Agenda - Executive Policy Committee – October 16, 2013

Report - Standing Policy Committee on Property and Development – October 8, 2013

Item No. 10 Encroachment Agreement to Allow for the Use of the Dawson Road North Right-of-Way Adjacent to 57-63 Dawson Road North for the Development and Maintenance of a Parking Area

STANDING COMMITTEE RECOMMENDATION:

On October 8, 2013, the Standing Policy Committee on Property and Development concurred in the recommendation of the Winnipeg Public Service and submitted the following to Council:

1. That an Encroachment Agreement in favour of Falcon Machinery (1965) Ltd. for the purpose of a parking area identified as “Total Encroachment Area” on Misc. Plan 14521 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.

Agenda - Executive Policy Committee – October 16, 2013

Report - Standing Policy Committee on Property and Development – October 8, 2013

DECISION MAKING HISTORY:

STANDING COMMITTEE RECOMMENDATION:

On October 8, 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 Encroachment Agreement to Allow for the Use of the Dawson Road North Right-of-Way Adjacent to 57-63 Dawson Road North for the Development and Maintenance of a Parking Area**

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

AUTHORIZATION

Author	Department Head	CFO	CAO
I. Day	B. Thorgrimson	M. Ruta	D. Joshi COO

RECOMMENDATIONS

1. That a proposed Encroachment Agreement in favour of Falcon Machinery (1965) Ltd. for the purpose of a parking area identified as “Total Encroachment Area” on Misc. Plan 14521 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

Encroachment By-law 692/74, General Regulations, 4(1)(d), states:

“Where the encroachment is of an unusual or commercial nature that it be referred to the Director of Land and Development Services of the City for the purpose of negotiating a reasonable rental and making recommendation to the Chief Administrative Officer for subsequent referral to Council.”

In this regard, the Planning, Property & Development Department has negotiated Terms and Conditions of an Encroachment Agreement, in favour of Falcon Machinery (1965) Ltd.

IMPLICATIONS OF THE RECOMMENDATIONS

The Department has determined that there is no general, policy, regulatory, environmental or human resource implications to entering into an Encroachment Agreement shown on the attached Miscellaneous Plan No. 14521.

HISTORY

Falcon Machinery (1965) Ltd. operates a manufacturing facility at 57-63 Dawson Road North where they fabricate heavy-steel products.

Falcon Machinery (1965) Ltd. submitted an application to the City's Zoning and Permits Branch to allow for parking on the Dawson Road North right-of-way.

The application was circulated to applicable City departments and public utilities for consideration and comments. All comments and concerns have been incorporated into the signed terms and conditions.

The Risk Management Division of Corporate Finance reviewed the insurance requirements for this proposed encroachment and their 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 Falcon Machinery (1965) Ltd.

This report seeks approval of the Encroachment Agreement as negotiated.

FINANCIAL IMPACT

Financial Impact Statement

Date: September 6, 2013

Project Name:

First Year of Program **2013**

Proposed Encroachment Agreement to Allow for the Use of the Dawson Road North Right-of-Way Adjacent to 57-63 Dawson Road North for the Development and Maintenance of a Parking Area

	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	823	3,438	3,438	3,438	3,438
Net Cost/(Benefit)	$ (823)	$ (3,438)	$ (3,438)	$ (3,438)	$ (3,438)
Less: Existing Budget Amounts	(823)	(3,438)	(3,438)	(3,438)	(3,438)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2013 consist of an initial admin fee of $250 + annual encroachment fees of $3,437.50 pro-rated for a November 1 commencement date. Revenues from 2014 onward represent encroachment fees for the 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
Risk Management, Corporate Finance

SUBMITTED BY

Department:	Planning, Property and Development
Division:	Municipal Accommodations
Prepared by:	Nolan Winters
Date:	September 9, 2013
File No.	

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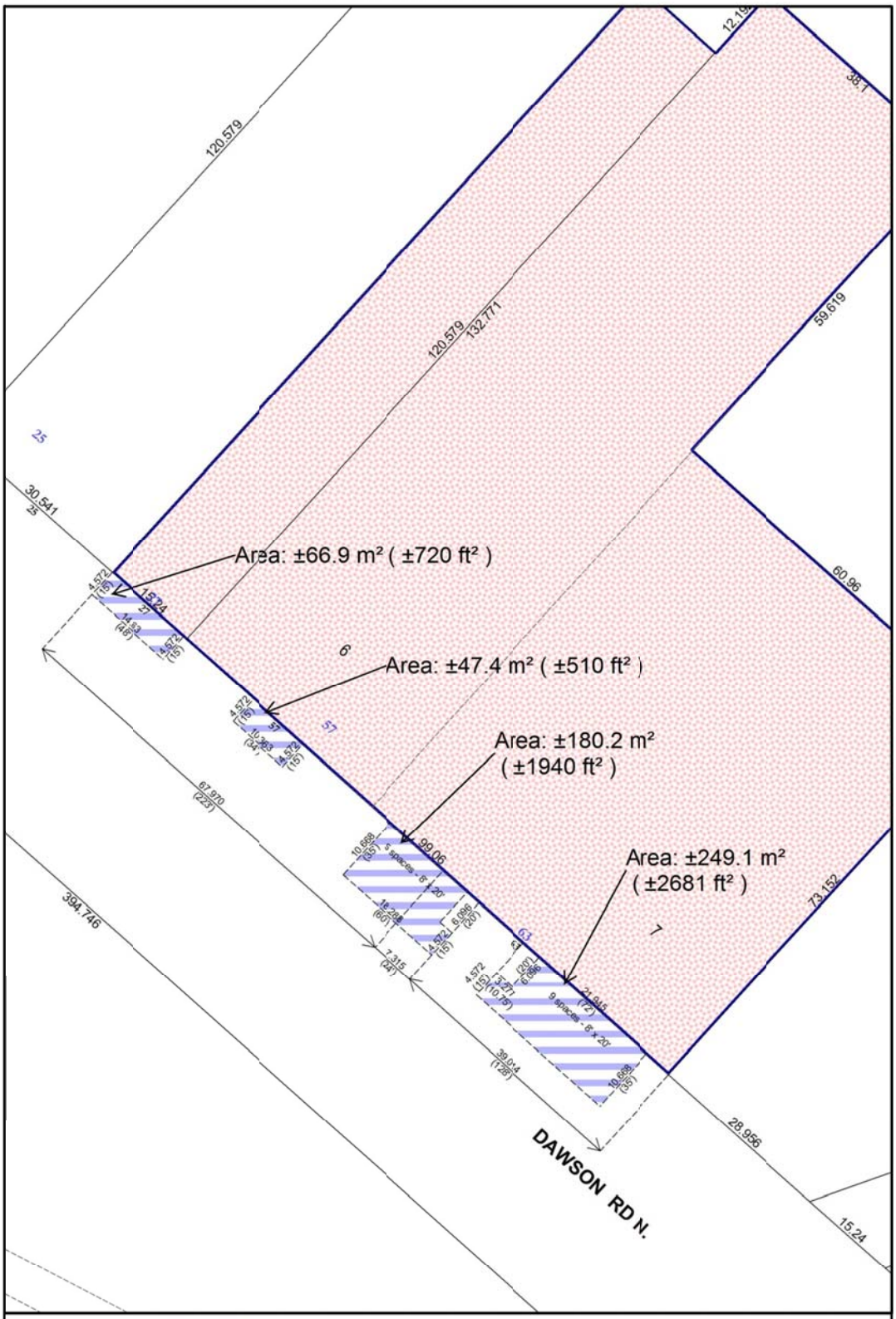


Date: 2013-JULY-09 District: RIEL
File: 32/6819 Scale: 1:700
Requested by: NW Drawn by: MS
Reference Dwg No.: 2131694 FALCON MACHINERY - SITE PLAN

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.

METRIC

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

MISC. PLAN NO. 14521

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR AN ENCROACHMENT AGREEMENT TO ALLOW FOR THE USE OF A PORTION OF THE DAWSON ROAD NORTH PUBLIC RIGHT OF WAY ADJACENT TO 57-63 DAWSON ROAD NORTH FOR THE PURPOSE OF PARKING.

Use:	Development and Maintenance of a Parking Area
Licensee:	Falcon Machinery (1965) Ltd. (hereinafter called the "Licensee")
Area:	Shown and identified as 'Total Encroachment Area' on Misc. Plan No. 14521, attached;
Term:	Annually Continuing, commencing the first day of the month following approval from the City's Standing Committees and Council;
Rental:	$3,437.50 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 ($2,000,000) per occurrence, such liability policy to include the City of Winnipeg as an additional insured and contain evidence of contractual liability and 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 coverages 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: Ninety (90) days written notice;

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 applicant 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;

The Licensee understands and agrees that the 'Encroachment Area' is licensed on an "as is" basis.

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 and appurtenances located within the Encroachment Area.

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

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.

Manitoba Hydro and Centra Gas Manitoba Inc. have facilities in the affected area but no easement requirements. Any removal or relocation of Manitoba Hydro and/or Centra Gas Manitoba Inc. existing facilities as a result of the proposed license will be at the expense of the developer and/or Licensee. Future electrical and/or gas service can be obtained from the local Manitoba Hydro District Office. If the application is revised at any time it will be necessary for Manitoba Hydro/Centra Gas to review the file to determine if their easement requirements remain the same. 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 204-480-1212;

The Licensee shall be responsible for all costs, utilities, and operating expenses in connection with the use and occupation of the Encroachment Area including, but not limited to; license fees, business tax, garbage removal, snow removal, security, etc. 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.
The Licensee shall not assign this agreement or sublet the lands without the prior consent of the City.

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 lands by the Licensee.

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 204-941-7267, 48 hours prior to excavation for further confirmation in the field;

That if at any time during the term the City's use or requirements for the Encroachment Area reasonably necessitate the relocation and/or modification and/or removal of the Parking Area, the Licensee shall be responsible to do all things necessary to relocate and/or modify and/or remove the Parking Area as required by the City and to pay all costs and expenses associated therewith.

The Public Works Department does not currently have plans for the areas encompassing the proposed encroachment agreement. However, if and when the City does require the encroachment areas in the future the parking will need to be removed at the Licensee's cost;

That all applicable permits be obtained prior to any development;

That snow removal in the parking area shall be the responsibility of 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 and agreed to by the Licensee, acting reasonably.

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.

FALCON MACHINERY (1965) LTD. HEREBY AGREES TO ENTER INTO AN ENCROACHMENT AGREEMENT WITH THE CITY OF WINNIPEG FOR THE USE OF THE PROPERTY IDENTIFIED AS `TOTAL ENCROACHMENT AREA` ON THE ATTACHED MISC. PLAN NO. 14521 AND IN ACCORDANCE WITH THE PROPOSED TERMS AND CONDITIONS AS OUTLINED HEREIN.

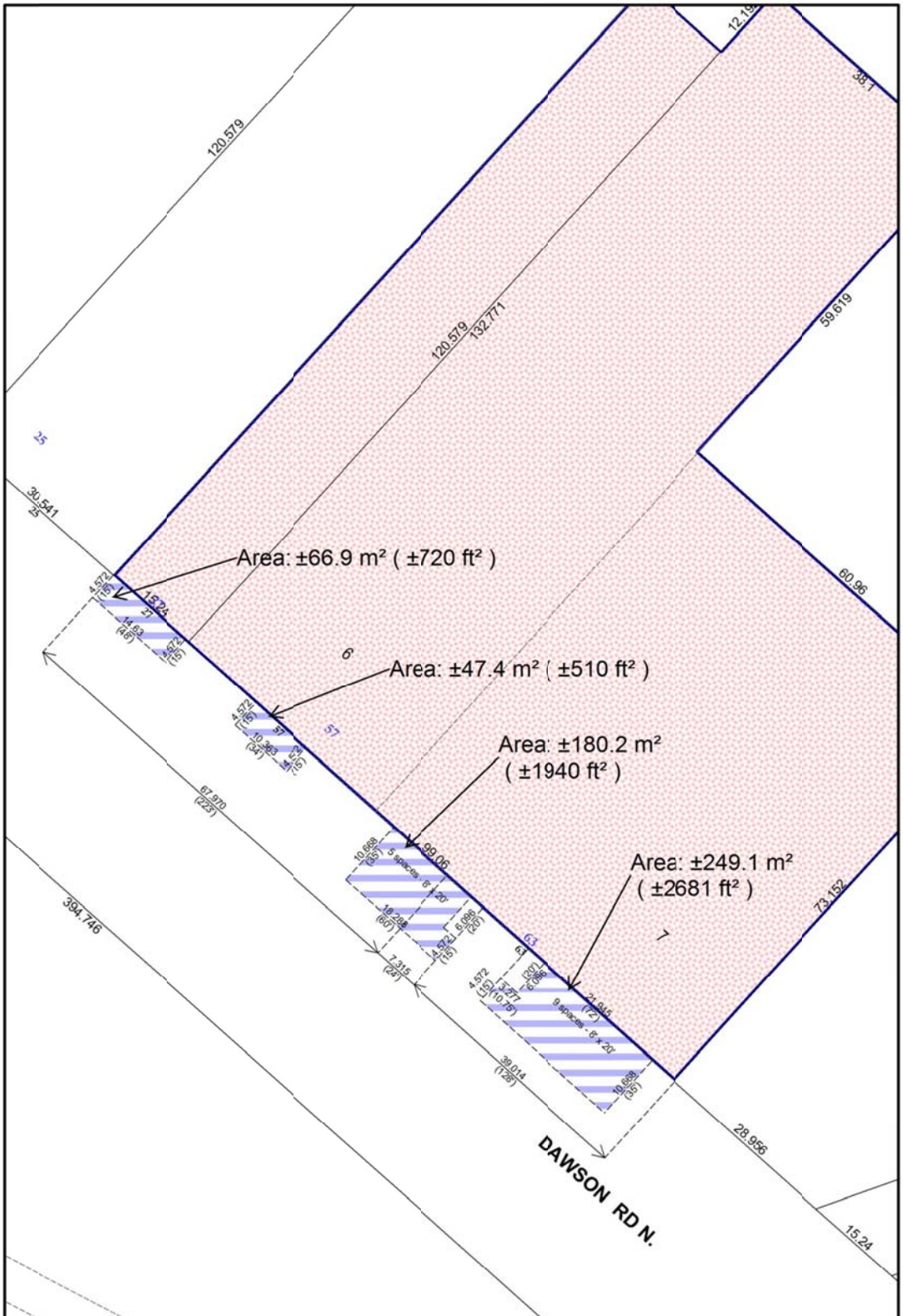
FALCON MACHINERY (1965) LTD.

Per: _____ Aug 20/2013

NAME EARL POITRAS

TITLE V.P / OPERATIONS MANAGER **DATE**

I/We have been authorized to bind the Corporation



TOTAL ENCROACHMENT AREA: ±543.6 m² (±5,851 ft²)

FALCON MACHINERY PROPERTY

Date: 2013-JULY-09 District: RIEL
File: 32/6819 Scale: 1:700
Requested by: NW Drawn by: MS
Reference Dwg No.: 2131694 FALCON MACHNERY - SITE PLAN

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METRIC

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