

CORPORATION OF THE MUNICIPALITY OF AMHERSTBURG

BY-LAW NO. 2004-79

A BY-LAW TO ADOPT AMENDMENT No. 6 TO THE  
OFFICIAL PLAN FOR THE TOWN OF AMHERSTBURG

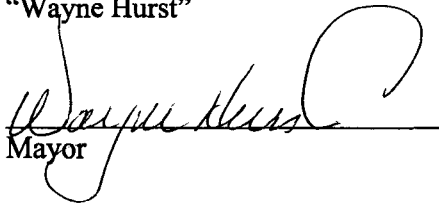
The Council of the Corporation of the Municipality of Amherstburg in accordance with the provisions of Sections 17 and 21 of the Planning Act, hereby enacts as follows:

1. Amendment No. 6 to the Official Plan for the Town of Amherstburg consisting of the attached text and map schedule is hereby adopted.
2. The By-Law shall come into force and take effect on the day of the final passing thereof.

READ A FIRST AND SECOND TIME THIS 16th DAY OF September, 2004.

READ A THIRD TIME AND FINALLY PASSED THIS 16<sup>th</sup> DAY OF September, 2004.

"Wayne Hurst"

  
\_\_\_\_\_  
Mayor

"David Mailloux"

  
\_\_\_\_\_  
Clerk

I, David Mailloux, Clerk of the Corporation of the Municipality of Amherstburg, do hereby CERTIFY that the above is a TRUE COPY of By-Law No. 2004-79, as enacted and passed by the Council of the Corporation of the Municipality of Amherstburg on the 16th day of September, 2004.

\_\_\_\_\_  
Clerk

**AMENDMENT NO. 6**  
**TO THE OFFICIAL PLAN**  
**FOR THE**  
**TOWN OF AMHERSTBURG**

APPROVAL PAGE

This Amendment to the Official Plan for the Town of Amherstburg which has been adopted by the Council of the Corporation of the Municipality of Amherstburg is hereby approved in accordance with Section 17 of the Planning Act, as AMENDMENT No. 6 to the Official Plan for the Town of Amherstburg.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Approval Authority

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AMENDMENT NO. 6  
TO THE OFFICIAL PLAN  
FOR THE TOWN OF AMHERSTBURG

PART "A" - PREAMBLE does not constitute part of this Amendment.

PART "B" - THE AMENDMENT consisting of the following text and map schedule, constitute Amendment No. 6 to the Official Plan for the Town of Amherstburg.

PART "A" - THE PREAMBLE

1. PURPOSE

The purpose of this Amendment is to designate the lands on the east side of Sandwich Street North, north of Brunner Ave. in a General Commercial designation in the Town of Amherstburg's Official Plan. This Amendment also creates site specific policies to assist in guiding the physical development of the lands and to place certain constraints on the range of General Commercial uses that will be permitted on these specified lands. The General Commercial designation is to extend northerly along the east side of Sandwich Street from Brunner Ave for approximately 400 metres. The purpose of the amendment is to allow for a department store and other larger format retail uses together with supporting service commercial uses.

2. LOCATION

The subject land is comprised of approximately 9.1 hectares (22.4 acres) which includes unopened municipal road allowances (Ouellette, Fraser and a portion of Park). The subject lands are a portion of the former Church and Dwight facilities and the front, surplus portion of the General Chemical lands.

The site is bound on the west by Sandwich Street (Essex County Road 20) and the Detroit River. To the north is a gas distribution station and vacant lands. To the east is an industrial development, Honeywell Chemicals, and also to the east is the General Chemical Plant and Warehousing operation. To the south is the residential subdivision known as Fraserville.

### 3. BASIS

Application for the extension of the General Commercial designation of the Town of Amherstburg's Official Plan was received in March 2004 from Petretta Construction Limited.

#### 3.1 Commercial Review Study

In 2001 a number of applications had been received for extensions of the General Commercial designation and Council requested that an analysis be undertaken to determine whether or not there was sufficient lands designated for commercial development.

The purpose of the Commercial Review Study undertaken in 2001 was to:

- review and analyze the historical commercial land use patterns in the Study Area in order to determine growth trends;
- review and evaluate the commercial land use, economic development, and downtown revitalization policies in the Town of Amherstburg's Official Plan to ensure that they:
  - (1) are consistent with the purpose and intent of the Official Plan and the goals and objectives of the Town;
  - (2) are clear, unambiguous, and consistent in their interpretation and application;
  - (3) provide appropriate guidance to the Town, developers and the public;
  - (4) meet the needs of the municipality now and for the next 20 years; and
  - (5) allow for logical and necessary growth in the Town, while ensuring that the quality of existing commercial areas are maintained and/or enhanced.
- determine if there is sufficient land designated for commercial purposes, that this land is in appropriate locations, and that it is designated for the appropriate type of commercial development;
- generate recommended alternatives to the existing policies and analyze their short and long term implications;
- ensure that land use incompatibility issues are properly addressed and, if necessary, appropriate mitigating measures are required; and
- ensure that the historical significance of Amherstburg and its built form are properly recognized, protected and enhanced by the policies of the Official Plan.

The results of that study indicated that there was a need for additional lands to be designated for commercial development. Council after reviewing the Commercial Review study approved the following Official Plan Amendments:

- Official Plan Amendment No. 1 allowed for the relocation and expansion of a local grocery store and additional retail on the east side of Sandwich Street just north of Fort Street.
- Official Plan Amendment No. 2 allowed for the expansion of a local grocery store on the east side of Sandwich Street just north of Richmond Street ( to the east of its existing site).
- Official Plan Amendment No. 3 created policies to reduce the parking requirements within the core (downtown) commercial area of Richmond and Dalhousie Streets. and
- Official Plan Amendment No. 4 extended the General Commercial designation that had been applied to OPA #1 northerly to Alma Street.

Although the commercial review was limited to the former Town of Amherstburg, it did identify that the amount of land designated commercially was not keeping pace with the anticipated growth of the community. It also concluded that the lands that were designated did not provide sufficient opportunity for large-scale commercial development or significant commercial expansion. There was a noted deficiency in commercial opportunities for anything beyond a fairly small footprint retail establishment.

The report examined not only the existing commercially designated areas but tried to find sites that could accommodate larger commercial establishments. Industrial sites such as SKD, General Chemical, Church and Dwight were all considered as potential and desirable commercial development areas.

The report also promoted the intensification or redevelopment of the White Woods Mall site, however the Mall site was not the only site found suitable for commercial development. The report considered the subject lands to be one of the more desirable of the alternatives. Although one other site ranked higher (White Woods Mall) than the subject lands the existing mall location would require a total redevelopment of the site and would still only accommodate a portion of the proposed development applied for by Petretta Construction. In addition, the redevelopment of White Woods Mall would be the replacement of retail for retail and not the introduction of needed additional retail square footage.

With the passage of time a different approach has been taken to new commercial development. In 1985 it was determined that the Town was under supplied in general merchandise commercial development and in particular department store type merchandise. In 2000 it was determined that the Town was also in short supply of suitably designated land for any commercial development that was greater than 3000 square feet. The town continues to be without department store type merchandizing and the proposed site is well situated for commercial uses.

The report also promoted special incentive policies for the core and dual designations (Commercial as well as either Multiple Residential or Office Residential) on a number of sites in order to increase development opportunities. With dual designations there is no guarantee that the site will develop commercial which can further limit the commercial development opportunities notwithstanding a commercial designation.

### 3.2 Commercial Land Opportunities

In addition, in 2003, a booklet was produced for the Town titled Commercial Land Opportunities. In the booklet the subject lands are noted as having great visibility and tremendous redevelopment potential. It was noted that an Official Plan amendment would be required. The potential to acquire more land was noted in the booklet, which would then enhance the development opportunities for the site. The sites are Sites 4 and 5 in the Brochure.

One of the important factors in considering commercial development opportunities is the fit between the proposed commercial establishment and the site. If the commercial development is needed and desired by the community and a developer is able to find a site that can meet good land use criteria, the site should be seriously considered. Although there are a number of sites within the Town that are suitable for a department store, most would require major redevelopment or are already in an alternative land use (White Woods Mall and SKD sites). Other factors need to be considered such as whether or not the site suits the commercial venture being proposed, is compatible with surrounding land uses, is within the Settlement boundary of the community, can be serviced, and the site is available for development within financially reasonable limits.

The lands south of Lowe Side Road at Sandwich Street would also be an acceptable site as they are south of the established commercial areas and residential areas and would draw traffic down Sandwich Street and past existing establishments. However, it is not seen as any more desirable than the subject lands and the site is not central to the market area.

The White Woods Mall would also be a suitable site for the development, but as noted above, the site would require redevelopment of established commercial uses nor is it the subject of the proposed application.

The application for General Commercial designation on the subject lands has been recommended by Council that the subject lands be placed in a General Commercial designation with some added conditions and the need to limit the range of uses on the site.

The Subject lands are currently designated industrial. The Church and Dwight portion of the site is designated Light Industrial and the General Chemical portion of the site is designated Heavy Industrial in the Official Plan.

The size of the site (19.2 acres) is an excellent size for a wide range of commercial opportunities.



The General Chemical lands and the Church and Dwight property are among the most desirable and appropriate sites in Amherstburg for commercial development. As noted in the Commercial Lands Opportunities booklet the sites are in the heart of Amherstburg's residential area and close enough to the established commercial development to encourage comparison-shopping.

The subject lands possess desirable site attributes:

- the lands have frontage on a major arterial road;
- the lands are between an area of established growth and an area of major future residential growth;
- the lands are close to the other established commercial areas of the community to help keep the disposable dollars in Amherstburg and the location is such that it will strengthen the commercial function of the established commercial development along Sandwich Street and the Downtown core;
- the site is large enough to create a buffer between it and the residential area to the south;
- there is no compatibility issue between these lands and the lands to the north or to the east as they are industrial.

### 3.3 Abutting Land Uses and Issues

Honeywell, located immediately to the east of the northern portion of the subject lands produces hydrofluoric acid for use in air conditioners and refrigerators. The acid is also used to assist in the refining of gasoline and in the manufacturing of light bulbs. Honeywell has expressed concerns as to the compatibility of their operation and a commercial development. In reviewing the list of permitted uses in a full range General Commercial site there are uses such as hotels, nursing homes or any other institutional use that would involve overnight stays. As a result of the concerns raised by Honeywell a special policy will be attached to the lands prohibiting any form of overnight accommodations.

Honeywell also raised a concern about trucks accessing the industrial lands and any conflicts that might occur with commercial customers. Currently Honeywell shares an access with General Chemical at a location about mid point on the subject lands. Traffic studies have been undertaken by Paradigm Transportation Solutions Limited and an independent access point for both Honeywell and General Chemical has been established to the north of the subject lands and no traffic conflicts have been identified. The County of Essex has also reviewed the traffic studies and have not identified any issues that cannot be resolved at site plan approval.

Also to the east of the subject lands is the General Chemical Plant. General Chemical produces calcium chloride at both the Amherstburg plant and a plant in Manistee, Michigan. General Chemical has filed voluntary petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code to facilitate pre-arranged restructuring. Part of the restructuring is to consolidate their operations and a possible joint venture with Tangsham of China. The Amherstburg plant closed its synthetic soda ash facility a few years ago and sold their limestone quarry (850 acres) to Smith Quarries for aggregate production. General Chemical owns

approximately 800 acres between Sandwich Street and Fox Road in addition to the over 500 acres of lands to the north associated with the former brine well operation. General Chemical has determined that the front portion of their lands (12.2 acres) are surplus to their needs.

Some concern has been expressed that the removal of lands from a Heavy Industrial designation will not be beneficial to the Town in the long term. The Town has (including the 800 acres noted above) over 2300 acres of land designated for industrial uses. In addition there is over 1500 acres designated for various extractive industrial activities (limestone, aggregate and brine).

The 2300 acres of lands designated Industrial is found in two locations. The first is approximately 830 acres located at Howard Ave. north of North Street. This industrial area is well removed from residential designations and development and is conveniently located within 6 kilometers of the 401 Highway system. The second location is north, east and south of the General Chemical plant. Although over half of the second location is consumed by General Chemical plant and settling beds, Amherstburg has sufficient lands designated Industrial.

Residents on Brunner Ave. raised concerns about utilizing Brunner Ave for access to the commercial site. The residents were not opposed to the commercial development but were opposed primarily to truck traffic using any portion of Brunner to gain access to the site. As a result of those concerns Council directed that no truck access occur on Brunner Ave. The applicant has been instructed to provide alternative site plans that reflect this directive. Appropriate policies have been incorporated into the Special Policies that apply to this site and into the implementing zoning by-law to ensure access from Brunner Ave. is restricted.

Existing General Commercial policies are also not precise enough to ensure appropriate site design and buffer to existing residential areas nor do they reflect the compatibility issue that could exist between the existing industries and some of the permitted uses within a General Commercial designation. This amendment will incorporate appropriate Special Policies to guide the development.

#### 3.4 Issues Raised by White Woods Mall

Since the application has been filed for the General Chemical/Church and Dwight property the owners of the White Woods Mall have objected to the development and have noted that a significant number of their tenants are not willing to enter into new long term leases. They also noted the closing of the A&P Grocery Store within the mall.

In the letter from Mr. Slopen, solicitor for White Wood Mall, he raises a number of points.

<b>Mr. Slopen's issue</b>	<b>Response</b>
1. the Official Plan amendment and re-zoning applications are premature as; a. no marketing study, b. drainage study, c. archeological study, d. environmental reports or e. planning reports dealing with the impact on the downtown and industry were submitted or available.	a. no marketing study is required b. the drainage study would be a condition of site plan approval c. the archeological study is completed d. the environmental report is completed e. the planning report is completed f. the impact on the downtown and industry has been reported on and believed to be beneficial to the Town.
2. The proposed General Commercial designation is not appropriate as a department store is proposed with ancillary stores and the Shopping Centre and Highway Commercial designations are required for this use.	The statement made is incorrect. Firstly, the proposed development is not a shopping centre. Although the Highway Commercial designation could be applied to this site (as the retail component of this designation is for large format retail) the General Commercial designation is the most appropriate designation for the site. The only zone that specifies a department store as a permitted use is the Commercial General Zone, which implements the General Commercial designation of the Official Plan.
3. That the General Commercial designation was used to eliminate the need for a market study.	The General Commercial designation was recommended as the appropriate designation and the primary function of this development application is retail and the development is not an enclosed or pedestrian oriented mall. The principles of White Woods Mall also developed the Sobey's commercial site (OPA #1) which provided for a food store and ancillary commercial. They were also advised that a market study was not required and that General Commercial was the appropriate designation for their site. The same opinion still applies.

<p>4. Alternative sites were not considered as to impact of the construction of a shopping centre and /or department store at the southerly border of the Town.</p>	<p>As noted elsewhere in this report the commercial review did consider alternative sites including a more southerly location. The applicants did not acquire a more southerly site. A more southerly site would not be central to the majority of residents once Kingsbridge, Pointe West and Golfview are completed.</p>
<p>5. A&amp;P 37,000 square feet to be vacant.</p>	<p>A supermarket is not proposed as a permitted use within the development. The Sobey's development was seen as capping the supermarket development limits when combined with No Frills and A&amp; P. The closure of A&amp;P is not related to this development application.</p>
<p>6. Tenants have notified the landlord that they will not renew their leases but rather stay on month to month.</p>	<p>It was understood that the landlord of White Woods Mall was in negotiations with a department store tenant and that it was because of those negotiations that tenants were on a month to month arrangement. However, the relationship between tenants and landlords is not a planning matter. The only issue is whether or not the proposed development will result in a designation not being able to fulfil its planned function. The proposed development is not a mall or an enclosed shopping centre. The planned function of the Shopping Centre designation is that of a pedestrian oriented indoor shopping experience. The planned function of a Shopping Centre remains the sole domain of White Woods Mall.</p>

### 3.5 Official Plan Policies

The Official Plan currently designates the southern portion of the site Light Industrial and the remainder of the site Heavy Industrial. The proposed land use designation change is to General Commercial.

The existing designations permit a wide range of industrial land uses as well as office uses. The uses permitted correspond to the uses made of the site in the past ranging from settling ponds to chemical compound production.

The new proposed use of the site is for a variety of large format retail.

The Town of Amherstburg has known since 1981 that it is deficient in commercial retail space. Although the Town has had a very positive attitude to development, the Town is dependent on development applications coming forward.

The subject lands have been the primary industrial employer for the Town until very recently. With the downsizing of the plant came a need to consider alternative land uses on this site.

During the Commercial Review, undertaken in October, 2001, the subject lands were identified as being suitable for consideration for commercial development.

The waterfront location makes the site a prime candidate for gateway commercial. The former uses of the land and the continued Heavy Industrial use and designation to the rear of the land make the property suitable for only commercial or industrial land uses. Commercial uses will increase the public exposure of the site to the aesthetic vistas of the Detroit River.

Site specific policies need to be applied to the subject lands in order to ensure site planning objectives for the site are achieved.

There is an abutting parcel of land (3.27 acres) owned by the applicants that has frontage on Brunner Ave. The site is part of the former Church and Dwight property. No proposal is being considered for this land at this time. The lands are currently designated Light Industrial in the Official Plan. Any development of these lands for any non residential land use will require access by way of the unopened road allowance of Park Avenue or the adjacent commercial development and will not be permitted access to Brunner Ave. The lands are vacant at this time except for a dwelling unit.

### 3.6 Alternative Sites

There are no alternative sites in Amherstburg that are currently designated commercial that could accommodate a development of this scale. An assessment of alternative sites was undertaken a number of times over the past three years.

The first search related to the evaluation of an application for a food store and associated retail at Sandwich and Fort (Mikhail ). As a result of that analysis it was determined that the Town was deficient in commercially designated lands and that the amendment should be approved as no sites were large enough to accommodate the proposed larger format grocery

store.

The next search was due to a request from the Economic Development office to identify sites that had commercial or industrial potential. The search was expanded to include all of Amherstburg. The report referenced the 8 sites noted in the Commercial Review but also included:

- the entire eastern frontage of Sandwich Street North, between Brunner Ave. to a location just south of Texas Road (subject lands for the most part),
- a site known as the Boblo lands, located on the west side of Sandwich Street south of Lowe Side Road,
- the Anderdon Tavern site, and
- lands that are the subject of Official Plan Amendment #4 (east side of Sandwich Street south of Alma).

All sites considered for a commercial designation are within the Settlement boundaries of the Town.

### 3.7 Land Use Impacts

One of the key questions planners must resolve is whether or not a proposed land use is compatible with adjacent land uses. The only area of interface between the proposed development and sensitive land uses would be at Sandwich Street and Brunner Ave. Land uses to the south of the subject lands are residential and front on to a local street that currently has extremely low traffic counts. The former Church and Dwight property has access to both Sandwich Street and Brunner Ave. No other industrial traffic uses Brunner Ave. as industrial development in the area has direct access to Sandwich Street or St. Arnaud or Victoria Street North.

The frontage on Sandwich Street is great enough to resolve the need for a Brunner / Sandwich intersection. Usage of the local street is not required and would place unnecessary traffic loads on to Brunner Ave. As a result of the meeting with the residents of Brunner Ave. Council has directed that no truck access be allowed to Brunner Ave. The Official Plan policies will reflect this directive. In addition the setbacks and side yards of Commercial to Residential designation will be increased to ensure adequate buffer between these two uses.

Although the site plan is strictly conceptual at this moment, the interface of this development to Sandwich Street and the Detroit River will be very important. As with both the Loblaw's and Sobey's developments, enhanced landscaping abutting Sandwich Street will be required. The General Commercial zoning does not permit front yard parking. The front yard is located between the road and the building on the site. Parking currently shown in the front yard would not be permitted.

Official Plan Amendment #4 created policies that require additional landscaping

requirements be incorporated into the site plans of new development and that special attention be given to fencing and lighting. It also requires consultation with the Local Architectural Conservation Advisory Committee on roof lines, height, building materials, and window placement. These policies were created to ensure heightened standards to the gateway of Amherstburg.

Although the existing site is heavy industrial and it could be argued that any redevelopment would be an improvement, this is a very significant Official Plan Amendment that is being requested. The Town will make every effort to secure as pleasing an entrance to the old town portion of Amherstburg as possible. The minimum landscaping strip will be 6 metres along both Sandwich Street and Brunner Ave.

Again, although the site plan is not part of this application the location of a loading dock on the front of the department store structure is not an acceptable design feature nor permitted by the Town's planning documents.

No loading docks will be permitted along the front face of any building and the holding zone will not be lifted until a suitable site plan has been established and issues associated with access resolved.

### 3.8 Traffic

A traffic study was undertaken by Paradigm Transportation Solutions Limited. The study dealt with **both** the commercial development as contained within the application and industrial development along Brunner Ave. The study made the assumption that industrial development would be permitted to occur on the portion of land that fronts on to Brunner Avenue that is intended to be severed from the Church and Dwight property.

Although the lands fronting Brunner Ave are designated in the Official Plan as Light Industrial they are part of a larger land holding that currently has access to Sandwich Street. In addition, the lands have access to an unopened municipal road allowance. Should these lands ever be developed access would be to Park Avenue and Ouellette Street and not to Brunner Avenue.

The report also identifies a number of roadway improvements that will be required as a result of traffic generated by this development. The first improvement is the requirement of a traffic signal at the main entrance to the site.

The traffic study also notes that improvements to Brunner Ave. This issue has already been dealt with in this report and truck access to Brunner for commercial use will not be permitted.

### 3.9 Drainage

Prior to the finalization of any site plan for this development the Town will need to have a drainage study undertaken by a qualified hydrologist demonstrating that (a) there will be no impact on the drainage of adjoining properties, (b) there will be no runoff from the proposal onto adjoining properties, (c) the soil composition/profile and geology of the site will allow for and required accumulation of water on the site. This will be a requirement of site plan approval.

### 3.10 Commercial Demand

It has been known for a long time that Amherstburg had significant additional retail capacity that was being absorbed in Windsor. There is a desire to increase the percentage of the disposable dollars that remain in the Town. That will not happen as long as Amherstburg does not have a serious DSTM establishment. The opening of Sobey's , the expansion of the Value-Mart and the expansion of Shoppers Drug Mart have all been positive improvements in Amherstburg's position in the retail market. The expansions were undertaken by competent retailers who know their business and who have determined that Amherstburg can support additional retail.

One of the problems identified in the retail / commercial assessment done at the time of the Sobey's application was that there was no available sites for larger format retail or really any other commercial. Loblaw's and Shoppers and Sobey's have done excellent jobs of finding sites and they all required expansion to the established commercial area.

In 1981 the Town had 207,802 square feet of commercial space. Since then there has been the expansion of Canadian Tire, the building of Sobey's, the expansion of Shoppers Drug Mart and Loblaws, the building of McDonalds and Burger King and building of a small plaza. There has also been the loss of some retail space such as the Mara Bread building and a downtown building supply establishment. The overall existing square footage is still less than 300,000 square feet including developments that are approved but not yet built.

Although the Official Plan for Amherstburg does not require the applicant to undertake a Retail Market Study, rough calculations, based on accepted (Census Canada) information on what people spend per capita on goods and materials, has been prepared by Monteith Brown Planning Consultants.

The total square footage of commercial space the Town can support is 595,341 square feet using conservative numbers leaving an under supply of almost 300,000 square feet..

Assuming a Primary Trade area of 25,000 population and a slight draw from the south end of LaSalle, the Town of Amherstburg can support approximately 600,000 square feet of retail space. The square footage would be broken down as follows:



### 3.10.1 Department Store Type Merchandise

This form of commercial development is referred to as simply DSTM. The DSTM is usually broken down between department stores, like Sears, Zellers, Wal-Mart, the Bay, etc., at 70% of the disposable dollar allocation, and specialty retail, like lady's apparel, shoe stores, and drug stores, at 30% of the disposable dollar allocation. The Town of Amherstburg currently has no true department stores. The Town does have a Saan's store, a shoe store, and two drug stores as well as a number of men's apparel and specialty retail stores.

The Town currently has about 175,000 square feet of DSTM merchandise in developed and approved locations and all of it is really within the specialty category. The Town has sufficient population to support about 343,500 square feet for a difference of **168,500** square feet of unutilized DSTM.

The application is proposing:

- 85,000 square feet of department store with a future expansion to 40,000 square feet (total 125,000) and
- 67,500 square feet of other buildings
- for a total of 197,500 square feet

If all of the development ends up as DSTM type retail it would exceed the capacity of the Town and impact existing retailers.

Restrictions will be placed in both the Official Plan policies and Zoning By-law regulations associated with this application to require a retail market study prior to the 40,000 square foot expansion and to limit the 67,500 square feet of other buildings to a maximum of 55,000 square feet of retail in order to provide for a safety margin relating to impact on existing retailers. Further a minimum square footage of 2700 square feet will be assigned to this area so that it does not compete with small retailers better suited to the central core of Amherstburg.

### 3.10.2 Home, Auto, Tires and Batteries

The next commercial category is known as HATBA - (usually Canadian Tire). The Town can support approximately 24,166 square feet of this form of commercial development and the Town already has its Canadian Tire store.

Uses such as auto, tires and batteries will not be permitted within this development without the provision of a supporting Retail Market Study.

### 3.10.3 Home Improvement

This category includes stores like Rona/ Building Box, Home Depot, Beaver Lumber etc. The Town can support approximately 34,800 square feet of this type of store.

#### 3.10.4 Food Stores / Supermarkets

This category is known as FCTM and the Town can support approximately 145,725 square feet. Had the Town attracted an upper end grocery store the number would be reduced to 116,580 square feet as upper end stores need more dollars per square foot to provide the upper end goods and services. The Town is currently very close to capacity for this category.

Supermarkets will not be permitted within this designation or zone without the provision of a supporting Retail Market Study.

#### 3.10.5 Personal Services

The Town can support approximately 36,000 square feet of hairdressers, dry cleaners etc. type land uses. There is still room within the community for limited additional personal service uses.

#### 3.10.6 Restaurants

The Town can support approximately 96,300 square feet of restaurants. There is still room for additional restaurant development.

#### 3.10.7 Liquor and Beer and Wine

This category equates to about 11,200 square feet and is close to being met but there would be room for a wine store or u-brew establishment.

#### 3.11 Archeological Assessment

An Archeological assessment has been prepared by Mayer Heritage Consultants Inc. and determined that additional assessment or mitigative measures are not warranted because no significant archeological resources were found.

#### 3.12 Road Closure

The applicant has requested the closure of Ouellette Street, Park Avenue and Fraser Street. Any closure of these roads should be conditional on any non residential access from the lands to the east of the subject lands being either to the north through General Chemical or to the west over the subject lands and not via Brunner Ave.

#### 3.13 Consultants Reports

Also forming part of this Official Plan Amendment are the reports prepared by the Applicant's consultants. They form an appendix to this document.

4. REPORT ON COMMENTS RECEIVED AFTER THE NOTIFICATION OF THE PUBLIC MEETING AUGUST 30, 2004

Approximately 85 residents and concerned individuals attended the statutory public meeting on the Petretta applications to amend the Official Plan and Zoning By-law. The majority of the comments were supportive of the application. Objections were raised by a number of individuals and submissions were received after the preparation of the draft documents. A review of the comments raised at the meeting and in the submissions is outlined below for Council's consideration before your final determination.

4.1. First Pro Shopping Centres - August 30, 2004

In their submission they note that they have been informed by Wal-Mart that they have rejected the Petretta site and have retained their firm to look for alternative sites in Amherstburg.

First Pro requests that Council not adopt any amendments for the Petretta site until a "more appropriate site can be identified".

The application before Council was not made by Wal-Mart or for Wal-Mart. At all times the applicant has made it very clear that what is being requested is a designation and zoning that could accommodate large format retail including a department store. Land use analysis has been carried out without any specific tenant in mind. Land use planning for both Official Plan policies and designations and for implementing zoning does not deal with the tenant but rather the "use".

A legitimate concern is:

What if the Town can only support one department store and the only department store interested in Amherstburg is Wal-Mart? If we designate this site are we forcing Wal-Mart to go to a site they have rejected and if so, will they then not locate in the Town?

To answer those questions we have to determine if there are any other locations in Amherstburg where a department store could locate.

Firstly, all lands designated General Commercial within the Town permit a department store without a market study. In addition, so long as the Shopping Centre Commercial designation does not expand, a department store would be permitted in a Shopping Centre Commercial designation without a market study.

As I do not believe the Town could support two department stores, the next question is: how to designate additional lands for commercial including the development of a department store without freezing the development rights of other existing sites.

There are a number of OMB hearings dealing with commercial development and whether or not it is the function of the municipality or the OMB to deal with competition between either two retailers or two sites. The Board has always ruled that neither the OMB nor the municipality is there to resolve issues of competition in the market place. The OMB went so far as to dismiss an appeal by an established commercial site (Trillium) in Waterloo against the creation of a new commercial site (Beechwood). The reasoning for the dismissal was that even though Trillium had NOT utilized their full approved commercial potential and even though they were designated and zoned for the same use, that was not sufficient grounds for opposing a new commercial area being created. The OMB also ruled in the London hearing that: "even if the success of one of the existing malls was threatened by approval but not yet constructed shopping centres the Board has no responsibility under the provisions of the Planning Act to control or limit competition ...such a problem must be resolved in the market place."

So long as the site being designated meets good land use planning criteria for commercial development, the desire of a competitor to attract a similar or even the same tenant is not sufficient grounds for refusing the application.

The Town does not have before it any other applications for this land use.

Should the Town wish to proceed with added caution it would be possible to clarify in the OPA #6 that the designation of the site for General Commercial does not give the site exclusive rights for the development of a department store. I would recommend that if that is Council's desire that the wording of subsection (f) of the proposed Official Plan amendment be changed to read as follows:

- (f) Within this General Commercial designation Council may restrict the maximum permitted gross floor area of a department store to 8000 square metres (85,000 square feet) until such time as a retail market study is completed. Should a department store be constructed elsewhere within Amherstburg prior to a department store building on this site, no department store will be permitted without justification from a market study. Other retail uses on the site may be restricted to 5100 square metres (55,000 square feet) until a retail market study is completed supporting further development. All retail uses within this area shall be greater than 250 square metres (2,690 square feet). No supermarket, grocery store or automotive, tire and battery store shall be permitted without supporting justification from a market study.

Should the Town wish to proceed with added caution it could also place a holding provision on the department store use with the removal of the holding provision conditional on site

plan approval and the filing and /or the issuance of a building permit for the use. I would recommend that if that is Council's desire that the wording of subsection (viii) of the proposed Zoning By-law be revised to add the following zoning provision:

(viii) Restricted Uses

Notwithstanding Section 15(2) no lands zoned CG-5 may be used for a continuum of care facility, day care, hotel or motel, nursing home or any land use involving overnight accommodation.

Notwithstanding Section 15(2) or the provisions of Section 15(4)(e)(x), a department store will not be permitted until such time as the site plan has been approved and a building permit issued for the use.

The above two modifications would allow the market place to determine which site was the most desirable for a department store.

4.2 Honeywell - Prince - August 30, 2004

The issues raised in Cindy Prince's letter include the position that the land uses are incompatible, that the use will compromise the integrity of the Heavy Industrial area, that there was inadequate vehicular traffic analysis on access, that there was no market study, the location relevant to the downtown, and Provincial Policy matters.

The issue of compatibility has been covered extensively and has been reconfirmed with both the Ministry of Municipal Affairs and Housing and the Ministry of the Environment. The Ministry of the Environment is responsible for health and safety risks and has determined that this is not an issue. There continues to be a misunderstanding by Honeywell and their planner as to where the access to Honeywell will be. Since the original traffic study it has been clear that the existing access to both General Chemical and Honeywell will be closed and a new access point created to the north. Honeywell has a site that currently does not have direct access to a street and have depended on General Chemical providing them an access point. General Chemical is relocating the access point to the north of the subject lands. Given there will be no interface between the two land uses on the commercial site the incompatibility issue has been appropriately addressed.

The issue of compromising the integrity of the Heavy Industrial designation has not occurred. Honeywell has not moved and the price of land is not a land use matter. The fact that the abutting designation may become General Commercial does not affect Honeywell's ability to operate. There are over 1,100 acres of land still designated Heavy Industrial adjacent to the Honeywell site. The removal of 12.2 acres of Heavy Industrial and 6.9 acres of Light Industrial lands will not impact the integrity of the Town's industrial land base. In addition to the 1,100 acres of Heavy Industrial lands in this portion of the Town there are an additional 830 acres abutting Howard Ave. Given the long established residential

communities of Fraserville and Texas Road, the Town considers the latter site to be the most desirable industrial location, from a healthy and safety perspective.

As noted above there is no issue relative to access to Honeywell.

Regarding the last three points raised in the letter, market study, the downtown and PPS, I do not understand the concern of Honeywell as they have made it clear they do not oppose additional commercial development in the Town. However, I have undertaken sufficient commercial analysis of the Town to determine that there is a serious deficiency in both the amount of land designated for commercial development, a serious deficiency in appropriately sized parcels for larger format uses, and a serious deficiency in DSTM. All matters associated with the Provincial Policy Statement have been carefully considered including the impact on the downtown. As Council is aware this proposal also has 80% support from the membership of the Chamber of Commerce. The proposed development does not threaten the Central Business Area.

#### 4.3 Brunner Avenue Residents

Several residents of Brunner Avenue reiterated their concern about truck traffic, access in general and landscaping. In our first report prepared for the May 3, 2004 meeting, no access to Brunner Ave was recommended. Council's directive to the applicant was to work with the resident but that no truck access would be permitted to Brunner Ave. I believe the latest addendum to the traffic report has resolved the issues of truck access. I believe the tougher policies in the Official Plan and the higher standards in the zoning by-law will resolve the issue of landscaping and buffer to the residents of Brunner Ave.

What remains is whether or not any vehicular access to the site should be permitted from Brunner Ave. The first two properties on Brunner will experience the greatest impact. The property at the corner is already under the influence of Sandwich Street.

Council directive on whether or not any access to Brunner Ave should be permitted is required.

#### 4.4 Reg Sprague - August 25, 2004

Mr. Sprague opposes the development primarily on safety concerns centred on the existence of Honeywell and General Chemical and the danger these industries may pose for customers of a big box store. His second concern was over the removal of a heritage building B Captain Sloane's home.

The issues of land use compatibility have been addressed. The issue of preserving a heritage dwelling in this setting and with the degree of alteration that has occurred is questionable.

4.5 Joseph Mikhail - August 25, 2004

All of the issues raised in Mr. Mikhail's letter were raised both at the public meeting held in May, 2004 and in Mr. Slopen's letter on behalf of the corporations noted under Mr. Mikhail's letter. No new issues have been raised that have not already been addressed.

4.6 ERCA - August 27, 2004

Requesting that a storm water management study be undertaken. This is already a requirement of the Official Plan prior to site plan approval.

4.7 Phil Kasurak - August 27, 2004

The first suggestion that the site be considered for a dual designation including residential are not feasible due to the Ministry of the Environments guidelines. The second suggestion that the wording of OPA #4 be included to ensure higher design standards and the involvement of LACAC has already been incorporated into the draft OPA #6.

4.8 Petretta - Hugh Handy

On behalf of the applicant, Hugh Handy made a request for several changes to the draft Official Plan amendment and the draft zoning by-law. Requested changes included:

1. Reduction in the minimum floor area for a retail store. The documents as prepared required that the minimum floor area be 300 square metres. The rationale behind the minimum size was to ensure the smaller footprint retail was reserved for the downtown and existing commercial areas. The request for a reduction to 250 square metres will also achieve the same objective as most stores within the core are 100 square metres or smaller.

I would recommend a revision to the documents to reflect the 250 square metres. The draft, revised policy noted above under item 1 of this report has been written with the 250 square metre number in place.

2. Increase the height of the buildings - particularly a department store to 15 metres.

The document in front of Council August 30<sup>th</sup>, had the maximum height for department store set at 15 metres.

3. Remove reference to the Local Architectural Advisory Committee from the Official Plan document.

Given Council remains the final deciding body, I would continue to recommend that consultation with LACAC has merit.

4. Increase the setback from Sandwich Street to a maximum of 25 metres.

Given the magnitude of the structures and Council's continues control through the site plan approval process I would be supportive of an increase in the setback to 25 metres for 25% of the buildings fronting on Sandwich Street.

5. Rewording has been requested of the restrictions at the corner of Sandwich Street and Brunner Ave. within the implementing by-law, for greater clarification of what is the desired end design elements to be achieved.

I would agree that the current wording can be improved on. I would also suggest that alternation to the wording would assist the residents of Brunner Ave. in being assured that any restaurants would not be abutting Brunner Ave. with associated odors and litter. I would suggest the following alternative wording to subsection:

(vii) Restricted Build Area in the zoning by-law.

**(vii) Restricted Build Area**

The land area at the north east corner of Sandwich Street and Brunner Ave., within the CG-5 zone, shall be a Restricted Build Area. Such "Restricted Build Area" shall not be used for a restaurant or a restaurant, fast-food. Parking for uses permitted within the in the "Restricted Build Area" shall be prohibited within the front yard and exterior side yard. The "Restricted Build Area" shall extend northward a minimum of 18 m from the Brunner Ave. property line and extend a minimum of 138 m eastward from the Sandwich Street property line.



PART "B" - THE AMENDMENT

All of this part of the document, entitled, "Part 'B' - The Amendment" consisting of the following text and map schedule constitutes Amendment No. 6 to the Official Plan for the Town of Amherstburg.

1. DETAILS OF THE AMENDMENT

The Official Plan of the Town of Amherstburg is amended as follows:

1.1 "Schedule B-1 to the Town of Amherstburg Official Plan is hereby amended by changing the land use designation of the lands so indicated on the attached map. Specifically the lands affected by this amendment are hereby placed in a General Commercial designation and to apply a Special Policy to the lands as outlined in Section 3.4.5 of the Official Plan.

1.2 Section "3.4.5 Special Policy Areas" of the Town of Amherstburg Official Plan is amended to add the following special policy after subsection (5):

"(6) The General Commercial Area on the east side of Sandwich Street for 400 metres north of Brunner Ave. has additional policies designed to restrict certain uses and to provide for additional site plan control directives. The Special Policies that apply to this General Commercial designation are as follows:

(a) In order to ensure an aesthetically pleasing approach to the historic portion of Amherstburg and to protect the historic character, and as this area represents the gateway to Amherstburg, additional policies will apply to commercial development established along the east side of Sandwich Street for 400 metres northerly from Brunner Ave. This policy will provide additional landscaping requirements at the time of site plan approval. Special attention will be given to lighting, fencing, loading facilities and location of garbage disposal. This policy will also allow Council to establish both minimum and maximum height regulations and setback regulations in a zoning by-law. Council will seek the advice of Amherstburg's Local Architectural Conservation Advisory Committee when dealing with development in this area on such matters as roof line, height, building material, and

window placement in order to reflect the historic small town appearance. Site plans associated with any Zoning By-law amendments to a General Commercial Zone shall be subject to public consultation.

- (b) Within this area Council may establish a setback that requires that at least 25% of the building fronting on to Sandwich Street be set back no less than 6 metres minimum and no more than 25 metres maximum.
- (c) Within this area Council may establish a minimum building height at the 6 metre setback from front lot line of 6 metres and a maximum building height of 15 metres.
- (d) Within this area Council may require an enhanced landscaping plan as part of the site plan approval that requires that deciduous trees be planted in the boulevard have 2.0 metres clear stem and head room for pedestrians and cyclists. In addition a minimum buffer or landscape strip of 3.0 metres be established along Sandwich Street and that 20% of the landscaping be woody plant material that is capable of providing interest in all seasons. Fencing or dense hedge material shall be required to obscure the parking areas visible from Brunner Ave and Sandwich Street North . Chainlink fences or wood construction fencing shall not be permitted unless they are fully screened from public view.
- (e) Within this area Council may restrict the land uses permitted under the General Commercial zoning to prohibit any land use that would involve overnight accommodation, grocery stores, supermarkets, automotive, tire and battery stores and the size of the permitted retail uses.
- (f) Within this General Commercial designation Council may restrict the maximum permitted gross floor area of a department store to 8000 square metres (85,000 square feet) until such time as a retail market study is completed. Should a department store be constructed elsewhere within Amherstburg prior to a department store building on this site, no department store will be permitted without justification from a market study. Other retail uses on the site may be restricted to 5100 square metres (55,000 square feet) until a retail market study is completed supporting further

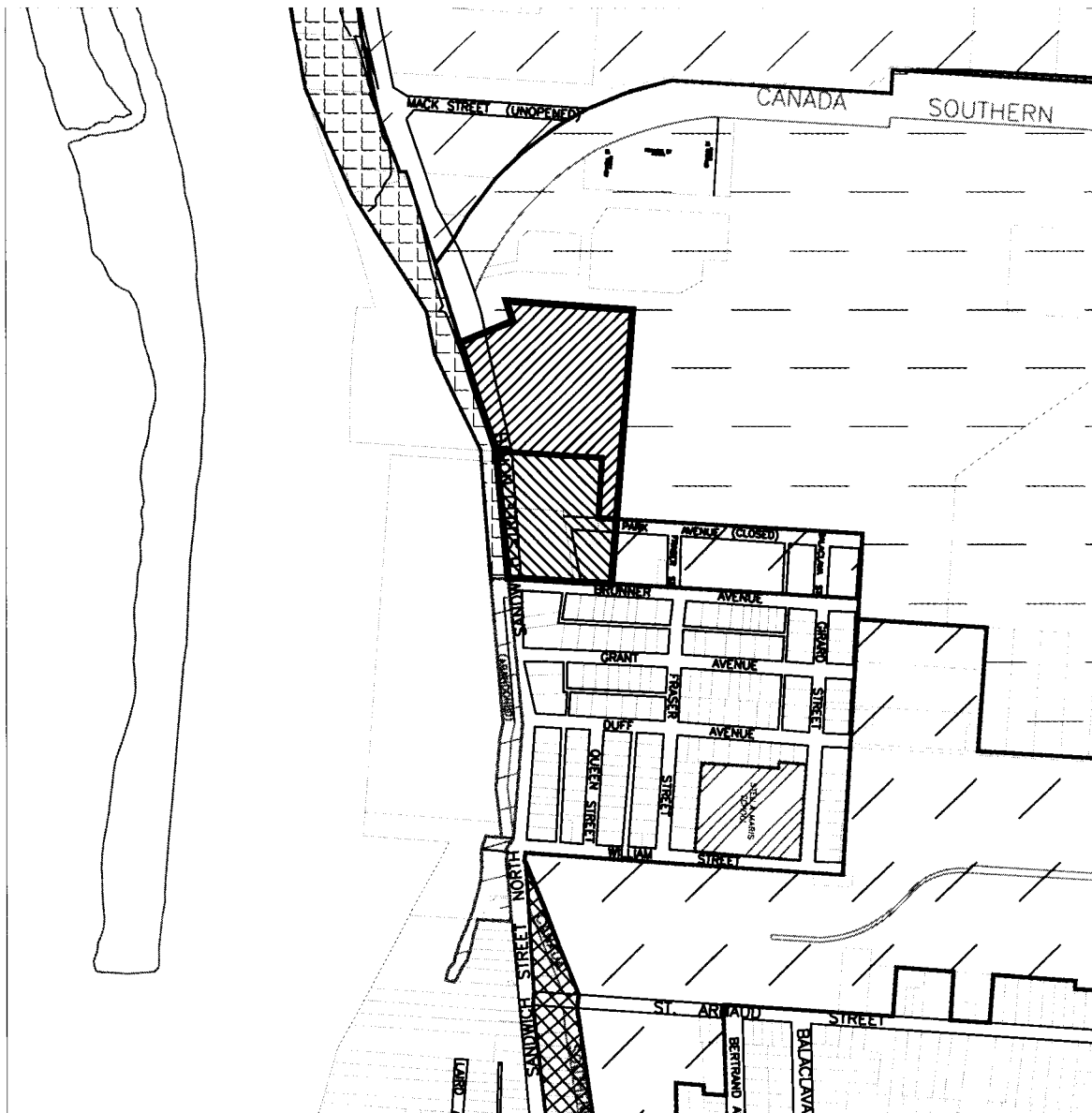
development. All retail uses within this area shall be greater than 250 square metres (2,690 square feet). No supermarket, grocery store or automotive, tire and battery store shall be permitted without supporting justification from a market study.



- (g) Although the maximum gross floor area of the site may be 18000 square metres (193,760 square feet) the retail restrictions and the need for market studies outlined above take precedent over the permitted gross floor area.
- (h) No vehicular access shall be permitted to Brunner Ave.
- (i) Any closure of roads within this area will be conditional on any non residential access from the lands to the east of the subject lands being either to the north through General Chemical or to the west over the subject lands and not via Brunner Ave.
- (j) Prior to the finalization of any site plan for this development the Town will need to have a drainage study undertaken by a qualified hydrologist demonstrating that (a) there will be no impact on the drainage of adjoining properties, (b) there will be no runoff from the proposal onto adjoining properties, (c) the soil composition/profile and geology of the site will allow for and required accumulation of water on the site. Site plan approval will also require clearance of archeological reports, environmental reports and traffic reports.”

## 2. IMPLEMENTATION AND INTERPRETATION








The implementation and interpretation of the Amendment shall be in accordance with the respective policies of the Official Plan of the Town of Amherstburg.

**SCHEDULE "A"**  
**OFFICIAL PLAN OF THE TOWN OF**  
**AMHERSTBURG**  
**OPA No. 6**



-  CHANGE FROM HEAVY INDUSTRIAL TO GENERAL COMMERCIAL
-  CHANGE FROM LIGHT INDUSTRIAL TO GENERAL COMMERCIAL

**LEGEND**

- |   |   |
|---|---|
|  LOW DENSITY RESIDENTIAL |  SPECIAL POLICY INDUSTRIAL |
|  HIGHWAY COMMERCIAL      |  INSTITUTIONAL             |
|  LIGHT INDUSTRIAL        |  RECREATIONAL DEVELOPMENT  |
|  HEAVY INDUSTRIAL        |   |

