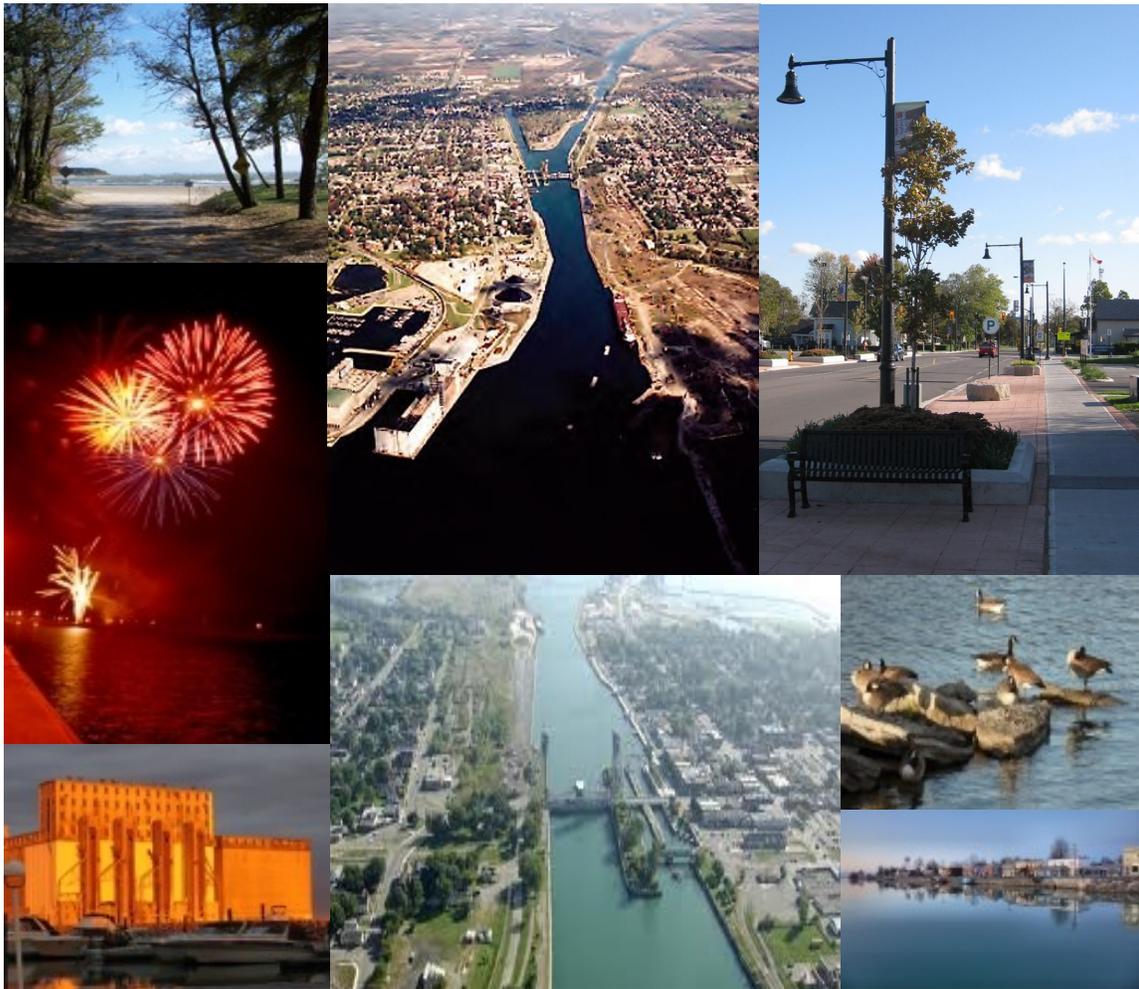


City of Port Colborne Official Plan Appendices



PORT COLBORNE
WWW.PORTCOLBORNE.CA

ISSUE DATE:

July 11, 2013

Appendix A



PL090828

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

Nyon Oil Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the City of Port Colborne to redesignate land at Part Lots 23, 24 and 25, Concession 4, Part Lots 16 to 20, Concession 5 from Deferred Industrial, Private Open Space and Agricultural to Special Industrial/Employment Area to permit the development of an energy park
OMB File No. PL090828

Nyon Oil Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 1150/97/81 of the City of Port Colborne to rezone lands respecting Part Lots 23, 24 and 25, Concession 4, Part Lots 16 to 20, Concession 5 from Agricultural and Environmental Protection to Special Exemption Heavy Industrial and Environmental Protection to permit the development of an energy park
OMB File No. PL090829

APPEARANCES:

Parties

Counsel

Nyon Oil Inc.

J. Ayres

City of Port Colborne

S. Premi

Region of Niagara

S. Chisholm
P. DeMelo

Also Appeared:

Ministry of Municipal Affairs and
Housing

R. Boxma

DECISION DELIVERED BY J. V. ZUIDEMA AND ORDER OF THE BOARD

[1] At the outset of this hearing, the Ministry of Municipal Affairs and Housing (“MMAH”) appeared, seeking party status. No formal motion materials were provided given the late request, so oral submissions and responses were provided. The Board provided an oral ruling substantially as follows:

[2] This is the sixth hearing associated with the appeals filed by Nyon Oil Inc. (“Nyon”). The other five hearing events were in person and via telephone conference prehearings. I have been case managing this matter since the first Pre-Hearing Conference (“PHC”) of April 6, 2011, over two years ago.

[3] The MMAH attends this morning seeking party status. The motion for party status is made orally, which is permitted under the Board’s Rules although not usual or preferred. Motions of a substantial nature, including that of party status, are normally done with 10 days’ notice and filing of a Notice of Motion with supporting affidavit material.

[4] The oral motion has left the responding parties to similarly provide verbal submissions without formal Response materials and affidavits although some documents have been tendered to support their positions. The Responding parties all object to the inclusion of MMAH as a party.

[5] The Board dismisses MMAH’s motion and my reasons are as follows:

[6] The appeal was launched under ss. 22(7) of the *Planning Act*. Subsection 22(11) refers to ss. 17(44) to ss. 17(44.7) as those provisions apply. Subsection 17(44.1) deals with the addition of parties and states:

Despite subsection (44), in the case of an appeal under subsection (24) or (36), only the following may be added as parties:

A person or public body who satisfies one of the conditions set out in subsection (44.2).

1. The Minister.
2. The appropriate approval authority.

[7] Subsection 17(44.2) states:

The conditions mentioned in paragraph 1 of subsection (44.1) are:

1. Before the plan was adopted, the person or public body made oral submissions at a public meeting or written submissions to the council.
2. The Municipal Board is of the opinion that there are reasonable grounds to add the person or public body as a party.

[8] In this circumstance, the addition of the Minister is not mandatory, as suggested by counsel to MMAH, but rather, discretionary as the term “may” and not “shall” is used in the legislation.

[9] To add the Province under the rubric of “person or public body” would mean that the Board would have to be satisfied that one of the conditions under ss. 17(44.2) had been satisfied.

[10] With respect to condition #1, no submissions or evidence was provided to satisfy that condition.

[11] With respect to condition #2, the Board is not convinced that there are reasonable grounds to add the Province because:

- a. The matters before the Board have been ongoing for over two years and there have been a number of opportunities for the Province to appear earlier and become engaged in the process. The Province received notice not only of the Board’s process but also the City’s initiatives through the public information meeting and the Province did not attend.
- b. With the greatest respect to the communications between the Planners at the Province and those at the Region, if the Province believes that a matter is of significant importance, it is not enough to send emails or other correspondence to staff and stop there. It is incumbent on the Province to attend before this Board where warranted and make its position known, and if necessary, continue to be engaged to defend that position.

[12] Through the process undertaken by the City, the Region and the applicant, significant time and resources have been expended to resolve the dispute between the parties. I am not counting the resources of the Board to have the matters move forward to possible resolution.

[13] The Board encourages at all times, for resolution to be achieved amongst the parties as long as the resolution meets the tests as enunciated in the legislation, in provincial, regional and local policy, and that it satisfies the Board that it is in the public interest and represents good and proper planning. The parties to date have been diligent in working towards that goal in earnest. To permit the Province to be added as a party at this late date could potentially undermine all of that good work and that would not be in the public interest nor reflect the spirit of negotiation and resolution which the Board strives to achieve. To do so at the start of a hearing, where settlement has been achieved, would in fact have the effect of thwarting the Board's process to encourage such resolution.

[14] Now to address the substantive reasons for denying party status in addition to those which I have provided thus far and would categorize as dealing with procedural fairness, unfortunately I am not persuaded by what the Province hopes to achieve in seeking such status.

[15] Regional Policy Plan Amendment ("RPPA") 1-2012 is in full force and effect. No appeals were launched and if the Province had concerns with that Regional Amendment, it could have appealed it and had the matter adjudicated through the Board's process. It did not. By not doing so, one can properly presume that RPPA 1-2012 meets the provincial policy objectives of both the 2005 Provincial Policy Statement ("2005 PPS") and the Growth Plan.

[16] Any amendment to a local official plan, such as the one I have before me, must conform to the upper tier plan. Similarly, zoning amendments must follow official plan policy. That's how planning works and that certainty is important to maintain.

[17] RPPA 1-2012 is not before me, nor is the City's new Official Plan nor is the appeal of RPPA 2-2009. The only matters to which I have jurisdiction is Nyon's appeals under ss. 22(7) and 34(11), seeking amendments to re-designate its lands from Deferred Industrial, Private Open Space and Agriculture to Special

Industrial/Employment Area and to rezone from Agricultural and Environmental Protection to Special Exemption Heavy Industrial and Environmental Protection. In each case, the re-designation and rezoning are to facilitate the development of an energy park.

[18] The other planning instruments to which the Province may have some concern are not consolidated with Nyon's appeals. No motion for consolidation was made and I cannot go beyond the boundaries of my jurisdiction. I cannot make any decisions or rulings on either the City's new Official Plan ("OP") or RPPA 2-2009.

[19] Finally, the Province states that there is no declaration of provincial interest here and that is why the 30-day notice requirement is not applicable. I accept that.

[20] Therefore for the foregoing reasons, I dismiss the request for party standing; however, MMAH is welcome to stay at these proceedings.

[21] Following the delivery of the Board's ruling, MMAH left the proceedings and the Board heard from Richard Brady, qualified and accepted as an expert in land use planning. Mr. Brady's testimony was in support of the settlement achieved amongst the parties.

[22] Mr. Brady provided an overview of the history and geography of the project. He opined that the settlement proffered to the Board met all legislative and policy tests, represented good planning and was in the public interest. It is on the basis of Mr. Brady's evidence that the Board allows the appeals in order to give effect to the settlement achieved.

[23] Mr. Brady reviewed his report, contained in Exhibit 1, Tab D. This report dated February 12, 2013, was submitted to the City's Municipal Council for consideration. The report articulates the rationale for support and recommends approval of the Nyon project. This report along with other supporting technical reports was posted to the City's website and all such information was available for the public.

[24] Mr. Brady then reviewed the specific language of the draft Official Plan Amendment ("OPA"). It was contained in Exhibit 1, Tab D2. At p.172, the details of the amendment are set out. This was part of the materials provided to the municipality.

Following dialogue, leading up to this hearing, refinements were made and the draft proposed to this Board was prepared. That document is located at Tab 3G. The refinements reflect, for example, the definition of rural employment as taken from the Port Colborne Official Plan.

[25] Mr. Brady opined that the proposed draft OPA as identified at Tab 3G of Exhibit 1 was consistent with the 2005 PPS, conformed to the Growth Plan, the Regional and local OPs, represented good planning and was in the public interest.

[26] The same was true for the proposed draft Zoning By-Law Amendment ("ZBA") found at Tab D3 as prepared for consideration by the municipalities. The By-Law contains a holding provision for the tank farm and following the provision of specific technical reports, the holding provision will be lifted. Site plan approval is also required before the "h" is lifted. The draft proposed to this Board was filed as Exhibit 14.

[27] Mr. Brady felt confident in recommending this draft By-Law to the Board because besides meeting all of the policy and legislative requirements, he explained that the City was still in control of the process yet to occur. He also indicated that the proposed planning instruments had undergone an extensive public process and the elements which were "fractious" to the community had been removed. His testimony was unchallenged.

[28] The Board also heard from Kristy Shortall, who was also qualified and accepted as an expert in land use planning. Ms. Shortall agreed with Mr. Brady's opinions. She testified that not only did the proposed planning instrument meet the requisite tests as enunciated by Mr. Brady, the project would take advantage of underutilized lands and achieve the objectives of the Growth Plan.

[29] She explained that the Provincial D6 Guidelines were implemented and all but one residence were located outside the 1,000 m radius. For the one residence impacted, mitigation for noise and traffic were completed. Like Mr. Brady, she recommended the draft OPA and ZBA to the Board.

[30] The Board also heard from a number of Participants: Wendy Bover, Toby McCreadie and Robert Ferri. All testified as laypersons.

[31] Ms. Bover raised concerns which were outside of the jurisdiction of the Board, such as corporate name change of Nyon, transfer of land from the City to Nyon and why the tanks are called petro-chemical. Her other concerns, that there was not enough public engagement and the unduly length of the process, were not supported. Despite her criticism of the lack of public process, Ms. Bover admitted under cross-examination that she did not access the City's website where all the relevant reports could be found because as she said, she could not attain those with ease. She also did not attend at the City Clerk's Department where these same reports were available as hard copies for public viewing. Ms. Bover testified that she lived approximately ½ a mile from the subject site.

[32] Ms. McCreddie came forward as a Participant later in the process. She did not identify herself as such at any of the earlier Pre-Hearings. Ms. McCreddie was concerned about potential vibration and she doubted that significant employment opportunities will result from the project. Her concerns of vibration stemmed from an existing Starch factory, which was across the Canal.

[33] Robert Ferri's concerns centered on access to property he inherited at 4253 Highway 140 ("Hwy 140"). Mr. Ferri does not live at this location; his residence is elsewhere in Welland. He was dissatisfied that access to his property on Hwy 140 was being re-routed and as such, he was being unnecessarily inconvenienced.

[34] In response to these concerns, Ms. Shortall was recalled. Concerning Mr. Ferri's misgiving, road re-alignments were done to address sightlines and safety issues. A report prepared by Paradigm located various access points along Hwy 140 and given the classification of this road (Class 3 Controlled Access), Kleinsmith Road was not preferred for upgrading given its incline. As such an alternate access to a new municipal road, approximately 200 m from Kleinsmith was provided. Ms. Shortall also explained that this rationale had been provided to Mr. Ferri's son as he was the contact name provided.

[35] With respect to Ms. Bover's and Ms. McCreddie's worries, Ms. Shortall assured them that no natural gas was being proposed for the tanks. They are to be petroleum or petrochemical which includes petrol, diesel and oil. She also set out the background and dialogue with the Niagara Peninsula Conservation Authority ("NPCA") wherein

floodplain analysis was done to address inaccuracy with mapping. A 30 m buffer for heritage features is provided. Further, a geotechnical report was done wherein seven boreholes were undertaken. That report with analysis was made available at the City Clerk's department as well as the public library.

[36] While the apprehensions of the Participants are genuinely held, they are not sufficient to successfully challenge the expert planning testimony of Ms. Shortall and Mr. Brady.

[37] The Board determines that the appeals are allowed in order to effect the settlement achieved between the parties.

BOARD ORDERS

[38] Therefore the Board orders the appeal of Nyon Oil Inc. is allowed in part and the Official Plan for the City of Port Colborne is modified as set out in Attachment 1 to this Order and filed with the Board as Exhibit 1, Tab 3G, and as modified is approved.

[39] Further the Board orders the appeal of Nyon Oil Inc. is allowed in part and Zoning By-law for the City of Port Colborne is hereby amended in the manner set in Attachment 2 to this order and filed with the Board as Exhibit 14. The Board authorizes the municipal clerk to assign a number to this by-law for record keeping purposes.

"J. V. Zuidema"

J. V. ZUIDEMA
VICE-CHAIR

ATTACHMENT 1

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THE CORPORATION OF THE CITY OF PORT COLBORNE

BY-LAW NO.XXX/XX/13

**BEING A BY-LAW TO ADOPT AMENDMENT NO.XX TO THE OFFICIAL PLAN OF THE
PORT COLBORNE PLANNING AREA**

WHEREAS it is deemed expedient to further amend the Official Plan, heretofore adopted by Council for the City of Port Colborne Planning Area;

NOW THEREFORE the Council of the Corporation of the City of Port Colborne pursuant to Section 17(22) of The Planning Act, R.S.O. 1990, enacts as follows:

1. The Official Plan Amendment No. XX to the Official Plan for the City of Port Colborne Planning Area consisting of the attached explanatory text and mapping.
2. That the Clerk is hereby authorized and directed to make application to the Regional Municipality of Niagara for approval of the aforesaid Amendment No. XX to the Official Plan for the Port Colborne Planning Area.
3. This By-law shall come into force and take effect on the date upon which it is finally passed.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS XXTH DAY OF
[Month] 2013.**

Vance Badawey, MAYOR

Ashley Grigg, CLERK

April 11, 2013

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**AMENDMENT NO.XX
TO THE OFFICIAL PLAN FOR THE
PORT COLBORNE PLANNING AREA**

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April 11, 2013

**AMENDMENT NO.XX
TO THE OFFICIAL PLAN FOR THE
PORT COLBORNE PLANNING AREA**

THE STATEMENT OF COMPONENTS

PART A - The Preamble which does not constitute part of this Amendment.

PART B - The Amendment consisting of the following text and Schedule "A", and which constitutes Amendment No. XX to the Official Plan for the Port Colborne Planning Area.

PART C - Definitions which also constitute a part of this Amendment.

PART A – THE PREAMBLE

Purpose

The purpose of this amendment is to re-designate certain lands within the Port Colborne Planning Area to Rural Employment Lands and Environmental Protection Area, and include a Special Policy Area to permit the development of a petrochemical storage and distribution facility.

Location

The lands are generally bounded by the CN railway tracks to the north, Highway 140 to the east, the Welland Canal by-pass to the west and Third Concession Road to the south. A detailed map of the subject lands is attached as Schedule "A" to this Official Plan Amendment No. XX

Basis

An application has been submitted to establish an energy park in the City of Port Colborne. The energy park will include a number of light industries in addition to a ground-mounted solar energy facility and a petrochemical storage and distribution facility.

These lands are currently designated "Deferred Industrial", "Private Open Space", and "Agricultural". It is proposed that these lands be re-designated to "Rural Employment" "Environmental Protection Area" and "Special Policy Area" permitting a 56 tank petrochemical storage and distribution facility.

The "Deferred Industrial" designation applies to those lands located on the west side of Snider Road, north of Third Concession Road and south of Forks Road. The Official Plan states that this "Industrial" designation has been placed on the subject property to recognize the strategic importance of these lands for industrial use given the extensive frontage along the Welland Canal and the assignment of the "Deferred" category is due to the absence of servicing. With private on-site services being proposed for the development, the removal of the "Deferred Industrial" designation is appropriate. Similar to other industrial lands fronting onto the Welland Canal, the subject property would be re-designated "Rural Employment".

Those lands located north of Forks Road and south of the Highway 58 corridor and fronting onto the Welland Canal are currently designated "Private Open Space". The balance of lands (i.e. those lands east of the "Private Open Space" designation and west of Highway 140) are designated "Agricultural".

The "Private Open Space" policies are intended to provide for recreational purposes. However, the Official Plan provides for re-designation of these lands for other uses where direct canal

April 11, 2013

access is required for industrial land; and the lands are not required by the Region or other appropriate government authority. The lands are no longer required for open space use because the Region no longer requires the protection of these lands to implement the Greater Niagara Circle Route trail system, and the adjacent proposed industrial use would benefit from direct access to the Canal.

The designation of the lands for industrial purposes is warranted based on a defined need for additional industrial lands to accommodate large parcel industrial users, as outlined in the City of Port Colborne's Industrial Land Needs Study. Furthermore, these lands are within the area identified by the Province, Region and City as an "Economic Gateway Centre" which has been identified as having a unique economic importance to the Region and the Province due to its proximity to the international border crossing and has recently been designated as "Rural Employment" with the adoption of RPPA 1-2012, the Region's Economic Gateway Amendment and the City's Official Plan (as adopted in 2012).

A number of studies have been completed, which demonstrate the feasibility and appropriateness of the proposed rural employment development in this location. These studies include:

- Planning Rationale Report;
- Floodplain Analysis Report;
- Noise Impact Study;
- Air Emissions Compliance Assessment;
- Traffic Impact Study;
- Hydrogeological Consultation Report;
- Functional Servicing Report;
- Groundwater Impact and Environmental (Contaminant) Management Plan;
- Geotechnical Study;
- Project Implementation Plan;
- Archaeological Study; and
- Abandoned Natural Gas Well Study.

Further to the above studies, the following studies will be completed prior to development proceeding:

- Environmental Impact Statement;
- Tree Preservation Plan; and
- Risk Assessment Plan.

In addition to the policies outlined in this Official Plan Amendment, there will be further controls governing the development on the subject property. These will include:

- Zoning By-law for Dry Industrial Development (ID) zone;
- Zoning regulations, including a holding "H" symbol so all required conditions must be cleared before development can commence;
- Site plan approval to delineate the specific nature and location of development; and

April 11, 2013

- Various required environmental approvals.

The specific nature of future industrial uses will be guided by the recommendations outlined in each of the supporting studies and adhere to standard protocol for industrial uses, including the MOE D-6 Separation Guidelines, which will guide development and be applied during the review of the Site Plan.

It is intended that the boundaries of the proposed land use designations, as shown on Schedule "A", shall be considered as approximate, except where they coincide with roads, railways or other definite physical features. Where the general intent of the Official Plan for the Port Colborne Planning Area is maintained, minor adjustments may be made in these boundaries without necessitating an amendment to the Plan. Other than such minor adjustments, no areas of designation shall be created that do not conform to the Official Plan with respect to land use.

PART B - THE AMENDMENT

All of this part of the document entitled Part B – The Amendment, consisting of the following text and Schedule "A" as well as Part C – Definitions, constitutes Amendment No. XX to the Official Plan for the Port Colborne Planning Area.

DETAILS OF THE AMENDMENT

The Official Plan for the Port Colborne Planning Area is hereby amended as follows:

The following text is inserted into Section G.12 of the Official Plan for the Port Colborne Planning Area:

- (s) Solar energy generating facilities and dry industrial development will be permitted uses on lands generally located south of the CN railway track, west of Highway 140, east of the Welland Canal By-pass, and north of Third Concession Road as shown on Schedule A (attached) and;

The following changes are made to Schedule C - Land Use of the Official Plan for the Port Colborne Planning Area:

1. That the area shown as "Rural Employment" on Schedule A, attached hereto, entitled "Schedule A to Official Plan Amendment No. XX", shall be re-designated from "Agricultural" and "Private Open Space" to "Rural Employment" and shall be so identified on Schedule C Land Use Map of the Official Plan for Port Colborne Planning Area.
2. That a portion of the area shown as "Rural Employment" on Schedule A, attached hereto be the subject of a Special Policy Area provision that permits the additional use of a 56 tank petrochemical storage facility, entitled "Schedule A to Official Plan Amendment No. XX", shall be redesignated from "Agricultural" and "Private Open Space" to "Rural Employment" subject to Special Policy Area provisions and shall be identified on Schedule C Land Use Map of the Official Plan for the Port Colborne Planning Area.
3. That the area shown as "Environmental Protection" on Schedule A, attached hereto, entitled "Schedule A to Official Plan Amendment No. XX", shall be re-designated from "Deferred Industrial" and "Agricultural" to "Environmental Protection Area" and shall be so identified on Schedule C Land Use Map of the Official Plan for the Port Colborne Planning Area.

The implementation and interpretation of this amendment shall be in accordance with all other relevant policies of the Official Plan for the Port Colborne Planning Area.

PART C – DEFINITIONS

Rural Employment Area

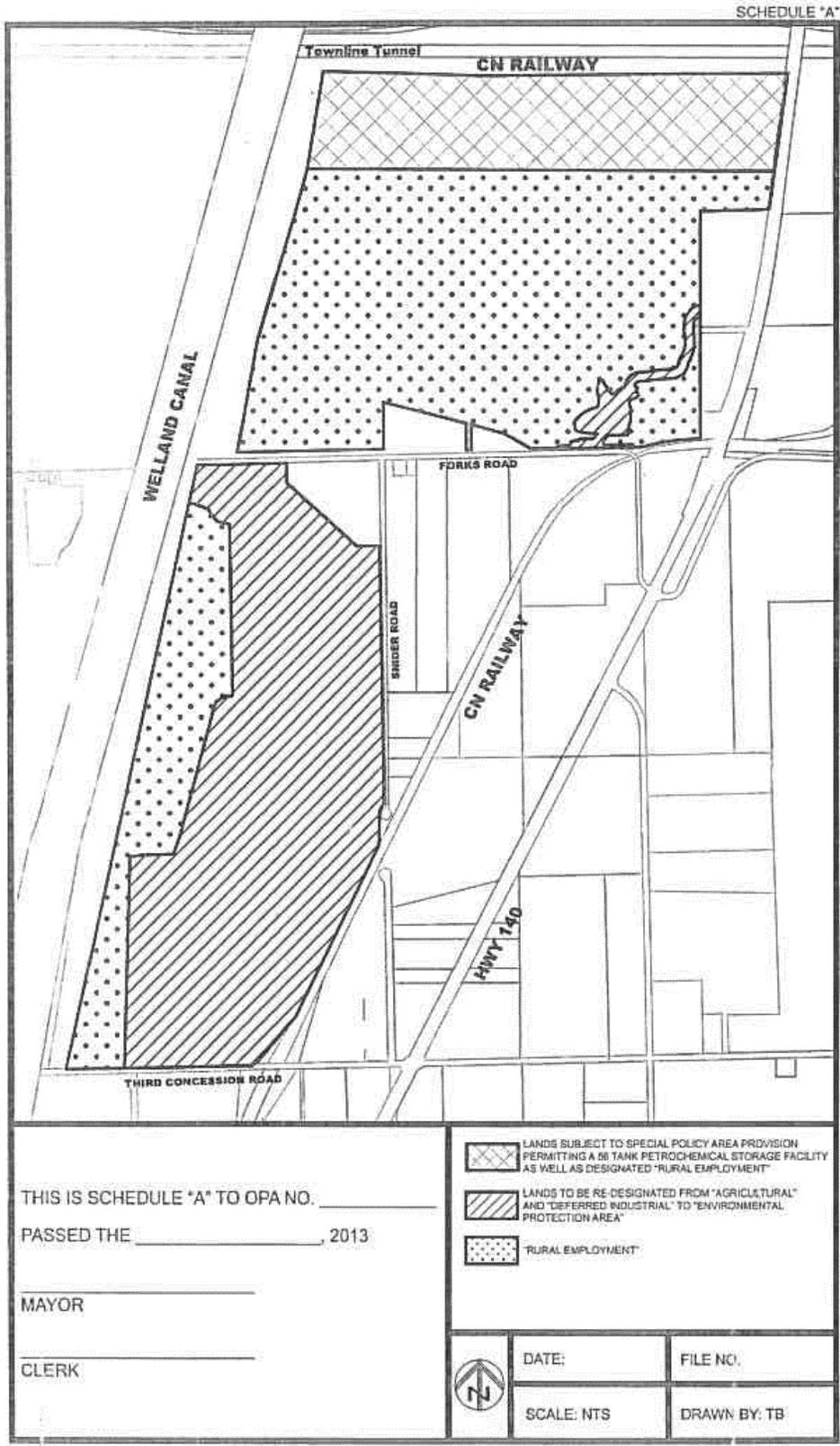
For the purposes of this Amendment, "Rural Employment Area" means,

"The areas identified on Schedule A as Rural Employment represent a portion of lands designated in the Regional Policy Plan through RPPA 1-2012 located near the Welland Canal and along Highway #140 but that fall outside the City's Urban Area Boundary. The predominant uses of lands designated Rural Employment shall be consistent with Section 4E of the Regional Policy Plan and 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 ideally be serviced through *sustainable private servicing* only. Uses shall be compatible with adjacent *agricultural uses*, planned *agricultural uses* and shall not negatively impact normal farm operations."

Environmental Protection Area

For the purposes of this Amendment, "Environmental Protection Area" means

"Areas designated as Environmental Protection on Schedule A are those lands that are classified as *Provincially Significant Wetlands (PSW's)*, *Areas of Natural and Scientific Interest (ANSI's)*, the *Habitat of Threatened and Endangered Species* and *Natural Hazard Areas* consistent with the designation and policies of the Regional Policy Plan as amended. The predominant uses for lands designated Environmental Protection Area shall include forest, fish and wildlife management; small-scale passive recreational uses and accessory uses such as: trails, boardwalks, footbridges, fences, docks and picnic facilities that will not negatively impact on the natural features or ecological function of the areas; and conservation and flood erosion control projects where it has been demonstrated that they are necessary in the public interest and no other alternatives are available."



ATTACHMENT 2

Ex 14

DRAFT ZONING BY-LAW AMENDMENT
THE CORPORATION OF THE CITY OF PORT COLBORNE
BY-LAW NO. _____

Exhibit:	14
File #:	PL 090828

BEING A BY-LAW TO AMEND ZONING BY-LAW 1150/97/81, AS AMENDED, RESPECTING LANDS KNOWN AS PART OF LOTS 23, 24 AND 25, CONCESSION 4 AND PART OF LOTS 16 TO 20, CONCESSION 5, CITY OF PORT COLBORNE, LOCATED ON THE EAST SIDE OF THE WELLAND CANAL, SOUTH OF THE RAILWAY LANDS, WEST OF HIGHWAY 140 AND SNIDER ROAD AND NORTH OF THIRD CONCESSION ROAD

WHEREAS, By-law 1150/97/81, as amended, 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. That the "Zoning Map" referenced as Schedule "A" forming part of By-law 1150/97/81, as amended, is hereby amended by changing those lands described on Schedule "A" attached from "A (Agricultural)" and "EP (Environmental Protection)" to the site-specific "HI-X-HSP (Heavy Industrial - Holding)", "ID-X-HSP (Dry Industrial Development Zone - Holding)", and "EP (Environmental Protection)".
3. It is intended that the boundaries of the proposed zones, as shown on Schedule "A", shall be considered as approximate, except where they coincide with roads, railways or other definite physical features. Where the general intent of the City of Port Colborne Zoning By-Law 1150/97/81 is maintained, minor adjustments may be made in these boundaries without necessitating an amendment. Other than such minor adjustments, no areas of implementing zones shall be created that do not conform to Zoning By-Law 1150/97/81.
4. That Section 30(b) entitled SPECIAL EXCEPTIONS AND PROVISIONS of Zoning By-law 1150/97/81, as amended, is hereby further amended by adding the following:

HI-X-HSP – (Heavy Industrial – Holding)

The provisions in Section 23 (HI – Heavy Industrial) of the City of Port Colborne Zoning By-law 1150/97/81 will continue to apply to the lands zoned "HI-X-HSP (Heavy Industrial - Holding)" The permitted uses will be restricted to a 56 tank petrochemical storage facility.

The uses permitted in this By-law shall not occur until the Holding Symbol (HSP) on the "HI-X-HSP (Heavy Industrial – Holding)" zone is removed through an amending By-Law enacted by the City of Port Colborne. The Holding (HSP) 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 (HSP) may only occur when:

- 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; and,

- iv) Meets Species at Risk requirements to the satisfaction of Ministry of Natural Resources.

ID-X-HSP – (Dry Industrial Development Zone - Holding)

Prior to any dry industrial development of lands zoned "ID-X-HSP", a Zoning By-Law Amendment is required to establish the permitted uses and zone requirements.

Further, development on the subject lands shall not occur until the Holding Symbol (HSP) on the "ID-X-HSP (Dry Industrial Development - Holding)" zone is removed through an amending By-Law enacted by the City of Port Colborne. Removal of the Holding Symbol (HSP) may only occur when:

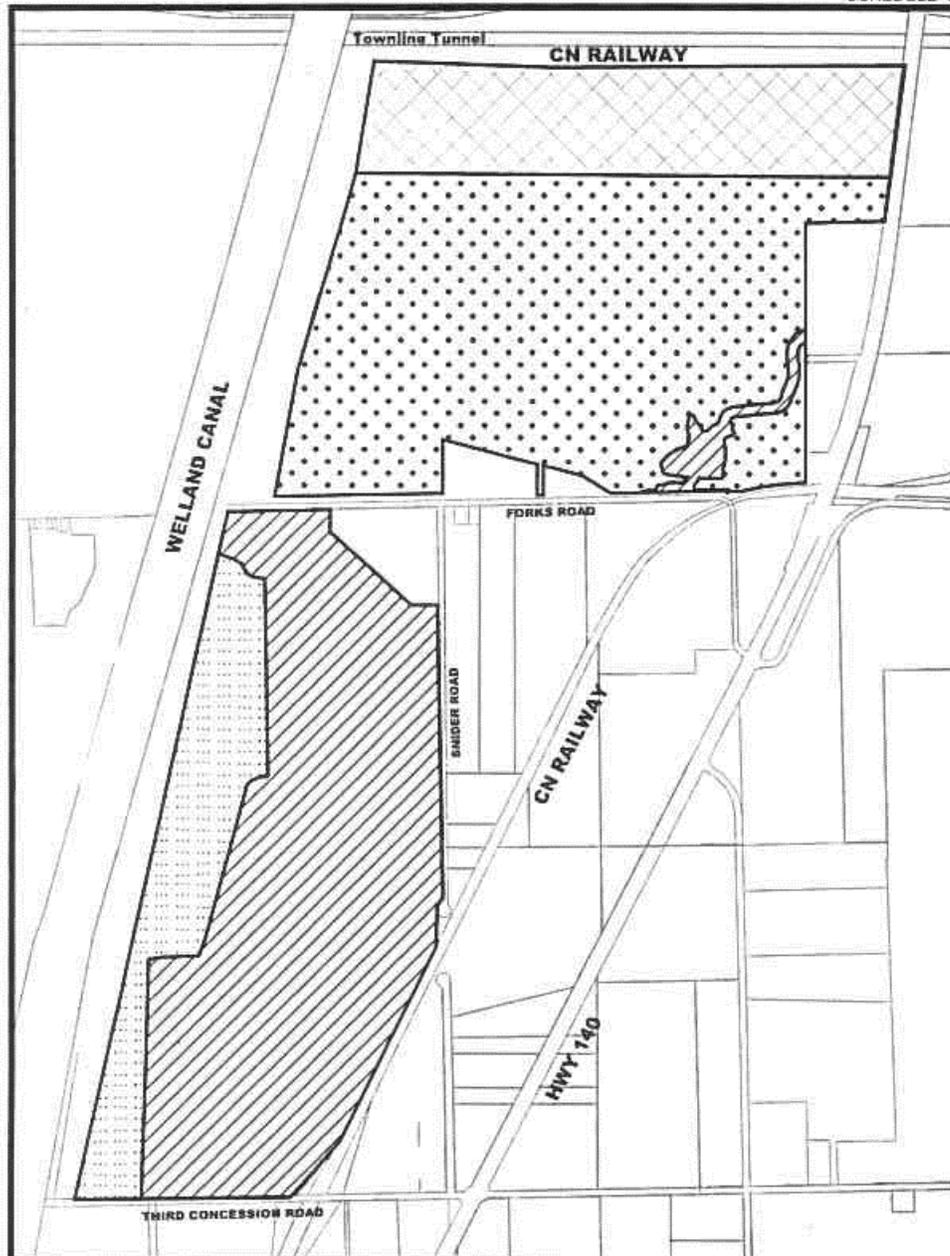
- i) The Owner enters into and registers on title a Site Plan Agreement with the City of Port Colborne which will include recommendations made in the supporting technical studies conducted in association with the development application;
 - ii) Appropriate technical studies are submitted including a 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 dependent upon the use proposed. A pre-consultation meeting will be held to identify which studies are required and to scope the extent of the studies;
 - iii) The above mentioned technical studies and their recommendations are to be satisfactory to the City of Port Colborne; and,
 - iv) 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.
5. Any development shall have a 25 metre setback from all hydro transmission and distribution facilities (including poles and towers and conductors thereon but excluding underground conductors) that exist on the subject lands and adjacent to the west of the subject lands at the time of this By-law, measured from the centre line of such hydro facilities, which may be reduced with the consent of Hydro One Networks Inc. upon preparation of a site plan. Notwithstanding the above, in the case of the two paralleling single-circuit transmission facilities that exist on the subject lands at the time of this By-law, a minimum setback of 25 metres shall be required for any development from the respective centreline of each transmission circuit to provide for a total utility corridor with a width not exceeding 75 metres. In addition, any petrochemical storage facilities developed in the HI-X-HSP zone following the lifting of the Hold Symbol (HSP), shall have a 100 metre setback from existing hydro transmission towers located on the northwest portion of the subject lands.
6. 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.
7. 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.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS
XX DAY OF XXXXXX, 2013.**

Vance Badawey, MAYOR

Ashley Grigg, CLERK

SCHEDULE "A"



THIS IS SCHEDULE "A" TO BY-LAW NO. _____
PASSED THE _____, 2013

MAYOR _____

CLERK _____

-  LANDS TO BE REZONED FROM "A" & "EP" TO "HI-X-HSP"
-  LANDS TO BE REZONED FROM "A" & "EP" TO "ID-X-HSP"
-  LANDS TO BE REZONED FROM "A" TO "EP"
-  LANDS TO BE REZONED FROM "A" TO "ID-X-HSP"



DATE: _____

FILE NO. _____

SCALE: NTS

DRAWN BY: TB