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Manitoba

The Municipal Board

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September 15, 2022

Marc Lemoine, City Clerk
City Clerk's Department
The City of Winnipeg
510 Main Street
Winnipeg, MB R3B 1B9

Dear Marc Lemoine:

RE: REFERRAL OF BY-LAW NO. 36/2022
WITH RESPECT TO 4025 ROBLIN BOULEVARD
THE CITY OF WINNIPEG
FILE NO(S). 22D2A-0002

As per Section 236.1(8)(c) of *The City of Winnipeg Charter*, and as per your letter to the Municipal Board dated March 29, 2022, we now submit a copy of the Board's Report and Recommendation Number D-22-003 with respect to the above mentioned matter.

Yours truly,

E. Wills

Erin Wills
Secretary

EW/amn

THE MUNICIPAL BOARD OF MANITOBA

REPORT AND RECOMMENDATION

REPORT DATE: September 15, 2022

Report No. D-22-003
File No. 22D2A-0002

MATTER:	Zoning By-law Referral *The City of Winnipeg Charter* Section 236.1(7)
LOCAL AUTHORITY	City of Winnipeg
BY-LAW NO:	36/2022
HEARING DATE:	June 28, 2022 July 4, 2022 July 18, 2022
PANEL:	Diane Stasiuk, Vice Chair Margaret Bonekamp, Member George Orle, Q. C., Member

PARTIES AND APPEARANCES:

for the City of Winnipeg
Kalyn Bomback, Legal Counsel, City of Winnipeg Legal Services
Ashley Pledger, Legal Counsel, City of Winnipeg Legal Services
Michael Robinson, Principal Planner/Development Applications
Cindy Desjardine, Traffic Assessment Engineer/Transportation
Martha Barwinsky, City Forester/Parks Forestry
Daniel Trenchard, Land Development Engineer/Planning, Property and Development

for the Applicant (Developer)
Carl Dalton, Legal Counsel, Tapper Cuddy LLP
Daniel Serhal, Serhal Consulting Inc. and Roblin Premiere Developments
Stephen Chapman, MORR Transportation Consulting Ltd.

for Winnipeg Condominium Corporation No. 389
Jennifer S. Hanson, Legal Counsel, Thompson Dorfman Sweatman LLP
Andrew Warkentin, Articling Student, Thompson Dorfman Sweatman LLP

for the Owner, Assiniboine Links-Phase II Inc. (formerly The Grand Lodge of the Independent Order of Odd Fellows)
Tomas Masi, Legal Counsel, D'Arcy & Deacon LLP
Al Nixon

Presenters (oral/written presentations)

Brian Scott
Jackie Drever
Carl Dalton
Terry Pettitt
Robert Delaney
Brent Horrill, also presented for:
- Don Lussier
- Barbara Pettit
- Mitch Njegovan
- Brian Scott
- Lynn Horrill
- Dawn Marie Johnston
- Peter Head
- Richard Best
- Patricia Gould
- Roberta Burns

Linda Delaney
Maxine Hasselviis
Cindy Tugwell
Allan Bischoff
Otto Gould
Kathryn Gibbings, also presented for:
- Ryan Sanders
- Brian Sanders

Monica Dubois, also presented for:
- Donald Fraser
- Dustin Fraser
- David Fraser

Linda Baylis
Cameron Drever
Robert Arthur

INTRODUCTION

The City of Winnipeg Council (the "Council") has given First Reading to By-law No. 36/2022 (the "Proposed By-law") which proposes to amend City of Winnipeg Zoning By-law No. 200/2006 (the "Zoning By-law") to re-zone land located at 4025 Roblin Boulevard (the "4025 Roblin") from "RMF-S" Residential Multi-Family (Small) (the "RMF-S") to "RMF-L" Residential Multi-Family (Large) (the "RMF-L") zoning district (the "Proposed Re-zoning").

BACKGROUND

As part of Development Application No. DAZ 212/21 (the "Development Application") to the City of Winnipeg (the "City"), the Applicant Serhal Consulting Inc. and Developer Roblin Premiere Developments (the "Developer"), brought a re-zoning application for Lot 1 Plan 35387 WLTO in RL 40 Parish of St. Charles, also known as 4025 Roblin (the

"Land" or "Lot 1"), for the construction of a new multi-family development (the "Proposed Development"). The Land is owned by Assiniboine Links-Phase II Inc. (the "Owner"), formerly The Grand Lodge of the Independent Order of Odd Fellows (the "IOOF").

The Land is located at the northwest corner of Roblin Boulevard (the "Roblin") and the William R. Clement Parkway (the "Parkway"). It is in the Ridgedale Neighborhood of the Charleswood – Tuxedo – Westwood Ward. The Land has a total area of approximately 4.5 acres, and contains a building known as Odd Fellows, a 3-storey multi-family residential building constructed in the 1920s. The Land is located within the Areas of Stability – Recent Communities policy area of the *Complete Communities Direction Strategy* Urban Structure Map.

The City's Public Service prepared an Administrative Report with a number of recommendations for the public hearing before the Assiniboia Community Committee (the "ACC"). The recommendations included the following:

- That the Zoning By-law be amended to re-zone the Land to RMF-L;
- That the Owner enter into a zoning agreement with the City which contemplated among other requirements, the following:
    - Any building shall be limited to a maximum height of 105 feet;
    - That no structures be permitted within 65 feet of the west property line.
    - That Caveat 2571526/1 (the "Caveat 257") be discharged as it affects Lot 1.

The ACC approved the Proposed Re-zoning, subject to a number of conditions, including the following:

- Replace the condition regarding building heights such that building heights be limited to a maximum height of 79 feet;
- Keep the condition that no structures be permitted within 65 feet of the west of the property line;
- Add the condition that no vehicular traffic shall be permitted to the Land from McQuaker Drive (the "McQuaker");
- Add the condition that no buildings or structures (including vehicle access and ramps) shall be permitted within 98 feet of the north property line.

The matter proceeded to the Standing Policy Committee on Property and Development, Heritage and Downton Development (the "SPC"). Due to a tie vote, the matter was submitted to the Executive Policy Committee (the "EPC") and Council without a recommendation. EPC concurred with the recommendations of ACC. On February 27, 2022, Council concurred with the recommendations of EPC and approved the Proposed Re-zoning.

The City received sufficient objections to the First Reading of the Proposed By-law and, on or about March 29, 2022, the matter was referred to The Municipal Board (the "Board") in accordance with Section 236.1(7) of *The City of Winnipeg Charter* (the "Charter"). The Board held a public hearing on June 28, July 4 and July 18, 2022 (the

'Hearing"). The Board now submits this Report and Recommendation (the "Report") to Council under Section 236.1(8)(c) of the Charter.

ISSUE

The purpose of this Report is to assist the City in deciding whether to proceed to pass the Proposed By-law as is, reject the Proposed By-law, or pass the Proposed By-law subject to any alterations, terms or conditions as may be recommended by the Board.

LEGISLATION

The City of Winnipeg Charter

Notice of first reading: sufficient objections

236.1(6) As soon as practicable after a proposed zoning by-law is given first reading under subclause (5)(b)(i), the city must give notice by ordinary mail to every person who made submissions at the hearing conducted by the designated committee of council respecting the proposed by-law, stating that

a) council has given first reading to the proposed by-law; and

b) any person who made submissions at the hearing respecting the proposed by-law may file an objection, with stated reasons, with the city within 14 days after the day the notice is given.

Referral to Municipal Board

236.1(7) If the city receives sufficient objections within 14 days after the day the notice is given, the city must, before council gives second reading to the proposed by-law, refer the proposed by-law to The Municipal Board.

Hearing by Municipal Board

236.1(8) If a proposed zoning by-law is referred to The Municipal Board, the board must

a) conduct a hearing respecting the proposed by-law within 120 days after the by-law being referred to it;
b) at least 14 days before the hearing, give notice of a hearing respecting the proposed by-law in accordance with clause 230(1)(a) (hearing by Municipal Board), which applies, with necessary changes, and by publishing a notice of the hearing on a website available to the public; and
c) within 60 days after conducting the hearing, submit a report, with recommendations, to council in respect of the proposed by-law.

Restrictions on adoption of by-law

236.1(9) Council must not pass a proposed zoning by-law that has been referred to The Municipal Board unless the proposed by-law conforms to the recommendations that the board has made in its report to council in respect of the by-law.

PRELIMINARY ISSUE

Prior to the commencement of the Hearing, Legal Counsel for Winnipeg Condominium Corporation No. 389 (the "WCC") sought an adjournment. It was submitted that WCC had not received the Developer's extensive materials until the eve of the Hearing and required more time to conduct a proper review. The City's Legal Counsel did not take a position, deferring the matter to the Board. The Developer opposed the adjournment request, citing delay concerns and that no new materials had been filed. The Developer noted that the materials filed with the Board were the same materials that were relied upon for the City's public hearing that WCC would have had prior access to.

After hearing all of the submissions, the Board noted that there appeared to have been a breakdown among participants in the filing and service of their materials and with the City's obligation to make those materials available to all. The Board did not grant the adjournment, it being satisfied that no new materials had been filed and that, due to the timing of presentations, WCC would have ample opportunity to review the materials in preparation for any cross-examinations of the Developer and its witnesses.

PRESENTATIONS

City of Winnipeg

Michael Robinson, Principal Planner with the City's Planning, Property & Development Department (the "PPD"), presented the following:

- Provided overview of the pre-application and application process. There were three conceptual plans initially proposed by the Developer.
- Option 2 became the preferred option that proposed the construction of one new multi-family building closer to the south and east property lines. The other two remaining options were not preferred as they would result in buildings along the west property line requiring the removal of trees along the west property line.
- The proposed building has an "L" shaped footprint.
- The initial proposal was for the portion of the building nearest the Parkway to have a maximum height of 10 storeys (approx.104 feet) and the portion fronting onto Roblin to be 8 storeys in height (approx. 84 feet).
- The Proposed Development is for a total of 229 units. The new multi-family building comprising 199 units plus the existing 30 dwelling units contained in the Odd Fellows building.
- Vehicular access to the Proposed Development is to be taken from a bi-directional approach from Roblin.

- 344 parking stalls are proposed, including 8 barrier free stalls, 34 visitor stalls and 42 secure bicycle parking stalls. 139 stalls are to be located outdoor and 205 stalls are to be located indoor.
- The proposed parking meets the 1.5 stall per unit criteria required under the Zoning By-law.
- The Urban Planning Division of PPD concluded that moderate density development, in line with the proposed density, is consistent with RMF-Medium (the "RMF-M") zoning district and could generally be supported.
- The land to the North of the subject Land is bare land condominium units zoned RMF-S district; the land to the South is passive green space zoned "R1-L" Residential Single Family (Large); then Roblin, then passive green space zoned "PR1" Parks and Recreation (Neighborhood District); the land to the East is passive greenspace zoned "A" Agricultural district then the Parkway; the land to the West is McQuaker, then "R1-L" Residential Single-Family (Large).
- The Proposed Development was reviewed against policies within the *OurWinnipeg Plan* (the "OurWinnipeg"), *Complete Communities Direction Strategy for Areas of Stability, Recent Communities* (the "Complete Communities"), and the *Climate Change Action Plan* (the "Climate Change Plan").
- Key policies applicable to the Proposed Development include, among other policies, the following:

OurWinnipeg:

- *01-1c Key Directions for Specific City Area's – Areas of Stability*
  Enhance the quality, diversity, completeness and sustainability of stable neighborhoods and expand housing options for Winnipeg's changing population.

- *Section 01, Direction 3:*
  Promote Compact Urban Form and Manage the Extension of Municipal Services for New Growth.

- *01-4 Housing Direction 1*
  Support diverse housing options in each neighborhood or neighborhood cluster throughout the city.

- *Section 03-1, Direction 9*
  Collaborate with developers, community organizations and other partners to foster an age-friendly and accessible urban environment. With guidance from Complete Communities, encourage age-friendly and accessible new development in existing neighborhoods.

- *City Building – Create Complete Communities – Our communities need to support various lifestyles, providing a range of options for living, working and playing. The daily necessities of life should be within reach, with options for accessing services, amenities and resources like grocery stores, banks and restaurants, together with community centres, schools and day care centres. These complete communities should provide a range of housing options to accommodate various incomes, household types, abilities and stages of life (p.25).*

- *Connect and Expand our Sustainable Transportation and Infrastructure Networks Ensuring mobility for people of all ages and abilities and for goods and services is an important part of improving our social, environmental and economic sustainability. Options for getting around are important to remaining livable, desirable and affordable in the future – options like enhanced public transit and active transportation routes that support walking, cycling and other human powered forms of transportation (p.25).*

Complete Communities Areas of Stability - Recent Communities:

- *Encourage intensification to occur at centres and along corridors.*
- *Support low to moderate change in low-density neighborhoods through development and redevelopment that is complimentary to the existing character and built form.*
- *Promote the form of buildings and spaces that are sensitive to the community context and address the transition between new and existing developments.*
- *Support Complete Communities by ensuring diverse and high-quality housing stock.*
- *In order to meet the full life-cycle of housing needs within the Community, promote a mix of housing type and tenure, such as duplexes, low rise apartments, secondary suites, semi-detached homes, townhouses.*

Climate Change Action Plan:

- *Strategic Opportunity #3 Advancing Sustainable Transportation – Increasing Mobility Options and Shift to Zero Emission Vehicles:*
  3.1 Increase Use and Efficiency of Public Transit Systems
  3.2 Increase the Density of Urban Development Along Key Transit Corridors

- *Strategic Opportunity #4 Facilitate Compact, Complete Development and Increase Density:*
  4.1 Increase Strategic Infill Development that Provides Access to and Capitalizes on Existing and Planned Corridors with Frequent Transit Service
  4.3 Pursue Transit-Oriented Development

- The Land is not at a centre or along a corridor.
- The Proposed Development is compliant with the City's plans, policies and strategies.
- Caveat 257 only affects the Lot 1 and not Lot 2, Plan 35387 which is the property to the north of the subject Land (the "Lot 2").
- The process for removing Caveat 257 is through the re-zoning application process. Caveat 257 would be discharged against the Land with a new caveat to be registered.
- The site is 4.5 acres which is significantly larger than typical lot sizes in the neighborhood. The large lot size accommodates larger buildings with significant setbacks, while preserving natural features on the site.
- The total number of units permitted on site is 491 but the proposed number of units is 229.
- The Proposed Re-zoning was made for RMF-L zoning district, but the proposed density is in line with the RMF-M zoning district.
- For 229 units on a 196,600 square foot lot, the density is 858 square feet per dwelling unit. This density falls well below the permitted density under RMF-L zoning district of 400 square feet per dwelling unit.
- The proposed density is equal to or less than other recently approved multi-unit

residential buildings in the surrounding area. The densities for 363 Oakdale (the "Oakdale"), 170 Hendon Avenue and 3901 Grant Avenue have a lot area per dwelling unit of 873, 333, and 645, respectively.

- Larger zoning was considered to allow for a smaller building footprint on site and, hence, a taller building height than would be permitted under RMF-M zoning.
- The smaller building footprint allows room for greater building setbacks to adjacent properties and preservation of natural space.
- Maintaining trees and significant setbacks help mitigate building mass in term of proximity and sightlines.
- A no build zone area of .75 acres is to be maintained along the west of the property for established trees and shrubs.
- Building setbacks from the properties to the west on McQuaker and a 45-degree angular plane to the condominiums to the north, together with maintaining trees and landscaping, help mitigate the effects of a larger scale development.
- Sun/Shadow studies concluded that minimal shadowing occurred toward residents on McQuaker and the condominiums to the north, with 5 hours of uninterrupted sunlight on September 21 and March 21 per the City's Sun Shadow Study guidelines.
- The site is located along two arterial roadways, Roblin and the Parkway.
- The site is close to a planned rapid transit line with stops to be located at Roblin and the Parkway. Higher density development in proximity to high frequency and rapid transit is encouraged per the Climate Change Plan.
- PPD recommended, among other matters, the Proposed Re-zoning and that: the Owner enter into a zoning agreement with the City limiting maximum building height to 105 feet; no structures be permitted within 65 feet of the west property line; and that Caveat 257 be discharged as it affects the Land.
- The ACC approved PPD's recommendations, subject to replacing the maximum building height to 79 feet; adding the condition that no vehicular traffic shall be permitted to the Land from McQuaker; and adding the condition that no buildings or structures (including vehicle access and ramps) shall be permitted within 98 feet of the north property line.
- At ACC, 140 registered in opposition to the re-zoning application. 10 people, including the Developer, registered in support.
- The matter proceeded to SPC and then to the EPC who concurred in the recommendations of ACC.
- Council concurred with the recommendations of EPC and approved the Proposed Re-zoning.
- The sign for the City's public hearing was posted on McQuaker which is the only street with a front yard to the property.
- The sign was inspected by the City and a certificate was issued. Charter requirements were met.
- The Applicant had the option to add additional signage but was not required to do so.
- The City's new planning policies *OurWinnipeg 2045 Development Plan* (the "OurWinnipeg 2045") and *Complete Communities 2.0* did not come into force until May, 2022. PPD evaluated the Proposed Development with the policies in force at the time the Development Application was made.
- Under the new policies, the Proposed Development would be in an "Established

Neighborhood" in "Recent Communities".

- Even if the new policies were in force at the time the Development Application was made, the Proposed Development would be compliant with the new policies and that a 5-8 storey building would be permitted.
- The City's planning policies speak to future growth, not past trends, which may mean greater densities and taller buildings than what has been seen in the past.
- The City has density targets of at least 50% of all new dwelling units in the existing built up areas of the City.
- Unaware of how many RMF-L and RMF-M density lots are available to meet market demand. The City does not look at market demand. That would be examined by the Developer.
- A heritage designation to the Odd Fellows building would not change PPD's recommendations. It is a separate issue and process.
- Unaware of any additional setback requirements for a heritage building.
- Emergency access during and after construction would be addressed during the plan approval process.
- There is no condition specifying that the Proposed Development must be a 55 plus residence.

Cindy Desjardine, Traffic Assessment Engineer with the City of Winnipeg Transportation, made the following submissions:

- The Applicant hired a transportation consulting firm MORR Transportation Consulting to conduct a Transportation Impact Study (the "MORR Study").
- The MORR Study is based on two scenarios establishing 250 dwelling units being developed by 2025, and an additional 50 units being developed by 2028.
- The Proposed Development of 229 units is lower than what the traffic analysis was based on.
- The Proposed Development is forecast to generate 1,360 trips per weekday in 2025 for the 250 unit scenario, and 1,632 trips per weekday in 2028 for the 300 unit scenario.
- The Proposed Development is expected to increase traffic volumes on Roblin by 8% in 2025 and by 10% in 2028.
- The proposed 229 units with tenants 55+ in age could have a lesser impact on traffic volumes.
- Public Works reviewed the findings and recommended that access to the site be granted via McQuaker in addition to the Roblin in order to reduce the need for westbound U-turn movements at Oakdale.
- If access via McQuaker is granted then the approach should be located as close to McQuaker as possible and that access design be configured to limit glare of vehicle traffic exiting the site.
- The Developer will be responsible to upgrade the portion of McQuaker to an urban standard roadway between Roblin and the approach location to the site.
- A safety analysis was not done as part of the MORR Study.
- There are no significant concerns with Council's decision to prohibit access.

- The MORR Study is based on 2010 and 2012 traffic counts. Traffic counts are usually conducted after five years but City was unable to do that during COVID.

Martha Barwinsky, City Forester for the Urban Forestry Branch, made the following submissions:

- The first page of the Arborist Report dated August 4, 2021 provided by the Developer shows that the site was inspected by J.P. Fontaine - Manitoba Certified Arborist (2006) but there appears to be confusion about his designation.
- The designation looks like a certificate of compliance from an Arborist Course. This is not an actual designation or certification from the International Society of Arborists (ISA).
- The analysis in the Arborist Report identifies three generalized areas: Area 1 is the area of trees along the west edge of the property; Area 2 is the area located along Roblin; and Area 3 is the area of trees located outside the east property line, on City land.
- The analysis makes general reference to native bush, trees, shrubs and/or perennials in the three Areas but they are not mapped out and lacks sufficient detail about species, age, size and caliper.
- The analysis lacks information identifying what trees require protection, including a detailed protection plan prior to construction, as well as retention and mitigation measures.
- There are no specifics on buffer zones or fencing.
- A complete arborist report would be a requirement of plan approval as part of a development agreement or construction plan.

Daniel Trenchard, Land Development Engineer with the City's PPD, made the following submissions:

- Summarized the Report of the Administrative Coordinating Group (the "Group").
- The Group recommended the Proposed Re-zoning, subject to the Applicant entering into a Servicing Agreement containing a number of conditions consistent with PPD's recommendations.
- There is adequate water servicing for the Proposed Development.
- The wastewater collection system cannot support the Proposed Development.
- The Developer would have to provide a comprehensive servicing report prepared by a qualified engineer outlining the required wastewater upgrades.

Ashely Pledger, Legal Counsel for the City, made the following submissions:

- Historical Resources By-law 55-2014 (the "HR By-law") speaks to who can nominate a building or land for Heritage designation.
- The Odd Fellows building was nominated by the Director of PPD. The Director can nominate land, buildings, or elements of land or buildings.
- In this case, the Director nominated elements of the building, not the entire piece of land upon which it is located.

- During period of nomination, the building cannot be demolished.

Legal Counsel for the City highlighted the following:

- Caveat 257 relates to a zoning agreement made between the City and Assiniboine Links-Phase II Inc. on January 10, 2001, as part of prior rezoning application (the "Zoning Agreement"). The Zoning Agreement is registered against Lot 1 only.
- The Zoning Agreement expressly provides that there is nothing that shall restrict or affect the powers of the City to amend, repeal, or vary the zoning by-law applicable to the land, or to enact a zoning by-law re-zoning the land.
- There are no other parties to the Zoning Agreement. No other consents were provided and/or required for the agreement to take effect.
- The City is the Caveator to Caveat 257 and has the authority to discharge it.
- The Zoning Agreement is not a building restriction arising out of a building or development scheme as would ordinarily occur between a property owner/developer and individual purchasers of land. It is a very different legal beast.
- The provisions of *The Municipal Board Act* giving the Board powers to vary or remove building restriction caveats have no application. This is a zoning by-law amendment which is part of the City's development process provided for under the Charter and the Development Procedures By-law.
- There is no evidence that Odd Fellows, when it subdivided the Land into Lot 1 and Lot 2 in December 1997, intended for the provisions and restrictions contained in the Zoning Agreement to bind and/or create an interest for the owners of both Lot 1 and Lot 2.
- The evidence does not exist that the Zoning Agreement was contemplated at the time of the 1997 subdivision. The Zoning Agreement only came into effect in 2001.
- The required notice was posted in accordance with Section 118 of the Charter. A certificate of designated employee was issued in accordance with Section 118 of the Charter and carries proof of compliance.
- To post notice on the public reserve land rather than the subject property would have been inconsistent with the spirit and intent of Section 118 of the Charter.
- The Developer was not required to post a second notice. The election to not post further does not amount to non-compliance.
- Council rejected the Public Service's recommendation to provide access to McQuaker but Public Service is satisfied with Council's decision.
- The historical designation process is separate and distinct from and immaterial to the matters engaged through the City's development process related to re-zoning.

Applicant/Developer

Daniel Serhal of Serhal Consulting Inc. and Roblin Premiere Developments presented the following:

- Approached Odd Fellows for the purpose of redeveloping the property.
- Since the summer of 2020 multiple options for the redevelopment have been reviewed.

- Three options were put forward and PPD was supportive of the density and building height of Option 2 (229 units; 10 storey portion along east portion of the property and 8 storey portion along south portion of the property facing Roblin).
- The Proposed Development is geared towards seniors and is amenity rich.
- The pre-application, community consultation, negotiation with administration, public hearing, and Council approval processes have been extensive.
- Multiple studies and investigations were conducted including a Shadow Study, a Traffic Impact Study, and Arborist Report.
- Following the pre-application process, all recommendations were incorporated into the final submitted design.
- Engaged Landmark Planning to conduct a thorough policy review and made sure that the Proposed Development aligned with the City's Development Policies: OurWinnipeg and Complete Communities.
- Landmark Planning also carried out comprehensive stakeholder engagement and community consultations. Feedback resulted in substantial modifications to site layout and building height.
- The Proposed Re-zoning received support by the Urban Planning District of PPD and City Administration.
- The Proposed Re-zoning received unanimous support at the ACC.
- Further modifications were made as a result of comments raised at the ACC hearing.
- The Proposed Re-zoning received overwhelming support at Council (12/15 in favor).
- Considered all feedback to address concerns and issues. Building was moved away from McQuaker and from condos to the north. Setbacks, parking placement and no build zones were very purposeful.
- Took care in preserving as many trees as possible, including modifying plan to preserve ornamental trees on Roblin.
- Plans to retain Odd Fellows building. The reason heritage nomination was opposed was because of intention to renovate the inside of the building to have amenities and create a walkway between the Odd Fellows building and new building.
- Emergency access is very prescriptive and must be met for building occupancy. Issue will be dealt with at planning approval stage.
- Water supply is adequate. Cannot increase land drainage from what exists now.
- PPD and condo owners wanted an approach on McQuaker, but McQuaker residents said no. ACC and Council agreed. Happy to have experts weigh in but issue is "of no consequence to me".
- ACC recommended building height be reduced to a maximum height of 79 feet measured from grade to top of roof.
- Two main concessions included lowering building height by 3 storeys and to not build anything within 100 feet of the condos to the north.
- Public hearing requirements and due process were met. Received notification on Monday before the sign need be posted on the Thursday of that same week. Had to be careful to be in compliance.
- Had the option to post additional or a second sign along Roblin but was careful to comply with the City's regulations. The signage requirements are highly prescriptive and didn't want to taint the process.

- Development was pushed away from McQuaker to mitigate potential issues pertaining to privacy, shadowing, and preservation of natural areas.
- Prepared to accommodate a revision in traffic flow circulation at the site. All design options that were brought forward include a widened road to access the condos to the north.
- The Proposed Development at 229 units is considered medium density. Could go to medium density but need greater building height under RMF– L zoning in order to reduce building footprint.

Stephen Chapman, Engineer with MORR Transportation Consulting Ltd. (the "MORR") presented the following:

- The study team looked at three intersections:
  - Roblin at the existing right-in-right-out ("RIRO") access to 4025 Roblin
  - Roblin at McQuaker
  - Roblin at Oakdale
- The study team considered scenarios assuming 250 units developed by 2025 and 300 units developed by 2028.
- The study team considered the following scenarios:
  - Access solely via the existing RIRO access on Roblin
  - Access via a new all-directional connection to McQuaker, in addition to the RIRO access on Roblin.
  - An exit-only connection to McQuaker, in addition to the RIRO access on Roblin.
- Existing traffic volumes were taken from City traffic data at the following locations: follows:
  - Intersection turning movement counts from the intersection of Roblin and the Parkway. The count was conducted during AM and PM peak hours on Tuesday April 20, 2010.
  - A segment count from Oakdale south of Roblin. The count was conducted all day on Thursday, March 22, 2012.
- No count data was available for the intersection of Roblin and Oakdale, or for the RIRO access on Roblin.
- If there is all directional access to McQuaker, the daily volumes on McQuaker are forecast to increase from an existing 100 vpd to 800 vpd in 2025 and 900 vpd in 2028 (vpd meaning vehicles per day).
- If the connection is only for vehicles exiting the development, the daily volume on McQuaker is forecast to be 600 vpd in 2025 and 700 vpd in 2028.
- All of these daily volumes are below Transportation Association of Canada and City of Winnipeg guideline thresholds for local urban streets.
- Growth rate adjustments of 1% compounded annually were made to account for growth on Roblin with Oakdale remaining static. 1% is typical for mature areas in the City.
- There is additional development in immediate area (Oakdale) but growth rate reflects overall growth in area and is not based on specific developments.
- If access is opened up at McQuaker, a Signal Warrant Analysis should be done as a check but is not likely warranted.

- Traffic flow between Lot 1 and Lot 2 did not form part of the analysis.
- Analysis did not look at on-site traffic circulation or construction traffic.
- No counts were conducted during COVID. All counts were pre-pandemic.
- It would have been preferable to have new counts conducted. It is "not an ideal circumstance".
- All 3 scenarios are workable and "nominally safe" in a safety sense but cannot predict future.
- Scenario 2 with all directional access to McQuaker is the preferred option but should include an eastbound left turn lane with 15m storage and permitted U-turns at Oakdale.

Legal Counsel for the Developer highlighted the following:

- The Zoning By-law only affects the zoning and the use on Lot 1.
- The Zoning Agreement is only registered against title to Lot 1.
- WCC misstates the facts. The Zoning Agreement has never affected or been recorded against title to Lot 2.
- Lot 2 is a separate parcel and has its own zoning and its own zoning agreement which is dated September 25, 1997 and is registered against title to Lot 2 as a separate Caveat No. 2221247 (the "Caveat 222").
- WCC became the registered owner of Lot 2 on August 7, 1998, being the date Condominium Declaration No. 2289321 was registered.
- Caveat 257 was registered over two years later on February 13, 2001.
- WCC could not have relied on Caveat 257 at the time it purchased Lot 2 as Caveat 257 did not exist at the time of purchase.
- Caveat 257 and the Zoning Agreement can be replaced and discharged without a Board order under Section 104(1) of *The Municipal Board Act*.
- The City has the statutory authority to rescind or amend its zoning agreement under the Charter and can do so without passing a zoning by-law.
- WCC conflates the two types of building restrictions. There are building restrictions created by municipalities (eg. zoning agreements), and building restrictions created by private landowners (eg. development schemes). The Zoning Agreement is not a development scheme.
- Municipalities may impose building restrictions by way of zoning agreements to restrict land use and development.
- The zoning agreement is between two parties – the landowner and municipality. A municipality has the authority to amend and discharge a zoning agreement.
- Even if the Board finds that the Zoning Agreement and Caveat 257 is a development scheme or contains a building restriction, the City has the authority to discharge Caveat 257 under s. 516 of the Charter.

Owner - Assiniboine Links-Phase II Inc. (formerly The Grand Lodge of Manitoba of the Independent Order of Odd Fellows "IOOF")

Al Nixon spoke on his own behalf as well as on behalf of the IOOF as follows:

- Odd Fellows is a non-profit organization that is very community service oriented.
- Building on the Land was originally constructed by the Grand Lodge of Manitoba in 1922 as a home for widows and orphans. It presently operates as an assisted living facility for seniors.
- Decline in membership has resulted in fiscal challenges and inability to operate the Property. The only option is to sell. The property must be developed.
- The Proposed Development is consistent with the organization's objectives.
- The City's zoning process is a deterrent for development. Odd Fellows has faced long delays thus far and is still facing uncertainty.
- There has been lots of communications and consultations by the Developer with the neighboring residents. From the three proposals, the Developer heard from the residents who said no removal of trees on the west side; no construction on the west side; and no high rises. Developer modified its proposal so development will be on the east side only. Negotiated down from 10 to 7 floors and from 8 to 6 floors.
- The Developer is committed to the continued operation of Odd Fellows. That is part of the obligation on the sale.
- Cannot foresee anyone purchasing the property with only 32 units of assisted living without development of the front area. Development of a complimentary seniors' complex at the front of the property would offer distinct economic and service advantages in terms of resident activities, dining room facilities and home care services.
- Though there will be some increase traffic flow on Roblin, there will be no increased traffic on McQuaker or the area of the condo residents. There will be some increased congestion at the entrance/exit to the property and the area directly in front of the Proposed Development.
- The property is privately owned and not public green space. There will be ample green space remaining to answer neighboring resident concerns.
- The Proposed Development represents the best option of continued use of the property consistent with Odd Fellows objectives and the needs of the community, while providing the best outcome for neighboring residents.

Winnipeg Condominium Corporation No. 389 ("WCC")

Jennifer Hanson, Legal Counsel for WCC, made the following submissions:

- WCC owns Lot 2 which contains 40 condominium units, also known as Assiniboine Crossing.
- The Developer failed to post the required notice for the re-zoning application pursuant to Section 118 of the Charter.
- Notice was posted on McQuaker. No notice was posted on 4025 Roblin, the address of the Proposed Development.
- Section 118(a)(i) of the Charter requires notice to be placed "in conspicuous locations on the site of the building or parcel". The posting on McQuaker did not meet the definition of "conspicuous" that being visible and obvious.
- More than one notice could have been posted along the Proposed Development.
- Odd Fellows currently posts its availability of "for rent suites" along the front of the

Property at 4025 Roblin, which has better visibility to traffic and passer-bys.

- Several caveats are registered against Lot 1 and Lot 2.
- Caveat 257 is a Zoning Agreement which was registered against Lot 1 and Lot 2 (Legal Counsel later clarified that Caveat 257 was only registered against Lot 1).
- At the time WCC purchased Lot 2, it relied on Caveat 257 and the restrictions on building height to a maximum of 3 stories and building density to a maximum of 33 units.
- Caveat 257 meets the definition of a restrictive covenant. An attempt to discharge the Caveat 257 through a re-zoning application is not legally correct.
- The building restriction procedure as set out in Section 516 of the Charter and the notice and other procedural requirements as set out in *The Real Property Act* and *The Municipal Board Act* were not followed.
- None of the 40 condo unit holders individually received notice and no written consents or approvals were presented or requested.
- The courts have suggested that building restriction caveats are fundamentally different from other caveats and the statutory authority to remove same stood with the relevant administrative body such as the Municipal Board.
- The doctrine of equity and equitable relief apply when a non-party (WCC) seeks to uphold a restrictive covenant.
- In holding an equitable interest in Caveat 257, WCC's property rights are and will be affected by its discharge.
- WCC relied on the buildings restrictions within Caveat 257 when taking over the life lease from Assiniboine Links-Phase II Inc. (Odd Fellows) on Lot 2 and continues to do so.
- The factual matrix and history of Lot 1 and Lot 2 is crucial when determining any amendments or conditions relating to development on Lot 1.
- WCC interests must be taken into consideration and Caveat 257 should remain on Lot 1.
- Caveat 257 is a restrictive covenant and cannot be legally discharged since the proper procedure for discharge has yet to be administered by the Owner and Developer.
- The current RMF-S zoning should remain and the Proposed Zoning By-law should not proceed to 2nd and 3rd reading.
- In the alternative, if the Board recommends to either keep the RMF-S zoning or recommends a re-zoning to RMF-L, and accepts that Caveat 257 can be discharged and/or removed, then the new planning policies must be applied.
- The City's new planning policies, namely the OurWinnipeg 2045 and Complete Communities 2.0 received 3rd reading by City Council on May 26, 2022.
- Proposed Development and re-zoning must abide by and follow the new policies, directives and initiatives.
- The Proposed Development falls within an "Established Neighborhood" and "Recent Communities" of Complete Communities 2.0.
- The housing typologies for Established Neighborhoods show Low Rise Residential and Medium Rise Residential.
- Low Rise Residential "allows low density forms and types from 3-4 storeys in height"

and "allows for some intensification in a form that respects the scale and character of the community".

- Medium Rise Residential "allows up to 6 storeys on the edge of existing adjacent residential neighborhoods" and allows "predominantly medium scale multi-residential buildings 4-6 storeys in height".
- The Proposed Development fits a Low Rise Residential development which allows a maximum of up to 4 stories.
- The Zoning By-law violates current policies by placing a maximum height of 79 ft. (7-8 storeys).
- The Proposed Development should be limited to 3 storeys in height, as measured from grade to top of roof, and should also be limited to 156 units, including the existing 32 units in Odd Fellows.
- If additional dwellings are permitted on the site there should be a second access off McQuaker.
- Need a safe route to and from Assiniboine Crossing condo site which would separate construction vehicles and residential traffic during construction.
- A new traffic count should be conducted at the Roblin and McQuaker intersection and a Signal Warrant Analysis be completed to confirm traffic control at the intersection after opening up of the Proposed Development.
- East-bound left-turn storage lane should be constructed on Roblin at McQuaker in conjunction with the new access to the site on McQuaker.
- A smart channel should also be constructed in the southbound right-turn cut-off from the Parkway to Roblin to decrease the speeds at which drivers navigate the turn.
- To avoid traffic issues on site, the site plan should be modified to retain and upgrade the laneway on the north side of the Odd Fellows building and reversing the direction of one-way traffic through Assiniboine Crossing to clockwise.
- The site plan should also be modified to widen the current one-way roadway adjacent and south of the parkade access (should the parking garage access not be revised).
- The Owner should submit plans showing the location and design of any proposed drainage, and ensure that drainage for the Proposed Development does not negatively and/or adversely affect the adjacent properties.
- The Owner should also ensure that all private services located on adjacent properties are not negatively and/or adversely affected by the Proposed Development.
- Prior to the Developer entering into a new zoning agreement with the City, the Developer and City should consult with WCC on any amended terms to the site plan which will affect WCC, including without limitation, access (road and parking location), buildings/dwellings layout, and private services (drainage and services).
- WCC seeks costs in respect of this referral.

Public Presentations

The Board received extensive oral and written submissions from the public opposing the Proposed By-law. Opposition came primarily from the WCC condo residents. Heritage Winnipeg and McQuaker residents also made presentations. The main concerns and issues raised are broken down and summarized as follows:

City's Public Hearing Process:

- The entire process has been flawed from the beginning. Stakeholders were not listened to. It has been a stressful three years.
- The City's public hearing was flawed, argumentative, poorly managed, and lacked collaborative effort.
- The voices of residents in opposition were ignored.
- The public hearing notice was placed out of site along McQuaker, hidden amidst trees.
- Residents used Facebook and other social media to alert the community of the hearing.
- Heritage Winnipeg gets the same 72 hour notice along with the public when it was posted online by the City as an agenda item.
- Heritage Winnipeg should be involved as early as possible in the process.
- The petition was put together very quickly.
- There is concern that the Owner has tied this development to economics only.
- Development should not be driven by economic despair.

Traffic:

- Traffic safety should be the paramount factor in decision-making.
- Proposed Re-zoning will greatly increase safety issues for drivers, pedestrians and cyclists in the area of 4025 Roblin which is within a few feet of the Parkway.
- The Parkway at Roblin and extension onto Grant Avenue has been impactful in terms of traffic volumes.
- The bicycle path ends at the yield lane onto Roblin west which is the same lane where vehicles at 80 km/hr are existing and merging right off the Parkway.
- With RMF-L zoning, the property could have 15 storey buildings with a total of 491 new units. Adding the existing 40 condo units, results in a total of 531 households accessing Roblin from the property.
- Council did not cap the density. Capping the density at RMF-S zoning with 197 dwellings in total would make the area safer.
- Councillor Klein has said that Charleswood has the highest vacancy rate in the City so to fill suites there may be an inclination to rent suites to those under 55.
- It is problematic right now for emergency vehicles to access 4025 Roblin.
- Even with reducing the trip generation numbers by 50%, based on 300 units, daily trips would be 816 (408 trips going out and 408 trips coming into the site) or 5,712 trips a week.
- The nearby intersection is ill suited for 300 plus more cars and required U-turns.
- Growth in new developments around 4025 Roblin will cause traffic in front of 4025 Roblin to grow exponentially.
- There is only one entrance and exit to the site. Adding more traffic on that road with a new residence is downright dangerous.
- No recent traffic study has been conducted. The data used was outdated (based on 2010 and 2012 volumes) and does not include traffic from surrounding new or pending developments.

- The traffic study did not factor in the 40 condo units that would be sharing the road with any new development.

McQuaker Access:

- Concerns with logistics of site access, both during and post construction.
- If there is access to McQuaker there would be almost twice the distance to work with entering Roblin from McQuaker than from 4025 Roblin.
- Access should be as far north as possible, as opposed to the south end, to lessen the overall vehicle activity near the entrance of 4025 Roblin.
- At the ACC meeting, Stephen Chapman from MORR indicated that having second access onto McQuaker would have an edge in terms of safety.
- In the ACC meeting regarding the development at 3707 Roblin, the representative for the City's Transportation Division recognized that the better design for 4025 Roblin would have been to tie it to McQuaker.
- Without access to McQuaker, condo residents would be sharing one access with construction vehicles every day for 2-3 years. After construction is complete, vehicles, including emergency and service vehicles, will have to negotiate through Lot 1 and over 300 vehicles to enter and exit the property.
- The additional access reduces the number of future U-turns at the median openings and is necessary to ensure the safety of seniors who will share a common access road with this development, including construction vehicles.
- Concerns by McQuaker residents regarding vehicle lights can be properly mitigated through angle of exit, strategic landscaping etc.

Neighborhood Characteristics:

- Desire to maintain the character of the area which is the jewel of the neighborhood, and to preserve green space and the natural habitat.
- The proposed density is for 229 units but a rezoning to RMF-L would allow for a potential density of up to 491 units.
- Concern that Council did not place any cap on the density.
- If there is to be development, it should stay within the 35 ft. height for the area, be of lower density, fall within the character of the area, and does not obscure the Odd Fellows sightline.
- The site is home to a beautiful 100 year old historic building.
- The development is completely out of character and built form for this prominent location which sites the only historic building in Charleswood.
- The approved height and density is not appropriate, a terrible fit and will have adverse effects on the look and feel of our neighborhood.
- Should build something worthy of future generations that is of architectural significance, with respect for our past and our future.
- Going from RMF-S to RML-L is not low to moderate change but a radical change.
- There are no developments higher than 6 stories along this residential stretch of Roblin. Allowing a development of this height and RMF-L zoning will set an unwelcome precedent for our community.
- A devaluation of the condo units is of serious concern.

- No noise impact study has been conducted.
- Privacy of surrounding neighbors remains an issue.
- Councillors and City planners justified the height and density of the development but downplayed the adverse effects to the character of the community.

Odd Fellows Building and Heritage Nomination:

- The City has nominated the building for heritage designation.
- Shame to lose Odd Fellows building amidst a concrete jungle.
- Even with development heights at 79 feet, the site lines to this building would be completely blocked by modern high rise buildings.
- Having the building hidden and overpowered by the Proposed Development would negatively impact its value as an intact historical site.
- The building, fronted with ample green space, has represented a historic landmark in the Charleswood area for a century, and is one of the only remaining historical buildings left in Charleswood with its original façade intact.
- Public Service did not consider the age or significance of the Odd Fellows building when they approved the development.
- There is huge concern from heritage community over the impact this large development will have on this massive heritage building.
- On the structural integrity of adjacent heritage properties, Heritage Winnipeg has been the leading force, not the City.
- Heritage Winnipeg has been advocating to the City to mandate structural engineer reports, but they have not done this.
- Heritage Winnipeg is impartial. There is no monetary gain. It responds to what the community wants.
- The HR By-law for the City provides that, once a building is designated, there are considerations that are a priority going forward with any new infill.
- Early consultation with Heritage Winnipeg should be written in the HR By-law if the construction affects a heritage property.
- Owner has gone on record that it does not support the property being nominated as a heritage site and supports the Developer. Heritage community is outraged by this.
- During the designation process, the building cannot be demolished in the interim.
- Once designated, Canadian standards and guidelines adopted by the provinces must be followed.
- It would be unusual for a high rise adjacent to a heritage building that blocks the view to be approved under the Canadian standards and regulations.
- Heritage designation is not a death sentence. Grants are available through various organizations. Heritage designation is an asset, not a liability.
- A verbal agreement to retain the building is not enough. Need an actual designation to protect the building.
- Heritage Winnipeg does not support the development in any way until the property is designated and structural engineer reports and other assessments are carried out and considered.
- Concerned residents are not in opposition to any development on the site but want

any new development to be consistent with the height of the current building and be built so as to preserve the site lines and integrity of this historic site.

Green Space and Natural Habitat:

- The Arborist Study was not done in accordance with the City's criteria. No mention of what was to happen to trees on the north side.
- Given the high density of the Proposed Development, the site's current green space will become a parking lot.
- Charleswood is a unique community with rural characteristics that should be protected and preserved.

Caveat 257:

- City's decision to discharge Caveat 257 creates serious concerns for the condo residents on Lot 2. This was done without due consideration.
- The rights and safety of condo residents should be honored.
- In 1997, IOOF split the property into two lots and built a 40-unit life lease complex on Lot 2.
- In 2000, Caveat 257 was part of a development agreement with the City and contained several building restrictions.
- Caveat 257 was relied on as protection against future development which could impact residents on Lot 2.
- By 2001, IOOF was in financial difficulty. The mortgage holder would not renew the $4 million mortgage. The residents developed a financing plan to purchase their life lease units under a condominium structure.
- The buy-out and conversion of the life lease into condominium units involved the retirement of the mortgage and payment of outstanding taxes. Lot 2 residents incurred these significant costs and relied upon the building restrictions in Caveat 257.
- The condominium structure resulted in a number of additional caveats regarding access, snow clearing, garbage removal, and road maintenance.
- Conditions upon which restrictions were placed in 2000 have not changed.
- The City does not have the unilateral right to remove, amend or vary Caveat 257.
- IOOF is indebted to the condo residents yet they proceeded to transact on this development without any consultation with WCC.

McQuaker Residents:

- Preserve and improve the treed buffer between the new development and our existing properties.
- Place the new development as far to the east side of the lot as possible.
- Limit the height of the new development to enable the treed buffer to shield its view from our existing properties.
- Maintain the Caveat 257 to protect McQuaker residents and allow the safe, quiet enjoyment of our street.
- Prevent the IOOF home from being demolished.
- Strongly oppose access onto McQuaker.

- The traffic study is misleading and reaches erroneous conclusions.
- McQuaker is not a typical residential street. It is a one-block long, dead end street, with no sidewalks, with deep ditches on both sides of the street, and no place to turn around at the dead end.
- People and children walk, run and ride bicycles on this street. Safe active transport will be impossible with 600-900 cars on the street daily, and children will be in danger.
- Adding several hundred cars per day will lead to constant trespassing, blocking of the street, unsafe conditions and conflict.
- With 250-300 new households living next door McQuaker will be used for overflow parking.
- The proposed plan to upgrade the end of McQuaker near Roblin ignores the portion that is not upgraded but will still have increased traffic volume.
- Allowing access to McQuaker will render it unusable to pedestrians and unsafe to all other active transportation. It will no longer function in a viable manner for vehicles.
- As an alternative to U-turns at Oakdale, traffic could be diverted further west around the bend with better sightlines or to the lights at Grant and Roblin, which connects to the Parkway.
- McQuaker can be considered a Residential Local Access, but local residents' safety and quality of life issues must be considered in determining the appropriate allowable traffic volumes.
- There will likely be some form of development at 4025 Roblin, but should keep the development from further impacting the quiet enjoyment of our surrounding properties.

FINDINGS

This is the Board's first Referral Hearing under Section 236.1(8) of the Charter since the planning amendments to *The City of Winnipeg Charter* and *The Planning Act* were proclaimed last October, 2021. The Hearing was conducted over a three-day period. In making this Report to Council, the Board carefully considered the applicable planning policies, and all of the presentations and submissions, both oral and written, which were brought forward in regards to the Proposed By-law. The Board appreciates the very fulsome and comprehensive presentations that were made.

The Board notes that there were no neighboring residents in support of the Proposed By-law at this Hearing. Early opposition was significant, with approximately 2000 petitioners and over 140 registered against the re-zoning at the ACC hearing. The primary objectors are from an established condominium development of WCC, also known as Assiniboine Crossing, a community of 40 bungalow-style condo units on Lot 2 behind the Odd Fellows building. Lot 2 is presently zoned RMF-S.

The Proposed Re-Zoning pertains to Lot 1 only, but there are some key historic events that provide helpful context to the present opposition by Lot 2 residents. IOOF originally owned all of the lands now known as Lot 1 and Lot 2. Following a subdivision in the late 1990s, a 40-unit life lease complex was built on Lot 2. In December 1997, a zoning agreement (Caveat 222) between the City and IOOF was registered against Lot 2

providing for, among other matters, a limitation to the number of dwelling units to 40. Due to financial difficulties, the life lease project was converted into a condominium entity (WCC) whereby the then life lease tenants purchased the condo units and incurred additional liabilities as part of the conversion.

In February 2001, as part of a prior re-zoning application, a separate zoning agreement (Caveat 257) between the City and Assiniboine Links-Phase II Inc. (formerly IOOF), was registered against Lot 1. Caveat 257 contains a number of restrictive provisions. These include limiting the number of units to 33 and height of the existing Odd Fellows building to 3 storeys, and limiting land use to seniors accommodations. Due to ongoing fiscal difficulties, Assiniboine Links-Phase II Inc. is now in the process of selling the Land to the Developer, subject to re-zoning approval which includes a discharge of Caveat 257. Caveat 257 was clearly intended to protect the existing Odd Fellows building and to preserve the characteristics of the established neighborhood.

The protections secured under Caveat 257 have remained in effect for over 21 years to the present day. Though there is conflicting evidence about what information the former life lease tenants relied upon at the time they made the financial commitment to purchase their life leases, the condo residents on Lot 2, both past and present, had no reason to believe that their established, heritage-rich community could be transformed to the extent being proposed. There is no doubt that the character and quality features of the area would drastically change with a higher density, RMF-L zoning development on Lot 1.

WCC submits, among other recommendations, that RMF-S zoning be maintained. If, however, a re-zoning is recommended, then new development should be limited to a maximum height of 3 storeys and that density be limited to 156 units, including the existing units in the Odd Fellows building. WCC further submits that there should be access from the Land to McQuaker. WCC also seeks costs for this Hearing but does not provide any details in support of its request.

WCC took issue with the public notice posted by the Developer on McQuaker for the City's public hearing at ACC. WCC contends that the Developer failed to meet the Section 118 of the Charter requirements and that more than one notice could have been posted. Residents were left scrambling to alert others and to prepare for the hearing. The City submits that the statutory requirements for posting were met and that a certificate of a designated employee was issued on the matter confirming proof of compliance. The Board notes that, even if there was technical compliance, the evidence reveals that the posting was not sufficiently visible to the condo residents or to vehicular

traffic and pedestrians on Roblin. Every case will have to be assessed separately by the City, but the Board has little doubt that the notice issue was the genesis for what residents observed to be a flawed public hearing process lacking proper notice, meaningful input and engagement.

In assessing the Proposed By-law, WCC contends that the Board should be guided by the City's new planning policies, OurWinnipeg 2045 and Complete Communities

Direction Strategy 2.0. The new policies came into force several months after the Developer's Development Application had already been made. The Board finds no reason to deviate from the City's approach to assess development applications based on the policies in effect at the time the application is made. The Board is therefore guided by the City's planning policies that were in effect at the time the Applicant's Development Application was made, namely OurWinnipeg and Complete Communities.

PPD asserts that Lot 1 at 4.5 acres is larger than typical lots in the neighborhood and could therefore accommodate larger building development. The Board also notes the unique characteristics of the site beyond size. The site is near the corner of the Parkway and Roblin, two major traffic arteries. It contains the Odd Fellows building, a 3 storey, 100 year old building presently operating as a 30 unit assisted living facility. Heritage designation of this building is pending. The site is surrounded by mature trees and substantial green space, prominently featuring this historic building. The site and building have been described as the "jewel" and "gateway to the neighborhood".

Directly north and adjacent to Lot 1 and the Odd Fellows building is Lot 2, which contains the Assiniboine Crossing 40 condo units. The condominium development can be best described as "land-locked" with no separate ingress and egress route. The sole access to and from Lot 2 onto Roblin can only be achieved through a one-way approach over Lot 1 and the City's public reserve land. Hence, there are a number of easements and cross-easements in effect for Lot 1 and Lot 2 to facilitate this shared access. If the Proposed Development and re-zoning were to proceed in its present form, the condo residents would be sharing a roadway with at least 229 other residents, plus their visitors and/or care-givers and staff.

Lot 1 is located within the Areas of Stability – Recent Communities Policy Area under Complete Communities. Key policies of Areas of Stability support *"low to moderate change in low-density neighborhoods through development and redevelopment that is complimentary to the existing character and built form"* of the neighborhood. The Recent Communities Policy Area also promotes *"the form of buildings and spaces that are sensitive to the community context"* and *"address the transition between new and existing developments"*. Further, the policy promotes *"a mix of housing type and tenure, such as duplexes, low rise apartments, secondary suites, semi-detached homes, townhouses" (italic emphasis ours)*.

Evidence was presented regarding the land uses and zoning surrounding Lot 1. The surrounding zoning includes RMF-S district, passive green space zoned "R1-L" Residential Single Family (Large) and "A" Agricultural district, and single-family residential uses zoned "R1-L" Residential Single Family (Large). There are no lands zoned RMF-L or developments of similar scale immediately adjacent to or near the site.

The Board notes that Council approved a building height of up to a maximum of 79 feet (7-8 storeys depending on ceiling height), but the neighboring condo units and single family dwellings are only 1-2 storeys in height and the Odd Fellows building is 3 storeys. The Board acknowledges the efforts made by the Developer in adjusting its building configuration to create greater buffers with adjacent properties and to preserve natural

green space and trees. The result, however, is that the reduced building footprint is being compensated for vertically with an allowable building height that is not sensitive to the community context.

The Board is of the view that a re-zoning from RMF-S to RFM-L to accommodate greater building heights of up to 7-8 storeys could be considered a radical change, as opposed to low or moderate change as permitted under the applicable planning policies. Further, the Proposed Development of 199 new units or a total of 229 dwelling units, represents a 563% percentage increase in dwelling units. Though PPD submits that 229 units would fall within RMF-M or medium zoning density levels, the Board feels that this increased level of density also exceeds what could be considered low to moderate change.

The Board was not made aware of any similar developments near the site along the stretch of Roblin. Other multi-unit residential buildings identified in the surrounding area include 363 Oakdale Drive, 170 Hendon Avenue and 3901 Grant Avenue. However, none of these developments can be seen from the site and the closest of these developments is nearly a kilometer away. The immediate context is that of low density, 1-2 storey single family uses. The Board considers a 79 foot building with almost 200 new units to be an inappropriate level of intensification for the site. The Board further notes that the site is not across from or adjacent to any commercial or retail development where higher intensity residential development is often featured.

Existing policy also directs intense development in Recent Communities to "centres" and "corridors". The City's Planner, however, confirms that the site is neither adjacent to nor a part of a defined centre or corridor. Though there are plans for a rapid transit line with stops to be located at Roblin and the Parkway, it may not be established until 2045, if at all.

The Developer indicated an intention to retain the Odd Fellows building and link same to a portion of the proposed new building. The Board has no reason to question these intentions, but it would appear that no consideration has been given to preserving the site lines of the Odd Fellows building. A development under RMF-L zoning, permitting a 7-8 storey building, could completely diminish the view to the Odd Fellows building, negatively impacting its value as an intact historical site.

The Board notes that it lacked any information regarding the impacts a large development would have on the structural integrity of the 100 year old Odd Fellows building. Though the historical designation process is a separate process from the City's development and related re-zoning procedures, the City should consider consultations with Heritage Winnipeg early in the development process. This may have helped alleviate public concern and uncertainty surrounding the future and integrity of this historic building.

Traffic safety was a common issue raised among residents. The issue is driven largely by the fact that access to the site is very close to the Parkway and Roblin intersection and that the only access to and from the site is from Roblin, making present navigation of traffic a challenge for seniors. The concern is that enhanced traffic movement arising

from the Proposed Development, and from nearby developments, including on Oakdale, will exacerbate an existing precarious situation in terms of safety. Further, the traffic volumes and counts outlined in the MORR Study were based on dated data from 10 and 12 years ago. No recent counts were conducted due to the COVID pandemic. Stephen Chapman, the engineer involved in the MORR Study conceded that it would have been preferable to have new counts conducted.

The Board also heard extensive arguments regarding secondary access to and from the site onto McQuaker. The condo residents support a secondary access, but McQuaker residents remain opposed to the idea, citing potential safety issues and disruption to their quiet, dead-end street. Mr. Chapman states that an all directional access to McQuaker, in addition to the RIRO access onto Roblin, would be the preferred approach. Public Works also recommended an access point off of McQuaker. The Board was not offered any explanation or rationale as to why ACC and Council rejected Public Works' recommendation. If development were to occur at the site, the Board urges the City to revisit the traffic issues raised herein, preferably with updated traffic data, as safety remains a paramount concern to residents.

The Board also notes the concerns raised by the City's Forester. The Developer's Arborist Report did not appear to have been conducted by a certified arborist and lacked detailed information, including a tree protection plan prior to construction, as well as retention and mitigation measures. No protective measures for the trees on the north side of Lot 1 is mentioned. The author of the Arborist Report did not appear at the Hearing. The Board acknowledges that a complete Arborist Report would be required for plan approval, but raises these deficiencies as the preservation and protection of greenspace and trees were considered by residents to be key priorities for any development.

Residents also raised issues pertaining to private services, mainly drainage and sanitary sewage capacity. The Board is satisfied that these matters would be appropriately addressed at the planning approval stage as part of a servicing agreement with the City, should future development occur at the site.

RECOMMENDATION

The Board notes that fiscal pressures appear to be driving the development process in this case. The Board is also very cognizant of the time, cost and effort expended by the Developer and desire by both the Owner and Developer to move forward without further delay. The Board is, however, of the view that development should not be driven by economic pressures or desperation. Legitimate concerns have been raised by nearby residents on Lot 2, whose dependency on Lot 1 and interests are inextricably linked to the Proposed Re-zoning and any future development on Lot 1.

The Board underscores that a number of residents are not opposed to development at the site, but the shift to RMF-L zoning under the Proposed By-law represents a drastic change that is not a suitable transition for the area. The Board considers the size and scale of the Proposed Development and Proposed Re-zoning to be incompatible with the character, context and built form of the surrounding dwellings and established neighborhood. The Board is of the view that the site is appropriate for some level of infill development and that the existing RMF-S zoning, which is intended to accommodate a mix of residential multi-family types at lower heights and densities, would still allow new development of diverse, high-quality housing stock, but in a form and density that are sensitive and complimentary to the character and features of this unique site and area.

Any development on Lot 1 will require either a discharge or amendment to Caveat 257. The Board acknowledges the extensive submissions and legal authorities that have been made characterizing these types of caveats and the legal framework and manner by which they can be discharged. After careful deliberation, the Board did not consider findings on these matters to be prerequisite in making its recommendation herein, on which the Board panel was unanimous.

The Board has no basis to consider an award of costs to WCC.

THEREFORE, THE BOARD RECOMMENDS:

1. That the City of Winnipeg By-law 36/2022 **BE REJECTED** and not proceed to second and third reading by City of Winnipeg Council.

FOR THE MUNICIPAL BOARD

September 15, 2022
Date

Diane Stasiuk, Vice Chair

E. Wills
Erin Wills, Secretary