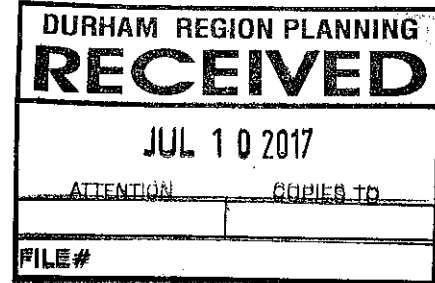


July 7, 2017

Denise Baker  
Partner  
T: 905-829-8600  
dbaker@weirfoulds.com

File 99999.99902

Mr. B.E. Bridgeman, MCIP, RPP  
Commissioner of Planning and Economic Development  
Regional Municipality of Durham  
Planning and Economic Development Department  
Planning Division  
605 Rossland Road East  
P.O. Box 623  
Whitby, ON  
L1N 6A3



Dear Mr. Mr. Bridgeman:

**Re: Notice of Appeal  
Amendment No. 107 to the Municipality of Clarington Official Plan  
Ontario Restaurant Hotel and Motel Association**

We are the solicitors for the Ontario Restaurant Hotel and Motel Association (the "Client") with respect to their concerns with the Municipality of Clarington's proposed Official Plan Amendment No. 107 ("OPA 107") approved by the Regional Municipality of Durham (the "Region"), as the approval authority, on June 19, 2017.

Our Client represents restaurant operators throughout the defined area of OPA 107 which includes locations with associated drive-through facilities ("DTF").

Our client's planning consultants Labreche Patterson & Associates Inc. have previously submitted a written letter to the Municipality of Clarington, delegated on this matter to the Planning and Development Committee of the Municipality of Clarington on October 24, 2016 and then further discussed our Clients concerns with Heather Finlay, Senior Planner at the Region to request modifications to OPA 107, which in its current form effectively prohibits DTF in the Prestige Employment Areas designation in OPA 107.

Despite the previous oral and written submissions, OPA 107 as adopted by the Region does not address our Client's concerns. As such, we are submitting this letter as our appeal of OPA 107, subject to modifications and deferrals under subsection 17(34) of the *Planning Act*. The previously submitted correspondence is enclosed and provides in part, the reasons for this appeal.

In summary, the reasons for the appeal are lack of justification for policy 11.5.5 b) of OPA 107 which effectively prohibits drive-through restaurants. In our view, there is no planning justification for Official Plan policies that prohibit or unjustifiably restrict DTF in any area of OPA

107 and we are aware of no appropriate planning justification provided by the Municipality of Clarington in support of such a prohibition and restriction.

For the aforementioned reasons and reasons raised in previous correspondence with the Municipality of Clarington, we are hereby filing this appeal of OPA 107 in so far as it prohibits or restricts drive-through restaurants.

Please find enclosed with this appeal letter the requisite Ontario Municipal Board Appellant form A1, cheque in the amount of \$300.00 payable to the Minister of Finance, and cheque payable to the Regional Municipality of Durham representing your \$250.00 administration fee for processing each appeal.

Thank you for your attention to this matter.

Yours truly,

**WeirFoulds LLP**



Denise Baker

DB/mw

Encls

cc Client

10658509.1



## Labreche Patterson & Associates Inc.

Professional Planners, Development Consultants, Project Managers

VIA MAIL AND E-MAIL ([dcrome@clarington.net](mailto:dcrome@clarington.net))

*Our File: P-375-HH*

October 20, 2016

Mr. David Crome  
Director of Planning  
Municipality of Clarington  
40 Temperance Street  
Bowmanville, Ontario  
L1H 3Z7

Dear Mr. Crome:

**Re: Draft Official Plan Amendment No. 107  
Clarington Official Plan Review  
File Number: COPA 2016-0001**

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We represent A&W Food Services of Canada Inc., McDonald's Restaurants of Canada Limited, Restaurant Brands International (operators and licensors of Tim Horton's Restaurants) as well as their industry association, the Ontario Restaurant Hotel and Motel Association (ORHMA). We are providing this written submission to you on behalf of our clients relative to the above noted subject matter.

ORHMA is Canada's largest provincial hospitality industry association. Representing over 11,000 business establishments throughout Ontario, its members cover the full spectrum of food service and accommodation establishments and they work closely with its members in the quick service restaurant industry on matters related to drive-through review, regulations and guidelines.

With the assistance of Labreche Patterson & Associates Inc., ORHMA has a strong record of working collaboratively with many municipalities throughout the Province over the last 10+ years to develop mutually satisfactory regulations and guidelines that are fair and balanced in both approach and implementation for new drive-through facilities ("DTF"). These planning-based solutions are most often specific urban design guidelines for drive-through facilities and include specific zoning by-law regulations that typically relate to minimum justified stacking/queuing requirements and setbacks relative to the DTF/queuing lane of the restaurant.

We understand that the subject in this case is a review of the current overall Official Plan (OP) for the Municipality of Clarington. Based on this we started our review for our clients with determining existing policies in place in the current OP relative to DTF. We are aware that there are many areas of Clarington covered by existing policies in several designations that prohibit DTF. We and our clients as well as their legal counsel have consistently taken the position that prohibitions are beyond the powers of a municipality provided by Section 16 of the Planning Act, with respect to the purpose of an Official Plan. There have been decisions from the Ontario Municipal Board up to and including the Supreme Court of Canada, going to this point. We are

also aware that previous correspondence from Novatech Consultants Ltd. on behalf of our clients in 2012 on other proposed amendments to the OP at the time provided further and specific case law and legal journal articles on this matter that specific OP based prohibitions of this kind are not in accordance with consistent case law decisions on this matter.

The existing prohibitions of DTF in the current OP as referenced above appear to have occurred and been in place for approximately 10 years or more. As these prohibitions, when they came into being, were not to our or our client's knowledge they were not challenged and came into effect. However, based on our review of the current draft OPA No.107 we see that a further prohibition is proposed in the "Prestige Employment Areas" designation by new section 11.5.5 b). We question why this is being proposed based on previous submissions by Novatech to this municipality that these forms of prohibitions which would include the existing ones are not in accordance with the consistent case law on this matter? Further, even though the case law speaks for itself, we are not aware of any justification as to why a prohibition on DTF in this designation is proposed even though several other uses such as light industrial, other commercial uses, banks, restaurants, athletic clubs, banquet facilities are permitted. What is it that is different with a DTF than these other permitted uses to justify a specific prohibition?

Based on the foregoing, we respectfully request that the proposed new policy section "11.5.5 b)" be removed in the final form of OPA No. 107 that will be adopted at some point by municipal Council.

Finally, please also consider this letter our formal request to be provided with copies of all future notices, reports, and Committee and/or Council considerations and decisions related to this matter.

Yours truly,  
**Labreche Patterson & Associates Inc.**



**Victor Labreche, MCIP, RPP**  
**Principal**

*Copy: C. Anne Greentree, Municipal Clerk, Municipality of Clarington*  
*(via e-mail: agreentree@clarington.net)*

*Leslie Smejkal, ORHMA*  
*(via e-mail: lsmejkal@orhma.com)*

*Darren Sim, A & W*  
*(via e-mail: dsim@aw.ca)*

*Julie May Rodgers, McDonalds Restaurants*  
*(via e-mail: Julie.may-rogers@ca.mcd.com)*

*Carol Patterson, Restaurant Brands International*  
*(via e-mail: cpatterson@rbi.com)*



Ontario

Environment and Land Tribunals Ontario  
**Ontario Municipal Board**  
 655 Bay Street, Suite 1500  
 Toronto ON M5G 1E5  
 Telephone: 416-212-6349  
 Toll Free: 1-866-448-2248  
 Fax: 416-326-5370  
 Website: [www.elfo.gov.on.ca](http://www.elfo.gov.on.ca)

# Appellant Form (A1)

Receipt Number (OMB Office Use Only)

Date Stamp - Appeal Received by Municipality

## 1. Appeal Type (Please check all applicable boxes) \*

Subject of Appeal	Type of Appeal	Act Reference (Section)
<b>Planning Act Matters</b>		
<b>Official Plan or Official Plan Amendment</b>	<input type="checkbox"/> Appeal a decision by local council that adopted an OP or OPA (exempt from approval by Minister or Approval Authority)	17(24)
	<input checked="" type="checkbox"/> Appeal a decision of an Approval Authority that approved or did not approve all or part of a plan or amendment	17(36)
	<input type="checkbox"/> Approval Authority failed to make a decision on the plan within 180 days	17(40)
	<input type="checkbox"/> Council failed to adopt the requested amendment within 180 days	22(7)
	<input type="checkbox"/> Council refused the requested amendment	
<b>Zoning By-law or Zoning By-law Amendment</b>	<input type="checkbox"/> Appeal the passing of a Zoning By-law	34(19)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – failed to make a decision on the application within 120 days	34(11)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – refused by the municipality	
<b>Interim Control Zoning By-law</b>	<input type="checkbox"/> Appeal the passing of an Interim Control By-law	38(4)
<b>Minor Variance</b>	<input type="checkbox"/> Appeal a decision of the Committee of Adjustment that approved or refused the application	45(12)
<b>Consent/Severance</b>	<input type="checkbox"/> Appeal a decision that approved or refused the application	53(19)
	<input type="checkbox"/> Appeal conditions imposed	
	<input type="checkbox"/> Appeal changed conditions	53(27)
	<input type="checkbox"/> Application for consent – Approval Authority failed to make a decision on the application within 90 days	53(14)
<b>Plan of Subdivision</b>	<input type="checkbox"/> Application for a plan of subdivision – Approval Authority failed to make a decision on the plan within 180 days	51(34)
	<input type="checkbox"/> Appeal a decision of an Approval Authority that <b>approved</b> a plan of subdivision	51(39)
	<input type="checkbox"/> Appeal a decision of an Approval Authority that did <b>not approve</b> a plan of subdivision	
	<input type="checkbox"/> Appeal a lapsing provision imposed by an Approval Authority	
	<input type="checkbox"/> Appeal conditions imposed by an Approval Authority	
	<input type="checkbox"/> Appeal conditions - after expiry of 20 day appeal period but before final approval (only applicant or public body may appeal)	51(43)
	<input type="checkbox"/> Appeal changed conditions	51(48)

Subject of Appeal	Type of Appeal	Act Reference (Section)
<b>Development Charges Act Matters</b>		
<b>Development Charge By-law</b>	<input type="checkbox"/> Appeal a Development Charge By-law	14
	<input type="checkbox"/> Appeal an amendment to a Development Charge By-law	19(1)
<b>Development Charge Complaint</b>	<input type="checkbox"/> Appeal municipality's decision regarding a complaint	22(1)
	<input type="checkbox"/> Failed to make a decision on the complaint within 60 days	22(2)
<b>Front-ending Agreement</b>	<input type="checkbox"/> Objection to a front-ending agreement	47
	<input type="checkbox"/> Objection to an amendment to a front-ending agreement	50
<b>Education Act Matters</b>		
<b>Education Development Charge By-law</b>	<input type="checkbox"/> Appeal an Education Development Charge By-law	257.65
	<input type="checkbox"/> Appeal an amendment to an Education Development Charge By-law	257.74(1)
<b>Education Development Charge Complaint</b>	<input type="checkbox"/> Appeal approval authority's decision regarding a complaint	257.87(1)
	<input type="checkbox"/> Failed to make a decision on the complaint within 60 days	257.87(2)
<b>Aggregate Resources Act Matters</b>		
<b>Aggregate Removal Licence</b>	<input type="checkbox"/> One or more objections against an application for a 'Class A' aggregate removal licence	11(5)
	<input type="checkbox"/> One or more objections against an application for a 'Class B' aggregate removal licence	
	<input type="checkbox"/> Application for a 'Class A' licence – refused by Minister	11(11)
	<input type="checkbox"/> Application for a 'Class B' licence – refused by Minister	
	<input type="checkbox"/> Changes to conditions to a licence	13(6)
	<input type="checkbox"/> Amendment of site plans	16(8)
	<input type="checkbox"/> Minister proposes to transfer the licence – applicant does not have licensee's consent	18(5)
	<input type="checkbox"/> Minister proposes to refuse transfer of licence – applicant is licensee or has licensee's consent to transfer	
	<input type="checkbox"/> Minister proposes to refuse transfer of licence – applicant does not have licensee's consent to transfer	
<input type="checkbox"/> Revocation of licence	20(4)	
<b>Municipal Act Matters</b>		
<b>Ward Boundary By-law</b>	<input type="checkbox"/> Appeal the passing of a by-law to divide the municipality into wards	222(4)
	<input type="checkbox"/> Appeal the passing of a by-law to redivide the municipality into wards	
	<input type="checkbox"/> Appeal the passing of a by-law to dissolve the existing wards	
<b>Ontario Heritage Act Matters</b>		
<b>Heritage Conservation District</b>	<input type="checkbox"/> Appeal the passing of a by-law designating a heritage conservation study area	40.1(4)
	<input type="checkbox"/> Appeal the passing of a by-law designating a heritage conservation district	41(4)

Other Matters

Subject of Appeal	Act/Legislation Name	Section Number
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**2. Location Information**

Address and/or Legal Description of property subject to the appeal \*  
Various - whole of Municipality

Municipality \*  
Municipality of Clarington

Upper Tier (Example: county, district, region)  
Regional Municipality of Durham

**3. Appellant/Objector Information**

**Note:** You must notify the OMB of any change of address or telephone number in writing. Please quote your OMB Case/File Number(s) after they have been assigned.

Last Name | First Name

Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation) \*  
Ontario Restaurant Hotel and Motel Association

Professional Title

Email Address

Daytime Telephone Number \* | Alternate Telephone Number | Fax Number  
416-947-5090 ext. | 905-826-8600

**Mailing Address**

Unit Number c/o 10	Street Number * 1525	Street Name * Cornwall Road	PO Box
City/Town * Oakville	Province * ON	Country * Canada	Postal Code * L6J 0B2

**4. Representative Information**

I hereby authorize the named company and/or individual(s) to represent me

Last Name | First Name  
Baker | Denise

Company Name  
WeirFoulds LLP

Professional Title  
Barrister and Solicitor

Email Address  
dbaker@weirfoulds.com

Daytime Telephone Number | Alternate Telephone Number | Fax Number  
416-947-5090 ext. | 905-829-8600 | 905-829-2035

**Mailing Address**

Unit Number 10	Street Number 1525	Street Name Cornwall Road	PO Box
City/Town Oakville	Province ON	Country Canada	Postal Code L6J 0B2

**Note:** If you are representing the appellant and are **not** a solicitor, please confirm that you have written authorization, as required by the OMB's Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box below.

I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her behalf and I understand that I may be asked to produce this authorization at any time.

## 5. Appeal Specific Information

Municipal Reference Number(s)

Municipality of Clarington Official Plan Amendment No. 107

Outline the nature of your appeal and the reasons for your appeal \*

Please see attached correspondence.

## Oral/written submissions to council

Did you make your opinions regarding this matter known to council?

Oral submissions at a public meeting       Written submissions to council

## 6. Related Matters

Are there other appeals not yet filed with the Municipality?

Yes       No

Are there other matters related to this appeal? (For example: A consent application connected to a variance application)

Yes       No

## 7. Scheduling Information

How many days do you estimate are needed for hearing this appeal?

1 day       2 days       3 days       4 days       1 week

More than 1 week

How many expert witnesses and other witnesses do you expect to have at the hearing providing evidence/testimony?  
Three (3)

Describe expert witness(es)' area of expertise (For example: land use planner, architect, engineer, etc.)  
Planning, traffic, and noise

Do you believe this matter would benefit from mediation?

(Prior to scheduling a matter for mediation, the OMB will conduct an assessment to determine its suitability for mediation)

Yes       No




### 8. Required Fee

Total Fee Submitted \* \$ 300

Payment Method \*  Certified cheque  Money Order  Solicitor's general or trust account cheque

### 9. Declaration

I solemnly declare that all of the statements and the information provided, as well as any supporting documents are true, correct and complete.

Name of Appellant/Representative	Signature of Appellant/Representative	Date (yyyy/mm/dd)
Denise Baker		2017/07/05

Personal information requested on this form is collected under the provisions of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, and the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28 as amended. After an appeal is filed, all information relating to this appeal may become available to the public.