Minute No. 593
Report – Standing Policy Committee on Property and Development – June 10, 2014

Item No. 12 **Encroachment Agreement to Allow for the Use of the Portage Avenue Right-of-Way between Albany Street and Queen Street**

COUNCIL DECISION:

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

1. That the terms and conditions attached as Schedule "A" for an encroachment agreement in favour of St. James Biz for the purpose of installing ten seating plazas and relocation of eighteen decorative metal trees identified as "Encroachment Total Area" on Misc. Plans 14648, 14649, 14650, 14651, 14652, 14654 be approved.

2. That the City enter into an encroachment agreement and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing.

3. That the authority be delegated to the Director of Planning, Property & Development to negotiate and approve the final terms and conditions of the encroachment agreement and such other agreements as determined necessary by the City Solicitor/Director of Legal Services, in accordance with the terms and conditions set forth in Schedule "A" and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

4. 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 – June 10, 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 June 18, 2014, 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 June 10, 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 the Portage Avenue Right-of-Way between Albany Street and Queen Street**

Issue: **The Applicant has proposed the Installation of Ten Seating Plazas on the Portage Avenue Right-of-Way as well as the Relocation of Eighteen Preexisting Decorative Metal Trees**

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

AUTHORIZATION

Author	Department Head	CFO	CAO
B. Erickson	B. Thorgrimson	M. Ruta	M. Jack COO

RECOMMENDATIONS

1. That the proposed terms and conditions attached as Schedule “A” for an encroachment agreement in favour of St. James Biz for the purpose of installing ten seating plazas and relocation of eighteen decorative metal trees identified as “Encroachment Total Area” on Misc. Plans 14648, 14649, 14650, 14651, 14652, 14654 be approved.

2. That the City enter into an encroachment agreement and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing.

3. That the authority be delegated to the Director of Planning, Property & Development to negotiate and approve the final terms and conditions of the encroachment agreement and such other agreements as determined necessary by the City Solicitor/Director of Legal Services, in accordance with the terms and conditions set forth in Schedule “A” and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

4. 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 St. James Biz.

IMPLICATIONS OF THE RECOMMENDATIONS

The Department has determined that there are no general, policy, regulatory, environmental or human resource implications to entering into an Encroachment Agreement shown on the attached Miscellaneous Plans No. 14648, 14649, 14650, 14651, 14652, 14654.

The seating plazas proposed by the St. James Biz consist of two benches, two concrete raised planters each featuring two trees and annual flower plantings, in addition to an underground Silva cell system designed to allow the trees to take root on the sidewalk, which will be covered with paving stones.

The Public Works and Water and Waste Departments have provided concurrence with the negotiated Terms and Conditions of the Encroachment Agreement. Note the Water and Waste Department has raised the following accepted risks regarding the encroachment agreement:

(a) The cast iron water main in question is reaching the end of its service life as it was installed in 1920. This main has seen leak activity with the most recent one in the winter of 2013. It is probable that parts of it will be replaced over the duration of the next 5 years, while other parts may wait 10+ years. Again, as mentioned previously, this water main is not currently on the Water & Waste Department`s upcoming work program for renewal.

(b) There is concern with regards to the depth and location of the tree vaults. These tree vaults will increase the depth at which the frost will penetrate overtop of the water main. This will speed up the deterioration of water main and will cause more frequent water main breaks and potentially cause the freezing of customer water service pipes as well.

(c) The Water & Waste Department is also concerned with the potential cost of restoration of the tree vaults should the water man fail. The vaults could potentially be damaged and require excavation in order to repair the water main.

HISTORY

An application was submitted to the City's Zoning and Permits Branch to install 10 seating plazas as well as the relocation of 18 decorative metal trees encroaching onto the Portage Avenue right-of-way between Albany Street and Queen Street.

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 St. James Biz.

This report seeks approval of the Encroachment Agreement as negotiated.

FINANCIAL IMPACT

Financial Impact Statement

Date: April 24, 2014

Project Name:

Proposed Encroachment Agreement to Allow for the Use of the Portage Avenue Right-of-Way between Albany Street and Queen Street

First Year of Program **2014**

	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	1,953	3,406	3,406	3,406	3,406
Net Cost/(Benefit)	$ (1,953)	$ (3,406)	$ (3,406)	$ (3,406)	$ (3,406)
Less: Existing Budget Amounts	(1,953)	(3,406)	(3,406)	(3,406)	(3,406)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2014 consist of the $3,406 annual encroachment fee pro-rated for an assumed commencement date of July 1, 2014 + an initial admin fee of $250. Amounts from 2015 onward represent the annual encroachment fee 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
Public Works Department
Water and Waste Department

SUBMITTED BY

Department	Planning, Property and Development
Division	Municipal Accommodations
Prepared by:	Nolan Winters
Date:	June 4, 2014
File No.:	MA2014-082

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