Minute No. 383
Report - Standing Policy Committee on Downtown Development – May 4, 2009

Item No. 1 **Sale of the Upper Fort Garry Site - Friends of Upper Fort Garry (Fort Rouge -East Fort Garry Ward) eFile FI-2.4(32)**

COUNCIL DECISION:

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

1. That the City-owned property shown hatched and identified as "City Property to be declared surplus Gate Lands" on Misc. Plan No. 12500/11, be declared surplus to the City's requirements.

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 Downtown Development - May 4, 2009

DECISION MAKING HISTORY:

Moved by Councillor Pagtakhan,

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

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 20, 2009, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Downtown Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On May 4, 2009, the Standing Policy Committee on Downtown Development concurred in recommendation 4 of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

STANDING COMMITTEE DECISION:

On May 4, 2009, the Standing Policy Committee on Downtown Development concurred in recommendations 1, 2 and 3 of the Winnipeg Public Service, namely:

1. That the Winnipeg Public Service secure from Heritage Landing Inc. a Quit Claim in respect to any interest it may have in the Upper Fort Garry Site and release the City of any obligations arising out of the Purchase/Sale Agreement dated October 3, 2007, as amended on January 23, 2008 and March 31, 2008.

2. That the previous decisions of the Standing Policy Committee on Downtown Development dated December 13, 2007 and March 31, 2008 be amended to coincide with the terms and conditions of the Purchase/Sale Agreement as contained in the report from the Director of Planning, Property and Development dated April 24, 2009.

Report - Standing Policy Committee on Downtown Development - May 4, 2009

DECISION MAKING HISTORY (continued):

STANDING COMMITTEE DECISION (continued):

3. That subject to approval of recommendations 1 and 2 above, and Council declaring the City-owned property shown hatched and identified as "City Property to be declared surplus Gate Lands" on Misc. Plan No. 12500/11 as surplus, the sale of the subject City-owned property shown outlined on Misc. Plan No. 12500/11, be approved in favour of the Friends of Upper Fort Garry Inc. for the purchase price of $1.00, with the Chief Administrative Officer being delegated the authority to finalize the terms and conditions of the Purchase/Sale Agreement as contained in the report from the Director of Planning, Property and Development dated April 24, 2009, and any other terms and conditions deemed necessary by the Acting City Solicitor/Manager of Legal Services in order to satisfy the intent of Council.

ADMINISTRATIVE REPORT

ISSUE: Proposed Sale of the Upper Fort Garry Site – Friends of Upper Fort Garry

For Submission to: Standing Policy Committee on Downtown Development

AUTHORIZATION

Author	Department Head	CFO	CAO
Ray Klassen/ John Zabudney	Deepak Joshi	N/A	Glen Laubenstein

HISTORY

At its meeting held on December 13, 2007, the Standing Policy Committee on Downtown Development directed:

1. *"That the Winnipeg Public Service Report entitled "Purchase / Sale of 100 Main Street - Heritage Landing Inc." be laid over to a special meeting on March 31, 2008, subject to the following:*

   A. *Prior to February 1, 2008, the Friends submitting a Business Plan to the Chief Administrative Officer that provides a detailed outline of their proposed project including; their concept for the site, the required capital, maintenance, and operating costs, as well as their fundraising strategy and implementation timeframes; and*

   B. *The Friends acknowledging within their Business Plan the market value of the City-owned site as the City's contribution towards the Friends proposed project and moreover, that the long-term Business Plan indicate that the City will not be responsible for any further capital development, maintenance, or operational funding for the site; and*

   C. *Prior to March 31, 2008, the Friends confirming with the Acting Chief Administrative Officer that their fundraising as itemized within their existing business plan in the amount of $12.5 million, (which amount shall exclude the value of any City land contributed for the heritage project) has been substantially completed (which shall mean confirmation of funding*

commitments in the amount of 80% of overall funding, both public and private) and that they have secured the site of the Grain Exchange Curling Club as required to achieve their project.

2. *That the Winnipeg Public Service negotiate an extension of time to the condition in the Purchase/Sale Agreement whereby the City must make a decision to the proposed reduction of the purchase price from December 14, 2007 to April 1, 2008, and that the date of adjustments, closing and possession shall be extended from March 31, 2008 to August 29, 2008 or as otherwise agreed to by the Winnipeg Public Service and the Purchaser.*

3. *That in the event that the Friends fail to meet any or all of the conditions set out in the first resolve, the sale of the portion of 100 Main as described in the Report of the Acting Director of Planning, Property and Development dated November 8, 2007 be approved and concluded at the reduced purchase price ($1,200,000.) as recommended in that Report, and that there will be no further extensions granted to the Friends."*

In addition, the Standing Policy Committee on Downtown Development at its meeting of March 31, 2008 also directed:

1. *"That the terms and conditions of the Second Amending Agreement between the City of Winnipeg and Heritage Landing Inc., dated March 31, 2008, be approved.*

2. *That the December 13, 2007, decision of the Standing Policy Committee on Downtown Development with respect to this matter (see In Camera Minute 8 of the December 13, 2007, meeting of the Standing Policy Committee on Downtown Development) be amended consistent with the revised terms and conditions set out in the Second Amending Agreement between the City of Winnipeg and Heritage Landing Inc., dated March 31, 2008.*

3. *That the Winnipeg Public Service be directed to continue discussions with the Friends regarding the development of the Upper Fort Garry Site and report back to the Standing Policy Committee on Downtown Development at their meeting of September 4, 2008.*

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

With respect to the Second Amending Agreement between the City of Winnipeg and Heritage Landing Inc., the Agreement provides, among other things, the Friends of Upper Fort Garry (Friends) with the prior right to acquire and develop the Upper Fort Garry Site provided that on or before March 31, 2010:

- The Friends satisfy all of the conditions set forth in the first resolve of the Standing Policy Committee on Downtown Development motion of December 13, 2007.
- The Friends obtain all permits and approvals necessary to develop the Upper Fort Garry Site.
- The Friends commence construction on the Upper Fort Garry Site.

Pursuant to the above Item No. 3 of Committee's motion of March 31, 2008, the Department forwarded a letter dated May 21, 2008, requesting the Friends to provide the Public Service with information as to the present status of its Upper Fort Garry Project.

On May 27, 2008, the Solicitor acting on behalf of the Friends responded to the Department's letter of May 21, 2008. The said letter raised several questions related to the process the Friends are required to fulfill in order to satisfy its obligations to the City under the terms and conditions of the Second Amending Agreement.

On June 5, 2008, the City's Legal Services Division responded to the Friends' Solicitor with a letter outlining the requirements that the Friends would have to fulfill in order for the City to transfer title of the subject property to the Friends.

In addition, several meetings were held between representatives of the City, Province and the Friends in order to further clarify the obligations that would have to be fulfilled in order to facilitate the conveyance of the property. At a meeting held on July 23, 2008, the Friends requested further clarification of the City's position pursuant to the Second Amending Agreement. On August 18, 2008, the Friends were sent a letter to further clarify the nature of the information required by the City from the Friends in order to determine whether certain conditions placed upon the Friends at the March 31, 2008 meeting of the Standing Policy Committee on Downtown Development have been met. The conditions were as follows:

1. *"The Friends to submit to the City a revised business plan that does not include revenue from the rental / operation of the building located at 100 Main Street.*

2. *The Friends to submit to the City the entirety of the audited report from The Exchange Group LLP, including the schedule of funding referenced in the letter from The Exchange Group LLP dated June 13, 2008, which schedule must show:*

    a. *cash amounts vs. pledges*
    b. *by each named (where consent has been provided or names are in the public domain) and/or anonymous donor:*

        i. *the total amount of the donation or pledge*
        ii. *how much of the donation has been received in cash, how much of the donation remains as a pledge, and the proposed timing of the payment with respect to the pledge (whether it will be in a lump sum vs. a time payment, and the proposed timing and amount of each such payment)*
        iii. *all conditions placed on donations and/or pledges*

3. *The Friends to submit to the City an executed agreement of purchase and sale with respect to the Grain Exchange Curling Club."*

The Friends subsequently submitted a revised business plan that does not include revenue from the building at 100 Main Street in its operations. In addition, the Friends have secured an interest in the Grain Exchange Curling Club by way of an Offer to Purchase Agreement, with the date of closing being no later than June 30, 2011.

The Public Service engaged the services of Ernst & Young LLP (E & Y) to obtain information concerning various aspects of the pledges, including the amounts, conditions, timing and recognition of the pledges provided. For confidentiality reasons, E&Y did not provide details of the donors. The following represents the results of the review:

Total private pledges:	$7,342,491.00
Total public pledges excluding land:	
Provincial Government	$1,500,000.00
Federal Government	$1,500,000.00
Total pledge funding:	**$10,342,491.00**
80% of $12.5 M:	$10,000,000.00
Excess over minimum required:	**$342,491.00**

The Public Service requested E & Y to provide additional information with respect to the pledges. On average there are a number of conditions but pledges are supported by documentation and the conditions appear to be manageable. Based on the information provided, the Public Service is satisfied that Friends has achieved the funding levels required by Standing Committee in its meeting of December 13, 2007.

RECOMMENDATIONS

That the Standing Policy Committee on Downtown Development approve:

1. That the Winnipeg Public Service secure from Heritage Landing Inc. a Quit Claim in respect to any interest it may have in the Upper Fort Garry Site and release the City of any obligations arising out of the Purchase/Sale Agreement dated October 3, 2007, as amended on January 23, 2008 and March 31, 2008.

2. That the previous decisions of the Standing Policy Committee on Downtown Development dated December 13, 2007 and March 31, 2008 be amended to coincide with the terms and conditions of the Purchase/Sale Agreement as set-out herein.

3. That subject to approval of Recommendation Nos. 1 and 2 above, and Council declaring the City-owned property shown hatched and identified as “City Property to be declared surplus Gate Lands” on Misc. Plan No. 12500/11 as surplus, the sale of the subject City-owned property shown outlined on Misc. Plan No. 12500/11, be approved in favour of the Friends of Upper Fort Garry Inc. for the purchase price of $1.00, with the Chief Administrative Officer being delegated the authority to finalize the terms and conditions of the Purchase/Sale Agreement as set-out herein, and any other terms and conditions deemed necessary by the Acting City Solicitor/Manager of Legal Services in order to satisfy the intent of Council.

That Council approve:

4. That the City-owned property shown hatched and identified as “City Property to be declared surplus Gate Lands” on Misc. Plan No. 12500/11, be declared surplus to the City’s requirements.

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

IMPLICATIONS OF THE RECOMMENDATIONS

The Public Service is satisfied that all of the conditions have been met by the Friends and therefore recommends that Upper Fort Garry Site be sold to the Friends, and that authority be delegated to the Chief Administrative Officer to finalize the terms and conditions of the Purchase/Sale Agreement as set-out herein, and any other terms and conditions deemed necessary by the Acting City Solicitor, Manager of Legal Services in order to satisfy the intent of Council. The sale to the Friends would also be subject to Council declaring the "Gate Lands" surplus and the Public Service securing from Heritage Landing Inc. a Quit Claim in respect to any interest it may have in the Upper Fort Garry Site.

Salient terms and conditions of the Purchase/Sale Agreement are as follows:

Purchase Price:	$1.00
Date of Closing:	June 1, 2009, or as otherwise agreed to
Environmental Condition:	Acquire property on an "as-is, where-is" condition
Special Conditions:	

- Friends obtaining all permits and approvals necessary to develop the City Property for the purpose of the project as described in the Upper Fort Garry Heritage Park and Interpretive Centre Business Plan dated September 2008.
- Friends submitting a Business Plan to the Chief Administrative Officer that provides a detailed outline of their proposed project including: their concept for the site, the required capital, maintenance and operating costs, as well as their fundraising strategy and implementation timeframes.
- Friends acknowledging within their Business Plan the market value of the City Property as the City's contribution toward the Project and moreover, the long term Business Plan indicate that the City will not be responsible for any further capital development, maintenance or operational funding for the Project.
- Prior to the closing date, Friends confirming with the Chief Administrative Officer that their fundraising as itemized within their existing business plan in the amount of $12.5 million, (which amount shall exclude the value of any City land contributed for the heritage project) has been substantially completed (which shall mean confirmation of funding commitments in the amount of 80% of overall funding, both public and private) and that they have secured the site of the Grain Exchange Curling Club as required to achieve their project.
- Friends having secured the right to purchase those lands occupied by the Grain Exchange Curling Club and located adjacent to the City Property.
- Friends agree that the City may register and maintain a caveat against the City Property to ensure the performance of the covenants on the part of Friends herein set forth. The City agrees that it will execute a postponement

of its caveat, if necessary, to allow for construction financing in an amount not greater than $4,000,000.00.

- The office structure commonly known as 100 Main Street located on the City Property at the closing date shall not be used to earn rental income prior to demolition.

- The office structure commonly known as 100 Main Street located on the City Property at the closing date shall be demolished at no cost to the City within a period of ten (10) months from July 31, 2009.

- The office structure commonly known as 100 Main Street located on the City Property at the closing date shall be occupied by the City for the two (2) month period of June 1, 2009 to July 31, 2009 at the City's sole cost and expense. In addition, the City shall use the building for its purposes, as well as subletting a portion of the building to a non-profit organization (Bookmates Inc.).

- Friends agree that at the closing date, the City shall continue to manage and maintain its parking facilities located on that part of the City Property shown as "Parcel A" on Misc. Plan No. 12500/4, attached, during the two (2) month period of June 1, 2009 to July 31, 2009 or until commencement of construction of the Project, whichever is the later. Friends further agree that no compensation will made payable by the City to the Friends for the use of the City Property as contemplated herein.

- Friends commencing construction of the Project within a period of one (1) year from the closing date.

- On or before completion of the Project, Friends shall forthwith do all things necessary to transfer and convey title to the City Property to the Province of Manitoba on the express condition that the Province of Manitoba shall assume all of the obligations of Friends hereunder including, without limitation, the obligation to transfer and convey to the City, at the sole cost of the Province of Manitoba, all of the City Property, free and clear of any and all encumbrances except those utility easements herein contemplated or hereafter placed by, through or under the City, or now existing, together with a Quit Claim Deed satisfactory in form to the City Solicitor in the event the Province of Manitoba should fail to complete construction of the Project within five (5) years of the closing date.

- In the event Friends should fail to complete construction of the Project within five (5) years of the closing date or fail to convey title to the City Property to the Province of Manitoba, the Friends shall, on demand made by the City as represented by the Chief Administrative Officer, transfer and convey at the Friends' sole cost and expense, to the City, all of the City Property, free and clear of any and all encumbrances except those utility easements herein contemplated or hereafter placed by, through or under the City, or now existing, together with a Quit Claim Deed satisfactory in form to the City Solicitor.

In accordance with correspondence received from the Friends dated April 21, 2009 (copy attached), the Friends requested authorization to proceed with permit applications in order to commence with construction of the Project on certain portions of the City property immediately after the closing date. Permit applications are being filed by the Friends and the issuance of any permits will be subject to approval and closing of the sale of the City property.

For Committee's information, the Friends has expressed an interest in purchasing for $1.00 the Public Lane shown hatched and identified as "Public Lane to be Closed" on Misc. Plan No. 12500/11. This matter will be processed under a separate Closing Application filed by the Public Service, at the sole cost and expense of the Friends, subject to Council enactment of the necessary By-law to effect the legal closing of the lane.

FINANCIAL IMPACT

Financial Impact Statement **Date:** April 24, 2009

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

Proposed Sale of the Upper Fort Garry Site - Friends of Upper Fort Garry

	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	$ 178,000	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ 178,000	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	178,000	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Direct costs represent out-of-pocket expenses inncured by Heritage Landing Inc. pursuant to its previous sale/purchase that are to be reimbursed upon approval of the sale of the subject property to the Friends of Upper Fort Garry. This expense will be charged to the Land Operating Reserve Fund.

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

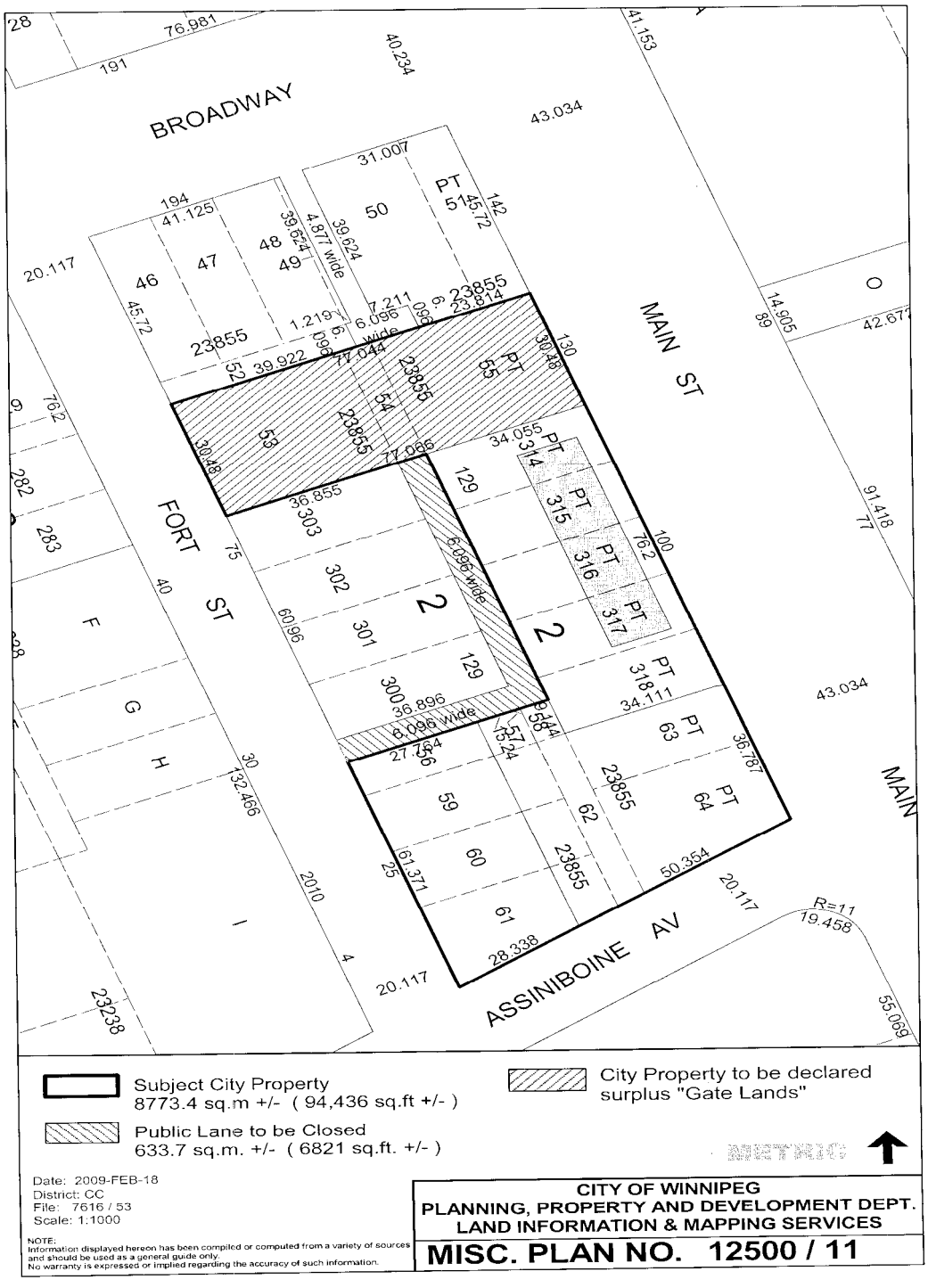
CONSULTATION

In preparing this Report there was consultation with:

Legal Services

SUBMITTED BY

Department: Planning, Property and Development
Division: Real Estate
Prepared by: John S. Zabudney
Date: April 24, 2009
File No.: 7616/53 (V)


BROADWAY
MAIN ST
FORT ST
ASSINIBOINE AV
MAIN
Subject City Property
8773.4 sq.m +/- (94,436 sq.ft +/-)
Public Lane to be Closed
633.7 sq.m. +/- (6821 sq.ft. +/-)
City Property to be declared surplus "Gate Lands"
METRIC
Date: 2009-FEB-18
District: CC
File: 7616 / 53
Scale: 1:1000
NOTE:
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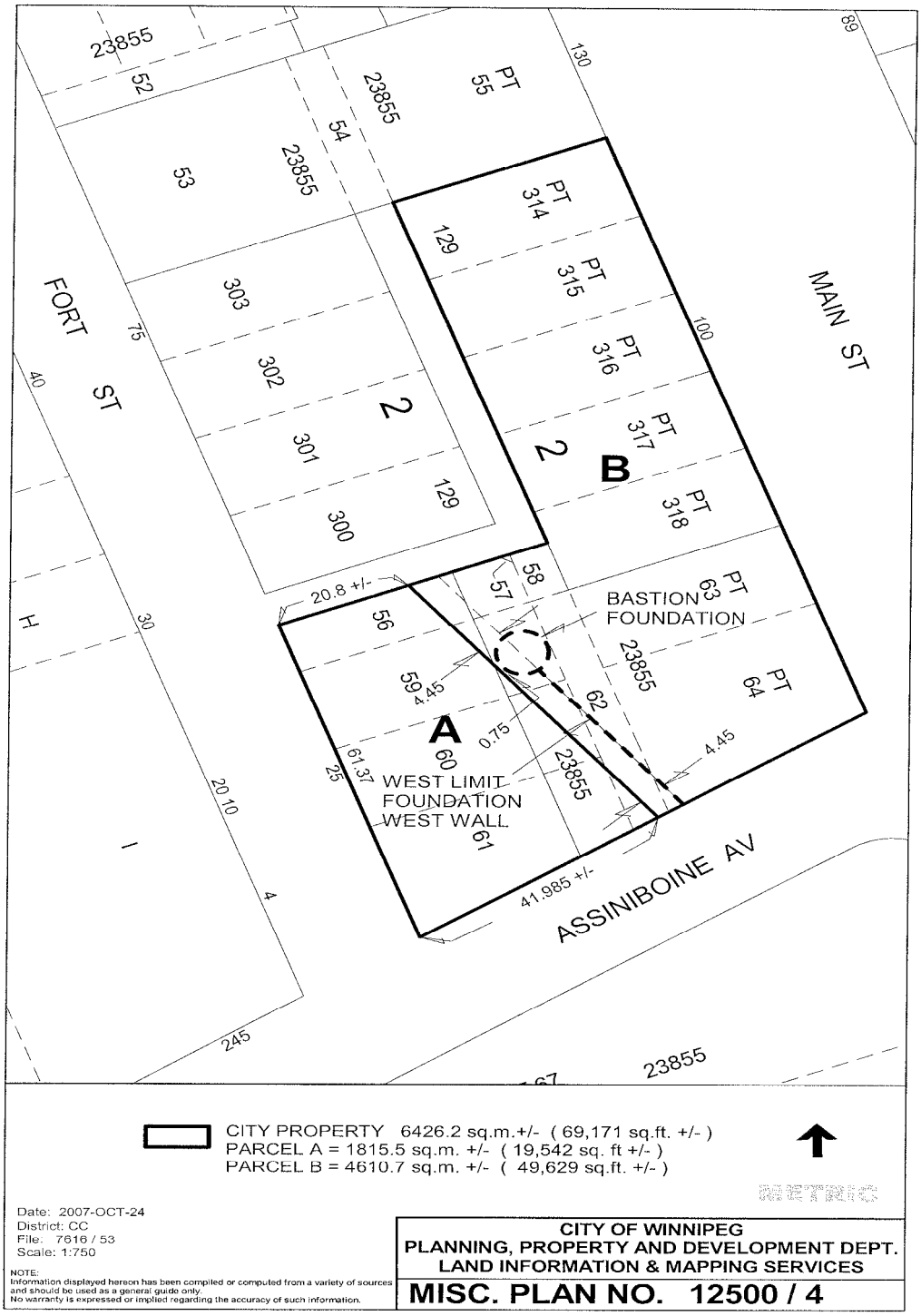
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 12500 / 11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FORT ST
MAIN ST
ASSINIBOINE AV
BASTION FOUNDATION
WEST LIMIT FOUNDATION WEST WALL
20.8 +/-
41.985 +/-
4.45
0.75
61.37
CITY PROPERTY 6426.2 sq.m.+/- (69,171 sq.ft. +/-)
PARCEL A = 1815.5 sq.m. +/- (19,542 sq. ft +/-)
PARCEL B = 4610.7 sq.m. +/- (49,629 sq.ft. +/-)
Date: 2007-OCT-24
District: CC
File: 7616 / 53
Scale: 1:750
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CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 12500 / 4

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FRIENDS OF UPPER FORT GARRY



The Birthplace of Winnipeg & Manitoba

Sent by E-mail and Mail

April 21, 2009

Mr. Ray Klassen
Manager of Real Estate
Planning, Property and Development Department
Real Estate Division
65 Garry Street 2nd Floor
Winnipeg MB R3C 4K4

Dear Ray:

RE: Permits - 100 Main Street Property
Friends of Upper Fort Garry Inc. ("Friends") and The City of Winnipeg ("City")

The purpose of this letter is to obtain **as soon as possible** your permission in writing for Friends to apply for the required permits to accomplish the following:

1. As of Monday, June 1, 2009 to commence:

   (a) the demolition of the parking areas excluding the parking stalls and access road required to serve the tenancies at 100 Main Street. Demolition will include removal of all electrical parking plug rails and site lighting including any underground electrical conduits, and removal of asphalt parking surface and associated granular base;

   (b) the undertaking of environmental impact studies as required for future development;

#509 – 63 Albert Street, Winnipeg, Manitoba, R3B 1G4
Telephone (204) 942-2663. Fax (204) 942-2094. email: info@heritagewinnipeg.com

(c) the undertaking of archeological investigations.

2. As of Monday, August 3, 2009 to commence:

(a) the removal of the remaining parking and road access;

(b) the demolition of the building at 100 Main Street.

In order to avoid any delay or confusion, would you advise by return what permit applications are required for each of the above items, to whom the permit applications are to be made, and how you will be able to assist us in obtaining each of the required permits.

Thank you very much for your help in this matter.

Yours truly,

FRIENDS OF UPPER FORT GARRY INC.

Per:

(Original signed and mailed)

Jerry L. Gray

Chair, Steering Committee