Agenda Item # | Page #

File No. OZ-7873
Planner: E. Lalande

TO:	**CHAIR AND MEMBERS BUILT AND NATURAL ENVIRONMENT COMMITTEE MEETING ON AUGUST 15, 2011**
FROM:	**J. M. FLEMING DIRECTOR, LAND USE PLANNING AND CITY PLANNER**
SUBJECT:	**METHADONE CLINIC AND DISPENSARY INTERIM CONTROL BY-LAW ONTARIO MUNICIPAL BOARD HEARING DECISION THE CORPORATION OF CITY OF LONDON**

RECOMMENDATION

THAT, on the recommendation of the Director of Land Use Planning and City Planner, the attached report related to the Methadone Clinics and Dispensaries' Interim Control By-law **BE RECEIVED** as information.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

November 8, 2010 – Methadone Clinics Draft Report
November 15, 2010 – Interim Control By-law Report
January 31, 2011 – Interim Control By-law Appeal Report

BACKGROUND

At its meeting on November 8, 2010, Planning Committee heard numerous concerns from members of the public related to methadone clinics and dispensaries. The Committee consequently directed Planning staff to prepare an interim control by-law for consideration by the Planning Committee and Council. Planning Committee received a report and Council subsequently passed an Interim Control By-law On November 15, 2010.

The Interim Control By-law was adopted to restrict the establishment of new methadone clinics and dispensaries within the municipal boundaries of the City of London for one (1) year. This time frame was set to allow Planning staff to study land use impacts related to methadone clinics and dispensaries. Council requested staff to conduct a study of the issues, prepare a report and provide recommendations on land use planning tools that could be considered to address concerns raised to Council.

The temporary restriction prevents new clinics and dispensaries from establishing until November 15, 2011. It is important to note that the interim control by-law does not affect existing methadone clinics, dispensaries or new and existing pharmacies.

Subsequent to its passing, the Interim Control By-law was appealed to the Ontario Municipal Board by Ontario Addiction Treatment Centres and 1276154 Ontario Limited. The appellants argued that the interim control by-law was not supported by valid planning rationale, was discriminatory and that the operation of methadone clinics does not create valid land use planning problems. The Ontario Municipal Board hearing took place on June 7 and 8, 2011. The hearing focused on the planning rationale supporting the Interim Control By-law that was enacted by Municipal Council.

Janice Page, Solicitor II acted on behalf of the City. Ross Fair, Executive Director of Community Services provided factual evidence and John Fleming, Director of Land Use Planning, City Planner provided land use planning evidence related to the of the Interim Control By-law.

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As part of its decision, the Board determined that it represents good planning to establish an Interim Control By-law in order to avoid the establishment of a new facility until such time as the planning study was completed. The Board noted that the intention to look to future planning was in the public interest for the Municipality. The Board also deemed that the definitions established by the Interim Control By-law were reasonable. Based on the evidence provided in the hearing, the Board acknowledges that methadone clinics and dispensaries are connected to valid land use planning matters. Further, the Board accepts that it is appropriate to plan methadone clinics for the benefit of the uses and to avoid land use impacts.

Further, the Board found persuasive the evidence that there is a causal connection between the concerns and issues that the community raised as early as 2004. The notion that issues were being raised by the public represents an urgency in the community. The Board noted that there was no evidence to suggest that the City has failed to comply with the strict interpretation of Section 38 of the Act. The Board does not consider the Interim Control By-law to be over reaching and is determined to cause no demonstrable adverse impact on the appellants. The Board considers the Interim Control By-law to be based on sound planning reasons.

The Ontario Municipal Board decision on July 15, 2011 dismissed the appeal and upheld the Interim Control By-law, which continues to be in force and effect until November 15, 2011. The decision from the Ontario Municipal Board can be found as attached to this report.

Planning staff is expeditiously continuing their efforts in completing the study as requested by Council through the implementation of the Interim Control By-law.

PREPARED BY:	**SUBMITTED BY:**
ERIC LALANDE **PLANNER I, CITY PLANNING AND RESEARCH**	**GREGG BARRETT,** **MANAGER III, CITY PLANNING AND RESEARCH**
RECOMMENDED BY:	
J. M. FLEMING **DIRECTOR, LAND USE PLANNING AND CITY PLANNER**	

August 4, 2011

EL/el

attach.

1. Ontario Municipal Board Decision – PL110093

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Agenda Item # | Page #

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Planner: E. Lalande

ISSUE DATE:

July 15, 2011

PL110093

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 38(4) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant (jointly):	Ontario Addiction Treatment Centres
Subject:	Interim Control By-law No. IC By-law 1476-298
Municipality:	City of London
OMB Case No.:	PL110093
OMB File No.:	PL110093

APPEARANCES:

Parties	**Counsel**
Ontario Addiction Treatment Centres (Daiter-Varenbut Medicine Professional Corporation) and 1276154 Ontario Ltd.	Alan Patton
City of London	Janice Page and Michael Schulthess

DECISION DELIVERED BY R. ROSSI AND ORDER OF THE BOARD

Interim Control By-Law 1476-298 ("the ICBL"), passed by London City Council on 15 November 2010, establishes provisions for the City of London to prohibit the establishment of new methadone clinics and methadone dispensaries for an interim period of one year in order to allow the for the completion of a land use planning study on the potential regulation of these uses.

The Appellants were interested in purchasing a property at 353 Bathurst Street for the future purpose of operating a methadone clinic (operating under the numbered company). The Board heard evidence from one of the Corporation's principal's, Dr. Jeff Daiter that the Corporation has decided not to purchase the property to operate a clinic at that location, but the appeal of the ICBL continues. Witnesses for the Appellants include Planner Will Poll and Dr. Daiter. Witnesses for the City of London include the City's Director of Land Use Planning, Planner John Fleming and Ross Fair, Executive Director of Community Services.

Mr. Fair presented his 10 December 2007 report entitled: "London CAReS – London's Community Addictions Response Strategy" (Exhibit 1 Tab 14) that responds to rising community concerns (from businesses and residents) related to the impacts of

the addicted homeless population in London's downtown area. This strategy was the outcome of a process of consultation and research that records indicate began several years before this report was written. A delegation led by E. Murray, Director of Neighbourhood Concerns, Eyes of East London, appeared before Municipal Council in 2004 and expressed concerns with methadone clinics and in particular the present-day site at 528 Dundas Street. Mr. Fair explained that "a more focused effort to research and evaluate the merits of planning for methadone clinics" did not occur until 2008. His aforementioned report called for various financial investments from various levels of government to help "in reducing the incidence of addiction amongst London's homeless population and its impact on the quality of life in London' downtown neighbourhood." Mr. Fair advised the Board that based on his research for the December 2007 report, to the City's knowledge, the methadone clinic at 528 Dundas Street was the only such clinic operating in London.

The Board notes that at the time of the December 2007 report, the planning department did not made any mention of or specific recommendation regarding the enactment of an ICBL.

On November 8, 2010, a draft report by City Planner Alanna Riley was prepared, ("the Riley Report"), which made recommendations for circulation through a consultation process to a wide range of participants, that would provide comments and input; that licensing be considered as an option to address concerns relating to methadone clinics; and that "Civic Administration be requested to review the potential use of an interim control by-law relating to the location of methadone clinics and pharmacies and to report back at a special meeting of the Planning Committee to be held on November 15, 2010 at 4:00 pm." On 15 November 2010, the report was submitted to Planning Committee, with an attached ICBL proposal to prohibit new methadone clinics and dispensaries for one year. The report explained a purpose of the ICBL:

> Municipal Council has recognized that it is prudent to avoid the establishment of new methadone clinics and dispensaries prior to the full study and evaluation of the planning impacts associated with these uses and the establishment of a land use planning framework to appropriately plan for them. Without an interim control by-law, it is possible that new methadone clinics or dispensaries could be inappropriately located and could cause land use conflicts for the duration of their existence.

The report continued:

> Staff have [*sic*] already begun the process of studying methadone clinics and dispensaries. A significant amount of work and consultation has already taken place. There remains, however, much work to be undertaken to establish sound land use policies and regulations. The interim control by-law would allow for this study to be completed, with some urgency, as the by-law is only to be in force and effect for a period of one year. In the meantime, the interim control by-law

will prevent the establishment of new methadone facilities that could undermine the upcoming policy and leave lasting negative impacts on the community.

Planning Committee approved the ICBL and Municipal Council passed the ICBL on November 15, 2010.

The Appellants contend that neither the planning study nor the ICBL are supported by a valid land use planning rationale; no planning concerns were raised that needed to be dealt with immediately; and no valid land use planning issues or problems arise from the operation of methadone clinics.

Mr. Patton argued that the first mention of an ICBL was made following the November 8, 2010 report when Sarah Merritt, Manager of the Old East Village Business Improvement Area (BIA), put forward the idea of an ICBL at the meeting of the Planning Committee. Mr. Fair acknowledged that neither he nor any member of the planning department had ever made such a recommendation.

Mr. Fair explained that during his research, his focus on addiction and homelessness was the downtown area. The boundaries of Mr. Fair's study area were Queens Avenue to the north, the Western Fair to the east and the Thames River on the south and west. With his focus on the downtown area, Mr. Fair explained that the methadone clinic at 528 Dundas Street came up regularly in the course of discussions. He did not become aware of other methadone clinics and dispensaries operating in London until December 2010. He also acknowledged that following his 2007 report, neither he nor his staff had made any investigations into other methadone clinics, their size, location, numbers of employees and patients and whether they had dispensaries associated with their operation.

Sarah Merritt, referenced above, was granted participant status and she made a brief presentation to the Board in support of the ICBL. She advised the Board that the BIA supports the ICBL because it makes it possible for the City to continue its broad-based community consultation process. She said that through this process, the subsequent by-law would meet the needs of everybody, including service providers, clients and neighbours. She added that the provincial methadone task force recommended this type of consultation take place.

Ms Merritt listed the benefits that the BIA sees to this process: increased community knowledge and understanding of issues pertinent to methadone clinics; demystification of treatment protocols; and in respect of the Old East Village Business Improvement Area, a definite reduction in the stigma surrounding people who need to use methadone. The ICBL is helping the City and her members to look at local factors that had to be addressed in this area. She cautioned that the BIA's support for the ICBL

was not premised on not wanting sick people in their community but rather, subsequent methadone clinics should be able to come into the area to offer their services in a manner through which everyone can work together. Retention of the ICBL would assist in this regard and she explained that the neighbourhood is already 'stressed' by the operation of the 528 Dundas Street clinic.

She also said the ICBL can assist in developing an understanding of the kinds of criminal activity that are taking place in front of some methadone clinics; it can assess the impacts of the location and co-location of clinics in already stressed neighbourhoods; it can help to develop a set of measurements that the community can work toward; it can allow methadone clinic owners to work with the community to help the latter identify and address any negative and/or unintended consequences of methadone treatment; and she said that on-site integration of social support services within methadone clinics could let everyone get to the issues, via a committee, to support these people.

She concluded her presentation by saying that the ICBL can assist in the development of criteria for each site, building designs, transportation, etc. She called for continued work through the ICBL and that there should be no further impacts placed on already stressed neighbourhoods through a lack of municipal planning. She told the Board that local input and local ownership will ensure there is progress and that it was the ICBL that got the community moving to deal with the issue of methadone clinics.

Mr. Patton reviewed the substance of Ms Merritt's appearance at the November 8, 2010 Planning Committee meeting and noted her interest at that time was in a broader context that also called for broader harm reduction services in the area and a note of the proliferation of sex trade workers and addicts on the street. She acknowledged that she was not only concerned with methadone clinics but she noted that communities do not limit themselves to the boundaries of a BIA. Communities cross such commercial boundaries and the impact of the nearby 528 Dundas Street clinic impacts the BIA. She confined herself to her experiences with other harm reduction services in her area. She noted that while the clinic at 528 Dundas Street is outside of the BIA boundary, people nevertheless move back and forth through the BIA area to access the clinic.

The City's Director of Land Use Planning, John Fleming, acknowledged that the Committee's direction to recommend enactment of an ICBL followed from the comments from Sarah Merritt of the BIA. Mr. Patton suggested that as Ms Merritt's submissions at the November 8, 2010 meeting dealt with the Old East Village BIA and as she had focused all her comments on 528 Dundas, the City could have confined the ICBL to the Old East Village area instead of enacting it city-wide. As the November 15,

2010 staff report states: "Without completing the current planning study relating to methadone clinics and dispensaries, there is no clear understanding of where these uses should be directed. Accordingly, there is no definitive geographic area that the interim control by-law should allow for new methadone clinics and dispensaries. Accordingly, the interim control by-law is to apply to the entire City". Mr. Fleming added that there is no confined or specific area because as Ms Merritt testified, the matter of methadone clinics crosses defined business areas and crosses all demographics.

In the Board's determination, Ms Merritt was a persuasive witness: well-versed on the issues; connected to the discussions in respect of the ICBL; and clear that the BIA mission was to link the life of the clinic into the community. The Board notes that the BIA does not wish to push methadone clinics into other areas to simply protect the BIA; rather, Ms Merritt's interest is broader than the immediate BIA area. Further, the Board accepts as persuasive the evidence that Ms Merritt was one of the first persons to call for an ICBL. The nature of the evidence may be such that her intention was to confine such this interim instrument to the area affected by 528 Dundas Street. However, the Board also accepts that the City has laid out clear and persuasive evidence in the form of the City draft report and the 2010 reports, as well as the planning evidence of Mr. Fleming, that sound planning principles served as the basis for the City's intention to enact the by-law in order to facilitate its completion of a land use planning study that should encompass the entire City.

Speaking in support of the ICBL, Mr. Fleming told the Board that the City's intent in passing an ICBL is to hold the status quo to allow for preparation of a planning study to understand better the planning issues associated with methadone clinics; allow for full community dialogue and consultation; develop policies if needed; create zoning amendments and regulations related to site plan or any other planning tools brought to bear; and evaluate the appropriate next steps. He added that planning staff's knowledge of methadone clinics is evolving and since the ICBL was put in place, staff has learned more but more must be done, which is why the ICBL is important to the City of London.

Mr. Fleming cited various Provincial Policy Statement policies to support the City's enactment of the ICBL: Part V Section 1 speaks to long-term prosperity and requires that communities plan such that they protect public health and safety. Mr. Fleming opined that the ICBL is consistent with this policy. He said the ICBL is not only about planning considerations: it is also about locating methadone clinics in areas where people are located and where people use them. In this regard, a land use planning perspective is necessary and locating them in areas that contribute to the health and safety of users, service providers and the contributors is important.

Mr. Fleming reviewed City of London Official Plan policies such as Section 19.98.1 that allows for the passing of an ICBL and opined that ICBL 1476-298 conforms to this policy, which considers conformity with the *Planning Act*. He noted that there are currently no specific policies in either the Official Plan or Zoning By-law that deal with methadone clinics.

In respect of land use planning considerations for methadone clinics, Mr. Fleming cited a number of high-level planning principles that his staff considered: planning for delivering service and minimizing land use conflicts, and planning to effectively deliver valuable methadone treatment services.

In the course of the hearing, the Parties were at odds as to what information should be put before the Board; specifically, whether the Board could consider the City's research and information related to methadone clinics that derived subsequent to the passage of the ICBL in November 2010. The Board accepted as persuasive Mr. Patton's arguments that the only information the Board should consider from the City would be limited to what was available up to passage of the by-law. Ms Page and her staff were gracious and responsive in purging from Mr. Fleming's witness statement any information from actions taken by the City post-November 15, 2010.

Mr. Patton questioned Mr. Fleming extensively on what the planning motivation could be for the City to enact this ICBL for methadone clinics and dispensaries. Evidence included visual exhibits of a handful of other clinics operating in London; how one avoids and mitigates land use conflicts that clinics might present; locational requirements; traffic and parking impacts; pedestrian traffic; loitering and congregation around these facilities; and a need to study littering as an activity and other nuisance activities that are associated with this type of land use. Mr. Fleming opined the following:

> It is my opinion that locations with certain land use characteristics may more appropriately serve the needs of methadone clinics and their clients than other locations which may not adequately serve these needs. The interim control by-law allows the opportunity for the study and better understanding of these locational requirements and the opportunity to plan for them accordingly.

Mr. Fleming also detailed the possible planning actions that will derive from the study of methadone clinics under the umbrella of the ICBL (outlined in his witness statement with the note that these and other related land use planning tools are being considered through the completion of the city's planning study that has been initiated by enactment of the ICBL).

As for the Appellants' suggestion that City Council established the ICBL in the absence of any specific proposal for a methadone clinic use, Mr. Fleming noted that

after the draft planning department report was presented, and with its recommendation for wide public consultation, "it was open to council to recognize that more work was required...and there was the very real potential for one or more methadone clinics to become established while the study was in progress." (Exhibit 3, page 16).

He noted that "Given the significant increase in the demand for methadone maintenance treatment...it was likely that a new facility could be established BEFORE the study was completed and new policies and regulations considered". It was his opinion that this would undermine the City's ability to ensure any new clinics were well located and well designed to deliver the service effectively and to avoid and mitigate any lasting land use impacts.

The Board determines that it represents good planning to establish an ICBL to in order to avoid the establishment of a new facility until such time as the planning study was completed, particularly when considered in the context of the City's preliminary research and reports as presented. The Board finds persuasive Mr. Fleming's characterization of the City's action in enacting the ICBL as proactive and responsible, rather than waiting for a zoning amendment application or building permit application for a new facility.

Even as the Board accepts as persuasive Mr. Patton's submission that the driving force for the City's enactment of the ICBL was the existence of the clinic at 528 Dundas Street, the Board notes that the City's planning instruments would not affect this property. The Board finds persuasive the City's broad application of the ICBL as a result of its intention to look to future planning as it knew the methadone treatment issue was increasing in importance, and that it was in the public interest for the Municipality to assess the situation of methadone clinics in London and determine a way forward through a comprehensive approach to the issue.

Even if the Board accepted that the Council's decision to enact the ICBL was focused on what it was told or observed around 528 Dundas Street alone, a large part of the motivation is ensuring the use is appropriately planned for other locations and not just trying to address situation at 528 Dundas.

Mr. Patton argued that planning was not the City's focus in enacting the ICBL. In the November 2010 report, there is a recommendation to circulate the report for comments by the City Department, other key stakeholders and the general public, but there is are no recommended planning actions. For example, Mr. Patton was concerned that at 4 p.m. on 15th of November, the day of City Council's enactment of the ICBL, such an instrument still not being recommended to the Planning Committee.

Mr. Fleming noted, however, that on the first page of the report, the 'Rationale' indeed speaks to an ICBL:

> The proposed interim control by-law will ensure that no new methadone clinics and dispensaries are permitted until a full planning study on these uses is completed and appropriate land use policies and regulations are put in place. The interim control by-law is to be established for a period of one year from the date of its passing.

Despite Mr. Patton's statement, It is evident to the Board that on the 15th of November City Council considered the recommendation of a by-law that would assist in achieving the recommendations laid out in the section above the 'Rationale' that make this specific reference to a proposed ICBL. While Mr. Patton argued that this is not a specific recommendation, the Board assigns little weight to this protestation. It is demonstrated through explicit reference to an ICBL and its purpose in the aforementioned section of the report and should be seen as nothing less than a clearly-stated component of this report from the General Manager to the Planning Committee.

The Board does not find persuasive Mr. Patton's argument that because the work of the planning department did not inform City Council of the existence of other methadone clinics and dispensaries in other locations in the City, Council was deprived of the benefit of seeing how other methadone clinics had been operating for many years. Mr. Fleming said the planning staff needed to understand what was operating at the time, and the whole point of bringing forward the draft report was to ensure further consultation and more study.

Mr. Patton cited the proposed expansion of the funeral home and said that the City could not show any land use in the vicinity of 528 Dundas Street that has suffered in an adverse land use planning way that the planner could attribute to the use and operation of 528 Dundas Street as a methadone clinic before November 15, 2010. He said the Riley Report also identified no adverse land use planning impacts adjacent to or in the vicinity of 528 Dundas Street. Mr. Fleming responded that the Riley Report goes 'hand in hand' with the November 15, 2010 report and should be read together.

Mr. Patton took issue with the failure of the City to include "methadone clinic" in its "Definition Excerpts" presented in Exhibit 13. Mr. Patton also took issue with the City's definition of the phrase 'the prescription of methadone' as the principal activity. In the Board's determination, the City's definitions of "Methadone Clinic" and "Methadone Dispensary", provided in the context of an interim control by-law that is enacted for a period of one year, are reasonable.

As a principal of the Ontario Addiction Treatment Centres, Dr. Jeff Daiter provided factual information about his experience opening and operating 40 clinics in

Ontario since 1995. Dr. Daiter provided an informative overview of the methadone situation in Ontario today from the perspective of Ontario Addiction Treatment Centres and he explained how his methadone clinics operate on a daily basis. Mr. Daiter's evidence was helpful to understand the work of OATC but it played no persuasive role in determining whether the ICBL was appropriate as presented. It is clear that as the City pursues its planning study on methadone clinics, however, a witness with specialized knowledge of the operation of methadone clinics such as Dr. Daiter might be considered by the City to be a potential source of information that could help to shape the City's treatment of methadone clinics beyond the expiration of this in-force ICBL after November 2011.

Planner William Poll analyzed the CAReS Report among others in his analysis. He pointed out that the report does not recognize other physicians and pharmacists in the City of London who provide methadone maintenance treatment as a part of their overall medical practice and he cited the other four locations in his evidence. Mr. Poll's evidence centred on the integration of these other facilities within the fabric of their local communities and he explained that he was unable to distinguish visually between MMT services and a standard medical dental office anywhere else in the City. He opined that there is no apparent loss of community, vacancies or deterioration of properties that one might attribute to a specific use.

As for the facility at 528 Dundas Street, he opined that with this downtown corridor's extensive array of uses, there are other things happening in this area that might create nuisance impacts. He could find no causal relationship between nuisance impacts identified and the location of the methadone clinic at 528 Dundas Street.

Mr. Poll suggested there are three uses operating within methadone clinics: assessment and prescription by a doctor, dispensing medication through clinic or pharmacy and testing of the patient through a laboratory. He said that these uses are permitted in Section 7.4 in commercial, office and industrial designations throughout the City; however, this policy information was not given to the Planning Committee at the November 8 meeting. He said that a wide array of zoning allows a wide area of dispersion versus over an ICBL that concentrates services. He added that only existing MMT clinics are permitted but the policy direction of the City is to disperse over many zones and a variety of land use designations.

The definition, as mentioned earlier, permits many types of services for medical practitioners and pharmacies, laboratories and clinics are permitted among many of these. No distinction is made on the basis of dispensing methadone or prescribing cancer or AIDS medication, which, he opined, is not what the By-law is intended to do. The ICBL should not identify a "pharmacy exclusively for or based on one type of drug",

he opined, and he added that the ICBL actually identifies a certain class of people who take a certain drug. As we do not distinguish patients receiving AIDS treatment, so too there should not be a distinction made for patients of MMT programs. He opined that this discriminates against a narrowly-defined group of people and does not constitute sound land use planning practice.

Mr. Poll opined that the November 15 report from the City Planning Department made no reference to the PPS; the ICBL is not in keeping with the requirements of the *Planning Act*; and has the effect of limiting the availability of public service facilities by reducing opportunities of locating methadone treatment facilities within the municipality.

Mr. Poll opined that there is no evidence in the November 8 report or in the minutes from the planning meeting of an imminent risk to the City's planning policies or regulations that would compromise what was happening in the City. There was also no clearly defined land use planning impact that seemed to emanate exclusively from the facility at 528 Dundas Street and did not create a causal relationship and need for zoning and regulatory policies on methadone.

Mr. Poll suggested that City Council did not have a full picture on 15th of November and they only had a one-sided presentation and it was unreasonable to have the ICBL apply to the entire geographic limits of the City as the area is too broad and the definitions are too vague. He opined that the by-law's focus could have been on those zones that permit medical and dental offices.

Ms Page put it to Mr. Poll that the November 8, 2010 report identifies the concerns and issues associated with methadone clinics and that the planning department had "investigated the causal connections" between the two and Mr. Poll had no evidence to the contrary in this regard. Ms Page pointed out to Mr. Poll that in further establishing the causal relationship between certain behaviours and methadone clinics, the Appellant's own witness, Dr. Daiter, a principle with OATC, has turned his mind to these matters by ensuring the patients of his clinics sign a contract to ensure certain behaviours (presented in evidence at the hearing) and that these behaviours are in fact raised in the November 8 report. In this regard, the Board finds persuasive the evidence that there is a causal connection between the concerns and issues that the community was raising as early as 2004, at the time of the research going into the December 2007 report and at the time of the November 8 report, culminating in enactment of the ICBL. Ms Page characterized these concerns and issues as land use planning impacts.

The Riley Report provides specific policy directives, identifies the proposed changes to the Zoning By-law and the Official Plan. The Board finds persuasive Ms

Page's submission that this document depicts a planning rationale for circulating the City's draft documents to various agencies and stakeholders in respect of these planning instruments and possible amendments. Mr. Poll agreed with Ms Page that in fact he had complimented the planning department's approach to issues related to methadone clinics including the production of draft documents to evaluate the proposed policy and zoning changes. The Board also finds persuasive Ms Page's submission that the Riley Report must be read in concert with – together with – the cover report, in that the latter provides a planning rationale for directing the circulation of these materials. Mr. Poll also conceded that the five objectives listed on page 3 of the November 8 report are in fact valid land use planning objectives that the City has identified in respect of the parameters of further study of the subject of methadone clinics and dispensaries in London.

While Section 38 of the *Planning Act* provides no legislative guidance to the Board on how to review an ICBL, the Board's experience with these planning instruments has led to a growing amount of case law, examples of which were presented by both Parties in Books of Authorities. By their very nature, interim control by-laws are valid for an interim period of time and serve to intervene in order to establish control beyond the zoning by-law control in a particular area. Its period of validity must be stated clearly and although not to exceed one year, the *Act* provides for an extension of the by-law for a further period of up to one year. Unlike a regular Zoning By-law, the Municipality is not required to give notice or conduct a hearing on the matter prior to the passage of the by-law, but the Municipality is required to give notice of its passage. The ICBL removes certain otherwise permitted land uses, and this includes development rights, from landowners on an interim basis.

Generally speaking, ICBLs do not constitute zoning but rather, restrict development rights for a set period of time. In *Nolan et al. v. Township of McKillop*, 36 M.P.L.R. (1987), certain principles in respect of Section 37 (now, Section 38) were enunciated that the Board regards as useful in determining the appropriateness of interim control by-laws:

1. That Section 37 (now, Section 38) must be interpreted strictly in view of the fact that it permits a municipality to negate development rights;

2. That the Municipality must substantiate the planning rationale behind the authorizing resolution and the interim control by-law;

3. That the By-law (ICBL) must conform with the Official Plan; and

4. That the authorized review must be carried out fairly and expeditiously.

The case of *Carr v. Owen Sound (City)* [1996] O.M.B.D. No. 1008 added to these four principles related to the matter of "urgency":

1. Is the situation sufficiently urgent to require the immediate negation of permitted uses and development rights; and

2. Are there effective and less drastic instruments that might have been used by the municipality to achieve the desired end?

In *Carr*, the Board accepted the notion that ICBLs should be used when there is some need for immediate action. Referencing *Shuniah (Township) Interim Control By-law 1601 (Re)*, 24 O.M.B.R. 377 at p. 379, the Board noted:

> Interim control by-laws are generally passed as a quick response to the emergence of a specific problem for the purposes of stopping the problem from getting out of hand and as a means of providing breathing space during which a study can be done to determine the appropriate planning policy and controls for dealing with the situation...

The *Carr* decision noted, however, that "...Urgency is not necessarily a pre-condition of an interim control by-law but is certainly part of the rationale underlying the usual practice of interim control...." With urgency established, the interim control by-law is the appropriate mechanism to afford the City the breathing space necessary to undertake the planning study and public process in which it is currently engaged.

The Court of Appeal for Ontario considered the subjects of ICBLs and "urgency" in *Re Equity Waste Management of Canada et al. and Corporation for the Town of Halton Hills* (1997), 35 O.R. (3d) 321. Laskin J. stated:

> A municipal council should be able to control development on an interim basis when it decides to review or change the existing land use and development policies in a given area. The council may want to do so because it believes it feels it was elected to institute a change in policy, or because it believes circumstances have changed since the zoning was enacted.

Residents, a local BIA, City planning staff and ultimately its Planning Committee and City Council were concerned enough about operations at 528 Dundas Street and its impact on the community that various research and reports were commissioned, leading to the enactment of the ICBL. In the Board's determination, the urgency to understand proper land use planning controls for methadone clinics is established by the initial community calls as early as 2004, by the meetings taking place leading up to the November 15, 2010 meeting and ultimately in Council's decision that an ICBL was warranted. There is no persuasive for the Board to reverse Council's decision in this regard. Further, a review of Mr. Poll's evidence that there are no less than four other methadone facilities operating in London communities supports the City's position that it

must consider City-wide implications of methadone clinics and dispensaries as a public interest to protect the health and safety of its citizens. In this, there is also urgency to safeguard that public interest, which the City of London is doing through a land use planning study of the matter.

Laskin J. added: "Interim control by-laws are, therefore, an important planning instrument for a municipality. They allow the Municipality to rethink its land use policies by suspending development that may conflict with any new policy." He quotes Henry J. in *715113 Ontario Inc. v Ottawa (City)*:

> A by-law enacted under this provision is authorized for the purpose of protecting the public interest in suitable zoning of the area in question and takes precedence over the right of affected landowners to use their lands freely.

As Laskin J. noted:

> Before passing an interim control by-law, a municipality must meet only one statutory condition. Under S.38(1) of the *Planning Act*, it must have a by-law or resolution directed that a review or study be undertaken in respect of land use planning policies in the municipality or any defined area of it.

In the case at hand, the City of London has complied with this statutory provision by directing a planning study be completed during the course of the effect of the ICBL to study methadone clinics that will lead to the development of a set of policies for treating these facilities in the future across the City.

Lastly, Laskin J. stated that the requirement that a review or study be undertaken "anticipates that the existing level of information and analysis is imperfect and possibly rudimentary....To expect that the information be perfected to a standard that would satisfy the needs of a Section 34 By-law runs counter to the very notion of interim control."

The Board heard no persuasive evidence to suggest that the City has failed to comply with the strict interpretation of Section 38 of the *Act*.

As to the principle regarding conformity with the Official Plan, only Mr. Fleming gave evidence that the instrument conforms to the Official Plan and he referenced several sections of the Plan in this regard. The Board references this with Mr. Poll's evidence in Exhibit 11, which appears to answer whether the planning rationale behind the ICBL was an Official Plan as opposed to whether the ICBL conformed with the Plan. The Board's reading of Mr. Poll's evidence provides nothing in respect of whether the ICBL conforms to this municipal planning instrument. Moreover, it was Mr. Fleming's uncontradicted evidence that the study arising from the ICBL is being undertaken expeditiously and the Board determines that this principle of the *Act* has been adhered to and don't see it in their grounds of appeal.

In respect of whether there was a planning rationale for the ICBL, the Board prefers the evidence of Mr. Fleming, which was also supported by the evidence of Mr. Fair, Ms Merritt and even Dr. Daiter (related to the provision of a list behaviours to which patients are required to commit), to the evidence that Mr. Poll provided.

The issue of methadone clinics and how they are to be treated by a municipality are in the public interest to pursue. While Mr. Poll did not think there was such an interest, the public interest is identified in the March 2007 "Report to the Methadone Maintenance Treatment Practices Task Force" at page 193 of Exhibit 1: "There is a need to balance the goal of improving access to MMT with the goal of minimizing risk (including the risk of diverting methadone) and ensuring public safety and quality of care." While the Province is not speaking with any legislative or regulatory authority in this report, it does provide advice in a public interest context that is not out of step with the Province's broad goal of ensuring public safety and quality of care.

Mr. Fleming opined that the PPS also identifies a public interest and he was unshaken in cross-examination on this point. Part V, Section 1.0 entitled "Building Strong Communities" of the PPS indicates:

> Ontario's long-term prosperity, environmental health and social well-being depend on wisely managing change and promoting efficient land use and development patterns. Efficient land use and development patterns support strong, liveable and healthy communities, protect the environment and public health and safety and facilitate economic growth.

As Mr. Fleming noted, this section of the PPS requires that communities plan such that they protect public health and safety and the ICBL is consistent with this public interest direction of the PPS. The Board finds this to be persuasive evidence of a public interest and has no evidence before it that the City acted in bad faith in enacting the ICBL.

It is noteworthy that in respect of the planning rationale for this ICBL, despite no expressed call for an ICBL, there were two reports and a draft planning report (the Riley Report) that were before Council. On November 8, issues were raised about methadone and various meetings had taken place with a host of stakeholders, at which time the issues were identified. Mr. Poll confirmed in oral evidence that the objectives and proposed Official Plan and Zoning By-law amendments were land use planning matters. On page 39 of Exhibit 2, the Board notes that these planning matters were picked up again on November 15 and these matters were before City Council. As the Court of Appeal has determined, the information before a Council may be rudimentary; it may or may not be fully addressed that this is sufficient for a municipality to proceed with the ICBL. Again, Mr. Poll admitted that these are land use planning matters and they were before Council.

Dr. Daiter referenced his contract of behaviour and explained that his clinics have security cameras to ensure there is no breach of contract. This creates in the Board's mind a causal connection between that were given to Council in 2007 and subsequently. Even Dr. Daiter turned his mind to these matters and told the Board that he wants to reduce the impacts within 100 feet of his facilities. While Mr. Patton equated the OATC contract with contracts of this type to those used by schools, hotels, airlines and movie theatres to regulate certain behaviours, the Board accepts as persuasive that doctors in London's other medical offices and clinics do not ask patients to sign contracts not to engage in the types of anti-social behaviours that OATC clinics require their patients to sign. In the Board's determination, coupled with community's concerns with methadone clinics, the information contained in the reports outlining various behaviour issues and activities associated with the operation of methadone clinics, the causal relationship between methadone clinics and dispensaries and the issues identified in the preceding reports has been established persuasively.

Sarah Merritt's statement during cross-examination about not wishing to stop methadone clinics from operating in her area or to push their development to other areas of the City raises an issue of location. As Mr. Poll told the Board, in order for him to determine the differences in methadone clinics, it was necessary for him to look at the other locations and see to what extent they were integrated in the communities. It is only reasonable in the Board's determination that the City be accorded the same opportunity to make its determination whether the clinics are integrating successfully. Clearly, the evidence before the Board reveals that the facility at 528 Dundas Street has not integrated well. As evidenced, it is treating numbers of patients that exceed significantly its design capacity to manage, yet the City cannot place limits on the number of patients that are served. A City-wide review of the matter through its planning study, protected by the implementation of the enacted ICBL, is warranted.

It was Mr. Fleming who advised the Board that the City needs to consider the various other methadone facilities that are operating in London and as well as to learn about the users in the community. He opined that this is a "planning rationale" and one the Province has also identified in the 2007 report: "Report to the Methadone Maintenance Treatment Practices Task Force" which states at page 269: "The task force believes that the principle of openness and community engagement should guide the integration of methadone clinic into neighbourhoods." The Board determines that the City of London has satisfied the issue of providing a planning rationale for its enactment of the ICBL.

In *Loralgia Management Ltd. v. Oshawa (City)* [2002] O.M.B.D. No. 1155, City staff had helped the methadone clinic to find a location in the downtown. City Council learned of this and it passed an ICBL to stop the clinic (and clinic was at the point of a

building permit). The Appellant argued that there was no planning rationale and the by-law was discriminatory and had been passed in bad faith. The Board distinguishes that case from the one at hand. The Board determined that there was no valid land use planning rationale provided in the Oshawa case; the City had banned a specific type of medical clinic based not on the function of the clinic but on those who would use the clinic as well as on the nature of their medical condition. In the case at hand, the ICBL is based on the prescription and dispensing of methadone and is directed toward the operator – the user of the land. The dispensary is defined as the primary activity of the business and the ICBL is directed at the business – not at the users. The Board determines that the ICBL in London looks at the operator, and a "methadone clinic" is a land use. The City wishes to examine methadone clinic operations, understand what is occurring within its boundaries and take decisions based on sound, stated planning principles as outlined in the evidence presented.

The Board does not find persuasive that City Council's decision to enact and ICBL was flawed or faulty. While it may not have known about the other four methadone clinics, the fact that the 528 Dundas Street clinic was the focus of the City's work does not mean that the information was incomplete or wrong as Mr. Patton would characterize it. Mr. Patton did not demonstrate in any persuasive way how Council's knowledge of four other clinics would alter its decision to implement a City-wide ICBL rather than confining it to the area where the 528 Dundas Street clinic is located or how this could be flawed. Moreover, as already cited, the Court of Appeal has determined that the information to inform Council's decision may be "imperfect and possibly rudimentary." This is precisely how Ms Page submitted that the Board might consider the fact that Council made its decision based on operations at one clinic without knowing about the operation of other clinics. This is in fact how the Board considers the information leading to Council's enactment of the ICBL. Furthermore, while Mr. Poll suggested that the other facilities he had observed appeared to be "invisible" and "integrating" with the local community, Mr. Poll offered no evidence regarding the daily activities of these other locations and what issues if any their presence created for surrounding residents and businesses. In any event, this is not fatal to the Appellants' case but it does persuade the Board to conclude that the City should also have that same opportunity through its land use planning study to make such assessments. The ICBL provides that opportunity – to examine in detail the downtown location and operation of the 528 Dundas Street, assess its impacts and to make similar studies of other facilities around the City in the public interest of ensuring the health, safety and quality of care to be offered as well as the impacts of such facilities, if any, on London's residents and businesses. Borne from a demonstrated planning rationale, the ICBL will facilitate this process and it should be upheld.

In respect of the case, *Equity Waste Management of Canada v. Halton Hills (Town)* [1997] O.J. No. 3921, which stands for the proposition that there needs to be a legitimate and valid planning concern to enact an ICBL, Council must be informed by the facts of before it makes its decision. If the facts are faulty, wrong or incomplete, the decision is not fully informed. As it has already stated, the Board determines that the existence of other facilities, unknown to Council at the time, does not constitute faulty, wrong or incomplete information that led to its decision to enact the ICBL. The Board is unwilling to assign any significant weight to Mr. Poll's opinion or Mr. Patton's submission that because there were other facilities operating in other neighbourhoods, Council made a faulty decision by applying what was being reported in respect of 528 Dundas Street to enactment of a City-wide ICBL. As the Equity case writes:

> An important purpose of interim control by-laws is to permit a municipality to change its mind, to reconsider its land use policies. Whether an area is suitably zoned, whether development should be suspended in the public interest, and whether proposed projects are compatible with a municipality's long range planning objectives are matters to be decided by municipal councils, not by the courts. The role of the court is limited to ensuring that the municipality did not exceed its powers or exercise those powers in bad faith.

In this vein, McMurtry J. and Laskin J recognized the Board's capacity to make decisions on whether a planning rationale informed a Council's decision to enact an ICBL:

> Considering the relative expertise of the two forums, the claims of Equity and Panorama that the by-law was not supported by a legitimate planning rationale and was passed only to appease a group of ratepayers in the face of looming municipal elections, could be dealt with at least effectively by the OMB as by the court. Indeed, whether the by-law had a legitimate planning rationale lies at the heart of the OMB's expertise.

Mr. Patton's submission that the 528 Dundas Street clinic is a "one-off" situation and that the other clinics have been "road tested" and are "so quiet and discreet" that the City did not know about them is not, in the Board's determination, a supportable one. The fact that the City has not received complaints about the other clinics and that there are no adverse impacts does not necessarily mean that there are no issues or impacts with those sites. The City-wide ICBL will provide the Municipality with an opportunity to examine methadone clinics across London and make specific recommendations, enact policies and do what it deems appropriate based on the particular circumstances of the City. In this regard, the Board does not consider the ICBL, based on the City's identified and legitimate planning rationale, to be over reaching and it should not be restricted to the limited study area that Mr. Patton suggested.

File No. OZ-7873
Planner: E. Lalande

The Board has been presented with highly persuasive evidence from the City that demonstrates a planning rationale informed its decision to enact the ICBL and that it is justifiably established to cover the entire geographic area of the City. The Board determines further that the ICBL causes no demonstrable adverse impact on the Appellants and that the City-wide application of this ICBL is based on sound planning reasons.

The Board dismisses the appeal and upholds Interim Control By-law No. 1476-298.

So Orders the Board.

"R. ROSSI"

R. ROSSI
MEMBER