Agenda - Executive Policy Committee - July 20, 2005

Report - Standing Policy Committee on Property and Development - July 5, 2005

Item No. 22 Sale of City-owned lands - northeast corner of Logan Avenue and King Edward Street
File FI-2.4(31)

STANDING COMMITTEE RECOMMENDATION:

On July 5, 2005, the Standing Policy Committee on Property and Development concurred in the administrative recommendation and submits the following to Council:

1. That the portion of the City-owned property shown outlined and identified as "Parcel 2" on Misc. Plan No. 6164/11 be declared surplus to the City's requirements.

2. That the sale of that portion of the City-owned property shown outlined and identified as "Parcel 2" on Misc. Plan No. 6164/11 in favour of KR Auto Ltd. (Krzysztof Rygiel) for the purchase price of $8,500.00 be approved in accordance with the terms and conditions of the Offer to Purchase dated June 13, 2005.

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

Agenda - Executive Policy Committee - July 20, 2005

Report - Standing Policy Committee on Property and Development - July 5, 2005

DECISION MAKING HISTORY:

STANDING COMMITTEE RECOMMENDATION:

On July 5, 2005, the Standing Policy Committee on Property and Development concurred in the administrative recommendation and submitted the matter to the Executive Policy Committee and Council.

Re: **Proposed Sale of City-owned Lands located at the Northeast corner of Logan Avenue and King Edward Street**
Assiniboia Community
St. James – Brooklands Ward

For submission to: **The Standing Policy Committee on Property and Development**

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

Report date: June 20, 2005

Recommendation(s):

That subject to Council declaring that portion of the City-owned property shown outlined and identified as "Parcel 2" on Misc. Plan No. 6164/11, attached, surplus to the City's requirements:

1. That the proposed sale of that portion of the City-owned property shown outlined and identified as "Parcel 2" on Misc. Plan No. 6164/11, attached, in favour of KR Auto Ltd. (Krzysztof Rygiel), for the purchase price of $8,500.00 be approved in accordance with the terms and conditions of the attached form of Offer to Purchase dated June 13, 2005.
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 is in receipt of an Offer to Purchase City-owned land at the northeast corner of Logan Avenue and King Edward Street.
- The Planning, Property and Development Department recommends approval of the sale in accordance with the terms and conditions of the attached form of Offer to Purchase dated June 13, 2005.

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):

- The City's standard terms and conditions of sale include provisions to protect the City's interests in the event that environmental contamination is discovered.

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:

The Planning, Property and Development Department are in receipt of an Offer to Purchase City-owned land at the northeast corner of Logan Avenue and King Edward Street. Standing Policy Committee on Property and Development approval is required for the sale.

HISTORY:

In 1995, KR Auto Ltd. (Mr. K. Rygiel) acquired the land located at the northeast corner of King Edward Street and Logan Avenue as shown on Misc. Plan No. 6164/9 from the City of Winnipeg. Mr. Rygiel established an auto body shop on the site and in 2003, he subsequently purchased additional City land between his holding and the southerly limit of Gallagher Avenue. His business has continued to grow and he has requested to purchase the City-owned land shown as Parcel 2 on Misc. Plan No. 6164/11.

Mr. John Malenki who owns the property as shown on Misc. Plan No. 6164/9, has also expressed interest in acquiring additional City-owned land adjacent to his property, including Parcels 1, 2, 3 and 4 and a portion of the public lane adjoining his holding (Misc. Plan No. 6164/11).

DISCUSSION:

On April 7, 2005, a representative of the Planning, Property and Development Department met with Mr. Rygiel and Mr. Malenki. At this meeting, it was agreed by all that the Department would recommend to the Standing Policy Committee on Property and Development the sale of Parcels 1 and 2 to Mr. Rygiel (owner of KR Auto Ltd.) and the sale of Parcels 3 and 4 to Mr. Malenki. In addition, it was agreed that the Public Lane adjoining Mr. Malenki's current property holding would remain legally opened to facilitate the sales as contemplated.

On April 8, 2005, Mr. Malenki advised the Department that he changed his mind and he wanted to acquire all of the City's property surrounding his holding given his long time use of the lands. His solicitor subsequently provided a letter to this effect, dated April 11, 2005 (copy attached).

For several years, Mr. Malenki has stored derelict vehicles on the City-owned property without the benefit of a formal agreement. The Department has on a number of occasions instructed Mr. Malenki to remove his personal property from the City land, however, to date he has not been co-operative.

It has been determined that Gallagher Avenue (Parcel 1 Misc. Plan No. 6164/11) cannot be legally closed and sold as it will remove the legally open street in front of Mr. Malenki's property. There is also a land drainage sewer in the street right-of-way that services the privately owned property to the east as well as the KR Auto property.

Mr. Rygiel was advised that the City would not be able to sell him Parcel 1. Mr. Rygiel, however, is still interested in acquiring Parcel 2, Misc. Plan No. 6164/11, and he has provided a letter as follows:

> *"I am aware that the subject City property is zoned M1 Industrial District and I am prepared to submit an offer to purchase the subject City property with the understanding that the offer is not conditional upon the property being rezoned to facilitate my proposed use of the land.*

It is my intention to only use the subject property for permitted uses under the current by-law. I do intend to make an application to rezone the property as required." (See attached letter and Offer to Purchase).

The Planning, Property and Development Department has met and discussed this matter with the Ward Councillor who is supportive of selling Parcel 2 to KR Auto Ltd. and not carry on with any further negotiations with Mr. Malenki until such time as he conforms to existing Zoning By-laws and obtains a Business License.

The Public Works Department has no objections to the sale of the subject lands.

The Planning, Property and Development Department recommends the sale for the following reasons:

a) The proposed purchase price is supported by an internal appraisal.
b) The property will generate realty tax upon closing of the sale.
c) The sale of the property to Mr. Rygiel will allow further development of his business operation at this location.

Financial Impact Statement

Date: June 14, 2005

Project Name:

Sale of Lands at North East corner of Logan Avenue and King Edward Street

First Year of Program 2005

	2005	2006	2007	2008	2009
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	8,555	164	164	164	164
Net Cost/(Benefit)	$ (8,555)	$ (164)	$ (164)	$ (164)	$ (164)
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ (8,555)	$ (164)	$ (164)	$ (164)	$ (164)

Additional Comments:

Proceeds of sale equal to $8,500 will be credited to the Land Operating Reserve. Incremental municipal property tax revenue of $55 in 2005 (assumes parcels added to the tax roll effective Sept. 1/05) and annual tax revenues of $164 from 2006 onward will be credited to the General Revenue Fund. Note that the estimate of taxation revenue is based on the assessed value equalling the purchase price and the portioning and mill rates remaining unchanged at 65% and 0.029686 respectively.

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

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

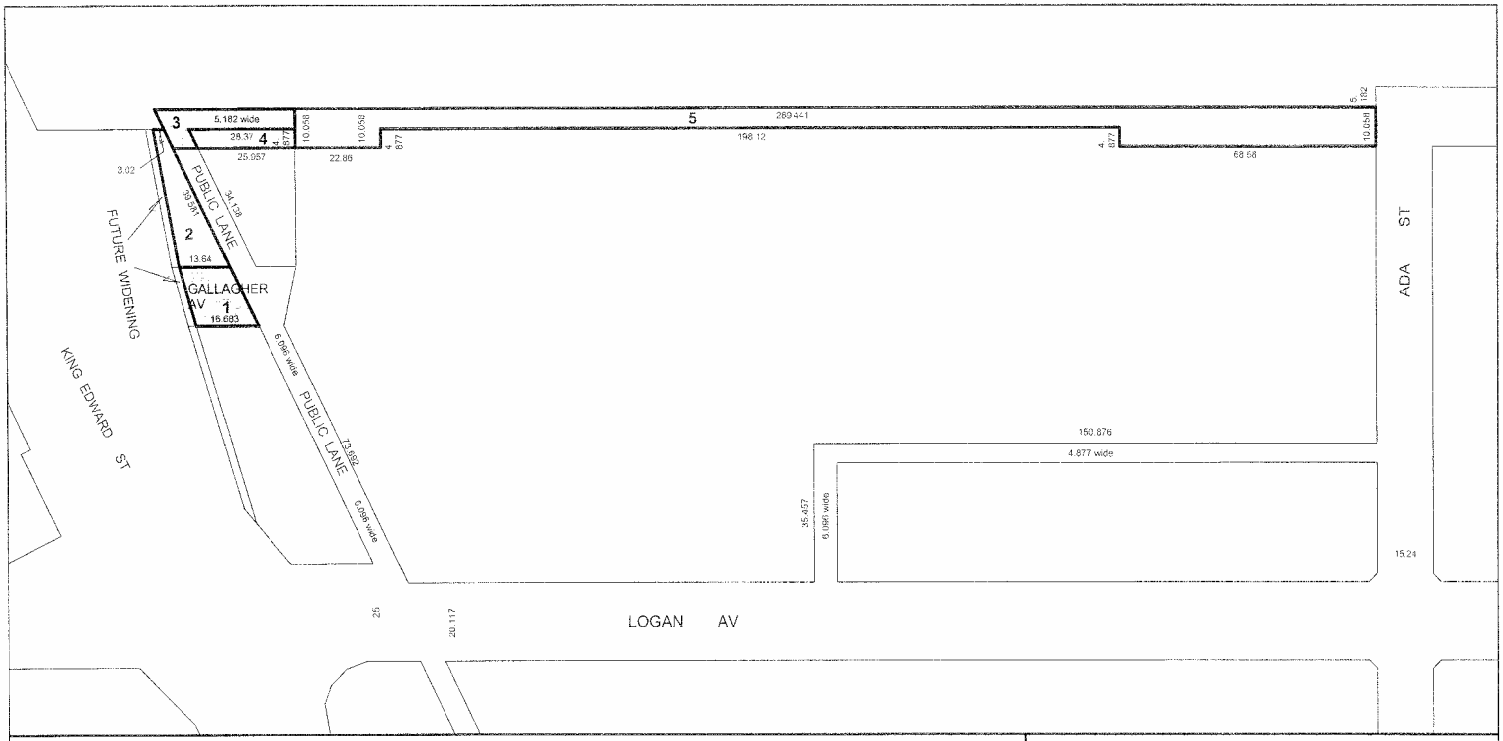
The Ward Councillor.

THIS REPORT SUBMITTED BY:

Planning, Property and Development Department
Division: Real Estate
Prepared by: Gerry Anderson
PPD File #: 5345/10

Document name: o:\reports directive\real estate\sales\(ga)closing & sale ne logan & king edward.doc

6322



Date: 2005- APR-08
District: ASBA
File: 5345 / 10
Scale: 1:1250

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.

Subject City Properties

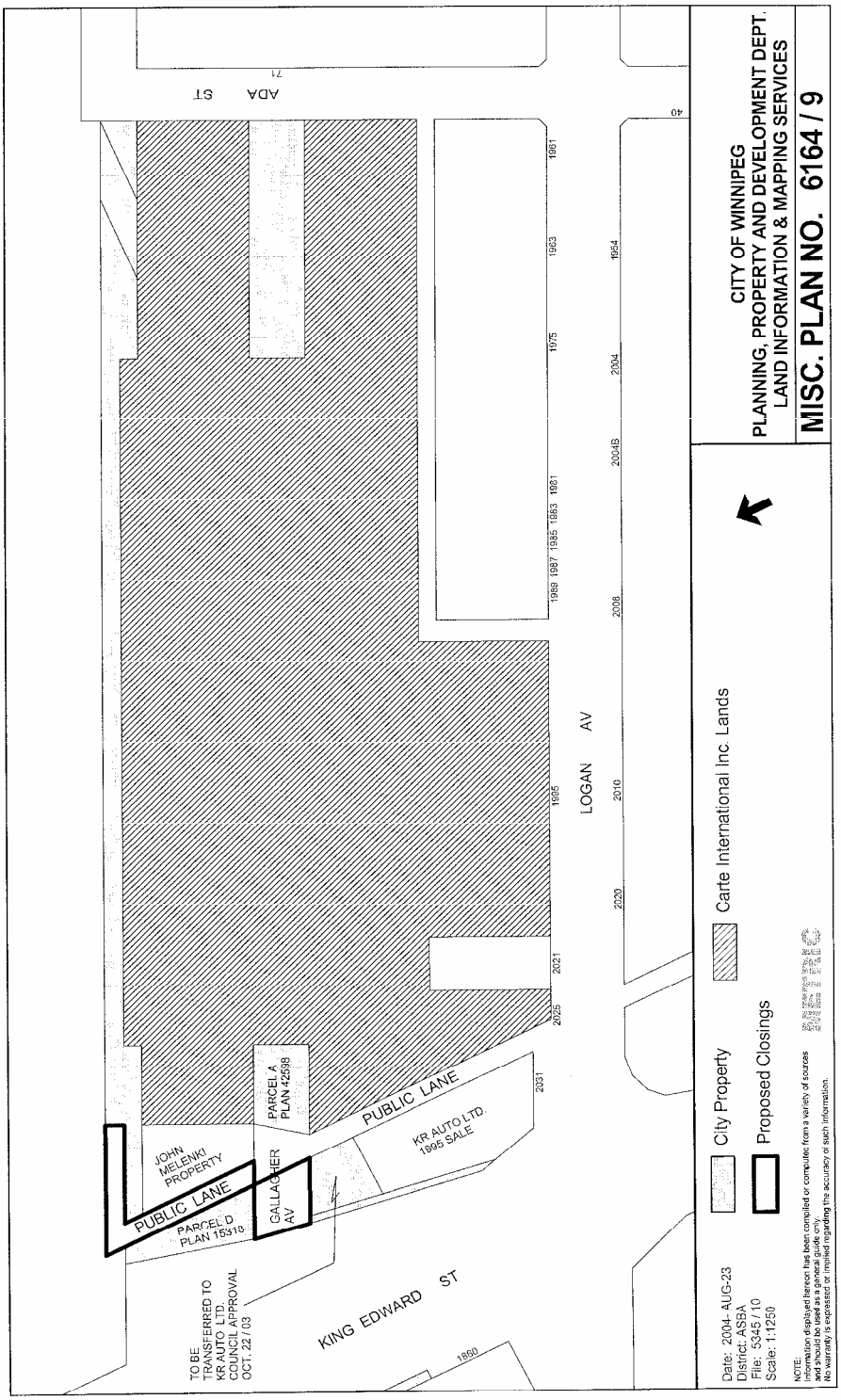
1. 231 sq.m.
2. 296.3 sq.m.
3. 222.0 sq.m.
4. 132.5 sq.m.
5. 1946.1 sq.m.

Proposed Closings

CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES

MISC. PLAN NO. 6164 / 11

6323


ADA ST
LOGAN AV
KING EDWARD ST
PUBLIC LANE
PUBLIC LANE
JOHN MELENKI PROPERTY
PARCEL D PLAN 15318
PARCEL A PLAN 42598
GALLAGHER AV
KR AUTO LTD 1995 SALE
TO BE TRANSFERRED TO KR AUTO LTD. COUNCIL APPROVAL OCT. 22 / 03
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 6164 / 9
City Property
Carte International Inc. Lands
Proposed Closings
Date: 2004- AUG-23
District: ASBA
File: 5345 / 10
Scale: 1:1250
NOTE:
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No warranty is expressed or implied regarding the accuracy of such information.

Sidney Green, Q.C.
147 Westgate, Winnipeg, Manitoba R3C 2E2
Telephone: (204) 783-0746
Fax: 783-2509

April 11, 2005

City of Winnipeg
Planning and Property Development Branch
2nd floor-65 Garry Street
Winnipeg, Manitoba R3C 4K4

Attention: G. Anderson

Dear Mr. Anderson:

Re: Property adjoining
2025 Logan Avenue

Further to my previous correspondence please be advised that I have once again been contacted by my client Mr. Malenki relative to City property adjacent to his property at 2025 Logan Avenue.

For your information I enclose the following:
1. Copy of letter dated November 8, 2003 which I sent to the City of Winnipeg Law Department;
2. Copy of letter dated December 8, 2003 which I sent to the City of Winnipeg;
3. Copy of letter dated March 25, 2004 which I sent to the City of Winnipeg.

In discussing this matter with Mr. Anderson, he advised me that on Friday, April 8, 2005, Mr. Malenki agree that the City could transfer a lot, which he has for many years wished to purchase, to his neighbour.

Mr. Malenki denies that he agreed to any such arrangement.

He indicates to me that he agreed to consider it.

In consideration of the matter Mr. Malenki is of the opinion that, given the history of this matter as outlined in the enclosed correspondence, he is entitled to a priority relative to this proposed transfer of land.

He wishes to purchase this property entirely, without prejudice to his claim to have had undisturbed use of it for over 40 (forty) years.

He also spent considerable monies to landscape the property and maintain same for 16 (sixteen years with the full knowledge of the City of Winnipeg.

I am writing this letter so that there will be no mistake about my client's position with respect to this property.

Yours truly,

SIDNEY GREEN, Q.C.
SG/mar
To: Fax: 944-8476

June 2, 2005

City of Winnipeg
Planning, Property and Development Department
Real Estate Division
2nd Flr., 65 Garry Street
Winnipeg, MB R3C 4K4

Attention: Gerry Anderson
Senior Negotiator – Land Sales

Dear Sir:

Re: Purchase of Parcel 2, Misc. Plan No. 6164/10

I am aware that the subject City property is zoned M1 Industrial District and I am prepared to submit an offer to purchase the subject City property with the understanding that the offer is not conditional upon the property being rezoned to facilitate my proposed use of the land.

It is my intention to only use the subject property for permitted uses under the current by-law. I do intend to make an application to rezone the property as required.

K&R Auto Ltd.

Chris Rygiel

File No: 5345/10

INDUSTRIAL/COMMERCIAL

OFFER TO PURCHASE

The Undersigned (hereinafter called "the Purchaser") hereby offers to purchase from The City of Winnipeg (the "City") the following lands: -

Parcel No. 2 as shown on Misc. Plan No. 6164/10

(hereinafter called the "lands")

for the sum of $8,500.00 cash, and upon the following terms and conditions:

1. (1) Attached to this Offer is the Purchaser's certified cheque payable to "The City of Winnipeg" in the amount of $1,275.00, and represents an amount equal to fifteen (15%) percent of the purchase price which the Purchaser tenders by way of deposit, and which sum shall be applied to the purchase price if the sale is approved by the City's Standing Policy Committee on Property and Development and/or City Council (in the event that Council approval is required). The Purchaser agrees to pay the balance of the purchase price, interest and adjustments on or before the date of closing.

(2) If the Purchaser fails to pay the balance of the purchase monies, interest and adjustments on or before the date of closing as in sub-clause (1) above provided, the City may, at its option, cancel the sale and retain the deposit as liquidated damages.

2. (1) The date of Closing, Possession and adjustments shall be on or before 120 days from the date of approval of the sale.

(2) The Purchaser agrees to pay as an adjustment an amount equal to the total of such taxes, rates and charges which would have been levied or charged against the Lands as though the Lands had been entered on the assessment rolls of the City as privately owned and subject to taxation, which adjustment shall be calculated from the date of adjustments to and including the last day of the current taxation year.

(3) The Purchaser shall pay interest in lawful money of Canada on all monies remaining outstanding and payable to the City as of the date of adjustments, which interest shall be calculated at the rate per annum equivalent to the prime lending rate in force by the City's Banker at the date of adjustments plus one (1%) percent, computed from the date of adjustments to and including the date all such monies and interest as aforesaid have been fully paid to the City.

3. Goods and Services Tax

(1) The Purchaser agrees to pay to the City all Goods and Services Tax applicable on the sale of the Lands or, if the Purchaser is a registrant under the Goods and Services legislation, the Purchaser shall advise the City in writing of its registration number The Goods and Services Tax is to be paid or the registration number provided to the City on or before the date of closing.

(2) If the Purchaser fails to pay the Goods and Services Tax or fails to provide its registration number as prescribed in sub-clause (1) of this Clause, the Purchaser agrees that all of the Purchaser's rights and interests in respect of the Lands shall, at the City's sole discretion, be fully ended without notice or any formality and all monies paid to the City by the Purchaser shall be retained by the City free from every claim.

4. The Purchaser will obtain possession of the Lands at the Purchaser's own expense.

5. The Purchaser will accept Title to the Lands subject to all exceptions, reservations and encumbrances expressed or implied in the City's Title.

6. The sale of the Lands to the Purchaser shall be subject to the provisions of the By-laws of the City of Winnipeg and all amendments thereto. Furthermore the Purchaser acknowledges and understands that it's proposed use and development of the lands may require applications for rezoning, variances or conditional uses and/or

amendments to Plan Winnipeg, which applications and resulting land dedication charges (if any) are to be at the sole cost and responsibility of the Purchaser.

7. The Purchaser agrees that the City may register and maintain a caveat against the Lands to ensure the performance of the covenants on the part of the Purchaser herein set forth, and the Purchaser agrees to grant and does hereby grant to the City an interest in the Lands according to the tenor of this Offer.

8. Upon closing of the sale, the Purchaser agrees to make application to the City Assessor (in form set out in Exhibit "A" attached) to have the Purchaser's name added to the Assessment Roll of the City as the Real Owner in respect of the lands.

9. The Purchaser agrees that in the event the Purchaser, at its sole cost, conducts or causes to be conducted an Environmental Site Assessment, it shall

(1) ensure that all work done in connection with such Environmental Site Assessment is completed no later than ninety (90) days from the Date of Approval, and

(2) maintain the Lands in safe condition at all times during the conduct of any work done in pursuance of this Clause 9; and

(3) restore the Lands to the same condition as prior to its entering in or upon same in pursuance of this Clause 9; and

(4) indemnify and save harmless the City from and against all damages and claims arising out of or in any way attributable to the conduct of any such Environmental Site Assessment; and

(5) provide copies of any such Environmental Site Assessment of the said Lands to the City for its own use, at no cost to the City no later than ninety (90) days from the date of approval.

AND in the event it is determined as a result of said Environmental Site Assessment, that contamination levels exceed Provincial Environmental Standards for the intended use of the Lands and documentation to that effect is produced to the City within ninety (90) days following the Date of Approval, the City, at its sole option, shall be entitled to:

take remedial action to bring the contamination levels to within the Provincial Environmental Standards;

OR

cancel the sale and return all monies paid in respect of the proposed sale by the Purchaser to that date, PROVIDED that the Applicant shall have first satisfied all conditions of this Clause 9.

AND FURTHER if the City has not been advised of any non-compliance of the lands to Provincial Environmental standards within 90 days from the Date of Approval, the Purchaser agrees to complete its purchase as herein contemplated and to indemnify the City against any and all claims arising from or in any way connected with the existence of contaminants of any kind at the Lands.

10 (1) The Purchaser agrees that the sale of the Lands shall be subject to any easement which may be required by a public utility, including, but not limited to the Manitoba Hydro, Manitoba Telephone System, Centra Gas, or The City of Winnipeg, for the maintenance of existing and future facilities together with the right to enter upon the Lands at any time, with or without equipment for said purposes and subject to the owner covenanting not to erect or cause to be erected upon the easement area any building or structure without the prior written consent of the public utility or The City of Winnipeg requiring such easement.

(2) The Purchaser to enter into agreements satisfactory to the said utilities or the City of Winnipeg.

(3) The Purchaser further covenants and agrees that it will, concurrent with its execution of this Offer to Purchase, enter into easement agreements with the City in the form similar to those set out in Exhibit "B" attached.

(4) The Purchaser acknowledges that the City may grant the easements before the Transfer of Land issues.

11. The Purchaser acknowledges and agrees that notwithstanding any other terms, conditions or provisions in this agreement that:

(1) the City has given no representations or warranties with respect to the Lands or with respect to the value thereof or with respect to the Purchaser's intended uses or development or redevelopment thereof or with respect to the environmental condition of the Lands;

(2) the Purchaser has inspected or investigated the Lands, the title thereto, the Permitted Encumbrances, any tenancies and all other matters material to the Purchase and the proposed use of the Lands and that it is relying solely upon its own independent inquiries and investigations and the advice of its own consultants and there are no representations, warranties, guarantees, conditions, collateral agreements, covenants and agreements except those expressly set forth herein;

(3) the Purchaser agrees that it is purchasing the Lands on an "as is", "where is" basis, and is purchasing the Lands based entirely on its own examinations without any representation by or on behalf of the City or any agent of the City. The Purchaser acknowledges that it has relied entirely upon its own inspection and investigation with respect to quantity, quality and value of the Lands;

(4) any information supplied to the Purchaser by the City or its agents or representatives is and was supplied without any representation or warranty, and that the responsibility for verification of any such information shall be the responsibility of the Purchaser; and

(5) the Lands are deemed to be taken by the Purchaser at the Purchaser's own risk with all faults and imperfections whatsoever. The Purchaser agrees with the City that the application of "Buyer Beware" shall apply to the offer in the strictest meaning.

(6) The Purchaser is aware that the lands are currently zoned M-1 Industrial District and that non accessory parking and storage are not permitted uses in the M-1 Industrial District, and all by-laws will be strictly enforced.

12. It is further understood and agreed between the parties that:

(a) The Purchaser agrees to be fully responsible for all activities and associated costs to create a Plan of Subdivision and the legal closing of streets and lanes if necessary including:

(i) the cost of preparation and registration of the subdivision, easement and closing plans;

(ii) any and all costs associated with the legal and physical closing of the open right-of-way lying within the Subject Land; and

(b) The Purchaser will be responsible for all costs of developing the Subject Land including the servicing of the Land;

(c) The Purchaser will be acquiring the Subject Land in an "as-is, where-is" condition and has satisfied itself as to soil conditions zoning, access and environmental concerns;

(d) The Purchaser will be responsible for any and all costs associated with applications related to zoning, variances and conditional uses including

application and processing costs the payment of any dedication fees owing;

(e) The Purchaser and the City shall each pay their own legal and other consultant's fees with respect to this sale.

13. Time shall be of the essence of this Offer.

14. The Purchaser will not file any caveat or other encumbrance against the Lands before the transfer of the Lands to the Purchaser.

15. The word "Purchaser" shall have a plural meaning in the event that more than one party is making this offer, and the masculine shall mean the feminine or neuter as the case may be.

16. The Purchaser is hereby advised that soil conditions in Winnipeg are of the glacial till variety which are composed of Lacustrine Clays with Silt Intrusions. The Purchaser shall be responsible for any increased costs of development due to this random stratification.

17. The Purchaser acknowledges and agrees that sale of the Lands by the City is subject to the approval of City Council or its delegated authority.

18. The full, true and correct name of the Purchaser is as follows: -

K. R. AUTO LTD. 2031 LOGAN AV

Name (Please Print) Address

Purchaser's Registration No. (G.S.T.) 871591178 RT

IN WITNESS WHEREOF the Purchaser has signed this document in

WINNIPEG, MAN, this 13 day of June 2005

G. Anderson
Witness

Authorized Signature

Name and Title of Authorized Signature (Please print)

Witness

Authorized Signature

Name and Title of Authorized Signature (Please print)

ACCEPTED this _____ day of _____, A.D., 2005

THE CITY OF WINNIPEG

Per:_____

DIRECTOR

Planning,Property and Development Department

Approved:

_____

Planning Property and Development Department

Certified as to form:

_____

for City Solicitor/Manager of Legal Services

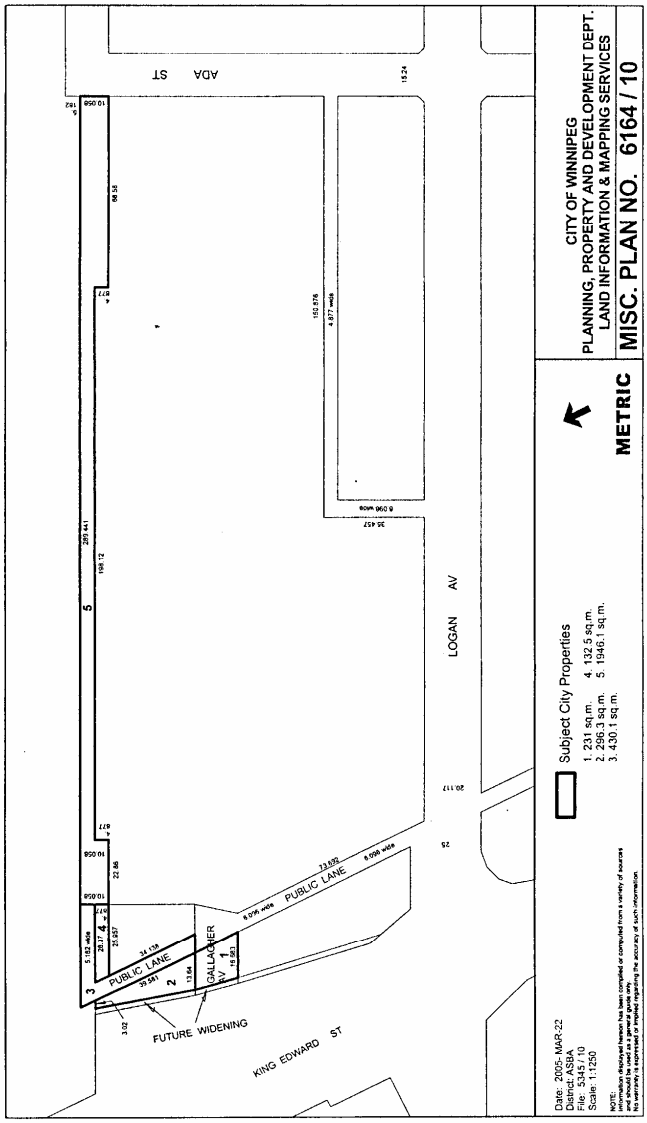

ADA ST
LOGAN AV
PUBLIC LANE
PUBLIC LANE
GALLAGHER
FUTURE WIDENING
KING EDWARD ST
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 6164 / 10
METRIC
Subject City Properties
1. 231 sq.m.
2. 296.3 sq.m.
3. 430.1 sq.m.
4. 132.5 sq.m.
5. 1946.1 sq.m.
Date: 2005- MAR-22
District: ASIA
File: 5345 / 10
Scale: 1:1250

EXHIBIT "A"

Real Owner Application

To the City Assessor

(Name of Municipality) Roll No. _____

1. I/We _____
(Print Full Name)

request that my/our name(s) appear in the Assessment Roll of the City of Winnipeg in respect to the following property, pursuant to Section 12(1) of "The Municipal Assessment Act", Cap. M 226 S.M..

2. Description of Properties: (Give description of all property in respect of which you wish your name to appear).

Part of Lot or Section	Lot or Section	Block or Township	Range	Interest in Property

DRAFT

3. Mailing Address _____
4. Place of Residence _____
5. Name and Address of Registered Owner _____
(Print)

_____
(Print)

6. Description of building on property:

Dwellings _____

Other Buildings _____

7. Date of Purchase _____ 8. Purchase Price _____

Date: _____ 19 ___ _____
(Signature of Applicant)

Office of the City Assessor
The City of Winnipeg _____
(Signature of Registered Owner)

Exhibit "B"

Access File No. R.14/2003(78)

EASEMENT AGREEMENT

THIS AGREEMENT made in duplicate this day of , A. D., 2005,

BETWEEN:

K R AUTO LTD.,

duly registered to carry on business in Manitoba,

(herein called the ***"Grantor"***),

OF THE FIRST PART,

- and -

THE CITY OF WINNIPEG,

(herein called the ***"City"***),

OF THE SECOND PART.

WHEREAS by virtue of an Offer to Purchase made in writing the 9th day of June, A.D., 2003, by the Grantor and accepted by the City, the Grantor is or is entitled to be the registered owner of lands shown illustrated and identified as ***"PARCEL 2"*** on Misc. Plan No. 6164/10 hereto attached (herein called ***"Parcel B"***), which land lies adjacent to City owned land shown illustrated and identified as ***"Future Widening"*** on said Misc. Plan 6164/10 (herein called ***"Parcel A"***);

AND WHEREAS the City has requested permission from the Grantor and the Grantor has agreed to permit the City to enter in, on, over and/or upon Parcel B for the purposes of ingress to and egress from Parcel A for any such work as may, at the sole discretion of the City, acting reasonably, be required in order to maintain and/or repair Parcel A in a good and safe condition at all times, upon the terms and conditions herein contained;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT IN CONSIDERATION of the sum of ONE DOLLAR ($1.00) paid by each party to the other *(the receipt and sufficiency of which is hereby acknowledged)* and the covenants and agreements herein contained, the Grantor and the City covenant and agree as follows:

1. The Grantor hereby grants and conveys to the City in perpetuity the right and easement to enter upon and use Parcel B and the right to do all things necessary thereon to maintain, construct, repair and/or replace Parcel A including without limitation, all improvements and/or appurtenances thereto, (herein jointly and severally called ***"Parcel A"***) and for every such purpose grants and conveys to the City the right of access to Parcel A over and across Parcel B at all times by its servants and employees or other persons acting with its authorization.

2. Except in an emergency situation where no notice shall be required, the City hereby undertakes and agrees to provide to the Grantor twenty-four (24) hours prior notice of the City's intention to enter upon and use Parcel B in pursuance of this Agreement.

3. The City agrees and undertakes to leave Parcel B in as good a condition after any work done in connection with such construction, maintenance, repair or replacement as prior to the commencement of any such work, and to indemnify the Grantor against any suits, actions, claims or demands arising out of such work.

4. The City hereby covenants and agrees to be responsible for damage to Parcel B and any buildings thereon, and/or injury to the persons of the Grantor and any other person being on Parcel B with the consent, express or implied, of the Grantor, arising out of the negligence of the City's servants or employees or other persons acting with the City's authorization including but not limited to

independent contractors hired by the City in the construction, maintenance, repair and/or replacement of Parcel A.

5. The Grantor covenants and agrees that:

(a) the Grantor will not erect or permit the erection of any building or other immoveable structure, in, over or upon Parcel B or any part thereof without the prior written permission of the City's Director of Public Works or such officer as may be acting in his stead (herein called ***"the Director"***);

(b) notwithstanding anything to the contrary as set forth in clause 5(a) above, the parties hereto acknowledge and agree that the Grantor shall be entitled to construct and install a fence in, over or upon Parcel B or any part thereof provided that the Grantor first obtains the written approval of the Director, acting reasonably, and provided that the construction and installation shall comply with all applicable by-laws and/or zoning regulations;

(c) the Grantor will maintain Parcel B in a well graded condition satisfactory to the Director, acting reasonably, so as to ensure that water drains away from Parcel A; and

(d) upon being given notice from the Director so to do, the Grantor will ensure that the grade of Parcel B is restored to a condition satisfactory to the Director, acting reasonably, so that water drains away from Parcel A.

6. The Grantor covenants and agrees with the City that the easement and rights hereby granted shall run with Parcel B and shall enure to the benefit of the City, its successors and assigns and shall be binding upon the Grantor and the Grantor's successors in title of Parcel B or any part thereof.

7. The Land affected by this agreement is described as:

Parcel 2 as shown on Misc. Plan No. 6164/10.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year first above written.

K R AUTO LTD.

Per: _____

Name: *(affix*

_____ Title:
corporate

Witness:
seal)

Name: _____

(please print) Per: _____

Address: _____ Name:

Title:

_____

THE CITY OF WINNIPEG

Per: _____

for DIRECTOR of Planning, Property and Development

Approved:

_____

for Director of Public Works

Approved:

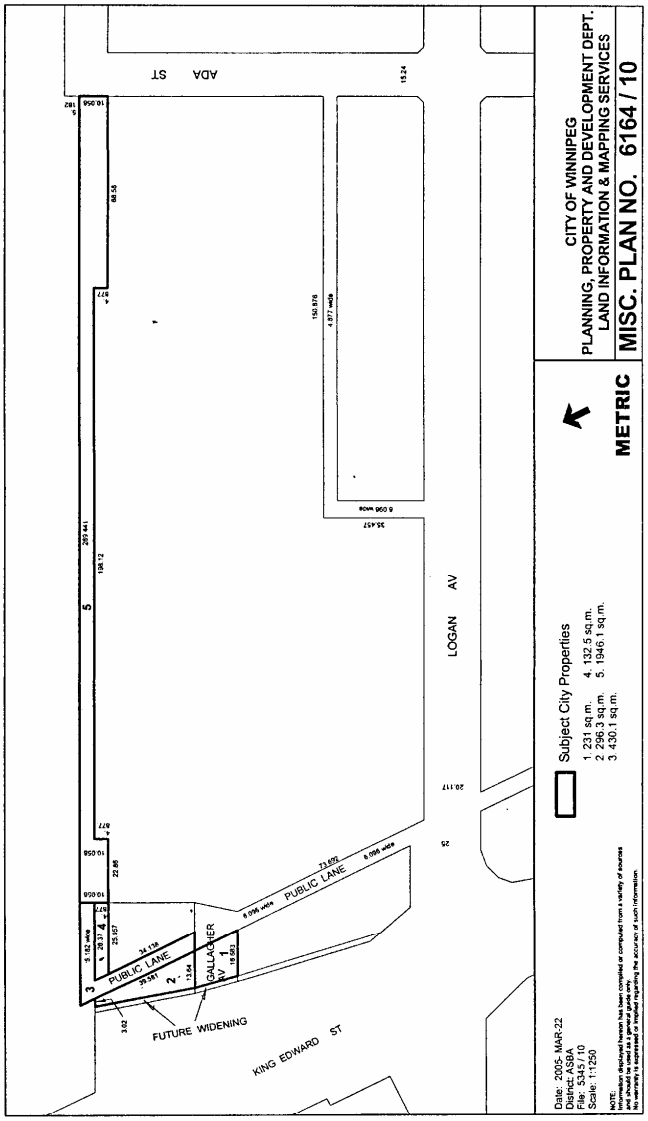
_____

Planning, Property and Development Department

Certified as to form:

_____

for City Solicitor


ADA ST
LOGAN AV
PUBLIC LANE
PUBLIC LANE
GALLAGHER AV
FUTURE WIDENING
KING EDWARD ST
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 6164 / 10
METRIC
Subject City Properties
1. 231 sq.m.
2. 296.3 sq.m.
3. 430.1 sq.m.
4. 132.5 sq.m.
5. 1946.1 sq.m.
Date: 2005- MAR-22
District: ASBA
File: 5345 / 10
Scale: 1:1250