Minute No. 321
Report - Standing Policy Committee on Property and Development – April 5, 2011

Item No. 6 Zoning Agreement Amendment – 56 De Caigny Cove (St. Boniface Ward) File ZAA 8/2010

COUNCIL DECISION:

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

1. That the Zoning Agreement under File DAZ 8H/86 (DASSF 87/88) dated October 15, 1986 (By-law No. 4928/88), be amended as follows:

   A. That Clause 2(b) be amended by adding the following:

      Excepting Lot 14 Block 1 Plan 23514, which shall provide a minimum of 15.24 metres (50 feet) measured from that rear lot line to any detached accessory building.

   B. That the following new Clause be added:

      That the maximum permitted height of any detached accessory building located in the rear yard of Lot 14 Block 1 Plan 23514 shall be no greater than 3.51 metres (11 feet 6 inches).

2. That the Director of Legal Services and City Solicitor be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 8H/86 (By-law No. 4928/88) 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 Director of Legal Services and City Solicitor 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 – April 5, 2011

DECISION MAKING HISTORY:

Moved by Councillor Browaty,

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

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On April 20, 2011, 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 April 5, 2011, 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 March 14, 2011, the Riel Community Committee concurred in the recommendation of the Winnipeg Public Service with the following amendment:

- Add the following Recommendation 1. B., namely:

  "1. B. That the following new Clause be added:

  That the maximum permitted height of any detached accessory building located in the rear yard of Lot 14 Block 1 Plan 23514 shall be no greater than 3.51 metres (11 feet 6 inches),"

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

RE: **Zoning Agreement Amendment – 56 De Caigny Cove**
File ZAA 8/2010]

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

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

Report date: **March 15, 2011**

COMMUNITY COMMITTEE RECOMMENDATION:

On March 14, 2011, 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 DAZ 8H/86 (DASSF 87/88) dated October 15, 1986 (By-law 4928/1988), be amended as follows:

   A. That Clause 2(b) be amended by adding the following:

      Excepting Lot 14 Block 1 Plan 23514, which shall provide a minimum of 15.24 metres (50 feet) measured from that rear lot line to any detached accessory building.

   B. That the following new Clause be added:

      That the maximum permitted height of any detached accessory building located in the rear yard of Lot 14 Block 1 Plan 23514 shall be no greater than 3.51 metres (11 feet 6 inches).

2. That the Director of Legal Services and City Solicitor be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 8H/86 (By-law 4928/1988) 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 Director of Legal Services and City Solicitor 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 March 3, 2011.

PUBLIC HEARING SUMMARY

File: ZAA 8/2010

Before: Riel Community Committee
Councillor Swandel, Chairperson
Councillor Steeves
Councillor Vandal

Public Hearing: March 14, 2011
Council Chamber
Council Building, 510 Main Street

Applicant: Design Lines (Norbert Badiou)

Subject:



Premises Affected: 56 De Caigny Cove

Exhibits Filed:

1. Application dated January 13, 2011
2. Notification of Public Hearing dated February 3, 2011
3. Manitoba Status of Title 2345827
4. Letter of authorization dated November 1, 2010 from R.F. and Barbara Town to Norbert Badiou of Design Lines
5. Zoning Agreement dated October 15, 1986
6. Caveat No. 1128825 dated March 2, 1989
7. Plans (5 pages)
8. Report from the Planning and Land Use Division dated March 3, 2011
9. Communication dated March 4, 2011, from Wayne F. Skibinski, in opposition to the application
10. Inspection Report
11. Audio Recording of representations

REPRESENTATIONS:

In Support:

Norbert Badiou
Bob Town

In Opposition

Frank Skibinski
Wayne F. Skibinski
Hoi (Lewis) Yu

For the City:

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

Exhibit "8" referred to in File ZAA 8/2010

ADMINISTRATIVE REPORT

Title: ZAA 8/10 – 56 De Caigny Cove Public Hearing

Issue: For consideration at the Public Hearing to amend the Zoning Agreement for the maintenance of an accessory building (gazebo) to permit a minimum rear yard of 50 feet instead of 67 feet.

Critical Path: Riel Community Committee – Standing Policy Committee on Property and Development – Executive Policy Committee – Council as per the *Development Procedures By-law* and *The City of Winnipeg Charter*.

AUTHORIZATION

Author	Department Head	CFO	CAO
P. Regan	N/A	N/A	

RECOMMENDATIONS

1. That Zoning Agreement under File DAZ 8H/86 (DASSF 87/88) dated October 15, 1986 (By-law 4928/1988), be amended as follows:

   A. That Clause 2(b) be amended by adding the following:

   Excepting Lot 14 Block 1 Plan 23514, which shall provide a minimum of 15.24 metres (50 feet) measured from that rear lot line to any detached accessory building.

2. That the Director of Legal Services and City Solicitor be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 8H/86 (By-law 4928/1988) 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 Director of Legal Services and City Solicitor be requested to do all things necessary for implementation in accordance with the terms of The City of Winnipeg Charter.

REASON FOR THE REPORT

- The applicant has constructed a 240 square foot (20 feet by 12 feet), 12 foot-tall detached gazebo in the rear yard of 56 De Caigny Cove.
- The gazebo was constructed without permits, and therefore the proposed development was not reviewed by the City of Winnipeg prior to the construction of the gazebo.
- The gazebo was constructed 50 feet away from the rear property line. The minimum rear yard setback for detached accessory buildings such as a gazebo is 67 feet under zoning agreement DAZ 8H/86.
- The applicant is now applying to amend zoning agreement DAZ 8H/86 to bring the gazebo into conformance with the by-law and allow the gazebo to remain in its existing place on the land.
- A zoning agreement amendment requires a Public Hearing as per the *Development Procedures By-law* and *The City of Winnipeg Charter.*
- The Report is being submitted for the Committee's consideration of the development application at the Public Hearing.

IMPLICATIONS OF THE RECOMMENDATIONS

- If the recommendations of the Planning and Land Use Division are concurred in, the 240 square foot detached gazebo will be permitted to remain in its location, 50 feet away from the rear property line.

HISTORY

DASZ 8/86 and DAZ 8H/86

- On October 15, 1986, Council recommended approval of the application DASZ 8/86 to subdivide and rezone land south of Bishop Grandin Boulevard, east of Lagimodiere Boulevard and north of John Bruce Road. This site is now part of the Island Lakes neighbourhood. A condition of approval for DASZ 8/86 was that the applicant enter into a zoning agreement with the City of Winnipeg. Among the conditions included in the recommended zoning agreement was the restriction on rear yard setbacks for structures on lots abutting the storm water retention ponds.
- DASZ 8/89 was a large subdivision and the zoning by-law for specific areas was enacted in phases. On March 2, 1989, By-Law 4928/88 under file DAZ 8H/86 came into force and effect confirming the rezoning of lands along De Caigny Cove, which included the subject site. The specific zoning agreement for these lands was tied to DAZ 8H/86.

Conditions included in this zoning agreement relevant to the subject application (ZAA 8/10) are as follows:

2. Each of Lots 1 to 18 both inclusive in Block 1 of the land have a rear lot line abutting or partly abutting the boundary of public lands containing a storm water retention lake and accordingly there shall be provided and maintained on each of those lots the following special rear yard setback as illustrated on Schedule "A" to this agreement, namely:

   a) a minimum of 25.9 metres (85 feet) measured from that rear lot line to any principal building, and

   b) a minimum of 20.4 metres (67 feet) measured from that rear lot line to any detached accessory building, and

   c) a minimum of 12.8 metres (42 feet) measured from that rear lot line to any temporary structure or swimming pool not enclosed with a building.

CONSULTATION

In preparing this report there was consultation with: N/A

SUBMITTED BY

Department	Planning, Property and Development
Division	Planning and Land Use
Date:	March 3, 2011
File No.	ZAA 8/10

List of Schedules and Attachments

1. Appendix A – Planning Discussion

APPENDIX 'A'

DATE: March 3, 2011

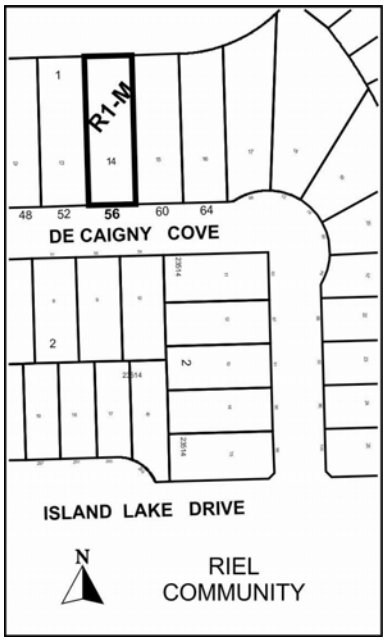
FILE: ZAA 8/10
RELATED FILES: DASZ 8/86, DAZ 8H/86, DASSF 87/88

COMMUNITY: Riel
NEIGHBOURHOOD #: 5.556

SUBJECT: For consideration at the Public Hearing to amend Clause 2(b) of the Zoning Agreement for the maintenance of an accessory building (gazebo) to permit a minimum rear yard of 50 feet instead of 67 feet.

LOCATION: 56 De Caigny Cove

LEGAL DESCRIPTION: Lot 14 Block 1 Plan 23514



APPLICANT: Design Lines (Norbert Badiou)
200 Queenston Street
Winnipeg, MB R3N 0W7

OWNER: Robert and Barbara Town
56 De Caigny Cove
Winnipeg, MB R3X 1T2

RECOMMENDATION: Approval

REPORT SUMMARY

- The applicant has constructed a 240 square foot (20 feet by 12 feet), 12 foot-tall detached gazebo in the rear yard of 56 De Caigny Cove.
- The gazebo was constructed without permits, and therefore the proposed development was not reviewed by the City of Winnipeg prior to the construction of the gazebo.
- The gazebo was constructed 50 feet away from the rear property line. The minimum rear yard setback for detached accessory buildings such as a gazebo is 67 feet under zoning agreement DAZ 8H/86.
- The applicant is now applying to amend zoning agreement DAZ 8H/86 to bring the gazebo into conformance with the by-law and allow the gazebo to remain in its existing place on the land.
- The Planning and Land Use Division recommends supporting this application because:
    - The primary reason for including the rear yard setbacks stipulated in the zoning agreement is to protect structures on lots abutting the retention pond from flooding and related damage in the event of a 100-year storm.
    - The Division has confirmed with Water and Waste that the main concern for Water and Waste is that development does not occur within 42 feet from the rear property line, which is where the water level of the retention pond is designed to be in the event of a 100-year storm. The subject development is located 50 feet from the rear property line.
    - Although the detached gazebo can impact neighbhouring views of the retention pond, landscaping elements such as coniferous trees and shrubs and developments that comply with the setback requirements of the zoning agreement can also potentially impact neighbouring views of the pond.

SITE DESCRIPTION

- The subject property is located on the north side of De Caigny Cove in the Island Lakes neighbourhood of the St. Boniface Ward.
- The property is 54.13 feet wide by 170.6 feet deep, or **9,235 square feet in area**.
- The subject property contains a one-storey, 1,533 square foot home with an attached garage that was built in 1992.
- The property backs onto a stormwater retention pond to the north. A 240 square foot detached gazebo is located in the rear yard, 50 feet away from the rear property.
- The site is within Plan Winnipeg 2020's Neighbourhood Land Use Policy Area and within the Areas of Stability – Recent Communities Policy Area under the *Draft* Complete Communities Direction Strategy. The property is zoned "R1-M" Residential Single-Family Medium.

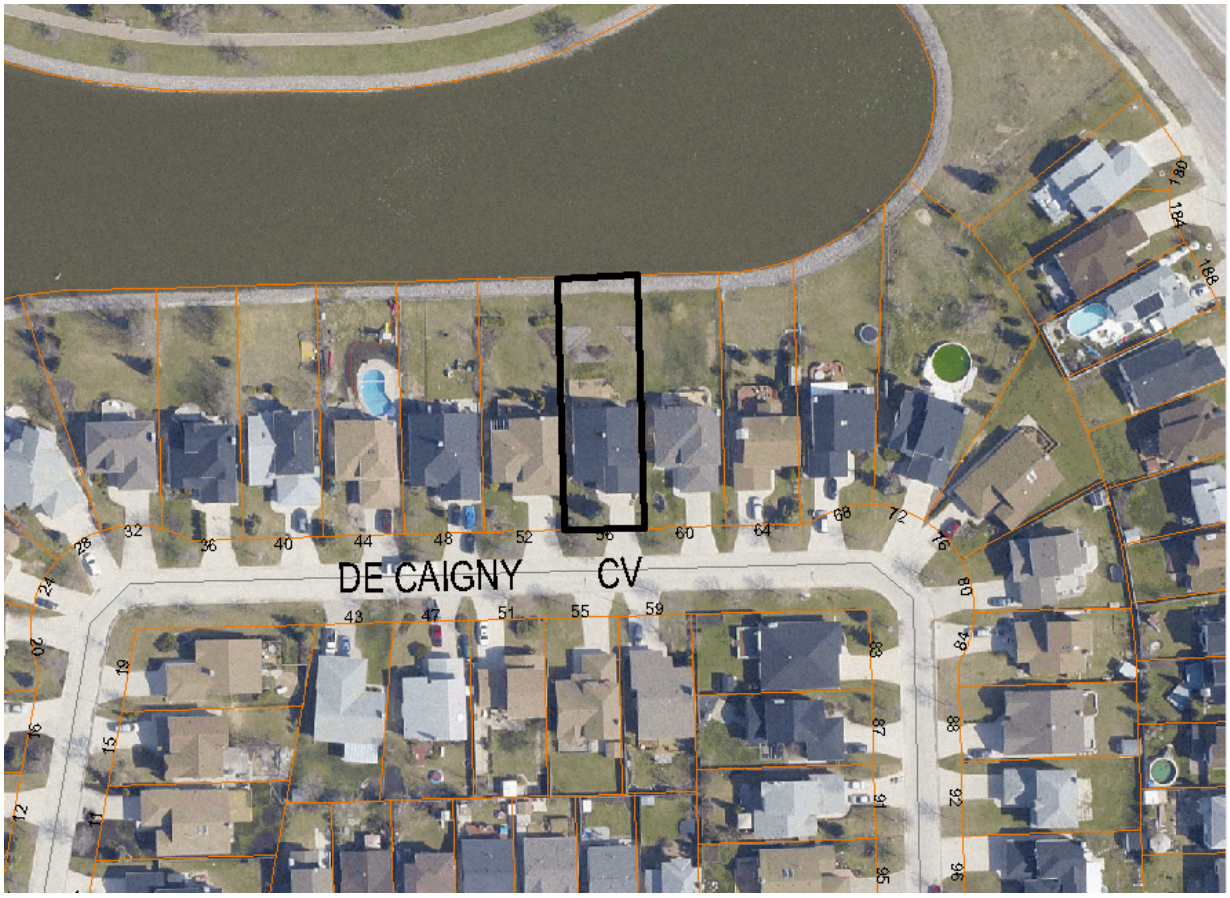


Figure 1: Aerial photograph showing approximate area of subject property (flown 2009)

SURROUNDING LAND USES & ZONING (See Figure 2)

North: A storm water retention pond zoned “PR-1” Parks and Recreation 1 (Neighbourhood).

South: Detached single-family homes zoned “R1-M” Residential Single-Family Medium.

East: Detached single-family homes zoned “R1-M” Residential Single-Family Medium.

West: Detached single-family homes zoned “R1-M” Residential Single-Family Medium.

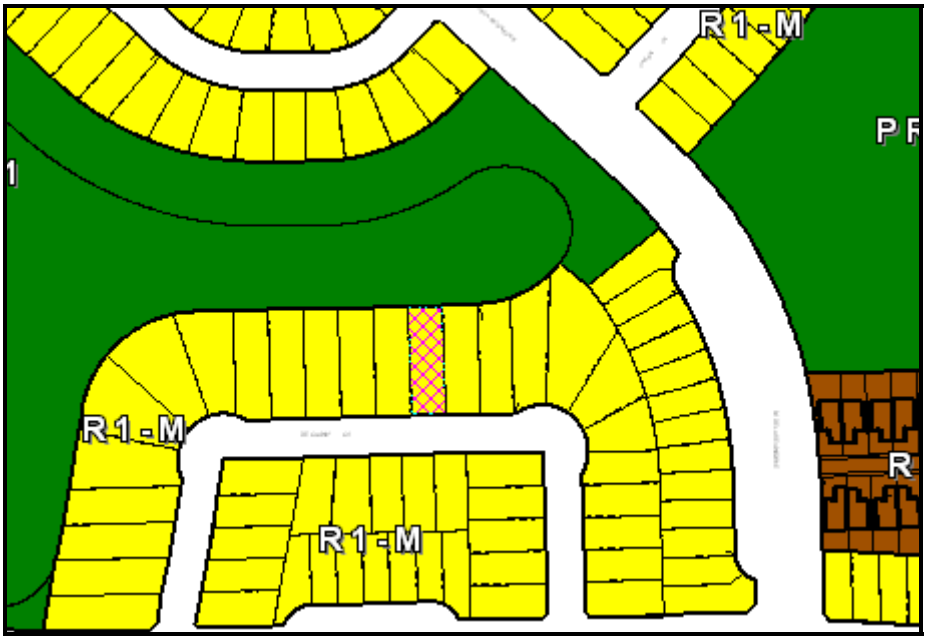


Figure 2: Zoning of the site and surrounding area.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

- The applicant has constructed a 240 square foot (20 feet by 12 feet), 12 foot-tall detached gazebo in the rear yard of 56 De Caigny Cove (see Figure 3).
- The gazebo was constructed without permits, and therefore the proposed development was not reviewed by the City of Winnipeg prior to the construction of the gazebo.
- The gazebo was constructed 50 feet away from the rear property line. The minimum rear yard setback for detached accessory buildings such as a gazebo is 67 feet under zoning agreement DAZ 8H/86.
- The applicant explains that he was not aware of the zoning agreement restriction and only thought that the development needed to comply with the Zoning By-law.
- Had a permit been applied for, the Zoning Officer would have identified the zoning agreement restriction on the land.
- The applicant is now applying to amend zoning agreement DAZ 8H/86 to bring the gazebo into conformance with the by-law and allow the gazebo to remain in its existing place on the land.



Figure 3: Photo of gazebo (taken March 3, 2011).

ANALYSIS AND ISSUES

PLAN WINNIPEG

- The proposed development is within the Neighbourhood Policy Area.

DRAFT COMPLETE COMMUNITIES DIRECTION STRATEGY

- Under the *Draft Complete Communities Direction Strategy* the proposed development is within the Areas of Stability – Recent Communities policy area. A key policy guiding the development of Areas of Stability includes:
    - Support low to moderate change in low-density neighbourhoods through development and redevelopment that is complimentary to the existing scale, character and built form.

ZONING

"R1-M" Residential Single-Family Medium District

- The R1-M district requires: a minimum lot width of 25 feet, a minimum lot area of 3,500 square feet, side yards of 4 feet, a front yard of 15 feet, and a rear yard of 25 feet. The maximum building height is 35 feet and the maximum lot coverage is 45 percent.

LAND USE BY-LAW

Zoning Agreement DAZ 8H/86

- Clause 2 of the zoning agreement for DAZ 8H/86 states the following:

  Each of Lots 1 to 18 both inclusive in Block 1 of the land have a rear lot line abutting or partly abutting the boundary of public lands containing a storm water retention lake and accordingly there shall be provided and maintained on each of those lots the following special rear yard setback as illustrated on Schedule "A" to this agreement, namely:

  a) a minimum of 25.9 metres (85 feet) measured from that rear lot line to any principal building, and

  b) a minimum of 20.4 metres (67 feet) measured from that rear lot line to any detached accessory building, and

  c) a minimum of 12.8 metres (42 feet) measured from that rear lot line to any temporary structure or swimming pool not enclosed with a building.

- The applicant has constructed a detached accessory structure (in this instance, a gazebo) that is 50 feet from the rear property line and therefore does not comply with Clause 2(b) of the zoning agreement.

RATIONALE FOR REAR YARD SETBACK IN THE ZONING AGREEMENT

- The rear yard setback incorporated into the zoning agreement is intended to accommodate fluctuations in the water level of the stormwater retention pond.
- The rear yard setback applied to principal and detached buildings, temporary buildings and swimming pools is intended to provide for an adequate amount of usable on-site rear yard space after the pond has reached its highest design level, which is a 100-year storm frequency. Further, the setback stipulated in the Zoning Agreement is also intended to guard against potential legal repercussions in the event of a 100-year storm.
- The Planning and Land Use Division has confirmed with Water and Waste that the water level of the retention pond would be expected to inundate the rear 12.8 metre area (42 feet) of lots backing onto these ponds in the event of a 100-year storm.
- The Planning and Land Use Division consulted Water and Waste about the subject application. Water and Waste did not express concerns with the amendment, primarily due to the fact that the development is more than 42 feet away from the rear property line.

COMPATIBILITY WITH THE SURROUNDING NEIGHBOURHOOD

- The detached gazebo can impact neighbhouring views of the retention pond, which is a key aesthetic feature of the neighbourhood.
- Landscaping elements such as coniferous trees and shrubs, and developments that comply with the setback requirements of the zoning agreement can also potentially impact neighbouring views of the pond.
- It is noted that structures built on lots that back onto retention ponds along De Caigny Cove appear to conform with the requirements of the zoning agreement.

SIMILAR ZONING OR SUBDIVISION AGREEMENT AMENDMENT APPLICATIONS

- The City of Winnipeg has processed similar amendment applications over the years in the form of either zoning agreement or subdivision agreement amendments to change rear yard setbacks along retention ponds. Some examples include:
    - ZAA 11/02 – 71 Georgetown Drive, which was an application to amend the zoning agreement to permit a minimum rear yard setback of 72 feet to a principal dwelling instead of 85 feet.
    - SAA 14/01 – 34 Lighthouse Point, which was an application to amend the subdivision agreement to permit a minimum rear yard setback of 68 feet to a principal dwelling instead of 85 feet.
    - ZAA 7/00 – 19 Eagleridge Court, which was an application to amend the zoning agreement to permit a minimum rear yard setback of 64 feet for an addition (a deck and three-season sunroom) to a principal dwelling instead of 85 feet.
    - SAA 17/99 – 17 Bluewater Crescent, which was an application to amend the subdivision agreement to permit a minimum rear yard setback of 65 feet to a principal dwelling instead of 75 feet.
    - SAA 33/87 – 42 Myles Robinson Way, which was an application to amend the subdivision agreement to permit a minimum rear yard setback of 83.3 feet to a principal dwelling instead of 85 feet.
- The Planning and Land Use Division recommended approval for all of the above applications, except SAA 17/99. All of these applications were approved by the relevant Community Committee and by Council.
- In each Planning Report, the Division cited the fact that the primary purpose of the setback is to protect structures from potential damage in the case of flooding after a storm event.

RECOMMENDATION

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

- The primary reason for including the rear yard setbacks stipulated in the zoning agreement is to protect structures on lots abutting the retention pond from flooding and related damage in the event of a 100-year storm.
- The Division has confirmed with Water and Waste that the main concern for Water and Waste is that development does not occur within 42 feet from the rear property line, which is where the water level of the retention pond is designed to be in the event of a 100-year storm. The subject development is located 50 feet from the rear property line.
- Although the detached gazebo can impact neighbhouring views of the retention pond, landscaping elements such as coniferous trees and shrubs and developments that comply with the setback requirements of the zoning agreement can also potentially impact neighbouring views of the pond.

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

Report Prepared By: Robert Kostiuk
PPD File # ZAA 8/10