Agenda - Council – March 23, 2011

Report - Standing Policy Committee on Property and Development – March 10, 2011

Item No. 9 Closing – Part of Public Road Plan 9280 WLTO, West of Kenaston Boulevard
(Charleswood - Tuxedo Ward)
File DAC 8/2010

STANDING COMMITTEE RECOMMENDATION:

On March 16, 2011, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and the Assiniboia Community Committee, as amended, and submits the following to Council:

1. That the proposed road closing as shown on Misc. Plan No. 13884/2 be approved and that the land be declared surplus to the City's needs.

2. That the Director of Legal Services and City Solicitor be instructed to prepare the necessary by-law for submission to Council to effect the road closing in accordance with Misc. Plan No. 13884/2, subject to the approval of the terms and conditions of the conveyance of the land by the Director of the Planning, Property and Development Department.

3. That Terracon Development Ltd. will provide Her Majesty the Queen in Right of the Province of Manitoba under Certificate of Title No. 1837939 an easement agreement over a portion of its property for ingress and egress purposes, should this be required.

4. That Terracon Development Ltd. provide the city with a 10 metre wide easement within the subject road closing (final location to be approved by the Winnipeg Public Service) for the future construction and maintenance of the westerly extension of a regional wastewater interceptor sewer.

5. 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 Property and Development – March 10, 2011

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On March 16, 2011, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and the Assiniboia Community Committee, as amended, and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On March 10, 2011, the Standing Policy Committee on Property and Development concurred in the recommendation of the Assiniboia Community Committee, with the following amendment, namely:

- Amend Recommendation 4. by deleting “20 metre” and replacing it with “10 metre”,

and forwarded the matter to the Executive Policy Committee and Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On February 8, 2011, the Assiniboia Community Committee concurred in the recommendation of the Winnipeg Public Service, as amended by the following motion:

WHEREAS Terracon Development Ltd. Entered into a Purchase/Sale Agreement with the Winnipeg Public Service allowing the City to enter and construct on a certain portion of its lands located at Kenaston Boulevard and Sterling Lyon Parkway (see Misc. Plan No. 13,653/3) for the widening of Kenaston Boulevard to meet the traffic needs of the IKEA Development in approximately May of 2010;

AND WHEREAS as part of the transaction, it was agreed that if possible the subject road closing would provide for a proposed land exchange to facilitate the needs of both Terracon Development Ltd. and the City:

THEREFORE BE IT RESOLVED that the recommendation of the Winnipeg Public Service be concurred in with the following amendment:

- Add the following Recommendations 3 and 4, namely:

Report - Standing Policy Committee on Property and Development – March 10, 2011

DECISION MAKING HISTORY: (continued)

COMMUNITY COMMITTEE RECOMMENDATION: (continued)

3. That Terracon Development Ltd. will provide Her Majesty the Queen in Right of the Province of Manitoba under Certificate of Title No. 1837939 an easement agreement over a portion of its property for ingress and egress purposes, should this be required.

4. That Terracon Development Ltd. provide the city with a 20 metre wide easement within the subject road closing (final location to be approved by the Winnipeg Public Service) for the future construction and maintenance of the westerly extension of a regional wastewater interceptor sewer and renumber the remaining Recommendation accordingly.

and forwarded the matter to the Standing Policy Committee on Property and Development.

PUBLIC HEARING SUMMARY

File:	DAC 8/2010
Before:	Assiniboia Community Committee Councillor Fielding, Chairperson Councillor Havixbeck Councillor Nordman
Public Hearing:	February 8, 2011 West Committee Room Council Building, 510 Main Street
Applicant:	Terracon Development Ltd. (Michael Falk)
Premises Affected:	West of Kenaston Boulevard
Exhibits Filed:	1. Report from the Real Property Officer dated January 24, 2011 2. Inspection Report 3. Supporting Documentation submitted by Michael Falk at the Public Hearing

REPRESENTATIONS:

In Support:

Michael Falk

In Opposition:

Nil

For the City:

Mr. B. Buyachok, Real Property Officer, Planning, Property and Development Department
Mr. N. Yauk, Planner, Planning, Property and Development Department

Exhibit "1" referred to in File DAC 8/2010

ADMINISTRATIVE REPORT

Title: **DAC 8/2010: TO SEEK COUNCIL APPROVAL FOR THE PROPOSED CLOSING OF PART OF PUBLIC ROAD PLAN 9280 WLTO, WEST OF KENASTON BOULEVARD**

Critical Path: **ASSINIBOIA COMMUNITY COMMITTEE – STANDING POLICY COMMITTEE ON PROPERTY AND DEVELOPMENT - EXECUTIVE POLICY COMMITTEE – COUNCIL**

AUTHORIZATION

Author	Department Head	CFO	CAO
B. Buyachok	N/A	N/A	N/A

RECOMMENDATIONS

1. That the proposed road closing as shown on Misc. Plan No. 13884/2 be approved and that the land be declared surplus to the City's needs.

2. That the Director of Legal Services and City Solicitor be instructed to prepare the necessary by-law for submission to Council to effect the road closing in accordance with Misc. Plan No. 13884/2, subject to the approval of the terms and conditions of the conveyance of the land by the Director of the Planning, Property and Development Department.

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

REASON FOR THE REPORT

All street and lane closings require the consideration of the Community Committee.

IMPLICATIONS OF THE RECOMMENDATIONS

There are no policy, regulatory, human resource or general implications associated with the recommendations.

The Naturalist Services Branch of the Public Works Department has identified the potential loss of trees and wetland associated with the recommendation for the conveyance of the land. Their comments appear in Appendix "A" of this report.

All costs associated with the road closing are the responsibility of the applicant. There are no financial implications for the City of Winnipeg.

HISTORY

The Planning, Property and Development Department has received a request from Mr. Michael Falk of Terracon Development Ltd. to close the public road so identified on the attached copy of Misc. Plan No. 13884/2. Once closed, Terracon will be purchasing Parcel 1 as shown on the sketch. The City of Winnipeg's Real Estate Division will be assuming jurisdiction over Parcel 2, and will eventually offer it for sale to the adjoining owners.

Terracon Development Ltd. is the beneficial owner of Tuxedo Business Park Inc., a 75 acre master planned business park located along the west side of Kenaston Boulevard immediately adjacent to part of the subject closing as outlined and identified as "Applicant's Property" on the sketch. Parcel 1 of the closing is to be incorporated into the master plan of the Park, most likely to be used as compound land or additional parking for the tenants of future buildings within the development. These buildings are identified as "Building 13" and "Building 14" on the attached Tuxedo Business Park Proposed Layout Sketch provided by Terracon.

The subject road was opened by Plan No. 9280 and registered in the Winnipeg Land Titles Office in August, 1966. The road exists in a legal context only, being undeveloped, consisting of dense bush and trees, and serving no present public transportation purpose.

The City of Winnipeg currently maintains a snow dump site immediately east of Parcel 1 of the proposed closing with access via Kenaston Boulevard. The subject closing will have no effect upon ingress or egress to the snow dump area.

CONSULTATION

In preparing this Report there was consultation with:

Internal Consultation:

There was consultation with the affected Civic departments.

External Consultation:

Manitoba Hydro, Centra Gas and MTS Allstream
Shaw Cablesystems did not respond to the request for comments on this proposal.

SUBMITTED BY

Department: Planning, Property and Development
Division: Development and Inspections
Prepared by: Bohdan Buyachok, Real Property Officer
Date: January 24, 2011
File No.

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APPENDIX "A"

Administrative Approval

The proposal has been considered by all affected City departments and public utilities. There are no administrative objections to the road closing.

Administrative Comments

The Planning and Land Use Division of the Planning, Property and Development Department has provided the following comments:

> There is no confirmed need for this right of way. We are aware of a possible future development at FortWhyte Alive and the President and CEO of that organization has indicated a possible interest in this property. Recognizing their opportunity to participate in the public hearing process, the Planning and Land Use Division has no reason to object.

Winnipeg Transit has provided the following comments:

> We have no objections to the proposed closing as it pertains to the existing adjacent developments. However, for a proposed development on the northern portion of the adjacent Fort Whyte lands, a means of access from Kenaston to the east side of the site will be necessary if transit service is to be provided. Winnipeg Transit's approval of this application is subject to the applicant providing this means of access through its property if and when required.

The Geomatics Branch of the Planning, Property and Development Department has provided the following comments:

> The property situated north of Parcel 2 proposed to be closed is currently owned by Her Majesty the Queen in Right of the Province of Manitoba under Certificate of Title No. 1837939. Although there is currently no physical access to this site, the proposed closing will in effect remove legal access to this property. Should the subject closing be approved, Her Majesty the Queen in Right of the Province of Manitoba will require an easement agreement for ingress and egress with either Terracon Development Ltd. or one of the adjoining properties.

The Zoning and Permits Branch of the Planning, Property and Development Department has provided the following comments:

> With respect to HMQ Manitoba property situated north of Parcel 2 proposed to be closed, the lot is currently an unbuildable lot as it abuts a public street that is unimproved and is not intended to be improved as a public right of way. Consequently, should the subject closing be approved, a variance for a parcel having no legal access would not be required under the Zoning By-law.

The Naturalist Services Branch of the Public Works Department has provided the following comments for consideration with respect to the sale of the subject land, subsequent to its closing, if approved by Council:

> We have looked at the site and have concerns about the potential loss of trees and wetland. At a minimum there should be compensation for the loss of this habitat. The ecological components of this site have value and it needs to be determined whether the need for development of the site outweighs that value. If the site is to be developed, the compensation would require the restoration of habitat nearby to account for an equal area as this loss.
>
> A monetary value could be attached to the site based on the forestry tree removal guidelines or based on our estimate to replant a compensating amount of habitat. Or another alternative would be for the developer of this property to landscape a compensating portion of their property to an agreeable naturalization spec.
>
> Our preference is that the restoration of habitat to be used as compensation would be done as close as possible to where removal occurs. It therefore presents a further option that if they do not wish to include the compensation in their landscaping the opportunity also exists for the support of a compensation project on Fort Whyte property if the project were agreeable to all parties.

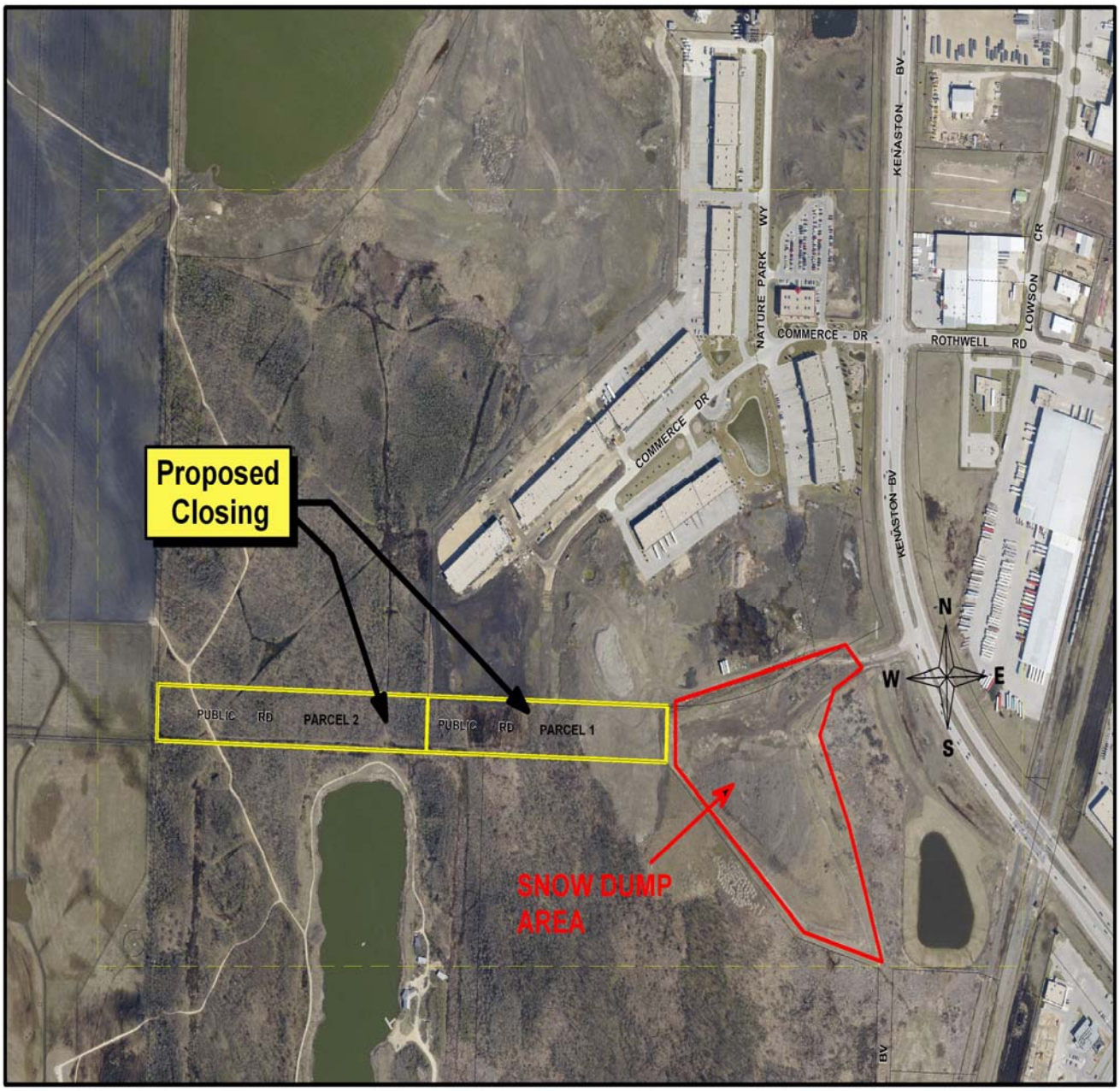
Easements

The Engineering Division of the Water and Waste Department has identified a 20m wide easement requirement, centered within the road closing, for the future westerly extension from Kenaston Boulevard of the regional wastewater interceptor sewer. No permanent structures will be allowed within the easement area.

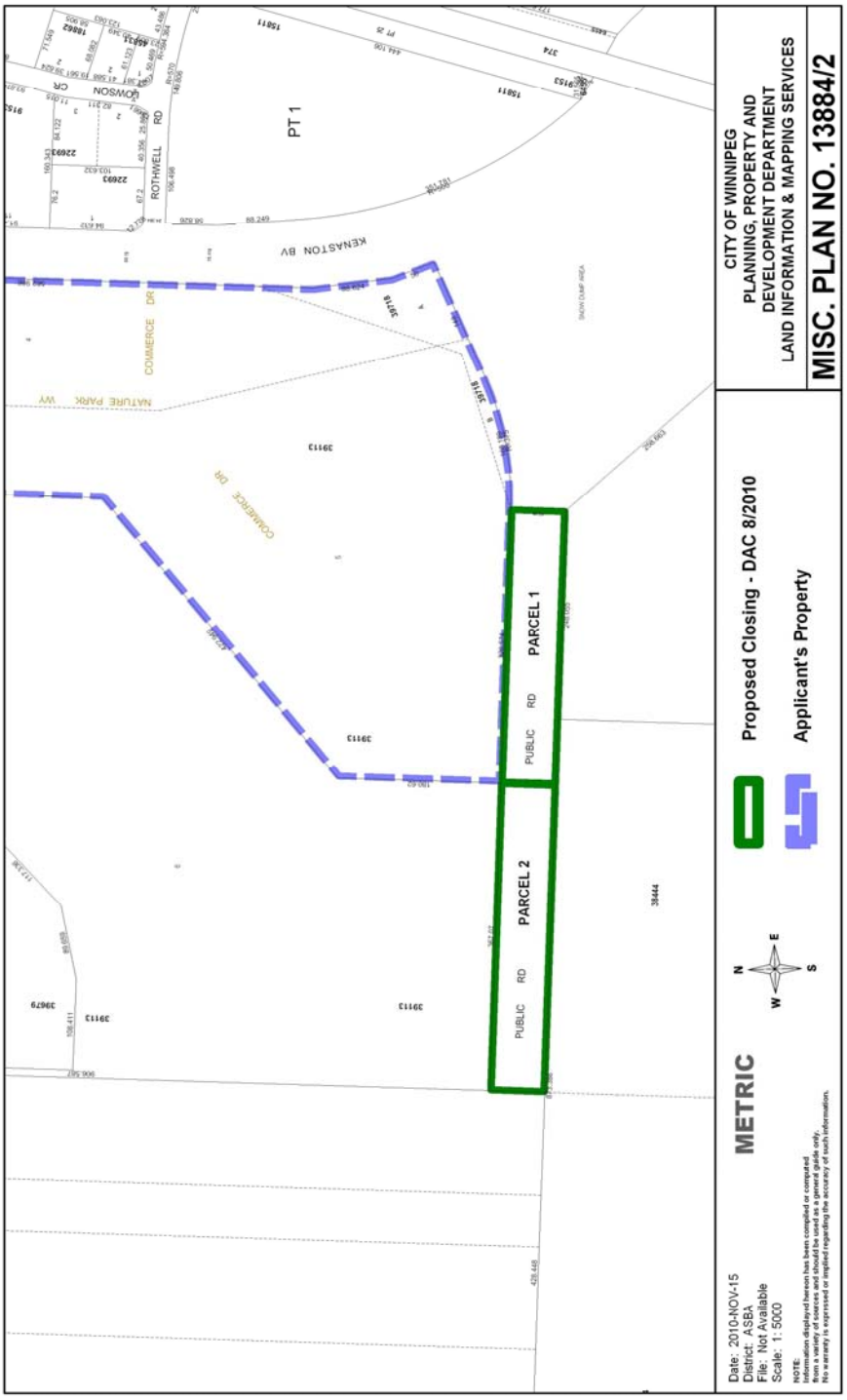
Transfer of Jurisdiction Over Public Rights-of-Way

The road must be legally closed before it may be sold. Title to all public rights of way in Manitoba is vested in the name of the Province. The registration in the Winnipeg Land Titles Office of a closing by-law removes the public right of way status from the land and vests the ownership of the property in the City's name. The City is not entitled to dispose of the land until this has been done.

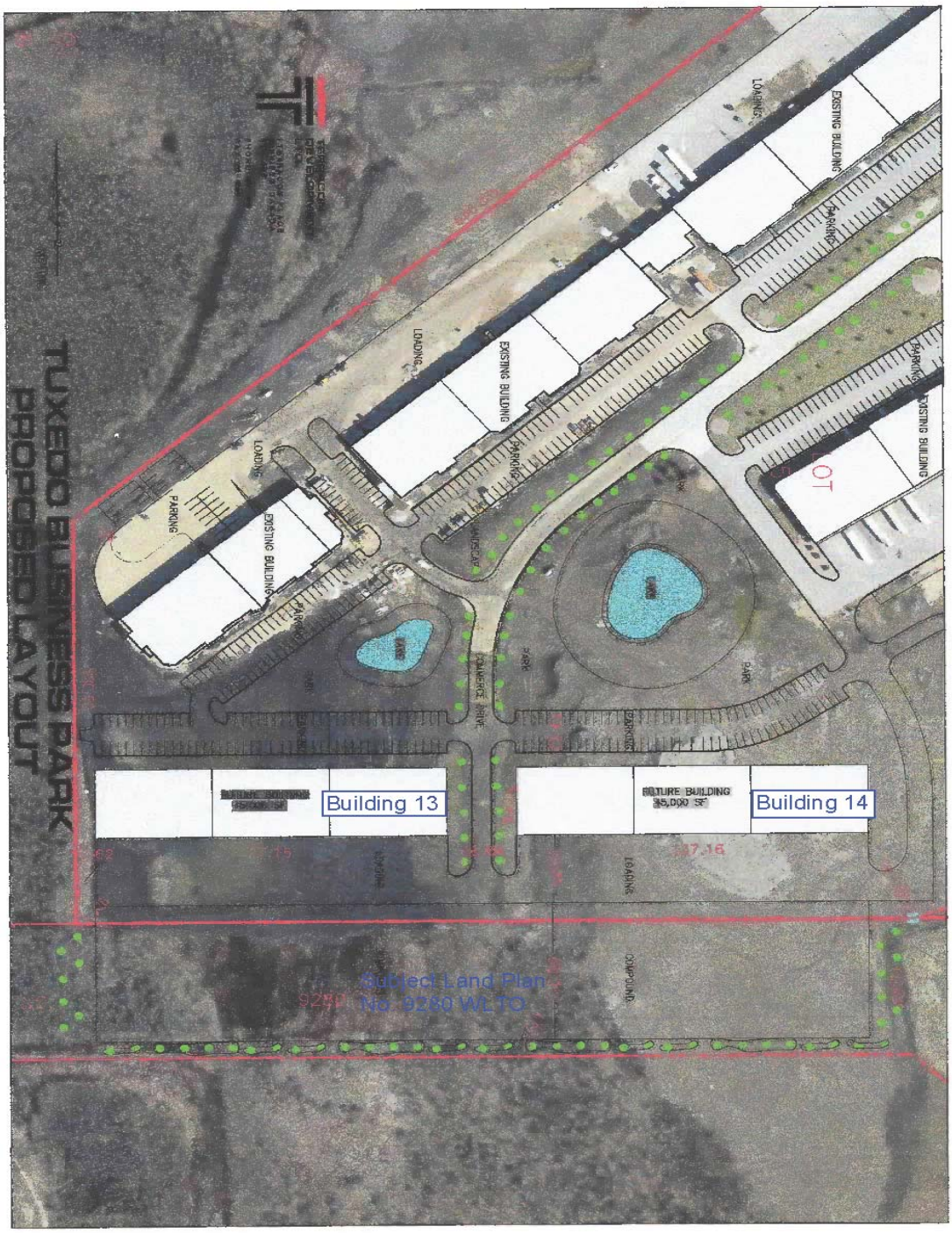
Aerial View of Subject Closing



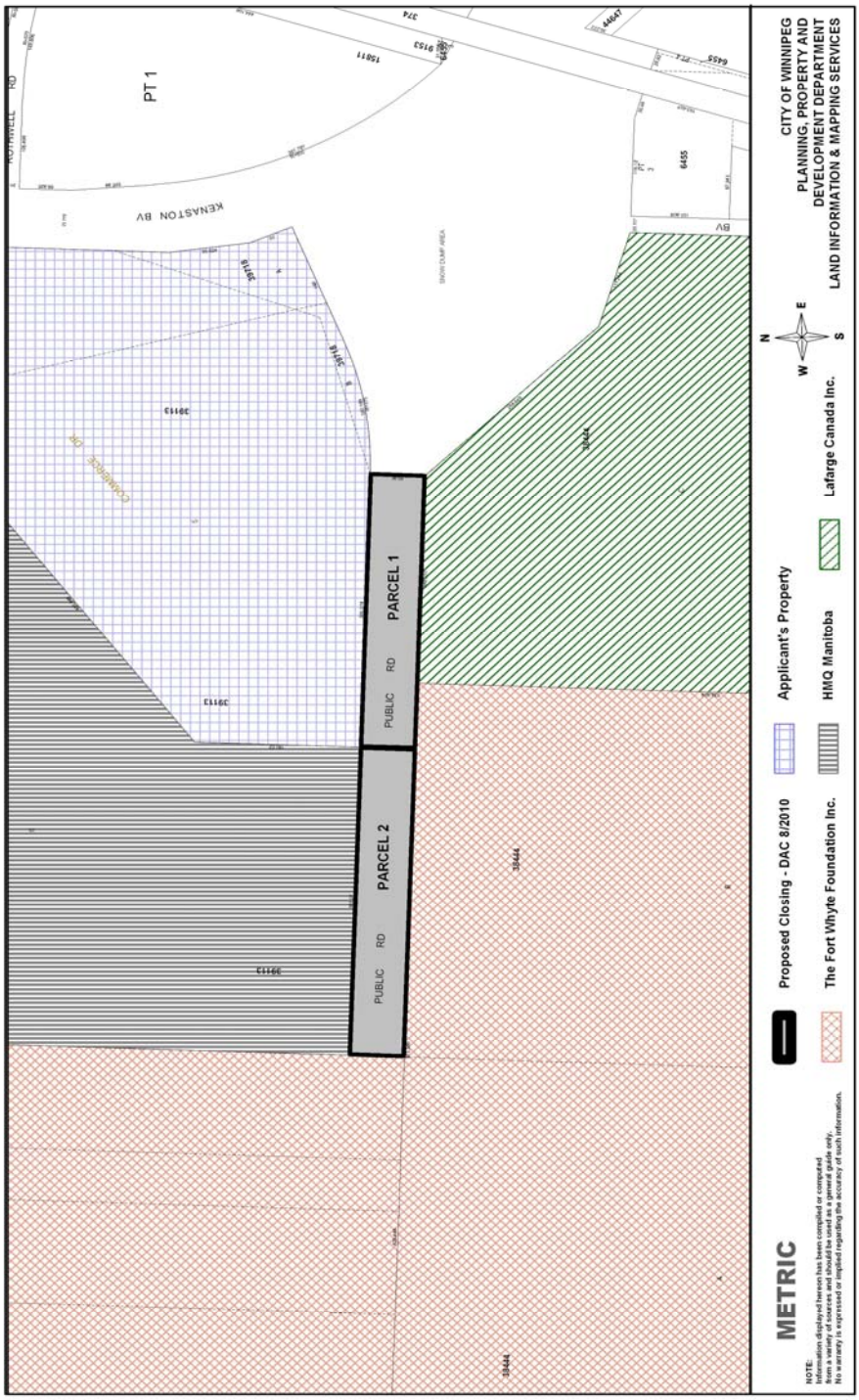
Miscellaneous Plan



Tuxedo Business Park Proposed Layout



Ownership Plot


PT 1
KENASTON BV
CHAMBORD CR
PARCEL 1
PUBLIC RD
PARCEL 2
PUBLIC RD
3913
3913
3913