Minute No. 289
Report - Standing Policy Committee on Property and Development- March 3, 2009

Item No. 13 **Expropriation - Howe Avenue Land Drainage Channel between McCreary Road and Loudoun Road (Charleswood-Tuxedo Ward) eFile GL-4**

COUNCIL DECISION:

Council concurred in the recommendations 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 interests in land identified on Schedule "B" to the report from the Director of Planning, Property and Development dated, March 12, 2009, required by the City for the Howe Avenue Land Drainage Channel.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the foregoing, including the execution of any documents related thereto.

Report - Standing Policy Committee on Property and Development - March 3, 2009

DECISION MAKING HISTORY:

Moved by Councillor Fielding,

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

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On March 19, 2009, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, and the supplementary recommendation of the Winnipeg Public Service contained in the report dated March 12, 2009, and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On March 3, 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 Land Interests – Howe Avenue Land Drainage Channel between McCreary Road and Loudoun Road
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: February 12, 2009

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 interests in land identified on the attached Schedule "A" required by the City for the Howe Avenue Land Drainage Channel.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the foregoing, including the execution of any documents related thereto.

Report Summary

Key Issues:

- Authorization to expropriate is required immediately to ensure that the City acquires the necessary interests in land prior to advertising the construction bid opportunities and in order to begin construction in early 2009 and completion prior to the 2010 spring runoff.

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): 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 Water and Waste Department has advised that adequate funding for the proposed expropriation will be available under capital project number 003-181000-200652-2070001917 PROPERTY.

Report

REASON FOR THE REPORT:
The interests in land identified on attached Schedule "A" are required for the development of the Howe Avenue Land Drainage Channel. Council's authorization to expropriate is required immediately to ensure that the City acquires the necessary interests in land prior to advertising the construction bid opportunities and in order to begin construction in early 2009 and completion prior to the 2010 spring runoff.

HISTORY:
On September 20, 2000, Council approved undertaking the Charleswood Land Drainage Study, which was to assess the current land drainage system and to re-examine the regional drainage and master drainage plan for the Charleswood area.

The Charleswood Land Drainage Study has recommended the development of the Howe Avenue Drainage Channel. The purpose of this drain is to provide enhanced drainage principally to the Liberty Street and Loudoun Road area south of Wilkes Avenue. The proposed new drain, which will be an open ditch, will carry runoff water from Loudoun Road and Liberty Street to McCreary Road and then through an existing drain to the Inland Cement Plant storm water retention pond.

At its January 24, 2007 meeting, Council concurred in the recommendation of the Standing Policy Committee on Infrastructure Renewal and Public Works and adopted the following:

1. *"That an expenditure of $300,000.00 be authorized before the 2007 Capital Budget is adopted, as a first call against the 2007 Tax-supported Capital Budget to begin the process of acquiring land to allow the construction of a major drain in South Charleswood between Loudoun and McCreary Road in the vicinity of the existing Howe Avenue right-of-way.*
2. *That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing."*

The City's Water and Waste Department has studied several alternatives for land drainage in the area and has determined that the proposed Howe Avenue alignment for the drain is the most feasible, functional and economical option for addressing localized flooding issues.

The Water and Waste Department has requested the Planning, Property and Development Department ("the Department") to commence negotiations with the 11 different property owners whose land interests the City requires for the development of the Howe Avenue Drainage Channel. The Department has negotiated and already purchased the necessary land interests from five of the 11 owners.

DISCUSSION:

On five of the remaining six properties, the Water and Waste Department needs to acquire a 30 metre wide permanent easement for the ditch and a 15 metre wide temporary construction easement which will run alongside and immediately south of the permanent easement.

The owners of Property #6 on attached Schedule "A" advise that they would prefer to sell the City the fee simple interest in the land required for the drain and the remaining land between the drain area and the southerly property limit, as opposed to granting the City an easement. The owners are of the opinion the land taken for the drain will have a much more significant impact on their five acre property then on the other +/- 100 acre properties. They feel that an easement provides the other owners with more flexibility for further development of those properties, whereas it is highly unlikely that they would ever be allowed to subdivide their property. They feel the lands to be taken for the drain will be unusable and the lands between the drain and southerly property limit will be inaccessible and no longer useful as part of their yard.

The Department is of the opinion that the owners of Property #6 have made very valid points and is supportive of acquiring the fee simple interests. Furthermore, should the lands to the east of Property #6 be developed in the future, the lands being acquired will likely be needed to extend Howe Avenue as part of the development. The Department and owners of Property #6 have agreed to terms and conditions for the sale of the needed lands, but a formal Purchase/Sale Agreement has not yet been executed.

The Department anticipates that it may be able to purchase three or four of the interests needed from the other five owners, but cannot guarantee that all will be purchased in time for construction of the drain to begin in early 2009. Several of the property owners who have not yet come to terms with the City for the needed land interests strongly believe that the development of the drain across their properties will negatively impact their properties and is of no direct benefit to them. They believe the drain will only benefit existing improved properties in the area, many of which, in their opinion, should not have been allowed to be developed in the first place.

These owners have indicated they would consider selling the City the needed land interests if they were allowed to develop their properties. The Department has advised the owners that the development of their properties and others in the area would require amendments to the Wilkes South Secondary Plan and Plan Winnipeg and that the owners would be responsible for all costs to install municipal services in the area. The owners are of the opinion that it would not be cost effective at this time for them to install services in the area, but that the City should provide services and promote the development of the area. This position is contrary to the City's policy that servicing costs are to be borne by developers.

Given the lengthy negotiation period of nearly two years with the landowners and the uncertainty that all the land interests can be acquired through continued negotiations, the Department and the Water and Waste Department concur that expropriation is the best course of action to acquire the needed land interests to allow construction of the drain in 2009 and completion prior to the 2010 spring runoff.

Particulars of the land interests to be expropriated are shown on attached Schedule “A”. For Committee’s information, even after expropriation commences the Department will continue to try to acquire the required land interests by negotiated agreement.

The Water and Waste Department has advised that adequate funding for the proposed expropriation will be available under capital project number 003-181000-200652-2070001917 PROPERTY.

Financial Impact Statement Date: February 12, 2009

Project Name:

Expropriation of Land Interests – Howe Avenue Land Drainage Channel between McCreary Road and Loudoun Road

COMMENTS:

The recommendations contained in this report include 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 interests in land identified on the attached Schedule "A" required by the City for the Howe Avenue Land Drainage Channel.
There are no financial implications associated with the recommendations.

"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 Division

Water and Waste Department

External Consultation With:

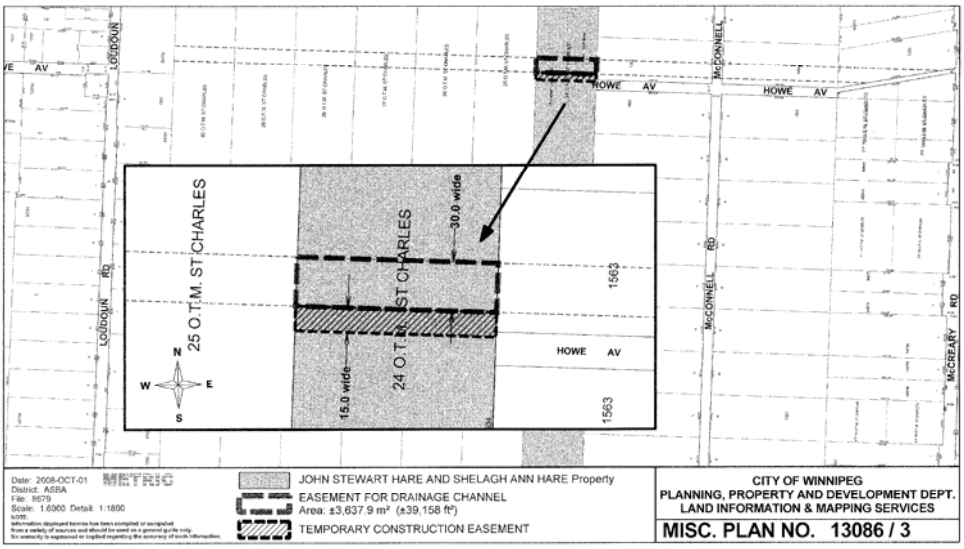
THIS REPORT SUBMITTED BY:

Department	Planning, Property and Development Department
Division	Real Estate Division
Prepared by:	Stewart Anderson
PPD File No:	5281, 8675, 8676, 8677, et al

SCHEDULE "A"

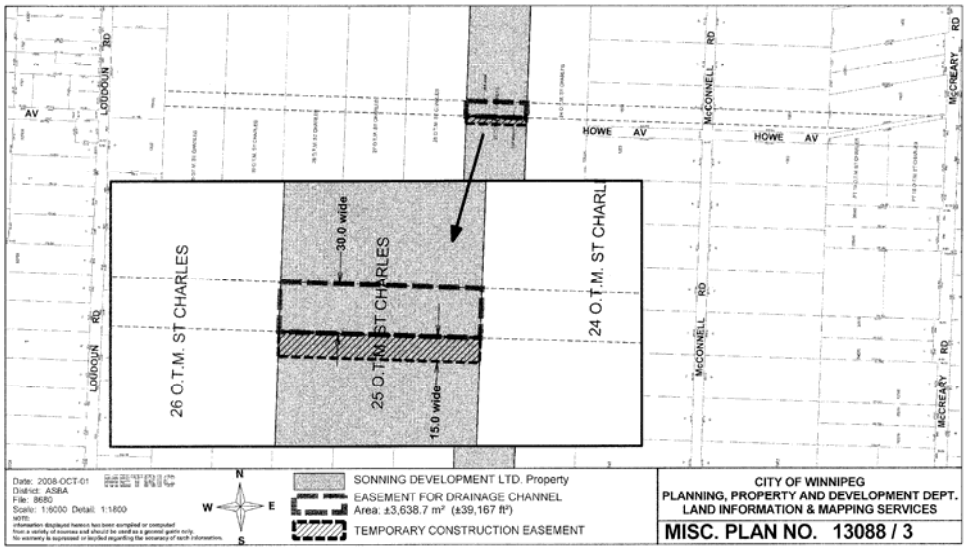
Property #1

Location:	2424 Wilkes Avenue, Between McConnell & Loudoun Roads.
Legal Description:	River Lot 24 St. Charles
Certificate of Title:	2132901
Registered Owner:	John & Shelagh Hare
Realty Roll No.:	01000306500
Assessment (2008):	$344,000
Zoning:	A – Agricultural (Min 40 Acres)
Interest Required:	Easement 3,637.9 +/-m^2 (39,158+/- sq. ft.), 15 meter wide temporary construction easement.
Description:	Home site off of Wilkes Avenue, easement area cultivated land.



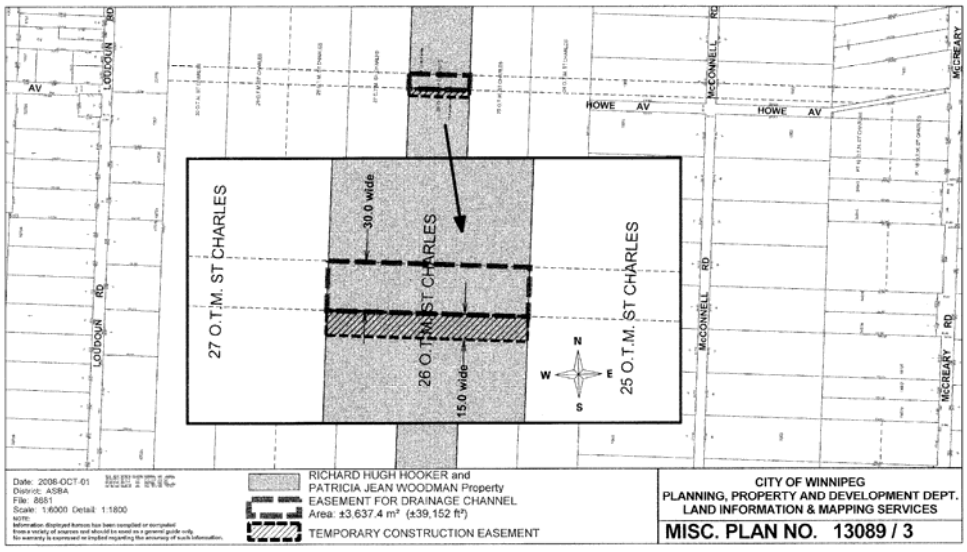
Property #2

Location:	South of Wilkes Avenue, Between McConnell & Loudoun Roads.
Legal Description:	River Lot 25 St. Charles
Certificate of Title:	1763959
Registered Owner:	Sonning Development Ltd.
Realty Roll No.:	01000354500
Assessment (2008):	$77,300
Zoning:	A – Agricultural (Min 40 Acres)
Interest Required:	Easement 3,638.7 +/-m^2 (39,167+/- sq. ft.), 15 meter wide temporary construction easement.
Description:	Cultivated land.



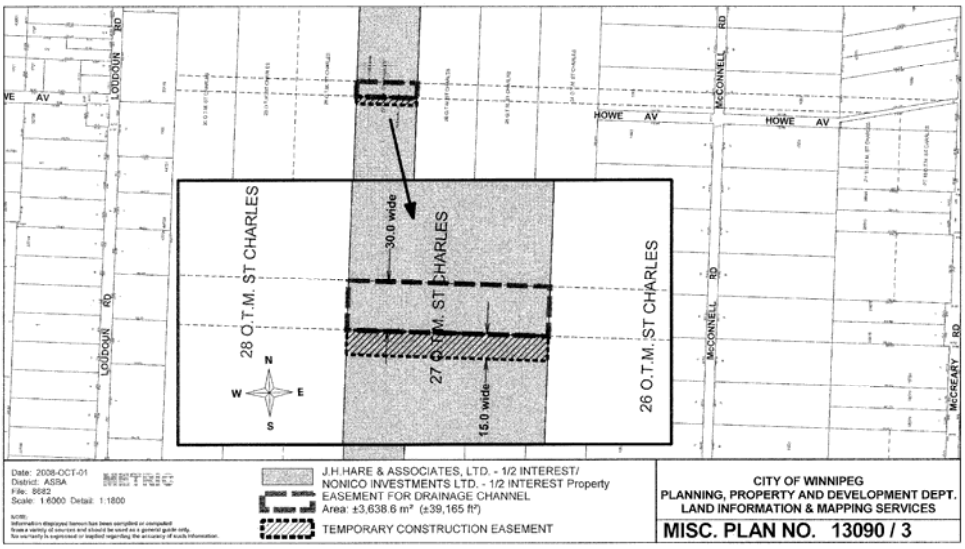
Property #3

Location:	2790 Wilkes Avenue, Between McConnell & Loudoun Roads.
Legal Description:	River Lot 26 St. Charles
Certificate of Title:	1188558
Registered Owner:	Richard Hooker & Patricia Woodman
Realty Roll No.:	01000402000
Assessment (2008):	$77,300
Zoning:	A – Agricultural (Min 40 Acres)
Interest Required:	Easement 3,637.4 +/-m^2 (39,152+/- sq. ft.), 15 meter wide temporary construction easement.
Description:	Home site off Wilkes Avenue, easement area cultivated land



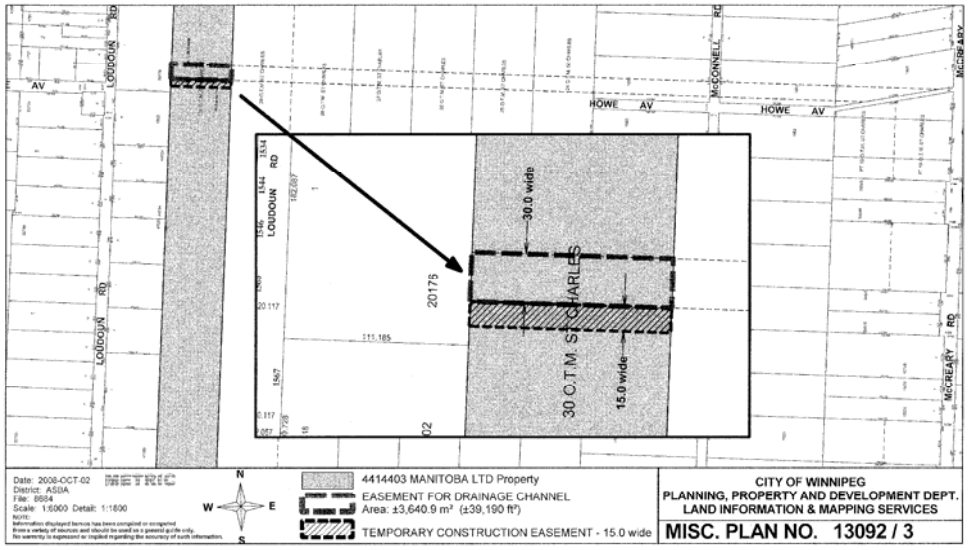
Property #4

Location:	2496 Wilkes Avenue, Between McConnell & Loudoun Roads.
Legal Description:	River Lot 27 St. Charles
Certificate of Title:	1841866
Registered Owner:	JH Hare & Associates Ltd ½ Interest & Nonico Investments Ltd ½ Interest
Realty Roll No.:	0100088582
Assessment (2008):	$74,540
Zoning:	A – Agricultural (Min 40 Acres)
Interest Required:	Easement 3,638.6 +/-m^2 (39,165+/- sq. ft.), 15 meter wide temporary construction easement.
Description:	Home site off Wilkes Avenue, easement area bush land.



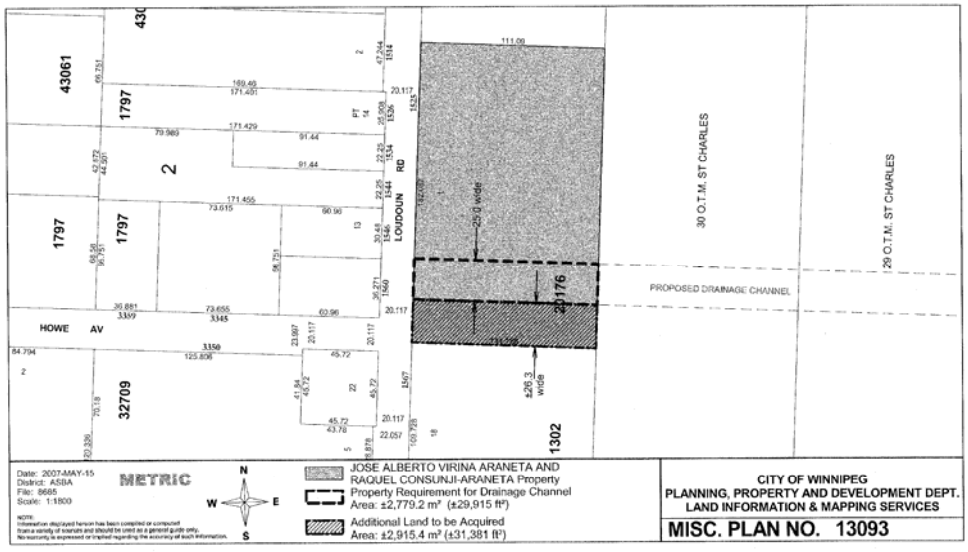
Property #5

Location:	South of Wilkes Avenue, Between McConnell & Loudoun Roads.
Legal Description:	River Lot 30 St. Charles
Certificate of Title:	1902057
Registered Owner:	4404403 Manitoba Ltd
Realty Roll No.:	01000497600
Assessment (2008):	$103,000
Zoning:	A – Agricultural (Min 40 Acres)
Interest Required:	Easement 3,640.9 +/-m^2 (39,190+/- sq. ft.), 15 meter wide temporary construction easement.
Description:	Easement area cultivated land.



Property #6

Location:	1525 Loudoun Road.
Legal Description:	Lot 1, Plan 20176
Certificate of Title:	2221414
Registered Owner:	Jose & Raquel Araneta
Realty Roll No.:	01000879200
Assessment (2008):	$103,000
Zoning:	RR5 – Rural Residential (5 Acres)
Interest Required:	Fee Simple Acquisition 5,694.6+/-m^2 (61,296+/- sq. ft.).
Description:	Acquisition area bush land.



RE: Expropriation of Land Interests – Howe Avenue Land Drainage Channel between McCreary Road and Loudoun Road – Supplemental Report
Assiniboia Community
Charleswood – Tuxedo Ward

FOR SUBMISSION TO: Executive Policy Committee

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

REPORT DATE: March 12, 2009

RECOMMENDATION:

That the interests in land identified on Schedule "A" attached to the report from the Director of Planning Property and Development dated, February 12, 2009, required by the City for the Howe Avenue Land Drainage Channel be replaced with Schedule "B", attached.

Report Summary

Key Issues:

- The dimensions of the required land interests to be expropriated for the Howe Avenue Land Drainage Channel have since changed. The revised dimensions are now 25 and 5 metres for the permanent and temporary easements respectively.
- The new land interests are identified in Schedule "B", attached. In essence, the interest in lands required for the Howe Avenue Land Drainage Channel has been reduced.

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): 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):

Report

REASON FOR THE REPORT:

The dimensions of the required land interests to be expropriated for the Howe Avenue Land Drainage Channel have since changed. The new land interests are identified in Schedule “B”, attached.

DISCUSSION:

The report from the Director of Planning, Property and Development dated, February 12, 2009, indicated that on the properties required for the Howe Avenue Land Drainage Channel, *“the Water and Waste Department needs to acquire a 30 metre wide permanent easement for the ditch and a 15 metre wide temporary construction easement which will run alongside and immediately south of the permanent easement.”* Those land interests were identified in Schedule “A” of the said report.

The dimensions of the required land interests to be expropriated have since changed. The revised dimensions are now 25 and 5 metres for the permanent and temporary easements respectively. The new land interests are identified in Schedule “B”, attached. In essence, the interest in lands required for the Howe Avenue Land Drainage Channel has been reduced.

Financial Impact Statement Date: March 12, 2009

Project Name:

Expropriation of Land Interests – Howe Avenue Land Drainage Channel between McCreary Road and Loudoun Road - Supplemental Report

COMMENTS:

There are no financial implications associated with the 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 Division

Water and Waste Department

External Consultation With:

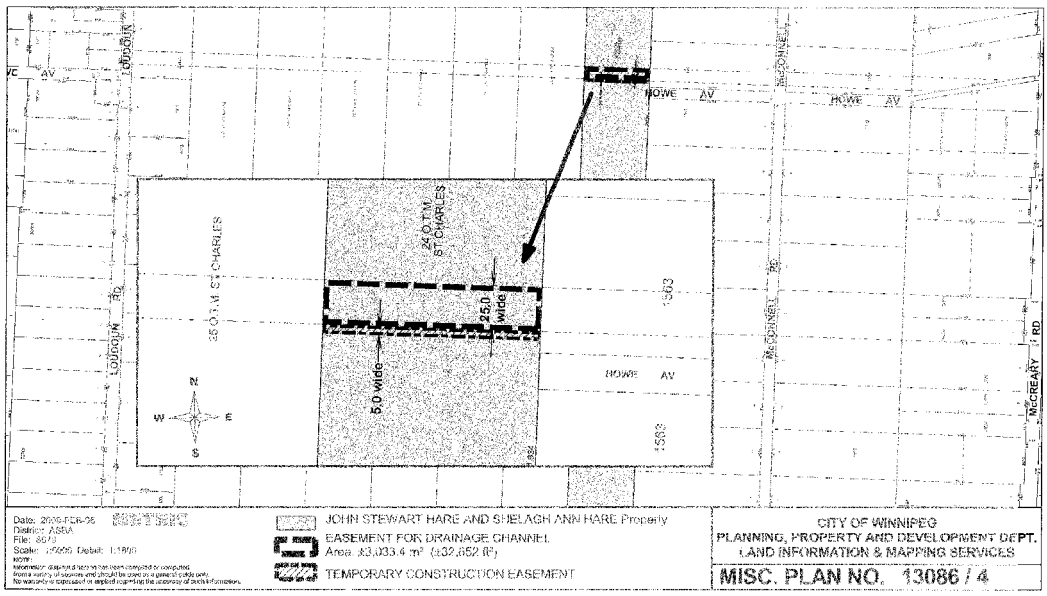
THIS REPORT SUBMITTED BY:

Department	Planning, Property and Development Department
Division	Real Estate Division
Prepared by:	John S. Zabudney
PPD File No:	5281, 8675, 8676, 8677, et al

SCHEDULE "B"

Property #1

Location:	2424 Wilkes Avenue, Between McConnell & Loudoun Roads.
Legal Description:	River Lot 24 St. Charles
Certificate of Title:	2132901
Registered Owner:	John & Shelagh Hare
Realty Roll No.:	01000306500
Assessment (2008):	$344,000
Zoning:	A – Agricultural (Min 40 Acres)
Interest Required:	Easement 3,033.4 +/-m^2 (32,652 +/- sq. ft.), 5 meter wide temporary construction easement.
Description:	Home site off of Wilkes Avenue, easement area cultivated land.



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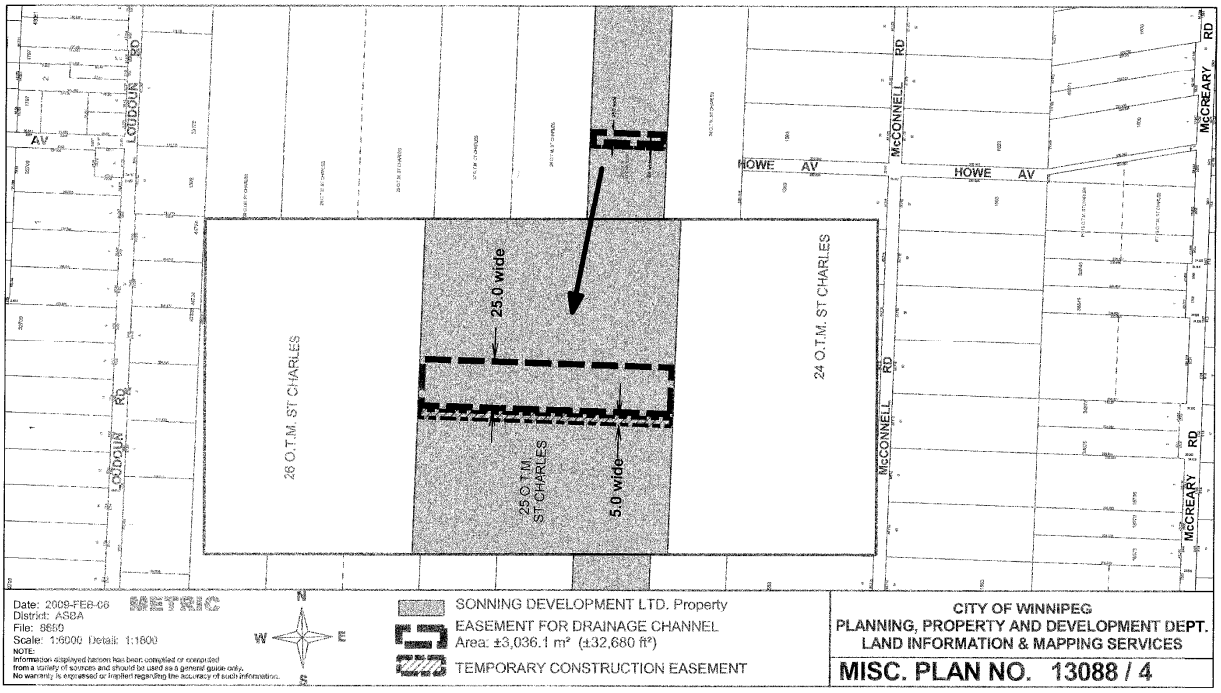
Legal Description:	River Lot 25 St. Charles
Certificate of Title:	1763959
Registered Owner:	Sonning Development Ltd.
Realty Roll No.:	01000354500
Assessment (2008):	$77,300
Zoning:	A – Agricultural (Min 40 Acres)
Interest Required:	Easement 3,036.1 +/-m^2 (32,680 +/- sq. ft.), 5 meter wide temporary construction easement.
Description:	Cultivated land.



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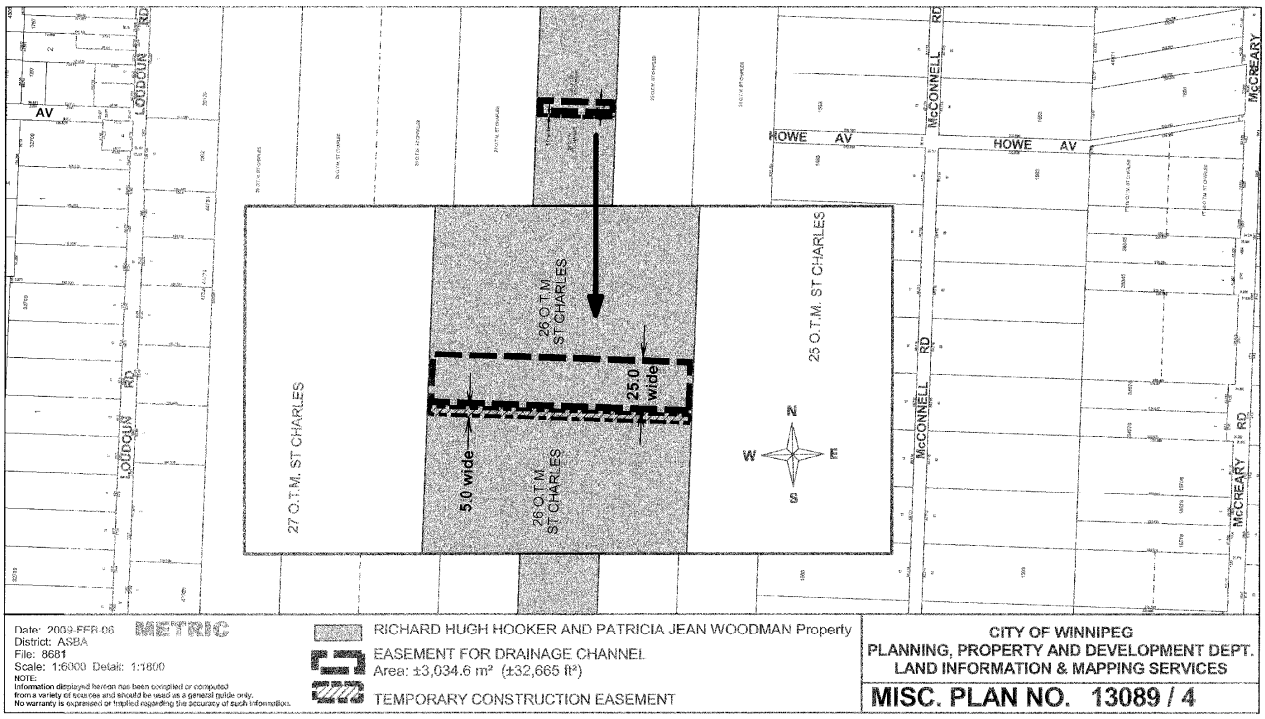

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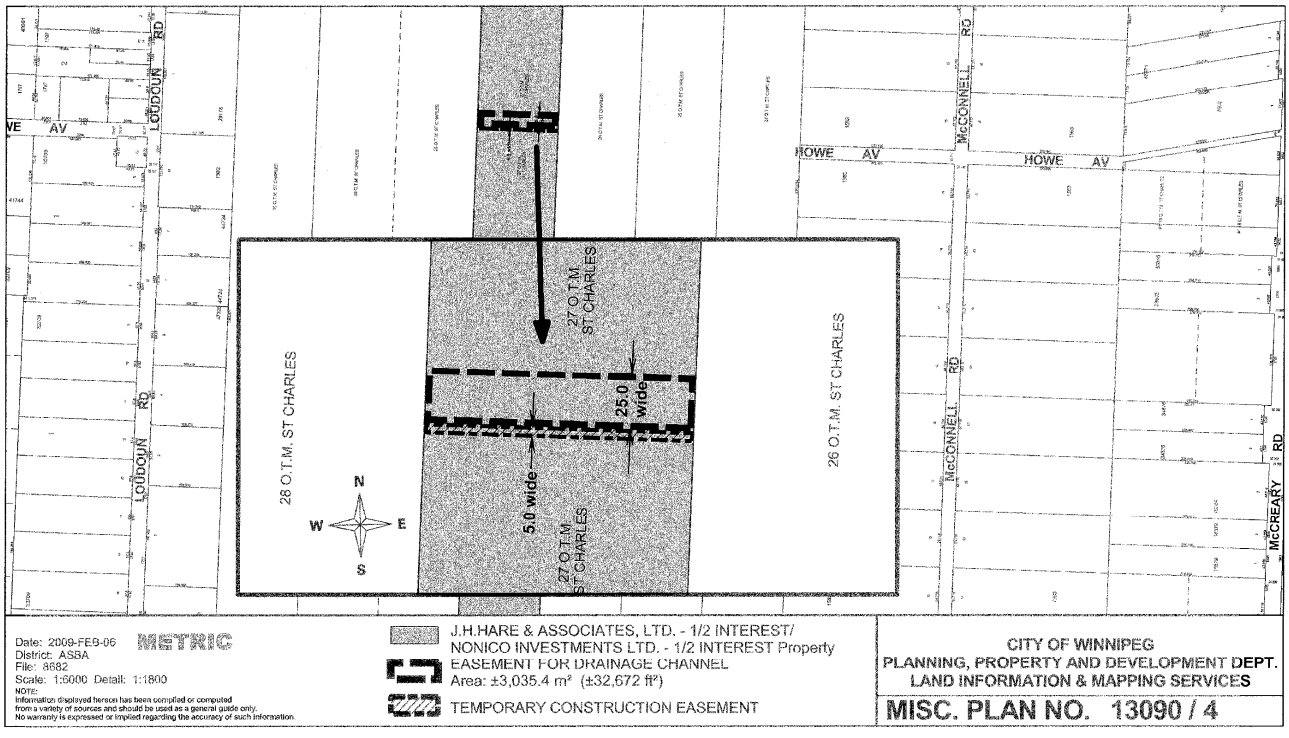
Certificate of Title:	1841866
Registered Owner:	JH Hare & Associates Ltd ½ Interest & Nonico Investments Ltd ½ Interest
Realty Roll No.:	0100088582
Assessment (2008):	$74,540
Zoning:	A – Agricultural (Min 40 Acres)
Interest Required:	Easement 3,035.4 +/-m^2 (32,672 +/- sq. ft.), 5 meter wide temporary construction easement.
Description:	Home site off Wilkes Avenue, easement area bush land.



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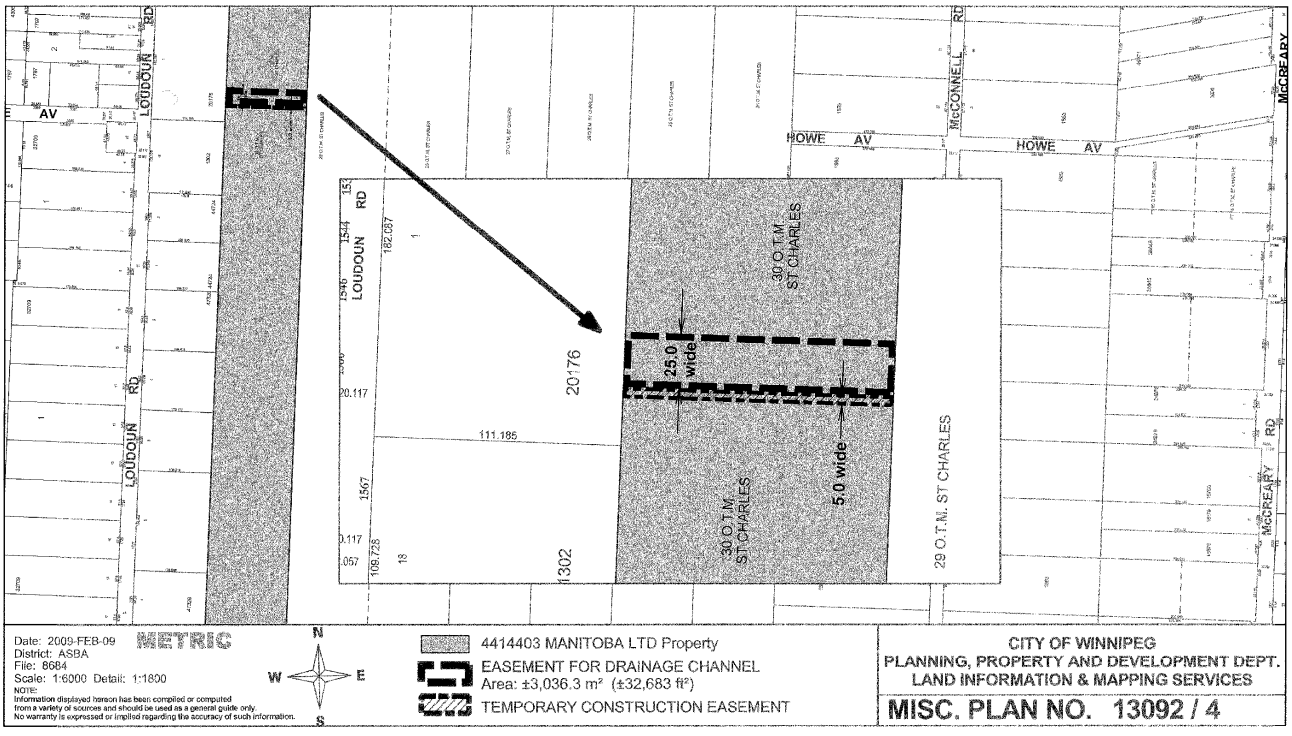
Interest Required:	Easement 3,036.3 +/-m^2 (32,683 +/- sq. ft.), 5 meter wide temporary construction easement.
Description:	Easement area cultivated land.



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Zoning:	RR5 – Rural Residential (5 Acres)
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