

ISSUE DATE:

**June 25, 2001**

DECISION/ORDER NO:

**1011**



Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL001383

TDL Group Ltd. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the City of London to redesignate land at 1310, 1314 and 1322 Commissioners Road West from Multi-Family Medium Density to Business District to include the subject lands within the Byron Business District  
OMB File No. O010007

TDL Group Ltd. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law Z-1 of the City of London to rezone lands respecting 1310, 1314 and 1322 Commissioners Road West from Residential R5 (R5-3) to Business District Commercial (BDC(3)) Zone to permit a broad range of uses  
OMB File No. Z000204

#### **A P P E A R A N C E S :**

##### **Parties**

TDL Group Ltd.

City of London

Byron Community Network

##### **Counsel\*/Agent**

A.R. Patton\* and B.D. Bain\*

D.G. Mounteer\*

Laurie Chan

#### **DECISION DELIVERED BY B.W. KRUSHELNICKI AND ORDER OF THE BOARD**

Byron is a community in the west end of the City of London with a busy commercial district. The commercial area is surrounded by a residential area consisting of older homes dating to the origin of the community, more recent single family neighbourhoods and, most recently, medium density townhouse development. The commercial area is located around the intersection of Commissioners Road West, one of the few contiguous east/west roadways in the City, and Boler Road. Boler Road crosses the Thames and meets Riverside Drive and further Oxford Road, two other east/west routes into the City.

TDL Group Ltd. ("TDL") is the developer of Tim Horton's Donut stores and restaurant and they propose to develop a Tim Horton's restaurant with 67 seats, 42 parking spaces and a drive-thru facility on the south side of Commissioners Road West just beyond the existing westerly boundary of the Byron Business District. The site consists of two lots – 1314 and 1322 Commissioners Road - comprising 0.77 acres with approximately 66 metres of frontage on Commissioners Road.

The concept plan shows a 3,000 square foot building on the east side of the property with parking to the west. The main entrance is on the west with access to the parking located on the western portion of the lot, and the drive-thru on the east side of the building. The exit from the drive-thru is also on the east side of the building with turning opportunities east and west on Commissioners. The plan also shows a generous buffer at the rear consisting of a landscaped area in which much of the existing mature vegetation is retained.

The site is on the very edge of the business district and would form an extension of the BDC(3) zone applicable to the business area, beyond its current boundary. The site is currently designated "multi-family, medium density residential" in the City's Official Plan and is zoned R5-3 which is a similar multi-family residential zone. The proposal would require an amendment of the Official Plan to extend the business district and a re-zoning to BDC(3) to permit a restaurant.

The opposition to the development comes primarily from the residents of the Byron area who say that the traffic effects of this development would aggravate an already bad existing situation. They say that this is an unnecessary extension of the business district which in effect intrudes into the adjacent residential area. Some are especially unhappy with the drive-thru part of the plan, saying that it is inconsistent with the pedestrian nature of the Byron business district and invites additional traffic that cannot be accommodated. Still others are concerned with the impacts that the use would have on the adjacent residential lands, although few if any of the immediate residential neighbours attended before the Board.

Before considering the merits of the TDL proposal, it is necessary to explain another element of the matters before the Board. Just to the east of the TDL proposal is a lot – 1310 Commissioners Road – which for some considerable time, possibly 25

years, has housed a veterinary office in a tidy house form building. It is zoned RO2 which permits office buildings such as medical offices, etc., but does not allow the existing long standing use. When staff reviewed the TDL proposal it noted the RO2 zone and suggested, along with its recommended approval of the TDL proposal, that the veterinary office also be rezoned to BDC(3) to make the zoning consistent with the existing use.

Apparently, according to the City's Planning Commissioner, Mr. Cote, this lot had been inadvertently rezoned improperly in the last round of comprehensive zone changes in the late 1980s. The effect was to make the vet's office a legal non-conforming use, a matter that was of no apparent concern to the occupant of the lot, but one which the planners felt should be rectified at the same time as the TDL proposal is processed.

The consulting planner retained by the City for this file had also coincidentally been the planner who prepared the by-law. She did not agree with this explanation. They note that the building is a well kept house form structure that blends well with the adjacent residential uses and that its RO2 zone, while not perfectly consistent with its use, has not posed a problem for them or the owner. A small lane providing access to the townhouses at the rear separates the existing business district from the vet's office and the City's retained planner considers this lane to be a distinctive, 'hard' zoning line that visually separates the business district from the houses to the west. They want the vet's office to remain as it is, and reject any tampering with its zoning or with the zoning on the lands proposed to be developed by TDL.

In any event the TDL interests have no objection to the concurrent consideration of this rezoning along with their proposal. The matters were therefore consolidated and heard together.

A particular objection to the proposal comes from the neighbour to the west of the TDL proposal, Mr. Broere. He owns a very oddly shaped parcel consisting of a triangular house parcel which fronts on Commissioners Road near an intersection with the lane leading to the townhouses in the rear, and a long narrow rectangular parcel further south. The two parcels are joined by a three foot isthmus and form one peculiar lot. His objection is unclear since he opposes the TDL proposal but is adamant that he

would like his entire lot zoned commercial also. He explains that he has been badly treated by the authorities over the years. However, he retained his oddly shaped lands over the years; these lands, especially the rear parcel, can only be described as remnant or holdout parcels from nearby residential development lands, and when approached by TDL was not interested in disposing of any of his lands. Neither is he interested in disposing of his lands to the rear for continued residential development, preferring instead that they be included in the commercial zone. It was hard to accommodate Mr. Broere's concerns or to associate them with those of the other residents.

In the end the most that could be considered of Mr. Broere's interest is that, if approved, he will be a neighbour to the Tim Horton's restaurant on the west side, where the proposal includes mostly parking and landscaping. The Board's concern is with compatibility of the two uses and the adequacy of buffering.

The most pressing concern of the residents is with the traffic in the area and the effect that the proposal will have on it. Everyone agrees that Commissioners Road is busy, especially in the morning. People trying to get their kids to schools or simply trying to get through Byron can be expected to wait in traffic for several minutes, especially at the turning point onto Boler. Ms Chan, one of the organizers of the opposition, showed videos taken on a typical morning through the front window of her van, just days before the commencement of the hearing. It demonstrated what everyone had been saying about the volumes of traffic and the delay.

Many others noted the opportunities for traffic mishaps caused by the increased volumes and were concerned especially about the children attending the school to the west of the site. Some who spoke at the public evening session of the hearing described how the traffic had become especially bad in recent years with increased development in the area and to the west. They noted also the development of the new fire hall and expressed concern with the ability of fire trucks and other emergency vehicles to navigate the traffic. Still others objected to the noise and congestion caused by the traffic in the business district and considered any proposal that would generate additional traffic or traffic movements to be inappropriate to the small town atmosphere that people valued in Byron.

In the course of reviewing the application, it was circulated to various departments and agencies. Key among the circulation comments, in light of the residents' concerns, were those from the traffic department. This evidence was provided by Mr. Petrie, formerly employed by the City and now employed elsewhere in Ontario. He was responsible for reviewing the development and explained that much of the traffic, especially the morning traffic on Commissioners and at the intersection with Boler Road, is commuter traffic from newly developing areas to the west seeking to cross the river and proceed on Riverside Drive or Oxford Street. Commissioners Road is only two lanes in this location, but handles a significant volume of traffic, 18,000 cars per day by most recent counts, 10,000 of which are estimated to be coming from outside the City. He concedes that at the peak times of the day, especially the morning peak, the volumes exceed the road's capacity.

However, much of this traffic will be diverted when the Oxford Street extension - including the Oxford Street bridge over the Thames - is built. These improvements will provide more direct access from the west and will significantly reduce the volumes on Commissioners Road. The improvements are now at an advanced stage with the environmental assessment completed, tenders pending and construction scheduled for next year.

In addition, Mr. Petrie reviewed the proposal in light of the expected traffic generation based on ITE estimates for a use of this kind. He concluded that the amount of new additional traffic generated will not be significant. As he explained, a restaurant of this kind does not attract significant new traffic to the site, but can be expected to divert existing traffic from the roadway. The concerns then are not with additional volume on the road, but with movements in and out of the site and, because of the drive-thru, with the adequacy of storage on the drive-thru lane. This latter point is key since a lack of storage may result in obstruction at the entrance. To this end, the traffic department conducted an independent study of drive-thru storage lanes at other locations and concluded that at the peak, storage for a maximum of 12 cars is necessary. Beyond this, people will simply park their car and enter the restaurant. The proposal provides storage for 15 cars in addition to the parking area.

On the question of access to the site, the main concern is with the left turn movement for west bound traffic into the site. Since the use takes greater advantage of

the morning traffic, the west bound entering movement is not the most prominent. Nevertheless, Mr. Petrie points out that a left turn lane – really an extension of the left lane already in existence in the business area – can be provided on the existing roadbed with modification to the markings. In other respects, he is satisfied that access to, and egress from, the site is adequate and normal.

Mr. Petrie also considered the traffic implications of the site in light of other nearby uses. For example the City has recently established a fire hall north of Commissioners Road in the triangle between Boler Road and Halls Mill Road. He could see no conflict with movements of the fire truck caused by the development of the site. Similarly the proximity to a school a short distance west on Commissioners Road was not a conflict in traffic terms and does not present an unacceptable safety hazard. This is a busy road requiring extra caution by parents and all pedestrians, especially in the morning, and the proposed facility as an extension of the business district will not change this significantly.

The planning department accepted the conclusions of the traffic officials and conclude that impacts arising from the proposal will not be significant and that the improvements in the area arising from the Oxford Street extension will lessen traffic in the Byron area significantly. Both Mr. Mottram and the planning commissioner, Mr. Cote, confirmed this conclusion.

Mr. MacLeod, a representative of TDL also argued that the facility that is proposed caters to a pedestrian clientele. He notes that the restaurant includes seating for 67 persons and that within a vicinity of one mile – a presumed reasonable walking distance - there is a population of 14,000 people. He expects that a good deal of their business will be from people in the neighbourhood and from employees in the nearby business district. He asserted that in the last six or seven years the appeal for drive-thru's has increased to the point where they are a practical necessity. He concedes that it is likely that the majority of the business, especially in the morning, will be from passing motorists.

On the question of traffic the Board agrees with the traffic officials and planning staff of the City. It is acknowledged that the area is now busy with traffic, causing some difficulty and inconvenience due to congestion. However, the Board is satisfied - as

were the staff - that the Oxford Street extension will relieve some of this at roughly the same time that the restaurant is proposed to come on line. The road system in the area can accommodate the additional movements and in combination with the site design and the organization of entrances, exits and turn lanes, the amount of additional inconvenience will be minimal and acceptable in the vicinity of a busy commercial district.

On the question of the extension of the business district, the planning view was that the business district designation does not extend to this parcel. Nevertheless the extension is a reasonable one that represents good planning. Byron is a growing community in which there had been a great deal of development and redevelopment in recent years. The Official Plan recognizes the possible need for expansion of the business area and includes criteria for the extension of the business district. The proposal conforms to these criteria by maintaining a low rise form that is similar to the nearby residential uses, providing an ample buffer and situating the building close to the street to provide a store front appearance consistent with many of the other stores in the business district in providing pedestrian access from the street.

Ms Montieth argues that the appropriate boundary line for the business district is the lane between the stores and the veterinary clinic, which forms an extension of Halls Mill Road. And she contends that the zoning on the veterinarian's office is not a mistake, despite Mr. Cote's evidence, but is a reflection of the fact that this is a transitional use between the business district and the residential area to the west. Although it is not the correct zoning on the land, it is appropriate. She notes also that the extensive parking area attached to the west and the drive-thru are not indicative of a pedestrian orientation and do not justify an extension of this magnitude into the residential area. The City's staff planners do not regard the extension as a significant one and accept that any use in the business district – even a primarily pedestrian use - will occasion some need for parking.

In short the City's staff considered the extension reasonable and acceptable, that the Plan designation and the zone proposed are appropriate alternatives to the existing residential zone, that the height and setback are also appropriate. The site is large enough to accommodate the use plus considerable buffering, and the staff conclude that a site plan will be required that will properly organize the use on the site.

The Board agrees with the staff review of the Official Plan boundary extension and the re-zoning. This applies also to the re-zoning of the veterinarian's office. The Board agrees that it is appropriate that the proper zoning be put in place to reflect the land use as it has existed for some time. The Board agrees that this is a minor extension to accommodate a reasonable amount of expected growth in the business district. As much as can be expected, the use will be consistent with the uses in the business district, combining a pedestrian oriented restaurant business located close to the street frontage, with parking and a drive-thru for automobile oriented service.

An extension of the business district into a residential area often results in concerns of compatibility and buffering. In addition the existing site has an older home which was at one time identified as having some heritage value, and the lot is well treed with mature vegetation. The development will be required to maintain as much of the mature vegetation as possible, especially at the rear of the lot where it abuts adjacent townhouses. The lot is ample at the rear and in combination with the retained mature vegetation, the site can be expected to be well buffered from the housing.

Of special concern is the speaker system for the drive-thru. In this case, the speaker is located about 30 metres from the nearest residential use. The area in the vicinity of the drive-thru and the speaker is bordered by a 2.4 metre wooden sound wall which in combination with the distance separation and the vegetation is adequate to attenuate the expected sounds. While the Board heard from a number of Byron residents, no one from the immediate residential area attended with concerns.

Finally, on the west side of the site is the Broere residence as mentioned previously. They will abut the entrance and parking area of the site and will not be close to either the restaurant building or the drive-thru use. A landscaped area with vegetation is proposed for the boundary on this side of the site.

In short the Board is satisfied that this is an ample site to accommodate the use proposed and that the distance separation from residential uses along with fencing and plantation will adequately buffer this site from the adjacent residential uses.

The Board heard from some of the residents that they were not opposed to development or to Tim Hortons in particular. They argued that this particular location is of concern. A representative of TDL described, however, the process that was

undertaken to locate a site in the area, including a few options in the existing business district. TDL takes pride in its relationship with the community and attempted to accommodate as much as possible the concerns of the community. However, their investigation of other potential sites was not successful and the proposed site offered the best opportunity. The residents complained that they had not been consulted or that their concerns were not answered, but the Board is satisfied that their concerns have been addressed.

The Board heard evidence of many other locations in the City where there is a similar relationship between the restaurant and residential uses. Many of these cases are in equally busy areas and have a drive-thru facility. In these instances, the relationship is an acceptable one that has not caused deterioration or destabilized the adjacent residential area. In the Byron case, TDL has made efforts to replicate its experience in other parts of the Province by introducing a downtown type design, close to the street and within walking distance of homes and businesses.

Finally there are residents of the area who expressed concerns that this would lead to the loss of some of the historic fabric and the village atmosphere of the Byron Business District. A member of the business community expressed concern that Byron is too busy and that the noise from the hustle and bustle of the village traffic make their businesses – such as outdoor cafes and shopping – less attractive. The Board agrees with the City's planners and other observers that Byron is a busy village that is attractive to those doing business. Some expansion of the business district is warranted and so long as it can be done in a way that is consistent with the Official Plan and can have a minimum of negative impacts on the balance of the community, the extension of the district is acceptable and represents good planning.

In summary the Board prefers the evidence of the planning and traffic staff for the City. As it has noted, the Board is satisfied that the proposal before it is good planning and that it conforms to the criteria established in the Official Plan for a reasonable and small scale extension of the Byron Business District. Much of this is predicated on the prospective improvements that will be realized with the extension of Oxford Street and the construction of the Oxford Street Bridge. In addition, the Board shares the planning staff's conclusion that the veterinarian's office should also be re-zoned to properly

reflect its use over many years and to put in place the most appropriate set of prescribed uses for this site.

For these reasons, the Board will allow the appeals and will re-designate the site at 1314 and 1322 Commissioners Road to Business District and re-zone them BDC(3) from Residential R5-3. In addition, following upon the consolidation explained above, the Board will re-designate and re-zone the lands at 1310 Commissioners Road to include them in the Business District and BDC(3) zone as amended from the previous RO2 zone.

The Board so orders.

B.W. KRUSHELNICKI  
MEMBER