

# CITY OF HAMILTON

## MOTION

COUNCIL DATE: February 8, 2012

**MOVED BY COUNCILLOR B. CLARK.....**

**SECONDED BY COUNCILLOR .....**

### **OFFICIAL PLAN DRIVE-THROUGH POLICIES**

WHEREAS the Town of Oakville ("Oakville") adopted a new official plan, which includes policies that in certain situations prohibit drive-through related uses;

AND WHEREAS appeals have been brought against Oakville's new official plan, including the drive-through policies;

AND WHEREAS the appeals pertaining to Oakville's drive-through policies have been made by a group of drive-through operators who identified themselves as Quick Service Restaurants;

AND WHEREAS counsel for the Quick Service Restaurants has advised counsel for Oakville that a motion will be brought before the Ontario Municipal Board challenging the authority of municipalities to enact policies within official plans, which prohibit uses, on the grounds that no such statutory jurisdiction exists, and that such motion will be argued as a question of law in order to seek a definitive ruling from the Board for future direction;

AND WHEREAS the City of Hamilton's ("Hamilton") new Urban Official Plan also contains policies, which prohibit drive-through uses in certain situations, and the TDL Group as an appellant to Hamilton's new Urban Official Plan and three other quick service restaurant operators and one industry trade organization as parties are challenging Hamilton's drive-through policies in the new Urban Official Plan, on the grounds, among other reasons, that official plan provisions are not to be used to prohibit specific uses such as drive-through facilities;

AND WHEREAS the legal issue being raised in the Oakville proceedings is identical to that forming part of the grounds for appeals against Hamilton's drive-through policies in its new Urban Official Plan, and a ruling by the Ontario Municipal Board on this issue in Oakville will directly relate to and impact upon Hamilton's interests and the scope of its jurisdiction when developing official plan policies;

AND WHEREAS it is in the public interest for Hamilton to seek party status in the Oakville proceeding with a view to inviting the Ontario Municipal Board to address the drive-through policy issue on a consolidated basis, which will have Province-wide implications;

**NOW THEREFORE BE IT RESOLVED:**

That City Legal and Planning staff be authorized to seek party status in the motion in OMB proceedings pertaining to the Town of Oakville's new official plan, with file number PL100637 and in said motion to support the position that municipalities do possess the authority to prohibit uses in Official Plans.



## OAKVILLE

February 2, 2012

Peter Barkwell  
Hamilton City Solicitor  
via email: peter.barkwell@hamilton.ca

Dear Mr. Barkwell:

**RE: Prohibitions in Official Plans**

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Oakville's new Official Plan, *Livable Oakville*, contains policies that prohibit auto-related uses ("drive-throughs") in certain parts of the municipality. A group of drive-through operators has identified themselves as QSR ("Quick Service Restaurants"). QSR has appealed the Official Plan policies that prohibit drive-throughs in certain parts of the Town. QSR's solicitor has advised Oakville that it intends to bring a motion, returnable on February 22<sup>nd</sup> to address the legal question as to whether Oakville has the authority under the *Planning Act* to prohibit a use by way of adoption of a policy in its Official Plan.

QSR maintains that it is beyond the jurisdiction of municipalities to prohibit uses in their Official Plans. They acknowledge that municipalities do this and that the Ontario Municipal Board has approved such policies, but they say that Section 16 of the *Planning Act* provides no such power to a municipality.

It is Oakville's position that the implications for municipalities in the Province are significant if QSR is able to convince the Board that municipalities do not possess the authority to prohibit uses in their Official Plans. Further, if QSR is successful on their motion in Oakville, it is anticipated that they will use this decision in all of the many other municipalities, including Hamilton, in which they have appealed drive-through policies.

We are advising you of the above information in the event that you wish to attend the motion and seek approval from the Board to participate.

Yours truly,

Nadia Chandra, B.A., J.D.  
Assistant Town Solicitor

c. Michael G. Kovacevic, Hamilton Senior Solicitor  
Michael Minkowski, Hamilton Senior Legal Counsel