



montréal • ottawa • toronto • hamilton • waterloo region • calgary • vancouver • beijing • moscow • london

October 23, 2012

VIA E-MAIL

Gregg Barrett
Manager - Land Use Planning, Policy
City of London
300 Dufferin Avenue
P. O. Box 5035
London, Ontario N6A 4L9

Michael S. Polowin
Direct 613-786-0158
Direct Fax 613-788-3485
michael.polowin@gowlings.com

Dear Mr. Barrett:

**Re: Proposed Southwest London Area Secondary Plan, London ON
City File:o-7609**

We are the solicitors for 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) with respect to the Secondary Plan. You may recall that we met in 2008, during the discussions surrounding the City of London Official Plan and proposals to prohibit drive-through facilities ("DTF").

We are writing to you today concerning proposed draft policies of the Southwest Area Secondary Plan. Specifically, 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".

You may recall that the issues in 2008 were finally solved when we asserted, and your City Solicitor agreed, that Official Plans may not contain prohibitions of specific uses. Once that principle was agreed to, language was negotiated to "discourage" DTF in certain commercial areas, without prohibiting them.

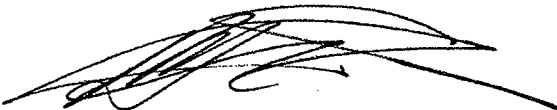
gowlings

We face the same issue today. While Secondary Plans can fairly be described as more detailed and specific than their parent OP, they are still subject to the same law. Therefore, the conclusions reached in London that solved our problems then, as appropriate in this context today.

Prohibitions are not appropriate in an OP or in this or any Secondary Plan. This was our advice in 2008, and that of your City Solicitor. In an email to the undersigned on July 8, 2008, Mr. Barber said "I have provided advice to the City's planners that they should review their present recommendations having regard to the Ottawa and Toronto OMB decisions respecting drive-throughs. I will have a solicitor from this office present at the next planning meeting."

We ask that Committee not approve the proposed language in the Secondary Plan as noted above. Further, as noted in a letter provided to the City dated October 15, 2012 by our clients planning consultant, the proposed language on DTF in the policies noted above in the Southwest Area Secondary Plan is not necessary and redundant as the agreed policy on DTF in 2008, policy 4.10 of the parent Official Plan, fully address this matter city wide.

Yours very truly,



Michael S. Polowin

MSP:abh

cc: John Fleming
James Barber
Cathy Saunders
Heather Lysynski
Clients

OTT_LAW\3365753\2