



THE CORPORATION OF THE TOWN OF COBOURG

BY-LAW NUMBER 023-2018


A BY-LAW TO AUTHORIZE THE MUNICIPAL SOLICITOR FOR THE CORPORATION OF THE TOWN OF COBOURG TO SIGN THE MINUTES OF SETTLEMENT OF THE LOCAL PLANNING APPEAL TRIBUNAL (FORMERLY KNOWN AS THE ONTARIO MUNICIPAL APPEAL BOARD (OMB)) APPEAL NO. PL120047 OF THE PROPOSED MUNICIPAL OFFICIAL PLAN AMENDMENT NO. 69, TOWN OF COBOURG.


WHEREAS the Town of Cobourg passed By-law No. 046-2010, adopting Official Plan Amendment No. 69 ("**OPA 69**") which OPA was approved by the Ministry of Municipal Affairs and Housing (the "**Minister**") on December 6, 2011 (MMAH File 14-OP-0087-069);

AND WHEREAS the DePalma Developments Limited (the "Appellant") appealed the Minister's approval of OPA 69 to the Ontario Municipal Board (now known as the Local Planning Appeal Tribunal (the "Tribunal"), concerning the Appellant's lands legally described as: PT RDAL BTN LT 22 & 23 CON 1 HAMILTON; PT LT 22 CON 1 HAMILTON AS IN NC340804 S/T HN13225; COBOURG (the "**DePalma Lands**");

NOW THEREFORE the Municipal Council of the Corporation of the Town of Cobourg enacts as follows:

1. THAT Municipal Council for the Corporation of the Town of Cobourg hereby authorizes the Municipal Solicitor to execute the signing of the Minutes of Settlement for on behalf of the Corporation in regards to the Local Planning Appeal Tribunal (formerly known as the Ontario Municipal Board) Appeal No. PL120047 Proposed Official Plan Amendment No.69 attached to this by-law as Appendix "A".
2. THAT this by-law shall take effect upon the date of passing.
3. THAT this By-law read and passed in Open Council this 22nd day of May 2018.


MAYOR


MUNICIPAL CLERK

Appendix "A"

Case No. PL120047

LOCAL PLANNING APPEAL TRIBUNAL Tribunal d'appel de l'aménagement local

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O 1990, c. P.13, as amended

Appellant:	DePalma Developments Limited
Subject:	Proposed Official Plan Amendment No. 69
Municipality:	Town of Cobourg
Case No.:	PL120047
File No.:	PL120047
Case Names:	A & W Food Services of Canada Inc.v. Cobourg (Town)

MINUTES OF SETTLEMENT (dated May 22, 2018)

WHEREAS Cobourg passed By-law No. 046-2010, adopting Official Plan Amendment No. 69 ("OPA 69") which OPA was approved by the Ministry of Municipal Affairs and Housing (the "Minister") on December 6, 2011 (MMAH File 14-OP-0087-069);

WHEREAS the DePalma Developments Limited (the "Appellant") appealed the Minister's approval of OPA 69 to the Ontario Municipal Board (now known as the Local Planning Appeal Tribunal (the "Tribunal")), concerning the Appellant's lands legally described as: PT RDAL BTN LT 22 & 23 CON 1 HAMILTON; PT LT 22 CON 1 HAMILTON AS IN NC340804 S/T HN13225; COBOURG (the "DePalma Lands");

WHEREAS the parties hereto wish to effect a settlement of all of the issues in this appeal;

NOW THEREFORE in consideration of the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties hereto covenant and agree as follows:

1. The Appellant and the Town of Cobourg (the "Town") confirm and agree that the recitals above are true, both in substance and in fact.
2. The Appellant and the Town have agreed to settle this appeal as it relates to the DePalma Lands, and to request the Tribunal to modify OPA 69 as set out on **Schedule "A"** hereto (being an Order of the Tribunal modifying OPA 69), which is attached hereto and forms part of these minutes of settlement.
3. The Appellant and the Town consent to the order of the Tribunal as set out in Schedule "A".
4. Except to the extent that it is necessary to allow the Tribunal to issue the Order in the form attached hereto as Schedule "A", the parties consent to an order by the Tribunal dismissing this appeal.
5. On May 28, 2018, at the first scheduled day of the hearing in this appeal (or as soon thereafter as possible with all parties using their best efforts to obtain another date to be heard by the Tribunal as quickly as possible), the Town agrees that the planning consultant and its land economist representing the Town will appear to present oral evidence to the Tribunal, in support of an order in accordance with these minutes of settlement, and particularly, Schedule "A" hereto.

6. If necessary, the parties agree to cooperate in putting forward a joint submission to the Tribunal with such limited supporting expert evidence as may be required to satisfy the Tribunal as to the appropriateness of these minutes of settlement, having regard to the applicable legal and planning considerations.

7. The parties hereto agree that these minutes of settlement address all of the terms and conditions of the settlement reached between them, and that there are no other written or oral terms which may amend, modify, or otherwise affect the provisions of this settlement.

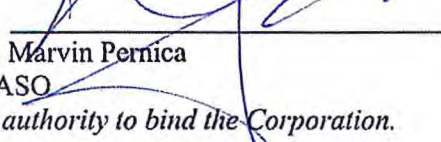
8. The parties agree to forthwith upon demand make, do, and execute or cause to be made, done, and executed, all such further assurances, acts, assignments, transfers, deeds, instruments, writings, and other documents as may be reasonably necessary to otherwise effect the terms of these minutes of settlement.

9. These Minutes may be executed by the parties in counterparts with the same effect as if they had signed the same document and all counterparts shall be construed together and shall constitute one and the same Minutes. These Minutes may be executed by the parties and transmitted by facsimile transmission, electronic mail in PDF format or other form of electronic transmission with the same effect as if the parties had delivered an executed original. The Minutes shall not be binding until all parties have evidenced their agreement by execution of same.

10. The agreement contained in these minutes of settlement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns, and any future owner of the DePalma Lands.

IN WITNESS whereof, the parties hereto have duly executed these minutes of settlement
by their authorized representatives.

DePalma Developments Limited

Per: 
Name: Marvin Pernica
Title: ASO
I have authority to bind the Corporation.

**THE CORPORATION OF THE
TOWN OF COBOURG**

Per: _____
Name:
Title:
I have authority to bind the Corporation.

SCHEDULE "A" TO THE MINUTES OF SETTLEMENT

AMENDMENT NO. 69 TO THE OFFICIAL PLAN OF THE COBOURG PLANNING AREA (Five Year Review) is hereby by order of the Local Planning Appeal Tribunal modified and approved by adding the following section after Section 14.3.2.6.1:

Special Provision for DePalma Lands

14.3.2.6 Special Provisions

14.3.2.6.2 DePalma Lands

- i) *Notwithstanding any other policies of this Plan, the following uses are permitted on the DePalma Lands as shown on Schedule I – Cobourg West Business Park Secondary Plan Land Use and Transportation Plan in addition to the uses already permitted in Section 14.3.2.2, subject to the following special provisions:*
 - a. *hotel, motel, conference centre, convention and banquet facility;*
 - b. *stand-alone service commercial uses, including personal service uses, eating establishment uses and drive-thru facilities but excluding banks, subject to clause ii) a);*
 - c. *stand-alone building supply uses, subject to clause ii) b);*
 - d. *stand-alone retail commercial uses, subject to clause ii) b);*
 - e. *retail commercial and service commercial uses, including eating establishment uses, which are accessory to a principal permitted use are permitted up to 15% of the gross floor area of the principal permitted use;*
 - f. *medical and dental clinics, subject to clause iii); and*
 - g. *laboratories.*

- ii) *Notwithstanding the foregoing, the permitted uses for the lands fronting directly onto the north side of the DePalma Drive extension, and the lands south of the DePalma Drive extension, shall be subject to the following special provisions:*
 - a. *stand-alone service commercial uses, including personal service uses, eating establishment uses and drive-thru facilities but excluding banks, may be permitted to a maximum total of no more than 2,322 sq. m. (25,000 sq. ft.) of gross floor area prior to December 31, 2020, and thereafter a further 1858 m² (20,000 ft.²) may be allowed (i.e. a maximum total of up to 4,180 sq. m. (45,000 sq. ft.) of gross floor area); and,*

 - b. *stand-alone retail commercial uses and stand-alone building supply uses may be permitted to a maximum total of no more than 2,322 sq. m. (25,000 sq. ft.) of gross floor area prior to December 31, 2020, and thereafter a further 3251 m² (35,000 ft.²) may be allowed (i.e. a maximum total of up to 5,574 sq. m. (60,000 sq. ft.) gross floor area) PROVIDED THAT at no time shall stand-alone building supply uses exceed 1,858 sq. m. (20,000 sq. ft.) of gross floor area.*

- c. *With respect to a. and b. above, any additional stand-alone service commercial uses, stand-alone building supply uses and stand-alone retail commercial uses proposed beyond the respective maximum individual gross floor area and/or beyond a maximum total gross floor area of 9,755 sq. m. (105,000 sq. ft.) on or after January 1, 2021 shall be subject to:*
- *the findings of a Planning Justification Report to be submitted to the Town which demonstrates the appropriateness of the DePalma Lands for additional commercial space based on:*
 - *Locational and transportation factors;*
 - *The existing and planned function of the DePalma Lands employment area, other nearby employment and commercial areas, and employment and commercial areas within the community as a whole; and,*
 - *The timing of development relative to other employment and commercial areas in the general vicinity of the DePalma lands and within the community as a whole; and*
 - *An updated Retail Market Impact Analysis to be submitted to the Town.*
 - *An updated Employment Land Needs Study to be submitted to the Town for additional commercial uses on the DePalma Lands, but such a study shall only be required for applications submitted after January 1, 2026. Applications submitted prior to January 1, 2026 shall be subject to a letter report/brief which shall evaluate and/or address any significant changes in the local and regional employment market.*

The aforementioned provisions shall be evaluated as part of a Zoning By-law Amendment in accordance with all relevant policies of the Official Plan, including but not limited to, Section 3.8.3.2 and Section 14 (Cobourg West Business Park Secondary Plan), to the satisfaction of the Town.

- iii) *Notwithstanding the foregoing, for lands subject to this amendment, medical and dental clinics may be permitted on or after January 1, 2021 but not before.*
- iv) *For additional clarity, the time horizons referenced in clauses ii) a), b) and c) and iii) above shall restrict the occupancy of floor space and shall not preclude the advancement of planning applications or approvals for permitted gross floor area in advance of the time horizons specified.*
- v) *Individual stand-alone building supply uses and stand-alone retail commercial uses shall have a minimum gross floor area of 465 sq. m. (5,000 sq. ft.) with the exception that 2 units less than 465 sq. m. (5,000 sq. ft.) shall be permitted.*
- vi) *Major stand-alone retail commercial uses with 4,645 sq. m. (50,000 sq. ft.) or more of retail gross floor area, including supermarkets, department stores, home and auto supply, and warehouse membership clubs shall be prohibited. In addition, supermarkets and department stores having a gross floor area less*

than 1,400 sq m (15,000 sq ft) and banks, which are considered anchor uses, shall be prohibited. Permission for such uses shall be subject to the findings of an updated Employment Land Needs Study (beyond January 1, 2026) and an updated Retail Market Impact Analysis, to be submitted to the Town which shall be evaluated as part of an Official Plan Amendment and a Zoning By-law Amendment in accordance with all relevant policies of the Official Plan, including but not limited to Section 3.8.3.2 and Section 14 (Cobourg West Business Park Secondary Plan), to the satisfaction of the Town. Notwithstanding the foregoing, any application for a supermarket and/or a department store with 1,400 sq m (15,000 sq ft) or more of gross floor area shall require the submission of a Retail Market Impact Study.

Major stand-alone retail commercial uses shall be defined as large-scale or large-format stand-alone retail stores with 4,645 sq m (50,000 sq ft) or more of retail gross floor area that have the primary purpose of retail commercial activities.

- vii) The aforementioned clauses shall be regulated in and through the implementing Zoning By-law.
- viii) In the event of any conflict between the above policies and other policies in the Town Official Plan or the Cobourg West Business Park Secondary Plan, the provisions of this section shall apply.
- ix) Section 14.3.2.4 shall not apply to the subject lands.

APPROVED by Order of the Local Planning Appeal Tribunal on the

day of _____, 2018.

