Minute No. 197
Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – February 4, 2019

Item No. 3 **Encroachment Agreement to Allow for an Underground Private Sewer Service Pipe within the Street Right of Way – 703 St. Anne's Road**
(St. Norbert - Seine River 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 703 St. Anne's Inc. to construct an underground private sewer within the street right of way to service 703 St. Anne's Road, be approved.

2. That the City enter into, execute and deliver an Encroachment Agreement with 703 St. Anne's Road Inc. 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 – February 4, 2019

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 by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On February 19, 2019, 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 February 4, 2019, 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 to Allow for an Underground Private Sewer Service Pipe within the Street Right of Way – 703 St. Anne's Road.

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	B. D'Avignon, Acting CFO	M. Jack, Acting CAO

EXECUTIVE SUMMARY

The Public Service has negotiated the proposed Terms and Conditions of an Encroachment Agreement in favour of 703 St. Anne's Inc. (the "Licensee"). The Licensee intends to construct an underground private sewer within the street right of way to service 703 St. Anne's Road.

The Licensee will be responsible for all costs associated with this Encroachment Agreement and the Ward Councillor has been consulted.

RECOMMENDATIONS

1. That the proposed Terms and Conditions for an Encroachment Agreement, attached hereto as Schedule A, in favour of 703 St. Anne's Inc. to construct an underground private sewer within the street right of way to service 703 St. Anne's Road, be approved.

2. That the City enter into, execute and deliver an Encroachment Agreement with 703 St. Anne's Road Inc. 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

Clause 4(1)(d) of the Encroachment By-law No. 692/74 (the "By-law) 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."

In Section 2 of the By-law, Designated Officer is defined as "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".

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

IMPLICATIONS OF THE RECOMMENDATIONS

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

On October 24, 2012, Council adopted Item No. 4 of the report of the Standing Policy Committee on Property and Development dated October 9, 2012 which recommended approval of a subdivision and rezoning of 703 St. Anne's Road to a "C2" Commercial Community District and a "PR1" Parks and Recreation 1 (Neighbourhood) District under the Winnipeg Zoning By-law 200/2006.

The proposed C2 zoned lot will be developed with a four-storey mixed use building. The Licensee would like to begin constructing an underground private sewer within the street right of way (identified on the last page of Schedule A) to facilitate further development of their property. The encroachment is needed to tie into a catch basin south of the Licensee's property as the existing catch basin adjacent to the Licensee's property is at capacity.

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 Public Service has negotiated proposed Terms and Conditions of an Encroachment Agreement in favour of the Licensee. The rent for the Agreement is based upon the encroachment license annual rate noted in the City of Winnipeg 2018 Fees and Charges Schedule.

FINANCIAL IMPACT

Financial Impact Statement

Date: December 14, 2018

Project Name:

First Year of Program **2019**

Encroachment Agreement to Allow for an Underground Private Sewer Service Pipe within the Street Right of Way – 703 St. Anne's Road

	2019	2020	2021	2022	2023
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	1,709	529	540	551	562
Net Cost/(Benefit)	$ (1,709)	$ (529)	$ (540)	$ (551)	$ (562)
Less: Existing Budget Amounts	(1,709)	(529)	(540)	(551)	(562)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2019 consist of the annual license fee and admin fee of $133 and $386 respectively + a one-time legal agreement preparation fee of $1,190. Revenues from 2020 onward consist of the license and admin fees increased by an assume inflation rate of 2%.

"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)
Ward Councillor

OURWINNIPEG POLICY ALIGNMENT

01-1a – City Building- Direction 1: Develop and Apply Direction Strategies

01-1a – City Building- Direction 3: Promote Compact Urban Form and Manage the Extension of Municipal Services for New Growth

01-1c –New Communities – Key Community: New Communities will continue to play an important role in accommodating the city's projected population growth. These New Communities will be planned as complete from the outset and will continue to achieve a high standard of sustainability in planning, design, construction and management.

SUBMITTED BY

Department: Planning, Property and Development Department
Division: Real Estate and Land Development
Prepared by: Armohan Singh, Real Estate Officer
Date: December 19, 2018
File No: 5947

Attachments:

Schedule A – Proposed Terms and Conditions

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR AN ENCROACHMENT AGREEMENT TO ALLOW FOR AN UNDERGROUND PRIVATE SEWER SERVICE PIPE WITHIN THE STREET RIGHT OF WAY - 703 ST. ANNE'S ROAD.

Use:	Underground private sewer within the street right of way - 703 St. Anne's Road.
Licensee:	703 St. Anne's Road Inc. (herein called the "Licensee");
Area:	Shown and identified as 'Approximate Location of Proposed Sewermain on Misc. Plan No. 15279/1 attached (herein called the "Encroachment Area");
Term:	Annually continuing, commencing the first day of the month following approval from the City's Standing Committees and Council or such other date as mutually agreed upon and approved by the City's Director of Planning, Property and Development (hereinafter called the "Director");
Rental:	$133.12 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 $386.00 plus GST;
Document Preparation Fee:	A one-time Legal Services Document Preparation Fee in the amount of $1,190.00 plus GST payable prior to the commencement date;
Realty Taxes:	The 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 Encroachment Area.
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 Encroachment Area.

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 for bodily injury and property damage., Such liability policy to include the City of Winnipeg as an additional insured and contain evidence of contractual liability and cross liability clause, owners and contractors protective liability, unlicensed motor vehicle liability, non-owned automobile liability, contingent employer's liability and products and completed operations liability;

Automobile liability insurance for owned automobiles to be used for or in connection with this agreement in the amount of at least two million ($2,000,000.00) inclusive for loss or damage including personal injuries and death resulting from any one accident or occurrence;

The Licensee shall purchase and maintain or cause their Contractor working within the street right of way to purchase and maintain the following insurance during the installation, construction, maintenance or repair of the private sewermain:
Contractor's pollution liability insurance in an amount not less than two million ($2,000,000.00) dollars per claim and five million ($5,000,000.00) in the aggregate.

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(s) 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 coverage's 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 acknowledges and agrees that the portion of the Encroachment Area that are identified as "Encroachment Area" on Misc. Plan No. 15279/1 is located within a right-of-way and is governed by The City of Winnipeg By-law No. 692/74;
	The Licensee understands and agrees that the Encroachment Area are 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 for any purpose whatsoever, including to maintain, operate, repair, inspect or rehabilitate existing water mains, sewer lines and appurtenances located within the Encroachment Area without being responsible for any damage occasioned thereby.
	The Licensee shall ensure that no other sewer connections are hooked up and connected to the Licensee's Sewer.

The City reserves the right for Manitoba Hydro-Electric Board, Centra Gas Manitoba Inc. or other public utilities (hereinafter referred to as the "Public Utilities") to enter upon the Encroachment Area at any time without notice to the Licensee for maintenance, repair or installation of their utilities without the City and/or Public Utilities being responsible for any damage occasioned thereby. 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 when working in proximity to all natural gas mains.

1. It was noted that the construction drawings you supplied did not show any gas facilities. Please add our facilities to your construction drawings as per the marked up set we've returned to you.

2. Upon review, it was noted that the private sewer main crosses our existing 219.1 mm steel gas main and may be in conflict. Site investigation to confirm current line elevations will need to be reviewed with the sewer line design drawings to confirm the separation between the 219.1 mm main and the proposed sewer.

3. Please note the following:

    - Proposed private sewer main crosses over an existing 219.1 mm distribution pressure natural gas main. A Manitoba Hydro Safety Watch may be required if any excavations are within 1.0 m of the 219.1 mm natural gas main.

    - Contact "Click before you dig" a minimum of 2 weeks prior to any work commencing within 1.0 m of the 219.1 mm distribution pressure natural gas main to arrange for the pipeline to be properly located and marked by Manitoba Hydro personnel at ClickBeforeYouDigMB.com or Call 1-800-940-3447. Upon receiving clearances, the

excavator will be provided with the phone number of the appropriate District in order to coordinate a Manitoba Hydro Safety Watch, if required.

- A minimum 900 mm of cover shall be maintained in all areas where equipment will be crossing, traveling or compacting over the 219.1 mm gas mains. Vibratory compaction cannot be used over or within 1.0 m of a main.

- If equipment must cross, travel, or compact over the gas main with less than the 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.

- When working with less than minimum cover, a minimum 300 mm of granular material shall be bladed into place with tracked equipment offset from the pipeline. Then static compaction equipment would be allowed and built up in layers until minimum cover is achieved.

- Once the pipeline depth and location has been confirmed by hand or hydro excavation, the safety watcher may authorize the limited use of mechanical Excavation. A smooth edged bucket must be used for excavations within 1.0 m of the main.

- Sub-base material shall be bladed into place as opposed to being end dumped over the 219.1 mm gas main in areas with less than the minimum cover.

- 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 to backfilling.

4. Absolutely no work including concrete cutting or pavement breaking may occur over the pipeline

(regardless of size) until depth of cover is determined and a safety watch is on site.

5. Please add a "Caution Gas" note on the gas main once it has been added to your construction drawings.

6. General:

   - Please note that the requirements of Manitoba Hydro's Safe Excavation and Safety Watch guidelines shall apply. All natural gas pipelines and service lines must be properly located and marked by Manitoba Hydro personnel. This can be arranged by visiting ClickBeforeYouDigMB.com or call 1- 800-940-3447. Construction operations are not to commence unless these conditions are adhered to.

   - All excavations within 1.0 meter of any natural gas main must be completed by hand or Hydro-excavation.

   - A minimum vertical separation of 300 mm from gas mains and 100 mm from gas service lines must be maintained between any Manitoba Hydro facility and any new installations.

   - A minimum 450 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 service.

   - If equipment must cross, travel, or compact over the gas main with less than the 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.

   - All construction operations 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. Any damages to the coating must be reported to and repaired at no cost by Manitoba Hydro prior to backfilling.

7. Manitoba Hydro believes that there should be no problem with this work however; Manitoba hydro makes no representations or warranties in that regard.

8. Please note that all construction drawings requiring review or approval must be mailed to Gas Design, 820 Taylor Avenue (1) Winnipeg, Manitoba, R3M 3T1. If you wish to send construction drawings electronically, they may be sent to GasDesign@hydro.mb.ca

   If you have any questions or comments, please contact Phil Robertson, P. Eng.; Gas Design Engineer at (204) 360-5709 (e-mail: probertson@hydro.mb.ca).

The Water and Waste Department advise the following:

1. The new proposed private sewer service is subject to review and approval by the Water & Waste Department. It must meet all requirements and conditions set forth by the Department and the Customer Technical Services Branch.

2. "Click before you Dig Manitoba" (http://www.clickbeforeyoudigmb.com/) must be contacted to ensure that locates are preformed, prior to any construction.

3. Plans for any Construction in the City Right-of-Way must be submitted to Underground Structures Branch for review and approval, prior to any construction.

The Licensee acknowledges and agrees that, if any work or maintenance needs to be performed on the City-owned infrastructure, and the proposed pathway (or any other proposed structures) is in any way impeding this work or maintenance, such proposed pathway (or structures) may need to be removed and

any removal/restoration of such pathway (or structures) would be at the sole expense of the Licensee.

For all necessary Sewer work and maintenance, the Licensee shall employ only contractors that are licensed and approved annually by the pursuant to the provisions of The City of Winnipeg Sewer By-Law No. 92/2010. The Licensee shall ensure that each such licensed contractor files evidence of insurance with the City in accordance with the City's licensing requirements pursuant to The City of Winnipeg Sewer By-Law No. 92/2010 and maintains such insurance for the full term of the agreement;

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 written consent of the City. And further the Licensee acknowledges and agrees that upon its making application for such consent by the Director, the Licensee shall pay to the City a non-refundable administration fee of two hundred and fifty dollars ($386.00), plus applicable GST.

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 Encroachment Area 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 on 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.

Unless otherwise specified herein, all improvements, development and construction on the Encroachment Area 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 Encroachment Area for its intended use. All improvements, development and construction are subject to prior written approval of the Director;

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

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 that the Encroachment Area 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 Encroachment Area and conduct the repairs at the sole cost and expense of the Licensee;

The Licensee shall not suffer or permit any claim, lien or charge under *The Builders' Liens Act*, C.C.S.M. c. B91, or any like statute to be made, filed or registered against the City or against the Encroachment Area or any fixtures or improvements thereto by reason of work, labor, services or materials supplied or claimed to have been supplied to the Licensee.

The Tenant shall not release into the environment, or deposit, discharge, place or dispose of, at, on or near the Encroachment Area and/or adjoining City land,

any dangerous goods as that term is defined in *The Dangerous Goods Handling and Transportation Act*, C.C.S.M. c. D12, as amended, replaced or substituted from time to time

In the event of termination, cancellation or expiration of the Agreement the Licensee shall remove its property from the Encroachment Area 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 Encroachment Area 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 Encroachment Area for any use or purpose, nor as to any environmental conditions which may exist;

That snow removal on the Encroachment Area shall be the responsibility of the Licensee;

The Licensee shall enter into a formal agreement with the City embodying the foregoing Proposed Terms and Conditions and such other Terms and Conditions as the Director of Legal Services deems necessary and in a form satisfactory to the Director of Legal Services.

The proposed terms and conditions of the proposed Encroachment Agreement are subject to the final approval of the City's Standing Committees and

Council, or its delegated authority, and are not binding until such time as that approval is obtained.

703 ST. ANNE'S ROAD INC. 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. 15279/1 AND IN ACCORDANCE WITH THE PROPOSED TERMS AND CONDITIONS AS OUTLINED HEREIN.

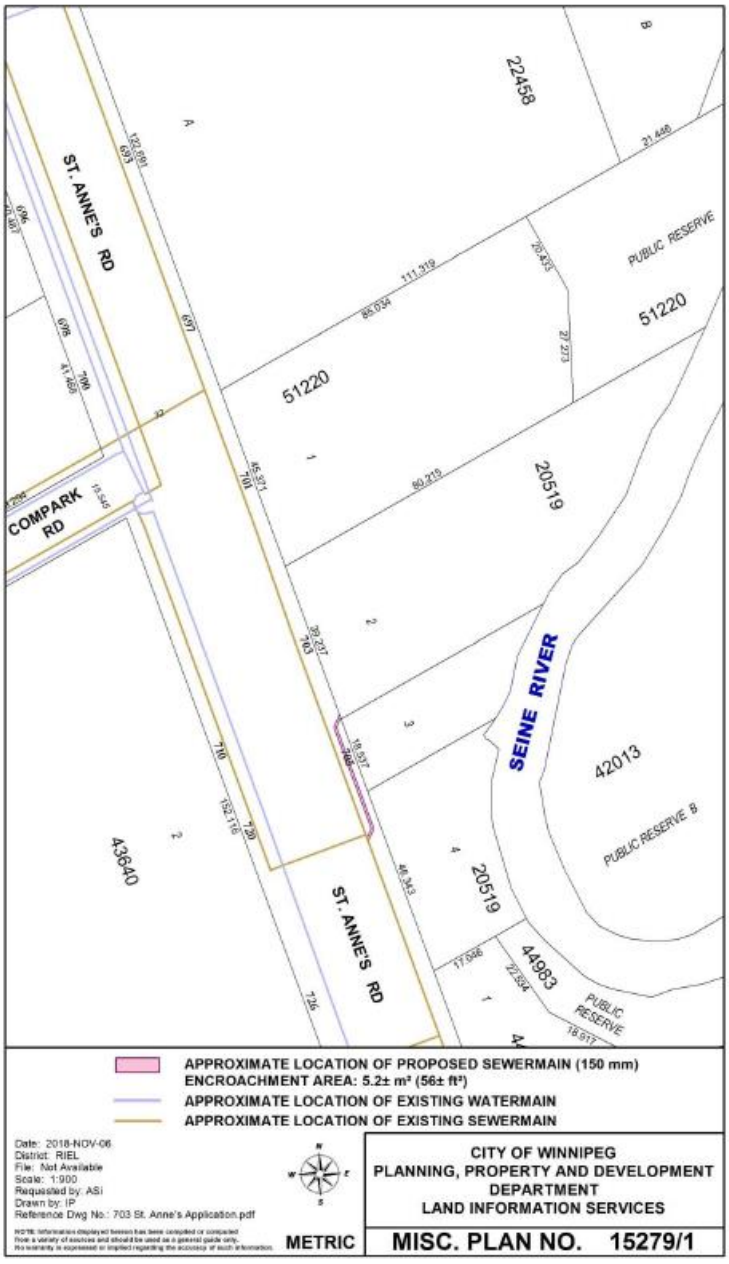
703 ST. ANNE'S ROAD INC.

Per: _____ Nov 28
DATE

Vitaly Ishine
NAME

President
TITLE

I/We have been authorized to bind the Corporation


ST. ANNE'S RD
COMPARK RD
SEINE RIVER
PUBLIC RESERVE
PUBLIC RESERVE B
22458
51220
20519
42013
43640
44983
APPROXIMATE LOCATION OF PROPOSED SEWERMAIN (150 mm)
ENCROACHMENT AREA: 5.2± m² (56± ft²)
APPROXIMATE LOCATION OF EXISTING WATERMAIN
APPROXIMATE LOCATION OF EXISTING SEWERMAIN
Date: 2018-NOV-06
District: RIEL
File: Not Available
Scale: 1:900
Requested by: ASI
Drawn by: IP
Reference Dwg No.: 703 St. Anne's Application.pdf
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT
DEPARTMENT
LAND INFORMATION SERVICES
MISC. PLAN NO. 15279/1