Minute No. 597
Report - Standing Policy Committee on Property and Development - July 5, 2005

Item No. 8 Rezoning - 1596/1600 Ness Avenue
File DAZ 201/2005

COUNCIL DECISION:

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

1. That The Winnipeg Zoning By-law No. 6400/94 be amended by rezoning the subject land as shown on Schedule "A" for File DAZ 201/2005 dated June 6, 2005, to a "C2" Commercial District subject to the following:

   A. That the applicant enter into a zoning agreement with the City of Winnipeg pursuant to Subsection 240(1) of The City of Winnipeg Charter to provide for the following:

      i. That no buildings or structure, including free-standing signs, shall be constructed, erected or placed on the land within an area of 15 feet in depth measured parallel with north limit of the land (described as the Madison Square Development) and that the existing landscaping in that area shall be maintained in good condition at all times to the satisfaction of the Director of Planning, Property and Development.

      ii. That no buildings, structures, parking areas or free-standing signs shall be constructed, erected or located on the land (described as the Madison Square Development) unless and until plans including the location and design of the proposed buildings and structures, parking and loading areas and free-standing signs have been submitted to and approved by the Assiniboia Community Committee.

      iii. That the total gross leaseable floor area of all buildings on the land (described as the Madison Square Development) shall not exceed 167,000 square feet.

2. That Caveat No. 85-63767, Caveat No. 85-63770 and Caveat No. 85-88935 be discharged.

Report - Standing Policy Committee on Property and Development - July 5, 2005

COUNCIL DECISION (continued):

3. That a ten percent (10%) dedication be made by a payment of a sum of money to the City in lieu of the requirement for land dedication based on the increase in the market value of the land.

4. That in the event the application is not proceeded with expeditiously and the by-law is not enacted within twenty-four (24) months after adoption of the report by Council, the matter shall be deemed to be concluded and shall not be proceeded with unless an extension of time is applied for prior to the expiry of this twenty-four (24) month period and the extension is subsequently approved by Council.

5. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary rezoning by-law and forward same to Council for all three readings.

6. That the rezoning by-law shall come into effect when the Zoning Agreement has been registered by caveat against the subject land at the Winnipeg Land Titles Office, provided that the said effective date occurs within twenty-four (24) months from the date that the said rezoning by-law is adopted by Council.

7. That the Proper Officers of the City are hereby authorized to execute said Zoning Agreement.

8. That the City Solicitor/Manager of Legal Services be requested to do all things necessary for implementation in accordance with the terms of The City of Winnipeg Charter.

Report - Standing Policy Committee on Property and Development - July 5, 2005

DECISION MAKING HISTORY:

Moved by Councillor De Smedt,

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

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 20, 2005, the Executive Policy Committee concurred in the recommendations of the Standing Policy Committee on Property and Development and the Assiniboia Community Committee and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On July 5, 2005, the Standing Policy Committee on Property and Development concurred in the recommendation from the Assiniboia Community Committee and submitted the matter to the Executive Policy Committee and Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On June 21, 2005, the Assiniboia Community Committee concurred in the administrative recommendation and submitted its recommendation to the Standing Policy Committee on Property and Development.

RE: **Rezoning – 1596/1600 Ness Avenue**
File DAZ 201/2005

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

Prepared by: **Josie Marques, Clerk,**
Assiniboia Community Committee

Report date: **June 24, 2005**

COMMUNITY COMMITTEE RECOMMENDATION:

On June 21, 2005, the Assiniboia Community Committee concurred in the administrative recommendation and recommends to the Standing Policy Committee on Property and Development:

1. That The Winnipeg Zoning By-law No. 6400/94 be amended by rezoning the subject land as shown on Schedule "A", for file DAZ 201/2005, dated June 6, 2005, to a "C2" Commercial District, subject to the following:

    A. That the applicant enter into a zoning agreement with the City of Winnipeg pursuant to Subsection 240(1) of The City of Winnipeg Charter, to provide for the following:

        i. That no buildings or structure including free-standing signs shall be constructed, erected or placed on the land within an area of 15 feet in depth measured parallel with north limit of the land (described as the Madison Square Development) and that the existing landscaping in that area shall be maintained in good condition at all times to the satisfaction of the Director of Planning, Property and Development;

        ii. That no buildings, structures, parking areas or free-standing signs shall be constructed, erected or located on the land (described as the Madison Square Development) unless and until plans including the location and design of the proposed buildings and structures, parking and loading areas and free-standing signs have been submitted to and approved by the Assiniboia Community Committee;

        iii. That the total gross leaseable floor area of all buildings on the land (described as the Madison Square Development) shall not exceed 167,000 square feet.

2. That Caveat No. 85-63767, Caveat No. 85-63770 and Caveat No. 85-88935 be discharged.

3. That a ten percent (10%) dedication be made by a payment of a sum of money to the City in lieu of the requirement for land dedication based on the increase in the market value of the land.

4. That in the event the application is not proceeded with expeditiously and the by-law is not enacted within twenty-four (24) months after adoption of the report by Council, the matter shall be deemed to be concluded and shall not be proceeded with unless an extension of time is applied for prior to the expiry of this twenty-four (24) month period and the extension is subsequently approved by Council.

5. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary rezoning by-law and forward same to Council for all three readings.

6. That the rezoning by-law shall come into effect when the Zoning Agreement has been registered by caveat against the subject land at the Winnipeg Land Titles Office, provided that the said effective date occurs within twenty-four (24) months from the date that the said rezoning by-law is adopted by Council.

7. That the Proper Officers of the City are hereby authorized to execute said Zoning Agreement.

8. That the City Solicitor/Manager of Legal Services be requested to do all things necessary for implementation in accordance with the terms of The City of Winnipeg Charter.

The Assiniboia Community Committee provided the following supporting reason(s) for its recommendation:

1. The Assiniboia Community Committee agreed with the administrative comments contained in the report from the Manager of Planning and Land Use dated June 13, 2005.

PUBLIC HEARING SUMMARY

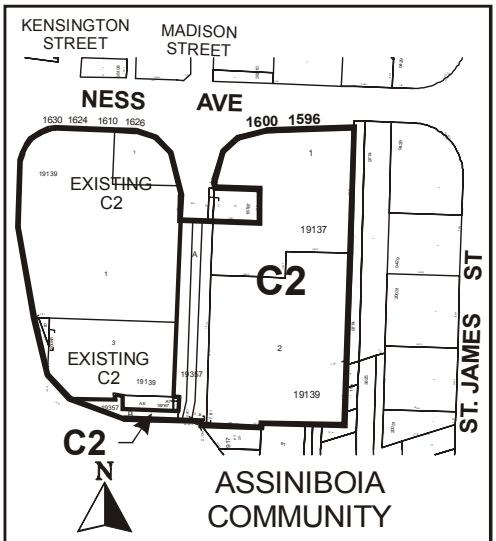
File: DAZ 201/2005

Before: Assiniboia Community Committee
Councillor De Smedt, Chairperson
Councillor Clement
Councillor Eadie

Public Hearing: June 21, 2005
Council Building, 510 Main Street

Applicant: ND LEA (Ross Mitchell)

Subject:



APPLICANT : ND LEA
FILE : DAZ 201/05
PROPOSAL : To rezone the land shown outlined above from an "R1-5A" RESIDENTIAL DISTRICT and an "M1" INDUSTRIAL DISTRICT to a "C2" COMMERCIAL DISTRICT and to withdraw the existing Zoning Agreement on the subject lands. **For information, phone Mr. R. Humble, Planner at 986-2688.**

Premises Affected: 1596/1600 Ness Avenue

Exhibits Filed:

1. Application dated May 6, 2005
2. Notification of Public Hearing dated May 24, 2005
3. Manitoba Status of Titles 1032434, 116031, 116035, 116038, 116040, 1148490, 1149225, and 1149234
4. Surveyor's Building Location Certificates and sketch dated July 26, 1985, December 6, 1985, February 11, 1987 and November 2, 1987
5. Letter of authorization dated November 4, 2004 from Michael J. Nozick, President, 57655 Manitoba Inc. to ND Lea Engineers & Planners Inc.
6. Site Plans (6 pages)
7. Report from the Manager of Planning and Land Use dated June 13, 2005
8. Inspection Report

REPRESENTATIONS:

In Support:
Donovan Toews, ND LEA

In Opposition
Nil

For Information:
R. Barry Ilisse

For the City:
Mr. R. Humble, Senior Planner, Planning, Property and Development Department

SUMMARIZATION OF REPRESENTATIONS AND SUBMISSIONS MADE AT THE PUBLIC HEARING

The applicant, Donavan Toews, ND LEA, appeared in support and gave a brief overview of the development.

Exhibit "8" referred to in File DAZ 201/2005

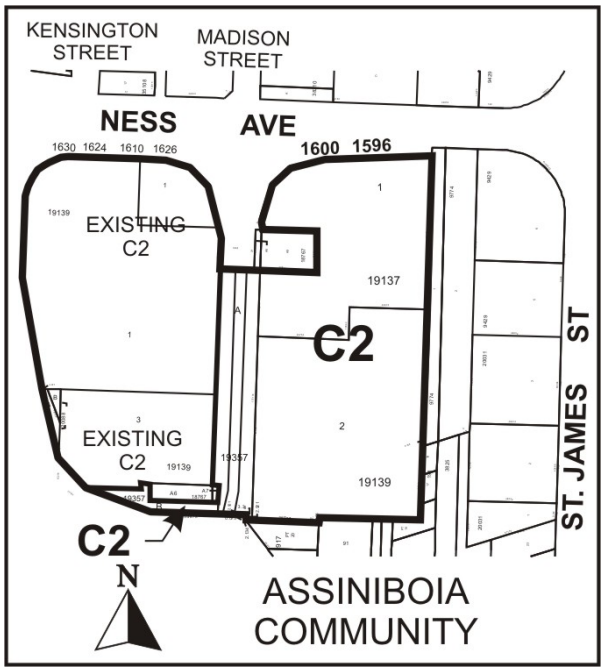
Winnipeg

Planning, Property and Development Department Report

To the Assiniboia Community Committee

Date: **June 13, 2005**
File: **DAZ 201/05**
Related Files: **N/A**
Subject: **Application to rezone land from an "R1-5A" Residential District and an "M1" Industrial District to a "C2" Commercial District.**

Location: **1596/1600 Ness Avenue**



Applicant: **ND LEA Engineers & Planners**

Owner: **57655 Manitoba Inc.**

Recommendation: **Approval with conditions.**

Site Description

The subject site, commonly referred to as Madison Square, is located south of Ness Avenue, between St. James and Century Streets in the Polo Park neighbourhood of the St. James Ward. The total area of Madison Square site is ± 9.65 acres, while the area being proposed for rezoning (east side) is ± 4.5 acres. The site, which was originally developed in the mid 1980's, is substantially built-out and is currently occupied by a number of commercial businesses, including an Office Depot, Moores, Liquor Mart, Bottle N' Cork, Pet Valu and office uses. The remainder of the site is occupied by accessory surface parking.

Surrounding Land Use
North: Ness Avenue, then commercial uses zoned "M1" Industrial
South: Multi-tenant office building zoned "M1" Industrial
East: Old Rail Line, then Mixed-use commercial / residential building zoned "M1" Industrial
West: Madison Square commercial development zoned "C2" Commercial

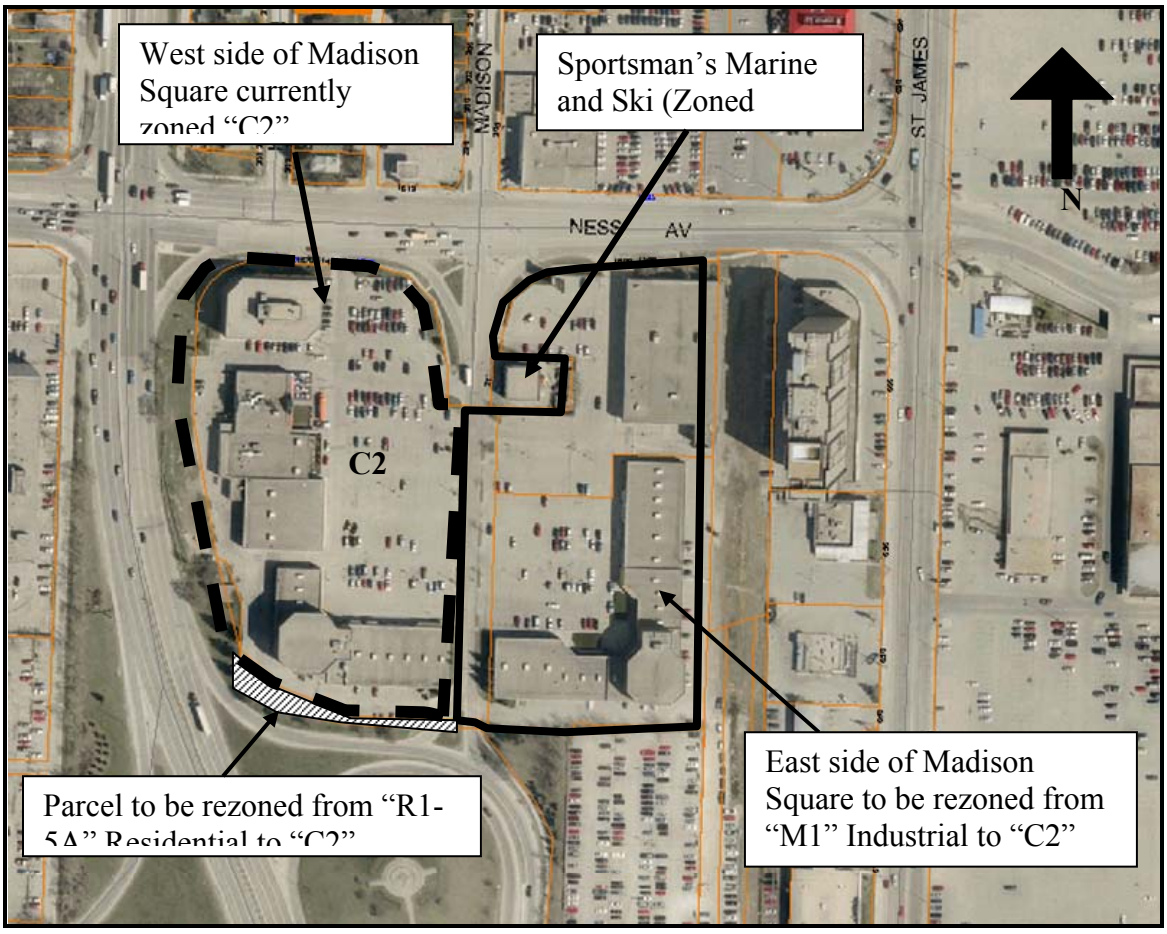


Figure 1: 2002 Air Photo of Subject Site



Figure 2: Existing commercial businesses on east side of Madison Square



Figure 3: View of subject site looking north toward Ness Avenue

Proposed Development

The Madison Square shopping centre is essentially divided into two halves, both from a physical and zoning perspective. The west half of Madison Square (i.e. west of Madison Street and east of Century) is predominantly zoned "C2" Commercial, with a small area to the south zoned "R1-5A" Residential. The east half of Madison Square, (i.e. east of Madison Street and west of St. James) is zoned "M1" Industrial. The applicant is proposing to rezone the eastern portion of Madison Square from "M1" Industrial to "C2" Commercial in order to establish consistency in zoning for the entire Madison Square development, and to provide consistency with the current commercial use of buildings located on this site. In addition, there is one parcel of land located in southwest corner of Madison Square which is also proposed for rezoning from "R1-5A" Residential to "C2" Commercial. This parcel currently serves as a surface parking lot for the businesses on the west side of Madison Square.

It is important to note that the owner's intent for the proposed rezoning is strictly for "housekeeping" purposes only and that no new development or site alterations are being proposed in conjunction with the rezoning.

While the majority of Madison Square is under one ownership, Sportsman's Marine and Ski, located on the east side of Madison Square, is under different ownership. Although this parcel is also zoned "M1" Industrial, it is not being included as part of the rezoning.

Analysis

Plan Winnipeg
Plan Winnipeg was recently amended to identify the Polo Park Area, including the subject site, as an Area of Regional Commercial Concentration and to redesignate these lands from an Industrial Policy Area to a Neighbourhood Policy Area, which allows for a variety of residential, commercial, institutional, and mixed uses. Thus, the proposed rezoning to "C2" Commercial District is in conformance with Plan Winnipeg 2020.

Compatibility with existing neighbourhood and surrounding uses
The immediate area has experienced a significant amount of commercial development over the past decade. The trend in development for this area continues to be commercial in nature and as a result of the redesignation of these lands to a Neighbourhood Policy Area, the transition of remaining industrial parcels to commercial uses has been facilitated. Subsequently, the proposed "C2" rezoning is compatible with the emerging commercial context of the surrounding area.

Withdrawal of Zoning Agreement
In conjunction with the proposed rezoning, the applicant wishes to withdraw the existing Zoning Agreement that was originally established in conjunction with DAZ 244/82, DAZ 272/84 and DAZ 273/84. Since its original inception, the Zoning Agreement has undergone several amendments resulting from the phased expansion and development of Madison Square.

The Zoning Agreement for this site was created at a time when the Polo Park area was in the beginning stages of large-scale commercial development. The Zoning Agreement was a response to the desire to maintain a neighbourhood commercial character in this area, given the close proximity of the established residential neighbourhood north of Ness Avenue. Subsequent to this, commercial development in this area has continued to expand and now, the area is a strong regional center with diverse retail uses. Administration has reviewed the said Zoning Agreement (and subsequent amendments) and although it is agreed that certain clauses are no longer applicable, others still have relevancy. Rather than further amending the existing Zoning Agreement, Administration is of the opinion that it should be withdrawn in its entirety and that a new Zoning Agreement be established pertaining to just the relevant clauses.

The following is a summary and analysis of the existing Zoning Agreement:

1. Lands Affected by Zoning Agreement:
    a. Lot 1, Block 1, Plan 19139 (1626 Ness Avenue – west side);
    b. Lot 2, Block 1, Plan 19139 (1620, 1622, 1624 and 1630 Ness Avenue – west side);
    c. Lot 3, Block 1, Plan 19139 (1610 Ness Avenue – west side)
    d. Parcel A6, Plan 18767 (west side);
    e. Block 2, Plan 19139 (1600 Ness Avenue – east side);
    f. Lot 1, Plan 19137 (1596 Ness Avenue – east side)

2. Description of Key Conditions:
    i. *No buildings or structure including free-standing signs shall be constructed, erected or placed on the land within an area of 15 feet in depth measured parallel with north limit of the land. That area shall be bermed and/or landscaped as shown on Schedule "A" and maintained in good condition at all times to the satisfaction of the Commissioner of Environment.*
        - The existing buildings do maintain a 15 foot setback from the north property line and there is a significant amount of high quality and mature landscaping in this area. Administration is of the opinion that the 15 foot setback and existing landscaping should be maintained and therefore recommend that the intent of this condition apply in a new Zoning Agreement.

    ii. *No buildings, structures, parking areas or free-standing signs shall be constructed, erected or located on the land unless and until plans including the location and design of the proposed buildings and structures, parking and loading areas and free-standing signs have been submitted to and approved by the St. James-Assiniboia Community Committee.*
        - Given the size of the Madison Square site and scale of existing development, it is recommended that the City maintain control over future development proposals. It is therefore recommended that this condition apply in the new Zoning Agreement.

iii. *Any fencing and landscaping shown on that Schedule "A" shall be completed within three months of occupancy in whole or in part of any building constructed on the land unless an extension of that time is approved by that Community Committee.*

- All fencing and landscaping as shown on the original Plan Approvals have been undertaken. Therefore, Administration is of the opinion that this condition is no longer applicable.

iv. *The total gross leaseable floor area of all buildings on the land (described as the Madison Square Development) shall not exceed 167,000 square feet of which 130,000 square feet may be used for an use permitted in the "C2" Commercial District and the remaining 37,000 square feet may be used only for business offices as permitted under that zoning district.*

- Administration has determined, that currently, the Madison Square Development maintains a gross leaseable floor area of approximately 150,000 square feet; which includes both the east and west sides. It is noted, however, that under a "C2" zoning designation an FAR of 3.0 is permitted and therefore a substantial increase in building area may be feasible. Although the on-site parking requirements may, to a degree, mitigate future development potential, Administration recommends that the 167,000 square foot limit be maintained under the new Zoning Agreement. This square footage cap would protect the established residential neighbourhood, located to the north of Ness.

v. *It is understood and agreed that the contiguous land* (i.e. the east side of Madison Square) *will remain zoned "M1" in order to avoid delay in development, but that contiguous land and any building or structure shall be erected, placed, altered or enlarged on that contiguous land for any use except:*

(a) uses permitted in both the "C2" and "M1" Districts; and

(b) uses which are conditional in both such districts, if approved as a conditional use under The City of Winnipeg Act.

- Based upon the proposed rezoning of the east side of Madison Square from "M1" to "C2", Administration is of the opinion that this condition is no longer applicable.

Recommendation

The Planning and Land Use Division recommend approval.

- The proposed rezoning is in compliance with Plan Winnipeg and its policies;
- The subject site falls within a Neighbourhood Policy Area, which allows for a variety of residential, commercial, institutional, and mixed uses;
- The proposed rezoning is compatible with the surrounding properties;
- The proposed use will not create an adverse effect on the amenities, use, safety and convenience of the adjoining properties and adjacent area.

Recommended Conditions of Approval

1. That The Winnipeg Zoning By-law 6400/94 be amended by rezoning the subject land as shown on Schedule "A", for file DAZ 201/05, attached hereto and dated, June 6, 2005, to a "C2" Commercial District, subject to the following:

    A. That the applicant enter into a zoning agreement with the City of Winnipeg pursuant to Subsection 240(1) of The City of Winnipeg Charter, to provide for the following:

        A) That no buildings or structure including free-standing signs shall be constructed, erected or placed on the land within an area of 15 feet in depth measured parallel with north limit of the land (described as the Madison Square Development) and that the existing landscaping in that area shall be maintained in good condition at all times to the satisfaction of the Director of Planning, Property and Development;

        B) No buildings, structures, parking areas or free-standing signs shall be constructed, erected or located on the land (described as the Madison Square Development) unless and until plans including the location and design of the proposed buildings and structures, parking and loading areas and free-standing signs have been submitted to and approved by the Assiniboia Community Committee;

        C) The total gross leaseable floor area of all buildings on the land (described as the Madison Square Development) shall not exceed 167,000 square feet.

II. That Caveat No. 85-63767, Caveat No. 85-63770 and Caveat No. 85-88935 be discharged.

III. That a ten (10) per cent dedication be made by a payment of a sum of money to the City in lieu of the requirement for land dedication based on the increase in the market value of the land.

IV. That, in the event the application is not proceeded with expeditiously and the by-law is not enacted within twenty-four (24) months after adoption of the report by Council, the matter shall be deemed to be concluded and shall not be proceeded with unless an extension of time is applied for prior to the expiry of this twenty-four (24) month period and the extension is subsequently approved by Council.

V. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary rezoning by-law and forward same to Council for all three readings.

VI. That the rezoning by-law shall come into effect when the Zoning Agreement has been registered by caveat against the subject land at the Winnipeg Land Titles Office, provided that the said effective date occurs within twenty-four (24) months from the date that the said rezoning by-law is adopted by Council.

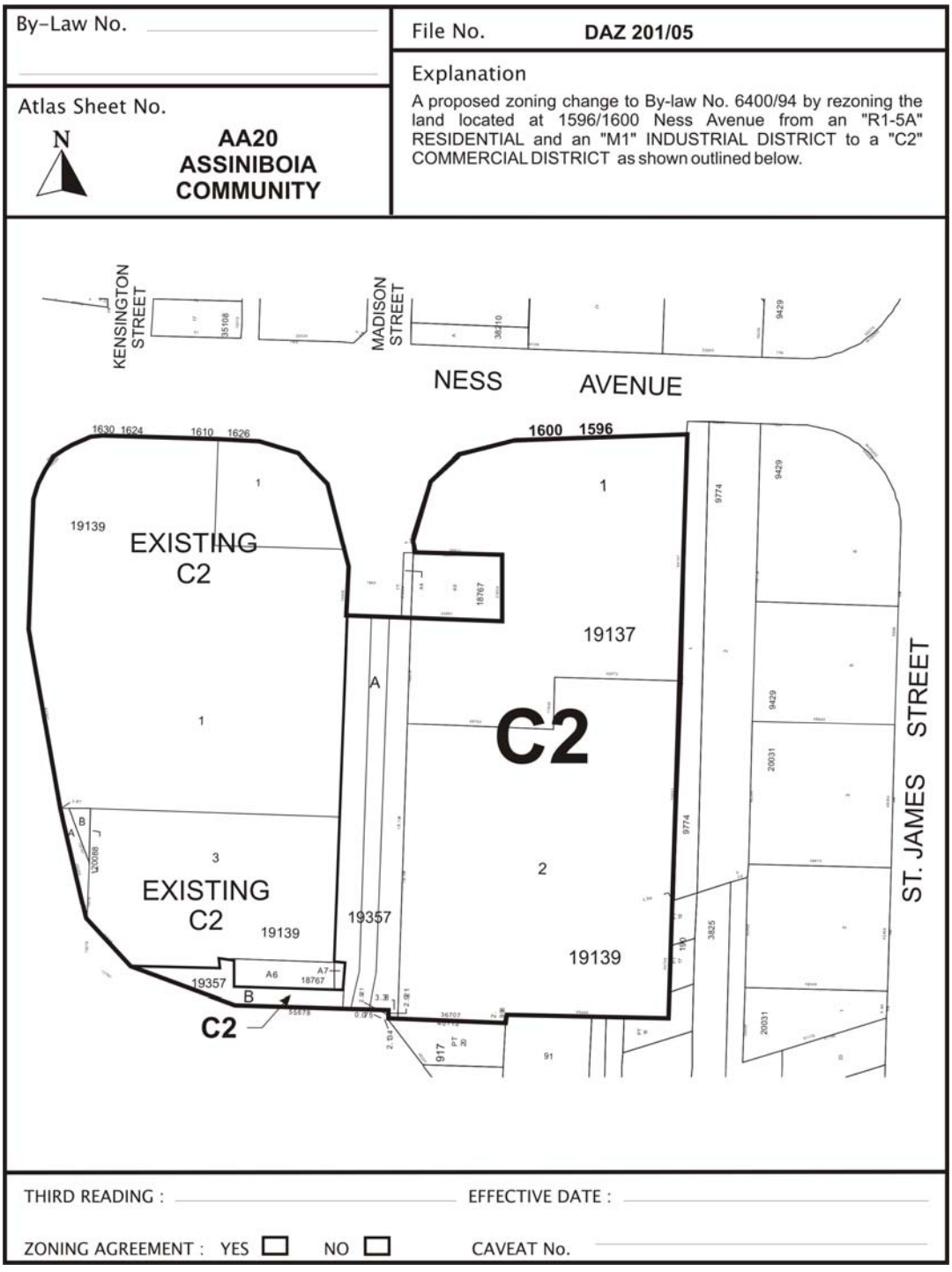
VII. That the Proper Officers of the City are hereby authorized to execute said Zoning Agreement.

VIII. That the City Solicitor/Manager of Legal Services be requested to do all things necessary for implementation in accordance with the terms of The City of Winnipeg Charter.

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

Report Prepared by: Randy Humble, Senior Planner
PPD File # DAZ 201/05

Schedule "A"



Schedule "A" to the report of the Assiniboia Community Committee for File No. DAZ 201/05, dated June 6, 2005.