Minute No. 504
Report - Standing Policy Committee on Property and Development - June 8, 2004

Item No. 34 **Encroachment Agreement for Parking Purposes within a portion of the Chief Peguis Trail Right-of-Way - Donwood Manor Personal Care Home Inc.**
File ED(33)

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 Donwood Manor Personal Care Home Inc. be approved for the development and maintenance of a vehicle parking area within a portion of the Chief Peguis Trail right-of-way, shown hatched and identified as 'Leave and License Area' on Misc. Plan No. 11837, at an annual rental rate of $1.00 plus an amount equivalent to realty taxes, the 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 Parking Purposes within a portion of the Chief Peguis Trail Right-of-Way – Donwood Manor Personal Care Home Inc.
East Kildonan - Transcona Community
North Kildonan Ward

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

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

Report date: May 28, 2004

Recommendation(s):

1. That Council consider the request for the approval of an Encroachment Agreement in favour of the Donwood Manor Personal Care Home Inc. for the development and maintenance of a vehicle parking area within a portion of the Chief Peguis Trail right-of-way shown hatched and identified as 'Leave and License Area' on Misc. Plan No. 11837, attached, at an annual rental rate of $1.00 plus an amount equivalent to realty taxes; 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, Real Estate Division, commenced its negotiations for a proposed Encroachment Agreement with the representatives of the Donwood Manor Personal Care Home Inc. The initial rental rate proposed by the Department was based upon a 10% return to the market value of the land, plus an amount equivalent to realty taxes. Donwood Manor Personal Care Home Inc. has advised that it agrees with all the terms and conditions proposed by the Department with the exception of the rental rate. The Donwood Manor has requested that consideration be given to a nominal annual rental rate of $1.00, plus an amount equivalent to realty taxes.

Although the Donwood Manor would have "exclusive use" of the encroachment area for parking purposes, the project appears to have merits, which would benefit the community.

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 a public right-of-way except by first legally closing same. 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 agreed to put forward the request made by the Donwood Manor Personal Care Home Inc. respecting the use of a portion of the Chief Peguis Trail right-of-way shown hatched and identified as 'Leave and License Area' on Misc. Plan No. 11837, attached. Council approval of an Encroachment Agreement is required.
HISTORY:

At its meeting held on December 3, 2002, the East Kildonan – Transcona Community Committee considered a request from the Donwood Manor Personal Care Home Inc. (Mr. James Heinrichs, Executive Director) to establish a 20 vehicle parking area within a portion of the Chief Peguis Trail right-of-way, shown hatched and identified as "Leave and License Area" on Misc. Plan No. 11837, attached.

In this regard, the East Kildonan – Transcona Community Committee referred the matter to the Standing Policy Committee on Property and Development for consideration.

On January 9, 2003, the Standing Policy Committee on Property and Development referred the request from the Donwood Manor Personal Care Home Inc. to the Administration.

DISCUSSION:

Representatives of Donwood Manor 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. Upon consideration of the comments received, the Designated Officer - Encroachments recommends that the application be approved subject to the following conditions:

That the approval of this application by the Designated Officer - Encroachments is only valid for a period of 6 (six) 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 obtains an extension of time from the Designated Officer - Encroachments.
That the subject portion of the right-of-way be leased for a 5 (five) year term only, with a cancellation clause of six months based on the recently completed North Kildonan Traffic Study which has recommended that the Chief Peguis Trail be added to the 5 - Year Capital Forecasts. The subject right-of-way will be required for the sound attenuation barrier and for the construction of the Trans - Canada Trail multi - use pathway when the Chief Peguis Trail is constructed.

That if any removal or relocation of existing MTS facilities is required as a result of the proposed work, it will be at the expense of the applicant and/or customer.

That if there are any existing Centra gas facilities which require removal and relocation as a result of the proposed work, the costs will be at the expense of the applicant and/or customer.

That the limits of the encroachment area are consistent with what has been identified on the attached drawings.

That all applicable permits be applied for and approved prior to the development of the proposed work.
In March 2003, the Planning, Property and Development Department, Real Estate Division, commenced its negotiations of a proposed Encroachment Agreement with the representatives of the Donwood Manor Personal Care Home Inc. Briefly, the terms and conditions of Agreement proposed by the Department which include the above mentioned provisions, are as follows:
Term: Five (5) year term, commencing on a mutually acceptable date together with a further five (5) year renewal option, subject to the City's Public Works Department reviewing and advising that the subject property would be available for lease.

Purpose: Development and maintenance of a vehicle parking area.
Rental: $1,814.00 per annum, plus an amount equivalent to realty taxes (±$535.00).
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: 180 days notice by either party.

The initial terms and conditions, more specifically the rental rate, proposed by the Department was based upon a 10% return to the market value of the land. Although the Donwood Manor is a non-profit organization, the proposed use of the encroachment area was intended to be used for the "exclusive use" of the Donwood Manor, and not available for use by the community. As such, the proposal does not meet all of the criteria under the City's Non-Profit Policy and the Department did not propose a less than market value rent to the Donwood Manor.

Donwood Manor Personal Care Home Inc. has advised that it agrees with all the proposed terms and conditions with the exception of the rental rate. The Donwood Manor has indicated that its proposed development of the additional parking area would help alleviate complaints received from area residents regarding the lack of on street parking available during times when the Donwood Manor was hosting special functions or events at its facility. Furthermore, the proposed additional parking area would allow the Donwood Manor to reserve more parking spaces for visitors or volunteers in the front of its building, while moving the staff parking to the proposed additional parking area.

The Ward Councillor has indicated his support towards the position taken by the Donwood Manor and provided the Department with the following commentary:

'The additional parking behind Donwood Manor will free up much needed parking on the streets in the area. More on street parking created by the proposed parking area, will create a significant 'publicly accessible benefit' for the surrounding community which has complained, historically, about the lack of available on street parking on Donwood due to the multi-family nature of the development is this area.

Donwood Manor is committed to providing a pathway entrance, across their proposed parking area, to the publicly accessible lands north of Donwood Manor, and maintain additional exterior lighting on their building, for enhanced security. This is similar to the Millennium Gardens site located on the same subject City lands. This is a public benefit for all pedestrians who are using the pathway between Donwood Drive and Douglas Avenue. A new, better lit access through the proposed parking area will provide a safer access for pedestrians."

In light of the foregoing, the Department has indicated to the representatives of the Donwood Manor that it would put forward the request for a nominal rental rate of $1.00 per annum, plus an amount equivalent to realty taxes, for consideration by the Standing Policy Committee on Property and Development, subject to the agreement of the following additional terms: Payment of an initial administrative fee of $250.00.

The proposed Agreement to provide for a review of the rent before the commencement of any renewal period.

By way of letter dated April 7, 2004, the Donwood Manor Personal Care Home Inc. advised of its agreement to the foregoing.

Although the Donwood Manor would have "exclusive use" of the encroachment area for parking purposes, the project appears to have merits, which would be a benefit to the community. Council's approval of an Encroachment Agreement is required.

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
Prepared by: Maxine Clayton
PPD File #: 8370

Document name: o:\reports directive\real estate\leasing\(mpc)donwood manor.doc

Financial Impact Statement

Date: May 28, 2004

Project Name:

First Year of Program 2004

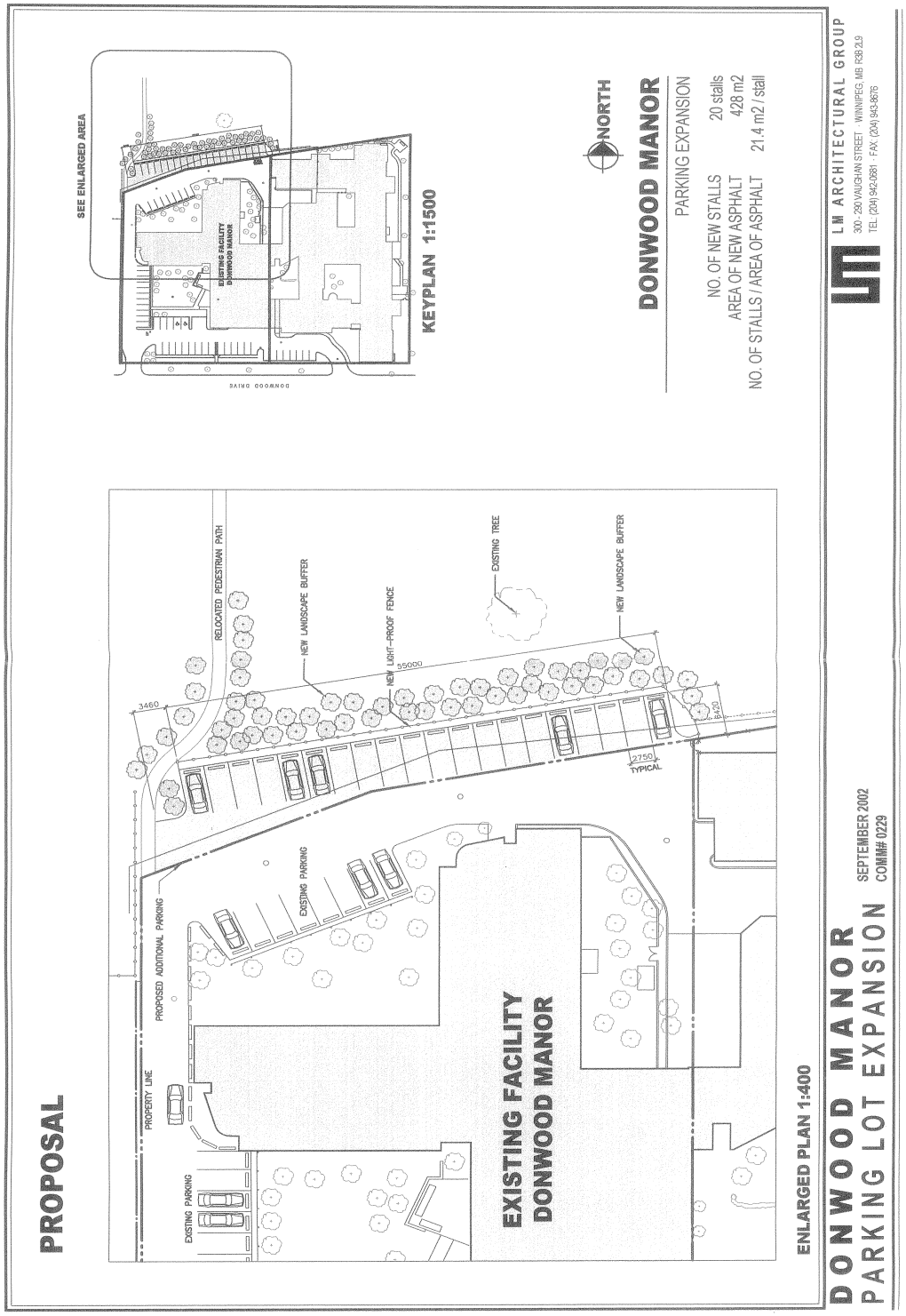
Proposed Encroachment Agreement for Parking Purposes within a portion of the Chief Peguis Trail Right-of-Way - Donwood Manor Personal Care Home Inc.

	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	523	535	535	535	535
Net Cost/(Benefit)	$ (523)	$ (535)	$ (535)	$ (535)	$ (535)
Less: Existing Budget Amounts	(523)	(535)	(535)	(535)	$ (535)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments:

The collection of $523 in the 2004 program year is comprised of $5 rental for the entire term of lease, prorated municipal realty taxes of $268 (assumes that Council will approve this transaction at its meeting of June 23, 2004), and a one-time administration fee of $250. Recoveries of $535 in years 2005 through 2008 represents municipal realty taxes the City will receive and assumes no increase in the assessed value of the property nor any change to the Municipal Mill Rate.

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


PROPOSAL
SEE ENLARGED AREA
EXISTING FACILITY DONWOOD MANOR
DONWOOD DRIVE
KEYPLAN 1:1500
NORTH
DONWOOD MANOR
PARKING EXPANSION
NO. OF NEW STALLS 20 stalls
AREA OF NEW ASPHALT 428 m2
NO. OF STALLS / AREA OF ASPHALT 21.4 m2 / stall
PROPERTY LINE
PROPOSED ADDITIONAL PARKING
EXISTING PARKING
RELOCATED PEDESTRIAN PATH
NEW LANDSCAPE BUFFER
NEW LIGHT-PROOF FENCE
EXISTING TREE
NEW LANDSCAPE BUFFER
3460
55000
2750 TYPICAL
6400
EXISTING PARKING
EXISTING FACILITY
DONWOOD MANOR
ENLARGED PLAN 1:400
DONWOOD MANOR
PARKING LOT EXPANSION
SEPTEMBER 2002
COMM# 0229
LM ARCHITECTURAL GROUP
300 - 290 VAUGHAN STREET WINNIPEG, MB R3B 2L9
TEL: (204) 942-0881 FAX: (204) 943-8676