

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: January 25, 2023

CASE NO(S): OLT-22-002249
(Formerly PL200194)

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Carmel Pharms Corp.
Appellant:	10982377 Canada Inc.
Appellant:	2541005 Ontario Limited
Subject:	By-law No. 2020-046
Municipality:	Township of Oro-Medonte
OLT Case No.:	OLT-22-002249
Legacy Case No.:	PL200194
OLT Lead Case No.:	OLT-22-002249
Legacy Lead Case No.:	PL200194
OLT Case Name:	Carmel Pharms Corp. v. Oro-Medonte (Twp.)

Heard: April 4-29, 2022 by video hearing

APPEARANCES:

Parties

Counsel

Township of Oro-Medonte	C. J. Williams, A. Skinner
2541005 Ontario Limited	S. Nadler and W. Friedman
10982377 Canada Inc.	B. Vakili
Oro-Medonte Community Coalition Corp.	I. Flett

DECISION DELIVERED BY JATINDER BHULLAR AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] These appeals are against the passage of Zoning By-law Amendment No. 2020-046 (proposed “ZBL”) by the Township of Oro-Medonte (“Township”). The proposed ZBL would amend the Township’s comprehensive Zoning By-law No. 97-95 to regulate Cannabis production and processing facilities in the Township.

[2] There are two remaining appeals. The third original Appellant, Carmel Pharms has previously settled the matter and their appeal having been processed separately by the Tribunal. The two remaining appeals were filed by:

- a) 2541005 Ontario Limited (“254”), which owns property located at 918 Line 3 South at which it has undertaken the construction of facilities for the cultivation of industrial hemp. Its property lies in prime agricultural lands and is zoned “Agricultural/Rural” under the Zoning By-law and;
- b) 10982377 Canada Inc. (“Organibis”/ “109”), which own property located at 250 Ridge Road West at which it proposes the development of greenhouses and facilities for Cannabis production and processing;

PRELIMINARY MATTERS

[3] Carmel Pharms having settled with the Township and the Tribunal having issued an oral decision in the matter had the following changes that allowed for the processing of the remaining appeals in this hearing of the merits:

- a. Carmel Pharms was not party to the hearing of the remaining appeals and did not participate, call evidence or make submissions;
- b. The Procedural Order (“PO”) was updated with the following changes;
 - Removal of issues list identified by Carmel Pharms from the Issues List in the issues list was revised to eliminate the issues identified by Carmel Pharms in the PO;

- Updated order of evidence with Carmel Pharms being removed from the list of parties presenting evidence;
 - Updated witness list with Carmel Pharms witnesses removed from the record;
 - Updated hearing plan with Carmel Pharms removed from the hearing plan
- c. In all other respects the PO guided the merits hearing for the remaining two Applicant/Appellant(s).

WITNESSES

[4] The Tribunal solemnly affirmed or swore witnesses per their selected preference.

[5] All witnesses were qualified on consent based on a review of their curriculum vitae or other background information, addressing of concerns raised and reviewed from the parties and a review and confirmation of their acknowledgement of their expert's duty obligations.

[6] 254 presented the following witnesses:

- a. Sean Colville to provide expert opinion evidence in the area of agrology and agricultural practices and the review of agricultural policies
- b. Paul Gri of Medical Saints Ltd. as a lay witness to provide evidence as a tenant of lands
- c. Robert Walters to provide expert opinion evidence in the area of land use planning

[7] Organibis presented the following witnesses:

- a. Reza Dadashi as a lay witness and owner of Organibis
- b. T.J. Cieciora to provide expert opinion evidence in the area of land use planning

[8] The Township brought forth the following witnesses:

- a. Derek Witlib to provide expert opinion evidence in the area of land use planning

[9] Oro-Medonte Community Coalition Corp. ("OMCCC") presented the following:

- a. Allan Ramsay to provide expert opinion evidence in the area of land use planning

EVIDENCE

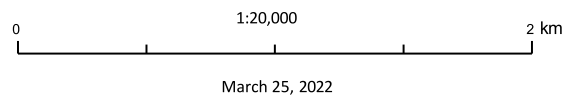
SITE CONTEXT

[10] The 254 and Organibis sites are geographically located in different parts of the Township. The surrounding context is also different.

[11] 254 lands are adjacent to Shanty Bay settlement area with various types and sizes of dwellings as well as facilities like trails and a school. This is illustrated in Figure 1 below:



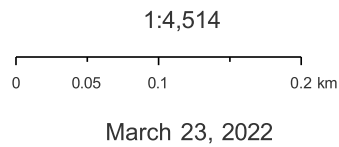
OLT Case No. PL200194
 2541005 Ontario Limited
 918 Line 3 South
 Ortho Imagery: County of Simcoe 2018



[12] As shown in Figure 2 below, a pictorial representation (Exhibit 16) shows that Organibis lands are along Ridge Road and near by to rural farm like setting with some residential dwelling uses.



OLT Case No. PL200194
10982377 Canada Inc.
250 Ridge Road West
Ortho Imagery: County of Simcoe 2018



EVIDENCE FROM LAY WITNESSES

[13] Paul Gri was called as a lay witness by 254. Mr. Gri provided a written witness statement which is part of Exhibit 5, Tab 24.

[14] Mr. Gri informed that Medical Saints Ltd. Operates the lands leased from 254 to cultivate industrial hemp. He stated that this operation runs on approximately 250 acres of agricultural lands and has been ongoing since about June 2020 in actively growing industrial hemp crop. He added that in prior years the lands were used for crops like corn and soyabeans.

[15] Mr. Gri stated that in order to cultivate industrial hemp they have secured appropriate licencing permissions from Health Canada. He added that this licence allows for cultivation and processing of the crop. Mr. Gri stated that the processing is limited to destemming the flowers from the plant and drying them in electrical dryers for downstream processors. This is used for example to produce products like CBD (Cannabidiol). Mr. Gri stated that they do not have any retail operation on the site of 254 property. He stated that a Manager resides on the residential dwelling situated on the property.

[16] Mr. Gri described the farm operation has growing season during spring and summer with the plants flowering around end of August. He stated that this is the time when there is potential smell that may be found objectionable by some people is most common.

[17] Mr. Gri explained that for the protection of the crop as well as specialized expensive equipment, the operation has erected a six foot fence encircling the property with three strings of barbed wire on top. He stated that such fencing is not required for industrial hemp cultivation but is required under terms of issued licences for the growing of Cannabis. Mr. Gri stated that he was not aware of any Township by-law regarding such fence erection or control of the same once erected.

[18] Mr. Gri stated that for all intents and purposes, industrial hemp has typical phases encountered in growing farm crops. He elaborated that these were for preparation of the land including appropriate application of manure or other nutrients, planting of the crop per the licenced specification in choosing the type of Cannabis variant with lower level of THC common with industrial hemp, irrigation, crop upkeep, harvesting, preparation for off-site shipment in plastic drums and processing of residual plants to nourish the lands as appropriate through spreading of unused portions of the plants like the leaves, stems and roots.

[19] Mr. Gri during cross-examination stated that the barn is used to process and package the crop for shipment to downstream commercial customers. He stated that barn could be further expanded, as it would allow for compressing harvest times.

[20] Mr. Gri also confirmed during cross-examination that rented electrical generators are brought on site to process the drying of harvested flowers before shipment. He stated that the existing public electrical utilities cannot provide the desired electrical needs of the dryers.

[21] Reza Dadashi was called as a lay witness by Organibis. Mr. Dadashi provided historical information of his process to acquire the subject property for cultivation of Cannabis having assessed possible 20 candidate properties and also having talked with the Township that the growing of Cannabis was permitted. Mr. Dadashi continued developing plans to originally farm Cannabis in a greenhouse but stated that as the time elapsed as well as the marketplace changed, he now proposes to grow Cannabis under licence from Health Canada but outdoors. He stated that while his original discussions with the Township proceeded to the finalization of a possible site plan control application, he was not exempted from the Township's ZBA to allow growing Cannabis outdoors, hence his appeal of the ZBA.

[22] Mr. Dadashi particularly spoke about the 150 metre ("m") setback requirements in the ZBA and stated that this virtually renders any growing of Cannabis uneconomic if not virtually impossible for his farming lands.

EVIDENCE OF SEAN COLVILLE: Agrology and agricultural practices and the review of agricultural policies (Exhibit 5, Tab 21)

[23] Mr. Colville adopted the facts in Mr. Walters witness statement regarding the description of 254 property as well as the Official Plan and Zoning By-law designations that apply to the respective property. In particular that the lands are designated Agricultural which for the County and the Township Official Plans translate into a recognition of the 254 lands as Prime Agricultural Areas (“PAA”).

[24] Mr. Colville further reviewed the quality of the 254 lands and stated that these are predominantly classified per Canada Land Inventory (CLI) classification as Class 2, with some parts as Class 1 and others as Class 3. He added that these are some smaller coverage of the 254 lands with small woodlots and several hedgerows, but predominantly the lands have been cleared for agricultural crop production.

[25] Mr. Colville emphasized that hemp is a field crop grown outside versus any structure like greenhouses. He stated that larger parcels of crop coverage are needed to make hemp growing viable. He referred to the OMAFRA Factsheet Growing Hemp in Ontario (Agdex # 153/20 from August 2020) which emphasizes the necessity for large crop areas when growing hemp as it states that licenses for industrial hemp production were not issued on lands less than 10 acres.

[26] Mr. Colville informed the Tribunal that hemp is differentiated from commonly known Cannabis in that hemp has (Tetrahydrocannabinol) “THC” of less than 0.5% whereas psychotropic Cannabis can have around 15% THC. Mr. Colville stated that industrial hemp is used in a variety of commercial processing to create consumer products like rope, twine, paper, etc., as well as food products like oils, etc.

[27] Mr. Colville reviewed the policies in PPS 2020 which specifically related to various aspects of uses in PAAs, permitted uses and activities in PAAs while also referring to the definitions of “Agricultural uses”; and “Agricultural-related uses”. Mr. Coville’s opinions regarding these keys are as follows (Exhibit 5, Tab 21):

48. Section 2.3 of the PPS provides the provinces policies regarding agriculture. The policies relevant to this hearing include the following:

2.3.1 Prime agricultural areas shall be protected for long-term use for agriculture.

Prime agricultural areas are areas where prime agricultural lands predominate. Specialty crop areas shall be given the highest priority for protection, followed by Canada Land Inventory Class 1, 2, and 3 lands, and any associated Class 4 through 7 lands within the prime agricultural area, in this order of priority.

2.3.2 Planning authorities shall designate prime agricultural areas and specialty crop areas in accordance with guidelines developed by the Province, as amended from time to time.

49. As previously noted, the Subject Lands are located within an area designated by the County and the Township as Agricultural and are part of a larger prime agricultural area.

50. The permitted uses in prime agricultural areas are discussed in Section 2.3.3 of the PPS and are as follows.

2331 In prime agricultural areas, permitted uses and activities are: agricultural uses,
agriculture-related uses and on-farm diversified uses.

Proposed agriculture-related uses and on-farm diversified uses shall be compatible with, and shall not hinder, surrounding agricultural operations. Criteria for these uses may be based on guidelines developed by the Province or municipal approaches, as set out in municipal planning documents, which achieve the same objectives.

2332 In prime agricultural areas, all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with provincial standards.(Bold added for emphasis).

51. The PPS defines an agricultural uses and agriculture-related uses as follows:

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.

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.

52. As per the PPS policies and definitions, agricultural uses and agriculture-related uses are permitted in the Agricultural designation. This includes the cultivation and processing of industrial hemp which should be promoted and protected in reference to PPS Policy 2.3.3.2.

[28] Mr. Colville also reviewed the policies related to “Agricultural System”; and “Agri-food network” in terms of the policies in the Growth Plan. Mr. Colville reviewed and opined as follows:

54. Section 4.2.6 of the Growth Plan describes the Agricultural System identified by the Province for the Greater Golden Horseshoe (GGH). The County of Simcoe is located in the GGH.

55. The PPS defines an agricultural system and the agri-food network as follows:

Agricultural System: A system comprised of a group of inter-connected elements that collectively create a viable, thriving agricultural sector. It has two components:

- a) An agricultural land base comprised of prime agricultural areas, including specialty crop areas, and rural lands that together create a continuous productive land base for agriculture; and
 b) An agri-food network which includes infrastructure, services, and assets important to the viability of the agri-food sector.

Agri-food network: Within the agricultural system, a network that includes elements important to the viability of the agri-food sector such as regional infrastructure and transportation networks; on-farm buildings and infrastructure; agricultural services, farm markets, distributors, and primary processing; and vibrant, agriculture-supportive communities.

56. The Agricultural Systems Portal shows that the Subject Lands are located within the agricultural land base.
57. As stated in the Agricultural Systems definition, the agricultural land base is comprised only of prime agricultural areas and rural lands. Industrial lands are not part of the agricultural land base. Also, the industrial hemp farm clearly will form part of the Township's agri-food network.
58. As per Section 4.2.6.7 of the Growth Plan,
Municipalities are encouraged to implement regional agri-food strategies and other approaches to sustain and enhance the Agricultural System and the long-term economic prosperity and viability of the agri-food

sector, including the maintenance and improvement of the agri-food network by:

a) providing opportunities to support access to healthy, local, and affordable food, urban and near-urban agriculture, food system planning and promoting the sustainability of agricultural, agri-food, and agri-product businesses while protecting agricultural resources and minimizing land use conflicts.

59. The proposed zoning by-law restricts a permitted agricultural use within the agricultural land base. It does not sustain and enhance the Agricultural System and the long-term economic prosperity and viability of the agri-food sector.

[29] Mr. Colville in reviewing the “Guidelines on Permitted Uses in Ontario’s Prime Agricultural Areas” opined that the ZBL does not recognize industrial hemp production and primary processing of the crop as a permitted use and thus conflicts with such direction.

[30] Mr. Colville also referred to OMAFRA’s Factsheet Growing Hemp in Ontario Agdex#: 153/20 (August 2020) noted that the method described in the factsheet form part of normal farm practices in that there is bed preparation, fertilization, seeding; disease, weed and pest control; harvesting, drying, etc. He also opined that the 254 lands are also well suited as per type of soil and their properties discussed by OMAFRA in the same document.

[31] Mr. Colville reviewed the appropriate parts of the “*The Farming and Food Production Protection Act* (“FFPPA”) and opined that while Ontario Land Tribunal does not have direct jurisdiction in consideration of matters under this Act; the FFPPA suitably informs the context of normal farm practices that can raise complaints from agricultural operations about odour, noise, dust, flies, smoke, light and vibration disturbances and that should such a disturbance be caused by a normal farm practice, the farmers are protected.

[32] In conclusion Mr. Colville addressed the pertinent Issues List items 3, 7 and 9 from the Issues List:

Item No. 3 - Does the By-law conform to, or conflict with, the Ontario Ministry of

Agriculture, Food and Rural Affairs' ("OMAFRA") classification of the growing of Cannabis crops as an agricultural use, and/or with the Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas issued by OMAFRA?

Item No. 7 - Considering the provisions of the Farming and Food Production Protection Act, 1998, S.O. 1998, C.1, does the By-law restrict normal farm practices and does it constitute good planning?

Item No. 9 - Is the By-law, which prohibits the growing of industrial hemp crops in Agricultural zoned lands, good planning based on proper planning rationale? Should the Bylaw have made any distinction or allowance for the growing and processing of industrial hemp crops in Agricultural zoned lands? Should the By-law have included site specific exemptions for existing and proposed industrial hemp growing and processing activities? Are the minimum setback standards from "Sensitive Land Uses" appropriate and reasonable as to industrial hemp crops?

[33] Mr. Colville while adopting land use planning opinions provided by Mr. Walters added that the ZBL from a farming perspective conflicts with the policies that encourage PAA protection for long-term use for agriculture; it does not follow guidelines that further identify hemp as a crop which requires large acreage while grown outdoors following normal farm practices; the identification of Industrial Zones (Rural Industrial and Economic Development) for hemp growing is ill suited as such zones in the Township do not support the size and quality of farming lands like the PAA of 254 lands which have already proven to be growing hemp under the Zoning By-law permissions prior to the ZBL.

[34] Mr. Colville also opined that any disturbances that arise from normal farm practices are permissive and there is a recourse under the FFPPA for consideration of conflicts. Mr. Colville concluded that the 254 lands are appropriate for hemp growing; these lands if subjected to required 150 m setbacks from an array of sensitive uses established in ZBL would lead to near impossibility to have a viable sized farming operation as of right anywhere in the Township. He added that ZBL virtually prohibits any hemp or Cannabis growing in PAAs which are most suitable cultivation of such crops in the Township.

[35] Mr. Colville's evidence was tested by other parties and stayed unchanged in this process. There was no competitive expert opinion evidence called by any of the other parties in the area of Mr. Colville's qualification by the Tribunal.

AGREED FACTS

[36] The witnesses presenting expert opinion evidence in the area of land use planning signed-off on agreed facts to their approach in planning as stated in Exhibit 4. These experts agreed that while the relevant policies in various planning statutes, policy documents, plans and By-laws have been flagged for the possible presentation of evidence, each expert may or may not address any or all of these and otherwise have differing opinions and interpretations regarding the remaining. Some key aspects where all expert witnesses agreed upon are noted as follows:

1. All planners agree that legislation, policies and regulations or sections thereof that are not listed below are either not relevant or applicable to the matter before the Tribunal, or that the matter conforms and complies with or is consistent with the legislation, policies and regulations, as applicable.

5. All planners agree that while the matter before the Tribunal is a Township-wide by-law and that portions of the Township of Oro-Medonte are within the area to which the Lake Simcoe Protection Plan (the "LSPP") applies, no detailed evidence will be given with respect to the LSPP since the policies of LSPP are most appropriately addressed at a more site-specific, detailed stage of development.

[37] The following matters were not before other than in the context so noted:

- a. Any matters of civil litigation, by-law violations, contractual discussions between the Township and one or more of the parties;
- b. Health Canada regulations for production and processing of Cannabis and industrial hemp other than for general information; and,
- c. Farming and Food Production Protection Act, 1998, S.O. 1998, C.1 FFPPA to inform regarding normal farm practices as referenced in PPS

2020 policies but not in Tribunal's mandate to directly adjudicate upon.

PLANNING EVIDENCE

PLANNING ACT

[38] Mr. Walters (see also Exhibit 5, Tabs 22-23) reviewed and provided his opinion evidence with request to the s. 2 of the Act, provincial interest. Mr. Walters opined that the ZBL fails to meet the requirements per s. 2(b) relating to the protection of agriculture and the policies that sequentially follow in policy 2.3.3.2 of the PPS. In reviewing s. 2(h) of the Act, Mr. Walters opined that the Act referring to the orderly development of safe and healthy communities includes agriculture as a land use. Mr. Walters similarly reviewed s. 2(l) and opined that the Township's financial well-being include the contribution of agriculture, in which the ZBL is not permitted. Mr. Walters opined that as required per s. 2(n) the public interest is not served by the ZBL with respect to agricultural land uses. Mr. Walters having adopted the evidence given by Mr. Colville in his area of expertise stated that Mr. Colville has shown, and he concurs that no health or safety issues have been established with respect to the agricultural carried out following normal farm practices. As such any prohibitions in the ZBL are unjustified.

[39] Mr. Cieciora opined that the ZBL does not have due regard for Provincial Interest. He specifically identified subsections 2 b), 2k), 2 l) and 2 n), which he opined require the protection of agricultural resources i.e., Cannabis or industrial hemp are included. Additionally, the possible employment opportunities related to growing such crops are lost for the Township and possible economic benefits are jeopardized. Mr. Cieciora added that in an Agricultural area like Oro-Medonte, such a ZBL does not resolve any planning conflicts but actually introduces the same.

[40] Mr. Witlib opined that the ZBL has regard for section 2 of the Act. He flagged subsections (b, h, k, l, o and p). He stated that the effect of commercial scale growing of Cannabis in potential nuisance impacts in the form of fugitive odour and light emissions on surrounding sensitive land uses is well known. He referred to the sensitive land uses

as set in the ZBL as residential building, places of worship building, or lands containing or zoned to permit a public or private school, a day nursery, a public park, a public trail or a community centre. He opined that the ZBL directs Cannabis production and processing facilities to appropriate zones where the potential for incompatibility with other land uses is minimized. Mr. Witlib also stated that the Township has received resident complaints regarding nuisances with existing operations in the past.

PPS 2020

[41] Mr. Walters referred to the factual and expert opinion evidence provided by Mr. Colville and stated that Mr. Colville confirms the subject lands to be prime agricultural lands and further as follows:

The effect of By-law 2020-046 in relation to the subject site, is to prohibit the production of Cannabis including industrial hemp as a permitted use on the site which is classified as part of a prime agricultural area as defined by the PPS. The By-law only permits this use on lands zoned Rural Industrial (IR) Zone and Economic Development (ED) Zone within the County with the addition of a 150 m setback from a Sensitive Land Use and such zones are designed to apply to non-prime agricultural areas.

In accordance with the PPS policies cited in Section 5.2 of this Analysis:

The subject site is prime agricultural land as defined in Section 6 of the PPS;
The site is a part of a prime agricultural area by definition in Section 6 of the PPS;
Agricultural uses are a permitted use in prime agricultural areas under Policy 2.3.3.1 of the PPS;

From the above policies, the PPS permits the production of Cannabis including industrial hemp on the subject site and requires that the subject site, as part of a prime agricultural area, be promoted and protected for the full range of agricultural uses including the production of Cannabis. Therefore, By-law 2020-046 is entirely inconsistent with Policies 2.3.3.1 and 2.3.3.2 of the PPS as it prohibits the production of Cannabis in a prime agricultural area.

Policy 2.3.3.2 of the PPS is an important policy that is referred to and supported by the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas as cited in Section 5.7 and discussed in Section 7.7 of this Analysis.

Policy 2.3.1 of the PPS requires that prime agricultural areas shall be protected for long-term use for agriculture. This policy supports Policy 1.1.1a) of the PPS that provides that healthy, liveable and safe communities are sustained by promoting efficient land use patterns which sustain the financial well-being of

the Province and municipalities over the long term

[42] Mr. Walters concluded that ZBL is inconsistent with Policies 2.3.1 and 1.1.1a) of the PPS as it prohibits the production of Cannabis including industrial hemp on the subject site over the long term. Mr. Walters further added to his conclusions with respect to the identified policies in the Issues List and opined that in the context of prime agricultural areas as well as rural areas, the diversification of the economic base needs to have an integrated consideration of agriculture and agricultural systems which is negatively impacted by the ZBL 2020-46.

[43] Mr. Cieciora opined that the ZBL is not consistent with PPS 2020 as it is required to be per statutory requirement under subsection 3(5)(a) of the *Planning Act*. He opined that economic base and opportunities are not diversified (policy 1.1.4.1 f) and 2.3) by restricting such crop growing in A/RU lands.

[44] Mr. Cieciora also listed most of the policy references made by Mr. Walters and provided strongly asserted conclusion regarding the ZBL inconsistency with PPS 2020 policies 2.3.1, 2.3.3.1, 2.3.3.2 which direct the growing of crops and promotion of the same when such are guided following normal farm practices. He also referred to the aspect that such should also be considered in the context of provincial standards. Mr. Cieciora referred to the FFPPA in terms of how it informs the questions about normal farm practices while it is not determinative in the appeals of the ZBL.

[45] Mr. Witlib provided a contextual basis of his analysis as follows:

I have reviewed the PPS as a whole as it relates to By-law 2020-046. It is my opinion that the following sections of the PPS are particularly applicable in the context of considering the By-law: Part I (which identifies municipal official plans as the most important vehicle for implementation of the PPS), Part IV, Policies 1.0, 1.1.1, 1.3.1, 1.3.2.2, 1.1.4 and 1.1.4.1. My review also considers Sections 1.1.5, 1.7.1. 2.3 and the applicable definitions contained in 6.0.

[46] Mr. Witlib opined in review of permitted Cannabis production and processing in industrial zones stated the following with respect to Part IV policies of PPS 2020:

- Contributes to strong, livable and healthy communities that promote and enhance human health and social well-being;
- Provides for the production of Cannabis while minimizing the environmental and social impacts that could result from nuisance impacts and their resulting inhospitable living environment;
- Maintains the inextricable link between strong communities, a clean and healthy environment and a strong economy;
- Ensures that long-term prosperity, human and environmental health and social well-being should take precedence over short-term considerations.

[47] In further elaboration of nuisance impacts, Mr. Witlib stated that the Township has received complaints based on such issues already. When questioned what mechanisms exist for handling such complaints, he explained that the process is to contact Health Canada which licences the production and processing of Cannabis including industrial hemp. He stated that the responsiveness of Health Canada is severely lacking and versus possibility of a Township authorized personnel who may be so empowered to enforce conditions of site plans, etc.

[48] Mr. Witlib opined that the permitted Cannabis production and processing in the ZBL will provide for the aspects of diversification of the economic base and employment opportunities.

[49] In reviewing sub-sections 2.3.3.1 and 2.3.3.2, Mr. Witlib opined that nothing in the ZBL would prohibit the consideration of a Cannabis production and processing facility in a prime agricultural area by way of an application for a zoning by-law amendment. The consideration of such an application would include regard for the site-specific context in relation to the potential for mitigation of conflicts with any sensitive land uses located in proximity to the subject lands to such an application.

THE GROWTH PLAN

[50] Mr. Walters opined those policies 4.2.6.7 a) and 4.2.6.8 encourages approaches to sustain and enhance Agricultural Systems with the 254 lands being classified as a PAA. He added that conversely the Growth Plan does not include the IR and ED type lands as of agricultural systems or lands for such attention.

[51] Mr. Walters opined that per policy 4.2.6.3 further asks for consideration of any adverse impacts to be considered in favour of possible mitigation or elimination of negative impacts on Agricultural System.

[52] Mr. Cieciora opined that contrary to the Act subsection 3(5)(b), the ZBA does not conform with the Growth Plan.

[53] In reference to section 1.2 of the Growth Plan:

Section 1.2 Vision for the Greater Golden Horseshoe

“Natural areas and agricultural lands will provide a significant contribution to the region’s resilience and our ability to adapt to a changing climate. Unique and high- quality agricultural lands will be protected for the provision of healthy, local food for future generations. Farming will be productive, diverse, and sustainable.”

[54] Mr. Cieciora opined that exclusion of Cannabis from A/RU zone as well as singling out Cannabis negatively reduces diversity and productivity of the Township farmland.

[55] Mr. Cieciora reviewed policy 2.2.9.1 of the Growth Plan:

Policy 2.2.9.1. Municipalities are encouraged to plan for a variety of cultural and economic opportunities within rural settlements to serve the needs of rural residents and area businesses.

[56] Mr. Cieciora opined that Cannabis farming can add to economic activities and possible businesses.

[57] Mr. Cieciora referring to policy 4.2.6.1 stated that the subject property of Organibis is identified as being Prime Agricultural Land reflected also in the County and Township plans as an equivalent designation of Agricultural.

[58] Mr. Cieciora reviewed policy 4.2.6.2 in detail:

Policy 4.2.6.2 Prime agricultural areas, including specialty crop areas, will be designated in accordance with mapping identified by the Province and these areas will be protected for long-term use for agriculture

[59] He opined that consistently with PPS 2020 and in conformity with the Growth Plan, this policy permits for the growing of crops including nursery, biomass, and horticultural crops as well as the establishment of on-farm associated buildings and structures. Mr. Cieciora concluded that, however, by prohibiting Cannabis crops and their associated farm practices the ZBL does not protect long-term agriculture use and thus it further adds to the ZBL non-conformity with the Growth Plan.

[60] Mr. Witlib provided the context of his assessment that the ZBL conforms with the Growth Plan and stated that he carried out the following:

I have reviewed the policies of the Growth Plan as a whole in the context of By-law 2020-046, as directed by Growth Plan section 1.2.3. It is my opinion that the following sections of the Growth Plan are particularly applicable in the context of considering the By-law: Section 2.1, 2.2.1, 2.2.5 and 2.2.9. My review also considers Sections 4, 4.2.6, 6.1 and the applicable definitions contained in 7.0.

[61] Mr. Witlib opined that by directing Cannabis production and processing facilities to the Township's industrial zones the ZBL would:

- Efficiently utilize the Township's employment lands and diversify the variety of employment uses in such areas;
- Contribute to retaining and attracting investment and aligning land use planning and economic development in Oro-Medonte, by protecting quality of life through minimizing potential nuisance impacts from Cannabis production and processing facilities; and

- Contribute to making Oro-Medonte a more attractive place for businesses to invest by providing a high quality of life for attracting knowledge-based talent to both work and live in the community.

COUNTY OF SIMCOE OFFICIAL PLAN

[62] Mr. Walters stated that the 254 lands are designated as Agricultural per the COP. He added that based on the policies and definition of agricultural uses in the COP, the production of Cannabis including the outdoor growing of hemp is permitted in the Agricultural designation as agricultural use. He stated that the COP further mirrors the policies in the PPS 2020. As a result, the ZBL having been previously determined to be inconsistent with the PPS 2020 continues to be inconsistent with the COP.

[63] Mr. Cieciora reviewed the COP with particular reference to the following policies:

- Policy 3.6.2 To enable the agricultural industry to function effectively in prime agricultural areas by minimizing conflicting and competing uses while accommodating uses and facilities which support the agricultural economy in accordance with the Planning Act and the Farm Practices Protection Act and its successors
- Policy 3.6.5 Prime agricultural areas are identified by the Agricultural designation on Schedule 5.1 and shall be protected for long-term use for agriculture. All types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with provincial standards.
- Policy 3.6.6 Permitted uses within the Agricultural designation are agricultural uses, agriculture-related uses (PPS 2014), processing of agricultural products, on-farm diversified uses, natural heritage conservation and forestry, mineral aggregate operations subject to Section 4.4, and agricultural produce sales outlets generally marketing production from the local area.
- Policy 3.7.1 To recognize, preserve and protect the rural character and promote long-term diversity and viability of rural economic activities.

[64] Mr. Cieciora re-iterated that the Agricultural definition of the COP provides

consistency and conformity with the PPS 2020 as well as the Growth Plan. He stated that as was determined in consideration of the ZBA under PPS 2020 and the Growth Plan, the ZBA continues to fail conformity with the COP with restrictions or prohibition imposed on cultivation of a crop, i.e., Cannabis growing in A/RU lands within the Township.

[65] Mr. Witlib opined that based on the analysis and his opinions regarding PPS 2020 and the Growth Plan, he is of the opinion that By-law No. 2020-046 conforms to the COP.

TOWNSHIP OF ORO-MEDONTE OFFICIAL PLAN (“TOP”)

[66] Mr. Walters opined that in consideration of Mr. Colville’s evidence, growing of hemp is a Specialized Agricultural Use within the meaning of the definition in the TOP.

[67] Mr. Walters opined that the ZBL prohibits the production of Cannabis including the outdoor growing of hemp on lands in PAA and instead permits on land designated IR and ED. He added that it reduces the type and ranges of agricultural uses in lands most suitable versus other areas, i.e., it does not support Agricultural Strategic Objective A2.4.2 a) of the TOP.

[68] Mr. Walters opined that the prohibition of the sought use on 254 lands as allowed for PAA also runs counter to establishing farm-related uses to improve the livelihood of area farmers in accordance with Agriculture Strategic Objective A2.4.2c).

[69] Mr. Walters opined that the ZBL does not support Economic Development Strategic Objective A2.7.2 b) of the TOP as it does not allow for a range of goods to the public. Since hemp is grown outdoors the ZBL essentially prohibits by restricting it to IR and ED zones where the acreage required to grow hemp efficiently is not available in the Township as demonstrated by Mr. Colville.

[70] Mr. Cieciora opined that the ZBL does not conform to the policies and objectives

applicable to the “Agricultural” land use designation. Mr. Cieciora reviewed the following goals and policies in the TOP:

Policy 2.7.2

b) To facilitate opportunities to provide a range of goods and services to the public by ensuring that the land use planning framework is supportive of development, as appropriate.

Objectives within the Agricultural land use designation in policy C1.1

a) To maintain and preserve the agricultural resource base of the Township.

b) To protect land suitable for agricultural production from development and land uses unrelated to agriculture.

c) To promote the agricultural industry and associated activities and enhance their capacity to contribute to the economy of the Township.

d) To preserve and promote the agricultural character of the Township and the maintenance of the open countryside

[71] Mr. Cieciora opined that Cannabis production and processing facility, indoors or outdoors fits within these policies and is permitted. He added that the ZBL does not conform as it does not permit what is allowed in the TOP and rather the Township planning suggests that zoning by-law amendment route be taken by any farmer who wants to grow Cannabis in spite of necessary and required licencing approvals and being allowed in all the higher planning policies and objectives in the TOP, the COP, the Growth Plan and PPS 2020.

[72] Mr. Witlib reviewed the TOP and concluded that the ZBL conforms with it. He identified that his opinion is based on key planning policies of the TOP. He identified these as being in sections A1, A2, C1, C2 and C8.

[73] With respect to the community vision guidance in section A1, Mr. Witlib opined

that the ZBL will support aspects of excellent quality of life while protecting agricultural areas albeit for Cannabis, this will be through site specific zoning by-law amendment requests in agricultural areas (A/RU). Mr. Witlib asserted that minimum setback from sensitive land uses is an added measure to minimize potential land use conflicts.

[74] In further consideration, Mr. Witlib opined that the Cannabis production and processing achieves conformance with policies of economic development while retaining and enhancing rural character attributes.

[75] Mr. Witlib provided repeated emphasis in considering other policies of the TOP by stating that “nothing ... would prohibit the consideration of a Cannabis production and processing facility in the Rural designation by way of a site-specific application for a zoning by-law amendment”.

ZONING BY-LAW 97-95 CONTEXT

[76] Mr. Walters stated that ZBL amends the definitions of Agricultural Use and Specialized Agricultural Use to exclude Cannabis production and processing. He opined that as such it prohibits the outdoor growing of Cannabis and thus prohibits this use in the A/RU Zone. He opined that based on an analysis of Mr. Colville it was discovered that many other types of agricultural uses and intensive agricultural uses permitted in the A/RU Zone can generate obnoxious odours including the mushroom farms, livestock operations including liquid manure applications as well as various pesticide or other chemical treatments that create nuisances. Mr. Walters concluded that the ZBL simply picks on a crop like Cannabis to remove is as an agricultural use in the context of claimed nuisances.

[77] Mr. Cieciura opined the following regarding ZBL No. 97-95 which was in effect prior to the proposed amendment under ZBL:

9.12 Zoning By-law 97-95 did not contain a specific use definition that captured Cannabis production and processing. In the absence of a definition, individuals that were cultivating Cannabis were zoned

Agricultural/Rural (“A/RU”) and considered an Agricultural Use, Specialized, which definition was as follows:

“AGRICULTURAL USE, SPECIALIZED - Means lands where specialty crops such as tender fruits (peaches, cherries, plums), grapes, other fruit crops, ginseng, vegetable crops, greenhouse crops and crops from agriculturally developed organic soil lands are predominantly grown, usually resulting from:

- a) soils that have suitability to produce specialty crops, or lands that are subject to special climatic conditions, or a combination of both; and/or
- b) a combination of farmers skilled in the production of specialty crops, and of capital investment in related facilities to produce, store or process specialty crops.”

9.12.1 Therefore, within the “A/RU” zone the proposed Cannabis Greenhouse Facility was considered an *Agricultural Use, Specialized*, which was a permitted use in the “A/RU” zone.

[78] Mr. Cieciora further opines that the ZBL even in newly identified areas where Cannabis cultivation and processing is allowed; Rural Industrial (“IR”) and Economic Development (“ED”); stipulates a minimum setback of 150 m from “sensitive land uses” where a new definition for this purpose has also been established.

OTHER EVIDENCE

[79] Mr. Ramsay provided evidence with respect to three issues. The first issue is identified as follows jointly in consideration of the two appellants:

Issue 3 (254 ONT)/ Issue 7 (109 CAN)

Does the By-law conform to, or conflict with, the Ontario Ministry of Agriculture, Food and Rural Affairs’ (“OMAFRA”) classification of the growing of Cannabis crops as an agricultural use, and/or with the Guidelines on Permitted Uses in Ontario’s Prime Agricultural Areas issued by OMAFRA?

[80] Mr. Ramsay opined that the ZBL neither conforms to or conflicts with OMAFRA guidelines on permitted in Ontario’s Prime Agricultural Areas Publication 851 (“Guidelines”). He opined that Guidelines are not a planning policy document that requires such conformity or avoidance of conflicts. He stated that Guidelines at best

represent best practices that can assist as considered appropriate.

[81] Mr. Ramsay addressed the second issue which was identified for the two Appellants as:

Issue 7 (254 ONT)/Issue 12 (109 CAN)

Considering the provisions of the *Farming and Food Production Protection Act, 1998, S.O. 1998, C.1 (FFPPA)* , does the By-law restrict normal farm practices and does it constitute good planning?

[82] Mr. Ramsay opined that the ZBL does not restrict normal farm practices. He stated that the FFPPA requires under section 6(1) that no municipal by-law applies to restrict a normal farm practice carried on as part of an agricultural operation.

[83] Mr. Ramsay stated that in the case of conflicts a statutory body can be approached for the determination of issues. He identified this body as NFPPB which is a specialized body with expertise in the field of agriculture and determining what comprises a normal farm practice.

[84] Mr. Ramsay addressed the third issue which states:

Issue 9 (109 CAN)

Should the By-law be expanded to permit Cannabis Production and Processing Facilities in Agricultural and Rural zones, as previously permitted?

[85] Mr. Ramsay stated that land use conflicts resulting from Cannabis production and processing facilities are known and include odour, light, noise and their potential negative impacts on sensitive lands uses, such as residential uses, schools and parks.

[86] Mr. Ramsay opined that site specific zoning by-law amendment as would be

required for Cannabis production and processing allow for proper mechanisms to consider each proposal on its own merits.

[87] Mr. Ramsay concluded and opined that that an approach that allows for the consideration of a proposal for a Cannabis Production and Processing Facility on a site specific basis is appropriate for Agricultural and Rural Zones and represents good planning.

ANALYSIS

[88] The Tribunal would allow an appeal by the Appellant(s) if any one or more of the following tests are not met by the ZBL and otherwise the appeals will be dismissed;

- Doesn't have regard for the Provincial Interest; or
- Is not consistent with PPS 2020; or
- Does not conform with the plans;
- The Growth Plan; or
- The County Official Plan; or
- The Township Official Plan

[89] Alternately, the Tribunal could consider a disposition where the appeal(s) are allowed in part and a Tribunal amended ZBL is approved.

[90] The Tribunal further notes that the parties provided various levels of supporting and opposing evidence in all of the required areas of determination. However, the Tribunal notes that consistency with the PPS 2020 provided the biggest contest between the evidence provided by the witnesses. The Tribunal thus analyses ZBL

consistency with PPS 2020 as first item in its analysis.

ZBL CONSISTENCY WITH PPS 2020

[91] Mr. Walters depended upon Mr. Colville's expertise to provide his opinions on PAA, designation of PAAs, agriculture, PAA permitted uses and activities, PAA agricultural uses and normal farm practices.

[92] There was no dispute that the Township lands with the designation Agricultural/Rural ("A/ARU") correspond are the same as the definition of PAAs in the PPS 2020. So, all policies related to PAAs in PPS 2020 apply to A/RU lands in the Township.

[93] The discussion and evidence regarding normal farm practices provides foundational construct on how the ZBL has come about. The driving PPS 2020 referenced policy is excerpted below (Emphasis added):

2.3.3.2 In prime agricultural areas, all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with provincial standards

[94] There was no dispute that Cannabis and industrial hemp are agricultural crops and represent agricultural uses. Mr. Colville, Mr. Walter, Mr. Cieciora provided evidence that Cannabis and industrial hemp are produced and processed per normal farm practices.

[95] Mr. Colville opined that normal farm practices include possibility of odour, noise, dust, flies, smoke, light and vibration disturbances. Mr. Ramsay provided evidence that normal farm practices include possibility of some such nuisance effects in the form of odour, light, noise and their potential negative impacts. Mr. Ramsay however stated that the ZBL does not restrict normal farm practices as it allows for the same where Cannabis production and processing is permitted in the ZBL; i.e., in the IR and ED zones in the Township.

[96] The Tribunal notes that neither the Township nor Mr. Ramsay provided any evidence as to how separation distance of 150 m from newly defined sensitive land uses in the ZBL represents a normal farm practice. On the contrary the Appellants and their witnesses showed that even in IR and ED zones in the Township, the ZBL separation distance provision virtually rules out any production of industrial hemp and very likely also make the outdoor growing of Cannabis untenable.

[97] The Appellants further argued that there already exist mechanisms as and when nuisance factors are encountered through other statutes and provincially established adjudicative processes. This coincides with Mr. Ramsay's evidence that nuisance conflicts where an entity claims to follow normal farm practices are addressed through the FPPPA and NFPPB.

[98] Mr. Witlib opined that the Township is equally encumbered to provide for and support policies in Part IV of PPS2020 and create a balance for a healthy, liveable rural community in the Township. He anchored his opinions on the fact that the Township has received complaints for some of the nuisance factors associated with Cannabis production and processing as well as the lack of responsiveness regarding complaints made to Health Canada by complainants. The Township argued that when the PPS 2020 is read as a whole in the context of applicable policies, the ZBL on balance is consistent with PPS 2020.

[99] The other key point of disagreement between the Appellants and Township plus OMCCC is (excerpted quick policy reference from Mr. Colville's evidence):

2.3.1 Prime agricultural areas shall be protected for long-term use for agriculture.

2.3.3.1 In prime agricultural areas, permitted uses and activities are: agricultural uses, agriculture-related uses and on-farm diversified uses.

[100] Based on the evidence of Mr. Colville, 254 argues that restricting which crops can be grown in PAA does not protect PAAs. The Appellants further submitted that the

restriction on Cannabis and industrial hemp production in A/RU fundamentally is against the requisite provisions in policies 2.3.1 and 2.3.3.1. Against the argument made by the Township and OMCCC that there are nearby communities, the Appellant experts opined that it is not the farmers with A/RU based farms who need to be cognizant of the need for compatibility but it is the establishment or creation of such communities with due considerations for agriculture and normal farm practices which is the issue.

[101] It was further pointed out by the same experts that except for the establishment of barns or like facilities which require Minimum Distance Separations (“MDS”) considerations, there is no setback, fencing or other requirements in policies and plans for A/RU lands not to be efficiently and fully utilized to the property lines.

[102] The Township argued that by defining sensitive land uses and a minimum setback of 150 m in the IR and ED rural areas for production and processing of Cannabis, the Township is following good practices in other jurisdictions and submitted that some places have minimum setback of as much as 500 m in nearby jurisdictions.

[103] However, Mr. Colville showed through an analysis of possible IR and ED land parcels in the Township that it will be virtually impossible to grow industrial hemp which requires large acreage and that even growing of Cannabis would be minimally possible in the IR and ED available lands. Mr. Dadashi also stated that given his generous farm size, even if Cannabis production and processing was allowed on his farm that the 150 m minimum setback would make his farming and competitiveness to grow Cannabis virtually impossible.

[104] The Township argued that potential farmers interested in producing and processing should go the route of zoning by-law amendment applications to seek permission or seek variation from minimum distance separation on a case by case basis. The Township submitted that they really have not taken a permission away for the production and processing of Cannabis from A/RU lands but would allow consideration of such requests through zoning by-law amendment process at the Township.

[105] The Appellants argued that by removing an existing permission, the Township has explicitly prohibited the production and processing of Cannabis and industrial hemp in A/RU lands.

[106] The Appellants further noted that the zoning by-law amendment requests and their possible appeals to bodies like the Tribunal are not a benevolent right given out by the Township but is a statutory right enshrined in the Act. The Appellants concluded that this goes against the fundamental constructs of such instruments to minimize such bureaucratic and inefficient land use planning which is fraught with uncertain outcomes, time delays as well create substantial expenses and business vulnerabilities for farmers.

[107] PPS 2020 provides the following direction regarding the interpretation of policies that provide directives as follows in Part III: How to Read the Provincial Policy Statement:

Some policies set out positive directives, such as “settlement areas shall be the focus of growth and development.” Other policies set out limitations and prohibitions, such as “development and site alteration shall not be permitted.” Other policies use enabling or supportive language, such as “should,” “promote” and “encourage.”

[108] There is no allowance for not being consistent with these whether you find other policies in PPS 2020 that a given planning instrument is consistent with. For any one positive directive with limitations, finding of inconsistency is sufficient to establish inconsistency with PPS 2020 in spite of other enabling and supportive language policies. Proverbially, “one bad apple spoils the lot”.

FINDINGS PPS 2020

[109] Based on the aforementioned analysis of submissions and evidence, the Tribunal makes the following findings regarding the consistency of the ZBL with PPS 2020:

FINDING 1

[110] The ZBL fails to be consistent with the following aspect of policy 2.3.3.2 of PPS 2020 as it removes the growing of a specific crop (Cannabis and industrial hemp), an agricultural use from A/RU lands (equivalently PAA per PPS 2020) Township wide and neither promotes nor protects the same whereas the PPS 2020 requires:

In prime agricultural areas, all types, sizes and intensities of agricultural uses ... shall be promoted and protected in accordance with provincial standards

FINDING 2

[111] The ZBL does not promote or protect normal farm practices. Simply allowing Cannabis production and processing in smaller Industrial area (IR, ED); which are not PAA and where policy 2.3.3.2 does not apply) then not permitting the same in A/RU Township wide for a specific crop. This is inconsistent with the following aspects of policy 2.3.3.2 of PPS 2020:

In prime agricultural areas, ... and normal farm practices shall be promoted and protected in accordance with provincial standards

FINDING 3

[112] The ZBL is inconsistent with policies 2.3.1 and 2.3.3.1 as it neither protects PAAs for long term as it restricts which crops can be grown in PAAs.

FINDING 4

[113] The Tribunal reiterates and finds that any separation distance requirements from sensitive land uses fundamentally offends any level of consistency with the PPS 2020 policies. PPS 2020 directs to protecting PAAs for the long term or the promotion of all types of agriculture uses and the permissions to do so is in PPS 2020 policies regarding PAAs. Restriction such imposed which have origins in other than how a farmer most

efficiently wants to produce or process a crop are inherently inconsistent with PPS 2020.

FINDING 5

[114] The Tribunal rejects the Township submissions and evidence of Mr. Witlib that having considered the overall PPS 2020 they have created a consistency with PPS 2020. The Tribunal finds in this regard that the policies that the ZBL is inconsistent with are positively directive and use the following emphatic qualifiers and cannot be balanced away or traded off with some other consistencies:

2.3.1 Prime agricultural areas shall be protected ...

2.3.2 Planning authorities shall designate prime agricultural areas and specialty crop areas in accordance with guidelines developed by the Province, as amended from time to time.

2.3.3.1 In prime agricultural areas, permitted uses and activities are: agricultural uses, agriculture-related uses and on-farm diversified uses.

2.3.3.2 In prime agricultural areas, all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected

FINDING 6

[115] The Tribunal finds that while any one of the findings which is based on inconsistency with positively amplified directives and/or further expanded upon through prohibition/permission (implied or directly) in PPS 2020 policies in itself establishes inconsistency with PPS 2020. However, in the matter before the Tribunal the collection of inconsistencies establishes that ZBL is not only inconsistent with the Provincial Policy Statement 2020 but it also fundamentally offends PPS 2020 with respect to policies for PAAs.

ZBL CONFORMITY WITH THE GROWTH PLAN

[116] Mr. Colville, Mr. Walters and Mr. Cieciora emphasized the importance of agriculture for the Township and specifically the importance of enabling the same in A/RU zones. Mr. Witlib in the context of Cannabis and industrial hemp provided emphasis in the Cannabis production and processing in industrial zones.

[117] Mr. Cieciora's reference to policy 4.2.6.2 showed that the Growth Plan almost verbatim concurrently supports the policies in PPS 2020 as follows (repeated for quick reference):

Policy 4.2.6.2 Prime agricultural areas, including specialty crop areas, will be designated in accordance with mapping identified by the Province and these areas will be protected for long-term use for agriculture

[118] The Tribunal notes that policies such as 4.2.6.2 shows the synergistic planning policies emphasis on the protection and long-term use for agriculture.

[119] Whereas the Growth Plan policies encourage employment and quality of life, the Growth Plan does not espouse the swapping of PAA lands for agriculture in favour of industrial lands as in the evidence of Mr. Witlib and submissions of the Township.

FINDING 7

[120] For these reasons and noting that the Growth Plan policies mirror and work synergistically with PPS 2020, the Tribunal finds that whereas the ZBL does not conform with the Growth Plan.

ZBL CONFORMITY WITH OFFICIAL PLANS (COP and TOP)

[121] Mr. Witlib referred the Tribunal to policy 4.6 of PPS 2020 to highlight the importance of Official Plans in the overall land use planning matters (Tribunal Emphasis Added):

4.6 The official plan is the most important vehicle for implementation of this Provincial Policy Statement. Comprehensive, integrated and long-term planning is best achieved through official plans.

Official plans shall identify provincial interests and set out appropriate land use designations and policies. To determine the significance of some natural heritage features and other resources, evaluation may be required.

In order to protect provincial interests, planning authorities shall keep their official plans up-to-date with this Provincial Policy Statement. The policies of this Provincial Policy Statement continue to apply after adoption and approval of an official plan.

[122] There was no disagreement regarding the importance of official plans as espoused in the PPS 2020. The Tribunal notes that in the same policy 4.6, the policy clearly maintains that PPS 2020 does not become subservient to any conflicts that may arise due to any reasons including that the official plans are not updated, the official plans are inconsistent but have not been appealed for a variety of reasons. Furthermore, any planning policy or plan that an official plan is consistent with or conform to, the downstream planning guided by planning activities and by-laws must maintain such consistencies and conformities.

[123] There was no contested evidence that the COP or the TOP are inconsistent with PPS 2020.

[124] As has been previously established that the ZBL is inconsistent with PPS 2020, hence it cannot be conforming to either the COP or the TOP. Specifically, as it relates to policies affecting A/RU lands, land uses thereof per normal farm practices or other provincial guidelines.

FINDING CONFORMITY WITH OFFICIAL PLANS

[125] For the aforementioned reasons, the Tribunal finds that the ZBL does not conform to the COP and the TOP.

CONCLUSIONS

[126] In summary the Tribunal concludes that the ZBL is not consistent with PPS 2020, does not conform with the Growth Plan, the COP and the TOP the Tribunal concludes that ZBL fails to satisfactorily satisfy the requisite statutory tests where all tests need to be positively met.

[127] The Tribunal also concludes that based on the ZBL having failed the key statutory tests required under the Act; any further analysis regarding ZBL having due regard for the or representing good land use planning is moot for the outcome in this hearing as meeting of all the test is part and parcel of the ZBL having due regard for provincial interest as well as good land use planning.

[128] Additionally, the Tribunal concludes that it cannot create an amended ZBL No. 2020-046 on Tribunal's own initiative to remedy the inconsistencies and non-conformities. It is anticipated that even if the Tribunal were to attempt the same, in all reasonable likelihood the outcome is likely to be akin to Zoning By-law No. 97-95 which remains in force and effect except for the sought after amendment through the proposed ZBL No. 2020-046 under appeals.

[129] As a consequence of all the material before the Tribunal and having due regard for the material that was before the approval authority when it made its decision and based on the Tribunal's analysis and findings the Tribunal concludes that the appeals by 10982377 Canada Inc. and 2541005 Ontario Limited against Township of Oro-Medonte By-law No. 2020-046 should be allowed.

ORDER

[130] **THE TRIBUNAL ORDERS** that the appeals against By-law No. 2020-046 of the Township of Oro-Medonte are allowed and the Tribunal directs the municipality to repeal By-law No. 2020-046.

“Jatinder Bhullar”

JATINDER BHULLAR
MEMBER

Ontario Land Tribunal

Website: olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.