

TO: CITY MANAGER

2003 May 16

FROM: DIRECTOR PLANNING AND BUILDING

SUBJECT: REZONING REFERENCE # 03-11
5264, 5266 & 5268 OAKMOUNT CRESCENT

PURPOSE: To respond to the issues of hours and days of operation for the proposed music studio use raised at the Public Hearing for Rezoning Reference #03-11.

RECOMMENDATION:

1. **THAT** a copy of this report be sent to those persons who spoke at or submitted correspondence to the Public Hearing for Rezoning Reference #03-11.

REPORT

The Public Hearing for Rezoning Reference #03-11 was held on 2003 April 29. The rezoning application is for the purpose of permitting a music studio use within the existing commercial building, which comprises three commercial strata lots within the St. Andrews at Deer Lake mixed use development within the Oaklands area, which was developed in accordance with Rezoning Reference #26/93 (see **attached** Sketch #1). Points were raised at the Public Hearing from area residents regarding potential noise related concerns, and associated hours and days of operation of the proposed music studio use.

On 2003 May 05 Council gave Second Reading to the Bylaw amendment. Arising out of a Council enquiry at its meeting of 2003 May 12, staff was requested to submit a report on the hours and days of operation matters raised at the Public Hearing. This report is in response to that request.

It is noted that the proposed music studio use is for the teaching of concert piano, with lessons provided on a one-on-one basis. The proponent has indicated that the studio will be occupied by a maximum of four pianos, with a maximum of four instructors at any given time.

Under the existing Comprehensive Development zoning, the commercial component of the development is restricted to the following subset of C1 Neighbourhood Commercial District uses and tenants, which are limited to operating hours between 6:00 am and 12:00 midnight, 7 days a week:

- convenience store, pharmacy, and other day-to-day retail shopping
- financial institution, insurance broker, and other business or professional offices
- dry cleaning collection and delivery, video rentals, barbershop/beauty salon, and other personal service establishments, excluding amusement or video machines/arcades whether principal or accessory use
- cafes or restaurants excluding drive-in restaurants and neighbourhood public houses.

If the proposed music studio use were to cease in the future, then the above uses would be eligible to be re-established at the subject site under the intended zoning amendment.

The restriction on the hours of operation for the commercial component of the project was established at the time of initial comprehensive development rezoning in order to ensure compatibility of the commercial uses with the residential development and avoid potential nuisance problems. A covenant is registered on title restricting the hours of operation as noted. There are no restrictions in place regarding the frequency of use (days of operation) of the current permitted commercial uses.

In reviewing the subject rezoning application, staff recommended that the operating hours of the proposed music studio use be further limited to between the hours of 7:00 am to 11:00 pm, 7 days a week, to avoid any potential nuisance and noise-related issues. A Section 219 Covenant is required to be registered limiting the hours of operation of the music studio use. As a prerequisite to the approval of the rezoning, the applicant was also required to have an acoustical review conducted and to commit to implementing any necessary noise mitigation measures identified through the acoustic study. The applicant has submitted an acoustical review, which determined that no additional noise mitigation measures are necessary. These terms were outlined in the Public Hearing rezoning report.

At the Public Hearing, the project proponent, Mr. Edward Parker was asked about his expected hours of operation. At that time, he indicated that he does not typically conduct lessons beyond 10:00 pm. With respect to days of operation, Mr. Parker indicated that he typically teaches two evenings a week and that it is unlikely that he would offer lessons on Sundays. One speaker at the Public Hearing expressed an understanding of piano lessons not being given after 10:00 p.m. During further discussions with staff following the Public Hearing on this matter, Mr. Parker indicated that the statements he made at the Public Hearing were provided as being generally reflective of his typical teaching schedule, but given that many of his students are working adults seeking accreditation, it would be a hardship to further specifically restrict his permitted hours and days of operation beyond the outlined limits. However, Mr. Parker has also undertaken to address complaints that may arise after the music studio is in operation.

The proposed hours of operation, restricted to between the hours of 7:00 am and 11:00 pm for the proposed music studio use are considered to be sufficiently limited to alleviate any potential concerns with respect to the impact of the music studio use within the residential neighbourhood. The acoustical study has assessed that the expected piano noise from the proposed music studio use would be significantly below any applicable bylaw criteria. However, the acoustical study did indicate that in the event of noise-related complaints, the windows could be upgraded at that time. Mr. Parker has agreed that if such complaints are received and validated, he will pursue further appropriate noise mitigation measures and that he would accept a further restriction on his hours of operation should there be complaints of annoyance from piano playing. The Section 219 Covenant document will be modified and be worded to include the applicant's commitment to implementing appropriate noise mitigation measures in the event that the measured peak piano noise exceeds the levels assessed in the completed acoustical study, submitted by Brown Strachan Associates on 2003 March 14 and that should there be complaints of annoyance from piano playing heard by residents between 10:00 p.m. and 11:00 p.m., the operator/owner, Mr. Parker, has agreed to cease piano

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lessons after 10:00 p.m.. Unless otherwise directed by Council, staff will proceed with the rezoning application, and the required Section 219 Covenant, on the terms outlined in this report.

This is provided for the information of Council.



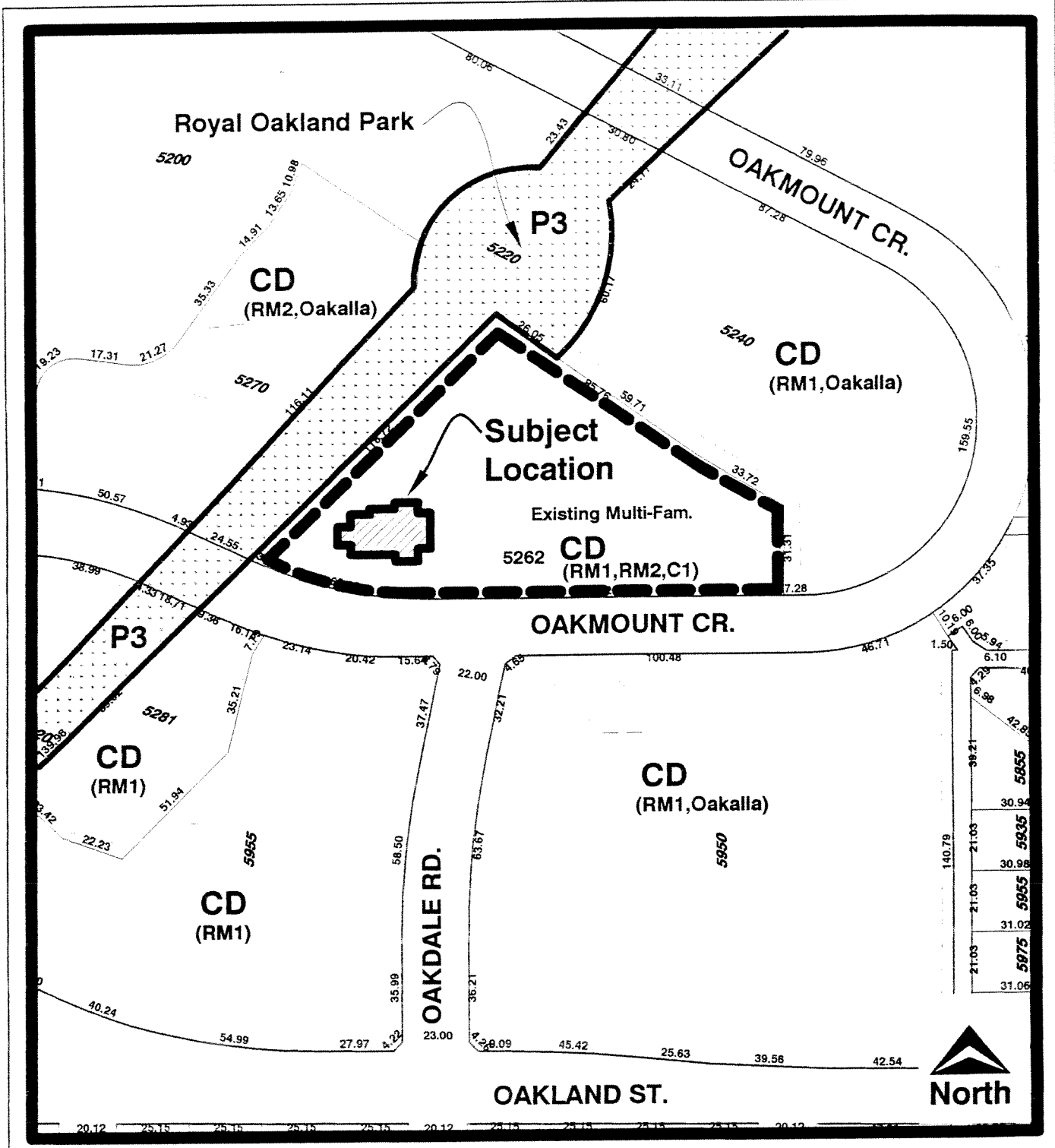
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Attach



J.S. Belhouse
Director Planning and Building

cc: City Clerk
City Solicitor
Chief Licence Inspector

P:\Jennifer\Rezoning\RZ #03-11\RZ 03-11 Response to Pub Hearing Re hours of operation.wpd



Planning and Building Department

Scale: 1 = 2500

Drawn By: J.P.C.

Date: March 2003

REZONING REFERENCE 03 -- 11
5264,66,68 Oakmount Cr.

Sketch # 1