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Re: EPC presentation July 14, 2010

I have read and reviewed the document attached to Complete Communities Direction Strategy - First Reading - By-law No. 68/2010 - SP 3/2010 and subscribe to its value as an important planning tool for Winnipeg. Beyond that, I have particular interest in approving of the overall attempt to offer greater certainty to the decision making process, and more latitude to a very capable administration. While I have spent many years advocating primarily on new attitude and support for our downtown, a specific section of this report, unrelated to downtown, has encouraged me to present this submission.

Page 96 of the Report, titled 'Employment Lands – All Employment Lands; Supporting Directions and Enabling Strategies' is followed by coherent analysis and some very 'enabling strategies'. Specifically, the statement on that page:

Adapt to changing conditions in market trends by allowing for the transition, as warranted, to more suitable uses pending the submission of a comprehensive report by the proponent detailing:

- The development's economic impact on existing employment land and adjacent employment land users
- Reasons why the proposed land use needs to be located in an employment land area
- The impact on future economic growth caused by removing them from the employment land inventory
- An engineering study setting out servicing infrastructure requirements and the impacts of the proposed development
- A transportation study demonstrating that there is enough viable transportation options to accommodate adjusted traffic levels without undue effects on existing employment users

Clearly set out parameters and focused directions add to the inestimable value of having certainty in creating development opportunities. Our current use of Industrial Policy Areas limits adaptive reuse and unnecessarily precludes some contemporary projects from happening. The guidelines as set out tell a proponent what is required for a complete submission, and, show a positive attitude towards new ideas. These are a powerful combination in encouraging urban compactness

and orderly growth. **As well, this policy of 'transition' goes a long way towards unlocking value from sites made functionally obsolete by sole virtue of their zoning.**

The separation of noxious and or dangerous activities from urban enclaves is part of our collective history. Setting rules for where dangerous or noxious uses may be allowed predates our current governmental structures. The town of Bethlehem, ('beit lechem' or 'house of bread') was set outside the walled city of Jerusalem to avoid the fire hazard in densely populated sectors. Urbanization caused the need for a central bakery, prudence regulated where it could be built. In the late 1800's drycleaners were required to locate out of heavily populated areas due to the flammable solutions they used. Changes in technology have allowed for bakers and drycleaners locating within city limits; Winnipeg should be open to changing business modes and be flexible in the designation of lands where more can be gained from adaptation than speculative protection.

Zoning laws are government regulated restrictions on how a particular piece of land can be used. The zones can be of many types, including residential, commercial, and industrial. These laws are directed to solve a very real problem, the creation of a nuisance for existing landowners. Nuisance signifies that the "right of quiet enjoyment" is being disrupted to such a degree that a tort is being committed against a landowner.

Zoning laws are ostensibly a proactive remedy for situations where development may diminish value. Often, zoning regulations create more uncertainty than the clarity for which there were designed. The result can be more exceptions through variance or conditional use applications than actual implementation of the by-law.

Nuisance law existed at Common Law before zoning laws, and can be said to be more specific as a remedy to a problem. Nuisance laws only apply when there is a conflict between two parties. They specify that if one person, by the legitimate use of their property, disrupts the legitimate use of property by another, he must cease and/or pay restitution. If however, the person who is claimed to be disrupting others was there first, practicing the same behavior, then he can continue.

An example is a pig farmer who stinks up the surrounding area. If he lives out away from the rest of the world, he is not disturbing anyone. If others move out to live near him, and then complain about the smell, they have to live with it. He was there first. Thus, an objective standard of evaluation is possible under nuisance laws.

Zoning laws, though, are necessarily arbitrary. If someone wants to start a factory in an area, and none of the neighbors who it would directly affect mind (and they may even want him to), he may still be disallowed by zoning laws. They are non-objective, and by design, arbitrary.

Thus, where zoning rules are in place, so are applications for Variances and Conditional Uses.

Anything we can do as a community to improve the certainty of our land use regulation will encourage orderly new development. As well, especially relating to industrial lands, lack of certainty can often dissuade new users from locating in Winnipeg.

It is therefore, with some pleasure that I am able to endorse the language and intent of the Complete Communities Direction Strategy, as it related to Section 5, 'Employment Lands'. The authors seem to have understood the anomalies created by rigid zoning regulations, especially as relating to Industrial Policy Areas. Many parcels of land sit dormant due to such restrictive policy, while alternate uses could be easily seen as compatible with surrounding uses. Easing the way for adaptive reuse is a very positive agenda. And, on that issue, a side note: much land affected would not need to be 'readapted' if not for the regulations; the legislation itself is the cause of the problem.

Yours truly,



Hart Mallin