Minute No. 383
Report - Standing Policy Committee on Property and Development - April 27, 2004

Item No. 24 **Encroachment Agreement for Parking Purposes within the Argyle Street North Right-of-Way south of Sutherland Avenue**
File ED(34)

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submits the following to Council:

1. That an Encroachment Agreement in favour of Greyhound Canada Transportation Corp. for the development of employee parking within the Argyle Street North right-of-way shown hatched and identified as "Encroachment Area" on Misc. Plan No. 11787/2 be approved in accordance with the terms and conditions outlined and any other such terms and conditions deemed necessary by the Director of Planning, Property and Development and the City Solicitor/Manager of Legal Services to protect the City's interest.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

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DECISION MAKING HISTORY:

Moved by Councillor Pagtakhan,
That the recommendation of the Standing Policy Committee on Property and Development be concurred in and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION:

On April 27, 2004 the Standing Policy Committee on Property and Development concurred in the administrative recommendation and submitted the matter to the Executive Policy Committee and Council.

Re: Encroachment Agreement for Parking Purposes within the Argyle Street North Right-of-Way South of Sutherland Avenue
Lord Selkirk – West Kildonan Community
Mynarski Ward

For submission to: Standing Policy Committee on Property and Development

Original report signed by: Director of Planning, Property and Development

Report date: April 13, 2004

Recommendation(s):

1. That Council approve an Encroachment Agreement in favour of Greyhound Canada Transportation Corp. for the development of employee parking within the Argyle Street North right-of-way shown hatched and identified as "Encroachment Area" on Misc. Plan No. 11787/2, attached, in accordance with the terms and conditions as outlined herein and any other such terms and conditions deemed necessary by the Director of the Planning Property and Development Department and the City Solicitor/Manager of Legal Services to protect the City's interest.

2. That the proper officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REPORT SUMMARY

Key Issues:

In July of 2002 Greyhound Canada Transportation Corp. (Greyhound) made an encroachment application at the Zoning and Permits Branch in regard to the proposed development of the Argyle Street North right-of-way for additional employee parking, in conjunction with its adjoining business operations at 110 Sutherland Avenue.

The Public Works Department advised that it had no objections to the subject right-of-way being utilized and developed for parking purposes and has also indicated that the right-of-way could be legally closed and made available for sale.

Gateway Packers Ltd. (Gateway), the adjacent property owner to the West, objected to the proposed encroachment citing that it would negatively impact on its current day to day operations and long term development plans.

In an attempt to resolve the differences and broker a mutually acceptable conclusion to this matter, the Department convened numerous meetings with both parties.

Both parties have now agreed to jointly participate in the closing of Argyle Street North and purchase the half of the right-of-way adjacent to its respective properties.

In order to formalize Greyhound's use of the right-of-way until such time as it is legally closed and sold to both parties, Gateway has advised that it will no longer object to the Encroachment Agreement subject to certain terms and conditions (i.e., the encroachment to be temporary in nature, Greyhound to pursue the legal closing of the right-of-way, etc.).

Greyhound has agreed to the proposed terms and conditions, including those that have been included to address Gateway's concerns.

The proposed terms and conditions are reasonable and are consistent with other such Encroachment Agreements for similar uses, save and except the conditions required by Gateway.

Implications of the Recommendation(s):

General implications:

- [X] None
- [ ] For the organization overall and/or for other departments
- [ ] **For the community and/or organizations external to the City of Winnipeg**
- [ ] **Involves a multi-year contract**

Comment(s):

Policy implications:

- [X] **No**
- [ ] **Yes**

Comment(s):

Environmental implications:

- [X] **No**
- [ ] **Yes**

Comment(s):
No issues of environmental contamination are apparent within the Argyle Street North right-of-way.

Human resources implications:

- [X] **No**
- [ ] **Yes**

Comment(s):

Financial implications:

- [X] Within approved current and/or capital budget
- [ ] Current and/or capital budget adjustment required

Comment(s):

REASON FOR THE REPORT:

In general, the City of Winnipeg cannot grant the lease of land comprising of public right-of-way unless by first legally closing the public right-of-way. The City has, however, the power to permit or license the use of public right-of-way subject to the continuing pleasure of Council. The Department has negotiated the terms and conditions of an Encroachment Agreement in favour of the Greyhound Canada Transportation Corp. respecting the use of the Argyle Street North right-of-way shown hatched and identified as "Encroachment Area" on Misc. Plan No. 11787/2, attached. This report seeks Council's approval to the proposed Encroachment Agreement.

HISTORY:

In July of 2002, the City's Zoning and Permits Branch advised that it had received an Encroachment Application on behalf of Greyhound Canada Transportation Corp. (Greyhound) for the development of employee parking within the entire portion of the Argyle Street North right-of-way, located south of Sutherland Avenue to Point Douglas Road. The Planning, Property and Development Department (the Department) was instructed to negotiate the terms and conditions of a proposed Encroachment Agreement.

Prior to commencing negotiations with Greyhound, the Department first contacted the other adjacent property owners to determine whether there were any objections to the proposed encroachment and development of the right-of-way. It was at this time that the Department was advised by Gateway Packers Ltd. (Gateway), that it objected to the proposed development of the Argyle Street North right-of-way for parking purposes or any other purpose other than that of a right-of-way. Gateway's concern was that any development of the right-of-way would have a negative impact on its current operations and any future development of its adjacent property.

Over the last 20 months the Department has convened numerous meetings in an attempt to address the differences of the involved parties and broker a mutually acceptable resolution to this matter. In addition, this matter has, at the request of both parties, been forwarded several times to the Lord Selkirk – West Kildonan Community Committee for consideration and comments. At the March 23, 2004, Community Committee meeting, both parties appeared to again present their respective positions. Representation by the Department suggested that a fair resolution to this long outstanding matter might be that both parties agree to legally close the right-of-way and purchase their respective half, subject to certain limiting conditions that would allow Greyhound to proceed with its encroachment application. Both parties agreed that although this might not be the best solution, it was likely the most workable one. The Community Committee therefore recommended the following:

"The Lord Selkirk – West Kildonan Community Committee advised the Planning, Property and Development Department that it does not object to the proposed encroachment agreement for parking purposes located within the Argyle Street north right-of-way by Greyhound Bus Lines as outlined on Misc. Plan No. 11787/2, subject to the following conditions:

That the encroachment agreement shall be temporary and shall expire within sixteen (16) months, namely, on July 31, 2005.

That an application to close the portion of Argyle Street North, south of Sutherland Avenue be immediately commenced and one-half of the closed right-of-way land offered to each of the adjacent owners.

That no fence be erected down the middle of the closed right-of-way lands."

DISCUSSION:

Throughout the course of the negotiations, the Department has maintained the position that unless both parties could arrive at a mutually acceptable resolution to this matter, the Department, in accordance with its established practice, was not prepared to give a favourable recommendation to the proposed Encroachment Agreement.

Both parties have now agreed to jointly participate in the legal closing of the Argyle Street North right-of-way and to purchase one half of the right-of-way directly adjacent to its respective property. The proposed street closing and proposed sale of the right-of-way will be addressed at future meetings under separate reports.

As well, Gateway has advised that it will no longer object to Greyhound's encroachment application provided Greyhound continues to actively participate in the legal closing of the right-of-way and title to half the adjacent right-of-way is issued in the name of Greyhound prior to July 31, 2005. Such terms and conditions, and others, are to be included in the Encroachment Agreement so as to ensure Gateway's concerns are addressed.

The Department has concluded its negotiations with Greyhound. Greyhound has agreed to the proposed terms and conditions, including those that address Gateway's concerns. The proposed terms and conditions are considered reasonable and are consistent with other such Encroachment Agreements for similar uses, save and except the terms and conditions required by Gateway. Briefly, the proposed terms and conditions of the Encroachment Agreement are as follows:

Site Size: 489.2 m^2 (5,265.7 ft^2)
Use: Development of employee parking.
Term: The agreement to commence on the first day of the month that immediately follows Council's approval of the proposed Encroachment Agreement.
The Agreement to be fully ended on whichever date first occurs; the date that title to the east half of the right-of-way is registered in the name of Greyhound resulting from the proposed road closing; Greyhound ceases to participate in the road closing process; or July 31, 2005.
Encroachment Rent: $1,300 per annum, plus GST.
Cancellation: 90-days written notice by either party; immediately upon Greyhound ceasing to participate in the road closing process; or by default.
Insurance: Public liability insurance of at least $2,000,000.00; naming the City of Winnipeg as additional insured; containing a cross-liability clause.

Other: Subject to Greyhound obtaining all permits and variances required to develop, occupy and utilize the subject property for its intended use.

Any other terms and conditions that are deemed necessary by the Director of the Planning, Property and Development Department and by the City Solicitor/Manager of Legal Services to protect the City's interests.

Financial Impact Statement

Date: April 6, 2004

Project Name:

Encroachment Agreement for Parking Purposes within the Argyle Street North Right-of-Way, South of Sutherland Avenue.

First Year of Program 2004

	2004	2005	2006	2007	2008
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
External	-	-	-	-	-
Grants (Identify)	-	-	-	-	-
Reserves, Equity, Surplus, Other	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	870	760	-	-	-
Net Cost/(Benefit)	$ (870)	$ (760)	$ -	$ -	$ -
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ (870)	$ (760)	$ -	$ -	$ -

Additional Comments:

The Incremental Revenue is a Gross Rental Calculated as follows: ($1,000.00 Rental + $300.00 Tax Equivalent = $1,300.00/Annum). The earliest commencement date of the proposed Encroachment Agreement is May 1, 2004, therefore, the first year runs from May 1,/04 to Dec. 31/04, and the second year runs from Jan 1/05 to July 31/05 . (Rents rounded to the nearest $10.00).

"Original signed by"
Karen Ayotte, Acting
Manager of Finance

IN PREPARING THIS REPORT, THERE WAS CONSULTATION WITH AND CONCURRENCE BY:

Public Works Department, Legal Services, Zoning & Permits Branch
This report submitted by:

Planning, Property and Development Department
Division: Real Estate Division
Prepared by: Stewart Anderson
PPD File #: 8318

Document name: o:\reports directive\real estate\leasing\(sa)argyle st -encroament.doc



ENCROACHMENT AREA
6.1 X 80.2 = 489.2 SQ.M.

APPLICANT'S PROPERTY

METRIC

CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.

SCALE: 1:1250	DATE: 2004-FEB-06	DISTRICT: LSWK
ATLAS: F13A1	FILE: 8318	
MISC. PLAN No.: 11787/2		JAC(LIBB)

All dimensions are approximate.
No warranty is expressed or implied regarding the accuracy of such information.