Agenda - Council - January 28, 2009

Report - Standing Policy Committee on Property and Development - January 6, 2009

Item No. 9 Easement - Rothesay Community Church Inc. - Emergency Egress Purposes
(Elmwood – East Kildonan Ward)
File GL-8

STANDING COMMITTEE RECOMMENDATION:

On January 21, 2009, 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 an Easement Agreement in favour of the Rothesay Community Church Inc., for emergency egress purposes onto and over a portion of the City-owned parkland located at 75 Brazier Street, identified as "Emergency Exit Easement Area" on Misc. Plan No.10968/1, be approved in accordance with the terms and conditions outlined on the Easement Agreement contained in the report from the Director of Planning, Property and Development dated December 10, 2008; the Agreement to provide for such other terms and conditions as are deemed necessary by the Director of the Planning, Property and Development Department and by the Acting City Solicitor/Manager of Legal Services to protect the City's interests.

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

Pursuant to Section 205(2) of The City of Winnipeg Charter, disposal of land owned or acquired by the City for park or cemetery purposes requires approval by two-thirds of all Members of Council.

Report - Standing Policy Committee on Property and Development - January 6, 2009

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On January 21, 2009, 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 January 6, 2009, 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 Easement Agreement in favour of Rothesay Community Church Inc. - Emergency Egress Purposes
East Kildonan – Transcona Community
Elmwood – East Kildonan Ward

FOR SUBMISSION TO: Standing Policy Committee on Property and Development

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

REPORT DATE: December 10, 2008

RECOMMENDATION:

1. That an Easement Agreement in favour of the Rothesay Community Church Inc., for emergency egress purposes onto and over a portion of the City-owned parkland located at 75 Brazier Street, identified as "Emergency Exit Easement Area" on Misc. Plan No.10968/1, attached, be approved in accordance with the terms and conditions outlined on attached Easement Agreement; the Agreement to provide for such other terms and conditions as are deemed necessary by the Director of the Planning, Property and Development Department and by the A/City Solicitor/Manager of Legal Services to protect the City's interests.
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:

- In accordance with Section 205(2) of the City of Winnipeg Charter, any disposition of parkland requires approval by a vote of 2/3 of all members of Council.
- The Rothesay Community Church Inc. is seeking the acquisition of an easement onto and over a portion of the City-owned parkland in order to accommodate emergency egress/exit from its building located at 257 Riverton Avenue, a requirement under the current Manitoba Building Code. Issuance of a building permit is pending favourable consideration and approval of the proposed Easement Agreement.
- The Parks and Open Space Division of the Public Works Department has no objection to granting the said easement.
- This report seeks approval of the Easement Agreement as negotiated.

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):

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:

Section 205(2) of the City of Winnipeg Charter, stipulates that any disposition of parkland requires approval by a vote of 2/3 of all members of Council. This report seeks approval of an Easement Agreement onto and over City-owned parkland as negotiated.

HISTORY:

The land shaded and identified as “Subject City Property” on the attached Misc. Plan No. 10968/1 is located on the north side of Riverton Avenue, east of Brazier Street. The subject property forms part of the Elmwood Winter Club located at 75 Brazier Street. The City acquired the property in 1975 as part of a Council adopted program to redevelop and expand the Elmwood Winter Club site.

In 2000, the Rothesay Community Church Inc. purchased the private holding located at 257 Riverton Avenue with the view of converting the existing warehouse building into a church. Appropriate applications were made with the Department for a building permit to undertake renovations. As part of this application process, it was discovered that the warehouse building was situated on site with a zero clearance westerly property line. The “Subject City Property” shaded and identified on the attached Misc. Plan No. 10968/1 is located immediately adjacent to and west of 257 Riverton Avenue.

To facilitate the staged and progressing renovations, the Winnipeg Public Service worked collaboratively with the Rothesay Community Church Inc. to obtain appropriate compliance to issue an Occupancy Permit in 2001 for use of specific areas of the building including only the Sanctuary Church area, the foyer and washrooms. The foregoing was on condition that the Rothesay Community Church Inc. would undertake and agree to enter into the appropriate easement agreement with the City to accommodate emergency egress from its building. Negotiations for an Easement Agreement in favour of the Rothesay Community Church Inc. over the subject property was initiated at that time, but not completed.

DISCUSSION:

In 2007, the Department received a Development Permit Application on behalf of the Rothesay Community Church Inc. (operating as the Riverwood Church Community) to finalize building renovations and obtain final occupancy for its building. Issuance of the final building and occupancy permits are subject to the Rothesay Community Church Inc. entering into an appropriate easement agreement with the City to address building code requirements. More specifically, the Rothesay Community Church Inc. is now seeking an easement onto and over the subject City-owned property to accommodate emergency egress from its building.

The size of the “Emergency Exit Easement Area” identified on the attached Misc. Plan No. 10968/1, is an approximate three (3) meter strip of the City-owned parkland. The “Emergency Exit Easement Area” consists primarily of green space. The Department has negotiated appropriate terms and conditions of agreement to ensure that use of the said parkland for the emergency egress purposes will not impede the use or the public enjoyment of the Elmwood Winter Club site.

The Department has concluded its negotiations with the Rothesay Community Church Inc. and is recommending that an easement in favour of the Rothesay Community Church Inc. be granted in accordance with the terms and conditions outlined on attached Easement Agreement.

It should be noted that while typically an easement agreement of this nature would be negotiated at a rate of compensation reflective of fair market value ($1,500.00), the Rothesay Community Church has requested that the compensation be reduced in this instance, given the information surrounding the activities and services provided by the Church to the Elmwood residents and community. In light of this information and community involvement, the Department is agreeable to a reduction of the consideration. The Easement Agreement provides for a payment of $500.00 in order to offset administration costs associated with processing of the Easement Agreement.

Financial Impact Statement

Date: December 10, 2008

Project Name: **First Year of Program** **2009**

Proposed Easement Agreement in favour of Rothesay Community Church Inc. - Emergency Egress Purposes

	2009	2010	2011	2012	2013
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	500	-	-	-	-
Net Cost/(Benefit)	$ (500)	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	(500)	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Incremental revenues in 2009 consist of the one-time encroachment fee of $500.

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

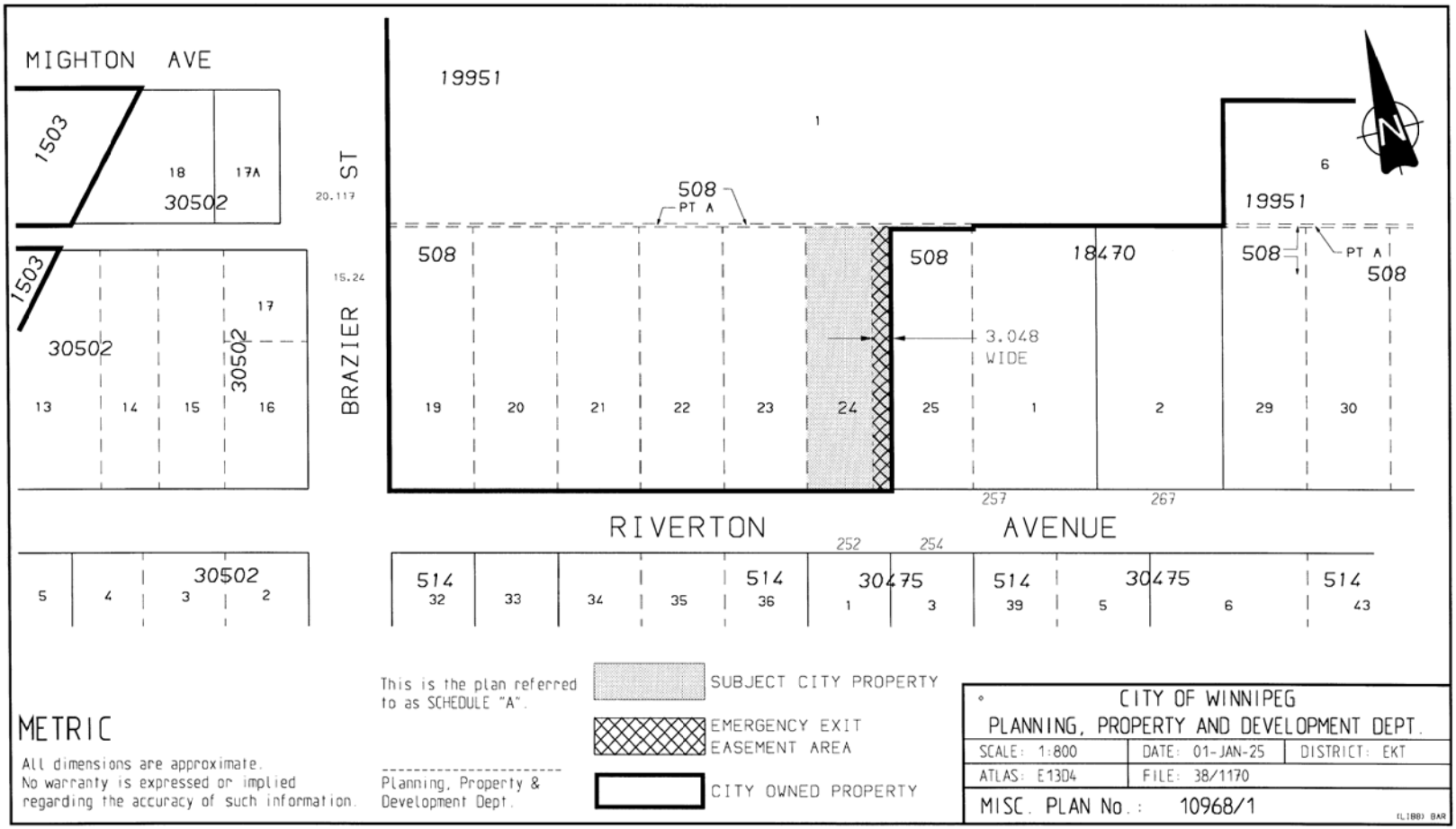
IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:
Public Works Department
Legal Services Division (as to legal issues)

External Consultation With:
N/A

THIS REPORT SUBMITTED BY:
Planning, Property and Development Department
Real Estate Division
Prepared by: Sara Cianflone
PPD File No. 38/1170

O:\Reports Directive\Real Estate\Sales\(sc) Easement over Parks Lands - Rothesay Church - 75 Brazier St.doc


MIGHTON AVE
1503
18
17A
30502
20.117
BRAZIER ST
15.24
1503
17
30502
30502
13
14
15
16
19951
1
508
PT A
508
508
18470
508
PT A
508
19951
6
3.048
WIDE
19
20
21
22
23
24
25
1
2
29
30
257
267
RIVERTON AVENUE
252
254
5
4
30502
3
2
514
32
33
34
35
514
36
30475
1
3
514
39
5
30475
6
514
43
N
SUBJECT CITY PROPERTY
EMERGENCY EXIT EASEMENT AREA
CITY OWNED PROPERTY
This is the plan referred to as SCHEDULE "A".
Planning, Property & Development Dept.
METRIC
All dimensions are approximate.
No warranty is expressed or implied regarding the accuracy of such information.
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
SCALE: 1:800
DATE: 01-JAN-25
DISTRICT: EKT
ATLAS: E13D4
FILE: 38/1170
MISC. PLAN No.: 10968/1

(Emergency Egress) File No. R.8/2000(35)

EASEMENT AGREEMENT

THIS AGREEMENT made in duplicate this day of , 2008,

BETWEEN:

THE CITY OF WINNIPEG,
(herein called the ***"City"***),

OF THE FIRST PART,

– and –

ROTHESAY COMMUNITY CHURCH INC.,
(herein called the ***"Grantee"***),

OF THE SECOND PART,

WHEREAS the City is the registered owner of land commonly known as 75 Brazier Street in the City of Winnipeg, in Manitoba, which land is legally described as:

LOT 24, WHICH LOT IS SHOWN ON A PLAN OF SUBDIVISION OF PART OF RIVER LOT 66 OF THE PARISH OF SAINT BONIFACE REGISTERED IN THE WINNIPEG LAND TITLES OFFICE AS PLAN NO. 508

And shown shaded identified as "SUBJECT CITY PROPERTY" on Misc. Plan No. 10968/1 hereto attached (herein called the ***"Subject City Property"***);

AND WHEREAS the Grantee is the registered owner of land and a building (herein called the ***"Building"***) located thereon lying adjacent to the Subject City Property and commonly known as 257 Riverton Avenue in the City of Winnipeg, in Manitoba, which land is legally described as:

LOT 25, WHICH LOT IS SHOWN ON A PLAN OF SUBDIVISION OF PART OF RIVER LOT 66 OF THE PARISH OF SAINT BONIFACE REGISTERED IN THE WINNIPEG LAND TITLES OFFICE AS PLAN NO. 508

(herein called the ***"Grantee's Land"***);

AND WHEREAS the Grantee intends to construct an emergency exit door on the west side of the Building and to maintain, inspect, repair, replace and/or remove and use the emergency exit door for the purposes of emergency egress from the Grantee's Land.

AND WHEREAS the Grantee is desirous of obtaining an easement over and upon that portion of the Subject City Property shown hatched and identified as "EMERGENCY EXIT EASEMENT AREA" on said Misc. Plan No. 10968/1 attached hereto, (herein called the ***"Easement Area"***) for the purposes of constructing, maintaining, inspecting, repairing, replacing and/or removing and using the emergency exit door and for the purposes of using the existing sidewalk which lies within the boundaries of the Subject City Property as herein before referred to (herein collectively and severally called the ***"Emergency Exit Facilities"***);

AND WHEREAS the City is prepared to grant to the Grantee said easement upon certain terms and conditions contained herein;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the sum of FIVE HUNDRED ($500.00) DOLLARS, plus applicable Goods and Services Tax (GST), paid by the Grantee to the City *(the receipt and sufficiency of which is hereby acknowledged)* and of the terms, conditions and covenants herein set forth, the parties hereto covenant and agree, each with the other, as follows:

1. The Preamble shall and does hereby form an integral part of this Agreement.

2. The City hereby grants to the Grantee, in common with others entitled thereto, a right-of-way over and upon the Easement Area for the purpose of providing Emergency Exit Facilities as a means of emergency egress from the Grantee's Land to Riverton Avenue in the City of Winnipeg, in Manitoba.

3. The Grantee shall:

   (a) not assign its rights, entitlements or privileges pursuant to this Agreement without having first obtained the written consent of the City, which consent shall not be unreasonably withheld;

   (b) comply with all applicable statues, by-laws, ordinances and regulations pertaining to the use of the Easement Area as herein contemplated;

   (c) use the Easement Area for the purposes of constructing, maintaining, inspecting, repairing, replacing and/or removing and utilizing the Emergency Exist Facilities only and for no other purposes whatsoever whereby said use shall ensure the protection of the existing trees;

   (d) ensure that its use of the Easement Area is conducted in a good, safe and workmanlike manner;

   (e) be solely responsible for any and all damage to the Easement Area and/or for injury to any person being on the Easement Area which may be caused by or through the Grantee and/or its contractors, servants, employees, lessees, invitees

and/or third parties;

(f) ensure that at all times during the currency of this Agreement, the use of the Easement Area by the Grantee and/or its contractors, servants, employees, lessees, invitees and/or third parties does not at any time negatively impact on the trees existing in, on or about the Subject City Property;

(g) not at any time obstruct or permit obstructions by the Grantee and/or its contractors, servants, employees, lessees, invitees and/or third parties in the Easement Area;

(h) be, at its sole cost, effort and expense, responsible for all costs associated with the construction, maintenance, including snow removal, inspection, repair, replacement and/or removal of the Emergency Exit Facilities and/or the Easement Area and/or any part thereof.

(i) Retain the services of a Manitoba Land Surveyor to prepare a Plan of Easement suitable for registration in the Winnipeg Land Titles Office and be responsible to prepare, register documents including but not limited to the Plan of Easement and Caveat with the Winnipeg Land Titles Office at its sole cost, effort and expense.

4. The Grantee shall and will at all times hereafter, indemnify and save harmless the City, its directors, officers and employees from and against all claims, demands, actions, suits and proceedings for loss, injuries, damages or compensation, except those arising from any acts of negligence of the City or those for whom it is responsible at law, by any person, firm or corporation, whether to real or personal property of every description, and whomsoever (including the City or any employee, agent, tenant, lessee or third party, whether claiming through or under the City or otherwise), caused by reason of or in any way attributable to the construction, maintenance, inspection, repair, replacement and/or removal, or use of the Emergency Exit Facilities, or by reason of any misfeasance, malfeasance or non-feasance on the part of the Grantee in connection with the use of the Easement Area; AND if any such claim, demand, suit or proceeding be made or brought against the City or any of its directors, officers or employees, the City may, on giving to the Grantee, ten (10) days written notice of its intention so to do, compromise or settle any such claim, demand, action, suit or proceeding upon such terms and conditions as the City shall think fit, unless the City shall, before the expiration of the said ten (10) day period of notice, be forbidden in writing by the Grantee to compromise or settle the same, in which case (as also in case no such compromise or settlement be effected) the Grantee shall be made a party to any such action, suit or proceeding and unless the same shall have been so forbidden as aforesaid, any such compromise or settlement shall be binding on the Grantee; AND the Grantee will in addition to paying its own costs and expenses in connection with any such claim, demand, action, suit or proceeding, also pay to the City, its directors, officers and employees the amount of all moneys, costs and

expenses which the City or any of its directors, officers or employees may reasonably incur, pay or become liable for in connection with any such claim, demand, action, suit or proceeding whether under the terms of any compromise, settlement or judgment or otherwise.

5. The City agrees to use its best efforts to ensure that its snow crews do not pile snow on the Emergency Exit Facilities and in particular, do not pile snow in such a way as would block the emergency exit door that forms part of the Emergency Exit Facilities.

6. Neither party shall use or commit or permit to be used or committed any act upon the Easement Area in such a manner as to unreasonably interfere with or obstruct the other's reasonable use thereof.

7. The City may register and maintain a caveat against the Land to ensure the performance of the covenants on the part of the Grantee herein set forth;

8. The easement and rights hereby granted shall run with the Subject City Property and shall enure to the benefit of the Grantee, its successors and assigns and shall be binding upon the City and the City's successors in title of the Subject City Property or any part thereof.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above written.

THE CITY OF WINNIPEG

Per: _____
Director
Planning, Property and Development Department

ROTHESAY COMMUNITY CHURCH INC.:

Per: _____
Name: JOHN COURTNEY (affix corporate seal)
Title: CHAIRMAN

Per: _____
Name: Malinda Roberts
Title: Secretary

AS TO BOTH
Witness:
Name: JERALD JOHN WAKE
(please print)
Address: 172 MACAULAY CRES
WPG MB R26 0PS

Approved:

_____
for Director, Public Works Department

Approved:

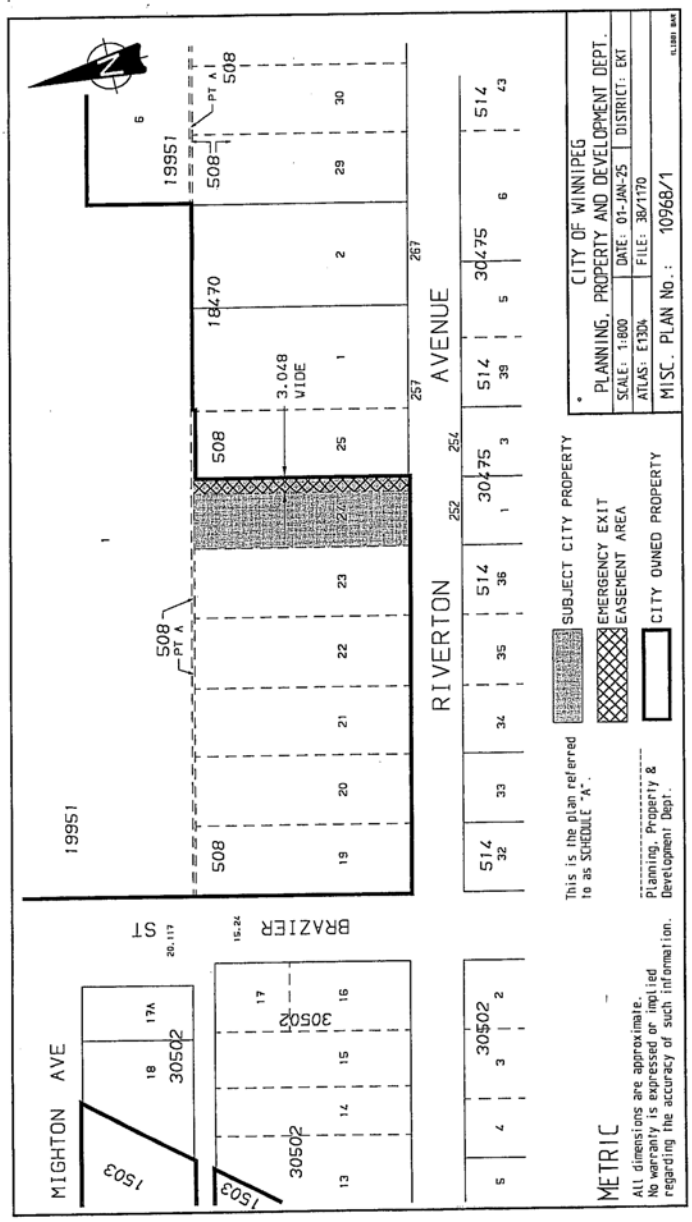
_____
Planning, Property and Development Department

Certified as to Legal Description:

_____
Planning, Property and Development Department

Certified as to form:

_____
for Acting/City Solicitor/Manger of Legal Services


MIGHTON AVE
BRAZIER ST
RIVERTON AVENUE
3.048 WIDE
SUBJECT CITY PROPERTY
EMERGENCY EXIT EASEMENT AREA
CITY OWNED PROPERTY
This is the plan referred to as SCHEDULE "A".
Planning, Property & Development Dept.
METRIC
All dimensions are approximate. No warranty is expressed or implied regarding the accuracy of such information.
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