**Minute No. 502**
**Report - Standing Policy Committee on Property and Development - June 8, 2004**

**Item No. 32** **Encroachment Agreement for use of a portion of the Mission Street Right-of-Way - Abcomp Holdings Ltd.**
**File ED(35)**

COUNCIL DECISION:

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

1. That an Encroachment Agreement in favour of Abcomp Holdings Ltd. be approved for the display and sale of prefabricated homes upon a portion of the Mission Street right-of-way, identified as "Encroachment Area" on Misc. Plan No. 10175/4, in accordance with the negotiated terms and conditions, said Agreement to provide for such other terms and conditions as are deemed necessary by the Director of Planning, Property and Development and the City Solicitor/Manager of Legal Services to protect the City's interests.

2. 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 - June 8, 2004**

DECISION MAKING HISTORY:

Moved by Councillor Pagtakhan,
That the recommendation of the Standing Policy Committee on Property and Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On June 16, 2004, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On June 8, 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: Proposed Encroachment Agreement for the use of a portion of the Mission Street Right-of-Way - Abcomp Holdings Ltd.**
**Riel Community**
**St. Boniface Ward**

**For submission to: Standing Policy Committee on Property and Development**

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

**Report date:** May 21, 2004

**Recommendation(s):**

1. That Council approve an Encroachment Agreement in favour of Abcomp Holdings Ltd. for the display and sale of prefabricated homes upon a portion of the Mission Street right-of-way identified as "Encroachment Area" on Misc. Plan No. 10175/4, attached, in accordance with the negotiated terms and conditions outlined herein; the Agreement to provide for such other terms and conditions as 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.

*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:**

The Planning, Property and Development Department has negotiated proposed terms and conditions of an Encroachment Agreement in favour of Abcomp Holdings Ltd. respecting the use of a portion of the Mission Street right-of-way identified as "Encroachment Area" on Misc. Plan No. 10175/4, attached.

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):
The City's standard terms and conditions of the Encroachment Agreement include provisions to protect the City's interests in the event environmental contamination is discovered.

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 public right-of-way unless the public right-of-way is first legally closed by By-law. 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 Planning, Property and Development Department has negotiated proposed terms and conditions of an Encroachment Agreement in favour of the Abcomp Holdings Ltd. respecting the use of a portion of the Mission Street right-of-way identified as "Encroachment Area" on Misc. Plan No. 10175/4, attached. This report seeks Council's approval to the Encroachment Agreement as negotiated.

**HISTORY:**

At its meeting held on April 27, 2004, the Standing Policy Committee on Property and Development considered a report from the Administration dated April 13, 2004, dealing with a lease in favour of Abcomp Holding Ltd. for the display and sale of prefabricated homes upon the

City-owned lands identified as "Leased Area" on Misc. Plan No. 10175/4, attached. Committee approved the lease of the City-owned lands, subject to Abcomp obtaining an Encroachment Agreement for the use of a portion of the Mission Street right-of-way identified as "Encroachment Area" on the said Misc. Plan.

**DISCUSSION:**

Abcomp submitted its Encroachment Application to the Planning, Property and Development Department. The Zoning and Permits Branch circulated the application to various city departments, the Ward Councillor and interested agencies for review and comment with no objections received.

In this regard, The City's Designated Officer – Encroachments recommends that the application be approved and that terms and conditions of an Encroachment Agreement pursuant to 4(1)(d) of the City's Encroachment B-law No. 692/74 be negotiated.

The Real Estate Division has concluded its negotiations with Abcomp Holding Inc. The negotiated terms and conditions of the proposed Encroachment Agreement are briefly stated as follows:

Term: An initial five (5) year term commencing on a mutually acceptable date, together with one further five (5) year renewal option.

Purpose: Display and sale of prefabricated homes.

Rental: $3,270.00 per annum, payable in monthly installments of $272.50, plus an amount equivalent to realty taxes (±$1,302.00). The rental rate is subject to review before the commencement of renewal period but in no event will it be less than the rent charged during the initial five-year term.

Insurance: General liability insurance of at least $2,000,000.00 naming The City of Winnipeg as additional insured and containing a cross-liability clause.

Cancellation: One (1) year written notice by either party.

Special Conditions: Subject to Abcomp Holdings Ltd. executing a Lease Agreement for the City-owned lands identified as "Leased Areas" on Misc. Plan No. 10175/4, attached. Subject to Abcomp Holdings Ltd. obtaining all permits required to develop, occupy and utilize subject property for its intended use.

Any other terms and conditions as 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.

The Planning, Property and Development Department is of the opinion that the proposed terms and conditions are fair and reasonable and therefore recommends that Council approve an Encroachment Agreement in accordance with the terms and conditions as outlined herein.

IN PREPARING THIS REPORT, THERE WAS CONSULTATION WITH AND CONCURRENCE BY:
No consultation was required in the preparation of this report.
This report submitted by:

Planning, Property and Development Department
Division: Real Estate Division
Prepared by: Stewart Anderson
PPD File #: 5894/5

Document name: o:\reports directive\real estate\leasing\(sa)abcomp encroachment agrmt.doc

## Financial Impact Statement

**Date:** May 17, 2004

**Project Name:**

Proposed Encroachment Agreement for the use of a portion of the Mission Street Right-of-Way - Abcomp Holdings Ltd.

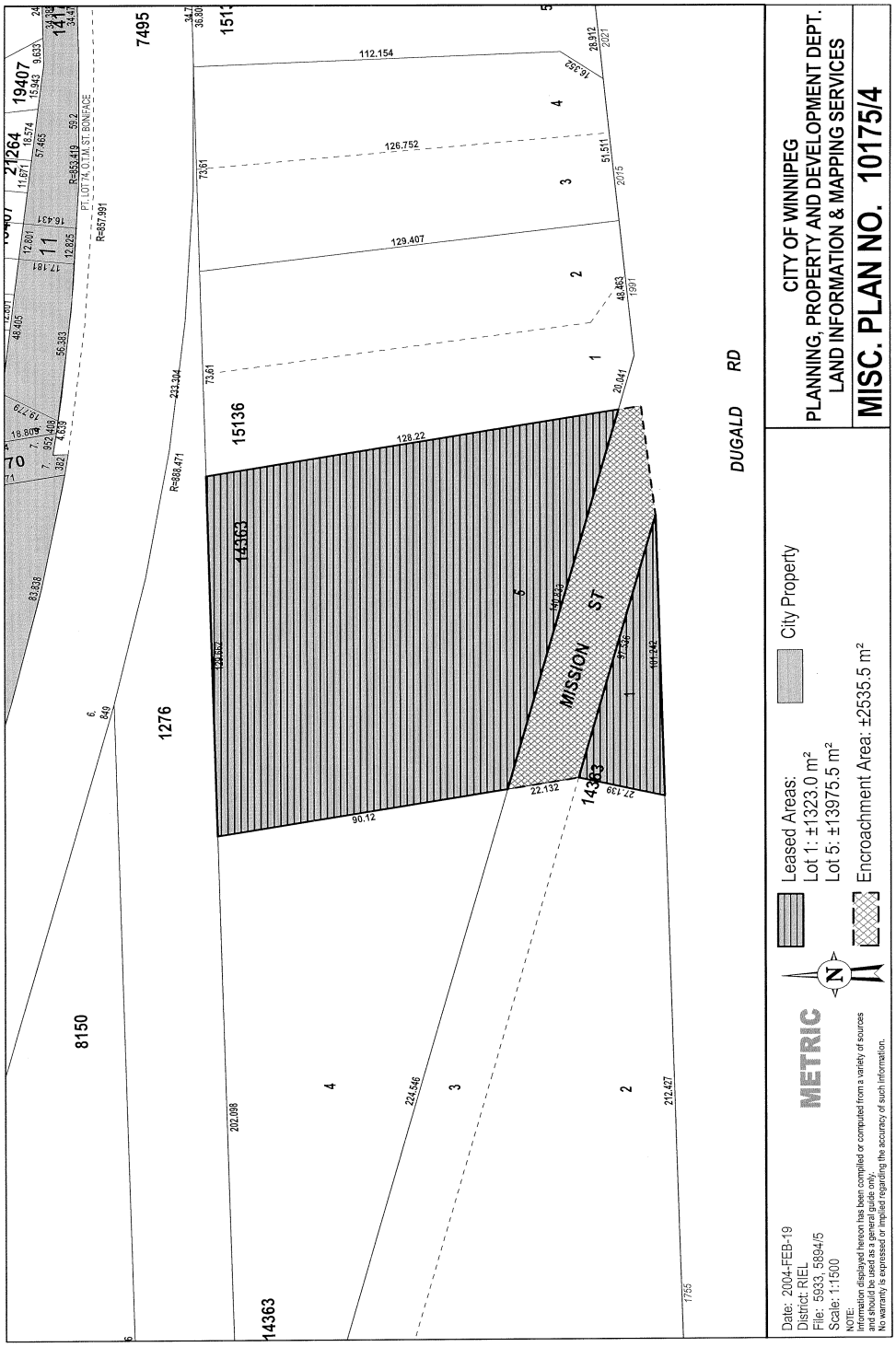
**First Year of Program** 2004

| | 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 | 2,286 | 4,572 | 4,572 | 4,572 | 4,572 |
| Net Cost/(Benefit) | $ (2,286) | $ (4,572) | $ (4,572) | $ (4,572) | $ (4,572) |
| Less: Existing Budget Amounts | - | - | - | - | - |
| Net Budget Adjustment Required | $ (2,286) | $ (4,572) | $ (4,572) | $ (4,572) | $ (4,572) |

**Additional Comments:**

Incremental Revenue is Calculated as follows: $3,270.00 - Annual Rent + $1,302.00 - Estimated Tax Equiv. = $4,572.00/annum. The earliest commencement date for the proposed Encroachment Agreement is July 1/04 therefore the 2004 Incremental Revenue value has been apportioned accordingly. The Estimated Tax Equiv. was calculated using 2004 Assessment & mill rate information, future changes to these rates have not been considered in subsequent years.

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


CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 10175/4
DUGALD RD
MISSION ST
City Property
Leased Areas:
Lot 1: ±1323.0 m²
Lot 5: ±13975.5 m²
Encroachment Area: ±2535.5 m²
METRIC
Date: 2004-FEB-19
District: RIEL
File: 5933, 5894/5
Scale: 1:1500
NOTE:
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No warranty is expressed or implied regarding the accuracy of such information.