

Memo



Date: October 18, 2010
File: 2370-20-425
To: City Manager
From: Manager, Property Management
Subject: Encroachment Agreement - Vibona Enterprises Ltd. - 1302 St. Paul Street
Report Prepared by: T. Abrahamson, Property Officer

Recommendation:

THAT Council approve the City entering into an Encroachment Agreement with Vibona Enterprises Ltd., in the form attached to the Report of the Manager, Property Management dated October 18, 2010, regarding a façade improvement which is encroaching on City-owned property;

AND THAT the Mayor and City Clerk be authorized to execute the said Encroachment Agreement.

Purpose:

Pursuant to Council Policy 329, to enter into an Encroachment Agreement for the purpose of a building façade improvement at a nominal rate of \$1.00.

Background:

The City of Kelowna entered into an Encroachment Agreement at 1302 St. Paul Street in February 1997 for the purpose of documenting an existing encroachment of this building on City sidewalk. The agreement was for an indefinite term at a nominal rate of \$1.00, and would expire if the building was demolished and the property redeveloped.

The building has remained on the property and changed ownership since the 1997 Encroachment Agreement was executed. The new owner wishes to update the building façade to accommodate a new custom home design business. Staff have been informed that the existing façade cannot be removed as it would require that the wooden members attached to the façade be removed as well, thus destabilizing the building. Therefore an additional façade must be added to the building creating a greater encroachment than contemplated under Council Policy 329.

Council Policy 329 permits encroachment of buildings in the downtown commercial area up to 0.20 m. The existing building currently encroaches 0.35 m on the east face and 0.07 m on the north face. The applicant requires an additional 0.04m on the east face (total 0.39 m) and 0.06 m on the north face (total 0.13 m). All other conditions in the policy will be met to allow the applicant to apply for a development permit and building permit in order to proceed with the façade improvement. The applicant will be required to submit an as-built survey after the façade improvement is completed as a condition of the Encroachment Agreement.

A handwritten signature in black ink, appearing to be the initials "N".

Internal Circulation:
Land Use Management

Existing Policy:
Council Policy 239

Considerations not applicable to this report:

Legal/Statutory Authority:
Legal/Statutory Procedural Requirements:
Financial/Budgetary Considerations:
Personnel Implications:
External Agency/Public Comments:
Community & Media Relations Considerations:
Alternate Recommendation:

In light of the above, the Real Estate & Building Services department request Council's support of this Encroachment Agreement.



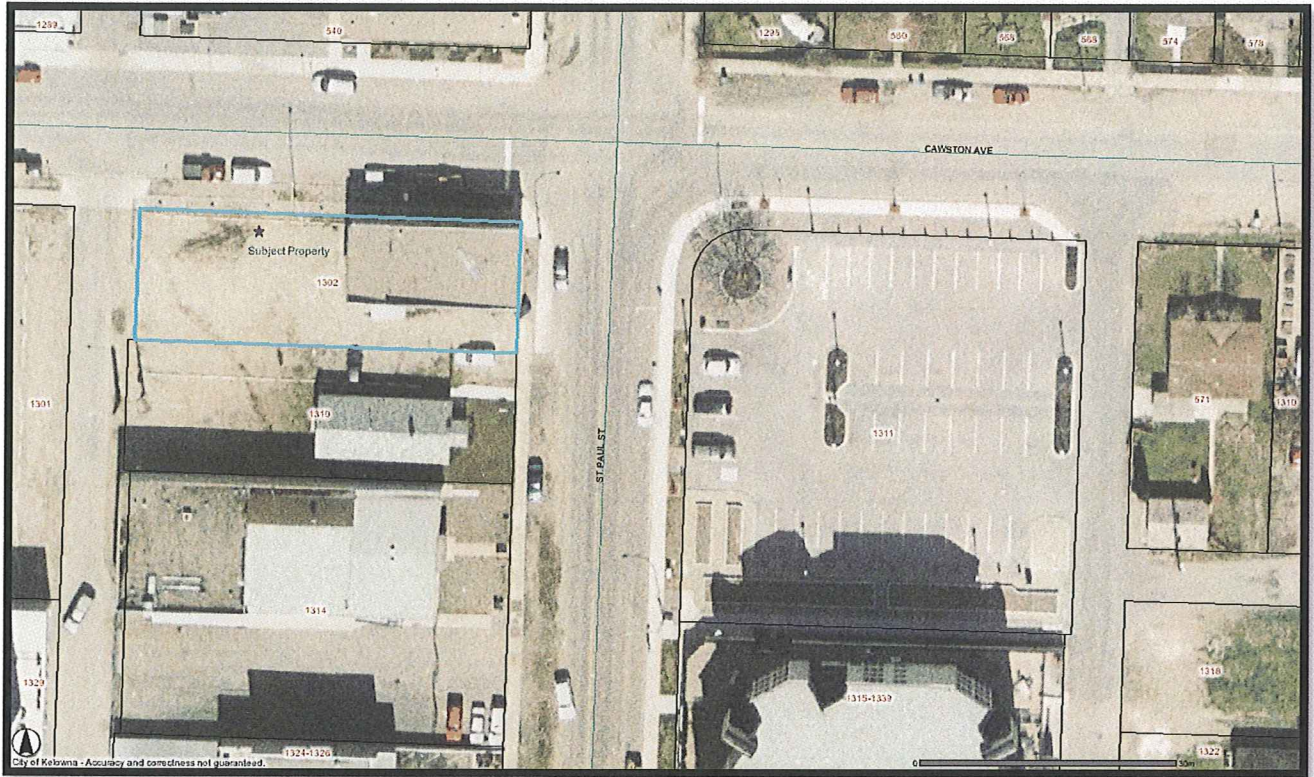
Ron Forbes, Manager
Property Management, Real Estate & Building Services

Approved for inclusion:



Doug Gilchrist, Director, Real Estate & Building Services

cc: S. Gambacort, Land Use Management



DOCUMENT APPROVAL			
Cir.	Department	Date	Init.
	Plan. Dept.	Oct. 18/10	DJ
	RE&BS	oct-19/10	RJ

THIS AGREEMENT made in triplicate the 1st day of October 2010.

BETWEEN:

VIBONA ENTERPRISES LTD.
1302 St. Paul Street, Kelowna, BC, V1Y 2E1

(hereinafter called the "Owner")

OF THE FIRST PART

AND:

CITY OF KELOWNA, a municipal corporation under the laws of the Province of British Columbia with an office situate at 1435 Water Street, in the City of Kelowna, in the Province of British Columbia

(hereinafter called the "City")

OF THE SECOND PART

WHEREAS the Owner is the registered owner of all and singular that certain parcel or tract of land situate, lying and being in the City of Kelowna, in the Province of British Columbia, and more particularly known and described as:

Parcel Identifier 011-967-404
Lot 11, D.L. 139, O.D.Y.D., Plan 645

(hereinafter called the "Lands")

AND WHEREAS the City is the possessor of the adjacent land as shown on the attached plan of survey dated the 10th day of September, 2010, and prepared by Runnalls Denby, British Columbia Land Surveyors;

AND WHEREAS a building has been erected on the Lands which encroaches on the adjacent land and is intended to undergo façade improvements (the "Works");

AND WHEREAS the Owner has requested that the City grant to it the right to continue the encroachment on the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the sum of One Dollar (\$1.00) now paid by the Owner to the City (the receipt of which is acknowledged by the City) and other good and valuable consideration, the parties covenant and agree as follows:

1. The City does, so far as it legally can but not otherwise, and subject to the Local Government Act, the Community Charter and the bylaws, grant to the Owner the right to encroach upon and use that portion of the adjacent land (the encroachment area) outlined on the Surveyor's Certificate attached hereto and marked as Schedule "A" for the purpose of maintaining that portion of the improvement presently existing and encroaching on the encroachment area.
2. If there are any major exterior renovations, structural changes or other alterations to the existing building which would conveniently permit the elimination of all or a portion of the encroachment, then, to that extent, the encroachment shall be removed and this Agreement shall cover only the remaining encroachment.
3. If the improvement which presently encroaches upon the adjacent land is demolished or more than 75% destroyed in any manner whatsoever, or is voluntarily torn down or redeveloped with a new structure, this Agreement shall become void and be of no effect.
4. In the event that the City requires the use, for whatever purpose, of the said lands, the City shall have the right to terminate this agreement by giving the owner ninety (90) days written notice of the termination. Upon termination of this agreement, the Owner shall leave the lands tidy and free of all encroachments and shall peaceably surrender the said lands to the City.
5. The Owner will be required to submit an as-built survey of the Works after the façade improvement has been installed as a condition of this Encroachment Agreement.

6. Construction of retaining walls within the encroachment area must be designed to withstand highway loading parameters where the walls may support adjacent road structures.
7. The Owner shall indemnify and hold the City of Kelowna harmless from any and all liabilities, actions, claims, damages, costs, losses, and expenses (including reasonable legal costs on a solicitor-client basis) suffered or incurred by the City of Kelowna as a result of the use of City Property under the Encroachment Agreement by the subject property Owner, its contractors, agents, employees, licensees and invitees or arising out of or connected with or that would not have occurred but for the works encroaching upon City of Kelowna property.
8. So long as the encroachment exists, the Owner shall provide evidence that at all times during the installation of the Works and until the date at which the Owner of the subject property provides written confirmation that it is no longer exercising any rights granted to it under the Encroachment Agreement, the property Owner, at its expense, shall maintain with one or more companies duly authorized to carry on business in the Province of British Columbia, comprehensive general liability insurance in a form acceptable to the City Property Owner, and naming the City of Kelowna as an additional named insured with cross liability and severability of interest clauses, covering personal injury and death, property damage and damage to the City Property and the City Property improvements. The property Owner must also provide the City of Kelowna with 30 days notice of any proposed cancellation of the insurance policy. In the event that the policy is cancelled or not renewed during the period of the Encroachment Agreement, the City of Kelowna shall have the right to effect its own comprehensive general liability insurance coverage and the subject property Owner shall bear the cost of effecting such insurance and pay the cost to the City of Kelowna upon demand.
9. The Execution of this Agreement does not imply or construe City approval or endorsement of any retaining wall construction on the adjoining private property.
10. Provided further that the benefit of the rights herein granted shall be a covenant running with the Lands and shall be binding upon the registered Owners of the Lands for the time being only so long as they or he is seized of an interest in the Lands and only in respect to that interest.
11. This Agreement shall enure to the benefit of and be binding upon the parties and their heirs, executors, successors and assigns.

12. Wherever the singular or masculine are used in this Agreement they shall be construed as importing the plural or the feminine or the body corporate or politic where the context or the parties so require.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first above written.

VIBONA ENTERPRISES LTD.)
by its authorized signatory(ies):)

_____)
Authorized Signatory)
Print Name: BOGDAN SWARSKI)

_____)
Authorized Signatory)
Print Name: _____)

CITY OF KELOWNA)
by its authorized signatory(ies):)

_____)
Mayor)

_____)
Clerk)

B.C. LAND SURVEYOR'S CERTIFICATE

ON LOT 11, D.L. 139, O.D.Y.D.,
PLAN 645 EXCEPT PLAN KAP63319

SCALE 1:200 All distances are in metres.

CIVIC ADDRESS: 1302 St. Paul Street

CLIENT : SNARSKI

FILE No: 13253

FB/Pg : 397/15

THIS DOCUMENT IS NOT VALID UNLESS ORIGINALLY SIGNED AND SEALED.

© THIS PLAN IS PROTECTED BY COPYRIGHT.

NO PERSON MAY COPY OR ALTER THIS CERTIFICATE WITHOUT PRIOR CONSENT OF RUNNALLS DENBY.

THE DIMENSIONS SHOWN ON THIS CERTIFICATE ARE NOT TO BE USED TO DEFINE PROPERTY BOUNDARIES.

Certified correct this 10th day of September, 2010

NEIL R. DENBY

B.C.L.S.

RUNNALLS DENBY

British Columbia land surveyors

259A Lawrence Avenue Phone: (250)763-7322

Kelowna, B.C. Fax: (250)763-4413

V1Y 6L2

Email: neil@runnallsdenby.com



CAWSTON AVENUE

LANE

SCHEDULE "A"

