

**Deputy City Manager's Office Report to
SPC on Utilities and Corporate Services
2019 July 17****ISC: UNRESTRICTED
UCS2019-0915
Page 1 of 6****Proposed Disposition of an Easement – (Rocky Ridge) – Ward 01 (10211 Eamon
RD NW**

EXECUTIVE SUMMARY

The purpose of this report is to request authorization for the granting of two (2) easements and for The City to enter into a Master Agreement related to a 2001 May 14 acquisition of 3.02 acres of land by The City from the Pentecostal Assemblies of Canada (the "Church"). The acquisition of the land was for the widening of Crowchild Trail NW and the future Rocky Ridge park and ride. As part of the 2001 May 14 acquisition, The City disposed of an access easement and parking agreement (the "Interim Easement Agreement") to the Church that permitted the employees, parishioners and the invitees of the Church to use surrounding City-owned lands for parking before the completion of the Rocky Ridge park and ride site.

Upon the completion of the Rocky Ridge park and ride site, the interim easement agreement required the parties to negotiate an agreement for the use of City lands for parking and failing agreement, that the matter be referred to arbitration. In addition, a dispute with the Church arose over the future parking arrangements. To avoid arbitration and to resolve the dispute, Administration recommends entering into the Master Agreement and the granting of two (2) easements to the Church. The Master Agreement will include both financial and development obligations from The City and governs the terms of the two easement agreements.

One of the easements will require the closure of a portion of 104 Street NW to construct an at grade gravel parking lot for 24 parking stalls and a 1.2 meter sidewalk to connect the parking to the church. The easement would permit the Church and its employees, parishioners and the invitees of the Church the exclusive use of twenty four (24) parking stalls on the 104 Street NW lands. The second easement will be on the Rocky Ridge park and ride site which will provide the Church with the right to use 175 exclusive stalls on Sunday and the non-exclusive use of the 175 parking stalls on all other days.

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ADMINISTRATION RECOMMENDATION:

Review Date: 2020 December 31

The SPC on Utilities and Corporate Services recommends that Council:

1. Authorize the Recommendations as outlined in Attachment 2; and
2. Request the Recommendations, Report and Attachments remain confidential under Sections 23, 24 and 25 of the *Freedom of Information and Protection of Privacy Act* until the agreements have been executed.

RECOMMENDATION OF THE STANDING POLICY COMMITTEE ON UTILITIES AND CORPORATE SERVICES, 2019 JULY 17:

That Council:

1. Adopt the Administration Recommendations contained in Report UCS2019-0915; and
2. Direct that the Recommendations, Report and Attachments remain confidential under Sections 23 (Local public body confidences), 24 (Advice from officials) and 25 (Disclosure harmful to economic and other interests of a public body) of the *Freedom of Information and Protection of Privacy Act* until the agreements have been executed; to be reviewed by 2020 December 31.

PREVIOUS COUNCIL DIRECTION / POLICY

On 1992 May 04, Council adopted LAND92-46, Acquisition of a portion of 10210 Crowchild Trail NW.

On 2001 May 08, Council adopted LAS2001-107, Proposed Acquisition - Rocky Ridge.

On 2011 November 08, Council adopted LAS2011-69 Proposed land exchange - Rocky Ridge.

BACKGROUND

The Church and The City have an extensive history of land dealings dating back to August 1991. At the time, The City identified that portions of lands owned by the Church, addressed as 10307 Crowchild Trail NW and 10210 Crowchild Trail NW (the "Church-Owned Lands"), as being required for the widening of both Crowchild Trail NW and Rocky Ridge Road NW and the future Rocky Ridge LRT park and ride facility.

By March 1992, the Church agreed to sell a portion of the Church-Owned Lands for the widening of Rocky Ridge Road NW but not the lands required for Crowchild Trail NW and the Rocky Ridge park and ride facility. Negotiations continued throughout the mid-1990s and due to the lack of progress on the negotiations, the Church began their development plans on the Church-Owned Lands.

By 1999, the Church submitted their plans for the development of the Church-Owned Lands which included a new church structure and parking lot. As part of this development process, the Church and The City re-engaged in negotiations with the Church to acquire the 3.02 acres from the Church-Owned Lands for the Crowchild Trail NW widening and future park and ride site.

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Negotiations for this acquisition continued into early 2001 with a land report being presented and adopted by Council on 2001 May 08.

From 2001 to 2005 the Church developed the Church-Owned Lands with the church structure and The City paid for the subdivision of 10210 Crowchild Trail NW which allowed for a portion of the property to remain with the Church. In total, 3.02 acres of the Church-Owned Lands was sold to The City. Upon conclusion of the development of 10307 Crowchild Trail NW and the subdivision of 10210 Crowchild Trail NW, the Church and The City executed the agreement of purchase and sale and the Interim Easement Agreement by November 2005.

The Interim Easement Agreement provided the Church and their parishioners the unrestricted use of the surrounding City-owned lands for parking to accommodate up to 175 parking stalls seven days a week and 24 hours a day. Six months prior to the development of the Rocky Ridge park and ride, The City was required to provide written notification to the Church of The City's intent to develop the Rocky Ridge park and ride and thereafter the parties were to enter into a new parking agreement, and failing agreement, the matter could be referred to arbitration ("Revised Parking Agreement"). The Revised Parking agreement was to be based on the following principles outlined in the Interim Easement Agreement:

- The Church needs 175 parking stalls for use on Sundays and non-exclusive use of 175 parking stalls on all days other than Sunday and;
- The City must provide adequate parking for its transit customers at all times, or adequate parking to service any other municipal purpose on the Rocky Ridge park and ride lands.

By mid 2011, The City acquired the remaining lands needed for the park and ride facilities including 10220 Eamon Road NW and 9136 Rocky Road NW. Following the assembly of these lands, and the lands acquired from the Church, The City began the process to construct the Rocky Ridge park and ride in 2013. In accordance with the Interim Easement Agreement, The City provided written notification to the Church of the planned construction and requested to enter into discussions for the Revised Parking Agreement.

During the negotiations of the Revised Parking Agreement, a dispute with the Church arose over the parking arrangement, specifically over the term "non-exclusive use of the 175 parking stalls". From the Church's perspective, the park and ride would be fully occupied by transit users on weekdays and this would not allow for the Church the use of any parking stalls. This was a concern for the Church as they perceived that the lack of available parking stalls to be contrary to the non-exclusive use believing that they have rights to use at least some of the non-exclusive 175 parking stalls during weekdays. The main concern for the Church was that they and their parishioners would have an insufficient amount of parking to allow them to host events during the week.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

Administration investigated several options to find alternative parking arrangements for the Church. These options included the widening of Eamon Road NW to accommodate angled parking, building of a parkade on Rocky Ridge park and ride lands, and The City acquiring surrounding lands to expand the park and ride facilities. Most of these options were expensive or from the Church's point of view, would not provide for a permanent solution as parking on the road would require a license subject to a 30-day termination requirement or a yearly permit

Approval(s): Stevens, Brad concurs with this report. Author: Gusa, Chris
City Clerk's: D. Williams

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application for on street parking. Administration and the Church agreed to investigate the parking and easement options on 104 Street NW.

In addition to the options that were investigated above, The City also has the option to do nothing and take the dispute to arbitration. Administration views this option as not being fair to the Church, as negotiations have been ongoing for several years to resolve the dispute. In addition, there is a concern with this option that The City would no longer be in control of the outcome and there is a chance that the decision rendered from an arbitrator could see a large amount of parking stalls to be reserved to the Church and no longer available for transit users. Administration came to the conclusion that doing nothing was not an option and in discussions with the Church, the easement options for the Rocky Ridge Ride park and ride and the parking lot on 104 Street NW became the preferred option for Church and The City.

The easements provide for a long term solution to the Church's parking constraints and for The City resolves the obligations in the Interim Easement Agreement. A lease agreement instead of an easement was also discussed however, a lease agreement is subject to renewals and a termination date. The Church was concerned that a lease was not a long term solution.

In order to implement the easement option on the 104 Street NW lands, The City will need approval for the road closure on the 104 Street NW lands to create a parcel and an associated land use. The parcel is required to allow for the registration of the easement agreement. The easement will provide for an at grade parking lot which will accommodate up to twenty four (24) parking stalls. At the same time, The City will work with the Church to obtain a land use amendment on the Church-Owned Lands which would allow them to rent out or license parking spaces. The costs associated with the Master Agreement, including the cost for construction of the parking lot is not to exceed \$367,500 (based on an estimate of \$350,000 for the construction and 5 per cent contingency), the construction of a 1.2-meter concrete sidewalk and the reimbursement of legal and consulting fees incurred by the Church in the amount of \$28,000 including GST.

In return, the Church is to agree with the terms of the Master Agreement and the easement agreements and will settle the dispute with The City and agree that this would satisfy the requirements of the Interim Easement Agreement on the allotment of parking stalls on the Rocky Ridge park and ride site.

The Church will be responsible for the maintenance of the parking stalls on the 104 Street NW lands as well as the seasonal maintenance of the 1.2 meter sidewalk. The City will be responsible for all maintenance on the Rocky Ridge park and ride site.

Valuation

The easements are being recommended for disposition at a nominal value. No valuation was undertaken. The Church is a non-profit organization. Advertisement of the below market easement is not required as per section 70(2)(c) of the *Municipal Government Act* (Alberta).

Stakeholder Engagement, Research and Communication

No engagement has occurred for the road closure or land use change with the community, the community association or the adjacent landowners. Administration will undertake any required community consultations or engagements as part of the planning process associated with the road closure and land use changes. The closure of the 104 Street NW by The City will have a

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direct impact on the adjacent landowner as this road is currently used by the owner to access their property. The City will need to register an easement once 104 Street NW is closed to ensure the adjacent landowner has access to their property.

Strategic Alignment

Not applicable.

Social, Environmental, Economic (External)

Social

Not applicable.

Environmental

No environmental review was conducted as per Section 4.2.3 of the S.A.L.E. Policy. *“Corporate Properties & Buildings will not conduct any Environmental Reviews on the following transactions: Statutory land dedication; Easements; and Right of ways”.*

Economic

Not applicable.

Financial Capacity

Current and Future Operating Budget:

Not applicable.

Current and Future Capital Budget:

Costs for the easements, construction, road closure and land use applications will be borne by The City. Interim funding for the Recommendations will come from Real Estate & Development Services Program Number 698.

Risk Assessment

There are several risks associated with proceeding with the proposed Recommendations. For the 104 Street NW easement, the rights being conveyed to the Church are more than what an easement normally grants to a grantee. The easement could be challenged in a court of law and ruled invalid or unenforceable. To mitigate this risk the agreement will include an indemnity from the Church to The City that if the validity of the easement is challenged at court The City will be indemnified by the Church from any losses arising from the easement being found to be invalid or unenforceable. The likelihood of the easement being challenged is medium as the agreement will be public however, the impact to The City is low by adding an indemnity agreement to the master agreement.

The adjacent landowner currently uses 104 Street NW for access to their property and will be impacted by the construction and the use of the parking lot. Administration will need to work with the owner on any planned interruptions during construction. The City also needs to register an easement that would protect the adjacent owner's access. The likelihood and impact are deemed high, however, this risk is mitigated by providing the adjacent owner with a public access easement through 104 Street NW. Administration can further mitigate this risk with effective communication and engagement with the adjacent owner.

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The Recommendations require a road closure and land use bylaw and the adjacent landowners or the public may object to these applications. Both the impact and the likelihood would be deemed high as the road closure and land use change is managed through the planning process at The City. There are no options to mitigate this risk as the Planning Authority has jurisdiction over the road closure and land use change process. This can be further mitigated by having an effective communication and engagement plan with the community.

If the proposed Recommendations are not approved The City would be at risk of the dispute being decided by an arbitrator through an arbitration process which is outlined in the Interim Easement Agreement. In arbitration, both The City and the Church are subject to the findings and decision that would be made by the arbitrator. The outcome may impact The City's allotment of parking stalls on the Rocky Ridge park and ride site. The likelihood of arbitration proceeding is high if an agreement is not reached however the risk is eliminated if the proposed Recommendations are approved.

REASON(S) FOR RECOMMENDATION(S):

To avoid arbitration, Administration recommends proceeding with the Recommendations. The Recommendations include the execution of a Master Agreement and the disposition of two easements to the Church. The Recommendations will require the closing of a portion of 104 Street NW and the construction of twenty four (24) at grade gravel parking stalls and a 1.2 meter sidewalk to connect the parking to the Church-Owned Lands. The City will grant an easement to the Church that would permit employees, parishioners and the invitees of the Church the exclusive use of the twenty four (24) parking stalls on the 104 Street NW area as well as providing for 175 exclusive stalls on Sunday and 175 non-exclusive parking stalls on all other days on the Rocky Ridge park and ride site.

ATTACHMENT(S)

1. Attachment 1a – Site Map
Attachment 1b – Context Map
2. Attachment 2 – Recommendations
3. Attachment 3 – Summary of Additional Property Information
4. Attachment 4 – Alberta Corporation/Non-Profit Search