Minute No. 44
Report - Standing Policy Committee on Downtown Development - October 27, 2008

Item No. 3 **Encroachment Agreement - Market Avenue Right-of-Way at Rorie Street - Manitoba Theatre Centre**
(Point Douglas Ward)
eFile ED(32)

COUNCIL DECISION:

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

1. That an Encroachment Agreement in favour of the Manitoba Theatre Centre to display and maintain a bronze statue at 174 Market Avenue encroaching onto the Market Avenue right-of-way at Rorie Street shown as 'Encroachment Area' on Misc. Plan No. 13352/1, be approved in accordance with the terms and conditions outlined Schedule A to the report from the Director of Planning, Property and Development dated, October 16, 2008, 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 - Standing Policy Committee on Downtown Development - October 27, 2008

DECISION MAKING HISTORY:

Moved by Councillor Pagtakhan,

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

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On November 12, 2008, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Downtown Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On October 27, 2008, the Standing Policy Committee on Downtown 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 is Favour of Manitoba Theatre Centre to Display and Maintain a Bronze Statue at 174 Market Avenue Encroaching onto the Market Avenue Right-of-Way at Rorie Street
Lord Selkirk/West Kildonan Committee
Point Douglas Ward

FOR SUBMISSION TO: Standing Policy Committee on Downtown Development

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

REPORT DATE October 16, 2008

RECOMMENDATION:

1. That Council approve an Encroachment Agreement in favour of Manitoba Theatre Centre to display and maintain a bronze statue at 174 Market Avenue encroaching onto the Market Avenue right-of-way at Rorie Street, shown as 'Encroachment Area' on Misc. Plan No. 13352/1 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 Water and Waste Department has advised that the proposed location for the statue is directly above an extremely old cast iron water main that is nearing the end of its life span. Locating a statue of this size and weight directly over a water main of this vintage, as proposed, is a risk and will make it most difficult for the repair crews to undertake a timely repair in the event of a leak. In that event, damage to the statue will result.

- The Planning, Property and Development Department has negotiated proposed terms and conditions of an Encroachment Agreement in favour of Manitoba Theatre Centre for the display and maintenance of a bronze statue at 174 Market Avenue encroaching onto the Market Avenue right-of-way at Rorie Street.

- The 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 Manitoba Theatre Centre to display and maintain a bronze statue at 174 Market Avenue encroaching onto the Market Avenue right-of-way at Rorie Street.

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

HISTORY:

Manitoba Theatre Centre submitted an encroachment application to the Zoning and Permits Branch of the Planning, Property and Development Department for the proposed display and maintenance of a bronze statue at 174 Market Avenue encroaching onto the Market Avenue right-of-way at Rorie Street.

DISCUSSION:

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 Manitoba Theatre Centre 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 for similar uses.

Briefly, the terms and conditions of the Encroachment Agreement agreed to by Manitoba Theatre Centre are as follows:

Use:	Display and Maintain a bronze statue located at 174 Market Avenue encroaching onto the Market Avenue right-of-way at Rorie Street;
Area:	Shown and identified as 'Encroachment Area' on Misc. Plan No. 13352/1;
Term:	Annual Continuing commencing on December 1, 2008;
Rental:	$54.00 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 the event that the By-law is amended changing the fees charged for encroachments, the rental paid under this agreement shall be adjusted accordingly;
Admin Fee:	A one-time administrative fee of $250.00 plus GST;

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: Thirty (30) days written notice by either party;

Conditions: The Applicant is required to enter into an Encroachment Agreement with the City of Winnipeg within six (6) months of the application approval, or alternatively obtain an extension of time from the Designated Officer-Encroachments;

That if there are any existing Hydro/Gas facilities which require removal and/or relocation as a result of this application, the costs will be at the expense of the developer and/or customer;

That the space between the edge of the proposed statue and the existing concrete planter be either less than 3½" or greater than 9";

That if the statue is not protected by bollards, there is some chance that the statue will be impacted by snow hauling operations;

That the following conditions set forth by the City of Winnipeg Water and Waste Department be met:

The proposed location for the statue is directly above an extremely old cast iron water main, originally installed in 1899 which is nearing the end of its life span. With a water main of this vintage, and as time goes by, leaks will start to occur ultimately increasing the frequency until a full water main renewal is required. Locating a statue of this size and weight directly over a water main of this vintage, as proposed, is a risk and will make it most difficult for the Department's repair crews to undertake a timely repair in the event of a leak. Undoubtedly damage to the statue will result in that event.

Therefore, as condition of this approval, MTC must agree that if damage to the statue should occur as a result of repair work, water main renewal or any other general maintenance work required to this particular water main, the Water and Waste Department cannot be held liable for costs and such costs are the sole responsibility of Manitoba Theatre Centre. If time permits, Manitoba Theatre Centre may be given first opportunity to arrange to have the statue removed prior to construction by a contractor of their choice at their sole expense.

That all applicable permits be obtained prior to any development;

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;

Manitoba Theatre Centre 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 Encroachment Agreement are subject to final approval of the City's Standing Committees and Council and to the City Solicitor as to form and content.

Financial Impact Statement

Date: October 16, 2008

Project Name:

First Year of Program 2008

Proposed Encroachment in Favour of Manitoba Theatre Centre to Display and Maintain a Bronze Statue at 174 Market Avenue Encroaching onto the Market Avenue Right-of-Way at Rorie Street

	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	255	54	54	54	54
Net Cost/(Benefit)	$ (255)	$ (54)	$ (54)	$ (54)	$ (54)
Less: Existing Budget Amounts	(255)	(54)	(54)	(54)	(54)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2008 consist of the one-time $250 admin fee + $54 in encroachment license revenue prorated for the Dec. 1, 2008 commencement date. Revenues from 2009 onward represent encroachment license revenue for the full year.

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

IN PREPARING THIS REPORT THERE WAS:

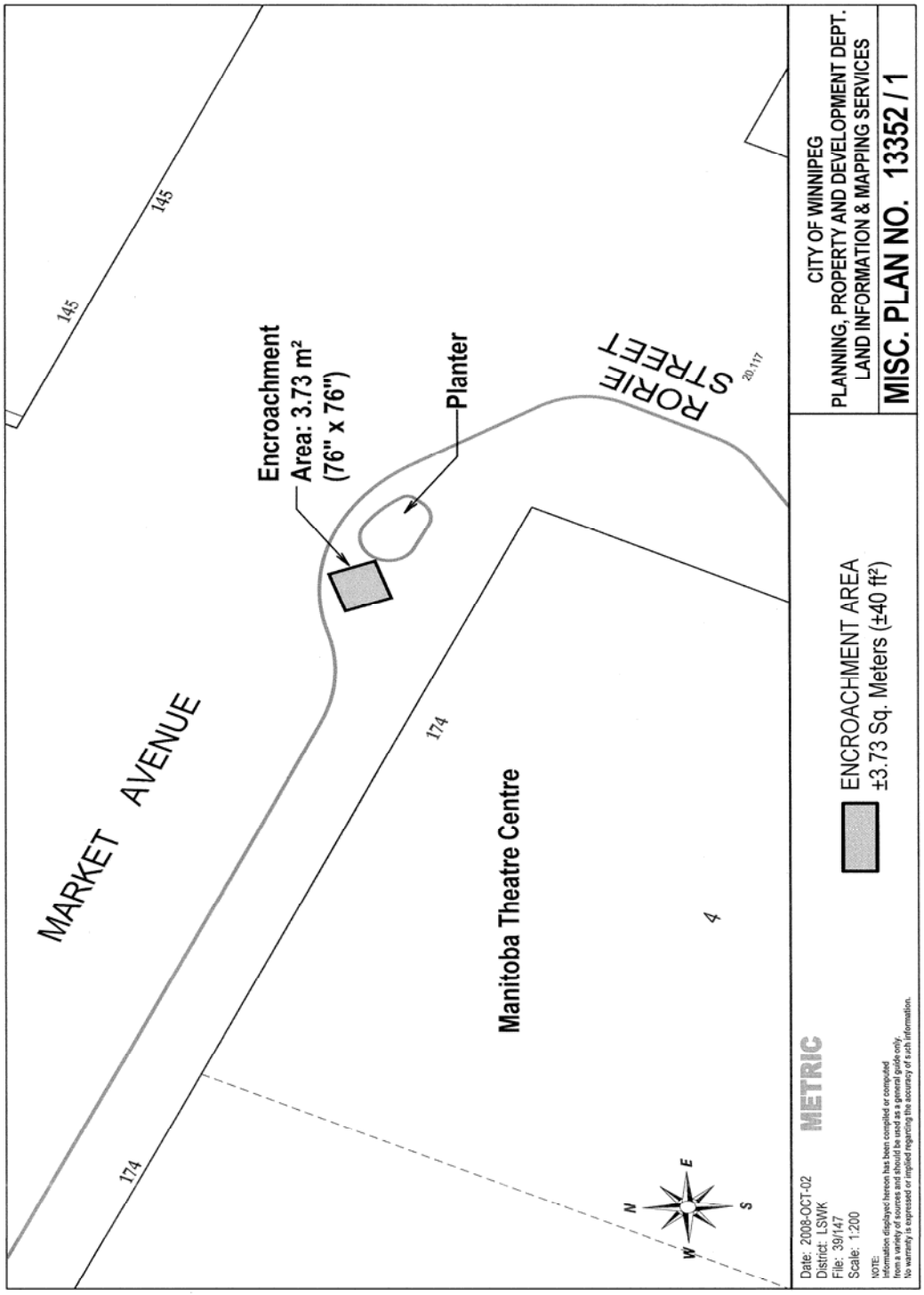
Internal Consultation With and Concurrence By:
Corporate Finance
Water and Waste
Internal Services-Legal Services Division as to Legal Issues

External Consultation With:

THIS REPORT SUBMITTED BY:

Department Planning, Property and Development
Division Real Estate Division
Prepared by: Maxine Clayton
PPD File No. 39/147

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MARKET AVENUE
RORIE STREET
Encroachment
Area: 3.73 m²
(76" x 76")
Planter
Manitoba Theatre Centre
145
145
174
174
4
20.117
N
E
S
W
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13352 / 1
ENCROACHMENT AREA
±3.73 Sq. Meters (±40 ft²)
Date: 2008-OCT-02
District: LSWK
File: 39/147
Scale: 1:200
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.

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR ENCROACHMENT AGREEMENT TO PERMIT THE PLACEMENT AND MAINTENANCE OF A BRONZE STATUE AT 174 MARKET AVENUE ENCROACHHING ONTO THE MARKET AVENUE RIGHT-OF-WAY AT RORIE STREET

Use:	Placement and maintenance of a bronze sculpture shown as 'Encroachment Area' on the attached Misc. Plan No. 13352;
Area:	Shown and identified as 'Encroachment Area' on Misc. Plan No. 13352, attached;
Term:	Annual Continuing, commencing December 1st, 2008;
Rental:	$54.00 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:	The Lessee shall provide evidence of liability insurance through a Commercial General Liability policy of at least $2,000,000.00, adding The City of Winnipeg as additional insured and containing a cross-liability clause; Any certificates of insurance documenting the above should be sent to: The City of Winnipeg, Risk Management Division, 3rd Floor, 185 King Street, Winnipeg, Manitoba R3B 1J1 Attention: E. Martin, Supervisor of Insurance and Risk Financing Phone: 986-5252 Fax: 986-6132 Email: emartin@winnipeg.ca
Cancellation:	Ninety (90) days written notice;
Conditions:	The applicant is required to enter into an Encroachment Agreement with the City of Winnipeg within six (6) months of the application approval, or alternatively obtain an extension of time from the Designated Officer – Encroachments; That if there are any existing Hydro/Gas or MTS facilities which require removal and/or relocation as a result of this application, the costs will be at the expense of the developer and/or customer; That the space between the edge of the proposed sculpture and the existing concrete planter be either less than 3½" pr greater than 9"; That if the sculpture is not protected with bollards, there is some chance of the sculpture being impacted by snow hauling operations;

That the following conditions set forth by the City of Winnipeg Water and Waste Department be met:

The proposed location for the statue is directly above an extremely old cast iron water main, originally installed in 1899. Although the Department has had a good track record with this water main, the water main is nearing the end of its life span. With a water main of this vintage, and as time goes by, leaks will start to occur ultimately increasing the frequency until a full water main renewal is required. Locating a statue of this size and weight directly over a water main of this vintage, as proposed, is a risk and will make it mot difficult for the Department's repair crews to undertake a timely repair in the event of a leak. Undoubtedly damage to the statue will result.

Therefore, as a condition of this approval, MTC must agree that if damage to the statue should occur as a result of repair work, water main renewal, or any other general maintenance work required to this particular water main, the Water and Waste Department cannot be held for costs and such costs are the sole responsibility of Manitoba Theatre Centre.

That all applicable permits be obtained prior to any development.

The proposed terms and conditions of the proposed Encroachment 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.

I, GERRY COUTURE, duly authorized to act on behalf of the Manitoba Theatre Centre, hereby agree that the Manitoba Theatre Centre will enter into a Encroachment Agreement with the City of Winnipeg for the use of the Market Avenue right-of-way identified as "Encroachment Area" on Misc. Plan No. 13352, attached, in accordance with the terms and conditions as outlined herein.

for Manitoba Theatre Centre **Date** OCT. 2, 2008

Please provide the following tenant contact information:

Contact Person:
Daytime: ALAN WAITE Phone: 956-1340

After Hours: ALAN WAITE Phone: 475-9577

E-mail Address: awaite@mtc.mb.ca