**Agenda – Council – November 19, 2008**

**Report - Executive Policy Committee - October 29, 2008**

**Item No. 1 Zoning Agreement Amendment - 1301 - 1357 Kenaston Boulevard, 64 - 120, 124 - 810 and 143 Nature Park Way, 71 - 127 and 90 – 146 Commerce Drive (Charleswood-Tuxedo Ward) File ZAA 17/2008**

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On October 29, 2008, the Executive Policy Committee concurred in the recommendation of the Assiniboia Community Committee and submits the following to Council:

1. That Zoning Agreement Caveat 2741741 under File DAZ 215/2001 dated November 21, 2001, be withdrawn.

2. 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 - Executive Policy Committee - October 29, 2008**

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On October 29, 2008, the Executive Policy Committee concurred in the recommendation of the Assiniboia Community Committee and submitted the matter to Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On October 14, 2008, the Assiniboia Community Committee concurred in the recommendation of the Winnipeg Public Service and, via the Priority Rezoning Process, submitted its recommendation to the Executive Policy Committee.

**RE:** **Zoning Agreement Amendment - 1301 - 1357 Kenaston Boulevard, 64 - 120, 124 - 180 and 143 Nature Park Way, 71 - 127 and 90 - 146 Commerce Drive**
**File ZAA 17/2008**

**For submission to:** **The Executive Policy Committee**

**Prepared by:** **Carlos Gameiro, Senior Committee Clerk**
**Assiniboia Community Committee**

**Report date:** **October 15, 2008**

COMMUNITY COMMITTEE RECOMMENDATION:

On October 14, 2008, the Assiniboia Community Committee concurred in the recommendation of the Winnipeg Public Service and, via the Priority Rezoning Process, recommends to the Executive Policy Committee:

1. That Zoning Agreement Caveat 2741741 under File DAZ 215/2001 dated November 21, 2001, be withdrawn.

2. 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 for its recommendation:

1. Fairness in the commerce community.

**PUBLIC HEARING SUMMARY**

File: ZAA 17/2008

Before: Assiniboia Community Committee
Councillor Fielding, Chairperson
Councillor Clement
Councillor Nordman

Public Hearing: October 14, 2008
West Committee Room
Council Building, 510 Main Street

Applicant: Terracon Development Ltd. (Cheryl Roney)

Subject:



| | |
|---|---|
| Premises Affected: | 1301 - 1357 Kenaston Boulevard, 64 - 120, 124 - 810 and 143 Nature Park Way, 71 - 127 and 90 - 146 Commerce Drive |

Exhibits Filed:

1. Application dated August 26, 2008
2. Notification of Public Hearing dated September 10, 2008
3. Manitoba Status of Titles 1771150, 1823992 and 1823989
4. Surveyor's Building Location Certificate and sketch dated August 21, 2008
5. Subdivision Agreement for DASSF 539/99
6. Zoning Agreements for DAZ 215/2001
7. Caveats 2560465, 2560466, 2560467 and 2741741
8. Drawing of the subject property
9. Plan of Kenaston Boulevard (1 page)
10. Plan of Subdivision (1 page)
11. Report from the Planning and Land Use Division dated September 5, 2008
12. Inspection Report
13. Audio Recording of representations of public hearing held on October 14, 2008

REPRESENTATIONS:

In Support:

Michael Falk, Terracon Development Ltd.

In Opposition

Nil

For the City:

Mr. J. Veitch, Planner, Planning, Property and Development Department
Mr. N. Yauk, Planner, Planning, Property and Development Department

Exhibit "11" referred to in File ZAA 17/2008

Winnipeg

## Planning, Property and Development Department Report

**To the Assiniboia Community Committee**

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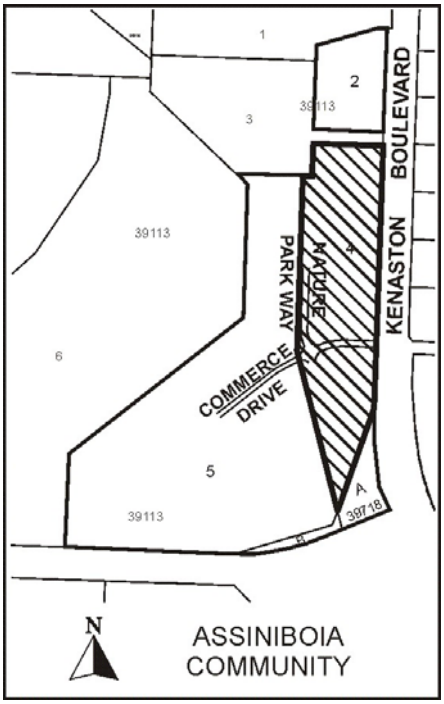
**Date:** September 5, 2008
**File:** **ZAA 17/2008**
**Related Files:** N/A
**Subject:** To discharge the Zoning Agreement affecting the lands zoned 'MMU' Manufacturing Mixed Use, (actual parcel affected highlighted with hatching in the figure below).

**Location:** Tuxedo Business Park 1301 – 1357 Kenaston Blvd.
**Legal Description:** Lots 2 & 4/5 PL 39,113 & PCLS A/B PL 39,718




**Applicant:** Terracon Development Ltd., (Michael Falk)
**Owner:** Tuxedo Business Park

**Recommendation:** **Approval**

1006

**Site Description**

Existing Land Use and Zoning

The approximately 75-acre subject site is zoned 'MMU' Manufacturing Mixed Use and occupied by the Tuxedo Business Park. When final build-out is complete the master planned business park will consist of approximately 75,000 square feet of multi-tenant 'flex' space.

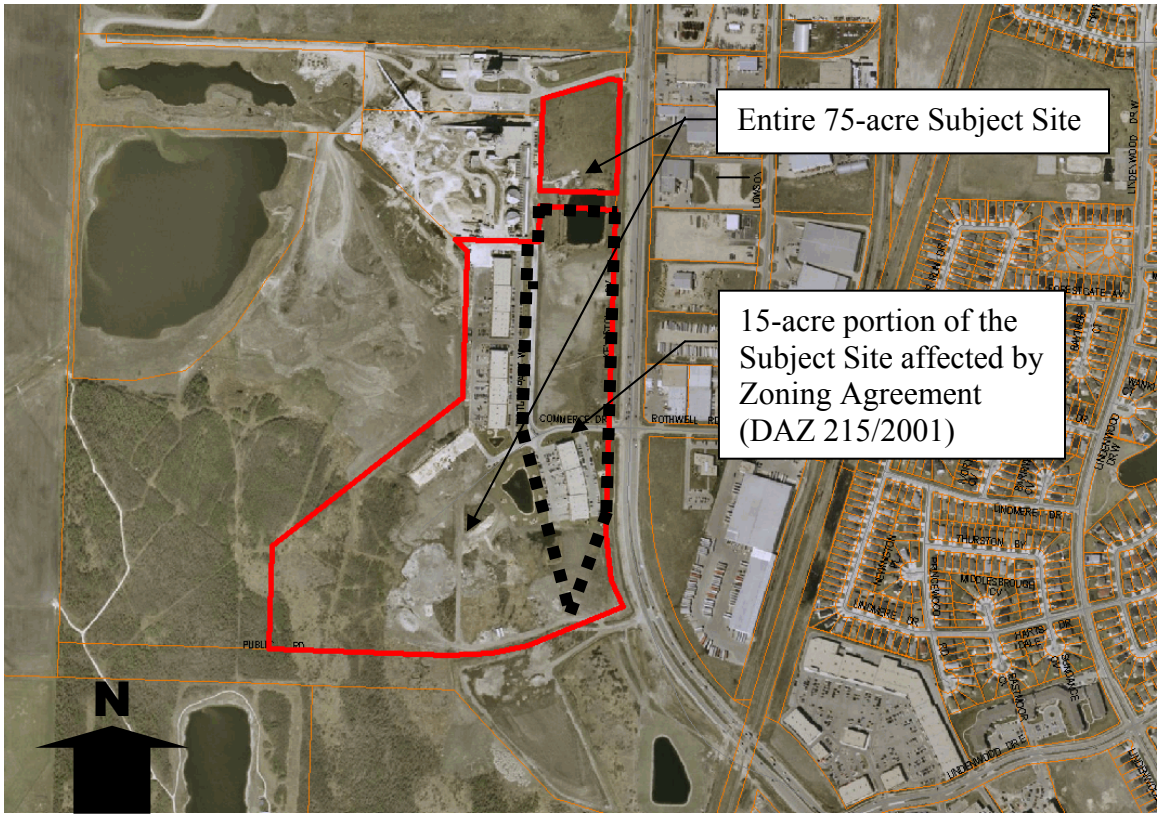



**Figure 1: Terracon Tuxedo Business Park Site (Aerial Photo Flown 2007)**

Surrounding Land Use and Zoning

North: 'M3' Manufacturing Heavy, (Lehigh Cement)
South: 'M3' Manufacturing Heavy, (City of Winnipeg snow dump)
East: Kenaston Boulevard then 'M3' Manufacturing Heavy
West: M3' Manufacturing Heavy, (Fort Whyte Alive)

## Background

- **DAZ 215/2001** - Rezoned front 15-acre parcel to 'M2' Industrial, included a Zoning Agreement restricting: Uses, Freestanding sign size, Yard setbacks and requiring plan approval prior to development permits,
- **March 1, 2008 –** Zoning By-law 200/06 adopted, re-tagging the entire 75-acre property from 'M2' & 'M3' Industrial to 'MMU' Manufacturing Mixed Use.

### Description of the Proposed Development

Terracon Development Ltd., the owner / developer is applying to remove the Zoning Agreement affecting the front 15-acre parcel of their development, known as the Tuxedo Business Park. As highlighted in their letter of intent, (dated August 22, 2008) the owners feel that a key component to the development of their business park is the addition of retail shops and personal services. Currently the existing zoning agreement prohibits these types of commercial uses.

### Analysis

#### Subject Site

The 15-acre subject site fronts along the west side of Kenaston Boulevard opposite Rothwell Road. The site forms a part of the larger 75-acre Tuxedo Business Park, a multi-tenant, master planned development of light industrial, manufacturing, office and limited personal service uses.

The properties along this section of Kenaston Boulevard are designated Industrial under *Plan Winnipeg 2020.* The Industrial designation encompasses the lands along the east and west sides of Kenaston running north from the CPR LaRiviere rail line to Wilkes Avenue. Acknowledging the importance of our existing industrial land base and the difficulty in attempting to establish new industrial lands, *Plan Winnipeg 2020* industrial policies strive to protect the city's industrial inventory while at the same time ensuring quality development and compatibility with the surrounding context.

#### History

Over the past few decades southwest Winnipeg has seen significant transformation in land use and development. This once a predominantly industrial quadrant of the city has rapidly transformed into a densely developed mix of residential, commercial and industrial uses. Within the immediate context of the subject site, along this portion of Kenaston Boulevard the *Plan Winnipeg* designation, zoning and uses have typically remained industrial. The City's intent has always been to protect and preserve a portion of our industrial land inventory in this area of southwest Winnipeg, resisting pressures to re-designate / rezone these areas for commercial uses.

**Rezoning 2001**
In 2001 the owners of the Tuxedo Business Park applied to rezone the front 15-acre subject site from 'M3' Industrial to 'M2' Industrial to allow a broader range of uses. The Public Service was concerned this rezoning would lead to a proliferation of non-industrial uses such as suburban offices and retail outlets. In addition, the Public Service was of the opinion that the rezoning would likely set a precedent encouraging more land owners in the immediate context to follow suit further eroding our industrial land base.

As a result, the Public Service recommended against the 2001 rezoning to 'M2' Industrial; suggesting 'MP-1' Industrial Business Park would be more appropriate based on all of the land use factors at play and the applicant's vision for their high standard business park. The recommendation was not concurred in and ultimately the rezoning of the front 15-acres to 'M2' Industrial was passed by Council subject to the applicant entering onto a zoning agreement on the land.

**Current Zoning**
With the adoption of the new City of Winnipeg Zoning By-law 200/06 the 75-acre Tuxedo Business Park was re-tagged to 'MMU' Manufacturing Mixed Use as recommended by the Zoning Advisory Committee and approved by Council. Below is an excerpt taken from the Public Service's report to the Standing Policy Committee on Property and Development heard October 30, 2007:

*'The ZAC also recommended that lands at the 3 sites identified above be rezoned to the new MMU zoning district (i.e., that the zoning maps be amended) based on criteria established in the Mapping Rules. The criteria indicated that MMU should only be applied to sites:*

- *that include a mix of uses such as manufacturing, warehousing, office, accessory*
- *retail, and a limited amount of service-oriented commercial;*
- *that include a higher level of design quality; and*
- *where development would generally be of a planned, contiguous, clustered nature.*

*The Winnipeg Public Service is comfortable rezoning the Tuxedo, Terracon and SmartPark sites to the MMU zoning district. The Tuxedo and SmartPark sites are* ***subject to existing Zoning Agreements that limit commercial development potential*** *and the Tuxedo Business Park site is subject to a Servicing Agreement.'*

**Existing Zoning Agreement**
The zoning agreement contains 5 key conditions affecting how the land can be developed and used.

- **Condition #2** – that the following uses be prohibited on the lands: *( 'MMU' standards listed in italics)*;
    a) Amusement devices, accessory *(permitted in 'MMU')*
    b) Animal pound, kennel *('kennel' permitted in 'MMU', animal pound not listed)*
    c) Arts / crafts / hobby: instruction, sale of supplies *('retail sales' permitted in 'MMU' limited to a maximum gross floor area of 40,000 sq.ft.)*
    d) Auction yard *(**not** permitted in 'MMU")*

*e)* Bank credit union *('personal services' permitted in 'MMU')*
f) Banquet Hall, dance hall *('hall rental' permitted in 'MMU')*
g) Barbershop beauty salon *('personal services' permitted in 'MMU')*
h) Bicycle: rental, sale, service *('retail sales' permitted in 'MMU' limited to a maximum gross floor area of 40,000 sq.ft.)*
i) Bingo parlour *('amusement enterprise indoor' permitted in 'MMU' limited to a maximum gross floor area of 10,000 sq.ft.)*
j) Bowling ally *('amusement enterprise indoor' permitted in 'MMU' limited to a maximum gross floor area of 10,000 sq.ft.)*
*k)* Cabaret *('drinking establishment' permitted in 'MMU' to a maximum gross floor area of 5,000 sq.ft.)*
l) Cocktail lounge *('drinking establishment' permitted in 'MMU' to a maximum gross floor area of 5,000 sq.ft.)*
m) Dating and escort service ***(not** permitted outside the boundaries of the Downtown Winnipeg Zoning By-law no.100/04)*
n) Drive-thru facility *('drive-in or drive through' permitted in 'MMU' subject to use specific standards no.96)*
o) Florist *('retail sales' permitted in 'MMU' limited to a maximum gross floor area of 40,000 sq.ft.)*
p) Gift store *('retail sales' permitted in 'MMU' limited to a maximum gross floor area of 40,000 sq.ft.)*
q) Grocery, confectionary *('retail sales' permitted in 'MMU' limited to a maximum gross floor area of 40,000 sq.ft.)*
r) Hotel, motel (permitted in 'MMU')
s) Jeweller, watchmaker *('retail sales' permitted in 'MMU' limited to a maximum gross floor area of 40,000 sq.ft.)*
t) Musical instruments, sale service, instruction *('retail sales' permitted in 'MMU' limited to a maximum gross floor area of 40,000 sq.ft.)*
u) Parish hall *('place of worship' permitted in 'MMU')*
v) Pet sales, supplies, except wholesale *('retail sales' permitted in 'MMU' limited to a maximum gross floor area of 40,000 sq.ft.)*
w) Restaurant over 3,500 sq. ft. *(permitted in 'MMU')*
x) Drive-thru restaurant *('drive-in or drive through' permitted in 'MMU' subject to use specific standards no.96)*
y) Advertising sign ***(not** permitted in 'MMU')*
z) Theatre, cinema, concert hall *('auditoriums/concert halls/theatre/cinema' permitted in 'MMU' to a maximum of 40,000 sq.ft.)*
aa) Toy sales *('retail sales' permitted in 'MMU' limited to a maximum gross floor area of 40,000 sq.ft.)*

*(Out of the over 30 uses listed, only 3 will remain prohibited with the removal of the Zoning Agreement: d) Auction yard, m) Dating and escort service and y) Advertising sign)*

- **Condition #3** - Free-standing signage on the land shall be limited to a maximum total of 48 sq.ft. of sign surface area and a maximum height of 8 feet. *('MMU' allows a maximum sign surface area of 1,25 sq,ft., per frontage foot to a maximum of 323 square feet with a maximum height of 20 feet)*

- **Condition #4** - A landscaped front yard of twenty-five (25) feet be provided adjacent to City rights-of-ways including Kenaston Boulevard. *(front yard in 'MMU' minimum 20 feet)*
- **Condition #5** – the following minimum yards be provided:
    - Front yard: 25 feet *(20 feet 'MMU)*
    - Rear yard: 25 feet *(0 feet 'MMU')*
    - Interior side yard: 15 feet *(15 feet 'MMU')*
    - Corner side yard: 20 feet *(20 feet 'MMU')*

- **Condition #6** – No new building, structure or works shall be erected or located on the land and no building/development permit issued for construction on the land unless and until detailed construction plans, indicating site layout, parking, access, building elevations and materials, signage, landscaping, fencing and garbage enclosures are submitted to and approved by the Assiniboia Community Committee. *(no plan approval required under 'MMU')*

Key uses that will be allowed on the land under an open 'MMU' zoning are;

- Retail Sales (40,000 sq. ft. maximum)
- Drinking Establishments (5,000 sq. ft. maximum)
- Restaurants, including Drive-thru (no size limitations)

**Discussion**

Public Service's support of the ZAC's recommendation to re-tag the lands to 'MMU' Manufacturing Mixed Use was based in part on the fact that the existing zoning agreement provided a check and balance. In the event that the Assiniboia Community Committee concurs with the Public Services recommendation to allow removal of the zoning agreement, future development of the remaining portions of the subject site will be as per the 'MMU' Manufacturing Mixed Use district, the intent statement and the Zoning and Permits department.

Plan approval by the Assiniboia Community Committee for future development proposals on the site will no longer be required.

The intent statement in the Zoning By-law 200/06 p.49 defines the 'MMU' Manufacturing Mixed Use district as:

*'The Manufacturing Mixed Use (MMU) district is intended to provide* ***linked commercial and industrial activities that are supportive of industrial functions*** *and are compatible with surrounding industrial use areas, while allowing more flexibility of uses and requiring a higher standard of landscaping and design. Uses may include offices, wholesale and business service establishments, campus-style industrial or business parks, and* ***limited*** *retail/personal service storefronts.* ***Supportive retail development****, not including offices, would be allowed to a* ***maximum of 35% of site area*** *including any land needed by the supportive retail to satisfy parking requirements, yards/setbacks and development and design standards (e.g., landscaping). During build out, supportive retail shall not exceed 50% of built site area. MMU zone districts should generally include at least thirty-five (35) acres of contiguous land, or land that would be contiguous except for intervening rights-of-way.'*

The intent statement for the 'MMU' Manufacturing Mixed Use district is very clear in specifying that the commercial uses should be **linked** with the industrial activity and are **supportive** of industrial functions. It goes on to specify that this supportive retail development, not including offices would be allowed to a maximum of 35% of the site area including areas for parking and landscaping. Based on the subject site of 75 acres, 26 acres could potentially be dedicated to retail, commercial and personal service uses. To put this in perspective, the First Pro shopping centre on the east side of Kenaston between Lindenwoods Drive East and McGillivray Boulevard is approximately 30 acres in size.

The 'MMU' intent statement was carefully crafted, with the input of the ZAC, to align with, and support our *Plan Winnipeg 2020* policies regarding industrially designated lands. *Plan Winnipeg 2020* Policy 3B-06 iv) states;

> *'allowing the possible introduction of commercial uses in industrial areas to act as a buffer between the industrial uses and the adjacent uses or to* ***service the needs of the local industrial population…****'*

If the future commercial and retail development at the Tuxedo Business Park was to proceed in conformance with the direction laid out by *Plan Winnipeg 2020* and the Zoning By-law's definition of the 'MMU' zone the Public Service will feel more at ease with the entire removal of the Zoning Agreement.

However it appears as though the owner's intentions may be at odds with the Zoning By-law's purpose statement for 'MMU'. In their latest brochure for the Tuxedo Business Park, ('Summer 2008') Terracon Development Ltd. highlights their future retail plans referred to as 'Tuxedo Town Centre':

> *"Tuxedo Town Centre is intended to attract an interesting array of restaurants, shops and services not only for the convenience of our tenants but* ***also for the surrounding community"***

In our opinion, this is clearly not the intent of allowing limited commercial / retail development in our industrial areas, and it causes the Public Service concern that the intention is to market this area to the surrounding community.

The area of commercial concentration for south west Winnipeg is at the intersection of Kenaston and McGillivray. These lands are zoned 'C4' Commercial and designated Commercial Concentration in *Plan Winnipeg 2020.* The lands are ideally located at the intersection of 2 major arterial streets to handle the traffic demands that come with this retail development. Furthermore during the rezoning processes development agreements were entered into to facilitate improvements to roadways, signalization, etc. to accommodate retail commercial traffic.

In terms of future development of the subject site, the Public Service does not support the infiltration of commercial / retail uses along this portion of industrial designated industrially zoned lands unless these uses are linked and supportive to the existing industrial tenants as per the 'MMU' definition and *Plan Winnipeg 2020* policies.

**Recommendation**
The Planning and Land Use Division recommend approval for the following reasons:

- The Zoning Agreement was applied to the site in 2001 when it was re-zoned to 'M2' Industrial,
- The subject site was recently re-tagged 'MMU' Manufacturing during the adoption of the new City of Winnipeg Zoning By-law 200/06,
- The 'MMU, Manufacturing district allows for linked / supportive commercial and retail uses.

**Recommended Conditions of Approval**

1. That Zoning Agreement Caveat 2741741 under File DAZ 215/2001 dated November 21st, 2001, be withdrawn.

2. 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.

However if the Assiniboia Community Committee wishes to retain some control over the future development of the Tuxedo Business Park then the Public Service recommends that the following conditions be considered:

1. That Zoning Agreement Caveat 2741741 under File DAZ 215/2001 dated November 21st, 2001, be amended as follows:

A. That Clauses 2, 3, 4 and 5 be deleted.

B. That the following new clause be added:

*No new building, structure or works shall be erected or located on the land and no building/development permit issued for construction on the land unless and until a detailed Master Plan, (as per sections 150 & 151 in Part 5 of the City of Winnipeg Zoning By-law 200/06) of the entire development area is submitted to and approved by the Assiniboia Community Committee and the Director of Planning Property and Development for plan approval*

C. That Clause 6 be amended by adding the bold text as follows:

*... by the Assiniboia Community Committee* ***and the Director of Planning Property and Development and thereafter maintained to the satisfaction of the Director of Planning, Property and Development.***

2. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 215/2001 dated November 21st, 2001, as approved in aforesaid Recommendation 1.

3. That the Proper Officers of the City are hereby authorized to execute said Amending Agreement.

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

Report Prepared by: James Veitch
PPD File # ZAA17/08