Agenda – Executive Policy Committee – June 13, 2007

PUBLIC HEARINGS

Item No. 1 Appeal under Plan Winnipeg By-law No. 7630/2000 – OTM Pt Lot 30, Kildonan – Pipeline Road (Pipeline Road and Balgona Road) File EP-1.1(PW)

On May 7, 2007, John S. Petryshyn, Barrister and Solicitor, Glowacki and Libitka, appealed the decision dated April 20, 2007, issued by Zoning and Permits Administrator, Development and Inspections Division, Planning, Property and Development Department, regarding provisions of The Plan Winnipeg By-law No. 7630/2000 for the premises located at OTM Pt Lot 30, Kildonan – Pipeline Road (Pipeline Road and Balgona Road).

The decision stated:

The proposal is contrary to Section 3B-08 of Plan Winnipeg as a full range of municipal services is not currently available to service the development.

Consequently, any application to subdivide the subject property will be refused without a hearing pursuant to Section 275(2)(a) of The City of Winnipeg Charter.

ADMINISTRATIVE RECOMMENDATION:

That the Executive Policy Committee concur with the interpretation of the Administration that an application to allow the construction of an unserviced residential dwelling in Rural Policy Area is contrary to Plan Winnipeg and cannot be approved under Section 275(2) of the City of Winnipeg Charter.

Agenda - Executive Policy Committee – June 13, 2007

Appellant: John S. Petryshun, Barrister and Solicitor, Glowacki and Libitka

Premises Affected: OTM Pt Lot 30, Kildonan - Pipeline Road (Pipeline Road and Balgona Road)

Exhibits Filed:

1. Decision dated April 20, 2007, issued by the Zoning and Permits Administrator, Development and Inspections Division, Planning, Property and Development Department
2. Notice of Appeal filed by John S. Petryshyn, Barrister and Solicitor, Glowacki and Libitka received May 7, 2007
3. Notification of Public Hearing dated May 11, 2007
4. Report from the Acting Director of Planning, Property and Development dated June 7, 2007
5. Presentation dated June 13, 2007 from Ashvindra Mann and Parminder Mann, in support of the appeal.

REPRESENTATIONS:

In Support of Appeal:

In Opposition to Appeal:

For Information on Appeal:

For the City:

Moved by Councillor

That the receipt of public representations be concluded.

Moved by Councillor

That the Appeal(s) be allowed / allowed in part / denied and the decision of the Zoning and Permits Administrator, Development and Inspections Division, Planning, Property and Development Department, be confirmed / cancelled.

Moved by Councillor

That the public hearing with respect to this appeal be concluded.

Exhibit "1" for EP-1.1(PW)

149.

Winnipeg

Planning, Property & Development Department • Service de l'urbanisme, des biens et de l'aménagement

Development and Inspections Division • Division de l'aménagement et des inspections

In reply please refer to / Référance à rappeler :

Andrew Ziegler
Phone: (204) 986-5144
Fax: (204) 986-6347
Z.P.B. 3.3

April 20, 2007

Myers Weinberg LLP
724-240 Graham Avenue
Winnipeg MB R3C 0J7

ATTENTION: Marietta Pellettieri

Dear Marietta:

RE: CERTIFICATE OF TITLE 1069595 - OTM PT LOT 30, KILDONAN - PIPELINE ROAD (PIPELINE ROAD & BALGONA ROAD)

This will acknowledge receipt of your letter dated April 3, 2007 requesting verification of use regarding the above captioned premises.

Please be advised that the subject site is located within an area zoned "A" Agricultural District and is subject to the provisions of the City of Winnipeg Zoning By-law No. 6400/94 and amendments thereto which requires a lot width of 300 feet and an area of 40 acres. A historical search of the property reveals that the subject site is not a Lot of Record, therefore a residence is not a permitted use.

In accordance with 3B-08 of Plan Winnipeg, a rezoning application can only proceed through the preparation and adoption of a Secondary Plan approved by Council. On September 5, 2000 the Lord Selkirk – West Kildonan Community Committee considered a Secondary Plan for this area and was recommended by the Committee that the Plan not be proceeded with, based on the large number of property owners and residents in opposition to the Plan. To date, no further Secondary Plan submissions are being considered. Please contact Michael Robinson, District Planner at 986-3213 for further information.

April 20, 2007

Consequently, any application to rezone the subject property will be refused without a hearing, pursuant to Section 275(2)(a) of the City of Winnipeg Charter.

You may appeal this decision by submitting a letter to the Clerk of the Executive Policy Committee at the following address:

City Clerks Department
Main Floor Council Building
510 Main St.
Winnipeg, MB R3B 1B9

Attention: Jo-Ann Park
Clerk, Executive Policy Committee
Phone: 986-3157

We trust this is the information you require.

Yours truly,

Martin Grady
Zoning & Permits Administrator
MG/AZ/cs

Receipt Enclosed

V:\ZPB Branch Files\2007\ZPB 3 - L.S. - WKLDG.3 Request for Information\Pipeline-Balgona AZ 07.doc

Exhibit "2" for EP-1.1(PW)

GLOWACKI & LIBITKA
BARRISTERS AND SOLICITORS

VICTOR W. LIBITKA, B.A., LL.B
victor-gl@shawbiz.ca
JOHN S. PETRYSHYN, B.A., LL.B.
john-gl@shawbiz.ca
JULIAN R. GLOWACKI, Q.C., (1921-2002)

601 Hammond Building
63 Albert Street
Winnipeg, Manitoba R3B 1G4
Telephone : 204-942-3385
Facsimile : 204 943-6354
E-mail : glowacki@shawbiz.ca

OUR FILE NO. 15493JP

Delivered Via : Personal Delivery

07 May 2007

Attention: Ms. Jo-Ann Park
Clerk of the Executive Policy Committee
City Clerks Department
Main Floor Council Building
510 Main Street
WINNIPEG MB R3B 1B9

Dear Madam:

RE: Certificate of Title 1069595 - OTM Pt Lot 30, Kildonan - Pipeline Road (Pipeline Road & Balgona Road)

With regard to your letter of April 20, 2007 sent to previous counsel for Mr. Ashvindra Maan, of 221 Kinver Avenue, Winnipeg, Manitoba, R2R 1G9, the said Mr. Maan has retained our offices to act on his behalf in this matter.

We, therefore, wish to appeal the decision as set out in the aforesaid letter of April 20, 2007.

Please advise date of hearing and/or any other documents you may require to facilitate the appeal.

We remain,

Respectfully yours,

GLOWACKI & LIBITKA

Per:

JOHN S. PETRYSHYN
/ks
DELIVERED

Exhibit "3" for EP-1.1(PW)

City Clerk's Department • Bureau du greffier

REGISTERED MAIL RT 157 321 637 CA

May 11, 2007

File EP-1.1(PW)

Glowacki and Libitka
Barristers and Solicitors
601 Hammond Building
63 Albert Street
Winnipeg, Manitoba
R3B 1G4
Attention: Mr. John S. Petryshyn

Appeal under Plan Winnipeg By-law No. 7630/2000 – OTM Pt Lot 30, Kildonan – Pipeline Road (Pipeline Road and Balgona Road)

This will acknowledge receipt of your communication dated May 7, 2007, appealing the decision of the Zoning and Permits Administrator, Development and Inspections Division, Planning, Property and Development Department, dated April 20, 2007, for the premises located at OTM Pt Lot 30, Kildonan – Pipeline Road (Pipeline Road and Balgona Road).

Please be advised that the appeal will be heard by the Executive Policy Committee at its meeting on Wednesday, June 13, 2007, at 9:00 a.m. in the Council Building, 510 Main Street.

The purpose of the appeal hearing is to allow interested persons to make submissions, ask questions or register objections with respect to this matter.

Information or documents concerning this matter and a description of the procedure to be followed at the hearing are available for inspection in the City Clerk's Department, 510 Main Street or can be accessed on the Internet site: www.winnipeg.ca/CLKDMIS.

JPark

Jo-Ann Park
Clerk of the Executive Policy Committee
Telephone 986-3732

c. Mr. J. Paterson, Acting Director of Planning, Property and Development
Mr. M. Grady, Zoning and Permits Administrator, Planning, Property and Development Department
Ms. M. Richard, Senior Planner (Plan Winnipeg), Planning, Property and Development Department

Exhibit "4" for EP-1.1(PW)

RE: Plan Winnipeg Appeal - Pipeline Road and Balgona Road – Rejection of an Application to Build on a Non-Conforming Lot

FOR SUBMISSION TO: **Executive Policy Committee**

ORIGINAL REPORT SIGNED BY: **Jim Patterson, A/Director of Planning, Property and Development**

REPORT DATE: **June 7, 2007**

RECOMMENDATION:

That the Executive Policy Committee concur with the interpretation of the Administration that an application to allow the construction of an unserviced residential dwelling in Rural Policy Area is contrary to Plan Winnipeg and cannot be approved under Section 275(2) of the City of Winnipeg Charter.

Report Summary

Key Issues:

- An application for a residence on the east side of Pipeline Road (OTM PT Lot 30, Kildonan), south of Balgona Road, has been rejected by the Director of Planning, Property and Development as contrary to Plan Winnipeg Policy 3B-08 Regulate Land Uses in Rural Areas.

- The subject property is zoned A Agricultural District and is located in a Rural Policy Area under Plan Winnipeg. Unless this is a Lot of Record, a residence is not a permitted use.

- A historical search of the property reveals that the subject site is not a Lot of Record meaning it did not lawfully exist on the effective date of the zoning by-law or amendments thereto and does not comply with the district bulk regulation for lot width and/or lot area.

- There is no secondary plan for this area.

- Under Section 275(2) of the City of Winnipeg Charter, an application to vary outside of what is determined to be minimal variances or in the absence of an adopted secondary plan must be rejected as contrary to Plan Winnipeg 2020 Vision in accordance with Section 275(2) of the City of Winnipeg Charter.

Implications of the Recommendation(s):

General Implications

( ) None

(x) For the organization overall and/or for other departments

(x) For the community and/or organizations external to the City

( ) Involves a multi-year contract

Comment(s): The recommendation provides clear and consistent support for Plan Winnipeg policies concerning land use in Rural Policy area.

Policy Implications

( ) No

(x) Yes

Comment(s): The recommendation supports Plan Winnipeg policies.

Regulatory Implications

(x) None

( ) Eliminates or reduces regulatory impact

( ) Proposes regulatory impact

Comment(s): The recommendation rejects an application that is contrary to the City of Winnipeg Charter. Section 235 states the following:

"The passing of a Plan Winnipeg by-law or a secondary plan by-law does not require council, any person, or any department or agency of the government, to undertake a proposal contained in the by-law, but public works, undertakings and development in the city must be consistent with Plan Winnipeg or any secondary plan."

Environmental Implications

(X) No

( ) Yes

Comment(s):

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):

Report

REASON FOR THE REPORT:

The Executive Policy Committee is responsible for hearing any appeal of an Administration decision concerning Plan Winnipeg 2020 Vision.

BACKGROUND:

An application to build a residence on an unserviced lot in Rural Policy Area has been rejected by the Director of Planning, Property and Development as contrary to Plan Winnipeg Policy 3B-08 Regulate Land Uses in Rural Areas.

The lot is located in Rural Policy Area under Plan Winnipeg. Policy 3B-08 states:

The City shall regulate land uses within locations designated as Rural on Policy Plate A by:

i) designating as agriculture and related support functions as the principal use in rural areas through the requirement of a minimum site area of 16 ha (40 acres), subject to minimal variances.

ii) allowing the subdivision of land into parcels less than 16 ha (40 acres) only through the preparation and adoption of a secondary plan.

DISCUSSION:

Nature of Application:
The parcel proposed for a residence has never been a buildable lot. It does not conform to the original Old Kildonan Town Planning Scheme or subsequent official plans including the Greater Winnipeg Development Plan, and Plan Winnipeg (1981, 1993 and 2001) and applicable zoning regulations and is not a Lot of Record. All plans directed that rural areas should be maintained for agriculture and related support functions. As such zoning by-laws have established minimum lot area and width as a mechanism to prevent semi-urban unserviced fringe development.

Since the subject property does not have “lot of record” status it must conform to Plan Winnipeg and Zoning By-law requirements. The property is zoned “A” Agricultural District with a minimum lot size of 40 acres and a minimum lot width of 300 feet. This is consistent with its Plan Winnipeg designation as a “Rural Policy Area”.
The Plan Winnipeg Policy noted above refers to a 40 acre area requirement “subject to minor variances”. Since the subject property is only a 10 acre site it would require much more than a “minimal variance” to conform to Plan Winnipeg.

Under Section 275(2) of the City of Winnipeg Charter, an application for a development by-law or approval of a plan of subdivision that does not conform with Plan Winnipeg and any secondary plan shall be rejected.

Intent of Rural Policy Areas:

A primary intent of a Rural Policy Area is to limit premature, unserviced development on the periphery of the urban area. Scattered developments of this nature make future orderly development to urban densities difficult to achieve.

Policy Implications:

Approving a lot with these significant variances is contrary to the direction of Plan Winnipeg and would set a precedent for similar unplanned rural residential development in Rural Policy Areas.

Plan Winnipeg only provides for an exception to the 40 acre rural lot minimum in situations where a secondary plan has been adopted. This is to ensure that development of rural residential areas is not done on a lot-by-lot basis. Rather, the whole area is taken into consideration. A secondary plan for this area was drafted to provide for a certain level of development and servicing but was ultimately rejected by Council largely as a result of local opposition to the plan.

Subdivision of this or similar non-conforming lots would cumulatively have the following detrimental effect on the area:

- Under-serviced homes in an urban area often create pressure later to provide a full range of municipal infrastructure on an unplanned basis.
- Piecemeal development negatively impacts the economic viability of the installation of infrastructure in the future.
- The incremental and unplanned development of land can preclude broader development objectives, thus delaying the municipal revenues to be realized by complete development at an urban standard.
- Intensification of the area will add to existing overland drainage problems.

The proposed development on a non-conforming lot in the absence of any secondary plan supporting this type of unserviced development was rejected by the Administration as contrary to Plan Winnipeg.

Financial Impact Statement Date: June 4, 2007

Project Name:

PLAN WINNIPEG APPEAL – PIPELINE ROAD – PROPOSED DEVELOPMENT IN RURAL POLICY AREA CONTRARY TO PLAN WINNIPEG

COMMENTS:

The recommendation in this report is that the Executive Policy Committee concur with the interpretation of the Administration that an application to allow the construction of an unserviced residential dwelling in Rural Policy Area is contrary to Plan Winnipeg and cannot be approved under Section 275(2) of the City of Winnipeg Charter. There are no financial implications associated with this recommendation.

"Original Signed By"
Mike McGinn, CA
Manager of Finance

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

Internal Services Department, Legal Services

External Consultation With:

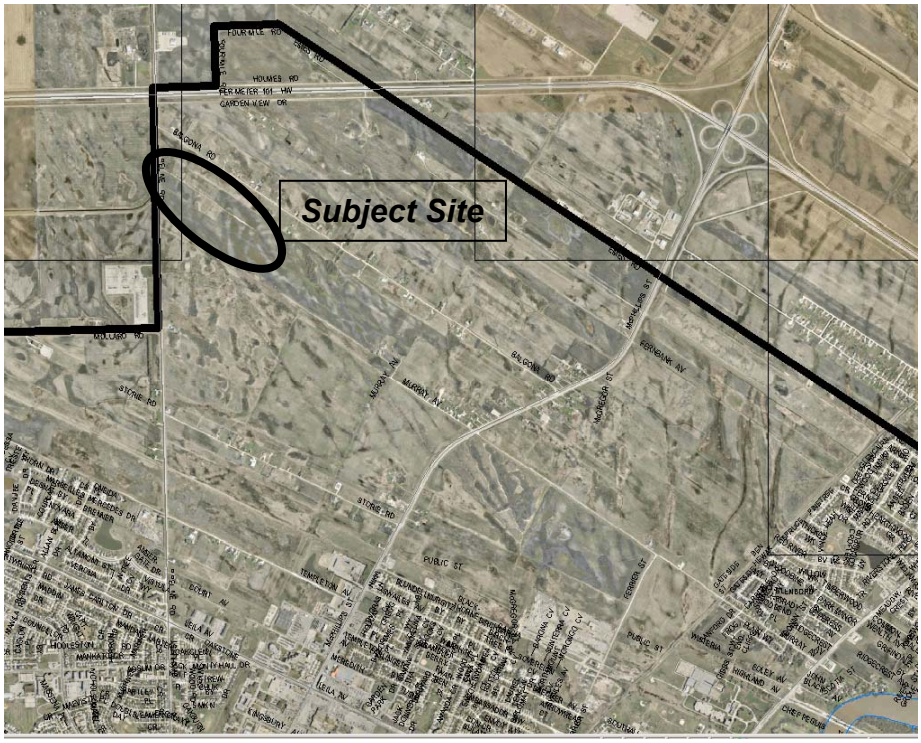
N/A

THIS REPORT SUBMITTED BY:

Department	Planning, Property and Development
Division	Planning and Land Use
Prepared by:	Michelle Richard, Senior Planner – Plan Winnipeg,
File No.	EP-1.1(PW)

O:\Reports Directive\Planning and Land Use\Urban Planning Reports\2007 Reports\PipelineAppeal2.doc

Attachment 1: Subject Site



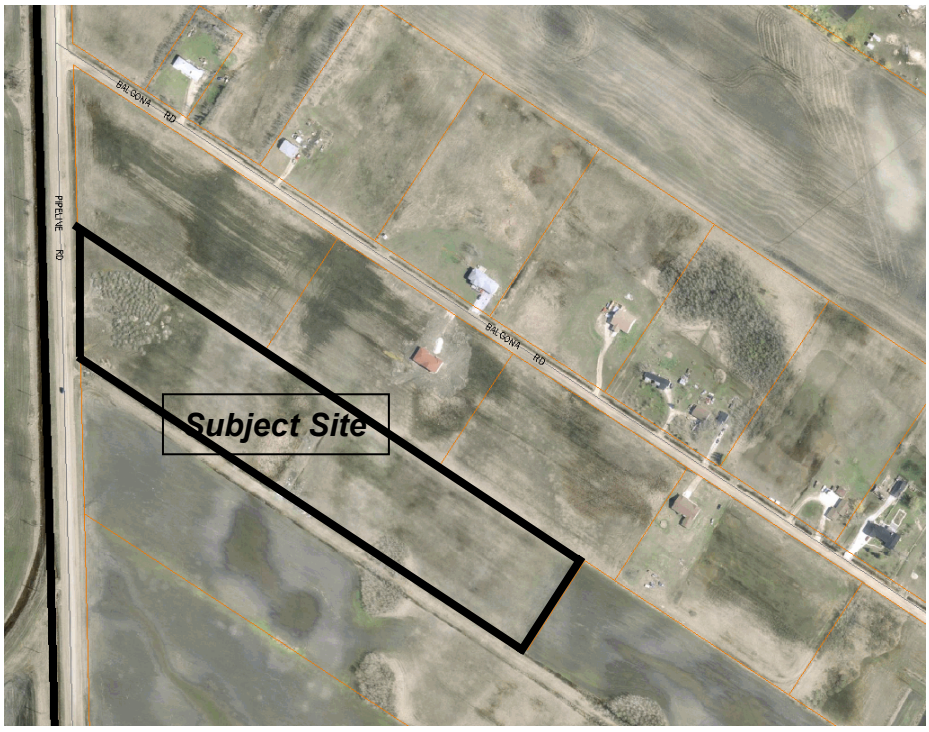


Exhibit “5” for EP-1.1(PW)

RECEIVED
CITY CLERKS
WINNIPEG
7 JUN 11 P2:12

PRESENTATION TO
THE EXECUTIVE POLICY COMMITTEE
13 JUNE 2007 - 09:00

BY: **ASHVINDRA MANN** and **PARMINDER MANN**

RE: **Lot 30 Pipeline Road (Pipeline & Balgona), Winnipeg, Manitoba**

APPEAL: **Plan Winnipeg By-Law 7630/2000**

GLOWACKI & LIBITKA
Barristers and Solicitors
601 Hammond Building
63 Albert Street
Winnipeg, Manitoba, R3B 1G4
Telephone: 204-942-3385
Facsimile: 204-943-6354
E-mail: john-gl@shawbiz.ca

The Applicants, Mann, are registered legal owners of a lot being some 10.68 acres of bare land.

We attach:

1. Copy of Status of Title;
2. Staking Certificate;
3. Nine (9) photographs of said lot and neighboring property.

To be presented: At hearing blueprint for single family residence to be constructed by applicants;

DATE: 2007/04/25
TIME: 12:50

MANITOBA TITLE NO: 2219961

STATUS OF TITLE PAGE: 1

STATUS OF TITLE.....	ACCEPTED	PRODUCED FOR..	MYERS, WEINBERG & ASSOCIATES
ORIGINATING OFFICE.....	WINNIPEG	ADDRESS.....	724-240 GRAHAM AVE.
REGISTERING OFFICE.....	WINNIPEG		WINNIPEG MB R3C 0J7
REGISTRATION DATE.....	2007/04/12		
COMPLETION DATE.....	2007/04/24	PRODUCED BY...	M.DERKSEN
		LTO BOX NO....	175

LEGAL DESCRIPTION:

ASHVINDRA MANN AND PARMINDER MANN
BOTH OF WINNIPEG, MANITOBA

ARE REGISTERED OWNERS AS JOINT TENANTS SUBJECT TO SUCH ENTRIES RECORDED HEREON IN THE FOLLOWING DESCRIBED LAND:

ALL THAT PORTION OF OTM LOT 30 PARISH OF KILDONAN LYING TO THE NORTH OF A LINE DRAWN NORTH OF PARALLEL WITH AND PERP DISTANT 33 FEET FROM THE SOUTHERN LIMIT OF SAID LOT WHICH LIES TO THE WEST OF A LINE DRAWN NLY AT RIGHT ANGLES TO THE SOUTHERN LIMIT OF THE LAND NOW BEING DESCRIBED THROUGH A POINT IN THE SAME DISTANT ELY THEREON 1471 FEET FROM THE WESTERN LIMIT OF SAID LOT
EXC ALL MINES AND MINERALS

ACTIVE TITLE CHARGES:

NO ACTIVE TITLE CHARGES EXIST ON THIS TITLE

ACCEPTED THIS 12TH DAY OF APRIL, 2007
BY C.SHAW FOR THE DISTRICT REGISTRAR OF
THE LAND TITLES DISTRICT OF WINNIPEG.

CERTIFIED TRUE EXTRACT PRODUCED FROM THE LAND TITLES DATA STORAGE SYSTEM ON 2007/04/25 OF TITLE NUMBER 2219961.
THIS IS NOT A DUPLICATE TITLE.

X _____
FOR THE DISTRICT REGISTRAR

********** END OF STATUS OF TITLE FOR TITLE 2219961 WPG **********

473 Henderson Highway
Winnipeg, MB
R2K 2H7

PHILLIPS & STEVENS
LAND SURVEYS

Tel. 663-2089
Fax. 668-9826
Toll Free 1-888-667-9554

Staking Certificate

April 17, 2007

File No. 200703036

Myers Weinberg
Barristers and Solicitors
724 Cargill Building
240 Graham Avenue
Winnipeg, Manitoba R3C 0J7

RE : Lot 30 Pipeline Road, Winnipeg, Manitoba, Your File No. 31475-001

CERTIFICATE OF TITLE: 1069595 (SEARCHED MARCH 27, 2007)

REGISTERED OWNERS: ROYSIE SANKAR AND SANDRA SANKAR AND WAYNE SANKAR AND CHERRIE SANKAR AND MIKE ARGOON

LEGAL DESCRIPTION: ALL THAT PORTION OF OTM LOT 30 PARISH OF KILDONAN LYING TO THE NORTH OF A LINE DRAWN NORTH OF PARALLEL WITH AND PERP DISTANT 33 FEET FROM THE SOUTHERN LIMIT OF SAID LOT WHICH LIES TO THE WEST OF A LINE DRAWN NLY AT RIGHT ANGLES TO THE SOUTHERN LIMIT OF THE LAND NOW BEING DESCRIBED THROUGH A POINT IN THE SAME DISTANT ELY THEREON 1471 FEET FROM THE WESTERN LIMIT OF LOT EXC ALL MINES AND MINERALS

ENCUMBRANCES: None

As requested, this is to certify that I have staked or referenced the boundaries of the above described land.

There are no encroachments, above ground level, onto the above described land by buildings from the adjoining properties.

Notes:
1) All distances are in metric.
2) Iron posts 0.019 sq. are at all points shown thus_____■



Nine (9) Photographs:

1. Photograph of another residence on Pipeline Road, one (1) block south of said Lot 30 (residence over five (5) years old);

2. Residence (north-east of Lot 30), backing to Lot 30;

3. Residence (north-east) back of Lot 30;

4. Back of Lot 30 (north-east);

5. Lot 30, facing west;

6. Lot 30 front Pipeline Road, Manitoba Hydro utility box;

7. Neighborhood Balgona Road, Lot for Sale;

8. South of Lot 30 Pipeline Road; and

9. South of Lot 30 Pipeline Road.

Currently there are utilities of Hydro (Natural Gas and Electricity) for Lot 30. Also, there is telephone service.

The owners propose to have a septic field and a well for water and sewage.

There currently exists an all weather road (Pipeline Road) and, as is evident from the photographs, the area already has several single family residences.

The owners propose to build a single family residence of some 1800 square feet for their personal use.

We know of no opposition to this Application. Also, there would be no cost to the City. In fact, a newly constructed home would raise the Real Property Taxes, et cetera, in the area.

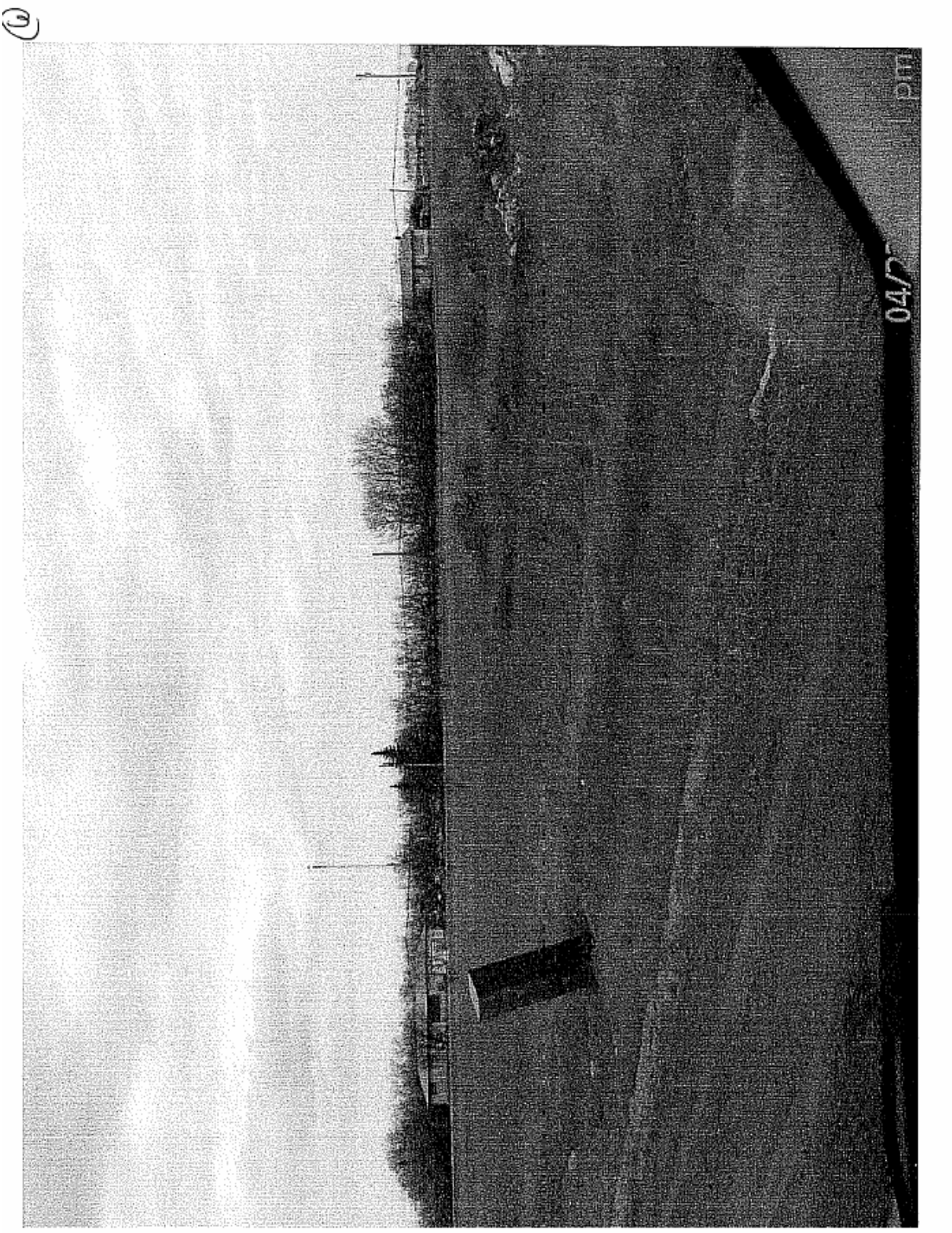

Mellard Rd
NEXT LEFT
04/22/07 5:09 pm

(4)

(5)

LOT 30 PIPELINE R/W

③



(7)

BY ACRES LOT ON PIPELINE RIGHT SHED (8)



(9)

