



**City of Port Colborne  
Special Council Meeting 35-20 – Public Hearing  
Monday, December 14, 2020 – 6:30 p.m.  
Council Chambers, 3<sup>rd</sup> Floor, 66 Charlotte Street**

**Agenda**

**Notice:** Council will meet through electronic participation in accordance with Bill 137, the Municipal Emergency Act in order to keep the health and safety of our community as a priority. If you wish to provide public comments regarding an item on the agenda please submit to [deputyclerk@portcolborne.ca](mailto:deputyclerk@portcolborne.ca) by noon on Monday, December 14, 2020.

Watch the Special Council Meeting streaming live on our [YouTube Channel](#).

1. **Call to Order:** Mayor William C. Steele
2. **Confirmation of Agenda:**
3. **Disclosures of Interest:**
4. **Public Hearing Under the Planning Act:**

**Application for Zoning By-law Amendment – (Page No. 3)  
Planning and Development Department, Planning Division, Report No. 2020-186,  
Subject: Public Meeting Report for Proposed Zoning By-law Amendment at 168  
and 176 Elm Street, File D14-02-20**

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- (i) Purpose of Meeting:
- (ii) Method of Notice:
- (iii) Explanation of Procedure to be Followed:
- (iv) Presentation of Application for Zoning By-law Amendment:
- (v) Comments of Applicant:
- (vi) Questions of Clarification to Applicant/Planning Staff:
- (vii) Oral Presentations and/or Questions from the Public:
- (viii) Announcement Respecting Written Notice of Passage of Zoning By-law Amendment:
- (ix) Explanation of Future Meetings:
- (x) Adjourn

## **5. Public Hearing Under the Planning Act:**

**Application for Zoning By-law Amendment – (Page No. 103)  
Planning and Development Department, Planning Division, Report No. 2020-187,  
Subject: Public Meeting Report for Proposed Zoning By-law Amendment at 599  
Main Street West, File D14-06-20**

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- (xi) Purpose of Meeting:
- (xii) Method of Notice:
- (xiii) Explanation of Procedure to be Followed:
- (xiv) Presentation of Application for Zoning By-law Amendment:
- (xv) Comments of Applicant:
- (xvi) Questions of Clarification to Applicant/Planning Staff:
- (xvii) Oral Presentations and/or Questions from the Public:
- (xviii) Announcement Respecting Written Notice of Passage of Zoning By-law Amendment:
- (xix) Explanation of Future Meetings:
- (xx) Adjourn

## **6. Adjournment**



**Planning and Development Department  
Planning Division**

**Report Number: 2020-186**

**Date: December 14, 2020**

**SUBJECT: Public Meeting Report for Proposed Zoning By-law Amendment at  
168 and 176 Elm Street, File D14-02-20**

**1) PURPOSE:**

The purpose of the report is to provide Council with information regarding a Zoning By-law Amendment application initiated by Steven Rivers of South Coast Consultants on behalf of the owner Hometown Properties Inc. for the property legally known as Lots 121 to 123 on Plan 12, and Part of Lots 368 and 369 on Plan 16, in the City of Port Colborne, Regional Municipality of Niagara, municipally known as 168 and 176 Elm Street.

**2) HISTORY, BACKGROUND, COUNCIL POLICY, PRACTICES**

The application for Zoning By-law Amendment accompanied by a planning justification report proposes to the zoning from I – Institutional and R4 – Fourth Density Residential to R4-56, a special provision of the Fourth Density Residential zone that will allow for a hall, apartment building and personal service business while recognizing the existing location of the building, and allowing for a reduction in lot area per unit, minimum floor area for a unit and parking. These changes are being sought to permit the conversion from an institutional building into a 22-unit apartment building with a hall and office space on the property.

**3) STAFF COMMENTS AND DISCUSSIONS**

The Notice of Public Meeting was circulated to required agencies, and property owners within 120 metres of the property on November 24, 2020. Public notice signs were posted on the property on or before November 24, 2020. Meeting details have been provided along with the Council Agenda on the City's website.

At the time of writing this report, staff has received the following comments from the public, City divisions and commenting agencies:

Patricia and Julius Premi – 171 Alexandra Street, Port Colborne

- In favour of the proposed Zoning By-law Amendment.

## Planning Division

### City of Port Colborne Official Plan

According to Schedule A: City Wide Land Use, the City of Port Colborne's Official Plan designates the subject property as **Urban Residential**. Land uses in the Urban Residential designation include residential, neighbourhood, commercial and community facilities and institutional uses.

The Official Plan designation is not proposed to be changed as a result of this application.

### City of Port Colborne Zoning By-law 6575/30/18

The subject parcel is zoned **Institutional (I)** and **Fourth Density Residential (R4)**. The I zone permits public apartment buildings; community garden; cultural facility; cemetery; day care; dwelling, accessory; food vehicle; long term care facility; place of assembly/banquet hall; place of worship; public uses; social service facility; and uses, structures and buildings accessory thereto. The R4 zone permits detached, semi-detached, triplex, fourplex dwellings; block and street townhouse dwellings; apartment buildings; public apartment buildings; and uses, structures and buildings accessory thereto.

The application for Zoning By-law Amendment proposes to change the zoning of the property from I – Institutional and R4 – Fourth Density Residential to R4-56, a special provision of the Fourth Density Residential zone which will permit the conversion into a 22-unit apartment building with accompanying hall and office space. A number of special provisions have been requested and outlined below and in the Draft Zoning By-law Amendment attached as Appendix A:

a)	Minimum Front Yard	4.5 metres
b)	Minimum Interior Side Yard	1.5 metres
c)	Minimum Corner Yard	1.5 metres
d)	Minimum Rear Yard	1.5 metres
e)	Maximum Lot Coverage	25 %
f)	Maximum Height	As existing
g)	Max Gross Floor Area	1450 square metres
h)	Minimum Landscape Area	25 %
i)	Minimum Floor Area / Unit	35 square metres
j)	Minimum Number of Parking Spaces	23 spaces
k)	Landscape Buffer Between the Edge of any Parking Area Abutting a Public Road	0 metres
l)	Landscape Buffer Between the Edge of any Parking Area Abutting a Residential Zone	1.5 metres
m)	Minimum Setback of a Building for the Purpose of Human Habitation to a Functioning Railway Right-of-way	1.5 metres

Adjacent Zoning and Land Use

<b>Northwest</b> City rail line	<b>North</b> Charlotte Street	<b>Northeast</b> Charlotte Street/Elm Street
<b>West</b> City rail line	<b>Applicant's Property</b>	<b>East</b> Elm Street
<b>Southwest</b> City rail line	<b>South</b> Residential dwellings Zoned: R4	<b>Southeast</b> Elm Street

Discussion

A sketch of the subject property is shown in Appendix C of this report. Staff would like to note that the property will be subject to a Site Plan Control application in the future, should the Zoning By-law Amendment be approved by Council. The Site Plan Control process will address sufficient servicing, lighting, site access and design, landscaping, screening and other physical features of the site.

Planning staff is not providing a recommendation to Council at this time to allow agency, public and Council comments to be addressed prior to any decision being made on the application. The recommendation report will return to Council for a decision at a future meeting.

**4) OPTIONS AND FINANCIAL CONSIDERATIONS:**

**a) Do nothing**

Not applicable.

**b) Other Options**

Not applicable.

**5) COMPLIANCE WITH STRATEGIC PLAN INITIATIVES**

Not applicable.

**6) ATTACHMENTS**

- Appendix A - Draft Zoning By-law Amendment
- Appendix B - Planning Justification Report
- Appendix C - Site Sketch

**7) RECOMMENDATION**

That Planning and Development Department, Planning Division, Report 2020-186 be received for information.

**8) SIGNATURES**

Prepared on December 1, 2020 by:



David Schulz, BURPL  
Planner

Reviewed by:

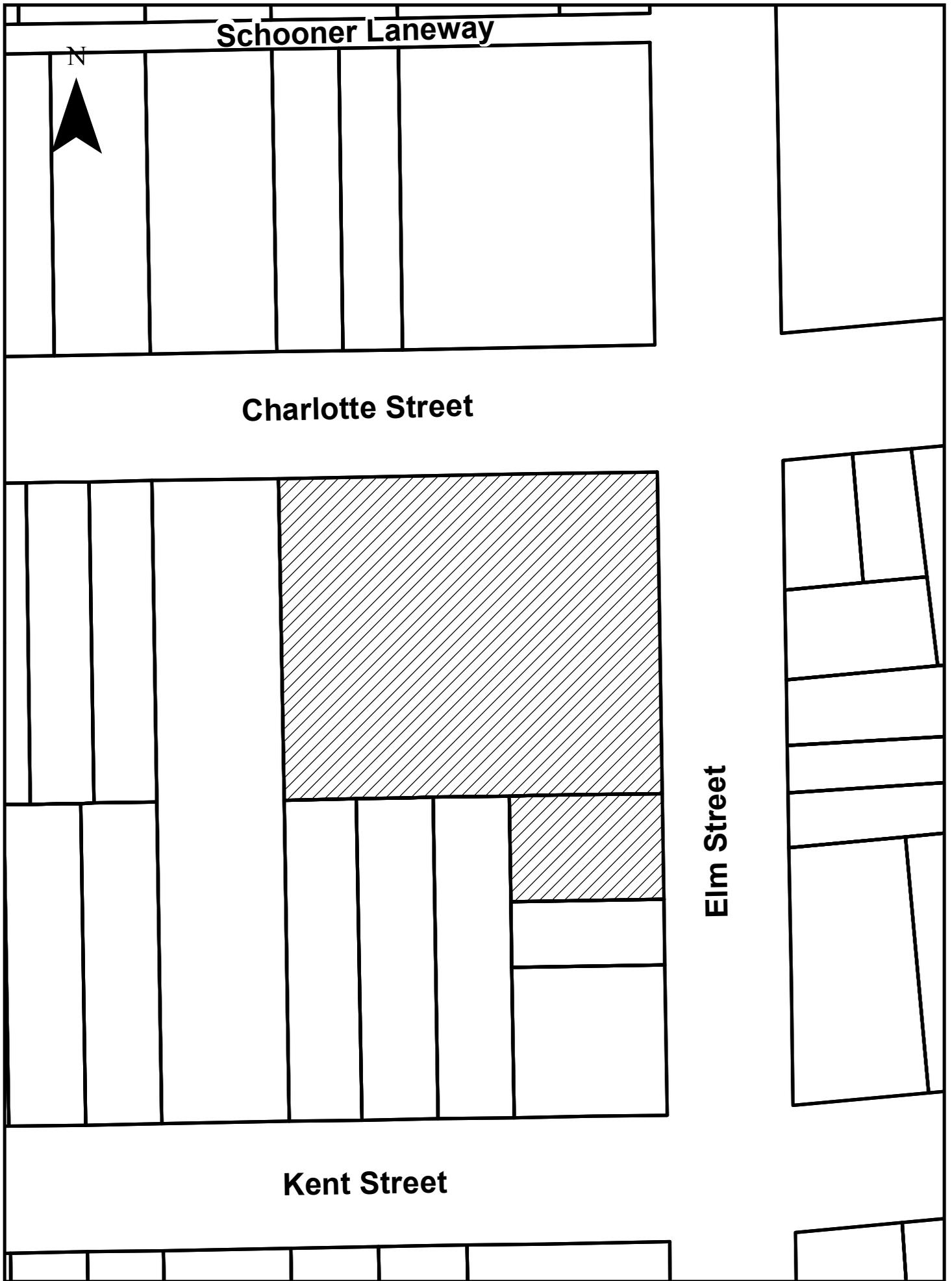


Dan Aquilina, MCIP, RPP, CPT  
Director of Planning and Development

Reviewed and Respectfully Submitted:



C. Scott Luey  
Chief Administrative Officer



THIS IS SCHEDULE "A" TO BY-LAW NO \_\_\_\_\_  
 PASSED THE \_\_\_\_\_, 2020  
 \_\_\_\_\_  
 MAYOR  
 \_\_\_\_\_  
 CLERK

 Lands to be rezoned from Institutional (I) to R4-56

NOVEMBER 2020  
 FILE NO D14-02-20  
 DRAWN BY; CITY OF PORT COLBORNE  
 PLANNING DIVISION  
 NOT TO SCALE

## REVISED PRELIMINARY PLANNING POLICY JUSTIFICATION REPORT

For

**Hometown Properties**

Re:

**An Apartment Building**

**168 and 176 Elm Street**

**Roll Nos: 271101002121100 and 271101002106200**

**Port Colborne, Regional Municipality of Niagara**



Prepared By:

**South Coast Consulting**

*Land Use Planning and Development Project Management*

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**REVISED PRELIMINARY PLANNING POLICY JUSTIFICATION REPORT**  
**A Mixed Use Office and Apartment Building**  
**168 & 176 Elm Street**  
**Roll Nos: 271101002121100 and 271101002106200**  
**Port Colborne, Regional Municipality of Niagara**

**PURPOSE, LOCATION & DESCRIPTION**

The purpose of this Revised Preliminary Planning Policy Justification Report is to review a revised proposal to redevelop the Subject Properties with a total lot area of about 3,460 square metres and 70 metres of frontage on Elm Street and 60 metres of frontage on Charlotte Street in the City of Port Colborne for an Apartment Building with 22 residential units ranging size from 38 to 89 square metres, several with adjacent patios or balconies, as illustrated in *Annex 1, Conceptual Site Plan and Floor Plans*. The dimensions of the Subject Properties are illustrated on *Figure 1, Subject Properties*. The Phases of the residential units will have the gross floor area and number of bedrooms illustrated in *Figure 2, Unit Gross Floor Area, Number of Bedrooms & Phases*.

<b>Figure 1: SUBJECT PROPERTIES</b>			
	<b>Lot Frontage on Elm Street in Metres</b>	<b>Lot Frontage on Charlotte Street in Metres</b>	<b>Lot Area in Square Metres</b>
168 Elm Street	17.42m	-	425.94sqm
176 Elm Street	50.25m	60.43	3033.99sqm
Total	67.67m	60.43	3458.93.18sqm

In addition to the residential units the building will accommodate *Personal Service Business* (consultation or information service provided by a professional realtor) *Home Based Business accessory use* and private recreational space / party room and washrooms accessory use for the tenants.

The Subject Properties, illustrated in *Annex 3, Subject Properties*, have an existing institutional building which will be redeveloped for the proposed uses and a two storey single detached dwelling that will be demolished to provide parking for the third phase.

**Figure 2:  
UNIT GROSS FLOOR AREA, NUMBER OF BEDROOMS & PHASES**

Unit	Floor Area (square metres)	Bedrooms
<b>Phase 1</b>		
1	41	1
2	41	1
3	38	1
4	40	1
<b>Phase 2</b>		
5	71	1
6	78	1
7	62	1
8	62	1
9	59	1
<b>Phase 3</b>		
10	51	1
11	51	1
12	51	1
13	45	1
14	50	1
15	41	1
16	48	1
17	72	1
18	56	1
19	89	2
20	72	2
21	49	1
22	58	1

The Subject Properties are proposed to be **rezoned from the Institutional (I) Zone and Fourth Density Residential Zone to a Fourth Density Residential (R4-X) Zone – Special**. Several zoning provision changes are required including:

- Reducing the minimum front yard requirement from 9 to 4.8 metres to recognize the existing setback;
- Reducing the minimum interior side yard requirement from 3 to 1.0 metres to recognize the existing setback;

- Reducing the minimum corner side yard from 7.5 to 1.5 metres to recognize the existing setback;
- Reducing the minimum rear yard from 6 to 1.5 metres to recognize the existing setback;
- Increasing the maximum lot coverage from 40 to 50 percent to recognize the existing coverage;
- Reducing the minimum floor area for residential units from 50 to 35 square metres;
- Reducing the total minimum number of required parking spaces from 30 to 23 (10 for Phases 1 and 2 and 13 for Phase 3);
- Reducing the landscape buffer provided between the edge of any parking area and an abutting road lot line from 3 to 0 metres;
- Reducing the landscape buffer provided between the edge of any parking area and an abutting residential lot line from 3m to 0.6 metres; and
- Reducing setback of a building for the purposes of human habitation from a functioning railway right-of-way from 15 to 1.7 metres.

The proposal is reviewed against the policies of the: Provincial Policy Statement (PPS); Growth Plan for the Greater Golden Horseshoe (Growth Plan); Region of Niagara Official Plan (ROP); City of Port Colborne Official Plan (PCOP); and the provisions of the City of Port Colborne Zoning By-Law (PCZB).

On 2018-11-22 the City of Port Colborne hosted a pre-application consultation meeting to discuss the proposed development. Staff of the City's Planning and Engineering departments attended. The meeting established an application for and Zoning B-law Amendment and Site Plan Control were required to proceed with the proposal. An Environmental Site Assessment (Phases 1 and 2) is also required to support the development applications.

The Subject Properties are located within the *Built-up Area* of the City and **designated Urban Residential** in the Port Colborne Official Plan as illustrated on *Figure A4.3, City Official Plan Schedule A, City Wide Land Use Excerpt*, in Annex 4, *Excerpts from Relevant Documents*.

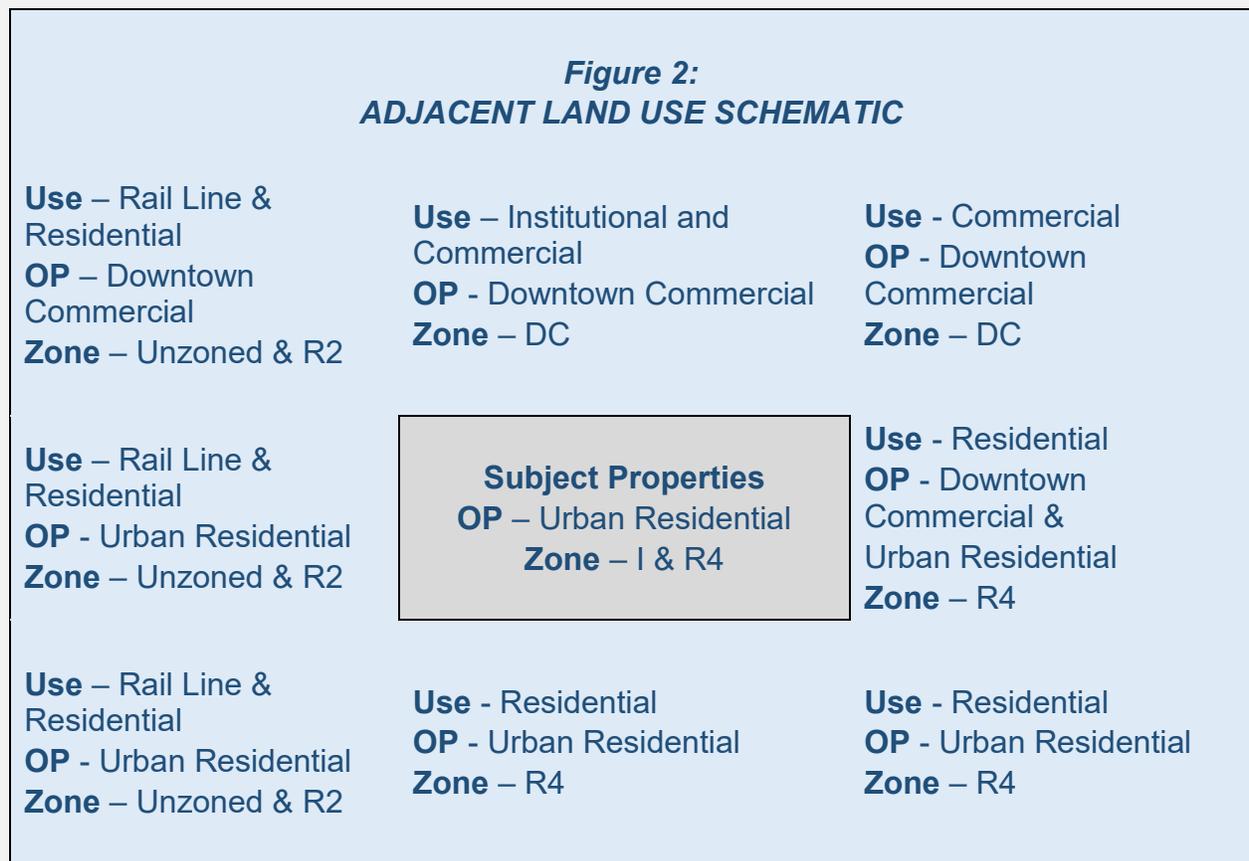
The Port Colborne Zoning By-law zones the Subject Properties "Institutional" and "Residential Fourth Density R4". A Zoning By-law Amendment is proposed to rezone the Subject Properties to a "Residential Fourth Density (R4-X) Zone - Special" to permit the development concept illustrated in the *Conceptual Site Plan and Floor Plans* in Annex 1.

## SURROUNDING LAND USES

The neighbourhood of the Subject Properties is an older established area and can be considered 100% developed. Neighbourhood land uses are commercial, residential, and institutional. Commercial uses are primarily located along major roadways. Residential uses are located in the interior, with a mix of older established low-density houses with some low-rise apartment buildings. The main feature of the neighbourhood is the Welland Canal, along the entire east boundary. The neighbourhood includes several parks, the Welland Canal Parkway Trail, the Port Promenade, the Roselawn Centre, the Port Colborne Historical and Marine Museum, the Port Colborne Library, and the typical mix of retail uses and dining establishments found in a vibrant downtown.

In terms of street improvements, Elm Street and Charlotte Street both have curbing, and sidewalks. A large shopping plaza is located at the northeast corner of this intersection, offering food, pharmacy, and healthcare. The area has oversized sidewalks for pedestrian traffic, with upgrades to streetscaping along Elm Street. The Subject Properties abut existing urban residential and commercial mixed uses and the City’s railway as illustrated on the *Figure 2: Adjacent Land Use Schematic*.

The development of the Subject Properties as residential use is compatible with the institutional, commercial, and residential mix of land uses context of the surrounding area.



## RELEVANT POLICY SUMMARY

Good planning practice directs that the plan and its policies are not written in stone. Policies such as those of the PPS, Growth Plan, ROP, and PCOP reviewed here, are used to try to reach a goal. They are not to be used as a set of threshold measures where the inability to meet every policy results in a proposal's failure. All of the policies may not be and, based on good planning practice, don't have to be, satisfied as though they are zoning by-law regulations. If, on the balance, the proposal satisfies most of the policies and moves the community towards its stated goals, then the proposal should be given serious consideration for approval.

Land use planning in Ontario, Niagara, and Port Colborne is about development. Protecting and preserving resources is important but, land use planning is primarily about promoting and encouraging appropriate development and complete communities. There are aspects of control to protect valuable and sensitive resources, such as significant cultural and natural heritage features from negative impacts from nearby uses, but the primary purpose is guiding development.

The guidance of development is evident starting with the *Planning Act*. The Citizen's Guide to Land-use Planning (the Guide) states *the Act*, among other things promotes sustainable economic development in a healthy natural environment and provides for a land use planning system led by provincial policy. The Guide further states, *the Act* provides the basis for preparing official plans and planning policies that will guide future development. The Guide states the PPS provides policy direction that will help build strong communities by protecting, among others, agricultural resources. Community planning is aimed at identifying common community goals and balancing competing interests of the various parties.

### Provincial Policy Statement

*Settlement areas* such as the Port Colborne are to be the focus of growth and development, and their vitality and regeneration is to be promoted. Land use patterns within *settlement areas* are to be based on, among other things, densities and a mix of land uses which; efficiently use land and resources, and efficiently use the *infrastructure* and *public service facilities* planned or available.

The proposal addresses the PPS directions by developing a residential building within the *settlement area* at a density and mix of land uses which efficiently use land and resources and the *infrastructure* and *public service facilities* available.

### Growth Plan

The Growth Plan requires population and employment growth to be accommodated by directing a significant portion of new growth to the *built-up areas* such as Port Colborne through *intensification*. The Growth Plan directs development in the *Built-up Area* through *intensification* at high density to support sustainability, therefore:

- Protecting and preserving prime agricultural land in prime agricultural areas;
- Reducing automobile dependence by transit supportive development; and
- Encouraging complete communities with a range of housing types.

The proposal addresses the Growth Plan directions by developing a residential building within the urban area and providing the City a range of housing types and affordability accessible to a range of household incomes.

### Official Plans

Growth and development is to be focused within urban areas. Land use must be carefully managed to accommodate appropriate development to meet the full range of current and future needs, while achieving efficient development patterns and avoiding significant or sensitive resources and areas which may pose a risk to public health and safety. Similar to the PPS, the ROP promotes the efficient use of land and the minimization of conflict between incompatible uses as a Strategic Objective and building compact, mixed use, transit supportive, *active transportation friendly* communities in the *Built-up Area* such as Port Colborne. The objectives of the ROP Growth Management Policies include directing the majority of growth and development to existing *Urban Areas* and promoting the efficient use of existing municipal sewage and water services.

The proposal helps create a compact, mixed use, transit supportive, active transportation friendly community in the Port Colborne urban area making efficient and sustainable use of existing municipal sewage and water services.

The Vision for the City of Port Colborne is among other things continue to provide the opportunity for a mix of residential accommodations accommodating households with diverse social and economic characteristics, needs and desires; ensuring new *development* is accessible by all members of the community, and developing the community in a way which optimizes existing Municipal and Regional infrastructure.

The Growth Management Strategy is to, among other things, support infill and *intensification*, subject to the applicable policies, in the Urban Residential designation, and support compact and transit supportive *development* within the *built boundary*.

Housing Strategic Planning Policies include that new housing development should:

- Be located in the urban area to make use of existing infrastructure and facilities;
- Be accessible to medical facilities, shopping, and any future public transportation system;
- Be close to or be developed with on-site parks and open space;
- Incorporate design features for an aging population;
- Use housing forms suitable for an aging population such as at-grade housing or medium density apartment buildings; and

- Be close to or be developed with social and recreational facilities. (Policy 2.4.2.1a)

The *intensification* of this proposal will count towards the municipality's 15% *intensification* target. An objective of the intensification policies is to revitalize and support the downtown by promoting intensification. Intensification sites should match the pre-established building character of adjacent buildings. Where appropriate, the design of the development should provide linkages and connections to existing and proposed pedestrian and bicycle networks.

The PCOP designates the Subject Properties **Urban Residential** - land primarily used for residential purposes. High Density Residential uses are to be developed as apartment buildings ranging in density from 70 to 100 units per net hectare. While the proposal is less than 70 units per hectare at approximately 66 units per hectare, it is a medium density apartment building promoted in the Housing Strategic Planning policies. As directed by the PCOP policies, the proposal has frontage on an arterial roads, ground-oriented residential uses on the main floor, and is in proximity to public transit and active transportation routes.

The proposal is for a transit supportive, active transportation friendly use of an existing underutilized building in the Port Colborne urban area at a residential density of 66 units per hectare making it an efficient and sustainable use of existing municipal sewage and water services on the Elm and Charlotte Street arterial roads and the Port Colborne West Bus Route.

The urban design guidelines encourage:

- the maintenance of the established building line for the front yard setback;
- corner buildings side elevations to be given equal design treatment as the main street façade;
- the building identity at corner locations to be reinforced by taller building elements such as towers, entrance structures or roof elements;
- buffering including grassed areas and appropriate planting of trees and shrubs and / or the provision of other suitable screening materials;
- Service and loading areas to be oriented to the rear of the building; and
- All parking areas to be placed at the rear of buildings and accessed from side streets to maintain a continuous building edge and a pedestrian-friendly street environment. Given the coverage of the existing building and the narrow side and rear yards, not all parking can be located at the rear of the building. Much of the area at the rear of the existing building is taken up by the loading space.

All proposed development within 500 metres of a railway right-of-way may be required to undertake noise studies, to the satisfaction of the municipality and / or Region in consultation with the appropriate railway, and shall undertake appropriate measures to mitigate any adverse effects from noise that were identified.

All proposed development within 75 metres of a railway right-of-way may be required to undertake vibration studies, to the satisfaction of the municipality and/or Region in consultation with the appropriate railway, and shall undertake appropriate measures to mitigate any adverse effects from vibration that were identified.

All proposed development adjacent to railways shall ensure that appropriate safety measures such as setbacks, berms and security fencing are provided to the satisfaction of the municipality and the Region, in consultation with the appropriate railway.

The City may provide for exemptions to the required parkland dedication if special features are being preserved in which the City has an interest.

The City has expressed an interest in preserving the courtyard on the Subject Properties. An exemption to the required parkland dedication is appropriate given its location to the nearby King George Memorial Park, New Life in the City Park, and the Port Promenade.

An Official Plan Amendment is not required because the uses permitted in the proposed zoning by-law amendment are commonly found in the **Urban Residential** designation and in both the “Residential” and “Intentional Zones”.

#### Zoning By-Law

The Subject Properties are zoned “**Institutional - I**” which permits, among other uses, a public apartment building and “**Fourth Density Residential – R4**”, which permits, among other uses, apartment buildings.

The zoning provisions proposed for the “Residential Fourth Density (R4-X) Zone – Special” recommended will provide a high quality, well designed development incorporating good urban design principles. The provisions provide a comprehensive approach to the design and retain a defined character within the development. The site specific measures will not impact the ability to provide adequate open space or parking for the residential units.

A zoning By-law amendment is recommended to permit the residential use similar to others located in the **Urban Residential** designation in the City.

#### POLICY AND ISSUES REVIEW

The City of Port Colborne Council has the authority to approve zoning by-law amendments if they implement the policies of the Official Plan. *Settlement areas* such as the Port Colborne where the Subject Properties are located are to be the focus of growth and development, and their vitality and regeneration is to be promoted. The proposal

satisfies the ROP intend to build more sustainable, *complete communities* by, among other things, making efficient use of land, resources and *infrastructure* and supporting *intensification*, to maximize the use of existing and planned *infrastructure* to support growth in a compact and efficient manner. The PCOP encourages *residential intensification* and *redevelopment* such as proposed in areas that have sufficient existing or planned *infrastructure*.

The proposal is efficient development, *intensification*, and optimization of the use of land and public investment in *infrastructure*, a strong theme throughout the PPS, ROP, and PCOP. The proposal is in an area where redevelopment is encouraged in these planning documents. It is efficient *development* optimizing the use of land, resources, and public investment in existing infrastructure, and public service facilities. As a residential development in a mixed use area there are no conflicts with surrounding uses. It's location near the City Hall bus stop is transit supportive. The location provides safe and easy walking and cycling to commercial and community facilities and is close to safe, publicly-accessible open spaces, parks, trails, and other recreational facilities.

There are a several positive policy supported aspects of the proposal:

- It is an intensified residential use of an existing underutilized building within an existing urban mixed use area, providing housing type and choice alternatives in downtown Port Colborne on the Elm and Charlotte Streets arterial road and transit corridors.
- It is compact redevelopment efficiently utilizing urban land, existing services, and municipal infrastructure.
- It provides safe and easy walking and cycling to commercial and community facilities and is close to safe, publicly-accessible open spaces, parks, trails, and other recreational facilities.
- It is a high quality, compact, orderly, built form that will help the City meet intensification target.
- Its design places windows and balconies overlooking pedestrian routes and parking areas providing for "eyes on the street" and maintains pedestrian access to the nearby park maintaining connectivity;
- It has a strong relationship to both Charlotte and Elm Streets and upper floor units are emphasized through the use of pronounced building elements including dormers. The primary building entrances clearly address both streets.
- Handicapped parking is located near the main entrance.
- Through the addition of an apartment building in this location:
  - housing variety is achieved;
  - a range of housing types is provided promoting variety and diversity;
  - residential density is increased promoting transit use and municipal sustainability; and
  - residential uses are located near a park and trail system.

### Planning Goals, Objectives, and Policies Satisfied

The City of Port Colborne Council has the authority to approve zoning by-law amendments if they implement the policies of the PCOP. *Settlement areas* such as the Port Colborne are to be the focus of growth and development, and their vitality and regeneration is to be promoted. The ROP intends to build more sustainable, *complete communities* by, among other things, making efficient use of land, resources and *infrastructure* and supporting *intensification*, to maximize the use of existing and planned *infrastructure* to support growth in a compact and efficient manner. The PCOP encourages *residential intensification* and *redevelopment* in areas that have sufficient existing or planned *infrastructure*.

The proposal:

- provides a mix of residential accommodations accommodating households with diverse social and economic characteristics, needs, and desires;
- ensures new *development* is accessible by all members of the community;
- optimizes existing infrastructure use;
- is *intensification*;
- is transit supportive *development* within the *built boundary*;
- is accessible to medical facilities;
- is close to and designed with on-site open space;
- incorporates design features for an aging population;
- provides housing forms suitable for an aging population;
- is close to social and recreational facilities;
- counts towards the municipality's 15% *intensification* target;
- assists with the revitalization and supports the downtown;
- matches the pre-established building character of adjacent buildings; and
- provides linkages and connections to existing pedestrian and bicycle networks.

The proposal is for a transit supportive, active transportation friendly use of an existing underutilized building in the Port Colborne urban area at a residential density of 66 units per net hectare making it an efficient and sustainable use of existing municipal sewage and water services on the Elm and Charlotte Street collector roads and the Port Colborne West Bus Route.

The proposal complies with the Urban Residential designation because it:

- is *intensification*;
- maintains of the established building line for the front yard setback;
- is a corner building with side elevations given equal design treatment as the main street façade;
- identities and reinforces the corner location through taller building elements such as towers, entrance structures or roof elements; and
- orients service and loading areas to the rear of the building.

The City has expressed an interest in preserving the courtyard on the Subject Properties. An exemption to the required parkland dedication is appropriate given its location close to the nearby King George Memorial Park, New Life in the City Park, and the Port Promenade.

### Efficient Development

This development is focused within the urban area. It is appropriate development helping the City meet the full range of current and future needs, while achieving efficient development and avoiding significant or sensitive resources and areas which may pose a risk to public health and safety.

The proposal is a higher density redevelopment and *intensification* of an under-utilized existing building optimizing the use of land, resources, and public investment in infrastructure and public service facilities. It minimizes the undesirable effects of development, including impacts on air, water, and other resources. The apartment building:

- provides a diversified residential opportunity meeting the identified needs in Niagara and balancing both urban development and the conservation of natural resources by redeveloping in a rejuvenating a built-up urbanized location;
- makes efficient use of land; and
- has no significant land use conflicts.

The proposal increases the efficiency of the use of existing municipal infrastructure and increases the municipality's sustainability by building a compact, mixed use, transit supportive, *active transportation friendly* development in the *Built-up Area*.

This proposal is a short walk from City Hall transit stop in an area where intensification is encouraged.

As a primarily residential development in a mixed use area there are no conflicts with surrounding uses and no impact on natural resources.

The apartment building facilitates the efficient use of community and engineering services, does not create an undue financial hardship on the municipality, and increases the City's robustness and ability to accommodate infrastructure and services maintenance.

The proposal is primarily an intensified residential use on the periphery of the downtown mixed use area. It provides for a range of housing alternatives in downtown on the Charlotte and Elm Streets arterial roads. It is compact development efficiently utilizing urban land, existing services, and municipal infrastructure. The location provides safe and

easy walking and cycling to commercial and community facilities and is close to safe, publicly-accessible open spaces, parks, trails, and other recreational facilities.

Efficient development, intensification, and optimizing the use of land and public investment in infrastructure that result from this proposal is a strong theme throughout the PPS, ROP, and PCOP. The proposal is in an area where redevelopment is encouraged in these planning documents. As a residential redevelopment in an existing mixed use area there are no conflicts with surrounding uses. The location near the City Hall bus stop is transit supportive.

### High Quality Urban Design

The proposal is a high quality, compact, orderly, built form that will help the City meet intensification targets. The building design places windows and balconies to overlook pedestrian routes and parking areas to encourage “eyes on the street” and maintains pedestrian access to the nearby park maintaining connectivity.

The building has a strong relationship to both Charlotte and Elm Streets as encouraged by the Region of Niagara Model Urban Design Guidelines. Upper floor units are emphasized through the use of pronounced building elements including dormers. The primary building entrances clearly address the streets.

The required handicapped parking space is located near a main entrance.

The proposal is a high quality, compact, orderly, built form that will help the City meet intensification targets. The building design places windows and balconies to overlook pedestrian routes and parking areas to encourage “eyes on the street” and maintains pedestrian access to the nearby park maintaining connectivity.

The building has a strong relationship to Charlotte and Elm Streets and upper floor units are emphasized through the use of pronounced building elements including dormers. The primary building entrances clearly address the streets. The required handicapped parking space is located near a main entrance. Through the addition of an apartment building in this location:

- Housing variety is achieved;
- A range of housing types is provided promoting variety and diversity;
- Residential density is increased promoting transit; and
- Residential uses are located near the park and trail system.

The building maintains the favourable streetscape and community character. The proposal maintains a sense of identity through rational and sensitive treatment of architectural features, forms, massing, and layout, compatible and homogeneous with the existing architecture in downtown Port Colborne.

### Streetscape and Established Community Character

Since there are only limited exterior changes (the addition of dormers) to the building, the streetscape and community character are maintained. At grade access to the ground floor units is provided as recommended by the Niagara Region Model Urban Design Guidelines and the PCOP Urban Residential policy for High Density Residential Housing.

The unchanged facades and structure of the building maintains the favourable streetscape and community character. The proposal maintains a sense of identity through rational and sensitive treatment of architectural features, form, massing, and layout, compatible and homogeneous with the existing architecture facades in downtown Port Colborne. At grade access to the ground floor units is provided as recommended by the Niagara Region Model Urban Design Guidelines and the PCOP Urban Residential policy for High Density Residential Housing.

### Affordable Housing

The PPS requires planning authorities to provide for an appropriate range and mix of housing types and densities to meet projected requirements of current and future residents by:

- establishing and implementing minimum targets for the provision of housing *affordable to low and moderate income households*. The Region of Niagara in consultation with the local municipalities may identify a higher target(s) for these lower-tier municipalities;
- permitting and facilitating:
  - all forms of housing required to meet the social, health and well-being requirements of current and future residents, including special needs requirements; and
  - all forms of *residential intensification*, including second units, and *redevelopment*.

Niagara Region staff advise that in the current market conditions where housing costs (rental and ownership) are increasing rapidly the least expensive calculation of affordability will be calculated as: Housing for which the purchase price results in annual accommodation costs (mortgage payments, property taxes, condominium fees, along with the costs of electricity, heat, water and other municipal services) which do not exceed 30% of gross annual household income for low and moderate income households. Using this calculation the maximum affordable housing cost for low-income households is \$995/month (calculated as 30% of the maximum annual household income for all households in the first to third income deciles). Using the same calculation the maximum affordable housing cost for moderate income households is \$2,107/month (calculated as 30% of the maximum annual household income for all households in the fourth to sixth income deciles).

It is important to note that the Niagara Region set's a more strict calculation for affordable housing by requiring that housing be affordable for households in core housing need. This calculation is in alignment with Niagara's 10-Year Housing and Homelessness Action Plan. Since the maximum household income for households in core housing need in Port Colborne is \$52,700, the maximum affordable housing cost for moderate income households is \$1,317 (calculated as 30% of \$52,700, the maximum income for the fourth income decile, as there are no households in Port Colborne in core housing need in the fifth or sixth income deciles). At this cost level, Port Colborne needs 49 units for people living on their own, 13 units for single parents, 2 units for couples, and 3 units for couples with children. Units provided at higher costs would not be affordable for any households in Port Colborne in core housing need. (Source: Statistics Canada; Niagara Region; CANCEA)

The threshold rent for moderate income affordable rental housing in Niagara is \$2,110.00 monthly.

The threshold rent for low income affordable rental housing in Niagara is \$995.00 monthly.

#### Municipal Servicing

A municipal servicing study is not required and a stormwater management plan was not required for quantity control given the existing development and small size of the Subject Properties.

#### Reduced Parking Standard

A review of Parking Standards Contained Within The City Of Vaughan's Comprehensive Zoning Bylaw stated seniors-oriented housing typically generates a lower parking demand per unit due to the smaller family sizes and a lower vehicle ownership rate. Studies from have shown that the average auto ownership for such dwellings is about 30% of the average for typical condominiums. A detailed study of parking rates for seniors housing facilities also found substantially lower parking allocation by dwelling unit, with decreasing parking demand based on the level of care provided. The Review recommended the proposed senior citizens dwelling parking standards presented in the [Table A5.1: Proposed Senior Citizens Dwelling Parking Standards](#) in Annex 5. The Table compares zoning provisions reviewed as part of Review and includes the City of Port Colborne.

A review of relevant literature indicates a parking standard of between 0.4 to 0.7 spaces per unit for a senior's assisted living housing is adequate. Parking is adequate for the tenants some of whom may not have private vehicles. The proposed development is on a bus route providing mobility for those without private vehicles. Planning Staff noted for a commercial to residential intensification project compromises are sometimes required

to support adaptive reuse proposals for rental housing. It is not uncommon for municipalities to allow reduce parking requirements for smaller-scale rental housing redevelopments. It is important to note reasonable rental prices can be achieved by offering a number of options for renters. For example, some renters may not require a parking space which could be reflective on the overall unit price. As the Owner has acquired a nearby property for additional parking spaces, parking concerns have been addressed adequately. Greater importance should be placed upon the number of rental units entering the market than the number of parking spaces provided on site, some of which may not even be used.

### Need

A total of 6,016 households (10,641 individuals) are on the affordable housing waitlist in Niagara as of 2013-12-31 (seniors - 2,240; households with no dependents - 1,765; families - 2,011). Within the past three years, the waitlist has grown by nine per cent with the biggest increase coming from seniors and families. Wait times range from 1.25 years to almost ten years, and vary according to the location of the units and the number of selections made by the household. The current stock of over 7500 affordable housing units is not keeping pace with the growth of the wait list. Furthermore, just under half of the current affordable housing stock is between 30- and 60 years old. This means a growing amount of resources will need to be invested in maintaining the current stock and cannot be used to create new affordable housing.

In 2013, 626 households were housed. Despite this the number of households currently on the waiting list for affordable housing continues to be a challenge. Since 2002 the waiting list in Niagara has increased by 42 per cent. The greatest increase started during the 2009 recession and has left a lasting impact on the affordable housing system.

(Sourced 2019-04-25 <https://www.niagararegion.ca/social-services/technical-report/current-need-report.aspx>)

As of 2017-09, there were 4,923 households on the Centralized Waiting List in Niagara. This represents 10, 2017 people waiting for Rent-Geared-to-Income housing across Niagara. In Port Colborne the Wait Time for seniors (55 and older) was Six years.

(Sourced 2019-04-25 <http://www.livinginniagarareport.com/housing-shelter-2017/affordable-housing-and-homelessness-prevention-2/>)

At its meeting of 2019-02-11 City Council passed the following:

Whereas access to adequate housing is a fundamental human right (paragraph 25(1) of the United Nations Universal Declaration of Human Rights, and Ontario Human Rights Commission – Human Rights Perspective on Housing Supply, January 2019); and

Whereas Port Colborne is fast approaching a housing crisis with alarming occupancy rates, soaring housing costs and stagnating incomes (Ontario Association of Food Banks, Quarterly Report, September 2018, Port Colborne Primary Rental Market Statistics, 2016, Key Housing Indicators for Port Colborne, July 5, 2017 and Where Will We Live - Ontario's Rental Housing Crisis, May 2018); and

Whereas the Senior Citizens Advisory Committee and the Social Determinants of Health Committee, both being committees of this council have each placed housing as a priority to their mandate; and

Whereas designing and implementing a poverty reduction strategy has been included in the Port Colborne Strategic Plan (CAO Report No.:2015-47); and

Whereas adequate and affordable housing has been directly linked to poverty reduction (Wellesley Institute, Poverty Is a Health Issue: It's time to address housing and homelessness, Oct 10, 2013)

Therefore be it resolved that The Corporation of the City of Port Colborne does acknowledge that housing is a human right and that municipal government has a role to play in the gradual realization of this right for all residents of Port Colborne; and

That the Director of Planning and Development be directed to engage with stakeholders to create a coordinated municipal affordable housing strategy for the city of Port Colborne with the goal to establish a definition for the term "affordable housing" and to create affordable housing options across the housing continuum, with a report due back to this council to include a high-level view of timelines and targets on or before May 27, 2019.

(Source 2019-09-09 <http://portcolborne.ca/fileBin/library/02-11-19-03%20regular.pdf>)

#### Train Noise and Vibration

Exterior Insulation and Finish System (EIFS) insulation wall construction and triple pane windows on the west side will mitigate the sound that may be produced by the rail line. These features will be considered during the Site Plan Control Approval process.

#### Reduced Unit Size

The minimum floor area reduction is a minor change from what is currently permitted and permits lower rental price units, sensitive infilling and efficient use of existing infrastructure. No negative impact is anticipated. Planning Staff noted for a commercial to residential intensification project, eliminating the minimum unit size is something municipalities have begun to do to proactively support diverse styles of housing and to provide choice in the size and price to the rental market. The Ontario Building Code sets out requirements for minimum living area and room sizes the building will still have to comply with. If the requirements cannot be met, a reduction in the number of units may be necessary.

## Environmental Site Assessment

A Designated Substance Survey, dated 2019-06-28, by CERTI Environmental Consultants, Environmental Assessments & Audits Division, states:

The following are significant recommendations:

- Removal of asbestos containing Floor tiles and Mastic Adhesive in the building must be removed following Type 1 Asbestos Removal Procedures (Ontario Regulation 278/05).
- Removal of the asbestos containing Pipe Elbows in the boiler room must be removed following Type 2 Glove Bag Removal Procedures (Ontario Regulation 278/05).
- Removal of the asbestos containing stipple ceiling finishes in the second level stairwell, second level ceiling, and North Wing Rooms must be removed following Type 3 Asbestos Removal Procedures (Ontario Regulation 278/05).
- Removal of the asbestos containing transite ceiling in the second level hallway must be removed following Type 1 Asbestos Removal Procedures (Ontario Regulation 278/05).
- Paint samples from the Second Floor Wall (green paint), Second Floor Ceiling (beige paint), and MacGillivray Hall Wall (Beige paint). are considered lead containing. Removal of lead paint must follow Type 2B Lead Removal Procedures.
- Test any items not surveyed or concealed items uncovered by remediation or demolition activities.

A Phase I Environmental Site Assessment (ESA), dated 2020-09-26, by CERTI Environmental Consultants, Environmental Assessments & Audits Division, states, based on the results of the groundwater-sampling program, there are no environmental concerns with Petroleum Hydrocarbons – Gasoline (F1), Diesel (F2), Weathered Diesel (F3), Heavy Oils (F4), Metals, and Volatile Organic Compounds (VOC's) at monitoring wells MW-2 (BH2), MW-6 (BH6), and MW-10 (BH10).

Groundwater concentrations of Petroleum Hydrocarbons – Gasoline (F1), Diesel (F2), Weathered Diesel (F3), Heavy Oils (F4), Metals, and Volatile Organic Compounds (VOC's), at monitoring wells MW-2 (BH2), MW-6 (BH6), and MW-10 (BH10) are within MOE Criteria Levels (Table 6, Residential/Institutional, Ontario Regulation 153/04 and 511/09).

A Phase II Environmental Site Assessment (ESA), dated 2020-09-30, by CERTI Environmental Consultants, Environmental Assessments & Audits Division, states, based on the results of the groundwater-sampling program, there are no environmental concerns with Petroleum Hydrocarbons – Gasoline (F1), Diesel (F2), Weathered Diesel (F3), Heavy Oils (F4), Metals, and Volatile Organic Compounds (VOC's) at monitoring wells MW-2 (BH2), MW-6 (BH6), and MW-10 (BH10).

Groundwater concentrations of Petroleum Hydrocarbons – Gasoline (F1), Diesel (F2), Weathered Diesel (F3), Heavy Oils (F4), Metals, and Volatile Organic Compounds (VOC's), at monitoring wells MW-2 (BH2), MW-6 (BH6), and MW-10 (BH10) are within MOE Criteria Levels (Table 6, Residential/Institutional, Ontario Regulation 153/04 and 511/09).

## ZONING RELIEF REQUIRED

Zoning relief is required to

- the minimum front yard requirement from 9 to 4.8 metres to recognize the existing setback;
- Reduce the minimum interior side yard requirement from 3 to 1.5 metres to recognize the existing setback;
- Reduce the minimum corner side yard from 7.5 to 1.5 metres to recognize the existing setback;
- Reduce the minimum rear yard from 6 to 1.8 metres to recognize the existing setback;
- Increase the maximum lot coverage from 40 to 50 percent to recognize the existing coverage;
- Reducing the minimum floor area for residential units from 50 to 35 square metres;
- Reduce the minimum number of required parking spaces from 33 to 23;
- Reducing the landscape buffer provided between the edge of any parking area and an abutting road lot line from 3 to 0 metres;
- Reduce the landscape buffer provided between the edge of any parking area and an abutting residential lot line from 3m to 0.6 metres along the south lot line; and
- Reduce setback of a building for the purposes of human habitation from a functioning railway right-of-way from 15 to 1.7 metres.

## SITE PLAN CONTROL

The City requires all residential developments with five or more dwelling units to enter into a Site Plan Agreement with the City. The agreement ensures the development is built and maintained as approved, ensures safe and efficient access, ensures proper drainage and landscaping is in place, and protects adjacent properties from incompatible development. Construction cannot occur until this agreement is in place.

This Agreement should include a warning clauses to advise future residents of potential noise, emissions and odour impacts from the nearby railway line owned by the City. Drainage requirements will be reviewed and addressed through the Site Plan application process.

## OPINION

The proposed Zoning By-law Amendment:

- Conforms with the provisions of the *Planning Act*; PPS; Growth Plan; ROP; and PCOP;
- Permits the proposed residential use; and
- Is good planning.

Council can be confident that the proposed Zoning By-law Amendment changing the property from Institutional and Fourth Density Residential to Fourth Density Residential with special provisions to permit a 22-unit apartment building is consistent with the City's Official Plan as well as Provincial and Regional policies. Special provisions are in place to recognize existing conditions while also supporting an adaptive reuse proposal that aims to add much-needed rental units into the market. The applicant is required to enter into a Site Plan Agreement ensuring the development is built and maintained as approved by the City

## CLOSING

This report is intended solely for Hometown Properties (the "Client") in providing the City of Port Colborne this Planning Justification Report to obtain necessary *Planning Act* approvals for the proposed office and residential redevelopment at 176 Elm Street. This report is prohibited to be used by any other party without written consent by an authorized representative of 2198795 Ontario Limited Operating as Steven P Rivers Land Use, Planning & Development (Steven Rivers. This report is considered Steven Rivers' professional work product and shall remain the sole property of Steven Rivers. Any unauthorized reuse, redistribution of, or reliance on, the report shall be at the Client's and recipient's sole risk, without liability to Steven Rivers. The Client shall defend, indemnify and hold Steven Rivers harmless from any liability arising from or related to the Client's unauthorized distribution of the report. No portion of this report may be used as a separate entity; it is to be read in its entirety and shall include all supporting drawings and appendices.

The conclusions and recommendations made in this report are in accordance with my present understanding of the proposed project, the current site use, surface and subsurface conditions, and are based on available information, a site reconnaissance on the date(s) set out in the report, records review and interviews with appropriate people and the work scope provided by the Client and described in the report and should not be construed as a legal opinion. Steven Rivers relied in good faith on the data and information provided by the Client and from other materials as noted in this report. Steven Rivers has assumed that the information provided was factual and accurate. Steven Rivers accepts no responsibility for any deficiency, misstatement, or inaccuracy contained in this report as a result of omissions, misinterpretations or fraudulent acts of persons interviewed or contacted. Reliance on this report is only extended to the Client. No other

representations or warranties of any kind, either expressed or implied, are made. Any use which a third party makes of this report, or any reliance on or decisions made based on it, are the sole responsibility of such third parties. If conditions at the property change or if any additional information becomes available at a future date, modifications to the findings, conclusions and recommendations in this report may be necessary.

I trust this information will meet your current requirements. Please do not hesitate to contact me should you have any questions or require additional information.

## *Steven Rivers*

South Coast Consulting

Land Use Planning and Development Project Management

Steven Rivers, MCIP, RPP

189 Clare Avenue

Port Colborne, Ontario L3K 5Y1

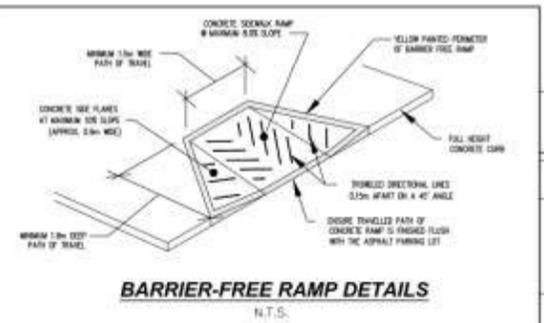
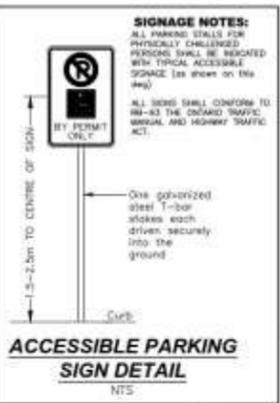
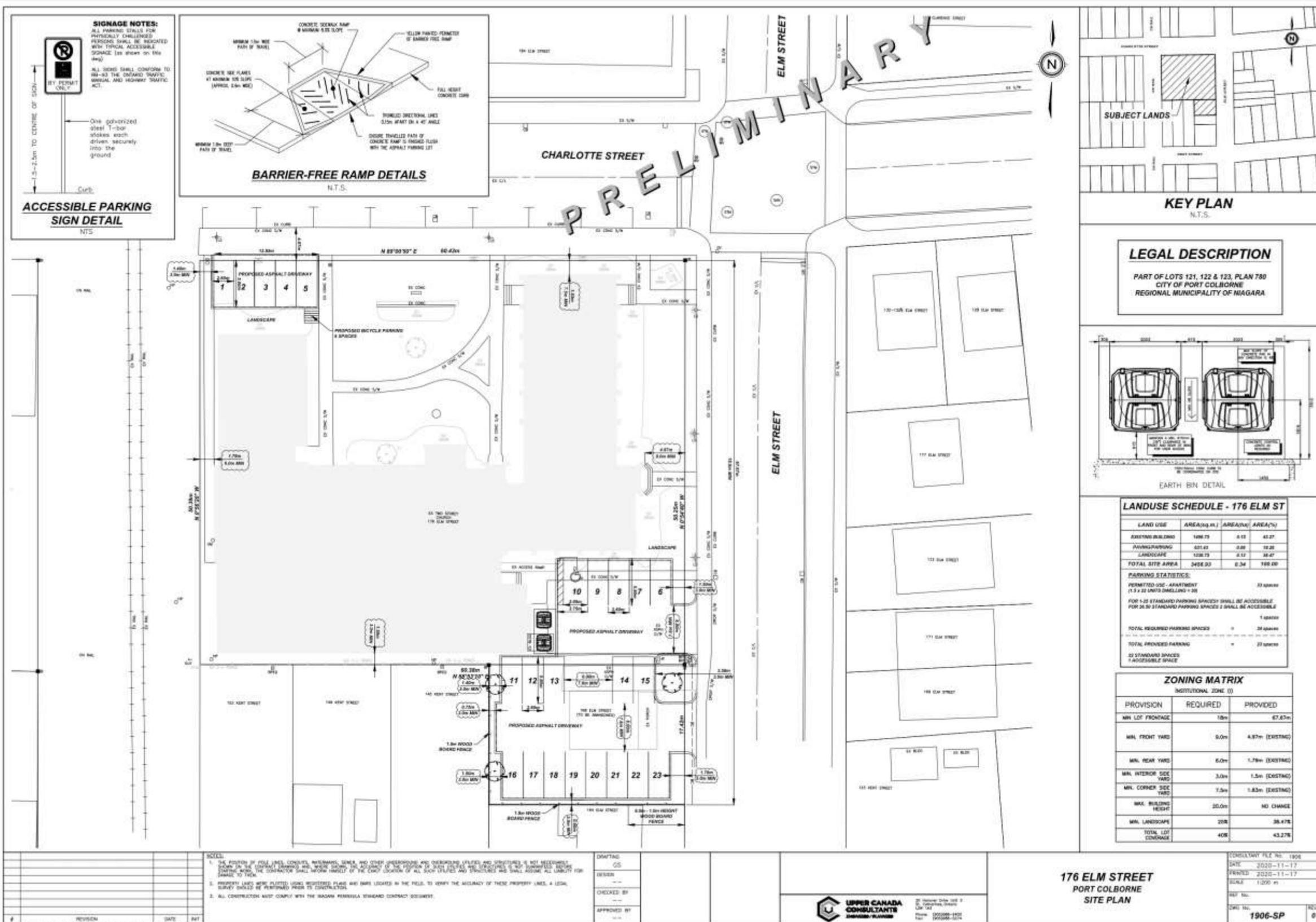
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Email: [info@southcoastconsulting.ca](mailto:info@southcoastconsulting.ca)

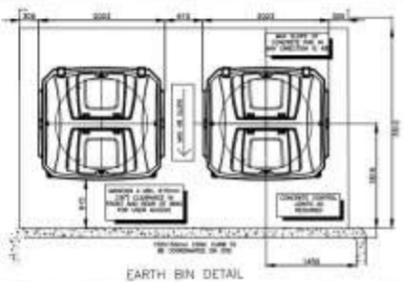
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PROVISION / USE	I ZONE REQUIREMENT	R4 ZONE REQUIREMENT	PROPOSED	COMMENT
Apartment Building	-	Permitted		The residential and place of assembly uses are provide for in both the "Institutional Zone" and the "Residential Fourth Density Zone". Satisfied – no change
Public Apartment Building	Permitted	Permitted		
Place of Assembly / Banquet Hall	Permitted	Permitted-		
Min Lot Area	125sqm/unit (2500sqm)	125sqm/unit (2500sqm)	3033.99SQM	Satisfied – no change
Min Frontage	18m	18m	50M	Satisfied – no change
Min Front Yard	9m	9m	4.8M	Existing
Min Interior Side Yard	3m	n/a	1.5	Existing
Min Corner Side Yard	7.5m	7.5m	1.5	Existing
Min Rear Yard	6m	6m	1.8	Existing
Max Lot Coverage	40%	40%	50%	Existing
Max Height	20m	20m	Existing	Existing
Min Landscape Area	25%	25%	25%	Satisfied – no change
Min Floor Area / Unit	50sqm	50sqm	38sqm	The minimum floor area reduction is a minor change from what is currently permitted and permits lower rental price units, sensitive infilling and efficient use of existing infrastructure. No negative impact is anticipated. Planning Staff noted for a commercial to residential intensification project, eliminating the minimum unit size is something municipalities have begun to do to proactively support diverse styles of housing and to provide choice in the size and price to the rental market. The Ontario Building Code sets out requirements for minimum living area and room sizes the building will still have to comply with. If the requirements cannot be met, a reduction in the number of units may be necessary.
<b>Parking</b>				
Apartment Building, Public	1 space per 3 units (7 + 1 accessible required)	1 space per 3 units (7 + 1 accessible required)	<b>23</b>	Parking is adequate for the tenants some of whom may not have private vehicles. The proposed development is on a bus route providing mobility for those without private vehicles. Planning Staff noted for a commercial to residential intensification project compromises are sometimes required to support adaptive reuse proposals for rental housing. It is not uncommon for municipalities to allow reduce parking requirements for smaller-scale rental housing redevelopments. It is important to note reasonable rental prices can be achieved by offering a number of options for renters. For example, some renters may not require a parking space which could be reflective on the overall unit price. As the Owner has acquired a nearby property for additional parking spaces, parking concerns have been addressed adequately. Greater importance should be placed upon the number of rental units entering the market than the number of parking spaces provided on site, some of which may not even be used.
Apartment Building	1.5 spaces/unit (33 required)	1.5 spaces/unit (33 required)		
Location	Required parking shall be provided on the same lot as the use requiring the parking; or On any lot that is not a road or lane and is presently zoned to permit parking and is located within 46 metres of the lot occupied by the building or structure or use for which the parking spaces are required.			
<b>A landscape buffer shall be provided between the edge of any parking area and an abutting lot line(s) in accordance with the following . . .</b>				
Abutting a Public Road	3m	3m	0	The reduced setback is required to accommodate as much residential parking as possible and still retain the courtyard the City has expressed interest in
Abutting a Residential Zone	3m	3m	1.2	The reduced setback is what has existed for some time with no apparent negative impacts and is required to accommodate as much residential parking as possible and still retain the courtyard the City has expressed interest in
<b>Required Bicycle Parking</b>				
Residential with 10 or more units	6 Spaces plus 1 for every additional 10 units > 20		7	Satisfied – no change
Place of Assembly / Banquet Hall	1 space per 1000sqm gross floor area			Satisfied – no change
<b>Setback from rail right-of-way</b>				
No building for the purpose of human habitation shall be constructed any closer than 15m to any functioning railway right-of-way			1.7	Existing – mitigation can be included at site plan control approval

ANNEX 1A  
CONCEPTUAL SITE PLAN & FLOOR PLANS



**LEGAL DESCRIPTION**  
 PART OF LOTS 121, 122 & 123, PLAN 780  
 CITY OF PORT COLBORNE  
 REGIONAL MUNICIPALITY OF NIAGARA



**LANDUSE SCHEDULE - 176 ELM ST**

LAND USE	AREA (sq. ft.)	AREA (%)	AREA (%)
EXISTING BUILDING	1496.75	0.13	43.27
PARKING/PARKING	621.43	0.06	18.28
LANDSCAPE	1238.75	0.12	36.47
<b>TOTAL SITE AREA</b>	<b>2456.93</b>	<b>0.34</b>	<b>780.00</b>

**PARKING STATISTICS:**  
 PERMITTED USE - APARTMENT (1.5 x 22 UNITS DWELLING + 20)  
 33 spaces  
 FOR 1-25 STANDARD PARKING SPACES 2 SHALL BE ACCESSIBLE  
 FOR 26-50 STANDARD PARKING SPACES 2 SHALL BE ACCESSIBLE  
 TOTAL REQUIRED PARKING SPACES = 28 spaces  
 TOTAL PROVIDED PARKING = 33 spaces  
 25 STANDARD SPACES  
 1 ACCESSIBLE SPACE

**ZONING MATRIX**  
 INSTITUTIONAL ZONE (I)

PROVISION	REQUIRED	PROVIDED
MIN. LOT FRONTAGE	18m	67.65m
MIN. FRONT YARD	5.0m	4.87m (EXISTING)
MIN. REAR YARD	6.0m	1.79m (EXISTING)
MIN. INTERIOR SIDE YARD	3.0m	1.5m (EXISTING)
MIN. CORNER SIDE YARD	7.5m	1.83m (EXISTING)
MAX. BUILDING HEIGHT	20.0m	NO CHANGE
MIN. LANDSCAPE	20%	36.47%
TOTAL LOT COVERAGE	40%	43.27%

#	REVISION	DATE	BY

**NOTES:**  
 1. THE POSITION OF POLE LINES, CONDUITS, WATERMANS, SIMEN, AND OTHER UNDERGROUND AND OVERGROUND UTILITIES AND STRUCTURES IS NOT NEARLY SHOWN ON THE ORIGINAL DRAWING AND, THEREFORE, THE LOCATION OF SUCH UTILITIES AND STRUCTURES IS NOT GUARANTEED. BEFORE CONSTRUCTION, THE CONTRACTOR SHALL VERIFY THE LOCATION OF ALL SUCH UTILITIES AND STRUCTURES AND SHALL ASSUME ALL LIABILITY FOR DAMAGE TO THEM.  
 2. PROPERTY LINES WERE PLATTED USING REGISTERED PLANS AND ARE LOCATED IN THE FIELD. TO VERIFY THE ACCURACY OF THESE PROPERTY LINES, A LEGAL SURVEY SHOULD BE PERFORMED PRIOR TO CONSTRUCTION.  
 3. ALL CONSTRUCTION MUST COMPLY WITH THE BAYVIEW PENINSULA STRENGTH CONTRACT AGREEMENT.

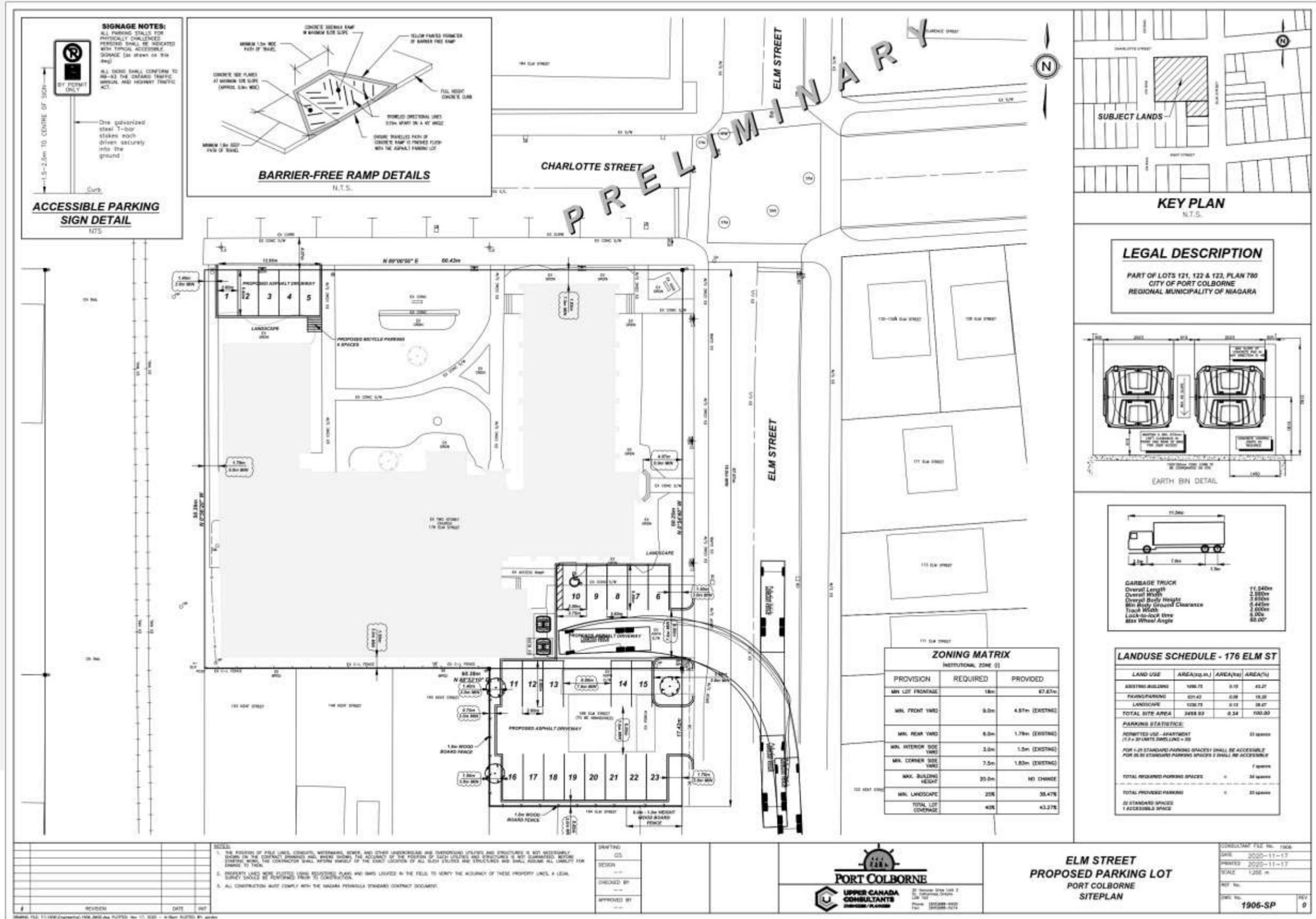
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 APPROVED BY: ---



**176 ELM STREET**  
**PORT COLBORNE**  
**SITE PLAN**

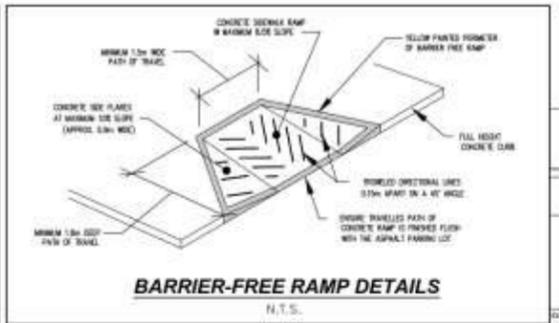
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 REV: 0

Pending agency, municipal, and public comments

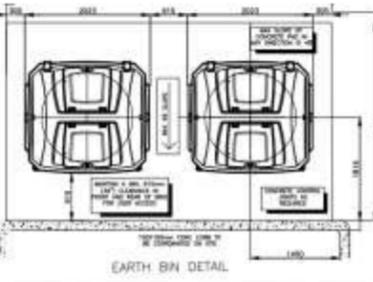


**SIGNAGE NOTES:**  
 ALL PARKING STALLS FOR PHYSICALLY CHALLENGED PERSONS SHALL BE INDICATED WITH TYPICAL ACCESSIBLE SIGNAGE (as shown on this sheet).  
 ALL SIGNS SHALL CONFORM TO M-80 THE CANADIAN TRAFFIC SIGNAGE AND HIGHWAY TRAFFIC ACT.  
 One galvanized steel T-bar stakes each driven securely into the ground.  
 Curb  
 1.0-2.5m TO CENTRE OF SIGN

**ACCESSIBLE PARKING SIGN DETAIL**  
 N.T.S.



**LEGAL DESCRIPTION**  
 PART OF LOTS 121, 122 & 123, PLAN 780  
 CITY OF PORT COLBORNE  
 REGIONAL MUNICIPALITY OF NIAGARA



**GARBAGE TRUCK**

Overall Length	11.24m
Overall Width	2.85m
Overall Body Height	3.65m
Min. Body Ground Clearance	3.44m
Truck Width	3.60m
Lock-to-lock Angle	88.00°

**ZONING MATRIX**  
 (MUNICIPAL ZONE 0)

PROVISION	REQUIRED	PROVIDED
MIN LOT FRONTAGE	18m	67.63m
MIN. FRONT YARD	9.0m	4.81m (EXISTING)
MIN. REAR YARD	9.0m	1.78m (EXISTING)
MIN. INTERIOR SIDE YARD	3.0m	1.5m (EXISTING)
MIN. CORNER SIDE YARD	7.5m	1.83m (EXISTING)
MAX. BUILDING HEIGHT	25.0m	NO CHANGE
MIN. LANDSCAPE	25%	35.47%
TOTAL LOT COVERAGE	40%	43.27%

**LANDUSE SCHEDULE - 176 ELM ST**

LAND USE	AREA(SQ.M.)	AREA(M <sup>2</sup> )	AREA(%)
EXISTING BUILDING	148.75	0.15	43.27
PARKING/PARKING	871.42	0.26	18.29
LANDSCAPE	1328.72	0.33	58.47
<b>TOTAL SITE AREA</b>	<b>3488.92</b>	<b>0.54</b>	<b>100.00</b>

**PARKING STATISTICS:**

PERMITTED USE - APARTMENT (1.5 x 20 UNITS) (MINIMUM) = 30

FOR 1.5 STANDARD PARKING SPACES SHALL BE ACCESSIBLE FOR 30.00 STANDARD PARKING SPACES 2 SHALL BE ACCESSIBLE

TOTAL REQUIRED PARKING SPACES = 34 spaces

TOTAL PROVIDED PARKING = 6

22 STANDARD SPACES  
 1 ACCESSIBLE SPACE

#	REVISION	DATE	INT

**NOTES:**

- THE POSITION OF POLE LINES, CONDUITS, WATERMAIN, SEWER, AND OTHER UNDERGROUND AND STRUCTURES IS NOT NECESSARILY SHOWN ON THE CONTACT DRAWING AND THEREFORE THE ACCURACY OF THE POSITION OF SUCH UTILITIES AND STRUCTURES IS NOT GUARANTEED BEFORE STARTING WORK. THE CONTRACTOR SHALL VERIFY THE EXACT LOCATION OF ALL SUCH UTILITIES AND STRUCTURES AND SHALL ADJUST ALL LIMITS FOR SPACES TO THIS.
- PROPERTY LINES WERE OBTAINED USING RECORDED PLANS AND SURVEY LOCATED IN THE FIELD TO VERIFY THE ACCURACY OF THESE PROPERTY LINES. A LEGAL SURVEY SHOULD BE PERFORMED PRIOR TO CONSTRUCTION.
- ALL CONSTRUCTION MUST COMPLY WITH THE NIAGARA PENINSULA STANDARD CONTRACT DOCUMENT.

DRAWING: GS  
 DESIGN: ---  
 CHECKED BY: ---  
 APPROVED BY: ---



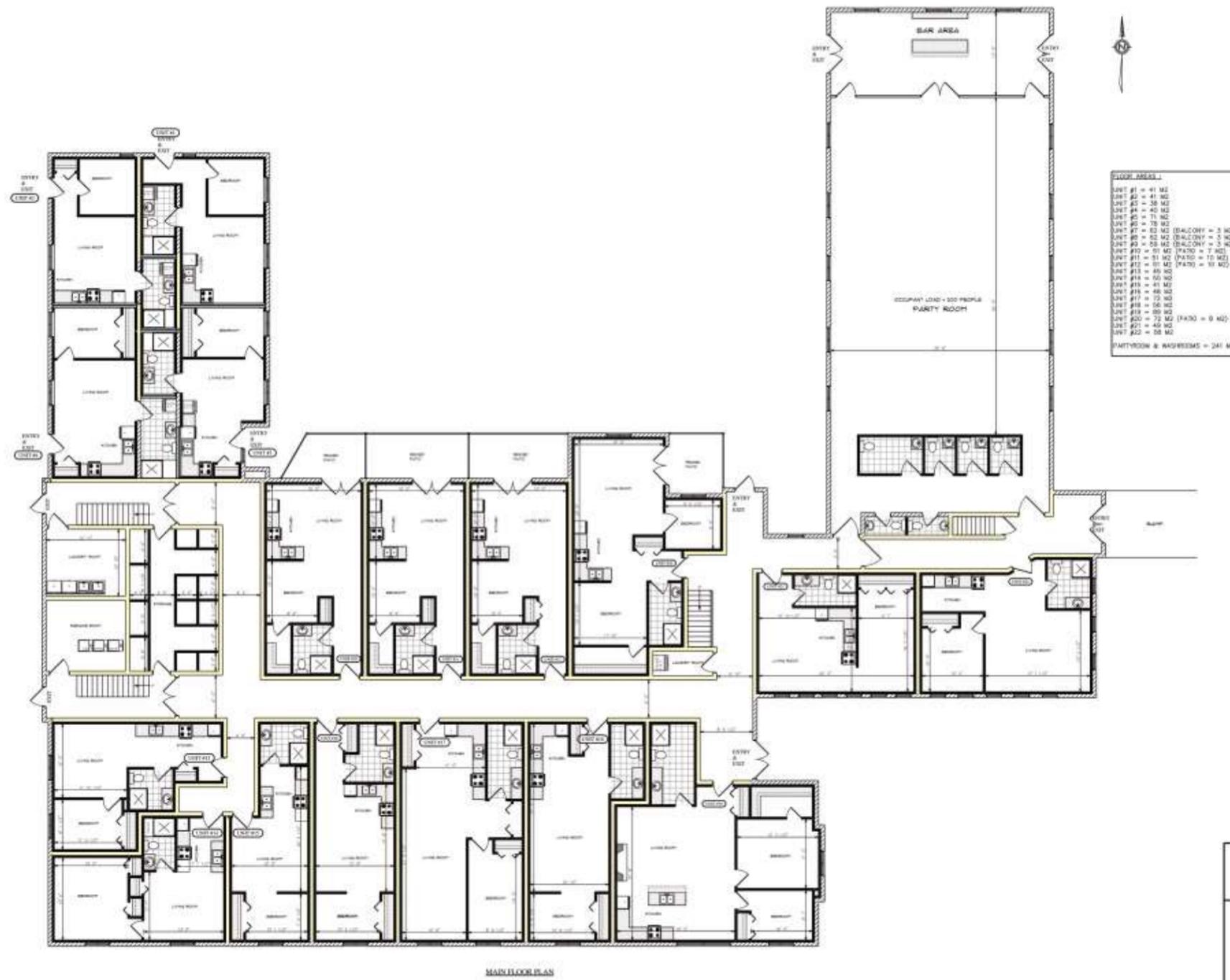
**ELM STREET  
 PROPOSED PARKING LOT  
 PORT COLBORNE  
 SITEPLAN**

CONSULTANT FILE NO. 1906

DATE: 2020-11-17  
 PRINTED: 2020-11-17  
 SCALE: 1:250 (H)

REV. NO. 0  
 DATE: 1906-SP

21  
 Pending agency, municipal, and public comments



**ROOM AREAS**

UNIT #1 = 41 SQ. FT.
UNIT #2 = 41 SQ. FT.
UNIT #3 = 38 SQ. FT.
UNIT #4 = 40 SQ. FT.
UNIT #5 = 71 SQ. FT.
UNIT #6 = 78 SQ. FT.
UNIT #7 = 82 SQ. FT. (BALCONY = 5 SQ. FT.)
UNIT #8 = 82 SQ. FT. (BALCONY = 5 SQ. FT.)
UNIT #9 = 82 SQ. FT. (BALCONY = 5 SQ. FT.)
UNIT #10 = 82 SQ. FT. (BALCONY = 5 SQ. FT.)
UNIT #11 = 91 SQ. FT. (PATIO = 7 SQ. FT.)
UNIT #12 = 91 SQ. FT. (PATIO = 10 SQ. FT.)
UNIT #13 = 91 SQ. FT. (PATIO = 10 SQ. FT.)
UNIT #14 = 91 SQ. FT. (PATIO = 10 SQ. FT.)
UNIT #15 = 91 SQ. FT. (PATIO = 10 SQ. FT.)
UNIT #16 = 91 SQ. FT. (PATIO = 10 SQ. FT.)
UNIT #17 = 91 SQ. FT. (PATIO = 10 SQ. FT.)
UNIT #18 = 91 SQ. FT. (PATIO = 10 SQ. FT.)
UNIT #19 = 91 SQ. FT. (PATIO = 10 SQ. FT.)
UNIT #20 = 91 SQ. FT. (PATIO = 10 SQ. FT.)
UNIT #21 = 91 SQ. FT. (PATIO = 10 SQ. FT.)
UNIT #22 = 91 SQ. FT. (PATIO = 10 SQ. FT.)
PARTY ROOM & WASHROOMS = 341 SQ. FT.

**#176 ELM STREET  
PORT COLBORNE , ONT.**

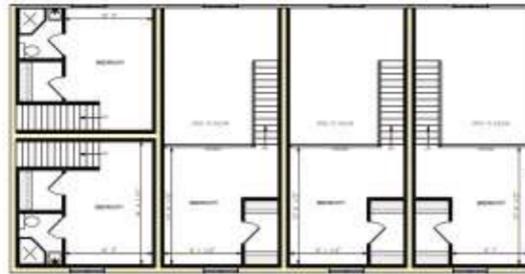
*g. curnock*  
**and associates**

401 300TH STREET  
2ND FLOOR, SUITE 200  
L3R 9A9

PHONE: (905) 555-8801  
g.curnock.ca  
gc@g.curnock.ca

**MAIN FLOOR PLAN**

DRAWN BY:	GEN. CURNOCK	SHEET 1 OF 4
CHECKED BY:		DATE:
DATE:	NOV. 22 / 2021	DRAW. NO.:
SCALE:	1/8" = 1'	5730



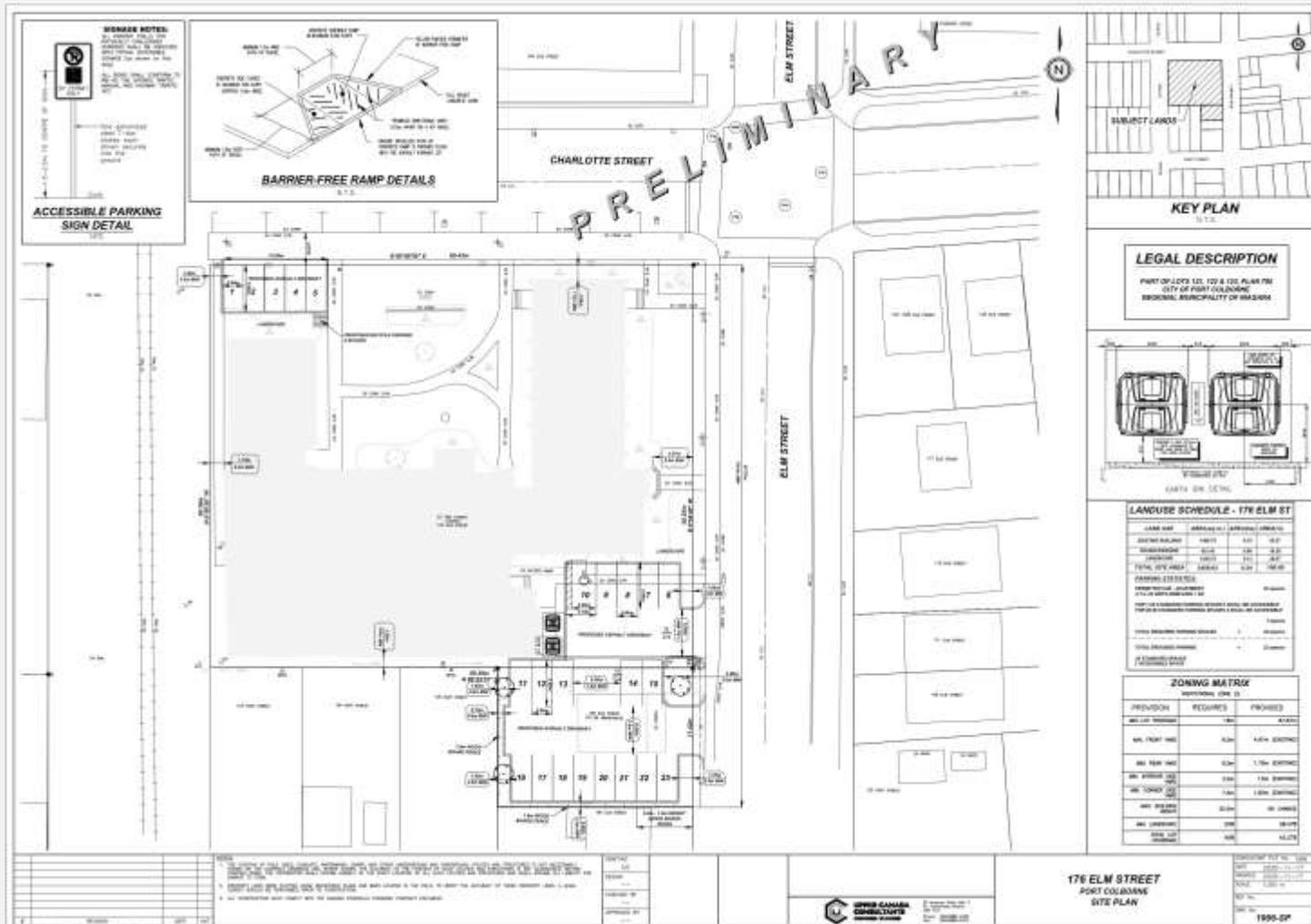
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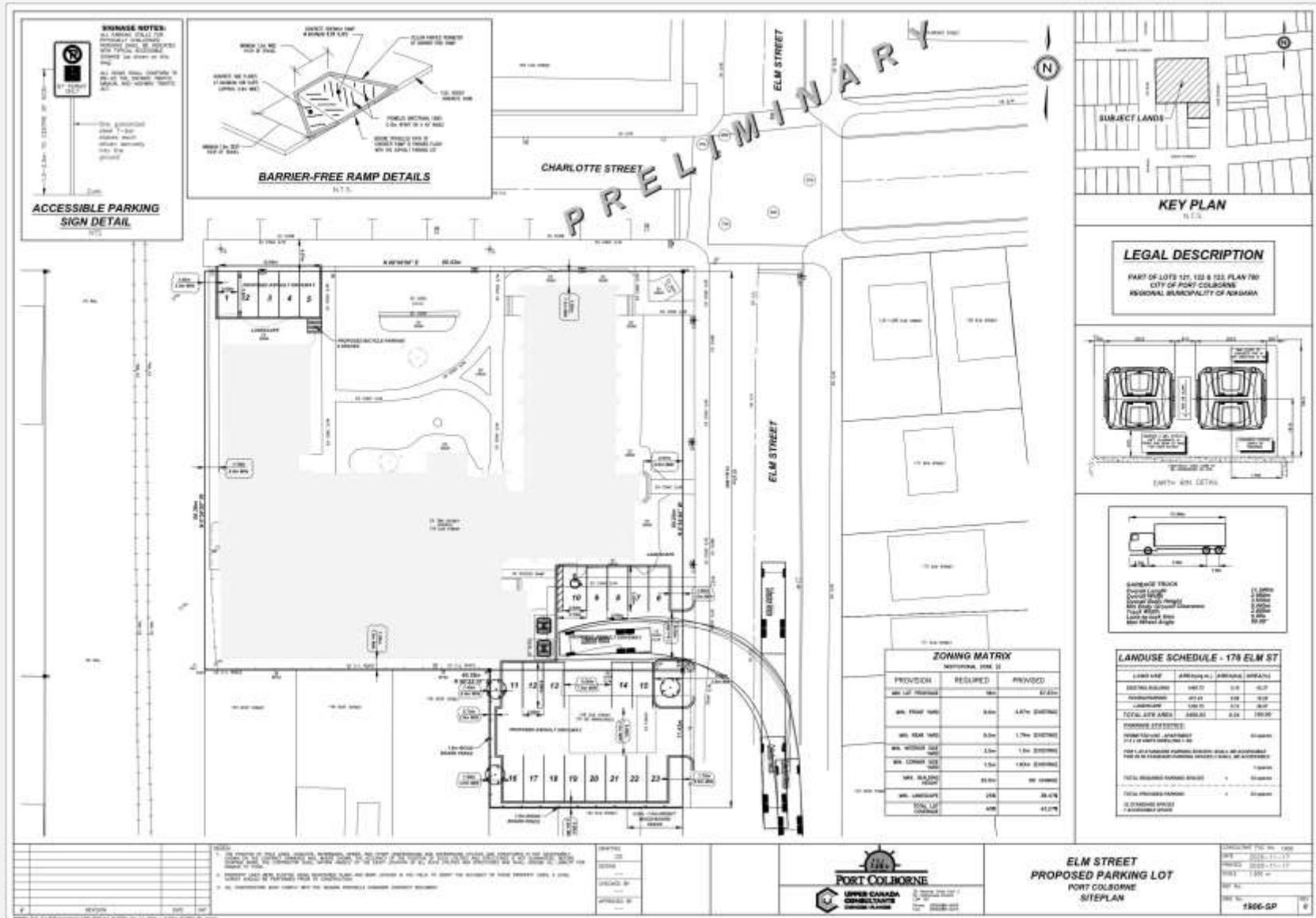


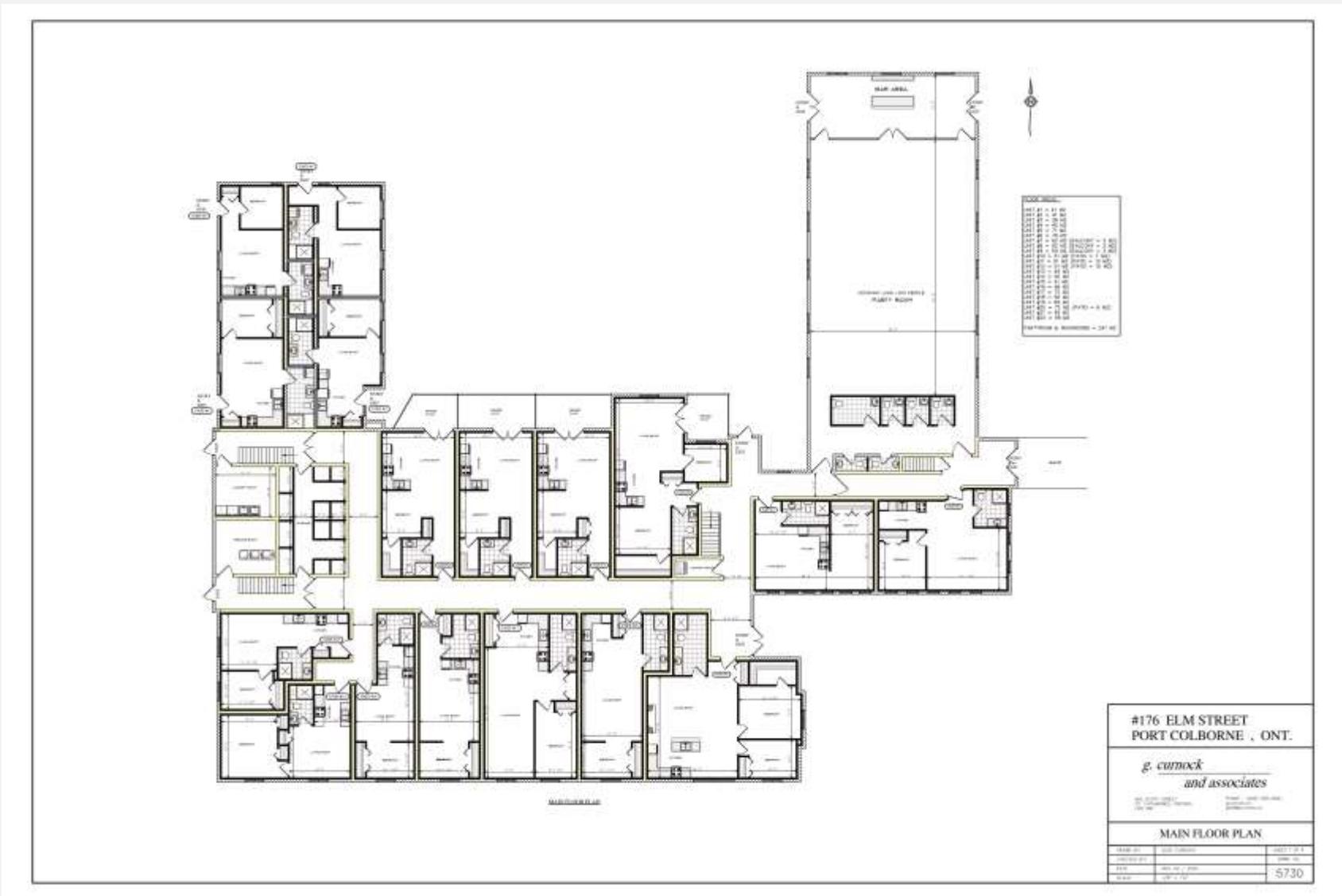
2ND FLOOR PLAN

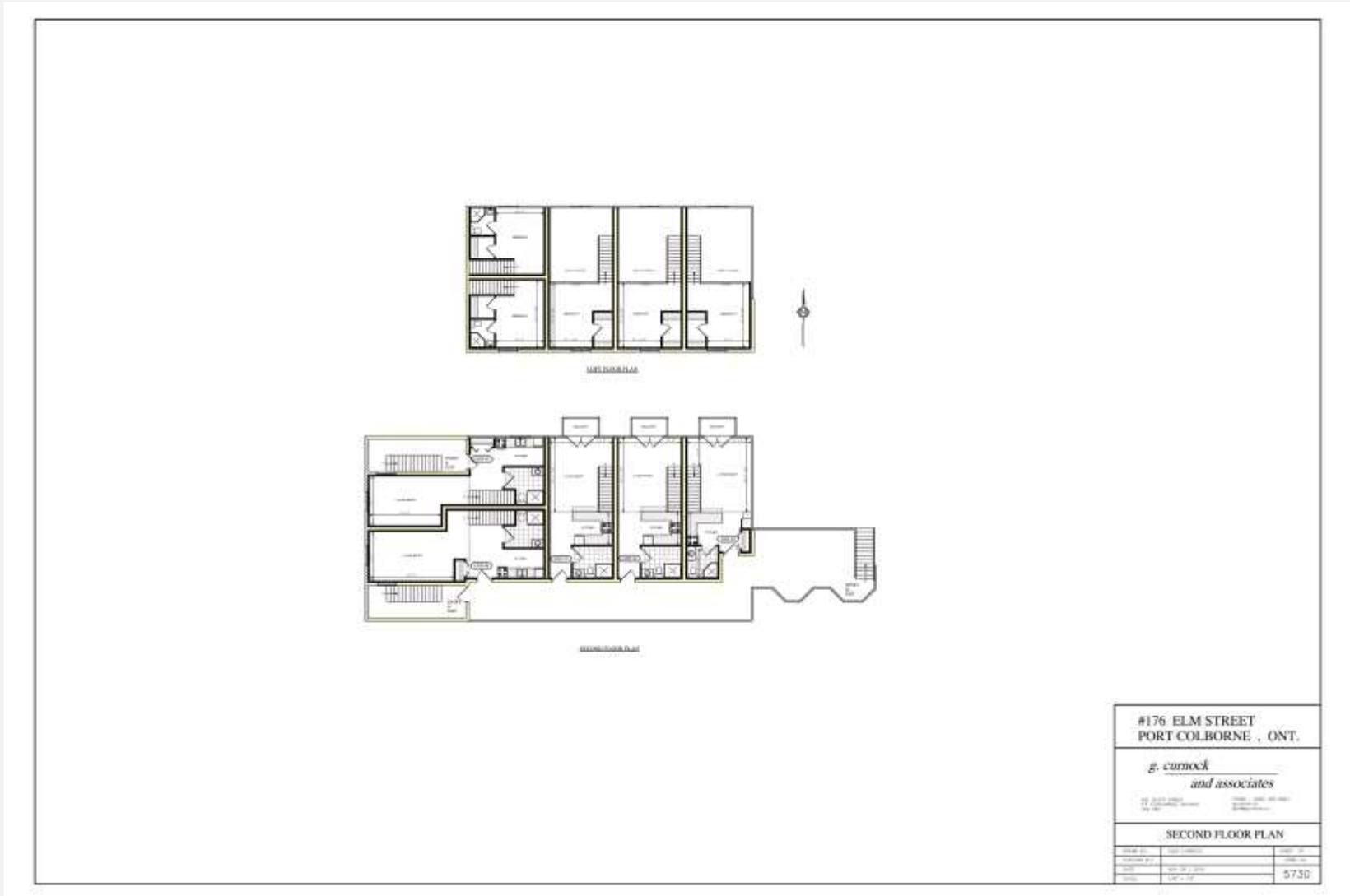
#176 ELM STREET PORT COLBORNE , ONT.		
<i>g. curnock</i> and associates		
481 ACORN STREET 2ND FLOOR L2M 3A02		PHONE : (505) 355-8801 gocurnock.ca gocurnock@comcast.ca
SECOND FLOOR PLAN		
DRAWN BY:	GEN CURNOCK	SHEET OF
CHECKED BY:		DRAWN BY:
DATE:	NOV 20 / 2019	5730
SCALE:	1/8" = 1'-0"	

ANNEX 1B  
CONCEPTUAL SITE PLAN & FLOOR PLANS







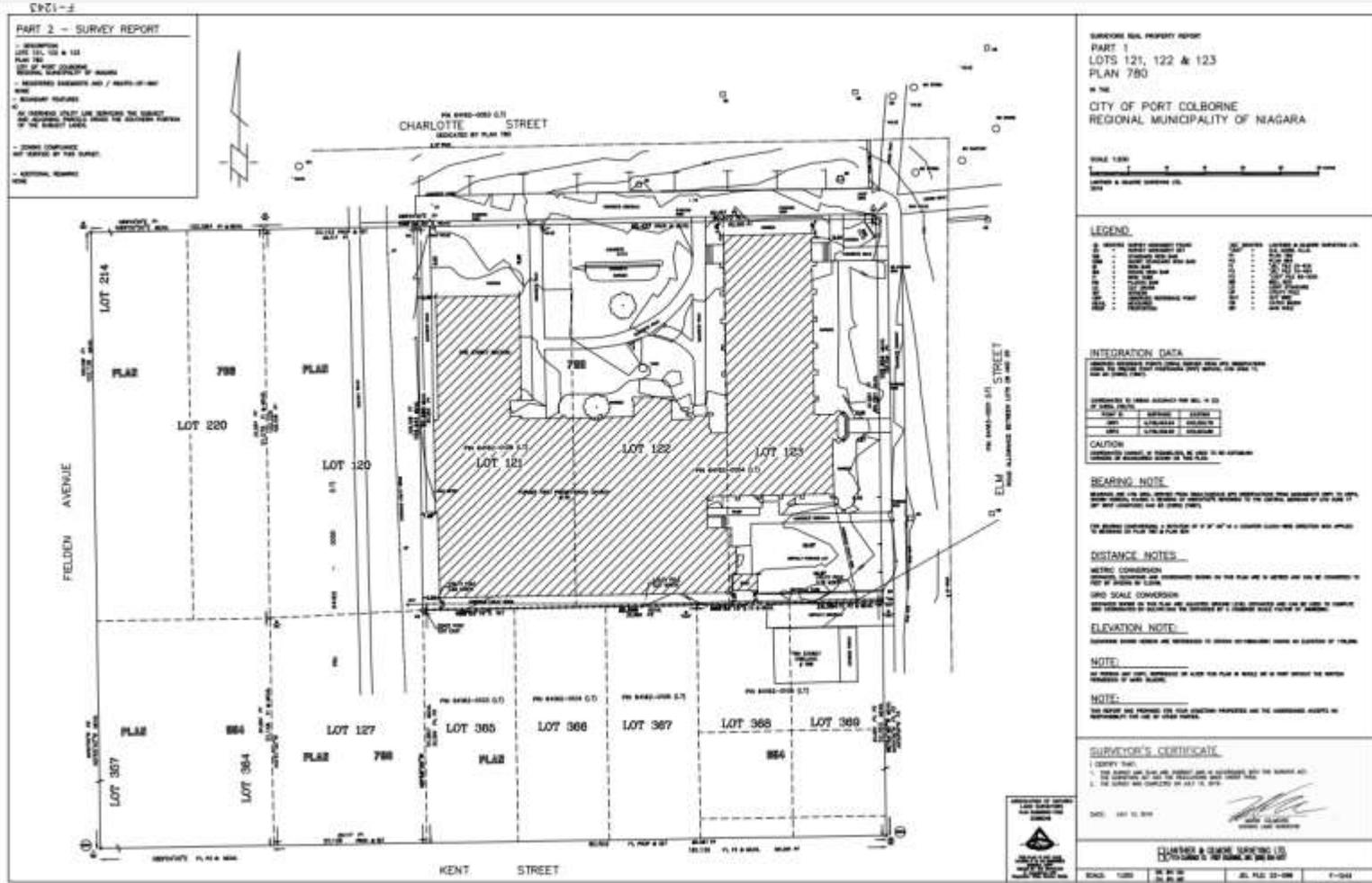


ANNEX 2

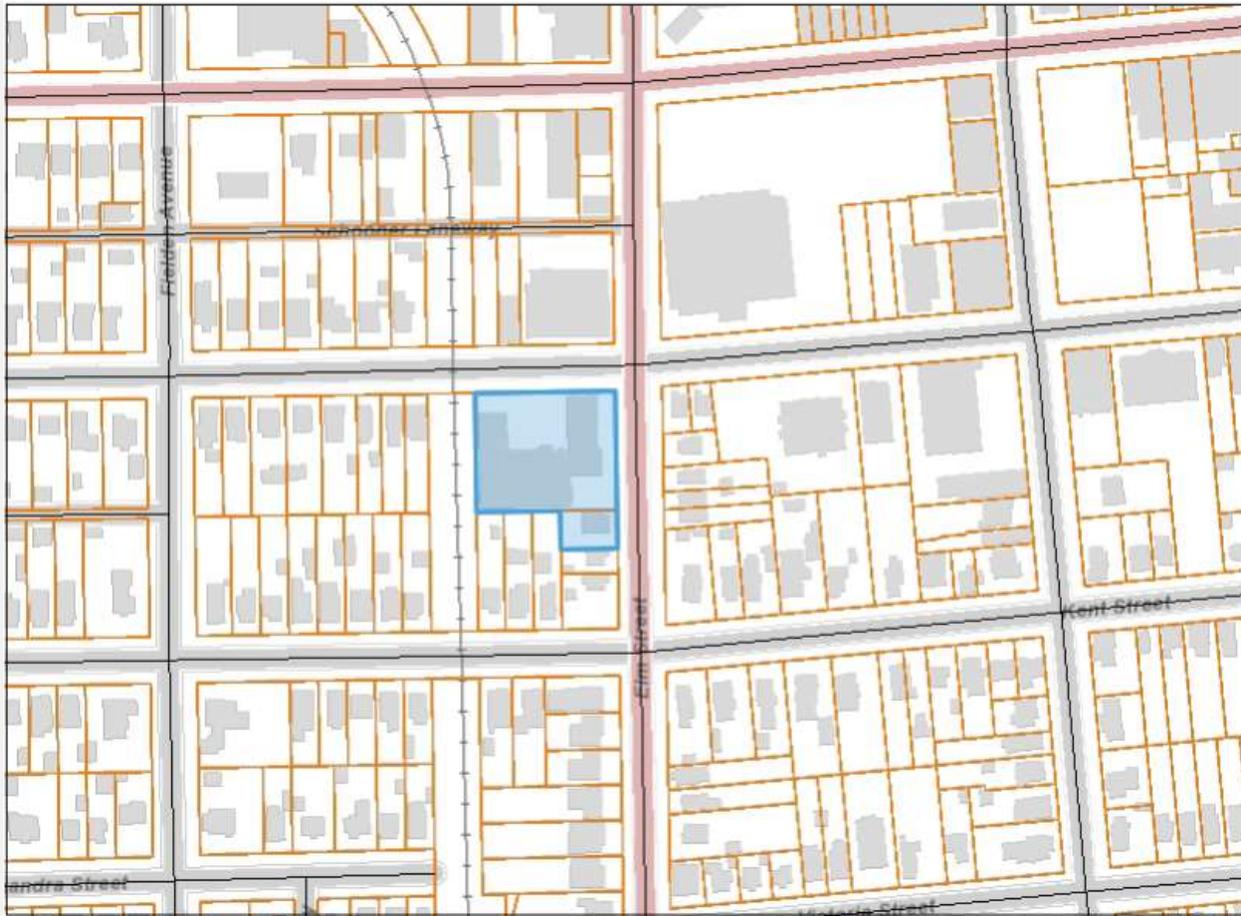
SURVEY

35

**Pending agency, municipal, and public comments**



ANNEX 3  
SUBJECT PROPERTIES



0.1 0 0.06 0.1 Kilometers

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ANNEX 4

EXCERPTS FROM RELEVANT DOCUMENTS

## THE PLANNING ACT

A purpose of the *Act* is to promote sustainable economic development in a healthy natural environment (sect. 1.1(a)). Provincial interests include the orderly development of safe and healthy communities (sect. 2(h)); and location of growth and development (sect. 2(p)), among others.

### Official Plan

Section 16 of the *Planning Act* states an official plan shall contain, goals, objectives and policies established primarily to manage and direct physical change and the effects on the social, economic and natural environment of the municipality or part of it. It may also contain a description of the measures and procedures to attain the plan's objectives and a description of the measures and procedures for informing and obtaining the views of the public on a proposed amendment to either an official plan or zoning by-law.

Section 21 of the *Act* states City Council may initiate an amendment to Official Plan. Section 24 states that where an official plan is in effect, no by-law shall be passed that does not conform the official plan. Section 2 of the *Planning Act* states Council shall have regard to matters of provincial interest such as the:

- Orderly development of safe and healthy communities;
- Adequate provision of employment opportunities; and
- Appropriate location of growth and development.

Sections 3(5) (a) and (b) state decisions of Council shall be consistent with the policy statements issued by the Minister and with the provincial plans that are in effect.

### Zoning

Section 34 of the *Planning Act* states a zoning by-law may be passed by Council for a number of purposes including prohibiting **the use of land**, except for such purposes set out in the by-law and except if the land was lawfully used for such purpose on the day of the passing of the by-law, so long as it continues to be used for that purpose. That section goes on to state that any by-law passed under this section or a predecessor of this section may be amended to permit the extension or enlargement of any land, building or structure used for any purpose prohibited by the by-law if such land, building or structure continues to be used in the same manner and for the same purpose as it was used on the day the by-law was passed. If a person applies for an amendment to a by-law passed under this section or a predecessor of this section he or she shall provide the prescribed information and material to Council.

## THE PROVINCIAL POLICY STATEMENT

The Provincial Policy Statement, 2014 (PPS) came into effect April 30, 2014 and applies to this application. It includes the following definitions:

*Brownfield sites*: means undeveloped or previously developed properties that may be contaminated. They are usually, but not exclusively, former industrial or commercial properties that may be underutilized, derelict or vacant.

*Development*: means the creation of a new lot, a change in land use, or the construction of buildings and structures requiring approval under the Planning Act,

*Infrastructure*: means physical structures (facilities and corridors) that form the foundation for development. Infrastructure includes: sewage and water systems, septage treatment systems, stormwater management systems, waste management systems, electricity generation facilities, electricity transmission and distribution systems, communications/telecommunications, transit and transportation corridors and facilities, oil and gas pipelines and associated facilities.

*Intensification*: means the development of a property, site or area at a higher density than currently exists through:

- a) *redevelopment*, including the reuse of *brownfield* sites;
- b) the development of vacant and/or underutilized lots within previously developed areas;
- c) infill development; and
- d) the expansion or conversion of existing buildings.

*Public service facilities*: means land, buildings and structures for the provision of programs and services provided or subsidized by a government

*Redevelopment*: means the creation of new units, uses or lots on previously developed land in existing communities, including *brownfield* sites.

*Settlement areas*: means urban areas and rural settlement areas within municipalities (such as cities, towns, villages and hamlets) that are: a) built up areas where development is concentrated and which have a mix of land uses; and b) lands which have been designated in an official plan for development over the long-term planning horizon provided for in policy 1.1.2.

#### Preamble

The Preamble to the PPS says it “provides for appropriate development while protecting resources of provincial interest, public health and safety, and the quality of the natural and built environment.”

A basic principle of policy led land use planning iterated in the PPS is that **when more than one policy is relevant, a decision-maker should consider all of the relevant policies to understand how they work together. The language of each policy, including the Implementation and Interpretation policies, will assist decision-makers in understanding how the policies are to be implemented.”**

**An important aspect of policy led land use planning is the terms used in the policies.** As succinctly outlined in the PPS, some policies set out **positive directives**, such as “settlement areas shall be the focus of growth and development.” Other policies set out **limitations and prohibitions**, such as “*development* and site alteration shall not be permitted.” Other policies use **enabling or supportive language**, such as “should,” “promote” and “encourage.”

The PPS says the policies represent minimum standards and planning authorities and decision-makers may go beyond these minimum standards to address matters of importance unless doing so would conflict with any policy of the Provincial Policy Statement.”

#### Vision

**The Provincial Policy Statement focuses growth and development within settlement areas.** It recognizes that the wise management of land use change may involve directing, promoting, or sustaining development. Land use must be carefully managed to accommodate appropriate development to meet the full range of current and future needs, while achieving efficient development patterns and avoiding significant or sensitive resources and areas which may pose a risk to public health and safety.

**Efficient development patterns optimize the use of land and public investment in infrastructure and public service facilities and minimize the undesirable effects of development, including impacts on air, water and other resources.**

#### Policies

The PPS policies for **Building Strong Healthy Communities** say Ontario's long-term prosperity, environmental health and social well-being depend on wisely managing change and **promoting efficient land use and development patterns**. Efficient land use and development patterns **support sustainability by promoting strong, liveable, healthy and resilient communities, protecting the environment and public health and safety, and facilitating economic growth**. **Healthy, liveable and safe communities are sustained by promoting efficient development and land use patterns which sustain the financial well-being of the Province and municipalities over the long term.** (Policy 1.1.1a)

#### Settlement Areas

The PPS says the vitality of settlement areas is critical to the long-term economic prosperity of our communities. It is in the interest of all communities to **use land and resources wisely, to promote efficient development patterns** (Section 1.1.3) and **Settlement areas shall be the focus of growth and development**, and their **vitality and regeneration shall be promoted**. (Policy 1.1.3.1)

## GROWTH PLAN OF THE GREATER GOLDEN HORSESHOE

*Brownfield Sites* undeveloped or previously developed properties that may be contaminated. They are usually, but not exclusively, former industrial or commercial properties that may be underutilized, derelict or vacant. (PPS, 2020)

*Intensification* The development of a property, site or area at a higher density than currently exists through:

- a) redevelopment, including the reuse of brownfield sites;
- b) the development of vacant and/or underutilized lots within previously developed areas;
- c) infill development; and
- d) the expansion or conversion of existing buildings.(PPS,2020)

To facilitate implementation of A Place to Grow: Growth Plan for the Greater Golden Horseshoe O. Reg. 311/06 has been modified. Any matter commenced, but where a decision(s) remains to be made as of May 16, 2019 is subject to the policies of A Place to Grow. The policies of this Plan regarding how land is developed, resources are managed and protected, and public dollars are invested are based on the following principles, among others:

- Support the achievement of complete communities that are designed to support healthy and active living and meet people’s needs for daily living throughout an entire lifetime.
- Prioritize intensification and higher densities in strategic growth areas to make efficient use of land and infrastructure and support transit viability.
- Support a range and mix of housing options, including second units and affordable housing, to serve all sizes, incomes, and ages of households.
- Improve the integration of land use planning with planning and investment in infrastructure and public service facilities, including integrated service delivery through community hubs, by all levels of government.
- Provide for different approaches to manage growth that recognize the diversity of communities in the GGH.
- Protect and enhance natural heritage, hydrologic, and landform systems, features, and functions.
- Integrate climate change considerations into planning and managing growth such as planning for more resilient communities and infrastructure – that are adaptive to the impacts of a changing climate – and moving towards environmentally sustainable communities by incorporating approaches to reduce greenhouse gas emissions.

The policies of the Growth Plan take precedence over the policies of the PPS to the extent of any conflict, except where the relevant legislation provides otherwise.

Population and employment growth will be accommodated by directing vast majority of new growth to the *settlement areas* [such as Port Colborne] that have a *delineated built boundary* [such as the City of Port Colborne]. (Policy 2.2.1.2.a) defined as the limits of the developed urban area as defined by the Minister in consultation with affected municipalities for the purpose of measuring the minimum intensification target in this Plan.

#### Where and How to Grow

The Growth Plan is about accommodating forecasted growth in *complete communities*.

These are communities that are well designed to meet people's needs for daily living throughout an entire lifetime by providing convenient access to an appropriate mix of jobs, local services, public service facilities, and a full range of housing to accommodate a range of incomes and household sizes. *Complete communities* support quality of life and human health by encouraging the use of active transportation and providing high quality public open space, adequate parkland, opportunities for recreation, and access to local and healthy food. They provide for a balance of jobs and housing in communities across the GGH to reduce the need for long distance commuting. They also support climate change mitigation by increasing the modal share for transit and active transportation and by minimizing land consumption through compact built form.

To support the achievement of complete communities, this Plan establishes minimum intensification and density targets that recognize the diversity of communities across the GGH. Some larger urban centres, such as Toronto, have already met some of the minimum targets established in this Plan, while other communities are growing and intensifying at a different pace that reflects their local context.

As in many thriving metropolitan regions, many communities in the *GGH* are facing issues of housing affordability, which are being driven primarily by sustained population growth and factors such as a lack of housing supply with record low vacancy rates. This Plan helps to address this challenge by providing direction to plan for a range and mix of housing options, including second units and *affordable* housing and, in particular, higher density housing options that can accommodate a range of household sizes in locations that can provide access to transit and other amenities. There is also a need for stakeholders to work collaboratively to find opportunities to redevelop sites using more age-friendly community design.

Population and employment forecasts contained in Schedule 3 will be used for planning and managing growth in the GGH to the horizon of this Plan in accordance with the policies in subsection 5.2.4. (Policy 2.2.1.1)

Applying the policies of this Plan will **support** the achievement of **complete communities** that:

- Feature a diverse mix of land uses, including residential and employment uses, and convenient access to local stores, services, and *public service facilities*;
- Improve social equity and overall quality of life, including human health, for people of all ages, abilities, and incomes;
- **Provide a diverse range and mix of housing options, including** second units and **affordable housing**, to accommodate people at all stages of life, and to accommodate the needs of all household sizes and incomes;
- Expand **convenient access** to:
  - a range of **transportation options, including options for the safe, comfortable and convenient use of active transportation**;
  - *public service facilities*, co-located and integrated in community hubs;
  - **an appropriate supply of safe, publicly-accessible open spaces, parks, trails, and other recreational facilities**; and
  - healthy, local, and affordable food options, including through urban agriculture;
- provide for a more **compact built form** and a vibrant public realm, including public open spaces;
- mitigate and adapt to climate change impacts, improve resilience and reduce greenhouse gas emissions, and contribute to environmental sustainability; and
- integrate green infrastructure and appropriate low impact development. (Section 2.2.1.4)

Until the next *municipal comprehensive review* is approved and in effect, the annual minimum *intensification* target contained in the applicable upper- or single-tier official plan that is approved and in effect as of July 1, 2017 will continue to apply. (Policy 2.2.2.2)

All municipalities will develop a strategy to achieve the minimum *intensification* target and *intensification* throughout *delineated built-up areas*, which will, among other things:

- identify strategic growth areas to support achievement of the intensification target and recognize them as a key focus for development;
- identify the appropriate type and scale of development in strategic growth areas and transition of built form to adjacent areas;
- encourage intensification generally throughout the delineated built-up area;
- ensure lands are zoned and development is designed in a manner that supports the achievement of complete communities;
- prioritize planning and investment in infrastructure and public service facilities that will support intensification; and
- be implemented through official plan policies and designations, updated zoning and other supporting documents. (Policy 2.2.3.3)

By the time the *next municipal comprehensive review* is approved and in effect, and for each year thereafter, the applicable minimum intensification target is a minimum of 50 per cent of all residential development occurring annually within Niagara will be within the delineated built-up area. (Policy 2.2.2.1a).

Until the next *municipal comprehensive review* is approved and in effect, the annual minimum intensification target contained in the ROP will continue to apply. (Policy 2.2.2.2)

All municipalities will develop a strategy to achieve the minimum *intensification* target and intensification throughout *delineated built-up areas*, which will:

- identify *strategic growth areas* to support achievement of the intensification target and recognize them as a key focus for development;
- identify the appropriate type and scale of development in *strategic growth areas* and transition of built form to adjacent areas;
- encourage *intensification* generally throughout the *delineated built-up area*;
- ensure lands are zoned and development is designed in a manner that supports the achievement of *complete communities*;
- prioritize planning and investment in *infrastructure* and *public service facilities* that will support *intensification*; and
- be implemented through official plan policies and designations, updated zoning and other supporting documents. (Policy 2.2.2.3)

Councils of upper- and single-tier municipalities may request an alternative to the target established in policy 2.2.2.1 where it is demonstrated that this target cannot be achieved and that the alternative target will be appropriate given the size, location and capacity of the *delineated built-up area*.

The Minister may permit an alternative to the target established in policy 2.2.2.1. If council does not make a request or the Minister does not permit an alternative target, the target established in policy 2.2.2.1 will apply.

**Upper-tier municipalities, in consultation with lower-tier municipalities, will, through a *municipal comprehensive review*, provide policy direction to implement the Growth Plan, including:**

- identifying minimum *intensification* targets for lower-tier municipalities based on the capacity of *delineated built-up areas*, including the applicable minimum density targets for *strategic growth areas* in the Growth Plan, to achieve the minimum *intensification* target in the Growth Plan;
- identifying minimum density targets for *strategic growth areas*, including any *urban growth centres* or *major transit station area* in accordance with this Plan;
- identifying minimum density targets for *employment areas*;
- **identifying minimum density targets for the *designated greenfield areas* of the lower-tier municipalities, to achieve the minimum density target for the upper- or single-tier municipality;**

- allocating forecasted growth to the horizon of the Growth Plan to the lower-tier municipalities in a manner that would support the achievement of the minimum *intensification* and density targets in this Plan; and
- addressing matters that cross municipal boundaries. (Policy 5.2.3.2)

**The minimum *intensification* and density targets in this Plan, including any alternative targets that have been permitted by the Minister, are minimum standards** and municipalities are encouraged to go beyond these minimum targets, where appropriate, except where doing so would conflict with any policy of this Plan, the PPS or any other provincial plan. (Policy 5.2.5.1)

The minimum *intensification* and density targets in the Growth Plan or established pursuant to the Growth Plan will be identified in upper- and single-tier official plans. Any changes to the targets established pursuant to this Plan may only occur through a *municipal comprehensive review*. (Policy 5.2.5.2)

**For the purposes of implementing the minimum *intensification* and density targets in the Growth Plan, upper- and single-tier municipalities will, through a *municipal comprehensive review*, delineate the following in their official plans, where applicable:**

- *delineated built-up areas*;
- *urban growth centres*;
- *major transit station areas*;
- *employment areas*;
- other *strategic growth areas* for which a minimum density target will be established; and
- *excess lands*. (Policy 5.2.5.3)

**The identification of *strategic growth areas*, *delineated built-up areas*, and *designated greenfield areas* are not land use designations** and their delineation does not confer any new land use designations, nor alter existing land use designations. Any *development* on lands within the boundary of these identified areas is still subject to the relevant provincial and municipal land use planning policies and approval processes. (Policy 5.2.5.8)

The *delineated built boundary* has been issued for the purpose of measuring the minimum *intensification* target in the Growth Plan. The conceptual *delineated built-up area* shown on Schedules 2, 4, 5, and 6 is for information purposes. For the actual delineation, the *delineated built boundary* that has been issued by the Minister should be consulted. (Policy 5.2.7.3)

The *designated greenfield areas* shown on Schedules 2, 4, 5, and 6 are conceptual. Actual *designated greenfield areas* will be delineated in applicable official plans. (Policy 5.2.7.4)

## REGIONAL OFFICIAL PLAN

In speaking to the contents of official plan the *Planning Act* says an official plan shall contain, (a) goals, objectives, and policies established primarily to manage and direct physical change and the effects on the social, economic, built, and natural environment of the municipality or part of it (Section 16.(1)(a)) and may contain, a description of the measures and procedures proposed to attain the objectives. (Section 16.2(a))

A Strategic Objective to the ROP is recognizing the diversified opportunities and needs in Niagara by balancing both urban development and the conservation of natural resources. a) **A choice of housing and employment locations**. b) **Development and efficient use of lands within the existing urban boundaries first**. c) Conservation of natural resources (e.g., fishery habitat, Areas of Natural and Scientific Interest, natural areas, wildlife habitat, waterways, Niagara Escarpment, wetlands, aggregate areas, and woodlots). d) **Minimization of conflicts between incompatible land uses**. (ROP Strategic Objective 2.1)

Another Strategic Objective is to facilitate and maintain a pattern of distinctive and identifiable urban communities. (SO 2.2) A third relevant Strategic Objective is to improve regional self-reliance through long-range economic development planning and economic diversification. a) Attraction of more employment through existing or new firms. . . . (ROP SO 2.2)

Similar to the PPS, the ROP recognizing efficient use of land and minimizing conflict between incompatible uses as Strategic Objectives.

The ROP has a number of defined terms including:

**Brownfield Sites** are undeveloped or previously developed properties that may be contaminated. They are usually, but not exclusively, former industrial or commercial properties that may be underutilized, derelict or vacant. (Provincial Policy Statement, 2005)

**Built-up Area** means all land within the built boundary.

**Built Boundary** means the limits of the developed Urban Areas as defined by the Minister of Infrastructure in accordance with Policy 2.2.3.5 in the Provincial Growth Plan for the Greater Golden Horseshoe.

**Complete Communities** meet people's needs for daily living throughout an entire lifetime by providing convenient access to an appropriate mix of jobs, local services, a full range of housing, and community infrastructure including affordable housing, schools, recreation and open space for their residents. Convenient access to public transportation and options for safe, non-motorized travel is also provided.

*Density Targets* The density target for the Urban Growth Centre is defined in Policy 4.G.10.2. The density target for Designated Greenfield Areas is defined in Policy 4.C.7.2.

*Development* means the creation of a new lot, a change in land use, or the construction of a building or structure, requiring approval under the Planning Act. It includes the construction of new, or significant expansion of existing, public utilities or infrastructure,

*Intensification* means the development of a property, site or area at a higher density than currently exists through:

- a) redevelopment, including the reuse of *brownfield sites*;
- b) the development of vacant and/or underutilized lots within previously developed areas;
- c) infill development; or
- d) The expansion or conversion of existing buildings.

*Redevelopment* means the creation of new units, uses or lots on previously developed land in existing communities, including brownfield sites.

*Urban Areas* means those areas shown as being within the Urban Areas Boundaries as defined by this Official Plan.

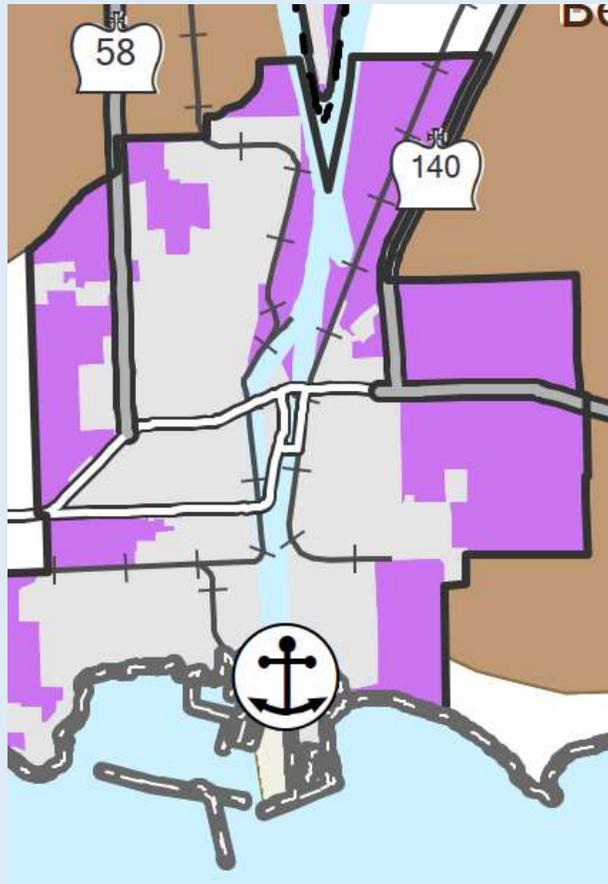
As illustrated on *Figure A4.1, Regional Plan Schedule A, Regional Structure Excerpt*, the ROP designates the Subject Properties **Built-up Area** within the **Urban Area Boundary**. The Objectives of the ROP for Managing Growth include (4.A.1.2) *directing a significant portion of Niagara's future growth to the Built-up Area through intensification*; (4.A.1.3) directing intensification to local municipally designated *intensification* areas; and (4.A.1.6) *building compact, mixed use, transit supportive, active transportation friendly communities in the Built-up Area and in Designated Greenfield Areas*.

#### Managing Growth

The objectives of the Growth Management Policies of the ROP are to: *Direct the majority of growth and development to Niagara's existing Urban Areas*. (Objective 4.A.1.1) . . . Ensure the availability of sufficient employment land to accommodate long term growth in Niagara to the year 2031, (Objective 4.A.1.9) and direct growth in a manner that *promotes the efficient use of existing municipal sewage and water services*. (Objective 4.A.1.12) Again as with the PPS

The ROP directs the majority of growth to *urban areas* but seeks to ensure the availability of sufficient employment land and promotes the efficient use of existing municipal sewage and water services.

**Figure A4.1**  
**Regional Plan Schedule A**  
**REGIONAL STRUCTURE EXCERPT**



***Intensification*** includes all forms of ***development*** that occur within the **Built-up Area** as identified on Schedule A of the ROP. The Region will **promote intensification** by:

- a) Providing a Regional framework for measuring *intensification*.
- b) Supporting *infrastructure* development and improvements in Local Municipally Designated Intensification Areas where upgrades or improvements to Regional *infrastructure* works are required.
- c) Working with local municipalities to develop *intensification* strategies including but not limited to coordination between growth management and the maintenance and expansion of utility *infrastructure*, both in terms of technological advancement and service provision
- d) Monitoring *intensification* rates across the Region on an annual basis. (Policy 4.C.1.1)

By the year 2015 and for each year thereafter, **a minimum of 40% of all residential development occurring annually within Niagara will occur within the Built-up Area** of Niagara's communities. (Policy 4.C.3.1)

The rate of *intensification* occurring in Niagara will be measured by calculating the total number of residential units created on an annual basis within the *Built-up Areas* of Niagara in relation to the total number of units created within Niagara Region. (Policy 4.C.3.2)

Beginning in 2009, the Region will track residential *intensification* rates on an annual basis and prepare an annual report. The Region will work closely with local municipalities to determine the preferred method for tracking residential *intensification* rates. (Policy 4.C.3.3)

The [Port Colborne] residential *intensification* target is considered to be [the] minimum standard. (Policy 4.C.4.1)

**[Port Colborne] will develop its own residential *intensification* target and strategy, which may equal or exceed the minimum standard, and incorporate the target into its official plan. - Residential Intensification Target (percent of total annual development) – City of Port Colborne - 15%** (Policy 4.C.4.2)

The preamble to Section 4G, Urban Growth, states Niagara aspires to build sustainable, *complete communities*. Such communities serve the needs of the present local population, without compromising the potential needs of future generations. Niagara's approach to building such communities addresses social, environmental, economic and cultural aspects of land use planning. **Niagara will build more sustainable, *complete communities* by, among other things making efficient use of land, resources and *infrastructure*.**

Objective 4G.1, in Our Common Objectives, is to build compact, vibrant, sustainable, integrated and *complete communities* and Objective 4G.4 is to *maximize the use of existing and planned infrastructure to support growth in a compact and efficient manner.*”

Policy 4.G.8.1 states *Built-up Areas* are lands located within Urban Areas which have been identified by the provincial government that *will be the focus of residential and employment intensification and redevelopment* within the *Region* over the long term.

#### THE CITY OFFICIAL PLAN

**Affordable** In the case of ownership housing, the least expensive of:

- a) Housing for which the purchase price results in annual accommodation costs which do not exceed 30 percent of gross annual household income for low and moderate income households; or
- b) Housing for which the purchase price is at least 10 percent below the average purchase price of a resale unit in the regional market area;

In the case of rental housing, the least expensive of:

- a) A unit for which the rent does not exceed 30 percent of gross annual household income for low and moderate income households; or
- b) A unit for which the rent is at or below the average market rent of a unit in the regional market area.

**Brownfield sites** Undeveloped or previously developed properties that may be contaminated. They are usually, but not exclusively, former industrial or commercial properties that may be underutilized, derelict or vacant.

**Development** The creation of a new lot, a change in land use, or the construction of a building or structure, requiring approval under the Planning Act. It includes the construction of new, or significant expansion of existing, public utilities or infrastructure but does not include:

- a) Activities that create or maintain infrastructure authorized under an environmental assessment process; or
- b) Works subject to the Drainage Act.
- c) The carrying out of agricultural practices on land that was being used for agricultural uses on the date the Plan came into effect.

**Intensification** The *development* of a property, site or area at a higher density than currently exists through:

- a) *Redevelopment*, including the reuse of *brownfield* sites;
- b) The development of vacant and/or underutilized lots within previously developed areas;
- c) Infill development; and
- d) The expansion or conversion of existing buildings.

*Redevelopment* The creation of new units, uses or lots on previously developed land in existing communities, including brownfield sites

The Vision for the City of Port Colborne is among other things continue to provide the opportunity for a mix of residential accommodations accommodating households with diverse social and economic characteristics, needs and desires; ensure new *development* is accessible by all members of the community, and develop the community in a way which optimizes existing Municipal and Regional infrastructure.

The Growth Management Strategy is to, among other things, direct urban growth to lands that fall within the designated Urban Area Boundary, which is serviced by municipal water and sanitary services, support infill and *intensification*, subject to the applicable policies, in the Urban Residential designation, and support compact and transit supportive *development* within the *built boundary*.

To support the Strategic Direction of Enhancing Quality of Life the City promotes a compact urban form, a balanced mix of housing types and land uses, efficient and cost effective infrastructure and transportation, and good urban design for neighbourhoods and business areas by, among other things, promoting *residential intensification* in the urban area with a flexible approach encouraging a mix of housing types and densities appropriate to location and incorporating active living considerations for both recreation and utilitarian purposes through support for such items as cycling and walking facilities and other means that promote healthy, active lifestyles.

A Housing Strategic Planning Policy is that new housing development should:

- i. Be located in the urban area to make use of existing infrastructure and facilities;
- ii. Be accessible to medical facilities, shopping and any future public transportation system;
- iii. Be close to or be developed with on-site parks and open space;
- iv. Incorporate design features for an aging population;
- v. Use housing forms suitable for an aging population such as at-grade housing or medium density apartment buildings;
- vi. Provide for a range of smaller lots and homes suitable to smaller households; and
- vii. Be close to or be developed with social and recreational facilities. (Policy 2.4.2.1a)

The City will work with other levels of government, the private sector, community and non-profit groups to ensure that sufficient affordable rental and ownership housing is provided (Policy 2.4.2.2a) and opportunities shall be made available for the provision of affordable housing within new intensified or infill developments. (Policy 2.4.2.2e)

### Intensification and Infill

The identification and *intensification* of residential and employment areas and corridors within the *built boundary* of the City is directed by the Provincial Growth Plan. *Intensification* supportive policies will offer opportunities to promote economic development, reduce the consumption of greenfield land, meet the municipality's intensification target of 15% and maximize the efficiency of existing *infrastructure*. Intensified *development* is compact, mixed-use and transit-supportive in nature, which reflects the vision of this plan.

As identified on Schedule A1, *intensification* will be encouraged specifically within local intensification areas which include the Downtown and Main Street West Development throughout the entire *Built-up area*, which will count towards the municipality's 15% *intensification* target, shall occur in accordance with the applicable policies of this Plan. (Policy 2.4.3)

The majority of the Municipality's *intensification* will be accommodated within the Urban Area where the development is compatible with the surrounding uses. (Policy 2.4.3a)

The Municipality supports the intensification through accessory dwellings and garden suites, provided that development is consistent with the applicable policies of this Plan. (Policy 2.4.3b)

The objectives of the intensification policies of this Plan are to:

- Revitalize and support the Downtown by promoting intensification in the Downtown areas;
- Encourage mixed use development in the Downtown areas which is in proximity to public transit and active transportation routes;
- Provide land use policy directions for the accommodating additional growth on lands designated Urban Residential and Downtown Commercial;
- Provide a policy framework that supports a limited amount of infilling throughout the Hamlet and Rural areas; and
- Provide policies that allow for accessory dwelling units and garden suites. (Policy 2.4.3c)

### Intensification Target

The Municipality will plan to achieve an intensification target of 15%. (Policies 2.4.3.1a)

Intensification will be measured on an annual basis and will include all new housing units created within the Built-up area. (Policies 2.4.3.1b)

### *Design Guidelines*

Infill and intensification sites should match the pre-established building character of adjacent buildings. (Policy 2.4.3.2a)

Where no existing or consistent character is established, infill and intensification development should be consistent with the applicable Design Guideline Policies of this Plan. (Policy 2.4.3.2b)

Where appropriate, the design of the development should provide linkages and connections to existing and proposed pedestrian and bicycle networks. (Policy 2.4.3.2c)

The design of infill and intensification development should be consistent with all other applicable policies of this Plan. (Policy 2.4.3.2d)

### *Urban Residential*

As illustrated on *Figure A4.2, Official Plan Schedule A, Port City Wide Land Use Excerpt*, the property is **designated Urban Residential**. The areas identified on Schedule A as Urban Residential are those lands that are **primarily used for residential purposes** and represent the existing and planned *built-up areas* within the *Urban Area Boundary*. **The predominant uses for lands designated Urban Residential shall include**, but not be limited to; **residential uses**; neighbourhood commercial uses such as a convenience store, beauty salon, post office, and doctor's office all of limited size; cemeteries, parks, schools, community facilities and institutional uses normally located in residential areas. (Policy 3.2)

As illustrated on *Figure A4.3, Official Plan Schedule D, Transportation Excerpt*, the property **abuts the Elm and Charlotte Streets Arterial Roads**.

### **Medium Density Residential will:**

- **Be developed at a density ranging from 35 to 70 units per hectare as Townhouses; Stacked townhouses; triplexes; and/or Fourplexes;**
- **Be encouraged adjacent to arterial or collector roads; and**
- **Be subject to Site Plan Control. (Policy 3.2.1a)**

**Figure A4.2**  
**Official Plan Schedule A**  
**CITY WIDE LAND USE EXCERPT**



**Figure A4.3**  
**Official Plan Schedule D**  
**TRANSPORTATION**



**Port Colborne**  
**Official Plan**  
**Schedule D: Transportation**

- Municipal Boundary
- Future Highway 3
- Port Colborne Blue Trails

**Roads Classification:**

- Lanesway
- Local Road
- Local Commercial or Industrial
- Arterial
- Collector
- Collector Commercial or Industrial
- St. Lawrence Bypass
- Regional
- Provincial

**Schedule Notes:**  
 This map is for general illustration purposes only.  
 For boundary information please contact the  
 City of Port Colborne Planning and Development  
 Department.

### High Density Residential will:

- Be developed as apartment buildings ranging in density from 70 to 100 units per net hectare;
- Have frontage on an arterial or collector road;
- Have commercial or ground-oriented residential uses on the main floor;
- Be oriented on the site to minimize shadows on adjacent low and medium density residential *development*;
- Be encouraged to be developed in proximity to public transit and active transportation routes; and
- Be subject to Site Plan Control. (Policy 3.2.1c)

As illustrated on *Figure A4.4, Official Plan Schedule A1, Greenfields*, the Subject Properties is **located in a designated Intensification Area**. *Intensification will be encouraged* in the Urban Area in accordance with the provisions of Section 2.4.3 of this plan, and *intensification* that will require modifications to the building that detract from the overall character of the neighbourhood will not be permitted. (Policy 3.2.2)

### *Intensification and Infill*

Intensification will be encouraged in the Urban Area in accordance with the provisions of Section 2.4.3 of this plan, as well as Intensification that will require modifications to the building that detract from the overall character of the neighbourhood will not be permitted. (Policy 3.2.2a)

### *Housing Design Guidelines*

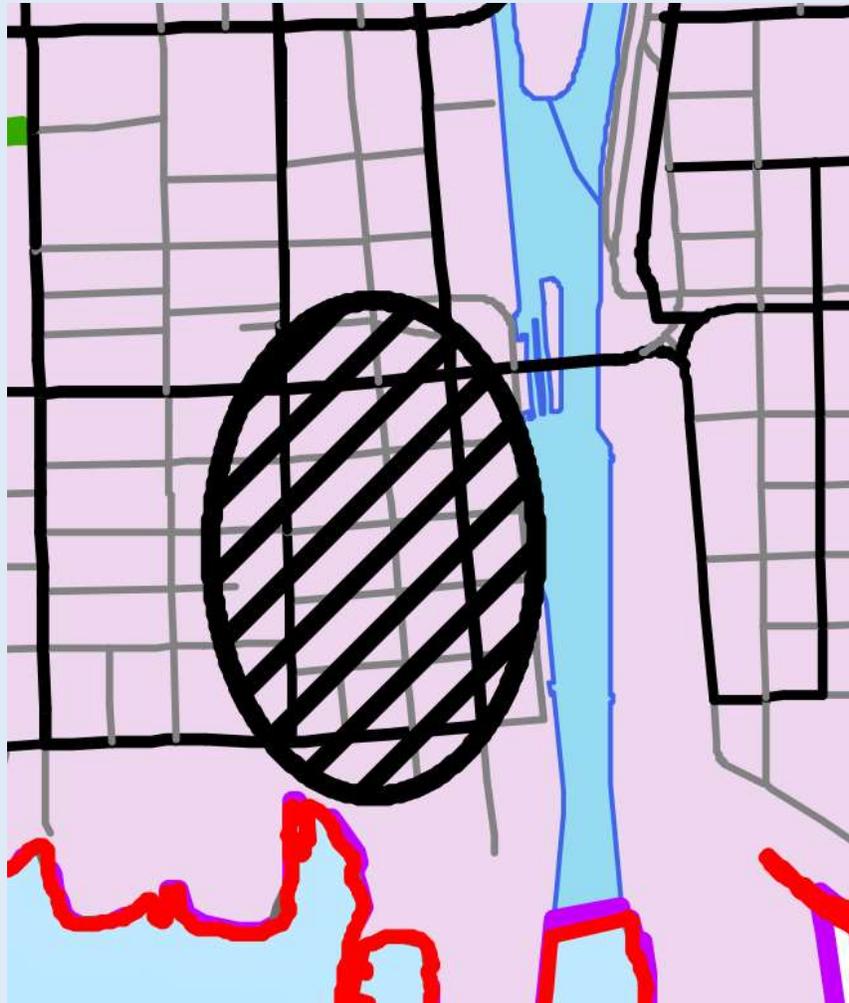
Townhouses and multiple-unit housing should:

- Be aligned parallel to the street from which the principal entrance should be visible and accessible;
- Consider overall form, massing and proportions and the rhythm of major repetitive building elements and roof designs to create a street facade that is composed of a consistent and attractive variety of building elements; and
- Be consistent with the placement and character of the surrounding built form where an infill development.(Policy 3.2.3.3a)

### *Development Adjacent to Railways*

All proposed development within 500 metres of a railway right-of-way **may be required to undertake noise studies**, to the satisfaction of the municipality and /or Region in consultation with the appropriate railway, and shall undertake appropriate measures to mitigate any adverse effects from noise that were identified. (Policy 3.16.8a)

**Figure A4.4**  
**Official Plan Schedule A1**  
**GREENFIELDS**



**Port Colborne**  
Official Plan

**Schedule A1: Greenfields**

-  Municipal Boundary
-  Urban Area Boundary
-  Built Boundary
-  Designated Greenfield Area
-  Intensification Area

All proposed development within 75 metres of a railway right-of-way **may be required to undertake vibration studies**, to the satisfaction of the municipality and/or Region in consultation with the appropriate railway, and shall undertake appropriate measures to mitigate any adverse effects from vibration that were identified. (Policy 3.16.8b)

All proposed development adjacent to railways **shall ensure that appropriate safety measures such as setbacks, berms and security fencing** are provided to the satisfaction of the municipality and the Region, in consultation with the appropriate railway. (Policy 3.16.8c)

#### Height and/or Density Incentives

The Zoning By-law may authorize **increases in the height and density of residential development** above that permitted in the Zoning By-law in return for the provision of rental housing. (Policy 11.1.3a)iii)

**No residential development will be granted for a bonus density greater than 20 percent above the maximum density** provided in the parent Zoning By-law; or for a bonus height greater than three (3) storeys above the maximum density provided in the parent Zoning By-law. (Policy 11.1.3a)iii)

#### Exemptions from Parkland Dedication

The City may provide for **exemptions to the required parkland dedication** if:

- Privately-owned open space is made available through a co-operative use agreement and which would fill a leisure need identified by and to the satisfaction of the City;
- The developer is a not-for-profit corporation or charitable organization as defined by Revenue Canada; or
- Special features are being preserved in which the City has an interest. (Policy 11.5.2a to c)

#### THE ZONING BY-LAW

The Subject Properties is **zoned “Institutional - I” and “Residential Fourth Density R4” START HERE** which permits, among other uses, a Public Apartment Building; a Place of Assembly / Banquet Hall; and accessory uses, structures and buildings. The R4 Zone permits, among other residential uses, Apartment Buildings; Apartment Buildings, Public; and uses, structures and buildings accessory thereto and the CD Zone permits, among other uses, Apartment Buildings; Apartment Buildings, Public; Offices; and uses, structures and buildings accessory thereto.

The Zoning By-law provides the following definitions:

**Apartment Building:** means a building divided vertically and horizontally, or horizontally into five or more dwelling units each with its own entrance either separately or from a common vestibule, stairway or hallway.

**Apartment Building, Public:** means a building divided vertically and horizontally, or horizontally into five or more dwelling units each with its own entrance either separately or from a common vestibule, stairway or hallway, that has been erected, owned and / or is maintained by a public agency or non-profit charitable organization.

**Table A4.1: ZONING CHART**

<b>PROVISION / USE</b>	<b>I ZONE REQUIREMENT</b>	<b>R4 ZONE REQUIREMENT</b>	<b>PROVIDED/PROVIDED</b>
<b>Uses</b>			
Apartment Building	-	Permitted	Apartment Building and Place of Assembly / Banquet Hall
Public Apartment Building	Permitted	Permitted	
Place of Assembly / Banquet Hall	Permitted	-	
<b>Zone Requirements</b>			
Min Lot Frontage	18m	18m	50m
Min Front Yard	9m	9m	4.9m existing
Min Interior Side Yard	3m	n/a	1.5m existing
Min Corner Side Yard	7.5m	7.5m	1.5m existing
Min Rear Yard	6m	6m	1.8m existing
Max Lot Coverage	40%	40%	50% existing
Maximum Height	20m	20m	existing
Min Landscape Area	25%	25%	25%
Min Floor Area / Unit	50sqm	50sqm	38sqm

Parking Standards			
Apartment Building	1.5 spaces/unit 30	1.5 spaces/unit 30	24
Place of Assembly / Banquet Hall*	Min 1 space/20sqm gfa 14 spaces	Min 1 space/20sqm gfa 14 spaces	
Abutting a Public Road	3m	3m	0m
Abutting a Residential Zone	3m	3m	1.2m existing
Required Bicycle Parking			
Residential Buildings with 10 or more dwelling units	6 Spaces plus 1 for every additional 10 dwelling units above 20 8	6 Spaces plus 1 for every additional 10 dwelling units above 20 8	7
Place of Assembly / Banquet Hall	1 space per 1000 square metres gross floor area 1	1 space per 1000 square metres gross floor area 1	

- No building for the purpose of human habitation shall be constructed any closer than 15m to any functioning railway right-of-way. (1.7m requested – existing setback)
- No open storage of refuse shall be permitted anywhere within the zoned area except:
  - Where refuse is to be collected within an 18 hour period after such refuse has been placed in an outdoor location;
  - Where the area used for the open storage of refuse or a refuse container is enclosed by a wall or an opaque fence not less than 1.8m in height; or
  - In any Residential Zone, where such refuse is contained completely within a structure or in a receptacle specifically intended for such purpose and having walls or sides and door or lid.
- A parking space, bicycle parking space, or parking area is permitted within any yard but is not permitted within a required landscape buffer, a landscape open space area or a sight triangle.
- Required parking spaces shall have adequate access to permit ingress and egress by means of driveways, aisles, maneuvering areas, or similar area . . . no part of this access is to be used for the temporary parking or storage of any motor vehicle.
- Driveways shall have a minimum unobstructed width of 7.5m where two-way traffic is permitted and 3m where only one-way direction of traffic flow is permitted.

- In the case of expansion of a building or structure that legally does not meet the parking requirements, the parking standards related to the expansion must be adhered to, but the parking deficiency of the original building or structure does not have to be corrected and can remain legally.

ANNEX 5

DETAILED RELEVANT POLICY & DESIGN REVIEW

Good planning practice directs:

- That the plan and its policies are not written in stone.  
Policies such as those of the PPS, ROP, and PCOP reviewed here, are to be used to try to reach a goal. They are not a set of threshold measures where the inability to meet every policy results in a proposal's failure. All of the policies of a plan may not be and, based on good planning practice, don't have to be satisfied as though they are zoning by-law regulations. If, on the balance, the proposal satisfies most of the policies and moves the community towards its stated goals, then the proposal should be given serious consideration for approval.
- Consideration of all of the relevant policies.  
As an example, only reviewing and evaluating the implications of the PPS's Agriculture policies does not provide a full planning analysis of a proposal. The PPS policies on: Settlement Areas, Rural Areas, Employment, and Long Term Economic Prosperity must also be considered. While the Agriculture policies may be most relevant, the others cannot be ignored. All of the policies together must be considered in any recommendation.

## POLICY AND DESIGN REVIEW

### Municipal Servicing

A municipal servicing study was not required and a stormwater management plan was not required for quantity control given the existing development and small size of the Subject Properties.

### Reduced Parking

Senior Housing Trip Generation And Parking Demand Characteristics, by Stephen B. Corcoran, P.E. (M) a, presented at the Institute of Transportation Engineers 66th Annual Meeting, concluded the peak parking demand at most senior facilities occurs midday with an average peak demand of 0.40 vehicles per dwelling unit for residents, employees, and visitors. Mother's Day is the highest parking day of the year with many facilities short of spaces for that one day.

Review of Parking Standards Contained Within The City Of Vaughan's Comprehensive Zoning Bylaw, by IBI Group, March, 2010, stated seniors-oriented housing typically generates a lower parking demand per unit due to the smaller family sizes and a lower vehicle ownership rate. Studies from Toronto and California have shown that the average auto ownership for such dwellings is about 30% of the average for typical condominiums. A detailed study of parking rates for seniors housing facilities in a Lower Mainland Community (British Columbia) also found substantially lower parking allocation by dwelling unit, with decreasing parking demand based on the level of care provided.

The Review recommended proposed senior citizens dwelling parking standards are presented in Exhibit 4-4 [reproduced below as *Table A5.1: Proposed Senior Citizens Dwelling Parking Standards*. Key elements of the proposed standards include:

- Three categories are proposed for senior citizens dwellings including independent, supportive, and nursing home. This allows the lower parking demand at supportive residences to be incorporated into the parking standards.
- As for multi-unit residential developments, proposed standards for independent senior citizens dwellings are specified by the size of the unit (i.e., the number of bedrooms) to make minimum requirements more reflective of actual demand.
- The proposed minimum parking requirements for independent senior citizens dwellings are reduced from existing requirements to reflect current planning goals and building practices in Vaughan. Minimum requirements are set approximately 30 percent below proposed multi-unit requirements reflecting the commonly observed differences in auto ownership. Similarly, the proposed visitor parking requirement is reduced to 0.2 spaces per unit. For high-order transit hubs the recommended visitor parking requirement is 0.15 spaces per unit, reflecting the high level of transit service in these areas. Further reductions are allowed based on good transit access, shuttle service, and unbundling of tenant parking from the price of a unit.
- Reflecting existing and/or proposed mix of residential and commercial/service uses and improved transit service in High-Order Transit Hubs, Local Centres, and Primary Centres/Primary Intensification Areas, minimum requirements are reduced in these areas.
- No maximum parking limits are proposed. This reflects that some seniors may have difficulty using transit, walking, or cycling due to physical mobility constraints.

This review of relevant literature indicates that a parking standard of between 0.4 to 0.7 spaces per unit for a seniors assisted living house use is adequate.

Planning Staff noted for a commercial to residential intensification project compromises are sometimes required as a result of adaptive reuse proposals for rental housing. It is not uncommon for municipalities to allow a reduction in parking requirements for smaller-scale rental housing developments. It is important to note that reasonable rental prices can be achieved by offering a number of options for renters. For example, some renters may not require a parking space which could be reflective on the overall unit price. As the Owner has acquired a nearby property for additional parking spaces, parking concerns have been addressed adequately. Greater importance should be placed upon the number of rental units entering the market than the number of parking spaces provided on site, some of which may not even be used.

#### Reduced Unit Size

Planning Staff noted for a commercial to residential intensification project that eliminating the minimum unit size from the Zoning By-law is something municipalities across Ontario have begun to do in order to proactively support diverse styles of housing, providing

choice in size and price to the rental market. The Ontario Building Code sets out requirements for minimum living area and room sizes that the building will still have to comply with. In the event that the requirements cannot be met, a reduction in the number of units may be necessary.

#### Train Noise & Vibration

The Guidelines for New Development in Proximity to Railway Operations prepared for The Railway Association of Canada and the Federation of Canadian Municipalities, dated May 2013 states areas in proximity to railway operations are challenging settings for new development, and in particular, for residential development. It is often difficult to reconcile the expectation and concerns of residents with railway operations. For this reason, developments must be carefully planned so as not to unduly expose residents to railway activities as well as not to interfere with the continued operation of the corridor itself, or the potential for future expansion, as railways play an important economic role in society that must be safeguarded.

This report strongly recommends that municipalities should take a proactive approach to identifying and planning for potential conflicts between rail operations and new developments in proximity to railway corridors. Prior to the receipt of an application for a specific project, the municipality should have already have identified key sites for potential redevelopment, conversion, or future rail crossings, and will have generated site-specific policies to manage such future change. To further assist municipalities and other stakeholders, this report provides a comprehensive set of guidelines for use when developing on lands in proximity to railway operations. The intent of the guidelines is to:

- promote awareness around the issues (noise, vibration, safety) and mitigation measures associated with development near railway operations, particularly those associated with residential development;
- promote greater consistency in the application of relevant standards across the country;
- establish an effective approvals process for new residential development, infill, and conversions from industrial/commercial uses that allows municipal planners to effectively evaluate such proposals with an eye to ensuring that appropriate sound, vibration, and safety mitigation is secured; and
- enhance the quality of living environments in close proximity to railway operations.

**Table A5.1  
PROPOSED SENIOR CITIZENS DWELLING PARKING STANDARDS**

Land Use	Description	Existing Standard	Proposed Standards						
			Base	High-order Transit Hubs		Local Centres		Primary Centres and Primary Intensification Corridors	
			Min	Min	Max	Min	Max	Min	Max
Senior Citizens Dwelling - Independent	Bachelor/1 bedroom	1 per unit	0.6	0.45	-	0.5	-	0.5	-
	2 Bedrooms		0.8	0.6	-	0.7	-	0.7	-
	3+ Bedrooms		0.95	0.4	-	0.45	-	0.45	-
Senior Citizens Dwelling - Supportive		1 per unit	0.5	0.4	-	0.45	-	0.45	-
Senior Citizens Nursing Home		0.5/bed	0.25/bed	0.25/bed	-	0.25/bed	-	0.25/bed	-
Visitor*	Applies to all SC dwelling types		0.2	0.15	-	0.2	-	0.2	-

\*Applied per bed in the case of nursing homes.

The report builds on the 2004 FCM/RAC Proximity Guidelines and is intended for use by municipalities and provincial governments, municipal staff, railways, developers, and property owners when new developments in proximity to railway operations are proposed. Information has been assembled through a comprehensive literature/best practices review from national and international sources as well as a consultation process involving planners, architects, developers, and other professionals from across Canada, the USA, and Australia, as well as members of RAC and FCM.

In addition to the detailed guidelines, the report offers a set of implementation tools and recommendations that are meant to establish a clear framework for the dissemination, promotion, and adoption of the guidelines; as well as suggested improvements to the development approval process. A key recommendation is for a new development assessment tool, called a Development Viability Assessment, which will allow municipal planners to better evaluate proposals for residential development in areas where standard mitigation cannot be accommodated due to site constraints.

In a communication from Aaron White, General Manager of Railway Administration / GIO RMS for Trillium Railway, dated 2019-09-14 advised Trillium, as a CN short line licensee, requires what CN would require for the particular classification of track.

This Subject Properties is located adjacent to Trillium's Government Spur. All track within Port Colborne city limits is actually owned by the City and Trillium operate it on behalf of CN.

Trillium classifies this section of track as a "Spur Line" per the CN definition - Spur Line means unscheduled traffic on a demand basis, low speeds, limited to 24kph (15 mph), and trains generally of light to moderate weight with 1 locomotive per train.

"Spur Line" requirements for development include:

- Safety setback of dwellings from the railway rights-of-way to be a minimum of 15 metres.
- The Owner shall install and maintain a chain link fence of minimum 1.83 metre height along the mutual property line.
- The following clause should be inserted in all development agreements, offers to purchase, and agreements of Purchase and Sale or Lease of each dwelling unit within 300m of the railway right-of-way: "Warning: Canadian National Railway Company or its assigns or successors in interest has or have a rights-of-way within 300 metres from the land the subject hereof. There may be alterations to or expansions of the railway facilities on such rights-of-way in the future including the possibility that the railway or its assigns or successors as aforesaid may expand its operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the

design of the development and individual dwelling(s). CNR will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the aforesaid rights-of-way.”

- Any proposed alterations to the existing drainage pattern affecting railway property must receive prior concurrence from the Railway and be substantiated by a drainage report to the satisfaction of the Railway.
- The Owner may be required to grant CN an environmental easement for operational noise and vibration emissions, registered against the Subject Properties in favour of CN.

Normal operation on this line has two train movements a day, one southward and one northward at less than 10 miles per hour. It is somewhat busier in the winter months due to ADM switching to rail from vessels while the Canal is closed. That’s not to say that traffic will not increase, but even if it does, the track will still remain classified as a “Spur Line”.

Trillium advises, the Region and City have more stringent requirements for vibration and noise, which don’t take into consideration the volume of rail traffic operating on the line. At this classification, Trillium doesn’t require it, but know from experience that new residents next to rail operations will complain to the municipalities about noise coming from the railway, even when warned ahead of time. There are residences along both sides of this rail corridor, and Trillium is not aware of ever receiving a formal noise complaint. There is an anti-whistling policy in place in Port Colborne, and sounding the horn in a residential area is typically what generates the most complaints to Trillium.

A previous impact assessment under the same conditions (OZA Inspections Ltd., letter report to MacDonald Zuberec Ensslen Architects Inc., re Proposed Bank Site, 184 Clarence Street, Port Colborne, dated 2002-11-12 in [Annex 7](#), states the slow speed of the trains is favourable to low ground vibration levels in the vertical plane, even at close proximity. Trillium’s main concern is negative vibration impact on the proposed structure. The limits established to minimize disturbance to humans should be considered ultra conservative relative to structural integrity. No specific building component specification is required to mitigate vibration levels. OZA concluded train vibration levels are within the criteria specified.

The OZA letter requirements were based on CN North America Principal Main Line Requirements compared to the CN Spur Line Requirements provided by Trillium in [Annex 8, CN SPUR LINE REQUIREMENTS](#).

Exterior Insulation and Finish System (EIFS) insulation wall construction and triple pane windows on the west side will mitigate the sound that may be produced by the rail line.

## EVALUATION SUMMARY & COMMENTS

There are a many positive aspects of the proposal. It is an intensified residential use within the existing mixed use area providing a range of housing alternatives in downtown Port Colborne on the Elm and Charlotte Streets primary transportation corridors. It is compact development efficiently utilizing urban land, existing services, and municipal infrastructure. The location provides safe and easy walking and cycling to commercial and community facilities and is close to safe, publicly-accessible open spaces, parks, trails, and other recreational facilities.

The proposal is a high quality, compact, orderly, built form that will help the City meet intensification targets. The building design places windows to overlook pedestrian routes and parking areas encouraging “eyes on the street” and maintains pedestrian access to the nearby park maintaining connectivity. The building has a strong relationship to both Elm and Charlotte Streets. The primary building entrances clearly address the streets. Handicapped parking spaces are located near the main entrance. Through the development of an apartment building in this location:

- Housing variety is achieved on the street and block;
- A range of housing types is provided to promoting variety and diversity;
- Residential density is increased promoting transit; and
- Residential uses are located near a park and trail system.

A review of relevant literature indicates that a parking standard of between 0.95 parking spaces per unit for a seniors use is adequate.

ANNEX 6  
PRE-CONSULTATION AGREEMENT



## Pre-Consultation Agreement

City of Port Colborne Department of Planning and Development  
Niagara Region Development Services  
Niagara Peninsula Conservation Authority

Persons intending to make an application for a proposed development are required to consult with planning City staff and Agency staff prior to submitting an application. A pre-consultation meeting will identify what is required to be submitted for a complete application and will provide the opportunity to discuss:

- the nature of the application;
- development and planning issues;
- fees;
- the need for information and/or reports to be submitted with the application;
- the planning approval process;
- other matters, as determined.

**Pre-Consultation Meeting Date:** November 22nd

**Local Municipal Contact:** Evan Acs

**Phone:** 905-835-2901 ext 202

**Email:** planner@portcolborne.ca

**Site Address:** 176 Elm Street

**Roll Number:** 27 11 010 021 062 00

**Land Area** 33, 106 sq ft

**Owner Contact Information:**

**Owner Name:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_ **Email:** \_\_\_\_\_

**Agent Contact Information:**

**Agent Name:** Michael Smith

**Phone Number:** 905-650-4741 **Email:** michaels@royalpage.ca

**Principal Contact:**  Owner  Agent

**Application Type:**

- |   |   |
|---|---|
| <input type="checkbox"/> Regional Official Plan Amendment | <input type="checkbox"/> Consent (Land Severance)           |
| <input type="checkbox"/> Local Official Plan Amendment    | <input checked="" type="checkbox"/> Zoning By-law Amendment |
| <input type="checkbox"/> Draft Plan of Subdivision        | <input checked="" type="checkbox"/> Site Plan Control       |
| <input type="checkbox"/> Draft Plan of Condominium        | <input type="checkbox"/> Other                              |
| <input type="radio"/> Vacant Land & Common Element        |   |
| <input type="radio"/> Conversion                          |   |
| <input type="radio"/> Other                               |   |

1. Brief description of proposed development:  
Convert old church building into ?? unit apartment building.
  
2. Existing Regional Official Plan Designation: Built-up area  
 Conformity with Regional Official Plan land use designations and policies?  
 Yes    No    Unknown  
 If 'No', what is the nature of the amendment needed?  
 \_\_\_\_\_  
 \_\_\_\_\_
  
3. Check All Applicable:  
 Brownfield    Greenfield    Built-up    Local CIP Area
  
4. Development Charges:  
 Regional By-law 62-2012                       Local By-law 6131/97/14
  
5. Existing Local Official Plan Designation: Urban Residential  
 Conformity with Official Plan land use designations and policies?  
 Yes    No    Unknown  
 If 'No', what is the nature of the amendment needed?  
 \_\_\_\_\_  
 \_\_\_\_\_
  
6. Existing Zoning: Institutional  
 Conformity with existing zoning?  
 Yes    No    Unknown  
 If 'No', what is the proposed zoning:  
Rezoning to R4, special provisions may be required.
  
7. Is property located in Intake Protection Zone?  
 No    IPZ 1    IPZ 2
  
8. Is Property recognized under Ontario Heritage Act?  
 No    Registry    Designated

9. Is Site Plan approval required?

Yes  No

10. Fees Required at time of Submission of the Application

Application	City of Port Colborne	Niagara Region	Niagara Peninsula Conservation Authority	Other Fees
Regional Official Plan Amendment				
Local Official Plan Amendment				
Zoning By-law Amendment				
Plan of Subdivision				
Plan of Condominium				
Consent				
Site Plan Agreement				
Zoning by-law and Site Plan Control	\$5,500	\$1,250		
<b>TOTAL</b>				

*Notes on Fees:*

- *Notwithstanding the fees noted above, all fees are payable based upon the rate in the fee schedule by-law in effect on the date the application is received.*
- *Further fees may be required at a later date as per the fee schedule by-law.*
- *Separate cheques shall be made payable to the appropriate agency.*

11. **Additional Agencies to be contacted:**

- Hydro  Enbridge/Pipelines  Ministry of Environment  
 CN/Trillium Rail  Seaway  Ministry of Transportation  
 Niagara Peninsula Conservation Authority  Other

12. Required Information and Studies to be submitted with the Application(s). Studies identified with an asterisk\* will likely require a peer review at the cost of the developer.

Local	Region	NPCA	Reports, Studies, Plans (See Notes for additional details)	No. of Copies		Notes
				Electronic Digital	Paper	
			Planning Justification Report			
			Conceptual Site Plan, Subdivision Plan			
			Draft Regional Official Plan Amendment			
			Draft Local Official Plan Amendment			
			Land Use/Market Needs*			
			Urban Design/Landscape Plans			
			Archaeology Assessment			
			Cultural Heritage Impact Assessment*			
			Environmental Impact Study			
			Environmental Planning Study/ Sub-Watershed Study			
			Tree Inventory Preservation Plan			
			Floodplain and Hazard Lands Boundary Plan			
			Geotechnical			
X	X		Environmental Site Assessment – Phase I and II			
			Air Quality/Noise & Vibration Study*			
			Agricultural Impact Assessment			
			Farm Operation and Ownership			
			Minimum Distance Separation I & II			
			Mineral Aggregate Resources			
			Municipal Servicing Study			
			Phasing Plan			
			Sensitive Land Use Report			
			Slope Stability Report			
			Stormwater Management Plan			
			Transportation Impact Study/Parking Impact Analysis			
			Hydrogeological Study and Private Servicing Plans*			
			Soil report			
			Financial Impact Assessment*			
			Shadow Analysis			
			Shoreline Study/Dynamic Beach			
			Risk Management Study			
			Gas Well Study/Gas Migration Study			
			Wind Study*			
			Other*			

**13. Additional Comments:**

Zoning by-law amendment required for private multi-unit residential. Staff will work with applicant to identify any required special provisions to recognize conversion of existing building into residential use.

Site plan control required. Please refer to site plan control handbook for requirements.

Preferred parking solution is for lot in court yard. Parking must meet parking requirements from zoning by-law in terms of sizing. Zoning by-law amendment can reduce the number of required parking spots from 1.5 per apartment unit.

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**14. Site Visit:**

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**15. Incentive Programs:**

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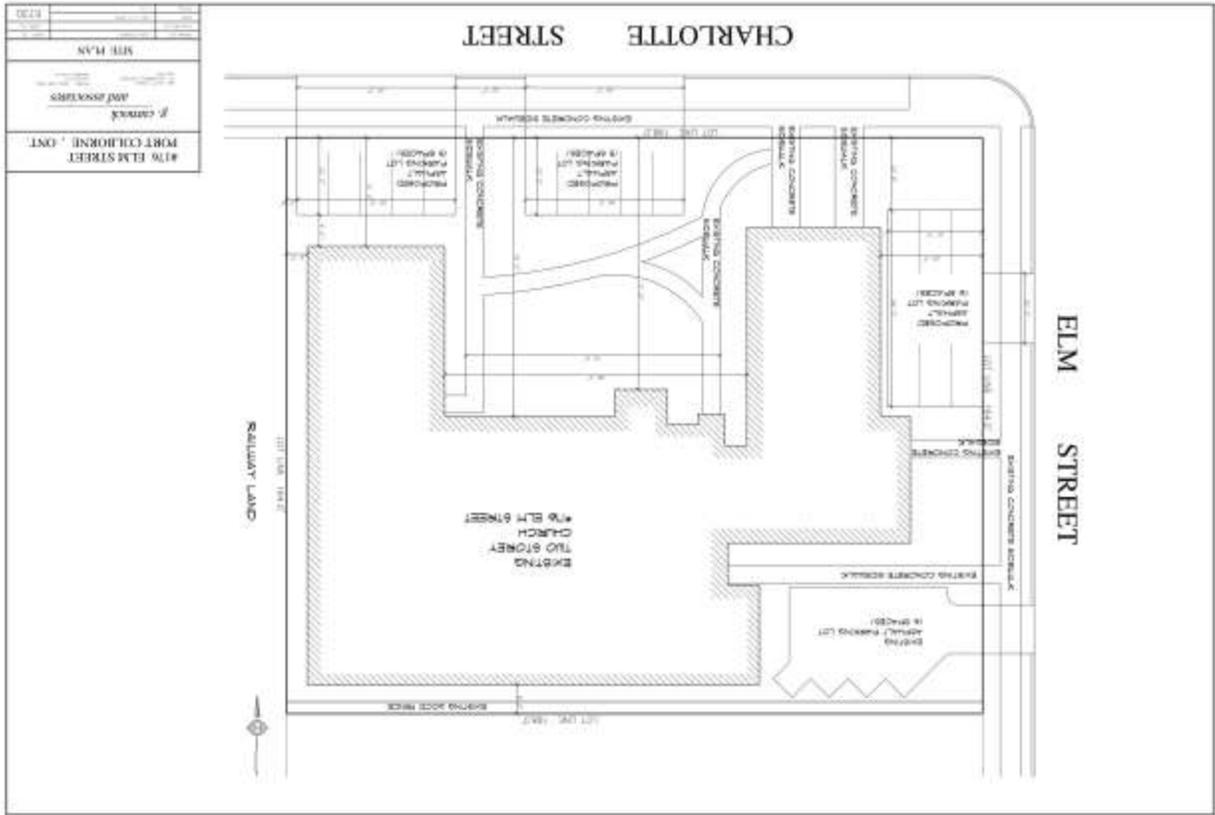
**Notes:**

1. The purpose of this document is to identify the information required to commence processing and evaluating an application as set out in the Planning Act. This pre-consultation process is designed to proceed based on the mutual agreement of the parties as shown by the signatures below.
2. Pre-consultation does not imply or suggest any decision whatsoever on behalf of staff or the municipality to either support or refuse the application.
3. The applicant should be aware that the information provided is accurate as of the date of the preconsultation meeting. Should an application not be submitted in the near future, and should other policies, by-laws or procedures be approved by the Province, Municipality, Region or other agencies prior to the submission of a formal application, the applicant will be subject to any new policies, by-laws or procedures that are in effect at the time of the submission of a formal application. If an application is not submitted within 1 year, it is advisable that the applicant confirm with the municipality the directives of the original preconsultation meeting.
4. Any application submitted without the information identified in this Pre-consultation Document will be deemed incomplete and not processed. Alternately, staff may recommend refusal of the application based upon insufficient information to properly evaluate the application.
5. The applicant acknowledges that the Municipality and Region considers the application forms and all supporting materials including studies and drawings, filed with any application to be public information and to form part of the public record. With the filing of an application, the applicant consents and hereby confirms that the consent of the authors of all supporting reports have been obtained, to permit the Municipality and Region to release the application and any supporting materials either for its own use in processing the application, or at the request of a third party, without further notification to, or permission from, the applicant.

6. It is hereby understood that during the review of the application additional studies or information may be required as a result of issues arising during the processing of the application or the review of the submitted studies.
7. If the Municipality or Region does not have sufficient expertise to review and determine that a study is acceptable, the Municipality may require a peer review. The cost of the peer review shall be paid for by the applicant. The Terms of Reference for a peer review is determined by the Municipality or Region.
8. Some studies may require NPCA review and clearance/approval. In this instance, the NPCA review fee shall be paid by the applicant.
9. All plans and statistics must be submitted in metric.

**Signatures:**

<u>EVAN ACS</u> Planning Staff	<u>Evan ACS</u> (signature)	<u>November 22/2018</u> Date
<u>HEATHER MAHON</u> Planning Staff	<u>H Mahon</u> (signature)	<u>Nov 22/18</u> Date
_____ Building Staff	_____ (signature)	_____ Date
<u>Alana VanderKeeen</u> Engineering Staff	<u>Alana VanderKeeen</u> (signature)	<u>Nov 22, 2018</u> Date
<u>Brian Kostuk</u> Engineering Staff	<u>B Kostuk</u> (signature)	<u>Nov. 22, 2018</u> Date
_____ Regional Staff	_____ (signature)	_____ Date
_____ NPCA Staff	_____ (signature)	_____ Date
_____ Fire Staff	_____ (signature)	_____ Date
_____ Canadian Niagara Power	_____ (signature)	_____ Date
<u>Glen Curnock</u> Agent	<u>G Curnock</u> (signature)	<u>Nov. 22/2018</u> Date
<u>MICHAEL SMITH</u> Owner	<u>M Smith</u> (signature)	<u>Nov 22/18</u> Date
_____ Owner	_____ (signature)	_____ Date





**Re: Port Colborne PreCon Agenda (Nov 22)**   
Brian Kostuk to: Evan Acs

11/22/2018 11:26 AM

Hi Evan,

I spoke with Darlene about 46-52-60 Adelaide Street. She said according to the bylaw the three separate water services can remain as-is.

Also, she informed me that 176 Elm Street currently has a 1-1/2 inch water line with a 1 inch meter.

Thanks,

Brian Kostuk, C.Tech.  
Design Technologist

City of Port Colborne  
1 Killaly Street West  
Port Colborne, Ontario L3K 6H1  
Telephone: 905-835-2901, Ext. 222  
Mobile: 905-380-8403  
Fax: 905-835-6800  
Email: briankostuk@portcolborne.ca

This message, including any attachments, is privileged and intended only for the person(s) named above. This material may contain confidential or personal information which may be subject to the provisions of the Municipal Freedom of Information and Protection of Privacy Act. Any other distribution, copying, or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by telephone, fax, or e-mail and permanently delete the original transmission from us, including any attachments, without making a copy.

Evan Acs      Greetings, Find attached the agenda for the No...      11/16/2018 04:22:19 PM

From: Evan Acs/Port\_Notes  
To: adele.labbe@niagararegion.ca, Aimee.Alderman@niagararegion.ca, Alana Vander Veen/Port\_Notes@Port\_Notes, Amy Dayboll/Port\_Notes@Port\_Notes, Brian Kostuk/Port\_Notes@Port\_Notes, craig.stratychuk@bell.ca, clampman@npca.ca, developmentreview@Port\_Notes, Dan Aquilina/Port\_Notes@Port\_Notes, ddeluce@npca.ca, EDO, Evan Acs/Port\_Notes@Port\_Notes, Heather Mahon/Port\_Notes@Port\_Notes, jeff.hoover@cnpower.com, Robert.Alguire@niagararegion.ca, steven.miller@niagararegion.ca, Scott Lawson/Port\_Notes@Port\_Notes, Sherry Hanson/Port\_Notes@Port\_Notes, Steven.Chappell@bell.ca, Steve Shypowskyj/Port\_Notes@Port\_Notes, susan.dunsmore@niagararegion.ca, Todd Rogers/Port\_Notes@Port\_Notes  
Date: 11/16/18 04:22 PM  
Subject: Port Colborne PreCon Agenda (Nov 22)

Greetings,

Find attached the agenda for the November 22nd preconsultation meeting in Port Colborne.

Evan Acs, MA, MSc  
Planner  
Planning & Development Department

City of Port Colborne  
66 Charlotte Street

ANNEX 7

OZA INSPECTIONS LTD., LETTER REPORT TO MACDONALD ZUBEREC  
ENSSLEN ARCHITECTS INC., RE PROPOSED BANK SITE, 184 CLARENCE  
STREET, PORT COLBORNE, DATED 2002-11-12

# OZA Inspections Ltd.

A Division of the OZA Group

P.O. Box 271  
Grimsby, ON L3M 4G5  
Toll Free 1-800-667-8263  
Tel (905) 945-5471  
Fax (905) 945-3942  
email oza@ozagroup.com  
www.ozagroup.com

November 12, 2002

**MacDonald Zuberec Ensslen Architects Inc.**  
39 Queen Street  
St. Catharines, ON  
L2R 5G6

**ATTN: Michael Zuberec**  
**RE: Train Vibration Impact Study**  
**Proposed Bank Site**  
**148 Clarence Street, Port Colborne, ON**  
**Our File No.: 10373**

---

## 1.0 INTRODUCTION

At the request of MacDonald Zuberec Ensslen Architects Inc, OZA Inspections Ltd. has completed an impact assessment of ground borne vibration from rail traffic relative to the above captioned project. Evaluation of train vibration levels is a condition implied by the City of Port Colborne, necessary for building permit approval. This requirement is imposed to satisfy Trillium Railway Company Limited (hereafter referred to as Trillium) standards for developments in close proximity to their facilities.

This study will determine and assess vibration impact from the Trillium line and, if necessary, recommend mitigation measures for compliance with standards.

## 2.0 SITE DESCRIPTION

The proposed development is located on the south side of Clarence Street in the downtown area of the City of Port Colborne. Trillium right of way borders the

Page 1 of 4

No. 9859 P. 2/8

MACDONALD ZUBEREC ENSSLEN ARCH NOV-14-2002 1:16PM

proposed site to the west, and consists of one track, classified as a government spur for access to the ADM grain elevators in the Port Colborne harbor. Site plan is attached as Figure 1. Commercial use borders Trillium to the west of the line, with a combination of commercial and residential use north and south. The track elevation is consistent with the surrounding area.

A one storey, 4,300 square foot bank structure is planned for the property. See the attached site plan, Figure 1, for reference. The structure proposed measures 10 metres to the center-line of the Trillium track at the closest point. The proposed site use is not considered a sensitive land use, as defined by the Ministry of the Environment(MOE).

### **3.0 RAIL VIBRATION ASSESSMENT**

#### **3.1 CRITERIA**

The MOE proposes train vibration limits within the threshold of human perception for residential or other "sensitive" land uses. The Canadian National Railway and Canadian Pacific Railway specify the same criteria, with a limit set at 0.14 mm/s RMS velocity, at frequencies between 4 hz and 200 hz. A copy of the CN specification is attached in Appendix A. CN considers an RMS velocity of 0.2 mm/s to be a significant problem. Trillium has accepted these guidelines in previous assessment.

#### **3.2 PROCEDURE**

There is no accepted prediction method for rail vibration, therefore on site testing is required to determine actual ground borne vibration levels. Measurements were carried out utilizing OZA model GPS-3 seismograph instrumentation (s/n 6111), capable of measuring and recording velocity in the specified frequency range. The seismograph was calibrated December 24, 2002, and in accordance with manufacturer specification. Measurement of a minimum of 5 train pass-by's, including all types of train traffic, is recommended. The measurement location was set along the line of the closest proposed section of the building relative to the rail line. The sensors were secured to the ground via spiking, with the sod removed.

Page 2 of 4

8/8 P. d 6886 ON

MACDONALD ZUBEREC ENSSLEN ARCH 1:18PM 2007 11 10 AM

### 3.3 TRAIN TRAFFIC

Rail traffic data was provided by Trillium verbally, summarized as follows: Maximum activity consists of one train travelling northerly into the ADM grain elevator, and returning southward on a daily basis. Train size ranges between 12 and 15 cars with 1 locomotive, moving slowly at an approximate speed of 5 mph. This data was consistent with observation made during the study period.

### 3.4 MEASUREMENT RESULTS

Vibration levels from six freight trains, travelling in both the north and south directions, with hoppers empty and under load, were measured. The RMS velocities of the vertical axis have been calculated in accordance with CN standards. The measurement results are summarized in Table 1. The RMS velocity was calculated using an averaging time constant of 1 second. An actual vibration time history report for a passenger train pass-by is attached in Appendix B.

TABLE 1 - VIBRATION SUMMARY:

Date	Time	No. Engines	No. Cars	Dir.	RMS Velocity (mm/s)
November 6, 2002	13:33	1	16	North	0.025
	13:54	1	15	South	0.060
November 7, 2002	13:30	1	15	North	0.023
	13:51	1	9	South	0.030
November 11, 2002	14:42	1	16	North	0.026
November 12, 2002	07:53	1	9	South	0.049

### 3.5 ASSESSMENT OF COMPLIANCE

The maximum RMS value for the study period, measured in the vertical direction was 0.06 mm/s. This level is well within the specified criteria of 0.14 mm/s for residential development, and therefore is more than acceptable for the planned land use.

### 3.6 DISCUSSION OF RESULTS

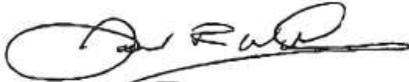
The slow speed of the trains is favorable to low ground vibration levels in the vertical plane, even at close proximity. Trillium's main concern is negative vibration impact on the proposed structure. The limits established to minimize disturbance to humans should be considered ultra conservative relative to structural integrity. No specific building component specification is required to mitigate vibration levels.

### 4.0 CONCLUSION

OZA Inspections Ltd. has conducted a detailed train vibration impact assessment for the proposed new bank building at 148 Clarence Street in the town of Port Colborne, Ontario. Based on measurements recorded throughout the study period, train vibration levels are within the criteria specified.

Respectfully submitted,

**OZA Inspections Ltd.**



**David Williams**  
Senior Technician

Reviewed by,



**David W. Seberras, P.Eng**



APPENDIX A



PRINCIPAL MAIN LINE REQUIREMENTS

- A. Safety setback of dwellings from the railway rights-of-way to be a minimum of 30 metres in conjunction with a safety berm. The safety berm shall be adjoining and parallel to the railway rights-of-way with returns at the ends, 2.5 metres above grade at the property line, with side slopes not steeper than 2,5 to 1.
- B. Noise attenuation barrier shall be adjoining and parallel to the railway rights-of-way, having returns at the ends, and a minimum total height of 5.5 metres above top-of-rail. Acoustic fence to be constructed without openings and of a durable material weighing not less than 20 kg. per square metre of surface area. The Railway may consider other measures recommended by an approved Noise Consultant satisfactory to the Railway.
- \* C. Ground-borne vibration transmission to be estimated through site testing and evaluation to determine if dwellings within 75 metres of the railway rights-of-way will be impacted by vibration conditions in excess of 0.14 mm/sec RMS between 4 Hz and 200 Hz. The monitoring system should be capable of measuring frequencies between 4 Hz and 200 Hz,  $\pm 3$  dB with an RMS averaging time constant of 1 second. If in excess, isolation measures will be required to ensure living areas do not exceed 0.14 mm/sec RMS on and above the first floor of the dwelling.
- D. The Owner shall install and maintain at his own expense a chain link fence of minimum 1.83 metre height along the mutual property line.
- E. The following clause should be inserted in all development agreements, offers to purchase, and agreements of Purchase and Sale or Lease of each dwelling unit within 300m of the railway right-of-way: "Warning: Canadian National Railway Company or its assigns or successors in interest has or have a rights-of-way within 300 metres from the land the subject hereof. There may be alterations to or expansions of the railway facilities on such rights-of-way in the future including the possibility that the railway or its assigns or successors as aforesaid may expand its operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwelling(s). CNR will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the aforesaid rights-of-way."
- F. Any proposed alterations to the existing drainage pattern affecting railway property must receive prior concurrence from the Railway and be substantiated by a drainage report to the satisfaction of the Railway.
- G. The Owner shall through restrictive covenants to be registered on title and all agreements of purchase and sale or lease provide notice to the public that the safety berm, fencing and vibration isolation measures implemented are not to be tampered with or altered and further that the Owner shall have sole responsibility for and shall maintain these measures to the satisfaction of CN North America.
- H. The Owner enter into an Agreement stipulating how CN North America's concerns will be resolved and will pay CN North America's reasonable costs in preparing and negotiating the agreement.

No. 9859 P. 7/8

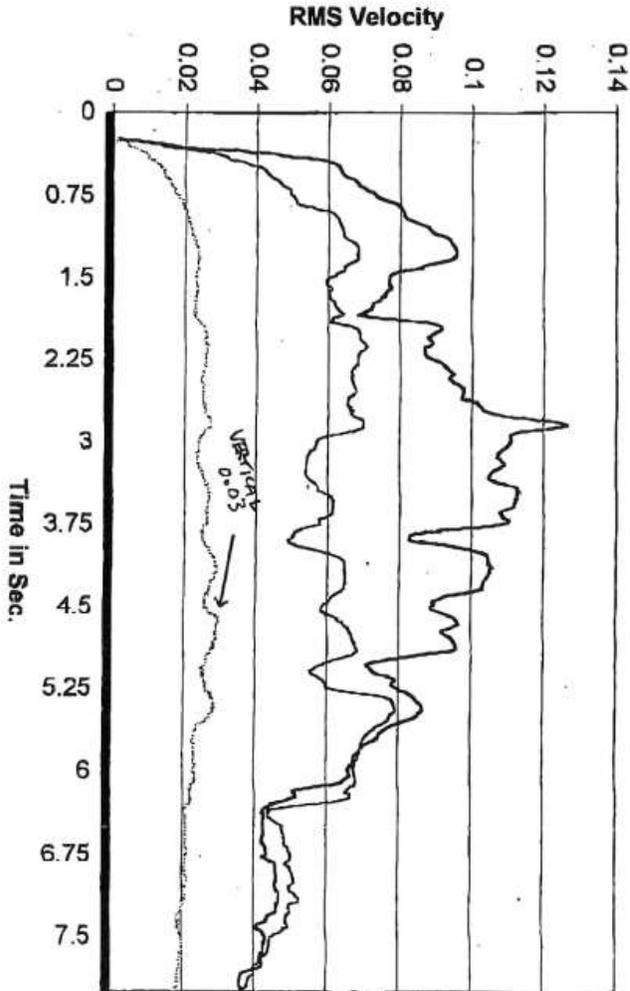
MACDONALD ZUBEREC ENSSLEN ARCH

Nov. 14. 2002 1:18PM

# APPENDIX B

## Data Summary

Unit SN.	Event Time	RMS Period	RMS Max	Units of Measure
6111	Nov 07/2002 1:51:33 PM	1.00 Seconds	0.1263	MM/PS



—	Long
- - -	Trans
...	Vert

ANNEX 8  
CN SPUR LINE REQUIREMENTS



Railway Properties  
1 Administration Rd  
Concord, ON L4K 1B9

Telephone: 905-760-5007  
Fax: 905-760-5010

## SPUR LINE REQUIREMENTS

- A. Safety setback of dwellings from the railway rights-of-way to be a minimum of 15 metres.
- B. The Owner shall install and maintain a chain link fence of minimum 1.83 metre height along the mutual property line.
- C. The following clause should be inserted in all development agreements, offers to purchase, and agreements of Purchase and Sale or Lease of each dwelling unit within 300m of the railway right-of-way: "Warning: Canadian National Railway Company or its assigns or successors in interest has or have a rights-of-way within 300 metres from the land the subject hereof. There may be alterations to or expansions of the railway facilities on such rights-of-way in the future including the possibility that the railway or its assigns or successors as aforesaid may expand its operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwelling(s). CNR will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the aforesaid rights-of-way."
- D. Any proposed alterations to the existing drainage pattern affecting railway property must receive prior concurrence from the Railway and be substantiated by a drainage report to the satisfaction of the Railway.
- E. The Owner may be required to grant CN an environmental easement for operational noise and vibration emissions, registered against the subject property in favour of CN.

---

March 2002

ANNEX 9

DESIGNATED SUBSTANCE SURVEY, PHASE I ENVIRONMENTAL SITE  
ASSESSMENT, AND PHASE II ENVIRONMENTAL SITE ASSESSMENT

**PROVIDED UNDER A SEPARATE COVER**

## ANNEX 10

### DRAFT ZONING BY-LAW AMENDMENT

THE CORPORATION OF THE CITY OF PORT COLBORNE

BY-LAW NUMBER \_\_\_\_\_

BEING A BY-LAW TO AMEND THE CITY OF PORT COLBORNE ZONING BY-LAW

WHEREAS the Council of the Corporation of the City of Port Colborne adopted By-law

AND WHEREAS the Council of the Corporation of the City of Port Colborne deems it expedient to amend said Zoning By-law.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF PORT COLBORNE ENACTS AS FOLLOWS:

1. That the City of Port Colborne Zoning By-law is hereby amended.
2. That Schedule 'B' to the City of Port Colborne Zoning By-law, as amended, is hereby further amended as shown on Schedule 'A' attached hereto and forming part of this By-law.
3. Notwithstanding the provisions of the Fourth Density Residential (R4) Zone, the following regulation shall apply:
  - a) Minimum Front Yard 4.5 metres
  - b) Minimum Interior Side Yard 1.5 metres
  - c) Minimum Corner Yard 1.5 metres
  - d) Minimum Rear Yard 1.5 metres
  - e) Maximum Lot Coverage 25 %
  - f) Maximum Height As existing
  - g) Max Gross Floor Area 1450 square metres
  - h) Minimum Landscape Area 25 %
  - i) Minimum Floor Area / Unit 35 square metres
  - j) Minimum Number of Parking Spaces 23 spaces
  - k) Landscape Buffer Between the Edge of any Parking Area Abutting a Public Road  
0 metres
  - a. Landscape Buffer Between the Edge of any Parking Area Abutting a Residential  
Zone 1.5 metres

- b. Minimum Setback of a Building for the Purpose of Human Habitation to a Functioning Railway Right-of-way 1.5 metres

READ A FIRST, SECOND AND THIRD TIME AND PASSED \ BY COUNCIL THIS  
\_\_\_\_\_ DAY OF \_\_\_\_\_, 2020.

\_\_\_\_\_ MAYOR  
\_\_\_\_\_ CLERK





**Planning and Development Department  
Planning Division**

**Report Number: 2020-187**

**Date: December 14, 2020**

**SUBJECT: Public Meeting Report for Proposed Zoning By-law Amendment at  
599 Main Street West, File D14-06-20**

**1) PURPOSE:**

The purpose of the report is to provide Council with information regarding a Zoning By-law Amendment application initiated by Steven Rivers of South Coast Consultants on behalf of the owner 2493207 Ontario Inc. for the property legally known as Part of Lot 31, Concession 2, in the former Township of Humberstone, now the City of Port Colborne, Regional Municipality of Niagara; municipally known as 599 Main Street West.

**2) HISTORY, BACKGROUND, COUNCIL POLICY, PRACTICES**

The application for Zoning By-law Amendment accompanied by a planning justification report proposes to change the zoning on a portion of the property (Phase 2 on the approved site plan, Part 3 on the concurrent consent application) from Highway Commercial (HC) to HC-57, a special provision of the Highway Commercial (HC) zone that recognizes the lot frontage and front yard requirements of the Zoning By-law to satisfy an anticipated condition of a consent application under application B07-20-PC.

**3) STAFF COMMENTS AND DISCUSSIONS**

The Notice of Public Meeting was circulated to required agencies, and property owners within 120 metres of the property on November 24, 2020. Public notice signs were posted on the property on or before November 24, 2020. Meeting details have been provided along with the Council Agenda on the City's website.

At the time of writing this report, staff has not received any comments from the public, City divisions or commenting agencies.

**Planning Division**

City of Port Colborne Official Plan

According to Schedule A: City Wide Land Use, the City of Port Colborne's Official Plan designates the subject property as **Highway Commercial**. Land uses in the Highway Commercial designation shall include, but not be limited to; hotels and motels; automobile sales and service establishments; places of amusement or recreation; restaurants with take-out and/or drive-through facilities; and accessory uses to the aforementioned uses, including a residence for a caretaker. For lands having frontage

on Main Street East between the Welland Canal and Elizabeth Street, a mix of uses including both commercial and residential uses are permitted in accordance with the appropriate policies.

The Official Plan designation is not proposed to be changed as a result of this application.

City of Port Colborne Zoning By-law 6575/30/18

The subject parcel is zoned **Highway Commercial (HC)**. The HC zone permits an animal care establishment; brew pub; car wash; convenience store; day care; drive-thru facility; dwelling, accessory; food vehicle; hotel; motor vehicle repair garage; motor vehicle sales/rental service centre; motor vehicle gas station; office; personal service business; place of assembly/banquet hall; place of worship; public use; recreation facility; restaurant, fast food, full service, take-out; retail building construction and supply; service commercial; and uses, structures and buildings accessory thereto.

The application for Zoning By-law Amendment proposes to change the zoning of the property from HC – Highway Commercial to HC-57, a special provision of the Highway Commercial zone which will recognize the lot frontage and front yard requirements of the Zoning By-law to allow the property to be severed under consent application B07-20-PC.

The requested special provisions have been outlined below and in the Draft Zoning By-law Amendment attached as Appendix A:

- a) Notwithstanding any provisions of this By-law to contrary, the lands indicated in Schedule A to this By-law (Phase 2 in the approved Site Plan Agreement) shall be deemed a lot.
- b) Notwithstanding any provisions of this By-law to the contrary, the frontage of the lands indicated on Schedule A to this By-law, shall be deemed to be the frontage of Phase 1 of the approved Site Plan Agreement.
- c) Notwithstanding any provisions of this By-law to the contrary, the front lot line for the lands indicated on Schedule A to this By-law shall be deemed to be the front lot line of Phase 1 of the approved Site Plan Agreement.
- d) Notwithstanding any provisions of this By-law to the contrary, the front yard for the lands indicated on Schedule A to this By-law shall be deemed to be the front yard of Phase 1 of the approved Site Plan Agreement.

Adjacent Zoning and Land Use

NORTH-WEST Residential dwellings Zoning: R1	NORTH Residential dwellings Zoning: R1	NORTH-EAST Residential dwellings Zoning: R1
WEST Vacant Residential/Commercial land Zoned: Residential Development and Highway Commercial	SUBJECT PROPERTY	EAST Commercial Property Zoned: Highway Commercial
SOUTH-WEST Main Street West	SOUTH Main Street West	SOUTH-EAST Main Street West

Discussion

A sketch of the subject property is shown in Appendix C of this report. Staff would like to note that no physical changes are proposed to the property. The property has obtained Site Plan Control approval for both Phase 1 and 2 of the development shown in the sketch. The Site Plan Agreement addresses servicing, lighting, site access and design, landscaping, screening and other physical attributes for the future development of Phase 2.

Planning staff is not providing a recommendation to Council at this time to allow agency, public and Council comments to be addressed prior to any decision being made on the application. The recommendation report will return to Council for a decision at a future meeting.

**4) OPTIONS AND FINANCIAL CONSIDERATIONS:**

**a) Do nothing**

Not applicable.

**b) Other Options**

Not applicable.

**5) COMPLIANCE WITH STRATEGIC PLAN INITIATIVES**

Not applicable.

**6) ATTACHMENTS**

- Appendix A - Draft Zoning By-law Amendment
- Appendix B - Planning Justification Report
- Appendix C - Site Sketch

**7) RECOMMENDATION**

That Planning and Development Department, Planning Division, Report No. 2020-187 be received for information.

**8) SIGNATURES**

Prepared on December 1, 2020 by:



David Schulz, BURPL  
Planner

Reviewed by:

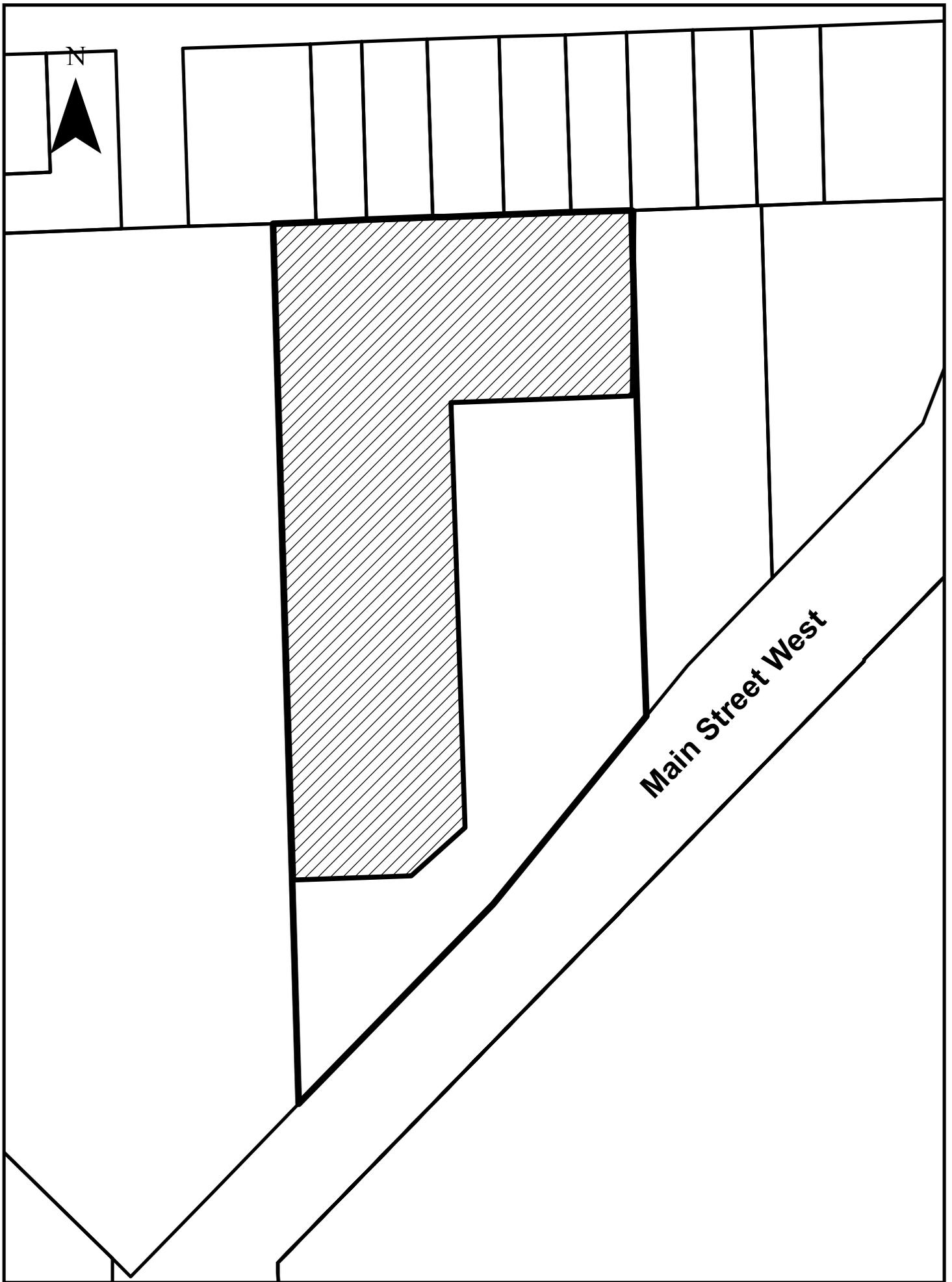


Dan Aquilina, MCIP, RPP, CPT  
Director of Planning and Development

Reviewed and Respectfully Submitted:



C. Scott Luey  
Chief Administrative Officer



THIS IS SCHEDULE "A" TO BY-LAW NO \_\_\_\_\_

PASSED THE \_\_\_\_\_, 2020

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CLERK



Lands to be rezoned from Highway Commercial (HC) to HC-57

NOVEMBER 2020

FILE NO D14-06-20

DRAWN BY; CITY OF PORT COLBORNE

PLANNING DIVISION

NOT TO SCALE

**PRELIMINARY PLANNING POLICY JUSTIFICATION REPORT  
For**

**Ritesh Malik**

**Re:**

**Roll No: 271103003813615  
599 Main Street West / Regional Road 3  
City of Port Colborne, Regional Municipality of Niagara**

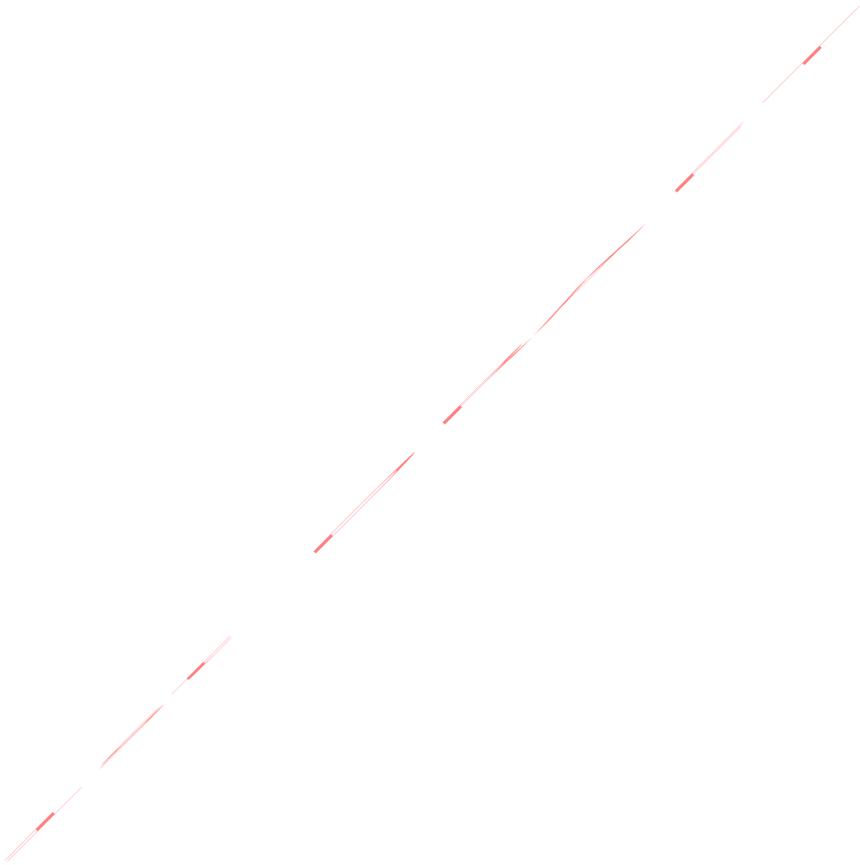


Prepared By:  
**South Coast Consulting**  
*Land Use Planning and Development Project Management*

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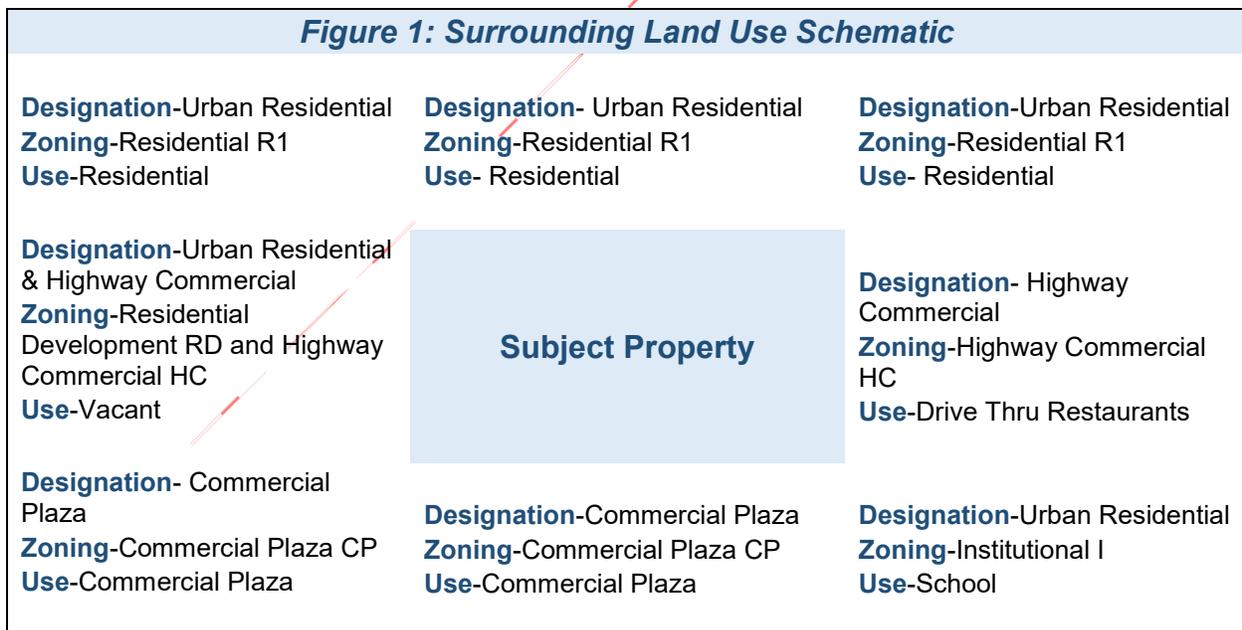


**PLANNING JUSTIFICATION REPORT**  
**Roll No: 271103003813615**  
**599 Main Street West / Regional Road 3**  
**City of Port Colborne, Regional Municipality of Niagara**

**PURPOSE, LOCATION, AND DESCRIPTION**

This purpose of the Preliminary Planning Policy Justification Report is to review proposed Consent for Severance as illustrated in *Annex 1, Draft Severance Sketch and Approved Site Plan* and Zoning By-law Amendment applications for Phase 2 of the Site Plan Control Approved development of the 2.24 hectares Subject Parcel with about 155 metres of frontage on Main Street West / Regional Road 3 in the City of Port Colborne as illustrated in *Annex 1, Draft Severance Sketch and Approved Site Plan*. The proposal is reviewed against the policies of the: Provincial Policy Statement (PPS); Growth Plan for the Greater Golden Horseshoe (Growth Plan); Region of Niagara Official Plan (ROP); City of Port Colborne Official Plan (PCOP); and the provisions of the City of Port Colborne Zoning By-Law.

The Subject Property is being developed and construction for Phase 1, as illustrated in *Annex 1, Draft Severance Sketch and Approved Site Plan*, and *Figure 2, Site Statistics* is substantially complete. Adjacent uses are commercial, single detached dwellings and an open field as illustrated on *Figure 1, Surrounding Land Use Schematic*.



**Figure 2: Parcel Statistics\***

(as per Quartek Drawing No. 17203-SS-1 by Lanthier and Gilmore)

<b>Severed Parcel (Part 3)</b>					<b>Retained Parcel (Part 1)</b>				
	<b>Parcel</b>	<b>Building 1</b>	<b>Pad 2</b>	<b>Pad 3</b>	<b>Parcel</b>	<b>Building A</b>	<b>Building B</b>	<b>Building C</b>	<b>Building D</b>
<b>Existing Use</b>	Vacant	Vacant	Vacant	Vacant	Commercial	Covered gas pumps	Commercial and restaurant	Car wash	Garbage enclosure
<b>Proposed Use</b>	Commercial	Commercial	Commercial	Commercial	Commercial	No change	No change	No change	Auto service
<b>Building Type</b>	n/a	One storey	One storey	One storey	n/a	Canopy	One storey	One storey	One storey
<b>Lot Frontage (m)</b>	155.24	n/a	n/a	n/a	155.24	n/a	n/a	n/a	n/a
<b>Lot Depth (m)</b>	195.09	n/a	n/a	n/a	261.97	n/a	n/a	n/a	n/a
<b>Lot / Floor Area sqm)</b>	21490	3048			8623.3	273.6	471	105	208.03
<b>Setback (m)</b>									
<b>Existing/Proposed (South) Front Lot Line</b>	n/a	98.0	20.4	55.0	n/a	<b>11.1</b>	<b>36.1</b>	<b>73.2</b>	85.9
<b>Existing/Proposed (North) Rear Lot Line</b>	n/a	5.0	149.4	124.7	n/a	<b>80.4</b>	<b>49.9</b>	<b>12.4</b>	32.2
<b>Existing/Proposed East Side Lot Line</b>	n/a	15.9	22.1	20.4	n/a	<b>8.4</b>	<b>6.0</b>	<b>6.0</b>	24.7
<b>Existing/Proposed West Side Lot Line</b>	n/a	10.8	12.9	11.0	n/a	<b>14.2</b>	<b>17.5</b>	<b>42.6</b>	27.8
<b>Existing/Proposed Height</b>	n/a	One storey	One storey	One storey	n/a	<b>One storey</b>	<b>One storey</b>	<b>One storey</b>	One storey

\* Part 2 Road Widening

## POLICY REVIEW SUMMARY

Good planning practice directs that the plan and its policies are not written in stone. Policies such as those of the PPS, Growth Plan, ROP, and PCOP reviewed here, are used to try to reach a goal. They are not to be used as a set of threshold measures where the inability to meet every policy results in a proposal's failure. All of the policies may not be and, based on good planning practice, don't have to be, satisfied as though they are zoning by-law regulations. If, on the balance, the proposal satisfies most of the policies and moves the community towards its stated goals, then the proposal should be given serious consideration for approval.

Land use planning in Ontario, Niagara, and Port Colborne is about development. Protecting and preserving resources and mitigating negative impacts is important but, land use planning is primarily about promoting and encouraging appropriate development and complete communities. There are aspects of control to protect valuable resources and sensitive uses such as significant cultural and natural heritage features from negative impacts of nearby uses but, the primary purpose of land use planning is guiding development.

The guidance of development is evident starting with the *Planning Act*. The Citizen's Guide to Land-use Planning (the Guide) states *the Act*, among other things promotes sustainable economic development in a healthy natural environment and provides for a land use planning system led by provincial policy. The Guide further states, *the Act* provides the basis for preparing official plans and planning policies that will guide future development.

The Guide states the PPS provides policy direction that will help build strong communities by protecting, among others, agricultural resources. Community planning is aimed at identifying common community goals and balancing competing interests of the various parties.

### Provincial Policy Statement

*Settlement areas* such as Port Colborne are to be the focus of growth and development, and their vitality and regeneration is to be promoted. Land use patterns within *settlement areas* are to be based on, among other things, densities and a mix of land uses which; efficiently use land and resources, and efficiently use, the *infrastructure* and *public service facilities* planned or available.

### Growth Plan

The Growth Plan requires population and employment growth to be accommodated by directing a significant portion of new growth to the *built-up areas* such as Port Colborne.

## Official Plans

The ROP designates the Subject Property *Designated Greenfield Area*, the PCOP designates it *Highway Commercial*.

Growth and development is focused within urban areas. Land use must be carefully managed to accommodate appropriate development to meet the full range of current and future needs, while achieving efficient development patterns and avoiding significant or sensitive resources and areas which may pose a risk to public health and safety. Similar to the PPS, the ROP recognizes the efficient use of land and the minimization of conflict between incompatible uses as a Strategic Objective and the building of compact, mixed use, transit supportive, *active transportation friendly* communities in the *Designated Greenfield Areas* such as Port Colborne. The objectives of the ROP Growth Management Policies include directing the majority of growth and development to existing *Urban Areas* and promoting the efficient use of existing municipal sewage and water services.

The PCOP's goals are to facilitate the efficient use of community and engineering services and to ensure development does not create an undue financial hardship on the municipality. A PCOP objective is to **increase the efficiency**.

Areas identified as Highway Commercial represent areas of existing and future commercial *development* near arterial roads and highways. The predominant uses for land designated Highway Commercial include, but not be limited to; hotels and motels; automobile sales and service establishments; places of amusement or recreation; restaurants with take-out and / or drive-through facilities. Commercial uses more appropriate in the Downtown Commercial areas such as retail stores, banks, medical clinics, and professional offices are not be permitted. New Highway Commercial uses are encouraged to be grouped in a planned development strip development is discouraged. **A minimum number of driveways to the site will be allowed and driveway entrances will be configured for maximum safety.**

Consent for land conveyances are only be granted where they will not compromise the orderly development of land or the general public interest. In commenting to the Committee of Adjustment, the City will ensure the size, configuration and location of the proposed consent is appropriate for the use proposed considering the municipal services available; and the lot size and proposed use conform to the provisions of the Zoning By-law are considered.

## Zoning By-Law

The Subject Property is zoned "**Highway Commercial - HC**". The HC Zone permits a number of commercial uses.

## DETAILED REVIEW

Good planning practice directs:

- That **the plan and its policies are not written in stone.** Policies such as those of the PPS, ROP, and PCOP reviewed here, are to be used to try to reach a goal. They are not a set of threshold measures where the inability to meet every policy results in a proposal's failure. **All of the policies of a plan may not be and, based on good planning practice, don't have to be satisfied as though they are zoning by-law regulations.** If, on the balance, the proposal satisfies most of the policies and moves the community towards its stated goals, then the proposal should be given serious consideration for approval.
- **Consideration of all of the relevant policies.** As an example, only reviewing and evaluating the implications of the PPS's Agriculture policies does not provide a full planning analysis of a proposal. The PPS policies on: Settlement Areas, Rural Areas, Employment, and Long Term Economic Prosperity must also be considered. While the Agriculture policies may be most relevant, the others cannot be ignored. All of the policies together must be considered in any recommendation.

**Growth and development is focused within urban areas.** Land use must be carefully managed to accommodate appropriate development to meet the full range of current and future needs, while achieving efficient development patterns and avoiding significant or sensitive resources and areas which may pose a risk to public health and safety (ROP Strategic Objective 2.1, ROP Policy 1.1.1a, and ROP Objective 4.A.1.9).

**Efficient development patterns optimize the use of land, public investment in, and public service facilities.** Efficient development patterns also minimize the undesirable effects of development, including impacts on air, water, and other resources. **Recognizing the diversified opportunities and needs in Niagara and balancing both urban development and the conservation of natural resources by providing a choice of development locations, the efficient use of lands, and the minimization of conflict is the Strategic Objective of the ROP.**

Similar to the PPS, **the ROP recognizes the efficient use of land** and the minimization of conflict between incompatible uses as a Strategic Objective. A PCOP Objective is to **increase the efficiency of the use of existing municipal infrastructure.** An Objective of the ROP is building **compact, communities in the *Built-up Area*** such as Port Colborne.

The PCOP suggests commercial redevelopment be assessed in relation to community character and be appropriately located to serve as part of the neighbourhood's existing or proposed fabric. Assessment in relation to community character could include:

- The scale of the activity;

- The orientation of the development to adjacent land uses; and,
- The capacity of the development to operate compatibly with housing.

Commercial development projects should be designed to be transit and active transportation friendly.

Parking requirements for commercial uses should be carefully considered and evaluated to ensure that an adequate, but not excessive, amount of parking space is provided.

The PCOP states the predominant uses for Commercial Plaza land includes, but not be limited to; retail stores; offices; restaurants; service businesses; movie theatres; and places of amusement or recreation. Commercial uses more appropriate in the areas designated Downtown Commercial such as retail stores with less than 500 square metres of floor area, banks, medical clinics, and small professional offices are not be permitted.

Adequate off-street parking are required in well-organized, landscaped and well-illuminated parking areas or structures and a minimum number of driveways to the site will be allowed and configured for maximum safety.

Buffering must be provided between the commercial establishment and other land uses, including grassed areas and appropriate planting of trees and shrubs and / or the provision of other suitable screening materials.

Parking and landscaping for commercial establishments should be designed with:

- Screening between parking areas and residential properties.
- Buffers at the perimeter of the property line adjacent to parking areas and laneways to accommodate landscaping and tree planting.
- Landscaped islands at the end of all parking aisles.
- Parking aisles with a length of more than 15 stalls broken up with landscaped islands planted with hardy, strongly branched and salt tolerant trees.
- Large parking areas up with linear pedestrian only sidewalks planted with a consistent row of trees.
- The placement of sidewalks oriented to link building entrances.
- Parking for bicycles consistent with professionally recognized design guidelines.

*Figure 3, Policy and Urban Design Review Matrix* provides a review of relevant policy and urban design guidelines and *Figure 4, Zoning Provision Compliance and Justification Matrix* provides a summary of compliance with the Zoning provisions and justification for changes.

**Figure 3: Policy and Urban Design Review Matrix**

<b>Criterion</b>	<b>Yes</b>	<b>No</b>
Planned development	✓	
Adequate off-street parking facilities	✓ As per approved Site Plan	
Minimum number of driveways	✓ One (1) as per approved Site Plan	
Drive-through aisles be defined	✓ As per approved Site Plan	
Gas stations incorporating a retail store use will locate a retail store entrance and windows to the street	✓ As per approved Site Plan	
Building entrances and display windows should be oriented to street frontages	✓ As per approved Site Plan	
A minimum of 40% of the main street frontage of a given property should be defined by building edge	✓ As per approved Site Plan	
No front yard parking should be permitted for those portions of the building frontage constituting the minimum 40%.	✓ As per approved Site Plan	
Commercial garbage receptacles will be adequately screened or in an enclosed storage area contiguous with the building	✓ As per approved Site Plan	
Efficient development pattern	✓ Existing vacant lot development	
Avoids significant resources	✓ No nearby resource land	
Avoids sensitive areas	✓ No nearby sensitive areas	
Buffering to mitigate conflict	✓ Minimum rear yard and landscaping provided	
Transit supportive	✓ Near transit route	

Appropriate scale	✓ Maximized building development on the lot	
Appropriate orientation to adjacent land uses	✓ Oriented to Main Street West / Regional Road 3 arterial road	
Compatible with housing	✓ No commercial uses fronting on residential uses	
Reuse of brownfield or greyfield		✓
Use provided for in the PCOP	✓	
Less than 500 sqm	✓	
Access driveways minimized	✓ Single shared access to all uses	
Landscaping	✓	
<ul style="list-style-type: none"> <li>Screening shall be provided between parking areas and adjacent residential properties</li> </ul>	✓ Landscape screening provided abutting residential use and zone	✓ None required abutting commercial zone
<ul style="list-style-type: none"> <li>Buffers shall be located at the perimeter of the property line adjacent to parking areas and laneways to accommodate landscaping and tree planting</li> </ul>	✓ Minimum rear yard and landscaping provided abutting residential uses and zone	
<ul style="list-style-type: none"> <li>Landscaped islands shall be placed at the end of all parking aisles</li> </ul>		✓ Not required by Site Plan Approval
<ul style="list-style-type: none"> <li>Parking aisles with a length of more than 15 stalls shall be broken up with landscaped islands</li> </ul>		✓ Not required by Site Plan Approval
<ul style="list-style-type: none"> <li>All parking islands shall be planted with hardy, strongly branched and salt tolerant trees</li> </ul>		✓ Not required by Site Plan Approval
Bicycle Parking		✓ Not on bike route. High traffic volume and vehicle turning movements makes bicycle / pedestrian access unsafe

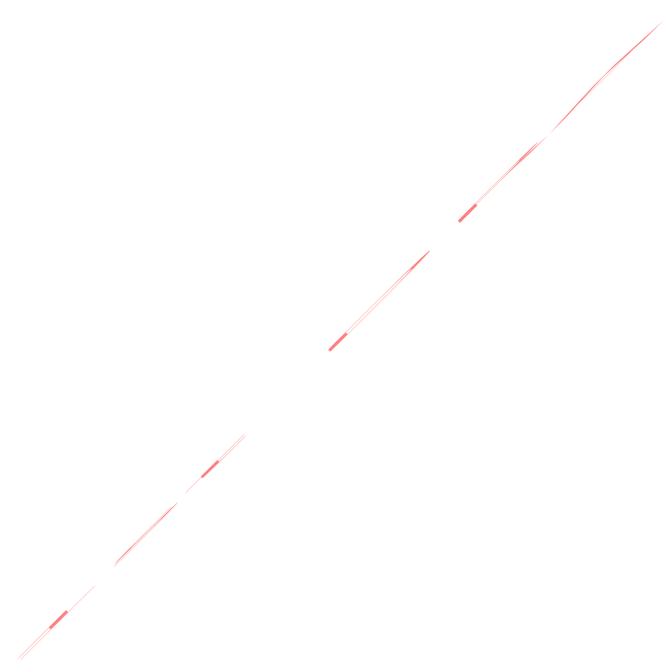
Stormwater Management

The storm sewer system for the entire commercial development is intertwined between Phases 1 and 2, and a stormwater management (SWM) facility for peak flow control to service the entire site is located in Phase 1. The lot severance will impact the overall SWM plan for the entire area because the existing SWM plan is being maintained, ownership and maintenance of the required infrastructure servicing the entire site is ensured, with easements being granted for the stormwater management system as necessary. If the lot severance will not alter the overall SWM plan for the entire site. No changes to approved Site Plan proposed

**Figure 4: Zoning Provision Compliance and Justification Matrix**

Regulation	Zone Requirements	Proposed Requirements		Comment
		Phase 1 (Part 1)	Phase 2 (Part 3)	
Minimum Lot Frontage	27m	155.24m	155.24m	No change
Minimum Lot Area	0.14ha	8623.3sqm	21490sqm	No change
Maximum Lot Coverage	33%	85%	85%	No change
Minimum Front Yard	9m	11.1m	20.4m	No change
Minimum Interior Side Yard	5m	6m	10.8m	No change
Minimum Rear Yard	5m	12.4m	5.0m	No change
<b>Requirement for a Lot</b>	Notwithstanding anything contained in this By-law, a parcel which is situated in any zone, and which lacks either the required lot frontage or lot area, or both the lot frontage and lot area for the lot in the respective zone, is and shall be deemed to be a lot provided that: All other requirements of the applicable zone are complied with, and where said parcel qualified under this section as a deemed lot, said deemed lot may be used for the purposes as permitted in the zone in which it is located, notwithstanding that it does not comply with the area and frontage requirements of that zone; and	No change	Notwithstanding any provisions of this By-law to the contrary Phase 2 shall be deemed to be a lot	The purpose of requiring minimum lot area and frontage is to ensure the parcel of land is adequate for development. Since the proposed Zoning By-law Amendment requires lot area for Phase 2 to be that in the approved site plan agreement and the frontage to be that of Phase 1, Phase 2 will be able to accommodate the proposed development. Since a recommended Consent for Severance condition requires a joint blanket easement for among other things access, parking and services there is no need for Phase 2 to have frontage on a public road
<b>Lot Frontage on Roads</b>	No person shall construct a building or structure or otherwise use any lot unless the lot fronts on an improved road or lane	No change	Notwithstanding any provisions of this By-law to the contrary the frontage for Phase 2 of the development of this property shall be deemed to be the frontage of Phase 1	The purpose of requiring frontage on a public road is to ensure access and services to the lot. Since a recommended Consent for Severance condition requires a joint blanket easement for among other things access, parking and services there is no need for Phase 2 to have frontage on a public road

<p><b>Front Lot Line</b></p>	<p>The lot line, not including a corner lot line, which abuts a street for the shortest distance, whether or not that line jogs or curves, and extending between the side lot lines, more or less for the full width of the lot and where more than one such lot line exists, means a lot line which abuts the same street as the front lot line of an abutting lot</p>	<p>No change</p>	<p>Notwithstanding any provisions of this By-law to the contrary the front lot line of for Phase 2 of the development of this property shall be deemed to be the front lot line of Phase 1</p>	<p>To ensure the lot frontage requirement is satisfied</p>
<p><b>Front Yard</b></p>	<p>That yard that extends across the full width of the lot between a front lot line and the nearest point of the principal building, not including a projection permitted under Section 2.20</p>	<p>No Change</p>	<p>Notwithstanding any provisions of this By-law to the contrary the front yard for Phase 2 of the development of this property shall be deemed to be the front yard of Phase 1</p>	<p>To ensure the front yard requirement is satisfied</p>



## SUMMARY

The City of Port Colborne Council has the authority to approve the Zoning By-law Amendment and the Committee of Adjustment has the authority to approve a consent for severance if they implement the policies of the Official Plan.

*Settlement areas* such as Port Colborne are to be the focus of growth and development, and their vitality and regeneration is to be promoted.

The ROP intends to build more sustainable, *complete communities* by, among other things, making efficient use of land, resources and *infrastructure* and supporting *intensification*, to maximize the use of existing and planned *infrastructure* to support growth in a compact and efficient manner.

This proposal an example of development supported from Provincial, Regional and local planning perspectives. Such developments provide additional commercial opportunities to serve the needs of residents and the travelling public. The Planning Justification Report analyzed Provincial, Regional, and local planning policies.

Policy 3.8 identifies area designated Highway Commercial as areas of existing and future commercial *development* within the Urban Area which cater primarily to the travelling public, in proximity to arterial roads and highways. The predominant uses for land designated Highway Commercial include, among others, restaurants with take-out and / or drive-through facilities; and accessory uses requested by the Zoning By-law Amendment Application.

Policy 3.8.1b) directs commercial uses that would be more appropriate in the Downtown Commercial areas such as retail stores, banks, medical clinics and professional offices to the Downtown Commercial area however the additional uses requested for this location are found in other locations outside the Downtown Commercial areas. The proposed additional use do not negatively impact surrounding land uses.

As encouraged by Policy 3.8.1c) the new Highway Commercial uses requested are grouped in a planned development.

The adequate off-street parking facilities, required by Policy 3.8.1d) are provided in well-organized, landscaped and well-illuminated parking areas.

Policy 3.8.1e)'s minimum number of driveway entrances configured for maximum safety is satisfied.

As required by Policy 3.8.1.2a) the design guidelines for Commercial Plaza are satisfied and as required by Policy 3.8.1.2b) drive-through aisles are defined. Policy 3.8.1.2g)'s requirement that as stations incorporating a retail store use locate a retail store entrance and windows to the street is satisfied.

Buffering is provided between the commercial establishment and other land uses, including grassed areas and appropriate planting of trees and shrubs and the provision of other suitable screening materials in the form of fencing as required by Policy 3.7.2.1a).

Building entrances and display windows are oriented to street frontages as required by Policy 3.7.2.1b).and a canopies encouraged as a means of weather protection for pedestrians by Policy 3.7.2.1g is provided.

Commercial garbage receptacles are adequately screened or in an enclosed storage area contiguous with the building as required by Policy 3.7.2.1i), the parking and landscaping is designed in accordance with Policy 3.7.2.2a), and the service and loading areas are oriented to the rear of the building as required by Policy 3.7.2.2b).

As provide for in Policy 11.7.2a) this consent may be granted because it does not compromise the orderly development of land or the general public interest, and as required by Policy 11.7.2b) it does not propose the creation of more than two new lots.

As provide for in Policy 11.7.2c) the new lot created will be within the Urban Residential designation subject to the policies of Section 3.2.4.

As required by Policy 11.7.2c) the policies for infill and intensification of Section 2.4.3 are satisfied, the size, configuration, and location of the proposed consent is appropriate for the use proposed considering the municipal services available, and the lot size and proposed use conform to the provisions of the Zoning By-law, as recommended.

To permit the phased development of the Subject Property the requested Zoning By-law amendment should define Phase 2 as a lot and the frontage for Phase 2 of the should be deemed to be the frontage of Phase 1. The purpose of requiring minimum lot area and frontage is to ensure a parcel of land is adequate for development. Since the proposed Zoning By-law Amendment requires lot area for Phase 2 to be that in the approved site plan agreement and the frontage to be that of Phase 1, Phase 2 will be able to accommodate the proposed development. Since a recommended Consent for Severance condition requires a joint blanket easement for among other things access, parking and services there is no need for Phase 2 to have frontage on a public road.

The purpose of requiring frontage on a public road is to ensure access and services to the lot. Since a recommended Consent for Severance condition requires a joint blanket easement for among other things access, parking, and services there is no need for Phase 2 to have frontage on a public road.

To permit the phased development of the Subject Property the requested Zoning By-law amendment should deem the frontage for Phase 2 to be the frontage of Phase 1 to ensure the lot frontage and front yard requirements are satisfied.

The recommended Zoning changes do not create a negative impact.

## OPINION

The proposed development generally conforms with the provisions of the *Planning Act*; PPS; Growth Plan; and the objectives of the ROP; PCOP; the Bridgeburg Secondary Plan and the recommended Dominion – Gordon- Parker – Burleigh Tertiary Plan. The Subject Property is in the Port Colborne Urban Area which enables its residential development. To enable residential development more dense than single detached dwellings official plan and zoning by-law amendments are required to permit either a plan of subdivision or condominium.

## RECOMMENDATION

The PCZB zones the Subject Property “**Highway Commercial - HC**”. The HC Zone permits a number of commercial uses. A Zoning By-law Amendment is required. See *Figure 3: Zoning Provision Compliance and Justification Matrix*, for recommended amendments required to the zoning provisions. They include:

- Deeming Phase 2 to be a lot;
- Deeming the frontage for Phase 2 to be the frontage of Phase 1;
- Deeming the front lot line of for Phase 2 to be the front lot line of Phase 1; and
- Deeming the front yard for Phase 2 to be the front yard of.

## CLOSING

This report is intended solely for Ritesh Malik (the “Client”) in providing The City of Port Colborne this requested Planning Justification Report to obtain necessary *Planning Act* approvals for the proposed commercial development at 599 Main Street West. This report is prohibited to be used by any other party without written consent by an authorized representative of 2198795 Ontario Limited Operating as Steven P Rivers Land Use, Planning & Development (Steven Rivers. This report is considered Steven Rivers’ professional work product and shall remain the sole property of Steven Rivers. Any unauthorized reuse, redistribution of, or reliance on, the report shall be at the Client’s and recipient’s sole risk, without liability to Steven Rivers. The Client shall defend, indemnify

and hold Steven Rivers harmless from any liability arising from or related to the Client's unauthorized distribution of the report. No portion of this report may be used as a separate entity; it is to be read in its entirety and shall include all supporting drawings and appendices.

The conclusions and recommendations made in this report are in accordance with my present understanding of the proposed project, the current site use, surface and subsurface conditions, and are based on available information, a site reconnaissance on the date(s) set out in the report, records review and interviews with appropriate people and the work scope provided by the Client and described in the report and should not be construed as a legal opinion. Steven Rivers relied in good faith on the data and information provided by the Client and from other materials as noted in this report. Steven Rivers has assumed that the information provided was factual and accurate. Steven Rivers accepts no responsibility for any deficiency, misstatement, or inaccuracy contained in this report as a result of omissions, misinterpretations or fraudulent acts of persons interviewed or contacted. Reliance on this report is only extended to the Client. No other representations or warranties of any kind, either expressed or implied, are made. Any use which a third party makes of this report, or any reliance on or decisions made based on it, are the sole responsibility of such third parties. If conditions at the property change or if any additional information becomes available at a future date, modifications to the findings, conclusions and recommendations in this report may be necessary.

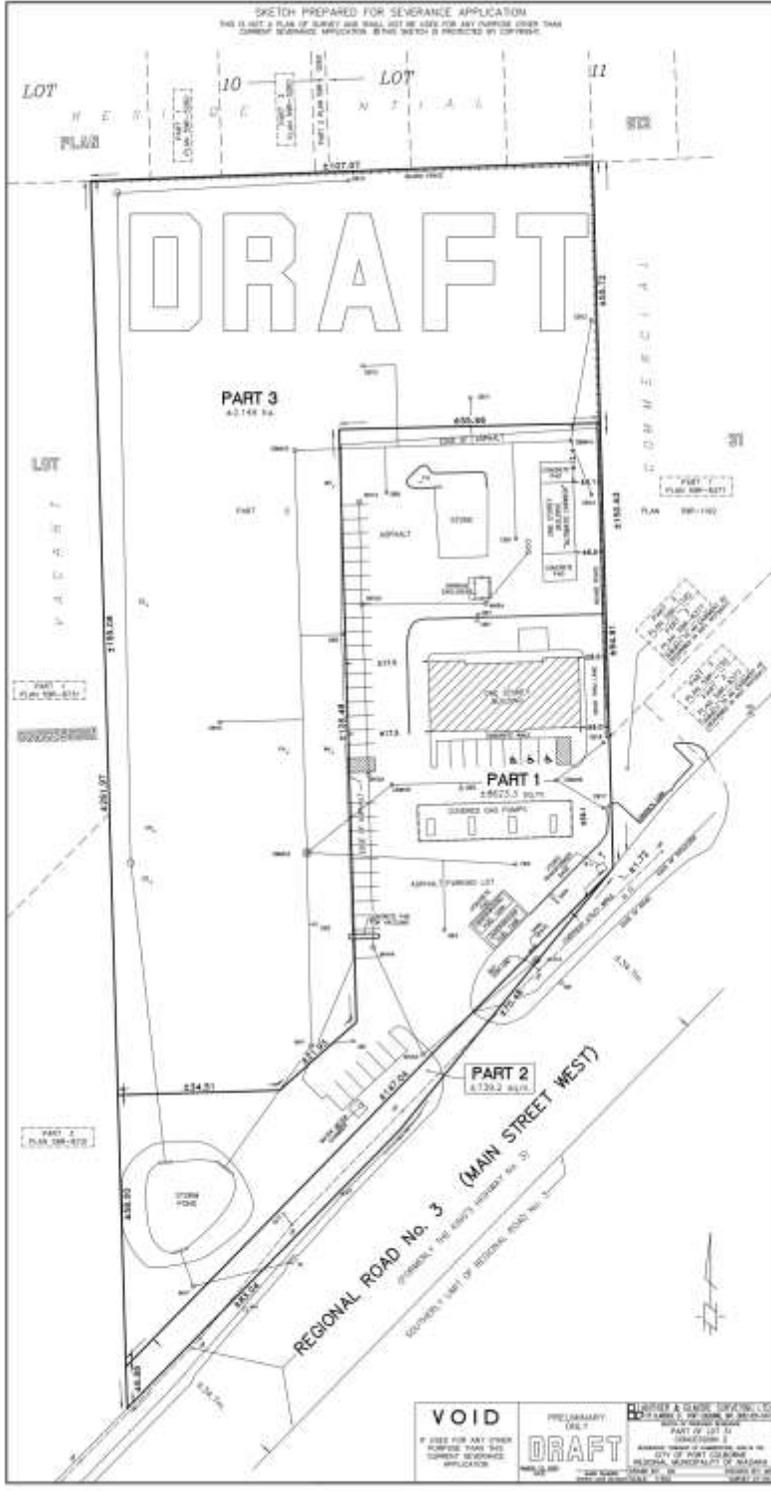
I trust this information will meet your current requirements. Please do not hesitate to contact me should you have any questions or require additional information.

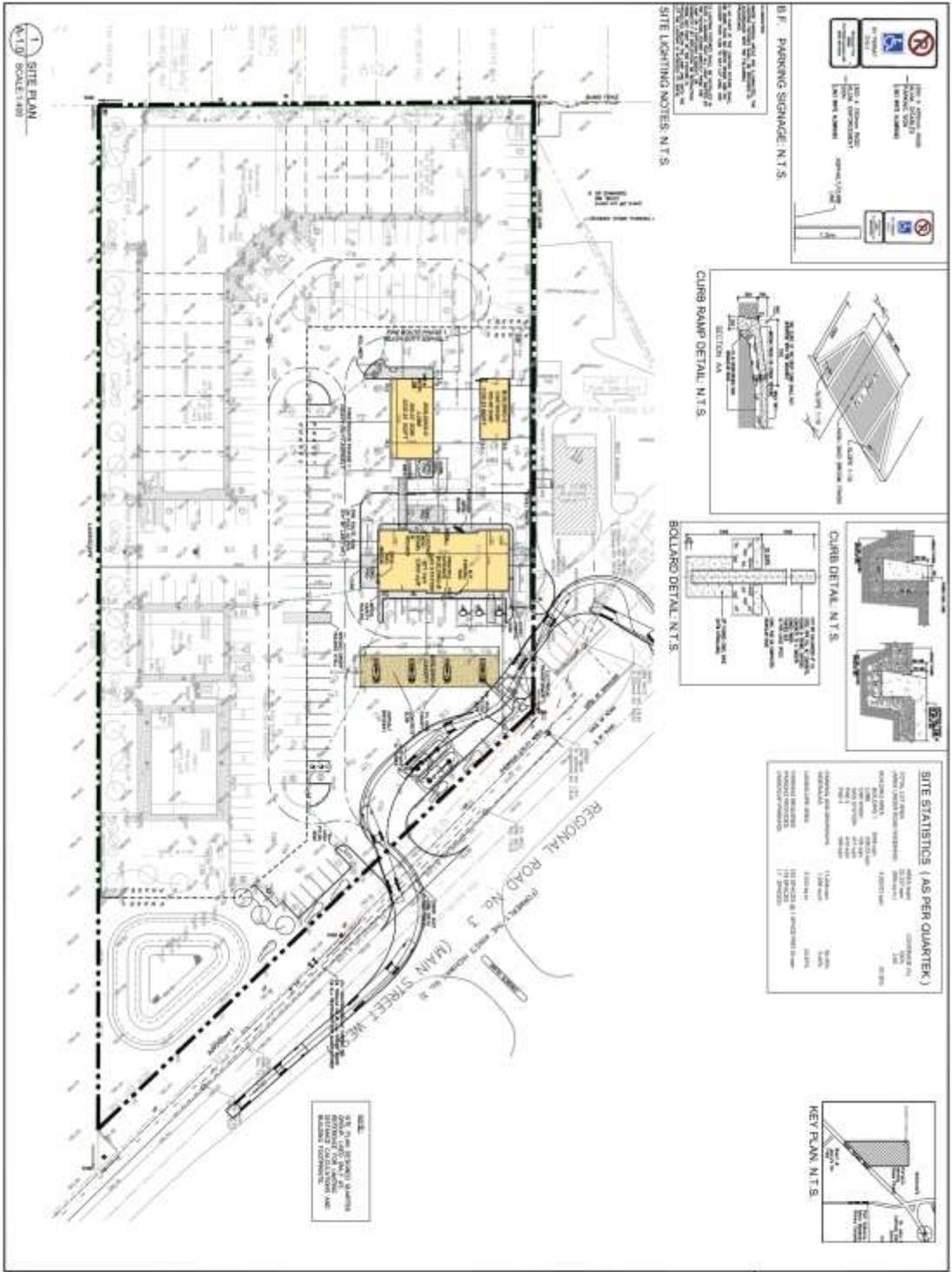
*Steven Rivers*

South Coast Consulting  
Steven Rivers, MCIP, RPP  
189 Clare Avenue  
Port Colborne, Ontario L3K 5Y1  
Phone: 905-733-8843  
Email: [steven.p.rivers@gmail.com](mailto:steven.p.rivers@gmail.com)

2020-10-09

ANNEX 1  
DRAFT SEVERANCE SKETCH AND APPROVED SITE PLAN





**n Architecture Inc**

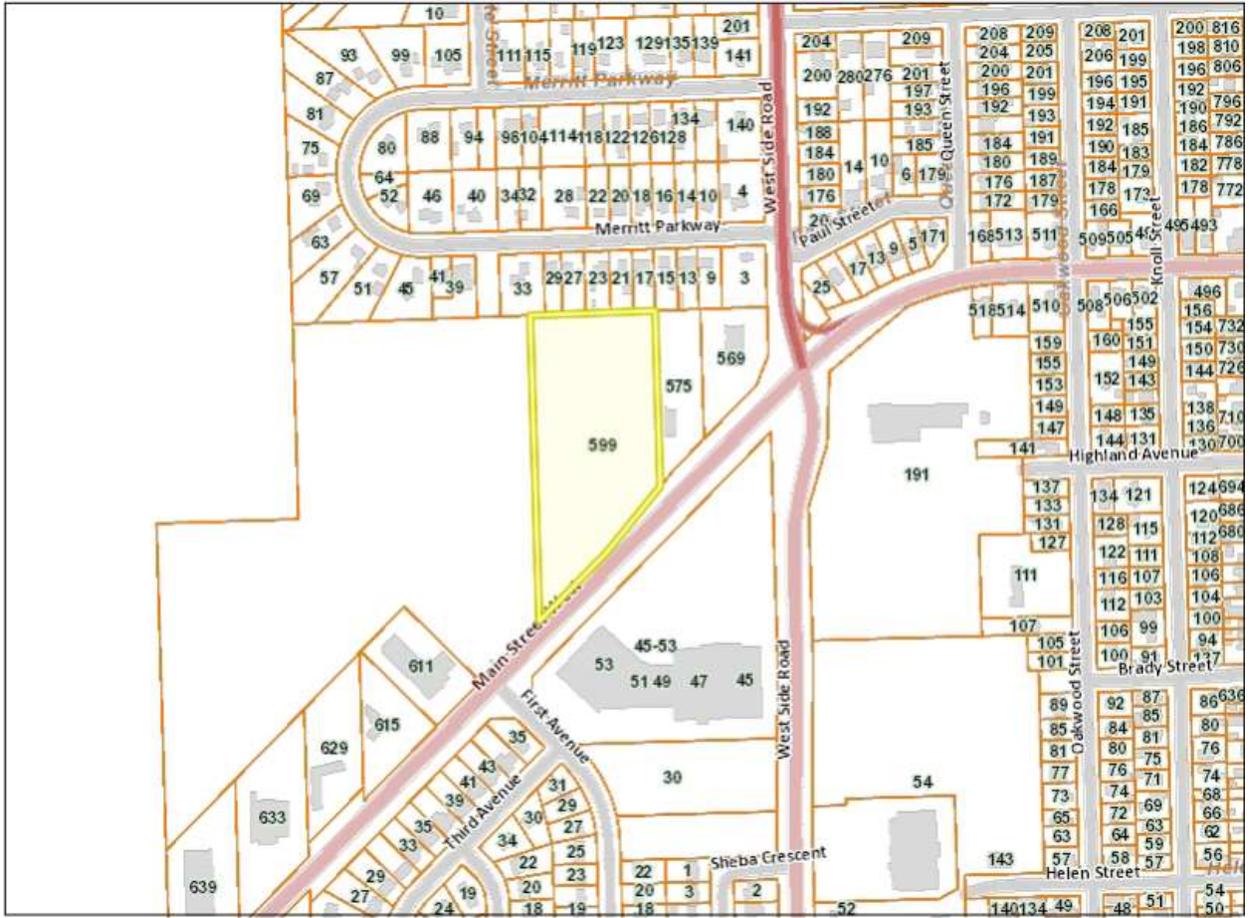
1870 LAMB ROAD, SUITE 200  
PORT COLBORNE, ONTARIO L2A 4S8  
TEL: 905-947-1111  
WWW.NARCHITECTURE.COM

**PROPOSED COMMERCIAL PLAZA  
MAIN STREET WEST,  
PORT COLBORNE, ON**

**OVERALL SITE PLAN**

DATE: 18-21 A-1.0

## ANNEX 2 SUBJECT PROPERTY



0.3                      0                      0.13                      0.3                      Kilometers

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## ANNEX 3

### EXCERPTS FROM RELEVANT DOCUMENTS

#### THE PLANNING ACT

One of the purposes of the *Act* is to promote sustainable economic development in a healthy natural environment (sect. 1.1(a)). Provincial interest include the: protection of natural areas, features and functions (sect 2(a)); orderly development of safe and healthy communities (sect. 2(h)); and; location of growth and development (sect. 2(p)), among others.

#### Official Plan

Section 16 of the *Planning Act* states an official plan shall contain, goals, objectives and policies established primarily to manage and direct physical change and the effects on the social, economic and natural environment of the municipality or part of it. It may also contain a description of the measures and procedures to attain the plan's objectives and a description of the measures and procedures for informing and obtaining the views of the public on a proposed amendment to either an official plan or zoning by-law.

Section 21 of the *Act* states City Council may initiate an amendment to Official Plan. Section 24 states that where an official plan is in effect, no by-law shall be passed that does not conform the official plan. Section 2 of the *Planning Act* states Council shall have regard to matters of provincial interest such as the:

- orderly development of safe and healthy communities;
- adequate provision of employment opportunities; and
- Appropriate location of growth and development.

Sections 3(5) (a) and (b) state decisions of Council shall be consistent with the policy statements issued by the Minister and with the provincial plans that are in effect.

#### Zoning

Section 34 of the *Planning Act* states a zoning by-law may be passed by Council for a number of purposes including prohibiting the use of land, except for such purposes set out in the by-law and except if the land was lawfully used for such purpose on the day of the passing of the by-law, so long as it continues to be used for that purpose. That section goes on to state that any by-law passed under this section or a predecessor of this section may be amended to permit the extension or enlargement of any land, building or structure used for any purpose prohibited by the by-law if such land, building or structure continues to be used in the same manner and for the same purpose as it was used on the day the by-law was passed. If a person applies for an amendment to a by-law passed under this section or a predecessor of this section he or she shall provide the prescribed information and material to Council.

## Consent for Severance

**A land severance is the authorized separation of a piece of land to form a new lot or a new parcel of land. This is commonly known as a consent and is required to create and sell a portion of a property. The Committee of Adjustment of the Town has the authority under the *Planning Act* (Sections 50 and 54) to consent to convey land if it implements the policies of the OP.**

The *Planning Act* specifies factors which must be taken into account. Under Section 50.1(24) **consideration must be given to**, among other matters, to the **health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality** and to:

- (a) the effect of development of the proposed severance on **matters of provincial interest** as referred to in section 2;
- (b) whether the proposed severance is **premature or in the public interest**;
- (c) whether the severance **conforms to the official plan** and adjacent plans of subdivision or severances, if any;
- (d) the **suitability of the land** for the purposes for which it is to be severed;
- (e) the number, width, location and proposed grades and elevations of **highways**, and the adequacy of them, and the highways linking the highways in the proposed severance with the established highway system in the vicinity and the adequacy of them;
- (f) the **dimensions and shapes** of the proposed lots;
- (g) the **restrictions** or proposed restrictions, if any, on the land proposed to be severed or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- (h) conservation of natural resources and flood control;
- (i) the adequacy of **utilities and municipal services**;
- (j) the adequacy of school sites;
- (k) the area of land, if any, within the proposed severance that, exclusive of highways, is to be **conveyed or dedicated for public purposes**;
- (l) the extent to which the severance's design optimizes the available supply, means of supplying, efficient use and **conservation of energy**; and
- (m) the interrelationship between the **design** of the proposed severance **and site plan control matters** relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act . . . .

Section 50.1(25) give the Committee of Adjustment authority to impose such conditions to the approval of a consent that in the opinion of the Committee are reasonable, including a requirement:

- (a) that **land be dedicated or other requirements met for park** or other public recreational purposes under section 51.1;
- (b) that such **highways, including pedestrian pathways, bicycle pathways and public transit rights of way, be dedicated** as the approval authority considers necessary;

- (c) that such land be dedicated for commuter parking lots, transit stations and related infrastructure for the use of the general public using highways, as the approval authority considers necessary;
- (d) when the proposed subdivision abuts on an existing highway, that sufficient land, other than land occupied by buildings or structures, be **dedicated to provide for the widening of the highway** to such width as the approval authority considers necessary; and
- (e) That the owner of the land proposed to be severed enter into one or more **agreements** with a municipality.

Section 50.1(26) agreements to be imposed as a condition to the approval of a consent and the agreements may be registered against the land to which it applies and that the municipality or the committee may enforce the provisions of the agreement against the owner and, subject to the Registry Act and the Land Titles Act, any and all subsequent owners of the land.

#### THE PROVINCIAL POLICY STATEMENT

The Provincial Policy Statement applies to this application. It includes the following definitions:

*Development*: means the creation of a new lot, a change in land use, or the construction of buildings and structures requiring approval under the Planning Act, but does not include: a) activities that create or maintain infrastructure authorized under an environmental assessment process; b) works subject to the Drainage Act; or c) for the purposes of policy 2.1.4(a), underground or surface mining of minerals or advanced exploration on mining lands in significant areas of mineral potential in Ecoregion 5E, where advanced exploration has the same meaning as under the Mining Act. Instead, those matters shall be subject to policy 2.1.5(a).

*Infrastructure*: means physical structures (facilities and corridors) that form the foundation for development. Infrastructure includes: sewage and water systems, septage treatment systems, stormwater management systems, waste management systems, electricity generation facilities, electricity transmission and distribution systems, communications/telecommunications, transit and transportation corridors and facilities, oil and gas pipelines and associated facilities.

*Public service facilities*: means land, buildings and structures for the provision of programs and services provided or subsidized by a government

*Settlement areas*: means urban areas and rural settlement areas within municipalities (such as cities, towns, villages and hamlets) that are: a) built up areas where development is concentrated and which have a mix of land uses; and b) lands which have been designated in an official plan for development over the long-term planning horizon provided for in policy 1.1.2.

## Preamble

The Preamble to the PPS says it “. . . provides for appropriate development while protecting resources of provincial interest, public health and safety, and the quality of the natural and built environment.”

A basic principle of policy led land use planning iterated in the PPS is that **“When more than one policy is relevant, a decision-maker should consider all of the relevant policies to understand how they work together. The language of each policy, including the Implementation and Interpretation policies, will assist decision-makers in understanding how the policies are to be implemented.”**

**Another important aspect of policy led land use planning is the terms used in the policies.** As succinctly outlined in the PPS, “Some policies set out **positive directives**, such as “settlement areas shall be the focus of growth and development.” Other policies set out **limitations and prohibitions**, such as “*development* and site alteration shall not be permitted.” Other policies use **enabling or supportive language**, such as “*should*,” “*promote*” and “*encourage*.”

The PPS says “The policies . . . represent minimum standards.” and “. . . planning authorities and decision-makers may go beyond these minimum standards to address matters of importance . . . unless doing so would conflict with any policy of the Provincial Policy Statement.”

## Vision

**The Provincial Policy Statement focuses growth and development within urban and rural settlement areas.** It recognizes that the wise management of land use change may involve directing, promoting, or sustaining development. Land use must be carefully managed to accommodate appropriate development to meet the full range of current and future needs, while achieving efficient development patterns and avoiding significant or sensitive resources and areas which may pose a risk to public health and safety.

**Efficient development patterns optimize the use of land and public investment in infrastructure and public service facilities and minimizes the undesirable effects of development, including impacts on air, water and other resources.**

## Policies

The PPS policies for **Building Strong Healthy Communities** say Ontario's long-term prosperity, environmental health and social well-being depend on wisely managing change and **promoting efficient land use and development patterns**. Efficient land use and development patterns support sustainability by **promoting strong, liveable, healthy and resilient communities, protecting the environment and public health and safety, and facilitating economic growth**. **Healthy, liveable and safe communities are sustained by promoting efficient development and land use patterns which sustain the**

**financial well-being of the Province and municipalities over the long term.** (Policy 1.1.1a)

#### Settlement Areas

The PPS says the vitality of settlement areas is critical to the long-term economic prosperity of our communities. . . . It is in the interest of all communities to **use land and resources wisely, to promote efficient development patterns** . . . (Section 1.1.3) and **Settlement areas shall be the focus of growth and development**, and their **vitality and regeneration shall be promoted**. (Policy 1.1.3.1)

#### GROWTH PLAN FOR THE GREATER GOLDEN HORSESHOE

The Growth Plan does not replace municipal official plans, but works within the existing planning framework to **provide growth management policy direction**. Provincial plans and official plans provide a framework for comprehensive, integrated, and long-term planning that supports and integrates the principles of strong communities, a clean and healthy environment, and economic growth, for the long term.

The Growth Plan is the Ontario government's initiative to plan for growth and development in Ontario in a way that supports economic prosperity, protects the environment and helps communities achieve a high quality of life. Through the Growth Plan, **regional growth plans are developed to guide government investments**.

Population and employment growth will be accommodated by, among other things:

- **directing development to settlement areas**, except where necessary for development related to the management or use of resources, resource-based recreational activities, and rural land uses that cannot be located in settlement areas; and
- **Directing major growth to settlement areas that offer municipal water and wastewater systems** and limiting growth in settlement areas that are serviced by other forms of water and wastewater services. (Policy 2.2.2.1.)

Applying the policies of this Plan will **support** the achievement of **complete communities** that:

- a) **feature a diverse mix of land uses, including residential and employment uses, and convenient access to local stores, services, and public service facilities;**
- b) improve social equity and overall quality of life, including human health, for people of all ages, abilities, and incomes;
- c) **provide a diverse range and mix of housing options, including second units and affordable housing**, to accommodate people at all stages of life, and to accommodate the needs of all household sizes and incomes;
- d) expand **convenient access** to:
  - i. a range of **transportation options, including options for the safe, comfortable and convenient use of active transportation;**
  - ii. **public service facilities**, co-located and integrated in community hubs;

- iii. **an appropriate supply of safe, publicly-accessible open spaces, parks, trails, and other recreational facilities;** and
- iv. healthy, local, and affordable food options, including through urban agriculture;
- e) ensure the **development of high quality compact built form**, an attractive and vibrant *public realm*, including public open spaces, through site design and urban design standards;
- f) **mitigate and adapt to climate change impacts, build resilience, reduce greenhouse gas emissions, and contribute towards the achievement of low-carbon communities;** and
- g) **Integrate green infrastructure and low impact development.** (Section 2.2.2.4)

## REGIONAL OFFICIAL PLAN

In speaking to the contents of official plan the *Planning Act* says an official plan shall contain, (a) goals, objectives, and policies established primarily to manage and direct physical change and the effects on the social, economic, built, and natural environment of the municipality or part of it . . . (Section 16.(1)(a)) and . . . may contain, a description of the measures and procedures proposed to attain the objectives. (Section 16.2(a))

A Strategic Objective to the ROP is to recognize the diversified opportunities and needs in Niagara by balancing both urban development and the conservation of natural resources. a) A choice of housing and employment locations. b) **Development and efficient use of lands within the existing urban boundaries first.** c) Conservation of natural resources (e.g., fishery habitat, Areas of Natural and Scientific Interest, natural areas, wildlife habitat, waterways, Niagara Escarpment, wetlands, aggregate areas, and woodlots). d) **Minimization of conflicts between incompatible land uses.** (ROP Strategic Objective 2.1)

Another Strategic Objective is to facilitate and maintain a pattern of distinctive and identifiable urban communities. . . . (SO 2.2) A third relevant Strategic Objective is to improve regional self-reliance through long-range economic development planning and economic diversification. a) Attraction of more employment through existing or new firms. . . . (ROP SO 2.2)

Similar to the PPS, the ROP recognizes diversified opportunities for employment locations and the efficient use of land; minimization of conflict between incompatible uses as Strategic Objectives.

The ROP has a number of defined terms including:

**Active Transportation** means any form of self-propelled (non-motorized) transportation that relies on the use of human energy such as walking, cycling, inline skating or jogging.

*Built Boundary* means the limits of the developed Urban Areas as defined by the Minister of Infrastructure in accordance with Policy 2.2.3.5 in the Provincial Growth Plan for the Greater Golden Horseshoe.

*Complete Communities* meet people's needs for daily living throughout an entire lifetime by providing convenient access to an appropriate mix of jobs, local services, a full range of housing, and community infrastructure including affordable housing, schools, recreation and open space for their residents. Convenient access to public transportation and options for safe, non-motorized travel is also provided.

*Density Targets* The density target for the Urban Growth Centre is defined in Policy 4.G.10.2. The density target for Designated Greenfield Areas is defined in Policy 4.C.7.2.

*Designated Greenfield Area* means the area within a settlement area that is not Built-up Area

*Development* means the creation of a new lot, a change in land use, or the construction of a building or structure, requiring approval under the Planning Act. It includes the construction of new, or significant expansion of existing, public utilities or infrastructure

*Employment Area* means areas designated in an official plan for clusters of business and economic activities including, but not limited to, manufacturing, warehousing, offices, and associated retail and ancillary facilities.

*Intensification* means the development of a property, site or area at a higher density than currently exists through:

- a) redevelopment, including the reuse of *brownfield sites*;
- b) the development of vacant and / or underutilized lots within previously developed areas;
- c) infill development; or
- d) The expansion or conversion of existing buildings.

*Urban Areas* means those areas shown as being within the Urban Areas Boundaries as defined by this Official Plan.

As illustrated on *Figure A3.1, Regional Official Plan Schedule A - Regional Structure Excerpt*, the ROP designates the Subject Property **Designated Greenfield Area** within the **Urban Area Boundary**. The Objectives of the ROP for Managing Growth include (4.A.1.2) directing a significant portion of Niagara's future growth to the *Built-up Area* through *intensification*; (4.A.1.3) directing intensification to local municipally designated *intensification* areas; and (4.A.1.6) building compact, mixed use, transit supportive, *active transportation friendly communities* in the *Built up Area* and in *Designated Greenfield Areas*.

**Figure A3.1: Regional Official Plan Schedule A  
Regional Structure Excerpt**



## Commercial Areas

Municipalities are encouraged to develop policies which carefully balance the supply of commercial space with the demand for commercial goods and services, placing a particular emphasis on commercial retail goods and services. (Policy 3.D.2)

The Region encourages local municipalities to revise their planning policies and zoning by-laws to support the redevelopment of greyfield areas into mixed uses areas. The Region strongly supports such redevelopment as an alternative to the establishment of new commercial areas. (Policy 3.D.6)

New commercial development or redevelopment should be assessed in relation to community character and be appropriately located to serve as part of the neighbourhood's existing or proposed fabric. Assessment in relation to community character could include:

- a) The scale of the activity;
- b) The orientation of the development to adjacent land uses; and,
- c) The capacity of the development to operate compatibly with housing. (Policy 3.D.10)

Commercial development and redevelopment projects should be designed to be transit and active transportation friendly. (Policy 3.D.11)

Parking requirements for commercial uses should be carefully considered and evaluated to ensure that an adequate, but not excessive, amount of parking space is provided. Parking requirements should include provision for secure and sheltered bicycle parking and pedestrian walkways. Municipalities are encouraged to study, assess and develop updated parking standard for commercial areas. (Policy 3.D.12)

## Intensification and Greenfield Growth

*Designated Greenfield Areas* will be planned as compact, complete communities (meeting people's needs for daily living throughout an entire lifetime by providing convenient access to an appropriate mix of jobs, local services, a full range of housing, and community infrastructure including affordable housing, schools, recreation and open space for their residents. Convenient access to public transportation and options for safe, non-motorized travel is also provided) by:

- Where permitted by scale, accommodating a range of land uses including residential, commercial, institutional, recreational, employment and other uses;
- Where limited by scale or configuration, making a significant contribution to the growth of the respective *Urban Areas* as a complete community;
- Providing opportunities for integrated, mixed land uses;
- Creating street patterns that are fine grain and in grid pattern, supporting transit and *active transportation* within the area and to adjacent areas;

- Ensuring that Greenfield development is sequential, orderly and contiguous with existing built-up areas;
- Ensuring that the provision of municipal servicing is in accordance with the water and wastewater servicing master plans. (Policy 4.C.5.1)

The *Region* will require a minimum combined gross density target of 50 people and jobs per hectare across all *Designated Greenfield Areas*, excluding the features within the Environmental Protection Areas and Environmental Conservation Areas in the Region's Core Natural Heritage System and any non-developable features designated in local official plans. (Policy 4.C.6.1)

The Region, working in collaboration with local municipalities, will identify minimum *Greenfield density targets for local municipalities* which will achieve the overall Regional *density target* set out in policy 4.C.6.1. (Policy 4.C.6.2)

In order to achieve the planned minimum greenfield density target, official plans shall:

- Adopt minimum and maximum residential and employment densities in local Official Plans, including distinctions between net and gross density;
- Include policies for achieving higher residential and employment densities in greenfield areas;
- Include policies for achieving a mix of housing types and residential densities in greenfield areas; and
- Develop greenfield development guidelines to support local policy direction for greenfield areas. (Policy 4.C.7.1)

The Region will monitor the combined 50 people and jobs per hectare target. (Policy 4.C.7.2)

#### Managing Growth

The objectives of the Growth Management Policies of the ROP are to: *Direct the majority of growth and development to Niagara's existing Urban Areas*, (Objective 4.A.1.1) ensure the availability of sufficient employment land to accommodate long term growth in Niagara to the year 2031, (Objective 4.A.1.9) and direct growth in a manner that *promotes the efficient use of existing municipal sewage and water services*. (Objective 4.A.1.12)

The ROP directs the majority of growth to *urban areas* but seeks to ensure the availability of sufficient employment land and promotes the efficient use of existing municipal sewage and water services.

The preamble to Section 4G, Urban Growth, states Niagara aspires to build sustainable, *complete communities* by, among other things making efficient use of land, resources and *infrastructure*.

Objective 4G.1, in Our Common Objectives, is to build compact, vibrant, sustainable, integrated and *complete communities* and Objective 4G.4 is to *maximize the use of existing and planned infrastructure to support growth in a compact and efficient manner.*

## THE CITY OFFICIAL PLAN

### Highway Commercial Development

As illustrated on *Figure A3.2, Official Plan Schedule A, Port Colborne Land Use Plan Excerpt*, the property is **designated Highway Commercial**. Areas identified as Highway Commercial represent areas of existing and future commercial *development* within the Urban Area which cater primarily to the travelling public, in proximity to arterial roads and highways. The predominant uses for land designated Highway Commercial include, but not be limited to; hotels and motels; automobile sales and service establishments; places of amusement or recreation; restaurants with take-out and / or drive-through facilities; and accessory uses. (Policy 3.8)

*Any new or expanding development in the Highway Commercial area is subject to Site Plan Control.* (Policy 3.8.1a)

*Commercial uses that would be more appropriate in the Downtown Commercial areas such as retail stores, banks, medical clinics and professional offices are not be permitted.* (Policy 3.8.1b)

*New Highway Commercial uses grouped in a planned development are encouraged and extensive strip development is discouraged.* (Policy 3.8.1c)

*Adequate off-street parking facilities, including consideration for bicycles, are required in well-organized, landscaped and well-illuminated parking areas or structures.* (Policy 3.8.1d)

A minimum number of driveways to the site will be allowed and driveway entrances will be configured for maximum safety. (Policy 3.8.1e)

*New and expanding Highway Commercial uses may be required to submit a Traffic Impact Assessment*, prepared by a qualified professional which identifies the potential traffic generated by the development, methods of mitigating any potential impacts and any improvements that may be required to the existing road network in order to accommodate the proposed development. (Policy 3.8.1g)

*New and expanding Highway Commercial uses may be required to submit a Market Study*, prepared by a qualified professional, to demonstrate that the proposed commercial floor space is warranted. (Policy 3.8.1h)

**Figure A3.2: Official Plan Schedule A  
Land Use Plan Excerpt**



- Municipal Boundary
- Urban Area Boundary
- EPA
- ECA
- Agricultural
- Hamlet
- Urban Residential
- Rural
- Downtown Commercial
- Commercial Plaza
- Highway Commercial
- Marine Commercial
- Industrial / Employment Area
- Mineral Aggregate Operation
- Gateway Economic Centre
- Rural Employment
- Parks and Open Space
- Private Open Space
- Special Study Area
- Secondary Plan Area
- Major Port
- Former Waste Management Facility

Highway Commercial uses are subject to the design guidelines for Commercial Plaza as specified in Section 3.7.2. (Policy 3.8.2a)

Drive-through aisles should be defined by curbing and planted areas instead of painted demarcations, however, an alternate route should be provided such that a vehicle is able to escape the drive-through lane in an emergency without having to reverse through the drive-through aisle. (Policy 3.8.1.2b)

Entrances to hotels and motels should be built to a minimum setback and incorporate an awning or canopy extending to the sidewalk. (Policy 3.8.1.2c)

Entrances to hotels and motels should incorporate a pick-up and drop-off area at the street line and orient all other parking to the side and rear. (Policy 3.8.1.2d)

Restaurant facilities in hotels and motels should be built to a minimum setback and have windows that relate directly to the adjacent street. (Policy 3.8.1.2e)

Display pedestals for vehicles at car dealerships will be located close to the building and not at the street line. (Policy 3.8.1.2bf)

Gas stations incorporating a retail store use will locate a retail store entrance and windows to the street. (Policy 3.8.1.2g)

Green building technologies will be encouraged, including reference to Leadership in Energy and Environmental Design (LEED) as promoted by the Canada Green Building Council. (Policy 3.8.1.2H)

Buffering shall be provided between the commercial establishment and other land uses. This shall include grassed areas and appropriate planting of trees and shrubs and/or the provision of other suitable screening materials. The types of trees and shrubs will be subject to the approval of the Director of Planning and Development Services. (Policy 3.7.2.1a)

Building entrances and display windows should be oriented to street frontages, and a minimum of one major building entrance should front directly onto the main street frontage. (Policy 3.7.2.1b)

Buildings should be built to a minimum setback at intersections to help frame the streets. (Policy 3.7.2.1c)

A minimum of 40% of the main street frontage of a given property should be defined by building edge. (Policy 3.7.2.1d)

No front yard parking should be permitted for those portions of the building frontage constituting the minimum 40%. (Policy 3.7.2.1e)

Where large setbacks can be justified for large commercial stores, smaller commercial buildings (i.e. restaurants, banks) should be located at the street edge. (Policy 3.7.2.1f)

Canopies and awnings are encouraged as a means of weather protection for pedestrians. (Policy 3.7.2.1g)

The building identity at corner locations will be reinforced by taller building elements such as towers, entrance structures or roof elements (i.e. skylights and dormers) (Policy 3.7.2.1h)

Commercial garbage receptacles will be adequately screened or in an enclosed storage area contiguous with the building. (Policy 3.7.2.1i)

Parking and landscaping for commercial establishments should be designed as follows:

- Screening shall be provided between parking areas and adjacent residential properties.
- Buffers shall be located at the perimeter of the property line adjacent to parking areas and laneways to accommodate landscaping and tree planting.
- Landscaped islands shall be placed at the end of all parking aisles.
- Parking aisles with a length of more than 15 stalls shall be broken up with landscaped islands.
- All parking islands shall be planted with hardy, strongly branched and salt tolerant trees.
- Large parking areas shall be broken up with linear pedestrian only sidewalks planted with a consistent row of trees.
- The placement of sidewalks shall be oriented to link building entrances.
- Parking for bicycles shall be included, which shall be consistent with professionally recognized design guidelines. (Policy 3.7.2.2a)

Service and loading areas shall be oriented to the rear of the building. (Policy 3.7.2.2b)

#### Consent to Sever

The plan of subdivision shall be considered as the main method of providing lots in the City. Consent for land conveyances shall only be granted where they will not compromise the orderly development of land or the general public interest. (Policy 11.7.2a)

*Development* which proposes the creation of lots requiring construction of a new public road, the execution of a development or which proposes the creation of more than two new lots should not proceed by way of consent. (Policy 11.7.2b)

**New lots shall only be created by way of consent within:**

- The Urban Residential designation subject to the policies of Section 3.2.4;
- The Hamlet designation subject to the policies of Section 3.3.4;
- The Rural designation subject to the policies of Section 3.4.4; and
- The Agricultural designation subject to the policies of Section 3.5.3. (Policy 11.7.2c)

**In commenting to the Committee of Adjustment, the City will ensure the following factors are considered:**

- Where applicable, the policies for infill and intensification, Section 2.4.3 of this Plan;
- **The size, configuration and location of the proposed consent should be appropriate for the use proposed considering the municipal services available**, or where municipal services are not available, the adequacy of potable water supply and suitability of the soil and site conditions for the installation and long-term operation of a private waste disposal system, subject to the approval of the Niagara Region Public Health Department and Niagara Region Public Works Department; and
- **The lot size and proposed use of the proposed consent should conform to the provisions of the Zoning By-law**, where applicable. (Policy 11.7.2c)

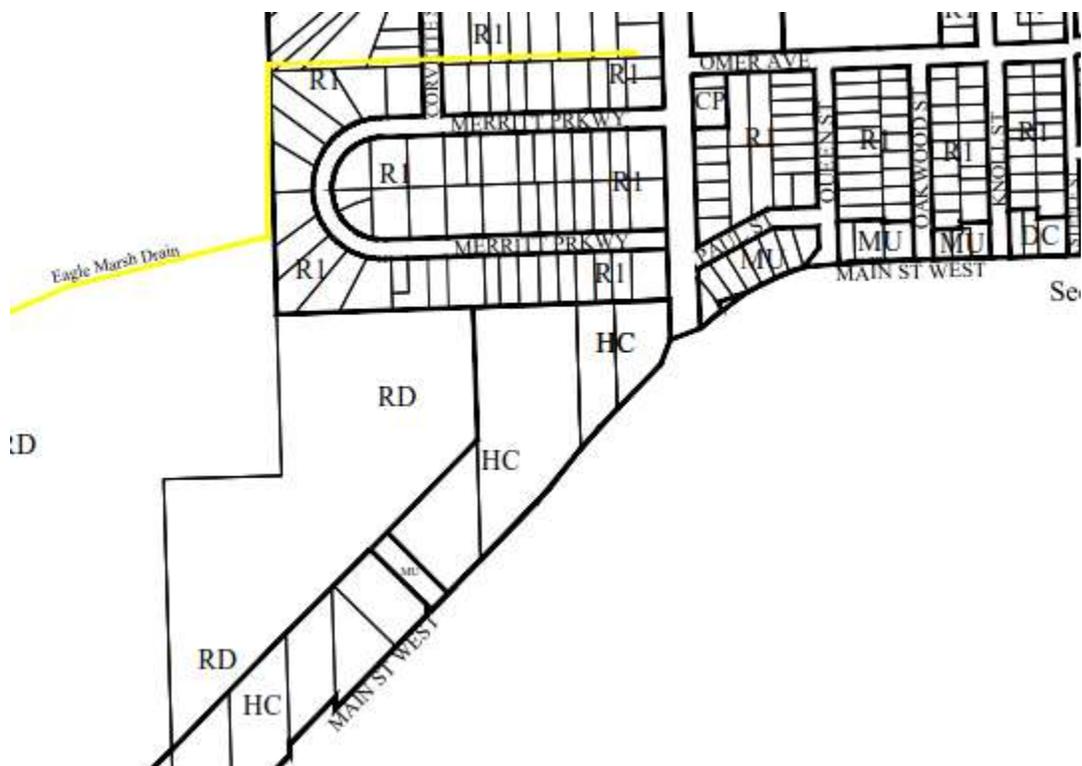
#### THE ZONING BY-LAW

As illustrated on *Figure A3.3, Zoning Map Schedule “A8” Excerpt* to The City of Port Colborne Zoning By-law the Subject Property is **zoned “Highway Commercial HC”** which permits:

- Animal Care Establishment;
- Brew Pub;
- Car Wash;
- Convenience Store;
- Day Care;
- Drive-Thru Facility;
- Dwelling, Accessory
- Food Vehicle;
- Hotel;
- Motor Vehicle Repair Garage;
- Motor Vehicle Sales/Rental Service Centre;
- Motor Vehicle Gas Station;
- Office;
- Personal Service Business;
- Place of Assembly/Banquet Hall;

- Place of Worship;
- Public Use;
- Recreation Facility;
- Restaurant, Fast Food;
- Restaurant, Full Service;
- Restaurant, Take-Out;
- Retail Building Construction and Supply;
- Service Commercial; and
- Uses, structures and buildings accessory thereto

**Figure A3.3: Zoning Map Schedule “A8” Excerpt**



### ZONING CHART

<b>PROVISION</b>	<b>HC ZONE REQUIREMENTS</b>
Min Lot Area	0.14 hectares
Min Lot Frontage	27 metres
Min Front Yard	9 metres
Min Interior Side Yard	5 metres
Min Rear Yard	5 metres
Max Lot Coverage	85 percent
Requirement for a Lot	Notwithstanding anything contained in this By-law, a parcel which is situated in any zone, and which lacks either the required lot frontage or lot area, or both the lot frontage and lot area for the lot in the respective zone, is and shall be deemed to be a lot provided that: All other requirements of the applicable zone are complied with, and where said parcel qualified under this section as a deemed lot, said deemed lot may be used for the purposes as permitted in the zone in which it is located, notwithstanding that it does not comply with the area and frontage requirements of that zone
Lot Frontage on Roads	No person shall construct a building or structure or otherwise use any lot unless the lot fronts on an improved road or lane
Lot	All contiguous land under one ownership
Front Lot Line	The lot line, not including a corner lot line, which abuts a street for the shortest distance, whether or not that line jogs or curves, and extending between the side lot lines, more or less for the full width of the lot and where more than one such lot line exists, means a lot line which abuts the same street as the front lot line of an abutting lot
Rear Lot Line	lot line furthest from and opposite the front lot line but if there is no such line, that point furthest from and opposite the front lot line
Interior Side Lot Line	The lot line other than a front lot line, a corner lot line or a rear lot line
Front Yard	That yard that extends across the full width of the lot between a front lot line and the nearest point of the principal building, not including a projection permitted under Section 2.20

ANNEX 4  
PRE-CONSULTATION AGREEMENT



## Pre-Consultation Agreement

City of Port Colborne Department of Planning and Development  
 Niagara Region Development Services  
 Niagara Peninsula Conservation Authority

Persons intending to make an application for a proposed development are required to consult with planning City staff and Agency staff prior to submitting an application. A pre-consultation meeting will identify what is required to be submitted for a complete application and will provide the opportunity to discuss:

- the nature of the application;
- development and planning issues;
- fees;
- the need for information and/or reports to be submitted with the application;
- the planning approval process;
- other matters, as determined.

**Pre-Consultation Meeting Date:** August 27th, 2020

**Local Municipal Contact:** David Schulz

**Phone:** 905-835-2901 ext 202

**Email:** planner@portcolborne.ca

**Site Address:** 599 Main St. W.

**Roll Number:** 27 11 030 038 136 15

**Land Area** 5.5 ac

**Owner Contact Information:**

**Owner Name:** 2493207 ONTARIO INC – Ritesh Malik

**Phone Number:** 647-225-8411 **Email:** Ritesh@riteshmalik.com

**Agent Contact Information:**

**Agent Name:** Steven Rivers

**Phone Number:** 905-733-8843 **Email:** Steven.p.rivers@gmail.com

**Principal Contact:**  Owner  Agent

**Application Type:**

- |   |  |
|---|--|
| <input type="checkbox"/> Regional Official Plan Amendment         | <input checked="" type="checkbox"/> Consent (Land Severance)                       |
| <input checked="" type="checkbox"/> Local Official Plan Amendment | <input checked="" type="checkbox"/> Zoning By-law Amendment                        |
| <input type="checkbox"/> Draft Plan of Subdivision                | <input type="checkbox"/> Site Plan Control   |
| <input type="checkbox"/> Draft Plan of Condominium                | <input type="checkbox"/> Other: Easements in favour of both parcels and vice versa |
| <input type="radio"/> Vacant Land & Common Element                |  |
| <input type="radio"/> Conversion                                  |  |

1. Brief description of proposed development:  
 Severance of Phase 1 from Phase 2 in the site plan agreement. Zoning By-law Amendment required to address the requirements for a lot and proposed uses. Official Plan Amendment required to allow the uses commonly found in the Downtown Commercial area in the Highway Commercial area.  
 \_\_\_\_\_
  
2. Existing Regional Official Plan Designation: Built-up Area  
 Conformity with Regional Official Plan land use designations and policies?  
 Yes    No    Unknown  
 If 'No', what is the nature of the amendment needed?  
 \_\_\_\_\_
  
3. Check All Applicable:  
 Brownfield    Greenfield    Built-up    Local CIP Area
  
4. Development Charges:  
 Regional By-law 2017-98    Local By-law 6131/97/14
  
5. Existing Local Official Plan Designation: Highway Commercial  
 Conformity with Official Plan land use designations and policies?  
 Yes    No    Unknown  
 If 'No', what is the nature of the amendment needed?  
Proposed added uses do not conform. Policy change required  
 \_\_\_\_\_
  
6. Existing Zoning: Highway Commercial  
 Conformity with existing zoning?  
 Yes    No    Unknown  
 If 'No', what is the proposed zoning:  
Zoning will need to be amended to allow for the lot creation not on a public road and other lot requirements, as well as to add new proposed uses in the HC zone.  
 \_\_\_\_\_
  
7. Is property located in Intake Protection Zone?  
 No    IPZ 1    IPZ 2



12. Required Information and Studies to be submitted with the Application(s). Application will not be deemed complete until all requested information and studies are submitted. Studies identified with an asterisk will likely require a peer review at the cost of the developer.

Local	Region	NPCA	Reports, Studies, Plans (See Notes for additional details)	No. of Copies		Notes
				Electronic Digital	Paper	
			Agricultural Impact Assessment			
			Air Quality/Noise & Vibration Study*			
			Archaeology Assessment			
			Conceptual Site Plan, Subdivision Plan			
			Cultural Heritage Impact Assessment*			
			Environmental Impact Study			
			Environmental Planning Study/ Sub-Watershed Study			
			Environmental Site Assessment Phase 1			
			Farm Business Plan*			
			Farm Operation and Ownership			
			Financial Impact Assessment*			
			Floodplain and Hazard Lands Boundary Plan			
			Gas Well Study/Gas Migration Study			
			Geotechnical			
			Hydrogeological Study and Private Servicing Plans*			
			Land Use/Market Needs*			
			Landscape Plan			
			Mineral Aggregate Resources			
			Minimum Distance Separation I & II			
			Municipal Servicing Study			
			Phasing Plan			
X			Planning Justification Report			Reviewing local planning documents
			Risk Management Study			
			Sensitive Land Use Report			
			Shadow Analysis			
			Shoreline Study/Dynamic Beach			
			Slope Stability Report			
			Soil report			
			Stormwater Management Plan			
			Transportation Impact Study/Parking Impact Analysis			
			Tree Inventory Preservation Plan			
			Urban Design			
			Wind Study*			
			Other: Record of Site Condition (can be dealt with later)			

**13. Additional Comments:**

- Easements and Zoning By-law Amendments can be applied for concurrently with the Consent application or can be dealt with as a condition of consent.
- Planning Justification Report analyzing local policies and by-laws is required. Please identify why the consent is required for the property.
- The fire route will need to be reconsidered as it was designed for the entire property
- Official Plan Amendment required for the additional uses requested. Policy 3.8.1 b) speaks to the uses not being permitted.
- Only one easement application required in addition to severance application.
- Severance/easement sketch required from an Ontario Land Surveyor

Regional comments to follow this document.

---

**14. Site Visit:**

---

**15. Incentive Programs:**

---

**Notes:**

1. The purpose of this document is to identify the information required to commence processing and evaluating an application as set out in the Planning Act. This pre-consultation process is designed to proceed based on the mutual agreement of the parties as shown by the signatures below.
2. Pre-consultation does not imply or suggest any decision whatsoever on behalf of staff or the municipality to either support or refuse the application.
3. The applicant should be aware that the information provided is accurate as of the date of the pre-consultation meeting. Should an application not be submitted in the near future, and should other policies, by-laws or procedures be approved by the Province, Municipality, Region or other agencies prior to the submission of a formal application, the applicant will be subject to any new policies, by-laws or procedures that are in effect at the time of the submission of a formal

application. If an application is not submitted within one year, it is advisable that the applicant confirm with the municipality the directives of the original preconsultation meeting.

4. Any application submitted without the information identified in this Pre-consultation Document will be deemed incomplete and not processed. Alternately, staff may recommend refusal of the application based upon insufficient information to properly evaluate the application.
5. The applicant acknowledges that the Section 1.0.1 of *The Planning Act* states "Information and material that is required to be provided to a municipality or approval authority under this Act shall be made available to the public." With the filing of an application, the applicant confirms that the Municipality and Region may release the application and any supporting materials either for its own use in processing the application, or at the request of a third party, without further notification to, or permission from, the applicant.
6. It is hereby understood that during the review of the application additional studies or information may be required as a result of issues arising during the processing of the application or the review of the submitted studies.
7. If the Municipality or Region does not have sufficient expertise to review and determine that a study is acceptable, the Municipality may require a peer review. The cost of the peer review shall be paid for by the applicant. The Terms of Reference for a peer review is determined by the Municipality or Region.
8. Some studies may require NPCA review and clearance/approval. In this instance, the NPCA review fee shall be paid by the applicant.
9. All plans and statistics must be submitted in metric.

**Signatures:**

_____	_____	_____
Planning Staff	(signature)	Date
_____	_____	_____
Planning Staff	(signature)	Date
_____	_____	_____
Building Staff	(signature)	Date
_____	_____	_____
Engineering Staff	(signature)	Date
_____	_____	_____
Engineering Staff	(signature)	Date
_____	_____	_____
Regional Staff	(signature)	Date
_____	_____	_____
NPCA Staff	(signature)	Date
_____	_____	_____

CNP Staff	(signature)	Date
_____ Fire Staff	_____ (signature)	_____ Date
_____ Owner/Agent	_____ (signature)	_____ Date

#### 599 Main Street West – Severance & Site Plan

The subject property is within the settlement area of the Provincial Policy Statement (PPS), Delineated Built-up Area of A Place to Grow: Growth Plan for the Greater Golden Horseshoe, and Urban (Built-up) Area of the Regional Official Plan (ROP). Main Street West is Regional Road 3; the existing road allowance in this area is deficient of the recommended policy width and a road widening ranging from 0.8 metres at the eastern limit to 7.3 metres at the western limit is required (this was required with the previous site plan application for Phase 1). No additional access is to be permitted for the subject property, and an easement will need to be granted for shared access. Prior to any works within the Regional Road allowance, a Regional Construction Encroachment and Entrance permit will be required. The storm sewer system for the entire commercial development is intertwined between Phases 1 and 2, and a stormwater management (SWM) facility for peak flow control to service the entire site is located in Phase 1. Please provide an update on how the lot severance may impact the overall SWM plan for the entire area. If the existing SWM plan is being maintained, ownership and maintenance of the required infrastructure servicing the entire site must be ensured, with easements being granted for the stormwater management system as necessary. If the lot severance is to alter the overall SWM plan for the entire site, the Region would require an updated SWM plan for each phase. Regional staff understands that waste collection for the subject property is to be provided through a private contractor and not Niagara Region.

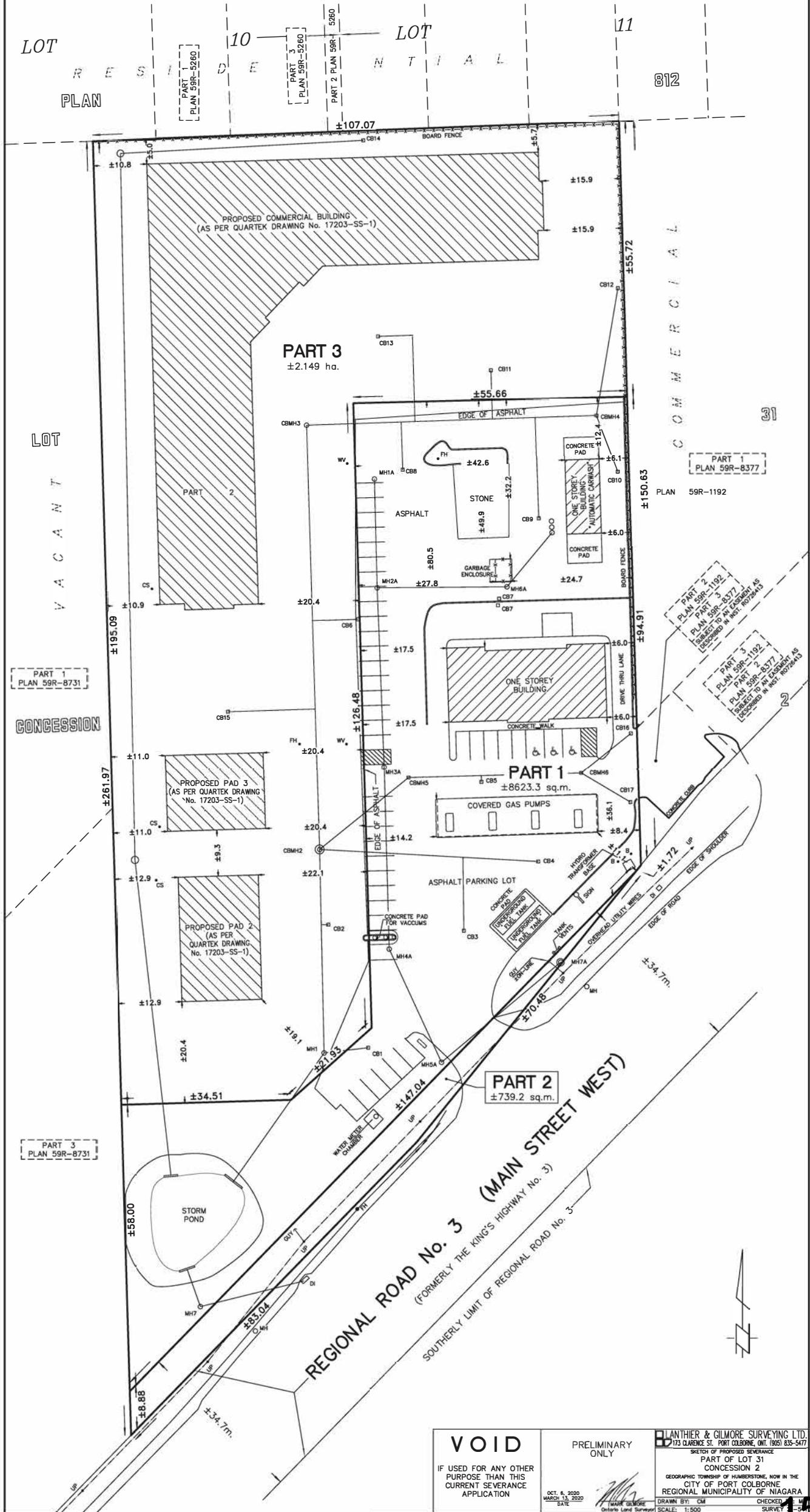
Fee: \$620 (consent review)



**REQUIRED WIDENING TO ACHIEVE A WIDTH OF 17.35 METERS FROM CENTERLINE OF THE ROAD ALLOWANCE FOR MAIN STREET WEST IN PORT COLBORNE**

IR-15-222

SKETCH PREPARED FOR SEVERANCE APPLICATION  
THIS IS NOT A PLAN OF SURVEY AND SHALL NOT BE USED FOR ANY PURPOSE OTHER THAN  
CURRENT SEVERANCE APPLICATION. © THIS SKETCH IS PROTECTED BY COPYRIGHT.



<p><b>VOID</b></p> <p>IF USED FOR ANY OTHER PURPOSE THAN THIS CURRENT SEVERANCE APPLICATION</p>	<p>PRELIMINARY ONLY</p>	<p><b>PLANTHIER &amp; GILMORE SURVEYING LTD.</b> 173 CLARENCE ST. PORT COLBORNE, ONT. (905) 835-9477</p> <p>SKETCH OF PROPOSED SEVERANCE PART OF LOT 31 CONCESSION 2 GEOGRAPHIC TOWNSHIP OF HUMBERSTONE, NOW IN THE CITY OF PORT COLBORNE REGIONAL MUNICIPALITY OF NIAGARA</p> <p>OCT. 8, 2020 MARCH 13, 2020 DATE</p> <p>MARK GILMORE Ontario Land Surveyor</p> <p>DRAWN BY: CM CHECKED BY: M SURVEY: 5-201</p> <p>SCALE: 1:500</p>
	<p>DATE</p>	



**City of Port Colborne  
Regular Meeting of Council 36-20  
Monday, December 14, 2020  
Following Special Council Meeting  
Council Chambers, 3<sup>rd</sup> Floor, 66 Charlotte Street**

## **Agenda**

**Notice:** Council will meet through electronic participation in accordance with Bill 137, the Municipal Emergency Act in order to keep the health and safety of our community as a priority. If you wish to provide public comments regarding an item on the agenda please submit to [deputyclerk@portcolborne.ca](mailto:deputyclerk@portcolborne.ca) by noon on Monday, December 14, 2020.

Watch the Council Meeting streaming live on our [YouTube Channel](#).

1. **Call to Order:** Mayor William C. Steele
2. **Introduction of Addendum Items:**
3. **Confirmation of Agenda:**
4. **Disclosures of Interest:**
5. **Adoption of Minutes:**
  - (a) Regular meeting of Council 34-20, held on November 23, 2020.
6. **Determination of Items Requiring Separate Discussion:**
7. **Approval of Items Not Requiring Separate Discussion:**
8. **Delegations/Presentations:**
  - (a) Lisa Wagter, Program Manager, Christian Horizons Group, Port Colborne Re: Invoice received for False Alarms at 408 Barrick Road, request invoice to be waved (Page No. 164)
  - (b) Grace Church, 895 Empire Road, Sherkston Re: Request to use The Sherkston Community Centre (Page No. 166)
9. **Councillors' Items:**
  - (a) Staff Responses to Previous Councillors' Enquiries
  - (b) Councillors' Issues/Enquiries
10. **Consideration of Items Requiring Separate Discussion:**

**11. Proclamations:**

None.

**12. Minutes of Boards, Commissions & Committees:**

- (a) Minutes of the Port Colborne Historical and Marine Museum Board meeting of October 20, 2020.

**13. Consideration of By-laws:**

**14. Council in Closed Session:**

- (i) Motion to go into Closed Session

That Council do now proceed into closed session in order to address the following matter(s):

- (a) Minutes of the closed session portion of the November 23, 2020 Council Meeting.
- (b) Planning and Development Department Report No. 2020-185, concerning an Appeal of Committee of Adjustment Decision A15-19-PC, pursuant to the *Municipal Act, 2001*, Subsection 239(2)(e), litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board.
- (c) Chief Administrative Officer, Project Management Office, Report No. 2020-190, concerning the potential disposition of City owned land, pursuant to the *Municipal Act, 2001*, Subsection 239(2)(c) a proposed or pending acquisition or disposition of land by the municipality or local board (surplus lands).

- (ii) Disclosures of Interest (closed session agenda):

- (iii) Consideration of Closed Session Items:

- (iv) Motion to Rise With Report:

**15. Disclosures of Interest Arising From Closed Session:**

**16. Report/Motions Arising From Closed Session:**

**17. Adjournment:**

**Council Items:**

Notes	Item	Description / Recommendation	Page
WCS MB EB RB GB FD AD DK HW	1.	<p><b><u>Planning and Development Department, Planning Division, Report No. 2020-157, Subject: Meadow Heights Subdivision Agreement Amendment – Phase 2, Stage 1</u></b></p> <p>That Council approve the amendments made to the Meadow Heights Subdivision Agreement between the City and 1399908 Ontario Inc. attached as Appendix A to Planning &amp; Development Department, Planning Division Report No. 2020-157; and</p> <p>That the Mayor and Clerk be authorized to sign the amended Meadow Heights Subdivision Agreement to be registered on title to the lands.</p>	167
WCS MB EB RB GB FD AD DK HW	2.	<p><b><u>Planning and Development Department, Planning Division, Report No. 2020-183, Subject: Community Improvement Plan Grant Policy</u></b></p> <p>That 138 Main Street be approved for a \$20,000 matching grant under the Façade Improvement Program; and</p> <p>That the Director of Planning and Development continue to review and approve CIP incentive applications up to an amount of \$10,000 through delegated authority.</p>	233
WCS MB EB RB GB FD AD DK HW	3.	<p><b><u>Planning and Development Department, Planning Division, Report No. 2020-184, Subject: Recommendation Report for the Removal of Holding Symbol, Nyon Oil Inc.</u></b></p> <p>That Council approve the draft Zoning By-law amendment, attached as Appendix A to Planning and Development Department, Planning Division, Report No. 2020-184, to remove the “H” Holding Provision from lands as depicted on Schedule “A” to the Draft By-law.</p>	239

WCS RB AD	MB GB DK	EB FD HW	4.	<p><b><u>Chief Administrative Officer, Project Management Office, Report No. 2020-188, Subject: Affordable Housing Project and Partnership with Port Cares</u></b></p> <p>That Council declares Chestnut Park, and the land between Chestnut Park and Lockview Park as surplus;</p> <p>That Council hereby approves in principle the affordable housing project proposed by Port Cares;</p> <p>That Council agrees to transfer the Chestnut Park property to Port Cares for \$1 pending the completion of a mutually satisfactory agreement;</p> <p>That the Director of Community and Economic Development prepare a Lockview Park revitalization plan; and</p> <p>That the Director of Planning and Development be directed to proceed with a rezoning application, a survey, and a development agreement.</p>	286
WCS RB AD	MB GB DK	EB FD HW	5.	<p><b><u>Department of Chief Administrative Officer, Report No. 2020-191, Subject: COVID-19 Update #8</u></b></p> <p>That Chief Administrative Officer Report No. 2020-191, Subject: COVID-19 Update #8, be received for information; and</p> <p>That By-law Enforcement staff be directed to implement a more rigorous enforcement plan for violations of the Province's COVID Orders that provides for charges to be laid against individuals and businesses that have repeated violations of these orders.</p>	291
WCS RB AD	MB GB DK	EB FD HW	6.	<p><b><u>Corporate Services Department, Finance Division, Report No. 2020-182, Subject: Cancellation, Reduction or Refund of Realty Tax</u></b></p> <p>That the applications received pursuant to Section 357/358 of the <i>Municipal Act, 2001</i>, as amended, numbered 2020-100, 2020-200, and 2020-300 be approved to cancel or reduce taxes in the total amount of \$11,327.51.</p>	294

WCS	MB	EB	7.	<p><b>Community and Economic Development Department, Parks and Recreation Division, Report No. 2020-189, Subject: Canadian Experiences Fund Grant Update – Project No. 2020-30 Supply and Installation of Solar Lighting at H.H. Knoll Lakeview Park</b></p> <p>That Project No. 2020-30 Supply and Installation of Solar Lighting at H.H. Knoll Lakeview Park be awarded to R&amp;B Electric Solutions Inc. of Welland, Ontario, for the total tender price of \$121,000.00, plus applicable taxes.</p> <p>That a by-law to authorize entering into the contract agreement be approved.</p>	297
RB	GB	FD			
AD	DK	HW			
<b>Miscellaneous Correspondence</b>					
<b>None.</b>					
<b>Outside Resolutions – Requests for Endorsement</b>					
WCS	MB	EB	8.	<p><b>Niagara Region Re: Support for Niagara’s Local Businesses through the Second Wave of the COVID-19 Pandemic</b></p> <p>That the resolution received from Niagara Region Re: Support for Niagara’s Local Businesses through the Second Wave of the COVID-19 Pandemic, be received for information.</p>	300
RB	GB	FD			
AD	DK	HW			
WCS	MB	EB	9.	<p><b>Town of Lincoln Re: Public Health Measures Re: Ontario COVID-19 Response Framework</b></p> <p>That the resolution received from the Town of Lincoln Re: Public Health Measures regarding Ontario COVID-19 Response Framework, be received for information.</p>	302
RB	GB	FD			
AD	DK	HW			
WCS	MB	EB	10.	<p><b>Niagara Region Re: Miller’s Creek Marina/Resort Development</b></p> <p>That the resolution received from Niagara Region Re: Miller’s Creek/Resort Development, be received for information.</p>	304
RB	GB	FD			
AD	DK	HW			
WCS	MB	EB	11.	<p><b>City of Hamilton Re: Amending the AGCO Licensing and Application Process for Cannabis Retail Stores to Consider Radial Separation from Other Cannabis Locations</b></p> <p>That the resolution received from the City of Hamilton Re: Amending the AGCO Licensing and Application Process for Cannabis Retail Stores to Consider Radial Separation from Other Cannabis Locations, be received for information.</p>	307
RB	GB	FD			
AD	DK	HW			

WCS RB AD	MB GB DK	EB FD HW	12.	<p><b><u>Township of Amaranth, City of Belleville, City of Brantford, Municipality of Meaford and Prince Edward County Re: Bill 218 Supporting Recovery and Municipal Elections Act, proposed changes to the Municipal Elections Act</u></b></p> <p>That the resolutions received from Various Municipalities Re: Bill 218 Supporting Recovery and Municipal Elections Act, proposed changes to the Municipal Elections Act, be received for information.</p>	310
WCS RB AD	MB GB DK	EB FD HW	13.	<p><b><u>Township of Howick Re: Amendments to the Tile Drain Loan Program (Resolution No. 276/20)</u></b></p> <p>That the resolution received from the Township of Howick Re: Amendments to the Tile Drain Loan Program, be received for information.</p>	319
WCS RB AD	MB GB DK	EB FD HW	13.	<p><b><u>Township of Howick Re: Amending the Tile Drainage Installation Act (Resolution No. 288/20)</u></b></p> <p>That the resolution received from the Township of Howick Re: Amending the Tile Drainage Installation Act, be received for information.</p>	320
WCS RB AD	MB GB DK	EB FD HW	15.	<p><b><u>Municipality of Southwest Middlesex Re: Drainage Matters on Canadian National Railway Lands</u></b></p> <p>That the resolution received from the Municipality of Southwest Middlesex Re: Drainage Matters on Canadian National Railway Lands, be received for information.</p>	324
<b>Responses to City of Port Colborne Resolutions</b>					
<b>None.</b>					

**Consideration of By-laws  
(Council Agenda Item 13)**

<b>By-law No.</b>	<b>Title</b>
6848/98/20	Being a By-law to Authorize Entering into an Amendment to Subdivision Agreement between The Corporation of the City of Port Colborne and 1399908 Ontario Inc.
6849/99/20	Being a By-law to Amend Zoning By-law 6575/30/18 respecting Land legally Described as Part of Lots 16, 17, 18 and 19, and Part of the Road Allowance between Lots 16 and 17, Part of the Road Allowance between Lots 18 and 19, in the City of Port Colborne, Regional Municipality of Niagara. The property is municipally known as the Nyon Oil lands generally south of the CN Rail Lane, west of Highway 140 and east of Canal Road in the City of Port Colborne
6850/100/20	Being a By-law to Authorize Entering Into a Contract Agreement with R&B Electric Solutions Inc. Re: Project No. 2020-30, Supply and Installation of Solar Lighting at H.H. Knoll Lakeview Park
6851/101/20	Being a By-law to Adopt, Ratify and Confirm the Proceedings of the Council of The Corporation of the City of Port Colborne at its Special and Regular Meetings of December 14, 2020

From: "Lisa Wagter" <lwagter@christian-horizons.org>  
To: "deputyclerk@portcolborne.ca" <deputyclerk@portcolborne.ca>  
Date: 2020-11-26 05:14 PM  
Subject: Invoice for a False Alarm

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear Deputy Clerk.

I hope I am emailing you as the correct person to correspond about this with. My name is Lisa Wagter and I am a program manager for a Christian Horizons group home here in Port Colborne. We are a non-profit agency who support adults with developmental disabilities.

Back in July we had a few false alarms. During these alarms the staff followed all protocols in our approved fire safety plan. After the second false alarm I met with Charles Turpin the Fire Prevention Officer to discuss the incident and in a day I also had Vipond our fire monitoring company come and check the system to determine the cause of the issue. The cause was unknown and could of been a spider or insect that set off one of our interconnected alarms.

I am sorry as I have just been notified of the invoice today as the invoice was mailed to our head office and the office move earlier this year.

I hope you can consider my requesting that this invoice be waved. As a non-profit we hope to spend this money on bettering our fire system and keeping it serviced.

Thank you for your consideration

Lisa Wagter  
Program Manager  
Christian Horizons  
West District  
289-213-2377  
lwagter@christian-horizons.org



City of Port Colborne  
 66 Charlotte Street  
 Port Colborne Ontario L3K 3C8

<b>INVOICE</b>	IVC003051
<b>Date</b>	7/16/2020
<b>Page</b>	1
<b>HST No.</b>	10698 4107 RT0001

## INVOICE

**Customer:**

Christian Horizons 4278  
 King Street East  
 Kitchener, ON  
 N2P 2G5

**Remit to:**

City of Port Colborne  
 66 Charlotte Street  
 Port Colborne, ON  
 L3K 3C8

Purchase Order	Account	Contact	Shipping Method		Payment Terms ID
	CHRIS0002		PICKUP		Net 30
Quantity	Description	U Of M	Unit Price	Ext. Price	
1.00	Nuisance Alarm, 408 Barrick Rd., 2020/07/11, 3:16 am, 18 min	Each	\$485.00	\$485.00	
1.00	Nuisance Alarm, 408 Barrick Rd., 2020/07/13, 10:48 pm, 10 min	Each	\$485.00	\$485.00	
1.00	Administration Fee per Response	Each	\$100.00	\$100.00	
<b>Subtotal</b>					\$1,070.00
<b>Misc</b>					\$0.00
<b>Tax</b>					\$139.10
<b>Freight</b>					\$0.00
<b>Total</b>					\$1,209.10

**GRACE CHURCH**

895 Empire Road, Sherkston, ON., L0S 1R0  
905-894-3462

Port Colborne City Hall  
66 Charlotte Street  
Port Colborne, ON., L3K 3C8  
ATTENTION: Mr. Scott Luey – CAO

Re: Letter of Request

Dear Mr. Luey,

As you are aware, and as per our conversation, Grace Church suffered a severe fire on Tuesday December 8<sup>th</sup>, 2020 – as a result it leaves our congregation out in the cold, literally. The church has been levelled by this fire

The Sherkston Community Centre is located directly across the street from us, and would be an ideal location for us to set up, if even temporarily, our Sunday morning worship services.

As our conversation was with yourself, Nancy & Alex (forgive me I've forgotten their last names) – everyone seemed agreeable to this, keeping in mind the 30% capacity numbers, and the limitation of mobility with regard to the washroom facilities of course.

We ask that you might consider this request on behalf of Grace Church – and we look forward to returning to some semblance of normalcy with our Sunday morning and Christmas services.

Many thanks

Sincerely,

Linda Morris,  
For,  
Pastor Steven Brown  
Bill Korten – Board Chair  
Grace Church  
Sherkston, ON.,  


Report Number: 2020-157

Date: December 14, 2020

**SUBJECT: Meadow Heights Subdivision Agreement Amendment – Phase 2,  
Stage 1**

**1) PURPOSE:**

The purpose of the report is to obtain Council's approval to amend an existing Subdivision Agreement between the City and 1399908 Ontario Inc.

**2) HISTORY, BACKGROUND, COUNCIL POLICY, PRACTICES**

On September 28, 2020, Council received Planning & Development Report No. 2020-63 that presented an amending agreement to the Meadow Heights Subdivision.

Council approved the report and agreement as presented although there was discussion on the types of trees to be planted in the subdivision and mention of formatting corrections.

**3) STAFF COMMENTS AND DISCUSSIONS**

The Department of Engineering and Operations (DEO) have reviewed the tree plantings under paragraph 20.7 a) ii) and are requesting this paragraph be amended to now require:

“ii) Trees shall be 50 millimetres caliper or more and a height of 1.8 metres or more, balled and bur lapped at planting and be of such varieties as Red Maple, Common Hackberry, Kentucky Coffeetree, Tulip Tree, Redspire Ornamental Pear, Princeton Sentry Gingko or such other compatible variety, as approved by the City.”

The DEO also requested additions to the amending subdivision agreement for the previously installed services to the sanitary and stormwater drainage system. These additions have been included in the amending agreement under clauses 17, 18 and 20.

Upper Canada Consultants on behalf of 1399908 Ontario Inc. are aware of the amendments.

**4) OPTIONS AND FINANCIAL CONSIDERATIONS:**

**a) Do nothing.**

Doing so would not amend the Subdivision Agreement as requested.

**b) Other Options**

Although not recommended, Council could request changes for consideration.

**5) COMPLIANCE WITH STRATEGIC PLAN INITIATIVES**

Not applicable.

**6) ATTACHMENTS**

Appendix A - Amendment to the Meadow Heights Subdivision Agreement Phase 2,  
Stage 1

**7) RECOMMENDATION**

That Council approve the amendments made to the Meadow Heights Subdivision Agreement between the City and 1399908 Ontario Inc. attached as Appendix A to Planning & Development Department, Planning Division Report No. 2020-157; and

That the Mayor and Clerk be authorized to sign the amended Meadow Heights Subdivision Agreement to be registered on title to the lands.

**8) SIGNATURES**

Prepared on November 11, 2020 by:



Dan Aquilina, MCIP, RPP, CPT  
Director of Planning and Development

Reviewed and Respectfully Submitted:



C. Scott Luey  
Chief Administrative Officer

Reviewed by:



Steve Shypowskyj  
Manager of Projects & Design  
Acting Director of Engineering & Operations

**CITY OF PORT COLBORNE**  
**AMENDMENT TO SUBDIVISION AGREEMENT**

**THIS AGREEMENT** made this        day of  
, 2020 and authorized by By-law        for the City of Port Colborne.

BETWEEN

**1399908 ONTARIO LTD.**  
Hereinafter called the **OWNER** of the **FIRST PART**;

AND

**THE CORPORATION OF THE CITY OF PORT COLBORNE**  
Hereinafter called the **CITY** of the **SECOND PART**;

AND

**1379296 ONTARIO INC.;**  
Hereinafter called the **MORTGAGEE** of the **THIRD PART**;

**WHEREAS** the lands described in Schedule “A” were subject to an Agreement dated the 3<sup>rd</sup> of May, 1990 between CIFA Developments Inc., Lehndorff Investors Services Limited and The Corporation of the City of Port Colborne and registered as Instrument No. LT 077615 on January 29, 1991 which is hereinafter referred to as the “original Subdivision Agreement”;

**AND WHEREAS** the lands described in Schedule “A” were subject to an amending Agreement dated the 28<sup>th</sup> of September, 2000 between 1399908 ONTARIO LTD, CIFA Developments Inc., and The Corporation of the City of Port Colborne and registered as Instrument No. LT 166874 on September 29, 2000 which is hereinafter referred to as the “existing Subdivision Agreement”;

**AND WHEREAS** 1399908 Ontario Ltd. obtained title to the lands on or about March 21, 2000 and owns the lands described on Schedule “A”;

**AND WHEREAS** the Owner has assumed all of the obligations of the original and existing Subdivision Agreement;

**AND WHEREAS** the Owner desires to amend the original Subdivision Agreement to enable development of a portion of the lands described in Schedule “A” and hereinafter known as the “revised Phase 2 Stage 1”;

**AND WHEREAS** the Owner desires to amend the existing Subdivision Agreement to enable development of revised Phase 2 Stage 1 by replacing the phasing plan, grading plan; street lighting plan and cost estimates;

**NOW THEREFORE** this agreement witnesseth that in consideration of the City approving this amending agreement, and in consideration of the sum of \$1.00 of lawful money of Canada now paid by the Owner to the City (the receipt whereof is hereby by the City acknowledged), the Parties hereto mutually covenant and agree as follows:

1. The parties hereto acknowledge that each of the foregoing recitals is true and correct as of the date hereof.
2. The parties hereto agree that the following clauses of the original or the existing Subdivision Agreement are hereby amended:
  - 2.1 Clause 1. of the original Subdivision Agreement entitled Definitions and Clauses 1.1 to 1.11 inclusive be deleted and Clauses 2.1 to 2.6 inclusive on the existing Subdivision Agreement be deleted and replaced with:

**2.2 Definitions**

In this Agreement the following terms shall have the meanings set out below, unless otherwise redefined or where the subject matter or context requires another meaning to be ascribed:

- 2.3 **“Agreement”** means this Subdivision Agreement.
- 2.4 **“Assumption By-Law for Primary Services”** means a by-law passed by the Council of The Corporation of the City of Port Colborne forthwith after the Director of Engineering and Operations has approved in writing the Certificate of Final Acceptance for Primary Services, assuming ownership of and responsibility for all Primary Services constructed by the Developer pursuant to the terms of this Agreement and the approved Plans, SAVE AND EXCEPT the following Primary Services:
  - a) The streets and roadways constructed by the Developer within the Plan of Subdivision;
  - b) The noise attenuation requirements
  - c) The utility services other than streetlights
- 2.5 **“Block”** shall mean the whole of a parcel or tract of land created by the Plan of Subdivision.

- 2.6 “Assumption By-Law for Secondary Services”** means a by-law passed by the Council of The Corporation of the City of Port Colborne forthwith after the Director of Engineering and Operations has approved in writing the Certificate of Final Acceptance for Secondary Services, assuming ownership of and responsibility for:
- a) all Secondary Services constructed by the Developer; and
  - b) the streets and roadways constructed by the Developer within the Plan of Subdivisions.
- 2.7 “Building Permit”** means a permit issued by the Chief Building Official of The Corporation of the City of Port Colborne approving an application for the construction, reconstruction or alteration of any building or structure for which such permit is required pursuant to the provisions of By-Law 129-90 and amendments thereto.
- 2.8 “Certificate of Final Acceptance for Primary Services”** means a certificate prepared by the Developer’s Consulting Engineer and approved in writing by the Director of Engineering and Operations at the expiration of the Maintenance Warranty Period for Primary Services setting out the Primary Services being accepted by the City and indicating the date of final acceptance of such Works.
- 2.9 “Certificate of Final Acceptance for Secondary Services”** means a certificate prepared by the Developer’s Consulting Engineer and approved in writing by the Director of Engineering and Operations issued at the expiration of the Maintenance Warranty Period for Secondary Services setting out the Secondary Services being accepted by the City and indicating the date of final acceptance of such Works.
- 2.10 “Chief Building Official”** means the Chief Building Official for the Corporation of the City of Port Colborne or his designate appointed pursuant to the Building Code Act.
- 2.11 “Completion Certificate for Primary Services”** means a certificate prepared by the Developer’s Consulting Engineer and approved in writing by the Director of Engineering and Operations upon satisfactory completion of all Primary Services, the approval date of which shall start the Maintenance Warranty Period for such Primary Services.
- 2.12 “Completion Certificate for Secondary Services”** means a certificate prepared by the Developer’s Consulting Engineer and approved in writing by the Director of Engineering and Operations upon satisfactory completion of all Secondary Services, the approval date of which shall start the Maintenance Warranty Period for such Secondary Services.

- 2.13 “Consulting Engineer”** shall mean the person or persons registered with the Association of Professional Engineers of the Province of Ontario, who for the time being is or are employed by the Developer to provide engineering services on behalf of the Developer for the Plan of Subdivision.
- 2.14 “Council”** means the Council of The Corporation of the City of Port Colborne.
- 2.15 “Developer”** shall mean the applicant for the approval of a Plan of Subdivision and the registered owner or owners in fee simple of the lands for which the Plan of Subdivision is proposed and their respective heirs, executors, administrators, successors and assigns. Wherever the singular is used herein it shall, where the context requires, include the plural.
- 2.16 “Director of Community and Corporate Services”** means the Director of Community and Corporate Services for The Corporation of the City of Port Colborne or his designate.
- 2.17 “Director of Engineering and Operations”** means the Director of Engineering and Operations for The Corporation of the City of Port Colborne or his designate.
- 2.18 “Easements”** shall mean the easements described in Schedule "B" hereto, which forms part of this Agreement.
- 2.19 “Final Default”** means a situation where the Developer fails to remedy a default within such time as provided in the notice given by the City, as provided in Section 44b) hereof.
- 2.20 “Front Lot Line”** means the lot line that divides a Lot from the street; provided, however, that:
- a) in the case of a corner lot, the shortest Street Line shall be deemed to be the front lot line and the longest Street Line shall be deemed to be the side lot line; and
  - b) in the case of a corner lot with two Street Lines of equal length, the lot line that abuts the wider street or abuts a Regional Road or highway shall be deemed to be the front lot line, and in the case of both streets being under the same jurisdiction or of the same width, the lot line where the principal access to the lot is provided shall be deemed to be the front lot line.
- 2.21 “Grading Conformance Certificate”** means the Certificate identified in Section 53 hereof.

- 2.22 “Frontage of Lot”** means the horizontal distance between the side lot lines measured along the Front Lot Line, but where the Front Lot Line is not a straight line or where the side lot lines are not parallel, the lot frontage is to be measured by a line 7.5 metres back from and parallel to the chord of the lot frontage, and for the purpose of this paragraph the chord of the lot frontage is a straight line joining the two points where the side lot lines intersect the Front Lot Line.
- 2.23 “Letter of Credit”** shall mean any municipal standby irrevocable Letter of Credit drawn upon a Chartered Bank posted with and in a form acceptable to the City pursuant to this Agreement. The municipal standby irrevocable Letter of Credit shall contain a provision which automatically renews it from year to year unless the Bank gives thirty (30) days advance written notice of its intention not to renew.
- 2.24 “Letter of Occupancy”** means a Letter of Occupancy issued by the Chief Building Official subsequent to final inspection of a dwelling, as required by Section 41 hereof.
- 2.25 “Local Improvements”** shall include utilities, sanitary sewers, storm sewers, sidewalks, curbs and gutters, pavements and such other local improvements as are defined by the Local Improvements Act or the Municipal Act.
- 2.26 “Lot”** shall mean the whole of a parcel or tract of land created by the Plan of Subdivision.
- 2.27 “Lot Grading Deposit”** means a deposit of security as specified in Subsection 31(b) hereof.
- 2.28 “Lot Grading Plan”** means a plan for the grading of a Lot as required in Subsection 31(a) hereof.
- 2.29 “Maintenance Warranty Period”** means the period of time during which the Developer is obliged to maintain the Works following approval of the Completion Certificate for Primary Services or Secondary Services, as the case may be, which period is defined in Section 55(f) hereof.
- 2.30 “Party”** shall mean a party to the Agreement and the successors or permitted assigns.
- 2.31 “Plan of Subdivision”** shall mean the Plan of Subdivision of the Lands described in Schedule “A” hereto ultimately approved for registration by the City and registered on title pursuant to the provisions of the Planning Act.
- 2.32 “Plans”** shall mean all drawings, plans, specifications, contracts and other

documents providing for the installation, construction and erection of the Works approved by and filed in the office of the Director of Engineering and Operations prior to execution of this Agreement by the City.

- 2.33 “Pre-Servicing”** means the installation of Works prior to registration of this Agreement.
- 2.34 “Primary Services”** shall mean the following municipal services required to be constructed by the Developer:
- a) municipal sanitary sewer system;
  - b) municipal storm sewer system, storm drainage and storm water management facilities sufficient in the opinion of the Director of Engineering and Operations to provide safety and protection from undue inconvenience to the general public;
  - c) municipal water system, including fire hydrants;
  - d) municipal streets and roadways of final design width with granular base, base course asphalt and concrete curbs and gutters;
  - e) street signs and traffic control signs and devices;
  - f) rough grading of the Lands;
  - g) Noise berm, wall or fence required to mitigate noise within the lands described in Schedule “A” annexed hereto; and all Utility Services.
- 2.35 “Region”** means The Corporation of the Regional Municipality of Niagara.
- 2.36 “Reserve Strip”** shall mean a parcel of land conveyed by the Developer to the City in fee simple, free of encumbrances, abutting a Street Line and separating the street from the next abutting lot or block, for the purpose of preventing legal access from the said street to the said next abutting lot or block.
- 2.37 “Secondary Services”** shall mean all municipal services required to be constructed by the Developer not defined as “Primary Services”, and without limiting the generality of the foregoing, shall include:
- a) top course roadway asphalt;
  - b) sidewalks;
  - c) paved driveway aprons;
  - d) footpaths;
  - e) fencing;
  - f) sodding of boulevards;
  - g) landscaping; and
  - h) tree plantings.
- 2.38 “Storm Water Management Report”** means an approved storm water

management report and specifications prepared by the Developer in accordance with Section 19 of this Agreement.

**2.39 “Street Line”** means a lot line dividing a Lot from a street and is the limit of the street or road allowance.

**2.40 “Subdivision”** means the division of a parcel of land into lesser parcels by means of a registered Plan of Subdivision.

**2.41 “Supervision”** means the full-time inspection and administration of the Works for the express purpose of enforcing the provisions of this Agreement and providing certification of the Works in accordance with Section 8.2.

**2.42 “City”** means The Corporation of the City of Port Colborne.

**2.43 “Treasurer”** means the Director of Community and Corporate Services for The Corporation of the City of Port Colborne or his designate.

**2.44 “Utility Services”** means:

- a) all electrical distribution and street lighting systems, complete; if applicable, all gas services, complete;
- b) all telephone services, complete; and all co-axial services, complete.

**2.45 ‘Works’** means all Primary Services and Secondary Services, both internal and external, and all construction, erection, installation and engineering required to service the Lands in accordance with the terms of this Agreement and the approved Plans.

**3** Clause 2. of the original Subdivision Agreement entitled Schedules to Agreement be amended by the addition of the following references:

SCHEDULE “A” - Description of Lands

SCHEDULE “B” - Lands Conveyed for Public Purposes

SCHEDULE “C” - Additional Site Conditions

SCHEDULE “D” - Roads

SCHEDULE “E” - Sanitary Sewers

SCHEDULE “F” - Storm Sewers and Surface Drains

SCHEDULE “G” - Watermains

SCHEDULE “H” - Sidewalks

SCHEDULE “I” - Streetlights

SCHEDULE “J” - Subdivision Deposit

SCHEDULE “K” - Subdivision Phase 2, Stage 1

APPENDIX “A” - Plans, Profiles and Specifications

4 That Clause 3 of the Original Subdivision Agreement entitled General be deleted and replaced with the following:

4.1 **GENERAL PROVISIONS**

4.2 **Notices**

Any notices required or permitted to be given pursuant to the terms of this Agreement shall be given in the manner hereinafter set out, in writing addressed in the case of:

- a) the City c/o Dan Aquilina, to City Hall, 66 Charlotte Street, Port Colborne, Ontario L3K 3C8 Facsimile 905-835-2939;
- b) the Developer, to Ray Khanna, Kingsway Investments Ltd.  
105 Main Street East, Suite 1510  
Hamilton, ON L8N 1G6 Facsimile 905-526-7200

The giving of such written notice shall be deemed to be complete, where notice is given by personal service, on the day that the serving of written notice is completed, and where notice is given by prepaid registered mail, two (2) days after the date of mailing, and where notice is given by telephone transmission of a facsimile of the notice, on the day that the transmission of the written notice is completed.

4.3 **Binding on Heirs, etc.**

This Agreement and everything herein contained shall ensure to the benefit of and be binding upon the successors and assigns of the Parties hereto and upon those persons and/or corporations hereafter acquiring title to all or any part of the Lands.

4.4 **Section 67 Planning Act**

The Developer agrees to be bound by the penalty provisions set forth in Section 67 of the *Planning Act*, R.S.O. 1990, c.P.13, and amendments thereto.

4.5 **Applicable Laws**

- a) In constructing, installing or providing the Works, the Developer shall comply with all statutes, laws, by-laws, regulations, ordinances, orders and requirements of any governmental or other public authorities having jurisdiction at any time from time to time enforced. Without limiting the foregoing, the Developer agrees to comply with, and cause to be complied

with, the provisions of the *Occupational Health and Safety Act*, the *Environmental Protection Act*, and The *Ontario Water Resources Act* and any regulations, policies and guidelines relating thereto. The Developer further agrees to handle and dispose of all materials in accordance with the foregoing legislation.

- b) The Developer shall do, cause to be done, or refrain from doing any act or thing as directed by the City if at any time the City considers that any situation or condition is unsafe, damaging to the environment, or contrary to the provisions of any applicable laws. If the Developer fails to comply with such direction, the City may take action to remedy the situation at the expense of the Developer and in this regard the City shall also be entitled to draw upon any security filed by the Developer under this Agreement.

#### **4.6 Severance of *Ultra Vires* Terms**

If any term of this Agreement shall be found to be *ultra vires* the City, or otherwise unlawful, such term shall conclusively be deemed to be severable and the remainder of this Agreement *mutatis mutandis* shall be and remain in full force and effect.

#### **4.7 Incontestability**

The Developer shall not call into question directly or indirectly, in any proceeding whatsoever in law or in equity, before any court or administrative or other tribunal, the right of the City to enter into this Agreement and to enforce each and every term, covenant and condition thereof, and this provision may be pleaded by the City in any such action or proceeding as a complete and conclusive estoppel of any denial of such right.

#### **4.8 Time of the Essence**

Time shall be of the essence of this Agreement.

#### **4.9 Certificate of Status**

Prior to execution of this Agreement by the City, the Developer shall deliver to the City a Certificate of Status issued by the Ontario Ministry of Consumer and Commercial Relations verifying that the Developer is a company duly incorporated under the laws of the Province of Ontario and is in good standing.

#### **4.10 Mortgagee's Postponement**

The Developer hereby agrees to procure, register and provide to the City any postponement agreements which the City solicitor considers necessary to ensure that this Agreement shall have priority over any interest of a mortgagee in the Lands.

#### **4.11 Notice to Purchasers**

The Developer shall notify or cause to be notified each and every purchaser of a Lot or Lots of all Works contracted by the Developer, the Developer's obligations to maintain the Works and all other conditions covered by this Agreement by providing a complete and accurate summary of same and shall cause such information to be fully recorded in any Offer to Purchase or Agreement of Purchase and Sale entered into by the Developer.

- 5 That Clauses 4. through 4.5 from the Original Subdivision Agreement be deleted and replaced with the following:

### **6 LANDS REQUIRED FOR MUNICIPAL PURPOSES**

**6.1** The Developer shall convey to the City, in fee simple, free from all encumbrances, such other land as may be required in connection with services necessary for the development of the lands described in Schedule "A" attached hereto, which said additional lands conveyed for Public Purposes are described in Schedule "B" attached hereto.

**6.2** The Developer shall transfer the lands referred to in Section 6.1 above in a neat and tidy condition, free from all debris and trash and in a condition including all necessary improvements completed to the satisfaction of the

**6.3** The Developer covenants and agrees, at its expense, to obtain and grant to the City, prior to final approval of the subdivision, easements required for the construction of services described in the Schedules attached hereto, in accordance with the City's standard easement agreement form, satisfactory to the City Solicitor. The Developer shall also grant such easements as required by other utility companies or commissions for the installation of their plant.

### **EASEMENTS FOR MUNICIPAL PURPOSES**

**6.4** The Developer covenants and agrees, at its sole expense, to obtain and/or grant to the City such easements as may be required for the installation and construction of services or development of the Lands in accordance with Schedule "B" annexed hereto.

**6.5** The Developer shall convey to the City or to such public utility company or commission or cable television company as the City may direct, easements required for utility and/or coaxial purposes in accordance with Schedule "B" annexed hereto. All such easements shall be prepared to the complete satisfaction of the City, and if required by the City, any such utility or cable television company.

**6.6** The Developer shall undertake and complete all improvements in, over, along and upon such easement lands conveyed to the City, including Primary Services, Secondary Services and Utility Services, in accordance with the terms of this Agreement and the Plans filed to the complete satisfaction of the Director of Engineering and Operations and shall keep such easement lands in a neat and tidy condition, free of all debris and trash until the City has passed the Assumption By-Law for Secondary Services.

**7** That Clause 5. through 15. of the original Subdivision Agreement commencing at and entitled Engineering and Inspections be deleted and replaced with:

#### **7.1 SERVICING PLANS AND SPECIFICATIONS**

**7.2** All Plans and specifications must be approved in writing by the Director of Engineering and Operations prior to the execution of this Agreement by the City and the Developer commencing construction of any of the Works.

**7.3** The Developer shall submit to the Director of Engineering and Operations three (3) copies of each plan required to be submitted for approval with respect to the construction of the Works contemplated in this Agreement.

**7.4** It is understood and agreed the Director of Engineering and Operations in his appraisal of the Plans and specifications will be guided by current requirements of the Province of Ontario, established specifications and standards adopted by the City or existing practices and standards as may from time to time be established or amended by the City by its officials or agents. The City may require, in writing, such variances from the Plans as it may deem appropriate due to conditions which may be disclosed as the work progresses and by sound engineering practices.

**7.5** No approval by the Director of Engineering and Operations shall operate as a release by the City of any liability of the Developer which, but for such approval, might exist or hereafter arise.

**7.6** All Plans shall be prepared and stamped by a Consulting Engineer or an Ontario Land Surveyor licensed to practice in the Province of Ontario.

## **8 ENGINEERING AND INSPECTION**

### **8.1 Consulting Engineer**

The Developer shall employ a competent and qualified Consulting Engineer, approved by the Director of Engineering and Operations, to:

- a) carry out all necessary soil investigations to the satisfaction of the Director of Engineering and Operations;
- b) design all Works required to be completed by this Agreement;
- c) prepare plans, profiles and specifications for the Works and submit detailed plans, profiles and specifications to the Director of Engineering and Operations for approval prior to installation or construction of such Works;
- d) obtain from the Director of Engineering and Operations details regarding the form and scale of the plans and profiles prior to their preparation;
- e) obtain and provide the City with all necessary approvals prior to installation or construction of the Works and prior to execution of this Agreement;
- f) prior to execution of this Agreement by the City, prepare and furnish the Director of Engineering and Operations with estimates of the cost of installation and construction of the said Works;
- g) if required, prepare contract documents and call tenders for installation and construction of the said Works;
- h) prepare and supply the City with Progress Payment Certificates;
- i) provide full time resident inspection and contract administration of all Works covered by this Agreement;
- j) maintain all records for the installation and construction of the said Works and submit "as constructed" records in electronic form to the Director of Engineering and Operations prior to approving the Completion Certificate for the Works as per the following:
  - i) all reports will be prepared in Microsoft Word and/or Excel and all drawings will be created in AutoCAD (2012) and the latest version of ESRI ArcGIS. Ownership of both hard copies and digital copies must be transferred to the City upon completion of the Works. Metric units are to be used;

- ii) mapping and associated database information is to be provided in ERSI (.shp) shapefile with object data attached. All information is to be tied to UTM coordinates using the standard NAD83 (Zone 17) datum and should be accompanied by supporting files (font files and plot files) if applicable. Please note that graphical images (.pdf, .cdr, .tif) and CAD files are not considered an acceptable GIS format.
- k) upon completion of installation and construction of the Works, supply the City with a certificate verifying that the Works were installed and constructed in accordance with the approved Plans and specifications;
- l) provide the Director of Engineering and Operations with individual record sheets of all sewer and water services location and depth;
- m) when requested by the Director of Engineering and Operations, accompany him on his inspections of the Works;
- n) supervise construction of all Works on a full time basis, including any remedial work the Director of Engineering and Operations may require;
- o) test all services and verify to the Director of Engineering and Operations, in writing, that all testing has been completed in accordance with the appropriate requirements;
- p) provide building elevations for construction purposes; and
- q) certify, in writing, to the Director of Engineering and Operations, as to the actual cost of all Works completed, prior to the City approving a Completion Certificate for such Works or reducing any Letter of Credit.

**8.2** All Primary, Secondary and Utility Services shall be installed, constructed, inspected and tested under the direct supervision of the Developer's Consulting Engineer at the sole expense of the Developer.

**8.3** The Developer's Consulting Engineer shall conduct all testing of Works and materials to the complete satisfaction of the Director of Engineering and Operations. All sanitary and storm sewers must be inspected and videoed via closed circuit television (CCTV) prior to final acceptance by the City. Complete CCTV reports in the latest format to be provided to City upon completion with as-built documents.

**8.4** The Director of Engineering and Operations or his designate shall have the right at any time and from time to time to request an inspection and re-inspection of any of the Works in progress to ensure such Works are being constructed in

accordance with the Plans and specifications approved by the Director of Engineering and Operations. Such inspections may include testing and the method and time of testing shall be at the sole discretion of the Director of Engineering and Operations.

- 8.5** The City shall inspect all works as deemed necessary to ensure that the works are being constructed in accordance with the plans and specifications approved by the City, to the Engineer's satisfaction. This inspection shall be in addition to the inspection provided by the Developer's Consulting Engineer, and shall in no way relieve the Developer or its Consulting Engineer of any responsibility with regard to supervision and inspection or the proper completion of the work. The Developer shall pay the full cost of engineering inspection by the City.
- 8.6** The City shall inspect all materials and appurtenances prior to installation to ensure conformance with latest City approved material/manufacturer lists. Any items deemed unacceptable are to be tagged or otherwise identified as "unacceptable", and removed from site immediately. Any items deemed "unacceptable" will be replaced at the expense of the Developer Replacement item(s) shall be examined for conformance to the specifications by the City.
- 8.7** The Director of Engineering and Operations shall have a discretionary right to order any work-in-progress stopped and such work shall not be recommenced without written authority from the Director of Engineering and Operations.
- 9** That Clauses 6 to 6.4 from the Original Subdivision Agreement titled Tenders and Contractors be deleted and replaced with the following:

### **TENDERS, INSURANCE & BONDING**

- 9.1** If required by the City, the Developer shall call for tenders for the Works in accordance with the City's Purchasing Policy (By-law No. 3687/113/98). Where the City requires the Developer to call for tenders, any tender proposed to be accepted by the Developer shall not be accepted until same has been approved in writing by the Director of Engineering and Operations.
- 9.2** Prior to commencement of any Works, the Developer shall, at his sole expense, provide the City with:
  - a) a copy of the contractor's Performance and Maintenance Bond and Labour and Material Payment Bond each for one hundred percent (100%) of the contract sum, if required. The aforesaid Bonds shall unconditionally guarantee to the Developer and the City that the Works will be satisfactorily completed and maintained within the terms of the contract, this Agreement and the approved Plans up to the face value of the bond. Without limiting the generality of the foregoing, such Bonds shall cover extensions to the contract, modifications thereof, and the Maintenance

Warranty Period. The bonding company shall not replace a prime contractor or sub-contractor without prior written approval of the Director of Engineering and Operations. Bonding companies are subject to acceptance by the City;

- b) a certified copy of the Developer's third party All Perils and Liability Insurance Policy naming the City as an additional insured in a form satisfactory to the City as follows:
- i) the policy is to be written on the comprehensive form including contractual liability and complete operations with an inclusive limit of five million dollars (\$5,000,000.00) bodily injury (including death) and property damage with a deductible not greater than one thousand dollars (\$1,000.00);
  - ii) the Liability Insurance Policy shall not contain any exclusions for damage to property, support of any property, building or land arising from the removal or weakening of support of any property, building or land whether such support be natural or otherwise and shall not contain an exclusion for blasting;
  - iii) the Standard Automobile Policy shall cover both owned and non-owned vehicles with inclusive limits of not less than two million dollars (\$2,000,000.00) bodily injury (including death) and property damage with a deductible not greater than one thousand dollars (\$1,000.00);
  - iv) excess umbrella liability coverage of four million dollars (\$4,000,000.00) for all risks included in (i) and (ii) above shall be provided with a retained limit up to ten thousand dollars (\$10,000.00);
  - v) "Cross Liability" and "Severability of Interest" clauses or endorsements shall be provided;
  - vi) an endorsement will be provided to the effect that the policy or policies will not be altered, cancelled or allowed to lapse without thirty (30) days prior written notice to the City from the insurer;
  - vii) the premium for the said policies shall be paid initially for a period of two (2) years and the policy shall be renewed for further one-year periods until all Works required under this Agreement are installed and assumed by the City;

- viii) The policy of insurance shall not be construed as relieving the Developer from responsibility for the deductibles or other or larger claims, if any, for which the Developer or City may be held responsible;
  - c) a certificate from the Worker's Safety Insurance Board certifying the contractor is in good standing with the Board; and
  - d) satisfactory evidence the contractor is qualified, experienced and has the equipment to successfully complete the Works.
- 10** That Clauses 7 to 7.14 titled Installation of Services from the Original Subdivision Agreement be deleted and replaced with the following:

**10.1 SERVICES**

General

- a) Where the Plan of Subdivision is serviced by a secondary means of egress or emergency access to be constructed by the Developer, an existing road allowance, open or unopened, or any newly dedicated widening thereof, the Developer agrees such secondary means of egress or emergency access, road allowance and any widening thereof shall be deemed to form part of the Lands and be subject to the requirements related thereto specifically indicated in the approved Plans.
- b) Where it is necessary to use a secondary means of egress or emergency access to be constructed by the Developer or an unopened road allowance to service all or any part of the Lands, the Developer shall, at its own expense, construct the necessary municipal services in accordance with the approved Plans.
- c) The Developer shall not change, or do any work that will prejudicially effect, any natural watercourse or drainage ditch without making full and proper provisions satisfactory to the Director of Engineering and Operations, and the Developer shall be solely responsible for any damage caused thereby and the Developer hereby indemnifies and saves harmless the City from any claim arising from such damage.
- d) The Developer shall keep all portions of the development well, properly and efficiently drained during construction and completion and will be held responsible for all damage which may be caused or results from water backing up or flowing over, through, from or along any part of the Works, or which any of the Developer's operations may cause to flow elsewhere, and the Developer hereby indemnifies and saves harmless the City from any claim arising from said damage.

- e) The Developer covenants and agrees to carry out all Works necessary to service the Plan of Subdivision in such a manner as to prevent erosion and earth, debris and other material from being washed or carried in any manner onto any road, road allowance or highway whether opened or unopened, or onto the property of any other person or persons. If such earth, debris or other material is washed or carried onto such road, road allowance, whether opened or unopened, or onto the property of any person or persons, the City, its servants or agents, may, at the City's discretion, clean and remove such material, rectify any damage caused, and abate any nuisance created by the Developer in the development of the Plan of Subdivision. The cost of any such work performed by or at the instruction of the City, shall be paid by the Developer on demand, and without limiting any of its remedies at law or in equity, the City may enforce any security available to it to recover such costs or may collect such costs in like manner as municipal taxes as provided in *The Municipal Act* and with the same priorities as taxes that are overdue and payable.
- f) The Developer shall be solely responsible for controlling dust nuisance in conjunction with the Works, both within the Plan of Subdivision and elsewhere.
- g) All streets abutting on the Lands or used for access to the Lands during installation or construction of the Works or during construction of dwellings shall, at all times, be kept as dust free as possible and in a good and usable condition, and without restricting the generality of the foregoing, the Developer shall at the end of each day during such construction cause all such streets to be cleaned of all refuse, rubbish, waste, debris and other materials of any kind, whether the same resulted from installation and construction of Works or otherwise, and if such streets are damaged the Developer shall at its own cost restore same immediately to the City's requirements and to the satisfaction of the Director of Engineering and Operations.
- h) All trucks making deliveries to or taking materials from the Lands shall be adequately covered and not unreasonably loaded so as to scatter refuse, rubbish, dust or debris on abutting streets or properties. If at any time, in the opinion of the Director of Engineering and Operations, damage is being or is likely to be done to any street or any improvement thereon, other than such portions as are part of the Works, by the Developer's or its contractor's vehicles or other equipment, whether licensed or unlicensed, the Developer or its contractor shall on the direction of the Director of Engineering and Operations make changes in or substitutions for such vehicles or other equipment or shall alter loading or shall in some other manner satisfactory to the Director of Engineering and Operations remove the cause of such damage or nuisance. The Developer shall at

its own cost repair any such damage immediately to the City's requirements and to the satisfaction of the Director of Engineering and Operations.

- i) The Developer shall inform all public utility companies having legal authority to install or construct utility systems (including without limitation Bell Canada, Consumer's Gas, Enbridge Gas, Canadian Niagara Power Inc., Regional Cable Television (Central) Inc., Niagara Regional Broadband Network, etc.) of the approximate date of construction of the Works in order that such utility companies may place their work in accordance with their requirements and to the satisfaction of the Director of Engineering and Operations, and the Developer shall assume complete responsibility and make all necessary arrangements for the moving of hydro-electric, gas, telephone and co-axial cables, pipes, conduits, wires, pipe lines, or any other public utility works as necessary and as approved by the Director of Engineering and Operations, and the Developer shall be solely responsible for any damage caused to the said cables, pipes, conduits, wires, pole lines and other works.
- j) The City disclaims any responsibility or liability for the support and protection of sewers, drains, pipes, conduits, tracks or other utilities, services and structures owned by the City or any other public body, by companies, or any other person enjoying special franchises or occupying any portion of the streets or ways on or below or above the surface. The Developer is directed to carefully examine the location of the Works and to make special inquiry of the companies or persons owning, controlling or operating said pipes, conduits, tracks and other utilities, services and structures, and to determine the character, size, position and length of such pipes, conduits, tracks, utilities and structures, and to inspect the public records of the various City Departments having recognizance and control of pipes, conduits and sewers, and to make such further personal inspection and investigation as is necessary to determine the correctness of the information so obtained. It is the Developer's responsibility to consult the companies concerned as to the exact location of said utilities, services and structures, and, where necessary, the Developer shall protect and support same to maintain their operation. In the event damage is done to a utility, service or structure the Developer thereof shall be notified immediately by the Developer and any costs arising from such damage shall be paid for by the Developer. A copy of such notice shall be sent to the Director of Engineering and Operations.
- k) The Developer agrees to keep boulevards and Easements graded and free and clear of all material and obstructions which might interfere with the construction of telephone, co-axial, gas and hydro-electric installations, and other utility works.

- l) The Developer shall remove from all road allowances in the Plan of Subdivision, any surplus or other material and obstructions and such trees and vines, as necessary and to the satisfaction of the Director of Engineering and Operations, and further, shall remove from the Lands any unkempt, diseased or infested trees, vines or bushes. In the event this clause is not complied with within fourteen (14) days of written notice delivered by the City to the Developer, the City may have such material removed and collect the cost thereof from the Developer, and without limiting its remedies at law or equity, the City may enforce any security held by it to recover costs or may collect the costs in like manner as municipal taxes as provided in *The Municipal Act* and with the same priorities as taxes that are overdue and payable.
- m) The Developer shall not remove any topsoil from the Lands without first obtaining written approval from the Director of Engineering and Operations.
- n) All Works required to be installed or constructed by the Developer shall be installed and constructed in accordance with the City's specifications therefor at the date of the commencement of the installation or construction of the Works and in accordance with the approved Plans.
- o) The Developer acknowledges and agrees, notwithstanding the complete installation of services in the subdivision as authorized by the City, that the City will not be held liable for any stoppage or delay of the registration of the Plan or the issuance of Building Permits for the lots in the Plan.

## **11 Survey Monuments to be Preserved**

The Developer agrees that all survey monuments or related markings established in connection with the installation of public utility and municipal services are to be preserved; and if any survey monument or related marking is accidentally or deliberately damaged, destroyed or removed, to immediately repair or replace such monuments or related markings under the direction of the person or persons responsible for establishing said survey monuments or related markings.

## **12 City's Right to Enter and Repair**

- a) The City shall have the right to enter on the Lands at all times and from time to time and to carry out maintenance and repair of the Works:
  - i) without notice to the Developer where, in the sole opinion of the Director of Engineering and Operations, danger to public safety or an emergency condition exists, or the streets have not been kept free of mud, dust and/or snow or to prevent damage or hardship to any persons or property; and

- ii) where repairs to or maintenance of the said Works has not been completed within twelve (12) hours after written notice requiring such repairs or maintenance has been delivered to the Developer.
- b) The decision of the Director of Engineering and Operations that repairs, remedial work or maintenance to the said Works is required or that an emergency state exists requiring immediate repair or maintenance shall be final, conclusive and incontestable. Such repairs, remedial works or maintenance shall not be deemed acceptance of the Works by the City or an assumption by the City of any liability in connection therewith and shall not release the Developer from any of its obligations under this Agreement.
- c) The cost of any repair or maintenance work (including professional fees) undertaken by the City pursuant to the provisions of this Agreement shall be borne by the Developer and the amount thereof shall be paid to the City within thirty (30) days after a statement of account therefor has been delivered to the Developer. If the Developer fails to pay the amount due to the City within such thirty (30) day period, the City may and is hereby expressly authorized by the Developer to deduct the amount owing to the City for such repairs or maintenance from any monies or Letters of Credit deposited with the City.
- d) Repairs or maintenance undertaken by the Developer pursuant to this subsection, shall be completed in the presence of the Director of Engineering and Operations or his representative.13111

**13 Services to be Co-ordinated**

The Developer agrees and acknowledges that the designs of all municipal and public utilities and services for the subdivision of the Lands must be coordinated with all adjacent developments to ensure secondary access, service main looping and other integration and co-ordination of utilities and services.

**14 Land Use Sign**

The Developer agrees to erect, to the satisfaction of the Director of Engineering and Operations, a 2.5m x 2.5m Land Use Sign prior to the commencement of construction of the Works, which shall indicate the proposed and abutting street system, lot patterns, sidewalk layout and land uses. The Developer further agrees to make available all such information and related servicing structures to prospective buyers.

**15 Interim Works**

The Developer agrees and acknowledges that, until the Director of Engineering and Operations affixes his signature of approval to the Plans, all works which may be carried out in the interim are done solely and entirely at the Developer's risk, and that changes to existing works or additional works may be required or reflected in the final approved Plans.

## **16 Roads**

- a) The Developer agrees to perform and complete all road Works required by this Agreement and the approved Plans and specifications to the complete satisfaction of the Director of Engineering and Operations.
- b) Any existing road damaged during the development of the Plan of Subdivision shall be restored by the Developer, to the complete satisfaction of the Director of Engineering and Operations, prior to approval of the Certificate of Completion for Primary Services.
- c) The roads shall be named to the satisfaction of the City.

## **17. Sanitary Sewer System**

- a) Prior to re-commencement of construction, the following inspections and tests must be performed on the previously installed sanitary sewer system. Reports and results must then be submitted to the City for review. Only upon approval of these reports and results by the Director of Engineering and Operations may construction continue.
  - i) Closed-Circuit Television (CCTV) Inspection, as per OPSS.MUNI 409, shall be performed on the sewer mains, service laterals, associated appurtenances, and maintenance holes.
    - a. All sewer mains and associated appurtenances shall be inspected to confirm alignment and to ensure that the pipes are free from obstructions, debris, and defects.
    - b. All service laterals and associated appurtenances shall be inspected to confirm alignment and to ensure that the pipes are free from obstructions, debris, and defects.
    - c. All maintenance holes shall be inspected for any defects, leaks, debris, and to ensure proper benching.

- ii) Low Pressure Air Testing, as per OPSS.MUNI 410 for pipes and ASTM C 1244 for maintenance holes, shall be performed on the sewer mains, service laterals, associated appurtenances, and maintenance holes to ensure the integrity of the conveyance system.
  - iii) Mandrel deflection testing, as per OPSS.MUNI 438, shall be performed on the sewer mains to ensure they are free from defects.
  - iv) Based on the reports and results provided to the City, the Director of Engineering and Operations may request to have sewer mains, service laterals, or associated appurtenances daylighted with the City's Construction Inspector in attendance, by and at the sole cost of the developer, for further inspection.
  - v) Any defects identified in the inspections shall be corrected by and at the sole cost of the developer. Following the corrective work, the respective sewer mains, service laterals, associated appurtenances, or maintenance holes shall be re-inspected and the new reports and results shall be submitted to the City for review.
- b) If required by the City, and prior to execution of this Agreement by the City, the Developer shall undertake a review of existing downstream sanitary sewer system to ensure the capacity of the system is sufficient for the increase in flows from the Plan of Subdivision. In the event the downstream system is inadequate for the flow increase from this Subdivision, upgrading of those facilities will be the financial responsibility of the Developer and the Work required and/or necessary to upgrade such facilities shall be completed by the Developer as part of development of this Plan of Subdivision to the complete satisfaction of the Director of Engineering and Operations.
- c) The Developer shall construct a sanitary sewer system, including service laterals from the sewer main to the Street Line and other appurtenances, to adequately service the Lands. All sanitary sewers, including upgrading of downstream facilities if deemed necessary by the City, shall be constructed according to the approved Plans and specifications. Plans must be approved by the Director of Engineering and Operations, the Region of Niagara Public Works Department and the Ministry of the Environment, and the construction and materials used therein shall be in accordance with the City's most recent specifications therefor.

- d) All sanitary sewer Works shall be flushed and cleaned by high velocity sewer flushing equipment:
  - i) after placement of the base course asphalt upon the streets in the Plan of Subdivision;
  - ii) forthwith after final paving of the streets has been completed; and
  - iii) upon receipt of any written notice from the Director of Engineering and Operations.
- e) All sanitary sewer Works shall be tested, and if necessary re-tested, and the method and time of testing shall be to the satisfaction of the Director of Engineering and Operations.
- f) All sanitary sewer Works shall be inspected and videoed via closed circuit television to the satisfaction, and upon any written notice from, the Director of Engineering and Operations and prior to assumption of the sanitary sewer Works by the City. In the event the results are not satisfactory in the sole opinion of the Director of Engineering and Operations, the Developer shall take such remedial steps as may, in the sole opinion of the Director of Engineering and Operations, be required.
- g) Prior to the Director of Engineering and Operations approving the Completion Certificate for Primary Services, the Developer shall supply the Director of Engineering and Operations with “as constructed drawings” and complete CCTV Reports showing the location and depth of the sanitary sewer lateral constructed to service each Lot.
- h) Prior to registration of the Plan, the Region shall confirm that adequate sanitary sewage allotment is available.
- i) The Developer agrees to perform and complete all sanitary sewer Works required by this agreement and the approved Plans and specifications to the complete satisfaction of the Director of Engineering and Operations.

## **18 Storm Drainage System**

- a) Prior to re-commencement of construction, the following inspections and tests must be performed on the previously installed storm drainage system. Reports and results must then be submitted to the City for review. Only upon approval of these reports and results by the Director of Engineering and Operations may construction continue.

- i) Closed-Circuit Television (CCTV) Inspection, as per OPSS.MUNI 409, shall be performed on the sewer mains, catchbasin leads, service laterals, associated appurtenances, catchbasins, and maintenance holes.
    - a. All sewer mains, catchbasin leads, and associated appurtenances shall be inspected to confirm alignment and to ensure that the pipes are free from obstructions, debris, and defects.
    - b. All service laterals and associated appurtenances shall be inspected to confirm alignment and to ensure that the pipes are free from obstructions, debris, and defects.
    - c. All catchbasins and maintenance holes shall be inspected for any defects, leaks, debris, and to ensure proper benching.
  - ii) Low Pressure Air Testing, as per OPSS.MUNI 410 for pipes and ASTM C 1244 for maintenance holes, shall be performed on the sewer mains, catchbasin leads, service laterals, associated appurtenances, catchbasins, and maintenance holes to ensure the integrity of the conveyance system.
  - iii) Mandrel deflection testing, as per OPSS.MUNI 438, shall be performed on the sewer mains and catchbasin leads to ensure they are free from defects.
  - iv) Based on the reports and results provided to the City, the Director of Engineering and Operations may request to have sewer mains, catchbasin leads, service laterals, or associated appurtenances daylighted with the City's Construction Inspector in attendance, by and at the sole cost of the developer, for further inspection.
  - v) Any defects identified in the inspections shall be corrected by and at the sole cost of the developer. Following the corrective work, the respective sewer mains, catchbasin leads, service laterals, associated appurtenances, catchbasins, or maintenance holes shall be re-inspected and the new reports and results shall be submitted to the City for review.
- b) The Developer agrees to construct a storm drainage and storm water management system to adequately service the Lands and all or any portion of the ultimate drainage area in which the Lands are located.

This system shall be constructed in accordance with the Plans approved by the Director of Engineering and Operations, the Region of Niagara Public Works Department, the Region of Niagara Public Works Department, the Niagara Peninsula Conservation Authority (NPCA) and the Ministry of the Environment, and construction and materials used therein shall be in accordance with the City's most recent specifications therefor.

- c) All storm sewer Works shall be flushed and cleaned by high velocity sewer flushing equipment:
  - i) after placement of the base course asphalt upon the streets in the Plan of Subdivision;
  - ii) forthwith after final paving of the streets has been completed; and
  - iii) upon receipt of any written notice from the Director of Engineering and Operations.
- d) All storm sewer Works shall be inspected and videoed via closed circuit television to the satisfaction of, and upon any written notice from, the Director of Engineering and Operations and prior to assumption of the storm sewer Works by the City. In the event the results are not satisfactory in the sole opinion of the Director of Engineering and Operations, the Developer shall take such remedial steps as may, in the sole opinion of the Director of Engineering and Operations, be required.
- e) Prior to the Director of Engineering and Operations approving the Completion Certificate for Primary Services, the Developer shall supply the Director of Engineering and Operations with "as constructed drawings" and complete CCTV Reports showing the location and depth of the storm sewer lateral constructed to service each Lot.

## **19 Stormwater Management System**

- a) The Developer agrees that prior to the City executing this Agreement the Developer shall prepare and provide a Storm Water Management Report which shall be submitted for approval by the Director of Engineering and Operations, the Ministry of the Environment, the NPCA and the Region of Niagara Public Works Department, indicating the following:

- i) the manner in which storm water will be conveyed across the Lands in both major and minor storms, using storm water management techniques that are in accordance with the Provincial guidelines contained in “Stormwater Management Practices Planning & Design Manual - June 1994” (Ministry of Environment) and the latest revision thereof or such more stringent standards as may be applicable;
  - ii) an assessment of downstream and upstream constraints and how these constraints can be addressed (at a minimum the storm water management system must provide Level 1 protection for downstream fisheries and resources); and
  - iii) an Erosion and Sediment Control Plan for the development of the Lands whereby erosion and sediment and their effects will be minimized on site during and after construction in accordance with the “Ontario Guidelines on Erosion and Sediment Control for Urban Construction Sites” May 1987 and the latest revision thereof or such more stringent standards as may be applicable.
- b) The Developer shall prepare and provide a Subdivision Grading Plan in accordance with Section 30 hereof indicating the existing and proposed grades as well as the means whereby major system flows will be conveyed across the Lands. The 100-year flood level shall be plotted on the Plan to ensure that all structural development will be located above this elevation.
- c) The Developer agrees to implement the Storm Water Management Plan, as approved by the NPCA including the approved grading and drainage plans, any required erosion and flood protection works, and all NPCA requirements.
- d) The Developer agrees to carry out or to have carried out all storm water management techniques and Works necessary and/or required to convey storm water runoff from the Lands in accordance with the approved Subdivision Grading Plan and Storm Water Management Plan to the complete satisfaction of the Director of Engineering and Operations and the Region of Niagara Public Works Department.

**20 Water Distribution System**

- a) Prior to re-commencement of construction, the following inspections and tests must be performed on the previously installed water distribution system. Reports and results must then be submitted to the City for review.

Only upon approval of these reports and results by the Director of Engineering and Operations may construction continue.

- i) Daylighting, with the City's Construction Inspector in attendance, of at least two (2) locations, to be decided by the Director of Engineering and Operations, of each type of water main pipe, hydrant lead, service lateral, tee, valve, bend, connection, and other appurtenances.
  - ii) Hydrostatic Pressure Test, as described in the latest version of the City's Watermain Commissioning Protocol and as per OPSS.MUNI 441, shall be performed on the entire water distribution system.
  - iii) Based on the reports and results provided to the City, the Director of Engineering and Operations may request to have additional water mains, hydrant leads, service laterals, or associated appurtenances daylighted with the City's Construction Inspector in attendance, by and at the sole cost of the developer, for further inspection.
  - iv) Based on the reports and results provided to the City, the Director of Engineering and Operations may request that Closed-Circuit Television (CCTV) Inspection, as per OPSS.MUNI 409, be performed on the water mains, hydrant leads, or associated appurtenances to ensure that the pipes are free from obstructions, debris, and defects.
  - v) Any defects identified in the inspections shall be corrected by and at the sole cost of the developer. Following the corrective work, the respective water mains, hydrant leads, service laterals, or associated appurtenances shall be re-inspected and the new reports and results shall be submitted to the City for review.
- b) The Developer shall construct a complete water supply and distribution system, including valves, valve boxes, fire hydrants, service connections, curbstops and boxes, blow-offs and ground hydrants as may be required for the purpose of servicing the Plan for Subdivision. The water distribution system shall be constructed according to the Plans approved by the Director of Engineering and Operations or the Region of Niagara Public Works Department and the Ministry of the Environment if required, and the construction and materials used therein shall be in accordance with the City's most recent specifications therefor.

- c) The Developer shall install, charge, test and maintain fire hydrants as required by the approved Plans and specifications in accordance with this Agreement to the complete satisfaction of the Port Colborne Fire Department and the Director of Engineering and Operations.
- d) The water supply and distribution system shall be designed to accommodate residential and fire flows with the minimum size of 150 mm in diameter.
- e) All water mains shall be flushed, chlorinated, pressure tested and bacterial tested in accordance with City Standards and to the satisfaction of the Director of Engineering and Operations prior to approval of the Completion Certificate for Primary Services.
- f) The Developer shall, prior to the Director of Engineering and Operations approving the Completion Certificate for Primary Services, supply the Director of Engineering and Operations with “as constructed drawings” showing the location and depth of the water connections constructed to service each of the Lots.

**21 Sidewalks**

The Developer shall, at its sole expense, construct concrete sidewalks in accordance with the approved Plans filed and specifications therefor.

**22 Fencing**

The Developer shall, at its sole expense, construct fencing in accordance with the approved Plans filed and specifications therefor.

**23 Street and Traffic Signs**

- a) The Developer shall erect and maintain temporary traffic signs and such other traffic control devices to the satisfaction of the Director of Engineering and Operations during the construction period.
- b) The Developer shall pay for all permanent street and traffic signs and other traffic control devices required by the approved Plans and to the satisfaction of the Director of Engineering and Operations. The Developer shall be responsible to install all permanent street and traffic signs to the current standards of the City.

**24 Electrical Distribution System and Street Lighting**

- a) The Developer shall arrange with Canadian Niagara Power Inc. (CNPI) for the design, provision and installation of all electrical transmission and distribution system and streetlighting system required to service all of the Lots shown on the Plan with electrical power in accordance with the plans and specifications therefor approved by CNPI and the Director of Engineering and Operations. All such facilities shall be installed underground unless specific external systems are approved by CNPI and the Director of Engineering and Operations. The cost of providing such facilities shall be borne by the Developer.
- b) The Developer shall arrange with CNPI for local electrical supply connections and appurtenances thereto from the distribution system to terminals on abutting private property. The wiring for such service connections shall be underground. The cost of providing such service connections and appurtenances shall be borne by the Developer and the Developer shall pay the cost thereof to CNPI upon receipt of a statement of account therefor.
- c) Prior to the Director of Engineering and Operations approving the Certificate of Final Acceptance for Primary Services, the Developer shall deliver to the City satisfactory proof of installation and construction of the aforesaid electrical transmission and distribution system and the street lighting system, which shall have been approved and/or accepted by a utility supplier satisfactory to the City, and upon Council passing the Assumption By-Law for Primary Services the City will assume the street lighting system into the City's street light inventory.
- d) The Developer will supply the City with 3 spare fixtures including but not limited to poles, arms, luminaires and mounting hardware for replacement inventory.

## **25 Utility Services**

All Utility Services required to service the Plan of Subdivision, including, without restricting the generality of the foregoing, hydro service, telephone cables and coaxial cables, shall be installed underground from the source with pad-mounted transformers. All Utility Services shall be installed and constructed prior to the Director of Engineering and Operations approving the Certificate of Completion for Primary Services

## **26 Mail Delivery**

- a) The Owner agrees to install a concrete pad at final approved grade in accordance with the requirements of Canada Post to facilitate the installation of Community Mail Boxes. The location of the concrete pads are subject to approval by Canada Post and the Engineer.
- b) The Owner agrees to identify the concrete pads on the engineering servicing drawings. The pads are to be poured at the time of the sidewalk and/or curb installation within each phase of the plan of subdivision.
- c) The Owner agrees to determine the location of all centralized mail facilities in cooperation with Canada Post and to post the location of these sites on appropriate maps, information boards and plans.

## **27 Tree Plantings**

- a) In order to maintain a high standard of amenity and appearance, the Developer, its heirs, executors, administrators, successors and assigns hereby undertake and agree to retain the maximum number of trees within the lands consistent with good design and conservation practices and to deposit a Letter of Credit with the City, to guarantee the total cost of purchasing, planting and maintaining trees within the Plan in accordance with the following:
  - i) The Owner agrees to plant one tree in the front yard of each lot within the plan, 1.5 metres from the front lot line. The location shall be on private property and not interfere with the alignment of the services to the property.
  - ii) Trees shall be 50 millimetres caliper or more and a height of 1.8 metres or more, balled and bur lapped at planting and be of such varieties as Red Maple, Common Hackberry, Kentucky Coffeetree, Tulip Tree, Redspire Ornamental Pear, Princeton Sentry Ginkgo or such other compatible variety, as approved by the City.
- b) In accordance with Schedule “J” annexed hereto, prior to registration of this Agreement by the City, the Developer shall provide a security in the form of a Letter of Credit to the City for Tree Planting within the subdivision, to cover the cost of purchasing, planting and maintaining trees within the Plan.

## **28 Driveways**

- a) Each Lot shall be serviced with a driveway approach constructed in accordance with the Plans filed to the complete satisfaction of the Director of Engineering and Operations.
- b) All driveway approaches (aprons) between the curb line and the sidewalk, or in the absence of a sidewalk, between the curb line and the Street Line shall be installed and paved by the Developer in accordance with the approved plans and specifications therefor prior to the Director of Engineering and Operations approving the Completion Certificate for Secondary Services.

## 29 Landscaping

- a) The Developer shall grade and place a minimum of 100mm of topsoil together with number one nursery sod on all portions of road allowances in the Plan of Subdivision not covered by asphalt or sidewalks and along all sides of the Plan of Subdivision abutting on adjacent existing streets. All sodding as herein described shall be considered as part of the cost of construction of services for the Plan of Subdivision, and shall be completed prior to the Director of Engineering and Operations approving the Completion Certificate for Secondary Services.
- b) All drainage ditches, major overland flow drainage swales and depressions within the Plan of Subdivision shall be sodded with number one nursery sod prior to the City issuing any building permits. The Developer shall maintain all sod until Council passes the Assumption By-Law for Secondary Services.

## 30 Subdivision Grading and Drainage

- a) Unless otherwise approved or required by the City, the Developer, its heirs, executors, administrators, successors and assigns hereby irrevocably undertake not to alter the grades or remove trees or other vegetation from the Lands until such time as:
  - i) the City has agreed in writing to such alteration or removal; and
  - ii) the City has approved the Subdivision Grading Plan pursuant to the terms of this Agreement and the City's Lot Grading and Drainage Policy, By-Law 2464/80/90 and amendments thereto.
- b) Prior to execution of this Agreement by the City or commencing any phase of development, and in accordance with the City's Lot Grading and Drainage Policy, By-Law No. 2464/80/90 and amendments thereto, the Developer shall prepare and provide the City, as part of the engineering drawings, a Subdivision Grading Plan for the purpose of controlling the overall drainage pattern in the Plan of Subdivision. The Subdivision Grading Plan shall be prepared in conformance the City's Lot Grading and Drainage Policy, By-Law 2464/80/90 and amendments thereto.
- c) The following grading works shall be completed prior to the issuance of any Building Permits:
  - i) construction and sodding of all major overland flow drainage swales and other erosion control devices to the satisfaction of the Director of Engineering and Operations for the Plan of Subdivision, subject to weather conditions; and
  - ii) rough grading of all Lots to generally conform to the Subdivision Grading Plan.

- d) If drainage problems arise which are as a result of non-compliance with the requirements of By-Law 2464/80/90 and amendments thereto, the Developer shall within forty-eight (48) hours of receiving notice thereof correct the problems. Without limiting its remedies at law or in equity, the City may enter upon the Lands to remedy any such problem and may use the Subdivider's Grading Deposit to cover the costs of any remedial works deemed necessary. Any costs of these remedial works in excess of the amount of the Subdivider's Grading Deposit shall be the responsibility of the Developer, and if not reimbursed to the City forthwith after being incurred by the City, the City may collect such costs in like manner as municipal taxes as provided in *The Municipal Act* and with the same priorities as taxes that are overdue and payable.
- e) The Developer shall deposit with the City as security for carrying out the provisions of the Subdivision Grading Plan, in accordance with Schedule "J" annexed hereto, a Subdivider's Grading Deposit as required by By-Law 2464/80/90 and amendments thereto.
- f) Upon completion of the Works and acceptance by the City of a Subdivision Grading Conformance Certificate prepared and signed by an Ontario Land Surveyor or Professional Engineer, the Developer may apply in writing for release of the Subdivider's Grading Deposit, less any cost for remedial work undertaken by the City.

### **31 Lot Grading and Drainage**

- a) Prior to the issuance of a Building Permit for a Lot, the Developer or the Building Permit applicant shall submit to the City three copies of a proposed Lot Grading Plan prepared by a Professional Engineer or an Ontario Land Surveyor and shall conform to the Subdivision Grading Plan.
- b) Prior to issuance of a building permit for a Lot, the Developer or Building Permit applicant shall submit to the City as security for carrying out the provisions of the Lot Grading Plan a Lot Grading Deposit in the amount of \$2,000.00 per Lot.
- c) Upon acceptance of the Grading Conformance Certificate by the City, the Developer may apply in writing for release of the Lot Grading Deposit, less any cost of remedial work performed by the City.
- d) The grading of a Lot shall be considered complete when the building has been erected and such lot has been graded and sodded, and/or seeded. Sodding and/or seeding shall be done within two months after occupancy of the dwelling or by the next June 1st following occupancy should occupancy take place after November 1st.
- e) Upon completion of the grading as noted in Section 31. a) of this Agreement, prior to landscaping or fencing, the Developer shall submit to the City one copy of the Lot Grading Plan which shall indicate the finished elevation as shown on the proposed Lot Grading Plan. This "as constructed" Lot Grading Plan shall be prepared and certified by a Professional Engineer or Ontario Land Surveyor.

- f) Once the “as constructed” grading of a Lot has been certified and signed by an Ontario Land Surveyor or Professional Engineer to be in conformance with the latest revision of the Subdivision Grading Plan, the Lot Grading Plan if approved by the City, shall be accepted and dated by the City, as the “Grading Conformance Certificate.”
- g) The Developer, its heirs, executors, administrators, successors and assigns hereby irrevocably undertake to maintain the grading and drainage schemes as established and verified by the Grading Conformance Certificate and not to alter or revise the grading or drainage without the express written consent of the Director of Engineering and Operations or the Chief Building Official.

**32 Foundation Drains**

The Developer agrees that foundation drains shall be pumped by a sump pump in each house to grade.

**33 Roof Water**

The Developer agrees that roof water drainage from any structure or building shall be directed via downspouts discharging via splash pads (concrete or other suitable material) to grass surfaces. These splash pads shall extend a distance at least 1.2 metres away from the structure and must direct the flow away from the building, not onto walks or driveways and not towards adjacent property.

**34 Minimum Basement Elevations**

If required, the Developer agrees to submit a plan for approval to the Director of Engineering and Operations, detailing the basement control elevations for individual dwellings or structures within the Plan of Subdivision and to ensure compliance with approved basement control elevations.

**35** That Clauses 8, 13, 14, 16 & 17 from the Original Subdivision Agreement be deleted and replaced with the following:

**36 BY-LAW(S), DOCUMENTATION AND REGISTRATION**

- a. Before this Agreement is executed by the City, the appropriate authorizing By-law must be enacted by the Council of the City.
- b. The City may, at the sole expense of the Developer, request the Developer’s solicitor to prepare such further and other documentation as may be deemed necessary and/or required by the City for the preparation, registration and implementation of the agreement.
- c. If required, the Developer’s solicitor, at the sole expense of the Developer, shall:

- i. provide and/or prepare all documentation which the City's Solicitor may require, including all necessary Transfers, Easements and restrictive covenants in registerable form;
  - ii. certify title to the City in a signed Certificate of Title;
  - iii. have all documentation signed by the Developer, Charges, and other necessary parties;
  - iv. sub search title and obtain an Execution Certificate prior to registration and provide copies of same to the City's Solicitor;
  - v. deliver all executed documentation to the City; and
  - vi. attend to registration of all documentation, at the Developer's expense, required by this Agreement.
- d. Prior to the City executing this Agreement, the Developer shall provide the City with two (2) copies each of the draft Plan of Subdivision (M-Plan) for the Lands and the draft Reference Plan (R-Plan) providing legal descriptions for Easements within or outside the Lands.
- e. The Developer covenants and agrees to register an application, signed by the City, for an order inhibiting any dealings with the Lands to the applicable Land Registrar immediately following the registration of the Agreement. The Developer acknowledges that the City shall not be obligated to register any documents in compliance with the Inhibiting Order or to apply to have the Inhibiting Order removed from title until the Developer has supplied all documents in compliance with this Agreement in a form satisfactory to the City for registration and all other documents required to provide discharges, releases and postponements with respect to any charges, mortgages or encumbrances with respect to the Lands have been registered against title to the lands.
- f. Upon the City being satisfied that all conditions of Draft Plan approval for the Plan of Subdivision have been satisfied by the Developer within the required time, the City shall register the following documentations at the sole expense of the Developer as soon as practicable:
  - i. the approved Plan of Subdivision; and
  - ii. all other documentation related thereto, including without limitation, Cessations of Charge.
- g. In the event the Plan of Subdivision is not registered within one (1) year from the date of registration on title of this Agreement, the City may declare the Developer in Final Default.
- h. The Developer shall not deal in any manner whatsoever with any Lot or Block shown on the Plan of Subdivision until this Agreement, the Plan of Subdivision and all other documentation (including Transfers, Easements, Cessation of Charge, Inhibiting Orders, Reference Plans, and Postponements of Charges) required by this Agreement and by the City's solicitor have been delivered, approved and registered on title to the complete satisfaction of the City's solicitor.

## Permits, Fees, Deposits and Occupancy

### 37 Building Permits – Issuance

The Developer covenants and agrees not to apply for building permits until:

- i. all Primary Services have been completed and a Certificate of Completion for Primary Services has been approved to the satisfaction of the Director of Engineering and Operations;
- ii. the City has on file an approved Subdivision Grading Plan;
- iii. the Developer has completed the following grading works:
  - i) rough grading of all Lots to generally conform to the Subdivision Grading Plan;
  - ii) construction and sodding of all major overland flow drainage swales and other erosion control devices deemed necessary by the City for the Lands;
- iv. the City has on file an approved Proposed Lot Grading Plan;
- v. the City is in receipt of all applicable fees and deposits including, without limiting the generality of the foregoing:
  - i) Development fees at the prevailing rate as prescribed by The Development Charges By-Law 6733/97/19 and amendments thereto;
  - ii) the Lot Grading Deposit;
  - iii) Building Permit application fee;
  - iv) Plumbing Permit application fee;
  - v) Water meter fee;
  - vi) Service Main connection application and fee, if applicable;
  - vii) Land for park dedication fee; and
  - viii) Any other fees, deposits or payments required under this Agreement;

- vi. the City's Fire Department has confirmed that an adequate water supply for firefighting operations and satisfactory access for firefighting equipment is available to service the Lands;
- vii. the City is satisfied all terms and conditions of this Agreement have been complied with insofar as they apply at that point in time;
- viii. the Developer has paid all development charges required by the Development Charges By-Law of the Regional Municipality of Niagara; and
- ix. the Developer has otherwise complied with all applicable law.

**38 Water Saving Devices**

The Developer agrees that all new homes being constructed will utilize water saving devices such as low flow toilets and low flow shower heads, of a standard acceptable to the Director of Engineering and Operations and the Chief Building Official.

**39 No Building Permit While In Default**

Notwithstanding anything herein contained, the City may refuse to issue building permits if there is an existing default in any of the provisions of this Agreement.

**40 Service Main Connections**

Prior to making any connections, if required, to existing municipal services the Developer shall submit to the City, completed Connection Permit applications and applicable fees for connection to existing sewer or water mains. No connection shall be made until the Connection Permits are approved by the City's Engineering and Operations Department.

**41 Occupancy**

Unless otherwise determined by the Chief Building Official, no dwelling, including model units, shall be occupied:

- i. until the Director of Engineering and Operations has approved the Certificate of Completion for Primary Services;
- ii. until the City has on file a Grading Conformance Certificate for the Lot; and;
- iii. until a final inspection has been completed and a Letter of Occupancy is issued by the Chief Building Official.

**42 Model Units**

The Developer agrees to pay all applicable permit fees and development charges for the buildings or structures constructed as model units, and shall otherwise comply with Section 41 herein, prior to a Letter of Occupancy being issued for said units.

#### **43 Water Meters**

All new homes constructed shall be equipped with water meters at the sole expense of the Developer.

### **SECURITY DEPOSITS AND CASH PAYMENTS**

#### **44 General**

- a) The Developer shall be responsible for the full amount of the cost for the design, construction, installation, servicing and maintenance of the Works for the Plan of Subdivision together with all City inspection charges, engineering, administrative and consulting fees and in order to guarantee compliance with all conditions contained herein, the Developer shall be required to post security and cash payments on account of aforesaid costs, charges and fees in accordance with Schedule "J" annexed hereto prior to execution of this Agreement by the City. The security should be in the form of a standby Letter or Letters of Credit with **automatic renewal provision**, in a form approved by the City. The Developer covenants and agrees that the Letter of Credit shall be kept in full force and effect and that it will pay all premiums as the Letter of Credit becomes due or until such time as the City returns the Letter of Credit in accordance with the provisions of this agreement.
- b) The Developer acknowledges and agrees that should there be a deficiency in or failure to carry out any work or matter required by any provision of this Agreement, whether or not such work or matter is specifically secured by way of Letter of Credit, and the Developer fails to comply within seven (7) days of being given written notice with a direction to carry out such work or matter, the City may draw on the Letter of Credit and enter onto the Lands and complete all outstanding works or matters, and pay all costs and expenses incurred thereby from the proceeds so drawn.
- c) The Developer acknowledges and agrees that the City reserves the right to draw on and use the proceeds from the Letters of Credit to complete any work or matter required to be done by the Developer pursuant to this Agreement. The Developer further acknowledges and agrees that, notwithstanding any provision to the contrary in this Agreement specifying the reduction or release of security, in the event that the City determines that any reduction in the Letter of Credit would create a shortfall with respect to securing the completion of any work or matter remaining to be carried out by the Developer pursuant to this Agreement, the City will not be obligated to reduce or release the Letter of Credit as by the particular provision until such time as such work is satisfactorily completed, or the City has sufficient security to ensure that such work will be completed.

- d) Whenever in this Agreement a Letter of Credit is required to be filed with the City, the Developer may instead deposit cash or a certified cheque to be cashed in an amount equal to the Letter of Credit and such deposit shall be held by the City as security in accordance with this Agreement provided that no interest shall be payable on any such deposit.
- e) The Developer acknowledges that upon the transfer of any ownership of the Lands, the City will not return any Letters of Credit or cash deposit required under this Agreement until the new Developer files a substitute Letter or Letters of Credit or cash or certified cheque in the required amounts with the City.
- f) The Developer acknowledges that for the purpose of determining the amount of security to be posted prior to execution, the Developer's Consulting Engineer shall provide the City with an estimate of the cost of design, construction, supervision, inspection and maintenance of all Works. Security to be posted for Primary Services and Secondary Services and City inspection charges, engineering, administrative and consulting fees shall be calculated, in a manner satisfactory to the Director of Engineering and Operations, on the basis of the Developer's Engineer's estimated cost of design, construction, supervision, inspection and maintenance of all Works as set out in Schedule "J" annexed hereto.
- g) From time to time, upon written request, the Developer's Consulting Engineer shall be required to certify in writing the actual cost of design, construction and maintenance of all Works installed and constructed to date, and the estimated cost of all outstanding Works, and the Director of Engineering and Operations may adjust the amount of security required if the actual cost of construction of all Works, installed and constructed to date or the estimated cost of all outstanding Works exceeds the original estimated costs as set out in Schedule "J" annexed hereto and the Developer shall be required to obtain, and the Developer hereby covenants to obtain, an amendment to the security to give effect thereto. In the event the Developer fails to increase the amount of security within seven (7) days of receipt of aforesaid written notice, then the Developer shall be deemed to be in Final Default of the terms and conditions of this Agreement.

#### **45 Cash Payments**

Prior to the execution of this Agreement by the City, as security for payment of services to be rendered by the City and its agents as required by this Agreement, and for presently outstanding payments owing to the City, the Developer shall, in accordance with Schedule "J" annexed hereto, deposit with the City cash payment and cash security as set out in Schedule "J", which security shall include, but not be limited to the following:

1. all arrears of taxes and all current taxes and local improvement charges assessed against the lands described in Schedule "A" annexed hereto; and
2. the City's engineering, administrative, consulting, and inspection costs for this Agreement, approval of the Plans, and enactment

of By-laws, shall be payable in cash to the City at the time of signing of this Agreement calculated on the following basis:

- i. 2% of cost of Works
- ii. Further, the Developer's Consulting Engineer shall be required to certify the actual cost of all construction in writing to the Director of Engineering and Operations, who may adjust the amount of inspection fee following construction if the actual construction costs vary from the original estimated costs by an amount greater than ten percent (10%).

3. The Developer shall reimburse the City, all legal costs incurred by the City associated with the preparation, administration and registration of this Agreement.

#### **46 Letter of Credit for On-Site Primary Services**

- a) The Developer shall deposit with the Treasurer of the City, prior to execution of this Agreement, a Letter of Credit in the amount of ten percent (10%) of the estimated cost of the design and construction of all Primary services to be constructed within the boundaries of the Plan of Subdivision (herein referred to as "On-Site Primary Services"). On default by the Developer in providing the On-Site Primary Services in accordance with the provisions of this Agreement and/or the approved Plans, the City shall be entitled to call upon such security deposit to pay for the completion of such On-Site Primary Services. Upon receipt of Claims for Liens filed pursuant to the provisions of the *Construction Lien Act* with respect to the construction of On-Site Primary Services, the City shall also be entitled to call upon the said Letter of Credit.
- b) For Off-Site Primary Services, the Treasurer, from time to time, upon written application of the Developer, may reduce or release security deposits, provided that at no time shall the amount retained be less than one hundred percent (100%) of the estimated cost of uncompleted Off-Site Primary Services plus ten percent (10%) of the actual cost of completed works. Before reduction or release of any security deposit, the Treasurer, from out of the security deposit, may pay firstly, into court or in settlement, any liens arising pursuant to the provisions of the *Construction Lien Act* with respect to the construction of Off-Site Primary Services secured under Section 44 of this Agreement; secondly, any engineering, consulting, administrative and legal costs still owing; thirdly, any arrears of taxes; fourthly, taxes for the then current year whether levied or unlevied, based on the assessment applicable; and finally, shall return the balance, if any, to the Developer.
- c) The Treasurer shall retain as security for the Maintenance Warranty Period an amount equal to ten percent (10%) of the total actual cost of Off-Site Primary Services completed to guarantee the workmanship and materials of the Works until assumption of the Off-Site Primary Services by the City. Upon assumption in accordance with the provisions of this Agreement, the ten

percent (10%) Maintenance Warranty hereinbefore referred to may be released by the Treasurer to the Developer.

**47 Letter of Credit for Off-Site Primary Services**

- a) The Developer shall deposit with the Treasurer of the City, prior to execution of this Agreement, a Letter of Credit for one hundred percent (100%) of the costs of design and construction of all Primary Services outside the boundaries of the Plan of Subdivision (herein referred to as "Off-Site Primary Services"). On default of the Developer in providing the Off-Site Primary Services in accordance with the provisions of this Agreement and/or the approved Plans, the City shall be entitled to call upon such security deposit to pay for the completion of such Off-Site Primary Services. The City shall also have the right to call upon the said security deposit upon receipt of Claims for Liens filed pursuant to the provisions of the *Construction Lien Act* with respect to Off-Site Primary Services.
- b) For Off-Site Primary Services, the Treasurer, from time to time, upon written application of the Developer, may reduce or release security deposits, provided that at no time shall the amount retained be less than one hundred percent (100%) of the estimated cost of uncompleted Off-Site Primary Services plus ten percent (10%) of the actual cost of completed works. Before reduction or release of any security deposit, the Treasurer, from out of the security deposit, may pay firstly, into court or in settlement, any liens arising pursuant to the provisions of the *Construction Lien Act* with respect to the construction of Off-Site Primary Services secured under Section 44 of this Agreement; secondly, any engineering, consulting, administrative and legal costs still owing; thirdly, any arrears of taxes; fourthly, taxes for the then current year whether levied or unlevied, based on the assessment applicable; and finally, shall return the balance, if any, to the Developer.
- c) The Treasurer shall retain as security for the Maintenance Warranty Period an amount equal to ten percent (10%) of the total actual cost of Off-Site Primary Services completed to guarantee the workmanship and materials of the Works until assumption of the Off-Site Primary Services by the City. Upon assumption in accordance with the provisions of this Agreement, the ten percent (10%) Maintenance Warranty hereinbefore referred to may be released by the Treasurer to the Developer.

**48 Letter of Credit for Off-Site and On-Site Secondary Services**

- a) The Developer shall deposit with the Treasurer of the City, prior to execution of this Agreement, a Letter of Credit in the amount of one hundred and twenty percent (120%) of the costs of design and construction of all Off-Site and On-Site Secondary Services. On default of the Developer in providing the Secondary Services in accordance with the provisions of this Agreement and/or the approved Plans, the City shall be entitled to call upon such security deposit in order to pay for the completion of such Secondary Services. The City shall also have the right to call upon the said security deposit upon receipt of Claims for Lien filed pursuant to the provisions of the *Construction Lien Act* with respect to Secondary Services.

- b) For all Secondary Services, the Treasurer, from time to time, upon written application of the Developer, may reduce or release such security deposits, provided that at no time shall the amount retained be less than one hundred and twenty percent (120%) of the estimated cost of uncompleted Secondary Services. Before reduction or release of any security deposit, the Treasurer, from out of the security deposit, may pay firstly, into court or in settlement, any liens arising pursuant to the provisions of the *Construction Lien Act* with respect to the construction of Secondary Services secured under Section 44 of this Agreement; secondly, any engineering, consulting, administrative and legal costs still owing; thirdly, any arrears of taxes; fourthly, taxes for the then current year whether levied or unlevied, based on the assessment applicable; and finally, shall return the balance, if any, to the Developer.
- c) The Treasurer shall retain as security for the Maintenance Warranty Period an amount equal to ten percent (10%) of the total actual cost of Secondary Services completed to guarantee the workmanship and materials of the Works until assumption of Secondary services by the City. Upon assumption in accordance with the provisions of this Agreement, the ten percent (10%) Maintenance Warranty herein before referred to may be released by the Treasurer to the Developer.
- d) Upon written demand by the Director of Engineering and Operations and upon the Developer making application for release of security, the Developer shall deliver to the City, a statutory declaration by or on behalf of the Developer stating:
  - i) the date of completion of the subject services;
  - ii) Works completed to date;
  - iii) all accounts that have become due and payable in connection with the construction, installation, inspection, repair and maintenance of the subject services have been paid; and
  - iv) all requirements of the *Construction Lien Act* have been complied with to date and proof of expiration of liens under the *Construction Lien Act*.

**49** That Clause 18 of the Original Subdivision Agreement titled Default be deleted and replaced with the following:

**DEFAULT**

- a) Upon breach by the Developer of any covenant, term, condition or requirement of this Agreement, any contract awarded for the Works or the approved Plans, or upon the Developer becoming insolvent or making any assignment for the benefit of creditors, the City, at its option, may declare the Developer to be in default. Notice of such default shall be given by the City, and if the Developer shall not remedy such default within such time as provided in the notice, the City may declare the Developer to be in Final Default under this Agreement and shall then forthwith give notice thereof to the Developer. Upon notice of default having been given, the City may

require all work by the Developer, its servants, agents, independent contractors and sub-contractors to cease (other than any work necessary to remedy such default) until such default shall have been remedied, and in the event of final default, may require all work as aforesaid to cease. Upon Final Default of the Developer, the City may, at its option, adopt or pursue any or all of the following remedies, but shall not be bound to do so:

- i) enter upon the land shown on the said Plan of Subdivision, by its servants, agents and contractors and complete any work, service, repair or maintenance wholly or in part required herein to be done by the Developer, and collect the cost thereof from the Developer and/or enforce any security available to it;
  - ii) make any payment which ought to have been made by the Developer and upon demand collect the amount thereof from the Developer and/or enforce any security available to it;
  - iii) retain any sum of money heretofore paid by the Developer to the City, for any purpose, and apply the same in payment or part payment for any work which the City may undertake;
  - iv) assume any work or services whether the same have been completed or not, and thereafter the Developer shall have no claim or title thereto or remuneration therefor;
  - v) bring action to compel specific performance of all or any part of this Agreement, or for damages or other relief or remedy; or
  - vi) exercise any other remedy granted to the City under the terms of this Agreement or available to the City in law or in equity.
- b) Developer shall be deemed to be in Final Default if:
- i) the City receives written notice from the Bank of its intention to not renew the Letter of Credit;
  - ii) the Developer has not made provision for renewal at least thirty (30) days prior to the date of maturity of any Letter of Credit posted;
  - iii) the City receives written notice from the insurance company or the Developer's agent that any insurance policy filed by the Developer with the City is being altered, cancelled or allowed to lapse;
  - iv) the Developer has not made provision for renewal at least thirty (30) days prior to the date of expiry of any insurance policy, Performance and Maintenance Bond or Labour and Material Payment Bond;
  - v) upon sale of the Lands the new Developer has not delivered to the City, replacement security deposits; or
  - vi) the Developer fails to increase security as required by the provisions of this Agreement.

- 50 That Clause 18 of the Original Subdivision Agreement titled Completion be deleted and replaced with the following:

**COMPLETION, MAINTENANCE, ACCEPTANCE AND ASSUMPTION OF WORKS**

- a) Condition Precedent

The performance by the Developer of its obligations in this Agreement to the satisfaction of the Director of Engineering and Operations shall be a condition precedent to the approval, maintenance, acceptance and assumption of the Works or any of them by the City.

- b) Time to Complete Servicing

The Developer shall proceed with the installation or construction of the Works required by this Agreement and the approved Plans with all reasonable dispatch and shall complete:

i) all required Primary Services within one year after the date of registration of the Plan of Subdivision; and

ii) all required Secondary Services not later than three (3) years after completion of the Primary Services or forthwith after 80% of the building construction has been completed whichever occurs earlier unless otherwise approved by the Director of Engineering and Operations.

iii) The Director of Engineering and Operations may extend the time for completion of Primary and Secondary Services or any of them for such length of time as he or she may deem expedient upon written application of the Developer with reasons why the extension is required.

51 **Roads**

- a) Until Council passes an Assumption By-Law for Secondary Services assuming all the roads constructed, the Developer, on behalf of itself, its successors and assigns, including its successors in title to the Lands in the Plan of Subdivision, hereby releases, discharges and agrees to indemnify and save harmless the City from and against all actions, causes of action, suits, claims and demands whatsoever and howsoever arising, and without limiting the generality of the foregoing, which may arise by reason of:

- i) any alteration of the existing grade or level of any road or roads on the said Plan to bring the grade or level in accordance with the plans approved by the Director of Engineering and Operations;

- ii) any damage to the lands abutting on any road or roads shown on the Plan of Subdivision or to any building erected thereon arising from or in consequence of any such alteration of grade or level; and
  - iii) any damages or injuries (including death) to persons or damage to property occurring or arising on any road or roads on the said Plan of Subdivision, however caused.
- b) All road allowances shown on the Plan of Subdivision shall be named to the satisfaction of the Director of Engineering and Operations.

**52 Completion Certificate for Primary Services**

- a) Primary Services installation will not be considered complete by the City until an inspection has been made by the Director of Engineering and Operations or his designate and the Completion Certificate for Primary Services has been issued by the Director of Engineering and Operations. The Director of Engineering and Operations shall be accompanied during his inspection by the Developer's Consulting Engineer. The Works shall be inspected and all deficiencies rectified to the complete satisfaction of the Director of Engineering and Operations, prior to the approval of the Completion Certificate for Primary Services.
- b) The City may withhold approval of a Completion Certificate if, in the sole opinion of the Director of Engineering and Operations, the Developer is in default of its obligations pursuant to this Agreement or the approved Plans.
- c) Prior to the Director of Engineering and Operations approving the Completion Certificate for Primary Services, the documentation listed in Subsection 52(d) must be provided to the Director of Engineering and Operations in a single submission package.
- d) The Developer's Consulting Engineer shall provide to the Director of Engineering and Operations document(s) verifying that all primary services were installed and constructed in accordance with approved plans and specifications;
  - i) Certificate(s) stating that all watermains have been flushed, chlorinated and pressure tested in accordance with City standards;
  - ii) Certificate(s) stating that all watermain tracer wires have been tested and the new water distribution system can be traced;

- iii) Certificate(s) stating that all fire hydrants servicing the development have been tested by a qualified hydrant testing agent;
  - iv) Copies of the hydrant test reports and fire flow test reports;
  - v) Certificate(s) stating that all storm and sanitary sewers have been flushed after placement of base course asphalt, air pressure tested, and inspected and videoed via close circuit television;
  - vi) Copies of the storm and sanitary sewer inspection reports and supporting data and documentation;
  - vii) Certificate stating that the approved Tree Preservation Plan has been complied with including a Clearance Letter from the Region;
  - viii) Certificate(s) stating that all utility services required to service the Plan of Subdivision are installed & constructed or a letter of commitment to complete the utility services from utility companies;
  - ix) Certificate (Overall Grading Certificate) stating that rough grading and major drainage works or swales have been completed in accordance with the Subdivision Grade Control Plan;
  - x) The original Drawings showing each of the said works "As Constructed" together with electronic drawing files in AutoCAD 2012 format using City of Port Colborne Drafting Standards; and
  - xi) Plans (cards) showing the location and depth of each sanitary sewer lateral, storm sewer lateral and water service lateral constructed to service each of the lots.
- e) The Developer shall provide the Director of Engineering and Operations with:
- i) a Statutory Declaration from the Developer in a form satisfactory to the Director of Engineering and Operations setting out the Works completed and verifying:
    1. All such works have been completed in accordance with the terms of this Agreement and the approved plan and specifications;
    2. All accounts have been paid for installation, construction, inspection, repair and maintenance of such Works; and
    3. That there are no outstanding debts, claims or liens in respect of such works.
- f) Subject to Section 52d) hereof, upon receipt of the required documentation and the Director of Engineering and Operations'

satisfaction that the installation and construction of all Primary Services has been completed in accordance with this Agreement and approved Plans, the Director of Engineering and Operations, shall date and approve the Completion Certificate of Primary Services.

**53 Completion Certificate for Secondary Services**

- a) Secondary Services installation will not be considered complete by the City until an inspection has been made by the Director of Engineering and Operations or his designate and the Completion Certificate for Secondary Services has been issued by the Director of Engineering and Operations. The Director of Engineering and Operations shall be accompanied during his inspection by the Developer's Consulting Engineer. The Works shall have been inspected and all deficiencies rectified to the complete satisfaction of the Director of Engineering and Operations, prior to the approval of the Completion Certificate for Secondary Services.
- b) The City may withhold approval of a Completion Certificate if, in the sole opinion of the Director of Engineering and Operations, the Developer is in default of its obligations pursuant to this Agreement or the approved Plans.
- c) Prior to the Director of Engineering and Operations approving the Completion Certificate for Secondary Services, the documentation listed in Section 53d) must be provided to the Director of Engineering and Operations in a single submission package.
- d) The Developer's Consulting Engineer shall provide to the Director of Engineering and Operations:
  - i) Certificate(s) verifying that all secondary services have been installed, fully completed, repaired and maintained in accordance with approved plans and specifications; and
  - ii) If required, the original Drawings showing each of the said works as constructed together with electronic drawing files in AutoCAD 2012 format using City of Port Colborne Drafting Standards.
- e) The Developer shall provide the Director of Engineering and Operations with a Statutory Declaration from the Developer in a form satisfactory to the Director of Engineering and Operations setting out the Works completed and verifying:

- i) All such works have been completed in accordance with the terms of this Agreement and the approved plan and specifications;
  - ii) All accounts have been paid for installation, construction, inspection, repair and maintenance of such Works; and
  - iii) that there are no outstanding debts, claims or liens in respect of such works.
- f) Subject to Subsection 36 hereof, upon receipt of the required documentation and the Director of Engineering and Operations' satisfaction that the installation and construction of all Secondary Services has been completed in accordance with this Agreement and approved Plans, the Director of Engineering and Operations shall date and approve the Completion Certificate for Secondary Services.

**54. Maintenance of the Subdivision**

- a) The Developer shall be responsible for the general tidy appearance of the entire Lands until completion of all building, and carry out all weed cutting and maintenance on all unsold lands and all un-assumed roads to the satisfaction of the Director of Engineering and Operations.
- b) The Developer shall adequately maintain all roads, sidewalks and pedestrian walkways within the Plan of Subdivision free from mud, debris, building materials, and other obstructions, to the satisfaction of the Director of Engineering and Operations until Council passes an Assumption By-Law for Secondary Services.
- c) The Developer shall be responsible to control weeds and to maintain vacant lands free from debris, waste building materials, tree stumps, discarded boulders, and other refuse, and shall notify any purchaser, in writing, to refrain from dumping on such vacant lands, including lands dedicated by it to the City for municipal purposes.
- d) The Developer shall maintain the Works, and every part thereof, in perfect order and in complete repair for the duration of the Maintenance Warranty Period and shall repair in a permanent manner satisfactory to the Director of Engineering and Operations any and all damage or injury to the Works, both during construction and during the period of maintenance as aforesaid.
- e) Should the Developer, for any reason, fail to carry out the repairs or maintenance, including weed control, when requested by the City, the Director of Engineering and Operations, at his sole option, after giving the Developer twelve (12) hours written notice, may perform the repairs or maintenance and all costs, charges and expenses so incurred shall be borne by the Developer. The decision of the Director of Engineering and Operations shall be final as to the

necessity of repairs or of any work done or required to be done. Any costs incurred by the City not reimbursed by the Developer forthwith may be collected by the City in like manner as municipal taxes as provided in *The Municipal Act* and with the same priorities as taxes that are overdue and payable.

- f) The Developer's obligation to maintain the Works as aforesaid shall commence on the approval date of the Completion Certificate for the Works and extend for a minimum of two (2) years or until the Director of Engineering and Operations approves the Certificate of Final Acceptance for such Works whichever occurs last (this period is herein referred to as the "Maintenance Warranty Period").
- g) The Maintenance Warranty Period for Primary Services shall commence on the date the Director of Engineering and Operations approves the Completion Certificate for Primary Services.
- h) The Maintenance Warranty Period for Secondary Services shall commence on the date the Director of Engineering and Operations approves the Completion Certificate for Secondary Services.

## **55 Certificate of Final Acceptance**

- a) Upon expiration of the two (2) year Maintenance Warranty Period for Primary Services or Secondary Services as the case may be, and upon receipt of written application by the Developer, the applicable Works will be inspected by the Director of Engineering and Operations, and provided all deficiencies have been rectified to his satisfaction and the Developer is not in default of the terms of this Agreement, the subject Works shall be accepted by the City and the Director of Engineering and Operations shall approve the Certificate of Final Acceptance prepared by the Developer's Consulting Engineer provided the requirements identified in Schedule "C" of the Certificate of Final Acceptance have been met.
- b) The Developer is required to submit a certificate from a registered Ontario Land Surveyor certifying he has found and/or replaced all standard iron bars (SIB's) shown on the registered Plan of Subdivision as of a date not earlier than seven days prior to the Director of Engineering and Operations approving the Certificate of Final Acceptance for Secondary Services.
- c) If upon inspection of the applicable Works all deficiencies have not been rectified to the complete satisfaction of the Director of Engineering and Operations the Maintenance Warranty Period shall be extended until such time as all deficiencies have been rectified and the Certificate of Final Acceptance has been approved by the Director of Engineering and Operations.
- d) The Director of Engineering and Operations may withhold approval of a Certificate of Final Acceptance for Primary or Secondary Services, if, in the sole opinion of the Director of Engineering and

Operations, the Developer is in default of its obligations to inspect, repair, construct or maintain any of the Works pursuant to this Agreement and the approved Plans.

**56 Assumption of Municipal Services**

- a) The Developer hereby acknowledges that upon assumption by the City of the municipal services required to be installed and constructed by this Agreement and the approved Plans, all such municipal services shall wholly vest in the City without payment therefor, free and clear of all claims and liens and the Developer shall have no right, title or interest therein. Municipal services shall be assumed by the City by Council passing:
  - i) an Assumption By-Law for Primary Services after the Director of Engineering and Operations approves the Certificate of Final Acceptance for Primary Services; and
  - ii) an Assumption By-Law for Secondary Services after the Director of Engineering and Operations approves the Certificate of Final Acceptance for Secondary Services.
  
- b) The Assumption By-Law for Primary Services shall not include the following Primary Services:
  - i) the streets and roadways constructed by the Developer within the Plan of Subdivision; and
  - ii) the Utility Services other than the streetlights.
  
- c) The Assumption By-Law for Secondary Services shall include the following Primary/Secondary Services:
  - iv) finished streets and roadways as constructed by the Developer within the Plan of Subdivision; and
  - v) all Secondary Services constructed by the Developer in accordance with the approved Plans and this Agreement.B

57 **INTERPRETATION**

It is hereby agreed that in construing this Agreement the words "Developer" and the personal pronoun "he", "it", "his" or "him" relating thereto and used therewith, shall be read and construed as "Developer or Developers", and "he", "she", "it" or "they", "his", "hers", "its" or "their", and "him", "her", "it" or "them" respectively, as the number and gender of the Party or Parties referred to in each case require and the number of the verb agreeing therewith shall be construed as agreeing with the said word or pronoun so substituted.

**IN WITNESS WHEREOF** the Parties have hereunto caused their seals to be affixed and attested by their proper signing officers and the individual Parties have hereunto set their hands and seals, as of the date hereof.

**SIGNED, SEALED & DELIVERED  
IN THE PRESENCE OF:**

**1399908 ONTARIO LTD.**

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
RAY KHANNA  
I HAVE THE AUTHORITY TO BIND THE  
CORPORATION

**1379296 ONTARIO INC.**

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
ELAINE HRISTOVSKI  
I HAVE THE AUTHORITY TO  
BIND THE CORPORATION

THE CORPORATION OF THE CITY OF  
PORT COLBORNE, Per:

\_\_\_\_\_  
WILLIAM C. STEELE, MAYOR

\_\_\_\_\_  
AMBER LAPOINTE, CLERK

WE HAVE THE AUTHORITY TO BIND THE  
CORPORATION

**SCHEDULE "A"**  
**Description of Lands**

Lots 48 to 75 inclusive Registered Plan 59M-195 City of Port Colborne, Regional Municipality of Niagara.

## **SCHEDULE “B”**

### **Lands Conveyed for Public Purposes**

The Developer shall convey free and clear of all encumbrances and at their own expense, easements to the City, over, under and through the following:

#### Easements

Parts 7 to 13 inclusive for storm drainage purposes laid out on reference plan 59R-15883, prepared by Kirkup, Mascoe & Ure Surveying Ltd, June 22, 2017.

Parts 1 to 5 inclusive for storm drainage purposes laid out on reference plan 59R-16623, prepared by Kirkup, Mascoe & Ure Surveying Ltd., January 30, 2020.

## **SCHEDULE “C”**

### **Additional Site Conditions**

1. The Developer agrees immediately after the registration of this Agreement, to deliver to the City executed transfers of easements and executed deeds of conveyance sufficient to vest in the City, or where applicable, in any other public authority or person, absolute title in fee simple, free and clear of all liens, charges, encumbrances and easements, the lands as set out in Schedule “B”.
2. The Developer agrees to provide the City with a copy of all documentation for installation of services, including drawings, spreadsheets and forms. This includes digital copies of all drawings in “.dwg”, “.pdf” and “.shp” formats, with the .pdf copy being full size, scalable and stamped, signed and dated by the Developer’s Consulting Engineer to the satisfaction of the Director of Engineering and Operations.
3. The Developer agrees to install the Temporary Swales as shown on Drawing Number 227-GP as part of Stage 1 to ensure drainage for Stage 1 functions until servicing is completed on Stage 2 lands.

## **SCHEDULE “D”**

### **Roads**

The Developer shall clear, excavate and grade the full width of all road allowances within the subdivision, to the City’s standard road cross-section and to the grades approved by the Engineer. The Developer shall dispose of all brush, rubble and surplus material resulting from this operation. The Developer shall construct, as part of the primary services as per roadways identified in Appendix “A”.

## **SCHEDULE “E”**

### **Sanitary Sewers**

The Developer shall construct a sanitary sewer system or systems including all trunk sewer extensions necessary to service the proposed development. All sewers shall be installed in the locations and at the grades and elevations the Engineer may direct. Capacity shall be provided in the sanitary sewer system for all domestic wastes in accordance with City, Region, and the Ontario Ministry of the Environment’s design criteria. The pipe sizes selected shall have sufficient capacity to serve the ultimate drainage area in which the subdivision is located and as designed by the Engineer. PVC sewer pipe shall be used for all local and minor collector sewers except where otherwise specified by the Engineer; a minimum pipe size for local sewers 200 mm diameter. The City’s standard manholes of a type approved by the Engineer shall be poured or placed at a minimum spacing of 106 m.

### **Private Drain Connections**

The Developer shall construct separate sanitary sewer connections (laterals) to serve each lot. Sanitary sewer laterals shall be a minimum 100 mm diameter PVC building sewer pipe with proper fittings as designed by City’s construction standards.

Only domestic waste from any building constructed on any lot shall be discharged into the sanitary sewer system through a drain connected to the sanitary sewer lateral servicing such lot.

Where there is a difference in elevation of the storm and sanitary sewer lateral, these shall be constructed in separate trenches and, in other cases, shall be constructed in accordance with the direction of the Engineer. Joint use of either the storm or sanitary lateral trenches will be permitted for the installation of water service connections subject to the City’s approval.

## **SCHEDULE “F”**

### **Storm Sewers and Surface Drains**

The Developer shall construct a storm sewer system and outlet or such extensions as necessary to provide a connection to existing trunk sewers where available. All sewers shall be installed in such locations, grades and depths as the Engineer may direct and such pipe sizes as are required to serve the subdivision lands and all or any portion of the ultimate drainage area the proposed development is located in. The storm sewer shall be designed to accommodate all roof water and surface run-off from roads and properties.

Concrete pipe of the gasket joint, or other approved type, shall be used, minimum pipe size for storm sewer 300 mm diameter, except where otherwise specified by the Engineer.

### **Private Drain Connections**

The Developer shall construct separate storm sewer connections (laterals) to serve each lot. Storm sewer laterals shall be a minimum 125 mm diameter PVC building sewer pipe with proper fittings as designated by City’s construction standards.

The foundation drains shall be collected in a sump from which they will be pumped and discharged to the surface in such a manner that any water collected shall drain away from the foundation. In no case shall the foundation drains be connected to the sanitary sewer lateral. Foundation drain connections may be made to the storm sewer lateral provided such connections are made at a point above the finished elevation of the ground adjacent the building.

Roof water from any building constructed on any lot shall be discharged directly to the ground through rain water leaders.

Where there is a difference in elevation of the storm and sanitary sewer lateral, these shall be constructed in separate trenches and, in other cases, shall be constructed in accordance with the direction of the Engineer. Joint use of either the storm or sanitary lateral trenches will be permitted for the installation of water service connections subject to the City’s approval.

## **SCHEDULE "G"**

### **Watermains**

The Developer shall construct a complete watermain system or systems, and all necessary appurtenances, including hydrants and house water service connections from the watermain to the street line. The design shall be prepared and/or approved by the City and constructed in accordance with its specifications. All watermains shall be sufficient size to service the subdivision, and the lands outside the subdivision, which will require the use of the subdivision's watermains as trunk or feeder mains.

The Developer shall be responsible for any damage causing to such watermains and appurtenances that may occur during construction of buildings on the lands and during the grading of same.

The Developer shall ensure that all service boxes located on the street line shall be adjusted to meet the finished boulevard elevation at the time of final grading of the boulevards and sodding.

The Developer agrees to obtain and comply with the necessary City watermain approvals to connect to the existing municipal water service.

The Developer will need to comply with the City's most recent commissioning plan at the date of construction.

## **SCHEDULE "H"**

### **Sidewalks**

The Developer shall construct and pay the cost of concrete sidewalks along the roads as shown hereunder. The said sidewalks are to be constructed to the satisfaction of the City and the specifications as required by the Engineer and shall be 1.5 m in width and 125 mm in thickness per Drawing Number 227-GSP.

1. Along the north, south and east side of Oriole Crescent along the
  - South and west side of Lot 69
  - West sides of Lots 70 to 73
  - West and north side of Lot 74
  - North side of Lot 75
  - South side of Lot 38, Apollo Drive
  - North side of Lot 58, Apollo Drive

## **SCHEDULE "I"**

### **Streetlights**

The Developer shall construct and pay the cost of a streetlighting network on Oriole Crescent. The streetlights will be installed as per approved design by Canadian Niagara Power Company Inc., in accordance with all applicable City standards as per Appendix "A" Drawing Number SL-1 by RTG Systems Inc. The Developer will supply the City with 3 spare fixtures including but not limited to poles, arms, luminaires and mounting hardware for replacement inventory.

The Developer shall install the most recent City approved fixtures.

**SCHEDULE "J"**  
**Subdivision Deposit**

**NAME OF SUBDIVISION:** Meadow Heights Phase II – Stage 1  
**OWNER:** 1399908 ONTARIO LTD.

**CONSTRUCTION COST YEAR:** 2020

	<u>DEPOSIT</u>	<u>Letter of Credit</u>	<u>Cash Deposit</u>
1. <u>General</u>	\$74,950.00	\$74,950.00	
2. <u>Primary Services</u> (Security for Construction Lien Act)	\$864,435.75	\$86,443.57	
3. <u>Secondary Services</u> (120% Deposit)	\$213,690.00	\$213,690.00	
4. <u>Inspection Charges</u>	\$23,000.00 (received)		\$8,312.00
5. <u>Street Lighting &amp; Hydro</u>	\$38,335.00	\$38,335.00	
6. <u>Tree Planting</u>	\$10,500.00	\$10,500.00	
7. <u>Street Name Signs</u>	\$2,000.00		\$2,000.00
8. <u>Sewer Cleaning</u>	\$18,360.00	\$18,360.00	
9. <u>Lot Grading</u>	\$52,000.00	\$52,000.00	
		<hr/> \$494,278.57	\$10,312.00

10. Details of Letters of Credit and Cash Deposit

Remittance of cash deposit of \$8312.00 should be made payable to The Corporation of the City of Port Colborne and the Letters of Credit should be drawn as follows:

City of Port Colborne (General)	\$74,950.00
City of Port Colborne (Primary Services)	\$86,443.51
City of Port Colborne (Secondary Services)	\$213,690.00
City of Port Colborne (Street Lighting & Hydro)	\$38,335.00
City of Port Colborne (Tree Planting)	\$10,500.00
City of Port Colborne (Sewer Cleaning)	\$18,360.00
City of Port Colborne (Lot Grading)	\$52,000.00

11. Details of Deeds Required

Parts 1 to 13 on Plan 59R-15883 and Parts 1 to 5 on Plan 59R-16623 inclusive for storm drainage purposes (to City)

NOTE: A signed Inhibiting Order must accompany this subdivision agreement. Further confirmation of the partial discharge of any mortgage or other encumbrance affecting the lands being conveyed to the City or Region must be provided to the City or Region.

12. Details of Easements Required

None.

NOTE: Should any of the following land be encumbered with mortgages, etc. the mortgages must consent to the documents.

**SCHEDULE "K"**

**Subdivision Phase 2, Stage 1**



**Excerpt from Meadow Heights Phase 2, Stage 1**

## **APPENDIX “A”**

### **Plans, Profiles and Specifications**

1. General Notes and Details, prepared by Upper Canada Consultants, dated April 9, 2020, Drawing Number 227-GND.
2. Plan & Profile – Oriole Crescent from STA – 0+000 to 0+160, prepared by Upper Canada Consultants, dated April 9, 2020, Drawing Number 227-PP1.
3. Plan & Profile – Oriole Crescent from STA 0+160 to 0+320, prepared by Upper Canada Consultants, dated April 9, 2020, Drawing Number 227-PP2.
4. Design Cross Sections 1 to 4, Meadow Heights, Phase 2, prepared by Upper Canada Consultants, dated April 9, 2020, Drawing Numbers 227-XSC1 to XSC4.
5. General Servicing Plan 227-GSP
6. General Grading Plan 227-GP
7. General Streetscaping Plan 227-SS

**Report Number: 2020-183**

**Agenda Date: December 14, 2020**

**SUBJECT: Community Improvement Plan Grant Policy**

**1) PURPOSE:**

The purpose of this report is to obtain Council's approval of delegated authority for approving Community Improvement Plan incentive applications and an increase to the Façade Improvement Grant Program for 138 Main Street.

**2) HISTORY, BACKGROUND, COUNCIL POLICY, PRACTICES:**

As Council is aware, since 2008, the City has adopted and implemented six Community Improvement Plans (CIP) for various project areas throughout the City including:

- The Olde Humberstone Main Street Area Community Improvement Plan (Main Street CIP);
- The Brownfield Community Improvement Plan (Brownfield CIP);
- The Downtown Central Business District Community Improvement Plan (Downtown CBD CIP);
- The East Waterfront Community Improvement Plan (East Waterfront CIP)
- The Industrial Community Improvement Plan (Industrial CIP); and
- The Niagara Gateway Economic Zone and Centre Community Improvement Plan (Gateway CIP).

Over the years, staff have provided Council with reports on the success that the CIP incentive programs have had in revitalizing the City. Council began funding the CIP Grant Programs in 2010, and staff saw a steady rise in the number of applications made over the years.

As previously reported to Council, when an application for a grant is received by Planning staff, it is reviewed for completeness and conformity with the applicable CIP the application is made under. If the application complies, the Director of Planning and Development provides the final approval on the project as well as the funding amount as per Council's direction in 2011. Once approved, grant funds are reserved for a period of one year while the applicant completes the work. As Council is aware, staff do not have delegated authority to approve applications for tax incentives.

In the summer of 2019, an application was submitted by Leslie Glynn for a planned Façade Improvement to 138 Main Street. The application was reviewed and approved for the maximum grant of \$10,000 under the Façade Improvement Grant Program under the Main Street CIP.

### 3) STAFF COMMENTS AND DISCUSSIONS:

Staff are providing comment regarding the two main matters of this report under separate subheadings: delegated authority and an increase to the Façade Improvement Grant Program for 138 Main Street.

#### Delegated authority

Staff have searched past year's meeting minutes and have not been able to locate Council's 2011 direction for the Director of Planning and Development to review and approve CIP incentive applications. Staff recall that direction occurred during consideration of the 2011 budget.

To date, staff have processed 158 applications and have provided approximately \$465,000 of budgeted money towards projects that were eligible in CIP funding. This has resulted in well over \$900,000 of "construction dollars" being spent throughout the City by local businesses and residents.

Staff is recommending that delegated authority continue through approval of this report.

#### Increase to the Façade Improvement Grant Program for 138 Main Street

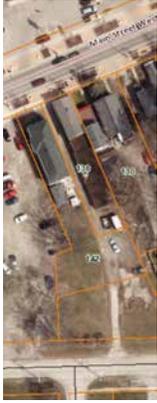
Presently, the Facade Improvement Grant Program is guided by the following:

"The program is structured as a matching grant where the City will provide a grant equal to 50% of the cost of eligible facade and storefront improvement and restoration works, up to a maximum grant per property/project of \$10,000.00.

At the discretion of Council, the grant can be increased by up to \$5,000.00 per property/project to a maximum grant of \$15,000.00 per property/project for properties/projects that are designated under the Ontario Heritage Act.

At the discretion of Council, a separate grant equal to 50% of the cost of eligible side and/or rear facade improvement and restoration works to commercial, institutional and mixed use buildings up to a maximum grant per property/project of \$5,000.00 may be provided where said rear and/or side facades are highly visible."

The improvement made at 138 Main Street was to all four sides of the building due to its unsightly condition. It is the opinion of staff that the property is unique in that all four sides are visible from Main Street and Amelia Street and rear access is available as shown in the image below.



The property owner's cost to improve all four sides was \$75,263 and staff are of the opinion that the construction has considerably improved the appearance of building and area which is one of the main goals of a CIP. Under the CIP program, the owners of 138 Main Street would only qualify for a grant of \$10,000 for the front façade of the building. Staff feel that projects of the type undertaken at 138 Main Street should be eligible for an increased grant based on the work that took place on the other sides of the building.

Below are the before and after pictures for 138 Main Street:

Before





After





In staff's opinion, these pictures illustrate how the CIP Façade Improvement Program has assisted in revitalizing the building.

The City Treasurer has recommended that a review of all CIP programs be completed. The Director of Planning & Development, Treasurer, Manager of Strategic Initiatives and the new Economic Development Officer will be proposing a review in the New Year.

**4) OPTIONS AND FINANCIAL CONSIDERATIONS:**

- a) Council can choose to not delegate authority and have every CIP application approved through consideration of a staff report.
- b) Council could also choose to reject that additional money be granted to 138 Main Street.

**5) COMPLIANCE WITH STRATEGIC PLAN INITATIVES:**

Not applicable.

**6) ATTACHMENTS:**

None.

**7) RECOMMENDATION:**

That 138 Main Street be approved for a \$20,000 matching grant under the Façade Improvement Program; and

That the Director of Planning and Development continue to review and approve CIP incentive applications up to an amount of \$10,000 through delegated authority.

**8) SIGNATURES:**

Prepared on December 4, 2020 by:

Reviewed and Respectfully Submitted:



Dan Aquilina, MCIP, RPP, CPT  
Director of Planning and Development



C. Scott Luey  
Chief Administrative Officer

Reviewed by:



Bryan Boles  
Director Corporate Services / Treasurer



**Planning and Development Department  
Planning Division**

**Report Number: 2020-184**

**Date: December 14, 2020**

**SUBJECT: Recommendation Report for the Removal of Holding Symbol, Nyon Oil Inc.**

**1) PURPOSE:**

The purpose of the report is to provide Council with a recommendation regarding the lifting of the H provision on specific lands owned by Nyon Oil Inc. (Nyon).

**2) HISTORY, BACKGROUND, COUNCIL POLICY, PRACTICES**

On November 9, 2020, Council approved a Zoning By-law amendment through By-law 6836/86/20 to alter the provisions of the HI-46-H zone to remove wording that requires the applicant to enter into a Site Plan Agreement, and obtain approval for private servicing prior to the removal of the Holding provision (H) on the property. The Zoning By-law amendment was sought to allow the development process to continue with the Site Plan Agreement and private servicing being required after the H has been removed from the property.

Nyon plans to develop a 56-tank petroleum facility on lands zoned HI-46-H. The HI-46-H now provides:

Notwithstanding the provisions of the Heavy Industrial (HI) Zone, the following shall apply:

- a) The provisions in Section 23 (HI – Heavy Industrial) of the City of Port Colborne former Zoning By-law 1150/97/81 will continue to apply to the lands zoned HI-46-H (Heavy Industrial - Holding). The permitted uses will be restricted to a 56-tank petrochemical storage facility.
- b) The uses permitted in this By-law shall not occur until the Holding Symbol (H) on the HI-46-H (Heavy Industrial – Holding) zone is removed through an amending By-law enacted by the City of Port Colborne. The Holding Provision will be administered to provide Council with the authority to ensure a Phase 2 Archaeological Study, a Geotechnical Study, a Noise Study, an Air Quality Study, Site Access and Traffic Study, a Vibration Study, a Tree Preservation Plan, an Environmental Impact Statement, and a Risk Assessment Report have been undertaken to the satisfaction of the City and appropriate approval authorities. Removal of the Holding Symbol (H) may only occur when:

- ii) The above mentioned technical studies and their recommendations are satisfactory to the City of Port Colborne,
- iv) Meet Species at Risk requirements to the satisfaction of Ministry of Natural Resources.

On December 2, 2020, an application to remove the Holding Symbol (H) on the HI-46-H (Heavy Industrial – Holding) zoned land along with a planning justification report was submitted by Niagara Planning Group on behalf of Nyon.

### **3) STAFF COMMENTS AND DISCUSSIONS**

Since February, 2020, Nyon has worked with the Director of Planning and Development, Mr. Cecil E. Vincent, interim Manager of Strategic Projects and the City Solicitor (DVS) to discuss the current HI-46-H zoning and study requirements needed to satisfy the City in order to remove the H holding provision.

Nyon has submitted the following studies and reports as required under provision (b) of the HI-46-H zone:

- Environmental Impact Statement
- Archaeological Assessment
- Geotechnical Study
- Noise Impact Study
- Noise Impact Study
- Traffic Impact Study
- Vibration Study
- Project Implementation Plan
- Risk Assessment Plan
- Fire Emergency Plan
- Species At Risk Requirements Fulfillment

DVS have reviewed all studies and reports mentioned above as provision (ii) of the HI-46-H zone requires City satisfaction. Without, staff can't recommend removal of the H holding provision to enable the development of the land to proceed. As the studies are technical in nature, the City retained Associated Engineering (AE) to provide peer review. Nyon was informed that without AE's review and agreement of the studies to develop a 56-tank petrochemical storage facility, the City would not be satisfied.

AE made Nyon's consultants aware of matters that required further review in order for them to be satisfied. Nyon's consultants provided AE with information or answers requested. AE has completed their peer review and have provided the following:

“There is currently a Holding designation (“H”) affecting the proposed site. The City of Port Colborne passed a specific Zoning By-law amendment that set out the requirement for lifting the “H”. The extent of this review is to establish if the content of the information is correct, appropriate and satisfactory to the City, such that it can be confident in a decision to lift the “H”. Various subconsultants

joined the AE team in support of the documents review including Gladki Planning Associates, RWDI Air Inc., Palmer Environmental and National Life Safety Group.”

With respect to the Risk Assessment and Fire Emergency Plan, DVP had discussions on the contents contained therein with Nyon in order to be satisfied. Nyon is wholly responsible for the ongoing performance of all recommendations set out in the Risk Assessment Plan and the Fire Emergency Plan. The City is not to bear any cost of the risk mitigation measures identified and set out in these plans. These obligations are reflected in a separate agreement between the City and Nyon in which Nyon agrees that these obligations are enforceable both as site planning matters, and also through as binding contract with the City.

Niagara Planning Group on behalf of Nyon submitted a planning justification report regarding the removal of the H holding provision. In the report they provide a summary review of all required studies, their peer reviews and recommendations.

This reports recommends the removal of the holding provision to allow the property to proceed to site plan control. The site plan agreement will contain requirements for specific studies to be done that would enable the detailed design of the property. Staff feel that this is an appropriate development approach when dealing with a complex and large project proposed by Nyon.

AE had commented that this development is subject to further review and consideration:

“Several components of the development will require further consideration by Municipal and Regional departments regarding “off-site” impacts associated with the proposed development; in particular the 3 Authorities Having Jurisdiction (AHJ); City Port Colborne, City of Welland, St. Lawrence Seaway Management Corporation. It may be necessary to upgrade municipal infrastructure, services and/or equipment to properly address the impacts of this development. The developer should identify such conditions and provide justification and/or recommendations for cost sharing.”

Niagara Planning Group had also commented on the complexity of the project and implementation through Site Plan Control:

“The studies and their associated peer reviews by Associated Engineering have been completed such that all peer review comments have been addressed. A complex and large development such as the Nyon project will require details of the studies and peer review recommendations to be implemented through the Site Plan and detailed design. Further, more specific and detailed studies, when detailed design is underway, have been noted in the Nyon initiated studies and the peer reviews. This is an appropriate approach so that detailed assessment will be addressed through further analysis in the site plan design and process for review by the City.”

The review of Nyon's proposal and process included significant review by staff, Miss Sara Premi and Mr. Tom Richardson of Sullivan Mahoney, the City's legal counsel.

In conclusion, the Director of Planning and Development is in agreement with the Niagara Planning Group's opinion that the proposed application should be approved as it represents good land use planning and is in the public interest. Reasons for this approval are for the following reasons:

- The proposed development and the removal of the "H" Holding provision are consistent with the Provincial Policy Statement, and conforms with the Growth Plan, the Niagara Region Official Plan and the City of Port Colborne Official Plan;
- The application for lifting the "H" is appropriate at this time given the studies have been completed, peer reviewed and there is agreement by the technical experts that the studies are complete in terms of breadth, scope, and level of detail for removal of the "H" Holding provision; and,
- The requirements related to Species At Risks by the MECP have been met.

#### **4) OPTIONS AND FINANCIAL CONSIDERATIONS:**

##### **a) Do nothing**

Although not recommended, Council could choose to do nothing and not make a decision.

##### **b) Other Options**

Although not recommended, Council could choose to have further review.

#### **5) COMPLIANCE WITH STRATEGIC PLAN INITIATIVES**

Not applicable.

#### **6) ATTACHMENTS**

Appendix A - Draft Zoning By-law Amendment

Appendix B - Nyon Planning Justification Report

#### **7) RECOMMENDATION**

That Council approve the draft Zoning By-law amendment, attached as Appendix A to Planning and Development Department, Planning Division, Report No. 2020-184, to remove the "H" Holding Provision from lands as depicted on Schedule "A" to the Draft By-law.

**8) SIGNATURES**

Prepared on December 7, 2020 by:



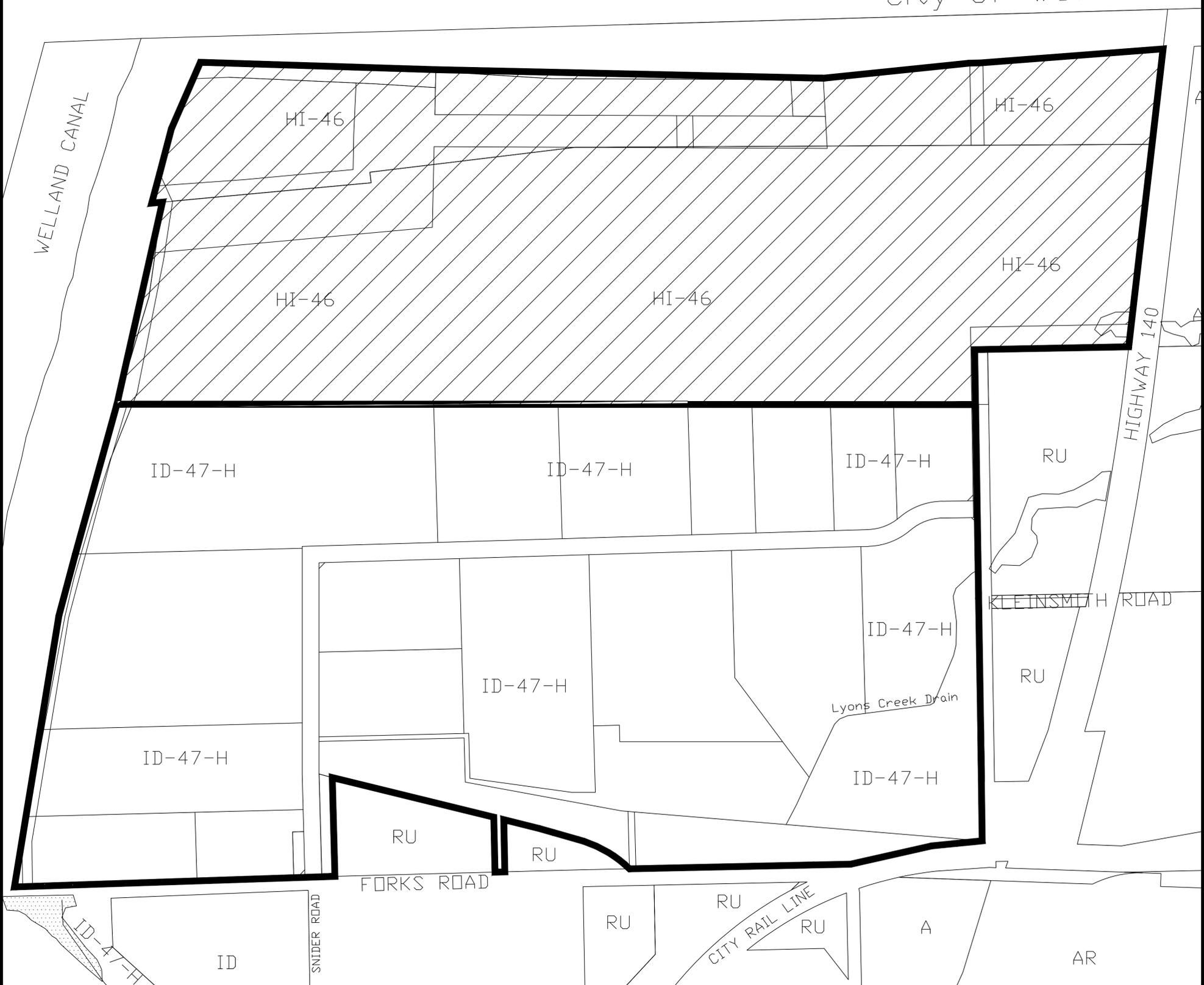
Dan Aquilina, MCIP, RPP, CPT  
Director of Planning and Development

Reviewed and Respectfully Submitted:



C. Scott Luey  
Chief Administrative Officer

City of Welland



THIS IS SCHEDULE "A" TO BY-LAW NO. \_\_\_\_\_ PASSED ON THE DECEMBER 14, 2020.  HI-46 lands where the H holding is removed

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CLERK



NOT TO SCALE

NOVEMBER 9, 2020

FILE NO. D14-05-20

DRAWN BY: \_\_\_\_\_  
PLANNING & DEVELOPMENT



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# Planning Justification Report

## Zoning By-law Amendment Application Removal of “H” Holding Provision

Lands generally south of the CN Rail lane, west of Highway 140, and east of Canal Road, City of Port Colborne

For: Nyon Oil Inc.

By: Niagara Planning Group (NPG) Inc.  
4999 Victoria Avenue  
Niagara Falls, ON  
L2E 4C9  
December 2020

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## 1. Introduction

Niagara Planning Group (NPG) Inc. are planning consultants to Nyon Oil Inc., Owners of the Subject Lands which are approximately 76.8 hectares of land generally south of the CN Rail line, west of Highway 140 and east of Canal Road in the City of Port Colborne. The lands are legally described as Part of Lot 16, Part of Lot 17, Part of Lot 18, Part of Lot 19, part of the Road Allowance Between Lots 16 and 17 (closed by by-law 3412/143/196; Inst. No. R0719834), Part of the Road Allowance Between Lots 18 & 19 (closed by by-law 34 12/143/196: inst. No. R0719834), City of Port Colborne; Regional Municipality of Niagara. NPG has been retained to provide professional planning advice on the Zoning By-law Amendment application to remove the “H” Holding provision for the Subject Lands.

The Subject Lands are currently zoned “HI-46-H” in the City of Port Colborne’s Comprehensive Zoning By-law 6575-30-18 (the City’s Zoning By-law) (as amended) which permits the development of a 56-tank petroleum storage facility. On November 9, 2020, The Council of the City of Port Colborne passed By-law 6836/86/20, approving a technical Zoning By-law Amendment involving the Subject Lands, to remove wording that requires the Owners to enter into a Site Plan Agreement and to obtain approval for private servicing prior to the removal of the Holding provision.

The technical rezoning is now in force and effect. The updated zoning for this site requires two conditions to be fulfilled. The two conditions are the completion of studies to the satisfaction of the City of Port Colborne and fulfillment of the Species at Risk requirements with the Province of Ontario. This Planning Justification Report provides the information on both conditions and concludes that the prerequisite conditions in the Subject Lands’ Site-Specific Zoning have been fulfilled.

## 2. Description of the Subject Lands and Surrounding Area

As shown in “Figure 1 - Aerial Context”, the Subject Lands are located on the east side of Canal Road, west of Highway 140 and south of the CN Railway Line. The Subject Lands have frontage of approximately 464 metres on Highway 140 and a total area of approximately 76.8 hectares.

Nyon Oil Inc. owns the Subject Lands which are currently zoned as “HI-46-H” and a related company owns the adjoining land which is zoned “ID-47-H” in the City’s Zoning by-law. Only the lands zoned “HI-46-H” are the subject of this rezoning application and are referred to as the “Subject Lands”.

Figure 1 – Aerial Context & Surrounding Land Uses



The subject lands are currently vacant. The surrounding uses are as follow:

**North:** Open Space and CN Railway Line  
**South:** Vacant Rural Employment and Environmental Protection  
**East:** Agriculture  
**West:** Canal Road and Welland Canal

Photo 1 – Subject Lands viewed from Highway 140 with the CN Rail line on the right.



Photo 2 – Subject Lands viewed from further south of Highway 140.



Photo 3 – Agricultural land east of the Subject Lands and across Highway 140.



### 3. Proposed Development and Zoning By-law Amendment Application

#### 3.1 Proposed Development

Nyon Oil Inc. has received Ontario Municipal Board approval to develop a 56-tank petroleum storage facility on approximately 76.8 hectares of the Subject Lands as shown in Figure 1. A portion of the Subject Lands, measuring approximately 19.8 hectares, falls within the Species At Risk habitat. Section 6.2 of this report outlines the requirements related to Species At Risk habitat.

The Region of Niagara Official Plan designates the Subject Lands as Rural Area in Schedule A – Regional Structure and Rural Employment Lands in Schedule G2 – Niagara Economic Gateway Employment Lands (See “Appendix B – Regional Official Plan Schedules”). Section 3.B.2.6 of the Regional Official Plan specifically addresses how the Rural Employment Lands are to be developed with specific policies for the Rural Employment Lands in the City of Port Colborne.

The City of Port Colborne Official Plan designates the Subject Lands as Rural Employment in the “Schedule A – City Wide General Land Use Plan” (“Appendix C – City of Port Colborne Official Plan Schedules”). Section 3.12 of the City’s Official Plan includes policies that address the development of Rural Employment Lands.

The City of Port Colborne Zoning By-law 6575/30/18 (as amended) zones the Subject Lands as a “HI-46-H” Zone (See “Appendix D – City of Port Colborne Zoning By-law Map”). This Site-Specific zone permits the 56-tank petroleum facility with requirements for several studies to be completed. An “H” (Holding) provision is included in the Zoning By-law which includes conditions that must be fulfilled prior to the removal of it. The By-law reads as follows:

*Notwithstanding the provisions of the Heavy Industrial (HI) Zone, the following shall apply:*

*a) The provisions in Section 23 (HI – Heavy Industrial) of the City of Port Colborne former Zoning By-law 1150/97/81 will continue to apply to the lands zoned HI-46-H (Heavy Industrial - Holding). The permitted uses will be restricted to a 56-tank petrochemical<sup>1</sup> storage facility.*

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<sup>1</sup> Petrochemical is commonly known as petroleum.

*b) The uses permitted in this By-law shall not occur until the Holding Symbol (H) on the HI-46-H (Heavy Industrial – Holding) zone is removed through an amending By-law enacted by the City of Port Colborne. The Holding Provision will be administered to provide Council with the authority to ensure a Phase 2 Archaeological Study, a Geotechnical Study, a Noise Study, an Air Quality Study, Site Access and Traffic Study, a Vibration Study, a Tree Preservation Plan, an Environmental Impact Statement, and a Risk Assessment Report have been undertaken to the satisfaction of the City and appropriate approval authorities. Removal of the Holding Symbol (H) may only occur when:*

*ii) The above mentioned technical studies and their recommendations are satisfactory to the City of Port Colborne,*

*iv) Meet Species at Risk requirements to the satisfaction of Natural Resources<sup>2</sup>*

In 2013 the proposal for the 56-tank petroleum facility together with Dry Industrial development on adjoining lands owned by Nyon Oil was the subject of an Ontario Municipal Board hearing. The Board approved the development subject to the Site-Specific zoning which has been carried forward into the City’s Zoning By-law and is quoted above.

### 3.2 Proposed Rezoning Application

Nyon Oil Inc. has worked with the City of Port Colborne to implement the requirements of the Ontario Municipal Board decision and the Zoning By-law for the Heavy Industrial Zoned Lands (“HI-46-H”).

The required studies have been completed and peer-reviewed to the satisfaction of the City of Port Colborne. Section 6.1 presents a summary of each of the required supporting studies. The study recommendations, together with peer review recommendations from Associated Engineering and the City of Port Colborne will be implemented through the forthcoming Site Plan and the Site Plan Agreement. Additionally, requirements relating to Species At Risk by the Ministry of Environment, Conservation and Parks, including registering the proposed work and the affected Species At Risk with the Ministry of Natural Resources & Forestry under the Endangered Species Act (2007) have been fulfilled. More information about the EIS is discussed in Section 6.1.1 of this report. Please see the enclosed Site Layout diagram regarding Species At Risk area within the Subject Lands.

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<sup>2</sup> It is noted that the applicable Ministry of the Ontario government is now the Ministry of Environment, Conservation, and Parks.

As the conditions for removing the Holding Symbol (H) in the “HI-46-H” zoning of the City’s Zoning By-law have been fulfilled, Nyon Oil Inc. is proposing a Zoning By-law Amendment to remove the “H” Holding provision for the Subject Lands.

## 4. Planning Policy Framework

**NOTE:** There is no change in land use permissions for the subject lands. However, as the *Planning Act* requires conformity for applications submitted under the *Act*, the following analysis addresses the Rural Employment designations and how the “H” removal is consistent with and conform to the Rural Employment designations.

### 4.1 Provincial Policy Statement (2020)

The Provincial Policy Statement (PPS) provides overall policy direction on matters of provincial interest related to land and development within the province of Ontario. It supports improved land use planning and management, contributing to a more efficient land use planning system, which seeks ultimately to protect resources of provincial interest, public health and safety, and to preserve and maintain the natural environment.

#### Relevant Policies and Analysis

##### **1.1.4 Rural Areas in Municipalities**

*Rural areas are important to the economic success of the Province and our quality of life. Rural areas are a system of lands that may include rural settlement areas, rural lands, prime agricultural areas, natural heritage features and areas, and other resource areas. Rural areas and urban areas are interdependent in terms of markets, resources and amenities. It is important to leverage rural assets and amenities and protect the environment as a foundation for a sustainable economy.*

*1.1.4.1 Healthy, integrated and viable rural areas should be supported by:*

- f) promoting diversification of the economic base and employment opportunities through goods and services, including value-added products and the sustainable management or use of resources;*
- h) conserving biodiversity and considering the ecological benefits provided by nature;*

The PPS identifies that a diversified economic base in Rural Areas is important for a sustainable economy. The Subject Lands are designated Rural Employment in the Niagara Region Official Plan and the City of Port Colborne Official Plan. The Rural Employment designation and policies in both Official Plans supports rural economic development and the specific uses implemented through the City’s Zoning of the Subject Lands.

An Environmental Impact Study (EIS) has been completed including a peer review on behalf of the City of Port Colborne. The recommendations of the EIS will be implemented through the Site Plan and Site Plan Agreement. The EIS has identified approximately 12.96 hectares of land as Species At Risk habitat where the proposed development does not occur until alternative habitat has been established to the satisfaction of MECP. Therefore, the proposed development has taken steps to conserve the biodiversity and protected the ecological benefits and this will be implemented through the Site Plan and Site Plan Agreement.

### **1.1.5 Rural Lands in Municipalities**

*1.1.5.1 When directing development on rural lands, a planning authority shall apply the relevant policies of Section 1: Building Strong Healthy Communities, as well as the policies of Section 2: Wise Use and Management of Resources and Section 3: Protecting Public Health and Safety.*

*1.1.5.6 Opportunities should be retained to locate new or expanding land uses that require separation from other uses.*

*1.1.5.7 Opportunities to support a diversified rural economy should be promoted by protecting agricultural and other resource-related uses and directing non-related development to areas where it will minimize constraints on these uses.*

The proposed 56-tank petroleum is located on the east side of the Welland Canal, separated from the City’s Settlement Area. This property provides a separation from other uses and is appropriate for the land use approved by the Ontario Municipal Board. The Subject Lands are currently vacant and the nearest agricultural land is across Highway 140 from the property. As such, the proposal does not remove agricultural uses and does not minimize potential constraints on nearby agricultural uses.

In terms of **Section 1** of the PPS, the following is confirmed:

- i. The lands implement Section 1.2.6 – Land Use Compatibility through providing separation from the City’s settlement area by locating the use in the Rural

- Employment Area, east of the Welland Canal and further established in the study on Noise Impact and the study on Air Quality Impact;
- ii. Implementing the policies of Section 1.3 – Employment – through creating economic diversity in Port Colborne and Niagara Region;
  - iii. The proposal also conforms with Section 1.6.8 – Transportation and Infrastructure Corridors as the proposed petroleum storage facility is highly compatible with and supportive of the long-term viability of the CN rail line to the north. The proposed development relies on the rail corridor for its supply-chain needs via a proposed spur line as well as rail off-loading infrastructure.
  - iv. Conforming with Section 1.7 – Long Term Economic Prosperity through the lands being designated Rural Employment and being brought to development for economic prosperity.

In terms of **Section 2** of the PPS, the following is noted:

- i. For Natural Heritage, the Zoning for the Subject Lands, approved by the Ontario Municipal Board, requires an Environmental Impact Statement to be completed. The EIS has been completed and a 2020 update was also prepared. A peer review by Associated Engineering, on behalf of the City of Port Colborne, has been completed concurring with the EIS findings. Appropriate review has occurred and the recommendations will be implemented through the Site Plan and Site Plan Agreement.
- i. For Culture and Archaeology, Stage 1 and Stage 2 Archaeological Studies were completed. The Ministry of Heritage, Sport, Tourism and Culture Industries has confirmed in writing that the studies are sufficient for the subject lands.

In terms of **Section 3** of the PPS, the following is noted: there are no Natural Hazards or Man Made Hazards on the site. This section of the PPS is not related to the development of the Subject Lands.

Based on the foregoing, the proposed development, as approved by the Ontario Municipal Board, is consistent with the general intent and policies of the PPS. The “H” Holding removal is a technical matter that supports the approved development. As such, the rezoning application conforms to the PPS by supporting the approved development, which is in conformity to the PPS.

## 4.2 Growth Plan for the Greater Golden Horseshoe (2019)

The Growth Plan for the Greater Horseshoe, 2019 (The Growth Plan), builds on the policies set out in the Provincial Policy Statement, emphasizing well-designed development and supporting economic development and job growth. The intent of the Growth Plan is to promote economic growth, increase housing supply, create jobs and building communities that are healthy and affordable for people of all ages. The Growth Plan supports the achievement of complete communities that are “compact, transit-supportive, and make efficient use of investments in infrastructure and public service facilities”.

## Relevant Policies and Analysis

### 2.2.5 Employment

1. *Economic development and competitiveness in the GGH will be promoted by:*
  - a. *making more efficient use of existing employment areas and vacant and underutilized employment lands and increasing employment densities;*
  - b. *integrating and aligning land use planning and economic development goals and strategies to retain and attract investment and employment.*

### 2.2.9 Rural areas

5. *Subject to the policies in Section 4, development outside of settlement areas may be permitted on rural lands for:*
  - a. *the management or use of resources;*
  - b. *resource-based recreational uses; and*
  - c. *other rural land uses that are not appropriate in settlement areas provided they:*
    - i. *are compatible with the rural landscape and surrounding local land uses;*
    - ii. *will be sustained by rural service levels; and*
    - iii. *will not adversely affect the protection of agricultural uses and other resource-based uses such as mineral aggregate operations.*

The subject lands are designated Rural Employment in both the Niagara Region and the City Official Plans. The use of the lands for the 56-tank petroleum facility is consistent with the policies of A Place to Grow supporting development outside of the City’s settlement area as the uses are consistent with a resource focus, are compatible with the rural landscape, and will be sustained by rural service levels.

Based on the foregoing, the development, as approved by the Ontario Municipal Board, is consistent with the general intent and policies of A Place to Grow. The “H” Holding removal is also a technical matter that supports the approved development. As such, the rezoning application conforms to A Place to Grow by supporting the approved development, which is in conformity to A Place to Grow.

### 4.3 Niagara Region Official Plan (2014)

The Niagara Region Official Plan (Regional Official Plan), designates the Subject Lands as Rural Employment Lands – Gateway Special Policy Area according to “Schedule G2 – Niagara Economic Gateway Employment Lands” (refer to Appendix B). Specific policies for the Subject Lands are as follows:

*3.B.2.2 Rural employment lands shall be considered “dry industrial” and are to be serviced through sustainable private servicing only.*

*3.B.2.3 Detailed land uses shall be identified in the Local Official Plan by way of amendment to the Local Official Plan. In all cases, uses shall be compatible with adjacent agricultural uses, planned agricultural uses and shall not negatively impact normal farm operations.*

*3.B.2.6 The lands designated in the City of Port Colborne as “Rural Employment Lands - Gateway Special Policy Area” on Schedule G2 are subject to the following policies:*

- a) The transportation infrastructure of Highway 140 is a unique characteristic of transportation service for these lands;*
- b) Uses shall be only those which are considered to have minimal water and wastewater requirements. The lands may be eligible for future municipally provided water and wastewater services subject to the completion of the ongoing Environmental Assessment for the Welland Canal Green Manufacturing Zone area;*
- c) Functional servicing reports and hydrogeological reports, at a minimum, shall be required to support these uses. Additional studies, as outlined in the Complete application policies of this Plan, shall also be required;*
- d) The lands shall be subject to Site Plan Control and the Niagara Region will be circulated all Site Plan Control applications;*

- e) *The lands are in the vicinity of the Dain City area in the City of Welland and the applicable portions of Chapter 3.A regarding land use compatibility requirements shall apply;*
- f) *Lands that comprise the Babion Woodlot will be subject to an Environmental Impact Statement which will confirm the boundaries of the Woodlot and the Provincially Significant Wetland. Upon approval of the Environmental Impact Statement, the Woodlot and Wetland will be designated as “Environmental Protection Area” in this Plan without further amendment to this Plan. The balance of lands shall be designated “Rural Employment Lands – Gateway Special Policy Area” without further amendment to this Plan.*
- g) *Should the land budget completed as part of the Regional Comprehensive Review, at a future five year review of the Regional Official Plan, establish the need for additional urban employment land in the Gateway, priority will be given to the Gateway Special Policy area lands that are physically contiguous to urban employment lands in the Gateway to be included in the urban are and to be eligible for urban servicing.*
- h) *Should the lands immediately west of the Rural Employment Lands, in the vicinity of the Welland Canal, cease to be owned by the Government of Canada, the designation of “Rural Employment Lands” shall apply.*

The 56-tank petroleum facility is a permitted use in the Regional Official Plan in accordance with Policy 3.B.2.3 and is a dry industrial use. The approved land use also implements the specific policies for the City of Port Colborne Rural Employment Lands – Gateway Special Policy Area. Based on the foregoing, the development, as approved by the Ontario Municipal Board and being implemented through the Site Plan and Site Plan Agreement, is consistent with the general intent and policies of the Niagara Region Official Plan.

The “H” Holding removal is a technical matter that supports the approved development. As such, the rezoning application conforms to Niagara Region Official Plan by supporting the approved development, which is in conformity to Niagara Region Official Plan.

#### 4.4 City of Port Colborne Official Plan (Office Consolidation 2017)

The Subject Lands are designated “Rural Employment” on Schedule A – City Wide Land Use Plan (Appendix C – “City of Port Colborne Official Plan Schedules”) of the City of Port Colborne Official Plan (Office Consolidation – September 2017) (City’s Official Plan).

Section 3.12 – Rural Employment of the City’s Official Plan includes the following policies:

*The predominant uses of lands designated Rural Employment shall include, but not be limited to uses that are of a dry industrial nature, in that they are considered to have minimal water and wastewater requirements, and should be serviced through sustainable private servicing only. All new or expanding rural development shall demonstrate that the use cannot be located within the urban area due to land use compatibility issues and/or specific locational requirements, including proximity to key transportation infrastructure or the proposed use is related to the management or use of a resource and is required to be in close proximity to it.*

### **3.12.1 General Policies**

n) *Notwithstanding the policies of this Section, the uses and policies permitted on and applicable to the lands legally described as Part Lots 16,17,18 and 19, Concession 5, and part of the Road Allowance between Lots 16 and 17 in Concession 5 and part of the Road Allowance between Lots 18 and 19 in Concession 5, formerly Township of Humberstone, now City of Port Colborne, Regional Municipality of Niagara, being Parts 1,2,3,4 and 5 of Reference Plan 59R-8816; Part of Lots 23,24 and 25, Concession 4, and Part of the Road Allowance between Lots 24 and 25, Concession 4, (formerly Township of Humberstone), designated as Parts 1 and 2 on Reference Plan 59R-12468, Part lots 16,17,18 and 19, Concession 5, and Part of the Road Allowance between Lots 16 and 17 in Concession 5 and Part of the Road Allowance between Lots 18 and 19 in Concession 5, Formerly Township of Humberstone, County of Welland, Now City of Port Colborne, Regional Municipality of Niagara, being Parts 1,2, and 3 on Reference Plan 59R-12469 are as determined by the decision of Member J.V. Zuidema in Ontario Municipal Board (OMB) Case No. PL090828 as set forth in the Order of the OMB dated July 11, 2013 and attached as Appendix ‘A’ to this Plan.*

The proposed 56-tank petroleum facility is of a dry industrial nature and was approved in the order of the Ontario Municipal Board dated July 11, 2013. The use complies with the policies and order of the OMB. The “H” Holding removal is an appropriate next step in implementing the City’s Official Plan, subject to fulfilling the requirements of the site-specific zoning for the subject lands.

**Policy 11.1.2 - Holding Zones** – of the City’s Official Plan states the following:

e) *Development or redevelopment of the lands cannot proceed until the Holding “H” symbol is removed and the Zoning By-law shall state:*

- i) The specific conditions or works that must be undertaken before the holding symbol can be removed; and*
- ii) The government or agency responsible for providing clearance that the condition(s) or requirement(s) has been met.*

The “HI-46-H” Zoning By-law specific to the Subject Lands identifies the conditions under which the “H” Holding provision will be removed. The required works to fulfill the conditions in the “HI-46-H” Zoning By-law related to the specific studies have been completed and are detailed in the next section of this report. The application to remove the “H” Holding symbol complies to the Official Plan with regard to land use policies and designations as well as the policies related to the removal of the “H” Holding symbol. This Report provides the basis for fulfilling the two conditions: that the studies have been completed to the satisfaction of the City of Port Colborne; and the Species at Risk requirements have been fulfilled with the Province of Ontario. Therefore, the requirements of the Official Plan have been met with regard to the Subject Lands and the application to remove the “H” Holding provision in the Zoning By-law conforms to the Official Plan.

## **5. Zoning**

The City of Port Colborne By-Law 6575/30/18 (as amended) zones the Subject Lands as “HI-46-H (Heavy Industrial – Holding)” with Special Provision 46. The Zoning By-law states the following:

*Notwithstanding the provisions of the Heavy Industrial (HI) Zone, the following shall apply:*

- a) The provisions in Section 23 (HI – Heavy Industrial) of the City of Port Colborne former Zoning By-law 1150/97/81 will continue to apply to the lands zoned HI-46-H (Heavy Industrial - Holding). The permitted uses will be restricted to a 56 tank petrochemical<sup>3</sup> storage facility.*
- b) The uses permitted in this By-law shall not occur until the Holding Symbol (H) on the HI-46-H (Heavy Industrial – Holding) zone is removed through an amending By-law enacted by the City of Port Colborne. The Holding Provision will be administered to provide Council with the authority to ensure a Phase 2 Archaeological Study, a Geotechnical Study, a Noise Study, an Air Quality Study, Site Access and Traffic Study, a Vibration Study, a Tree Preservation Plan,*

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<sup>3</sup> Petrochemical is commonly known as petroleum.

*an Environmental Impact Statement, and a Risk Assessment Report have been undertaken to the satisfaction of the City and appropriate approval authorities. Removal of the Holding Symbol (H) may only occur when:*

- ii) The above mentioned technical studies and their recommendations are satisfactory to the City of Port Colborne,*
- iv) Meet Species at Risk requirements to the satisfaction of Ministry of Natural Resources<sup>4</sup>.*

## 6. Zoning By-law Amendment Application

The Zoning By-law Amendment application is submitted to remove the “H” Holding provision on the Subject Lands’ current zoning. A draft Zoning By-law is in Appendix E to this Report.

An application to remove the “H” Holding provision is appropriate at this time as the prerequisite conditions embedded in the Zoning By-law have been met. In detail, the required studies have been completed and peer-reviewed by Associated Engineering to the satisfaction of the City of Port Colborne. The recommendations resulting from the studies and peer reviews will be implemented through the Site Plan process and Site Plan Agreement. The provision related to the Species At Risk requirements of MECP has also been fulfilled.

### 6.1 Technical Studies Completion

Required supporting studies have been completed, peer reviewed to the satisfaction of the City of Port Colborne as per condition b)ii) of the “HI-46-H” Zone in the City’s Zoning By-law. This section provides a summary of these studies, their peer reviews and pertinent recommendations.

#### 6.1.1 Environmental Impact Statement

- a) Environmental Impact Statement (EIS) prepared by MMM Group and dated November 21, 2012;
- b) EIS Update Memo prepared by WSP (formerly MMM Group) and dated September 3, 2020 and

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<sup>4</sup> It is noted that the applicable Ministry of the Ontario government is now the Ministry of Environment, Conservation, and Parks.

c) Nyon Oil Tank Farm EIS Peer Review Response prepared by WSP (formerly MMM Group) and dated November 6, 2020

EIS (2012):

The Environmental Impact Statement (dated Nov 21, 2012) prepared by MMM Group was undertaken for the lands zoned “HI-46-H” and “ID-47-H” in the City’s Zoning By-law.

The EIS (2012) concludes that the Subject Lands (zoned “HI-46-H” ) contains primarily grassland habitat with the driving constraint being the two (2) Species At Risks, namely Eastern Meadowlark and Bobolink, that would require Endangered Species Act approval for the proposed removal of their habitat. The EIS concluded there is no intrusion into the mapped Provincially Significant Wetlands, contiguous wetland habitat, Babion Woods or contiguous woodland habitat. The study recommends an Erosion and Sediment Control (ESC) Plan be prepared and Vegetation and silt protection measures will be implemented and maintained prior to and throughout construction.

It is also recommended to update this EIS at the Site Plan stage to review the impacts of detailed design as well as the appropriateness of mitigation measures and recommendations.

EIS Update Memo (2020):

The Environmental Impact Statement Update Memo (dated September 3, 2020) was subsequently prepared by WSP (formerly MMM Group) to address the Eastern Meadowlark and Bobolink habitat identified in the EIS (2012) within the Subject Lands only (lands zoned as “HI-46-H” in the City’s Zoning By-law). The memo reviewed Species At Risk bat species and concluded that this habitat is unlikely to be impacted by the proposed development because the Subject Lands are sub-optimal as breeding habitat for these species.

The memo determined an area of 12.96 hectares of Species At Risk (Eastern Meadowlark and Bobolink) habitat would be impacted by the proposed development, subject to further detailed design ; it is noted that the collective impact of the proposed development is less than 30 hectares. The MECP does not require a permit for development of up to 30 hectares of Species At Risk habitat subject to complying with requirements established in O.Reg. 242/08 Section 23.6 (Hay, 2020)<sup>5</sup>. Section 6.2 of this report will discuss how these requirements have been or will be fulfilled.

The memo recommends updating the EIS during the Site Plan stage when additional

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<sup>5</sup> Hay, R. (2020). Nyon Oil Tank Farm Environmental Impact Study (EIS) Update Memo. WSP.

studies are completed and more detailed site design information is available.

#### Peer Review:

Peer Review of the Update Memo was undertaken by Associated Engineering and documented in the following technical memorandums:

- a) Technical Memorandum - Nyon Oil Tank Farm Environmental Impact Study (EIS) Update Memo Peer Review – Ecology dated September 24, 2020 and
- b) Technical Memorandum - Nyon Oil Tank Farm Environmental Impact Study (EIS) and Risk Assessment Report Peer Review – Hydrogeology dated September 30, 2020.

#### *Technical Memorandum – Ecology:*

This memo expresses agreement to the EIS Update Memo’s approach to background screening, species-specific studies and habitat analysis conducted. Also, the technical memo provided comments which all have been addressed in a response letter prepared by WSP and dated November 6, 2020.

#### *Technical Memorandum – Hydrogeology:*

This memo concludes that impacts to groundwater can likely be mitigated through site design once appropriate site data have been collected. It also recommends several additional studies to be undertaken as part of the Site Plan Approval process.

In conclusion, the peer review has found the associated studies to be complete. Recommendations from the studies and the peer reviews will be implemented through the Site Plan Approval process.

#### Response to Peer Review:

WSP prepared a response memo the peer review dated November 6, 2020. The response memo addressed comments with supporting rationale that confirms the approach for the updated EIS Memo. Further work will be required during the Site Plan stage as detailed design proceeds; this further work can only be done as the design is completed.

#### 6.1.2 Archaeological Assessment

The following studies have been completed to date to fulfill condition b)ii) of the “HI-46-H” Zone in the City’s Zoning By-law:

- a. Stage 1 Archaeological Assessment prepared by Golder Associates and dated January 23<sup>rd</sup>, 2012;
- b. Stage 2 Archaeological Assessment prepared by Golder Associates and dated June 15<sup>th</sup>, 2015 and
- c. Stage 2 Archaeological Assessment – Supplementary Documentation prepared by Golder Associates and dated June 15<sup>th</sup>, 2015

A Stage 1 Archaeological Assessment for the lands zoned as “HI-46-H” and “ID-47-H” in the City’s Zoning By-law was prepared by Golder Associates and dated January 23<sup>rd</sup>, 2012. This assessment concluded that the Subject Lands are part of an area of no further archaeological concern. Stage 2 Archaeological Assessment is not recommended for the Subject Lands.

A Stage 2 Archaeological Assessment was subsequently completed in June 2015 for a smaller area that were deemed to retain archaeological potential from Stage 1. Part of the study area (not including the Subject Lands) is recommended for Stage 3 Archaeological Assessment. The Ministry of Heritage, Sport, Tourism and Culture Industries (formerly Ministry of Tourism, Culture and Sport) expressed their satisfaction that the fieldwork and report associated with the Stage 2 Archaeological Assessment are consistent with the Ministry’s 2011 Standards and Guidelines for Consultant Archaeologists and the terms and conditions for archaeological licences in a letter dated June 26, 2015 and therefore fulfilling part of condition b)ii) of the “HI-46-H” Zone in the City’s Zoning By-law.

### 6.1.3 Geotechnical Study

The following studies have been completed to date to fulfill condition b)ii) of the “HI-46-H” Zone in the City’s Zoning By-law:

- a. Geotechnical Investigation Tank Farm Site Appraisal Highway 140 Port Colborne, Ontario prepared by Peto MacCallum Ltd. and dated June, 2012;
- b. Peer Review by Associated Engineering
- c. Peer Review response by Odandetech (J. Krpan email to D. Aquilina and response, April 2020)

The geotechnical report concluded that the subsurface of the lands typically comprise dolostone bedrock at the base and piles founded on bedrock. This material is considered the most suitable foundation system from a geotechnical perspective. This report

recommends additional field work as part of site design to further investigate the onsite soil conditions as well as the differential settlement due to consolidation of the clay. The City of Port Colborne had confirmed in writing that no further geotechnical work is needed for the development and siting of storage tanks on the property.

#### 6.1.4 Noise Impact Study

The following studies have been completed to date to fulfill condition b)ii) of the “HI-46-H” Zone in the City’s Zoning By-law:

- a) Noise Feasibility Study for Proposed Industrial Development Energy Park – Port Colborne prepared by GHD and dated August 31, 2020
- b) Supplemental Response to Peer Review dated November 9, 2020 prepared by GHD.

##### Noise Feasibility Study (2020):

The Noise Feasibility Study (dated August 31, 2020) prepared by GHD was undertaken for the lands zoned “HI-46-H” and “ID-47-H” in the City’s Zoning By-law.

The study concludes that the predicted noise level at all tested locations as a result of the proposed petroleum storage facility on the Subject Lands are within the noise level limits as per noise requirements of NPC-300.

It is also recommended that further noise impact assessments are warranted through the site plan process as detailed design and selection of equipment is known. This is also part of the Environmental Compliance Approval application.

##### Peer Review:

Peer Review of the Noise Feasibility Study was undertaken by Associated Engineering sub-consultant RWDI and documented in the following technical memorandum:

- a) Technical Memorandum - Noise Feasibility Study for Proposed Industrial Development, Energy Park – Port Colborne Peer Review

This technical memo acknowledges the study was satisfactorily conducted with appropriate methods and data though it listed several comments, including some that are only relevant to lands not part of the application for the Subject Lands. The following summarizes the responses to the peer review comments related to the Subject Lands that was addressed in a letter prepared by GHD dated November 9, 2020:

- The response identified that some of the peer review comments would be addressed as part of the detailed assessment required at the Environmental Compliance Approval application stage. The response further noted that detailed design would be needed to address matters related to ships berthing at Dock 10; Dock 10 which will be addressed at the Site Plan Stage;
- the noise model was updated to consider worst-case noise sensitive receptors in all cardinal directions, including the nearest residential point of reception in the north direction from the site, which is a single-storey residence located on the north side of Netherby Road. This residential receptor is similar to an adjoining residential receptor to the east and has been addressed;
- the noise model was also updated to include additional noise-generated activities at the spur line and the ensuing noise level is still within the applicable MECP sound level limits;
- the detailed noise impact assessment at the Site Plan stage may include recommendations to limit nighttime truck volumes entering/exiting the Site and/or construction of acoustic barriers in the event that a residence is constructed on vacant lands directly across Highway 140

The peer review also recommended that the “H” Holding provision be maintained for the Subject Lands and lands outside the “HI-46-H” zoned lands. The response from GHD regarding the peer review feedback has addressed the issues of potential noise from ships at Dock 10 with further mitigation measures and has addressed the land use compatibility comments. It is our opinion that the concerns regarding noise have been addressed in the study and response memo and that removal of the “H” Holding provision should be removed for the Subject Lands. The balance of the site (Site B or lands zoned “ID-47-H”) are not part of this application.

#### 6.1.5 Air Quality Study

The following studies have been completed to date to fulfill condition b)ii) of the “HI-46-H” Zone in the City’s Zoning By-law:

- a. Land-Use Compatibility Air Quality Study for Proposed Tank Farm and General Industrial Development Energy Park – Port Colborne prepared by GHD and dated September 3, 2020

### Land-Use Compatibility Air Quality Study (2020):

The Land-Use Compatibility Air Quality Study (dated September 3, 2020) prepared by GHD was undertaken for the lands zoned “HI-46-H” and “ID-47-H” in the City’s Zoning By-law.

The study concludes that there could be stationary odour impacts from the proposed development. However, the impacts could be mitigated with the required and recommended controls, the implementation of best practices, and compliance with the regulatory and design requirements.

It is also recommended that the detailed air dispersion modelling assessment be updated when site plan design is completed. The study also includes a checklist of design requirements to which the proposed storage tanks need to meet prior to construction.

### Peer Review:

Peer Review of the Land-Use Compatibility Air Quality Study was undertaken by Associated Engineering (through the sub-consultant RWDI) and documented in the following technical memorandum:

- a) Technical Memorandum - Land-Use Compatibility Air Quality Study for Proposed Tank Farm and General Industrial Development Peer Review

This technical memo concludes that the Land-Use Compatibility Air Quality Study provides a reasonable assessment of the potential land-use compatibility of the proposed development on the Subject Lands and no additional study is required, except for Emission Summary and Dispersion Modelling (as part of the Environmental Compliance Approval application process), Air Quality Impact Assessment (prior to construction of the shipping/unloading facility at Dock 10) and a mechanism to ensure products are stored in their specific tanks (either as part of Site Plan Approval or Environmental Compliance Approval application process). As such, no peer review response from GHD is needed.

### 6.1.6 Traffic Impact Study

The following studies have been completed to date to fulfill condition b)ii) of the “HI-46-H” Zone in the City’s Zoning By-law:

- a. Transportation Impact Study (TIS) prepared by Paradigm and dated September 2013; and
- b. Transportation Impact Study (TIS) Update for Phase 1 of the Nyon Oil Incorporated development prepared by Paradigm and dated September 2020.
- c. Response to Peer Review Comments prepared by Paradigm and dated November 2020.

TIS (2013):

The TIS (2013) prepared by Paradigm was undertaken for the lands zoned “HI-46-H” and “ID-47-H” in the City’s Zoning By-law. This study has been updated to reflect current conditions in the TIS Update (2020).

TIS Update (2020):

The TIS Update (2020) prepared by Paradigm was undertaken for Phase 1 of the development which encompasses the Subject Lands (zoned “HI-46-H” in the City’s Zoning By-law). Full-turning movement is proposed for the intersection to Highway 140 approximately 400 metres north of Kleinsmith Road. The report concludes that the studied intersections are predicted to operate with acceptable levels of service during AM and PM peak hours until 2032 (the extent of the forecast period). The additional traffic generated from the proposed development only increases intersection delay by one second or less during peak hours. The TIS Update also proposed recommendations to address an intersection that is predicted to operate at a critical level in 2032.

Peer Review:

Peer Review of the TIS Update (2020) was undertaken by Associated Engineering and documented in the following technical memorandum:

- b) Technical Memorandum - Nyon Oil Incorporated - Phase 1, Port Colborne, ON, Transportation Impact Study Update Peer Review

The peer review report identified technical updates being required related to number of employees and certain intersection characterization.

Response to Peer Review:

Paradigm prepared a response memo dated November 26, 2020. Paradigm has provided detailed replies and updated the technical information. The responses and updated technical information confirm the recommendations of the traffic impact study and that the implementation of the recommendations will occur through the future Site Plan Agreement.

6.1.7 Vibration Study

GHD assessed that the proposed setback distances from the spur line are larger than what typically would warrant a vibration study. As pumps and pipes are also setback at a

considerable distance from the nearest residence, vibration study for these components are deemed not necessary either.

#### 6.1.8 Project Implementation Plan

The following studies have been completed to date to fulfill condition b)ii) of the “HI-46-H” Zone in the City’s Zoning By-law:

- a. Project Implementation Plan (Rev 1) prepared by J. Huber Consulting Limited dated May 12, 2020

##### Project Implementation Plan (Rev 1):

The Project Implementation Plan provides information related to the various processes that are proposed on the Subject Lands including the product delivery by ship and by rail. The Plan also lays out preliminary plans for various phases of construction, the required compliance and permits for the proposed development in addition to the conceptual design basis which includes applicable codes and regulations and operating philosophies, equipment, and control systems. A Fire Safety Plan including an Emergency Response Plan will be developed in consultation with the local Fire Chief. Prior to the facility’s commissioning, an Operating Management System will be developed, documenting the requirements of maintenance and operating procedures among others. Additionally, a detailed process hazard assessment (“PHA”) will be conducted in compliance with accepted industry standards and practices when detailed engineering is almost complete.

##### Peer Review:

Peer Review of the Project Implementation Plan Rev 1 (2020) was undertaken by Associated Engineering and documented in the following technical memorandum:

- a) Technical Memorandum – Nyon Oil Inc. Port Colborne Energy Park Petroleum Tank Farm and Distribution Facility Project Implementation Plan (Rev. 1) Peer Review

The peer review listed requirements to be incorporated in the Site Plan Agreement, including the Ministry of Transportation Land Use Permit and compliance with MECP’s D-3 and D-6 guidelines among others. The technical memo also sought to clarify several issues concerning the Project Implementation Plan to which J. Huber Consulting Limited had responded. These clarifications are summarized as follows:

- J. Huber Consulting Limited clarified that water and wastewater treatment for process conditions is not anticipated in the current scope though needed for normal operations personnel;

- Rail loading and unloading will be included in the scope and the location of rail loading facilities will be identified in the next phase;
- The next phase of engineering work through the Site Plan will identify the appropriate approval authorities for the proposed facilities which involve multiple jurisdictions and require clearance from CN Rail and St. Lawrence Seaway Management Corporation.

#### 6.1.9 Risk Assessment Plan

The following studies have been completed to date to fulfill condition b)ii) of the “HI-46-H” Zone in the City’s Zoning By-law:

- a. Risk Assessment Plan R.0 – Process Hazard Analysis – What-if Report prepared by Nyon Oil Inc. and Timbers Consulting dated May 8 - 15, 2020; and
- b. Risk Assessment Plan R1.1 – Process Hazard Analysis – What-if Report prepared by Nyon Oil Inc. and Timbers Consulting dated November 12, 2020

##### Risk Assessment Plan (R.0):

The Risk Assessment Plan provides information to assist managers and employees of Nyon Oil Inc. in improving safety, operability and reducing consequences associated with unplanned releases of hazardous materials. Ten (10) recommendations were also provided to address hazard risk of various flammable liquid fires. In conclusion, risk has been assessed by the team, and deemed to be As Low as Reasonably Practicable for all scenarios for residual risk assessment. Identified gaps will be closed upon successful implementation or complete and full consideration of the recommendations. The Plan also recommends that as the design progresses through the Site Plan and then detailed design, further risk assessments are necessary to ensure that the project maintains a tolerable level of risk exposure to workers, the public, and the environment while delivering economic value to the City of Port of Colborne.

##### Peer Review

Peer Review of the Risk Assessment Plan R.0 (2020) was undertaken by National Life Safety Group and documented in the following technical memorandum:

- a) Technical Memorandum – Risk Assessment Plan – Process Hazard Analysis – What-If Report Port Colborne Energy Park Peer Review dated October 2020

The peer review concludes that the Risk Assessment Plan has adequately considered hazards at a high level and its recommendations are comprehensive enough to appropriately address hazard risk of various flammable liquid fires. The peer review

technical memo also outlines several suggestions to improve the Plan, ranging from grammatical and formatting edits to inclusion of additional hazards as part of a comprehensive risk assessment.

#### Risk Assessment Plan (R1.1):

The Risk Assessment Plan was updated to address outstanding suggestions from the peer reviewer and to align with the updated Project Implementation Plan. Salient changes in the R1.1 version include grammatical and formatting edits, revising the definition of “hazard”, updating Appendix 6.1 – Project Implementation Plan, clarification of scope boundaries and that the Security and Vulnerability Assessment will be carried out in the future by a group of subject matter experts and therefore not part of this Risk Assessment Plan.

#### 6.1.10 Fire Emergency Plan

The following studies have been completed to date to fulfill condition b)ii) of the “HI-46-H” Zone in the City’s Zoning By-law:

- a. Nyon Fire Emergency Plan prepared by Firewise Training & Consulting and dated July 6, 2020; and
- b. Nyon Fire Emergency Plan - Forming Phase 1 of the Nyon Master Fire Plan prepared by Firewise Training & Consulting and dated November, 2020

#### Fire Emergency Plan (July 2020):

The Fire Emergency Plan is specifically developed for the proposed tank farm on the Subject Lands. It addresses issues related to firefighter training, on-site training location, necessary modifications to the City of Port Colborne Fire Department’s tanker trucks as well as proposed locations on the site for storing of foam concentrate and diking and damming equipment. The Plan also states that the City’s Fire Department response time as well as initial personnel and equipment sent to the Subject Lands are likely inadequate and therefore recommends either Nyon Oil Inc. employs a dedicated 24-hour Emergency Response Team to provide immediate initial mitigation of any incident or a satellite fire station be constructed next to the Subject Lands.

#### Peer Review:

Peer Review of the Fire Emergency Plan (July 2020) was undertaken by National Life Safety Group and documented in the following technical memorandum:

b) Technical Memorandum – Nyon Fire Emergency Plan Port Colborne Energy Park Peer Review

The peer review states the Fire Emergency Plan is developed with an appropriate approach. Discussion of more specific fire and safety objectives, updated scope and definitions, background materials and risk analysis as well as relevant best practices in emergency responses would strengthen the Plan. The technical memo also suggests inputs from the City of Port Colborne, the City of Welland and St. Lawrence Seaway Management Corporation should be incorporated in future versions of the Fire Emergency Plan. Recommendations to improve the current Fire Emergency Plan as well as for future assessments and future enhancements to Nyon Master Fire Emergency Plan are also included in the Peer Review.

Fire Emergency Plan (November 2020):

The Fire Emergency Plan was updated to address all recommendations outlined in the Peer Review with respect to the proposed tank farm on the Subject Lands. It is also made clear that future revisions to this document will be done at an appropriate time to incorporate other facilities under Nyon Oil Inc. and eventually form the Nyon Master Fire Plan. Highlights of the updates include clarification of Background and Purpose, Mutual Aid Agreement information; training and training location; site emergency response team and site emergency equipment; spills response and site access and inclusion of applicable legislations.

The implementation of the Fire Emergency Plan is being accomplished through a separate agreement between Nyon and the City of Port Colborne. The agreement will be executed prior to the Council decision to remove the “H” Holding provision.

### 6.1.11 Tree Preservation Plan

The EIS (2012) does not identify any trees on the Subject Lands. As such, the City has confirmed that a Tree Preservation Plan is not needed for this development.

## 6.2 Species At Risk Requirements Fulfillment

Condition b)iv) of the “HI-46-H” Zone in the City’s Zoning By-law states that Species At Risk Requirements by the MECP need to be met prior to the removal of the “H” Holding provision. The following table documents the requirements associated with the affected Species At Risk habitat and how they have been and/or will be fulfilled:

Requirement	Status
Register the work and the affected species with the Ministry (before work begins);	The proposed work and the Species At Risk affected have been registered under Ontario Regulation Reg. 242/08 of the Endangered Species Act (2007) on October 13, 2020.
Prepare and follow a habitat management plan;	This is noted in the EIS Update Memo and will be fulfilled before activities begin.
Create or enhance habitat, and manage that habitat;	A replacement habitat of approximately 13 hectares is proposed on agricultural land that is currently used for row crops. The EIS Update Memo notes this habitat must be established per ESA requirements within 12 months of the date development begins.
Provide a written commitment (also called an undertaking) to the Ministry that says you will manage the habitat over time;	This is future work to be done as part of the implementation of the registration.
Minimize effects to the protected species;	This is noted in the EIS Update Memo.
Avoid activities that are likely to affect habitat or the birds between May 1 – July 31;	The EIS Update Memo recommends avoidance of vegetation removals between April 1 and August 31.
Prepare and maintain records that relate to the work and the habitat; and	This is future work to be done as part of the implementation of the registration.
Report sightings of rare species (and update registration documents, if needed).	This is future work to be done as part of the implementation of the registration.

The *Peer Review – Ecology (September 24, 2020)* technical memo states the recommendations detailed in the EIS Update Memo (2020) will satisfy the requirements of the Endangered Species Act based on the assumption provided in the EIS Update Memo.

## 7. Summary of Planning Analysis

The proposed development was approved by the Ontario Municipal Board in its decision of July, 2013. The principle of use for the 56-tank petroleum facility has been approved on the Subject Lands.

The zoning established at the time of the Ontario Municipal Board decision placed an “H” - Holding provision on the Subject Lands to establish the preparation of more detailed studies on specific matters and fulfillment of requirements related to Species At Risks by the Ministry of Environment, Conservation and Parks as identified in the Zoning By-law.

The studies and their associated peer reviews by Associated Engineering have been completed such that all peer review comments have been addressed. A complex and large development such as the Nyon project will require details of the studies and peer review recommendations to be implemented through the Site Plan and detailed design. Further, more specific and detailed studies, when detailed design is underway, have been noted in the Nyon initiated studies and the peer reviews. This is an appropriate approach so that detailed assessment will be addressed through further analysis in the site plan design and process for review by the City. Section 6.1 of this report summarizes the required supporting studies, their associated peer reviews and the ensuing recommendations. Additionally, Section 6.2 of this report discusses the requirements related to the Species At Risk identified on the Subject Lands and how these requirements have been or will be fulfilled.

## 8. Conclusion

It is our opinion that the proposed application should be approved as it represents good land use planning, is in the public interest, and should be supported by the approval authority for the following reasons:

- The proposed development and the removal of the “H” Holding provision are consistent with the Provincial Policy Statement, and conforms with the Growth Plan, the Niagara Region Official Plan and the City of Port Colborne Official Plan;
- The application for lifting the “H” is appropriate at this time given the studies have been completed, peer reviewed and there is agreement by the technical experts that the studies are complete in terms of breadth, scope, and level of detail for removal of the “H” Holding provision; and,
- The requirements related to Species At Risks by the MECP have been met.

**Report prepared by:**



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**Jeremy Tran, MPlan  
Planner  
Niagara Planning Group (NPG) Inc.**

**Report Reviewed by:**



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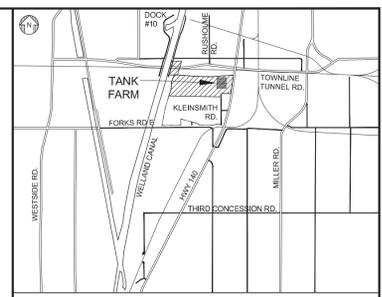
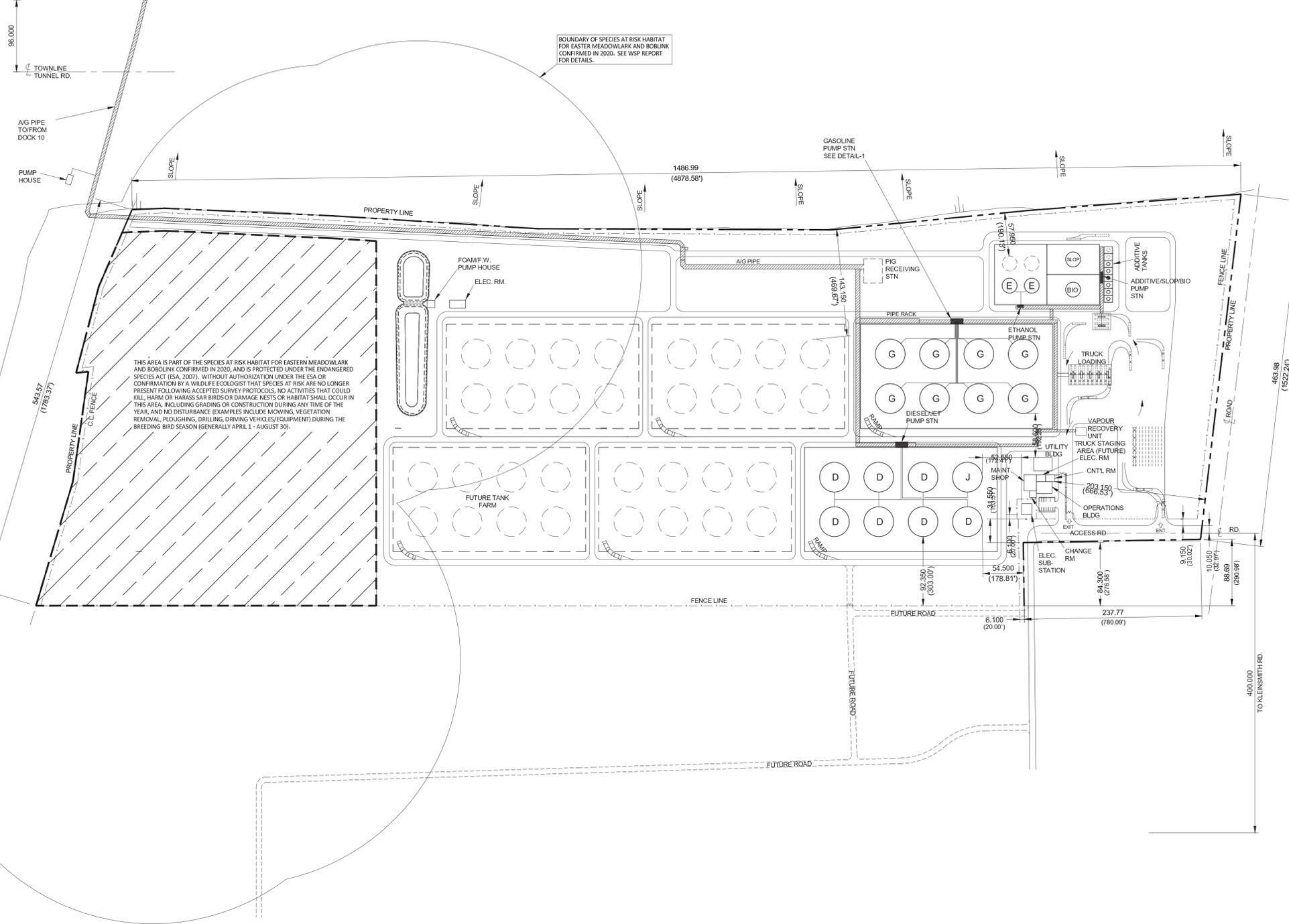
**Mary Lou Tanner, FCIP, RPP  
Principal Planner  
Niagara Planning Group (NPG) Inc.**

## 9. Appendices

### Appendix A – Sketch of Proposed Development



MATCHLINE C.O.D. 10-D102



KEY PLAN  
N.T.S.

PROPERTY:  
PART OF LOTS 16, 17, 18, 19, CONCESSION 5, CITY  
OF PORT COLBORNE, REGIONAL MUNICIPALITY  
OF NIAGARA

LEGEND:  
--- PROPERTY LINE  
- - - FENCE LINE

BM # BENCHMARK PER RASCH & HYDE LTD. DRAWING  
13F034-TOPO DATED 08 NOV. 2013  
CUT CROSS ON CONCRETE BASE OF HYDRO  
TOWER.

BM No.	ELEVATION	NORTH	EAST
BM-1	177.90	4757660.142	644637.032
BM-2	177.91	4757641.553	644637.030
BM-3	178.16	4757654.648	644910.309
BM-4	178.18	4757645.080	644910.193

- NOTES:
- DIMENSIONS ARE IN METER, UNLESS OTHERWISE NOTED.
  - ZONING DESIGNATION IS "H1-46-H".
  - TOTAL PROJECT AREA 76,838 HECTARES  
PROJECT AREA DEVELOPED 57,006 HECTARES  
PROJECT AREA NOT DEVELOPED DUE TO SAR CONSIDERATIONS 19,832 HECTARES

REV.	REVISION DESCRIPTION	DATE	BY	CHKD.	APPR.
E		2020-09-22	CFC	JC	
D	RISK HABITAT FOR EASTERN MEADOWLARK AND BOBLINK ADDED	2020-08-28	CFC	DL	JC
C	FOR ESTIMATE	2015/09/14	HL	DL	
B	NOTE 2 & OIL/WATER SEPARATOR ADDED	2014/07/07	CFC	DL	
A	FOR TSSA APPLICATION	2014/04/23	CFC	DL	

ENGR. D. LAW DRAWN CFC CHKD. DL APPR. SCALE 1:3000  
BY DATE BY DATE ISSUED FOR CONSTRUCTION U. N. E.

MCL MILEY COMPANY LIMITED

NYON OIL INC.  
TORONTO, ONTARIO

PORT COLBORNE TERMINAL

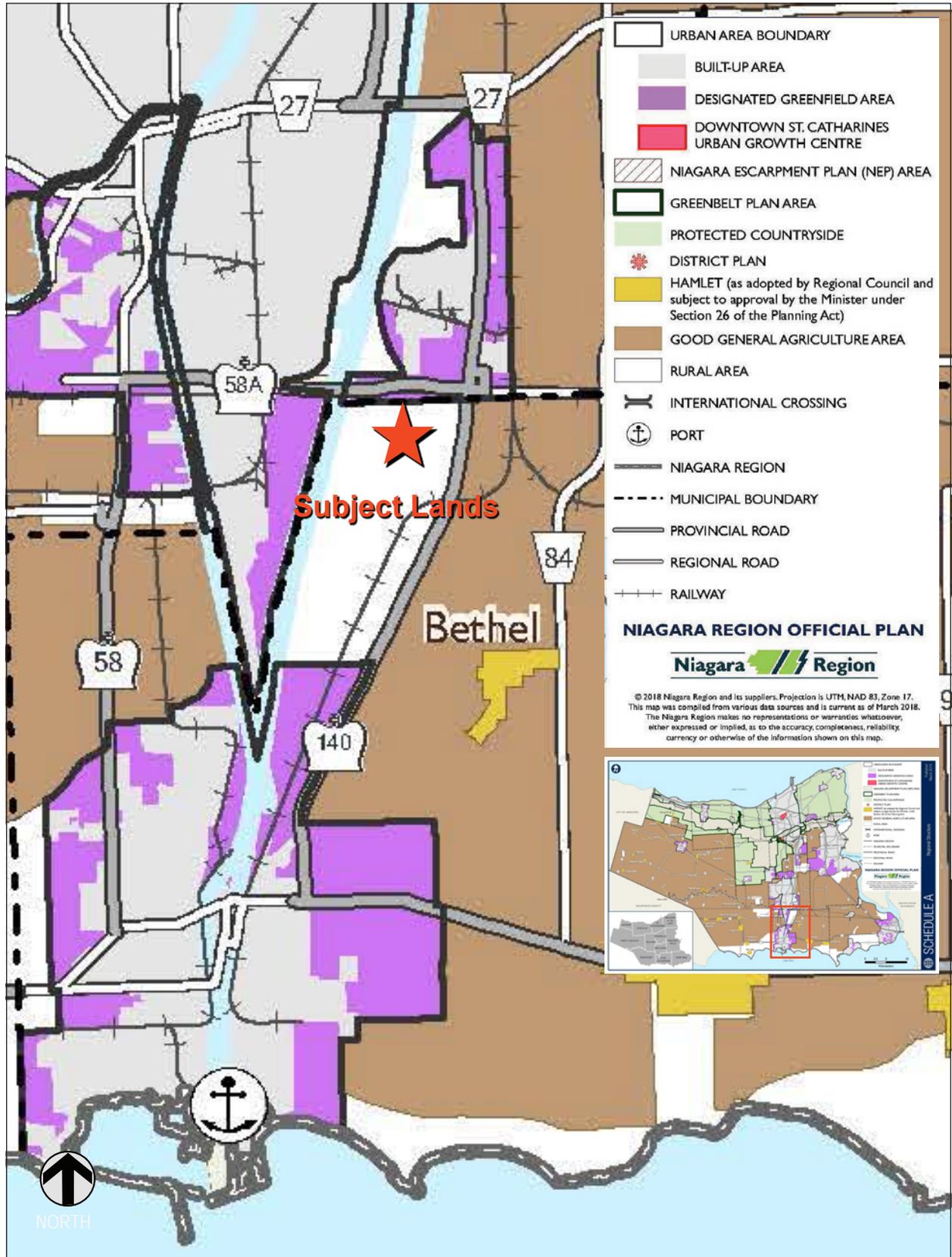
TANK FARM  
SITE LAYOUT

ITEM & CLASS	AREA	JOB NUMBER	DRAWING NUMBER	REV.
A	-	E3208-20	10-D101	E

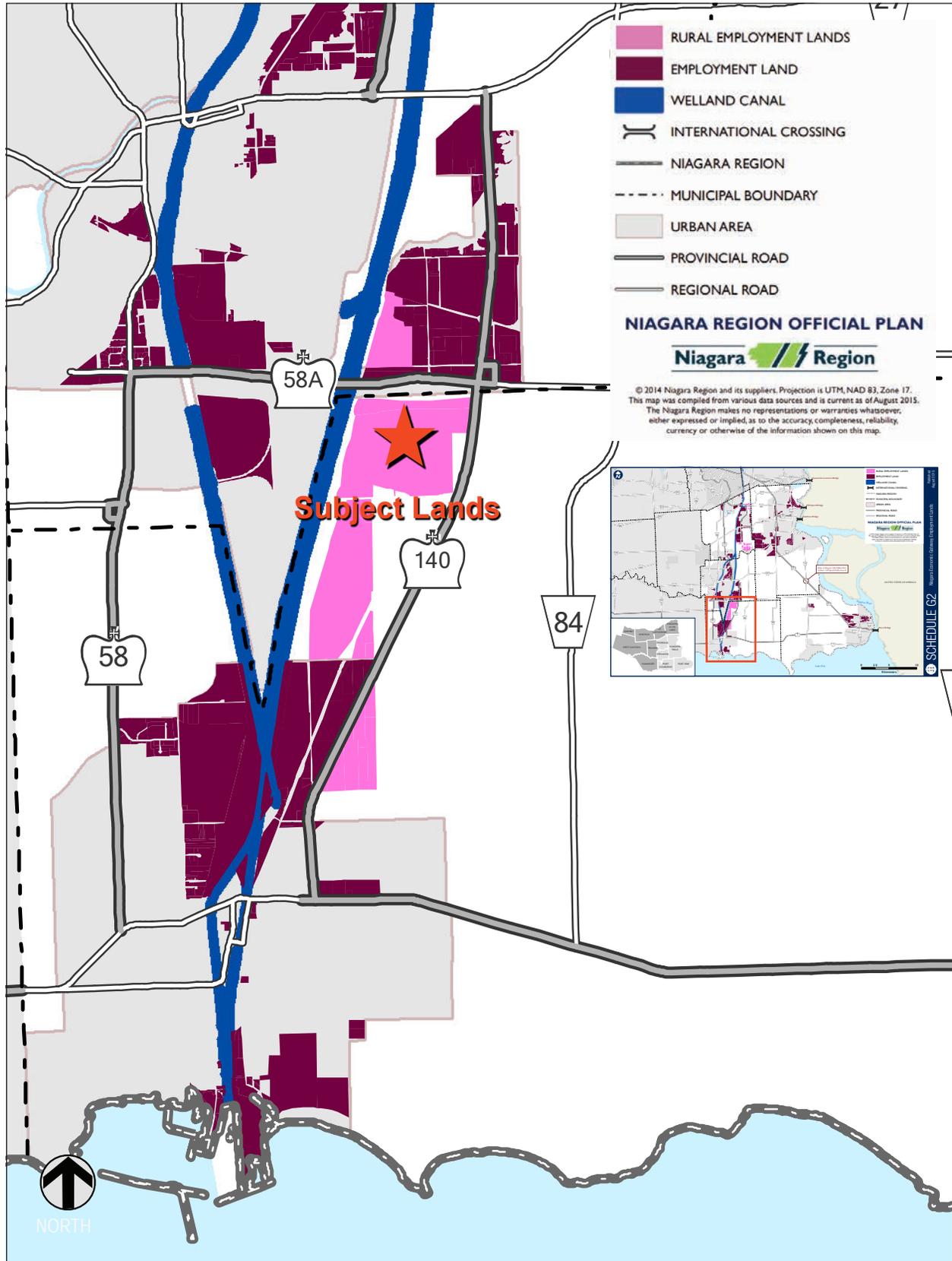


CLIENT DWG. NO.

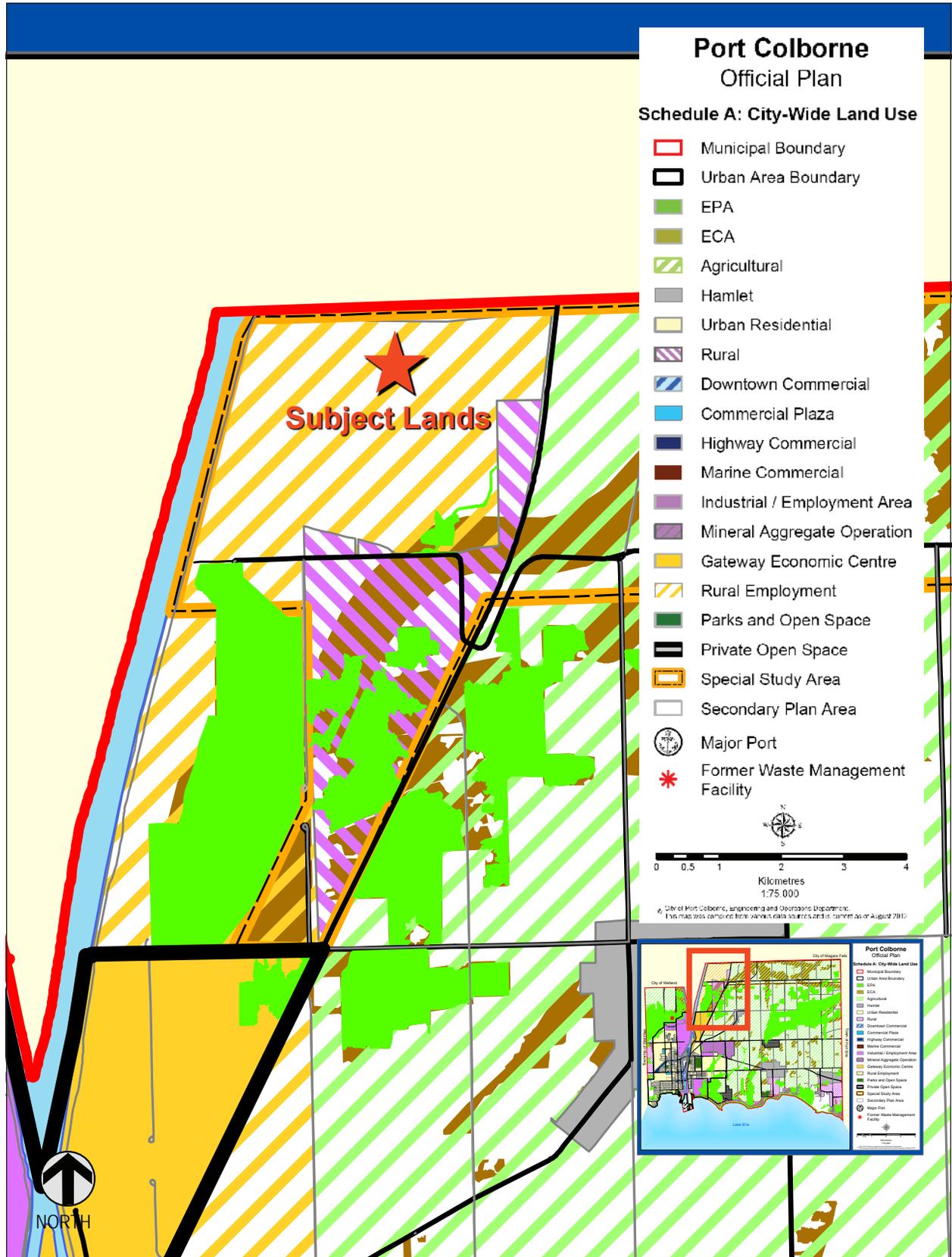
Schedule A: Regional Structure



Schedule G2: Niagara Economic Gateway Employment Lands

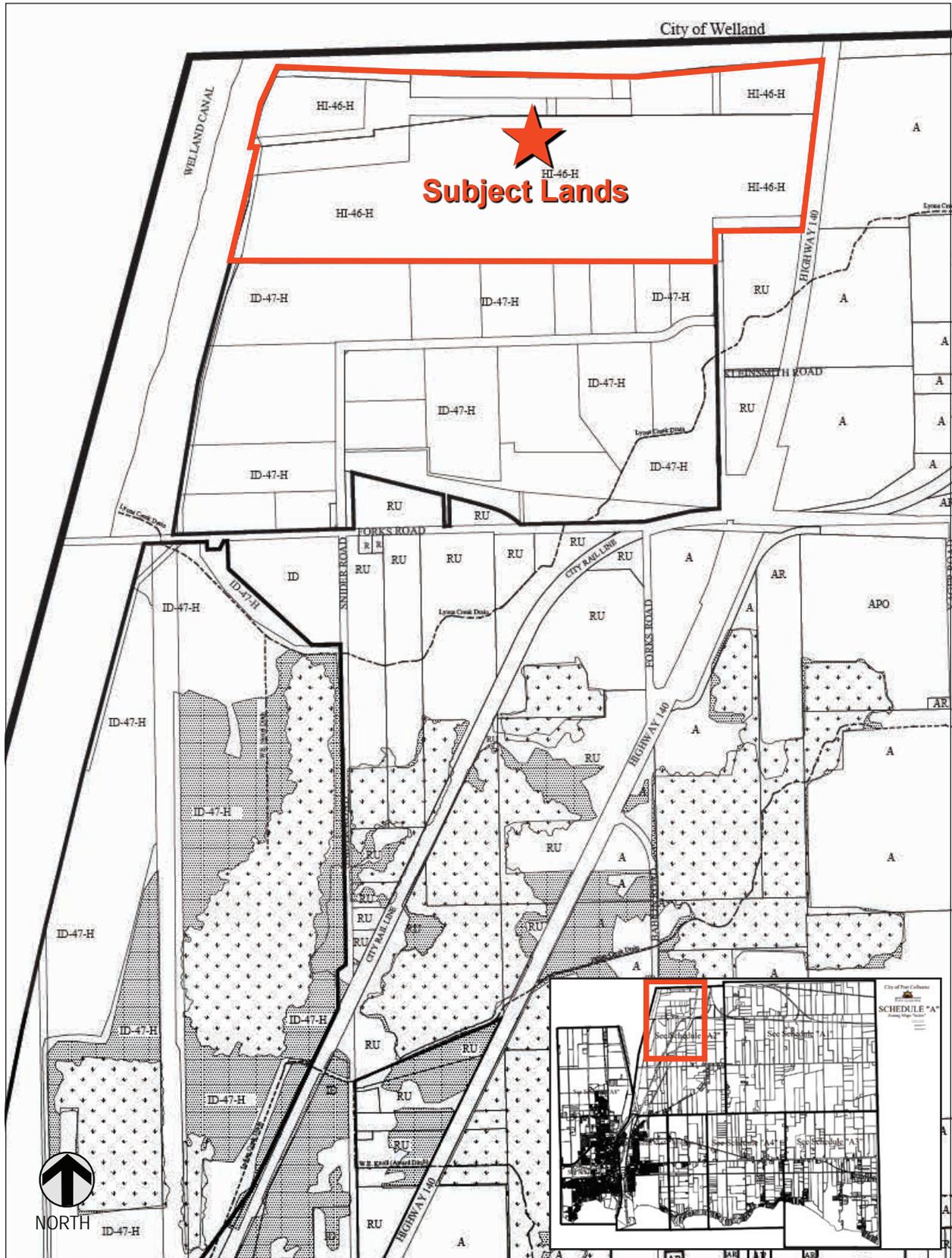


Schedule A: City Wide General Land Use Plan



# Appendix D - City of Port Colborne Zoning By-law Map

Schedule A2



## Appendix E – Draft Zoning By-laws

### THE CORPORATION OF THE CITY OF PORT COLBORNE

BY-LAW NO. \_\_\_\_\_

**BEING A BY-LAW TO AMEND ZONING BY-LAW 6575/30/18, AND AS AMENDED, RESPECTING PART OF LOTS 16, 17, 18 AND 19, PART OF THE ROAD ALLOWANCE BETWEEN LOTS 16 AND 17, PART OF THE ROAD ALLOWANCE BETWEEN LOTS 18 & 19 IN THE CITY OF PORT COLBORNE, LOCATED ON THE EAST SIDE OF CANAL ROAD, SOUTH OF THE CN RAILWAY LANDS AND WEST OF HIGHWAY 140**

**WHEREAS** By-law 6575/30/18, as amended, is a by-law of the Corporation of the City of Port Colborne regulating the use of lands and the character, location and use of buildings and structures within the City of Port Colborne;

**AND WHEREAS**, the Council of the Corporation of the City of Port Colborne desires to amend the said by-law;

**NOW THEREFORE**, and pursuant to the provisions of Section 34 and Section 36 of The Planning Act, R.S.O. 1990, the CORPORATION OF THE CITY OF PORT COLBORNE ENACTS AS FOLLOWS:

1. This amendment shall apply to those lands described on Schedule "A" attached to and forming part of this by-law.
2. That the "Zoning Map" referenced as Schedule "A-2" forming part of By-law 6575/30/18, as amended, is hereby amended by changing those lands described on Schedule "1" attached from the "HI-46-H (HEAVY INDUSTRIAL – HOLDING)" zone to a site specific "HI-46 (HEAVY INDUSTRIAL)" zone.
3. That this By-law shall come into force and take effect on the day that it is passed by Council, subject to the provisions of The Planning Act, R.S.O 1990.
4. The City 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.

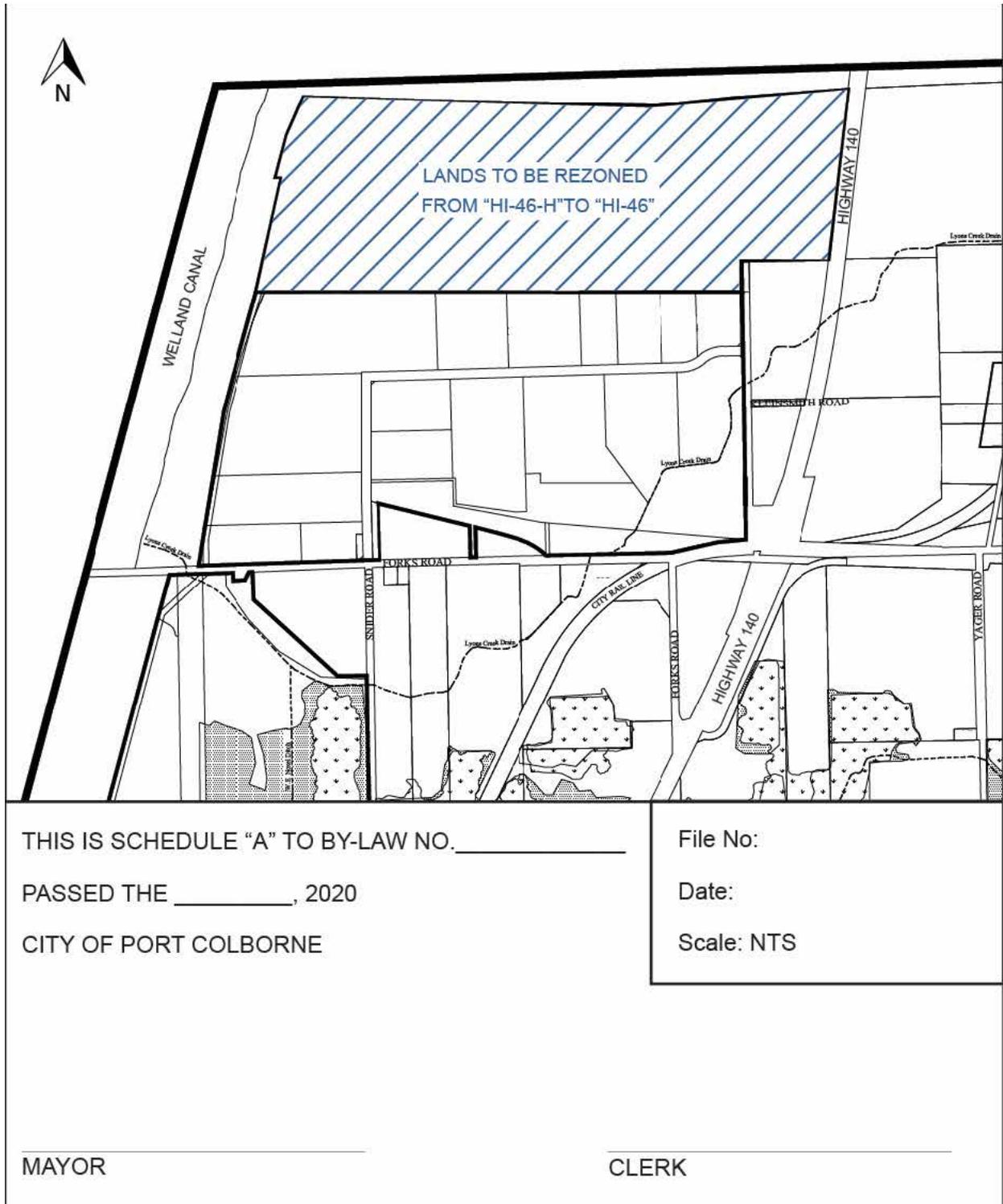
**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS XXTH  
DAY OF XXX, 2020**

---

William C. Steele  
Mayor

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Peter M. Senese  
Deputy Clerk





**Department: Chief Administrative Officer  
Project Management Office**

**Report Number: 2020-188**

**Date: December 14, 2020**

**Subject: Affordable Housing Project and Partnership with Port Cares**

**1) PURPOSE:**

The purpose of this report is to seek approval from Council to move forward with next steps in the planning and development process to support Port Cares' affordable housing project proposed for Chestnut Park.

**2) HISTORY, BACKGROUND, COUNCIL POLICY, PRACTICES**

Port Colborne, like many cities and towns across Canada, is exploring funding options, innovative approaches, and strategic partnerships to address affordable housing shortages and wait lists. According to recent research from Brock University, Niagara needs 20,000 more affordable housing units. Council has identified affordable housing as a priority and have asked staff to review options.

Port Cares has been developing plans to create more affordable housing units and have been reviewing the availability and suitability of various sites in Port Colborne. City staff have had preliminary discussions with Port Cares about the suitability of Chestnut Park and having it redeveloped for much needed affordable housing units.

At their November 24<sup>th</sup> meeting, Port Cares' Board of Directors approved a recommendation from their Property and Capital Committee to work with the City to acquire the Chestnut Park property and construct a two-storey, twenty-unit affordable housing structure (see attached concept plan).

Port Cares has retained a housing consultant who is preparing a business case and a funding application for CMHC's Seed funding program. They also plan to explore other affordable housing funding programs including the federal government's "Rapid Housing Initiative."

**3) STAFF COMMENTS AND DISCUSSIONS**

Chestnut Park is underutilized and could be repurposed and redeveloped for a broader community benefit by providing much needed affordable housing. Chestnut Park is also situated near a much larger park, Lockview Park, that could be upgraded into a park that is modern and more suitable for area residents and would render Chestnut Park surplus to the City's park infrastructure needs. The playground equipment at Chestnut Park will be relocated to Lockview Park as part of the implementation of the Parks and Recreation

Master Plan and creating premier parks within the City. City staff have had discussions about creating a multi-year plan to invest in new amenities and structures for Lockview Park and staff are proposing to develop a plan for Council review.

There are several steps in the planning and development process that need to be taken before this property can be legally transferred to Port Cares. The property needs to be rezoned, a survey is required to create a separate parcel to be conveyed, a development agreement between Port Cares and the City should be prepared along with a formal transfer agreement.

A due diligence period will be established as part of the transfer agreement to allow Port Cares time to complete an environmental assessment as well as secure funding grants and related project financing.

Having Council's support for this project and providing staff with direction to proceed with next steps will assist Port Cares with their funding application timelines and project schedule. Staff are aware of other partnerships where municipalities have donated land as part of a contribution to an affordable housing project and to help facilitate development and attract other public sector funding and partnerships.

#### **4) OPTIONS AND FINANCIAL CONSIDERATIONS:**

There will be City staff time required to relocate the playground equipment from Chestnut Park to Lockview Park, however this will be minimal. Staff are recommending the transfer of Chestnut Park to Port Cares for \$1 as the City's contribution to this affordable housing project.

#### **5) COMPLIANCE WITH STRATEGIC PLAN INITIATIVES**

The draft 2020-2025 Strategic Plan is under development and will include key statements regarding quality of life, affordable housing, and the principles of sustainability including economic and social sustainability.

#### **6) ATTACHMENTS**

Appendix A – Zoning and Proposed Building Footprint

#### **7) RECOMMENDATION**

That Council declares Chestnut Park, and the land between Chestnut Park and Lockview Park as surplus;

That Council hereby approves in principle the affordable housing project proposed by Port Cares;

That Council agrees to transfer the Chestnut Park property to Port Cares for \$1 pending the completion of a mutually satisfactory agreement;

That the Director of Community and Economic Development prepare a Lockview Park revitalization plan; and

That the Director of Planning and Development be directed to proceed with a rezoning application, a survey, and a development agreement.

**8) SIGNATURES**

Prepared by:



Gary Long  
Manager of Strategic Initiatives

Respectfully submitted by:



Scott Luey  
Chief Administrative Officer



Clarke Street

Chestnut Street

Chestnut Street

Clarke Street

240'

Proposed location of  
 2-storey, 20-unit apartment  
 building footprint = 8,125 sq.ft  
 total lot coverage = 28.2%  
 total building size = 16,250 sq.ft

Parking Area:  
 7 spaces required by  
 R4 zoning; can  
 accommodate 16  
 spaces (including 4  
 accessible spaces)

80.00'

135'

Fire Lane / Secondary Parking Lot Access

Mandatory  
Landscaping Buffer

120'



Report Number: 2020-191

Date: December 14, 2020

Subject: COVID-19 Update #8

**1) PURPOSE:**

This CAO generated report is provided as a follow up to the COVID-19 pandemic update that was provided to City Council on November 23, 2020.

**2) HISTORY, BACKGROUND, COUNCIL POLICY, PRACTICES**

The City's Emergency Operations Centre (EOC) was activated in response to the COVID-19 pandemic on March 13, 2020 by bringing together the City's Emergency Control Group (ECG). The COVID-19 pandemic continues to affect the nation and the City continues to prepare, respond, and plan recovery from the impacts of the pandemic to the municipality. As described in a previous staff report, the City's response is based on four principles:

- Maintaining essential City services to the community throughout the emergency;
- Continuing to ensure the safety and security of the public and City staff;
- Ensuring the organization remains financially stable throughout COVID-19; and
- Continuing to remain consistent in the City's actions with the actions of other agencies.

In order to respond appropriately to the impacts of the pandemic and adhere to these principles, the City's response has been divided into three phases:

- First phase – initial response and precautions for users and staff
- Second phase – maintaining essential services
- Third phase – recovery and reopening

Currently, the City is in the third phase, recovery and reopening, as staff continue to execute plans that were developed for reopening the City's programs, services, and facilities.

**3) STAFF COMMENTS AND DISCUSSIONS**

The City continues to maintain essential services during the COVID-19 pandemic. In recent months more services, programs, and facilities have reopened; the City has moved beyond maintaining essential services and now offers almost all municipal services that were available prior to the pandemic, albeit often with precautions in place. The precautions in place to protect the community and staff have been described in past reports. These precautions remain in place and are actively being monitored, evaluated,

and adjusted as needed. City management is content with the precautions in place and, based on feedback from staff and union officials, City Staff are also content with the current working conditions.

Recently the Province of Ontario released a new COVID Response Framework that includes a colour coded approach to the public health measures that are in place in different jurisdictions in Ontario. Niagara was initially in the yellow category known as “Protect” but has since moved into the orange or “Restrict” category based on case numbers in the Region. Regional staff have advised that Niagara’s most recent case data should result in the area remaining in the orange category but that the conditions that could trigger a move from orange to red (“Control”) could easily materialize locally.

Directors are currently undertaking an exercise that will define the level of service for each City department based on the different levels of the Province’s Framework. For example, in the yellow stage, the City’s Library allowed some in-person browsing of the Library but in the orange stage the service level was changed to curbside pickup of lending materials only. Part of this exercise will also include determining the staffing levels required in each department to maintain the identified service level.

City By-law staff have been providing valuable education and information to residents and businesses about the Province’s COVID restrictions and the Region’s Mask By-law. There is some pressure on enforcement agencies in Niagara to transition from an education and information approach to a more rigorous enforcement method up to and including charges for individuals and businesses that have more than one instance of a violation of Provincial Orders. Enforcement is difficult for City staff for a number of reasons, including the fact that many violations take place outside of enforcement officers’ working hours, sometimes offenders have moved on before an officer arrives on scene, and that there is a feeling of needing to work together to help businesses prosper in what is proving to be a difficult time for the local economy.

Staff propose an enforcement system that is based on a warning as a first step and a fine for future infractions under the Province’s Orders. Under this system, the City would maintain a database of names of individuals and businesses that have received a warning and subsequent violations would result in a fine being issued.

Staff will continue to monitor the Province’s COVID Recovery Framework and will report the City’s response and precautionary actions taken to Council.

#### **4) OPTIONS AND FINANCIAL CONSIDERATIONS:**

The Financial Services Division continues to forecast a balanced budget for 2020. The 2021 Budget has been presented to Council and approved. This budget includes contingencies to ensure that any continued financial impacts of the pandemic are mitigated within current operating funds to ensure a deficit is not created.

**a) Do nothing.**

Not applicable.

**b) Other Options**

Not applicable.

**5) COMPLIANCE WITH STRATEGIC PLAN INITIATIVES**

Not applicable.

**6) ATTACHMENTS**

None.

**7) RECOMMENDATION**

That Chief Administrative Officer Report No. 2020-191, Subject: COVID-19 Update #8, be received for information; and

That By-law Enforcement staff be directed to implement a more rigorous enforcement plan for violations of the Province's COVID Orders that provides for charges to be laid against individuals and businesses that have repeated violations of these orders.

**8) SIGNATURES**

Prepared on December 8, 2020 and respectfully submitted by:



C. Scott Luey  
Chief Administrative Officer



**Corporate Services Department  
Finance Division**

**Report Number: 2020-182**

**Date: December 14, 2020**

**SUBJECT: Cancellation, Reduction or Refund of Realty Tax**

**1) PURPOSE**

The purpose of this report is to seek approval of Council in order to cancel, reduce or refund realty tax of the applicant in accordance with the recommendations of the Municipal Property Assessment Corporation (MPAC) Assessor.

**2) HISTORY, BACKGROUND, COUNCIL POLICY, PRACTICES**

Under section 357/358 of the *Municipal Act, 2001*, as amended, an application to Council may be made by the taxpayer for the cancellation, reduction or refund of tax levied in the current and previous year for specific purposes. In some cases, a review may increase the property assessment and increase a property's tax levied.

Once an application is received from a taxpayer under Section 357/358 and processed by staff, the application is forwarded to MPAC for a revised assessment recommendation. These applications are then returned to the municipality for staff to calculate the amount of cancellation or adjustment of taxes.

This report to council is the third report relating to 357/358 municipal tax adjustments presented for 2020. Reports 2020-37 and 2020-154 have previously been submitted and approved by Council. It is customary to have multiple reports each year depending on the timing of the applications.

Section 357 Application Numbers 2020-100, 2020-200, and 2020-300 were received and are in the Treasurer's possession.

**3) STAFF COMMENTS AND DISCUSSIONS**

The attached summary report encompasses the applications received to date for submission to Council for approval.

Staff recommends Council approval of the recommendation of the MPAC assessor for the Section 357 applications. It is a rarity that the taxpayer challenges any recommendation, however, if such did occur, staff would request MPAC to attend the committee meeting to defend or amend the recommendation. Staff have received no objections from the taxpayers.

**4) OPTIONS AND FINANCIAL CONSIDERATIONS:**

Application numbers 2020-100, 2020-200, and 2020-300 under Section 357/358 require Council's approval. The total amount of reduction or cancellation of taxes is \$11,327.51, of which \$5,333.96 is the municipal portion.

**5) COMPLIANCE WITH STRATEGIC PLAN INITIATIVES**

Not applicable.

**6) ATTACHMENTS**

Appendix A – Calculation of adjustments based on the Assessor’s reports and comments

**7) RECOMMENDATION**

That the applications received pursuant to Section 357/358 of the *Municipal Act, 2001*, as amended, numbered 2020-100, 2020-200, and 2020-300 be approved to cancel or reduce taxes in the total amount of \$11,327.51.

**8) SIGNATURES**

Prepared on November 26, 2020 by:



Andrea Hawkins  
Tax Clerk

Reviewed by:



Stephen Corr  
Manager of Revenue & Taxation

Reviewed and respectfully submitted by:



C. Scott Luey  
Chief Administrative Officer

Reviewed by:



Bryan Boles  
Director of Corporate Services





**Community and Economic Development Department  
Parks and Recreation Division**

**Report Number: 2020-189**

**Date: December 14, 2020**

**SUBJECT: Canadian Experiences Fund Grant Update - Project No. 2020-30  
Supply and Installation of Solar Lighting at H.H. Knoll Lakeview Park**

**1) PURPOSE:**

The purpose of this report is to provide an update regarding grant funding approved under the Federal Economic Development Agency, Canadian Experiences Fund, and to obtain approval to award the installation of solar lighting at H.H. Knoll Lakeview Park to the recommended bidder.

**2) HISTORY, BACKGROUND, COUNCIL POLICY, PRACTICES**

At its meeting of November 23, 2020, Council approved the recommendation of Community and Economic Development, Parks and Recreation Division Report 2020-165, Subject: Federal Economic Development Agency, Canadian Experiences Fund Grant Application – Resolution of Support. As outlined in that report, the City has been successful in securing grant funding under the Federal Economic Development Agency for Southern Ontario (FedDev Ontario), Canadian Experiences Fund, in order to undertake various improvements to enhance visitor experience for a total allocation of up to \$200,000 - representing 100% of total eligible project costs.

The grant was initially earmarked to fund for improvements at H.H. Knoll Lakeview Park. Enhancements were slated to position the site as a “celebration park”, better equipped to host special events, such as the Canal Days Marine Heritage Festival concert series. The original project scope included the installation of hydro improvements, repaving of asphalt pathways, and solar lighting. Completion of the project was delayed due to COVID-19 and, as a result, in consultation with FedDev Ontario, staff explored the opportunity to adjust the project scope to include Wi-Fi improvements at H.H. Knoll Lakeview Park (the Park) and Sugarloaf Marina.

Following Council’s approval of the above report, staff consulted with Niagara Regional Broadband Network to confirm budgetary capital and operational costs to install fibre cable through the Park to Sugarloaf Marina, and provide Wi-Fi access points at both locations. Through that consultation it has been determined that the installation of fibre cable would exceed the funding and project completion timeframe set out by FedDev Ontario. As a result, staff recommend proceeding with the supply and installation of solar lighting in the Park, as outlined in the original project scope.

Prior to November 23, 2020, and in accordance with the original project scope, the Engineering and Operations Department issued a Request for Proposals for the Supply and Installation of Solar Lighting at H.H. Knoll Lakeview Park. Proposal documents were prepared and a public proposal procedure was initiated. During the proposal process a total of two (2) contractors took out documents. At the time of tender closing on November 16th, one (1) contractor had submitted pricing. The results of that proposal opening have

been identified below. The entire proposal process and opening proceedings adhered to the purchasing policy as previously adopted and endorsed by Council.

### **3) STAFF COMMENTS AND DISCUSSIONS**

The intended work consists of the purchase and supply of multiple LED solar light units along with, the design and installation of these units along the southern path and parking lot at H.H. Knoll Lakeview Park. The tendering process closed on Monday, November 16th, 2020 with one (1) compliant submission:

**R&B Electric Solutions Inc.**

**\$110,000.00**

(Plus ten percent contingency, as recommended below)

The tender document and pricing submitted by R&B Electric Solutions Inc. of Welland, Ontario in the amount of \$110,000.00, plus applicable taxes was found to be complete in all aspects with regard to specifications, details and format. The contract provides for the installation of ten LED solar light units and installation along the southern path and parking lot at H.H. Knoll Lakeview Park. Staff recommend including a 10% contingency above the contract price for any unexpected circumstances that may be encountered during installation, resulting in a total tender price of \$121,000.

The evolving solar lighting industry is of great interest to R&B Electric Solutions Inc. They have extensive experience in pole lighting in all applications. They have worked closely with municipalities and separate entities on solar projects, in providing the best, most efficient outdoor lighting solutions most suited to the customer's needs. They have been highly referenced for their quality of work and ability to meet deadlines.

It is the recommendation of staff at this time that Council accept the tender as submitted by R&B Electric Solutions Inc. and award Project No. 2020-30 Supply and Installation of Solar Lighting at H.H. Knoll Lakeview Park to them. This will allow the City to enter into an agreement with R&B Electric Solutions Inc. and to initiate construction as soon as scheduling allows while staying below the approved budget.

Although the installation of fibre and Wi-Fi access points to the Park and Sugarloaf Marina could not be completed under the Canadian Experiences Fund Grant, staff will continue to investigate this project, with future progress on this initiative being presented through subsequent reports to Council.

### **4) OPTIONS AND FINANCIAL CONSIDERATIONS:**

#### **a) Do nothing**

Grant funding under the Canadian Experiences Fund has been approved. As a result, this option is not recommended.

#### **b) Other Options**

None.

**5) COMPLIANCE WITH STRATEGIC PLAN INITIATIVES**

Not applicable.

**6) ATTACHMENTS**

None.

**7) RECOMMENDATION**

That Project No. 2020-30 Supply and Installation of Solar Lighting at H.H. Knoll Lakeview Park be awarded to R&B Electric Solutions Inc. of Welland, Ontario, for the total tender price of \$121,000.00, plus applicable taxes.

That a by-law to authorize entering into the contract agreement be approved.

**8) SIGNATURES**

Prepared on December 4, 2020 by:



Ashley Grigg  
Director of Community and  
Economic Development

Reviewed by:



Bryan Boles  
Director of Corporate Services

Reviewed by:



Steve Shypowskyj  
Acting Director of  
Engineering and Operations

Reviewed and respectfully submitted by:



C. Scott Luey  
Chief Administrative Officer

November 25, 2020

**Special CL 21-2020, November 18, 2020**

**LOCAL AREA MUNICIPALITIES**

**LOCAL AREA MPs and MPPs**

**SENT ELECTRONICALLY**

**RE: Motion - Support for Niagara's Local Businesses through the Second Wave of the COVID-19 Pandemic  
Minute Item 8.1**

Regional Council, at its meeting held on November 18, 2020, passed the following motion:

WHEREAS the COVID-19 pandemic continues to pose a real and imminent threat the health of the residents of the Niagara region; and

WHEREAS public health authorities at the provincial and local level have implemented reasonable measures to protect the health of the residents of Niagara and Ontario; and

WHEREAS these measures may have the unintended effect of disadvantaging certain businesses in the Niagara region, namely those in the tourism, hospitality and food services sectors; and

WHEREAS Regional Council formally recognizes the important part that Niagara's more than 1,200 restaurants play in our economy, employing thousands of residents through the entire year; and

WHEREAS Regional Council also recognizes that Niagara's tourism, hospitality and food service sector are connected to a supply chain of numerous sectors that rely on these businesses operating to continue to provide gainful employment to thousands of residents; and

WHEREAS the Niagara region has been disproportionately impacted by the COVID-19 pandemic as compared to many other areas of the province.

NOW THEREFORE BE IT RESOLVED:

1. That the Regional Chair **BE DIRECTED** to advocate to the provincial and federal government for financial support for Niagara's struggling hospitality, tourism and food service sectors as they cope with the impacts of public health protection orders on their operations;
2. That staff **BE DIRECTED** to undertake a proactive "buy local" marketing initiative to help support Niagara's local businesses, taking advantage of the upcoming holiday shopping season;
3. That Regional staff **BE DIRECTED** to pursue all opportunities for coordination and partnership with the local area municipalities in the execution of the "buy local" initiative, including but not limited to the municipal economic development offices and corporate communication divisions; and
4. That the Regional Clerk **BE DIRECTED** to circulate a copy of this resolution to Niagara's 12 local area municipalities and the local area MPs and MPPs.

Yours truly,



Ann-Marie Norio  
Regional Clerk

CLK-C 2020-214



4800 SOUTH SERVICE RD  
BEAMSVILLE, ON L0R 1B1  
905-563-8205

November 17, 2020

SENT VIA EMAIL

Region of Niagara  
1815 Sir Isaac Brock Way  
P.O. Box 1042  
Thorold, ON L2V 4T7

Attention: Ann-Marie Norio, Regional Clerk

**RE: PUBLIC HEALTH MEASURES RE: ONTARIO COVID-19 RESPONSE  
FRAMEWORK**

Please be advised that Council for the Corporation of the Town of Lincoln passed the following resolution on November 16, 2020:

Moved by: Mayor Sandra Easton  
Seconded by: Councillor Adam Russell

WHEREAS, recently, there have been decisions made by the Province and Niagara Public Health that saw Niagara move into the 'Orange-Restrict' level, as per the Ontario COVID-19 Response Framework; and

WHEREAS, we are supportive of public health measures to keep our community safe, and recognize that there are members of our business community that are calling for greater transparency in how these decisions are made, and the data that is being used to support these decisions; and

WHEREAS, we must strike a balanced approach to combatting COVID-19, while ensuring our local economy remains open, with appropriate restrictions put in place to protect our community and especially our most vulnerable citizens; and

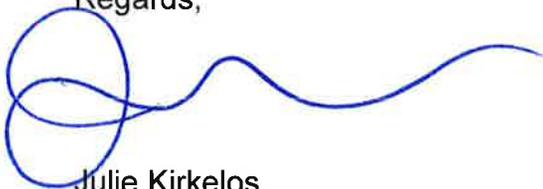
WHEREAS, small business is a large economic driver of our community, employing our friends and neighbours, and has already seen a significant reduction in business since the start of the pandemic.

THEREFORE, BE IT RESOLVED THAT:

1. Niagara Region Public Health prepare a full report to all Regional elected officials, and that be shared with LAM's, including in that report as much data as possible on the decision-making process; and
2. That the focus of restrictions, either under the Section 22 order, or otherwise, review the dining-out to household only restrictions and that this be reviewed on a weekly basis.

**CARRIED**

Regards,



Julie Kirkelos  
Town Clerk  
[jkirkelos@lincoln.ca](mailto:jkirkelos@lincoln.ca)

cc: Local Area Municipal Clerks, sent via email  
Members of Niagara Regional Council  
Niagara Region Public Health

November 26, 2020

**CL 22-2020, November 19, 2020**

David Adames  
Chief Executive Officer  
Niagara Parks Commission  
7400 Portage Road, P.O. Box 150  
Niagara Falls, Ontario, Canada L2E 6T2

***SENT ELECTRONICALLY***

**RE: Motion – Miller’s Creek Marina/Resort Development  
Minute Item 8.2**

Dear Mr. Adames,

Regional Council, at its meeting held on November 19, 2020, passed the following motion:

Whereas the Niagara Parks Commission (“NPC”) has considered options for the operation or closing of its marina on the Niagara River in Fort Erie, near Miller’s Creek;

Whereas in 2005, the NPC agreed to work with the Town of Fort Erie to permit the Fort Erie Economic Development & Tourism Corporation (“EDTC”) to undertake a Request for Proposals process for the expansion and enhancement of the marina and potential development of the lands between the Niagara Parkway and Cairns Crescent (“the adjacent lands”);

Whereas as a result of the cooperative efforts of the NPC, Town of Fort Erie and the EDTC, submissions were received for expansion and enhancement of the marina and the development of a resort on the adjacent lands;

Whereas since 2012, the NPC has embarked on a number of processes with a view to proceed with a marina/resort development at the Miller’s Creek Marina, including consultations with the Town of Fort Erie and Niagara Region;

Whereas the NPC’s most recent initiative resulted at the end of August 2017 in no proponent submitting a response to the NPC’s Request for Proposals for development at the marina;

Whereas the NPC continues to be committed to marina enhancements and development on the adjacent lands;

Whereas the Council of the Region of Niagara understands that there remains developer interest in proceeding to develop the marina and adjacent lands at Miller's Creek Marina.

NOW THEREFORE BE IT RESOLVED:

1. That the Council of the Region of Niagara **REITERATES** its continuing support for the expansion and enhancement of the marina and a resort development on the adjacent lands at the Niagara Parks Commission's Miller's Creek Marina;
2. That Council **URGES** the Niagara Parks Commission to continue its discussions with the Province of Ontario regarding the transfer of a portion of the adjacent lands to facilitate redevelopment of the marina and development of a resort;
3. That Council **REQUESTS** the Niagara Parks Commission to review the realignment of the Niagara Parkway to allow for the development of the marina and resort development;
4. That Council **REQUESTS** that the Niagara Parks Commission work with the Town of Fort Erie and the Region of Niagara in the preparation and circulation of a public Request or Call for Proposals (RFP) that maintains the integrity of the mandate of the Niagara Parks Commission;
5. That a copy of this resolution **BE FORWARDED** to the Chair of the Niagara Parks Commission for action;
6. That a copy of this resolution **BE FORWARDED** to the Premier of the Province of Ontario, the Minister of Tourism, Culture and Sport, the Minister of Infrastructure, the Chair of the Region of Niagara, local area MPPs, and the Honourable Tony Baldinelli, MP; and
7. That a copy of this resolution **BE CIRCULATED** to the Councils of the local municipalities in Niagara for their support.

Yours truly,



Ann-Marie Norio  
Regional Clerk

CLK-C 2020-217

Cc: Hon. Premier Doug Ford  
Hon. Lisa MacLeod, Minister of Heritage, Sport, Tourism and Culture Industries  
Hon. Laurie Scott, Minister of Infrastructure  
Jim Bradley, Chair, Niagara Region  
Tony Baldinelli, MP, Niagara Falls  
Jennifer Stevens, MPP - St. Catharines  
Jeff Burch, MPP - Niagara Centre  
Wayne Gates, MPP - Niagara Falls  
Sam Oosterhoff, MPP - Niagara West-Glanbrook  
Local Area Municipalities



OFFICE OF THE MAYOR  
CITY OF HAMILTON

**September 8, 2020**

Honourable Doug Ford  
Premier of Ontario  
Premier's Office, Room 281  
Legislative Building  
Queen's Park  
Toronto, ON M7A 1A1

Honourable Doug Downey  
Attorney General  
Ministry of the Attorney General  
McMurtry-Scott Building  
720 Bay Street, 11th Floor  
Toronto, ON M7A 2S9

Subject: **Amending the AGCO Licensing and Application Process for Cannabis Retail Stores to Consider Radial Separation from Other Cannabis Locations**

Dear Premier & Attorney General,

Hamilton City Council, at its meeting held on August 21, 2020, approved a motion, Item 6.1, which reads as follows:

WHEREAS in late 2019 the Province of Ontario announced that the AGCO had been given regulatory authority to open the market for retail cannabis stores beginning in January 2020, without the need for a lottery;

WHEREAS the AGCO has continued to send Cannabis Retail Store applications to the City of Hamilton for the required 15-day comment period,

WHEREAS the City has reviewed 61 Cannabis Retail Store applications for comment since January 2020;

WHEREAS the AGCO does not take into consideration radial separation for Cannabis Retail Stores.

**THEREFORE, BE IT RESOLVED:**

.../3

- (a) That the Mayor contact the Premier of Ontario, Ministry of Attorney General, and local Members of Parliament to ask that the Province consider amending its licensing and application process for Cannabis Retail Stores to consider radial separation from other cannabis locations.
- (b) That the request be sent to other municipalities in Ontario, including the Association of Municipalities of Ontario for their endorsement.
- (c) That Staff be requested to submit heat maps outlining the location of all proposed AGCO Cannabis Retail Store in the City on all AGCO Cannabis Retail Store applications.

As per the above, we write to request, on behalf of the City of Hamilton, that the appropriate legislative and regulatory changes be made and implemented to the AGCO licensing and application process to take into consideration radial separation for Cannabis Retail Stores as a condition of approval for a license.

Currently the City of Hamilton has reviewed 61 cannabis retail location applications since January 2020. Approximately 12 of these potential locations are within 50m (or less) of each other.

The City of Hamilton appreciates that the AGCO conducts a background search prior to approving any licenses, however the lack of separation between locations poses a community safety issue, as the over saturation in specific area(s)/wards, can negatively impact the surrounding community with increased traffic flow, and an overall “clustering” of stores within a small dense area.

The City of Hamilton is confident that radial separations from cannabis retail locations will have a significant positive impact on the community and allow for its residents to continue to enjoy a safe and healthy community lifestyle.

Sincerely,



Fred Eisenberger  
Mayor

C: Hon. Donna Skelly, MPP, Flamborough-Glanbrook

Hon. Andrea Horwath, Leader of the Official Opposition, MPP, Hamilton Centre

Hon. Paul Miller, MPP, Hamilton East-Stoney Creek

Hon. Monique Taylor, MPP, Hamilton Mountain

Hon. Sandy Shaw, MPP, Hamilton West-Ancaster-Dundas



City of Port Colborne  
**RECEIVED**  
NOV 09 2020  
CORPORATE SERVICES  
DEPARTMENT

374028 6TH LINE • AMARANTH ON • L9W 0M6

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Honourable Doug Ford, Premier of Ontario  
Premier's Office, Room 281  
Legislative Building, Queen's Park  
Toronto, Ontario M7A 1A1

Honourable Premier Ford,

**Re: Bill 218**

At the regular meeting of Council held November 4, 2020, the following resolution was carried:

Council discussed the Ontario Bill 128, Supporting Recovery and Municipal Elections Act 2020. Provincial Bill 218 was recently introduced to the legislature as Supporting Ontario's Recovery and Municipal Elections Act 2020. As part of this bill, it was proposed to remove the framework for conducting ranked ballot municipal elections for the 2022 election, citing cost as the reason for the change.

This proposed change results in further erosion of local decision-making by repealing the ranked ballot voting system utilized very effectively by London, Ontario in the last municipal election. This is a system that could and perhaps should be adopted by other municipalities around Ontario. It is felt that the system encourages more candidates and improved participation of voters.

Bill 218 also proposed shortening the nomination period of the 2022 municipal election to approximately six weeks.

**Resolution #11**

**Moved by: G. Little – Seconded by: H. Foster**

**BE IT RESOLVED THAT:**

The Township of Amaranth request the Provincial Government of Ontario rescind the proposed changes regarding ranked ballot voting and the nomination period included as part of bill 218.

Further resolved that a letter regarding this resolution be forwarded to Doug Ford, Premier of Ontario, Sylvia Jones, MPP Dufferin-Peel and Steve Clark,

Minister of Municipal Affairs and Housing. Letter to be copied to AMO and all Ontario Municipalities.

**CARRIED.**

<b>Recorded Vote</b>	<b>Yea</b>	<b>Nay</b>	<b>Absent</b>
<b>Deputy Mayor Chris Gerrits</b>	<b>X</b>		
<b>Councillor Heather Foster</b>	<b>X</b>		
<b>Councillor Gail Little</b>	<b>X</b>		
<b>Mayor Bob Currie</b>	<b>X</b>		

Respectfully submitted,

*Nicole Martin*

Nicole Martin, Dipl. M.A.  
Acting CAO/Clerk

C: Sylvia Jones, MPP Dufferin-Peel  
Steve Clark, Minister of Municipal Affairs and Housing  
A.M.O.  
Ontario Municipalities



City of Port Colborne  
**RECEIVED**

NOV 12 2020

CORPORATE SERVICES  
DEPARTMENT

CORPORATE SERVICES DEPARTMENT  
TELEPHONE 613-968-6481  
FAX 613-967-3206

## City of Belleville

169 FRONT STREET  
BELLEVILLE, ONTARIO  
K8N 2Y8

November 10, 2020

The Honourable Doug Ford  
Premier's Office, Room 281  
Legislative Building, Queen's Park  
Toronto, ON M7A 1A1

**Delivered by e-mail**  
premier@ontario.ca

Dear Premier Ford:

**RE: Bill 218 – Proposing Changes to the Municipal Elections Act –  
Extension of Nomination Period  
New Business  
10, Belleville City Council Meeting, November 9, 2020**

This is to advise you that at the Council Meeting of November 9, 2020, the following resolution was approved.

“WHEREAS municipalities in Ontario are responsible for conducting fair and democratic elections of local representatives; and

WHEREAS the Government of Ontario, with Bill 218, Supporting Ontario's Recovery and Municipal Elections Act, 2020 is proposing changes to the Municipal Elections Act, 1996; to extend nomination day from the end of July to the second Friday in September; and

WHEREAS municipal elections are governed by the Municipal Elections Act which was amended in 2016 to include shorter nomination periods; and

WHEREAS the operation, finance and regulatory compliance of elections is fully undertaken by municipalities themselves; and

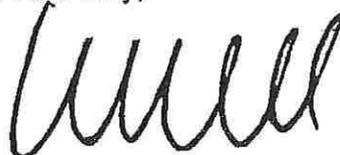
WHEREAS local governments are best poised to understand the representational needs and challenges of the body politic they represent, and when looking at alternative voting methods to ensure voters have options in an effort to increase voter participation and are able to vote safely, it becomes more difficult to implement these alternatives with the proposed shorter period between Nomination day and the October 24, 2022 Election day;

NOW THEREFORE BE IT RESOLVED THAT the Corporation of the City of Belleville send a letter to the Premier, the Minister of Municipal Affairs and Housing and Minister of the Attorney General urging that the Government of Ontario respect Ontario municipalities' ability to apply sound representative principles in their execution of elections; and,

THAT the Corporation of the City of Belleville Council recommends that the Government of Ontario supports the freedom of municipalities to run democratic elections within the existing framework the Act currently offers without amendment; and THAT this resolution be circulated to all Ontario Municipalities, AMO and AMCTO."

Thank you for your attention to this matter.

Yours truly,



Matt MacDonald  
Director of Corporate Services/City Clerk

MMacD/nh

Pc: AMO

Todd Smith, MPP Prince Edward-Hastings  
Daryl Kramp, MPP Hastings – Lennox & Addington  
Minister of Municipal Affairs and Housing  
Minister of the Attorney General  
Councillor Kelly, City of Belleville  
Councillor Thompson, City of Belleville  
Ontario Municipalities



City of Port Colborne  
**RECEIVED**  
NOV 12 2020  
CORPORATE SERVICES  
DEPARTMENT

November 12, 2020

MPP Will Bouma  
96 Nelson Street, Suite 101  
Brantford, ON N3T 2X1

*Sent via email: [will.bouma@pc.ola.org](mailto:will.bouma@pc.ola.org)*

Dear MPP Bouma:

Please be advised that Brantford City Council at its Special meeting held November 10, 2020 passed the following resolution:

**Bill 218 - Ranked Ballots for Municipal Elections**

WHEREAS Bill 218 – “Supporting Ontario's Recovery and Municipal Elections Act, 2020” removes the option for municipalities to choose the ranked ballot system for an election; and

WHEREAS in 2016 the Ontario Provincial Government gave municipalities the tools to use Ranked Balloting in Municipal elections commencing in 2018, which was deployed in the City of London thereby becoming the first Municipality in Canada to make the switch, while Cambridge and Kingston both passed referendums in favour of reform and Burlington, Barrie, Guelph, Meaford and others are now exploring a change as well; and

WHEREAS the change of election method process does not impact the Provincial election models but greatly impacts a Municipalities execution options; and

WHEREAS the only explanation given for this is that we should not be ‘experimenting’ with the electoral process during a pandemic mindful that ranked ballot voting is not an experiment but widely used throughout the world and should be a local option that Municipalities can look to utilize in the next election which is just under two years away

WHEREAS Bill 218 also moves up the Municipal nomination date from the end of July to mid September for no apparent reason thereby reinforcing the power of incumbency and potentially discouraging broader participation in municipal elections; and

WHEREAS these changes are being proposed without any consultation with AMO, Municipalities or the public;

## NOW THEREFORE BE IT RESOLVED:

- A. THAT the City Clerk BE DIRECTED to submit the following comments on behalf of the Council of the City of Brantford to the Province of Ontario with respect to the proposed changes to the *Municipal Elections Act, 1996*:
- i. Council does not support the proposed changes to the *Municipal Elections Act, 1996*, specifically related to the removal of the option for a municipality to hold a ranked ballot election;
  - ii. Council does support the principle that each Municipality should be able to choose whether or not to use first-past-the-post or a ranked ballot election; and
  - iii. Council encourages the Provincial government to meaningfully consult with Municipalities on municipal issues before introducing legislative changes of this magnitude; and
- B. THAT the City Clerk BE DIRECTED to forward a copy of this resolution to MPP Will Bouma, Premier Doug Ford, and the list of other Municipalities and include a request to delay the decision until such a time that the Association of Municipalities of Ontario, Large Urban Mayor's Caucus of Ontario, the Federation of Canadian Municipalities and comments from Municipalities have been collected and submitted to the Province.

I trust this information is of assistance.

Yours truly,



Tanya Daniels  
City Clerk  
[tdaniels@brantford.ca](mailto:tdaniels@brantford.ca)

cc: Hon. D. Ford, Premier of Ontario  
The Association of Municipalities of Ontario;  
The Federation of Canadian Municipalities;  
Large Urban Mayor's Caucus of Ontario;  
All Ontario Municipalities



City of Port Colborne  
**RECEIVED**

NOV 09 2020

CORPORATE SERVICES  
DEPARTMENT

November 9, 2020

The Hon. Doug Ford, Premier of Ontario  
Legislative Building  
Queen's Park  
Toronto ON  
M7A 1A1

Dear Premier Ford,

**Re: Bill 218, Supporting Ontario's Recovery and Municipal Elections Act**

Please be advised that at their meeting on November 2, 2020, Council of the Municipality of Meaford passed the following resolution pertaining to Bill 218, Supporting Ontario's Recovery and Municipal Elections Act:

Moved by: Deputy Mayor Keaveney  
Seconded by: Councillor Vickers

**That Council of the Municipality of Meaford:**

- 1. Declare their opposition to all of the amendments to the Municipal Elections Act proposed as part of Bill 218;**
- 2. Reaffirm their desire to move ahead with a ballot question in 2022 about switching to a ranked ballot election in 2026;**
- 3. Direct staff to send a copy of this resolution to the Premier, Minister of Municipal Affairs, Leader of the Opposition; and**
- 4. Direct staff to send a copy of this resolution to all municipalities in the Province of Ontario requesting their support in opposing the amendments to the Municipal Elections Act.**

Carried - Resolution #2020-30-05

As per the above resolution, please accept a copy of this correspondence for your information and consideration.



Yours sincerely,

**Matt Smith**

Clerk / Director of Community Services

Municipality of Meaford

21 Trowbridge Street West, Meaford

519-538-1060, ext. 1115 | [msmith@meaford.ca](mailto:msmith@meaford.ca)

cc: Steve Clark, Minister of Municipal Affairs and Housing  
Andrea Horwath, Leader of Opposition  
Bill Walker, MPP  
Association of Municipalities of Ontario  
All Ontario Municipalities

November 3, 2020

Please be advised that during the Committee of the Whole meeting on October 29, 2020 the following motion was carried;

**RESOLUTION NO. CW-407-2020**

**DATE:** October 29, 2020  
**MOVED BY:** Councillor MacNaughton  
**SECONDED BY:** Councillor St-Jean

**Resolution by Councillor MacNaughton regarding Bill 218, Supporting Ontario's Recovery and Municipal Elections Act, 2020 is proposing changes to the Municipal Elections Act of 1996**

**WHEREAS** municipalities in Ontario are responsible for conducting the fair and democratic elections of local representatives; and

**WHEREAS** Government of Ontario, with Bill 218, Supporting Ontario's Recovery and Municipal Elections Act, 2020 is proposing changes to the Municipal Elections Act of 1996

- to prohibit the use of ranked ballots in future Municipal Elections, and
- extend nomination day from the end of July to the second Friday in September; and

**WHEREAS** each municipal election is governed by the Municipal Elections Act which was amended in 2016 to include the option to allow Municipalities to utilize ranked ballots for their elections and shorter nomination periods; and

**WHEREAS** London, Ontario ran the first ranked ballot election in 2018 and several other municipalities since have approved bylaws to adopt the practice, or are in the process of doing so including our regional neighbours in Kingston via a referendum return of 63%; and



**Howick**  
TOWNSHIP

44816 Harriston Road, RR 1, Gorrie On N0G 1X0  
Tel: 519-335-3208 ext 2 Fax: 519-335-6208  
[www.howick.ca](http://www.howick.ca)

November 19, 2020

The Honourable Ernie Hardeman  
Minister of Agriculture, Food and Rural Affairs

By email only [minister.omafra@ontario.ca](mailto:minister.omafra@ontario.ca)

Dear Mr. Hardeman:

Please be advised that the following resolution was passed at the November 17, 2020 Howick Council meeting:

**Moved by Councillor Gibson; Seconded by Deputy Reeve Bowman:**

**Whereas; installing tile drainage is a common land improvement practice among farmers in Ontario and the benefits of tile drainage for crop productivity, farm efficiency and even for reducing environmental impacts have been studied and are generally well known to farmers; and**

**Whereas; the Tile Loan Program, authorized by the Tile Drainage Act, provides loans to agricultural property owners to help them finance these tile drainage projects; all tile loans have 10-year terms and repayments are made annually; and**

**Whereas; the provincial government sets the program interest rate at a competitive level which was reduced from 8% to 6% in the fall of 2004 and the loan limit was also increased from \$20,000.00 to \$50,000.00 at the same time; and**  
**Whereas; interest rates have continued to decline over the years and the cost per acre for tile drainage has increased over the years;**

**Now therefore; be it resolved that Council request the Ontario Ministry of Agriculture, Food and Rural Affairs to consider lowering the interest rate on Tile Drain Loans to 4% and increasing the yearly loan limit to \$100,000; and that this resolution be forwarded to Ontario Ministry of Agriculture, Food and Rural Affairs; MPP Huron Bruce Lisa Thompson; AMO; Land Improvement Contractors of Ontario and Drainage Superintendents of Ontario Association. Carried.**

**Resolution No. 276/20**

If you require any further information, please contact this office, thank you.

Yours truly,

*Carol Watson*

Carol Watson, Clerk  
Township of Howick

cc MPP Perth Wellington Randy Pettapiece  
ROMA

City of Port Colborne  
**RECEIVED**  
NOV 19 2020  
CORPORATE SERVICES  
DEPARTMENT



44816 Harriston Road, RR 1, Gorrie On N0G 1X0  
Tel: 519-335-3208 ext 2 Fax: 519-335-6208  
[www.howick.ca](http://www.howick.ca)

City of Port Colborne  
**RECEIVED**  
DEC 03 2020  
CORPORATE SERVICES  
DEPARTMENT

December 3, 2020

The Honourable Ernie Hardeman  
Minister of Agriculture, Food and Rural Affairs

By email only [minister.omafra@ontario.ca](mailto:minister.omafra@ontario.ca)

Dear Mr. Hardeman:

Please be advised that the following resolution was passed at the December 1, 2020 Howick Council meeting:

**Moved by Councillor Hargrave; Seconded by Councillor Illman:**

**Be it resolved that Council request the Ministry of Agriculture, Food and Rural Affairs amend the Tile Drainage Installation Act and/or the regulations under the Act that would require tile drainage contractors file farm tile drainage installation plans with the local municipality; and further, this resolution be forwarded to Minister of Agriculture, Food and Rural Affairs, Huron-Bruce MPP Lisa Thompson, Perth-Wellington MPP Randy Pettapiece, Rural Ontario Municipal Association, Ontario Federation of Agriculture, Christian Farmers Federation Of Ontario, Land Improvement Contractors of Ontario, Drainage Superintendents of Ontario and all Ontario municipalities. Carried. Resolution No. 288/20**

If you require any further information, please contact this office, thank you.

Yours truly,

*Carol Watson*

Carol Watson, Clerk  
Township of Howick



**Background Information to the Township of Howick  
Resolution No. 288-20 Requesting Amendments to the  
Agricultural Tile Drainage Installation Act**

**Rational for Proposed Amendments**

Over the years, Howick Township staff have received many requests for tile drainage information on farmland. Usually these requests come after a change in ownership of the farm. Some of these drainage systems were installed recently but many are 30 to 40 or more years old. Many were installed by contractors who are no longer in business or who have sold the business and records are not available.

Information is generally available if the tile was installed under the Tile Drain Loan Program because a drainage plan is required to be filed with the municipality. If the tile system was installed on a farm without using the Tile Drain Loan Program, there likely are no records on file at the municipal office.

The other benefits to filing tile drainage plans with the municipality are identified in Section 65 of the Drainage Act.

- 65(1) – Subsequent subdivision of land (severance or subdivision)
- 65(3) – Drainage connection into a drain from lands not assessed to the drain
- 65(4) – Drainage disconnection of assessed lands from a drain
- 65(5) – Connecting to a municipal drain without approval from council

Section 14 of the Act states:

(1) "The Lieutenant Governor in Council may make regulations,

(a) providing for the manner of issuing licences and prescribing their duration, the fees payable therefor and the terms and conditions on which they are issued;

(a.1) exempting classes of persons from the requirement under section 2 to hold a licence, in such circumstances as may be prescribed and subject to such restrictions as may be prescribed;

(b) Repealed: 1994, c. 27, s. 8 (5).

(c) establishing classes of machine operators and prescribing the qualifications for each class and the duties that may be performed by each class;



- (d) providing for courses of instruction and examinations and requiring licence holders or applicants for a licence under this Act to attend such courses and pass such examinations;
- (e) prescribing the facilities and equipment to be provided by persons engaged in the business of installing drainage works;
- (f) prescribing standards and procedures for the installation of drainage works;
- (g) prescribing performance standards for machines used in installing drainage works;
- (h) prescribing forms and providing for their use;
- (i) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1990, c. A.14, s. 14; 1994, c. 27, s. 8 (4, 5)."

I believe it would be beneficial if a regulation required the installer, of agricultural drainage, to file a plan of the drainage system with the municipality following completion of the work.

While most of Section 14 deals with contractor, machine and installer licences, I think that Section 14(f) or 14(i) may allow a regulation change. This would be a better solution than an amendment to the Act.

### **Recommendations:**

- Request by municipal resolution that the Ministry of Agriculture, Food and Rural Affairs amend the Tile Drainage Installation Act and/or the regulations, under the Act, that would require tile drainage contractors file all farm tile drainage installation plans in the Municipality where the installation took place
- Send the municipal resolution to:
  - Minister of Agriculture, Food and Rural Affairs
  - Lisa Thompson, MPP Huron Bruce
  - Randy Pettapiece, MPP Perth Wellington
  - Rural Ontario Municipal Association [roma@roma.on.ca](mailto:roma@roma.on.ca)
  - [OFA](#)
  - [CFFO](#)
  - All Ontario municipalities
  - the Land Improvement Contractors of Ontario (LICO), and
  - the Drainage Superintendents Association of Ontario (DSAO)

Wray Wilson, Drainage Superintendent  
Township of Howick  
[drainage@howick.ca](mailto:drainage@howick.ca)

**WHEREAS** the operation, finance and regulatory compliance of elections is fully undertaken by municipalities themselves; and,

**WHEREAS** local governments are best poised to understand the representational needs and challenges of the body politic they represent, and when looking at alternative voting methods to ensure more people vote safely, it becomes more difficult to implement these alternatives with the proposed shorter period between Nomination day and the October 24, 2022 Election day;

**NOW THEREFORE BE IT RESOLVED THAT** Corporation of the County of Prince Edward Council send a letter to the Ministry of Municipal Affairs and Housing urging that the Government of Ontario continues to respect Ontario municipalities' ability to apply sound representative principles in their execution of elections;

**AND THAT** the Corporation of the County of Prince Edward Council recommends that the Government of Ontario supports the freedom of municipalities to run democratic elections within the existing framework the Act currently offers;

**AND THAT** this resolution be circulated to all Ontario Municipalities, AMO and AMCTO.

**CARRIED**



---

Catalina Blumenberg, Clerk



Municipality of Southwest Middlesex

December 7, 2020

Please be advised that the Council of Southwest Middlesex passed the following resolution at its November 25, 2020 Council meeting:

Drainage Matters: CN Rail

Moved by Councillor McGill

Seconded by Councillor Vink

“WHEREAS municipalities are facilitators of the provincial process under the *Drainage Act* providing land owners to enter into agreements to construct or improve drains, and for the democratic procedure for the construction, improvement and maintenance of drainage works; and

WHEREAS municipal drain infrastructure and railway track infrastructure intersect in many areas in Ontario; and

WHEREAS coordination with national railways is required for the construction or improvement of drains that benefit or intersect with national railways; and

WHEREAS the national railways have historically participated in the process for construction, improvement and maintenance of drainage works; and

WHEREAS currently municipalities are experiencing a lack of coordination with national railways on drainage projects; and

WHEREAS the lack of coordination is resulting in projects being significantly delayed or cancelled within a year; and

WHEREAS municipal drains remove excess water to support public and private infrastructure and agricultural operations;

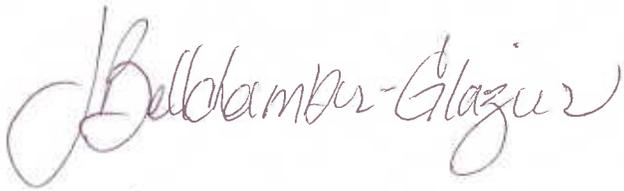
THEREFORE be it resolved that the Province of Ontario work with the Federal Minister of Transportation to address concerns regarding municipal drainage matters and need for coordination with the national railways; and

THAT Council circulate the resolution to the Provincial Ministers of Agriculture, Food, and Rural Affairs, and Municipal Affairs and Housing, and the Federal Minister of Transportation, the local MP and MPP, the Association of Municipalities of Ontario, and all municipalities.”

Municipality of Southwest Middlesex Resolution #2020-274

Carried

Sincerely,

A handwritten signature in cursive script that reads "Bellchamber-Glazier".

Jillene Bellchamber-Glazier  
CAO-Clerk

Cc: The Honorable Marc Gardeau, Minister of Transport  
The Honorable Ernie Hardeman, Minister of Agriculture, Food and Rural Affairs  
Monte McNaughton, MPP Lambton-Middlesex-London  
Lianne Rood, MP Lambton-Kent-Middlesex  
The Association of Municipalities of Ontario  
All Ontario Municipalities

The Corporation of the City of Port Colborne

By-Law no. 6848/98/20

Being a by-law to authorize entering into an amendment to subdivision agreement between The Corporation of the City of Port Colborne and 1399908 Ontario Inc.

Whereas the Council of The Corporation of the City of Port Colborne enacted By-law 2364/185/89, Being a By-law to authorize entering into a Subdivision Agreement with CIFA Development Inc. and Lehndorff Investors Services Ltd. on the 14<sup>th</sup> day of November, 1989 respecting lands described as Parcel 29-1, Section 59 – Humberstone – 3 being part of lots 29 and 30, Concession 3 shown as parts 1 through 6 on Plan 59R-1, in the City of Port Colborne, Regional Municipality of Niagara; and

Whereas the Council of the Corporation of the City of Port Colborne enacted By-law 3930/75/00, Being a By-law to Authorize Entering into an Amending Agreement with 1399908 Ontario Ltd. et al to the original Subdivision Agreement with CIFA Developments Inc. et al respecting the Meadow Heights Plan of Subdivision; and

Whereas by approving the recommendations of Department of Planning and Development Report No. 2017-150, Subject: Meadow Heights Subdivision Agreement Amendment – Phase 2, on November 27, 2017, Council has approved entering into an amending agreement to the afore-mentioned existing subdivision agreement through By-law 6536/103/17; and

Whereas by approving the recommendations of Planning and Development Department, Planning Division Report No. 2020-63, Subject: Meadow Heights Subdivision Agreement Amendment – Phase 2, on September 28, 2020, as well as Planning and Development Department, Planning Division Report No. 2020-157, Subject: Meadow Heights Subdivision Agreement Amendment – Phase 2, Stage 1, Council has approved repealing By-law 6536/103/17 and entering into an amending agreement to the afore-mentioned existing subdivision agreement;

Now therefore the Council of The Corporation of the City of Port Colborne enacts as follows:

1. That Council hereby approves entering into an Amendment to the Subdivision Agreement with 1399908 Ontario Inc., which agreement is attached to this By-law as Schedule "A".
2. That the Mayor and Clerk be and they are hereby authorized and directed to sign the said Agreement and the Clerk is hereby authorized to affix the Corporate Seal thereto.
3. That the executed Amendment to Subdivision Agreement be registered on title to the subject lands in the Niagara Land Registry Office.
4. That By-law 6536/103/17, Being a By-law to Authorize Entering into an Amendment to the Subdivision Agreement with 1399908 Ontario Inc. (Meadow Heights Subdivision), be hereby repealed.
5. That this By-law shall come into effect on the date of its final passing by Council.

Enacted and passed this 14th day of December, 2020.

\_\_\_\_\_  
William C. Steele  
Mayor

\_\_\_\_\_  
Amber LaPointe  
City Clerk

**CITY OF PORT COLBORNE**  
**AMENDMENT TO SUBDIVISION AGREEMENT**

**THIS AGREEMENT** made this      day of  
, 2020 and authorized by By-law      for the City of Port Colborne.

BETWEEN

**1399908 ONTARIO LTD.**  
Hereinafter called the **OWNER** of the **FIRST PART**;

AND

**THE CORPORATION OF THE CITY OF PORT COLBORNE**  
Hereinafter called the **CITY** of the **SECOND PART**;

AND

**1379296 ONTARIO INC.:**  
Hereinafter called the **MORTGAGEE** of the **THIRD PART**;

**WHEREAS** the lands described in Schedule "A" were subject to an Agreement dated the 3<sup>rd</sup> of May, 1990 between CIFA Developments Inc., Lehndorff Investors Services Limited and The Corporation of the City of Port Colborne and registered as Instrument No. LT 077615 on January 29, 1991 which is hereinafter referred to as the "original Subdivision Agreement";

**AND WHEREAS** the lands described in Schedule "A" were subject to an amending Agreement dated the 28<sup>th</sup> of September, 2000 between 1399908 ONTARIO LTD, CIFA Developments Inc., and The Corporation of the City of Port Colborne and registered as Instrument No. LT 166874 on September 29, 2000 which is hereinafter referred to as the "existing Subdivision Agreement";

**AND WHEREAS** 1399908 Ontario Ltd. obtained title to the lands on or about March 21, 2000 and owns the lands described on Schedule "A";

**AND WHEREAS** the Owner has assumed all of the obligations of the original and existing Subdivision Agreement;

**AND WHEREAS** the Owner desires to amend the original Subdivision Agreement to enable development of a portion of the lands described in Schedule "A" and hereinafter known as the "revised Phase 2 Stage 1";

**AND WHEREAS** the Owner desires to amend the existing Subdivision Agreement to enable development of revised Phase 2 Stage 1 by replacing the phasing plan, grading plan; street lighting plan and cost estimates;

**NOW THEREFORE** this agreement witnesseth that in consideration of the City approving this amending agreement, and in consideration of the sum of \$1.00 of lawful money of Canada now paid by the Owner to the City (the receipt whereof is hereby by the City acknowledged), the Parties hereto mutually covenant and agree as follows:

1. The parties hereto acknowledge that each of the foregoing recitals is true and correct as of the date hereof.
2. The parties hereto agree that the following clauses of the original or the existing Subdivision Agreement are hereby amended:
  - 2.1 Clause 1. of the original Subdivision Agreement entitled Definitions and

Clauses 1.1 to 1.11 inclusive be deleted and Clauses 2.1 to 2.6 inclusive on the existing Subdivision Agreement be deleted and replaced with:

**2.2 Definitions**

In this Agreement the following terms shall have the meanings set out below, unless otherwise redefined or where the subject matter or context requires another meaning to be ascribed:

**2.3 "Agreement"** means this Subdivision Agreement.

**2.4 "Assumption By-Law for Primary Services"** means a by-law passed by the Council of The Corporation of the City of Port Colborne forthwith after the Director of Engineering and Operations has approved in writing the Certificate of Final Acceptance for Primary Services, assuming ownership of and responsibility for all Primary Services constructed by the Developer pursuant to the terms of this Agreement and the approved Plans, SAVE AND EXCEPT the following Primary Services:

- a) The streets and roadways constructed by the Developer within the Plan of Subdivision;
- b) The noise attenuation requirements
- c) The utility services other than streetlights

**2.5 "Block"** shall mean the whole of a parcel or tract of land created by the Plan of Subdivision.

**2.6 "Assumption By-Law for Secondary Services"** means a by-law passed by the Council of The Corporation of the City of Port Colborne forthwith after the Director of Engineering and Operations has approved in writing the Certificate of Final Acceptance for Secondary Services, assuming ownership of and responsibility for:

- a) all Secondary Services constructed by the Developer; and
- b) the streets and roadways constructed by the Developer within the Plan of Subdivisions.

**2.7 "Building Permit"** means a permit issued by the Chief Building Official of The Corporation of the City of Port Colborne approving an application for the construction, reconstruction or alteration of any building or structure for which such permit is required pursuant to the provisions of By-Law 129-90 and amendments thereto.

**2.8 "Certificate of Final Acceptance for Primary Services"** means a certificate prepared by the Developer's Consulting Engineer and approved in writing by the Director of Engineering and Operations at the expiration of the Maintenance Warranty Period for Primary Services setting out the Primary Services being accepted by the City and indicating the date of final acceptance of such Works.

**2.9 "Certificate of Final Acceptance for Secondary Services"** means a certificate prepared by the Developer's Consulting Engineer and approved in writing by the Director of Engineering and Operations issued at the expiration of the Maintenance Warranty Period for Secondary Services setting out the Secondary Services being accepted by the City and indicating the date of final acceptance of such Works.

**2.10 "Chief Building Official"** means the Chief Building Official for the Corporation of the City of Port Colborne or his designate appointed pursuant to the Building Code Act.

- 2.11 **"Completion Certificate for Primary Services"** means a certificate prepared by the Developer's Consulting Engineer and approved in writing by the Director of Engineering and Operations upon satisfactory completion of all Primary Services, the approval date of which shall start the Maintenance Warranty Period for such Primary Services.
- 2.12 **"Completion Certificate for Secondary Services"** means a certificate prepared by the Developer's Consulting Engineer and approved in writing by the Director of Engineering and Operations upon satisfactory completion of all Secondary Services, the approval date of which shall start the Maintenance Warranty Period for such Secondary Services.
- 2.13 **"Consulting Engineer"** shall mean the person or persons registered with the Association of Professional Engineers of the Province of Ontario, who for the time being is or are employed by the Developer to provide engineering services on behalf of the Developer for the Plan of Subdivision.
- 2.14 **"Council"** means the Council of The Corporation of the City of Port Colborne.
- 2.15 **"Developer"** shall mean the applicant for the approval of a Plan of Subdivision and the registered owner or owners in fee simple of the lands for which the Plan of Subdivision is proposed and their respective heirs, executors, administrators, successors and assigns. Wherever the singular is used herein it shall, where the context requires, include the plural.
- 2.16 **"Director of Community and Corporate Services"** means the Director of Community and Corporate Services for The Corporation of the City of Port Colborne or his designate.
- 2.17 **"Director of Engineering and Operations"** means the Director of Engineering and Operations for The Corporation of the City of Port Colborne or his designate.
- 2.18 **"Easements"** shall mean the easements described in Schedule "B" hereto, which forms part of this Agreement.
- 2.19 **"Final Default"** means a situation where the Developer fails to remedy a default within such time as provided in the notice given by the City, as provided in Section 44b) hereof.
- 2.20 **"Front Lot Line"** means the lot line that divides a Lot from the street; provided, however, that:
- a) in the case of a corner lot, the shortest Street Line shall be deemed to be the front lot line and the longest Street Line shall be deemed to be the side lot line; and
  - b) in the case of a corner lot with two Street Lines of equal length, the lot line that abuts the wider street or abuts a Regional Road or highway shall be deemed to be the front lot line, and in the case of both streets being under the same jurisdiction or of the same width, the lot line where the principal access to the lot is provided shall be deemed to be the front lot line.
- 2.21 **"Grading Conformance Certificate"** means the Certificate identified in Section 53 hereof.
- 2.22 **"Frontage of Lot"** means the horizontal distance between the side lot lines measured along the Front Lot Line, but where the Front Lot Line is not a straight line or where the side lot lines are not parallel, the lot frontage is to be measured by a line 7.5 metres back from and parallel to the chord of the lot frontage, and for the purpose of this paragraph the chord of the lot frontage is a straight line

joining the two points where the side lot lines intersect the Front Lot Line.

- 2.23 **"Letter of Credit"** shall mean any municipal standby irrevocable Letter of Credit drawn upon a Chartered Bank posted with and in a form acceptable to the City pursuant to this Agreement. The municipal standby irrevocable Letter of Credit shall contain a provision which automatically renews it from year to year unless the Bank gives thirty (30) days advance written notice of its intention not to renew.
- 2.24 **"Letter of Occupancy"** means a Letter of Occupancy issued by the Chief Building Official subsequent to final inspection of a dwelling, as required by Section 41 hereof.
- 2.25 **"Local Improvements"** shall include utilities, sanitary sewers, storm sewers, sidewalks, curbs and gutters, pavements and such other local improvements as are defined by the Local Improvements Act or the Municipal Act.
- 2.26 **"Lot"** shall mean the whole of a parcel or tract of land created by the Plan of Subdivision.
- 2.27 **"Lot Grading Deposit"** means a deposit of security as specified in Subsection 31(b) hereof.
- 2.28 **"Lot Grading Plan"** means a plan for the grading of a Lot as required in Subsection 31(a) hereof.
- 2.29 **"Maintenance Warranty Period"** means the period of time during which the Developer is obliged to maintain the Works following approval of the Completion Certificate for Primary Services or Secondary Services, as the case may be, which period is defined in Section 55(f) hereof.
- 2.30 **"Party"** shall mean a party to the Agreement and the successors or permitted assigns.
- 2.31 **"Plan of Subdivision"** shall mean the Plan of Subdivision of the Lands described in Schedule "A" hereto ultimately approved for registration by the City and registered on title pursuant to the provisions of the Planning Act.
- 2.32 **"Plans"** shall mean all drawings, plans, specifications, contracts and other documents providing for the installation, construction and erection of the Works approved by and filed in the office of the Director of Engineering and Operations prior to execution of this Agreement by the City.
- 2.33 **"Pre-Servicing"** means the installation of Works prior to registration of this Agreement.
- 2.34 **"Primary Services"** shall mean the following municipal services required to be constructed by the Developer:
- a) municipal sanitary sewer system;
  - b) municipal storm sewer system, storm drainage and storm water management facilities sufficient in the opinion of the Director of Engineering and Operations to provide safety and protection from undue inconvenience to the general public;
  - c) municipal water system, including fire hydrants;
  - d) municipal streets and roadways of final design width with granular base, base course asphalt and concrete curbs and gutters;
  - e) street signs and traffic control signs and devices;
  - f) rough grading of the Lands;
  - g) Noise berm, wall or fence required to mitigate noise within the lands

described in Schedule "A" annexed hereto; and all Utility Services.

- 2.35 "Region"** means The Corporation of the Regional Municipality of Niagara.
- 2.36 "Reserve Strip"** shall mean a parcel of land conveyed by the Developer to the City in fee simple, free of encumbrances, abutting a Street Line and separating the street from the next abutting lot or block, for the purpose of preventing legal access from the said street to the said next abutting lot or block.
- 2.37 "Secondary Services"** shall mean all municipal services required to be constructed by the Developer not defined as "Primary Services", and without limiting the generality of the foregoing, shall include:
- a) top course roadway asphalt;
  - b) sidewalks;
  - c) paved driveway aprons;
  - d) footpaths;
  - e) fencing;
  - f) sodding of boulevards;
  - g) landscaping; and
  - h) tree plantings.
- 2.38 "Storm Water Management Report"** means an approved storm water management report and specifications prepared by the Developer in accordance with Section 19 of this Agreement.
- 2.39 "Street Line"** means a lot line dividing a Lot from a street and is the limit of the street or road allowance.
- 2.40 "Subdivision"** means the division of a parcel of land into lesser parcels by means of a registered Plan of Subdivision.
- 2.41 "Supervision"** means the full-time inspection and administration of the Works for the express purpose of enforcing the provisions of this Agreement and providing certification of the Works in accordance with Section 8.2.
- 2.42 "City"** means The Corporation of the City of Port Colborne.
- 2.43 "Treasurer"** means the Director of Community and Corporate Services for The Corporation of the City of Port Colborne or his designate.
- 2.44 "Utility Services"** means:
- a) all electrical distribution and street lighting systems, complete; if applicable, all gas services, complete;
  - b) all telephone services, complete; and all co-axial services, complete.
- 2.45 "Works"** means all Primary Services and Secondary Services, both internal and external, and all construction, erection, installation and engineering required to service the Lands in accordance with the terms of this Agreement and the approved Plans.
- 3.** Clause 2. of the original Subdivision Agreement entitled Schedules to Agreement be amended by the addition of the following references:

SCHEDULE "A" - Description of Lands  
SCHEDULE "B" - Lands Conveyed for Public Purposes  
SCHEDULE "C" - Additional Site Conditions  
SCHEDULE "D" - Roads  
SCHEDULE "E" - Sanitary Sewers

SCHEDULE "F" - Storm Sewers and Surface Drains  
SCHEDULE "G" - Watermains  
SCHEDULE "H" - Sidewalks  
SCHEDULE "I" - Streetlights  
SCHEDULE "J" - Subdivision Deposit  
SCHEDULE "K" - Subdivision Phase 2, Stage 1  
APPENDIX "A" - Plans, Profiles and Specifications

4. That Clause 3 of the Original Subdivision Agreement entitled General be deleted and replaced with the following:

**4.1 GENERAL PROVISIONS**

**4.2 Notices**

Any notices required or permitted to be given pursuant to the terms of this Agreement shall be given in the manner hereinafter set out, in writing addressed in the case of:

- a) the City c/o Dan Aquilina, to City Hall, 66 Charlotte Street, Port Colborne, Ontario L3K 3C8 Facsimile 905-835-2939;
- b) the Developer, to Ray Khanna, Kingsway Investments Ltd.  
105 Main Street East, Suite 1510  
Hamilton, ON L8N 1G6 Facsimile 905-526-7200

The giving of such written notice shall be deemed to be complete, where notice is given by personal service, on the day that the serving of written notice is completed, and where notice is given by prepaid registered mail, two (2) days after the date of mailing, and where notice is given by telephone transmission of a facsimile of the notice, on the day that the transmission of the written notice is completed.

**4.3 Binding on Heirs, etc.**

This Agreement and everything herein contained shall ensure to the benefit of and be binding upon the successors and assigns of the Parties hereto and upon those persons and/or corporations hereafter acquiring title to all or any part of the Lands.

**4.4 Section 67 Planning Act**

The Developer agrees to be bound by the penalty provisions set forth in Section 67 of the *Planning Act*, R.S.O. 1990, c.P.13, and amendments thereto.

**4.5 Applicable Laws**

- a) In constructing, installing or providing the Works, the Developer shall comply with all statutes, laws, by-laws, regulations, ordinances, orders and requirements of any governmental or other public authorities having jurisdiction at any time from time to time enforced. Without limiting the foregoing, the Developer agrees to comply with, and cause to be complied with, the provisions of the *Occupational Health and Safety Act*, the *Environmental Protection Act*, and The *Ontario Water Resources Act* and any regulations, policies and guidelines relating thereto. The Developer further agrees to handle and dispose of all materials in accordance with the foregoing legislation.
- b) The Developer shall do, cause to be done, or refrain from doing any act or thing as directed by the City if at any time the City considers that any

situation or condition is unsafe, damaging to the environment, or contrary to the provisions of any applicable laws. If the Developer fails to comply with such direction, the City may take action to remedy the situation at the expense of the Developer and in this regard the City shall also be entitled to draw upon any security filed by the Developer under this Agreement.

**4.6 Severance of *Ultra Vires* Terms**

If any term of this Agreement shall be found to be *ultra vires* the City, or otherwise unlawful, such term shall conclusively be deemed to be severable and the remainder of this Agreement *mutatis mutandis* shall be and remain in full force and effect.

**4.7 Incontestability**

The Developer shall not call into question directly or indirectly, in any proceeding whatsoever in law or in equity, before any court or administrative or other tribunal, the right of the City to enter into this Agreement and to enforce each and every term, covenant and condition thereof, and this provision may be pleaded by the City in any such action or proceeding as a complete and conclusive estoppel of any denial of such right.

**4.8 Time of the Essence**

Time shall be of the essence of this Agreement.

**4.9 Certificate of Status**

Prior to execution of this Agreement by the City, the Developer shall deliver to the City a Certificate of Status issued by the Ontario Ministry of Consumer and Commercial Relations verifying that the Developer is a company duly incorporated under the laws of the Province of Ontario and is in good standing.

**4.10 Mortgagee's Postponement**

The Developer hereby agrees to procure, register and provide to the City any postponement agreements which the City solicitor considers necessary to ensure that this Agreement shall have priority over any interest of a mortgagee in the Lands.

**4.11 Notice to Purchasers**

The Developer shall notify or cause to be notified each and every purchaser of a Lot or Lots of all Works contracted by the Developer, the Developer's obligations to maintain the Works and all other conditions covered by this Agreement by providing a complete and accurate summary of same and shall cause such information to be fully recorded in any Offer to Purchase or Agreement of Purchase and Sale entered into by the Developer.

5. That Clauses 4. through 4.5 from the Original Subdivision Agreement be deleted and replaced with the following:

**6. LANDS REQUIRED FOR MUNICIPAL PURPOSES**

- 6.1 The Developer shall convey to the City, in fee simple, free from all encumbrances, such other land as may be required in connection with services necessary for the development of the lands described in Schedule "A" attached hereto, which said additional lands conveyed for Public Purposes are described in Schedule "B" attached hereto.

6.2 The Developer shall transfer the lands referred to in Section 6.1 above in a neat and tidy condition, free from all debris and trash and in a condition including all necessary improvements completed to the satisfaction of the

6.3 The Developer covenants and agrees, at its expense, to obtain and grant to the City, prior to final approval of the subdivision, easements required for the construction of services described in the Schedules attached hereto, in accordance with the City's standard easement agreement form, satisfactory to the City Solicitor. The Developer shall also grant such easements as required by other utility companies or commissions for the installation of their plant.

#### **EASEMENTS FOR MUNICIPAL PURPOSES**

6.4 The Developer covenants and agrees, at its sole expense, to obtain and/or grant to the City such easements as may be required for the installation and construction of services or development of the Lands in accordance with Schedule "B" annexed hereto.

6.5 The Developer shall convey to the City or to such public utility company or commission or cable television company as the City may direct, easements required for utility and/or coaxial purposes in accordance with Schedule "B" annexed hereto. All such easements shall be prepared to the complete satisfaction of the City, and if required by the City, any such utility or cable television company.

6.6 The Developer shall undertake and complete all improvements in, over, along and upon such easement lands conveyed to the City, including Primary Services, Secondary Services and Utility Services, in accordance with the terms of this Agreement and the Plans filed to the complete satisfaction of the Director of Engineering and Operations and shall keep such easement lands in a neat and tidy condition, free of all debris and trash until the City has passed the Assumption By-Law for Secondary Services.

7. That Clause 5. through 15. of the original Subdivision Agreement commencing at and entitled Engineering and Inspections be deleted and replaced with:

#### **7.1 SERVICING PLANS AND SPECIFICATIONS**

7.2 All Plans and specifications must be approved in writing by the Director of Engineering and Operations prior to the execution of this Agreement by the City and the Developer commencing construction of any of the Works.

7.3 The Developer shall submit to the Director of Engineering and Operations three (3) copies of each plan required to be submitted for approval with respect to the construction of the Works contemplated in this Agreement.

7.4 It is understood and agreed the Director of Engineering and Operations in his appraisal of the Plans and specifications will be guided by current requirements of the Province of Ontario, established specifications and standards adopted by the City or existing practices and standards as may from time to time be established or amended by the City by its officials or agents. The City may require, in writing, such variances from the Plans as it may deem appropriate due to conditions which may be disclosed as the work progresses and by sound engineering practices.

7.5 No approval by the Director of Engineering and Operations shall operate as a release by the City of any liability of the Developer which, but for such approval, might exist or hereafter arise.

7.6 All Plans shall be prepared and stamped by a Consulting Engineer or an Ontario Land Surveyor licensed to practice in the Province of Ontario.

**8 ENGINEERING AND INSPECTION****8.1 Consulting Engineer**

The Developer shall employ a competent and qualified Consulting Engineer, approved by the Director of Engineering and Operations, to:

- a) carry out all necessary soil investigations to the satisfaction of the Director of Engineering and Operations;
- b) design all Works required to be completed by this Agreement;
- c) prepare plans, profiles and specifications for the Works and submit detailed plans, profiles and specifications to the Director of Engineering and Operations for approval prior to installation or construction of such Works;
- d) obtain from the Director of Engineering and Operations details regarding the form and scale of the plans and profiles prior to their preparation;
- e) obtain and provide the City with all necessary approvals prior to installation or construction of the Works and prior to execution of this Agreement;
- f) prior to execution of this Agreement by the City, prepare and furnish the Director of Engineering and Operations with estimates of the cost of installation and construction of the said Works;
- g) if required, prepare contract documents and call tenders for installation and construction of the said Works;
- h) prepare and supply the City with Progress Payment Certificates;
- i) provide full time resident inspection and contract administration of all Works covered by this Agreement;
- j) maintain all records for the installation and construction of the said Works and submit "as constructed" records in electronic form to the Director of Engineering and Operations prior to approving the Completion Certificate for the Works as per the following:
  - i) all reports will be prepared in Microsoft Word and/or Excel and all drawings will be created in AutoCAD (2012) and the latest version of ESRI ArcGIS. Ownership of both hard copies and digital copies must be transferred to the City upon completion of the Works. Metric units are to be used;
  - ii) mapping and associated database information is to be provided in ERSI (.shp) shapefile with object data attached. All information is to be tied to UTM coordinates using the standard NAD83 (Zone 17) datum and should be accompanied by supporting files (font files and plot files) if applicable. Please note that graphical images (.pdf, .cdr, .tif) and CAD files are not considered an acceptable GIS format.
- k) upon completion of installation and construction of the Works, supply the City with a certificate verifying that the Works were installed and constructed in accordance with the approved Plans and specifications;
- l) provide the Director of Engineering and Operations with individual record sheets of all sewer and water services location and depth;

- m) when requested by the Director of Engineering and Operations, accompany him on his inspections of the Works;
  - n) supervise construction of all Works on a full time basis, including any remedial work the Director of Engineering and Operations may require;
  - o) test all services and verify to the Director of Engineering and Operations, in writing, that all testing has been completed in accordance with the appropriate requirements;
  - p) provide building elevations for construction purposes; and
  - q) certify, in writing, to the Director of Engineering and Operations, as to the actual cost of all Works completed, prior to the City approving a Completion Certificate for such Works or reducing any Letter of Credit.
- 8.2 All Primary, Secondary and Utility Services shall be installed, constructed, inspected and tested under the direct supervision of the Developer's Consulting Engineer at the sole expense of the Developer.
- 8.3 The Developer's Consulting Engineer shall conduct all testing of Works and materials to the complete satisfaction of the Director of Engineering and Operations. All sanitary and storm sewers must be inspected and videoed via closed circuit television (CCTV) prior to final acceptance by the City. Complete CCTV reports in the latest format to be provided to City upon completion with as-built documents.
- 8.4 The Director of Engineering and Operations or his designate shall have the right at any time and from time to time to request an inspection and re-inspection of any of the Works in progress to ensure such Works are being constructed in accordance with the Plans and specifications approved by the Director of Engineering and Operations. Such inspections may include testing and the method and time of testing shall be at the sole discretion of the Director of Engineering and Operations.
- 8.5 The City shall inspect all works as deemed necessary to ensure that the works are being constructed in accordance with the plans and specifications approved by the City, to the Engineer's satisfaction. This inspection shall be in addition to the inspection provided by the Developer's Consulting Engineer, and shall in no way relieve the Developer or its Consulting Engineer of any responsibility with regard to supervision and inspection or the proper completion of the work. The Developer shall pay the full cost of engineering inspection by the City.
- 8.6 The City shall inspect all materials and appurtenances prior to installation to ensure conformance with latest City approved material/manufacture lists. Any items deemed unacceptable are to be tagged or otherwise identified as "unacceptable", and removed from site immediately. Any items deemed "unacceptable" will be replaced at the expense of the Developer Replacement item(s) shall be examined for conformance to the specifications by the City.
- 8.7 The Director of Engineering and Operations shall have a discretionary right to order any work-in-progress stopped and such work shall not be recommenced without written authority from the Director of Engineering and Operations.
9. That Clauses 6 to 6.4 from the Original Subdivision Agreement titled Tenders and Contractors be deleted and replaced with the following:

**TENDERS, INSURANCE & BONDING**

- 9.1 If required by the City, the Developer shall call for tenders for the Works in accordance with the City's Purchasing Policy (By-law No. 3687/113/98). Where the City requires the Developer to call for tenders, any tender proposed to be

accepted by the Developer shall not be accepted until same has been approved in writing by the Director of Engineering and Operations.

9.2 Prior to commencement of any Works, the Developer shall, at his sole expense, provide the City with:

- a) a copy of the contractor's Performance and Maintenance Bond and Labour and Material Payment Bond each for one hundred percent (100%) of the contract sum, if required. The aforesaid Bonds shall unconditionally guarantee to the Developer and the City that the Works will be satisfactorily completed and maintained within the terms of the contract, this Agreement and the approved Plans up to the face value of the bond. Without limiting the generality of the foregoing, such Bonds shall cover extensions to the contract, modifications thereof, and the Maintenance Warranty Period. The bonding company shall not replace a prime contractor or sub-contractor without prior written approval of the Director of Engineering and Operations. Bonding companies are subject to acceptance by the City;
- b) a certified copy of the Developer's third party All Perils and Liability Insurance Policy naming the City as an additional insured in a form satisfactory to the City as follows:
  - i) the policy is to be written on the comprehensive form including contractual liability and complete operations with an inclusive limit of five million dollars (\$5,000,000.00) bodily injury (including death) and property damage with a deductible not greater than one thousand dollars (\$1,000.00);
  - ii) the Liability Insurance Policy shall not contain any exclusions for damage to property, support of any property, building or land arising from the removal or weakening of support of any property, building or land whether such support be natural or otherwise and shall not contain an exclusion for blasting;
  - iii) the Standard Automobile Policy shall cover both owned and non-owned vehicles with inclusive limits of not less than two million dollars (\$2,000,000.00) bodily injury (including death) and property damage with a deductible not greater than one thousand dollars (\$1,000.00);
  - iv) excess umbrella liability coverage of four million dollars (\$4,000,000.00) for all risks included in (i) and (ii) above shall be provided with a retained limit up to ten thousand dollars (\$10,000.00);
  - v) "Cross Liability" and "Severability of Interest" clauses or endorsements shall be provided;
  - vi) an endorsement will be provided to the effect that the policy or policies will not be altered, cancelled or allowed to lapse without thirty (30) days prior written notice to the City from the insurer;
  - vii) the premium for the said policies shall be paid initially for a period of two (2) years and the policy shall be renewed for further one-year periods until all Works required under this Agreement are installed and assumed by the City;
  - viii) The policy of insurance shall not be construed as relieving the Developer from responsibility for the deductibles or other

or larger claims, if any, for which the Developer or City may be held responsible;

- c) a certificate from the Worker's Safety Insurance Board certifying the contractor is in good standing with the Board; and
- d) satisfactory evidence the contractor is qualified, experienced and has the equipment to successfully complete the Works.

10. That Clauses 7 to 7.14 titled Installation of Services from the Original Subdivision Agreement be deleted and replaced with the following:

**10.1 SERVICES**

General

- a) Where the Plan of Subdivision is serviced by a secondary means of egress or emergency access to be constructed by the Developer, an existing road allowance, open or unopened, or any newly dedicated widening thereof, the Developer agrees such secondary means of egress or emergency access, road allowance and any widening thereof shall be deemed to form part of the Lands and be subject to the requirements related thereto specifically indicated in the approved Plans.
- b) Where it is necessary to use a secondary means of egress or emergency access to be constructed by the Developer or an unopened road allowance to service all or any part of the Lands, the Developer shall, at its own expense, construct the necessary municipal services in accordance with the approved Plans.
- c) The Developer shall not change, or do any work that will prejudicially effect, any natural watercourse or drainage ditch without making full and proper provisions satisfactory to the Director of Engineering and Operations, and the Developer shall be solely responsible for any damage caused thereby and the Developer hereby indemnifies and saves harmless the City from any claim arising from such damage.
- d) The Developer shall keep all portions of the development well, properly and efficiently drained during construction and completion and will be held responsible for all damage which may be caused or results from water backing up or flowing over, through, from or along any part of the Works, or which any of the Developer's operations may cause to flow elsewhere, and the Developer hereby indemnifies and saves harmless the City from any claim arising from said damage.
- e) The Developer covenants and agrees to carry out all Works necessary to service the Plan of Subdivision in such a manner as to prevent erosion and earth, debris and other material from being washed or carried in any manner onto any road, road allowance or highway whether opened or unopened, or onto the property of any other person or persons. If such earth, debris or other material is washed or carried onto such road, road allowance, whether opened or unopened, or onto the property of any person or persons, the City, its servants or agents, may, at the City's discretion, clean and remove such material, rectify any damage caused, and abate any nuisance created by the Developer in the development of the Plan of Subdivision. The cost of any such work performed by or at the instruction of the City, shall be paid by the Developer on demand, and without limiting any of its remedies at law or in equity, the City may enforce any security available to it to recover such costs or may collect such costs in like manner as municipal taxes as provided in *The Municipal Act* and with the same priorities as taxes that are overdue and payable.

- f) The Developer shall be solely responsible for controlling dust nuisance in conjunction with the Works, both within the Plan of Subdivision and elsewhere.
- g) All streets abutting on the Lands or used for access to the Lands during installation or construction of the Works or during construction of dwellings shall, at all times, be kept as dust free as possible and in a good and usable condition, and without restricting the generality of the foregoing, the Developer shall at the end of each day during such construction cause all such streets to be cleaned of all refuse, rubbish, waste, debris and other materials of any kind, whether the same resulted from installation and construction of Works or otherwise, and if such streets are damaged the Developer shall at its own cost restore same immediately to the City's requirements and to the satisfaction of the Director of Engineering and Operations.
- h) All trucks making deliveries to or taking materials from the Lands shall be adequately covered and not unreasonably loaded so as to scatter refuse, rubbish, dust or debris on abutting streets or properties. If at any time, in the opinion of the Director of Engineering and Operations, damage is being or is likely to be done to any street or any improvement thereon, other than such portions as are part of the Works, by the Developer's or its contractor's vehicles or other equipment, whether licensed or unlicensed, the Developer or its contractor shall on the direction of the Director of Engineering and Operations make changes in or substitutions for such vehicles or other equipment or shall alter loading or shall in some other manner satisfactory to the Director of Engineering and Operations remove the cause of such damage or nuisance. The Developer shall at its own cost repair any such damage immediately to the City's requirements and to the satisfaction of the Director of Engineering and Operations.
- i) The Developer shall inform all public utility companies having legal authority to install or construct utility systems (including without limitation Bell Canada, Consumer's Gas, Enbridge Gas, Canadian Niagara Power Inc., Regional Cable Television (Central) Inc., Niagara Regional Broadband Network, etc.) of the approximate date of construction of the Works in order that such utility companies may place their work in accordance with their requirements and to the satisfaction of the Director of Engineering and Operations, and the Developer shall assume complete responsibility and make all necessary arrangements for the moving of hydro-electric, gas, telephone and co-axial cables, pipes, conduits, wires, pipe lines, or any other public utility works as necessary and as approved by the Director of Engineering and Operations, and the Developer shall be solely responsible for any damage caused to the said cables, pipes, conduits, wires, pole lines and other works.
- j) The City disclaims any responsibility or liability for the support and protection of sewers, drains, pipes, conduits, tracks or other utilities, services and structures owned by the City or any other public body, by companies, or any other person enjoying special franchises or occupying any portion of the streets or ways on or below or above the surface. The Developer is directed to carefully examine the location of the Works and to make special inquiry of the companies or persons owning, controlling or operating said pipes, conduits, tracks and other utilities, services and structures, and to determine the character, size, position and length of such pipes, conduits, tracks, utilities and structures, and to inspect the public records of the various City Departments having recognizance and control of pipes, conduits and sewers, and to make such further personal inspection and investigation as is necessary to determine the correctness of the information so obtained. It is the Developer's responsibility to

consult the companies concerned as to the exact location of said utilities, services and structures, and, where necessary, the Developer shall protect and support same to maintain their operation. In the event damage is done to a utility, service or structure the Developer thereof shall be notified immediately by the Developer and any costs arising from such damage shall be paid for by the Developer. A copy of such notice shall be sent to the Director of Engineering and Operations.

- k) The Developer agrees to keep boulevards and Easements graded and free and clear of all material and obstructions which might interfere with the construction of telephone, co-axial, gas and hydro-electric installations, and other utility works.
- l) The Developer shall remove from all road allowances in the Plan of Subdivision, any surplus or other material and obstructions and such trees and vines, as necessary and to the satisfaction of the Director of Engineering and Operations, and further, shall remove from the Lands any unkempt, diseased or infested trees, vines or bushes. In the event this clause is not complied with within fourteen (14) days of written notice delivered by the City to the Developer, the City may have such material removed and collect the cost thereof from the Developer, and without limiting its remedies at law or equity, the City may enforce any security held by it to recover costs or may collect the costs in like manner as municipal taxes as provided in *The Municipal Act* and with the same priorities as taxes that are overdue and payable.
- m) The Developer shall not remove any topsoil from the Lands without first obtaining written approval from the Director of Engineering and Operations.
- n) All Works required to be installed or constructed by the Developer shall be installed and constructed in accordance with the City's specifications therefor at the date of the commencement of the installation or construction of the Works and in accordance with the approved Plans.
- o) The Developer acknowledges and agrees, notwithstanding the complete installation of services in the subdivision as authorized by the City, that the City will not be held liable for any stoppage or delay of the registration of the Plan or the issuance of Building Permits for the lots in the Plan.

**11. Survey Monuments to be Preserved**

The Developer agrees that all survey monuments or related markings established in connection with the installation of public utility and municipal services are to be preserved; and if any survey monument or related marking is accidentally or deliberately damaged, destroyed or removed, to immediately repair or replace such monuments or related markings under the direction of the person or persons responsible for establishing said survey monuments or related markings.

**12. City's Right to Enter and Repair**

- a) The City shall have the right to enter on the Lands at all times and from time to time and to carry out maintenance and repair of the Works:
  - i) without notice to the Developer where, in the sole opinion of the Director of Engineering and Operations, danger to public safety or an emergency condition exists, or the streets have not been kept free of mud, dust and/or snow or to prevent damage or hardship to any persons or property; and
  - ii) where repairs to or maintenance of the said Works has not been completed within twelve (12) hours after written notice

requiring such repairs or maintenance has been delivered to the Developer.

- b) The decision of the Director of Engineering and Operations that repairs, remedial work or maintenance to the said Works is required or that an emergency state exists requiring immediate repair or maintenance shall be final, conclusive and incontestable. Such repairs, remedial works or maintenance shall not be deemed acceptance of the Works by the City or an assumption by the City of any liability in connection therewith and shall not release the Developer from any of its obligations under this Agreement.
- c) The cost of any repair or maintenance work (including professional fees) undertaken by the City pursuant to the provisions of this Agreement shall be borne by the Developer and the amount thereof shall be paid to the City within thirty (30) days after a statement of account therefor has been delivered to the Developer. If the Developer fails to pay the amount due to the City within such thirty (30) day period, the City may and is hereby expressly authorized by the Developer to deduct the amount owing to the City for such repairs or maintenance from any monies or Letters of Credit deposited with the City.
- d) Repairs or maintenance undertaken by the Developer pursuant to this subsection, shall be completed in the presence of the Director of Engineering and Operations or his representative.13111

**13. Services to be Co-ordinated**

The Developer agrees and acknowledges that the designs of all municipal and public utilities and services for the subdivision of the Lands must be coordinated with all adjacent developments to ensure secondary access, service main looping and other integration and co-ordination of utilities and services.

**14. Land Use Sign**

The Developer agrees to erect, to the satisfaction of the Director of Engineering and Operations, a 2.5m x 2.5m Land Use Sign prior to the commencement of construction of the Works, which shall indicate the proposed and abutting street system, lot patterns, sidewalk layout and land uses. The Developer further agrees to make available all such information and related servicing structures to prospective buyers.

**15. Interim Works**

The Developer agrees and acknowledges that, until the Director of Engineering and Operations affixes his signature of approval to the Plans, all works which may be carried out in the interim are done solely and entirely at the Developer's risk, and that changes to existing works or additional works may be required or reflected in the final approved Plans.

**16. Roads**

- a) The Developer agrees to perform and complete all road Works required by this Agreement and the approved Plans and specifications to the complete satisfaction of the Director of Engineering and Operations.
- b) Any existing road damaged during the development of the Plan of Subdivision shall be restored by the Developer, to the complete satisfaction of the Director of Engineering and Operations, prior to approval of the Certificate of Completion for Primary Services.
- c) The roads shall be named to the satisfaction of the City.

17. **Sanitary Sewer System**

- a) Prior to re-commencement of construction, the following inspections and tests must be performed on the previously installed sanitary sewer system. Reports and results must then be submitted to the City for review. Only upon approval of these reports and results by the Director of Engineering and Operations may construction continue.
  - i) Closed-Circuit Television (CCTV) Inspection, as per OPSS.MUNI 409, shall be performed on the sewer mains, service laterals, associated appurtenances, and maintenance holes.
    - a. All sewer mains and associated appurtenances shall be inspected to confirm alignment and to ensure that the pipes are free from obstructions, debris, and defects.
    - b. All service laterals and associated appurtenances shall be inspected to confirm alignment and to ensure that the pipes are free from obstructions, debris, and defects.
    - c. All maintenance holes shall be inspected for any defects, leaks, debris, and to ensure proper benching.
  - ii) Low Pressure Air Testing, as per OPSS.MUNI 410 for pipes and ASTM C 1244 for maintenance holes, shall be performed on the sewer mains, service laterals, associated appurtenances, and maintenance holes to ensure the integrity of the conveyance system.
  - iii) Mandrel deflection testing, as per OPSS.MUNI 438, shall be performed on the sewer mains to ensure they are free from defects.
  - iv) Based on the reports and results provided to the City, the Director of Engineering and Operations may request to have sewer mains, service laterals, or associated appurtenances daylighted with the City's Construction Inspector in attendance, by and at the sole cost of the developer, for further inspection.
  - v) Any defects identified in the inspections shall be corrected by and at the sole cost of the developer. Following the corrective work, the respective sewer mains, service laterals, associated appurtenances, or maintenance holes shall be re-inspected and the new reports and results shall be submitted to the City for review.
- b) If required by the City, and prior to execution of this Agreement by the City, the Developer shall undertake a review of existing downstream sanitary sewer system to ensure the capacity of the system is sufficient for the increase in flows from the Plan of Subdivision. In the event the downstream system is inadequate for the flow increase from this Subdivision, upgrading of those facilities will be the financial responsibility of the Developer and the Work required and/or necessary to upgrade such facilities shall be completed by the Developer as part of development of this Plan of Subdivision to the complete satisfaction of the Director of Engineering and Operations.

- c) The Developer shall construct a sanitary sewer system, including service laterals from the sewer main to the Street Line and other appurtenances, to adequately service the Lands. All sanitary sewers, including upgrading of downstream facilities if deemed necessary by the City, shall be constructed according to the approved Plans and specifications. Plans must be approved by the Director of Engineering and Operations, the Region of Niagara Public Works Department and the Ministry of the Environment, and the construction and materials used therein shall be in accordance with the City's most recent specifications therefor.
- d) All sanitary sewer Works shall be flushed and cleaned by high velocity sewer flushing equipment:
  - i) after placement of the base course asphalt upon the streets in the Plan of Subdivision;
  - ii) forthwith after final paving of the streets has been completed; and
  - iii) upon receipt of any written notice from the Director of Engineering and Operations.
- e) All sanitary sewer Works shall be tested, and if necessary re-tested, and the method and time of testing shall be to the satisfaction of the Director of Engineering and Operations.
- f) All sanitary sewer Works shall be inspected and videoed via closed circuit television to the satisfaction, and upon any written notice from, the Director of Engineering and Operations and prior to assumption of the sanitary sewer Works by the City. In the event the results are not satisfactory in the sole opinion of the Director of Engineering and Operations, the Developer shall take such remedial steps as may, in the sole opinion of the Director of Engineering and Operations, be required.
- g) Prior to the Director of Engineering and Operations approving the Completion Certificate for Primary Services, the Developer shall supply the Director of Engineering and Operations with "as constructed drawings" and complete CCTV Reports showing the location and depth of the sanitary sewer lateral constructed to service each Lot.
- h) Prior to registration of the Plan, the Region shall confirm that adequate sanitary sewage allotment is available.
- i) The Developer agrees to perform and complete all sanitary sewer Works required by this agreement and the approved Plans and specifications to the complete satisfaction of the Director of Engineering and Operations.

#### **18 Storm Drainage System**

- a) Prior to re-commencement of construction, the following inspections and tests must be performed on the previously installed storm drainage system. Reports and results must then be submitted to the City for review. Only upon approval of these reports and results by the Director of Engineering and Operations may construction continue.
  - i) Closed-Circuit Television (CCTV) Inspection, as per OPSS.MUNI 409, shall be performed on the sewer mains, catchbasin leads, service laterals, associated appurtenances, catchbasins, and maintenance holes.

- a. All sewer mains, catchbasin leads, and associated appurtenances shall be inspected to confirm alignment and to ensure that the pipes are free from obstructions, debris, and defects.
  - b. All service laterals and associated appurtenances shall be inspected to confirm alignment and to ensure that the pipes are free from obstructions, debris, and defects.
  - c. All catchbasins and maintenance holes shall be inspected for any defects, leaks, debris, and to ensure proper benching.
- ii) Low Pressure Air Testing, as per OPSS.MUNI 410 for pipes and ASTM C 1244 for maintenance holes, shall be performed on the sewer mains, catchbasin leads, service laterals, associated appurtenances, catchbasins, and maintenance holes to ensure the integrity of the conveyance system.
  - iii) Mandrel deflection testing, as per OPSS.MUNI 438, shall be performed on the sewer mains and catchbasin leads to ensure they are free from defects.
  - iv) Based on the reports and results provided to the City, the Director of Engineering and Operations may request to have sewer mains, catchbasin leads, service laterals, or associated appurtenances daylighted with the City's Construction Inspector in attendance, by and at the sole cost of the developer, for further inspection.
  - v) Any defects identified in the inspections shall be corrected by and at the sole cost of the developer. Following the corrective work, the respective sewer mains, catchbasin leads, service laterals, associated appurtenances, catchbasins, or maintenance holes shall be re-inspected and the new reports and results shall be submitted to the City for review.
- b) The Developer agrees to construct a storm drainage and storm water management system to adequately service the Lands and all or any portion of the ultimate drainage area in which the Lands are located. This system shall be constructed in accordance with the Plans approved by the Director of Engineering and Operations, the Region of Niagara Public Works Department, the Region of Niagara Public Works Department, the Niagara Peninsula Conservation Authority (NPCA) and the Ministry of the Environment, and construction and materials used therein shall be in accordance with the City's most recent specifications therefor.
- c) All storm sewer Works shall be flushed and cleaned by high velocity sewer flushing equipment:
- i) after placement of the base course asphalt upon the streets in the Plan of Subdivision;
  - ii) forthwith after final paving of the streets has been completed; and
  - iii) upon receipt of any written notice from the Director of Engineering and Operations.

- d) All storm sewer Works shall be inspected and videoed via closed circuit television to the satisfaction of, and upon any written notice from, the Director of Engineering and Operations and prior to assumption of the storm sewer Works by the City. In the event the results are not satisfactory in the sole opinion of the Director of Engineering and Operations, the Developer shall take such remedial steps as may, in the sole opinion of the Director of Engineering and Operations, be required.
- e) Prior to the Director of Engineering and Operations approving the Completion Certificate for Primary Services, the Developer shall supply the Director of Engineering and Operations with "as constructed drawings" and complete CCTV Reports showing the location and depth of the storm sewer lateral constructed to service each Lot.

**19. Stormwater Management System**

- a) The Developer agrees that prior to the City executing this Agreement the Developer shall prepare and provide a Storm Water Management Report which shall be submitted for approval by the Director of Engineering and Operations, the Ministry of the Environment, the NPCA and the Region of Niagara Public Works Department, indicating the following:
  - i) the manner in which storm water will be conveyed across the Lands in both major and minor storms, using storm water management techniques that are in accordance with the Provincial guidelines contained in "Stormwater Management Practices Planning & Design Manual - June 1994" (Ministry of Environment) and the latest revision thereof or such more stringent standards as may be applicable;
  - ii) an assessment of downstream and upstream constraints and how these constraints can be addressed (at a minimum the storm water management system must provide Level 1 protection for downstream fisheries and resources); and
  - iii) an Erosion and Sediment Control Plan for the development of the Lands whereby erosion and sediment and their effects will be minimized on site during and after construction in accordance with the "Ontario Guidelines on Erosion and Sediment Control for Urban Construction Sites" May 1987 and the latest revision thereof or such more stringent standards as may be applicable.
- b) The Developer shall prepare and provide a Subdivision Grading Plan in accordance with Section 30 hereof indicating the existing and proposed grades as well as the means whereby major system flows will be conveyed across the Lands. The 100-year flood level shall be plotted on the Plan to ensure that all structural development will be located above this elevation.
- c) The Developer agrees to implement the Storm Water Management Plan, as approved by the NPCA including the approved grading and drainage plans, any required erosion and flood protection works, and all NPCA requirements.
- d) The Developer agrees to carry out or to have carried out all storm water management techniques and Works necessary and/or required to convey storm water runoff from the Lands in accordance with the approved Subdivision Grading Plan and Storm Water Management Plan to the

complete satisfaction of the Director of Engineering and Operations and the Region of Niagara Public Works Department.

**20. Water Distribution System**

- a) Prior to re-commencement of construction, the following inspections and tests must be performed on the previously installed water distribution system. Reports and results must then be submitted to the City for review. Only upon approval of these reports and results by the Director of Engineering and Operations may construction continue.
  - i) Daylighting, with the City's Construction Inspector in attendance, of at least two (2) locations, to be decided by the Director of Engineering and Operations, of each type of water main pipe, hydrant lead, service lateral, tee, valve, bend, connection, and other appurtenances.
  - ii) Hydrostatic Pressure Test, as described in the latest version of the City's Watermain Commissioning Protocol and as per OPSS.MUNI 441, shall be performed on the entire water distribution system.
  - iii) Based on the reports and results provided to the City, the Director of Engineering and Operations may request to have additional water mains, hydrant leads, service laterals, or associated appurtenances daylighted with the City's Construction Inspector in attendance, by and at the sole cost of the developer, for further inspection.
  - iv) Based on the reports and results provided to the City, the Director of Engineering and Operations may request that Closed-Circuit Television (CCTV) Inspection, as per OPSS.MUNI 409, be performed on the water mains, hydrant leads, or associated appurtenances to ensure that the pipes are free from obstructions, debris, and defects.
  - v) Any defects identified in the inspections shall be corrected by and at the sole cost of the developer. Following the corrective work, the respective water mains, hydrant leads, service laterals, or associated appurtenances shall be re-inspected and the new reports and results shall be submitted to the City for review.
- b) The Developer shall construct a complete water supply and distribution system, including valves, valve boxes, fire hydrants, service connections, curbstops and boxes, blow-offs and ground hydrants as may be required for the purpose of servicing the Plan for Subdivision. The water distribution system shall be constructed according to the Plans approved by the Director of Engineering and Operations or the Region of Niagara Public Works Department and the Ministry of the Environment if required, and the construction and materials used therein shall be in accordance with the City's most recent specifications therefor.
- c) The Developer shall install, charge, test and maintain fire hydrants as required by the approved Plans and specifications in accordance with this Agreement to the complete satisfaction of the Port Colborne Fire Department and the Director of Engineering and Operations.
- d) The water supply and distribution system shall be designed to accommodate residential and fire flows with the minimum size of 150 mm in diameter.

- e) All water mains shall be flushed, chlorinated, pressure tested and bacterial tested in accordance with City Standards and to the satisfaction of the Director of Engineering and Operations prior to approval of the Completion Certificate for Primary Services.
- f) The Developer shall, prior to the Director of Engineering and Operations approving the Completion Certificate for Primary Services, supply the Director of Engineering and Operations with "as constructed drawings" showing the location and depth of the water connections constructed to service each of the Lots.

**21. Sidewalks**

The Developer shall, at its sole expense, construct concrete sidewalks in accordance with the approved Plans filed and specifications therefor.

**22. Fencing**

The Developer shall, at its sole expense, construct fencing in accordance with the approved Plans filed and specifications therefor.

**23. Street and Traffic Signs**

- a) The Developer shall erect and maintain temporary traffic signs and such other traffic control devices to the satisfaction of the Director of Engineering and Operations during the construction period.
- b) The Developer shall pay for all permanent street and traffic signs and other traffic control devices required by the approved Plans and to the satisfaction of the Director of Engineering and Operations. The Developer shall be responsible to install all permanent street and traffic signs to the current standards of the City.

**24. Electrical Distribution System and Street Lighting**

- a) The Developer shall arrange with Canadian Niagara Power Inc. (CNPI) for the design, provision and installation of all electrical transmission and distribution system and streetlighting system required to service all of the Lots shown on the Plan with electrical power in accordance with the plans and specifications therefor approved by CNPI and the Director of Engineering and Operations. All such facilities shall be installed underground unless specific external systems are approved by CNPI and the Director of Engineering and Operations. The cost of providing such facilities shall be borne by the Developer.
- b) The Developer shall arrange with CNPI for local electrical supply connections and appurtenances thereto from the distribution system to terminals on abutting private property. The wiring for such service connections shall be underground. The cost of providing such service connections and appurtenances shall be borne by the Developer and the Developer shall pay the cost thereof to CNPI upon receipt of a statement of account therefor.
- c) Prior to the Director of Engineering and Operations approving the Certificate of Final Acceptance for Primary Services, the Developer shall deliver to the City satisfactory proof of installation and construction of the aforesaid electrical transmission and distribution system and the street lighting system, which shall have been approved and/or accepted by a utility supplier satisfactory to the City, and upon Council passing the Assumption By-Law for Primary Services the City will assume the street lighting system into the City's street light inventory.

- d) The Developer will supply the City with 3 spare fixtures including but not limited to poles, arms, luminaires and mounting hardware for replacement inventory.

**25. Utility Services**

All Utility Services required to service the Plan of Subdivision, including, without restricting the generality of the foregoing, hydro service, telephone cables and coaxial cables, shall be installed underground from the source with pad-mounted transformers. All Utility Services shall be installed and constructed prior to the Director of Engineering and Operations approving the Certificate of Completion for Primary Services

**26. Mail Delivery**

- a) The Owner agrees to install a concrete pad at final approved grade in accordance with the requirements of Canada Post to facilitate the installation of Community Mail Boxes. The location of the concrete pads are subject to approval by Canada Post and the Engineer.
- b) The Owner agrees to identify the concrete pads on the engineering servicing drawings. The pads are to be poured at the time of the sidewalk and/or curb installation within each phase of the plan of subdivision.
- c) The Owner agrees to determine the location of all centralized mail facilities in cooperation with Canada Post and to post the location of these sites on appropriate maps, information boards and plans.

**27. Tree Plantings**

- a) In order to maintain a high standard of amenity and appearance, the Developer, its heirs, executors, administrators, successors and assigns hereby undertake and agree to retain the maximum number of trees within the lands consistent with good design and conservation practices and to deposit a Letter of Credit with the City, to guarantee the total cost of purchasing, planting and maintaining trees within the Plan in accordance with the following:
  - i) The Owner agrees to plant one tree in the front yard of each lot within the plan, 1.5 metres from the front lot line. The location shall be on private property and not interfere with the alignment of the services to the property.
  - ii) Trees shall be 50 millimetres caliper or more and a height of 1.8 metres or more, balled and bur lapped at planting and be of such varieties as Red Maple, Common Hackberry, Kentucky Coffeetree, Tulip Tree, Redspire Ornamental Pear, Princeton Sentry Gingko or such other compatible variety, as approved by the City.
- b) In accordance with Schedule "J" annexed hereto, prior to registration of this Agreement by the City, the Developer shall provide a security in the form of a Letter of Credit to the City for Tree Planting within the subdivision, to cover the cost of purchasing, planting and maintaining trees within the Plan.

**28. Driveways**

- a) Each Lot shall be serviced with a driveway approach constructed in accordance with the Plans filed to the complete satisfaction of the Director of Engineering and Operations.

- b) All driveway approaches (aprons) between the curb line and the sidewalk, or in the absence of a sidewalk, between the curb line and the Street Line shall be installed and paved by the Developer in accordance with the approved plans and specifications therefor prior to the Director of Engineering and Operations approving the Completion Certificate for Secondary Services.

**29 . Landscaping**

- a) The Developer shall grade and place a minimum of 100mm of topsoil together with number one nursery sod on all portions of road allowances in the Plan of Subdivision not covered by asphalt or sidewalks and along all sides of the Plan of Subdivision abutting on adjacent existing streets. All sodding as herein described shall be considered as part of the cost of construction of services for the Plan of Subdivision, and shall be completed prior to the Director of Engineering and Operations approving the Completion Certificate for Secondary Services.
- b) All drainage ditches, major overland flow drainage swales and depressions within the Plan of Subdivision shall be sodded with number one nursery sod prior to the City issuing any building permits. The Developer shall maintain all sod until Council passes the Assumption By-Law for Secondary Services.

**30. Subdivision Grading and Drainage**

- a) Unless otherwise approved or required by the City, the Developer, its heirs, executors, administrators, successors and assigns hereby irrevocably undertake not to alter the grades or remove trees or other vegetation from the Lands until such time as:
  - i) the City has agreed in writing to such alteration or removal; and
  - ii) the City has approved the Subdivision Grading Plan pursuant to the terms of this Agreement and the City's Lot Grading and Drainage Policy, By-Law 2464/80/90 and amendments thereto.
- b) Prior to execution of this Agreement by the City or commencing any phase of development, and in accordance with the City's Lot Grading and Drainage Policy, By-Law No. 2464/80/90 and amendments thereto, the Developer shall prepare and provide the City, as part of the engineering drawings, a Subdivision Grading Plan for the purpose of controlling the overall drainage pattern in the Plan of Subdivision. The Subdivision Grading Plan shall be prepared in conformance the City's Lot Grading and Drainage Policy, By-Law 2464/80/90 and amendments thereto.
- c) The following grading works shall be completed prior to the issuance of any Building Permits:
  - i) construction and sodding of all major overland flow drainage swales and other erosion control devices to the satisfaction of the Director of Engineering and Operations for the Plan of Subdivision, subject to weather conditions; and
  - ii) rough grading of all Lots to generally conform to the Subdivision Grading Plan.
- d) If drainage problems arise which are as a result of non-compliance with the requirements of By-Law 2464/80/90 and amendments thereto, the Developer shall within forty-eight (48) hours of receiving notice thereof correct the problems. Without limiting its remedies at law or in equity, the City may enter upon the Lands to remedy any such problem and may use the Subdivider's Grading Deposit to cover the costs of any remedial works deemed necessary. Any costs of these remedial works in excess of the amount of the Subdivider's Grading Deposit shall be the responsibility of the Developer, and if not reimbursed to the City forthwith after being

by the City, the City may collect such costs in like manner as municipal taxes as provided in *The Municipal Act* and with the same priorities as taxes that are overdue and payable.

- e) The Developer shall deposit with the City as security for carrying out the provisions of the Subdivision Grading Plan, in accordance with Schedule "J" annexed hereto, a Subdivider's Grading Deposit as required by By-Law 2464/80/90 and amendments thereto.
- f) Upon completion of the Works and acceptance by the City of a Subdivision Grading Conformance Certificate prepared and signed by an Ontario Land Surveyor or Professional Engineer, the Developer may apply in writing for release of the Subdivider's Grading Deposit, less any cost for remedial work undertaken by the City.

**31. Lot Grading and Drainage**

- a) Prior to the issuance of a Building Permit for a Lot, the Developer or the Building Permit applicant shall submit to the City three copies of a proposed Lot Grading Plan prepared by a Professional Engineer or an Ontario Land Surveyor and shall conform to the Subdivision Grading Plan.
- b) Prior to issuance of a building permit for a Lot, the Developer or Building Permit applicant shall submit to the City as security for carrying out the provisions of the Lot Grading Plan a Lot Grading Deposit in the amount of \$2,000.00 per Lot.
- c) Upon acceptance of the Grading Conformance Certificate by the City, the Developer may apply in writing for release of the Lot Grading Deposit, less any cost of remedial work performed by the City.
- d) The grading of a Lot shall be considered complete when the building has been erected and such lot has been graded and sodded, and/or seeded. Sodding and/or seeding shall be done within two months after occupancy of the dwelling or by the next June 1st following occupancy should occupancy take place after November 1st.
- e) Upon completion of the grading as noted in Section 31. a) of this Agreement, prior to landscaping or fencing, the Developer shall submit to the City one copy of the Lot Grading Plan which shall indicate the finished elevation as shown on the proposed Lot Grading Plan. This "as constructed" Lot Grading Plan shall be prepared and certified by a Professional Engineer or Ontario Land Surveyor.
- f) Once the "as constructed" grading of a Lot has been certified and signed by an Ontario Land Surveyor or Professional Engineer to be in conformance with the latest revision of the Subdivision Grading Plan, the Lot Grading Plan if approved by the City, shall be accepted and dated by the City, as the "Grading Conformance Certificate."
- g) The Developer, its heirs, executors, administrators, successors and assigns hereby irrevocably undertake to maintain the grading and drainage schemes as established and verified by the Grading Conformance Certificate and not to alter or revise the grading or drainage without the express written consent of the Director of Engineering and Operations or the Chief Building Official.

**32. Foundation Drains**

The Developer agrees that foundation drains shall be pumped by a sump pump in each house to grade.

**33. Roof Water**

The Developer agrees that roof water drainage from any structure or building shall be directed via downspouts discharging via splash pads (concrete or other suitable material) to grass surfaces. These splash pads shall extend a distance at least 1.2

metres away from the structure and must direct the flow away from the building, not onto walks or driveways and not towards adjacent property.

**34. Minimum Basement Elevations**

If required, the Developer agrees to submit a plan for approval to the Director of Engineering and Operations, detailing the basement control elevations for individual dwellings or structures within the Plan of Subdivision and to ensure compliance with approved basement control elevations.

35. That Clauses 8, 13, 14, 16 & 17 from the Original Subdivision Agreement be deleted and replaced with the following:

**36. BY-LAW(S), DOCUMENTATION AND REGISTRATION**

- a. Before this Agreement is executed by the City, the appropriate authorizing By-law must be enacted by the Council of the City.
- b. The City may, at the sole expense of the Developer, request the Developer's solicitor to prepare such further and other documentation as may be deemed necessary and/or required by the City for the preparation, registration and implementation of the agreement.
- c. If required, the Developer's solicitor, at the sole expense of the Developer, shall:
  - i. provide and/or prepare all documentation which the City's Solicitor may require, including all necessary Transfers, Easements and restrictive covenants in registerable form;
  - ii. certify title to the City in a signed Certificate of Title;
  - iii. have all documentation signed by the Developer, Charges, and other necessary parties;
  - iv. sub search title and obtain an Execution Certificate prior to registration and provide copies of same to the City's Solicitor;
  - v. deliver all executed documentation to the City; and
  - vi. attend to registration of all documentation, at the Developer's expense, required by this Agreement.
- d. Prior to the City executing this Agreement, the Developer shall provide the City with two (2) copies each of the draft Plan of Subdivision (M-Plan) for the Lands and the draft Reference Plan (R-Plan) providing legal descriptions for Easements within or outside the Lands.
- e. The Developer covenants and agrees to register an application, signed by the City, for an order inhibiting any dealings with the Lands to the applicable Land Registrar immediately following the registration of the Agreement. The Developer acknowledges that the City shall not be obligated to register any documents in compliance with the Inhibiting Order or to apply to have the Inhibiting Order removed from title until the Developer has supplied all documents in compliance with this Agreement in a form satisfactory to the City for registration and all other documents required to provide discharges, releases and postponements with respect to any charges, mortgages or encumbrances with respect to the Lands have been registered against title to the lands.
- f. Upon the City being satisfied that all conditions of Draft Plan approval for the Plan of Subdivision have been satisfied by the Developer within the required time, the City shall register the following documentations at the sole expense of the Developer as soon as practicable:
  - i. the approved Plan of Subdivision; and
  - ii. all other documentation related thereto, including without limitation, Cessations of Charge.

- g. In the event the Plan of Subdivision is not registered within one (1) year from the date of registration on title of this Agreement, the City may declare the Developer in Final Default.
- h. The Developer shall not deal in any manner whatsoever with any Lot or Block shown on the Plan of Subdivision until this Agreement, the Plan of Subdivision and all other documentation (including Transfers, Easements, Cessation of Charge, Inhibiting Orders, Reference Plans, and Postponements of Charges) required by this Agreement and by the City's solicitor have been delivered, approved and registered on title to the complete satisfaction of the City's solicitor.

### **Permits, Fees, Deposits and Occupancy**

#### **37. Building Permits – Issuance**

The Developer covenants and agrees not to apply for building permits until:

- i. all Primary Services have been completed and a Certificate of Completion for Primary Services has been approved to the satisfaction of the Director of Engineering and Operations;
- ii. the City has on file an approved Subdivision Grading Plan;
- iii. the Developer has completed the following grading works:
  - i) rough grading of all Lots to generally conform to the Subdivision Grading Plan;
  - ii) construction and sodding of all major overland flow drainage swales and other erosion control devices deemed necessary by the City for the Lands;
- iv. the City has on file an approved Proposed Lot Grading Plan;
- v. the City is in receipt of all applicable fees and deposits including, without limiting the generality of the foregoing:
  - i) Development fees at the prevailing rate as prescribed by The Development Charges By-Law 6733/97/19 and amendments thereto;
  - ii) the Lot Grading Deposit;
  - iii) Building Permit application fee;
  - iv) Plumbing Permit application fee;
  - v) Water meter fee;
  - vi) Service Main connection application and fee, if applicable;
  - vii) Land for park dedication fee; and
  - viii) Any other fees, deposits or payments required under this Agreement;
- vi. the City's Fire Department has confirmed that an adequate water supply for firefighting operations and satisfactory access for firefighting equipment is available to service the Lands;
- vii. the City is satisfied all terms and conditions of this Agreement have been complied with insofar as they apply at that point in time;

- viii. the Developer has paid all development charges required by the Development Charges By-Law of the Regional Municipality of Niagara; and
- ix. the Developer has otherwise complied with all applicable law.

**38. Water Saving Devices**

The Developer agrees that all new homes being constructed will utilize water saving devices such as low flow toilets and low flow shower heads, of a standard acceptable to the Director of Engineering and Operations and the Chief Building Official.

**39. No Building Permit While In Default**

Notwithstanding anything herein contained, the City may refuse to issue building permits if there is an existing default in any of the provisions of this Agreement.

**40. Service Main Connections**

Prior to making any connections, if required, to existing municipal services the Developer shall submit to the City, completed Connection Permit applications and applicable fees for connection to existing sewer or water mains. No connection shall be made until the Connection Permits are approved by the City's Engineering and Operations Department.

**41. Occupancy**

Unless otherwise determined by the Chief Building Official, no dwelling, including model units, shall be occupied:

- i. until the Director of Engineering and Operations has approved the Certificate of Completion for Primary Services;
- ii. until the City has on file a Grading Conformance Certificate for the Lot; and;
- iii. until a final inspection has been completed and a Letter of Occupancy is issued by the Chief Building Official.

**42. Model Units**

The Developer agrees to pay all applicable permit fees and development charges for the buildings or structures constructed as model units, and shall otherwise comply with Section 41 herein, prior to a Letter of Occupancy being issued for said units.

**43. Water Meters**

All new homes constructed shall be equipped with water meters at the sole expense of the Developer.

**SECURITY DEPOSITS AND CASH PAYMENTS**

**44. General**

- a) The Developer shall be responsible for the full amount of the cost for the design, construction, installation, servicing and maintenance of the Works for the Plan of Subdivision together with all City inspection charges, engineering, administrative and consulting fees and in order to guarantee compliance with all conditions contained herein, the Developer shall be required to post security and cash payments on account of aforesaid costs, charges and fees in accordance with Schedule "J" annexed hereto prior to execution of this Agreement by the City. The security should be in the form of a standby Letter or Letters of Credit with **automatic renewal provision**, in a form approved by the City. The Developer covenants and agrees that the Letter of Credit shall be kept in full force and effect and that it will pay all premiums as the Letter of Credit becomes due or until such time as the City

returns the Letter of Credit in accordance with the provisions of this agreement.

- b) The Developer acknowledges and agrees that should there be a deficiency in or failure to carry out any work or matter required by any provision of this Agreement, whether or not such work or matter is specifically secured by way of Letter of Credit, and the Developer fails to comply within seven (7) days of being given written notice with a direction to carry out such work or matter, the City may draw on the Letter of Credit and enter onto the Lands and complete all outstanding works or matters, and pay all costs and expenses incurred thereby from the proceeds so drawn.
- c) The Developer acknowledges and agrees that the City reserves the right to draw on and use the proceeds from the Letters of Credit to complete any work or matter required to be done by the Developer pursuant to this Agreement. The Developer further acknowledges and agrees that, notwithstanding any provision to the contrary in this Agreement specifying the reduction or release of security, in the event that the City determines that any reduction in the Letter of Credit would create a shortfall with respect to securing the completion of any work or matter remaining to be carried out by the Developer pursuant to this Agreement, the City will not be obligated to reduce or release the Letter of Credit as by the particular provision until such time as such work is satisfactorily completed, or the City has sufficient security to ensure that such work will be completed.
- d) Whenever in this Agreement a Letter of Credit is required to be filed with the City, the Developer may instead deposit cash or a certified cheque to be cashed in an amount equal to the Letter of Credit and such deposit shall be held by the City as security in accordance with this Agreement provided that no interest shall be payable on any such deposit.
- e) The Developer acknowledges that upon the transfer of any ownership of the Lands, the City will not return any Letters of Credit or cash deposit required under this Agreement until the new Developer files a substitute Letter or Letters of Credit or cash or certified cheque in the required amounts with the City.
- f) The Developer acknowledges that for the purpose of determining the amount of security to be posted prior to execution, the Developer's Consulting Engineer shall provide the City with an estimate of the cost of design, construction, supervision, inspection and maintenance of all Works. Security to be posted for Primary Services and Secondary Services and City inspection charges, engineering, administrative and consulting fees shall be calculated, in a manner satisfactory to the Director of Engineering and Operations, on the basis of the Developer's Engineer's estimated cost of design, construction, supervision, inspection and maintenance of all Works as set out in Schedule "J" annexed hereto.
- g) From time to time, upon written request, the Developer's Consulting Engineer shall be required to certify in writing the actual cost of design, construction and maintenance of all Works installed and constructed to date, and the estimated cost of all outstanding Works, and the Director of Engineering and Operations may adjust the amount of security required if the actual cost of construction of all Works, installed and constructed to date or the estimated cost of all outstanding Works exceeds the original estimated costs as set out in Schedule "J" annexed hereto and the Developer shall be required to obtain, and the Developer hereby covenants to obtain, an amendment to the security to give effect thereto. In the event the Developer fails to increase the amount of security within seven (7) days of receipt of aforesaid written notice, then the Developer shall be deemed to be in Final Default of the terms and conditions of this Agreement.

#### 45. Cash Payments

Prior to the execution of this Agreement by the City, as security for payment of services to be rendered by the City and its agents as required by this Agreement, and for presently outstanding payments owing to the City, the Developer shall, in accordance with Schedule "J" annexed hereto, deposit with the City cash payment

and cash security as set out in Schedule "J", which security shall include, but not be limited to the following:

1. all arrears of taxes and all current taxes and local improvement charges assessed against the lands described in Schedule "A" annexed hereto; and
2. the City's engineering, administrative, consulting, and inspection costs for this Agreement, approval of the Plans, and enactment of By-laws, shall be payable in cash to the City at the time of signing of this Agreement calculated on the following basis:
  - i. 2% of cost of Works
  - ii. Further, the Developer's Consulting Engineer shall be required to certify the actual cost of all construction in writing to the Director of Engineering and Operations, who may adjust the amount of inspection fee following construction if the actual construction costs vary from the original estimated costs by an amount greater than ten percent (10%).
3. The Developer shall reimburse the City, all legal costs incurred by the City associated with the preparation, administration and registration of this Agreement.

**46. Letter of Credit for On-Site Primary Services**

- a) The Developer shall deposit with the Treasurer of the City, prior to execution of this Agreement, a Letter of Credit in the amount of ten percent (10%) of the estimated cost of the design and construction of all Primary services to be constructed within the boundaries of the Plan of Subdivision (herein referred to as "On-Site Primary Services"). On default by the Developer in providing the On-Site Primary Services in accordance with the provisions of this Agreement and/or the approved Plans, the City shall be entitled to call upon such security deposit to pay for the completion of such On-Site Primary Services. Upon receipt of Claims for Liens filed pursuant to the provisions of the *Construction Lien Act* with respect to the construction of On-Site Primary Services, the City shall also be entitled to call upon the said Letter of Credit.
- b) For Off-Site Primary Services, the Treasurer, from time to time, upon written application of the Developer, may reduce or release security deposits, provided that at no time shall the amount retained be less than one hundred percent (100%) of the estimated cost of uncompleted Off-Site Primary Services plus ten percent (10%) of the actual cost of completed works. Before reduction or release of any security deposit, the Treasurer, from out of the security deposit, may pay firstly, into court or in settlement, any liens arising pursuant to the provisions of the *Construction Lien Act* with respect to the construction of Off-Site Primary Services secured under Section 44 of this Agreement; secondly, any engineering, consulting, administrative and legal costs still owing; thirdly, any arrears of taxes; fourthly, taxes for the then current year whether levied or unlevied, based on the assessment applicable; and finally, shall return the balance, if any, to the Developer.
- c) The Treasurer shall retain as security for the Maintenance Warranty Period an amount equal to ten percent (10%) of the total actual cost of Off-Site Primary Services completed to guarantee the workmanship and materials of the Works until assumption of the Off-Site Primary Services by the City. Upon assumption in accordance with the provisions of this Agreement, the ten percent (10%) Maintenance Warranty hereinbefore referred to may be released by the Treasurer to the Developer.

**47. Letter of Credit for Off-Site Primary Services**

- a) The Developer shall deposit with the Treasurer of the City, prior to execution of this Agreement, a Letter of Credit for one hundred percent (100%) of the costs of design and construction of all Primary Services outside the

boundaries of the Plan of Subdivision (herein referred to as "Off-Site Primary Services"). On default of the Developer in providing the Off-Site Primary Services in accordance with the provisions of this Agreement and/or the approved Plans, the City shall be entitled to call upon such security deposit to pay for the completion of such Off-Site Primary Services. The City shall also have the right to call upon the said security deposit upon receipt of Claims for Liens filed pursuant to the provisions of the *Construction Lien Act* with respect to Off-Site Primary Services.

- b) For Off-Site Primary Services, the Treasurer, from time to time, upon written application of the Developer, may reduce or release security deposits, provided that at no time shall the amount retained be less than one hundred percent (100%) of the estimated cost of uncompleted Off-Site Primary Services plus ten percent (10%) of the actual cost of completed works. Before reduction or release of any security deposit, the Treasurer, from out of the security deposit, may pay firstly, into court or in settlement, any liens arising pursuant to the provisions of the *Construction Lien Act* with respect to the construction of Off-Site Primary Services secured under Section 44 of this Agreement; secondly, any engineering, consulting, administrative and legal costs still owing; thirdly, any arrears of taxes; fourthly, taxes for the then current year whether levied or unlevied, based on the assessment applicable; and finally, shall return the balance, if any, to the Developer.
- c) The Treasurer shall retain as security for the Maintenance Warranty Period an amount equal to ten percent (10%) of the total actual cost of Off-Site Primary Services completed to guarantee the workmanship and materials of the Works until assumption of the Off-Site Primary Services by the City. Upon assumption in accordance with the provisions of this Agreement, the ten percent (10%) Maintenance Warranty hereinbefore referred to may be released by the Treasurer to the Developer.

**48. Letter of Credit for Off-Site and On-Site Secondary Services**

- a) The Developer shall deposit with the Treasurer of the City, prior to execution of this Agreement, a Letter of Credit in the amount of one hundred and twenty percent (120%) of the costs of design and construction of all Off-Site and On-Site Secondary Services. On default of the Developer in providing the Secondary Services in accordance with the provisions of this Agreement and/or the approved Plans, the City shall be entitled to call upon such security deposit in order to pay for the completion of such Secondary Services. The City shall also have the right to call upon the said security deposit upon receipt of Claims for Lien filed pursuant to the provisions of the *Construction Lien Act* with respect to Secondary Services.
- b) For all Secondary Services, the Treasurer, from time to time, upon written application of the Developer, may reduce or release such security deposits, provided that at no time shall the amount retained be less than one hundred and twenty percent (120%) of the estimated cost of uncompleted Secondary Services. Before reduction or release of any security deposit, the Treasurer, from out of the security deposit, may pay firstly, into court or in settlement, any liens arising pursuant to the provisions of the *Construction Lien Act* with respect to the construction of Secondary Services secured under Section 44 of this Agreement; secondly, any engineering, consulting, administrative and legal costs still owing; thirdly, any arrears of taxes; fourthly, taxes for the then current year whether levied or unlevied, based on the assessment applicable; and finally, shall return the balance, if any, to the Developer.
- c) The Treasurer shall retain as security for the Maintenance Warranty Period an amount equal to ten percent (10%) of the total actual cost of Secondary Services completed to guarantee the workmanship and materials of the Works until assumption of Secondary services by the City. Upon assumption in accordance with the provisions of this Agreement, the ten percent (10%) Maintenance Warranty herein before referred to may be released by the Treasurer to the Developer.
- d) Upon written demand by the Director of Engineering and Operations and upon the Developer making application for release of security, the Developer

shall deliver to the City, a statutory declaration by or on behalf of the Developer stating:

- i) the date of completion of the subject services;
- ii) Works completed to date;
- iii) all accounts that have become due and payable in connection with the construction, installation, inspection, repair and maintenance of the subject services have been paid; and
- iv) all requirements of the *Construction Lien Act* have been complied with to date and proof of expiration of liens under the *Construction Lien Act*.

49. That Clause 18 of the Original Subdivision Agreement titled Default be deleted and replaced with the following:

**DEFAULT**

- a) Upon breach by the Developer of any covenant, term, condition or requirement of this Agreement, any contract awarded for the Works or the approved Plans, or upon the Developer becoming insolvent or making any assignment for the benefit of creditors, the City, at its option, may declare the Developer to be in default. Notice of such default shall be given by the City, and if the Developer shall not remedy such default within such time as provided in the notice, the City may declare the Developer to be in Final Default under this Agreement and shall then forthwith give notice thereof to the Developer. Upon notice of default having been given, the City may require all work by the Developer, its servants, agents, independent contractors and sub-contractors to cease (other than any work necessary to remedy such default) until such default shall have been remedied, and in the event of final default, may require all work as aforesaid to cease. Upon Final Default of the Developer, the City may, at its option, adopt or pursue any or all of the following remedies, but shall not be bound to do so:
  - i) enter upon the land shown on the said Plan of Subdivision, by its servants, agents and contractors and complete any work, service, repair or maintenance wholly or in part required herein to be done by the Developer, and collect the cost thereof from the Developer and/or enforce any security available to it;
  - ii) make any payment which ought to have been made by the Developer and upon demand collect the amount thereof from the Developer and/or enforce any security available to it;
  - iii) retain any sum of money heretofore paid by the Developer to the City, for any purpose, and apply the same in payment or part payment for any work which the City may undertake;
  - iv) assume any work or services whether the same have been completed or not, and thereafter the Developer shall have no claim or title thereto or remuneration therefor;
  - v) bring action to compel specific performance of all or any part of this Agreement, or for damages or other relief or remedy; or
  - vi) exercise any other remedy granted to the City under the terms of this Agreement or available to the City in law or in equity.
- b) Developer shall be deemed to be in Final Default if:
  - i) the City receives written notice from the Bank of its intention to not renew the Letter of Credit;
  - ii) the Developer has not made provision for renewal at least thirty (30) days prior to the date of maturity of any Letter of Credit posted;

- iii) the City receives written notice from the insurance company or the Developer's agent that any insurance policy filed by the Developer with the City is being altered, cancelled or allowed to lapse;
- iv) the Developer has not made provision for renewal at least thirty (30) days prior to the date of expiry of any insurance policy, Performance and Maintenance Bond or Labour and Material Payment Bond;
- v) upon sale of the Lands the new Developer has not delivered to the City, replacement security deposits; or
- vi) the Developer fails to increase security as required by the provisions of this Agreement.

50. That Clause 18 of the Original Subdivision Agreement titled Completion be deleted and replaced with the following:

**COMPLETION, MAINTENANCE, ACCEPTANCE AND ASSUMPTION OF WORKS**

a) Condition Precedent

The performance by the Developer of its obligations in this Agreement to the satisfaction of the Director of Engineering and Operations shall be a condition precedent to the approval, maintenance, acceptance and assumption of the Works or any of them by the City.

b) Time to Complete Servicing

The Developer shall proceed with the installation or construction of the Works required by this Agreement and the approved Plans with all reasonable dispatch and shall complete:

- i) all required Primary Services within one year after the date of registration of the Plan of Subdivision; and
- ii) all required Secondary Services not later than three (3) years after completion of the Primary Services or forthwith after 80% of the building construction has been completed whichever occurs earlier unless otherwise approved by the Director of Engineering and Operations.
- iii) The Director of Engineering and Operations may extend the time for completion of Primary and Secondary Services or any of them for such length of time as he or she may deem expedient upon written application of the Developer with reasons why the extension is required.

51. **Roads**

a) Until Council passes an Assumption By-Law for Secondary Services assuming all the roads constructed, the Developer, on behalf of itself, its successors and assigns, including its successors in title to the Lands in the Plan of Subdivision, hereby releases, discharges and agrees to indemnify and save harmless the City from and against all actions, causes of action, suits, claims and demands whatsoever and howsoever arising, and without limiting the generality of the foregoing, which may arise by reason of:

- i) any alteration of the existing grade or level of any road or roads on the said Plan to bring the grade or level in accordance with the plans approved by the Director of Engineering and Operations;
- ii) any damage to the lands abutting on any road or roads shown on the Plan of Subdivision or to any building erected thereon arising from

consequence of any such alteration of grade or level; and

iii) any damages or injuries (including death) to persons or damage to property occurring or arising on any road or roads on the said Plan of Subdivision, however caused.

b) All road allowances shown on the Plan of Subdivision shall be named to the satisfaction of the Director of Engineering and Operations.

**52. Completion Certificate for Primary Services**

- a) Primary Services installation will not be considered complete by the City until an inspection has been made by the Director of Engineering and Operations or his designate and the Completion Certificate for Primary Services has been issued by the Director of Engineering and Operations. The Director of Engineering and Operations shall be accompanied during his inspection by the Developer's Consulting Engineer. The Works shall be inspected and all deficiencies rectified to the complete satisfaction of the Director of Engineering and Operations, prior to the approval of the Completion Certificate for Primary Services.
- b) The City may withhold approval of a Completion Certificate if, in the sole opinion of the Director of Engineering and Operations, the Developer is in default of its obligations pursuant to this Agreement or the approved Plans.
- c) Prior to the Director of Engineering and Operations approving the Completion Certificate for Primary Services, the documentation listed in Subsection 52(d) must be provided to the Director of Engineering and Operations in a single submission package.
- d) The Developer's Consulting Engineer shall provide to the Director of Engineering and Operations document(s) verifying that all primary services were installed and constructed in accordance with approved plans and specifications;
  - i) Certificate(s) stating that all watermains have been flushed, chlorinated and pressure tested in accordance with City standards;
  - ii) Certificate(s) stating that all watermain tracer wires have been tested and the new water distribution system can be traced;
  - iii) Certificate(s) stating that all fire hydrants servicing the development have been tested by a qualified hydrant testing agent;
  - iv) Copies of the hydrant test reports and fire flow test reports;
  - v) Certificate(s) stating that all storm and sanitary sewers have been flushed after placement of base course asphalt, air pressure tested, and inspected and videoed via close circuit television;
  - vi) Copies of the storm and sanitary sewer inspection reports and supporting data and documentation;
  - vii) Certificate stating that the approved Tree Preservation Plan has been complied with including a Clearance Letter from the Region;
  - viii) Certificate(s) stating that all utility services required to service the Plan of Subdivision are installed & constructed or a letter of commitment to complete the utility services from utility companies;
  - ix) Certificate (Overall Grading Certificate) stating that rough grading and major drainage works or swales have been

- completed in accordance with the Subdivision Grade Control Plan;
- x) The original Drawings showing each of the said works "As Constructed" together with electronic drawing files in AutoCAD 2012 format using City of Port Colborne Drafting Standards; and
  - xi) Plans (cards) showing the location and depth of each sanitary sewer lateral, storm sewer lateral and water service lateral constructed to service each of the lots.
- e) The Developer shall provide the Director of Engineering and Operations with:
- i) a Statutory Declaration from the Developer in a form satisfactory to the Director of Engineering and Operations setting out the Works completed and verifying:
    1. All such works have been completed in accordance with the terms of this Agreement and the approved plan and specifications;
    2. All accounts have been paid for installation, construction, inspection, repair and maintenance of such Works; and
    3. That there are no outstanding debts, claims or liens in respect of such works.
  - f) Subject to Section 52d) hereof, upon receipt of the required documentation and the Director of Engineering and Operations' satisfaction that the installation and construction of all Primary Services has been completed in accordance with this Agreement and approved Plans, the Director of Engineering and Operations, shall date and approve the Completion Certificate of Primary Services.

**53. Completion Certificate for Secondary Services**

- a) Secondary Services installation will not be considered complete by the City until an inspection has been made by the Director of Engineering and Operations or his designate and the Completion Certificate for Secondary Services has been issued by the Director of Engineering and Operations. The Director of Engineering and Operations shall be accompanied during his inspection by the Developer's Consulting Engineer. The Works shall have been inspected and all deficiencies rectified to the complete satisfaction of the Director of Engineering and Operations, prior to the approval of the Completion Certificate for Secondary Services.
- b) The City may withhold approval of a Completion Certificate if, in the sole opinion of the Director of Engineering and Operations, the Developer is in default of its obligations pursuant to this Agreement or the approved Plans.
- c) Prior to the Director of Engineering and Operations approving the Completion Certificate for Secondary Services, the documentation listed in Section 53d) must be provided to the Director of Engineering and Operations in a single submission package.
- d) The Developer's Consulting Engineer shall provide to the Director of Engineering and Operations:
  - i) Certificate(s) verifying that all secondary services have been installed, fully completed, repaired and maintained in accordance with approved plans and specifications; and
  - ii) If required, the original Drawings showing each of the said works as constructed together with electronic drawing files in

AutoCAD 2012 format using City of Port Colborne Drafting Standards.

- e) The Developer shall provide the Director of Engineering and Operations with a Statutory Declaration from the Developer in a form satisfactory to the Director of Engineering and Operations setting out the Works completed and verifying:
  - i) All such works have been completed in accordance with the terms of this Agreement and the approved plan and specifications;
  - ii) All accounts have been paid for installation, construction, inspection, repair and maintenance of such Works; and
  - iii) that there are no outstanding debts, claims or liens in respect of such works.
- f) Subject to Subsection 36 hereof, upon receipt of the required documentation and the Director of Engineering and Operations' satisfaction that the installation and construction of all Secondary Services has been completed in accordance with this Agreement and approved Plans, the Director of Engineering and Operations shall date and approve the Completion Certificate for Secondary Services.

**54. Maintenance of the Subdivision**

- a) The Developer shall be responsible for the general tidy appearance of the entire Lands until completion of all building, and carry out all weed cutting and maintenance on all unsold lands and all un-assumed roads to the satisfaction of the Director of Engineering and Operations.
- b) The Developer shall adequately maintain all roads, sidewalks and pedestrian walkways within the Plan of Subdivision free from mud, debris, building materials, and other obstructions, to the satisfaction of the Director of Engineering and Operations until Council passes an Assumption By-Law for Secondary Services.
- c) The Developer shall be responsible to control weeds and to maintain vacant lands free from debris, waste building materials, tree stumps, discarded boulders, and other refuse, and shall notify any purchaser, in writing, to refrain from dumping on such vacant lands, including lands dedicated by it to the City for municipal purposes.
- d) The Developer shall maintain the Works, and every part thereof, in perfect order and in complete repair for the duration of the Maintenance Warranty Period and shall repair in a permanent manner satisfactory to the Director of Engineering and Operations any and all damage or injury to the Works, both during construction and during the period of maintenance as aforesaid.
- e) Should the Developer, for any reason, fail to carry out the repairs or maintenance, including weed control, when requested by the City, the Director of Engineering and Operations, at his sole option, after giving the Developer twelve (12) hours written notice, may perform the repairs or maintenance and all costs, charges and expenses so incurred shall be borne by the Developer. The decision of the Director of Engineering and Operations shall be final as to the necessity of repairs or of any work done or required to be done. Any costs incurred by the City not reimbursed by the Developer forthwith may be collected by the City in like manner as municipal taxes as provided in *The Municipal Act* and with the same priorities as taxes that are overdue and payable.
- f) The Developer's obligation to maintain the Works as aforesaid shall commence on the approval date of the Completion Certificate of the Works and extend for a minimum of two (2) years or until the Director

of Engineering and Operations approves the Certificate of Final Acceptance for such Works whichever occurs last (this period is herein referred to as the "Maintenance Warranty Period").

- g) The Maintenance Warranty Period for Primary Services shall commence on the date the Director of Engineering and Operations approves the Completion Certificate for Primary Services.
- h) The Maintenance Warranty Period for Secondary Services shall commence on the date the Director of Engineering and Operations approves the Completion Certificate for Secondary Services.

**55. Certificate of Final Acceptance**

- a) Upon expiration of the two (2) year Maintenance Warranty Period for Primary Services or Secondary Services as the case may be, and upon receipt of written application by the Developer, the applicable Works will be inspected by the Director of Engineering and Operations, and provided all deficiencies have been rectified to his satisfaction and the Developer is not in default of the terms of this Agreement, the subject Works shall be accepted by the City and the Director of Engineering and Operations shall approve the Certificate of Final Acceptance prepared by the Developer's Consulting Engineer provided the requirements identified in Schedule "C" of the Certificate of Final Acceptance have been met.
- b) The Developer is required to submit a certificate from a registered Ontario Land Surveyor certifying he has found and/or replaced all standard iron bars (SIB's) shown on the registered Plan of Subdivision as of a date not earlier than seven days prior to the Director of Engineering and Operations approving the Certificate of Final Acceptance for Secondary Services.
- c) If upon inspection of the applicable Works all deficiencies have not been rectified to the complete satisfaction of the Director of Engineering and Operations the Maintenance Warranty Period shall be extended until such time as all deficiencies have been rectified and the Certificate of Final Acceptance has been approved by the Director of Engineering and Operations.
- d) The Director of Engineering and Operations may withhold approval of a Certificate of Final Acceptance for Primary or Secondary Services, if, in the sole opinion of the Director of Engineering and Operations, the Developer is in default of its obligations to inspect, repair, construct or maintain any of the Works pursuant to this Agreement and the approved Plans.

**56. Assumption of Municipal Services**

- a) The Developer hereby acknowledges that upon assumption by the City of the municipal services required to be installed and constructed by this Agreement and the approved Plans, all such municipal services shall wholly vest in the City without payment therefor, free and clear of all claims and liens and the Developer shall have no right, title or interest therein. Municipal services shall be assumed by the City by Council passing:
  - i) an Assumption By-Law for Primary Services after the Director of Engineering and Operations approves the Certificate of Final Acceptance for Primary Services; and
  - ii) an Assumption By-Law for Secondary Services after the Director of Engineering and Operations approves the Certificate of Final Acceptance for Secondary Services.

- b) The Assumption By-Law for Primary Services shall not include the following Primary Services:
  - i) the streets and roadways constructed by the Developer within the Plan of Subdivision; and
  - ii) the Utility Services other than the streetlights.
- c) The Assumption By-Law for Secondary Services shall include the following Primary/Secondary Services:
  - iv) finished streets and roadways as constructed by the Developer within the Plan of Subdivision; and
  - v) all Secondary Services constructed by the Developer in accordance with the approved Plans and this Agreement.B

57. **INTERPRETATION**

It is hereby agreed that in construing this Agreement the words "Developer" and the personal pronoun "he", "it", "his" or "him" relating thereto and used therewith, shall be read and construed as "Developer or Developers", and "he", "she", "it" or "they", "his", "hers", "its" or "their", and "him", "her", "it" or "them" respectively, as the number and gender of the Party or Parties referred to in each case require and the number of the verb agreeing therewith shall be construed as agreeing with the said word or pronoun so substituted.

**IN WITNESS WHEREOF** the Parties have hereunto caused their seals to be affixed and attested by their proper signing officers and the individual Parties have hereunto set their hands and seals, as of the date hereof.

**SIGNED, SEALED & DELIVERED  
IN THE PRESENCE OF:**

1399908 ONTARIO LTD.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
RAY KHANNA  
I HAVE THE AUTHORITY TO BIND THE  
CORPORATION

1379296 ONTARIO INC.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
ELAINE HRISTOVSKI  
I HAVE THE AUTHORITY TO  
BIND THE CORPORATION

THE CORPORATION OF THE CITY OF  
PORT COLBORNE, Per:

\_\_\_\_\_  
WILLIAM C. STEELE, MAYOR

\_\_\_\_\_  
AMBER LAPOINTE, CLERK

WE HAVE THE AUTHORITY TO BIND THE  
CORPORATION

**SCHEDULE "A"**

**Description of Lands**

Lots 48 to 75 inclusive Registered Plan 59M-195 City of Port Colborne, Regional Municipality of Niagara.

**SCHEDULE "B"**

**Lands Conveyed for Public Purposes**

The Developer shall convey free and clear of all encumbrances and at their own expense, easements to the City, over, under and through the following:

Easements

Parts 7 to 13 inclusive for storm drainage purposes laid out on reference plan 59R-15883, prepared by Kirkup, Mascoe & Ure Surveying Ltd, June 22, 2017.

Parts 1 to 5 inclusive for storm drainage purposes laid out on reference plan 59R-16623, prepared by Kirkup, Mascoe & Ure Surveying Ltd., January 30, 2020.

**SCHEDULE "C"**

**Additional Site Conditions**

1. The Developer agrees immediately after the registration of this Agreement, to deliver to the City executed transfers of easements and executed deeds of conveyance sufficient to vest in the City, or where applicable, in any other public authority or person, absolute title in fee simple, free and clear of all liens, charges, encumbrances and easements, the lands as set out in Schedule "B".
2. The Developer agrees to provide the City with a copy of all documentation for installation of services, including drawings, spreadsheets and forms. This includes digital copies of all drawings in ".dwg", ".pdf" and ".shp" formats, with the .pdf copy being full size, scalable and stamped, signed and dated by the Developer's Consulting Engineer to the satisfaction of the Director of Engineering and Operations.
3. The Developer agrees to install the Temporary Swales as shown on Drawing Number 227-GP as part of Stage 1 to ensure drainage for Stage 1 functions until servicing is completed on Stage 2 lands.

**SCHEDULE "D"**

**Roads**

The Developer shall clear, excavate and grade the full width of all road allowances within the subdivision, to the City's standard road cross-section and to the grades approved by the Engineer. The Developer shall dispose of all brush, rubble and surplus material resulting from this operation. The Developer shall construct, as part of the primary services as per roadways identified in Appendix "A".

**SCHEDULE "E"**

**Sanitary Sewers**

The Developer shall construct a sanitary sewer system or systems including all trunk sewer extensions necessary to service the proposed development. All sewers shall be installed in the locations and at the grades and elevations the Engineer may direct. Capacity shall be provided in the sanitary sewer system for all domestic wastes in accordance with City, Region, and the Ontario Ministry of the Environment's design criteria. The pipe sizes selected shall have sufficient capacity to serve the ultimate drainage area in which the subdivision is located and as designed by the Engineer. PVC sewer pipe shall be used for all local and minor collector sewers except where otherwise specified by the Engineer; a minimum pipe size for local sewers 200 mm diameter. The City's standard manholes of a type approved by the Engineer shall be poured or placed at a minimum spacing of 106 m.

**Private Drain Connections**

The Developer shall construct separate sanitary sewer connections (laterals) to serve each lot. Sanitary sewer laterals shall be a minimum 100 mm diameter PVC building sewer pipe with proper fittings as designed by City's construction standards.

Only domestic waste from any building constructed on any lot shall be discharged into the sanitary sewer system through a drain connected to the sanitary sewer lateral servicing such lot.

Where there is a difference in elevation of the storm and sanitary sewer lateral, these shall be constructed in separate trenches and, in other cases, shall be constructed in accordance with the direction of the Engineer. Joint use of either the storm or sanitary lateral trenches will be permitted for the installation of water service connections subject to the City's approval.

**SCHEDULE "F"**

**Storm Sewers and Surface Drains**

The Developer shall construct a storm sewer system and outlet or such extensions as necessary to provide a connection to existing trunk sewers where available. All sewers shall be installed in such locations, grades and depths as the Engineer may direct and such pipe sizes as are required to serve the subdivision lands and all or any portion of the ultimate drainage area the proposed development is located in. The storm sewer shall be designed to accommodate all roof water and surface runoff from roads and properties.

Concrete pipe of the gasket joint, or other approved type, shall be used, minimum pipe size for storm sewer 300 mm diameter, except where otherwise specified by the Engineer.

**Private Drain Connections**

The Developer shall construct separate storm sewer connections (laterals) to serve each lot. Storm sewer laterals shall be a minimum 125 mm diameter PVC building sewer pipe with proper fittings as designated by City's construction standards.

The foundation drains shall be collected in a sump from which they will be pumped and discharged to the surface in such a manner that any water collected shall drain away from the foundation. In no case shall the foundation drains be connected to the sanitary sewer lateral. Foundation drain connections may be made to the storm sewer lateral provided such connections are made at a point above the finished elevation of the ground adjacent the building.

Roof water from any building constructed on any lot shall be discharged directly to the ground through rain water leaders.

Where there is a difference in elevation of the storm and sanitary sewer lateral, these shall be constructed in separate trenches and, in other cases, shall be constructed in accordance with the direction of the Engineer. Joint use of either the storm or sanitary lateral trenches will be permitted for the installation of water service connections subject to the City's approval.

**SCHEDULE "G"**

**Watermains**

The Developer shall construct a complete watermain system or systems, and all necessary appurtenances, including hydrants and house water service connections from the watermain to the street line. The design shall be prepared and/or approved by the City and constructed in accordance with its specifications. All watermains shall be sufficient size to service the subdivision, and the lands outside the subdivision, which will require the use of the subdivision's watermains as trunk or feeder mains.

The Developer shall be responsible for any damage causing to such watermains and appurtenances that may occur during construction of buildings on the lands and during the grading of same.

The Developer shall ensure that all service boxes located on the street line shall be adjusted to meet the finished boulevard elevation at the time of final grading of the boulevards and sodding.

The Developer agrees to obtain and comply with the necessary City watermain approvals to connect to the existing municipal water service.

The Developer will need to comply with the City's most recent commissioning plan at the date of construction.

**SCHEDULE "H"**

**Sidewalks**

The Developer shall construct and pay the cost of concrete sidewalks along the roads as shown hereunder. The said sidewalks are to be constructed to the satisfaction of the City and the specifications as required by the Engineer and shall be 1.5 m in width and 125 mm in thickness per Drawing Number 227-GSP.

1. Along the north, south and east side of Oriole Crescent along the
  - South and west side of Lot 69
  - West sides of Lots 70 to 73
  - West and north side of Lot 74
  - North side of Lot 75
  - South side of Lot 38, Apollo Drive
  - North side of Lot 58, Apollo Drive

**SCHEDULE "I"**

**Streetlights**

The Developer shall construct and pay the cost of a streetlighting network on Oriole Crescent. The streetlights will be installed as per approved design by Canadian Niagara Power Company Inc., in accordance with all applicable City standards as per Appendix "A" Drawing Number SL-1 by RTG Systems Inc. The Developer will supply the City with 3 spare fixtures including but not limited to poles, arms, luminaires and mounting hardware for replacement inventory.

The Developer shall install the most recent City approved fixtures.

**SCHEDULE "J"**  
**Subdivision Deposit**

**NAME OF SUBDIVISION:** Meadow Heights Phase II – Stage 1  
**OWNER:** 1399908 ONTARIO LTD.

**CONSTRUCTION COST YEAR:** 2020

	<u>DEPOSIT</u>	<u>Letter of Credit</u>	<u>Cash Deposit</u>
1. <u>General</u>	\$74,950.00	\$74,950.00	
2. <u>Primary Services</u> (Security for Construction Lien Act)	\$864,435.75	\$86,443.57	
3. <u>Secondary Services</u> (120% Deposit)	\$213,690.00	\$213,690.00	
4. <u>Inspection Charges</u>	\$23,000.00 (received)		\$8,312.00
5. <u>Street Lighting &amp; Hydro</u>	\$38,335.00	\$38,335.00	
6. <u>Tree Planting</u>	\$10,500.00	\$10,500.00	
7. <u>Street Name Signs</u>	\$2,000.00		\$2,000.00
8. <u>Sewer Cleaning</u>	\$18,360.00	\$18,360.00	
9. <u>Lot Grading</u>	\$52,000.00	\$52,000.00	
		<hr/> \$494,278.57	<hr/> \$10,312.00

**10. Details of Letters of Credit and Cash Deposit**

Remittance of cash deposit of \$8312.00 should be made payable to The Corporation of the City of Port Colborne and the Letters of Credit should be drawn as follows:

City of Port Colborne (General)	\$74,950.00
City of Port Colborne (Primary Services)	\$86,443.51
City of Port Colborne (Secondary Services)	\$213,690.00
City of Port Colborne (Street Lighting & Hydro)	\$38,335.00
City of Port Colborne (Tree Planting)	\$10,500.00
City of Port Colborne (Sewer Cleaning)	\$18,360.00
City of Port Colborne (Lot Grading)	\$52,000.00

**11. Details of Deeds Required**

Parts 1 to 13 on Plan 59R-15883 and Parts 1 to 5 on Plan 59R-16623 inclusive for storm drainage purposes (to City)

**NOTE:** A signed Inhibiting Order must accompany this subdivision agreement. Further confirmation of the partial discharge of any mortgage or other encumbrance affecting the lands being conveyed to the City or Region must be provided to the City or Region.

**12. Details of Easements Required**

None.

**NOTE:** Should any of the following land be encumbered with mortgages, etc. the mortgages must consent to the documents.



**APPENDIX "A"**

**Plans, Profiles and Specifications**

1. General Notes and Details, prepared by Upper Canada Consultants, dated April 9, 2020, Drawing Number 227-GND.
2. Plan & Profile – Oriole Crescent from STA – 0+000 to 0+160, prepared by Upper Canada Consultants, dated April 9, 2020, Drawing Number 227-PP1.
3. Plan & Profile – Oriole Crescent from STA 0+160 to 0+320, prepared by Upper Canada Consultants, dated April 9, 2020, Drawing Number 227-PP2.
4. Design Cross Sections 1 to 4, Meadow Heights, Phase 2, prepare by Upper Canada Consultants, dated April 9, 2020, Drawing Numbers 227-XSC1 to XSC4.
5. General Servicing Plan 227-GSP
6. General Grading Plan 227-GP
7. General Streetscaping Plan 227-SS

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The Corporation of the City of Port Colborne

By-law no. 6849/99/20

Being a by-law to amend Zoning By-law 6575/30/18 respecting lands legally described as Part of Lots 16, 17, 18 and 19, part of the road allowance between Lots 16 and 17, part of the road allowance between Lots 18 and 19, in the City of Port Colborne, Regional Municipality of Niagara. The property is municipally known as the Nyon Oil lands generally south of the CN Rail lane, west of Highway 140 and east of Canal Road in the City of Port Colborne.

Whereas By-law 6575/30/18 is a by-law of The Corporation of the City of Port Colborne restricting the use of land and the location and use of buildings and structures; and

Whereas, the Council of The Corporation of the City of Port Colborne desires to amend the said by-law.

Now therefore, and pursuant to the provisions of Section 34 of the *Planning Act, R.S.O. 1990*, The Corporation of the City of Port Colborne enacts as follows:

1. This amendment shall apply to those lands described on Schedule "A" attached to and forming part of this by-law.
2. The Special Provision: HI-46-H of Section 37.2 entitled Special Provisions of Zoning By-law 6575/30/18, as amended, is hereby further amended by removing the H holding provision.
3. That this by-law shall come into force and take effect on the day that it is passed by Council, subject to the provisions of the *Planning Act*.
4. The City Clerk is hereby authorized and directed to proceed with the giving notice of the passing of this by-law, in accordance with the *Planning Act*.

Enacted and passed this 9th day of December, 2020.

\_\_\_\_\_  
William C Steele  
Mayor

\_\_\_\_\_  
Amber LaPointe  
Clerk

City of Welland



THIS IS SCHEDULE "A" TO BY-LAW NO. 6849/99/20 HI-46 lands where the H holding is removed  
PASSED ON THE DECEMBER 14, 2020.

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CLERK



NOT TO SCALE

NOVEMBER 9, 2020

FILE NO. D14-05-20

DRAWN BY:  
PLANNING & DEVELOPMENT

The Corporation of the City of Port Colborne

By-law No. 6850/100/20

Being a By-law to Authorize Entering into a Contract Agreement with R&B Electric Solutions Inc. Re: Project No. 2020-30 Supply and Installation of Solar Lighting at H.H. Knoll Lakeview Park

Whereas at its meeting of December 14, 2020 the Council of The Corporation of the City of Port Colborne approved the recommendation of Community and Economic Development, Parks and Recreation Division, Report No. 2020-189, Subject: Canadian Experiences Fund Grant Update - Project No. 2020-30 Supply and Installation of Solar Lighting at H.H. Knoll Lakeview Park;

Whereas the Council of The Corporation of the City of Port Colborne is desirous of entering into a contract agreement with R&B Electric Solutions Inc. regarding Tender 2020-30, Supply and Installation of Solar Lighting at H.H. Knoll Lakeview Park.

Now therefore the Council of The Corporation of the City of Port Colborne enacts as follows:

1. That the Corporation of the City of Port Colborne enter into a contract agreement with R&B Electric Solutions Inc. regarding Tender 2020-30, Supply and Installation of Solar Lighting at H.H. Knoll Lakeview Park.
2. That the Mayor and the Clerk be and each of them is hereby authorized and directed to sign said agreement, attached hereto as Schedule "A", together with any documents necessary to complete the conditions of said agreement, and the Clerk is hereby authorized to affix the Corporate Seal thereto.

Enacted and passed this 14<sup>th</sup> day of December, 2020.

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William C. Steele  
Mayor

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Amber LaPointe  
City Clerk

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# **CITY OF PORT COLBORNE**

## **REQUEST FOR PROPOSAL**

**CONTRACT No. 2020-30**

**SUPPLY AND INSTALLATION OF SOLAR LIGHTING  
AT H.H. KNOLL LAKEVIEW PARK**

Date of Issue: Monday, October 26th, 2020

**Closing Date: Monday, November 16th, 2020 at 2:00:00 p.m. local time**

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## Notice

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This contract utilizes the latest revision of the **Niagara Peninsula Standard Contract Document**, which forms the specification part of this document, with exception to the *Standard Instruction to Bidders, Form of Proposal, and Supplementary Special Provisions*. The **Standard Document** is available on the internet at the “Tenders” section of the Regional Municipality of Niagara website ([www.niagararegion.ca](http://www.niagararegion.ca)) and the responsibility for obtaining or having access to the Document will rest with the Tenderer. Once acquired, the **Standard Document** can be utilized on all projects which clearly indicate reference and use of the **Niagara Peninsula Standard Contract Document**. The **Standard Document** is intended to be used as a reference specification and need not be acquired with each tender or quotation call.

This contract utilizes the latest revision of the **Ontario Provincial Standards for Roads and Public Works**, which forms the specification part of this document, with exception to the *Standard Instruction to Bidders, Form of Proposal, and Supplementary Special Provisions*. The **Provincial Standard Document** is available on the internet at [www.raqsb.mto.gov.on.ca](http://www.raqsb.mto.gov.on.ca) and the responsibility for obtaining or having access to the Document will rest with the Tenderer. Once acquired, the **Provincial Standard Document** can be utilized on all projects which clearly indicate reference and use of the **Ontario Provincial Standards**. The **Provincial Standard Document** is intended to be used as a reference specification and need not be acquired with each tender or quotation call.

## Communications

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All questions related to this Request for Proposal (RFP), or for clarification on completing the proposal submission forms, are to be directed in writing or by e-mail to:

### Single Point of Contact:

**Contact for Enquiries: Patrick Zub, Design and Construction Supervisor**  
**Telephone Number: (905) 835 2900 ext 221**  
**E-mail: patrickzub@portcolborne.ca**

Any questions that the Proponent has to submit questions to be released in the form of an addendum, all questions relating to this RFP should be made in writing or e-mail **no later than Wednesday, November 11th, 2020 (See Appendix 'A' – Schedules)**. The Corporation of the City of Port Colborne will not guarantee a response to any questions received after this deadline. The Corporation of the City of Port Colborne reserves the right to extend the closing deadline or any other dates, if required.

No oral interpretations will be effective to modify any provisions of the proposal, unless they are confirmed in writing to all potential proponents by the Corporation of the City of Port Colborne in the form of an addendum.

Any Proponent finding discrepancies or omissions in the specifications or other documents, or having any doubts concerning the meaning or intent of any part thereof, should immediately request clarification. Responses, if not already addressed in the proposal, will be addressed in the form of addendum, if required, and sent out to the Plan Takers. In order to ensure that addenda are received, Proponents must register as a Plan Taker by e-mailing Stephanie Jennings, Civil Technologist, at [stephaniejennings@portcolorne.ca](mailto:stephaniejennings@portcolorne.ca). Proponents shall be solely responsible for registering as a Plan Taker and ensuring they receive any and all addenda. All addenda should be acknowledged in *Appendix 'C' Form of Proposal*.

If Proponents fail to report any discrepancies, errors or omissions to the City, Proponents will be deemed to have accepted all such terms of reference as being accurate. Proponents are encouraged to review the document in full before the deadline for questions (*See Appendix 'A' – Schedules*).

For the purposes of this contract the following party is identified as:

Owner: The Corporation of the City of Port Colborne  
(hereinafter referred to as “**The City of Port Colborne**” or “**the City**” or “**Owner**”)

## Community Background

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Port Colborne is a dynamic city of 19,000 people on the shores of Lake Erie. The City is one of 12 municipalities that constitute the Regional Municipality of Niagara. The City traces its roots to the extension of the Welland Canal to Lake Erie in 1832, which led to extensive settlement in the City's urban area. Our community offers the best of small and large city infrastructure and activities. While sharing similarities with other municipalities that have distinct urban and rural areas, Port Colborne's history and vision for the future is unique and makes it special.

Port Colborne is situated on the north shore of Lake Erie, at the mouth of the Welland Canal. It shares its boundaries with the Township of Wainfleet to the west, the Town of Fort Erie to the east, and the City of Welland and City of Niagara Falls to the north.

The urban area of Port Colborne is located at the southern end of the municipality, centered on the Welland Canal, and consists of a variety of residential neighbourhoods, a downtown/historic core area, as well as various commercial and industrial areas. The urban area makes up less than one-quarter of the municipality's geographic area.

The Welland Canal has provided an impetus for industrial development along the waterfront. A number of major industries are located on or close to the waterfront, occupied by residential development (primarily cottages) that have deeded access to the beaches and in many cases, access rights that extend into Lake Erie.

The rural area consists of active agricultural lands, hamlet areas, aggregate resource areas, and a handful of estate residential developments.

The community's location at the intersection of major land, water and rail transportation routes makes it an important gateway for bi-national trade passing between Canada and the United States.

Port Colborne has also been recognized regionally and provincially through the Gateway Economic Centre and Places to Grow initiatives. The Region's economic development zone is centered on Port Colborne's Highway 140 corridor identifying this as a key growth area regionally. The Provinces Growth Plan for the Greater Golden Horseshoe identifies Port Colborne as one of three major ports in the region.

Port Colborne is thriving in economic development and is recognized for being able to network globally, regionally, with business owners, festivals and various other levels of government, which allows for enhanced experiences in all that is key to the City's mission and strategy. Promoting Port Colborne as "Niagara's South Coast", the City has invested to create a tourism destination and continually strives to increase visitation in the Region of Niagara as a whole.

## **Section 1.0 Introduction**

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The City of Port Colborne is inviting Proposals from qualified, professional firms to supply and install LED solar lighting along with all applicable components for H.H. Knoll Lakeview Park. The Project entails the purchase and supply of multiple LED solar light units along with, the design and installation of these units along the southern path and parking lot at H.H. Knoll Lakeview Park.

The information provided in this RFP is intended to provide a general overview of the work required.

By submitting a proposal, proponents agree they shall not have any claim for any compensation of any kind whatsoever, as a result of participating in this RFP. This RFP is issued solely for the purpose of obtaining proposals. Neither the issuance of this RFP nor the submission of a proposal implies any obligation by the City of Port Colborne to enter into any agreement.

By the signing and delivering of a Proposal, the proponent agrees that, if the Proposal is accepted and any necessary agreement is negotiated within the irrevocable period, the proponents will enter into such agreement with the City of Port Colborne in a form satisfactory to the City, prior to the commencement of the review.

A Proposal shall be prepared and submitted at the sole expense of the Proponent and without any cost to The City of Port Colborne. All Proposals received by the City Clerk become the property of the City of Port Colborne and as such are subject to the Municipal Freedom of Information and Protection of Privacy Act.

The Proposal, whether or not it has been accepted, and any right there under, shall not be assigned by the Proponent without the prior written consent of the City of Port Colborne which shall not in under any circumstances relieve the proponent of any liabilities and obligations under the Proposal.

### **1.1 Background**

H.H. Knoll Lakeview Park is the most visited park in the City of Port Colborne. In addition, the Park hosts the concert series each year during the Canal Days Marine Heritage Festival, the City's signature event, celebrating the heritage connections of Port Colborne to the Welland Canal (the festival attracts more than 225,000 people each year). The Park is also noted for its trails, shoreline and amenities in the form of a bandshell, concession, splash pad, playgrounds, pavilion and proximity to Sugarloaf Marina, the H.H. Knoll Lakeview Park attracts a wide range of visitors and users.

The purpose of this project is to implement lighting enhancements to H.H. Knoll Lakeview Park in order to better accommodate special community, regional and national events, including the Canal Days Maine Heritage Festival.

The City has identified the need to install additional lighting within the Park. The installation of LED solar lighting will more fully illuminate the venue for attendees, help to ensure the safety and security of those in attendance, assist attendees in locating and navigating to amenities, and enable the City and emergency services to properly oversee and manage the venue during

special events. Effective and evenly distributed lighting result in less antisocial behaviour, fewer accidents, a better crowd flow and easier access for rescue teams. The permanent installation of park LED solar lighting will enhance the overall versatility of the Park for the purpose of hosting a variety of other City and third party operated festivals and events.

## **1.2 Purpose and Intent**

The purpose of this RFP is to solicit written proposals from a single firm, or a team of firms, technically qualified to complete the work required as outlined herein. It is the intent of the City of Port Colborne to enter into an agreement with the proponent who can supply and installed solar lighting at H.H. Knoll Lakeview Park.

The scope of work shall be made up of all components outlined in **Section 3.0 Scope of Proponent Services** are to be used as a guide, and should be combined with good engineering Judgement and Standard Engineering Practices.

## **Section 2.0 Instruction to Proponents and Terms and Conditions**

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### **2.1 Submission Procedure**

The following policies regarding the submission of Proposals and the opening procedures will be applicable for this Project. Proponents are requested to adhere strictly to the instructions concerning submissions.

▶ **All Proposals must be sealed and submitted to:**

Amber LaPointe, City Clerk  
First Floor, City Hall  
66 Charlotte Street  
Port Colborne, Ontario, L3K 3C8

▶ **By the following time:**

2:00:00 p.m. local time  
Monday, November 16th, 2020

Proposals received later than the time specified will not be accepted, regardless of the postal seal date. Submissions must be plainly marked to reveal the contents and the Proponent's name and address. Submissions received after this time will not be opened and will be returned to the Proponent.

Proposals shall be submitted in an envelope with **Appendix 'E' – Envelope Submission Label** affixed to the front.

i. The envelope shall contain:

- Four (4) sets of the Proposal (Including **all** items listed under 4.0 Requirements for Proposal Submission), one (1) marked "Original" and three (3) marked "Copy"
- One (1) digital PDF copy of the proposal saved on a USB Drive
- Appendix 'B' – Litigation and Conflict of Interest
- Certificate of Insurance
- Workers Safety and Insurance Board (WSIB) Certificate of Clearance
- Appendix 'C' – Form of Proposal (**Page 21 – 22**)
- Addendum (if applicable)

The proposal must be legible and written in ink or typewritten. Any form of erasure, strikeout, or over-writing must be initialed by the Proponents authorized signing officer.

All Costs must be clearly indicated and all extensions written in figures. The proposal must not be restricted by a statement added to the Form of Proposal, by covering letter, or by alterations to the Form of Proposal, as supplied by The City of Port Colborne, unless expressly otherwise provided herein.

The Form of Proposal must be signed and witnessed in the spaces provided on the form, with the signature of the Proponent or responsible authorized signing officer of the firm bidding. **If a joint proposal is submitted, it must be signed and addressed on behalf of each of the Proponents.**

Submissions shall not be made by e-mail or facsimile. Adjustment by e-mail, facsimile, letter, or otherwise to a proposal already submitted is not permitted. A Proponent will be permitted to withdraw their unopened submission after it has been deposited, if such request is received in writing by the City Clerk prior to the time specified for the closing of the proposal.

More than one submission from an individual/sole proprietor, firm, partnership, corporation, or association under the same or different names will not be considered.

**In order to submit a proposal you must be on the list of plan takers.**

In response to COVID-19, **City of Port Colborne facilities are closed to the public until further notice to help limit the spread.** The City of Port Colborne is offering alternate methods of quotation submittal including:

- Mailing your Quotation to 66 Charlotte Street, Port Colborne, ON L3K 3C8
- Dropping your Quotation in the mail slot at City Hall. It is located to the left of the main doors

If a receipt or confirmation of delivery is required please call **905-835-2900 ext. 126 or ext. 127.**

For up-to-date information about how the City is responding to COVID-19, including facility closures and service disruptions, visit <http://portcolborne.ca/page/covid-19>.

## **2.2 Addendum / Addenda**

All clarifications, and/or modifications to the proposal documents will be made by written addendum. All such modifications shall be incorporated into the proposal documents and shall be considered when determining the base proposal. Replies to questions and modifications in any other manner will not be legally binding and the City of Port Colborne will assume no responsibility for oral instruction or suggestion provided by any City representative or Proponent.

## **2.3 Opening of Submissions**

Proposals will be opened the same day that they close at **2:15:00 p.m. local time, Monday, November 16th, 2020** on the **First Floor at City Hall.**

Anyone submitting a bid will, through their duly authorized representative, be permitted to attend the opening. **In response to COVID-19, the City of Port Colborne has screening policies in place. Any representative wishing to attend the opening must complete the visitor screening form and a face covering must be worn at all times while in the building, please ensure you have a face covering upon arrival. If these policies are not met, the City has the right to refuse entry to the building.**

Names of the Proponent's who have submitted a response to this proposal and the name(s) of the awarded Proponent(s) will be posted on the City's website under Projects and Tenders: <http://portcolborne.ca/page/ProjectsTendersEngineering>.

## **2.4 Informal or Incomplete Proposals**

Bids shall be rejected as informal/incomplete for any of the following reasons:

- i. Late
- ii. Incorrect Form of Proposal document
- iii. Incorrect/Missing proposal envelope
- iv. Incomplete
- v. Missing/Incomplete Addendum/Addenda
- vi. proposal not signed and/or sealed
- vii. Bids completed in pencil
- viii. Erasures, overwriting, or strikeouts not initialed
- ix. Submitted by fax or e-mail

## **2.5 Unbalanced Bids**

The Owner reserves the right, in its sole and unfettered discretion, to reject any bids which contain pricing which appears to be so unbalanced as likely to have negative implications on the Project, the work set out herein, or the interests of the Owner.

## **2.6 Errors and Corrections**

City staff may clarify any aspect of a proposal submission with the Proponent at any time after the submission has been opened. Any such clarification will not alter the proposal and will not constitute a negotiation or renegotiation of the submission. The City of Port Colborne is not required to clarify any part of a proposal. Any clarification of a proposal by a Proponent shall not be effective until confirmation has been delivered in writing.

All bids, upon closing, will be checked for correctness and mathematical errors. Should any errors be found, all parties submitting bids will be notified of the correction(s).

## **2.7 Confidentiality**

The City of Port Colborne will treat all bids as confidential. The City will comply with the Municipal Freedom of Information and Protection of Privacy Act, and its Retention By-Law pursuant to the Municipal Act, in respect of all bids. All reports approved by the Council of The City of Port Colborne will become public information. These reports will not include proposal documents. The City will retain all copies of all bids, successful or otherwise, and they will be destroyed in accordance with the City's Retention By-Law.

## **2.8 Acceptance or Rejection of Proposals**

The Owner reserves the right, in its sole and unfettered discretion, to accept or reject any proposal(s) as the interests of the Owner require, without stating the reasons. Therefore, the lowest or any proposal will not necessarily be accepted.

## 2.9 Proposals Irrevocable

The proponent agrees that this proposal is to continue open for acceptance and irrevocable until the formal contract has been executed by the successful proponent for the said work, and that the Owner may, at any time, within sixty (60) calendar days of closing date, accept this proposal without notice, whether any proposal has been previously accepted or not.

## 2.10 Litigation and Conflict of Interest

The Owner reserves the right to reject a proposal if a Proponent:

- i. Has, at any time, threatened, commenced, or engaged in legal claims or litigation against the any of the parties involved in this application.
- ii. Is involved in a claim or litigation initiated by the Owner.
- iii. Previously provided goods or services to the Owner in an unsatisfactory manner.
- iv. Has failed to satisfy an outstanding debt to the Owner.
- v. Has a history of illegitimate, frivolous, unreasonable, or invalid claims.
- vi. Provides incomplete, unrepresentative, or unsatisfactory references.
- vii. Has engaged in conduct that leads the Owner to determine that it would not be in the Owner's best interests to accept the proposal.
- viii. Has a conflict of interest or that which may be viewed as a conflict of interest either with or by the Owner.

Proponents **must** sign and submit *Appendix 'B' Litigation and Conflict of Interest*.

## 2.11 Negotiations

If all bids are over budget, the Owner reserves the right to negotiate the terms of the project contract, including price and revised scope of work, directly with the lowest Proponent to identify cost saving opportunities associated with alternate processes, materials, or construction methods. If an acceptable Contract cannot be met with the lowest Proponent, the Owner reserves the right to negotiate an acceptable Contract with the next-lowest Proponent.

If, after the above negotiations, a Contract cannot be reached which is acceptable to the Owner, the Proposal will be cancelled without award. The Owner further reserves the right, in its sole and unfettered discretion, to cancel the proposal at any time without an award being made.

## 2.12 Pricing

All prices as submitted should include all costs such as, but not limited to, labour, travel time, equipment, vehicle charges, materials, overheads, warranty and profits, disbursements and other related charges in the performance of the work.

No further charges shall be permitted by any Proponent beyond the process provided in the submission. All prices must be quoted in Canadian Funds, inclusive of all applicable duties, taxes, any and all foreseeable costs required for the fulfillment of this contract.

## **2.13 Bid Award**

Award of this RFP shall be as recommended by the designated City of Port Colborne department in conjunction with Procurement Services, and as approved by the CAO.

## **2.14 Accessibility Regulations for Contracted Services**

Contracted employees, third party employees, agents, and others that provide customer service on behalf of The City of Port Colborne are legally obliged to comply with the provisions outlined in Section 6 of Ontario Regulation 429/07 with respect to training. The Proponent shall ensure that such training includes, without limitation, a review of the purposes of the Act and the requirements of the Regulation, as well as instruction regarding all matters set out in Section 6 of the Regulation. By signing the Form of Proposal, The Proponent represents and agrees to be in full compliance with this regulation.

## **2.15 Workplace Safety and Insurance Board (WSIB) Certificate of Clearance**

A generic and/or specific Certificate of Clearance shall be provided to the Department Director or designate and the WSIB Certificate shall be valid for sixty (60) days from the date of the commencement of the Project.

All Proponents shall furnish the Workplace Safety and Insurance Board account number in the Form of Proposal where indicated. Prior to release of each and every progress draw if the intended payment falls outside of the sixty (60) day validity period, the successful Proponent shall be required to provide a new Certificate of Clearance to the Owner. The Certificate shall indicate that the Proponent has complied with the requirements of the Workplace Safety and Insurance Board and is in good standing in the records of the Board.

## **2.16 Liquidated Damages**

The liquidated damages for this contract shall be **Five Hundred (\$500)** for each and every day's delay as outlined in NPSCD Special Provisions – General – Section G16.

## **2.17 Compliance with Regulations**

All construction activities must comply with the Ministry of Labour and the Occupational Health and Safety Act. A vertical cut trench complying with the current regulations, unless otherwise specified in the Special Provisions Contract Items, shall be employed. The Contractor must perform all works in strict accordance with all applicable national, provincial, and municipal codes and regulations by any agency having jurisdiction.

### **2.17.1 Declaration of an Emergency – No Damages**

The bidders acknowledge that at the time of the release of this Bid opportunity; the Province of Ontario has declared an emergency pursuant to Order in Council 518/2020 (Ontario Regulation 50/20) pursuant to section 7.0.1 of the Emergency Management and Civil Protection Act. In the

event that the Canadian Federal Government or the Province of Ontario continues the state of emergency or declares a further state of Emergency the bidders expressly agree that the City is not liable to the bidders and the bidders hereby waive any claims for: changes in the work; extra work; additional work; liquidated damages; remedies pursuant to any hazardous or toxic substance or construction safety provisions of the contract; or indirect or consequential damages including but not limited to loss of anticipated profits or opportunity and/or the cost of labour or materials, or overhead arising out of, related to, or resulting from the said Order, or any future order by any government authority or government action related to COVID-19, provided further that:

- i. If work under the contract is stopped for a period of time by the City or other government authority because of the COVID-19 pandemic, then:
  - the bidders shall promptly comply with such order; and,
  - the bidders' sole remedy related to such stoppage from the City shall be an extension to the contract time for the period of time that the work under the contract is stopped, except if such stoppage is the result of an act or omission of the bidders in which case the bidders shall not be entitled to an extension of the contract time. Notwithstanding the foregoing, if work under the contract is stopped for a period of time of more than forty (40) consecutive working days by the City or other government authority because of the COVID-19 pandemic, then the City may terminate this agreement on seven (7) days' written notice to the bidders. On the termination date situated in such a notice, the bidders shall discontinue the Services and the City's sole obligation to the bidders shall be pay the bidders for that portion of the work or services performed to the termination date; and,
  
- ii. If the City or other governmental authority restricts the hours of work at the place of work or number of workers that may attend at the place of work because of the COVID-19 pandemic, then:
  - the bidders shall promptly comply with such restrictions; and,
  - the City's sole obligation to the bidders shall be to extend the contract time for the period of time that the Contract Administrator or City deems reasonable given the nature of the restrictions put in place because of COVID-19 except if such restriction are issued as a result of an act or omission of the bidders in which case the bidders shall not be entitled to an extension of the contract time.

### **2.17.2 Health and Safety Directive (COVID-19)**

The City puts the proponents on express notice that this bid opportunity is being issued during a healthcare emergency that may continue during the Term of the Agreement arising from this bid. The City reserves the right to issue health and safety directives related to COVID-19, including but not limiting to halting construction, modifying the number of workers that may attend the job site, implementing sanitation or physical distancing protocols, and the provision of services. The Contractor shall follow all such health and safety directives at its expense. In the event the Contractor fails to follow a health and safety directive that the City or Contract Administrator determines presents an immediate risk to the health and safety of the those at the job site or members of the public, the City may immediately terminate the agreement and is not liable for any damages including loss of anticipated profit or the cost of labour and materials. The City is not liable to the Contractor in the event of a delay required by health and safety directives for any damages including loss of anticipated profit or the cost of labour or materials.

## **2.18 Insurance Requirements**

The City of Port Colborne's insurance requirements for proponents are described below. The coverage provided by these policies shall not be changed or amended in any way or cancelled by the Proponent unless approved by the City in writing.

### **2.18.1 Comprehensive General Liability and Automobile Insurance**

The Proponent shall provide the City of Port Colborne with a certified copy of Third Party Liability in a form satisfactory to the City Solicitor as follows:

- i. Policy to be written on the comprehensive form including Contractual Liability and Complete Operations with an inclusive limit of not less than two million dollars (\$5,000,000.00) Bodily Injury and Property Damage with a deductible not greater than five thousand dollars (\$5,000.00). The Liability Insurance Policy shall not contain any exclusions of liability for damage, etc., to property, building or land arising from the removal or weakening of support of any property, building or land whether such support be natural or otherwise.
- ii. Standard Automobile Policy on both owned and non-owned vehicles with inclusive limits of not less than one million dollars (\$5,000,000.00) Bodily Injury and Property Damage with a deductible not greater than one thousand dollars (\$5,000.00).
- iii. A "Cross Liability" clause or endorsement.
- iv. An endorsement certifying that the City of Port Colborne is included as an additional named insured.
- v. An endorsement to the effect that the policy or policies will not be altered, cancelled or allowed to lapse without thirty (30) days prior written notice to the City.

### **2.18.2 Professional Liability Insurance**

The Insurance Coverage shall be in the minimum amount of one million dollars (\$5,000,000.00). The Proponent shall provide to the City proof of Professional Liability Insurance carried by the Proponent.

## **2.19 Claims**

Should a third party claim or claims arise during the course of The Contractor maintaining the site throughout the duration of construction, The Contractor shall retain an independent adjuster who will determine if The Contractor shall be held liable for all third party claims, and advise the claimants, in writing, of the determination of liability within thirty (30) calendar days of the claim on The Contractor. Copies of the third party claim and such determinations shall be forwarded to the City Clerk.

Should the thirty (30) calendar day time period expire without any determination of liability, the City shall reserve the right to retain its own independent adjuster, who will then determine Contractor liability for such third party claims. Upon receiving a response regarding said claim, The Contractor will then have ten (10) calendar days to respond to the City. Should a response

not be received within the ten (10) calendar days, the City shall then deduct the cost of retaining its independent adjuster, as well the amount of the claim as determined by the independent adjuster, the sum of which shall also be deducted from any outstanding payment certificates to The Contractor.

If a third party claim is settled to the satisfaction of the claimant, The Contractor shall submit to the City Clerk a copy of the claimant's unequivocal release. The claimant's release shall cover both the City and The Contractor in the release form.

## **2.20 Hold Harmless**

The successful Proponent shall indemnify and save harmless the City of Port Colborne, its elected officials, officers, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever arising out of the negligence, errors, omissions, fraud or willful misconduct of the successful Proponent, its officers, employees, agents and subcontractors, or any of them, attributable to or in connection with the delivery or performance of the goods and services contemplated in this Request for Proposal, except to the extent that same is attributable to or caused by the negligence of the City, its officers, employees and agents, or any of them. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the successful Proponent in accordance with this Request for Proposal.

## Section 3.0 Scope of Proponent Services

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### 3.1 Project Management

- i. Following the award of the proposal, the awarded Proponent shall sign the agreement for assignment and submit other required documentation.
- ii. The awarded proponent must supply updated WBIB certificate and Certificate of Insurance.
- iii. The lead contact person for this project will be the City's Design and Construction Supervisor. The Proponent will also assign a lead contact person responsible for undertaking the project.
- iv. Progress draws for completion of design/documents will only be given upon submission of works.
- v. Any significant change in the Proponent's timeline shall be approved by the City's Design and Construction Supervisor in advance.
- vi. No direction impacting the scope of the assignment shall be considered unless it is in writing through the City's Design and Construction Supervisor.

### 3.2 Project Scope

The project consists of the Proponent adhering to and completing the following:

- i. Total cost of this project shall not exceed **One Hundred and Ten Thousand Dollars** (\$110,000.00). All works are to include all necessary material and labour to complete the supply and installation of LED solar lighting at H.H. Knoll Lakeview Park.
- ii. The proponent will supply multiple LED solar lights with an aesthetic design (Specifications in *Attachment 'A' – (i)*). The amount of LED solar lights supplied will be determined on how many can be installed for the above price.
- iii. There are two (2) areas where lights shall be considered (Map in *Attachment 'A' – (ii)*). Area one (1) shall be sufficiently illuminated before illuminating Area two (2). If the proponent cannot sufficiently illuminate both areas with the above budget, Area two (2) shall be removed.
- iv. Field inspections of H.H. Knoll Lakeview Park for verification of existing buildings/sites, above ground infrastructure etc. may be required.
- v. Shop drawings to be approved by the City before installation.
- vi. Detailed product and warranty specifications of products.

### **3.3 Commencement and Completion of Work**

The works shall commence once the agreement has been signed by both parties, and the City has received the appropriate documentation as outlined in this proposal.

Once the work is commenced, it shall be continued without interruption or delays, except as required due to inclement weather conditions, or as approved in writing by the City's Contract Administrator.

**The City requires installation of the LED solar lights to be completed, and all associated deliverables received, prior to ~~Tuesday December 22, 2020~~ \_\_\_\_\_.**

**The liquidated damages clause of this contract will be strictly enforced.**

## **Section 4.0 Requirements of Proposal Submission**

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### **4.1 Proposal Submission Requirements**

One (1) Original and three (3) Copies and one (1) electronic copy on a USB Drive or CD in PDF format of the proposal Package are to be submitted.

The Proposal is not to exceed 20 pages, not including the covering letter, resumes, company credentials and appendices. Appendices are to be limited to resumes, project lists and corporate information. Appendices containing other material will be disregarded.

The Proponent's proposal will include:

- At least three (3) letters of reference of similar work experience. With all applicable contact information as this will be a key component in the qualification of a proponent. Proponents will be disqualified should these not be included in the proposal package.
- The Proponent's interest in the project and an understanding of the objective(s) of this project, as well as any relevant experience should be referenced.
- Identification of all sub-consultants, their qualifications and experience, as well as their specific role in the project.
- A project schedule with the committed time expected to be provided by the City.
- LED Solar Light Product Specifications and Warranty.
- A complete cost breakdown for the project.

The Proponents shall note that the City of Port Colborne will consider the estimated total engineering service fees for this project as an upset limit based on the proposal and the project duration assumed and will not consider extra items unless prior written approval has been obtained.

### **4.2 Proposal Evaluation**

#### **4.2.1 Evaluation of Proposals**

The evaluation committee will be comprised of three (3) City of Port Colborne staff. The committee will review and evaluate the proposals of all compliant submissions. In conducting their evaluation, the evaluation committee may consult professional advisors, as the City considers appropriate.

#### **4.2.2 Evaluation of Submissions**

To be utilized at the discretion of the Owner should any inconsistencies arise in the bidding process which will then implement **2.8 Acceptance or Rejection of Proposals**.

Proposals will be evaluated according to the following evaluation criteria:

Criteria	Weighting / Points Available
Requirements Fulfilled	20%
Experience and References on Similar Projects	15%
Understanding of Project	25%
Project Schedule	25%
Cost Breakdown	15%
<b>Total Points Available:</b>	<b>100%</b>

**Criteria:**

- i. **Requirements Fulfilled:** The proposal will be evaluated on meeting all requirements are outlined in this RFP.
- ii. **Experience and References on Similar Projects:** The proposal must clearly demonstrate the Proponent’s successful experience with past same or substantially similar projects. Elements which will be of consideration are size and scope of projects, project complexity, project team résumés, and confirmation of references.
- iii. **Understanding of Project:** The proposal will be evaluated based on the Proponent’s ability to clearly demonstrate the understanding of the project scope, including deliverables.
- iv. **Project Schedule:** The proposal will be evaluated based on the Proponent’s ability to clearly outline the project schedule and meeting the **Tuesday, December 22nd, 2020** \_\_\_\_\_ deadline.
- v. **Cost Breakdown:** The proposal will be evaluated based meeting the One Hundred and Ten Thousand Dollars (\$110,000.00) maximum budget.

**4.2.3 Evaluation and Ranking Method**

The City will evaluate proposals based on the criteria listed above.

The ranking of proponents will be based on the total score for the rated criteria.

$$\text{Proponent's Total Score} = \text{Total Points for Rated Criteria}$$

**4.2.4 Determination of Successful Proponent**

The proposal with the highest overall point score may be, however, is not necessarily guaranteed recommendation for the award. The award of this bid is subject to the Owner obtaining approval from **The Chief Administrative Officer (CAO)**.

## Appendix 'A' – Schedules

The Proponent is to supply a separate project schedule in the submitted proposal and summarize the key dates below. These dates must meet a timeline to meeting funding deadlines.

Description	Date
RFP Issue Date:	Monday, October 26th, 2020
Deadline for Questions 12:00:00 p.m. local time:	Wednesday, November 11th, 2020
RFP Closing Date (2:00:00 p.m. local time) and Public Opening (2:15:00 p.m. local time):	Monday, November 16th, 2020
Award RFP:	<del>Monday, November 23rd, 2020</del>
Construction Tentative Start Date:	<del>Wednesday, November 25th, 2020</del>
Construction Mandatory Completion Date:	<del>Friday, December 22nd, 2020</del>

## **Appendix 'B' – Litigation and Conflict of Interest**

The Owner may, in its sole discretion, reject a submission if the Contractor:

- i. Has, at any time, threatened, commenced, or engaged in legal claims or litigation against the Owner.
- ii. Is involved in a claim or litigation initiated by the Owner.
- iii. Previously provided goods or services to the Owner in an unsatisfactory manner.
- iv. Has failed to satisfy an outstanding debt to the Owner.
- v. Has a history of illegitimate, frivolous, unreasonable, or invalid claims.
- vi. Provides incomplete, unrepresentative or unsatisfactory references.
- vii. Has engaged in conduct that leads the Owner to determine that it would not be in the Owner's best interests to accept the submittal.
- viii. Has a conflict of interest or that which may be viewed as a conflict of interest either with or by the Owner. (see below)

The *Contractor*, all of the *Sub-Contractors*, and all of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall not engage in any activity or provide any services where such activity or the provision of such services creates a conflict of interest (actually or potentially, in the sole opinion of the *Owner*) with the provision of the *Work* pursuant to the *Contract*. The Contractor acknowledges and agrees that a conflict of interest includes the use of *Confidential Information* where the *Owner* has not specifically authorized such use.

The Contractor shall disclose to the *Owner*, in writing, without delay, any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest, including the retention of any *Sub-Contractor* or *Supplier* that is directly or indirectly affiliated with or related to the *Contractor*.

The Contractor covenants and agrees that it will not hire or retain the services of any employee or previous employee of the *Owner* where to do so constitutes a breach by such employee or previous employee of the employee's or previous employee's employment contract or the previous employer's conflict of interest policy, as it may be amended from time to time.

A breach of this Article by the *Contractor*, any of the *Sub-Contractors*, or any of their respective advisors, partners, directors, officers, employees, agents, or volunteers shall entitle the *Owner* to terminate the *Contract*, in addition to any other rights and remedies that the *Owner* has in the *Contract*, in law, or in equity.

We, the undersigned, hereby disclose any acts of litigation or any conflict of interest.

---

Date

Signature of Authorized Person Signing for  
Company (Company Seal)

## Appendix 'C' – Form of Proposal

Project Number: 2020-30  
Project Title: Supply and Installation of Solar Lighting at H.H. Knoll Lakeview Park  
Closing Date: Monday, November 16th, 2020  
Closing Time: 2:00:00 p.m. Local Time

I/We the undersigned have clearly read and understand this Proposal document, and herewith agree to perform the work required in accordance with the document issued by Procurement Services, at the price(s) detailed in the Form of Proposal.

I/We acknowledge and agree that I/we have not assumed that any information concerning our operations, business or person, or any other information required to be provided by me/us when submitting our Proposal is known to the City, regardless of whether such information may be actually previously known to the City or not. Further, I/we acknowledge and agree that all information to be provided by me/us is to be complete and full in such detail as required.

I/We acknowledge that we have received Addendum/Addenda No. \_\_\_ to No. \_\_\_ inclusive, and that all changes specified in the Addendum/Addenda have been included in the prices submitted.

I/We agree to commence work as specified to proceed continuously to the completion and to complete by **the expiration of allotted working days, or completion date, which ever has been specified in this document.**

I/We agree that this proposal is to continue open for acceptance and irrevocable until the formal contract has been executed by the successful Proponent for the said work, and the bond or bonds as specified have been executed by the approved surety or sureties, and that the Owner may, at any time, within sixty (60) calendar days of closing date, accept this proposal without notice, whether any proposal has been previously accepted or not.

We certify that:

- i. The party executing this document is authorized to sign the same.
- ii. To the best of my/our knowledge and belief the information provided in our Proposal submission is correct.
- iii. Except as expressly and specifically permitted in the Instructions to Proponents, we shall not have any claim for any compensation of any kind whatsoever, as a result of participating in the RFP, and by submitting a RFP we shall be deemed to have agreed that we have no such claim.
- iv. To the best of my/our knowledge and belief our Proposal submission is made without any connection, comparison of figures or agreements with or knowledge of any other corporation, firm or person submitting a Proposal for the same work and is in all respects fair and without collusion or fraud.

- v. To the best of my/your knowledge and belief no member of Council and no officer or employee of the Corporation of the City of Port Colborne is, will be or has, become interested, directly or indirectly, as a contracting party, partner, stockholder, surety or otherwise in, or in the performance of the contract, or in the supplies, work, or business to which it relates, or in any portion of the profits thereof, or in any of the money to be derived therefrom.
- vi. To the best of my/our knowledge and belief there is not nor was there any actual or perceived unfair advantage or conflict of interest in our proposal submission.

Below Price to be carried forward from **Proponent's Cost Breakdown**, Cost Breakdown to be included separately in the Proposal.

<b>Supply and Installation of Solar Lighting at H.H. Knoll Lakeview Park</b>	
Total Quotation Price (i):	\$
Harmonized Sales Tax (ii):	\$
Total Contract Amount [(i) + (ii)]:	\$
H.S.T. Registration Number:	

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Proponent Contact E-mail Address

\_\_\_\_\_  
Proponent Representative Name and Title

\_\_\_\_\_  
Insert Workplace Safety and Insurance Board Account No.

\_\_\_\_\_  
Proponent Representative Signature

\_\_\_\_\_  
Witness Name and Title

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date

Proponent's Seal

**Appendix ‘D’ – Agreement between Owner and Contractor**

This Agreement made on the \_\_\_\_\_ day of \_\_\_\_\_ in the year two thousand and twenty (2020)

by and between

**THE CORPORATION OF THE CITY OF PORT COLBORNE  
66 CHARLOTTE STREET  
PORT COLBORNE, ONTARIO  
L3K 3C8**

hereinafter called the “Owner”

and

**R&B ELECTRIC INC  
8-129 HAGAR STREET  
WELLAND, ONTARIO  
L3B 5V9**

hereinafter called the “Contractor”

**witness:** that the parties agree as follows

**ARTICLE A-1 - THE WORK**

The Contractor shall:

- i. perform the Work required by the Contract Documents for the supply and installation of solar lighting, located at H.H. Knoll Lakeview Park, for which the Agreement has been signed by the parties, and for which were the Engineer of the City of Port Colborne is acting as and is hereinafter called the Contract Administrator.
- ii. do and fulfill everything indicated by this Agreement, and
- iii. commence the Work by the \_\_\_\_\_ day of \_\_\_\_\_, 2020 and attain completion of the Work, as certified by the Contract Administrator, by the \_\_\_\_\_ day of in the year 2020.

## ARTICLE A-2 - CONTRACT DOCUMENTS

The following is a full and complete list of the Contract Documents referred to in Article A-1 of this Agreement (comprising the "Contract"). This list is subject to subsequent amendment in accordance with the provisions of the Contract and agreed upon between the parties.

Title Page  
Notice  
Communications  
Community Background  
Section 1.0 Introduction  
Section 2.0 Instruction to Proponents and Terms and Conditions  
Section 3.0 Scope of Proponent Services  
Section 4.0 Requirements of Proposal Submission  
Appendix 'A' – Schedules  
Appendix 'B' – Litigation and Conflict of Interest  
Appendix 'C' – Form of Proposal  
Appendix 'D' – Agreement between Owner and Contractor  
Appendix 'E' – Envelope Submission Label  
Attachment 'A' – Applicable Documents and Drawings

## ARTICLE A-3 - CONTRACT PRICE

- i. The quantities shown in the Cost Breakdown are estimated. The Contract Price shall be the final sum of the products of the actual quantities that are incorporated in or made necessary by the Work, as confirmed by count and measurement, and the appropriate Unit Prices, together with any adjustments that are made in accordance with the provisions of the Contract Documents.
- ii. The Total Quotation Price shall be the sum of the product of the estimated quantities and the appropriate Unit Prices in the Cost Breakdown, included in Proponents Proposal, included as part of this contract.
- iii. Based on the Form of Proposal, referred to in article A-3 ii), the Bid price is:

**\$ ONE HUNDRED TEN THOUSAND DOLLARS AND ZERO CENTS (\$110,000.00)** in Canadian funds, *excluding H.S.T.*

## ARTICLE A-4 – PAYMENT

- i. The Owner shall pay The Contractor in Canadian funds for the performance of the Contract, the amounts being determined by actual measured quantities of the individual Work items contained in the Schedule of Quantities in Article A-3 ii) of this Agreement, and measured in accordance with the methods of measurement given in the specifications.
- ii. Subject to applicable legislation and the provisions of the Contract Documents, and in accordance with legislation and statutory regulations respecting Holdback percentages,

and, where such legislation or regulations do not exist or apply, subject to a Holdback of ten per cent (10%) plus any applicable Maintenance Holdback, the Owner shall:

- a. make monthly payments to The Contractor on account of the Work performed, as certified by the Contract Administrator, provided that Statutory Declaration as well as WSIB Clearance certificates are supplied for each payment certificate prior to cheque release, and
- b. upon completion of the Work, as certified by the Contract Administrator, pay to The Contractor the unpaid balance of Holdback monies then due.
- iii. If the Owner fails to make payments to The Contractor as they become due under the terms of this Contract or in an award by arbitration or court, interest of five per cent (5%) per annum on such unpaid monies shall also become due and payable until payment. Such interest shall be calculated and added to any unpaid amounts monthly.

#### **ARTICLE A-5 - RIGHTS AND REMEDIES**

- i. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to, and not a limitation of, any duties, obligations, rights, or remedies otherwise imposed or available by law.
- ii. No action or failure to act by the Owner, Contract Administrator, or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence of any breach thereunder, except as may be specifically agreed in writing.

#### **ARTICLE A-6 - RECEIPT OF AND ADDRESSES FOR NOTICES**

Notices in Writing under this Agreement, whether by hand, courier, pre-paid first class mail, facsimile, or other form of electronic communication, will be addressed to the recipient at the address set out below. A Notice in Writing will be deemed to have been received by the recipient on the date of delivery if delivered by hand or courier, or if sent by mail it shall be deemed to have been received five (5) calendar days after the date on which it was mailed. A Notice in Writing sent by facsimile or other form of electronic communication shall be deemed to have been received on the date of its transmission, unless such day is not a Working Day or it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been received at the opening of business at the place of receipt on the next Working Day following the transmission thereof.

The Owner at: 66 Charlotte Street  
Port Colborne, Ontario L3K 3C8

The Contractor at: 8-129 Hagar Street  
Welland, Ontario L3B 5V9

The Contract Administrator at: 1 Killaly Street West  
Port Colborne, Ontario, L3K 6H1

**ARTICLE A-7 - LAW OF THE CONTRACT**

The law of the Place of the Work shall govern the interpretation of the Contract.

**ARTICLE A-8 - LANGUAGE OF THE CONTRACT**

This Agreement is drawn in English at the request of all parties hereto.

**ARTICLE A-9 SUCCESSION**

The General Conditions of the Unit Price Contract hereto annexed, and the other aforesaid Contract Documents, are to be read into and form part of this Agreement and the whole shall constitute the Contract between the parties and subject to law and the provisions of the Contract Documents, shall ensure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and assigns.

In witness whereof the parties hereto have executed this Agreement under their respective corporate seals and by their authorized representatives.

SIGNED, SEALED, AND DELIVERED in the presence of:

**OWNER**  
**THE CORPORATION OF THE CITY OF PORT COLBORNE**

\_\_\_\_\_  
Signature  
**SCOTT LUEY, CAO**

\_\_\_\_\_  
Signature  
**AMBER LAPOINTE, City Clerk**

**CONTRACTOR**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and title

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Name & Title

**Appendix 'E' – Envelope Submission Label**

***Envelope #1***

**Amber LaPointe  
City Clerk  
66 Charlotte Street  
Port Colborne, ON  
L3K 3C8**

- a) Technical Proposal (1 Original and 3 Copies)
- b) Digital proposal (PDF on a USB Drive)
- c) Appendix 'B' – Litigation and Conflict of Interest
- d) Certificate of Insurance
- e) WSIB Certificate of Clearance
- f) Appendix 'C' – Form of Proposal
- g) Addendum (if applicable)

**PROJECT NO.: 2020-30**

**Supply and Installation of Solar Lighting at H.H. Knoll Lakeview Park**

**CLOSING: Monday, November 16th, 2020 at 2:00:00 p.m. local time**

**CONTRACTOR: \_\_\_\_\_**

## **Attachment 'A' – Applicable Documents and Drawings**

- i. Solar Light Specifications
- ii. General Location Map

## Summary of Specifications for LED Light

The following specification outlines the minimum requirements for the LED solar lights as part of this project:

### 1. General

LED fixtures and all electrical equipment to be a side or hanging arm mount, CSA and UL rated, for outdoor use in a wet location, in a potentially harsh environment.

Complete unit (lighting/fixture, batteries, solar panel, controls, drivers, inverters and electronics, pole etc) to be a stand alone configuration and operate independently of other lighting or infrastructure.

### 2. Solar Light Fixture and Metal Pole

LED solar light fixture to be a downward-facing, shaded, 'bell-shape' (See *Figure 1*). Powder coat finish to be black, dark bronze or similar. Approximate shape and size is to be round and approximately 18"Ø or larger.

Metallic poles to be 12' min – 15' max nominal height (excluding attachments) above concrete pedestal (14' – 17' total height), of an aesthetic design, with a powder coat or similar corrosion resistant finish, same colour of attached light and other fixtures. Round or octagonal pole profile required.

### 3. Concrete Pedestal

Poles to be base plate mounted on a reinforced concrete pedestal base, with bolt-thru attachment, and of sufficient diameter for plate at 24" minimum height above grade. Convex top profile preferred at perimeter of mounting bolt array. Required 3500Psi cement, minimum.

Concrete pedestal base to be coordinated and/or provided by successful bidder, and all associated costs thereof to be included in pricing. Construction must be sufficient to support pole, fixture and all attachment weight, at height and outreach, and intended to withstand coastal weather conditions.

### 4. LED Lighting

LED fixture total wattage to be 55W or higher.

LED total output range to be between 6000 – 10000 Lumens.

LED Light Colour emission to be between 2700K – 4500K; 70CRI.

LED Count to be 24 or more, per fixture head, in any configuration.

*Figure 1 - 'bell-shaped' light fixture example*



## **5. Power Controller**

Lighting to be photocell controlled for dusk till dawn operation. Additionally, a timer may be included for dusk-timed off operation. Motion sensing with a dimmable feature will be considered but is not mandatory for consideration. Subscription or cloud based remote control is not required and will not be considered for this project.

## **6. Electronics**

Batteries to be serviceable (replaceable) Lead Acid variety, with a capacity of 200Ah or better, intended for rechargeable solar use.

Electronic components and batteries must be mounted at a height that is prohibitive to theft, vandalism or intentional damage. Components mounted at the base of the pole must be in a lockable, weather and tamper-proof enclosure.

Assembly operating temperature range to be from -30°C to +40° or better.

## **7. Solar Panel**

Solar Panel to be adjustable for orientation, angle etc. and/or positioned in a South facing direction, conducive to maximum solar exposure at location. Housing colour to be similar or complimentary to pole and fixtures.

Solar Panel to be of sufficient wattage to charge batteries (70W or better recommended) to provide enough charge to power LED lights outlined for ~5 hours use per day or better, assuming optimal sunlight exposure.

## **8. Warranty**

Warranty coverage will be for a minimum of one year from the completion date of construction as determined by the City, manufacturer's warranty statement will be included with the bid submission.

All major components (fixture, pole, batteries, solar panel/drivers) are to be serviceable and/or independently replaceable.

**Attachment 'B' – R&B Electric Inc. Proposal**



The Corporation of the City of Port Colborne

By-Law No. 6851/101/20

Being a by-law to adopt, ratify and confirm  
the proceedings of the Council of The  
Corporation of the City of Port Colborne at  
its Special and Regular Meetings of December 14, 2020

Whereas Section 5(1) of the *Municipal Act, 2001*, provides that the powers of a municipality shall be exercised by its council; and

Whereas Section 5(3) of the *Municipal Act, 2001*, provides that a municipal power, including a municipality's capacity rights, powers and privileges under section 9, shall be exercised by by-law unless the municipality is specifically authorized to do otherwise; and

Whereas it is deemed expedient that the proceedings of the Council of The Corporation of the City of Port Colborne be confirmed and adopted by by-law;

Now therefore the Council of The Corporation of the City of Port Colborne enacts as follows:

1. Every action of the Council of The Corporation of the City of Port Colborne taken at its Special and Regular Meetings of December 14, 2020 upon which a vote was taken and passed whether a resolution, recommendations, adoption by reference, or other means, is hereby enacted as a by-law of the City to take effect upon the passing hereof; and further
2. That the Mayor and Clerk are authorized to execute any documents required on behalf of the City and affix the corporate seal of the City and the Mayor and Clerk, and such other persons as the action directs, are authorized and directed to take the necessary steps to implement the action.

Enacted and passed this 14<sup>th</sup> day of December, 2020.

\_\_\_\_\_  
William C. Steele  
Mayor

\_\_\_\_\_  
Amber LaPointe  
City Clerk

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**City of Port Colborne  
Regular Council Meeting 34-20  
Minutes**

**Date:** November 23, 2020

**Time:** 6:30 p.m.

**Place:** Council Chambers, Municipal Offices, 66 Charlotte Street, Port Colborne

**Members Present:** M. Bagu, Councillor  
E. Beauregard, Councillor (via Zoom)  
R. Bodner, Councillor  
G. Bruno, Councillor  
F. Danch, Councillor (via Zoom)  
A. Desmarais, Councillor  
W. Steele, Mayor (presiding officer)  
H. Wells, Councillor (via Zoom)

Absent: D. Kalailieff, Councillor

**Staff Present:** D. Aquilina, Director of Planning and Development Department (via Zoom)  
B. Boles, Director of Corporate Services/Treasurer (via Zoom)  
T. Cartwright, Fire Chief (via Zoom)  
A. Grigg, Director of Community and Economic Development (via Zoom)  
B. Kostuk, Development and Asset Inventory Supervisor (via Zoom)  
A. LaPointe, Manager of Legislative Services/City Clerk  
S. Lawson, Deputy Fire Chief (via Zoom)  
S. Luey, Chief Administrative Officer  
C. Madden, Deputy Clerk (minutes)  
S. Shypowskyj, Acting Director of Engineering and Operations (via Zoom)

Also in attendance was one member of WeeStream.

**1. Call to Order:**

Mayor Steele called the meeting to order.

Mayor Steele delivered his Mayor's Report, a copy of which is attached.

Regional Councillor Butters informed Council that the search for the Niagara Region's new CAO will begin in the near future and that a recent motion was brought forward at Regional Council regarding changes to the Conservation Authorities Act and Conservation Authorities' Role in Land Use Planning. She further reported that Dr. Hirji provided clarification on his recent COVID-19 precautionary recommendations and that an assertive approach to enforcement was emphasized. The Regional Councillor concluded her report by providing the statistics of COVID-19 cases in the Niagara region and by encouraging residents to maintain social distancing, stay home as much as possible, wash hands and to follow the news provided on the Region of Niagara's website with respect to COVID-19.

**2. Introduction of Addendum Items:**

**Additions:**

6846/96/20, Being a By-law to Appoint a Chief Building Official and a Building Inspector to act when the Office of the Chief Building Official is Vacant.

**3. Confirmation of Agenda:**

**No. 259** Moved by Councillor M. Bagu  
Seconded by Councillor R. Bodner

That the agenda dated November 23, 2020 be confirmed, as amended.

CARRIED

**4. Disclosures of Interest:**

Councillor Beauregard declared a pecuniary interest regarding item 2 (Corporate Services Department, Financial Services Division, Report 2020-153, Subject: Penalty and Interest on Outstanding Accounts Receivable), item 8 (Chief Administrative Officer, Report No. 2020-176, Subject: Cedar Bay Beach Promenade) and By-law 6841/91/20 (Being a By-law to Establish Penalty and Interest Charges on Outstanding Accounts Receivable due to the Municipality) as he is employed by Sullivan Mahoney and the firm has provided legal advice with respect to these items. Councillor Beauregard refrained from discussing and voting on items 2, 8 and By-law 6841/91/20.

**5. Adoption of Minutes:**

**No. 260** Moved by Councillor G. Bruno  
Seconded by Councillor A. Desmarais

- (a) That the minutes of the special meeting of Council (Public Hearing) 29-20, held on November 2, 2020, be approved as presented.



That a by-law be adopted to authorize the 2021 interim levy of taxes for all property tax classes, from the last revised assessment roll, before the adoption of the estimates for the year and final tax levy rates are established.

**9. Department of Chief Administrative Officer, Report No. 2020-179, Subject: COVID-19 Update #7**

Council Resolved:

That Chief Administrative Officer Report No. 2020-179, Subject: COVID-19 Update #7, be received for information.

**12. Correspondence from Christine Clark Lafleur, Executive Director, Port Cares to Mayor William Steele, Re: Port Cares Funding Request – Council Support**

Council Resolved:

That the correspondence from Christine Clark Lafleur, Executive Director, Port Cares regarding Council support of Port Cares Funding request of \$4,000.00, be received for information.

**13. Niagara Region Re: PHD-C 9-2020, Referral of Motion – Decriminalization of Personal Possession of Illicit Drugs**

Council Resolved:

That the correspondence received from Niagara Region Re: PHD-C 9-2020, Referral of Motion – Decriminalization of Personal Possession of Illicit Drugs, be received for information.

**17. Town of Lincoln Re: Public Health Measures Re: Ontario COVID-19 Response Framework**

Council Resolved:

That the resolution received from the Town of Lincoln Re: Public Health Measures Re: Ontario COVID-19 Response Framework, be received for information.

CARRIED

**8. Delegations/Presentations**

None.

**9. Councillors' Items:****Staff Responses to Previous Councillors' Enquiries****(a) COVID-19 Update (Luey)**

The Chief Administrative Officer provided a COVID-19 update, highlighting that the Niagara Region is currently in the orange level of the Province's recovery framework. He further reported that more restrictions will be put into place in the near future, namely with how the City conducts meetings internally with mask protection. The Chief Administrative Officer informed Council that the City's Emergency Control Group will be enacting a policy where mandatory masks are to be worn at all times during meetings and the policy will apply to both staff and Council. The Chief Administrative Officer concluded his report by confirming that at the next Council meeting, all eight Councillors will participate virtually via Zoom and the Mayor will be the only member of Council present in Chambers.

**(b) Importing Fill (Luey)**

The Chief Administrative Officer provided an update to Council that addressed the previous Councillor's inquiry regarding imported fill at agricultural zoned properties. The Chief Administrative Officer informed Council that this information had been forwarded to the City's Solicitor for advice and that advice is expected to be received within the next 1-2 days.

**(c) Decorative Lights Installation in Downtown and Main Street BIAs (Grigg)**

The Director of Community and Economic Development informed Council that the decorative lights that were purchased for the Downtown and Main Street BIAs are expected to be delivered by the end of the week or at the latest, early next week. She further reported that the lights will be installed as soon as delivered.

**(d) Mineral Aggregate Operation Zoning Recommendation Report (Aquilina)**

The Director of Planning and Development informed Council that a recommendation report regarding Mineral Aggregate Operation Zoning will be brought forward at the next Council meeting on December 14, 2020 and that communications will be circulated to the public on the City's website and social media channels on December 3, 2020.

### **Councillors' Issues/Enquiries**

#### **(a) Trees Down Due to Storm (Danch)**

In response to Councillor Danch's request for a clean-up of a few trees that had fallen as a result of the storm near the cemetery at Highway 58 and Windsor Terrace, the Acting Director of Engineering and Operations confirmed that this matter would be investigated.

#### **(b) Signs on Wyldewood Road (Wells)**

In response to Councillor Wells' request for an update on the new parking restriction signage to be posted along Wyldewood Road, the Acting Director of Engineering and Operations informed Council that there was an internal miscommunication issue but the signs have now been ordered and the work is to be completed during the first half of December 2020.

#### **(c) Vale Health and Wellness Centre Minor Hockey (Bagu)**

Councillor Bagu expressed appreciation towards the Emergency Operations Centre and staff for arranging for the proper security measures to be put in place in order for one parent or guardian to be able to enter into the Vale Health and Wellness Centre and watch while their child was playing in the minor hockey league.

#### **(d) Repairing Dip on Steele Street and Clarence Street (Bagu)**

Councillor Bagu expressed appreciation towards staff for repairing the big dip in the road that was located at Steele Street and Clarence Street.

#### **(e) Thank you to Community and Economic Development Staff (Bruno)**

Councillor Bruno also expressed appreciation towards Community and Economic Development staff for arranging for the proper security measures to be put in place in order for one parent or guardian to be able to enter into the Vale Health and Wellness Centre and watch while their child was playing in the minor hockey league. He further indicated that the security measures were very well done and thanked staff for making everyone feel safe.

### **10. Consideration of Items Requiring Separate Discussion:**

#### **2. Corporate Services Department, Financial Services Division, Report No. 2020-153, Subject: Penalty and Interest on Outstanding Accounts Receivable**

**No. 262**      Moved by Councillor H. Wells

Seconded by Councillor A. Desmarais

That Council approve a one-time penalty on Property Tax accounts to be charged at 1 ¼ percentage of the amount due and unpaid on the first day of default as well as Interest on Property Tax accounts to begin accruing at 1 ¼ percentage of the amount due and unpaid starting on the first day of default;

That Council approve Interest on Water and Wastewater accounts to begin accruing at 1 ¼ percentage of the amount due and unpaid starting on the first day of default. The Director, Corporate Services/Treasurer is approved to move any unpaid water and wastewater balance to the property tax roll of the related property;

That Council approve the temporary extension of the COVID-19 Property Tax, Water and Wastewater Penalty and Interest Relief Program to June 30, 2021;

That the Director of Corporate Services/Treasurer be directed to use discretion to backdate to the due date any payment on any accounts receivable balance received within five business days of the due date provided a reasonable explanation for the late payment has been provided; and

That the Director of Corporate Services/Treasurer be directed to bring forward for approval the necessary by-laws pertaining to the establishment of penalty and interest on amounts due and unpaid to the municipality.

The following was accepted as a friendly amendment:

That the main motion be amended by striking out the third paragraph and adding the following thereto:

“That Council approve the temporary extension of the COVID-19 Property Tax, Water and Wastewater Penalty and Interest Relief Program to March 31, 2021;”

The vote was then called on the main motion, as amended, as follows:

That Council approve a one-time penalty on Property Tax accounts to be charged at 1 ¼ percentage of the amount

due and unpaid on the first day of default as well as Interest on Property Tax accounts to begin accruing at 1 ¼ percentage of the amount due and unpaid starting on the first day of default;

That Council approve Interest on Water and Wastewater accounts to begin accruing at 1 ¼ percentage of the amount due and unpaid starting on the first day of default. The Director, Corporate Services/Treasurer is approved to move any unpaid water and wastewater balance to the property tax roll of the related property;

That Council approve the temporary extension of the COVID-19 Property Tax, Water and Wastewater Penalty and Interest Relief Program to March 31, 2021;

That the Director of Corporate Services/Treasurer be directed to use discretion to backdate to the due date any payment on any accounts receivable balance received within five business days of the due date provided a reasonable explanation for the late payment has been provided; and

That the Director of Corporate Services/Treasurer be directed to bring forward for approval the necessary by-laws pertaining to the establishment of penalty and interest on amounts due and unpaid to the municipality.

CARRIED

**4. Engineering and Operations Department, Engineering Division, Report No. 2020-169, Subject: Traffic Review – Chippawa Road at Dolphin Street and Berkley Avenue**

---

**No. 263**

Moved by Councillor A. Desmarais  
Seconded by Councillor E. Beauregard

That Council direct staff to remove the unwarranted stop sign locations on Chippawa Road at Berkley Avenue, by amending Parking and Traffic By-Law 89-2000 Schedule "P"; install speed radar signs facing both directions on Chippawa Road between the Dolphin Street and Berkley Avenue intersections; and include a request in the 2022 budget package to reconstruct the intersection of Chippawa Road, Dolphin Street, and Berkley Avenue, as proposed in Appendix A of this report, for an estimated cost of \$35,000.

Moved in amendment by Councillor A. Desmarais  
Seconded by Councillor E. Beauregard

That the main motion be amended by striking out the first paragraph and adding the following as the first, second and third paragraphs:

“That Council direct staff to remove the unwarranted stop sign locations on Chippawa Road at Berkley Avenue, by amending Parking and Traffic By-Law 89-2000 Schedule “P”; install speed radar signs facing both directions on Chippawa Road at appropriate locations; and reconstruct the intersection of Chippawa Road, Dolphin Street, and Berkley Avenue, as proposed in Appendix A of this report in 2021, for an estimated cost of \$35,000 which is to be funded through the 2021 Contingency Reserve;

That the Director of Engineering and Operations be directed to bring a report back to Council that outlines the findings of investigations conducted on the following along Chippawa Road: sidewalks, lighting, speeding, traffic flow and the Highway 140 entrance; and

That the Director of Engineering and Operations be directed to bring a report forward to Council after the first half of 2021 with respect to the results and success of removing the stop signs on Chippawa Road at Berkley Avenue by amending Parking and Traffic By-law 89-2000 Schedule “P”, and installing speed radar signs facing both directions on Chippawa Road.”

CARRIED

The vote was then called on the main motion, as amended, as follows:

That Council direct staff to remove the unwarranted stop sign locations on Chippawa Road at Berkley Avenue, by amending Parking and Traffic By-Law 89-2000 Schedule “P”; install speed radar signs facing both directions on Chippawa Road at appropriate locations; and reconstruct the intersection of Chippawa Road, Dolphin Street, and Berkley Avenue, as proposed in Appendix A of this report in 2021, for an estimated cost of \$35,000 which is to be funded through the 2021 Contingency Reserve;

That the Director of Engineering and Operations be directed to bring a report back to Council that outlines the findings of investigations conducted on the following along Chippawa Road: sidewalks, lighting, speeding, traffic flow and the Highway 140 entrance; and

That the Director of Engineering and Operations be directed to bring a report forward to Council after the first half of 2021 with respect to the results and success of removing the stop signs on Chippawa Road at Berkley Avenue by amending Parking and Traffic By-law 89-2000 Schedule "P", and installing speed radar signs facing both directions on Chippawa Road.

CARRIED

**5. Engineering and Operations Department, Engineering Division, Report No. 2020-171, Subject: By-law Revision – Load Restriction on Brookfield Road**

---

**No. 264** Moved by Councillor H. Wells  
Seconded by Councillor A. Desmarais

That Council direct staff to amend Traffic and Parking By-Law 89-2000 by removing Brookfield Road from Schedule "Y" (Reduced Load Restrictions, March 1 to April 30 inclusive each and every year) and adding Brookfield Road to Schedule "Z" (Reduced Load Restrictions, January 1 to December 31 inclusive each and every year).

CARRIED

**6. Planning and Development Department, Planning Division, Report No. 2020-174, Subject: Utility Trailers**

---

**No. 265** Moved by Councillor G. Bruno  
Seconded by Councillor H. Wells

That staff be directed to propose an amendment to Section 3.9.1(a) of Zoning By-law 6575/30/18 by deleting reference to a utility trailer.

Moved in amendment by Councillor G. Bruno  
Seconded by Councillor H. Wells

That the main motion be amended by adding the following as the second paragraph:

"That the Director of Planning and Development be directed to propose amendments to section 3.9.1(a) of Zoning By-law 6575/30/18 by revising the dates for recreation vehicles and boats to reflect April 15 to November 15 of each year as well as the dates for snowmobiles and snowmobile trailers to reflect November 15 to April 15 of each year."

CARRIED

The vote was then called on the main motion, as amended, as follows:

That staff be directed to propose an amendment to Section 3.9.1(a) of Zoning By-law 6575/30/18 by deleting reference to a utility trailer; and

That the Director of Planning and Development be directed to propose amendments to section 3.9.1(a) of Zoning By-law 6575/30/18 by revising the dates for recreation vehicles and boats to reflect April 15 to November 15 of each year as well as the dates for snowmobiles and snowmobile trailers to reflect November 15 to April 15 of each year.

CARRIED

**7. Planning and Development Department, By-law Enforcement Division, Report No. 2020-178, Subject: Sign Variance Request 832 King Street**

**No. 266**

Moved by Councillor G. Bruno  
Seconded by Councillor A. Desmarais

That Council approve the variance for the proposed signs at 832 King Street as outlined in Appendix A to Planning and Development Department, By-law Enforcement Division, Report No. 2020-178, Subject: Sign Variance Request 832 King Street.

CARRIED

**8. Department of Chief Administrative Officer, Report No. 2020-176, Subject: Cedar Bay Beach Promenade**

**No. 267**

Moved by Councillor H. Wellis  
Seconded by Councillor R. Bodner

That Chief Administrative Officer Report No. 2020-176, Subject: Cedar Bay Beach Promenade, be received for information.

CARRIED

**10. Community and Economic Development Department, Parks and Recreation Division, Report No. 2020-165, Subject: Federal Economic Development Agency, Canadian Experiences Fund Grant Application – Resolution of Support**

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**No. 268** Moved by Councillor H. Wells  
Seconded by Councillor A. Desmarais

That the Federal Economic Development Agency for Southern Ontario, Canadian Experience Fund application and funding as outlined in Community and Economic Development Department, Parks and Recreation Division, Report 2020-165, be accepted and supported;

That a by-law to authorize entering into a contribution agreement respecting the above, be approved.

CARRIED

**11. Corporate Services Department, Financial Services Division, Report No. 2020-168, Subject: Revised 2021 Levy Budget**

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**No. 269** Moved by Councillor G. Bruno  
Seconded by Councillor H. Wells

That the Corporate Service Department, Financial Services Division, Report No. 2020-168, Subject: Revised 2021 Levy Budget, be received; and

That the 2021 Levy Budget as outlined in Corporate Services Department, Financial Services Division, Report No. 2020-168, Subject: Revised 2021 Levy Budget, be approved.

**Recorded Vote:**

Yes: Bagu, Beauregard, Bodner, Bruno, Danch, Desmarais, Wells, Steele

No: None.

CARRIED

**14. Niagara Peninsula Conservation Authority Re: Changes to Conservation Authorities Act and Conservation Authorities' Role in Land Use Planning**

**No. 270**

Moved by Councillor H. Wells

Seconded by Councillor A. Desmarais

Whereas the Province has introduced Bill 229, Protect, Support and Recover from COVID 19 Act – Schedule 6 – Conservation Authorities Act;

Whereas the Legislation introduces a number of changes and new sections that could remove and/or significantly hinder the conservation authorities' role in regulating development, and engaging in review and appeal of municipal planning applications:

Whereas we rely on the watershed expertise provided by local conservation authorities to protect residents, property and local natural resources on a watershed basis by regulating development and engaging in reviews of applications submitted under the *Planning Act*;

Whereas the changes allow the Minister to make decisions without CA watershed data and expertise;

Whereas the Legislation suggests that the Minister will have the ability to establish standards and requirements for non-mandatory programs which are negotiated between the conservation authorities and municipalities to meet local watershed needs;

Whereas municipalities require a longer transition time to put in place agreements with conservation authorities for non-mandatory programs;

Whereas municipalities believe that the appointment of municipal representatives on CA Boards should be a municipal decision; and the Chair and Vice Chair of the CA Board should be duly elected;

Whereas the changes to the 'Duty of Members' contradicts the fiduciary duty of a CA board member to represent the best interests of the conservation authority and its responsibility to the watershed;

Whereas conservation authorities have already been working with the Province, development sector and

municipalities to streamline and speed up permitting and planning approvals through Conservation Ontario's Client Service and Streamlining Initiative;

Whereas changes to the legislation will create more red tape and costs for the conservation authorities, and their municipal partners, and potentially result in delays in the development approval process;

And Whereas municipalities value and rely on the natural habitats and water resources within our jurisdiction for the health and well-being of residents; municipalities value the conservation authorities' work to prevent and manage the impacts of flooding and other natural hazards; and municipalities value the conservation authority's work to ensure safe drinking water;

Therefore, Be it Resolved:

1. That the Province of Ontario work with conservation authorities to address their concerns by repealing and/or amending changes to the Conservation Authorities Act and the Planning Act.
2. That the Province of Ontario delay enactment of clauses affecting municipal concerns.
3. That the Province of Ontario provide a longer transition period up to December 2022 for non-mandatory programs to enable coordination of CA-municipal budget processes.
4. That the Province respect the current conservation authority/municipal relationships.
5. And That the Province embrace their long-standing partnership with the conservation authorities and provide them with the tools and financial resources they need to effectively implement their watershed management role.

CARRIED

**15. Town of Grimsby Re: Proposed Regulation under the Ontario Heritage Act (Bill 108)**

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**No. 271** Moved by Councillor H. Wells  
Seconded by Councillor A. Desmarais

That the resolution received from the Town of Grimsby  
Re: Proposed Regulation under the Ontario Heritage Act  
(Bill 108), be supported.

CARRIED

**16. City of Niagara Falls Re: Niagara Region’s New Restrictions on Dining**

**No. 272** Moved by Councillor M. Bagu  
Seconded by Councillor A. Desmarais

That the resolution received from the City of Niagara Falls  
Re: Niagara Region’s New Restrictions on Dining, be  
received for information.

CARRIED

**11. Proclamations:**

None.

**12. Minutes of Boards, Commissions & Committees:**

**No. 273** Moved by Councillor F. Danch  
Seconded by Councillor H. Wells

(a) Minutes of the Port Colborne Public Library Board Meeting of  
September 8, 2020.

(b) Minutes of the Port Colborne Historical & Museum Board  
Meeting of September 15, 2020.

CARRIED

**13. Consideration of By-laws:**

**No. 274** Moved by Councillor R. Bodner  
Seconded by Councillor M. Bagu

That the following by-law be enacted and passed:

6841/91/20	A By-Law to Establish Penalty and Interest Charges on Outstanding Accounts Receivable due to the Municipality
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CARRIED

**No. 275** Moved by Councillor E. Beauregard  
Seconded by Councillor G. Bruno

- (b) Chief Administrative Officer Report No. 2020-181, concerning the potential disposition of City owned land, pursuant to the *Municipal Act, 2001*, Subsection 239(2)(c) a proposed or pending acquisition or disposition of land by the municipality or local board (surplus city lands).
- (c) Chief Administrative Officer Report No. 2020-180, concerning the potential disposition of City owned land, pursuant to the *Municipal Act, 2001*, Subsection 239(2)(c) a proposed or pending acquisition or disposition of land by the municipality or local board (seaway lands).

CARRIED

**Motion to Rise With Report:**

**No. 277** Moved by Councillor H. Wells  
Seconded by Councillor E. Beauregard

That Council do now rise from closed session with report at approximately 10:06 p.m.

CARRIED

**15. Disclosures of Interest Arising From Closed Session:**

None.

**16. Report/Motions Arising From Closed Session:**

- (b) **Chief Administrative Officer Report No. 2020-181, concerning the potential disposition of City owned land, pursuant to the *Municipal Act, 2001*, Subsection 239(2)(c) a proposed or pending acquisition or disposition of land by the municipality or local board (surplus city lands).**

The City Clerk reported that direction was provided to staff during closed session in accordance with the *Municipal Act, 2001*.

- (c) **Chief Administrative Officer Report No. 2020-180, concerning the potential disposition of City owned land, pursuant to the *Municipal Act, 2001*, Subsection 239(2)(c) a proposed or pending acquisition or disposition of land by the municipality or local board (seaway lands).**

The City Clerk reported that direction was provided to staff during closed session in accordance with the *Municipal Act, 2001*.

**17. Adjournment:**

Mayor Steele adjourned the meeting at approximately 10:07 p.m.

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William C. Steele  
Mayor

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Amber LaPointe  
City Clerk

AL/cm



## City of Port Colborne – November 23, 2020

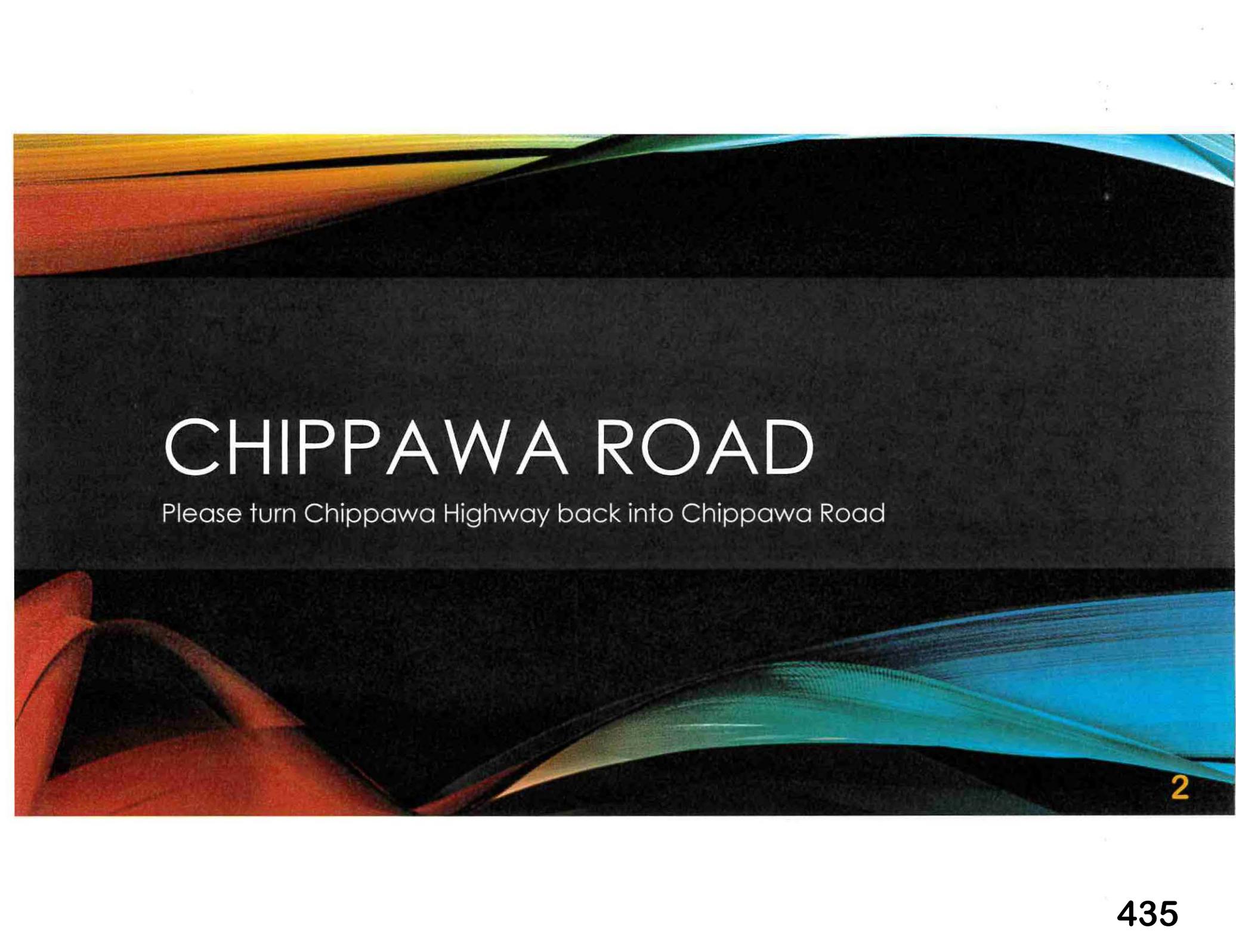
### Written Submissions

#### Item 4.

**Engineering and Operations Department, Engineering Division, Report No. 2020-169, Subject: Traffic Review – Chippawa Road at Dolphin Street and Berkley Avenue**

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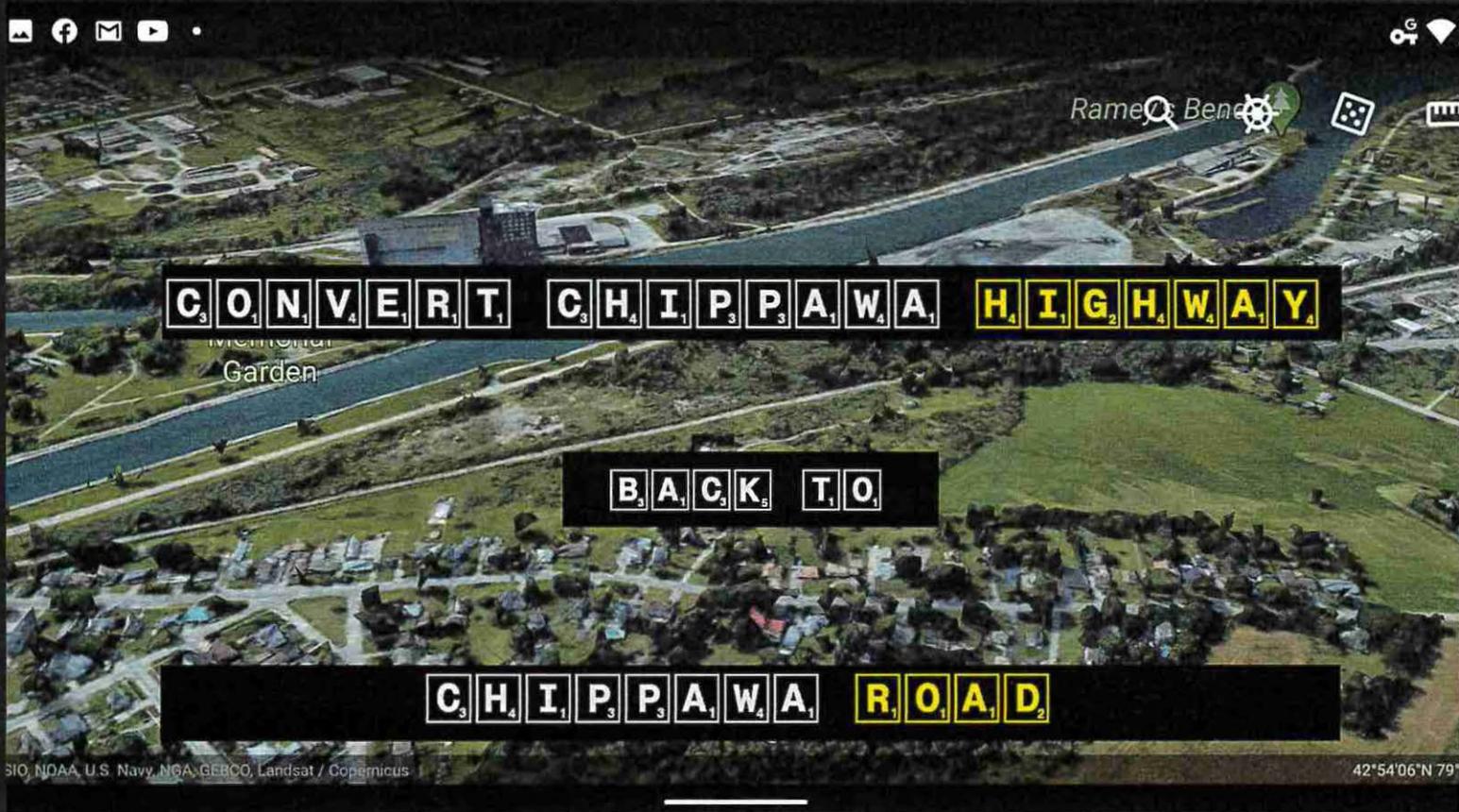
1. Harvey Thiessen, Area Leader, Oceania North America – Chippawa Road Resident.
  - Chippawa Road PDF - Slide Presentation.
  - Chippawa Road letter
  - [https://youtu.be/TY4\\_xpA3LZ4](https://youtu.be/TY4_xpA3LZ4) - Video Time 8:09
2. Wendy Barber – Chippawa Road Resident.
3. Kerry Conn and Douglas Fester – 250 Chippawa Road



# CHIPPAWA ROAD

Please turn Chippawa Highway back into Chippawa Road

# WE WANT A SAFE, QUIET NEIGHBORHOOD



3

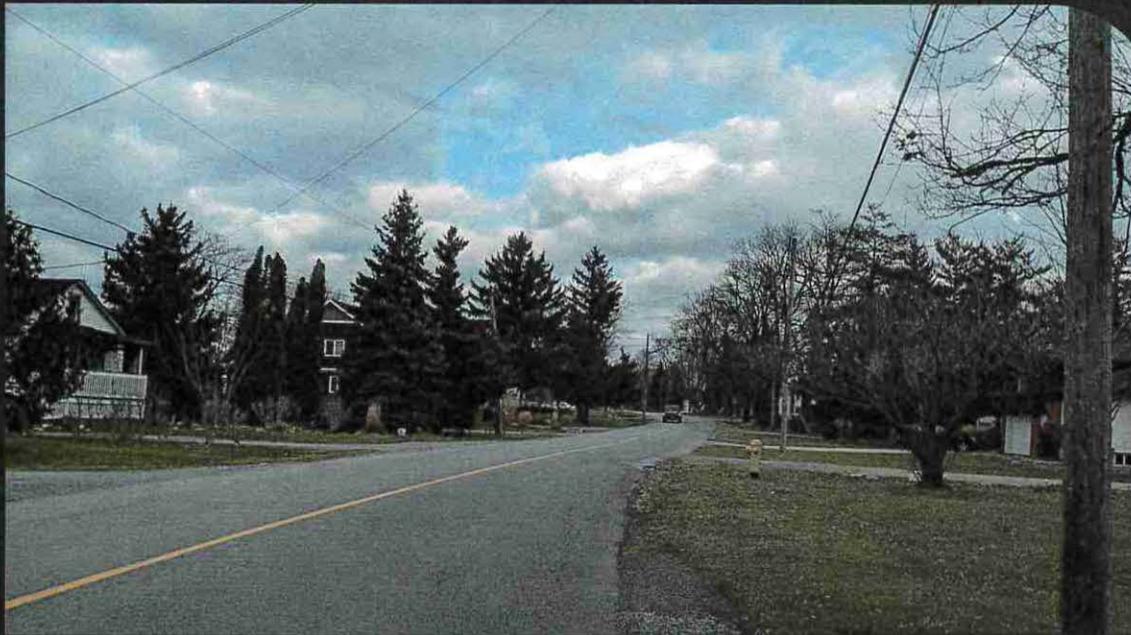
# PROBLEMS

- Parents are anxious for the childrens' safety.



# PROBLEMS

- No sidewalks so many older residents are afraid to take walks – detrimental to their long term health.



# PROBLEMS

- Those who do venture for walks talk of a high sense of risk. There is high anxiety about the traffic and frequent negative interactions with drivers.



# PROBLEMS

- Despite signs to the contrary, commercial trucks use Chippawa as a shortcut.



7

# PROBLEMS

- The volume of traffic is excessive for a residential road. People use it as a shortcut and as a result, GPS reroutes visitors here as well. The bizarre thing is that it is not a shortcut at all when speed limits are obeyed.



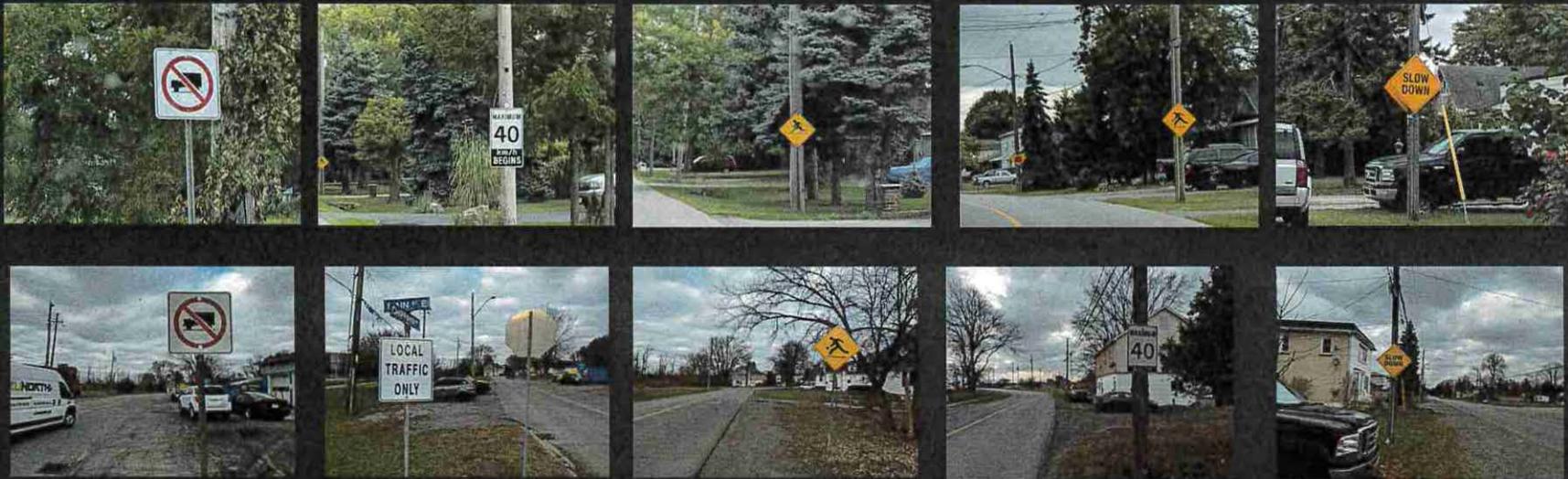
Chippawa at speed limit



Main/140 at speed limits

# PROBLEMS

- While there is reasonable signage, it seems to have little effect.



# PROBLEMS

- The Stop Sign at Chippawa/Berkley is disrespected. In one 24 hour period I documented over 300 violations. This alone signifies that the volume of traffic is unreasonable. You can't imagine those willing to blow through stop signs willing to stick to the speed limit.



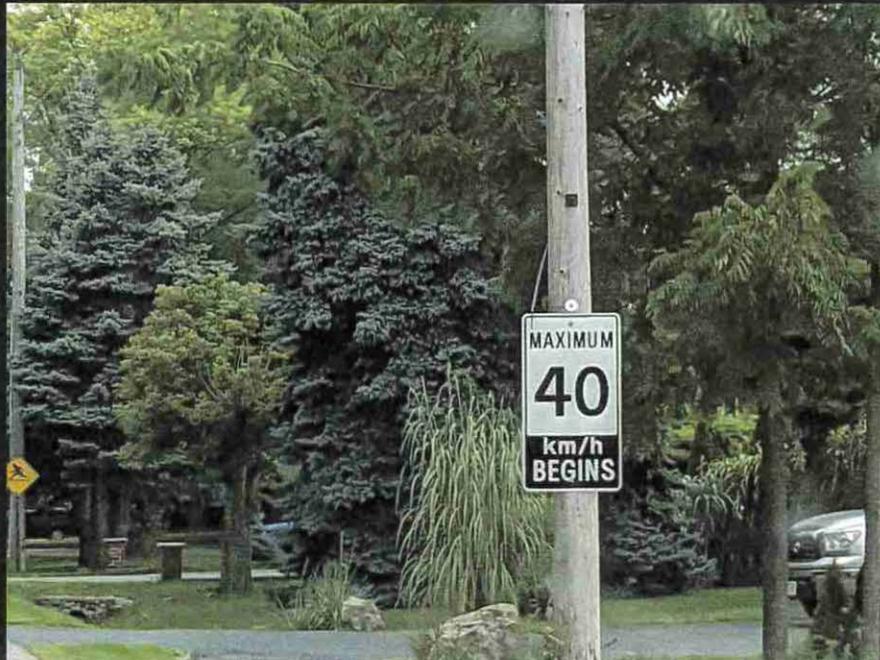
# PROBLEMS

- The volume of traffic is steadily increasing and the speed of vehicles is increasing.



# PROBLEMS

- 40 KM/H seems to indicate a minimum speed not a maximum. In reality, speeds are often closer to 80.



# PROBLEMS

- For video documented records you can reference the following:
  - A 15 min time lapse of a typical day

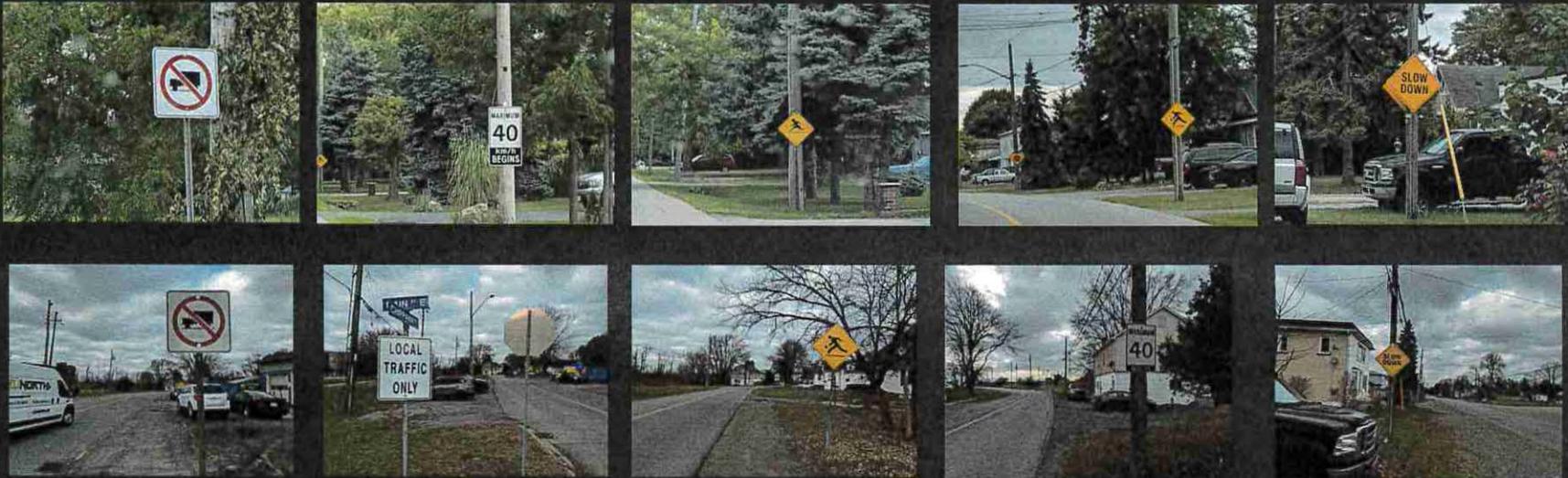
<https://www.facebook.com/ChippawaRoad/videos/362017058147146>

- A record of all the stop sign violations in one day (300 plus).

<https://www.facebook.com/ChippawaRoad/videos/615729305780490>

# SOLUTIONS

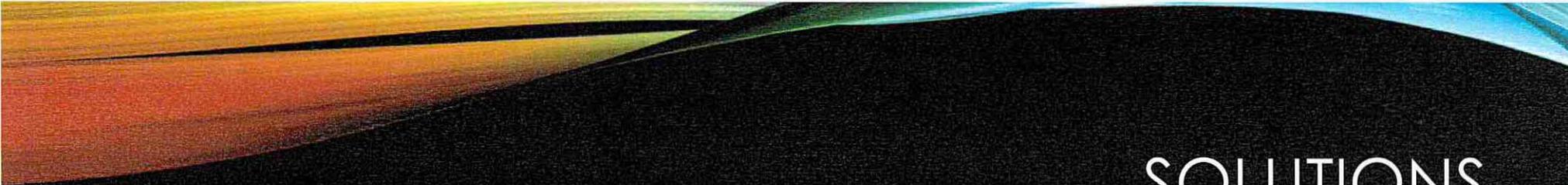
- More signs are likely not going to work as existing ones are ignored.



# SOLUTIONS

- Occasional police presence does not seem to have an impact.





# SOLUTIONS

- Residents have suggested:
  - SIDEWALKS
  - TURNING TRIANGLE INTO A PARK
  - SPEED BUMPS (AT LEAST 4 WOULD BE REQUIRED)
  - CLOSING CHIPPAWA AT 140
  - SPLITTING BERKLEY IN HALF BETWEEN THE STOP SIGNS (SEE PIC NEXT SLIDE) AND TURNING DOLPHIN/CHIPPAWA (SOUTH) SOUTH INTO A CRESCENT
  - SPEED FEEDBACK SIGNS
  - OTHER TRAFFIC CALMING SOLUTIONS

# SOLUTIONS



Chippawa split, turning Dolphin and Chippawa (south) into a crescent

17



## SOLUTIONS

Thank you for taking time to consider how to calm the traffic in this residential area. We thank the operations department for their study and happily entertain any professional advice they can give.

**Please turn Chippawa Highway into Chippawa Road!**

From: "Harvey Thiessen (ONA)" <Harvey.Thiessen@om.org>  
To: "charlottemadden@portcolborne.ca" <charlottemadden@portcolborne.ca>  
Cc: "angiedesmarais@portcolborne.ca" <angiedesmarais@portcolborne.ca>, "ericbeauregard@portcolborne.ca" <ericbeauregard@portcolborne.ca>  
Date: 2020-11-22 10:00 AM  
Subject: response to operations report re Chippawa Road

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear Ms. Madden,

Kindly include the following in the documents available for council on Monday 23d November.

Thank you for taking council time to look at Chippawa Road.

I have now had the time to read through the report from the Engineering Division regarding the intersection of Dolphin, Berkley and Chippawa. The report is well done from a city engineering perspective and adds some good history and explanations.

From impressions as a resident it seems the primary question being answered was concerning the removal of an 'oddity' in urban planning. Without disrespecting the work, the emphasis seems to be on tidying up past lack of planning around a certain intersection– the impetus and focus doesn't seem to be driven by resident's concern about safety along the entire road. I presume that the first was their intent as the study appears commissioned prior to the latest slate of residents' concerns and the focus too narrow (as indicated by the title - **Traffic Review - Chippawa Road at Dolphin Street and Berkley Avenue.**)

The residents' concerns that were taken into account in the report focused on were **"local residents having raised concern about the operation of the intersections"** From my interaction with fellow residents, none have actually had a concern that the intersection is a bit weird nor that it is the main problem. We focused on the intersection in order to show that the drivers are behaving improperly and disrespecting all signs along the road – this was the one place we could demonstrate this fact as evidence. It was not the focus of our concerns. Even I, as the property owner on that very corner, do not think that this the primary problem to solve. So for our purposes the report is done well, but the focus is a bit off.

The main concern of the residents still remains the safety along the **entire** stretch of Chippawa. The fact that the accident incidence is low speaks to the fact that we know the road is fraught with danger so we take self-protective measures to avoid injury – it is not because the road is safe. You won't find us walking on the road for the same

reasons we would not be walking along any other highway. Reported traffic incidents will be low because residents are smart. We wish we didn't need to be. We would rather prefer a calm street where the residents from 70 households could take a leisurely, healthy walk without first amping up our self-protective anxiety.

We appreciate the introduction of radar signs – I presume there is evidence that these are effectual to some degree. Surely conscientious drivers will take note and slow. We remain doubtful that many drivers we have observed will have that admirable quality. It is certainly worth trying and will certainly provide more data as to existing behaviour. It is a long road though and placement where suggested may not be most efficacious. People whip around the gentle corner of 140/Chippawa and even if they slow down a little, they have come from a highway where most travel 100 and 80 can already make them feel like they have slowed down quite a bit. It might work better having the one sign 50-100 metres in from the 140 facing the 140 and the other closer to the original suggestion. These distances will be at a point where drivers will have reached the speed that they will carry through for the entire length of the road.

Certainly a study to the cost and ability to install sidewalks is welcomed. It is a long stretch and wasn't initially designed to support sidewalks so there are obviously challenges. However, we do have clever and talented engineers so I suspect they are up to the job. The long term health of the residents would certainly best be served by a proper sidewalk – not just for safety but the ability to take walks at all.

There was considerable weight placed on the preferred route of the emergency services. I certainly agree that we should not put unnecessary obstacles in the way of the performance of their vital services. However, I would challenge the idea that any alterations would interfere with their ability to get where they need to go as quickly as possible. I have timed the route they would normally take along Chippawa and compared it to the route they would need to take along East Main/140. Keeping to the speed limits, it actually takes 10-20 seconds longer to travel the route they usually take. In other words, they have been doing it wrong all along. It is wise to listen to the science, not intuition or historic practice. Of course in an emergency we don't expect emergency vehicles to travel the speed limits. However, if they speed along Chippawa, they can also speed along Main and 140. There is an added safety advantage in emergency vehicles taking the Main/140 route. Those roads are considerably wider and therefore it is much safer to exceed the speed limits. It has already been noted that Chippawa is narrower than normal so speeding along this road is obviously more dangerous than a four lane highway and a much wider road. So I would say it is safe to take consideration of the emergency services' need to use Chippawa out of the equation in making a decision. The only inconvenience they would face is changing habits.

The arguments against splitting Chippawa at Berkley was that the resultant crescent would be too tight a turn for garbage trucks, firetrucks and that the two residents' driveway would somehow be affected. The first objection is disputed by the fact that weekly garbage trucks do take that turn (as well as city snow plows) – which could in

fact be made a little wider when it does become a crescent. Vehicles do not need to make that turn at speed. Secondly, I do not follow the argument that the driveways in the vicinity would prevent it from being split. No access to any driveway is limited by a split in any way. All of this could be cheaply tested by dropping a couple of concrete barriers and putting up the appropriate warning signs.

Regarding speedbumps. Nobody's favorite but certainly effective. If we take out the argument of the emergency services, the only argument left standing is the potential hazard they introduce during winter and snow clearing. This could be mediated however, by having 6 portable speed bumps installed which could be removed when weather sets in. Even intermittent usage could have the advantage of being in place to accomplish two things

1. Retrain the mindsets of PC locals who are used to mistakenly thinking this is a short cut. This would just take a couple of months a year to accomplish. In fact I imagine that if this is the regular route one takes, after going down it twice with speed bumps in place, one changes habits to avoid those annoying obstacles. This could be a quick and effective solution. If you don't have them, rent them for the few weeks left in this year and find out! Opps I type this while it is already snowing so maybe wait until next year or until after this snow drop has melted and we have a couple of clear weeks.
2. Retraining of the GPS guidance system. GPS instructs visitors to take this route because speeding traffic shows algorithms that it is a faster route. Slowing down traffic for a period will mark this as a slower route so GPS will re-instruct itself to tell visitors to carry on down the 140 to East Main.

Stop Sign removal. This would occur in the case of splitting the road. However as it is the only move at the intersection as suggested in the reports conclusion, it is of course a counter-intuitive for residents and some will object vigorously. We do figure that it is most logical that this would increase the speed of the traffic – at least along these 50-100 metres. If you could point us to reports that indicate they are ineffectual in controlling traffic speed, we are certainly ready to learn something that is against our intuition. There have to be many studies out there on the effect of stop signs as a speed calming measure and not simply a traffic regulation tool. What is the data? I know the report says that the ministry does not recommend Stop Signs as a speed calming measure, but that is not the same as saying they are not effective in doing so. They just say that is an insufficient reason for putting up a stop sign. Ours are already up. We don't know the science behind this, but are ready to learn.

Signs: The 'no trucks' sign at 140 should be moved further toward 140. Presently it is only visible after trucks have turned onto it. It should also have a 'local traffic only' sign at 140. I don't think anyone reads the signs at Chippawa/East Main as one has to pay

close attention to the traffic when making the turns. Reading signs is not on the list of things to do when navigating that corner safely.

Police patrol. We all realize that drivers' behavior generally everywhere has gone beyond the ability of intermittent police presence to affect. Our street is certainly no exception nor is it unique. So residents have given up on this fiction and city officials should as well. We cannot simply say that it is a matter for another agency to address. It is we that are left with the situation and so a little creative thinking can be engendered by taking up the full responsibility.

In short, I would say from resident's perspective the Operations Department report is an excellent report on what to do about an architectural oddity. It is however, not a report on how to best create a safe and secure environment for residents along the entire length of that road. It is a matter of focus. We trust that the council meeting will focus on the residents' concerns and suggestions and widen the conversation to include our overall perspective.

Thanks again for your considerations and deliberations.

For a more beautiful, safe and courteous city,  
Harvey

-----

**Harvey Thiessen**

Area Leader

Oceania North America

[www.om.org](http://www.om.org)

404-567-3452

Be **Extraordinary** this Christmas: [www.om.org/Christmas](http://www.om.org/Christmas)

From: "Wendy Barber" [REDACTED] >  
To: "deputyclerk@portcolborne.ca" <deputyclerk@portcolborne.ca>  
Date: 2020-11-23 09:28 AM  
Subject: Chippawa Road

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Council Meeting ... November 23, 2020 ... Item 4

It is a beautiful, sunny Friday afternoon, but I am so concerned for the children on this street returning home from school for the weekend. I am sure their focus is not on the dangers of the road that they walk, bicycle or skateboard on. At 3:30 this afternoon, for 15 minutes I watched the traffic and was surprised at the volume of vehicles (cars, delivery trucks, transports and motorcycles) but this normal traffic for this residential road. The real frightening shocker is the speed at which the majority of these vehicles were travelling obvious in a hurry to get themselves home for their weekend.

Something needs to happen before someone is killed. **Removing the stop signs will only allow the offenders to travel the entire length of Chippawa Road at their interpretation of 40 kilometers per hour.** The speeding is a 24 hour a day, seven day a week problem that affects most of the residents that live in this community. I often wonder if these drivers are aware that they are dangerously close to a charge of stunt driving. (50 kilometers over the posted speed limit)

Please find some way to slow down or divert the traffic to make the residents safe.

Thank you  
Wendy Barber

From: "kconn" [REDACTED]  
To: charlottemadden@portcolborne.ca, [REDACTED]  
Date: 2020-11-22 12:02 PM  
Subject: City Council review of Chippawa Rd November 23, 2020

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hello Charlotte,

I am writing in regards to the upcoming meeting on November 23 and wish that my comments will be considered during this review.

This stretch of road is nothing more than a speeding frenzy with most drivers reaching speeds of 80km. Local residents aren't quite that ambitious, knowing and living on this road. My husband absolutely loathes mowing the ditch as standing on the curb provokes the speeders to honk at him because he apparently is in their way!

Going for a leisurely walk or riding a bike along the curbside is taking your very life into your hands which is why many residents simply don't engage in these activities on this road.

The current stop/no truck signs appear to apply to the residents only, as few others observe them. Outside of the familiar delivery trucks, I have witnessed an alarming increase in heavy truck traffic along this road.

Placing radar signs should only be considered if used to collect data which would further support any cost analysis regarding the placement of eventual speed bumps. The construction of sidewalks, although more problematic, would further enhance the residents safety and overall quality of living.

Thank you for taking the time to consider my comments.

Kerry Conn and Douglas Fester  
250 Chippawa Rd



## MAYOR'S REPORT

NOVEMBER 23, 2020 COUNCIL MEETING

### **COVID-19 UPDATE**

Good evening and welcome to our virtual council meeting.

Tonight we are welcoming Councillors Bagu, Bruno, Bodner and Desmarais into the council chambers. Also joining us are our CAO Scott Luey, Clerk Amber LaPointe, Deputy Clerk Charlotte Madden, and a member of Wee Stream who are live streaming this meeting for us.

Our other city councillors and various city directors are each attending from home with Councillor Kalailieff absent on vacation.

Based on the Province of Ontario's Response Framework in dealing with COVID-19, last week Niagara moved into the orange – restrict stage as defined by this framework. We need to continue to work hard so Niagara remains here and no further restrictions are put in place as is evidenced in other areas of the province. Remember the precautions you have taken over the past seven months, continue to save lives.

We emphasize the need for social distancing, hand washing and face coverings where social distancing can't be maintained or where required by the Region's face covering by-law.

We ask that you continue to support our local businesses.

### **Holiday Drive-Through Toy Drive**

The Port Colborne Fire and Emergency Services Team have partnered with Port Cares to make a child smile this holiday season.

This coming Saturday, November 28 from 9 a.m. to 1 p.m. at the Fire Hall, 3 Killaly Street West, fire fighters will be collecting unwrapped toys for ages 0-18 as well as non-perishable food items. Please support this important drive.

## **Home for the Holidays – Decorating Contest**

Calling all Clark Griswolds; we're looking for the best holiday decorations in town! Port Colborne residents are invited to PORTicipate in their very own home decorating contest.

The contest is open to Port Colborne residents. Entries must be submitted to [eventservices@portcolborne.ca](mailto:eventservices@portcolborne.ca) by Thursday, Dec. 10, 2020 at 5 p.m. To enter, please submit a photo of your home, including a brief description and which category it fall into.

### **Categories include:**

Best Lawn Decorations

Best Light Display

Best Balcony or Front Door Display

Best Window Decorations

Details about each category can be found on our website.

There will be one winner for each category. The winner will be selected by the community, in an online voting system. Each winner will receive a gift card to a local Port Colborne establishment (retail shop or restaurant) of their choice. Winners will be announced on Monday, Dec. 21, 2020.

## **Business Christmas Light Display Contest**

In partnership with the Port Colborne Downtown BIA, we are also inviting businesses and storefronts across Port Colborne to decorate in the most festive way they know how. There is no such thing as too many twinkle lights!

To enter, please email photos and a brief description to [eventservices@portcolborne.ca](mailto:eventservices@portcolborne.ca) by Thursday, Dec. 10, 2020. The winner will be chosen by the community in an online voting system. Voting will take place from Dec. 11 - 19, with the winner being announced on Monday, Dec. 21, 2020.

The winner will receive a Christmas Decoration Prize Pack and gift card to a local Port Colborne establishment (restaurant or retail shop).

## **Christmas at the Museum**

The Port Colborne Historical and Marine Museum will be spreading Christmas cheer on Sunday, December 6, with our Grand Old Christmas at Home Kits.

More details on the kits, and how to purchase and pick them up will be available soon. Although things will be different this year, rest assured the museum grounds will be decorated and the holiday spirit will be flowing.

## **Christmas Market**

On Friday, Dec. 11 from 10 a.m. to 1 p.m., join us at the Market Square for Port Colborne's first ever Christmas Market.

Featuring various local farmers and artisan vendors selling their products, this is the perfect opportunity to look for unique gifts this holiday season.

Anyone interested in being a vendor, can email [marketclerk@portcolborne.ca](mailto:marketclerk@portcolborne.ca).

## **Closing**

In closing, we ask for your patience while we all work together and remain vigilant in fighting the COVID-19 virus.

Our number one priority is the health and safety of our staff and citizens.

Please stay safe and be kind.



Port Colborne Historical & Marine  
**MUSEUM**  
*...more than a museum!*

City of Port Colborne  
**RECEIVED**  
NOV 19 2020  
CORPORATE SERVICES  
DEPARTMENT

A meeting of the Board of Management of the Port Colborne Historical and Marine Museum was held October 20, 2020 at 7 p.m. at the L.R. Wilson Heritage Research Archives.

Present On Location: Terry Huffman, Brian Heaslip, Jeff Piniak, Bert Murphy, Stephanie Powell Baswick, Abbey Stansfield

Present Via Microsoft Teams: Bryan Boles, Donna Abbott, John Maloney, Marcia Turner, Alexander Fazzari, Claudia Brema, Bonnie Johnston, Cheryl MacMillan, Bina Patel Councillor Eric Beauregard

Regrets: Margaret Tanaszi, and Pam Koudjis,

#### Minutes of Last Meeting

Moved by: Marcia Turner

Seconded by: Claudia Brema

To: Approve the Minutes of the Board of Management from September 15, 2020 as amended.

Motion Carried.

#### Business Arising From Minutes:

Bryan Boles, Director of Corporate Services, met with the board to discuss how the museum budget will be formatted going forward. It was explained that items that are ongoing from the Capital Budget, like roof repair and computer updates are not Capital items they are Operational expenses and therefore that is where they have been put in the budget and will remain going forward.

It was also is consolidating Reserve Accounts in an effort to streamline the corporate finances.

#### Correspondance:

There was a letter from the Legion asking if the Museum would be purchasing a Remembrance Day wreath this year. Alexander Fazzari recused himself from discussion and voting as he is an executive member of the Legion.

Moved by: Terry Huffman

Seconded by: Donna Abbott

To: Purchase a 16" Remembrance Day wreath on behalf of the Museum.

Motion Carried.

A note of thanks, received from an Archives researcher, was also read to the board for the work that the Archivist, Michelle Vosburgh, does and how impactful it was for this researcher and their family.



Port Colborne Historical & Marine  
**MUSEUM**  
*...more than a museum!*

**Curator Report:**

Stephanie Powell Baswick reported that the HMCS Port Colborne model had been retrieved by family of a gentleman that served on the real HMCS Port Colborne. It will be on display in the archives to be viewed by appointment until Remembrance Day to honour those that served.

Stephanie also reported that the members' tours have been going well and that in November the Book A Safe Service (B.A.S.S) will be promoted to the public going forward. The concept art for the logo for the service was sent out to the board.

**Auxiliary Report:**

Bonnie Johnston reported that a day for the executive to meet is being arranged. Stephanie reported that the Tearoom alarm is now engaged and those going into the tearoom will need to disengage it when they go in.

Bonnie also reported that the executive is discussing Christmas Puddings.

**Programme Committee Report:**

No Report.

**Fundraising Committee Report:**

Marcia Turner reported that Lower Lakes Towing had sponsored museum tours for the rest of 2020 with a donation of \$5,000 so that everyone who books a gallery visit can have a tour.

**Building and Property Committee Report:**

Brian Heaslip reported that the committee had a walkabout of the grounds and identified issues that need fixing. Prior to the meeting the board had the opportunity to submit any issues that they had and while not everything is achievable there are some priorities. Some key issues is the Carriage House and looking into the foundation and see if that's the cause for some issues there.

Another identified issue is the pathway and raising the ground on either side to ensure that no one gets injured due to the few inches of difference between the path and the ground.

**Finance Committee Report:**

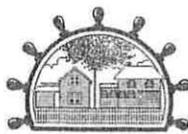
It was reported as stated by Bryan Boyles at the opening of the meeting that the operating budget that the board had approved had been amended to include the funds moved from the Museum Capital budget to the Museum Operation Budget.

Moved by: Brian Heaslip

Seconded by: Donna Abbott

To: Accept the proposed 2021 Museum Operational Budget as amended.

Motion Carried.



Port Colborne Historical & Marine  
**MUSEUM**  
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Membership Committee Report  
No Report

Accession Committee Report:

Terry Huffman reported that now that the committee met with Museum Registrar, Michelle Vosburgh, on October 1<sup>st</sup>. There is one item that needed to be brought to the board as a whole. There is a sign from a tailor on West Street that has been offered to the museum for purchase.

Stephanie Powell Baswick reported that the City has been offered a propeller and an anchor from Algoma and that the Mayor feels that the Museum grounds would make an appropriate venue for the potential artifacts.

Policy Report:

Alexander Fazzari reported that there are some COVID19 policies from the City that need adopting and that he will send them out to the board.

Marketing and Site Promotion Report:  
No Report.

Heritage Committee:  
No Report.

New Business:

This year the Museum will be lighting up the heritage village instead as part of the City initiative to do so. The Museum will also be preparing and selling wreath kits for people to purchase.

Stephanie reported that Mason Thomas from the City has been getting quotes for the Cedar Shingles and is just waiting on the third quote to proceed with the work that needs to be done. He is also looking at the accessibility issues and that the HVAC will be replaced next year. The foundation issues are also on his list.

Terry Huffman requested direction from the board on the accession committee items for offer. The Sign was sent back to the accession committee to gather more information on it before proceeding. The Anchor and Propeller that have been offered to the City by Algoma were discussed by the committee as a whole. Suggestions were made to have the propeller installed on the museum grounds and that the anchor be put somewhere like Derek's Point as the museum grounds already has one.

Moved by: John Maloney \*

Seconded by: Donna Abbott

To: Accept the Propeller and Anchor from Algoma so long as there are no costs to the museum.

Motion Deferred.



Port Colborne Historical & Marine  
**MUSEUM**  
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Moved by: Terry Huffman

Seconded by: Cheryl MacMillan

To: Defer the motion to accept the Propeller and anchor until more information has been gathered.

Motion Carried.

Motion to Adjourn: Bonnie Johnston