C: Dir., Department of General Services

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

July 19, 2016

From: David S. Freeman, AICP
Director of General Services

Subject: Sale of city-owned property located at 1426 W. 41st Street to Balance Builders, Inc.

Reviewed: Sabrina Joy-Hogg, Deputy City Manager

Ward/Superward: 2/7

Approved: Marcus D. Jones, City Manager

Item Number: **PH-10**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Balance Builders, Inc.
2525 Oconee Avenue, Suite 101.
Virginia Beach, VA 23454

III. **Description:**
This agenda item is an ordinance to authorize the sale of a vacant parcel of land owned by the City of Norfolk (the "city"), and located at 1426 W. 41st Street (the "property"), to Balance Builders, Inc. ("Balance Builders").

IV. **Analysis**
Balance Builders seeks to purchase and develop the property located at 1426 W. 41st Street. The city has agreed to sell the property to Balance Builders for the appraised value of $17,000. The appraised value of the property differs from the assessed value as the property is subject to deed restrictions which limit its development to a single-family, owner-occupied home. As a condition of the sale of this property, no building permit shall be issued until a zoning certificate has been obtained from the Department of City Planning verifying the proposed single-family dwelling to be built on the property is consistent with the prevailing patterns of the neighborhood.

The development of a quality home built on this property will help to exemplify the continued expansion efforts in the area and will add to local comparable real estate values. Conveyance to Balance Builders will subject the property to real estate taxes, thereby creating on-going revenue for the city. No specific city use has been identified for this property.

V. Financial Impact

Purchase price	$17,000 (appraised value)
Typical Costs of Closing	Each party to this transaction shall pay its own legal fees
FY 2016 Assessed Value of Parcel	$22,000
Annual Real Property Tax Revenue	• $253 annually (current total revenue for this lot) • Potential $2,070.00 annually (with land and improvements at a proposed value of $180,000)

VI. Environmental

There are no known environmental issues associated with this property.

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the city's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of General Services – Office of Real Estate and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Legal Description
- Purchase and Sale Agreement
- Aerial map

12/15/2015-wld
Form and Correctness Approved:

By Nathaniel Beaman
Office of the City Attorney

Contents Approved:

By Nicole Riddick for DSF
DEPT. General Services

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE AUTHORIZING THE CONVEYANCE TO BALANCE BUILDERS, INC. OF A CERTAIN PARCEL OF PROPERTY LOCATED AT 1426 W. 41st STREET FOR THE TOTAL SUM OF $17,000.00 IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE PURCHASE AND SALE AGREEMENT.

- - -

WHEREAS, the City of Norfolk owns certain property known as 1426 W. 41st Street; and

WHEREAS, Balance Builders, Inc. ("BB") has offered to purchase the said property being described in Exhibit A attached hereto, from the City of Norfolk for the sum of $17,000.00; and

WHEREAS, Section 2(5) of the Norfolk City Charter provides the City with broad authority for the disposition of its real property; and

WHEREAS, Council has determined that the public interest is best served by the conveyance of the property to BB for the sum of $17,000.00 upon the terms and conditions set forth in the Purchase and Sale Agreement attached hereto as Exhibit B; now, therefore,

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the sale to BB of that certain parcel of property described in Exhibit A, for the sum of $17,000.00, is hereby authorized and the Purchase and

Sale Agreement, a copy of which is attached as Exhibit B, is hereby approved.

Section 2:- That upon receipt of the sum of $17,000.00 and the satisfaction of all terms and conditions set forth in the Purchase and Sale Agreement, the City Manager is authorized to deliver a deed conveying the said property to BB, with Special Warranty of Title, in form satisfactory to the City Attorney, and the City Manager is further authorized to do all things necessary and proper to carry out the terms of the Purchase and Sale Agreement.

Section 3:- That the City Manager, with the advice and counsel of the City Attorney, may correct, revise or amend the Purchase and Sale Agreement as he may deem advisable in order to carry out the intent of the Council as expressed herein.

Section 4:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

EXHIBIT A TO ORDINANCE

1426 West 41st Street
Lot 32 – Southern Development & Exchange Company

A rectangular-shaped lot, piece or parcel of land situate, lying and being in the City of Norfolk, Virginia, said parcel being bounded on the south by West 41st Street and described as follows: Lot 32 in Block 9 as shown on a plat entitled, "Southern Development & Exchange Company," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia, in Map Book 6 at Page 49.

September 28, 2015

EXHIBIT B TO ORDINANCE

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT made this ___ day of _____, 2015, by and between the **CITY OF NORFOLK,** a municipal corporation of the Commonwealth of Virginia ("City"), and **BALANCE BUILDERS, INC.**, a Virginia corporation ("BB"), whose address is 2525 Oconee Avenue, #101, Virginia Beach, Virginia 23454.

RECITALS:

A. City is the owner in fee simple of certain real property known as 1426 W. 41st Street, together with all improvements thereon and all rights and appurtenances thereunto pertaining, located in the City of Norfolk, Virginia, said property being described in Exhibit A, which is attached hereto and made a part hereof ("Property").

B. BB desires to purchase the property from City and City desires to sell the Property to BB in accordance with the terms and conditions of this Agreement.

C. These recitals are incorporated by this reference into this Agreement.

D. The conveyance of the Property to BB will enable BB to construct attractive and affordable housing that will enhance the Property, as well as the neighborhood generally, and will return the Property to the real estate tax rolls.

NOW, THEREFORE, in consideration of the purchase price and the mutual promises contained in this Agreement, the parties agree as follows:

1. SALE. City agrees to sell and BB agrees to purchase the Property, together with all easements, rights, and appurtenances thereto, and all buildings and improvements now located thereon.

2. PURCHASE PRICE. The purchase price (the "Purchase Price") for the Property is **Seventeen Thousand Dollars and 0/100 ($17,000.00)**, and the Purchase Price will be paid in the form of a certified check or by wire transfer of funds at Closing.

3. DEPOSIT. Within five (5) business days from the date this Agreement is fully executed by City, BB shall deposit with an escrow agent selected by City ("Escrow Agent") the sum of **One Thousand Seven Hundred Dollars and 0/100 ($1,700.00)** in cash as earnest money ("Deposit"). The Deposit shall be deposited by the Escrow Agent in a fully federally insured interest bearing account and all interest accruing on the Deposit shall belong to BB in all events. The Deposit shall be non-refundable except as specifically set forth herein.

4. CONVEYANCE.

a. City agrees to convey the Property "AS IS" to BB by Special Warranty Deed, subject to applicable easements and restrictive covenants of record.

b. Possession of the Property will be given to BB at closing.

c. City agrees to pay the expenses of preparing the deed and to pay any fees or costs that are normally the responsibility of the Grantor. BB will pay all other fees and costs charged in connection with the transfer of the Property and the recordation of the deed.

d. City and BB agree that the attorney or title insurance company ("Title Company") selected by BB shall act as the settlement agent ("Settlement Agent") at BB's expense. The Settlement Agent shall prepare the settlement statement, update and record the deed, collect and disburse settlement funds in accordance with this Agreement and the settlement statement, and file any required state and federal tax forms or other certifications in accordance with Paragraph 18.

5. FEASIBILITY PERIOD. BB shall have 120 days from the date the Purchase and Sale Agreement is executed by all parties in which to complete its assessment of the Property, including title examination and environmental assessment.

6. CLOSING. Closing will be made at the offices of the Norfolk City Attorney, 810 Union Street, Suite 900, Norfolk, Virginia 23510, or such other location as the parties may agree, within 120 days of the effective date of the ordinance authorizing the conveyance of the property by City ("Effective Date"), or as soon thereafter as settlement documents can be prepared and any title issues can be resolved.

7. CONDITIONS. BB's obligations are expressly conditioned upon the satisfaction of each of the following conditions in the sole determination of BB, it being understood that City is under no obligation whatsoever to expend any funds to satisfy any of these conditions. If any one of the following conditions cannot be met within the Feasibility Period, BB may unilaterally terminate this Agreement:

a. Receipt of a satisfactory title commitment.

b. Receipt of a Phase I Environmental Assessment and Report ("Phase 1 Report") conducted and prepared by an environmental engineering and inspection company selected by BB at BB's expense, and such other testing and reports as may be reasonably required by BB or recommended in the Phase I Report, any such additional testing and reports will be at the BB's expense.

c. Satisfaction by City of all obligations under this Agreement.

8. SOLD "AS IS"; NO REPRESENTATIONS AND WARRANTIES BY CITY. BB acknowledges that City has made no representations or warranties whatsoever in regard to the Property, except for Special Warranty of Title. BB agrees that they have inspected and are thoroughly familiar with the Property and are acquiring the Property in its "as is" condition. BB understands and agrees that City has not made and makes no representations or warranties of any kind with respect to the condition of the Property or its fitness, suitability or acceptability for any particular use or purpose, and City shall not be liable for any latent or patent defects therein.

9. DEVELOPMENT. BB understands and agrees that no building permit shall be issued for the development of a single-family dwelling on the parcel until a zoning certificate has been granted by the Department of City Planning, which verifies that the proposed single-family dwelling to be built on the parcel is consistent with the prevailing pattern in the neighborhood with respect to the footing, massing, scale, appearance, fenestration, roof lines and other exterior elements.

10. OWNER OCCUPIED. The deed shall contain a restrictive covenant limiting construction upon the property to single-family, owner occupied dwellings and structures appurtenant thereto.

11. NOTICES. All notices to the parties hereto will be delivered by hand, via certified mail return receipt requested, or via facsimile and all be deemed effective upon delivery if by hand and upon confirmation of receipt if by other means, to the following address until the address is changed by notice in writing to the other party:

Purchaser: Geoffrey Wallace
Balance Builders, Inc.
2525 Oconee Avenue, #101
Virginia Beach, Virginia 23454

City: City of Norfolk
Attn: Bernard Pishko, City Attorney
810 Union Street, Suite 900
Norfolk, Virginia 23510

12. SURVIVAL. The provisions contained in this Agreement will be true as of the date of this Agreement and as of the date of Closing and will survive the Closing.

13. BROKERAGE OR AGENT'S FEES. Neither City nor BB are represented by a real estate broker, agent or finder in this transaction. No fees or commissions are or will be due from or payable by City as a result of this transaction. City shall not have any obligation whatsoever to pay any brokers or agent's fees or commissions, nor shall City have any obligation whatsoever to see that any such fees or commissions are paid.

14. DEFAULT AND REMEDIES.

a. If the conveyance contemplated by this Agreement is not consummated because of City's or BB's default, the non-defaulting party may elect to:

i. Terminate this Agreement;

ii. Seek and obtain specific performance of this Agreement; or

15. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties and will supersede the terms and conditions of all prior written and oral agreements, if any, concerning the matters it covers. The parties acknowledge there are no oral agreements, understandings, representations, or warranties that supplement or explain the terms and conditions contained in this Agreement. This Agreement may not be modified except by an agreement in writing signed by the parties.

16. GOVERNING LAW. This Agreement is to be construed in accordance with the laws of the Commonwealth of Virginia.

17. SUCCESSOR/ASSIGNMENT. This Agreement will be binding upon and the obligations and benefits hereof will accrue to the parties hereto, their heirs, personal representatives, successors and assigns.

18. IRS REPORTING REQUIREMENTS. For the purpose of complying with any information reporting requirements or other rules and regulations of the Internal Revenue Service ("IRS") that are or may become applicable as a result of or in connection with the transaction contemplated by this Purchase and Sale Agreement including, but not limited to, any requirements set forth in proposed Income Tax Regulation Section 1.6045-4 and any final or successor version thereof (collectively the "IRS Reporting Requirements"), City and BB hereby designate and appoint BB's attorney or Title Company to act as the "Reporting Person" (as that term is defined in the IRS Reporting Requirements) to be responsible for complying with any IRS Reporting Requirements. The attorney or Title Company hereby acknowledges and accepts such designation and appointment and agrees to fully comply with any IRS Reporting Requirements that are or may become applicable as a result of or in connection with the transaction contemplated by this Purchase and Sale Agreement. Without limiting the responsibility and obligations of the attorney or Title Company as the Reporting Person, City and BB hereby agree to comply with any provisions of the IRS Reporting Requirements that are not identified therein as the responsibility of the Reporting Person, including but not limited to, the requirement that City and BB each retain an original counterpart of this Purchase and Sale Agreement for at least four (4) years following the calendar year of the Closing.

WITNESS the following duly authorized signatures and seals:

[SIGNATURES ON FOLLOWING PAGE]

CITY OF NORFOLK

By: _____
City Manager

Attest:

_____
City Clerk

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, _____, a Notary Public in and for the City of Norfolk, in the Commonwealth of Virginia, whose term of office expires on the _____ day of _____, 20___, do hereby certify that Marcus D. Jones, City Manager, and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names as such are signed to the foregoing Purchase and Sale Agreement dated this _____ day of _____, 20___, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this _____ day of _____, 20___.

_____
Notary Public

Registration No._____

APPROVED AS TO CONTENTS:

_____
Director, Department of General Services

APPROVED AS FORM AND CORRECTNESS:

_____
Deputy City Attorney

PURCHASER:

BALANCE BUILDERS, INC.

By: _____

Title: _____

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, _____, a Notary Public in and for the City of _____, in the Commonwealth of Virginia, whose term of office expires on _____, do hereby certify that _____, the _____ of Balance Builders, Inc., whose name is signed to the foregoing Purchase and Sale Agreement dated _____, has acknowledged the same before me in my City and State aforesaid. He is personally known to me or has produced a driver's license as identification.

Given under my hand this___ day of_____, 20___.

_____
Notary Public

Registration No._____

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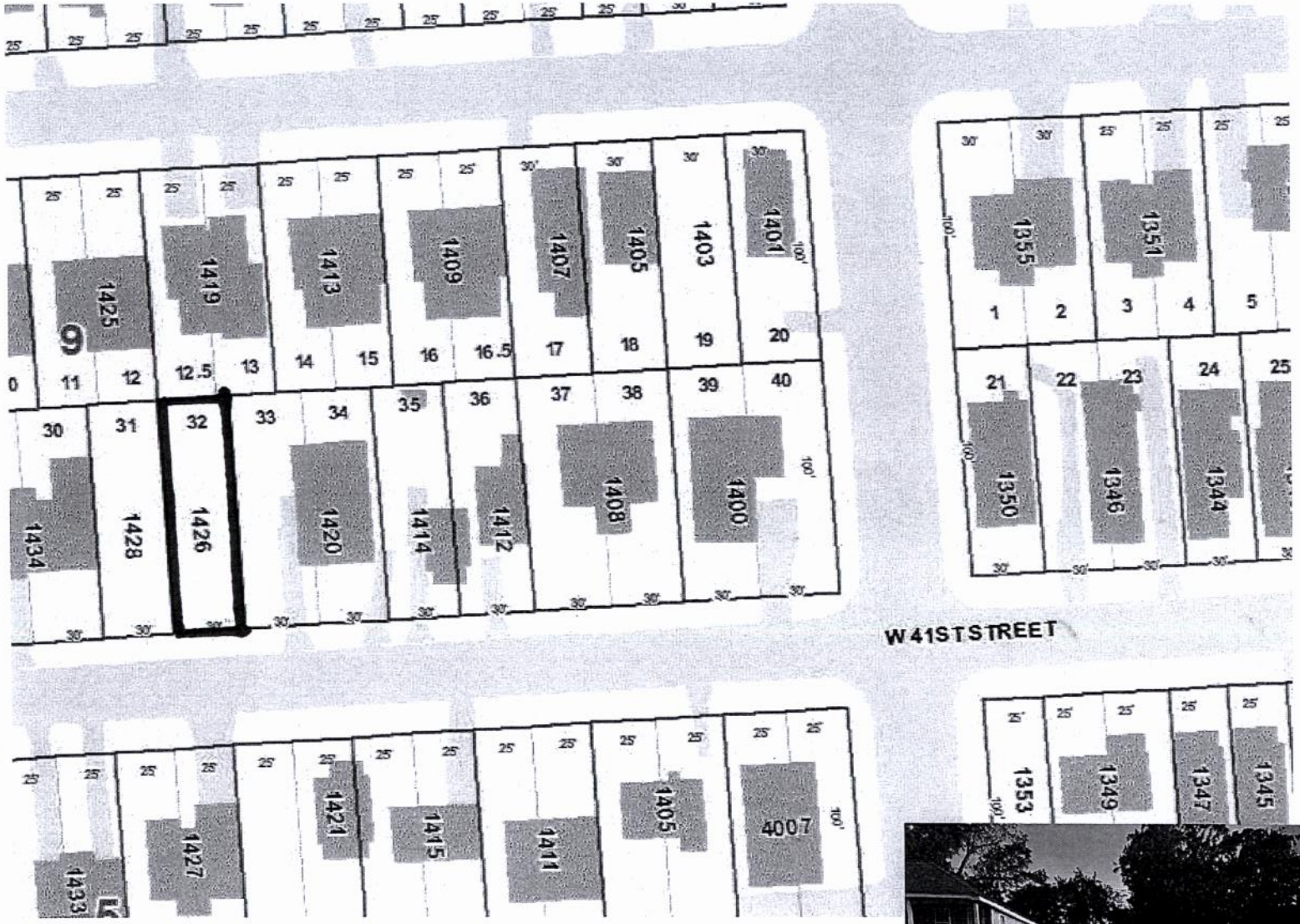
September 28, 2015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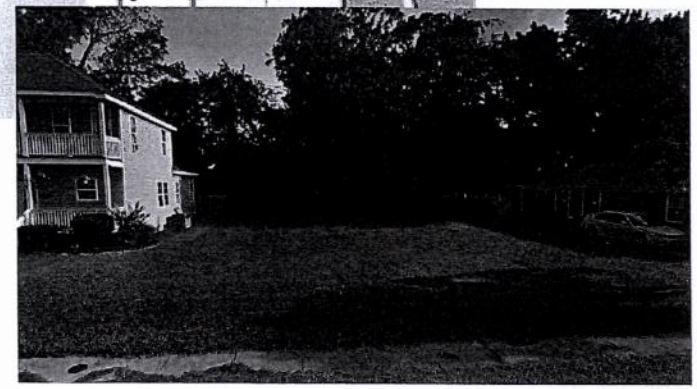

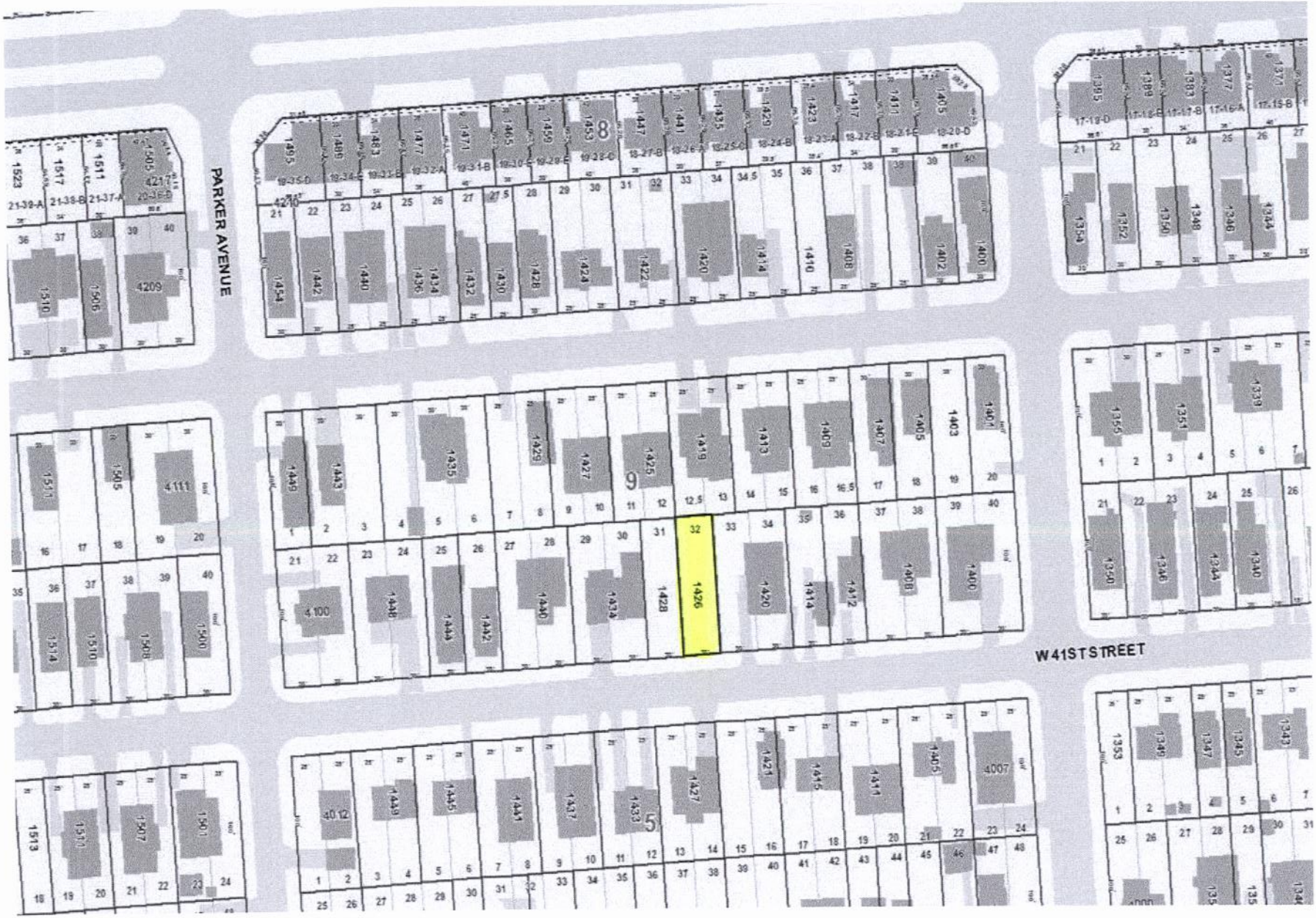
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