Leave and License for Millennium Gardens-River East – Use of part of public right-of-way located east of Henderson Highway, south of Douglas Avenue

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4. The Standing Policy Committee on Property and Development has been advised that the Millennium Gardens-River East seniors group would like to establish a community garden to the east of Henderson Highway and within the right-of-way being held for the future extension of the Chief Peguis Trail, outlined as Parcel B on Misc. Plan No. 10858/8. A Leave and License for the use of a portion of the lands within a public right-of-way requires Council consideration.

On February 15, 2002, Millennium Gardens-River East requested the Community Services Department for a renewal of the seasonal Use Agreement-Garden Permit for the 2002 garden season, and indicated that their intention to install improvements upon the City-owned lands, and to leave these improvements on site year round (raised flowerbeds and 20 foot by 30 foot Olympic commercial building). Pursuant to the terms of the garden permit, installation of improvements requires the prior approval of the Director of Planning, Property and Development.

On March 22, 2002, the Real Estate Division of the Planning, Property and Development Department met with representatives of Millennium Gardens-River East and reviewed the proposed use and clarified that given the intended substantive improvement to be left on the land year round, the only form of agreement that could facilitate the proposed use is a Leave and License Agreement, which would cause them to be responsible to pay realty tax on the demised lands.

On April 8, 2002, the Real Estate Division provided the group with written clarification of the differences between a Garden Permit and a Leave and License Agreement, and what use and conditions can be contemplated under each agreement. On April 22, 2002, the Real Estate Division received direction from Millennium Gardens-River East to proceed with the Leave and License Agreement to facilitate their project.

When Millennium Gardens-River East made its original application for a Leave and License, it was proposing to lease a larger area (7,022.9 square metres) shown as Area 1 on Misc. Plan No. 10858/1. This location is on the northerly side of the right-of-way. The proposed building to be placed upon the lands was approximately 28 feet by 20 feet. In the information package provided by Millennium Gardens-River East, it was indicated that they planned for future phases of additional site development.

The now proposed leased area is a smaller area (3,750 square metres) shown as Parcel B on Misc. Plan No. 10858/8. It was noted that the location within the right-of-way changed from the northerly side to the center portion of the right-of-way. The water collection/educational shed to be placed upon the lands is a 20-foot wide by 30-foot wide by 8-foot high commercial structure being purchased from Olympic Building Systems Inc., and has an estimated material package cost of approximately $10,500.00 plus GST. The supplier indicated that it would require a building permit to facilitate its installation.

As a result of discussions with the Millennium Gardens-River East group, the Planning, Property and Development Department consulted with a number of other internal stakeholders relative to the proposal.

Divisional/Departmental Comments Received:

Zoning and Permits Branch, Planning, Property and Development Department

In consultation with the Zoning and Permits Administrator, it was confirmed that notwithstanding the fact that Zoning By-laws do not apply to right-of-ways, the following would be required:

1. The construction of the proposed 20-foot by 30-foot Olympic commercial type shed will require a building permit and must meet all applicable Building Codes with respect to: a) allowable size; b) appropriate thickness and reinforcing of the foundation; c) etc. (Only a building/shed of less than 108 square feet can be constructed without a building permit.)

2. The matter of access and parking would need to be discussed and reviewed with the Zoning and Permits Branch.

3. The proposed shed is larger than an existing concrete pad on site upon which the structure is to be placed, therefore the design of the additional supporting foundation must comply with the foundation requirements pursuant to the Building Code and any alternative foundation support must be designed and sealed by a Professional Engineer registered in the Province of Manitoba. Further, construction of multiple small sheds with interconnecting roof drains running between two or more sheds would be unacceptable and would cause the installation to be deemed a single building of more than 108 square feet thereby requiring a building permit;

4. In either instance, a small or large shed, an electrical permit is needed if power is intended to be supplied.

5. Exterior signage may be an issue dependant upon where it is to be located, the proposed size of the sign, the content and if or not it is intended to be illuminated.

The Zoning and Permits Branch confirmed that it was in agreement that the revised application could be finalized in accordance with the original approved intent to waive all fees, charges, etc., subject to the revised changes of the proposed Leave and License square foot area, location and the size of the proposed building structure being first re-circulated to the appropriate departments and no objections being received.

Public Works Department

On April 15, 2002, the Public Works Department advised of its objection to the proposed Leave and License for the development of a temporary shed, billboard and garden plot. The Department objects to the placement of $98,000.00 worth of improvements (as per information received from the Millennium Garden-River East.) directly in the path of the Chief Peguis Trail extension, which is a high priority for implementation in the near future.

Note that when the proposed use was first circularized, the Public Works Department had identified suitable areas for the placement of the Millennium Gardens along the north side of the right-of-way and behind the site leased to Mr. Petrasko. In its most recent communication, the Public Works Department suggested that the proposed project be constructed at the location shown as "proposed Alternate area" as outlined on Figure 3.

Forestry Branch, Public Works Department

On April 15, 2002, the Forestry Branch advised in part that "... they do not have any major concerns regarding this project, however, the estimated project area does seem to involve some trees and if possible should be moved to a less densely treed area. If not, then as many of the existing trees in the area as possible should be preserved especially if they are healthy or specimen trees. This tree preservation, however, should not be attempted if construction activities will have a negative impact on them. If they cannot be properly protected then removal and replacement would be more desirable. The Forestry Branch would be available to consult on appropriate tree protection procedures."

Development Management Branch, Planning, Property and Development Department

On April 15, 2002, the Development Management Branch expressed serious concerns regarding the currently proposed location of the Millennium Gardens and advised in part "… this location will discourage individuals from utilizing the garden. Firstly, the garden's location is not integrated into the public roadway network. It is not readily accessible from any paved public sidewalk, pathway or rights-of-way. Less mobile seniors dependent on walking aides (walkers, canes, motorized scooters, wheelchairs, etc.) cannot easily traverse surrounding grass fields to reach the garden. Secondly, the garden is not in close proximity to any lighted areas nor is there any indication on the plans of lights being provided for the garden. Many seniors perceive dark areas as unsafe and will be discouraged from using the garden in the early evenings. Finally, vandals will be attracted to the garden due to the isolated location and lighting. Signs of graffiti, arson and vandalism will discourage seniors from using the garden for fear of personal safety. For these reasons, we feel a better location for the garden should be found that promotes accessibility, personal safety and security."

Tenant in Adjacent Site – Petrasko Garden Centre

On April 9, 2002, Mr. Petrasko, the tenant of the City's adjacent property advised that he was prepared to permit Millennium Gardens-River East access through his leased area and the use of his water, as long as they were not using the water at the same time. This arrangement is to simply facilitate vehicle access for loading purposes and no other purpose. Such arrangement would be at the pleasure of the tenant, Mr. Petrasko, and not enforceable by either Millennium Gardens or the City, and in the event the arrangement should be withdrawn for whatever reason, Millennium Gardens would be required to make alternate arrangements. There has been no contemplation for access by the general pedestrian/public over the City-land, either to the proposed garden site or for visitor parking.

Property Assessment Department

The Property Assessment Department has reaffirmed that The Manitoba Municipal Assessment Act requires that occupiers of land, pursuant to a Leave and License Agreement, are subject to assessment and taxation. However, if the status of the occupier meets the criteria of The Manitoba Municipal Assessment Act and qualifies for an exemption from the school taxes, the realty taxes would be somewhat reduced. The estimate for the 2001 realty taxes is $593.30 (that assumes no exemption but includes the land and building as proposed).

Further to the aforementioned comments, the Real Estate Division has been advised that a Use Agreement-Garden Plot has been issued by the Community Services Department for the 2002 growing

season. As well, a Use Agreement-Equipment Permit was issued to the Millennium Gardens for the use of a large band mobile for an on-site event scheduled for May 16, 2002.

Planning, Property and Development Department comments:

Ideally, it would be best if the Group were prepared to relocate its proposed development to the alternate site to the north as recommended by the Public Works Department. Access could be obtained from Douglas Avenue. It is recognized that this area is more densely treed. However, in so doing, there might possibly be less impact upon the tenant's development of the lands when the capital street project is commenced.

Notwithstanding that the original application was for an alternate more suitable location, the Millennium Gardens-River East elected to situate its gardens pursuant to the 2001 Garden permit in the center of the right-of-way, identified as Parcel B on Misc. Plan No. 10858/8.

On April 29, 2002, the Millennium Gardens-River East advised that:

1. They now favour the location shown on as Parcel B on Misc. Plan No. 10858/8 "as our garden would be more centrally located and exposed to the community as it is more visible to foot and car traffic down Henderson Highway".

2. This site has already been partially prepared for the garden project. The site has been treated for weeds. A ditch to improve drainage has been constructed around the property. Culverts have been installed with the intention of aiding drainage and with the intention of collecting water for pumping into a cistern for the watering of the garden. The paid cost of the drainage improvements was $4,333.50.

3. Limestone has been donated, delivered and levelled. This limestone is to be used for the purposes of raising the height of the gardening beds and as a base for the construction of the proposed shed. The cost for this was $1,177.00.

4. A contractor was hired to "disc" the vegetable growing area at a cost of $330.00. The Group intends to donate surplus vegetables to Winnipeg Harvest.

5. There has been considerable "time" donated by volunteers

6. "With all of this time and effort spent, we want to remain on this site. If we have to move our "Millennium Gardens", we will again be delayed for another year or so. This would be very disappointing to our seniors who more and more will feel that the Gardens will not happen in their time";

7. "We wish to continue with Parcel "B" now and not consider the proposed alternate area. However, when the City decides to continue with the Chief Peguis Trail in the future, we will then be prepared to move our raised garden beds and water collection facility/education centre."

Alternatives to be considered:

Alternative One

The proposed project could be limited to developing the gardens only via a garden permit and that the only permanent structures to be allowed to be constructed on the site would be the raised garden beds and perhaps a small utility shed of less than 108 square feet.

This would be in keeping with the guidelines for the temporary use of properties acquired for future right-of-way. Given the future plan to develop a street through these lands, this alternative would be acceptable to the Administration but is unacceptable to Millennium Gardens-River East.

Alternative Two

The proposed project could be facilitated via a Leave and License Agreement for a location within the right-of-way as proposed by the Public Works Department.

Given the future plan to develop the street through these lands, this would be an acceptable solution from the Administration's perspective to facilitate the Millennium Garden's proposed project. This location may also have the effect of buffering the future right of way from the residential neighbourhood to the north. However relocation of the gardens at this point in time is unacceptable to Millennium Gardens-River East for the reasons as identified above.

Alternative Three

. The proposed project could be facilitated via a Leave and License Agreement for the existing proposed location.

As stated, the Public Works Department has advised that it does not support this alternative.

The Planning, Property and Development Department is of the view that given the vision for this project and the financial investment to be expended it would be most appropriate to create a solution for the long term to enable the realization of the full extent of the project, and to enable a full return on the project investment.

However, in view of the advice received from the Millennium Gardens-River East group as to work carried out to date, costs expended and acknowledgement that the project would be relocated when the City decides to proceed with its construction of its transportation project,
consideration should be given to the request of this applicant for a Leave and License Agreement.

Should it be decided to grant a Leave and Licence to the Millennium Gardens, then the Planning, Property and Development Department would suggest that in addition to the City's standard terms of Leave and Licence, the following additional terms and conditions should be made a condition of the Agreement, namely: .

- Millennium Gardens-River East (Millennium Gardens) be required to sign the site "Temporary Recreation Use of Future Transportation right-of-way"
- Millennium Gardens be required to execute the agreement on or before the commencement of the agreement
- The agreement is cancellable by either party, for any reason and at the pleasure of the City, by giving thirty (30) days advance written notice
- Millennium Gardens be responsible for all costs associated with its operation and use of the lands

- Millennium Gardens provide appropriate indemnification and insurance to the satisfaction of the City Solicitor/Manager of Legal Services and the Manager of the City's Insurance Branch
- Millennium Gardens agrees that the Leave and License Agreement is not assignable
- That any and all improvements to the land are subject to the prior approval of the Director of Planning, Property and Development, and that such plan, specification should be made available in advance in a timely manner for review
- Millennium Gardens be responsible to remove any and all improvements at its sole cost on or before the effective termination date of the agreement
- Millennium Gardens be responsible to pay the realty tax or equivalent to realty tax and applicable GST
- The commencement of the month-to-month agreement will be May 15, 2002
- All terms and conditions of the document be satisfactory to the City Solicitor/Manager of Legal Services

Furthermore, the Leave and Licence should be subject to the Millennium Gardens-River East providing access as is acceptable to the Director of Public Works in the event that the arrangement with Mr. Petrasko (Petrasko Garden Centre) is withdrawn, failing which, the Leave and Licence would be terminated.

The Standing Policy Committee on Property and Development recommends:

I. That a Leave and License in favour of Millennium Gardens-River East to permit a community garden in that portion of the right-of-way being held for the future extension of the Chief Peguis Trail, outlined as Parcel B on Misc. Plan No. 10858/8, be approved.

II. That the Chief Administrative Officer be authorized to finalize the terms and conditions of the Leave and License Agreement; said agreement to contain the City's standard terms and conditions, the additional conditions recommended by the Planning, Property and Development Department as outlined above, and the provision that Millennium Gardens-River East provide access as is acceptable to the Director of Public Works in the event that the arrangement with Mr. Petrasko (Petrasko Garden Centre) is withdrawn, failing which, the Leave and License Agreement would be terminated.

III. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing, including the execution of any documents related thereto.