Minute No. 173
Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – February 3, 2020

Item No. 5 Zoning Agreement Amendment – 1539 Logan Avenue (Point Douglas Ward) File ZAA 6/2019

COUNCIL DECISION:

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

1. That the Zoning Agreement be amended as follows:

   A. That Clause 4 be amended by deleting the words "no free-standing signs and".

   B. That Clause 2 be amended by deleting the period and adding ", except for a convenience store and gas station" after "6 a.m."

2. That the City enter into, execute and deliver an agreement to amend the Zoning Agreement in accordance with recommendation 1, and such other agreements as determined necessary by the City Solicitor and Director of Legal Services to implement the intent of the foregoing (the "Ancillary Agreements").

3. That authority be delegated to the Director of Planning, Property and Development to negotiate and approve the terms and conditions of the agreement to amend the Zoning Agreement, and the Ancillary Agreements, in accordance with this report and such other terms and conditions deemed necessary by the Director; of Legal Services and City Solicitor to protect the interests of the City.

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

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – February 3, 2020

DECISION MAKING HISTORY:

Moved by Councillor Mayes,

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

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On February 11, 2020, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On February 3, 2020, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendation of the Lord Selkirk-West Kildonan Community Committee and submitted the matter to the Executive Policy Committee and Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On January 21, 2020, the Lord Selkirk-West Kildonan Community Committee concurred in the recommendation of the Winnipeg Public Service, with the following amendment:

- Add the following new Recommendation:

  "1.B. That Clause 2 be amended by deleting the period and adding ", except for a convenience store and gas station" after "6 a.m."

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

On November 21, 2019, the Lord Selkirk-West Kildonan Community Committee did not hear any representation on the application and adjourned the public hearing to its meeting on January 21, 2020 at 5:00 p.m. in the Council Building at 510 Main Street.

PUBLIC HEARING SUMMARY

File: ZAA 6/2019

Before: Lord Selkirk-West Kildonan Community Committee
Councillor Eadie, Chairperson
Councillor Santos
Councillor Sharma

Public Hearing: January 21, 2020
November 21, 2019
Council Building, 510 Main Street

Applicant: Levene Tadman Golub Law Corporation
(Mara Koven-Lapointe)

Subject:



Premises Affected: 1539 Logan Avenue

For submission to: The Standing Policy Committee on Property and Development, Heritage and Downtown Development

Prepared by: Pieter Prinsloo, Senior Committee Clerk
Lord Selkirk-West Kildonan Community Committee

Report date: January 22, 2020

Community Committee Recommendation:

On January 21, 2020, the Lord Selkirk-West Kildonan Community Committee concurred in the recommendation of the Winnipeg Public Service, as amended, and recommended to the Standing Policy Committee on Property and Development, Heritage and Downtown Development:

1. That the Zoning Agreement be amended as follows:

   A. That Clause 4 be amended by deleting the words "no free-standing signs and".

   B. That Clause 2 be amended by deleting the period and adding ", except for a convenience store and gas station" after "6 a.m."

2. That the City enter into, execute and deliver an agreement to amend the Zoning Agreement in accordance with recommendation 1, and such other agreements as determined necessary by the City Solicitor and Director of Legal Services to implement the intent of the foregoing (the "Ancillary Agreements").

3. That authority be delegated to the Director of Planning, Property and Development to negotiate and approve the terms and conditions of the agreement to amend the Zoning Agreement, and the Ancillary Agreements, in accordance with this report and such other terms and conditions deemed necessary by the Director; of Legal Services and City Solicitor to protect the interests of the City.

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

Note: The wording in bold and italics denotes amendments made by the Community Committee.

The Lord Selkirk-West Kildonan Community Committee provided the following supporting reasons for its recommendation:

1. I am very appreciative of the owner coming forward as well as some representation from the neighbourhood to talk about the 24 hour aspect and I see no reason why it would be a detriment to the community, he's mentioned that he's looking to hire or employ some of the neighbourhood, creating extra jobs, and that's always an important issue for this neighbourhood and I appreciate him doing that.
2. The way that he has explained how he's going to do the transaction with the community, I am supportive of that and appreciate Councillor Ross Eadie saying that there are other gas stations that do that makes me comfortable and confident in that and having that support from the community is important.

3. After the laundromat, why I am not too, I want to treat it somewhat like the car wash, you know I think the noise coming out of there and the separate entrance to the laundromat might be a bit of an issue so I do have some concerns with the laundromat being 24/7, I think people can understand that and be fine with doing their laundry during the day, and don't need to do it from 12 a.m. to 6 a.m., so I unfortunately cannot be supportive of that, but the rest of the project, convenience store, you know, offering those services and amenities at that time would be very, very good for the neighbourhood.

Exhibits Filed:

1. Application dated August 20, 2019
2. Notification of Public Hearing dated September 25, 2019
3. Manitoba Status of Title2985716/1
4. Letter of authorization dated June 6, 2019 from 10027988 Manitoba Ltd. to Levene Tadman Golub Law Corporation
5. Caveat1305366/1
6. Plans (9 pages)
7. Report from the Urban Planning Division dated November 4, 2019
8. Inspection Report
9. Notice of Adjournment dated November 15, 2019
10. Amended Application dated November 26, 2019
11. Notification of Public Hearing dated November 26, 2019
12. Report from the Urban Planning Division dated January 14, 2020
13. Inspection Report dated January 9, 2020
14. Photos submitted by the Applicant at the Public Hearing
15. Recording of Representations of public hearing held on January 21, 2020

REPRESENTATIONS:

In Support:

Matthew Chambers
Gurjeet Kang

In Opposition:

Nil

For Information:

Ron Keller

For the City:

R. Hayer, Planner, Planning, Property and Development Department

Exhibit "12" referred to in File ZAA 6/2019

ADMINISTRATIVE REPORT

Title: ZAA 6/2019 – 1539 Logan Avenue

Issue: For consideration at the Public Hearing to amend a Zoning Agreement under File DAZ 238/89 so as to accommodate 24 hour operations of a gas station, convenience store, and to maintain a free-standing sign.

Critical Path: Lord Selkirk West Kildonan Community Committee – Standing Policy Committee on Property and Development – Executive Policy Committee – Council.

AUTHORIZATION

Author	Department Head	CFO	CAO
R. Hayer, MCP	N/A	N/A	

RECOMMENDATIONS

1. That, the Zoning Agreement be amended as follows:
   A. That, Clause 4 be amended by deleting the words "no free-standing signs and".
2. That the City enter into, execute and deliver an agreement to amend the Zoning Agreement in accordance with recommendation 1, and such other agreements as determined necessary by the City Solicitor and Director of Legal Services to implement the intent of the foregoing (the "Ancillary Agreements").
3. That authority be delegated to the Director of Planning, Property and Development to negotiate and approve the terms and conditions of the agreement to amend the Zoning Agreement, and the Ancillary Agreements, in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor and Director of Legal Services to protect the interests of the City.
4. That, the proper officers of the City be authorized to do all things necessary to implement the intent of the forgoing.

REASON FOR THE REPORT

A Zoning Agreement under File DAZ 238/89 (By-law 5439/90) contains two clauses that the applicant wishes to modify:

- Clause 2 does not allow any business on the land to operate between 12:00 am and 6:00 am. The applicant wishes to amend this clause so that a gas station and convenience store may operate on a 24 hour basis.
- Clause 4 does not allow any free-standing signs and no flashing, scintillating or animated signage on the property. The applicant wishes to maintain an existing pylon sign on the property and requires an amendment to said clause.

Modification of caveats on a Land Title requires a Zoning Agreement Amendment application.

Approval of a Zoning Agreement Amendment requires a Public Hearing as per the *Development Procedures By-law.* This Report is being submitted for the Committee's consideration of the development application at the Public Hearing.

IMPLICATIONS OF THE RECOMMENDATIONS

If the recommendations of the Urban Planning Division are concurred in, the proposal can proceed.

HISTORY

DAZ 238/89: In 1989, the land was rezoned to a "C2" Commercial Community District, subject to a Zoning Agreement which includes the following relevant clauses:

- No business can operate between 12:00 a.m. and 6:00 a.m.
- No free-standing signs and no flashing, scintillating or animated signage shall be permitted on the land.

DCU 160/89: In 1989, a Conditional Use was approved to permit the establishment of a convenience store, a carwash, and a gas kiosk on the subject land subject to a condition that the carwash not operate between 12:00 a.m. and 6:00 a.m.

DCU 207211/19: In 2019, a Conditional Use was approved to permit the establishment of a carwash use, subject to the following conditions:

- That, the carwash use must not operate between 10:00 p.m. and 7:00 a.m.
- That, when the carwash use is in operation, motor-vehicle doors to/from the carwash building must only be open when a motor-vehicle is entering/exiting the carwash building.
- That, a continuous light proof wood ornamental fence with vertical style boards at least 3 feet in height must be erected and maintained along:
    - the entire length of the east property line along Blake Street excepting for a break to accommodate the pedestrian connection between the site and public sidewalk;

  - along the entire length of the west property line along Milton Street excepting the approved private approach; and
  - along the entire length of the south property line along Logan Avenue excepting the approved private approaches.

- That, the existing fence along the north property limit be replaced with a continuous light proof wood fence at least 6 feet in height.
- That, robust landscaping must be installed near the south east and south west corners of the site to include a variety of shrubs and landscape materials.
- That, all trash and refuse must be stored in a building, or within a garbage enclosure constructed in accordance with Part 5 Section 197(2)(e) of the City of Winnipeg Zoning By-law no. 200/2006.
- That, the Owner must submit plans showing the location and design of any and all proposed garbage enclosures; fencing; freestanding signage and landscaping on the Owner's Land ("Works") to the Lord Selkirk – West Kildonan Community Committee and the Director of Planning, Property and Development for approval prior to the issuance of any building or development permit, and thereafter must construct the Works in substantial conformance with the approved plans and maintain the Works to the satisfaction of the Director.
- That the landscaping be completed by September 2020.

ZAA 6/19: In 2019, a Zoning Agreement Amendment Application was submitted to amend a clause in the Zoning Agreement to accommodate 24 hour operations of a gas station. The ZAA application was initially scheduled for a public hearing on November 12, 2019. However, the hearing was adjourned as it was determined that, to accommodate the applicant's proposal, a separate clause in the Zoning Agreement would also have to be amended.

SUBMITTED BY

Department	Planning, Property and Development
Division	Urban Planning
Prepared by:	R. Hayer, MCP
Date:	January 14, 2020
File No.	ZAA 6/2019

List of Schedules and Attachments

1. Appendix A – Planning Discussion

APPENDIX 'A'

DATE: January 14, 2020

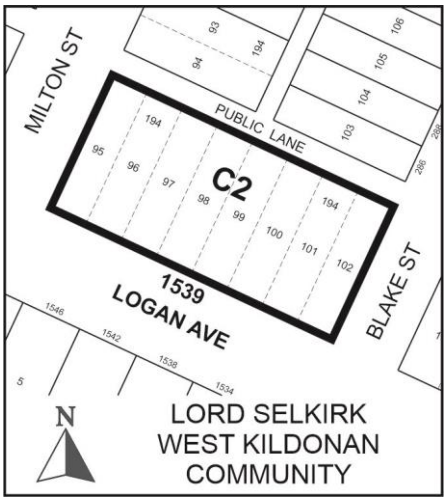
FILE: **ZAA 6/2019**
RELATED FILES:

COMMUNITY: Lord Selkirk West Kildonan
NEIGHBOURHOOD #: 2.114 (Weston)

SUBJECT: For consideration at the Public Hearing to amend the Zoning Agreement under DAZ 238/1989.

LOCATION: 1539 Logan Avenue

LEGAL DESCRIPTION: LOT 2 PLAN 24669 NW 14 11 2E



APPLICANT: Levene Tadman Golub Law Corporation

OWNER: 10027988 MANITOBA LTD.
18 Cloverdale Crescent
R0E 0K0

RECOMMENDATION: Approval-in-part

SITE DESCRIPTION

The subject site is located on the north side of Logan Avenue, between Blake Street and Milton Street, in the Weston Neighbourhood and the Point Douglas Ward.

The site is designated 'Areas of Stability – Mature Community' policy area under the *Complete Communities Direction Strategy* of *OurWinnipeg.*

The site is zoned "C2" Commercial Community District under the City of Winnipeg Zoning By-law (no. 200/06)

Currently on the site is a one-storey commercial building and gas kiosk constructed in 1990-91.

A free-standing pylon sign is located at the south west corner.

The property is currently undergoing renovations, including interior alternations for a convenience store, carwash, gas station, and laundromat.



Figure 1: Aerial photograph showing approximate area of subject property (flown 2018)

SURROUNDING LAND USES & ZONING (See Figure 2)

North: Public lane; then single-family dwellings zoned "R2" Residential Two-Family District.

South: Logan Avenue; then single-family dwellings zoned "R2" Residential Two-Family District.

East: A single-family dwelling on land zoned "C1" Commercial Neighbourhood District; then single-family dwellings zoned "R2" Residential Two-Family District.

West: Commercial buildings, a place-of-worship (Pacific Community Methodist Church), and a retail store (Commercial Vac Ltd.), all zoned "C1" Commercial Neighbourhood District; then single-family dwellings zoned "R2" Residential Two-Family District.

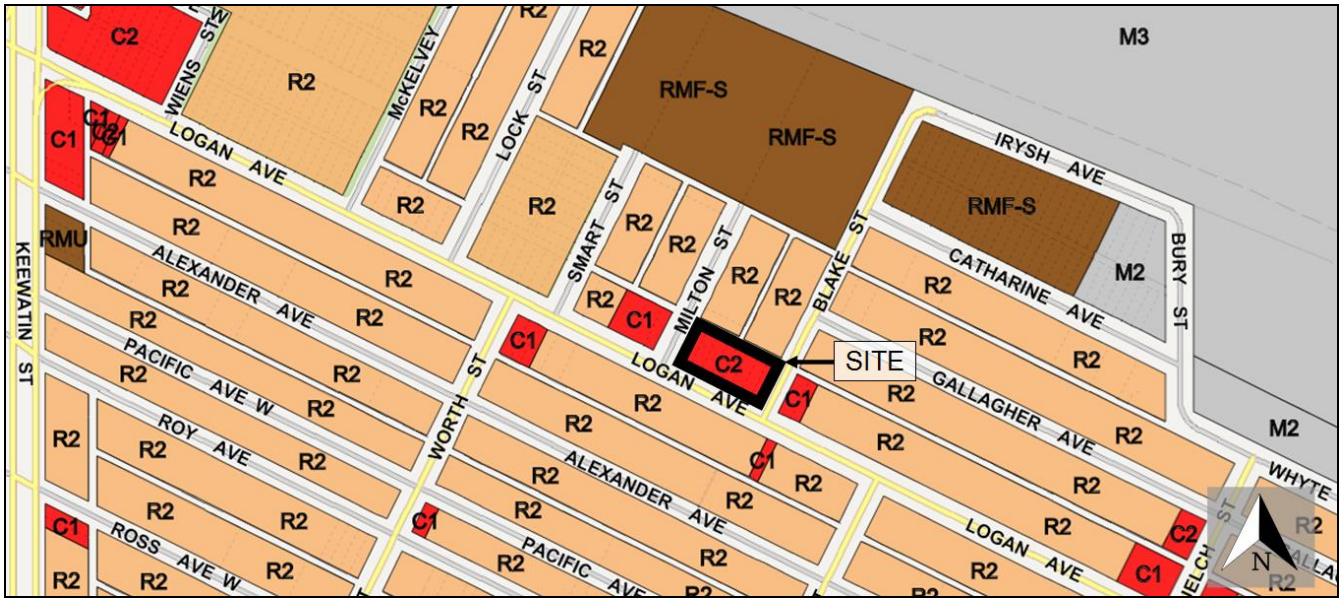


Figure 2: Zoning of the site and surrounding area.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

The proposed development involves the establishment of a 24 hour gas station and associated convenience store. Also proposed is the maintenance of a free-standing sign.

Collaboration:

In August 2019, the proponent met with the Zoning & Permits Branch and formally submitted the initial application. Prior to filing the application, there were no discussions between the proponent and the Urban Planning and Design Division. Upon receiving and reviewing the application, the Division notified the Zoning Branch of the following:

- The letter of intent stated that the proponent wishes to operate a carwash on the property, however it was discovered that the existing carwash facility had lost its previous conditional use approval due to being inoperative for at least 24 months. Thus, the Zoning Branch notified the proponent that a new conditional use application would be required to re-establish the carwash use.
- The site plan submitted with the application showed the location of an existing pylon sign on the property, however the Zoning Agreement did not allow any free-standing signs on the property. Subsequently, the Zoning Branch investigated whether the sign could be maintained given the Zoning Agreement clause, and concluded that an amendment is warranted. Although amending the clause restricting signage was not part of the proponent's initial request, it was determined necessary to accommodate the plans submitted with the application. Given that this discovery occurred after the initial application was scheduled for a public hearing, a new advertisement had to be prepared in order to meet requirements for public notice under the City of Winnipeg Charter.

ANALYSIS AND ISSUES

Complete Communities Direction Strategy

Under the *Complete Communities Direction Strategy* the proposed development is within the 'Areas of Stability – Mature Community' policy area. Areas of stability are primarily understood as the residential areas where the majority of Winnipeggers currently live. They offer some of the best opportunities to accommodate residential infill growth. Accordingly, intensification of commercial uses should be accommodated within residential areas in a sensitive manner which recognizes the existing form and character of the surrounding area. Key relevant policies under *Complete Communities* include:

- *Support low to moderate change in low-density neighbourhoods through development and redevelopment that is complementary to the existing scale, character and built form.*
- *Support a mix of commercial services and employment uses that serve the local community.*

City of Winnipeg Zoning By-Law (No. 200/2008)

The subject property is zoned "C2" Commercial Community District. Fuel Sales and Retail Sales are Permitted Principal Uses under the zoning designation.

Zoning Agreement Analysis:

Clause 2: Restrictions on Hours of Operation

Clause 2 of the existing Zoning Agreement Caveat allows a gas station and convenience store to operate on the land between the hours of 6:00 a.m. and 12:00 p.m. The carwash can remain open between 7:00 a.m. and 11:00 p.m. (per conditions of approval under file DCU 207211/19).

- The applicant wishes to amend the Zoning Agreement caveat to allow the gas station and convenience store to operate on a 24-hour basis.

While convenience stores and gas stations provide many benefits, they could have a negative quality of life impact when allowed too close to homes (noise, light, etc.). The Zoning Agreement caveat on the property was approved by Council in 1989. At the time, the subject property was surrounded by mostly residential properties. The clauses in the Zoning Agreement are included to balance the needs of commercial development with the needs of residential properties by ensuring compatibility and minimizing potential adverse effects.

Since 1989, the surrounding context has not changed significantly. For example, the population of the Weston neighbourhood has slowly increased from 5,715 in 1990 to 6,235 in 2016. Land use patterns have also not changed in any significant manner, other than a low to moderate intensification of residential properties through infill development in keeping with the policies in *Complete Communities* (see Figure 3).

- After review, there is nothing to suggest that Council's decision to restrict hours of operation in 1989 should be overturned in terms of the site and policy context. The Division recommends that Clause 2 not be amended.
- Keeping Clause 2 as-is ensures the development is complementary to the existing character of the area.

The letter of intent notes that one of the reasons the applicant wishes for the subject property to accommodate 24-hour operations is to support a range of life style choices such as shift work and late

working hours. It is worth noting there is a 24-hour gas station with convenience store at the corner of Logan Avenue and Keewatin Street (500m west of the subject site) which could be assumed to accommodate such needs.



Figure 3: Subject site and surrounding residential uses highlighted (flown 2018)

Clause 4: Restrictions on Signage:

Clause 4 of the existing Zoning Agreement Caveat places significant restrictions on signage. No free-standing signs and no flashing, scintillating or animated signage is permitted on the land, per Clause 4 of the caveat.

- The applicant wishes to maintain a pylon sign on the property (see Figure 4). An amendment to Clause 4 is necessary to proceed.

As with any business that caters to automobile traffic, it is reasonable for a gas station to have a sign of sufficient height and visibility that can attract customers. For this reason, it would be reasonable to amend the Zoning Agreement clause that prohibits any free-standing signs. However, given the surrounding residential context, the restrictions on flashing, scintillating or animated signage should remain.

- After review, the Urban Planning Division recommends that Clause 4 be amended to the extent necessary to allow free-standing signage on the land and prohibit flashing and scintillating signage.

- Amending Clause 4 helps to support a commercial business that could serve the local community.



Figure 4: Free-standing sign on the property, looking east (picture taken 2019)

RECOMMENDATION

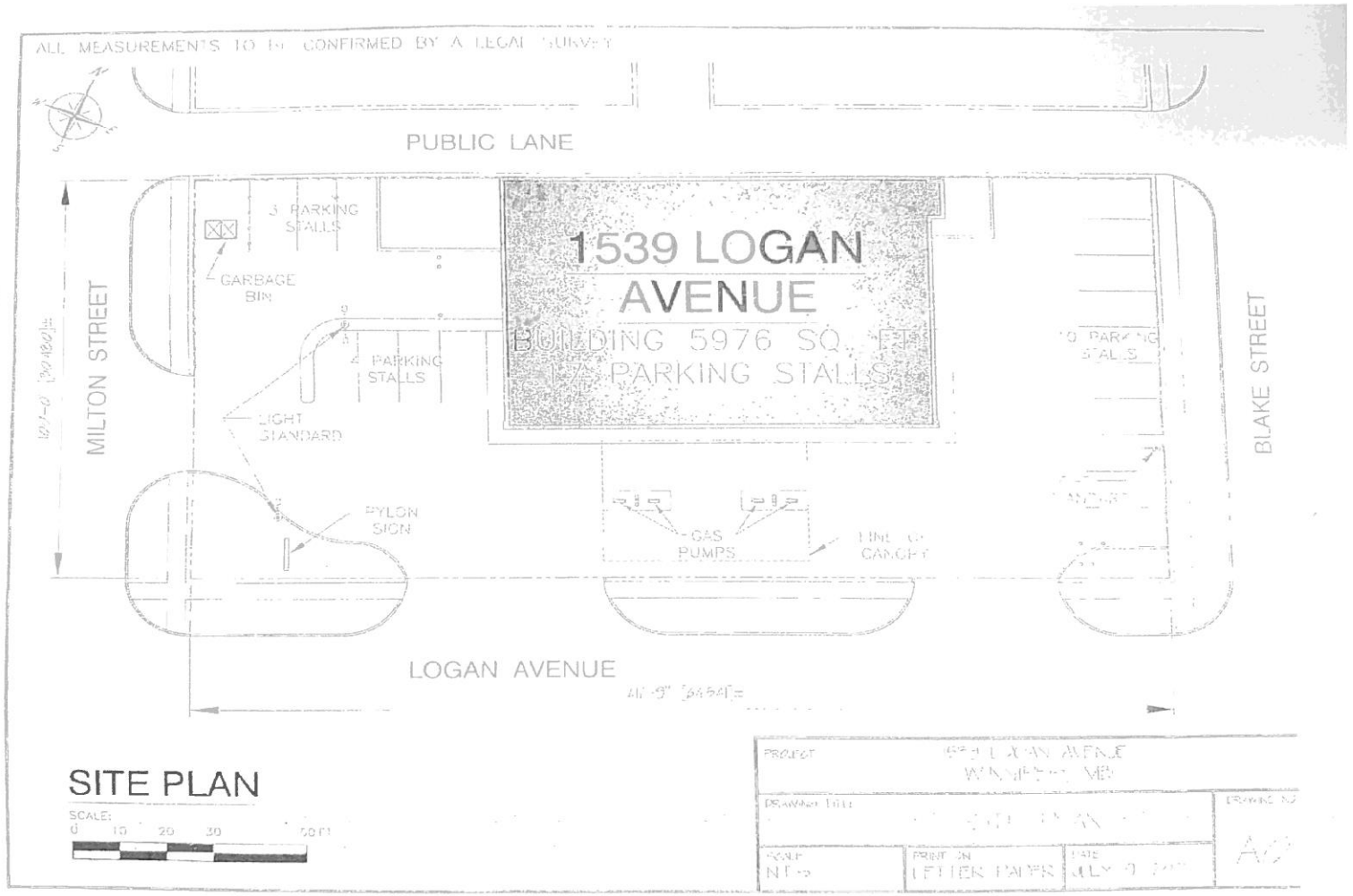
The Urban Planning Division recommends **approval-in-part** for the following reasons:

- The subject property is located in a residential area and Council's decision to restrict hours of operation from when the property was rezoned in 1989 can be considered reasonable measures to ensure compatibility between the commercial development on the subject site and the surrounding residential neighbourhood. Given the surrounding context has not changed significantly, and given the relevant policies under the *Complete Communities Direction Strategy*, It is recommended that the request to amend Clause 2 so as to allow the gas station to operate on a 24 hour basis be denied.
- Given that a gas station caters mainly to automobile traffic, it is reasonable to allow for a free standing sign so as to allow the business to attract customers. Thus, it is recommended that Clause 4 be amended to allow the pylon sign to be maintained.

This Report Submitted by:
Planning, Property and Development Department
Urban Planning Division

Report Prepared By: R. Hayer, MCP
PPD File # ZAA 6/2019

Exhibit "6" referred to in File ZAA 6/2019



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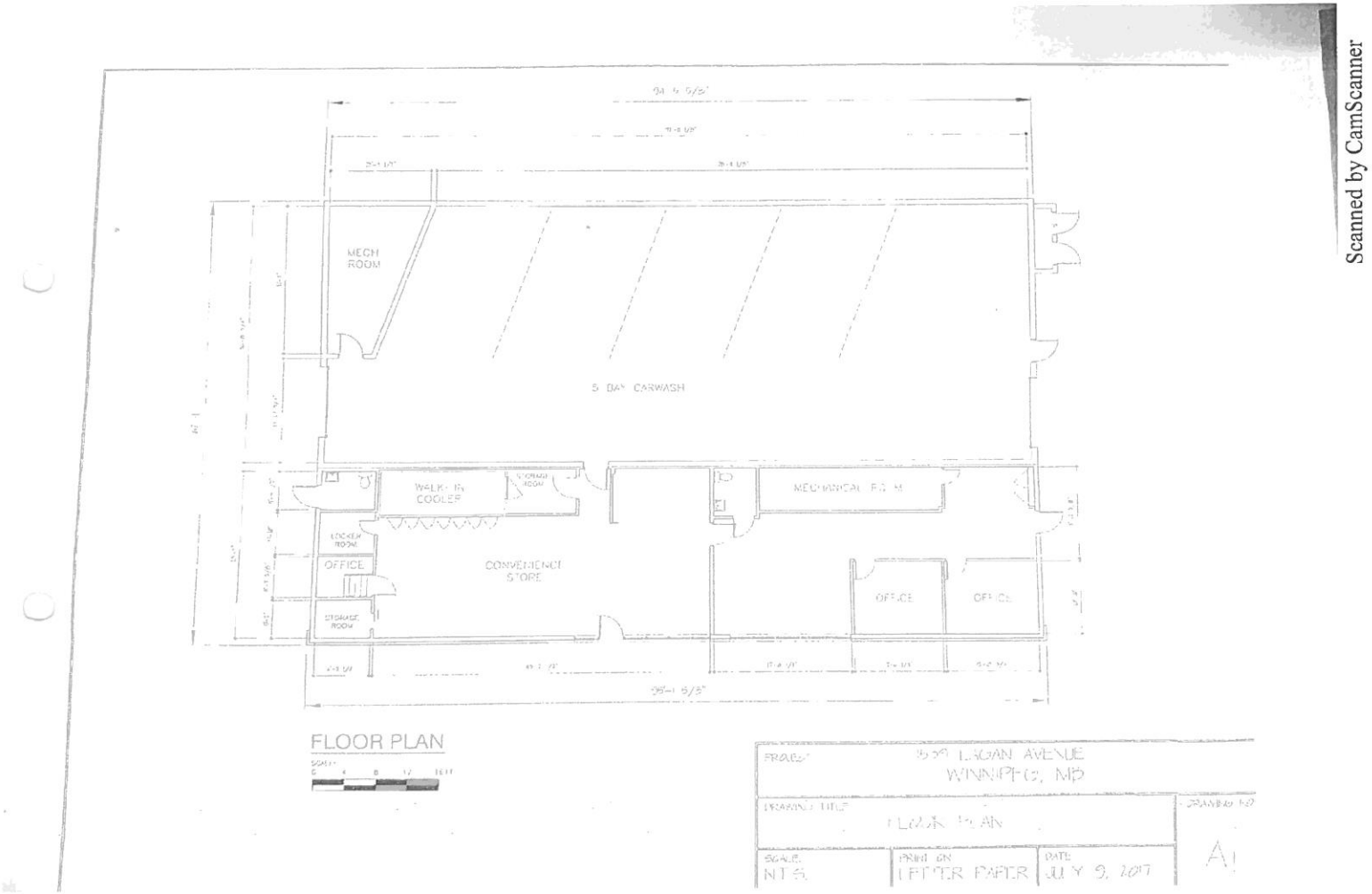

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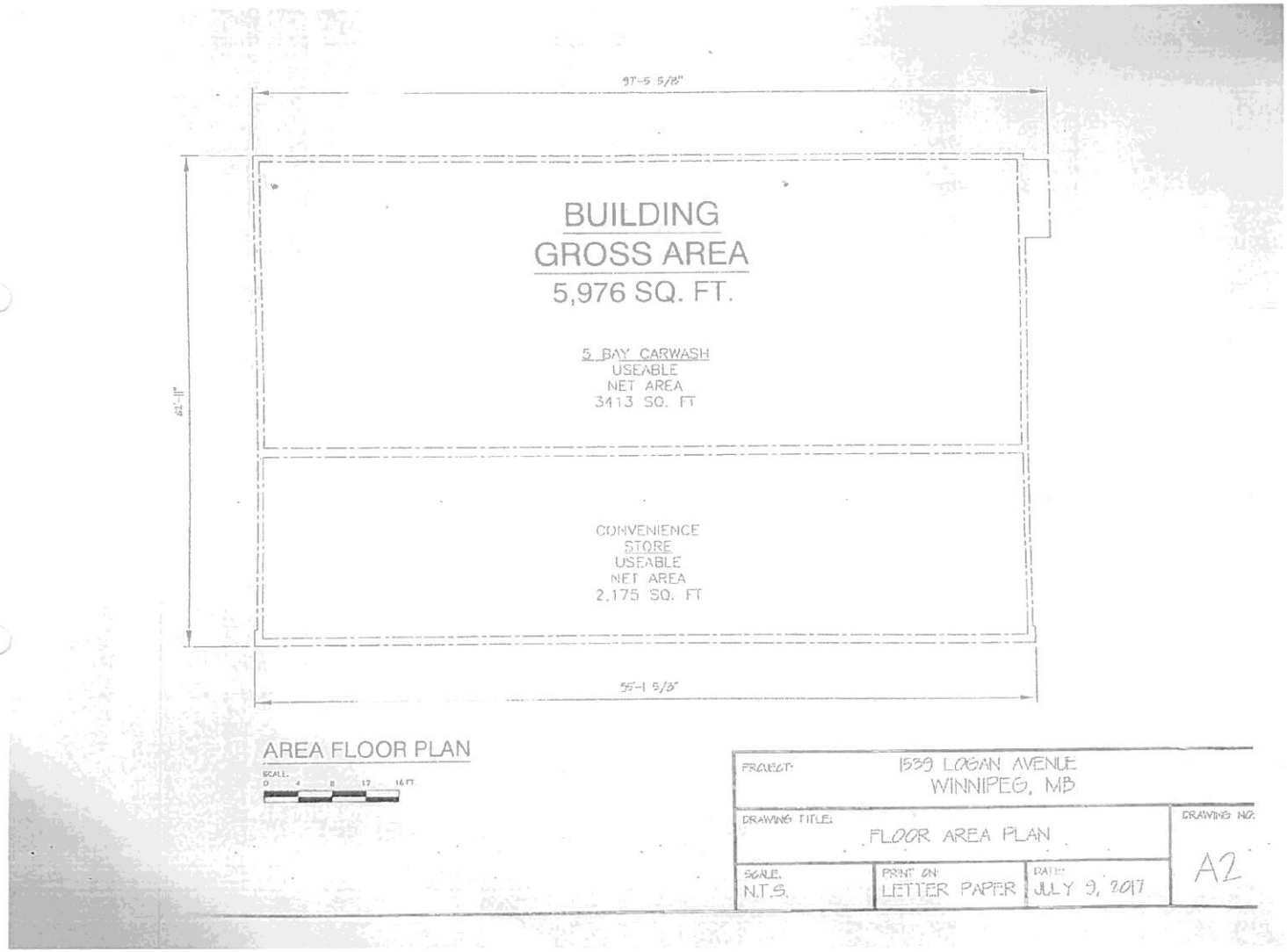

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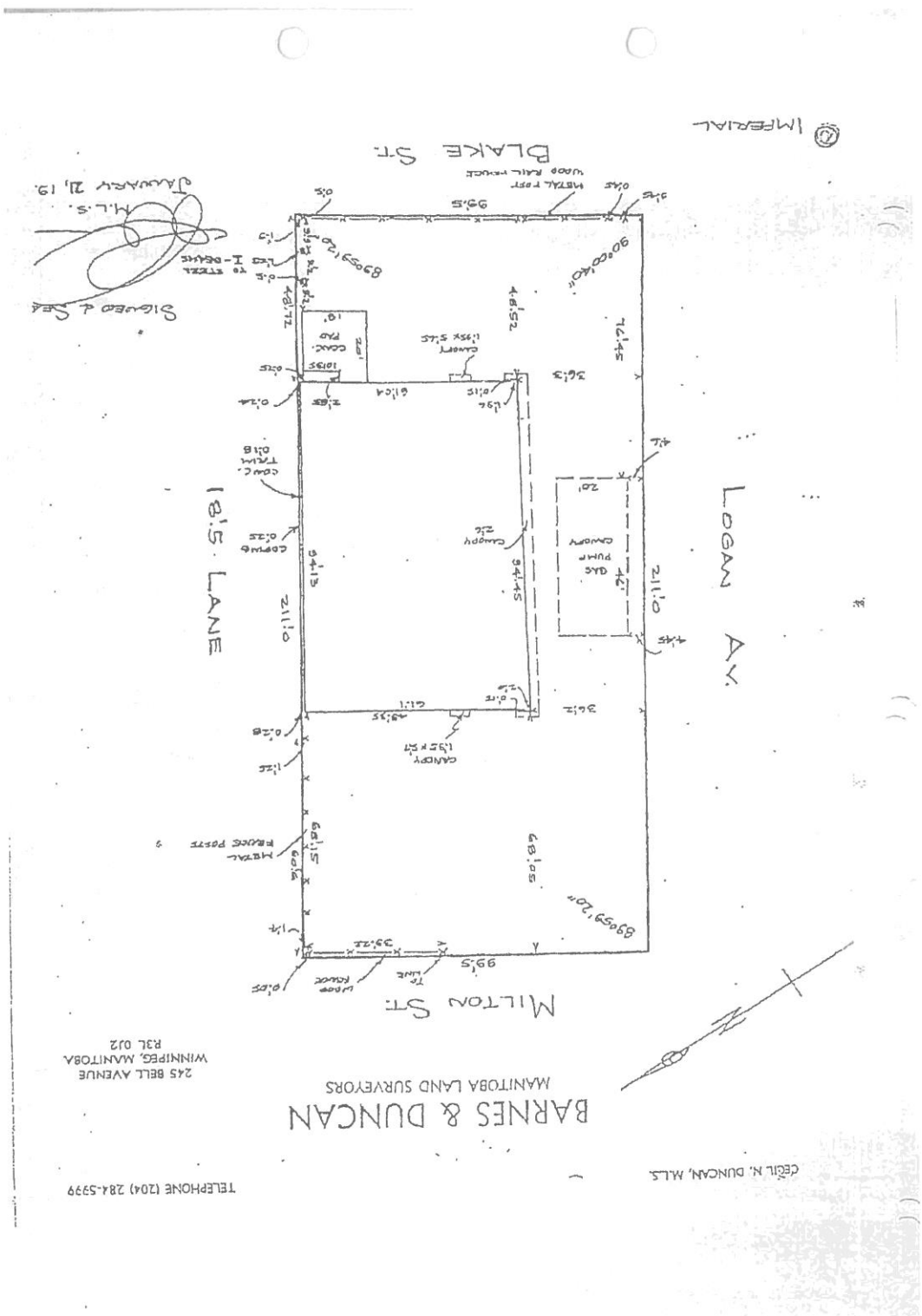
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MILTON ST.
LOGAN AV.
18.5' LANE
BARNES & DUNCAN
MANITOBA LAND SURVEYORS
245 BELL AVENUE
WINNIPEG, MANITOBA
R3L 0J2
TELEPHONE (204) 284-5999
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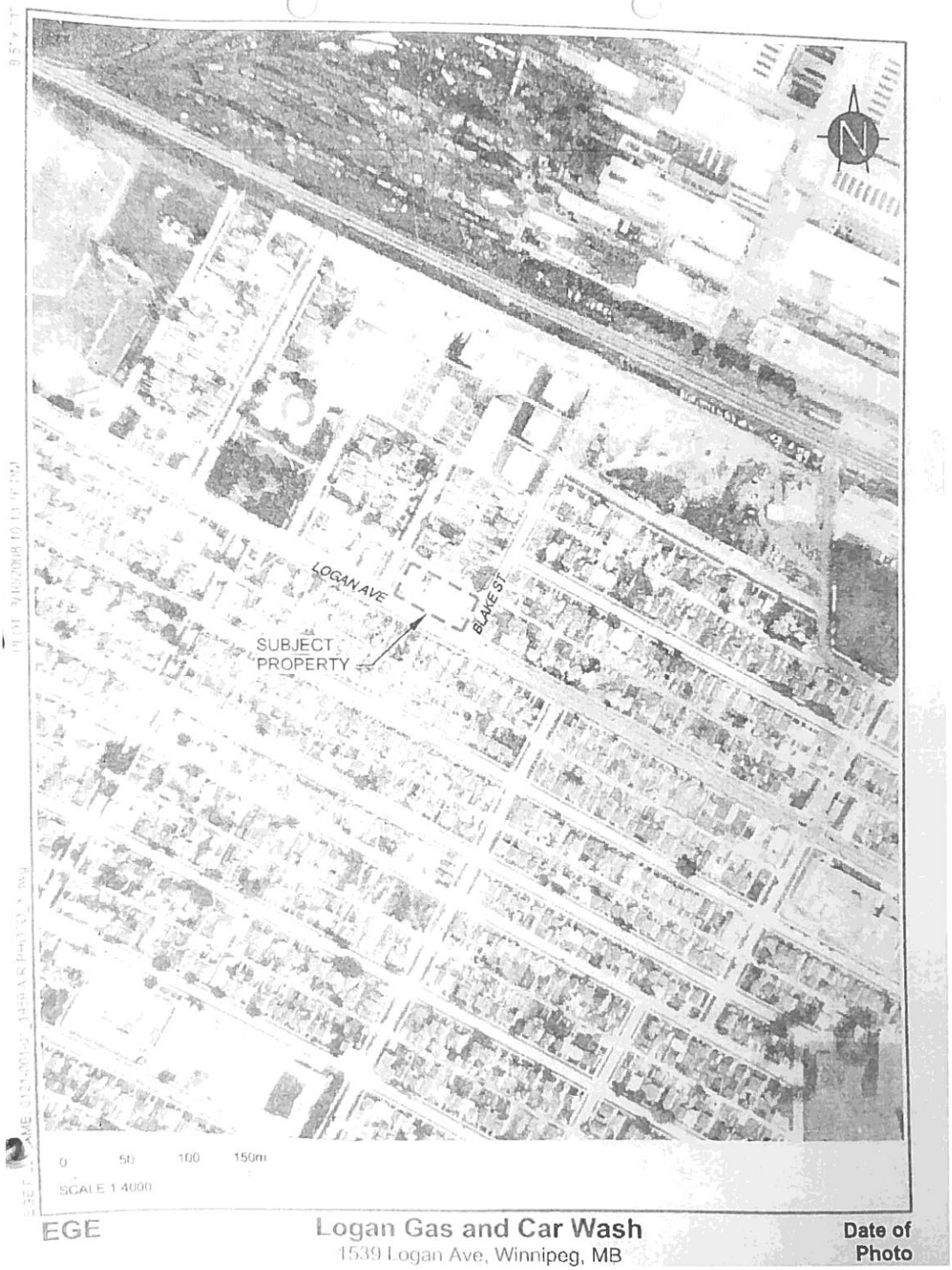

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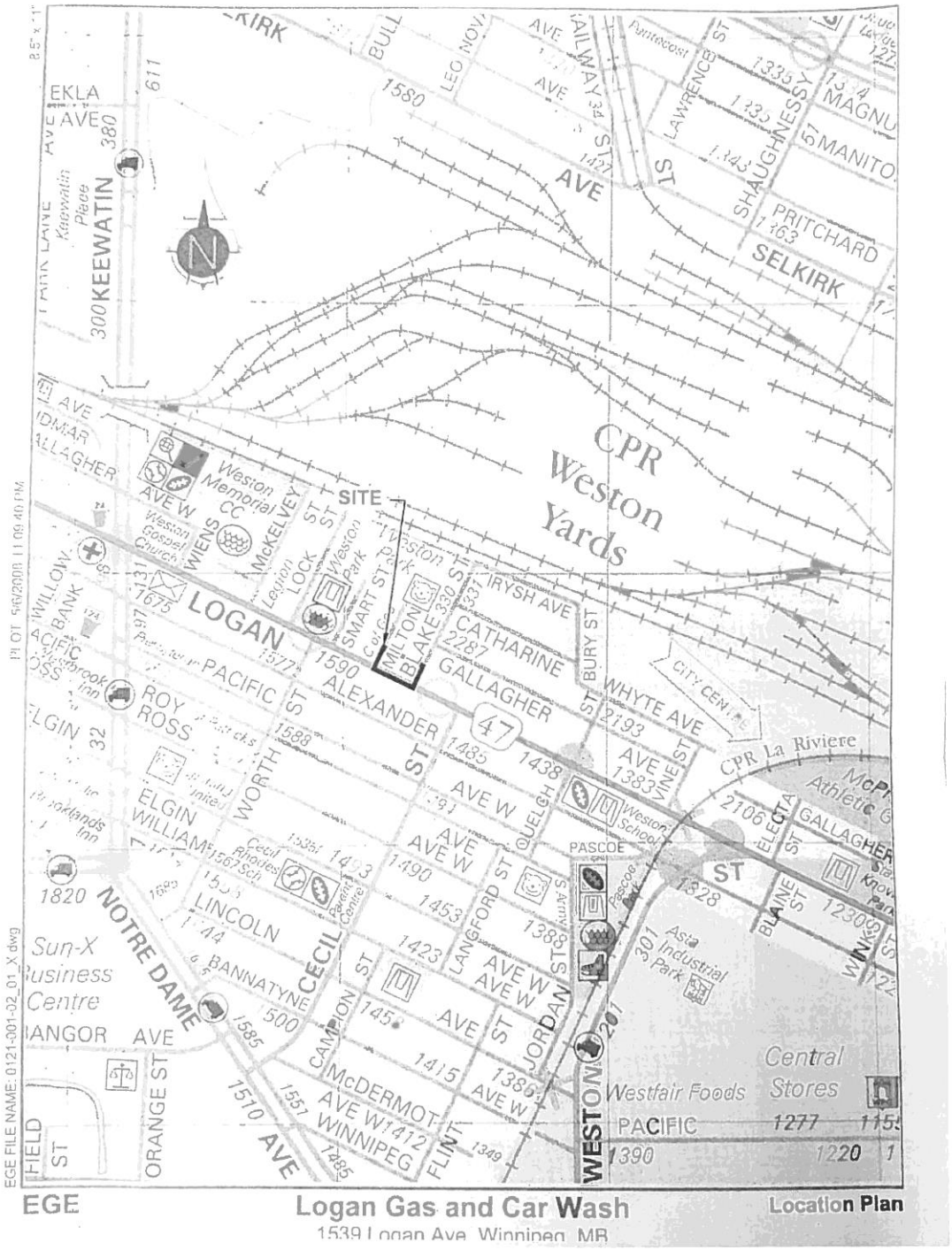

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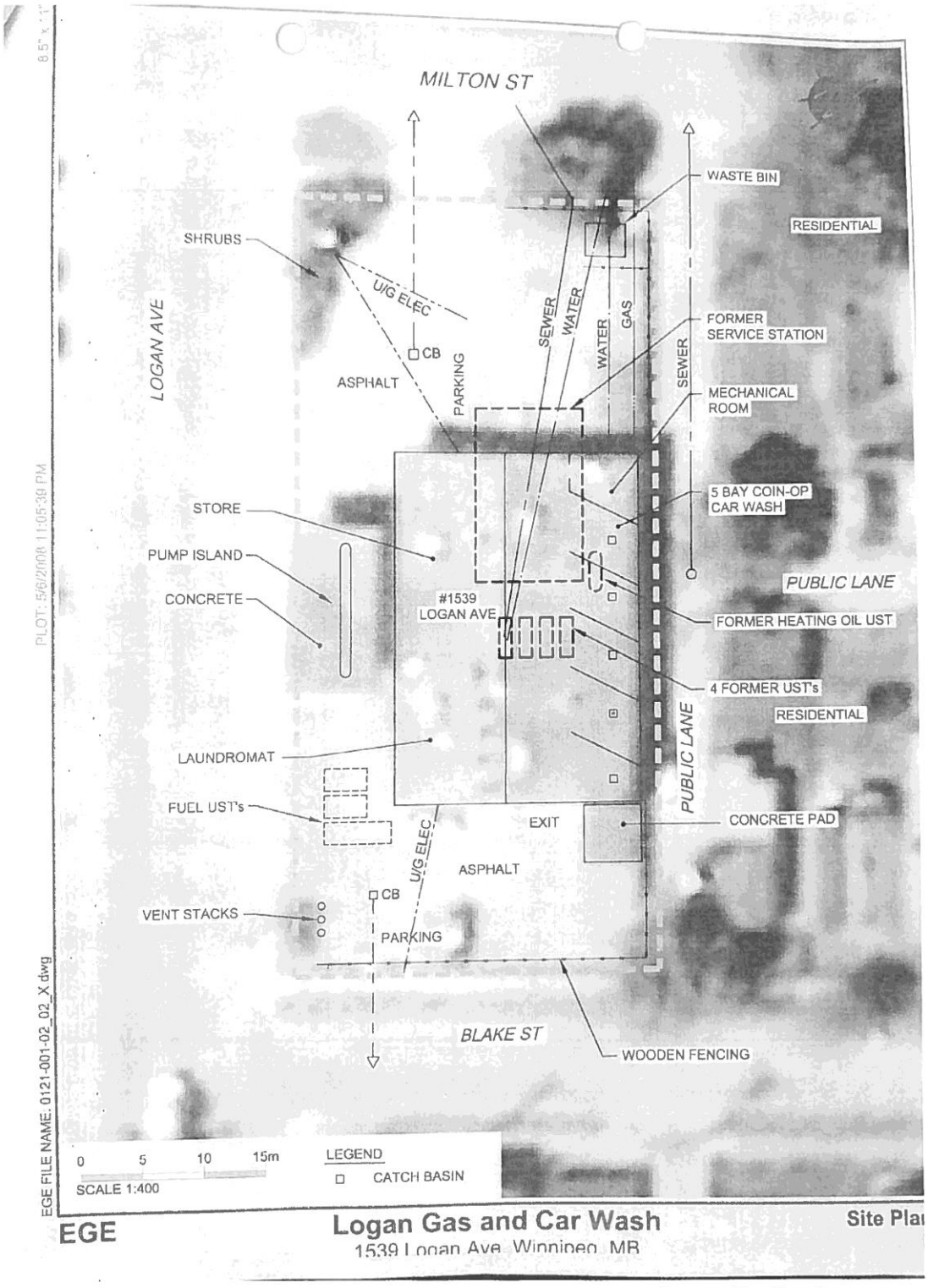

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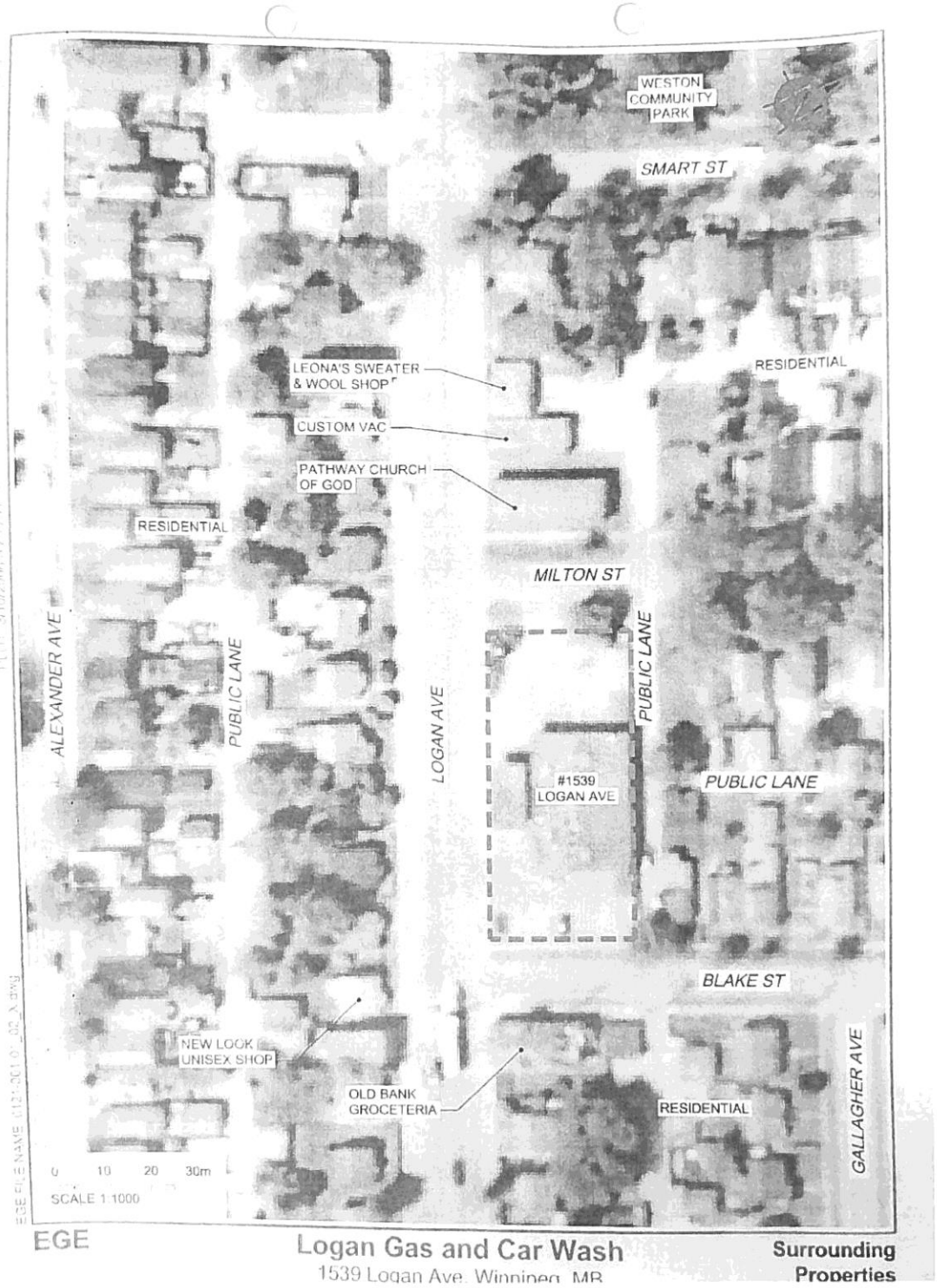

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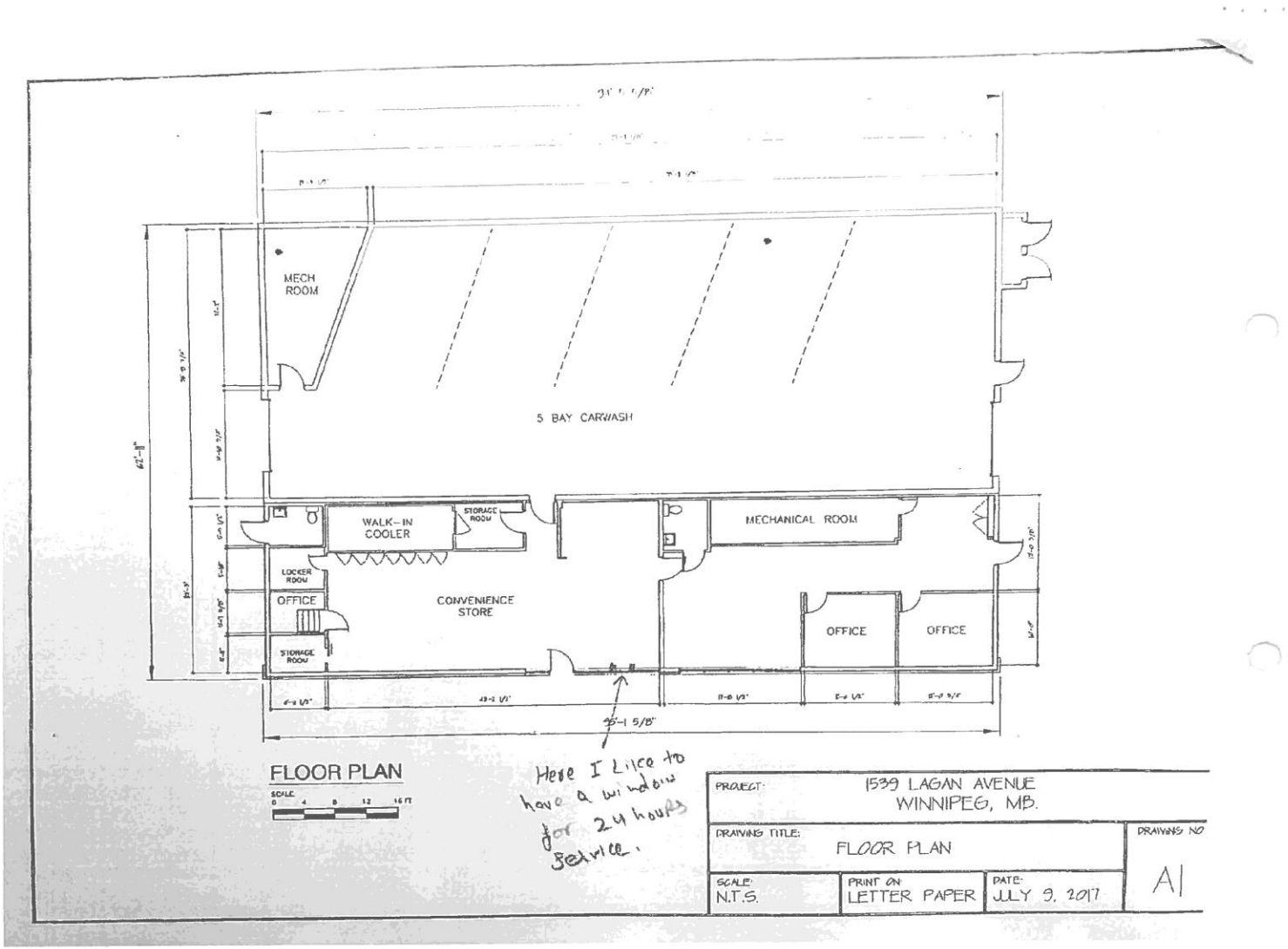

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