

ISSUE DATE:

June 14, 2012



PL111331

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

IN THE MATTER OF subsection 34(19) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant: A & W Food Services of Canada Inc.
Appellant: McDonald's Restaurants of Canada Limited
Appellant: Ontario Restaurant Hotel & Motel Association
Appellant: The TDL Group Corp.; and other
Subject: By-law No. 2011-137
Municipality: City of Niagara Falls
OMB Case No.: PL111331
OMB File No.: PL111331

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Appellant: A & W Food Services of Canada Inc.
Appellant: McDonald's Restaurants of Canada Limited
Appellant: Ontario Restaurant Hotel & Motel Association
Appellant: The TDL Group Corp.; and other
Subject: By-law No. 2011-136
Municipality: City of Niagara Falls
OMB Case No.: PL111331
OMB File No.: PL111332

APPEARANCES:

Parties

A & W Food Services of Canada Inc.
McDonald's Restaurants of Canada Limited
Ontario Restaurant Hotel & Motel
Association
The TDL Group Corp.
Wendy's Restaurants of Canada Inc.

City of Niagara Falls

Counsel

L. Townsend

K. Beaman

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. V. ZUIDEMA ON
APRIL 30, 2012, AND ORDER OF THE BOARD**

A first Pre-Hearing Conference (PHC) was convened to address various appeals. The Appellants are: A & W Food Services of Canada Inc. (A & W), McDonald's Restaurants of Canada Limited (McDonald's), Ontario Restaurant Hotel & Motel Association (ORHMA), The TDL Group Corp. (TDL), and Wendy's Restaurants of Canada Inc. (Wendy's).

The appeals deal with City of Niagara Falls (City) Zoning By-law No. 2011-136 (ZBL 2011-136) which amends Zoning By-law No. 79-200 (ZBL 79-200) as amended. The purpose of ZBL 2011-136 is in response to new development trends and to improve the by-law's readability. Among other things, ZBL 2011-136 modifies Section 4.6 (Restoration and Non-Conforming Building) to permit legal non-conforming buildings to be rebuilt in addition to being strengthened or restored to a safe condition. The appeals also address City of Niagara Falls Zoning By-law No. 2011-137 (ZBL 2011-137) which amends the same Zoning By-Law ZBL 79-200, and introduces standards for drive-through facilities.

Council for the City adopted the amending zoning by-laws and the Appellants noted above filed appeals pursuant to subsection 34 (19) of the *Planning Act*. Each Appellant is concerned with section 4.6 of ZBL 2011-136 which adds additional language to the right to rebuild on lands where the building is non-conforming. However, the Appellants allege that section 4.6 constrains legal non-conforming rights to buildings only. This, they claim, removes a right permitted under the *Planning Act* and is therefore outside the City's jurisdiction, as the *Planning Act* does not restrict legal non-conforming rights to buildings only.

Further the Appellants contest section 4 of ZBL 2011-137 which amends the General Provisions of ZBL 79-200 by adding s. 4.34. The effect of this section is to prohibit drive-through facilities in Central Business Commercial (CB) Zones and Neighbourhood Commercial (NC) Zones. The Appellants submit that this is inappropriate as there are no studies or planning justification reports to justify these prohibitions.

At the commencement of this first PHC, the Board was advised that the parties were engaged in fruitful dialogue and that there was a real possibility of a resolution. As such, they requested the Board not schedule hearing dates or impose a Procedural Order, but rather provide time for the parties to continue their discussions. The parties would then contact the Board to arrange for a settlement hearing which could be done via Telephone Conference Call (TCC). I will continue to case manage this file and should the parties wish to convene a TCC for the purpose noted above, they can contact the Board Planner, Raymond Borja to arrange same suitable to the parties' schedules and the Board's calendar.

Finally Counsel for the City indicated he would provide an Affidavit concerning notice for this PHC. The Board was satisfied based on the submissions provided that proper notice had been given; however, an Affidavit would be of assistance to ensure the record is complete.

These are the Board's directions.

"J. V. Zuidema"

J. V. ZUIDEMA
VICE-CHAIR