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PL071013

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Avonwood Shopping Centres Limited. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 201-2000 of the City of Stratford to rezone lands composed of Part Of Lot 42, Concession 1 from I-2 (General Industrial) to C-4 Special (Shopping Centre Commercial- Special) to permit a department store on site with a floor area of 111,300 sq. ft., limit non-department retail stores to 20,000 sq. ft. and prohibit a supermarket on site

OMB Case No. PL071013

OMB File No. PL071013

Avonwood Shopping Centres Limited has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the City of Stratford to redesignate land composed of Part Of Lot 42, Concession 1 to redesignate the property from Industrial Area to Commercial Area and to add Special Policy Area policy between Festival Market Place and the CNR line, to permit a department store on site with a floor area of 111,300 sq. ft, limit non-department retail stores to 20,000 sq. ft. and prohibit a supermarket on site

OMB Case No. PL071013

OMB File No. PL080070

IN THE MATTER OF subsection 17(24) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Appellant: Avonwood Shopping Centres Limited
Appellant: Tanurb (Festival Marketplace) Inc.
Subject: Proposed Official Plan Amendment No. 10
Municipality: City of Stratford
OMB Case No.: PL071013
OMB File No.: PL071152

Avonwood Shopping Centres Limited has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 201-2000 of the City of Stratford to rezone lands composed of Part Of Lot 42, Concession 1 from I-2 (General Industrial) to C-4 Special (Shopping Centre Commercial- Special) to permit a department store on site with an increase in floor area from the original 111,300 sq. ft. to 135,000 sq. ft., limit non-department retail stores to 20,000 sq. ft. and prohibit a supermarket on site

OMB Case No. PL071013

OMB File No. PL081093

Avonwood Shopping Centres Limited has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the City of Stratford to redesignate land composed of Part Of Lot 42, Concession 1 to redesignate the property from Industrial Area to Commercial Area and to add Special Policy Area policy between Festival

Market Place and the CNR line, to permit a department store on site with an increase in floor area from the original 111,300 sq. ft. to 135,000 sq. ft., limit non-department retail stores to 20,000 sq. ft. and prohibit a supermarket on site

OMB Case No. PL071013

OMB File No. PL081092

APPEARANCES:

Parties

Counsel

City of Stratford

J. Matera
E. Costello
T. Halinski

Avonwood Shopping Centres Limited

D. Wood
S. Mahadevan

City Centre Committee

S. Stein
M. Bowman

Loblaws Properties Limited

A.R. Patton

Tanurb Festival Marketplace Inc.

B. Card
W. Meagher (student-at-law)

DECISION DELIVERED BY C. HEFFERON AND ORDER OF THE BOARD

SUMMARY

This case involved an appeal to the Ontario Municipal Board (“Board”) by Avonwood Shopping Centres Limited (“Avonwood”) against refusals by the City of Stratford (“City” or “Council”) to approve Avonwood’s applications to amend the City’s Official Plan and Zoning By-law as well as an appeal against the Official Plan Amendment 10 as adopted by the City on October 24, 2007 and subsequently modified.

Tanurb (Festival Marketplace) Inc. (“Tanurb”) also appealed Council’s adoption of Official Plan Amendment 10. As the Tanurb appeal of Official Plan Amendment 10 essentially mirrored the Avonwood appeal, except where otherwise indicated in this decision, both the Avonwood and Tanurb appeals of Official Plan Amendment 10 are consolidated as the “Avonwood appeal”.

Loblaw Properties Limited (“Loblaws”) initially supported the position of the City in opposing the Avonwood and Tanurb appeals. During the course of this hearing, the Board permitted Loblaws to withdraw from the hearing since it advised that it no longer opposed the Avonwood appeals.

The City’s position in opposition to the Avonwood appeals was supported by the City Centre Committee (“CCC”), which is composed of many of the owners and tenants of the commercial retail businesses in the Downtown Core.

Avonwood’s total land holdings straddle the border between the City of Stratford and the Township of Perth East and comprise approximately 26 ha. The portion of the total Avonwood land holdings within the Stratford city boundaries comprises approximately 14.6 ha. and is located immediately south of the Festival Marketplace shopping centre in the Ontario Street East Commercial Area. They are designated “Industrial Area” by the 1993 Official Plan and zoned “General Industrial” (I-2) in the City of Stratford Zoning By-law 201-2000.

Avonwood appealed to the Board to change the existing Official Plan designation on a 7.0 ha portion of its total 14.6 ha land holding (“subject lands”) at the eastern portion of the Romeo Industrial Park from “Industrial Area” to “Commercial Area,” and to re-zone this portion of its lands from “General Industrial I-2” to “Shopping Centre Commercial Special C-4” to permit development of a 135,000 square foot Walmart store plus an additional 20,000 square feet of other retail commercial uses.

The Board heard that Avonwood (and its predecessor companies First Pro Shopping Centres and Othello Shopping Centres) first expressed interest in the subject lands as a potential site for a large format retail store in 1999. Avonwood had acquired a contractual interest in the lands by February 28, 2005, which was the date of the first Avonwood applications. Avonwood’s contractual interest in the site continued through February 12, 2008, which was the date of its second applications, and through the hearing.

As noted, Avonwood also appealed Official Plan Amendment No. 10, which had been adopted by City Council on October 24, 2007 to amend the in force 1993 City of Stratford Official Plan (“1993 Official Plan”). Official Plan Amendment 10 would amend

the commercial/retail structure of Stratford as set down in the 1993 Official Plan. Modifications to Official Plan Amendment 10 were adopted by Council in 2008. Official Plan Amendment 10 as so modified by Council is referred to in this decision as “OPA 10” and is shown in Exhibit 183. Because of the Avonwood and Tanurb appeals, OPA 10 was not in force at the time of this hearing.

The Romeo Industrial Park is located to the east of the Downtown Core and is designated “Industrial Area” by the 1993 Official Plan (Exhibit 55). It abuts an area to the north designated “Commercial Area” in the 1993 Official Plan. This Commercial Area, situated with some exceptions along both sides of Ontario Street East between Romeo Street and the eastern City limits, is referred to in this decision as the “Ontario Street East Commercial Area”. The exceptions referred to are the Samsonite and F.A.G. Bearings sites where the Romeo Industrial Park extends from Douro Street on the south to Ontario Street East on the north between Burritt Street to the west and the Zehrs site to the east. This section of Ontario Street is also known as Provincial Highways 7 & 8.

Festival Marketplace, an enclosed shopping centre owned by Tanurb, is located on the most easterly portion of the Ontario Street East Commercial Area and is approximately three kilometres east of the Stratford City Hall. The Stratford City Hall is located near the centre of the area designated “Downtown Core” by the 1993 Official Plan.

The “Downtown Core” is located generally adjacent to Ontario Street (Provincial Highways 7 & 8) more or less in the centre of the City of Stratford.

The Commercial Area to the west of the Downtown Core designated in the 1993 Official Plan is located generally adjacent to the intersection of Huron Street (Provincial Highway 8) and O’Loane Avenue. It is referred to in this decision as the “West End Commercial Area”. The easterly limit of the West End Commercial Area is also approximately three kilometres west of the Stratford City Hall.

The general land use plan for the City is found in Schedule B of the 1993 Official Plan and is also shown in Exhibit 8.

It was made clear to the Board during the hearing that neither the City nor the CCC opposed the entry of a new large format retail store (such as a Walmart store) into Stratford. Rather, they opposed its proposed location, which is near an existing cluster of large scale retail stores and shopping centres in the Ontario Street East Commercial Area near the east gateway of Stratford. Both the City and CCC submitted that any future Walmart store should be located in the West End Commercial Area in the vicinity of Huron Street and O'Loane Avenue (as provided for by section 6.4.11 of City adopted OPA 10).

Wal-Mart Canada Corp., for its part indicated in a letter to Avonwood dated November 19, 2008 and copied to the City Clerk (Exhibit 6, Tab 126) that for its own reasons it would not consider a west end site, and would only locate a Walmart store on the portion of the Avonwood site within the City. However, no one from Wal-Mart Canada Corp. testified at the hearing, which would have permitted opposing counsel to cross-examine Wal-Mart Canada Corp. on the contents of this letter.

Avonwood indicated during the hearing that it opposed certain sections of the City-adopted OPA 10 and proposed certain modifications of its own to OPA 10. The Avonwood modifications are referred to in this decision as the "Goldberg Version of OPA 10." The Goldberg Version of OPA 10 was prepared by Mr. M. Goldberg of Goldberg Group in connection with his peer review of the 2002 Commercial Policy Structure Review, and subsequently endorsed by Avonwood.

In 2000, the City commissioned the firms of Sorensen, Gravely, Lowes Planning Associates Inc. and Robin Dee & Associates to review the City's commercial retail development policy. The result was the Commercial Policy Structure Review 2002, (which is also referred to as the Commercial Needs Study 2002 or "CNS 2002"). The findings and recommendations in the CNS 2002 led to the preparation of draft OPA 10 by Mr. Sorensen. This draft would amend those sections of the 1993 Official Plan that pertain to the City's commercial retail policy – including those sections respecting the location of future large format retail developments. This draft of OPA 10 also sought to further clarify the City's policies respecting commercial retail development in the Downtown Core. The Sorensen draft of OPA 10 was adopted by Council on October 24, 2007. Modifications to OPA 10 were adopted by Council subsequent to this date. OPA 10 as so modified by Council was appealed to the Board by Avonwood.

The Board heard uncontested evidence that since at least October 24, 2007 when it was adopted by the City, OPA 10 has provided a clear statement of Council's policy on the future commercial retail structure of Stratford. Counsel for the City and CCC contended in final argument that the policies in OPA 10 are a linguistic progression of the policies in the 1993 Official Plan. They submitted that the policies contained in OPA 10 should be given significant weight regarding the Avonwood applications and warrant the dismissal of the Avonwood appeals.

Citing the Board decision of Clergy Properties Ltd. v. City of Mississauga (1996) 34 O.M.B.R. 277, establishing what has come to be known as the "Clergy Principle", counsel for Avonwood contended that, on the contrary, the Avonwood applications should be measured against the policies of the 1993 Official Plan precisely because OPA 10, although "adopted," had not yet been "approved" when the completed applications were filed with the City. He submitted that the Board should therefore assign little, if any, weight to OPA 10 because it has no status in law.

In final argument, counsel for the City and counsel for the CCC each argued that the 2008 Avonwood applications replaced the previous or 2005 Avonwood applications, which they contended had been withdrawn. The Avonwood appeals respecting Council's October 24, 2007 decision related to a second, significantly different development proposal than Avonwood's 2005 proposal, and therefore the Avonwood 2005 applications to City Council should be considered by the Board to have been withdrawn and replaced with the second or 2008 Avonwood applications. This reasoning, if accepted by the Board, calls into question the applicability of the Clergy Principle to the Avonwood applications for Official Plan and Zoning By-law amendments. On the facts of the case, however, and after consideration of the final arguments of counsel, I find that it was not Avonwood's intention to withdraw its 2005 applications but rather simply to revise them by the 2008 applications.

Nevertheless, Avonwood's 2008 revisions to the 2005 applications were significant and were submitted to the City more than three years after City Council deferred making a decision on OPA 10 at Avonwood's request in March 2004 so that Avonwood would have the opportunity to submit revised applications. I rejected the submission of counsel for Avonwood citing the Clergy Principle that would have the Board substantially discount the weight it would give to OPA 10 because I did not

accept counsel's submission that the Clergy Principle applied to the circumstances of the present appeal.

After weighing all the facts and the arguments of opposing counsel, I find that the Avonwood do not conform either to the planning policies set out in the 1993 Official Plan or with the progression or evolution of these policies in OPA 10 and that these policies represent good planning. Furthermore, it is my view that Avonwood's proposals are neither in the public interest nor represent good planning.

The Board therefore dismisses Avonwood's appeals against the decision of City Council refusing its applications for amendments to the 1993 Official Plan and to Zoning By-law 201-2000. The Board also dismisses the Avonwood appeal (other than the part of the Tanurb appeal referred to below) against the decision of Council to adopt OPA 10, and approves OPA 10 as modified in accordance with the 2008 and 2009 modifications as shown in Exhibit 183 (Attachment "1").

My detailed reasons and analysis follow below.

WITNESSES

For purposes of clarity, I have listed below both the expert and lay witnesses called by the parties as well as the names of the participants who testified at the Board hearing.

Expert Witnesses called by the City of Stratford

Warren Sorensen, qualified to give opinion evidence on land use planning
Robin Dee, qualified to give opinion evidence on commercial retail marketing
Richard Zelinka, qualified to give opinion evidence on land use planning

Other Witnesses called by the City of Stratford

Ian Rawlings, IBI Group, a professional land use planner
Gary Waddington, Ontario Retail Corporation, a specialist in industrial and commercial property

Expert Witness for the City Centre Committee

David Butler, qualified to give opinion evidence on land use planning

Expert Witnesses called by Avonwood Shopping Centres Inc

Michael Goldberg, qualified to give opinion evidence on land use planning
Brent Clarkson, qualified to give opinion evidence on land use planning
Douglas Annand, qualified to give opinion evidence on commercial retail marketing
Lee Parsons, qualified to give opinion evidence on commercial retail marketing

Expert Witness called by Tanurb (Festival Marketplace) Inc.

Robert Dragicevic, qualified to give opinion evidence on land use planning

A Note regarding Certain Expert Witnesses

Messrs. D. Annand (urbanMetrics inc.) and M. Goldberg (Goldberg Group) were retained by the City to peer review the 2005 market and planning studies that accompanied the 2005 Avonwood applications. In the course of that peer review, they also reviewed the CNS 2002 report prepared for the City by Messrs. Dee and Sorensen. Messrs. Annand and Goldberg testified under summons issued by the Board on the application of Avonwood. Messrs. B. Clarkson (MHBC Planning Limited) and L. Parsons (Malone Givens Parsons Ltd.) were retained by Avonwood and gave evidence in support of the Avonwood appeals. Mr. R. Zelinka (Zelinka Priamo Ltd.) appeared under summons issued by the Board on the application of the City of Stratford.

Other Witnesses for the City Centre Committee

Marcia Matsui
Dave Martin
Jeremy Wreford
J.D. Graham
Gary O'Connell
Lee Helperin

PARTICIPANTS

A number of local residents requested participant status. The Board recognized the following as participants:

L. Baswick
S. Clarke
M. Wilson
L. Walker-Fitzpatrick

J. Schneider

L. Ryan

Testimony of the Participants

Several important points were made by the participants in their evidence. They are all, with the exception of Mr. L. Ryan, residents of Stratford. Mr. Ryan stated his support of the Avonwood appeals. The others spoke in opposition to the Avonwood appeals. Residents of the City in opposition to the Avonwood appeals expressed their view that the success of the Shakespearean Festival and the Downtown Core are inextricably linked – “as goes the one, so goes the other” as one witness put it.

According to this group, locating a large format retail store, such as a Walmart store, in the West End Commercial Area (rather than on the Avonwood lands in the east end Industrial Area of the City) would help achieve the planned objective of City Council for what the City’s expert witnesses described as a three-node retail structure balanced along an east/west axis. This structure would, they contended, have the least impact on the economic health of the Downtown Core. All members of this group agreed that the protection of the Downtown Core is a priority. They perceived that another large format retail store located near the existing retailers in the Ontario Street East Commercial Area would be a threat to the Downtown Core.

They also testified that since the City’s motto connotes the dual pillars on which Stratford is built – industry and the arts - the removal of any land from the industrial inventory for use as a commercial retail shopping centre would be contrary to the City’s mission and a threat to its attractiveness as a centre for clean industry, which could result in a loss of well-paid industrial jobs.

MATTERS BEFORE THE BOARD

The first matter before the Board is Avonwood’s appeals against the City’s October 24, 2007 refusal to amend the 1993 Official Plan and Zoning By-law 201-2000 to permit development of a 7.0 ha portion of its 14.6 ha site with a 111,300 square foot Walmart discount department store along with an additional three buildings each of 1-storey containing approximately 20,000 square feet of other retail/commercial uses as set out in Exhibit 6, Tab 115. In February 2008, Avonwood revised its applications to show a 135,000 square foot Walmart store as well as the three additional or satellite

buildings containing a total of approximately 20,000 feet of commercial and retail space. The revised concept plan also showed a 90,000 square foot home improvement centre – a permitted use on lands zoned General Industrial I-2. The home improvement centre proposal is not therefore part of the current appeals before the Board. Exhibit 18A shows Avonwood's revised concept plan.

The second matter before the Board is Avonwood's appeal of Council's October 24, 2007 decision to adopt OPA 10. OPA 10 would amend those sections of the 1993 Official Plan dealing with the Urban Structure (section 6.1), the Downtown Core (section 6.2) and with Commercial Areas outside the Downtown Core (section 6.4). OPA 10 would also add section 15.1.13, which deals with applications for new or expanded commercial retail uses or development in any land use designation.

Accompanying its appeal of OPA 10, Avonwood proposed a modified version of OPA 10 prepared by Mr. M. Goldberg based on market research conducted by Mr. D. Annand. The Board was asked to consider both of these versions of OPA 10. The Goldberg Version of OPA 10 proposed a two-node rather than a three-node retail structure for the City and certain other changes. I heard evidence that the effect of the modifications proposed by Mr. Goldberg would be to loosen considerably the City's policies regarding the introduction of large format retail stores. Counsel for Avonwood submitted that the Board should reject the City-adopted version of OPA 10 and approve the Goldberg Version of OPA 10.

MEANING AND APPLICABILITY OF THE CLERGY PRINCIPLE

As previously indicated, Avonwood submitted two sets of site specific applications to Council – the first in 2005 and the second in 2008. In final argument, both counsel for the City of Stratford and counsel for the CCC argued that the 2008 Avonwood applications replace the previous 2005 applications, which they contend had been withdrawn. As noted above, I find the 2008 applications are a revision of the 2005 applications, and are not new applications.

Nevertheless, I find the revisions to be significant and made more than three years after Avonwood requested on 23 March 2004 that Council defer making a decision on OPA 10 in order to allow Avonwood time to submit applications respecting

development of the subject lands (Exhibit 2, Tab 46). As noted above, in these circumstances, I will not discount the weight I will give to all of this evidence on the basis of the Clergy Principle.

In reaching this conclusion, I have considered the decisions of the Court and previous OMB decisions that have cited the original decision of the Board in Clergy Properties Ltd. supra.

Avonwood argued that since OPA 10, though *adopted* by Council, was not *approved* and therefore was not in effect when Avonwood submitted its 2005 applications, it would be unfair to give OPA 10 any weight when assessing those applications. Avonwood relied on the statement of the Board, at paragraph 15:

The Board in determining the policy framework under which an application should be examined has consistently stated that an application must be tested against the policy documents in place at the date of the application. It has done so in order to lend some certainty to the land use planning process.

The preceding statement is often referred to as the “Clergy Principle.” Avonwood submits that the Clergy Principle applies to the case at hand, and that it requires that the Board at least heavily discount the evidence presented by the City and the CCC regarding OPA 10 as finally adopted by the City. In support, counsel for Avonwood referred me to the 2007 OMB decision of Vice Chair S.B. Campbell, Sun Life Assurance Company of Canada v. City of Burlington (2007) Carswell Ont 8003, 57 OMBR 280 argument. In paragraph 43, the Board found:

The Board finds that Clergy is not merely a Board policy; it is an enunciation of a principle of natural justice and procedural fairness. It is well settled law that natural justice and procedural fairness require that the party must know the case it must answer and be permitted to answer that case. If in the context of planning law, the policy regime were a moving target, natural justice would be absent.

And in paragraph 88, she wrote:

In considering this application, the Board, having regard to the Clergy Principle as considered above, must make a distinction between the existing, applicable policy and evolving policy.

I find that the facts of Sun Life are different from the facts of the matter before me respecting the process leading to Council’s adoption of OPA 10. But even if I have erred

in concluding this, it is my view that the Board's discretion to consider and give appropriate weight to the evidence cannot be fettered.

An examination of the chronology of the Avonwood applications and OPA 10 shows that in late 2003, Mr. Sorensen submitted a draft OPA 10 that would implement the recommendations of the CNS 2002. On January 4, 2004, Avonwood submitted what it and the City both acknowledged was an incomplete application. On March 4, 2004, Avonwood requested that the City defer consideration of OPA 10 until it had had an opportunity to review proposed OPA 10 in light of Avonwood's complete development proposal. The City agreed with this deferral request. Avonwood did not submit its complete applications until February 28, 2005, which was about a year after it first submitted its incomplete applications.

Having regard to the evidence, I find that Avonwood was at the time fully aware of the evolving policy of the City as embodied in proposed OPA 10, and was not prejudiced by the process followed by the City resulting in Council's decision to adopt the Sorensen draft of OPA 10. When OPA 10 was adopted on October 24, 2007, it was clear that the Sorensen draft of OPA 10 had widespread support throughout the community and among members of Council. It was also clear from public meetings that the possible arrival of a Walmart store to Stratford had widespread public support but the majority of those who attended those meetings (and expressed their opinions publicly) felt a large format retail store such as a Walmart should locate in the West End Commercial Area as proposed in the Sorensen draft of OPA 10. As noted above, although a letter from Wal-Mart Canada Corp. was led in evidence indicating that it would only locate a Walmart department store on the Avonwood site, I gave this evidence little weight since Avonwood did not call the author of this letter to give evidence and to be subject to cross-examination.

After first recommending adoption of the Sorensen version of OPA 10 in a report to Planning and Heritage Committee dated February 9, 2004 (Exhibit 2, Tab 42), the City Planning Director Ms. B. Dembek, changed her earlier recommendation and in reports to Planning and Heritage Committee dated March 5, 2007 (Exhibit 5, Tab 90) and June 12, 2007 (Exhibit 5, Tab 101) recommended adoption of the Goldberg Version of OPA 10, as well as approval of the Avonwood applications. Her February 9, 2004 recommendation had been approved by City Council, while her March 5, 2007 and June

12, 2007 recommendations were not accepted by Council (Exhibit 5, Tab 108). It is noteworthy that Ms. Dembek was not called as a witness by any of the parties to the present hearing.

The parties began disputing the role that OPA 10 should play in the hearing on the Avonwood appeals even before the OMB pre-hearing process began several months before the full OMB hearing commenced in January 2009. The dispute centred on when the new Avonwood applications should be considered to have commenced as opposed to when they were actually tendered, which was agreed by all parties to have been February 12, 2008. If the commencement (that is, the effective) date of the applications was determined to have been February 12, 2008, then a number of significantly more restrictive legislative and policy documents would come into play – including Bill 51 amending the Ontario *Planning Act*. Bill 51 came into full force on January 1, 2007. The decision by Council on October 24, 2007 to adopt OPA 10 could also be given significant weight.

If, on the other hand, the effective commencement date of the Avonwood applications was found by the Board to have been February 28, 2005, Avonwood's position was that the weight given to OPA 10 should be heavily discounted by the Board in considering the evidence.

In James Dick Construction Inc. v. Town of Caledon, [2003] CarswellOnt 6221, 47 O.M.B.R. 87, 50 M.P.L.R. (3d) 311, at paragraphs 44 and 45, the Board states:

The Board is authorized to conclude when it is fair to apply the Clergy Principle and should undoubtedly do so in the vast majority of cases. And equally, it has the authority to conclude when the circumstances of a case warrant the application of another principle. For instance, it may choose in its procedural discretion to consider and apply more recent policies and more modern standards that are consistent with a compelling interest.

To conclude otherwise is to require that current practices and policies, no matter how reasonable, must be ignored or given so little weight as to be made trivial in all cases where the date of application precedes them. This would amount in some cases to wilful blindness that would prevent the decision-maker when determining the merits of an application – even where it is reasonable to do so – to apply criteria, standards and tests that are based on the most current research and information.

In determining the applicability of the Clergy Principle to the present case, in addition to the decisions previously referred to, I also reviewed the decisions of Dunpar Developments Inc. v. Toronto (City) 58 O.M.B.R. 1 (2007) and Dunpar Developments Inc. v. Toronto (City) (2008) 60 O.M.B.R. 1 (Ont. Div. Ct.).

In the Dunpar Developments case, the Board considered the rationale for and the application of the Clergy Principle to the facts of that case. Before that Panel of the Board were the approval of an Official Plan amendment, Zoning By-law amendment and a site plan. However, a different Panel had earlier decided that the Board did not have jurisdiction to hear the Official Plan Amendment appeal. Consequently, the Board considered only the zoning by-law amendment and site plan.

In deciding whether the policies of the City of Etobicoke Official Plan and the City of Toronto Official Plan were relevant to the Board's consideration of the zoning by-law amendment and site plan, the Board applied the Clergy Principle along with other Board decisions. The Board said that the Clergy Principle "seemed to stand for the proposition that their application is merely a matter of Board procedure (paragraph 18) ... However, generally following the principles of natural justice, the Board will evaluate an application against the policy regime in effect at the time the application was made (paragraph 19)." (Dunpar Developments Inc. v. Toronto (City) (2008) 51 M.P.L.R. (4th) 153).

An application for leave to appeal from this decision was dismissed by the Ontario Superior Court. In dismissing the application, the Court held that the Board had not erred in law. The Court reasoned that "the Board did not ignore the evidence tendered by the City and the Kingsway residents group concerning the City of Toronto Official Plan; it merely discounted its importance in determining that 'the evidence in this area is of limited relevance'". In short, the Court found that the Board had applied the Clergy Principle in a manner consistent with the discretion of the Board.

I note that the facts in the Clergy Properties case differ considerably from the facts of the Avonwood applications. As an illustration, the Clergy Properties decision pertained to a subdivision application on lands that had been designated for the proposed residential use in the City of Mississauga Official Plan, whereas the

Avonwood application is for development of a large format discount department store on lands designated and zoned for industrial uses.

But, again, even if the facts of Clergy Properties and Avonwood are more similar than I have characterized them above, I nevertheless adopt the conclusions in Dunpar Development that the Board retains discretionary authority as to where and when to apply the Clergy Principle, and that the Board itself must, in each case, weigh the relevant evidence.

THE AVONWOOD APPLICATIONS

Consistency of Avonwood's Applications with the 2005 Provincial Policy Statement

The Board finds that the Avonwood applications are not consistent with the intent and purpose of the 2005 Provincial Policy Statement ("PPS").

The PPS applies to all applications, matters or proceedings commenced on or after March 1, 2005. Even though the PPS 2005 did not come into effect until March 1, 2005, it was proclaimed on February 5, 2005. The Avonwood application was submitted on February 12, 2005. All parties to these proceedings agreed that the PPS 2005 applies to the Avonwood applications, although they also agreed that section 1.3.2 of the PPS dealing with the conversion of employment lands to non-employment uses would not apply. I accepted this agreement.

The PPS affirms that Ontario has a policy-led planning system. PPS policy 4.5 states that "the Official Plan is the most important vehicle for the implementation of the Provincial Policy Statement." This has been interpreted to mean that not only Official Plan policies but also development applications must be consistent with the policies of the PPS. I concur with this interpretation.

PPS Policy 4.5 continues with, "municipal official plans shall provide clear, reasonable and attainable (Board's emphasis) policies to protect provincial interests and direct development to suitable areas."

Avonwood presented evidence that neither the 1993 Official Plan policies nor the City-adopted OPA 10 policies are "reasonable" or "attainable" (as required by PPS

policy 4.5) because the market has selected the Ontario Street East Commercial Area for department store type merchandise (DSTM) and food store related merchandise (FSRM) shopping and because the area is better located to recapture outflow dollars. The City's witnesses acknowledged that the Ontario Street East Commercial Area has become the dominant area for DSTM and (with the 1999 development of a 90,000 square foot Zehrs store on a portion of the F.A.G. Bearings lands) FSRM shopping, and took the Board to section 6.4 of the 1993 Official Plan which states that (the development of the Ontario Street East Commercial Area with large scale retail uses) happened primarily because the City had not exercised sufficient control over auto-oriented retail development in the 1990s. Avonwood's witnesses did not attempt to refute this statement. After consideration of the evidence and the submissions of counsel, I find that the City's policies as embodied in the 1993 Official Plan are both reasonable and attainable.

PPS Policy 1.7.1.b states that "long term economic prosperity should be supported by maintaining and where possible enhancing the vitality and viability of downtowns and mainstreets". The City's witnesses took me to section 9 of the 1993 Official Plan, which details the City's policies regarding the preservation of heritage buildings and structures. Evidence was presented that substantial public dollars followed significant private investment dedicated to preserving heritage buildings and structures in the Downtown Core.

PPS Policy 1.7.1.g states that "long term economic prosperity should be supported by providing opportunities for sustainable tourism development". Section 4.2.2 of the 1993 Official Plan identifies the Downtown Core as one of the City's important tourism resources. Official Plan Section 4.2.5 acknowledges the connection between tourism and heritage.

Evidence was presented by witnesses for the CCC, who were with one exception all downtown merchants, that small scale retail located in heritage-type buildings makes the Downtown Core an interesting and attractive place to shop and to visit, and that this provides opportunities for sustainable tourism development. I was also told by these witnesses that they see a direct link between the financial health of the Shakespeare Festival and the use of the heritage-type structures in the Downtown Core for retail purposes. These witnesses testified that their years of retail experience in Stratford told

them that the Avonwood proposal, which would significantly increase the amount of retail in the Ontario Street East Commercial Area, would result in many of the long-standing retail shops in the Downtown Core being driven out of business since the Ontario Street East Commercial Area would acquire increased attractiveness to Stratford residents. Stratford residents, the Board was told, constitute an important segment of the Downtown Core merchants' customer base, and the loss of this business would represent a significant threat to the vitality of retail in the Downtown Core.

To demonstrate the fragility of business in the Downtown Core, the Board was told that the impact of the 2008-9 economic recession on Michigan and Ohio visitors to the Festival in particular led to a reduction in the average length of their stays. This reduction had, the Board was told, a direct adverse impact on food and beverage sales, especially in high end, tourist-oriented restaurants. A result was that several long established specialty shops in the Downtown Core closed down in 2009, and that nine high end restaurants in the Downtown Core were put up for sale in 2009, several of them even before the end of the Festival season. I was told that this was unprecedented, and that most of these restaurants had been in business for many years. Evidence was led that it is these businesses that attract visitors to the Downtown Core. Although the CCC witnesses were closely cross-examined by counsel for Avonwood, none of them recanted any portion of their testimony.

After consideration of all the evidence, I find that the Avonwood proposal poses a threat to sustainable tourism in Stratford, in large part because of the demonstrated fragility of the specialty retail and high end restaurant businesses in the Downtown Core, and is therefore not consistent with PPS policy 1.7.1 (g). I am of the view that sustainable tourism development in the City would be at serious risk of being eroded if the Avonwood proposal were to be accepted.

Conformity of Avonwood Applications to the 1993 Official Plan

I find the Avonwood applications are contrary to the intent of the 1993 Official Plan because the planned functions of the Industrial Areas, the Commercial Areas and the Downtown Core would be compromised by the proposed expansion of the Ontario

Street East Commercial Area into the adjacent Industrial Area (Romeo Industrial Park). My detailed reasons and analysis follow.

Conformity of Avonwood Proposal to 1993 Official Plan Policies for Industrial Areas

I find that re-designating the Avonwood lands will result in the loss of lands needed for future industrial uses, which is contrary to City policy as expressed in the 1993 Official Plan, and would also threaten the planned function of the Romeo Industrial Park.

Avonwood's proposal would expand the Ontario Street East Commercial Area by re-designating a portion of the Avonwood lands from Industrial Area to Commercial Area. In section 6.5 of the 1993 Official Plan, Goal and Objective (iv) for Industrial Areas is:

To maintain the integrity of industrial areas for industrial purposes and to discourage those uses which will be detrimental to industry or which reduce the potential attraction of these areas for future industrial development.

I note that for a proposal merely to reduce the *potential attractiveness* of an area designated for industrial uses is sufficient reason for the City to "discourage" that proposal.

Policies for Industrial Areas are also outlined in the 1993 Official Plan. Section 6.5.1 (Primary Uses) lists the kind of uses that are permitted in Industrial Areas:

In designating 'Industrial Areas' on Schedule B, the primary permitted uses will be for the manufacturing, assembling, repairing, wholesaling, or storage of any goods substance, article or thing. Warehousing and building trades are also permitted. The Zoning By-law shall set out uses permitted within designated 'Industrial Areas'.

Zoning By-law 201-2000 lists the specific uses permitted in Industrial Areas. The Board notes that neither 'department store' nor 'discount department store' of the type that has been proposed by Avonwood appears on the list and therefore are not permitted in Industrial Areas.

Section 6.5.2 of the 1993 Official Plan dealing with Secondary Uses in Industrial Areas, reads:

Non-essential commercial uses as well as commercial uses which attract a large number of patrons will not be permitted in 'Industrial areas'. Such uses will be encouraged to locate in designated 'Commercial Areas' or in the 'Downtown Core'.

Having regard to all the evidence and the provisions of the 1993 Official Plan including section 6.5, I adopt the evidence of the City and CCC planning witnesses on this point that the introduction of the retail uses proposed by Avonwood into the designated industrial area would reduce the potential attractiveness of the Romeo Industrial Park for future industrial users and would lead to other applications being made for the conversion of nearby lands within the Industrial Area to retail commercial uses. Accordingly, I find that the planned function of the Industrial Area is likely to be adversely affected if Avonwood's applications are allowed.

Conformity of Avonwood Proposal to 1993 Official Plan Policies for Commercial Areas

The term 'discourage' as used in sections 6.2, 6.4.2, 6.5 and 15.1.11 of the 1993 Official Plan expresses Council's policy that large format retail development should not take place on lands designated for industrial uses. I am of the view that this policy, which antedates the earliest of the Avonwood applications, represents good planning. The Clergy Principle, if adopted by this Panel, would not in the event require the Board to discount evidence of 1993 Official Plan policies that continued in force through the present hearing.

Testifying in support of the Avonwood applications, both Mr. Annand and Mr. Goldberg told the Board that the term, "discourage" allows an action to continue along the selected path but denotes caution. Mr. Stein, counsel for the CCC, argued to the contrary. He submitted that the word "discourage" denotes "prohibition".

As "discourage" is not defined in the 1993 Official Plan, I consulted the Canadian Oxford Dictionary. There, the word is defined to mean:

1. deprive of courage, confidence or enthusiasm
2. dissuade
3. oppose or deter

I find that the meaning of "discourage" set out in the Canadian Oxford Dictionary and as used in the context of the 1993 Official Plan to be clear. The City stated its land

use policy to be one that was opposed to large format commercial retail development on lands designated by the 1993 Official Plan for industrial purposes. Council's intent in using this word is clarified in the City-adopted OPA 10 amendment to section 6.4.2 of the 1993 Official Plan, in particular, wherein the introductory sentence to the last paragraph states:

The designation of additional lands for these or similar circumstances is not considered necessary and may have a potentially detrimental effect on the Downtown Core.

In OPA 10, this sentence is followed by, what I interpret to be an unequivocal statement of Council's intent for the Ontario Street East Commercial Area:

For this reason, there shall be no redesignations or zoning of additional lands in the Ontario Street east area, which would have the effect of permitting any new retail facilities for DSTM (department store type merchandise) or food shopping or any further expansions of existing retail for DSTM or food shopping.
(Exhibit 115A, page 21)

This statement replaces the original concluding sentence in the 1993 Official Plan, which reads, "The City will, therefore, discourage proposals which would increase the size of areas designated for these purposes." It is clear from earlier statements in section 6.4.2 that the "purposes" referred to are shopping centre complexes.

In my view, the proposed new phraseology makes unmistakably clear what "discourage" in the 1993 Official Plan was not only intended to mean, but in fact does mean. As noted above, I find the phrase used to be a linguistic progression or evolution and a clarification of the City's intent as expressed in the 1993 Official Plan. I accept the submission of counsel for the CCC that the new phraseology does not change the City's policies contained in the 1993 Official Plan but does clarify them.

Section 6.4.2 both as it is now in the 1993 Official Plan and as it would be if amended by City-adopted OPA 10 are analysed in further detail in the section of this decision dealing with the protection of the planned function of the Downtown Core.

The Preface to the 1993 Official Plan states that "the Plan is intended to guide the development, redevelopment and improvement of the City of Stratford over the period 1993 to 2013".

Section 1.3 states that “the Official Plan of the City of Stratford is designed to achieve (ten) purposes” including the following:

1. To formally express a vision statement and the planning goals and objectives of the City as to the type of community desired and the quality of life to be achieved.
2. To establish in general terms the desired type, form, pattern, intensity and character of land use and the principles and policies of the City governing the future development, redevelopment and improvement of the municipality.
3. To assist the City in determining its position and actions on all matters related to the use of land and the development and redevelopment of the municipality...
4. To provide the basis for the preparation and amendment of zoning by-laws and other by-laws affecting the use and development of land in the City.

Section 1.4 of the 1993 Official Plan contains the City’s Vision Statement, which states that the essential character and identity of Stratford is “the Festival City” and stresses the importance of tourism. Section 1.4 also states that “as a result of the control exercised by the City over the proliferation of commercial development at the periphery of the municipality and through continued investment ... the City will have ensured that (by 2013) the core continues to dominate as the centre and focal point of the community.”

Section 6.4 of the 1993 Official Plan begins with a general statement of the City’s policy for Commercial Areas. Commercial Areas include all retail areas outside the Downtown Core, which has its own specific policies relating to development. Of particular significance to the matter before the Board is the City’s view that certain Commercial Areas, including the Ontario Street East Commercial Area place excessive reliance on the use of the automobile, which the Plan suggests, has led to the “quite garish” appearance of this gateway to the City and clashes with the City’s desired image as the “Festival City”. It is Council’s policy to limit the extent of the Ontario Street East Commercial Area to what currently exists there.

Section 6.4 then lists a number of Goals and Objectives for Commercial Areas.

Goal and Objective (iii) is “to maintain and enhance the economic viability of all commercial areas”. Counsel for Avonwood submitted that not allowing the proposed

development of the subject lands would threaten the economic viability of the entire Ontario Street East Commercial Area. However, no evidence was adduced that supported this submission. On the contrary, the City's land use planning and marketing witnesses told me that the entire Ontario Street East Commercial Area is healthy and that locating the proposed Walmart store in the West End Commercial Area would in no way threaten the health of the Ontario Street East Commercial Area.

Goal and Objective (v) for Commercial Areas is to ensure the optimal use of lands and buildings designated, zoned and available for commercial purposes before additional lands are re-designated or re-zoned for these purposes. As noted earlier, I heard from the City's planning and marketing witnesses that there is ample land allotted for commercial and retail purposes in the West End Commercial Area. Avonwood attempted to refute this by persuading the Board that this land was not "designated for commercial purposes". While this may be technically correct, I accept the testimony of Mr. Sorensen that the designation and zoning on the lands in this vicinity, while not commercial at this time, are intended to hold the lands until site specific applications for commercial designation and zoning are made to the City. Mr. Sorensen testified that the lands in the area are in diverse ownership and that Council's policy is to wait until the market decides which parcel is best suited to be developed first before applying the Commercial Area designation. The Board finds Council's policy to be reasonable in the circumstances.

Goal and Objective (vi) for Commercial Areas is "to ensure that the designation or development of Commercial Areas outside the Downtown Core does not have a detrimental or adverse economic impact on the Downtown Core". The Board heard evidence from Mr. Sorensen and Mr. Dee that expansion of the Ontario Street East Commercial Area as Avonwood proposes could be "the tipping point" to break the delicate balance that now exists between retail stores in the Ontario Street East Commercial Area and the Downtown Core, and as a result adversely impact the planned function of the Downtown Core. I find this argument to be persuasive in the circumstances and consistent with the testimony of the witnesses for the CCC.

As noted above, I find the Avonwood proposal is contrary to the intent of the 1993 Official Plan because the planned functions of both the Industrial Area and the

Commercial Area would be compromised by the proposed expansion of the Ontario Street East Commercial Area into the adjacent Industrial Area.

Conformity of Avonwood Proposal to 1993 Official Plan Policies for the Downtown Core

In my view, the City-Adopted OPA 10 clarifies the City's intent to protect the planned function of the Downtown Core. After reviewing the policies of the 1993 Official Plan in light of the City-adopted OPA 10, the evidence of all the witnesses, and the submissions of counsel, I find that a large format department store on the subject lands threatens the planned function of the Downtown Core and that it does not represent good planning. The detailed reasons follow.

Section 6.1 of the City-adopted OPA 10 expands on the extent of the risk that additional large format retail stores in the Ontario Street East Commercial Area pose to the planned function of the Downtown Core. The Goldberg Version of OPA 10, on the other hand, merely observes that this situation exists because of decisions made in the marketplace. I find that the City-adopted OPA 10 properly draws attention to the serious risk posed by an extension of the Ontario Street East Commercial Area to the health of the Downtown Core. In my view, the City-adopted OPA 10 more accurately reflects and reinforces the intent of the 1993 Official Plan respecting large format commercial retail development that may endanger the planned function of the Downtown Core. I prefer the evidence of the City's planning witnesses in support of OPA 10 that the planned function of the Downtown Core must be protected, to the evidence of the experts testifying in support of the Goldberg Version of OPA 10 that the decisions in the marketplace should establish land use patterns. The City-adopted OPA 10, in my view, represents good planning.

Section 6.4.1 of the 1993 Official Plan sets out the policies for Commercial Areas: The City's policy is to locate large format commercial retail uses requiring extensive parking outside the Downtown Core. Section 6.4.1 indicates that the actual uses permitted are specified in the Zoning By-law. The City-adopted OPA 10 would add two new paragraphs to section 6.4.1, which further clarify Council's intent. The first new paragraph states Council's intent, which is:

To protect the retail commercial health of the Downtown Core by (redirecting) the attention of retail interests and reassert greater retail recognition of the Downtown

Core ... and thereby move towards a commercial structure characterized by healthy interaction and balance. For these reasons, there shall be no redesignations or zoning of any additional lands in the Ontario Street East (Commercial Area) which would have the effect of permitting any new retail facilities for DSTM or food shopping or any further expansions of existing retail facilities for DSTM or food shopping.

The second new paragraph further clarifies Council's intent that new retail development proposals should be directed to the Downtown Core as the location of "first choice" and that large format retail should be directed to the West End Commercial Area. It indicates that those development proposals for which a "downtown location is demonstrably not available or appropriate for warranted new retail uses" will be directed to the West End Commercial Area "in order to strengthen the major commercial structure of Stratford being the east-west axis along Ontario and Huron Streets with the Downtown Core occupying the preferred and central position."

After consideration of all the evidence and the submissions of counsel, I find that the new paragraphs in OPA 10 clarify the Council's intent in section 6.4.1 of the 1993 Official Plan and represent good planning since they would add protection to the planned function of the Downtown Core.

As noted above, section 6.4.2 (Special Policy Areas: Ontario Street) pertains specifically to the Festival Marketplace and Canadian Tire Store as well as the Stratford Mall (anchored by Zellers) in the Ontario Street East Commercial Area. The final paragraph of section 6.4.2 reads:

The designation of additional lands for these (large integrated shopping centres) or similar complexes is not considered necessary and may have a potentially detrimental impact on the Downtown Core. The City will therefore discourage proposals which would increase the size of areas designated for these purposes.

The City-adopted OPA 10 re-writes and expands this paragraph, which in the Board's view clarifies the City's intent as expressed in the 1993 Official Plan. The amended section reads:

The designation of additional lands for these or similar complexes is not considered necessary and may have a potentially detrimental impact on the 'Downtown Core'. For this reason, there shall be no redesignations or zoning of additional lands in the Ontario Street east area which would have the effect of permitting any new retail

facilities for DSTM or food shopping or any further expansions of existing retail facilities for DSTM or food shopping.

Avonwood alleged that this (rewrite) was done in response to its proposal to develop a Walmart store on the lands abutting the shopping centre lands covered by policy 6.4.2 (Special Policy Areas: Ontario Street). In my view, the City's planning witnesses successfully refuted this allegation in their testimony that the amended section 6.4.2 was directed to Avonwood's proposal to develop a large format Walmart store on its lands. I find that the new paragraphs in OPA 10 simply clarify Council's intent in this area as expressed in the 1993 Official Plan.

I find that while the City-adopted OPA 10 also clarifies the intent of the final paragraph of section 6.4.2, the intent of the original policy is clear when read in the context of the entire section 6.4. The intent is simply that no additional lands adjacent to C.H. Meier Blvd. and south of Ontario Street will be designated for commercial uses. Any new warranted commercial lands are to be located in one of the other Commercial Areas in the City. New section 6.4.11 of the City-adopted OPA 10 directs new large format retail development to the West End Commercial Area and gives a land use planning justification.

Section 15.1.11 of the 1993 Official Plan specifies the conditions under which the City will consider site specific amendments to the Plan. Generally, such amendments will be "discouraged" since in the City's view, they "undermine the ability to achieve the objectives of the Plan ... resulting in a weakening of the overall integrity of the Plan".

Section 15.1.11 goes on to state that site specific amendments will be "discouraged unless the merits of the proposal are substantial or extenuating and where it has been sufficiently demonstrated that the proposed use cannot or should not be accommodated within land use areas designated for these purposes."

New section 15.1.13 of the City-adopted OPA 10 sets down the implementation provisions for all retail development and directs interested parties to the provisions of new section 6.4.12 of the City-adopted OPA 10, which refers specifically to "warranted" new large format retail proposals. The term "warranted" refers to proposals that are accompanied by planning, traffic and market impact studies showing the proposed new development is warranted by market conditions, road capacity and "impact on the

planned function and economic viability of existing and planned Commercial Areas in the City”.

After consideration of the evidence, I find that the circumstances of the Avonwood application are neither extenuating nor substantial as set down in section 15.1.11 of the 1993 Official Plan. I also find that it has been adequately demonstrated by planning witnesses for the City that land use areas intended for (large format commercial retail) purposes already exist in the West End Commercial Area.

AVONWOOD’S OBJECTIONS TO OPA 10

Avonwood had three principal objections to the City-adopted OPA 10.

Objection 1: it is flawed

Avonwood’s first objection to OPA 10 is that market data on which OPA 10 is based are flawed. Avonwood submitted that since the major retail policy initiatives of OPA 10 flow directly from (the recommendations of) the CNS 2002 and it is flawed, OPA 10 is itself flawed and should not be approved by the Board.

During the period 2005 to 2008, Avonwood commissioned a number of studies to accompany its applications. These include a planning analysis of the proposed Avonwood site specific Official Plan and Zoning By-law amendments (Exhibit 3, Tab 71) by GSP Group, which was submitted in February, 2005; and a market demand and impact analysis by Malone Givens Parsons Ltd., which was also submitted in February 2005 (Exhibit 3, Tab 72). GSP indicated that it did not agree with the Dee/Sorensen findings in the CNS 2002 respecting the role of the Downtown Core as the primary retail focus of Stratford, primarily because the nature of retail (DSTM and FSRM in particular) had undergone a fundamental change over the previous decade with the advent of large format retail stores (such as, Walmart and Zehrs) that sell a large variety of goods from a wide variety of categories. GSP also had disputed the Dee/Sorensen findings in the CNS 2002 regarding the amount of warranted new DSTM space that could be accommodated in Stratford without driving existing retail stores out of business. The GSP report concluded that the recommended amendments to the 1993 Official Plan as embodied in the Sorensen draft of OPA 10 did not reflect the reality of what was

occurring on the ground in retail. The MGP report submitted in February, 2005 adopted this finding.

In February 2008, GSP submitted an updated planning analysis of the proposed Official Plan and Zoning By-law amendments for the revised (2008) applications respecting the Avonwood lands (Exhibit 6, Tab 113). Also in February 2008, MGP submitted an update of its February 2005 Market Demand and Impact Analysis that reflected the revised (2008) Avonwood applications (Exhibit 6, Tab 114). In this latter study, MGP confirmed that it “would not change the overall findings or conclusions of our 2005 Market Study”. The 2005 MGP report found that the proposed Walmart store would not have, what Mr. Annand described in his Peer Review of the 2005 (MGP) Market Study, as “a critical impact for existing Stratford retailers” (Exhibit 6, Tab 114, page 1).

Counsel for the City did not agree that the CNS 2002 was in any way flawed and pointed out the lengthy process by which it was reviewed before being adopted by Council. They also pointed out that Council waited almost five years before adopting OPA 10. During that period, updated data about retail store vacancies in the Downtown Core and information about commercial retail in the City as a whole came available and were used to measure the validity and applicability of the data collected in 2000 for the CNS 2002. I was also told that during this period both the overall thrust as well as the specific policies of the Sorensen-prepared version of OPA 10 were subjected to rigorous analysis and close examination, and were found to be fundamentally sound.

In their peer review of the 2005 MGP report, Messrs. Annand and Goldberg also reviewed the CNS 2002 and the proposed OPA 10 and did not report any of what I could determine would qualify as substantive “flaws” in the work of Messrs. Dee and Sorensen. Messrs. Annand and Goldberg completed their peer review in 2007. I was told that MGP shared its data – particularly those with respect to storefront vacancies in the Downtown Core - with Mr. Annand and Mr. Goldberg as well as with Mr. Dee when they were preparing their peer reviews. Mr. Dee and Mr. Sorensen had, then, ample opportunity to change their recommendations to Council and to propose modifications to OPA 10.

In response to a question from the Board, Mr. Annand himself noted that market research conclusions are often modified after the fact in order to better accommodate the facts as they appear. I accept Mr. Annand's assessment that market research is not an exact science but rather, in his words "functions more like an early warning". I find that Avonwood's criticism of the CNS 2002 and Mr. Dee's 2000 research as "flawed" reflects more on the benefit of hindsight and little more than a disagreement among professionals rather than an indication of a fundamental flaw in what is today a more than 8-year old document.

I find on the evidence then that the City-adopted OPA 10 is not "flawed" as submitted by Avonwood.

Objection 2: it is inconsistent with market realities

Mr. Annand expressed his professional opinion that an Ontario Street East Commercial Area location has greater potential for the recapture of the household shopping dollars that he indicated are currently leaving Stratford for centres like Kitchener-Waterloo and Woodstock, than would a West End Commercial Area location (Exhibit 53, page 27, conclusion vi). Mr. Annand told the Board that his research shows that people generally prefer to do all the weekly family shopping in one location if at all possible. The Kitchener-Waterloo area's Sunrise Centre on Highways 7 & 8, with its new large format Walmart store, was used as an example of such an attractive one-stop shopping destination. The Avonwood lands represent, he testified, an opportunity for the Ontario Street East Commercial Area to develop into a shopping destination in the order of the Sunrise Centre.

Although much was made by Mr. Annand and Avonwood's land use planning witnesses (Messrs. Clarkson and Goldberg) on the benefits of an east end over a west end location with respect to recapturing retail dollar outflow, beyond some travel time estimates (Exhibit 152) prepared by Mr. Clarkson that in the end only succeeded in showing that no place in Stratford is less than 10 minutes drive from anyplace else, no data were presented to me that would justify Avonwood's contention.

The Board was told by Avonwood's witnesses that regardless of travel distances, the main point is that Wal-Mart Stores Inc., which Avonwood suggested is the world's

most successful retailer, is the best arbiter of what is a suitable location for one of its stores. And, for its proposed Stratford store, Wal-Mart Canada Corp. has selected Avonwood's east end site. As noted above, no one from Wal-Mart Canada Corp. was called as a witness and as a consequence this evidence was not tested by cross-examination.

The City and Avonwood's planning witnesses differed in their view of the land use implications of an east end versus a west end location. Avonwood's land use planner – Mr. Clarkson, whose views were supported by Mr. Goldberg and Mr. Parsons – stated that it is “bad land use planning” to try to force a retailer to go where it does not want to go and where the community is not prepared for it to go. Mr. Sorensen contended that the West End Commercial Area has been planned for space extensive and large format retail uses since at least 1993 with the adoption of the City's 1993 Official Plan, then re-confirmed with the adoption of OPA 10, and that this is good planning in the context of the City.

The City's retail market (Mr. Dee) and land use planning witnesses (Messrs. Sorensen, and Zelinka) maintained that a Walmart store anchoring a regional-serving centre in the west end would offer a similar level of convenience and service for at least as many people. In fact, they told the Board, a west end location would be more convenient for even more people than would an east end location as the residential lands in the new Stratford West Secondary Plan areas get built out over the next decade or two. In addition, Messrs. Sorensen and Zelinka testified that a regional-serving shopping centre in the West End Commercial Area would speed the development of the Stratford West Secondary Plan lands and that this represented good planning.

The Board was told that large parcels of land suitable for the scale of development proposed for the Avonwood lands are available in the West End Commercial Area. Available lands include both the Ontario Realty Corp's former MTO site at the southeast corner and the former North American Developments Inc. site at the southwest corner of Huron Street and O'Loane Avenue. As well, Mr. Sorensen testified that virtually all of the lands adjacent to the intersection of Huron Street and O'Loane Avenue are available for the type and scale of development proposed by Avonwood for the subject lands. While Avonwood's counsel attempted in vigorous

cross-examination of the witnesses to demonstrate to the Board that none of the sites in the west end was suitable for a regional-serving shopping centre, I was not so persuaded and find that parcels of land suitable for a regional-serving shopping centre with large format retail stores are available in the West End Commercial Area.

With respect to the recapture of shopping dollars now spent outside Stratford by City residents: Messrs. Annand and Parsons were of the opinion that an Ontario Street East Commercial Area location is preferable to a location in the West End Commercial Area for the recapture of outflow dollars. However, no evidence was presented by Avonwood to support the testimony of Mr. Annand and Mr. Parsons. The City's witness, Mr. Dee, on the other hand said that the east end and west end locations would be equally effective in recapturing outflow dollars. After considering the testimony of all the witnesses on this question, I preferred the opinion of the City's witness since I was not given any hard evidence that showed any difference in the capability of either the west end or the east end to recapture outflow dollars.

Objection 3: the West End Commercial Area is not a viable location for a regional shopping centre

Avonwood maintained that because of market considerations at this time, a location in the West End Commercial Area is not suitable for a regional-serving shopping centre, and "may not be for a decade or more". Mr. Parsons suggested that the best strategy is to begin with something on the order of a neighbourhood or community level shopping centre (Exhibits 130, 131), and then, if and when the market so warrants, a regional-serving shopping centre might be developed. I note that this is not inconsistent with the policies proposed in amended section 6.4.11 in both the Sorensen version and Goldberg Version of OPA 10. However, the City's witnesses testified that allowing a Walmart store to locate in the Ontario Street East Commercial Area would effectively rule out regional-serving commercial retail from ever developing in the West End Commercial Area.

The Board was told by many witnesses – both the expert and lay witnesses – that Wal-Mart Canada Corp. is not an ordinary retailer. It is one that has an immediate impact on any market area it enters. It was the evidence of both the City's expert witnesses and Mr. Butler, a qualified land use planner testifying on behalf of the CCC,

that if a Walmart store were permitted to locate on the Avonwood lands, other large format retail stores would insist on locating nearby. Mr. Butler told me that in these circumstances it would be difficult, if not impossible, to stop them. Testifying in support of the Avonwood proposal, Mr. Parsons did not attempt to dispute this judgement, stating merely that in his opinion, the West End Commercial Area was not an appropriate location for regional-serving, large format retail stores (such as a Walmart store).

After considering all the evidence, I find that Avonwood's attempt to persuade the Board that the locational preferences of any developer or retailer – even a major developer like Avonwood or a major retailer like Wal-Mart Canada Corp. – should take precedence over the City's planning policies is inconsistent with the policy-led planning approach instituted by the Province and endorsed by Council in both the 1993 Official Plan and OPA 10.

I also find that the location of the proposed Walmart store in the Ontario Street East Commercial Area would effectively preclude the development of a regional serving shopping centre in the West End Commercial Area, and as a result adversely impact the achievement of the planned function of the West End Commercial Area. On this point, I adopt the evidence of the City's land use planning witnesses.

THE GOLDBERG VERSION OF OPA 10

In furtherance of its goal of persuading Council that it should be allowed to develop its lands with the proposed large format retail store and associated retail (and possibly when market conditions are favourable, with a home improvement centre), Avonwood submitted a version of OPA 10 prepared by Mr. Goldberg based on the research and findings of himself, Mr. Annand and Mr. Parsons. In fact, a total of three versions of OPA 10 by three different land use planners (Mr. Goldberg, Mr. Clarkson and Mr. Dragicevic, a land use planner retained by Tanurb) were prepared that supported the Avonwood appeals. As the three versions did not differ substantively, the other two authors agreed in the hearing for convenience to adopt Mr. Goldberg's version. Avonwood recommended that the Board allow its appeal of OPA 10, and approve the Goldberg Version of OPA 10.

While not having any impact on further development of the existing Ontario Street East Commercial Area, the Sorensen-prepared/City-adopted version of OPA 10 would preclude commercial development on the Avonwood site and would effectively direct future large format retail development to the West End Commercial Area (new section 6.4.11) or to one of the other Commercial Areas designated in Schedule B of the 1993 Official Plan in order to protect the planned function of the Downtown Core and the Romeo Industrial Park.

The Goldberg Version of OPA 10 differed significantly in several key areas from the Sorensen version. For example, the Goldberg Version of OPA 10 promotes two rather than three nodes of commercial retail development along Highways 7 & 8 – the Downtown Core and the Ontario Street East Commercial Area. It also does not prohibit commercial development of the Avonwood lands but rather recommends a “cautious” approach to the re-designation of all non-commercial lands in all of Stratford (Exhibit 115A, section 6.4.2, page 19). The Sorensen-prepared, City-adopted version of OPA 10 as well as both the Goldberg and Clarkson versions are each set out in Exhibit 115A.

In addition to its submission that the data on which the Sorensen-version of OPA 10 is based were flawed (see Objection 1 above), Avonwood took issue with the inclusion of what it described as ‘emotive’ words in the Sorensen version. In particular, the use of the term “eroded” in section 6.2 was cited, viz, “the relative prominence of the Downtown Core has been eroded over recent years.” Avonwood further alleges that the words “relative decline” in section 6.2, Goals and Objectives (ii): “...to reverse the relative decline in the retail sector (of the Downtown Core)...” were used to stir up strong reactions in the reader. Avonwood suggested that Mr. Goldberg’s use of “less emotional” words in his version of OPA 10 is “more helpful” to an applicant attempting to determine Council’s thinking regarding land use in certain areas of Stratford.

Mr. Sorensen disagreed with this assessment, confirming to the Board in cross-examination that the words he used exactly describe the conditions he saw. After consideration of all the evidence on this question, I find that the words chosen by Mr. Sorensen in his recommended version of OPA 10 are appropriate. I therefore reject the submission of counsel for Avonwood in this regard.

Differences between the Sorensen and the Goldberg Version of OPA 10

I find two important differences between the City-adopted or Sorensen version and the Goldberg Version of OPA 10 to be particularly germane to the Avonwood applications and to the future use of the Avonwood lands. First: the City-adopted version prohibits re-designation to permit commercial uses of any additional land in the Industrial Area adjacent to the Ontario Street East Commercial Area. The Goldberg Version of OPA 10, on the other hand, allows such re-designations provided that a “cautious” approach is taken.

Second: the City-adopted version of OPA 10 recommends a policy-led approach to commercial retail planning. It would, for example, direct new large format retail to the West End Commercial Area. The Goldberg Version of OPA 10, on the other hand, suggests a market-centred or application-driven approach to planning for future retail commercial development in the City. It recommends, for example, that the West End Commercial Area “continue” to be developed with local-serving commercial retail of the kind shown on Exhibit 29A, since that is the type that has chosen to locate in that area up to this time. For the same reason Mr. Goldberg recommends that the re-designation of additional land in the Ontario Street East Commercial Area continue as applications come in subject only to a “cautious” approach being taken. The difference in approach is evidenced in detail in the texts of the City-adopted, Sorensen version and the Goldberg Version of OPA 10 section 6.4.12 (Exhibit 115A).

The land use planning witness retained by the CCC, Mr. Butler, expressed deep concern with Mr. Goldberg’s recommended cautious, application-driven approach as it would apply to the Ontario Street East Commercial Area and particularly to the Avonwood lands. He contended that if the Goldberg version of OPA 10 were approved, there would be no effective means of controlling the loss of the several remaining smaller parcels of industrial land on the Avonwood site within the City limits to commercial uses and of discouraging speculation in the Industrial Area (including the F.A.G. and Samsonite plants) along the south side of Ontario Street east of Romeo Street.

The land use planning witnesses testifying in support of the Avonwood appeals (Messrs. Clarkson and R. Dragicevic) disagreed forcefully with Mr. Butler, giving several

examples from other jurisdictions of commercial shopping centres abutting industrial lands. In fact, Mr. Clarkson said that this is a more desirable land use situation, one with less potential for conflict, than where shopping centres abut residential districts.

With respect to the second key concern, the Board finds Mr. Butler's evidence more persuasive than that of either Mr. Clarkson or Mr. Dragicevic. In Mr. Butler's opinion, industrial-type jobs create wealth in a community, whereas retail jobs are only created where wealth already exists. In my view, this takes on added significance when considered in light of Stratford's motto, "industry and arts". This view was also put forward in evidence by one of the participants, Ms L. Walker-Fitzpatrick.

Mr. Butler also testified that it is a key principle of land use planning in Ontario that industrial lands should only be allowed to be removed from a municipal inventory under what the 1993 Official Plan describes as "substantive or extenuating" circumstances. This principle is a clear inference from the policy of section 15.1.11 of the 1993 Official Plan and has been confirmed in numerous Board decisions. Mr. Butler testified that preserving industrial land for future industrial uses makes a far greater contribution to the overall long term well-being of a community than does Mr. Clarkson's approach, which in Mr. Butler's opinion, only offers reduced potential for land use conflict with existing residential. I am of the view, however, that this is one of the many factors that the Board must take into consideration when evaluating a proposal that involves the possible conversion of lands designated for industrial uses to non-industrial uses.

After consideration of the evidence and the submissions of Council, I find that the Goldberg Version of OPA 10 does not further the intent of the 1993 Official Plan and is not consistent with the policies of the PPS. I find, on the other hand, that the Sorensen version of OPA 10 furthers the intent of the 1993 Official Plan and is consistent with the provisions of the PPS specifying a "policy-led" approach to planning.

Findings With Respect to the City's Commercial and Industrial Land Policies

I find that the 1993 Official Plan plays a critical role in determining how the commercial structure of the City is to develop and in how the Ontario Street Special Policy Area – Shopping Centres (section 6.4.2) functions to preserve the integrity of the

Romeo Industrial Park. In my view, it has not been proven that Council has ever wavered in its reliance on the policies of the 1993 Official Plan for these roles, and in its conviction that the subject property should be preserved for industrial employment uses.

Protection of the planned function of the Downtown Core for commercial and service uses including retail stores is a priority policy direction in the 1993 Official Plan. It is also as a policy priority of the City-adopted OPA 10. There, the Downtown Core is confirmed as the City's "primary retail focus" in terms of the policy intent of the (Official) Plan," whereas in the Goldberg Version of OPA 10, it is the "central focus for some retail and service commercial uses" (Exhibit 115A, page 4, see Goldberg proposed amendments to section 6.2).

I find that there is a fundamental difference in intent between these two versions. While there were repeated attempts by Avonwood's expert witnesses to interpret the term "primary retail focus" otherwise, it was made clear to me by the many references to older policy documents (e.g., Stamm 1982, Halwa 1992, and the CNS 2002 itself) made by the City's expert witnesses and references to the 1993 Official Plan that the intent of this policy in the City-adopted version of OPA 10 is to ensure that when people think of retail shopping in Stratford, they think first of the Downtown Core rather than Ontario Street East Commercial Area. The purpose of this policy is again to preserve and strengthen the planned function of the Downtown Core.

I find that the language of the Goldberg Version of OPA 10 provides little direction as to Council's intent vis-à-vis the planned function of the Downtown Core than does the City-adopted version of OPA 10. Adherence to policies that protect the planned function of the Downtown Core is essential to the long-term prosperity of the City and therefore worthy of whatever protection or assistance can reasonably be afforded (as required by PPS policies 1.7.1.b and 1.7.1.f). In my view, and in the view of the vast majority of the participants and lay witnesses who testified before this Board, anything that risks the health of the Shakespeare Festival – including threats to the City's image as "the Festival City" – must therefore be avoided. After consideration of the information made available to it and clearly mindful of the local insights of its constituent members, Council has determined that a large format department store use on the Avonwood lands poses considerable risk to the planned function of the Downtown Core and thus considerable risk to the Festival itself and has endorsed

policies that protect the planned function of the Downtown Core. I find on the evidence that this City policy represents good planning.

A key element of the City-adopted version of OPA 10 is the concept of “healthy interaction and balance” between and among what Council envisions to be a three-node commercial structure. From east to west, then, the regional-serving commercial structure of Stratford is composed of the existing Ontario Street East Commercial Area, the Downtown Core itself and the West End Commercial Area. Mr. Goldberg and the other experts supporting the Avonwood proposal reject completely the concept of a balanced 3-node commercial structure along an east-west axis. As noted, Avonwood sees a 2-node commercial structure – one part is centered on the current Ontario Street East Commercial Area and the second on the Downtown Core.

In my view, the Goldberg Version of OPA 10 offers a fundamentally different view of how the commercial structure of the City has developed in the past and should develop in the future from that presented in the 1993 Official Plan and described in the CNS 2002. Mr. Goldberg and the other Avonwood expert witnesses stressed that the Goldberg Version of OPA 10 builds on the way commercial retail in Stratford has been developing for years because of market forces. They testified that the Ontario Street East Commercial Area will continue to be the location for large format retail stores and the Downtown Core for government and commercial offices, specialty retail and service commercial, including restaurants. The West End Commercial Area will continue to be the location for neighbourhood or local-serving retail and some service commercial. Avonwood’s retail market land use planning witnesses expressed no doubt that the West End Commercial Area, especially along Huron Street would be an ideal location for local or community-level shopping centres on the order of 100,000 square feet in total GFA and entered as evidence examples of the type of such developments that would fit there (Exhibits 130, 131).

Again, the evidence from the parties represents two diametrically opposed visions of appropriate land use planning policy. The Goldberg Version of OPA 10 reacts to what may be termed the imperative of the marketplace. Confirming the land use planning opinions of Messrs. Clarkson and Goldberg, Avonwood’s retail market expert witness, Mr. Parsons, told the Board that the Ontario Street East Commercial Area exists primarily because it’s where the market determined it should be. He found several

market-based reasons why the Ontario Street location has succeeded as a regional-serving shopping node but the main reason it has (located there) is because, according to Mr. Parsons who is also an experienced land use planner, the Ontario Street East Commercial Area is the most convenient shopping location for most of the people in the Stratford market area.

The Board was told that the City-adopted OPA 10, on the other hand, takes a pro-active approach to development applications. It directs development (most especially commercial retail) to where Council has determined it will best serve the public interest, which is consistent with the policy-led approach to land use planning advocated by the PPS (Part 1, Preamble). The City's expert witnesses contend that the Ontario Street East Commercial Area has succeeded as a shopping area because shopping centres and large format stores were permitted to develop there during the past few decades, which has been an era of unprecedented growth in disposable income and automobile ownership. The City-adopted OPA 10 strives to counter the inertia of certain marketplace forces with what it clearly intends to be Council's firm hand. Council's policies (e.g. new section 6.4.11 in OPA 10) permit large format retail stores to enter the Stratford marketplace on the condition that they locate where the City has planned for new large scale shopping centres, namely, in the West End Commercial Area. The City-adopted version of OPA 10 is an attempt, I find, to advance the land use planning policies already in the 1993 Official Plan and is consistent with Council's overall vision for the community.

The City's land use planning witnesses testified that the West End Commercial Area will succeed as a regional-serving shopping centre simply because of the presence of large format retail stores like Walmart and the national brand merchandisers that are inevitably attracted to locate near stores like Walmart. Avonwood's witnesses, on the other hand, vigorously contended that the West End Commercial Area is simply not a viable location for a regional-serving shopping area – the proof being both that the most successful merchandisers chose early-on to locate in the Ontario Street East Commercial Area where they are best able to capture a portion of the shopping dollars that would have been spent in Kitchener-Waterloo or Woodstock area malls.

After consideration of all the evidence, I find that the City-adopted OPA 10 will protect the planned function of the Downtown Core by limiting the amount of lands designated to commercial retail development in the Ontario Street East Commercial Area to what currently exists. This has been Council's policy for decades. The Board was told that the result of this policy direction has been the preservation of downtown Stratford, one of the few smaller city centres that have managed to survive the changes in contemporary shopping practices including the introduction in the past 10 years of "power centres" composed of multiple large format retail stores.

I also find that the Goldberg Version of OPA 10 represents a fundamental departure from the intent and purpose of the 1993 Official Plan, a departure that would not only threaten the planned function of the Downtown Core and the City's Commercial Areas, but one that would lead to the loss of lands in the Romeo Industrial Park and over time defeat its planned function. Accordingly, I find that the City-adopted version of OPA 10 represents good planning, and should be approved.

THE TANURB APPEAL

Tanurb (Festival Marketplace) Inc. appealed Council's October 24, 2007 decision to adopt OPA 10.

Tanurb opposed the language of an early draft of a sentence in section 6.4.2 of OPA 10, which Tanurb alleged could have been interpreted to prohibit any on-site expansion of the existing Festival Marketplace shopping centre. Tanurb also indicated that it generally preferred the Goldberg Version of OPA 10 to the City adopted version.

Mr. Sorensen, author of the City-adopted version of OPA 10 stated that it had not been the intent of the sentence in question to downzone the Tanurb Festival Marketplace lands and proposed a modification to the sentence.

The intent of the modification, which moves the word "additional" (in the version of OPA 10 adopted by Council on October 24, 2007 and subsequently modified in 2008) so that it qualifies the word "lands" to ensure that Tanurb's right to use its existing Festival Marketplace lands is not constrained by any wording in OPA 10 that may have the unintended effect of downzoning those lands. During the hearing, Mr. Card, counsel

for Tanurb, indicated that the modification proposed would be acceptable to his client. The City did not object to this proposed modification being made.

Otherwise, the version of OPA 10 herein approved by the Board is unchanged from the version adopted by Stratford City Council on October 24, 2007, then modified slightly and endorsed by Council on November 24, 2008 as shown in Exhibit 183. I find the Tanurb-proposed modification represents good planning and I therefore approve it.

DISPOSITION AND ORDER OF THE BOARD

The Tanurb Appeal

The Board Orders that the Tanurb appeal against OPA 10 is allowed in part. The Board approves the modification to OPA 10 proposed by Tanurb (as found in Exhibit 183). In all other respects the Tanurb appeal is dismissed.

The Avonwood Appeal

The Board Orders that the Avonwood appeals against Council's refusal to grant amendments to the Official Plan of the City of Stratford and to the City of Stratford Zoning By-law 201 – 2000 are dismissed.

The Board Orders that the Avonwood appeal against OPA 10 is dismissed.

OPA 10 as Modified

The Board approves OPA 10 with the modifications adopted by Council in November 2008 (Exhibit 183) and the modification proposed by Tanurb as found in Exhibit 183, which is attached to this decision (Attachment "1").

So Orders the Board.

"C. Hefferon"

C. HEFFERON
MEMBER

ATTACHMENT "1"

As adopted and endorsed
by City of Stratford Council
with clarifications as per
evidence of W. Sorensen and
additional clarification to
accommodate Tanurb

AMENDMENT No. 10
to the
OFFICIAL PLAN OF THE CITY OF STRATFORD

Section 1 – TITLE AND COMPONENTS

This Amendment shall be referred to as Amendment No. 10 to the Official Plan for the City of Stratford. Sections 1 to 4 constitute background information and are not part of the formal Amendment. Section 5 constitutes the formally adopted Amendment to the Official Plan.

Section 2 – PURPOSE

The purpose of this Amendment is to update the policies applicable to retail and other commercial land uses in the City reflecting the adoption of the Commercial Needs Study by City Council in 2002.

Section 3 – LOCATION

This amendment affects commercial land use policies in all parts of the City, particularly in the Downtown Core, the Ontario Street East commercial area, the Huron Street West commercial area and nearby lands.

Section 4 – BASIS OF THE AMENDMENT

The existing Stratford Official Plan provides strong direction for the physical accommodation and locational guidance of commercial facilities to serve the needs of the citizens of the City and the surrounding regional areas that look to Stratford to provide the specialized goods and services not available locally.

In order to provide information on the performance of Stratford's commercial sector and provide a basis for updating the land use policies of the Official Plan in this regard, the City commissioned a Commercial Needs Study. The Study involved extensive empirical research, including:

- a series of customer intercept surveys, conducted in the downtown area and other significant retail areas in the City, to determine the current extent of Stratford's trade area
- a telephone survey of randomly selected residents, undertaken to understand the shopping patterns of residents of the City and of the surrounding trade area.

Based on the results of these surveys, together with forecasts of population growth, consumer spending, retail trends and other factors, projections of warranted retail space were developed for the short and mid-term future. These projections provide an indication of types of new space needed, according to the key categories of consumer retailing, such as supermarket, speciality food, department store and various sub-categories of DSTM (department store type merchandise).

The Study confirmed the basic soundness of Stratford's commercial structure, but observed that for certain types of retailing the downtown Core is no longer the dominant location. Key anchor stores are not part of the downtown retail sector. These uses and others have located or relocated in outlying parts of the City. These anchor stores are primarily, and in certain respects problematically, concentrated in the Ontario Street East corridor.

The Study also evaluated four locational options for the distribution of warranted retail/service space to determine the optimal locations for development that would assist Stratford in meeting identified commercial needs and augment and strengthen the City's commercial structure. The Study further recommended a policy approach to establishing and implementing the preferred commercial structure. This amendment establishes the policy to implement the commercial structure.

Section 5 – THE AMENDMENT

The Official Plan of the City of Stratford is amended as follows:

1. Section 6.1, third paragraph, of the Official Plan is amended by the deleting the third paragraph, and replacing it with the following text:

At the centre of the City lies the 'Downtown Core', undoubtedly the City's heart and the area of most intensive development and diverse activity. In order to retain and enhance this diversity, this Plan intends to safeguard and strengthen the key uses and components of the 'Downtown Core', which are identified as retailing, offices, business and personal services, culture, entertainment, dining and accommodation, public administration, and community and recreation activities. The retail sector in the Core requires particular attention, as its relative importance to residents of the City and surrounding regional area has declined in recent years. The Core is compact and characterized by a low profile of two and three storey buildings. While the west, north and east sides of the Core are surrounded by residential development, the south side abuts an underutilized area formerly occupied by railway and industrial uses. The City's oldest residential areas are located closest to the Core while the City of Stratford's newest residential areas are located on the periphery of the City. Commercial development, not unexpectedly, has taken place along the major streets leading to the Core and, in particular, along Ontario Street between Romeo Street and the City boundary and it is the concentration of retail development in this particular location that has resulted in the relative prominence of 'Downtown Core' retailing being eroded over recent years. Industrial development in the City is generally concentrated around the periphery of the City from southeast to southwest.

3. Section 6.2, first paragraph, is amended by deleting the fifth sentence and replacing it with:

While the 'Downtown Core' remains the City's primary retail focus in terms of the policy intent of this Plan, the relative prominence of 'Downtown Core' retailing has been eroded over recent years, and requires increased attention and emphasis in the City's planning and development approval process for retail land uses. The 'Downtown Core' is also the centre of government and business being the location of the Perth County Court House, City Hall and the County of Perth Administration offices and Council Chambers.

4. Section 6.2, is amended by the addition of the following new paragraph before Goals and Objectives for the Downtown Core:

The range of land uses in the Downtown Core is much wider than that of any other location in the City, ensuring that the downtown area can function as the true "central place" for the community. This location provides the greatest opportunity for multi-purpose trips for those residing some distance from the downtown and provides an inherent synergy and efficiency for both the downtown functions and for the residents involved. This range of land uses is also a unique benefit for the residents of the central parts of Stratford having immediate access to such a full range of goods and services.

5. Section 6.2, Goals and Objectives, paragraph ii) is amended to read:

To maintain the downtown as the City's centre for retail and service trade and government services and to reverse the relative decline in the retail sector by establishing the 'Downtown Core' as the location of first choice for new retail development.

6. Section 6.2.1, retitled "Use Policies" is amended to read:

Because the 'Downtown Core' is the heart of the City, not only in geographic, community identity and historic terms, but also as the healthy and fully functioning central place for activities of significance to residents of the City and surrounding region, the priority uses for the 'Downtown Core' shall be:

- i) all types of retail uses, including specialized and/or comprehensive retail facilities serving a City-wide or regional customer base, and retailers oriented to theatre patrons, tourists and visitors, as well as retail facilities oriented to the daily and weekly needs of residents, especially those located in and around the 'Downtown Core';
- ii) business, professional and administrative offices;
- iii) business and personal services of all types;
- iv) culture, entertainment, dining and accommodation;
- v) governmental facilities, public administration and other institutional uses;
- vi) facilities for community and indoor recreation activities and parks and open space.

In recognition of the diversity and multi-purpose role of the 'Downtown Core' as designated on Schedule "B", a wide range of uses will be permitted including, but not limited to, the priority uses identified above. Additional permitted uses shall include small scale, unobtrusive manufacturing, wholesaling and repair uses. Residential uses are also permitted in the upper stories of commercial buildings, as a component of mixed use developments, or in former industrial or commercial buildings no longer suited for their original purpose or in free standing structures. Uses that do not make an intensive use of land will be discouraged. The actual permitted uses will be set out in the Zoning By-law.

7. Section 6.2.5 is amended by the addition of the following sentence at the end of the paragraph:

The City will also consider appropriate measures to encourage and support the viability of 'brownfields' redevelopment to facilitate reuse and redevelopment of lands.

8. Section 6.4, Goals and Objectives, is amended by the addition of the following as new paragraph i):

i) To maintain and enhance Stratford's strong commercial structure, focused on the 'Downtown Core' as the central element of an east-west commercial axis along Ontario and Huron Streets, and ensure healthy interaction and balance among these retail locations.

and by the renumbering of subsequent paragraphs.

9. Section 6.4.1 is amended by the addition of the following new paragraph after the existing paragraph:

The retail commercial health of the 'Downtown Core' is profoundly affected by the amount and location of retail development that is permitted to occur in non-downtown areas of the City. Indeed, the relative significance of downtown retailing has been eroded in recent years, primarily by the concentration of retail activities in the vicinity of Ontario Street and C.H. Meier Blvd. It is the intent of this plan to redirect the attention of retail interests and reassert greater retail recognition of the 'Downtown Core' as well as other potential retail locations in Stratford, and thereby move towards a commercial structure characterized by healthy interaction and balance. For these reasons, there shall be no redesignations or zoning of any additional lands in the Ontario Street east area, generally between Romeo Street and the City limit, which would have the effect of permitting: (i) any new retail facilities for DSTM or food shopping; or (ii) any further expansions of existing retail facilities for DSTM or food shopping. For clarification, this policy does not affect, and is not intended to affect, the existing commercial designations and zoning rights for lands in the Ontario Street east area, generally between Romeo Street and the City limit.

While the 'Downtown Core' shall be regarded as the location of first choice for new retail development, it is recognized that there may be circumstances where a downtown location is demonstrably not available or appropriate for warranted new retail uses, and for such circumstances this Plan recognizes the potential for retail expansion in the vicinity of Huron Street and O'Loane Avenue. The resulting expansion in that vicinity, which shall occur only in accordance with Section 6.4.11 and other applicable provisions of this Plan, would strengthen the major commercial structure of Stratford being the east-west axis along Ontario and Huron Streets, with the 'Downtown Core' occupying the preferred and central position.

10. Section 6.4.2, final paragraph, is amended to read:

The designation of additional lands for these or similar complexes is not considered necessary and may have a potentially detrimental impact on the 'Downtown Core'. For this reason, there shall be no redesignations or zoning of additional lands in the Ontario Street east area which would have the effect of permitting: (i) any new retail facilities for DSTM or food shopping; or (ii) any further expansions of existing retail facilities for DSTM or food shopping. For clarification, this policy does not affect, and is not intended to affect, the existing commercial designations and zoning rights for lands in the Ontario Street east area, generally between Romeo Street and the City limit.

11. Section 6.4 is amended by the addition of the following new Section 6.4.11:

Potential Future Retail in Huron/O'Loane Vicinity

This Plan recognizes the future potential for expanded retail development in the general vicinity of Huron Street and O'Loane Avenue. This area is identified in recognition of its strategic location in Stratford's commercial structure within the east-west commercial axis along Ontario and Huron Streets, and in recognition of the potential benefit of additional development to anchor the western element of the structure. Such development may initially consist of smaller, neighbourhood-oriented

stores of the type that would customarily serve residential needs in the area.

The additional retail potential of this location, as a potential location for warranted new large format retail development for which a 'Downtown Core' location is demonstrably not available or appropriate, shall only be realized when appropriate amendments to this plan and to the zoning by-law are brought forward for consideration in accordance with the following:

- i) Updated market support and impact studies in accordance with the requirements of the Implementation Provisions for Retail Development in Section 6.4.12 of this Plan, shall be provided to establish that the proposed retail use(s) responds to identified public needs and the level of adverse impact on the planned function of other retail locations is acceptable.
- ii) A planning study or evidence of other satisfactory investigations of potential locations within the 'Downtown Core' shall be required, in order to demonstrate that a 'Downtown Core' location is not available or appropriate for the proposed uses.
- iii) An implementing Official Plan amendment, in accordance with this section and other applicable provisions of this Plan, shall also establish a comprehensive framework of designations and policies to accommodate the warranted development and shall provide specific policy directions for the implementation, through zoning by-law amendments, of appropriate limitations on the size, type and phasing of the development and/or with respect to particular retail uses.

12. Section 6.4 is amended by the addition of the following Section 6.4.12:

Implementation Provisions for Retail Development

Applications for Official Plan Amendment, Zoning By-law Amendment and/or Minor Variance to permit new or expanded retail commercial uses or developments shall be accompanied by appropriate studies to assess

the justification for and the impact of the proposals. These studies shall include:

- a) Planning report(s) assessing amongst other matters the appropriateness of the proposed application and the probable impact of the proposal on the structure of the City and on the neighbourhood and/or community where the development is to be located.
- b) Traffic impact studies addressing such matters as traffic generation and road and intersection capacity, access points, transit accessibility, turning movements and other road network or operational improvements to accommodate the proposal.
- c) Retail market demand and impact study. Studies of retail demands and impacts shall be based on acceptable population growth projections, information on changes in retail inventory, spending patterns and other applicable factors. The type and size of warranted facilities shall be specified, and the study shall identify impacts on the role, planned function and economic viability of existing and planned commercial areas in the City. The scope of a study may be reduced where information provided in a commercial needs study prepared by the City or a retail market demand and impact study submitted to and accepted by the City remains current.
- d) Other studies that may be required by the City.

The City may, and in the case of major applications shall, obtain peer review assistance in assessing the market, traffic, planning or other pre-requisite studies submitted by an applicant, and the City's costs for such peer review shall be reimbursed by the applicant.

The study requirements set out in i) through iv) above be varied or waived if the application does not involve new or expanded retail uses of a type or amount sufficient to pose a planning concern in relation to the policies of this Plan and/or if sufficient up-to-date information is already available to enable full and proper consideration of the application. In making this

determination, the City will generally consider that a retail market study is not required for applications involving less than 1,858 square metres (20,000 square feet) of new or expanded retail floor area, although a retail market study may be required by the City, at its discretion, for such application.

Any implementing planning instrument shall, in accordance with this section and other applicable provisions of this Plan, establish or set out guidance for the accommodation of the warranted retail development and shall provide specific direction for the implementation of appropriate limitations on the size and type and phasing of the development and/or particular retail uses.

Pro-active development promotion and direct City action in the 'Downtown Core' or elsewhere in the City's commercial structure may be undertaken in order to encourage desired development and change.

In order to advance planning for the potential retail expansion in the vicinity of Huron Street and O'Loane, the City may initiate studies, reviews and amendments to the Official Plan and/or zoning by-law. In particular, the City will consider initiating such reviews at such time as the former provincial highway yard is made available for other uses, or as part of the planning review of lands west of O'Loane scheduled for annexation to the City.

13. Section 15.1 is amended by the addition of the following new Section 15.1.3:

Implementation Provisions for All Retail Development

Applications for Official Plan Amendment, Zoning By-Law Amendment and/or Minor Variance to permit new or expanded retail commercial uses or development in any land use designation in this Plan shall comply with the provisions of Section 6.4.12 of this Plan.