Minutes - Executive Policy Committee – July 15, 2009

PUBLIC HEARINGS

Minute No. 323 **Appeal – Application to vary The Winnipeg Zoning By-law No. 200/2006 – 1033 Storie Road**
(Old Kildonan Ward)
File EP-1.1(PW)

EXECUTIVE POLICY COMMITTEE DECISION:

The Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service, namely, that the appeal be denied and the decision dated June 10, 2009, issued by the Zoning and Permits Administrator, Planning, Property and Development Department, regarding provisions of the Plan Winnipeg By-law No. 7630/2000 for the premises located at 1033 Storie Road, be confirmed.

DECISION MAKING HISTORY:

Moved by Councillor Wyatt,

That the receipt of public representations be concluded.

Carried

Moved by Councillor Wyatt,

That the Appeal be denied and the decision of the Zoning and Permits Administration, Planning, Property and Development Department, be confirmed for the following reasons:

1. That an application to vary a non-conforming lot in Rural Policy Area to allow the construction of a single family dwelling is contrary to Plan Winnipeg 2020 and cannot be approved under Section 275(2) of the City of Winnipeg Charter.

2. There are many parts of the City that are in Rural Policy Areas and have no services or improvements, and to allow this application to proceed would establish a precedent for uncontrolled development. In order to maintain orderly development in the City, the principles of Plan Winnipeg 2020 must be upheld.

Carried

Moved by Councillor Wyatt,

That the public hearing with respect to this appeal be concluded.

Carried

PUBLIC HEARING SUMMARY

File: EP-1.1(PW)

Before: Executive Policy Committee
His Worship Mayor Katz, Chairperson
Deputy Mayor Swandel
Councillor Clement
Councillor Fielding
Councillor Pagtakhan
Councillor Steeves
Councillor Wyatt

Public Hearing: July 15, 2009
West Committee Room
Council Building, 510 Main Street

Appellant: Musa Deeb, President, Haiger Holdings Ltd.

Premises Affected: 1033 Storie Road

Nature of Appeal: On June 10, 2009, Musa Deeb, President, Haiger Holdings Ltd., appealed the decision dated June 10, 2009, issued by the Zoning and Permits Administrator, Planning, Property and Development Department, regarding provisions of the Plan Winnipeg By-law No. 7630/2000 for the premises located at 1033 Storie Road.

The decision stated:

"The proposal is contrary to Section 3B-08 of Plan Winnipeg.

Consequently, your application is hereby refused without a hearing pursuant to Section 275(2)(a) of The City of Winnipeg Charter."

Exhibits Filed:

1. Decision dated June 10, 2009, issued by the Zoning and Permits Administrator, Planning, Property and Development Department
2. Notice of Appeal filed by Musa Deeb, President, Haiger Holdings Ltd., received June 10, 2009
3. Notification of Public Hearing dated June 25, 2009
4. Report of the Public Service dated June 29, 2009
5. Communication dated July 10, 2009, from Frederick Bortoluzzi, Ludkiewicz Bortoluzzi, Barristers and Solicitors, advising that their firm is no longer acting for the appellant, Musa Deeb.
6. Audio Recording of representations from the public hearing held on July 15, 2009

REPRESENTATIONS:

In Support of the Appeal:

Mr. Musa Deeb, President, Haiger Holdings Ltd.

In Opposition to the Appeal:

Nil

For Information on the Appeal

Nil

For the City:
Mr. Deepak Joshi, Director of Planning, Property and Development
Ms Dianne Himbeault, Acting Manager of Planning and Land Use, Planning, Property and Development
Mr. John Wintrup, Senior Planner, Planning, Property and Development

Exhibit "1" for the Appeal of The Plan Winnipeg By-law No. 7630/2000 for the premises located at 1033 Storie Road in the Old Kildonan Ward.

Winnipeg

Planning, Property & Development Department • Service de l'urbanisme, des biens et de l'aménagement

Development and Inspections Division• Division de l'aménagement et des inspections
Inspections • Inspections

In reply please refer to: Martin Grady

(204) 986-5147
Fax / Téléc. : (204) 942-2008

June 10, 2009

Mr. Frederick Bortoluzzi

RE: APPLICATION TO VARY ZONING BYLAW NO. 200/2006
1033 STORIE ROAD

With reference to your request to vary the provisions of the "A" Agricultural Zoning District for the establishment of a lot to permit a lot area of 2.8 acres instead of 40 acres at the above referenced location. Please be advised that the proposal is contrary to Section 3B-08 of Plan Winnipeg.

Consequently, your application is hereby refused without a hearing pursuant to Section 275(2)(a) of the City of Winnipeg Charter.

You may appeal this decision by submitting a letter to the Clerk of the Executive Policy Committee at the following address:

City Clerks Department
Main Floor Council Building
510 Main St.
Winnipeg, MB
R3B 1B9

Attention: Jo-Ann Park
Clerk, Executive Policy Committee

Yours truly,

Martin Grady
Zoning and Permits Administrator

Exhibit "2" for the Appeal of The Plan Winnipeg By-law No. 7630/2000 for the premises located at 1033 Storie Road in the Old Kildonan Ward.

RECEIVED
CITY CLERKS
WINNIPEG

Musa Deeb
c/o Ludkiewicz Bortoluzzi

9

June 10, 2009

City Clerks Department
510 Main Street
Winnipeg Manitoba R3B 1B9

Attention: Jo-Ann Park

Re: Notice of Appeal
Application to Vary Zoning By Law No. 200/2006
1033 Storie Road
Letter of Martin Grady dated June 10, 2009

Take note that I am appealing the refusal of my application to Vary under Zoning By-Law 200/2006 as set out in the letter of Martin Grady to my solicitor Frederick Bortoluzzi dated June 10, 2009, a copy of which is attached.

Please provide the writer with a date for the hearing of the appeal.

Yours truly,

Musa Deeb
President of Haiger Holdings Ltd.

Receipt Acknowledged by the City of Winnipeg Clerks Department this 10th day of June, 2009

Name:

Exhibit "3" for the Appeal of The Plan Winnipeg By-law No. 7630/2000 for the premises located at 1033 Storie Road in the Old Kildonan Ward.

Winnipeg

City Clerk's Department • Bureau du greffier

REGISTERED MAIL

June 25, 2009

File EP-1.1(PW)

Mr. Musa Deeb, President
Haiger Holdings Ltd.

Mr. Frederick Bortoluzzi

Appeal under Plan Winnipeg By-law No. 7630/2000 – 1033 Storie Road

This will acknowledge receipt of your communication dated June 10, 2009, appealing the decision of the Zoning and Permits Administrator, Planning, Property and Development Department dated June 10, 2009, for the premises located at 1033 Storie Road.

Please be advised that the appeal will be heard by the Executive Policy Committee at its meeting on Wednesday, July 15, 2009, at 9:00 a.m. in the Council Building, 510 Main Street.

The purpose of the appeal hearing is to allow interested persons to make submissions, ask questions or register objections with respect to this matter.

Information or documents concerning this matter and a description of the procedure to be followed at the hearing are available for inspection in the City Clerk's Department, 510 Main Street or can be accessed on the Internet site: www.winnipeg.ca/CLKDMIS.

JPark

Jo-Ann Park
Manager of the Decision Making Process
Telephone 986-3732
Email jpark@winnipeg.ca

c. Mr. D. Joshi, Director of Planning, Property and Development
Mr. M. Grady, Zoning and Permits Administrator, Planning, Property and Development Department
Ms. D. Himbeault, Acting Manager of Planning and Land Use, Planning, Property and Development Department
Mr. J. Veitch, Senior Planner (Plan Winnipeg), Planning, Property and Development Department

Exhibit "4" for the Appeal of The Plan Winnipeg By-law No. 7630/2000 for the premises located at 1033 Storie Road in the Old Kildonan Ward

ADMINISTRATIVE REPORT

ISSUE: 1033 Storie Road Plan Winnipeg Appeal DAV 09-110005

Critical Path: The Executive Policy Committee is responsible for hearing any appeal of an Administration decision concerning *Plan Winnipeg 2020 Vision*

AUTHORIZATION

Author	Department Head	CFO	CAO
J. Veitch	D. Joshi	P. Olafson Corporate Controller	P. Sheegl Deputy CAO

RECOMMENDATIONS

- That the Executive Policy Committee concur with the interpretation of the Public Service that an application to vary a non-conforming lot in Rural Policy Area to allow the construction of a single family dwelling is contrary to *Plan Winnipeg 2020* and cannot be approved under Section 275(2) of the *City of Winnipeg Charter*

IMPLICATIONS OF THE RECOMMENDATIONS

- The recommendation provides clear and consistent support for *Plan Winnipeg 2020* policies concerning land use in Rural Policy areas as well as with past interpretations rejecting similar applications in the immediate context.

- The applicant will not be able to legally establish the lot to get development permits.

HISTORY

- **1996** - a public hearing was held by the Lord Selkirk / West Kildonan Community Committee to consider the creation of a Secondary Plan allowing the establishment of 2 and 5-acre lots. The Community Committee recommended that the plan not be proceeded with, for the following reason;

  "…the large number of property owners and residents that registered in opposition during the public hearing."

- **2000** - a draft Secondary Plan, referred to the Old Kildonan Secondary Plan, By-law #7637/2000, which would have permitted the establishment of 2-acre lots on Storie road was not proceeded with

- **June / November 2007** Previous applications of a similar nature, interpreted by the Public Service to be contrary to Plan Winnipeg were rejected by the Executive Policy Committee;

    - **June 8, 2007** - Pipeline Road and Balgona Road
    - **June 8, 2007** - 2689 McPhillips Street
    - **November 14, 2007** – 111 Symington Road

- **January 8, 2008** - at the request of several Storie Road residents, the creation of a Secondary Plan allowing 2-acre lots was revisited. Again this was rejected by the Standing Policy Committee based a report from the Public Service outlining the high infrastructure costing required to facilitate the establishment of 2-acre lots in the area

- **September 25, 2008** – Applicant given separate title for the 2.9-acre parcel at the Winnipeg Land Titles Office without the consent of the City of Winnipeg

- **October 20, 2008** - Zoning Administrator informed the applicant that the subject site is not a 'Lot of Record' and thus has no development rights

- **March 19, 2009** – Applicant applies for variance to allow the 2.9 –acre lot in the 'A' Agricultural (40-acre) zone

- **June 10, 2009** - Zoning Administrator refused the variance application without a hearing for the 2.9-acre lot pursuant to Section 275(2)(a) of the City of Winnipeg Charter**,** as it is contrary to Section 3B-08 of *Plan Winnipeg 2020*

- **June 10, 2009** – Applicant filed an appeal of Zoning and Permits decision with the EPC clerk's office

FINANCIAL IMPACT

Financial Impact Statement **Date:** June 29, 2009

Project Name:

Plan Winnipeg Appeal – 1033 Storie Road

COMMENTS:

The recommendation contained in this report is that the Executive Policy Committee concur with the interpretation of the Public Service that an application to vary a non-conforming lot in Rural Policy Area to allow the construction of a single family dwelling is contrary to Plan Winnipeg 2020 and cannot be approved under Section 275(2) of the City of Winnipeg Charter.

There are no financial implications associated with this recommendation.

"Original Signed By"
Mike McGinn, CA
Manager of Finance

CONSULTATION

In preparing this Report there was consultation with:

- Zoning and Permits Branch
- Geomatics Branch

SUBMITTED BY

Department:	Planning, Property and Development
Division:	Planning and Land Use Division
Prepared by:	James Veitch, Senior Planner
Date:	June 29, 2009
File No.	DAV 09-110005

O:\Reports Directive\Planning and Land Use\Urban Planning Reports\2009 Reports\RIS Storie Road.doc

APPENDIX 1:

Key Issues:

- *Plan Winnipeg 2020* is the primary planning policy document that guides all land use, development and planning matters within the City of Winnipeg,

- All versions of Plan Winnipeg, (1986, 1993 and 2001) have included policies limiting the minimum size of lots within Rural Policy Area,

- The Public Service rejected the Variance application for the subject property because it is contrary to *Plan Winnipeg 2020* Policy 3B – Regulate Land Uses in Rural Areas,

- A historical search of the Subject Site revealed that the 2.9-acre parcel is not a 'Lot of Record' meaning it did not lawfully exist on the effective date of the Zoning By-law or amendments thereto and does not comply with the bulk regulations for lot width and/or lot area and thus has no development rights,

- There is no Council adopted secondary plan for this area, previous initiatives for Secondary Planning in this area were not supported by the existing land owners,

- The subject property is not serviced by sewer, water or underground land drainage,

- Under Section 275(2) of the City of Winnipeg Charter, an application to vary outside of what is determined to be a minimal variance or in the absence of an adopted Secondary Plan must be rejected as contrary to *Plan Winnipeg 2020 Vision,*

- Previous applications of a similar nature within the same area were denied by the Executive Policy Committee.

Nature of the Application:
The subject site is a vacant 2.9-acre parcel, zoned 'A' Agricultural and designated Rural Policy Area in *Plan Winnipeg* 2020. The site is not a 'Lot of Record' based on the historical search of its establishment conducted by the City of Winnipeg Zoning and Permits Branch on behalf of the applicant. Therefore the site does not comply with the current 'A' Agricultural district bulk regulations for lot area, (40-acre minimum).

The applicant was informed of the non 'Lot of Record' status by the Zoning and Permits Branch. They explained that the site had no development rights unless a variance was applied for and granted to establish the lot under our current Zoning By-law 200/06.

Zoning and Permits also informed the applicant that under Section275(2) of the City of Winnipeg Charter, an application to vary outside of what is determined to be a minimal variance or in the absence of an adopted Secondary Plan must be rejected as contrary to *Plan Winnipeg 2020.* As part of that variance application discussion Zoning and Permits further indicated that there is an appeal process available through the Executive Policy Committee on Property and Development.

The applicant has since filed his appeal to the Clerk of the Executive Policy Committee requesting that the Committee allow the variance application to proceed in an attempt to establish the 2.9-acre lot in the 'A' Agricultural District within the Rural Policy designation.

Intent of Rural Policy Areas:
The primary intent of Rural Policy Areas is to limit premature, unserviced development on the periphery of the urban area. Scattered developments of this nature make future orderly development to urban densities difficult to achieve.

Policy Implications:
Allowing an application that is contrary to *Plan Winnipeg 2020* to proceed would set a precedent for similar applications within Rural Policy areas and would be contrary to several recent Executive Policy decisions denying applications of a similar nature.

Plan Winnipeg only provides for an exception to the 40-acre rural lot minimum in situations where a secondary plan has been adopted. This is to ensure that development of rural residential areas is not done on a lot-by-lot basis. Rather, the whole area is taken into consideration. A secondary plan for this area was drafted to provide for a certain level of development and servicing but was ultimately rejected by Council largely as a result of local opposition to the plan.

Variance and development of this or similar non-conforming lots would cumulatively have the following detrimental effect on the area:

- Under-serviced homes in an urban area often create pressure later to provide a full range of municipal infrastructure on an unplanned basis,

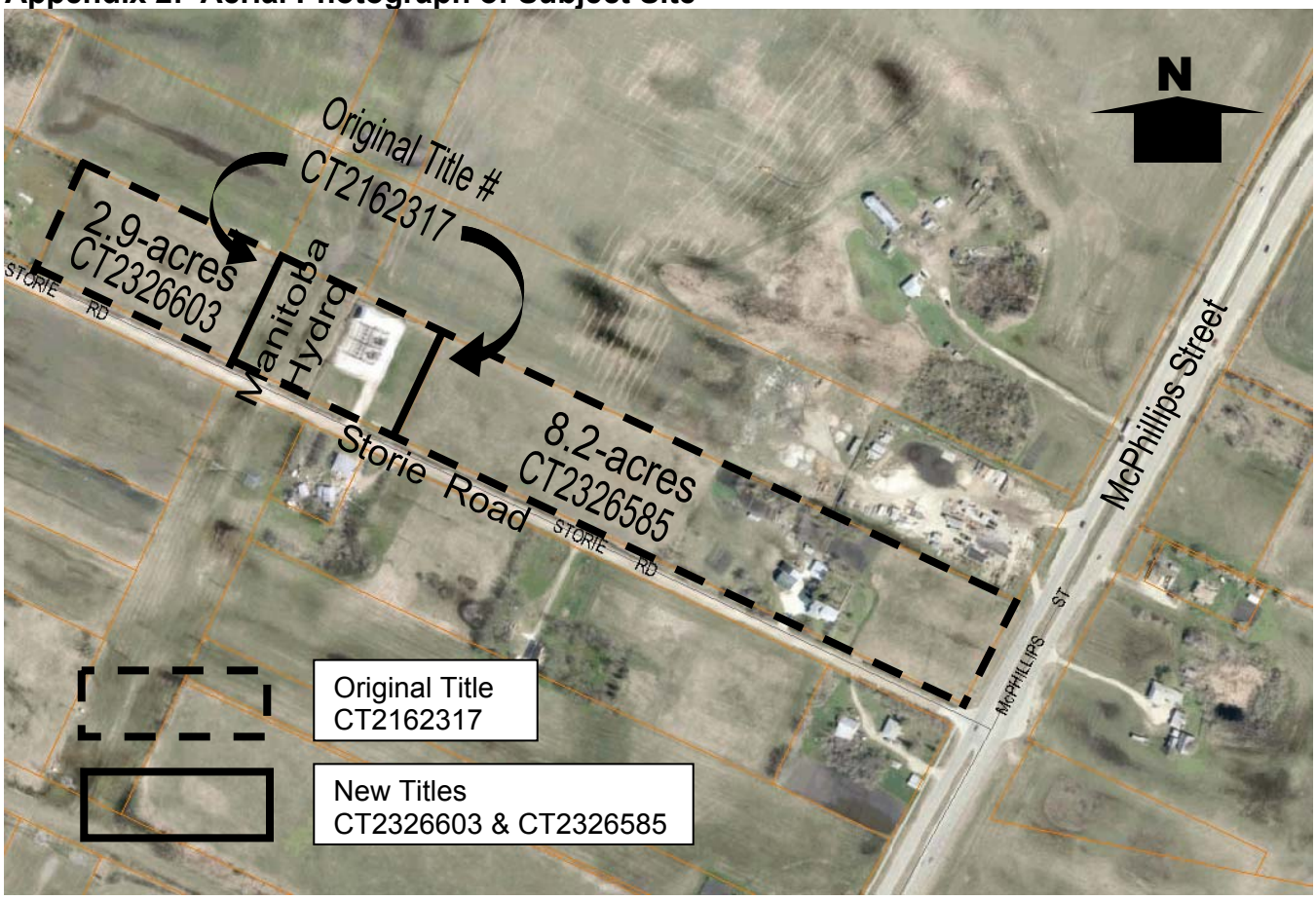
- Piecemeal development negatively impacts the economic viability of the installation of infrastructure in the future,

- The incremental and unplanned development of land can preclude broader development objectives, thus delaying the municipal revenues to be realized by complete development at an urban standard,

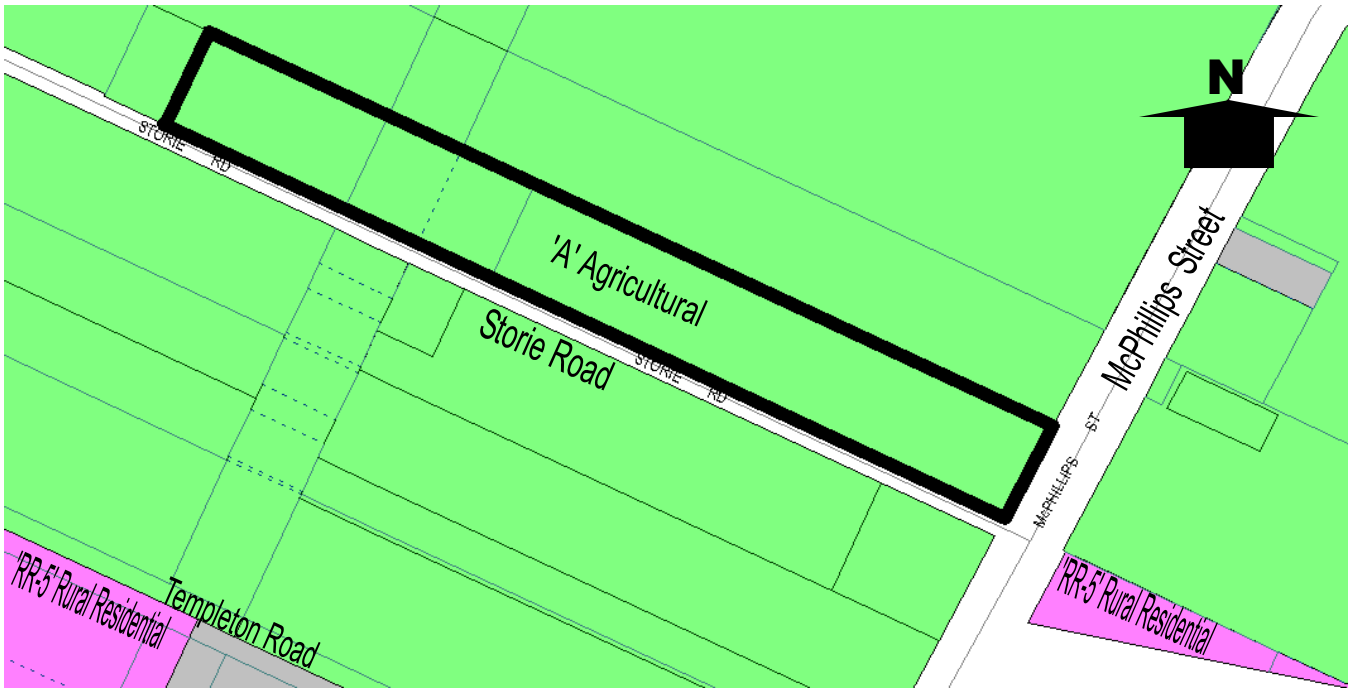
- Intensification of the area will add to existing overland drainage problems. The proposed development on a non-conforming lot in the absence of any secondary plan supporting this type of unserviced development was rejected by the Administration as contrary to Plan Winnipeg.

Conclusion:
Plan Winnipeg 2020 clearly requires a 40-acre minimum parcel size in rural Policy Areas; unless a smaller size is permitted under a council adopted Secondary Plan. Since no Secondary Plan has been adopted for this area, and since the 2.9-acre subject site was established without Municipal consent well below the 40-acre minimum this variance to lawfully establish the lot is not supported by *Plan Winnipeg 2020.*

Appendix 2: Aerial Photograph of Subject Site



Zoning of Subject Site & Context



Plan Winnipeg Designation of Subject Site & Context

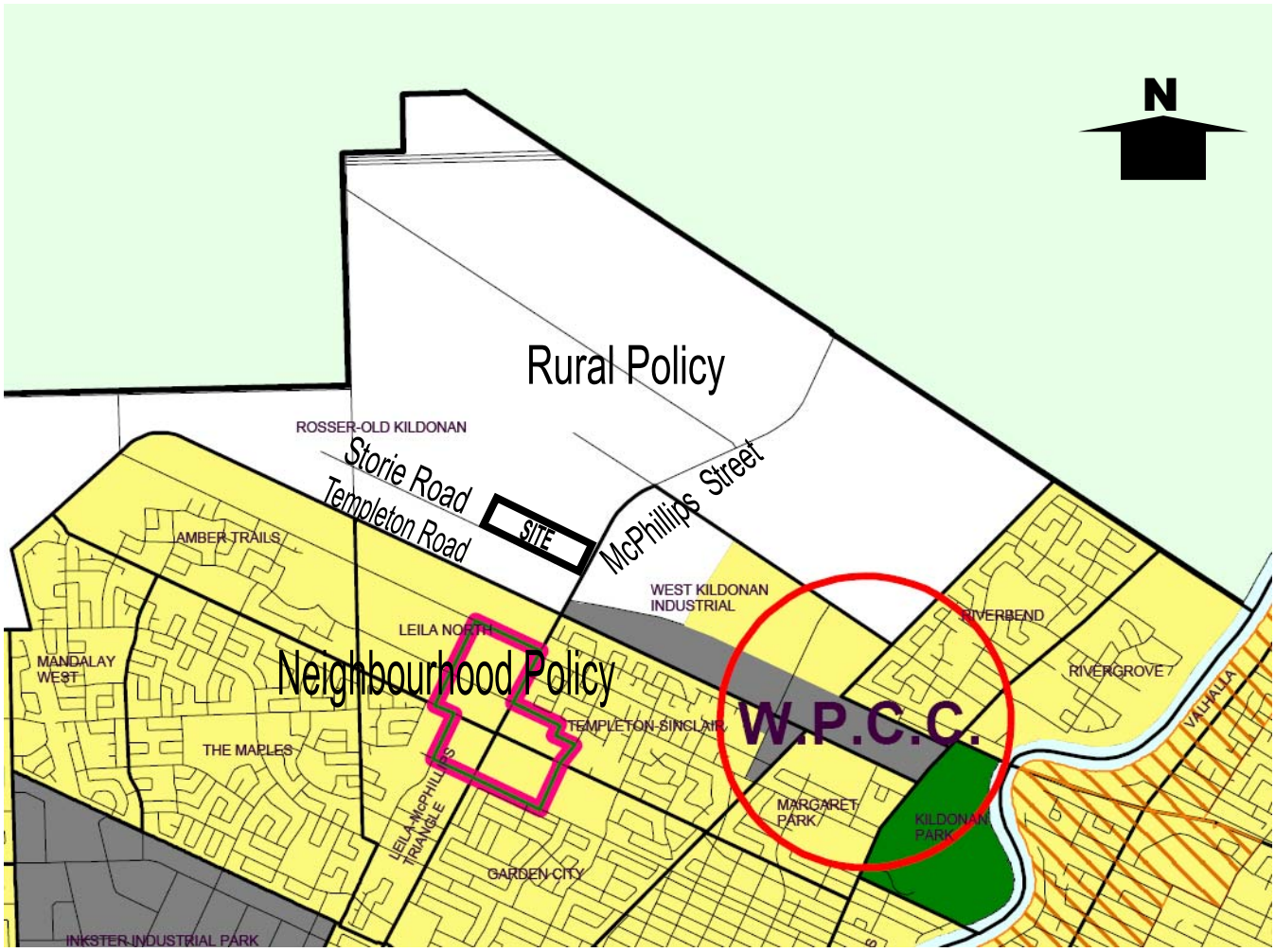

N
Rural Policy
ROSSER-OLD KILDONAN
Storie Road
Templeton Road
SITE
McPhillips Street
AMBER TRAILS
WEST KILDONAN INDUSTRIAL
RIVERBEND
LEILA NORTH
Neighbourhood Policy
MANDALAY WEST
RIVERGROVE
VALHALLA
TEMPLETON-SINCLAIR
W.P.C.C.
THE MAPLES
LEILA-McPHILLIPS TRIANGLE
MARGARET PARK
KILDONAN PARK
GARDEN CITY
INKSTER INDUSTRIAL PARK

Exhibit "5" for the Appeal of The Plan Winnipeg By-law No. 7630/2000 for the premises located at 1033 Storie Road in the Old Kildonan Ward

LUDKIEWICZ | BORTOLUZZI *
Barristers and Solicitors

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9 JUL 13 A11:36

July 10, 2009

Winnipeg, City Clerk's Department
Council Building
510 Main Street
Winnipeg, MB R3B 1B9

Attention: Jo-Ann Park & Visa Hutter

Dear Madams:

Re: Appeal – Application to Vary The Winnipeg Zoning By-law No. 200/2006 – 1033 Storie Road, Mr. Musa Deeb, Haiger Holdings Ltd. Appeal Date: July 15th, 2009 at 9:00 AM

This letter will confirm that we are no longer acting for Mr. Deeb on this matter.

Yours truly,

LUDKIEWICZ BORTOLUZZI

FREDERICK BORTOLUZZI

PLEASE REPLY TO: [ ] B1 - 1921 Pembina Hwy Wpg. MB R3T 2G7 [x] 23-2188 McPhillips St Wpg. MB R2V 3C8
T (204) 925-4555 | F (204) 925-4554 | fredbort@mts.net
*INCORPORATED PROFESSIONAL PRACTICE: FREDERICK BORTOLUZZI LAW CORPORATION