


**DUXBURY & ASSOCIATE**  
PROFESSIONAL CORPORATION

BARRISTERS & SOLICITORS  
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TELEPHONE (905) 570-1242 • FACSIMILE (905) 570-1955  
[brian@duxburylaw.ca](mailto:brian@duxburylaw.ca)    [marimo@duxburylaw.ca](mailto:marimo@duxburylaw.ca)

Brian Duxbury, B.A., LL.B

Marimo Kubota, B.A., M.A., LL.B

 *Certified Specialist - Civil Litigation*

March 25, 2009

**Via Courier**

Ontario Municipal Board  
655 Bay Street, Suite 1500  
Toronto, ON M5G 1E5  
**Attention: Patrick Hennessy, Secretary**

**Delivered**

✓ City of Hamilton  
Clerk's Office  
77 James Street North  
Hamilton, ON L8R 2K3  
**Attention: Kevin Christenson, City Clerk**

<b>OFFICE OF THE CITY CLERK</b>	
MAR 25 2009	
REC'D BY.....	DATE.....
REF'D TO.....	DATE.....
REF'D TO.....	DATE.....
REF'D TO.....	DATE.....
ACTION: T. McCabe	
A. Zuidema	
P. Mallard	
E. John	
Lisa-Records	

ar. R. Powers

Dear Sirs:

**RE: Notice of Appeal of Decision of Council  
dated February 25, 2009 - 201 King Street East, Dundas  
File Nos. OPA-08-003 and ZAC-08-011**

I am retained by First Dundas Leasing Limited and J. Douglas Hammond in respect to the above noted matter.

My client is appealing the decision of Council dated February 25, 2009 wherein Council denied my client's application for an official plan amendment and a zoning by-law amendment for the lands located at 201 King Street East (in the former Town of Dundas), Hamilton, Ontario.

My client's Notice of Appeal is attached. My cheques, each in the amount of \$125.00 payable to the Minister of Finance are being delivered to the City of Hamilton with this letter.

If you have any questions in respect to this appeal or require any further information please do not hesitate to contact me.

Yours very truly,

DUXBURY & ASSOCIATE  
PROFESSIONAL CORPORATION

Per:

A handwritten signature in black ink, appearing to read "Brian Duxbury". The signature is fluid and cursive, with a large loop at the end.

Brian Duxbury  
BD:mc  
Encls.



Ontario Municipal Board  
 Commission des affaires municipales de l'Ontario  
 655 Bay Street, Suite 1500 Toronto, Ontario M5G 1E5  
 TEL: (416) 326-6800 or Toll Free: 1-866-887-8820  
 FAX: (416) 326-5370  
[www.omb.gov.on.ca](http://www.omb.gov.on.ca)

**APPELLANT FORM (A1)**

**PLANNING ACT – Bill 51**

**(SUBMIT TO MUNICIPALITY/APPROVAL AUTHORITY)**

**Instructions:**

- Complete one form for each type of appeal you are filing.
- A filing fee of \$125 is required for each type of appeal you are filing. To view the Fee Schedule, visit the Board's website.
- The filing fee must be paid by certified cheque or money order, in Canadian funds, payable to the Minister of Finance.
- Do not send cash.
- Submit your completed appeal form(s) and filing fee(s) to either the Approval Authority or Municipality, as applicable, by the required filing deadline. The Approval Authority/Municipality will forward your appeal(s) and fee(s) to the Ontario Municipal Board.
- Please print clearly throughout the appeal form.
- The *Planning Act* and the *Ontario Municipal Board Act* are available at [www.omb.gov.on.ca](http://www.omb.gov.on.ca).

Receipt Number (OMB Office Use Only):

Date Stamp - Appeal Received by Municipality

**Part 1: Appeal Type (Please check only one box)**

SUBJECT OF APPEAL	TYPE OF APPEAL	PLANNING ACT REFERENCE (SECTION)
Minor Variance	<input type="checkbox"/> Appeal a decision	45(12)
Consent	<input type="checkbox"/> Appeal a decision or conditions imposed	53(19)
	<input type="checkbox"/> Appeal conditions imposed	53(27)
	<input type="checkbox"/> Failed to make a decision on the application within 90 days	53(14)
Zoning By-law/Amendments	<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 checked="" type="checkbox"/> Application for an amendment to the Zoning By-law – refused by the municipality	
Interim Control By-law	<input type="checkbox"/> Appeal the passing of an Interim Control By-law	38(4)
Official Plan or Official Plan Amendment	<input type="checkbox"/> Appeal a decision	17(24) or 17(36)
	<input type="checkbox"/> Failed to make a decision on the application within 180 days	17(40)
	<input checked="" type="checkbox"/> Application for an amendment to the Official Plan – refused by the municipality	22(7)
	<input type="checkbox"/> Application for an amendment to the Official Plan – failed to make a decision on the application within 180 days	22(7)
Subdivision	<input type="checkbox"/> Appeal a decision	51(39)
	<input type="checkbox"/> Appeal conditions imposed	51(43) or 51(48)
	<input type="checkbox"/> Failed to make a decision on the application within 180 days	51(34)

**Part 2: Location Information**

201 King Street East (Dundas), Hamilton, Ontario

Address and/or Legal Description of property subject to the appeal:

Municipality: City of Hamilton

**Part 3: Appellant Information**

First Name: Last Name:

First Dundas Leasing Limited

Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation)

Professional Title (if applicable):

E-mail Address: N/A  
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: 905-627-5990 Alternate Telephone #:

Fax #: 905-627-8354

Mailing Address: 1096 Sulphur Springs Road, R.R. #3 Dundas  
Street Address Apt/Suite/Unit# City/Town  
Ontario L9H 5E3

Province Country (if not Canada) Postal Code

Signature of Appellant: [Signature] Date: 23/03/09

Please note: You must notify the Ontario Municipal Board of any change of address or telephone number in writing. Please quote your OMB Reference Number(s) after they have been assigned.

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.

**Part 4: Representative Information (if applicable)**

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

First Name: Brian Last Name: Duxbury

Company Name: Duxbury & Associate Professional Corporation

Professional Title: Lawyer

E-mail Address: brian@duxburylaw.ca  
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: 905-570-1242 Alternate Telephone #:

Fax #: 905-570-1955

Mailing Address: 1500 - 1 King Street West Hamilton  
Street Address Apt/Suite/Unit# City/Town  
Ontario L8P 1A4

Province Country (if not Canada) Postal Code

Signature of Appellant: [Signature] Date: 23/03/09  
(continued on next page...)

Please note: If you are representing the appellant and are NOT a solicitor, please confirm that you have written authorization, as required by the Board'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.

### Part 5: Appeal Specific Information

1. Provide specific information about what you are appealing. For example: Municipal File Number(s), By-law Number(s), Official Plan Number(s) or Subdivision Number(s):

(Please Print) This is an appeal of the decision of the Council of the City of Hamilton dated February 25, 2009 wherein Council denied the official plan amendment application and zoning by-law amendment application of First Dundas Leasing Limited pursuant to City of Hamilton File No. OPA-08-003 and ZAC-08-011.

2. Outline the nature of your appeal and the reasons for your appeal. Be specific and provide land-use planning reasons (for example: the specific provisions, sections and/or policies of the Official Plan or By-law which are the subject of your appeal - if applicable). \*\*If more space is required please continue in Part 8 or attach a separate page.

(Please Print)

See Schedule "A" attached.

**\*\*The following sections (a&b) apply only to appeals of Zoning By-law Amendments under Section 34(11) of the Planning Act.**

a) **DATE APPLICATION SUBMITTED TO MUNICIPALITY:** February 27, 2008  
(If application submitted on or after January 1, 2007 please use the OMB1 'Bill 51' form.)

- b) Provide a brief explanatory note regarding the proposal, which includes the existing zoning category, desired zoning category, the purpose of the desired zoning by-law change, and a description of the lands under appeal:  
\*\*If more space is required please continue in Part 8 or attach a separate page.

See Schedule "A" attached.



**Part 9: Required Fee**

Total Fee Submitted: \$ 250.00 (Two cheques, each in the amount of \$125.00)

Payment Method:  Certified cheque \*  Money Order

- The payment must be in Canadian funds, payable to the Minister of Finance.
- Do not send cash.

\*Or Solicitor's general or trust account cheque.

## **SCHEDULE "A"**

### **GROUND OF APPEAL AND EXPLANATORY NOTE**

This is an appeal from the decision of the Council of the City of Hamilton dated February 25, 2009 wherein Council denied the appellant's application for an official plan amendment and a zoning by-law amendment for lands known municipally as 201 King Street East, Dundas, Ontario (now the City of Hamilton).

The purpose of the applications was for approval of an official plan amendment and a change in the zoning to permit a self-storage facility in addition to an existing defined range of uses currently permitted on the property.

The subject lands are currently undeveloped and are located at the north west corner of Olympic Drive and King Street East, immediately north of Desjardins Canal. Directly to the north is the Dundas Recycling Centre and solid waste transfer station and to the south west is the Dundas Sewage Treatment Plant CSO Tank.

The appellant is proposing to add a self-storage facility to the existing range of uses permitted on the site. The existing site specific zoning permits the following uses:

1. parks and playgrounds;
2. picnic areas;
3. park maintenance, storage and administrative facilities;

4. mini golf and other recreational uses, including but not limited to swimming pools and tennis clubs;
5. other amusement and recreational services excluding carnivals, circuses and gasoline powered recreational vehicles; and,
6. restaurants.

The subject lands are designated “Parkland” in the Town of Dundas Official Plan. The application was to amend the Town of Dundas Official Plan by adding a “Parkland - exception” policy. The City staff recommendation is to designate the property as “General Commercial” so as to allow the self-storage facility.

The subject property is currently zoned “Park and Recreation” (H-PR1-FP/S-85) and the appellant has applied to amend the zoning by adding self-storage as a permitted use with regulations and deleting the H-holding provision. The City staff recommendation is to amend the zoning to a Highway Commercial - Flood Plain (C.H-FP/S-115) Zone Modified. The purpose of the zoning amendment is to allow for a self-storage facility on the property and other limited existing permitted uses for the property.

In conjunction with its application, the appellant filed numerous studies and reports with the City of Hamilton including a planning review, a scoped environmental impact study, a visual assessment

overview, a storm water management brief and other documents or reports pertinent to the applications.

The appellant's applications were circulated to various agencies for comment. The City of Hamilton Planning Department was supportive of the applications. The Hamilton Conservation Authority staff were not opposed to the application. The applications were reviewed by the Regionally Environmentally Significant Areas Impact Evaluation Group (ESAIEG) who were not opposed to the applications. No other review agency was opposed to these applications.

The applications came before the City of Hamilton's Economic Development and Planning Committee on February 17, 2009 at which time the Committee recommended refusal of the applications. The Committee's recommendations came before the Council of the City of Hamilton on February 25, 2009 at which time the Council denied the appellant's applications.

The appellant appeals the decision of Council on the following grounds:

1. the proposed use of the property, pursuant to the Official Plan and Zoning By-law amendment applications is an appropriate use for this subject property;
2. all of the reports filed in support of the applications demonstrate that the use of the property for a self-storage facility is an appropriate use and no adverse impacts are identified.

3. the applications are consistent with the policies of the Provincial Policy Statement.
4. the applications conform to the intent of the Hamilton-Wentworth Official Plan;
5. the applications conform to the intent of the Town of Dundas Official Plan;
6. the applications do not demonstrate any adverse impact on surrounding land uses;
7. the City of Hamilton's Economic Development and Planning Committee failed to identify any sufficient reasons for denying the application;
8. the City of Hamilton's Economic Development and Planning Committee improperly characterized the designation and existing zoning for the land and the range of uses currently allowed on the subject property;
9. the City of Hamilton's Economic Development and Planning Committee improperly relied upon proposals or vision statements which had no proper basis in policy or law;
10. the City of Hamilton's Economic Development and Planning Committee failed to give proper regard to the scientific reports and information presented by the applicant;
11. the City of Hamilton's Economic Development and Planning Committee gave improper and

untoward weight to the submissions of other parties or individuals;

12. the City of Hamilton's Economic Development and Planning Committee failed to give any or sufficient reasons for its recommended denial of the application;
13. the City of Hamilton's Economic Development and Planning Committee failed to give proper regard to its own policies, to the history of designations and zoning for the subject property and to the City Planning Department recommendations;
14. the applications represent good land use planning for the subject property; and
15. such further and other grounds as the appellant may request and the Board may permit.

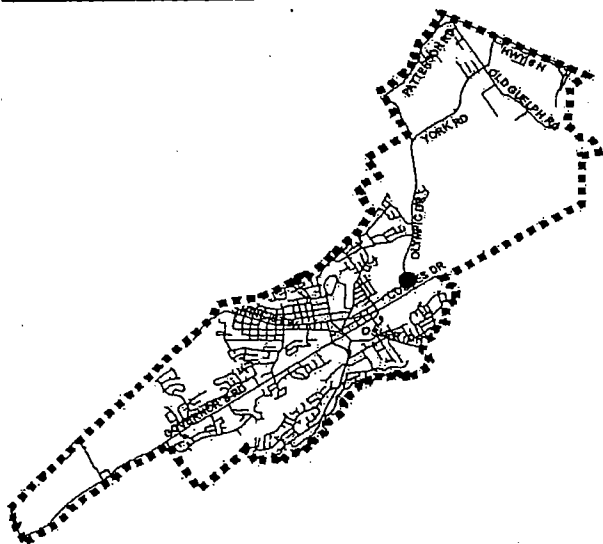
A location map of lands that are the subject matter of this appeal is attached as Schedule "B".

A copy of the proposed Official Plan Amendment is attached to this notice of appeal as Schedule "C".

A copy of the proposed Zoning By-law Amendment is attached to this notice of appeal as Schedule "D".



● Site of the Application



Ward 13 Key Map

N.T.S.

## Location Map



PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

File Name/Number:  
ZAC-08-011/OPA-08-003

Date:  
March 20, 2008

Appendix "A"

Scale:  
N.T.S.

Planner/Technician:  
EJ/LMM

### Subject Property

201 King Street East

**Schedule "1"**

**Amendment No. \_\_\_\_  
to the  
Official Plan for the former Town of Dundas**

The following text, together with Schedule "A", "Land Use - Town of Dundas Official Plan", and Schedule "B-1", "Exceptions" of the Official Plan of the former Town of Dundas, attached hereto, constitute Official Plan Amendment No. \_\_\_\_\_.

**Purpose:**

The purpose of this Amendment is to re-designate the subject lands from "Parkland" to "General Commercial" on Schedule "A", Land Use - Town of Dundas Official Plan, and "Exception GC1" on Schedule "B-1" "Exemptions" in order to permit a self-storage facility and the range of existing permitted recreational uses.

**Location:**

The lands affected by this Amendment are known municipally as 201 King Street East.

**Basis:**

The intent of the Amendment is to permit a self-storage facility and the range of existing permitted recreational uses. The basis for the re-designation is as follows:

- The proposed development is consistent with the Provincial Policy Statement.
- The proposed development offers an opportunity for infill development within the built-up urban area consistent with the intent of the Places to Grow Plan.
- The proposed development conforms with the Region of Hamilton-Wentworth Official Plan.
- The proposed development is compatible with the existing and planned development in the immediate area, and is in keeping with the character of the surrounding neighbourhood.
- It is an appropriate development that will protect existing environmental features, and reinforce Dundas' economic vitality by strengthening existing

uses and facilitating creation of new employment and economic development opportunities

**Actual Changes:**

1. Schedule "A", Land Use - Town of Dundas Official Plan, be revised by re-designating the subject lands from "Parkland" to "General Commercial", and identifying the subject lands as OPA No. \_\_\_\_\_, as shown on the attached Schedule "A" to this Amendment.

2. That the following Policy be added:

Policy 3.3.4 Exceptions

3.3.4.1 Notwithstanding the permitted uses of Policy 3.3.3, the following site-specific policies shall pertain to the redevelopment of the lands consisting of an area of approximately 2.1 hectares (5.2 acres) situated on the northwest corner of King Street East and Olympic Drive and identified on Schedule "B-1" as **Exception GC 1**, for a limited commercial development:

(a) the only permitted uses will be as follows;

- i) A self-storage facility
- ii) Parks and playgrounds
- iii) Picnic areas
- iv) Park maintenance, storage and administrative facilities
- v) Mini-golf
- vi) Swimming pools
- vii) Tennis clubs
- viii) Restaurants, licensed
- ix) Restaurants, unlicensed excluding Drive-in restaurants
- x) Take out food services
- xi) Accessory buildings and structures

3. That Policy 3.9.4.6 be deleted in its entirety:

**Implementation:**

An implementing Zoning By-law Amendment will give effect to the intended use on the subject lands. A site plan will be prepared to develop the storage facility.

This is Schedule "1" to By-law No. [REDACTED], passed on the [REDACTED] day of [REDACTED], 2009.

The  
City of Hamilton

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













Fred Eisenberger  
Mayor

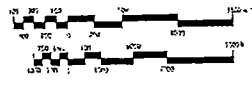
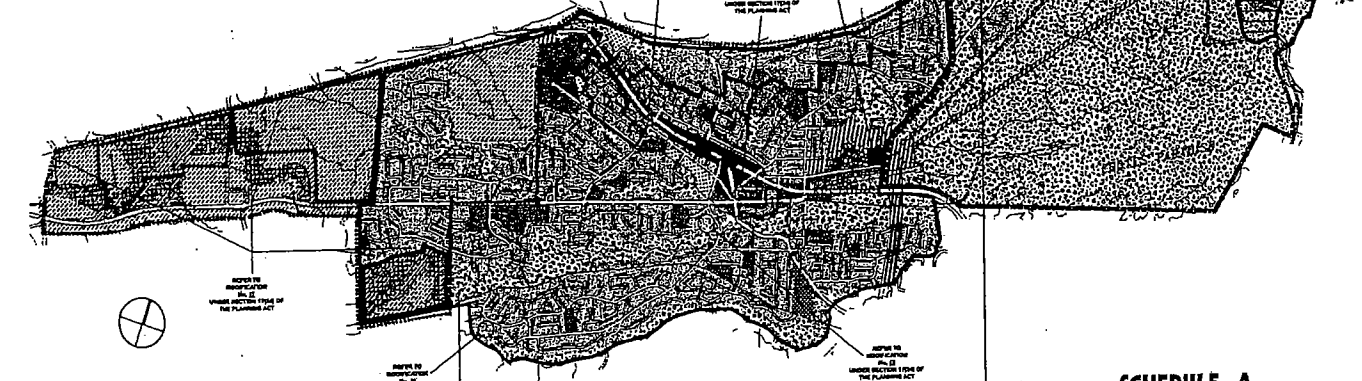
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Kevin C. Christenson  
Clerk

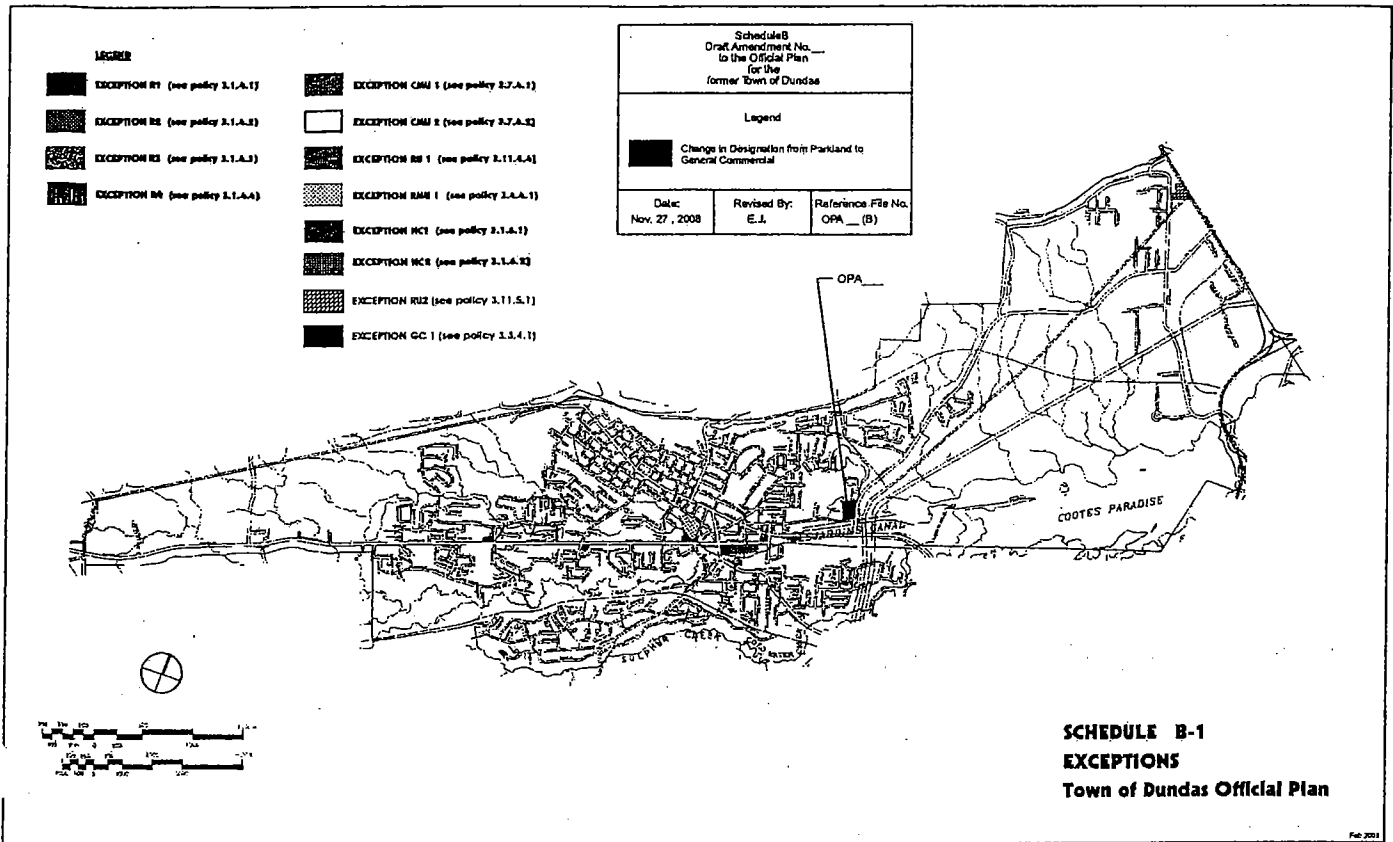
Schedule A Draft Amendment No. ___ to the Official Plan for the former Town of Dundas		
Legend		
Change in Designation from Parkland to General Commercial		
Date: Sept. 22, 2008	Revised By: E.J.	Reference File No. OPA ___ (A)

**LEGEND**

- |  |   |  |
|--|---|--|
|  Natural Open Space                             |  Downtown Mixed Use                  |  Area Subject to Parkway Belt West Plan   |
|  Open Space                                     |  Employment / Residential Mixed Use  |  Urban Area Boundary  |
|  Escarpment Natural Area                        |  Residential / Commercial Conversion |  Area Subject to Niagara Escarpment Plan  |
|  Escarpment Protection Area                     |  Residential / Commercial Mixed Use  |  Deleted from Plan<br><small>Note: Subject to O.P.A. #22, as approved by the O.E.B.C. under previous Official Plan (1992)</small> |
|  Rural Area                                     |  Landmark Sites                      |  |
|  Niagara Escarpment Parks and Open Space System |  General Commercial                  |  |
|  Employment Node                                |  Residential Neighbourhoods          |  |
|  Major Institutional                            |  Residential Intensification         |  |
|  USINee   |  Cross-Melville Heritage District    |  |



**SCHEDULE A  
LAND USE  
Town of Dundas Official Plan**



**Authority:** Item [REDACTED], Economic  
Development and Planning  
Committee  
Report:08-[REDACTED] (PED08248)  
CM: [REDACTED]

**Bill No.** [REDACTED]

**CITY OF HAMILTON**

**BY-LAW NO. [REDACTED]**

**To Amend Zoning By-law No. 3581-86 (Dundas),  
Respecting Lands Located at 201 King Street East**

**WHEREAS** the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap. 14, Sch. C. did incorporate, as of January 1, 2001, the municipality "City of Hamilton";

**AND WHEREAS** the City of Hamilton is the successor to certain area municipalities, including the former area municipality known as the "The Corporation of the Town of Dundas" and is the successor to the former Regional Municipality, namely, "The Regional Municipality of Hamilton-Wentworth";

**AND WHEREAS** the City of Hamilton Act, 1999, provides that the Zoning By-laws and Official Plans of the former area municipalities and the Official Plan of the former regional municipality continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

**AND WHEREAS** Zoning By-law No. 3581-86 (Dundas) was enacted on the 22nd day of May, 1986, and approved by the Ontario Municipal Board on the 10th day of May, 1988;

**AND WHEREAS** the Council of the City of Hamilton, in adopting Item [REDACTED] of Report [REDACTED] of the Economic Development and Planning Committee at its meeting held on the [REDACTED] day of [REDACTED], 2008, recommended that Zoning By-law No. 3581-86 (Dundas), be amended as hereinafter provided;

**AND WHEREAS** this by-law will be in conformity with the Official Plan of the City Hamilton (the Official Plan of the Town of Dundas), upon approval of Official Plan Amendment No. [REDACTED] proposed by the City of Hamilton but not yet approved in accordance with the provisions of the Planning Act.

**NOW THEREFORE** the Council of the City of Hamilton enacts as follows:

1. Schedule "I" of Zoning By-law No. 3581-86 (Dundas) is hereby amended, by changing the zoning from the Park and Recreation (H-PR1-FP/S-85) Zone to the Highway Commercial (C.H-FP/S-115) Zone, Modified, on the lands the extent and boundaries of which are shown on a plan hereto annexed as Schedule 'A'.
2. That Section 32 - "EXCEPTIONS" of Zoning By-law No. 3581-86 (Dundas), as amended, is hereby further amended by adding the following subsection:

C.H-FP/S-115      That Notwithstanding the provisions of Section 19: Highway Commercial - Flood Plain (C.H-FP/S-115) the following Special Provisions shall apply to the lands known Municipally as No. 201 King Street East, shown as "C.H-FP/S-115" on Schedule "I".

- (a) Notwithstanding Sub-Section 19.1, Permitted Uses, only the following uses shall be permitted:

- i) A self-storage facility
- ii) Parks and playgrounds
- iii) Picnic areas
- iv) Park maintenance, storage and administrative facilities
- v) Mini-golf
- vi) Swimming pools
- vii) Tennis clubs
- viii) Restaurants, licensed
- ix) Restaurants, unlicensed excluding Drive-in restaurants
- x) Take out food services
- xi) Accessory buildings and structures

- (b) Notwithstanding Section 19.2. Regulations for Commercial Uses, the following special regulations shall apply for all uses:

- (i) Minimum Front yard of 15 metres (King Street East).
- (ii) Minimum interior Side Yard of 7.5 metres
- (iii) Minimum Exterior Side Yard of 15 metres
- (iv) Minimum Rear Yard of 7.5 metres
- (v) Maximum Height of 7.5 metres
- (vi) Maximum Lot Coverage 50%

- (c) Notwithstanding Section 7.12.2.5, a minimum of 30 parking spaces shall be provided and maintained for a self-storage facility.

- (d) Notwithstanding Section 7.13.2, no loading spaces shall be required for a self-storage facility.
  - (e) Notwithstanding Section 7.1.1, parking spaces will be permitted within the required front yard of a self-storage facility.
  - (f) Notwithstanding the definition of LOT LINE FRONT of SECTION 3, DEFINITIONS, the front lot line shall be deemed to be the south boundary of Parts 4 and 5, as shown on Plan 62R-13990.
  - (g) All other provisions of Section 19, Subsection 19.2, as applicable for the Highway Commercial (C.H-FP/S-115), shall continue to apply for a self-storage facility.
  - (h) All other provisions of Section 26, Subsection 26.2, as applicable for the Park and Recreation Zone (PR1), shall continue to apply to all other permitted uses.
3. By-law No. 3581-86 (Dundas) is amended by adding this by-law to Section 32 as Schedule S-115, and by deleting Schedule S-85 in its entirety.
  4. Schedule "I" of the Zoning Schedule Key Map is amended by marking the lands referred to in Section 1 of this by-law as S-115.
  5. The Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this by-law, in accordance with the Planning Act.

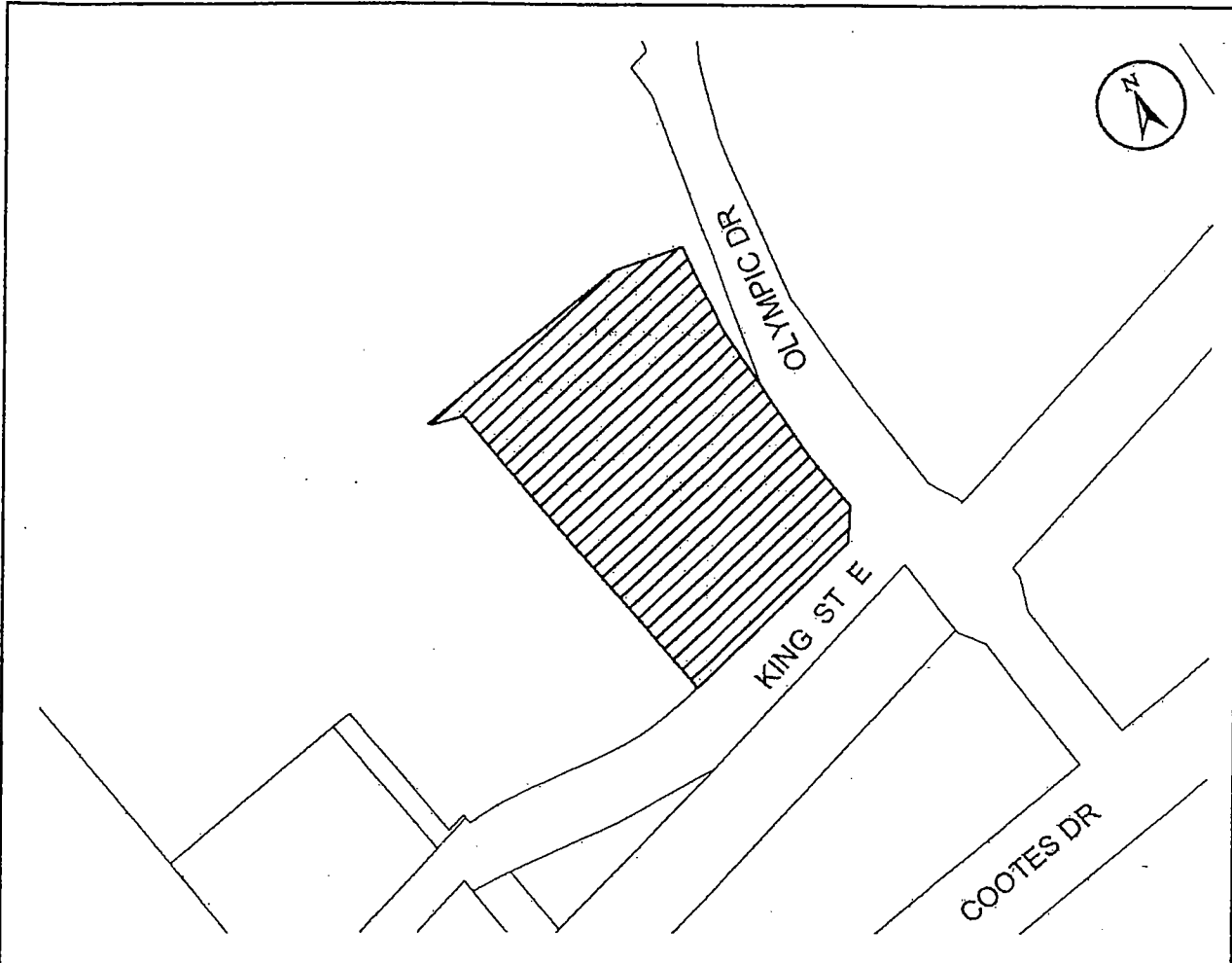
**PASSED and ENACTED** this [REDACTED] day of [REDACTED], 2008.

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Fred Eisenberger  
Mayor

---

Kevin C. Christenson  
Clerk



This is Schedule "A" to By-Law No. 08-

Passed the ..... day of ....., 2008

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Clerk

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Mayor

## Schedule "A"

Map Forming Part of  
By-Law No. 08-\_\_\_\_\_

to Amend By-law No. 3581-86

### Subject Property



201 King Street East

Change in zoning from the Park and Recreation  
(H-PR1-FP/S-85) Zone to the Highway Commercial  
- Flood Plain (C.H-FP/S-115) Zone, Modified.

Scale:  
N.T.S.

File Name/Number:  
ZAC-08-011/OPA-08-003

Date:  
March 20, 2008

Planner/Technician:  
EJ/LMM



Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT