

ISSUE DATE:
Aug. 3, 07
 DECISION/ORDER NO:
2191



PL050408

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

07-262

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~~

APPEARANCES:

Parties

City of Hamilton
 TDL Group Corp.

Counsel

A. Zuidema
 S. Makuch

OFFICE OF THE CITY CLERK
 AUG 07 2007

REC. BY: _____ DATE: _____
 REF'D TO: J. McCabe DATE: _____
 REF'D TO: A. Smith DATE: _____
 REF'D TO: A. Kaveling DATE: _____
L. Barros
Z. Eric
 ACTION: P. Mattarot

**MEMORANDUM OF ORAL DECISION DELIVERED BY J.P. ATCHESON
 ON JULY 19, 2007 AND PARTIAL ORDER OF THE BOARD**

The purpose of this hearing is to consider a settlement of the appeal filed by the TDL Group Corp. to the OPA 198, a Secondary Plan for the West Harbour Area of the City of Hamilton. The appeal filed by The TDL Group Corp. was very specific in that it appealed only Section A.6.3.3.1.19 (Local Commercial Areas), and, in particular, the prohibition found in this part of the Secondary Plan to prohibit drive-through uses.

advised the Board that The TDL Group Corp. is in full support of the modifications to OPA 198, as found in Exhibit 3.

The Board notes that no other parties or individuals were present.

The Board, after considering the evidence filed and the submission made, is satisfied that the settlement reached is an improvement over the existing policy directions found in OPA 198 and that this Official Plan Amendment should be amended as set out in Exhibit 3.

The Board notes that there are still outstanding appeals with respect to Official Plan Amendment 198 and as such, the Board will withhold its order as it relates to The TDL Group Corp. appeal and settlement until all of the other matters under appeal have been determined.

The Board commends the parties for their efforts in finding a settlement of this appeal.

Accordingly, and for the reason outlined in this decision:

THE BOARD ORDERS that the appeal of The TDL Group Corp. is allowed in part, and Official Plan Amendment 198 to the Official Plan of the City of Hamilton is modified, as set out in Attachment 1 to this decision, and as modified, is approved.

The Board will withhold its final Order in this matter pending the final disposition of the other matters still under appeal.

The Board may be spoken to should problems arise.

"J.P. ATCHESON"

J.P. ATCHESON
MEMBER

ATTACHMENT 1

**Proposed Policy Changes
Setting Sail: West Harbour Secondary Plan
OMB File No. PL030754
July 19, 2007**

A.6.3.3.1.19

iii) auto-oriented commercial uses, such as gas stations and auto repair garages are not permitted. For greater clarity, this policy does not prohibit drive-through restaurants.

A.6.3.3.1.25

In addition to the Land Use Policies of this plan, the following policy shall apply:

Auto-oriented commercial uses such as gas stations, auto repair garages, other drive-through services including but not limited to drive-through restaurants, or other uses normally classified as highway commercial will not be permitted in the following areas:

- i) Properties that front or flank along James Street North, including the proposed James Street Pier;
- ii) Properties designated "Prime Retail Streets" on Barton Street and Pier 8;
- iii) The southwest corner of MacNab Street North and Stuart Street (land designated "Local Commercial");
- iv) The southwest corner of Bay and Barton Streets (land designated "Local Commercial"); and
- v) The southeast corner of Barton and Oxford Streets (land designated "Local Commercial").

A.6.3.3.1.26

Further to policies in A.6.3.3.1.19 and A.6.3.3.1.25, this policy will clarify that no auto-oriented commercial uses such as gas stations, auto repair garages, other drive-through services including but not limited to drive-through restaurants, or other uses normally classified as highway commercial shall be permitted in the area bounded by Wellington Street North on the east, Strachan Street East and West on the south and Hamilton Harbour on the west and north.