THE HAMILTON LICENCING TRIBUNAL PRESENTS REPORT 09-004 AND RESPECTFULLY RECOMMENDS:

1. Appeal Hearing – William Haizel, Owner, Greenhill Villa, 2 Webber Avenue, Hamilton, Ontario; and, East Avenue Place, 65 East Avenue South, Hamilton Ontario: Residential Care Facility Licences (Item 4.1)

   (a) That the Residential Care Facility Licence application, to be submitted by Mr. William Haizel, for the property known as East Avenue Place, located at 65 East Avenue South, Hamilton, Ontario, be accepted and a Licence be issued subject to the following conditions, which are to be in place until December 31, 2010; provided that Mr. William Haizel satisfies all
necessary requirements, as set out in the City of Hamilton Licensing Code By-law 07-170 and Guidelines:

(i) That the menus be provided, by fax, to the Issuer of Licences two weeks prior to the dates being served.

(ii) Additions and/or changes to the menus are to be provided, by fax, to the Issuer of Licences as soon as known and before service of the meal.

(iii) That food preparation for East Avenue Place, located at 65 East Avenue South, Hamilton, Ontario, occur on site unless otherwise approved, in writing, by the Issuer of Licenses.

(iv) Should food preparation be required at an alternative location, the Operator shall submit a written request, which details the proposed change(s), to the Issuer of Licences for consideration and approval, prior to taking any action.

(v) That the Operator provide the required continuous educational hours to all employees by August 15, 2009.

(vi) That, after August 15, 2009, the Operator provide continuous educational hours for all employees at a minimum rate of 3 hours each 90 days.

(vii) That for each tenant, the Operator use a Medication Administration Record (MAR) form, which has been approved by the Medical Officer of Health or their designate.

(viii) That the Operator provide copies of all utility invoices and proof of payment in full, for East Avenue Place, located at 65 East Avenue South, Hamilton, Ontario, within thirty (30) days of the due date; indicating that the utility services are not in arrears.

(ix) That a random inspection of East Avenue Place, located at 65 East Avenue South, Hamilton, Ontario, be conducted in addition to the regularly scheduled inspections, approximately every six (6) months to ensure that the Operator is in compliance with the Hamilton Licensing Code By-law and its Guidelines as well as the imposed conditions noted in recommendation (a)(i) through (a)(viii) above.

(b) That the Residential Care Facility Licence application, to be submitted by Mr. William Haizel, for the property known as Greenhill Villa, located at 2 Webber Avenue, Hamilton, Ontario, be accepted and a Licence be issued subject to the following conditions, which are to be in place until December
31, 2010; provided that Mr. William Haizel satisfies all necessary requirements, as set out in the City of Hamilton Licensing Code By-law 07-170 and Guidelines:

(i) That the menus be provided, by fax, to the Issuer of Licences two weeks prior to the dates being served.

(ii) Additions and/or changes to the menus are to be provided, by fax, to the Issuer of Licences as soon as known and before service of the meal.

(iii) That food preparation for Greenhill Villa, located at 2 Webber Avenue, Hamilton, Ontario, occur on site unless otherwise approved, in writing, by the Issuer of Licenses.

(iv) Should food preparation be required at an alternative location, the Operator shall submit a written request, which details the proposed change(s), to the Issuer of Licences for consideration and approval, prior to taking any action.

(v) That the Operator provide the required continuous educational hours to all employees by August 15, 2009.

(vi) That, after August 15, 2009, the Operator provide continuous educational hours for all employees at a minimum rate of 3 hours each 90 days.

(vii) That for each tenant, the Operator use a Medication Administration Record (MAR) form, which has been approved by the Medical Officer of Health or their designate.

(viii) That the Operator provide copies of all utility invoices and proof of payment in full, for Greenhill Villa, located at 2 Webber Avenue, Hamilton, Ontario, within thirty (30) days of the due date; indicating that the utility services are not in arrears.

(ix) That a random inspection of Greenhill Villa, located at 2 Webber Avenue, Hamilton, Ontario, be conducted in addition to the regularly scheduled inspections, approximately every six (6) months to ensure that the Operator is in compliance with the Hamilton Licensing Code By-law and its Guidelines as well as the imposed conditions noted in recommendation (a)(i) through (a)(viii) above.
FOR THE INFORMATION OF THE COUNCIL:

(a) CHANGES TO THE AGENDA (Item 1)

There were no changes to the agenda.

(b) DECLARATIONS OF INTEREST (Item 2)

There were none declared.

(c) APPROVAL OF MINUTES OF PREVIOUS MEETING (Item 3)

3.1 March 31, 2009

The minutes of the March 31, 2009, meeting of the Hamilton Licensing Tribunal were approved, as presented.

(d) Appeal Hearing – William Haizel, Owner, East Avenue Place, 65 East Avenue South, Hamilton Ontario: Residential Care Facility Licence (Item 4.1a)

On April 14, 2009, the Issuer of Licences had refused the renewal applications for the Residential Care Facility Licences for East Avenue Place, located at 65 East Avenue South, Hamilton Ontario and Greenhill Villa, located at 2 Webber Avenue, Hamilton, Ontario.

The refusals were based on the following grounds:

That in accordance with Section 12(1)(d), Section 12(1)(e) and Section 26 of the City of Hamilton Licensing Code By-law 07-170, as amended; the business was not being carried on in compliance with the law.

1. Conviction under the Ontario Fire Code, O.Reg. 213/07, Fire Protection and Prevention Act, Division B, Sentence 2.7.1.7(1), on March 23, 2009 that Mr. William Haizel did fail to maintain the first floor front exit of East Avenue Place, located at 65 East Avenue South, Hamilton, Ontario, free of obstruction:

   (a) On May 22, 2008, a Hamilton Fire Prevention Division Officer responded to a report that the front door exit, of East Avenue Place, located at 65 East Avenue South, Hamilton, Ontario, was improperly locked with a metal bar placed in ‘U brackets’. The Fire Safety Officer did not find the steel bar in place, but advised the operator in charge of the facility that the locking device was not allowed and that there would be legal action if the device was found in use.
Attendance by Municipal Law Enforcement Officers at 23:50 hours on May 22, 2008, found that the illegal locking device was in use.

2. An inspection by Public Health Services, Health Protection Division, Infectious Diseases Section, on March 27, 2009 found, pursuant to Schedule 20 of the City of Hamilton Licensing Code By-law 07-170, as amended, and the Residential Care Facilities Guideline, the following to be in non-compliance:

   a. Section 51(1) and (2), each tenant shall retain a physician, but where one tenant had been unable to do so, the operator had failed to make arrangements for a physician to provide emergency medical care to the tenant.

   b. Section 50, the operator had not ensured that one tenant had been given a TB skin test screen.

   c. Section 49, the operator had permitted an inadequate supply of perishable foods to meet the tenants' needs for at least a 24 hour period.

   d. Section 13, the operator had not ensured that one staff person had participated in twenty hours of continuing education within each twenty-four month period.

3. An inspection by Public Health Services, Health Protection Division, Infectious Diseases, on May 27, 2008 found, pursuant to Schedule 20 of the City of Hamilton Licensing Code By-law 07-170, as amended, and the Residential Care Facilities Guideline, the following to be in non-compliance:

   a. Section 56(1), the operator had not maintained an alphabetical list of the tenants.

   b. Section 50, the operator had not ensured that one tenant had been given a TB skin test screen.

   c. Section 56(2), the operator had not ensured that tenants' files were complete and contained the necessary information.

   d. Section 49, the operator had permitted an inadequate supply of perishable foods to meet the tenants' needs for at least a 24 hour period.

   e. Section 8, the operator had not ensured that, at all times, a qualified employee had been designated as the person responsible for the
operation of the facility and whose primary duty was the supervision of the tenants.

4. Public Health Services, Health Protection Division, Infectious diseases, reported that properties at 65 East Avenue South and 2 Webber Avenue were in non-compliance with Schedule 21, Section 1, of the City of Hamilton Licensing Code By-law 07-170 as amended, and a Notice of Violation letter was sent to Mr. William Haizel on February 24, 2009:

   a. Meals were being prepared and transported from one property, 65 East Avenue South, to another property, 2 Webber Avenue, without a City of Hamilton Caterer's Licence.

Mr. Ormond advised the Licensing Tribunal that Legal Counsel for the Appellant, the Appellant, the City’s Legal Counsel and himself had all worked diligently to prepare and agree upon the following Statement of Facts and proposed conditions, which are to be imposed upon the Residential Care Facility Licences for both East Avenue Place and Greenhill Villa, should the Tribunal approve the issuance of the Licences:

Statement of Facts

1. Non-Compliance with Other Law: At 65 East Avenue South, Hamilton, Ontario, the Operator did fail to maintain the first floor front exit from the building free of obstructions contrary to Division B, Sentence 2.7.1.7.(1) of the Ontario Fire Code O.Reg 213/07, as amended, and did; thereby, commit an offence contrary to the Fire Protection and Prevention Act, S.O. 1997, c. 4, Section 28. On March 23, 2009 William Haizel, Owner/Operator pled guilty and was fined $4000.00.

2. Record Keeping for Tenants: The Operator did fail to maintain proper tenant files and admission records, as set out in the Guidelines in that:

   a. Assessment and opinion admission forms, transfer records and TB screening test information were found to be incomplete or not recorded in tenant files for a combined total of 8 occurrences.

   b. Physician of record and next-of-kin information for more than one tenant was not specifically recorded, on more than one occasion. Where the physician generally associated with the facility is the physician for the tenant, this was not specifically recorded in the tenants’ file.

   c. Community agency information, which provides support to tenants not recorded for three tenant files. S. 51 of the Guidelines.
d. A physician’s note had not been obtained and/or recorded in the tenant file for tenants who the operator permitted to self medicate. This occurred two times at each facility and on one occasion involved more than one tenant. While a note has been obtained from the physician of the tenants retroactively permitting the administration of medication, the operator agrees that this practice is not sufficient and the Guidelines, specifically for s.45 and s.46, require prior written confirmation of this practice.

e. Tenant records were found not to have been updated to reflect incidences or occurrences such as medication refusals and injuries.

f. The alphabetical list of tenants was not current.

These record issues are contrary to By-law 07-170 schedule 20, sections 48, 50 and 56, and the respective Guidelines listed under old by-law sections references s. 46, s. 48, s.51 and s. 54.

3. Medication Practices: The Operator did fail in ensuring that the medication is appropriately managed in that:

a. Medication was not secured at all times, as required by By-law 07-170, section 47 of Schedule 20, as medicine cabinet was found to be unlocked on Sept 5, 2007.

b. Upon receiving allegations that a resident was passing his medication to other residents, the Operator attempted to deal with the situation by removing the medications to its sister facility at 65 East Avenue. The Operator understands that this action still qualifies as carrying tenants medications off site contrary to the Guidelines s. 45 and 46.

c. Medication was not administered, as directed by a physician, as two tenants were permitted to self medicate (insulin) without a Doctor’s note or proper storage, as required by s.47 and s.48 of By-law and s.45 and s.46 of Guidelines. While a note was obtained from the physician of the tenants retroactively permitting this administration of medication, the Operator has been subsequently advised that this practice is not in compliance with the Guidelines.

Medication refusals were not recorded and reported to healthcare professionals, as required by s. 45 of the Guidelines.
4. Staffing Requirements and Qualifications: That the Operator failed to ensure that:

a. Staff had been reported to the Issuer of Licences as new employees, as required by section 8 of Schedule 20.

b. Supervisory staff were present in the home on a continuous basis, as required by Sections 14 and clause (d) of Section 18 of Schedule 20.

c. Recreational activities are provided to tenants, as required by Section 46 of Schedule 20, and the Guideline referring to old by-law section 44.

d. Employees have received the continuous education required by Section 13 of Schedule 20.

e. Maintain records of educational hours for staff, as required by the Guidelines.

This is contrary to By-law 07-170 schedule 20 particularly Sections 8, 13, 14, 18 and 46, and the respective Guidelines listed under old by-law sections 8, 12, and 44.

5. That the operator failed to ensure an adequate supply food of sufficient nutrition in that:

a. There was not always a 3 day supply of non-perishable food and a 24 hour supply of perishable food according to the menu. There are a number of occasions that this was the case. A previous City Health Inspector’s Order dated 1999, acknowledged the Operator prepares food on one site while serving it at the other. This report created some confusion in what the operator was permitted to retain on the premises in terms of perishable foods. Upon receiving notice that the previously identified practice was no longer permitted, the Operator began preparing meals on site at both facilities on or about December 17, 2008; accordingly, both facilities are maintaining independent supplies of perishable foods on site.

b. Menus failed to accurately reflect the food offered for meals, and were either not updated or posted.

This is contrary to By-law 07-170 schedule 20, section 49, and the respective Guidelines under old by-law section 47.
6. Concern with Future Compliance with Law; The City was notified of a shut-off date for a service under the City’s Vital Services By-law 05-322. The City was subsequently advised payment had been made and the shut off averted. This is covered under the Vital Services By-law Number 05-322.

7. The above listed items 2 through 5 of non-compliance were determined during inspections by the Public Health Nurse Inspector between May 17, 2007 and July 7, 2009 and reported to the operator through the issuance of compliance reports at the time of the inspections. Since the time of the recorded violations, the Operator has brought itself in compliance with the By-law 07-170 schedule 20 and the Guidelines in this Statement of Agreed Facts under subparagraphs: 1, 2b, 2c, 2e, 2f, 3a, 3b, 3d, 4a, 4b, 4c, 4d, 4e, 5a, 5b and 6. (listed above)

8. Wherever the violations, as noted in the compliance reports, cannot be remedied by the Operator as they occur in the past, the Operator has put into place and has taken positive steps to ensure that no future violations occur; specifically, the Operator has done the following:

- With respect to subparagraph 2a (listed above) the operator has changed its admission policies to compel each resident to have a 2-step TB skin test performed within ten (10) days of admission failing which his or her tenancy can be terminated pursuant to the Residential Tenancies Act, 2006 S.O.2006, CHAPTER 17; and,

- With respect to subparagraphs 2d and 3c (listed above), a physician’s note has been obtained by the physician indicating that a tenant can self-administer the insulin.

Closing Statements:

In closing, both Mr. Ormond and Mr. Simmons stated that they were in joint agreement with the Statement of Facts and the conditions recommended by staff.

Staff Recommendations:

That the issuance of a Residential Care Facility Licence for both East Avenue Place, located at 65 East Avenue South, Hamilton, Ontario and Greenhill Villa, located at 2 Webber Avenue, Hamilton, Ontario, be approved, subject to the following conditions, which are to be imposed upon those licenses until December 31, 2010:
That both Licences be issued on the condition that the Operator complies with the following requirements in addition to the Hamilton Licensing Code By-law 07-170 and Guideline requirements:

(a) That the menus be provided by fax to the Issuer of Licences, two weeks prior to the dates being served.

(b) Additions and/or changes to the menus are to be provided, by fax, to the Issuer of Licences as soon as known and before service of the meal.

(c) That food preparation for each licensed premise occur on the site of the premise unless otherwise approved, in writing, by the Issuer of Licenses.

(d) Should food preparation be required at an alternative location, the Operator shall submit a written request, which details the proposed change(s), to the Issuer of Licences, for consideration and approval, prior to taking any action.

(e) That the Operator provide the required continuous educational hours to all employees by August 15, 2009.

(f) That, after August 15, 2009, the Operator provide continuous educational hours for all employees at a minimum rate of 3 hours each 90 days.

(g) That for each tenant, the Operator use a Medication Administration Record (MAR) form, which has been approved by the Medical Officer of Health or their designate.

(h) That the Operator provide copies of all utility invoices and proof of payment in full; indicating that the utility services are not in arrears within 30 days of the due date.

(i) That the facility is reviewed every 6 months to ensure conditions are complied with.

The Tribunal moved into Closed Session, at 9:53 a.m., to deliberate upon the submissions of the parties.

As shown in the Closed Session Minutes, the Tribunal reconvened in Open Session at 10:05 a.m.

Having heard and considered the submissions of the parties, the Licensing Tribunal provided its recommendation as shown in Item 1 above.
(d) PRIVATE & CONFIDENTIAL

5.1 Closed Session Minutes – March 31, 2009

As the Licensing Tribunal determined that no discussion, respecting the Closed Session Minutes of the March 31, 2009, meeting of the Licensing Tribunal, was required, the Minutes were approved in Open Session, as shown below:

(a) The Closed Session Minutes of the March 31, 2009 meeting of the Hamilton Licensing Tribunal were approved, as presented.

(b) The March 31, 2009 Minutes, of Hamilton Licensing Tribunal, will remain confidential and restricted from public disclosure, in accordance with exemptions provided in the Municipal Freedom of Information and Protection of Privacy Act.”

(e) ADJOURNMENT (Item 6)

There being no further business, the Hamilton Licensing Tribunal adjourned at 10:15 a.m.

Respectfully submitted,

Councillor B. Clark, Acting Chair
Hamilton Licensing Tribunal

Stephanie Paparella
Legislative Assistant
July 8, 2009