Minute No. 500
Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – June 25, 2018

Item No. 11 Encroachment Agreement – City Right-of-Way adjacent to 121-123 Princess Street (Point Douglas Ward)

COUNCIL DECISION:

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

1. That the proposed terms and conditions for an Encroachment Agreement, attached hereto as Schedule A, in favour of Winnipeg Condominium Corporation No. 434 for the land adjacent to 121-123 Princess Street (identified as "Encroachment Area" on Misc. Plan No. 15112 in Schedule A) be approved.

2. That the City enter into, execute and deliver an Encroachment Agreement with Winnipeg Condominium Corporation No. 434 and such other agreements (the "Ancillary 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 Chief Administrative Officer to negotiate and approve the terms and conditions of the Encroachment Agreement and the Ancillary Agreements in accordance with this report 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 – June 25, 2018

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 11, 2018, 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 June 25, 2018, 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: Encroachment Agreement between Winnipeg Condominium Corporation No. 434 and the City of Winnipeg to allow for the use of City Right-of-Way adjacent to 121-123 Princess Street

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

AUTHORIZATION

Author	Department Head	CFO	CAO
M. Pittet	J. Kiernan	M. Ruta	M. Ruta Acting CAO

EXECUTIVE SUMMARY

The Public Service has negotiated the proposed Terms and Conditions of an Encroachment Agreement in favour of Winnipeg Condominium Corporation No. 434 (the "Licensee"). The Licensee is the owner of 121-123 Princess Street and requires the Encroachment Agreement to construct a ramp for barrier free access to obtain a final occupancy permit.

The Licensee will be responsible for all costs for this encroachment.

The Ward Councillor concurs in the recommendation of the Public Service.

RECOMMENDATIONS

1. That the proposed terms and conditions for an Encroachment Agreement, attached hereto as Schedule A, in favour of Winnipeg Condominium Corporation No. 434 for the land adjacent to 121-123 Princess Street (identified as "Encroachment Area" on Misc. Plan No. 15112 in Schedule A) be approved.

2. That the City enter into, execute and deliver an Encroachment Agreement with Winnipeg Condominium Corporation No. 434 and such other agreements (the "Ancillary 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 Chief Administrative Officer to negotiate and approve the terms and conditions of the Encroachment Agreement and the Ancillary Agreements in accordance with this report 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

On March 22nd, 2017, Council approved the terms and conditions of an Encroachment Agreement between the City and Winnipeg Condominium Corporation No. 434 for constructing a ramp. Within the terms and conditions the following clause was included:

> "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 obtains an extension of time from the Designated Officer – Encroachments;"

In response to objections from a nearby land owner, the Licensee reviewed the design for the ramp to be constructed within the encroachment area. The design review did not yield any alternative solutions and was not completed until late October 2017, approximately one month after the six-month approval period imposed by Council.

In summary, the previous Council approval has expired and the Licensee is seeking another approval for the same encroachment. The proposed terms and conditions are unchanged from the previous approval with the exception of the annual fees which are determined by the Encroachment By-law No. 692/72.

The Encroachment Agreement is required to secure a final occupancy permit.

IMPLICATIONS OF THE RECOMMENDATIONS

The Public Service has determined that there are no general, policy, regulatory, environmental, human resource, or other implications of this report.

The Encroachment Agreement may be terminated upon ninety (90) days written notice should the City require these lands for any purpose in the future.

The Licensee will be responsible for all costs associated with this Agreement.

The Licensee will no longer be charged interim occupancy fees.

HISTORY/DISCUSSION

In 2016, an application was submitted to the City's Zoning and Permits Branch to develop and maintain a ramp for barrier free access adjacent to 121-123 Princess Street. The ramp was required in order to secure a final occupancy permit.

The application was circulated to applicable City departments and public utilities for consideration and comments. All comments and concerns were 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 were incorporated into the Terms and Conditions.

The Public Service negotiated the proposed Terms and Conditions for an Encroachment Agreement in favour of Winnipeg Condominium Corporation No. 434 and Council approved the terms and conditions on March 22, 2017.

In April of 2017, the owner of a neighboring property (the "Complainant") objected to the Licensee's plans for construction of a ramp in the lane between the two properties. The objection focused on the following:

- Garbage trucks having difficulties accessing bins at end of laneway
- Delivery trucks having difficulties making deliveries in the laneway
- Loss of up to 3 staff parking spots

When the Complainant expressed their concerns, construction of the ramp was halted indefinitely in search of a mutually beneficial solution. The Licensee considered the installation of a lift instead of a ramp but this option was found to be unsuitable and financially impractical.

In October, 2017 with no other options available to them, the Licensee began work on a revised ramp that they hoped would satisfy the Complainant's concerns.

On March 13, 2018, the City received a new ramp plan that included minor alterations to certain aspects of the ramp. The Licensee was notified that Council would have to approve the terms and conditions for a second time as the six-month approval window imposed by Council had expired.

The occupier of the main floor and basement at 121-123 Princess Street continues to pay interim occupancy fees inasmuch as a final occupancy permit cannot be issued until barrier free access is obtained. To date, the sum total of the interim occupancy permits has now exceeded the cost of the final occupancy permit.

This report seeks approval of the Encroachment Agreement as previously negotiated, with the exception that the annual fees have changed as they are determined by the Encroachment By-law No. 692/74 (as noted in Schedule A, attached).

The Ward Councillor concurs in the recommendation of the Public Service.

The Complainant was notified that the terms and conditions would be provided to Council for a second time for approval. The Public Service will continue to investigate possible resolutions to the objections from the Complainant.

FINANCIAL IMPACT

Financial Impact Statement

Date: June 4, 2018

Project Name:

First Year of Program 2018

Encroachment Agreement between Winnipeg Condominium Corporation No. 434 and the City of Winnipeg to allow for the use of City Right-of-Way adjacent to 121-123 Princess Street

	2018	2019	2020	2021	2022
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	2,287	1,097	1,097	1,097	1,097
Net Cost/(Benefit)	$ (2,287)	$ (1,097)	$ (1,097)	$ (1,097)	$ (1,097)
Less: Existing Budget Amounts	(2,287)	(1,097)	(1,097)	(1,097)	(1,097)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2018 consist of the annual rent amount of $717 + the admin fee of $380 + the one-time legal document preparation fee of $1,190. Revenues from 2019 onward consist of the annual rent amount and admin fee.

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

CONSULTATION

This Report has been prepared in consultation with:

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

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: June 4, 2018
File No.: 9001

Attachments:
Schedule A (Terms and Conditions including Misc. Plan No. 15112)

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:	AGREED ~~$700.00~~ 716.80 NW 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~~ 358 NW plus GST; AGREED A
Document Preparation Fee:	A one-time Legal Services Document Preparation Fee in the amount of ~~$1,160.00~~ 1,190 NW plus GST payable prior to the commencement date; AGREED A
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

2018/05/30: AGREED BY XLNH TATE AS ON BEHALF OF WCC #434

	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.

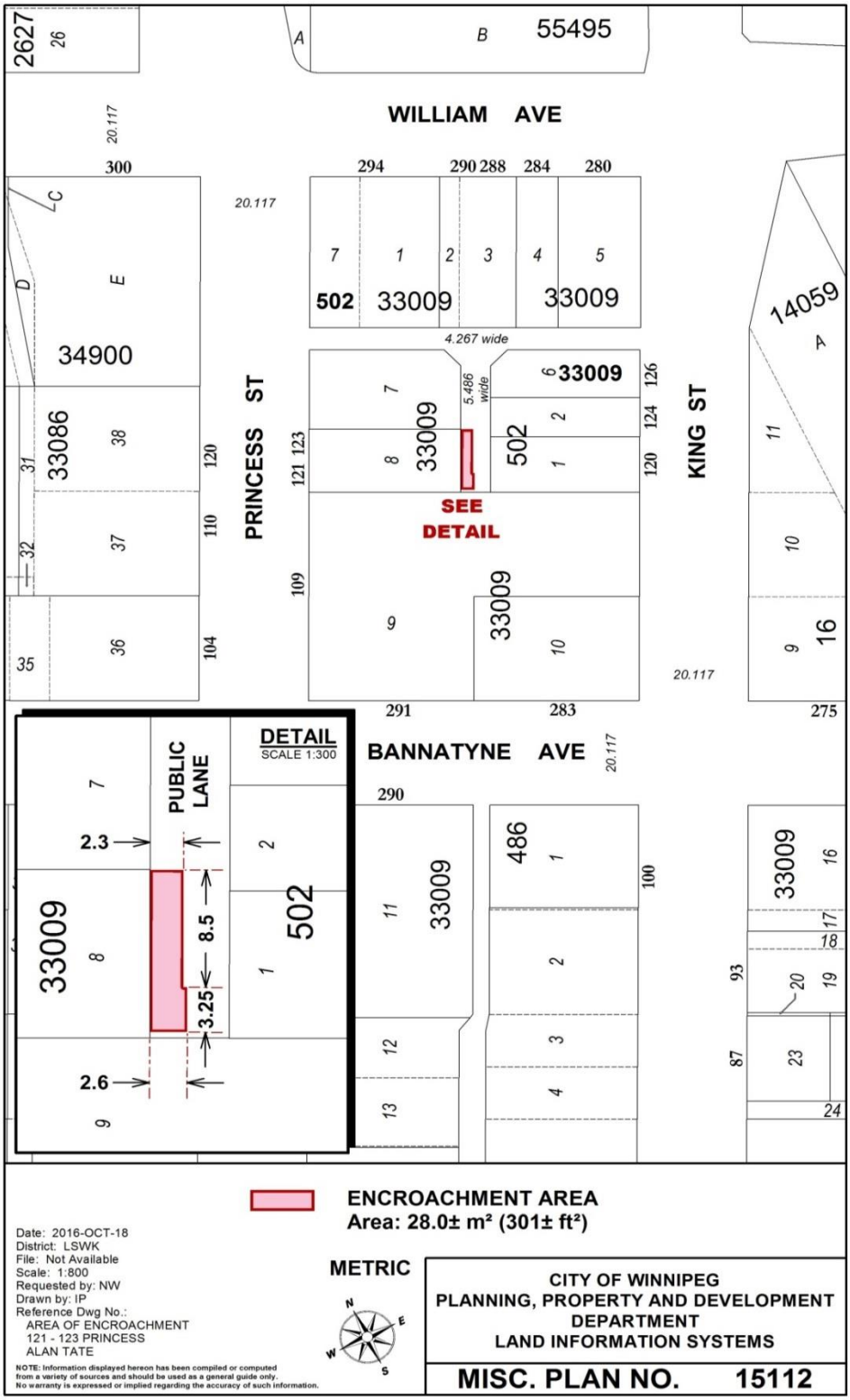
WINNIPEG CONDOMINIUM CORPORATION NO. 434

Per: _____ 2016-11-29
DATE

ALAN TATE
NAME

DIRECTOR WCC #434
TITLE

I/We have been authorized to bind the Corporation


WILLIAM AVE
PRINCESS ST
KING ST
BANNATYNE AVE
PUBLIC LANE
DETAIL
SCALE 1:300
SEE DETAIL
4.267 wide
5.486 wide
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
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METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT
LAND INFORMATION SYSTEMS
MISC. PLAN NO. 15112