Agenda - Council - July 22, 2009

Report - Standing Policy Committee on Property and Development – July 13, 2009

Item No. 4 Encroachment Agreement - Donwood Manor Personal Care Home Inc. (North Kildonan Ward) eFile ED (33)

STANDING COMMITTEE RECOMMENDATION:

On July 15, 2009, 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 the proposed Encroachment Agreement in favour of the Donwood Manor Personal Care Home Inc. be approved in accordance with the proposed terms and conditions as stated in the report of the Winnipeg Public Service dated June 12, 2009.

2. That the Property 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 – July 13, 2009

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 15, 2009, 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 July 13, 2009, 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.

ADMINISTRATIVE REPORT

ISSUE: **Proposed Encroachment Agreement for Parking Purposes within a portion of the Chief Peguis Trail Right-of-Way – Donwood Manor Personal Care Home Inc.**

Critical Path: **Standing Policy Committee on Property and Development**

AUTHORIZATION

Author	Department Head	CFO	CAO
R. Klassen	D. Joshi	n/a	P Sheegl, Deputy CAO

In accordance with the Council Order of July 18, 1979, the Standing Policy Committee on Property and Development shall authorize the leasing or rental of City properties for which the Director of Planning, Property and Development Department has no authority. In this regard, the Planning, Property and Development Department, has negotiated proposed terms and conditions of an Encroachment Agreement in favor of the Donwood Manor Personal Care Home Inc. for the use of a portion of the Chief Peguis Trail, approximately 456.0 square meters, shown on Misc. Plan No 11837/1. This report seeks the Committee's approval of the Encroachment Agreement as negotiated.

RECOMMENDATIONS

1. That the proposed Encroachment Agreement in favour of the Donwood Manor Personal Care Home Inc. be approved in accordance with the proposed terms and conditions as stated herein.

2. That the Property Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

IMPLICATIONS OF THE RECOMMENDATIONS

- The Department has determined that there are no general, policy, regulatory, environmental, human resource or financial implications to the Encroachment Agreement of this land as outlined in the attached Schedule "A".

- The existing Encroachment Agreement with Donwood Manor Personal Care Home Inc. (Donwood Manor) expires on June 30, 2009.
- Donwood Manor wishes to enter into a new Encroachment Agreement for the use of a portion of the Chief Peguis Trail being approximately 456 square meters, shown illustrated and identified as “Encroachment Area” on Misc. Plan No. 11837/1, for the purpose of vehicular parking in conjunction with the personal care home operations located at 171 and 165 Donwood Drive.
- The additional parking behind Donwood Manor was able to free up much needed parking on the streets in the immediate area. The staff parking area allowed for more on-street parking which created an accessibility benefit for the surrounding community.

HISTORY

One June 16th, 2004, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and approved the Encroachment Agreement in favour of Donwood Manor Personal Care Home Inc. for the development and maintenance of a vehicular parking area within a portion of the Chief Peguis Trail right-of-way. With the annual rental rate of $1.00 plus an amount equivalent to realty taxes, the said Agreement is 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 interest.

The Encroachment Area is owned by the City of Winnipeg and situated within a portion of the Chief Peguis Trail right-of-way shown hatched and identified as “Encroachment Area” on Misc. Plan No. 11837/1 attached. The site is approximately 456 square meters and has been used since July 4th, 2004 by Donwood Manor in conjunction with their business by adding an additional 20 vehicle parking spots. The Encroachment Area forms part of the lands associated with the future expansion of the Chief Peguis Trail.

The City has been working towards extending the Chief Peguis Trail from Henderson Highway to Lagimodiere Boulevard. The Public Works Department has reviewed the Terms and Conditions of the Encroachment Agreement and finds the 180-day cancellation clause to be acceptable.

The current Encroachment Agreement expires on June 30, 2009. Representatives from Donwood Manor have made a request to enter into a new agreement so that they can continue to have access to the additional parking spots until the extension of the Chief Peguis Trail.

The Planning, Property and Development formulated the proposed Terms and Conditions for a new Encroachment Agreement for an additional five-year term, with a 180-day cancellation clause, and recommend that the proposed Encroachment Agreement in favour of the Donwood Manor Personal Care Home Inc. be approved.

FINANCIAL IMPACT

Financial Impact Statement **Date:** June 12, 2009

Project Name: **First Year of Program 2009**

Proposed Encroachment Agreement for Parking Purposes within a portion of the Chief Peguis Trail Right-of-Way – Donwood Manor Personal Care Home Inc.

	2009	2010	2011	2012	2013
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	251	251	251	251	251
Net Cost/(Benefit)	$ (251)	$ (251)	$ (251)	$ (251)	$ (251)
Less: Existing Budget Amounts	(251)	(251)	(251)	(251)	(251)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues consist of the nominal rent of $1/annum + an annual admin fee of $250. Realty taxes, which are the responsibility of the tenant, have been excluded from the analysis due to the amount being immaterial.

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

CONSULTATION

In preparing this Report there was consultation with:

Corporate Support Services Department (Legal Services as to form and content)

Public Works Department

Water & Waste Department

SUBMITTED BY

Department:	Planning, Property and Development
Division:	Real Estate
Prepared by:	P. Johannsson, Real Estate Officer
Date:	June 12, 2009
File No.	8370

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Schedule "A"
Proposed Terms and Conditions for Encroachment Agreement between the City of Winnipeg and Donwood Manor Personal Care Home – 165 Donwood Drive.

Encroachment Area on Misc. Plan No. 11837/1 hereinafter referred to as the ("Encroachment Area")

Landlord:	City of Winnipeg
Tenant:	Donwood Personal Care Home Inc.
Leased Area:	4,908.3 sq. ft. or 456.0 sq. m. as shown on the attached Misc. Plan 11837/1
Use:	Premises shall be used for parking stalls only, not exceed 20 stalls, and the Tenant shall be responsible for all costs associated with its operation and use of the lands.
Term:	Five (5) years commencing July 1, 2009.
Rent:	$1.00 per annum plus GST
Realty Taxes:	Tenant is responsible for all realty taxes, municipal taxes, school taxes, local improvements, license fees, business tax, etc. of which may be charged in respect of the use and occupation of the subject property.
Admin Fee:	An annual administration fee of $250.00 plus GST.
Cancellation:	Then agreement is subject to cancellation by either party, for any reason by giving 180 days written notice. Upon termination or cancellation of the agreement the Tenant shall remove its property and any and all improvements at its sole cost on or before the effective termination date of the Agreement and shall

	restore the premises to a condition satisfactory to "the Director". Should the Tenant default in so doing the City may remove the Tenant's property and restore the premises at the sole risk and expense of the Tenant.
Insurance:	Tenant to indemnify and save harmless the City from and against any and all claims for damages which may arise out of the use of the premises by the Lessee. A Comprehensive General Liability policy, including but not limited to the following provisions: The City of Winnipeg to be named as additional insured; The policy to contain a cross liability clause; Minimum limits of $2,000,000.00 all inclusive, including Tenant's legal liability; and Tenant shall file with the City a certified copy of the Insurance Policy in form satisfactory to the City Solicitor -Manager of Legal Services. City shall have the right to alter limits and coverages as required from time to time during the term of this agreement.
Tenant Responsibilities:	To pay all operating costs, to maintain the "Encroachment Area" in a neat and tidy condition satisfactory to the Director of Planning, Property and Development (hereinafter referred to as "the Director"). No assignment without written consent, no sub-letting, no placement of signage or advertising and leasehold improvements without prior written approval from "the Director". Tenant acknowledges and agrees that the limits of the "Encroachment Area" are consistent with what has been identified on the attached drawings. Tenant agrees that no permanent structures shall be erected within the "Encroachment Area", and all

improvements to the land are subject to the prior approval of “the Director”

The City shall have the right of access to the “Encroachment Area” at any time (24 hours a day, seven days a week) by its employees or other persons acting with authorization, with or without equipment to maintain, operate, repair, inspect or rehabilitate the existing feeder mains, and appurtenances located within the “Encroachment Area”.

Tenant shall ensure that all environmental contaminants are received, handled, used, stored, treated, shipped and disposed of in the manner required from time to time by applicable laws, by-laws, regulations, rules or requirements of all authorities having jurisdiction over the premises of the Tenant.

Tenant shall not release into the environment, or deposit, discharge, place or dispose of, at on, or near the premises and/or adjoining City land, any dangerous goods as that term is defined in The Dangerous Goods Handling and Transportation Act, R.S.M. 1987, c.D12, as amended, replaced or substituted from time to time.

Tenant shall comply with all applicable statutes, by-laws, ordinances and regulations pertaining to those of the premises as herein contemplated.

In the event of the Tenant not complying with the terms and conditions contained in the agreement and such default continues for a period of ten days after notice to remedy such default, the agreement is subject to immediate cancellation by “the Director”.

Tenant shall not file any caveat or other encumbrance against the premises.

Tenant shall enter into a formal agreement with the City embodying the foregoing terms and conditions and such other terms and conditions as the City Solicitor/Manager of Legal Services deems necessary and in form satisfactory to the City Solicitor/Manager of Legal Services.

_____ _____

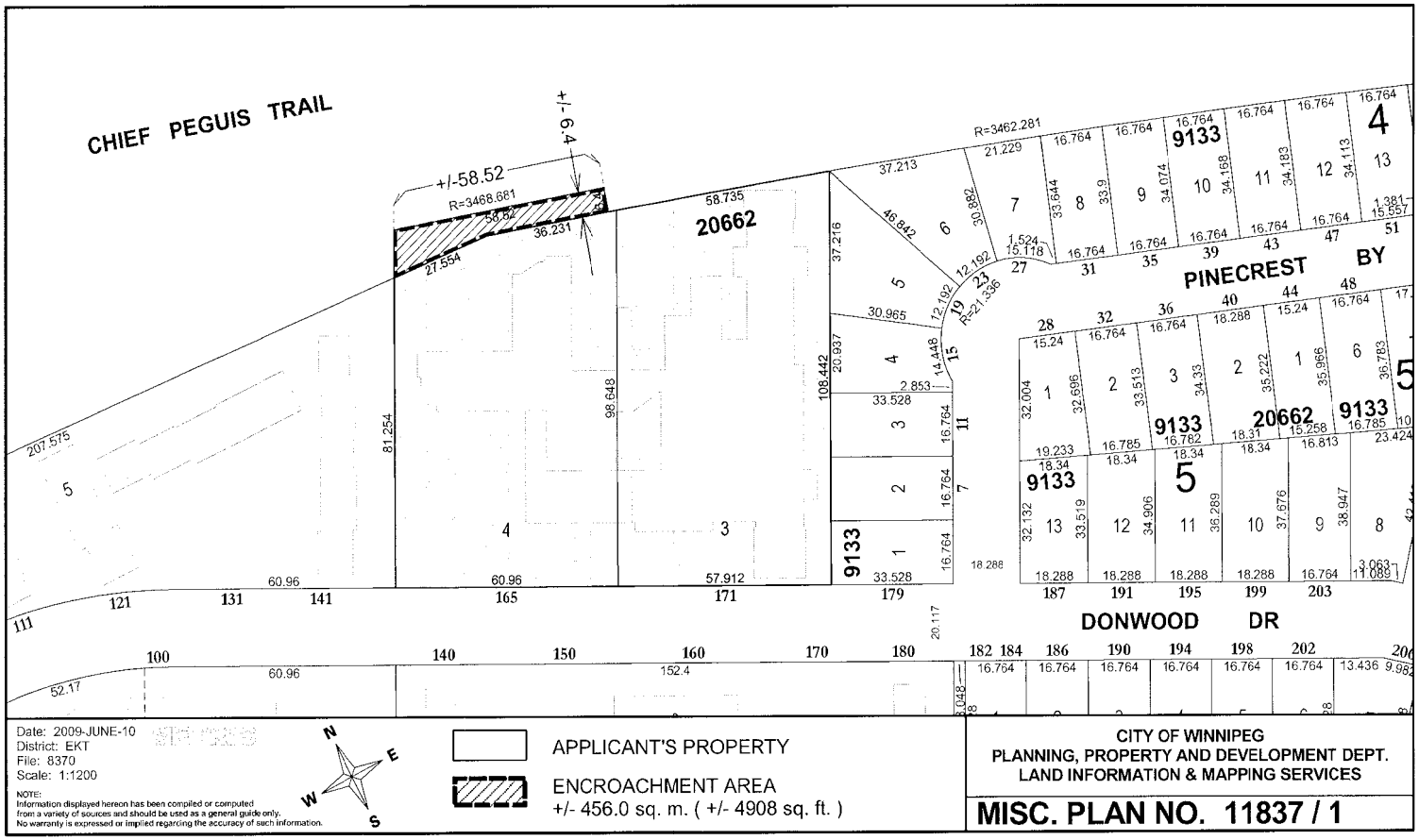
DONWOOD MANOR DATE

Per: _____

Name:

_____

Tile:



Date: 2009-JUNE-10
District: EKT
File: 8370
Scale: 1:1200

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.

APPLICANT'S PROPERTY

ENCROACHMENT AREA
+/- 456.0 sq. m. (+/- 4908 sq. ft.)

CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES

MISC. PLAN NO. 11837 / 1