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# Audit of the Proposed Sale of Parcel A at the Northeast Corner of Waverley Street and McGillivray Boulevard

## Final Report
## March 2004

# Audit Department

Leaders in building public trust in civic government

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## Background

The Chief Administrative Officer asked the Audit Department to review the recent proposed sale of the surplus city-owned property known as Parcel A, identified on Misc. Plan No. 8091/13 on the northeast corner of Waverley Street and McGillivray Boulevard, to G.R.R. Holdings Ltd. for the purpose of operating a Keg Steakhouse and Bar (the Keg). The sale was conditional upon obtaining a successful Zoning Agreement Amendment (ZAA) and Conditional Use (DCU) to permit the development and operation of an approximately 8,800 square foot restaurant, lounge and outdoor patio.

Parcels A & B as shown on Misc. Plan No. 8091/13 were previously and conditionally sold by the City. The Assiniboia Community Committee turned down an application to have Parcel A rezoned to a Commercial designation to accommodate a 24 hour donut shop and car wash. As a result of this, the Assiniboia Community Committee subsequently considered an application of the Planning, Property and Development Department to have Parcels A and B on Misc. Plan No. 8091/13 rezoned to M1-B Industrial District to establish a zoning classification and a list of permitted uses which would reflect the desires of the Community at large. The rezoning allowed the Department to harmonize its marketing program with the wishes of the Community. Council at its meeting held on November 22, 2000 passed By-Law No. 7719/2000 rezoning the subject property to M1-B Industrial District with restricted permitted uses. The subject properties were again marketed by way of a public invitation for offers.

The Department recommended to the Standing Policy Committee on Property and Development that the sale of the subject property to the Keg be approved subject to approval of a Zoning Agreement Amendment and Conditional Use to permit the proposed development of the property. The Real Estate Division made the Department's recommendation to conditionally sell the subject property to the Keg based upon, among other things, the opinion of the area planner. The planner believed that the proposed development and use was appropriate for the site having regard for the nature and quality of other Keg restaurants in the City. The Standing Policy Committee on Property and Development agreed with the Department's recommendation to conditionally sell the subject property to the Keg and concluded that the proposed development merited further consideration by Community Committee.

The Keg's application to amend the Zoning Agreement to permit the proposed development was considered by Community Committee. Although the Keg representatives addressed many of the residents' concerns at the City Centre Community Committee hearing, the Committee referred to the wording of the Zoning Agreement and its list of acceptable uses and opposed the amendment to accommodate a restaurant on that basis. The Standing Policy Committee on Property and Development decided to not support the decision of the Community Committee and recommended that the Zoning Agreement Amendment be approved. Executive Policy Committee and Council rejected the recommendation and supported the Community Committee's position. The offer was deemed null and void and the transaction was not concluded.

The decision-making process surrounding G.R.R. Holdings Ltd.'s offer and the proposed amendment of the Zoning Agreement revealed numerous differences of opinion among the parties involved and generated negative publicity. Councillors raised questions about the appropriateness of the Planning, Property and Development's handling of the transaction and the effectiveness of the current process.

A chronology of the significant events pertaining to the proposed sale and Zoning Agreement Amendment is located on page 6. A more detailed history of the property, transactions and decision-making process is located in Appendix A.

## Audit Objectives

The objectives for this audit were:

- To determine if compliance with legislation, by-laws and policy was achieved and if the appropriate processes were followed in conjunction with the proposed sale of property on the northeast corner of Waverley Street and McGillivray Boulevard and the related amendment of the Zoning Agreement governing this property.

- To identify opportunities for improvement where required.

## Audit Scope and Approach

Parcels A and B on the northeast corner of Waverley Street and McGillivray Boulevard were most recently marketed by way of a public invitation for offers in July 2002. While our audit included reviewing the history of this property, we focused on the form of Offer to Purchase from G.R.R. Holdings Ltd. and on the Conditional Sale of Parcel A, including the proposed amendment to the Zoning Agreement. Our audit included, therefore, the processes related to the consideration of this proposal from July 2002 through July 2003. In conducting our audit, we employed several methodologies:

- We obtained copies of all relevant correspondence related to this proposed sale and proposed Zoning Agreement Amendment from the Real Estate Division of the City of Winnipeg Planning, Property & Development Department. This correspondence included reports, minutes from meetings, letters, email correspondence and newspaper articles.
- We interviewed management and staff from the Planning, Property and Development Department - Real Estate Division to discuss the history of this property, processes related to declaring property as being surplus, zoning processes, and the role of various committees in these matters.
- We interviewed management and staff from the Planning, Property and Development Department – Planning and Land Use Division to obtain an understanding of both current and proposed zoning processes.
- We met with the owner of G.R.R. Holdings Ltd. and his real estate agent to discuss their experiences with respect to the offer to purchase and the proposed Zoning Agreement Amendment and to hear their suggestions on improvements to the processes.
- We consulted Legal Services to obtain a legal interpretation of the issues surrounding the proposed sale and Zoning Agreement Amendment including the role of various committees.
- We reviewed *Plan Winnipeg 2020 Vision* to consider the proposed sale and proposed Zoning Agreement Amendment's compliance with this by-law.
- We reviewed the City of Winnipeg Charter Act regarding the authority City Council has with respect to zoning and land use and the sale of real property.
- We reviewed The City of Winnipeg – City Organizational By-Law for information regarding the roles of the various committees in relation to declaring property as being surplus and zoning decisions.

## Audit Conclusions

The audit has been conducted in accordance with generally accepted auditing standards. In preparing our report, we have relied upon interviews and information, data and other documentary evidence provided to us. The conclusions reached in this report are based upon information available at the time. In the event that significant information is brought to our attention after completion of the audit, we reserve the right to amend the conclusions reached.

In our opinion, compliance with legislation, by-laws and policy was achieved and the appropriate processes were followed in conjunction with both the proposed sale of property and proposed amendment of the Zoning Agreement governing the property on the northeast

corner of Waverley Street and McGillivray Boulevard. Members of the Planning, Property and Development Department performed their duties in good faith and in accordance with current policies and required processes. The Purchaser indicated that despite the unfavourable outcome both he and his real estate agent commented on the professional manner in which department staff conducted business. Furthermore, we found that suggestions reported in the media that the transaction was handled in a less than transparent manner were without merit.

We observed that the current process provides that the Department and each committee has an opportunity to make its own recommendations for review and decision by Council. This ensures that, while the Community Committee rightly focuses on local interests, the Standing Policy Committee on Property and Development can represent the broader interests of the City as a whole. Executive Policy Committee provides a "sober second thought" and Council ultimately makes a decision with the benefit of all perspectives. We believe that this dichotomy of views and hierarchy of responsibilities creates a healthy tension in the system and that the "checks and balances", while adding time and complexity to the process, help to ensure fairness and sound decisions. We also found that it is not unusual for the City to accept *Offers to Purchase* that require a change in zoning. In fact, "subject to" clauses are common in both public and private sector agreements.

Having said that, we recognize that this particular transaction did not have a desirable outcome for some of the participants, including the prospective purchaser. This was the first time that the City had placed a restrictive Zoning Agreement as a precondition to the marketing of surplus property. The prospective purchaser questioned the extent to which the Zoning Agreement represented a firm commitment on the part of the City, given that both the Department and the Standing Policy Committee were willing to consider a proposal that was inconsistent with the restrictions only eighteen months after the by-law was passed by Council. With hindsight, the purchaser suggested that it would have been better to have had the offer rejected from the outset if it did not have a chance of success. It became clear to us that members of the community and many councillors believed that the acceptance of the proposal, despite its merits, would result in the appearance of Council reneging on a commitment to the local community.

## Recommendation

Based upon this experience, we are recommending that the City use caution when entering into a zoning agreement that would restrict the potential uses of City owned surplus property. This is particularly true when the decision is based upon the opinions of a small group of residents that may or may not represent the views of the community as a whole. Council should be made aware of the circumstances leading to the proposed Zoning Agreement and be clearly informed of the potential impact on market value and marketability that might arise from the restrictions. In the unusual case where Council has approved a Zoning Agreement on surplus property, we would suggest that the Administration not consider recommending acceptance of offers to purchase that do not comply with the Zoning Agreement during the period allowed for registration. We recommend that the Planning, Property and Development Department report to Council on policy options for dealing with the rezoning of city owned surplus property that take these suggestions into consideration.

## Planning, Property and Development Department Response

*The Planning, Property and Development Department believes that the Audit Report represents a solid understanding of the events, issues and other factors involving this particular transaction. The Department appreciates the fair and objective "Third-Party" opinion expressed by the Audit Department and is pleased with the observations and conclusions presented, which clearly indicate that the Administration carried out its duties and responsibilities in accordance with the City's process and policy.*

*Furthermore, the observations made by the Audit Department will be considered in a subsequent report being prepared by the Real Estate Division pertaining to policy and procedure related to the Department's surplus property sales program.*

## Acknowledgement

We appreciate the excellent cooperation received from the Planning, Property and Development management and staff in conducting our audit. We also want to thank representatives of the Keg Restaurant and Bar for taking the time to provide their perspective.

***Audit Team***

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August 2003

# Chronology of Significant Events

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|---|---|
| November 22, 2000 | Council passed By-Law 7719/2000 which called for the re-zoning of Parcel A at the northeast corner of Waverley Street and McGillivray Boulevard to M1-B and also specified that any future owner(s) enter into a zoning agreement with the City of Winnipeg to provide only restricted permitted uses as specified in the Standing Policy Committee's recommendations. |
| July 2002 | Parcel A was marketed by public invitation. Four submissions were received. |
| August 22, 2002 | The Planning, Property and Development Department recommended to the Standing Policy Committee on Property and Development that approval be given for the sale of Parcel A to G.R.R. Holdings Ltd., subject to obtaining any necessary variance and or amendment to the Zoning Agreement to permit the proposed development of the site. |
| September 12, 2002 | The Standing Policy Committee on Property and Development approved the conditional sale of Parcel A to G.R.R. Holdings Ltd. in accordance with the terms and conditions of the offer dated July 25, 2002. |
| October 30, 2002 | The Planning and Land Use Division of the Planning, Property & Development Department supported the application to amend the Zoning Agreement affecting Parcel A to include a restaurant and cocktail lounge in the list of permitted uses and allow the encroachment of surface parking and a restaurant patio. A new condition was also recommended requiring the restaurant be closed to the public between 2:00 am and 7:00 am daily. These recommendations were forwarded to the City Centre Community Committee. |
| November 12, 2002 | The City Centre Community Committee was provided with various exhibits and heard representations both in support of and in opposition to the proposed amendments to the Zoning Agreement. The Community Committee recommended that the amendment to the Zoning Agreement not be proceeded with and that the application for a conditional use permit be rejected. These recommendations were forwarded to The Standing Policy Committee on Property and Development for its consideration and recommendations. |
| December 3, 2002 | The Standing Policy Committee on Property and Development stated that they did not concur with the Community Committee and recommended that the Zoning Agreement Amendment be approved. |
| January 22, 2003 | Executive Policy Committee (EPC) did not concur with the recommendation of the Standing Policy Committee on Property and Development and recommended that the amendment to the Zoning Agreement not be proceeded with. |
| January 29, 2003 | Council agreed with EPC and rejected the application for amendment of the Zoning Agreement. |

## Audit Observations

Based upon discussions with Departmental staff and the prospective purchaser as well as our review of relevant by-laws, policies, processes, and documents, we determined whether compliance had been achieved. We also attempted to address the various concerns that had been raised by parties involved in or affected by the proposed transaction.

### *Was the appropriate decision-making process followed regarding the proposed sale? Was the process transparent?*

The Department recommended acceptance of the proposed sale, based upon their belief that it was a good deal for the City and different enough from prior offers to be acceptable to the Community. A comprehensive report was prepared to support their recommendations. The Standing Policy Committee on Property and Development recommended approval of the amendment to the zoning agreement, based upon the Administration's report. The Community Committee, after a public hearing at which residents confirmed their objections, recommended that it be rejected. Executive Policy Committee supported the Community Committee decision and, ultimately, Council agreed and rejected the proposed amendment. The current decision-making process was followed, the recommendations made were transparent, and all parties to the transaction exercised their appropriate roles.

### *Did the proposed sale comply with Plan Winnipeg 2020 Vision?*

*Plan Winnipeg 2020 Vision* states, "No public work, undertaking or development shall be inconsistent with a *Plan Winnipeg* by-law." *Plan Winnipeg's Policy Plate A regarding Land Use* identifies the northeast corner of Waverley Street and McGillivray Boulevard as an industrial area. With reference to the *Policy Plate A* land designations, *Plan Winnipeg* states that the City shall promote orderly development by "considering the industrial designation to signify areas of concentrated industrial uses and supportive infrastructure with the possible inclusion of compatible commercial uses." *Plan Winnipeg* also states that the City will accommodate new industrial areas by "allowing the possible introduction of commercial uses in industrial areas to act as a buffer between the industrial uses and adjacent uses or to service the needs of the local industrial population." *Zoning By-Law No. 6400/94 Part Eight – Industrial Districts*, identifies restaurants under 2,500 square feet in floor area as 'permitted' and restaurants over 2,500 square feet as 'conditional'.

The offer from G.R.R. Holdings Ltd. to use the property to construct and operate a Keg Steakhouse & Bar is consistent with *Plan Winnipeg* and also the general parameters of the M1-B designation. The restaurant and lounge could have serviced both the neighboring industrial and neighborhood areas. The Keg Steakhouse & Bar's existing locations on Pembina Highway and Portage Avenue are identified in *Plan Winnipeg 2020* as being in Neighborhood areas while a third location on Garry Street is classified as Downtown.

### *Why were changes in zoning initiated in advance of the public offering?*

From discussions with Planning, Property & Development personnel, the Department initiated the change in zoning to M1-B to both enhance Parcel A's marketability and to address the concerns expressed by Community Committee. The M1-B district provides for greater building setbacks and a higher standard of landscaping than the existing M2 zoning. Building construction within M1-B is also subject to Design Board approval, which ensures a

higher standard of development. Since M1-B provides for a broader range of uses than M2, a list of permitted uses was developed in consultation with Community Committee. With the Standing Policy Committee on Property and Development's recommendation, Council approved the Zoning Agreement that included the rezoning and list of permitted uses. It should be noted that this was the first time that the Department had recommended a restricted use agreement on City-owned surplus property. Since prior attempts to sell the property had been unsuccessful, it was hoped that this would clarify the intended use of the property and enhance marketability.

### *What were the impacts of instituting a restrictive zoning agreement?*

From the perspective of the Community and the Councillors involved in the process to develop the list of restrictive uses, the Zoning Agreement represented a firm commitment on the part of the City to accept only offers to purchase that would comply with the specific uses. The Council-approved By-Law reinforced this perception, although the agreement could not be registered at Land Titles until the sale of the property. When the Department and Standing Committee on Property Development proceeded with an offer that ignored this commitment, it was viewed as reneging on a promise. This was unacceptable to many members of Executive Policy Committee and Council. The Department and Standing Committee, however, believed that the agreement had been developed in reaction to previous offers that were objectionable to a group of citizens and felt that the new offer was significantly different enough that the Community might want to reconsider its objections. The Department and Standing Committee knew that this entailed a risk, but made the judgment that it was worth taking. In the end, the objections were sustained and the majority of Councillors supported the Community Committee's perspective.

### *Was the recommendation to accept an offer to purchase that required an amendment to a zoning agreement within the Department's mandate?*

From a review of the details of offers for both Parcel A and B of this property and discussions with both the Keg's and the Department's representatives, it is common practice to receive offers that involve intended uses that require amendments to the existing zoning. For instance, an offer was received regarding Parcel B, which would have involved rezoning the property for multi-family purposes. "Subject to" clauses are a normal part of Offers to Purchase in both the public and private sector and can involve anything from zoning or variances to funding or successfully locating an appropriate tenant. Furthermore, any purchaser could have successfully acquired the property and then filed an application to amend the Zoning Agreement.

In this case, the Department was well aware of the history of the property and of concerns previously raised by the Community Committee. The restaurant and lounge was significantly different from the 24-hour donut shop and car wash that first garnered opposition to development on this property. Administration believed that G.R.R. Holdings Ltd.'s offer was not only attractive financially for the City, but also that it fit in with the neighboring industrial and neighborhood areas. The offer was deemed worthy of consideration despite the need for the Zoning Agreement Amendment since it involved a well-known Winnipeg business and the aesthetics could be assured through the Design Board's involvement. The Real Estate Division made specific recommendations to the Standing Policy Committee on Property and Development with respect to this property and included their rationale for their

recommendations in their report. This is consistent with the Audit Department's *Real Estate Management Audit Phase II (March 2000)* recommendations that were intended to ensure that Councillors and the community are always provided with the best professional advice from the Administration. In this case, the Standing Policy Committee members supported the recommendation.

The City of Winnipeg could establish a policy whereby offers that are inconsistent with the existing zoning would be rejected immediately in all cases. There is a risk, however, that such a policy might limit the marketability of property and not allow the City of Winnipeg to be receptive to innovative ideas. The current process allows each offer to be evaluated on its own merit.

***Should the property have been re-marketed when the decision was made to recommend acceptance of an offer to purchase that required a zoning agreement amendment?***

The property was widely marketed through the public offering process. Winnipeg has a relatively small real estate community and any potential purchaser who was interested in this property for any purpose (including for another type of restaurant), had an equal opportunity to submit their offer in the public offering process. Concerns expressed about other restaurants possibly not submitting offers because of the existing zoning, therefore, do not appear to be valid. It would also appear unlikely that there was potential for a considerably higher offer to be received if the property were re-marketed with a restaurant as a permitted use. Discussions with the Department's Real Estate Division staff indicate that independent appraisals conducted in recent months suggest that G.R.R. Holdings Ltd.'s offer was in line with the property's estimated fair value.

***Was it appropriate for the Department and Standing Policy Committee on Property and Development to recommend acceptance of an offer to purchase that required an amendment to a zoning agreement approved by Council less than 2 years earlier?***

Given that the Department took the unusual step of applying to rezone City-owned surplus property, restricting the use of the property to those listed and that Council had approved these recommendations, it was a risk to anticipate that Council would change its direction in the foreseeable future. We believe that both the Department and the Standing Policy Committee underestimated the reaction from the Community in asking councillors to make a decision that could be perceived as reneging on a prior commitment. It is our opinion, therefore, that while both the Department and the Standing Policy Committee believed that they were acting in the best interests of the City, the decision to proceed was probably ill advised in the circumstances.

***Was the Community Committee decision representative of the local Community's interests? Was it a good decision?***

There is still some speculation on the part of individuals interviewed that the Community Committee's decision did not necessarily reflect the interests or views of the local community at large. There is also the concern that the deal might have been beneficial to the City from a financial perspective. While the meeting was advertised as required in the local newspaper, a fundamental flaw in the process is that it is more likely that residents who have

strong objections to a proposal will take the time to attend the meeting. While the Community Committee process is beyond the scope of this review, it may be advisable for the City to consider ways to ensure that the public consultation process encourages greater participation in the process to ensure that public input represents the Community's opinions. We noted, in this case, that no residents attended to support the proposal, and the Keg was not encouraged to take a proactive approach of advising residents of the details of the proposed development prior to the meeting, although they were willing to do this. We believe that this may have influenced the outcome.

### *Can the Standing Policy Committee and Executive Policy Committee make recommendations that contradict the Community Committee's recommendations?*

From discussions with Planning, Property & Development Department personnel, recommendations made by Standing Policy Committee and Executive Policy Committee have contradicted the Community Committee's recommendations on previous occasions. Although this rarely occurs, each committee has an opportunity to make its own recommendations for review and decision by Council. This ensures that, while the Community Committee is focused on local interests, the Standing Policy Committee can represent the interests of the City as a whole. Executive Policy Committee provides a "sober second thought" to the process and Council ultimately makes a decision with the benefit of all perspectives. We believe that this dichotomy of views and hierarchy of responsibilities creates a healthy tension in the system and that the "checks and balances", while adding some time and complexity to the process, help to ensure fairness and sound decisions.

Throughout this process, the Administration and Standing Policy Committee were well aware that their recommendations would be controversial. They believed that G.R.R. Holdings Ltd.'s proposal was significantly different from the donut shop proposal which resulted in By-Law 7719/2000 with its list of restricted permitted uses. The original objections had also been limited to a very small group of residents. Rejecting the proposal outright, since it was not on this list of restricted permitted uses, would close the door on development that may have been acceptable to the Community and could also be of financial benefit to the City through the sale proceeds and well into the future, from tax revenue.

It is important to note that G.R.R. Holdings Ltd. and its owner, real estate agent and legal council were knowledgeable about the zoning amendment process and were aware of the risk that their application might be rejected. There is evidence of this in their decision not to acquire the property and then seek the zoning amendment. There is further evidence of their knowledge of the risk of rejection in their unwillingness to incur the costs of an environmental site assessment until the zoning and land use issues were resolved.

### *When is it appropriate to approve a zoning agreement for City-owned surplus land?*

From our discussions with the purchaser, it was clear that they understood that there was a chance that they would be unsuccessful in obtaining an amendment to the Zoning Agreement to facilitate the proposed development of a Keg restaurant. Staff advised us that this was the first time that the City had approved a Zoning Agreement for a property that it still owned. A condition of the sale was that the Purchaser was to enter into this Zoning Agreement with the

City once title to the lands vested in the name of the Purchaser. The terms and conditions of the Zoning Agreement approved by Council (Zoning By-law 7719/2000) was current City policy and would be enacted and come into effect upon its registration by way of caveat as a first charge against the Purchaser's title to the lands

When it became evident that the proposed Zoning Agreement Amendment to permit the development of a Keg restaurant would not be approved by Council, the Purchaser's solicitor presented an alternative argument, which suggested the cancelling of the Zoning Agreement. In doing so, the property would revert to its original zoning designations (MP-2 and M2) which would possibly facilitate his Client's proposed development.

We believe that the City would be prudent to establish a policy and criteria for when it is appropriate to restrict the potential uses of City-owned surplus property through a zoning agreement. Zoning agreements should only be used for such restrictions when they are intended to represent a firm commitment and no variation from that commitment is anticipated in the foreseeable future. Council should be fully informed about the basis for the agreement, such as the extent of public consultation, and the potential negative effects of placing such restrictions including reduced market value or marketability. In the event that Council chooses to provide a restrictive zoning agreement, we believe that the Administration should not recommend the sale of the related real property for developments that require an amendment to that zoning agreement.

### *Can the development process be streamlined?*

This matter took seven months to work its way through the various committees and City Council. Particularly in view of the outcome, this timeframe seems excessive. While this audit was limited to a review of a particular transaction, we were made aware that the City of Winnipeg is currently exploring means of reforming the development process. This endeavour is consistent with *Plan Winnipeg*, which states "The City shall facilitate opportunities for business growth in Winnipeg by assisting business in meeting government requirements associated with new development and expansion, including streamlining procedures and regulations within the civic administration." This case indicates that there are opportunities to develop a more streamlined process that could result in decisions being made in a timelier manner. This process has begun with the Downtown area through the drafting of a new Downtown Winnipeg Zoning By-Law. In addition, a planning commission is being contemplated which would consolidate the development approval process including not only zoning and variances issues, but also issues such as heritage status and traffic flow. If the above approach is successful, it will be implemented throughout the City of Winnipeg. We strongly endorse the direction to explore opportunities to streamline the process.

# Appendix A: Details of the Transactions

## Proposed Sale of Property

### *Creation of Parcels and Original Zoning*

The property on the northeast corner of Waverley Street and McGillivray Boulevard previously formed part of the rights-of-way. The property was deemed surplus to the Public Works Department's requirements. The Planning, Property and Development Department received several unsolicited offers to acquire the property. Due to this interest in the property, City Council declared the property surplus to the City's requirements and made same available for sale. When, title to the land vested in the name of the City, the property took on the industrial zoning districts of the neighboring properties, which were MP-2 to the North and M2 to the South. Both parcels were sold in 1999 but the purchaser was unable to obtain rezoning of the site to a Commercial designation for retail purposes. Assiniboia Community Committee rejected the rezoning application at the time on the basis that, among other things, a proposed donut shop and car wash would negatively impact the neighboring residential environment of Lindenwoods.

### *Rezoning to M1-B Industrial District*

In order to make this property more marketable, in 2000 the Administration proposed to rezone the property for uses that were consistent with the environment of Fort Garry Industrial Park and also addressed Assiniboia Community Committee's concerns. The Area Planner attended a meeting of the Lindenwoods Community Association on May 3, 2000 and the Association's Annual General Meeting on June 26, 2000. The Administration proposed that the land be rezoned to M1-B Industrial District. The district provided for offices as a principal use, greater building setbacks and a higher standard of landscaping than the existing zoning. Building construction within M1-B was also subject to Design Board approval ensuring a higher standard of development. On September 12, 2000, the Assiniboia Community Committee recommended that the proposed rezoning be approved. On October 24, 2000, the Standing Policy Committee on Property and Development concurred with Community Committee and recommended the rezoning to M1-B and also specified that any future owner(s) enter into a zoning agreement with the City of Winnipeg to provide only restricted permitted uses as specified in the recommendations. Council adopted these recommendations on November 22, 2000 and passed the related By-law 7719/2000. Since such By-Laws are agreements between the City of Winnipeg and the purchaser, any purchaser of this property would be required to enter into a zoning agreement with the City at which time the agreement would be registered by way of caveat as a first charge against the subject land at the Winnipeg Land Titles Office and the said By-law would come into effect. This caveat had to be registered within 24 months of the adoption of the By-Law by Council. Beyond this timeframe, the matter would be concluded and the original MP-2 and M2 zoning would remain in effect unless Council extended the 24-month period.

In 2000 and 2001, both parcels were again sold but the transactions were not concluded, as purchasers were unable to obtain suitable tenants.

### *Public Offering*

Parcels A and B identified on Misc. Plan No. 8091/13 were marketed by way of a public invitation for offers in July 2002. Offers were accepted until 12:00 noon, Friday, July 26, 2002. By way of a report dated September 6, 2002, the Planning, Property and Development Department recommended to The Standing Policy Committee on Property and Development that approval be given for the sale of Parcel A to G.R.R. Holdings Ltd. for the price of $600,000. This approval would be subject to G.R.R. Holdings Ltd. applying on or before September 30, 2002 at the Zoning and Permits Branch for any necessary variance and/or approvals and amendments(s) to the Zoning Agreement By-Law No. 7719/2000 to permit the proposed development of the site, failing which the Offer would be deemed null and void and deposit monies would be returned by the City without interest or deduction.

The recommendation was made on the following basis:

a. The price offered was approximately $100,000 higher than the next best offer and also $100,000 over the advertised price.
b. The District Planner provided the following comments:
    - The Keg's recent projects were very attractive in terms of design and landscaping. The Division (Real Estate) reviewed the proposed site plan and felt the development would be an attractive addition to the corner.
    - The restaurant would not be 24- hour operation. This was a concern for area residents in relation to the donut shop.
    - The restaurant would provide a neighbourhood service for the residents of Linden Woods and employees of the adjacent industrial areas.
    - There would be no approach from northbound Waverley shown on the site plan. This would be desirable from Public Works perspective.
c. It was anticipated that the proposed development would be aesthetically attractive on the site and create a sizeable tax base.
d. The terms and conditions of the Offer to Purchase were in accordance with the City's standard terms and conditions except for Clause 11, which made the offer conditional upon the zoning agreement being amended to permit the operation of one full service restaurant and lounge with outdoor patio.
e. The Offer to Purchase for the purpose of a Keg restaurant required both an amendment to the Zoning Agreement as well as conditional use approval. This would ensure that the development on the site was acceptable to the members of the Community Committee. The M1-B Industrial District zoning designation required Design Board Approval for any project that goes on the site. The layout of the site provided for extensive landscaping. Access to the site was restricted to Buffalo Place.

On September 12, 2002, the Standing Policy Committee on Property and Development recommended the sale of Parcel A to G.R.R. Holdings Ltd. in accordance with the terms and conditions of the Offer to Purchase dated July 25, 2002. Since G.R.R. Holdings Ltd. would not be in a position to meet the November 22, 2002 deadline to get Zoning By-law No. 7719/2000 registered (24 months from November 22, 2000), an extension of time was recommended by the Department and Standing Policy Committee on Property and Development. On September 25, 2002, Council approved this extension of 12 additional months to November 22, 2003.

## Proposed Amendment of the Zoning Agreement to Accommodate a Restaurant and Lounge

G.R.R. Holdings Ltd. filed an application to amend the Zoning Agreement affecting Parcel A. The proposed amendments included adding a Restaurant and Cocktail Lounge to the list of permitted uses and allowing the encroachment of surface parking and a restaurant patio by reducing the minimum yards from 20 feet to 3 feet on the east side of Waverley Street. The Development Management Branch supported this application for the following reasons:

- The proposed restaurant and cocktail lounge uses were compatible with the adjacent industrial park and the residential neighborhood of Linden Woods on the west side of Waverley Street.
- The site was large enough to provide parking well in excess of the by-law requirements and the adjacent street system was capable of accommodating traffic from the proposed development.
- The site would be developed to a high standard in terms of building design and landscaping and would contribute to the appearance of the area.
- The Keg restaurant would not be a 24-hour operation.
- The proposed use would provide a neighborhood service for people living and working in the area.
- The encroachment into the 20-foot yard against Waverley only involved surface parking and a portion of the restaurant patio.
- The Zoning Agreement would remain in force to prevent the development of the balance of the site with uses that may be incompatible with the industrial or residential character of the area.

On October 30, 2002, the Development Management Branch's recommendations were forwarded to the City Centre Community Committee. These recommendations included:

- Adding one only restaurant with a maximum floor area of 9,000 square feet and a cocktail lounge to the list of permitted uses. (This recommendation would also require Conditional Use approval by the Board of Adjustment, since Industrial District M1-B only permits restaurants that have a maximum floor area of 2,500 sq. ft.)
- Amending the minimum yards requirements against the east side of Waverley Street from 20 feet to three (3) feet.
- Adding a new condition that the restaurant on the site be closed to the public between the hours of 2:00am and 7:00 am daily.

Advertising of the November 12, 2002 City Centre Community Committee Meeting regarding the proposed amendments to the Zoning Agreement was made in compliance with the 14 day standardized notice/posting period.

### *Community Committee Recommendation*

On November 12, 2002, the City Centre Community Committee was provided with various exhibits and heard representations both in support of and in opposition to the proposed amendments to the Zoning Agreement. Neighboring residents of Lindenwoods expressed concerns about increased traffic volumes and noise, noise from voices and music on the patio, odors from cooking and exhaust fumes and flashing lights from vehicles entering and leaving the parking lot. They believed that their ability to enjoy their backyards and decks would be adversely affected and that permitting a restaurant to operate in the area would create a precedent for others to locate there. The Community Committee recommended that the amendment to the Zoning Agreement not be proceeded with and the application for a Conditional Use to permit a restaurant having a floor area of 8,500 square feet and a cocktail lounge be rejected. Community Committee can only recommend approval or rejection of such proposed amendments and therefore the proposal was forwarded to the Standing Policy Committee on Property and Development for its consideration and recommendations.

The terms and conditions of G.R.R. Holdings Ltd.'s Offer to Purchase of Parcel A called for the Purchaser to satisfy or waive conditions on due diligence on or before December 12, 2002. On November 21, 2002, the President of G.R.R. Holdings Ltd. requested a ninety-day extension to satisfy the conditions of Clause 9 and 11 of the Offer to Purchase. This would allow G.R.R. Holdings Ltd. until March 12, 2003 to satisfy the conditions. These conditions outlined Environmental Site Assessment issues and Zoning issues respectively. The Purchaser had elected not to perform an Environmental Site Assessment on the property until such time as Council made a final decision in regards to the proposed Zoning Agreement Amendment. The Department responded by recommending a sixty-day extension provided Council approved the Zoning Agreement Amendment applied for by G.R.R. Holdings Ltd. The recommended Due Diligence date would be amended from December 12, 2002 to January 12, 2003, while the closing date would be amended from January 12, 2003 to February 12, 2003 provided the Zoning Agreement Amendment was approved. The President of G.R.R. Holdings Ltd. objected to these dates citing concerns about the adequacy of time Council was provided with to consider the Zoning Agreement Amendment request. He also restated his position that adequate time was needed to complete the environmental site assessment and that it was not reasonable to incur such costs until the zoning and land use issues were resolved.

### *Standing Policy Committee on Property and Development Recommendation*

On December 3, 2002, the Standing Policy Committee on Property and Development stated that they did not concur with the recommendation of the City Centre Community Committee and recommended that the Zoning Agreement Amendment be approved. The Committee also recommended approval of the extension of the due diligence date to February 12, 2003 and the closing date to March 12, 2003 as requested by G.R.R. Holdings Ltd. These extensions were subject to Council approving the Zoning Agreement Amendment.

### *Executive Policy Recommendation*

On December 4, 2002, Executive Policy Committee laid over consideration of the Zoning Agreement Amendment until its January 22, 2003 meeting. On January 22, 2003, Executive Policy Committee (EPC) did not concur with the recommendation of the Standing Policy

Committee on Property and Development. EPC did concur with the recommendation of City Centre Community Committee and recommended that the proposed Zoning Agreement Amendment not be proceeded with.

### *Council Decision*

On January 29, 2003, Council agreed with EPC and did not concur with the recommendation of the Standing Policy Committee on Property and Development to amend the Zoning Agreement affecting the property at the northeast corner of Waverley Street and McGillivray Boulevard.

The Due Diligence period therefore expired on December 12, 2002 and the scheduled Date of Closing remained January 12, 2003. The offer was therefore deemed null and void and the transaction was not concluded. The Real Estate Division returned G.R.R. Holdings Ltd.'s deposit on February 7, 2003.

# Appendix B: Composition and Roles of Governing Bodies

### Community Committees

The City of Winnipeg has five Community Committees comprised of the Councillors that represent the wards in each of the communities. As Councillors, these individuals are concerned with decisions affecting the whole city. As members of Community Committees, their concern is with local community issues. Community Committee public hearings are conducted to hear the pros and cons of proposed variances, rezoning, zoning agreement amendments, subdivisions with new streets and Secondary Plans/Amendments. In October 2002, the ward boundaries changed and Lindenwoods became part of River Heights. This change resulted in Lindenwoods changing from being within Assiniboia Community Committee's boundaries to being within City Centre's Community Committee boundaries.

### Board of Adjustment

The Board of Adjustment is comprised of five citizen members who are appointed for three-year terms. The board holds public hearings to consider applications for variances and conditional uses in connection with various zoning by-laws of the City of Winnipeg. The Board reports to Council on any proposed secondary plan by-law or zoning bylaw referred to it by Council for that purpose, and gives notice of its report and recommendations and the meeting where Council is to consider its report, in accordance with The City of Winnipeg Charter.

### Standing Policy Committee on Property and Development

The Standing Policy Committee on Property and Development is composed of a Chairperson appointed by the Mayor and three other members elected by Council. The Committee provides policy advice to Council on asset management matters including land development, development control, planning and land use. Some of the Committee's responsibilities include:

- Considering and reporting to Council through the Executive Policy Committee on all matters respecting Planning and Development;
- Considering and reporting to Council through the Executive Policy Committee on all matters respecting the approval of the terms and conditions of the leasing, selling or purchasing of or dealing with land within existing guidelines established by Council or as may be established from time to time;
- Considering matters referred to it by Council, the Executive Policy Committee, or the Chief Administrative Officer;
- Hearing and deciding appeals from conditional use orders made by the Director of Planning, Property and Development, Community Committees, or the Board of Adjustment and variance orders made by the Director of Planning, Property and Development, Community Committees or the Board of Adjustment.

**Executive Policy Committee (EPC)**

Executive Policy Committee of Council is comprised of the mayor, the chairpersons of the standing committees and any other member of Council appointed by the mayor. The number of members must be less than 50% of the total number of members of Council.

Among other duties, the Executive Policy Committee of Council must:

- formulate and present recommendations to Council respecting policies, plans, budgets, by-laws and other matters that affect the city as a whole;
- ensure the implementation of policies adopted by Council;
- except as otherwise determined by Council, co-ordinate the work of committees of Council; and
- except as otherwise determined by Council, receive the reports of other committees of Council and forward them to Council with its own recommendations.

**Council**

An elected 15 member City Council plus the Mayor, serves as the legislative branch for the City of Winnipeg. Some of the final decisions that cannot be delegated by Council include any matter requiring the enactment of a by-law and declaration of land as being surplus to the City's requirements. Notwithstanding the delegation of any authority or power under this by-law to Executive Policy Committee or a Standing Policy Committee, Council may, at its discretion, review or deal with any matter that falls within the mandate of Executive Policy Committee or a Standing Policy Committee.