

Issue Date:

June 30, 2009



Ontario

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

PL081565

Loblaw Properties 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 Peterborough to redesignate land at 300 Milroy Drive proposes a policy change to the "Special Purpose Retail" designation to allow a food store as permitted use on the subject property (Approval Authority File No. O-0705), OMB File No. PL081565

Loblaw Properties 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 1997-123 of the City of Peterborough to rezone lands respecting 300 Milroy Drive to implement the proposed Official Plan Amendment and permit a food store
OMB File No. PL081566

APPEARANCES:

Parties

Loblaw Properties Limited

City of Peterborough

Wal-Mart Canada Corp.

Mason Homes Limited

Counsel

S. Zakem

D. Bronskill

S. Mahadevan

G. Petch

**MEMORANDUM OF ORAL DECISION DELIVERED BY A. CHRISTOU AND
ORDER OF THE BOARD**

This is the third Prehearing Conference (PHC) to deal with preliminary and procedural matters for an upcoming Ontario Municipal Board hearing on appeals by Loblaw Properties Limited (Loblaw).

The Board was advised by Mr. Bronskill, Counsel for the City of Peterborough (City), that a partial settlement had been reached with Mason Homes Limited (Mason) and Wal-Mart Canada Corp. (Wal-Mart), and their request for Party status has been

granted. He requested the Board add the two entities as Parties to these proceedings. However, Smart Centres will not be seeking Party status for this hearing.

Mr. Bronskill further advised the Board that the City had posted a Notice of the Loblaw applications in The Peterborough Examiner on May 22, 2009, advising any further interested parties of this PHC on June 12, 2009, should they wish to participate at the hearing. There was no one from the public present at the PHC and no one requested, in writing, to be included as Party or Participant to this hearing.

With the City moving forward to consider the Loblaw and the Mason applications in the fall and winter 2009, Mr. Bronskill, with the consent of the Parties, requested that the hearing schedule be revised as follows:

1. The motion dates previously set aside for July 16 and 17, 2009, be released from the Board's calendar;
2. The 20 hearing days previously set aside to commence on October 13, 2009, be released from the Board's calendar;
3. Two days in January 2010 be scheduled by the Board to hear any motions arising from the application review process; and
4. 20 hearing days be scheduled by the Board in May 2010, to hear the Loblaw appeals.

The Board, at Mr. Zakem's request, heard planning evidence from Mr. Harry Frousios, a qualified land use planner, in support of a "first step" Zoning By-law amendment to rezone the Loblaw site from M3.2 (Enhanced Service Industrial) to C.7 (Commercial District – Special Purpose Retail), to permit a retail establishment, but excluding a department store and a food store. This matter was agreed to by the Parties in the partial settlement, to bring the 1.6 ha parcel of land into the commercial zone, consistent with the Portage Commercial Node and the Special Purpose Retail designation in the Official Plan.

In Mr. Frousios' opinion, this would provide for the uses contemplated in the Special Purpose Retail designation in the Official Plan, which allows large retail stores with minimum 750 m² GFA, but excludes supermarkets. He testified this constitutes good planning. The Loblaw Official Plan and Zoning Amendment applications to permit a food store are to be heard at the full hearing, in May 2010.

Mr. Petch indicated he had no objections to the C.7 zoning being requested by Loblaw at this time. Ms Mahadevan advised the Board that she was in agreement with Mr. Bronskill's proposal and she would not be taking any position on the C.7 zoning requested.

The Board is satisfied that the proposed Zoning By-law amendment would be consistent with the Provincial Policies and would conform to the City of Peterborough Official Plan. The change is supported by the City as an appropriate use of the land and therefore, constitutes good planning.

Pursuant to subsection 34(11) of the *Planning Act*, the Board will allow, in part, the appeal by Loblaw and will approve the Amendment to Zoning By-law 1997-123 as shown in Attachment "1", to rezone the Loblaw site from M3.2 (Enhanced Service Industrial) to C.7 (Commercial District – Special Purpose Retail), to permit a retail establishment, but excluding a department store and a food store. The full hearing, which is scheduled to take place in May 2010, will deal with the balance of the appeals by Loblaw for the permission of a food store at 300 Milroy Drive.

DISPOSITION

THE BOARD ORDERS that the appeal against By-law 1997-123 of the City of Peterborough is allowed in part, and By-law 1997-123 is amended as set out in Attachment "1" to this Order.

FURTHER, at the request of the parties, the Board sets the following:

- January 27 and 28, 2010, at the Board offices in Toronto, for a further PHC to hear any Motions arising from the City's application review process. The PHC is to be held at:

10:00 a.m.
Hearing Room 16-1A
16th Floor
655 Bay St.
Toronto, ON M5G 1E5

and

- The full hearing is to commence on May 3, 2010, for 20 hearing days.

The hearing is to be held at:

10:30 a.m.
Council Chambers, Municipal Building
500 George Street North
Peterborough, Ontario

No further Notice will be provided.

The revised Procedural Order is shown as Attachment "2" to this decision.

This Member of the Board is seized for the case management of these appeals.

So Orders the Board.

"A. Christou"

A. CHRISTOU
MEMBER

THE CORPORATION OF THE CITY OF PETERBOROUGH

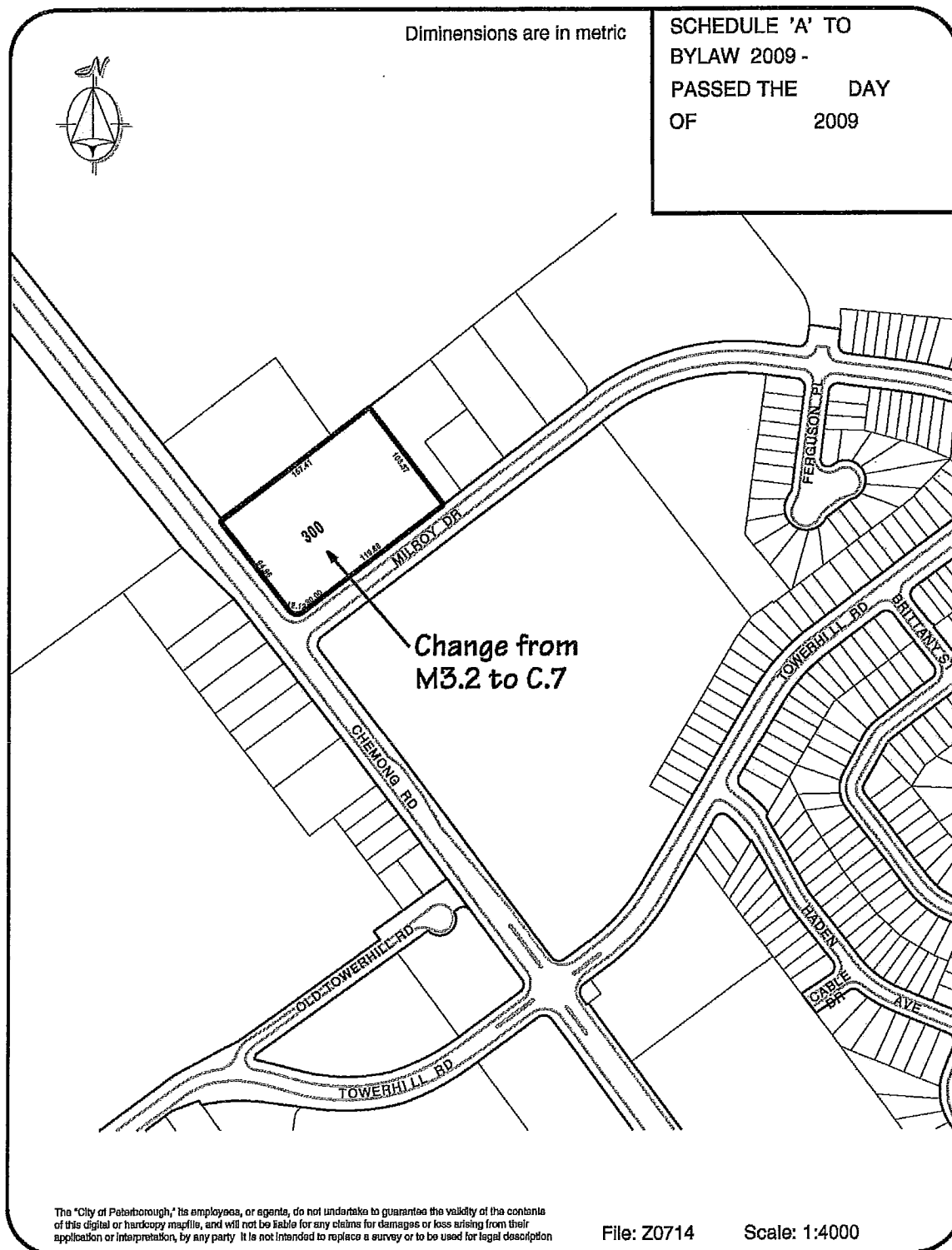
BY-LAW NUMBER 09- _____

BEING A BY-LAW TO AMEND THE ZONING FOR
300 MILROY DRIVE

WHEREAS the Ontario Municipal Board deems it advisable to amend By-Law #1997-123 with respect to the lands known municipally as 300 Milroy Drive;

THEREFORE By-Law #1997-123 is further amended by the Ontario Municipal Board as follows:

Map 16 forming part of Schedule "A" to By-law 97-123 is amended by changing the area shown on the sketch attached hereto as Schedule "A" **from M3.2 to C.7.**



ATTACHMENT "2"

PL081565

PL081566

ONTARIO MUNICIPAL BOARD

Loblaw Properties 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 Peterborough to redesignate land at 300 Milroy Drive proposes a policy change to the "Special Purpose Retail" designation to allow a food store as a permitted use on the subject property

(Approval Authority File No. O-0705)

OMB File No. PL0801565

Loblaw Properties 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 97-123 of the Town of Peterborough to rezone lands respecting 300 Milroy Drive to implement the proposed Official Plan Amendment and permit a food store

OMB File NO. PL081566

PROCEDURAL ORDER

1. The Board may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

Organization of the Hearing

2. The hearing will begin on **May 3, 2010 at 10:00 a.m.** in the City of Peterborough, Council Chambers, Municipal Building, **500 George Street North, Peterborough, Ontario**. The hearing is scheduled to commence at **10:30 a.m.**

3. The length of the hearing will be about **4 weeks (20 hearing days)**.

4. The **Parties and Participants** identified at the prehearing conference are listed in **Attachment 1** to this Order.

5. The **Issues** are set out in the Issues List attached as **Attachment 2**. There will be no changes to this list unless the Board permits, and a party who asks for changes may have costs awarded against it.

6. Any person intending to participate in the hearing should provide a telephone number and address (and facsimile number and e-mail address, if any) to the Board as soon as possible. Any such person who will be retaining a representative should advise

the other parties and the Board of the representative's name, address and phone number as soon as possible.

7. A person who wishes to become a party at the hearing, and who did not request this at the prehearing conference, must request the Board's permission to be added as a party to the hearing. The Board may refuse such request.

Requirements Before the Hearing

8. Expert witnesses in the same field shall have a meeting before the exchange of witness statements to try to resolve or reduce the issues for the hearing. On or before **April 2, 2010**, the experts must prepare a list of agreed facts and the remaining issues to be addressed at the hearing, and provide this list to all of the parties and the Municipal Clerk.

9. A party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other parties and to the Clerk a list of the witnesses which will be called. This list must be delivered on or before **March 2, 2010**.

10. An expert witness shall prepare an expert witness statement which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section 13. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Board may refuse to hear the expert's testimony.

11. A participant or party or other witness who is not a professional in the subject matter to be addressed must provide to the Board and the parties two (2) copies of an outline of the evidence he/she will give at the hearing on or before **March 18, 2010**, or he/she may not give oral evidence at the hearing.

12. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence, as in section 13.

13. On or before **March 18, 2010**, the parties shall provide two (2) copies of their witness and expert witness statements, reports or any other written evidence to the other parties and one (1) copy to the Clerk of the City of Peterborough.

14. On or before **March 18, 2010**, the parties providing evidence in accordance with **Attachment 3 - Financial Disclosure Statement** shall provide two (2) copies of such Financial Disclosure Statement to the other parties, subject to the other parties having provided an executed agreement regarding the confidentiality of such information, which agreement shall be substantially in accordance with the form of agreement in **Attachment 4**.

15. On or before **April 19, 2010**, the parties shall provide a list of the order in which their witnesses will be called to the other parties and the Clerk of the City of Peterborough.

16. On or before **April 26, 2010**, the parties shall provide copies of their visual evidence to all of the other parties. If a model will be used, all parties must have reasonable opportunity to view it before the hearing.

17. Parties may provide to all other parties and file with the Clerk a written response to any written evidence on or before **April 2, 2010**. The failure of a party to provide a written response shall not be considered by the Board as being in agreement by that party to the written evidence of another party.

18. A person wishing to change written evidence, including witness statements, must make a written motion to the Board, unless the other parties consent to the change of written evidence (*see Rules 34 and 35 of the Board's Rules, which require that the moving party provide copies of the motion to all other parties 10 days before the Board hears the motion*).

19. A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Board on or before **April 26, 2010**, that the written evidence is not part of their record or all the parties agree that the written evidence is not part of the record.

20. Documents may be delivered by personal delivery, facsimile, electronic mail (as an email attachment) or registered or certified mail, or otherwise as the Board may direct. The Board's Rules 26 to 31 on this subject shall govern the delivery of documents by fax. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.

21. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Board's Rules 61 to 65 apply to such requests.

22. The order of evidence shall be in accordance with **Attachment 5**.

23. The purpose of the Procedural Order and the meaning of the terms used in the Procedural Order are set out in **Attachment 6**.

This member is [not] seized.

So orders the Board.

ATTACHMENT 1

LIST OF PARTIES AND PARTICIPANTS

List of Parties

City of Peterborough

500 George Street North,
Peterborough, Ontario, K9H 3R9

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dbronskill@goodmans.ca

Loblaw Properties Limited

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Toronto, Ontario M5J 2T9

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Eileen Costello
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Fax: (416) 865 – 1515
ecostello@airdberlis.com

Attachment 1 (cont.)

Mason Homes Limited

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Toronto, Ontario M5J 2T3

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Wal-Mart Canada Corp.

Wood Bull LLP
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Toronto, Ontario M5H 2M5

Mary Bull
Tel: (416) 203-7739
Fax: (416) 203.7160
mbull@woodbull.ca

List of Participants

Consolidated Real Estate Services Inc.

Portage Place & Willowcreek Centre
Portage Place Administration Office
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Peterborough, Ontario K9H 7J6

Lynn Eno
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lynneno@live.com

ATTACHMENT 2

ISSUES LIST

The identification of an issue does not mean that all parties agree that such issue, or the manner in which the issue is expressed, is appropriate or relevant to the determination of the Board at the hearing. The extent to which these issues are appropriate or relevant to the determination of the Board at the hearing will be a matter of evidence and argument at the hearing.

DRAFT CONSOLIDATED ISSUES LIST OF THE CITY OF PETERBOROUGH AND LOBLAW PROPERTIES LIMITED

Provincial Policy

1. Does the proposed development have regard to the matters of provincial interest set forth in Section 2 of the *Planning Act*, and in particular, subsections (h), (l) and (p)?
2. Has Council rendered a decision on the applications for the proposed development to which the Board should have regard, pursuant to Section 2.1 (a) and (b) of the *Planning Act*?

[NTD: Section 2.1 of the *Planning Act* provides that the Board must have regard for the decision of the approval authority on the same planning matter and the materials in front of the approval authority at the time of the decision. In this instance we do not have a decision.(we have only the fact of a non-decision) and the only material as of yet is the material filed by LPL in support of the application].

3. Is the proposed development consistent with the Provincial Policy Statement (2005)?
4. Does the proposed development conform to the Growth Plan for the Greater Golden Horseshoe (2006)?

City of Peterborough Official Plan

5. Does the proposed development conform to the goals, objectives and policies of the City of Peterborough Official Plan, and in particular, the commercial policies of the City of Peterborough Official Plan? If not, is the proposed amendment to the Official Plan appropriate given the goals, objectives and policies of the Official Plan and in particular, the commercial policies of the Official Plan?

6. Will the impacts from the proposed supermarket result in the loss of planned function of any approved commercial designation or of the Central Area?
7. Will the proposed supermarket strengthen or enhance the planned function of the Portage Commercial Node in accordance with the objectives of the City's Official Plan?
8. Is there sufficient market capacity to justify additional food store space within the City of Peterborough? If so, is this the appropriate location for additional food store space given that the existing designation as "Special Purpose Retail" specifically prohibits the proposed food store use?
9. Is there sufficient market capacity to justify the proposed development in addition to the Wal-Mart expansion?
10. Should the introduction of additional food store space in the north end of the City be subject to a local comprehensive planning process to determine the best location?
11. Is the proposed development premature pending completion of the Chemong Secondary Plan process?

Other

12. Can the traffic generated by the proposed development be accommodated on the surrounding road network? If the proposed development is approved, will the site driveways (proposed and existing) operate at good levels of service?
13. Can the proposed development be appropriately serviced?
14. Does the proposed official plan amendment and zoning by-law amendment represent good planning?
15. Is the form of the implementing planning documents acceptable?

ATTACHMENT 3

FINANCIAL DISCLOSURE STATEMENT

Identification of Store(s) Alleged to be Closed

1. Where a party or other person alleges that the development proposed by Loblaw Properties Ltd. ("Loblaws" and the "Loblaws Development") will result in the closure of one or more store(s) that party or person shall identify such store(s).
2. Where a party or other person makes an allegation pursuant to section 1, that party or person shall address, to the extent known, whether that store will be replaced by another user of the same premises and the nature of the user, if any.
3. Where a party or other person, alleges pursuant to section 1 that there will be a store closure(s) and further alleges that such closure(s) will have a significant long term adverse effect upon existing commercial concentrations, the party or other person shall identify:
 - (a) the commercial concentration(s); and
 - (b) the extent to which there will be a loss of planed function of the Central Area or upon existing commercial concentration(s).

Financial Information Regarding Stores Alleged to be Closed

4. Where a store has been identified in section 1 above, the following information shall be provided by the party or other person in respect of the identified store:
 - (a) A clear and concise description of the occupancy arrangements in respect of the store, including:
 - (i) identification of the operator of the store;
 - (ii) identification of the owner of the property on which the store is located;
 - (iii) identification of any tenancies affecting the store, if known;
 - (iv) identification of any person(s) holding a charge against the property in which the store is located, if known;
 - (v) identification of any franchise relationship where there is any interconnection with an identified store that is alleged will be closed;
 - (vi) the relationship, if any, between the person(s) identified in (ii), (iii), (iv) and (v) and the person(s) identified in (i), if known;

- (vii) the general type of merchandise sold or the services provided in the store (at least at the level of detail in the five digit North American Industry Classification System) and any change thereto over the past three (3) years.
- (b)
 - (i) fiscal year-end audited or unaudited financial statements for the preceding three (3) year period, if usually prepared in the normal course of business; or
 - (ii) if such audited or unaudited financial statements are not usually produced in the normal course of business, a financial statement in accordance with Appendix "A" hereto with the intent that there be full and fair disclosure of such financial information.
- (c) if the store is affiliated with a retail chain that operates more than one store, any financial transfers in the past three (3) years between the store, its suppliers and its head office, to the extent that such information is readily available;
- (d) lease obligations for the store including, the detailed terms of the leases, operating agreements and any other covenants including, in particular, those with respect to the continuous occupancy or use of the store;
- (e) the base and percentage rental payments paid during the past three years and the person(s) to whom such payments were made; and the formula to be used for the calculation of future rental payments;
- (f) mortgage obligations, if known;
- (g) detailed revenue and expense projections for the succeeding three (3) years, or until closure, to demonstrate the basis for the allegation of closure; such projections to take the form of the audited or unaudited financial statements produced in accordance with section 4(b) above. If audited or unaudited financial statements are not produced in the ordinary course of business, such projections to be provided in accordance with Appendix "A" hereto;
- (h) the existing trade area of the store, to the extent known; and
- (i) the gross leasable area ("gla") of the store.
- (j) other stores that are owned or operated by the same person or company, or are under the same franchise banner where there is a financial interconnection with an identified store that is alleged will be closed.

Identification of Multi-Tenant Property Alleged to Close

5. Where a party or other person alleges that the Loblaws Development will result in the closure of a number of stores in a multi-tenanted property such that the multi-tenanted property will close, that party or other person shall identify the multi-tenanted property.

6. Where a party or other person, alleges pursuant to section 5 that there will be a closure of a multi-tenanted property and further alleges that such closures will have a significant long term adverse effect upon existing commercial concentrations the party or other person shall identify:

- (a) the commercial concentration(s); and
- (b) the extent to which there will be a loss of planned function of the Central Area or upon existing commercial concentration(s).

Financial information Regarding Multi-Tenanted Property Alleged to Close

7. Where a multi-tenanted property has been identified in section 5, in addition to the information that would be required to be provided by section 4 for each of the stores alleged to close, the following information shall be provided by the party or person in respect of the identified multi-tenanted property:

- (a) Identification of tenants and vacancies in the property over the last three (3) years, including the following information for each occupied or vacant premises, including: gla; any vacancies; time to re-lease the premises; those lease terms related to a tenant's obligation to continue to occupy premises; or to pay rent after vacating premises; tenant improvement allowances; rental rates and rental payments; other payments and recoveries (including taxes, common area charges, marketing and maintenance expenses) during that period;
- (b) Covenants or agreements with lenders, financial partners or other tenants in the property regarding the continuous use and occupancy by the tenants;
- (c)
 - (i) fiscal year-end audited or unaudited financial statements for the past three (3) year period if usually prepared in the normal course of business; or
 - (ii) if such audited or unaudited financial statements are not usually produced in the normal course of business, a financial statement in accordance with Appendix "A" [hereto] with the intent that there be full and fair disclosure of such financial information; and
- (d) detailed revenue and expense projections for the succeeding three (3) years, or until closure, to demonstrate the basis for the allegation of closure; such projections to take the form of the audited or unaudited financial statements

produced in accordance with paragraph 7(c) above. If audited or unaudited financial statements are not produced in the ordinary course of business, such projections to be provided in accordance with Appendix "A" hereto.

Assumptions Regarding the Development Proposal

8. Where a store is identified in section 1, or a multi-tenanted property is identified in section 5, the following information is required:

- (a) assumptions, which may be generalized, regarding the magnitude of sales transfer from the store or multi-tenanted building, or both, to the tenant or occupant(s) in the Loblaws Development corresponding to each year of operation specified above; and
- (b) assumptions regarding market conditions, including the size of the trade area served by the store, the inventory of competitive floor space operating within that trade area, and the projections of population and consumer expenditures that have been incorporated in any calculations of sales transfer.

It is understood that a party or other person may choose to use assumptions in regard to the foregoing that are provided to them by a market analyst. The market analyst may, if necessary, generalize the assumptions based on the location and nature of the store (i.e. the market consultant may provide one set of generalized assumptions for the entire Downtown). In such case, the assumptions will be identified in the party or other person's witness statement and the assumptions and the basis of the assumptions will be identified in the market analyst's witness statement.

Identification of Stores or Multi-Tenanted Property Alleged to Experience Declining Sales

9. Where a party or other person alleges that the Loblaws Development will result in the decline in sales performance levels of a store or multi-tenanted property, and that the alleged decline in sales productivity level in such store or multi-tenanted property, although not resulting in closure, will have a significant long term adverse effect upon existing commercial concentrations the party or other person shall identify the store and/or multi-tenanted property.

Financial and Other Information Regarding Stores Alleged to Experience Declining Sales

10. Where a party or other person makes the allegations identified in section 9, that party or other person shall identify:

- (a) the commercial concentration(s); and
- (b) the extent to which there will be a loss of planned function of the Central Area or upon existing commercial concentration(s).

11. Where a store or multi-tenanted property has been identified in section 9, the financial and other information identified in section 4, section 7 and section 8, as the case may be, shall, be provided by the party or person.

Required Witness

12. Where a party or other person has made an allegation referred to in section 1, section 5 or section 9, that party shall provide oral evidence from a senior principal or the operator of the store or the operator of the multi-tenanted property, as the case may be, to support and explain such allegation.

General Requirements

13. All financial statements and financial information provided pursuant to this Attachment shall be provided on a confidential basis and evidence regarding the financial statements shall be given on an "in camera" basis, if requested by the party providing such information, and remain confidential throughout this proceeding.

14. Where a party or other person, pursuant to section 1, section 5 or section 9 alleges a closure or diminishment of sales productivity and does not know or provide the information required pursuant to this Attachment, the evidence regarding such allegation shall be admissible. However, the Board may take such failure to provide information into consideration in the weight to be given to the evidence of the party or other person.

15. Compliance with the required productions pursuant to this Attachment does not limit the extent of cross-examination on the information provided, and where appropriate, further and better disclosure of financial information may be ordered by the Board.

APPENDIX "A" - FINANCIAL DISCLOSURE STATEMENT (SHEET 1 OF 3)

	ACTUAL (000s)			FORECAST (000s)		FORECAST (000s)		
	F2007	F2008	F2009	F2010	F2011	F2012	F2013	F2014
Gross Sales								
Discounts								
Net Sales								
Miscellaneous income								
Cost of Sales								
Gross Margin								
Operating Expenses								
Fixed Expenses:								
Occupancy Costs								
- Rent*								
Mortgage payments*								
- Realty Taxes*								
- Common Area Maintenance*								
- Heat*								
- Hydro*								
- Water*								
Total Occupancy Costs								
Fixed Maintenance Contracts								
Advertising and marketing								
Franchise fees*								
Licences*								
Professional fees*								

Other								
- Payroll Bank Charge*								
- Brinks Expense*								
- Employee Bonus*								
- Insurance Expense*								
- Interest on Lease Equipment*								
- IT Expense*								
Total for Other								
Total Fixed Expenses								

* if applicable)

Note: If information is not provided in regarding to an item on this form, it means that the information is not applicable to the particular business.

Note: In this chart under the heading "Forecast" the years 2010 and 2011 will be assumed to be development years. As a result, it is assumed that the first full year of operation of the Loblaws Development will be 2012 and that no impact will be assumed prior to 2012.

APPENDIX "A" - FINANCIAL DISCLOSURE STATEMENT (SHEET 2 OF 3)

	ACTUAL (000s)			FORECAST (000s)		FORECAST (000s)		
	F2007	F2008	F2009	F2010	F2011	F2012	F2013	F2014
Variable Expenses:								
Wages & Benefits:								
- Wages*								
- Employee Bonuses*								
- Employee Benefits*								
Management Salaries*								
Management Bonuses*								
Management Benefits*								
Advances*								
- RSP Expense*								
- Vacation Expense*								
- WSIB*								
Total Wages & Benefits								
Supplies								
- Sales Supplies*								
- In-Store Supplies*								
- Office Supplies*								
Total Supplies								
Repairs and Maintenance								
- Repairs and Maintenance- Building*								
Improvements								
- Repairs and Maintenance - Equipment*								

Total Repairs and Maintenance								
Other								
- Vehicle Leasing*								
- Equipment Leasing*								
- Vehicle Fuel & Repairs*								
- Freight*								
- Outside Services*								
- Telephone*								
- Bank Charges*								
- Waste Disposal*								
- Theme Events*								
- Laundry*								
- Mileage Reimbursement*								
- Travel & Marketing*								
- Security*								
- Small Equipment/Furniture*								
Total Other								
Total Variable								

* if applicable)

Note: If information is not provided in regarding to an item on this form, it means that the information is not applicable to the particular business.

Note: In this chart under the heading "Forecast" the years 2010 and 2011 will be assumed to be development years. As a result, it is assumed that the first full year of operation of the Loblaws Development will be 2012 and that no impact will be assumed prior to 2012.

APPENDIX "A" - FINANCIAL DISCLOSURE STATEMENT (SHEET 3 OF 3)

	ACTUAL (000s)			FORECAST (000s)		FORECAST (000s)		
	F2007	F2008	F2009	F2010	F2011	F2012	F2013	F2014
Cash Flow (Deficiency) From operations								
Sales per Square Foot								
Cash Flow (Deficiency) per Square Foot								

* if applicable)

Note: If information is not provided in regarding to an item on this form, it means that the information is not applicable to the particular business.

Note: In this chart under the heading "Forecast" the years 2010 and 2011 will be assumed to be development years. As a result, it is assumed that the first full year of operation of the Loblaws Development will be 2012 and that no impact will be assumed prior to 2012.

ATTACHMENT 4

[Re: INSERT NAME OF PARTY]

UNDERTAKING OF CONFIDENTIALITY

WHEREAS the party noted above ("the Disclosing Party"), has confidential sales data, and other financial and other confidential information in respect to its business in the City of Peterborough in its possession;

AND WHEREAS Loblaws made applications to amend the City of Peterborough Official Plan and the City of Peterborough Zoning By-law 97-123, as amended (the "Amendments");

AND WHEREAS Loblaws has appealed the Amendments to the Ontario Municipal Board (the "Proceedings");

AND WHEREAS the Disclosing Party has agreed to provide certain financial and confidential information, including the actual sales figures for the last three (3) full years of operation for the Disclosing Party's business in the City of Peterborough (the "Confidential Data") to the market analysts and legal counsel for the parties to the Proceedings provided that an undertaking of confidentiality has been executed by each person as a condition precedent to receiving the Confidential Data;

AND WHEREAS the Confidential Data may be used in analyses and reports prepared by the market analysts;

NOW THEREFORE, this undertaking applies to the Confidential Data released pursuant to this Undertaking.

1. Confidential Data

- 1.1. The undersigned agrees that all Confidential Data, whether provided in electronic or paper form, are confidential and shall not be disclosed to anyone (including clients, agents or advisors) except staff of the undersigned who sign an undertaking in the form of this Undertaking.
- 1.2. The undersigned agrees that no additional electronic or paper copies are to be made of such data unless expressly further authorized in writing by the Disclosing Party or its legal counsel or by order of the Ontario Municipal Board or as may be ordered by a court of competent jurisdiction.
- 1.3. Upon request by the Disclosing Party or its legal counsel, the undersigned agrees to forthwith return all Confidential Data to the Disclosing Party or its legal counsel. In this regard, the undersigned shall forthwith retrieve

from any person receiving from the undersigned the Confidential Data and return such data to the Disclosing Party or its legal counsel.

2. Documentation relating to Confidential Data

2.1. All documentation relating to Confidential Data (including analyses, summaries, reports, orders and witness statements) ("Documentation") shall not be disclosed to anyone (including clients, agents or advisors) except staff of the undersigned who sign an undertaking in the form of this Undertaking.

2.2. The Documentation shall be either destroyed by the undersigned or provided to the Disclosing Party or its legal counsel upon the conclusion of any approvals process in which such Documentation is used or at the completion of any proceedings that arise from such approvals process, or, if there are no proceedings, upon request by the Disclosing Party or its legal counsel.

3. Management of Confidential Data and Documentation

3.1. In order to ensure that confidentiality is maintained, the undersigned agrees to keep the Confidential Data, Documentation and any files, information and documents arising therefrom or any records which refer to such data in a file separate from any other files and in a locked cabinet and take all other measures reasonably necessary to ensure that persons not authorized to view this material, including clients, agents, or advisors, are not inadvertently provided with such opportunities.

4. Exception

4.1. Where the undersigned seeks to disclose to anyone a document containing Confidential Data and/or Documentation and such Confidential Data and/or Documentation can be removed without affecting the obligations of the undersigned under this Undertaking, then such Confidential Data and/or Documentation shall be removed from the document and the document will be considered as one to which this Undertaking does not apply.

5. General

5.1. Notwithstanding any of the foregoing, the undersigned will be obliged to comply with any order of the Ontario Municipal Board or any requirement at law, with respect to the production or disclosure of the Confidential Data.

5.2. The undersigned agrees to provide an original signed copy of this Undertaking forthwith to the Disclosing Party or its legal counsel.

- 5.3. The undersigned agrees to provide forthwith to the Disclosing Party or its legal counsel an original signed copy of an undertaking in the form of this Undertaking from any staff of the undersigned who would be under an obligation to sign an undertaking prior to receiving Confidential Data and/or Documentation.

IN WITNESS WHEREOF AND IN CONSIDERATION of receiving copies of or having an opportunity to inspect the said confidential documents, I give my Undertaking this

_____ day of _____, 2010 at _____
(date) (month) (place)

(signature)

(print name)

ATTACHMENT 5
ORDER OF PROCEEDINGS

Loblaw Properties Limited – Evidence in Chief

City of Peterborough

Mason Homes Limited

Wal-Mart Canada Corp.

Participants

Loblaw Properties Limited – Evidence in Reply

ATTACHMENT 6

Purpose of the Procedural Order and Meaning of Terms

The Board recommends that the parties **meet to discuss this sample Order before the prehearing conference** to try to identify the issues and the process that they want the Board to order following the conference. The Board will hear the parties' comments about the contents of the Order at the conference.

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not represented by a lawyer, you should prepare by obtaining the Guide to the Ontario Municipal Board, and the Board's Rules, from the Board Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-326-6800, or from the Board website at www.omb.gov.on.ca.

Meaning of terms used in the Procedural Order:

Party is an individual or corporation permitted by the Board to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an **unincorporated group** wishes to become a party, it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorisation from the party. **NOTE** that a person who wishes to become a party before or at the hearing, and who did not request this at the prehearing conference, must ask the Board to permit this.

Participant is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Board on all or some of the issues in the hearing. Such persons may also be identified at the start of the hearing. The Board will set the time for hearing these statements. **NOTE** that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can. If a participant does not attend the hearing and only files a written statement, the Board will not give it the same attention or weight as submissions made orally. The reason is that parties cannot ask further questions of a person if they merely file material and do not attend.

Written and Visual Evidence: **Written evidence** includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material. **Visual evidence** includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing.

Witness Statements: A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the

witness will rely on at the hearing. An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness' opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing. A

participant statement is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the participant will address and a short outline of the evidence on those issues; and a list of reports, if any, which the participant will refer to at the hearing.

Additional Information

Summons: A party must ask a Board Member or the senior staff of the Board to issue a summons. This request must be made before the time that the list of witnesses is provided to the Board and the parties. (See Rules 45 and 46 on the summons procedure.) If the Board requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Board is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.

The order of examination of witnesses: is usually direct examination, cross-examination and re-examination in the following way:

- direct examination by the party presenting the witness;
- direct examination by any party of similar interest, in the manner determined by the Board;
- cross-examination by parties of opposite interest;
- re-examination by the party presenting the witness; or
- another order of examination mutually agreed among the parties or directed by the Board.

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