Agenda - Council - December 17, 2008

Report - Standing Policy Committee on Property and Development - November 25, 2008

Item No. 5 Zoning Agreement Amendment - 5204 Roblin Boulevard (Charleswood-Tuxedo Ward) File ZAA 2/2008

STANDING COMMITTEE RECOMMENDATION:

On December 10, 2008, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and the Assiniboia Community Committee and submits the following to Council:

1. That the Zoning Agreement under File DAZ 313/85 dated July 8, 1987 (By-law No. 4638/87), be amended as follows:

   A. That Clause 2 be amended to read as follows:

      That uses on the land be restricted to the following:
      a) Dwelling, Single-family detached
      b) Dwelling, Live work
      c) Offices for accounting, financial services, manufacture's agent or other similar uses, provided that the use does not involve any retail sales

   B. That Clause 3 be deleted and the following substituted therefore:

      That there shall be no exterior alterations or additions carried out or constructed to the existing building on the land unless final plans, showing the location and details of the exterior alterations, additions, lighting, and any other associated works are submitted to the Assiniboia Community Committee and the Director of Planning, Property and Development for approval prior to the issuance of any development or building permits; and therefore shall be maintained to the satisfaction of Director of Planning, Property and Development.

   C. That Clause 4 be deleted and the following substituted therefore:

      That no new building shall be constructed on the easterly lot, that is in excess of 18-feet in height, unless its sole use is as a dwelling unit.

Report - Standing Policy Committee on Property and Development - November 25, 2008

D. That Clause 7 be amended to read as follows:

That no signs shall be located on the land without the prior approval of Assiniboia Community Committee and the Director of Planning, Property and Development and shall be maintained thereafter to the satisfaction of the Director of Planning, Property and Development.

E. That an additional Clause be added as follows:

That any building, structure or addition thereof on the land shall provide a minimum rear yard of 25 feet.

2. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 315/85 (By-law No. 4638/87) as approved in aforesaid Recommendation 1.

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

4. 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 - November 25, 2008

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On December 10, 2008, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and the Assiniboia Community Committee and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On November 25, 2008, the Standing Policy Committee on Property and Development concurred in the recommendation of the and submitted the matter to the Executive Policy Committee and Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On November 10, 2008, the Assiniboia Community Committee concurred in the recommendation of the Winnipeg Public Service, with the following amendments, namely:

- Recommendation 1.A. - delete the following uses:
  c) Office
  d) Personal Services
  e) Medical/Dental/Optical Counseling Clinic;

  and replace with the following:
  c) Offices for accounting, financial services, manufacture's agent or other similar uses, provided that the use does not involve any retail sales.

- Recommendation 1.C. - insert the words "on the easterly lot, that is" after the word construction.

- Recommendation 1.D. - delete the word "new" in the first line and inserting the words "Assiniboia Community Committee and" after the words "approval of" and before the words "the Director,"

and forwarded the matter to the Standing Policy Committee on Property and Development.

Report - Standing Policy Committee on Property and Development - November 25, 2008

DECISION MAKING HISTORY (continued):

COMMUNITY COMMITTEE RECOMMENDATION (continued):

On October 14, 2008, the Assiniboia Community Committee adjourned the public hearing to its meeting on November 10, 2008.

RE: **Zoning Agreement Amendment - 5204 Roblin Boulevard**
File ZAA 2/2008

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

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

Report date: **November 12, 2008**

COMMUNITY COMMITTEE RECOMMENDATION:

On November 10, 2008, the Assiniboia Community Committee concurred in the recommendation of the Winnipeg Public Service and recommends to the Standing Policy Committee on Property and Development:

1. That the Zoning Agreement under File DAZ 313/85 dated July 8, 1987 (By-law 4638/87), be amended as follows:

   A. That Clause 2 be amended to read as follows:

      That uses on the land be restricted to the following:
      a) Dwelling, Single-family detached
      b) Dwelling, Live work
      ~~***c) Office***~~
      c) Offices for accounting, financial services, manufacture's agent or other similar uses, provided that the use does not involve any retail sales
      ~~***d) Personal Services***~~
      ~~***e) Medical/Dental/Optical Counseling Clinic***~~

   B. That Clause 3 be deleted and the following substituted therefore:

      That there shall be no exterior alterations or additions carried out or constructed to the existing building on the land unless final plans, showing the location and details of the exterior alterations, additions, lighting, and any other associated works are submitted to the Assiniboia Community Committee and the Director of Planning, Property and Development for approval prior to the issuance of any development or building permits; and therefore shall be maintained to the satisfaction of Director of Planning, Property and Development.

   C. That Clause 4 be deleted and the following substituted therefore:

      That no new building shall be constructed ***on the easterly lot, that is*** in excess of 18-feet in height, unless its sole use is as a dwelling unit.

D. That Clause 7 be amended to read as follows:

That ~~***new***~~ no signs shall be located on the land without the prior approval of ***Assiniboia Community Committee and*** the Director of Planning, Property and Development and shall be maintained thereafter to the satisfaction of the Director of Planning, Property and Development.

E. That an additional Clause be added as follows:

That any building, structure or addition thereof on the land shall provide a minimum rear yard of 25 feet.

2. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 315/85 (By-law No. 4638/87) as approved in aforesaid Recommendation 1.

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

4. 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.

Note: The wording in bold and italics denotes amendments made by the Community Committee.

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

1. This is a normal residential dwelling in a residential neighbourhood with residential houses behind it and beside it. We are trying to maintain some reasonable control over the landscaping and the look of the dwelling, while at the same time attempting to allow an entrepreneur some flexibility to operate his business from this site.

PUBLIC HEARING SUMMARY

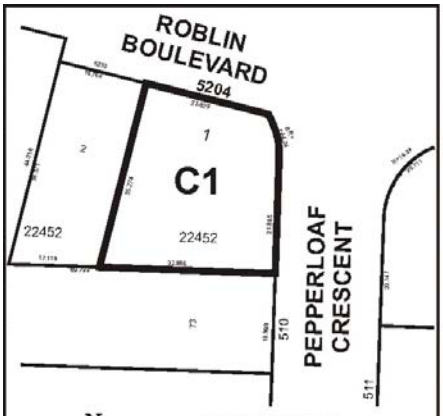
File: ZAA 2/2008

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

Public Hearing: November 10, 2008
October 14, 2008
West Committee Room
Council Building, 510 Main Street

Applicant: E. Thompson Holdings Ltd.

Subject:



APPLICANT : E THOMPSON HOLDINGS LTD.

FILE : ZAA 2/08

PROPOSAL : To amend the zoning agreement affecting the land shown above by amending Clause 2 relating to uses, deleting Clause 3 & 4 relating exterior additions, alterations and building height, amending Clause 7 relating to signage approval body and amending Clause 10 relating to new construction approval body. **For information, phone Mr. J. Veitch, Planner at 986-7728.**

Premises Affected: 5204 Roblin Boulevard

Exhibits Filed:

1. Application dated July 11, 2008
2. Notification of Public Hearing dated September 3, 2008
3. Manitoba Status of Title 1457978
4. Zoning Agreement
5. Drawing of subject property
6. Plans (2 pages)
7. Report from the Planning and Land Use Division dated October 6, 2008
8. Inspection Report
9. Audio Recording of representations of public hearing held on October 14, 2008
10. Notice of Adjournment dated October 15, 2008
11. Audio Recording of representations of public hearing held on November 10, 2008

REPRESENTATIONS:

In Support:

Ed Thompson, E. Thompson Holdings 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 "7" referred to in File ZAA 2/2008

Planning, Property and Development Department Report

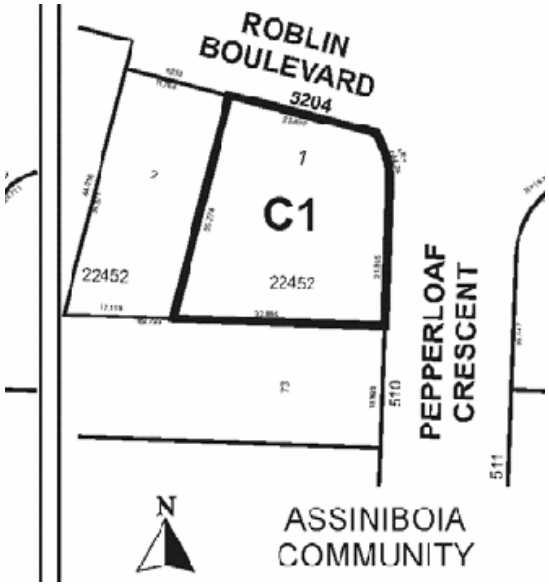
To the Assiniboia Community Committee

Date: October 6, 2008
File: **ZAA 2/2008**
Related Files: N/A
Subject: To delete clauses 3 & 4 and amend clauses 2, 7 and 10 of B/L 4638/87.

Location: 5204 Roblin Blvd.
Legal Description: Lot 1 Plan 22452

Applicant: E. Thompson Holdings Ltd. (Ed Thompson)
Owner: E. Thompson Holdings Ltd.

Recommendation: **Approval in part**



Site Description

Existing Land Use and Zoning

The subject site, which is zoned "C1" Commercial District, is located on the southwest corner of Roblin Boulevard and Pepperloaf Crescent in the Roblin Park neighbourhood of the Charleswood-Tuxedo Ward. The site is occupied by an office use within an existing converted single-family dwelling.



Figure 1: Subject Site and Surrounding Land Uses (Aerial Photo Flown 2007)

Surrounding Land Use and Zoning

North: Roblin Boulevard, then a 35 foot Public Reserve, then "R1-L" single-family residences.
South: "R1-L" single-family dwellings, fronting Pepperloaf Crescent.
East: Pepperloaf Crescent, then an ESSO Gas Station zoned "C2".
West: A "C1" commercial site - vacant and under same ownership as subject site.

Background

As per B/L 4638/87 a Zoning Agreement was placed on the land in conjunction with a property rezoning from a residential district to a commercial district to allow for an office use. The purpose of the Zoning Agreement was to protect the residential character of the existing single-family dwelling and the neighbourhood by imposing use restrictions and to provide the Assiniboia Community Committee with the opportunity to review any future changes on the site through Plan Approval.

Description of the Proposed Development

The applicant is seeking to amend the Zoning Agreement so that future changes to the site in terms of alterations/additions, signage, and development plans do not need approval from both the Assiniboia Community Committee and the Director of Planning, Property and Development. The applicant is also seeking to delete two clauses of the Agreement, one, which currently limits the height of new buildings to eighteen (18) feet, and another other, which does not accommodate any exterior alterations or additions to the existing building. The impetus for this application is to create a 48 square foot addition to an existing sunroom. Currently, no exterior alterations or additions are permitted to this building as per clause 3 of the current Zoning Agreement.

Analysis

Plan Winnipeg Compliance

The amendments requested in this application would not lead to development that is out of step with that accommodated in Plan Winnipeg for Neighbourhood Policy Areas.

Intent of Original Zoning Agreement

It must be remembered that the original intent of the Zoning Agreement put in place was to protect the scale and character of the existing residential dwellings from commercial uses. Typically, commercial uses might be not be compatible with existing neighbouring residences. The requirement of Community Committee's approval of future adjustments to the site ensures that the original intent can be exercised. From the applicant's point of view, however, this requires that even relatively simple adjustments must await a forthcoming Community Committee meeting. As such, the applicant is requesting that such authority rest in the hands of the Director of Planning, Property and Development.

The nature of the existing Zoning Agreement speaks to the caution exercised by the decision makers that allowed the rezoning of the subject property from a residential to commercial use. Relinquishing this in total is at odds with the original intent of the Agreement.

Zoning

The difficulty with Zoning Agreements is that they provide an added layer of approvals. To the applicant it is easier and more desirable when one has only to meet the minimum requirements of the zoning by-law for a given zoning district. In reality, however, the intricacies of specific developments are often difficult to accommodate within one of a few zoning categories from which to choose from. This makes Zoning Agreements necessary, especially when the zoning

category contains many uses that would not be appropriate on a given site. Given the context of the existing Agreement is it difficult to recommend many substantive changes.

Zoning By-Law 200/2006

With the passing of Zoning By-Law 200/2006 have come some important changes that may effect the application at hand. It is noted that the landscaping requirements of the By-Law are far more comprehensive than what had existed in Zoning By-Law 6400/94. Given the onerous landscaping standards of the By-Law, it appears that Director approval of any future landscaping that satisfies the intent of the By-Law would also satisfy the intent of the original agreement.

Other changes to the Zoning By-Law, however, may work at cross-purposes from the Agreement. For example, under Zoning By-Law 6400/94 the minimum required rear yard of the "C1" Commercial District was 25 feet. Under Zoning By-Law 200/2006 the minimum required rear yard is zero feet. To maintain the intent of the original Zoning agreement, it is suggested that a new clause be added to ensure a 25-foot rear yard will be maintained to the residential property directly south of the subject site.

Exterior Alterations and Additions

Clause 3 of the Zoning Agreement does not allow for any alterations or additions to the existing building. While the intent of this clause was likely to limit the expansion of commercial activity, it is noted that the continuance of this clause may interfere with the owner's ability to maintain the building's appearance. It is noted, for example, that the concurrent Plan Approval (BP 07 154627 DP) to add a 48 square foot addition and exterior alteration is expected to enhance the overall appearance of the building. Therefore, removal of this clause is reasonable.

Building Height

The context of the neighbourhood is captured best by the neighbouring single-family dwellings. Most of these dwellings are one and two stories and Zoned "R1-M". New residential development in this zone is limited to a maximum height of 35 feet. Under"C1" zoning, the maximum building height is 39 feet. The existing Zoning Agreement limits the height of any new building constructed to 18 feet. Given the context of the surrounding neighbourhood, a 35-foot building would not be out of character for a residential use, especially with the provision of a 25 foot rear yard. However, a 35-foot high medical clinic might be. Given this, it is recommended that the clause read that no new building be in excess of 18-feet unless its sole use is as a dwelling unit.

Recommendation

The Planning and Land Use Division recommends:

- amending clauses 2 &7 relating to restricting uses and signage approval authority;
- deleting clauses 3 & 4 by substituting new clauses to deal with exterior alterations and building height; and
- That clause 10, dealing with new construction approval authority not be amended.

Recommended Conditions of Approval

1. That Zoning Agreement under File DAZ 313/85 dated July 8, 1987 (By-law 4638/87), be amended as follows:

   A. That Clause 2 be amended to read as follows:

      That uses on the land be restricted to the following:
      a) Dwelling, Single-family detached
      b) Dwelling, Live work
      c) Office
      d) Personal Services
      e) Medical/Dental/Optical Counseling Clinic

   B. That Clause 3 be deleted and the following substituted therefore:

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   D. That Clause 7 be amended to read as follows:
      That new no signs shall be located on the land without the prior approval of the Director of Planning, Property and Development and shall be maintained thereafter to the satisfaction of the Director of Planning, Property and Development.

   E. That an additional Clause be added as follows:
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2. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 315/85 (By-Law No. 4638/87) as approved in aforesaid Recommendation 1.

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

4. 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: Noah Yauk
PPD File # ZAA 2/2008