

REPORT NO. 366 of the  
ENVIRONMENT, TRANSPORTATION & PUBLIC SAFETY  
STANDING COMMITTEE  
of its meeting held March 23, 2016

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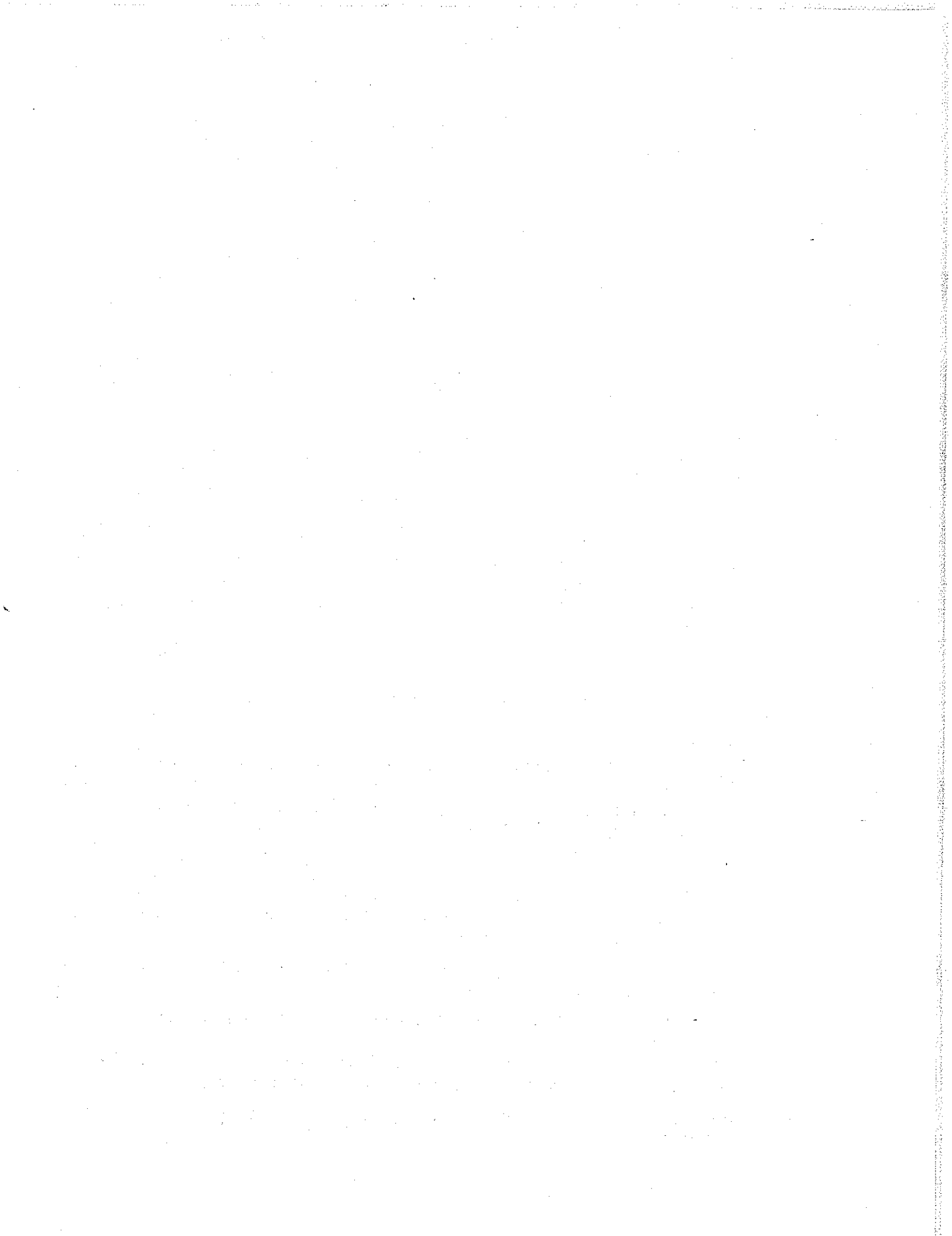
Present: Councillor Chris Holt  
Councillor Fred Francis  
Councillor Bill Marra (Chair)  
Councillor Hilary Payne  
Councillor Paul Borrelli

That the following recommendations of the Environment, Transportation and Public Safety Standing Committee **BE APPROVED**:

Moved by Councillor Francis, seconded by Councillor Holt,

- I That the applicant request for the property at 810 Ouellette Avenue identified as Plan 256 BLK 3 Lot 1 Lot 2; RP 12R6781 PT 1; & 25 Elliott E IRREG; to permit fence area to encroach on the Ouellette Avenue right-of-way, **BE DENIED**.
- II. That encroachment of the two (2) existing signs located on the Ouellette Avenue and Elliott Street East right-of-way, as shown on attached Drawing C-3322 and figure 2 and 3, **BE APPROVED**, subject to the owner entering into an encroachment agreement, satisfactory in form to the City Solicitor and in technical content to the City Engineer, to comply with the following terms and conditions:
  - (a) Furnish a copy of the Registered Deed by which ownership to the property was acquired.
  - (b) Pay a \$225.00 (includes 5% G.I.S. charge) encroachment application fee to Engineering. (PAID)
  - (c) Indemnify the City of Windsor against all claims which may arise by reason of its occupying sections of the public right-of-way herein before listed and file with the Corporation a Certificate of Insurance evidencing proof of Commercial General Liability insurance with limits of at least \$2,000,000.00 per occurrence, with an endorsement naming the Corporation of the City of Windsor as an additional insured, and including cross liability and a 30 day notice of cancellation provision.

The Certificate of Insurance must be satisfactory in form and content to the Risk Management Division and be provided to the Corporation at the commencement of this encroachment and annually thereafter.
  - (d) Pay a \$300.00 fee to Engineering for the preparation of the agreement, to be signed by the property owner. (PAID)
  - (e) Pay a surcharge in the amount of \$100.00 to Engineering, as required by M67-2015. (PAID)
  - (f) Pay an annual encroachment fee of \$25.00, calculated according to M67-2015, and any and all applicable provincial and federal land taxes, etc.
  - (g) Pay an annual inspection and billing fee of \$52.00 to the Engineering Department. (2015)



- (h) Remove the encroachment and restore the area within 60 days to the condition of the surrounding area upon receipt of written notice by the City Engineer to do so.
- (i) The applicant agrees to obtain a Street Opening Permit at a cost of \$208.00 for the subject encroachment. (2015)
- (j) The agreement shall be for 20 years from the agreement execution date or change of zoning or change in ownership, whichever occurs first.
- (k) The applicant agrees to obtain a Building Permit from the Chief Building Official.


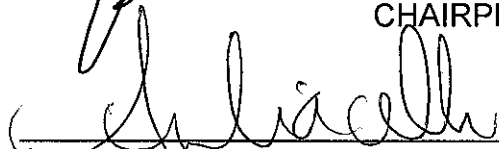
and further, that the Chief Administrative Officer and City Clerk **BE AUTHORIZED** to sign the agreement, satisfactory in form to the City Solicitor and in technical content to the City Engineer, in accordance with By-law 208-2008 as the authority for encroachments.

Carried.

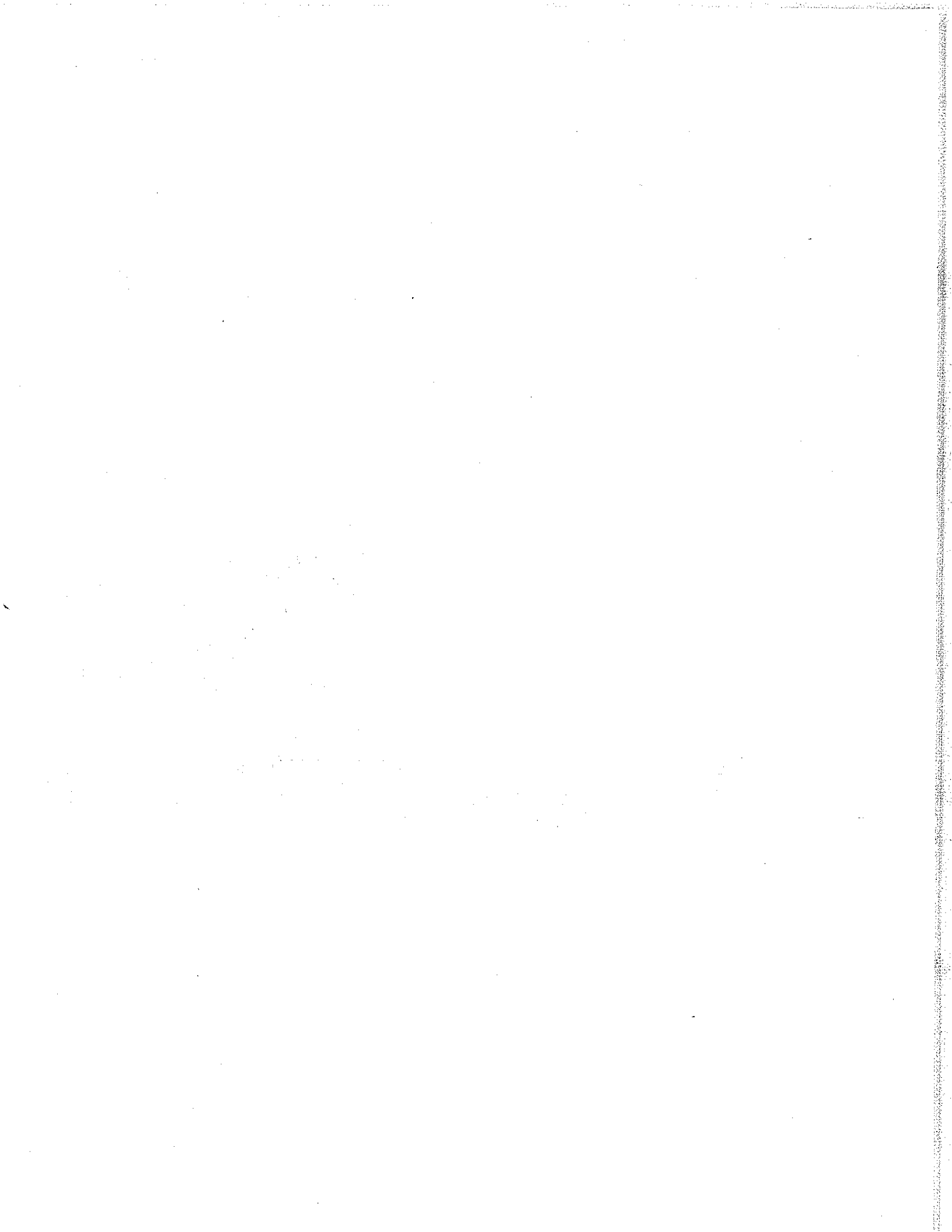
Councillor Marra was absent when the vote was taken on this matter.

**S 17/2016 SE2016**

Clerk's Note: The report of the City Engineer dated January 12, 2016 entitled "810 Ouellette Avenue – Fence and Sign Encroachment" is **attached** as background information.

  
 \_\_\_\_\_ CHAIRPERSON  
  
 \_\_\_\_\_ SUPERVISOR OF COUNCIL SERVICES

| NOTIFICATION: |  |
|---------------|--|
| NAME          | CONTACT INFORMATION  |
| Stuart Miller | <a href="mailto:mmaarch@mnsi.net">mmaarch@mnsi.net</a>             |
| Maria Milonas | <a href="mailto:Cen21maria@hotmail.com">Cen21maria@hotmail.com</a> |





**Development, Projects &  
Right-of-Way**

**MISSION STATEMENT**

*"Our City is built on relationships – between citizens and their government, businesses and public institutions, city and region – all interconnected, mutually supportive, and focused on the brightest future we can create together"*

|   |  |
|---|--|
| <b>REPORT #: S 17/2016</b>  | <b>Report Date: 1/12/2016</b>          |
| <b>Author's Contact:</b><br>Josie Liburdi<br>Technologist I (A)<br>519-255-6100 ext 6145<br>jliburdi@citywindsor.ca | <b>Date to Council: March 23, 2016</b> |
|   | <b>Clerk's File #: SE2016</b>          |

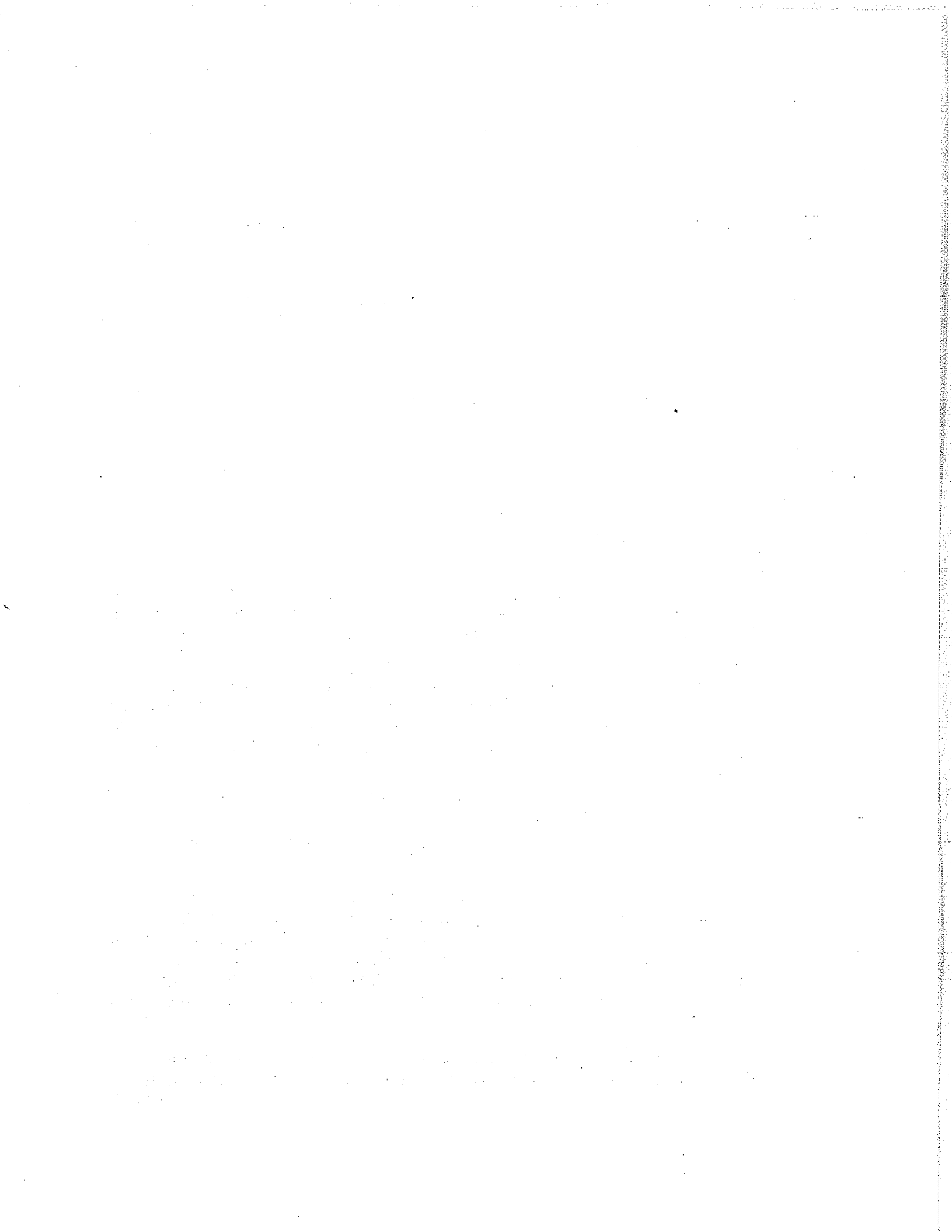
**To: Mayor and Members of City Council**

**Subject: 810 Ouellette Avenue - Fence and Sign Encroachment - Ward 3**

**RECOMMENDATION:**

- I. That the applicant request for the property at 810 Ouellette Avenue identified as Plan 256 BLK 3 Lot 1 Lot 2; RP 12R6781 PT 1; & 25 Elliott E IRREG; to permit fence area to encroach on the Ouellette Avenue right-of-way, **BE DENIED**.
- II. That encroachment of the two (2) existing signs located on the Ouellette Avenue and Elliott Street East right-of-way, as shown on attached Drawing C-3322 and figure 2 and 3, **BE APPROVED**, subject to the owner entering into an encroachment agreement, satisfactory in form to the City Solicitor and in technical content to the City Engineer, to comply with the following terms and conditions:
  - (a) Furnish a copy of the Registered Deed by which ownership to the property was acquired.
  - (b) Pay a \$225.00 (includes 5% G.I.S. charge) encroachment application fee to Engineering. **(PAID)**
  - (c) Indemnify the City of Windsor against all claims which may arise by reason of its occupying sections of the public right-of-way herein before listed and file with the Corporation a Certificate of Insurance evidencing proof of Commercial General Liability insurance with limits of at least \$2,000,000.00 per occurrence, with an endorsement naming the Corporation of the City of Windsor as an additional insured, and including cross liability and a 30 day notice of cancellation provision.

The Certificate of Insurance must be satisfactory in form and content to the Risk Management Division and be provided to the Corporation at the commencement



of this encroachment and annually thereafter.

- (d) Pay a \$300.00 fee to Engineering for the preparation of the agreement, to be signed by the property owner. (PAID)
- (e) Pay a surcharge in the amount of \$100.00 to Engineering, as required by M67-2015. (PAID)
- (f) Pay an annual encroachment fee of \$25.00, calculated according to M67-2015, and any and all applicable provincial and federal land taxes, etc.
- (g) Pay an annual inspection and billing fee of \$52.00 to the Engineering Department. (2015)
- (h) Remove the encroachment and restore the area within 60 days to the condition of the surrounding area upon receipt of written notice by the City Engineer to do so.
- (i) The applicant agrees to obtain a Street Opening Permit at a cost of \$208.00 for the subject encroachment. (2015)
- (j) The agreement shall be for 20 years from the agreement execution date or change of zoning or change in ownership, whichever occurs first.
- (k) The applicant agrees to obtain a Building Permit from the Chief Building Official.

and further, that the Chief Administrative Officer and City Clerk **BE AUTHORIZED** to sign the agreement, satisfactory in form to the City Solicitor and in technical content to the City Engineer, in accordance with By-law 208-2008 as the authority for encroachments.

### **EXECUTIVE SUMMARY:**

N/A

### **BACKGROUND:**

An application was received from the property owner of 810 Ouellette Avenue, requesting permission for a fence encroachment as shown on drawing C-3322 and figures 1 on the Ouellette Avenue right-of-way. The intended use for the fence encroachment is a play area for a daycare, as outlined in the application. Play areas are a requirement that the Ministry of Education requires for Child Care Licensing in Ontario.

During the encroachment inspection, two (2) sign encroachments were found in the Elliott Street East and Ouellette Avenue right-of-ways as shown on drawing C-3322 and figures 2 & 3.

## DISCUSSION:

### Sign Encroachment

The two (2) existing signs occupy an area of  $1.4\text{m}^2$  (15.4 sq ft), in the Ouellette Avenue and Elliott Street East right-of-way, shown on the attached drawing C-3322 and figure 2 & 3. Administration does not have any objections to the sign encroachments. The applicant does not currently have permits or encroachment agreements for these encroachments. A building permit from the Chief Building Official will be required as well as a street opening permit from the City Engineer.

### Fence Encroachment

The requested fence occupy an area of  $350.3\text{m}^2$  (3770.6 sq ft) in the Ouellette Avenue right-of-way, shown on drawing C-3322. The proposed fence is to be constructed of wrought iron and four (4) feet in height as shown in Figure 1. During circulation of the C-Drawing there were sightline concerns raised from various departments.

"Transportation Planning does not support this proposed encroachment at 810 Ouellette Avenue given that the minimum sight distance criteria is not met, as per the Transportation Association of Canada Guidelines (TAC). Although the Ouellette Avenue/Elliott Street intersection is signalized, operational conditions such as: malfunction of the signals, a violation of the signal or the signals operating in a flashing mode can occur. In order to reduce the potential vehicle conflicts at the intersection, it is critical that a vehicle on Ouellette Avenue is able to see an approaching vehicle on Elliot Street at a distance far enough from the intersection that the driver has enough time to make a instantaneous decision to avoid conflict; and vice versa."

Council Resolution CR 425-81 approved encroachments for beautification purposes in 1987. The property at 986 Ouellette Avenue has an encroachment agreement in place for a four foot (4') high ornamental iron fence, for beautification purposes and more effective maintenance of the grass in the front of the building. The encroachment policy approved by M67-2015 no longer permits encroachments for beautification purposes, which is not the intent of the encroachment at 810 Ouellette Avenue.

Furthermore, Engineering will be reconstructing the roads, water mains & sidewalks from property line to property line on the span of Ouellette Avenue from Wyandotte Street East to Elliott Street East. This site will be disturbed as a result of streetscaping construction. The Engineering and Planning Departments further raised concerns with the proposed fence encroachment due to the upcoming construction. Therefore administration cannot recommend the fence encroachment.

If Council wishes to approve the applicants request notwithstanding Administrations safety concerns with the sightline issue from the fence, the attached drawing C-3322



and the following terms and conditions will be required for the encroachment agreement.

- (a) Furnish a copy of the Registered Deed by which ownership to the property was acquired.
- (b) Pay a \$225.00 (includes 5% G.I.S. charge) encroachment application fee to Engineering. (PAID)
- (c) Indemnify the City of Windsor against all claims which may arise by reason of its occupying sections of the public right-of-way herein before listed and file with the Corporation a Certificate of Insurance evidencing proof of Commercial General Liability insurance with limits of at least \$2,000,000.00 per occurrence, with an endorsement naming the Corporation of the City of Windsor as an additionally insured, and including cross liability and a 30 day notice of cancellation provision.

The Certificate of Insurance must be satisfactory in form and content to the Risk Management Division and be provided to the Corporation at the commencement of this encroachment and annually thereafter.

- (d) Pay a \$300.00 fee to Engineering for the preparation of the agreement, to be signed by the property owner. (PAID)
- (e) Pay a surcharge in the amount of \$100.00 to Engineering, as required by M67-2015. (PAID)
- (f) Pay an annual encroachment fee of \$2382.00, calculated according to M67-2015, and any and all applicable provincial and federal land taxes, etc.
- (g) Pay an annual inspection and billing fee of \$52.00 to the Engineering Department. (2015)
- (h) Remove the encroachment and restore the area within 60 days to the condition of the surrounding area upon receipt of written notice by the City Engineer to do so.
- (i) The applicant agrees to obtain a Street Opening Permit at a cost of \$208.00 for the subject encroachment. (2015)
- (j) The agreement shall be for 20 years from the agreement execution date or change of zoning or change in ownership, whichever occurs first.
- (k) The applicant agrees to obtain a Building Permit from the Chief Building Official.

### **RISK ANALYSIS:**

#### **Sign Encroachment:**

Low to moderate liability risks are standard with any encroachment and are mitigated by transferring the risk to the property owner through indemnification and insurance requirements set out in the agreement.

Fencing Encroachment:

There are risks to public health and safety and liability associated with blocked sightlines. If the fence encroachment is permitted and sightlines are blocked, it means that vehicles will not see a car/pedestrian approaching from other directions before it is too late. Not only is this a risk to drivers and pedestrians using the road, but given the proximity to a daycare and the chance for children being in the area, there is even more risk to people accessing that establishment. This risk is significant and should be avoided.

**FINANCIAL MATTERS:**

**Sign Encroachment (ONLY) - Fees for administrations recommendation:**

The calculated encroachment fee according to M67-2015 results in an annual encroachment fee of \$25.00.

***Sign Formula:***

$$\text{Land Value} \times \text{Area of Encroachment} \times \text{Non-Residential Factor} \times \text{Risk Factor} \\ = \text{Encroachment Fee } (\$25.00 \text{ min.})$$

$$10 \times 15.4 \times 0.05 \times 1.25 = \$9.63, \text{ therefore } \$25.00 \text{ min fee applies}$$

Therefore, the annual encroachment fee of \$25.00, plus the annual billing and inspection fee of \$52.00 are applicable for a total of \$77.00

**Both Sign Encroachment & (Fence Encroachment - NOT RECOMMENDED) - Fees:**

The calculated encroachment fee according to M67-2015 results in an annual encroachment fee of \$2382.00.

***Fence Formula:***

$$\text{Land Value} \times \text{Area of Encroachment} \times \text{Non-Residential Factor} \times \text{Risk Factor} \\ = \text{Encroachment Fee}$$

$$10 \times 3770.6 \times 0.05 \times 1.25 = \$2,357.00$$

**Sign Formula:**

**Land Value x Area of Encroachment x Non-Residential Factor x Risk Factor**

**= Encroachment Fee (\$25.00 min.)**

10 x 15.4 x 0.05 x 1.25 = \$9.63, therefore \$25.00 min fee applies

Therefore, the annual encroachment fee of \$2382.00, plus the annual billing and inspection fee of \$52.00 are applicable for a total of \$2434.00.

**CONSULTATIONS:**

The following have been consulted/notified on this application:

- City of Windsor - Transportation Planning – Janelle Bastien
- City of Windsor - Ward 3 Councillor – Rino Bortolin
- City of Windsor - Windsor Police Service – Barry Horrobin
- City of Windsor - Planning Department – Adam Coates
- City of Windsor - Building Department – Rob Vani
- City of Windsor - Engineering Department
- City of Windsor – Risk Management – Dana Paladino

**CONCLUSION:**

Typically encroachments are approved by the Chief Administrative Officer; however, when not recommended or supported by administration the issue is reported to council for approval. Administration is in support of the two (2) existing signs; however administration cannot support the fence encroachment for sightline issues and associated public safety concerns.

**PLANNING ACT MATTERS:**

N/A

**APPROVALS:**

| Name                  | Title   |
|-----------------------|---|
| France Isabelle Tunks | Senior Manager of Development Projects and Right of Way/Deputy City Solicitor |
| Shelby Askin Hager    | City Solicitor  |
| Mark Winterton        | City Engineer   |
| Helga Reidel          | Chief Administrative Officer  |

**NOTIFICATIONS:**

| Name | Address | Email |
|------|---------|-------|
| n/a  |         |       |

**APPENDICES:**

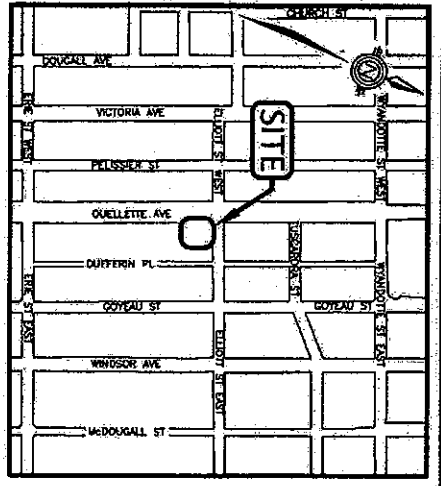
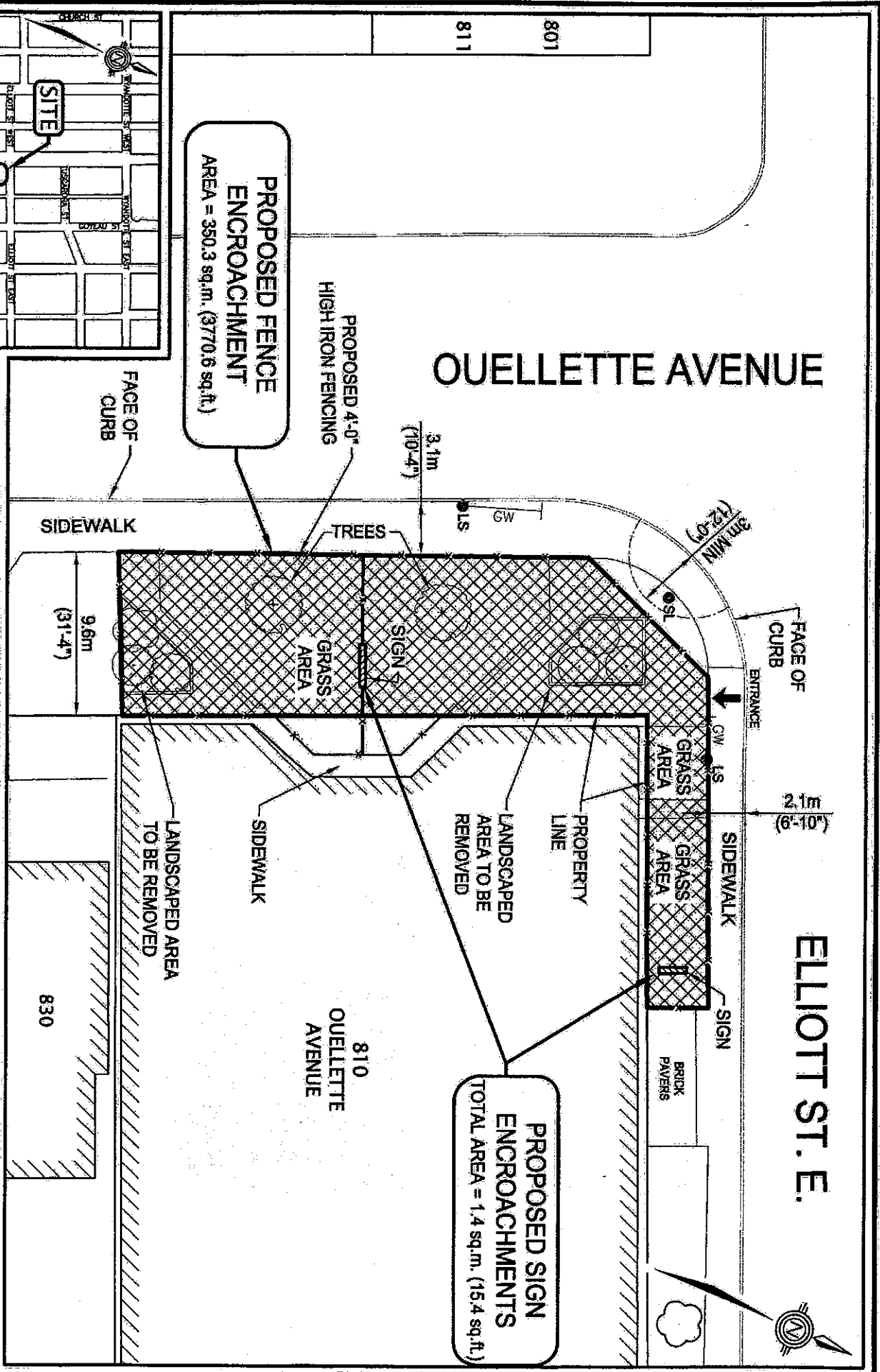
1. Appendix I - Drawing C-3322
2. Appendix II - Figure 1, 2 & 3

OUELLETTE AVENUE

ELLIOTT ST. E.

**PROPOSED FENCE ENCROACHMENT**  
 AREA = 350.3 sq.m. (3770.6 sq.ft.)

**PROPOSED SIGN ENCROACHMENTS**  
 TOTAL AREA = 1.4 sq.m. (15.4 sq.ft.)



KEY PLAN - N.T.S.

THE CORPORATION OF THE CITY OF WINDSOR - ENGINEERING DEPARTMENT  
**PROPOSED FENCE & SIGN ENCROACHMENT AT**  
**810 OUELLETTE AVENUE**

*Marianne Drouillard*  
 Marianne Drouillard, Manager

3matics

SCALE: 1:300  
 DATE: DECEMBER, 2015  
 DWN BY: NB  
 CHECKED BY: PUU / JL

DWG. NO. C-3322

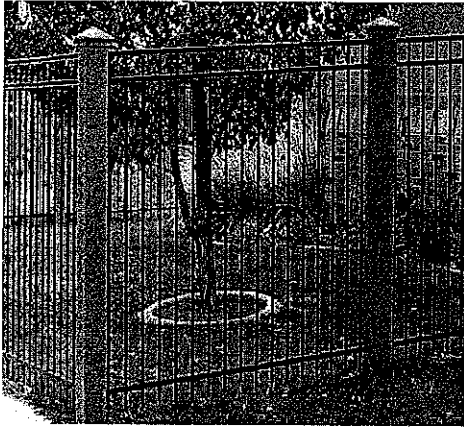


Figure 1 - Fence Detail

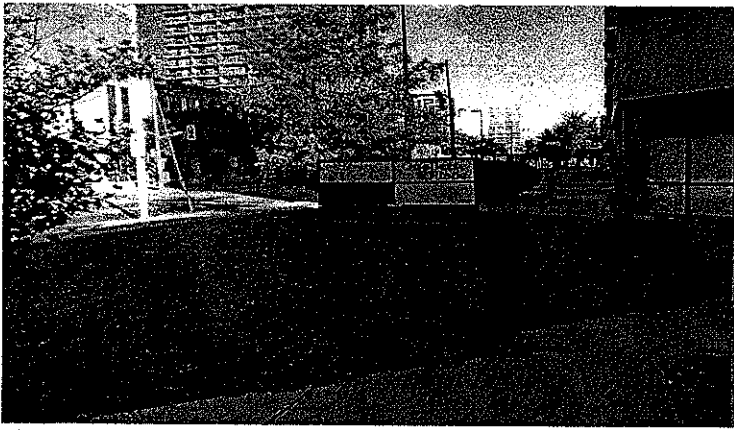


Figure 2 - Ouellette Avenue Sign



Figure 3 - Elliott Street Sign

**From:** Stuart Miller [mailto:mmaarch@mnsi.net]

**Sent:** Friday, April 15, 2016 11:36 AM

**To:** Stuart, Kelly

**Cc:** Bastien, Janelle; Liburdi, Josie; Pilon, Adam

**Subject:** Re: Environment, Transportation & Public Safety Standing Committee Reports No. 366 - Request for inclusion at Council Mtg 18 Apr,'16

**APR 18 2016**

**ADDITIONAL  
INFORMATION** ↗

Adam / Kelly Stuart:

Our firm represents our client Maria Milonas whom is anxious to construct a new Day Care Facility in the first level of the long vacant commercial portion of the residential tower 810 Ouellette Ave.

To accomplish this we have made application for an encroachment for Fence (Exterior Play Area, and to retain the existing) & Signage - Ward 3 (S17/2016).

This application was reviewed at the Environment, Transportation & Public Safety Standing Committee in the City of Windsor Council Chamber on 23 Wednesday, March '16 - Report No. 366. our office was able to speak as a delegation and provide background to the application at that meeting. During the meeting Mark Winterton - C. of W. Engineer stated that his department could not support the application as they had concerns regarding: a) minimum sight criteria, & b) beautification purposes (of the adjacent portion of Ouellette, ending to the north of Elliot St.)

The application was denied. We have received this decision in a report in email dated 06 Apr.'16. This same email stated that this application could be further addressed at Council meeting Mon. 18 Apr.'16.

I have discussed this with Mark Winterton. He advises that he has personally reviewed this application, and has provided encouragement that City Staff were further investigating the a) minimum sight criteria, & b) beautification purpose, and that potentially a compromise may be able to be negotiated, when an internal report was to be completed later in the year - summer was mentioned..

Mark suggested that I respond to the Council Services Department, on behalf of my client Maria Milonas stating that we were very anxious to seek a resolution on this matter - approval of the Encroachment application, but at this time understood that the matter was being investigated by the City, who were very well aware that my client was extremely concerned about the outcome of the application.

Mark mentioned that future correspondence be conducted with Adam Pilon, City of Windsor Building Department, whom will be directly involved with the Transportation and Engineering Depts of the City..

**We will not request the opportunity for an additional delegation to personally address the Council the 18 Apr meeting on this matter.**

**We do instead however, request to have entered into the meeting minutes that my client is very anxious to be party to any future discussions or negotiations concerning the approval of this encroachment application.**

Stuart Miller, B.Arch, OAA  
MMA Architect Inc.

