

ISSUE DATE:

Mar. 24, 2010



MM090045

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

IN THE MATTER OF subsection 4.3(1) of the *Retail Business Holidays Act*, R.S.O. 1990, c. R.30, as amended

Applicant	OMERS Realty Management Corporation and OPGI Management GP Inc.
Appellant	Leszek Pisarek
Subject	Square One Shopping Centre
By-Law	105-2009
Municipality	Regional Municipality of Peel
OMB Case No.:	PL090045
OMB File No.:	PL090045

APPEARANCES:

Parties

Counsel

Region of Peel

R. Maciver

OMERS Realty Management Corporation
and OPGI Management GP Inc.

C. Tanzola

Leszek Pisarek

**MEMORANDUM OF ORAL DECISION DELIVERED BY D. R. GRANGER ON
MARCH 16, 2010 AND ORDER OF THE BOARD**

This proceeding began as a Board conducted mediation at the request of the above noted Parties.

At the conclusion of the second day of mediation, Mr. Pisarek requested his withdrawal as a Party with the understanding that the remaining Parties would seek the approval of an amended By-law under the *Retail Business Holidays Act*.

On consent and at the request of the remaining Parties, the Board converted the mediation to a hearing and rendered its decision and Order in the matter.

The matter began as an appeal by Leszek Pisarek (Appellant) against By-law 105-2009 (By-law) enacted by the Council of the Regional Municipality of Peel (Region) on October 8, 2009 to permit a tourism exemption under the *Retail Business Holidays Act* for the Square One Shopping Centre and area at 100 City Centre Drive, 99 to 309 Rathburn Road and 25 to 55 City Centre Drive in the City of Mississauga (City).

P. Thoma, on behalf of OMERS Realty Management Corporation and OPGI Management GP Inc. (Applicant), presented expert land use planning and market analyst evidence in support of an amended By-law. His evidence was not contradicted and no other evidence was proffered. Mr. Thoma was responsible for making the application and has been in attendance at all public meetings regarding the By-law.

Mr. Thoma confirmed his opinion that the Square One Shopping Centre represents the largest draw for tourists in the City and one of the largest in the Greater Toronto Area and its exemption would facilitate the maintenance and development of tourism.

Mr. Thoma confirmed the protection of the common pause day principle through the requirements of the *Employment Standards Act* that allows for employees to refuse to work on statutory holidays. Mr. Thoma confirmed the appropriateness of a further requirement for Square One Shopping Centre management to require the posting of notices informing all employees that while they may be requested to work on holidays, they may refuse by giving 48 hours notice and that no reprisals will result from any such refusal. Square One Shopping Centre management has agreed to provide such a notice for each individual retailer to post in an area visible and conspicuous to all employees.

Mr. Thoma confirmed that a reduction to the area covered by the exemption to only 100 City Centre Drive, the actual Square One Shopping Centre mall area, was appropriate and would not result in any change to his conclusions or opinion supporting an amended By-law. He confirmed that the Tourism Criteria set out in *Ontario Regulation 711/91* were entirely met.

Mr. Thoma confirmed that the application, background study, notice of the required public meeting and discussion at the public meeting all set out that the holidays sought for exemption were New Year's Day, Family Day, Victoria Day, Canada Day,

Labour Day and Thanksgiving Day with the hours of operation set out as 11:00 a.m. to 6:00 p.m. He confirmed that the actual By-law enacted inadvertently failed to include Family Day, due to its relative newness and not being specifically identified in the *Retail Business Holidays Act*. He also noted the inadvertent setting of the hours of operation as 11:00 a.m. to 5:00 p.m. instead of 11:00 a.m. to 6:00 p.m. The hours, 11:00 a.m. to 6:00 p.m. are consistent with existing Sunday hours of operation. Counsel for the Region was forthright in his admission that the exclusion of Family Day and incorrect hours of operation were clerical errors and requested their correction.

Counsel for the Region was also forthright in his admission that the notice for the public meeting was inadvertently published in a newspaper having general circulation in the municipality 27 days before the required public meeting instead of the minimum 30 days. Counsel for the Parties set out the unique circumstances in this case as one being under a statute that does not affect the personal rights of individuals and requested the Board exercise its discretion to abridge the notice to that served. They noted that no prejudice resulted as all who intended to appeal the By-law, Mr. Pisarek being the only one, had. A full and fair process to address the only objection has been facilitated. They also noted that the matter had received media attention in the form of articles and discussion and no others had sought status in the matter.

Having carefully considered the consent and request of the Parties, the Board finds, in the unique circumstances of this case, it to be just and proper to perfect the notice and abridge it to the notice provided. There is no prejudice resulting from the abridgment and the Board is satisfied that the matter has received a full and fair proceeding with the full consent of the Parties.

In conclusion, recognizing the full consent of the Parties, pursuant to subsection 4.3 (4) of the *Retail Business Holidays Act* the Board dismisses the appeal on the condition that the Council of the Regional Municipality of Peel amend By-law 105-2009 in the following manner:

1. The hours of operation will be 11:00 a.m. to 6:00 p.m.
2. The holidays listed will include Family Day.

3. Schedule A and Schedule B will be amended to include only 100 City Centre Drive as set out in a gray tone on Exhibit No. 2 to this hearing.

The Board so Orders.

“D. R. Granger”

D. R. Granger
VICE CHAIR