**Agenda - Council - October 26, 2005**

**Report - Standing Policy Committee on Property and Development - October 4, 2005**

**Item No. 15 Subdivision and Rezoning- 2140 Ness Avenue**
**File DASZ 29/2005**

STANDING COMMITTEE RECOMMENDATION:

On October 19, 2005, the Executive Policy Committee concurred in the recommendations of the Standing Policy Committee on Property and Development and the Assiniboia Community Committee and submits the following to Council:

1. That the plan of subdivision proposed under File DASZ 29/2005 be approved for preparation as a plan of subdivision by a Manitoba Land Surveyor in accordance with Schedule "A" for File DASZ 29/2005 dated September 6, 2005, for registration in the Winnipeg Land Titles Office subject to the following:

    A. That the Developer be required to enter into a Development Agreement with the City containing all the conditions outlined in the report of the Administrative Coordinating Group dated August 16, 2005.

2. That the Director of Planning, Property and Development be authorized to certify any documents in connection therewith.

3. That The Winnipeg Zoning By-law No. 6400/94 be amended by rezoning the subject land as shown on Schedule "A" for File DASZ 29/2005 dated September 6, 2005, from a "R1-5A" Residential District to a "C1.5" Commercial District subject to the applicant entering into a Zoning Agreement with the City pursuant to Section 240 (1) of The City of Winnipeg Charter to include the following conditions:

    A. That land usage be restricted as follows:

        i. That the following uses shall not be permitted on the land:

            a. auction room
            b. automobile, including motorcycle: rental, sales, including accessory repair, service, installation of supplies/parts
            c. automobile, including motorcycle: supplies/parts, sales
            d. beer: sales
            e. bingo parlour
            f. boat: sales, service
            g. bowling alley

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h. building materials, hardware, home improvement supplies or equipment: sales
i. bus station
j. cocktail lounge
k. exterminator
l. fuel: sales kiosk
m. hotel, including motel, limited to guest rooms
n. liquor: sales
o. parking area, non-accessory
p. tattoo parlour
q. tire: sales, service

B. That the following signs are prohibited on the "C1.5" Commercial District land:

i. Free-standing signs in excess of twenty (20) feet in height.
ii. Mobile advertising signs, except for a period of fourteen (14) days upon issuance of a new occupancy permit.
iii. Flashing or scintillating signs

C. That prior to the issuance of a development permit plans showing the site layout, access, parking, loading, fencing, landscaping, garbage enclosures, site lighting, signage and building elevations and materials be submitted for the approval of the Assiniboia Community Committee and thereafter all to be maintained to the satisfaction of the Director of Planning, Property and Development.

D. That the building height on the subject property shall be limited to a maximum of two (2) storeys to ensure compatibility with the surrounding area.

4. That a ten percent (10%) dedication be made by a payment of a sum of money to the City in lieu of the requirement for land dedication based on the increase in market value of the land and the creation of additional sites, (if applicable).

5. That in the event the application is not proceeded with expeditiously and the by-law is not enacted within twenty-four (24) months after adoption of the report by Council, the matter shall be deemed to be concluded and shall not be proceeded with unless an extension of time is applied for prior to the expiry of this twenty-four (24) month period and the extension is subsequently approved by Council.

6. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary by-law in accordance with the above.

**Report - Standing Policy Committee on Property and Development - October 4, 2005**

7. That the subdivision section of the by-law shall come into force and effect upon execution by the City of Winnipeg of the Development Agreement.

8. That the zoning section of the by-law shall come into force and effect when the Plan of Subdivision has been registered in the Winnipeg Land Titles Office, and the Zoning Agreement has been filed by caveat in the Winnipeg Land Titles Office against those lands provided that the said effective date occurs within twenty-four (24) months from the date that the said rezoning by-law is adopted by Council.

9. That the Plan of Subdivision shall be approved and signed by the Director of Planning, Property and Development within two (2) years of the date of passage of the aforementioned by-law.

10. That in the event the necessary City of Winnipeg mylar approval signatures have not been secured within twenty-four (24) months after adoption of the by-law, the matter shall be deemed to be concluded and shall not be proceeded with unless Council extends that time.

11. That the City Solicitor/Manager of Legal Services be requested to do all things necessary for implementation in accordance with the terms of The City of Winnipeg Charter.

**Report - Standing Policy Committee on Property and Development - October 4, 2005**

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On October 19, 2005, the Executive Policy Committee concurred in the recommendations of the Standing Policy Committee on Property and Development and the Assiniboia Community Committee and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On October 4, 2005, the Standing Policy Committee on Property and Development concurred in the recommendation of the Assiniboia Community Committee and submitted the matter to the Executive Policy Committee and Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On September 20, 2005, the Assiniboia Community Committee concurred in the administrative recommendation with the following amendment, namely:

- That a new condition be added, namely:

  "3.D. That the building height on the subject property shall be limited to a maximum of two (2) storeys to ensure compatibility with the surrounding area."

and submitted its recommendation to the Standing Policy Committee on Property and Development.

**RE:** **Subdivision and Rezoning- 2140 Ness Avenue**
**File DASZ 29/2005 [c/r DAV 135021/2005D]**

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

**Prepared by:** **Josie Marques, Clerk,**
**Assiniboia Community Committee**

**Report date:** **September 22, 2005**

COMMUNITY COMMITTEE RECOMMENDATION:

On September 20, 2005, the Assiniboia Community Committee concurred in the administrative recommendation, as amended, and recommends to the Standing Policy Committee on Property and Development:

1. That the plan of subdivision proposed under File DASZ 29/2005 be approved for preparation as a plan of subdivision by a Manitoba Land Surveyor in accordance with Schedule "A" for File DASZ 29/2005, and dated September 6, 2005, for registration in the Winnipeg Land Titles Office, subject to the following:

    A. That the Developer be required to enter into a Development Agreement with the City containing all the conditions outlined in the report of the Administrative Coordinating Group dated August 16, 2005;

2. That the Director of Planning, Property and Development be authorized to certify any documents in connection therewith.

3. That The Winnipeg Zoning By-law No. 6400/94 be amended by rezoning the subject land as shown on Schedule "A" for File DASZ 29/2005, and dated September 6, 2005, from a "R1-5A" Residential District to a "C1.5" Commercial District, subject to the applicant entering into a Zoning Agreement with the City pursuant to Section 240 (1) of The City of Winnipeg Charter to include the following conditions:

    A. That land usage be restricted as follows:

        i. That the following uses shall not be permitted on the land:

            a. auction room
            b. automobile, including motorcycle: rental, sales, including accessory repair, service, installation of supplies/parts
            c. automobile, including motorcycle: supplies/parts, sales
            d. beer: sales
            e. bingo parlour

f. boat: sales, service
g. bowling alley
h. building materials, hardware, home improvement supplies or equipment: sales
i. bus station
j. cocktail lounge
k. exterminator
l. fuel: sales kiosk
m. hotel, including motel, limited to guest rooms
n. liquor: sales
o. parking area, non-accessory
p. tattoo parlour
q. tire: sales, service

B. That the following signs are prohibited on the "C1.5" Commercial District land:

i. Free-standing signs in excess of twenty (20) feet in height;
ii. Mobile advertising signs, except for a period of fourteen (14) days upon issuance of a new occupancy permit; and
iii. Flashing or scintillating signs

C. That prior to the issuance of a development permit, plans showing the site layout, access, parking, loading, fencing, landscaping, garbage enclosures, site lighting, signage, and building elevations and materials be submitted for the approval of the Assiniboia Community Committee; and thereafter all to be maintained to the satisfaction of the Director of Planning, Property and Development.

***D. That the building height on the subject property shall be limited to a maximum of two (2) storeys to ensure compatibility with the surrounding area.***

4. That a ten percent (10%) dedication be made by a payment of a sum of money to the City in lieu of the requirement for land dedication based on the increase in market value of the land and the creation of additional sites, (if applicable).

5. That in the event the application is not proceeded with expeditiously and the by-law is not enacted within twenty-four (24) months after adoption of the report by Council, the matter shall be deemed to be concluded and shall not be proceeded with unless an extension of time is applied for prior to the expiry of this twenty-four (24) month period and the extension is subsequently approved by Council.

6. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary by-law in accordance with the above.

7. That the subdivision section of the by-law shall come into force and effect upon execution by the City of Winnipeg of the Development Agreement.

8. That the zoning section of the by-law shall come into force and effect when the Plan of Subdivision has been registered in the Winnipeg Land Titles Office, and the Zoning Agreement has been filed by caveat in the Winnipeg Land Titles Office against those lands provided that the said effective date occurs within twenty-four (24) months from the date that the said rezoning by-law is adopted by Council.

9. The Plan of Subdivision shall be approved and signed by the Director of Planning, Property and Development within two (2) years of the date of passage of the aforementioned by-law.

10. That in the event that the necessary City of Winnipeg mylar approval signatures have not been secured within twenty-four (24) months after adoption of the by-law, the matter shall be deemed to be concluded and shall not be proceeded with unless Council extends that time.

11. That the City Solicitor/Manager of Legal Services be requested to do all things necessary for implementation in accordance with the terms of The City of Winnipeg Charter.

***Note: The wording in bold and italics denotes amendments made by the Community Committee.***

The Assiniboia Community Committee provided the following supporting reason(s) for its recommendation:

1. The Assiniboia Community Committee agreed with the administrative comments contained in the report from the Manager of Planning and Land Use dated September 6, 2005 and in the report from the Administrative Coordinating Group dated August 22, 2005.

**PUBLIC HEARING SUMMARY**

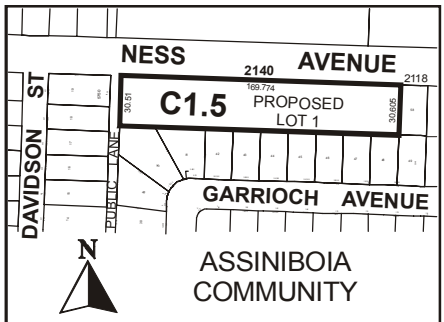
File: DASZ 29//2005 [c/r DAV 135021/2005D]

Before: Assiniboia Community Committee
Councillor Eadie, Chairperson
Councillor Clement
Councillor De Smedt

Public Hearing: September 20, 2005
Community Committee Chamber
5006 Roblin Boulevard

Applicant: Ben Haber

Subject:




**APPLICANT :** BEN HABER
**FILE :** DASZ 29/05
**PROPOSAL :** An application for the approval of the plan of subdivision shown outlined above as may be determined by Council and for a proposed zoning change to By-law No. 6400/94 by rezoning the land shown outlined above from an "R1-5A" RESIDENTIAL DISTRICT to a "C1.5" COMMERCIAL DISTRICT. **For information, phone Mr. R. Humble, Planner at 986-2688.**

Premises Affected: 2140 Ness Avenue

Exhibits Filed:

1. Application dated June 13, 2005
2. Notification of Public Hearing dated June 20, 2005
3. Manitoba Status of Titles 1508855 and 1508920
4. Surveyor's Building Location Certificate and sketch dated August 3, 1976
5. Letter of authorization dated June 7, 2005 from Ken Wiebe, President, Seventh-Day Adventist Church to Ben Haber

6. Plan
7. Report from the Manager of Planning and Land Use dated September 6, 2005
8. Report from the Administrative Coordinating Group dated August 22, 2005
9. Inspection Report

REPRESENTATIONS:

In Support:

Ben Haber

In Opposition:

Nil

For Information:

Nil

For the City:

Mr. R. Humble, Senior Planner, Planning, Property and Development Department

SUMMARIZATION OF REPRESENTATIONS AND SUBMISSIONS
MADE AT THE PUBLIC HEARING

The applicant, Ben Haber, appeared in support of the application and gave a brief overview of the proposal. Mr. Haber asked for clarification of the land dedication recommendation.

The Senior Planner advised that the ten percent (10 %) was applicable to the increase in assessment value on the zoning change as determined by the Real Estate Division.

Councillor Eadie advised that there should be a two (2) story limit on the height of any buildings erected on the site to ensure compatibility with the surrounding area.

Exhibit "7" referred to in File DASZ 29/2005 [c/r DAV 135021/2005D]

## Planning, Property and Development Department Report

**To the Assiniboine Community Committee**

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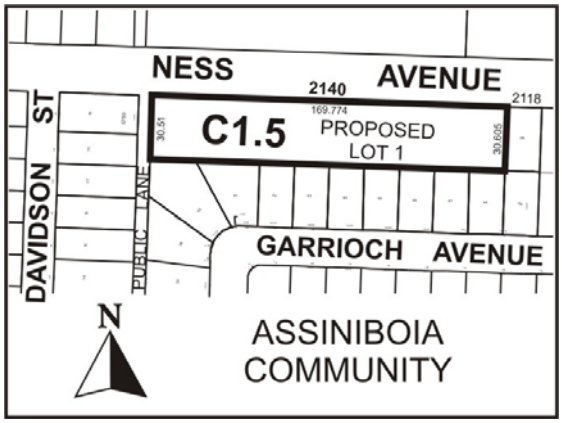
**Date:** September 6, 2005
**File:** **DASZ 29/05**
**Related Files:** [DAV 05-135021]
**Subject:** Plan of subdivision to consolidate 10 lots into proposed Lot 1. Rezone the said lots from 'R1-5A' Residential District to a'C1.5' Commercial District.

**Location:** 2140 Ness Avenue

**Legal Description:** C/T 1508920
Lots 59 and 60, Block 10, Plan 5090, WLTO in RL 17 to 20, Parish of St. James
C/T 1508855
Lots 61 to 68, Block 10, Plan 5090, WLTO in RL 17 to 20, Parish of St. James




**Applicant:** Ben Haber

**Owner:** The Manitoba – Saskatchewan Conference of Seventh-Day Adventist Church

**Recommendation:** Approved with Conditions

**Report Summary:**

- The applicant wishes to consolidate 10 parcels, totaling 1.3 acres and rezone to the "C1.5" commercial;
- The existing 1 storey church building would be retained and converted to a commercial use;
- The applicant has not identified the proposed future uses;
- Planning and Land Use Division recommends Approval subject to a Zoning Agreement limiting commercial uses to those compatible with the surrounding area.

## Site Description

Existing Land Use and Zoning

The application includes 10 parcels of land on the south side of Ness Avenue, with an approximate area of 1.3 acres. The lands are occupied by a vacant church and are currently zoned 'R1-5A' Residential District. The site is situated in the Silver Heights neighbourhood of the St. James ward. Located along a heavy traffic corridor, the site is directly adjacent to commercial development on its east side.




Surrounding Land Use and Zoning
North: Ness Avenue then 'M2' Industrial (Military Base)
South: 'R1-5A' Residential
East: 'C1' Commercial (Len's Auto Service and Sales – Existing Non-Conforming)
West: Public lane, followed by 'R1-5A' Residential

**Description of the Proposed Development**
The applicant proposes to rezone the land from 'R1-5A' Residential District to 'C1.5' Commercial District and consolidate the lots to permit future commercial uses on the site. The applicant has indicated to Administration that although he does not yet know what commercial uses will occupy the site, he intends to retain the existing church building and convert it to accommodate commercial uses. The ± 4,200 square foot building is a 1970's, one-storey brick structure with a flat roof. The rear (south) wall of the building extends for approximately 90 feet and is between 9 to 10 feet in height with minimal openings, facing the residences to the south. An unimproved gravel surface parking lot is located to the east of the church building. A cluster of significant deciduous trees is situated along the south property line on both sides of the church building.

In conjunction with the proposed rezoning, a concurrent variance application (DAV 05-135021/D) has been made for maintenance of an existing building to permit a rear yard of 4.22 feet instead of 25 feet.

**Analysis**

*Plan Winnipeg Compliance*
The subject site is within the 'Neighbourhood' designation in Plan Winnipeg. Policy 3A-01 Promote Orderly Development promotes a local neighbourhood identity with a mixed use of residential, educational, commercial, etc. at a compatible scale and density. Policies 3B-01 Promote Vibrant Neighbourhoods and 3B-05 Promote Commercial Densification discuss encouraging and promoting mixed uses in residential areas and commercial densification where appropriate.

*Compatibility with existing neighbourhood and surrounding uses*
Directly east of the subject site, fronting onto Ness Avenue, are several properties zoned 'C1' Commercial District. To the south of site is a residential neighbourhood with the residences fronting onto Garrioch Avenue. The existing church building, which is being retained, maintains a 10 foot high brick wall along its rear elevation.

*Transportation and Site Access*
The subject site fronts onto Ness Avenue which is considered a heavy use traffic corridor. Currently there is one approach to the site off Ness on the east side of the building.

*Servicing*
As per the ACG Report, ACG recommends that the Developer shall, at no expense to the City, construct a combined sewer in Ness Avenue to serve the proposed development as determined by and to the satisfaction of the Director of Water and Waste.

*Site Design Issues*
- In addition to the existing 4,200 square foot building, the site is also occupied by an unimproved gravel surface parking lot. The parking area has no landscaping or perimeter fencing. The Planning and Land Use Division is of the opinion that significant upgrades to the surface parking should be required prior to the issuance of a development permit.
- Approximately 10 large deciduous trees are located along the south property line. The trees add to the visual appearance of the site as well as providing a green buffer for the residences to the south fronting onto Garrioch Avenue. Administration is of the opinion that that the Developer should undertake to retain these trees.

*Land Use Bylaw Issues*
The 18,500 square foot site is currently occupied by a 4,200 square foot building which represents a site coverage of approximately 22.7%. Under the proposed "C1.5" zoning designation a maximum lot coverage of 60% is permitted. Subsequently, the site could potentially accommodate an additional 6,900 square feet of development. However, parking requirements would likely play a limiting factor to such an increase.

Based upon the proposed "C1.5" Commercial District zoning designation, the proximity of the existing residential neighbourhood directly to the south and the fact that the proposed commercial uses are currently not known, the Planning and Land Use Division recommend that a Zoning Agreement be undertaken, limiting the potential uses on this site to those compatible with the surrounding area.

**Recommendation**

The Planning and Land Use Division recommends approval for the following reasons:

- The existing church building on the subject site has been vacant for some time. While the building does not lend itself to an adaptive re-use to residential, commercial would be more appropriate.
- A Zoning Agreement, prohibiting uses incompatible with the surrounding neighbourhood would ensure that future commercial fits the context of the area.

**Recommended Conditions of Approval**

I. That the plan of subdivision proposed under File No. DASZ 29/05 be approved for preparation as a plan of subdivision by a Manitoba Land Surveyor in accordance with Schedule "A" for File No. DASZ 29/05, attached hereto and dated September 6, 2005, for registration in the Winnipeg Land Titles Office, subject to the following:

A. That the Developer be required to enter into a Development Agreement with the City containing all the conditions outlined in the report of the Administrative Coordinating Group dated August 16, 2005;

II. That the Director of Planning, Property and Development be authorized to certify any documents in connection therewith.

III That The Winnipeg Zoning By-Law No. 6400/94 be amended by rezoning the subject land as shown on Schedule "A" for File No. DASZ 29/05, attached hereto and dated September 6, 2005, to a "C1.5" Commercial District, subject to the applicant entering into a Zoning Agreement with the City pursuant to Section 240 (1) of The City of Winnipeg Charter to, to include the following conditions:

A. That land usage be restricted as follows:

i) The following uses shall NOT be permitted on the land:

- AUCTION ROOM
- AUTOMOBILE, including motorcycle: RENTAL, SALES, including accessory REPAIR, SERVICE, INSTALLATION OF SUPPLIES/PARTS
- AUTOMOBILE, including motorcycle: SUPPLIES/PARTS, SALES
- BEER: SALES

- BINGO PARLOUR
- BOAT: SALES, SERVICE
- BOWLING ALLEY
- BUILDING MATERIALS, HARDWARE, HOME IMPROVEMENT SUPPLIES or EQUIPMENT: SALES
- BUS STATION
- COCKTAIL LOUNGE
- CONTRACTOR'S ESTABLISHMENT
- EXTERMINATOR
- FUEL: SALES kiosk
- HOTEL, including MOTEL, limited to guest rooms
- LIQUOR: SALES
- PARKING AREA, non-accessory
- TATTOO PARLOUR
- TIRE: SALES, SERVICE

B. The following signs are prohibited on the "C1.5" land:
   i) Free-standing signs in excess of twenty (20) feet in height;
   ii) Mobile advertising signs, except for a period of fourteen (14) days upon issuance of a new occupancy permit; and
   iii) Flashing or scintillating signs

D. That, prior to the issuance of a development permit, plans showing the site layout, access, parking, loading, fencing, landscaping, garbage enclosures, site lighting, signage, and building elevations and materials be submitted for the approval of the Assiniboia Community Committee; and thereafter all to be maintained to the satisfaction of the Director of Planning, Property and Development.

IV. That a ten (10) percent dedication be made by a payment of a sum of money to the City in lieu of the requirement for land dedication based on the increase in market value of the land and the creation of additional sites, (if applicable).

V. That, in the event the application is not proceeded with expeditiously and the by-law is not enacted within twenty-four (24) months after adoption of the report by Council, the matter shall be deemed to be concluded and shall not be proceeded with unless an extension of time is applied for prior to the expiry of this twenty-four (24) month period and the extension is subsequently approved by Council.

VI. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary by-law in accordance with the above.

VII. That the subdivision section of the by-law shall come into force and effect upon execution by the City of Winnipeg of the Development Agreement.

VIII. That the zoning section of the by-law shall come into force and effect when the Plan of Subdivision has been registered in the Winnipeg Land Titles Office, and the Zoning Agreement has been filed by caveat in the Winnipeg Land Titles Office against those lands **provided that the said effective date occurs within twenty-four (24) months from the date that the said rezoning by-law is adopted by Council.**

IX. The Plan of Subdivision shall be approved and signed by the Director of Planning, Property and Development within two (2) years of the date of passage of the aforementioned by-law.

X. In the event that the necessary City of Winnipeg mylar approval signatures have not been secured within twenty-four (24) months after adoption of the by-law, the matter shall be deemed to be concluded and shall not be proceeded with unless Council extends that time.

XI. That the City Solicitor/Manager of Legal Services be requested to do all things necessary for implementation in accordance with the terms of The City of Winnipeg Charter.

This Report Submitted by: Randy Humble, Senior Planner
Planning, Property and Development Department
Planning and Land Use Division

Report Prepared by: Randy Humble
PPD File # 2.215

**Schedule "A"**

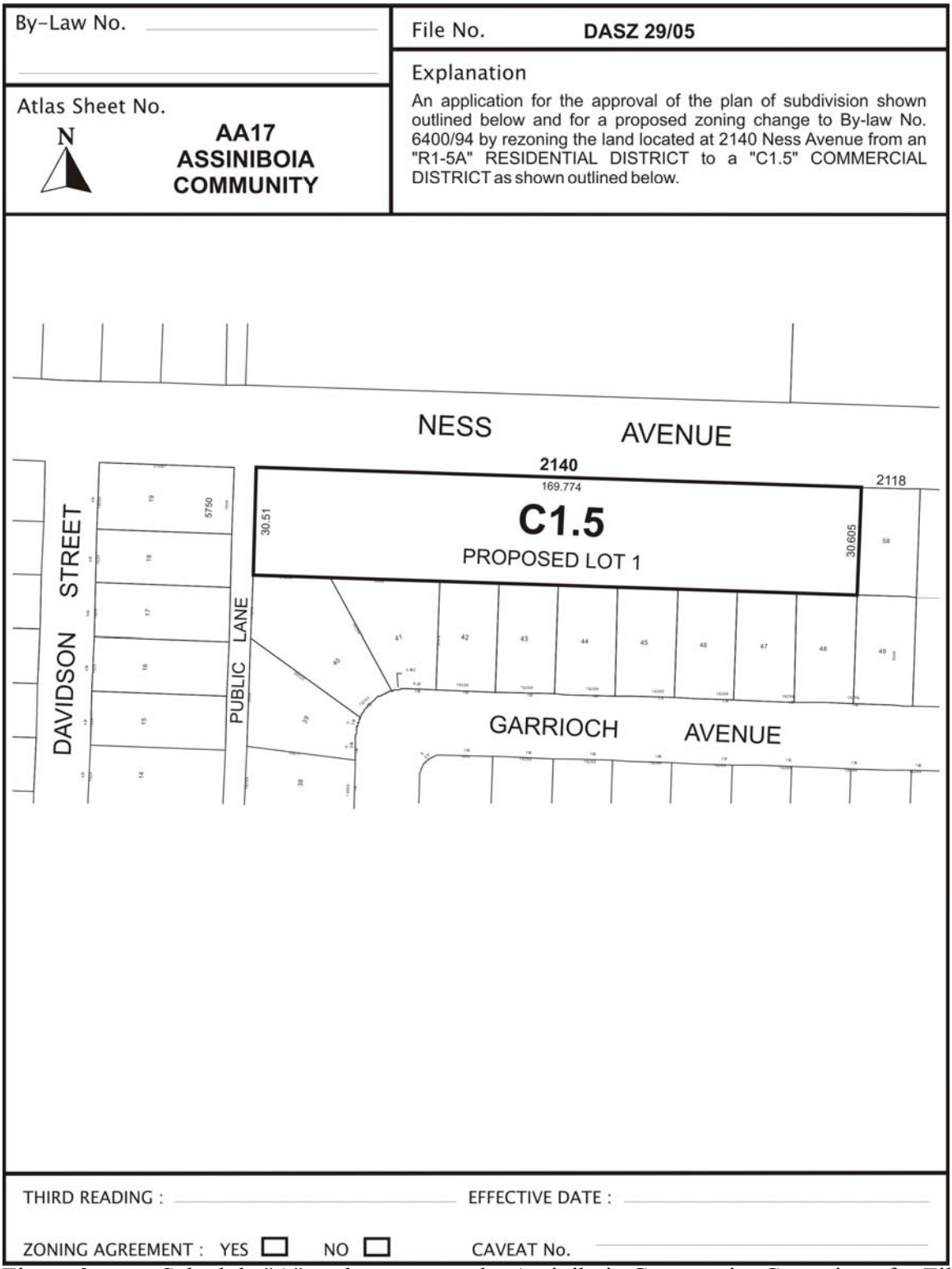



Figure 2: Schedule "A" to the report to the Assiniboia Community Committee for File No. DASZ 29/2005, dated September 6, 2005.

Exhibit “8” referred to in File DASZ 29/2005 [c/r DAV 135021/2005D]

**Re: Proposed subdivision and rezoning of land located at 2140 Ness Avenue – DASZ 29/05**

An application has been submitted by Ben Haber to subdivide and rezone land located at 2140 Ness Avenue. It is recommended that approval of DASZ 29/05 be subject to the Developer entering into a Servicing Agreement as follows:

1. The Developer shall, at no expense to the City, construct a combined sewer in Ness Avenue to serve the proposed development as determined by and to the satisfaction of the Director of Water and Waste.
2. The Developer shall pay the full cost of engineering services provided by or on behalf of the City in connection with the construction of the combined sewer required to serve the proposed development.
3. The Developer shall pay $1,650.00 to defray the City's administration and related costs associated with the preparation and implementation of the Servicing Agreement.

THIS REPORT SUBMITTED BY:

Administrative Coordinating Group
File No. AG 29/05
August 16, 2005

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**"Original signed by E.L. Carrière"**
Land Development Engineer

*"Original signed by K.T. Raban"*
Water and Waste Department