

ISSUE DATE:

**July 17, 2013**



PL111148

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 2333 NSW Inc. (Marland Management Services Inc.)  
Appellant: A & W Food Services of Canada Inc.  
Appellant: Antorisa Investments Ltd. (Ralph Chiodo)  
Appellant: Azuria Group; and others  
Subject: New City of Mississauga Official Plan  
Municipality: City of Mississauga  
OMB Case No.: PL111148  
OMB File No.: PL111148

IN THE MATTER OF subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant jointly: 2188101 Ontario Inc. 1615242 Ontario Inc.  
and 2187308 Ontario Inc.  
Subject: Failure of the Regional Municipality of Peel to announce a  
decision respecting Proposed New Official Plan  
Municipality: City of Mississauga  
OMB Case No.: PL111148  
OMB File No.: PL110973

**APPEARANCES:**

**Parties**

City of Mississauga

Daraban Holdings Ltd.  
White Elm Investments Ltd.

Quick Service Restaurants  
McDonalds Restaurants of Canada Limited  
A & W Food Services Canada Inc.  
Wendy's Restaurants of Canada TDL Group  
Corporation  
Ontario Restaurant Hotel and Motel  
Association

**Counsel**

M. Taggart

M. Flowers

D. Baker

2188101 Ontario Inc.  
1615242 Ontario Inc.  
2187308 Ontario Inc.

S. Zakem

**AMENDING DECISION BY R. ROSSI**

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[1] In accordance with Rule 108 of the Board's Rules of Practice and Procedure, whereby the Board may at any time and without prior notice to the parties correct a technical or typographical error made in a decision or order, the Decision and Order issued on July 8, 2013, is hereby amended by attaching 'Attachment 1', the Minutes of Settlement (which includes "Schedule 'A' – Mississauga Official Plan – Modifications to DTF Policies) to the Decision and Order as referenced in paragraph 4 of the Decision and Order.

[2] In all other respects, the Board's Decision and Order issued on July 8, 2013 remains the same.

"R. Rossi"

R. ROSSI  
MEMBER

**Attachment 1**

**PL111148**

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**MINUTES OF SETTLEMENT**

June 21, 2013



**MINUTES OF SETTLEMENT**

**BETWEEN:**

**A & W FOOD SERVICES OF CANADA INC.,  
McDONALD'S RESTAURANTS OF CANADA LTD.,  
ONTARIO RESTAURANT HOTEL AND MOTEL ASSOCIATION,  
TDL GROUP CORP.,  
WENDY'S RESTAURANTS OF CANADA INC.**

(collectively, the "Appellants")

- and -

**THE CORPORATION OF THE CITY OF MISSISSAUGA**

(the "City")

**WHEREAS:**

1. the Appellants operate quick service restaurants containing drive-through facilities ("DTFs") throughout North America, including currently and prospectively within the City of Mississauga;
2. Mississauga Official Plan ("MOP") was adopted by City Council on September 29, 2010 and partially approved by the Region of Peel on September 22, 2011, adopted by by-law 0305-2010.
3. MOP includes a number of policies relating to DTFs;
4. the Appellants filed appeal letters dated October 25, 2011 appealing the decision of the Region of Peel to partially approve MOP, including the policies relating to DTFs, pursuant to subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13 (the "Appeals"), which Appeals, along with several others, have been consolidated under Ontario Municipal Board (the "Board") Case No. PL111148;
5. the Appellants and the City (collectively, the "Parties") have agreed to enter into these Minutes of Settlement for the purpose of a partial settlement of the Appeals;
6. the Parties have agreed that the unsettled portions of the Appeals will be consolidated with the Appellants' appeal of Official Plan Amendment 8 ("OPA 8") under Case No. PL130350;

**NOW THEREFORE** in consideration of the foregoing and of the mutual covenants hereinafter expressed and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereto agree with one another as follows:

**1.0 Recitals Binding**

1.1 The Parties acknowledge and agree that the recitals to these Minutes of Settlement are true and accurate and form a binding part of the Minutes of Settlement.

**2.0 Schedule 'A'**

2.1 The Parties acknowledge and agree that Schedule 'A' attached to these Minutes of Settlement forms a binding part hereof.

**3.0 Disposition of Appeals**

3.1 Upon execution of these Minutes of Settlement, the Parties shall proceed on June 27, 2013 to request the Board to issue an Order:

3.1.1 Allowing the Appeals in part by approving the DTF policies as modified in the form attached hereto as Schedule 'A'; and

3.1.2 Consolidating the balance of the Appeals of the drive-through policies in the Downtown Core Local Area Plan (sections 4.1.1 e) and 4.2.1 b)), with the Appellant's appeal of OPA 8, Board Case No. PL130350.

3.2 Upon the issuance of the Order referenced in 3.1 above, the Appellants agree to withdraw the portion of their appeal pertaining to section 19.16.4 of the Region approved MOP and take no further action with respect to this section of MOP.

3.3 Upon the issuance of the Order referenced in 3.1 above, the Appellants agree to withdraw the portion of their appeal pertaining to the pre-existing prohibitions which have been carried over into MOP in the Clarkson Village Community Node ("Clarkson"), the Streetsville Community Node ("Streetsville") and the Port Credit Local Area Plan area ("Port Credit") and take no further action with respect to these sections of the MOP.

3.4 For the purpose of clarity, the withdrawal of the portion of the appeal pertaining to the pre-existing prohibitions in MOP for Clarkson, Streetsville and Port Credit is without prejudice to the Appellants' right to file further appeals relating to new drive-through prohibitions or regulations in the event the City passes a future Official Plan Amendment affecting drive-throughs in the aforementioned areas.

3.5 In requesting the above mentioned Order from the Board, a land use planner in the employ of the City will provide professional planning evidence to the Board in support of the above mentioned request.

3.6 The Parties acknowledge and agree that upon execution of these Minutes of Settlement, they will not be treated as confidential and, among other things, will be filed with the Board in respect of the Appeals.

3.7 The Parties shall bear their own costs in respect of the Appeals and the negotiation and preparation of these Minutes of Settlement. Accordingly, no party shall request that the Board make an order for costs as against any other party to these Minutes of Settlement in respect of the Appeals.

4.0 General Provisions

4.1 These Minutes of Settlement shall be enforceable by and against the Parties hereto, their heirs, executors, administrators, successors and assigns.

4.2 The Parties acknowledge and agree that in the event the Board fails or refuses to approve the policies as modified in the form attached hereto as Schedule 'A', these Minutes of Settlement become null and void and, subject to further negotiations on the policies, the Parties will attend before the Board commencing on October 15, 2013 for a hearing on the merits of the Appeals.

4.3 The Parties agree that they shall make reasonable best efforts to negotiate with one another in respect of both the outstanding portion of these Appeals, (PL111148) and the Appellant's appeal of OPA 8 (PL130350).

4.4 These Minutes of Settlement shall be the entire agreement among the Parties and their respective heirs, executors, personal legal representatives, successors, assigns and successors in title and shall not be amended except by way of written agreement executed by the Parties to the Minutes of Settlement at the time of such amendment.

4.5 Every notice, consent, request, instruction, approval and other communication provided for or permitted by these Minutes of Settlement and all legal processes in regard hereto shall be validly given, made or served, if in writing and delivered, or sent by facsimile, to the party to whom it is to be given at the address noted for such party as follows:

4.5.1 TDL Group Corp., addressed to it at:

The TDL Group Corp.  
874 Sinclair Road  
Oakville, Ontario  
L6K 2Y1

Attention: Paul Barron

4.5.2 The City, addressed to it, at:

The Corporation of the City of Mississauga

300 City Centre Drive  
Mississauga, ON  
L5B 3C1

Attention: City Clerk

or to such other address in the Province of Ontario as any party may, from time to time, designate in writing delivered in a like manner.

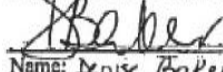
- 4.6 Whenever the singular or neutral is used in these Minutes of Settlement, the same shall be construed as meaning plural, or body politic or corporate or individual and vice versa where the context so requires.
- 4.7 If any provision of these Minutes of Settlement or the application thereof to any circumstance is held to be invalid, illegal or unenforceable, then such invalidity, illegality or unenforceability shall attach only to such provisions and shall not affect any other provision of these Minutes of Settlement and where necessary shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein and the remaining provisions of these Minutes of Settlement or the application thereof to other circumstances shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.
- 4.8 The Parties agree that the headings to the various parts of these Minutes of Settlement are inserted for convenience only and shall not affect the construction, meaning, intent, or interpretation of any provision of these Minutes of Settlement.
- 4.9 These Minutes of Settlement are made pursuant to, shall be governed by and shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in Ontario.
- 4.10 These Minutes of Settlement may be signed in counterparts and the signatures delivered by facsimile or email transmission, each of which shall be deemed to be an original with the same effect as if the signatures thereto were upon the same instrument and delivered in person.

City of Mississauga  
City Clerk

IN WITNESS WHEREOF the Parties have executed this agreement by the hands of their duly authorized signing officers in that regard.

Dated June<sup>24</sup>, 2013

**A & W FOOD SERVICES OF CANADA INC.,**

  
\_\_\_\_\_

Name: Denise Baker  
Title: Counsel to A & W Food Services of Canada Inc.  
I have the authority to bind the corporation

**MCDONALD'S RESTAURANTS OF CANADA LTD.,**

  
\_\_\_\_\_

Name: Denise BAKER  
Title: Counsel to McDonald's Restaurants of Canada Ltd.  
I have the authority to bind the corporation

**ONTARIO RESTAURANT HOTEL AND MOTEL ASSOCIATION,**

  
\_\_\_\_\_

Name: Denise Baker  
Title: Counsel to Ontario Restaurant Hotel and Motel Association  
I have the authority to bind the corporation

**TDL GROUP CORP.**

  
\_\_\_\_\_

Name: Mark Holly  
Title: Vice President, Development  
I have the authority to bind the corporation

**WENDY'S RESTAURANTS OF CANADA INC.**

  
\_\_\_\_\_

Name: Denise Baker  
Title: Counsel to Wendy's Restaurants of Canada Inc.  
I have the authority to bind the corporation



**THE CORPORATION OF THE CITY OF  
MISSISSAUGA**



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Name: *Mary Ellen Benck*  
Title: *City Solicitor*  
I have the authority to bind the corporation

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Name:  
Title:  
I have the authority to bind the corporation

**SCHEDULE 'A'**

**Mississauga Official Plan  
Modifications to DTF Policies**

1. Insert a new policy in to the following sections of the Plan:

- 11.2.6 (Mixed Use)
- 11.2.9 (Convenience Commercial)
- 11.2.11 (Business Employment)
- 11.2.12 (Industrial)

The new policy is to read:

Notwithstanding the policies of this Plan, existing drive-through facilities will be permitted as they existed on the day these policies come into effect.

2. Modify and move section 9.2.1.8 to the following sections of the Plan:

- 11.2.6 (Mixed Use)
- 11.2.9 (Convenience Commercial)
- 11.2.11 (Business Employment)
- 11.2.12 (Industrial)

The modified policy is to read:

Zoning by-law amendments will be required for new drive-through facilities in Intensification Areas and may be permitted where it can be demonstrated that the drive-through facility will not interfere with the intended function and form of the Character Area. Such applications may be permitted in circumstances where the location, design and function of the drive-through facility achieves the intent of the Plan, including, but not limited to, policies regarding the following:

- a. minimum height;
- b. minimal building setbacks;
- c. continuity of the planned built form;
- d. continuity and character of the *streetscape*;
- e. no driveways or parking areas between the building and the street;
- f. active facades that address principal street frontages, and
- g. the provision for pedestrian movement into and through the site.

The application will address, among other matters, the nature of surrounding uses, the specific location of the site within the Character Area, and opportunities for the integration of the drive-through facility with other uses within the development.

3. Modify and move section 9.2.2.2 to the following sections of the Plan:

- 11.2.6 (Mixed Use)
- 11.2.9 (Convenience Commercial)
- 11.2.11 (Business Employment)
- 11.2.12 (Industrial)

The modified policy is to read:

Drive-through facilities may be permitted in non-intensification areas, provided that the proposed development does not interfere with the intended function and form of these Character Areas. Drive-through facilities may be permitted where the location, design and function of the drive-through facility achieves the intent of the Plan and adequately addresses to the satisfaction of the City, among other matters, the nature of surrounding areas, compatibility with surrounding uses, the specific location of the site within the Character Area, and opportunities for the integration of the drive-through facility with other uses within the development.

4. Modify section 15.3.2.2 to read:

Notwithstanding the above policy, existing single storey financial institutions and free-standing restaurants, which are not substantially screened from Hurontario Street by a building, will be permitted as they exist on the day these policies come into effect provided, however, that the reconstruction or alteration of these uses may be permitted if the proposal results in a visual or functional improvement of the site which achieves the intent and policies of the Gateway Corporate Centre Character Area Policies.

5. Delete section 15.4.2.3

6. Delete prohibitions in the Official Plan with the following exceptions:

- The Downtown Core
- Port Credit Local Area Plan area
- Streetsville and Clarkson Village Community Nodes