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

Item No. 21 Sale of a Portion of the public lane south of River Avenue between Scott and Bryce Streets - Vincent Nocita Construction Co. Ltd. File FI-2.4(32)

STANDING COMMITTEE RECOMMENDATION:

On July 20, 2005, the Executive Policy Committee concurred in the recommendation from the Standing Policy Committee on Property and Development and submitted the following to Council:

1. That the City acquire, by way of dedication in accordance with the special items outlined in the Offer to Purchase contained in the report of the Director of Planning, Property and Development dated June 16, 2005, the closed lane as shown shaded on Misc. Plan No 12433/2.

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 Property and Development - July 5, 2005

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 20, 2005, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On July 5, 2005, the Standing Policy Committee on Property and Development recommended to the Executive Policy Committee and Council that the City acquire, by way of dedication in accordance with the special items outlined in the Offer to Purchase contained in the report of the Director of Planning, Property and Development dated June 16, 2005, the closed lane as shown shaded on Misc. Plan No 12433/2.

STANDING COMMITTEE DECISION:

On July 5, 2005, the Standing Policy Committee on Property and Development concurred in the administrative recommendation.

Re: **Proposed Sale of a portion of the Public Lane South of River Avenue, between Scott and Bryce Streets – Vincent Nocita Construction Co. Ltd.**
City Centre Community
Fort Rouge - East Fort Garry Ward

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

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

Report date: June 16, 2005

Recommendation(s):

1. That the proposed sale of that portion of the Public Lane shown hatched on the attached Misc. Plan No 12433/2 to Vincent Nocita Construction Co. Ltd. be approved at a price of $1.00, and in accordance with the terms and conditions of the attached Offer to Purchase, and subject to Council's adoption and enactment of the proposed closing By-law.
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:

- Vincent Nocita Construction Co. Ltd. intends to consolidate a portion of the subject Public Lane with its adjacent land to the east (374 River Avenue) in order to facilitate a condominium development.
- On March 23, 2005, Council adopted the closing of that portion of the subject Public Lane South of River Avenue between Scott And Bryce Streets, shown hatched on the attached Misc. Plan No. 12433/2 (DAOC 2/2004).
- The Planning, Property and Development Department is now recommending the approval of the terms and conditions of sale.

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 is in receipt of an Offer to Purchase that portion of the Public Lane shown hatched on Misc. Plan No. 12433/2. Approval by the Standing Policy Committee on Property and Development is required for the proposed terms and conditions of sale as set out in the attached Offer to Purchase.

HISTORY:

Vincent Nocita Construction Co. Ltd. intends to consolidate a portion of the subject Public Lane with its adjacent land to the east (374 River Avenue) in order to facilitate a condominium development.

On February 1, 2005, the City Centre Community Committee considered and approved an application (DAOC 2/2004) to legally close that portion of the Public Lane south of River Avenue between Bryce and Scott Streets shown hatched on the attached Misc. Plan No. 12433/2.

On March 7, 2005, the Standing Policy Committee on Property and Development considered and approved DAOC 2/2004. Subsequently, on March 23, 2005, Council adopted the closing of the Public Lane south of River Avenue between Bryce and Scott Streets.

DISCUSSION:

The Planning, Property and Development Department has determined that there is no City requirement for that portion of the subject Public Lane. Vincent Nocita Construction Co. Ltd. has agreed, at its expense, to dedicate to the City a portion of its land for a new Public Lane south of its property (shown shaded on Misc. Plan No. 12433/2) to accommodate area access to and from the remaining Public Lane.

In addition to the requirement for a lane opening width of 7.25 metres, the Public Works Department requires Vincent Nocita Construction Co. Ltd., at its expense to:

a) Acquire and dedicate a 3 metre by 3 metre corner cut for the Public Lane as shown on Misc. Plan No. 12433/2.

b) Remove and repair curbs/sidewalk, restore boulevard on the existing lane turnout at River Avenue, to the satisfaction of the City.

c) Construct a 7.25 metre in width concrete pavement and all related works, including, but not necessarily limited to land drainage sewer, to the satisfaction of the City.

d) Relocate an existing hydro pole line.

The Planning, Property and Development Department recommends that the sale of that portion of the subject Public Lane to Vincent Nocita Construction Co. Ltd. be approved for the following reasons:

a) The purchaser will be responsible for all costs related to the closing of the Public Lane including necessary closing/opening plans and Plan of Survey.

b) The proposed purchase price of $1.00 is supported as the purchaser is dedicating to the City more land for the new lane (225.7. sq. meters) than the area of the lane it is purchasing from the City (190.2 sq. meters).

c) The purchaser will be responsible for all costs related to the construction of the new concrete public lane and all related works.

d) The proposed terms and conditions of sale as recommended by the Department are in accord with the City's standard terms and conditions and include special items required by the Department (i.e. the title to the subject property to be consolidated with the Purchaser's adjacent property to the east, the purchaser to relocate the closed lane and dedicate this land to the City, the purchaser to pay all costs related to construction of the new public lane). The Department has provided these terms to the purchaser and expects receipt of a response prior to the Committee's consideration of this report.

Financial Impact Statement Date: June 14, 2005

COMMENTS:

The proposed sale of a portion of the Public Lane South of River Avenue, between Scott and Bryce Streets to Vincent Nocita Construction Co. Ltd. and the related land swap will result in revenues to the City of a nominal $1 per annum. As such, it is fair to say there are no associated financial implications to the City with the proposed transaction.

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

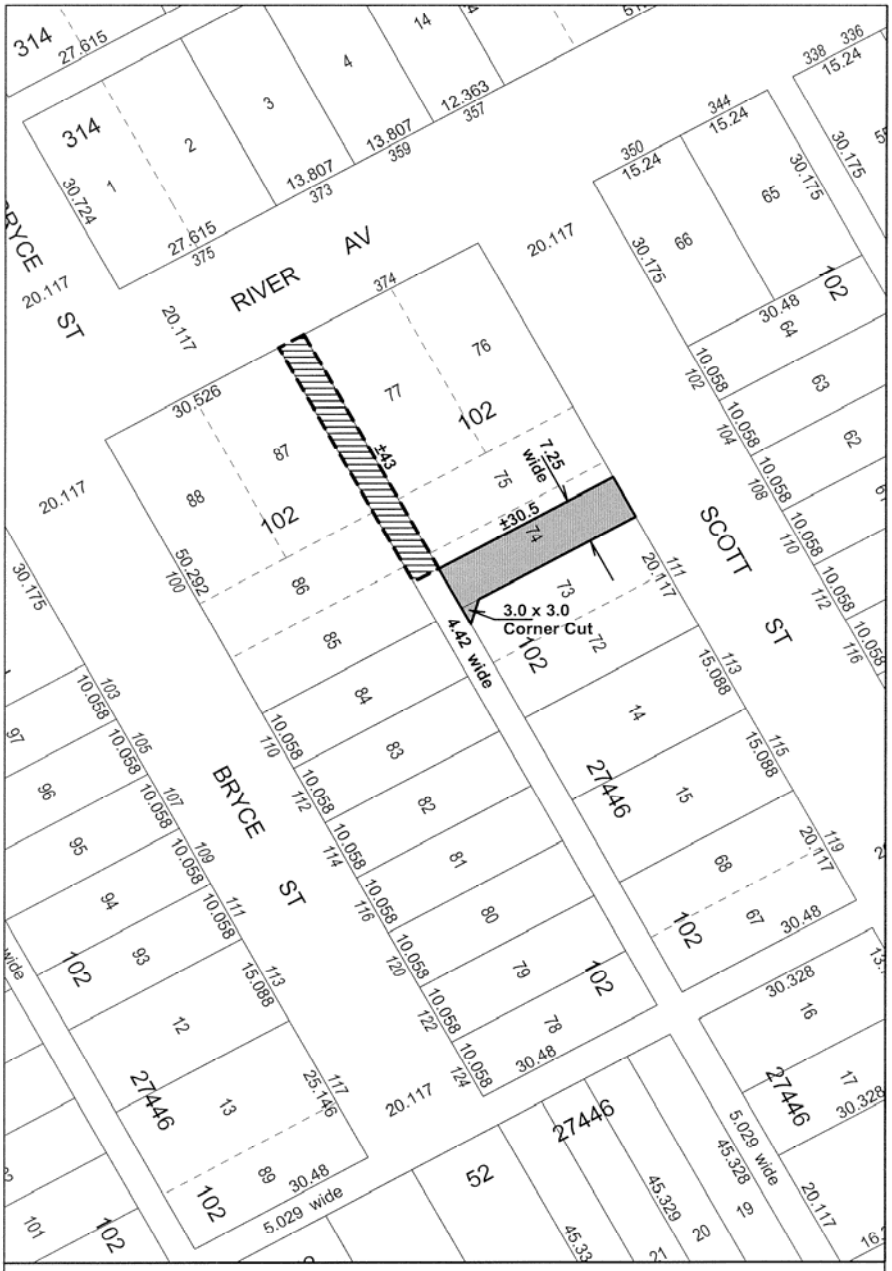
IN PREPARING THIS REPORT, THERE WAS CONSULTATION WITH AND CONCURRENCE BY:

No consultation was required in preparing this report.

THIS REPORT SUBMITTED BY:

Planning, Property and Development Department
Division: Real Estate
Prepared by: Barry Lucyk
PPD File #: 8539

Document name: o:\reports directive\real estate\sales\(bl)riverscott.doc


RIVER AV
BRYCE ST
SCOTT ST
±43
7.25 wide
±30.5
3.0 x 3.0
Corner Cut
4.42 wide
5.029 wide
27446
102
Proposed Sale to Vincent Nocita Construction Co. Ltd.
Area: ±190.2 m² (±2047.5 ft²)
Property to be Dedicated to The City of Winnipeg for a Public Lane
Area: ±225.7 m² (±2429.0 ft²)
N
Date: 2005-JUN-6
District: CC
File: 8539
Scale: 1:750
METRIC
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. 12433/2

File No: **8539**

INDUSTRIAL/COMMERCIAL

OFFER TO PURCHASE

The Undersigned (hereinafter called "the Purchaser") hereby offers to purchase from The City of Winnipeg (the "City"), subject to Council enactment of the necessary by-law to effect the legal closing of the following lands: -

> ***South side of River Avenue, west of Scott Street, shown cross-hatched as "Proposed Sale to Vincent Nocita Construction Co. Ltd.", on Misc. Plan No. 12433/2 attached hereto: (hereinafter called the "Lands");***

for the sum of $1.00 cash, the receipt of which is hereby acknowledged.

1. (1) The purchase price is payable as follows:

   (a) By payment of $1.00 cash as noted above; and
   (b) By the transfer, at no cost to the City, of the real property which property is shown shaded as "Property to be dedicated to the City for a Public Lane" on Misc. Plan No. 12433/2 attached hereto, and which is free and clear of all encumbrances and restrictions, on the date of closing, possession and adjustments as set out in Clause 3 (1) herein.

2. (1) The payment of $1.00 as set out in clause 1 (1) herein 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), herein after called the "Date of Approval".

3. (1) The date of closing, possession and adjustments shall be one hundred and twenty (120) days following the Date of Approval or earlier as mutually agreed to.

(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.

4. 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 or the date the balance of monies is paid to the City, whichever is the earlier.

(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.

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

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

7. 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 its proposed use and development of the Lands may require applications for re-zoning, variances or conditional uses, and 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.

8. 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.

9. Upon approval of the sale by the City, 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.

10. The Purchaser agrees that in the event the Purchaser, at its sole cost, conducts or causes to be conducted an Environmental Site Assessment and/or soil testing of the Lands, it shall:

(1) ensure that all work done in connection with such Environmental Site Assessment and/or soil testing 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 10; and

(3) restore the Lands to the same condition as prior to its entering in or upon same in pursuance of this Clause 10; 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/or soil testing; and

(5) provide copies of any such Environmental Site Assessment and/or Report concerning soil testing 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 and/or soil testing, 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, but in any event, prior to closing, 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 Purchaser shall have first satisfied all conditions of this Clause 10.

AND FURTHER if the City has not been advised of any non-compliance of the Lands to Provincial Environmental standards within ninety (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.

11. (1) The Purchaser acknowledges that the City is not providing any warranty as to the environmental condition of the Lands.

(2) The Purchaser shall indemnify and save harmless the City from and against all claims, costs and damages arising from or in any way connected with the existence of contaminants of any kind in or on the Lands.

(3) The Purchaser agrees that it will rely solely upon its own investigations in determining the degree of contamination, if any, existing on and within the Lands and the extent of contamination, if any.

(4) It is understood and agreed that the terms, conditions and covenants contained in this Clause 11 shall not merge but shall survive closing.

12. The City agrees that in the event the City, at its sole cost, conducts or causes to be conducted an Environmental Site Assessment and/or soil testing of the lands to be dedicated as a public lane ("Future Public Lane Lands"), it shall:

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

(2) maintain the Future Public Lane Lands in safe condition at all times during the conduct of any work done in pursuance of this Clause 12; and

(3) restore the Future Public Lane Lands to the same condition as prior to its entering in or upon same in pursuance of this Clause 12; and

(4) indemnify and save harmless the Purchaser 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/or soil testing.

AND in the event it is determined as a result of said Environmental Site Assessment and/or soil testing, that contamination levels exceed Provincial Environmental Standards for the intended use of the Future Public Lane Lands and documentation to that effect is produced to the Purchaser within ninety (90) days following the Date of Approval, but in any event, prior to closing, the Purchaser, 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 City to that date, PROVIDED that the City shall have first satisfied all conditions of this Clause 12.

AND FURTHER if the Purchaser has not been advised of any non-compliance of the Future Public Lane Lands to Provincial Environmental standards within ninety (90) days from the Date of Approval, the City agrees to complete the transaction as herein contemplated.

13. 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.

14. (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, MTS Allstream Inc., Centra Gas Manitoba Inc., 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. The Purchaser will assume any and all costs for any relocation of utility distribution facilities. The Purchaser agrees to pay, on closing, the cost for Manitoba Hydro to disconnect and remove the existing overhead poles and/or hydro lines in the Lands.

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

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

15. In consideration of the sale of the Lands by the City to the Purchaser, the Purchaser covenants and agrees as follows:

(1) The Purchaser shall, at the Purchaser's sole cost, effort and expense, do all things as are necessary, including but not limited to causing to be prepared a closing plan to effect the legal closing of the Lands, and a Plan of Survey, suitable for registration at Winnipeg Land Titles Office, together with such documentation as may be required to ensure that the Lands to be conveyed by the City and the Purchaser's adjoining property legally described as: Lots 77, 76, 75, and Pt. Lot 74, Plan 102, in the Winnipeg Land Titles Office are consolidated so as to constitute a single and indivisible parcel. The Purchaser does hereby acknowledge that in complying with this obligation it may be required to arrange for the discharge and re-registration of existing encumbrances against the Purchaser's property described herein. This agreement shall run with the Lands and the Purchaser's adjoining property and shall bind the Purchaser, its successors and assigns and its successors in title.

(2) The Purchaser shall, at the Purchaser's sole cost, effort and expense, do all things as are necessary, including but not limited to causing to be prepared an opening plan to effect the legal opening of the land shown as shaded as "Property to be dedicated to the City for a Public Lane" on Misc. Plan No. 12433/2 attached hereto, suitable for registration at Winnipeg Land Titles Office in the name of the City of Winnipeg, all at no cost to the City.

(3) To pay the applicable Land Titles Office registration fees and Land Transfer Tax in respect thereto.

16. No commission is payable by the City on the sale of the Lands.

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

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

19. 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.

20. 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.

21. 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.

22. The sale of the Lands shall be subject to the Purchaser, at the Purchaser's sole cost, effort and expense, being responsible for the removal of the existing lane turnout at River Avenue, including but not limited to the restoration of the curb, boulevard and sidewalk all to the satisfaction of the City's Director of the Public Works Department.

23. The sale of the Lands shall be subject to the Purchaser transferring to the City of Winnipeg, at no expense to the City, the real property shown shaded as "Property to be dedicated to the City for a Public Lane", on Misc. Plan No. 12433/2 attached, failing which, this Offer shall be null and void.

23. The Purchaser shall, prior to the date of closing, enter into a Servicing Agreement with the City of Winnipeg, to carry out the following works at its expense:

(a) Construct a 7.25 m in width by 150mm in thickness portland cement concrete pavement (including a 3.0 m x 3.0 m corner cut) and all related works, including, but not necessarily limited to land drainage sewer, within the proposed east-west public lane (as same is shown on Misc. Plan No. 12433/2 attached hereto as " Property to be dedicated to the City for a Public Lane), all as determined by and to the satisfaction of the Director of Public Works,

failing which, this Offer to Purchase shall be null and void.

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

Vincent Nocita Construction Co. Ltd., 630 Leila Avenue, Winnipeg, Man. R2V 3N7
Name (Please Print) Address

Purchaser's Registration No. (G.S.T.)_____

IN WITNESS WHEREOF the Purchaser has signed this document in

_____, _____, this _____ day of _____2005

_____ _____
Witness Authorized Signature

_____
Name and Title of Authorized Signature (Please print)

Witness

Authorized Signature

Name and Title of Authorized Signature (Please print)

THE CITY OF WINNIPEG

Per: _____
DIRECTOR of Planning, Property and Development

Approved as to details:

Planning, Property and Development

Approved as to form:

for City Solicitor/Manager of Legal Services

Approved as to details:

Public Works Department

O:\Real Estate\barry\8539-RiverScott\nocitaconstroffer.doc

EXHIBIT "A"
Real Owner Application

To the City Assessor

_____ Roll No. _____
(Name of Municipality)

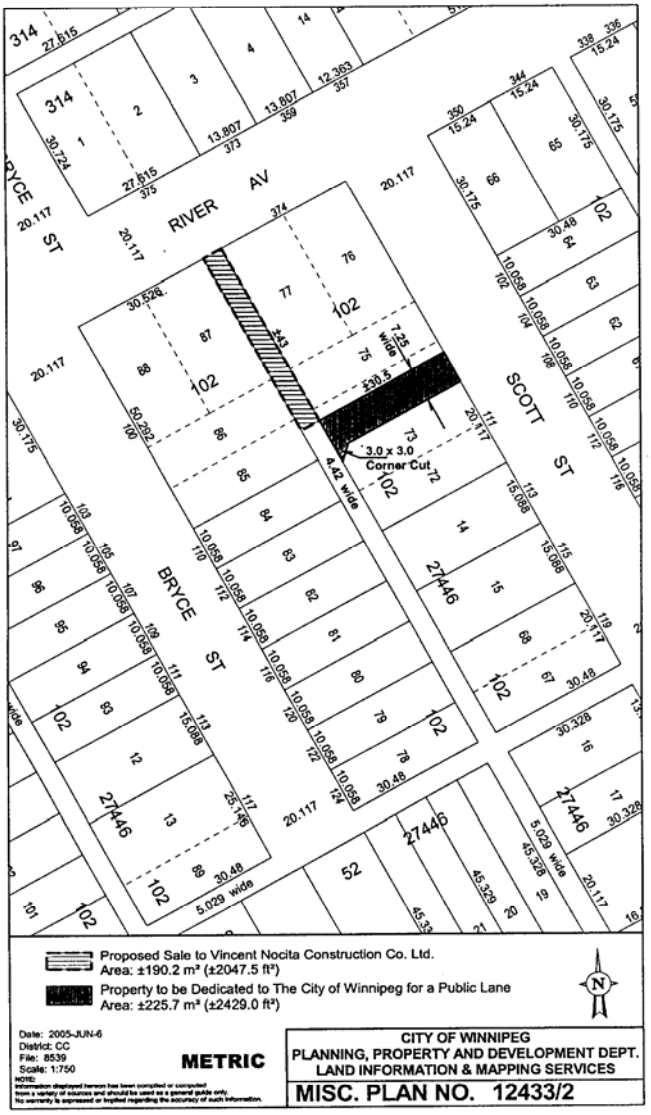
1. I/We_____
(Print Full Name)
request that my/our name(s) appear in the Assessment Roll of the City of Winnipeg in respect to the following property, pursuant to Section 12(1) of "The Municipal Assessment Act", Cap. M 226 S.M..
2. Description of Properties: (Give description of all property in respect of which you wish your name to appear).

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

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: _____ 20 ___ _____
(Signature of Applicant)

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


RIVER AV
BRYCE ST
SCOTT ST
3.0 x 3.0 Corner Cut
4.42 wide
7.25 wide
5.029 wide
Proposed Sale to Vincent Nocita Construction Co. Ltd.
Area: ±190.2 m² (±2047.5 ft²)
Property to be Dedicated to The City of Winnipeg for a Public Lane
Area: ±225.7 m² (±2429.0 ft²)
Date: 2005-JUN-6
District: CC
File: 8539
Scale: 1:750
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 12433/2