Minute No. 59
Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – November 19, 2018

Item No. 2 **Encroachment Agreement between Kildonan Crossing Shopping Centre Ltd. and the City of Winnipeg to allow for the use of City Right-of-Way at the Northwest Corner of Regent Avenue West and Lagimodiere Boulevard**

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 Kildonan Crossing Shopping Centre Ltd. for the land located at the northwest corner of Regent Avenue West and Lagimodiere Boulevard (identified as "Encroachment Area" on Misc. Plan No. 7282/4 in Schedule "A") be approved.

2. That the City enter into, execute and deliver an Encroachment Agreement with Kildonan Crossing Shopping Centre Ltd. 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 – November 19, 2018

DECISION MAKING HISTORY:

Moved by Councillor Mayes,

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

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On December 5, 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 November 19, 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 Kildonan Crossing Shopping Centre Ltd. and the City of Winnipeg to allow for the use of City Right-of-Way at the Northwest Corner of Regent Avenue West and Lagimodiere Boulevard

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	D. McNeil

EXECUTIVE SUMMARY

The Public Service has negotiated the proposed Terms and Conditions of an Encroachment Agreement in favour of Kildonan Crossing Shopping Centre Ltd. (the "Licensee"). The Licensee is the owner of the Shopping Centre at 1615 Regent Avenue West and requires the use of right-of-way for parking and two double faced pylon signs.

The Licensee will be responsible for all costs associated with this Encroachment Agreement for an encroachment. The Ward Councillor concurs in the recommendation of the Department.

RECOMMENDATIONS

1. That the proposed Terms and Conditions for an Encroachment Agreement, attached hereto as Schedule "A", in favour of Kildonan Crossing Shopping Centre Ltd. for the land located at the northwest corner of Regent Avenue West and Lagimodiere Boulevard (identified as "Encroachment Area" on Misc. Plan No. 7282/4 in Schedule "A") be approved.

2. That the City enter into, execute and deliver an Encroachment Agreement with Kildonan Crossing Shopping Centre Ltd. 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

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 Department has negotiated Terms and Conditions of an Encroachment Agreement for an encroachment in favour of the Licensee.

IMPLICATIONS OF THE RECOMMENDATIONS

The Department 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.

HISTORY/DISCUSSION

The Licensee entered into its original encroachment agreement for the area identified as "Encroachment Area" on Misc. Plan No. 7282/4 in Schedule "A" in 1995. The tenancy has been ongoing since 1995 and the last renegotiation of the agreement took place in 2009. The most recent encroachment agreement expired in March 2018 and the tenant has been in a overhold situation since that time (i.e. operating as a month to month tenancy). The tenant has applied for a new encroachment agreement that will be retroactive to April 2018, thereby avoiding any gaps within the term of the ongoing agreements.

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 (attached as Schedule “A”).

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 rent for the Agreement was derived from a current market value appraisal which assumed a commercial land use to be the highest and best use.

The Ward Councillor concurs in the recommendation of the Department.

FINANCIAL IMPACT

Financial Impact Statement

Date: October 17, 2018

Project Name:

First Year of Program 2018

Encroachment Agreement between Kildonan Crossing Shopping Centre Ltd. and the City of Winnipeg to allow for the use of City Right-of-Way at the Northwest Corner of Regent Avenue West and Lagimodiere Boulevard

	2018	2019	2020	2021	2022/23
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	28,576	36,386	36,386	36,386	45,386
Net Cost/(Benefit)	$ (28,576)	$ (36,386)	$ (36,386)	$ (36,386)	$ (45,386)
Less: Existing Budget Amounts	(28,576)	(36,386)	(36,386)	(36,386)	(45,386)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2018 consist of the $36,000 annual encroachment fee prorated for the April 1 commencement date, a one-time document preparation fee of $1,190 and an annual administration fee of $386. Revenues from 2019 to 2021 consist of the encroachment and admin fees. Revenue in 2022/23 consist of the $386 admin fee, $36,000 in encroachment fees for 2022 and $9,000 in encroachment fees for the first three months of 2023. No budget adjustment is required.

"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

01-1a – City Building- Direction 1: Develop and Apply Direction Strategies- Ensure effective implementation efforts through integration, partnerships and collaboration across the City of Winnipeg organizational structure and with external organizations.

01-3 – Prosperity- Direction 2: Provide a Predictable and Cost Effective Business Environment that Promotes Investment and Growth

01-3 – Prosperity –Direction 8: Encourage Activities Beneficial to the Winnipeg Economy

SUBMITTED BY

Department: Planning, Property and Development Department
Division: Real Estate and Land Development
Prepared by: Nolan Winters, Property Administrator
Date: October 17, 2018
File No: 4435

Attachments:
Schedule “A” – Proposed Terms and Conditions

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR AN ENCROACHMENT AGREEMENT TO ALLOW FOR THE USE OF RIGHT OF WAY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF REGENT AVENUE WEST AND LAGIMODIERE BOULEVARD

Use:	Parking and the maintenance of two double faced pylon signs;
Licensee:	Kildonan Crossing Shopping Centre Ltd. (hereinafter called the "Licensee")
Area:	Shown and identified as 'Encroachment Area' on Misc. Plan No. 7282/4, attached; (hereinafter called the 'Encroachment Area')
Term:	Five (5) year term, commencing April 1, 2018 to March 31, 2023;
Rental:	$36,000.00 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 $380.00 plus GST; 386
Document Preparation Fee:	A one-time Document Preparation Fee in the amount of $1,190 for a simple encroachment agreement payable prior to the commencement date;
Renewal:	One five (5) year option, at the same terms and conditions, save for the renewal option, and subject to a rental rate review at the end of the initial five (5) year term, which rental rate shall at no time be less then $36,000.00 per annum plus applicable 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 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 for 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;

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 applicant 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 applicant will be at the expense of the Licensee.

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

(a) 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;

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

(c) 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;

(d) 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;

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 Encroachment Area 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, that 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 Encroachment Area reasonably necessitate the relocation and/or modification and/or removal of the Licensee's property from the Encroachment Area, 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.

That all applicable permits be obtained prior to any development;

The Licensee will not erect or permit the erection of any building or structure whatsoever in the Encroachment Area, 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 Encroachment Area 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 the Encroachment Area requires 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 Encroachment Area 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;

The Water and Waste Department advises that according to our GIS records there are several City-owned catch basin leads (a 200mm and a 300mm) as well as a Land Drainage manhole within this property. The Water & Waste Department's infrastructure must be protected and maintained in working order. Any damage to the water and sewer infrastructure must be repaired at the expense of the developer.

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 in the Encroachment 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.

KILDONAN CROSSING SHOPPING CENTRE 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. 7282/4 AND IN ACCORDANCE WITH THE PROPOSED TERMS AND CONDITIONS AS OUTLINED HEREIN.

KILDONAN CROSSING SHOPPING CENTRE LTD.

Per: _____ _____

DATE

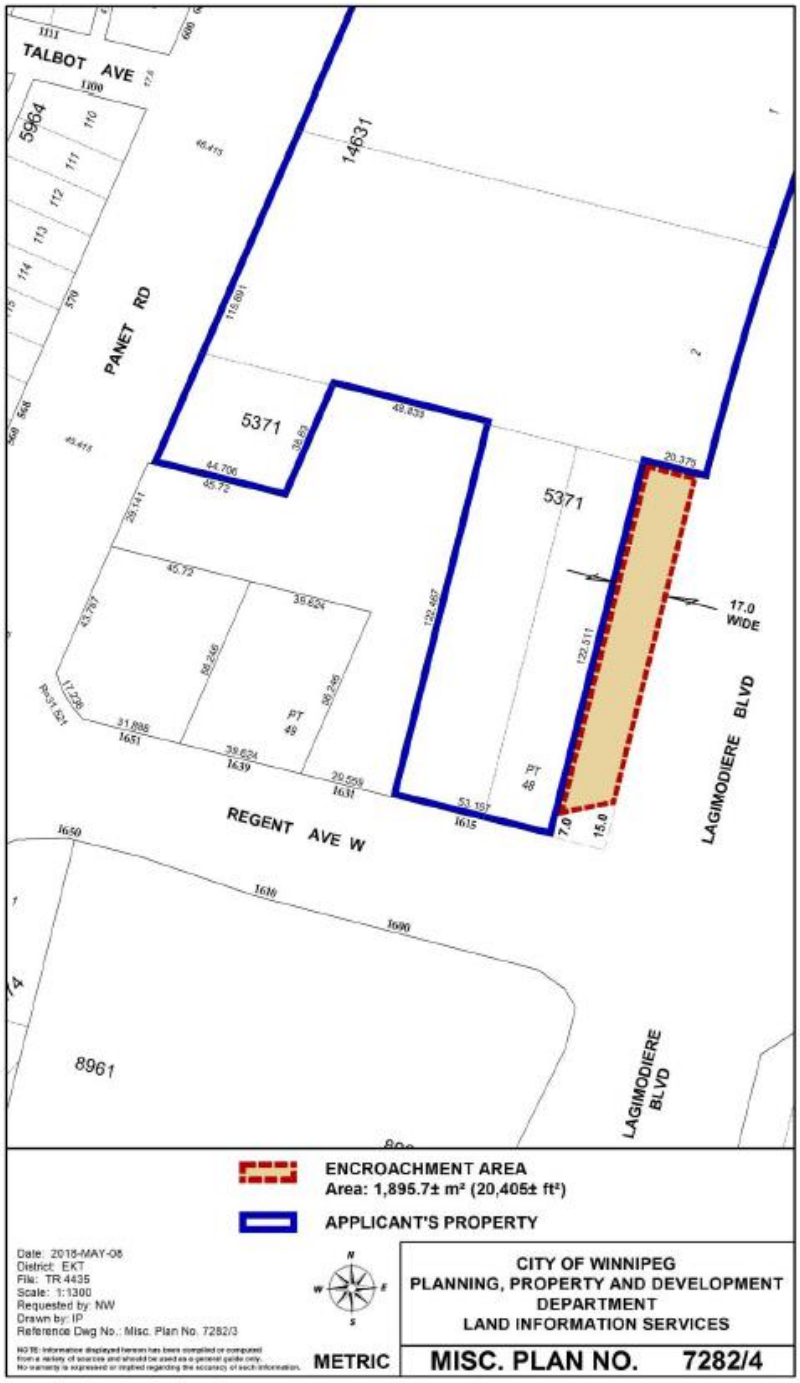
DANNY KISSOON

NAME

SENIOR VICE PRESIDENT - OPERATIONS

TITLE

I/We have been authorized to bind the Corporation


TALBOT AVE
PANET RD
REGENT AVE W
LAGIMODIERE BLVD
LAGIMODIERE BLVD
17.0 WIDE
5964
14631
5371
5371
8961
ENCROACHMENT AREA
Area: 1,895.7± m² (20,405± ft²)
APPLICANT'S PROPERTY
Date: 2018-MAY-08
District: EKT
File: TR 4435
Scale: 1:1300
Requested by: NW
Drawn by: IP
Reference Dwg No.: Misc. Plan No. 7282/3
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT
DEPARTMENT
LAND INFORMATION SERVICES
MISC. PLAN NO. 7282/4