



Labreche Patterson & Associates Inc.

Professional Planners, Development Consultants, Project Managers

VIA MAIL AND E-MAIL (phil.caldwell@burlington.ca)

Our File: P-375-09 EEE

July 3, 2014

Mr. Phillip Caldwell, MCIP RPP
Planner II, Policy & Research
City of Burlington
426 Brant Street
PO Box 5013
Burlington, Ontario
L7R 3Z6

Dear Mr. Caldwell:

Re: City of Burlington Official Plan Review – July 7, 2014 Council Workshop on Commercial Strategy Study – matters dealing with proposed Drive-through Policies and Guidelines

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). As you are aware and attached hereto for your reference, we previously provided written comments to you on this matter after we attended the Drive-through Stakeholders Meeting held by the city on Feb. 18, 2014. Based on the recent notice we received from the City of Burlington and accompanying material which we have reviewed to be considered at a Council workshop on the Commercial Strategy Study complete by the City's consultants, we ask that this letter be provided to members of council and city staff for their consideration at the workshop. We understand that this workshop is not open to the general public to participate in nor are delegations permitted at the workshop.

Based on our review of the material to be considered at the Council workshop on July 7th, it appears that none of our comments provided to the city in our previous letter was considered in the preparation of this latest material. As such, we continue to object with the recommendations contained in the Commercial Policy Study specifically regarding any prohibition of drive-through facilities (DTF) from any areas of the city where DTF are permitted in the current Official Plan for the City of Burlington. The reason for our continued objections to the city's direction on DTF policies is detailed on page two of our previous letter attached dated March 28, 2014. We ask that these comments be considered again as they are still applicable.

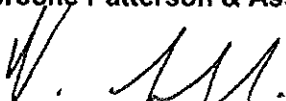
Further, we object to the specific recommendations contained on page 36 and 37 of Appendix "A" to staff report "PB-09-14". Some of these recommendations may be appropriate to certain land use contexts to which they may be applied in the future but only at the level of a Zoning By-law and not an Official Plan. In addition, specific items such as not permitting DTF on corner lots and a minimum setback 30 metres for a DTF to any existing residential use or designation that permits a residential use

is excessive and not acceptable to be contained at the level of the Official Plan. We also wish to note that while a "Commercial Strategy Study" is being put forward to be accepted by City Council, it does not contain any "study" or real justification for the proposed policies and prohibitions on DTF. Based on the lack of any study and justification in this regard we continue to object to the suggested policy direction on DTF, at the level of the Official Plan, in the future.

The above comments are based on the information currently available to us. We reserve our right to comments further on this matter and on the future first and subsequent drafts of the Official Plan that we understand will be released later this year.

Thank you for your time and considerations of our comments herein. Please do not hesitate to contact us to discuss our comments or for additional information.

Yours truly,
Labreche Patterson & Associates Inc.



Victor Labreche, MCIP, RPP
Senior Principal

VL/
Attach.

- Copy:
- Andrea Smith, Manager of Policy and Research, City of Burlington*
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Labreche Patterson & Associates Inc.

Professional Planners, Development Consultants, Project Managers

VIA MAIL AND E-MAIL (phil.caldwell@burlington.ca)

Our File: P-375-00 EEE

March 28, 2014

Mr. Phillip Caldwell, MCIP RPP
Planner II, Policy & Research
City of Burlington
426 Brant Street
PO Box 5013
Burlington, Ontario
L7R 3Z6

Dear Mr. Caldwell:

**Re: Drive-through Stakeholder Meeting
City of Burlington Official Plan Review**

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 presentation slides from the *Drive-through Stakeholder Meeting* on February 18, 2014 as well as the background material currently available to the public. Please accept this as our written submission on the subject matter.

The following comments are based on the information contained in the slides presented during the meeting:

Slide Number:	Comment:
5	As you are aware the Burlington Zoning By-law already prohibits restaurants with a drive-through facility (DTF) in the downtown. As this prohibition already prevents food service DTF from locating in the Downtown we do not understand the specific need for a prohibition at the level of the Official Plan. This is also reflected in the significant case law related to prohibitions at the level of the Official Plan that will be referenced further below.
7	The Commercial Strategy Study recommends additional design considerations for DTF where permitted on Fairview St including the following: <ul style="list-style-type: none">• Not located on corner lots;• No more than one drive-through per building; and• 150 m separation distance between DTF. These regulations are unusual and we ask that you please advise what

	studies were completed to justify these suggested regulations. We would consider these to be overly restrictive and not justified.
14	The map shows where new DTF Official Plan prohibitions are proposed which would also include the downtown. DTF would be permitted without limitations everywhere else. We accept the existing ZBL prohibition in the downtown area but object to additional prohibitions in the new Official Plan. DTF can be successfully integrated into a higher-density mixed use buildings through strategic site plan design. Prohibition policies to control the specific location of DTF should only be considered in the ZBL, not at the level of the Official Plan.
15	These examples effectively show how a standalone restaurant and bank can be incorporated into higher-density mixed use buildings. However, these examples do not include a DTF and only the primary use is retained. We agree with this approach but would suggest that these example developments could include a DTF to the rear or flankage side of the property. There are many examples of restaurants in mixed-use buildings which successfully include a DTF in dense populated and mixed use areas. Examples of these can be provided to you upon your request.
17	Design policies at the level of the Official Plan should be 'generic' for all land uses with reference to specific use guidelines as noted in 'option #3' (separate Urban Design Guidelines for DTF).

As noted above, we do not support any prohibitions of DTF in the new Official Plan. New development of DTF within the mixed-use (intensification corridors) would be required to conform to the regulations of the ZBL and would require Site Plan approval. Further, the proponent of a DTF would have to meet all other Official Plan policies such as urban design, building massing and built form that will no doubt be added to the new Official Plan. As such, a proposed new DTF anywhere in the city would have to meet all policy requirements just like any other use would. This would ensure a high-quality of design, pedestrian orientation, and mitigation of impacts on adjacent uses without the need or justification for a specific DTF prohibition. Simply, if a proposed DTF can't meet all policies of the new Official Plan as would any other use would have too, the use cannot proceed. This was the premise of a recent decision of the OMB relative to a settlement reached with the Town of Grimsby on its new Official Plan.

We have also reviewed Phase 1 of the Commercial Strategy Study (*Commercial Policy and Design Review Background Paper*) and note that it includes some inaccurate statements. Five other Official Plans from similar municipalities (Mississauga, Oakville, Guelph, Ajax, and Kitchener) were reviewed to provide context particularly for DTF restrictions in mixed use designations (section 4.2.3). The City of Guelph does not prohibit DTF in their OP and was excluded from this section. It is important to note that the other four municipalities initially proposed DTF prohibitions but have since removed any specific prohibitions through consultation or through a settlement at the OMB.

Further and as referred to in the comments above relative to "slide 5" in the table above, specific urban design guidelines and to a much lesser extent zoning based regulations for DTF are common throughout Ontario. It is important to note that the implementation of official plan based policies that specifically prohibit DTF in areas that would otherwise permit service retail commercial uses and associated parking areas is not a common or appropriate form of policy based regulation applied to these facilities in Ontario. In fact, the Ontario Municipal Board has noted in a case regarding the new official plan for the City of Ottawa that *"the proper approach for controlling these is the one adopted by the City of Toronto, which prohibits these facilities through its zoning by-law and not in its Official Plan. Official Plans do not need to be prescriptive like zoning by-laws."* This is an approach repeated in virtually every case, both at the Ontario Municipal Board and in the Courts, on proposed official plan

prohibitions for this specific use. It is important to note that any considered prohibition of DTF in the zoning by-law is limited to very specific areas which need to be appropriately considered and justified.

Further, we also wish to note that of the existing 25 locations owner/operated by our clients 6 locations appear to be within a proposed new the designation that would prohibit a drive-through in the new Official Plan. If the suggested prohibitions were to stand we would object to these locations becoming Legal Non-conforming within any future zoning by-law amendment pertaining to these existing locations.

The above comments are based on the information currently available to us. We request an opportunity to review a copy of the final Commercial Strategy Study and related city staff report so that we can comment on this again prior to recommendations going to City Council which you have advised would be in May or June of this year

Thank you for your time and considerations of our comments herein. Please do not hesitate to contact us to discuss our comments or for additional information.

Yours truly,
Labreche Patterson & Associates Inc.



Victor Labreche, MCIP, RPP
Senior Principal

VL/jv

Copy:

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Susan Towle, Wendy's Restaurants of Canada
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EMBEE PROPERTIES LIMITED

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July 4, 2014

VIA E-MAIL

Planning Department – 2nd Floor
City of Burlington- 426 Brant Street
Burlington, ON, L7R 3Z6

Attention: Phillip Caldwell, MCIP RPP
Planner II - Policy | Planning & Building

**Re: Official Plan Review Commercial Strategy Study- July 7, Council Workshop:
Drive- Through Policy Guidelines/Recommendations**

Dear Mr. Caldwell:

Without Prejudice

Embee Properties Ltd. is the registered owner of certain lands in the City of Burlington; namely 3041-3061 Walkers Line.

We have carefully reviewed the various new drive-through policies proposed as part of Draft Official Plan Review, Commercial Strategy Study and Briefing Note.

Further to our letter of March 19, 2014 it is our submission that these proposed policies do not reflect appropriately the purpose of drive-through facilities nor recognize their essential value as established land uses on our property.

For these reasons, we object to all general and specific policies relating to drive-through facilities.

We continue to welcome the opportunity to review our concerns with staff during their ongoing Official Plan Review process.

We request that we receive written notice of any and all further actions by the City with regard to the file.

Yours very truly,

EMBEE PROPERTIES LTD.

Jonathan Rubin MCIP, RPP
Phone: 416.250 5858 ext.34
E-mail: jonathan@embeeproperties.ca

cc: Michael Baker- Embee Properties Ltd.

EMBEE APPLEBY LINE LIMITED

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July 4, 2014

VIA E-MAIL

Planning Department – 2nd Floor
City of Burlington- 426 Brant Street
Burlington, ON, L7R 3Z6

Attention: Phillip Caldwell, MCIP RPP
Planner II - Policy | Planning & Building

**Re: Official Plan Review Commercial Strategy Study- July 7, Council Workshop:
Drive- Through Policy Guidelines/Recommendations**

Dear Mr. Caldwell:

Without Prejudice

Embee Appleby Line Ltd. is the registered owner of certain lands in the City of Burlington; namely 3091 Appleby Line. The aforementioned property is subject to file # 535-019/13. Please note, 2 drive-through facilities are proposed along Appleby Line.

We have carefully reviewed the various new drive-through policies proposed as part of Draft Official Plan Review, Commercial Strategy Study and Briefing Note.

Further to our letter of March 19, 2014 it is our submission that these proposed policies do not reflect appropriately the purpose of drive-through facilities nor recognize their essential value as established land uses on our property.

For these reasons, we object to all general and specific policies relating to drive-through facilities.

We continue to welcome the opportunity to review our concerns with staff during their ongoing Official Plan Review process.

We request that we receive written notice of any and all further actions by the City with regard to the file.

Yours very truly,
EMBEE APPLEBY LINE LTD.

Jonathan Rubin MCIP, RPP
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cc: Michael Baker- Embee Appleby Line Ltd.

EMBEE-JOVIC DEVELOPMENT GROUP

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July 4, 2014

VIA E-MAIL

Planning Department – 2nd Floor
City of Burlington- 426 Brant Street
Burlington, ON, L7R 3Z6

Attention: Phillip Caldwell, MCIP RPP
Planner II - Policy | Planning & Building

**Re: Official Plan Review Commercial Strategy Study- July 7, Council Workshop:
Drive- Through Policy Guidelines/Recommendations**

Dear Mr. Caldwell:

Without Prejudice

Embee-Jovic Development Group is the registered owner of certain lands in the City of Burlington; namely 3505 Dundas Steet.

We have carefully reviewed the various new drive-through policies proposed as part of Draft Official Plan Review, Commercial Strategy Study and Briefing Note.

Further to our letter of March 19, 2014 it is our submission that these proposed policies do not reflect appropriately the purpose of drive-through facilities nor recognize their essential value as established land uses on our property.

For these reasons, we object to all general and specific policies relating to drive-through facilities.

We continue to welcome the opportunity to review our concerns with staff during their ongoing Official Plan Review process.

We request that we receive written notice of any and all further actions by the City with regard to the file.

Yours very truly,
EMBEE-JOVIC DEVELOPMENT GROUP


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cc: Michael Baker- Embee-Jovic Development Group