

ISSUE DATE:

November 07, 2012



PL111325

Ontario
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.
Appellant: Grand Niagara Resort Inc. (2285045 Ontario Inc.)
Appellant: Walker Aggregates Inc.
Subject: Proposed Official Plan Amendment No. 96
Municipality: City of Niagara Falls
OMB Case No.: PL111325
OMB File No.: PL111325

APPEARANCES:

Parties

Counsel*/Agent

Cytec Canada Inc	J. Wilker* (absent) D. Germain*
Grand Niagara Resort Inc. (2285045 Ontario Inc.)	C. Brawley(planner)
Walker Aggregates Inc.	S. Garrod* (absent)
City of Niagara Falls	K. Beaman*
Regional Municipality of Niagara	P. DeMelo*

MEMORANDUM OF ORAL DECISION DELIVERED BY R. ROSSI ON OCTOBER 29, 2012, AND ORDER OF THE BOARD

[1] Today's teleconference call was convened for the parties to advise the Ontario Municipal Board on the status of their discussions related to the City-initiated Official Plan Amendment No. 96 ("OPA 96") to the City of Niagara Falls Official Plan, whose purpose was to update the Plan's environmental and natural heritage policies and

mapping. Specifically, OPA 96 adds policy 12.1.49, which speaks to aggregate operations within the Environmental Protection Area (“EPA”).

[2] The Board withheld its Order on the settlement reached between Walker Aggregates Inc. (“Walker”) and the City of Niagara Falls (“City”) and the Regional Municipality of Niagara (“Region”) until the parties could communicate the position of Cytec Canada Inc. (“Cytec”) on the settlement.

[3] In August 2012, having learned that Cytec did not object to the settlement reached between Walker, the City and the Region, the Board ordered that the Walker appeal was allowed in part and the Board amended the City of Niagara Falls Official Plan with OPA 96. Accordingly, Walker’s counsel Mr. S. Garrod did not participate in today’s teleconference call.

[4] Mr. J. Wilker, counsel for Cytec, was unable to participate in today’s call but he was replaced by his colleague Mr. D. Germain, who advised the Board that Cytec’s environmental work was under way and its report would be released in the next couple of weeks. He could not speak to the report’s findings but expressed his client’s ongoing concern that the City had misidentified some of Cytec’s (and other) sites through OPA 96.

[5] Mr. K. Beaman, counsel for the City, expressed the City’s desire to obtain the Board’s approval of the balance of the lands affected by OPA 96 save and except for the Cytec lands and the Grand Niagara Resort Inc. (“Grand Niagara”) lands, which are under appeal. Mr. C. Brawley, the planner acting as agent for Grand Niagara in this matter, advised the Board that his client is engaging in updating environmental work that will carry through to 2013. And, as his client’s concerns are site-specific, he, along with Grand Niagara principal Mr. J. Sorokolit, would support an approach that would see the balance of the OPA 96-affected lands approved but with Grand Niagara (like “Cytec”) left to pursue its site-specific appeal without prejudice. Mr. P. DeMelo for the Region also supported Mr. Beaman’s approach.

[6] To determine whether Cytec could also proceed in this manner requires direction from this party's principals in the United States, particularly where the Board heard that some of Cytec's appeal relates not just to its lands but to other affected lands. In this regard, Mr. Germain has undertaken to obtain direction and report back to the Board via a subsequent teleconference call. On consent, the Board will hold a second teleconference call on **Thursday, November 22, 2012 at 9:30 a.m.** to determine how the parties will proceed in this regard. The number is (416) 212-8012 or toll-free 1 (866) 633-0848; the access code is 1006967#. No further notice will be given. The Member continues to be seized for administrative carriage of this file.

"R. Rossi"

R. ROSSI
MEMBER