Minute No. 209
Report - Standing Policy Committee on Property and Development - January 10, 2006

Item No. 6 Subdivision and Rezoning - 2424 Ferrier Street
File DASZ 49/2005

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development and adopted the following:

1. That the plan of subdivision proposed under File DASZ 49/2005 be approved for preparation as a plan of subdivision by a Manitoba Land Surveyor in accordance with Schedule "A" for File DASZ 49/2005 dated November 17, 2005, for registration in the Winnipeg Land Titles Office, subject to the following:

    A. That the applicant enter into a Zoning Agreement with the City of Winnipeg pursuant to Subsection 240(1) of the City of Winnipeg Charter to provide for the following:

        i. that no buildings or other permanent structures shall be allowed to be constructed on the lands shown cross-hatched on Figure 1.

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 outlined on Schedule "A" for File DASZ 49/2005 dated November 17, 2005, to an "M1" Industrial District.

4 That the ten percent (10%) dedication in lieu of the requirement for land dedication based on the increase in market value of the land and the creation of additional sites be waived in this instance.

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 - January 10, 2006

COUNCIL DECISION (continued):

7. That the zoning and subdivision sections of the by-law shall come into force and effect upon registration at the Winnipeg Land Titles Office of the Plan of Subdivision and the Zoning Agreement referred to in Recommendation 1.A. by caveat against the subject land, provided that the effective date occurs within twenty-four (24) months from the date that the said rezoning by-law is adopted by Council.

8. 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.

9. 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.

10. 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 - January 10, 2006

DECISION MAKING HISTORY:

Moved by Councillor De Smedt,

That the recommendation of the Standing Policy Committee on Property and Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On January 18, 2006, the Executive Policy Committee concurred in the recommendations of the Standing Policy Committee on Property and Development and the Lord Selkirk-West Kildonan Community Committee, as amended, and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On January 10, 2006, the Standing Policy Committee on Property and Development concurred in the recommendation of the Lord Selkirk-West Kildonan Community Committee, as amended, namely:

- That Recommendation No. 1 be amended by adding the words "subject to the following" after the word "Office" in the fourth line of Recommendation 1.

- That a new Clause 1A. be added as follows:

  "1.A. That the applicant enter into a Zoning Agreement with the City of Winnipeg pursuant to Subsection 240(1) of the City of Winnipeg Charter to provide for the following:

  i. that no buildings or other permanent structures shall be allowed to be constructed on the lands shown cross-hatched on Figure 1."

- That Recommendation No. 7 be deleted and the following substituted therefore:

  "7. That the zoning and subdivision sections of the by-law shall come into force and effect upon registration at the Winnipeg Land Titles Office of the Plan of Subdivision and the Zoning Agreement referred to in Recommendation 1.A. by caveat against the subject land, provided that the effective date occurs within twenty-four (24) months from the date that the said rezoning by-law is adopted by Council."

and submitted the matter to the Executive Policy Committee and Council.

Report - Standing Policy Committee on Property and Development - January 10, 2006

DECISION MAKING HISTORY (continued):

COMMUNITY COMMITTEE RECOMMENDATION:

On December 6, 2005, the Lord Selkirk-West Kildonan Community Committee concurred in the administrative recommendation with the following amendments, namely:

- That the following words be deleted in Recommendation 1., namely:

  "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 November 25, 2005."

- That Recommendation 4 be deleted and replaced with the following new Recommendation 4, namely:

  "4 That the ten percent (10%) dedication in lieu of the requirement for land dedication based on the increase in market value of the land and the creation of additional sites be waived in this instance."

- That Recommendation 7 be deleted in its entirety and the remaining recommendations renumbered accordingly

- That former Recommendation 8 be amended by adding the words "and subdivision sections" after the word "zoning" in the first line thereof

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

RE: **Subdivision and Rezoning - 2424 Ferrier Street**
File DASZ 49/2005 [c/r DAV 165465/2005D]

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

Prepared by: **Diane Timmins, Clerk**
Lord Selkirk-West Kildonan Community Committee

Report date: **December 15, 2005**

COMMUNITY COMMITTEE RECOMMENDATION:

On December 6, 2005, the Lord Selkirk-West Kildonan 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 49/2005 be approved for preparation as a plan of subdivision by a Manitoba Land Surveyor in accordance with Schedule "A" for File DASZ 49/2005, dated November 17, 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 November 25, 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 outlined on Schedule "A" for File DASZ 49/2005 dated November 17, 2005, to an "M1" Industrial District.

4 That ***the*** 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 ***be waived in this instance***.

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.***~~

7. That the zoning ***and subdivision*** section***s*** of the by-law shall come into force and effect when the Plan of Subdivision has been registered in the Winnipeg Land Titles Office, 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.

8. 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.

9. 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.

10. 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 Lord Selkirk-West Kildonan Community Committee provided the following supporting reasons for its recommendation:

1. The Ward Councillor is very familiar with the subject property and the events which occurred and believes this is an exceptional situation that warrants unusual recommendations. By providing the applicant with financial relief from the servicing and land dedication requirements, The City of Winnipeg can do justice to the property owner of 2424 Ferrier Street, who has suffered undue hardship.

2. The Ward Councillor believes the subject property was rezoned in error from an Industrial ("M1") District to a Rural Residential ("RR-2") District in 1989, when the City did a mass rezoning of properties resulting from Plan Winnipeg amendments. He is of the view the subject property should never have been rezoned to a "Rural Residential" designation given that the subject property was located in the middle of an industrial area and the property owner didn't request or initiate same.

3. Prior to the above rezoning coming into effect, a cabinet making business was established on the subject property. The property owner was advised that although the cabinet making business was a non-conforming use under the new zoning, he had grandfather rights that would allow him to continue with his business. However, as a result of a fire which occurred in the summer of 2005, the building burned down and the non-conforming cabinet making business was no longer allowed as the grandfather rights were now lost. The property owner was accordingly required to apply for a rezoning to an industrial zoning designation before a building permit could be issued that would allow the construction of a new building on the same foundation and the re-establishment of the cabinet making business.

PUBLIC HEARING SUMMARY

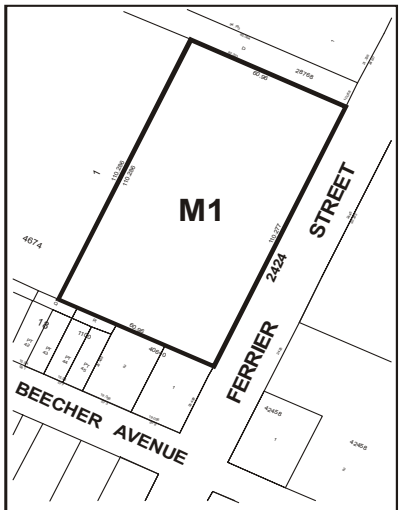
File: DASZ 49/2005 [c/r DAV 165465/2005D]

Before: Lord Selkirk-West Kildonan Community Committee
Councillor Lazarenko, Chairperson
Councillor O'Shaughnessy
Councillor Pagtakhan

Public Hearing: December 6, 2005
West Committee Room, Council Building
510 Main Street

Applicant: Man-Shield Construction Inc. (Tony Nocita)

Subject:



LORD SELKIRK
WEST KILDONAN
COMMUNITY

APPLICANT : MAN-SHIELD CONSTRUCTION INC.
FILE : DASZ 49/05
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 "RR-2" RESIDENTIAL DISTRICT to an "M1" INDUSTRIAL DISTRICT. **For information, phone Mr. M. Robinson, Planner at 986-3213.**

Premises Affected: 2424 Ferrier Street

Exhibits Filed:

1. Application dated November 15, 2005
2. Notification of Public Hearing dated November 9, 2005
3. Manitoba Status of Titles 1274753 and 1859701
4. Surveyor's Building Location Certificate and sketch dated October 27, 2005 (2 pages)
5. Letters of authorization dated November 4, 2005 from IVZ Enterprises Ltd. and Ashlind Holdings Ltd. to Man-Shield Construction Inc.
6. Plans (2 pages)
7. Report from the Manager of Planning and Land Use dated November 17, 2005
8. Report from the Administrative Coordinating Group dated November 25, 2005
9. Inspection Report

REPRESENTATIONS:

In Support:
Tony Nocita, Man-Shield Construction Inc.

In Opposition
Nil

For the City:
Mr. M. Robinson, Planner, Planning, Property and Development Department

SUMMARIZATION OF REPRESENTATIONS AND SUBMISSIONS MADE AT THE PUBLIC HEARING

Tony Nocita, Man-Shield Construction Inc., appeared in support of the application and stated the subject property was inadvertently rezoned by the City approximately fifteen or sixteen years ago from an industrial to a rural residential zoning classification even though it was located in the middle of an industrial area. Mr. Nocita commented that the property owner has suffered considerable hardship as a result of a fire which occurred in the summer, and that he wants to rebuild his building on the existing foundation on the property. In this connection, Mr. Nocita requested that Committee give favourable consideration to having the servicing requirements and the ten per cent (10%) land dedication waived in this matter in view of the inadvertent rezoning of the subject property which precipitated the subject application.
Exhibit "7" referred to in File DASZ 49/2005 [c/r DAV 165465/2005C]

Winnipeg

Planning, Property and Development Department Report

To the Lord Selkirk-West Kildonan Community Committee

Date: **November 17, 2005**
File: **DASZ 49/05**
Related Files: **DAV 05-165465/D**

Subject: An application has been received from Manshield Construction for approval of a plan of subdivision and related zoning change to By-law 6400/94 by rezoning the subject lands from an "RR-2" Rural Residential District to an "M-1" Industrial District to allow for a wood products manufacturer (cabinet maker).

Location: **2424 Ferrier Street**



Applicant: **Manshield Construction**

Owner: **Ashlind Holdings Ltd.**

Recommendation: **Approval**

Report Summary:

- The landowner's business, which was a non-conforming use, burned to the ground earlier this year.
- The property is currently zoned "RR-2" Rural Residential, which does not permit industrial uses
- The current zoning designation is the result of a 1989 Plan Winnipeg amendment
- Industrial is the highest and best use of the land
- The proposed use is compatible with the area
- The proposed use will not have a substantial adverse impact on adjacent properties

Site Description

The subject site is located on Ferrier Road, just north of Beecher Avenue in the Templeton-Sinclair neighbourhood of the Old Kildonan Ward.
North: Industrial uses zoned "M1" Industrial
South: Single-family residences zoned "R1-20" Residential
East: Industrial uses zoned "M2" Industrial
West: Undeveloped land zoned "RR-2" Rural Residential

Background

In 1989, City Council amended Plan Winnipeg by redesignating lands located between the proposed extension of McGregor Street and Ferrier Street, south of the C.P.R. Bergen Cut-Off, from an Industrial Policy Area to a Neighbourhood Policy Area. This was done because residents in the area were concerned about the lack of sewer and water service. Several of them owned properties with relatively large street frontages and, because of the Industrial Policy Area designation, were unable to subdivide. Consequently, the share of the cost of water and sewer service which would have to be borne by these owners, would have been inordinately high.

Subsequent to the amendment, the lands were rezoned to reflect a residential use category. The subject parcel was one of the lands that was included in this amendment.

Description of the Proposed Development

Earlier this year, the subject landowner's cabinet making business burned to the ground. At this time, he wishes to construct a new building and reestablish his use on the subject land.

However, in 1989, a Plan Winnipeg amendment was made in this area, affecting the subject property as well as several others in the area. As a result of the amendment, the property was rezoned to "RR-2" Rural Residential.

In order to construct a new building and reestablish the cabinet making operation, an amendment to By-law No. 6400/94 to rezone the land to an "M1" Industrial District is required.

Analysis

Plan Winnipeg Compliance
The subject parcel falls within a designated Neighbourhood Policy Area under Plan Winnipeg, which allows for a variety of residential, commercial, institutional, and mixed uses; thus, the proposed rezoning is in conformance with Plan Winnipeg 2020.

Compatibility with existing neighbourhood and surrounding uses
The subject property is adjacent to industrial uses both to the north and the west. Furthermore, the McGregor Street extension proposed ROW abuts the property immediately to the west. For these reasons, the highest and best use for the subject land is light industrial.

Site Design Issues
The building foundation was poured several years ago. In light of this, the orientation of the building is already established.

The building is sited to the far northern half of the property, leaving a large buffer between the building and the residences to the south. However, a tree row along the north and south property line to provide screening and noise attenuation for the existing and future homes immediately adjacent would provide added benefit.

Servicing
The subject property is currently serviced by a watermain, a wastewater sewer and ditches. The street is not paved. A servicing agreement requiring upgrades to the street and utilities is being submitted in conjunction with this report.

Future Right of Way
Property in the northwest corner of the proposed lot (as shown in Figure 1 of the accompanying ACG Report) is required for the future extension of McGregor Street. As such, the servicing agreement indicates that a caveat be registered against the title of the proposed lot indicating that no new buildings or other permanent structures shall be permitted to be constructed on this land.

Recommendation

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

- Light industrial is the highest and best use of the land
- The building is being oriented away from the residential properties to the south
- Municipal services for light industrial development are available;
- The proposed rezoning is compliant with Plan Winnipeg and its policies;
- The proposed use is compatible with the surrounding properties
- The proposed use will not have a substantial adverse impact on adjacent properties

Recommended Conditions of Approval

I. That the plan of subdivision proposed under File No. DASZ 49/05 be approved for preparation as a plan of subdivision by a Manitoba Land Surveyor in accordance with Schedule "A" for File No. DASZ 49/05, attached hereto and dated November 17, 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 November 25, 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 49/05, attached hereto and dated November 17, 2005, to an "M1" Industrial District.

IV. 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.

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, **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:
Planning, Property and Development Department
Planning and Land Use Division

Report Prepared by: Michael Robinson, AICP
PPD File # 3.324

Schedule "A"

By-Law No. _____

File No. **DASZ 49/05**

Explanation

An application for the approval of the plan of subdivision shown outlined below and for a proposed zoning change to By-law No. 6400/94 by rezoning the land located at 2424 Ferrier Street from an "RR-2" RESIDENTIAL DISTRICT to an "M1" INDUSTIAL DISTRICT as shown outlined below.

Atlas Sheet No. **T26**

N

LORD SELKIRK WEST KILDONAN COMMUNITY



Schedule "A" to the report of the Lord Selkirk-West Kildonan Community Committee for File DASZ 49/05 dated November 17, 2005

THIRD READING : _____ EFFECTIVE DATE : _____

ZONING AGREEMENT : YES ☐ NO ☐ CAVEAT No. _____



Figure 1: Aerial Photo (Flown in 2002)

Exhibit "8" referred to in File DASZ 49/2005 [c/r DAV 165465/2005C]

Re: Proposed plan of subdivision and rezoning of land located on the west side of Ferrier Street, north of Beecher Avenue – DASZ 49/05

An application has been submitted by Man-Shield Construction Inc. on behalf of the Owner to subdivide and rezone land located on the west side of Ferrier Street north of Beecher Avenue. The subject property is currently serviced by a watermain, a wastewater sewer and ditches. The street is not paved.

It is recommended that approval of DASZ 49/05 be subject to the Developer entering into a servicing agreement with the City as follows:

1. The Developer shall, at not expense to the City, extend the land drainage sewer in Ferrier Street from Beecher Avenue to the north limit of the proposed subdivision. Based on the 2005 local improvement rate, the Developer's share of the cost of the land drainage sewer is calculated as follows:

   362.8' x $48.00/ft. = $17,366.25

   The City will endeavour to reimburse the Developer for the difference between the cost of constructing the land drainage sewer and the Developer's share of the cost thereof as the City collects from benefiting lands when the lands are developed and/or through the enactment of a Local Improvement By-law.

2. Property in the northwest corner of the proposed lot as illustrated on the attached Figure 1 is required for the future extension of McGregor Street and as such no new buildings or other permanent structures shall be permitted to be constructed on this land. This requirement is to be registered as a caveat against the title of the proposed lot.

3. The Developer shall, at no expense to the City, construct portland cement concrete pavement to a width of 10.0m and a thickness of 200mm in the Ferrier Street from Beecher Avenue to the north limit of the proposed subdivision, and all related works including, but not necessarily limited to boulevard landscaping and ornamental street lighting, all as determined by and to the satisfaction of the Director of Public Works. The City will endeavour, within the limits of its powers to make recoveries from other benefiting privately owned lands through subsequent agreements, or alternatively the Developer may request the City to endeavour to enact Local Improvement By-laws for the above-referenced improvements.

4. The Developer is to pay all costs associated with the installation and/or relocation of street lights and other utilities made necessary as a result of or required to accommodate works, which are required by the Developer to serve the proposed subdivision, as determined by and to the satisfaction of the Director of Public Works.

5. The Developer shall be responsible to control and to initiate the clean up litter and refuse from the contractors and builders for this development, both on-site and off-site, during the installation of services and construction of buildings, until substantial completion of all construction. The clean up of litter and refuse shall be done on a regular basis as determined by the Director of Public Works. This shall include initiating action and assuming any costs in remedying the situation to the satisfaction of the Director of Public Works.

6. The Developer shall ensure that construction traffic uses access routes as determined by the Director of Public Works. The Developer shall maintain, at no expense to the City, the access routes in a clean, dust free and safe condition, free of dropped and tracked-on mud, and shall undertake regular scraping and sweeping of streets until building construction, including landscaping is complete, all as determined by and to the satisfaction of the Director of Public Works.

7. The Developer shall pay the full costs of engineering services provided by or on behalf of the City in connection with the installation of services required to serve the proposed development.

8. 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:

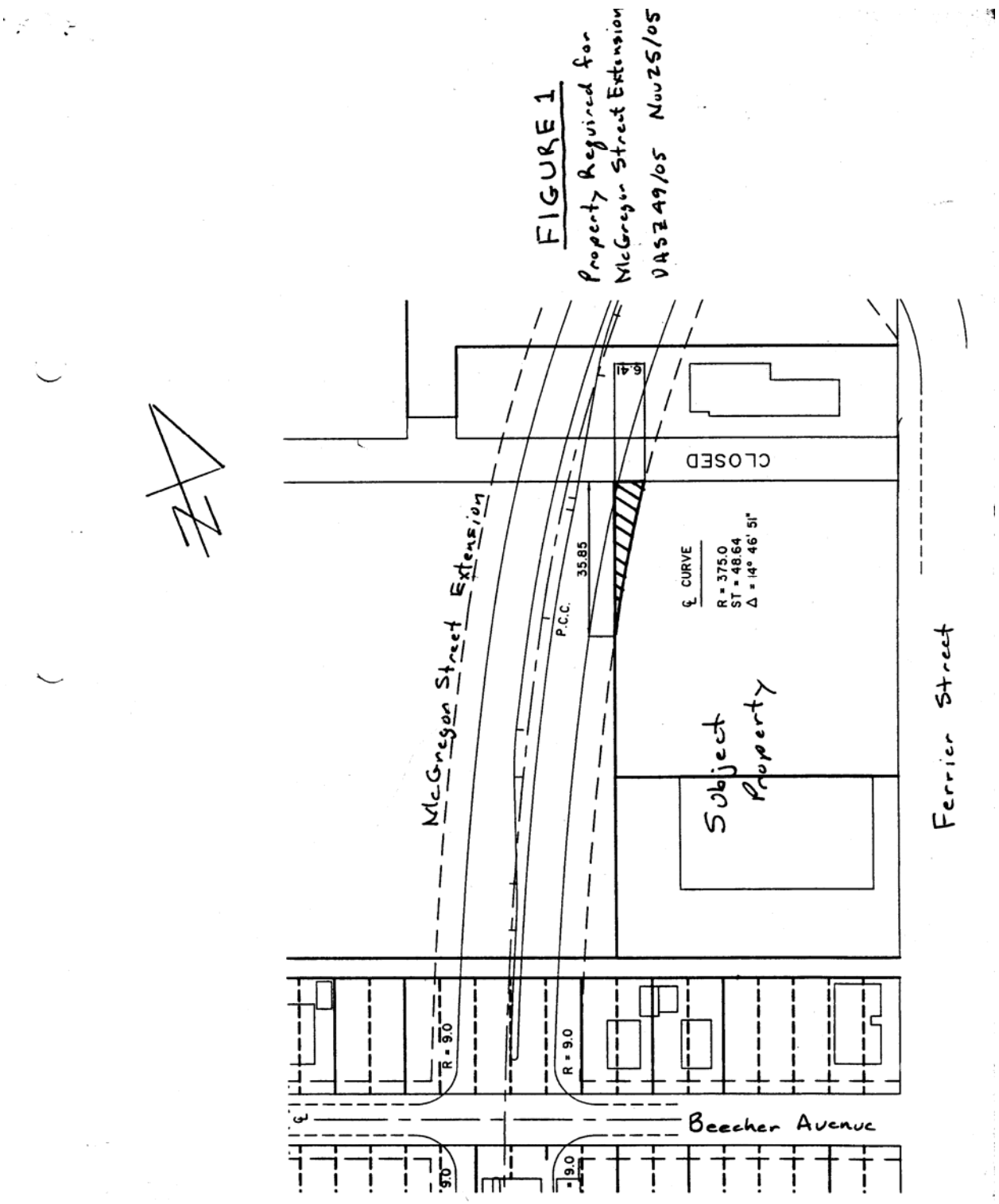
Administrative Coordinating Group
File No. AG 49/05
November 25, 2005

v:\ACGReports/05ag49-report

"Original signed by E.L. Carriere"
E.L. Carrière, P. Eng.
Land Development Engineer

"Original signed by K. T. Raban"
K.T. Raban, P. Eng.
Water and Waste Department

"*Original signed by R.J. Hartmann"*
R.J. Hartmann, P. Eng.
Public Works Department
Transportation Division


FIGURE 1
Property Required for
McGregor Street Extension
DAS249/05 Nov25/05
A2
CLOSED
℄ CURVE
R = 375.0
ST = 48.64
Δ = 14° 46' 51"
35.85
P.C.C.
McGregor Street Extension
Subject Property
Ferrier Street
R = 9.0
R = 9.0
Beecher Avenue
9.0
9.0