Minute No. 172
Report "A"- Standing Policy Committee on Property and Development - January 6, 2009

Item No. 1 **Expropriation of Lands - McGillivray Boulevard Street Widening and Rehabilitation Project - Waverley Street to Columbia Drive (Charleswood - Tuxedo Ward) File FI-2(31)**

COUNCIL DECISION:

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

1. That the Acting City Solicitor/Manager of Legal Services be instructed to initiate expropriation proceedings, including preparing the necessary by-law for submission to Council, to acquire the properties as identified on Schedule "A" to the report from the Director of Planning, Property and Development dated November 19, 2008 and required by the City for the McGillivray Boulevard Street Widening and Rehabilitation Project.

2. That the Director of Planning, Property and Development be authorized to request the Province of Manitoba to waive the requirement for an expropriation inquiry, under clause 9(8)(a) of the Expropriation Act.

3. Subject to Council's confirmation of the proposed expropriation, that for this expropriation the Chief Administrative Officer be delegated the authority to approve statutory offers of compensation where the market value component is $750,000.00 or less (recognizing that the ancillary costs of the expropriation will likely result in an overall cost exceeding the market value component limit), and to approve settlement of expropriation claims not exceeding $750,000.00 (excluding interest and legal and appraisal fees).

4. That the Proper Officers of the City be authorized to do all things necessary to implement the foregoing, including execution of any necessary documents and preparation of any necessary by-laws.

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

DECISION MAKING HISTORY:

Pursuant to The Municipal Conflict of Interest Act, Councillor Fielding advised that he would refrain from entering the discussion and voting on the matter, due to a potential perceived conflict of interest, and left the meeting.

Moved by Councillor Swandel,

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

Carried

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: Expropriation of Lands - McGillivray Boulevard Street Widening & Rehabilitation Project – Waverley Street to Columbia Drive
Assiniboia Community
Charleswood - Tuxedo Ward

FOR SUBMISSION TO: Standing Policy Committee on Property and Development

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

REPORT DATE: November 19, 2008

RECOMMENDATION:

1. That the Acting City Solicitor/Manager of Legal Services be instructed to initiate expropriation proceedings, including preparing the necessary by-law for submission to Council, to acquire the properties as identified on the attached Schedule "A" and required by the City for the McGillivray Boulevard Street Widening & Rehabilitation Project.
2. Subject to the approval of Recommendation No. 1, that the Director of Planning, Property and Development be authorized to request the Province of Manitoba to waive the requirement for an expropriation inquiry, under clause 9(8)(a) of the Expropriation Act.
3. Subject to Council's confirmation of the proposed expropriation, that for this expropriation the Chief Administrative Officer be delegated the authority to approve statutory offers of compensation where the market value component is $750,000.00 or less (recognizing that the ancillary costs of the expropriation will likely result in an overall cost exceeding the market value component limit), and to approve settlement of expropriation claims not exceeding $750,000.00 (excluding interest and legal and appraisal fees).
4. That the proper officers of the City be authorized to do all things necessary to implement the foregoing, including execution of any necessary documents and preparation of any necessary by-laws.

Report Summary

Key Issues:

- Authorization to expropriate is required immediately to ensure that the City has a legal interest in all properties prior to advertising the construction tenders and to ensure the City has possession of all property interests for construction to begin in 2009.

- The Director of Planning, Property and Development has the delegated authority to approve statutory offers of compensation where the market value component is $25,000.00 or less (recognizing that the ancillary costs of the expropriation will likely result in an overall cost exceeding the market value component limit). The Department recommends that for this expropriation the Chief Administrative Officer be delegated the authority to approve statutory offers of compensation where the market value component is $750,000.00 or less (recognizing that the ancillary costs of the expropriation will likely result in an overall cost exceeding the market value component limit), to better reflect the value of the land interests being acquired and expedite acquisition of those interests, and to approve settlement of expropriation claims not exceeding $750,000.00 (excluding interest and legal and appraisal fees).
- If an expropriated property owner accepts a statutory offer, the owner's claim is effectively settled. Therefore delegating authority to the Chief Administrative Officer to approve such offers necessitates amending the City Organization By-law No. 7100/97 to provide that for expropriation projects designated by Council, the Chief Administrative Officer is authorized to approve settlement of expropriation claims not exceeding an amount specified by Council, notwithstanding existing monetary limits in that By-law on settlement of expropriation claims (CAO: $100,000.00; EPC: $250,000.00).
- To group together related delegated authorities of the type recommended in this report, the same amending by-law should also provide that for expropriation projects designated by Council, the Chief Administrative Officer is authorized to approve statutory offers of compensation not exceeding an amount specified by Council.
- If on an expropriation project Council specifies an amount for delegated approval of statutory offers, it needs to specify an amount at least as large for delegated approval of settlement of expropriation claims.

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

( ) No

(X) Yes

Comment(s): The Director of Planning, Property and Development has the delegated authority to approve statutory offers of compensation where the market value component is $25,000.00, or less (recognizing that the ancillary costs of the expropriation will likely result in an overall cost exceeding the market value component limit). The Department recommends that for this expropriation the Chief Administrative Officer be delegated the authority to approve statutory offers of compensation where the market value component is $750,000.00 or less (recognizing that the ancillary costs of the expropriation will likely result in an overall cost exceeding the market value component limit), to better reflect the value of the land interests being acquired and expedite acquisition of those interests, and to approve settlement of expropriation claims not exceeding $750,000.00 (excluding interest and legal and appraisal fees).

Regulatory Implications

(X) None

( ) Eliminates or reduces regulatory impact

( ) Proposes regulatory impact

Comment(s):

Environmental Implications

(X) No

( ) Yes

Comment(s): No environmental issues are anticipated related to the proposed recommendations of this report.

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): The required property acquisitions associated with this project will be funded from the 2008 Annual Capital Budget and the 2009 to 2013 Five-Year Capital Forecast adopted by Council on December 18, 2007. At this Special Council Meeting, Council concurred in the recommendations of Executive Policy Committee of December 12, 2007, which included a $13,680,000.00 capital budget for the cost of property acquisition and roadway construction for the McGillivray Boulevard Street Widening & Rehabilitation project between Waverley Street and Columbia Drive. Costs to initiate expropriation proceedings and offers of compensation will be funded from account number 003-181000-180604-1804002607.

Report

REASON FOR THE REPORT:

The subject properties, identified in the attached Schedule “A”, are required for the development and implementation of the McGillivray Boulevard Street Widening & Rehabilitation Project. Council’s authorization to expropriate is required immediately to ensure that the City has a legal interest in all properties prior to advertising the construction bid opportunities and to ensure the City is in possession of all property interests for construction to begin in May, 2009.

Under the Expropriation Act, before serving expropriated owners with notices for possession, the City must serve formal offers of compensation. Council has delegated to the Standing Policy Committee on Property & Development authority to approve such offers generally, and has delegated to the Director of Planning, Property and Development authority to approve offers up to $25,000.00. The Department recommends that for this expropriation the Chief Administrative Officer be delegated the authority to approve statutory offers of compensation where the market value component is $750,000.00 or less (recognizing that the ancillary costs of the expropriation will likely result in an overall cost exceeding the market value component limit), and to approve settlement of expropriation claims not exceeding $750,000.00 (excluding interest and legal and appraisal fees).

HISTORY:

On May 18, 2005, Council passed By-law No. 106/2005 which established a 27.5 metre-wide no-build zone from the northern boundary of McGillivray Boulevard between Kenaston Boulevard and the R.M. of MacDonald to accommodate the future construction of a four-lane divided roadway.

The 2007 Capital Budget adopted by Council on January 25, 2007 included funding for McGillivray Boulevard - Waverley Street to Columbia Drive Project in the amount of $1,500,000.00.

The 2008 Capital Budget adopted by Council on December 18, 2007 includes additional funding for the McGillivray Boulevard – Waverley Street to Columbia Drive Project in the amount of $13,680,000.00.

The McGillivray Boulevard Street Widening & Rehabilitation Project includes the twinning of McGillivray Boulevard between Waverley Street and Columbia Drive, which will improve capacity to accommodate existing and projected travel demands by improving safety, traffic operation and reducing through traffic on local neighbourhood streets. Improvements between Waverley Street to Kenaston Boulevard are substantially underway. The project also includes intersection improvements at Kenaston and McGillivray Boulevards, which is intended to alleviate traffic congestion and delays and this location. Securing of the outstanding property requirements will also ensure continuity in the progress of the intersection and project improvements and avoid undue traffic concerns that may arise.

To-date, the City has completed the widening of McGillivray Boulevard by 27.5 metres from Waverley Street to Columbia Drive, except for the segment fronted by three properties between Kenaston Boulevard and Columbia Drive.

The Public Works Department has advised that the privately-owned property requirements as denoted on the attached Schedule “A” are needed in order to accommodate the construction of the McGillivray Boulevard Street Widening & Rehabilitation Project between Kenaston Boulevard and Columbia Drive, including intersection improvements at Kenaston and McGillivray Boulevard slated to commence in the spring of 2009.

The Planning, Property and Development Department has established contact with the three owners; namely, Logistics Holdings Inc., John R. McCall, and 3346218 Manitoba Ltd. (operating as Shindico), to discuss the City's property requirements for the McGillivray Boulevard Street Widening & Rehabilitation Project and how it may impact their respective properties. The Department has also presented two of the Owners, namely Logistics Holdings Inc. and John R. McCall, with proposed terms and conditions to acquire the needed land from their respective properties. Negotiations are currently underway with 3346218 Manitoba Ltd. (operating as Shindico). In addition, all of the affected owners have been advised that the Department is recommending that Council

authorize expropriation proceedings in order to ensure a legal interest in all the properties prior to advertising the construction tenders. This is to ensure that construction can begin in the spring of 2009.

DISCUSSION:

While the Department intends to continue to actively negotiate settlements with all three property owners, it is the consensus of the Department and the Public Works Department that expropriation proceedings need to be initiated. This will ensure possession of these properties required for the McGillivray Boulevard Street Widening & Rehabilitation Project between Kenaston Boulevard and Columbia Drive, and will establish a common date for valuation purposes.

Although it may be possible to reach early settlements for the required land interests and report same to Committee, there are no guarantees that all land interests will be acquired in time for the tendering of the McGillivray Boulevard Street Widening & Rehabilitation Project between Kenaston Boulevard and Columbia Drive, scheduled for early 2009. In order to guarantee possession of all privately owned interests for the 2009 construction season, it is important for the expropriation process to commence immediately. The attached Schedule “B” illustrates an anticipated flow of events for the proposed expropriation (if an inquiry is required).

Under the Expropriation Act, once Council makes a declaration of expropriation, the City must serve notices of intended expropriation on all property owners (including tenants). Each owner has 30 days to object to the expropriation. If any owner objects, the City must notify the Province of Manitoba that due to the objection(s) an inquiry is necessary. An inquiry considers whether the expropriation is fair and reasonably necessary for the achievement of the City's objectives. The time required to appoint an inquiry officer, hold the inquiry and await the inquiry officer's report may prevent the City from confirming the expropriation and obtaining possession of the properties in a timely way.

Under clause 9(8)(a) of the Expropriation Act, the Lieutenant Governor in Council, deeming it necessary or expedient in the public interest to do so in the circumstances, may direct the confirming authority to make its order confirming a declaration without an inquiry being conducted.

Given the Public Works Department’s construction timelines associated with the project, the Department recommends the City request the Province to waive the need for an inquiry for this project.

After Council confirms the expropriation, before the City can serve expropriated owners with notices for possession it must serve formal offers of compensation.

Presently the Director of Planning, Property and Development has the delegated authority to approve such offers where the market value component is $25,000.00 or less (recognizing that the ancillary costs of the expropriation will likely result in an

overall cost exceeding the market value component limit). Offers in excess of $25,000.00 plus ancillary costs must be approved by the Standing Policy Committee on Property & Development.

The Department recommends that for this expropriation the Chief Administrative Officer be delegated the authority to approve statutory offers of compensation where the market value component is $750,000.00 or less (recognizing that the ancillary costs of the expropriation will likely result in an overall cost exceeding the market value component limit), to better reflect the value of the land interests being acquired and expedite acquisition of those interests, and to approve settlement of expropriation claims not exceeding $750,000.00 (excluding interest and legal and appraisal fees).

If an expropriated property owner accepts a statutory offer, the owner's claim is effectively settled. Therefore delegating authority to the Chief Administrative Officer to approve such offers necessitates amending the City Organization By-law No. 7100/97 to provide that for expropriation projects designated by Council, the Chief Administrative Officer is authorized to approve settlement of expropriation claims not exceeding an amount specified by Council, notwithstanding existing monetary limits in that By-law on settlement of expropriation claims (CAO: $100,000.00; EPC: $250,000.00).

To group together related delegated authorities of the type recommended in this report, the same amending by-law should also provide that for such expropriation projects designated by Council, the Chief Administrative Officer is authorized to approve statutory offers of compensation not exceeding an amount specified by Council.

If on an expropriation project Council specifies an amount for delegated approval of statutory offers, it needs to specify an amount at least as large for delegated approval of settlement of expropriation claims.

Funding for this project to support these costs is available through the McGillivray Boulevard – Waverley Street to Columbia Drive Project in account number 003-181000-180604-1804002607.

Financial Impact Statement Date: November 4, 2008

Project Name:

Expropriation of Lands - McGillivray Boulevard Street Widening & Rehabilitation Project – Waverley Street to Columbia Drive

COMMENTS:

The recommendations contained in this report include, among others, that subject to Council's confirmation of the proposed expropriation, that for this expropriation the Chief Administrative Officer be delegated the authority to approve statutory offers of compensation where the market value component is $750,000.00 or less (recognizing that the ancillary costs of the expropriation will likely result in an overall cost exceeding the market value component limit), and to settle expropriation claims not exceeding $750,000.00 (excluding interest and legal and appraisal fees).

While there are no direct financial implications associated with this report's recommendations, to the extent that one or more statutory offers of compensation are within the recommended limit of $750,000, those acquisitions will be completed without further approvals of Standing Policy Committee on Property and Development.

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

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:
Legal Services Division
Public Works Department

External Consultation With:
N/A

THIS REPORT SUBMITTED BY:
Department: Planning Property and Development
Division: Real Estate
Prepared by: Sara Cianflone
PPD File No. 8731, 8732, S-3-TUX (III)

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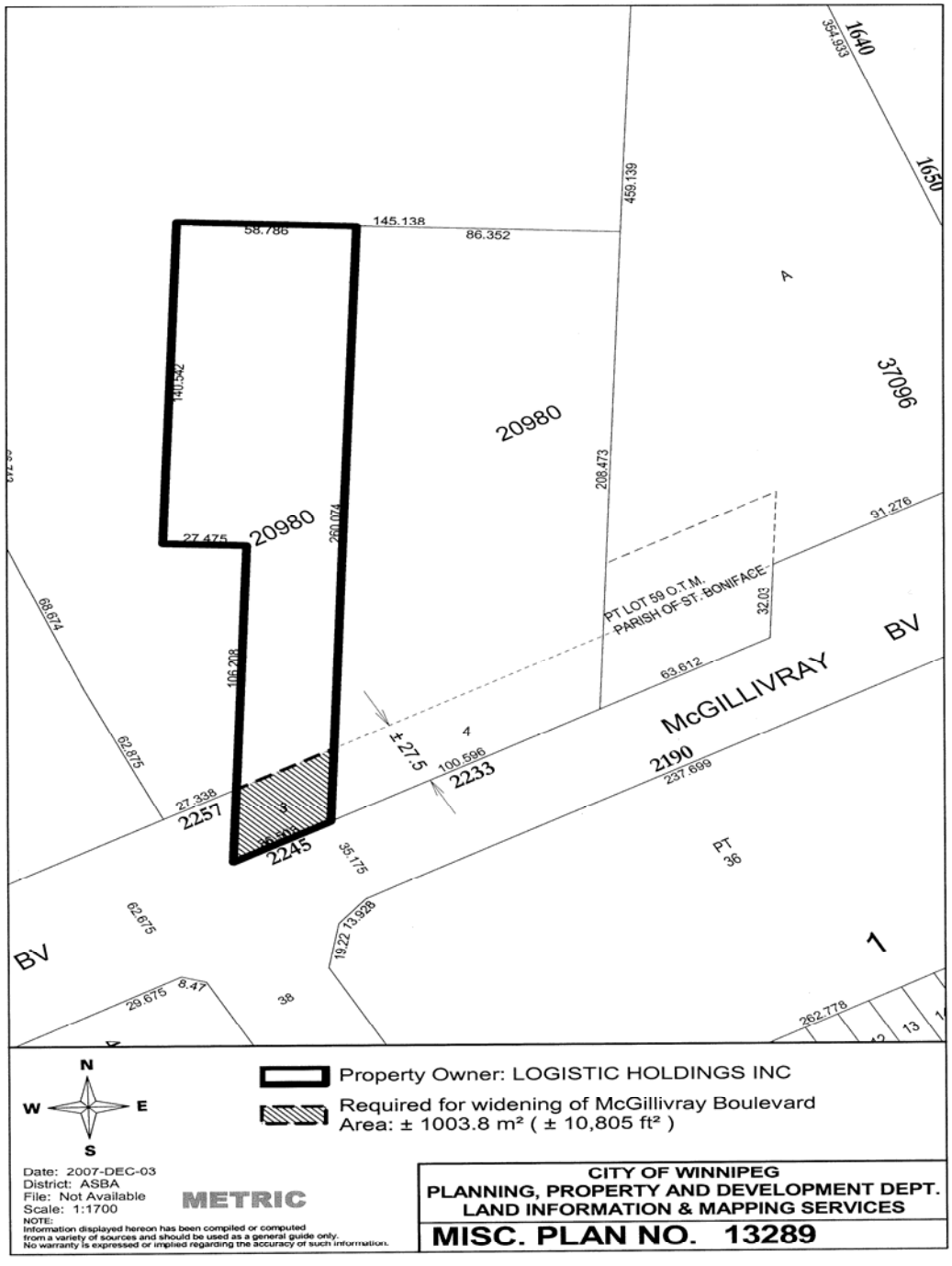
Schedule "A"

Property #1

Address:	2245 McGillivray Boulevard
Legal Description:	Lot 3, Plan 20980 60/61, St. Boniface OTM as shown shaded on Misc. Plan No. 13289
Certificate of Title:	2079466
Registered Owner:	Logistics Holdings Inc.
Realty Roll No.:	10001348000
Assessment (2008):	$469,700 (entire parcel)
Zoning:	"M1/M2" – Manufacturing Light/General
Property Taking:	1004 +/-m^2 (10,805 +/- sq. ft.)
Description:	Partial taking, frontage along McGillivray Boulevard used as parking lot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PT LOT 59 O.T.M.
PARISH OF ST. BONIFACE
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106.208
63.612
McGILLIVRAY
BV
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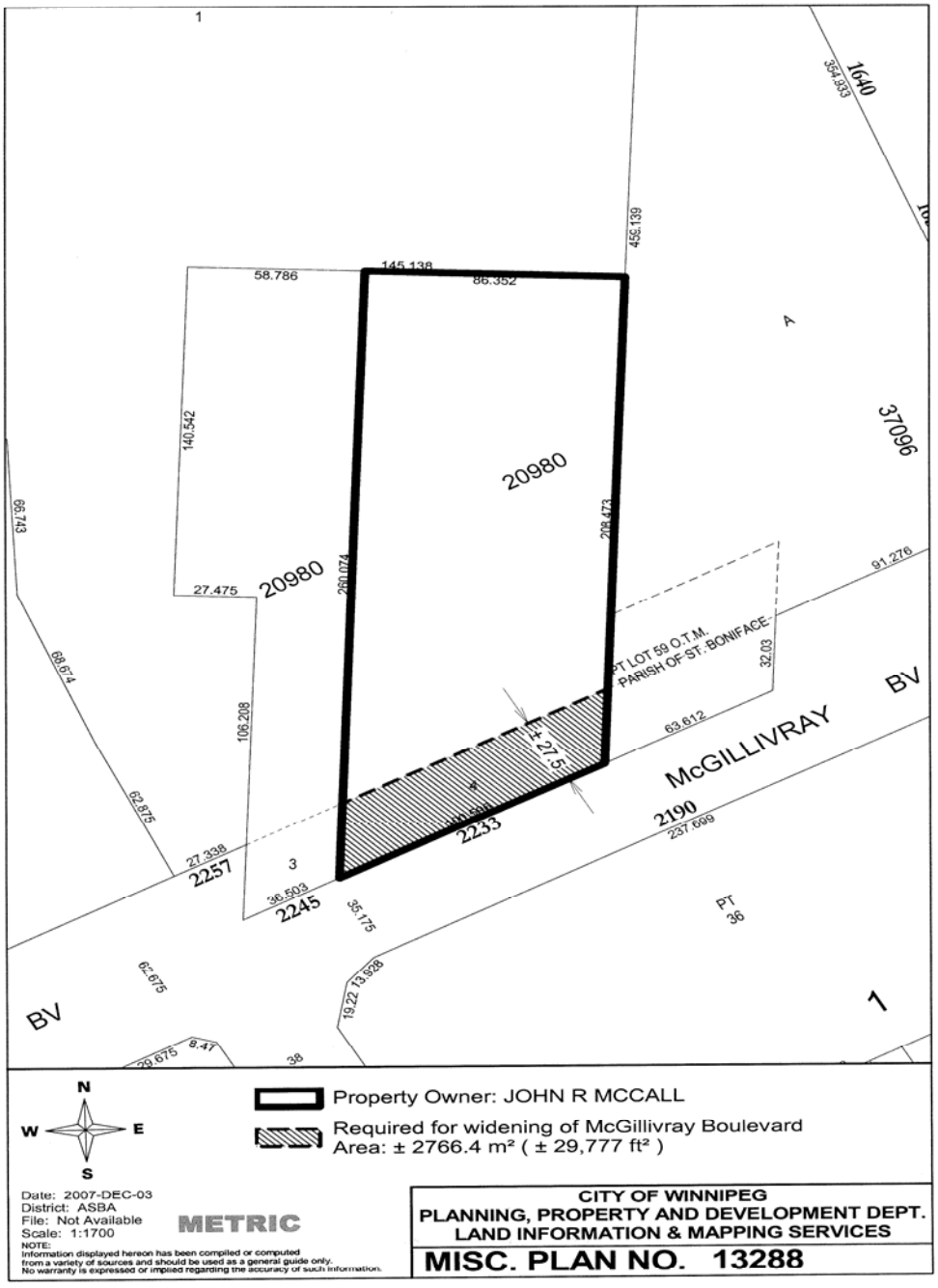
27.5
100.596
2233
2190
237.699
27.338
2257
3
2245
35.175
PT
36
62.675
19.22
13.928
BV
1
29.675
8.47
38
262.778
13
N
W
E
S
Property Owner: LOGISTIC HOLDINGS INC
Required for widening of McGillivray Boulevard
Area: ± 1003.8 m² (± 10,805 ft²)
Date: 2007-DEC-03
District: ASBA
File: Not Available
Scale: 1:1700
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. 13289

Property #2

Address:	2233 McGillivray Boulevard
Legal Description:	Lot 4, Plan 20980, 60/61 St. Boniface OTM as shown shaded on Misc. Plan No. 13288
Certificate of Title:	1065123, 1297852
Registered Owner:	John R. McCall
Realty Roll No.:	10001348500
Assessment (2008):	$1,069,200 (entire parcel)
Zoning:	"M1/M2" – Manufacturing Light/General
Property Taking:	2766 +/- m^2 (29,777 +/-sq. ft.)
Description:	Partial taking, frontage along McGillivray Boulevard used as parking lot and landscaped area. The corner of the existing office building will encroach into the partial taking. The City will grant a Building Encroachment for the remaining life of the existing building.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PT LOT 59 O.T.M.
PARISH OF ST. BONIFACE
32.03
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106.208
BV
63.612
McGILLIVRAY
± 27.5
62.875
2190
237.699
2233
27.338
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2245
35.175
PT
36
62.675
19.22
13.928
BV
1
29.675
8.47
38
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W
E
S
Property Owner: JOHN R MCCALL
Required for widening of McGillivray Boulevard
Area: ± 2766.4 m² (± 29,777 ft²)
Date: 2007-DEC-03
District: ASBA
File: Not Available
Scale: 1:1700
METRIC
NOTE:
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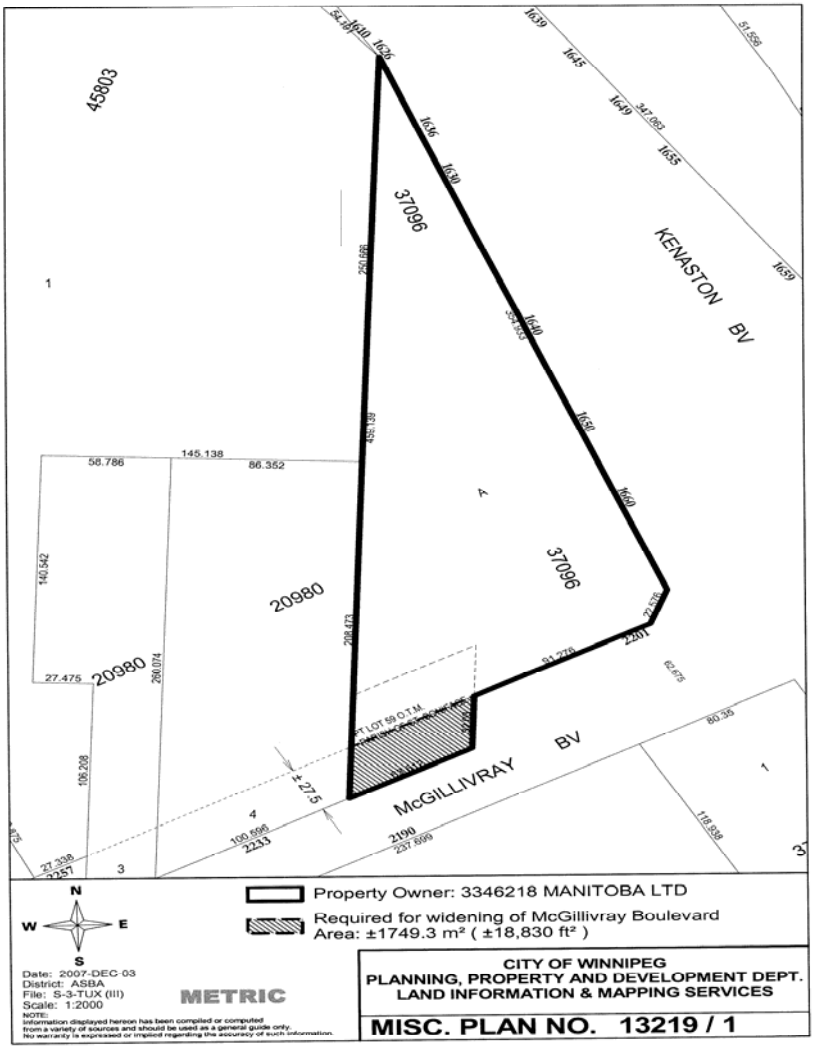
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13288

Property #3

Address:	1660 Kenaston Boulevard
Legal Description:	Par Lot A Plan 37096 as shown shaded on Misc. Plan 13219
Certificate of Title:	1647091, 1670391
Registered Owner:	3346218 Manitoba Ltd. (operating as Shindico)
Realty Roll No.:	10006416900
Assessment (2008):	$7,731,000 (entire parcel)
Zoning:	"C4" – Commercial Regional
Property Taking:	1749 +/- m^2 (18,830 +/-sq. ft.)
Description:	Partial taking, vacant land used as shopping centre parking lot



SCHEDULE "B"

PROJECTED TIME LINE - EXPROPRIATION (WITH INQUIRY*) MCGILLIVRAY BOULEVARD STREET WIDENING & REHABILITATION PROJECT – WAVERLEY STREET TO COLUMBIA DRIVE

Projected Date	Required Event
November 25, 2008	Standing Policy Committee on Property and Development concurs in recommendation of Planning, Property and Development Department to initiate expropriation
December 17, 2008	Council approves recommendation to initiate expropriation, passes expropriation by-law and makes declaration of expropriation
January to April 2009	Inquiry process and receipt of inquiry officer's report
February 2009	Standing Policy Committee on Property and Development approves any statutory offers of compensation over $750,000.00
May 2009	Council confirms expropriation, City registers and serves all documents including statutory offers of compensation and notices for possession
June 2009	Advertise bid opportunity for construction
July 2009	Possession of expropriated properties, award construction bid opportunity, commence construction

*An inquiry can be triggered by any expropriated owner (including a tenant). The Province of Manitoba has the authority to waive the inquiry where it deems it necessary or expedient in the public interest to do so in the circumstances.