



**Subject: Recommendation Report for Proposed OPA and ZBA at 9 Chestnut Street, File D09-01-22 and D14-04-21**

**To: Council**

**From: Development and Legislative Services Department**

Report Number: 2022-236

Meeting Date: November 8, 2022

---

### **Recommendation:**

That Development and Legislative Services Department – Planning Division Report 2022-236 be received; and

That the Official Plan Amendment attached as Appendix A of Development and Legislative Services Report 2022-236, be approved; and

That the Zoning By-law Amendment attached as Appendix B of Development and Legislative Services Report 2022-236, be approved, rezoning the subject land from Public and Park (P) to R4-71.

---

### **Purpose:**

The purpose of this report is to provide Council with a recommendation regarding Official Plan and Zoning By-law Amendment applications initiated by the City of Port Colborne for the property legally known as Lots 504 to 511, on Plan 8, in the City of Port Colborne, Regional Municipality of Niagara, municipally known as 9 Chestnut Street (Chestnut Park).

---

### **Background:**

On December 14, 2020, City Council passed the following Motion:

That Council declares Chestnut Park, and the land between Chestnut Park and Lockview Park as surplus;

That Council hereby approves in principle the affordable housing project proposed by Port Cares;

That Council agrees to transfer the Chestnut Park property to Port Cares for \$1 pending the completion of a mutually satisfactory agreement;

That the Director of Community and Economic Development prepare a Lockview Park revitalization plan; and

That the Director of Planning and Development be directed to proceed with a rezoning application, a survey, and a development agreement.

The proposed Zoning By-law Amendment application proposes to change the zoning from Public and Park (P) to a special provision of the Fourth Density Residential (R4) zone. The Zoning By-law Amendment is being sought to permit the construction of a residential apartment building on the subject land. Special provisions are also being considered to permit a reduction in lot area per unit, reduction in minimum front yard setback, reduction in minimum corner side yard setback, and an increase to the minimum rear yard setback for separation distance insurances. The specific provisions will be analyzed further through the Discussion section of this report.

In addition to the Zoning By-law Amendment referenced above, through staff's review of the file, it has been determined that an Official Plan Amendment is also required. The Official Plan Amendment will permit the land to be developed as a public apartment building with a maximum density of 148 units per hectare. The specific policy change in the proposed Official Plan Amendment will be analyzed further through the Discussion section of this report.

Public Meetings for the subject applications were held on February 16, 2021 and November 1, 2022, where the applications were presented to Council and members of the public were able to provide input on the proposed development.

A location map of the subject property has been provided below:



---

## Discussion:

### Planning Legislation

Planning staff reviewed these applications with consideration of several planning documents including the *Planning Act*, R.S.O., 1990, as amended, the *Provincial Policy Statement (2020)*, *A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019)*, the *Regional Official Plan*, the *City of Port Colborne Official Plan* and the *City of Port Colborne Comprehensive Zoning By-law 6575/30/18*. For the applications to be supported by Staff, it must conform to or be consistent with the aforementioned plans.

### Planning Act

Section 2 of the *Planning Act* outlines matters of provincial interest.

Section 3 of the Act requires that, in exercising any authority that affects a planning matter, planning authorities “shall be consistent with the policy statements” issued under the Act and “shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be”.

Section 21 of the Act allows for the consideration of an Official Plan Amendment.

Section 34 of the Act allows for the consideration of a Zoning By-law Amendment.

Planning staff have reviewed the applications in light of the provincial interests identified in Section 2 of the Planning Act, as well as the aforementioned planning documents, which are examined in greater detail below.

### **Provincial Policy Statement (2020)**

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 a “settlement area” according to the PPS. Settlement areas are to be the focus of growth and development and land use patterns shall be based on densities and a mix of land uses (including single-detached, additional residential units, multi-unit housing, affordable housing and housing for older persons) and should efficiently use land and resources. Further, the PPS states that the mix of housing and densities shall be provided to meet projected market-based and affordable housing needs of current and future residents.

Staff are satisfied that the proposed Official Plan and Zoning By-law Amendment applications are consistent with the PPS. The applications propose to make use of existing infrastructure and help contribute to suitable mix of densities and affordable housing.

### **Growth Plan for the Greater Golden Horseshoe (2019)**

Much like the PPS, the Growth Plan also directs and encourages development in settlement areas. The subject lands are located in the “Delineated Built-up Area” where intensification is generally encouraged. The Growth Plan policies support the achievement of complete communities that are designed to support healthy and active living and meeting people’s needs for daily living throughout their lifetime. The Growth Plan encourages complete communities that provide a diverse range and mix of housing options, including additional residential units and affordable housing, to accommodate people at all stages of life, and to accommodate the needs of all household sizes and incomes.

Staff are satisfied that the proposed Official Plan and Zoning By-law Amendment applications conform to the Growth Plan. The proposed application supports the priorities of the Growth Plan through intensification and providing a mix of housing types, including affordable housing.

### **Regional Official Plan**

The subject property is located within the Built-up Area, according to the Regional Official Plan (ROP). Objective 4.A.1.2 states that a significant portion of Niagara’s future growth should be directed to the Built-up Area through intensification. Intensification includes all forms of development that occur within the Built-up Area and is generally

encouraged. Staff are satisfied that the proposed Official Plan and Zoning By-law Amendment applications conform to the ROP.

### **City of Port Colborne Official Plan**

The subject property is located within the Built-up Area and Urban Residential designation according to the City's Official Plan (OP). The Official Plan supports intensification that is accommodated within the Urban Area and where development is compatible with surrounding uses. Section 2.4.3 of the City's OP provides direction for residential development proposals as follows:

#### **2.4.3 Intensification and Infill**

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

- a) The majority of the Municipality's intensification will be accommodated within the Urban Area where the development is compatible with the surrounding uses.*
- c) The objectives of the intensification policies of this Plan are to:*
  - i) Revitalize and support the Downtown by promoting intensification in the Downtown areas;*
  - iii) Provide land use policy directions for the accommodating additional growth on lands designated Urban Residential and Downtown Commercial;*

##### **2.4.3.1 Design Guidelines**

- a) Infill and intensification sites should match the pre-established building character of adjacent buildings.*
- b) Where no existing or consistent character is established, infill and intensification development should be consistent with the applicable Design Guideline Policies of this Plan.*
- c) Where appropriate, the design of the development should provide linkages and connections to existing and proposed pedestrian and bicycle networks.*
- d) The design of infill and intensification development should be consistent with all other applicable policies of this Plan.*

The above policies are achieved through the proposed redevelopment as intensification is encouraged within the built boundary of the City and specifically in the Urban Residential designation. The use is compatible with surrounding residential uses. When referring to design guidelines found in Section 3.2.3.1 (Urban Residential designation), policy c) provide further direction for development in existing neighbourhoods as follows:

*New residential communities and new development in existing neighbourhoods should be visually interesting such that:*

- i) A variety of residential building types, sizes and setbacks should be provided on any given street to encourage a diverse, non-repetitive community fabric.*

Staff are confident this proposal meets the above policies with respect to intensification and the applicable design guidelines as the building will contribute to a variation in building type and size.

In addition to the above, the Official Plan sets out further, more specific policies for the siting of apartment buildings. Residential uses are permitted within the Urban Residential designation with proposed developments being evaluated based on policies within Section 3.2.1. Section 3.2.1 sets out the density and design aspects of all dwelling types within the City's urban residential areas. Section 3.2.1 c) states that:

*High Density Residential will:*

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

The following policies of the Official Plan are proposed to be amended:

*Policy 3.2.1 c) High Density Residential will:*

- i) Be developed as apartment buildings ranging in density from 70 to 100 units per net hectare;*
- ii) Have frontage on an arterial or collector road;*

The amendment will allow for an increase in density on the subject land as well as allow the proposed apartment building to be located on a local road. Based on the proposed design of the building, the density will be a maximum of 148 units per hectare. Staff find this amendment to be appropriate as the site will still have adequate greenspace and

the density represents an additional 13 units above the 100 units per hectare threshold. With respect to policy ii) above, apartment buildings are required to have frontage on an arterial or collector road. Chestnut Street is recognized as a local road as per Schedule D: Transportation of the Official Plan. Staff find this amendment to be appropriate, especially given the context of the proposed building and the existing uses surrounding the property. Staff note that by definition of Collector Road, meaning a road that serves traffic between local residential and arterial roads (or local commercial or industrial properties), it could certainly be argued that Bridge Street, if not Chestnut Street as well, could fall into this category. The building is proposed to have ground-oriented residential uses on the main floor and it will be oriented on site to minimize shadows on adjacent residential uses. The Region's newly established Niagara Regional Transit OnDemand will assist with transportation in the area. Finally, should Council approve of the Official Plan and Zoning By-law Amendment, the property would be subject to Site Plan Control, which will further address mitigation measures through fencing, buffering, landscaping, lighting, etc. Staff are of the opinion that the proposal meets the goals and intent of the Official Plan.

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

The subject property is currently zoned Public and Park (P) according to Zoning By-law 6575/30/18. The P zone permits a cemetery; community garden; conservation use; cultural facility; food vehicle; park; public use; recreation uses; and uses, structures and buildings accessory thereto.

The Zoning By-law Amendment proposes to change the zoning of the property from Public and Park to a special provision of the Fourth Density Residential (R4) zone. The R4 zone permits detached, semi-detached, triplex, fourplex dwellings; block and street townhouse dwellings; apartment buildings; public apartment buildings; and uses, structures and buildings accessory thereto. The proposed special provisions to be included within the special R4-71 zone are outlined below:

<b>Provision Type</b>	<b>Existing R4 Zoning Provisions</b>	<b>Recommended "R4-71" Zoning Provisions</b>
Minimum Lot Area Per Unit <i>Section 8.7 b)</i>	125 square metres	67 square metres
Minimum Front Yard <i>Section 8.7 c)</i>	9 metres	7 metres
Minimum Corner Side Yard <i>Section 8.7 e)</i>	7.5 metres	3 metres
Minimum Rear Yard <i>Section 8.7 f)</i>	6 metres	24 metres
Minimum Landscape Buffer Abutting a Residential Zone and/or Public and Park (P) Zone <i>Section 3.11.1 a)</i>	3 metres	1 metre

Staff have reviewed the proposed amendments to the Zoning By-law and find that they are appropriate for the development of the site. Minimum lot area per unit is another form of density provision, further than that of the Official Plan requirement. It is noted that section 2.1 b) of the Zoning By-law exempts existing lots of record from the lot area provisions of the by-law, however staff is of the opinion that it is appropriate to recognize the proposed lot area per unit regardless. The increase in density will allow for an additional 13 units to be provided to families in need.

The change in minimum front yard setback from 9 metres to 7 metres and change in corner side yard setback from 7.5 metres to 3 metres is not expected to negatively impact surrounding land uses. The building will still be sufficiently setback from the travelled portion of the road. The situating of the building will provide separation from the residential uses directly adjacent to the property. The reduction in landscape buffer on the south property line is necessary to fit the proposed driveway between the building and property line. No vehicles will be parked adjacent to the property line as they are proposed to be parked parallel with the driveway. Additionally, a fence and sufficient landscaping will be required on the south property line that will screen the driveway from neighbouring properties. The by-law proposes a rear yard setback of 24 metres instead of the typical 6 metres. The inclusion of this increased setback has been recommended by the Niagara Region, Port Cares' independent consultant, and City Planning staff as a way to ensure the separation between the Dayson industrial facility to the west is maintained. Staff recommend the approval of the Zoning By-law Amendment.

### **Planning Justification Report prepared by NPG Planning Solutions Inc.**

Prior to this application returning to Council for the second Public Meeting, Port Cares retained an independent planning consultant to prepare a Planning Justification Report (PJR) to help facilitate the application. The report, prepared by NPG Planning Solutions, analyzes the policies set forth in relevant Provincial, Regional and City plans referenced above. The report concludes that the proposed development is consistent with the objectives of the Provincial Policy Statement (PPS 2020), Places to Grow, for the Greater Golden Horseshoe (Growth Plan 2019), Regional Official Plan (ROP) and the City of Port Colborne Official Plan. The development is contributing to residential intensification and making use of existing infrastructure. Given the findings of the report, the author concludes that the Zoning By-law Amendment represents good planning. The full PJR can be found attached as Appendix D.

---

### **Internal Consultations:**

**Original Notice of Public Meeting – January 26, 2021**



As Council is aware, the Zoning By-law Amendment portion of this application came to a Public Meeting in February of 2021. Notice for the original Public Meeting was circulated on January 26, 2021. Comments were received from the Niagara Region, which have been summarized below:

Niagara Region

(full original comment attached as Appendix C)

- Strongly in support of affordable housing and does not object to the application in principle.
- Requests that a detailed Noise Study be completed due to the adjacent industrial use.
- The Noise Study is required to ensure the proposal is consistent with the Provincial Policy Statement and conforms to Provincial and Regional Plans from a land use perspective.
- Recommend to the City to incorporate a site-specific west side/flanking yard setback in the amending by-law.

Updated comments from the Niagara Region have been received and are summarized below under the Current Notice of Public Meeting.

**Current Notice of Public Meeting – October 12, 2022**

The current Notice of Public Meeting for both the Official Plan and Zoning By-law Amendment was circulated to internal departments and agencies on October 12, 2022. As of the date of preparing this report, staff has received updated comments on the proposed application from the Niagara Region (updated comment included in Appendix C). Updated comments have been provided based on the Region's review of the Planning Justification Report and Detailed Noise Study, found attached as Appendices D and E, respectively. The Region's comment has been summarized below:

*Regional Planning and Development Services staff is satisfied that the proposed Official Plan Amendment and Zoning By-law Amendment applications are consistent with the Provincial Policy Statement and conform to the Growth Plan and Regional Official Plan, subject to the above comments. The proposal will facilitate the construction of an affordable housing project, which the Region strongly supports.*

---

**Financial Implications:**

There are no financial implications.

---

## Public Engagement:

### Original Notice of Public Meeting – January 26, 2021

The original Notice of Public Meeting was circulated in accordance with Sections 34(13) of the *Planning Act*. Notice was circulated on January 26, 2021, to property owners within a 120m buffer from the subject property. As of the date of preparing this report, comments have been received from the following members of the public through the original circulation of the application:

- Kimberly and Justin LeBlanc – 290 Clarke Street
- Jessica Nuxoll – 155 Humboldt Parkway
- Emmanuel Boudreau – 203 Wellington Street
- Shari Patterson – 69 Chestnut Street
- Richard Lascelles and family – 109 Humboldt Parkway
- Gayle Pulak – No address provided
- Barbara deGuerre – 289 Clarke Street
- Donna Hale – 286 Clarke Street
- Penny Turnbull – 301 Clarke Street
- Mona and Roland Breton – 17 Wellington Street
- Jim Turnbull – 301 Clarke Street
- Amy and Steven Forte – 216 Humboldt Parkway
- Sam Tavano and family – 193 Humboldt Parkway
- MayBeth Szilagyi – 19 Bridge Street
- Jennefer Driver – No address provided
- Josephine DiGregorio – 56 Chestnut Street
- Catarina Buri – 296 Clarke Street
- Andrew Herron – 62 Janet Street
- Matthew deGuerre – 289 Clarke Street
- Gino Castagna – No address provided
- Bethany Moore – 256 Clarke Street
- Patti, Martin, Robert, Nicholas Fitzgerald – 10 Page Street
- Jacques and Olga Lieber – 121 Humboldt Parkway
- Irma Comazzolo – 292 Clarke Street
- Tony Pruyn – 240 Humboldt Parkway
- Michelle Turcotte – No address provided
- Jack and Cathy Roseboom – 58 Janet Street
- Sylvia Sukkel – 251 Clarke Street
- Mirella Meneguzzo – 251 Clarke Street
- Rudy Sukkel – 251 Clarke Street
- Alexandra Taylor – 303 Clarke Street
- Ryan Dyck – No address provided

- David and Jennie Beck – 274 Humboldt Parkway
- Mary Bigford – 147 Killaly Street East
- RB McGinnes – 290 Humboldt Parkway
- M. Berry – 117 Humboldt Parkway
- Irene L. – 48 Chestnut Street
- Melissa Bigford and Christopher Lofquist – 173 Chippawa Road
- Scott and Lee Mathieson – 307 Clarke Street

The above comments in full have been included in Appendix F along with staff's responses.

### **Current Notice of Public Meeting – October 12, 2022**

The current Notice of Public Meeting was circulated in accordance with Sections 22 and 34 of the *Planning Act*. Notice was circulated on January 26, 2021, to property owners within a 120m buffer from the subject property. As of the date of preparing this report, a revised comment from Melissa Bigford and Christopher Lofquist has been received. The full comment has been included in Appendix F attached to this report, however the key highlights/questions are as follows. Each point has been numbered for clarity for staff's response following the points:

#### Melissa Bigford and Christopher Lofquist – 173 Chippawa Road

1. Do not agree that the lands are considered surplus to the City based on Parks and Recreation Master Plan.
2. If the land is large enough to accommodate the proposed development, it would not require an official plan amendment or special zoning by-law provisions/reduced setbacks.
3. The D6 guidelines require a separation distance of 70 metres, currently only 44 metres is proposed. Why are D6 guidelines to ensure protection of the sensitive land use not being met?
4. Noise issues from Barber Drive are also a concern for existing and proposed residents in the area.
5. Where are the Phase One and Two Environmental Site Assessments and Geotechnical studies agreed upon in the MOU between the City and Port Cares?
6. Do not feel the 1 metre landscape buffer is adequate for proper screening/buffering. Where will the snow storage be placed?
7. Public notices are not consistent for applications, all applications should be treated equally. Concerned regarding the recommendation report being brought back to Council on November 8<sup>th</sup>.
8. The use is not compatible with adjacent land uses and established building character.

### Staff Responses

1. This land was strategically chosen by City Council with assistance from Economic Development staff as it presented an opportunity to partner with Port Cares on an important affordable housing proposal.
  2. Through the design of the building, it was determined that it would be beneficial to the development to include some special setbacks and zoning provisions. These minor by-law changes will assist in achieving a greater unit count and density, which is supported by staff.
  3. Specific D6 Guideline provisions are commented on from the Niagara Region. It is noted that there are instances when D6 concerns can be mitigated through site design, specific zoning changes and uses, and building design. The proposed zoning will have an increased minimum setback from the western property line, the existing industrial use has a “single use” zoning which limits the potential for any expansion or change to a more intrusive use, and finally, the building will include upgraded windows and building materials as an example to mitigate any excess noise that may be present. With the above included, the Region has concluded that they have no further concerns with respect to land use compatibility.
  4. The Region has concluded that no further noise assessment will be required, they are satisfied that any land use compatibility concerns have been addressed adequately.
  5. Phase One and Two Environmental Site Assessments (ESA) are not something that is typically required for a change in use from Park to Residential (considered a change from sensitive to less sensitive). To staff’s knowledge, a Phase One and Two ESA has been completed through a consultant retained by Port Cares. Additionally, a Geotechnical study is not typically something required at the Official Plan or Zoning By-law Amendment stage. The requirement for a study would come out through the building permit or site plan control stage.
  6. Snow removal/storage will be the responsibility of the property owner. Through staff’s review of the proposed site plan, there appears to be adequate space on the northwestern corner of the parking lot for snow storage, if required. In staff’s opinion, a one metre landscape buffer, with included fencing and landscaping, will provide a sufficient buffer.
  7. Staff recognize that different application types and site-specific criteria can lead to different public notice methods. The public notice has met the requirements of the Planning Act.
  8. In staff’s opinion, the residential building is compatible with adjacent land uses. Please refer to the Official Plan section of this report for more information regarding staff’s position.
-

## **Strategic Plan Alignment:**

The initiative contained within this report supports the following pillar(s) of the strategic plan:

- Service and Simplicity - Quality and Innovative Delivery of Customer Services
  - People: Supporting and Investing in Human Capital
  - Governance: Communications, Engagement, and Decision-Making
- 

## **Conclusion:**

Based on the review of the application and applicable Provincial, Regional, and City planning policies, Planning staff is of the opinion that the proposal is consistent with the Provincial Policy Statement and conforms with the Growth Plan, Regional Official Plan, and City Official Plan, and represents good planning. Staff recommends that the Official Plan Amendment attached as Appendix A and the Zoning By-law Amendment attached as Appendix B, be approved.

---

## **Appendices:**

- a. Official Plan Amendment
- b. Zoning By-law Amendment
- c. Niagara Region Comments
- d. Planning Justification Report prepared by NPG Planning Solutions
- e. Noise Impact Study prepared by Wood Environmental
- f. Public comments received and staff response
- g. Proposed building plans

Prepared by,

David Schulz, BURPI, MCIP, RPP  
Senior Planner  
(905) 835-2900 x202  
david.schulz@portcolborne.ca

Respectfully submitted,

Denise Landry, MCIP, RPP  
Manager of Planning Services  
(905) 835-2900 x203

denise.landry@portcolborne.ca

**Report Approval:**

All reports reviewed and approved by the Department Director and also the City Treasurer when relevant. Final review and approval by the Chief Administrative Officer.