



Subject: Recommendation Report for OPA and ZBA Killaly Street East and Welland Street, File No.: D09-01-21 & D14-05-21

To: Council

From: Planning and Development Department

Report Number: 2021-136

Meeting Date: May 10, 2021

Recommendation:

That Planning and Development Department Report 2021-136 be received; and

That the Official Plan Amendment attached as Appendix A to Planning and Development Report 2021-136 be approved; and

That the Zoning By-law Amendment attached as Appendix B to Planning and Development Report 2021-136 be approved; and

That Planning staff be directed to circulate the Notice of Adoption and Passing in accordance with the *Planning Act*.

Purpose:

The purpose of this report is to consider an application initiated by the City of Port Colborne for an Official Plan and Zoning By-law Amendment regarding the lands known as Part of Lot 27 on Concession 2, and Part 1 on Plan 59R-1871, on the northeast corner of Welland Street and Killaly Street East, formerly in the Township of Humberstone, now in the City of Port Colborne, Regional Municipality of Niagara, municipally known as 72 Killaly Street East, vacant land on the northside of Killaly Street East and City-owned land on Welland Street.

Background:

At its January 25, 2021 meeting, Council provided the following direction to staff:

That the Director of Planning & Development be directed to make applications to amend the Official Plan and Zoning By-law for City and private property located at the northwest corner of Welland and Killaly Street East; and

That all costs be absorbed by the City.

The application for Official Plan Amendment proposes to change the Official Plan designation for these properties from Urban Residential to Industrial/Employment Area. The application for Zoning By-law Amendment proposes to change the zoning from Residential Development (RD) to Light Industrial (LI). Special provisions have been recommended and will be outlined further in the report. The Zoning By-law Amendment is being sought to permit the expansion of the existing business located at 72 Killaly Street East.

On April 19, 2021, Planning staff presented Public Meeting Report 2021-120 for this application, outlining the proposed amendments and receive questions and comments from Council and members of the public.

Discussion:

City of Port Colborne Official Plan:

According to Schedule A: City Wide Land Use, the City of Port Colborne's Official Plan designates the subject properties as **Urban Residential**. Land uses in the Urban Residential designation include residential, neighbourhood, commercial and community facilities and institutional uses.

The Official Plan Amendment proposes to redesignate the lands from Urban Residential to Industrial/Employment. The land uses in the **Industrial/Employment** designation shall include, but not be limited to; manufacturing and fabricating; assembling; processing; servicing and repairing; warehousing and storage; shipping and receiving; offices as an accessory or secondary use; commercial activities that provide amenities to employees during the workday, as an accessory use, cannabis production facilities; industrial activities related and proximate to the Canal and harbour such as ship dockage and repair; and accessory uses such as parking garages.

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

The subject properties are currently zoned **Residential Development (RD)**. The RD zone permits a detached dwelling; and uses, structures and buildings accessory thereto.

The Zoning By-law Amendment proposes to change the zoning from Residential Development (RD) to Light Industrial (LI). The LI zone permits the following uses: adult oriented entertainment establishment; cannabis production facility; car wash; contractor's yard; crematorium; education facility; industry, light; motor vehicle repair

garage; public use; research facility; transportation depot; and uses, structures, and building accessory thereto does not include obnoxious, dangerous or offensive trades.

As mentioned previously, the amendment, if approved, will permit the expansion of the existing industrial facility at 72 Killaly Street East.

Adjacent Zoning and Land Use:

Northwest Welland Street/Rail spur	North Secondary School Zoned: Institutional	Northeast Residential properties Zoned: R2
West Welland Street/Rail spur	Subject Properties	East Residential properties Zoned: R2
Southwest Welland Street	South Killaly Street East	Southeast Killaly Street East/Residential properties

Planning Division Comment:

Through staff's review of current and former Official Plan documents, it appears that the subject lands have been designated as Urban Residential since at least 2006. Further, staff have reviewed current and former Zoning By-laws for the City of Port Colborne. Through the passing of Zoning By-law 1150/97/81 in 1982, the City-owned parcel (formerly Exit Chemical) and the larger parcel (formerly the Dwor Estate lands) were zoned as Residential Development. The 72 Killaly Street East parcel (Fontaine Transport) was zoned Light Industrial up until the passing of the City's current Zoning By-law 6575/30/18 in 2018. As Council is aware, land uses in the Zoning By-law are required to conform to the overarching Official Plan land use designation. This was the reasoning behind the land use changes and long-standing history with these properties.

Based on former uses located on the subject lands, it is unrealistic in the immediate future to expect a residential proposal to come forward. Staff is aware of Mr. Fontaine's proposed expansion and are willing to work to accommodate the proposal while keeping the neighbourhood's comments in mind.

Ministry of Environment, Conservation and Parks D-6 Guidelines:

Concerns about noise, dust, emissions, and vibrations can be dealt with through the application of the Ministry of Environment, Conservation and Parks D-6 Guidelines. These guidelines specifically address land use compatibility between industrial properties and more sensitive land uses, including residential. As suggested by Council and the Region, staff have reviewed uses permitted in the Light Industrial zone and concur with the Region's recommendation. Staff would like to further note section 2.3, being "Uses Prohibited in All Zones" of the Zoning By-law, that lists "any use where its

nature or the material used therein is considered a noxious use as defined in Section 38.” In Section 38, Noxious use is defined as:

- a) a use which creates an adverse effect through the generation of noise, vibration, dust, fumes, gas, odour, waste, hazardous waste, emissions, smoke, glare, radiation, electrical interference; or*
- b) any use involving the use or storage of hazardous, toxic or contaminant substances which constitutes a threat to public health and safety; or*
- c) any use that is not lawfully permitted in the Province of Ontario; or*
- d) a combination thereof; but*
- e) excluding normal agricultural and livestock operations and normal aggregate resource operations in a licensed pit or quarry*

Staff is confident that the wording in the Zoning By-law does prohibit business types that generate excessive noise, dust, vibrations or emissions for uses not specifically zoned. However, staff concur with the Region’s recommendation regarding the removal of the “Contractor’s Yard” and “Motor Vehicle Repair Garage” from the permitted uses of the zone, as these uses, without question, could have a negative impact on the neighbourhood. Staff have also determined that based on by-law requirements for a Cannabis Production Facility, and an Adult Oriented Entertainment Establishment, these would not be suitable uses on these lands. Therefore, staff are suggesting removing these from the permitted uses.

With respect to the Region’s comment regarding the 20m interior side yard setback, staff note that this extra restriction will not be required. The City owns a 9m wide strip of land in between the residential properties on Janet Street and the former Dwor Estate parcel. This 9m strip plus the 15m required interior side yard setback will provide a buffer of 24m from the residential property line to any proposed expansion to the Fontaine Transport facility. Staff are confident that the 20m D6 Guideline requirement has been met for this property. Finally, to further limit any potential impacts, staff will recommend that outdoor storage will not be permitted in any required interior side yard setback (15m) and that any parking areas located in the required interior side yard setback be maintained with asphalt or concrete, so as to limit any dust impact.

Traffic:

With an increase of roughly five trucks per day travelling to and from the site, staff feel that traffic will be minimally impacted. The entrances to the site will be configured and improved as necessary to maximize the safety of ingress and egress from the site.

Site Plan Control:

The lands are currently not under site plan control. Any expansion or building on the property will require a site plan agreement to be registered on title of the land. The site plan agreement will address fencing, lighting, landscaping, parking and other physical attributes of the site. As mentioned in the oral comments from Melissa Bigford, if Council would like, staff can be directed to circulate a preliminary site plan and to take into consideration comments from members of the public that have objected to this proposal. Staff will be requesting a landscape plan through the site plan control submission to ensure the easterly property line has sufficient tree coverage to help shield the view of the facility.

Internal Consultations:

Notice of Public Meeting was circulated on March 30, 2021 to internal departments and agencies and the following comments have been received as of the time this report was prepared:

Port Colborne Fire Department:

“No objections”

Bell Canada:

“Buried cable from the east running parallel to Killaly St. E. and then up to the east wall of 72, where we have a terminal.”

Drainage Superintendent:

“Operations has no concerns with Municipal Drains however there is a city owned parcel next to the Killaly Street parcel. The right of way is not wide enough for the ditch and the machine to work on the ditch. If/when that parcel is developed the maintenance of the ditch will have to be completed from the subject parcel.”

Niagara Region:

- The Region’s full comment is attached as Appendix C
- No objection to the proposed amendment. It is recommended to include the following in the Zoning By-law Amendment to minimize and mitigate any potential impacts to the neighbouring residential area, including:
 - Limit the permitted uses to Class I industry, to ensure the 20m minimum separation distance can be achieved. Based on our review of the LI zone provisions, Regional staff recommend removing permission for a contractor’s yard and motor vehicle repair garage, both of which would generate offsite noise and/or dust impacts;

- Increase the minimum interior side yard abutting a Residential zone provision to 20m, in line with the minimum separation distance recommended by the D6 Guidelines;
 - Prohibit outdoor storage within the minimum interior side yard abutting a Residential zone to ensure this setback is maintained for all aspects of the use, not just the buildings; and,
 - Require that a parking area in the interior side yard abutting a Residential zone also be paved with concrete or asphalt to minimize dust impacts.
 - Regional staff recommend that the City consider including a Holding provision on these lands to require submission of a Stage 1-2 Archaeological Assessment for any areas of the property that are not already disturbed by existing development. Alternatively, this requirement could be addressed through later *Planning Act* approvals, such as site plan control.
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Financial Implications:

This proposal has the potential to increase the City's tax base while encouraging the growth of our employment sector.

Public Engagement:

Notice was circulated on March 25, 2021 and the following comments have been received as of the date of preparing this report (full comments have been attached as Appendix D):

Gerry Tate (no address provided):

- Supportive of the proposal

Melissa Bigford (no address provided):

- Objects to the proposal
- Concerns regarding amending a 40-year-old land designation
- The list of permitted uses in the Light Industrial zone are not compatible with the adjacent residential neighbourhood
- Questions why the taxpayers are being financially responsible
- Do not believe the amendments are in the best interest of the neighbourhood and the community as a whole

Letter Submitted by Multiple Residents:

- Object to the proposal
- Concerns regarding contamination of soil, increase in noise, dust and traffic

- Do not believe the proposal is in the best interest of the neighbourhood and community
 - Concerns regarding the values of their homes nearby
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Conclusion:

Based on staff's review of the applicable Provincial, Region and City policies, and consideration of materials submitted, the Planning Division recommends the approval of Official Plan Amendment No. 8 (Appendix A) redesignating the lands from Urban Residential to Industrial/Employment. Further, staff recommend the approval of the Zoning By-law Amendment attached to this report (Appendix B), changing the zoning of the land from Residential Development (RD) to LI-62. Council is statutorily obligated to make a decision on applications for Official Plan and Zoning By-law Amendments

Appendices:

- a. Official Plan Amendment No. 8
- b. Zoning By-law Amendment
- c. Regional Comments
- d. Public Comments

Respectfully submitted,

David Schulz
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Report Approval:

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