

**APPENDIX L – ADDITIONAL INFORMATION REMITTED TO DEVELOPMENT OFFICER**

Whether through other process requirements or through the concerns of area residents, the Development Officer has been made aware of additional information related to the Horticultural Mix Plant operation on the Subject Lands. The following is a list of additional information given to the Development Officer:

1. There is a known report by Friesen Drillers regarding the Day Area groundwater table that is not addressed in the report provided by the Proponent to the Province. As such, it is the position of the Objecting Party that the decision to issue an Environmental Licence was not issued based on complete information, and the Day Area groundwater table is at risk.
2. The Proponent advised the Province that the use may develop to include a “perlite/vermiculite expanding plant that may or may not be constructed in the long term and is not part of the current Development proposal. Perlite and vermiculite are two very important additives ... but need to be heated at high temperature to expand (pop like popcorn)”. The Proponent indicates they will seek further Environmental Licence approval for this use.
3. The definition within *M.R. 164/88* provides additional guidance to better understand the nature of the use; to be understood as having a natural resource type material that is industrially processed into a commercial output. The Proponent’s application expresses an intent to “process up to 1.5 million bags of loose peat (compressed to roughly 510,000 m<sup>3</sup>), and 2.5 million bags of growing media (compressed to roughly 570,000 m<sup>3</sup>)”, mixed with chemicals stored on-site.
4. The Environmental Licence identifies the type of Development Class as a Bulk Material Handling Facility, as defined with *Manitoba Regulation 164/88, Classes of Development Regulation* (“M.R. 164/88”), being a regulation of *the Environment Act* of Manitoba as “**a facility operated for commercial purposes** (emphasis mine) for the blending, handling, sorting, storage, treatment, transfer or sale of bulk materials such as sand, gravel, crushed rock, top soil, fertilizer, pesticides or other crop protection products, but does not include a pit or quarry or bulk materials handling on a farm for the sole purpose of serving that farm.”
5. The Development Officer, CAO, Mayor, and one councilor were shown satellite imagery of Berger’s Processing Plants at other locations in North America. Their reaction was one of surprise and denial that this would occur on-site. See Addendum K.
6. An article published through a local news media company quoted Berger would have eight (8) football fields of materials stored on-site. See Addendum L.
7. Under the Summary of Comments / Recommendation prepared by Manitoba Conservation and Climate received in respect to an Environment Act Proposal filed by the Proponent for the construction and operation of a peat screening and mixing plant for horticultural growing media located at the Subject Land, Manitoba Municipal Relations, Community Planning Branch reviewed the proposal and offered the following comments, dated June 26, 2020, attached under Addendum M:
  - a. “Although the by-law amendment referred to in Council Resolution 19-195 has yet to be approved, Development Permit DX 2020-21 was issued based on current zoning by-law definitions for the following permitted uses:

- ***Agricultural Activities...***
- ***Agri-Business...***
- ***Agriculture Support Industry...***
- ***Agricultural Product Storage...***

*The Environment Act* proposal indicates that the business in question provides a “range of high quality products and services designed for the needs of commercial horticultural customers.” It also states that the “sale of horticultural mixes (is) primarily to professional greenhouse growers and producers in Canada.” As such, the proposed land use appears to fit within the definition of Agri-business or Agricultural Support Industry. Community Planning Branch therefore has no concerns.”

8. As the comments of Manitoba Municipal Relations, Community Planning Branch dated June 26, 2020, were issued under a statement made by the Proponent within the *The Environment Act* proposal indicating that the business provides a “range of high quality products and services designed for the needs of commercial horticultural customers” for the “sale of horticultural mixes primarily to professional greenhouse growers and producers in Canada”, the Beausejour Planning Office deemed that the proposed land use appeared to “fit within the definition of Agri-business or Agricultural Support Industry”.

## ADDENDUM K: MEETING NOTES

11/30/2020

Mail - Jennifer Lim - Outlook

**From:** Jennifer Lim  
**Sent:** Tuesday, October 20, 2020 11:18 PM  
**To:** cdraper@rmofspringfield.ca <cdraper@rmofspringfield.ca>; Dan Doucet <ddoucet@rmofspringfield.ca>; m3a@mymts.net <m3a@mymts.net>; Allan Akins <aakins@mymts.net>  
**Subject:** Record of Today's Meeting -

Dear Madam CAO and Development Officer,

I've often found it worthwhile to follow-up by email after an important meeting to review what was discussed. Especially when a matter may be contentious or have many aspects to be considered. It keeps a record of what was said, to the best of our recollection, that is timely.

As such, I wanted to provide you with my account of our discussion and request your feedback if there are any errors or omissions that you might feel are prudent to alter or include. This way all parties are apprised of our discussion today and what the expectations are to resolve the matter.

We met this morning, October 20, 2020 at about 9:30 am in the Council Chambers to discuss the Berger development on Oakwood Road. Margaret and Allan Akins, Jennifer Lim, Colleen Draper, and Dan Doucet were in attendance.

Jennifer Lim requested the meeting, after electronically remitting an addendum to the information provided to Administration and Council in September, in order to further explain why the development permit, DX 2020-21, was issued in error for Berger's ~44,000 SF industrial peat moss processing plant on Oakwood Road. Colleen Draper accepted the request and received the information provided by the Akins and Ms. Lim.

The following points of discussion were made:

- The Zoning By-law prescribes the use for the processing plant is commercial manufacturing and the land is not suitably zoned, as outlined in the planner's report and addendum packages. Elements of those reports were discussed, and the case was made that not only was the analysis correct, but that there was eminent harm to the Akins' and affected area residents if development continues.
- Harm to quality of life, which may include, but is not necessarily limited to:
  - Significant noise and nuisance factors, such as sounds, smells, dust, etc;
  - Significant impact to the day-area ground water table flagged for concerns (high-vulnerability) in the municipality's study, yet not addressed in the proponent's groundwater study as remitted to the Province. The Rural Municipality of Springfield, Manitoba, has long been concerned with the security and availability of its groundwater, which it relies on to meet all its domestic, commercial and industrial water needs;
  - Significant negative impact to property value, etc.
- Area residents would not have had any reasonable expectation that an industrial development for commercial manufacturing would have been permitted in the AG zone, as the land is not so designated nor zoned. The area residents have been denied their right to public hearing.
- The Development poses direct harm to area residents in proximity to the development; as well, without any conditions to protect the municipal interest, the municipality is left vulnerable. What is good for area residents is also in the interest of the municipality. There are in and around 270 area residents in opposition to the development; refer to on-line petition.
- The Environmental Licence does not cover aspects of zoning, such as:
  - Hours of Operation;
  - Number of Employees;
  - Access and Egress Routes;
  - Road Maintenance and Upkeep;

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- Limitations on Groundwater Draw (that meet with the municipality's study and don't compromise the day area aquifer);
  - Location of Exterior Storage;
  - Overall Footprint;
  - Screening and Landscaping;
  - Aesthetics;
  - And the like
- While there is no harvesting on-site, the commercial manufacturing processing and packaging use has all the components of a "Natural Resource" use, except the harvesting. The Akins provided air photos to the CAO and Development officer to show the scope of the development; that it is not fully contained within the ~44,000 SF industrial building, and, that it has the impact on the land of an industrial development.
  - A "Natural Resource" use is subject to special land use regulations that require the applicant to provide evidence and assurances to protect area residents and the municipality from negative impacts. Equally, a "Home Industry" is subject to special land use regulations and public hearing requirements, yet the Proponent's use at this site is far more intensive than a Home Industry, and in fact meets the standard for "Light Industrial", yet it was issued a development permit.

The Akins stand by the position that the development permit must be revoked immediately. If the Proponent wishes to undertake a proper planning procedure to re-designate and re-zone the land to permit a "Light Industrial" use, and are willing to enter into a Development Agreement to protect the interests of area residents and the municipality, then there is a possibility that the use may be developed accordingly.

The CAO was not prepared to concede to the Akins at the meeting.

Instead, the plan was for the CAO to talk with the Development Officer after our meeting and, then, make a presentation to Council.

The CAO and Development Officer are aware that the Akins are ready to take legal action, if necessary, but truly desire to work with the Municipality. There is a willingness to continue talks, so long as the Municipality is willing to concede that the permit was issued in error; and, (seemingly) due to the fact that the Proponent may have misrepresented the application.

After Mr. and Mrs. Akins showed the CAO and the Development Officer satellite imagery of Berger's processing sites, the CAO commented while looking at the air photos that this was not what was anticipated; and the Development Officer agreed. Given that, the Municipality would have every right to invoke the Building By-law and revoke the development permit.

This would be a reasonable course of action and would satisfy the area resident's call to action.

The CAO has committed to making a formal response on or before Friday, October 30, 2020.

We very much appreciate meeting with you. If there are any additions or corrections to the account provided, for everyone's records, please respond to this email.

Kind Regards,

	<p><b>Jennifer Lim MCIP RPP</b>          Owner + Principal Planner          Threshold Planning Studio Inc.          Treaty 1 Territory, Lands of Anishinaabeg,          Cree, Oji-Cree, Dakota, and Dene Peoples          Homeland of the Metis Nation          Winnipeg, Manitoba          (204) 295-4740</p>
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11/30/2020

Mail - Jennifer Lim - Outlook

**From:** Jennifer Lim  
**Sent:** Friday, November 6, 2020 5:07 PM  
**To:** Colleen Draper <cdraiper@rmofspringfield.ca>  
**Cc:** m3a@mymts.net <m3a@mymts.net>; Allan Akins <aakins@mymts.net>; Dan Doucet <ddoucet@rmofspringfield.ca>; tfell@rmofspringfield.ca <tfell@rmofspringfield.ca>; gfuhl@rmofspringfield.ca <gfuhl@rmofspringfield.ca>; Sveinson, Larissa (MR) <Larissa.Sveinson@gov.mb.ca>  
**Subject:** Post-Meeting Summary

Dear Madam CAO,

As with before, I want to follow up with a summary of our meeting from this morning, while it's at the front of our minds, so that we can go forward and ensure that both parties understand each other. Please note that this is not necessarily a chronological account, but an overall summary of what was discussed through meeting. Please send any corrections or additions at your soonest convenience.

We (you and I) met in the Council Chambers at about 10 am this morning with Mayor Fell, Councilor Fuhl, Mr. Doucet, and Mr. & Mrs. Akins. Mayor Fell stated that the municipality was willing to address individual issues, such as noise, dust, unsightly issues related to the Berger development on Oakwood Rd, but that the use was permitted and there would be no change to that position.

Madam CAO expressed a sense that the majority of conditions that could result from planning processes should inherently be captured under the Provincial Environmental Licensing ("EAL") required by Berger. We conceded that aspects of the Environmental Licence would address certain land use issues (such as on-site groundwater draw, on-site chemical storage, etc...), however, it may not address issues specific to land use on-site and it may not address off-site concerns directly impacted by Berger's activities; further, an inherent right to public process has been denied. Mayor Fell asked specifically what issues those were. I responded that I had already remitted those issues in-writing.

I sought to know what Madam CAO had asked of Berger, of Manitoba Agriculture, and of the Environmental Licensing Branch prior to our meeting. Madam CAO responded that she asked Berger what a 24/7 operation looks like; answer provided was a normal day would be Monday through Friday from 07:00-19:00 with preparation and production of product on-site, trucks coming to and from the site, administration on-site, maintenance of equipment on-site and other related processing plant operations. Berger assured Madam CAO they would operate within the requirements of the EAL.

Mr. Akins pointed out that the EAL required them to obtain the Development Permit after EAL approval (granted September 8), and that Berger obtained the Development Permit prior to September 8, so already the Proponent was not complying with provisions under the EAL. Mr. Doucet confirmed the permit was issued from the OFC, not the municipal office. We made the request, again, for a copy of the permit. Mr. Doucet stated he would look into it, through the advice of a lawyer, and in the meantime, we were able to seek the copy through Eduardo at the OFC.

Madam CAO stated she spoke with a member of the Department of Agriculture (Jeff), who indicated he was in favour of the use being classified as an Agricultural use. Madam CAO stated she spoke with Shannon Kehler of the Environmental Approvals branch, who agreed with the use being permitted in the agricultural zoning. There was no indication that the Municipality had followed up with the Community and Regional Planning Branch as part of the investigation.

Mayor Fell was not willing to engage Council in a Public Hearing process. Mayor Fell stated that, "the Municipality has determined through the advice of our Planning Office and through the Provincial Planners (at the Beausejour Community and Regional Planning Branch) that Berger's development is a Permitted Use and

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falls under (a series of four defined) Agricultural (Use Classifications)". Note: the brackets are inserted by me for clarity. As such, Mayor Fell expressed that a Public Hearing process was not warranted and was not fair to Berger, nor legally required.

We are of the position that the Berger development is a Commercial Manufacturing use, which falls under "Light Industrial", and as such, a series of amendments would have been required to be approved prior to any development occurring on-site related to a Commercial Manufacturing use. Those amendments would be subject to a high level of rigour through legislated by-law amendment processes, requiring Public Hearing(s), Ministerial approval (for the Development Plan Amendment), and offer the ability for Appeal Hearing to Municipal Board, being a quasi-judiciary body. And, should the proposals pass as approved by-law amendments, it would be reasonable to expect Third Reading of any zoning by-law amendment would not be passed until there was an approved Development Agreement in-place to outline roles and responsibilities and protect municipal interests. As such, any related Development Permit would not be released or further acted upon until such time as these steps have been completed.

Mayor Fell reiterated repeatedly throughout the meeting that Berger's development was a permitted use as it was agricultural and, in doing so, eventually stated that my opinion was a belief. Mayor Fell stated her position was based on the advice of the planning office and the Province's planners. Mr. Akins asked if the Springfield planning office had RPP's. Mr. Doucet stated he was not an RPP; he was a C.E.T. and the Provincial Planners were RPP's. Therefore, we asked that the position be reviewed by the Community Planning Regional Office, and a written response be provided, as we are of the position that the Akins' personal property rights are being violated. As the municipality is basing its decision to determine Berger's use is primarily agricultural on the direction of the Registered Professional Planners at the Beausejour Office but did not bring Larissa or Janice to discuss the matter openly, we are at an impasse.

As such we are seeking to have Larissa review the independent planning reports (attached) and provide to us a written response including all legislation and professional planning rationale to explain how the primary use on-site is determined to be agriculturally related.

If that cannot be provided, we are seeking the municipality either:

1. Concede to our position, revoke the permit and advise the Proponent of the perils should they decide to proceed with required applications to re-designate and re-zone the subject lands, or
2. Seek legal advice and respond accordingly.

If Larissa's written response can be provided, we will review her correspondence and either provide response or concede.

In response to our request, Mayor Fell indicated that she would first have to talk with Council to seek their approval in advance of authorizing Madam CAO to engage Larissa and/or the Municipal lawyer in the matter. Confirmation of Council's decision would be provided to the Akins on or before November 24, 2020. Mr. Akins has, on more than one occasion, asked the municipality to acquire a legal opinion. I had indicated at delegation on September 22, 2020, that it was the position of the Province to neither regulate nor enforce the Municipality in their right to administer their zoning by-law, and that I had directly asked the question of the Beausejour office, whether or not the Beausejour office played a role in guiding Springfield to determine the use types for the Berger development in order to issue permit(s).

I asked if Beausejour confirmed 'Agri-business' and 'Agricultural Support Industry' were the correct use types to permit Berger's development? and I asked if the Beausejour Office still supports that position given my planning brief? The answer I was provided was, "the permit was issued prior to our review of the proposal in response to the Environment Act circulation. As per my previous response, the RM of Springfield is responsible for issuing permits and enforcing their zoning by-law." (Larissa Sveinsson - September 22, 2020). We have approached the

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municipality and Council on four (4) separate occasions, not including e-mail and telephone correspondence, since an independent planning report was prepared in September. Our position on the matter has not changed. We provided an addendum in early October and images of what the Proponent's comparable developments look like on October 22. Each time we afford the Municipality and Council time to gather information and respond. Berger continues to develop a commercial manufacturing plant unchecked, as the Municipality insists the primary use is a series of four permitted agricultural uses. The Akins are directly impacted by the on-going development. Their personal property rights continue to be denied.

We request no further delays on the matter.

As Larissa works in the capacity of a public servant and is not held on retainer by the Municipality to provide professional planning advice, we are making the request to her now. Hence, she is carbon copied on this correspondence, so she can act on it immediately. We do not need to await Council's permission to seek her review and response. I would respectfully ask of Larissa to provide a thorough review and response sent to our attention at the same time as the Municipality and Council of Springfield is apprised of the position.

Larissa, please confirm that you have received this request and will act on it as requested. Larissa, please contact me should you have any questions or concerns. We will keep everyone informed. Madam CAO, we respectfully ask that this matter be forwarded to the attention of Council to seek whether they wish to authorize administration to have a legal review of the matter. We will expect a response regarding Council's decision on or before November 24.

I thank-you Madam CAO for your respectful conduct and for your time and attention to this important matter. Thank-you to everyone who attended the meeting. We look forward to working with Larissa and both your offices to find swift and appropriate resolution to this matter.

Kind Regards,

	<p><b>Jennifer Lim MCIP RPP</b> Owner + Principal Planner Threshold Planning Studio Inc. Treaty 1 Territory, Lands of Anishinaabeg, Cree, Oji-Cree, Dakota, and Dene Peoples Homeland of the Metis Nation Winnipeg, Manitoba (204) 295-4740</p>
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**ADDENDUM L: NEWS RELEASE**

To:

- Colleen Draper <[cdraper@rmofspringfield.ca](mailto:cdraper@rmofspringfield.ca)>

Cc:

- [m3a@mymts.net](mailto:m3a@mymts.net);
- Allan Akins <[aakins@mymts.net](mailto:aakins@mymts.net)>;
- Dan Doucet <[ddoucet@rmofspringfield.ca](mailto:ddoucet@rmofspringfield.ca)>;
- [tfell@rmofspringfield.ca](mailto:tfell@rmofspringfield.ca)

+2 others

Bcc:

- Joe Aiello <[JAiello@phillipsaiello.ca](mailto:JAiello@phillipsaiello.ca)>;
- Rachel Gotthilf <[rgotthilf@ombudsman.mb.ca](mailto:rgotthilf@ombudsman.mb.ca)>

Dear Madam CAO,

As November 24 approaches and we await Council's decision to engage legal advice, I felt it was opportune to send to you an article written in the Carillon, where it quotes Berger's representative as having acknowledged there will be eight (8) football fields worth of peat and other particulates stored outdoors, onsite.

See:

<https://www.thecarillon.com/local/Over-eight-football-fields-of-storage-space-on-Berger-landscape-plan-572992551.html>



Over eight football fields of storage space on Berger landscape plan

The sightlines of the new Berger peat moss processing plant in the RM of Springfield has some area residents concerned, but Berger representatives say the outdoor storage portion of the site is to store already-packaged material. Nearby resident Allan Akins submitted images to The Carillon of other Berger sites, including near Watsonville, CA and Hadashville. [www.thecarillon.com](http://www.thecarillon.com)

This on-site storage described in the article will be in keeping with the images Mr. Akins provided to Mr. Doucet and yourself at our meeting on October 20, 2020. At our meeting on November 6, both Mr. Doucet and Madam Mayor asserted that there was no outdoor storage as part of the use on-site. It was dismissed as misinformation, yet the November 6 article by Josh Greschner confirms:

"The Quebec-based company's landscape plan, submitted to the province as part of an environmental review process, notes a great deal of the space at the site would be used for storage of peat, mix, "peat for mix," and perlite. According to the landscape plan, total space allotted for such storage on the site is

more than 525 metres by 1,150 metres. Such a total space comes to at least eight Canadian football fields." Greshner writes, "the storing of loose peat, according to Berger spokesperson Elizabeth Raymond, is to take place in a 16-foot tall bunker with an open section for truck access."

Mr. Akins had stated that there were inconsistencies between what the Municipality understood would be developed and what was applied for under the Environmental License. Their Environmental application states the plant will operate 24/7. Madam CAO stated on November 6 that Berger said a 24/7 operation would operate between 07:00 and 19:00, Monday to Friday, with 30 employees.

However, 30 production workers will be required ("per shift ") meaning there will be 90 employees working on-site through 3 shifts per day noted under the Environmental licence. This number of employees will not include onsite administration staff, those coming to deliver raw mineral product from harvesting sites to be stored, processed and packaged in the commercial manufacturing plant, and those coming to pick up and haul away the packaged product ready for sale at places like Home Depot and Rona. The Environmental Licence indicates that Berger will produce 5 million 50-pound bags of mixed minerals on-site.

Madam CAO had asked if there was anything beyond the Environmental Licence that a planning process would need to cover, yet there are clear inconsistencies in how the municipality understands the scope of the operation and the Environmental Licence that was issued. If the Environmental was all that was required to issue a permit, our main concern would be the inconsistencies between the licence provisions and the understanding of the municipality. This, however, is not all that is legally required to issue a permit for a commercial manufacturing use, which brings us to a difference of professional opinion on the determination of land use. I have reached out to Larissa Sveinson to seek her evaluation of my work. She has not yet responded. I will follow up with her.

In the meantime, how do we ensure the municipality resolve clear discrepancies between the Environmental Licence and the permit issued by the OFC, with direction and input from the municipality and the province on the land use? When Berger goes on the public record and states eight (8) football fields of on-site storage at Oakwood Rd., has you-tube videos clearly describing their commercial manufacturing use, and, there are satellite photos of other similar sites easily found on-line, how do we get the municipality to act in the interests of its residents and protect their personal property rights against an incompatible use type that will cause negative impacts to existing residents and takes valuable land out of agricultural use?

We look forward to knowing Council's response on November 24.