Minute No. 602
Report – Standing Policy Committee on Property and Development – September 11, 2012

Item No. 11 **Encroachment Agreement - Sterling Lyon Parkway, west of Kenaston Boulevard**
(Charleswood-Tuxedo Ward)

COUNCIL DECISION:

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

1. That a Encroachment Agreement, in favour of Tuxedo Yards Development Corp. and Seasons (Winnipeg) JV Corp., for a private sewer crossing under Sterling Lyon Parkway, shown and identified as 'Encroachment Area' on Misc. Plan No. 14015/1, be approved in accordance with the proposed 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 – September 11, 2012

DECISION MAKING HISTORY:

Moved by Councillor Browaty,

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

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 19, 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 September 11, 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 to allow for a private sewer crossing under Sterling Lyon Parkway, west of Kenaston Blvd between Lot 12 Block 2 Plan 49257 & Lot 14 Block 1 Plan 49257 for the Seasons of Tuxedo site**

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

AUTHORIZATION

Author	Department Head	CFO	CAO
J. Zabudney	B. Thorgrimson	M. Ruta CFO	P. Sheegl CAO

RECOMMENDATIONS

1. That a proposed Encroachment Agreement, in favour of Tuxedo Yards Development Corp. and Seasons (Winnipeg) JV Corp., for a private sewer crossing under Sterling Lyon Parkway, shown and identified as 'Encroachment Area' on Misc. Plan No. 14015/1, attached, 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

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 property for which the Director of Planning, Property and Development has no authority. In this regard, the Planning, Property and Development Department has negotiated the proposed terms and conditions of an Encroachment Agreement in favour of Tuxedo Yards Development Corp. and Seasons (Winnipeg) JV Corp. for a private sewer crossing under Sterling Lyon Parkway, west of Kenaston Boulevard.

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. 14015/1.

HISTORY

MMM Group Limited, on behalf of the owners, submitted an encroachment application to the City's Zoning and Permits Branch to allow for a private sewer crossing under Sterling Lyon Parkway for the Seasons of Tuxedo site west of Kenaston Boulevard between Lot 12, Block 2, Plan 49257 and Lot 14, Block 1, Plan 49257.

The application was circulated by the City's Zoning and Permits Branch to applicable City departments and public utilities for consideration and comments. Any required comments have been incorporated into the terms and conditions.

The Planning, Property and Development Department has negotiated proposed terms and conditions of an Encroachment Agreement in favour of the Tuxedo Yards Development Corp. and Seasons (Winnipeg) JV Corp. to allow for a private sewer crossing under Sterling Lyon Parkway at the Seasons of Tuxedo site private sewer crossing.

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:** August 17, 2012

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

Proposed Encroachment Agreement in favour of Tuxedo Yards Development Corp. and Seasons (Winnipeg) JV Corp.; for a Private Sewer Crossing

	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	607	1,426	1,426	1,426	1,426
Net Cost/(Benefit)	$ (607)	$ (1,426)	$ (1,426)	$ (1,426)	$ (1,426)
Less: Existing Budget Amounts	(607)	(1,426)	(1,426)	(1,426)	(1,426)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2012 consist of an initial admin fee of $250 + lease revenues of $1,426 pro-rated for an assumed October 1 commencement date. Revenues from 2013 onward represent annual lease revenues 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 issues
Public Works Department

SUBMITTED BY

Department:	Planning, Property and Development
Division:	Real Estate
Prepared by:	Marlene Haderer
Date:	August 20, 2012
File No.	9-A-7813 (V3)

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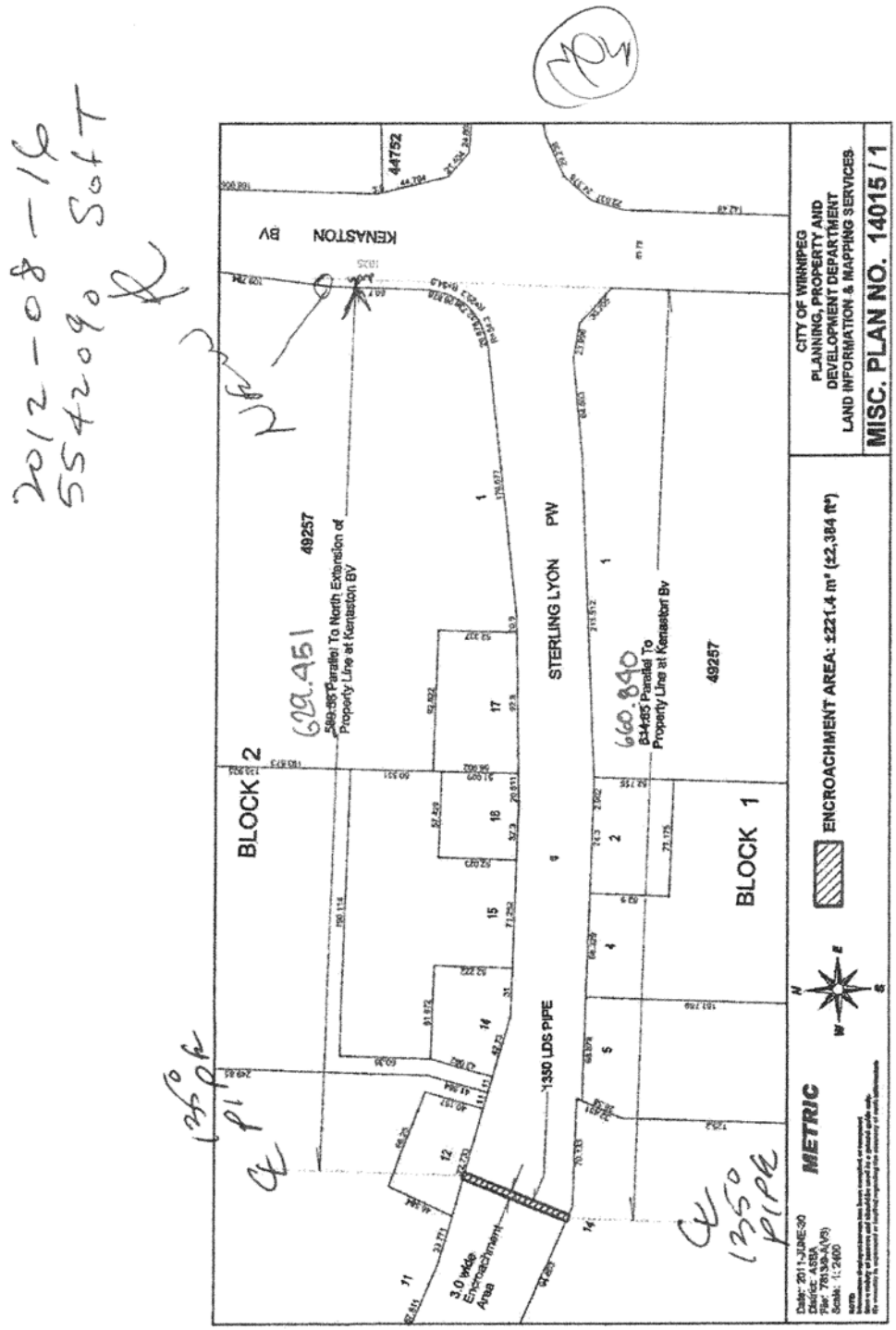

2012-08-16
5542090 SofT
KENASTON BV
44752
49257
BLOCK 2
BLOCK 1
STERLING LYON PW
629.451
660.840
1350 LDS PIPE
3.0 wide Encroachment Area
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14015 / 1
ENCROACHMENT AREA: ±221.4 m² (±2,384 ft²)
METRIC

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR ENCROACHMENT AGREEMENT TO ALLOW FOR A PRIVATE SEWER CROSSING UNDER STERLING LYON PARKWAY, WEST OF KENASTON BOULEVARD BETWEEN LOT 12 BLOCK 2 PLAN 49257 AND LOT 14 BLOCK 1 PLAN 49257 FOR THE SEASONS OF TUXEDO SITE.

Use:	Private Sewer Crossing under Sterling Lyon Parkway
Licensee:	Tuxedo Yards Development Corp. and Seasons (Winnipeg) JV Corp.; (hereinafter called the 'Licensee")
Area:	Shown and identified as 'Encroachment Area' on Misc. Plan No. 14015/1, attached;
Term:	Annually Continuing, commencing the first day of the month following approval from the City's Standing Committees and Council;
Rental:	$1426.00 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 Licensee shall purchase and keep in force during the full term of the agreement the following insurance coverage: Commercial general liability insurance in the amount of at least two million dollars ($5,000,000) per occurrence, such liability policy to include the City of Winnipeg as an additional insured and contain evidence of a cross liability clause; All policies to be taken out with insurers licensed to and carrying on business in the Province of Manitoba; Deductibles shall be borne by the Licensee; The Licensee shall not cancel, materially change or cause any such policies to lapse without a minimum of thirty (30) days prior written notice to the City of Winnipeg; The Licensee shall file with the City a certificate of insurance in a form satisfactory for the City Solicitor;

The City shall have the right to alter the limits and/or coverage's as reasonably required from time to time during the continuance of this lease agreement and any subsequent renewals thereof, provided that the City shall give the Licensee reasonable notice and shall request reasonable change;

Cancellation:

No cancellation provision with the exception of default or in accordance with The City of Winnipeg Encroachment By-Law No. 692/74 and any amendment thereto. The City may cancel the proposed encroachment upon Licensee default of any of the terms of the encroachment agreement, provided that the City provides 15 days written notice to remedy the default along with a description of the nature of the default. Should the licensee not remedy the default to the satisfaction of the City of Winnipeg's Director of Planning, Property & Development and the City of Winnipeg's Director of Public Works, the City at its sole discretion may terminate the encroachment agreement immediately upon the expiration of the 15 day notice period.

Conditions:

That the approval of this application by the Designated Officer – Encroachments is only valid for a period of six (6) 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 obtain an extension of time from the Designated Officer – Encroachments;

That all utilities be permitted to enter the area 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 applicant will be at the expense of the Licensee. Prior to any digging or excavation, Manitoba Hydro and/or Centra Gas Manitoba Inc. advise the Licensee contact the Call-Before-You Dig line at 480-1212;

That if any removal, relocation or adjustment of existing MTS facilities is required, it will be at the expense of Licensee; that extreme caution be used when excavating in the vicinity of MTS buried plant and that the Licensee contact the Buried Plan Location Service at 941-7267, 48 hours prior to excavation for further confirmation in the field;

That a design drawing of the proposed sewer must be submitted to the Underground Structures Branch of the Public Works Department for review and approval;

The Licensee shall keep and maintain the private Land Drainage Sewer in good repair in accordance with industry standards at all times. Any costs associated with the repair and maintenance, of the private Land Drainage Sewer is the responsibility of the Licensee.

For all necessary sewer work and maintenance, the Licensee shall employ only contractors that are licensed and approved annually by The City of Winnipeg pursuant to the provisions of Sewer By-Law No. 92/2010. The Licensee shall ensure that each such licensed contractor files evidence of insurance with The City in accordance with the City's licensing requirements pursuant to Sewer By-Law No. 92/2010 and maintains such insurance for the full term of the agreement;

That all applicable permits be obtained prior to any development;

The Licensee shall indemnify the City and save the City harmless from and against all claims for loss or damages which arise out of the use of the private Land Drainage Sewer or use of the Encroachment Area by the Licensee;

The Licensee shall release and forever discharge the City, its employees and agents from any and all claims, demands, actions, suits or other proceedings arising from the Private Land Drainage Sewer contained in the Encroachment Area, including any claims for loss or damage to any equipment brought in, on or about the Encroachment Area, including without limitation damage to the Private Land Drainage Sewer, and regardless of whether such loss, damage, injury or death is due to any action, inaction or negligence of the City, its employees, agents or otherwise.

Such release and indemnification shall survive the expiry or sooner determination of the Term.

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.

TUXEDO YARDS DEVELOPMENT CORP. AND SEASONS (WINNIPEG) JV CORP. HEREBY ACKNOWLEDGES AND AGREES WITH THE ABOVE TERMS AND CONDITIONS.

per:

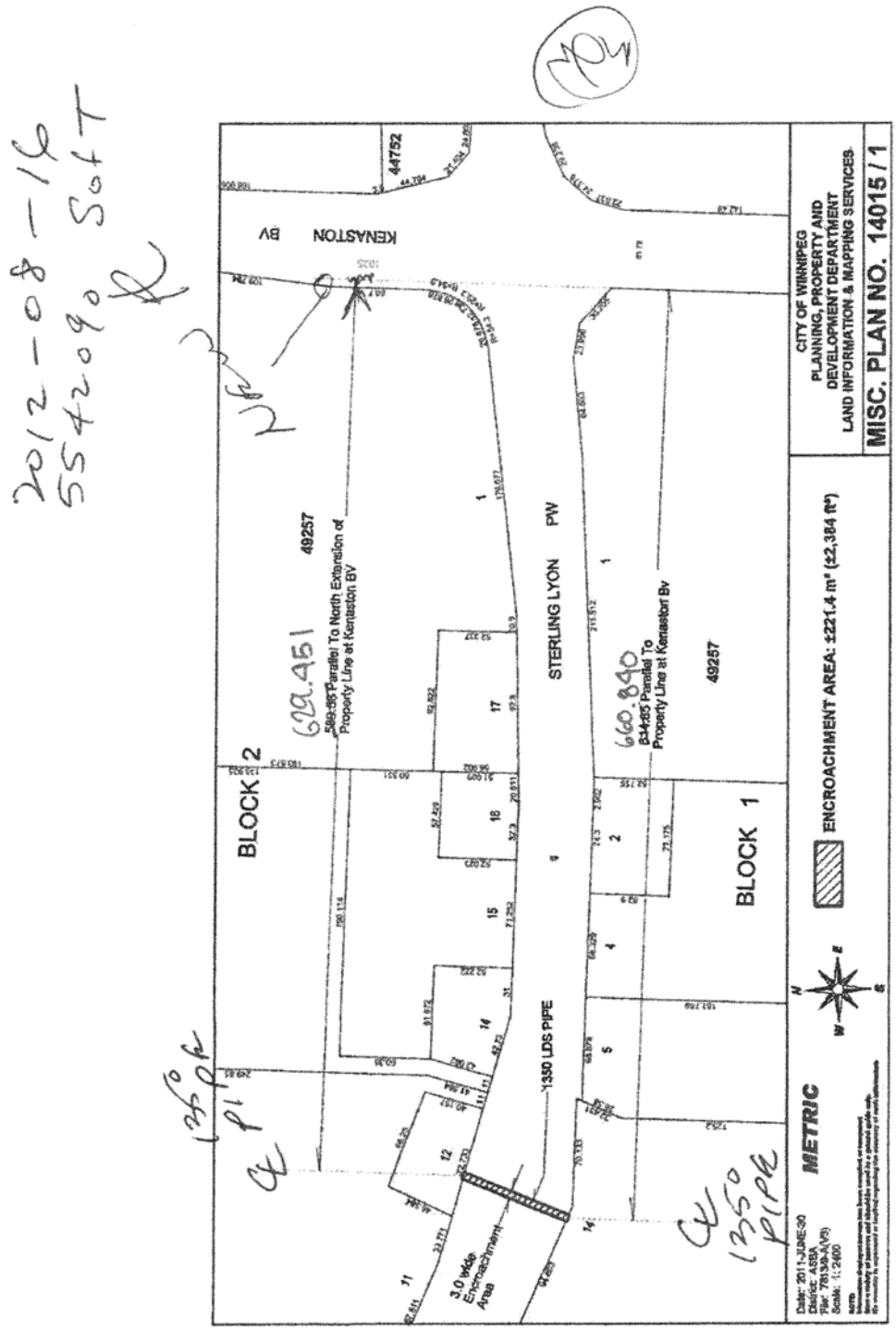
TUXEDO YARDS DEVELOPMENT CORP.

MICHAEL NOZICK - PRESIDENT — August 15/2012

TITLE — DATE

SEASONS (WINNIPEG) JV CORP.

TITLE — DATE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