

For Information

DATE: May 31, 2012

REPORT TITLE: **ONTARIO MUNICIPAL BOARD (OMB) APPEAL OF REGIONAL BY-LAW 97-2011 - RETAIL BUSINESS HOLIDAYS ACT EXEMPTION - BRAMALEA CITY CENTRE**

FROM: Patrick O'Connor, Regional Solicitor

OBJECTIVE

To update Regional Council with respect to the Ontario Municipal Board (OMB) decision on the appeal of Regional By-law 97-2011 entitled "A by-law under the Retail Business Holidays Act to permit retail business establishments in the vicinity of the Bramalea City Centre in the City of Brampton to be open on holidays for the maintenance or development of tourism".

REPORT HIGHLIGHTS

- The appeal of Regional By-law 97-2011 has been dismissed by the OMB and the By-law has been approved.
- No amendments or alterations of By-law 97-2011 have been ordered.
- Pursuant to the Retail Business Holidays Act, By-law 97-2011 came into force on May 23, 2012 concurrent with the dismissal of the OMB appeal.
- Bramalea City Centre is now permitted to open for business on the holidays stipulated in By-law 97-2011, the next of which is Canada Day.

DISCUSSION**1. Background**

On September 8, 2011, Regional Council enacted By-law 97-2011 (the "By-law") which granted Morguard Investments Ltd. ("Morguard"), as well as the retail businesses within and in the vicinity of Bramalea City Centre ("BCC") an area based tourism exemption from the holiday closing requirements of the *Retail Business Holidays Act*, R.S.O. 1990, c. R.30 (the "Act"). The By-law provides that BCC is permitted to open on New Year's Day, Victoria Day, Canada Day, Labour Day and Thanksgiving Day between the hours of 11:00 a.m. and 6:00 p.m. whereas that would otherwise be prohibited by Section 2 of the Act. The By-law does not permit BCC to open on Family Day. During the 30 day appeal period following the enactment of the By-law, a Notice of Appeal was received from an employee of one of the retail businesses in BCC, and an appeal was taken to the OMB. During the period of time that the By-law was under appeal, the By-law was stayed by operation of the Act, and BCC could not avail itself of the exemption granted by Regional Council.

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During the hearing of the appeal, legal counsel for Morguard made the submission that BCC was itself a cultural or multi-cultural tourist attraction and, as a result, satisfies the tourism requirements of the Act. The Region agreed with this position and made the additional submission that the tourism exemption is further supported by the proximity of BCC to Chinguacousy Park. The appellant, unsupported by any expert witnesses, made the submission that neither BCC nor Chinguacousy Park are tourist attractions sufficient to satisfy the tourism criteria under the Act.

At the conclusion of the one day hearing, Vice Chair Stefanko reserved his decision, and his written Order was subsequently released on May 23, 2012. In his reasons Vice Chair Stefanko dismisses the appeal, finding that BCC is a cultural or multi-cultural tourist attraction, and that all statutory requirements were met in the enactment of the By-law. As this was the only appeal, the By-law came into force on the same date as the written decision was released. As there were no amendments ordered by the OMB, no further action is required by Regional Council.

CONCLUSION

The only appeal of the By-law has been dismissed by the OMB and the By-law came into force on May 23, 2012. No amendments to the By-law have been ordered by the OMB and no further action by Regional Council is necessary. BCC can now avail itself of the exemption granted by Regional Council and may open for business on New Year's Day, Victoria Day, Canada Day, Labour Day and Thanksgiving Day between the hours of 11:00 a.m. and 6:00 p.m. BCC remains subject to the holidays closing provisions of the Act on Family Day, Good Friday, Easter Sunday and Christmas Day.

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Approved for Submission:



D. Szwarc, Chief Administrative Officer

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