Agenda - Council - July 16, 2008

Report - Standing Policy Committee on Property and Development - June 24, 2008

Item No. 28 Exchange of Lands - Manitoba and Pritchard Avenues, east of Shaughnessy Street (Point Douglas Ward) File FI-2.4.4.1

STANDING COMMITTEE RECOMMENDATION:

On July 9, 2008, 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 the proposed exchange of lands be approved as follows:

    A. The Purchaser (Gurchait Judge) to receive title to the City-owned property shown as "Proposed Closing" on Misc. Plan No. 13317/1;

    B. The City to receive the property identified as "Proposed Opening" on Misc. Plan No. 13317/1, all in accordance with the terms and conditions of the Offer to Purchase dated June 11, 2008, and subject to such additional terms and conditions that the Director of Planning, Property and Development and the City Solicitor/Manager of Legal Services consider necessary to protect the interests of the City.

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

Report - Standing Policy Committee on Property and Development - June 24, 2008

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 9, 2008, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On June 24, 2008, the Standing Policy Committee on Property and Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

RE: Proposed Exchange of Lands located at Manitoba and Pritchard Avenues, East of Shaughnessy Street
Lord Selkirk – West Kildonan Community, Point Douglas Ward

FOR SUBMISSION TO: Standing Policy Committee on Property and Development

ORIGINAL REPORT SIGNED BY: Director, Planning, Property and Development

REPORT DATE: June 16, 2008

RECOMMENDATION:

1. That Council approve the proposed exchange of lands as follows:
    a) The Purchaser (Gurchait Judge) to receive title to the City-owned property shown as "Proposed Closing" on Misc. Plan No. 13317/1, and
    b) The City to receive the property identified as "Proposed Opening" on Misc. Plan No. 13317/1, all in accordance with the terms and conditions of the attached Offer to Purchase dated June 11, 2008, and subject to such additional terms and conditions that the Director of Planning, Property and Development and the City Solicitor/Manager of Legal Services consider necessary to protect the interests of the City.
2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report Summary

Key Issues:

- The Planning, Property and Development Department has concluded its negotiations for an exchange of lands located between Manitoba and Pritchard Avenues, east of Shaughnessy Street.
- Approval by Council for the proposed exchange is required.

Implications of the Recommendation(s):

General Implications

(X) None

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

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

( ) Involves a multi-year contract

Comment(s):

Policy Implications

(X) No

( ) Yes

Comment(s):

Regulatory Implications

(X) None

( ) Eliminates or reduces regulatory impact

( ) Proposes regulatory impact

Comment(s):

Environmental Implications

(X) No

( ) Yes

Comment(s): The City's standard terms and conditions of sale include provisions to protect the City's interests in the event that environmental contamination is discovered.

Human Resources Implications

(X) No

( ) Yes

Comment(s):

Financial Implications

(X) Within approved current and/or capital budget

( ) Current and/or capital budget adjustment required

Comment(s):

Report

REASON FOR THE REPORT:

The Planning, Property and Development Department has concluded its negotiations for an exchange of lands located between Manitoba and Pritchard Avenues, east of Shaughnessy Street. Council approval is required for the proposed exchange.

HISTORY:

The Department received a request from the owner (Gurchait Judge) of the property shown as "Proposed Subdivision Boundary" (former Florence Nightingale School site) to purchase the subject lanes identified as "Proposed Closing" on the attached copy of Misc. Plan No. 13317/1. The proposed closing is to be incorporated in DASZ 8/2008, a subdivision and rezoning application for the development of several single family dwellings on the former School site.

An alternate lane providing access and egress is to form part of the development and is identified as "Proposed Opening" on the sketch. The lane will be opened as a public right of way by DASZ 8/2008. This new alignment will restore the right of way to its original configuration prior to its closure in 1924 by By-law No. 10993 which diverted the lane in order to accommodate the construction of Florence Nightingale School.

The proposal has been considered by all affected City departments and public utilities. No civic need was identified nor are any easements required. The approval of the closings is subject to, among other things, the following conditions:

> *"The existing lane approaches from Manitoba and Pritchard Avenues for the public lanes proposed to be closed are to be removed and the curb, boulevard and sidewalk restored by the applicant, at no expense to the City, and*
>
> *The Purchaser shall, at no expense to the City, construct Portland cement concrete pavement to a width of 5.0m by 150mm in thickness in the proposed public lane, tying into the existing public lane pavement, the centerline is to be coincident with the centerline of the existing public lane pavement to the east, and all related works all as determined by and to the satisfaction of the Director of Public Works."*

On May 14, 2008, Council approved the proposed closing of part of the public lanes between Manitoba and Pritchard Avenues, East of Shaughnessy Street (DAC 6/2008) for incorporation into DASZ 8/2008.

DISCUSSION:

The Department has concluded its negotiations with the applicant for the exchange of the lands in accordance with the terms and conditions as set out in the attached Offer to Purchase dated June 8, 2008.

The Department is recommending that the proposed exchange at $1.00, be approved as follows:

- The applicant to receive the proposed closed lanes for incorporation in DASZ 8/2008.
- The applicant will provide a portion of his property for the opening of the lane between McNichol and Shaughnessy Streets.

The property the applicant will be receiving (proposed closed lanes) is approximately the same square footage as the land required for the opening. The Planning, Property and Development Department is therefore recommending that the exchange be approved at $1.00.

The Planning, Property and Development Department is supportive of the exchange of lands for the following reasons:

a) The exchange provides for efficient use of the adjoining properties.
b) The Ward Councillor has no objections to the proposed exchange.
c) The applicant will be responsible for all costs associated with Plan of Survey in order to facilitate the requirements of the Public Works Department.
d) The property will generate realty tax upon closing of the exchange.

Financial Impact Statement **Date:** June 13, 2008

Project Name:

Proposed Exchange of Lands located at Manitoba and Pritchard Avenues, East of Shaughnessy Street

COMMENTS:

The recommendations included in this report are that Council approve the proposed exchange of lands as follows:
a) The Purchaser (Gurchait Judge) to receive title to the City-owned property shown as "Proposed Closing" on Misc. Plan No. 13317/1, and
b) The City to receive the property identified as "Proposed Opening" on Misc. Plan No. 13317/1, all in accordance with the terms and conditions of the attached Offer to Purchase dated June 11, 2008, and subject to such additional terms and conditions that the Director of Planning, Property and Development and the City Solicitor/Manager of Legal Services consider necessary to protect the interests of the City.

Other than a nominal fee of $1 to be paid by the applicant, there are no financial implications associated with these recommendations.

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

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

N/A

External Consultation With:

N/A

THIS REPORT SUBMITTED BY:

Department: Planning, Property and Development Department
Division Real Estate Division
Prepared by: Joedi Pruden
PPD File No. 8748

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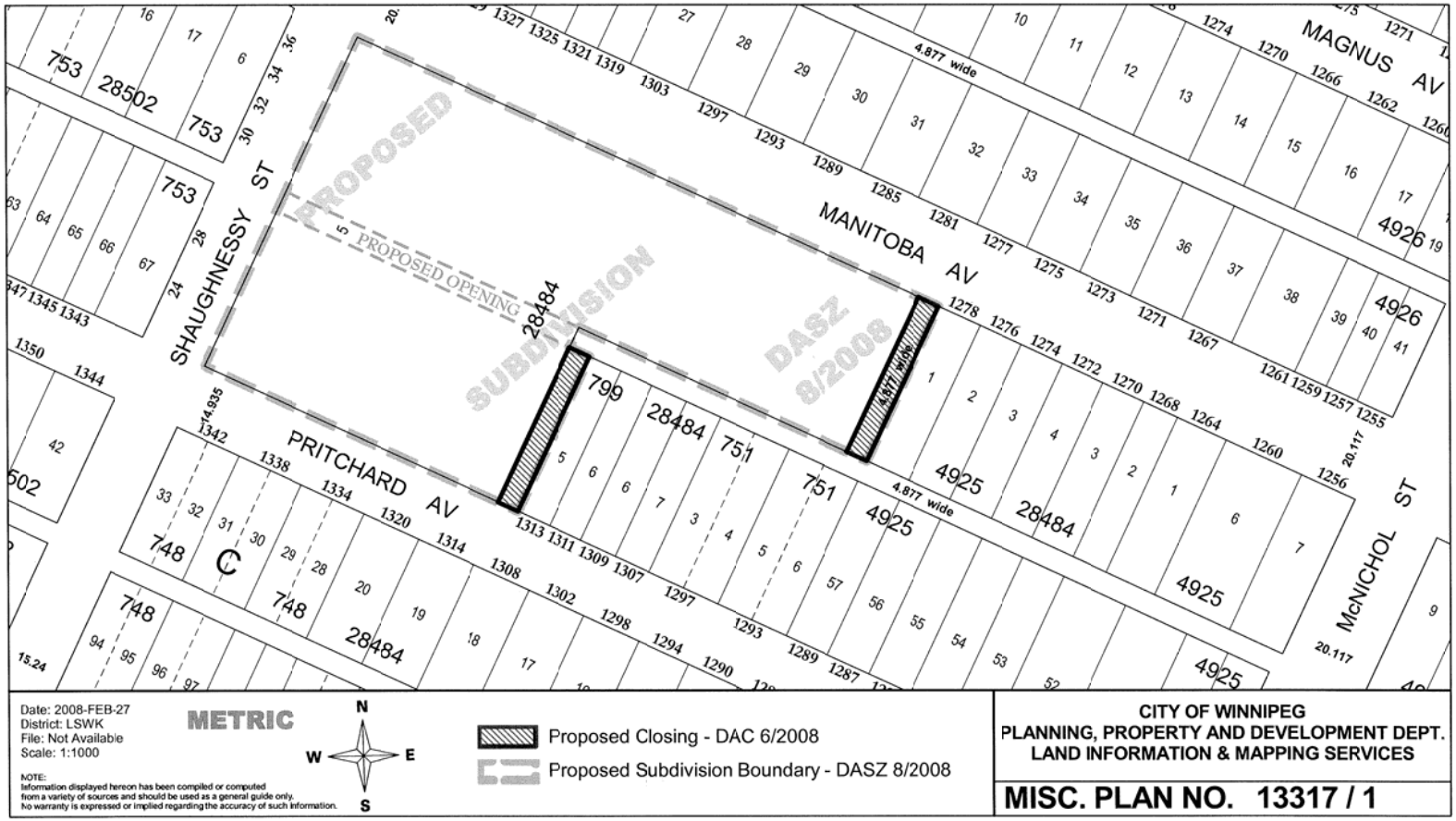

MAGNUS AV
MANITOBA AV
SHAUGHNESSY ST
PRITCHARD AV
McNICHOL ST
PROPOSED
PROPOSED OPENING
SUBDIVISION
DASZ 8/2008
4.877 wide
14.935
20.117
15.24
753
28502
28484
799
751
4925
4926
748
Date: 2008-FEB-27
District: LSWK
File: Not Available
Scale: 1:1000
METRIC
N
W
E
S
NOTE:
Information displayed hereon has 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.
Proposed Closing - DAC 6/2008
Proposed Subdivision Boundary - DASZ 8/2008
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13317 / 1

Man. & Pritchard
File: 8748

OFFER TO PURCHASE

Subject to Council enactment of the necessary by-law to effect the legal closing of part of the Public Lanes between Manitoba and Pritchard Avenues, east of Shaughnessy Street shown as "Proposed Closing" on the attached Misc. Plan 13317/1, the Undersigned (hereinafter called "the Purchaser") hereby offers to purchase from The City of Winnipeg (the "City"), the following:

Area shown outlined as "Proposed Closing" on attached Misc. Plan 13317/1

(hereinafter called the "Lands")

for the sum $1.00 cash, the receipt of which is hereby acknowledged.

1. (1) The purchase price is payable as follows:

(a) By payment of $1.00 cash as noted above, and

(b) Pursuant to DASZ 8/2008, the Purchaser to provide a road opening, free of all costs, charges and encumbrances, that said portion of Lot 5, Plan 28484 (hereinafter called "Applicant's Property") shown as "Proposed Opening" on the attached Misc. Plan No. 13317/1 .

2. (1) The payment of $1.00 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 Council (in the event that Council approval is required) and/or its delegated authority, hereinafter called the "Date of Approval".

3. (1) The date of closing, possession and adjustments shall be sixty (60) days following the date of enactment of the necessary by-law to effect the legal closing of the lanes between Manitoba and Pritchard Avenues, east of Shaughnessy Street shown as "Proposed Closing" on the attached Misc. Plan 13317/1, or earlier as mutually agreed to (hereinafter called the "date of closing, possession and adjustments"). This is not to be construed as placing any duty or obligation upon Council to enact the legal closing of the subject lanes.

(2) The Purchaser agrees to pay as an adjustment an amount equal to the total of such taxes, rates and charges which would have been levied or charged against the Lands as though the Lands had been entered on the assessment rolls of the City as privately owned and subject to taxation, including local improvements if any, which adjustment shall be calculated from the date of closing, possession and 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 closing, possession and 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 closing, possession and adjustments to and including the date all such monies and interest as aforesaid have been fully paid to the City.

4. <u>Goods and Services Tax</u>

(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 Tax 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, possession and adjustments or the date the balance of monies is paid to the City, whichever is the earlier.

(2) If the Purchaser fails to pay the Goods and Services Tax or fails to provide his 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.

5. The Purchaser will obtain possession of the Lands at the Purchaser's own expense, which includes, without limiting the generality of the foregoing, obtaining his own Surveyor's Building Location Certificates, Surveyor's Staking Certificates and Zoning Memorandum and in connection therewith acknowledges and is aware that the City does not provide Declarations of Possession.

6. The Purchaser acknowledges that in submitting this Offer to Purchase, the Purchaser relies entirely upon personal inspection of the Lands, independent of any representation made by or on behalf of the City of Winnipeg. Any error or discrepancy in the description or in the dimensions of the Lands as contained herein shall not entitle the Purchaser to any compensation in respect thereof nor shall it entitle the Purchaser to the cancellation of this Offer to Purchase.

7. It is agreed that no representation, warranty, collateral agreement or condition affecting this offer or the land is expressed herein. The City does not warrant the quality, condition or sufficiency of the Lands for any use or purpose. The Lands are deemed to be taken by the Purchaser in an "as is" condition and at the Purchaser's own risk and 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.

8. All existing improvements (if any) in or on the said Lands shall remain as part of the freehold.

9. The Purchaser will accept Title to the Lands subject to all exceptions, reservations and encumbrances expressed or implied in the City's Title.

10. The Purchaser agrees that in the event the Purchaser, at his sole cost, conducts or causes to be conducted an Environmental Site Assessment and/or soil testing of the Lands, and it is determined as a result thereof 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 sixty (60) days following the Date of Approval, but in any event, prior to closing, the City, at its sole option, shall be entitled to:

(1) take remedial action to bring the contamination levels within the Provincial Environmental Standards, **or,**

(2) cancel the sale and return all monies paid in respect of the proposed sale by the Purchaser to that date.

AND FURTHER, in the event the Purchaser fails to provide such documentation as aforesaid, the Purchaser hereby agrees to complete the purchase as herein contemplated and to indemnify and save harmless the City from and against any and all claims arising from or in any way attributable to the existence of contaminants of any kind whatsoever at, in, or upon the said Lands.

The Purchaser agrees that this clause 10 shall survive the closing of this transaction of purchase and sale.

11. (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 Manitoba Hydro, MTS Allstream Inc., Centra Gas Manitoba Inc., or The City of Winnipeg, and/or any of their respective successors and/or other utilities, 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 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 granting any easements required pursuant to clause 11(i).

(3) Any removal or relocation of a public utility as a result of a proposed subdivision will be at the expense of the Purchaser. Information on electrical and gas service to new subdivisions can be obtained from the local Manitoba Hydro District Office.

(4) The Purchaser at its own expense shall be responsible to prepare or cause to be prepared, any Easement Plan that may be required to effect registration of the Easement Agreement in the Winnipeg Land Titles Office.

(5) The Purchaser acknowledges that the City may grant the easement before the Transfer of Land issues.

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

(1) The Purchaser shall, at the Purchaser's sole cost, effort and expense, do all things as are necessary, including but not limited to causing to be prepared a closing plan to effect the legal closing of the Lands, and possibly a Plan of Survey, suitable for registration at the Winnipeg Land Titles Office.

(2) The Purchaser shall, at the Purchaser's sole cost, effort and expense, do all things as are necessary, including but not limited to causing to be prepared an opening plan to effect the legal opening of the land shown as "Proposed Opening" as shown on Misc. Plan No. 13317/1, suitable for registration at the Winnipeg Land Titles Office, failing which, this offer shall be null and void.

(3) The Purchaser to pay the applicable Land Titles Office registration fees and Land Transfer Tax in respect thereto.

13. This Offer is subject to the Purchaser receiving approval from the City's Standing Policy Committee on Property and Development and/or Council (in the event that Council approval is required) and/or its delegated authority, to rezone and subdivide the Proposed Subdivision Boundary area as shown on the attached Misc. Plan No. 13317/1 (DASZ 8/2008), no later than 6 months from the Date of Approval, (unless extended in writing by the mutual consent of the Purchaser and the City). Failing which the agreement resulting from the Offer to Purchase shall be null and void. All costs for the subdivision and rezoning (DASZ 8/2008) including but not limited to application fees, dedication, permits, etc. are to be at the sole cost and responsibility of the Purchaser.

14. No commission is payable by the City on the sale of the Lands.

15. No current legal survey was made of the property to determine the nature and extent of any structure thereon or to determine if there are any encroachments from adjoining lands.

16. The City advises that there might be an existing basement in the Lands. The removal of any existing concrete or debris and any costs connected therewith will be the responsibility of the Purchaser.

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

18. The 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 his proposed use and development of the Lands may require applications for re-zoning, variances or conditional uses, amendments to Plan Winnipeg, which applications, resulting land dedication charges (if any) are to be at the sole cost and responsibility of the Purchaser. Nothing in this Offer shall be construed as placing any duty or obligation upon the City to grant such rezoning, variance or conditional use orders and/or amendments to Plan Winnipeg when the Purchaser's application for same is made to the City.

19. The Purchaser will be responsible for the removal of the existing lane approaches from and Manitoba and Pritchard Avenues and the restoration of the curb, boulevard and sidewalk at no expense to the City.

20. Upon approval of the sale by the City, 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.

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

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

23. 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.

24. The Purchaser agrees that the City may register Caveat/s 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.

25. None of the provisions of this agreement will merge with the conveyance of the Lands.

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

BHARAT S. JUDGE.
Name (Please Print) Address

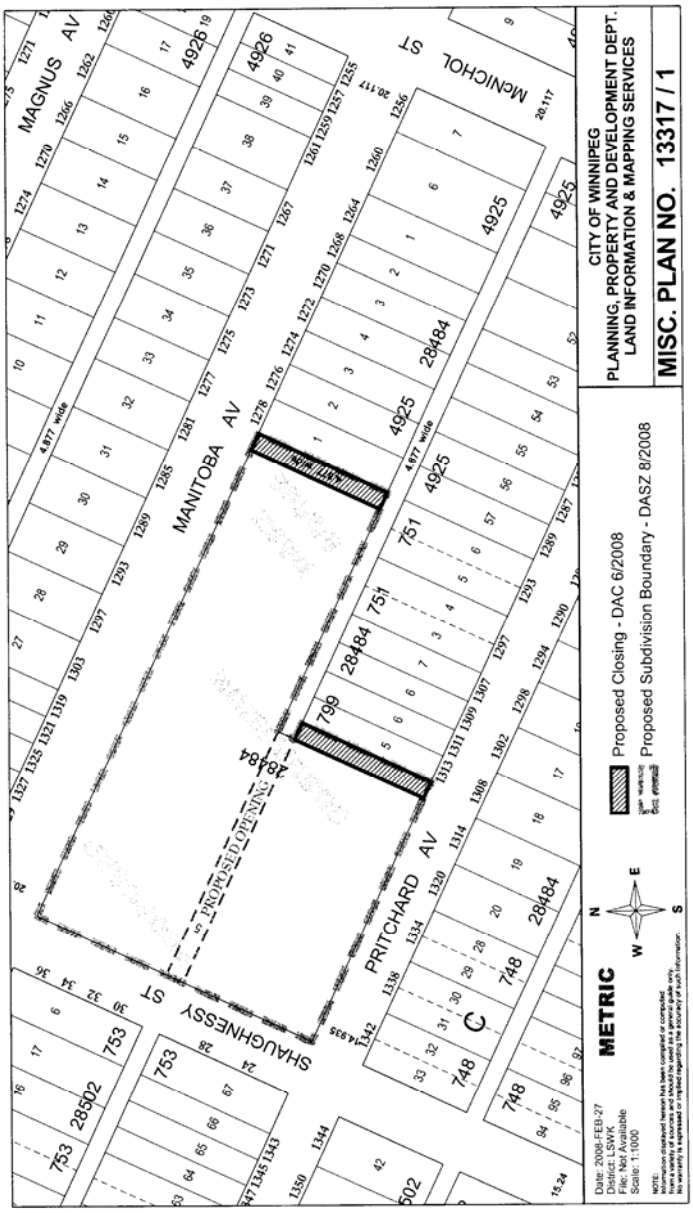
Purchaser's Registration No. (G.S.T.) N/A.

IN WITNESS WHEREOF the Purchaser has signed this document in

WINNIPEG, MTB., this 11 day of JUNE 2008.

Witness Purchaser

Witness Purchaser


CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13317 / 1
Proposed Closing - DAC 6/2008
Proposed Subdivision Boundary - DASZ 8/2008
METRIC
Date: 2008-FEB-27
District: LSWK
File: Not Available
Scale: 1:1000
MAGNUS AV
MANITOBA AV
McNICHOL ST
PRITCHARD AV
SHAUGHNESSY ST
PROPOSED OPENING
4.877 wide
4.935
20.117
28484
28502
4926
4925
751
799
748
753
C

Example Only ***NOT TO BE FILLED OUT AT TIME OF OFFER***

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: _____ 19 ____ _____

(Signature of Applicant)

Office of the City Assessor _____

The City of Winnipeg (Signature of Registered Owner)