Minute No. 638
Report - Standing Policy Committee on Property and Development - September 4, 2003

Item No. 18 Zoning Agreement Amendment - 1366 Henderson Highway
File ZAA 9/2003 [DAZ 206/93]

COUNCIL DECISION:

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

1. That Zoning Agreement DAZ 206/93 (By-law No. 6249/93) dated October 20, 1993 be amended as following:

   A. That Clause 3 be deleted;

   B. That Clause 4 be deleted.

2. That Zoning Agreement DAZ 206/93 (By-law No. 6249/93) dated October 20, 1993 be amended to the following:

   A. That no building shall be located on the land exceeding a height of four (4) stories.

   B. That the westerly most 7.62 metres (25 feet) of the subject property shall only be used for landscaping.

   C. That the landscaping on the subject property be maintained to the satisfaction of the Director of Planning, Property and Development and the East Kildonan-Transcona Community Committee.

3. That Clause 6 of Zoning Agreement DAZ 206/93 (By-law No. 6249/93) dated October 20, 1993, be amended to the following should the legal boundaries of the subject property change:

   A. That the southerly most 7.0 metres (23 feet) of the subject property shall only be used for landscape purposes.

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COUNCIL DECISION (continued):

4. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 206/93 (By-law No. 6249/93) as approved in aforesaid Recommendation Nos. 1, 2 and 3.

5. That the Proper Officers of the City are hereby authorized to execute said Amending Agreement.

6. 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.

7. That in the event this application is not proceeded with expeditiously and the agreement is not signed within twenty-four (24) months after adoption of this report by Council, the matter shall be deemed to be concluded and shall not be proceeded with unless an extension of this time is applied for prior to the expiry of this twenty four (24) month period and the extension is subsequently approved by Council.

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DECISION MAKING HISTORY:

Moved by Councillor Vandal,

That the recommendation of the Standing Policy Committee on Property and Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 17, 2003, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and the East Kildonan-Transcona Community Committee (as amended), and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On September 4, 2003, the Standing Policy Committee on Property and Development concurred in the recommendation of the East Kildonan-Transcona Community Committee, as amended, namely:

- Amend Recommendation 2.C by replacing the words “Ward Councillor” with the words “East Kildonan-Transcona Community Committee”,

and submitted the matter to Executive Policy Committee and Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On July 21, 2003, the East Kildonan-Transcona Community Committee concurred in the administrative recommendation as amended, namely:

- That Recommendation No. 2. B. be amended by substituting the words “10.0 metres (32.8 feet)” with the words “7.62 metres (25 feet)”;

- That Recommendation Nos. 2. C. and 2. D. be deleted in their entirety;

- That Recommendation No. 2. E. be renumbered to Recommendation No. 2. C., and be amended by adding the words “and the Ward Councillor” at the end;

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DECISION MAKING HISTORY (continued):

- That Recommendation No. 3. A. be amended by substituting the words “5.0 metres” with the words “7.0 metres (23 feet)”;

and submitted its recommendation to the Standing Policy Committee on Property and Development.

RE: **Zoning Agreement Amendment - 1366 Henderson Highway**
File ZAA 9/2003

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

Prepared by: **Inga K. Skundberg, Clerk, East Kildonan-Transcona Community Committee**

Report date: **August 5, 2003**

COMMUNITY COMMITTEE RECOMMENDATION:

The East Kildonan - Transcona Community Committee concurred in the administrative recommendation, as amended, and recommends to the Standing Policy Committee on Property and Development:

1. That the Zoning Agreement DAZ 206/93 (By-Law 6249/93), dated October 20, 1993 be amended as following:

   A. That Clause 3 be deleted;

   B. That Clause 4 be deleted;

2. That the Zoning Agreement DAZ 206/93 (By-Law 6249/93), dated October 20, 1993 be amended to the following:

   A. That no building shall be located on the land exceeding a height of four (4) stories;

   B. That the westerly most ~~***10.0 metres (32.8 feet)***~~ ***7.62 metres (25 feet)*** of the subject property shall only be used for landscaping;

   ~~***C. That the northerly most 5.0 metres (16 feet) of the subject property shall only be used for landscaping;***~~

   ~~***D. That except for egress and ingress points for motor vehicles, the easterly most 6.096 meters (20.0 feet) of the subject property shall only be used for landscaping;***~~

   C. That the landscaping on the subject property be maintained to the satisfaction of the Director of Planning, Property and Development***, and the Ward Councillor.***

3. That Clause 6 of Zoning Agreement DAZ 206/93 (By-Law 6249/93), dated October 20, 1993 be amended to the following should the legal boundaries of the subject property change:

   A. That the southerly most ~~***5.0 metres***~~ ***7.0 metres (23 feet)*** of the subject property shall only be used for landscape purposes;

4. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 206/93 (By-Law 6249/93), as approved in aforesaid Recommendation Nos. 1, 2 and 3.

5. That the Proper Officers of the City are hereby authorized to execute said Amending Agreement.

6. 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 Act.

7. That in the event this application is not proceeded with expeditiously and the agreement is not signed within twenty-four (24) months after adoption of this report y Council, the matter shall be deemed to be concluded and shall not be proceeded with unless an extension of this time is applied for prior to the expiry of this twenty four (24) month period and the extension is subsequently approved by Council.

Note: Bold and italicized wording denotes variation between administrative recommendations and recommendations of the East Kildonan-Transcona Community Committee.

The East Kildonan-Transcona Community Committee provided the following supporting reason for its recommendation:

1. The East Kildonan-Transcona Community Committee agreed with administrative comments contained in the report from the Acting Manager of Planning and Land Use.

PUBLIC HEARING SUMMARY

File: ZAA 9/2003

Before: East Kildonan-Transcona Community Committee
Councillor Thomas, Chairperson
Councillor Lubosch
Councillor Wyatt

Public Hearing: July 21, 2003
North Committee Room
City Hall
510 Main Street

Applicant: 4525982 Manitoba Ltd. (K. Fast)
c/o 10 Donald Street
Winnipeg, MB R3C 1L5

Subject:



EAST KILDONAN
TRANSCONA
COMMUNITY

APPLICANT : 4525982 MANITOBA LTD.

FILE : ZAA 9/03

PROPOSAL : To amend the Zoning Agreement affecting the land shown outlined above as follows:(a) to delete the restriction which stipulates that no building shall be located on the land exceeding one storey in height and (b) to delete the restriction which stipulates that no building located on the land shall have a gross main floor area of 743.2 square metres(8,000 square feet) but the limitation does not apply to any basement area,(c) to allow for the unrestricted use of the site for development by deleting the requirement for landscaping as stipulated in the agreement. **For information, phone Mr. J. Wintrup, Planner at 986-5102.**

Premises Affected: 1366 Henderson Highway

Exhibits Filed:

1. Application dated July 9, 2003
2. Advertising notice dated July 3, 2003
3. Manitoba Status of Title 1343961
4. Letter of Consent from the Manager of Leasing and Acquisitions, Retail Real Estate, Canada Trust, to 4525982 Manitoba Ltd. dated May 5, 2003
5. Caveat
6. Zoning Agreement DAZ 206/93
7. Conditional Use Order DCU 155/93C
8. Report from the Acting Manager of Planning and Land Use dated July 14, 2003
9. Photograph(s) of the Site and Inspection Notice
10. Communication from the East Kildonan-Transcona Residents' Advisory Group with respect to the application, dated July 17, 2003
11. Petition in opposition to the application purporting to contain 80 signatures submitted by Judy McGifford at the public hearing
12. Petition in opposition to the application purporting to contain 4 signatures submitted by Myron Kruk at the public hearing

REPRESENTATIONS:

In Support:
Mark Olson

In Opposition:
Vern Gaddows
John Galayda
Al & Dorothy Gascoigne
Myron Kruk
Judy McGifford
Tony Romanow
Martin Sudfeld
Morna Wake

For Information Purposes:
Helen Doughie
Art McGifford
Debbie Walstra

For the City:
John Wintrup, Planner, Planning, Property and Development Department

SUMMARIZATION OF REPRESENTATIONS AND SUBMISSIONS
MADE AT THE PUBLIC HEARING

Mark Olson appeared in support of the application. He advised that the subject application is the result of an improperly posted previous application affecting the same location, and that the applicant is not applying for anything more than what was applied for previously. He further advised that he supports the administrative recommendations (Exhibit 8) with the exception of Recommendation Nos. 2. B., C, and D. In this connection, he indicated that the applicant understands that there needs to be some kind of landscaping control, and agreed with Recommendation No. 2. E..

Councillor Lubosch commented that the property is zoned as a "C2" Commercial District and that the applicant should be subject to the zoning regulations of such, the same as neighboring properties, however, because there is a park at the subject location, there will be some sensitivities to the development as he does not want the park compromised.

Judy McGifford appeared in opposition to the application, and submitted a petition in opposition, filed as Exhibit 11. She advised that she is against any development at the subject location.

Tony Romanow appeared in opposition to the application, and advised that he is against any development at the subject location and wants the landscaping that currently exists at the site to remain. He indicated that he moved into the area with a park across the street and that he hopes it will be further enhanced.

Vern Gaddows appeared in opposition to the application. He expressed concern that the traffic would increase and expressed his opinion that traffic is already congested in the area. He suggested that the subject lands be expropriated and be categorized as a historical site. He commented that if the application were to proceed, the development should be out of visual sight and remain visibly a green space, and that landscaping conditions be enforced on the site.

John Wintrup responded by advising that plan approval for the landscaping would be submitted to the Community Committee for approval, and once approved, if conditions are not adhered to, fines and penalties would be charged.

Myron Kruk appeared in opposition to the application, and advised that he lives at the corner of Corne Street and Slater Avenue, backing onto the Bergen Cut-Off. He indicated that the majority of the neighboring area is residential and that many of the properties are large and that the owners have invested a significant amount of money and time into landscaping their properties. He commented that if the applicant wishes to develop the property that they should adhere to the conditions of the original agreement. He indicated that the berm is enjoyed by many people and expressed concern regarding the purported traffic congestion that exists in the area. Myron Kruk submitted additional pages to the petition in opposition to the application originally submitted by Judy McGifford (Exhibit 11), filed as Exhibit 12.

Martin Sudfeld appeared in opposition to the application. He commented that he would like the property to remain as it currently exists until the property has been purchased and they know who will be developing the property and for what purpose. He expressed concern that conditions of the application may not be enforced if it were to proceed.

Councillor Lubosch indicated that the berm is currently a passive park and that with respect to maintenance, the park is to remain as natural as possible. He advised that the section of the berm fronting Henderson Highway is not owned by the City of Winnipeg and that the City only owns a portion of it on the south end of the property.

Debbie Walstra appeared for information, and advised that she was brought up as a child residing beside the park. She indicated that she would prefer that the subject property not be developed, and that if the application were to proceed, that the building not exceed two stories in height.

Art McGifford appeared for information and advised that the petition previously submitted (Exhibits 11 and 12) opposed the deletion of height, area and landscaping restrictions. He indicated that he would be supportive of a one-storey building on the subject property as agreed to in the original agreement.

Mark Olson advised that because the applicant does not yet have a user for the site, the location of the building can not yet be determined. He further advised that all conditions imposed will be adhered to. With respect to concerns expressed about traffic, he indicated that adjustments will be made to the lights at the site, which he commented would allow better access to Henderson Highway. He advised that the landscaping plan will be submitted to the Community Committee for approval. He further advised that the portion of the berm privately owned will be removed on the subject property and in this connection, the applicant wishes to work with the City of Winnipeg and the Ward Councillor to enhance the existing pathway by building a gentle pathway to the berm to allow more accessibility. Mark Olson indicated that the subject property will probably attract a service orientated business and commented that any increase in traffic should be marginal as those that would utilize the site would likely be from the neighboring area.

Councillor Lubosch commented that the pathway will likely be integrated into the North Kildonan Parkway in the future and that he wants to ensure the trail is protected and developed.

He further commented that he has never seen the restrictions that currently exist on the subject property on any other commercial property in the area and questioned the equity of one section of Henderson Highway being regulated differently than a neighboring section of Henderson Highway. In this connection, he indicated that it is a challenge to balance residential, commercial and greenspace property. He indicated that the property with the uses imposed on it will be more restrictive than what is allowed with general "C2" Commercial District zoning regulations.

In reply please refer to / Référence à rappeler :

John S. Wintrup
(204) 986-5102
Fax / Téléc. : (204) 986-3684

File No. ZAA 9 / 03 July 14, 2003
Our c/f CP 500 (.411)

Ms. Inga Skundberg, Community Clerk
East Kildonan – Transcona Community Committee
Council Building
510 Main Street
Winnipeg, MB R3B 1B9

Dear Ms. Skundberg:

ZONING AGREEMENT AMENDMENT
1366 Henderson Highway
East Kildonan – Transcona
File No. ZAA 9 / 03

An application has been received from K. Fast (Manitoba Ltd. 4525982), to amend the Zoning Agreement affecting the property shown below by deleting paragraphs 3, 4 and 6 thereof.

RELATED FILES: DAZ 206/93, DCU 155/93, ZAA 08/03



SITE DESCRIPTION:

Dimensions:

54.012 metres (177.2 feet) frontage on Henderson Highway.

Site Area:

56,487 square feet (1.29 acres).

Existing Land Use and Zoning:

Vacant land zoned "C2" Commercial.

DEVELOPMENT DESCRIPTION:

The subject property is owned by the Toronto – Dominion Bank. The applicant intends to purchase the vacant land and market it for a commercial use. The applicant is proposing to expand the list of allowable uses beyond the current list of one, a bank.; and construct a larger commercial building.

ADMINISTRATIVE COMMENTS:

The subject site is commonly known as the Bergen Cut-Off. The City of Winnipeg has acquired a majority of the previous Bergen Cut-Off lands west of the subject site, which have been rezoned "PR-1" Parks and Recreation District. The City has also acquired the southerly strip of land adjacent to the subject property for the purpose of providing a link between Henderson Highway and the Bergen Cut-Off park lands as part of the future North Winnipeg Trail way system.

The original Zoning Agreement (DAZ 206/93) was made to rezone the subject land to "C2" Commercial from "R1-5" Single Family District in order to permit only the construction of a bank. The Toronto-Dominion Bank intended to construct an 8,000 sq.ft., one-storey building with a 24-hour drive through teller (DCU 155/93).

T-D's intention to construct a bank at this location has ended. The lands are currently vacant and for-sale. The present owners have allowed the adjacent auto-body shop to the north to temporarily use portions of the site for vehicle storage. New owners would like to purchase and market the land to potential commercial users. The EKT CC has already recommended that the number of commercial uses for the land be expanded beyond the original use of a bank. The only restrictions remaining are for height, floor space and buffer area that where specific for the construction of the bank.

On June 18, 2003 the East Kildonan – Transcona Community Committee held a Public Hearing regarding ZAA 8/03 to amend the Zoning Agreement for 1366 Henderson Highway.

The original application requested parts 2, 3, 4, and 6 of the Zoning Agreement be deleted. The EKT CC heard the matter and passed a motion recommending changes to parts 2, 3 and 4 of the agreement. The request for deleting part 6 was denied. However, prior to the matter proceeding to the Standing Policy Committee on Property and Development, the Administration concluded the Public Hearing was improperly posted by the City: only the expansion of uses was listed as being under consideration. Consequently, P&D was restricted to concur only with EKT CC's recommendation for part 2, the expansion of uses.

The Planning and Land-Use Division initiated a new application on behalf of the applicant for the remainder (parts 3, 4 and 6) of the original application. This new application is ZAA 09/ 2003.

The Planning and Land-Use Division supports deleting parts 3 and 4 of the Zoning Agreement:

I. *No building shall be located on the land exceeding a height of one story.*

I. *No building located on the land shall have a gross main floor area exceeding 743.2 square metres (8,000 square feet) but that limitation does not apply to any basement area.*

These paragraphs specifically indicate only a one-story building, not exceeding a gross main floor area of 743.2 square metres (8,000 sq.ft) be constructed. A larger building can be accommodated providing that extensive landscaping be provided. This landscaping can be provided in required yards to limit any impact on the surrounding neighbours and compliment the adjacent parklands.

The Division does not support deleting paragraph 6:

I. **That part of the land shown on Schedule "B" to this Agreement shall not be used for any purpose except landscaping.**

This paragraph makes reference to the southern portion of the subject property that is adjacent to the City of Winnipeg lands. The Division's main concern regarding the original rezoning was the removal of the railway embankment and the existing foliage. The Division's opinion is this would be undesirable. The embankment is an integral part of the proposed North Winnipeg Trailway system that will link North Kildonan with West Kildonan across the Bergen Cut-off Railway Bridge. This site requires extensive landscaping to complement the linear park to the west. An appropriate amount of landscaping along the southern portion of the subject property will also be required to be complementary and contiguous to the North Kildonan pathway

development along the south property line. The purpose of Paragraph 6 is to ensure that a substantial part of the embankment closest to Henderson Highway is used only for this landscaping purpose.

At this time, the Division will only support a change to Paragraph 6 that will allow the developer some flexibility if the legal description of the property boundaries change.

RECOMMENDATION:

1. That, the Zoning Agreement DAZ 206/93 (By-Law 6249/93), dated October 20, 1993 be amended as following:

    A. That, paragraph 3 be deleted;

    B. That, paragraph 4 be deleted;

2. That, the Zoning Agreement DAZ 206/93 (By-Law 6249/93), dated October 20, 1993 be amended to the following:

    A. That, no building shall be located on the land exceeding a height of four (4) stories;

    B. That, the westerly most 10.0 metres (32.8 feet) of the subject property shall only be used for landscaping;

    C. That, the northerly most 5.0 metres (16 feet) of the subject property shall only be used for landscaping;

    D. That, except for egress and ingress points for motor vehicles, the easterly most 6.096 meters (20.0 feet) of the subject property shall only be used for landscaping;

    E. That, the landscaping on the subject property be maintained to the satisfaction of the Director of Planning, Property and Development.

3. That, Paragraph 6 of Zoning Agreement DAZ 206/93 (By-Law 6249/93), dated October 20, 1993 be amended to the following should the legal boundaries of the subject property change:

    A. That, the southerly most 5.0 metres of the subject property shall only be used for landscape purposes;

4. That, the City Solicitor be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 206/93 (By-Law 6249/93), dated, as approved in aforesaid Clause I, II and III.

5. That, the Proper Officers of the City are hereby authorized to execute said Amending Agreement.

6. That, the City Solicitor be requested to do all things necessary for implementation in accordance with the terms of the City of Winnipeg Charter Act.

7. That, in the event this application is not proceeded with expeditiously and the agreement is not signed within twenty-four (24) months after adoption of this report by Council, the matter shall be deemed to be concluded and shall not be proceeded with unless an extension of this time is applied for prior to the expiry of this twenty four (24) month period **and the extension is subsequently approved by Council**.

Final Draft

Yours truly,

C. Knoll
Acting Manager of Planning and Land Use

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Per: John S. Wintrup, Planner
East Kildonan – Transcona Community
986-5102



Figure 1: Air Photo of Subject Property and Surrounding Context

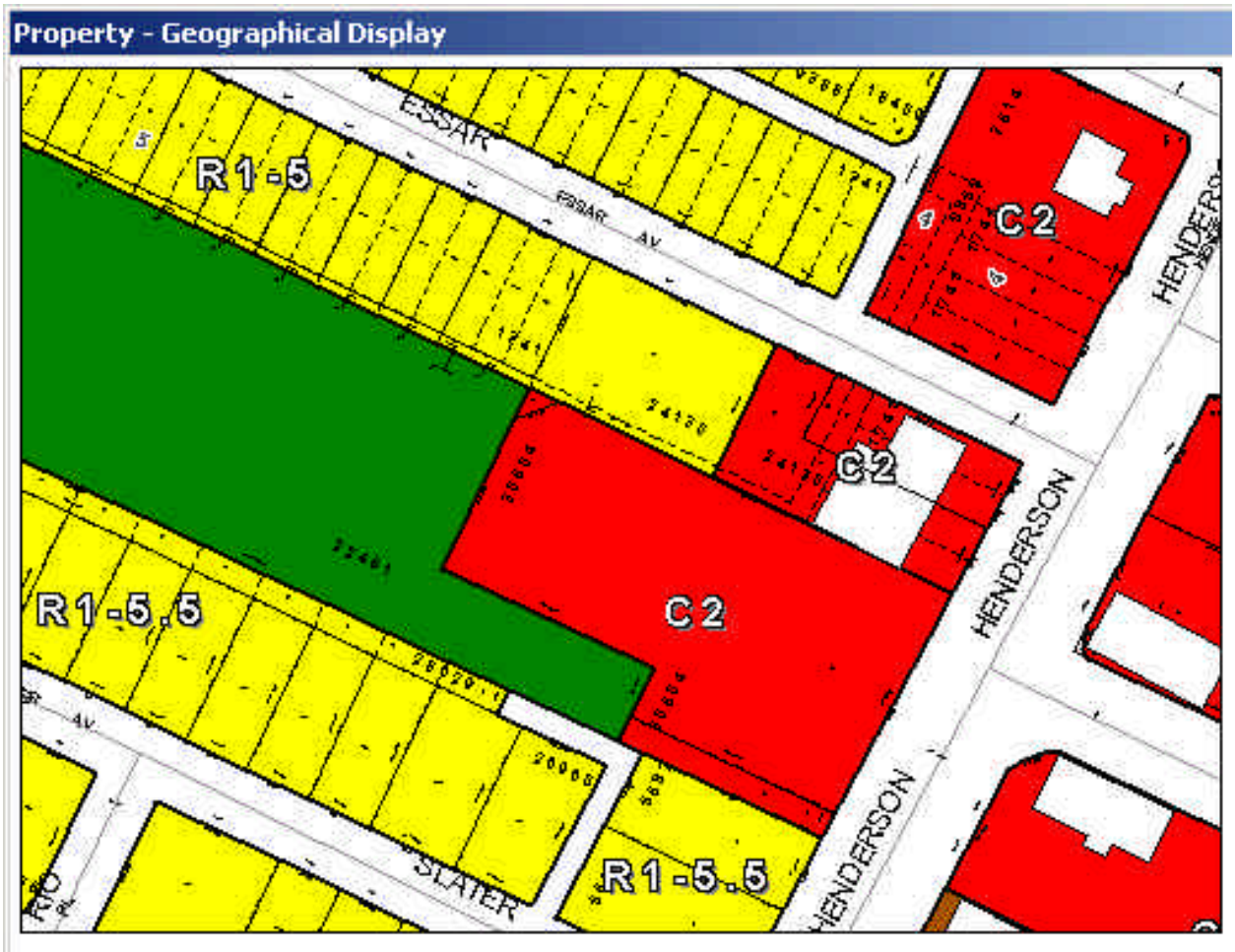


Figure 2: Zoning Map of Subject Property and Surrounding Context