Minutes - Executive Policy Committee - June 9, 2010

PUBLIC HEARINGS

Minute No. 323 **Appeal - Plan Winnipeg By-law No. 7630/2000 - 2501 Ferrier Street (Old Kildonan Ward)**
File EP-1.1(PW)

EXECUTIVE POLICY COMMITTEE DECISION:

The Executive Policy Committee allowed the appeal and cancelled the decision of the Zoning and Permits Administrator, Planning, Property and Development Department dated June 3, 2010, regarding provisions of Plan Winnipeg By-law No. 7630/2000 for the premises located at 2501 Ferrier Street.

DECISION MAKING HISTORY:

Moved by Councillor O'Shaughnessy,
That the receipt of public representations be concluded.

Carried

Moved by Councillor O'Shaughnessy,
That the Appeal be allowed and the decision of the Zoning and Permits Administrator, Planning Property and Development Department, be cancelled.

Carried

Moved by Councillor O'Shaughnessy,
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 Fielding Councillor O'Shaughnessy Councillor Pagtakhan Councillor Steeves
Public Hearing:	June 9, 2010 West Committee Room Council Building, 510 Main Street
Appellants:	MMM Group Limited (on behalf of The Immaculate Heart of Mary School)
Premises Affected:	2501 Ferrier Street
Nature of Appeal:	On May 29, 2010, MMM Group Limited, on behalf of The Immaculate Heart of Mary School, appealed the decision dated April 23, 2010, issued by the Plan Winnipeg Planner, Planning, Property and Development Department, regarding provisions of Plan Winnipeg By-law No. 7630/2000 for the premises located at 2501 Ferrier Street. The decision stated: "With reference to your application to rezone the land at the above referenced location, please be advised that your proposal is contrary to Sections 3A-01 iii), 3A-02 v) and 3B-06 iii) and iv) of Plan Winnipeg Vision 2010 that restricts the introduction of non-industrial uses within Industrial Policy Areas. Consequently, your application to rezone the subject property is hereby refused without a hearing pursuant to Section 275(2)(a) of the City of Winnipeg Charter."
Exhibits Filed:	1. Decision dated April 23, 2010, issued by the Plan Winnipeg Planner, Planning, Property and Development Department 2. Notice of Appeal filed by MMM Group Limited, on behalf of The Immaculate Heart of Mary School, received May 4, 2010 3. Notification of Public Hearing dated May 7, 2010

4. Report from the Winnipeg Public Service dated June 3, 2010
5. Dr. Mark Karpa, Board Chairman, Immaculate Heart of Mary School submitted documentation in support of the appeal
6. Audio Recording of representations

REPRESENTATIONS:

In Support of the Appeal:

Paul McNeil, Vice-President Planning & Development, Western Canada
MMM Group Limited
Rod Picklyck, Principal, Immaculate Heart of Mary School
Dr. Mark Karpa, Board Chairman, Immaculate Heart of Mary School
Brock Feenstra, MMM Group Limited
Lauren Lange, MMM Group Limited

In Opposition to the Appeal:

Nil

For Information on the Appeal

Nil

For the City:

Deepak Joshi, Director of Planning, Property and Development
James Veitch, Plan Winnipeg Planner, Planning, Property and Development Department
John Wintrup, Senior Planner, Planning, Property and Development Department

Exhibit "1" for the Appeal of Plan Winnipeg By-law No. 7630/2000 for the premises located at 2501 Ferrier Street in the Old Kildonan Ward

Winnipeg

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

Planning and Land Use Division • Division de l'urbanisme et de l'usage des sols

In reply please refer to / Référence à rappeler :

James Veitch, Senior Planner
Plan Winnipeg
Phone: (204) 986-7728
Fax: (204) 986-7524

April 23, 2010

Mr. Ross Mitchell
Senior Planner
MMM Group Limited

RE: DAZ 202 / 2010 – 2501 FERRIER STREET

Dear Mr. Mitchell:

With reference to your application to rezone the land at the above referenced location, please be advised that your proposal is contrary to Sections 3A-01 iii), 3A-02 v) and 3B-06 iii) & iv) of *Plan Winnipeg Vision 2020* that restrict the introduction of non-industrial uses within Industrial Policy Areas.

Consequently, your application to rezone the subject property 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 by May 12th, 2010, 4:30 pm. to the Clerk of the Executive Policy Committee at the following address:

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

Attention: Jo-Ann Park
Clerk, Executive Policy Committee
Phone: 986-3732

Yours truly,

J. Veitch

James Veitch
Plan Winnipeg Planner

G:\Correspondence\2501 Ferrier PW rejection.doc

Exhibit "2" for the Appeal of Plan Winnipeg By-law No. 7630/2000 for the premises located at 2501 Ferrier Street in the Old Kildonan Ward

RECEIVED
CITY CLERKS
WINNIPEG
10 MAY -4 A9:58

MMM GROUP

MMM Group Limited
Suite 111 - 93 Lombard Avenue

May 29, 2010

Ref. No.: 5509104.101.710

Ms. Jo-Ann Park, Clerk
Executive Policy Committee
City Clerk's Department
Main Floor Council Building
510 Main Street
Winnipeg MB R3B 1B9

Dear Ms. Park:

Re: 2501 Ferrier Street Rezoning – DAZ 202/2010

On behalf of our client, The Immaculate Heart of Mary School (IHMS), MMM Group Limited (MMM) hereby appeals the decision of the Planning Property and Development Department to reject the above-referenced rezoning application involving their property at 2501 Ferrier Street. It is the intention of IHMS to construct a K-8 school on the property which is located within the West Kildonan Industrial Neighbourhood. As referenced in the Department's letter dated April 23, 2010, copy attached, the application is being rejected as being contrary to Plan Winnipeg on the grounds that non-industrial land uses are not allowed within parts of the City designated as Industrial Policy Areas.

Our grounds for appeal can be briefly summarized as follows:

1. It is our understanding that the blanket land use policy area designations under the current Plan Winnipeg will be eliminated under the revised *OurWinnipeg* development plan which is shortly going to Council for first reading. This will remove the only impediment to the application proceeding to a Public Hearing before the Lord Selkirk-West Kildonan Community Committee.

2. The 2009 *City of Winnipeg Employment Lands Strategy*, a background study to *OurWinnipeg*, recommended the elimination of the West Kildonan Industrial Neighbourhood. The report notes that the viability of the neighbourhood as an industrial area is compromised by its small size and isolated location and the encroachment of residential development.

If this appeal is successful, it is our intention to have the rezoning application scheduled for a Public Hearing at the earliest possible date. The Board of the IHMS will consult with neighbouring property owners prior to the hearing.

MMM and IHMS would be pleased to address the Executive Policy Committee on this matter.

Sincerely,

MMM Group Limited

Ross Mitchell, MCIP
Senior Planner

RM/dt

Attachments

c: Mr. James Veitch, Plan Winnipeg Planner
Planning and Land Use Division
Unit 31-30 Fort Street
Winnipeg MB R3C 4X7

Dr. Mark Karpa, Board Chairman
Immaculate Heart of Mary School

Exhibit "3" for the Appeal of Plan Winnipeg By-law No. 7630/2000 for the premises located at 2501 Ferrier Street in the Old Kildonan Ward

Winnipeg

City Clerk's Department • Bureau du greffier

REGISTERED MAIL RW 141 436 186 CA

May 7, 2010

File EP-1.1 (PW)

Mr. Ross Mitchell
Senior Planner
MMM Group Limited

Appeal under Plan Winnipeg By-law No. 7630/2000 – 2501 Ferrier Street

This will acknowledge receipt of your communication dated May 29, 2010, appealing on behalf of the Immaculate Heart of Mary School the decision of the Plan Winnipeg Planner, Planning Property and Development Department, dated April 23, 2010, for the premises located at 2501 Ferrier Street.

Please be advised that the appeal will be heard by the Executive Policy Committee at its meeting on Wednesday, June 9, 2010, 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

c. Mr. D. Joshi, Director of Planning, Property and Development
Mr. L. Strijack, Director of Legal Services and City Solicitor
Mrs. D. Himbeault, Acting Manager of Planning and Land Use,
Planning Property and Development Department
Mr. J. Veitch, Plan Winnipeg Planner, Planning Property and Development Department
Dr. Mark Karpa, Board Chairman, Immaculate Heart of Mary School,
Winnipeg, I

Exhibit "4" for the Appeal of Plan Winnipeg By-law No. 7630/2000 for the premises located at 2501 Ferrier Street in the Old Kildonan Ward

ADMINISTRATIVE REPORT

Title: 2501 Ferrier Street - *Plan Winnipeg 2020 Vision* Appeal

Issue: To consider an appeal of a Public Service decision concerning *Plan Winnipeg 2020 Vision* regarding the rejection of a rezoning application (DAZ 202/10) to not proceed to a public hearing.

Critical Path: Executive Policy Committee

AUTHORIZATION

Author	Department Head	CFO	CAO
P. Regan	D. Joshi	N/A	P. Sheegl, Deputy CAO

RECOMMENDATIONS

- That the Executive Policy Committee concur with the interpretation of the Public Service that an application to rezone land from 'M2' Manufacturing General to 'PR2' Parks and Recreation (Community) in an Industrial Policy Area to allow the establishment of a K – 8 private school with a daycare is contrary to *Plan Winnipeg 2020* and cannot be approved under Section 275(2) of the *City of Winnipeg Charter.*

REASON FOR THE REPORT

The applicant under DAZ 202/2010, intended to rezone the subject site from 'M2' Manufacturing – General to 'PR2' Parks and Recreation (Community). The purpose of the rezoning was to allow the establishment of a Kindergarten to Grade 8 Private School with an accessory daycare use.

The Public Service refused without a hearing the application, writing a letter to the applicant informing him that under Section 275(2) (a) of the City of Winnipeg Charter, an application to rezone land allowing the introduction of non-industrial uses into Industrial Policy areas must be rejected as it is contrary to *Plan Winnipeg 2020.*

The Applicant filed an appeal of the Public Service decision with City Clerks.

The Executive Policy Committee is delegated the authority to hear and decide on appeals of decisions of the Public Service related to *Plan Winnipeg 2020*.

IMPLICATIONS OF THE RECOMMENDATIONS

- The recommendation provides clear and consistent support for *Plan Winnipeg 2020* policies concerning rezoning and land-use that are not consistent with *Plan Winnipeg* policy designations as well as with past interpretations rejecting similar applications;

- The applicant will not have the ability to rezone the subject site and obtain development permits for a school;

HISTORY

History of Templeton / Sinclair Area (see Figure 1 below)

1. **November 25, 2009** – PW 2/2007 & DASZ 4/2009, 455 Templeton Plan Winnipeg Amendment, City of Winnipeg Council approves the amendment of *Plan Winnipeg 2020* from Industrial Policy to Neighbourhood Policy;
    - Logical and orderly extension of residential, characterized as infill
    - Offset the City's tight residential land supply in NW quadrant of Winnipeg
    - ELS indicates these lands are no longer strategic / logical industrial lands

2. **March 2008** - Employment Lands Strategy; Altus Clayton, MMM Group: recommending that the Templeton / Sinclair Industrial Policy Area be eliminated due the land's non-strategic location for industrial lands and due to encroachment of residential development;

3. **February 22, 2006** – DASZ 40/2004, lands north of Beecher: Subdivision and rezoning to allow 20 single family lots;

4. **December 6, 2006** – PW 1/2005 & DASZ 53/2004, lands south of Bergen Cut-off: Subdivision, Rezoning and amendment to *Plan Winnipeg 2020* from Industrial Policy to Neighbourhood Policy to allow 117 single family lots;

5. **March 23, 2005** –DASZ 29/2004, North of Templeton, south of Beecher: Subdivision and rezoning to allow 34 single family lots;

6. **February 25, 2004** – DASZ 28/2003, 2425 Ferrier subdivided and rezoned: from 'A' Agricultural to 'M2' Industrial, to allow further industrial development and an existing residential dwelling to remain;

7. **September 24, 2003** –DASZ 28/2002, North of Beecher: Subdivision and rezoning to allow 18 single family lots;

8. **1993** – Lands south of Bergen Cut-off, north of Templeton Avenue east of original McGregor Street extension and west of Ferrier Street were re-designated from Industrial Policy to Neighbourhood Policy allowing the infill of residential housing;

9. **November 21, 1990** – Council approves the re-alignment of the McGregor Street extension to a more direct north south route connecting with Ferrier Street at the Bergen Cut-off intersection.

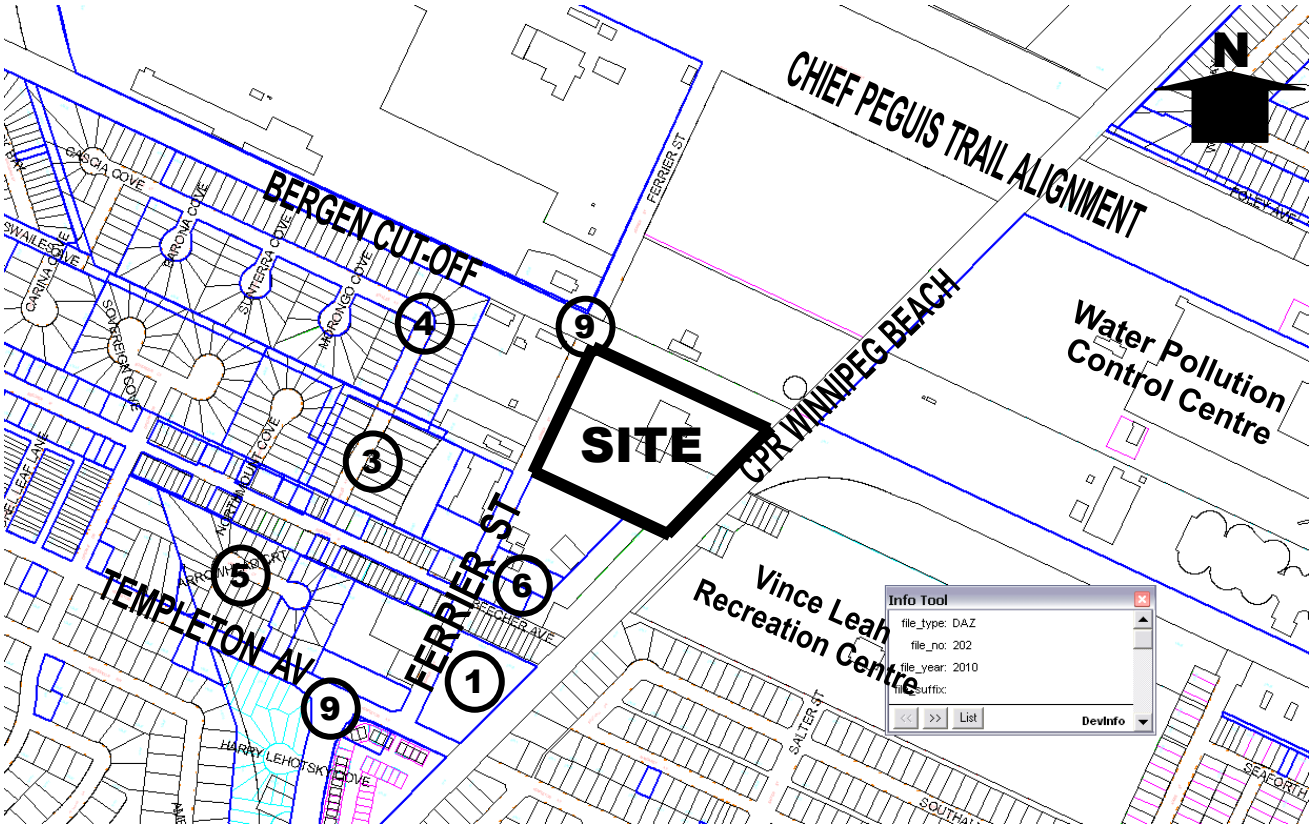

Figure 1: History Context: Previous Applications

FINANCIAL IMPACT

Financial Impact Statement Date: May 25, 2010

Project Name:

Appeal of a Public Service decision concerning Plan Winnipeg 2020 Vision regarding 2501 Ferrier Street

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 rezone land from 'M2' Manufacturing General to 'PR2' Parks and Recreation (Community) in an Industrial Policy Area to allow the establishment of a K – 8 private school with a daycare 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:

N/A

SUBMITTED BY

Department: Planning, Property and Development
Division: Planning and Land Use
Prepared by: James Veitch, Senior Planner
Date: June 3, 2010
File No.

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Appendix:
1. Plan Winnipeg Discussion
2. Site Location, Zoning and Plan Winnipeg Policy Area context

APPENDIX 1: Plan Winnipeg Discussion

Key Issues:

- *Plan Winnipeg 2020 Vision* is our 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 guiding the development and use of our Industrially designated lands;

- *Plan Winnipeg 2020* is clear as to what constitutes an 'Industrial Policy Area': restricted to industrial land uses only and commercial uses to act as a buffer to adjacent uses or to service the local industrial users;

- The Public Service has consistently rejected applications to rezone lands in Industrial Policy areas that sought to establish non-industrial uses without first amending *Plan Winnipeg 2020*;

- The Employment Lands Strategy suggests the Industrial Policy area situated at the NE corner of the Templeton / Sinclair neighbourhood has become obsolete due to residential pressures and its non-strategic location;

- An application to amend the Industrial Policy area to Neighbourhood Policy south of the subject site at the SE corner of Beecher and Ferrier was supported, passed and adopted in November 2009;

- The Public Service would likely support an application to amend *Plan Winnipeg 2020* to Neighbourhood Policy for the subject site. However, with our Development Plan Review process nearing completion, an application to amend *Plan Winnipeg 2020* at this time is not appropriate;

- Should the Executive Policy Committee indicate that under Plan Winnipeg By-law No. 7630/2000 the development application for 2501 Ferrier Street can proceed to Public Hearing, the merits of the rezoning application would be heard at the Lord Selkirk – West Kildonan Community Committee.

Nature of the Application:

The subject site is a 7-acre vacant parcel, zoned 'M2' Manufacturing - General and designated Industrial Policy Area in *Plan Winnipeg 2020*.

Under DAZ 202/2010, the applicant intended to rezone the subject site from 'M2' Manufacturing – General to 'PR2' Parks and Recreation (Community). The purpose of the rezoning was to allow the establishment of a Kindergarten to Grade 8 Private School with an accessory daycare use.

April 23, 2010, the Planning and Land Use Division wrote a letter to the applicant informing him that under Section 275(2) (a) of the City of Winnipeg Charter, an application to rezone land allowing the introduction of non-industrial uses into Industrial Policy areas must be rejected as it

is contrary to *Plan Winnipeg 2020.* We further indicated that there is an appeal process available through the Executive Policy Committee.

The applicant has since filed an appeal, (received May 4th, 2010) to the Clerk of the Executive Policy Committee requesting that the Committee allow the rezoning of 2501 Ferrier Street under file DAZ 202/2010.

Policy Implications:

Allowing an application that is contrary to *Plan Winnipeg 2020* to proceed would set a precedent for similar applications requesting rezonings that do not align with current Plan Winnipeg policy. Furthermore granting this appeal would be contrary to several recent Executive Policy decisions denying applications of a similar nature.

Conclusion:

An application to rezone a site in an Industrial Policy Area to allow a non-industrial zoning and use is contrary to *Plan Winnipeg 2020.* Any site must first (or congruently) have the Policy Area amended in *Plan Winnipeg* prior to allowing an alternate zoning and use.

3A-01 Promote Orderly Development

The City shall promote orderly development through land use designations on Policy Plate A by:

iii) considering the Industrial designation to signify areas of concentrated industrial uses and supportive infrastructure with the possible inclusion of compatible commercial uses;

3A-02 Promote Compact Urban Form

The City shall promote compact urban form in support of sustainability by:

v) supporting new development which is adjacent to, and compatible with, existing development and which is designed to minimize the special use of land;

3B-06 Accommodate New Industrial Areas

The City shall accommodate new industrial areas within locations designated as Industrial on Policy Plate A by:

iii) restricting land uses in industrial areas, where warranted, to industrial uses only, in order to promote stability and predictability;
iv) allowing the possible introduction of commercial uses in industrial areas to act as a buffer between the industrial areas and adjacent uses or to service the needs of the local industrial population;

The Templeton / Sinclair Industrial Policy Area under consideration has been under considerable pressure over the last few decades to transition into residential and associated support uses, (see the History section in this report). The Industrial Policy boundaries have

consistently been shrinking since the re-alignment of the future McGregor Street extension in 1990. As the Templeton / Sinclair industrial lands are now surrounded on three sides by Residential Policy as well as the Employment Land Strategy findings now suggest it makes good planning sense to re-designate the remaining Industrial Policy area south of the Bergen Cut-off for residential and associated compatible uses.

However, as our City development plan is currently well into the review process, an amendment to *Plan Winnipeg 2020* at this time is not appropriate.

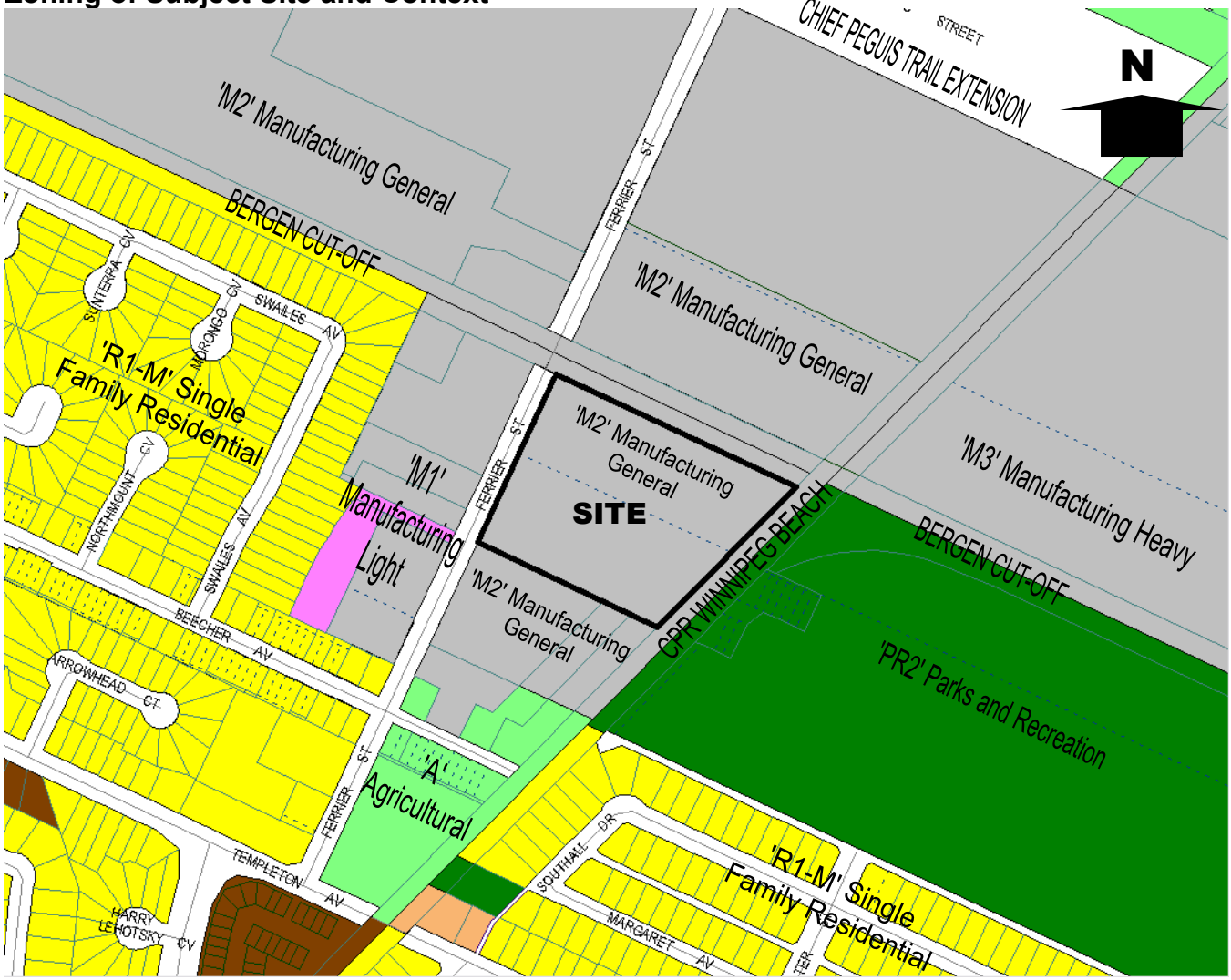
Should the Executive Policy Committee indicate that under Plan Winnipeg By-law No. 7630/2000 the development application for 2501 Ferrier Street can proceed to Public Hearing, the merits of the rezoning application would be heard at the Lord Selkirk – West Kildonan Community Committee.

Appendix 2: Site Location

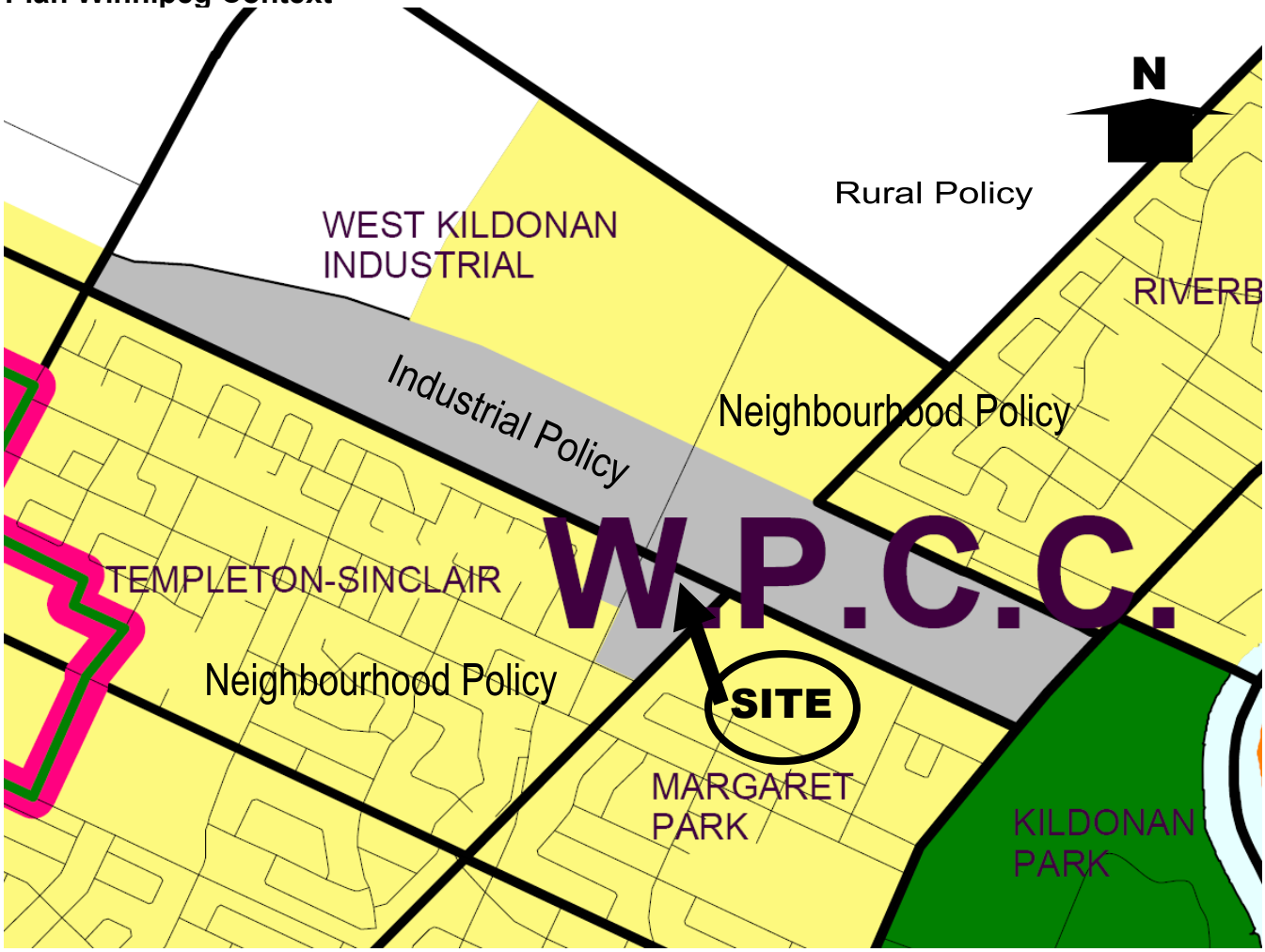
Site Location (Aerial flown 2009)



Zoning of Subject Site and Context



Plan Winnipeg Context



Industrial Policy

Neighbourhood Policy

Major Open Space

Rural Policy

Exhibit "5" for the Appeal of Plan Winnipeg By-law No. 7630/2000 for the premises located at 2501 Ferrier Street in the Old Kildonan Ward

EPC - JUNE 7, 2010

APPEAL UNDER PLAN WINNIPEG – 2501 FERRIER STREET
FILE EP-1.1 (PW)

June 10, 2010

Delegation in Support of the Appeal:

Paul McNeil – MMM Group
Rod Picklyck – Principal, Immaculate Heart of Mary School
Mark Karpa – Immaculate Heart of Mary School

Basis for the Appeal:

1. We believe that the position taken by the Winnipeg Public Service to not accept a rezoning application for the establishment of an educational facility in an Industrial Policy Area on the basis of the cited Plan Winnipeg policies is an excessively rigid interpretation of specific clauses in the document. We contend that Plan Winnpeg must also be viewed as a broad policy document with a reasonable degree of flexibility to meet the overall objectives of the document. By accepting the application, we assert that the City will not be contravening Plan Winnipeg or the City of Winnipeg Charter.

2. There are precedents for educational uses within Industrial Policy Areas. These include Red River College, the Winnipeg Technical College and Fort Whyte Alive. There is also a daycare in the Fort Garry Industrial Park.

3. The draft *OurWinnipeg* document indicates a shift in City policy away from a rigid separation of land uses to more mixed, complete communities. Although not as of yet adopted as policy, OurWinnipeg is a clear indication of future intent, and granting the Lord Selkirk – West Kildonan Community Committee the ability to consider the rezoning application would be consistent with future policy direction.

We respectively request that the Winnipeg Public Service be given direction to accept the rezoning application without first requiring a Plan Winnipeg amendment.

Thank you,

Paul McNeil