Agenda - Council – January 27, 2010

Report - Standing Policy Committee on Property and Development – January 5, 2010

Item No. 4 Zoning Agreement Amendment – 20 De La Seigneurie Boulevard (St. Boniface Ward) File ZAA 7/2009

STANDING COMMITTEE RECOMMENDATION:

On January 20, 2010 the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and the Riel Community Committee and submits the following to Council:

1. That the Zoning Agreement under File DASZ 8A/1986 dated October 15, 1986 (By-law No. 4551/87) be amended as follows:

   A. That Clause 2 be deleted and the following substituted therefore:

      "2. That under the existing "C2" Commercial Community District, the following uses under The Winnipeg Zoning By-law No. 200/2006 shall be deemed to be prohibited uses:

         i. Auto/light truck/motorcycle repair and service
         ii. Auto/light truck/motorcycle sales and rental
         iii. Auto parts and supplies, sales
         iv. Drinking establishments
         v. Kennels
         vi. Hostels, motels, hotels
         vii. Landscape or garden supplies businesses
         viii. Pawnshops"

   B. That Clause 8 be deleted and the following substituted therefore:

      "8. That in order to protect the amenity and convenience of adjoining lands and the neighboring community, no business facility on the "C2" Commercial land shall be operated or open on any day of the week between 1:00 a.m. and 7:00 a.m. with the exception of retail pharmacies and drug mart outlets and/or protection and emergency services which will both be allowed to operate 24 hour basis."

2. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DASZ 8A/86 (By-law No. 4551/87) as approved in aforesaid Recommendation 1.

Report - Standing Policy Committee on Property and Development – January 5, 2010

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 – January 5, 2010

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On January 20, 2010, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and the Riel Community Committee and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On January 5, 2010, the Standing Policy Committee on Property and Development concurred in the recommendation of the Riel Community Committee and submitted the matter to the Executive Policy Committee and Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On December l7, 2009, the Riel Community Committee concurred in recommendation of the Winnipeg Public Service, with the following amendment, namely:

- That Recommendation 1. A. be amended by deleting "v. Restaurants" and "vi. Drive –in or drive through facilities" from the list of prohibited uses under the new Clause 2 and renumbering the remaining prohibited uses accordingly",

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

RE: **Zoning Agreement Amendment – 20 De La Seigneurie Boulevard**
File ZAA 7/2009 [c/r DAV 152438/2009D]

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

Prepared by: **Marc Pittet, Senior Committee Clerk**
Riel Community Committee

Report date: **December 8, 2009**

COMMUNITY COMMITTEE RECOMMENDATION:

On December 7, 2009, the Riel Community Committee concurred in the recommendation of the Winnipeg Public Service, as amended, and recommends to the Standing Policy Committee on Property and Development:

1. That the Zoning Agreement under File DASZ 8A/1986 dated October 15, 1986 (By-law 4551/87) be amended as follows:

   A. That Clause 2 be deleted and the following substituted therefore:

      "2. That under the existing "C2" Commercial Community District, the following uses under The Winnipeg Zoning By-law No. 200/2006 shall be deemed to be prohibited uses:

         i. Auto/light truck/motorcycle repair and service
         ii. Auto/light truck/motorcycle sales and rental
         iii. Auto parts and supplies, sales
         iv. Drinking establishments
         ~~***v. Restaurants***~~
         ~~***vi. Drive–in or drive through facilities***~~
         v. Kennels
         vi. Hostels, motels, hotels
         vii. Landscape or garden supplies businesses
         viii. Pawnshops"

   B. That Clause 8 be deleted and the following substituted therefore:

      "8. That in order to protect the amenity and convenience of adjoining lands and the neighboring community, no business facility on the "C2" Commercial land shall be operated or open on any day of the week between 1:00 a.m. and 7:00 a.m. with the exception of retail pharmacies and drug mart outlets and/or protection and emergency services which will both be allowed to operate 24 hour basis."

2. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DASZ 8A/86 (By-law No. 4551/87) 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 Riel Community Committee provided the following supporting reason for its recommendation:

1. The Riel Community Committee agreed with the administrative comments contained in the report of the Planning and Land Use Division dated November 30, 2009.

PUBLIC HEARING SUMMARY

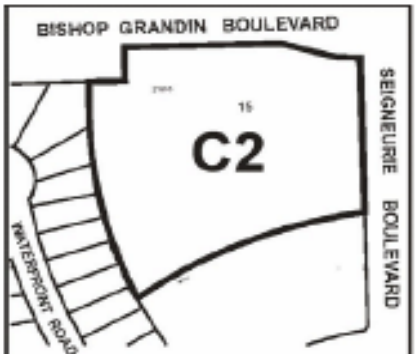
File: ZAA 7/2009 [c/r DAV 152438/2009D]

Before: Riel Community Committee
Councillor Vandal, Chairperson
Councillor Steeves

Public Hearing: December 7, 2009
Council Chamber
Council Building, 510 Main Street

Applicant: MMM Group Ltd. (Veronica Hicks)

Subject:



APPLICANT : MMM GROUP LTD.
FILE : ZAA 7/09
PROPOSAL : To amend the Zoning Agreement affecting the land shown outlined above by deleting Clauses 2 and 8 relating to limited "C1" Commercial Neighbourhood District uses and hours of operation. **For information, phone Mr. J. Wintrup, Planner at 986-5102.**
DEMANDEUR : MMM GROUP LTD.
RÉFÉRENCE : MCZ 7/09
PROJET : Demande de modification de la convention de zonage touchant le bien-fonds indiqué ci-dessus par abrogation des alinéas 2 et 8 portant sur les limitations applicables au secteur de zonage C1 (Secteur Commercial De Quartier) usage et aux heures d'ouverture. **Pour obtenir des renseignements, veuillez communiquer avec M. J. Wintrup, urbaniste, au 986-5102.**

Premises Affected: 20 De La Seigneurie Boulevard

Exhibits Filed:

1. Application dated October 7, 2009
2. Notification of Public Hearing dated October 19, 2009
3. Manitoba Status of Title 2307479
4. Letter of authorization dated April 18, 2008 from Scott Neiles, President, 4671962 Manitoba Ltd. to MMM Group
5. Caveat 87-82435 and Zoning Agreement under File DASZ 8A/1986 dated October 15, 1986
6. Plans (3 pages)
7. Report from the Planning and Land Use Division dated November 30, 2009
8. Audio Recording of representations of public hearing held on December 7, 2009

REPRESENTATIONS:

In Support:

Frank Bueti
Veronica Hicks, MMM Group Limited
Peter Kaufmann
Paul McNeil, MMM Group Limited
Scott Neiles
Heather Sarna
Brent Yanchishyn

In Opposition

Todd Hollinger
Raphael and Rebecca Leung

For Information:

Gary Buckley
Tony and Maria Bussoli
Bob and Betty Gunning
Margaret Lima
John Prestay
Brad Bretula
Dean Ratfelder
David J. Stewart
Giuseppe Torchia
Lindsey Wilson

For the City:

Ms. S. Matile, Land Development Engineer, Planning, Property and Development Department
Mr. R. Kostiak, Planner, Planning, Property and Development Department

Exhibit "7" referred to in File ZAA 7/2009 [c/r DAV 152438/2009D]

ADMINISTRATIVE REPORT

ISSUE: ZAA 7/2009 20 De La Seigneurie Blvd Public Hearing.

Critical Path: RIEL Community Committee as per the *Development Procedures By-law* and *The City of Winnipeg Charter*.

AUTHORIZATION

Author	Department Head	CFO	CAO
K. Lalor	n/a	n/a	

RECOMMENDATIONS

1. That Zoning Agreement under File DASZ 8A/1986 dated October 15 (By-law 4551/87), be amended as follows:

   A. That Clause 2 be deleted and the following substituted therefore:

   That under the existing "C2" Commercial Community District, the following uses under By-Law 200/2006,shall be deemed to be prohibited uses;

   i) Auto/light truck/motorcycle repair and service
   ii) Auto/light truck/motorcycle sales and rental
   iii) Auto parts and supplies, sales
   iv) Drinking establishments
   v) Restaurants
   vi) Drive –in or drive through facilities
   vii) Kennels
   viii) Hostels, motels, hotels
   ix) Landscape or garden supplies businesses
   x) Pawnshops

   B. That Clause 8 be deleted and the following substituted therefore:

   That in order to protect the amenity and convenience of adjoining

lands and the neighboring community, no business facility on the "C2" Commercial land shall be operated or open on any day of the week between 1:00 a.m. and 7:00 a.m. with the exception of retail pharmacies and drug mart outlets and/or protection and emergency services which will both be allowed to operate 24 hour basis.

9. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DASZ 8A/86 (By-Law No. 4551/87) as approved in aforesaid Recommendation 1.

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

11. 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.

IMPLICATIONS OF THE RECOMMENDATIONS

If the recommendations of the Planning and Land Use Division are concurred in, this will allow **C2 Commercial Community District** land-uses (with exception of the prohibited list of uses) to be developed on the property after a site plan has been approved by the RIEL Community Committee.

CONSULTATION

In preparing this Report there was consultation with:

N/A

SUBMITTED BY

Department	Planning, Property and Development
Division	Planning and Land Use
Prepared by	Kevin Lalor
Date:	November 30, 2009
File No.	ZAA 7/2009

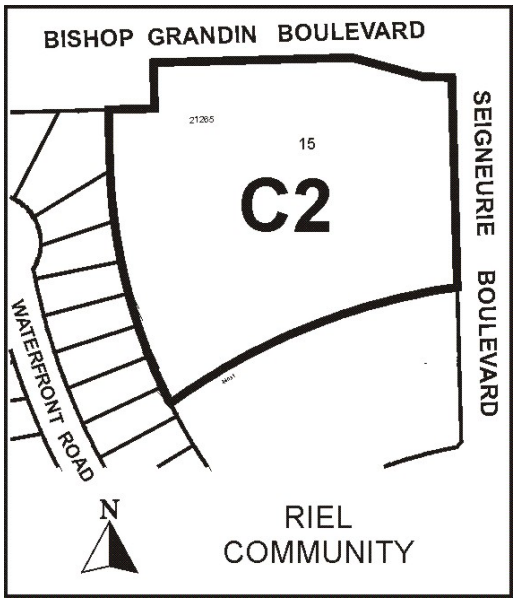
APPENDIX 'A'

Date: November 30/2009
File: ZAA 7/2009
Related Files: DASSF 531/09, DAV 09 152438/D

Subject: The applicants are proposing to amend Zoning Agreement DASZ 8A/86 by deleting clauses 2 & 8 which a) restrict use of the land to " C1" uses and limit the hours of operation from 7:00 a.m. to 1:00 a.m.

Location: 20 De La Seigneurie Blvd

Legal Description: Part Lot 2, Block 15, Plan 21265

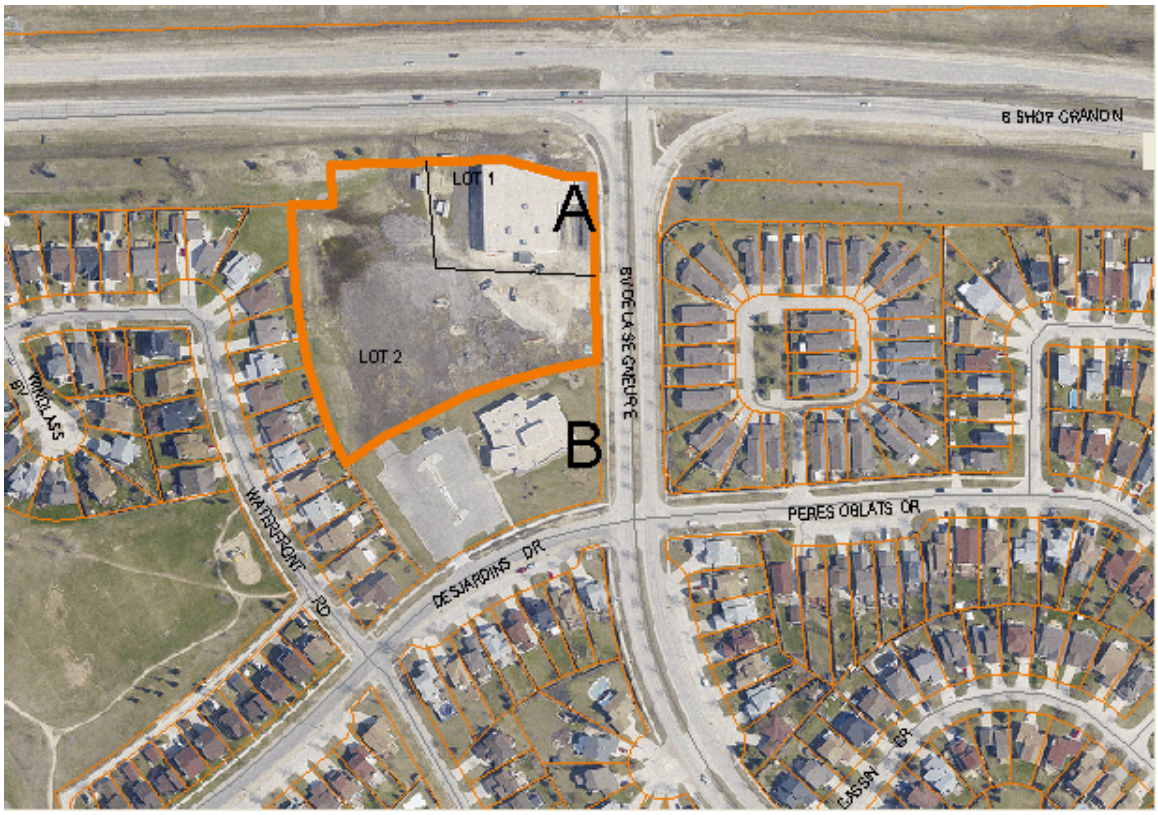


Applicant: MMM Group Ltd.

Owner: 4671962 Manitoba Ltd.

Recommendation: Approval (in part)

Site Description:



Existing Land Use & Zoning:

A 16, 740 sq. ft. sporting goods store (Home Run Sports) and accessory parking area currently occupies the site. The land is zoned “C2” Commercial.

Surrounding Land Use & Zoning:

South : To the immediate south is a Manitoba Medical office complex with 12,131 sq. ft. of floor space and 60 parking stalls.. The land is zoned “C2” Commercial.

West: To the west along Waterfront Road is an established single family residential housing subdivision , zoned “ R1-M” Single Family Residential.

North: To the north is Bishop Grandin Boulevard and the adjoining hydro properties zoned “RR-5” Rural Residential.

East: On the east side of Boulevard De La Seigneurie is a thirty three (33) unit condominium complex zoned “ RMF-S” Multiple Family.

Background:

- In 1986, as part of a phased future development plan for the Island Lakes area, Novamet Developments under application DASZ 8A/86, recommended that all of the land at the N.W. corner of Desjardins Drive and Boulevard De La Seigneurie (comprising 6.28 acres) be zoned "C2" Commercial.
- In 1988, the most southerly third of the property (2 acres) was subdivided and removed from the overall parcel by short form subdivision.
- Early in 2008, the Manitoba Medical Association purchased the above noted 2 acre parcel and constructed a one story 12,000 sq. ft. office facility (**B** on the above insert map).
- Shortly thereafter in June 2008, under DCU 08 11848/C, Home Run Sports applied for and was granted the right to establish a retail outlet , by the Board of Adjustment.
- In September of 2009, the current development application was processed and a public hearing before the Riel Community Committee was arranged for December/2009.

Description of the Proposed Development:

The overall site area owned currently by 4671962 Manitoba Ltd. (bounded by the orange line) is 4.2 acres. The first part of their application is a DASSF 531/09 short form subdivision application, which if approved , will separate Home Run Sports (**A** / lot 1 on the above map) from the remaining approximately 3.3 acre vacant parcel (identified as lot 2). The owners then intend to sell the aforementioned 3.3 acre parcel for either retail development purposes or some other appropriate use; i.e. a fire hall . The possibility of the establishing a fire-hall at this location has been under review for some time, but as yet no definitive decision has been made. The second part of the application relates to the need for a variance (DAV 09 152438/D) which is required as a direct result of the proposed subdivision. The proposed subdivision land-locks the existing parking area for Home Run Sports which will no longer have direct access to an existing street or lane and will have to enter into a cross easement agreement with the prospective new owners of the adjoining 3.3 acre parcel, when and if it is sold. The third and final segment of the application is a request to amend the original Zoning Agreement (DASZ 8A/1986) by deleting two of the original clauses ; specifically 2 & 8. Clause 2 is highly restrictive in that it limits use of the land to just "C1" Commercial uses - in spite of the fact that the land, in its entirety, has always been zoned " C2" Commercial. By removing said restriction and allowing a broader range of "C2" uses, the owner would have more options available to him, when marketing the noted residual 3.3 acre property. Clause 8 does not allow any new development between the hours of 1:00 a.m. and 7:00 a.m.. The owner is requesting that clause be deleted in order to allow for the **possible** establishment of businesses that operate on a 24 hour basis.

Analysis:

DAV 09 152438D & DASSF 531/09: The Planning and Land Use Division fully supports both the proposed subdivision and subject variance. The creation of a new lot (proposed lot 2) was anticipated and it would appear that the new lot will be large enough to accommodate at least one additional project; while at the same time minimizing the impact on existing home owners immediately adjacent to the west. The proposed short form subdivision also triggers the need for a variance because the accessory parking area for Home Run Sports does become landlocked under the projected site plan. However, as is customary on multi –tenant commercial properties, cross easement agreements will be put in place which will allow all existing or future tenants of the site to have equal access to both Desjardins Drive and Boulevard De La Seigneurie.

ZAA request A – application to amend the original zoning agreement DASZ 8A/86 by deleting Clause 2 which restricted development on the site to just “C1” Commercial uses: When the original zoning agreement was put in place, many of the listed “C2” Commercial uses, in particular those that could potentially be ‘problem uses’ (i.e. carwashes, convenience stores, drive –through restaurants etc.) were not conditional under the then existing By-Law. So, while the land was allowed to be rezoned “C2” Commercial, the future use of the land was restricted to a limited number of “C1” uses.
It should be noted, however, that the current By-Law regulations reflect , to a much greater extent, the need to protect existing residential neighborhoods from the adverse effects of adjoining commercial development. Hence, most potentially noxious use like carwashes, private clubs, pawnshops etc. have been identified and listed as conditional uses and many others are subject to higher standards (such as the limiting of the gross floor area of certain commercial uses). The Planning and Land Use Division therefore contends that the restrictive intent of Clause 2 ,in the original 1986 zoning agreement, is no longer necessary. The regulations outlined in the commercial use section of By-Law 200/2006 generally, in our view, protect the interests of adjoining residential property owners. However, that said, there are still some uses which are not deemed to be suitable at the subject location, for a variety of reasons. Those uses should not even be regarded as conditional, in the context of this commercial site; they should be listed as **prohibited** uses . Those uses are identified and listed in the amended wording of Clause 2 outlined in the next section.

ZAA request B – application to amend the original zoning agreement DASZ 8A/86 by deleting Clause 8 which stipulates that any businesses on site cannot operate between the hours of 1:00 a.m. and 7:00 a.m.: It is generally felt that the existing parameters for hours of operation are more than fair and are well in excess of what the two existing businesses currently require. The Manitoba Medical facility operates, we believe , in accordance with standard 8:00 a.m. -5:00 p.m. business hours; Home Run Sports may stay open until 10:00 p.m. week nights. The only uses that generally provide full 24 hour service and are deemed to be potentially suitable tenants at this location are 1) retail pharmacies/drug mart outlets and 2) emergency and protection services (i.e. fire-hall). With that in mind, the Planning and Land Use Division has recommended that Clause 8 can be marginally amended in order to make provision for possible future drug mart outlets and protection / emergency service facilities to be able to operate on a 24 hour basis at this location.

Recommendation:

The Planning and Land Use Division recommends approval **in part** for the following reasons:

- The original zoning agreement was quite restrictive and for good reason, in 1986. However, several By-Laws later, it is our view that there are “C2” uses listed under By-Law 200/2006 which now can and should be regarded as appropriate uses at this location.
- In our opinion, several uses that require 24 hour operating status, are regarded as potentially appropriate uses at this location.

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