

ITEM 9
MANAGER'S REPORT NO. 4
COUNCIL MEETING 1983 01 17

RE: LETTER FROM J. P. DAEM, PROPERTY MANAGER, BRADSON MANAGEMENT SERVICES, INC
WHICH APPEARED ON THE AGENDA FOR THE 1982 DECEMBER 13 MEETING OF COUNCIL
(ITEM 2(a))
LANE ESTATE AT 4112 SARDIS STREET
RELATED TO CENTRAL PARK PLACE
(ITEM 7, REPORT NO. 68, 1982 DECEMBER 13)

MUNICIPAL MANAGER'S RECOMMENDATION:

1. THAT the recommendations of the Director Planning & Building Inspection be adopted.

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TO: MUNICIPAL MANAGER
PLANNING & BUILDING INSPECTION DEPARTMENT

FROM: DIRECTOR PLANNING & BUILDING INSPECTION
1983 JANUARY 12

SUBJECT: EXPIRY OF THE LIFE TENANCY IN FAVOUR OF WILHELMINA LANE REGISTERED COVENANT UNDER SECTION 215 OF THE LAND TITLE ACT LOT 92 OF DISTRICT LOT 34, GROUP 1, N.W.D. PLAN 45944
4112 SARDIS STREET - RELATED TO CENTRAL PARK PLACE
THREE CONDOMINIUM APARTMENT TOWERS - R.Z. #78/72

RECOMMENDATIONS:

1. THAT, if the Owners Strata Plan NW 429 wish to retain the existing dwelling on Lot 92 for a further interim period, they be advised that a new agreement would require to be effected by means of an amendment rezoning by-law after the holding of a public hearing and that this would require them to make an amendment rezoning application.
2. THAT, if an amendment rezoning by-law is pursued, it be subject to the terms outlined in Section 3.0 of this report.
3. THAT a copy of this report be sent to the Owners Strata Plan NW 429, c/o Mr. J.P. Daem, Bradson Management Services Inc., 7409 Conway Avenue, Burnaby, B.C., V5E 2P7, and to Pennyfarthing Development Corporation, Suite 270, 1441 Creekside Drive, Vancouver, B.C.

1.0 REQUEST OF A DELEGATION

Council at its meeting of 1982 December 13 received, as a delegation, Mr. J.P. Daem of Bradson Management Services Inc., who appeared on behalf of the Owners Strata Plan NW 429, Central Park Place. The purpose of this delegation was to appeal the removal of a house on the property (Lot 92) related to the expiry of a life tenancy and to request retention of the house for use by a second resident caretaker. Council also received the attached staff report which was received for information purposes. As a result of further Council discussion, the following motion was adopted:

"THAT the use of the existing home on the subject property for caretaker purposes be approved for a period of five years, after which a further review will take place, subject to the determination of the legality of granting such approval."

In the Council discussion, support was given to allowing the existing dwelling to remain for an additional interim 5 to 10 years thereby enabling the Strata Corporation to budget sufficient funds to afford the acquisition of an additional resident caretaker's suite. However, Council also wished to be assured that, if the dwelling were to remain for an additional interim period, this could be legally permitted within the terms of the requisite zoning by-law, Rezoning Reference #78/72, By-Law No. 6414, Amendment By-Law No. 47, 1973, without requiring a new public hearing. Concern was also expressed that if the dwelling were to remain, the building and grounds would be suitably maintained.

2.0 LEGAL IMPLICATIONS

The following information is provided on the aspect of whether the dwelling could continue to be legally retained with respect to the governing Rezoning #78/72 without requiring a new public hearing.

The adopted Comprehensive Development site plan shows landscaping in the area currently occupied by the dwelling and any reference to the dwelling in the rezoning reports was related to its interim retention tied to a life estate by its occupant. It is noted that, if the dwelling were proposed to be retained permanently, an amendment rezoning application entailing a new public hearing would be required.

Now that the life estate has expired, the registered covenant must be acted upon and its terms completed at this time. The registered covenant cannot legally countenance it being held in abeyance for an additional 5 to 10 years now that the life estate has expired.

Therefore, should the Owners Strata Plan NW 429 wish to pursue this matter, a new registered covenant is required with the intent of generally achieving the same terms as those outlined in the life estate covenant. The Municipal Solicitor does not support the Municipality entering into a new legal agreement regarding the existing dwelling unless achieved through an amendment rezoning application.

The Municipal Solicitor states:

"The parties entered into a covenant to remove the dwelling on the expiry of the life tenancy and deposited a letter of credit to ensure the removal of the building. That covenant was entered into as a condition of the rezoning. In my opinion, the covenant should be enforced. I point out that Pennyfarthing's solicitor in his letter to me dated January 6, 1982 stated 'we will advise further once our client has removed the existing structures from Lot 92 ...'.

"Since it was a condition of the rezoning that the dwelling be removed at the expiry of the life tenancy, if Council is now going to discharge that restrictive covenant and enter into a new one, it is in effect amending the rezoning by-law and, in my opinion, that amendment should be effected by by-law after a public hearing."

3.0 TERMS OF A NEW AGREEMENT

The terms for a new agreement to be achieved through an amendment rezoning by-law are as follows:

3.1 That the agreement permit the retention of the dwelling for an interim period of 5 years with the possibility of renewing this retention agreement for an additional 5 years at the discretion of the Municipal Council. The agreement in the form of a registered covenant would be entered into between the Owners Strata Plan NW 429, Central Park Place and the Municipality.

Upon the registration of the new covenant, the previous life estate covenant would be released.

3.2 That a survey plan be submitted and registered consolidating Lot 92 on which the dwelling is located and the balance of the site, Lot 93, into a single legal parcel, thereby attaining one of the prerequisites of Rezoning Reference #78/72. This survey plan would be required to be registered prior to the registration of the new restrictive covenant. This step would effectively transfer ownership of Lot 92 to the Owners Strata Plan NW 429.

3.3 That the dwelling for the further interim period be restricted for use by a resident caretaker.

3.4 That the existing carport structures and driveways on Lot 92 be removed and the area landscaped as soon as practicable as mentioned in the delegation's submission.

3.5 That the Owners Strata Plan NW 429 be required to demolish the dwelling and landscape the site in accordance with the adopted Comprehensive Development Plan at the end of either the 5 year period if a renewal is not approved by Council or the 10 year period if a renewal had been approved.

3.6 That the Owners Strata Plan NW 429 be required to deposit or to arrange to have deposited a continuing Letter of Credit equal to the current Letter of Credit in the sum of \$7,200 which would continue to be automatically increased by \$400 per year to guarantee the demolition of the dwelling and the provision of the requisite final landscaping on Lot 92.

4.0 CONCLUSION

In conclusion, if the Owners Strata Plan NW 429 wish to pursue the retention of the dwelling on Lot 92 for a further interim period of 5 to 10 years, it would be necessary to ratify this proposal through a new legal agreement effected through an amendment rezoning application and necessitating a public hearing. The proposed terms of a new agreement to maintain the same guarantees and qualitative features of the life estate covenant are outlined in Section 3.0 of this report.

Should the Owners Strata Plan NW 429 not wish to pursue the necessary amendment rezoning application, the life estate covenant would take precedence and the developer would be requested to fulfil the terms of the life estate covenant with the current Letter of Credit on deposit of \$7,200 being utilized to guarantee fulfillment.

ITEM 7
MANAGER'S REPORT NO. 68
COUNCIL MEETING 1982 12 13

RE: LETTER FROM J. P. DAEM, PROPERTY MANAGER,
BRADSON MANAGEMENT SERVICES, INC., 7409 CONWAY AVENUE, BURNABY, B.C. V5E 2P7
LANE ESTATE AT 4112 SARDIS STREET
RELATED TO CENTRAL PARK PLACE

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MUNICIPAL MANAGER'S RECOMMENDATION:

1. THAT the recommendation of the Director Planning & Building Inspection be adopted.

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ITEM 9
MANAGER'S REPORT NO. 4
COUNCIL MEETING 1983 01 17

TO: MUNICIPAL MANAGER 1982 DECEMBER 07

FROM: DIRECTOR PLANNING &
BUILDING INSPECTION

SUBJECT: EXPIRY OF THE LIFE TENANCY IN FAVOUR OF WILHELMINA LANE
REGISTERED COVENANT UNDER SECTION 215 OF THE LAND TITLE ACT
LOT 92 OF DISTRICT LOT 34, GROUP 1, N.W.D. PLAN 45944
4112 SARDIS STREET
RELATED TO CENTRAL PARK PLACE - THREE CONDOMINIUM APARTMENT
TOWERS - REZONING REFERENCE #78/72

RECOMMENDATION:

1. THAT this report be received for information purposes.

REPORT

Council has on its Agenda for its meeting of 1982 December 13 a request from Mr. J.P. Daem of Bradson Management Services Inc., to appear as a delegation on behalf of the Owners, Strata Plan N.W. 429, Central Park Place. The purpose of this delegation is to appeal the removal of a house on the property (Lot 92) related to the expiry of a life tenancy and to request retention of the house as a resident caretaker house for the Strata Corporation (see attached Sketch #1).

As background, Central Park Place is a condominium development accommodating over 400 units in 3 towers of over 20 storeys which is now completely constructed and encompasses the entire block bounded by Grange Street, Barker Avenue, Sardis Street and Patterson Avenue. The requisite Rezoning #78/72 was granted Final Adoption of the rezoning bylaw on 1974 April 08.

The developer had been able to include all properties within the subject block in his consolidated site except for the one property (Lot 92) at 4112 Sardis Street. The developer was finally able to acquire this lot subject to a life interest to its occupant, Mrs. Wilhelmina Lane. After extensive discussion between the developer and Municipal staff, a supportable arrangement was determined, outlined in the Third Reading report submitted to Council on 1974 March 08, and described as follows:

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"The applicant has submitted a survey plan consolidating the entire site into one legal lot except for a single lot at 4112 Sardis on the corner of Patterson Avenue and Sardis Street. The lot at 4112 Sardis Street, although owned by this developer, is subject to a life interest by its present occupant, Mrs. Wilhelmina Lane. A comprehensive legal agreement has been submitted providing for interim landscaping, and the demolition and final landscaping of the subject lot and the consolidation of the subject lot with the appropriate strata corporation upon the expiration of the life interest. This agreement is to be registered as a covenant on the Lot at 4112 Sardis Street.

"The applicant has also submitted a letter of credit for \$4,000 which will be automatically increased by \$400 per year to guarantee the demolition of the existing house and the provision of the requisite final landscaping on the lot at 4112 Sardis Street."

Council granted Third Reading of the rezoning bylaw on this basis. Council approval to permit the Municipality to enter into a covenant agreement under Section 215 of the Land Title Act (formerly Section 24A of the Land Registry Act) is not done lightly. The legal step of registration against the title of the property ensures that the agreements will enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This covenant is intended to assure specific performance of the agreement and preclude changes in future. Fulfillment of the terms of the covenant will bring this large high rise apartment development in conformance with the adopted Comprehensive Development Plan. The legal and rezoning ramifications of retaining the existing interim building are significant.

The first 2 towers of Central Park Place were constructed by Marc-Narod Enterprises Ltd. The Pennyfarthing Development Corporation recently completed construction of the third tower and entered into agreements to observe and perform all legal obligations previously required of Marc-Narod. Pennyfarthing has currently on deposit with the Municipality a Letter of Credit in the amount of \$7,200 to guarantee the removal of existing structures on Lot 92, the landscaping of Lot 92 in conformance to the Comprehensive Development Plan, and the consolidation of this lot with the balance of the site.

In general, it is also noted that remnant buildings have not been left as part of consolidated apartment sites. Such a precedent would hamper the development of the various apartment areas in the Municipality in conformance with Council adopted Community Plans. Sketch #2, attached, also indicates the location of the subject lot within the centre of this apartment area.

Lawson, Lundell, Lawson & McIntosh, the solicitors for Pennyfarthing, informed the Municipality in a letter dated 1982 January 06 that the life tenancy had expired and that once Pennyfarthing had complied with the operational terms of the covenant that the Municipality would be so informed. As this covenant agreement does not yet appear to have been complied with in the light of this delegation, staff will contact the developer to request that he complete the terms of the registered covenant.

This is for the information of Council.

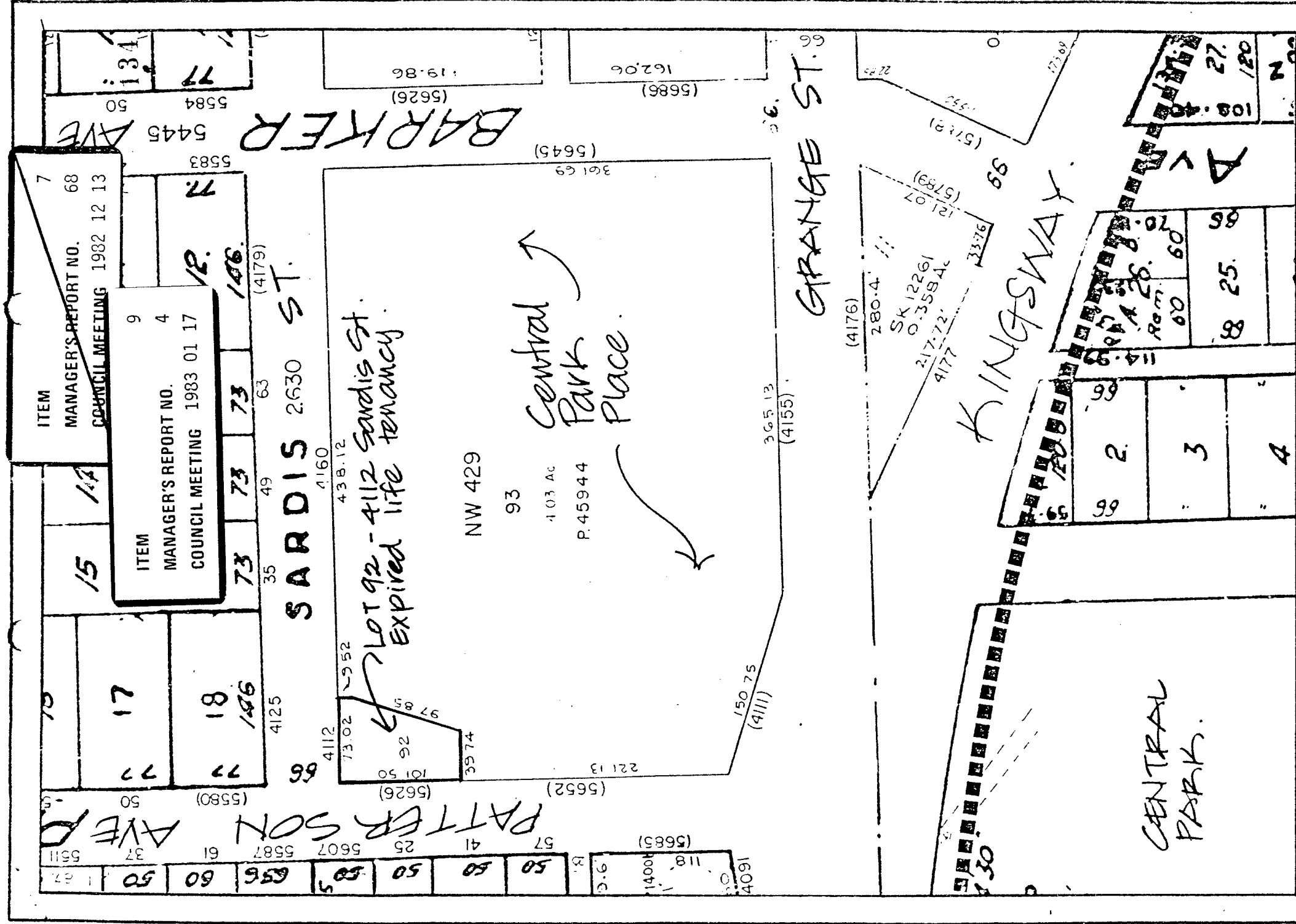
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Attachments

cc: Municipal Solicitor

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COUNCIL MEETING 1983 01 17

A. L. Parr
A. L. PARR
DIRECTOR PLANNING &
BUILDING INSPECTION



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Date **DEC/02**

Scale **1" = 100'**

Drawn By **Burnaby Planning Department**

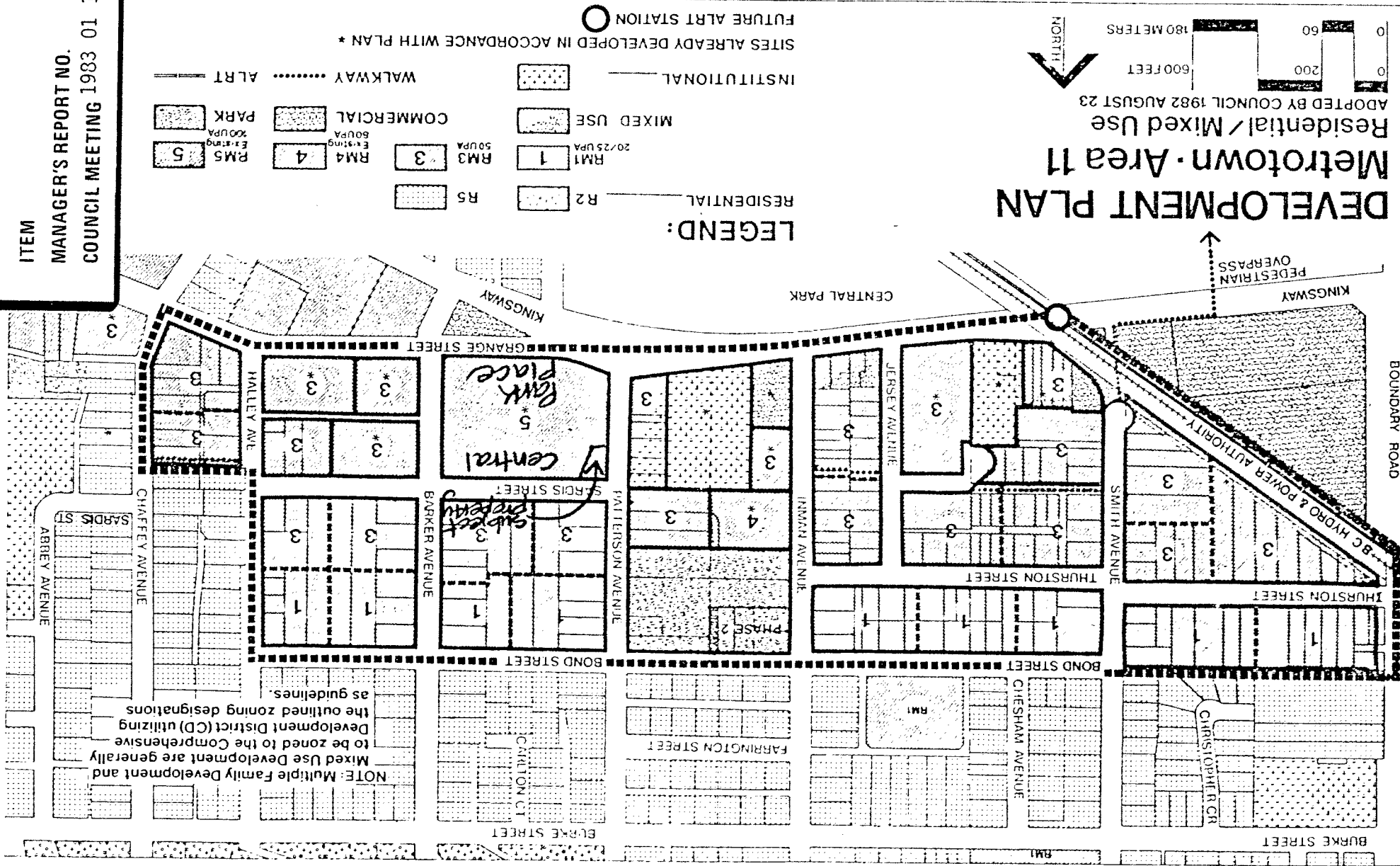
SKETCH 1

412 Sardis St. - Expired Life Tenancy
 Registered covenant to demolish the existing building and landscape the site according to the adopted CP Plan upon expiration of the life interest

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NOTE: Multiple Family Development and Mixed Use Development are generally to be zoned to the Comprehensive Development District (CD) utilizing the outlined zoning designations as guidelines.



LEGEND:

R2 RESIDENTIAL
 R3
 R4
 R5
 R1 20/25 UPA
 RM1
 RM3
 RM4
 RM5 Existing 500 UPA
 COMMERCIAL
 MIXED USE
 INSTITUTIONAL
 PARK
 WALKWAY
 ALERT

SITES ALREADY DEVELOPED IN ACCORDANCE WITH PLAN *

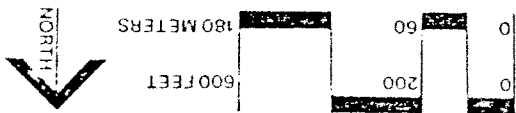
○ FUTURE ALERT STATION

DEVELOPMENT PLAN

Metrotown - Area 11

Residential / Mixed Use

ADOPTED BY COUNCIL 1982 AUGUST 23



SKETCH 2

