**Minutes – Executive Policy Committee – September 23, 2015**

**Report – Standing Policy Committee on Property and Development – September 15, 2015**

**Item No. 14 Encroachment Agreement between the Y.M.H.A Jewish Community Centre of Winnipeg Inc. and the City of Winnipeg**

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the following to Council:

1. That the proposed terms and conditions attached hereto and referred to as Schedule "A" for an encroachment agreement in favour of the Y.M.H.A Jewish Community Centre of Winnipeg Inc., for the construction of a fenced-in, landscaped, outdoor play area ancillary to the daycare building, and as identified as the "Encroachment Area" on Misc. Plan No. 14251/4 be approved.

2. That the City enter into an encroachment agreement 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 and Development to negotiate and approve the final terms and conditions of the encroachment agreement, 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.

**Minutes – Executive Policy Committee – September 23, 2015**

**Report – Standing Policy Committee on Property and Development – September 15, 2015**

DECISION MAKING HISTORY:

Moved by Councillor Orlikow,

That the recommendation of the Standing Policy Committee on Property and Development be concurred in and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION:

On September 15, 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:** **Encroachment Agreement Between the Y.M.H.A Jewish Community Centre of Winnipeg Inc. and the City of Winnipeg**

**Issue:** **Construction of a fenced-in, landscaped, outdoor play area ancillary to the daycare building at 1710 Grosvenor Avenue**

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

## AUTHORIZATION

| Author | Department Head | CFO | CAO/COO |
|---|---|---|---|
| B. Erickson | M. Pittet | M. Ruta | M. Jack<br>COO |

## RECOMMENDATIONS

That the Standing Policy Committee on Property and Development recommend that Council approve the following:

1. That the proposed terms and conditions attached hereto and referred to as Schedule “A” for an encroachment agreement in favour of the Y.M.H.A Jewish Community Centre of Winnipeg Inc., for the construction of a fenced-in, landscaped, outdoor play area ancillary to the daycare building, and as identified as the “Encroachment Area” on Misc. Plan No. 14251/4 be approved.

2. That the City enter into an encroachment agreement 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 and Development to negotiate and approve the final terms and conditions of the encroachment agreement, 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

In accordance with the Council Order of July 18, 1979, the Standing Policy Committee on Property and Development shall authorize the leasing or rental of City property and right-of-way for which the Director of Planning, Property and Development has no authority.

In accordance with Encroachment By-law 692/74, General Regulations, 4. (1) d, which 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 and Development Department has negotiated the proposed terms and conditions of an encroachment agreement as set out in attached Schedule "A" in favour of the Y.M.H.A Jewish Community Centre of Winnipeg Inc. for the use of right-of-way located near 1710 Grosvenor Avenue and identified as "Encroachment Area" on attached Miscellaneous Plan No. 14251/4.

## EXECUTIVE SUMMARY

Application of an Encroachment Agreement for the construction of a fenced-in, landscaped, outdoor play area ancillary to the daycare building at 1710 Grosvenor Avenue, as specified in the History section of this report.

## IMPLICATIONS OF THE RECOMMENDATIONS

1. The Planning, Property and Development Department has determined that there are no general, policy, regulatory, environmental or human resource implications to entering into an Encroachment Agreement as set out in the attached Proposed Terms and Conditions, Schedule "A".

2. The Y.M.H.A Jewish Community Centre of Winnipeg Inc. will be able to provide better outdoor activities and programs for their daycare patrons, and will also provide a safety buffer by having this area fenced from the adjacent bus loop. The daycare is a public facility that can be used by all residents of Winnipeg.

3. An annual continuing term with cancellation provision will allow for the Y.M.H.A Jewish Community Centre of Winnipeg Inc. to construct and landscape the outdoor play area, while maintaining the lands. Should the City of Winnipeg require this right-of-way for future projects, the ninety (90) day cancellation provision will allow for this.

4. The City will benefit from this agreement by formally issuing all maintenance costs to the Y.M.H.A Jewish Community Centre of Winnipeg Inc., increasing improvements to the Encroachment Area, and obtaining satisfactory insurance agreements from the Y.M.H.A Jewish Community Centre of Winnipeg Inc., mitigating risk from the City of Winnipeg.

5. There will be no expenses incurred by the City as a result of this Agreement.

## HISTORY

The City of Winnipeg Standing Policy Committee on Property and Development approved the sale of 1710 Grosvenor Avenue, former Fire Station No. 12, to the Rose and Max Rady Jewish Community Centre on February 24, 2014.

This adjacent property is currently being developed into a daycare facility, and request has been made for an encroachment in the subject area as a fenced-in, landscaped, outdoor play area adjacent to the daycare building.

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 has reviewed the insurance requirements for this proposed lease and 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 Y.M.H.A Jewish Community Centre of Winnipeg Inc.

This report seeks approval of the Encroachment Agreement as negotiated.

## FINANCIAL IMPACT

## Financial Impact Statement

**Date:** August 17, 2015

**Project Name:**

**First Year of Program** **2015**

Encroachment Agreement Between the Y.M.H.A Jewish Community Centre of Winnipeg Inc. and the City of Winnipeg

| | 2015 | 2016 | 2017 | 2018 | 2019 |
|---|---|---|---|---|---|
| **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 | 508 | 1,031 | 1,031 | 1,031 | 1,031 |
| Net Cost/(Benefit) | $ (508) | $ (1,031) | $ (1,031) | $ (1,031) | $ (1,031) |
| Less: Existing Budget Amounts | (508) | (1,031) | (1,031) | (1,031) | (1,031) |
| Net Budget Adjustment Required | $ - | $ - | $ - | $ - | $ - |

**Additional Comments:** Revenues in 2015 consist of a one-time admin fee of $250 + annual rent of $1,031 pro-rated for an assumed commencement date of October 1st. Revenues from 2016 onward represent the annual rental amount. Municipal tax implications are immaterial and have been excluded from this analysis.

"Original signed by"

Cheryl Turman, CPA, CA
A/Manager of Finance

## CONSULTATION

### In preparing this report there was consultation with:

Legal Services (as to legal issues)
Risk Management (as to insurance requirements)

## OURWINNIPEG POLICY ALIGNMENT

**01-2a Collaborate To Make Safe Communities (Direction #4): Promote Safety on Street and Sidewalks**
The proposed encroachment includes a full fence around the perimeter of the subject area, which will provide safety for children attending the daycare from the adjacent bus loop.

**03-2 Vitality: (Direction #1): Strive to Eliminate Derelict Buildings**
The proposed encroachment is part of the redevelopment of former Fire Station #12, which was deemed a surplus City-owned building in 2014.

**03-2 Vitality: (Direction #6): Promote Cleanliness and Beautification**
The subject area for the encroachment includes aesthetically pleasing vegetation and ornamental features which add to the general cleanliness and appearance of the community.

## SUBMITTED BY

| | |
|---|---|
| Department: | Planning, Property and Development Department |
| Division: | Municipal Accommodations |
| Prepared by: | Julian Roberts, Real Estate Officer 2 |
| Date: | August 19, 2015 |
| File No.: | MA2015-187 |

O:\Reports Directive\Municipal Accommodations\Leases\2015\MA2015-187 - Encroachment Agreement between the Y.M.H.A Jewish Community Centre of Winnipeg Inc. and the City of Winnipeg - 1710 Grosvenor Ave.docx

**SCHEDULE A**

## PROPOSED TERMS AND CONDITIONS OF ENCROACHMENT AGREEMENT

**ON THE EAST SIDE OF PROPOSED DEVELOPMENT AT 1710 GROSVENOR AVENUE**
**Identified as "Encroachment Area"**
**On Attached Misc. Plan No 14251/4**

| | |
|---|---|
| Use: | To create a fenced-in, landscaped, outdoor play area ancillary to the daycare, on the east side of the proposed development, identified as "Encroachment Area" on Misc. Plan No. 14251/4, attached (hereinafter identified as the "Encroachment Area") |
| Licensee: | Y.M.H.A Jewish Community Centre of Winnipeg Inc. (hereinafter identified as the "Tenant") |
| Term: | Annual continuing, commencing the first day of the month following approval from the City's Standing Committees and Council. |
| Encroachment Fee: | **$1031.25** plus GST per annum, receipt which is hereby acknowledged. |
| Admin Fee: | One time fee of **$250.00** plus GST payable on the commencement date. |
| Taxes: | The Tenant is to pay such taxes, rates, including local improvements and charges assessed for the Encroachment Area in the same manner as if the Encroachment Area and any improvements thereon had been entered on the assessment roll of the City as privately owned and subject to taxation. |
| Insurance: | To indemnify and keep indemnified the City from and against all claims for damages which arise out of the use of the Encroachment Area by the Tenant;<br><br>To further safeguard the City, the Tenant shall purchase and keep in force, during the full term of the agreement the following insurances :<br><br>(i) Commercial General Liability insurance in the amount of at least $5,000,000 with The City of Winnipeg to be added as an additional insured. Such policy to also include a cross liability clause and contractual liability clauses.<br><br>(ii) All risks property insurance policy for the full replacement cost insuring all outdoor equipment and/or play structures. Such policy to also include a Waiver of Subrogation Rights against The City of Winnipeg. |

All policies shall be taken out with insurers licensed to and carrying on business in the Province of Manitoba;

Deductibles shall be borne by the Tenant;

The Tenant shall not cancel or cause any such policy or policies to lapse without minimum thirty (30) days prior written notice to the City of Winnipeg;

The Tenant shall provide written notice to the City of Winnipeg of any material changes to their policies within thirty (30) days of the change taking effect;

The Tenant shall file with the City a certificate of insurance in a form satisfactory to the City Solicitor;

The City shall have the right to alter the limits and/or coverage as reasonably required from time to time during the continuance of this agreement;

In addition to the above, the Tenant shall ensure that any and all contractors and/or subcontractors hired in connection with the development and/or maintenance of the outdoor play area, maintain the following minimum insurances; commercial general liability insurance in the amount of $2,000,000 with The City of Winnipeg to be added as an additional insured, cross liability clause, contractual liability clause, non-owned automobile liability and products and completed operations endorsement.

City's Option To Cancel: The proposed Encroachment Agreement may be terminated on 90 day's written notice by the City only or immediately by default.

Other: 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 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 Tenant understands and agrees that they are licensing the Encroachment Area on an "as is" basis.

Tenant is to comply with all laws, by-laws and regulations of any federal, provincial or municipal authority, and shall obtain all necessary permits pertaining to the use and occupancy of the Encroachment Area.

The redevelopment of the Encroachment Area shall be performed at the sole cost, expense and effort of the Tenant and in accordance with the conceptual plan herein attached as a Schedule "B".

The Tenant shall not erect or permit the erection of any building or other structure, other than the works referred to herein, nor make any excavation other than that required for the works referred to herein, and shall not place fill upon the Encroachment Area or on the lands adjacent to 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 Works, the Tenant shall be responsible to do all things necessary to relocate and/or modify and/or remove the works as required by the City and to pay all costs and expenses associated therewith.

Immediately following construction or dismantling of works within the Encroachment Area, the Tenant agrees to restore the Encroachment Area and the adjacent lands, including but not limited to the public right-of-way, to a condition at least equal to the condition that existed prior to construction. The Tenant shall be responsible for any and all damages to the Encroachment Area and permitted structures in the Encroachment Area and adjacent lands, including but not limited to the public right-of-way, resulting from its use and occupation of the Encroachment Area.

The Tenant shall obtain all permits required to develop, occupy and utilize the Encroachment Area for its intended use prior to commencement of any works within the Encroachment Area.

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 City reserves the right to MTS Communications Inc., Centra Gas (Manitoba) Inc., The Manitoba Hydro-Electric Board and/or other public utilities to enter upon the Encroachment Area for maintenance and/or repair of their utilities.

Manitoba Hydro/Central Gas advises of the following conditions:

(i) The Licensee can obtain Future electrical and/or gas service from the local Manitoba Hydro District Office;

(ii) If the application is revised at any time it will be necessary for Manitoba Hydro/Centra Gas to review the file to determine if our easement requirements remain the same;

(iii) Please be advised that no easements are required as a result of this application.

That if any removal or relocation of any existing public utilities i.e. Centra Gas, MTS, sewer and water, etc., are required as a result of the proposed work, all removal or relocation work will be performed at the sole cost, expense and effort of the Tenant.

Public Works Division advises of the following conditions:

(i) The Tenant must adhere to the City's tree protection guidelines during construction from Section 5 of the City's Tree Planting Details & Specifications:

http://winnipeg.ca/publicworks/Forestry/documents/Principles_and_Guidelines.pdf;

(ii) The redevelopment of the Encroachment Area shall be performed with an ISA Certified Arborist actively managing the tree protection pre-, during, and post-construction, at the sole cost, expense and effort of the Tenant.

The Tenant agrees that the Encroachment Area on the east side of the building does not interfere with Transit bus access and operation in the adjacent bus loop.

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

The Tenant shall not assign this agreement or sublet the Encroachment Area without the prior consent of the City.

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.

The Tenant agrees to enter into an appropriate Encroachment Agreement with the City embodying the within terms and conditions and in a form satisfactory to the City Solicitor/Manager of Legal Services.

This proposal is subject to final approval by the City of Winnipeg's Council, or its delegated authority.

I, GAYLE WAXMAN, duly authorized to act on behalf of the Y.M.H.A Jewish Community Centre of Winnipeg Inc., hereby agree that the Y.M.H.A Jewish Community Centre of Winnipeg Inc. will enter into an Encroachment Agreement with the City of Winnipeg for the use of City owned lands identified as "Encroachment Area" on Misc. Plan No. 14251/4, attached, in accordance with the terms and conditions as outlined herein on this Offer to Lease.

G Waxman

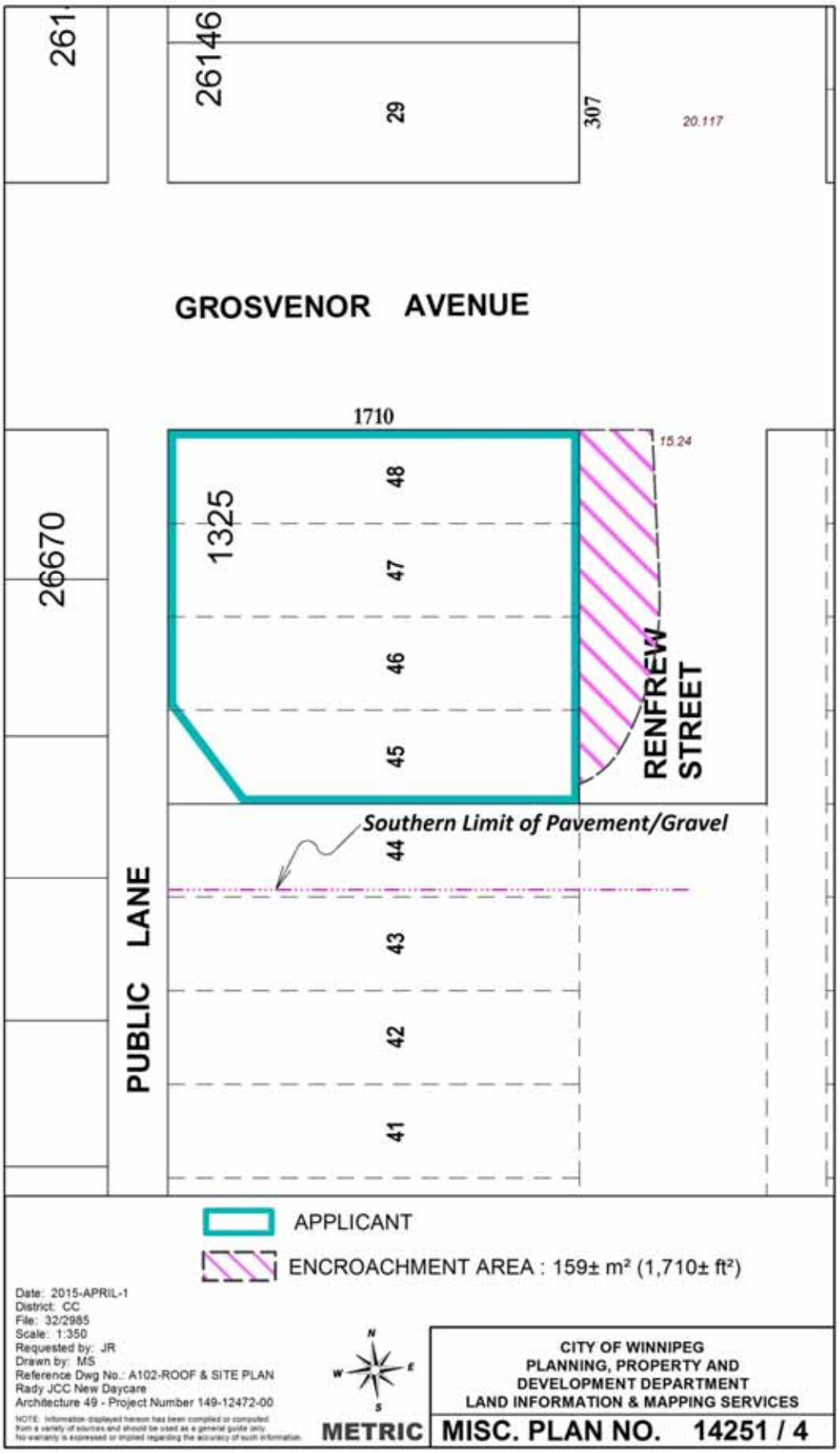
**for the Y.M.H.A Jewish Community Centre of Winnipeg Inc.**

July 22, 2015

**Date**

Contact Person: Daytime: GAYLE WAXMAN Phone: 204 477-7532
After Hours: _____ Phone: _____
E-mail Address: GWaxman@RadyJCC.com.

V:\Julian Roberts\Current Easement Processing\1710 Grosvenor Ave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Southern Limit of Pavement/Gravel
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PUBLIC LANE
APPLICANT
ENCROACHMENT AREA : 159± m² (1,710± ft²)
Date: 2015-APRIL-1
District: CC
File: 32/2985
Scale: 1:350
Requested by: JR
Drawn by: MS
Reference Dwg No.: A102-ROOF & SITE PLAN
Rady JCC New Daycare
Architecture 49 - Project Number 149-12472-00
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.
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CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14251 / 4

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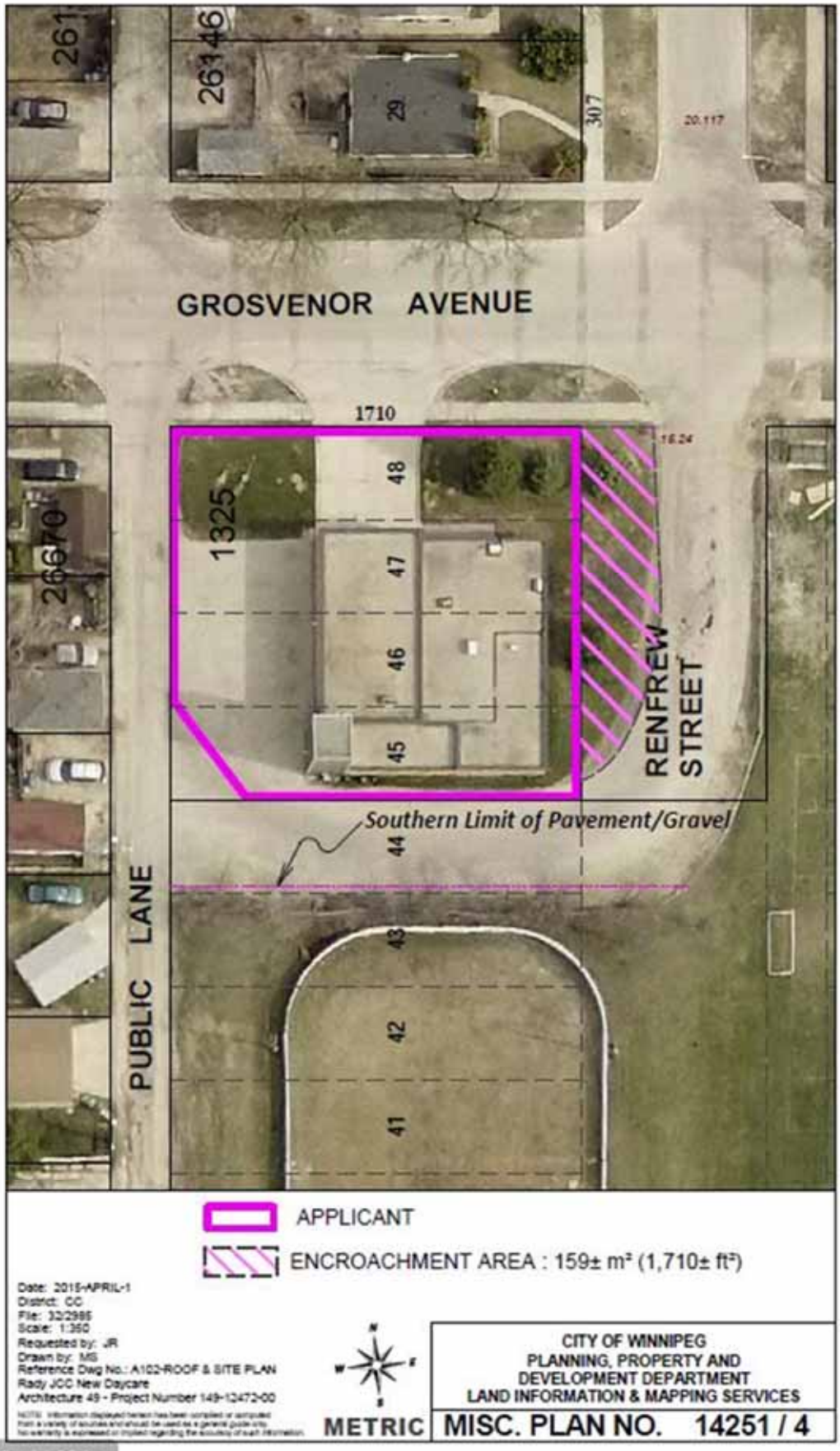
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METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14251 / 4

8.50 x 14.00 in

**Schedule "B"**

