PW-A3-1

Region of Peel
Working for you

REPORT
Meeting Date: January 10, 2013
Regional Council

For Information

DATE: December 21, 2012

REPORT TITLE: **APPLICATION BY MORGUARD CORPORATION AND BRAMALEA CITY CENTRE EQUITIES INC. TO AMEND BY-LAW 97-2011 TO ADD FAMILY DAY TO THE EXISTING EXEMPTION UNDER THE RETAIL BUSINESS HOLIDAYS ACT**

FROM: Dan Labrecque, Commissioner of Public Works
Patrick O'Connor, Regional Solicitor

OBJECTIVE

To request that Regional Council make a determination respecting the application by Morguard Corporation and Bramalea City Centre Equities Inc. whether to amend By-law 97-2011 to add Family Day to the existing exemption under the *Retail Business Holidays Act.*

REPORT HIGHLIGHTS

- On October 16, 2012 Bramalea City Centre Equities Inc. and Morguard Corporation applied to the Regional Municipality of Peel for an exemption under the *Retail Business Holidays Act* ("RBHA") for an Area Basis Tourist exemption for Bramalea City Centre to allow retail business openings on Family Day.
- The application requests an exemption from the requirements of the RBHA that would permit retail businesses in the Bramalea City Centre to open for business on Family Day.
- The exemption being requested is in addition to the exemption previously granted to retail businesses in the Bramalea City Centre under By-law 97-2011.
- The subject lands are known municipally as 25 Peel Centre Drive (Bramalea City Centre), 40/44 Peel Centre Drive and 50-100 Peel Centre Drive.
- A public meeting in respect of the proposed exemption was held on December 13, 2012.
- Council now needs to decide whether or not to extend the existing exemption to permit Bramalea City Centre to be open on Family Day.
- Resolution 2011-794 from the September 8, 2011 meeting is contrary in substance to the requested Family Day exemption therefore, if wishing to enact the Family Day exemption Regional Council would have to re-open the 2011 resolution by a two-thirds majority, in accordance with Section V-7(a) of the Procedure By-law 100-2012.

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DISCUSSION

1. Purpose and Effect of Application

Morguard Corporation and Bramalea City Centre Equities Inc. (collectively, the "Applicant") has applied to the Regional Municipality of Peel to request an exemption from the requirements of the RBHA that would permit retail businesses in the Bramalea City Centre ("BCC") to open for business on Family Day. The exemption would be in addition to the exemption previously granted for holiday openings under Region of Peel By-law 97-2011.

If this Application is approved without modification, retail businesses within and adjacent to Bramalea City Centre would be permitted to open for business on a voluntary basis between 11:00 a.m. and 6:00 p.m. on Family Day.

The area proposed for exemption is generally located in the area bounded by Peel Centre Drive, Queen Street East, Dixie Road and Team Canada Drive as shown in Appendix I (the "Exemption Area").

a) Exemptions under By-law 97-2011

On November 10, 2010 the Applicant formally requested an exemption from the retail business closure requirements of the RBHA for the Exemption Area. Specifically, this previous application sought permission to allow retail businesses within the Exemption Area to remain open voluntarily on the following statutory holidays: New Year's Day, Family Day, Victoria Day, Canada Day, Labour Day and Thanksgiving Day.

On September 8, 2011 Regional Council approved By-law 97-2011 to allow the openings on five of the six requested days, save and except for Family Day as per Resolution 2011-794 (Appendix II). By-law 97-2011 was subsequently appealed to the Ontario Municipal Board ("OMB") on October 7, 2011 by individuals opposed to the exemptions granted.

The appeal was heard on April 23, 2012 and a decision was issued by the OMB on May 23, 2012 recognizing the Bramalea City Centre as a cultural or multi-cultural attraction; thereby dismissing the appeal and bringing into effect Region of Peel By-law 97-2011.

In addition to passing By-law 97-2011 on September 8, 2011, Regional Council adopted Resolution 2011-867 which referred to a future meeting of Council a Notice of Motion, "That Regional Council proposes to amend all by-laws previously enacted under the *Retail Business Holidays Act*, to remove any exemption which would permit openings on Family Day" (the "Family Day Motion"). A public meeting was held on June 14, 2012 to invite input on the Family Day Motion and the matter was considered by Regional Council on July 5, 2012. The Family Day Motion was defeated by a vote of Regional Council. As such, Square One Shopping Centre and the Mississauga Chinese Cultural Centre retained their existing permissions to open for business on Family Day.

2. *Retail Business Holidays Act*

The RBHA authorizes Regional Council to grant tourism exemptions. An adopted Regional by-law is required for this purpose. Any person who objects to an exemption by-law may appeal Council's decision to the OMB within 30 days. A by-law that is not appealed will come into force on the 31st day after it is passed by Council.

The RBHA requires applicants to demonstrate that the exemption criteria outlined in the RBHA and accompanying regulation (O.Reg 711/91) have been satisfied and that the exemption would assist in the maintenance or development of tourism.

The RBHA provides direction to a municipal council considering approval of a tourism area exemption. In making its decision, a municipal council is to take into account the following:

1) The principle that holidays should be maintained as common pause days; and

2) A by-law may only be passed if there is compliance with the Provincial tourism criteria found in Ontario Regulation 711/91 (the "Tourism Criteria").

Attached as Appendix III is a table that outlines the existing approved RBHA exemption areas in the Region of Peel and the statutory holidays for which retail openings are permitted.

3. External Circulation - Comments

Regional staff circulated this application to the Clerks and Planning Departments at the City of Brampton, City of Mississauga, and Town of Caledon as well as Brampton's Economic Development Office, Peel Police and Paramedics, Brampton Fire, and the Brampton Board of Trade. The following comments were received:

- Peel Police advised that there should be no operational impact; and.

- The City of Brampton's Economic Development Office commented it supports the application as it positions the BCC on the same competitive playing field as Square One Shopping Centre and other retail shopping centres in the Region. The comment letter also notes that the approval of the application would benefit retailers, area residents and tourists by providing an opportunity to shop in Brampton.

4. Public Meeting

A public meeting for the present application was held on December 13, 2012.

Regional staff provided an overview of the application and highlighted key requirements of the RBHA and the Tourism Criteria.

Tara Piurko, Andrew Butler, and Alex Arifuzzaman presented on behalf of the Applicant.

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Tara Piurko, Partner, McCarthy Tétrault LLP reviewed the history of the original application leading to Regional Council enactment of By-law 97-2011, the OMB decision supporting By-law 97-2011, and Regional Council's decision on the Family Day Motion (as discussed earlier in this report) that resulted in Square One Shopping Centre and the Mississauga Chinese Cultural Centre retaining existing permissions to open on Family Day.

Andrew Butler, General Manager – Morguard Investments Limited provided information on the efforts being made by the Applicant to ensure that retail operators are aware that openings on the currently exempted statutory holidays are voluntary and to inform retail workers about their right to refuse to work. Mr. Butler advised that the applicant has not received any complaints from the public for being open on the currently exempt holidays; nor have tenants expressed any concern about staffing issues on the current exempt holidays

Alex Arifuzzaman, Partner - Interstratics Consultants Inc. provided analysis of the economic impact of the Bramalea City Centre in general and openings on the currently exempted statutory holidays, and projected benefits from being open on Family Day for the maintenance and development of tourism.

Both oral and written submissions were received from members of the public. In general, these submissions highlighted concerns with the Application and its alleged failure to fulfill Tourism Criteria, the alleged lack of need for additional shopping days, and the desire and ability of retail workers to enjoy public holidays with family and friends.

CONCLUSION

The purpose of the Application is to request an exemption from the requirements of the RBHA that would permit retail businesses in the BCC to open for business on Family Day. Upon consideration, staff is of the opinion that the approval of the Application is chiefly one of policy for Council to decide as the issues are substantively similar to those considered in the original application that led to the approval of By-law 97-2011. In this regard, staff is not putting forward a recommendation concerning what decision Council should take.

Should Regional Council decide in favour of the amendment, the draft by-law, if enacted, would amend existing By-law 97-2011 to add Family Day to the list of holidays previously approved for exemption from the RBHA (Appendix IV). It is open to Regional Council to enact the attached draft by-law with or without modifications, or to decline to enact the draft by-law.

To facilitate its request that Regional Council approve Family Day openings at BCC, the Applicant has filed a separate and new application, distinct from the original November 2010 application that resulted in By-law 97-2011. The Applicant is not requesting reconsideration of By-law 97-2011 that was approved by Regional Council ultimately supported by the OMB.

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The approval of this Application is contrary in substance to a previously decided motion. Should Regional Council decide in favour of the amendment, it will have to pass a motion to reopen Resolution 2011-794 and will require a two-thirds majority vote to proceed, in accordance with Sections V-7(a) and V-7(c) of the Region of Peel Procedure By-law 100-2012.

Dan Labrecque
Commissioner of Public Works

Patrick O'Connor
Regional Solicitor

Approved for Submission:

per D. Szwarc, Chief Administrative Officer

For further information regarding this report, please contact Andrea Warren at extension 4355 or via email at warrena@peelregion.ca

Authored By: Andrea Warren

c. Legislative Services

DS-13-2

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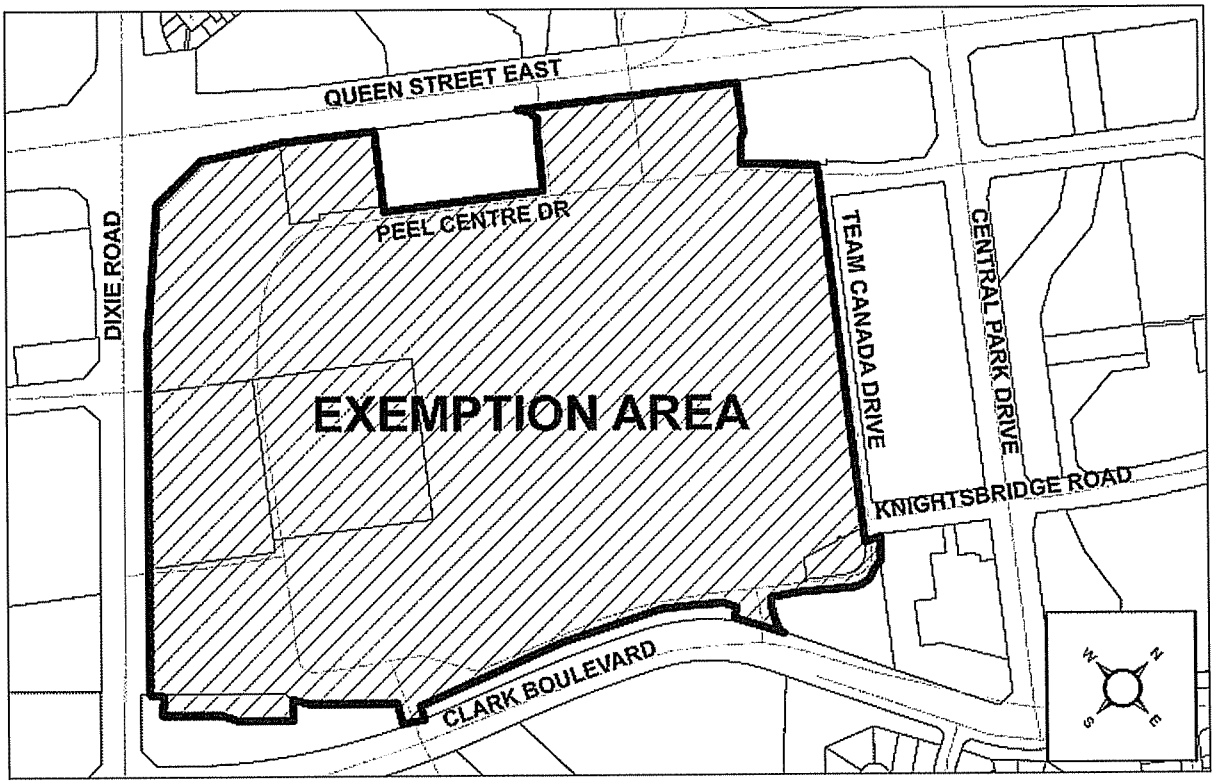
APPENDIX I



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APPENDIX II

APPROVED AT REGIONAL COUNCIL
September 8, 2011

ITEMS RELATED TO PUBLIC WORKS

Chaired by Councillor A. Thompson

PW-A. DEVELOPMENT SERVICES

PW-A1. **Application for an Area Basis Tourist Exemption Under the *Retail Business Holidays Act* by Morguard Corporation for the Bramalea City Centre**

Moved by Councillor Palleschi;
Seconded by Councillor Morrison;

That the recommendation related to item PW-A1 be amended to exclude Family Day from the exemption under the *Retail Business Holidays Act* for the Bramalea City Centre.

Carried 2011-794

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APPENDIX III

Retail Business Holidays Act
Exemption Areas – Region of Peel

Region of Peel By-law	Area	Statutory Holidays with Openings Permitted
40-98	Mississauga Chinese Cultural Centre	All
33-2010	Mississauga Square One	New Year's Day Family Day Victoria Day Canada Day Labour Day Thanksgiving Day
97-2011	Bramalea City Centre	New Year's Day Victoria Day Canada Day Labour Day Thanksgiving Day
78-2012	Port Credit Business Improvement Area	New Year's Day Victoria Day Canada Day Labour Day Thanksgiving Day

PW-A3-9

THE REGIONAL MUNICIPALITY OF PEEL
BY-LAW NUMBER XX -2013

A by-law to amend By-law 97-2011, titled "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".

WHEREAS, on September 8th, 2011, the Council of the Regional Corporation enacted By-law 97-2011 pursuant to Subsection 4(1) of the *Retail Business Holidays Act*, R.S.O. 1990, c. R.30 (the "Act");

AND WHEREAS By-law 97-2011 granted permission for business establishments in the vicinity of Bramalea City Centre in the City of Brampton to be open on certain holidays for the maintenance or development of tourism;

AND WHEREAS, an application has been made by Morguard Corporation on behalf of persons carrying on retail business in the municipality for a further exemption to the Act for the maintenance or development of tourism on Family Day;

AND WHEREAS, the Council of The Regional Municipality of Peel has taken into account the principle that holidays should be maintained as common pause days;

AND WHEREAS, the Council of The Regional Municipality of Peel has applied the tourism criteria to this application and has deemed that there is compliance with the tourism criteria for the retail businesses located in the area sought for exemption;

AND WHEREAS, the Council of The Regional Municipality of Peel held a public meeting following at least thirty days of published notice in respect of this proposed by-law and at that public meeting all persons who attended were permitted an opportunity to make representations in respect of the proposed by-law;

AND WHEREAS, the Council of The Regional Municipality of Peel has by resolution adopted on this XX day of January, 2013, resolved to allow the application and to grant an exemption to the Act;

NOW THEREFORE, the Council of the Regional Corporation enacts as follows:

1. That Section 2 of By-law 97-2011 be amended by the addition thereto, immediately after clause (a), of the following clause, and by re-lettering the remaining clauses in that Section accordingly:

   "b. Family Day;".

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2. The amendments to By-law 97-2011 as provided herein shall come into force and take effect, subject to any appeal under Section 4.3 of the Act, on the thirty-first day following its passing.

READ THREE TIMES AND PASSED IN OPEN COUNCIL this XX day of January, 2013.

Regional Clerk

Regional Chair

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