

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

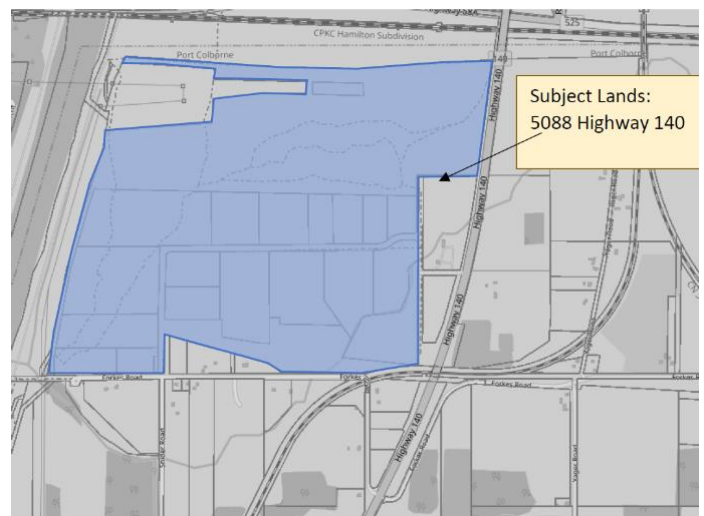
Re: Easement Application B15-24-PC
Concession 5, Part of Lots 16 to 19 and Part Road Allowance, Reference Plan
59R15312, Parts 1, 5, 6, 8 to 11, 14, 16 to 19, 37, 39, and 42
5088 Highway 140
Agent: Weston Consulting
Owner(s): One Forty Development Inc.

Proposal

This application was submitted as part of a technical amendment of consent application B11-24-PC. The purpose and effect of this application is to obtain consent to register multiple easements for the purpose of access, utilities, servicing, and stormwater management. The subject parcels are shown as Parts 5 to 11 on the proposed sketch (see Appendix A), where Parts 5 to 9 and Part 11 are proposed to be conveyed for a future industrial use, and Part 10 is proposed to be retained for a future industrial use. Appendix B includes an enlarged copy of the table in Appendix A, which outlines the purpose of each easement.

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 proposal 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 comments provided for B11-24-PC remain applicable for B15-24-PC.

Niagara Peninsula Conservation Authority (NPCA)

The NPCA’s comments for file B11-24 remain applicable for B15-24. However, it is further noted that the easements for access noted within B15-24 do contain features regulated by the NPCA. While NPCA staff have no concerns with registering these areas as easements for their intended purposes, future construction of any access routes must address all NPCA regulated features and confirm no negative impact to the satisfaction of the NPCA. Should any of these easements be impacted by the regulatory flood hazard

in this area, safe access must be achieved while ensuring no negative impact to the flood hazard to the NPCA's satisfaction prior to supporting the accessways.

Lastly, any works within NPCA regulated areas or buffers does require NPCA approval and may require Permits from this office prior to the commencement of the works on Site.

Drainage Superintendent

Drainage comments provided for B11-24-PC remain applicable for B15-24-PC.

Staff Response

A drainage apportionment agreement has been included as a condition of application B11-24-PC. Fulfilment of all the conditions of B11-24-PC has been included as a condition of this consent application.

Fire Department

No objections.

Engineering Division

Engineering comments provided for B11-24-PC remain applicable for B15-24-PC.

Staff Response

A development agreement has been included as a condition of application B11-24-PC. Fulfilment of all the conditions of B11-24-PC has been included as a condition of this consent application.

Discussion

The lands proposed to be severed (Part 5 on the proposed severance sketch for application B11-24-PC and Part 10 on the proposed easement sketch for this application) 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 proposed severance sketch for application B11-24-PC and Parts 5-9 and 11 on the proposed easement sketch for this application). Below is the applicable policy review.

The proposal to register easements over the lands proposed to be retained was 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 easement 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 easement 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 consent to register easements. Some consent policies are included in section 11.1.7.2; of these, the policies that provide for consents for land conveyance, but not for the creation or provision of lots, apply. The size, configuration and location of the proposed consent should be appropriate for the use proposed.

Planning staff are satisfied that the proposed easement application conforms to the OP. The proposed consent is of an appropriate size, configuration, and location for the use proposed, as the proposed easements for access, utilities, servicing, and stormwater management are required to support application B11-24-PC.

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

The lands proposed to be retained (Parts 5-9 on the proposed easement plan) are in the ID-47-H zone, while Part 10 is situated in the lands subject to O. Reg. 337/24. Planning staff note that the zoning provisions established for the subject lands do not apply to the proposed easements, as section 1.2 of the Zoning By-law provides that the Zoning By-law applies to all lots within the City, but the proposed easements are not lots.

O. Reg. 337/24

The lands proposed to be severed (Part 5 on the proposed severance sketch for application B11-24-PC) 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 C 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 easement application conforms to O. Reg. 337/24, as the MZO was prepared with regard to the severance of the subject lands as detailed in application B11-24-PC and as supported by this application.

Recommendation:

Given the information above, Planning Staff recommends application B15-24-PC be **granted** subject to the following conditions:

1. That the applicant provides the Secretary-Treasurer with the deeds for the conveyance of the subject parcel or a registrable legal description of the subject parcel, together with a paper copy and electronic copy of the deposited reference plan, if applicable, for use in the issuance of the Certificate of Consent.
2. That a final certification fee of \$240 payable to the City of Port Colborne is submitted to the Secretary-Treasurer.
3. That application B11-24-PC be granted.
4. That all the conditions of consent for application B11-24-PC be cleared.
5. 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,



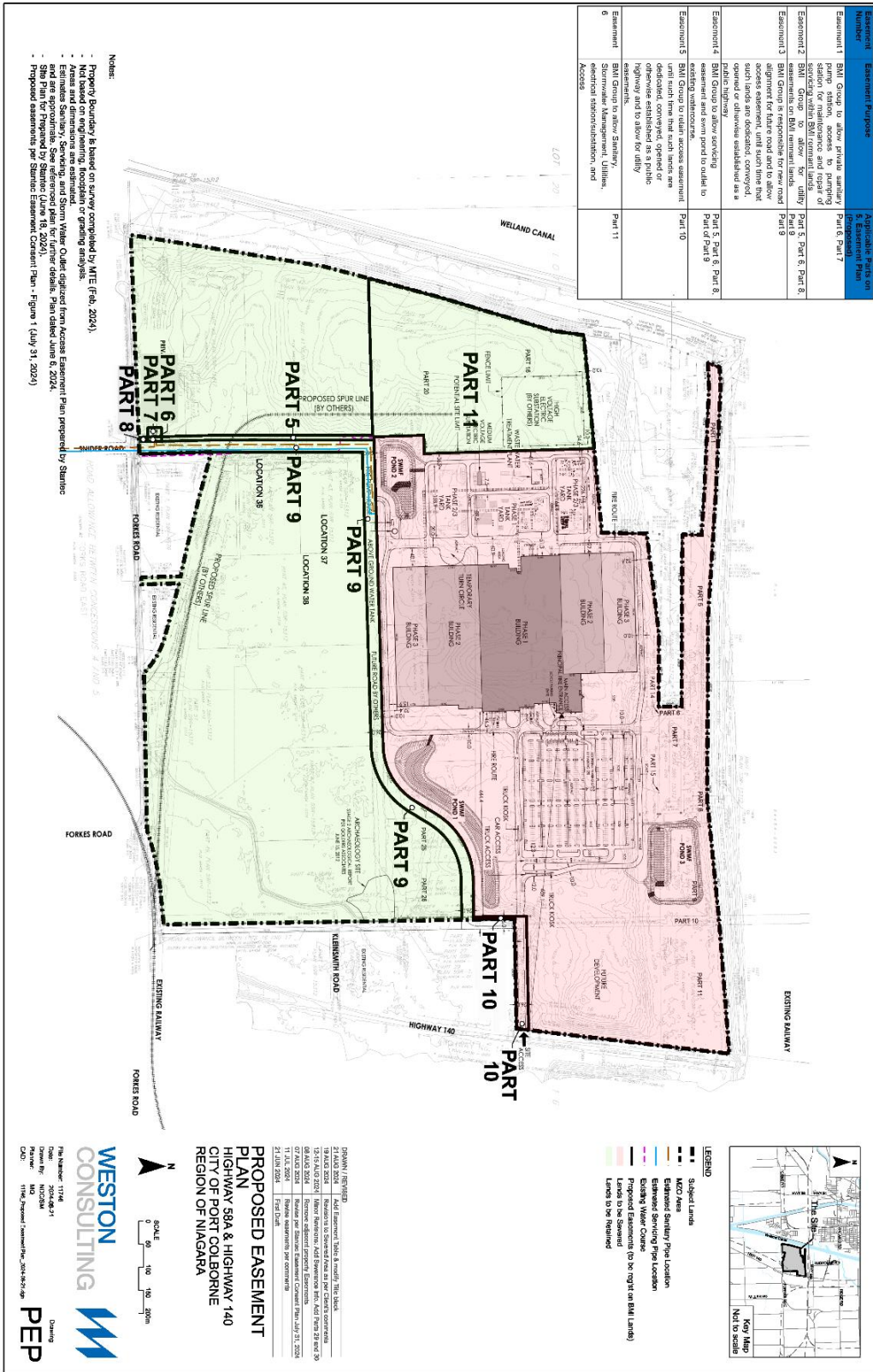
Diana Vasu, BA, MA
Planner

Submitted by,



Denise Landry, MCIP, RPP
Chief Planner

Appendix A



Appendix B

Purpose of Easement Registration (Table Enlarged)

Easement Number	Easement Purpose	Applicable Parts on 5. Easement Plan (Proposed)
Easement 1	BMI Group to allow private sanitary pump station, access to pumping station for maintenance and repair of servicing within BMI remnant lands	Part 6, Part 7
Easement 2	BMI Group to allow for utility easements on BMI remnant lands	Part 5, Part 6, Part 8, Part 9
Easement 3	BMI Group is responsible for new road alignment for future road and to allow access easement, until such time that such lands are dedicated, conveyed, opened or otherwise established as a public highway	Part 9
Easement 4	BMI Group to allow servicing easement and stormwater management pond to outlet to existing watercourse.	Part 5, Part 6, Part 8, Part of Part 9
Easement 5	BMI Group to retain access easement until such time that such lands are dedicated, conveyed, opened or otherwise established as a public highway and to allow for utility easements.	Part 10
Easement 6	BMI Group to allow Sanitary, Stormwater Management, Utilities, electrical station/substation, and Access	Part 11

Appendix C



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