

**City of Port Colborne  
Special Council Meeting 29-20 – Public Hearing  
Minutes**

- Date:** November 2, 2020
- Time:** 6:30 p.m.
- Place:** Council Chambers, Municipal Offices, 66 Charlotte Street, Port Colborne
- Members Present:** M. Bagu, Councillor (via Zoom)  
E. Beauregard, Councillor (via Zoom)  
R. Bodner, Councillor  
G. Bruno, Councillor (via Zoom)  
F. Danch, Councillor (via Zoom)  
A. Desmarais, Councillor (via Zoom)  
D. Kalailieff, Councillor  
W. Steele, Mayor (presiding officer)  
H. Wells, Councillor
- Staff Present:** D. Aquilina, Director of Planning & Development (via Zoom)  
A. LaPointe, Manager of Legislative Services/City Clerk  
S. Luey, Chief Administrative Officer  
C. Madden, Deputy Clerk  
C. Roome, Planning Technician (via Zoom)  
D. Schulz, Planner

Also in attendance was one member of WeeStream.

**1. Call to Order:**

Mayor Steele called the meeting to order.

**2. Confirmation of Agenda:**

**No. 229** Moved by Councillor R. Bodner  
Seconded by Councillor H. Wells

That the agenda dated November 2, 2020 be confirmed, as  
circulated or as amended.

CARRIED

**3. Disclosures of Interest:**

Councillor Beauregard declared an indirect pecuniary interest with regard to Planning and Development Department, Planning Division, Report No. 2020-164,

Subject: Public Meeting Report for Zoning By-law Amendment D14-05-20, Nyon Oil Inc. as he is employed by Sullivan Mahoney and the firm has provided legal advice with respect to this item. Councillor Beauregard refrained from discussing or voting on this item.

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

Application for Zoning By-law Amendment Planning and Development Department, Planning Division, Report No. 2020-164, Subject: Public Meeting Report for Zoning By-law Amendment D14-05-20, Nyon Oil Inc.

##### **(i) Purpose of Meeting:**

David Schulz advised that the purpose of this meeting, pursuant to Section 34 of the Planning Act, is to consider an application submitted by the agent, Niagara Planning Group, on behalf of the owner Nyon Oil Inc for the lands legally know 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, south of the CN rail line, West of highway 140 and East of Canal Road in the City of Port Colborne.

##### **(ii) Method of Notice:**

Notice of the Public Meeting was administered in accordance with Section 34 of the Planning Act, as amended, and Section 5 of Ontario Regulation 545/06.

The Notice of Public Hearing was mailed to property owners within 120m of the property on October 13th. A sign was also posted on the property on October 13<sup>th</sup> and was also posted on the City's website and social media accounts

Notice was circulated to required agencies including the Regional Municipality of Niagara. The Region states that this proposal is technical in nature and requested to allow the development approvals process to continue in a manner that will allow implementation of the recommendations of the required technical studies. The Region supported the proposed technical amendment.

##### **(iii) Explanation of Procedure to be Followed:**

Mr. Schulz advised that the procedure to be followed this evening will be to present Department of Planning & Development Report No. 2020-164, to hear any comments from the applicant, to receive questions of clarification from Council to the applicant or Planning Staff, to open the meeting to the public for comments and questions, to announce the requirements under the Planning Act for written notice of passage of the proposed zoning by-law amendment, and to provide a brief explanation of future meetings regarding the application

**(iv) Presentation of Application for Zoning By-law Amendment:**

At this time, Mr. Schulz presented highlights from the Planning and Development Public Hearing Report No. 2020-164.

Mr. Schulz advised that the subject property is located south of the CN rail line, West of Highway 140 east of the Welland Canal and North of Forks Road. The property is currently vacant. The surrounding lands are industrial in nature however most remain undeveloped. The Official Plan designates the lands Rural Employment and the Zoning By-law designates the property as H-146-H.

Prior to the Holding Provision removal, a number of requirements are needed from the applicant including the completion of several studies.

The application for Zoning By-law Amendment proposes to alter the provisions of the H-146-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 on the property. The Zoning By-law Amendment is being 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.

**(v) Comments of Applicant:**

Mr. Schulz invited the applicant to comment.

Mary Lou Tanner proceeded to state that Nyon is not proposing to make any changes to the Zoning By-law, only to remove some of the clauses around lifting the Holding provision on the property. The applicant cannot register the Site Plan agreement as long as the H is on the site. As a result the applicant is asking for removal of clauses one and three.

**(vi) Questions of Clarification to Applicant/Planning Staff:**

Councillor Bruno questioned whether there is role in this process for our legal counsel.

Mr. Schulz advised that legal staff has been engaged in the process since the beginning of the approval.

Councillor Bruno then asked about the current status of the peer review process.

Mr. Schulz responded that studies are being submitted as they are being completed.

Councillor Kalailieff questioned if the legal team has had any concerns so far.

Mr. Schulz responded that this time the legal staff had no concerns but will be more involved with the Holding provision removal.

Before opening the meeting to the public Mr. Schulz read the following cautionary statements:

“If a person or public body does not make oral submissions at a public meeting or make written submissions to the City of Port Colborne before a decision on the proposed Zoning By-law Amendment is passed by Council, the person or public body is not entitled to appeal the decision of the City of Port Colborne Council to Local Planning Appeal Tribunal.”

And;

“If a person or public body does not make oral submissions at a public meeting, or make written submission to the City of Port Colborne before a decision on the proposed Zoning By-law Amendments is passed by Council, the person or public body may not be added as a party to the hearing of an appeal before the Local Planning Appeal Tribunal unless, in the opinion of the Tribunal, there is reasonable grounds to do so.”

Mr. Schulz also advised that for any interested members of the public there is a sign-in sheet to request future notices regarding this application.

**(vii) Oral Presentations and/or Questions from the Public:**

At this time, Mr. Schulz invited any members of the public who wish to speak to the application to do so.

Bonnie Folkens addressed Council.

Ms. Folkens asked if a blast radius report would be included and if it would be available to the public. Mr. Schulz responded he was unsure if it had been submitted at that time but that it will be addressed in the recommendation report.

Ms. Folkens asked what the start date would be of the operations of the property. Mr. Schulz advised that there was no exact time, but the applicant looks to lift the Holding provision in the near future which will provide a timeline.

Ms. Folkens asked about what the main method of transport will be for the facility and asked for Mr. Schulz’s thoughts on the St. Lawrence Seaway. Mr. Schulz responded that the methods of transportation are believed to be rail, water and transport but that it will be confirmed in the recommendation report and that the St. Lawrence Seaway will become more involved in the process when the Holding provision is removed.

Ms. Folken’s inquired about whether the shore bank along the canal would be modified. Mr. Schulz stated that he did not have an answer at that time and that it will be addressed to the recommendation report.

Ms. Fokkens questioned the Notice requirements of the application.

Mr. Schulz provided a response regarding the Notice and that it was circulated in accordance with the Planning Act and Ontario Regulation.

**(viii) Announcement Respecting Written Notice of Passage of Zoning By-law Amendment:**

Mr. Schulz advised that if anyone wishes “to be notified of the approval of the zoning by-law amendment they must make a written request to the clerk. Only those persons and public bodies that give the clerk a written request for the notice of the adoption and passing of a zoning by-law amendment will be given notice.”

**(ix) Explanation of Future Meetings:**

Mr. Schulz advised that this concludes the Public Hearing Under The Planning Act. The proposed Zoning By-law Amendment will be placed on Council’s agenda at a future date.

**No. 230** Moved by Councillor D. Kalailieff  
Seconded by Councillor A. Desmarais

That Development Department, Planning Division, Report No. 2020-164, Subject: Public Meeting Report for Zoning By-law Amendment D14-05-20, Nyon Oil Inc, be received for information.

CARRIED

**(x) Adjournment:**

Mayor Steele adjourned this Public Hearing at approximately 7:00 p.m.

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

**(i) Purpose of Meeting:**

The purpose of this meeting, pursuant to Section 34 of the Planning Act, is to consider an application submitted by agent Mark Koabel on behalf of owner Patricia Kenworthy for the lands legally known as Part of Lot 2, Concession 2, formerly in the Township of Humberstone, now in the City of Port Colborne, Regional Municipality of Niagara, municipally known as 5718 Highway 3 East.

The application for Zoning By-law Amendment proposes to change the zoning from Agricultural to Agricultural Purposes Only and AR-55. The Zoning By-law Amendment is being sought to satisfy a condition of a farm consolidation severance under consent application B26-19-PC.

**(ii) Method of Notice:**

Notice of the Public Meeting was administered in accordance with Section 34 of the Planning Act, as amended, and Section 5 of Ontario Regulation 545/06.

The Notice of Public Meeting was mailed to property owners within 120 metres of the property on October 13th. A sign was posted on the property by October 13th. Notice was also posted on the City's Website and social media.

As of the date of this meeting, staff have not received any written comments from members of the public.

The following agency has provided comments.

Regional Municipality of Niagara:

In accordance with Section 3.3.4 of the Memorandum of Understanding (Planning Function and Services in Niagara) between the Region and the local municipalities, Zoning By-law Amendment application for Agricultural Purposes Only, required as a condition of consent, are exempt from Regional review. The above noted ZBA was required as a condition of consent application B26-19-PC (Regional file CS-19-0079); therefore, this file is exempt from our review.

Please note the following comments provided by environmental and private septic staff for information.

Environmental Planning Comments

Environmental Planning staff have reviewed this application and have no comments to provide. The re-zoning request is proposed for the southern extent of the subject lands which is more than 50 m from the Significant Woodland located at the northern extent of the property, and the Significant Woodland is adequately identified in the City's Zoning By-law with an Environmental Conservation overlay.

Private Septic System Comments

The Zoning application is to change the zoning from Agricultural to Agricultural Purpose Only, recognizing an increase in accessory lot coverage, for the property municipally known as 5718 Highway 3 East, in Port Colborne. No record was found for the sewage system servicing residential dwelling. However, previous applications for the construction of a barn indicate that the approximate location of the existing septic system is east of the dwelling (tank and bed). A survey drawing from Chambers and Associates dated July 03, 2020 was submitted indicating an increase in the proposed front lot line. Since the increase the existing septic now meets the required 3.0 metre setback from the property line to the existing in-ground legal non-conforming septic. Therefore, provided no changes are proposed

for the existing dwelling, our Department has no objections to the proposed Zoning Application. Secondly, condition (3) for the previous Consent Application has been cleared.

**(iii) Explanation of Procedure to be Followed:**

The procedure to be followed this evening will be to present Planning and Development Department Report No. 2020-161, hear any comments from the applicant, receive questions of clarification from Council to the applicant or Planning Staff, open the meeting to the public for comments and questions, announce the requirements under the Planning Act for written notice of passage of the proposed zoning by-law amendment, and provide a recommendation to Council.

**(iv) Presentation of Application for Zoning By-law Amendment:**

At this time, I would like to present Planning and Development Department Public Hearing Report 2020-161.

Location and Context

The property is located at 5718 Highway 3, which is on the north side of Highway 3 to the west of Holloway Bay Road. The property currently has a single detached dwelling with several farm buildings. Most of the land is under cultivation. The surrounding lands are agricultural in nature with the exception of residential dwellings also located on them.

City of Port Colborne Official Plan

The City of Port Colborne Official Plan designates the property as **Agricultural**. Lands designated Agriculture are Prime Agricultural Areas as defined by the Provincial Policy Statement and as identified on the Agricultural Land Base Map of the Regional Policy Plan and are used primarily for agricultural purposes.

A small portion of the property is also designated as an Environmental Conservation Area which will remain on the property.

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

The City of Port Colborne Zoning By-law 6575/30/18, zones the property **Agricultural** which permits the following uses: accessory agricultural activities; agriculture use; agri-tourism and value added uses; conservation uses; dwelling, detached existing at the date of the passing of this by-law as a principal use on a new lot; dwelling, detached as a principal use on an existing lot of record; kennel; cannabis production facility; and uses, structures and buildings accessory thereto.

A small portion of the property contains the Environmental Conservation Overlay which will remain on the property.

The application for Zoning By-law Amendment proposes to change the zoning to Agricultural Purposes Only and AR-55. Agricultural Purposes Only permits agricultural uses, conservation uses, and uses, structures and buildings accessory thereto including greenhouses. The AR-55 zone, which is a special provision of the Agricultural Residential zone, permits dwelling, detached and uses, structures and buildings accessory thereto. The special provision is required to recognize the increase in accessory lot coverage on the property.

**(v) Comments of Applicant:**

At this time, Your Worship, I would like to invite the applicant to comment.

**(vi) Questions of Clarification to Planning Staff/Applicant:**

At this time, Your Worship, are there any questions of clarification for myself?

Before opening the meeting to the public I would like to read the following:

“If a person or public body does not make oral submissions at a public meeting or make written submissions to the City of Port Colborne before a decision on the proposed Zoning By-law Amendment is passed by Council, the person or public body is not entitled to appeal the decision of the City of Port Colborne Council to Local Planning Appeal Tribunal.

If a person or public body does not make oral submissions at a public meeting, or make written submission to the City of Port Colborne before a decision on the proposed Zoning By-law Amendments is passed by Council, the person or public body may not be added as a party to the hearing of an appeal before the Local Planning Appeal Tribunal unless, in the opinion of the Tribunal, there is reasonable grounds to do so.”

To any interested members of the public – if you would like to receive future notices regarding this application please contact me by email at [planner@portcolborne.ca](mailto:planner@portcolborne.ca) or by phone at (905) 835-2900 ext. 202 or the City Clerk at [cityclerk@portcolborne.ca](mailto:cityclerk@portcolborne.ca)

**(vii) Oral Presentations and/or Questions by Public:**

At this time, Your Worship, I would like to invite any members of the public who wish to speak to the applications to do so.

**(viii) Announcement Respecting Written Notice of Passage of the Zoning By-law Amendment:**

"If you wish to be notified of the approval of the zoning by-law amendment you must make a written request to the Clerk. Only those persons and public bodies that give the clerk a written request for the notice of the adoption and passing of a zoning by-law amendment will be given notice."

**(ix) Explanation of Future Meetings**

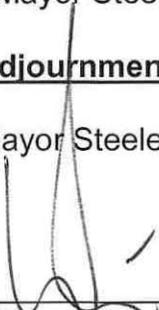
This concludes the Public Hearing under the Planning Act. The proposed Zoning By-law Amendment and recommendation has been placed on the agenda to follow this public meeting.

**(i) Adjournment:**

Mayor Steele adjourned this Public Hearing at approximately 7:09 p.m.

**6. Adjournment**

Mayor Steele adjourned the meeting at approximately 7:09 p.m.

  
\_\_\_\_\_  
William C. Steele  
Mayor

  
\_\_\_\_\_  
Amber LaPointe  
City Clerk

Minutes prepared by the Department of Planning and Development.



## City of Port Colborne – November 2, 2020

### **Special Council Meeting - Public Hearing Under the Planning Act**

#### Item 4.

**Planning and Development Department, Planning Division, Report No. 2020-164,  
Subject: Public Meeting Report for Zoning By-law Amendment D14-05-20, Nyon  
Oil Inc.**

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1. Mary Lou Tanner, Principal Planner and Jeremy Tran, Planner, Niagara Planning Group (NPG) Inc. – representing Nyon Oil Inc.
  - Ms. Tanner and Mr. Tran will be providing a PowerPoint presentation with regard to the above report in our Zoom Virtual Council Meeting.
2. Bonnie Fokkens, 13 Crescent Drive, Welland
  - Ms. Fokkens will be in attendance to speak to the above report in our Zoom Virtual Council Meeting.
3. Gordon R. Baker, Q.C. Barrister and Solicitor, President, Nyon Oil Inc.
  - Mr. Baker will be in attendance to only answer questions of Council with regard to the above report and will be speaking in our Zoom Virtual Council Meeting.

### **Written Submissions for Report No. 2020-164**

1. Wendy Bover

## **Special Council - Public Hearing Under the Planning Act**

### **Item 5.**

**Planning and Development Department, Planning Division, Report No. 2020-161, Subject: Planning Meeting and Recommendation Report for Zoning By-law Amendment D14-05-19, 5718 Highway 3**

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1. Mark Koabel, representing Patricia Kenworthy
  2. Patricia Kenworthy, owner
- Mr. Koabel will be in attendance to speak to the above report in our Zoom Virtual Council Meeting.

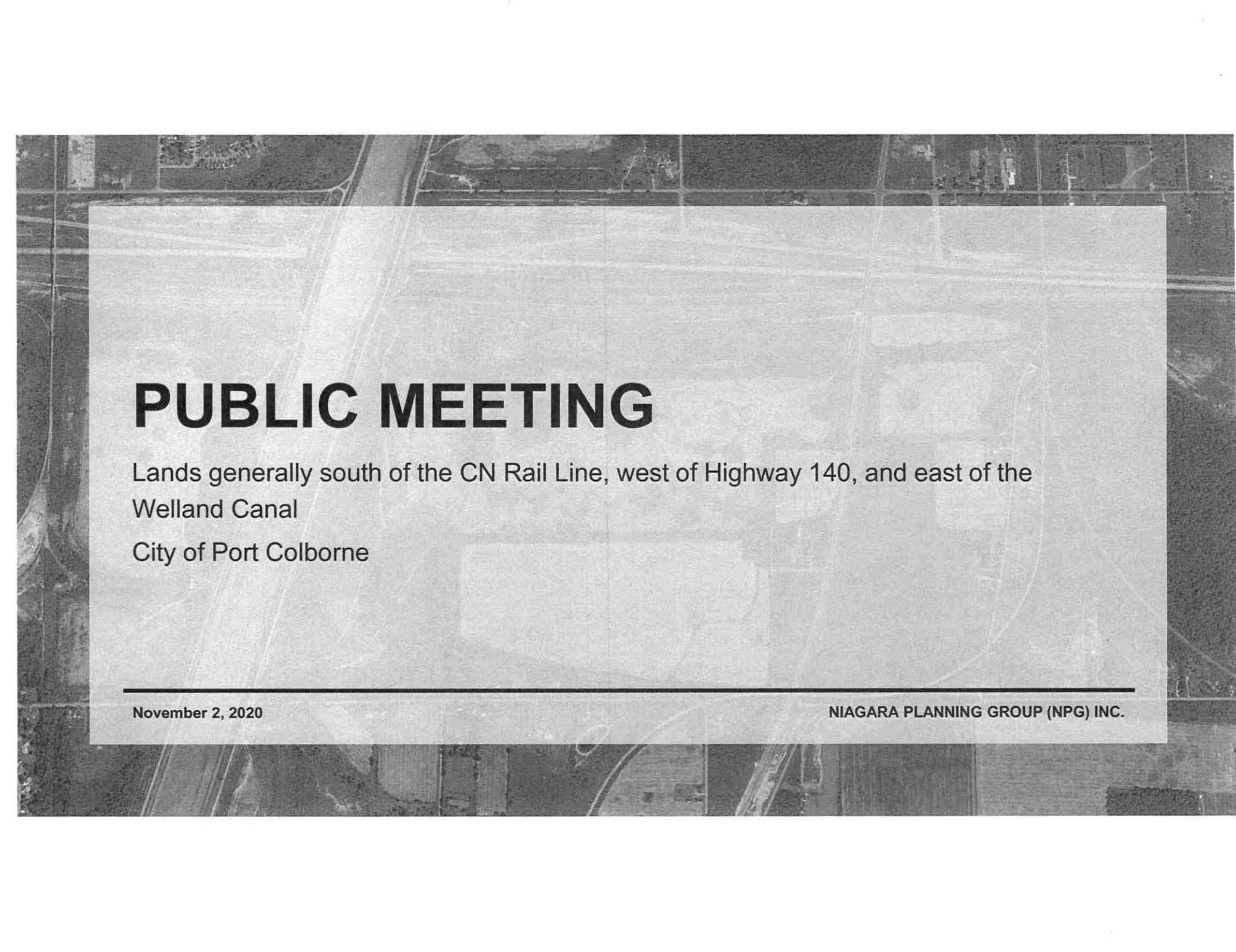
**Special Council Meeting following Special Council (Public Hearing) which begins at 6:30 p.m.**

### **Item 2.**

**Department of Planning and Development, Planning Division, Report No. 2020-162, Subject: Recommendation Report for the Removal of Holding Provision D14-04-20, 433 Sugarloaf Street**

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1. Barry Mills, Canalway Nice Homes Limited
- Mr. Mills will be in attendance to speak to the above report in our Zoom Virtual Council Meeting



# **PUBLIC MEETING**

Lands generally south of the CN Rail Line, west of Highway 140, and east of the Welland Canal

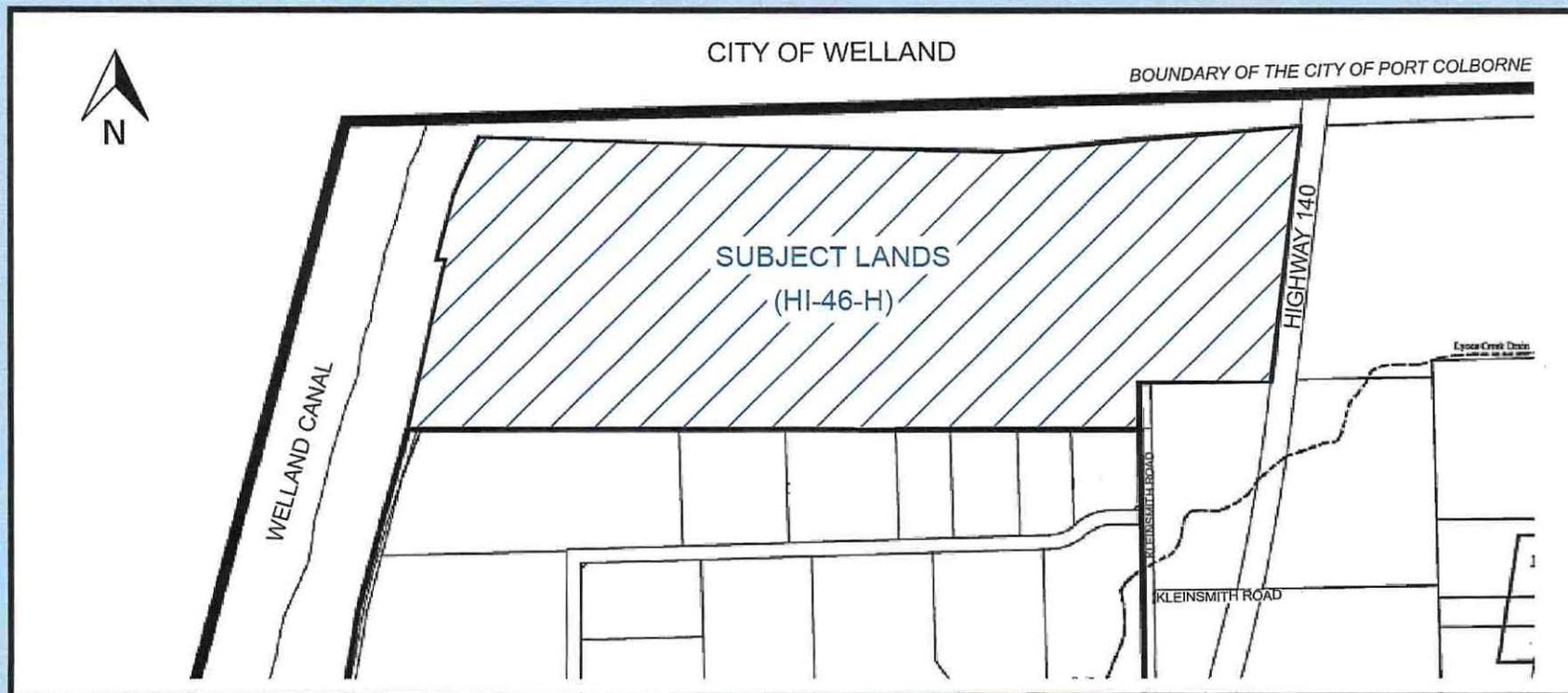
City of Port Colborne

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November 2, 2020

NIAGARA PLANNING GROUP (NPG) INC.

# Subject Lands



# Zoning By-law for Petroleum Site

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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:
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## Zoning By-law for Petroleum Site

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- i) The Owner enters into and registers on title a Site Plan Agreement with the City of Port Colborne which will include recommendations made in the supporting technical studies conducted in association with the development application;
  - ii) The above mentioned technical studies and their recommendations are satisfactory to the City of Port Colborne,
  - iii) Prior to the City entering to the Site Plan Agreement, approval shall be obtained from the applicable approval authority which identifies an appropriate location and design for a private sewage disposal system and private water supply system to adequately and appropriately service the proposed use;
  - iv) Meet Species at Risk requirements to the satisfaction of Ministry of Natural Resources.
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# Proposed Technical Amendment

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Special Provision: HI-46-H is amended by removing provision b) i) and b) iii) which read:

- b)i) The Owner enters into and registers on title a Site Plan Agreement with the City of Port Colborne which will include recommendations made in the supporting technical studies conducted in association with the development application;
  
- b)iii) Prior to the City entering to the Site Plan Agreement, approval shall be obtained from the applicable approval authority which identifies an appropriate location and design for a private sewage disposal system and private water supply system to adequately and appropriately service the proposed use;

- ✓ **Supports implementation of the zoning and studies for this site**
- ✓ **Protects the public interest as the City retains decision making on:**
  - ✓ **Removing the Holding Provision**
  - ✓ **Site Plan/Site Plan Agreement**
- ✓ **Ensures the development is implemented through established processes and as contemplated through the studies**
- ✓ **Is consistent with the PPS, and conforms with the Growth Plan, NROP and City of Welland Official Plan**

Public meeting Nyon  
City of Port Colborne  
Nov 2, 2020

Bonnie Fokkens  
13 Crescent Drive  
Welland, ONTARIO  
L3B 2W6

I am a resident of Dain City – located across the proposed development. I am also a Councillor for the City of Welland, Ward 6 – which as a neighboring Municipality - will be affected by this development.

I have the following questions that I am hoping can be answered by the Developer or by City Staff

- 1 When is the anticipated start date?
- 2 What are the thoughts of the St Lawrence Seaway and Transport Canada?
- 3 What is the mode of transportation - rail – road – water – or any combination of both?
  - a. If it is water – what are the designs along the Welland Canal for safe transportation and will the Welland Canal be modified to suit the transport of goods
- 4 Can you confirm the product(s) that will be transported
- 5 Is there a report on the Blast Radius around the development?
  - a. Has it been made public to the residents?
  - b. Has it been made public to neighboring Municipalities?
- 6 Have you received any comments from neighboring Municipalities? – What were they?
- 7 Is this meeting legal? The Planning Act requires 20 days' notice to the public and affected municipalities.
  - a. The City of Welland received the notice on Oct 20, 2020 (as per Welland Staff). That is in contravention of the Planning Act.
  - b. Signs were posted Oct 19<sup>th</sup> regarding the public Meeting on the City of Port Colborne's web site.
  - c. To meet the Planning Act requirements – notice should have been given and posted by Oct 14, 2020.

I would suggest that this Public Meeting should not be held tonight as it does not meeting the Planning Act Requirements – and that the City respond publically to the above questions in order that a proper and a more informed public meeting can be held.

Respectfully

Bonnie Fokkens

From: "Wendy Bover" <[REDACTED]>  
To: "Wendy Bover" <[REDACTED]>, "cityclerk@portcolborne.ca"  
<cityclerk@portcolborne.ca>  
Date: 2020-11-02 11:21 AM  
Subject: Submission for 6:30 Meeting

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

This is my submission for tonight's meeting. Please confirm it has been received and will be distributed to council. Thank you.

These are questions I would like council to ask themselves and the city staff before voting on tonight's issue:

1. To avoid possible future legal issues should I be asking that the terms of the site plan agreement and private servicing be locked in place before allowing the development to proceed?
2. If I vote yes to proceed with the development without locking the agreement and servicing in place until a later date will it leave the city liable for the cost of any development that was done and does not meet the original agreement and servicing if it is decided to keep it as is at that later date?
3. Should I be asking all of the companies using this property to define exactly what is going to be stored and transported to and from this location, their explosive qualities, and the risks of shipping these products throughout the Great Lakes and St Lawrence Seaway?