

ISSUE DATE:

JUNE 16, 2008



PL070601

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 17(36) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Appellant: Cytec Canada Inc
Subject: Proposed Official Plan Amendment No. 7-2005
Municipality: City of Niagara Falls
OMB Case No.: PL070601
OMB File No.: O070091

IN THE MATTER OF subsection 17(36) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Appellant: Cytec Canada Inc
Subject: Proposed Official Plan Amendment No. 7-2005
Municipality: City of Niagara Falls
OMB Case No.: PL070601
OMB File No.: O070092

IN THE MATTER OF subsection 17(36) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Appellant: Cytec Canada Inc
Subject: Proposed Official Plan Amendment No. 72
Municipality: City of Niagara Falls
OMB Case No.: PL070601
OMB File No.: O070148

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Cytec Canada Inc
Subject: By-law No. 2007-144
Municipality: City of Niagara Falls
OMB Case No.: PL070601
OMB File No.: R070191

APPEARANCES:

Parties

Counsel

Cytec Canada Inc.

J.J. Wilker

1251600 Ontario Limited

I.M. Gilberti

City of Niagara Falls

K. Beaman

Regional Municipality of Niagara

M. Kyne

**MEMORANDUM OF ORAL DECISION DELIVERED BY M. G. SOMERS ON
MAY 29, 2008 AND ORDER OF THE BOARD**

1251600 Ontario Limited (“the Applicant”) proposed a mixed use development comprised of an executive golf course, a prestige industrial building and residential uses. This development is located at 2233 Stanley Avenue (Pt Lot 17, 24) in Stamford, Ontario (“Subject Property”). Only the residential part of this development required an expansion to the Urban Area Boundary. This involved approximately 3 hectares of land intended to accommodate 24 townhouse dwelling units and two 10-storey condominium apartment buildings containing 240 units.

As a result of the development, the Applicant submitted applications to the City of Niagara Falls to amend the City’s Official Plan and Zoning By-law to permit the proposed residential and prestige industrial uses. The Regional Plan Amendment 7-2005 was adopted and approved by the Region of Niagara. The City Official Plan Amendment was adopted by the City of Niagara Falls and approved by the Region as OPA No. 72. In addition, the City of Niagara Falls passed the Zoning By-law as By-law No. 2007-144.

Cytec Canada Inc. (“the Appellant”) has a major land holding that is a closed landfill in the areas of Stanley and Portage Roads. Access to this land locked property is currently across the southern edge of the area defined in the proposal and along an existing access road that runs parallel to the CN rail line. In addition to this, there is a historical access through the property defined in the proposal, by way of Braas Road and rights-of-way originally created by court judgement. Also, a right-of-way exists north of the area defined in the proposal. The Appellant requires access to these properties for maintenance and security including heavy equipment from time to time. It is imperative to the Appellant that vehicular access to this property be maintained.

It is the Appellant’s position that the Region’s consideration of this Regional Official Plan Amendment is premature and as such appealed the above referenced planning documents to the Board.

Present at the hearing was Counsel Jeffrey Wilker for the Appellant; Italia Gilberti for the Applicant and Michael Kyne for the Regional Municipality of Niagara (Mr. Kyne

also acted as agent for the City). In addition, Richard Brady a qualified land use planner retained by the Applicant was present at the hearing in support of the Minutes of Settlement.

Counsel at the beginning of the hearing informed the Board that the parties have mutually agreed to settle the appeals on the basis of the Applicant granting an easement/right-of-way in exchange for the quit claim/release by the Appellant of any other easements it has across the Subject Property. Counsel filed the Minutes of Settlement (Exhibit "1").

The Board notes that the Committee of Adjustment ("the Committee") for the City of Niagara Falls has granted the requisite *Planning Act* permission for the creation of such an easement, by granting consent under Application File No. B-2008-006.

It was the evidence of Mr. Brady that the abovementioned settlement does not change and or modify the Amended Official Plans or By-law No. 2007-144. Mr. Brady testified that the Settlement represents good planning and is in the public interest.

On consent of all the parties and subject to the terms of Minutes of Settlement the Board Orders that the appeals be dismissed and that there be no Order as to costs.

The Board so Orders.

"M.G. Somers"

M.G. SOMERS
MEMBER