



Labreche Patterson & Associates Inc.

Professional Planners, Development Consultants, Project Managers

VIA E-MAIL (hmcneely@london.ca)

Our File: P-375-12 J

October 15, 2012

Ms. Heather McNeely, Senior Planner
City of London
Planning Division
P.O.Box 5035
London, ON
N6A 4L9

Dear Ms. McNeely:

**Re: Proposed Southwest Area Secondary Plan, London, ON
City File No.: O-7609**

We represent A&W Food Services of Canada Inc., McDonald's Restaurants of Canada Ltd., the TDL Group Corp. (operators and licensors of Tim Hortons Restaurants), and Wendy's Restaurants of Canada Inc. as well as their industry association, the Ontario Restaurant Hotel and Motel Association (ORHMA). We are providing this written submission to you on behalf of our clients after having reviewed the proposed Southwest Area Secondary Plan that will be considered in as part of the statutory public meeting tonight required by the Planning Act for this official plan/secondary plan amendment and may be adopted by City Council at its meeting tonight. We have just become aware of this proposed secondary plan last Friday. Please accept this as our written submission on the subject matter

ORHMA is Canada's largest provincial hospitality industry association. Representing over 11,000 business establishments throughout Ontario, its members cover the full spectrum of food service and accommodation establishments and they work closely with its members in the quick service restaurant industry on matters related to drive-through review, regulations, and guidelines.

With the assistance of Labreche Patterson & Associates Inc., ORHMA has a strong record of working collaboratively with municipalities throughout the Province to develop mutually satisfactory regulations and guidelines that are fair and balanced in both approach and implementation for existing and new drive-through facilities ("DTF"). These planning-based solutions are most often specific urban design guidelines for drive-through facilities and may include specific zoning by-law regulations that typically relate to minimum justified stacking/queuing requirements and setback relative to the actual DTF/queuing lane of the restaurant.

As some on City Council and as well as city planning staff will recall, we went through a significant challenge to meet both the objectives of the established city policies and the

restaurant industry and the noted brands above in 2007 and 2008 to further establish specific policies on DTF at the level of the Official Plan. After about 18 months of process and significant public involvement it was settled on the basis of the new policy (policy 4.10) in the "parent" City of London Official Plan. It was also understood by city staff including city Legal Department that specific prohibition of a land use at the level of an Official Plan or Secondary Plan was not in accordance with the related planning law.

While there are several related cases on this matter of prohibition one often cited deals with the new City of Ottawa Official Plan appeal in 2005. The Ontario Municipal Board noted in that case regarding the 2005 official plan for the City of Ottawa that *"the proper approach for dealing with drive-through facilities is the one adopted by the City of Toronto, which prohibits these facilities through its zoning by-law and not in its Official Plan. Official Plans do not need to be prescriptive like zoning by-laws."* This is an approach repeated in almost every case, both at the Ontario Municipal Board and in the Courts, on proposed official plan prohibitions for this specific use. It is imperative to note that any considered prohibition of DTF in the zoning by-law is limited to very specific areas which also need to be appropriately considered and justified.

Based on the foregoing and on our review of the proposed draft policies of the Southwest Area Secondary Plan, we object to the following policies:

- Policy 20.5.3.3 – Neighbourhood Central Activity Nodes, ii) Permitted Uses (the last sentence) *"Drive-through commercial uses shall not be permitted"*.
- Policy 20.5.9.1 Low and Medium Density Residential (in the Bostwick Residential Neighbourhood) ii) Permitted Uses (the last sentence) *"Drive-through commercial shall not be permitted"*.
- Policy 20.5.10 – Low and Medium Density Residential (North Lambeth, Central Longwoods and South Longwoods Residential Neighbourhoods) ii) Permitted Uses (the last sentence) *"Drive-through commercial uses shall not be permitted"*.

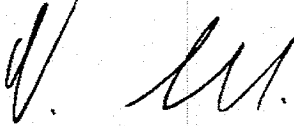
Further, we believe and as discussed and agreed to by Mr. Barrett in a discussion we had with him earlier today, that policy 4.10 in the London Official Plan only permits DTF in "commercial land use designations". Mr. Barrett further confirmed that the noted policies that we object to as noted above are not within "commercial designations" therefore the parent Official Plan as already written, would not permit a DTF in any event. As such, specifically noting the prohibitions is redundant.

We have reviewed the material available regarding this draft secondary plan and the staff report being considered later today on this matter and note that there are no related studies or detailed planning justification as to why this specific prohibition of DTF within this Secondary Plan is specifically noted justified.

Based on the foregoing, particularly the related case law on this matter which was previously considered by the City's Legal Department and the fact that the parent Official Plan already has a clear accepted policy on DTF, we request that the above noted policy sections of the proposed Southwest Area Secondary plan be revised to remove the last sentence in the noted policies.

Thank you for your consideration of our comments herein. Please also consider this letter our formal request to be provided with copies of all future notices, reports, and resolutions relating to the proposed Southwest Area Secondary Plan.

Yours truly,
Labreche Patterson & Associates Inc.



**Victor Labreche, MCIP, RPP
Senior Principal**

Attach.

Copy: *Gregg Barrett, Manager, Policy Planning & Programs
City of London*

John Fleming, Managing Director, Planning and City Planner

James Barber, City Solicitor, City of London

Cathy Saunders, City Clerk, City of London

Marco Monaco, ORHMA

Leo Palozzi, The TDL Group Corp.

Leslie Smejkal, The TDL Group Corp

Paul Hewer, McDonald's Restaurants of Canada Limited

Susan Towle, Wendy's Restaurants of Canada, Inc.

Darren Sim, A&W Food Services of Canada Inc.

Michael Polowin, Gowling Laffleur Henderson LLP

Current OP Policy
in "parent" OP
City of London.

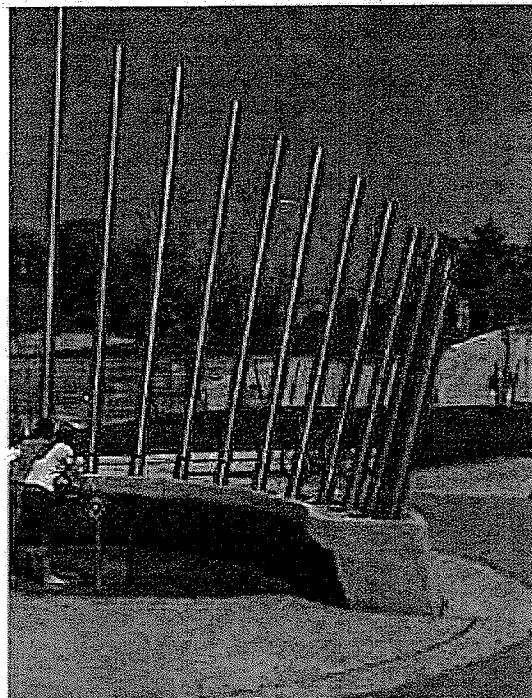
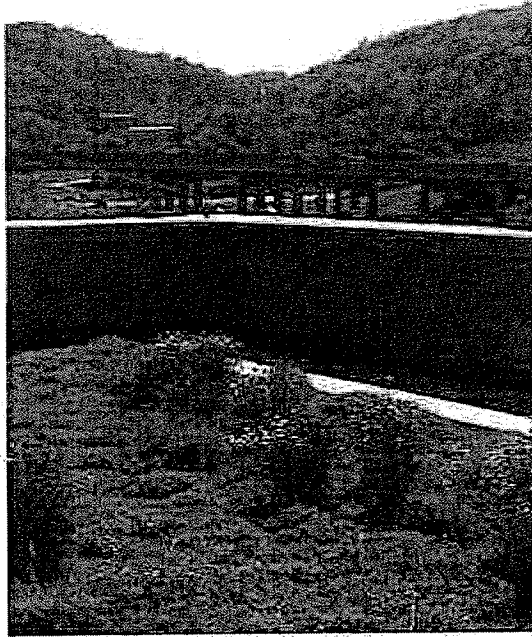
designated for commercial use before they were annexed to the City of London on January 1, 1993, to develop on an individual, on-site wastewater treatment system subject to:

- i) the policies of Section 17.2 which limit uses to those of a "dry" nature; and
- ii) lands subject to this policy shall be placed in a holding zone limiting the range of permitted uses to uses of a "dry" nature until such time as municipal services are available and the holding provision is lifted.
(Section 4.9 added by OPA No. 88 - OMB Order No. 2314 - approved 99/12/23)

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**4.10
Drive-Through
Facilities**

Drive-through facilities are normally associated with restaurants, financial institutions, convenience stores, automobile services stations and a limited range of retail uses, and are normally located in auto-oriented commercial designations. Drive-through facilities are permitted in commercial land uses designations other than Downtown and Business District Commercial through a zoning by-law amendment and/or site plan application, subject to the application of urban design guidelines. Urban design guidelines will address such issues as built form and streetscape, pedestrian circulation, vehicular access and parking, landscaping and signage. Particular attending shall be given to site which abut residential uses.

Within the pedestrian-oriented downtown and Business District Commercial land uses designations, zoning by-law amendments for new drive-through facilities will not be permitted by the Official Plan at locations where they would interfere with the intended function and form of these designations. Proposals for new drive-through facilities with the Downtown and Business District Commercial land use designations will be subject to concurrent applications for a zoning by-law amendment and site plan approval. Such applications will only be considered for approval in circumstances where the location, design and function of the drive-through facility maintains the intent of the Official Plan, does not interfere with the continuity and character of the streetscape, does not have a negative impact on the pedestrian orientation of the land use designation, and where pedestrian movement into and through the site can be maintained. Additional matters to be addressed may include the nature of surrounding uses, the specific location of the site within the Downtown or Business District Commercial land use designation, proximity to heritage resources, and opportunities for the integration of the drive through facility with other uses within the development. (OPA #444)



City of London
 "Southwest Area Plan"
 (October 2012 draft)

- k) quality materials for buildings that are durable and have high levels of energy conservation;
- l) the employment of building technologies such as "greenroofs." Alternately, the use of reflective roof surface materials with high solar and thermal reflectivity to reduce the "heat island" effect is also desired; and
- m) the retention of identified heritage properties as a resource and to promote community identity.

20.5.3.3 Neighbourhood Central Activity Nodes

i) Intent

Neighbourhood Central Activity Nodes are intended to provide a neighbourhood-scale activity and gathering place for residents of the surrounding neighbourhood. They are located generally in the centre of each neighbourhood area, at a significant intersection, and within walking distance of most residents. While predominantly residential in character, activity nodes will also permit a range of community based commercial and institutional uses.

ii) Permitted Uses

Neighbourhood Central Activity Nodes have a higher intensity of activity-generating uses than other parts of the neighbourhood, but are predominantly pedestrian-scale, and, in addition to residential development, are encouraged to include a limited range of convenience and personal service commercial uses; small-scale eat-in restaurants, such as coffee or tea shops, or small-scale eat-in bakeries; civic and institutional uses such as parks, schools and churches; and live-work functions. Drive-through commercial uses shall not be permitted.

iii) Location

- a) A limited number of activity nodes will be permitted throughout the Secondary Planning area. Central Activity Nodes shall be located as shown on the Neighbourhood Land Use Schedule for the respective residential neighbourhood, or alternatively, generally located at the intersection of two collector roads internal to the residential neighbourhood.

In the South Longwoods Neighbourhood, the Central Activity Node is located mid-block with the intent to incorporate access to the open space network as a key component and provide a relatively central and accessible location. The Central Activity Node in this Neighbourhood may be located at the intersection of a secondary collector road and a local road.

20.5.9

"Bostwick Residential Neighbourhood"

20.5.9.1 Low and Medium Density Residential**i) Intent**

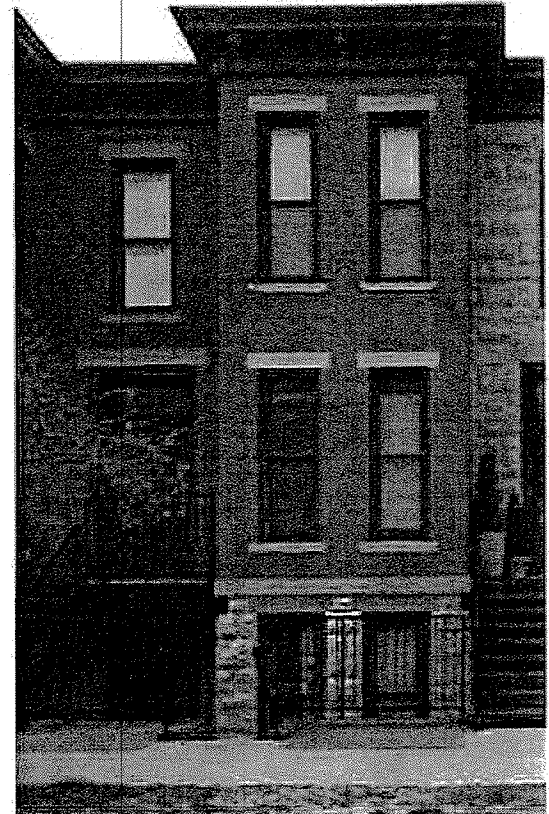
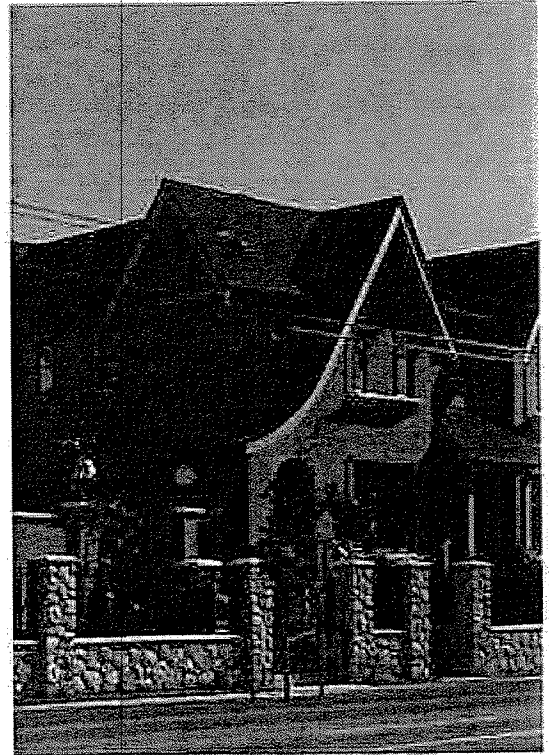
The intent of the Low and Medium Density Residential designations is to encourage a mix of housing types, forms and intensities throughout the Bostwick Neighbourhood and within individual developments, at an intensity that is higher than is found in more recent suburban neighbourhoods, and also higher than the other Neighbourhood Areas within the Southwest Secondary Planning Area. This is to be achieved by requiring a minimum density of development and encouraging the integration of the permitted range of housing types within individual developments.

ii) Permitted Uses

The primary permitted uses in the Multi-family, Medium Density Residential designation of the Official Plan will be permitted in the Low and Medium Density Residential designations, including low density forms such as single detached, semi-detached and duplex dwellings, triplexes and fourplexes. In addition to residential development, a limited range of convenience and personal service commercial uses, small-scale eat-in restaurants, civic and institutional uses such as parks, schools and churches, and live-work uses may be permitted within the Medium Density Residential Designation. Drive-through commercial uses shall not be permitted.

iii) Built Form and Intensity

- a) Within the Low Density Residential designation, residential development shall have a minimum density of 25 units per hectare and a maximum density of 40 units per hectare. Building heights shall not exceed four storeys.
- b) Within the Medium Density Residential designation, new residential development shall have a minimum density of 35 units per hectare and a maximum density of 75 units per hectare. Building heights shall not exceed six storeys and shall be sensitive to the scale of development in the surrounding neighbourhood.
- c) A residential density exceeding 75 units per hectare (up to a maximum of 100 units per hectare) may be considered in accordance with Section 3.3.3 ii) of the Official Plan.



20.5.10

"North Lambeth, Central Longwoods,
and South Longwoods Residential
Neighbourhoods."

20.5.10.1 Low and Medium Density Residential

i) Intent

The intent of the Low and Medium Density Residential designations is to encourage a mix of housing types, forms and intensities throughout the North Lambeth, Central Longwoods and South Longwoods Neighbourhoods and within individual developments, at an intensity that is higher than is found in more recent suburban neighbourhoods. This is to be achieved by requiring a minimum density of development and encouraging the integration of a range of housing types within individual developments.

ii) Permitted Uses

The primary permitted uses in the Multi-family, Medium Density Residential designation will be permitted in the Low and Medium Density Residential designations, including low density forms such as single detached, semi-detached and duplex dwellings, triplexes and fourplexes. In addition to residential development, a limited range of convenience and personal service commercial uses, small-scale eat-in restaurants, civic and institutional uses such as parks, schools and churches, and live-work uses may be permitted within the Medium Density Residential Designation. Drive-through commercial uses shall not be permitted.

iii) Built Form and Intensity

- a) Within the Low Density Residential Designation, residential development shall have a minimum density of 20 units per hectare and a maximum density of 35 units per hectare. Building heights shall not exceed four storeys and shall be sensitive to the scale of development in the surrounding neighbourhood.
- b) Within the Medium Density Residential Designation, residential development shall have a minimum density of 30 units per hectare and a maximum density of 75 units per hectare.
- c) The policies of Section 20.5.4.1iv) of this Plan shall apply to development adjacent to portions of the arterial road network within these Neighbourhoods.
- d) To support a mixed-use community centre facility, the Medium Density Residential Designation will allow for increased residential density and a high-rise height without an Official Plan Amendment provided that the building allows for a mix of residential and limited retail uses integrated with the development of a public community facility, and shall be located at the intersection of two arterial roads. High quality design, including setbacks, building orientation, landscaping and pedestrian scale and orientation shall also be required.

