Minute No. 265
Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – March 7, 2017

Item No. 12 Encroachment Agreement to Allow for the Use of City Right-of-Way Adjacent to 121-123 Princess Street for the Purpose of Constructing and Maintaining a Wheel Chair Ramp

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 terms and conditions attached as Schedule A for an encroachment agreement in favour of Winnipeg Condominium Corporation No. 434 (hereinafter referred to as the "Licensee") for the purpose of developing and maintaining a ramp for barrier free access identified as "Encroachment Area" on Misc. Plan 15112 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.

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – March 7, 2017

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 March 15, 2017, 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 March 7, 2017, 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 Right-of-Way Adjacent to 121-123 Princess Street for the Purpose of Constructing and Maintaining a Wheel Chair Ramp

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

AUTHORIZATION

Author	Department Head	CFO	CAO
B. Erickson	J. Kiernan	B. Holsten-Boyer A/CFO	D. McNeil

EXECUTIVE SUMMARY

Winnipeg Condominium Corporation No. 434 has applied to develop and maintain a ramp on City right-of-way (public lane) to allow for barrier-free access adjacent to 121-123 Princess Street.

RECOMMENDATIONS

1. That the proposed terms and conditions attached as Schedule A for an encroachment agreement in favour of Winnipeg Condominium Corporation No. 434 (hereinafter referred to as the “Licensee”) for the purpose of developing and maintaining a ramp for barrier free access identified as “Encroachment Area” on Misc. Plan 15112 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 Winnipeg Condominium Corporation No. 434.

IMPLICATIONS OF THE RECOMMENDATIONS

The Public Service 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. 15112.

HISTORY/DiSCUSSION

An application was submitted to the City's Zoning and Permits Branch by the Licensee to develop and maintain a ramp on City right-of-way (public lane) for barrier free access adjacent to 121-123 Princess 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 Public Service has negotiated proposed Terms and Conditions of an Encroachment Agreement in favour of Winnipeg Condominium Corporation No. 434.

This report seeks approval of the Encroachment Agreement as negotiated.

FINANCIAL IMPACT

Financial Impact Statement

Date: December 6, 2016

Project Name:

First Year of Program 2017

Proposed Encroachment Agreement to Allow for the Use of City Right-of-Way Adjacent to 121-123 Princess Street for the Purpose of Constructing and Maintaining a Wheel Chair Ramp

	2017	2018	2019	2020	2021
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	2,235	1,075	1,075	1,075	1,075
Net Cost/(Benefit)	$ (2,235)	$ (1,075)	$ (1,075)	$ (1,075)	$ (1,075)
Less: Existing Budget Amounts	(2,235)	(1,075)	(1,075)	(1,075)	(1,075)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2017 consist of the annual rent amount of $700 + the admin fee of $375 + the one-time legal document preparation fee of $1,160. Revenues from 2018 onward consist of the annual rent amount and admin fee.

"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 03-1 Direction 9 - Collaborate with Developers, Community Organizations, and Other Partners to Foster an Age-Friendly and Accessible Urban Environment**
- **Section 1-2a Direction 4 - Promote Safety on Streets and Sidewalks**
- **Section 03-1 Direction 8 - Include Age-Friendliness in City of Winnipeg Strategic Planning**

SUBMITTED BY

Department	Planning, Property and Development
Division	Municipal Accommodations
Prepared by:	Nolan Winters, Real Estate Officer
Date:	February 3, 2016
File No.:	MA2016-292

Attachments:

- Schedule A (Terms and Conditions including Misc. Plan 15112)

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SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR AN ENCROACHMENT AGREEMENT TO ALLOW FOR THE USE OF A PORTION OF CITY RIGHT-OF-WAY ADJACENT TO 121-123 PRINCESS STREET

Use:	Development and maintenance of a ramp for barrier free access;
Licensee:	Winnipeg Condominium Corporation No. 434 (hereinafter called the "Licensee")
Area:	Shown and identified as 'Encroachment Area' on Misc. Plan No. 15112, attached, hereinafter referred to as the "Lands";
Term:	Annually continuing, commencing the first day of the month following approval from the City's Standing Committees and Council;
Rental:	$700.00 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;
Administrative Fee:	Annual administrative fee of $375.00 plus GST;
Document Preparation Fee:	A one-time Legal Services Document Preparation Fee in the amount of $1,160.00 plus GST payable prior to the commencement date;
Realty Taxes:	Licensee is responsible for all realty taxes, municipal taxes, school taxes, local improvements, license fees, business tax, etc. of which may be charged in respect of the use and occupation of the Lands.
Other Fees, Licenses, Taxes etc:	All other license fees, business tax, levies, etc. which may be charged in respect of the use and occupation of the Lands.
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 two million dollars ($2,000,000) 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 to the City's Supervisor of Insurance;
	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 by either party;
	Should the Licensee be in default of any of the terms and conditions of the Agreement, the City shall provide the Licensee with fifteen (15) days written notice to remedy the default along with a description of the nature of the default. Should the Licensee not remedy the default to the satisfaction of the City, the City, at its sole discretion, may terminate this Agreement immediately upon the expiration of the fifteen (15) days' notice period
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.

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 license will be at the expense of the Licensee.

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

(a) Manitoba Hydro has existing infrastructure in the area that can be potentially problematic to maintain with this proposed design. If Manitoba Hydro ever needs to access their infrastructure the customer shall clear the area to allow them access to work. Any damage to the customer owned property as a result of Manitoba Hydro doing maintenance or construction in the area shall be replaced at the customers' cost.

Centra Gas Manitoba Inc. has facilities in the affected area but no easement requirements.

(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) There is an underground street lighting conductor in area. Hydro must be able to maintain or replace conductor if necessary;

(f) Prior to any digging or excavation, the Licensee must 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 Lands 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 Lands.

The Licensee shall not assign this agreement or sublet the Lands without the prior consent of the City.

The Licensee shall release, indemnify and save the City harmless from and against any and all claims for damages or injuries, including death, which may arise from the use of the Lands by the Licensee. This provision shall survive any termination, cancellation or expiration of this Agreement.

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 Lands reasonably necessitate the relocation and/or modification and/or removal of the Licensee's property on the Lands, the Licensee shall be responsible to do all things necessary to relocate and/or modify and/or remove its property as required by the City and to pay all costs and expenses associated therewith.

Unless otherwise specified herein, all improvements, development and construction on the Lands are to be performed at the sole cost, expense and effort of the Licensee, including but not limited to obtaining all permits required to develop, occupy and utilize the Lands for its intended use. All improvements, development and construction are subject to prior written approval by the Director;

The Licensee will not erect or permit the erection of any building or structure whatsoever on the Lands, nor make any excavation therein or improvement thereon, without the prior written approval of the Director of Planning, Property and Development;

The Licensee shall maintain at its own expense the Lands in good repair in accordance with industry standards and in a safe, clean and tidy condition to the satisfaction of the City;

In the event that the Lands require repair and the Licensee receives a written notice from the City, the Licensee shall forthwith perform the repairs at its sole cost, expense and effort. If the Licensee does not so repair, the City may enter upon the Lands and conduct the repairs at the sole cost and expense of the Licensee;

Upon termination or cancellation of the Agreement the Licensee shall remove its property from the Lands and leave same in a condition satisfactory to the City. Should the Licensee default in so doing the City may remove the Licensee's property and restore the Lands at the sole risk and expense of the Licensee;

Notwithstanding the forfeiture or termination of this Agreement in any manner herein provided for, the Licensee shall be and remain liable to the City for all payments due and obligations and liabilities to the City for all payments due and obligations and liabilities incurred hereunder up to the date of such forfeitures or termination and for the fulfillment of all obligations on the part of the Licensee to be observed and performed upon after the said termination;

The Licensee is to comply with all laws, by-laws and regulations of any federal, provincial or municipal or other applicable authority;

The Licensee acknowledges and agrees that the City has made no representation, warranties or guarantees of any nature or kind whatsoever as to the quality, conditions or suitability of the Lands for any use or purpose, nor as to any environmental conditions which may exist;

That snow removal on the Lands 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.

WINNIPEG CONDOMINIUM CORPORATION No. 434 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. 15112 AND IN ACCORDANCE WITH THE PROPOSED TERMS AND CONDITIONS AS OUTLINED HEREIN.

WINNIPEG CONDOMINIUM CORPORATION NO. 434

Per: _____ 2016-11-29

DATE

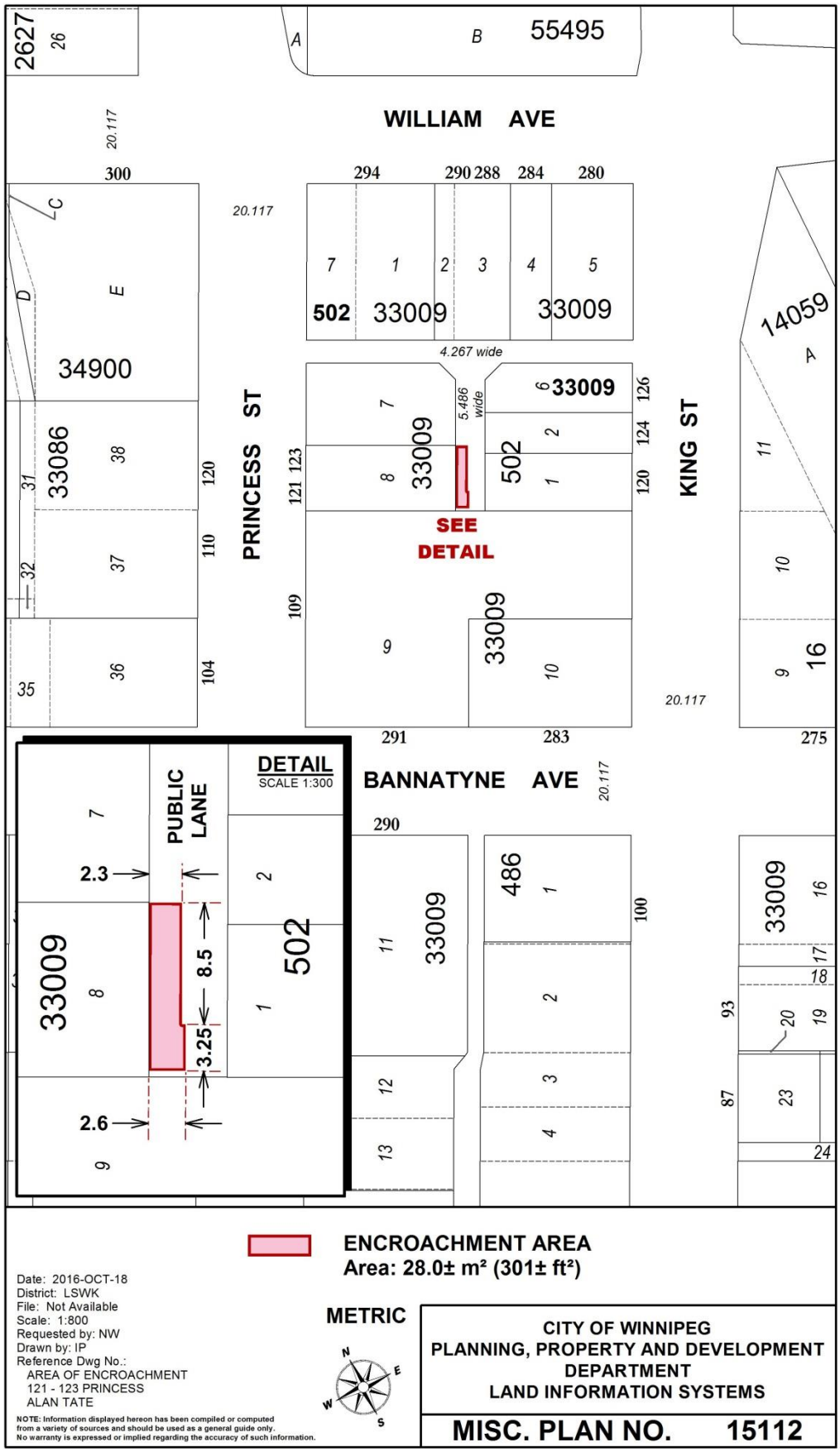
ALAN TATE

NAME

DIRECTOR WCC #434

TITLE

I/We have been authorized to bind the Corporation



ENCROACHMENT AREA
Area: 28.0± m² (301± ft²)

Date: 2016-OCT-18
District: LSWK
File: Not Available
Scale: 1:800
Requested by: NW
Drawn by: IP
Reference Dwg No.:
AREA OF ENCROACHMENT
121 - 123 PRINCESS
ALAN TATE

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.

METRIC

N E S W

CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT
LAND INFORMATION SYSTEMS

MISC. PLAN NO. 15112