Minute No. 118
Report – Standing Policy Committee on Downtown Development, Heritage and Riverbank Management – November 28, 2011

Item No. 1 **Encroachment Agreement - Henry Avenue right-of-way adjacent to 662 Main Street**
(Point Douglas Ward)

COUNCIL DECISION:

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

1. That an Encroachment Agreement in favour of CentreVenture Development Corporation to develop and maintain a green space for residents of a supportive housing project encroaching onto the Henry Avenue right-of-way adjacent to 662 Main Street, as shown on Misc. Plan No13810/1, be approved in accordance with the terms and conditions as set out in Schedule A.

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

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DECISION MAKING HISTORY:

Moved by Councillor Swandel,

That the recommendation of the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On December 7, 2011, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On November 28, 2011, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: **Proposed Encroachment Agreement for the Development and Maintenance of a Green Space encroaching onto the Henry Avenue right-of-way adjacent to 662 Main Street**

Critical Path: **Standing Policy Committee on Downtown Development, Heritage and Riverbank Management – EPC - Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
J. Zabudney	B. Thorgrimson	N/A	Deepak Joshi COO

RECOMMENDATIONS

1. That a proposed Encroachment Agreement in Favour of CentreVenture Development Corporation to develop and maintain a green space for residents of a supportive housing project encroaching onto the Henry Avenue right-of-way adjacent to 662 Main Street, as shown on attached Miscellaneous Plan No13810/1, be approved in accordance with the proposed terms and conditions as set out in the attached Schedule 'A'.

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

REASON FOR THE REPORT

On March 24, 2004, Council established the Standing Policy Committee on Downtown Development. This Standing Policy Committee has jurisdiction over matters related to asset management, development control, land acquisition, land development and planning and land use in the area defined as Downtown.

On March 23, 2011, Council amended the name of the Standing Policy Committee on Downtown Development to the Standing Policy Committee on Downtown Development to the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management.

This report seeks Committee's approval of the proposed terms and conditions, negotiated by the Planning, Property and Development Department, in favour of CentreVenture Development Corporation.

IMPLICATIONS OF THE RECOMMENDATIONS

The Department has determined that there is no general, policy, regulatory, environmental or human resource implications to lease the lands as shown on the attached Miscellaneous Plan No. 13810/1.

HISTORY

CentreVenture Development Corporation submitted an encroachment application to the City's Zoning and Permits Branch to develop and maintain a green space, encroaching onto the Henry Avenue right-of-way, for use of residents of a 42 unit supportive housing project located at 662 Main Street.

The application was circulated to applicable City departments and public utilities for consideration and comments. No objections were received.

The Planning, Property and Development Department has negotiated proposed terms and conditions of an Encroachment Agreement in favour CentreVenture Development Corporation to develop and maintain a green space encroaching onto the City right-of-way.

The Public Works Department has no objection to the proposed encroachment, subject to conditions as noted on Schedule 'A'.

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

This report seeks approval of the Encroachment Agreement as negotiated.

FINANCIAL IMPACT

Financial Impact Statement **Date:** October 28, 2011

Project Name: **First Year of Program** **2011**

Proposed Encroachment Agreement with CentreVenture Development Corporation

	2011	2012	2013	2014	2015
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	622	372	372	372	372
Net Cost/(Benefit)	$ (622)	$ (372)	$ (372)	$ (372)	$ (372)
Less: Existing Budget Amounts	(622)	(372)	(372)	(372)	(372)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2011 consist of the $372 annual encroachment fee + a $250 one-time administration fee. Revenues from 2012 onward represent the annual encroachment fee only.

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

CONSULTATION

In preparing this report there was consultation with:

Corporate Finance
Legal Services Department as to legal issue
Public Works Department

SUBMITTED BY

Department	Planning, Property and Development
Division	Real Estate
Prepared by:	Maxine Clayton
Date:	October 31, 2011
File No.	8046/29

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PROPOSED TERMS AND CONDITIONS FOR LEAVE AND LICENCE AGREEMENT TO PERMIT AND MAINTAIN AN PREMISES FOR RESIDENTS OF A SUPPORTIVE HOUSING PROJECT LOCATED AT 662 MAIN STREET – CENTREVENTURE DEVELOPMENT CORPORATION (HERINAFTER REFERRED TO AS 'LICENSEE')

1. City grants to the Licensee to use at the pleasure of the City that portion of the street right-of-way adjacent to 662 Main Street, shown identified as 'Encroachment Area' on Misc. Plan No. 13810/1 and comprising approximately ±52.6 m² (±566ft²) (hereinafter referred to as the Premises').

2. (a) Term is annual continuing, commencing the first day of the month following approval from the City's Standing Committees and Council;

   (b) Licensee to pay to the City as rental for the Premises the sum of $372.00 per annum, payable in advance, 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, an initial administrative fee of $250.00 plus applicable G.S.T.

   (b) In addition to the foregoing, the Licensee shall pay all licence fees and business tax which may be charged in respect of the use and occupation of the Premises by the Licensee and any goods and services tax charged in respect of rent payable under the lease or in respect of the rental of space under the lease, whether such fees and taxes are charged by any municipal, provincial or federal authority or otherwise.

3. Approval of this application will be valid only for a period of six (6) months from the date of said approval subject to the applicant entering into a Leave and Licence Agreement with the City of Winnipeg within the stated time frame, or alternatively receiving an extension of time from the Designated Officer – Encroachments.

4. Premises to provide a green space/outdoor space for year round exclusive use by the residents of a 42 supportive housing project and the support services staff located within the building adjacent to 662 Main Street.

5. Licensee agrees that the Premises shall be operated on the street right-of-way on a year round basis of each year.

6. Licensee shall pay all utilities and operating expenses, including snow removal, grass cutting etc, in connection with use of the Premises.

7. Licensee shall comply with all applicable by-laws, regulations, etc., of any federal, provincial or municipal authority pertaining to the use and occupancy of the Premises by the Licensee and shall obtain all necessary permits.

8. Licensee shall not carry on or permit to be carried on the Premises anything that may be deemed a nuisance or annoyance to the City or residents in the area.

9. No outdoor speakers or other electronic entertainment devices shall be permitted on or near the Premises.

10. Licensee agrees that any noise emanating from the Premises shall be limited to between the hours of 7:00 a.m. and 10:00 p.m. with the sound level not to exceed 60 dBA beyond the lot line.

11. Licensee shall at its own expense maintain the Premises in a neat and tidy condition satisfactory to the Director of Planning, Property and Development Department.

12. Licensee shall be responsible for cleaning up any litter within the immediate and surrounding area of the Premises and any windblown litter generated by the Premises.

13. Licensee shall ensure that the means of egress at the main entrance seating area must be unobstructed and maintained at a minimum clear width of 1100mm (44").

14. Licensee shall ensure that a clear, unobstructed straight path of travel for pedestrians of 1.8m be adhered to adjacent to the proposed Premises and that there shall be no obstructions such as sign poles or street furniture within the 1.8 pedestrian area adjacent to the Premises.

15. That sun umbrellas used at tables on the Premises, if any, shall not extend past the limit of the Premises area onto the right-of-way.

16. Licensee shall not erect or permit the erection of any building or other structure, including but not limited to a fence attached, annexed, affixed or connected to the ground or to a building or other structure, upon the Premises or make any excavation therein without the prior written consent of the City and shall obtain all necessary applications and permits from the said Department prior to commencing operation or use of the Premises on the Premises or any portion thereof.

17. In the event the agreement is terminated by either party for any reason whatsoever, the Licensee shall within thirty (30) days take up and remove the Premises and restore the Premises to the same level and condition, including sodding, as it was in prior to the commencement of the agreement; and in the event the Licensee defaults in so doing, the City may remove the Premises and restore the Premises at the sole risk and expense of the Licensee.

18. The City reserves the right to enter upon the Premises at any time with or without equipment

    (a) to view the state of repair and the Licensee shall repair according to notice in writing from the City. If the Licensee fails to repair according to notice, the City may do such work at the sole cost and expense of the Licensee; or

    (b) for the purpose of maintaining or repairing its utilities in or near to the Premises; or;

    (c) for any other purposes

    without being responsible for any damage occasioned thereby.

19. Whenever so requested, the Licensee shall remove the Premises in order to permit the City or any public utility unimpeded access to its services, above or below ground, for maintenance, repair or installation of services at anytime without notice to the Licensee and that any removal or relocation of existing facilities as a result of the proposed application will be at the expense of the Licensee.

20. The Licensee shall contact Public Works Department when work on the proposed encroachment begins as the traffic regulations will need to be amended to remove on-street parking from the section of Henry Avenue.

21. Licensee acknowledges and agrees that appropriate lighting along the entire length of the Bell Hotel from Main Street to King Street along Henry Avenue be installed.

22. Licensee shall ensure that all utilities be permitted to enter the area for maintenance, repair or installation of services at anytime without notice to the applicant and that any removal or relocation of existing facilities as a result of the proposed application will be at the expense of the applicant. However, it must be noted that there is a gas main on Henry Avenue, as shown on the attached sketch. Prior to any digging or excavation the Licensee must contact the Call-Before-You Dig line at 480-1212.

23. The Licensee shall ensure that extreme caution be used when excavating in the vicinity of MTS buried plant and that the applicant contact the Buried Plan Location Service at 941-7267, 48 hours prior to excavation for further confirmation in the field.

28. (a) Licensee shall not assign the agreement nor sub-let the Premises without the prior written consent of the City;

    (b) Upon making application for consent by the City, the Licensee shall forthwith pay to the City a non-refundable administrative fee of TWO HUNDRED AND FIFTY ($250.00) DOLLARS or such amount as may from time to time be determined by the City in its sole and unfettered discretion acting reasonably, plus applicable goods and services tax; and

    (c) Any consent by the City to an assignment shall not relieve the Licensee of its obligations for the payment of the licence fee and the performance of the terms and conditions herein contained.

29. Licensee shall assume all costs and expenses incurred by the City in repairing actual damage to the Premises or utilities therein, which is caused by the Licensee's use of the Premises.

30. (a) Licensee to indemnify and save harmless the City from and against any and all claims for damages or injuries, including death, which may arise out of the use of the Premises by the Licensee.

    (b) To further safeguard the City the Licensee shall purchase and keep in force each and every year (i.e. throughout the year) during the continuance of the agreement a Commercial General Liability Policy including but not limited to the following provisions:

        i) The City of Winnipeg to be added as an additional insured;

ii) The Policy to contain a Cross Liability Clause;
iii) Minimum limits of $2,000,000.00 all-inclusive;
iv) The Licensee shall not cancel, materially alter, or cause each policy to lapse without minimum fifteen (15) days prior written notice to the City Solicitor/Director of Legal Services and the Licensee shall file with the City a certificate of insurance in form satisfactory to the City Solicitor/Director of Legal Services.

(c) The City shall have the right to alter the limits and coverages as required from time to time during the term of the agreement.

31. (a) Agreement is subject to cancellation upon ten days notice being given by either party.

(b) In the event of the Licensee not complying with the terms and conditions contained in the agreement, the agreement is subject to immediate cancellation by the Director of Planning, Property and Development Department.

(c) If the term hereby granted shall be at any time seized or taken in execution or attachment by any creditor of the Licensee or its permitted assigns, or if the Licensee or its permitted assigns shall make any assignment for the benefit of creditors or become bankrupt or insolvent shall take the benefit of any Act that may be in force for bankrupt or insolvent debtors, the current year's rental shall immediately become due and payable and the said term shall immediately become forfeited and void.

(d) Notwithstanding the forfeiture or termination of this agreement in any manner herein provided for, the Licensee shall be and remain liable to the City for all payments due and obligations incurred hereunder up to the date of such forfeiture or termination and for the fulfillment of all obligations herein contained on the part of the Licensee to be observed and performed upon or after said forfeiture or termination.

32. Upon termination or cancellation of the agreement the Licensee shall at its own expense remove all its property from the Premises and shall restore the Premises to a condition satisfactory to the City. Should the Licensee default in so doing, the City may remove the Licensee's property and restore the Premises at the sole risk and expense of the Licensee.

33. Licensee shall not file any caveat or other encumbrance against the Premises.

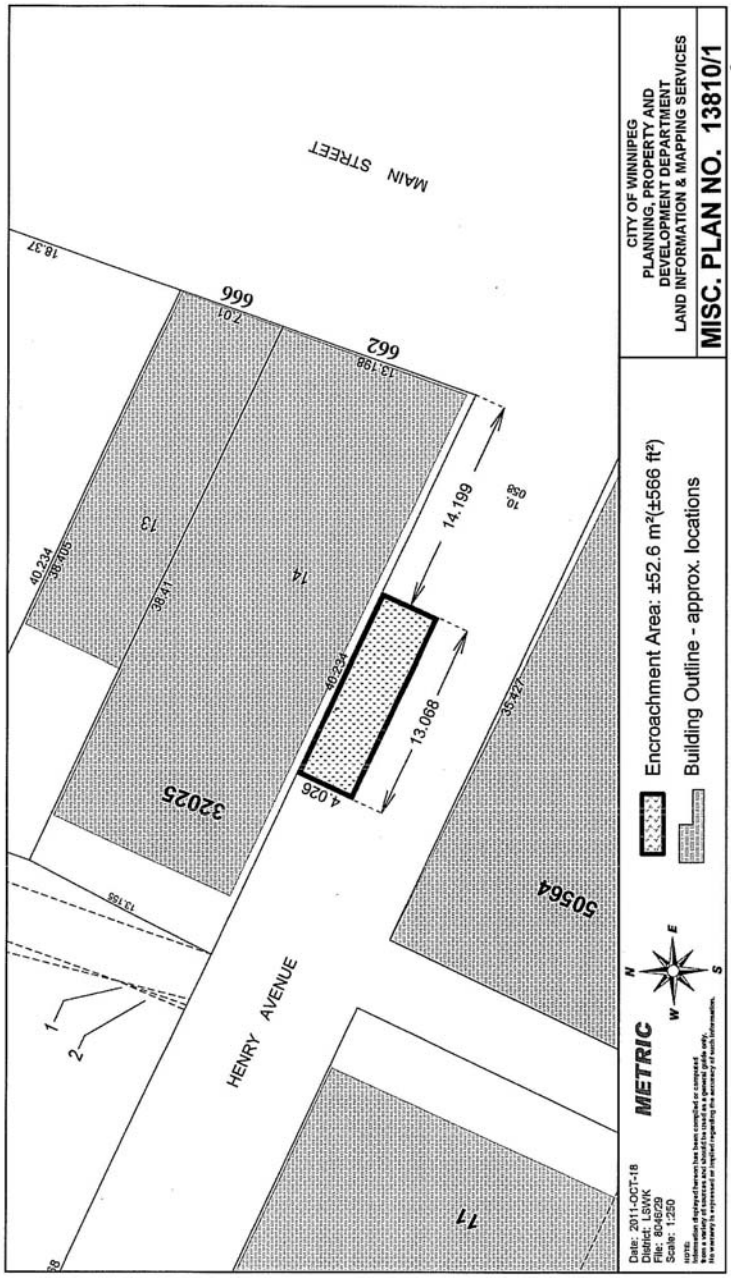
34. Licensee shall enter into a formal agreement with the City embodying the foregoing terms and conditions and such other terms and conditions as the City's Chief Zoning Officer and City Solicitor/Director of Legal Services deems necessary and in form satisfactory to the City Solicitor/Director of Legal Services.

35. Licensee shall obtain a Development Application and Occupancy Permit prior to the use of the Premises.

I, LORETTA MARTIN, ON BEHALF OF CENTRE VENTURE DEVELOPMENT CORPORATION, HEREBY ACKNOWLEDGES AND AGREES TO ENTER INTO AN ENCROACHMENT AGREEMENT WITH THE CITY OF WINNIPEG FOR THE USE OF THE AREA IDENTIFIED AS 'ENCROACHMENT AREA' ON MISC. PLAN NO. 13810/1 ATTACHED IN ACCORDANCE WITH THE PROPSED TERMS AND CONDITIONS AS OUTLINED ON THE SCHEDULE 'A'.

Per: _____ Oct. 19/11
CentreVenture Development Corporation — Date

Director of Development
Title


MAIN STREET
HENRY AVENUE
666
662
32025
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11
13
14
14.199
13.068
4.026
40.234
38.405
38.41
35.427
13.198
7.01
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13.155
1
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CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13810/1
Encroachment Area: ±52.6 m²(±566 ft²)
Building Outline - approx. locations
METRIC
Date: 2011-OCT-18
District: LSWK
File: 8046/29
Scale: 1:250