Agenda – Council – March 26, 2014

Report – Standing Policy Committee on Property and Development – March 11, 2014

Item No. 9 Zoning Agreement Amendment – 1210-1220 Chamberlain Avenue (Point Douglas Ward)
File ZAA 12/2013

STANDING COMMITTEE RECOMMENDATION:

On March 19, 2014, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the following to Council:

1. That Zoning Agreement under File DASZ 33/07, (By-law No. 34/08), be amended as follows:

    A. That Clauses 3-7 be deleted and replaced with the following clause:

    ”That the maximum number of dwelling units on the subject lands shall not exceed 200.”

2. That the Director of Legal Services and City Solicitor be requested to prepare the necessary Amending Agreement to Zoning Agreement DASZ 33/07, (By-law No. 34/08) 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 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 – March 11, 2014

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On March 19, 2014, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and the Lord Selkirk-West Kildonan Community Committee, and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On March 11, 2014, the Standing Policy Committee on Property and Development concurred in the recommendation of the Lord Selkirk-West Kildonan Community Committee and submitted the matter to the Executive Policy Committee and Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On February 18, 2014, the Lord Selkirk-West Kildonan Community Committee concurred in the recommendation of the Winnipeg Public Service and forwarded the matter to Standing Policy Committee on Property and Development.

RE: **Zoning Agreement Amendment – 1210-1220 Chamberlain Avenue File ZAA 12/2013**

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

Prepared by: **Inga Skundberg, Clerk**
Lord Selkirk-West Kildonan Community Committee

Report date: **February 20, 2014**

COMMUNITY COMMITTEE RECOMMENDATION:

On February 18, 2014, the Lord Selkirk-West Kildonan Community Committee concurred in the recommendation of the Winnipeg Public Service and recommended to the Standing Policy Committee on Property and Development:

1. That Zoning Agreement under File DASZ 33/07, (By-law No. 34/08), be amended as follows:

   A. That Clauses 3-7 be deleted and replaced with the following clause:

      "That the maximum number of dwelling units on the subject lands shall not exceed 200."

2. That the Director of Legal Services and City Solicitor be requested to prepare the necessary Amending Agreement to Zoning Agreement DASZ 33/07, (By-law No. 34/08) 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 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.

The Lord Selkirk-West Kildonan Community Committee provided the following supporting reason for its recommendation:

1. The Lord Selkirk-West Kildonan Community Committee agreed with the administrative comments contained in the report of the Urban Planning Division dated February 11, 2014.

PUBLIC HEARING SUMMARY

File: ZAA 12/2013

Before: Lord Selkirk-West Kildonan Community Committee
Councillor Pagtakhan, Chairperson
Councillor Eadie
Councillor Sharma

Public Hearing: February 18, 2014
Council Building, 510 Main Street

Applicant: MEG Construction Inc. (Chris Snelgrove)

Subject:



Premises Affected: 1210-1220 Chamberlain Avenue

Exhibits Filed:

1. Application dated December 16, 2014
2. Notification of Public Hearing dated December 20, 2013
3. Manitoba Status of Titles 2580556/1, 2580638/1 and 2580639/1

4a. Letter of authorization dated November 26, 2013 from Terra Commons Inc. to Chris Snelgrove

4b. Letter of authorization dated December 11, 2013 from Winnipeg Condominium Corporation No. 777 to Chris Snelgrove

5. Surveyor's Building Location Certificate and sketches (2 pages) dated June 10, 2013 and December 3, 2013
6. Caveats 4166963/1 and 4166964/1
7. Report from the Urban Planning Division dated February 11, 2014
8. Inspection Report
9. Audio Recording of representations

REPRESENTATIONS:

In Support:

Andrew Marquess
Dom Rutigliano
Geoff Zywina

In Opposition

Nil

For Information:

Nil

For the City:

Mr. G. Jasper, Land Development Engineer, Planning, Property and Development Department
Mr. N. Yauk, Planner, Planning, Property and Development Department

Exhibit "7" referred to in File ZAA 12/2013

ADMINISTRATIVE REPORT

Title: ZAA 12/2013 – 1210 Chamberlain Ave

Issue: For consideration at the Public Hearing to amend the Zoning Agreement to remove clauses 3, 4, 5, 6 and 7 and all of their subparts.

Critical Path: Lord Selkirk – West Kildonan 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
B. Smith	B. Thorgrimson	N/A	

RECOMMENDATIONS

1. That Zoning Agreement under File DASZ 33/07, (By-law No. 34/08), be amended as follows:

   A. That Clauses 3-7 be deleted and replaced with the following clause:

   That the maximum number of dwelling units on the subject lands shall not exceed 200.

2. That the Director of Legal Services and City Solicitor be requested to prepare the necessary Amending Agreement to Zoning Agreement DASZ 33/07, (By-law No. 34/08) 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 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 property owner wishes to delete conditions of this zoning agreement and requires approval to do so.

- The clauses of the zoning agreement are specific to the development of a community park which can no longer be established because buildings have been erected on the property.

IMPLICATIONS OF THE RECOMMENDATIONS

- If the recommendations of the Planning and Land Use Division are concurred in, the subject clauses will be deleted.

HISTORY

The subject site was rezoned to a "PR1" Parks and Recreation District under DASZ 33/07 to accommodate a privately owned and publicly accessible community park. This rezoning was part of a larger subdivision and rezoning application where the balance of the lands were rezoned to "RM2" (now "RMF-S") to enable the renovation of existing and the construction of new units for a total of 192 multi-family dwelling units. The establishment of the privately owned park space was in exchange for an adjacent city owned park space made available to the developer, with the understanding as negotiated through the rezoning process, that the developer would be responsible for developing the "PR1" lands as community park space for public use. Since the approval of DASZ 33/07 two buildings were constructed without the issuance of building permits and with portions resting on the lands zoned "PR1" such that each building extends approximately 45 feet into the lands zoned "PR1". Since the "PR1" zoning district does not accommodate residential development of any kind, the applicant has applied to rezone the subject property to an "RMF-S" Zoning District under the associated file DAZ 233/2013 to enable the buildings to remain. **The subject application is to amend the Zoning Agreement of DASZ 33/07 to remove the clauses related to the development of the community park** – conditions that serve no relevancy in the context of the parcel not being developed as a park.

CONSULTATION

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

SUBMITTED BY

Department	Planning, Property and Development
Division	Planning and Land Use
Date:	Feb. 11, 2014
File No.	ZAA 12/13

Attachments:
APPENDIX 'A': Public Service Report
Appendix B: Zoning Agreement Conditions of DASZ 33/07:

APPENDIX 'A': Public Service Report

DATE:	February 11, 2014
FILE:	**ZAA 12/13**
RELATED FILES:	DAZ 233/2013**,** DASZ 33/07, (By-law No. 34/08)
COMMUNITY:	Lord Selkirk / West Kildonan
NEIGHBOURHOOD #:	Mynarski
SUBJECT:	For consideration at the Public Hearing to amend the Zoning Agreement to remove clauses 3, 4, 5, 6 and 7 and all of their subparts.
LOCATION:	1210 Chamberlain Ave
LEGAL DESCRIPTION:	Parcel B, Plan 52401, Common Element 52469
APPLICANT:	MEG Construction (Chris Snelgrove) 265 Sutherland Avenue R2W 2N5 WPG, MB
Owner:	Winnipeg Condominium Corporation No. 777 Terra Commons Inc.
RECOMMENDATION:	Approval

REPORT SUMMARY

The Urban Planning Division recommends the application be approved for the following reasons:

- The subject clauses of the Zoning Agreement pertain to the development of a community park in a specific location (Parcel B) which no longer can be constructed as approved, because of the presence of buildings that encroach into these lands. See Appendix B for full Zoning Agreement Conditions.
- As per the conditions of approval of DASZ 33/2007, the developer will forfeit $100,000 for not carrying through with the completion of the community park, as approved, on Parcel B.

SITE DESCRIPTION

Land Use and Zoning

The subject site is zoned “PR1” Parks and Recreation District and is located on Chamberlain Avenue between McPhillips Street and Fife Street in the Mynarski Neighbourhood of the Point Douglas Ward.



Figure 1: Approximate Boundary of the Subject Site (Aerial Flown 2012)

SURROUNDING LAND USES & ZONING

North: Single-Family Residences zoned “R1-M” Residential Single-Family District.
South: Multi-family dwellings zoned “RMF-S” Residential Multi-Family District.
East: Multi-family dwellings zoned “RMF-S” Residential Multi-Family District.
West: Multi-family dwellings zoned “RMF-S” Residential Multi-Family District.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

- As part of a larger multi-family development, the property developer has constructed two multi-family buildings partly on lands that are zoned “PR1” Parks and Recreation District.
- As per DASZ 33/07 the subject lands (Parcel B) were rezoned to “PR1” Parks and Recreation District to accommodate a privately owned, but publicly accessible community park. The City did own park lands in the development area known as the Troy Tot Lot, which were declared surplus to the City’s needs and sold to the developer with the expectation that the developer would install a community park in a more strategic location (Parcel B).
- To accommodate the buildings as they have been constructed, the property developer has applied to rezone the subject lands to an “RMF-S” Residential Multi-Family Zoning District under the concurrent application DAZ 233/13. Under the current zoning of the subject site (“PR1”) residential development is not a permitted use.
- The applicable clauses of the Zoning Agreement for DASZ 33/07 relate specifically to the development of the subject lands as a community park, hence the “PRI” zoning designation. The subject lands have a specific geography and shape, comprising 20, 400 sq ft of land area (~ 82ft X 240 ft).
- As per the conditions of the zoning agreement it is noted that plans for the development of the community park were submitted to and subsequently approved by the Public Service on Aug. 12, 2012. The approved plans are consistent with the size and dimensions of the subject lands (Parcel B) as approved through DASZ 33/07 and By-Law No. 34/2008.
- Despite the “PR1” zoning of the subject lands and the approved site plan for a community park, two buildings have been erected in such a manner that the each project into the subject lands (community park) by approximately 45 feet.
- The introduction of the buildings on the lands intended for the community park space mean that the community park cannot be built as approved. As a result, the zoning agreement clauses that make up the subject of this application do not relate to what has been constructed on the land and are for all intents and purposes are meaningless should the buildings remain.
- The result of all this is that the city will be out a park, and the developer will be out $100.000.

RECOMMENDATION

The Urban Planning Division recommends the application be approved because:

- The subject clauses as they remain have little function as they pertain to the lands being developed as a park.
- The penalty for not establishing the park was dealt with in the conditions of approval for DASZ 33/07, where funds put up by the developer ($100, 000) would have been returned upon the completion of the community park. A conditional of approval of the associated DAZ 233/13 application will reallocate those funds for park purposes elsewhere in the community.

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

PPD File # ZAA 12/13
Appendix B: Zoning Agreement Conditions of DASZ 33/07:

(19)

DASZ 33/2007
FN No. 368 OB

ZONING AGREEMENT

DEVELOPMENT AGREEMENT
(rezoning)
The City of Winnipeg Charter - Sections 240(1) and (2)

THIS AGREEMENT made in duplicate effective this 19th day of December, 2007

BETWEEN:

THE CITY OF WINNIPEG
(hereinafter called the *"City"*),

OF THE FIRST PART,

- and -

2404559 MANITOBA LTD.
duly registered to carry on business in Manitoba,
(hereinafter called the *"Owner"*)

OF THE SECOND PART.

WHEREAS:

(a) The Owner is, or is entitled to be, the registered owner of the land hereinafter described;

(b) In connection with the requirements for rezoning the land, the Owner, or representative of the Owner, has made application to have the land rezoned to an "RM-2" Multiple-Family District and a "PR1" Parks and Recreation District; and

(c) The City has agreed insofar as it lawfully can and may and subject to the provisions of The City of Winnipeg Charter to rezone that land as requested subject to execution of this agreement as a condition of enactment of the rezoning by-law; and

NOW THEREFORE IT IS AGREED THAT in consideration of and conditional upon the City enacting a by-law to rezone that land, the Owner covenants and agrees that:

1. The Owner's land (including land contiguous to the land being rezoned, if any) is described as **PARCELS A AND B PLAN _____ (DEPOSIT NO 130/2008) WLTO IN OTM LOT 43 PARISH OF ST JOHN** (hereinafter called the *"land"*).

2.(a) Prior to the issuance of a building or development permit for any of the following on the land, the Owner must submit plans showing location and design to the Director of Planning, Property and Development ("Director") for approval:

- buildings;
- private open space areas;
- community park areas;
- playground equipment;
- accessory parking areas;
- private approaches;
- garbage enclosures;
- fencing;
- landscaping;
- signage.

(b) The Owner must physically maintain all items in clause (a) to the satisfaction of the Director.

3.(a) The Owner must, at its sole cost and expense, develop Parcel B (identified on attached Schedule "A") as a community park with playground equipment (the "Park") and must physically maintain the Park and all equipment in or on it to the satisfaction of the Director.

(b) The Owner must develop Parcel B in conformance with plans approved by the Director. The Owner acknowledges that the City will not issue any building or development permit for Parcel B until the Owner has submitted such plans to the Director and the Director has approved them.

(c) The Owner must ensure that the Park is open and available to the public.

(d) The Owner must erect signage identifying the Park, which signage must be satisfactory to the Director. The Owner must physically maintain the signage to the satisfaction of the Director.

4. Upon installation of the playground equipment in the Park, the Owner must submit to the City a letter of credit securing the sum of fifty thousand dollars ($50,000.00), which letter of credit must be renewed on an annual basis at an amount determined by the Director at his sole discretion, to ensure that the playground equipment is being inspected and maintained to the satisfaction of the Director.

5. At least once each calendar year, the Owner must:

(a) have the playground equipment in the Park inspected by a Certified Playground Inspector; and

(b) submit documentation verifying that the playground equipment complies with the most current revision of "CAN-CSA Z6412 Children's Playspaces and Equipment – A National Standard of Canada" to the City's Manager of Parks and Open Space, Public Works Department, within one month after the inspection.

6. The Owner must, at its sole cost, effort and expense, indemnify and keep indemnified the City from and against all claims, actions or proceedings for loss, injury, damages or compensation by any person, firm or corporation, whether to real or personal property, wheresoever situated, or by any member, employee, agent, Owner, invitee, or third party, whether claiming through or under the Owner or otherwise caused by reason of or in any way attributable to the Owner's use of the Park or the construction, maintenance, existence or use of any buildings or structures (including but not limited to the playground equipment) erected thereon, or in any way connected therewith, or otherwise by reason of the exercise by the

Owner of the use hereby granted or the performance of or failure to perform its obligations hereunder, or by reason of:

- any breach, violation, non-observance or non-performance of any covenant, condition or agreement in this agreement contained, and on the part of the Owner to be kept, observed or performed;
- any loss or damage to property, whether belonging to the Owner or otherwise, and any injury to person or persons, including death resulting at any time therefrom, arising out of or in connection with the Owner's use or occupation of the Park and/or by or through anything done or omitted to be done by the Owner or any assignee, sub-Owner, contractor, agent, servant or employee of the Owner; and
- any repairs, improvements, installations or alterations which the Owner may make or cause to be made upon or to the Park, including without limitation, claims for liens in respect of wages, work, services or materials, liability for damage to property and liability for injury to person or persons;

and such indemnities will survive the expiry or sooner determination of this agreement.

7. To further safeguard the City, the Owner agrees and undertakes as follows with respect to the Park:

(a) the Owner shall provide and maintain the following insurance coverage at all times during the duration of the agreement:

(i) Commercial general liability insurance, in the amount of at least five million dollars ($5,000,000.00) inclusive, with The City of Winnipeg added as an additional insured; such liability policy to also contain a cross-liability clause, contractual liability, non-owned automobile liability and products and completed operations cover; and

(ii) An All Risk property insurance policy, for the full replacement cost insuring all buildings, contents, and equipment and tenant's improvements.

(b) all policies taken out are to be with insurers licensed to carry on business in the Province of Manitoba;

(c) deductibles will be borne by the Owner;

(d) the Owner will not cancel any such policy or policies or allow it or them to lapse without a minimum of thirty (30) days prior written notice to the City;

(e) the Owner will provide written notice to the City of any material changes to its policy or policies within thirty (30) days of the change taking effect;

(f) the Owner will file with the City annual certificates of insurance in a form satisfactory to the City Solicitor; and

(g) the City has the right to alter the limits and/or coverages as reasonably required from time to time during the continuance of this agreement.

8. Nothing in this agreement restricts or affects the powers of the City to amend, repeal or vary the Zoning By-law applicable to the land or to enact a zoning by-law rezoning the land and it is understood by the Owner that the execution of this agreement by the City cannot operate to effect any variance to the Zoning By-law or approve any conditional use or operate to relieve against compliance with any other by-law or regulation of the City.

9. If a provision of this agreement conflicts with a provision of any variance or conditional use order now existing or made in the future the most restrictive provision will apply.

11. This agreement runs with the land and binds the Owner, its successors and assigns and the owners and occupiers of the land.

12. If the City does not enact the amending by-law recited in this agreement, the agreement will become void, and the City will withdraw any caveat registered to record this agreement.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed as of the day and year first above written.

THE CITY OF WINNIPEG

Per: _____
for Director of the Planning, Property and Development

2404559 MANITOBA LTD.

Per: _____
Name: Andrew MARQUESS (affix corporate seal)
Title: President

Per: _____
Name:
Title:

_____
Witness:
Name: Sharon Satz
(please print)
Address: 1383 Spruce
Winnipeg