Agenda - Council - February 23, 2005

Report - Standing Policy Committee on Property and Development - February 1, 2005

Item No. 4 Subdivision and Rezoning - 541, 543 and 547 Selkirk Avenue
File DASZ 41/2004

STANDING COMMITTEE RECOMMENDATION:

On February 16, 2005, the Executive Policy Committee concurred in the recommendations of the Standing Policy Committee on Property and Development and the Lord Selkirk-West Kildonan Community Committee and recommends to Council that the application for subdivision and rezoning under File DASZ 41/2004 not be proceeded with.

Report - Standing Policy Committee on Property and Development - February 1, 2005

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On February 16, 2005, the Executive Policy Committee concurred in the recommendations of the Standing Policy Committee on Property and Development and the Lord Selkirk-West Kildonan Community Committee and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On February 1, 2005, the Standing Policy Committee on Property and Development concurred in the recommendation of the Lord Selkirk-West Kildonan Community Committee and submitted the matter to the Executive Policy Committee and Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On January 11, 2005, the Lord Selkirk-West Kildonan Community Committee concurred in the administrative recommendation and submitted its recommendation to the Standing Policy Committee on Property and Development.

RE: **Subdivision and Rezoning - 541, 543 and 547 Selkirk Avenue**
File DASZ 41/2004 [c/r DCU 326949/2004D]

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

Prepared by: **Diane Timmins, Clerk,**
Lord Selkirk-West Kildonan Community Committee

Report date: **January 25, 2005**

COMMUNITY COMMITTEE RECOMMENDATION:

On January 11, 2005, the Lord Selkirk-West Kildonan Community Committee concurred in the administrative recommendation and recommends to the Standing Policy Committee on Property and Development that the application for subdivision and rezoning under File DASZ 41/2004 not be proceeded with.

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

1. The Lord Selkirk-West Kildonan Community Committee agreed with the administrative comments contained in the report of the Manager of Planning and Land Use dated December 29, 2004.

2. The Lord Selkirk-West Kildonan Community Committee believed the proposed development would not contribute to the revitalization of the community, and if approved, would further deteriorate the area and cause a big social problem.

3. There is substantial community opposition to the application.

PUBLIC HEARING SUMMARY

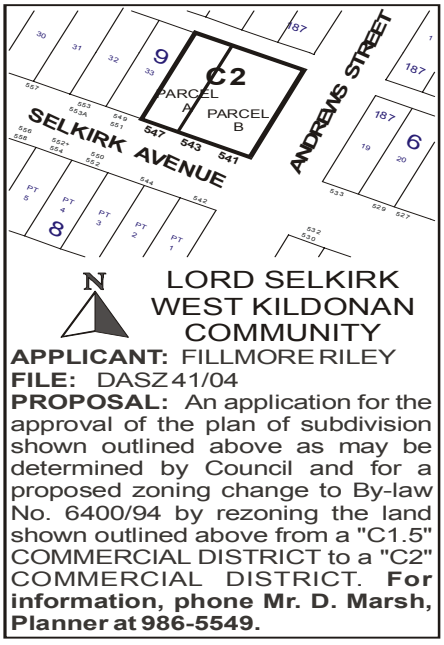
File: DASZ 41/2004 [c/r DCU 326949/2004D]

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

Public Hearing: January 11, 2005
Council Chamber, Council Building
510 Main Street

Applicant: Fillmore Riley LLP (B. Neil Johannson)

Subject:



Premises Affected: 541, 543 and 547 Selkirk Avenue

Exhibits Filed:

1. Application dated October 19, 2004
2. Notification of Public Hearing dated December 7, 2004
3. Manitoba Status of Titles 1180409, 1721887
4 a. Surveyor's Building Location Certificate and sketch for 547 Selkirk Avenue dated September 24, 2004
   b. Surveyor's Building Location Certificate and sketch for 541 Selkirk Avenue dated October 12, 2004
5 a. Letter of Authorization dated August 9, 2004 from 541 Selkirk Ltd. to Fillmore Riley LLP
   b. Letter of Authorization dated August 12, 2004 from The City of Winnipeg to Fillmore Riley LLP
6. Site Plan
7. Communication dated November 23, 2004, from Sue Ziemski, Housing Committee Chair, William Whyte Residents Association, in opposition to the application
8. Communication dated November 24, 2004, from Mary Williams, General Manager, North End Housing Project, Inc., in opposition to the application
9. Communication dated November 26, 2004, from Bernice Getty, Executive Director, North End Women's Centre, Inc. in opposition to the application
10. Communication dated November 26, 2004, from Sonia Prevost-Derbecker, Executive Director, Ndinawemaaganag Endaawaad, in opposition to the application
11. Communication dated November 29, 2004, from Lucille Bruce, Executive Director, Native Women's Transition Centre, in opposition to the application
12. Communication dated November 29, 2004, from Josie Hill, Executive Director, Ma Mawi Wi Chi Itata Centre, in opposition to the application
13. Report from the Manager of Planning and Land Use dated December 29, 2004
14. Communication dated January 10, 2005, from Marty Donkervoort, General Manager, Community Ownership Solutions, in opposition to the application
15. Communication dated January 10, 2005, from Dan Highway and Bonnie Macdonell, Co-Chairs, Board of Directors, Urban Circle Training Centre Inc., in opposition to the application
16. Inspection Report
17. Presentation dated January 11, 2005, in support of the application, submitted by Neil Johannson, on behalf of the applicant, at the public hearing on January 11, 2005

18. Photograph of the Merchants Hotel submitted by Neil Johannson, on behalf of the applicant, at the public hearing on January 11, 2005
19. Communication dated January 11, 2005 from the Director, Licensing & Inspection, Manitoba Liquor Control Commission, listing the complaints and infractions at the Merchants Hotel over the last three (3) years, submitted by Neil Johannson, on behalf of the applicant, at the public hearing on January 11, 2005

REPRESENTATIONS:

In Support:

B. Neil Johannson, Fillmore Riley LLP
Kevin Wayne Rudolph, Assistant Manager, Merchants Hotel

In Opposition:

Lucille Bruce, Executive Director, Native Women's Transition Centre
Sonia Prevost-Derbecker, Executive Director, Ndinawemaaganag Endaawaad
Marty Donkervoort, General Manager, Community Ownership Solutions
Bernice Getty, Executive Director, North End Women's Centre, Inc.
Dan Highway and Bonnie Macdonell, Co-Chairs, Board of Directors, Urban Circle Training Centre Inc.
Josie Hill, Executive Director, Ma Mawi Wi Chi Itata Centre
Karlo Kelemen
Heinz Saleski
Annette Champion-Taylor, Co-Chair, William Whyte Residents Association
Mary Williams, General Manager, North End Housing Project, Inc.
Sue Ziemski, Housing Committee Chair, William Whyte Residents Association

For Information:

Sylvia Todaschuk, Selkirk Avenue Business Improvement Zone

For the City:

Mr. D. Marsh, Planner, Planning, Property and Development Department
Mr. M. Robinson, Planner, Planning, Property and Development Department

SUMMARIZATION OF REPRESENTATIONS AND SUBMISSIONS
MADE AT THE PUBLIC HEARING

B. Neil Johannson, on behalf of the applicant, Fillmore Riley, accompanied by Kevin Wayne Rudolph, Assistant Manager, Merchants Hotel, appeared in support of the application. Mr. Johannson submitted and read into the record his presentation, filed as Exhibit 17. He also submitted a photograph of the Merchants Hotel, filed as Exhibit 18, together with a communication dated January 11, 2005 from the Director, Licensing & Inspection, Manitoba Liquor Control Commission, listing the complaints and infractions at the Merchants Hotel over the last three (3) years, filed as Exhibit 19. In this connection, Mr. Johannson noted the Liquor Control Commission had no current concerns about the operation of the Merchants Hotel.

Mr. Johannson advised Committee that his client, the Merchants Hotel, is not seeking additional rights with the subject application, but is merely wanting to add a fenced patio for smokers on a vacant City lot adjoining the hotel to the west in an effort to remove the congestion and problems on the surrounding streets and into a controlled environment. Mr. Johannson stated the City of Winnipeg has agreed to sell the vacant property to the Merchants Hotel, conditional upon approval of the subject application. He further stated he did not agree with the negative administrative recommendation and the comments contained therein, but in the event a positive recommendation was forthcoming from the Community Committee, his client would be willing to restrict the "C2" zoning applied for to the hotel only, as well as restricting the use of the adjoining vacant lot as a patio appurtenant to the hotel only. Mr. Johannson stated the application should be approved for the following reasons:

1. There are no close residential properties near the Merchants Hotel, therefore no significant noise problems could result from the proposed outdoor patio. In this connection, Mr. Johannson stated that as his client is prepared to install fencing and foliage on the patio to improve the look of Selkirk Avenue, this would also serve to reduce any noise levels, as well as to enhance the area.

2. Many of the social problems in the neighbourhood do not emanate from the Merchants Hotel, but rather from the surrounding area. In this connection, Mr. Johannson noted that from a list of police attendances obtained, the bulk of them related to problems outside the Hotel and the surrounding area. He suggested that even if the Merchants Hotel were to disappear, the social problems would remain and move elsewhere.

3. The Merchants Hotel has worked closely and continues to work closely with the City of Winnipeg Police Service and has video surveillance on the premises. It is also prepared to install surveillance cameras in the proposed patio area to provide security and a controlled environment.

Kevin Rudolph stated the smoking patio would be a positive improvement to the Hotel by encouraging customers to come into the hotel and lead to a more controlled environment.

Annette Champion-Taylor, Co-Chair, William Whyte Residents Association, appeared in opposition to the application and stated she was opposed to the rezoning of the subject property to a "C2" Commercial designation. She stated concurrence in the comments contained in the report of the Manager of Planning and Land Use dated December 29, 2004 and expressed concern that approval of this application would lead to:

- the patio to become grounds for illegal alcohol consumption, illicit drug trades, and prostitution
- increased traffic
- increased noise levels that would be detrimental to the residences in the area
- have a negative impact on existing businesses in the area.

Ms Taylor disagreed with the statement made by Mr. Johannson that the Merchants Hotel is not close to any residential houses and stated the noise levels resulting from the outdoor patio would be a detriment to those residential properties.

In rebuttal, Mr. Johannson agreed there was no question there were problems on Selkirk Avenue but felt the problems were the community's rather than the Merchants Hotel's. Mr. Johannson reiterated that with the outdoor patio, the Hotel would be better able to control its patrons by providing a smoking area off the street and in a controlled environment.

The Planner confirmed that the Merchants Hotel is a non-conforming use and is grandfathered under The Winnipeg Zoning By-law No. 6400/94 but since it is proposing to expand, it must be brought into conformity, hence the subject application.

Exhibit "13" referred to in File DASZ 41/2004 [c/r DCU 326949/2004D]

Winnipeg

Planning, Property and Development Department Report

To the Lord Selkirk – West Kildonan Community Committee

Date: December 29th, 2004
File: DASZ 41/04
Related Files: DCU 04-326949D
Subject: Amend By-Law No. 6400/94 by rezoning and subdividing the land shown below from a "C1.5" Commercial District to a "C2" Commercial District.

Location: 541, 543, & 547 Selkirk Ave
Legal Description: Lot 34, Block 9, Plan 187 WLTO (W Div) in RL 36 Parish of St. John.



Applicant: Fillmore Riley
Owner: 541 Selkirk Ltd, City of Winnipeg (547 Selkirk Ave)

Recommendation: Denial.

Report Summary:

- This application is in conjunction with a conditional use application (see DCU 04-326949D) to expand the existing Merchants Hotel, which is a "non-conforming use";

- The proposed rezoning is not in compliance with Plan Winnipeg 2020 and its policies, in so much that the proposed rezoning is not in conformance with Plan Winnipeg Policies 3A-01 ii) *Promote Orderly Development*, 3B-01 ii) *Promote Vibrant Neighbourhoods*; and 3B-04 ii) *Accommodate Commercial and Retail Development*;
- The proposed rezoning to "C2" Commercial is not consistent with the surrounding neighbourhood and commercial area;
- The proposed rezoning to "C2" Commercial will permit more intense commercial uses to occur, and thus potential have adverse impacts on the surrounding area;
- The existing business is a non-conforming use, and as such it should "*continue until it is removed but not to encourage its survival*".

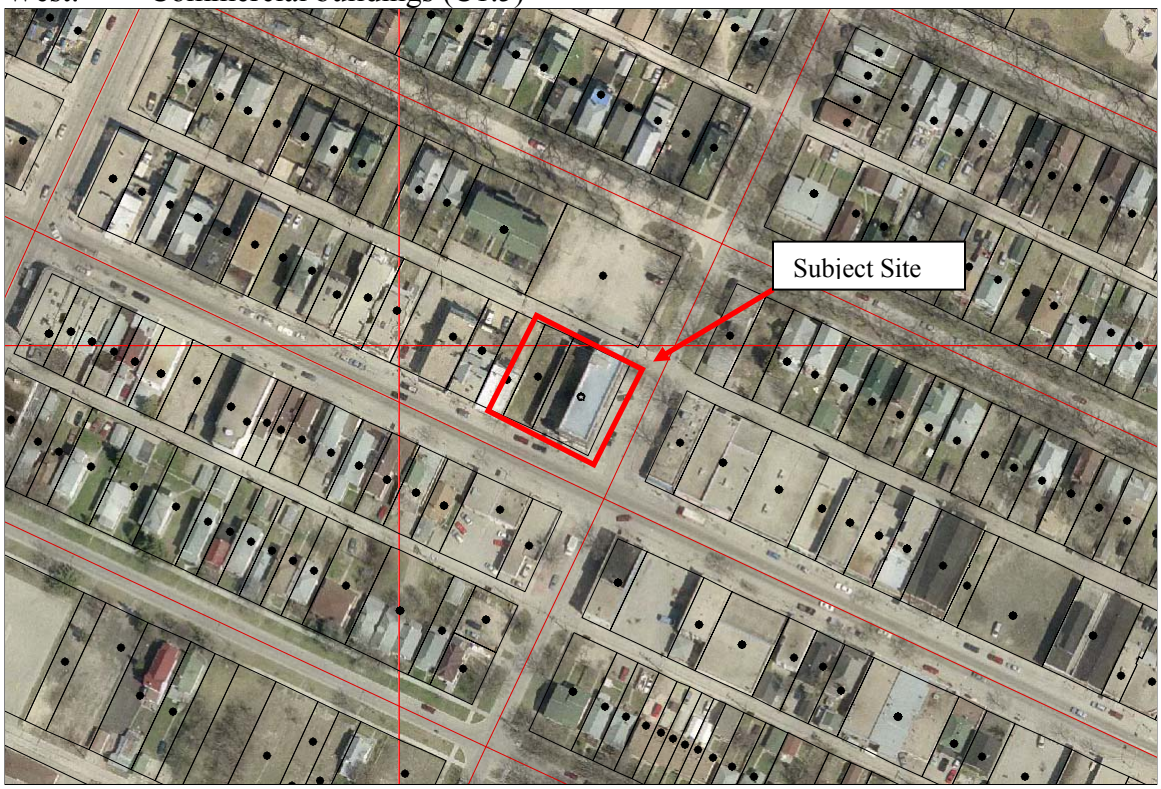
Site Description

Existing Land Use and Zoning:

The site in question is zoned "C1.5" Commercial, and is currently occupied by a three storey commercial building and a vacant lot. The site in question is approximately 10,000 square feet (0.23 acres) total in size.

Surrounding Land Use and Zoning:

North: A public lane, then a parking lot (R2-T) and detached residential buildings (R2-T)
South: Selkirk Ave, then commercial building (C1.5)
East: Andrews St, then commercial buildings (C1.5)
West: Commercial buildings (C1.5)



Aerial of Subject Site and Surrounding Properties

Background

The Merchants Hotel is a long-standing business that has been in operation on Selkirk Avenue since the early 1900's, and is considered by many as a landmark in this portion of the City. The existing structure houses a restaurant / bar, a beverage room, and a hotel. The existing use is classified under the City of Winnipeg Zoning By-Law No. 6400/94 as a "Hotel, including a beverage room or any conditional use", which is a Conditional Use in a "C2" Commercial District. The business is not permitted under the current "C1.5" Commercial District zoning; however, as the business predates By-Law No. 6400/94 the Merchants Hotel is classified as a "non-conforming use".

Description of the Proposed Development

The applicant is proposing to expand the existing Merchants Hotel through the purchase of an adjacent lot and development of an outdoor patio area. As expansion of a 'non-conforming use' is not permitted, the applicant must bring the existing properties and use into conformance with the development standards of the City of Winnipeg By-Law No. 6400/94. A "hotel with a beverage room" is a conditional use in a "C2" Commercial District, and thus the applicant has applied to rezone the site from "C1.5" to "C2" Commercial, and for a conditional use (see related file DCU 04-326949D). As part of these applications, the owner has also applied to purchase the adjacent vacant lot currently owned by the City of Winnipeg.

Analysis

The Planning & Land Use Division has concerns with the proposed rezoning and related conditional use application (see related file DCU 04-326949D) in terms of appropriateness and compatibility of "C2" Commercial zoning along Selkirk Ave, and compatibility of the use in the area. At present, the Planning & Land Use Division is of the opinion that the proposed rezoning is not consistent with the surrounding area, will potentially have adverse impacts, and is not consistent with Plan Winnipeg 2020. The rationale for this position is discussed below in further detail

"C1.5" Commercial versus "C2" Commercial

The existing site is zoned "C1.5" Commercial, as is the majority of land parcels along the Selkirk Avenue commercial area, which stretches from Main Street to Arlington Street. The character of this street is one of an older 'main street' commercial area within an established neighbourhood. An important aspect to consider is the intent and purpose of different commercial districts as defined by the City of Winnipeg Zoning By-Law No. 6400/94. As defined in Section 700 (2), the "C1.5" Commercial District "*is intended to regulate commercial development with less of a neighbourhood orientation, typically found along commercial corridors within existing older neighbourhoods"*. The current commercial area is recognized as a commercial corridor within an existing older neighbourhood, hence a "C1.5" Commercial District zoning and its associated permitted uses is appropriate for this area.

In contrast, Section 700 (3) indicates that a "C2" Commercial District "*is intended to regulate more intensive commercial sites that do not have a local or neighbourhood orientation"*. In general, "C2" Commercial Districts are found along major arterial streets that have a more regional focus beyond the immediate neighbourhood. "C2" Commercial districts also permit a much wider list of permitted and conditional uses, many of which potentially may have more impact on the surrounding neighbourhoods, such as licensed clubs, pawn shops, billiard parlors, drive-through automobile oriented uses, and others. In addition, "C2" Commercial District regulations are less restrictive in terms of site coverage and Floor Area Ratio (FAR) regulations, allowing the entire site to be built on to a maximum FAR of 3.0. In contrast, a "C1.5" Commercial district has a sixty (60%) percent maximum site coverage and a maximum FAR of 2.0.

Given the intent of a "C2" Commercial Districts as "*sites that do not have a local or neighbourhood orientation"*, a "C2" Commercial District appears contrary to the character of Selkirk Avenue commercial area. Moreover, "C2" Commercial districts allow for a wider range of potentially non-compatible uses, and have less restrictive development controls, which may be detrimental to the character of the area. Due to these issues the Planning & Land Use Division believes a "C2" Commercial District is not compatible with the area, and is not appropriate for this location.

Plan Winnipeg 2020 Compliance

It is the opinion of the Planning & Land Use Division that the proposed rezoning is *not consistent* with Plan Winnipeg 2020. More specifically, the proposed rezoning is not consistent with the following Plan Winnipeg Policies:

> *Policy 3A-01 Promote Orderly Development – The City shall promote orderly development through land use designations on Policy Plate A by: ii) considering the Neighbourhood designation to signify areas of local identity with mutually supportive uses generally including a residential mix together with a variety of educational, recreational, institutional, commercial, and possibly industrial uses, at a scale and density compatible with each other.*
>
> *Policy 3B-01 Promote Vibrant Neighbourhoods – The City shall promote vibrant neighbourhoods by encouraging and accommodating within new and existing developments a variety of compatible mixed uses including: ii) low-intensity ancillary uses such as local commercial, educational, recreational, religious, and institutional uses at a scale and density compatible with, and necessary to support, low-intensity residential development, and in recognition of traffic flows related to these uses;*
>
> *Policy 3B-04 Accommodate Commercial and Retail Development – The City shall accommodate commercial and retail development by: ii) supporting the maintenance and development of neighbourhood main streets that provide a wide range of local services, that enhance neighbourhood character, and that provide for the incremental expansion of commercial uses consistent with the general character of the adjacent neighbourhood;*

The existing non-conforming use on-site has a history of being a use with significant impacts on the surrounding neighbourhood in terms of noise, disturbance, and criminal and other activities that have occurred (see discussion under Analysis in related file DCU 04-326949D). The proposed rezoning and conditional use to bring this use into conformance and allow it to expand through the development of an outdoor patio area may exacerbate these existing impacts and introduce additional disturbances to the neighbourhood. Given the current impacts of the existing non-conforming use and the potential for additional impacts through development of more intensive uses under the proposed "C2" Commercial District zoning, the Planning & Land Use Division believes the proposed rezoning is not consistent with a "*mutual supportive use…at a scale and density compatible with each other*" (Policy 3A-01 ii)), "*compatible mixed use*" or "*low intensity ancillary use*" (Policy 3B-01 ii)) to the existing neighbourhood and commercial uses in the area. Moreover, the proposed rezoning does not "*enhance neighbourhood character*", nor is it an "*incremental expansion of commercial uses consistent with the general character of the adjacent neighbourhood*"(Policy 3B-04 ii)).

Non-Conforming Use

Non-conforming uses may continue as they existed prior to the current by-law, but may not be changed or expanded. Any change or expansion would require bringing the existing use and / or structure into compliance with the current by-law through rezoning, conditional use, or other regulatory approvals.

As indicated above, the Merchants Hotel is considered a non-conforming use. Section 180 (2) of City of Winnipeg Zoning By-Law No. 6400/94 states that "*the intent of this By-law is to permit a non-conformity to continue until it is removed but not to encourage its survival*". As the existing use has substantial impacts on the surrounding neighbourhood, per the intent of By-Law No. 6400/94 any actions should not "encourage its survival". An expansion of the existing use would encourage its survival and continue to be a non-compatible use in the neighbourhood.

Public Input

The proposed rezoning and conditional use of the Merchants Hotel has generated a high degree of interest from the public, businesses, and organizations in the Selkirk Avenue area. Letters of opposition in regards to these applications have been received from the following:

- William Whyte Residents Association
- North End Women's Centre Inc
- Ma Mawi Wi Chi Itata Centre Inc
- Ndinawemaaganag Endaawaad
- North End Housing Project Inc

The concerns raised by these groups may be summarized as follows:

- Noise generated by the patio will be detrimental to residents in the area;
- Based on past incidents at the Merchants Hotel, the patio may become grounds for illegal activities;
- Creation of a negative community image;

- Increased traffic and safety considerations;
- Impacts of existing business on the surrounding area

Neighbourhood Revitalization Programs

The site in question is located in the William Whyte neighbourhood, which has been designated as a "Major Improvement Neighbourhood" under Plan Winnipeg 2020, and also a Housing Improvement Zone (HIZ) under Winnipeg Housing Policy. There are a variety of non-governmental social agencies that are active in the neighbourhood in regards to social, education, and housing issues.

Recommendation

The Planning and Land Use Division recommends denial for the following reasons:

- The proposed rezoning is not in compliance with Plan Winnipeg 2020 and its policies;
- The proposed rezoning to "C2" Commercial is not consistent with the surrounding neighbourhood and commercial area;
- The proposed rezoning to "C2" Commercial will permit more intense commercial uses to occur, and thus potential have adverse impacts on the surrounding area;
- The existing business is a non-conforming use that has substantial impacts on the surrounding neighbourhood, and as such any actions in regard to it should allow it to "*continue until it is removed but not to encourage its survival*".

This Report Submitted by:
Planning, Property and Development Department
Planning and Land Use Division

Report Prepared by: David Marsh AICP, Planner
PPD File # 300 (.302)

Schedule "A"

By-Law No. _____

File No. **DASZ 41/04**

Atlas Sheet No. **X24**

N

LORD SELKIRK WEST KILDONAN COMMUNITY

Explanation

An application for the approval of the plan of subdivision shown outlined below and for a proposed zoning change to By-law No. 6400/94 by rezoning the land located at 541, 543 and 547 Selkirk Avenue from a "C1.5" COMMERCIAL DISTRICT to a "C2" COMMERCIAL DISTRICT as shown outlined below.



Schedule "A" for File No. DASZ 41/04, LS/WK Community, dated December 29th, 2004

THIRD READING : _____ EFFECTIVE DATE : _____

ZONING AGREEMENT : YES ☐ NO ☐ CAVEAT No. _____

6056