



Labreche Patterson & Associates Inc.

Professional Planners, Development Consultants, Project Managers

VIA MAIL and E-MAIL (karen.whitney@york.ca)

Our File: P-375-09 P

March 4, 2015

Ms. Karen Whitney, MCIP, RPP
Director, Community Planning
Transportation and Community Planning Department
York Region Administrative Centre
7250 Yonge Street
Newmarket, ON
L3Y 6Z1

Dear Ms. Whitney:

**Re: York Region - Committee of the Whole Agenda Item E.2.2 on March 5, 2014
Town of Newmarket Official Plan Amendment No. 10
"Newmarket Urban Centres Secondary Plan"**

As you are aware, we represent A&W Food Services of Canada Inc., McDonald's Restaurants of Canada Limited., the Tim Hortons Inc., and Wendy's Restaurants of Canada Inc. as well as their industry association, the Ontario Restaurant Hotel and Motel Association (ORHMA). We have previously provided submission comment letters to the Town of Newmarket regarding this matter prior to the adoption of this proposed new secondary plan by town council. Our previous submission letters are attached hereto for your reference. Also, as you are aware, we previously met with you and other representatives for the Region of York, Community Planning Department and a representative for the Town of Newmarket to discuss our concerns further as it relates to "prohibition" language contained in this proposed Secondary Plan. As we had detailed in our previous submission letters, a prohibition of permitted drive-through facilities in the subject area of Newmarket at the level of an Official Plan/Secondary Plan is not in accordance with decisions of the Ontario Municipal Board in similar cases. The case law and references in this regard are further detailed in our previous submission letters.

We have reviewed the related staff recommendation report and recommended regional modifications to policies "6.4.2 Drive-through Facilities" and "14.2.3 Existing Lawful Uses" with our clients. Based on our review and considerations of these modifications with our clients, policy 6.4.2 continues to prohibit drive-through facilities in "Priority Commercial Area" of this new secondary plan. Apart from the fact that that our clients collectively have seven brand locations within the Priority Commercial Area, the prohibition is not acceptable again for reasons we have detailed in our previous submission letters.

Further, proposed modified policy 14.2.3, in our opinion still appears to go beyond what appropriate matters to be regarded are to be within The Planning Act relative to existing lawful uses. Clause "d)" of 14.2.3 is not necessary particularly the reference to "urban design" in that clause.

Based on the foregoing we respectfully ask that you along with the Committee of the Whole and/or Regional Council prior to its final consideration of the recommended modifications to this plan consider the following requested modifications to the above noted policies.

6.4.2 Drive-through Facilities

New drive-through facilities ~~will not be permitted~~ be discouraged within *Priority Commercial Areas* ~~or in areas fronting on Yonge Street or Davis Drive. Throughout Urban Centres~~ Nnew drive-through facilities ~~will be discouraged throughout the rest of the Urban Centres, and may only be~~ may be permitted where supported by an air quality study and stacking and queuing report that demonstrates, to the satisfaction of the Town, that the stacking and queuing can be entirely accommodated on the subject property, that the use will not result in negative traffic impacts on Yonge Street or Davis Drive, that pedestrian flow is not impeded, and that there will be no unacceptable adverse ~~negative~~ air quality or noise impacts to surrounding uses or activities.

14.2.3 Existing Lawful Uses

Land ~~The~~ uses, and buildings and structures that legally existed prior to the adoption of this Plan shall be permitted to continue; however, they are ultimately intended to be redeveloped and used in conformity with this Plan. Where previously approved uses or existing lawful uses, buildings or structures are not in conformity ~~consistent~~ with the objectives and policies of this Plan, such uses will be encouraged to redevelop over time in a manner that is consistent with this Plan.

Enlargements, extensions, additions and alterations ~~Expansions~~ of existing lawful uses including buildings and structures ~~additions and/or alterations~~ may be permitted in accordance with Policy 6.4.7 and the applicable Non-conforming Uses policies of the Official Plan, without amendment to this Plan. **Such applications will be considered through an amendment to the Zoning By-law or by application to the Committee of Adjustment, subject to the following policies:** ~~in accordance with the Transitional Policies contained in Policy 6.4.7.~~

- a) **the existing lawful use has been continuous;**
- b) **the enlargement, extension, addition or alteration is located on the same property originally owned and used by the applicant on the day the use, building or structure was prohibited by a zoning by-law;**
- c) **the proposed use is the same or similar to the lawfully existing use and does not increase zoning by-law non-compliance;**
- d) ~~the applicable provisions of this Plan are met including but not limited to, urban design, traffic impacts, and parking.~~

Alternatively, if you and the Committee of the Whole or Regional Council cannot accept the requested modification to these policies noted above, we request that these policies be left out of the plan at this time to be sent back to Region of York and Town of Newmarket staff for further consideration.

Please accept this as our written request to be notified of the decision when it is to be finally made by the Regional Municipality of York on the Town of Newmarket Official Plan Amendment No. 10, ("*Newmarket Urban Centres Secondary Plan*").

Thank you for your attention and further consideration of this matter.

Yours truly,
Labreche Patterson & Associates Inc.



Victor Labreche, MCIP, RPP
Senior Principal

Enclosure (2)

Copy: Jason Ezer, Senior Planner, York Region
(via e-mail: Jason.ezer@york.ca)

Denis Kelly, Regional Clerk
(via e-mail: regional.clerk@york.ca)

Marion Plaunt, Town of Newmarket
(via e-mail: mplaunt@newmarket.ca)

Leslie Smejkel, ORHMA
(via e-mail: lsmejkal@orhma.com)

Carol Patterson, Tim Hortons Inc.
(via e-mail: patterson_carol@timhortons.com)

Jessica Oliver, McDonald's Restaurants of Canada Limited
(via e-mail: jessica.oliver@ca.mcd.com)

Patricia Simiele, McDonald's Restaurants of Canada Limited
(via e-mail: patricia.simiele@ca.mcd.com)

Gerry Prendergast, Wendy's Restaurants of Canada, Inc.
(via e-mail: gerry.prendergast@wendys.com)

Darren Sim, A&W Food Services of Canada Inc.
(via e-mail: dsim@aw.com)



Labreche Patterson & Associates Inc.

Professional Planners, Development Consultants, Project Managers

VIA MAIL AND E-MAIL (mplaunt@newmarket.ca)

Our File: P-375-09 P

November 6, 2013

Ms. Marlon Plaunt, MES, MCIP, RPP
Senior Planner
395 Mulock Drive
P. O. Box 328, Station Main
Newmarket, Ontario
L3Y 4X7

Dear Ms. Plaunt:

**Re: Draft Newmarket Urban Centres Secondary Plan
Town of Newmarket**

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 draft Urban Centres Secondary Plan to determine if the document would apply to our clients' current and future operating interests. 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.

The ORHMA and the noted member brands have requested that we review the proposed draft Urban Centres Secondary Plan for the Town of Newmarket to determine if the document would apply to their operating interests. The following is a summary of our review:

Section 6.4.2 (iv) is particularly concerning for our clients as it will greatly reduce their opportunity for future development within the Urban Centres area. This section states:

New drive-through facilities will not be permitted within Priority Commercial Areas or in areas fronting on Yonge Street or Davis Drive. New drive-through facilities will be discouraged throughout the rest of the Urban Centres, and may only be permitted where a stacking and queuing study has demonstrated to the satisfaction of the Town that the stacking and queuing can be entirely accommodated on the subject property,

that the use will not result in negative traffic impacts on Yonge Street or Davis Drive, pedestrian flow is not impeded, and that there will be no negative air quality or noise impacts to surrounding uses or activities.

We disagree with proposed DTF restrictions as this unjustly limits the possibility of developing new DTF uses anywhere within the Urban Centres area especially in *Priority Commercial Areas* and along Yonge Street and Davis Drive. We are not aware of any planning justification that has been completed to justify this proposed policy of this Secondary Plan.

Firstly, we are of the opinion that DTF should be permitted wherever a restaurant is permitted. The following is an extract from the draft Secondary Plan which identifies the permitted uses within the *Priority Commercial Areas*:

6.4.1 Priority Commercial Areas

i. Within Priority Commercial Areas, street-related commercial uses, including retail stores, restaurants, personal and business services, professional offices or public institutional uses shall be required on the ground floors levels of all buildings fronting on the public streets.

Restaurant uses are not simply a permitted use, in fact, they are one of the *required* uses for the ground floor of all buildings in Priority Commercial Areas. Currently, there are several existing restaurants in these areas, several of which have DTF. New restaurants proposed in this area will not be permitted to have a DTF but will still be required to provide parking spaces at a prescribed rate. The OMB has previously accepted that restaurants with a DTF require fewer parking spaces than a restaurant without a DTF as more vehicles can be accommodated in a queuing lane than in traditional parking area layouts. This not only results in a more efficient use of land but also, when designed appropriately, reduces congestion within the site. Prohibiting DTF in these areas will not eliminate the overflow of vehicles onto the public right-of-way as vehicles will continue to access the site and will require a place to park. If overflow of vehicles are occurring in this area onto the public street, new zoning regulations and site plan control standards are justified, not a prohibition.

Secondly, it is not necessary to 'discourage' and further restrict the development of DTF throughout the rest of the Urban Centres through the explicit requirement for a stacking and queuing study. These studies can be requested through Site Plan Control and therefore do not need to be specifically listed in the Secondary Plan. No other land use within the Secondary Plan requires specific studies in order to be deemed a permitted use. This is not justified and should be removed at the level of new Official Plan policy.

Thirdly, we request that the following text from section 6.4.2 (iv) be removed entirely: "*... and that there will be no negative air quality or noise impacts to surrounding uses or activities.*" Peer-reviewed research has considered the impact of DTF on air quality compared with regular parking areas and has concluded that DTF have the same and often less affect on air quality than regular parking areas. Additionally, studies of traffic flow through DTF have shown that a restaurant with a DTF can process more vehicles quicker and more efficiently than an identical restaurant without a DTF. Therefore a restaurant with a DTF should require less parking than an identical restaurant which does not have a DTF. This has been implemented successfully in other municipalities. The only noise source that is unique to a DTF (and not a regular parking area) is noise from the speaker box. This is commonly mitigated to appropriate levels through barriers such as landscaping (vegetation and fences); details of which can be provided by a qualified engineer through the Site Plan approval process.

Finally, we object to the prohibition of new DTF within Priority Commercial Areas and on lands fronting onto Yonge Street or Davis Drive. Currently, there are several DTF within these areas. Of these, most are located within a plaza area and do not have direct access onto Yonge Street or David Drive. During peak hours a DTF may overflow into the surrounding parking area or onto a collector road. As mentioned above, a new DTF can be designed to eliminate the impact on adjacent traffic flow through site plan control.

Based on the above, we reserve the right to provide additional comments regarding the potential impact of the proposed Urban Centres Secondary Plan on our clients' current and future operating interests based on any future released drafts of the proposed Urban Centres Secondary Plan. Thank you for your consideration to our comments herein and we look forward to working with you to mutually resolve our concerns.

Finally, please also consider this letter our formal request to be provided with copies of all future notices, reports, and Committee and/or Council considerations and resolutions related to the proposed Urban Centres Secondary Plan for the Town of Newmarket.

Yours truly,
Labreche Patterson & Associates Inc.



Victor Labreche, MCIP, RPP
Senior Principal

VL/jv

Copy: *Andrew Brouwer, Director, Legislative Services, Town Clerk, Town of Newmarket*
(via e-mail: abrouwer@newmarket.ca)

Leslie Smejkal, ORHMA
(via e-mail: lsmejkal@orhma.com)

Paul Barron, The TDL Group Corp.
(via e-mail: barron_paul@timhortons.com)

Sean O'Meara, The TDL Group Corp.
(via e-mail: OMeara_Sean@timhortons.com)

Sherry MacLauchlan, McDonald's Restaurants of Canada Ltd.
(via e-mail: Sherry.maclauchlan@ca.mcd.com)

Susan Towle, Wendy's Restaurants of Canada
(via e-mail: susan.towle@wendys.com)

Darren Sim, A&W Food Services of Canada Inc.
(via e-mail: dsim@aw.ca)



Labreche Patterson & Associates Inc.

Professional Planners, Development Consultants, Project Managers

VIA MAIL AND E-MAIL (mplaunt@newmarket.ca)

Our File: P-375-09 P

June 13, 2014

Ms. Marion Plaunt, MES, MCIP, RPP
Senior Planner
395 Mulock Drive
P. O. Box 328, Station Main
Newmarket, Ontario
L3Y 4X7

Dear Ms. Plaunt:

**Re: Final Draft of Newmarket Urban Centres Secondary Plan (Recommended for Adoption)
Town of Newmarket**

As previously advised, 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 "final" Draft Urban Centres Secondary Plan to determine if the document would apply to our clients' current and future operating interests of drive-through facilities (DTF).

We previously provided a letter dated November 6, 2013 in which we identified our objections to the initial draft of the Urban Centres Secondary Plan. We have also had subsequent discussions with you about our objections subsequent to sending our previous letter. A copy of that letter is attached hereto for your reference as many of our concerns continue to exist in the final draft of the Secondary Plan. We are providing the following letter as a summary of our recent telephone discussions and our continuing concern with the final draft.

Based on our review of this proposed new Secondary Plan with our clients we continue to object to Section 6.4.2. This section states:

New drive-through facilities will not be permitted within Priority Commercial Areas or in areas fronting on Yonge Street or Davis Drive. New drive-through facilities will be discouraged throughout the rest of the Urban Centres, and may only be permitted where supported by an air quality study and a stacking and queuing report that demonstrates to the satisfaction of the Town that the stacking and queuing can be entirely accommodated on the subject property, that the use will not result in negative traffic impacts on Yonge Street or Davis Drive, pedestrian flow is not impeded, and that there will be no negative air quality or noise impacts to surrounding uses or activities.

We object to the proposed DTF prohibitions specifically contained in the first sentence of this section. As previously discussed, the primary use (in our case a 'restaurant' use) will continue to be permitted in the Priority Commercial Areas (policy 6.4.1) and will continue to accommodate traffic to access and exit the site whether a DTF exists or not. Other service commercial uses including restaurants will continue to be permitted along with their associated parking areas. There is nothing different from a DTF compared to any other permitted service commercial use other than the required queuing/stacking lane. It has been demonstrated and accepted by the OMB that a queuing lane (when compared with regular parking spaces) better handles the movement of vehicles on the site and is a more efficient use of land.

In an earlier discussion with you, you noted that a primary reason for this new policy is that vehicle queuing lanes often overflow onto public a street which is not acceptable. Again, to prohibit a permitted DTF use today at the level of the Official Plan to address possible overflow situations etc. is clearly not appropriate or justified. In fact, we note that section 5.7 of the town's current Zoning By-law already and most appropriately address DTF queuing locations and associated regulations. Specifically section 5.7.5 i) of the ZBL states "*Queuing lanes within Urban Centre Zones shall not be located in the required front or exterior side yards.*" We note that the "Urban Centre Zones" covers the same geographic areas as the proposed "Priority Commercial Areas" and areas fronting Yonge Street or Davis Drive. Based on this, the concern you previously raised about overflow stacking is already covered in the town's Zoning Bylaw. As such, apart from the principle concern/objection we have with a DTF prohibition being within an Official/Secondary Plan document, as the matter is covered in the ZBL, no rationale exists for the prohibition when the ZBL covers potential issue.

Further, we note that our clients collectively have seven existing DTF/restaurant locations in the area proposed to prohibit new DTF. While you have recently advised that policy 14.2.3 "Existing Uses" would continue to permit the existing DTF, based on our review of the wording of this policy, we would disagree. Our specific concern with this policy is paragraph ii) of the policy which states "*Replacements of previously approved uses may be permitted in the event of damage that was outside of the control of the landowner without amendment to the Plan.*" Also, the language used in the remainder of this policy seems to be overly restrictive and not in accordance with "planning law" and ones rights to rebuild legal non-conforming uses. Based on this, we object to policy 14.2.3 as it is currently written and could apply to our clients current DTF operations if policy 6.4.2 iv) is not removed or revised to delete the prohibition prior to the plan being adopted. For your information, the current operations for our clients in this area are as follows:

McDonald's

- 17155 Yonge St
- 17760 Yonge St

Tim Hortons

- 17310 Yonge St
- 17725 Yonge St
- 191 Davis Dr

A&W

- 16650 Yonge St

Wendy's

- 17725 Yonge St

Since our initial letter, policy 6.4.1 (iv) has also been revised to include the requirement of an "air quality study" as well as a "stacking and queuing report". We object to these requirements which again are not justified in any of the background material and reports prepared on this proposed new Secondary Plan. We also note that DTF based on excepted evidence and reports filed with the OMB are not a specific measurable contributor to over "pollution". DTF rely primarily on what is termed "pass-by traffic". DTF locate on existing heavily travelled roads and rely primarily on that existing traffic for business and are not considered a "primary destination use". As such, to specifically require a DTF use to complete an air quality study when much larger pollution factors and contributors are exempt is not justified or acceptable. As such, we object to this proposed requirement to complete an "air quality study" in all areas of the plan that may permit a DTF.

In addition, we object to the requirement to complete a "stacking and queuing report" particularly when the town's recent zoning by-law already contains regulations for queuing size and location in it that we have to meet. To stipulate that we have to complete an additional report/study in this regard circumvents the Zoning Bylaw which is not acceptable.

Based on the above, we request that policy 6.4.2 (iv) be removed as written in this proposed new secondary plan based on the fact that the town's zoning by-law already addresses matters for DTF queuing lane location and size etc. as well as the towns powers of Site Plan Control in Section 41 of The Planning Act of Ontario. Further, we would note as we have previously that a prohibition of a DTF use or virtually any use for that matter at the level of an Official/Secondary Plan is not in accordance with OMB case law. If the town wishes to restrict or in justified cases prohibit a land use, it should be at the level of the Zoning By-law. As we previously noted, we have settled matters such as this in many major urban centres recently such as Vaughan, Mississauga, Hamilton and Waterloo to name a few. Thank you for your consideration to our comments herein and recent phone discussions and we would very much welcome an opportunity to meet with you to discuss revisions to the final form of this secondary plan that would be acceptable to our clients before it is finally adopted by town council.

Finally, please also consider this letter our formal request to be provided with copies of all future notices, reports, and Committee and/or Council considerations and resolutions related to the proposed Urban Centres Secondary Plan for the Town of Newmarket.

Yours truly,
Labreche Patterson & Associates Inc.



Victor Labreche, MCIP, RPP
Senior Principal

VL/jv

Copy: *Andrew Brouwer, Director, Legislative Services, Town Clerk, Town of Newmarket*
(via e-mail: abrouwer@newmarket.ca)

Jason Unger, Assistant Director of Planning
(via e-mail: junger@newmarket.ca)

Richard Nethery, Director of Planning and Building Services
(via e-mail: rnethery@newmarket.ca)

Rob Prentice, Commissioner of Development and Infrastructure Services
(via e-mail: rprentice@newmarket.ca)

Leslie Smejkal, ORHMA
(via e-mail: lsmejkal@orhma.com)

Paul Barron, The TDL Group Corp.
(via e-mail: barron_paul@timhortons.com)

Carol Patterson, The TDL Group Corp.
(via e-mail: Patterson_Carol@timhortons.com)

Jessica Oliver, McDonald's Restaurants of Canada Ltd.
(via e-mail: Jessica.oliver@ca.mcd.com)

Susan Towle, Wendy's Restaurants of Canada
(via e-mail: susan.towle@wendys.com)

Darren Sim, A&W Food Services of Canada Inc.
(via e-mail: dsim@aw.ca)