Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – September 20, 2016

Item No. 4 **Zoning Agreement Amendment – 86-142 Water Ridge Path: East side abutting rail line (even #'s)**
(Old Kildonan Ward)
File ZAA 3/2016 [c/r DASZ 15/2012]

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and submitted to Council the application for a zoning agreement amendment under File ZAA 3/2016 [c/r DASZ 15/2012] be rejected.

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – September 20, 2016

DECISION MAKING HISTORY:

Moved by Councillor Orlikow,

That Rule 10(3) of The Procedure By-law No. 50/2007 be suspended in order that the following item, which was received less than 96 hours preceding the committee meeting, be considered by Committee.

Carried

Moved by Councillor Orlikow,

That the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development be concurred in and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION:

On September 20, 2016, the Standing Policy Committee on Property and Development, Heritage and Downtown 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 July 5, 2016, the Lord Selkirk-West Kildonan Community Committee concurred in the recommendation of the Winnipeg Public Service and forwarded the matter to the Standing Policy Committee on Property and Development, Heritage and Downtown Development.

On June 14, 2016, the Lord Selkirk-West Kildonan Community Committee adjourned the public hearing to its meeting on July 5, 2016 at 5:00 p.m. in the Council Building at 510 Main Street.

On May 17, 2016, the Lord Selkirk-West Kildonan Community Committee adjourned the public hearing to its meeting on June 14, 2016 at 5:00 p.m. in the Council Building at 510 Main Street, to allow the Winnipeg Public Service to dialogue further with the applicant in an effort to find a solution as it relates to the guidelines.

RE: **Zoning Agreement Amendment – 86-142 Water Ridge Path:**
East side abutting rail line (even #'s)
File ZAA 3/2016

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

Prepared by: **Ms I. Skundberg, Committee Clerk**
Lord Selkirk-West Kildonan Community Committee

Report date: **July 7, 2016**

COMMUNITY COMMITTEE RECOMMENDATION:

On July 5, 2016, 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, Heritage and Downtown Development that the application for a zoning agreement amendment under File ZAA 3/2016 [c/r DASZ 15/2012] be rejected.

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

1. The proponent has possibilities to work with the properties and whether or not they do, it is not a total loss of money.

2. The rail standards need to be applied consistently and although it is not a City of Winnipeg regulation yet, we believe there is enough support on Council to continue with the railway standards that have been set.

3. Who knows what the railway will do later on with that particular line.

PUBLIC HEARING SUMMARY

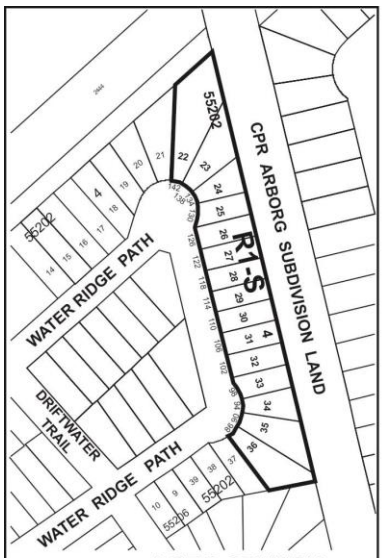
File: ZAA 3/2016

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

Public Hearing: July 5, 2016
Council Building, 510 Main Street

Applicant: Lombard North Group (Jeff Pratte)

Subject:



APPLICANT : LOMBARD NORTH GROUP

FILE : ZAA 3/16

PROPOSAL : To amend the Zoning Agreement DASZ 15/2012, By-law 59/2013 affecting the land shown outlined above by amending Clause 4(b) which deals with the location of a habitable room or space, bathroom, water closet compartment, or recreation room or space no less than 49.2 feet (15.0 metres) to the eastern limit of the lot to be amended to no less than 30 feet (9.14 metres) for Lots 22, 26, 27, 28, 29, 30, 31, 32 and 36 of Block 4 Plan 55202 and 25 feet (7.62 metres) for Lots 23, 24, 25, 33, 34 and 35 Block 4 Plan 55202. **For information, phone Mr. N. Yauk, Planner, at 204-986-4560.**

Premises Affected: 86-142 Water Ridge Path: East side abutting rail line (even #'s)

Exhibits Filed:

1. Application dated March 22, 2016
2. Notification of Public Hearing dated March 29, 2016
3. Manitoba Status of Titles 2804730/1, 2804732/1, 2804742/1, 2804750/1, 2804753/1, 2703407/1, 2804769/1, 2804772/1, 2703410/1, 2703411/1, 2823520/1, 2804778/1, 2804786/1, 2804941/1, 2804944/1

4a. Letter of authorization dated February 10, 2016 from SGS Properties Ltd. to Lombard North Group

4b. Letter of authorization dated February 10, 2016 from Jagdeep Singh Uppal and Sukhvir Kaur Uppal to Lombard North Group

5a. Caveat 4442386/1

5b. Caveat 4442383/1

6. Aerial Photograph
7. Plans (4 pages)
8. Report from the Urban Planning Division dated May 9, 2016
9. Inspection Report
10. PowerPoint Presentation in support of the application submitted by David Palubeski, Lombard North Group, at the public hearing on May 17, 2016
11. Recording of Representations of public hearing held on May 17, 2016
12. Notice of Adjournment dated May 26, 2016
13. Recording of Representations of public hearing held on June 14, 2016
14. Notice of Adjournment dated June 17, 2016
15. PowerPoint Presentation in support of the application submitted by Jeff Pratte, Lombard North Group, at the public hearing on July 5, 2016
16. Recording of Representations of public hearing held on July 5, 2016

REPRESENTATIONS:

In Support:

David Palubeski, Lombard North Group
Jeff Pratte, Lombard North Group

In Opposition

Nil

For Information:

Matt Gavin

For the City:

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

Exhibit "8" referred to in File ZAA 3/2016

ADMINISTRATIVE REPORT

Title: ZAA 3/2016 – 86 – 142 Water Ridge Path

Issue: For consideration at the public hearing to amend clause 4(b) from the Zoning Agreement for DASZ 15/2012 associated with the location of a habitable room or space, bathroom, water closet compartment or recreation room on the subject property.

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	Division Head	Department Head	CFO	CAO
Femi Ojo	B. Smith	n/a	n/a	

RECOMMENDATIONS

1) That the Zoning Agreement under File DASZ 15/2012 dated July 27, 2005 (By-law No. 59/2013) **not** be amended.

REASON FOR THE REPORT

- The applicant is proposing to amend an existing zoning agreement which reduces the location of habitable room or space, bathroom, water closet compartment, or recreation room to no less than 49.2 feet to the eastern limit of the lot to be amended to no less than 30 feet for lots 22, 26, 27, 28, 29, 30, 31, 32, and 36 of block 4 plan 55202 and 25 feet for Lots 23, 24, 25, 34 and 35 of block 4 plan 55202.
- 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 Zoning Agreement will **not** be amended as proposed.

HISTORY

DASZ 15/2012

- The subject property was part of land parcel that went through a subdivision approval process under file DASZ 15/2012 (By-law 59/2013) by rezoning the land located on Rosser North Kildonan, bounded by Jefferson & CPR & CNR previous line, Inkster Gardens bounded by Jefferson & King Edward from an "A" Agricultural District and "RR5" Rural Residential 5 District to an "R1-M" & "R1-S" Residential Single-family District, "R2" Residential Two-family District, "RMF-S" & "RMF-M" Residential Multi-Family District, CMU" Commercial Mixed Use District and "PR1" Parks and Recreation 1 District.
- Under DASZ 15/2012, restrictions were placed on the developable area of the easterly lots abutting the Arborg CPR line to accommodate an adequate setback between buildings and the rail line.
- A zoning agreement caveat was placed on the land in conjunction with that rezoning. The relevant clause restricting the land under the zoning agreement is clause 4(b) which states that:

  (4) For every lot on the owner's Land that backs onto the CPR Arborg Subdivision land identified on Plan Deposited No. 2002/2012, the owner must;

  (b) ensure that no habitable room or space, bathroom, water closet compartment, or recreation room or space is located less than 49.2 feet (15.0 metres) from the eastern limit of the lot.
- Through the subject application, the developer seeks to remove this condition on 14 lots.

CONSULTATION

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

SUBMITTED BY

Department	Planning, Property and Development
Division	Urban Planning
Prepared by:	Femi Ojo, MCIP
Date:	May 9, 2016
File No.	ZAA 3/2016

List of Schedules and Attachments

1. Appendix A – Planning Discussion

APPENDIX 'A'

DATE: May 9, 2016

FILE: **ZAA 3/2016**
RELATED FILES: DASZ 15/2012 (B/L 59/2013)

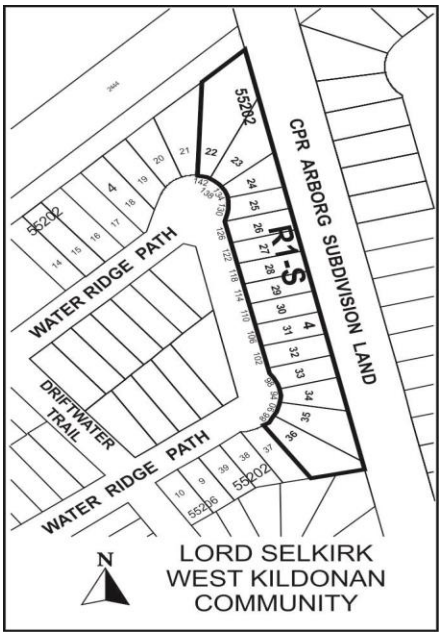
COMMUNITY: Lord Selkirk – West Kildonan Community

NEIGHBOURHOOD #: 3.316

SUBJECT: For consideration at the public hearing to amend clause 4(b) from the Zoning Agreement for DASZ 15/2012 that has to do with the location of a habitable room or space, bathroom, water closet compartment or recreation room on the subject property.

LOCATION: Land located at Rosser North Kildonan, Bounded by Jefferson & CPR/CNR previous lines Inkster Gardens Neighborhood bounded by Jefferson & King Edward.

LEGAL DESCRIPTION: LOTS 22 – 36 BLOCK 4 PLAN 55202



APPLICANT: Lombard North Group / Jeff Pratte
287 Tache Avenue
Wpg., MB R2H 2A1

OWNER: SGS Properties
287 Tache Avenue
Wpg., MB R2H 2A1

RECOMMENDATION: Rejection

SITE DESCRIPTION

- The subject property is located in the north east section of Precinct C; also known as Waterford Green. The Precinct is situated adjacent to the neighborhoods of Foxwarren Lake, Mandalay west and the developed portion of Inkster Gardens.
- Lands north of Precinct C are zoned Agriculture and to the east is the Arborg CPR line.
- The subject site is within (Precinct C) Policy Area under the Complete Communities Direction Strategy. The lots that are the subject of this application are within the low density residential area of the Precinct C, plan as shown in the Land use and Transportation Map below.

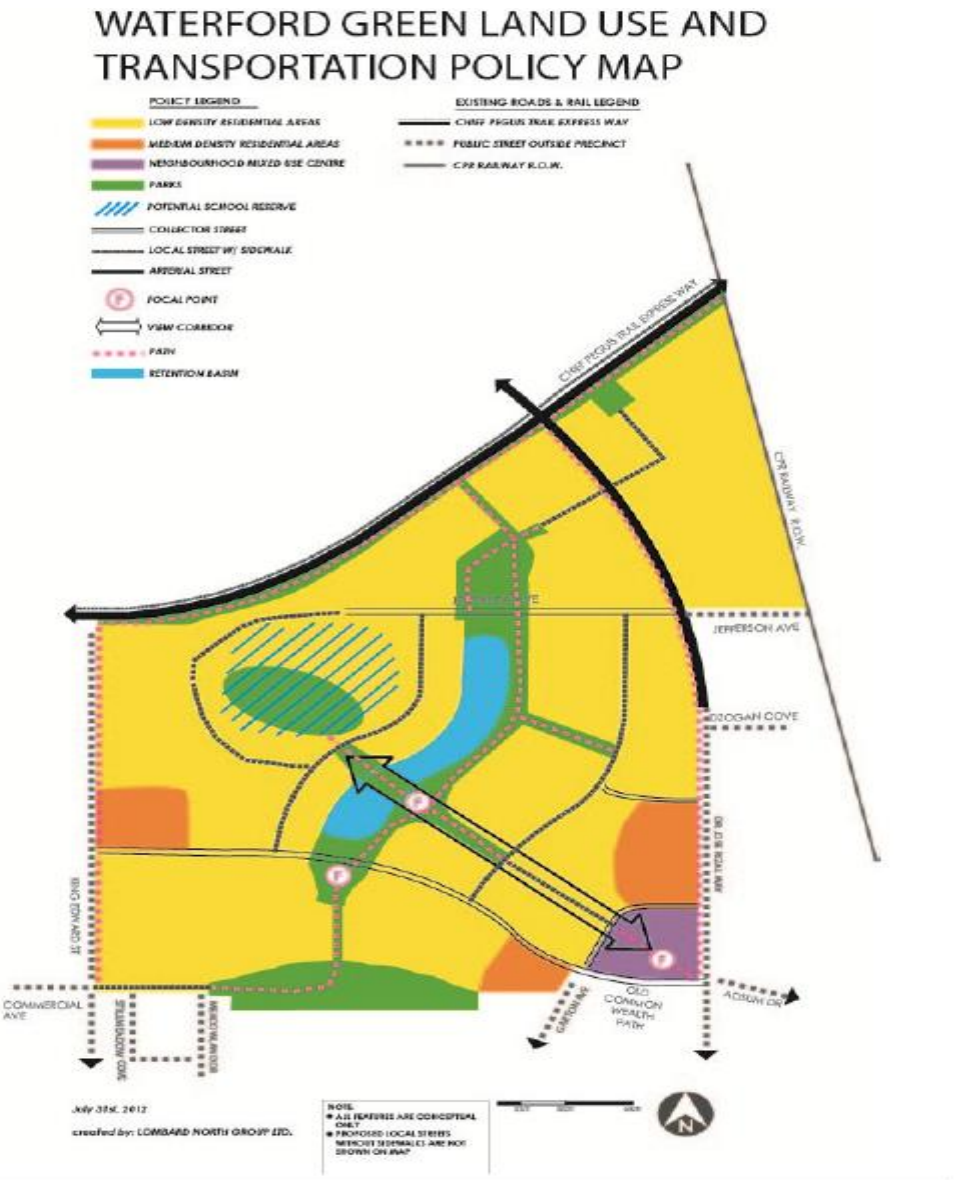


Figure 1: Land Use and Transportation Policy Map for Precinct C

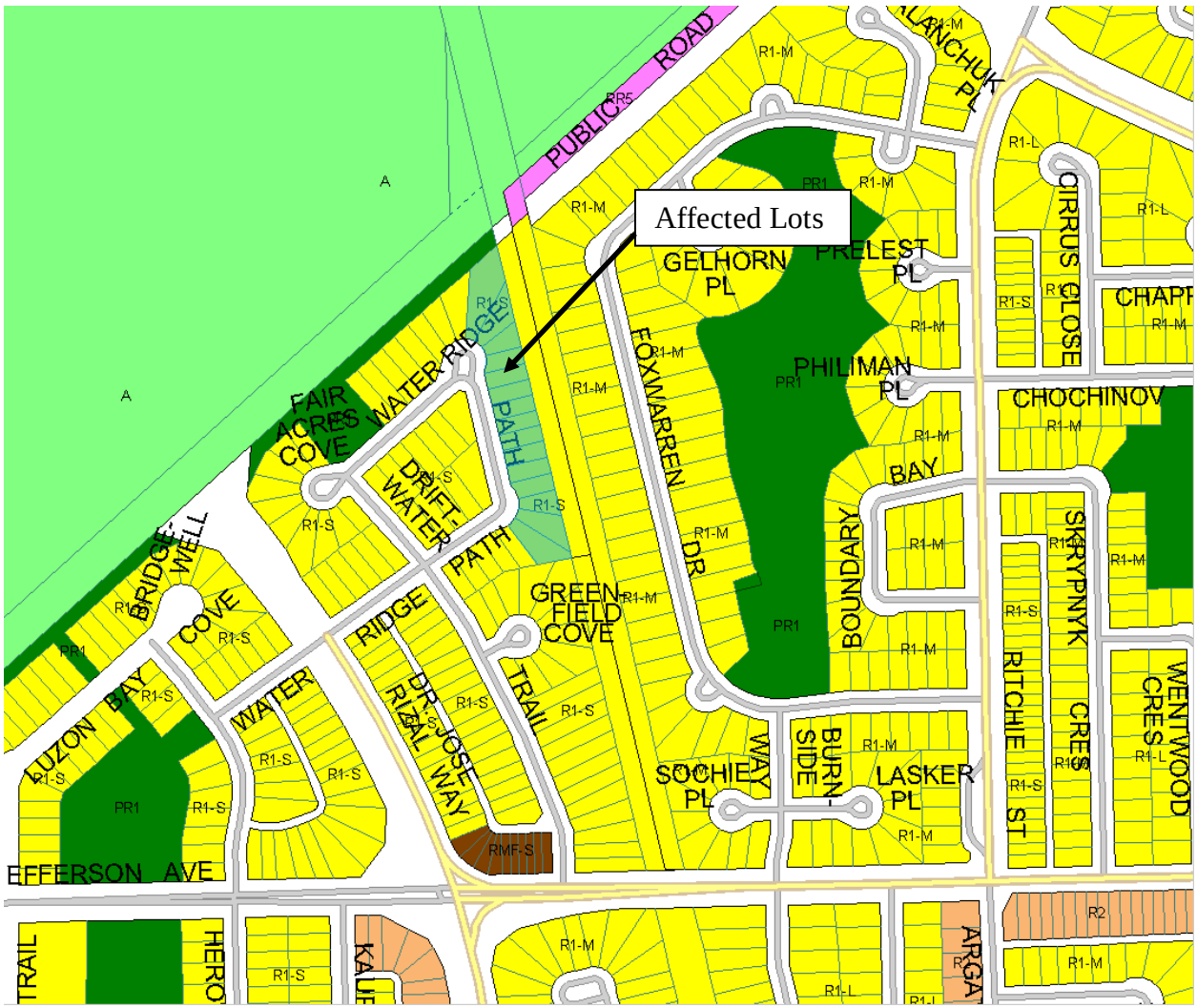


Figure 2: Zoning of the subject property and surrounding area

DESCRIPTION OF THE PROPOSED DEVELOPMENT

- The subject site is zoned “R1-S” Single-Family Residential (small). This zoning district is intended for single-family dwellings.
- The existing zoning agreement reduces the location of habitable room or space, bathroom, water closet compartment, or recreation room to no less than 49.2 feet to the eastern limit of the lot to be amended to no less than 30 feet for lots 22, 26, 27, 28, 29, 30, 31, 32, and 36 of block 4 plan 55202 and 25 feet for Lots 23, 24, 25, 34 and 35 of block 4 plan 55202.
- The applicant is requesting a zoning agreement amendment to accommodate this development as proposed.



Figure 3: Subject parcel under Consideration

ANALYSIS AND ISSUES

COMPLETE COMMUNITIES DIRECTION STRATEGY

- Under the *Complete Communities Direction Strategy* the proposed development is within the Waterford Green (Precinct C).
- A Precinct Plan is one of the tools the City of Winnipeg uses under the *Complete Communities Direction Strategy* to implement *Our Winnipeg* at a detailed neighborhood level. Precinct C, a *New Community* , is to be guided by the following six (6) Directions;
    - Be developed in a sustainable manner;
    - Be established through s planning process
    - Increase opportunities to live, work, learn and play in the same neighborhood;
    - Be developed with complete streets, enabling safe and convenient spaces for pedestrians, bicyclists, public transit ridership, and motorists to promote physical activity, health and active transportation;
    - Encourage green development and conserve natural areas to develop new communities in a suitable manner; and
    - Reflect local heritage.

WATERFORD GREEN PRECINCT PLAN

- Per the Complete Communities policies for New Communities, a planning process was completed for Waterford Green (Precinct C) and was endorsed as Council policy on December 12, 2012 as the *Waterford Green Precinct Plan*. The most relevant policy to the subject zoning agreement amendment application is the following:

  C-3.1 Low Density Residential Land Use Policies

  3. Residential, and other uses that may be sensitive to a nearby rail line, shall be buffered from the CPR's Arborg rail line.

WINNIPEG ZONING (BY-LAW 200/2006)

- The "R1-S" Residential Single-Family District is intended to accommodate primarily single-family residential development in low-density areas. Development standards are as follows;
- The R1-S district requires: a minimum lot width of 25 feet, a minimum lot area of 2,500 square feet, side yards of 3 ft. each or 2 & 4, a front yard of 15 feet, and a rear yard of 25 feet. The maximum building height is 35 feet and the maximum lot coverage is 45 percent.

REVIEW OF SUBJECT ZONING AGREEMENT AMENDMENT APPLICATION – RAIL PROXIMITY CONSIDERATIONS

- Policy C-3.1(3) of the Waterford Green Precinct Plan requires that residential development be buffered from the CPR Arborg rail line.
- At the time DASZ 15/2012 was processed and reviewed, the accepted buffering standard from the CPR Arborg rail line was explained in the planner's report:

Proximity Guidelines for development near the CPR Arborg Rail Line

The existence of a CPR branch line is noted along the eastern edge of the planned area north of Jefferson Avenue. A number of proposed residential properties (zoned R2 and R1-S) share the property boundary to the west side of the rail line. This proximity to a rail line brings inherent concerns with respect to safety, noise and vibration.

A Proximity Guidelines and Best Practices research report prepared for The Railway Association of Canada and The Federation of Canadian Municipalities (2006) recommends "best practices" for: protecting dwellings from train derailments or other rail incidents; and reducing the amount of noise and vibration from trains affecting dwellings. The report recommends for the following:

- *Dwellings to be setback 15 metres (49.2 feet) from a branch line right-of-way (which is the type of rail line alongside the planned area);*
- *A two metre (6.6 foot) high berm, with a side slope no more than a rise of one and a run of 2.5, be built alongside the rail line right-of-way; and*
- *A 1.38-metre (4.5 feet) high chain link fence be built at the edge of the right-of-way and a three-metre high acoustical fence be built on the top of the berm.*

The Urban Planning Division has been consistent in recommending that new residential dwellings adjacent to rail branch lines meet the minimum separation distance. This is a recommended condition of the proposed zoning agreement.

- The specific condition included in the zoning agreement for DASZ 15/2012 that implemented the setback from the CPR Arborg rail line (which is the subject of this zoning agreement amendment application) was found under section 2.A.(v) of the recommendations:

  That, north of Jefferson Avenue, no habitable room or space, bathroom, water closet compartment, or recreation room or space shall be less than 49.2 feet (15 metres) from the eastern limit of the planned area.

- As such, the accepted mitigation or buffering standard for a residential development from the CPR Arborg rail line at the time of application for DASZ 15/2012 was the 15 metre or 49.2 foot setback without the berm.

- Since that time, City Council requested that the Public Service seek ways to improve safety for new development in proximity to railway operations when it passed the following motion on March 25, 2015:

  …that the Winnipeg Public Service be directed to explore how to improve safety for new development in proximity to railway operations and to report back to Council and provide recommendations within 120 days.

- The Public Service reported back to Council on the matter in a background report titled: *Improving Safety for New Development in Proximity to Railway Operations in the City of Winnipeg.*

- On January 27th, 2016, Council adopted all of the recommendations included in the background report without a single vote in opposition (a copy of the minutes and report can be accessed online, under item 9, the REPORT OF THE STANDING POLICY COMMITTEE ON PROPERTY AND DEVELOPMENT, HERITAGE AND DOWNTOWN DEVELOPMENT DATED JANUARY 12, 2016, via the following link: http://clkapps.winnipeg.ca/DMIS/ViewDoc.asp?DocId=15008&SectionId=&InitUrl=).

- Key recommendations in the background report included:

  - That the Public Service amend OurWinnipeg and/or the Complete Communities Direction Strategy to include policies for development of new residential and sensitive uses adjacent to rail lines and yards; and,

  - That the Public Service develop guidelines (for Council endorsement) for buffering residential and sensitive uses from rail lines and yards using Federation of Canadian Municipalities (FCM) / Railway Association of Canada (RAC) The Guidelines for New Development in Proximity to Railway Operations (2013) as a base.

- Work is underway on both the amendment and the guidelines, but is not yet complete.

- Considering that: (1) the *Waterford Green Precinct Plan* includes a policy requiring that sensitive uses such as residential developments be buffered from the CPR Arborg rail line; and (2) that Council has ultimately recommended that new development be developed in a manner similar or closer to what is recommended in the FCM/RAC Guidelines, the subject application to lessen the setback from the CPR Arborg rail line is not supportable.

- DASZ 15/2012, as approved by Council, created a new subdivision as shown in Figure 1. The northeasterly lots abutting the Arborg CPR line are restricted, but not to the extent as would be required by the FCM guidelines in that a 2 metre tall berm is not required within the property line of the subject lots that abut the western property line of the CPR Arborg subdivision.

- It is important to note that the FCM/RAC Guidelines recognize that a reduction in a recommended setback from a rail line could be supported if an alternative mitigation measure(s) being proposed. Some examples of mitigation alternatives include:
    - Small reductions in the setback – up to 5 metres may be achieved through a reciprocal increase to the height of a safety berm on the site;
    - Substantial reductions to the setback may be achieved through the construction of a crash wall.
- Neither a berm, nor crash wall are being proposed with the reduced setback in the subject application.

REASONS FOR RECOMMENDATION

- Support for the proposed zoning agreement amendment application is inconsistent with the policies of the *Waterford Green Precinct Plan* and inconsistent with the general direction of Council with respect to improving safety for new development adjacent to rail.
- The applicant is not proposing to construct a mitigation measure such as a berm or crash wall in conjunction with the proposed reduced setback.

RECOMMENDATION

- That the Zoning Agreement (File ZAA 3/16) to amend existing zoning agreement under file DASZ 15/2012, By-law 59/2013 which reduces the location of habitable room or space, bathroom, water closet compartment, or recreation room to no less than 49.2 feet to the eastern limit of the lot to be amended to no less than 30 feet for lots 22, 26, 27, 28, 29, 30, 31, 32, and 36 of block 4 plan 55202 and 25 feet for Lots 23, 24, 25, 34 and 35 of block 4 plan 55202 be **rejected.**

This Report Submitted by:
Planning, Property and Development Department
Urban Planning Division
Report Prepared By: Femi Ojo, MCIP
PPD File # ZAA 3/2016