Minute No. 389
Report – Standing Policy Committee on Property and Development – May 12, 2015

Item No. 16 Proposed Permanent and Temporary Easement Requirements Located on Parkland (Bunn's Creek Greenway) Adjoining 2033 Henderson Highway in favour of 2033 On the Creek Inc.

COUNCIL DECISION:

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

1. That the proposed terms and conditions attached as Schedule "A" for a permanent easement, in favour of 2033 On the Creek Inc. for the purpose of installing, maintaining and repairing riverbank stabilization works over a portion of the City-owned parkland (Bunn's Creek Greenway) for the benefit of 2033 Henderson Highway which is owned by 2033 On the Creek Inc., all as identified on the attached Misc. Plan No. 14880/2, be approved.

2. That the City enters into an easement 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 Director of Planning, Property and Development be delegated the authority to negotiate and approve the final terms and conditions of the easement 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 any other terms and conditions deemed necessary by the Director of Legal Services/City Solicitor in order 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 – May 12, 2015

DECISION MAKING HISTORY:

Moved by Councillor Orlikow,

That the recommendation of the Standing Policy Committee on Property and Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 20, 2015, 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 May 12, 2015, 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 and Temporary Easement Requirements Located on Parkland (Bunn's Creek Greenway) Adjoining 2033 Henderson Highway in favour of 2033 On the Creek Inc.**

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

AUTHORIZATION

Author	Department Head	CFO	CAO/COO
J. Zabudney	M. Pittet	N/A	M. Jack A/COO

RECOMMENDATIONS

1. That the proposed terms and conditions attached as Schedule "A" for a permanent easement, in favour of 2033 On the Creek Inc. for the purpose of installing, maintaining and repairing riverbank stabilization works over a portion of the City-owned parkland (Bunn's Creek Greenway) for the benefit of 2033 Henderson Highway which is owned by 2033 On the Creek Inc., all as identified on the attached Misc. Plan No. 14880/2, be approved.

2. That the City enters into an easement 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 Director of Planning, Property and Development be delegated the authority to negotiate and approve the final terms and conditions of the easement 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 any other terms and conditions deemed necessary by the Director of Legal Services/City Solicitor in order 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

In accordance with s.205 of The City of Winnipeg Charter, all dispositions of property designed or acquired for park or cemetery purposes require approval of at least 2/3 of all members of Council. The subject City property is zoned 'PR 1' – Parks and Recreation. The subject easements are a disposition of an interest in land, and therefore fall under this section of The City of Winnipeg Charter.

EXECUTIVE SUMMARY

- The proposed Easement will benefit the owner of 2033 Henderson Highway through riverbank stabilization measures on the adjacent City owned parkland

IMPLICATIONS OF THE RECOMMENDATIONS

- The proposed easement requirements will limit the City's ability to use the parkland (Bunn's Creek Greenway) property and are for the exclusive benefit of the adjacent property owner.

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

HISTORY

The City acquired a portion of Bunn's Creek Greenway (Lot 4, Plan 12681) in 1975, as part of an expropriation in the Bunn's Creek Acquisition Program, to be utilized as flood plain and creek bank. The purpose of this acquisition of private land was to affect the following:

a) Preserve Bunn's Creek as a natural amenity and surface water outlet to be maintained.

b) Curtail private waste disposal systems, which in many cases were malfunctioning, causing the area to become overloaded with waste drainage.

c) Control construction and developments that were occurring adjacent to the creek, which in many cases, were resulting in some form of landfill encroaching on the creek bed endangering the stability of the creek bank.

d) And to eliminate dumping, garbage accumulation, burning and other nuisance pollutions.

Bunn's Creek is valued as natural riparian corridor and linear park, and comprises a segment of the north leg of the Trans Canada Trail.

On April 16, 2015, the solicitor for 2033 On The Creek Inc., approached the City, on behalf of their client, requesting to enter into an easement agreement with the City, wherein they could utilize a portion of the Bunn's Creek parkland to carry out some creek bank stabilization. 2033 On The Creek Inc. also requested an "Ingress/Egress Area" easement as depicted on the attached Misc. Plan 14880/2, in conjunction with the construction of the "Permanent Easement" and certain other improvements to the City land to stabilize the creek bank.

2033 On The Creek Inc. plan on developing the adjacent site at 2033 Henderson Highway with condominiums, the configuration and scale of which will require river bank stabilization to ensure the structural integrity of their development. Though they could modify plans to mitigate against stabilization, or could undertake stabilization entirely on their own property, upon their engineer's recommendations the developer has proposed a stabilization plan within City land. It is understood that this is a more economical and aesthetically pleasing option. The associated remedial construction includes installing rip-rap along the City-owned creek bank and shear-keys in the flood-plain area and instrumentation to monitor the performance of the works. The proposed stabilization and monitoring devices and erosion protection works, located within City property, are designed to mitigate detrimental impacts to the stability of the riverbank associated with the proposed development, and improve stability conditions to sufficiently prevent any slope movements that might otherwise damage the structure of 2033's proposed development. A Waterways permit will need to be obtained prior to commencing this construction.

The specific Works proposed on the City's property are not being done at the need or request of the City or the City's waterway engineer; although, the work does fall within the regulated area defined by the Waterways By-law (250' offset of Bunn's Creek). The Developer's submitted plans show that they will be adding fill, which will have the tendency to endanger the stability of land, and could impact both City, private land, and their proposed condominium structure. As a result, the engineering consultant for 2033 On the Creek Inc. has proposed the shear-key and erosion protection works to address this concern and ensure the stability of the land, and to mitigate or eliminate any effects from addition fill.

The "Ingress/Egress Area" will be utilized for the right of passage and re-passage of persons and vehicles and equipment entering the Project to complete the necessary creek bank work.

The proposed easement areas were circulated to the Parks and Open Spaces Division of Public Works and the Urban Division of the Planning, Property and Development Department. No objections were received to the proposed easement request as any concerns raised have been addressed in the easement and security agreements. However, a Park Crossing Permit, a letter of approval from Naturalist Services, and a Waterways permit, along with a Letter of Credit in the amount of $100,000.00 for security, have been identified as required for this project to proceed.

At this time, the Department is requesting that Council approve the proposed easement areas and that the Director of Planning, Property and Development be delegated the authority to finalize the terms and conditions of the necessary Easement Agreement, and any other terms and conditions deemed necessary by the Director of Legal Services/City Solicitor in order to protect the interests of the City.

FINANCIAL IMPACT

Financial Impact Statement Date: May 7, 2015

Project Name:

Proposed Permanent and Temporary Easement Requirements Located on Parkland (Bunn's Creek Greenway) Adjoining 2033 Henderson Highway in favour of 2033 On the Creek Inc.

COMMENTS:

There are no financial implications associated with this report other than a nominal $1/annum easement fee associated with the permanent easement agreement. The temporary easement is also subject to a nominal $1 fee.

"Original Signed By"
Mike McGinn, CA
Manager of Finance

CONSULTATION

Legal Services as to legal issues, Public Works, and Parks.

OURWINNIPEG POLICY ALIGNMENT

Not applicable

SUBMITTED BY

Department: Planning, Property and Development
Division: Real Estate
Prepared by: Leah Furedi
Date: May 08, 2015
File No.: A3/4567

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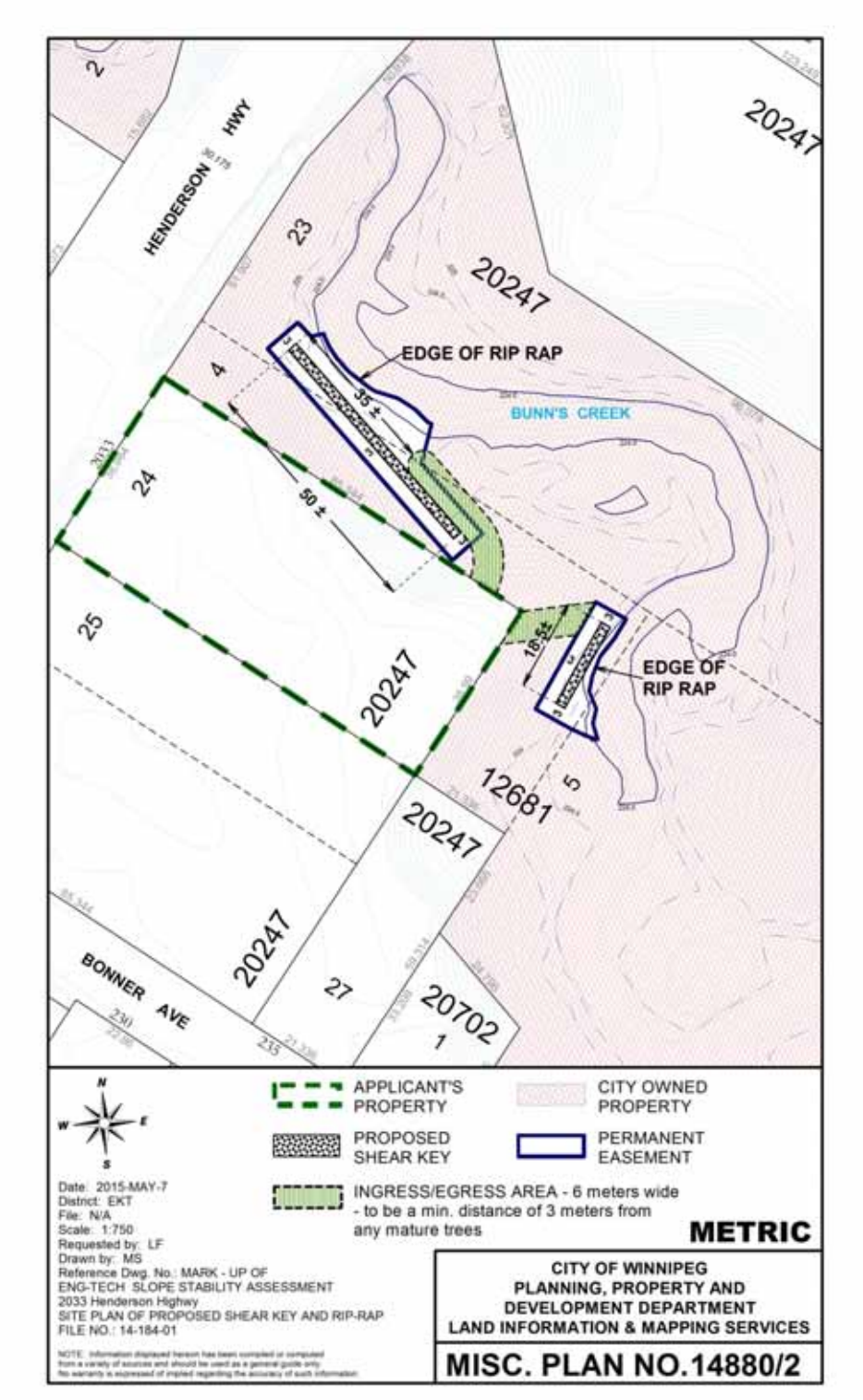
Schedule "A"

Grantor:	The City of Winnipeg (the "City");
Grantee:	2033 On the Creek Inc. ("2033") and all future owners of 2033 Henderson Highway;
Term:	in perpetuity;
Fee:	$1.00
Purpose:	for 2033 to install riverbank stabilization works, including shear key, rip rap and monitoring devices (the "Works"), on the City's property that 2033 requires because of 2033's proposed development and construction of a multi-family dwelling on the adjacent property located at 2033 Henderson Highway to ensure the stability of the foundation of the proposed building and the riverbank for and due to 2033's development and construction of a multi-family dwelling on the adjacent property at 2033 Henderson Hwy;
Easement Area:	as shown identified on Misc. Plan No. 14880/2 attached hereto as Schedule "B", with such amendments as determined necessary by the Director of Planning, Property and Development to ensure that the "Ingress/Egress" Area is a minimum of at least 3 meters away from any mature trees;
Easement Terms:	City to grant 2033 access to the Easement Area and permission to 2033 to construct, install, monitor, maintain and/or repair the Works; 2033, and all future owners, to construct, install, monitor, maintain, and /or repair, in accordance with applicable statutes, regulations, by-laws; 2033 to be responsible to restore the Easement Area after any construction, installation or repair to the Works; 2033 to provide the City with security in the amount of $100,000 in order to guarantee the completion of the installation and construction of the Works, the initial restoration of the City property, the completion of as-built drawings, the completion and registration of a Plan of Easement & the indemnification of the City for any Builder's Liens that may be registered; 2033 to indemnify and release the City for any loss, damages, claims, etc. that may arise out of the granting of the easement;

2033 to respect the City's current use of the property as a public park and use commercially reasonable efforts not to interfere with that use during its use of the Easement Area;

2033 to maintain liability insurance over the Easement Area;
2033 not to build any structures or do any landscaping within the Easement Area without the prior written approval of the Director of Planning, Property & Development

Schedule "B"


HENDERSON HWY
20247
23
EDGE OF RIP RAP
35 ±
BUNN'S CREEK
4
24
50 ±
25
18.5±
EDGE OF RIP RAP
12681
5
27
20702
1
BONNER AVE
APPLICANT'S PROPERTY
CITY OWNED PROPERTY
PROPOSED SHEAR KEY
PERMANENT EASEMENT
INGRESS/EGRESS AREA - 6 meters wide - to be a min. distance of 3 meters from any mature trees
METRIC
Date: 2015-MAY-7
District: EKT
File: N/A
Scale: 1:750
Requested by: LF
Drawn by: MS
Reference Dwg. No.: MARK - UP OF ENG-TECH SLOPE STABILITY ASSESSMENT 2033 Henderson Highway SITE PLAN OF PROPOSED SHEAR KEY AND RIP-RAP FILE NO.: 14-184-01
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO.14880/2