Minute No. 469
Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – July 5, 2016

Item No. 16 Encroachment Agreement – Right-of-Way on Corydon Avenue Adjacent to 1685 Corydon Avenue (River Heights – Fort Garry Ward)

COUNCIL DECISION:

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

1. That the proposed terms and conditions attached as Schedule "A" for an encroachment agreement in favour of M.C.G. Enterprises Ltd. (hereinafter referred to as the "Licensee") for the purpose of developing and maintaining a bocce court and portable bar identified as "Encroachment Area" on Misc. Plan 14951 be approved (hereinafter referred to as the "Lands").

2. That the City enters into an encroachment agreement and such other agreements as determined necessary by the Director of Legal Services and City Solicitor 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 Director of Legal Services and City Solicitor, in accordance with the terms and conditions set forth in Schedule "A" and such other terms and conditions deemed necessary by the Director of Legal Services and City Solicitor 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, Heritage and Downtown Development – July 5, 2016

DECISION MAKING HISTORY:

Moved by Councillor Orlikow,

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

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 6, 2016, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On July 5, 2016, the Standing Policy Committee on Property and Development, Heritage and Downtown 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 City-Owned Right-of-Way on Corydon Avenue Adjacent to 1685 Corydon Avenue for the purpose of Installing and Maintaining a Bocce Court and Portable Bar**

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

AUTHORIZATION

Author	Department Head	CFO	CAO/COO
B. Erickson	J. Kiernan	M. Ruta	M. Jack COO

RECOMMENDATIONS

1. That the proposed terms and conditions attached as Schedule “A” for an encroachment agreement in favour of M.C.G. Enterprises Ltd. (hereinafter referred to as the ``Licensee``) for the purpose of developing and maintaining a bocce court and portable bar identified as “Encroachment Area” on Misc. Plan 14951 be approved (hereinafter referred to as the ``Lands``).

2. That the City enters 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

The Encroachment By-law No. 692/74, clause 4(1)(d), states:

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

Section 2 of The Encroachment By-law No. 692/74 provides:

""Designated Officer" means the Director of Planning, Property and Development or such other person as may be authorized in writing by the said Director to exercise some or all of the powers vested in him by this By-law".

In this regard, the Planning, Property & Development Department has negotiated Terms and Conditions of an Encroachment Agreement, in favour of M.C.G. Enterprises Ltd.

EXECUTIVE SUMMARY

Application for an Encroachment Agreement for development and maintenance of a bocce court and portable bar adjacent to 1685 Corydon Avenue, as specified in the History section of this report.

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 Plan No. 14951.

HISTORY

An application was submitted to the City's Zoning and Permits Branch to develop and maintain a bocce court and portable bar on lands adjacent to 1685 Corydon Avenue.

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 have negotiated proposed Terms and Conditions of an Encroachment Agreement in favour of M.C.G. Enterprises Ltd.

This report seeks approval of the Encroachment Agreement as negotiated.

FINANCIAL IMPACT

Financial Impact Statement

Date: June 8, 2016

Project Name:

First Year of Program **2016**

Proposed Encroachment Agreement to Allow for the Use of City-Owned Right-of-Way on Corydon Avenue Adjacent to 1685 Corydon Avenue for the purpose of Installing and

	2016	2017	2018	2019	2020
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	1,000	765	780	796	812
Net Cost/(Benefit)	$ (1,000)	$ (765)	$ (780)	$ (796)	$ (812)
Less: Existing Budget Amounts	(1,000)	(765)	(780)	(796)	(812)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2016 consist of the annual rental amount of $750 + a one-time admin fee of $250. Revenues from 2017 represent the $750 rental amount increased by an assumed inflation factor of 2%/annum.

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

CONSULTATION

In preparing this report there was consultation with:

Legal Services Department (as to legal issues)
Risk Management, Corporate Finance

OURWINNIPEG POLICY ALIGNMENT

OurWinnipeg Reference:

- **Section 01-5** Promote and enable opportunities for all age groups to be active as part of their daily lives.
- **Section 01-5** Work with community partners to provide services that are responsive to the community's recreation and leisure needs.
- **Section 03-2** Promote Cleanliness and Beautification.

SUBMITTED BY

Department	Planning, Property and Development
Division	Municipal Accommodations
Prepared by:	Nolan Winters, Real Estate Officer
Date:	June 10, 2016
File No.:	MA2016-132

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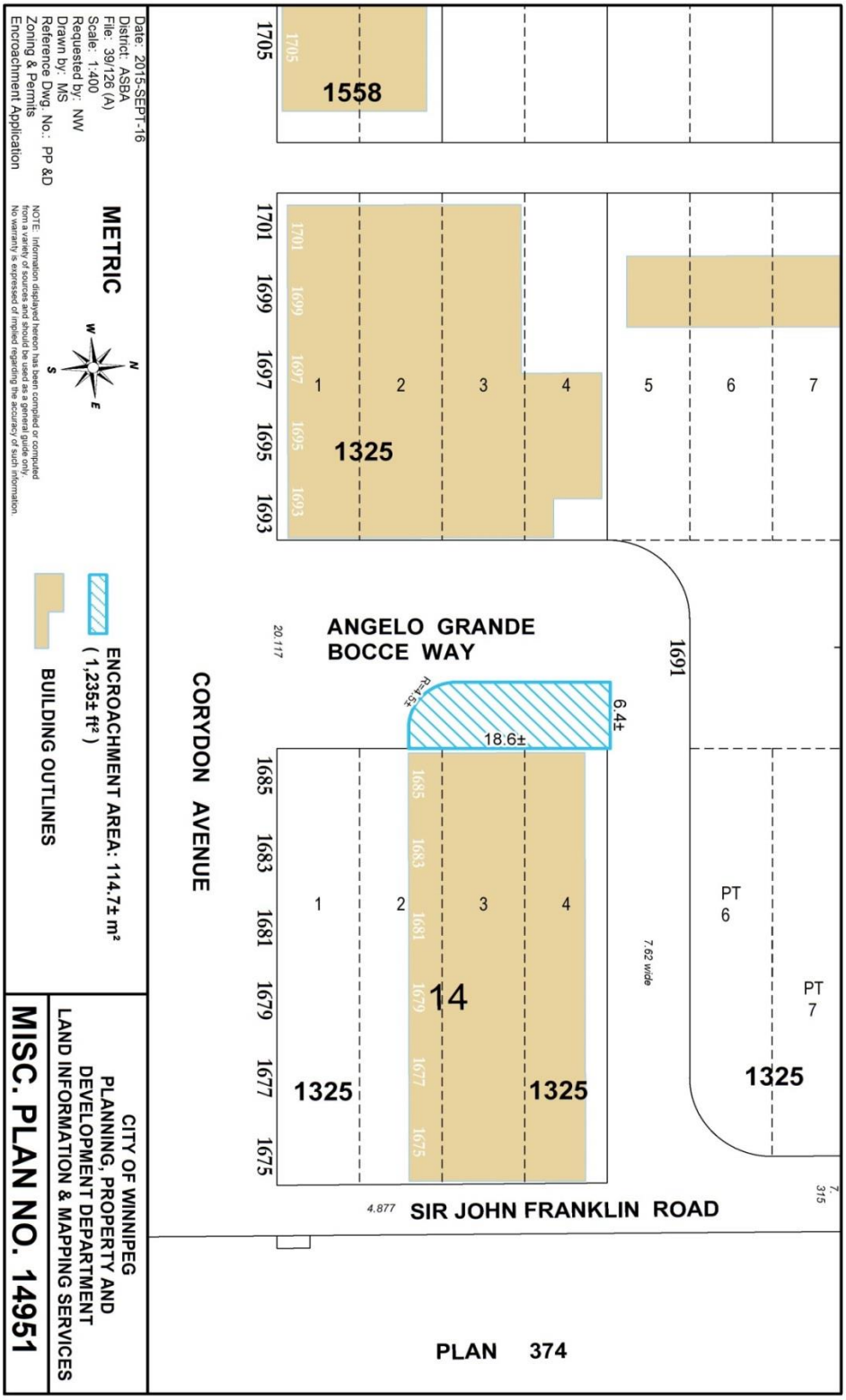

Date: 2015-SEPT-16
District: ASBA
File: 39/126 (A)
Scale: 1:400
Requested by: NW
Drawn by: MS
Reference Dwg. No.: PP &D
Zoning & Permits
Encroachment Application
METRIC
NOTE: Information displayed hereon has been compiled or computed from a variety of sources and should be used as a general guide only. No warranty is expressed or implied regarding the accuracy of such information.
ENCROACHMENT AREA: 114.7± m² (1,235± ft²)
BUILDING OUTLINES
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14951
CORYDON AVENUE
ANGELO GRANDE BOCCE WAY
SIR JOHN FRANKLIN ROAD
PLAN 374
1705
1701
1699
1697
1695
1693
1691
1685
1683
1681
1679
1677
1675
1558
1325
14
PT 6
PT 7
R=4.6±
18.6±
6.4±
20.117
7.62 wide
4.877
7.315

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR AN ENCROACHMENT AGREEMENT TO ALLOW FOR THE USE OF A PORTION OF THE ANGELO GRANDE BOCCE WAY PUBLIC RIGHT OF WAY ADJACENT TO 1685 CORYDON AVENUE FOR THE PURPOSE OF DEVELOPING A RECREATIONAL AREA

Use:	Development and maintenance of a recreational area and portable bar.
Licensee:	M.C.G. Enterprises Ltd. (hereinafter called the "Licensee")
Area:	Shown and identified as 'Encroachment Area' on Misc. Plan No. 14951, attached;
Term:	Annually continuing, commencing the first day of the month following approval from the City's Standing Committees and Council;
Rental:	$750.00 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 annual 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, host liquor 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 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 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 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 proposed Licensee will be at the expense of the Licensee.

Manitoba Hydro and/or Centra Gas Manitoba Inc. advise of the following:

(a) Manitoba Hydro has no facilities in the affected area and no easement requirements. However it must be noted that there may be gas facilities in the area;

(b) 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;

(c) Future electrical and/or gas service can be obtained from the local Manitoba Hydro District Office;

(d) 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;

(e) Upon review, it was noted that a portion of our 60.3 mm steel distribution pressure main passes the park benches and the bocce court of the proposed encroachment. Information available at this time would indicate that the steel main will not be impacted by the proposed encroachment. Excavation within the encroachment requires that the main is day lighted to verify elevation and all excavation within 1 m of the pipe is performed by hand or hydro-excavation with a safety watch present;

(f) Please note that the requirements of Manitoba Hydro's Safe Excavation and Safety guidelines shall apply. All construction operation within the vicinity of natural gas pipelines are to take place in a manner so as not to damage or cause detriment to the integrity of the natural gas pipeline. All natural gas pipeline and service lines must be property located and marked by Manitoba Hydro personnel. Construction operations are not to commence unless these conditions are adhered to. 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;

(g) All excavations within 1.0 m of any natural gas main must be completed by hand or hydro-excavation;

(h) A minimum vertical separation of 300 mm from gas mains and 100 mm from gas service line must be maintained between any Manitoba Hydro facility and any new installations;

(i) A minimum 600 mm of cover shall be maintained in all areas where equipment will be crossing, traveling or compacting over the gas service lines. Vibratory compaction cannot be used over or within 1 m of a main;

(j) If equipment must cross, travel, or compact over the gas main with less than minimum depth of cover, earth bridging or steel plates shall be placed over the main and extend a minimum of 1.0 m on either side at each crossing location;

(k) Caution must be used to ensure the integrity of the pipeline coating. Any damages to the coating must be reported to and repaired at no cost by Manitoba Hydro prior backfilling;

(k) Please note that all construction drawings requiring review or approval must be sent to Gas Pipeline Engineering at gasflesipn@hydro.mb.ca;

The Public Works Department does not object to this application subject to the following:

(a) That the use for recreational purposes is seasonal (April 1 to October 31) and all elements are removed between October 31 and April 1. The portable "bar" should not interfere with spring clean-up operations;

(b) That in an emergency maintenance/repair situation the portable "bar" will be removed by others to allow for the maintenance/repair activities;

(c) That in a non-emergency maintenance/repair situation notice will be provided to the Licensee to have the portable "bar" removed to allow for the maintenance/repair activities;

The Water and Waste Department advises of the following:

(a) Our GIS indicates that there is a City owned 150 mm water main running in a north/south direction at an offset of approximately 3.5 m west of the east property line of Angelo Grand Bocce Way. The water main is located under part of the proposed Encroachment Area; such water mains are typically buried approximately 7-9 feet deep. There is also the building's private sewer service and the City owned portion of the water service running underneath the Encroachment Area;

(b) Please be advised that if any work/maintenance needs to be performed on the City infrastructure, the bocce court, as well as anything else place in this

area, may need to be removed and any removal/restoration would be at the expense of the owner;

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 Recreation Area, the Licensee shall be responsible to do all things necessary to relocate and/or modify and/or remove the Recreation Area as required by the City and to pay all costs and expenses associated therewith.
That all applicable permits be obtained prior to any development;

That snow removal in the Recreation 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.

M.C.G. ENTERPRISES LTD. 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. 14951 AND IN ACCORDANCE WITH THE PROPOSED TERMS AND CONDITIONS AS OUTLINED HEREIN.

M.C.G. ENTERPRISES LTD.

Per: _____ May 10. 2016

DATE

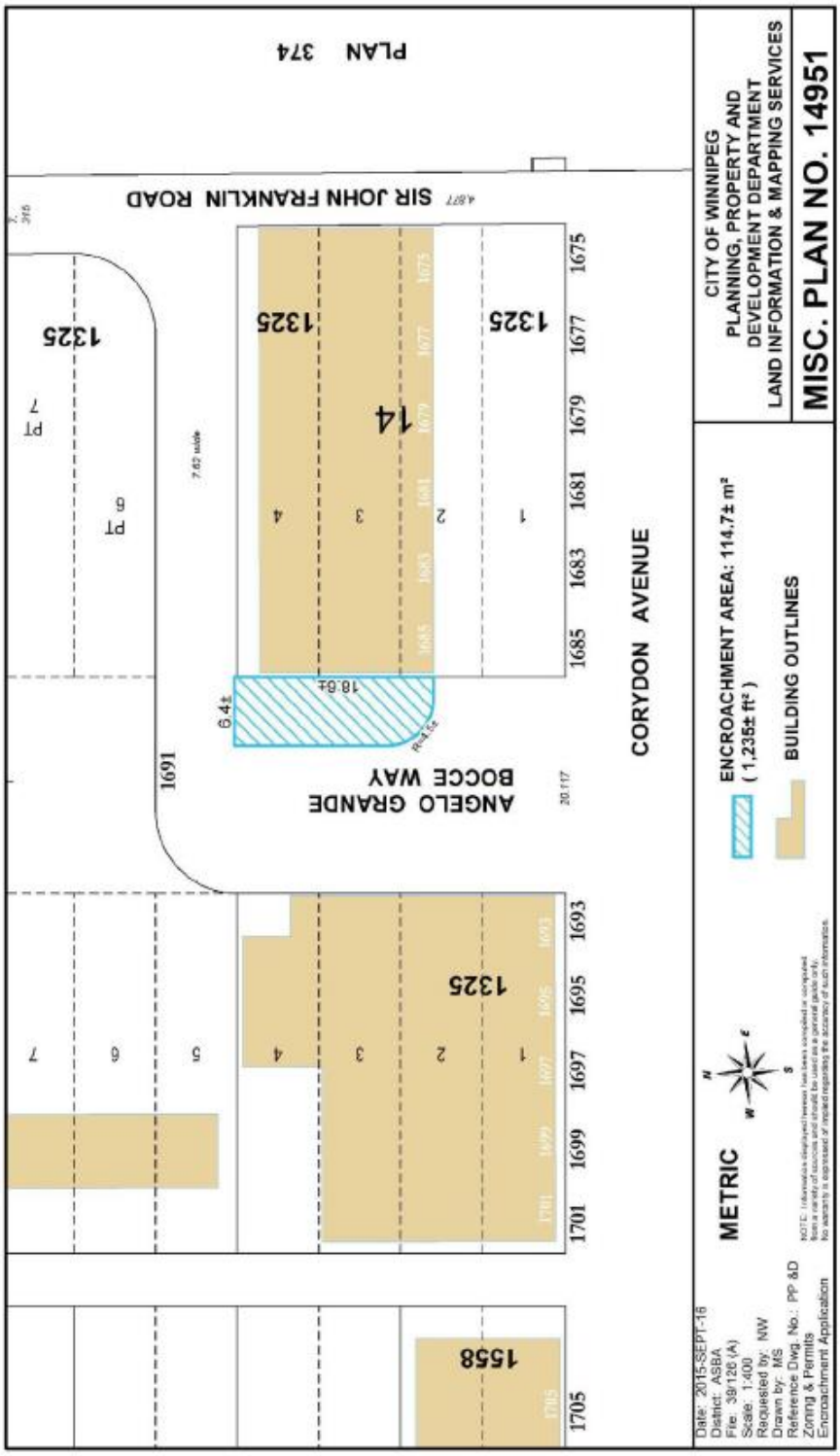
GIUSEPPE GRANDE

NAME

OWNER

TITLE

I/We have been authorized to bind the Corporation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