Agenda - Executive Policy Committee – November 16, 2005

Report - Standing Policy Committee on Property and Development – November 1, 2005

Item No. 12 Sale - west of Oak Point Highway, south of Hyde Avenue - Bergner Equipment Rentals Ltd. File FI-2.4(34)

STANDING COMMITTEE RECOMMENDATION:

On November 1, 2005, the Standing Policy Committee on Property and Development concurred in the administrative recommendation and recommends to Council:

1. That the City owned property shown outlined on Misc. Plan No. 12477 be declared surplus to the City's requirements.

2. That the sale of the subject City property, shown outlined on Misc. Plan No. 12477, to Bergner Equipment Rentals Ltd. for the price of $25,000.00 be approved in accordance with the terms and conditions of the Offer to Purchase dated September 9, 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 – November 16, 2005

Report - Standing Policy Committee on Property and Development – November 1, 2005

DECISION MAKING HISTORY:

STANDING COMMITTEE RECOMMENDATION:

On November 1, 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: **Sale of City Lands West of Oak Point Highway South of Hyde Avenue**
Bergner Equipment Rentals Ltd.
Lord Selkirk - West Kildonan Community
Point Douglas Ward

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

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

Report date: October 20, 2005

Recommendation(s):

1. That Council declare the City owned property shown outlined on the attached Misc. Plan No. 12477 surplus to the City's requirements.
2. That approval be given for the sale of the subject City property shown outlined on the attached Misc. Plan No. 12477 to Bergner Equipment Rentals Ltd. for the price of $25,000.00 in accordance with the terms and conditions of the attached Offer to Purchase dated September 9, 2005.
3. 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 subject City property shown outlined on Misc. Plan No. 12477 forms part of lands that the City acquired from the former Village of Brooklands, which was adjacent to the former landfill site.
- The Planning, Property and Development Department is in receipt of an Offer to Purchase the subject City-owned property shown outlined on Misc. Plan No. 12477. Council approval is required to declare City owned property surplus to the City's needs. Approval by the Standing Policy Committee on Property and Development is required for the sale of the subject City owned property.

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 the subject City-owned property shown outlined on Misc. Plan No. 12477. Council approval is required to declare City owned property surplus to the City's needs. Approval by the Standing Policy Committee on Property and Development is required for the sale of the subject City owned property.

HISTORY:

The subject City property shown outlined on Misc. Plan No. 12477 forms part of lands that the City acquired from the former Village of Brooklands, which was adjacent to the former landfill site.

Details of the subject property are as follows:

Location:	West side of Oak Point Highway South of Hyde Avenue
Legal Description:	Lot 62 Plan 24342
Certificate of Title:	1128993
Roll Number:	07092120000
Assessment:	$25,800.00
Size:	5,981.6 square metres (64,386 square feet)
Zoning:	"C3-2" Commercial District
Estimate of Value:	$34,000.00

DISCUSSION:

Recently, the adjoining owner Bergner Equipment Rentals Ltd. expressed interest in purchasing the subject property shown outlined on Misc. Plan No. 12477. It has indicated that the property would be used for the purpose of expanding yard operations and accommodating the parking of additional truck trailers.

The subject property was circulated to all City Departments and no Civic need was identified. In addition, the Water and Waste Department has indicated that the subject City property is well outside of the landfill control zone and that there are no concerns with the City selling this property from a water or sewer perspective.

The Ward Councillor was consulted and has advised that he has no objections to the sale of the property.

The Planning, Property and Development Department has concluded its negotiations with Bergner Equipment Rentals Ltd. for the sale of the subject property shown outlined on Misc. Plan No. 12477.

Details of the Offer are as follows:

Price Offered:	$25,000.00
Deposit:	$3,700.00 being 15% of the purchase price (certified cheque)

Although the proposed Purchaser is not prepared to pay the City's asking price of $32,000.00, the Planning Property and Development Department is supportive of the sale to Bergner Equipment Rentals Ltd. for the price of $25,000.00 for the following reasons:

1. Hyde Avenue is not an improved street at this location.
2. A considerable amount of fill and grading will be required to fully utilize the subject property.
3. Bergner Equipment Rental Ltd. is the only potential purchaser of the land since the subject property is adjacent to their property and it is land locked.
4. Bergner Equipment Rentals Ltd. will be required to consolidate the subject property with its adjacent lands.
5. The property will be added to the tax roll.

Financial Impact Statement

Date: October 13, 2005

Project Name:

Sale of City Lands West of Oak Point Highway South of HydeAvenue

First Year of Program 2006

	2006	2007	2008	2009	2010
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	25,482	482	482	482	482
Net Cost/(Benefit)	$ (25,482)	$ (482)	$ (482)	$ (482)	$ (482)
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ (25,482)	$ (482)	$ (482)	$ (482)	$ (482)

Additional Comments:

Revenues in 2006 consist of the $25,000 purchase price and incremental realty taxes of $482, the latter amount continuing to be collected on an annual basis. The tax revenue is based on the assumption that the assessed value of the property equals the purchase price, the portioning and mill rates equal the current ones and remain constant, and that the property is added to the tax roll effective January 1, 2006. The sale proceeds will be credited to the Land Operating Reserve Fund while the tax revenues will accrue to the General Revenue Fund.

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

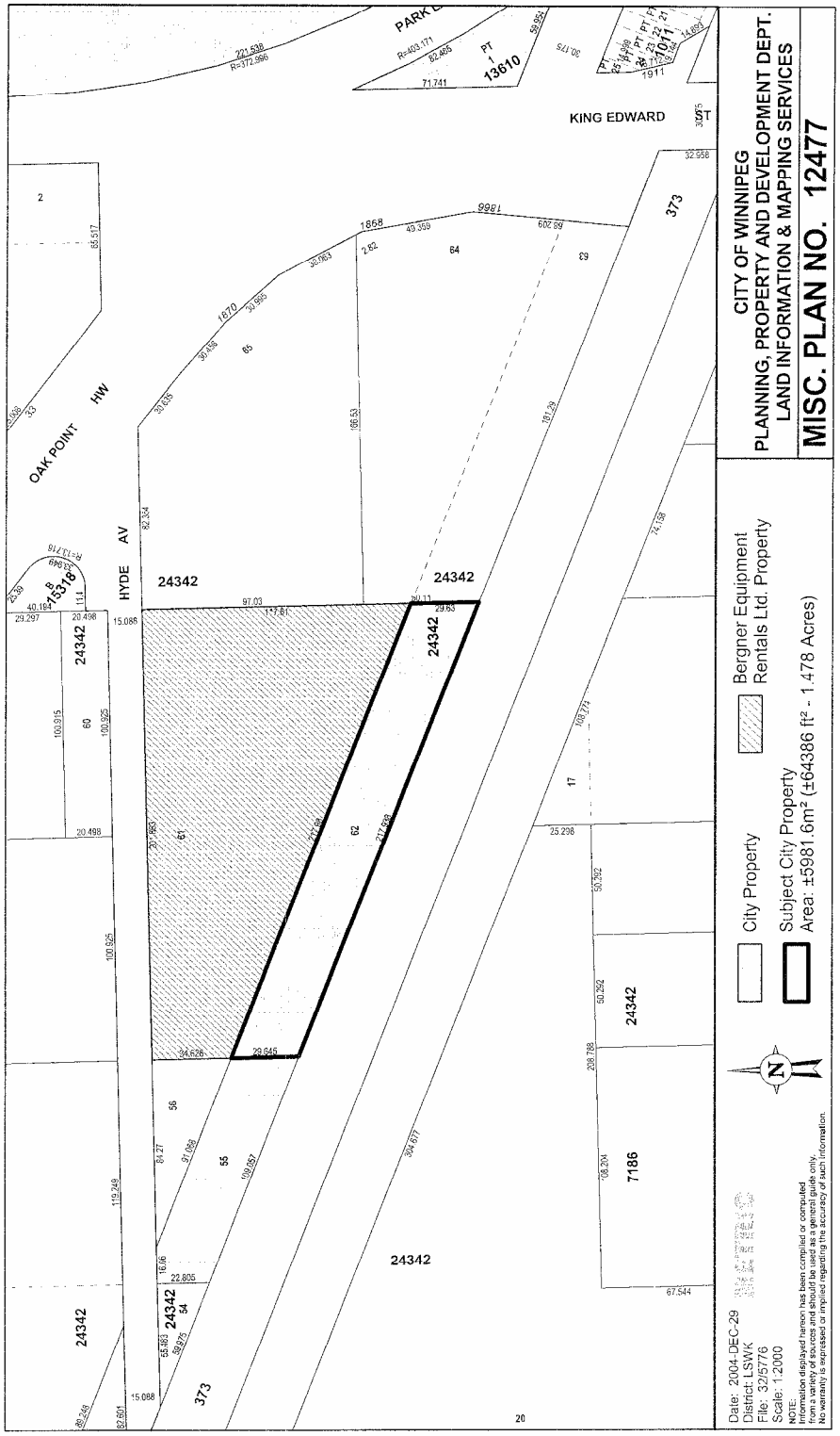
IN PREPARING THIS REPORT, THERE WAS CONSULTATION WITH AND CONCURRENCE BY:

The Water and Waste Department

THIS REPORT SUBMITTED BY:

Planning, Property and Development Department
Division: Real Estate
Prepared by: Gerry Anderson
PPD File #: 32/5776

Document name: o:\reports directive\real estate\sales\(ga) sale of city lands to bergner eqipment.doc


CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 12477
City Property
Bergner Equipment Rentals Ltd. Property
Subject City Property
Area: ±5981.6m² (±64386 ft² - 1.478 Acres)
Date: 2004-DEC-29
District: LSWK
File: 32/5776
Scale: 1:2000
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.
KING EDWARD ST
OAK POINT HW
HYDE AV
24342
373
7186
13610
PT 1
1011
1868
1870
1866
15318

Chapman Goddard Kagan Barristers & Solicitors

George E. Chapman, Q.C.
Alan R. Goddard, B.A., LL.B
Donna G. Kagan, LL.B
Kelly P. Land, B.A., LL.B

Almer N. Jacksteit, B. Comm., LL.B
Michael J. Law, B.A., LL.B
Esmeralda K. Bautista, B.S.C., LL.B
Michelle A. du Bourg, B.A., LL.B

Geo. Thos. Chapman, Q.C. (1923 - 1985)

1864 Portage Avenue
Winnipeg, Manitoba, R3J 0H2
Ph. (204) 888-7973
Fax (204) 832-3461
E-Mail address: gec@cgklaw.ca

Writer's Direct Line: (204) 831-3100

File No. 29,719

RECEIVED
CITY OF WINNIPEG
SEP 23 2005

September 20, 2005

City of Winnipeg
2nd floor – 65 Garry Street
Winnipeg, MB R3C 1K4

Dear Sirs:

Re: Purchase of Land West of Oakpoint Highway at Hyde Avenue
Your File No 32/5776

Thank you very much for your letter to us dated September 15, 2005, which we have now reviewed with Mr. Bergner.

The Offer to Purchase, in duplicate, is enclosed and you will note that the price is not the price requested. Otherwise the offer is as you had prepared it. Also enclosed a certified cheque made payable to the City of Winnipeg in the amount of $3,750.00 which represents the deposit with respect to the purchase of the above-noted property.

We assume the price will be satisfactory and we look forward to the return of one executed copy of the offer to purchase at your earliest convenience.

Yours truly,

CHAPMAN, GODDARD, KAGAN
Per:

GEORGE E. CHAPMAN
GEC/tc

Enc.

c.c. Bergner Equipment Rentals Ltd.

File No: 32/5776

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: -

Lot 62 Plan 24342 Shown as Subject City Property on Misc. Plan No.12477.

(hereinafter called the "lands")

for the sum of $25,000.00 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 $3,750.00, 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 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 property is zoned C3-2 Highway Commercial and that their will be a Trunk Service Rate charge applicable if the property is rezoned or subdivided further.

(7) The Purchaser is aware that the origin and nature of the soil fill is unknown. This could affect development depending on the nature of the fill and it's affect on conditions at the site. Some of the potential concerns related to soil fill are, whether there are any deleterious materials in the fill, to what extent the fill is capable of safely supporting buildings, services or other loads, and whether there are any explosive gases associated with the fill or underlying natural organic soil. Requirements for construction of buildings on fill is covered in the building code.

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

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

(b) 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;

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

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

The Purchaser shall at its sole cost, effort and expense, do all things as are necessary, including but not limited to causing to be prepared and registered at the Winnipeg Land Titles Office, 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 lot 61 plan 24342 (herein called the "Purchaser's adjoining property") 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 adjoining property.

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

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

16. 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.

17. 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.

18. 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.

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

BERGNER EQUIPMENT RENTALS LTD — 425-A OAK POINT RD, WINNIPEG, MB R2R 1T9

Name (Please Print) Address

Purchaser's Registration No. (G.S.T.) 100478981RT0001

IN WITNESS WHEREOF the Purchaser has signed this document in

duplicate, _____, this 19th day of September 2005

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

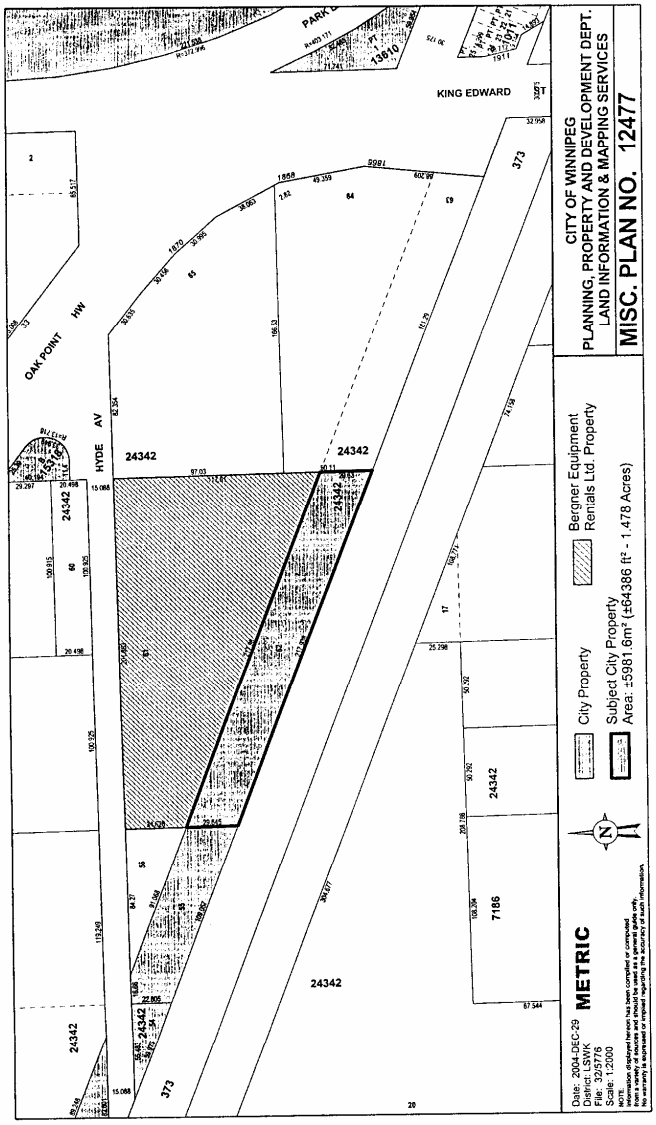

CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 12477
Bergner Equipment Rentals Ltd. Property
City Property
Subject City Property
Area: ±5981.6m² (±64386 ft² - 1.478 Acres)
METRIC
KING EDWARD ST
OAK POINT HW
HYDE AV
24342
7186
373

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	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: _____ 20 ___ _____
(Signature of Applicant)

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