

**Development and Government Relations Department**  
Planning Division Report

September 6, 2024

Secretary-Treasurer  
Port Colborne Committee of Adjustment  
66 Charlotte Street  
Port Colborne, ON L3K 3C8

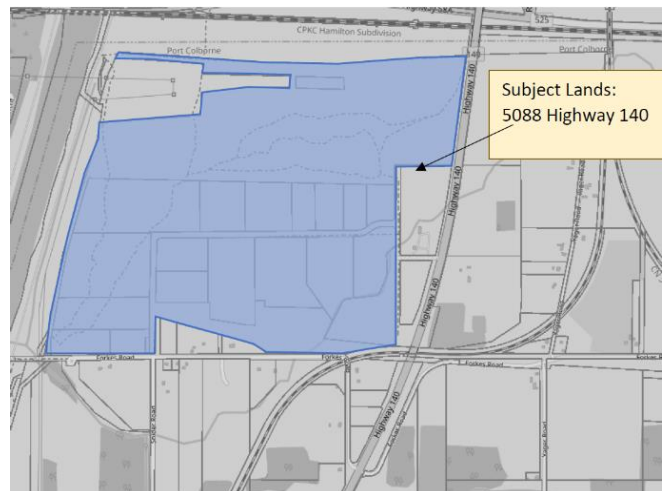
**Re: Application for Consent B11-24-PC  
Concession 5, Part of Lots 16 to 19 and Part Road Allowance, Reference Plan  
59R15312, Parts 1, 5, 6, 8 to 11, 14, 16 to 19, 37, 39, and 42  
5088 Highway 140  
Agent: Weston Consulting  
Owner(s): One Forty Development Inc.**

**Proposal**

The purpose and effect of this application is to permit the conveyance of the “lands to be severed” and “lands to be retained” on the proposed sketch (see Appendix A), where both the severed and retained lands are to be used for a future industrial use.

**Surrounding Land Uses and Zoning**

A portion of the subject lands are impacted by Ontario Regulation 337/24 made under the *Planning Act*, filed on August 30, 2024 (O. Reg. 337/24); the remaining portions of the subject lands are in a special provision of the Heavy Industrial zone (HI-46) and a special provision of the Industrial Development zone (ID-47-H). To the north of the subject lands is the City of Welland; to the west is the Welland Canal; to the south are lands zoned ID-47-H, Industrial Development (ID), Rural (RU), Agricultural Residential (AR); and to the east are lands zoned Agricultural (A) and RU.



## **Environmentally Sensitive Areas**

The subject lands are impacted by Other Wetlands and Non-Provincially Significant Wetlands as per the Niagara Region Natural Environment System (NES) mapping, and several watercourses, a flood hazard, and unevaluated wetlands that are regulated by the Niagara Peninsula Conservation Authority (NPCA). Planning staff have examined the proposal in relation to this feature in the “Discussion” section of this report. The application has also been circulated to the Niagara Region and the NPCA for comment.

## **Public Comments**

Notice was circulated on August 28, 2024, to properties within 60 metres of the subject lands, in accordance with section 44 (5) of the *Planning Act*. As of September 6, 2024, no comments from the public have been received.

## **Agency Comments**

Notice of the application was circulated on August 16, 2024, to internal City departments and external agencies. As of September 6, 2024, the following comments have been received.

### Ministry of Transportation Ontario (MTO)

The severed parcel is adjacent to a controlled access Highway 140 and within the MTO’s Niagara Greater Toronto Area study. Permanent access to Highway 140 cannot be granted to the severed lot at this time. The applicant must seek alternate access to the site, other than Highway 140 (i.e. the applicant should access the site by using Municipal Streets and/or opening existing Road Allowances). Municipal road access must be in place prior to site occupancy.

### Staff Response

Access to the proposed lots is being addressed through the Site Plan Control process.

### Niagara Region

Regional staff do not have any comments to provide on the consent application as Provincial and Regional interests are being addressed through the site plan application. Staff note the property is within the Rural Employment Area in the Niagara Official Plan, which allows any new development within a rural employment area to be subject to the land use permissions of the Local Official Plan and Site Plan control.

### Niagara Peninsula Conservation Authority (NPCA)

The subject lands are traversed by several watercourses, a flood hazard and unevaluated wetlands which are all regulated by the NPCA. Staff note that the proposed consent does

serve to fragment several of the smaller watercourses on site but will not fragment the existing floodplain hazard noted for the Lyons Creek Municipal Drain.

The NPCA has been working closely with the City and the Region on site specific details relating to the future development of the northern section of the property (lands to be severed). Detailed studies and plans pertaining to the future development of these lands have been provided to the NPCA for review.

All lands to the south (lands to be retained) have not yet been adequately assessed or studied in terms of NPCA's regulated features and their functions. This would need to occur in consultation with the NPCA prior to the commencement of any works on these lands.

At this time, the NPCA does not offer any concerns with the proposed consent. We would only note that all future development or site alterations proposed on these lands (severed and retained) shall be circulated to the NPCA for review and approval as Permits from this office may be required prior to the commencement of the works on site.

#### Drainage Superintendent

This parcel is in the watershed of the East Branch of the Lyons Creek Municipal Drain. Should the application be approved, a drainage apportionment will be required to adjust the currently assessed costs to all the parcels. The drainage apportionment will be completed by an appointed Drainage Engineer and not completed by the Drainage Superintendent. It is the recommendation of the Superintendent to use the same Engineer previously used on this parcel to complete the last severance. Once the plan of severance has been filed at the Registry Office, please provide to the Planning Department for internal consultation with the Drainage Superintendent.

#### Staff Response

A drainage apportionment agreement has been included as a condition of the severance.

#### Fire Department

No objections.

#### Building Department

No objections.

#### Engineering Division

MTO to provide comments/approval at the entrance off 140. A formal agreement must be entered with the City of Port Colborne, identifying the permanent roadway location for the

development to the south. This is required as the City must place the water and sanitary into a future Right of Way.

### Staff Response

A development agreement has been included as a condition of the severance.

### **Discussion**

The lands proposed to be severed (Part 5 on the proposed sketch) are governed by O. Reg. 337/24. Section 3 of O. Reg. 337/24 provides that City, Regional, and Provincial policies do not apply to the severed lands; however, these same policies do apply to the lands proposed to be retained (Parts 1-4 on the severance sketch). Below is the applicable policy review.

The proposal to sever the lands proposed to be retained (Parts 1-4 on the severance sketch) were reviewed with consideration of applicable policies in the Provincial Policy Statement (2020), A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019), the Niagara Official Plan (2022), the City of Port Colborne Official Plan (2013), and Zoning By-law 6575/30/18.

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. The subject lands are within an “employment area” according to the PPS. Employment areas are to provide for an appropriate mix and range of diversified employment uses, and land use patterns shall facilitate the conditions for economic investment by including market-ready sites with the necessary infrastructure to support current and projected needs.

Planning staff are satisfied that the proposed application is consistent with the PPS. The proposal will help facilitate the construction of a battery separator plant which will contribute to the range of employment uses in the City and the Region. The proposed development supports economic growth in a key employment area within the Niagara Region.

The subject lands are within an “employment area” in the Growth Plan. Section 2.2.5 of the Growth Plan provides that economic development in, and competitiveness of, employment areas are to be promoted by making more efficient use of existing vacant and underutilized employment lands.

Planning Staff are satisfied that the proposed consent application conforms to the Growth Plan. The proposed application will facilitate the development of existing vacant and underutilized employment lands in the City of Port Colborne.

The Niagara Official Plan (NOP) designates the subject lands as within the “Rural Employment Area” and “Future Employment Area”, which are both part of the “Niagara Economic Centre”. These NOP policies encourage the development of major industrial

facilities with advantageous access to transportation corridors used for the movement of goods.

Planning staff are satisfied that the proposed consent application conforms to the NOP. The proposed severance will facilitate the development of industrial lands within the City and Region that offer direct access to Highway 140.

#### City of Port Colborne Official Plan

The lands proposed to be retained are designated as Rural Employment in the City's Official Plan (OP). Dry industrial uses are permitted in the Rural Employment designation. The Rural Employment designation does not include provisions for consents to sever. Some consent policies are included in section 11.1.7.2; of these, the policies that provide specifically for consent for land conveyances apply. Proposals must support the orderly development of land and the general public interest, and the size, configuration and location of the proposed lots should be appropriate for the proposed use, with adequate servicing available and in conformance with Zoning By-law 6575/30/18, where applicable.

Planning staff are satisfied that the proposed consent application conforms to the OP. If approved, the application will consolidate the existing 53 lots into 4, which will support the orderly development of the land and the general public interest by preparing the lots for future dry industrial uses that will provide the region with new jobs. Future development of the lands proposed to be retained will need to arrange for private servicing, which the size, configuration, and location of the proposed lots will allow for.

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

The lands proposed to be retained are primarily in the ID-47-H zone, with a portion of the lands to the north being situated in the HI-46 zone.

The proposed severance will leave the following dimensions if the application is approved:

- Part 1: An estimated lot frontage of 448.6 metres and an estimated lot area of 20.47 hectares.
- Part 2: A estimated lot frontage of 645.8 metres and an estimated lot area of 49.49 hectares.
- Part 3: A future right-of-way with an estimated lot area of 4.16 hectares. This road will be designed to municipal standards, and will be dedicated to the City at a later date.
- Part 4: To be merged with Part 5, with a future lot frontage of 88.33 metres and an estimated lot area of 14.2 hectares.
- Part 5: A lot frontage of 88.33 metres and an estimated lot area of 74.45 hectares.

Planning staff note that no new lot will be created as a result of this application. There are presently 53 separate parcels, which will be consolidated into 3 parcels (Parts 4 and 5 will become 1 parcel after they merge, and Parts 1 and 2 will remain as proposed in the sketch, for a total of 3 parcels), with Part 3 to become a municipal road servicing the 3 parcels.

O. Reg. 337/24 provides the zoning requirements for Part 5; the provisions of Zoning By-law 6575/30/18 apply to the remaining Parts. The ID zone requires a minimum lot frontage of 30 metres and a minimum lot area of 0.4 hectares. The HI zone requires a minimum lot frontage of 30 metres and does not establish a minimum lot area.

Planning staff are satisfied that the proposed application will meet the zoning requirements established by Zoning By-law 6575/30/18.

#### O. Reg. 337/24

The lands proposed to be severed (Part 5) are subject to a Minister's Zoning Order (MZO), O. Reg. 337/24, which provides that every use of land and every erection, location or use of any building or structure is prohibited on the lands proposed to be severed, except for heavy industrial uses, detached buildings or structures that are accessory to the principal use on the same lot, and accessory uses. O. Reg. 337/24 is attached as Appendix B to this report. O. Reg. 337/24 outlines the definitions in respect of the MZO, the application of the MZO, the non-application of policy statements, the permitted uses and zoning requirements, the terms of use, and that O. Reg. 337/24 is deemed to be a by-law passed by the Council of the City of Port Colborne.

Planning staff note that all City and Regional policies referenced thus far do not permit the lands to be municipally serviced, but section 3 of O. Reg. 337/24 provides relief of these provisions.

Planning Staff are satisfied that the proposed consent application conforms to O. Reg. 337/24, as the MZO was prepared with regard to the severance of the subject lands as detailed in this application.

#### **Recommendation:**

Given the information above, Planning Staff recommends application B11-24-PC be **granted** subject to the following conditions:

1. That application B15-24-PC be granted.
2. That the applicant provides the Secretary-Treasurer with the deeds for the conveyance of the subject parcels, with a paper and electronic copy of the deposited reference plan, for use in the issuance of the Certificate of Consent.

3. That a final certification fee of \$240 payable to the City of Port Colborne is submitted to the Secretary-Treasurer.
4. That a drainage apportionment agreement be completed by an approved engineer at the cost of the applicant, with a copy of the deposited plan to be delivered to the Drainage Superintendent through the planning department for the apportionment agreement to be completed, to the satisfaction of City staff.
5. That the owner enters into a Development Agreement with the City Port Colborne to require the identification of the permanent roadway location for the roadway that will service the “lands to be severed” identified on the severance sketch, such that the City will be able to place the water and sanitary into a future Right of Way, and that vehicular traffic will be provided adequate access to Highway 140 from municipal streets prior to site occupancy, to the satisfaction of City staff.
6. That the applicant submits an affidavit that Parts 4 and 5 will merge, to the satisfaction of City staff.
7. That all conditions of consent be cleared by September 11, 2026.

For the following reasons:

1. The application is consistent with the Provincial Policy Statement and conforms to the Growth Plan for the Greater Golden Horseshoe, the Regional Official Plan, City of Port Colborne Official Plan, will comply with the provisions of Zoning By-law 6575/30/18, as amended, and with O. Reg. 337/24.

Prepared by,



Diana Vasu, BA, MA  
Planner

Submitted by,



Denise Landry, MCIP, RPP  
Chief Planner

# Appendix A

**DRAFT**  
FOR DISCUSSION  
PURPOSES ONLY.  
PRIVILEGED AND  
CONFIDENTIAL.

- Notes:**
- Property Boundary is based on survey completed by MTE (FPA, 2024).
  - Not based on engineering, geotechnical or grading analysis.
  - Areas and dimensions are estimated. Areas to be reviewed and retained to be confirmed via survey.
  - Site Plan or Proposed by Statute (June 16, 2024).



**PART 3  
LANDS TO BE  
RETAINED  
(EST. 4,162 ha.)**

- LEGEND**
- - - Subject Lands
  - - - Proposed (Site Plan M20)
  - - - Lands to be Severed (Est. 74,498 ha)
  - - - Lands to be Retained - Part 1 (Est. 20,469 ha)
  - - - Lands to be Retained - Part 2 (Est. 49,491 ha)
  - - - Lands to be Retained - Part 3 (Est. 4,162 ha)
  - - - Lands to be Retained - Part 4 (Est. 14,197 ha)
  - - - Lands to be Retained - Part 5 (Est. 74,498 ha)



**SEVERANCE PLAN**  
**HIGHWAY 624 & HIGHWAY 140**  
**CITY OF PORT COLBORNE**  
**REGION OF NIAGARA**

**DRAWING REVISIONS**

NO.	DATE	DESCRIPTION
1	10.11.2024	Initial Issue
2	10.11.2024	Final Issue

**WESTON CONSULTING**

File Number: 17146  
 Drawing No: 2024-04-18  
 Project: 2024-04-18, Severance Plan, 17146 Agp  
 Date: 2024-04-18

**SP**



## Appendix B



### ONTARIO REGULATION 337/24

made under the

### PLANNING ACT

Made: August 30, 2024

Filed: August 30, 2024

Published on e-Laws: August 30, 2024

Published in The Ontario Gazette: September 14, 2024

### ZONING ORDER — CITY OF PORT COLBORNE, REGIONAL MUNICIPALITY OF NIAGARA

#### Definitions

1. In this Order,

“accessory use” means a use subordinate and incidental to the principal use on the same lot;

“building height” means the vertical distance between the average grade around the building or structure to the upper most limit of the building, and excludes roof top mechanical equipment, elevator enclosures, stair enclosures, chimneys, antennas, communication towers, electrical transmission equipment, spires, flag poles, silos or tanks;

“heavy industrial use” means,

- (a) the manufacturing or processing of products from raw or semi-raw materials,
- (b) outdoor storage and processing of products and materials,
- (c) the manufacturing, processing, assembly, disassembly or packaging of finished parts or products from previously prepared materials,
- (d) the repairing or servicing of products,
- (e) warehousing and storage,
- (f) office and administration, or
- (g) utility facilities including electrical substations, wastewater treatment facilities, sanitary pumping stations, fire pump houses and water tanks;

“landscaped open space” means a space used for the growth and maintenance of grass, flowers, shrubs, trees or similar landscape material and includes landscape buffers, walkways, hard surface landscaping, patios, fences, amenity areas and similar facilities, but excludes driveways, parking areas, loading areas, ramps and curbs;

“loading areas” means an off-street space for loading and unloading persons, goods, wares, supplies, equipment, materials or merchandise, and may include an open or covered area used to provide access to a loading door, platform or bay;

“lot frontage” means the distance measured six metres from the front lot line and parallel to the front lot line, and where the front lot line is curved, measured six metres from the chord and parallel to the chord;

“outdoor processing” means the manufacturing, production, assembly, disassembly, packaging of products, supply of materials, or use of materials in an unroofed area;

“outdoor storage” means the keeping of any goods, junk, material, equipment, merchandise or vehicles in an unroofed area in the same place for more than 24 hours;

“parking area” means an area of land used for parking motor vehicles that is located on the same lot as the principal use, and includes parking spaces and all drive aisles, manoeuvring areas, entrances, exits and similar areas used to enter a parking area or to exit from it, but excludes internal road networks not directly related to parking spaces, laybys, fire routes, vehicle scales, maintenance areas, loading areas, connections to municipal roads, outdoor storage, and outdoor processing.

#### **Application**

**2.** (1) This Order applies to lands in the City of Port Colborne, in the Regional Municipality of Niagara, in the Province of Ontario, being the lands identified on a map numbered 353 and filed at the Toronto office of the Ministry of Municipal Affairs and Housing located at 777 Bay Street.

(2) For the purposes of this Order, the lands described in subsection (1) are deemed to be a single lot, and despite any future severance, partition or division of those lands, the Order shall apply to all of those lands as if no severance, partition or division occurred.

#### **Non-application of policy statements, etc.**

**3.** Policy statements issued under subsection 3 (1) of the Act, provincial plans and official plans do not apply in respect of a licence, permit, approval, permission or other matter required before a use permitted by this Order may be established on the lands described in subsection 2 (1).

#### **Permitted uses**

**4.** Every use of land and every erection, location or use of any building or structure is prohibited on the lands described in subsection 2 (1), except for the following uses:

1. Heavy industrial uses.
2. Detached buildings or structures that are accessory to the principal use on the same lot.
3. Accessory uses.

#### **Zoning requirements**

**5.** The following zoning requirements apply to the uses permitted on the lands referred to in subsection 2 (1):

1. The minimum lot frontage is 30 metres, which may be along an unopened or future road allowance.
2. The minimum front yard setback is 7.5 metres.
3. The minimum corner exterior side yard setback is 7.5 metres.
4. The minimum interior side yard setback is 3 metres.
5. The minimum rear yard setback is 8 metres.
6. The maximum building height is 35 metres.

7. The minimum number of parking spaces is 1,400.
8. The minimum number of accessible parking spaces is 27.
9. The minimum number of outdoor bicycle parking spaces is 30.
10. The minimum landscaped open space within a parking area shall be equal to 10 per cent of the parking area and shall be provided within the parking area or within 10 metres of the parking area limit.
11. Loading areas are permitted to be located in all yards.
12. Outdoor storage and outdoor processing is permitted in all yards, including yards abutting highways or arterial collector roads.
13. Accessory uses may account for up to 20 per cent of the total gross floor area of the principal use.

**Terms of use**

**6. (1)** Every use of land and every erection, location and use of buildings or structures shall be in accordance with this Order.

(2) Nothing in this Order prevents the use of any land, building or structure for any use prohibited by this Order if the land, building or structure is lawfully so used on the day this Order comes into force.

(3) Nothing in this Order prevents the reconstruction of any building or structure that is damaged or destroyed by causes beyond the control of the owner if the dimensions of the original building or structure are not increased and its original use is not altered.

(4) Nothing in this Order prevents the strengthening or restoration to a safe condition of any building or structure.

**Deemed by-law**

**7.** This Order is deemed for all purposes, except the purposes of section 24 of the Act, to be a by-law passed by the council of the City of Port Colborne.

**Commencement**

**8. This Regulation comes into force on the day it is filed.**

Made by:

PAUL CALANDRA

*Minister of Municipal Affairs and Housing*

Date made: August 30, 2024