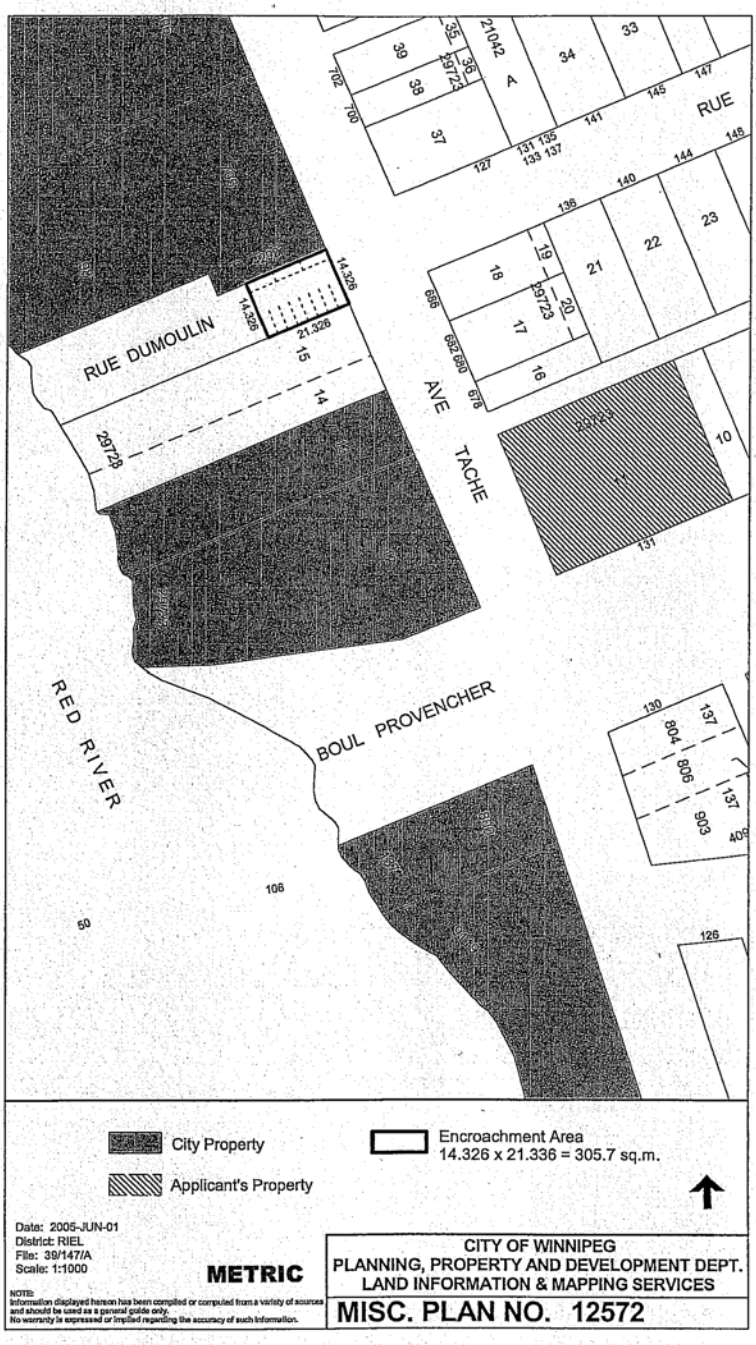
Agent for 131 Provencher Holdings Ltd

December 13, 2007.
Date

Please review and confirm the following Agent Contact Information:

Laurent Soret, Commercial Property Manager
Rancho Realty Services (Manitoba) Ltd.
30 Speers Road
Winnipeg, Manitoba
R2J 1L9
Direct (204) 254-9272
Fax (204) 233-2518
lsoret@ranchogroup.com

Schedule "A"


RUE DUMOULIN
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14.326
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29729
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