

ISSUE DATE:

**October 4, 2007**

DECISION/ORDER NO:

**2657**



PL060319

**Ontario Municipal Board**

**Commission des affaires municipales de l'Ontario**

Greenfield South Power Corporation has appealed to the Ontario Municipal Board under subsection 34(10) of the *Planning Act*, R.S.O. 1990 c. P.13, as amended, against Zoning By-law 0088-2006 of the City of Mississauga  
OMB File No. R060076

Greenfield South Power Corporation and Greenfield North Power Corporation have appealed to the Ontario Municipal Board under subsection 17(24) of the *Planning Act* R.S.O. 1990 c. P.13, as amended, from a decision of the City of Mississauga to approve Amendment No. 48 to the Official Plan for the City of Mississauga  
Approval Authority File No.: L.A.19  
OMB File No. O060063

Greenfield South Power Corporation has referred to the Ontario Municipal Board under subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, determination and settlement of details of a site plan for lands composed of Part 1, Plan 43R-7398, parts of Lots 2 & 3, Concession 1, South of Dundas Street, in the City of Mississauga  
OMB File No. M060069

Greenfield South Power Corporation has appealed to the Ontario Municipal Board under subsection 36(3) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to remove the holding symbol from By-law H-M1-2638  
OMB File No. Z060088

Greenfield South Power Corporation has appealed to the Ontario Municipal Board under section 136(1)(b) of the *Municipal Act*, S.O. 2001, c.25, from Council's failure or neglect to make a decision respecting an Application to Injure Private Trees for lands situated on 2315 Loreland Avenue  
OMB File No. M060088

**APPEARANCES:**

**Parties**

Greenfield South Power Corporation

City of Mississauga

**Counsel**

S. D'Agostino

M. Minkowski

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**DECISION DELIVERED BY J. CHEE-HING**

**1. CONTEXT**

**Background:**

The applicant, Greenfield South Power Corporation (“Greenfield”) proposes to construct and operate a natural gas fired combined cycle electric generating plant at its lands located at 2315 Loreland Avenue in the City of Mississauga (“City”). The site is designated Business Employment in the current and applicable Official Plan (“OP”) called the Mississauga Plan and zoned H-M1-2368 (Industrial) under Zoning By-Law 5500. The site is bounded by industrial type uses to the north and west; the Etobicoke Creek to the east and the Canadian Pacific Railway (“CPR”) line to the south (Ex. 5). On August 4, 2005, Greenfield filed applications with the City for site plan approval; the lifting of the holding designation “H” from By-Law H-M1-2638; and a tree removal permit. These matters are now before the Board on appeal.

In March of 2006, the City Council approved OPA 48 and its implementing ZBL 0088-2006. The applicant subsequently appealed these two planning instruments to the Board on the basis that these instruments would not permit its proposed natural gas fired electric generating plant on the subject site. The City then brought a motion to dismiss Greenfield’s appeals on OPA 48 and ZBL 0088-2006. The Board in its decision of October 3, 2006 (OMBD No. 2794) granted the City’s motion, in part, and allowed Greenfield’s appeals on these two instruments to proceed only on a site-specific basis.

That panel of the Board further ordered that Greenfield's appeals on the subject site be consolidated with its site-specific appeals of OPA 48 and ZBL 0088-2006.

**The Proposal:**

Greenfield's proposal calls for the construction and operation of an electricity generating plant to be fuelled primarily with natural gas (approximately 98 percent). Standby fuel will consist of No. 2 fuel oil for use only during natural gas interruptions. The Greenfield South Power Project as it is formally called will have a generation capacity of 280MW (megawatts) and is configured as a combined cycle power plant. Under the contract with the Ontario Power Authority (OPA), the plant, if approved, will operate primarily during "shoulder" and "peak" electricity demand periods which occur typically between morning and evening on summer and winter business days. The proposal based on current projections will run about 25 percent of the hours in a given year (Ex. 2A).

**The Issues:**

At the onset of the hearing, counsel for both the applicant and the City advised that the site plan issues raised by the City relating to storm water (issues #4, #5), fire fighting facilitation (#7), and municipal services and street improvements (#8) were no longer to be argued at this hearing. Mr. Minkowski for the City further advised that the issue of particulate emissions will not be raised as part of his submissions on the air quality issue (#10) during the hearing and that matter will be raised through the Ministry of the Environment (MOE) review process should the applicant be successful with his appeals at this Board. The remaining issues on the Issues List to be adjudicated are provided as follows:

**Issues List**

**Official Plan and Zoning By-Law**

1. Does the designation on the subject land, prior to OPA 48, permit its development for a gas-fired electric generation use?
2. Does it represent good planning to exempt the subject lands which are designated Business Employment from the City of Mississauga official plan prohibition that in general restricts the location of power generating facilities to lands designated Industrial and to permit on the subject lands a natural gas-fired electric power generation facility?
3. Is it appropriate to remove the permitted use of gas-fired electric generation from the subject land?

**Site Plan Approval**

6. Fuel Oil Storage Capacity – Should the amount of stored fuel oil be reduced given the site’s proximity to Etobicoke Creek and the rail corridor and the stormwater management plan?
9. Noise – Is the 7 meter noise wall shown on the site plan appropriate from a visual and functional site layout and perspective (i.e. – not acoustic impact)?
10. Air Quality – Can the proposal be developed without creating an unacceptable risk of icing impacts on adjacent roads and rail line as a result of the vapor plume emanating from the cooling towers?

**Lifting the “H”**

11. Has Greenfield South met the conditions of lifting the H?

**The Positions of the Parties:**

It is the position of the City that it has made a concerted decision to establish a policy framework for power generating uses through various planning documents including the Mississauga Plan, OPA 48, and ZBA 0088-2006. The applicant was well aware of the City's intentions with respect to power generating stations and the need to bring the current zoning by-law into conformity with the official plan. There is no compelling planning reason to grant a site-specific exemption from OPA 48 and ZBA 0088-2006. The application fails to meet the principles of good planning with regard to site-specific exemptions to the OPA and ZBA. The Mississauga Plan (OP), which is the current OP, does not permit power generating stations on the subject lands. It is the City's position that the applicant's proposal is a power generating station.

It is the position of the applicant that the proposal is a permitted use under the current zoning, which was put in place by a previous OMB decision (OMBD No.0783 [2004]). The designation under the current OP also permits the development of the proposal. OPA 48 and ZBA 0088-2006 were passed by City Council after the applications for the natural gas fired electric power generation plant were made. The effect of the OPA and ZBA is to remove this permission from the subject lands. This is a downzoning of the subject lands and there is no evidence of a public benefit that would justify this downzoning and erosion of a landowner's development rights. The subject site is one of two sites in the City selected by the Province of Ontario for the location of a natural gas fired electric generator subject to required environmental assessment and local planning approvals.

**2. FINDINGS OF THE BOARD:**

At the hearing which took three weeks, the applicant called four expert witnesses: Messrs. G. Vogt (president of Greenfield South Power), expert in electrical power generation; B. Gastmeier, acoustics engineer; P. Complin, air emissions

engineer; and R. Dragicevic, planner to provide evidence in their respective disciplines. The City called Mr. J. Hardcastle, staff planner to provide planning evidence in opposition to the application. There were six participants – Ms E. Francisco, president of the Sherway Homeowners and Recreation Association, Ms R. Stummer, Mr. B. Francisco, Mr. C. Tyler, Mr. L. Mancini and Mr. B. Upper – who all provided statements and testified in opposition to the application. Forty seven exhibits were filed. Mr. D’Agostino advised the Board that his client is no longer pursuing the appeal on the tree-cutting application, as it is no longer an issue.

This panel of the Board considered all of the evidence given by the expert witnesses (both in the form of their witness statements and their oral testimony), the submissions of counsel, and the lay evidence of the participants in deriving its findings.

In the view of this panel, the remaining issues can be distilled into the central issues to this hearing, which are firstly, whether the proposal is an appropriate use for this site, and if so, then site specific exemptions to the OPA and ZBA should be granted. If it is not an appropriate use then the application fails and all the appeals are disallowed. Secondly, if the Board determines that the proposed use is appropriate then under what conditions, if any, should the Board grant draft site plan approval and remove the “H” designation on the site.

The Board’s findings are as follows:

1. The Board finds that the designation of Business Employment under the Dixie district policies of the Mississauga Plan, which was the OP in force at the time of the applications, permits industrial uses within enclosed buildings including manufacturing. The Board finds that the production of electrical power within an enclosed structure as proposed by the applicant falls within the uses permitted in an M1 zone under this designation. Further, the Board finds that the current zoning of the site – “H-M1-2638” as a result of a previous OMB decision (OMBD

No.0783 [2004]) confirms the development of the site as a power generating facility subject to the removal of the “H” symbol, site plan approval and a building permit. The Board finds that the effect of the proposed ZBA would be to remove this permission from the subject site as confirmed through the aforementioned OMB decision. This, in the Board’s view, is tantamount to a downzoning of the subject lands. The City has not demonstrated in its evidence and submissions that there are significant public benefits, which justify the taking away of this underlying zoning permission.

2. The Board finds that the location of the site to be within a stable industrial area. The Board finds the proposed use to be appropriate for the site and would be generally compatible with the surrounding area. The Board finds that site specific exemptions to the OPA and ZBA should be granted to permit the proposal subject to certain site plan conditions.
  
3. On the issues relating to the site plan referral, the Board makes the following findings:
  - a) The volume of fuel oil to be stored on site is excessive. The Board finds that a 50 percent reduction in the volume of fuel oil stored at the site is appropriate. This would enable the applicant to have the equivalent of six months worth of plant operation and meet his business needs.
  
  - b) On the issue of the noise wall, the Board finds the applicant’s offer to reduce the height of the noise wall to 7m, construct a chain link fence in front of this wall facing the rail line, and, provide a 2m gap with landscaping to be an acceptable compromise. The result would be the relocation of the noise wall 2m inwards from the property line.

- c) On the issue of the risk of potential icing impacts caused by vapour plumes from the cooling towers, the Board finds that the risk of such icing events to be marginal. The Board finds that the proposal can be developed without creating an unacceptable risk of icing impacts on adjacent roads.
4. The Board will withhold it's Order in respect to the lifting of the H designation on the subject site until it receives confirmation from the City that the conditions for the lifting of the H designation have been met by the applicant.

The reasons for these findings follow.

### **3. THE EVIDENCE, ARGUMENTS, AND ANALYSIS:**

#### **Official Plan and Zoning By-law Issues (Issues # 1, 2, 3 of Issues List):**

Issue #1, asks whether the current designation on the subject land permits the development of a natural gas-fired electric generation use. Mr. Dragecivic, planner for the applicant testified that the City has been aware of the applicant's proposal since December of 2004 and that the applicant was advised by planning staff that the site was appropriately zoned for the development of a natural gas fired electrical power generator. No issue was made by the City about the OP designation of the site at that time. Relying on that advice, the applicant proceeded to purchase the lands, retain the necessary consultants to undertake the necessary studies and obtain planning and environmental approvals. He testified that the Board in a previous decision on the same lands (OMBD No. 0783 [2004]) confirmed the development of the site as a power generating facility subject to the removal of the "H" symbol, site plan approval and a building permit. In that decision the Board confirmed that, the business employment designation permits industrial uses that operate within enclosed buildings. This decision



was made with the Board having regard for the approved official plan in place at that time (Mississauga Plan).

He gave further evidence that a planning staff report dated October 24, 2005 to City Council on the applicant's proposal confirms that the zoning in place permits a power generating facility and that the applications filed by Greenfield must be processed under the zoning in place. Appendix 9 of the same report confirms that no ZBA is required to permit the proposed power generating plant and that the existing zoning which permits the use overrides the OP policies (Ex's 1,10A).

Mr. Hardcastle, planner for the City in his testimony acknowledged that the underlying zoning in place at the time of the application permitted the natural gas-fired electric generation proposal. However, he disagrees that the Mississauga Plan designation of the subject lands permits the use. It was his testimony that the applicant was advised that while the zoning was in place, the OP in place permitted power generation uses only in lands designated industrial. The subject land is designated business employment. He further testified that the applicant was well aware prior to his submission of his site plan application on August 4, 2005 that an official plan and comprehensive zoning by-law review were underway which would bring all lands within the City in conformity with the OP. These amendments would change the zoning on the subject lands and would not allow power generation in lands not designated industrial (Ex's 8, 9). It was his testimony that the business employment designation in the Mississauga Plan does not include power generating facilities as a permitted use.

Section 3.3.1.1 of the Mississauga Plan states that:

“Uses permitted by the Business Employment designation are:

- a. industrial uses, including manufacturing, assembling, processing, fabricating, research and development, sales and service, warehousing, distributing and wholesaling; .....

The Board finds that the production of electrical power as proposed by the applicant falls within manufacturing uses within the business employment designation of the OP. The OMB decision of April 20, 2004, in this panel's view confirmed that such a use was permitted on the subject lands. In that decision, the panel recognized the business employment designation under the OP, which permitted a range of business activities including industrial uses that operate within enclosed buildings. This Board decision was issued on April 20, 2004. If the City had any concerns about that Board decision on the zoning not being in conformity with the OP respecting this permission then it ought to have amended the OP.

Furthermore the Board finds that the October 24, 2005 planning staff report to City Council to be clear in its recognition that the zoning permissions were in place to process the applicant's proposal. They did not, in that report, advise Council that an OPA was required to process the application. In addition, Appendix 9 to that staff report states that although the proposal would not conform with the Business Employment designation that the existing zoning, which permits the use, overrides the OP policies.

Issues #2 and #3 speak to whether it is good planning to exempt the subject lands from OPA 48 and whether it is appropriate to remove the permitted use as is currently intended under ZBL 888. To put it in simpler terms, these issues ask whether the applicant's proposal is an appropriate use for the site and whether exemptions to the OPA and ZBA should be given to allow the proposal.

Mr. Dragicevic proffered evidence that the subject lands is a brownfield site that has been vacant for at least 25 years. It is located within an industrial area with excellent proximity to the hydro-electric transmission lines and surrounded by uses that are either industrial to the west and north, conservation lands (the Etobicoke Creek) lands to the east and the CPR line to the south. It is his opinion that the site is an excellent location for an electrical power generating facility. It is compatible with the

surrounding uses and that there are no adverse planning impacts to the surrounding area from a noise, air and traffic perspective.

The Toronto Region Conservation Authority (TRCA) has not objected to the proposal and has worked with the applicant in the site plan layout. There is to be a dedication of lands to the TRCA as part of the conditions for the lifting of the H designation on the site. The proposal meets all of the requirements of the M1 zone (the underlying zoning) with the exception of frontage requirements on Loreland Avenue. The frontage issue should be resolved in the near future when the City dedicates Loreland Avenue as a public highway.

It is his opinion that OPA 48 and its implementing ZBL 088 would have the effect of removing the current zoning permission for a power generating facility as proposed by the applicant. The definition of a power generating facility in OPA 48 does not include a combined cycle power generating facility, which is what the applicant is proposing. ZBL 088 restricts the types of power generating facilities in the M1 zone to only those that are gas-fired. This in Mr. Dragicevic's opinion is tantamount to a downzoning of the subject lands.

Mr. Hardcastle adduced in his planning evidence that the City by its actions has made a concerted effort to establish policies for the location of power generating uses within the City and provide clarity to the term power generating facilities and power generating stations. It was his evidence that OPA 48 and its implementing ZBL 088 are two of the planning documents, which the City have utilized to address these objectives. It was his opinion that the proposal constitutes a power generating station as defined in the Mississauga Plan and this use is not permitted in lands designated business employment. OPA 48 and ZBL 088 complete an integrated policy and regulatory framework for the appropriate location of power generating uses in the City and that there is no compelling reason to exempt the subject lands from these planning documents.

It was Mr. Hardcastle's planning opinion that the proposal is not compatible with the surrounding area. The size of the proposal is not consistent with the built form in the area, which is characterized by one to two storey structures. The height and mass of the proposed development will be visible throughout the surrounding community. It was his opinion that the potential impact of icing on the nearby roads due to the vapour plumes from the plant is a significant safety concern. The size of the auxiliary fuel tanks and its close proximity to the businesses that back onto the site are of a safety and visual concern both to the planner as well as the participants at the hearing (Ex's 5, 8, 9). It is his planning opinion that the proposal fails the tests of good planning, it is not compatible with the surrounding area and is a visual anomaly with the surrounding area. As such, the proposal should not be exempt from OPA 48 and ZBA 088.

Counsel for both parties vigorously argued their positions on whether the proposal is an appropriate use for the site and should be exempt from the respective amendments. It was Mr. Minkowski's submission that OPA 48 and ZBA 088 in conjunction with OPA 25 complete an integrated policy and regulatory framework for the appropriate location of power generating uses in Mississauga. There is no compelling planning reason to exempt the subject lands from these amendments and that the granting of site specific exemptions will have an adverse impact upon and destabilize the goals and policies of the Mississauga Plan, OPA 48, and OPA 25 as it relates to power generating uses and their location within the City.

The thrust of Mr. D'Agostino's submission was that the underlying zoning for the subject lands permits the applicant's proposal. The use is also permitted in the Mississauga Plan designation for the M1 zone within which the site is located. To remove this permission from the subject lands through OPA 48 and ZBA 088 is tantamount to a downzoning. Mr. D'Agostino submitted that these amendments were done by the City in the face of the knowledge that there was an outstanding application for a power plant on the subject site and this goes to the issue of fairness.

It is the finding of this panel that OPA 48 and ZBA 088 will remove the permissions for the subject site to enable the applicant to construct and operate a natural gas-fired combined cycle electric generation plant as proposed. The Board has already determined that with respect to Issue #1, the production of electrical power as proposed by the applicant falls within manufacturing uses within the business employment designation of the Mississauga Plan. To remove this permission is a downzoning of the subject lands. This in the Board's view is a curtailment of the applicant's rights to develop his property in accordance with the permissions given under the applicable zoning by-law. If a planning authority proceeds to downzone an applicant's lands there must be a clear demonstration that there will be a public benefit or good arising from this downzoning and that this public good outweighs the loss of the individual's planning rights. This is a fundamental test to be used when accessing the erosion of an individual's planning rights.

In the matter at hand, the Board finds that the City has not demonstrated that a public good or benefit will result if the site specific exemptions to the OPA and ZBA are not granted. On the contrary, the Board finds that the proposal will contribute to the supply of electrical power in Mississauga and fulfill a need for electrical power generation within that municipality. This, in the Board's view, is a tangible public benefit. Furthermore, the Board prefers the evidence of Mr. Dragicevic that the location of the site within an industrial area and within close proximity to the hydro-electric transmission corridor and transportation facilities makes it well suited for the location of an electrical power plant. The planning impacts as adduced by Mr. Hardcastle are in the view of the Board not significantly adverse to be unacceptable.

This is not to say that, in the matter at hand, the Board does not recognize the Municipality's role to clearly set out its future physical, social and economic development through its Official Plan policies and to ensure that its Zoning By-laws conform to the OP. In fact it does recognize this role. However, based on the evidence

heard at this hearing, it is the Board's view, that in the face of the City making a concerted decision to establish a policy framework for power generating uses, planning staff, in its report to council, stated that the applicant's proposal is to be processed under the underlying zoning in place. Planning staff in its analysis deemed that the zoning permissions were in place to allow the proposal and informed the applicant of this both prior to and after Greenfield submitted its applications.

There was considerable debate and evidence proffered by both parties on the terms "power generating stations" and "power generating facilities", its usage in the various planning documents and under which term the proposal fell under. In light of this panel's finding that the Mississagua Plan permits the proposed use in an M1 zone, the Board finds the arguments on this as not relevant to its findings.

The Board is cognizant of the participants concerns, all of whom either live or have businesses in the area. However, the Board finds that these concerns are more appropriately of a site plan nature and will be addressed further on under the site plan issues.

For these reasons this panel of the Board finds that the proposal is an appropriate use for the site and that site specific exemptions to OPA 48 and ZBA 088 to allow this proposal are to be given subject to certain conditions, which are elaborated upon in the Conclusion Section of this decision.

**Site Plan Issues (Issues No. 6, 9, 10 of Issues List)**

Issue No. 6 relates to the amount of fuel oil proposed to be stored and whether it should be reduced given the site's proximity to Etobicoke Creek, the rail corridor and the stormwater management plan. Mr. Vogt, president of Greenfield South Power and an expert in electrical power generation testified that the three storage tanks will hold

enough fuel oil to supplement the use of natural gas in the event that there is a natural gas disruption as sometimes happens during the cold winter months. It was his evidence that there is a stormwater management plan in place to ensure that any leaks will be contained on the site and not flow to the creek. It was his evidence that the TRCA had input into the siting of the tanks and they were subsequently moved further away from the creek at the TRCA's request. The TRCA has no environmental issues with the proposal. As part of the Environmental Screening Report (ESR) done for the Ministry of the Environment (MOE), MOE did not express any concern about the quantity of fuel oil stored on the site, which is estimated to be 19 million litres.

The City considers the proposed storage tanks to be too large to be properly accommodated on the site and are a threat to public safety having that much fuel stored close to residential dwellings, adjacent businesses, and the threat to the Etobicoke Creek should there be a massive failure of the fuel storage tanks and the containment dyke. The participants also expressed safety concerns as business owners whose properties back onto the location of the storage tanks (Ex. 3), and share the concerns of the City on the potential contamination of the Etobicoke Creek. Both the City and the participants also expressed concerns about the size and height of the three auxiliary fuel storage tanks which at 20m in height was visible within the neighbourhood.

The City estimates that there is enough fuel oil to accommodate 300 hours of plant operation using the fuel oil. Assuming that the plant operates on fuel oil at 4 percent of the operating hours in a calendar year it is estimated that there is enough oil stored for 3.4 years of operation (Ex 8). Mr. Vogt disputed these calculations and estimated that there is probably one year of operation based on a worse case scenario during very cold winter months. In his estimation it is not uncommon to have natural gas interruptions of up to 12 business days during cold winter months. Mr. D'Agostino submitted that neither the MOE nor the TRCA expressed any concerns on the size and height of the tanks.

On this issue, the Board finds that the amount of fuel oil proposed to be stored on the site is excessive. It is not in the public interest nor is it good planning to have that much fuel oil on the site and in very close proximity to the businesses that abut the site to the north. Mr. Vogt indicated that fuel oil can be delivered within 24 hours if the applicant requires a delivery to replenish the plant's reserves. There is no need to have one year's supply (based on Mr. Vogt's estimate), if the maximum probable interruption of natural gas is 12 days and there can be a 24 hour turnaround for fuel oil delivery. Mr. Vogt indicated that his firm will be willing to reduce the volume of fuel oil stored at the site by 10 percent, which would result in a reduction of 2m from the height of the tanks, or whatever the Board deems as appropriate. The Board finds that a 50 percent reduction in the volume of fuel oil stored at the site is appropriate. This would enable the applicant to have the equivalent of six months worth of plant operation and still adequately meet his business needs. This would result in a decrease of approximately 10m off the height of the tanks.

On the issue of the noise wall, the Board finds that the City's concerns were focussed on the likelihood of graffiti on the outside of the wall. Mr. Dragicevic indicated that the applicant was willing to reduce the height of the wall to 7m, construct a chain link fence in front of the wall facing the rail line, and provide a 2m gap with landscaping. The result would be the relocation of the noise wall 2m inwards from the property line. This option was contingent on there being no impact on the stormwater management plan due to the relocation of the noise wall. If there are any impacts on the stormwater management plan then the parties will have 30 days to resolve these concerns. The City planner indicated that if the Board approved the application then this is an acceptable compromise. It is the Board's finding that this is an acceptable compromise.

On the issue of potential icing impacts caused by the vapour plumes emanating from the cooling towers, the Board finds that the only expert technical evidence given on this issue was by Mr. Complin, air emissions engineer for the applicant. Mr. Complin testified that the modified AERMOD model predicted an insignificant number of



significant icing events on nearby roads. Icing events of one hour or less due to the vapour plumes might occur once a year and this frequency is a very small increase over the natural icing conditions that occur during the year when the ambient air temperature is below freezing (Ex. 1A). The City did not provide any technical evidence to contradict Mr. Complin and the Board sees no reason to dispute his evidence. Therefore, the Board finds that the proposal can be developed without creating an unacceptable risk of icing impacts on the adjacent roads.

**Other Concerns of the Participants:**

The participants expressed other concerns besides those relating to the fuel oil storage tanks, icing impacts on nearby roads and compatibility with the surrounding land uses in the area. Mr. B. Upper delivered an impassioned statement on the long-term harmful effects of air borne particulates that would be emitted from the cooling towers of the proposed plant. Concerns were expressed about ambient noise, the impacts of the proposal on the Etobicoke Creek, its eco-systems and the water, which flows into Lake Ontario.

At the onset of the hearing, the City confirmed that the issue of air quality as it relates to air borne particulates and emissions would not be raised at this hearing. Mr. Minkowski advised that should the applicant be successful at this Board then this issue would be raised by the City through the MOE approval process.

Mr. Dragicevic proffered evidence that the TRCA had input into the location of the fuel storage tanks on the site and that they were moved further away from the creek at their request. Furthermore, the TRCA has not objected to the proposal and its proximity to the Etobicoke Creek. The Etobicoke Creek falls within its jurisdiction. The only expert technical evidence given on ambient noise levels was that of Mr. Gastmeier, acoustical engineer for the applicant. Mr. Gastmeier conducted a noise study, which indicated that the ambient noise levels from the proposal would be below the provincial

standards. Noise levels are regulated by the MOE and they did not express any concerns as part of the ESR process (Ex.1). Mr. Gastmeier's evidence on ambient noise levels was not challenged by the City.

#### **4. CONCLUSION AND BOARD ORDERS:**

For the above noted reasons and analysis, it is the overall finding of this panel of the Board that the proposal is an appropriate use for the site and that site specific exemptions to OPA 48 and ZBA 0088-2006 are to be granted. These exemptions will be subject to certain conditions of draft site plan approval as noted in the following Board Orders.

The **BOARD ORDERS** that:

1. The site specific appeal to Official Plan Amendment No.48 of the City of Mississauga is allowed and the Board directs the Municipality in collaboration with the applicant to amend OPA 48 in accordance with this decision. The final form of the OPA is to be submitted to the Board within 30 days of the issuance of this decision.
2. The site specific appeal to Zoning By-law No. 0088-2006 of the City of Mississauga is allowed and the Board directs the Municipality in collaboration with the applicant to amend the By-law in accordance with this decision. The final form of the ZBL is to be submitted to the Board within 30 days of the issuance of this decision.
3. The appeal of the site plan application is allowed and the draft site plan as set out in Exhibit 10D is approved subject to the conditions set out in Exhibit 10D, Tab 8 and modified as follows:

- a. There will be 50 percent reduction in the volume of fuel oil stored at the site.
  - b. The height of the noise wall will be reduced to 7m, a chain link fence in front of this wall facing the rail line will be constructed, and, a 2m gap with landscaping will be provided. The result would be the relocation of the noise wall 2m inwards from the property line.
4. The lifting of the H designation on the subject site as it applies only to the applicant's power generating proposal is approved in principle. The Board will withhold its Order in this regard until it receives confirmation from the City that the conditions for lifting the H have been met by the applicant.
  5. The applicant will have 60 days from the date of issuance of this decision to address the outstanding site conditions as modified by this Order. The Order for the site plan will be withheld until the Board is advised that the site plan agreement has been entered into.
  6. This panel will remain seized in the event that it is necessary for the parties to speak to the Board on the fulfillment of the outstanding conditions.

So Orders the Board.

"J. Chee-Hing"

J. CHEE-HING  
MEMBER