

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: May 17, 2016

CASE NO(S): PL141047

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Shire Corporation
Subject:	Request to amend the Official Plan - Failure of Town of Lincoln to adopt the requested amendment
Existing Designation:	Good General Agriculture and Natural Environment
Proposed Designation:	Site specific (to be determined)
Purpose:	To permit an agriculturally related Non-Agricultural Source Material (NASM) Storage and Distribution Facility to the list of permitted uses within the Agricultural Designation
Property Address/Description:	3289 Frost Road
Municipality:	Town of Lincoln
Approval Authority File No.:	PLOPA20130113
OMB Case No.:	PL141047
OMB File No.:	PL141047
OMB Case Name:	Shire Corporation v. Lincoln (Town)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Shire Corporation
Subject:	Application to amend Zoning By-law No. 93.14.Z1 – Neglect of application by Town of Lincoln
Existing Zoning:	Agricultural (A) Zone, Agricultural (A-4) Zone, and Environmental Conservation (EC) Zone
Proposed Zoning:	Agricultural (A-xx) Zone
Purpose:	To permit the reuse of the existing lagoons for a Non-Agricultural Source Material (NASM) storage and distribution facility
Property Address/Description:	3289 Frost Road

Municipality: Town of Lincoln
 Municipal File No.: PLZBA20130114
 OMB Case No.: PL141047
 OMB File No.: PL141048

PROCEEDING COMMENCED UNDER subsection 37 of the *Ontario Municipal Board Act*, R.S.O. 1990, c. O.28, as amended

Motion By: Mountain View Niagara Escarpment Community Assoc.
 Purpose of Motion: Request for an Order Dismissing the Appeal
 Appellant: Shire Corporation
 Subject: Proposed Official Plan Amendment and Proposed Zoning By-law Amendment
 Municipality: Town of Lincoln
 OMB Case No.: PL141047
 OMB File No.: PL141047, PL141048

PROCEEDING COMMENCED UNDER subsection 37 of the *Ontario Municipal Board Act*, R.S.O. 1990, c. O.28, as amended

Motion By: Ralph Izzo
 Purpose of Motion: Request for an Order Dismissing the Appeal
 Appellant: Shire Corporation
 Subject: Proposed Official Plan Amendment and Proposed Zoning By-law Amendment
 Municipality: Town of Lincoln
 OMB Case No.: PL141047
 OMB File Nos.: PL141047, PL141048

PROCEEDING COMMENCED UNDER subsection 97(1) of the *Ontario Municipal Board Act*, R.S.O. 1990, c.O. 28, as amended

Request by: Mountain View Niagara Escarpment Community Assoc.
 Request for: Request for an Order Awarding Costs
 Costs sought against: Shire Corporation

Heard: February 2-29, 2016, in Beamsville, Ontario

APPEARANCES:

<u>Parties</u>	<u>Counsel*/Representative</u>
Town of Lincoln (“Town”)	T. Halinski*
Shire Corporation (“Applicant”)	N. Smith* and S. Kaufman*
Regional Municipality of Niagara (“Region”)	S. Chisholm*
Mountain View Niagara Escarpment Community Association (“MNECA”)	H. Thiel and M. Christie
Sharon MacDonald	Self-represented
Ralph Izzo	Self-represented

DECISION DELIVERED BY BLAIR S. TAYLOR AND ORDER OF THE BOARD**INTRODUCTION**

[1] On or about August 2, 2013, the Applicant filed an Official Plan Amendment (the “OPA”) and a Zoning By-law Amendment (the “ZBA”) for the lands known municipally as 3289 Frost Road in the Town of Lincoln (the “Subject Lands”) seeking to establish a stand-alone facility at the Subject Lands for Non-Agricultural Source Material (“NASM”). As the Town had not dealt with the applications within the required statutory time periods on September 8, 2014, the development applications were appealed to the Ontario Municipal Board (the “Board”).

[2] Additionally the Town had adopted a new Official Plan (“New OP”) whereby in s. 2.1.4.2 certain uses in the Agricultural Area were prohibited including the storage or processing of treated solid material that is left over from municipal waste water treatment process as well as other NASM unrelated to a specific farm operation, and the Town’s New OP in Policy 2.1.5.3 provided that “Agricultural – Related Uses” must relate directly to farms in the area.

[3] On May 19, 2015, the Applicant appealed those provisions of the New OP to the Board.

[4] Thus there were two matters to be dealt with by the Board.

[5] The Board heard the appeals in Beamsville for 19 days.

[6] The Board has carefully considered all of the evidence it heard during the course of some 19 days including the expert evidence, the evidence of the lay witnesses and the participants. The Board has also carefully considered the decisions of the Town Council, the supporting information/material that was available to the Town Council, and the submissions of counsel.

DECISION

[7] For the reasons set out below the Board dismisses the appeals of the requested OPA and ZBA for the proposed development and dismisses the Applicant's appeal against the provisions of the New OP.

CONTEXT

[8] The Subject Lands are approximately 4 kilometers ("km") from the urban boundary of Beamsville, and approximately 8-10 km south of the Queen Elizabeth Highway. The Subject Lands are located near the intersection of Frost Road and Young Street in the Town, and constitute some 14.3 hectares ("ha") of land. The Subject Lands were acquired by the Applicant on August 30, 2012 from Grand River Foods Ltd.

[9] The Subject Lands had previously been used as a poultry processing plant, a use which was a water-intensive use resulting in the construction over a period of time of three clay-lined lagoons located at the rear of the property. These lagoons were previously used for the storage and treatment of processed waste water from the poultry

processing plant, and also of some sanitary sewage from the septic facilities. The lagoons were regulated by Certificates of Approval from the Ministry of the Environment and Climate Change (“MOECC”) under s. 53 of the *Ontario Water Resources Act*.

[10] As the visual exhibits illustrate the three lagoons vary in size: the lagoon closest to Young Street is the middle size, the one lagoon north of that is the smallest in size, and the third lagoon is the largest in size. In conjunction with the berms that have been constructed around the lagoons, the lagoons occupy about one third of the Subject Lands.

THE SURROUNDING CONTEXT

[11] The Subject Lands are found within a rural area of the Town being located at least 4 km outside the closest urban boundary of Beamsville. The Subject Lands are designated in the Niagara Region Policy Plan (“NRPP”) as being located within the Rural Area and the Subject Lands are designated as Good General Agriculture. The Subject Lands are designated in the Town Official Plan as being located in the Rural Area and predominantly designated as Good General Agriculture with a modest portion of the Subject Lands designated as Natural Environmental. The Subject Lands are zoned in the Town Zoning By-law No. 93-14-Z1 as an Agricultural Zone, A-4 Agricultural Zone Site Specific Exception No. 4 and EC for Environmental Conservation.

[12] The A-4 site specific agricultural zoning was approved in or about 1979 to add poultry processing and the slaughter of poultry as an additional permitted use for a very modest front portion of the Subject Lands located close to Frost Road. The lagoons are not included within the area that is subject to the site specific zoning; rather the lagoons are located within the area that is zoned Agricultural.

[13] During the course of the hearing at the request of Mr. Izzo, and with the consent of all the parties, the Board with the parties did a site visit to the Subject Lands. Most of the buildings and structures that had been part of the poultry processing plant had been demolished prior to the acquisition by the Applicant. Thus remaining at the time of the

Board's site visit were the three lagoons at the rear of the property and closer to Frost Road a long narrow structure that had two segments. Those segments were entirely covered, but that portion of the structure closest to the lagoons was entirely enclosed by side walls and end walls, whereas that portion closest to Frost Road was covered, but open.

MOTION NO. 1

[14] In the lead up to the hearing MNECA brought a motion to dismiss the appeal on the grounds that the Subject Lands constituted a waste disposal site as per s. 25 of the *Environmental Protection Act* and that s. 46 of the *Environmental Protection Act* states that "no use shall be made of land or land covered by water which has been used for the disposal of waste within 25 years from the year in which such lands ceased to be used unless approval by the Minister for the proposed use has been given."

[15] In the alternative MNECA sought the order of the Board adjourning the appeal *sine die* pending the receipt of approval from the Minister of the Environment and Climate Change pursuant to s. 46.

[16] The Board dealt with the motion and provided an oral decision which is set out below.

[17] This motion deals with Exhibits 1, 2 and 3 in the hearing. Exhibit 1 contains the original Motion Record with an affidavit by Marcia Christie, a member and director of MNECA with regard *inter alia* to their research concerning s. 46 of the *Environmental Protection Act*. The results of that research are not directly stated but the Motion Record submits that the Subject Lands were used for the disposal of waste and the Applicant is required to have the approval of the Minister of the Environment and Climate Change pursuant to s. 46 of the *Environmental Protection Act*.

[18] The relief sought is to dismiss the appeal by the Applicant and in the alternative to adjourn the hearing *sine die* so that the Applicant can apply to the Minister of the Environment and Climate Change.

[19] The MNECA Reply, Exhibit 1, Tab 1, also submits that a) the Applicant's appeal is frivolous and vexatious, and that b) the Applicant's appeal is an abuse of process.

[20] The Board heard no submissions on this motion from any other party except the Applicant who filed its Notice of Response in Exhibit 3 which has two affidavits attached thereto: the first from a professional land use planner and the second from a water and waste water professional engineer. In addition the Board staff received a letter from the MOECC dated January 28, 2016 (Exhibit 2) which was provided to all the parties.

[21] The Board has reviewed the Motion Record and the Motion Record materials and the Reply and the Applicant's Response in Exhibit 3 as well as the MOECC letter found at Exhibit 2. The Board has considered the oral submissions and the Board finds these to be the relevant facts:

- The Subject Lands were formerly used as a chicken processing plant with sewage works.
- The chicken processing plant was regulated as such and there was a Certificate of Approval for the Subject Lands issued under the *Ontario Water Resources Act*.
- The Subject Lands also had an Amended Certificate of Approval also issued under the *Ontario Water Resources Act*.
- The chicken processing plant at the Subject Lands was never regulated under the *Environmental Protection Act*.

- The Town's Official Plan in section 2.13 Environmental Constraint Area has an objective to identify "known waste disposal sites" and the land use schedule identifies Environmental Constraint sites. The Subject Lands are not so identified.
- There is no notice registered on title to the Subject Lands as being a waste disposal site.
- The Applicant engaged in municipal pre-consultation and section 46 of the *Environmental Protection Act* was not raised there.
- The Applicant engaged in MOECC pre-consultation prior to the purchasing of the Subject Lands including a site visit in July 2012 with two officials of MOECC. The Ministry officials did not indicate that section 46 of the Environmental Protection Act applied.
- Finally the Board has reviewed Exhibit 2 being a letter from the Ministry of the Environment and Climate Control dated January 28, 2016 which includes in part the following:

The historical operations at the site were related to food processing. As a component of the site operations the company applied and received an Environmental Compliance Approval issued under section 53 of the OWRA related to sewage works. No waste disposal operations occurred at the Site. Therefore, approval requirements under Part V (section 27) of the EPA would not be applicable. Therefore since no waste disposal occurred at the Site, section 46 of the EPA does not apply to the Site and there is no need to obtain Minister's approval to use the site. (emphasis in original)

[22] The Board finds that the Subject Lands were used and regulated by the MOECC as a chicken processing plan with sewage works pursuant to the *Ontario Water Resources Act*.

[23] The Board finds that s. 46 of the *Environmental Protection Act* is intended to apply to former land fill sites and dumps. Dealing with the relief requested, the Board

will not dismiss the appeal as it is not persuaded by the lay research concerning s. 46 of the *Environmental Protection Act* but rather prefers the affidavit evidence of James Webb and John Levie and considers Exhibit 2 being the letter from the MOECC to corroborate those opinions.

[24] With regard to the proposition that the Applicant has acted in a frivolous and vexatious manner, no evidence was put to the Board other than a bald assertion. The Board does not find that the Applicant has acted in a frivolous and vexatious manner in pursuing its Application.

[25] With regard to the proposition that the appeal by the Applicant is an abuse of process, the Board disagrees. The Province of Ontario in the *Planning Act* gives the Applicant a statutory right of appeal which right it has exercised. The Board anticipates that evidence will be called with regard to whether or not a NRPP amendment is required and the Board will hear all the evidence and render a decision.

[26] Thus the Board will dismiss the motion by MNECA.

[27] The Board notes that Ms. Smith has reserved her rights for Costs on the motion.

MOTION NO. 2

[28] The second motion was by Mr. Izzo seeking an order of the Board dismissing the appeal by the Applicant with regard to the OPA and ZBA and in the alternative an Order of the Board implementing the joint recommendation of the planners (and of counsel to the Town) for a sequenced hearing allowing the land use planning issue (the principle of use) to be dealt with first. In support of the motion, Mr. Izzo referenced the Agreed Statement of Facts signed by all the land use planners to the hearing. There were two Agreed Statements of Fact, the first of which was the following:

1. Recommended Sequencing for Hearing to Begin with Planning Principles to Fundamentally Address the Question:

Is it appropriate or good planning for the proposed use to be located in a Prime Agricultural Area (Provincial Policy Statement 2014, Growth Planning for the Greater Golden Horseshoe 2006, Regional Official Plan, Town of Lincoln Official Plan, Town of Lincoln Zoning By-law) as an Agricultural Use?

[29] The grounds in support of the motion are that the land use planners recommended “sequencing” the hearing to deal with planning principles. Secondly, that conducting a “phased” hearing adheres to the Agreed Statement of Facts. Thirdly, that “phasing” the hearing is not only reasonable but also would make efficient use of the Board’s hearing time as well as the public and private resources involved and results in significant costs savings if the question was answered in a negative. Fourthly, that the Applicant declined the “phased” hearing structure. And fifthly, failing to comply with the Agreed Statement of Facts demonstrated that the Applicant meets the threshold for dismissal of proceedings.

[30] The alternative relief sought in the motion was supported by the Town which the Town suggested would involve two phases, the first phase being five to seven days to deal with the threshold land use planning issue with a determination made then, and then proceeding if necessary to phase two of the hearing which the Town anticipated would take another week to be heard. The Town indicated that this was the most expeditious way to proceed and that there was no prejudice to the Applicant in this matter.

[31] The motion was contested by the Applicant on the basis of Rule 3 and Rule 4 of the Board’s *Rules of Practice and Procedure* (“Rules”). Rule 3 states with regard to the interpretation of the Rules that these Rules shall be liberally interpreted to secure the just, most expeditious and cost-effective determination of every proceeding on its merits. And for matters not dealt with in the Rules, Rule 4 provides that the Board may at any time in any proceeding make orders with respect to the procedure and practices that apply in the proceeding. If these Rules do not provide for a matter of procedure, the Board may do whatever is necessary and permitted by law to enable it to adjudicate

effectively and completely on any matter before it. The Board may follow the Rules of Civil Procedure where appropriate or may exercise any of its powers under the *Ontario Municipal Board Act* or applicable legislation.

[32] Ms. Smith, on being presented with the suggestion of a “phased” hearing had sought information from the Town with regard to a number of matters, including dealing with the Issues, i.e. with Exhibit 12 which contains the revised Issues List. The Issues List contains over 40 Issues under the following headings: Agronomy/Planning, Traffic, Noise, Odor and Dust, Storm Water, Hydro Geology, Environmental, Natural Heritage Features, and Proposed Use. Ms. Smith by e-mail sought information with regard to what issues might be in Phase 1 and what issues might be in Phase 2:

- Were the phases discreet
- What witnesses would be called in Phase 1
- Where would the Participants be heard
- Would there be duplication of the witnesses if the matter went to Phase 2
- Would there be delay to the processing of the appeals
- What was the most effective use of the Board’s time

[33] Having raised those issues and not having received a response she found satisfactory, Ms. Smith on behalf of her client indicated that with regard to the alternative relief sought by the motion, there was no perspective on the number of Issues being reduced; the number of witnesses being reduced; she has received no response whatsoever from the Region; had no response as to whether certain witnesses might be required in both Phase 1 and Phase 2; had no indication of where the Participants might be heard; and no indication of when Phase 2 of the hearing might be scheduled. She stated that the Board is here now, all the parties are here and they

are ready to proceed and that any delay would be prejudicial to her client and the most just, expeditious and cost-effective approach would be to proceed now.

[34] The Board reserved on the matter overnight and on the next day gave the following oral decision.

[35] This motion deals with Exhibits 4, 5 and 6: Exhibit 4 being the Motion Record dated January 18, 2016 seeking the following relief: a) to dismiss the appeal for failure to follow the Agreed Statement of Facts by the planners; and b) in the alternative to “sequence” the hearing. The Board observes that the relief sought is to “sequence” the hearing and the grounds in support of the motion in paragraphs 2, 3 and 4 reference “phasing”. It is apparent that in the motion “sequencing” and “phasing” are synonymous.

[36] The Town’s Exhibit 5 supports the alternative relief of “sequencing” (page 1, paragraph 1) and the Board notes in paragraphs 5, 6, 7, 8, 9 and 10, the Town also references a “phased” hearing. The Town says that “phasing would be more efficient and economical in terms of the use of public and private resources especially if the threshold issue were to be answered in the negative”. The Town suggested that such “phasing” ought not to create inefficiencies if the threshold issue were to be positively decided.

[37] The Town in response to the Board’s questions indicated that a “phased” hearing would first utilize five to seven days of hearing time after which it was anticipated that the Board would reserve and render a decision. Thus the remaining 13 to 15 hearing days currently scheduled would not be required. Following the “Phase 1” decision by the Board as to whether the matter would end or not, the Board could schedule “Phase 2” of the hearing at a date to then be set.

[38] The Applicant opposes the motion (Exhibit 6), and counsel for the Applicant distinguishes a “sequenced” hearing by topics or themes from a “phased” hearing that the Town envisages as two separate hearings: the first to deal with the threshold issue;

and the second if necessary, at a late date, dealing with remaining issues. Ms. Smith sought practical and procedural comments from the Town on a “phased” hearing concerning timing and what issues from the Issues List would remain on the table. She also sought similar input on timing from the Region.

[39] From the record, no direct responses seem to have been provided. Ms. Smith submits that: firstly, they have received no communication on issues to be eliminated and witnesses that would not need to be called; secondly, there is no witness list for the Town and Region for a Phase 2 hearing; thirdly, the Applicant does not know when the Phase 2 hearing might be scheduled, and finally, the Board is present and the hearing is currently scheduled to proceed.

[40] The Board has examined the Board’s file and the Board notes the following: the first pre-hearing conference was in April 2015 and it set down a hearing of four weeks (presumably on the advice of counsel) to commence February 1, 2016.

[41] At the second pre-hearing in August 2015, the hearing date was revised to commence on February 2, 2016, but the hearing still remained at four weeks in length. When the written decision from the second pre-hearing conference was issued, attached to it was a Procedural Order which had an Issues List attached to it of 44 issues and secondly, key dates including September 25, 2015 for the Witness Lists, November 2, 2015 for Witness Statements, December 11, 2015 for Replies, and January 15, 2016 for Visual Evidence, and as well, the Procedural Order set out the order of evidence starting with the Applicant. There is no suggestion of a “phased” hearing.

[42] Considering the motion, the Board observes that for months all the parties were preparing for a four-week hearing and presumably all the events required by the Procedural Order were met.

[43] The suggestion for a sequenced hearing arises from the planners' Agreed Statement of Facts in or about December of 2015. The motion is dated January 18, 2016 about two weeks prior to the start of the hearing.

[44] The Board finds that this hearing was conceptualized by the parties in April of 2015 at the first pre-hearing and structurally implemented through the issuance of the Procedural Order arising from the second pre-hearing conference in August of 2015.

[45] The Board finds the concept of phasing the hearing to have been floated, but no details of which have ever been provided to the Applicant or the Board in terms of for example, specific issues that would be removed from the Issues List and witnesses that would not have to be called.

[46] The Board seeks to provide a fair and transparent hearing process. Rule 3 of the Board's Rules speaks to the just, most expeditious and cost-effective determination of matters.

[47] The Board will not at this late date phase the hearing which would in effect undo all the hearing planning and process that has gone on to date. To do so would result in delay and inefficiencies with no certainty of process, issues, or timing. Thus the Board will not dismiss the appeal and will not phase the hearing. The motion is denied.

THE PREVIOUS USE

[48] The Design and Operations Report prepared by ASI Group, Revision No. 4, ("D/O Report") describes the former use of the property. The property was a former poultry processing plant. There were three lagoons located at the rear of the property with approximate surface areas of 0.675 ha, 1.725 ha, and 3.36 ha. The former structures and buildings on this property were demolished by the previous owner including the main poultry processing plant itself and the associated water, waste water and electrical power distribution infrastructure. The plant employed up to 100 staff at peak operations and processed up to 55,000 birds per day, five to six days per week.

Inbound trucks were estimated to be 13 trucks and outbound trucks were estimated to be an additional 20 trucks per day.

THE DEVELOPMENT PROPOSAL

[49] From the D/O Report, the Applicant's proposal is as follows: to seek a permanent NASM storage facility on the Subject Lands. The report indicates that the Applicant will seek MOECC approval for a new permanent stand-alone storage and staging facility for NASM and the proposed site would be required to operate under an Environmental Compliance Approval ("ECA") issued under s.27 of the *Environmental Protection Act*. A supplementary ECA may be required to handle site runoff and storm water flows under s. 53 of the *Ontario Water Resources Act*.

[50] However, before making application for any approval by the MOECC, the Applicant requires an OPA and ZBA for the Subject Lands.

[51] The proposed facility will be designed and operated to receive, store and transfer NASM. Section 1.1 of Ontario Regulation 267/03 made under the *Nutrient Management Act* defines NASM as consisting of:

- Pulp and paper biosolids
- Sewage biosolids
- Anaerobic digestion output, if less than 50% by volume of the total amount of anaerobic digestion materials that were treated in the mixed anaerobic digestion facility were on-farm anaerobic digestion materials
- Any other material that is not from an agricultural source and that is capable of being applied to land as a nutrient

[52] The D/O Report further states that the current proposal is for a material storage and transfer facility where NASM from a variety of sources (municipal digested biosolids, food processing wastes, compost and others), shall be received and transferred to the lagoons where the loads shall be blended together. Following storage, the blended materials shall be pumped into trucks and transported to approved farm sites (with nutrient management and/or NASM plans approved and in place) for direct land application. It further states that the Subject Lands are topographically flat, that there are three existing clay-lined former waste treatment lagoons that are situated along the eastern half of the property which were previously used to treat waste water from chicken farming and processing operations from the former operation. It is anticipated that the proposed site operations will require five to 10 employees, that the truck traffic is estimated to be a maximum of 80 vehicles per day and the evidence of Mr. Levie is that the proposed storage and transfer facility would be able to receive 900 tonnes of biosolids per day and its maximum capacity would be 134,000 cubic meters.

[53] The primary haul route for materials arriving at the Subject Lands would be via the Queen Elizabeth Highway ("QEW"), then south on Ontario Street to a jog onto King Street, then another jog onto Mountain Road proceeding southerly to Young Street and then west and north on Frost Road to the Subject Lands.

[54] An alternative is to access the Subject Lands via the QEW and Victoria Avenue and then westerly along Fly Road to Mountain Road. At the present time both proposed haul routes are mostly on regional roads.

BACKGROUND DATES

[55] In or about 1967 Tony Leontis purchased 54 acres at Frost Road and Young Street for his chicken processing.

[56] By 1978 there were two lagoons constructed. In 1979 the site specific by-law was approved by the Township anticipating the processing of 100 chickens per day.

[57] In 1994 lagoon number three was constructed. In 1998 it was further enlarged and lagoon water was spray irrigated on rented parcels of land in the immediate vicinity being respectively 75 acres, 100 acres and 55 acres, for approximately 230 acres in the immediate area of the Subject Lands.

[58] In 2001 the poultry processing plant and some 26 acres (including the lagoons) were sold to Grand River Poultry. Mr. Leontis advised that subsequently another six or seven acres were also sold to Grand River Poultry.

[59] On August 30, 2012, the Applicant purchased the Subject Lands from Grand River Foods Ltd. and numbered company 2337697 Ontario Inc. purchased the abutting lands (48 ha). The Board notes that the same principals and the same mailing address for the Applicant is provided for 2337697 Ontario Inc.

[60] On August 2, 2013 the Applicant filed its OPA and ZBA applications.

[61] On July 7, 2014 the Town adopted its New OP.

[62] On June 14, 2014 the Applicant's public meeting was held.

[63] On September 8, 2014 the Applicant appealed its OPA and ZBA applications.

[64] On May 2, 2015 the Region issued Notice of Approval of the Town's New Official Plan.

[65] On May 19, 2015 the Town's New OP and specifically with regard to Policies 2.1.4.2 and 2.1.5.3 were appealed by the Applicant

THE PLANNING REGIME

[66] With regard to the matters before the Board, the following planning instruments have been raised with the Board: s. 2 of the *Planning Act*, the Provincial Policy

Statement 2014 (“PPS”), the NRPP, the Town Official Plan (in force and of effect), the New OP, and the Town Zoning By-law, and s. 2.1 of the *Planning Act* with regard to the decisions of municipal council, and the supporting information and material that municipal council considered in making its decision. The Board will now set out the relevant portions of each that have a bearing on this matter.

SECTION 2 OF THE *PLANNING ACT*

[67] Section 2 sets out matters of provincial interest that the Board in carrying out its responsibilities under the *Planning Act* shall have regard to including in this case: b) the protection of the agricultural resources of the Province, and g) the minimization of waste.

[68] The Board notes from Part III of the PPS that the PPS is to be read in its entirety and that there is no implied priority in terms of the order in which policies appear.

[69] It also has a geographic scale of policy and states that “the Provincial Policy Statement recognizes the diversity of Ontario and that local context is important.” Part III also includes the position that the policies represent minimum standards and that planning authorities and decision makers may go beyond the minimum standards to address matters of importance to a specific community unless doing so would conflict with any policy of the PPS

[70] Part III notes that guidance material may be issued from time to time.

[71] Part IV sets out the vision for Ontario’s land use planning system and that the long term and social wellbeing of Ontario depends upon planning for strong, sustainable and resilient communities, and that the Province’s agricultural resources are to be wisely used and managed over the long term as this is a key provincial interest.

[72] Turning to the policies themselves the Board notes:

Section 1.1.1 that healthy, livable and safe communities are sustained by:

- a) promoting efficient development and land use patterns which sustain the financial wellbeing of the Province and municipalities over the long term.

[73] Section 1.1.4.1 healthy, integrated and viable rural areas should be supported by:

- a) building upon rural character and leveraging rural amenities and assets;
- b) promoting regeneration including the redevelopment of brownfield sites;
- f) promoting diversification of the economic base and employment opportunities through goods and services including value added products and sustainable management or use of resources;
- i) by providing for economic activities in prime agricultural areas in accordance with policy 2.3.

[74] Section 2.3.1 under the heading of Agriculture states that prime agricultural areas shall be protected for long-term use for agriculture.

[75] Section 2.3.3.1 provides that the permitted uses in prime agricultural areas are: agricultural uses, agriculture-related uses, and on-farm diversified uses, all of which are defined terms in the PPS and noted below.

[76] In s. 2.3.3.2 with regard to prime agricultural areas, the policy states that all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with provincial standards.

[77] Under the Implementation and Interpretation section, s. 4.7 indicates that the official plan is the most important vehicle for implementation of the PPS.

[78] Section 4.9 indicates that the policies of the PPS represent minimum standards and the PPS does not prevent planning authorities from going beyond the minimum standards established unless in so doing it would conflict with any policy of the PPS.

[79] Finally, under Definitions are the following:

- i) Agricultural uses: means the growing of crops, including nursery, biomass, and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish, aquaculture, apiaries, agro-forestry, maple syrup production, and associated on-farm buildings and structures, including, but not limited to livestock facilities, manure storages, value-retaining facilities, and accommodation for full-time farm labour when the size and nature of the operation requires additional employment.
- ii) Agriculture-related uses: means those farm-related commercial and farm-related industrial uses that are directly related to farm operations in the area, support agriculture, benefit from being in close proximity to farm operations, and provide direct products and/or services to farm operations as a primary activity.
- (iii) On-farm diversified uses: means uses that are secondary to the principle agricultural use of the property, and are limited in area. On-farm diversified uses include, but are not limited to home occupations, home industries, agri-tourism uses, and uses that produce value-added agricultural products.

In the matter before the Board, the key definition is that for agriculture-related uses.

NIAGARA REGIONAL POLICY PLAN

[80] The Board notes the following policies are from the Office Consolidation of the NRPP dated as of December 31, 2010.

[81] The NRPP has these definitions:

- i) “Agricultural Areas: means those areas outside of the Urban Areas Boundaries suitable for agriculture and approximately shown on the Agricultural Land Base Map contained in this Policy Plan as Good Tender Fruit, Good Grape, or Good General Agriculture.”
- ii) “Agricultural-related Uses: means those farm-related commercial and farm-related industrial uses that are small-scale and directly related to the farm operation and are required in close proximity to the farm operation.”
- iii) ”Development: means the creation of a new lot, a change in land use, or the construction of a building or structure, requiring approval under the *Planning Act*. It includes the construction of new, or significant expansion of existing public utilities or infrastructure but does not include works subject to the *Drainage Act*.”

[82] Section 1 of the NRPP deals with the physical and economic background of the Niagara Region and outlines that the Niagara Peninsula area is not a true “peninsula” but rather a narrow neck of land stretching between Lake Erie and Lake Ontario. The Niagara Escarpment running east/west through the northern part of the region is approximately 100 m high and is the dominant physical feature of the Region. The section also notes that the Great Lakes are a moderating influence on climate and that agriculture is an important industry in the region. Fruit and vegetable crops, poultry, livestock, greenhouse products and general crops are large categories of agricultural production. The fruit-processing industry and the wine industry are two important secondary industries which depend on a viable agricultural industry.

[83] Section 3 of the NRPP provides the Regional Strategy and Strategic Objectives with underlying principles, including s. 3.6: “to provide for the conservation and wise use of Niagara’s agricultural and other natural resources through environmentally sound resource use without compromising the needs of future generations”. This strategic objective has a number of underlying principles including:

- advocate and support government policies and programs which promote the agricultural industry
- preserve agricultural lands with highest priority being given to the protection of the unique agricultural lands

[84] Section 6 of the NRPP has the Agriculture and Rural Policies for which the first objective is 6.1 to preserve Niagara’s agricultural lands. Policy 6.A.6 states that in the Unique and Good General Agricultural Areas, the predominant land use will be agriculture.

[85] Section 6.A.8 deals with non-agricultural uses and provides that: “Non-agricultural uses should not be located in Agricultural Areas. The introduction of new non-agricultural development of all types into the Agricultural Areas has an adverse impact on the agricultural and natural resources and shall be strictly limited. However, applications for individual non-agricultural uses may be considered. These applications will be reviewed through a Regional Policy Plan Amendment subject to the following conditions:

- a) Non-agricultural uses are not permitted in Unique Agricultural Areas – Good Tender Fruit and Good Grape Areas.
- b) Non-farm residential lots and uses are not permitted in Good general Agricultural Areas or in Rural Areas in close proximity to agricultural activity.
- c) A demonstrated need for additional land to be designated within the municipality and the desirability of the proposed use to the community.

- d) There are no reasonable alternatives in Rural Areas or in Urban Areas.
- e) There are no reasonable alternative locations in other Good General Agricultural Areas with lower priority agricultural land.
- f) The degree of conflict with surrounding agricultural uses. Any conflict should be mitigated to the extent feasible. This would depend on the size and nature of the proposed use, the existing agricultural uses, and on any buffering factors between them. For example, creeks, roadways and other prominent features would be helpful in defining and screening a non-agricultural use from surrounding farms.
- g) Compliance with policies contained in s. 7 Environmental Policies including the Natural Heritage and Aggregate Resource Policies.
- h) Applications must be supported by adequate technical assessment to ensure that private water supply and private sewage services can be provided.
- i) Compliance with other policies contained in the Regional Policy Plan.

[86] The Implementation section contains s. 12.6 which states in part the following:

Other policies affecting lands outside the Unique Agricultural Areas notwithstanding, this plan shall not prohibit the continued operation of legally established residential, industrial, business, agricultural, and institutional facilities. Further, this Plan shall not prohibit the reasonable expansion or change in the use of such facilities provided Urban Area Boundaries are not superseded; the expansion does not involve a major intensification of land use in accordance with Policy 7.B.1.26, the expansion will not have a negative impact on the Core Natural Heritage System; or result in the intrusion of new incompatible uses; and subject to:

- i) the need and desirability of the operation;
- ii) regard for environmental, agricultural, and other policies of this Plan;
- iii) compatibility with existing surrounding uses;

- iv) access and servicing requirements being met; an
- v) no additional municipal services being required.

Further policies guiding the continued operation and possible expansion of such existing uses should be included in local official plans. In addition, within the Niagara Escarpment Plan area, the Niagara Escarpment Plan Policies apply to existing uses.

[87] The 2010 NRPP then contains Policy Plan Amendment 6-2009: The Agricultural Value-Added Activities Policies. Under the heading Farm Diversification Uses Policy 6.A.18 states the following:

Farm diversification refers to those agricultural related value added and secondary uses that complement farming activities and provide for increasing the economic value and consumer appeal of an agricultural product or use. Farm diversification uses shall complement the principal agricultural uses on the property and in the surrounding area, and shall contribute to the sustainability and viability of the farming operation. All uses outside of settlement areas are subject to the Region's servicing policies.

[88] Policy 6.A.19 states the following:

Farm diversification uses shall be consistent with the applicable provisions of the Provincial Policy Statement 2005, and conform to the Niagara Escarpment Plan and the Greenbelt Plan.

[89] The Policy Plan Amendment 6-2009 also contains the Part III "Additional Policies". They are shown in the consolidation as being within a box with the following preamble:

The following additional policies are added after Policy 6.A.34:

The following two policies are not part of the Regional Policy Plan and have no force or effect until the Provincial Policy Statement is amended by the Province to permit the uses provided for unless prior endorsement is given by the Province. In the meantime, the policies are supported by Regional Council as input to the Provincial Policy Statement review. Furthermore, it is intended that when and if the Provincial Policy Statement is amended to permit the uses provided for below, the policies will be incorporated as part of the Regional Policy Plan without the need for a further amendment to the Regional Policy Plan.

[90] Then these two policies are provided.

- 6.A.35 Uses that are not directly related to agriculture may be considered in special circumstances where the use would allow the ongoing adaptive re-use of existing buildings or structures that are designated under the *Ontario Heritage Act* as having cultural heritage significance and that would otherwise be surplus or fall into disrepair, provided such uses are small scale, would not expand outside of the existing structure or building and would not change the appearance of the farming operation, and their impacts (such as noise, odour, traffic and servicing) on surrounding land uses is minimal and will not hinder surrounding agricultural uses. Such uses may only be considered in site specific zoning amendments by the local municipality.
- 6.A.36 Local Official Plans may recognize certain farm diversification uses that include agriculturally related commercial and industrial uses on existing undersized lots provided:
- The uses are agriculturally related uses, are related to surrounding farm operations and require a location in close proximity to the farm operation;
 - The scale of the operation is limited and appropriate to the site and the surrounding area;
 - The agricultural character of the area continues to dominate;
 - It has been demonstrated to the satisfaction of the Region and the local municipality that the proposed use is not more appropriately located on the same parcel as the farm operation, or in a designated settlement area;
 - The use has a minimal impact on, does not interfere with and is compatible with the surrounding agricultural and rural land uses;
 - The use is limited to low water and low effluent producing uses and the site is capable of accommodating the use on private water and private sewage treatment systems;
 - A residential use is not permitted;
 - The use complies with all other applicable provisions of the Regional Policy Plan;
 - The use would be subject to a site specific zoning amendment and be limited to the specific use applied for;
 - In Specialty Crop Areas additional limitations will be required. For greater clarity, in specialty crop areas, because of existing farm lot patterns, the more intensive nature of specialty crop farming, and the significance of this agricultural land base, a more careful application of this policy is required.

Such uses may include production activities and marketing activities.

Where such uses are proposed, they are directed to existing commercial or industrial or other non-agriculturally zoned parcels

of land, or parcels made unsuitable for agriculture by former land uses.

[91] Part IV of the NRPP Amendment 6-2009 contains the following definition, which is outside the box:

Farm Diversification: means a range of uses that are designed to expand the range of economic opportunities available to farmers and is a generic reference to value added, agriculturally related and secondary agricultural uses that may not be directly related to the agricultural activity conducted on the farm property.

TOWN OFFICIAL PLAN

[92] The Board was referred to the Town Official Plan Consolidated Version as of March 2010. Part II of the Official Plan deals with Land Use Policies and 2.1.1 provides the Preamble for Agricultural Uses:

Council is sympathetic to the economic concerns presently facing the farming community and the diversity of the agricultural capability of the lands, but at the same time does not want to compromise the opportunities for future agriculture. A balance is sought. The agricultural lands within the Town are an important asset to the community. These lands include high quality Unique Agricultural lands as well as Good General Agricultural lands. The agricultural industry is well diversified and includes the production of a variety of crops such as grapes, tender fruit, vegetables, greenhouse flowers and produce, cash crops and livestock. It is important to ensure that these lands are preserved for the benefit of current and future generations.

[93] Section 2.1.2 provides a number of Objectives which include the following:

- a) To encourage the preservation of agricultural lands for agricultural purposes and to direct on-farm uses to urban areas, hamlets or areas of low agricultural capability.
- c) To promote the preservation of agricultural lands with highest priority on lands suitable for tender fruit and grape production. High quality Good General Agricultural lands have the second highest priority.
- d) to minimize the impact of non-farm uses on the agricultural area.

[94] Section 2.1.3 provides in subsection (b):

Uses permitted within the Agricultural area:

- i) Agricultural, livestock, and poultry uses, greenhouses, estate and farm wineries, horticulture, forestry and conservation uses and farm related residential uses.
- ii) Water supply and sewage treatment facilities and essential public uses such as utility, communication, and transportation facilities which are of a linear nature and cannot reasonably locate outside agricultural areas may be permitted within them and should be located so as to minimize the effects on surrounding Unique and Good General Agricultural lands, farm operations, surface drainage, and natural environmental resources.
- iii) Communication towers, waste disposal sites and transfer stations, and automobile recycling uses including tire storage and recycling shall not be permitted.

[95] Section 2.1.3. subsection (c) provides:

In addition to the uses permitted in the agricultural area pursuant to Section 2.1.3 (b) of this Plan, small scale commercial and industrial uses which are directly related to, and serving the surrounding agricultural community and are necessary in close proximity to agriculture may also be permitted by Official Plan Amendment subject to the following criteria:

- i) Such uses shall be encouraged to locate in hamlets, urban area or on pockets of poor agricultural land, which may or may not be vacant and may have physical or man-made constraints that would preclude an agricultural use on the site and are well removed from agricultural uses;
- ii) The availability of alternative sites in Urban Areas and Hamlet Areas;
- iii) The need for and desirability of the proposed use to the community;
- iv) The degree of conflict with surrounding agricultural uses;
- v) The quality of the agricultural land including soils, climate, and the nature of agricultural activity in the area; and
- vi) Compliance with the Minimum Distance Separation Formulae (MDS 1).

[96] The Board also has before it the New OP approved by the Region dated as of March 20, 2015 which is under appeal and the subject of another appeal process (See PL150475). For the purposes of this hearing as noted above there are two specific policies that are under appeal.

[97] The New OP in s. 1.1 provides The Community Vision for the Town as a Centre of Excellence for Agriculture, where the majority of growth in the Town will be directed

to the larger urban settlements of Beamsville, Vineland and Prudhommes, and the balance of the Town will remain an intact, protected and rural area where the top priority is agricultural development. Part 2 of the Plan sets out the Agricultural Area Land Use Policies and Section 2.1.3 indicates Permitted Uses which include:

- a) agricultural uses
- b) agricultural-related uses
- c) on-farm diversification uses

[98] Section 2.1.4.2 deals with Uses Prohibited in the Agricultural Area:

Non-agricultural uses including compost facilities, soil manufacturing, storage or processing of treated solid material that is leftover from the municipal waste water treatment process as well as other non-agricultural source material, unrelated to a specific farm operation, waste disposal sites and transfer stations, and automotive recycling uses including tire storage and recycling uses, are not permitted in the Specialty Agricultural or Prime Agricultural designations.

This policy is under appeal by the Applicant.

[99] Section 2.1.5.2 focuses on the Prime Agricultural Designation and Section 2.1.5.3 sets out Agriculture-Related Uses as set out below:

- (a) Agriculture-related uses may be permitted in accordance with the policies of this Plan. Allowing a range of appropriate on-farm uses contributes to economically sustainable agriculture in the Town which in turn facilitates broader access to local food and beverages, agricultural products and VQA wines and preserves the agricultural land base, supports the Town as a Centre of Excellence for Agriculture and maintains the scenic quality of the agricultural landscape.
- (b) Agriculture-related uses include farm-related commercial and farm-related industrial uses that are directly related to farm operations in the area. These uses support agriculture and benefit from being in close proximity to farm operations and provide direct products from and/or direct services to farm operations as a primary activity.

- (c) Adaptive re-use of surplus farm facilities on existing farms or agricultural related uses will be encouraged to conserve built heritage resources and cultural heritage landscapes that would otherwise disappear as a result of no longer being required for farm purposes.
- (d) Agriculture-related uses must relate directly to farms in the area. It is recognized that in order to sustain market and allow for efficient operation of agriculture-related uses, products processed and/or sold by these businesses may be obtained from surrounding local farm operations or from further away. This is permitted provided the majority of product is from farm operations in the area. To assess whether a proposed agriculture-related use meets the test of providing direct products, and or services to farm operations as a primary activity, the Town may require evidence demonstrating that the use will service the local agricultural industry as the sole or main business activity.
- (e) Lot creation to accommodate agriculture-related uses is not permitted.
- (f) New agriculture-related uses will be permitted in accordance with applicable policies in 2.1.5.4 notwithstanding any other policies in this Plan.

This Policy 2.1.5.3 is under appeal by the Applicant.

[100] Finally, Part 10 of the New OP. It simply defines “Agriculture-Related uses” as meaning agriculture-related uses as defined in the PPS.

TOWN COMPREHENSIVE ZONING BY-LAW NO. 93-14-Z1

[101] The Board was also referred to the Town’s Zoning By-law: February 2011 Consolidated version.

[102] With regard to the Subject Lands s. 8 sets out the Agricultural Zone and s. 8.1 lists the Permitted Uses which include: Agriculture, but not a NASM storage facility.

[103] Section 8.2 for the Agricultural Zone indicates that the minimum lot frontage is 100 m and the minimum lot area is 16.2 ha. For an Estate Winery the minimum lot frontage is 100 m and the minimum lot area is 8 ha. For a Farm Winery the minimum lot frontage is 50 m and the minimum lot area is 3.2 ha. For Greenhouse and

Agricultural Produce Warehouses the minimum lot frontage is 60 m and the minimum lot area is 2 ha.

[104] Finally in terms of the planning regime the *Planning Act* in s. 2.1 requires that the Board: a) have regard to any decision that is made under the *Planning Act* by a municipal council; and b) have regard for any supporting information and material that the municipal council considered in making its decision.

[105] In that regard the Board has reviewed the two decisions of the Lincoln Council both of which the Board acknowledge occurred after the appeals to the Board. The Board has also reviewed the materials that were considered by those two councils, one before the municipal election and one after the municipal election.

THE HEARING

[106] As noted above, the Issues List attached to the Procedural Order was revised on the basis of certain themes as found in Exhibit 12. As required by the Procedural Order expert meetings were held and arising out of the expert meetings were a series of Agreed Statements of Fact on certain topics. Arising out of those meetings a number of issues were either resolved, or partially resolved.

ODOUR AND DUST

[107] Exhibit 8.8, Tab 9 is the Agreed Statement of Facts between Mr. Levie on behalf of the Applicant and Anthony Ciccone on behalf of the Town wherein the issues from the Issues List related to Odour and Dust are agreed upon by the experts to have been addressed through the expert meeting consultation, and some minor amendments to the management plan for the proposed facility.

[108] The Board would note that none of the other parties had an expert with regard to Odour and Dust.

STORM WATER

[109] Exhibit 8.8, Tab 10 has the Agreed Statement of Facts between Mr. Levie on behalf of the Applicant and Stan Matthew on behalf of the Town with regard to Storm Water Management and Site Runoff Impacts.

[110] The Agreed Statement of Facts indicates that the issues from the Issues List with regard to Storm Water Management and Site Runoff have been addressed and resolved through the expert meeting. The Board notes that only the Applicant and the Town had experts at the meeting.

NOISE

[111] Exhibit 8.8, Tab 11 contains the Agreed Statement of Facts between Joe Tomaselli on behalf of the Town and Brian Howe on behalf of the Applicant with regard to the issues from the Issues List related to Noise. The conclusion of the Agreed Statement of Facts is that the acoustical experts agree that it is feasible for the on-site facility operations to be designed to meet the requirements of the MOECC D-Series Guidelines and that it would be the responsibility of the Applicant to apply for an Environmental Compliance Approval from the MOECC and to prepare and submit a detailed Noise Study in support of that application.

[112] No other party had an expert at that meeting.

HYDROLOGY

[113] Exhibit 8.8, Tab 12 contains the Agreed Statement of Facts between Dan Menard on behalf of the Applicant and David Slaine on behalf of MNECA with regard to hydrogeological matters.

[114] The expert's Agreed Statement of Facts is restricted to agreeing that bacteriological parameters were not an appropriate stand-alone ground water quality

monitoring indicator; that the water bearing hydro stratigraphic unit beneath the lagoons is a combination of gravelly silt till and the upper weathered zone of the dolostone bedrock and is one contiguous hydro stratigraphic unit; that wetland surface water was observed to be present on the site within 50 m of the edge of the lagoon; and that additional hydrogeological field characterization of the site could be completed.

TRAFFIC

[115] Exhibit 8.8, Tab 8 contains the agreed Statement of Facts with regard to Traffic. Stew Elkins, Ward Wilson and Garry Muckle on behalf of the Applicant attended, as did Rick Hein on behalf of the Town.

[116] With regard to the traffic issues, arising out of the expert meeting, there were two areas of further work to be done: firstly, to confirm truck maneuvers and lane widths specifically with regard to Frost Road and Young Street, and secondly with regard to the actual wine route.

LAND USE PLANNING

[117] Exhibit 8.8, Tab 13 contains the Agreed Statement of Facts from four land use planners: James Webb on behalf of the Applicant, Margaret Walton on behalf of the Town, Pat Busnello on behalf of the Region, and Patrick Robson for MNECA.

[118] The Agreed Statement of Facts is quite brief and encompasses only two clauses.

[119] The first clause is noted above in Motion No. 2 and deals with the recommended sequencing for the hearing to begin with planning principles to fundamentally address the question:

Is it appropriate or good planning for the proposed use to be located in a prime agricultural area (Provincial Policy Statement 2014, Growth Plan for the Greater Golden Horseshoe 2006, Regional Official Plan, Town of Lincoln Official Plan, Town of Lincoln Zoning By-law (as an Agricultural-related Use)?

[120] The second clause is with regard to the characterization of the use:

The source and distribution of materials cannot, to any degree, be constrained by geography. Any materials distributed from this site will only be sent to farms for application under the *Nutrient Management Act*.

WITNESSES

[121] The Applicant called the following witnesses:

- Sarah Mastroianni by summons from the Niagara Peninsula Conservation Authority
- John Levie, Environmental Engineer
- Michael Payne, Agronomist and Residuals and Bio Solids Utilization Specialist
- Janice Janiec, Agronomist
- Brian Howe, Acoustical Engineer
- Ward Wilson, Municipal Engineer (Road Designs)
- Stew Elkins, Traffic Engineer
- Dan Menard, Hydro Geologist
- James Webb, Land Use Planner

[122] The Town called the following witnesses:

- Jackie van de Valk, Agrologist under summons from the Ontario Ministry of Agriculture Food and Rural Affairs

- Margaret Walton, Land Use Planner
- Rick Hein, Traffic Engineer

[123] The Region called the following witnesses:

- Pat Busnello, Land Use Planner

[124] MNECA called the following witnesses:

- David Slaine, Hydrogeologist
- Patrick Robson, Land Use Planner
- Nicolette Novak,
- Phil Andrews, Tender Fruit Grower
- Sylvia Augaitis, of the Wine Marketing Association of Ontario
- Len Panachetti, Cave Spring Cellars, Inn on the Twenty Restaurant and the Jordan Hotel
- Christopher Medlin, Environmental Officer with the MOECC under summons
- Debbie Zimmerman, CEO of the Grape Growers Association
- Gus Kormarelas, 3516 Cosby Road, Beamsville, Poultry Farmer
- Thomas Zielnik, 3381 Frost Road, local resident
- John Varsakis, 3203 Frost Road, abutting land owner

[125] Mr. Izzo called the following witness:

- Tony Leontis, 3295 Frost Road, former owner of the Subject Lands from 1967 to 2001.

[126] Ms. MacDonald called no witnesses.

[127] To facilitate the large number of Participants identified for the hearing, the Board set aside "Participant Days" and heard participant evidence on February 10, 11, and 25, 2016. Over the course of those days the Board heard from 24 witnesses, some who had been proposed as witnesses for MNECA, and others who had registered as Participants.

[128] The evidence from those Participant Days was wide ranging both in opposition and support of the development proposal.

[129] In opposition, some witnesses were located near the Subject Lands and expressed fears and concerns with regard to matters of public safety arising from the volume of truck traffic on the rural roads, the potential for accidents and spillage, for well contamination and odour from the proposal. Others living further away expressed fears and concerns with regard to the perceived negative impact on the area as a tourism destination for tender fruit, vineyards, and wineries, if the area were to be the home of a NASM storage facility operating six days a week with 80 trucks per day hauling municipal sewage sludge to and from the Subject Lands.

[130] In support of the development application, the Board heard from three cash crop farmers, all residing outside the Town and outside the Region. The first from Wilsonville, south of Brantford, who was a former employee of the Applicant's related business, and he identified a number of benefits for farmers and the province that arose from the "recycling" of the biosolids: a diversion from landfilling, enrichment of the low phosphorus levels in Haldimand County soils, and that there was no cost to the farmer for the land application. The second farmer was from York, in Haldimand County, and

he operated a hog and cash crop farm of some 1,500 acres. He testified that the application of the biosolids was very beneficial to the soil, as the biosolids were nutrient rich. The third farmer was from St. George in Brant County, who testified that the provincial rules for the application of biosolids were quite strict, and that the biosolids were full of organic matter and nutrients which enriched the soil.

THE APPLICANT'S CASE

[131] In support of the development application, the Applicant called Mr. Levie, an Environmental Engineer with considerable experience with regard to biosolids. Mr. Levie had prepared the D/O Report for the application and he testified that the Subject Lands were relatively flat on which were located the three existing lagoons that had been lined for industrial sewage (not NASM). The lagoons were a substantial feature on the Subject Lands and had a capacity to service a small town of 2,400 to 2,500 people.

[132] The lagoons he said were an accessory use to the former poultry processing plant which had been the principal use, but that by volume the lagoons occupied a large percentage of the site being about 33% of the site. He stated that the proposal was to use the lagoons as an interim storage site for NASM and Official Plan and Zoning By-law amendments were necessary but thereafter there would be other approvals required such as site plan approval and approvals from the MOECC. In terms of the operation of the facility he did not identify a particular source of the materials but noted that approximately 900 tonnes of NASM would arrive per day. The application of NASM to farmers' fields is a seasonal event (i.e. not during the winter) that is also subject to weather consideration (i.e. rain) and therefore minimally there would be 124 days for which the site would only be able to store materials and not be able to distribute them.

[133] He described the business model as having several components: first the proposed incoming NASM would be prescreened, then weighed, then unloaded and blended with water and transferred to the lagoons. There the incoming NASM would be

blended with the existing NASM in the lagoons. For the land application, the stored NASM would then be sampled, a determination made for appropriate lands to receive the NASM, logistical arrangements would be made for shipping, NASM plans would have to be sought and approved for the land application, and then it would be shipped to its final destination. He described the NASM smell as being a musky, damp earth odour, like a sewage treatment plant and that as part of the *Environmental Protection Act* process he anticipated that there would be odour mitigation which would include prescreening the materials coming in, the water level in the lagoons would cap the materials underneath, oxygen would be added to reduce the sulphur compounds, the receipt of the NASM would be within an enclosed building with a carbon filter, and possibly there might be a floating liner on the lagoons, but that would be determined in an application to the MOECC.

[134] In cross-examination Mr. Levie acknowledged that the Region has a Biosolids Master Plan, that the Region has an existing biosolids facility at Garner Road in Niagara Falls, that the Garner Road facility is similar to this proposed facility except that it is two to two and a half times larger than the subject proposal, that Garner Road has lots of storage capacity, and that the Biosolids Master Plan has a planning horizon until 2031.

[135] Mr. Payne, Agronomist and Residual Biosolids Utilization Specialist gave evidence in support of the application. Mr. Payne had retired in 2011 from the Ontario Ministry of Agriculture Food and Rural Affairs (“OMAFRA”) and had started Black Lake Environmental of which he was the principal. Mr. Payne gave evidence that he had started with the OMAFRA as a Soil and Crop Specialist but became the Ministry representative for biosolids in eastern Ontario and from that he essentially became the Ministry representative on biosolids and worked with the Nutrient Management branch of the Ministry and has been involved in the development of the NASM Regulations, the Best Management Practices Guidelines, and he was the OMAFRA lead in research for the Province of Ontario and sat on the Ontario Biosolids Committee.

[136] As a member of OMAFRA he had previously given evidence in a Board matter in Huron County on a rezoning application to permit the storage of “processed organic material with the existing buildings”: see *Rastorfer v. Municipality of Huron East* (PL090690).

[137] With Ms. Janiec, collectively they had prepared an Agricultural Impact Assessment (“AIA”) for the proposal. The AIA provides a review of the proposal, the PPS, the regulatory framework for NASM, the proximity to agriculture and agricultural planning policies are considered.

[138] The AIA states that “the PPS also permits proposed new secondary and agriculture-related uses, on a limited scale, and when they are compatible with and do not hinder surrounding agricultural operations.”

[139] Further the AIA states:

... this would include NASM storage activities, and activity closely related to agriculture as the nutrients in NASM can form a significant part of a farmer’s crop fertility program. It is also important to note that the proposed use will be utilizing the existing lagoons and other facilities and not altering the surrounding agricultural land. In summary, it is our opinion that the intended use of the property is consistent with the PPS.

PROXIMITY TO AGRICULTURE

[140] The AIA states that the anticipated market area for agricultural application will primarily include the surrounding rural area of the Region as well as the adjoining areas of Hamilton, Haldimand and Norfolk County. Mr. Payne testified that there was a need for NASM by “cash crop” farmers in Niagara, Haldimand and Norfolk.

[141] The AIA report quantifies that the volume of NASM stored will require an application area of about 5,700 ha when the facility is at maximum capacity, which would be less than 15% of the land planted in grain corn in 2011 for all of Niagara, Haldimand, and Norfolk, according to his calculations. In cross-examination he

confirmed in his opinion the storage of NASM was an agriculture-related activity, that prime agricultural areas (such as the Subject Lands) should be protected for the long term, that the haul distance to Haldimand Norfolk would be approximately 50 km, that the transportation of NASM in an outbound truck would not deteriorate or lose quality, that the proposed operation was not small scale, but rather substantial, and in his opinion the site was in close proximity to the farm operations, and confirmed that under the Niagara Region BioSolids Master Plan that the Region had sufficient capacity for the planning arising to 2031. He also testified that he had no knowledge of the ownership of the abutting lands.

[142] The Board also heard from the co-author of the AIA: Ms. Janiec.

[143] Ms. Janiec has been employed both in the public and private sector with regard to bio solids and from 1999 to 2003 with OMAFRA as a Biosolids Program Coordinator, and self-employed since 2013.

[144] The Board qualified her as an Agronomist noting that she is not a land use planner and she has no formal training in land use planning.

[145] Ms. Janiec, in her evidence, took the Board to the OMAFRA Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas draft for input and discussion dated February 2015 ("Draft Guidelines"): Exhibit 8.2, Tab15.

[146] Section 2.2.1 of the Draft Guidelines sets out the PPS Criteria for Agriculture-Related Uses:

- i) Farm-related commercial and farm-related industrial uses which she described as may or may not be on the farm.
- ii) Compatible with, and shall not hinder, surrounding agricultural operations.

- iii) Directly related to farm operations in the area. This she said was important as this was providing access to a supply of nutrients that currently is not being met.
- iv) Supports agriculture.
- v) Provides direct products and/or services to farm operations as a primary activity.
- vi) Benefits from being in close proximity to farm operations.

[147] Ms. Janiec stated that she had had discussions with her colleagues regarding the draft Guidelines as to what the fit was for storage of NASM and the discussion that yes, this was a perfect example of an agriculture-related use. She also pointed to Figure 2 in the Draft Guidelines showing examples of agriculture-related uses that had a picture of a “farm input supplier (e.g. feed, seeds, fertilizer etc.)” In her view the storage of NASM met those criteria.

[148] Ms. Janiec also opined with regard to the policies of the NRPP with regard to s. 12.6 for the Reasonable Change in Use. In her opinion the storage of the waste water from the chicken processing plant was similar in nature to the proposed use with the storage of NASM.

[149] With regard to the Town Official Plan and s. 2.1.3(c), the Small Scale Commercial/Industrial Uses, it was her opinion that a NASM storage facility at the Subject Lands would be permitted and that the criteria had been met.

[150] In cross-examination Ms. Janiec was asked about the demand for NASM in the agricultural community and more specifically what constituted the agricultural community to which she replied, cash crop farmers in Niagara, Haldimand Norfolk and Hamilton. When asked if the AIA had shown a justification for the need she admitted that it clearly only showed the land nearby that was utilized for cash cropping and that

actual need or demand is based on, through her experience, working with the industry. When asked if there were any potential customers that might reference demand she indicated that there was not, but that rather by experience, those in the industry are aware that there is more demand than supply, therefore there is a need.

[151] Under cross-examination Ms. Janiec confirmed that the Draft Guidelines are just that: a draft that was issued by the Province of Ontario for input and discussion and what was before the Board was not the final document.

[152] The Board heard transportation evidence from Mr. Wilson, a Municipal Engineer in Road Design. Mr. Wilson had specifically examined the existing Frost Road and Young Street concerning their design standards. He agreed that both are rural access routes with a 5 tonne road limit and gravel portions of road. He indicated that he had prepared four options to upgrade the local roads for truck traffic: ranging from Option 1 which was essentially to “beef up” the existing roads with no widenings at a cost of \$550,000 to Option 4 which would upgrade the roads to the rural road standard for the Town, including an upgrade to the depth of gravel, at a cost of \$1.3 million.

[153] He agreed that this matter could be resolved at Site Plan.

[154] Mr. Elkins, the Traffic Engineer provided further traffic evidence. He had prepared the Traffic Impact Study which examined existing conditions, gave base count information, trip generation information, future background traffic, and assessed the future total traffic with recommendations for mitigation and road improvements.

[155] His operational assumptions were that the site would be used six days per week, 12 hours per day, with up to 80 trucks per day. His Traffic Impact Study indicated that incoming trucks would be 75% from the north, 10% from the south and 15% from the west whereas the outbound trucks would be 10% to the north, 55% to the south and 35% to the west. With regard to the haul routes that are shown in the Traffic Impact Statement he advised that they were developed on a least impacts basis. He indicated

that all roads save and except for Young Street and Frost Roads, were arterial roads with sufficient capacity to handle the truck traffic.

[156] With regard to the kind of trucks, he testified that they would range from dump trucks, to straight tankers, to “B train trucks” and confirmed as per Exhibit 31 that “B train trucks” have a cab of 3 m followed by an approximate 0.8 m gap followed by an 8.5 m trailer followed by a 0.8 m gap and followed by a 9.6 m second trailer for a total of 22.7 m in length: about 74.5 feet.

[157] In cross-examination Mr. Elkins acknowledged that the inbound traffic would be primarily coming from the Queen Elizabeth Highway from the west via Ontario Street, King Street and Mountain Road. He confirmed that while the regional roads may have (numeric) capacity that there would also be congestion in certain places and that the haul route using Ontario Street to King Street to Mountain Road included two 90 degree turns within a short distance and he agreed that this was a constrained area: in fact it was quite constrained. He added that the Region was making some improvements with a “notched area” at the Mountain/King intersection between the north and south bound traffic to increase the separation distance between the north and south bound lanes. He recognized the constraint but opined that it allowed for the traffic movements.

[158] Under cross-examination from Mr. Izzo, Mr. Elkins confirmed that a straight truck (30 to 33 feet long) turning south on Mountain Road from King Street would encroach into the notched area but was unsure as to whether or not it would encroach into the oncoming traffic lane.

[159] When asked if the larger “B train truck” would encroach into the oncoming lane Mr. Elkins indicated he had not done the analysis and could not respond.

[160] The final witness called by the Applicant was Mr. Webb, land use planner.

[161] Mr. Webb confirmed that the Subject Lands are designated in the NRPP as being in the Rural Area and a Good General Agricultural designation, and in the Town Official

Plan as being within a Rural Area and a predominately Good General Agricultural designation, and that the lands were zoned agricultural.

[162] Referencing the PPS Mr. Webb opined that s. 2.3.1 stated that Prime Agricultural Areas shall be protected for long-term use for Agriculture, and s. 2.3.3.1 indicated that there were three permitted uses and activities in Prime Agricultural Areas as being: agricultural uses, agriculture-related uses, and on-farm diversified uses.

[163] Mr. Webb indicated that the development proposal was neither an agricultural use, nor was it an on-farm diversified use. However, in his opinion, it was an agriculture-related use as per the PPS definition.

[164] In that regard he relied upon the opinion evidence of Ms. Janiec with regard to the criteria contained within the Draft Guidelines by OMAFRA. Thus in his opinion the development application was consistent with the PPS.

[165] He examined the Growth Plan for the Greater Golden Horseshoe ("Growth Plan"). He noted that it too protects Prime Agricultural Areas but that really the Growth Plan was focused on intensification and its references are to direct development to settlement areas, and thus he stated the development application conformed to the Growth Plan.

[166] Turning to the NRPP, he noted that within the chapter on Implementation, s. 12.6 had its intent and purpose to allow for the continued operation of legally established residential, industrial, business, agricultural and institutional facilities, and the Regional Policy Plan shall not prohibit the reasonable expansion or change in the use of such facilities provided that a number of criteria are met. In his opinion the subject application was a reasonable change in use taking into account what had been on the property previously: i.e. a chicken processing plant with an associated truck traffic, 100 employees, and three large lagoons. Those lagoons were for the treatment of the chicken processing waste water and are now proposed for the receipt and storage of NASM before it is shipped to farms. He stated that if you compared the former use with

the new proposed use that this was a reasonable change in use and therefore there was no need to amend the NRPP as the criteria were met.

[167] Turning to the criteria of s. 12.6 specifically, he testified that the first criterion was the need and desirability of the operation and in this regard he relied on the evidence of Mr. Payne and Ms. Janiec with regard to the fact that there was a general greater demand than supply of NASM. The second test was regard for environmental, agricultural and other policies of the NRPP and he highlighted and “read down” the words “have regard to” as meaning one did not have to comply with, but you had to consider the policies to see if the intent was met. He stated that NRPP Amendment 6-2009 deleted the old Policy 6.A.7 (the Small Scale Agriculturally Related Uses section) and that without this policy in place that there was a gap in terms of one of the three permitted uses under the 2014 PPS, i.e. the agriculture-related uses. He examined Amendment 6-2009 and took the Board to the Part III Additional Policies which policies are “in the box” and specifically with regard to 6.A.36 where local official plans may recognize certain Farm Diversification Uses but that the definition of “farm diversification” means it has to be conducted on the farm property, which he indicated was contrary to the definition that is found for agriculture-related uses in the PPS.

[168] He additionally took the Board to s. 6.A.35 which is with regard to the ongoing adaptive reuse of existing buildings or structures that have been designated under the *Ontario Heritage Act* as having cultural heritage significance and that would otherwise be surplus or fall into disrepair. He opined that the Subject Lands were an agriculturally-related use, were on an under-sized lot because it was less than the minimum size for General Agriculture in the Zoning By-law, that the proposal needed to be close to agriculture, that it was not part of a farm operation, and that the Subject Lands were a parcel of land not suitable for Agriculture due to their prior use. In his opinion, the Part III Additional Policies (in the box) had been adopted by Council and with the coming into force of the PPS, the Part III policies also came into force.

[169] He then took the Board back to the criteria found within s. 12.6 of the NRPP and opined that all the criteria were met for s. 12.6 as a reasonable change in use and therefore an NRPP amendment was not necessary.

[170] He then examined the Town Official Plan and in particular s. 2.1.3. He confirmed the Subject Lands are designated as “Good General Agricultural”, and that in addition to the permitted uses, that s. 2.1.3(c) indicates that “small scale commercial and industrial uses which are directly related to, serving the surrounding Agricultural Community and are necessary in close proximity to Agriculture may also be permitted by Official Plan Amendment subject to certain criteria”. He stated that in his opinion the proposal before the Board was a small scale activity due to the small number of employees involved and the proposed activity on the property. He indicated that while (c)(i) suggests that some such uses shall be encouraged and located in hamlets or urban areas or pockets of poor agricultural land that the Policy did not preclude the intended use.

[171] The second criterion in the Town Official Plan concerns the availability of alternative sites in urban areas and hamlet areas, and in that regard he relied on the evidence of Ms. Janiec that in her opinion such storage uses would not be a good fit in hamlets or urban areas.

[172] The third criterion involves the assessment of the need for and desirability of the proposed use to the community. Again he relied on the evidence of Mr. Payne and Ms. Janiec with regard to need and desirability.

[173] With regard to the degree of conflict with surrounding agricultural uses he opined that there would be no conflict and this was actually in support of agriculture.

[174] With regard to the quality of the agricultural lands, he indicated that due to the former use of the Subject Lands that they were “distressed” and that Ms. Janiec had also supported this position.

[175] The final criterion deals with the minimum distance separation formula which is not applicable. Thus in his opinion the development application was a small scale industrial use related to agriculture that is permitted to s. 2.1.3(c) of the Town's Official Plan, and should be approved by the Board.

[176] With regard to the New OP he testified that the proposed use would actually be a prohibited use and he was unaware of any studies that the Town had done in arriving at that policy. He also commented that the public information meeting on the subject development application had occurred two weeks after the New OP had been adopted by Council and he only received the Technical Report prior to the public information meeting showing the subject proposal as being a prohibited use under the New OP. He complained that he should have been personally informed by the Town staff that the New OP was proposing to prohibit the use, notwithstanding the fact that all the statutory notice requirements of the *Planning Act* had been met, and the New OP was available on the Town website.

[177] In Mr. Webb's opinion the subject application represented good planning as it was an adaptive reuse of the property and the existing lagoons for NASM storage. The area was close to the broader agricultural area, the Region was already engaged in this activity, the Province allows for the land application of NASM, the use of NASM for land application would minimize waste going to land fill sites, the proposed change in use would be in support of ongoing viable agriculture and be consistent with the PPS, conform to the Growth Plan, conform to the NRPP, and the local Official Plan.

[178] He stated that further processing would be required if the OPA and ZBA were approved by the Board, involving approvals from the MOECC for the Subject Lands, and Nutrient Management Plans where the NASM was to be applied to farmers' fields. There would also have to be a detailed Site Plan prepared and approved by the municipality, but in all he opined that this was good planning and was appropriate for the orderly development of the lands.

[179] In cross-examination Mr. Webb confirmed his opinion that no amendment to the NRPP was required, although he did confirm that there had been communication from the Region to indicate that the Region believed a Regional Policy Plan Amendment was required.

[180] With regard to the Regional Policy Plan Amendment 6-2009 and Part III being the policies “in the box”, he was asked by counsel for the Town if with the passage of the New PPS they were now in force and effect to which he responded that yes, the Region in 2010 with these policies had put them “in place” and his interpretation is that they became part of the Regional Policy Plan without further amendment due to the passing of the PPS. It was his opinion that these policies were in force and effect.

[181] With regard to the Town of Lincoln’s Official Plan he was asked what metrics he had used to determine that the Shire proposal was “small scale”. He responded to indicate that on a revenue side, the \$750,000 of net revenue would be small scale, and that the number of employees being 10 to 12 at the peak period of time would be small scale. He was asked if the volume of the biosolids was an indicator of scale to which he replied no. He was asked whether the parcel size was an indicator of scale, to which he indicated that it was a relative term and since the parcel was less than the zoning by-law full farm size of 40 ha, he thought it was small scale. He was asked who owned the parcel to the east of the Subject Lands. He replied that it is not owned by the Applicant, but it is owned by the numbered company, the principals of which are the same as the Applicant. He was asked if he knew the size of the abutting lands to which he replied no. He was asked if he knew it was 46 ha in size to which he replied he only knew the lands were larger, and when he was asked as to its current use, he responded to say that he thought it was in agriculture.

[182] With regard to the Board case that had been cited in his Planning Justification Report (“Rastorfer”) he was asked whether he relied on that case for scale to which he responded no, only for the agriculture-related use. With regard to the Rastorfer case he was asked if one truck arrived per day, which he confirmed, whether the total storage

was 6,400 tonnes, which he confirmed, and the NASM was spread on farms within a three to four mile radius of the site, which he confirmed, and in this particular case, the proposal is that it be for three or more regions of the Province of Ontario, which he confirmed.

[183] When asked with regard to the consideration of alternative sites, he stated that he relied on the evidence of Mr. Payne and Ms. Janiec and his own evidence that it should not locate in an urban area because of the number of employees were low and not able to meet the threshold of the Growth Plan.

[184] When asked whether there had been any other analysis of other alternative sites he confirmed that there had been none. Mr. Webb was also shown Exhibit 58 which was a printout from the Applicant's website concerning the project details for the subject proposal.

[185] Exhibit 58 shows nine municipal facilities all shown on the website of which at least five were in relative proximity to existing residential and urban development.

TOWN OF LINCOLN CASE

[186] The Town of Lincoln first called Ms. van de Valk by summons from the Ontario Ministry of Agriculture Food and Rural Affairs where she is employed. She was called with regard to the status of the Draft Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas. She has provided input to the draft and confirmed that the Draft Guidelines were the initial attempt by the Ministry to evaluate the land use principles in Prime Agriculture Areas pursuant to the PPS. She indicated that after the Draft Guidelines had been published that input had been requested from municipalities and stakeholders. That input is being summarized and analyzed and that there is a final revision being done which is working its way up through the hierarchy at the Ministry for final approval and she could not comment on any changes due to the confidentiality provisions, but she did indicate that once approved those Draft Guidelines would be the final approved Guidelines.

[187] The Town then called Ms. Walton as a Land Use Planner. She was originally retained with regard to the completion of the Town New OP and was subsequently retained with regard to the subject application. She confirmed that the Subject Lands under the NRPP are designated as Good General Agriculture. Under the local Official Plan also as Good General Agriculture and under the council adopted New OP as Prime Agricultural Areas predominately.

[188] Before giving her planning opinion, Ms. Walton in her testimony provided some agricultural context for the application before the Board. She indicated that agriculture in the Niagara Peninsula is unique, that the combination of climate, soils and landform allow crops to be grown here that cannot be grown elsewhere in the Province. That the Niagara Peninsula is home to the majority of the provincial specialty crop lands which are defined and identified by the Province and receive the highest level of protection under provincial planning policy. She stated that the Town is home to a significant amount of specialty crop land and what is not specialty crop land in Lincoln is prime agricultural land and she said this is very unique in Ontario.

[189] Whereas most municipalities in Ontario have a combination of prime agricultural land and rural land, Lincoln is unique in not having that combination. Therefore special consideration has to be given to accommodating uses elsewhere in the Town that might otherwise seek to be located on rural lands. She indicated that the Town has done so by designating industrial and commercial lands within its boundaries to accommodate those types of uses and in 2015 there were 57.5 ha of vacant industrial land of which 44.1 ha were within the urban boundaries.

[190] The other option to deal with land uses that might otherwise be accommodated in the rural lands was to direct it to other lands in the Region that are designated as rural industrial, i.e. in the Town of Thorold where there are “dry” industrial areas.

[191] To illustrate the agricultural character, Ms. Walton provided Exhibit 63 which is a Profile of Agriculture in the Region of Niagara.

[192] The results show that the top four commodities by farm receipts are: Greenhouse Product, Fruit, Nursery Product, and Sod and Maple and Poultry and Egg.

[193] Within the Region itself, cash crops are shown as only being 8% of the total gross farm receipts.

[194] Returning to the Town, with regard to Greenhouses, Fruit, which includes Tender Fruit and Grapes, Poultry and Nursery, unlike other farm operations these types of agriculture can operate quite profitably on smaller parcels of land and the average Greenhouse operation in 2011 was slightly more than 8,000 square meters ("sq m") If one were to compare the size of an average farm in the Town versus the provincial average it would be 24.6 ha versus 99 ha.

[195] Ms. Walton said that there are a number of challenges facing the agriculture industry in the Region and the Town. The climate makes the Region and the Town a desirable place for agriculture but also to live and there is pressure on the land base from those who want to use the land for farming purposes and those who wish to move to Niagara as a lifestyle choice. In order to preserve the prime agricultural lands and the Specialty Crop lands she stated that the Town has to be very vigilant with regard to its land use policies to support the goal of keeping prime agricultural lands and Specialty Agricultural lands in production.

[196] She testified that she has worked for the Region of Niagara conducting a Regional Agricultural Economic Impact Study and an Agricultural Action Plan which led to the approval of Regional Policy Plan Amendment 6-2009 to manage on-farm uses.

[197] From that she indicated that protection of the land base for agricultural was fundamental and that the purpose of allowing agriculture-related uses or on-farm diversification was to improve the financial return to farmers, but those matters had to be assessed on the appropriateness of the uses through scale, impact, requirement for servicing, role and complementing the on-site agricultural operation, the relationship to

the local farming community, and whether the activity would be more appropriately located in a settlement area or a rural area.

[198] With regard to the Town's New OP she noted that the Town must be diligent in ensuring that there is sufficient land to accommodate a range of uses. The Town has done its Economic Development Strategy that was aimed at promoting the Town as a Centre for Excellence in Agriculture. It focused on how to support agriculture economically and provide the services necessary for it to thrive and as a result it directed non-agricultural uses to appropriately designated lands in the urban areas and rural settlements or to other appropriately designated lands in the Region.

[199] Turning to the policy framework Ms. Walton reviewed the PPS and in particular went to the Permitted Uses in Prime Agricultural lands, section 2.3.3.1 and confirmed that the development proposal before the Board was not an agricultural use and clearly was not an on-farm diversification.

[200] With regard to agriculture-related uses she stated that the proposed use was not directly related to farm operations in the area, that the development proposal is to receive waste from industrial, commercial and institutional sources from across Ontario, store it on site and ultimately the product would be widely distributed across the Region, City of Hamilton and the Counties of Haldimand and Norfolk. She stated that the development proposal is not required to be in proximity to farm operations as the agreed Statement of Facts by the planners indicates the product may be shipped across Ontario. She indicated that documentation submitted in support of the application did not demonstrate a need for the facility and in fact the Region's Biosolids Master Plan has confirmed capacity to 2031 to manage NASM generated within the Region. Finally she stated that there is no evidence of any evaluation of alternative locations by the Applicant to avoid prime agricultural lands, when in fact there are locations both within the Town and the Region where this use could be accommodated.

[201] Addressing policy 12.6 of the NRPP, it was her interpretation that this policy permitted the reasonable expansion or change to legally “existing uses subject to certain criteria”. In her evidence she first noted that the prior owner had demolished the former poultry processing plant so it no longer exists. Presuming that the preamble to the criteria had been satisfied she noted that the criteria does not allow for a major intensification of use, that the need and desirability for the proposed use have not been demonstrated, that regard for the agricultural policies of the Plan have not been met as these are Prime Agricultural lands that should be protected for long-term agricultural use, and she opined that the proposal was out of character with the existing surrounding uses. In her opinion the application did not satisfy s. 12.6 of the NRPP and therefore would require a NRPP amendment application which would then be assessed against the criteria in s. 6.A.8.

[202] With regard to the Town Official Plan she testified that the development proposal was not a permitted use as per s. 2.1.3(b) and with regard to s. 2.1.3(c) where other uses may be permitted in the agricultural area, she disagreed that this was a small scale industrial use. She disagreed that it was directly related to and serving the surrounding agricultural community. She observed that the facility did not have to be in close proximity to agriculture as NASM did not deteriorate during travel. She noted that there was an availability of other sites in appropriately urban areas both within the Town and the Region. She stated that there was no need or desirability for the proposed use in the Town and disagreed that the Subject Lands were so degraded that they could not be brought back into agriculture. More specifically she told the Board that the Subject Lands could easily accommodate greenhouses and the lagoons would actually be a benefit for managing water for the greenhouses.

[203] Therefore it was her opinion that the development application did not conform to the Town of Lincoln’s Official Plan.

[204] Turning to the New OP, she took the Board to s. 2.1.4.2 which provides that: “non-agricultural uses including compost facilities, soil manufacturing, storage or

processing of treated solid material that is left over from the municipal waste water treatment process as well as other non-agricultural source material unrelated to a specific farm operation, waste disposal sites and transfer stations and automotive recycling uses including tire storage and recycling uses are not permitted in the Specialty Agricultural or Prime Agricultural designations". She stated that this policy fulfills s. 2.3.1 of the PPS to protect Prime Agricultural Areas for long-term agriculture.

[205] She testified that the Applicant has also appealed s. 2.1.5.3 of the Official Plan (quoted above) and she opined that s. 2.1.5.3 was consistent with and implemented the direction of 2.3 of the PPS and of the NRPP by managing and supporting and protecting the agriculture resource in the Town.

[206] Therefore it was her opinion that both appeals should be dismissed.

[207] With regard to the issue of proximity to farm operations, in cross-examination Ms. Walton was asked to quantify that, she replied that in her opinion it was three to four miles.

[208] The final witness for the Town was Mr. Hein; a traffic engineer. In essence Mr. Hein agreed that the traffic and transportation issues could be dealt with as a site plan matter, that Option 4 (\$1.3 million) was the appropriate option for implementation. Mr. Izzo then put Exhibit 67 before Mr. Hein. Exhibit 67 is a video of a truck turning at "the jog" on the proposed haul route in downtown Beamsville. Mr. Hein testified that the truck would have to encroach into the oncoming lane in order to safely make the turn. He stated that this was due to the design of the intersection and that without demolishing buildings, there were no other mitigation measures available.

REGION'S CASE

[209] The Region called one witness: its Manager of Planning, Mr. Busnello. He testified that the staff of the Region had advised the Applicant that an amendment to the

NRPP was required as the proposed use likely constituted a non-agricultural use in a prime agricultural area.

[210] Mr. Busnello testified that in his opinion the subject application did not conform to s. 12.6 of the NRPP, as the former use was a chicken processing plant for which the lagoons were ancillary; that the former chicken processing plant had been demolished, and that now the lagoons were being proposed as the principal use.

[211] Further he observed that the Applicant has not addressed a need in the Region or in the Town for the proposed NASM facility, nor has the Applicant addressed the desirability of the proposed facility for the Region or the Town.

[212] He stated that the AIA did not address any need for Niagara farmers, but rather addressed a (general) provincial need. He observed that the Region had a Biosolids Master Plan that provided a corporate strategy for regional wastewater facilities up to the year 2031, and those needs were met through the Garner Road facility.

[213] Asked about the geographic scale for need, Mr. Busnello replied that it varied with the type of use: it could be the local community, it could be broader, and it could be the Region, but the policy direction was not looking at servicing a provincial need.

[214] Turning to the issue of the status of Part III of Policy Plan Amendment 6-2009, he testified that these policies in the box were not in force or of effect as the policies had been deferred by Regional Council and have remained deferred, and not brought back to Regional Council.

[215] In conclusion Mr. Busnello reiterated his opinion that an application to amend the NRPP was necessary and no such amendment was before the Board.

MNECA CASE

[216] At the outset of the hearing, MNECA had proposed to call 22 witnesses. At the Board's urging, Mr. Thiel reviewed his witness list and reduced the number of witnesses to 12, and some of the other intended witnesses were accommodated during the Participant Days referenced above.

[217] From a land use planning perspective MNECA called Mr. Robson. He is now in the private sector, but has considerable experience in administrative positions with the Region. He characterized the development proposal as an industrial use, where the biosolids were "processed" by rehydrating them and mixing and blending them ("like frozen orange juice from concentrate" he said), and then stored on site. This he said was a waste facility and an industrial use.

[218] He testified that the development application did not meet s.12.6 of the NRPP as being a reasonable change in use, as previously the lagoons had been auxiliary to the main use of the chicken processing plant, that the plant had been demolished, and now the auxiliary use was being proposed as the primary use.

[219] This he said did not constitute good planning as there had been no assessment of any alternative location, either within or outside the Region. Had such an assessment of alternative locations been done, it would have noted there were 2,000 ha of designated industrial land available and well serviced by highway, rail, and marine access within the Region.

[220] Asked with regard to the scale of the agricultural community, Mr. Robson gave a geographic context of 10 km east west and 8 km north south, approximating an old township boundary.

[221] The second witness for MNECA was Nicolette Novak. Her evidence in many ways was illustrative of the fears and concerns of many in the Town and Region. Ms. Novak's food and wine business is conducted on a 55 acre site that has been in her

family since 1977. It is about 6.5 km from the Subject lands but not far from the QEW and Ontario Street which form part of the haul route. Grapes, peaches, and plums are grown on site, which also hosts a winery and a bistro.

[222] Her opposition to the subject application stems from personal experience that commenced in 2011 with a startup nearby animal husbandry operation whose manure handling she testified resulted in a public health issue in the Town and dramatically affected her business for a number of years. With this personal experience she had grave concerns with regard to the potential of spills and odours from trucks affecting the tourist destination that the Town had become.

[223] Next the Board heard from Mr. Andrews, a tender fruit grower whose farm consists of 90 owned acres and 110 leased acres where peaches, wine grapes, plums and pears are grown. Of the 90 acres that are owned, it is made up of four parcels which he advised is very common in the fruit industry. He indicated that 95% of his produce is packed and shipped through Jordan to major chain grocery stores. He does not use NASM as he farms under the auspices of the Canada Gap Program which does not allow the use of NASM nor allow any history of use of NASM on the farms. He advised that the Canada Gap Program is a federal initiative to provide guarantees for customers of products for food distribution.

[224] When asked what the consequence was of not having Canada Gap certification, he indicated that if his products failed the Canada Gap criteria, his contracts with suppliers would be cancelled thereby jeopardizing his livelihood.

[225] Next, the Board heard from Mr. Augaitis, Executive Director of Wine Marketing Association of Ontario. She advised that the Wine Marketing Association of Ontario was a creature of the Province of Ontario's wine and grape growing strategy; it was a joint venture between the Wine Council and the Wine Growers Association that was funded by OMAFRA.

[226] VQA (Vinters' Quality Alliance of Ontario) is their quality standard or brand guaranteeing that the wine contains 100% Ontario grapes.

[227] She stated that there were 1.9 million visitors per year to the wine industry and that there was a concern of a negative impact of Applicant's proposed operation on the marketing image for Ontario wine and wineries.

[228] Next, the Board heard from Mr. Pennachetti, President of Cave Spring Cellars Ltd. and Inn on the Twenty Ltd., 3836 Main Street, Jordan, Ontario. The winery owns and operates 161 acres of vineyards in the Town of Lincoln. In total there are 220 full time and part time employees, half of the winery sales are to the Liquor Control Board of Ontario. He was asked if NASM was ever used on the winery property to which he responded it is never used in wineries, they would not consider it, and he is not aware of any wine producer who uses NASM.

[229] The Board heard from Ms. Zimmerman, the CEO of the Grape Growers of Ontario. The Grape Growers of Ontario is the organization that represents over 500 Grape Growers who produce grapes for processing, specifically for wine and ice wine.

[230] Ms. Zimmerman was asked if members of her organization used biosolids. She indicated that they are not normally used by her group for the simple reason that there is a 15-month interval period after application and no harvest.

[231] Additionally, she indicated that it is the soil profile that makes up the taste of the wine and grape growers are therefore very careful about any application of anything to the soil.

[232] Moreover she testified that the Grape Growers Association competes with wines from abroad, that other jurisdictions have certification processes for sustainability and biosolids are not allowed within those processes and are not certified as being sustainable.

[233] Mr. Zielnik, resides at 3381 Frost Road, about 500 m north of the Subject Lands. Mr. Zielnik has trucking experience and indicated that he is very concerned with regard to the width of the local road. The width of the paved surface of the road is only 18 feet, and the road shoulders are soft on either side and beyond that are the ditches. His concern is that in the winter time the road will look like it is 25 feet wide, when in fact the hard travelled portion is much less and there will be accidents and spillage.

[234] Mr. Varsakis lives at 3203 Frost Road, which abuts the Subject Lands. He stated that they have a swimming pool in their rear yard and that their daily lives would be turned upside down by the approval of the development proposal: with 80 trucks per day on their local road, their proximity to the lagoon, and the likelihood of odour emanating from the lagoons.

[235] The only witness called by Mr. Izzo was Mr. Leontis of 3295 Frost Road. Mr. Leontis was the owner of the Subject Lands from 1967 to 2001. At that time he had 54 acres and two chicken barns. In 1978 he applied for and got zoning approval for a processing plant which he received in 1979. Thereafter he built his plant and started processing 100 chickens per day: his last volume in 2001 was 35,000 to 45,000 chickens per day. In 2001 he sold the operation and 26 acres to Grand River Poultry. The 26 acres included the poultry processing plant and the lagoons. Subsequently the company needed additional space and he sold them an additional 6 or 7 acres.

REPLY

[236] In reply, Ms. Smith called Mr. Webb who when asked the question was he aware of any land applying NASM within three to four miles of the site indicated that his client (who did not testify) had told him that there were three sites within a 3 km radius.

[237] When cross-examined he confirmed that he had nothing in writing to substantiate same.

RASTORFER AND THE MUNICIPALITY OF HURON EAST (PL090690)

[238] The Applicant and its consultants place considerable weight on this 2010 decision. (See the Agricultural Impact Statement of Payne and Janiec – Exhibit 8.1, Tab 8, Page 120, 121).

[239] In Rastorfer, the Board dealt with a rezoning application for lands in Huron County whereby the ZBA proposed an additional permitted use in the General Agricultural Zone to permit the “storage of processed organic material with the existing buildings”. The facts outlined in the case are that the applicant proposed to store organic waste material in two former turkey barns and to apply this material to agricultural lands during the crop cycle. The material would be dropped off by truck usually one per day. The total storage was 5,831 sq m and the material weight was 6,425 tonnes, and the site would require a Certificate of Approval from the MOECC.

[240] The rezoning was opposed on the basis that the proposed use was not an agriculturally-related use but a waste transfer facility that was not consistent with the PPS, did not conform to the County of Huron Official Plan and the Municipality of Huron East Official Plan, and did not represent good planning. The Board in that case heard evidence that the County of Huron and the municipality of Huron East had both sent letters of recommendation to the MOECC with regard to the Certificate of Approval, subject to the rezoning. The evidence that each day a truck would deposit and load material on a concrete pad in front of one of the barns, the material would be pushed into each barn and deposited on the field from the rear of each barn, and that the material would be spread on farms within a three to four mile radius, the prime user of which would be the applicant.

[241] That panel of the Board had two contrasting land use planning opinions before it: the first focusing on the input (the storage of NASM), and the second focusing on the output (the application of the NASM to the land), similar to fertilizer or manure. The Board in that case found that the output analysis was more complete.

[242] In this matter, counsel for the Applicant submits that the Board's analysis in Rastorfer of the use being characterized by its output is noteworthy and she urged the Board to reach a similar conclusion in this matter.

[243] The responding parties in this case submit that the facts in Rastorfer are fundamentally different: the total capacity was 5,831 sq m versus 134,000 sq m; one truck per day versus 80 trucks per day; the material would be deposited on the field from the rear of each barn and would be spread on farms within a 3 or 4 mile radius owned by a single identified owner. There was no indication that the lands in question were prime agricultural lands, the material in Rastorfer did not include sewage biosolids, and the evidence was that the rezoning conformed to the upper and lower tier Official Plans.

[244] The Board finds the Rastorfer case to be of interest as it is apparently the only such previous case heard by the Board. However the Board is not bound by precedent and each case before the Board must be decided on its own particular facts.

COMMENTARY

[245] In this case, the matter before the Board juxtaposes two persuasive but totally divergent public policy positions.

[246] The Applicant submits that a NASM storage facility on the Subject Lands would be an effective, adaptive use of three remaining waste water lagoons from a former chicken processing plant similar to the adaptive reuse of a brownfield. The proposal would minimize waste that would otherwise be deposited in a landfill, would in effect recycle those "nutrients" to cash crop farmers, who would receive the NASM and its application to their lands at no cost, thereby enhancing their economic bottom line, and adding to the vitality of the agricultural sector. The Applicant submits that there is a need for this product and service that is presently unmet, and it is desirable that such a facility and service be supplied in order to meet that need.

[247] The Respondents submit that the Application does not constitute good land use planning as the Subject Lands are prime agricultural lands to be preserved for long term agricultural use, that the Subject Lands are located in the midst of the foremost tender fruit and wine region of Ontario, that the tender fruit and wineries do not use NASM and as such there is no need, nor is it desirable for such a facility to be located in the Town or in the Region as the Region already has a Biosolids Master Plan to look after all the Regions biosolids to the year 2031. The Respondents say that the Applicant conducted no review of other available lands for such a proposed use, and the proposed development for the Subject lands is but a matter of convenience for the Applicant and not good land use planning.

[248] In reaching its decision, the Board has reviewed the public policy documents which lead the Board to its final disposition in this matter.

PROVINCIAL POLICY STATEMENT 2014

[249] The issue before the Board is whether the development proposal is consistent with the PPS, and more particularly is the development proposal in this case an agriculture-related use?

[250] In this regard, the Board first observes that the PPS in Part III acknowledges the diversity of Ontario and that local context is important. It is within this lens, that the Board considers the matter of the consistency with the PPS.

[251] It is common ground that the Subject Lands are prime agricultural lands and that the PPS in s. 2.3.1 directs that prime agricultural lands shall be protected for long-term use in agriculture. That is the imperative direction of the PPS.

[252] Section 2.3.3.1, dealing with Permitted Uses in Ontario's Prime Agricultural Areas, specifically allows *inter alia* agriculture-related uses as an exception to s. 2.3.1 subject to certain criteria.

[253] The definition of agriculture-related use contains six criteria. These criteria are set out in the Draft Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas (see Exhibit 8.2, Tab 15, Page 986) and they are:

- i) farm related commercial and farm related industrial uses
- ii) compatible with and shall not hinder surrounding agricultural operations
- iii) directly related to farm operations in the area
- iv) supports agriculture
- v) provides direct products and/or services to farm operations as a primary activity
- vi) benefits from being in close proximity to farm operations.

[254] Section 2.2 of the Draft Guidelines at page 995 states that "agriculture-related uses are farm related commercial and industrial uses that add vitality and economic viability of prime agricultural areas because they service the local agricultural community." (emphasis added).

[255] Then the Draft Guidelines assess each of the criteria which include the following:

- i) "Farm related industrial operations": may include processing of local farm products such as abattoirs, feed mills, grain dryers, cold/dry storage facilities, fertilizer storage and distribution facilities, food processors, wineries, agricultural biomass pelletizers and cheese factories. (emphasis added).

- ii) “Compatible”: it is noted at page 996 that uses should be appropriate to available rural services i.e. services that do not require the level of road access, water and waste water servicing and utilities typically found in settlement areas, and that it is appropriate to qualify agricultural uses on a case by case basis.
- iii) “Directly related to farm operations in the area”: the Draft Guidelines state as follows: “Agriculture-related uses must relate directly to the farms in the area, providing services to a large extent by the local agricultural industry. For example a winery using grapes grown in the area could be an agriculture-related use.” (emphasis added)
- iv) “Supports Agriculture”: This criterion limits uses to those primarily focused on supporting and benefitting agriculture. For example, a grain elevator used by local farmers supports and benefits farms in the area.
- v) “Provides direct products and/or services”: “This criterion underscores the point that agriculture-related uses must service the local agricultural industry as a primary activity.” (emphasis added) And at page 998: “To assess whether a proposed use meets the test of providing direct products and/or services to farm operations as a primary activity, municipalities should require evidence demonstrating that the use would service the local agricultural industry as a primary business activity. As a best practice, municipalities may also require evidence that the use cannot be located in settlement areas or on rural lands.” (emphasis added)
- vi) “Benefits from being close proximity to farm operations: To meet this criterion, agriculture-related uses need to be located near the farm operations they serve. Farm operations benefit from this proximity. For example, proximity may reduce the need to transport large loads over long distances. Uses that do not benefit nearby farm operations but simply

wish to take advantage of lower land costs in prime agricultural areas would not be classified as agriculture-related uses.”

[256] The Board acknowledges that these are simply “draft” guidelines. However the Draft Guidelines do provide assistance to the Board with regard to guiding the interpretation of s. 2.3.1 and s. 2.3.3.1 of the PPS: that prime agricultural areas shall be protected for long-term use for agriculture, and while exceptions for agriculture-related uses may be made, that those exceptions must meet the criteria provided by the definition of agriculture-related use.

[257] In that regard the Board is not satisfied that the proposed use meets the criteria in the definition for a number of reasons. Firstly the Subject Lands are located on rural roads that are presently not suited to handle the anticipated truck traffic of 80 trucks per day, and that will necessitate upgrading at a cost range of \$500,000 to \$1.3 million.

[258] Secondly the Board is not satisfied that the development proposal is directly related to farm operations in the area. The PPS states that the local context is important, and the only *viva voce* evidence the Board heard with regard to local application of NASM was hearsay evidence provided in reply by Mr. Webb based on information provided orally to him by his client, which client did not testify. There was no other oral evidence provided to the Board with regard to any local NASM application or any application of NASM in the Town.

[259] The preponderance of evidence was to the contrary: that the agricultural areas that would be serviced by the development proposal would be elsewhere in Niagara Region, the Counties of Haldimand and Brant, and perhaps Hamilton.

[260] The land use planning opinions as to the geographic scope of “in the area” ranged dramatically. Mr. Webb adopted the position of Mr. Payne and Ms. Janiec which included agricultural areas in other municipalities within the Region of Niagara, within the Counties of Haldimond and Norfolk and within the municipality of Hamilton.

[261] Ms. Walton adopted the Rastorfer geographic scale of three to four miles from the Subject Lands and Mr. Robson adopted a former geographic township of being 8 km by 10 km.

[262] In examining the Draft Guidelines, it is clear that in a number of instances the Draft Guidelines refer to the “local” agricultural community. To the Board the “local” agricultural community is going to vary from case to case. However in these circumstances where the agricultural lands of the Town are made up of specialty crop lands and prime agricultural lands, and the evidence from the witnesses is that NASM is not allowed to be used (due to Canada Gap Program) or is not used due to other competitive forces such as imported wines, the Board finds that the proposal is not directly related to farm operations in the area. The Board finds that “in the area” will be determined on a case by case basis and that there are particular facts that are associated with the tender fruit industry and the prime agricultural lands within the Town that may be not be at issue in other cases.

[263] The Board finds, as the Draft Guidelines suggest, that as a best practice, municipalities may also require evidence that the use cannot be located in a settlement area or on rural lands.

[264] The evidence before the Board is that the Applicant considered no other lands other than the Subject Lands and that the Town and Region already have lands designated that would accommodate such a use.

[265] The Board also has examined Figure 1 from the Draft Guidelines at page 994 and notes that the heading of the figure is as follows: “Examples of Agricultural Uses Provided All PPS Criteria Are Met”. In the subject case, the Board finds that the criteria have not been met.

[266] Thus the Board finds that the development applications are not consistent with the PPS as they fail to satisfactorily address the criteria of the definition of an agriculture-related use.

[267] The Board has also considered s. 2 of the *Planning Act* and finds that while the recycling of biosolids in the manner proposed would advance the minimization of waste (s. 2(g)) in this case the Board is not satisfied with regard to the protection of agricultural resources of the Province and more specifically the prime agricultural lands that it would propose to occupy (s. 2(b)).

[268] Therefore the Board finds that the applications fail to satisfy s. 2 of *the Planning Act*.

[269] With regard to the NRPP, the issue before the Board is whether the development proposal conforms to the NRPP (and more specifically s. 12(6)) or is an amendment application required?

[270] Before addressing this issue, the Board feels compelled to digress and comment on the 2010 version of the NRPP. The Board fails to understand how the public could possibly read and understand the provisions of that document, when, for example the 2010 version includes s. 6.A.7 (Exhibit 8.3, Tab 1, page 1125) which would purport to allow small scale agriculturally related uses, only to find almost 200 pages of text later, that the policy was actually deleted by Amendment 6-2009, (see page 1321), but without any other notation in the NRPP.

[271] Part III of Amendment 6-2009 is another case in point. Part III contains the “Additional Policies” (in the box) with the preamble that the policies are not part of the NRPP and have no force and effect but that it is intended that when the PPS is amended then the policies will be incorporated as part of the NRPP without the need for further amendment.

[272] Over the course of four weeks of hearings and the evidence of four land use planners, it was only at the end of the hearing through the persistence of Ms. Smith that the Board was advised that the Part III policies (in the box) had not been adopted by Regional Council but rather deferred, whereupon Ms. Smith abandoned any argument with regard to the Part III policies.

[273] However it raises the question as to why a “policy” not adopted by Council was included in the 2010 NRPP, and how the public could be expected to have any understanding of the policy direction of the NRPP in that regard.

[274] Turning to the issue at hand, in consideration of the NRPP, the Board notes that the Applicant submits that s. 12.6 envisions the reasonable change in use of existing industrial facilities on lands outside Unique Agricultural Areas, and therefore no amendment to the NRPP is necessary, as this is the adaptive reuse of the remnant lagoons, on the Subject Lands which have been distressed by the former use, and the proposed use would meet the agricultural need in the area and was desirable.

[275] The Board does not find this to be a reasonable change in use of such existing facilities. The Board finds that the former use was a chicken processing plant, which was demolished. The Board finds that the lagoons were ancillary to the chicken processing plant, which use was the principal use.

[276] The Board finds that the development proposal is not needed in the area, as it will not primarily service the local area, but rather other areas and most likely other counties, as cash crops constitute only 8% of the gross farm receipt of all farms for the Region of Niagara, and the Region has a Biosolids Master Plan that deals with the planning horizon to 2031 whereby all the regional biosolids can be dealt with.

[277] The Board finds that it is not desirable to locate such a proposed facility in the area that it will not primarily service. Additionally, the Board finds that the agricultural and rural area objectives of the NRPP are to preserve Niagara’s agricultural lands. The use of the Subject Lands which are prime agricultural lands as a stand-alone NASM storage and distribution centre would negate the long term use of the Subject Lands for agricultural purposes. Thus the Board finds that the subject application does not meet the requirements of s. 12.6 of the NRPP and that an amendment application was necessary and no such NRPP Amendment application was filed (and appealed) as part of this hearing.

TOWN OFFICIAL PLAN

[278] The issue before the Board is whether the development application conforms to the Town Official Plan.

[279] Section 2.1.3(c) of the Official Plan would enable small scale commercial and industrial uses which are directly related to and serving the surrounding agricultural communities.

[280] First the Board finds that the development proposal would not primarily service the surrounding agricultural communities, which do not use NASM.

[281] The Board finds that the development proposal with up to 80 trucks per day, and requiring local road improvements ranging in cost to up to \$1.3 million, for a facility that would be large enough to service the waste water needs of a municipality of 2,400 people, fails the test of being a small scale industrial use.

[282] Further the Board finds that no alternative sites were ever considered by the Applicant contrary to s. 2.1.3 (c)(ii).

[283] The Board finds based on the facts of this case, that the development proposal should be encouraged to locate in a hamlet or urban area, that there is an availability of alternative sites in urban areas, that there is no need for nor is it desirable to have the proposed use in the agricultural community, and that the Subject Lands are prime agricultural lands which could be maintained and utilized in a greenhouse operation where the existing lagoons could be part of that operation.

[284] Thus the Board finds that the development application does not conform to the in force and of effect Official Plan.

GOOD LAND USE PLANNING

[285] The Board finds that the development application does not constitute good land use planning as it fails to have appropriate regard for the protection of agricultural resources of the Province, is inconsistent with the PPS as it is not an agriculture-related use, does not conform to the NRPP and required an amendment to be filed, (which was not), does not conform to the Town Official Plan in that there was no demonstrated need or desirability of the development proposal for the Subject Lands, that no alternative sites were considered, and that the Subject Lands ought to be preserved for long-term agricultural use

IS IT IN THE PUBLIC INTEREST?

[286] The Board finds that the public interest is best perceived through the lens of the public policy documents, which first and foremost would seek to preserve prime agricultural lands. This application if approved would for the foreseeable future, if not permanently, remove the Subject Lands from any possibility of agricultural use. The fact that the abutting 46 ha of agricultural lands were also acquired on the same date, by the same shareholders, raises questions as to their long-term use in agriculture if the Subject Lands were approved for a NASM storage facility. The Board does not find the development application in these circumstances to be in the public interest.

NEW OFFICAL PLAN

[287] The issue before the Board is whether the appeals against the impugned sections of the New OP ought to be upheld.

[288] With regard to the New OP and the two policies that are under appeal, the Board, finds that the two contested policies being s. 2.1.4.2 and s. 2.1.5.3 are consistent with the PPS seen through the local context, satisfy the Provincial interest to protect agricultural resources of the Province, and conform to the NRPP. In this regard the Board prefers the evidence of Ms. Walton, that in light of nature of agriculture within the

Town, that the prohibition with regard to certain industrial uses including the storage or processing of treated solid material that is left over from the municipal waste water treatment process is not a permitted use within the Specialty Agriculture and Prime Agriculture designations is appropriate.

[289] Additionally with regard to s. 2.1.5.3 concerning agriculture-related uses, similarly the Board finds in these circumstances the policies to be appropriate. Therefore the appeals against these two policies of the Official Plan are dismissed.

[290] Thus all appeals by the Applicant are wholly dismissed.

[291] Although costs were requested by MNECA, the Board finds that this is not an appropriate case for costs.

“Blair S. Taylor”

BLAIR S. TAYLOR
MEMBER

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Ontario Municipal Board

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