

Report to Planning and Environment Committee

To: Chair and Members
Planning & Environment Committee

From: John M. Fleming
Managing Director, Planning and City Planner

Subject: Mike Abualhayja
8076 Longwoods Road

Meeting on: April 3, 2018

Recommendation

That, on the recommendation of the Managing Director, Planning and City Planner, the following report on the decision by the Ontario Municipal Board, relating to an appeal by Jacqueline Caranci concerning 8076 Longwoods Road **BE RECEIVED** for information.

Background

An application to amend the Z.-1 Zoning By-law was received by the City and deemed complete on January 11, 2017. The application was to allow for the adaptive reuse of an existing structure (barn) located at 8076 Longwoods Road to facilitate a livestock facility and an abattoir through an Agricultural Commercial Special Provision (AGC2(1)) Zone.



Figure 1: Subject Site

A Public Participation Meeting was held before the Planning and Environment Committee on May 23, 2017, to consider the matter. At Municipal Council on May 30, 2017, the matter was referred back to staff to report back with a revised by-law to ensure that the livestock operation would be maintained appropriately. Council approved the recommended amendment on July 25, 2017.

The matter was appealed to the Ontario Municipal Board (OMB) on August 22, 2017 by Jacqueline Caranci and a hearing took place on February 7-9, 2018. In its decision dated March 16, 2018, the Board was satisfied that conflicts and compatibility concerns between the subject site and neighbours and agricultural operations are addressed through the Zoning By-law Amendment. The Board also concluded that the “Zoning By-law Amendment represents good planning and sees no reason to interfere with the City’s decision”, and ordered the appeal be dismissed.

Conclusion

The OMB decision found that the City has very carefully thought through the proposal and next steps with site plan approval so as to ensure that the new operation and

neighbouring uses will be able to co-exist into the future. The appeal was dismissed and a copy of the OMB decision dated March 16, 2018 is attached to this report as Appendix "1".

Prepared by:	Sonia Wise Planner II, Current Planning
Submitted by:	Michael Tomazincic, MCIP, RPP Manager, Current Planning
Recommended by:	John M. Fleming, MCIP, RPP Managing Director, Planning and City Planner

March 26, 2018

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Appendix 1

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 16, 2018

CASE NO(S): PL170972

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

Appellant:	Jaqueline Caranci
Subject:	By-law No. Z.-1-172592
Municipality:	City of London
OMB Case No.:	PL170972
OMB File No.:	PL170972
OMB Case Name:	Caranci v. London (City)

Heard: February 7 to 9 in London, Ontario

APPEARANCES:

<u>Parties</u>	<u>Counsel/Representative*</u>
Jacqueline Caranci	Douglas Gagel*
City of London	Aynsley Anderson
Mike Abualhayja	Alan Patton

DECISION OF THE BOARD DELIVERED BY PAULA BOUTIS AND ORDER OF THE BOARD

INTRODUCTION

[1] The Appellant, Jacqueline Caranci, appeals a decision of the City of London ("City") passing Zoning By-law No. Z-1-172592 ("ZBLA"). This ZBLA amends By-law No.

Z.-1 ("ZBL") to rezone land located at 8076 Longwoods Road ("Subject Site"). The rezoning allows the property to continue to have the existing dwelling use, but also allows a livestock facility within the existing barn, and will permit an abattoir.

[2] Ms. Caranci lives at 7620 Longwoods Road, just south and east of the Subject Site. In addition to Ms. Caranci testifying, she called several other witnesses who live near the Subject Site. These were Rick Burt, who lives immediately to the south at the next door property at 7638 Longwoods Road; Arlene Bulgin, who lives at 4316 Murray Road; and Mary Lou and Steven Saker, who live at 7671 Longwoods Road.

[3] In addition, Bill Millar testified. He operates a strawberry farm that surrounds the Subject Site with a municipal address of 7375 Longwoods Road. At one time, the Subject Site was part of his property.

[4] The Applicant Mike Abualhayja also testified about the proposal and the Subject Site.

[5] For the City, Sonia Wise, a planner in Current Planning for the City, testified. The Board qualified her to give opinion evidence in the area of land use planning.

[6] At the conclusion of the three day hearing, the Board reserved its decision. After a full review of the evidence, the Board concludes it must dismiss the appeal.

ROLE OF THE BOARD

[7] The Board understands that Mr. Abualhayja had been or has been keeping livestock at his property in the absence of zoning permissions to do so. The Board also understands that the Applicant sought the ZBLA to bring the property into compliance with the zoning by-laws.

[8] The Appellant feels that if the Board approves the variances "after the fact", this amounts to allowing the Applicant to flout the rules. However, the Board must emphasize that its role is not an enforcement role for breaches of City by-laws or other laws. As noted at the hearing, the Board's obligation is to determine whether the ZBLA sought meets the statutory requirements under the *Planning Act* ("Act") and other applicable guidelines and policies, and whether it constitutes good planning, in accordance with the evidence presented. The Board's judgment on planning permissions cannot be clouded by the Applicant's alleged breach of the zoning by-laws. Planning decisions, as counsel for the City put it, are about regulating the use, not the user.

[9] Finally, the Appellant sought to address the question of whether the proposed abattoir use was really needed. As counsel for the Applicant submitted, and the Board agreed, the market need for a particular use is not part of the mandate of the Board. To the extent need is important, it is only in the context of particular policies that may apply to the application, but it is not the Board's role to address market needs or concerns. As a result, the Board does not consider this issue relevant.

EVIDENCE AND ANALYSIS

Issues

[10] In every decision the Board makes, it must have regard to Council's decision (s. 2.1 of the Act) and it must have regard to the various matters of provincial interest listed in s. 2 of the Act. These include the protection of agricultural resources of the Province.

[11] In addition, the ZBLA must be consistent with the Provincial Policy Statement, 2014 ("PPS") and conform to the City's Official Plan ("OP"). Both instruments provide direction on compatibility concerns and the protection of agricultural uses.

Area Context, Planning History of Subject Site and the Proposal

[12] The Subject Site is a little over a kilometre away from London's urban boundary, located west of Lambeth in south west London. There are two nearby rural settlements north of the Subject Site. One is along Longwoods Road and Kilbourne Road. The other is further east, closer to the urban boundary, and north of Kilbourne Road.

[13] To the south and east of the Subject Site are a few detached dwellings, where the Appellant and other witnesses reside. These are not considered "rural settlements". They are in lands designated Agricultural in the OP and all the lands are zoned agricultural, as is the Subject Site.

[14] The Subject Site itself is about 2 hectares in size, with 150 metres ("m") frontage. There is a dwelling, storage barn, and a shed on the site. There are many trees along the south and north property lines and scattered throughout the property.

[15] The Subject Site was severed from lands formerly owned by Mr. Millar. This occurred around November of 2000. Mr. Millar testified he had a surplus dwelling on the property and did not want to be a landlord, so sought to have it severed. This was done under the zoning by-law in force at the time. Other abutting lands were to merge with and the Board understands did merge with the retained farm lands.

[16] At the time, Mr. Millar, as the applicant, advised that he was not seeking to create or expand a livestock facility, which was reflected in the staff planning report. Also noted in the staff report was that minimum distance separation requirements referred to in the OP were met.

[17] The property to be severed - and which became the Subject Site - had on it a farmhouse, barn, and shed. The retained lands were expected to and have continued to be used for growing crops. Because the dwelling was a surplus dwelling, policies under the OP at the time contemplated that a severance would be appropriate. Under the zoning by-law of the time, the permitted uses were for a farm, a market garden, a specialty farm, a forestry use, a single family dwelling, a home occupation and an accessory use.

[18] In 2008, the City undertook a "zoning by-law refinement review", which included the Subject Site. The existing use at that time was a single detached dwelling within the AG1 Zone, with an OP designation of Agricultural, which remains. Planning staff recommended changing the zoning from an AG1 zone variation to an AG4 zone variation, which change occurred, and which allows only a detached dwelling on the site, but no livestock.

[19] The proposed ZBLA would change the zoning to "holding Agricultural Commercial Special Provision Zone" (AGC2), subject to three holding provisions:

- a. an h-5 provision, to ensure that the development takes a form compatible with adjacent land uses, and agreements are required to be entered into following a public site plan review;
- b. an h-18 provision, requiring an archaeological assessment prior to development; and
- c. an h-120 provision, not to be removed until the site plan approval has been granted and a record of approval for a Nutrient Management Strategy has been obtained.

[20] The AGC2(1) zoning will only permit as uses the existing dwelling, abattoir, and livestock facility within the existing structure.

[21] The barn on the Subject Site has a high-roof portion and a low-roof portion. It is configured in an 'L' shape. For the purposes of this application, the barn use is considered a new use, changing as it is from a storage barn to housing livestock and an abattoir. The change of use triggers the need for a minimum distance separation ("MDS") calculation to facilitate the use, which is discussed later in these reasons.

[22] The proposal contemplates that approximately 100 sheep and 100 goats will be kept in the high roof section of approximately 200 metres squared ("m²") in pens. The abattoir is to operate in the 110 m² lower-roofed section. Mr. Abualhayja indicated he did not expect to actually have the maximum number of animals there at any one time, given the number of animals available at auction at any one time.

[23] The Applicant's planning justification report indicated that the livestock would be housed prior to slaughter for about three days. The expectation is that about 2,000 pounds of meat will be produced each week as part of the Applicant's wholesale business, which he operates as London Quality Halal Meats. He testified his current operations ship to London, Windsor, Hamilton, Kitchener and Mississauga.

[24] Mr. Abualhayja testified that an abattoir operation is regulated by the Canadian Food Inspection Agency ("CFIA") and the Ontario Ministry of Food and Agriculture ("OMAFRA"). He also has training specific to handling halal meat processing.

[25] Mr. Abualhayja testified that they will slaughter animals two days a week and process two days a week for shipping to their customers. Upon questioning by Aynsley Anderson, counsel for the City, Mr. Abualhayja testified that currently they use the Mount Brydges Abattoir and Norwich Packers for their meat business, which is a short drive away from the Subject Site.

[26] Mr. Abualhayja testified that the manure would be shipped off-site daily and would not be stored outside. In addition, any other animal waste from the abattoir will be picked up at the end of the slaughter day. He testified that the animal waste has to be kept in a special room inside the slaughter house. For the manure, OMAFRA issued a Nutrient Management Strategy (Exhibit 9), which is valid from Fall 2017 to Fall 2022.

[27] Regarding traffic, in addition to day-to-day personal driving, the Applicant indicated there would be traffic related to the delivery of product off-site and livestock to the site, along with the transfer of waste from the site.

Conditions at the Subject Site and Resident Concerns

[28] During his cross-examination, the Appellant's representative put to him photographs that he was told were taken of his property on August 15, 2016 (Exhibits 12A, 12B and 12C). Mr. Abualhayja denied that these were of his property. These were later proven through the witness who took them, Mr. Burt, who resides immediately to the southeast of the Subject Site and is the closest property. Mr. Burt also took video footage from the fence line on that same day (Exhibit 14), which the Board viewed at the hearing.

[29] The photographs showed a few dead animals in the yard. The video showed similar images and clearly showed a manure pile. The fencing was broken and looked to be in poor condition. Mr. Abualhayja agreed the video was of the Subject Site. The Board also concludes the photographs were of the Subject Site.

[30] Mr. Burt testified he had been living in the area for about 30 years and had been at his current property for about 15 years. He indicated that "about two years ago, maybe a little later than two years ago, all of a sudden flies inundated our neighbourhood." He testified he began to see "huge piles of manure and dead animals

all over the place" and "the fence was terrible". It was his view that the flies came from the manure pile (or piles).

[31] He testified that he thought livestock came to the Subject Site about four or five years ago, but that the flies got bad about two years ago. It was at that time he started investigating. He was confident that the flies arose from the Subject Site and not from the chicken farm, which was further away and had not caused a problem in the past.

[32] Mr. Burt testified that the situation interfered with family outings: they could not have a picnic because of the flies and the smell.

[33] Mr. Burt also testified that the animals from the Subject Site came into his fields. He stated that animals destroyed probably a quarter acre. Though Mr. Burt indicated he had taken photographs as late as November 2017, and problems persisted, no photographs or video was in evidence for anything other than the one date in August 2016.

[34] Mr. Burt was upset that his property, which is not in a rural settlement area, but an agriculturally zoned area, had less stringent MDS setbacks than rural settlements do under the guidelines.

[35] Other witnesses testified to similar concerns about nuisance issues. Ms. Saker was also certain that the problems did not result from the chicken farm down the road, and noted that she had come from a chicken farm background.

[36] The witnesses also raised concerns that their property values would be impacted by this operation. Mr. Saker is a real estate agent and had commented that in the past three or four years, he had seen "quite a few new homes" across the road from him. To the east, he testified a new ranch had gone up and, further along Longwoods Road before Kilbourne Road, there were two new houses. He commented there was another

pocket just south of the Subject Site and the rest of the area would be more farms. He also commented that there was a big demand for these houses and that the property values were higher because they were close to the City urban boundary limits.

[37] The Appellant's representative asked Mr. Saker for his opinion on the impact the Subject Site re-zoning would have on property values. The Board refused to allow this line of questioning as Mr. Saker was clearly not neutral in the matter as a nearby resident. Also, the Appellant's representative had advised the Board at the outset that no expert witnesses would be called in the Appellant's case and he had not been so qualified by the Board and could not be in the circumstances.

[38] Ms. Saker raised concerns about the bend in the road along Longwoods Road as a traffic hazard. She has been living there for nine years, and noted three major accidents, two of which were "life altering". In one case, a person was paralyzed. In another case, the accident was fatal. She testified that people speed and go straight instead of following the curb. Ms. Saker was concerned that if more traffic were entering and leaving the Subject Site that there would be more accidents. However, she had not told the City about the curb or her concerns with it.

[39] On this point specifically, it was the opinion of Andrew Giesen, Senior Transportation Technologist with the City, that this site is not a retail operation and is not expected to generate any traffic above that of any other agricultural use in the area. Staff had conducted a sight line review to ensure compliance with the City's Access Management Guidelines and the Ontario Ministry of Transportation Standards and concluded that the measured sight line distance is sufficient for stopping sight distance. He also advised that should trees or shrubs pose difficulties for sight lines, the City has a program to deal with this on a complaint basis (Exhibit 5A, Tab 12, page 151).

[40] Mr. Giesen provided this information in an email in response to an email from Mr. Burt. Mr. Giesen provided Mr. Burt with the details he needed to contact the City should a tree or shrub be posing a hazard.

[41] Mr. Millar was next to testify in the Appellant's case. He owns the adjoining farm to the Subject Site, out of which the Subject Site was severed as a surplus dwelling on the farm as described earlier. Mr. Millar testified they own property on both sides of Longwoods Road.

[42] Mr. Millar testified that they are a third generation fruit farm which grows strawberries. He is the second generation and his son the third. They have been supplying the London area with strawberries and raspberries for over 50 years and use local labour. In the summer, the farm has over 50 employees. He explained that the majority of sales are direct on the farm sales. They also have customers that also pick their own berries. He said they have some wholesale sales.

[43] Mr. Millar was of the view that allowing the proposed agricultural operation would harm his own, as people would not want to come to the farm to buy his product or pick strawberries if they are "inundated with flies or there is a really bad odour" and "dead animals rotting" nearby. He commented that there were days when it was really bad and customers started to complain. He indicated he could not see planting his berries near the livestock operations and it would make some of his land unusable for his production. He was concerned about the viability of his farm if this is permitted.

[44] Finally Mr. Millar commented that while he understood that the Agricultural Advisory Committee did not have concerns with this proposal, they did not consult with him.

[45] Mr. Millar under cross-examination advised he was not allowed to have animals. However, Ms. Anderson took Mr. Millar to provisions which explained that an AG1 zone, the zoning of his farm, can have animals. She asked if he was aware that all properties surrounding the Subject Site were permitted to have livestock. Mr. Millar stated that, "Just because you can, doesn't mean you should."

[46] Ms. Caranci, the Appellant, was the last to testify in her case. Ms. Caranci is part of an unincorporated association, the Longwoods Community Association. It was through her work with this group that they determined one of them would file an appeal and others would be witnesses or financially support the appeal.

[47] Ms. Caranci testified that she and her husband purchased the property they live in now in February of 2016. There had been another home at the site which they demolished, and then they built the current home.

[48] They bought their property as it was surrounded by fields and appeared to be part of a residential neighbourhood. She did say they had also looked at the zoning and did understand it was not residentially zoned. However, she testified they also had confirmed that the Subject Site was zoned only for a single family dwelling only. Ms. Caranci was forthright in her admission that she understood zoning can change through applications, just as she had sought a minor variance change for her own property. However, she felt her neighbours would not have animals on their properties within her lifetime, even if they could do so at any time under current zoning.

[49] Along with others, Ms. Caranci was an active participant in this matter through the public process. In addition to the statutory meeting, there was a meeting held by the local councillor, Anna Hopkins, at the Lambeth Community Centre. At this meeting, City staff for planning and transportation and Councillor Hopkins attended to answer questions about the proposal.

[50] Ms. Caranci testified that this operation will introduce conflicts between the Subject Site and its neighbours and so does not uphold the OP. She felt it would harm Mr. Millar's operations. Further, there was no market need for it. Like the others, she was concerned about truck traffic. She thought the Subject Site would not go back to farm uses and was concerned that if the Board allowed it, it would "set a precedent" for other people in the City to break by-laws and then solve them through a re-zoning. She felt that it would jeopardize the investment in her home. Lastly, she felt it created a public health and safety issue.

[51] She commented the flies had been "unreal", the worst of which occurred while they were building the new home and the finishes were going in. She had also had to deal with escaping animals getting onto her property, indicating it had happened several times. Ms. Caranci testified that she had seen predatory animals approach the Subject Site because of the dead animals. She felt she could not leave her kids in the yard to play in these circumstances.

[52] Several of the Appellant's witnesses, including the Appellant herself, were concerned Mr. Abualhayja would get the zoning, but then not proceed with the abattoir. This would then allow for livestock but without an abattoir. The Board gathered from this that the residents felt that the livestock would then not be regulated.

[53] Ultimately, Ms. Caranci was of the view that the mitigation measures would not work, noting smell and flies do not respect minimum separation distances. She had been disappointed in enforcement activity to date and had little confidence things would improve. She felt Council's unanimous vote in favour of the proposal could only mean they did not understand the extent of the problems. She felt this approval was succumbing to the self-interest of one property owner to the detriment of other property owners.

[54] The Board recalled Mr. Abualhayja to ask what he was doing with the animals now. He stated that at this time, there were no animals on his property. The Board is not confident that it obtained an accurate answer as to when he removed the animals, but Mr. Abualhayja indicated "they can send any inspector to my farm" and see he does not have any animals.

[55] The Board notes at this juncture that it accepts the evidence of the nearby residents that the manner in which the Subject Site has been operated has created conflicts between them and the owner of the property.

Staff Review and Agency Comments

[56] There were no significant concerns or comments from commenting agencies. Transportation Planning and Design sought a road widening dedication of 18.0 m from the centre line on Longwoods Road. Water servicing is to be addressed through site plan approval. Urban Forestry had no concerns as no new construction is contemplated. Wastewater and Drainage Engineering had no objections.

[57] Planning staff wrote two reports in support of the proposal. The first was as part of the public participation meeting on May 23, 2017 ("May Report"). The second was prepared for the Planning and Environment Committee for its meeting on July 17, 2017 ("July Report").

[58] Following its meeting on May 30, 2017, Council directed that the application be referred to staff to report back with a revised by-law that would provide for "a potential opportunity to ensure that the livestock operation is maintained appropriately". Council also referenced that certain considerations be taken in respect of site plan regarding fencing, tree planting and a holding provision for a public site plan approval process.

[59] The final by-law passed by Council on July 25, 2017 included the three holding provisions referenced earlier and limited the uses to the existing dwelling, the abattoir, and the livestock facility within the existing structure. Earlier iterations of the proposed ZBLA added uses to the AGC2 zone, rather than limiting them to the specific uses, and had fewer holding zone provisions. Notably the holding provisions related to site plan agreements and approval and the requirement for a Nutrient Management Strategy were absent. The addition of the h-5 provision also means that there will be an opportunity for further public consultation related to the site plan approval process.

[60] Both the May and July Reports, in addition to reviewing the planning framework itself, included a review of applicable provincial legislation that would govern the operation. This includes the *Farming and Food Production Protection Act, 1998* ("FFPPA"), the *Nutrient Management Act, 2002* ("NMA"), and the *Food Safety and Quality Act, 2001* ("FSQA").

[61] Under FFPPA, nuisance issues that do not result from "normal farm practices" can be addressed through the Normal Farm Practices Protection Board. Nuisance complaints are addressed through neighbour to neighbour resolution, mediation and conflict resolution, and ultimately a hearing to that Board if necessary.

[62] The NMA governs the safe use of nutrients, which includes what is defined as "agricultural source materials" like manure from livestock. Obtaining the Nutrient Management Strategy is one of the conditions that must be fulfilled before the h-120 provision can be lifted. It is also under the NMA that deadstock is regulated. Enforcement of this legislation is by the Ministry of Environment and Climate Change.

[63] The FSQA regulates the slaughter of livestock and processing of meat for food.

Planning Evidence

[64] Ms. Wise took the Board through the PPS, the in-force City OP, and the recently approved London OP, which though passed is under appeal and therefore not in-force. Ms. Wise is of the opinion that the proposal is consistent with the PPS and conforms to the City OP and London OP. She is of the opinion that the livestock facility and abattoir use is appropriate within the agriculturally designated area and that impacts can be mitigated.

Provincial Policy Statement, 2014

[65] Regarding the PPS, Ms. Wise opined that agricultural resources are a key provincial interest, ensuring the production of food and fibre in the province.

[66] Policies at s. 1.1.4 of the PPS address rural areas, which reference the need to provide opportunities for economic activities in prime agricultural areas. The Subject Site is within an agricultural area. These activities are subject to the Policies in s. 2.3 which are specifically directed at agriculture. It was Ms. Wise's opinion that this proposal relates to an economic activity which is small scale and local in nature.

[67] Under s. 2.0, the Province directs that Ontario's long term prosperity, environmental health and social well-being depend on a number of factors, including protecting agricultural resources for their economic, environmental and social benefits.

[68] Under the policies at s. 2.3, prime agricultural areas are required to be protected for long term use for agriculture. Permitted uses will be agricultural uses, agriculture-related uses and on-farm diversified uses. These are defined terms which include the raising of livestock and associated on-farm buildings and structures, including livestock facilities, and manure storage. Agriculture-related uses means uses that are directly related to farm operations in the area in close proximity to farm operations.

[69] Under Policy 2.3.3.1, proposed agriculture-related uses and on-farm diversified uses shall be compatible with and not hinder surrounding agricultural operations. Criteria for these uses may be based on guidelines developed by the Province or municipal planning documents which achieve the same objectives.

[70] Under Policy 2.3.3.2, all types, sizes and intensities of agricultural uses and normal farm practices are to be promoted and protected in accordance with provincial standards. Under Policy 2.3.3.3, new land uses including new livestock facilities must comply with the MDS formulae developed by the Province.

Official Plan

[71] Ms. Wise then reviewed with the Board the applicable policies from the City's OP, from 1989.

[72] The Vision Statement includes reference to the protection of agricultural lands outside of designated growth areas from incompatible development or activities that detract from the long term viability of farming (Policy 2.2.1.(iii)).

[73] Policy 2.4.1.(xx) requires that agricultural lands will be protected for long term agricultural uses. Permitted uses and activities on designated agricultural lands are limited to agricultural uses, secondary uses and agriculture related uses.

[74] Policy 2.7.2.(viii) addresses economic development strategy which encourages, among other activities, agriculture and food activities to be innovative and responsive to changes in the economy.

[75] It was Ms. Wise's opinion that these policies focused on the long term preservation of agricultural uses on agricultural lands and the economic advantage of agricultural uses in the City.

[76] The main policies in the City's OP regarding agricultural land farming and the rural community are found at s. 2.10. A goal of the City is to conserve agricultural land, protect the viability of farms and farm-related industries and maintain the quality of rural life to the benefit of all. Sub-policies in this section, specifically, i, ii, iii, iv, and ix, direct Council to address the need to conserve agricultural lands as valuable, limited and non-renewable; protect the productivity of farmland; protecting the long term viability and stability of agriculture by accepting that it should be a permanent use of land; encouraging economic development and research opportunities that add to the valuable contribution the sector makes to the local and regional community; and to support legislation of senior levels of government.

[77] Ms. Wise summarized these policies as recognizing that agricultural land is a non-renewal resource important to the City's economy. Further, agricultural areas are vulnerable to threats and pressures which include land use compatibility and the introduction of non-farm uses in rural areas. These lands are to be protected as long term, considered permanent, and not place holders for future residential development.

[78] Chapter 9 of the City OP further addresses the agriculture, rural settlement and urban reserve land use designations. Ms. Wise referenced the following text in the introduction:

The objectives and policies of this Chapter are intended to protect the agricultural and land resource and maintain the viability of farming within these areas to ensure agriculture continues to make a significant contribution to the City's economy. The policies recognize the need for a long term commitment to agriculture and are intended to prohibit the fragmentation of land holdings, minimize the loss of prime agricultural land to non-farm development, and prohibit the introduction of land uses that are incompatible with, or may potentially constrain farm operations.

[79] Ms. Wise testified that this proposal reinforces the long term preservation and economic contribution of agriculture.

[80] There are several policies that then reinforce this vision under s.9.1.1 i, ii, vii, viii, and ix. These address protection of the land base for future generations; promotion and support for a healthy and productive agricultural industry; minimizing land use conflicts between residential uses in the settlement area and livestock operations; discouragement of the creation of non-farm residential lots in the area; and mitigating impacts from any new non-agricultural uses on surrounding agricultural operations and lands to the extent feasible.

[81] Ms. Wise testified that these were consistent themes for the protection of long term use for agricultural lands. These policies also identify the need for compatibility between farm and non-farm or sensitive uses and the need to minimize land use conflicts.

[82] Though not in-force due to being under appeal, Ms. Wise reviewed the new OP for London with the Board. The London OP has similar goals as the City OP for the protection of a local food production system, permits this type of operation and includes the same policies as the City OP for the agricultural-related commercial and industrial use policies, referenced below.

[83] While it was the suggestion of Mr. Gagel that the Subject Site and surrounding area were in transition to residential uses, the Board finds this is an inaccurate representation of the planning regime, the zoning in place and the long term intentions of the City as evidenced through its OP and as directed by the PPS.

[84] Under the policies at s. 9.2, the City OP identifies livestock as a primary permitted use (Policy 9.2.1). Secondary uses are permitted, including agriculturally-related commercial and industrial uses. Ms. Wise testified that an abattoir is a secondary permitted use (Policy 9.2.2).

[85] Policies at s. 9.2.8 relate to agriculturally-related commercial and industrial uses. These are small-scale uses that are supportive of the farm operation itself. New uses of this nature may be permitted by an amendment to the ZBL, subject to several requirements:

- a. The amount of land devoted to the activity includes only the minimum necessary to support the activity and its servicing requirements. Ms. Wise testified that the Subject Site is an existing under-sized farm parcel within an agricultural area that makes efficient use of the site and does not require the removal of arable land from production.
- b. It can be demonstrated that the use is supportive of the farm operation and requires a location in close proximity to the farm to function successfully. Ms. Wise testified that the proposal for the abattoir on-site illustrates a clear relationship between the need to locate the agricultural and agriculturally-related commercial uses together. The integration of these uses in one location eliminates the need to transfer livestock to and from the site for accommodation, slaughter and processing.
- c. The location of the facility should not impose any operating constraints or result in a reduction of the efficiency of existing farms in the vicinity. These activities should be directed to sites having soil capability, drainage, topographic, site size or configuration limitations for agriculture. Ms. Wise testified that the abattoir will be located within an existing barn and not impact the neighbouring farms or farming operations. Crop production is not feasible on this sized parcel. The Agricultural Advisory Committee supported this application.

- d. The facility does not require municipal or sewage disposal services. Ms. Wise indicated that this facility will use private services.
- e. Access is available from a public highway or road and the access must not create a hazard due to poor site lines or proximity to an intersection, steep grade or curve. The road should be capable of accommodating traffic year round, the volume and type of traffic, including truck traffic, that it is likely to generate. Ms. Wise indicated that there is direct access from Longwoods Road and that while there is a curve on the road, there are no existing concerns with sightlines, access or the current driveway location. Ms. Wise noted that six parking spaces will be required for the abattoir which can be accommodated on the Subject Site, and which will be subject to site plan approval.
- f. There should be adequate drainage and suitable outlets for storm water runoff. Ms. Wise noted this is an adaptive reuse. As a result, there is no new construction; and
- g. The uses are subject to site plan control, which must address several factors, including compliance with the MDS requirements, which is addressed below.

Minimum Separation Distance Requirements

[86] Because this amounts to a new livestock facility, this triggered the requirement for a building permit, which in turn triggered the requirement for compliance with the MDS requirements in the City OP (Policy 9.2.11) and the ZBL.

[87] The Minimum Distance Separation Document Formulae and Guidelines for Livestock Facility and Anaerobic Digester Odour Setbacks ("MDS Guidelines") are prepared by OMAFRA.

[88] Ms. Wise testified that the minimum distance separations are not required for the abattoir use, but are required for the livestock use.

[89] She further testified that MDS II setback distances must be applied prior to the approval of a building permit application for a first livestock facility occupying an area greater than 10 m².

[90] In this case, Ms. Wise testified that the Subject Site is surrounded by "Type A Land Uses (Less Sensitive)". These include dwellings on lots which are located outside settlement areas and which are not recognized through an official plan designation for development. It also includes dwellings located on lots zoned for agricultural uses, residential uses, or non-agricultural uses provided that the lots remain in prime agricultural areas.

[91] For the purposes of the MDS calculation, the nearest land use is Mr. Burt's property, which is directly abutting the Subject Site. Ms. Wise took the Board through several scenarios regarding the number of livestock that may be on the Subject Site. This included the Applicant's stated proposal and other scenarios with potential for greater impacts. There was no scenario in which the proposal did not meet the required set-backs. In four out of five cases, the set-back requirements were exceeded. In the last and fifth scenario, the requirements were met or exceeded (Exhibit 5A, Tab 24).

[92] Mr. Burt was upset about the fact that the MDS requirements would have been double those that apply to his property if he were in a rural settlement area. However, the situation is that neither he, nor his neighbours, are in a rural settlement area for which greater MDS setbacks apply.

Site Plan

[93] No site plan application was before the Board and the ZBLA is subject to holding provisions regarding the approval of a site plan. Council's resolution authorizing the

passage of the ZBLA subject to the holding provisions also requested that through the site plan process the following be considered:

- a. Relocation of the livestock paddock to the north side of the livestock facility. Ms. Wise testified this area is the furthest location from the nearest sensitive Type A land use;
- b. Adequate fencing of the perimeter of the livestock paddock. Ms. Wise testified this would address stray livestock concerns;
- c. Provision of tree planting at the southeast corner of the property. Ms. Wise testified this corner directly abuts a neighbouring Type A land use, and has little to no vegetation and landscaping at this time. Tree planting will assist with screening between the two properties; and
- d. Provision of tree planting or landscaping along the east property boundary. Ms. Wise testified the northern and eastern boundaries of the Subject Site abut a field used for crop cultivation. The interface between the two is open and un-vegetated. Tree plantings and landscaping will provide better delineation and screening of the property boundary and better containment.

[94] The Board is satisfied that conflicts and compatibility concerns between the Subject Site and area neighbours and agricultural operations are addressed through the ZBLA, both because of the application of the MDS formulae and because of the holding provisions relating to the future site public plan process.

[95] The Board adopts Ms. Wise's opinion that the ZBLA is consistent with the PPS's intention to preserve and protect agricultural lands for the long-term; that it conforms to the OP; that the uses are appropriate within the agricultural designation; and impacts will be mitigated to the extent feasible.

[96] The City has very carefully thought through the proposal and next steps with site plan approval so as to ensure that new operation and neighbouring uses will be able to co-exist into the future, notwithstanding the past situation. The Board concludes the ZBLA represents good planning and sees no reason to interfere with the City's decision.

ORDER

[97] The appeal is dismissed.

"Paula Boutis"

PAULA BOUTIS
MEMBER

If there is an attachment referred to in this document,
please visit www.elfo.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

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