Agenda – Council – October 24, 2012

Report – Standing Policy Committee on Property and Development – October 9, 2012

Item No. 3 Zoning Agreement Amendment – Unit 214-2989 Pembina Highway (St. Norbert Ward)
File ZAA 6/2012 [c/r DCU 140113/2012D]

STANDING COMMITTEE RECOMMENDATION:

On October 17, 2012, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, as amended, and submits the following to Council:

1. That the Zoning Agreement under File DAZ 331/75 dated July 15, 1976 (By-law No. 1349/76), be amended as follows:

   A. That Clause 2 of the Zoning Agreement, which states:

      The land and building or structure thereon shall not be used for and no building or structure shall be erected, altered or enlarged on the land for any use except any one or more of the following uses:

      1. Appliance Stores
      2. Bakeries
      3. Banks
      4. Barber Shops
      5. Beauty Parlors and Salons
      6. Bicycle Sales or Repair Shops
      7. Book Stores
      8. Clothing Shops
      9. Dressmaking Shops, Custom
      10. Drug Stores
      11. Dry Cleaning Receiving Station (no processing on premises)
      12. Dry Goods and Fabric Stores
      13. Eating and Drinking Places
      14. Florist Shops
      15. Food Stores
      16. Gift Shops
      17. Hardware Shops
      18. Hat Repair Shops and Stores
      19. Hobby Shops
      20. Jewelry Shops

21. Luggage Shops
22. Music Stores
23. News Stores
24. Novelty Shops
25. Offices, Business and Professional
26. Pet Shops
27. Camera and Photography Supply Stores
28. Record Stores
29. Shoe Stores and Repair Shops
30. Sporting Good Stores
31. Stationary Stores
32. Tailor Shops, Custom
33. Tobacco Shops
34. Toy Stores
35. Travel Bureaus
36. Signs (See 6.(6)(a)(vii) of Part VIII of By-law No. 1800)
37. Accessory Uses (See 6.(6) of Part VIII of By-law No. 1800)

as amended effective August 31, 1982, by adding to said Clause 2, the following:

7A Business machine store, sales and rental

be deleted and the following substituted therefore:

"2. A body modification establishment use shall be deemed a conditional use on the land, subject to the following:
   i) That, the body modification use shall operate by appointment only, and;
   ii). That, there shall be no exterior signage on the site related to the body modification establishment use."

2. That the Director of Legal Services and City Solicitor be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 331/75 (By-law No. 1349/76) 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 – October 9, 2012

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On October 17, 2012, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, with the following amendment:

- Amend Recommendation 1. A. by adding the following after the words "be deleted":

  "and the following substituted therefore:

  2. A body modification establishment use shall be deemed a conditional use on the land, subject to the following:
     i) That, the body modification use shall operate by appointment only, and;
     ii). That, there shall be no exterior signage on the site related to the body modification establishment use."

and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On October 9, 2012, the Standing Policy Committee on Property and Development did not concur in the recommendation of the Riel Community Committee, concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On September 10, 2012, the Riel Community Committee did not concur in the recommendation of the Winnipeg Public Service and the application for zoning agreement amendment under File ZAA 6/2012 be rejected and forwarded to the Standing Policy Committee on Property and Development.

RE: **Zoning Agreement Amendment – Unit 214-2989 Pembina Highway File ZAA 6/2012 [c/r DCU 140113/2012D]**

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

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

Report date: **September 12, 2012**

COMMUNITY COMMITTEE RECOMMENDATION:

On September 10, 2012, the Riel Community Committee did not concur in the recommendation of the Winnipeg Public Service and recommended to the Standing Policy Committee on Property and Development that the application for Zoning Agreement Amendment under File ZAA 6/2012 be rejected.

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

1. There are many outstanding issues in the existing mall that need to be addressed prior to any amendments being made to the existing zoning agreements for any of the individual properties.

PUBLIC HEARING SUMMARY

File: ZAA 6/2012

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

Public Hearing: September 10, 2012
Council Chamber
Council Building, 510 Main Street

Applicant: The First String Tattoo Studio (Jason Majury)

Subject:



Premises Affected: Unit 214-2989 Pembina Highway

Exhibits Filed:

1. Application dated June 26, 2012
2. Notification of Public Hearing dated July 31, 2012
3. Manitoba Status of Title 2566918/1
4. Letter of authorization dated June 18, 2012 from 6369813 Manitoba Ltd. to The First String Tattoo Studio (Jason Majury)
5. Plans (3 pages)
6. Report from the Planning and Land Use Division dated August 30, 2012
7. Inspection Report
8. Audio Recording of representations

REPRESENTATIONS:

In Support:

Jason A. Majury
Nicole D. Majury

In Opposition

Nil

For the City:

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

Exhibit "6" referred to in File ZAA 6/2012

ADMINISTRATIVE REPORT

Title: ZAA 6/2012 – 2989 Pembina Highway Public Hearing

Issue: An application for consideration at the Public Hearing to delete clause 2 of the Zoning Agreement for DAZ 331/75, which restricts the uses permitted on the subject site.

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 DAZ 331/75 dated July 15, 1976 (By-law No. 1349/76), be amended as follows:

   A. That Clause 2 of the Zoning Agreement, which states:

   The land and building or structure thereon shall not be used for and no building or structure shall be erected, altered or enlarged on the land for any use except any one or more of the following uses:

   1. Appliance Stores
   2. Bakeries
   3. Banks
   4. Barber Shops
   5. Beauty Parlors and Salons
   6. Bicycle Sales or Repair Shops
   7. Book Stores
   8. Clothing Shops
   9. Dressmaking Shops, Custom
   10. Drug Stores
   11. Dry Cleaning Receiving Station (no processing on premises)
   12. Dry Goods and Fabric Stores
   13. Eating and Drinking Places
   14. Florist Shops
   15. Food Stores

16. Gift Shops
17. Hardware Shops
18. Hat Repair Shops and Stores
19. Hobby Shops
20. Jewelry Shops
21. Luggage Shops
22. Music Stores
23. News Stores
24. Novelty Shops
25. Offices, Business and Professional
26. Pet Shops
27. Camera and Photography Supply Stores
28. Record Stores
29. Shoe Stores and Repair Shops
30. Sporting Good Stores
31. Stationary Stores
32. Tailor Shops, Custom
33. Tobacco Shops
34. Toy Stores
35. Travel Bureaus
36. Signs (See 6.(6)(a)(vii) of Part VIII of By-law No. 1800)
37. Accessory Uses (See 6.(6) of Part VIII of By-law No. 1800)

as amended effective August 31, 1982, by adding to said Clause 2, the following:

7A Business machine store, sales and rental

be deleted.

2. That the Director of Legal Services and City Solicitor be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 331/75 (By-law No. 1349/76) 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 would like to establish what would be considered a “Body Modification Establishment” under the Zoning By-law within the second floor of the existing building on the site. Body modification establishments or equivalent are not a permitted use under the existing zoning agreement for the site.

- The applicant would like to delete clause 2 of the zoning agreement to allow a body modification use to be considered on the site through a conditional use application (see associated file DCU 12-140113/D) under the current zoning by-law.
- 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, clause 2 of the zoning agreement for DAZ 331/75 will be deleted and permitted and conditional uses for the site will be consistent with the C2 zoning regulations of the current zoning by-law.

HISTORY

DAZ 331/75

- The subject property was rezoned under file DAZ 331/75 (By-law 1349/76).
- A zoning agreement caveat was placed on the land in conjunction with this rezoning. The zoning agreement restricts a total of 37 commercial uses (detailed in part 1(A) of the Recommendation Section above) and requires plan approval from the Commissioner of Environment (now the Director of Planning, Property and Development) for the location and design of: any proposed buildings and structures; accessory parking area(s); fencing; and, landscaping prior to the issuance of any building permit.

DAV 12-118320/C

- On May 14, 2012, the Board of Adjustment approved variance application DAV 12-118320/C permitting the establishment of a restaurant use with no additional parking stalls instead of 26 spaces.

CONSULTATION

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

SUBMITTED BY

Department	Planning, Property and Development
Division	Urban Planning
Prepared by:	Robert Kostiuk, MCIP
Date:	August 30, 2012
File No.	ZAA 6/2012

List of Schedules and Attachments

1. Appendix A – Planning Discussion

APPENDIX 'A'

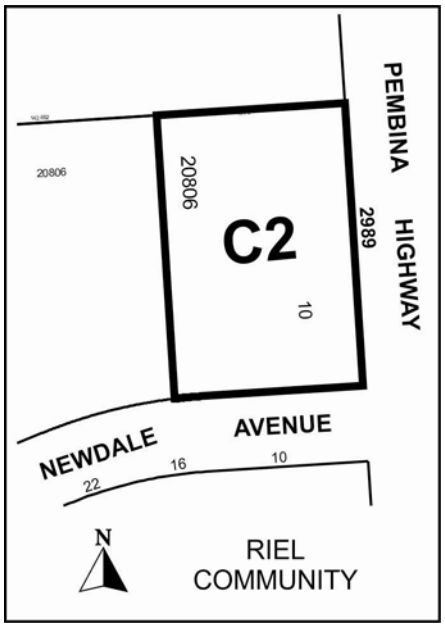
DATE: August 30, 2012

FILE: ZAA 6/2012
RELATED FILES: DCU 12-140113/D (c/r), DAZ 331/75

COMMUNITY: Riel
NEIGHBOURHOOD #: 5.638

SUBJECT: For consideration at the Public Hearing to delete Clause 2 of the Zoning Agreement for DAZ 331/75, which restricts the uses permitted on the subject site.

LOCATION: 2989 Pembina Highway
LEGAL DESCRIPTION: LOT 10 PLAN 20806 101/2 ST N



APPLICANT: Jason Majury (The First String Tattoo Studio)
2989 PEMBINA HWY UNIT 214
WINNIPEG MB

OWNER: 6369813 MANITOBA LTD.
7 PURDUE BAY
WINNIPEG MB R3T 3C6

RECOMMENDATION: Approval

REPORT SUMMARY

- The applicant would like to establish what would be considered a “Body Modification Establishment” under the Zoning By-law within the second floor of the existing building on the site. Body modification establishments or equivalent are not a permitted use under the existing zoning agreement for the site.
- The applicant would like to delete clause 2 of the zoning agreement to allow a body modification use to be considered on the site through a conditional use application under the current zoning by-law.
- The Urban Planning Division recommends supporting this application.

SITE DESCRIPTION

- The subject property is located on the west side of Pembina Highway, north of Newdale Avenue in the Richmond West neighbourhood of the St. Norbert Ward.
- The subject site contains a two-storey strip mall and is approximately **33,750 square feet in area.**
- The strip mall is located towards the rear or western portion of the property with parking in the front.
- The site is located along a Regional Mixed-Use Corridor (Pembina Highway) under the Complete Communities Direction Strategy and is zoned “C2” Commercial Community.



Figure 1: Air photo (flown 2009) of the subject property and surrounding area

SURROUNDING ZONING & USES (See Figure 2)

North: Three-storey multi-family residential buildings zoned RMF-S.

South: Newdale Avenue and two-storey multi-family residential buildings zoned RMF-S.

East: Pembina Highway and nine-storey multi-family buildings zoned RMF-M.

West: A five-storey multi-family building zoned RMF-S.

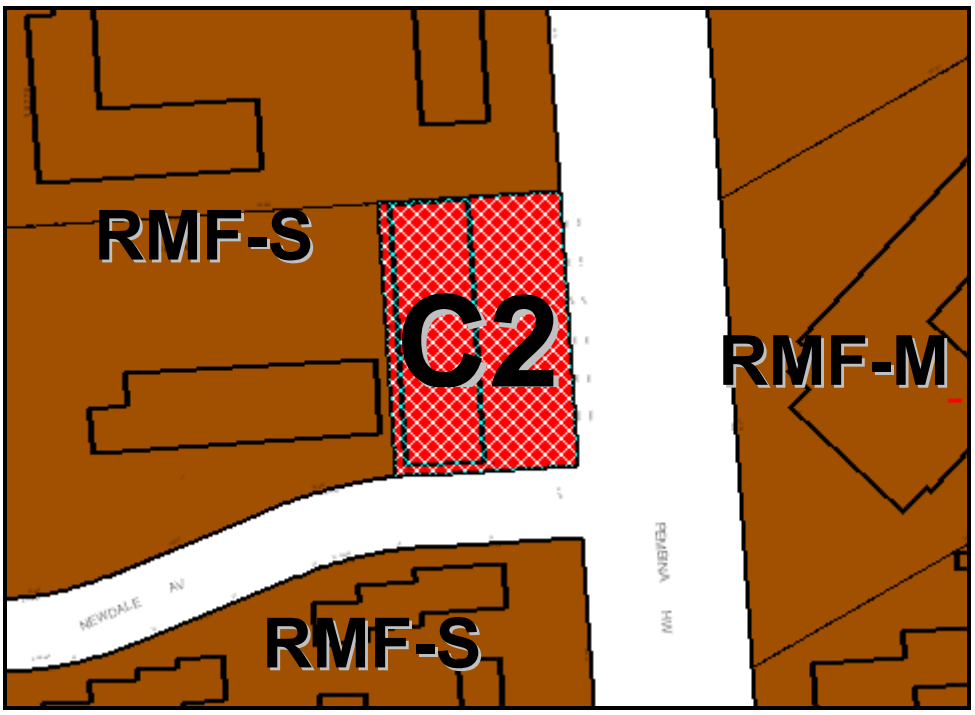


Figure 2: Zoning of the subject property and surrounding area

DESCRIPTION OF THE PROPOSED DEVELOPMENT

- The applicant would like to establish what would be considered a “Body Modification Establishment” under the Zoning By-law within the second floor of the existing building on the site. Body modification establishments or equivalent are not a permitted use under the existing zoning agreement for the site.
- The applicant explains that the proposed studio would be for custom tattoo art and laser removal. There would be no body piercing within the establishment.
- Drawings provided in the application show that the proposed studio will be located within an existing unit (unit 214) on the second floor of the building. This unit is approximately 1,300 square feet in area.
- No exterior changes to the building or site are proposed.
- Body modification establishments are conditional uses within the C2 zone. As such, an associated conditional use application is also required (see DCU 12-140113/D).

ANALYSIS AND ISSUES

COMPLETE COMMUNITIES DIRECTION STRATEGY

- Under the *Complete Communities Direction Strategy* the site is located along a Regional Mixed Use Corridor (Pembina Highway). Key relevant policies to the subject application that guide the development of Regional Mixed Use Corridors under the *Complete Communities Direction Strategy* include:
    - Provide a mix of employment, higher-density residential opportunities, retail and service uses that support the needs of and respect the context of adjacent communities.
    - Support a range of housing opportunities in terms of type, tenure, unit size.
    - Promote the highest levels of intensification at significant intersections. Between each centre, lower intensities of commercial, residential and mixed use development are appropriate.
    - Support active uses (such as retail and services) at street level and office and housing on the upper levels of multi-storey developments.
    - Promote high-quality plazas, parks and streetscapes as focal points and networks that are connected to the greater community.
    - Support development in accordance with Universal Design and Crime Prevention Through Environmental Design (CPTED) policies.
    - Promote innovative parking strategies and high intensity developments, including locating parking lots to the rear of developments, encouraging the development of underground parking or parking structures and encouraging the preservation and/or planting of trees and other types of vegetation within and around surface parking lots.

ZONING (BY-LAW 200/2006)

"C2" Commercial Community 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

Amendment to Zoning Agreement DAZ 331/75

- The existing zoning agreement for the site restricts land uses and form as follows:

2. *The land and building or structure thereon shall not be used for and no building or structure shall be erected, altered or enlarged on the land for any use except any one or more of the following uses:*

1. Appliance Stores
2. Bakeries
3. Banks
4. Barber Shops
5. Beauty Parlors and Salons
6. Bicycle Sales or Repair Shops
7. Book Stores
7.A Business machine store, sales and rental
8. Clothing Shops
9. Dressmaking Shops, Custom
10. Drug Stores
11. Dry Cleaning Receiving Station (no processing on premises)
12. Dry Goods and Fabric Stores
13. Eating and Drinking Places
14. Florist Shops
15. Food Stores
16. Gift Shops
17. Hardware Shops
18. Hat Repair Shops and Stores
19. Hobby Shops
20. Jewelry Shops
21. Luggage Shops
22. Music Stores
23. News Stores
24. Novelty Shops
25. Offices, Business and Professional
26. Pet Shops
27. Camera and Photography Supply Stores
28. Record Stores
29. Shoe Stores and Repair Shops
30. Sporting Good Stores
31. Stationary Stores
32. Tailor Shops, Custom
33. Tobacco Shops
34. Toy Stores
35. Travel Bureaus
36. Signs (See 6.(6)(a)(vii) of Part VIII of By-law No. 1800)
37. Accessory Uses (See 6.(6) of Part VIII of By-law No. 1800)

3. *No building or structure shall be erected on the land except in accordance with plans submitted to the City showing the location and design of the proposed building and structures, the location and design of the accessory parking area, the location and type of fencing, and the location and type of landscaping, which plans shall be subject to the approval of the Commissioner of Environment of the City and the City's landscape architect and shall, after such approval, be signed by said Commissioner for identification under the designation Schedule "A" to*

Zoning Agreement DAZ 331/75 and attached to this agreement prior to the issuance of any building permit.

4. *Installation of the landscaping approved by said Schedule "A" shall be completed within six months of the date of issuance of an occupancy permit for the building unless an extension of that period is approved by the Fort Garry Community Committee on application thereto.*

- The applicant would like to delete clause 2 of the zoning agreement to allow a body modification use to be considered on the site through a conditional use application under the current Zoning By-law. A body modification use is not a permitted use within clause 2 of the existing zoning agreement.

Conditional Use

- Body modification establishments are conditional principal uses in the C2 zone. The applicant would like to establish a body modification use on the land. As such, a conditional use application is required (see DCU 12-140113/D).

COMPATIBILITY WITH THE SURROUNDING NEIGHBOURHOOD

- The subject site is located along a Regional Mixed Use Corridor (Pembina Highway) under the Complete Communities Direction Strategy. Policies guiding the development of Regional Mixed Use Corridors support a range of uses.
- The subject zoning agreement was established in 1975/76 when the Tuxedo, Fort Garry, Charleswood Zoning By-Law 1800 was in force and effect. That zoning by-law was repealed in 1995 when the City of Winnipeg Zoning By-law No. 6400/94 came into effect. Zoning By-law No. 6400/94 was repealed in 2008 when the current Zoning By-law 200/2006 was adopted.
- The current zoning by-law helps address common issues between commercial and residential uses that were not addressed under previous zoning by-laws. For example, there are more use specific standards and buffering requirements in place for commercial uses under the current by-law that were not in previous zoning by-laws.
- The current zoning by-law is also not as specific with regard to use as previous by-laws. For example, a book store, clothing shop, or gift store, would all generically be considered "retail sales" or personal services" uses instead of being individually itemized. The change was made to the current by-law recognizing that that many of these uses were not all that different in terms of function and potential impact (ex. the difference between a book store and hobby shop is minimal in terms of function and impact).
- A problem with clause 2 of the existing zoning agreement is that it permits some dated and overly specific uses while not permitting current uses, such as a video game or personal computer store, which would be appropriate for the site.
- Pembina Highway is a high capacity arterial that can appropriately support the current permitted uses in the C2 zone. As stated in the Zoning By-Law, C2 districts are intended

to be “located along collector streets, at arterial/collector intersections, or along portions of arterial streets with relatively shallow lots.”

- The applicant is not proposing changes to the building or the site; he is only trying to establish a use within an existing unit in the existing building.
- If over time major changes are proposed to the building (ex. the construction of an addition, the demolition and construction of a new building), the proposed changes would need to adhere to the regulations and buffering requirements of the current zoning by-law. Further, site plan approval from the Riel Community Committee and the Director of Planning, Property and Development is required prior to development on the land as per clause 3 of the existing zoning agreement. Review by the Director and the Community Committee can help further ensure that future development does not impact the neighbouring properties.

RECOMMENDATION

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

- Policies guiding the development of Regional Mixed Use Corridors support a range of uses.
- Pembina Highway is a high capacity arterial that can appropriately support the current permitted uses in the C2 zone.
- Zoning By-Law 200/2006 includes buffering requirements to help reduce incompatibilities between commercial and residential uses.

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

Report Prepared By: Robert Kostiuk, MCIP
PPD File # ZAA 6/2012