

APPENDIX I – “LIGHT INDUSTRIAL” ANALYSIS AND SUPPORTING FACTORS

1. *The Interpretations Act* of Manitoba applies the liberal rule of interpretation, providing those interpreting Acts and their regulations the direction that, “Every Act and regulation must be interpreted as being remedial and must be given the fair, large and liberal interpretation that best ensures the attainment of its objects”. Most Municipal By-laws are created as a result of those statutes. Those by-laws, where necessary, provide their own rules around operating and interpretive clauses.
2. The Operative and Interpretive Clauses of the Zoning By-law are found under Part 1 and include Sections related to Title and Contents, Non-Conforming Buildings, Structures, Lots and Uses, the Zoning District Maps, Approval Required for Development, Other Legislation, Definitions, and Use Class Definitions. Key Policies are found under Appendix F.
3. As a Land Use Planner working in a Planning District, discretion is afforded in determining whether a proposed use falls within any of the defined use categories or defined use types shown in the use regulations within a given zoning district. A planner must provide the interpretation within the typically taking into account the nature of the proposed use and its potential impacts, including but not limited to: whether it involves dwelling units; sales; processing; type of product, storage and amount, and nature thereof; enclosed or open storage; anticipated employment; transportation requirements; excessive noise, odour, fumes, dust, toxic material, and vibration likely to be generated; and the general requirements for public utilities such as water and sanitary sewer. The authority to provide an interpretation does not include the authority to add a new permitted or conditional use to the use tables.
4. Typically, uses and activities are classified into general “use categories” and specific “use types” based on common functional or physical impact characteristics, such as the type and amount of activity, the type of customers or residents, how goods or services are sold or delivered, and/or site conditions. This classification system, normally employed by professional planners, provides a systematic basis for assigning present and future land uses into appropriate zoning districts. This classification system does not always list every use or activity that may appropriately exist within the categories and specific uses may be listed in one category when they may reasonably have been listed in one or more other categories. The use category titles are typically intended as an indexing tool and are not necessarily exhaustive.
5. On occasion, a use clearly falls within one or more defined use types and related special land use provisions apply. Where there is less clarity, often due to the zoning-by-laws own policy’s surrounding interpretation, and, in particular, with respect to conjunctives such as “and”, “or”, “and/or”, use types can prove more difficult to be defined. One definition may exempt a use from policies under the zoning by-law to which another definition must adhere; or, in certain circumstances there may be multiple uses on-site, so the approving authority may determine that more than one definition applies.
6. In the case of the Horticultural Mix Plant, the Approving Authority is granted to the Development Officer of the Municipality. The Development Officer determined that four (4) agricultural use types fit the proposed use. The case for why these four uses do not adequately cover the scope of the Horticultural Mix Plant is found under Appendix M.

7. Whether as a matter of practice or policy, an Approving Authority has an obligation under the zoning by-law to apply provisions contained in regulations, laws or policies over the use of land, buildings or structures, to the most restrictive or highest standard.
8. Therefore, when reviewing the Use Class Definitions, not only must the Approving Authority find a Use Definition that sufficiently covers the scope of Primary use, the Approving Authority also cannot use a definition that has a lesser standard.
9. While the Zoning By-law prescribes that “words, phrases and terms neither defined herein nor defined in By-laws of the RM of Springfield shall be given their usual and customary meaning except where, in the opinion of Council, the context indicates a different meaning (S.1.6)”, that does not mean that Council can assign a meaning to suit the means of the Proponent without regard to real impacts to personal property rights in proximity.
10. The Municipality had already passed a motion (#195-19) to amend a definition within their zoning by-law to include the wording ‘peat moss’. This was an incorrect process as:
 - b. Zoning By-laws have a prescribed amendment process as per *The Planning Act* S. 73-84, and making a motion to amend a definition does not adhere to by-law processes as per *The Municipal Act* S.140-147;
 - c. The definition of “Agricultural Activities” provided examples to understand the intent of the definition through a list of typical uses and including the words ‘peat moss’ is not a use, but a thing. While this may be a grammatical nuance, it certainly is unclear what is intended. The Municipality would have to be more specific about the scope of use in order to accurately word the amendment, however; even if better worded, processing and manufacturing peat moss is not an agricultural activity. Raw peat moss is a ‘natural resource’ when harvested, not an ‘agricultural’ product; the processing and packaging on a different site of a harvested natural resource material into a manufactured product for eventual commercial sale is an industrial use, defined under the Zoning By-law within the ‘Light Industrial’ use class definition as a ‘commercial manufacturing’ use.
11. Agriculture is a primary industry, typically resulting in the harvest of a raw product, whether plant or animal-based. Commercial manufacturing is a secondary industry, where a raw product, whether harvested or mined, is processed, often using machinery or tools, and chemical or biological processing, in an assembly process to fabricate large quantities of goods in short periods of time, that can typically be stored, and have little or no variation in each batch. The Commercial Manufacturing of peat moss is classified under the North American Industry Classification System (NAICS) Canada as 325313 - Chemical fertilizer (except potash) manufacturing.
12. The Proponent has a series of YouTube videos, whereby they self-identify the act of processing and packaging the peat moss as ‘manufacturing’:
<https://www.youtube.com/watch?v=CemJus9HXlk> (listen in and around minute 1:19).
 - a. In this video: <https://www.youtube.com/watch?v=Z549FVcDMeM>, around the 2 minute mark, the Proponent expresses that their commercially manufactured product is packaged both for large growers and for retail consumers. Under the Proponent’s Development Permit application, the Municipality identified that peat moss can be used as a planting medium in ‘horticulture’ – and have based the use of the word ‘horticulture’

on the understanding that horticulture is an agricultural activity, practiced by farmers; and, subsequently has correlated the act of processing and manufacturing of the commercial peat moss product with 'horticultural' activities, as an 'Agricultural Support Industry'.

13. When identifying Agricultural practices, the zoning by-law makes allowances for farmers to conduct horticultural practices such as growing potted plants for sale as 'Agricultural Activities'. The Province defines 'horticulture' as a type of agricultural activity whereby "a farmer produces horticultural crops, including vegetables, fruit, mushrooms, sod, trees, shrubs and greenhouse crops".
14. Horticulture, as commonly defined, as an activity is not exclusive to farmers (also called "professional growers"). It is commonly defined as "the art or practice of garden cultivation and management" and, as such, there is a large commercial market for private individuals developing their own gardens and green spaces whether for pleasure or profit; there is a large commercial market for manufactured peat moss that can be used in the development and maintenance of golf-courses, hotel grounds, community gardens, parks, greenhouses, and countless other green spaces maintained by government bodies, NGO's, cooperatives, businesses or other corporate entities. The sale of packaged peat moss as a growing supplement is most certainly not mainly for farmers; it is for a much wider range of horticultural use beyond that of professional growers.
15. It is not the intent of the zoning by-law's Agricultural Use Class definitions to be inclusive of the wider range of horticultural uses and developments covered under the common definition, such as Public Parks and those uses and developments that would have horticultural components to support their services, such as Religious Assemblies, Outdoor Amusement Establishments, Community Recreation Services, etc.
16. As the Zoning By-law's Operative and Interpretive Clauses direct the Development Officer to employ the common definition of a word where not defined therein, the Municipality is not correct in narrowing the scope of 'horticultural activities' to fit within four Agricultural Use Class definitions.
17. The processing and manufacturing of commercial-grade peat moss is not an agricultural activity; it is "commercial manufacturing", specifically listed under the "Light Industrial" Use Class definition.
18. **Light Industrial** means *processing and manufacturing uses, provided that they do not create unusual fire, explosion or safety hazards, noise in excess of average intensity of street and traffic noise in the area in question; they do not emit smoke, dust, dirt, toxic or offensive odours or gas and there is no production of heat or glare perceptible from any adjacent site. Typical uses include commercial manufacturing and research facilities.*
19. Berger's processing and packaging of peat moss easily fits within the scope of 'commercial manufacturing'.
20. "Light Industrial" is neither a permitted nor conditional use in the "AG" zone.
21. For comparison, the City of Winnipeg defines **manufacturing and production uses** to mean "a subcategory of uses including firms involved in the manufacturing, processing, fabrication,

packaging, or assembly of goods. Natural, constructed, raw, secondary, or partially completed materials may be used. Products may be finished or semi-finished and are generally made for the wholesale market, for transfer to other plants, or to order for firms or consumers. Custom industry is included (i.e., establishments primarily engaged in the on-site production of goods by hand manufacturing involving the use of hand tools and small-scale equipment). Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site. Accessory activities may include retail sales, offices, cafeterias, parking, employee recreational facilities, warehouses, storage yards, repair facilities, truck fleets, and caretaker's quarters”.

22. The descriptions of districts contained are typically intended to assist in selecting the appropriate zoning district for different types of land, and to assist in identifying the intended character of each district. When there is a conflict between any statement in the district description and a substantive requirement in other sections of a zoning by-law, typically the substantive requirements in other sections apply. Whether by policy or by practice, in no case may a district description be interpreted to require performance levels beyond the substantive requirements of this By-law.
23. To permit the primary use, the Proponent would need to re-designate the land and re-zone the land to an appropriate designation and zone, such as an Industrial-use/Employment Lands designation and an appropriate Industrial-use zone; or, the Proponent or the municipality may seek to amend the “AG” Use Table to either permit or conditionally permit “Light Industrial”.