Minute No. 79
Report – Executive Policy Committee – December 2, 2009

Item No. 3 **Expropriation Settlement – 344 Gertrude Avenue (Midtown Carwash) – Rapid Transit Corridor Project Phase 1 (Fort Rouge-East Fort Garry Ward) eFile GL-4**

COUNCIL DECISION:

Council concurred in the recommendation of the Executive Policy Committee and adopted the following:

1. That the expropriation settlement and acquisition of the remaining property be approved at the all-inclusive negotiated settlement price of $3,360,000.00, plus ancillary costs.

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

Report – Executive Policy Committee – December 2, 2009

DECISION MAKING HISTORY:

Moved by His Worship Mayor Katz,

That the recommendation of the Executive Policy Committee be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On December 2, 2009, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

On November 18, 2009, the Executive Policy Committee laid over the matter to its meeting on December 2, 2009.

Further, on November 18, 2009, the Executive Policy Committee directed the Winnipeg Public Service to negotiate an extension of time on the proposed expropriation settlement to February 28, 2010, and report back with further (financial) information on the non competition clauses (in particular, the ability of the expropriated owners to bid), and on reasonable access to the facility for marketing for potential buyers, as well as (full) financial information on the existing business for the years 2007 and 2008.

ADMINISTRATIVE REPORT

ISSUE: **To seek Council Approval for the Proposed Expropriation Settlement of 344 Gertrude Avenue (Midtown Carwash) as part of the Rapid Transit Corridor Project – Phase 1.**

Critical Path: **Executive Policy Committee**
Council

AUTHORIZATION

Author	Department Head	CFO	CAO
R. Klassen	D. Joshi	N/A	G. Laubenstein

RECOMMENDATIONS

1. That the proposed expropriation settlement and acquisition of the remaining property be approved at the all-inclusive negotiated settlement price of $3,360,000.00, plus ancillary costs.

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

IMPLICATIONS OF THE RECOMMENDATIONS

- There are no regulatory, environmental or human resource implications associated with this report.

- By settling the expropriation at this time and at the proposed negotiated settlement price of $3.36 million, the City's potential exposure to compensation and additional ancillary costs in excess of the amount proposed is eliminated.

- Adequate funding exists for the proposed negotiated settlement.

HISTORY

On March 25, 2009, Council confirmed Expropriation By-law No. 180/2008, to acquire land for the purpose of construction of Stage 1 of the Southwest Rapid Transit Corridor.

Upon being advised of the expropriation, the owners (BGR Enterprises Ltd.) of 344 Gertrude Avenue (the Property) expressed concerns that the expropriation of the required land would have a significant negative impact on its operations (carwash, gas kiosk and rental car business). The owner indicated that the partial taking would render the Property no longer fiscally and/or operationally viable, resulting in the closure of its business.

The new property line would be within two feet from the car rental entrance door which greatly reduces the area used for parking rental vehicles. The partial taking has the following effects:

- The new property line is now in close proximity to the gas kiosk and will likely impact the gas storage tanks' electronic monitoring devices to some degree.
- The staging area for vehicles waiting to enter the carwash will be reduced thus forcing vehicles to stage on the Scott and Donald Streets creating traffic delays and increased potential for accidents to occur.

The partial taking runs angular to the exit door of the carwash and brings the new pedestrian sidewalk to within +/- 6 feet from south limit of the door to +/- 19 feet of north limit of the door. Smaller compact cars are able to make the turn within the reduced area, but larger vehicles such as full size cars, trucks and SUV's exiting the building will not be able to maneuver the turn without driving over the new pedestrian sidewalk resulting in pedestrian safety concerns.

The Department has explored what potential options are available to minimize the impact of the taking on the current operations at this location, i.e. building reconfiguration, building realignment on the remaining property and business relocation. After careful consideration the Department has concluded that these options are not cost effective.

In consideration of the aforementioned, the Department has concluded that BGR Enterprises Ltd's claim that the taking renders its property no longer operationally and fiscally viable is valid. In order to limit the City's exposure to a potentially lengthy and costly expropriation hearing, the Department is of the opinion that negotiating the total acquisition of the Property with an early possession date would be in the best interest of the City at this time.

Particulars of 344 Gertrude Avenue are:

Location:	344 Gertrude Avenue
Legal Description:	Lots 12 – 13 Blk 4 Plan 208, Lots 5 – 6, Plan 27498
Certificate of Title:	1234649
Registered Owner:	BGR Enterprises Ltd.
Realty Roll No.:	12021171100
2010 Assessment:	$843,000
Zoning:	"C2" – Commercial

Site Size:	2,686 +/- m^2 (28,910 sq, ft.)
Description:	Improved with a 5,563 sq. ft. masonry wall building currently used as a carwash, gas kiosk, car rental.

The solicitors for BGR Enterprises Ltd. presented the Department with a proposed all-inclusive settlement price representing the total acquisition of the property, all equipment, trade fixtures, allowances for business interruptions, loss of income, etc, of $4.444 million dollars, excluding legal and other professional fees, with an of October 31, 2009, possession date.

Based on independent appraisals, business valuation documents and financial records provided from BGR Enterprises Ltd. and in accordance with compensable items under the Expropriation Act, the Department has negotiated an all inclusive settlement price of $3.36 million, excluding legal and other professional fees, which are estimated at less than $175,000 at this time. The settlement also provides for a December 15, 2009 possession date, and the City's right to market the Property for sale prior to the City taking possession of the property. (See attached Schedule "A" - Letter dated Oct 15, 2009 conditions of marketing Property).

The Department notes that a portion of the proposed settlement price could be alleviated by the resale of the Property, equipment and trade fixtures. The Department also feels that sales proceeds can be maximized if the Property is marketed as an operational business as opposed to a vacant building and land. Should a prospective purchaser wish to continue to operate the property as a full service carwash, the cost for the re-configuration, realignment, alteration, renovations, etc, would be at the sole responsibility of any prospective purchaser and not the City.

The sale proceeds recognized by the resale of the Property would be credited back to the Southwest Rapid Transit Corridor Project – Phase 1 land acquisition account, resulting in a possible net settlement much lower than the $3.36 million proposed settlement price.

The Department is of the opinion that it is in the City's best interest to settle this expropriation and acquisition at the proposed settlement price of $3.36 million with the December 15, 2009 proposed possession date.

FINANCIAL IMPACT

Financial Impact Statement **Date:** November 2, 2009

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

Proposed Expropriation Settlement of 344 Gertrude Avenue (Midtown Carwash) as part of the Rapid Transit Corridor Project – Phase 1

	2009	2010	2011	2012	2013
Capital					
Capital Expenditures Required	$ 3,460,800	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	3,460,800	-	-	-	-
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	$ -	$ 329,468	$ 329,468	$ 329,468	$ 329,468
Less: Incremental Revenue/Recovery	100,800	-	-	-	-
Net Cost/(Benefit)	$ (100,800)	$ 329,468	$ 329,468	$ 329,468	$ 329,468
Less: Existing Budget Amounts	(100,800)	329,468	329,468	329,468	329,468
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Capital costs in 2009 consist of the $3.36M purchase amount + $100,800 in short-term financing and corporate admin charges; the latter amount being offset by a recovery in the Corporate Finance Department's current budget. Direct costs from 2010 onward represent debt & finance charges on the 2009 capital expenditure and will be charged to the current budget of the Transit Department. Note that for the purpose of this analysis, it is assumed that the full purchase price is funded from the Equity in Capital Assets Fund.

"Original signed by"

Mike McGinn, CA
Manager of Finance

CONSULTATION

In preparing this Report there was consultation with:

Transit Department

SUBMITTED BY

Department	Planning, Property and Development Department
Division	Real Estate Division
Prepared by	Stewart Anderson
Date:	November 3, 2009
File No.	8436

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Schedule "A"

Winnipeg

Planning, Property & Development Department • Service de l'urbanisme, des biens et de l'aménagement

Real Estate Division • Division des biens immobiliers

In reply please refer to / Référence à rappeler :

Stewart Anderson, CRA, SR/WA
(204) 986-5030
Fax / Téléc. : (204) 944-8476

October 15, 2009

D'Arcy & Deacon
12th Floor 330 St. Mary Avenue
Winnipeg, Manitoba R3C 4E1

Attention: Paul Barsy

RE: AGREEMENT TO MARKET 344 GERTRUDE AVENUE FOR SALE– MIDTOWN CAR WASH
FILE NO. 8436 (PLEASE QUOTE WHEN REPLYING)

Further to our Letter of Intent of today's date, B.G.R. Enterprises Ltd. agrees to allow the Planning, Property and Development Department (the Department) to market the land, equipment and trade fixtures comprising 344 Gertrude Avenue (the Property) for sale immediately, with the business in operation, at this time and on the following terms and conditions:

a. The marketing of the Property shall begin immediately.

b. During the listing period, the Department will not place any "for sale" signage on or near the Property and will not advertise or post any other form of public notice advising of the sale of the property, unless B.G.R. Enterprises Ltd. provides prior written consent.

c. The Department will not conduct showings, viewings or inspections of the Property during normal operating hours of the business. The Department will make all reasonable efforts to coordinate the timing of showings, viewings and inspections with B.G.R. Enterprises Ltd.

d. The success or lack thereof of marketing the Property for sale shall not negatively affect the Department's present recommendation to Council to acquire the land, equipment, and trade fixtures comprising 344 Gertrude Avenue at an all inclusive purchase price of THREE MILLION, THREE HUNDRED AND SIXTY THOUSAND ($3,360,000.00) DOLLARS, excluding legal and professional fees.

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Should B.G.R. Enterprises Ltd. remain the owner of the Property after December 15, 2009, it has the right to have the listing of 344 Gertrude Avenue terminated upon written notice to the Department.

Should the aforementioned terms and conditions be acceptable, please provide concurrence by arranging to the appropriate officers of B.G.R. Enterprises Ltd sign in the space below and return of fully executed copy of this letter to this office.

Upon receipt of your favourable response the Department will be in contact with you to make further arrangements in this regard.

Thank you for your continued cooperation in this regard.

Yours truly,

Stewart Anderson

Stewart Anderson

We, James M. Penner and Laurie H. Penner, being duly authorized to act on behalf of B.G.R. Enterprises Ltd., hereby consents to allow the City of Winnipeg to actively market the Property in accordance with the proposed terms and conditions outlined herein.

Oct 15/09
Date

James M. Penner - President

Oct 15/09
Date

Laurie H. Penner - Secretary

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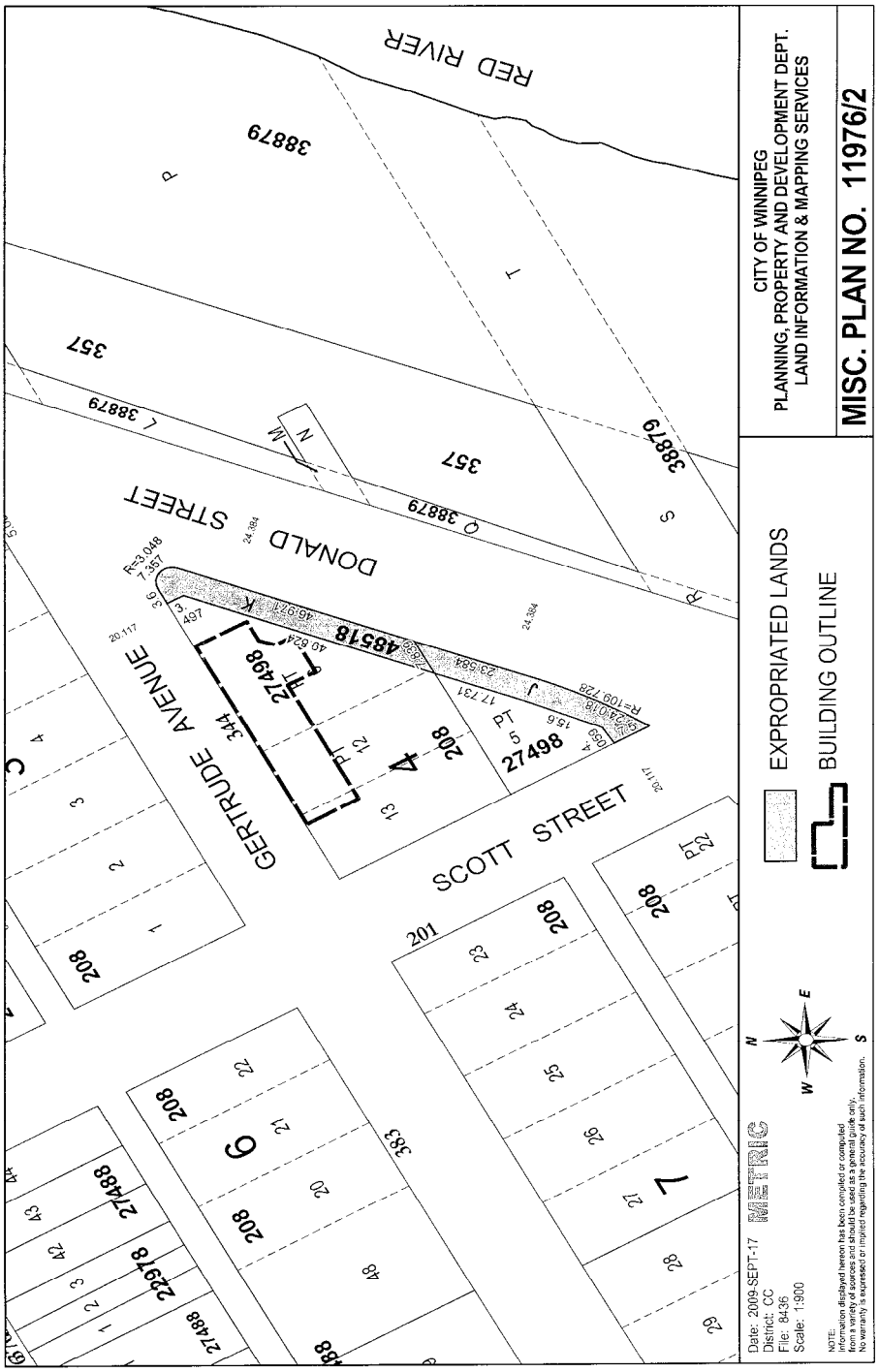
RED RIVER
DONALD STREET
GERTRUDE AVENUE
SCOTT STREET
EXPROPRIATED LANDS
BUILDING OUTLINE
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 11976/2
Date: 2009-SEPT-17
District: CC
File: 8436
Scale: 1:900
METRIC