Minute No. 226
Report - Standing Policy Committee on Property and Development - February 1, 2005

Item No. 7 Zoning Agreement Amendment - 2184-2188 McPhillips Street
File ZAA 19/2004 (c/r DASZ 11/79)

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development and adopted the following:

1. That the Zoning Agreement (Caveat No. 80-3973) under File DASZ 11/79 dated August 15, 1979, (By-law No. 2440/79) be amended for the subject property as follows:

   A. Delete clause 2(i) relating to land use
   B. Delete clause 2(ii-iv) relating to signage
   C. Delete clause 3(i) relating to bulk provisions
   D. Delete clause 3(iii) relating to parking
   E. Delete clause 4(i) relating to building setbacks
   F. Delete clause 4(iii) relating to building setbacks.
   G. That plans showing landscaping shall be submitted to and approved by the Lord Selkirk-West Kildonan Community Committee and the Director of Planning, Property and Development prior to execution of the amended Zoning Agreement and maintained thereafter to the satisfaction of the Director.

2. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DASZ 11/79 (By-law No. 2440/79) dated August 15, 1979, as approved in aforesaid Recommendation 1.

3. That the Proper Officers of the City are hereby authorized to execute said Amending Agreement.

4. That the City Solicitor/Manager of Legal Services be requested to do all things necessary for implementation in accordance with the terms of The City of Winnipeg Charter.

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

DECISION MAKING HISTORY:

Moved by Councillor De Smedt,

That the recommendation of the Standing Policy Committee on Property and Development be adopted by consent.

Carried

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, as amended, 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 with the following amendment:

- Amend Recommendation 1.G. by deleting the words “final recording” in the third line thereof and substitute therefore the word “execution”,

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 with the following amendments, namely:

- That Recommendation 1.G. be deleted in its entirety and replaced with the following:

    1. G. That plans showing landscaping shall be submitted to and approved by the Lord Selkirk-West Kildonan Community Committee and the Director of Planning, Property and Development prior to final recording of the amended Zoning Agreement, and maintained thereafter to the satisfaction of the Director,

and submitted its recommendation to the Standing Policy Committee on Property and Development.

RE: **Zoning Agreement Amendment - 2184-2188 McPhillips Street**
File ZAA 19/2004

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 24, 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:

1. That the Zoning Agreement (Caveat No. 80-3973) under File DASZ 11/79 dated August 15, 1979 (By-Law No. 2440/79), be amended for the subject property as follows:

   A. Delete clause 2(i) relating to land use
   B. Delete clause 2(ii-iv) relating to signage
   C. Delete clause 3(i) relating to bulk provisions
   D. Delete clause 3(iii) relating to parking
   E. Delete clause 4(i) relating to building setbacks
   F. Delete clause 4(iii) relating to building setbacks
   G. ***That plans showing landscaping shall be submitted to and approved by the Lord Selkirk West Kildonan Community Committee and the Director of Planning, Property and Development prior to final recording of the amended Zoning Agreement and maintained thereafter to the satisfaction of the Director.***

2. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DASZ 11/79 (By-Law No. 2440/79) dated August 15, 1979, as approved in aforesaid recommendation 1.

3. That the Proper Officers of the City are hereby authorized to execute said Amending Agreement.

4. That the City Solicitor/Manager of Legal Services be requested to do all things necessary for implementation in accordance with the terms of The City of Winnipeg Charter.

Note: The wording in bold and italics denotes amendments made by the Community Committee.

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 30, 2004.

2. The amendments proposed to the Zoning Agreement affecting the subject property will result in the subject property being treated like other similar properties along McPhillips Street.

PUBLIC HEARING SUMMARY

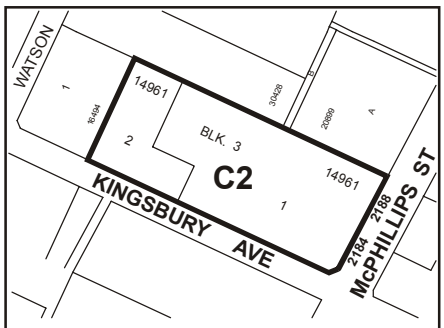
File: ZAA 19/2004

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

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

Applicant: Colliers Pratt McGarry (Ian Marcil)

Subject:



LORD SELKIRK
WEST KILDONAN
COMMUNITY
APPLICANT : COLLIERS PRATT
McGARRY
FILE : ZAA 19/04
PROPOSAL : To delete the zoning agreement affecting the land shown outlined above. **For information, phone Mr. M. Robinson, Planner at 986-3213.**

Premises Affected: 2184-2188 McPhillips Street

Exhibits Filed:
1. Application dated November 19, 2004
2. Notification of Public Hearing dated December 13, 2004
3. Manitoba Status of Titles 1520223 and 1520226

4. Surveyor's Building Location Certificate and sketch dated April 29, 1997
5. Letter of authorization dated October 18, 2004, from Garden Oaks Square Ltd. to Colliers Pratt McGarry Real Estate Advisory Services
6. Zoning Agreement DASZ 11/79
7. Site Plan
8. Report from the Manager of Planning and Land Use dated December 30, 2004
9. Inspection Report

REPRESENTATIONS:

In Support:
Ian Marcil, Colliers Pratt McGarry

In Opposition
Nil

For Information:
Nil

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

Ian Marcil, on behalf of Colliers Pratt McGarry, appeared in support of the application. Mr. Marcil stated concurrence in the recommendations of the Manager of Planning and Land Use dated December 30, 2004 but expressed concern with the required number of trees to be planted, namely twenty-four (24), which would affect the visibility of the property. In this connection, Mr. Marcil indicated there was no property in the area that had as many trees and questioned the need for same.

Exhibit "8" referred to in File ZAA 19/2004

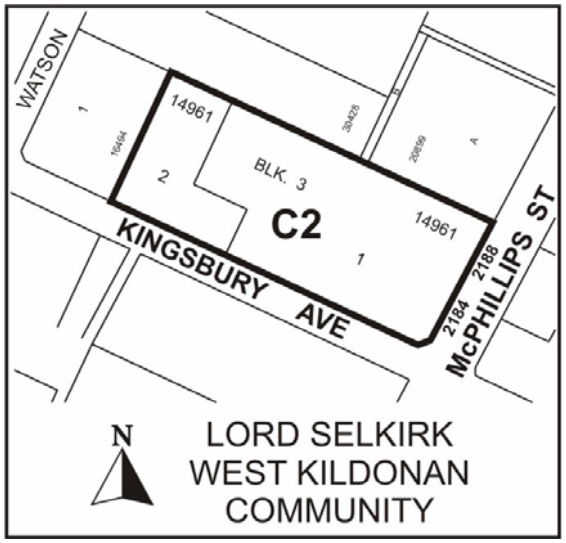
Winnipeg

Planning, Property and Development Department Report

To the Lord Selkirk West Kildonan Community Committee

Date: **December 30, 2004**
File: **ZAA 19/04**
Related Files: **N/A**
Subject: **Application to discharge zoning agreement DASZ 11/79 and any amendments thereto from the property legally described below:**

Location: **2184-2188 McPhillips Street**
Legal Description: **PT Lot 1 Blk 3 Plan 14961 which lies to the NW of a straight line drawn from a point in the eastern limit of said lot distant only thereon 20 feet from the southern limit of said lot to a point in the said southern limit distant only thereon 20 feet from the said eastern limit in OTM lots 12 to 15 Parish of Kildonan (ct 1520223)**
And
Lot 2 Block 3 Plan 14961 WLTO in OTM Lots 12 to 15 Parish of Kildonan (CT 1520226) to allow for "C2" Commercial district uses as listed in by-law 6400/94.



Applicant: **Ian Marcil, Colliers Pratt McGarry**
Owner: **Garden Oaks Square Ltd.**

Recommendation: That the Zoning Agreement be amended.

SITE DESCRIPTION:

Site Area, Existing Land Use, and Zoning
The subject property, known as Garden Oaks Square, is zoned "C2" Commercial and is subject to a Zoning Agreement that restricts the permitted uses. The site, which is ± 13,500 square feet (4.90 acres) is currently occupied by a community shopping center which has 53,000 square feet of rentable area and fifteen (15) individual lease spaces.

Surrounding Land Use and Zoning
North: Townhomes zoned "C2" Commercial and a shopping center zoned "C2" Commercial
South: Property owned by Manitoba Hydro zoned "R1-20" Residential
East: Shopping center zoned "CR" Commercial Regional Shopping Center
West: Shopping center zoned "C2" Commercial

APPLICATION DESCRIPTION:

Summary of Zoning Agreement

When this development was approved in 1979, a Zoning Agreement (ZA) was drafted and included as a caveat to the property. The ZA is summarized below. It is also referenced in Table 1, which illustrates and compares the ZA with "C2" Commercial development standards.

Use
Under the ZA, uses permitted on the property are more restrictive than what would normally be allowed in a "C2" Commercial district.

Signage
The ZA is more restrictive in terms of the amount and size of signage that is permitted on the building façade and on the site.

Setbacks
The ZA includes specific setbacks for building and parking that would normally not apply in the "C2" Commercial district

Parking
The ZA parking requirement is less restrictive than what is required under current By-law 6400/94.

Bulk regulations
Regulations with regards to height and density are subject to the provisions of the Old Kildonan Town Planning Scheme of 1957.

Development Control
No construction or alterations to the site are permitted without plan approval by the Lord Selkirk West Kildonan Community Committee.

	Zoning Agreement (2440/79)	**C2 Zoning (By-law 6400/94)**
Freestanding Sign		
	Height – 30 feet **Signs Permitted** – One **Size** - 323 square feet of signage **Setback** - 20 foot setback from PL	**Height** – 35 feet **Signs Permitted** – Not regulated **Size** - 323 square feet of signage **Setback** - 5 foot setback from PL
Fascia Identification		
	Signs Permitted – One per unit **Size** -10% of the square footage of the building wall of the commercial unit	**Signs Permitted** – Not regulated **Size** – 25% of building wall
Bulk Provisions		
	Old Kildonan Town Planning Scheme 1957	Building Height – 45 feet Maximum FAR – 3.0
Setbacks		
McPhillips	**Building** – 40 feet **Parking** – 20 feet	**Building** – 0 feet **Parking** – 0 feet
Kingsbury	**Building** – 25 feet **Parking** – 10 feet	**Building** – 0 feet **Parking** – 0 feet
Watson	**Building** – 25 feet **Parking** – 10 feet	**Building** – 0 feet **Parking** – 0 feet
Parking		
	1.5 spaces per unit	1 per 250 square feet of space
Plan Review		
	Any changes to the site must be approved by the Community Committee	None, unless a variance, conditional use, rezoning, or subdivision is required.
Uses		
	Uses specified in the Zoning Agreement	All uses permitted in C2 District

Table 1: Summary and Comparison of the ZA and "C2" Commercial

History

The Zoning Agreement for this property was created at a time when the Leila/McPhillips area was growing and in the beginning stages of large scale commercial development. The Zoning Agreement was a response to the desire to maintain a neighborhood commercial character in this area. Subsequent to this, commercial development in this area has continued to expand and now, the area is a strong regional retail center with diverse retail uses. Some of the establishments in the surrounding neighbourhood include the Garden City Shopping Centre, Garden City Square, Walmart, and Home Depot.

Proposed Changes

The applicant has indicated that the Zoning Agreement affects the owner's ability to lease space due to the time required to obtain an amendment to the Zoning Agreement whenever a prospective tenant would like to open a store that is for a non-listed use.

The applicant has further indicated that since the surrounding area includes many commercial plazas, some of which are subject to ZA's and some that are not, those with ZA uses restrictions face an unlevel playing field when trying to attract tenants to their properties. Since the application of ZA's is inconsistent among similar properties, the applicant maintains that the aptness of maintaining this agreement is no longer justified.

ADMINISTRATIVE ANALYSIS

Given the number of conditions imposed under the ZA, it is important to look at each condition individually to determine its relevance today and to establish whether amending or discharging the condition is compatible with the area and will have an adverse effect on surrounding properties.

Uses
Appendix 1 includes a list of all the uses which are not currently permitted under the ZA which would be allowed either as of right or by conditional use with "C2" Commercial zoning. The Planning and Land Use Division reviewed this list and has concluded that, given the character and context of the area today, permitting the complete range of uses allowed with the "C2" Commercial district is appropriate.

Signage
The current By-law allows more wall signage – in both amount and square footage - as well as higher freestanding signage with reduced setbacks from the property line.

Over the last few years, a number of sign variances have been granted on the subject property – allowing additional freestanding and fascia signage as well as excessive sign area. Thus, through the variance process, the ZA sign restrictions have been slowly reduced.

Therefore, at this point, given that the vast majority of commercial businesses operating along McPhillips Road are subject to the current sign By-law (6400/94) and given that sign variances amending the ZA have been frequent over the years, there does not appear to be a compelling reason to maintain the sign regulations through the ZA.

Setbacks
The setbacks (parking and building) required under the ZA are more restrictive than under "C2" Commercial.

a) Parking Setbacks
The parking areas currently conform to the required setback in the ZA – forming a nicely bermed landscape area along Kingsbury and McPhillips. These landscape strips offer visual relief from asphalt and help buffer the parking lot from the road whereas under the current By-law 6400/94, no landscape buffer would be required. Therefore, we recommend that the parking setback remain as specified in the ZA.

b) Building Setbacks
The building setbacks which are specified in the ZA are not in line with existing conditions nor are they practical for offering guidance in the event of new development – given the existing site layout and general building orientation in the area. Considering that any proposed alterations to the existing buildings or construction of new buildings requires Community Committee review, we recommend that this element of the ZA be discharged.

Parking
The ZA requires 1.5 parking spaces for every unit or a total of 27 parking stalls. This appears to be an error or misrepresentation – given that this establishment, with 51,000 square feet of retail space, clearly needs in excess of 27 parking stalls. The applicant provides approximately 300 parking spaces, which is well in excess of the 265 parking spaces that they would be required to provide under today's By-law. Therefore, we concur that the ZA parking regulations should be discharged.

Bulk Regulations
The bulk regulations under the Old Kildonan Town Planning Scheme were retired several decades ago and provide poor guidance for future development. The current bulk regulations, which guide lot coverage and height, replace the outdated bulk standards. Therefore, we concur that the old bulk regulations should be discharged.

Development Control
Given the size of the property and the scale of development, we recommend that the City maintain control over future development proposals. Therefore, we recommend that the requirement for plan approval remain.

Development Deficiencies
As part of a new zoning agreement incorporating these changes, the Planning and Land Use Division is recommending that the applicant comply with all current development standards which are applicable to "C2" zoned properties. In that vein, we have consulted with the Zoning and Permits Division to determine what, if any, deficiencies are present at the subject property. Based on this analysis, it was determined that pursuant to the By-law (6400/94) planting requirement of one shade tree for every 32 feet of commercial street frontage, the owner must provide a total of 13 additional trees.

The McPhillips street frontage, where there are currently no trees, is the preferred planting location. With that said, locating some or all of the trees in curbed landscape islands within the parking area would also provide significant benefit by visually breaking up asphalt and by creating pockets of shade.

RECOMMENDATION

Based on the above analysis, the Planning and Land Use Division recommends amending the subject Zoning Agreement as summarized below:

Uses	Discharge restrictions and permit "C2" Commercial uses
Signage	Discharge restrictions
Setbacks	Maintain parking setbacks and discharge building setbacks
Parking	Discharge previous parking requirement
Bulk	Discharge previous bulk requirements
Development Control	Maintain Community Committee plan approval
Landscaping	Install 13 trees

Recommended Conditions of Approval

1. That the Zoning Agreement Caveat No. 80-3973 under file DASZ 11/79 dated August 15, 1979 (By-Law No. 2440/79), be amended for the subject property as follows:
   A. Delete clause 2(i) relating to land use
   B. Delete clause 2(ii-iv) relating to signage
   C. Delete clause 3(i) relating to bulk provisions
   D. Delete clause 3(iii) relating to parking
   E. Delete clause 4(i) relating to building setbacks
   F. Delete clause 4(iii) relating to building setbacks
   G. That thirteen (13) minimum 2.5" calliper deciduous trees shall be installed on the subject property no later than June 30, 2005. Plans showing landscaping shall be submitted to and approved by the Lord Selkirk West Kildonan Community

Committee and the Director of Planning and Land Use Division prior to final recording of the amended Zoning Agreement and maintained, thereafter, to the satisfaction of the Director.

2. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DASZ 11/79 (By-Law No. 2440/79) dated August 15, 1979, as approved in aforesaid Clause 1.

3. That the Proper Officers of the City are hereby authorized to execute said Amending Agreement.

4. That the City Solicitor/Manager of Legal Services be requested to do all things necessary for implementation in accordance with the terms of The City of Winnipeg Charter.

This Report Prepared and Submitted by:
Michael Robinson, AICP
Planning, Property and Development Department
Planning and Land Use Division

Appendix 1
Uses permitted with full "C2" Zoning that are currently restricted by the ZA

Use	**Type**
Amusement Parlour	Conditional Use (C)
Amusement Enterprise	C
Outdoor Driving Range	C
Indoor Driving Range	Permitted (P)
Arena, Auditorium	C
Auction Room	C
Auto Repair	C
Auto Sales	P
Car Wash	C
Banquet/Dance Hall	C
Bed & Breakfast	P
Custom Bicycle Manufacture	P
Bingo	C
Boat Marina	C
Bowling Alley	P
Bus Station	C
Cabaret	C
Care Home	P
Club	P
Cocktail Lounge	C
Contractors Establishment	P
Convent	C
Day Care	P
Driving School	P
Dwelling	C
Exterminator	P
Family Day Care	P
Farmers Market	P
Flea Market	P
Group Daycare	P
Hotel	C
Institution	C
Institution, Residential	C
Laboratory	P
Library	P
Mail Order	P
Heavy Equipment Sales	C
Mobile Home Park	C
Museum	P

Rehab Home	P
Park	C
Parking Structure	C
Post Office	P
Public Utility or Service	P
Radio or TV Station	P
Rec Centre	P
Recycling Depot	P
Spa	P
Shelter House	P
Sign Manufacture	P
Stone or Monument Sales	P
Motion Picture Studio	C
Swimming Pool	C
Tattoo Parlour	C
Taxidermist	P
Delivery Service	C
Theatre, Hall	P
Wood Products Manufacture	P