Minute No. 644
Report - Standing Policy Committee on Property and Development - September 4, 2003

Item No. 24 Proposed Closing and Sale of Sherbrook Street between Higgins and Henry Avenues
File DAC 16/2003

COUNCIL DECISION:

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

1. That the proposed sale of Sherbrook Street shown as "proposed closing" on Misc. Plan No. 11970 to Arctic Glacier Inc. be approved at a price of $10,890.00 and in accordance with the "Proposed Terms and Conditions" in the attached administrative report dated August 15, 2003, and upon such additional terms and conditions that the Director of Planning, Property and Development and the City Solicitor/Manager of Legal Services consider necessary to protect the interest of the City and to achieve the intent of the Standing Policy Committee on Property and Development.

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 Property and Development - September 4, 2003

DECISION MAKING HISTORY:

Moved by Councillor Vandal,

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

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 17, 2003, 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 September 4, 2003, the Standing Policy Committee on Property and Development concurred in the administrative recommendation and submitted the matter to Executive Policy Committee and Council.

Re: Proposed Closing and Sale of Sherbrook Street between Higgins and Henry Avenues – DAC 16/03
Lord Selkirk-West Kildonan
Point Douglas Community

For submission to: **The Standing Policy Committee on Property and Development**

Original report signed by: **Director of Planning, Property and Development**

Report date: August 15, 2003

Recommendation(s):

1. That the proposed sale of Sherbrook Street shown as "Proposed Closing" on Misc. Plan No. 11970 to Arctic Glacier Inc. be approved at a price of $10,890.00 and in accordance with the "Proposed Terms and Conditions" attached, and upon such additional terms and conditions that the Director of Planning, Property and Development and the City Solicitor/Manager of Legal Services consider necessary to protect the interest of the City and to achieve the intent of the Standing Policy Committee on Property and Development.

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

REPORT SUMMARY

Key Issues:

- Arctic Glacier Inc. has requested the proposed closing and purchase of the public street shown as "Proposed Closing" on the attached Misc. Plan No. 11970 to facilitate its expansion of its adjoining holding.
- Arctic Glacier Inc. will be developing a parking lot on the lands, when closed.
- Arctic Glacier Inc. will pay to the City the sum of $10,890.00, being the full market value of the street to be closed.

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 of Winnipeg
	Involves a multi-year contract

Comment(s):

-

Policy implications:

X	**No**
	Yes

Comment(s):

-

Environmental implications:

X	**No**
	Yes

Comment(s):

- The City's standard terms and conditions of sale include provisions to protect the City's interests in the event that environmental contamination is discovered.

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):

-

REASON FOR THE REPORT:

Negotiations with the applicant have been concluded and, by this Report, the Planning, Property and Development Department is seeking the approval of the Standing Policy Committee on Property and Development to the negotiated terms and conditions of sale.

HISTORY:

An application was received from Arctic Glacier Inc. to close and purchase Sherbrook Street between Higgins and Henry Avenues, which adjoins the company's property at 625 Henry Avenue. The applicant plans to incorporate the street into the expansion of the Applicant's adjoining holding. The City lands will be used for parking purposes only. No structures or buildings, other than fencing and appropriate development of the parking area, will be allowed on the lands due to the existence of a combined sewer in the right-of-way. The proposed closing is as shown on the attached Misc. Plan No. 11970.

Particulars of the street proposed to be closed and sold are summarized as follows:

Location:	North side of Henry Avenue, East of Chambers Street
Size:	20.117. x 50.322m. (66 ft. x 165 ft. = 10,896.6 sq. ft.)
Zoning:	"M2" Industrial
Assessed Value:	Not yet assessed
Price Offered:	$10,890.00 ($1.00/sq. ft.)
Applicant:	Arctic Glacier Inc. (Robert Nagy) 625 Henry Avenue
Adjustments:	From date of enactment of the By-law
Purpose:	Parking

DISCUSSION:

The proposal was circulated to all appropriate City departments and the public utilities. Although there has not yet been a formal reply from the Water and Waste Department, there will be an easement requirement for an existing combined sewer in the street right-of-way. This process has not yet been completed, although any additional requirements for easements will be identified prior to the completion of a formal sale agreement by the Legal Services Division.

The Public Works Department advises that it has no objection to the proposal provided that the applicant enters into a Servicing Agreement to restore the curb and boulevard on Henry Avenue and the boulevard on Higgins Avenue, unless the applicant applies for and obtains private approach approval. Also, if the applicant wishes to retain the approach to Henry Avenue as a private approach, it would be non-conforming under the Private Approaches By-law and would require the approval of the Standing Policy Committee on Public Works.

Arctic Glacier Inc. will pay to the City the sum of $10,890.00, being the full market value of the street to be closed, which will be encumbered by an easement. Due to the time constraints of the applicant's proposed expansion, this matter is being advanced at this time in the interests of good customer service.

IN PREPARING THIS REPORT, THERE WAS CONSULTATION WITH AND CONCURRENCE BY:

There was no consultation with other Departments in the preparation of this report.

THIS REPORT SUBMITTED BY:

Planning, Property and Development Department
Division: Real Estate
Prepared by: Pat Henry
PPD File #: 8441

Document name: o:\reports directive\real estate\sales\(dph)Sherbrook

Financial Impact Statement

Date: August 8, 2003

Project Name:

Proposed Closing of Sherbrook Street between Higgins and Henry Avenues

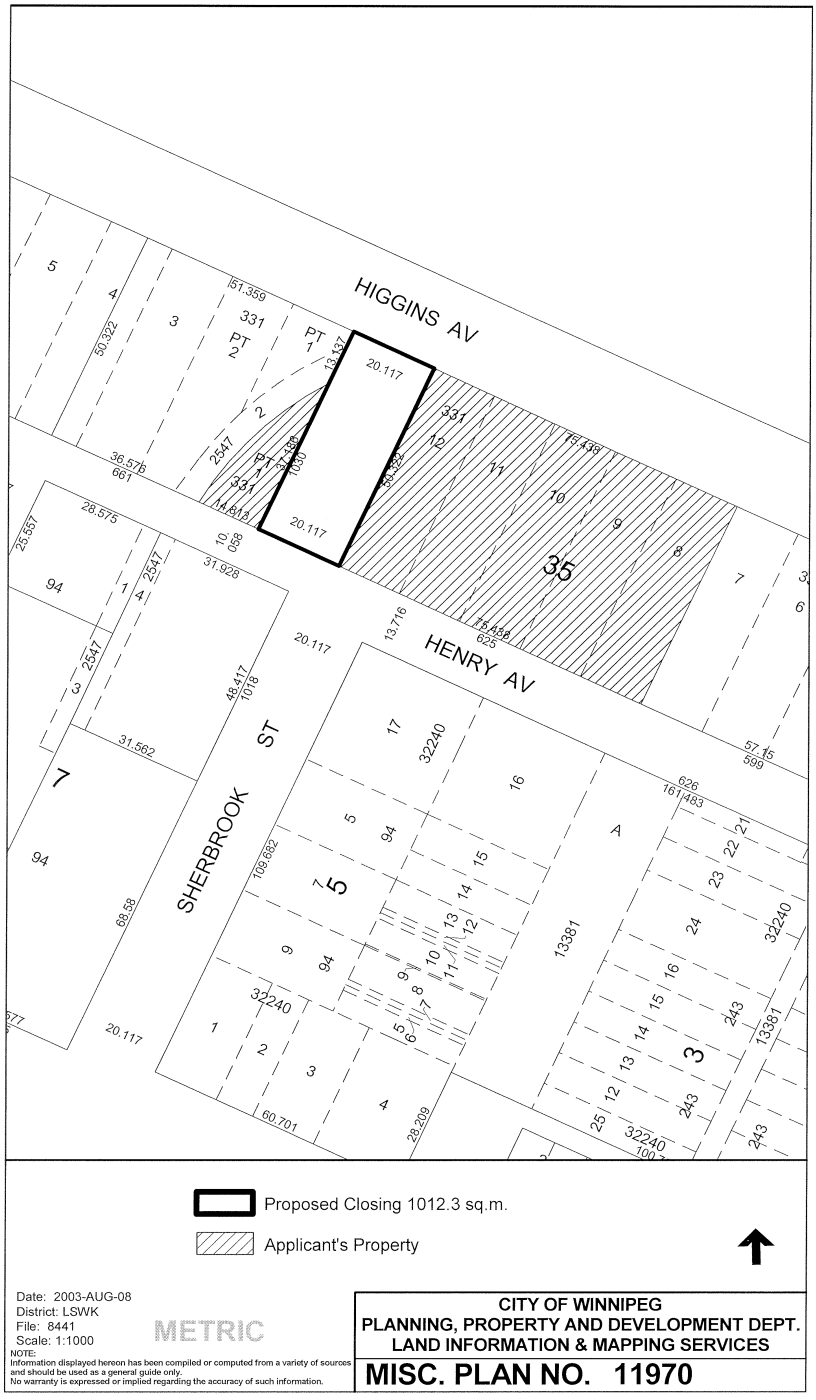
First Year of Program 2004

	2004	2005	2006	2007	2008
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
External	-	-	-	-	-
Grants (Identify)	-	-	-	-	-
Reserves, Equity, Surplus, Other	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	11,269	379	379	379	379
Net Cost/(Benefit)	$ (11,269)	$ (379)	$ (379)	$ (379)	$ (379)
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ (11,269)	$ (379)	$ (379)	$ (379)	$ (379)

Additional Comments:

Although not assessed unto itself, the application of the land assessment for adjoining parcels applied directly to the subject property would suggest tax recovery of $379.00 in the first year (assuming passing of the By-law by the end of December 2003), and $379.00 per year thereafter. The figure of $11,269.00 in 2004 includes both the purchase price and the estimated tax recovery for 2004. There are no other financial implications as all costs connected with the conveyance will be the responsibility of Arctic Glacier Inc.

"Original signed by"
Gord Courage, Manager
Support Services Division


HIGGINS AV
HENRY AV
SHERBROOK ST
Proposed Closing 1012.3 sq.m.
Applicant's Property
Date: 2003-AUG-08
District: LSWK
File: 8441
Scale: 1:1000
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. 11970

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PROPOSED TERMS AND CONDITIONS

1. This transaction is subject to the successful enactment of the necessary street closing By-law by Council.

2. City to transfer or deed to the Purchaser(s) that portion of the public street proposed to be closed, shown as "Proposed Closing" (hereinafter called the lands) on Misc. Plan No. 11970.

3. Purchaser(s) to pay to the City the sum of $10,890.00, being the purchase price of the lands which contain approximately 1,012.3m² (10,896.6 sq. ft.), payable as follows:

   a) $1,633.50, being 15% of the purchase price, to be remitted with a signed copy of the Proposed Terms and Conditions;

   b) the balance of $9,256.50 payable upon request by the City.

4. (1) Purchaser(s) agrees to pay to the City all Goods and Services Tax applicable on the sale of the lands or, if the Purchaser(s) is a registrant under the Goods and Services legislation, the Purchaser(s) shall advise in writing of its registration number. The Goods and Services Tax is to be paid, or the registration number provided, to the City within ten (10) days from date of notice by the City.

   (2) If the Purchaser(s) fails to pay the Goods and Services Tax or fails to provide its registration number as prescribed in sub-clause (1) of the Clause, the Purchaser(s) agrees that all of the Purchaser(s)' rights and interest in respect of the lands shall, at the City's sole discretion, be fully ended without notice or any formality and all monies paid to the City by the Purchaser(s) shall be retained by the City free from every claim.

5. Purchaser(s) to pay to the City upon request its share of the cost and expense which will be incurred by the City in connection with the closing and, without limiting the generality of the foregoing, will pay upon request $250.00, being the By-law costs.

6. Purchaser(s) to prepare or cause to be prepared all necessary plans including the Closing Plan, and the Plan of Right-of-way for the Utilities easements (if required), to assist the By-law to effect the closing for registration at the Winnipeg Land Titles Office, with all costs associated therewith at the Purchaser's expense

7. Purchaser(s) to pay adjustments as of the day of the enactment of the By-law.

8. Purchaser(s) to pay as an adjustment an amount equal to the total of such taxes, rates and charges, including local improvement levies, which would have been levied or charged against the lands being purchased, for the unexpired portion of the current taxation year as though the said lands had been entered on the assessment rolls of the City as privately-owned and subject to taxation.

9. Purchaser(s) to obtain possession of the lands at the Purchaser(s)' own expense.

10. It is agreed that no representation, warranty, collateral agreement or condition affecting this offer or the lands is expressed herein. The City does not warrant the quality, condition or sufficiency of the Sale Land for any use or purpose. The Sale Land is deemed to be taken by the Purchaser(s) in an "as is" condition and at the Purchaser(s)'s own risk and with all faults and imperfections whatsoever. The Purchaser(s) agrees with the City that the application of "Buyer Beware" shall apply to the offer in the strictest meaning.

11. (a) Purchaser(s) to make application to the necessary authorities for the use of the existing approaches on Henry Avenue and Higgins Avenue as private approaches. If the necessary permission is not obtained, necessitating the removal of one or both the said approaches, the Purchaser(s) agrees to pay the cost of removing same and restoration of the boulevards, curbs and/or sidewalks as required by the Public Works Department.

(b) Purchaser(s) acknowledges that the size and location of any and all approaches is subject to the approval of the City. New private approaches and/or modifications to existing approaches will be dealt with once an application for private approach approval has been received by the Public Works Department.

(c) Should the Purchaser(s) wish to retain the street turnout to Henry Avenue as a private approach, please be advised that such an approach would be non-conforming under the Private Approaches By-law and would require the approval of the Standing Policy Committee on Public Works.

12. Purchaser(s) to accept title subject to all or any exceptions, reservations or encumbrances expressed or implied in the City's Title.

13. Purchaser(s) to pay any and all additional costs and charges which may arise by reason of the closing.

14. Upon enactment of the By-law the Purchaser(s) agrees to complete the purchase of the lands and to be bound by the terms and conditions herein outlined, failing which the Purchaser(s) shall forfeit all amounts thus far mentioned in Clauses 3 (a) and 5 in favour of the City.

15. Purchaser(s) to indemnify the City against all claims arising out of the street closing.

16. (1) Purchaser(s) agree that sale of the lands to the Purchaser(s) is subject to any easement which may be required by a public utility, including but not limited to Manitoba Hydro, Manitoba Telephone System, Centra Gas Manitoba Inc. or the City of Winnipeg, for the construction and/or maintenance of facilities in the lands, together with the right to enter upon the lands at any time, with or without equipment, for the said purposes and subject to the owner covenanting not to erect nor cause to be erected upon the easement area any building or structures without the prior written consent of the public utility or The City of Winnipeg requiring such easements; and,

(2) without limiting the generality of the foregoing, the sale of the lands shall be subject to the following easements, namely:

i) in favour of the City for the construction and maintenance of a combined sewer in the lands, and

ii) Purchaser(s) shall not erect nor permit the erection of any building or other structure in, upon, or over the easement area without the consent in writing thereto of the City.

iii) the Purchaser(s) to enter into agreements satisfactory to the said utilities or The City of Winnipeg, and

iv) the Purchaser(s) acknowledges that the City may grant the easements before the Transfer of Land issues.

17. The Purchaser(s) agrees that in the event the Purchaser(s), at its sole cost, conducts or causes to be conducted an Environmental Site Assessment of the lands and it is determined as a result thereof that contamination levels exceed Provincial Standards for the intended use, and provides to the City documentation in this respect, the City, at its sole option, shall be entitled to:

(1) take remedial action to bring the contamination levels within the Provincial Environmental Standards,

or,

(2) cancel the sale and return all monies paid to that date to it by the Purchaser(s) in respect of this offer.

PROVIDED HOWEVER, that in the event the Purchaser(s) fails to advise the City of such non-compliance of Provincial Environmental Standards on or before SIXTY (60) days from the date of the acceptance of the offer by the City, then and in that event, the Purchaser(s) hereby agrees to complete the purchase as herein contemplated and to

indemnify and save harmless the City from and against any and all claims arising from or in any way connected with the existence of contaminants of any kind whatsoever at, in, or upon the said lands.

18. Upon the passing of the By-law, the Purchaser(s) covenants and agrees as follows:

(1) The lands shall be consolidated with the Purchaser(s)' adjoining lands described as (hereinafter called Parcel "B"), and held under Certificates of Title No. .

(2) If Parcel "B" is subject to any existing mortgage(s), lien(s), builder's lien(s) or judgement(s), the lands shall be consolidated with Parcel "B" in series with the discharge of the mortgage(s), lien(s), builder's lien(s), or upon the satisfaction of the judgement(s).

(3) That the lands and "B" are to be considered as Consolidated Lands to constitute a single and indivisible parcel and henceforth, no further subdivision or conveyance or disposition of any part of the Consolidated Lands shall be carried out without making application to the City for approval of subdivision of the Consolidated Lands or any part thereof. Nothing in this sub-section will prohibit the mortgagee(s), lien(s) holder(s), builder's lien(s) holder(s) or judgement(s) holder(s) from proceeding with the involuntary sale of Parcel "B" and, without limiting the generality of the foregoing, no further subdivision application will be required at the time of such involuntary sale.

(4) That the City shall be entitled to register a Caveat against each of the lands and "B" to ensure the performance of the covenants on the part of the Purchaser(s) herein set forth, and the Purchaser(s) hereby grant to the City an interest in the lands and "B" according to the tenor of this offer.

(5) This agreement shall run with the lands and "B" and shall bind the Purchaser(s), his/her/their/its successors and assigns and his/her/their/its successors in title.

(6) To pay all Lands Titles Office registration fees and Lands Transfer Tax in respect thereto.

19. The sale of the lands to the Purchaser(s) shall be subject to the provision of the By-laws of the City of Winnipeg and all amendments thereto. Furthermore, the Purchaser(s) acknowledges and understands that its proposed use and development of the lands (for parking purposes, only) may require applications for re-zoning, variances or conditional uses, amendments to Plan Winnipeg, which applications and resulting land dedication charges (if any) are to be at the sole cost and responsibility of the Purchaser(s).

20. No commission is payable by the City on the sale of the lands.

21. Purchaser(s) agrees that the City may register and maintain a caveat against the lands to ensure the performance of the covenants on the part of the Purchaser herein set forth, and

the Purchaser(s) agrees to grant and does hereby grant to the City an interest in the lands according to the tenor of this Agreement.

22. Upon the passing of the By-law, the Purchaser(s) agrees to make application to the City Assessor (in form set out in Exhibit "A" attached) to have the Purchaser(s)' name added to the Assessment Roll of the City as the Real Owner in respect of the lands.

23. Purchaser(s) to enter into a formal agreement with the City, if deemed necessary, embodying the terms and conditions hereinbefore listed and in a form satisfactory to the City Solicitor.

I/WE, hereby irrevocably agree to purchase the additional lands described herein in accordance with the foregoing terms and conditions.

_____ _____

DATE **PURCHASER**

_____

PURCHASER