Minute No. 187
Report – Standing Policy Committee on Downtown Development, Heritage and Riverbank Management – January 8, 2013

Item No. 2 Encroachment Agreement - Public Right of Way North of Cumberland Avenue and Adjacent to 370 Donald Street (Daniel McIntyre 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 The Bell Building Inc. for the purpose of a Transformer, shown and identified as "Encroachment Area" on Misc. Plan 13795/2 be approved in accordance with the 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.

Report – Standing Policy Committee on Downtown Development, Heritage and Riverbank Management – January 8, 2013

DECISION MAKING HISTORY:

Moved by Councillor Pagtakhan,

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 January 16, 2013, 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 January 8, 2013, 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 to allow for the use of the public right of way north of Cumberland Avenue and adjacent to 370 Donald Street for the purpose of a Transformer and Underground Feeds**

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

AUTHORIZATION

Author	Department Head	CFO	CAO
J. Zabudney	B. Thorgrimson	P. Olafson, Acting CFO	M. Jack, Acting COO

RECOMMENDATIONS

1. That a proposed Encroachment Agreement in favour of The Bell Building Inc. for the purpose of a Transformer, shown and identified as “Encroachment Area” on Misc. Plan 13795/2 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 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, Heritage and Riverbank Management.

In this regard, the Planning, Property and Development Department has negotiated the proposed terms and conditions of an Encroachment Agreement in favour of The Bell Building Inc. for a Transformer on the lands north of Cumberland Avenue adjacent to 370 Donald Street.

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. 13795/2.

HISTORY

The Bell Building at 370 Donald Street was constructed in 1905 and is considered a mixed use building. In March of 2012 The Bell Building Inc. took ownership of 370 Donald Street with the intent of converting the building into a residential rental complex.

The Bell Building Inc. submitted an application to the City's Zoning and Permits Branch in August of 2012 to allow for a transformer and underground feeds North of Cumberland Avenue adjacent to 370 Donald Street.

370 Donald Street currently is included in the City of Winnipeg's Historical Buildings Inventory.

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 Bell Building Inc. to allow for a transformer and underground feeds North of Cumberland adjacent to 370 Donald Street.

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: December 20, 2012

Project Name:

First Year of Program **2013**

Proposed Terms and Conditions for An Encroachment Agreement with The Bell Building Inc.

	2013	2014	2015	2016	2017
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	422	188	188	188	188
Net Cost/(Benefit)	$ (422)	$ (188)	$ (188)	$ (188)	$ (188)
Less: Existing Budget Amounts	(422)	(188)	(188)	(188)	(188)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Incremental revenues consist of the one-time admin fee of $250 + $172 in encroachment fees. The latter item is based on an assumed commencement date of February 1, 2013. Revenues from 2014 onward represent the encroachment fee for a full year.

"Original signed by"

Mike McGinn, CA
Manager of Finance

CONSULTATION

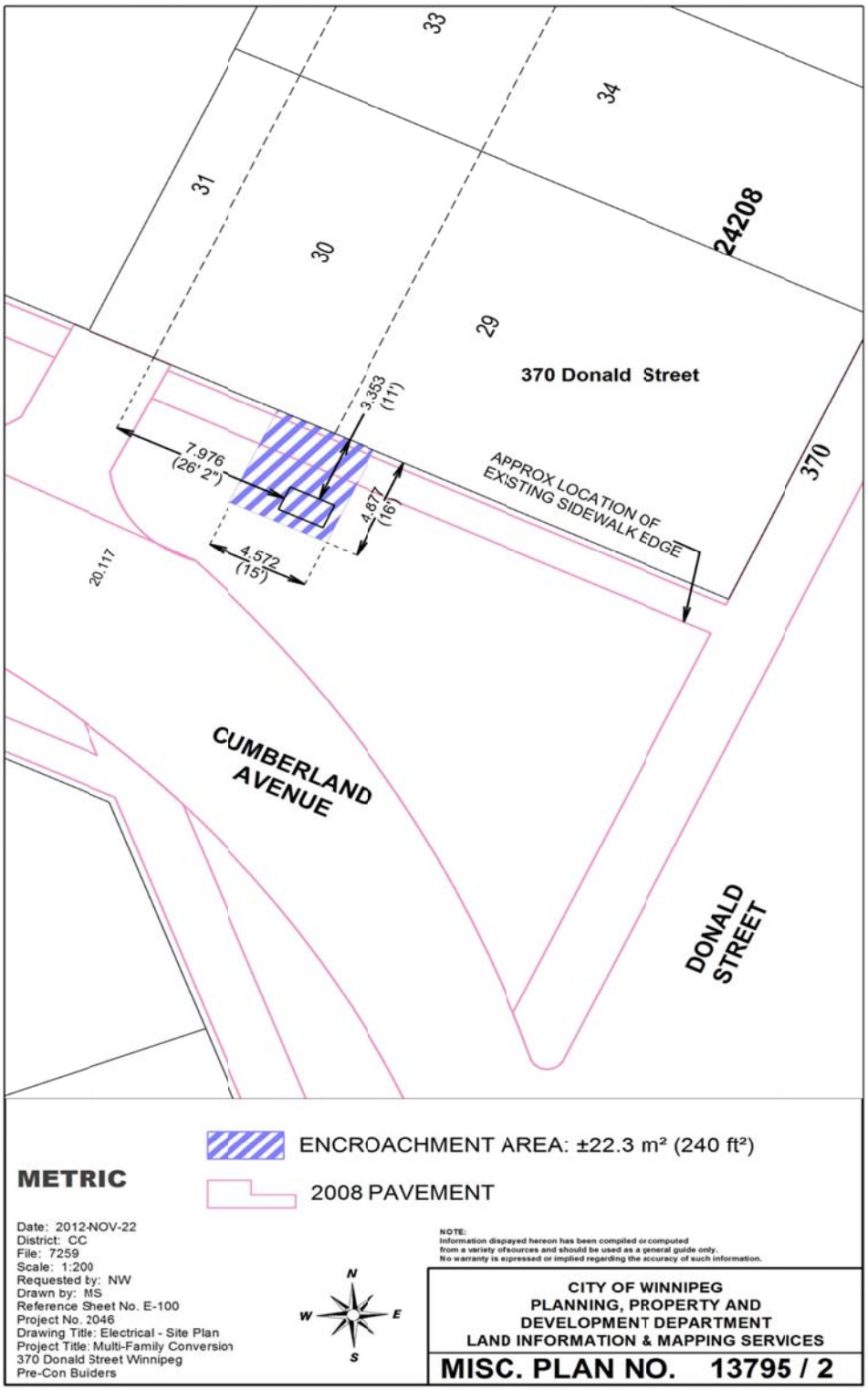
In preparing this report there was consultation with:

Legal Services Department as to legal issues
Corporate Finance as to insurance requirements

SUBMITTED BY

Department	Planning, Property and Development
Division	Real Estate
Prepared by:	Nolan Winters
Date:	December 21, 2012
File No.	7259

O:\Reports Directive\Real Estate\Leasing\(nw) 370 Donald Transformer.docx


33
34
31
30
29
24208
370 Donald Street
370
3.353 (11')
7.976 (26' 2")
4.877 (16')
4.572 (15')
20.117
APPROX LOCATION OF EXISTING SIDEWALK EDGE
CUMBERLAND AVENUE
DONALD STREET
ENCROACHMENT AREA: ±22.3 m² (240 ft²)
2008 PAVEMENT
METRIC
Date: 2012-NOV-22
District: CC
File: 7259
Scale: 1:200
Requested by: NW
Drawn by: MS
Reference Sheet No. E-100
Project No. 2046
Drawing Title: Electrical - Site Plan
Project Title: Multi-Family Conversion
370 Donald Street Winnipeg
Pre-Con Builders
N
W
E
S
NOTE:
Information displayed hereon has been compiled or computed from a variety ofsources and should be used as a general guide only. No warranty is expressed or implied regarding the accuracy of such information.
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13795 / 2

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR AN ENCROACHMENT AGREEMENT TO ALLOW FOR THE USE OF A PORTION OF THE PUBLIC RIGHT OF WAY NORTH OF CUMBERLAND AVENUE AND ADJACENT TO 370 DONALD STREET FOR THE PURPOSE OF A TRANSFORMER.

Use:	Establish Electrical Transformer and Underground Feeds
Licensor:	The City of Winnipeg
Licensee:	The Bell Building Inc. (hereinafter called the "Licensee")
Area:	Shown and identified as 'Encroachment Area' on Misc. Plan No. 13795/2, attached;
Term:	Annually continuing, commencing the first day of the month following approval from the City's Standing Committees and Council;
Rental:	$187.50 per annum plus GST; 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 ($2,000,000) per occurrence, such liability policy to include the City of Winnipeg as an additional insured and contain evidence of a cross liability clause and contractual liability; During the construction/installation of the underground feeds and electrical transformer the Licensee or their contractor shall purchase and keep in force during the construction/installation process the following insurance coverage(s): Commercial general liability insurance in the amount of at least two million dollars ($2,000,000) per occurrence, such liability policy to include the City of Winnipeg as an additional insured and contain evidence of a cross liability clause, contractual liability and including the operations of underground excavation; Contractors' pollution liability insurance in the amount of at least two million dollars ($2,000,000) insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work performed by the Licensee or the Licensees contractor, its agents, representatives, employees or sub-contractors. Coverage shall apply to both sudden and gradual pollution conditions including the further disruption of pre-existing conditions, arising from the services rendered by the Licensee or others on the Licensees behalf.

Such insurance to remain in force for twenty-four (24) months past completion of the construction and installation.

Automobile Liability insurance covering all motor vehicles, owned operated or licensed in the name of Licensee or others on the Licensees behalf in an amount not less than two million dollars ($2,000,000).

The Licensee or others performing the work on the Licensees behalf are responsible for insuring equipment and tools used for the 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 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 encroachment agreement and any subsequent renewals 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: The Licensee understands and agrees that the 'Encroachment Area' is leased on an "as is" basis.

The development and maintenance of the Encroachment Area will be performed at the sole cost, expense and effort of the Licensee, including, obtaining all permits required to develop, occupy and utilize the Encroachment Area for its intended use.

The City shall have the right to access the Encroachment Area at any time (twenty four hours a day, seven days a week) by its employees or other persons acting with its authorization, with or without equipment to maintain, operate, repair, inspect or rehabilitate existing water mains, sewer lines, the existing pumping station and appurtenances located within the Encroachment Area.

The Licensee shall not erect or permit the erection of any building or other structure, other than the electrical transformer and underground feeds referred to herein, nor make any excavation other than that required for erecting the electrical transformer and underground feeds referred to herein, and shall not place fill upon the Encroachment Area or on the lands adjacent to the Encroachment Area;

The Licensee shall be responsible for all costs, utilities, and operating expenses in connection with the use and occupation by the Licensee of the Encroachment Area including, but not limited to, license fees, business tax, garbage removal, snow removal (to be hauled away and not piled up on the Encroachment Area or on the lands adjacent to the Encroachment Area) and security cost; provided, however, that snow removal from the public sidewalk shall remain the responsibility of the City;

Immediately following construction of the electrical transformer and underground feeds, the Licensee agrees to restore the lands in the Encroachment Area and the adjacent lands, including but not limited to the public sidewalk, to a condition at least equal to the condition they were in prior to the said construction. The Licensee shall be responsible for any and all damages to the lands and permitted structures in the Encroachment Area and adjacent lands, including but not limited to the public sidewalk, resulting from its use and occupation of the Encroachment Area.

The Licensee shall also be responsible for cleanup of litter in the immediate area as a result of use and occupation of the Encroachment Area;

That all utilities be permitted to enter the Encroachment Area for maintenance, repair or installation of services at any time 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;

The Licensee shall not assign this agreement without the prior consent of the Licensor.

The Licensee shall indemnify and save the City harmless from and against any and all claims for damages or injuries, including death that may arise from the use of the Encroachment Area by the Licensee.

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

That the approval of this application by Council or its delegated authority is only valid for a period of six (6) months from the date of said approval unless the applicant executes 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;

The Water and Waste Department advises in preparation for construction that there exists private 150 millimetre water service running on the East side of the Encroachment Area in close proximity to the construction site.

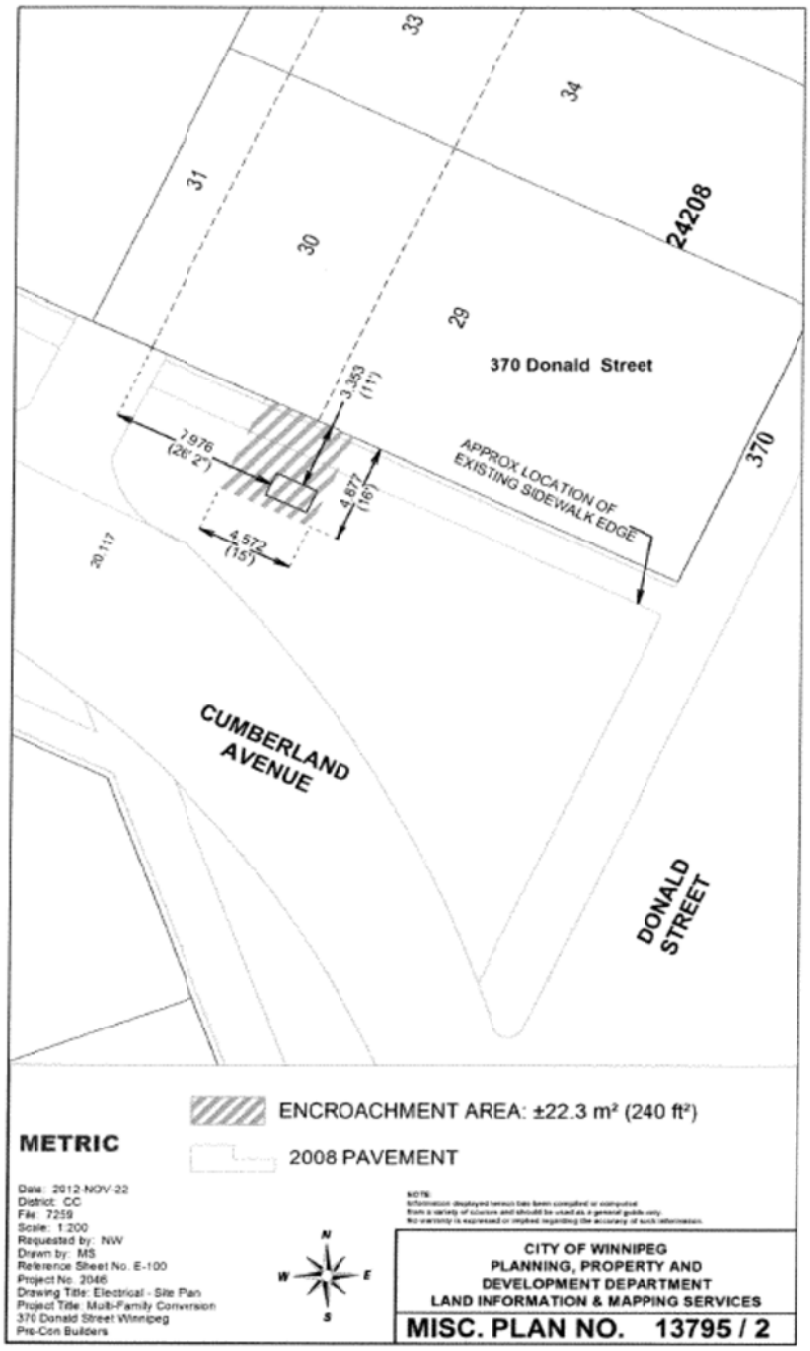
That all applicable permits be obtained prior to any further development.

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.

THE BELL BUILDING INC. HEREBY ACKNOWLEDGES AND AGREES WITH THE ABOVE TERMS AND CONDITIONS.

THE BELL BUILDING INC. **DATE** Dec 14 2012

PRESIDENT
TITLE


33
34
31
30
29
24208
370 Donald Street
370
3.353 (11')
1.976 (26' 2")
4.877 (16')
4.572 (15')
20.117
APPROX. LOCATION OF EXISTING SIDEWALK EDGE
CUMBERLAND AVENUE
DONALD STREET
ENCROACHMENT AREA: ±22.3 m² (240 ft²)
2008 PAVEMENT
METRIC
Date: 2012 NOV 22
District: CC
File: 7259
Scale: 1:200
Requested by: NW
Drawn by: MS
Reference Sheet No. E-100
Project No. 2046
Drawing Title: Electrical - Site Plan
Project Title: Multi-Family Conversion
370 Donald Street Winnipeg
Pre-Con Builders
N
W
E
S
CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13795 / 2

O:\Reports Directive\Real Estate\Leasing\(nw) 370 Donald Transformer December 19, 2012.doc