Agenda – Council – February 27, 2013

Report – Standing Policy Committee on Property and Development – February 19, 2013

Item No. 18 Permanent Easement located on Public Reserve adjacent to 110 Creek Bend Road in favour of Creek Bend Project Inc. or nominee

STANDING COMMITTEE RECOMMENDATION:

On February 22, 2013, the Executive Policy Committee concurred in the recommendations of the Standing Policy Committee on Property and Development, and submits the following to Council:

1. That a permanent easement in favour of Creek Bend Project Inc. or nominee over a portion of the City-owned parkland (Seine River Greenway) identified on the attached Misc. Plan No. 13322/5, be approved.

2. That the 2013 Riverbank Greenway Program capital budget (# 6351300113) be increased by $19,250 to be funded by a one-time payment to be made by Creek Bend Project Inc. or nominee.

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

Pursuant to Section 205(2) of The City of Winnipeg Charter, disposal of land owned or acquired by the City for park or cemetery purposes requires approval by two-thirds of all Members of Council.

Report – Standing Policy Committee on Property and Development – February 19, 2013

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On February 22, 2013, the Executive Policy Committee concurred in the recommendations of the Standing Policy Committee on Property and Development, and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On February 19, 2013, 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 Permanent Easement located on Public Reserve adjacent to 110 Creek Bend Road in favour of Creek Bend Project Inc. or nominee**

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

AUTHORIZATION

Author	Department Head	CFO	CAO
J. Zabudney	B. Thorgrimson	M. Ruta	D. Joshi COO

RECOMMENDATIONS

1. That a permanent easement in favour of Creek Bend Project Inc. or nominee over a portion of the City-owned parkland (Seine River Greenway) identified on the attached Misc. Plan No. 13322/5, be approved.

2. That the 2013 Riverbank Greenway Program capital budget (# 6351300113) be increased by $19,250 to be funded by a one-time payment to be made by Creek Bend Project Inc. or nominee.

3. 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 City Policy, all sales of property designed or acquired for park or cemetery purposes require approval of at least 2/3 of all members of Council. The subject easement falls under this City Policy.

IMPLICATIONS OF THE RECOMMENDATIONS

- The proposed easement area shown on Misc. Plan No. 13322/5 will limit the City's exclusive use of that portion of the parkland (Seine River Greenway) property and no permanent structures will be allowed within the Easement area as it is a spatial separation for the existing building.

- There are no regulatory or human resources implications associated with this report.

HISTORY

The property owner, Creek Bend Project Inc., was granted a variance by order DAV 111766/2011D (c/r DASZ 6/2011) on May 6, 2011 to permit a no rear yard on the property known as 110 Creek Bend Road.

The result of the granting of the variance requires that the City and Creek Bend Project Inc. enter into an Easement Agreement for spatial separation and access for maintenance of the easterly wall of 110 Creek Bend Road in the area shown as “Easement Area” on Misc. Plan No. 13322/5 attached.

The proposed Easement Area was circulated to the Parks, Waterways and Community Initiatives Division of the Planning, Property and Development Department, the Parks and Open Spaces Division of the Public Works Department and other City Departments and their comments have been included in the proposed terms and conditions of the Easement outlined in Schedule “A”, attached. As a condition of granting the easement, the Parks, Waterways and Community Initiatives Division required the proponent to pay for the cost to supply and install new benches, trees and signage within the Easement Area and/or the adjacent Seine River Trail, estimated at $19,250.00 It was agreed that the proponent pay a one time charge of $19,250.00 to be applied to the Riverbank Greenway Capital Account for 2013 and that Parks would be responsible to complete those works.

The Department is recommending approval of the Easement in accordance with the proposed terms and conditions herein.

FINANCIAL IMPACT

Financial Impact Statement

Date: January 14, 2013

Project Name:

First Year of Program **2013**

Proposed Permanent Easement located on Public Reserve adjacent to 110 Creek Bend Road in favour of Creek Bend Project Inc. or nominee

	2013	2014	2015	2016	2017
Capital					
Capital Expenditures Required	$ 19,250	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ 19,250	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - One Time Charge to Proponent	19,250	-	-	-	-
Total Funding	$ 19,250	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ 19,250				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	441	250	250	250	250
Net Cost/(Benefit)	$ (441)	$ (250)	$ (250)	$ (250)	$ (250)
Less: Existing Budget Amounts	(441)	(250)	(250)	(250)	(250)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Capital expenditures in 2013 consist of $19,059 to supply & install new benches, trees and signage with the Easement Area + corporate admin fees of $191; the latter amount offset by a recovery in the Corporate Finance Department's current budget. Revenues in 2013 onward also consist of a $250 annual lease admin fee.

"Original signed by"

Mike McGinn, CA
Manager of Finance

CONSULTATION

In preparing this report there was consultation with:

Parks Waterway and Community Initiatives Division, Planning, Property and Development Dept.
Parks and Open Spaces Division, Public Works Department

SUBMITTED BY

Department	Planning, Property and Development Department
Division	Real Estate
Prepared by:	Barry Lucyk
Date:	January 15, 2013
File No.	8742

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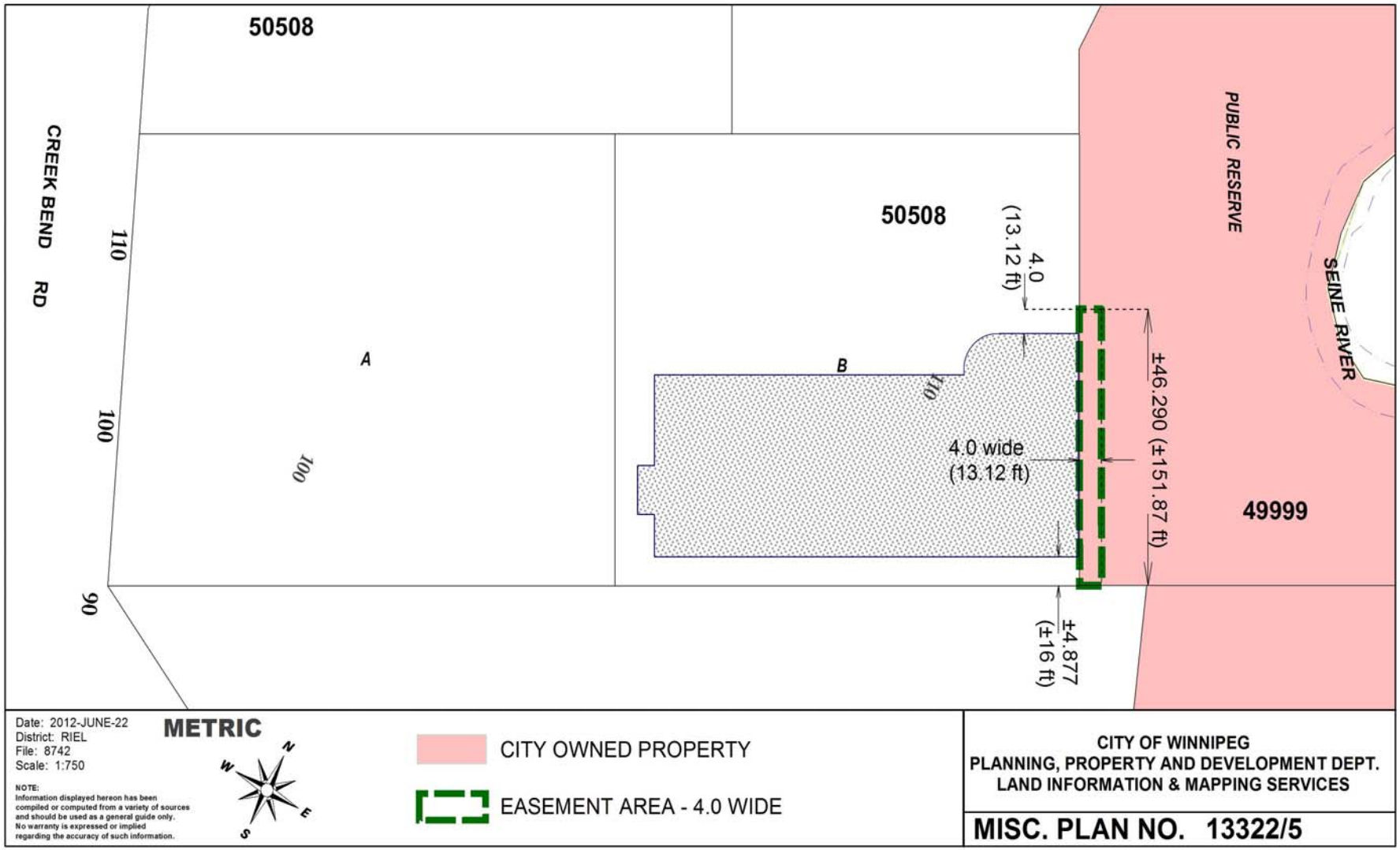
50508
CREEK BEND RD
110
100
90
A
100
50508
B
110
4.0
(13.12 ft)
4.0 wide
(13.12 ft)
±46.290 (±151.87 ft)
±4.877
(±16 ft)
PUBLIC RESERVE
SEINE RIVER
49999
Date: 2012-JUNE-22
District: RIEL
File: 8742
Scale: 1:750
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NOTE:
Information displayed hereon has 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.
CITY OWNED PROPERTY
EASEMENT AREA - 4.0 WIDE
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13322/5

Schedule "A"

Proposed Terms and Conditions for Easement Agreement on City Owned Property, Shown As "Easement Area 4.0 Wide" On Attached Misc. Plan No. 13322/5 hereinafter referred to as "Easement Area"

Grantee:	Creek Bend Project Inc. or nominee, hereinafter referred to as "Creek Bend"
Grantor:	The City of Winnipeg, hereinafter referred to as "City"
Easement Area:	Shown as "Easement Area 4.0 Wide" on the attached Misc. Plan No. 13322/5, to be provided to Creek Bend in an "as is" condition.
Size:	185.16 sq. metres +/- or 1993 +/- sq. ft.
Purpose:	Access by Creek Bend for repair and maintenance of the easterly wall and a spatial separation area in conjunction with the development of 110 Creek Bend Road (the "Creek Bend Property") and for no other purpose.
Term:	In perpetuity, commencing the first day of the month following approval from the City's Standing Committee and/or Council.
Fee:	One-time fee of **$19,250.00 (NINETEEN THOUSAND TWO-HUDNRED & FIFTY DOLLARS)** plus GST and an annual administration fee of $250.00 plus GST.
Municipal Taxes:	In event that taxes are assessed against Creek Bend as a result of the City granting this Easement to Creek Bend, Creek Bend agrees it shall be responsible to pay to the local taxing authority all realty taxes charged, levied, assessed or imposed on the Easement Area as a result of the City granting the Easement to Creek Bend including municipal taxes, local improvement taxes, frontage taxes and school taxes which shall be billed directly to Creek Bend.
Other Fees, Licenses, Taxes, etc.:	Creek Bend shall pay all license fees, business taxes, etc. which may be charged in respect of the use and occupation of the Easement Area.
Insurance:	Creek Bend shall indemnify and save harmless the City against and from all liabilities, obligations, damages, claims costs, fines, suits, demands actions and causes of action. Creek Bend shall provide and maintain the following insurance coverage at all times during the duration of the Easement Agreement: Commercial general liability insurance, in the amount of at least five million dollars ($5,000,000.00) inclusive, with the City added as an

additional insured and contain evidence of a cross liability clause and contractual liability;

Creek Bend, and/or others performing the work on their behalf, are responsible for insuring equipment and tools used for any construction/installation that may be owned, rented, leased or borrowed.

Workers Compensation or employment insurance coverage must be in place in accordance with provincial legislation.

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

Deductibles shall be borne by Creek Bend

Creek Bend shall not cancel, or cause any such policy or policies to lapse without minimum thirty (30) days prior written notice to the City;

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

Creek Bend shall file with the City 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 as reasonably required from time to time during the continuance of the Agreement and for any subsequent renewals thereof, provided that the City shall give Creek Bend reasonable notice and shall request reasonable change.

Cancellation & Default: Upon default or breach of the Creek Bend covenants or provisions of the the Easement Agreement, Creek Bend will upgrade buildings or structures on the Creek Bend Property to comply with the provisions of the Building Code in place at that time and undertakes to discharge the caveat to be registered against title to the City property and Creek Bend Property evidencing registration of this Easement.

Conditions:

1. Creek Bend acknowledges and agrees to accept the Easement Area in its present condition.

2. Creek Bend is to install and maintain, at its expense:

(a) bollards within the Creek Bend property, along the property line between the Creek Bend Property and the Public Reserve, to clearly delineate the Creek Bend land from the City owned land.

3. The parties acknowledge and agree that this Easement Agreement does not constitute the sole use of the Easement Area, and that the Easement Area is Public Reserve for the use of the general public. This Agreement shall not preclude the placement of a path, trees or benches by either party, with the Easement Area, if done so with reasonable consideration of the adjacent residents and subject to review and prior approval of the Director of Public Works.

4. Creek Bend shall, at its expense, maintain the Easement Area and all other turf areas extending eastward from the Creek Bend lands to the Seine River Greenway path.

5. Creek Bend agrees to notify the City (Superintendant of Parks Services-East Area) a minimum of 72 business hours in advance of scheduled maintenance at 110 Creek Bend Road where Creek Bend intends to bring in equipment that may do damage to trees or the grounds of the Easement Area.

6. When undertaking any work, repairs or maintenance to 110 Creek Bend Road, that require access to the Easement Area, Creek Bend shall employ appropriate measures to secure the Easement Area and protect the public who also have a right of access to the Easement Area.

7. Creek Bend shall be responsible for any damage to the Easement Area and adjacent City property done as a result of access to the Easement Area; and such repairs shall be restored to a condition as good or better as prior to the damage occurring, subject to review and approval by the Superintendant of Park Services – East Area.

8. This Easement Agreement runs with the lands and shall be binding on Creek Bend and their successors, legal representatives, permitted assigns and successors-in-title to the Creek Bend Property.

9. Creek Bend will not transfer or convey the Creek Bend Property without having first given written notice to the City's Director of Planning, Property & Development and without first having obtained an acknowledgement from the proposed purchaser in a form satisfactory to the City Solicitor/Director of Legal Services that the proposed purchaser will be bound by the terms of the easement agreement as if the proposed purchaser has executed same in place of Creek Bend.

10. City and Creek Bend both acknowledge that no buildings or permanent structures will be constructed within the Easement Area as shown on Misc. Plan No. 13322/5.

11. If any development, construction, buildings or permanent structures are erected within the Easement Area, Creek Bend will take all steps necessary, at their sole cost and expense, to comply with the provision of the Building Code in force at that time, including without limitation, upgrading or demolishing any building or structure on the Creek Bend Property.

12. Creek Bend shall indemnify, release and hold the City harmless from any actions, causes of actions, suits and demands whatsoever arising out of this agreement and/or the alteration, construction, maintenance, repair, replacement or removal of any building or structure on the Creek Bend Property or their assignees, contractors, agents, servants or employees or any other persons for whom Creek Bend may in law be responsible for, including without limitation, actions, causes of actions and demands for personal injuries, property damage or property repair.

13. To give the appropriate public notice of the requirements of this agreement, the parties agree to register a caveat against title to the Creek Bend Property and the City Property. If the caveat is discharged, struck out, vacated or disposed of for any reason, this agreement shall be deemed to have been breached.

Other:

The City reserves the right for MTS Communications Inc., Manitoba Hydro-Electric Board and Water and Waste Department or other public utilities (hereinafter referred to as "Public Utilities") to enter upon the Easement Area for maintenance and/or repair of their utilities without the City and/or the Public Utilities being responsible for any damage occasioned thereby.

Creek Bend understands and agrees that employees, agents and servants of the City have a right of access to enter the said Easement Area, with or without equipment, for any purpose whatsoever, including, but not limited to, those purposes related to viewing the state of repair, the safety, protection, preservation or improvement of the Easement Area, and for doing any work of maintaining or repairing its utilities in or near to the Easement Area, without being responsible for any damage occasioned thereby.

Any other terms and conditions as are deemed necessary by the Director of the Planning, Property and Development Department and by the City Solicitor/Director of Legal Services to protect the City's interests.

Creek Bend agrees to enter into an appropriate Easement Agreement with the City embodying the terms and conditions named herein and in a form satisfactory to the City Solicitor/Director of Legal Services.

Final terms and conditions of the proposed Easement Agreement are subject to the consideration and approval of City Council or its delegated authority.

Creek Bend Project Inc. hereby agrees to enter into an Easement Agreement with the City of Winnipeg for the use of the City owned lands identified as "Easement Area" on Misc. Plan No. 13322/5 attached, in accordance with the proposed terms and conditions as outlined herein on this Schedule "A".

Creek Bend Project Inc.

Per: _____

_____

I have authority to bind the Corporation

Name: Rob Lee

Title: Vice President

Date: Jan 10/13

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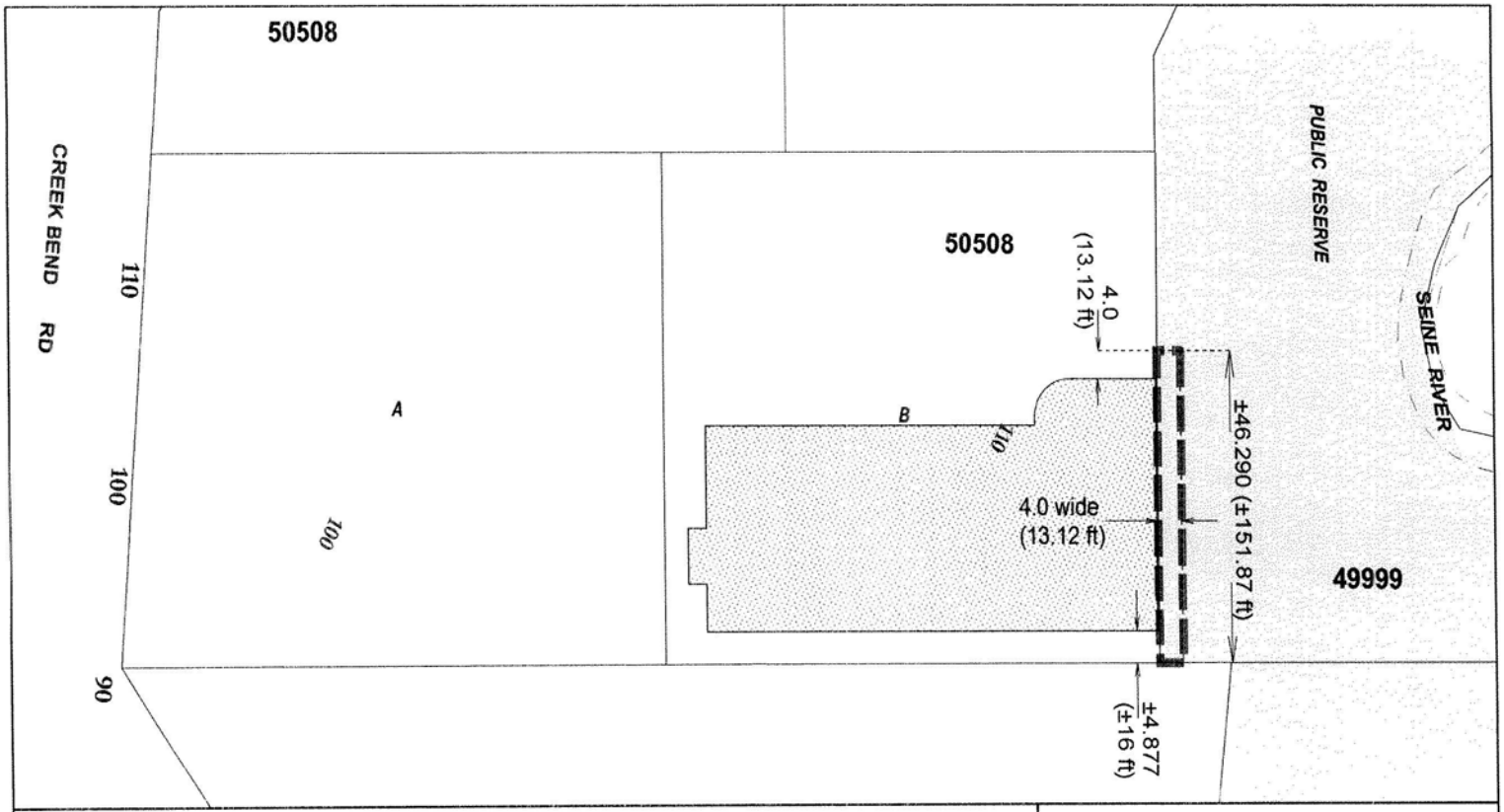

Date: 2012-JUNE-22
District: RIEL
File: 8742
Scale: 1:750

METRIC

N W E 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.

CITY OWNED PROPERTY

EASEMENT AREA - 4.0 WIDE

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

MISC. PLAN NO. 13322/5