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PL080959

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: TDL Group (Tim Horton Donuts or TDL)
Appellant: 595799 Ontario Ltd. (Karam Business Inn or Karam)
Subject: By-law No. 2008-250
Municipality: City of Ottawa
OMB Case No.: PL080959
OMB File No.: PL080959

APPEARANCES:

Parties

The City of Ottawa

TDL Group

595799 Ontario Ltd.

Counsel

T. Marc

M. Polowin

P. Vice

DECISION DELIVERED BY A. CHRISTOU

TDL Group (Tim Horton Donuts or TDL) and 595799 Ontario Ltd. (Karam Business Inn or Karam) have appealed the City of Ottawa Comprehensive By-law No. 2008-250 with respect to a newly established exemption from parking requirements for retail and restaurant ground floor uses with a Gross Floor Area (GFA) of less than 150 m², in the City's Traditional Main Streets (TMS).

TDL, in particular, is seeking the elimination of parking requirements for main floor uses up to 450 m² in GFA on TMS; while Karam is suggesting that no parking should be required for any uses on TMS.

BACKGROUND

On June 25, 2008, City of Ottawa Council passed By-law No. 2008-250 which represents the consolidation of 36 Zoning By-laws of the former municipalities. It implements the directives of the new City of Ottawa Official Plan (OP) adopted in 2003.

Schedule 'B' of the OP shows some 17 designated TMS, which represent pre World War II urban development in the former City of Ottawa and the former municipalities which are now amalgamated into the City of Ottawa. These areas, because of their compact, street-related mixed use developments, had evolved long ago, before the proliferation of the private car and associated on-site parking lots, and generally enjoyed on-street parking. Most of the TMS are pedestrian related with store fronts abutting the sidewalk. Some provide a variety of commercial services to the residential neighbourhoods, while others provide a concentration of restaurants and entertainment facilities attracting patrons from further distances. Most TMS are near public transit.

Traditional Main Streets are one of the areas in the City identified in the OP to accommodate intensification and reinvestment through mixed use residential-commercial development and redevelopment. Surface parking lots are encouraged to redevelop with mixed use buildings and underground parking as part of a mixed use development is also encouraged. One of the tools to encourage redevelopment in the TMS and to achieve the intensification objective was to consider parking exemptions for ground floor commercial and restaurant uses and appropriate development standards.

THE HEARING

The Board heard from three qualified and experienced land use planners and two Transportation and Parking Engineers, as follows:

- Françoise Jessop, is the Program Manager, Zoning Studies and Area Planning, of the City of Ottawa;
- Murray Chown is a Planning Consultant with extensive private and public municipal planning experience in Ottawa;

- Brian Casagrante, was the consulting planner for Karam Business Inn on Elgin Street;
- David Argue was the City's consulting Transportation Engineer with some understanding of Main Street issues; and
- Michael Tedesco, a Traffic, Transportation Planning and Parking expert, appeared on behalf of TDL.

Ms Jessop testified that the former municipal By-laws did not contain parking exemptions for the TMS. Therefore, this was a new initiative. Work on the consolidated By-law started in 2003 and involved a very lengthy public consultation process. In fact there were three draft versions of the By-law presented to the public and to Council for its review and approval, before the fourth and final version was adopted.

1. The first draft was issued in May 2006 and it proposed that in the TM zones, parking would not be required for uses on lots measuring less than 20 m in width and 600 m² in area, except for a restaurant use or a medical facility, for which parking would have to be provided in full;
2. The second draft (Exhibit 2, Tab 17), issued in May 2007, contained the same parking exemptions, but staff also included restaurants and medical facilities in the exemption (Exhibit 3, page 228).

Ms Jessop indicated that during public consultation, a comment by Domicile Developments Inc. (an infill developer) was received suggesting that the parking exemption should be based on unit size rather than lot size, and they suggested 420 m² would be appropriate. Staff made a change to the next draft By-law to exempt any ground floor use of 420 m² or less in GFA from parking requirements, but they did not study or analyze this request in any detail.

3. The third By-law draft issued on March 7, 2008, contained the revised exemption, which applied to ground floor uses in the TM zone that were less than 420 m² in GFA.

Ms Jessop further indicated that before the public meeting, there had been concerns expressed to staff regarding the potential concentration of restaurants on certain streets that might occur as a result of the exemption. Therefore, the staff report to the Planning and Environment Committee indicated that further review of the exemption had been undertaken and that the introduction of a 420 m² exemption all at once, might result in too many parking exemptions and that the number in the provision should be reduced to units with less than 150 m² GFA. The rationale was that the revised lower number will allow for simpler changes of use in existing building for small sized businesses, since no additional parking would need to be provided. As well, it would encourage a mix of different ground floor uses within a new development. Larger uses, beyond the 150 m² GFA, would be required to go through the cash-in-lieu of parking process, for all main streets located in the former City of Ottawa, or a minor variance process for those located in the Stittsville Main Street, where the additional required parking cannot be provided on site.

The Planning and Environment Committee concurred with staff's recommended change, and made a further change to remove the parking exemption for restaurants on Elgin Street, Somerset Street (between Bay Street and Preston Street) and Preston Street as defined by the Preston Street Business Improvement Area boundaries. A further change was subsequently made to allow the parking exemption for restaurants on Somerset Street.

4. Council approved this Committee recommendation and fourth version of the By-law at its June 15, 2008 meeting, which is the By-law before the Board.

Ms Jessop testified that the Zoning By-law also contains a number of additional parking reductions for uses on TMS, as for example, for uses located near rapid transit stations; where shared parking provisions in mixed use buildings exist; and parking credits in Section 114 (Exhibit 1, page 17) which allows for change of use based on previous use parking rates, and allows another use to come to a unit as long as it does not exceed the parking requirement. Further, if a use cannot provide on-site parking, it could apply for a variance to reduce parking requirements or pay cash-in-lieu for parking and the City can build parking facilities where required.

Ms Jessop introduced a table (Exhibit 1, Tab 5) which analysed the number and percentage of TMS businesses. The table shows a total of 1605 businesses existed in the TMS. Of these, 915 or 57% were less than 150 m² in GFA; 571 or 36% were between 150 m² and 450 m² GFA; and 119 or 7% were larger than 450 m² GFA. Of the 1605 businesses, 347 (22%) are restaurants. Of those restaurants, 191 or 55% are smaller than 150 m². Ms Jessop opined that the By-law reinforced the small scale occupancies on TMS and the new incentive exempting small businesses from providing parking is therefore appropriate. It is also consistent with the OP and the Provincial policy because it reduces parking requirements. She opined there is no justification to increase the exemption to 450 m².

With respect to the exclusion of Elgin Street and Preston Street from the restaurant parking exemption, it was her view that there are too many restaurants and not enough parking available in these areas. Restaurants must meet the parking requirement on site, or pay cash-in-lieu for the City to provide parking or seek relief from the By-law. Also, it is important for these areas to have a variety of uses such as convenience stores, pharmacies, etc, to serve the community.

Mr. Argue was the City's consulting Transportation Engineer (iTRANS Consulting Inc.) retained to provide professional advice for this case, but more so with respect to the parking near transit stations issue, according to his witness statement. He did not appear to have extensive municipal experience or a comprehensive understanding of planning instruments, but proffered some understanding on Main Street issues. He undertook a comparative parking analysis of several cities – Vancouver, Edmonton, Calgary, Toronto, Kingston, Burlington, Mississauga and Winnipeg.

Mr. Chown provided thorough planning evidence in support of a higher parking exemption than proposed by the City. He methodically navigated through the OP, Provincial Policy and the City's voluminous reports to make the point that a parking exemption of between 280 m² to 450 m² GFA would be more acceptable to the Appellants and would, in his opinion, represent good planning.

Mr. Casagrante advanced the view that there should be no parking required for any uses on TMS both above and below ground level and within 600 m of transit stations. This would be consistent with the OP objectives for intensification, would reduce auto dependency and improve pedestrian activity. It was his opinion that the 150 m² GFA parking exemption is not meaningful and would not help to attract development on the TMS. With no GFA limit for parking, there would be more incentives for properties to develop larger commercial uses. He asserted the City should use other means to control the number of restaurants on Preston and Elgin Streets and the City should provide municipal parking lots in TMS.

Mr. Tedesco opined that:

- There is enough parking available to accommodate today's demand on the TMS and there would be no impact on the street with a 450 m² exemption;
- It would be inefficient use of land to require on-site parking for uses on TMS;
- Parking should be provided elsewhere by the City and the private sector;
- The proposed 150 m² GFA parking exemption is not enough to foster intensification and the City will not attract the development it needs to achieve its intensification goals on TMS;
- Underground parking is uneconomical the further down you go.
- He concurred with Mr. Chown's recommendation for a GFA exemption of 450 m² and affirmed that an exemption of 280 m² for restaurants would have no impact on parking demand, although he supports restaurants be entirely exempt from parking.

DISCUSSION

The City must be commended for its bold move to effect a significant change in thinking by introducing a reduction in parking for retail and restaurant ground floor uses in its Zoning By-law in the TMS. This parking reduction fits in well with the concepts of compact communities, re-urbanization, intensification, enhanced pedestrian activity and public transit initiatives along major streets, which is in vogue in our times and is encouraged by Provincial policy and OP policies.

The Board was also impressed by the professional stand taken by Mr. Chown, Mr. Casagrande and Mr. Tedesco in advancing the “global” case for greater parking exemptions in what they described to be in the public interest. They did not directly seek any site-specific relief for their respective clients, but rather, spoke eloquently for the greater business interest of existing and future TMS occupants, retailers and developers.

The Appellants generally accepted that although the City’s 150 m² ground floor GFA exemption is a good start, they suggest that a 450 m² GFA per unit exemption would be better for the TMS, as it would encourage more commercial redevelopment. This assertion was based on the premise that by providing a higher parking exemption, less parking would be needed in the TMS; therefore, they declared, there would be more walking, biking and transit use, consistent with the OP policies.

However, the issue the Board has to weigh is: who more appropriately represents the general public interest in Ottawa – the elected City Council or the Appellants and whose view should prevail in the matter before the Board?

There is no question that the Appellants have been very vigilant of Ottawa Council’s decisions over the past several years. They have agreed and disagreed with Council’s decisions on many matters and have fought valiantly to ensure their private interests are adequately addressed by Council. They have upheld their development rights and they have continued to do so very effectively at this hearing and at the 2006 TDL Official Plan OMB appeal on main streets and drive through restaurants.

The City has also defended its position and responsibility for setting public policy in the Official Plan and guarding the public interest with respect to providing new

parking exemptions in the TMS. The City is cognizant of the community's concerns when commercial parking overflows into the residential areas and needs to do more local studies to address the issue. Therefore, the City would like to scale down the parking exemption to a smaller, more manageable size now and study the matter over a period of time when it can make further adjustments if seen appropriate. This would be in the public interest according to Ottawa's witnesses.

The Appellants' evidence indicates the Zoning By-law TMS parking exemption before the Board, appears to have been prepared in a rather hurried and non-comprehensive way, by implementing somewhat incompletely thought out concepts. There is no question the City had a gargantuan task in harmonizing many Zoning By-laws and creating a Comprehensive By-law for the amalgamated City. The task entails immense complexity and encompasses a myriad of complicated and complex issues. It seems there is never enough time for staff to undertake an endless number of studies and reviews and write comprehensive reports on a very tight time schedule. It is not an enviable position to be in. However, the process followed in this case was inconsistent.

The City presented four draft versions of the Comprehensive By-law through the public consultation process over a period of more than two years. What is important to know is that Council approved each of the three Draft By-laws and each progressive draft contained a different parking exemption for the TMS, with apparently no analysis in the first three instances. It was therefore suggested by the Appellants that it would be awkward for the City, given the circumstances, to now make a strong case for limiting the parking exemption to only uses with no more than 150 m² of ground floor GFA. Further, if a ground floor unit were 150.1 m² in GFA, then the full amount of parking must be provided. This scenario does not appear to be in the spirit of a thoughtful zoning exemption, particularly given the trajectory of the exemption starting from a high of 20 m lot and 600 m² GFA, which, for unsubstantiated reasons then stealthily reduced to 420 m² at the mere suggestion of one respondent, and further reduced to 150 m², apparently to address the "concerns" of one individual, even though there had been no written or verbal submission made by any resident or group in opposition of the measure. In fact, the Board was shown evidence of strong support for the exemption from one community and business association on the Bank Street TMS.

What appears to be uncharacteristic for this particular undertaking is that the City's four zoning versions for the TMS Zone were not very well researched, analysed, rationalized or comprehensively reported to provide some assurance to those running businesses in these areas or to ensure consistency. Ms Jessop agreed under cross examination that the City did not do a research project nor a detailed review before it brought its proposals to Council. The City had not studied what effect its 150 m² GFA parking exemption would have on the TMS. It wasn't very clear how the City came up with the first notion of exempting uses on lots with less than 20 m frontage and 600 m² GFA. The fact that a single suggestion from a commenting party was taken at face value to reduce the amount of floor space required to provide parking from 600 m² to 420 m² per unit, with no evident analysis, is somewhat disconcerting to the appellants. In light of the openness and transparency of Ottawa's public consultation process, the fact that an anonymous party (identified as a City Councillor only at this hearing), recommended significant amendments and restrictions that were subsequently adopted by Council, also raised concerns by the appellants with respect to transparency. They asked the City several times for a rationale or explanation for this change, but were never provided with one.

No one doubts that a Councillor may have some legitimate concerns about a large number of restaurants in their area and a study may, in fact, have been warranted to determine how to best deal with the particular localized issue. Instead, a last minute, significant restriction on parking for restaurant uses was piggy-backed in the comprehensive By-law. The approach taken by the City and the rather shallow justification provided at the fourth and final version of the draft By-law for reducing the parking exemption on the TMS only to a use smaller than 150 m², and further, removing the parking exemption for all restaurants on Elgin Street and on Preston Street (between Wellington Street and Carling Avenue), appears to be perplexing and wanting. One has to question: where will the existing restaurants on Elgin Street and on Preston Street find the required parking to satisfy the By-law? They have existed for many years without such parking. They rely mainly on street parking and passing pedestrian traffic. There are also some private parking lots serving the areas and there is public transit available on these particular two TMS. There were no complaints or concerns raised by any residents over the lengthy, well publicized By-law review process. There is no rational reason for this restriction.

To zero-in to a requirement for restaurant parking in two isolated portions of the TMS, while exempting restaurants in all the remaining TMS, under the circumstances described by some of the experts at this hearing, points to perhaps some inconclusive and hurried thought process. In a comprehensive By-law situation, the Municipality normally has to treat all similar uses in a similar manner. The evidence advanced by the Appellants, that parking should not be required for any size restaurants in all the TMS, was argued well, although it may not be entirely in the public interest as such.

One more peculiarity in this hearing was that none of the experts could estimate the number of in-service parking spaces existing in the TMS or the number of parking spaces that may become free and available to other users because of this exemption. If we don't know how many parking spaces exist, how can we rationally determine the degree of potential impact the proposed parking exemption may have? Without knowing the most basic factor in the equation, the results may just be guesswork or conjecture or may prove to be detrimental.

What limited parking information was presented by Mr. Argue, it appeared to be incomplete, inconsistent and was patently refuted by the appellants. His review and analysis came after the City passed its By-law and it dealt mainly with paid parking. "Free" on-street parking and private parking in some of the TMS was not considered; and the study reviewed only seven of the 17 TMS. When he considered the "worst case scenarios" only three of the 17 TMS showed possible parking shortages and the impact, if any, wasn't clearly articulated.

Several examples of parking exemptions were proffered by Mr. Tedesco for the opposing Parties, ranging from 150 m² GFA, to no parking required at all for the respective examples. The issue of exempting retail and restaurant parking in the older, established commercial areas is not unique to Ottawa, but it seems to be something that is dealt with in some fashion by almost every municipality. Some municipalities rationalize the issue by undertaking studies for specific areas and enacting By-laws to regulate and control parking through a variety of measures.

Other municipalities such as Toronto have undertaken more elaborate and detailed reviews and studies to assess the parking requirements for specific uses such as retail and restaurants. These studies usually recommend parking standards for

Council's consideration. The IBI Group has recently completed such a study for Toronto's new Zoning By-law and recommends a variety of parking standards for retail and restaurant uses, ranging from a minimum of zero parking spaces per 100 m² GFA, up to a maximum of 5 spaces per 100 m² GFA. Toronto Council has not yet concluded its review of the Amalgamated Zoning By-law and no decisions have been made on commercial parking standards. These are only the consultant's recommendations. The appellants advocated that the Board should adopt Toronto's parking standards for the "Avenues", which may share some similarities with Ottawa's TMS. It was suggested these standards require no parking at all. The Board is not totally convinced that one solution fits all circumstances and that Toronto's "Avenues" are similar to Ottawa's TMS in many respects.

Ottawa's circumstances are unique and demand their own parking solutions. The City is endowed, by statute, with the responsibility to establish public policy and to best determine the public interest. It has done so in this case by establishing a modest parking exemption and has left the door open to revisit the matter in the future, when it develops a better understanding of any impacts on TMS. This exemption will also enhance the intensification potential of these areas, consistent with the PPS. What is important to note here is that the Council decision that prevails is the one which enacts the By-law, not the various drafts.

The Board heard what appeared to be a circular argument from the Appellants. First, they argued that the proposed 150 m² GFA exemption is not sufficient to accommodate the redevelopment of TMS and a more generous exemption is mandated by the OP and the PPS to achieve intensification. Then they said there is enough parking there today to accommodate the parking requirements of the existing and future uses. They also said parking in TMS should be provided by the City and private interests in parking lots and on side streets, but not be required on site. The City should charge for parking, because free parking is used for longer term and there is no turn-over to support the commercial uses. Mr. Tedesco also stated that if you don't provide enough parking, people will not come and the TMS will languish. Although these are good suggestions, there seems to be a play on how to deal with parking for TMS. More study is essential and the involvement of all players is required to provide successful solutions.

The Board has carefully considered the amount of ground floor GFA that can be adequately provided for with no additional parking requirement. The Board is satisfied from the evidence presented that the existing ground floor retail businesses and restaurants on the 17 TMS are adequately served by the available parking in the vicinity. There seems to be a balance or equilibrium between the existing retail and restaurants uses and whatever on-site, private or public parking lots and on-street parking spaces exist on the TMS. People frequenting these facilities are contended to find parking where they may and if they have to walk some distance, they do so with no complaint or concern. Therefore, the evidence suggests no new parking need be provided for those uses as they legally existed on the day Council passed the By-law. This is consistent with the PPS and conforms to the OP because parking is being reduced in the TMS.

Although the City's thought process did not appear to be as thorough and consistent as it ought to have been, the essence of gradual change adopted by Council for the TMS parking exemption was new and appropriate. The Board finds that exempting the first 150 m² of ground floor GFA for retail and restaurant uses in TMS, instead of only those uses that have less than 150 m² GFA, is a good first step and would appear to be a reasonable approach. It will give the municipality the opportunity to review any possible impacts and make necessary adjustments to the By-law at the next opportunity.

The Board was not convinced about the City's alleged affect of "too many restaurants" existing on Elgin Street and Preston Street TMS and requiring parking for restaurants in these two areas. Without the benefit of a comprehensive study and analysis of existing parking conditions, this is not an appropriate step for the City to implement at this time. There was no compelling evidence presented to support this last minute punitive regulation and there was no public concern raised about this issue. There was no definitive information on the assumed impact for the Board to make a thoughtful analysis. The City ought to treat its TMS in a consistent fashion. If there is a parking problem in a specific area, the City has mechanisms available and the responsibility to provide municipal parking facilities. It also has control through its licensing powers to provide a buffer if it believes there are too many restaurants. The market also provides a measure of control: if there are too many restaurants and not

enough facilities to accommodate them, some will fail and will close. Zoning regulation is not the only control mechanism available to address an undefined concern.

The Board was also not convinced by the Appellants' argument that requiring parking for commercial and restaurant uses is an impediment to cost-efficient forms of commercial development on the TMS and that requiring some parking will have a nefarious affect on the success of main streets. It has been a long-standing planning practice in Ontario municipalities, for commercial uses to provide their own on-site parking, for obvious reasons and the Ottawa By-law today requires parking for any development on TMS. Although it may not appear to apply in all TMS by virtue of their historical development, some of the larger commercial uses do provide parking for their customers' convenience. To completely exempt all (or as per the alternative suggestions of various witnesses for up to 450 m²; or 420 m²; or 280 m²) ground floor retail and restaurant uses in TMS from parking, would effectively transfer the responsibility for providing a great deal of required parking solely to the public realm. In essence, what appears to be suggested here is that the taxpayer should foot the parking bill for the benefit of commercial establishments (private gain at public cost) or the community should put up with the added inconvenience and traffic associated with its proximity to a TMS with very limited parking resources. This suggestion is somewhat farfetched and paradoxical in the Board's view, given that any mixed use residential developments in the TMS would be required to provide full parking for the residential component. Also, an increase to the exemption would reduce the cash-in-lieu funding for the City required to provide municipal parking in these areas; and further may act as a disincentive for new residential mixed use buildings, as they would have to provide underground parking which comes at a significant cost. In the name of good planning, a more balanced approach must be struck for a harmonious co-existence of all the affected stakeholders in the TMS and the surrounding community.

It was further suggested by Mr. Chown, that the proposed 150 m² parking exemption was too low in terms of the PPS to enhance and maintain main streets and was not consistent with what other Cities have exempted in their By-laws. He recommended to the Board that for restaurants on TMS, a parking exemption of 280 m² would be more acceptable and would represent good planning. The Board appreciates Mr. Chown's candid opinion for offering a middle of the range numerical exemption. Nevertheless, the PPS does not give a numerical value to assist the Board in its

determination; no study was undertaken to support the rationale for the 280 m² proposed exemption; and other Cities may have taken comprehensive parking studies, something that was not done here or was done superficially. Although 280 m² may represent the “normal” size of a Tim Horton restaurant, Mr. Tedesco affirmed under cross examination that three of these restaurants in the TMS are close to 150 m² in area.

The Board was also not convinced of the Appellants’ assertion that a parking exemption for the first 150 m² of ground floor GFA (instead of 450 m²) will have a direct negative influence on the future redevelopment of the TMS and meeting the City’s intensification objectives. The TMS is only one component of where intensification is to take place in Ottawa. It is not the only place, as repeatedly suggested by some of the witnesses. In addition to TMS, intensification is directed to the downtown and other centres throughout the City, which is consistent with the OP and the PPS. Therefore, this argument does not cut muster.

In order to comprehend the sheer number of parking spaces involved in the various numerical proposals for exemptions, the Board has undertaken a simple mathematical analysis. For example, the By-law (Exhibit 4, Tab 6, page 154) presently requires the following parking for restaurants:

Restaurants	150 m ²	280 m ²	450 m ² +	TOTAL
Parking required	13 spaces	26 spaces	43 spaces	
# of Restaurants	191	147	9	347
Total Parking	2,483	3,822	387	6,692 +

From information provided by the City (Exhibit 1, Tab 7), there were 347 restaurants when they surveyed the records to compile the TMS users list. From these, 191 restaurants would have less than 150 m² GFA. Assuming, for the purpose of this exercise, that these are all 150 m², then, they would require 2,483 parking spaces. If the 147 restaurants were all 280 m² in GFA, an additional 3,822 parking spaces would be required, and for the 9 restaurants at 450 m², a further 387 spaces. In total, more than 6,692 parking spaces would be required to satisfy the existing parking requirement in the Zoning By-law for restaurants alone.

In essence, the City proposes to reduce this parking requirement by approximately 2,480 spaces (150 m² exemption) or 37%. If we assume these spaces

were to be provided on-street, parallel to the curb and each space was 6 m in length, some 14,880 metres (or about 15 kilometres) of linear space would be required for parking. Correspondingly, a 280 m² exemption, with 6,305 parking spaces, would represent more than 37.8 kilometres of curb space for parking and a full exemption for 450 m², of 6,692 spaces, would require some 40 kilometres of curb space. This simple, partial analysis would indicate to the Board, that caution is needed in the amount of parking exemption to be provided at this time. The City needs to consider this matter in more detail and comprehensively determine an appropriate course of action on how to apply any increase in parking exemption in the TMS in the future.

Retail Parking

The Board is prepared to permit those retail establishments legally existing on the day of the passing of the By-law, so that for up to and not exceeding 150 m² in GFA, no parking shall be required. Similarly, for any new retail establishments, the first 150 m² in GFA shall be exempt from parking requirement. Parking shall be required at the prescribed rates for these uses for any GFA in excess of 150 m².

Restaurant Parking

The Board has given considerable thought to the issue of parking for restaurants in the TMS. A large percentage of the uses on the TMS are in fact small restaurants. People attending these establishments may walk to, arrive by public transit or drive, and may find parking on the TMS or on adjoining residential streets. These restaurants have operated under these conditions for many years. The Board is prepared to recognize the established condition and will exempt all restaurants existing on the day of the passing of the By-law, up to and not exceeding 280 m² in Gross Floor Area, from parking requirements. For new restaurants, the first 150 m² GFA will be exempt from parking. Parking shall be required at the prescribed rates for these uses for any GFA in excess of 150 m².

Municipal Parking Lots

The City has been collecting funds for cash-in-lieu of parking from various commercial developments over the years. The evidence shows that although some studies have been done on allocating municipal parking lots, no such parking lot has been constructed. The impact of Council's zoning initiative on TMS will be felt once the By-law comes into effect. It is therefore imperative that Ottawa puts into action its acquisition and construction of municipal parking facilities in TMS in the very near future, consistent with the OP objectives.

DISPOSITION

Based on the evidence presented and having carefully considered the matter before it, the Board finds that the City of Ottawa By-law No. 2008-250 as it pertains to parking exemptions for the Traditional Main Streets and as modified by the Board, meets the objectives of the Official Plan, is consistent with the Provincial Policy Statement and represents good planning.

Accordingly, the Board will allow the appeals in part and directs the City to modify the By-law with respect to retail and restaurant parking generally as indicated above. In all other respects, the appeals are dismissed.

The Board's Order is withheld until such time as it is advised that By-law No. 2008-250 has been modified and a copy is provided to the Board.

The Board may be spoken to.

"A. Christou"

A. CHRISTOU
MEMBER