

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: April 01, 2020

CASE NO(S):

PL150852

PL150853

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Cytec Canada Inc.
Applicant:	Heartland Forest Ministries
Subject:	Consent
Property Address/Description:	8215 Heartland Forest Road
Municipality:	City of Niagara Falls
Municipal File No.:	B-2015-011
LPAT Case No.:	PL150852
LPAT File No.:	PL150852
LPAT Case Name:	Cytec Canada Inc. v. Niagara Falls (City)

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Cytec Canada Inc.
Applicant:	Heartland Forest Ministries
Subject:	Minor Variance
Variance from By-law No.:	79-200, as amended by By-law Nos. 2005-198 and 2012-042
Property Address/Description:	8215 Heartland Forest Road
Municipality:	City of Niagara Falls
Municipal File No.:	A-2015-034
LPAT Case No.:	PL150852
LPAT File No.:	PL150853

Heard: March 11, 2020 by telephone conference call
APPEARANCES:

Parties

Counsel

Cytec Canada Inc.

Jeffrey Wilker

Heartland Forest Ministries

Tom Richardson

City of Niagara Falls

David Nelligan

MEMORANDUM OF ORAL DECISION DELIVERED BY M. ARPINO ON MARCH 11, 2020 AND ORDER OF THE TRIBUNAL

[1] This proceeding originally scheduled as a hearing of the merits was converted to a telephone conference call to allow the parties to make submissions on mutually acceptable modifications and conditions to the Tribunal for its consideration of the merits of the request for minor variance and related consent.

BACKGROUND

[2] Heartland Forest Ministries (“Heartland”) is the Applicant in this matter. Heartland owns approximately 113 hectares (“ha”) of property (“Subject Land”) at 8215 Heartland Forest Road. In the City of Niagara (“City”). The Subject Land is identified as Part 1 and Part 2 on Attachment 1. Heartland received approval from the City of Niagara Committee of Adjustments (“Committee”) for consent to sever approximately 6.6 Hectares ha. (“Part 1”). Heartland proposes to develop a recreational trailer camp on Part 1. Part 2 will be retained for continued resort commercial use.

[3] The Committee also approved an application submitted by Heartland for minor variances from the provisions of Zoning By-law No. 2005-198 to permit reduced minimum lot area requirements for Part 1 and Part 2. The approvals of the consent and minor variances are contingent on Heartland’s fulfilling various conditions.

[4] The Committee’s decisions were appealed by Cytec Canada Inc. (“Appellant”)

which operates a large phosphene production plant near the Subject Land.

[5] In 2002 the City Official Plan (“OP”) was amended to include Special Policy Area “35” which applies to the Subject Land. This designation permits development of a comprehensive fully integrated, large scale resort commercial development consisting of both high and low intensity resort commercial components subject to stipulated polices.

[6] The Subject Land contains designated Environmental Protection areas. The OP includes site specific polices which stipulate how the woodlot/wetland on the Subject Land is to be retained and protected.

[7] Thompson’s Creek is immediately south of the Subject Land. The quality and quantity of Thompson’s Creek is critical to the Appellant as it discharges to the Creek under the Ministry of the Environment and Climate Change (“MOECC”) approvals.

[8] The Appellant contends that the decision of the Committee is inconsistent with the Provincial Policy Statement (“PPS”) 2014 including Policy 1.2.6 which requires Major facilities and sensitive land uses be planned to ensure they are appropriately designed, buffered and/or separated from each other to prevent or mitigate adverse effects from odour, noise and other contaminants, minimize risk to public health and safety, and to ensure the long-term viability of major facilities.

[9] The Appellant asserts that the Committee’s decision does not conform to the OP policy which designates the Subject Land may be developed as a comprehensive resort area. The Appellant maintains that separated parcels for site specific land uses does not conform to the comprehensive resort commercial designation. The Appellant also submits that the Applicant failed to comply with the OP policies regarding Thompson’s Creek.

[10] The City planning staff recommended the application for consent to sever Part 1 and the requested relief from the zoning requirements regarding minimum lot size.

[11] The Tribunal was informed that the Parties have agreed to certain conditions in order to resolve the appeal as between them. The Parties provided the Tribunal with suggested changes which the parties deem acceptable, for the Tribunal to consider which are set out in Attachment 2 (“Agreed Terms”).

[12] The Agreed Terms include a suggestion that the west boundary of Part 1 be identical to the limit of the RCE(H) 564 zone under Zoning By-law 2018-75, and therefore excludes any lands zoned EPA.

[13] The Agreed Terms include commitments which the Parties submit should be secured by either a private agreement between the Owner and the Appellant, or by an agreement between the Owner and the City. The Parties addressed potential nuisance claims by abutting property owners within the Agreed Terms.

[14] Glenn J. Wellings, a registered professional planner provided oral testimony and an affidavit in support of the Settlement. The Tribunal qualified Mr. Wellings to provide opinion evidence in land use planning. Mr. Wellings summarized and confirmed his written opinion that the decision of the Committee, if modified by the Agreed Terms has appropriate regard for matters of Provincial interest in accordance with Section 2 of the Act, and is consistent with the PPS 2014 (and PPS 2020). It was his evidence that the relief sought subject to the provisions of the Agreed Terms, conforms to the Region of Niagara (“Region”) and City Official Plans and applicable zoning by-laws. It was also his opinion that the minor variances and consent conditions are reasonable, appropriate and represents good planning. Mr. Wellings confirmed his opinion that the variances granted by the Committee by the terms and provisions in Attachment 2, meet the general intent of the Region and City Official Plans and zoning by-laws, are desirable and are minor in nature. In accordance with the provisions of s. 45(1) of the Act.

LEGISLATIVE TESTS

[15] In making its decision regarding both the consent and minor variance applications the Tribunal had regard to matters of provincial interest as set out in s. 2 of

the Act and, to the decision of the approval authority. The Tribunal also noted that the relief sought, and the Agreed Terms are consistent with the PPS, 2014 and PPS, 2020 .

[16] The Tribunal is satisfied that this conforms with the Region and City Official Plans. This change is also consistent with the PPS. The minor variances to minimum lot size provisions of the zoning by-law satisfy the legislative requirements. The Agreed Terms address potential conflicts between abutting land uses.

[17] The Tribunal is satisfied that a plan of subdivision is not necessary for the proper and orderly development. The consent has regard to the criteria listed in s. 51(24) of the Act and conforms to the Region and City Official Plans. The requested severance complies with the applicable zoning by-laws and reflects good planning and, is in the public interest.

[18] Applications for minor variance must satisfy all four tests in s. 45(1) of the Act, namely that the requested variances:

- i. maintain the general intent and purpose of the official plan,
- ii. maintain the general intent and purpose of the zoning by-law,
- iii. are desirable for the appropriate development or use of the land, building or structure, and
- iv. are minor.

[19] Based upon the uncontradicted oral testimony of Mr. Wellings and the documentary evidence, the Tribunal finds that the requested minor variance and consent, as amended by the Agreed Terms accord with the legislative requirements of the Act which govern approvals of consents and minor variances.

THE TRIBUNAL ORDERS THAT

[20] The appeal is allowed and the variances to Zoning By-law 2018-75 are authorized, subject to the terms and provisions set out in Attachment 2 hereto and forming part of this Order.

[21] The appeal of the consent is allowed, and provisional consent is to be given subject to the conditions set out in Attachment 2 to this Order.

[22] The remainder of the decision of the Committee decision including the conditions imposed by the Committee, are confirmed,

[23] The Tribunal may be spoken to through the case coordinator, in the event any matters should arise in the connection with the implementation of this Order.

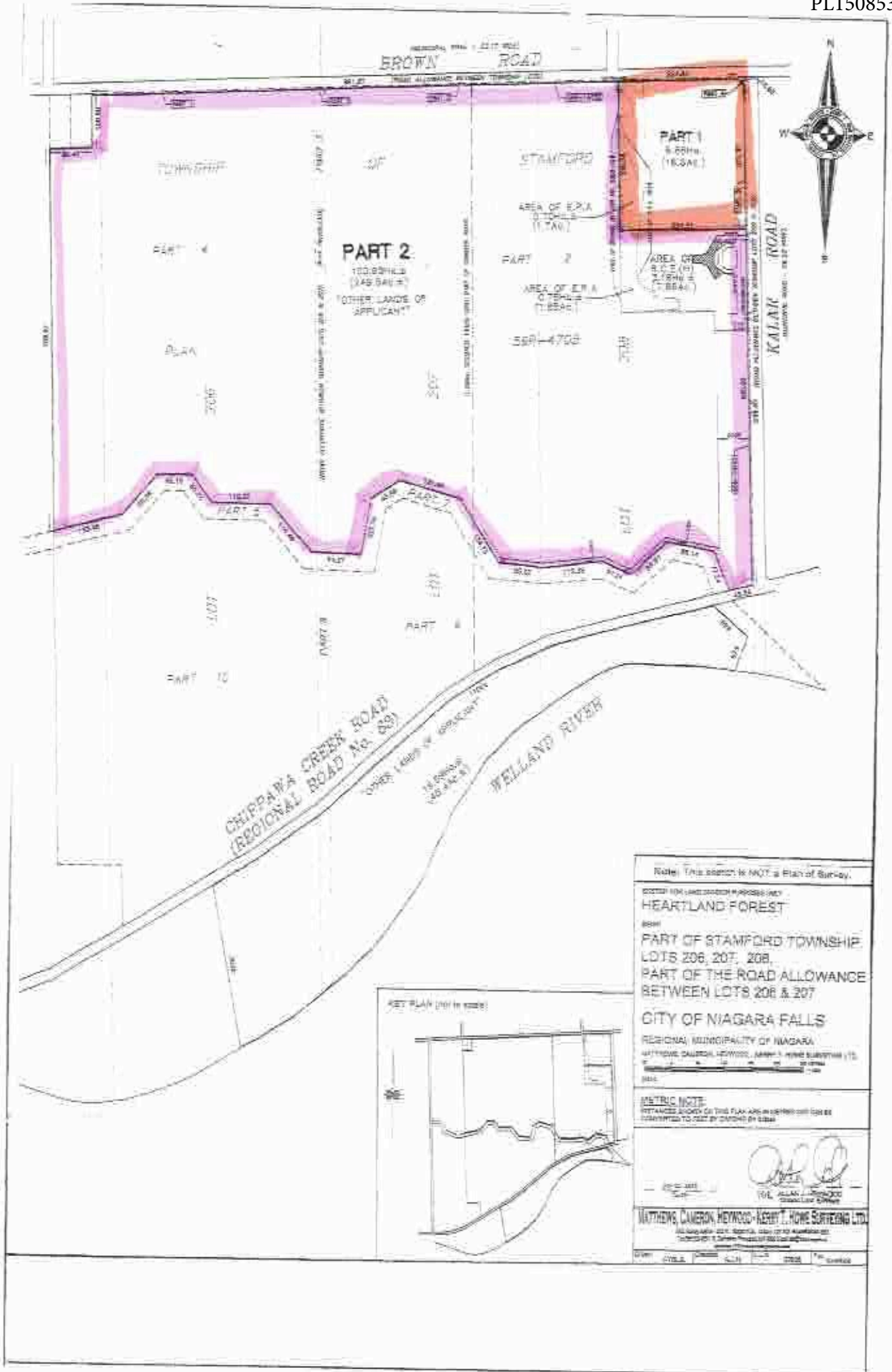
“M. Arpino”

M. ARPINO
MEMBER

If there is an attachment referred to in this document,
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Local Planning Appeal Tribunal

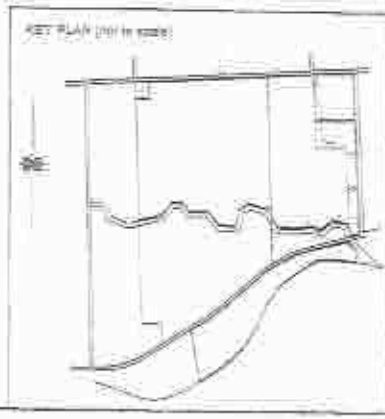
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Note: This plan is NOT a Plan of Survey.

OWNER FOR LAND SHOWN PURPOSES ONLY
HEARTLAND FOREST
 80H
 PART OF STAMFORD TOWNSHIP,
 LOTS 206, 207, 208,
 PART OF THE ROAD ALLOWANCE
 BETWEEN LOTS 206 & 207

CITY OF NIAGARA FALLS
 REGIONAL MUNICIPALITY OF NIAGARA
 ATTORNEY CAMERON HEYWOOD, 4000-1 WINDSWEPT (15,
 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000



METRIC NOTE
 DISTANCES SHOWN ON THIS PLAN ARE IN METERS UNLESS OTHERWISE INDICATED AND SHOULD BE CONSIDERED TO BE IN METERS UNLESS OTHERWISE INDICATED.

ALLAN J. HEYWOOD
 Geomatics Engineer

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ATTACHMENT 2

The following provisions have been considered by the Tribunal and form part of the Order of the Tribunal regarding the appeal of the minor variance in PL150853.

- (a) For Part 1, zoned as part of RCE(H)-654 under Zoning By-law 2018-75, the uses permitted shall include only those permitted under section 5(a) (ii) (iii) and (iv).
- (b) For Part 2, zoned as part of RCE(H)-654 under Zoning By-law 2018-75, the uses permitted shall include only those permitted under section 5 (a) (i) (ii) and (iv).
- (c) Pursuant to Zoning By-law 2018-75, the minimum lot area is “the whole of the lands.” The variance to the minimum lot area is granted so that the severed lands, being Part 1, are deemed to be the “whole of the lands” with respect to the uses permitted under Part 1, and with the remainder of the lands, being the rest of the lands subject to Zoning By-law 2018-75 are deemed to be the “whole of the lands” for the uses permitted on the remainder of the lands. In all other respects the regulations within Zoning By-law 2018-75 are confirmed.

The following conditions form part of the Order of the Tribunal regarding the matter of the Consent in PL150852:

- (a) The application is amended so that the westerly lot line of Part 1 is identical to the limit of the RCE(H) 564 zone under Zoning By-law 2018-75, and therefore excludes any lands zoned EPA. The consent to sever Part 1 as amended, is subject to the following additional conditions:

(a) That the Owner enter into a consent agreement with the City of Niagara Falls to the satisfaction of the Cytec Canada Inc., or in the alternative enter into an agreement with Cytec Canada Inc., to be registered on title to Part 1 and to include the following terms and conditions:

1. The following notice clause shall be included in all Agreements of Purchase and Sale, any subdivision and/or condominium agreement, any site plan agreement, and in any leases as follows:

“Cytec Canada Inc. (“Cytec”) owns lands located north of the Welland River and west of Garner Road. Cytec’s lands are designated Industrial and zoned for heavy industrial uses. Cytec operates chemical manufacturing and industrial facilities on its lands and may in the future expand its operations by expanding or adding to its existing buildings or constructing new buildings and/or intensifying its operations. Cytec may also erect and/or construct and operate facilities for any of the uses permitted in the City’s Zoning By-law. Cytec’s use of its lands may generate odour and air emissions and create noise, together with other industrial effects. Cytec is a member of the Canadian Chemical Producer’s Association and has been verified under the Responsible Care Codes of Practice. This notice clause includes any successors and/or assigns in title to Cytec;”

and,

2. The Owner shall submit a stormwater management plan and report for approval of any development for Part 1, which plan and report shall be sealed by a qualified professional engineer demonstrating that the existing conditions of Thompsons’s Creek are maintained to Cytec’s satisfaction, not to be unreasonably withheld, which conditions include impacts on flood potential, erosion, water quality and quantity and fish habitat or shall in the alternative obtain the required consent from Cytec, not to be unreasonably withheld, for proposed impacts or alterations on the existing conditions.