Agenda – Council – April 25, 2012

Report – Standing Policy Committee on Property and Development – April 10, 2012

Item No. 10 Encroachment Agreement Dawson Road Right-of-Way - Gerdau Long Steel North America (St. Boniface Ward)

STANDING COMMITTEE RECOMMENDATION:

On April 18, 2012, 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 in favour of Gerdau Long Steel North America, Metallics Raw Material for the purpose of storage and sale of scrap metal in connection with its adjoining salvage yard business, as shown as 'Encroachment Area' on Misc. Plan No. 13328/2, 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.

Report – Standing Policy Committee on Property and Development – April 10, 2012

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On April 18, 2012, 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 April 10, 2012, 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

Title: Proposed Encroachment Agreement for the Storage of Scrap Metal Encroaching onto the Dawson Road Right-Of-Way Adjacent to 314 Dawson Road – Gerdau Long Steel North America, Metallics Raw Material

Critical Path: Standing Policy Committee on Property and Development, EPC, Council

AUTHORIZATION

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

RECOMMENDATIONS

1. That a proposed Encroachment Agreement in favour of Gerdau Long Steel North America, Metallics Raw Material for the purpose of storage and sale of scrap metal in connection with its adjoining salvage yard business, as shown as 'Encroachment Area' on attached Misc. Plan No. 13328/2, 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 foregoing.

REASON FOR THE REPORT

In general, the City cannot grant the lease of land comprising of a public right-of-way unless first legally closing the public right-of-way. The City has, however, the power to lease or permit the use of a public right-of-way subject to the continuing pleasure of Council.

This report seeks Council's approval of the terms and conditions of the Encroachment Agreement.

IMPLICATIONS OF THE RECOMMENDATIONS

The Department has determined that there is no policy, regulatory, environmental or human resource implications to the lease of the subject property as described on the attached Misc. Plan No. 13328/2.

HISTORY

The original Leave and License agreement (now referred to as an Encroachment Agreement) was approved in 1976 in favour of United Rescue Services Ltd for use in connection with its adjacent operations of auto salvage and used car sales.

Subsequently the leave and license agreement was assigned several times as the adjacent business changed ownership.

At its June 17, 1992 meeting Council considered and adopted a report recommending the leave and license agreement in favour of Select Auto Service and Sales to increase the area of encroachment area to its present size, shown as “Encroachment Area” on attached Misc. Plan No. 13328/2.

Most recently a request was made to assign the leave and license agreement in favour of Gerdau Long Steel North America Metallics Raw Material. The Public Services has used this opportunity to update the agreement to the current encroachment agreement format and to determine if the current use is still acceptable to area.

Greg Pulchalski, on behalf of Gerdau Long Steel North America, Metallics Raw Material, submitted an encroachment application to the City’s Zoning and Permits Branch to store and sell scrap metal in connection with its adjoining salvage yard business at 314 Dawson Road North.

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

The Corporate Finance Department, Risk Management, 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.

FINANCIAL IMPACT

Financial Impact Statement **Date:** March 15, 2012

Project Name: **First Year of Program** **2012**

Proposed Encroachment Agreement to to Store Scrap Metal For Sale in Connection with its Adjoining Salvage Yard Business at 314 Dawson Road North.

	2012	2013	2014	2015	2016
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	7,050	10,200	10,200	10,200	10,200
Net Cost/(Benefit)	$ (7,050)	$ (10,200)	$ (10,200)	$ (10,200)	$ (10,200)
Less: Existing Budget Amounts	(7,050)	(10,200)	(10,200)	(10,200)	(10,200)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Incremental revenues in 2012 consist of the annual encroachment fee of $10,200, which has been prorated for a May 1 commencement date, plus a one-time administration fee of $250. Revenues from 2013 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 to legal issues
Public Works Department

SUBMITTED BY

Department	Planning, Property and Development
Division	Real Estate
Prepared by:	L. Danielson, Real Estate Officer
Date:	March 21, 2012
File No.	5099 (24)

o:\reports directive\real estate\leasing\(lzd) encroachment agmt-gerdau steel.doc

RECEIVED
CITY CLERK'S
MAR 0 2 2012
PLANNING, PROPERTY & DEVELOPMENT DEPARTMENT

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR AN ENCROACHMENT AGREEMENT FOR THE STORAGE OF SCRAP METAL ENCROACHING ONTO THE DAWSON ROAD RIGHT-OF-WAY ADJACENT TO 314 DAWSON ROAD – GERDAU AMERISTEEL CORPORATION

Licensor:	The City of Winnipeg
Licensee:	Gerdau Ameristeel Corporation (hereinafter called the 'Licensee')
Use:	Storage of scrap metal for sale in connection with its adjoining salvage yard business only and for no other purposes whatsoever;
Area:	Shown and identified as 'Encroachment Area' comprising of an area of ±7834.0 m² (±84,325ft²') on Misc. Plan No. 13328/2 attached; (hereinafter called the 'Encroachment Lands');
Term:	Annual Continuing, commencing the first day of the month following approval from the City's Standing Committees and Council or such other date as mutually agreed upon;
Rental:	$10,200.00 annum, plus applicable GST, plus an initial administrative fee of $250.00 plus applicable GST; Rental is subject to review by the City but in no event will it be less than paid in the previous year.
Taxes	Licensee responsible for all municipal taxes, school taxes, local improvements, license fees, business tax, etc. which may be charged in respect of the use and occupation of the Encroachment Lands;
Insurance:	To further safeguard The City of Winnipeg, the Licensee shall purchase and keep in force during the full term of the agreement the following insurance coverage:

Commercial General Liability insurance;

(a) in the amount of least 5,000,000
(b) the City of Winnipeg to be added as an additional insured
(c) containing a cross liability

Pollution Liability insurance in the amount of at least $1,000,000

All policies shall be taken out with insurers licensed to and carrying on business in the Province of Manitoba;

The Licensee shall not cancel, or cause any such policy or policies to lapse without a minimum of thirty (30) days prior written notice to The City of Winnipeg.

Deductibles shall be borne by the Licensee;

The Licensee shall provide written notice to the City of Winnipeg of any material changes to their policies within thirty (30) days of the change taking effect;

The Licensee shall file the City of Winnipeg an annual certificate of insurance in a form satisfactory to the City Solicitor;

The City shall have the right to alter the limits and/or coverages reasonably required from time to time during the continuance of the agreement and for any subsequent renewal thereof, provided that the City shall give the Licensee reasonable notice and shall request reasonable change;

Cancellation: Ninety (90) days written notice by either party;

Conditions: Approval of this application by the Designated Officer-Encroachments is only valid for a period of 6 (six) months from the date of said approval unless the Licensee enters into an Encroachment Agreement with the City of Winnipeg within the stated time frame, or alternatively obtains an extension of time from the Designated Officer-Encroachments;

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

That all utilities be permitted to enter the Encroachment Lands for maintenance, repair or installation of services, at anytime without notice to the Licensee, and that any removal and/or relocation of existing facilities, as a result of the proposed application, will be at the expense of the Licensee.

Licensee to maintain, at its own expense, the Encroachment Lands in a clean and tidy condition to the satisfaction of the City;

Licensee shall not carry on or permit to be carried on the Encroachment Lands that may be deemed a nuisance or annoyance to the City or residents in the area;

Licensee to pay all utilities and operating cost costs in connection with the use of the Encroachment Lands;

The Licensee shall submit an application for the new private approach, noted on the attached Schedule 'B', for approval under the Private Access By-Law;

The Licensee acknowledges that there is a hydro facility that runs along the Encroachment Lands, as shown on Schedule 'C' and that any removal or relocation of Manitoba Hydro and/or Centra Gas Manitoba Inc. existing facilities as a result of the encroachment will be at the expense of the Licensee. Prior to any digging or excavation, the Licensee shall contact the Call-Before-You-Dig line at 480-1212; should any future electrical and/or gas service be required, the Licensee shall contact the local Manitoba Hydro District Office;

The City reserves the right to enter upon the Encroachments Area at any time with or without formal notice:

(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 and expense of the Licensee; or

(b) for the purpose of maintaining or repairing utilities in or near to the Encroachment Area; or

(c) for any other purposes

Without being responsible for any damage occasioned thereby;

Whenever so requested, the Licensee shall remove the scrap metal from the Premises in order to permit the City or any public utility unimpeded access to the its 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.

The Licensee not to assign or sub-let or part with possession of all or any part of the Encroachment Lands without the Licensee first obtaining the prior written consent of the City; and

(a) 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;
(b) Any consent by the City to an assignment shall not relieve the Licensee of its obligations for the payment of the encroachment fee and the performance of the terms and conditions herein contained;

In the event of the Licensee being in default of any terms and conditions contained herein, and such default is not remedied within ten (10) days of written notice to the Licensee by the City, the Encroachment Agreement is subject to immediate cancellation by the City;

Upon termination or cancellation for cause or expiry of the Encroachment Agreement, at the City's option, the Licensee shall

remove its property (asphalt parking lot) and improvements from the Encroachment Lands, at its expense, and leave same in a condition satisfactory to the City. Should the Licensee default in so doing so, the City may remove the Licensee's property and improvements and restore the Encroachment Lands at the sole risk and expense of the Licensee;

The Licensee acknowledges and agrees that all applicable permits be obtained prior to any development;

The 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 Solicitor/Director of Legal Services deems necessary and in a form satisfactory to the City Solicitor/Director of Legal Services as to form.

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/Director of Legal Services as to form and content.

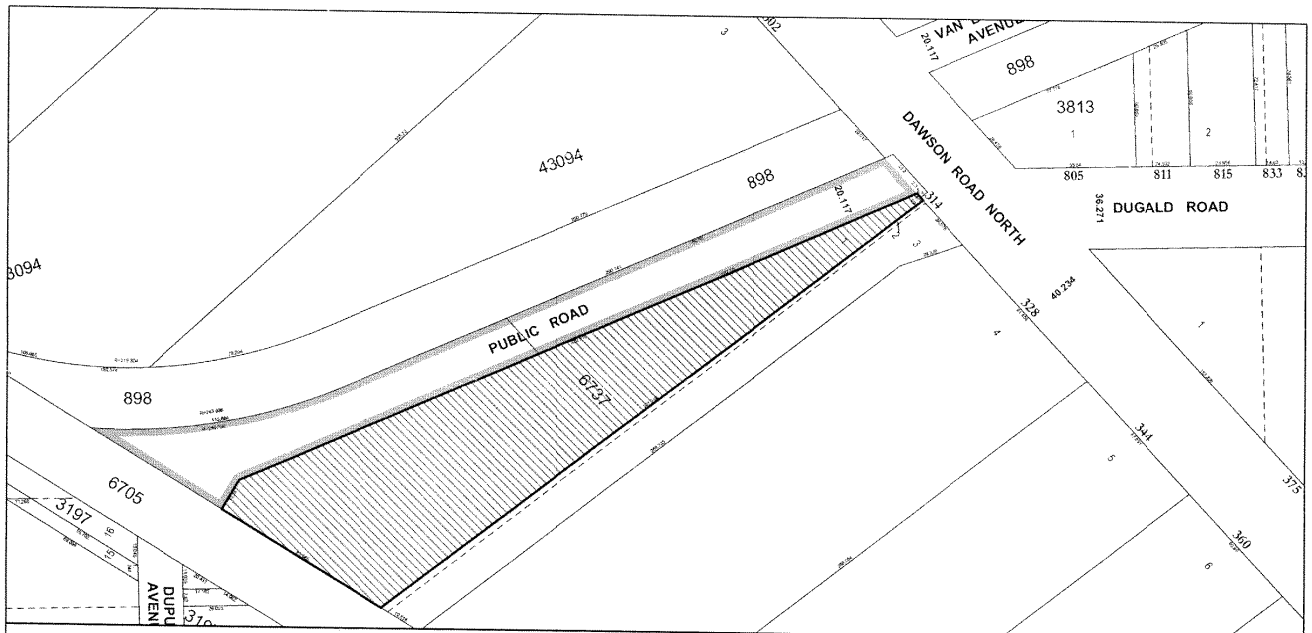
GERDAU AMERISTEEL CORPORATION hereby agrees to enter into an encroachment agreement with the City of Winnipeg for the use of the City property identified as "Encroachment Area" on the attached Misc. Plan No. 13328/2 and in accordance with the terms and conditions as outlined herein.

GERDAU AMERISTEEL CORPORATION

NAME
W. G. PUCHALSKI

DIRECTOR - METALLICS — JANUARY 24, 2012

TITLE **DATE**



Date: 2011-NOV-24
District: RIEL
File: 5099/24
Scale: 1:1800

METRIC

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S

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.

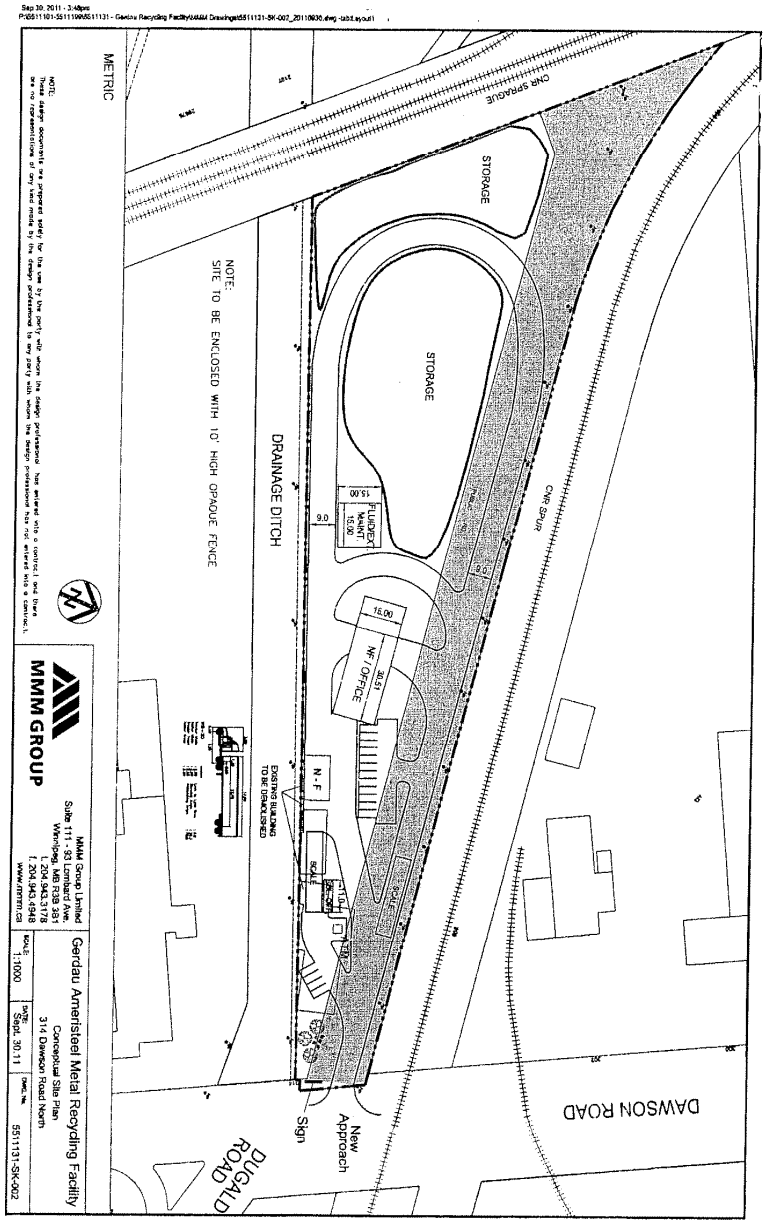
ENCROACHMENT AREA: ±7,834.0 m²(±84,325 ft²)

APPLICANT'S PROPERTY

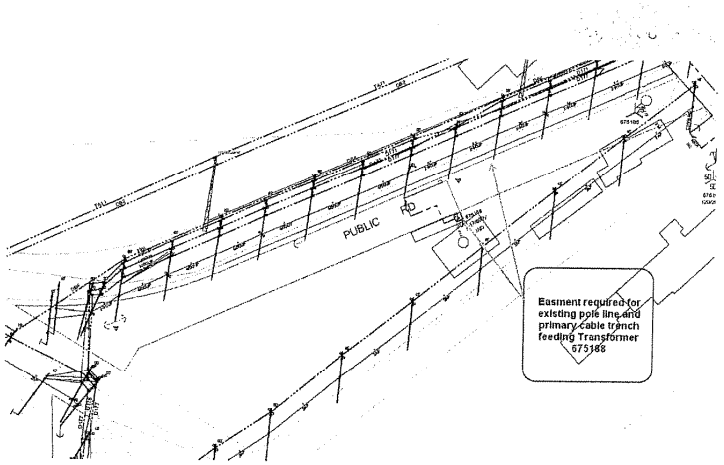
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES

MISC. PLAN NO. 13328/2

Schedule B


METRIC
CNR SPRAGUE
STORAGE
STORAGE
CNR Spur
NOTE:
SITE TO BE ENCLOSED WITH 10' HIGH OPAQUE FENCE
DRAINAGE DITCH
15.00
FLUIDEX
WASH
15.00
9.0
16.00
WF / OFFICE
36.0
N.F
EXISTING BUILDING
TO BE DEMOLISHED
SCALE
DAWSON ROAD
DUGALD ROAD
New
Approach
Sign
MMM GROUP
MMM Group Limited
Suite 1170 - One Lombard Place
Winnipeg, MB R3B 0X3
T 204.943.3178
F 204.943.4948
www.mmm.ca
Gerdau Ameristeel Metal Recycling Facility
Conceptual Site Plan
314 Dawson Road North
Winnipeg, MB
SCALE: 1:1000
DATE: Sept. 30.11
DWG. No. 5511131-SK-002

Schedule C


PUBLIC
RD
Easment required for existing pole line and primary cable trench feeding Transformer 675188