



THE CORPORATION OF THE CITY OF BRAMPTON

BY-LAW

Number 190-98

To Adopt Amendment Number OP 93- 99
to the Official Plan of the
City of Brampton Planning Area

The Council of the Corporation of the City of Brampton, in accordance with the provisions of the Planning Act, R.S.O. 1990, c.P. 13, hereby ENACTS as follows:

1. Amendment Number OP93- 99 to the Official Plan of the City of Brampton Planning Area is hereby adopted and made part of this by-law.
2. The Clerk is hereby authorized and directed to make application to the Region of Peel for approval of Amendment Number OP93- 99 to the Official Plan of the City of Brampton Planning Area.

READ a FIRST, SECOND and THIRD TIME, and PASSED in OPEN COUNCIL, this 12th day of August, 1998 .


PETER ROBERTSON - MAYOR


LEONARD J. MIKULICH - CLERK

Approved as to Content:


William H. Winterhalt, M.C.I.P., R.P.P.
Director, Planning, Policy and Research

APP.
AS TO FORM
LAW DEPT.
BRAMPTON
DATE 8/13/98

AMENDMENT NUMBER OP93- 99
to the Official Plan of the
City of Brampton Planning Area

AMENDMENT NUMBER OP93- 99
TO THE OFFICIAL PLAN OF THE
CITY OF BRAMPTON PLANNING AREA

1.0 Purpose:

The purposes of this amendment are to amend the policies of the Official Plan:

- to clarify that the Central Area is to be the major location for entertainment and cultural uses including movie theatres, museums, art galleries, and live theatre;
- to establish limited permissions for movie theatres in Regional Retail and Local Retail (Neighbourhood and District Retail) designations outside of the Central Area;
- to delete definitions for “Entertainment Use” and “Regional Entertainment Use”; and
- to add a policy which limits permissions for movie theatres on 2 sites within the City (First Gulf and Gateway Six) to their current permissions.

These changes result from the findings of an entertainment use study completed for the City of Brampton and the evaluation and consideration thereof in the context of the goals and objectives of the Official Plan.

2.0 Location:

The lands subject to this amendment include the whole of the City of Brampton Planning Area with respect to definitions for entertainment and regional entertainment uses, and the Central Area, Regional Retail and Local Retail designations, and two specific sites (Steeles Avenue and First Gulf Boulevard, and Queen Street and Gateway Boulevard) with respect to permissions for entertainment uses;

3.0 Amendments and Policies Relative Thereto:

The Document known as the Official Plan of the City of Brampton Planning Area is hereby amended:

(1) by deleting the first bullet point following the third paragraph of Section 3.2, Policy 3.2.1 thereof and substituting therefor the following:

- the fullest range of commercial uses, including retail, service commercial, business and professional activities;
- the major location for entertainment and cultural uses, including movie theatres, museums, art galleries, and live theatre;

(2) by deleting the first bullet point following the first paragraph of Section 4.2.1, Policy 4.2.1.1 thereof and substituting therefor the following:

- a full range and concentration of commercial uses, including office, retail, and service activities;
- the major location for entertainment and cultural uses, including movie theatres, museums, art galleries and live theatre;

(3) by deleting from Section 4.2.2 thereof, policy 4.2.2.2 in its entirety and substituting therefor the following:

The Central Area designation is regarded as the major location for entertainment and cultural uses in the City. In this regard, the Central Area shall serve as the major location for movie theatres, museums, art galleries and live theatre.

Notwithstanding the importance of the Central Area as the focus for community activity, the following limited permissions for movie theatres in Regional Retail and Local Retail designations shall be allowed:

Regional Retail designations – movie theatres shall be permitted in Regional Retail designations subject to a maximum of 10 screens and 2,600 seats; and,

Neighbourhood and District Retail designations – movie theatres shall be permitted in Neighbourhood and District Retail designations subject to a maximum of 3 screens and 780 seats.

- (4) by adding to Section 4.2.2 thereof the following new policy as policy 4.2.2.3 and renumbering the existing policy 4.2.2.3 to policy 4.2.2.4:

Notwithstanding the above-noted permissions for movie theatres in Regional Retail and Local Retail designations, the following two exceptions, which are currently existing and Ontario Municipal Board approved respectively, shall continue to be acknowledged as permitted uses subject to the following limitations:

Gateway Six (Queen Street and Gateway Boulevard) – movie theatres shall be permitted subject to a maximum of 6 screens and 1,490 seats; and,

First Gulf Properties (Steeles Avenue and First Gulf Boulevard) – movie theatres shall be permitted subject to a maximum of 10 screens and 42,000 square feet (3,902 square metres) gross commercial area.

- (5) By adding to Section 4.2.7 thereof the following new policy as policy 4.2.7.7:

The City shall restrict entertainment uses in Regional Retail designations to ensure they are of a limited scale relative to the primary retail function of a particular retail centre in accordance with policy 4.2.2.2 of this Plan and as defined in the relevant secondary plan and/ or zoning by-law.

- (6) by deleting from Section 5.2 thereof, definitions for “Entertainment Use” and “Regional Entertainment Use”.

Approved as to Content:



William H. Winterhalt
Director, Planning, Policy and Research

| |
|---|
| ISSUE DATE NOV 09 1998 DECISION/ORDER No. 2804 |
|---|



TRINITY.

RL970803
RECEIVED

NOV 13 1998

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

LOW REPAIR

Trinity Development Group Inc. 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 Brampton to redesignate the lands located at the northeast corner of Bovaird Drive and the future Highway 410 Extension by deleting Policy 4.2.2.2 relating to the prohibition of certain entertainment uses outside of the central corridor
Municipality's File Number: C3E12.5
OMB File Number: O970209

Trinity Development Group Inc. has appealed to the Ontario Municipal Board under subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the Regional Municipality to modify and approve a portion of Amendment No. 62, to the Official Plan for the City of Brampton, known as the Queen Street Corridor Secondary Plan
Region's File Number: 21OPA 93-62
OMB File Number: O980183

Trinity Development Group Inc. has appealed to the Ontario Municipal Board under subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the Regional Municipality to modify and approve a portion of Amendment No. 63 to the Official Plan for the City of Brampton, known as the Downtown Brampton Secondary Plan
Region's File Number: 21OPA 93-63
OMB File Number: O980184

Trinity Development Group Inc., 20 Vic Management Inc. and 1113443 Ontario Inc. have appealed to the Ontario Municipal Board under subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the Regional Municipality of Peel to approve Amendment No. 99 to the Official Plan for the City of Brampton
Region's File Number: OP93-99
OMB File Number: O980197

Trinity Development Group Inc., 20 Vic Management Inc. and 1113443 Ontario Inc. have appealed to the Ontario Municipal Board under subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, against Zoning By-law 191-98 of the City of Brampton
OMB File Number: R980185

Trinity Development Group Inc. 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 an amendment to By-law 181-88, as amended, of the City of Brampton to rezone the lands comprising Part of Lots 11 and 12, Concession 3, E.H.S. from "Agricultural" to "Shopping Centre to permit a Regional Retail Shopping Centre in a power centre format
OMB File Number: Z970111

C O U N S E L :

| | | |
|--------------------------------------|-----|--|
| J. Goldenberg and J. Farber | for | Trinity Development Group Inc. |
| J. Pepino and J. Atwood-Petkovski | for | City of Brampton |
| L. Townsend | for | 20 Vic Management Inc. and 1113443 Ontario Inc. (Shopper's World) |
| N. Davis | for | Central Area Supporters |

P U B L I C P A R T I C I P A N T S :

C. Moon, Central Area Supporters
T. Dakers, Downtown Business Development Association
M. Gillespie, Downtown Business Owner
R. Lewis, Downtown Business Owner
R. Nutbrown, Vice President, Brampton Board of Trade

DECISION DELIVERED BY D. R. GRANGER AND ORDER OF THE BOARD

The matter before the Board involves an appeal by Trinity Development Group Inc. (Trinity) of the Council of the City of Brampton's (City) refusal or neglect to enact a proposed amendment to the Official Plan for the City of Brampton to redesignate their lands at the northeast corner of Bovaird Drive and the future extension of Highway No. 410 by deleting policy 4.2.2.2 related to the prohibition of certain entertainment uses outside of the Central Area (Downtown Brampton, Bramalea City Centre and the Queen Street Corridor in between).

The City has since revised policy 4.2.2.2 and other policies through Official Plan Amendment No. 99 (OPA 99) which proposes up to 2,600 theatre seats and 10 screens for Regional Retail designations, including the subject lands, and up to 780 seats and three screens for Neighbourhood and District Retail designations. The subject policies also provide that the Central Area is to be the a "major" location for entertainment and cultural uses, including movie theatres, museums, art galleries and live theatre. Trinity has appealed this amendment. The Board consolidates that appeal with this hearing. Official Plan Amendments 93-62 (OPA 93-62) and 93-63 (OPA 93-63) provides for similar policies in the Downtown Brampton and Queen Street Corridor Secondary Plans. Trinity has filed the only appeals related to these two amendments. The Board consolidates those appeals with this hearing.

The matter also involves an appeal by Trinity of the City's refusal or neglect to enact an amendment to By-law 181-88 as amended to rezone their lands comprising Part of Lots 11 and 12, Concession 3, E.H.S. from Agricultural to Shopping Centre. The City has since passed By-law 33-98 which zones the subject lands C3 -Section 851, now approved and in effect, with no theatre permissions included.

Trinity is presently finalizing the site plan for the permitted 74,320 square metres of retail in a power box format. The City has also since passed By-law 191-98 which proposes up to 2,600 theatre seats and 10 screens for the regional retail property known as Shopper's World and up to 780 theatre seats and 3 screens for all local and district commercial sites (potentially twelve new sites). Trinity has appealed this by-law. The Board consolidates that appeal with this hearing.

Counsel for Shopper's World presented a resolution of the City, Exhibit No. 1, which sets out that Shopper's World can develop their 2,600 seats and 10 screens immediately or a theatre up to 10 screens and 3,050 seats or the addition of seats to an existing facility (provided the existing facility is no more than 10 screens) up to a maximum of 3,050 seats by means of obtaining a building permit not before January 1, 2001.

Trinity initially requested a 10-screen 3,050 to 3,250-seat movie theatre. Trinity revised their request, as required by their proposed tenant, Famous Players, and is now seeking permissions to develop 3,860 movie theatre seats and 16 screens immediately. The City is prepared to allow 10 screens and 3,050 seats.

At the beginning of the hearing N. Davis, counsel for the Central Area Supporters, informed the Board of their withdrawing as a party to the hearing. He stated that after 2 ½ years of promoting official plan policies related to the health of the central area, they had exhausted their financial ability. He did indicate that individual members may appear at the public evening portion of the hearing.

The Board appreciated the contribution and cooperation of the Central Area Supporters through the prehearing conference process and invited their active participation in the public evening portion of the hearing.

At the beginning of the second day of the hearing the Board was informed by counsel for the City that the last day for appeals on OPA 99 and By-law 191-98 had passed and that in addition to the appeals by Trinity there were also appeals by Monterey

Park Inc. owner of Gateway 6 Theatre and Restaurant Complex (Gateway 6). Correspondence from Gateway 6 entered as Exhibits No. 4 and No. 14 indicated no objection to this hearing proceeding with the consolidation of By-law 191-98 and OPA 99 provided it does not affect their right to proceed with their appeals and new official plan and zoning by-law amendments on their lands at a later date. All parties to this hearing consented. The Board consolidates By-law 191-98 and OPA 99 with this hearing, save and except the lands of Gateway 6.

Early in the second day of the hearing Minutes of Settlement signed by all parties were presented by counsel for Shoppers World as Exhibit No. 15 in essence removing any objection from any party to Shoppers World having the right to immediately develop 10 screens and 2,600 seats with expansion to 3,050 seats after January 1, 2001.

The Board accepted the agreement as a fully consented statement of fact between the parties. Shoppers World then withdrew as a party to the hearing leaving only Trinity and the City.

This was a 10 day and 1 evening hearing with 44 exhibits presented. Expert market evidence was given by Hermann Kircher for Trinity and by Emrik Suichies for the City. Expert planning evidence was given by Robert Macauley for Trinity and by John Marshall for the City. Public participants C. Moon, representing the Central Area Supporters, T. Dakers, representing the Downtown Business Development Association (B.I.A.), M. Gillespie, downtown business owner, R. Lewis, downtown business owner, and R. Nutbrown, Vice President and Past President of the Brampton Board of Trade, gave evidence in support of the official plan and by-law amendments of the City.

The Board finds that OPA 99, OPA 93-62, OPA 93-63 and By-law 191-98 represent good planning and the public interest save and except that they do not insure the Central Area being the major location for movie theatres specifically and as a result, the Board finds that the addition of 6 screens and 810 seats above that which the City has agreed to

permit on the Trinity site will not significantly adversely impact on the overall planned function of the Central Area. The reasons follow.

It was the evidence of the planner for the City that, as a result of the decision of the Board related to the granting of theatre permissions on the First Gulf Business Park Inc. (First Gulf) site in 1997, the City undertook studies to quantify and support policies in the official plan which would limit theatre permissions outside the Central Area therefore protecting its planned function. It was his opinion that criticisms of the Board relating to the lack of supporting studies and generalities were now addressed with specificity and ascertain ability.

The market evidence presented by Trinity and the City was helpful to the Board in determining the impact that the Trinity theatre proposal would have on the planned function of the Central Area designation regarded as the major location for entertainment and cultural uses in the City and in that regard the Central Area serving as the major location for movie theatres, museums, art galleries and live theatre as set out OPA 99.

The expert market evidence of Trinity relied on license plate surveys at two existing power centres in Brampton, customer surveys at two new format movie theatres in Mississauga, an evaluation of the competitive retail structure and a review of trade area demographic, income and expenditure statistics.

Movie theatre expenditure volume (including ticket sales and concessions with concessions constituting approximately 40 percent of the total) of Brampton residents is estimated at \$8.4 million in 1997 and projected to grow to \$17.7 million by 2006. Estimated Brampton share of warranted seats was 50 percent for 1997 and 93.4 percent for 1999 and beyond. Inflow (non-Brampton patrons coming to Brampton) was estimated at 25 percent. A one time 20 percent increase in use is predicted upon market maturity (2001-2002). This prediction resulted from the on-site customer survey (total 800 surveyed) at two new format theatres in Mississauga (Coliseum and Silver City) which

indicated that the number of visits to a movie theatre after new format movie theatres are introduced in the market area increases by an average of 20 percent to 25 percent.

It was the evidence of the market expert for Trinity that this so called "bump up" or "wow" factor would be sustained in the future. In addition, he predicted an annual growth in expenditures of 2.5 percent. He predicted that, based on all of the above, 10,940 seats would be warranted by the year 2006 when, in his opinion, all theatres that will be built, will have been built. This assumed that the 3,470 seats existing today would be closed as new format theatres develop. This assumption was mutually agreed by all parties. Subtracting the 2,052 seats under construction at First Gulf, 3,050 seats approved for Shopper's World and the 3,860 proposed by Trinity leaves 1,978 seats for the Central Area, the smallest, although it presently has unlimited movie theatre permissions. Restricting Trinity to 3,050 seats would leave the Central Area at 2,788 seats, the second smallest.

There was no direct evidence as to whether a theatre at Shopper's World or a theatre in the Central Area would develop first. The Board was made aware by the planner for the City and by evidence given at the First Gulf hearing that an active proposal in the Central Area has existed on lands of the Inzola Group (Market Square) for a theatre of up to 20 screens. No one appeared at this hearing to represent that proposal.

It was emphasized by Trinity that, other than First Gulf, where an Odeon-Cineplex is now under construction, they had the only other committed proposal, Famous Players having entered into a contract with Trinity for 16 Screens and 3860 seats. It was the contention of Trinity that the City, in allowing 3,050 seats at each of the two Regional Retail designated sites and 780 seats at each of the 13 District and Neighbourhood designated sites, together with the 2,052 First Gulf seats previously approved by the Board, was far in excess of the market. It was the evidence of both of the market experts that the impact of the potential 13 District and Neighbourhood sites on the new format theatres would be minimal. Neither expert quantified an opinion in that regard.

The market expert for the City, on the other hand, undertook a residual analysis to show whether or not enough demand existed to support a major theatre in the Central Area in order that it might fulfill its planned function. He undertook an independent analysis of market demand for theatres to the year 2021 relying on City population information checked against Statistics Canada population, Statistics Canada incomes, expenditures in total and per capita on movie theatres and AC Neilson E.D.I. "world's box office authority" data. He estimated expenditure growth (ticket sales) at 1 percent annually, based on historical data, from \$6.210 million in 1996 to \$16.665 million in 2021. Total expenditures would be \$9.654 million in 2006. He calculated the average income for new format theatre seats at \$1,400 in 1996 dollars.

While he acknowledged an initial "bump up" or "wow" factor which might increase attendance, he felt that there was not enough evidence garnered over the short period of time that new format theatres have existed in Canada to prove that it would be sustained in the long run and therefore should not constitute a new statistical platform to project future growth from. In his opinion, this factor is related to the event or product, not the facility.

Neither market expert provided evidence of the American experience with new format theatres specifically even though they are purported to be 3 to 5 years ahead of the Canadian experience. The market expert for the City calculated an approximate existing outflow of \$3.2 million and inflow of \$1.1 million leaving a net \$2.1 million outflow from the total Brampton resident theatre ticket expenditures of \$6.4 million. In his opinion this net loss could only be regained if new format theatres were only occurring in Brampton.

The evidence shows that several new facilities are built, under construction or approved in the areas surrounding Brampton including Oakville, Mississauga, Vaughan and Toronto. At best, he predicted a balance between inflow and outflow in the future. He predicted, based on the above, a demand for 11,904 seats by the year 2021 which at

an average of 250 seats per screen, equates to 48 screens. At the year 2006, demand would exist for 6896 seats and 28 screens.

In his opinion there would be some "over storing" necessary to accommodate movie theatre permissions set out in OPA 99. He agreed that, within the official plan designations, the market would decide what would get built and what would not. In his opinion, not all proposals would be built. Subtracting the First Gulf, Trinity and Shopper's World permissions would leave no residual market for the Central Area in the year 2006.

With respect to the overall long term planning of the City of Brampton, the Board prefers the evidence of the market expert for the City. He took a cautious approach for the most part utilizing available historical data. The evidence was overwhelming in showing how quickly the market would be saturated with the new format theatres in the Greater Toronto Area and beyond.

He was candid in his opinion that all theatre complexes in Brampton will be in place by 2005 and that he did not expect that all permissions in the official plan could be utilized even with a significant amount of over storing. While he agreed that some higher sales and attendance have occurred with the new format theatres in Mississauga, he also noted that they are a first of their kind and that the industry is still climbing out of a previously long period of decline. He felt it imprudent to draw long term conclusions from a two-year climb or event.

On the marketing evidence presented, the Board finds there to be a significant over supply of movie theatre permissions within the City of Brampton. While the City has taken significant positive steps to identify the importance of the Central Area with policies and public expenditures, it cannot guarantee that a movie theatre will be located in the Central Area. Demand may simply not warrant one. The fact that a structure is in place to immediately accommodate a major movie theatre facility with available parking and transit access at Market Square in the historic downtown core may well indicate reticence on the part of the movie theatre industry itself.

On the evidence presented, the Board finds the historic Brampton downtown to be in good health with several attributes including: integrated local and GO transit, live theatre, the "old courthouse" museum/art gallery/regional offices complex, new Y.M.C.A. complex, Market Square complex and road realignments, several banks, restaurants, the City Hall complex and Gage Park.

There is no apparent reason that the Board could ascertain through the evidence presented that might be discouraging the immediate development of a new format multi-plex theatre in the Brampton historic downtown specifically or the Central Area generally. This leads then to the planning case.

Three issues arose in the management of this case through the prehearing process.

1. Given that the approved Official Plan policies provide that the Central Area is intended to function as the major location for entertainment uses in the City of Brampton, what is the appropriate limitation, if any, in terms of gross floor area, number of seats and/or number of screens to be applied to Regional Retail designations in regard to movie theatres?
2. Is it appropriate that the proposed Official Plan policies identify the Central Area as the major location for movie theatres?
3. If so, what is the appropriate limitation, if any, in terms of gross floor area, number of seats and/or number of screens to be applied to Regional retail designations in regard to movie theatres?

On the planning evidence presented, the Board finds that until the approval of the 1997 Official Plan, entertainment uses were permitted without limitations in the Regional

Commercial (1984 Official Plan) and Regional Retail (1993 Official Plan) designations which covered the Trinity and Shopper's World sites. The latter designations were in effect until March 1997.

The Sandringham-Wellington Secondary Plan, approved in 1990 and still in effect, sets out the requirement for detailed commercial impact studies that take proper account of the role/potential of other existing and designated competing commercial areas including the Central Commercial Corridor (now Central Area). In that regard, Trinity submitted the Retail Market Demand and Impact Analysis, dated June 13, 1997, for their regional power centre development. The City subsequently approved the power centre use without a movie theatre as set out in By-law 33-98. New policies in the 1997 Official Plan set out that the Central Area be the major location for entertainment uses. Policy 4.2.2.2 specifically sets out:

The Central Area designation is regarded as the major location for entertainment uses in the City. However, exceptions to Central Area locations will be considered to accommodate local and regional serving entertainment uses as follows:

Entertainment uses may be located within the Local Retail or Regional Retail designations provided they are of a limited scale relative to the primary retail function of a particular retail centre as defined in the relevant zoning by-laws;

It was the evidence of the planner for the City that of the total floor space proposed on the Trinity site, the movie theatre accounted for approximately 11 percent.

The Board finds this to be of a limited scale relative to the primary retail function of the Trinity development. The initial zoning by-law amendment application by Trinity was submitted to the City prior to the approval of the 1997 Official Plan and the official plan amendment application by Trinity was submitted with the above policy 4.2.2.2 in effect. Initially Trinity sought to strike Official Plan Policy 4.2.2.2 as it affects their land, as was

done with First Gulf. Trinity now seeks to further amend the policy proposed to be amended in OPA 99 in order that their proposal for a movie theatre of 3,860 seats and 16 screens might proceed.

In response to the First Gulf hearing and the Trinity applications, the City proceeded to further clarify policies related to entertainment uses generally and movie theatres specifically which resulted in OPA 99. Policy 4.2.2.2 was replaced by the following:

The Central Area designation is regarded as the major location for entertainment and cultural uses in the City. In this regard, the Central Area shall serve as the major location for movie theatres, museums, art galleries and live theatre.

Notwithstanding the importance of the Central Area as the focus for community activity, the following limited permissions for movie theatres in Regional retail shall be allowed:

Regional Retail designations - movie theatres shall be permitted in Regional Retail designations subject to a maximum of 10 screens and 2,600 seats;

As a result of this hearing and discussions between the parties leading up to it, the City, through its counsel at final argument, replaced the above second paragraph with:

Regional Retail designations -movie theatres shall be permitted on the City's two Regional Retail designated sites as follows:

Highway 410/Bovaird (Trinity) - movie theatres shall be permitted subject to a maximum of 10 screens and 3,050 seats; and

Highway 10/Steeles Avenue (Shopper's World) - 10 screens and 2,600 seats up to December 31, 2000; and

- 10 screens and 3,050 seats, or the addition of seats to an existing facility (provided the existing facility is no more than 10 screens) up to a maximum of 3,050 seats, as of January 1, 2001.

The Shopper's World permissions reflect the agreement between the parties entered as Exhibit No. 15. The question now becomes whether or not the addition of 810 seats and 6 screens at Trinity, in the context of all other movie theatre permissions, will have any additional significant adverse impact on the planned function of the Central Area to be the major location for movie theatres, museums, art galleries and live theatre. There was no evidence or argument suggesting the Central Area would not continue as the major location for museums, art galleries and live theatre.

On the evidence presented, the Board finds that the Central Area is not presently the major location for movie theatres and with the permissions already planned outside the Central Area, may never be.

The Board was assisted by both counsel with the submission of a joint book of authorities with several cases related to the question of the Board interfering with market forces especially in the context of new uses adversely impacting on existing and proposed uses planned for by the community. Needless to say a long list of terms, descriptions and findings, that are now frequently referred to as tests, have developed through many years of "store wars" in Ontario including, but not limited to:

- Harmful, deleterious impact
- Massive, overpowering, destructive, urban blight
- Harmful, jeopardize, undermine or destroy
- Thwart commercial competition or inhibit retail innovation

- Diminution of service
- Delay entrance to the market
- Not realize the planned function

On the evidence presented at this hearing, the Board finds the question of whether or not the planned function of the Central Area can be realized, or protected, with respect to being the major location for movie theatres to be the most pertinent.

It was the uncontested planning evidence that the Central Area, which includes the Bramalea City Centre, the Brampton Downtown and the Queen Street Corridor in between, has unlimited movie theatre permissions and potential movie theatre facility sites including the previously referred to Market Square.

Together with the other permissions in the Regional Retail and Neighbourhood and District Retail designations and considering the market evidence of there being a significant over supply of movie theatre permissions, especially to the year 2006, the Board finds that the City has taken, whether it intended or not, an open free market approach to the development of movie theatres excepting the limitations outside the Central Area.

While potential currently exists for the Central Area to receive a large or even the largest movie theatre facility, there is nothing stopping areas outside the Central Area, even with the limitations proposed, from developing first and significantly diminishing the market potential for movie theatres in the Central Area. It is a first come, first served situation. Will the planned function of the Central Area not be realized if it is not the major location or recipient of the largest theatre facility individually?

On the evidence presented including the exceptional commitment of the City in undertaking several significant downtown investments and that the Central Area continues to be the major location for museums, art galleries and live theatre, the Board finds that the overall planned function of the Central Area, which also includes having the fullest range

of commercial uses, including retail, service commercial, business and professional activities, will continue to be realized.

While the Central Area may not realize the largest movie theatre individually, the Board finds on the evidence presented that it will continue to be the major location for entertainment and cultural uses collectively. To ensure the location of the largest movie theatre facility in the Central Area, the City would have had to remove long-standing permissions from at least one of the Regional Retail designations. To have done so would have been a draconian interference into the market to selfishly reserve a use that, while successful commercially and a good draw for any established commercial area, was uncontestedly deemed not to be one of life's necessities. The City quite rightly chose not to go down that road.

With respect to the Trinity site specifically, having considered all of the market and planning evidence, the Board finds that the development of a 16 screen 3,860 seat movie theatre facility, constituting a 6 screen 810 seat addition to permissions already proposed by the City, and in the context of an approved regional scale retail power centre development site which has historically had movie theatre permissions, will not significantly affect the long term supply of movie theatre permissions in the City of Brampton as to negate the Central Area from realizing its overall planned function.

With this matter now decided by the Board, the issues of movie theatre limitations within the Regional Retail designations are resolved with the agreement of the parties regarding Shopper's World and in accordance with a firm commitment of Famous Players at Trinity. With no firm commitment of a theatre operator on the Shopper's World site evident, opportunity still exists, confirmed in the evidence of the market experts, for the Central Area to achieve the development of a large or even the largest movie theatre in the immediate future.

In that regard, the Board will not remove the Central Area as the major location for movie theatres at this time. Further review of policies in that regard may be appropriate at the time of the next 5 year review of the official plan scheduled for the year 2002.

The Board allows the appeal of Trinity, in part, and approves OPA 99 as amended in accordance with Schedule "A" attached hereto, save and accept as it affects the lands of Gateway 6.

The Board allows the appeals of Trinity, in part, and approves OPA 93-62 and OPA-63 as amended in accordance with Schedule "B" attached hereto.

The Board allows the appeal of Trinity, in part, and approves By-law 191-98 as amended in accordance with Schedule "C" attached hereto, save and accept as it affects the lands of Gateway 6.

The Board so Orders.

A handwritten signature in cursive script that reads "Don Granger".

D. R. GRANGER
MEMBER



Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

SCHEDULE "A"

**CITY OF BRAMPTON - TRINITY DEVELOPMENT GROUP INC.
MODIFICATIONS TO THE OFFICIAL PLAN & CENTRAL AREA SECONDARY PLANS**

RE: CITY OF BRAMPTON OFFICIAL PLAN

Official Plan Amendment 99 - Approved by the Region of Peel on August 26, 1998
Modifications to: Section 3.0 Amendments and Policies Relative Thereto

(1) by deleting the 2nd bullet point in amendment (1) thereof, referring to Section 3.2, Policy 3.2.1, and substituting therefor the following:

- the major location for entertainment and cultural uses. In this regard, the Central Area shall serve as the major location for movie theatres, museums, art galleries and live theatre.

(2) by deleting the 2nd bullet point in amendment (2) thereof, referring to Section 4.2.1, Policy 4.2.1.1 and substituting therefor the following:

- the major location for entertainment and cultural uses. In this regard, the Central Area shall serve as the major location for movie theatres, museums, art galleries and live theatre.

(3) by deleting the 3rd paragraph of amendment (3) thereof, referring to Section 4.2.2, Policy 4.2.2.2 and substituting therefor the following:

Regional Retail designation as - movie theatres shall be permitted on the City's two Regional Retail designated sites as follows:

Highway 410/Bovaird Drive - movie theatres shall be permitted subject to a maximum of 16 screens and 3,860 seats; and

Highway 10/Steeles Avenue - movie theatres shall be permitted subject to a maximum of:

- 10 screens and 2,600 seats up to December 31, 2000; and
- 10 screens and 3,050 seats, or the addition of seats to an existing facility (provided the existing facility is no more than 10 screens) up to a maximum of 3,050 seats, as of January 1, 2001.



Ontario

PL970803

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

SCHEDULE "B"

RE: CENTRAL AREA SECONDARY PLANS

Official Plan Amendments 93-62 (Downtown Brampton Secondary Plan) and 93-63 (Queen Street Corridor Secondary Plan) - Approved by the Region of Peel on July 29, 1998

Modification to Official Plan Amendment 93-62:

- (1) By deleting the 2nd sentence in Modification 1. thereof, and substituting therefor the following:

In light of the foregoing, the Central Area is considered the major location for entertainment and cultural uses. In this regard, the Central Area shall serve as the major location for movie theatres, museums, art galleries and live theatre.

Modification to Official Plan Amendment 93-63:

- (1) By deleting the 2nd sentence in Modification 1. thereof, and substituting therefor the following:

In light of the foregoing, the Central Area is considered the major location for entertainment and cultural uses. In this regard, the Central Area shall serve as the major location for movie theatres, museums, art galleries and live theatre.



Ontario

PL970803

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

SCHEDULE "C"

Delete paragraph 3(t) 403.2(1), and substitute the following:

403.2 shall be subject to the following requirements and restrictions:

- (1) Movie theatres shall only be permitted up to a maximum of
 - 10 screens and 2,600 seats up to December 31, 2000; and
 - 10 screens and 3,050 seats, or the addition of seats to an existing facility (provided the existing facility is no more than 10 screens) up to a maximum of 3,050 seats, as of January 1, 2001.

Add paragraph 2(m):

- (1) By adding to Section 851, Section 851.1 thereof, the following item to the list:
 - (ii) Movie theatres;
- (2) By amending Section 851.2(m) by deleting the reference to 74,320 square metres and replacing the same with 84,000 square metres;
- (3) By adding to Section 851, Section 851.2 thereof as subsection (o):
 - (o) Movie theatres shall only be permitted to an aggregate of 16 screens and 3,860 seats.