Minute No.25
Report - Standing Policy Committee on Downtown Development - November 4, 2004

Item No. 1 **Encroachment Agreement for a Portion of the McDermot Avenue Right-of-Way in Favour of Mayberry Fine Art**
File ED(32)

COUNCIL DECISION:

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

1. That an Encroachment Agreement in favour of Mayberry Fine Art to display an original bronze sculpture of a life-size colt onto a portion of the McDermot Avenue right-of-way shown shaded and identified as 'Leased Area' on Misc. Plan No. 12377, be approved, in accordance with the terms and conditions as outlined in the administrative report dated October 29, 2004.

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 Downtown Development - November 4, 2004

DECISION MAKING HISTORY:

Moved by Councillor De Smedt,

That the recommendation of the Standing Policy Committee on Downtown Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On November 17, 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 November 4, 2004, the Standing Policy Committee on Downtown Development concurred in the administrative recommendations as amended and submitted the matter to the Executive Policy Committee and Council.

Re: **Proposed Encroachment Agreement for a Portion of the McDermot Avenue Right-of-Way in Favour of Mayberry Fine Art**
Lord Selkirk-West Kildonan Community
Point Douglas Ward

For submission to: **Standing Policy Committee on Downtown Development**

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

Report date: October 29, 2004

Recommendation(s):

1 That Council approve an Encroachment Agreement in favour of Mayberry Fine Art to display an original bronze sculpture of a life-size colt onto a portion of the McDermot Avenue right-of-way shown shaded and identified as 'Leased Area' on Misc. Plan No. 12377, attached, in accordance with the terms and conditions as outlined herein.

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 Mayberry Fine Art to display a bronze sculpture (life size colt) within the McDermot Avenue right-of-way.
- This report seeks approval of the Encroachment Agreement as negotiated.

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):

- There are no environmental implications associated with the recommendations of this report.

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:

Council has the authority to permit or license the use of public right-of-way.

The Department has negotiated the terms and conditions of an Encroachment Agreement in favour of Mayberry Fine Art to display a bronze sculpture (life size colt) within a portion of the McDermot Avenue right-of-way shown shaded and identified as 'Leased Area' on Misc. Plan No. 12377, attached. This report seeks Council's approval to the proposed Encroachment Agreement.

HISTORY:

Bill Mayberry, of Mayberry Fine Art, submitted an encroachment application to the City's Zoning and Permits Branch to display a bronze sculpture (life size colt) within the McDermot Avenue right-of-way, outside their gallery at 212 McDermot Avenue.
The application was circulated to various City Departments and public utilities for consideration and comments. No objections were received for the proposed display and use of the subject right-of-way.

DISCUSSION:

The Department has concluded its negotiations with Mr. Mayberry and both parties concur that the proposed terms and conditions are fair and reasonable. As well, the proposed terms and conditions are consistent with other Encroachment Agreements.
Briefly, the terms and conditions of the Encroachment Agreement, which have been agreed to by Mr. Mayberry, are as follows:

Term: Annual continuing, commencing on a mutually acceptable date.

Purpose: Placement and maintenance of a bronze sculpture (life size colt).

Rental: $40.68 per annum plus applicable GST, computed on the basis of the fees outlined in the City of Winnipeg's Encroachment By-law No. 692/74, Sec. 4(1)(d) and amendments thereto. In the event that the said By-law is amended, changing the fees charged for encroachments, the rental paid under this agreement shall be adjusted accordingly.

Taxes: The Lessee will be responsible for all municipal taxes, school taxes, local improvements, license fees, business tax, GST, etc. which may be charged in respect of the use and occupation of the subject property.

Insurance: The Lessee shall take full responsibility for insurance and liability; and shall purchase a General liability insurance of at least $2,000,000.00 naming The City of Winnipeg as additional insured and containing a cross-liability clause, and provide a copy to the City of Winnipeg.

Cancellation: 30 days written notice by either party.

Other: That the sculpture be located within the right-of-way to provide a minimum of 5 feet unobstructed pedestrian access between the sculpture base and the tree grate.

The Lessee will be responsible for maintenance, including snow clearing, in the general area of the sculpture.

Upon termination of the proposed Encroachment Agreement the Lessee shall be solely responsible for the removal of the sculpture and returning all affected portions of the right-of-way to a state at least equal to the condition prior to the installation of the said sculpture.

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

Financial Impact Statement

Date: October 19, 2004

Project Name:

Proposed Encroachment Agreement For A Portion of the McDermot Avenue Right-of-Way In Favour of Mayberry Fine Art

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	41	41	41	41	41
Net Cost/(Benefit)	$ (41)	$ (41)	$ (41)	$ (41)	$ (41)
Less: Existing Budget Amounts	41	41	41	41	41
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments:

The Incremental Revenue is calculated based on the City of Winnipeg's Encroachment Fee By-law No. 692/74.

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

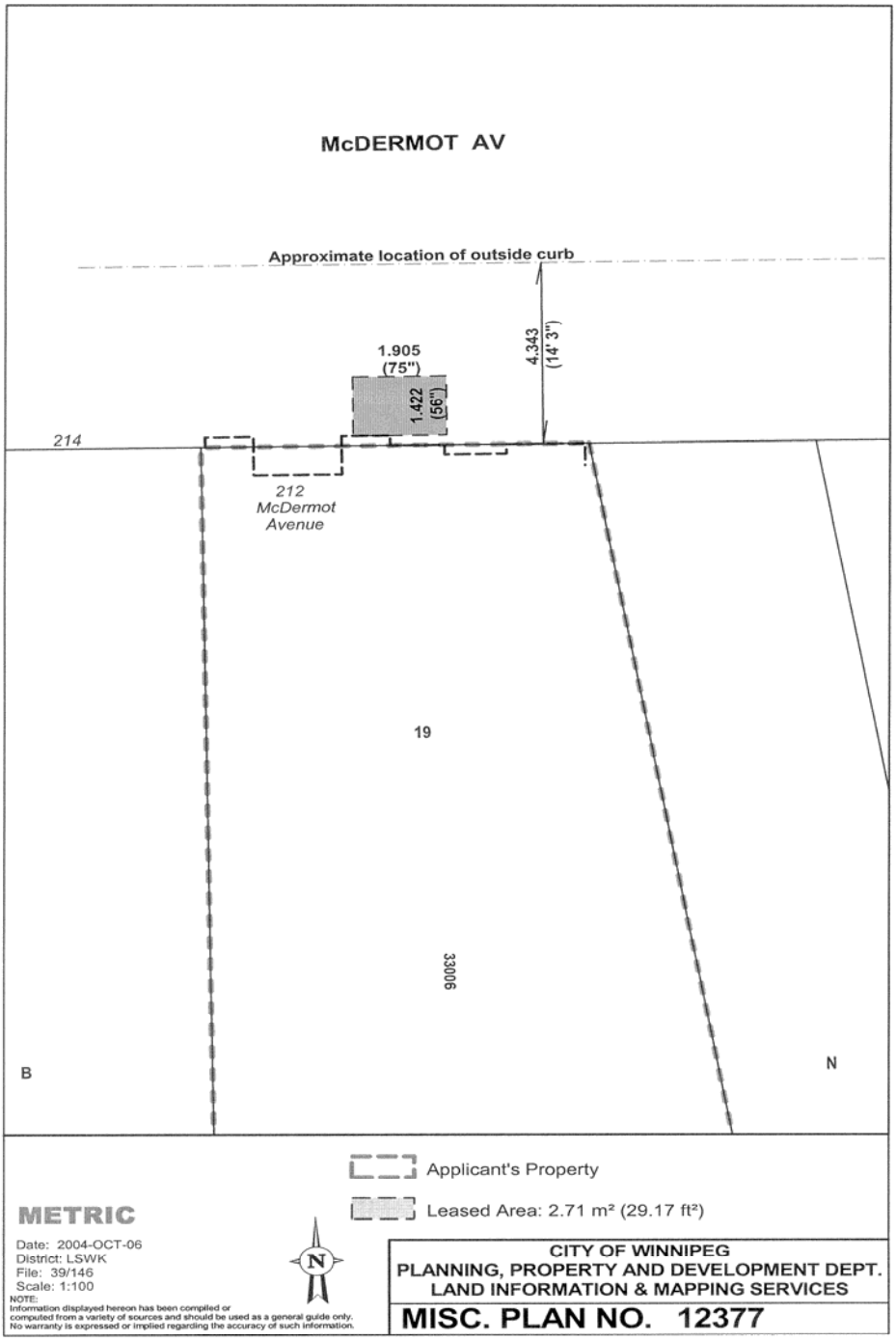
IN PREPARING THIS REPORT, THERE WAS CONSULTATION WITH AND CONCURRENCE BY:

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: Maxine Clayton
PPD File #: 5228

Document name: o:\reports directive\real estate\leasing\mayberry fine art.doc


McDERMOT AV
Approximate location of outside curb
1.905
(75")
1.422
(56")
4.343
(14' 3")
214
212
McDermot
Avenue
19
33006
B
N
Applicant's Property
Leased Area: 2.71 m² (29.17 ft²)
METRIC
Date: 2004-OCT-06
District: LSWK
File: 39/146
Scale: 1:100
NOTE:
Information displayed hereon has been compiled or computed from a variety of sources and should be used as a general guide only. No warranty is expressed or implied regarding the accuracy of such information.
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 12377