Minute No. 583
Report - Executive Policy Committee - September 3, 2008

Item No. 6 **Rezoning - 329 and 357 Oak Point Highway (Point Douglas Ward) File DAZ 221/2008**

COUNCIL DECISION:

Council concurred in the recommendation of the Executive Policy Committee and adopted the following:

1. That The Winnipeg Zoning By-law No. 200/06 be amended by rezoning the subject land as shown on Schedule "A" for File DAZ 221 /2008 dated July 1, 2008 to an "M1" Industrial District.

2. That a ten percent (10%) dedication be made by a payment of a sum of money to the City in lieu of the requirement for land dedication based on the increase in market value of the land.

3. That in the event the application is not proceeded with expeditiously and the by-law is not enacted within twelve (12) months after adoption of the report by Council, the matter shall be deemed to be concluded and shall not be proceeded with unless an extension of time is applied for prior to the expiry of this twelve (12) month period and the extension is subsequently approved by Council.

4. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary rezoning by-law and forward same to Council for all three (3) readings.

5. 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 - Executive Policy Committee - September 3, 2008

DECISION MAKING HISTORY:

Moved by His Worship Mayor Katz,

That the recommendation of the Executive Policy Committee be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 3, 2008, the Executive Policy Committee concurred in the recommendation of the Lord Selkirk-West Kildonan Community Committee and submitted the matter to Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On July 15, 2008, the Lord Selkirk-West Kildonan Community Committee concurred in the recommendation of the Winnipeg Public Service and, via the Priority Rezoning Process, submitted its recommendation to the Executive Policy Committee.

RE: **Rezoning - 329 and 357 Oak Point Highway**
(Point Douglas Ward)
File DAZ 221/2008

For submission to: **Executive Policy Committee**

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

Report date: **July 24, 2008**

COMMUNITY COMMITTEE RECOMMENDATION:

On July 15, 2008, the Lord Selkirk-West Kildonan Community Committee concurred in the recommendation of the Winnipeg Public Service and, via the Priority Rezoning Process, recommends to the Executive Policy Committee:

1. That The Winnipeg Zoning By-law No. 200/06 be amended by rezoning the subject land as shown on Schedule "A" for File DAZ 221 /2008 dated July 1, 2008 to an "M1" Industrial District.

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

1. The Lord Selkirk-West Kildonan Community Committee agreed with the comments contained in the report from the Planning and Land Use Division dated July 3, 2008.

PUBLIC HEARING SUMMARY

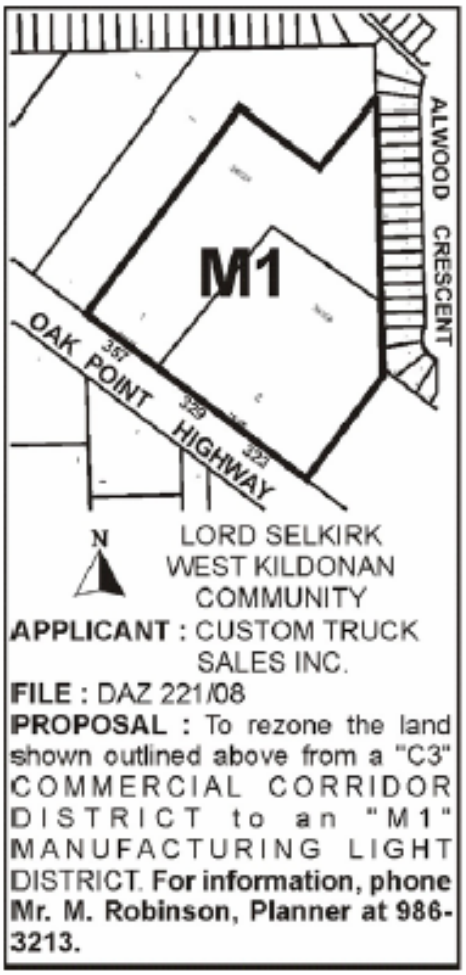
File: DAZ 221/2008

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

Public Hearing: July 15, 2008
West Committee Room
Council Building, 510 Main Street

Applicant: Custom Truck Sales Inc. - Jim Clark

Subject:



Premises Affected: 329 and 357 Oak Point Highway

Exhibits Filed:

1. Application dated June 2, 2008
2. Notification of Public Hearing dated June 5, 2008
3. Manitoba Status of Titles 1614331, 2030101
4. Letter of authorization dated May 30, 2008, from Favorite Enterprises Ltd. to Custom Truck Sales Inc.

5a. Surveyor's Building Location Certificate and sketch dated December 13, 1993

5b. Surveyor's Building Location Certificate and sketch dated September 30, 1998

6. Land Information Services Sheet
7. Subdivision Agreement DASSF 564/98
8. Subdivision Caveat 2339948.
9. Report from the Planning and Land Use Division dated July 3, 2008
10. Inspection Report
11. Audio Recording of representations

REPRESENTATIONS:

In Support:

Jim Clark

In Opposition

Nil

For the City:

Ms S. Matile, Land Development Engineer, Planning, Property and Development Department
Mr. M. Robinson, Planner, Planning, Property and Development Department
Mr. N. Yauk, Planner, Planning, Property and Development Department

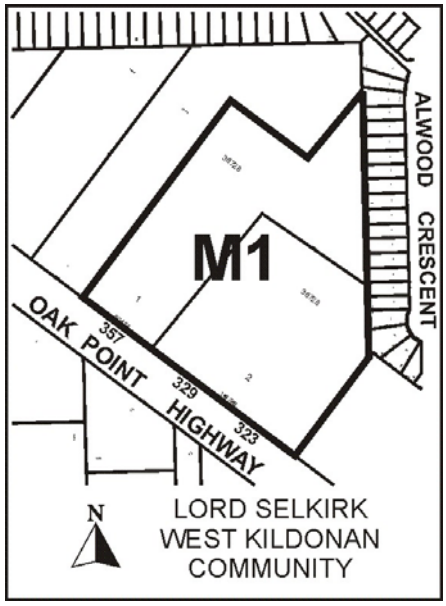
Exhibit "9" referred to in File DAZ 221/2008

Winnipeg

Planning, Property and Development Department Report

To the Lord Selkirk-West Kildonan Community Committee

Date: July 3, 2008
File: DAZ 221/2008
Related Files:
Subject: Application to amend Zoning By-law 200/2006 by rezoning the subject lands from a "C3" Commercial District to a "M1" Industrial District
Location: 329 & 357 Oak Point Highway



Applicant: Custom Truck Sales Inc. (Jim Clark)
Owner: Same

Recommendation: *Approval*

Report Summary
The Planning and Land Use Division recommends that the application be **approved** for the following reasons:

- The existing truck sales and repair use (357 Oak Point Highway) seeks to acquire the adjacent property (329 Oak Point Highway) and to expand their business
- Truck sales and repair is not permitted in the "C3" Commercial District in Zoning By-law 200/2006
- In order to expand, a rezoning to "M1" Industrial is required

Site Description
The subject properties, which are currently zoned "C3" Commercial, are located on Oak Point Highway, between Egesz Street West and Egesz Street East, in the Oak Point Highway Industrial neighbourhood of the Point Douglas ward.

North: Residences zoned "R1-M" Single-Family Residential
South: Oak Point Highway, then light industrial uses zoned "C3" Commercial
East: Light industrial uses zoned "C3" Commercial
West: Light industrial uses zoned "C3" Commercial

Background
All of the properties in Winnipeg which were zoned either "C3-1" or "C3-2" in Zoning By-law 6400/94 have since become zoned "C3" Commercial District as a result of the passing of Zoning By-Law 200/2006.

The intent of the "C3" Commercial District in Zoning By-Law 200/2006 is slightly different than the intent associated with the "C3-1" and "C3-2" Districts of Zoning By-Law 6400/94. The result is a shift from a "highway commercial" district to an "automobile oriented" commercial district. Given the intent of the "C3" Commercial District, major thoroughfares such as Portage Avenue and Pembina Highway easily come to mind as ideal candidates for this new zoning category. The applicability of this Zoning District, however, has been questioned in other areas of the City including those businesses fronting Oak Point Highway. The result of the "C3" Commercial District in these cases has rendered many of the existing uses to become non-conforming in Zoning By-Law 200/2006. These uses, however, were all either permitted or conditional in the "C3-1" and "C3-2" Districts of Zoning By-Law 6400/94. The non-conformity that has been established does not effect the immediate operations of any of the properties subjected to this situation, but will come into play when owners wish to expand their operations or attempt to add new uses that were previously acceptable in the former Zoning By-Law.

It is noted that the Planning and Land Use Division had already began to investigate this problem prior to the rezoning application at hand. A comprehensive zoning analysis of the affected properties on Oak Point Highway revealed that the most appropriate Zoning

District for the subject properties would be the “M1” Industrial District (Please see Appendix 1 for the complete Zoning Analysis).

This rezoning will be put forward as part of the one year Zoning By-law review, which will commence in March 2009.

In the interim, the Planning, Property, and Development Department has agreed to work with property owners who have become non-conforming because of the new Zoning By-law and have plans to develop prior to the one year review.

Description of Proposed Development
The applicant wishes to purchase the adjacent property (329 Oak Point Highway) for the future expansion of their current truck sales and repair use (357 Oak Point). In purchasing the property for these purposes, the applicant is seeking assurance that this expansion would be permitted. Presently, the non-conforming status of the properties does not provide for such expansion and the range of trucking related uses that were previously provided for in Zoning By-Law 6400/94. While the applicant has no immediate plans to expand the business, the adjacent property (329 Oak Point Highway) has become available on the market. Given this circumstance, the applicant is not in a position to wait until the upcoming one-year Zoning By-Law review to determine whether the property will be rezoned to “M1” Industrial District.

The fact that the character of Oak Point Highway has not changed with the passing of the new Zoning By-Law and that the trucking related uses were permitted on these properties in Zoning By-Law 6400/94, but are no longer in Zoning By-Law 200/2006, suggests a significant hardship is present for the owners of both properties subject to this application.

Recommendation

The Planning and Land Use Division recommend approval for the following reasons:

- The land uses on the subject properties have become non-conforming with the passing of Zoning By-Law 200/2006. This presents a significant hardship to the property owners.
- The uses that are permitted and conditional within the “M1” Industrial District are compatible and in character with the trucking related uses of neighbouring properties along Oak Point Highway.

Recommended Conditions of Approval

1. That The Winnipeg Zoning By-law No. 200/06 be amended by rezoning the subject land as shown on Schedule “A” for File DAZ 221 /2008 dated July 1, 2008 to an “M1” Industrial District.

2. That a ten percent (10%) dedication be made by a payment of a sum of money to the City in lieu of the requirement for land dedication based on the increase in market value of the land.

3. That in the event the application is not proceeded with expeditiously and the by-law is not enacted within twelve (12) months after adoption of the report by Council, the matter shall be deemed to be concluded and shall not be proceeded with unless an extension of time is applied for prior to the expiry of this twelve (12) month period and the extension is subsequently approved by Council.

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5. 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 Submitted by:
Planning, Property and Development Department
Planning and Land Use Division

Report Prepared by: Michael Robinson, AICP; Noah Yauk, MCP
PPD File # DAZ 221/2008



Figure 1: Aerial Photo (Flown in 2005)

Schedule "A"

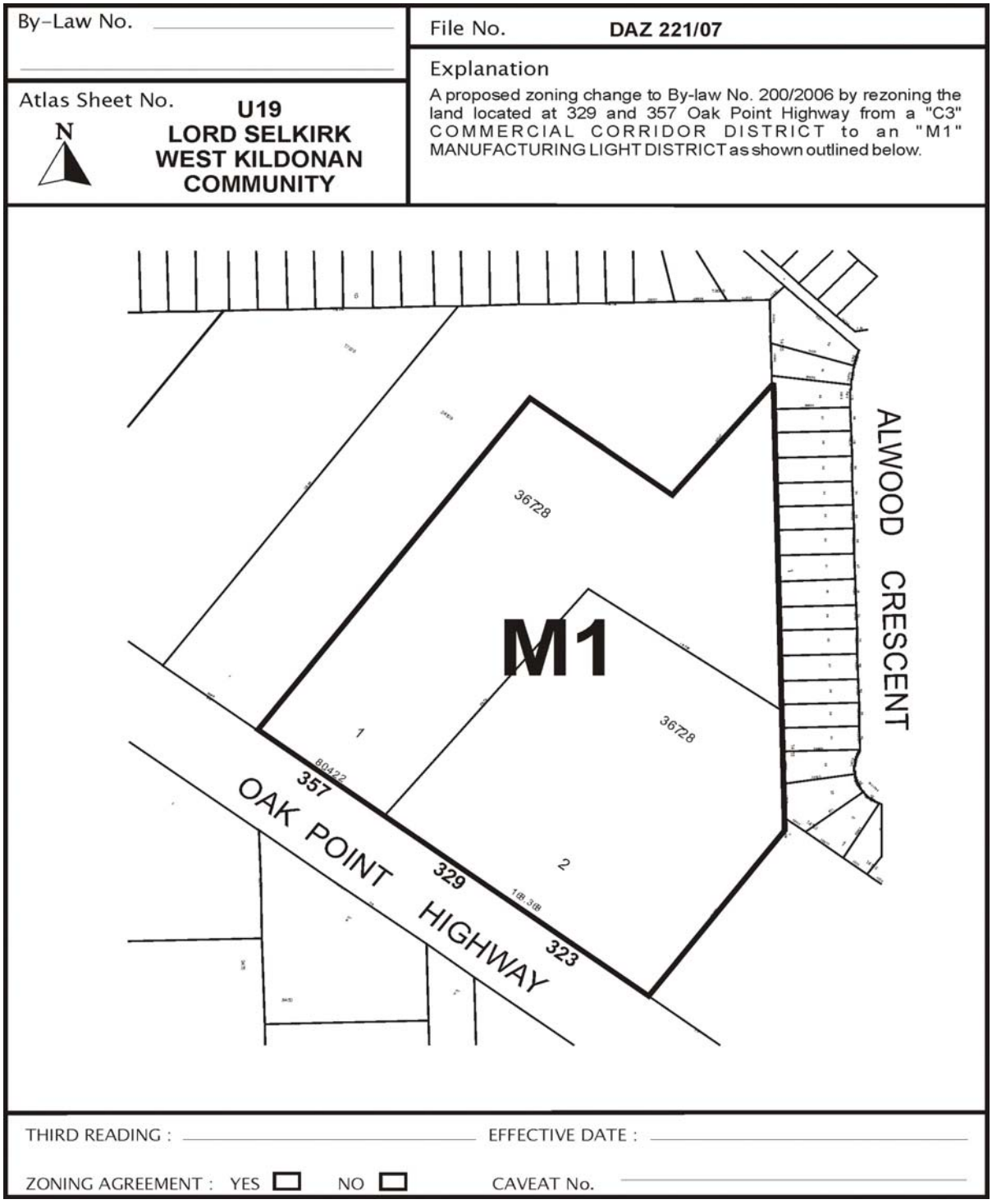
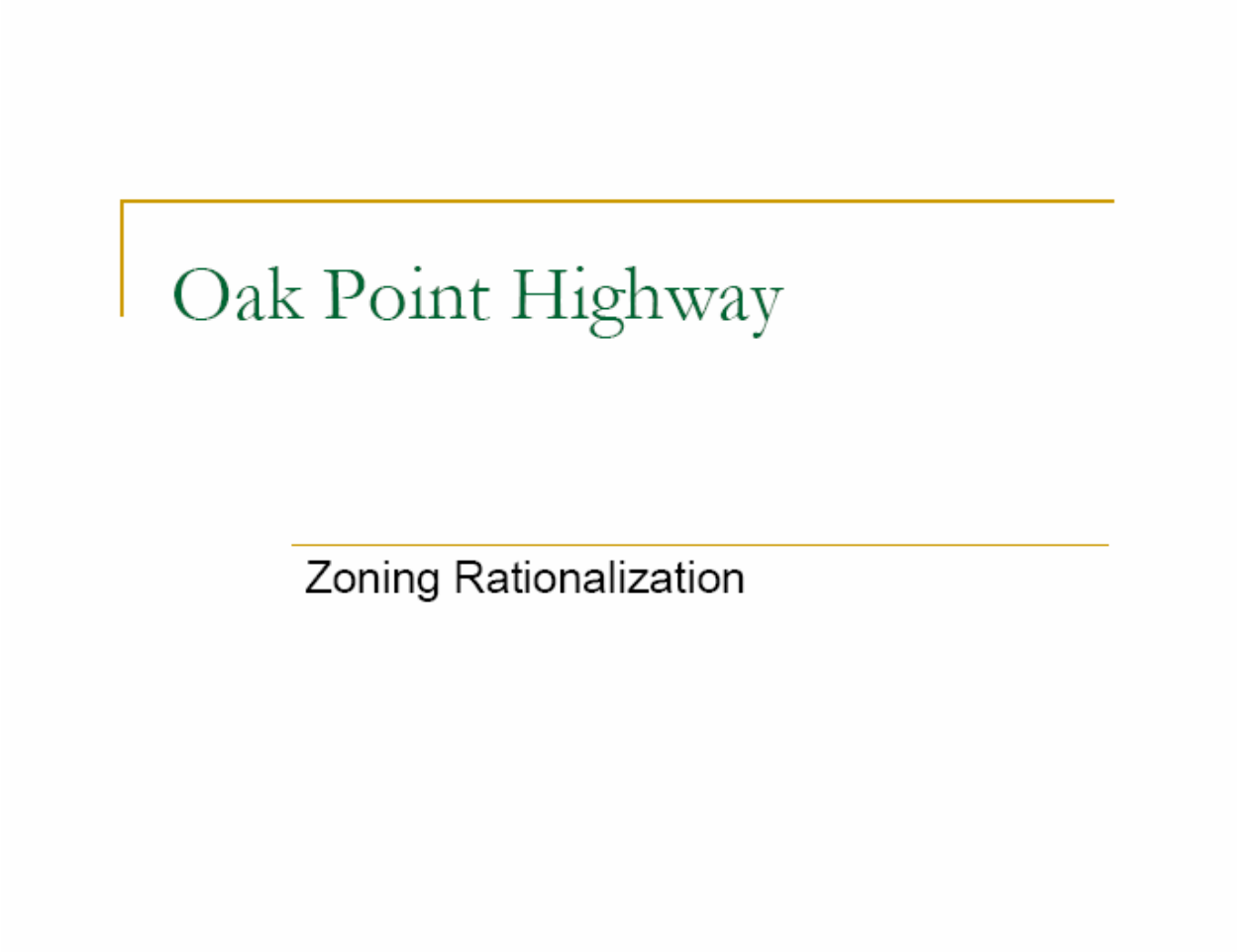


Figure 1: Schedule "A" to the report to the Lord Selkirk-West Kildonan Community Committee for File DAZ 221/2008, dated July 1, 2008.

Appendix "A"



New Zoning

- Old zoning "C3-1/2"
- New zoning "C3"

The intent of the "C3" District has changed. It is no longer a highway commercial district, but an automobile oriented commercial district (Portage Avenue, Pembina Hwy)

This has resulted in changes to the zoning district.

- Use
- Bulk standards

Non Conforming Uses

9 properties are vacant
13 properties remain permitted or conditional
21 properties have uses which have become non-conforming

Non conforming use
"Means any use of a building, or parcel of land, or portion of a building, or parcel of land, lawfully existing prior to the effective date of this By-law, that does not conform to one or more of the applicable use regulations of the district in which it is located on the effective date of this By-law"

- No expansion
- Buildings cannot be replaced if they are destroyed
- Limited structural alterations

What to do?

- Fix problem by changing the zoning district
- Address all properties at the same time as part of the scheduled one year review (errors and omissions)?

Rezone to "M1" Industrial

- "M1" is intended for light manufacturing, processing, service, storage, wholesale and distribution operations
- Less restrictions than "C3"
  - Uses
  - Yards
  - Outdoor storage
- All non conforming uses would become permitted or conditional under "M1"

"M1" Industrial

Uses that would become permitted under "M1"

- Funeral Chapel
- Bus Depot
- Transit Station
- Fleet Services
- Wholesaling
- Light Manufacturing
- Freight or truck yard
- Warehouse
- Recycling Plant

Uses that would become conditional under "M1"

- Adult service or entertainment establishment
- Towing and storage facility
- Utility facility, major
- Contractor's establishment
- Heavy Equipment Sales

"M1" Industrial

- More Floor Area Ratio (FAR)
- Less restrictive yards
- Less restrictive outdoor storage

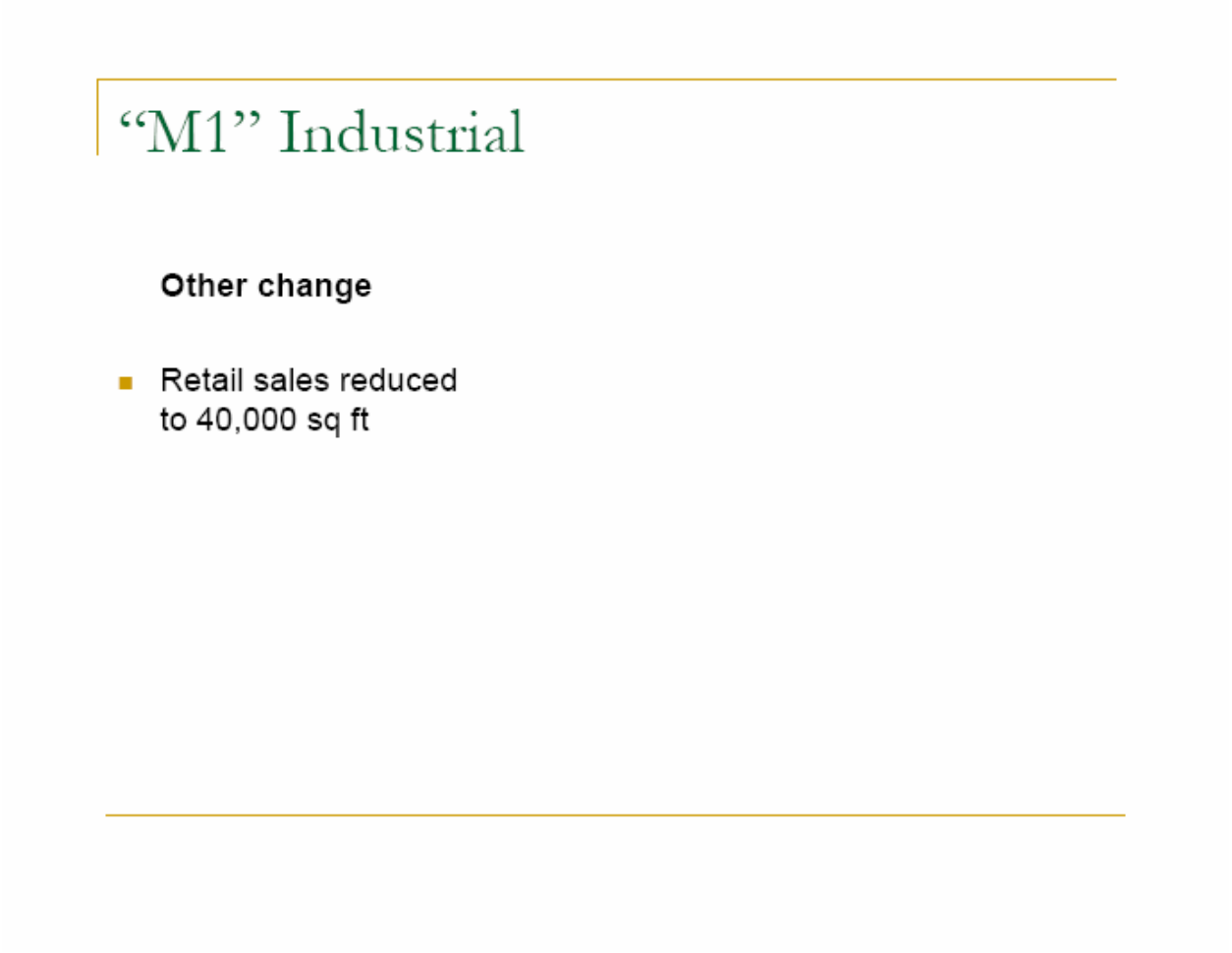
"M1" Industrial

Uses that would become prohibited under "M1"

- Assisted Living Facility
- Library
- College or University
- Hostel
- Body modification establishment

Uses that would go from permitted to conditional under "M1"

- Hotel, motel
- Landscape/garden contractor or production


"M1" Industrial
Other change
Retail sales reduced to 40,000 sq ft

Next Steps

- Recommend rezoning properties to “M1” next year as part of the Zoning By-Law review
- In the interim, work with property owners