

ISSUE DATE:
June 26, 2012



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LEGAL SERVICES

PL050408

By-law No. 12-164

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

Harbour West Neighbours Inc., Michael Poworoznyk, Shawn Selway and John Mattinson have appealed to the Ontario Municipal Board under subsection 17(24) of the Planning Act, R.S.O. 1990, c. P.13, as amended, from a decision of the City of Hamilton to approve Proposed Amendment No. 23 to the (former) Regional Official Plan for the City of Hamilton
Approval Authority File No. ROPA No. 23
OMB File No. O050065

The TDL Group Corp, the Harbour West Neighbours Inc., the Canadian National Railway, 687224 Ontario Inc. et al. have appealed to the Ontario Municipal Board under subsection 17(24) of the Planning Act, R.S.O. 1990, c. P.13, as amended, from a decision of the City of Hamilton to approve Proposed Amendment No. 198 to the Official Plan for the City of Hamilton
Approval Authority File No. OPA No. 198
OMB File No. O050066

Rheem Canada Ltd., the Harbour West Neighbours Inc., the Canadian National Railway, 687224 Ontario Inc. et al. have appealed to the Ontario Municipal Board under subsection 34(19) of the Planning Act, R.S.O. 1990, c. P.13, as amended, against Zoning By-law 05-073 of the City of Hamilton
OMB File No. R050077

BEFORE:

J. DE P. SEABORN
VICE-CHAIR

) Tuesday, the 26th
)
) day of June, 2012

THESE MATTERS having come on for public hearing, and the Board in its ~~Decision issued~~
March 7, 2012 having withheld its Order to permit the parties an opportunity to review the final
wording of the amended planning Instruments, and said documents having now been filed with
the Board;

THE BOARD ORDERS that the appeals of the official plan amendments are allowed in part;
OPA 23 to the former Region of Hamilton-Wentworth Official Plan and OPA 98 to the former
City of Hamilton Official Plan are amended in the manner set out in Attachment '1' and as
amended are approved;

Bill No. [REDACTED]

CITY OF HAMILTON

BY-LAW No. [REDACTED]

**To Amend Zoning By-law 05-200, as Amended, Respecting the
Barton-Tiffany Lands**

WHEREAS the City of Hamilton has in force several Zoning By-laws which apply to the different areas incorporated into the City by virtue of the City of Hamilton Act, 1999, S.O. 1999, Chap. 14;.

AND WHEREAS the City of Hamilton is the lawful successor to the former Municipalities identified in Section 1.7 of By-law 05-200;

AND WHEREAS Zoning By-law No. 05-200 was enacted on the 25th day of May, 2005;

AND WHEREAS the Ontario Municipal Board has ordered that Zoning By-law No. 05-200, be amended as hereinafter provided, and as set out in Board Order [REDACTED] dated [REDACTED]; and

AND WHEREAS this By-law is in conformity with the Official Plan of the Hamilton Planning Area, approved by the Minister under the Planning Act on June 1, 1982.

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. That Map Nos. 867 and 868, of Schedule "A" of By-law 05-200, are amended by incorporating the Conservation/Hazard Land (P5) Zone (Block "1"), Downtown Multiple Residential (D6, 443, H45) Zone (Block "2"), Downtown Residential (D5, 444, H46) Zone (Block "3"), Downtown Prime Retail Streets (D2, 442, H44) Zone (Block "4"), Downtown Multiple Residential (D6, 445, H47) Zone (Block "5") on the lands the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A" to this By-law.
2. That Schedule "C" – Special Exceptions of By-law 05-200 is amended by adding the following Special Exceptions:

"442. Notwithstanding Section 6.3, on those lands zoned Downtown Prime Retail Streets (D2) Zone, identified on Maps 867 and 868 of Schedule "A" - Zoning Maps, the following special regulations shall apply:

No person shall erect, or use any building in whole or in part, or use any land in whole or in part, within the Downtown Mixed-Use (D3) for any purpose other than one or more of the following uses, or uses accessory thereto. Such erection or use shall also comply with the following prescribed regulations:

a) PERMITTED USES

Commercial Entertainment
Commercial Parking Facility
Commercial Recreation
Commercial School
Conference or Convention
Centre
Craftsperson Shop
Financial Establishment
Medical Clinic
Office
Personal Services
Recreation
Repair Service
Restaurant
Retail
Studio
Tradesperson's Shop
Veterinary Service

b) PROHIBITED USES

i) Notwithstanding a) above, the following uses are prohibited even as an accessory use:

Dwelling Unit(s)
Drive Through Facility
Hotel

ii) Notwithstanding a) above, the following uses are prohibited except as an accessory use:

Garden Centre
Dry Cleaning Plant

c) REGULATIONS

- i) Minimum Rear Yard 6.0 metres abutting a Residential Zone property line;
- ii) Minimum Interior Side Yard 3.0 metres abutting a Residential Zone property line;
- iii) Maximum Building Height 15.0 metres;
- iv) Maximum Gross Floor Area for a Retail Unit 6,000 square metres;
- v) Maximum Lot Coverage for Retail Uses 20 percent;
- vi) Maximum Floor Area Ratio for Retail Uses 0.2;
- vii) Maximum Gross Floor Area for Office Uses within a Building 3,000 square metres;
- viii) Built Form for New Development
In the case of buildings constructed or alterations to the exterior of existing buildings, excluding any alterations to façade, fenestration or doors, after the effective date of this By-law:
 - A) The minimum length of the ground floor façade shall be equal to 25% or more of the measurement of the street line and shall be subject to the following:
 - 1) A minimum building setback of 3.0 metres; and,

- 2) A maximum building setback of 4.5 metres; and,
- 3) Where a building(s) exists on a lot in conformity with A) 1) and A) 2) above, with a ground floor façade being equal to 25% or more of the measurement of any street line, section 2) above shall not apply to any additional building(s); and,
- 4) All principle entrances shall be accessible from the building façade with direct access from the public sidewalk.

ix) Additional Requirements for Commercial Parking Facility

- A) Shall only be contained within a building; and,
- B) With the exception of an access driveway to the parking facility, the ground floor of the facility which faces any street shall only be used for uses listed in a) above, other than parking.

x) Visual Barrier Requirements

A visual barrier is required along any yard abutting a Downtown Residential (D5) or Downtown Multiple Residential (D6) Zone, except where a building is located or the area used for an access driveway, in accordance with Section 4.19 of this By-law.

xi) Outdoor Storage

- A) No outdoor storage of goods, materials or equipment shall be permitted.

B) Notwithstanding A) above, the display of goods or materials for retail purposes shall be permitted.

xii) Accessory Buildings In accordance with the requirements of Section 4.8 of this By-law.

xiii) Parking In accordance with the requirements of Section 5 of this By-law."

"443. Notwithstanding Section 6.6, on those lands zoned Downtown Multiple Residential (D6) Zone, identified on Maps 867 and 868 of Schedule "A" - Zoning Maps, the following special provisions shall apply:

No person shall erect, or use any building in whole or in part, or use any land in whole or in part, within the Downtown Multiple Residential (D6) Zone for any purpose other than one or more of the following uses, or uses accessory thereto. Such erection or use shall also comply with the following prescribed regulations:

a) **PERMITTED USES**
Residential

Multiple Dwelling
Home Business

Commercial

The following commercial uses shall only be permitted as part of a mixed-use building where the Commercial uses are contained jointly with residential uses in the same building or structure:

Commercial Entertainment
Commercial Recreation
Commercial School
Conference or Convention Centre
Craftsperson Shop
Day Nursery
Financial Establishment
Medical Clinic
Office

Personal Services
Recreation
Repair Service
Restaurant
Retail
Studio
Tradesperson's Shop
Veterinary Service

b) PROHIBITED USES

Notwithstanding a), the following uses are prohibited, even as an accessory use:

Drive Through Facility
Garden Centre
Hotel
Dry Cleaning Plant

c) REGULATIONS

i) Restriction of Commercial Uses permitted as part of a mixed use building

- A) Commercial uses shall only be permitted on the ground floor;
- B) The gross floor area of the Commercial uses shall not exceed the gross floor area of the Residential uses; and,
- C) Pedestrian access to any Residential use shall be completely segregated from any Commercial use.

ii) Minimum Side Yard

3.0 metres;

iii) Minimum Rear Yard

6.0 metres;

iv) Density requirements for Multiple Dwellings

Maximum 150 units per hectare;

v) Maximum Floor Area Ratio

0.6;

vi) Built Form for New Development

In the case of buildings constructed or alterations to existing buildings after the effective date of this By-law:

A) The minimum width of the ground floor façade shall be equal to 25% or more of the measurement of the any street line and shall be subject to the following:

- 1) A Minimum Building setback of 3.0 metres; and,
- 2) A Maximum Building setback of 4.5 metres; and,
- 3) Where a building(s) exists on a lot in conformity with A) 1) and A) 2) above, with a ground floor façade being equal to 25% or more of the measurement of any street line, section 2) above shall not apply to any additional building(s); and,
- 4) All principle entrances shall be accessible from the building façade with direct access from the public sidewalk; and,
- 5) No parking, driveways or aisles shall be located between a building façade and the public street.

- vii) Building Height
 - A) Minimum 7.5 metres and 2 storeys; and,
 - B) Maximum 15.0 metres.
- viii) Visual Barrier Requirements

A visual barrier is required along any yard abutting a "D5" Zone, except where a building is located or the area used for an access driveway, in accordance with Section 4.19 of this By-law.
- ix) Outdoor Storage
 - A) No outdoor storage of goods, materials or equipment shall be permitted.
 - B) Notwithstanding A) above, the display of goods or materials for retail purposes shall be permitted.
- xi Accessory Buildings

In accordance with the requirements of Section 4.8.1 of this By-law.
- xi) Parking

In accordance with the requirements of Section 5 of this By-law."

"444. Notwithstanding Section 6.5.1, 6.5.2.1 f), 6.5.2.2 f), 6.5.2.3 f), 6.5.2.4, 6.5.2.5, on those lands zoned Downtown Residential (D5) Zone, identified on Map 868 of Schedule "A" - Zoning Maps, the following special provisions shall apply:

a) PERMITTED USES

Single Detached Dwelling
Semi Detached Dwelling
Street Townhouse Dwelling

b) SINGLE DETACHED DWELLING REGULATIONS

- i) Maximum Building Height 11.25 metres;

c) SEMI-DETACHED DWELLING REGULATIONS

- i) Maximum Building Height 11.25 metres;

d) STREET TOWNHOUSE DWELLING REGULATIONS

- i) Maximum Building Height 11.25 metres;"

"445. Notwithstanding Section 3, as it relates to the definition of "Grade", Sections 4.6(d), 6.6 and of this By-law, on those lands zoned Downtown Multiple Residential (D6) Zone, as identified on Map No. 868 of Schedule "A" - Zoning Maps and legally described as Part of Lot 3 and All of Lots 4, 5, 6, and 7, Block 30, Registered Plan 127 in the City of Hamilton. Designated as Parts 3, 4, 5, 6, 7, 8 on Plan 62R-19307, the following special provisions shall apply:

- a) For the purposes of Special Exception No. 445, 'Grade' shall mean the average level of the proposed or finished ground of the Bay Street elevation.

No person shall erect, or use any building in whole or in part, or use any land in whole or in part, within the Downtown Multiple Residential (D6) Zone for any purpose other than one or more of the following uses, or uses accessory thereto. Such erection or use shall also comply with the following prescribed regulations:

b) PERMITTED USES

Residential

Multiple Dwelling
Home Business

Commercial

The following commercial uses shall only be permitted as part of a mixed use building where the Commercial uses are contained jointly with residential uses in the same building or structure:

Commercial Entertainment
Commercial Recreation
Commercial School
Conference or Convention Centre

Craftsperson Shop
Day Nursery
Financial Establishment
Medical Clinic
Office
Personal Services
Recreation
Repair Service
Restaurant
Retail
Studio
Tradesperson's Shop
Veterinary Service

c) PROHIBITED USES

Notwithstanding b) above, the following uses are prohibited, even as an accessory use:

Drive Through Facility
Garden Centre
Hotel
Dry Cleaning Plant

d) REGULATIONS

i) Restriction of Commercial Uses permitted as part of a mixed use building

A) Commercial uses shall only be permitted on the ground floor;

B) The gross floor area of the Commercial uses shall not exceed the gross floor area of the Residential uses; and,

C) Pedestrian access to any Residential use shall be completely segregated from any Commercial use.

ii) Building Setback from a Street Line

A) Maximum 4.5 metres, except,;

B) Where a visibility triangle shall be provided for a driveway access;

C) Notwithstanding A) above, the following regulations shall apply:

1. Where the ground floor is used for residential purposes the minimum setback shall be 3.0 metres;
2. Minimum setback shall be 6.5 metres for the fourth to eighth storeys; and,
3. Minimum 6.0 metres for that portion of a building providing an access driveway to a garage.

iii) Minimum Southerly Side Yard

A) 4.5 metres: and,

B) 6.5 metres for the fifth to eighth storeys.

iv) Minimum Northerly Side Yard

A) 7.0 metres, and,

B) 9.0 metres for the fifth to eighth storeys.

v) Building Height

A) Where the ground floor is used for commercial purposes:

1. Minimum 8.3 metres and two storeys;
2. Minimum 4.5 metres for the first storey; and,
3. Maximum 30.8 metres and eight storeys.

B) Where the ground floor is used for residential purposes:

1. Minimum 11.3 metres and three storeys;
2. Minimum 3.8 metres for the first storey; and
3. Maximum 30.0 metres and eight storeys.

vi) Density Requirements for Multiple Dwellings Maximum 300 units per hectare.

vii) Built Form for New Development In the case of buildings constructed or alterations to existing buildings after the effective date of this By-law:

A) The minimum width of the ground floor façade shall be equal to 25% or more of the measurement of the front lot line and shall be subject to the following:

1. Where a building(s) exists on a lot in conformity with d) ii) above, with a ground floor façade being equal to 25% or more of the measurement of any street line, section A) above shall not apply to any additional building(s); and,
2. All principle entrances shall be accessible from the building façade with direct access from the public sidewalk; and,
3. No parking, driveways or aisles shall be located between a building façade and the public

street.

- viii) Planning Strip Requirements
Where a property line abuts a property lot line within a Downtown Residential D5 Zone, or a Downtown Multiple Residential D6 Zone a minimum 3.0 metre wide Planting Strip shall be provided and maintained.
- ix) Visual Barrier Requirements
A visual barrier is required along any yard abutting a Downtown Residential (D5) Zone, except where a building is located or the area used for an access driveway, in accordance with Section 4.19 of this By-law.
- x) Outdoor Storage
 - A) No outdoor storage of goods, materials or equipment shall be permitted.
 - B) Notwithstanding A) above, the display of goods or materials for retail purposes shall be permitted.
- xi) Permitted Yard Encroachments
A porch, deck or canopy may encroach into any required yard to a maximum of 1.8 metres, or to a maximum of half the distance of the required yard.
- xii) Accessory Buildings
In accordance with the requirements of Section 4.8.1 of this By-law.
- xiii) Parking
In accordance with the requirements of Section 5 of this By-law."
- xiv) Amenity Area Restriction
Outdoor amenity areas are prohibited in the rear yard and northerly side yard."

3. That Schedule "D" - Holding Provisions of By-law 05-200 is hereby amended by adding the following Holding Provisions:

"44. Notwithstanding Section 6.3 and Special Exception No. 442 of this By-law, on those lands zoned Downtown Prime Retail Streets (D2) Zone, identified on Maps 867 and 868 of Schedule "A" - Zoning Maps no development shall be permitted until such time as:

- i) a Vibration Study, prepared by a qualified Professional Engineer, completed to the satisfaction of the Director of Planning, Planning and Economic Development Department; and,
- ii) an Urban Design Study for the Barton/Tiffany Area, to the satisfaction of the Director of Planning, Planning and Economic Development Department."

"45. Notwithstanding Section 6.6 and Special Exception No. 443 of this By-law, on those lands zoned Downtown Multiple Residential (D6) Zone, identified on Maps 867 and 868 of Schedule "A" - Zoning Maps, no development shall be permitted until such time as:

- i) a Noise Study, prepared by a qualified Professional Engineer, which shall address site layout and design including the location of outdoor amenity space, and building design including the location of non-habitable space, shall be completed in consultation with the appropriate railway company to the satisfaction of the Director of Planning, Planning and Economic Development Department to ensure that maximum sound levels are not exceeded in accordance with provincial guidelines including NPC 205;
- ii) prior to any site alteration, a signed Record of Site Condition (RSC) shall be submitted to the City of Hamilton, Director of Planning, Planning and Economic Development Department and the Ministry of the Environment (MOE). This RSC must be to the satisfaction of the City of Hamilton, including acknowledgement of receipt of the RSC by the MOE; and,
- iii) an Urban Design Study for the Barton/Tiffany Area, to the satisfaction of the Director of Planning, Planning and Economic Development Department."

"46. Notwithstanding Section 6.5 and Special Exception No. 444 of this By-law, on those lands zoned Downtown Residential (D5) Zone, identified on Map 868 of Schedule "A" - Zoning Maps, no development shall be permitted until such time as:

- i) receiving approval of a Site Plan Control Application, to the satisfaction of the Director of Planning, Planning and Economic Development Department; and,
- ii) a Noise and Vibration Study, prepared by a qualified Professional Engineer, which shall address site layout and design including the location of outdoor amenity space, and building design including the location of non-habitable space, shall be completed in consultation with the appropriate railway company to the satisfaction of the Director of Planning, Planning and Economic Development Department to ensure that maximum sound levels are not exceeded in accordance with provincial guidelines including NPC 205; and,
- iii) prior to any site alteration, a signed Record of Site Condition (RSC) submitted to the City of Hamilton, Director of Planning, Planning and Economic Development Department and the Ministry of the Environment (MOE). This RSC must be to the satisfaction of the City of Hamilton, including acknowledgement of receipt of the RSC by the MOE; and,
- iv) an Urban Design Study for the Barton/Tiffany Area, to the satisfaction of the Director of Planning, Planning and Economic Development Department."

"47. Notwithstanding Section 6.6 and Special Exception No. 445 of this By-law, on those lands zoned Downtown Multiple Residential (D6) Zone, identified on Maps 867 and 868 of Schedule "A" - Zoning Maps and legally described as Part of Lot 3 and All of Lots 4, 5, 6, and 7, Block 30, Registered Plan 127 in the City of Hamilton. Designated as Parts 3, 4, 5, 6, 7, 8 on Plan 62R-19307, no development shall be permitted until such time as:

- i) a Noise Study, prepared by a qualified Professional Engineer, which shall address site layout and design including the location of outdoor amenity space, and

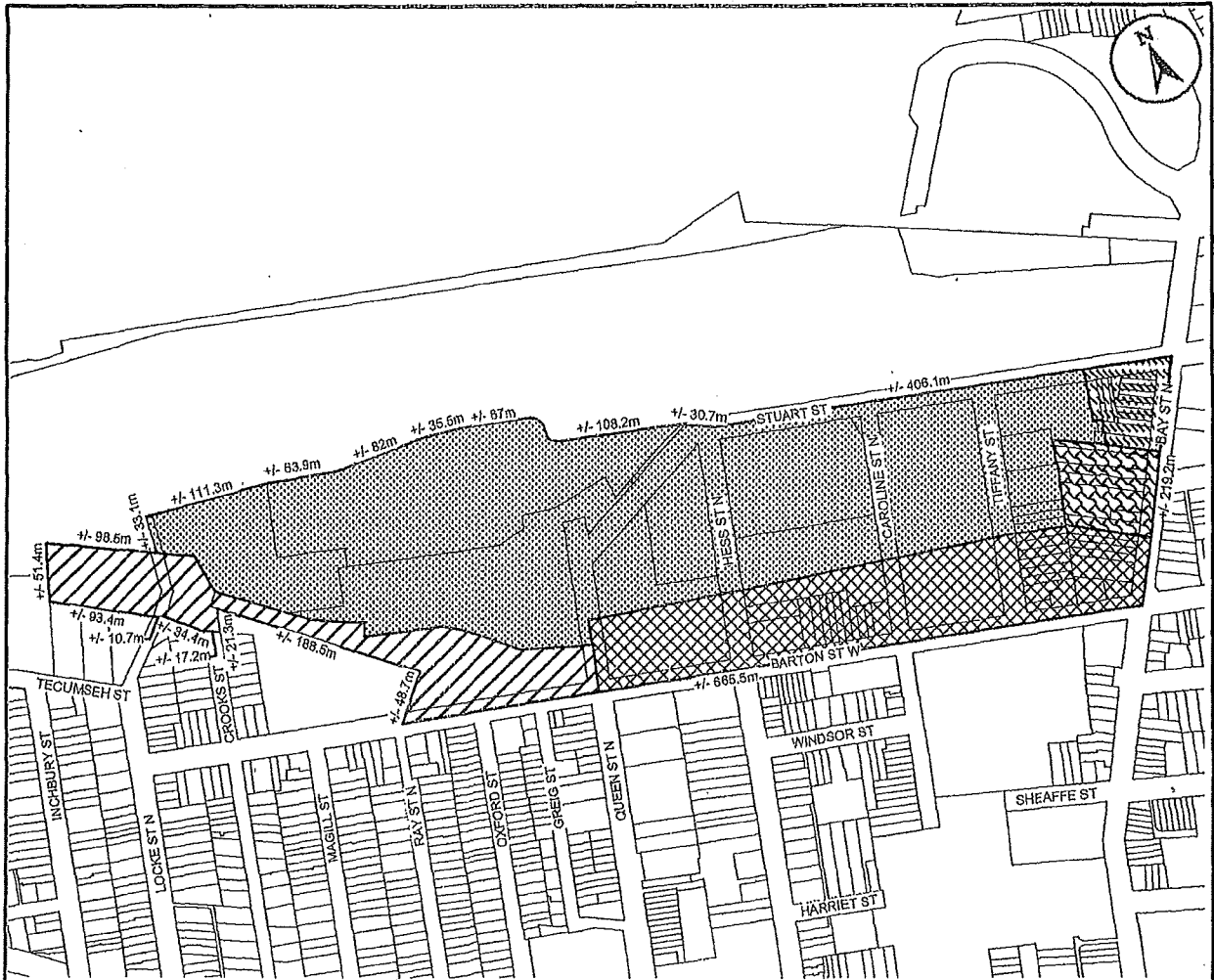
building design including the location of non-habitable space, shall be completed in consultation with the appropriate railway company to the satisfaction of the Director of Planning, Planning and Economic Development Department to ensure that maximum sound levels are not exceeded in accordance with provincial guidelines including NPC-205;

- ii) prior to any site alteration, a signed Record of Site Condition (RSC) shall be submitted to the City of Hamilton and the Ministry of the Environment (MOE). This RSC must include an acknowledgement of receipt of the RSC by the MOE, and submission of the City of Hamilton's current RSC administration fee to the satisfaction of the Director of Planning, Planning and Economic Development Department; and
 - iii) receiving final approval of a Site Plan Control Application in accordance with Schedule "B" - Property Details Figure 1, to the satisfaction of the Director of Planning, Planning and Economic Development Department."
4. That Schedule "F" -- Special Figures of By-law 05-200 is amended by adding Figure 5: Property Details Sketch Related to Special Exemption 445.
 5. That the Clerk is hereby authorized and directed to proceed with the giving of notice of passing of this By-law in accordance with the Planning Act.
 6. That this By-law shall come into force and be deemed to have come into force in accordance with Sub-section 34(21) of the Planning Act, either upon the date of passage of this By-law or as provided by the said Sub-section.

PASSED and ENACTED this ~~17th~~ day of ~~June~~, 2012

R. Bratina
Mayor

Rose Caterini
Clerk








This is Schedule "A" to By-Law No. 12-
 Passed the day of, 2012

 Clerk

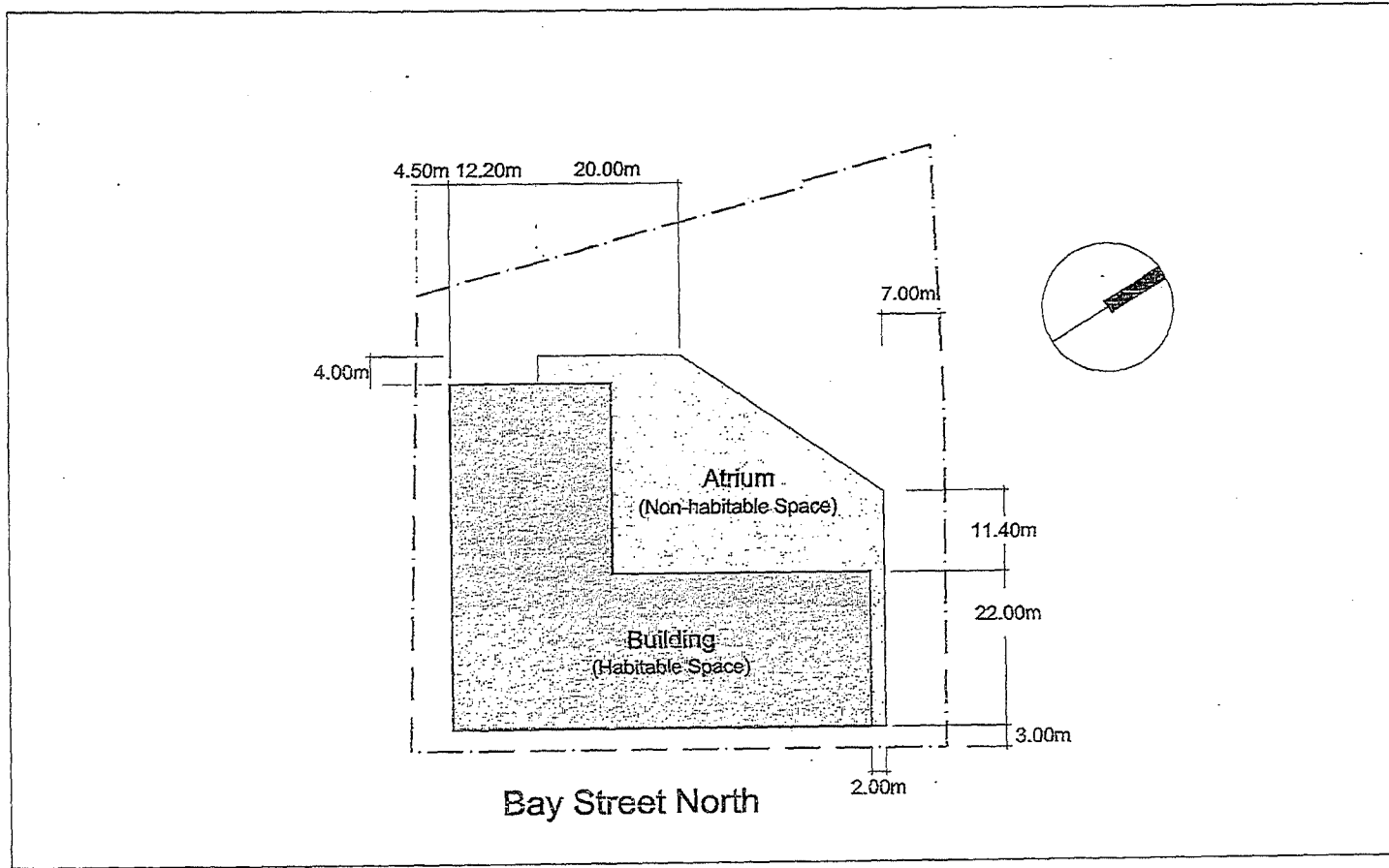
 Mayor

Schedule "A"
 Map Forming Part of
 By-Law No. 12-_____
 to Amend By-law No. 05-200
 Map 867 and 868

- Subject Property**
 Barton Tiffany Area
-  Block 1 - Lands to be added to By-law No. 05-200 as Conservation Hazard Land (P5) Zone
 -  Block 2 - Lands to be added to By-law No. 05-200 as Downtown Multiple Residential (D6, 443, H45) Zone
 -  Block 3 - Lands to be added to By-law No. 05-200 as Downtown Residential (D5, 444, H46) Zone
 -  Block 4 - Lands to be added to By-law No. 05-200 as Downtown Prime Retail Streets (D2, 442, H44) Zone
 -  Block 5 - Lands to be added to By-law No. 05-200 as Downtown Multiple Residential (D6, 445, H47) Zone

Scale: N.T.S.	File Name/Number: Setting Sail-Barton Tiffany
Date: January 24, 2012	Planner/Technician: SM/MB
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT	






 Property Boundary

Figure 5:
 Property Details Sketch
 Related to Special Exemption 445