Minute No. 547
Report - Standing Policy Committee on Property and Development – July 4, 2006

Item No. 3 **Sale/Exchange of Lands between 4525982 Manitoba Ltd. and the City of Winnipeg - Henderson Highway at Essar Avenue**
File FI-2.4(33)

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submits the following to Council:

1. That Recommendation No. 1.A. of Item 1 of the Report of the Standing Policy Committee on Property and Development, as referred back by Council on October 27, 2004, be filed.

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

Minutes - Executive Policy Committee – July 19, 2006

Report - Standing Policy Committee on Property and Development – July 4, 2006

DECISION MAKING HISTORY:

Moved by Councillor De Smedt,

That the recommendation of the Standing Policy Committee on Property and Development be concurred in and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION:

On July 4, 2006, the Standing Policy Committee on Property and Development submitted the following to the Executive Policy Committee and Council, namely:

1. That Recommendation No. 1.A. of Item 1 of the Report of the Standing Policy Committee on Property and Development, as referred back by Council on October 27, 2004, be filed.

Further, the Standing Policy Committee on Property and Development filed Recommendation Nos. 1.B. to 1.F. of Item 1 of the Report of the Standing Policy Committee on Property and Development dated October 12, 2004.

COMMUNITY COMMITTEE RECOMMENDATION:

On June 13, 2006, the East Kildonan-Transcona Community Committee, in view of a communication dated May 31, 2006, from ND Lea Inc. withdrawing the application under File DASZ 30/2004, filed the matter.

STANDING COMMITTEE RECOMMENDATION:

On January 10, 2005, the Standing Policy Committee on Property and Development laid over consideration of the matter pending receipt of a report from the East Kildonan–Transcona Community Committee with respect to a Public Hearing for subdivision/rezoning to be convened under File DASZ 30/2004.

COUNCIL:

On October 27, 2004, Council referred back Item 1.A. of the Report of the Standing Policy Committee on Property and Development dated October 12, 2004.

Report - Standing Policy Committee on Property and Development – July 4, 2006

DECISION MAKING HISTORY (continued):

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On October 20, 2004, the Executive Policy Committee concurred in Recommendation No. 1.A. of the Standing Policy Committee on Property and Development and submitted the matter to Council. Further, the Executive Policy Committee referred Recommendation No. 1.B. to 1.F. inclusive back to the Standing Policy Committee on Property and Development:

STANDING COMMITTEE RECOMMENDATION:

On October 12, 2004, the Standing Policy Committee on Property and Development recommended to Council:

1. That Alternative 1, as outlined in the report from the Director of Planning, Property and Development dated September 28, 2004, as amended, be concurred in, namely:

    A. That the southwesterly triangular portion (legally described as Parcel "A", Plan 30604) of Parcel "Y" as shown on Misc. Plan No. 12150/4, be declared surplus to Parks and Open Space and the City's needs.

    B. That the sale of City-owned lands shown as Parcels "X" and Parcel "Y" on Misc. Plan No. 12150/4, be approved at a price of $116,400.00 in accordance with the terms and conditions of the Offer To Purchase attached to the report from the Director of Planning, Property and Development dated September 28, 2004, subject to an appropriate commercial rezoning by Council of the City-owned Essar Avenue lands, said application for rezoning to be initiated by and be at the expense of the developer.

    C. That the purchaser shall be responsible for rezoning and appropriately landscaping Parcel "X", as shown on Misc. Plan No. 12150/4 to a "PR-1" Parks District and the City shall re-acquire for parkland Parcel "X" from 4525982 Manitoba Ltd., in exchange for a Receipt of Charitable Donation.

    D. That the purchaser shall be responsible for rezoning Parcel "Z", as shown on Misc. Plan No. 12150/4 to a "PR-1" Parks and Recreation District and the City shall acquire same for a price of $6,100.00.

E. That any net proceeds from the sale of the City lands (after payment for Parcel "Z" and incidental costs) be credited to the East Kildonan – Transcona Land Dedication Reserve Account.

Agenda – Executive Policy Committee – July 19, 2006

Report - Standing Policy Committee on Property and Development – July 4, 2006

DECISION MAKING HISTORY (continued):

STANDING COMMITTEE RECOMMENDATION (continued):

F. That the City acquire from 4525982 Manitoba Ltd., at no cost, an easement over the lands shown as "Pathway Easement – 7.0 m wide" on Misc. Plan No. 12150/4.

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

Re: Proposed Sale/Exchange of Lands between 4525982 Manitoba Ltd. and the City of Winnipeg - Henderson Highway at Essar Avenue
East Kildonan-Transcona Community
North Kildonan Ward

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

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

Report date: September 28, 2004

Recommendation(s):

That consideration be given to the Offer to Purchase submitted by 4525982 Manitoba Ltd in respect to the subject property and that the Director of the Planning, Property and Development Department be provided with direction in this regard.

REPORT SUMMARY

Key Issues:

4525982 Manitoba Ltd. the owner/developer of the lands adjacent to the City owned lands requested that the City consider the sale or exchange of its property to facilitate the construction of a commercial development at 1366 Henderson Highway.

The Ward Councillor does not support the sale of the southwesterly triangular portion of Parcel "Y". He is only prepared to support the sale of the subject property ("Parcel "X" and Parcel "Y" on Misc. Plan No. 12150/4) along Essar Avenue for the purposes of residential infill single-family housing development. The developer/owner's proposal would be subject to a public hearing related to rezoning portions of the site. Therefore, the proposed transaction described in this report would likely be finalized only if the rezoning is approved.

The City owned vacant lands, PARCELS "X" AND "Y" (except for Parcel "A", Plan 30604 zoned "C2" Commercial District) are currently zoned "R1-5" (formerly parkland) and were declared surplus by 2/3 majority of Council on January 25th, 1989.

In order for the City to sell or exchange the south-westerly triangular portion of Parcel "Y", which lands were previously acquired for parks and recreational purposes, the lands must be declared as surplus to the City's needs by 2/3 majority of Council in accordance with The City of Winnipeg Charter Act.

Approval of the transaction in accordance with the price, terms and conditions of the attached Offer To Purchase would result in net revenue for the City. Additionally, the City in exchange for a Receipt of Charitable Donation would reacquire at no cost, Parcel "X" which would by then be rezoned to "PR1", Parks and Recreation District and appropriately landscaped.

The City would also be acquiring, for the sum of $6,100.00, additional parkland frontage with "B & C" grade habitat along Henderson Highway together with an easement at no cost for a pedestrian pathway allowing area residents east-west access to and from the City parklands over the 4525982 Manitoba Ltd. lands.

Recently, by a letter dated September 17, 2004, and a letter dated September 22, 2004, there have been other expressions of interest in acquiring the City owned lands on Essar Avenue for the purposes of constructing infill residential housing. However, the proposal described in this report is the result of the earliest expression of interest from April 2004.

The owner/developer of the lands advises that its option to purchase the lands at 1372 Henderson Highway will expire shortly and, therefore, requires that Council consider this matter at its October 27, 2004 meeting.

Implications of the Recommendation(s):

General implications:

	None
	For the organization overall and/or for other departments
X	**For the community and/or organizations external to the City of Winnipeg**
	Involves a multi-year contract

Comment(s):
Approval of the Offer to Purchase (Alternative 1.) would result in the East Kildonan-Transcona Community obtaining two parcels of parkland totaling some 11,613 square feet, a free pathway easement and its Land Dedication Account receiving approximately $110,300.00 ($116,400.00 less $6,100.00 and incidental costs for Parcel "Z").

Policy implications:

X	**No**
	Yes

Comment(s):

Environmental implications:

	No
X	**Yes**

Comment(s):
If Alternative 1 is selected the City would be acquiring some environmentally sensitive lands (Parcel "Z") containing "B&C" grade habitat.

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):
Selection of either alternative would not require any City funding.

REASON FOR THE REPORT:

The City has received an unsolicited Offer to Purchase, which requires consideration as follows:

The Standing Policy Committee on Property and Development has the authority to accept or reject sales of City-owned property once they have been declared surplus to the City's needs. In order for the City to sell the southwesterly triangular portion of Parcel "Y", Council by 2/3 majority must declare the lands surplus to the City's needs.

The developer has proposed the donation of some lands to the City and Council must approve any donation of lands, together with an appropriate source of adequate funding to cover incidental and related costs.

Council must approve the proposed acquisition of Parcel "Z", as it is not part of any previously approved Council program.

The Ward Councillor does not support the sale of the City-owned Parcels X and Y, shown on attached Misc. Plan No. 12150/4 for any purpose other than single-family residential infill housing. Accordingly the Director of the Planning, Property and Development Department, by this report, is seeking direction from the Standing Policy Committee on Property and Development.

HISTORY:

Essar Lands:

City records show that the City owned lands (shown as Parcel "X" and Parcel "Y" on Misc. Plan No. 12150/4, with the exception of a small triangular portion legally described as Parcel "A", Plan 30604 and Parcel "C", Plan 24130) were acquired by the City in 1929 and 1934 for Parks purposes.

On January 25, 1989, a 2/3 majority of Council declared the same City owned lands shown as Parcels "X" and "Y" on attached Misc. Plan No. 12150/4 (including Parcel "C", Plan 24130 but not including Parcel "A", Plan 30604) surplus to the City's needs and available for sale.
That the south-westerly triangular portion of Parcel "Y" (legally described as Parcel "A", Plan 30604) shown attached Misc. Plan No. 12150/4, having been acquired for park and recreational purposes pursuant to Zoning Agreement 206/93, will require that a 2/3 majority of Council declare it surplus to the City's needs in accordance with The City of Winnipeg Charter Act, Statutes of Manitoba 2002, Chapter 39, Section 205(2).

In accordance with City policy, the Ward Councillor has been consulted regarding the notion to declare the aforesaid Parcel "A" surplus to the City's needs. The Councillor does not support the sale of "Parcel A"; his complete comments are provided within the "Discussion" section of this report.

Particulars of the City owned lands Parcel "X" and "Y", Misc. Plan No 12150/4, are as follows:

Location:	Southside of Essar Avenue, West of Henderson Highway
Legal Description:	Parcels S& C Plan 24,130, Parcel A, Plan 30604
Certificate of Title:	Parcel S, Plan 24,130 CT 1121357 Parcel C, Plan 24,130 CT 1121336 Parcel A, Plan 30604, part CT 1343960
Registered Owner:	The City of Winnipeg
Zoning:	Parcels S, and C, Plan 24,130 - zoned R1-5 Residential District Parcel A, Plan 30604 - zoned C2 - Commercial District
Realty Roll:	Part 04000945800
Assessed Value (2004):	Not apportioned
Current Taxes:	Exempt from taxes
Total Site Area:	1,535 square meters (16,523 square feet)
Property Description:	Vacant, unimproved, mostly rectangular, level parcel of land flanked by residential use on the west and north sides, and permitted commercial/industrial use on the south and east side.

Recently, by a letter dated September 17, 2004, and a letter dated September 22, 2004, there have been other expressions of interest (besides the Offer to Purchase described in this report) in acquiring the City owned lands for the purposes of constructing infill residential housing.

Former Bergen Cut-off Lands:

The 4525982 Manitoba Ltd. owned lands, and the lands shown on attached Misc. Plan 12150/4 as "City Owned Property" just east, and south of the 4525982 Manitoba Ltd. lands, were all once part of the abandoned CPR Bergen Cut-off.

In the fall of 1989, the City acquired title to part of the abandoned rail right-of-way, from the East River Park & Residential Company Ltd. (principals: Messrs. G. Hilderman & G. Tripp). The remainder of the lands was then sold by East River Park & Residential Company Ltd. to the Toronto Dominion Bank for the purpose of constructing a new bank building. After this date, the TD Bank acquired Canada Trust and consolidated their holdings under the name TD Canada Trust at a location in a strip mall several blocks to the south of the subject property and as a result, the lands were declared surplus to their needs. The lands were subsequently sold to the current owner 4525982 Manitoba Ltd.

The "C2"- Commercial District zoning on the now (former TD lands) 4525982 Manitoba Ltd. lands was established in 1993 under DAZ 206/93. The Zoning Agreement, executed as a

condition of the rezoning, restricted development of the land to a one-storey bank, credit union, or trust company, or a drive through automatic teller associated with one of those uses having a maximum main floor gross area not exceeding 8,000 square feet. The Agreement also required a portion of the land along the southern boundary to be used only for landscaping. It also provided for the dedication to the City of Parcels "A" and "C", Plan 30604, for parks and recreational purposes.

On June 18, 2003, the East Kildonan-Transcona Community Committee considered a Zoning Agreement Amendment Application (ZAA 08/03) to expand the list of permitted uses. The East Kildonan-Transcona Community Committee recommended that the use list be expanded to allow a wide range of commercial uses. The Standing Policy Committee on Property and Development (SPCPD) concurred in the East Kildonan-Transcona Community Committee recommendation and added “Liquor Sales” to this list and Council approved the amendment on July 23, 2003.

On July 21, 2003, the East Kildonan-Transcona Community Committee considered a further Zoning Agreement Amendment Application (ZAA 09/03) to remove the one-storey height limitation and the maximum building area restrictions, and to delete the requirement for landscaping along the south boundary. The Planning, Property and Development Department recommended that consideration be given to the height and building area amendments, subject to requiring additional restrictions relating to landscaped yards (set backs). The East Kildonan-Transcona Community Committee supported the developer’s request for a four-storey height and no restriction on the building size. The requirement for landscaping along the south property boundary was maintained, but no additional landscaped yards were required. The SPCPD concurred in this recommendation, and Council subsequently approved amendments on September 24, 2003.

On January 23, 2004, 4525982 Manitoba Ltd. purchased the property from the Toronto Dominion Bank. The principals of 4525982 Manitoba Ltd. are Marcel Chartier, Mark Olsen and Landstar Developments, which is controlled by the Olsen family.

By letter dated April 6, 2004, the City was asked to consider a proposal to enter into a land exchange with 4525982 Manitoba Ltd to facilitate development of the lands shown on attached Misc. Plan No. 12150/4 as “4525982 Manitoba Ltd. Lands”.

Ongoing negotiations have resulted in 4525982 Manitoba Ltd. submitting the Offer To Purchase that is currently under consideration.

DISCUSSION:

From a parks planning perspective, the old Essar Park (parcel X and Y) has been declared surplus by Council and, therefore, is not required for Parks and open space purposes. This land should be sold for another appropriate use. The current developer has agreed to the City's asking price. There is no guarantee that the next applicant will agree to this price. The reacquisition of

the landscaped parcel X will go a long way to screen the residential neighbourhood from the more intensive development on the site proposed to be assembled.

Additionally, the acquisition of Parcel Z in combination with the 7.0 meter Walkway Easement will allow a safe and aesthetically pleasing walkway entrance to Bergen Cutoff Park off of Henderson Highway. Bergen Cutoff Park, due to it being an abandoned railway line, is at a significantly higher elevation than the sidewalk on Henderson Highway. As a result, room is required to design a safe way for cyclists and people in wheel chairs to negotiate this steep slope without accidentally rolling out onto busy Henderson Highway.

4525982 Manitoba Ltd. advises that it is attempting to complete a land assembly to provide enough developable area to satisfy a potential tenant's needs, as well make the development as attractive and non-intrusive as possible for the community and the immediate residents. The developer has already acquired an additional interest (Option to Purchase by way of non-refundable Option deposit) in the adjacent privately owned lands known as 1372 Henderson Highway, and hopes to acquire the City-owned lands (effectively only Parcel "Y") and rezone them to a "C2" Commercial District in order to complete the land assembly and satisfy its tenant's requirements.

The developer requires only a portion of the City-owned lands shown as Parcel "Y" on Misc. Plan No. 12150/4 but is willing to acquire both Parcels "X" and "Y" at the City's full estimated market value, then gift back the Parcel "X" portion in a landscaped condition once the development is complete. The reason for this is because the Planning, Property and Development Department expressed the opinion that Parcels "X" and "Y", which are actually one holding, would be capable of being developed as 3 residential building lots with an estimated net market value of $116,400.00. The sale of the Parcel "Y" portion would decrease the depth of the residential building lots so much as to render them impossible to be properly developed into residential lots. The developer, to facilitate acceptance of the Offer To Purchase, is prepared to buy the entire City-owned lands and gift back the Parcel "X" portion, subject to a 4m wide access easement for periodic maintenance of the proposed adjacent building.

The Planning, Property and Development Department has expressed an interest in acquiring the developer's lands shown as Parcel "Z" in order to increase the City's parks frontage on Henderson Highway and to protect some environmentally sensitive "B" & "C" grade habitat located on the Parcel "Z" lands. The Planning Property and Development Department has also requested that the developer grant an easement shown as "Pathway Easement – 7.0 wide" on attached Misc. Plan No. 12150/4 to maintain a pedestrian pathway, which is used by area residents to enable direct access thru the City owned parklands over the developer's lands for access to and from Henderson Highway.

The developer, as per the terms and conditions of the attached Offer To Purchase, will be responsible for attending to and paying for all incidental costs involved in concluding the proposed transaction, including but not limited to preparing subdivision plans, rezoning and variance applications, any dedication fees, etc. The City will be responsible only for its own legal expenses and any incidental Winnipeg Land Title Office charges for land transfer costs of

lands transferred to the City and registration costs for Caveats registered by the City for its benefit.

The Planning, Property and Development Department has considered the following aspects of the attached Offer To Purchase and provides the following comments:

> It would allow the City to divest itself of some of its surplus lands at full estimated market value, then reacquire over half of the lands back for park purposes in a landscaped condition at no direct cost to the City, the landscaping to be to the satisfaction of the Director of Planning, Property and Development Department
>
> The City would increase its' parkland frontage and vista on Henderson Highway as well as acquire some environmentally sensitive “B & C” grade habitat.
>
> It would allow the developer to proceed to try and obtain the various approvals required to permit development of its lands
>
> There would be an opportunity to revisit the existing zoning conditions if the old Essar Park (zoned residential) were to be included in a new commercial development.
>
> The City would be increasing its property and business tax base.
>
> The City would be acquiring, at no cost, a pathway easement to legitimize the use of a publicly used pathway over private property.
>
> The proposed commercial development may possibly have a negative impact on the adjacent primarily residential neighbourhood that any conditions placed on the required rezoning may not entirely be able to address.

It should be noted that the developer/owner’s proposal would be subject to a public hearing related to rezoning portions of the site. This transaction would likely be finalized only if the rezoning is approved.

The Ward Councillor does not support the sale of Parcel A, Plan 30604. He is only prepared to support the sale of the subject property ("Parcel "X" and Parcel "Y" on Misc. Plan No. 12150/4) along Essar Avenue for the purposes of residential infill single-family housing development. This is congruent with both the current R1-5 zoning of the property and the adjacent and surrounding single family housing. He is of the understanding, based on an inquiry to his office some time ago, that there may be an additional expression of interest or offer to purchase for the City-owned lands along Essar Avenue formerly known as "Essar Park". Recently, the Planning, Property and Development Department has received expressions of interest; however, the proposal described in this report is the result of the earliest expression of interest from April 2004.

There are two alternative courses of action as follows:

Alternative 1 – Accept the Offer to Purchase from 4525982 Manitoba Ltd.

If this alternative is selected and Council finds the Offer to Purchase herein acceptable, then a series of recommendations should be approved as follows:

That the proposed sale of City owned lands shown as Parcel “X” and Parcel “Y” on the attached Misc. Plan No. 12150/4, be approved at a price of $116,400.00 and in accordance with the terms and conditions of the attached Offer To Purchase.

That Council, by two-thirds majority, in accordance with The City of Winnipeg Charter Act, declare as surplus to the City’s needs the southwesterly triangular portion (legally described as Parcel "A", Plan 30604) of Parcel "Y", shown attached Misc. Plan No. 12150/4.

That once Parcel "X" has been rezoned to a "PR1" Parks District and appropriately landscaped, the City reacquire for parkland PARCEL “X” from 4525982 Manitoba Ltd., in exchange for a Receipt of Charitable Donation in accordance with terms and conditions outlined in the attached Offer To Purchase.

That once Parcel "Z" is rezoned to a "PR-1" Parks and Recreation District, the City acquire same, shown on attached Misc. Plan No. 12150/4, for a price of $6,100.00 in accordance with the terms and conditions of the attached Offer To Purchase.

That any net proceeds from the sale of the City lands (after payment for PARCEL “Z” and incidental costs) be credited to the East Kildonan – Transcona Land Dedication Reserve Account.

That the City acquire from 4525982 Manitoba Ltd., at no cost, an easement over the lands shown as “Pathway Easement – 7.0 m wide” on attached Misc. Plan No. 12150/4.

That the proper officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Alternative 2 – Reject the Offer to Purchase from 4525982 Manitoba Ltd.

If this alternative is selected, the following recommendation should be approved:

> That the Offer to Purchase from 4525982 Manitoba Ltd. be rejected, and that the Director of the Planning, Property and Development Department be instructed to offer the City owned lands on Essar Avenue for public sale to be used as detached, single family residential building sites.

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

Planning and Land Use Division
The Ward Councillor has been consulted.

This report submitted by:

Planning, Property and Development Department
Division: Real Estate
Prepared by: M. Sousa
PPD File #: 8449

Document name: o:\reports directive\real estate\acquisition\(ms)8449 essar lands sale exchange.doc

Financial Impact Statement

Date: September 28, 2004

Project Name:

First Year of Program 2004

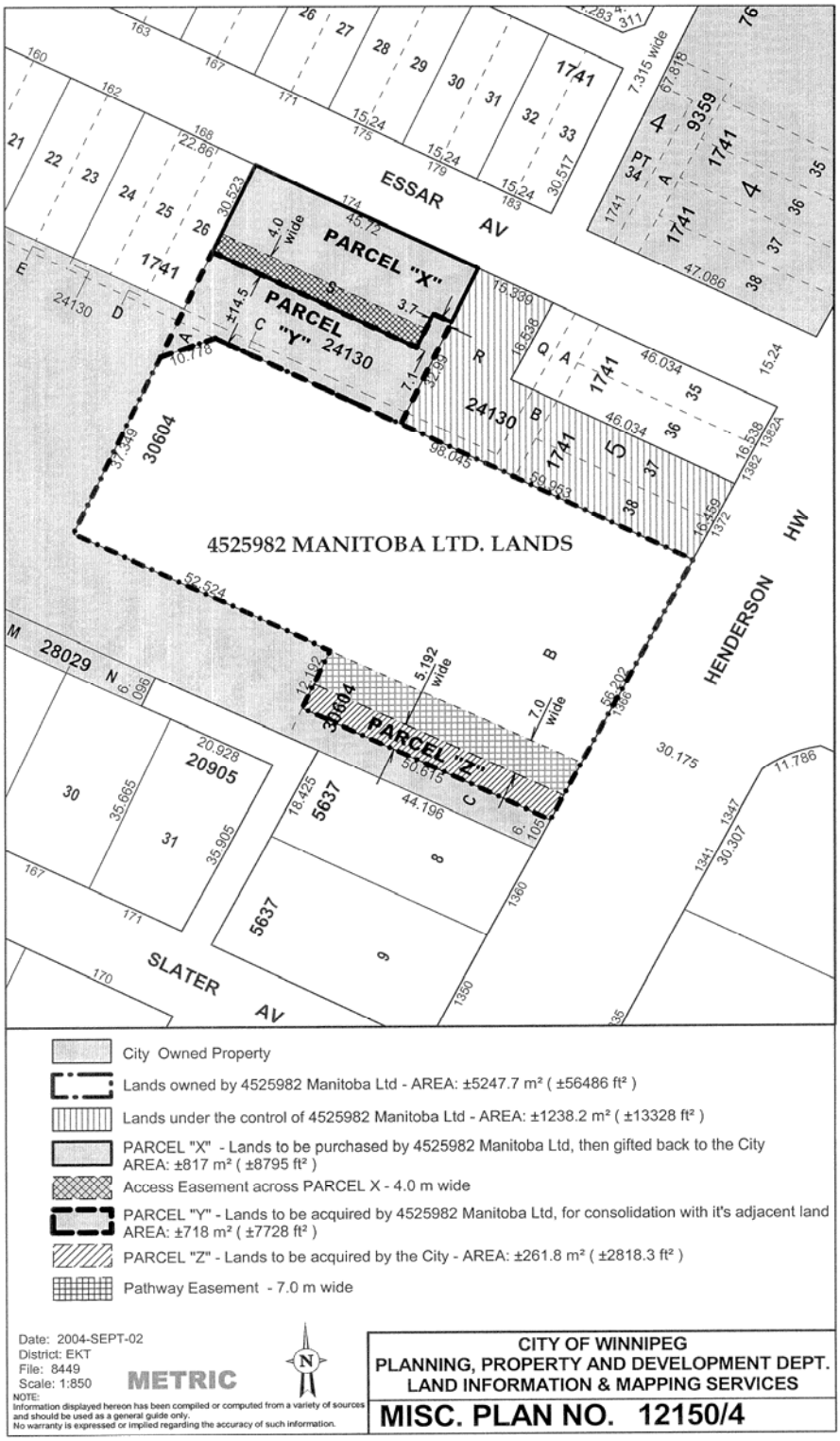
Proposed Sale/Exchange of Lands between 4525982 Manitoba Ltd. and the City of Winnipeg - Henderson Highway at Essar Avenue

	2004	2005	2006	2007	2008
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	$ 6,283	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	116,583	-	-	-	-
Net Cost/(Benefit)	$ (110,300)	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ (110,300)	$ -	$ -	$ -	$ -

Additional Comments:

(Note: This FIS has been prepared assuming Alternative 1 is approved.) Direct costs represent the $6,100 purchase price for Parcel Z plus a 3% GST component of $183, the latter of which is offset by a recovery of the same amount by the Corporate Finance Department. Incremental revenues/recoveries include the GST component, as mentioned, plus $116,400 in proceeds from the proposed sale of Parcels X & Y. Net proceeds of approximately $110,300 are to be credited to the Land Dedication Reserve Fund (East Kildonan-Transcona Community).

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


ESSAR AV
PARCEL "X"
PARCEL "Y" 24130
4525982 MANITOBA LTD. LANDS
PARCEL "Z"
HENDERSON HW
SLATER AV
City Owned Property
Lands owned by 4525982 Manitoba Ltd - AREA: ±5247.7 m² (±56486 ft²)
Lands under the control of 4525982 Manitoba Ltd - AREA: ±1238.2 m² (±13328 ft²)
PARCEL "X" - Lands to be purchased by 4525982 Manitoba Ltd, then gifted back to the City
AREA: ±817 m² (±8795 ft²)
Access Easement across PARCEL X - 4.0 m wide
PARCEL "Y" - Lands to be acquired by 4525982 Manitoba Ltd, for consolidation with it's adjacent land
AREA: ±718 m² (±7728 ft²)
PARCEL "Z" - Lands to be acquired by the City - AREA: ±261.8 m² (±2818.3 ft²)
Pathway Easement - 7.0 m wide
Date: 2004-SEPT-02
District: EKT
File: 8449
Scale: 1:850
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. 12150/4

File No: 8449

INDUSTRIAL/COMMERCIAL

OFFER TO PURCHASE

4525982 MANITOBA LTD. (hereinafter called "the Purchaser") hereby offers to purchase from The City of Winnipeg (the "City") the following lands:

Certificate of Title No. 1121336

Parcel "C" Plan 24130 WLTO in RL 57 Parish of Kildonan

Certificate of Title No. 1121357

Parcel "S" Plan 24130 WLTO in RL 57 Parish of Kildonan

Part Certificate of Title No. 1343960

Parcel "A" Plan 30604 WLTO in RL 58 Parish of Kildonan

comprising approximately 16,523 square feet (+./-) shown as Parcels X and Y on attached Misc. Plan No. 12150/4.

(hereinafter called the "Lands")

for the sum of $116,400.00 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 $15,000.00 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) In addition to the foregoing, it is mutually agreed and understood by the parties hereto that certain lands shall be exchanged between the parties as set out below in chronological order:

i. the Purchaser shall retain a portion of the Lands (City of Winnipeg Essar lands) comprising **7,728** square feet (+/-) shown as Parcel Y on attached Misc. Plan No. 12150/4;

ii. the Purchaser shall be responsible for rezoning Parcels X and Z as shown on Misc. Plan No. 12150/4 to PR1 Parks and Recreation District and landscaping Parcel X at the Purchaser's expense;

iii. upon finalization of the rezoning and landscaping of Parcel X, the Purchaser shall convey to the City Parcel X comprising **8,795** square feet (+/-) as shown on Misc. Plan No. 12150/4 in exchange for a Receipt of Charitable Donation; a portion of Parcel X shown as "Access Easement across Parcel X – 4.0 m wide" on Misc. Plan No. 12150/4 will be subject to an access easement in favour of the Purchaser.

It is mutually understood and agreed that with respect to subparagraphs ii. and iii. above, the specific requirements of landscaping and the terms and conditions of granting the easement are to be at the discretion of the Director of Planning, Property and Development Department.

Upon the Purchaser at its sole cost and responsibility providing the City with an independent appraisal complying to the requirements of **The Income Tax Act**

the City will provide the Purchaser with a Receipt of charitable Donation for the fair market value of the land in accordance with the appraisal report. It is understood and accepted by the Purchaser, that the Purchaser releases the City from any and all liability arising of any dispute of any nature or kind whatsoever between the Purchaser and the Government of Canada or any authority having jurisdiction pertaining to the use of the Receipt for Charitable Donation.

iv. upon finalization of the rezoning of Parcel Z, the Purchaser shall convey to the City, the lands shown as Parcel Z on Misc. Plan No. 12150/4 for the consideration of $6,100.00 **comprising 2,818.3 square feet (+/-).**

v. the Purchaser will at no cost to the City, grant an easement for a public pathway across the Purchaser's land shown as "Pathway Easement – 7.0 m wide" on Misc. Plan No. 12150/4.

(3) 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 and the City shall have no further remedies as against the Purchaser.

2. (1) The date of Closing, Possession and adjustments shall be on or before 210 days from the date of approval of the sale or such earlier or later date as the parties hereto may mutually agree upon.

(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, save and except for the Lands shown as Parcel X on attached Misc. Plan No. 12150/4 which will be transferred back to the City, 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, and the City shall pay the Land transfer costs for the Lands shown as Parcel X and Parcel Z, to be conveyed to the City.

5. The Purchaser will accept Title to the Lands subject to all exceptions, reservations and encumbrances expressed or implied in the City's Title and the City will accept Title to Parcels X and Z as shown on attached Misc. Plan No.

12150/4, subject to all exceptions, reservations and encumbrances expressed or implied in the City and Purchaser's Titles respectively.

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 Lands 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. **This agreement shall be subject, subordinate and postponed to all mortgages which may now or hereafter charge or affect the Property and to all renewals, modifications, consolidations, replacements and extensions of such mortgages. The City agrees to execute promptly any document in confirmation of such subordination and postponement which the Purchaser may request.**

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 of the Lands, 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 Lands 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.

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

(a) the Purchaser agrees to be fully responsible for all activities and associated costs to create Plans of Subdivision and the legal closing of streets

and lanes if necessary for the Lands shown as Parcels X, Y and Z on attached Misc. Plan No. 12150/4 including:

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

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

(iii) any dedication fees payable in connection with the creation of this subdivision.

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

(c) the Purchaser will be acquiring the Lands in an "as-is, where-is" condition and shall satisfy itself as to soil conditions zoning, access and environmental concerns;

(d) the Purchaser will be responsible for any and all costs associated with applications related to zoning, variances and conditional uses including application and processing costs and the payment of any dedication fees owing;

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

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

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

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

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

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

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

4525982 Manitoba Ltd.

Purchaser's Registration No. (G.S.T.) 860 8011 58RT0001

19. Due Diligence

The obligation of the Purchaser to complete the purchase of the lands shall be subject to the following conditions being satisfied or waived on or before one hundred and eighty (180) days from the date of approval of the sale:

(1) Parcels X and Z being subdivided and rezoned to PR1 Parks and Recreation District;

(2) Parcel Y being subdivided and rezoned to a C2 Commercial District;

(3) any soil testing is to be to the satisfaction of the Purchaser in its sole discretion;

(4) that the Purchaser is able to relocate the utility easements to a suitable alternative location.

If any of the above due diligence conditions have not been satisfied or waived within the 180 day period, this agreement shall terminate and be of no further force and effect and neither party hereto shall have any claims against the other party arising out of this agreement except that the amount paid by the Purchaser under section 1(1) shall be unconditionally refunded to the Purchaser without deduction and the City shall not be liable for any costs incurred by the Purchaser.

The City acknowledges that the foregoing due diligence conditions are conditions inserted solely for the benefit of the Purchaser, as a condition precedent to the Purchaser's obligation to complete the purchase and any one or more of them may be therefore waived by the Purchaser at any time and the agreement shall be amended accordingly. If any of the conditions not so fulfilled shall not have been waived by the Purchaser, and, unless the parties hereto agree in writing otherwise, the agreement resulting from the acceptance of this offer shall be at an end and the City and Purchaser shall be released from all obligations to the other under or pursuant to this offer and agreement and the deposit will be paid to the Purchaser without interest, deduction or setoff forthwith.

The Purchaser shall use its best efforts to proceed as expeditiously as possible to finalize the aforesaid subdivisions and rezoning.

The City shall provide authorization to the Purchaser to make application for rezoning of the Lands referred to in Clause 19.

20. **DISCLOSURE:** The Purchaser advises that pursuant to the Manitoba Securities Act and the Real Estate Brokers Act, Marcel Chartier, Broker, Derrick Chartier, Real Estate Agent and Mark Olson, Real Estate Agent, are directors or the beneficial owners of the Lands and of the Purchaser, and may become entitled to a beneficial interest in the Lands by virtue of this Agreement.

21. It is mutually agreed between the Purchaser and the Vendor that there will be no real estate commission fees payable in respect of this transaction. Furthermore, the Purchaser does not represent the Vendor and the Vendor does not represent the Purchaser, therefore, both parties are acting in their own best interests.

IN WITNESS WHEREOF the Purchaser has signed this document this 15th day of September, 2004

4525982 MANITOBA LTD.

Betty Boisvert
WITNESS

Marcel Chartier
BY ITS AUTHORIZED AGENT

I have authority to bind the Corporation

ACCEPTED this _____day of _____, A.D., 2004

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

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_____

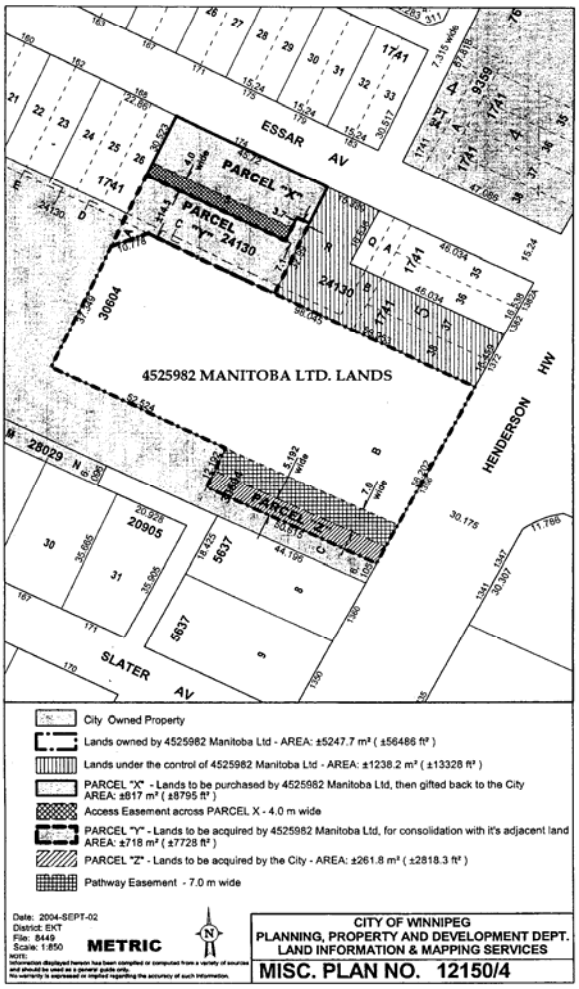
Date: _____ 200 __ _____

(Signature of Applicant)

Office of the City Assessor _____

The City of Winnipeg (Signature of Registered Owner)

EXHIBIT "A"


ESSAR AV
PARCEL "X"
PARCEL "Y" 24130
4525982 MANITOBA LTD. LANDS
HENDERSON HWY
PARCEL "Z"
SLATER AV
City Owned Property
Lands owned by 4525982 Manitoba Ltd - AREA: ±5247.7 m² (±56486 ft²)
Lands under the control of 4525982 Manitoba Ltd - AREA: ±1238.2 m² (±13328 ft²)
PARCEL "X" - Lands to be purchased by 4525982 Manitoba Ltd, then gifted back to the City AREA: ±817 m² (±8795 ft²)
Access Easement across PARCEL X - 4.0 m wide
PARCEL "Y" - Lands to be acquired by 4525982 Manitoba Ltd, for consolidation with it's adjacent land AREA: ±718 m² (±7728 ft²)
PARCEL "Z" - Lands to be acquired by the City - AREA: ±261.8 m² (±2818.3 ft²)
Pathway Easement - 7.0 m wide
Date: 2004-SEPT-02
District: EKT
File: 8449
Scale: 1:850
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 12150/4