Agenda - Council - March 21, 2007

Report - Standing Policy Committee on Property and Development - February 27, 2007

Item No. 15 Rezoning - 452 Talbot Avenue
File DAZ 241/2005

STANDING COMMITTEE RECOMMENDATION:

On March 14, 2007, the Executive Policy Committee concurred in the recommendations of the Standing Policy Committee on Property and Development and the East Kildonan-Transcona Community Committee and submits the following to Council:

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 241/2005 dated February 13, 2007, 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 the following uses shall not be permitted on the land:

            a. automobile, including motorcycle: rental, sales, including accessory repair, service, installation of supplies/parts
            b. automobile, including motorcycle: supplies/parts, sales
            c. beer: sales
            d. bingo parlour
            e. exterminator
            f. farm supplies: sales
            g. fuel: sales kiosk
            h. hotel, including motel, limited to guest rooms
            i. liquor: sales
            j. machinery/heavy equipment supplies and parts: sales, installation, service
            k. mobile home park
            l. motors or machines, recreational or utility, including power toboggans, outboard motors, lawn mowers: rental, sale, service
            m. parking area, non-accessory
            n. pawnshop
            o. sign, advertising
            p. tattoo parlour
            q. terminal for haulage, motor freight station, excluding an intermodal terminal

r. terminal for courier/delivery/ express service, cleaning service, key and lock service, security service, taxi, or similar service
s. tire: sales, service

ii. That there shall be no advertising signs, mobile signs, poster signs and A-frame signs on the entire site, except that a mobile sign shall be permitted on the site for a period of thirty (30) days in association with a new occupancy permit.

iii. That no illuminated signage be erected on the south or west sides of the building.

iv. That prior to the issuance of any occupancy permits, all garbage containers be fully enclosed by a brick/concrete and/or wood barrier fence that is at least 6 inches above the top of the garbage container, and thereafter maintained to the satisfaction of the Director of Planning, Property and Development.

v. That the hours of operation for any business being conducted shall not fall within 10:00 p.m. and 6:00 a.m.

vi. That for the development of any building, and/or accessory parking area and/or signage plans shall be submitted showing the location and design of the proposed buildings, the location and design of accessory parking areas, private approaches, garbage enclosures, fencing, landscaping and signage to the Director of Planning, Property and Development and the East Kildonan-Transcona Community Committee for plan approval prior to the issuance of any building or development permit, and thereafter all to be maintained to the satisfaction of the Director of Planning, Property and Development.

2. 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.

3. 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.

Report - Standing Policy Committee on Property and Development - February 27, 2007

4. 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 (3) readings.

5. 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.

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

7. 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 - February 27, 2007

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On March 14, 2007, the Executive Policy Committee concurred in the recommendations of the Standing Policy Committee on Property and Development and the East Kildonan-Transcona Community Committee and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On February 27, 2007, the Standing Policy Committee on Property and Development concurred in the recommendation of the East Kildonan-Transcona Community Committee and submitted the matter to the Executive Policy Committee and Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On February 19, 2007, the East Kildonan-Transcona Community Committee concurred in the administrative recommendation and submitted its recommendation to the Standing Policy Committee on Property and Development.

RE: **Rezoning - 452 Talbot Avenue**
File DAZ 241/2005

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

Prepared by: **Inga K. Skundberg, Clerk,**
East Kildonan-Transcona Community Committee

Report date: **February 21, 2007**

COMMUNITY COMMITTEE RECOMMENDATION:

On February 19, 2007, the East Kildonan-Transcona 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 6400/94 be amended by rezoning the subject land as shown on Schedule "A", for File DAZ 241/2005 dated February 13, 2007, 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 the following uses shall not be permitted on the land:

            a. automobile, including motorcycle: rental, sales, including accessory repair, service, installation of supplies/parts
            b. automobile, including motorcycle: supplies/parts, sales
            c. beer: sales
            d. bingo parlour
            e. exterminator
            f. farm supplies: sales
            g. fuel: sales kiosk
            h. hotel, including motel, limited to guest rooms
            i. liquor: sales
            j. machinery/heavy equipment supplies and parts:sales, installation, service
            k. mobile home park
            l. motors or machines, recreational or utility, including power toboggans, outboard motors, lawn mowers: rental, sale, service
            m. parking area, non-accessory
            n. pawnshop
            o. sign, advertising
            p. tattoo parlour

q. terminal for haulage, motor freight station, excluding an intermodal terminal
r. terminal for courier/delivery/ express service, cleaning service, key and lock service, security service, taxi, or similar service
s. tire: sales, service

ii. That there shall be no advertising signs, mobile signs, poster signs and A-frame signs on the entire site, except that a mobile sign shall be permitted on the site for a period of thirty (30) days in association with a new occupancy permit;

iii. That no illuminated signage be erected on the south or west sides of the building;

iv. That prior to the issuance of any occupancy permits, all garbage containers be fully enclosed by a brick/concrete, and/or wood barrier fence that is at least 6 inches above the top of the garbage container, and thereafter maintained to the satisfaction of the Director of Planning, Property and Development;

v. That the hours of operation for any business being conducted shall not fall within 10:00 p.m. and 6:00 a.m.

vi. That for the development of any building, and/or accessory parking area and/or signage, plans shall be submitted showing the location and design of the proposed buildings, the location and design of accessory parking areas, private approaches, garbage enclosures, fencing, landscaping and signage to the Director of Planning, Property and Development and the East Kildonan-Transcona Community Committee for plan approval prior to the issuance of any building or development permit, and thereafter all to be maintained to the satisfaction of the Director of Planning, Property and Development.

2. 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.

3. 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.

4. 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 (3) readings.

5. 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.

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

7. 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 East Kildonan-Transcona Community Committee provided the following supporting reason for its recommendation:

1. The subject application is a small change to accommodate the existing business and is consistent with the business that occupied the building prior to the current owner.

PUBLIC HEARING SUMMARY

File: DAZ 241/2005

Before: East Kildonan-Transcona Community Committee
Councillor Thomas, Chairperson
Councillor Browaty
Councillor Wyatt

Public Hearing: February 19, 2007
Community Committee Chambers, 755 Henderson Highway

Applicant: Booth, Dennehy, Barristers and Solicitors
(Raymond Oakes)

Subject:



Premises Affected: 452 Talbot Avenue

Exhibits Filed:
1. Application dated January 22, 2007
2. Notification of Public Hearing dated January 25, 2007
3. Manitoba Status of Title 2033991

4. Letter of authorization dated April 2005, from Jayson Pfeill, Gallery Heating and Air Conditioning Ltd., to Booth Dennehy
5. Surveyor's Building Location Certificate and sketch dated July 28, 2005
6. Report from the Planning and Land Use Division dated February 13, 2007
7. Inspection Report

REPRESENTATIONS:

In Support:

Jayson Pfeill, Gallery Heating and Air Conditioning Ltd.

In Opposition

Nil

For Information:

Nil

For the City:

Mr. J. Wintrup, Senior Planner, Planning, Property and Development Department

SUMMARIZATION OF REPRESENTATIONS AND SUBMISSIONS
MADE AT THE PUBLIC HEARING

Jayson Pfeill, Gallery Heating and Air Conditioning Ltd, appeared in support of the application and provided a brief overview of the proposal.

Exhibit "6" referred to in File DAZ 241/2005

Winnipeg

Planning, Property and Development Department Report

To the East Kildonan - Transcona Community Committee

Date: February 13, 2007
File: DAZ 241/05
Related Files:
Subject: Rezone the land to allow for a contractor's establishment.

Location: 452 Talbot Avenue
Legal Description: LOT 40 PLAN 29374 67/68 ST B



Applicant: **Booth Dennehy Barristers & Solicitors**
Owner: **Galaxy Heating and Air Conditioning**

Recommendation: **Approve with Conditions**

Report Summary:

- The owner is proposing to continue using the existing structure for a contractors business, which is a conditional use in C1.5 and permitted in C2.
- Over the past 40 years, commercial uses at this location included a grocery store.

- The subject property is one of a few commercial uses that are operating in residentially zoned areas in the neighbourhood, along a Regional Street (Watt).
- The small physical dimensions of the lot restricts the land-uses that can be accommodated on the subject property, precluding the commercial intensification of the land.

Site Description

The subject property is approximately **7,375.5 square feet (50.7 feet by 145.5 feet)** located on the southwest corner of Talbot Avenue and Watt Street in the Chalmers neighbourhood of the Elmwood - East Kildonan Ward. The site is zoned **"C1" Commercial District** and is occupied by a one storey, stucco and cinderblock building with a commercial unit fronting Talbot Avenue and parking in the rear. Adjacent lands include multiple family dwellings to the west zoned "RM-3". Surrounding uses include a convenience store (7-11) zoned "C1.5" to the east across Watt Street and an apartment to the north across Talbot Avenue zoned "RM-3".

Background

A grocery store operated at this location from the 1950's to the early-1990's. Around the mid-1990's, the building was vacant for a few years when Kirkfield Heating and Air conditioning occupied the building. Since November, 2004, Gallery Heating and Air Conditioning Ltd. has been operating at this location without the required Building, Development, and Occupancy Permits.

In 2005, the present owner was notified several times that the subject property is zoned "C1" Commercial District under the City of Winnipeg Zoning by-law 6400 and as such, a contractors establishment was not permitted. A rezoning was started in 2005 to permit this land-use and never followed through. In September, 2006 the City of Winnipeg initiated legal actions: the applicant subsequently provided the necessary documentation to continue the rezoning application in early 2007.

Description of the Proposed Development

Galaxy Heating and Air Conditioning is proposing to continue to use the existing structure for a contractor's establishment.

Analysis

PLAN WINNIPEG
The proposed concept in consistent with Plan Winnipeg in that a commercial rezoning is allowed in Neighbourhood Policy Areas.

ZONING

- A **"C1" Commercial District** has 41 Permitted Uses and 20 Conditional Uses that provide for local commercial uses typically found in neighbourhoods. There is a front yard requirement of 20 feet and the maximum building height is 30 feet.
- A **"C1.5" Commercial District** has 63 permitted and 56 conditional uses intended to regulate commercial development with less of a neighbourhood orientation. There is no front yard requirement and the maximum building height is 45 feet.
- A **"C2" Commercial District** has 104 Permitted Uses and 47 Conditional Uses that are generally orientated to a community wide market. There is no front yard requirement and the maximum building height is 45 feet.

LAND USE BY-LAW ISSUES

There are only slight differences between "C1" and "C1.5" commercial zones. A "C1.5" zoning category generally allows a few additional uses as permitted and conditional, which are not permitted in "C1". The "C1" is the most restrictive commercial zoning category in limiting the number of uses whereas the "C2" is the more open. A "C1.5" falls between the two but is closer to "C1" than "C2".

A **"C1" Commercial District** is intended to provide for local commercial uses typically found within neighbourhoods. These land-uses tend to cater to the local residents, and are usually scattered throughout Winnipeg's older neighbourhoods. They serve the local residents down the street and not necessary a community or city wide market. A 'contractor's establishment' is not permitted.

The **"C1.5" Commercial Districts** is intended to regulate commercial developments with less a neighbourhood orientation than "C1" . These land-uses target local residents and a neighbourhood wide market. They are scattered throughout Winnipeg's residential neighbourhoods. A 'contractor's establishment' is a conditional use.

A **"C2" Commercial District** is intended to regulate more intensive commercial sites that do not have a local or neighbourhood orientation. These land-uses tend to cater to a community wide market. They serve the local residents down the street as well as the surrounding community but not necessary a city wide market. This zoning category is common throughout the City of Winnipeg. A 'contractor's establishment' is a permitted use.

The Division considered recommending C1.5 Commercial District to allow the use as a 'conditional use'. However, the new zoning by-law that is nearing completion indicates the C1.5 District will be collapsed into the C2, which in turn will be more restrictive.

COMPATIBILITY WITH SURROUNDING USES

Over the past 40 years, commercial uses (a grocery store) have been at this location, which is on a Regional Street (Watt). The subject property is one of several commercial uses that are operating in residentially zoned areas in the neighbourhood. These commercial properties have existed for decades and many were non-conforming uses when Zoning By-Law 16502 became effective in April, 1950. Prior to 1986, when the Zoning By-Law No. 4440/86 became effective, the property could establish different commercial uses in the residential zone by zoning variance.

The City of Winnipeg Charter now classify these as 'temporary' use variances with a maximum 5-year period. A re-zoning provides a more in-depth analysis of the impact of a commercial property on the neighbourhood and provides certainty for property owners of the potential use of the property.

Other commercial sites along Talbot are either existing non-conforming uses or they have been re-zoned to accommodate a full range of neighbourhood commercial uses. For example, 522 Talbot (southwest corner of Talbot and Elmwood) was re-zoned to "C1" Commercial District (from "R2-T" Residential District) in 1999 so the existing commercial structure could be used for a commercial operation. Similarly, 663 Talbot (northeast corner of Grey and Talbot), another existing non-conforming commercial building, was rezoned from "R2" Residential District to "C1" Commercial District in 1980 as its non-conforming rights terminated.

Recommendation

The Planning and Land-Use Division supports the rezoning application. The zoning will reflect an existing on-ground condition of a commercial building that has housed small scale commercial uses for the last +35 years. The small physical dimensions of the lot also restricts the type of uses that can be accommodated on the subject property, precluding the commercial intensification of the land.

The Division is further recommending that the type of uses permitted on the land should be restricted to ensure future commercial uses continue to be compatible with the surrounding residential dwellings. These uses are generally considered to be intensive commercial users with associated sounds, smells and/or visual impacts that would be detrimental to the adjacent residents.

Signage is a particular concern considering the close proximity of the residential dwellings directly to the west and north. It would not be appropriate to have signage on the west side of the building since it may cause a negative impact on the neighbours. Flashing signage and signs in excess of the allowable amount would also prove detrimental to the adjacent residents.

The parking area is also a concern since the standard for screening has been substantial improved in the last 40 years. Fencing and/or vegetation is required to mitigate the negative impacts of the parking area on the surrounding residential land-uses.

A clause to require the final site plan to be reviewed by the EKTCC is necessary to ensure the landscaping, fencing, building, etc addresses the concerns of the adjacent neighbours.

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 241/05**, attached hereto and dated, **February 13, 2007**, 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 the following uses shall NOT be permitted on the land:

      a AUTOMOBILE, including motorcycle: RENTAL, SALES, including accessory REPAIR, SERVICE, INSTALLATION OF SUPPLIES/PARTS
      b AUTOMOBILE, including motorcycle: SUPPLIES/PARTS, SALES
      c BEER: SALES
      d BINGO PARLOUR
      e EXTERMINATOR
      f FARM SUPPLIES: SALES
      g FUEL: SALES kiosk
      h HOTEL, including MOTEL, limited to guest rooms
      i LIQUOR: SALES
      j MACHINERY/HEAVY EQUIPMENT SUPPLIES and PARTS:SALES, INSTALLATION, SERVICE
      k MOBILE HOME PARK
      l MOTORS or MACHINES, RECREATIONAL or UTILITY, including power toboggans, outboard motors, lawn mowers: RENTAL, SALE, SERVICE
      m PARKING AREA, non-accessory
      n PAWNSHOP
      o SIGN, Advertising
      p TATTOO PARLOUR
      q TERMINAL for HAULAGE, MOTOR FREIGHT STATION, excluding an intermodal terminal
      r TERMINAL for COURIER/DELIVERY/ EXPRESS SERVICE, CLEANING SERVICE, KEY AND LOCK SERVICE, SECURITY SERVICE, TAXI, or similar service
      s TIRE: SALES, SERVICE

      (ii) That there shall be no advertising signs, mobile signs, poster signs and A-frame signs on the entire site, except that a mobile sign shall be permitted on the site for a period of thirty (30) days in association with a new occupancy permit;

      (iii) That no illuminated signage be erected on the south or west sides of the building;

      (iv) That, prior to the issuance of any occupancy permits, all garbage containers be fully enclosed by a brick/concrete, and/or wood barrier fence that is at least 6 inches above the top of the garbage container, and thereafter maintained to the satisfaction of the Director of Planning, Property and Development;

(v) The hours of operation for any business being conducted shall not fall within 10:00 pm and 6:00 am.

(vi) That for the development of any building, and/or accessory parking area and/or signage, plans shall be submitted showing the location and design of the proposed buildings, the location and design of accessory parking areas, private approaches, garbage enclosures, fencing, landscaping and signage to the **Director of Planning, Property and Development** and **the East Kildonan - Transcona Community Committee** for plan approval prior to the issuance of any building or development permit, and thereafter all to be maintained to the satisfaction of the Director of Planning, Property and Development;

2. 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.

3. 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.

4. 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 (3) readings.

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

7. 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: John S. Wintrup
PPD File # DAZ 241/05

Schedule "A"

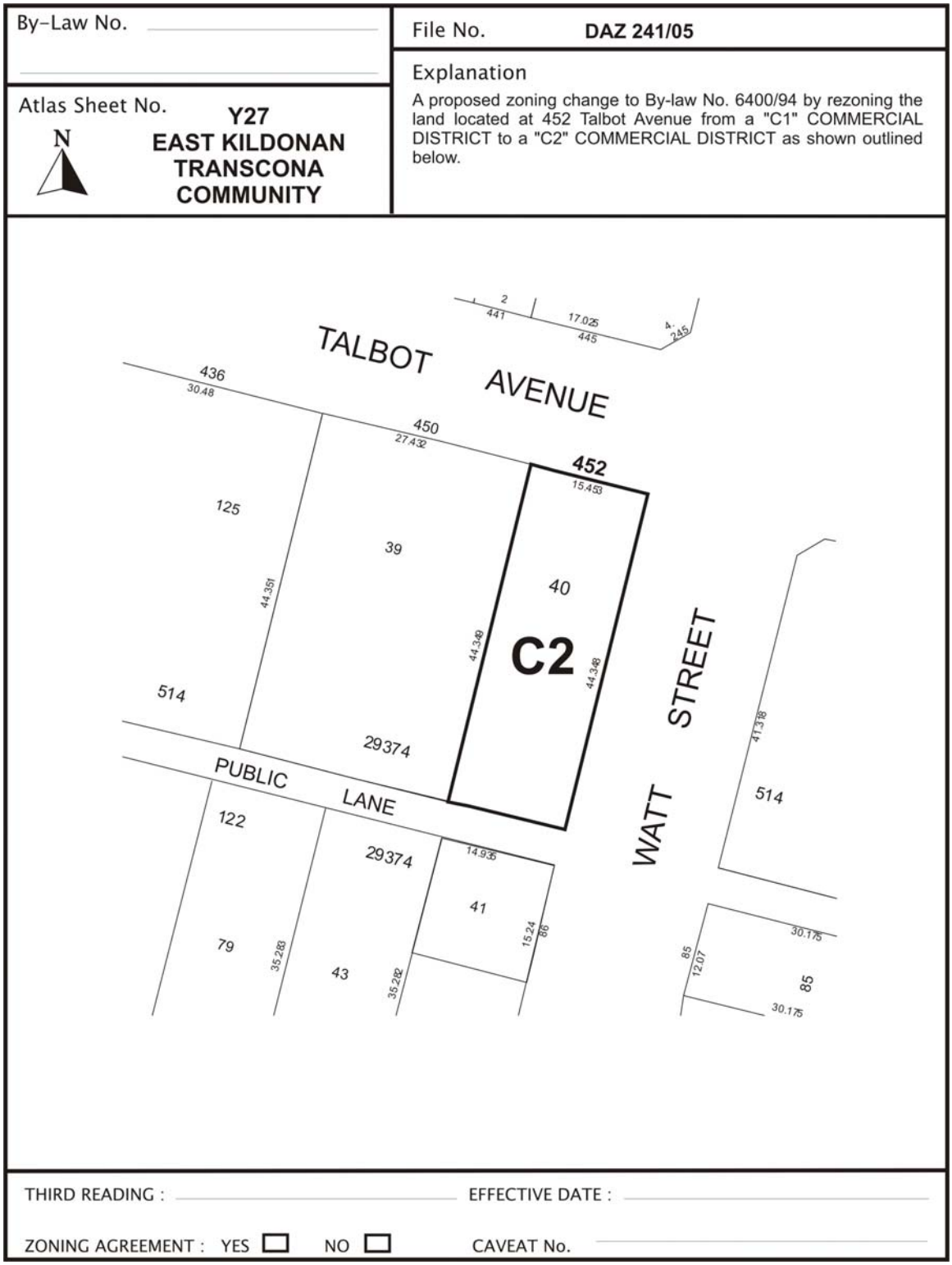


Figure 1: Schedule "A" to the report to the East Kildonan -Transcona Community Committee for File No. DAZ 241/05, dated February 13, 2007.

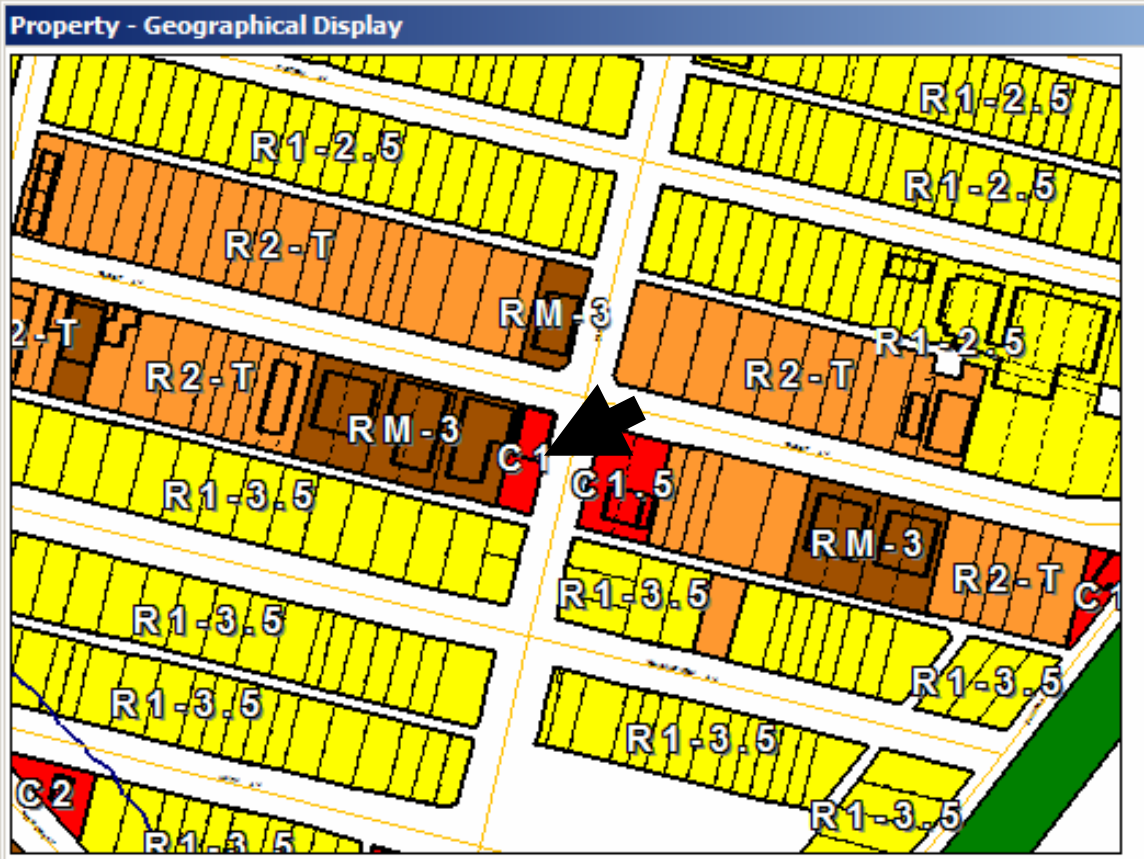


Figure 2: Existing Zoning for subject property and Surrounding Area.



Figure 3: Existing Land-Uses for subject property and Surrounding Area.