

July 26, 2011

Transport Canada  
112 Kent Street  
Ottawa, ON K1A 0W8

Attention: Director General, Airport and Port Programs

**By Fax to 613-990-8889; Hard Copy to Follow by Regular Mail**

Senior Advisor, Program Management  
Airport and Port Programs  
Transport Canada  
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Attention: Desiree Sauve, Senior Advisor, Program Management

**By Email to [desiree.sauve@tc.gc.ca](mailto:desiree.sauve@tc.gc.ca); Hard Copy to Follow by Regular Mail**

**RE: Creation of Canada Port Authority Pursuant to Settlement Agreement and Related Requirement to Prepare a Land Use Plan Pursuant to the Canada Marine Act**

Recital H of the Settlement Agreement dated July 15, 2010 between the City, the Federal Crown and the Oshawa Harbour Commission states:

“The Minister of Transport has approved moving forward to continue the OHC as a Canada port authority pursuant to the *Canada Marine Act*, simultaneously with the resolution of the Oshawa Harbour land-related issues and, pursuant to Section 10 of the *Canada Marine Act*, the Minister has the authority to issue letters patent continuing the OHC as a Canada port authority.” (*underline added*)

Similarly, section 7.1 of the Land Use, Development and Municipal Services Agreement requires the Canada Port Authority to prepare a Fire Protection and Emergency Services Plan and Protocol within 120 days of the Effective Date of that agreement (July 15, 2010). Section 7.2 of that agreement requires the Canada Port Authority to regularly update the Plan.

Over one year has passed since the Settlement Agreement and Land Use, Development and Municipal Services Agreement (“Agreements”) were executed. During that time, the letters patent have not been issued and the Canada Port Authority has not been formed. This delay is inconsistent with these Agreements and the very foundation of the understanding and basis of these Agreements.

The delay in the formation of the Canada Port Authority has resulted in a delay in the establishment of a new governance model for the Harbour and a delay in the initiation and preparation of a Land Use Plan by the Canada Port Authority. Such a Plan is required to be finalized within one year of the creation of the Canada Port Authority.

I am concerned that the Oshawa Harbour Commission is continuing to advance development, commitments and leases at the harbour. This is inconsistent with the Agreements on a number of fronts – first of all, a new Canada Port Authority was to be put in place “simultaneously” with the execution of the Settlement Agreement with a new governance structure, more members and a broader perspective on potential development; secondly, all potential new development was to be considered as part of the required Land Use Plan process that Canada Port Authorities are subject to.

Accordingly and consistent with the Agreements, please form the Canada Port Authority immediately, begin the preparation of the required Land Use Plan and prohibit the Oshawa Harbour Commission from executing any additional development arrangements until the Canada Port Authority is put in place and the Land Use Plan finalized.

In the event the Oshawa Harbour Commission is allowed to continue to advance development and make commitments in the absence of the Canada Port Authority and related Land Use Plan, the vision of the new Canada Port Authority and its members and the Land Use Plan could be severely compromised by arrangements made between the Oshawa Harbour Commission and various development interests/lessees. This would certainly not be consistent with the Agreements.

The above-noted points are emphasized by the fact that the Land Use, Development and Municipal Services Agreement states in Clause 3.1 (e) that all Port lands will be used for those industrial purposes deemed appropriate by the Canada Port Authority in its sole discretion. The reference to the Canada Port Authority vs. Oshawa Harbour Commission is important.

I would respectfully request a timely response to this important matter.

Thank you,



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Bob Duignan  
City Manager

- cc: Mayor John Henry  
David Potts, City Solicitor  
Tom Hodgins, Commissioner, Development Services  
Director, Business Law Division, Department of Justice (Fax: 416-973-0809)  
Donna Taylor, Chief Executive Officer, Oshawa Harbour Commission (Fax: 905-576-5701)  
John Cloutier, Transport Canada by email to [john.cloutier@tc.gc.ca](mailto:john.cloutier@tc.gc.ca)