Manitoba

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**The Municipal Board**

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June 2, 2023

**CONFIDENTIAL**

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

Dear Marc Lemoine:

**RE: REFERRAL OF BY-LAW NO. 84/2022**
**WITH RESPECT TO 490 SHAFTESBURY BOULEVARD**
**THE CITY OF WINNIPEG**
**FILE NO. 22D2A-0003**

As per Section 236.1(8)(c) of the *City of Winnipeg Charter*, and as per your letter to the Municipal Board dated July 22, 2022, we now submit a copy of the Board's Report and Recommendation Number D-23-002 with respect to the above mentioned matter.

Yours truly,

E. Wills

Erin Wills
Secretary

EW/ip/enclosure

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THE MUNICIPAL BOARD OF MANITOBA

# REPORT AND RECOMMENDATION

**REPORT DATE:** June 2, 2023

Report No. D-23-002
File No. 22D2A-0003

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|---|---|
| **MATTER:** | Zoning By-law Referral<br>*The City of Winnipeg Charter*<br>Section 236.1(7) |
| **LOCAL AUTHORITY** | City of Winnipeg |
| **BY-LAW NO:** | 84/2022 |
| **HEARING DATE:** | April 4, 2023<br>April 5, 2023<br>April 6, 2023 |
| **PANEL:** | Brenda Loewen, Acting Chair<br>Chris Fulsher, Member<br>Tom Raine, Member |

**PARTIES AND APPEARANCES:**

*for the City of Winnipeg*
Nicole Beasse, Legal Counsel, City of Winnipeg Legal Services
Devin Clark, Planner, Urban Planning & Design – Development Applications Branch/Planning, Property and Development

*for the Applicant*
Brennan Johnson, Landmark Planning & Design Inc.
Donovan Toews, Landmark Planning & Design Inc.
Mark Hearson, Engineer, Stantec

*for the Owner/Developer, 490 Shaftesbury Inc./Private Pension Partners*
James Mercury, Legal Counsel, MLT Aikins LLP
Karl Loepp, 490 Shaftesbury Inc.

*Presenters (oral/written presentations)*
*Oral Presentations by*:
John Unger
Alana Wald
Mike Mager

Bryce Matlashewski, Terri Fuglem, and Cheryl MacInnis *presented for*:

| | | |
|---|---|---|
| Clara Baricz * | Kathy Ellis * | Susan Foote * |
| Gail Gel * | Leigh Halprin * | Lisa Haydey * |
| Karl Koop * | Katarina Koop * | Cameron Mann * |
| Eric Mann * | Julia Mann * | Scott Mann * |
| Jim Marr * | Laura Matlashewski * | Kailey Murphy * |
| Chalmer Plummer * | Lorane Poersch * | Howard Raber * |
| Steven Raber * | Chris Radcliffe * | Aedan Rooney * |
| John Rooney * | Roman Saposhnik * | Ignazio Scaletta * |
| Leslie Scaletta * | Michael Scott * | Peter Sheridan * |
| Edward Shinewald * | James Speirs * | Beverley Underhill * |
| Jeremy Wald * | Ted Wald * | Pamela White * |

Note: * denotes written objections also filed.

*Written objections filed with the Board by:*

| | | |
|---|---|---|
| Daniel Akman | Cydney Akman | Jolene Bailie |
| Janine Bergen | Donald Bergen | Judith Boult |
| Ian Boult | Laura-ann Brooke | Elmer Clark |
| Joanne Clark | Darrel Donen | Connie Donen |
| Arthur DeFehr | Jonathan Dueck | Brian Etkin |
| Jenna Ghuman | Andrew Giesbrecht | Theresa Gourlay |
| David Greenberg | Donna Copsey Haydey | Nellie Hyworon |
| Love Joy Ladera | Robbie MacDonald | Samantha MacDonald |
| Brandon MacDonald | Aislinn Mager | Sandra Marles |
| Rhea Mossman Sims | Randall Neufeld | Caryl Ordas |
| Cheryl Pauls | Kelly Radcliffe | Kieran Rooney |
| Gary Sewell | Lourdes Troncillo-Scott | Jonathan Wald |
| Raymond Wan | | |

*Experts for the presenters:*
Jennifer Lim, Planner, Threshold Planning Studio Inc.
Kate Moir, Principal/Owner, Moir Informed Decisions

## INTRODUCTION

The City of Winnipeg Council (the "Council") has given First Reading to By-law No. 84/2022 (the "Proposed By-law") which proposes to approve a two-lot plan of subdivision (the "Subdivision") and amend City of Winnipeg Zoning By-law No. 200/2006 (the "Zoning By-law") to re-zone land located at 490 Shaftesbury Boulevard (the "490 Shaftesbury") in the Assiniboia Community pursuant to Development Application No. DASZ 3/2022 (the "Development Application"). 490 Shaftesbury is currently zoned "PR1 PDO-1 Airport Vicinity" Parks and Recreation 1 (Neighbourhood) District ("PR1").

The approved Subdivision created two lots. Proposed Lot 1 ("Lot 1"), the site of the proposed new development, is to be rezoned to "RMF-M" (Plan Development Overlay 1 Airport Vicinity") Residential-Multi Family (Medium) District ("RMF-M"). Proposed Lot 2 ("Lot 2") is to be re-zoned to "PR2" (Plan Development Overlay 1 Airport Vicinity) Parks and Recreation 2 (Community) District ("PR2") (the "Proposed Re-Zoning").

## BACKGROUND

Landmark Planning & Design Inc. ("Landmark"), made the Development Application to the City of Winnipeg (the "City") to subdivide and rezone Parcel 2 Plan 12444 WLTO in RL 18-20 Parish of St. Charles (the "Land"), also known as 490 Shaftesbury. The Land is owned by 490 Shaftesbury Inc. (the "Owner"). The Land is located on the west side of Shaftesbury Boulevard between Corydon Avenue/Roblin Boulevard and Grant Avenue. It is located in the Tuxedo Neighborhood of the Charleswood – Tuxedo – Westwood Ward. To the north, the Land is adjacent to golf course lands zoned Parks and Recreation 1, to the south and east, university lands zoned Education and Industrial, and across Shaftesbury Boulevard to the east, single-family dwellings zoned Residential Single Family – Large.

The Land is approximately 1.41 acres. Lot 1 measures approximately 1.39 acres and contains a dwelling that was constructed in 1978 and was used as housing for people with physical and intellectual disabilities. The dwelling is currently un-inhabited. The Land is located within the Areas of Stability – Recent Communities policy area under the *Complete Communities* Direction Strategy.

Lot 2 is approximately 740 square feet located at the northwest corner of the Land. Lot 2 is to be re-zoned at the time it is dedicated to the City and consolidated with the adjacent golf course.

The proposed development on Lot 1 consists of three buildings with a total of 58 housing units and are identified as buildings A, B and C (the "Proposed Development"). Building A is to be situated on the most westerly portion of Lot 1, it is proposed to be 6-stories measuring 72 feet in height and will create 22 housing units. Building B, at 60 feet in height, is in the middle and it is proposed to be 5-stories, creating 20 housing units. Building C measuring 50 feet in height will be located on the eastern most portion of Lot 1 and is 4 stories creating 16 housing units.

The City's Public Service prepared administrative report DASZ 3/2022 (the "Administrative Report") containing 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 Lot 1 to RMF-M;
- That the Developer enter into a Zoning Agreement with the City, pursuant to subsection 240(1) of The City of Winnipeg Charter (the "Charter"), which contemplated among other requirements, the following:
    - Plan approval by the Director of Planning, Property and Development (the "PPD")

as well as the ACC, which would cover site and building design details that require approval prior to the issuance of building permits.
- That the building height of Building C be limited to a maximum of 50 feet.
- That the top floor of each building be recessed between seven and ten feet from the main floor wall.

PPD's Urban Planning Division (the "UPD") recommended support for two variances, both for Building A. The first is 12 foot height variance increasing the height from 60 feet to 72 feet and the second, a 2 foot decrease to the north-west side yard variance from 18 feet to 16 feet.

The ACC approved the Proposed Re-Zoning as recommended by the UPD, adding the following condition to the servicing agreement:

- That requires the developer to plant trees within the boulevard fronting the Land in accordance with the City's specifications and standards and to maintain these trees for a period of two years.

The matter proceeded to the Standing Policy Committee on Property and Development (the "SPC") where they concurred with the recommendation of ACC. It moved along the process to the Executive Policy Committee (the "EPC") where they agreed with the recommendation of ACC and SPC. On June 23, 2022, Council concurred with EPC and gave first reading to the Proposed By-law approving the Proposed Re-Zoning in a 14 – 1 vote.

The required variances met with opposition with 102 area residents appealing Variance Order DAV 102389/2022D. On or about July 14, 2022, the City's Appeal Committee issued Variance Appeal Order DAV 102389A/2022D [c/r DASZ 3/2022] which overturned the appeal providing, the "...provisions of the proposed "RMF-M PDO-1 Airport Vicinity Protection Area" Dimensional Standards of the Winnipeg Zoning By-law No. 200/2006 are varied on the "land" ...". Further, the Variance Appeal Order added the following condition:

- That the Proposed Development explore implementation of mitigation strategies that improve bird safety as outlined in City of Winnipeg Bird Friendly Resources.

The City received sufficient objections to the first reading of the Proposed By-law and, on or about July 22, 2022, the matter was referred to The Municipal Board (the "Board") in accordance with Section 236.1(7) of the Charter. The Board held a public hearing on April 4th, 5th and 6th, 2023 (the "Hearing"). The Board notes that, under Section 236.1(7) of the Charter, the Board's jurisdiction on the referral pertains to re-zoning matters only. The Board therefore submits this report and recommendation (the "Report") to Council under Section 236.1(8)(c) of the Charter on the Proposed Re-Zoning.

## ISSUE

The purpose of this Report is to assist the City, in deciding whether to proceed to pass the Proposed By-law, to approve the Proposed Re-Zoning as is, to reject the Proposed Re-Zoning, or approve the Proposed Re-Zoning 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) subject to subsection 24(3.2) of *The Municipal Board Act*, 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) (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.

## PRESENTATIONS

### City of Winnipeg

Devin Clark, Planner with UPD of the City's PPD, presented the following:

- Provided an overview of the pre-application and application process.
- The pre-application was for the establishment of a 5-story multi-level residential complex with a total of 48 dwellings. UPD concluded that based on a policy review that a moderate density development is in line with the RMF-M zoning district and could be generally supported and that a variance for height could be considered.
- The application was deemed complete by the Zoning and Permits Branch on January 17, 2022.
- The Proposed Development was modified from the pre-application proposal to now consist of three buildings with a total of 58 units at varying heights.
    - A total of 87 parking stalls are proposed which meets the requirements of the Zoning By-Law:
    - 83 stalls are below grade and will provide:
        - 11 accessible stalls (4 required by the Zoning By-law)
        - 2 van accessible stalls (1 required by the Zoning By-law)
        - 6 stalls will be assigned to visitors.
    - 4 stalls will be situated above grade and will be assigned to visitors, giving a total of 10 visitor parking stalls, whereas the Zoning By-law minimal standard requirement is 9.
- Seven exterior bicycle lockups and nine secure bicycle parking stalls will be located below grade.
- Proposed landscaping exceeds that of the Zoning By-law minimum requirements.
- Of the 58 proposed units, two will be universally accessible and four adaptable.
- The City's Public Works Department identifies Shaftesbury Boulevard as an arterial street with respect to traffic volumes and in the context of the Regional Street Network in terms of spacing from other arterials.
- Arterial roads are meant to accommodate high volumes of traffic.
- The Proposed Development requires two variances.
- The first variance is for Building "A" height from 60 feet to 72 feet.
- The second variance is for the north side yard setback from 18 feet to 16 feet as needed to dedicate Lot 2 to the golf course.
- The land and proposed development has been deemed to have sufficient sewer, water, and land drainage capacity.
- Conditions to the servicing agreement pertained to the dedication of Lot 2 and payments toward the regional land drainage system.
- ACC added a condition for additional trees within the boulevard of the right of way

for the purpose of additional buffering and screening the Proposed Development from the dwellings to the east.

- The Proposed Development was reviewed against policies within the *OurWinnipeg* By-law 67/2010 (the "*OurWinnipeg*"), *Complete Communities Direction Strategy* By-law 68/2010 for Areas of Stability, Recent Communities (the "Complete Communities"), the Winnipeg's *Climate Action Plan* (the "Climate Action Plan"), *Transit Master Plan* and *the Pedestrian and Cycling Strategies.*

Key policies applicable to the Proposed Development include, among other policies, the following:

*OurWinnipeg:*

- In the City Building section of *OurWinnipeg*:
  - *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 daycare 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).*

- *01/1b Key Directions for the Entire City*
  - *Dynamically integrate transportation with land use.*
  - *Create a safe, efficient and equitable transportation system for people, goods and services.*
  - *Create a transportation system that supports active, accessible and healthy lifestyle options.*

UPD determined that the Proposed Development complies with this policy given its proximity to the existing frequent transit service along Corydon Avenue and Grant Avenue. There are future plans to install rapid transit along Grant Avenue.

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

UPD determined that the Proposed Development is consistent with the above policy because it will enhance the quality of housing, diversity of housing typologies in a predominantly single-family residential neighbourhood. Further, it will 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.*

Alignment with this policy shows that multi-family residential development is more efficient in terms of spatial use of land and there will be no need for new infrastructure to accommodate the Proposed Development.

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

The Proposed Development supports diverse housing options for various needs of the people, in a neighbourhood that primarily consists of single-family residential dwellings.

- *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 neighbourhoods.*

The Proposed Development consists of accessible features within each of the buildings.

Complete Communities *Areas of Stability - Recent Communities:*

- *Support low to moderate change in low-density neighbourhoods through development and redevelopment that is complimentary to the existing character and built form.*

The change of Lot 1 from PR1 to RMF-M is considered a moderate change within the context of single-family residential uses on the east side of Shaftesbury Boulevard, a university campus consisting of multiple buildings, one of which is a tower measuring approximately 76 feet, to the south and west, and a golf course to the north.

There are several locations and site designs that are considered when determining what is complementary to the existing scale, character and form built. In specific, lot characteristics, surrounding uses, density, building setbacks and proximity between uses, building design, comparable scenarios in the neighbourhood, and use of landscaping.

UPD completed a review as part of the Administrative Report and demonstrates that a mix of low-rise, mid-rise and high-rise multi-family residential buildings can be found in close proximity of single-family dwellings in the Tuxedo neighbourhood. The Administrative Report identifies the following criteria:

- *Promote the form of buildings and spaces that are sensitive to the community context and address the transition between new and existing developments.*

The Proposed Development has a tiered or stepped-down effect with the tallest of three buildings located at the westernmost portion of the Land to the shortest at the easternmost portion. There is a combination of landscaping and separation distances from surrounding properties to provide for a reasonable transition of the multiple-family housing to single-family dwellings.

The back portion of the Proposed Development is set against the open spaces of the golf course and university campus. Further, the Proposed Development adheres to the City's shadow study criteria that provides for a minimum of five hours of consecutive sunlight on nearby properties.

- *Encourage diverse and high-quality housing stock.*

The intended housing will be of high quality that incorporates aesthetically pleasing design features along with environmentally friendly building applications such as green roofs.

- *Encourage development that helps meet the full life-cycle of housing needs within the community, by promoting a mix of housing type and tenure, such as duplexes, low rise apartments, secondary suites, semi-detached homes, townhouses.*

The Proposed Development ranges between low to mid rise, providing a range of housing types and tenures that helps meet the full life-cycle of housing needs.

Climate Action Plan:

With its close proximity to transit and active transportation, the Proposed Development aligns with the policy objectives of the Climate Action Plan to reduce, or limit increased green house gases. One of the Vision Statements in the Climate Action Plan is that:

- *Winnipeg facilitates compact development and healthy neighbourhoods that are connected through a network of active and transit-oriented mobility options. This means that the City strategically integrates climate action within both land use and transportation decision-making.*

- *Section 5.1 Emission Reduction Sector Targets:*
  *Therefore, supporting diverse housing forms, density, complete community and transit-oriented development are land use strategies that support the reduction of green house gases emissions from transportation and buildings.*

- *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*

- *Strategic Opportunity #5 Low Carbon and Energy Efficient Buildings:*
  *5.2 Improve energy performance of new buildings*

Transit Master Plan:

- *The proposed network is designed to support the city as it develops, following the policies outlined in OurWinnipeg and the Complete Communities Direction Strategy. Transit oriented development is an important tool to promote compact urban development around key transit nodes.*
- *Improved connectivity in the new route network will promote and support OurWinnipeg's goals of increased density and a mix of land uses to better enable people to choose to live without a car, or to drive less.*

Pedestrian and Cycling Strategies:

- *Key Direction 2B:*
  *Improving pedestrian and bicycle access to transit increases multi-model transportation choices and helps to extend the reach of public transit. To develop a comprehensive pedestrian and bicycle network, it is important to look for opportunities to integrate walking and cycling with other modes of transportation, particularly in regards to opportunities for better integration with transit.*

A well-established cycling network exists around the Proposed Development that connects to the surrounding area. There is a multi-use path that runs along the west side of Shaftesbury Boulevard and ties into paved multi-use pathways along both Grant Avenue and Corydon Avenue, proceeds into and beyond Assiniboine Park to the north, to the south through the Assiniboine Forest and beyond.

Airport Vicinity Protection Area Plan Regulation (the "AVPA")

- *Area II of Overlay District Not Fronting on Portage Avenue:*
  *(b) new multiple-family dwellings may be constructed not exceeding a density of 85 units per hectare (35 units per acre) inclusive of any dwelling units referred to in clause 3(a) above of that portion of lots falling within Area II, excluding any part of*

*that area designate Floodway, and new multiple-family dwellings in excess of that density may be approved as conditional uses under The City of Winnipeg Charter.*

Amendments to the AVPA were adopted by the Province of Manitoba (the "Province") through a new Airport Vicinity Protection Area Regulation 66/2021 (the "Regulation") on August 12, 2021. The City appropriately updated its By-laws to reflect the changes as set out in the Regulation. The following list of amendments to the Regulation took place and subsequently required amendments to City By-laws:

- January 27, 2022, Council adopted By-law No. 11/2022 via the Errors and Corrections provision of the Charter, which amended *OurWinnipeg* By-law No. 67/2010 and Complete Communities Direction Strategy By-law No. 68/2010 and the Zoning By-law to comply with the changes made.
    - The Application was originally posted as being located within Area 2 of the AVPA PDO, though, based on the Provincial Authority, Area 2 provisions limiting density were no longer in effect.
- June 23, 2022, Council repealed the AVPA Secondary Plan and repealed the density requirements in the PDO-1 Airport Vicinity of the Zoning By-law to address outstanding discretionary amendments resulting from the Regulation.
- November 4, 2022, the Province amended the Regulation.
    - The key amendment as it pertains to City by-laws includes the expansion of Areas 1 and 2, effectively putting the Land back into Area 2.
    - This amendment does not regulate density, the Zoning By-law states: *New or replacement single-family residential dwelling and multiple-family residential dwellings may be constructed in Area 2.*

The adjacent property at 500 Shaftesbury Boulevard is designated under the Province of Manitoba *Heritage Resources Act* (C.C.S.M. c. H39.1). This designation regulates several interior and exterior building elements. As this would relate to the Proposed Development, it provides in part:

*Former Manitoba School for the Deaf, Winnipeg 109. The parcel of land and buildings known as the former Manitoba School for the Deaf, situated at 500 Shaftesbury Boulevard, in the City of Winnipeg, including the following specific site features:*

*(d) sight lines as seen from Shaftesbury Boulevard and Grant Avenue.*

- The provisions set out in the *Heritage Resources Act* do not apply to properties beyond 500 Shaftesbury.
- The City has worked with the proponents to ensure the Proposed Development demonstrates compliance with maintaining site-lines to the Canadian Mennonite University (the "CMU") as seen from Shaftesbury Boulevard.

In summary the Proposed Development:

- Does not require the expansion of new infrastructure and efficiently uses land to accommodate a diversity of housing options.
- Integrates land use with multi-model transportation, including transit and active transportation.
- Aligns with emissions reduction targets under the Climate Action Plan in that multi-unit residential is more efficient in terms of spatial land use and building energy efficiency.
- Diverse housing forms, increasing density and aligning land use with transit can support the reduction of greenhouse gas emissions.
- Is considered to be a moderate change in a low density neighbourhood.
- Is located adjacent to a university campus site, which is a higher density use than single family residential dwellings.
- Falls below the maximum permitted density (75 units) under the RMF-M zoning district with a proposed density of 58 units.
- Tiers down from the tallest building to shortest west to east.
- Incorporates landscaping and separation distance to adjacent properties that provides a gradual transition to the single-family dwellings to the east.
- Incorporates both on site and boulevard landscaping to effectively act as a screen to neighbouring properties.
- In comparison to other multi-unit residential buildings in the neighbourhood, it is consistent in terms of setback, density, height, and screening through the use of landscaping.

## Applicant

Donovan Toews of Landmark Planning & Design Inc. presented the following:

- The Applicant team consists of Private Pension Partners (P3) (the "P3"), the owner, a private equity real estate investment management firm, BLDG Architecture Office Inc. led the detailed design process, Stantec was the transportation consultant, and Landmark led the planning, stakeholder engagement and development approvals processes.
- Neighbourhood context of the Land shows a variety of uses including Assiniboine Park and Forest, the Tuxedo Golf Course, and properties zoned both educational, commercial, and single-family residential.
- The Land is comprised of a vacant home that was previously used as a group home and areas of bare and treed land.
- To the north lies the Tuxedo Golf Club, the south CMU's gravel parking lot and green space.
- The process undertaken:
    - December 2020 Pre-application submitted.
    - March 2021 First Open House hosted by P3.
    - March 2021 Second Open House hosted by P3.
    - September 2021 Third Open House, first hosted by Landmark.
    - November 2021 Fourth Open House, second hosted by Landmark.

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| o | December 2021 | DASZ application, for subdivision and rezoning. |
| o | April 2022 | Public Hearing at which ACC recommended approval. |
| o | May 2022 | SPC concurred with ACC's recommendation. |
| o | May 2022 | EPC concurred with SPC and ACC's recommendation. |
| o | June 2022 | Council gave Proposed By-law first reading. |
| o | July 2022 | Variance appeal overturned by City's Appeal Committee. |
| o | July 2022 | Referral made to the Board. |
| o | April 2023 | Municipal Board Hearing. |

- *OurWinnipeg* and *Complete Communities* were in place at the time of the application.
- Specific policies applicable to the Proposed Development have been identified as:
    - 01-1c Key Directions for Specific City Area's – Areas of Stability
      *Enhance the quality, diversity, and completeness of stable neighbourhoods and expand housing options for changing populations.*
    - Section 01 Direction 3:
      *Promote Compact Urban Form and Manage the Extension of Municipal Services for New Growth.*
    - Section 01-4, Housing Direction 1:
      *Support diverse housing options in each neighbourhood throughout the city.*
    - Section 03-1, Direction 9:
      *Collaborate with developers and other partners to foster an age-friendly urban environment. Encourage age-friendly development in existing neighbourhoods.*

*OurWinnipeg 2045* and *Complete Communities 2.0*

- Responsibly plan, prioritize, and accommodate growth in areas that best support Complete Communities.
- Encourage compatible residential development that aligns with the City's residential intensification target.
- Encourage development that expands housing options, types, and tenures for residents to meet life cycle needs, including aging in place.
- Increase the population within Established Neighbourhoods to contribute to the physical renewal and revitalization of neighbourhoods.
- Design new development in Established Neighbourhoods to a high standard of urban design.
- Facilitate the redevelopment of Established Neighbourhoods that contributes to the further development of walkable, bikeable, and transit-oriented communities.

The Proposed Development aligns with *OurWinnipeg* and *Complete Communities* and their successors *OurWinnipeg 2045* and *Complete Communities 2.0*.

Climate Action Plan

The Proposed Development aligns with Policy:

- 3.1 Increase the use and efficiency of public transit systems.
- 3.2 Increase the density of urban development along transit corridors.
- Strategic Opportunity 4: Facilitate compact, complete development and increase density.
  *4.1 Increase strategic infill development that capitalizes on existing and planned corridors with frequent transit service.*
- Enable diverse mobility choices through the development of higher-density and more complete communities.

Airport Vicinity Protection Area, AVPA (as of February 2023):

- The Land is in Area 2 within the AVPA boundary.
- Area 2 of the current AVPA permits new multi-family residential development that achieves the following indoor sound mitigations levels:
  - Bedrooms: 35 dB (Decibel)
  - Livingroom, dining room and recreation rooms: 40 dB
  - Kitchen, hallways, and bathrooms: 45 dB
- The Proposed Development will comply with the above noted mitigation levels.
- Several multi-family developments exist in the neighbourhood.
- The Land is currently zoned Parks and Recreation, however, is not the historic or current land use.

Active Transportation and Transit:

- Located on the City's existing and expanding active transportation network and is near many Winnipeg Transit routes.

The Proposed Development is located in an area that is well suited to support it. It will:

- Provide housing options for the 55+ population to live and age in place.
- Introduce accessible housing units including both universally accessible and adaptable units.
- Help satisfy the City's goal of 50% infill for new residential development.

Area residents raised several concerns that were voiced during the public engagement process. Each of the following have been addressed:

- Issue 1: Building height, shadows, and views.
  - Building bulk is broken up into three separate buildings to create a tiered effect to the street, reducing new shadows to the east.
  - Height and scale conform to RMF-M zoning standards with a variance for height and setback on one building.
  - Sun shadow study confirms that there is compliance with City standards.

  - Allows for continued sightlines to CMU.
- Issue 2: Natural features and landscaping.
  - Proposed landscaping exceeds all zoning by-law requirements.
  - An arborist report includes recommendations on how to protect trees on adjacent properties.
  - There will be no effect on the adjacent golf course.
  - The developer will pay the City any required parkland dedication fees.
- Issue 3: Design and aesthetics.
  - High quality building design features a mixture of materials, colours, and articulation.
  - Resident parking will be underground.
  - Visitor parking will be both above and below grade.
- Issue 4: Construction and phasing.
  - Construction is likely to be completed in one phase.
  - Construction management plan will be implemented.
- Issue 5: Traffic, parking, and safety.
  - Planned parking meets zoning by-law requirements.
  - Existing approach to be widened.
  - Addition of a sidewalk connecting to existing pathway.
  - A traffic impact study was undertaken and indicates additional traffic is easily accommodated.
- Issue 6: Property values.
  - Research demonstrates that new developments generally do not have a negative impact on the property values of existing homes.

- The first draft of the Proposed Development developed in March 2021 was more in line with the heritage style of three buildings, each five levels with 16 units, for a total of 48 units.
- After considering the first design critiques, the three buildings are now more modern in style.
- The preferred design incorporates green roofs on all buildings.
- As a result of overturning the variance appeal, the two variances for Building "A" have been approved.
- Stantec was commissioned to complete a Traffic Impact Study to assess the implications of the Proposed Development.
- As a result, Stantec along with the City's Public Works department, advise that the additional traffic generated by the Proposed Development can be easily accommodated without a need for any improvements to the road network.
- The Proposed Re-Zoning has received full support from the City's Public Service.
- Recommendations for approval have been received by ACC, SPC, EPC and the Proposed Re-Zoning By-law passed first reading with a vote of 14 to 1 in favour.
- The Variance Appeal Order of the Appeal Committee DAV 102389A/2022D [c/r DASZ 23/2022] imposed a condition regarding mitigation strategies regarding bird safety.

**Owner and Developer – Private Pension Partners**

Karl Loepp, Partner at P3 provides the following:

- Development Company was founded in 2010 for the purpose of developing and owning real estate in Manitoba.
- P3 has other developments in Winnipeg.
- The highest and best use for the Land is the Proposed Development.
- Demographics in the area will be well served.
- There are no similar products on the market in the Tuxedo area.

**Transportation**

Mark Hearson, Transportation Engineer with Stantec presented the Traffic Impact Study, highlighting the following:

- Contracted by Landmark.
- The Land's vehicular access is located at the northwest corner.
- A pedestrian access is located south of the driveway.
- Shaftesbury Boulevard runs north south, is a two lane un-divided road with a posted speed limit of 50 km/hour and is not a part of the Winnipeg Truck Route network.
- There is a 25-metre-wide public right-of-way multi-use path between the street and the Land.
- Mountbatten Avenue is an east-west, two lane un-divided collector that intersects Shaftesbury Boulevard at a T-intersection approximately 10 metres north of the Land's access.
- Approximately 10 metres south of the Land's existing access on the east side of Shaftesbury Boulevard is an alleyway.
- Counts were taken at weekday morning peak period, from 7:30 am to 8:30 am, and weekday afternoon peak period, from 4:15 pm to 5:15 pm.
- Average daily traffic was reviewed for consistency with road classification.
- Counts were taken in June 2018 at mid-block located between Cuthbertson Avenue and Mountbatten Avenue.
- The average daily traffic estimate for Shaftesbury Boulevard between Mountbatten Avenue and Cuthbertson Avenue for 2021 is 3,998 northbound, 3,193 southbound for a daily average of 7191 vehicle movements.
- It is estimated there will be an increase of one vehicle every 3.0 minutes during the weekday morning peak and one vehicle every 2.18 minutes during the weekday afternoon peak.
- Trip generation for 490 Shaftesbury is estimated using the Institute of Transportation Engineers *Trip Generation Manual – 10$^{th}$ Edition.*
- Proposed Development trip generation estimates are 314 total weekday trips, 20 weekday morning peak and 26 weekday afternoon peak trips with the remainder scattered throughout the day.
- There are no capacity concerns expected at the intersection of the Proposed

Development's access point and Shaftesbury Boulevard for the future combined time horizons (2023 and 2028) when configured as a T-intersection with a stop-controlled access road and free-flowing Shaftesbury Boulevard approaches.

- There is no material change to the overall traffic volume that could warrant a change in the primary road characteristics or classification.
- Overall estimated change in average daily traffic for Shaftesbury Boulevard between Mountbatten Avenue and Cuthbertson Avenue in 2023 is 7,425 vehicle movements representing an increase of 234 over that of 2021, and 7,608 in 2028.
- Transit Impact analysis revealed that the closest existing transit stop to the Proposed Development is approximately 380 metres to the south which is within the idealized 400 metre walking distance to transit service, which is the common objective to transit provision in the City.
- Access to the Land is within 40 metres of the T-intersection of Shaftesbury Boulevard and Mountbatten Avenue.
- The queues identified in the traffic simulation at the access point were minimal and the general risk of this interaction is very low.
- There is no real safety concern but, shifting the access point to the south may reduce interaction with the Mountbatten Avenue intersection, but the benefit would not be significant.
- Existing offset from the property line to the multi-use path is approximately 9-metres which aids in maintaining site triangles for both drivers and path users.
- Effort should be made to delineate a turnaround and facilitate the intended flow to prevent conflicts in the parking lot of the Proposed Development.
- An effort should be made to provide signage and sightlines where the ramp from the underground parking meets the at-grade parking lot.
- Integration of on-site pedestrian facilities with the multi-use path is recommended to prevent pedestrians from using the travelled lanes of the Land's access road.
- There is a hammerhead turn-around for large vehicles such as firetrucks and refuse trucks.
- The Winnipeg Fire Department had no concerns about the proposed turn-around.

## Public Presentations

A group of area residents engaged Jennifer Lim, a registered planner, of Threshold Planning Studio Inc. and Kate Moir of Moir Informed Decisions as expert witnesses.

Ms. Lim provided the following:

- The proposed development is an increase in residential density 12 times greater than that of the adjacent residential area.
- Developments in Areas of Stability are for consideration of moderate increases and must be sensitive to local context.
- The current zoning PR1 does not permit residential development and the change to RMF-M is a significant zoning change.
- The Zoning Bylaw notes that the designation of RMF is intended to accommodate the development of multi-family units in neighbourhoods with medium to high

residential densities.

- The Land is located within Recent Communities under the Urban Structure Map of *OurWinnipeg*.
- According to *OurWinnipeg*, areas designated Recent Communities were planned between the 1950s and 1990s and is primarily low and medium density residential with some retail and are typically stable residential communities with limited redevelopment potential over the next 30 years.
- The Charter requires that development in the City must be consistent with Plan Winnipeg or any secondary plan.

Finding 1

- Section 235 of the Charter states there must be compliance with By-laws.
- *OurWinnipeg* and secondary plan *Complete Communities* were in effect at the time of the application.

Finding 2

- *OurWinnipeg, Complete Communities*, the Zoning By-law, Action Plans adopted by By-law and any other By-laws relevant to the application must meet this definition.
- The Proposed By-law is only partially consistent with all of the directional strategies in addition to all relevant By-laws and therefore should not be a consideration.

Finding 3

- Section 4 of *Complete Communities* outlines the Direction and Enabling Strategies specific to the Areas of Stability which are relevant to the Application.
- The Land is identified to be within an Area of Stability.
- Mature communities have greater priority for infill over Recent Communities where infill is limited.

Finding 4

- The land use zoning provides for what currently exists.
- Re-zoning needs to take into consideration the vision of Recent Communities as defined in *OurWinnipeg*.
- Density is relative to local context.
- Parts of Tuxedo, zoned R1 have a relative density of nearly three homes (units) per acre.
- The Land will house 58 units on a 1.41-acre parcel.
- A moderate increase in density could potentially contemplate duplex development, requiring a re-zoning to R2.
- A duplex development on the Land could accommodate up to 12 buildings, two units per building for a total of 24 units which is in contrast to RMF- M at 76 units.
- Area residents, at the City's public hearing, and during the appeal hearing noted that they are not opposed to development on the Land but are opposed to the Proposed Development for several reasons, including density.
- The Proposed Development is not contextually suitable and sensitive to the existing community.

Finding 5

- Direction 1 in *Complete Communities*, notes that there will be supporting planning tools that may include zoning, local area plans, guidelines, and background studies. The word may is suggestive and not mandatory.
- The Land is not located at a convergence of significant transportation routes.
- The Land is not located on a Regional Mixed-Use Corridor, nor is it located in a Community Mixed-Use Corridor.
- The function of a corridor is to move people from one centre to another.
- The Land is not located in a centre and Shaftesbury Boulevard does not function as a corridor.
- The policy, Direction 1, has no relevance, and there is no support for intense and diverse development.
- Direction 2 is the enabling strategy of supporting amendments to plan adoptions specifically in emerging community however, this has no relevance as the Land is not located in an emerging area.
- The Application does not adhere to either Direction 1 or 2 therefore is inconsistent with *Complete Communities*.

Finding 6

- *OurWinnipeg* states when new development occurs in an Areas of Stability, it should be contextually suitable and enhance and celebrate what makes the area unique.
- A thorough review of A Sustainable Winnipeg, *Complete Communities*, Sustainable Transportation, and Sustainable Water and Waste was undertaken to discern guiding principles for infill.
- The City has developed the Infill Development Guidelines for Multi-family Development in Areas of Stability.
- Respecting the transit system, the city seeks to encourage transit use through the implementation of related policies.
- Shaftesbury Boulevard is not indicated on the conceptual major street and highway network as shown in the Sustainable Transportation policy.
- Sustainable transportation does not support the intensification of the Proposed Development.
- The sustainable water and waste policy revolves around potable water consumption, harvesting and recycling/reuse. It is unclear how the Proposed Development might be designed to support this policy.
- The Infill Development Guidelines for Multi-family Developments in Areas of Stability is advisory in nature and does not serve as a regulatory by-law. At best the City refers to the guidelines as a matter of best practice.
- Section 2 – Site Planning:
  2.1.iv Promote infill development that is considerate of its context
  2.2.2 Building Setbacks
  2.2.3 Building Orientation
- The Proposed Development does not address local context, was not sensitive to the adjacent community's concerns and does not meet the intent of the guidelines.

Finding 7

- *OurWinnipeg - Section 01-4* provides indicators of how the City can achieve housing goals.
  Direction 1 provides the enabling strategy to support the creation of a range of sizes, forms and tenures of housing.
  Direction 2 provides the enabling strategy to support contextually sensitive infill development that builds complete and inclusive communities in Areas of Stability.
- The community was allowed limited engagement; however, their input was not sought regarding their vision or thoughts on what might be lacking within their local community; the engagement was simply to inform area residents of the intent to rezone and redevelop the Land.
- It should be noted that at the ACC and the Appeal Hearing of the Appeals Committee, the proposed use and density was not an available point of discussion with the local community.
- The Guideline for Mature Communities provides for infill in a manner that is more conducive to infill than the Infill Guidelines are for Recent Communities.
- *OurWinnipeg* is the integration of systems to avoid piecemeal development and provide directional strategies to be contemplated to harmonize community development.
- The Areas of Stability addresses context of the local community.
- Infill is generally not the focus in Areas of Stability related to Transformative Areas.
- Within Recent Communities, infill must be sensitive to the local context and, effectively, without the support of the local neighbourhood the application does not meet the need identified by the community.

Finding 8

- The Shaftesbury neighbourhood is identified as a low density residential development.
- The Zoning By-law, which is regulatory, describes the intended zoning district direct multi-family development in areas of medium to high densities.

Finding 9

- Regarding the variances for the Proposed Development, one must look to section 247 (3) of the Charter.
- Sections under the Charter require that when considering *OurWinnipeg* and *Complete Communities* that the variance must be consistent, there is no wiggle room or generally consistent with.
- The ACC recommendation on April 29th.
- 2022 was worded in such a way that the remainder of the site is effectively permitted to have 72 foot maximum height under the current variance.
- The 16 foot side yard setback variance is not worded so as to restrict the variance to the area on the site plan.

Finding P1

- With respect to *OurWinnipeg 2045* and *Complete Communities 2.0*, there does not appear to be any relevant regulatory language addressing transitional procedures.
- The Board should turn their attention to *OurWinnipeg 2045* and *Complete Communities 2.0.*
- Section 235 of the Charter provides direction regarding compliance with by-laws.
- The section reads:
    - The passing of a Plan Winnipeg by-law or a secondary plan by-law does not require council, any person, or any department or agency of the government, to undertake a proposal contained in the by-law, but public works, undertakings and development in the city must be consistent with Plan Winnipeg or any secondary plan.

Supplemental findings relating to *OurWinnipeg 2045* and *Complete Communities 2.0*:

Supplemental Finding S1

- *OurWinnipeg 2045* Urban Structure Map identifies the Land has been within the area designated Recent Communities within Established Neighbourhoods, which represents lands that will accommodate additional growth that are contextually sensitive, and promote efficient land use, be cost effective to municipal servicing, enhance housing choice and affordability, and the conservation of green infrastructure and heritage resource.
- *OurWinnipeg 2045* speaks to the intensification in Transformative Areas, areas with Transit-oriented Development, and around corridors.
- The Land is not located on a corridor.

Supplemental Finding S2

- *Complete Communities 2.0* maintains the same vision and principles that guided the first *Complete Communities* Direction Strategy; however, it does take some additional steps to implement the plan.

Supplemental Finding S3

- *Complete Communities 2.0* Policy 2.1 aims for a minimum of 50% of all new dwelling units to be located in the intensification target area.
- Intensification is a term that refers to the development of a site at a greater size and/or intensity than what currently exists, though the policy is however vague in terms of timeline and how intensification will be phased over the course of the secondary plans target of 2045.

Supplemental Finding S4

- *Complete Communities 2.0* Policy *2.3*
    - 2.3.1 Enable and encourage compatible infill development to a degree consistent with the intensification target.
    - 2.3.2 Leverage enabling tools to enable growth were directed by this by-law.
    - 2.3.3 Ensure that lands or planned, zoned, and serviced to facilitate development, were directed by this by-law.

2.3.3.1 Use local area planning, including zoning rationalizations, as a tool to clarify land use and development expectations.

- Conflict is not expressly defined in the glossary, however in Black's Law Dictionary 2nd Edition conflict is, "Friction that happens when incompatible parties or differences…".
- *Complete Communities 2.0* contains several references to conflict often dealing with pedestrian and/or vehicles.
- Conflict is also referred to in policy 2.21 with regards to site design, more specifically recognizing different scales, densities, and uses.

Supplemental Finding S5

- *Complete Communities 2.0* policy 3.1 states that where compatible with surrounding land uses, the highest multi-family residential densities should be directed to areas that provide the best transit service.
- The Land falls within the area targeted for intensification of housing.
- There is no metric for high or medium multi-family residential density within *Complete Communities 2.0*.
- The metric that should be used is provided under *Complete Communities 2.0* Policy 6.1 where consideration should be given in priority of 1. Downtown, 2. Corridors (which may include properties within 200 metres of these corridors), 3. Intensification target area, and 4. Greenfield development in accordance with phasing plan.
- The Land is not on a corridor nor is it within 200 metres of a corridor.
- Policy 3.1.3 applies: "Multi-family residential densities elsewhere in the urban structure will be directed in accordance with other policies from other sections of this By-law".

Supplemental Finding S6

- Section D of *Complete Communities 2.0* provides goals and policies for Established Neighbourhoods.
- Goal 1 is to encourage compatible residential development within Established Neighbourhoods to build more complete communities and align with the City's residential intensification target.
- Key policies set out within Goal 1 that should be considered are 1.1, through 1.6 which gives direction for new residential development in an existing neighbourhood, ensuring compatibility.
- The Infill Guidelines are not referenced in *Complete Communities 2.0* however appear to be the only relevant guideline.
- The Land is approximately 5.5 kilometres from Polo Park, 3.6 kilometres from the Outlet Mall, 2.0 kilometres to the Shops of Tuxedo, and 9.9 kilometres from Downtown. The nearest mixed-use corridor is Portage Avenue.
- Shaftesbury Boulevard from the intersection of Corydon Avenue and Wilkes Avenue would be considered a Collector Street.
- There is no bus service along Shaftesbury Boulevard.
- *Complete Communities 2.0*, Section D, Policies 1.14 through 1.18 provide directions for Recent Communities.

- Mid-rise residential uses are not supported on a collector street.
- Policy 1.6 considers single family residential uses will be generally encouraged.
- Policy 2.9 in Section D of *Complete Communities 2.0* note that buildings with multi-unit residential uses should be designed to support pedestrian activity and reinforce the public realm through thoughtful use of architectural features.
- Policies 2.21 and 2.22 regarding site design suggests that the site design should take cues from the character of the neighbourhood or street and should mitigate potential for land use conflict, parking, vehicular access, service elements, building placement and landscaping are all important design elements.
- Goal 7 is to strategically encourage and guide growth within established neighbourhoods through the use of secondary plans.
- Also, of relevance to the Application, would be the Winnipeg Housing Policy, the Housing Policy Implementation Plan, and the Climate Action Plan.
- Relevant housing policies for the application include the Support Housing Diversity, and Neighborhood Housing, however there are no metrics, and the policies are ambiguous in nature.
- It could be interpreted that the infill on a local collector street could be generally 30% more intense than the surrounding density and generally 30% higher than the surrounding development.
- In so saying, infill development could be 30% more intense than the local context which might afford 2.5 story infill.
- Small scale residential will allow for some intensification that will respect the scale and character of the community.

Supplemental Finding S7

- The Land is located under the PDO-1 Airport Vicinity Protection Area and is subject to Schedule D of Zoning By-law 200/2006.
- Area 2, Schedule D is of no effect and that the construction would be subject to building requirements for noise mitigation standards.
- At the time of the Application the PDO-1 Area 2 had a density restriction that was not to exceed 85 units per hectare or 35 units per acre.
- If multi-family dwellings exceed the limit, approval as a conditional use can be sought under the Charter.
- Using these parameters, the Land would allow for 41 units.
- Under the criteria of PDO-1 AVPA lands in Area 2 would have reasonably been restricted to RMF-S.
- The size and scale of the Proposed Development is incompatible with character, context and built form of the surrounding dwellings and established neighborhood.
- The Proposed Development is not consistent with *OurWinnipeg, OurWinnipeg 2045, Complete Communities* or *Complete Communities 2.0*, and does not adhere to the description of RMF.

Ms. Kate Moir provided the following:

- The public engagement process that was undertaken by the Developer and Consultants failed to be equitable and fair for two primary reasons: (1). Lack of meaningful engagement by the developer and consultant in the pre-application process, and (2). Lack of meaningful engagement with residents at the ACC Public Hearing in relation to the Charter.
- Public engagement was carried out via zoom as it was conducted during COVID-19 pandemic.
- The first open house was facilitated by the architects where the residents were shown a development with 48 units.
- A poll was taken; however the results were never made available to the public.
- Landmark presented a 58 unit development in the open house zoom meeting of September 2021.
- At the November 2021 open house, there was increase in the height of one building and decrease in the height of another.
- Concerns regarding loss of parkland in the area and their concerns on wildlife were not addressed at the April 27, 2022 Public Hearing.
- There was failure to acknowledge that the building height, shadows and views are much higher than what is allowed and what is currently permitted in PR-1 zone.
- The impacts to the residents were downplayed.
- Safety concerns regarding turning and bumper to bumper traffic during peak times were not mentioned.
- One additional vehicle every 3.75 minutes fails to address the reality of the situation.
- Unfortunately, at the ACC held on April 27, 2022, there was notable bias in the questioning and apparent bias in favor of the developer.
- The chair of ACC sought confirmation from the City planner that the file before them was like Roblin Boulevard and that all policies affected are the same. This implied that ACC should be considering this file identical to the proposal they approved.
- Landmark suggested that there is fear of the Proposed Development because it is a multi-family development, and further suggested that it is quite normal to encounter this fear in these types of circumstances.
- A resident was asked to confirm the comparison of the Proposed Development to a Roblin Boulevard re-zoning application.
- An ACC committee member alluded that the Land is privately owned therefore they can't force it to be park space with the exception of denying the application. The member went on to advise that it is cost prohibitive for the City to purchase the land therefore it should be developed as presented.
- This same member stated that the library impedes this site line for CMU so how is the proposal different from the north.
- ACC determined that Shaftesbury Boulevard is an arterial road which allows up to a six-story building.
- ACC voted two in favor with one opposed.

- The opposing member advised that the development process was flawed as over 458 people signed a petition, sent in letters, and then waited hours to have their chance to speak.

The Board received extensive oral and written submissions from area residents opposing the Proposed By-law.

Aside from the flawed hearing process as provided by Ms. Moir, the main concerns and issues raised are broken down and summarized as follows:

Traffic and safety:

- Traffic safety should be the paramount factor in decision-making.
- The Proposed Re-Zoning will greatly increase safety issues for drivers, pedestrians, and cyclists in the area of 490 Shaftesbury.
- Shaftesbury Boulevard has already been impacted in terms of traffic volumes as a result of Seasons of Tuxedo Shopping Mall and adjacent substantial commercial and residential development.
- There will be a disproportionately large effect on queuing on southbound Shaftesbury Boulevard at Mountbatten Avenue.
- Guidance from the City's own Transportation Standards Manual describes street classification as being based on the characteristics of a street, including its function, access, geometric features, traffic features, and traffic volumes.
- Shaftesbury Boulevard measures only 8 metres, which supports a residential classification because it is below the 10 metres required for a collector street.
- There are no pedestrian traffic control measures, local bus routes, or accommodation for cyclists on the roadway.
- The current volume of approximately 7000 vehicle movements per day undermines the street's function.
- In an independent study conducted by CMU, it is reported that between 4:00 pm and 5:00 pm it was safe to turn left onto northbound Shaftesbury Boulevard only 49% of the time.
- The stop sign at Mountbatten Avenue causes the southbound traffic to spread out.
- Northbound traffic is compressed because of the traffic light at Grant Avenue.
- Users of the CMU parking lot will be impacted by the predicted 6% increase in traffic volume that will be introduced at a driveway that is between Mountbatten Avenue and the parking lot entrance.
- Crossing the street from the east to the west to access the multi-use path is already challenging and can be dangerous.
- People use the street in the winter as there is no sidewalk to walk on.
- Driver frustration and improper driving behaviors can be evidenced on a regular basis.
- The traffic study done by the developer was flawed and used historical information from as far back as 2013 and did not reflect the true traffic flows of today.
- Furthermore, the traffic study was conducted in June 2018 which reflected a period after the end of school year.

- The multi-use path users will be put in harm's way with the increased traffic volumes.
- Large vehicles will be required to back out across the multi-use path and onto the busy roadway.
- Canada post has already recognized the safety hazards on Shaftesbury Boulevard and have ceased personal home delivery and installed community mailboxes.

Sustainable transportation:

- Sustainable transportation guidelines encourage walking, cycling, or the use of public transit buses.
- Marketing for the Proposed Development is for affluent seniors with the desire to age in place however, common sense dictates that the access to necessities on foot is too far and is unrealistic.
- It has been documented that potential development densities should be directed towards locations with the best public transit to enhance the viability of any means of transportation and that it should have the lowest possible impact on the environment.
- The Proposed Development does not align with sustainable transportation goals, and it is anticipated that the result would be more automobile use resulting in more emissions, more consumption of fuel, and more negative impact on the environment.

Parking:

- Overflow parking will occur on Shaftesbury Boulevard with the exception of between 7:00 am to 9:00 am and 15:30 pm to 17:30 pm Monday to Friday when parking is prohibited.
- Shaftesbury Boulevard is a narrow street and with the addition of parking essentially reduces the street to one lane causing even more congestion.
- It is recognized that the Proposed Development meets the city requirement guideline for parking stalls.
- The parking that will occur on Shaftsbury Boulevard will contribute to more traffic issues and cut through traffic to access Corydon Avenue and Grant Avenue as well as bottleneck at the CMU access.

Public engagement (supplemental to evidence from expert witnesses):

- Residents were not consulted with regards to what is missing in the neighbourhood or what they thought would be appropriate, they were simply told what was proposed.
- Feedback from the community was given nominal consideration in only a few instances and blatantly disregarded on specific issues such as height, scale and density.
- The residents felt that attempts were made to discredit residents in the media, to ACC and others.
- Landmark recorded public engagement sessions which they acknowledged would be available, therefore prompting more engagement.
- The residents felt the consultation was disrespectful then lacked trust.

- There has been a lack of clarity in what is proposed on the Land.
- The local knowledge has been underutilized as a resource by the architect, planner, developer, civic leaders and administration.
- A draft letter sent to residents by Councillor Kevin Klein in January 2021 noted that the "current proposed development is not consistent with the character of the neighborhood."
- Residents appealed the ACC decision and opposed the development by supporting the variance appeal with over 100 signed letters.
- Residents also objected to the first reading of the Proposed By-law.

Heritage character:

- The former School for the Deaf located at 500 Shaftesbury Boulevard, including lands and building is owned and operated by CMU, was given heritage status under *The Heritage Resources Act (C.C.S.M. c H39.1).*
- This includes specific site features such as sight lines as seen from Shaftesbury Boulevard and Grant Avenue.
- The Proposed Development includes one building with a height of 72 feet that will have a jarring visual element therefore undermining the beauty and stateliness of the heritage property.

Water Drainage and aging infrastructure:

- Specific to CMU, there has been an agreement with the previous owners of the Land regarding water drainage whereby CMU uses a swale on the property that runs under the driveway and through a culvert.
- CMU owns and maintains old, fragile sewer and water lines 50.4 metres to the west and 27.6 m to the north of 490 Shaftesbury, and the combined sewer line 81 metres to the south of 490 Shaftesbury.

Diminished Greenbelt and Parkland:

- The Greenbelt runs from Portage Avenue, across the Assiniboine River and continues south to Assiniboine Park, along the Tuxedo Golf Course, the Assiniboine Forest and continues on to Fort Whyte Alive.
- The multi-use path is the only sidewalk in the entire neighbourhood connecting Corydon Avenue to Grant Avenue.
- The Proposed Development contradicts what the City has stated, in that it aims to increase the areas allocated for parks, maintain connectivity to natural lands, increase the urban forest/canopy and preserve natural heritage, identity and place.
- OURS-Winnipeg (Outdoor Urban Recreational Spaces), a community based greenspace advocate organization with a focus on urban greenspaces, river and nature corridors, and the urban forest, indicates that the City has one of the lowest ratios of park space.
- A public engagement survey conducted by Winnipeg Recreation and Parks Strategies in October 2021 affirms that Winnipeggers highly value their connections to nature, 62% of respondents considered natural features as their top priority.
- The Greenbelt provides travel routes and natural habitat for animals and falls along seasonal routes for migratory birds.

- 70% of all terrestrial birds are migratory and 80% of migratory birds travel at night.
- The Proposed Development's building height will adversely affect the migration of both animals and birds.
- Bird collisions with windows up to 95 feet result in increased deaths of warblers and sparrows.
- A compounding factor in bird mortality is the combination of height and windows that are lit at night.
- The lack of natural land left after the construction of the Proposed Development will cause a rupture in the natural continuity that will be harmful to animals, birds and environmental resilience.
- The urban forest/canopy acts as a mitigating factor of the harmful effects of CO2 emissions on climate change.
- Trees and forests provide shade that reduces the build up of heat, habitat for small animals, insects and birds, aid in water retention, purify air and provide beauty.
- The Assiniboine Forest is the largest urban forest in Canada measuring 285 hectares, is home to a myriad of plants, animals and birds, some of which are rare, offers 18 kilometres of trails and less accessible marshes and thickets.

Community Character

- The Proposed Development is an extreme zoning change from PR1 to RMF-M.
- The proposed buildings have no aesthetic relationship to the existing structures.
- There will be a loss of privacy to homes nearby.
- There is a lack of continuity of front yard setback that is required on the east side up the street.
- The tower at CMU stands approximately 76 feet in height, historic and the benchmark on the street.

## FINDINGS

The following Report to Council is as a result of the Board's careful consideration of the applicable planning policies, along with both oral and written presentations brought forward to the Board in regard to the Proposed By-law. The Board appreciates the comprehensive presentations made by not only the parties, but also the interested persons and their expert witnesses who attended the Board's three day Hearing.

In assessing the Proposed Re-Zoning, Landmark contends that the Board can be guided by either the City's *OurWinnipeg* and *Complete Communities* or the new planning policies, *OurWinnipeg* 2045 and *Complete Communities 2.0* as they are confident that the Proposed Development is in alignment with both. The new policies came into force several months after the Development Application had already been made. UPD took the approach that the Development Application should be based on the policies in effect at the time the application was made. Ms. Lim suggested that both the original policies and new policies can be used. The Board will be 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*.

The Board notes that the Proposed By-law includes an approved Subdivision which creates two lots identified as Lot 1 and Lot 2. Lot 2 is a small lot on the north-west corner of the Land. The rezoning of Lot 2 will take place at the time it is dedicated to the adjacent Tuxedo Golf Course. No detailed positions, arguments or issues were raised with specific regard to Lot 2. The Board therefore focused its Report on the Proposed Re-Zoning of Lot 1 of the approved Subdivision.

Lot 1 currently includes a dwelling constructed in 1978. A conditional use was approved in 1975 by the Assiniboine Park Community Committee for community housing, which allowed for no more than 12 residents. At the time of the conditional use application, the Land was zoned "A" Agricultural under Tuxedo-Fort Garry- Charleswood Zoning By-law 1800. When Zoning By-law 6400/94 came into effect, the district changed from "A" Agricultural to "PR1" Parks and Recreation-1.

The Board heard evidence that there are lands within the City that are zoned PR1 that will not be used as parks and recreation land. PR1 zoning is simply used in some cases to hold the property until there is a need for development - a holding zone of sorts. The Land is one such case. Historically, the Land was never used, nor was it intended to be used, as a park.

Evidence was presented regarding land uses and zoning types surrounding the Land. The area directly across the street consists of single-family homes, zoned R1-L, that at most are two stories in height. CMU, a university campus, is zoned E1 and includes an area of green space, a parking lot, and a library which houses a public café. The main campus consists of two buildings, one of which has a tower that measures approximately 76 feet in height. Directly adjacent to CMU to the west, and located on Grant Avenue, is a police station which is zoned C1. Tuxedo Golf Course is adjacent to the north and is zoned PR1.

Moving slightly beyond the adjacent properties from the Land are areas with other zoning types, including a mix of low-rise, mid-rise and high-rise residential buildings and commercial properties, all in close proximity to the single-family dwellings in the Tuxedo neighborhood.

The Board notes that the prior conditional use, permitting a community housing facility on the Land, created a residential footprint despite the PR1 zoning. The housing facility most recently accommodated up to 12 residents. The Board views this use as low density and, therefore, increasing the density to 58 units as part of the Proposed Re-Zoning is considered to be a moderate change. The Board further notes that the proposed 58 units falls below the maximum permitted density of 75 units under RMF-M zoning.

The Board heard evidence that the height of the proposed structures is not keeping within the integrity of the area. Within the context of the current neighbouring land uses, the university campus consists of multiple buildings, one of which includes a tower measuring approximately 76 feet in height. The Board notes that, in terms of scale, the highest building of the Proposed Development measures 72 feet which is less than the CMU tower.

The Board acknowledges the efforts made by the developer to address the concerns of the

area residents regarding design and aesthetics by adjusting building height and overall design. The original design called for three buildings at five stories each. After further review, a tiered or stepped down effect of three buildings at 4, 5, and 6-stories was created. Landmark brought forward evidence of a shadow study that was conducted to mitigate the impacts of the buildings' bulk. The shadows created by the Proposed Development will allow adjacent homes on the east side of Shaftesbury Boulevard a minimum of 5 hours of daylight. The Board is satisfied these efforts meet the minimum standards set out in the Zoning By-law.

The Board notes that the variances to increase the six-story building height to 72 feet from 60 feet, the allowable height in the RMF-M zoning, and to decrease the north side yard from 18 feet to 16 feet, was appealed. The Variance Appeal Order upheld these variances and will come into force when the Proposed By-law comes into force and effect.

The Variance Appeal Order also imposed a condition regarding mitigation strategies regarding bird safety. The developer was unable to make any specific comment regarding the mitigation strategies as outlined in the City of Winnipeg Bird Friendly Resources at the time of the Hearing. The Board, however, is satisfied that there is an undertaking to fulfil the condition as set out in the Variance Appeal Order.

The Board is of the view that the developer has satisfactorily responded to resident's concerns regarding natural features and landscaping, design and aesthetics, and construction and phasing. The Board is satisfied, on the evidence, that the proposed landscaping meets or exceeds Zoning By-law minimum requirements and that there is sufficient separation from surrounding properties to provide for a reasonable transition from the Proposed Development to the nearby single-family dwellings. The Board is further satisfied on the evidence presented by the Owner that every effort will be made to develop a construction management plan that will allow for construction to be completed in one phase.

The City did not conduct a traffic impact study as they deemed Shaftesbury Boulevard suitable for the traffic increase the Proposed Development would produce. The City made this determination based on their standard policies and in conjunction with the appropriate departments and data. Landmark, however, considered it prudent to address area residents concerns and contracted with Stantec to conduct a traffic study.

One issue identified is that access to the Proposed Development is very close to Mountbatten Avenue and the access to CMU's parking lot. The concern is that increased vehicular movement arising from the Proposed Development will greatly increase safety risks for pedestrians, drivers and cyclists. Traffic volumes and counts outlined in the study are based on data from 2018.

Stantec used professional estimating metrics by extracting relevant trip generation rates from the Institute of Transportation Engineers *Trip Generation Manual – 10th Edition* to forecast future traffic that will likely be associated with the Proposed Development. Accordingly, it was determined that the increase to peak hour traffic will be minimal. The Board is cognizant that any increase in traffic can be a concern to those using the

roadways. However, the Board is satisfied with the evidence that the proposed additional traffic volumes will be minimal and can be accommodated.

Landmark also addressed area residents' concerns relating to multi-use path safety. The Board notes that the existing approach to the Proposed Development will be widened. A sidewalk will be installed to connect the Proposed Development to the existing pathway. A stop sign is to be installed that will force all exiting vehicles to stop at the multi-use path. The Board is satisfied that safety mitigation surrounding the path has been adequately addressed.

The Board also notes that the parking at the Proposed Development not only meets the minimum requirements of the Zoning By-law but actually exceeds it. Further, the developer has agreed to mitigate the concerns regarding overflow parking onto Shaftesbury Boulevard by reconfiguring the above grade visitor parking, doubling the stalls from four to eight.

CMU received heritage status in 1981. The Board is satisfied that site features specific to CMU under the *Heritage Resources Act* are being upheld and that the site lines of CMU from Shaftsbury Boulevard and Grant Avenue are not obstructed by the Proposed Development. The Board encourages ongoing collaboration between CMU and the developer regarding drainage matters.

Lot 1 is located within the Areas of Stability – Recent Communities policy area under *Complete Communities*. *Complete Communities* sets out policies for the development of neighbourhoods within the City. The height and scale of the Proposed Development is considered to be a moderate change in a low-density neighbourhood and is complementary to the existing scale, character and built form of the neighborhood and surrounding land uses and buildings. The Board notes that the Land, which sits immediately adjacent, or in close proximity to, a university campus, police station, recreational amenities, and single-family dwellings, is appropriate for the moderate level of residential infill development being proposed. The Board is satisfied that the Proposed Re-Zoning to RMF-M aligns with the City's planning policies.

The Proposed Re-Zoning further aligns with the City's policies and strategies in that the Proposed Development helps meet the need for accessible, diverse and high quality housing stock that is efficient in terms of land use and building energy. The three-tiered multi-residential buildings will also have design and environmental building features in harmony with nearby high-end multi-residential housing and single-family dwellings in the Tuxedo neighborhood.

The Proposed Re-Zoning will also allow for housing growth in an area that has the municipal service capacity to support intensification, while integrating land use through a network of transportation options. The multi-family complex will help expand housing options and create a more complete community that will allow area residents the option to downsize within their own community if they so choose.

From the beginning of the application process, area residents strongly opposed the

Proposed By-law. Those opposed wrote many letters and attended every meeting from the first open house onward. The Board heard that a degree of bias was perceived at the ACC where committee members asked questions and made comments regarding a separate property and the policies used in the determination of its re-zoning. Though area residents felt the process was flawed, the Board recognizes that all current hearing processes were followed. However, the Board believes it is incumbent on the City to ensure that public consultation processes allow for meaningful, collaborative public engagement and input.

## RECOMMENDATION

The Board is of the view that the Land is appropriate for the level of infill development being proposed on Lot 1 and the shift from PR1 zoning to RMF-M zoning under the Proposed By-law represents a moderate change that aligns with the applicable City policies, plans and strategies. Further, the Board takes no issue with the City's plans to rezone Lot 2 from PR1 zoning to PR2 zoning.

After careful deliberation, the Board is recommending that the City approve the Proposed Re-Zoning. Although the developer has identified maximum building heights and density and has agreed to double the number of above grade visitor parking stalls, the Board finds it prudent to recommend that these three matters form part of a Zoning Agreement.

**THEREFORE, THE BOARD RECOMMENDS:**

1. That with respect to City of Winnipeg By-law No. 84/2022, the City of Winnipeg council **APPROVE** the Proposed Re-Zoning on conditions to include, but not limited to, the following:

    a. That the Owner/Developer enter into a Zoning Agreement with the City of Winnipeg.

    b. That the Zoning Agreement include, among other requirements, the following with respect to Lot 1 of the Plan of Subdivision:

        i. Total density of Buildings A, B and C not to exceed a maximum of 58 units;
        ii. Building A maximum height not to exceed 72 feet; Building B maximum height not to exceed 60 feet; and Building C maximum height not to exceed 50 feet;
        iii. The number of above grade visitor parking stalls to increase from 4 to 8.

FOR THE MUNICIPAL BOARD

June 2, 2023
Date

BJ Loewen
Brenda Loewen, Acting Chair

E Wills
Erin Wills, Secretary