Minute No. 573
Report - Standing Policy Committee on Downtown Development - July 8, 2004

Item No. 1 **Restaurant Patio on Portage Avenue - Moxie's Classic Grill - MTS Centre**
File ED

COUNCIL DECISION:

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

1. That the permanent construction of the Moxie's Classic Grill (Moxie's) Restaurant Patio on Portagescape fronting onto the MTS Centre be approved in principle subject to the proponents acceptance of development parameters including design and functional requirements.

2. That the patio be granted a Leave and Licence for a twenty (20) year term.

3. That the annual patio rental fee be waived for a period of seven (7) years, that the rental fee be 50% of the usual annual rental fee in year eight, 75% of the usual annual rental fee in year nine, and the full usual annual rental fee in years ten and beyond.

4. That the Chief Administrative Officer be authorized to finalize and approve the terms and conditions of all agreements required to implement matters as directed by the Standing Policy Committee on Downtown Development.

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

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DECISION MAKING HISTORY:

Moved by His Worship Mayor Katz,
That the recommendation of the Standing Policy Committee on Downtown Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 14, 2004, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Downtown Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On July 8, 2004, the Standing Policy Committee on Downtown Development concurred in the administrative recommendation and submitted the matter to the Executive Policy Committee and Council.

Re: PROPOSED PORTAGE AVENUE PATIO ASSOCIATED WITH MTS CENTRE

For submission to: Standing Policy Committee on Downtown Development

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

Report date: July 7, 2004

Recommendation(s):

1. That the proposed permanent construction of the Moxie's Classic Grill (Moxie's) Restaurant Patio on Portagescape fronting onto the MTS Centre be approved in principle subject to the proponents acceptance of development parameters including design and functional requirements, and;
2. That the proposed patio be granted a Leave and Licence for a 20 year term, and;
3. That the annual patio rental fee be waived for a period of seven years, that the rental fee be 50% of the usual annual rental fee in year eight, 75% of the usual annual rental fee in year nine, and the full usual annual rental fee in years ten and beyond, and;
4. That the Chief Administrative Officer be authorized to finalize and approve the terms and conditions of all agreements required to implement matters as directed by the Standing Policy Committee, and;
5. That the Proper Officers of the City do all things possible to effect the intent of the foregoing.

REPORT SUMMARY

Key Issues:

- True North is finalizing it's lease arrangements for the development of a Moxie's Classic Grill (Moxie's) within the north west corner of the new MTS Centre fronting onto Portage Avenue.
- As a key component of their restaurant, Moxie's is proposing a permanent outdoor patio to be developed along the Portagescape sidewalk within the public right-of-way.
- In return for their substantial investment in the outdoor patio estimated at between $90,000 to $120,000, Moxie's has requested concessions from the City including the ability to construct the patio as a permanent feature within the Portagescape sidewalk, as well as a waiver of patio rental fees estimated at a net present value of $23,500.
- The proposed patio supports the City's vision of active vibrant downtown streetscapes and the creation of destination venues.
- Based upon the favourable policy implications associated with the proposed development, the Administration recommends the approval of the patio subject to the finalization of the patio design details and the execution of a Leave and Licence Agreement.

- In that Moxie's wish to have the necessary approvals for the development of their proposed patio in place as soon as possible to allow the completion of the patio coincident with the opening of the MTS Centre in November 2004, it is recommended that the Chief Administrative Officer (CAO) be authorized to finalize and approve the terms and conditions of all agreements.
- The Administration has considered the potential precedent created by these recommendations and will continue to deal with future patio applications on a case-by-case basis.

Implications of the Recommendation(s):

General implications:

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

Comment(s):

- This Report has two primary recommendations that impact the organization including the permanent construction of a private patio on a public right-of-way and the waiving of annual patio rental fees.
- Moxie's Classic Grill has requested consideration of a 20 year Leave and Licence Agreement for their patio with rental fee concessions as defined herein.

Policy implications:

X	**No**
	Yes

Comment(s):

-

Environmental implications:

X	**No**
	Yes

Comment(s):

-

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:

This Report requires the direction of the Standing Policy Committee on Downtown Development for the approval to construct a permanent outdoor patio within a public right-of-way as well as the authority to waive the usual annual rental payments.

HISTORY:

The Administration first learned of the proposed permanent patio on Monday June 28, 2004 and have subsequently been working with representatives from True North, Moxie's Classic Grill, as well as Scatliff + Miller + Murray Landscape Architects in order to present sufficient information to the Standing Policy Committee to enable an informed decision.

DISCUSSION:

True North is in the final stages of negotiation with regard to the prime restaurant tenant on the main floor of the new MTS Centre. The restaurateur is a national chain called Moxie's Classic Grill (Moxie's) with their head office located in Calgary Alberta.

Moxie's proposal to True North and to the City includes a large, approximately 100 seat permanent patio located on the Portagescape right-of-way. Their conceptual design proposes to integrate decorative wrought iron fencing, permanent fireplace heaters, zinc-clad planters, and projecting canopy arms integrated with the design of the building. The eight decorative canopy arms would be used to support a series of canvas canopies, signage, hanging heaters, and night illumination fixtures. Moxie's and their consultants have estimated their investment in the patio at between $90,000 and $120,000.

Moxie's Request

In return for their significant investment in the patio Moxie's has requested that the City:

- allow the construction of the patio on the Portagescape right-of-way to be permanent rather than the typical seasonal patio arrangement which provides for patio operations between April 1 and October 31 each year, and;
- agree to a 20 year encroachment that matches the term of their indoor lease, and;
- agree to a waiver period and a phase-in for the annual rental costs for the patio, and;
- assist in expediting this project through the various approval and design committees.

The proposed permanent patio construction along Portagescape adjacent to the new MTS Centre is a positive statement from a number of aspects:

- Brings significant new private investment within our downtown on the city's most prominent street.
- Reinforces the concept of an Entertainment Zone associated with the new MTS Centre as envisioned by downtown stakeholders as well as private and government partners in the funding of the MTS Centre.
- Capitalizes on the City's vision and investment for Portagescape as a vibrant animated streetscape.
- Provides an exciting destination restaurant concept that will serve as a draw to the downtown as well as the MTS Centre on both event and non-event nights.
- New business and property taxes for the City will be created, as the patio investment will be reflected in the assessment of the new restaurant.

Administrative Response to Moxie's Requests

a) Permanent Construction-

Although the conceptual design, the destination restaurant aspects, and the proposed private investment at this location is exciting, the patio design has to accommodate the functional and servicing requirements associated with construction within the public right-of-way, and especially so within the heart of Winnipeg's downtown. Firstly, the design needs to consider and address such requirements as snow clearing, sidewalk cleaning, transit loading, crowd management following MTS Centre events, access to public utilities, accessibility, damage caused by City, Utility, or BIZ maintenance operations, as well as building code and Liquor Licence requirements. Secondly, the patio must be sympathetic to the design of the MTS Centre as well as consider other urban design principles such as pedestrian comfort, wind, and shade. Not unlike Moxie's and True North, the City will have a vested interest in the ongoing success of this restaurant and patio and we wish to ensure that these matters have been addressed through the assistance of the City's Downtown Design Advisory Committee.

In addition, there is an existing water main and a land drainage sewer within the vicinity of the proposed patio. At this time we have not been yet able to determine if there are any other non-City utilities that are located within the proposed patio site. Any such facilities would have to be protected by an encroachment agreement which would outline the City's (or any other utilities) right to enter upon and maintain the facilities 24 hours per day, seven days a week. In a worst case scenario, this could mean having to dismantle / demolish a portion of the patio. Although crews would attempt to minimize any damage, the City and any other utility should not be held liable for any damages or loss of revenue by the restaurant as a result of the repairs.
It is the Administrations perspective, which is shared by representatives of Moxie's, True North, as well as our streetscape consultants, Scatliff + Miller + Murray, that all of these functional and aesthetic considerations can be addressed during the detailed design stage of the patio, as well as through the contractual aspects of the Leave and Licence Agreement.

b) Twenty Year Encroachment Term-

The request for a certain term of the encroachment is not a unique situation and the Administration support in this instance, that Moxie's and / or their lender will require assurance that their investment in the development of this patio can be utilized and amortized over an appropriate term. It is logical that the Encroachment term match the term of the lease for the interior portion of the restaurant.

c) Reprieve from the Annual Rental Costs for the Patio

Based upon the conceptual design, the Administration has estimated that the annual lease payment for the patio in 2004 would be $3,014. Based upon Moxie's significant private investment on the public right-of-way, the Administration recommends support in this instance, for their request for a waiver period and a phase-in period for the annual Encroachment fees and has discussed the following:

- A seven (7) year waiver for the encroachment fees,
- A 50% reduction of the usual annual encroachment fee in year eight (8),
- A 25% reduction of the usual encroachment fee in year nine (9),
- 100% of the usual encroachment fee in years ten through twenty (10 to 20).

The total cost of the annual encroachment rental fee concession has been estimated at $23,500 (based upon 2004 rates).

d) Assistance with expediting the project through approval / design committees

In that time is of the essence with regard to the design and construction of the patio concurrent with the streetscape works, the Administration recommends that the Chief Administrative Officer be authorized to finalize and approve the terms and conditions of all agreements required to implement matters as directed by the Standing Policy Committee. It is likely that the City's interests as identified herein may be addressed through a single Leave and Licence Agreement. The Leave and Licence Agreement will include cancellation clauses in the event of non-performance by Moxie's. The landscape architectural firm of Scatliff + Miller + Murray has been retained to address and finalize the patio and the streetscape design.

Financial Impact Statement

Date: July 7, 2004

Project Name:

PROPOSED PORTAGE AVENUE PATIO ASSOCIATED WITH MTS CENTRE

First Year of Program 2004

	2004	2005	2006	2007	2008 (& Beyond)
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	$ 3,014	$ 3,014	$ 3,014	$ 3,014	$ 11,444
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ 3,014	$ 3,014	$ 3,014	$ 3,014	$ 11,444
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ 3,014	$ 3,014	$ 3,014	$ 3,014	$ 11,444

Additional Comments:

The direct costs noted above represent foregone encroachment fees revenue associated with the use of space in the public right-of-way. This "opportunity cost" has not been budgeted. However, no net budget adjustment is required as there is no out-of-pocket expense involved.

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

IN PREPARING THIS REPORT, THERE WAS CONSULTATION WITH AND CONCURRENCE BY: PUBLIC WORKS STREETS MAINTENANCE DIVISION, LEGAL SERVICES DIVISION, WATER AND WASTE DEPARTMENT, PROPERTY ASSESSMENT DEPARTMENT, AND THE REAL ESTATE DIVISION

THIS REPORT SUBMITTED BY:

Planning, Property and Development Department
Division: Office of the Director
Prepared by: Jim Paterson

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