

Peat moss plant lands Springfield in court



JORDAN ROSS THE CARILLON

Allan Akins, chair of the Springfield Taxpayers Rights Corp., holds a copy of the lawsuit in front of the Berger peat moss mixing plant, which is nearing completion west of Oakbank. Akins lives less than a kilometre from the plant.

by JORDAN ROSS

Outraged by council's approval of a peat moss mixing plant near their homes, and denied a public hearing at which to voice their concerns, a group of Springfield residents are taking the municipality to court in an attempt to force the facility's relocation.

The group, which calls itself the Springfield Taxpayers Rights Corp., filed suit against the RM of Springfield in the Manitoba Court of Queen's Bench on June 29. Lawyer Justin Vincent of the Steinbach firm Loewen Henderson Banman Legault is representing the group in court.

Allan Akins is chairing the group,

which he said has about 190 members, and represents 60 of the estimated 80 homes located within one and a half miles of the plant, located west of Oakbank along Oakwood Road.

Akins said he is "very confident" in the legal challenge, which the group is collectively funding, but acknowledged it won't be easy to convince the province's high court to rule against a municipal government.

Springfield Mayor Tiffany Fell declined comment, citing ongoing legal proceedings, but issued a one-sentence statement confirming the RM has yet to file a statement of defence.

Winnipeg lawyer Faron Trippier, counsel for the RM of Springfield,

did not respond to a request for comment.

"As this is a matter before the court, Berger has no comment," Yannick Coutié, vice-president of marketing and communications for the Quebec-based company, which is not a respondent in the case, wrote in an email.

Berger has said it plans to use the plant, which is nearly operational, to blend and package growing media intended for greenhouse vegetable growers in Canada and the U.S. The plant will also house a quality control lab. In a release last year, Berger said the plant is strategically located between its main extraction site near Deer Lake and its packag-

ing plant near Hadashville.

Akins said the plant belongs in an industrial park, not in a rural area dotted with acreages and farms.

The lawsuit, reviewed by *The Carillon*, seeks to have the plant's development permit declared invalid which would halt operations and force the relocation of the multi-million-dollar facility. If a judge won't agree, the lawsuit outlines three acceptable alternatives.

The first is an order directing the RM to require Berger to apply to rezone the agricultural land on which the plant is situated. The resulting public hearing would then attract an avalanche of objections from local property owners.

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“Overstepping jurisdiction”

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The second is an order directing the RM to revoke the development permit and issue a conditional use permit, again triggering a public hearing.

The third is an order directing the RM to enter into a development agreement with Berger that addresses the concerns residents have about the plant's operations. Akins said they include noise, dust, fire, traffic, and water use concerns. Akins said Berger could never comply with the conditions and would likely take the RM to court.

The lawsuit also seeks an unspecified amount of special damages and court costs.

Six affidavits underpin the lawsuit's allegations, which have yet to be tested in court. (At press time, the case was set to go before a Winnipeg judge for a routine remand.)

Taken together, the affidavits allege that Springfield council overstepped its jurisdiction, acted in bad faith, and breached four provincial acts and four of its own bylaws in approving the Berger plant. It also alleges council skirted oversight and fast-tracked the development.

Heather Erickson, a former Springfield councillor turned accountability watchdog, alleges in her affidavit that council deliberately circumvented the mechanisms designed to give residents a voice at the council table.

Erickson recounted how council emerged from closed-door meetings in 2019 to reclassify peat moss as an agricultural product and add peat moss to the definition of agriculture contained in the zoning by-law. Springfield said it was following the province's lead.

Erickson followed up with the province, which told her it hadn't reclassified peat moss, a mineral whose environmental licensing falls under manufacturing and industrial regulations. Springfield administrators told Erickson the RM's definition trumped the province's.

Mayor Fell has previously defended the Berger plant, calling it an important economic development



Signage at the entrance to Berger's property along Oakwood Road.

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project that will create 50 jobs. Berger expects the plant to gradually ramp up operations over four years, reaching peak capacity in 2025.

Janet Nysten, a former Springfield CAO, wrote in her affidavit that the RM's development officer erred in assessing Berger's proposal by interpreting relevant bylaws without seeking direction from council.

Nysten asserts that the plant is industrial, not agricultural, and was granted the wrong class of development permit. She also criticizes council for failing to convene a public hearing and for giving Berger preferential treatment.

"I believe Council has done everything it could to avoid being held accountable to its citizenry, contrary to the best interests of the residents of Springfield," Nysten wrote.

In previous public remarks, Berger has maintained it jumped through all hoops asked of it.

"Since the beginning of the project in fall 2019, Berger collaborated with all governmental and municipal authorities to ensure the legal and environmental compliance of the project," the company wrote in an August 2020 release.

The lawsuit also includes affidavits from appraiser Deana Halladay and planner Jennifer Lim, whose professional services were retained by the Taxpayers Rights Corp.

The Carillon previously reported on a report by Halladay that concluded the plant will depress the value of nearby residential properties by five to 20 percent.

Lim called the plant "wasteful of agricultural land" and questioned

whether mixing and processing a product can rightfully be called agricultural activity.

"I do not believe this accords with the usual and customary meaning of agriculture," she wrote.

Lim also filed freedom of information requests with the RM, writing that the resulting documents arrived late and "in a disorganized and cropped manner making their review and interpretation difficult."

Akins and his wife, Margaret Marion-Akins, also filed affidavits. The snowbirds returned home in March 2020 to find the plant under construction. Akins, who has a background in agriculture and land development, said construction should never have started before the province issued an environment licence.

Akins calculated Berger, which paid \$2.1 million for 160 acres, saved tens of millions of dollars by situating its plant on farmland.

He said he believes the RM and Berger had "pre-existing discussions" about the plant before it became public, making its approval a foregone conclusion.

Last fall, the province required Berger to form a community liaison committee consisting of one Springfield councillor, two Berger executives, two citizens, and an environment officer.

Meeting minutes posted on the RM website show the committee has met four times since last September. Its fifth meeting is to take place this month.