Minute No. 206
Report – Standing Policy Committee on Property and Development – January 14, 2014

Item No. 18 **Encroachment Agreement to Allow for the Use of a Portion of the Melrose Avenue East Right-of-Way for the Purpose of Constructing a Vestibule Addition at 517 Pandora Avenue East (Transcona Ward)**

COUNCIL DECISION:

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

1. That a proposed Encroachment Agreement in favour of Transcona East End Community Club Inc. for the purpose of constructing a vestibule identified as "Encroachment Area" on Misc. Plan 14540 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.

Report – Standing Policy Committee on Property and Development – January 14, 2014

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 January 22, 2014, the Executive Policy Committee concurred in the recommendations of the Standing Policy Committee on Property and Development**.**

STANDING COMMITTEE RECOMMENDATION:

On January 14, 2014, 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 a Portion of the Melrose Avenue East Right-of-Way for the Purpose of Constructing a Vestibule Addition at 517 Pandora Avenue East**

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

AUTHORIZATION

Author	Department Head	CFO	CAO
I. Day	B. Thorgrimson	n/a	D. Joshi A/CAO

RECOMMENDATIONS

1. That a proposed Encroachment Agreement in favour of Transcona East End Community Club Inc. for the purpose of constructing a vestibule identified as “Encroachment Area” on Misc. Plan 14540 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 Transcona East End Community Club Inc.

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. 14540.

HISTORY

Transcona East End Community Club Inc. operates the City-owned facility at 517 Pandora Ave. East commonly known as East End Arena and Community Club.

Transcona East End Community Club Inc. submitted an application to the City's Zoning and Permits Branch to allow for an expansion of the facility in the form of a vestibule onto the Melrose Ave. East right-of-way for the purpose of a lobby and second entrance.

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 Transcona East End Community Club Inc.

This report seeks approval of the Encroachment Agreement as negotiated.

FINANCIAL IMPACT

Financial Impact Statement

Date: December 9, 2013

Project Name:

First Year of Program **2014**

Proposed Encroachment Agreement to Allow for the Use of a Portion of the Melrose Avenue East Right-of-Way for the Purpose of Constructing a Vestibule Addition at 517 Pandora Avenue East

	2014	2015	2016	2017	2018
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	469	282	282	282	282
Net Cost/(Benefit)	$ (469)	$ (282)	$ (282)	$ (282)	$ (282)
Less: Existing Budget Amounts	(469)	(282)	(282)	(282)	(282)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2014 consist of the annual rental of $218.75 + a one-time administration fee of $250. Revenues from 2015 onward consist of the rental amount only.

"Original signed by"
Mike McGinn, CA
Manager of Finance

CONSULTATION

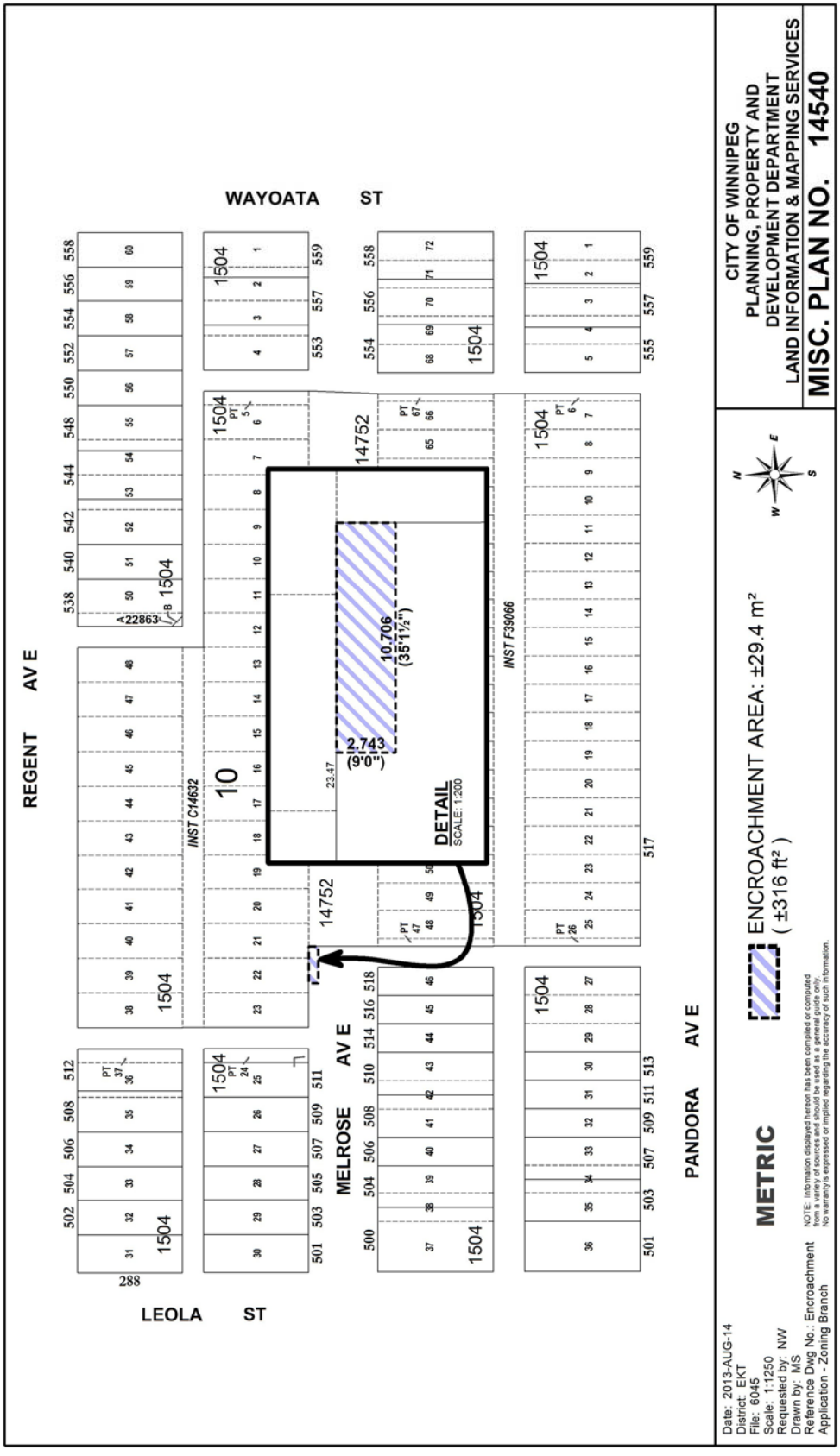
In preparing this report there was consultation with:

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:	December 10, 2013
File No.	6045

O:\Reports Directive\Municipal Accommodations\Leases\MA2013-183 - Proposed Encroachment Agreement to Allow for the Use of a Portion of the Melrose Avenue East Right-of-Way for the Purpose of Constructing a Vestibule Addition at 517 Pandora Ave. E.docx


WAYOATA ST
REGENT AV E
LEOLA ST
MELROSE AV E
PANDORA AV E
INST C14632
INST F39066
10.706 (35'1½")
2.743 (9'0")
23.47
DETAIL
SCALE: 1:200
ENCROACHMENT AREA: ±29.4 m² (±316 ft²)
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14540
Date: 2013-AUG-14
District: EKT
File: 6045
Scale: 1:1250
Requested by: NW
Drawn by: MS
Reference Dwg No.: Encroachment
Application - Zoning Branch
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.

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR AN ENCROACHMENT AGREEMENT TO ALLOW FOR THE USE OF THE MELROSE AVENUE RIGHT-OF-WAY AT 517 PANDORA AVENUE EAST FOR THE PURPOSE OF A VESTIBULE

Use:	Vestibule Addition to be used as a small lobby and second entrance for the East End Community Club
Licensee:	Transcona East End Community Club Inc. (hereinafter called the "Licensee")
Area:	Shown and identified as 'Encroachment Area' on Misc. Plan No. 14540, attached; (hereinafter called the "Encroachment Area")
Term:	Annually continuing, commencing the first day of the month following approval from the City's Standing Committees and Council;
Rental:	$218.75 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 five million dollars ($5,000,000) 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 Council is only valid for a period of eight (8) 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;
	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 for any purpose including, without limitation, to maintain, operate, repair, inspect the Encroachment Area and any improvement thereon or rehabilitate existing water mains, sewer lines and appurtenances located within the Encroachment Area.
	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 Encroachment Area, the Licensee shall be responsible to do all things necessary to relocate and/or modify and/or remove the Encroachment Area as required by the City and to pay all costs and expenses associated therewith.
	The Licensee shall not assign the Encroachment Agreement or sublet the Encroachment Area without the prior written consent of the Licensor.
	That all utilities be permitted to enter the Encroachment 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 Licensee will be at their own expense.
	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 Licensee. 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 to 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, 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 release, 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.

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;

The Licensee acknowledges that there is a 150mm water main running east/west in front of the proposed Encroachment Area at approximately a 4.3m offset, south of the north property line.

Centra Gas Manitoba Inc. will require easements for future development. At this time Centra Gas is unable to determine exactly where they will need easements as a result of the limited development information provided to date. Their office will require more detailed information before determining their easement requirements. The Licensee shall do all things necessary to assist the City and Centra Gas in determining the location and need for easements and in obtaining, executing, and registering said easements;

The Licensee acknowledges that there is a 2" steel gas main belonging to Manitoba Hydro and Centra Gas. The gas main is capped and ends almost directly in the middle of the Encroachment Area. Manitoba Hydro and Centra Gas will not be held accountable for any disruption to the Encroachment Area should they require access to their facilities for any reason in the future. The Licensee shall be responsible to permit Manitoba Hydro and Centra Gas access to their facilities when required and shall be required, at the Licensee's sole cost and expense, to remove or relocate the vestibule in order to permit such access;

That the Licensee shall obtain all applicable permits prior to any development;

That snow removal in the Encroachment 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, 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.

TRANSCONA EAST END COMMUNITY CLUB INC. HEREBY AGREES TO ENTER INTO AN ENCROACHMENT AGREEMENT WITH THE CITY OF WINNIPEG FOR THE USE OF THE PROPERTY IDENTIFIED AS `ENCROACHMENT AREA` ON THE ATTACHED MISC. PLAN NO. 14540 AND IN ACCORDANCE WITH THE PROPOSED TERMS AND CONDITIONS AS OUTLINED HEREIN.

Transcona East End Community Club Inc.

Per: Tom Neely — Nov 15/2013.

DATE

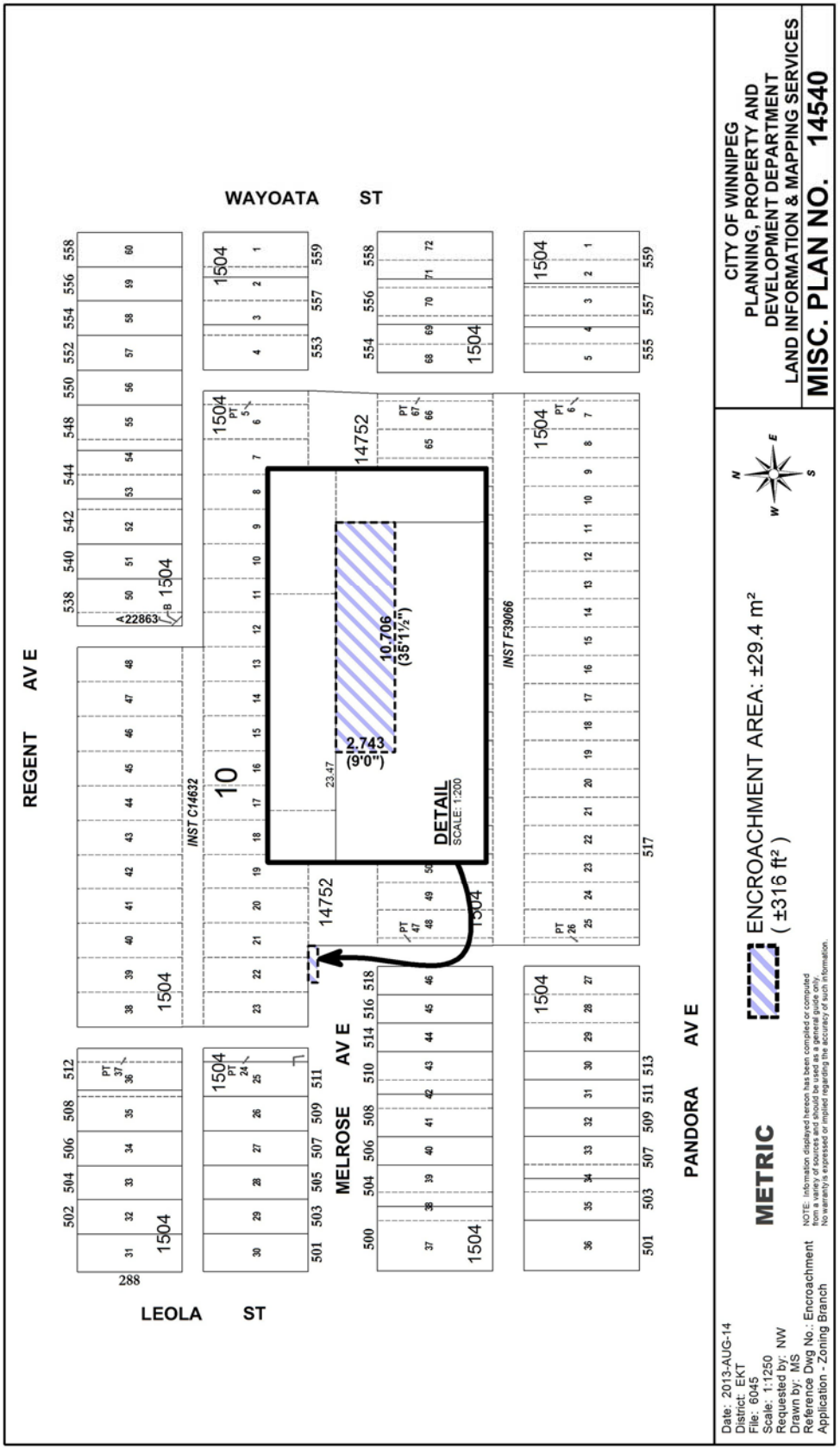
THOMAS A. NESBY

NAME

V.P. ADMINISTRATION

TITLE

I/We have been authorized to bind the Corporation


WAYOATA ST
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10.706
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CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14540
ENCROACHMENT AREA: ±29.4 m²
(±316 ft²)
METRIC
Date: 2013-AUG-14
District: EKT
File: 6045
Scale: 1:1250
Requested by: NW
Drawn by: MS
Reference Dwg No.: Encroachment
Application - Zoning Branch