Agenda - Council – July 20, 2011

Report - Standing Policy Committee on Property and Development – July 5, 2011

Item No. 4 Zoning Agreement Amendment – 5198 Roblin Boulevard (Charleswood - Tuxedo Ward) File ZAA 3/2011

STANDING COMMITTEE RECOMMENDATION:

On July 13, 2011, the Executive Policy Committee concurred in the recommendations of the Standing Policy Committee on Property and Development and the Assiniboia Community Committee and submits the following to Council:

1. That the application for zoning agreement amendment under File ZAA 3/2011 be rejected.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report - Standing Policy Committee on Property and Development – July 5, 2011

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 13, 2011, the Executive Policy Committee concurred in the recommendations of the Standing Policy Committee on Property and Development and the Assiniboia Community Committee and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On July 5, 2011, the Standing Policy Committee on Property and Development concurred in the recommendation of the Assiniboia Community Committee and submitted the matter to the Executive Policy Committee and Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On June 9, 2011, the Assiniboia Community Committee did not concur in the recommendation of the Winnipeg Public Service, and recommended that the application for zoning agreement amendment under File ZAA 3/2011 be rejected and forwarded the matter to the Standing Policy Committee on Property and Development.

RE: **Zoning Agreement Amendment – 5198 Roblin Boulevard**
File ZAA 3/2011

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

Prepared by: **Visa Hutter, Senior Committee Clerk**
Assiniboia Community Committee

Report date: **June 9, 2011**

COMMUNITY COMMITTEE RECOMMENDATION:

On June 9, 2011, the Assiniboia Community Committee did not concur in the recommendation of the Winnipeg Public Service and recommends to the Standing Policy Committee on Property and Development that the application for zoning agreement amendment under File ZAA 3/2011 be rejected.

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

1. The Assiniboia Community Committee did not agree with the administrative comments contained in the report of the Planning and Land Use Division dated June 1, 2011.

PUBLIC HEARING SUMMARY

File: ZAA 3/2011

Before: Assiniboia Community Committee
Councillor Fielding, Chairperson
Councillor Havixbeck

Public Hearing: June 9, 2011
West Committee Room
Council Building, 510 Main Street

Applicant: MMM Group Limited (Laura Dainard)

Subject:



Premises Affected: 5198 Roblin Boulevard

Exhibits Filed:

1. Application dated March 10, 2011
2. Notification of Public Hearing dated March 30, 2011
3. Manitoba Status of Title 2400250
4. Letter of authorization dated January 6, 2010 from Pioneer Petroleums Management Inc. to MMM Group
5. Caveat 3834553
6. Zoning Agreement between The City of Winnipeg and Imperial Oil Limited
7. Plans (one page)
8. Report from the Planning and Land Use Division dated June 1, 2011
9. Inspection Report

10. Communication dated June 7, 2011, from Jim Roberts in opposition to the application
11. Communication dated June 7, 2011, from Bob and Carol Turner in opposition to the application
12. Communication dated June 9, 2011, from Linda Sherrin in opposition to the application
13. Presentation submitted by Misty Carson, MMM Group Ltd. at the public hearing in support of the application
14. Communication dated June 7, 2011, submitted at the public hearing by David and Leona Fitzpatrick, in opposition to the application
15. Communication dated June 9, 2011, from Lois Melville and Henry Schmidt, submitted at the public hearing by David and Leona Fitzpatrick, in opposition to the application
16. Communication dated June 7, 2011, from Bob Acheson, submitted at the public hearing by Bonnie Hutcheson, in opposition to the application
17. Communication and photographs (10) of subject and surrounding properties, submitted at the public hearing by Kathy Bielus, in opposition to the application
18. Audio Recording of representations

REPRESENTATIONS:

In Support:
Misty Carson, MMM Group Ltd.
Bob Reid

In Opposition:

Bob Acheson	Bonnie Hutcheson
Sal Aysan	Janet James
Kathy Bielus	Alison Jones
Larry Bielus	Steve Kunka
Ron Braun	Lois Melville
Ruth Christian	Corraine Paulson
William Christian	Jim Roberts
Catherine C. Cronin	Henry Schmidt
Vicki Densley	Linda Sherrin
David Fitzpatrick	Bob Turner
Leona Fitzpatrick	Carol Turner
Garth Gerwing	Carla Wenger
Laura Huebert	Eric Wenger

For the City:
Mr. N. Yauk, Senior Planner, Planning, Property and Development Department

Exhibit "8" referred to in File ZAA 3/2011

ADMINISTRATIVE REPORT

Title: ZAA 3/11 – 5198 Roblin BV Public Hearing

Issue: For consideration at the Public Hearing for a zoning agreement amendment to remove clauses 7 and 9 which deal with hours of operation and hours of exterior lighting.

Critical Path: Assiniboia 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 the Zoning Agreement under File DAZ 235/07 (By-Law No. 137/08) dated September 24, 2008, be amended as follows:

    a. That Clause 7 of the Zoning Agreement be deleted and replaced with the following:

    "All exterior site lighting must be shut off between the hours of 12:00 a.m. (midnight) and 6:30 a.m."

    b. That Clause 9 of the Zoning Agreement be deleted and replaced with the following:

    "The hours of operation must be between 7:00 a.m. and 12:00 a.m. (midnight)"

2) That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 235/07 (By-Law No. 137/08) 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.

REASON FOR THE REPORT

- Zoning Amendment Applications require a Public Hearing as per the *Development Procedures By-law* and *The City of Winnipeg Charter.*
- The applicant is proposing to delete clauses 7 and 9 from the existing zoning agreement. The clauses deal with the hours of exterior site lighting and operation.
- 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 hours of operation and exterior site lighting may be extended to midnight on a daily basis.

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	Noah Yauk
Date:	June 1, 2011
File No.	ZAA 3/11

List of Schedules and Attachments

1. Appendix A – Planning Discussion

APPENDIX 'A'

DATE:	April 12, 2010
FILE:	ZAA 3/11
RELATED FILES:	DAZ 235/07 (By-Law No. 137/08)
COMMUNITY:	Assiniboia
NEIGHBOURHOOD #:	2.624 – Roblin Park
SUBJECT:	The applicant would like to amend the existing Zoning Agreement on the property in order to allow for longer hours of operation. The applicant is seeking to delete Clauses 7 and 9 from the agreement altogether so that the proposed land uses can operate on a 24 hour basis.
LOCATION:	5198 Roblin BV
LEGAL DESCRIPTION:	Lot 76, Plan 20354
APPLICANT:	Misty Carson (MMM Group) 111 – 93 Lombard Winnipeg MB R3B 3B1
OWNER:	Pioneer Petroleums Management Inc.
RECOMMENDATION:	Amend the zoning agreement

REPORT SUMMARY:

- The applicant's motivation to seek a zoning amendment is to extend the hours of operation and exterior site lighting beyond what was approved under DAZ 235/07.
- The subject property is zoned "C2" Commercial Community and is surrounded by single-family residential uses on all sides, with the exception of a neighbourhood commercial strip mall to the east, which contains a restaurant and a bank.
- Under DAZ 235/07 the property was rezoned from "C1" to "C2" to accommodate a gas bar. As part of that approval process a Zoning Agreement was placed on the property to protect neighbouring properties from the full impacts of the "C2" zoning district.
    - Gas bars not permitted under the C1 zoning district
    - Hours of operation for retail sales in the C1 district are limited to operate between the hours of 9 a.m. and 9 p.m. only.
- The Planning and Land Use Division recommends amending the zoning agreement to allow the commercial development to remain open until 12:00 a.m. This is seen as a compromise between the property owner's interest in retaining longer hours as well as the spirit of the former rezoning process to accommodate the replacement of a former gas bar.

SITE DESCRIPTION

Surrounding Land Use and Zoning

North: Roblin Boulevard then 'PR1' Parks (35 foot wide buffer) and 'R1-L' Single Family Residential

South: 'R1-L' Single Family Residential

East: 'C2' Commercial

West: Pepperloaf Crescent then 'C1' Commercial

Background

- 1969 - established as a Conditional Use in 'C1' Commercial under By-law 1800
- 1986 - Conditional Use DCU 174/86 redevelopment of the site
- 1995 - DAV 398/95, DAV 883/95 front yard variances for gas bar canopy
- 2007 – DAZ 235/07 rezoning to allow for the re-development of an existing use, (Fuel Sales, Convenience Store)



Figure 1: Subject Site and Surrounding Land Uses (Aerial Photo – flown 2009)

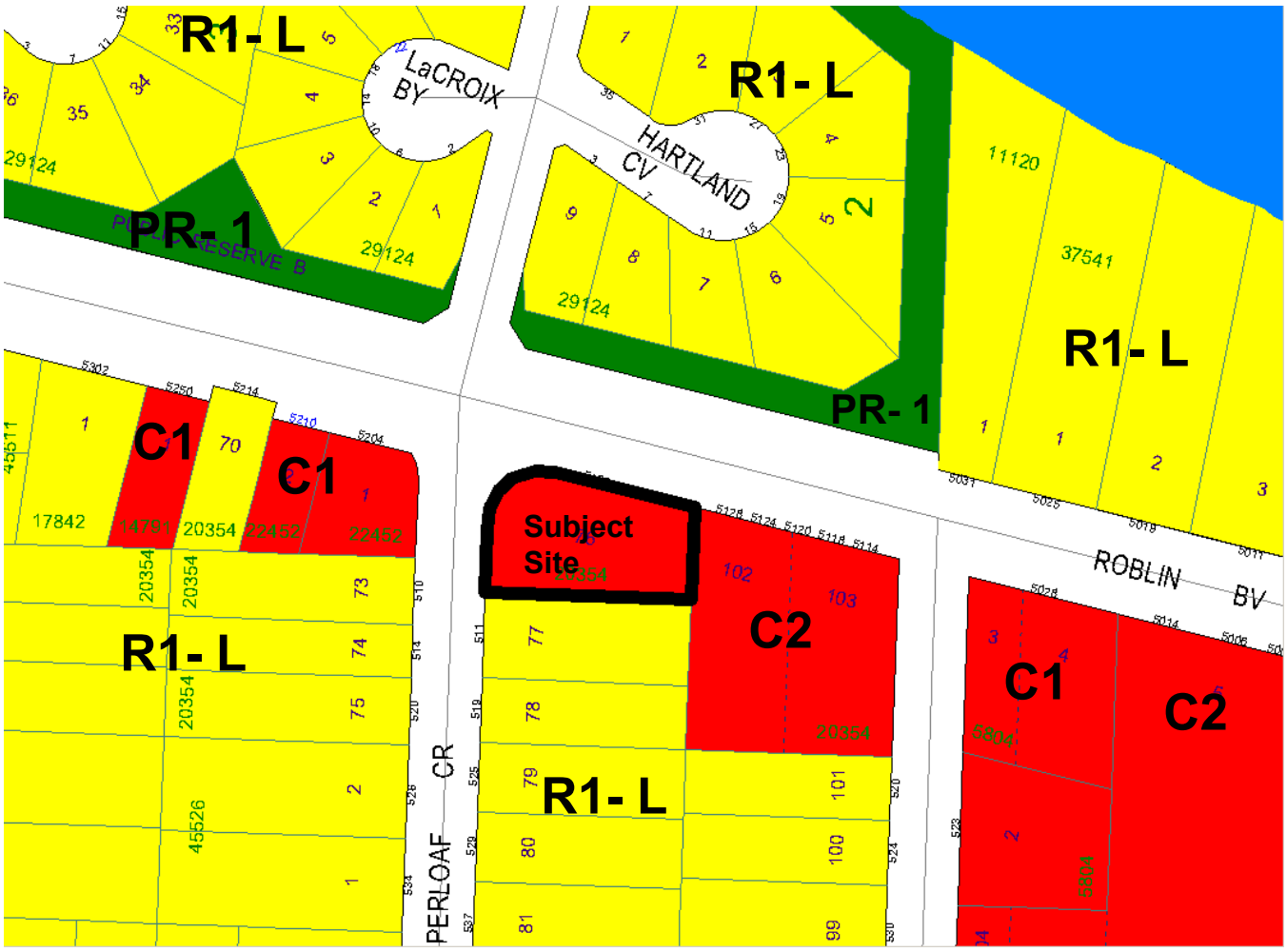

Figure 1: Zoning Map of subject property and Surrounding Context.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

- The applicant wishes to expand the hours of operation and associated external lighting beyond the hours approved under DAZ 235/07. The applicant is asking that these clauses be deleted entirely.

ANALYSIS

ZONING (BY-LAW 200/2006)

It is noted that the proposed development has been made possible through the property being rezoned from “C1” Commercial Neighbourhood District to “C2” Commercial Community District. While previous zoning by-laws have permitted fuel sales in the C1 zoning district, zoning by-law 200/2006 does not. The rezoning to C2 was supported so as to accommodate a use that already had existed on the site. A zoning agreement, however, was attached to the approval so as to ensure the use’s compatibility with neighbouring properties. The intent of the zoning agreement was to ensure the property was operating more in line with the C1 zoning district

given the residential nature of neighbouring land uses. As a result of the zoning agreement the subject property does not have the full development rights associated with the C2 zoning district, yet still provides for a gas bar and related convenience store.

- **"C2" Commercial Community District** is intended to accommodate more intensive commercial sites that do not have a local or neighbourhood orientation. The district is intended to include attractive commercial, institutional, recreational, and service facilities needed to support the surrounding neighbourhoods and the broader community. C2 districts are generally located along collector streets, at arterial/collector intersections, or along portions of arterial streets with relatively shallow lots.

- **"C1" Commercial Neighbourhood District**
  The Commercial Neighbourhood (C1) district is intended to accommodate small, compact commercial uses within or surrounded by residential areas that are attractive and compatible in scale and character with surrounding residential uses, to serve the convenience needs of the surrounding neighbourhood. This district is not intended to accommodate businesses sized or designed to serve a trade area more than one-half mile from the business. C1 districts are generally located along local streets or a local/collector intersections.

    - **"C1" Hours of operations for Retail Sales**
      It is noted that retail sales (including convenience stores) are limited to operate between the hours of 9 a.m. and 9 p.m.

ZONING AGREEMENT (BY-LAW 235/07) EFFECT OF PROPOSED CHANGES

The proposed zoning agreement amendments (deleting clauses 7 and 9) would result in the 24 hour use of the site. Given the property is located within a low density single-family neighbourhood, deleting these clauses entirely does not guarantee that there will not be any adverse impact on the neighbouring residential properties. While the process of establishing the hours of operation is a somewhat arbitrary one, it is recommended that they be extended until no later than 12 a.m. This recognizes a compromise between the applicant's desires to be competitive in the market while recognizing the residential context of Roblin in this area. It is noted there are already commercial establishments in close proximity operating beyond the hours applied to the subject development (Cosmos restaurant which according to staff closes at 11 p.m.). Given the history of public hearings associated with the proposed development and the expectations and assurances provided to residents through the zoning agreement, this is the furthest that the Planning and Land Use Division is willing to go in terms of recommendations to the proposed amendments at this time.

RECOMMENDATION

1) That the Zoning Agreement under File DAZ 235/07 (By-Law No. 137/08) dated September 24, 2008, be amended as follows:

    a. That Clause 7 of the Zoning Agreement be deleted and replaced with the following:

"All exterior site lighting must be shut off between the hours of 12:00 a.m. (midnight) and 6:30 a.m."

b. That Clause 9 of the Zoning Agreement be deleted and replaced with the following:

"The hours of operation must be between 7:00 a.m. and 12:00 a.m. (midnight)"

2) That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 235/07 (By-Law No. 137/08) 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 3/11