Minute No. 129
Report - Standing Policy Committee on Property and Development – November 29, 2011

Item No. 8 **Zoning Agreement Amendment – South side of Bishop Grandin Boulevard, west of De La Seigneurie Boulevard (St. Boniface Ward) File ZAA 11/2011**

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development that the application for zoning agreement amendment under File ZAA 11/2011 be rejected.

Report - Standing Policy Committee on Property and Development – November 29, 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 December 7, 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 November 29, 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 November 14, 2011, the Riel Community Committee did not concur in the recommendation of the Winnipeg Public Service and recommended to Standing Policy Committee on Property and Development that the application for a zoning agreement amendment under File ZAA 11/2011 be rejected.

RE: **Zoning Agreement Amendment – South side of Bishop Grandin Boulevard, west of De La Seigneurie Boulevard**
File ZAA 11/2011

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

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

Report date: **November 14, 2011**

COMMUNITY COMMITTEE RECOMMENDATION:

On November 14, 2011, the Riel 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 11/2011 be rejected.

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

1. There was a commitment made to the Community to restrict the hours of operation on this site and there is no support from area residents to allow a commercial enterprise to open twenty-four hours a day.

PUBLIC HEARING SUMMARY

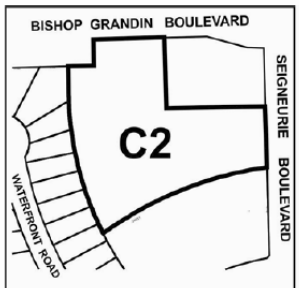
File: ZAA 11/2011

Before: Riel Community Committee
Councillor Swandel, Chairperson
Councillor Vandal

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

Applicant: Heather Sarna & Associates (Heather Sarna)

Subject:



APPLICANT : HEATHER SARNA & ASSOCIATES
FILE : ZAA 11/11
PROPOSAL: To amend the Zoning Agreement affecting the land shown outlined above by deleting Clause 8, which restricts the hours of operation for C2 uses to be closed between 1:00 a.m. and 7:00 a.m. every day of the week, with the exception of retail pharmacies and drug mart outlets and protection and community services, which may operate 24 hours/day, everyday of the week. **For information, phone Mr. R. Kostiuk, Planner at 986-7367.**
DEMANDEUR : HEATHER SARNA & ASSOCIATES
N° DE RÉFÉRENCE : MCZ 11/11
PROJET : Projet de modification de la convention de zonage touchant les biens-fonds indiqués ci-dessus par abrogation de l'alinéa 8 qui restreint les heures d'ouverture applicables aux secteurs C2 et qui prévoient que les commerces soient fermés entre 1 heure et 7 heures tous les jours de la semaine, sauf les pharmacies, les services de protection et les services communautaires qui peuvent rester ouverts 24 heures sur 24, tous les jours de la semaine. **Pour plus de renseignements, veuillez communiquer avec M. R. Kostiuk, urbaniste, au 986-7367.**

Premises Affected: South side of Bishop Grandin Boulevard, west of De La Seigneurie Boulevard

Exhibits Filed:

1. Application dated August 31, 2011
2. Notification of Public Hearing dated September 29, 2011
3. Manitoba Status of Title 2493580
4. Letter of authorization dated August 16, 2011 from Gary J. Buckley, President, 5977704 Manitoba Ltd. to Heather Sarna and/or Heather Sarna and Associates
5. Surveyor's Building Location Certificate and sketch dated April 26, 2011
6. Caveat No. 87-82435 dated July 31, 1987
7. Caveat No. 1181318 dated July 20, 1989
8. Caveat No. 4008226 dated November 17, 2010
9. Site Plan
10. Report from the Planning and Land Use Division dated October 19, 2011
11. Communication dated November 3, 2011, from Zdenka and Don Melnyk in opposition to the application
12. Inspection Report
13. Petition purporting to contain the signatures of 403 area residents in opposition to the application submitted by Gloria Anderson at the Public Hearing
14. Presentation, Supporting Documentation and Petition purporting to contain the signatures of 59 area residents in support of the application submitted by Peter Kaufmann at the Public Hearing
15. Audio Recording of Representations

REPRESENTATIONS:

In Support:

Peter Kaufmann
Heather Sarna
Kathy Wright

In Opposition

Margaret Adams
Samir Ahadzada
Gloria Anderson
Al Alexandruk
Heather Alexandruk
Maria Bussoli
Tony Bussoli
Guy Cloutier
Anita Cloutier
Euglene Clune
Barbara Clune
Stanley Eagleton
Stephen Edwards
Tom Gallipo
Carol Gallipo
Pat Gowryluk
Joy Gowryluk
Robert Gunning
Betty Gunning
Todd Hollinger
Louise Johnston
Brian Johnston
Nadine Lecocq
Raphael Leung
Rebecca Leung
Margaret Lima
Norman Lofgren
Janet Lofgren
Connie McAdam
Wylie McAdam
Patricia McAdam
Coleen McCrae
Zdenka and Don Melnyk
Dean Ratfelder
Rosemarie Ratfelder
Bertram Rebeiro
Loren Remillard
Robin Rice
Ida Savoie
Aime Savoie
Janice Sheffield
Margaret Sirkis

For Information:

Shelley Magnifico
Matt Maruca
Lindsey Wilson

For the City:

Mr. K. Raban, P. Eng., Land Development, Planning, Property and Development Department
Mr. R. Kostiuk, Planner, Planning, Property and Development Department

Exhibit "10" referred to in File ZAA 11/2011

ADMINISTRATIVE REPORT

Title: ZAA 11/11 – South Side of Bishop Grandin Blvd, West of De La Seigneurie Blvd (Lot 2 Plan 50626) Public Hearing

Issue: For consideration at the Public Hearing to amend the Zoning Agreement which restricts the hours of operation for permitted uses on the site to being closed between the hours of 1:00 a.m. and 7:00 a.m.

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 the Zoning Agreement under File DASZ 8A/86 dated October 15, 1986 (By-law No. 4551/87), be amended as follows:

   A. That Clause 8 of the Zoning Agreement, which states:

   That, in order to protect the amenity and convenience of adjoining lands and the neighbouring community, all business facilities on the "C2" Commercial Community land must be closed between the hours of 1:00 a.m. and 7:00 a.m. every day of the week, with the exception of:

   (a) retain pharmacies and drug mart outlets; and
   (b) protection and emergency services,

   which may operate 24 hours a day, every day of the week.

   be deleted.

2. That the Director of Legal Services and City Solicitor 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 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 explains that the owner of the property has had the opportunity to come to an agreement with a grocery/convenience store.
- The applicant would like to either amend or delete Clause 8 of the existing zoning agreement, which restricts the hours of operation for permitted uses to being closed between the hours of 1:00 a.m. and 7:00 a.m.
- 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 Urban Planning Division are concurred in, the hours of operation for commercial uses permitted under the zoning agreement for the property will not be restricted.

HISTORY

DASZ 8A/86

- In 1986, as part of a phased future development plan for the Island Lakes area, Novamet Developments under application DASZ 8A/86, was approved for the rezoning of the land at the northwest corner of Desjardins Drive and Boulevard De La Seigneurie (comprising 6.28 acres) to "C2" Commercial. A zoning agreement was attached as a condition of approval of the rezoning and subdivision. Key restrictions in this zoning agreement restricting the C2 land are as follows:

    2. The C2 land and any building or structure thereon shall not be used for, and no building or structure shall be erected, placed, altered or enlarged on the C2 land for any use except uses permitted within the "C1" Limited Commercial District of the applicable zoning by-law as amended from time to time.

3. No building or structure shall be erected or located on the "C2" land and no building permit shall be issued for construction on the "C2" land unless and until plans including the location and design of the proposed buildings and structures, exterior materials and elevations thereof, accessory parking and loading areas, the location and design of landscaping, fencing and garbage enclosures, all methods of access and egress to and from the land and all signs except fascia and mobile signs are submitted to and approved by the St. Boniface-St. Vital Community Committee and the Commissioner of Planning and Community Services and thereafter identified by the signature of that Commissioner under the designation Schedule "A" to Zoning Agreement DASZ 8A/86 and no buildings, structures or works shall be constructed or placed on the "C2" land except in accordance with that Schedule "A" to this agreement.
4. All fencing, landscaping and garbage enclosures shown on that Schedule "A" shall be completed within three (3) months of occupancy, in whole or in part, of any building constructed on the land unless an extension of that time is approved by that Community Committee, and those works shall thereafter be maintained in good condition at all times to the satisfaction of that Commissioner.
5. Not more than three (3) permanent free-standing pylon signs and two (2) mobile advertising signs shall be located on the commercial land.
6. There shall be no outside storage of any goods or materials on the "C2" land.
7. A fence six and one half feet (1.9812 metres) high shall be constructed and maintained along the entire length of the west lot line of the commercial land and shall be maintained in good condition from time to time to the satisfaction of that Commissioner of Planning.
8. In order to protect the amenity and convenience of adjoining lands and the adjacent area, no business facility on the "C2" land shall be operated or open for public access on any day of the week between 1:00 am and 7:00 am.

DASSF 271/88

- In 1988, the most southerly third of the property (2 acres) was subdivided and removed from the overall parcel by short form subdivision.
- A subdivision agreement was registered as a caveat on the subdivision. The key conditions of the caveat were to ensure cross access between the two parcels created through the subdivision.

DCU 08-118448/C

- On July 4, 2008, the Board of Adjustment granted conditional use order DCU 08-118448/C, permitting the construction of a commercial building (Home Run Sports) with a gross floor area in excess of 5,000 square feet, and allowing for retail sales uses to not be limited to operating between the hours of 9:00 a.m. to 9:00 p.m., subject to the following conditions:

  1) That, if the Conditional Use granted by the order is not established within two (2) years of the date thereof, the order, in respect of that Conditional Use shall terminate.

2) That the development be built in substantial conformance with the plans submitted and identified as Sheet 1, Exhibit 9, for File DCU 08-118448/C, dated June 23, 2008, and thereafter maintained to the satisfaction of the Director of Planning, Property and Development.

3) That the hours of operation for the proposed use or any future use shall not extend beyond 10:00 p.m. on any given evening.

DAV 09-152438/D & DASSF 531/09

- On December 9, 2009, the Riel Community Committee granted variance order DAV 09-152438/D permitting the maintenance of an accessory parking area having no access to a street or lane (access will be across neighbouring property).
- Under DASSF 531/09, the northern portion of the C2 zoned land was further subdivided into two lots (Lots 1 and 2 of Plan 50626).

ZAA 7/2009

- On January 27, 2010, Council approved the following amendment to the zoning agreement for DASZ 8A/86 (By-law No. 4551/87):

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 on a 24 hour basis."

DAV 11-129478/C & DASSF 537/11

- An application was made under DASSF 537/11 to subdivide the subject property into three (3) lots. This proposed subdivision required a variance application.
- On September 16, 2011, the Board of Adjustment granted variance order DAV 11-129478/C, permitting the following:
    1. the establishment of three lots to permit Lot 3 having no frontage on a public street;
    2. the establishment of three lots with no access to accessory parking areas on proposed lots 1 and 3 from a street or driveway (access will be by cross access agreement);
    3. the construction of a multi-tenant building with no rear yard on Lot 1;
    4. the construction of a multi-tenant building with no rear yard on Lot 2.
- The approval of this variance was subject to several conditions that were primarily needed to ensure that cross access agreements were entered into in order to ensure vehicular access to all three lots.

CONSULTATION

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

SUBMITTED BY

Department	Planning, Property and Development
Division	Urban Planning
Date:	October 19, 2011
File No.	ZAA 11/11

List of Schedules and Attachments

1. Appendix A – Planning Discussion

APPENDIX 'A'

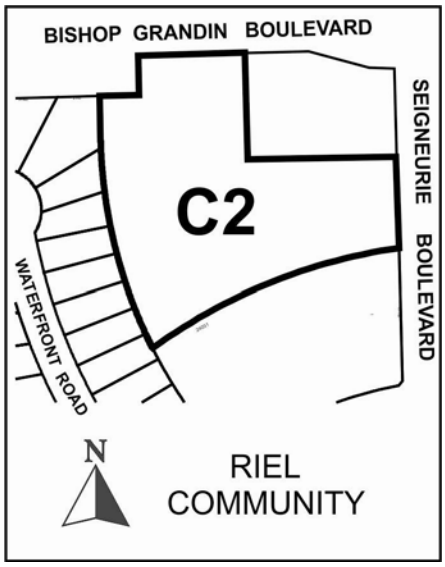
DATE: October 19, 2011

FILE: ZAA 11/11
RELATED FILES: DAV 11-129478/C, DASSF 537/11, ZAA 7/09, DAV 09-152438/D, DASSF 531/09, DCU 08-118125, DASSF 27/88, DASZ 8/86

COMMUNITY: Riel
NEIGHBOURHOOD #: 5.556

SUBJECT: For consideration at the Public Hearing to delete Clause 8 of the Zoning Agreement which restricts the hours of operation for permitted uses to being closed between the hours of 1:00 a.m. and 7:00 a.m.

LOCATION: South of Bishop Grandin Boul., west of Boul. De La Seigneurie
LEGAL DESCRIPTION: Lot 2 Plan 50626



APPLICANT: Heather Sarna & Associates
301-570 Portage Avenue
Winnipeg, MB R3C 0G4

OWNER: 5977704 MANITOBA LTD.
301-570 Portage Avenue
Winnipeg, MB R3C 0G4

RECOMMENDATION: Approval

REPORT SUMMARY

- The applicant explains that the owner of the property has had the opportunity to come to an agreement with a grocery/convenience store.
- The applicant would like to either amend or delete Clause 8 of the existing zoning agreement, which restricts the hours of operation for permitted uses to being closed between the hours of 1:00 a.m. and 7:00 a.m.
- The Urban Planning Division recommends supporting this application by deleting clause 8 of the zoning agreement.

SITE DESCRIPTION

- The subject site is located on the southwest corner of the Bishop Grandin Boulevard and Boulevard De La Seigneurie intersection in the Island Lakes neighbourhood of the St. Boniface Ward.
- The site is vacant and approximately **3.3 acres in area**.
- The site is located within the Areas of Stability – Recent Communities policy area under the Complete Communities Direction Strategy and is zoned “C2” Commercial Community.



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

SURROUNDING LAND USES & ZONING (See Figure 2)

North: A commercial development (Home Run Sports) zoned C2 and Bishop Grandin Boulevard.

South: A 12,000 square foot office owned by the Manitoba Medical Association and zoned C2.

East: A bungalow condominium development zoned RMF-S.

West: Detached homes zoned R1-M.

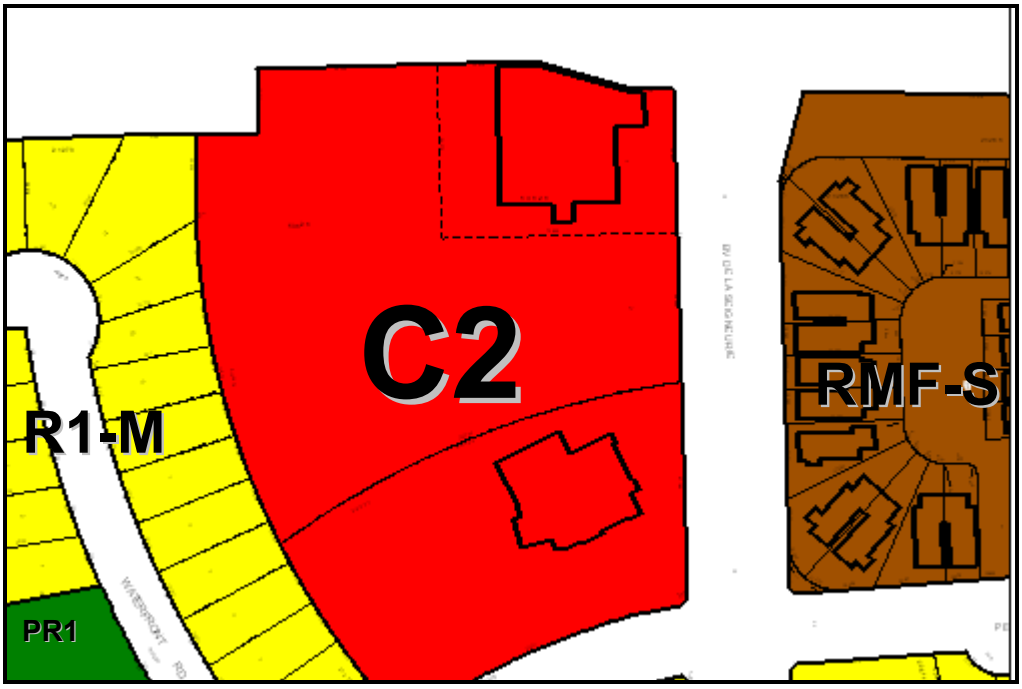


Figure 2: Zoning of the site and surrounding area.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

- The applicant explains that the owner of the property has had the opportunity to come to an agreement with a grocery/convenience store.
- The applicant would like to either amend or delete Clause 8 of the existing zoning agreement, which restricts the hours of operation for permitted uses in the C2 zone to being closed between the hours of 1:00 a.m. and 7:00 a.m.
- Deleting or amending the clause would allow for 24-hour operation of permitted C2 uses (as per the existing zoning agreement) on the property.

ANALYSIS AND ISSUES

COMPLETE COMMUNITIES DIRECTION STRATEGY

- Under the *Complete Communities Direction Strategy* the proposed development is within the Areas of Stability – Recent Communities policy area. Key policies guiding the development of Areas of Stability include:

- Support low to moderate change in low-density neighbourhoods through development and redevelopment that is complimentary to the existing scale, character and built form.
- Promote the form of buildings and spaces that are sensitive to the community context and that address the transition between new and existing development.
- Encourage intensification to occur at centres and along corridors.
- Support a mix of commercial services and employment uses that serve the local community.

ZONING (BY-LAW 200/2006)

"C2" Commercial Neighbourhood District

- The C2 zoning 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. Non-residential structures in the C2 zone require the following dimensional standards: a minimum front, side and corner side yard of 0 feet, and a rear yard of 25 feet. The maximum building height is 49 feet and the maximum Floor Area Ratio is 3.0.

LAND USE BY-LAW

Zoning Agreement DASZ 8A/86 & Subsequent Amendments

- On January 27, 2010, Council approved the following amendment to the zoning agreement for DASZ 8A/86 (By-law No. 4551/87):

  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

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  vii. Landscape or garden supplies businesses

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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 on a 24 hour basis."

- The applicant would like to delete clause 8 of the zoning agreement to allow for the 24-hour operation of a grocery/convenience store, which would be a permitted C2 use under the zoning agreement.

COMPATIBILITY WITH THE SURROUNDING NEIGHBOURHOOD

- Among the key principles of the Complete Communities Direction Strategy is the notion of being able to access services, amenities and community resources by ensuring that most of the daily necessities of life – services, facilities, and amenities – are readily accessible.
- Island Lakes has limited access to commercial facilities as there is only one commercially-zoned property within a one kilometer radius of the subject site. However, most commercial areas are at least 2 kilometres (as the crow flies) from the subject site.
- The nearest commercially-zoned property from the site is located at the southwest corner of the Bishop Grandin Boulevard and Island Shore Boulevard intersection. This site is zoned C3.
- Given the size of the site, proximity to Bishop Grandin, and access from De La Seigneurie Boulevard (a collector), the subject site is appropriate for C2 uses and development.
- Under Zoning By-Law 200/2006, there are no C2 uses that have restricted hours. All uses in the C2 zone can operate during hours determined by the owner.
- Allowing for all hours of operation for most businesses permitted in the C2 zone gives residents in Island Lakes the ability to have closer access to services that they would otherwise need to travel fairly significant distances for.
- Although there are some in the community who may believe that 24-hour services can contribute to creating crime in the neighbourhood, there is theory and research that suggests that that the opposite can be true. Allowing for more varied times of operation or for the 24-hour operation of uses can help create more public surveillance or "eyes on the street." More public surveillance can help reduce the likelihood of criminal acts due to the greater likelihood of the act being viewed and reported.
- The existing zoning agreement affecting the property prohibits businesses that can be disruptive to the neighbourhood.
- There are restrictions in Zoning By-Law 200/2006 that include buffering requirements to help reduce incompatibilities between commercial and residential uses.

- The previous zoning agreement amendment application ZAA 9/09 did not eliminate the restriction on hours of operation for all uses permitted in the zoning agreement. However, at that time, the Complete Communities Direction Strategy was not implemented nor even a Draft.
- The Complete Communities Direction Strategy clearly encourages a mix of uses and the concept of making daily services more accessible for the existing surrounding neighbourhood. Eliminating restrictions on hours of operation for businesses located in suitably-zoned commercial sites can help achieve one of the key goals of Complete Communities.

RECOMMENDATION

The Urban Planning Division recommends **approval** for the following reasons:

- The proposed amendment is consistent with the Complete Communities Direction Strategy, which clearly encourages the concept of making daily services more accessible for the existing surrounding neighbourhood.
- Allowing for all hours of operation for most businesses permitted in the C2 zone gives residents in Island Lakes the ability to have closer access to services that they would otherwise need to travel fairly significant distances for.
- The current Zoning By-Law does not restrict the hours of operation of any use in the C2 zone.
- Zoning By-Law 200/2006 includes buffering requirements to help reduce incompatibilities between commercial and residential uses.
- The existing zoning agreement affecting the property prohibits businesses that can be disruptive to the neighbourhood.

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

Report Prepared By: Robert Kostiuk, MCIP
PPD File # ZAA 11/11