Minute No. 513
Report - Standing Policy Committee on Property and Development – July 5, 2011

Item No. 3 Zoning Agreement Amendment – 2190 McGillivray Boulevard (Charleswood - Tuxedo Ward)
File ZAA 2/2011 [c/r DAV 128172/2011D]

COUNCIL DECISION:

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

1. That the Zoning Agreement under File DASZ 2/89 (By-law No. 5232/89) dated May 31, 1989, be amended as follows:

   A. That Clause 6 of the Zoning Agreement be amended as follows:

      i. By adding the word “new” after “No”

      ii. By deleting the words “northerly, westerly and easterly fifty (50) feet of the “C2” lands” and replacing with the following: “southerly fifty (50) feet of the subject ‘C4’ lands”.

   B. That Clause 12 of the Zoning Agreement be amended as follows:

      i. By deleting the clause and replacing it with the following:
      The owner shall provide and maintain a landscape strip not less than ten (10) feet along the west property line, not less than fifteen (15) feet along the south property line, not less than twenty (20) feet along the north property line, and not less than (20) feet along the most easterly lands affected by the zoning agreement, except at points of ingress and egress, to the satisfaction of the Director, Planning, Property and Development.

2. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DASZ 2/89 (By-law No. 5232/89) 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.

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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 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 concurred in the recommendations of the Winnipeg Public Service and forwarded the matter to the Standing Policy Committee on Property and Development.

RE: **Zoning Agreement Amendment – 2190 McGillivray Boulevard**
File ZAA 2/2011 [c/r DAV 128172/2011D]

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 concurred in the recommendation of the Winnipeg Public Service and recommends to the Standing Policy Committee on Property and Development:

1. That the Zoning Agreement under File DASZ 2/89 (By-law No. 5232/89) dated May 31, 1989, be amended as follows:

    A. That Clause 6 of the Zoning Agreement be amended as follows:

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        ii. By deleting the words “northerly, westerly and easterly fifty (50) feet of the “C2” lands” and replacing with the following: “southerly fifty (50) feet of the subject ‘C4’ lands”.

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2. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DASZ 2/89 (By-law No. 5232/89) 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.

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

1. The Assiniboia Community Committee agreed with the administrative comments contained in the report of the Planning and Land Use Division dated June 1, 2011.

2. The proposed business is more appealing than the current use and will be more attractive to area residents.

PUBLIC HEARING SUMMARY

File: ZAA 2/2011 [c/r DAV 128172/2011D]

Before: Assiniboia Community Committee
Councillor Fielding, Chairperson
Councillor Havixbeck

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

Applicant: Landstar Development Corporation (Kevin Olson)

Subject:



Premises Affected: 2190 McGillivray Boulevard

Exhibits Filed:

1. Application dated April 13, 2011
2. Notification of Public Hearing dated May 9, 2011
3. Manitoba Status of Title 2031056
4. Letter of authorization dated January 25, 2011 from 4914920 Manitoba Ltd. to Landstar Development Corporation
5. Surveyor's Building Location Certificate and sketch dated May 10, 2005
6. Caveats 1232448 and 1595035
7. Plans (1 page)
8. Report from the Planning and Land Use Division dated June 1, 2011
9. Inspection Report
10. Photographs (2) of subject property submitted by Mark Olson, at the public hearing in support of the application
11. Audio Recording of representations

REPRESENTATIONS:

In Support:

Michael MacKay
Kevin Olson, Landstar Development Corporation
Mark Olson, Landstar Development Corporation

In Opposition

Gary Edgar
Karen Corver

For Information:

Nil

For the City:

Mr. N. Yauk, Senior Planner, Planning, Property and Development Department

Exhibit "8" referred to in File ZAA 2/2011

ADMINISTRATIVE REPORT

Title: ZAA 2/11 – 2190 McGillivray

Issue: For consideration at the Public Hearing for a zoning agreement amendment to amend clauses 6 and 12 that deal with landscape buffering and building setbacks.

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 DASZ 2/89 (By-Law No. 5232/89) dated May 31, 1989, be amended as follows:

   a. That Clause 6 of the Zoning Agreement be amended as follows:
      I. By adding the word "new" after "No"
      II. By deleting the words "northerly, westerly and easterly fifty (50) feet of the "C2" lands" and replacing with the following: "southerly fifty (50) feet of the subject 'C4' lands".

   b. That Clause 12 of the Zoning Agreement be amended as follows:
      I. By deleting the clause and replacing it with the following:
      The owner shall provide and maintain a landscape strip not less than ten (10) feet along the west property line, not less than fifteen (15) feet along the south property line, not less than twenty (20) feet along the north property line, and not less than (20) feet along the most easterly lands affected by the zoning agreement, except at points of ingress and egress, to the satisfaction of the Director, Planning, Property and Development.

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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 amend clauses 6 and 12 from the existing zoning agreement. The clauses deal with landscape requirements and building setbacks from property lines.
- 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 zoning agreement can be amended to accommodate a future building to be located 10 feet from the west property line of the subject site; and alter the landscape buffer requirements along the west and south property lines.

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 2/11

List of Schedules and Attachments

1. Appendix A – Planning Discussion

APPENDIX 'A'

DATE:	June 1, 2011
FILE:	ZAA 2/11
RELATED FILES:	DASZ 2/89 (By-Law No. 5232/89)
COMMUNITY:	Assiniboia
NEIGHBOURHOOD #:	2.647 – Whyte Ridge
SUBJECT:	The applicant would like to amend the existing Zoning Agreement on the property in order to permit a reduction in the required landscape strip along the south and west property line and a reduction in the required building setback to the west property line.
LOCATION:	2190 McGillivray BV
LEGAL DESCRIPTION:	Lot 36, Block 1,Plan 28797 WLTO EXC Plan 37768 WLTO in OTM Lots 30-35 Parish of St. Vital
APPLICANT:	Mark Olson (Landstar Development Corp.) 2C – 2020 Portage Ave Winnipeg MB R3J) 0K4
OWNER:	4914920 Manitoba Ltd. – M. Gindin
RECOMMENDATION:	Amend the zoning agreement

REPORT SUMMARY:

- The applicant is seeking to amend the zoning agreement for the following reasons:
    1. to correct an existing situation along the rear lot line whereby the original zoning agreement requires a 20 foot landscape buffer and a 16 foot landscape buffer has been provided. This requires amending Clause 12 of the Zoning Agreement.
    2. to reduce part of the existing landscape buffer along the west property line by 10 feet to locate a future 10,000 sq. ft. commercial building closer to the west property line. This requires amending Clauses 6 and 12 of the Zoning Agreement.
- There is an existing stand of mature trees along the rear of the property that buffers the commercial site from the residential homes to the south. While the required 20 foot landscape strip was not originally provided, adding the missing 4 feet would not really change anything. The developer is proposing instead to add some interior parking lot landscaping to enhance the appearance of the site.

- The applicant is proposing to reduce the landscape area within the west yard, but is proposing additional plantings within the remaining area. This will allow the proposed building to be closer to the public sidewalk and therefore, potentially more pedestrian oriented. The site redevelopment is also including internal pedestrian connections for better pedestrian circulation.
- It is noted that the design of the proposed building will need to be endorsed by the Assiniboia Community Committee as per clause 14 of the existing zoning agreement.
- For the above reasons, the Planning and Land Use Division is recommending that the Zoning Agreement be amended.

SITE DESCRIPTION

Surrounding Land Use and Zoning

North: McGillivray, then commercial and industrial uses zoned "C4" Commercial District and "M1" Manufacturing District.

South: Single family homes zoned 'R1-M' Residential District

East: Columbia Drive, then vacant lands zoned 'R1-M' Residential District

West: A Petro Canada Gas Station zoned 'C4' Commercial District

Background

- 1989 – The subject property was rezoned to R1-4 and C2 with an attached zoning agreement. It is noted that the zoning agreement applies to the subject property as well as to the property directly east, which contains the Petro Canada fuel station. These properties were coupled at the time the original zoning agreement was drafted.
- Under zoning by-law 6400/94 the subject property was zoned "C2" Commercial District.
- Under zoning by-law 200/2006 the subject property was zoned "C4" Commercial District.



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

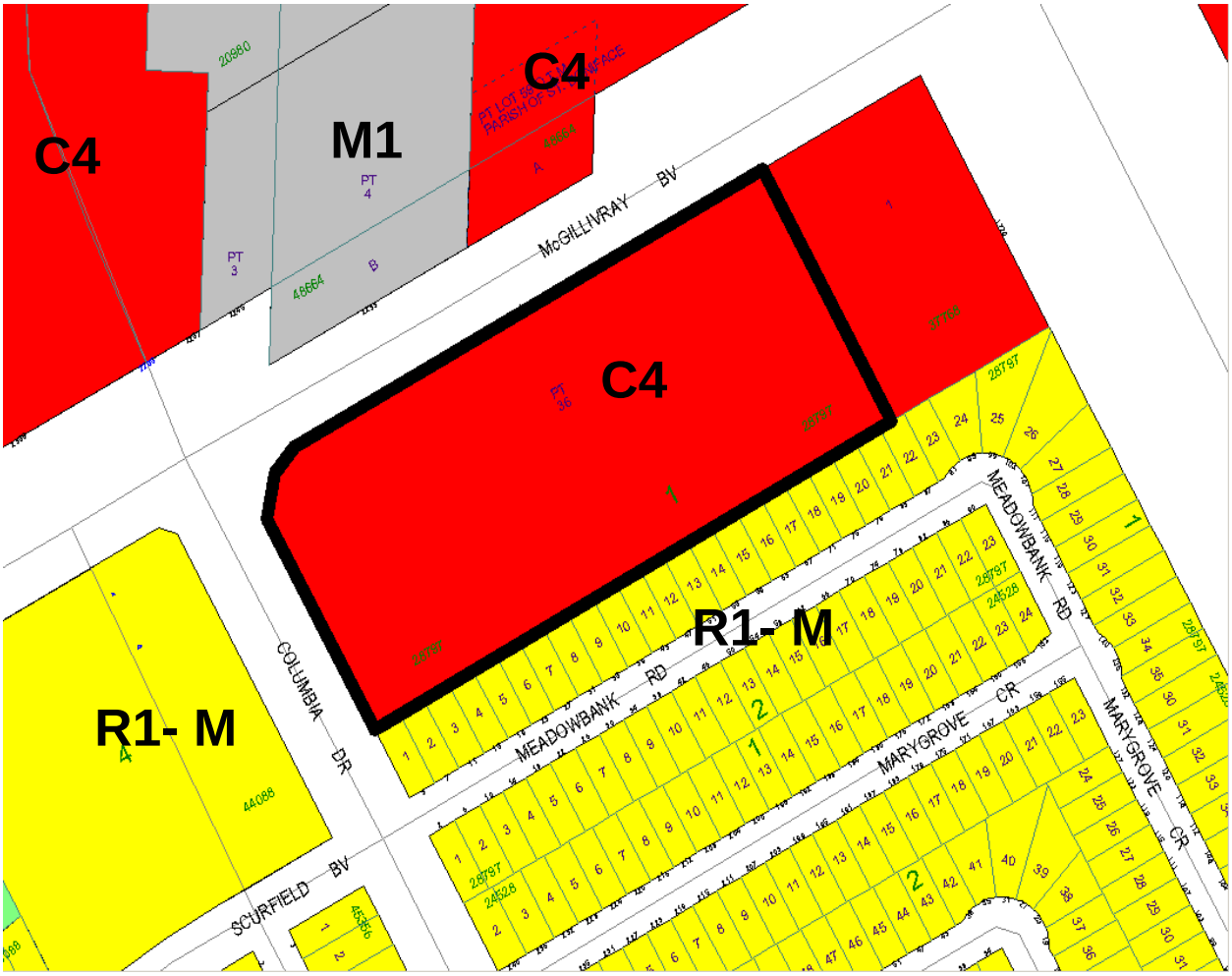


Figure 1: Zoning Map of subject property and Surrounding Context.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

- The application is twofold. The first part is to rectify an existing situation wherein the rear landscape buffer was not built to the specifications of the zoning agreement, which requires 20 ft. The existing landscape buffer is about 16 feet. The second part is to accommodate a future commercial building to be located 10 feet from the west property line. This requires the zoning agreement to be amended to decrease an existing landscape buffer along part of the west yard from 20 to 10 feet, and a building setback requirement from any building to a property line of 50 ft to 10 feet.

ANALYSIS

ZONING (BY-LAW 200/2006)

The property is currently zoned “C4” Commercial Community District. This “C4” zoning designation is the result of the City’s adoption of Zoning By-Law 200/2006. Prior to the adoption of Zoning By-law 200/2006, the subject property was zoned “C2” Commercial District in zoning by-law 6400/94. Notwithstanding the requirements of the zoning agreement associated with DASZ 2/89, the proposed development would meet the requirements of the “C2” zoning district.

The following describes the difference between the "C2" and "C4" zoning districts of zoning by-law 200/2006. It is likely the current "C4" zoning designation was enacted to reflect the regional type of development north of the subject property at Kenaston Commons.

- **"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.

- **"C4" Commercial Community District** is intended to accommodate the development of large-scale, distinctive and attractive regional centres containing a mix of concentrated land uses. These commercial uses are subject to frequent view by the public and visitors to Winnipeg, and they should provide an attractive appearance with landscaping sufficient parking, and controlled traffic movement. The centre should provide commercial, office, institutional, and residential uses and structures at higher intensities than surrounding areas. The area may also contain concentrations of medium- to highdensity office development, as well as a broad mix of complementary uses, which may include major civic and public facilities and parks. The district may contain multi-family housing, and development should facilitate and encourage pedestrian travel between residential and nonresidential uses. These areas are generally associated with the Areas of Regional Commercial and Mixed Use Concentration identified in Plan Winnipeg.

It is noted that all of the existing and proposed uses on the subject site are permitted in the C2 zoning district. It can be argued, that despite being rezoned to "C4" from "C2", the site is effectively operating as a "C2" site.

Amendments to Accommodate Proposed Building
It might seem that much of the intent of the zoning agreement associated with DASZ 2/89 would have been to protect the residential properties directly south of the subject property. While strict requirements for building setbacks make sense along the south property line to ease potential land use conflicts, this is less the case within other property lines, such as the north and west, which are separated from other properties via significant roadways like McGillivray BV and Columbia Drive. In fact, it is common planning practice to want buildings to be located closer to the street and public sidewalks to gain some building exposure on the street and to encourage more pedestrian oriented environments. It is interesting that the building setback in the zoning agreement does not apply to the south property line given the proximity to residential development.

The location of the proposed building 10 feet from the west property line will help better define this street edge without compromising landscaping. Though this grassed buffer area is proposed to be reduced to 10 feet, additional plantings in this area and to the north of the proposed building will offset this loss of greenspace and improve the visual appearance of the site.

It is suggested that this building setback clause be amended in the zoning agreement in a manner that removes this building setback condition from all property lines, but requires it on the south property line. The dimensional standards for the "C4" zoning district are sufficient enough to protect the residential properties to the south. For example, a minimum 50-foot setback is required for any new commercial pad site to the rear property line. Though it may be superfluous to do so, stating this in the zoning agreement does not hurt.

Rear Landscape Buffer
As per the zoning agreement associated DASZ 2/89, a 20-foot landscape buffer is required around the entire perimeter of the site. There is no property line where it is more important to ensure a buffer is required at the south property line of the subject site. This is especially so because residences are located on the other side of the property line. As a result, this condition of the zoning agreement is respected greatly. For reasons unknown, the landscape buffer that should be 20 feet in depth is only about 16 feet in depth along this portion of the rear property line. The current property owner, though responsible to understand any legal obligations with respect to the property, claims they were simply unaware that these landscape dimensions were substandard. The situation came to light during a previous Plan Approval application for a Shopper's Drug Mart store on this site. There are only two ways to ameliorate the situation: (1) make the property owner restore the landscape strip by tearing up the concrete and resodding it or (2) amend the zoning agreement to legitimize the landscape strip as it is (16 feet instead of 20). It is noted that the existing landscape area provides a rich stand of mature spruce trees that buffer neighbouring residences. Given this established context it is difficult to envision how the restoration of the 20-foot buffer (by adding a few feet) would change anything materially. As a trade-off, the applicant instead proposes to add some landscaping within the interior parking area to help break up a large expansive parking area as a better use of resources.

ZONING AGREEMENT (BY-LAW 235/07) EFFECT OF PROPOSED CHANGES
The proposed zoning agreement amendments will result in the addition of a future building at the northwest corner of the subject site, set back 10 feet from the west property line behind a landscaped buffer, and to maintain the existing buffer at the rear of the site to be 16 feet in depth instead of 20 feet in depth. The proposed development will also improve the appearance of the site through the addition of further landscape treatments and will include a defined pedestrian circulation system throughout the site. With respect to building setbacks of future development, any new or proposed buildings must meet the dimensional standards of the "C4" zoning district as well as any applicable clauses of the amended zoning agreement. Future Plan Approval, required by the Assiniboia Community Committee, can ensure that the building has a proper interface with the street edge so that it is oriented more to the pedestrian.

RECOMMENDATION

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

Report Prepared by: Noah Yauk
PPD File # ZAA 2/11