




TITLE: <p style="text-align: center;">BY-LAW NO. 6876 TO REZONE PROPERTY LOCATED AT 1324 & 1330 – 1ST STREET NORTH (LOTS 6/9, BLOCK 1, PLAN 848 BLTO) FROM CAR COMMERCIAL ARTERIAL ZONE TO CG COMMERCIAL GENERAL ZONE APPLICANT: JIMARCO DEVELOPMENT INC. OWNER: KAREN SWANSON, DALENE STANGER & SWANSON HOLDINGS LTD.</p>		
PRESENTER: Steve McMillan	AGENDA NO:	
DEPARTMENT: City of Brandon Planning Department	DATE: January 22 nd , 2008	
CLEARANCES: City of Brandon Development Services Division	ATTACHMENTS: 1. Draft By-law (# of pages = 1) 2. Aerial Photo (# of pages = 1) 3. Development Agreement (# of pages = 8)	
APPROVALS: <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;">  <hr style="width: 100%;"/> General Manager of Development Services </div> <div style="text-align: center;"> <u>January 25, 2008</u> Date </div> <div style="text-align: center;">  <hr style="width: 100%;"/> City Manager </div> <div style="text-align: center;"> <u>25/01/08</u> Date </div> </div>		

DISCUSSION:

Jimarco Development Inc., applicant on behalf of the owners, Karen Swanson, Dalene Stanger and Swanson Holdings Ltd., is applying to rezone 1324 & 1330 1st Street North (Lots 6/9, Block 1, Plan 848 BLTO) from CAR Commercial Arterial Zone to CG Commercial General Zone to accommodate future residential development.

The required appeal hearing has been concluded and Council may now:

- a) Give the by-law third reading if no alterations are made to the by-law;
- b) Alter the by-law to address any representations on the objection made at the hearing and, despite subsection 74(2), give the altered by-law third reading without further notice or hearing;
or
- c) Pass a resolution not to proceed with the by-law.

The required development agreement has been executed.

RECOMMENDATIONS:

That By-law No. 6876 to rezone 1324 & 1330 – 1st Street North (Lots 6/9, Block 1, Plan 848 BLTO) from CAR Commercial Arterial Zone to CG Commercial General Zone be read a third and final time.

BY-LAW NO. 6876

BEING A BY-LAW of the City of Brandon to amend Zoning By-law No. 6642.

WHEREAS Section 80(1) of The Planning Act provides that a zoning by-law may be amended;

NOW THEREFORE the Council of the City of Brandon, duly assembled, enacts as follows:

- 1. The land described as Lots 6/9 in Block 1, identified on a plan of part of the City of Brandon, in Manitoba, registered in the Brandon Land Titles Office as Plan 848, commonly known as 1324/1330 – 1st Street North, and highlighted on the map attached hereto as Schedule “A” is hereby reclassified:

FROM: CAR Commercial Arterial Zone

TO: CG Commercial General Zone**
- 2. District Map No. 21, being part of By-law No. 6642, is hereby amended in accordance with Section 1 of this by-law.**
- 3. This by-law shall come into full force and take effect on the day following its passage.**

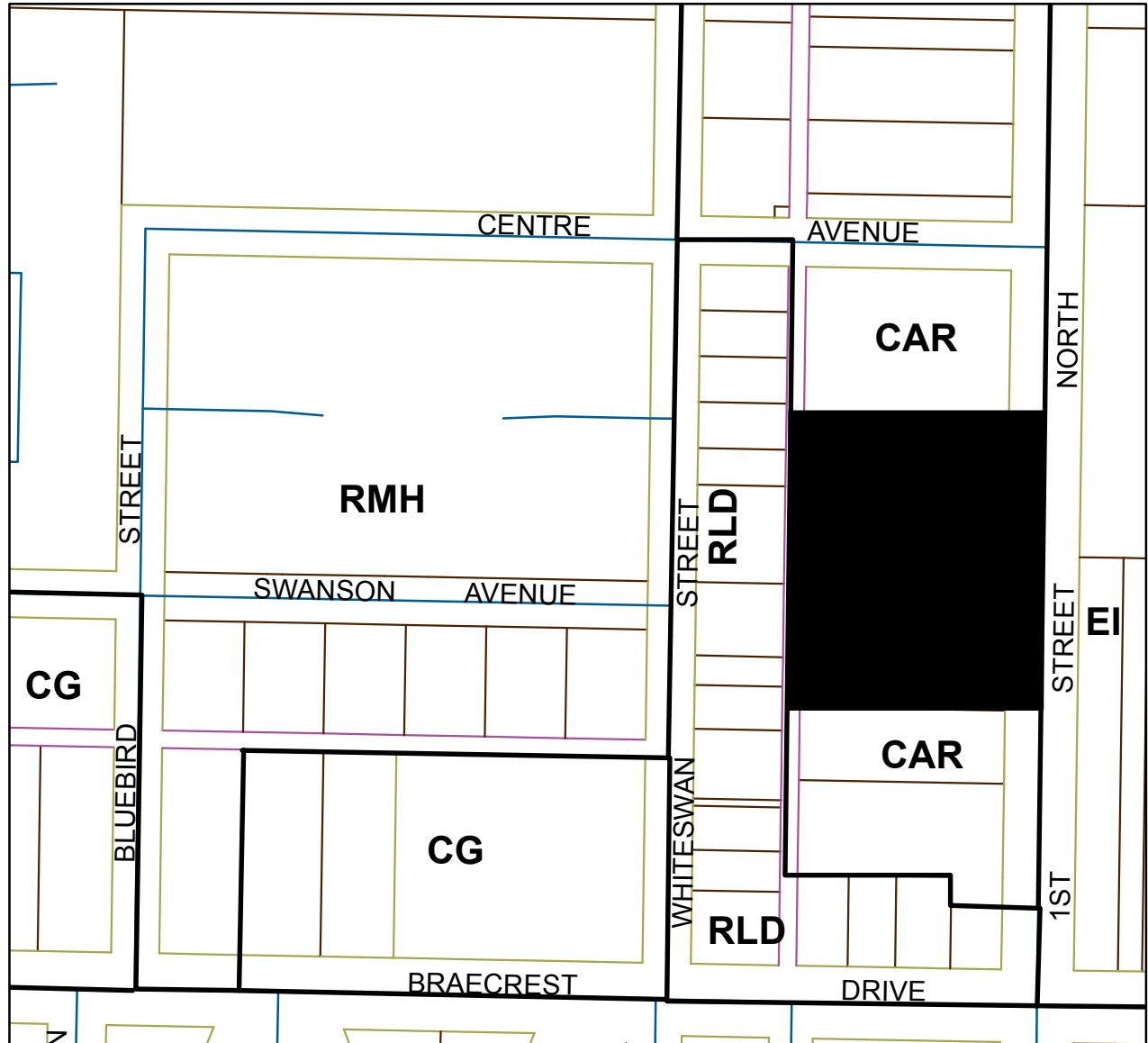
DONE AND PASSED by the Council of the City of Brandon duly assembled this day of A.D. 2008.

MAYOR

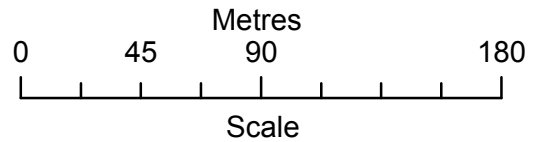
CITY CLERK

Read for a first time this 20th day of August A.D. 2007
Read for a second time this 7th day of January A.D. 2008
Read for a third time this day of A.D. 2008

Application for Zoning By-Law Amendment



Schedule "A" By-Law No. 6876
 Amending District Map No. 21 of By-Law No. 6642
 Zoning Amendment Application Z-9-07-B
 1330/1330 1st Street North
 Lots 6/9, Block 1, Plan 848 BLTO



- Proposed lots to be rezoned from CAR Commercial Arterial Zone to CG Commercial General Zone.
- EI Educational and Institutional Zone
- RLD Residential Low Density Multiple Family Zone.
- RMH Residential Mobile/Modular Home Zone

**City of Brandon
 Planning
 Department**



Map creation date: 08/07/07

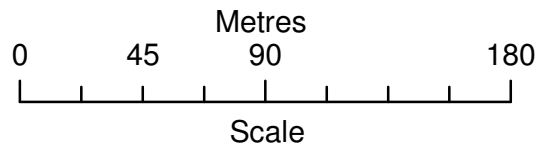
City of Brandon


Revised:

Application for Zoning By-Law Amendment



Schedule "A" By-Law No. 6876
 Amending District Map No. 21 of By-Law No. 6642
 Zoning Amendment Application Z-9-07-B
 1324/1330 1st Street North
 Lots 6/9, Block 1, Plan 848 BLTO



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- RLD Residential Low Density Multiple Family Zone.
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**City of Brandon
 Planning
 Department**



Map creation date: 08/07/07

City of Brandon

Revised:

THIS AGREEMENT made in duplicate this _____ day of _____, A.D. 2008.

BETWEEN:

**KAREN JOHANNE SWANSON, DARLENE ANN STANGER
AND SWANSON HOLDINGS LIMITED,**

(hereinafter called the "Developer"),
OF THE FIRST PART,

- and -

THE CITY OF BRANDON,

(hereinafter called the "City"),
OF THE SECOND PART.

WHEREAS the Developer is the owner or is entitled to be the owner of property commonly known as 1324 and 1330 – 1st Street North and legally described as:

Lots 6 and 7 Block 1 Plan 848 BLTO in SE ¼ 35-10-19 WPM and Lots 8 and 9 in Block 1 Plan 848 BLTO in SE ¼ 35-10-19 WPM

and illustrated on the attached **Schedule "A"** (hereinafter called the "lands") and the building(s) that is proposed to go on lands is attached as **Schedule "B"**;

AND WHEREAS the City of Brandon Planning Commission at its meeting on September 19, 2007 conducted a Public Hearing on the application for rezoning and submitted a report and recommendation to Brandon City Council;

AND WHEREAS the Council of the City of Brandon will consider the report and recommendation of the Planning Commission when considering the applications for rezoning with a resolution of the Council of the City of Brandon required for a decision on the application;

AND WHEREAS the Developer may wish to proceed, fully at their risk and liability, with the construction of utilities and Public Works in advance of the required approvals subject to the terms contained in this agreement concerning said construction activity;

NOW THEREFORE this Agreement witnesseth that in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1. The preamble hereof and the attached Schedules shall form an integral part of this Agreement.
2. DEFINITIONS

Where the context so implies the following definitions shall apply in the singular and the plural:

- (a) "City Engineer" shall mean the Senior Engineer employed by the City of Brandon or any person delegated to act on his behalf;
- (b) "Consulting Engineer" shall mean the firm or person employed by the Developer for the designs, drawings, specifications and supervision of the works necessary to be carried out by the Developer and the City of Brandon;
- (c) "Municipal Above Ground Improvements" shall include all improvements installed by the Developer in or on existing or proposed municipal streets, lanes, easements, land or rights of way (hereinafter called "municipal lands") in accordance with approved plans and specifications said improvements in or on municipal lands become the responsibility of the City, or others to own and maintain after acceptance by the City and shall include but not be limited to the following:
 1. construction and installation of all roads, walkways, sidewalks, retention ponds, etc. as laid out in the approved construction drawings;
 2. all street lighting of roadways and lane ways;
 3. all signing including street names, and traffic control signs as

Initials

- 4. directed by the City Engineer; and
- 4. landscaping of all publicly owned land including the planting of trees and sodding of boulevards and ditches, parkland, and public reserve land; and
- (d) "Municipal Underground Improvements" shall include all improvements installed by the Developer in or on existing proposed municipal lands in accordance with approved plans and specifications said improvements in or on municipal lands to become the responsibility of the City, or others to own and maintain after acceptance by the City and shall include and not be limited to a storm water drainage system with detention pond, potable water system, waste water system, below ground electrical power, telephone and natural gas distribution systems, together with all laterals, branches, manholes, service connections, fire hydrants, valves, pedestals, culverts and usual engineering appurtenances necessary to fully service the lands, and all excavation of frost susceptible material, back fill, sub-base construction to roads and grading of right-of-ways to levels and grades acceptable to the City Engineer.

3. The Developer shall:

- a) engage a Consulting Engineer, duly licensed to practice by the Association of Professional Engineers & Geoscientists of the Province of Manitoba, for the purpose of design and project management for all aspects of construction of the lands;
- b) provide a lot grading and drainage plan for the lands, which plan shall be acceptable to the City Engineer prior to issuance of a building permit, and the Developer covenants and agrees that the lands shall be graded to, conform to, and be maintained in accordance with the said lot grading and drainage plan;
- c) provide a landscape plan of the lands, which plan shall be acceptable to the Director of Development Services prior to issuance of a building permit, and the Developer covenants and agrees the lands shall be landscaped in accordance with the plan immediately upon the completion of the development;
- d) grade and level all boulevards and ditches within the subdivision including a minimum of six (6) inches of top soil and shall sod all of the said boulevards and ditches and the Developer shall plant trees of no less than five (5) years maturity on the said boulevards which trees shall be spaced and shall be of such species as shall be prescribed by the Director of Community Services but such spacing shall not be more than fifty (50) feet apart;
- e) provide a storm water management plan for the lands, which plan shall be acceptable to the City Engineer prior to issuance of a building permit;
- f) provide all plans of ingress and egress to the lands, which plans shall be acceptable to the City Engineer;
- g) provide all plans of above and below ground infrastructure, which plans shall be acceptable to the City Engineer prior to issuance of a building permit; and
- h) obtain from the City Engineer a certificate to state that the construction of the Municipal Above Ground Improvements and Municipal Underground Improvements as required by this Agreement for the lands has been satisfactorily completed, and this certificate must accompany application made to the Brandon & Area Planning District for a building permit.

4. The Developer acknowledges and agrees that once the development has commenced, the construction and servicing of the lands must be finalized within two (2) years. Failure to do so may in the determination of the City render this Agreement null and void, and be termed a default to this Agreement. The Developer may however, by notice in writing, request an extension of time within to complete the construction and servicing. No extension of time shall be allowed unless such written request is made by the Developer and approved by the City.

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5. From and effective on the date of written acceptance from the City Engineer for all Municipal Above Ground Improvements and Municipal Underground Improvements required pursuant to this Development Agreement, the Developer agrees to and shall provide a full and comprehensive warranty for all such improvements, concerning any and all defects and failures, for a period of two (2) years. The Developer agrees to be responsible for all engineering and maintenance costs during such warranty period. Failure on the part of the Developer to comply with the terms with respect to this warranty shall result in default of this Agreement and shall give rise to the City exercising its rights and remedies. In addition though, and while the warranty is to be for a period of two (2) years, the Developer agrees and acknowledges that the warranty and obligations thereunder to the City shall not be released or determined satisfied until such time as a final inspection is arranged at or upon the end of the two (2) year warranty period. The onus to arrange such final inspection shall be on the Developer. The Developer shall not be released of any and all obligations pursuant to this Agreement or the warranty until such time as any defects or failures, if any, which are determined upon final inspection for completion of the warranty period, are remedied to the complete satisfaction of the City. As a result, the Developer understands and acknowledges that the warranty period can extend farther than a period of two (2) years in these circumstances, and until same is released by the City.
6. The Developer acknowledges and agrees:
- a) that this Development Agreement be specific to the attached concept plan **Schedule "B"** and any deviation from this attached concept plan may and shall open this agreement for further review and the insertion of additional requirements;
 - b) to contribute, on a one time basis, a monetary amount of \$1,654.36 in lieu of land dedication for Parks & Recreation as established by the Manager of Public Works for the City. This amount is based on \$2,968.00 per hectare of developable land less 25% for roadways and is due upon signing of this Agreement;
 - c) to design, construct and hard surface the laneway bordering the west side of said lands from the south property line of the property to Centre Avenue including the approach. The work shall be constructed to the latest version of the City of Brandon Construction Specifications and to the satisfaction of the City Engineer;
 - d) to contribute on a one time basis, the monetary amount of \$19,440.00 in lieu of land dedication to the Brandon School Division in accordance with the Municipal Act and Division Policy and is due upon signing of this Agreement;
 - e) to supply, construct and maintain a 1.5 meter solid opaque fence along the south, west and north sides of the proposed parking area as laid out in the attached **Schedule "B"**, save and except those openings required for access;
 - f) to obtain all approvals concerning the Development from the Highway Traffic Board (ie. egress, ingress, 125 foot control zone) and produce a copy of these approvals to the City Engineer;
 - g) to provide in conjunction with item 3e) of this Agreement, submit to the Planning Department an engineering report relating to drainage of the lands whereby such report shall compare pre and post development lands drainage and establish control mechanisms to ensure no further rate of runoff water will be generated from the site after development in comparison to the site in its present condition and confirming there will be no impact of the drainage flows from the development on properties downhill of the lands;
 - h) that the developer shall plant a combination of deciduous and coniferous trees spaced not more than 30 ft. apart within a 5' green grass area adjacent to the fence on the lands;

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- i) that all lighting in parking lots, walkways and on the building shall be full cut off lights to prevent spill over and glare to adjoining property;
 - j) that the development incorporate a 12.1m (40') front setback for all commercial buildings;
 - k) that the developer shall submit to MIT a traffic study for their review and authorization as part of any application for access permit from the development directly onto 1st Street. Any access to 1st Street shall be along the south property line of the development and shall be a shared access with the property to the south of the development; and
 - l) the developer agrees to supply easements as required for all utilities requiring same.
7. The Developer agrees to furnish security for any and all of its obligations pursuant to this Agreement, by means of an Irrevocable Letter of Credit for the amount of fifty thousand (**\$50,000.00**) dollars prior to application for a building permit. The issuer of the Irrevocable Letter of Credit, and the form and content thereof, shall be subject to the approval of the City. This will be a one time application and will cover the Developer for this or any other Agreement entered. City approval and building permits for the lands will not be issued until the Irrevocable Letter of Credit is in full force and effect, the duration of which must operate continuously throughout the currency of this or any other Development Agreement with the City, the warranty period, and until the City is agreeable to the release of this security, should there be deficiencies to remedy as a result of final inspections for purposes of the warranty. Upon final inspection and written acceptance by the City of all improvements for purposes of completing the warranty period, and once and only once any and all outstanding deficiencies as a result of inspections for the completion of the warranty period are met to the satisfaction of the City will the Irrevocable Letter of Credit be released back to the Developer and cancelled. Failure to comply with the terms of this Agreement shall result, at the discretion of the City, in action against the security as presented by the Developers.
8. The City and the Developer agree that there will be no waiver of rights on the part of the City should it not immediately enforce its rights and remedies pursuant to this Agreement.
9. The Developer shall be required to reference survey monuments prior to development, and confirm that these monuments have been replaced (if disturbed) in compliance with *The Surveys Act* when construction is completed.
10. The Developer shall obtain all necessary permits relating to the development on the lands from the City prior to issuance of a building permit by the Brandon & Area Planning District.
11. The Developer agrees to indemnify and save harmless the City, its officers, employees and agents from and against all claims, proceedings, demands, damages, actions, judgements of any kind, including without limiting the generality of the foregoing, all damages for personal injury or death arising out of or attributable to all actions or conduct of the Developer, its employees, agents and contractors upon the development lands including but not limited to any work or act committed or omitted by the Developer in the performance of this Agreement.
12. The City shall be entitled to register a Caveat against all of the lands affected by this Agreement reflecting the provisions of this Agreement.
13. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators and assigns, provided however that no assignment shall be made by the Developer unless and until such assignment has been approved in writing by the City, such approval should not or will not be unreasonably withheld.

Initials

IN WITNESS WHEREOF the parties have hereunto set their hands and seals and/or caused their corporate seals to be affixed duly attested to by the hands of their proper signing officers in that behalf, the day and year first above written.

SWANSON HOLDINGS LIMITED

Per:

"Authorized Signatory
I am authorized to bind the corporation."

"Authorized Signatory
I am authorized to bind the corporation."

Witness Signature

KAREN JOHANNE SWANSON

Name of Witness

Address

Witness Signature

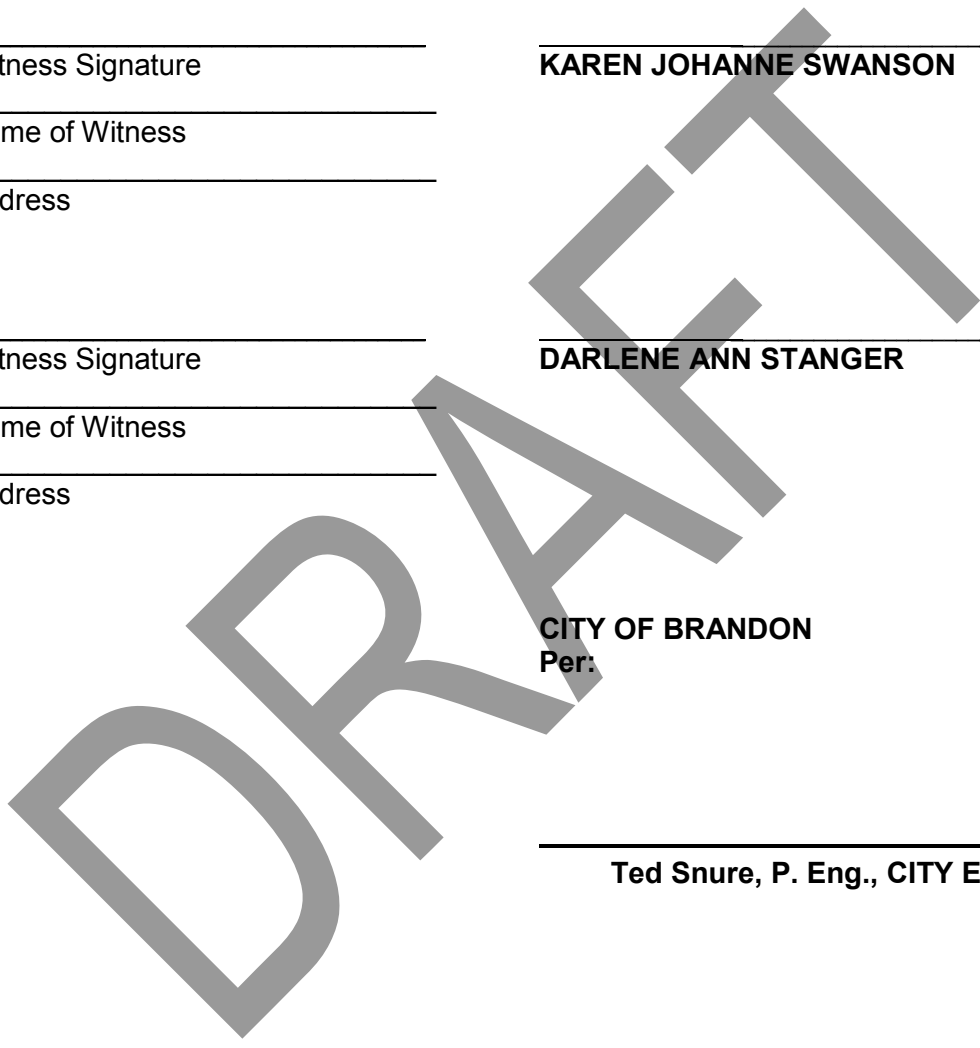
DARLENE ANN STANGER

Name of Witness

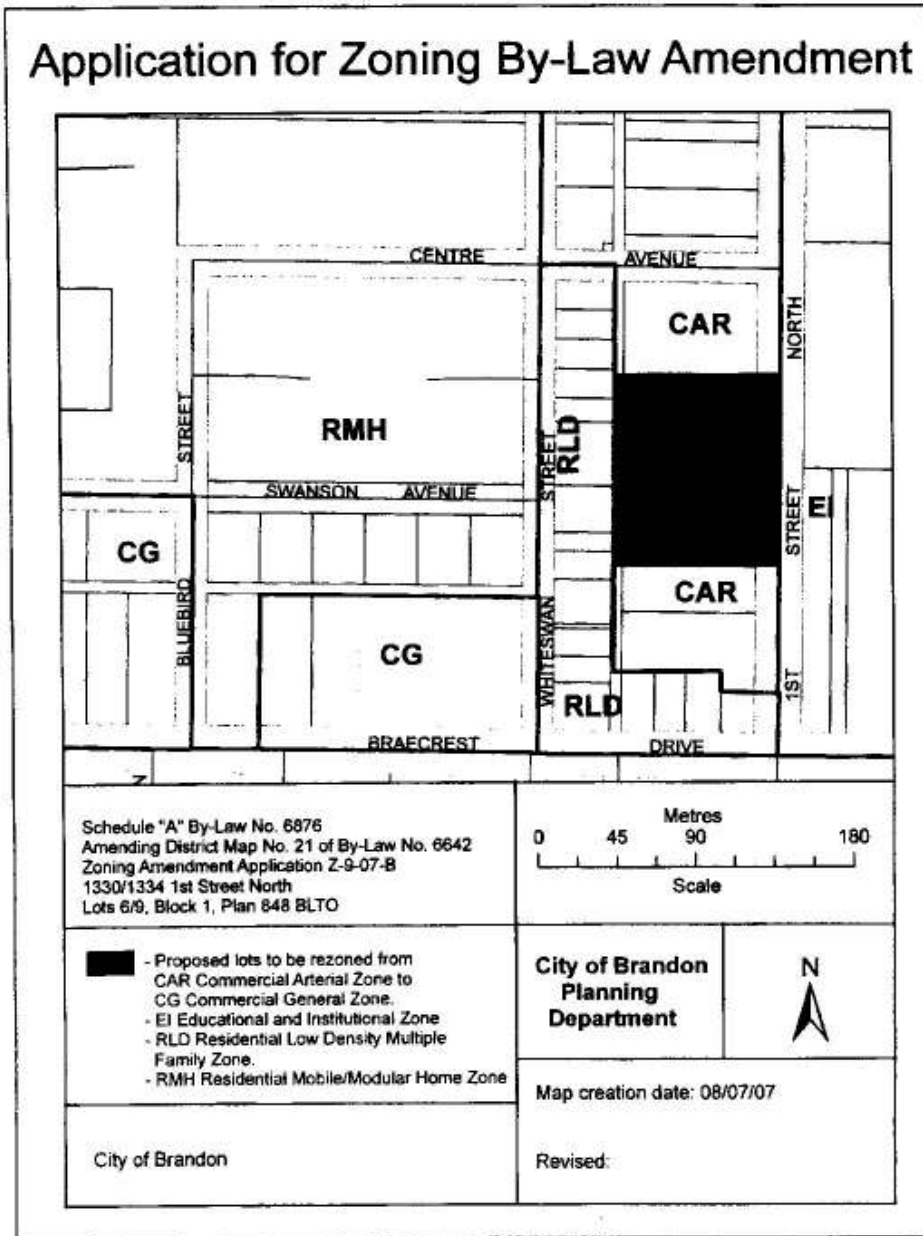
Address

CITY OF BRANDON
Per:

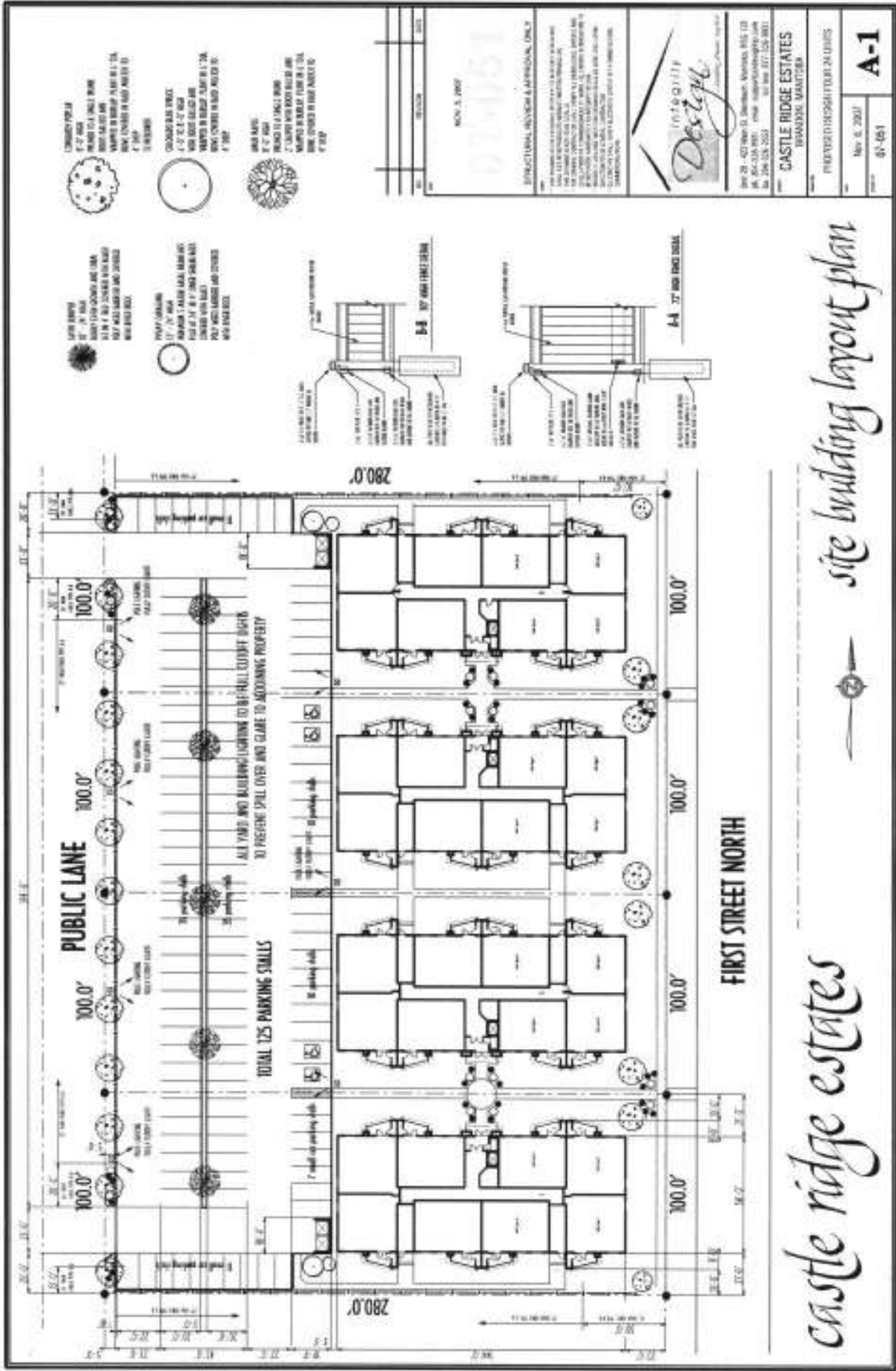
Ted Snure, P. Eng., CITY ENGINEER



Schedule "A"



Schedule "B"



castle ridge estates *site building layout plan*

THIS AGREEMENT made in duplicate this
day of _____, A.D. 2008.

BETWEEN:

**KAREN JOHANNE SWANSON,
DARLENE ANN STANGER
AND SWANSON HOLDINGS LIMITED,**

(hereinafter called the "Developer"),
OF THE FIRST PART,

-- and --

THE CITY OF BRANDON,

(hereinafter called the "City"),
OF THE SECOND PART.

DEVELOPMENT AGREEMENT

TS/pk

Date: January 24, 2008

The City of Brandon
Engineering & Operations Department
410 - 9th Street
Brandon, Manitoba
R7A 6A2

T. E. Snure, P. Eng.
CITY ENGINEER

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