

CONSOLIDATED HEARINGS BOARD

IN THE MATTER OF Sections 2 and 3 and 6 (3) of the Consolidated Hearings Act, 1981, S.O. 1981, c.20;

— and —

IN THE MATTER OF Section 12(2) of the Environmental Assessment Act, R.S.O. 1980, c.140;

— and —

IN THE MATTER OF Sections 30, 35 and 38 of the Environmental Protection Act, R.S.O. 1980, c.141, as amended;

— and —

IN THE MATTER OF Sections 24 and 61 (2) of the Ontario Water Resources Act, R.S.O. 1980, c.361, as amended;

— and —

IN THE MATTER OF Section 28 (3) of, and Regulation 164 under, the Conservation Authorities Act, R.S.O. 1980, c.85, as amended;

— and —

IN THE MATTER OF Section 40(12) of the Planning Act, S.O. 1983, c.1, as amended; in connection with site plan control of the sanitary landfill site;

— and —

IN THE MATTER OF Section 22(1) of the Planning Act, 1983 in connection with a referral to this Board by the Honourable Bernard Grandmaitre, Minister of Municipal Affairs, on a request by the Regional Municipality of Halton to amend the Official Plan for the Town of Milton to redesignate a parcel of land comprising Part Lots 3 and 4, Concession 2 N.S. in the Town of Milton from "Agriculture" and "Conservation and Hazard Lands" to permit the construction, operation and maintenance of a landfill site, Minister's File No. 24-OP-0208-A01;

— and —

IN THE MATTER OF Section 34(11) of the Planning Act, 1983 in connection with an appeal to this Board by the Regional Municipality of Halton for an order directing an amendment to By-law 61-85 of the Town of Milton to rezone the lands situated at Lot 3 and part of Lot 4, Concession 2 N.S., in the Town of Milton from "Agriculture" to permit a regional sanitary landfill site and ancillary uses;

— and —

IN THE MATTER OF Section 15(1) of the Planning Act, R.S.O. 1980 ch.379 in connection with a referral by the Honourable Claude F. Bennett, Minister of Housing on a request by Tremaine Britannia Citizen's Group for consideration of part of the Official Plan for the Halton Planning Area with respect to Sections 1 to 5 inclusive, 7, 9 and 10 of Part III D3 Solid Waste Management, Minister's File No. OPC:0026;

— and —

IN THE MATTER OF Section 54 of the Ontario Municipal Board Act, R.S.O. 1980, c.347 as amended in connection with an application by the Regional Municipality of Halton for an order approving:

a) the acquisition of land for the construction, operation and maintenance of a sanitary landfill site to contain 7.96 million cubic metres of waste in the Regional Municipality of Halton and to do so by one of two alternative methods as follows:

- (i) landfilling at the site referred to in Halton's Environmental Assessment as Site F in the City of Burlington;
- (ii) landfilling at the site commonly referred to in Halton's Environmental Assessment as Site D in the Town of Milton

at an estimated cost of \$12,775,000.00, and the borrowing of money by way of temporary advances not exceeding in the aggregate such estimated cost pending the sale of debentures, and

(b) the issuance of necessary debentures to a maximum of \$12,775,000.00 for a term not to exceed fifteen years;

— and —

IN THE MATTER OF Section 193(5) and Paragraph 84 of Section 210 of the Municipal Act, R.S.O. 1980, c.302, as amended;

— and —

IN THE MATTER OF Sections 6, 7 and 8 of the Expropriations Act, R.S.O. 1980, c.148;

— and —

IN THE MATTER OF an undertaking of the Regional Municipality of Halton to provide facilities for the purpose of receiving, dumping and disposing of waste as required by section 137 of the REGIONAL MUNICIPALITY OF HALTON ACT, R.S.O. 1980, c.436, as amended, by acquiring the land for, constructing, operating and maintaining a landfill to contain 7.96 million cubic metres of waste in the Regional Municipality of Halton.

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OFFICIAL REPORTERS

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I N D E X

WITNESS:

PETER ROBERT WALKER (Resumed)

Cross-examination by Mr. Leitch (Cont'd) 14604

Cross-examination by Ms. Cronk 14662

E X H I B I T S

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9 Water Resources Act, R.S.O. 1980, c.361, as amended;

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Management, Minister's File No. OPC-0026;



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IN THE MATTER OF Section 64 of the Ontario Municipal Board Act, R.S.O. 1980, c.347, as amended in connection with an application by the Regional Municipality of Halton for an order approving:

(a) The acquisition of land for the construction, operation and maintenance of a sanitary landfill site to contain 7.96 million cubic metres of waste in the Regional Municipality of Halton and to do so by one of two alternative methods as follows:

(i) landfilling at the site referred to in Halton's Environmental Assessment as Site F in the City of Burlington;

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BEFORE: H. H. Lancaster, Q.C. - Chairman

Dr. D.J. Kingham - Member



Nethercut & Co. Ltd.

Toronto, Ontario

Hearing conducted at The Oakville
Granary Commercial Centre, 105 Robinson
Street, Oakville, Ontario, on

Tuesday, November 24, 1987

VOLUME 63

APPEARANCES:

T.R. Lederer and H.D. Hodgson	for the Regional Municipality of Halton (Proponent)
J.R. Tidball	for the Ministry of the Environment
T. Vigod J.F. Castrilli	for the West Burlington Citizens Group
D. Estrin, F.E. Leitch and H. Dahme	for the Corporation of the Town of Milton
S.R. Garrod and A. Nurvo	for the Milton Area Citizens Coalition and several affected Milton area landowners
R.B. Tuer, Q.C. E.A. Cronk and F. Perrier	for National Sewer Pipe Limited
L.F. Longo	for Azova Investments Limited
M.J. McQuaid, Q.C. and C.J. Tzekas	for the City of Burlington
C. Mansfield	for the Ministry of Natural Resources
P. Renaud	for Cumis Limited



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Toronto, Ontario

APPEARANCES (Cont'd):

1	C. Stevenson	for Framgard Holdings,
2	P. Hancock	Fosseri Investments
3		Limited, Seriphos
4		Investments Limited and
5		Topic Investments
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J.H. Olah

for the Halton Region
Conservation Authority

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Per: C. F. Nethercut, C.V.R.



Oakville, Ontario
November 24, 1987

---Upon commencing at 9:30 a.m.

MR. LANCASTER: Good morning, please be seated.

PETER ROBERT WALKER (Resumed):

CROSS-EXAMINATION BY MR. LEITCH (Cont'd):

MR. LANCASTER: Mr. Lederer?

MR. LEDERER: One small point. I indicated in direct evidence that we would supply the parties with the extracts from the Burlington Official Plan which Mr. Walker referred to and I have those available now.

MR. LANCASTER: Did we not have part of them before?

MR. LEDERER: You marked the full plan, but we could not obtain copies for everybody and it may not be necessary to exhibit this separately.

MR. LANCASTER: I thought we did. Thank you.

THE WITNESS: What number is that?

MR. LEITCH: H-322. I have it on good authority, Mr. Lederer told me.

MR. LANCASTER: That is the Official Plan itself.

MR. LEITCH: Q. Mr. Walker, when we



1 left off on Thursday, I had started some questions with
2 regard to the opinion you gave as to the effect of the
3 zoning by-law for the Town of Milton and the Official
4 Plan for the Town of Milton and I started that line of
5 questioning just after we had dealt with your planning
6 opinion in regard to a comparison of Sites F and D,
7 you will recall?

8 A. Yes.

9 Q. You said something I have puzzled
10 about in the meantime and I want to go back to it
11 briefly. You said in answer to a question that you
12 felt that your planning opinion was somewhat
13 proscribed, and we had a question and answer series
14 wherein I tried to satisfy myself as to what you meant
15 by that and I am still not clear as to the meaning of
16 your words and I want to go back to that.

17 If you had been asked to undertake the
18 environmental assessment in this matter by the Region
19 of Halton, would you have considered all of the things
20 which were considered by the consortium, albeit you may
21 have had to consider all those things without their
22 help and, to a lesser depth, but would you have
23 considered all those things?

24 A. I believe I would have considered
25 all of them. I haven't segregated out to say there is



1 something I would not have considered, and I would have
2 to assume if I didn't agree to something being done I
3 would have made my thoughts known. Yes, I would have
4 looked at all of those things to different levels of
5 degree, depending on the resources, time, et cetera,
6 available.

7 Q. At the end of that process you
8 would have arrived at an opinion as to the relative
9 suitability of the two sites? I won't ask you what the
10 opinion would be because you haven't gone through the
11 exercise, but the result would have been that you would
12 have applied your mind to all of the factors that the
13 team applied its mind to and you would have come to a
14 conclusion?

15 A. I would have had some thoughts and
16 opinions on those aspects of the process, yes. Now,
17 under the circumstances you have described, whether I
18 would have one site, two sites, or "X" sites, I don't
19 know that, but I would have had an opinion at the end
20 of that process, yes.

21 Q. You would have concluded, in other
22 words, a planning opinion from your expertise as a land
23 use planner? You might have come up with three sites,
24 four sites, five sites, or one site; we don't know
25 because you haven't done it?



1 A. I think the environmental
2 assessment process is a planning process and I would
3 have come up with a planning process in that context.
4 At the same point where I came to an opinion at the end
5 of 2C and at the end of the comparative analysis, that
6 is the end of one substantial stage of the
7 environmental assessment process, therefore at the end
8 of that planning process I would have had an opinion.

9 In my opinion, as a land use planner,
10 there was then the need to plug in the implementation
11 or the method by which the results coming out of that
12 planning process would have been implemented, and that
13 would have gone into matters which could have been
14 considered under the Planning Act and they could be
15 considered under the Planning and Development Act as
16 well.

17 In other words, I would look to the
18 tools which the land use planner is also interested in
19 from an planning opinion standpoint.

20 Q. I understand, but just stopping at
21 Stage 2C, the Stage 2C report, and assume you have done
22 that work without the assistance of the other experts.
23 You would have looked at the same range of subject
24 matters and you would have arrived at an opinion?

25 A. Yes, I would have, but I don't



1 want to be mistakenly taken as saying, "Yes, I would
2 have looked at it," I would have used my breadth of
3 experience, which in some things is very general, such
4 as dust and litter. I don't have very much more
5 experience than my years as a land use planning
6 consultant would give me.

7 Q. Likewise with hydrogeology. You
8 would have look at hydrogeology as best you could
9 because you would have been obliged to do so under the
10 Environmental Assessment Act, but you could not have
11 looked at it in the kind of depth that was looked at by
12 Trow?

13 A. That is correct.

14 Q. My question again, and I will go
15 back to it, at that point in time you would have been
16 able to arrive at an opinion as to what the
17 environmental assessment process would have dictated in
18 relation to site or sites?

19 A. Yes.

20 Q. And at that very same stage in
21 time in this process which you actually were involved
22 in, as I understand it, you looked at that range of
23 subjects as they had been studied by other experts?

24 A. Yes.

25 Q. You performed a synthesis of their



1 results and of their preferences and you reached a
2 conclusion from your own discipline as to what the
3 results should be?

4 A. Yes.

5 Q. Is that a better opinion in the
6 way that that was done than your opinion would have
7 been had it been done the way I suggested in my
8 hypothetical?

9 A. I think the answer is that it
10 certainly is a more in-depth analysis of the components
11 of it. I think my reaction, my answer is somewhat
12 subjective in the sense that I would get more fun out
13 of doing one that I had less specific information
14 coming from the individual consultants.

15 So, from that standpoint, I think
16 constrained in quotes is a proper word, but I don't
17 think that it takes away from the fact that it was a
18 planning opinion at the end of that leg of the overall
19 process.

20 Q. So if I understand you, when you
21 say "proscribed" or "constrained", you mean you were
22 constrained in that you did not do it all yourself?

23 A. That is clear.

24 Q. Is that what you mean by
25 "proscribed" or "constrained"?



1 A. Yes.

2 Q. That then takes me back to where
3 we left off. I had been reviewing your opinion with
4 respect to whether or not landfill was a permitted use
5 considering the Official Plan of the Town of Milton?

6 A. Yes.

7 Q. And the zoning by-law 61/85?

8 A. Yes.

9 Q. I had reached the point where I
10 was trying to review the methods of interpretation
11 which one can bring to documents of this kind. Can I
12 start here this morning and put the proposition to you
13 that like lawyers, different land use planners come to
14 different conclusions from time to time as to the
15 meaning of planning documents. I have in mind the
16 meaning of the Official Plan and zoning by-law as they
17 fit together to cover one piece of land. Is that so?

18 A. I think that that is so, yes.

19 Q. When different opinions are
20 arrived at as between different planners and the matter
21 has to be resolved before a Board like this, are there
22 some methods that you can suggest as to how a Board
23 goes about that exercise in the way of interpreting the
24 meaning which is to be preferred?

25 A. Well, meaning preferred by Board



1 members in terms of acceptance?

2 Q. When they conclude finally what
3 the meaning of the zoning by-law and the Official Plan
4 is and they have differing opinions before them -- let
5 me be more precise in that.

6 It would be my submission that a planner
7 would look first at the words of the documents
8 themselves to see that they had a fairly clear meaning?

9 A. Yes, sir.

10 Q. It is my submission that if you
11 concluded that there was some ambiguity in the meaning
12 or ambiguity as pointed out by the opinions of two
13 experts who looked at the same words came to a
14 different conclusion, then you would have to go some
15 distance beyond the very words themselves in order to
16 attribute meaning to them.

17 In other words, you would have to go to
18 the context of the by-law or the Official Plan in which
19 the words are found?

20 A. I think that the Official Plan
21 level there is some ground for flexibility of
22 interpretation because it is a guideline and not a law
23 in the sense of something which is in this particular
24 case a by-law. When you are looking at the by-law, I
25 don't think that the person who reads the by-law should



1 be expected to perceive behind the by-law some kind of
2 contextual thing except for the Official Plan and the
3 by-law should speak for itself and therefore the
4 flexibility of interpretation, or it would be the
5 interpretation of intent or an interpretation of what
6 the guideline or policies are all about at the Official
7 Plan level and I don't think it can be at the zoning
8 by-law level in my opinion.

9 Q. You say there is no flexibility in
10 interpretation with zoning by-laws or there shouldn't
11 be?

12 A. Well, if the by-law is ambiguous,
13 ...

14 Q. That's my point.

15 A. ... then perhaps there is a case
16 for several opinions being right and leaving it up to
17 in this case this Board to decide which of the opinions
18 they prefer from that standpoint. However, if the by-
19 law wording is clear, then I think the opinion of a
20 planner would be based upon the clarity of the by-law.

21 Q. There are clear laws and there are
22 unclear laws and we deal with them all the time in my
23 work, and I am constantly amazed at how often we have
24 disagreements between intelligent people as to what the
25 meaning of a particular law is. Where we take your



1 case of there being some ambiguity, and without saying
2 there is in this by-law, and that is a matter for
3 argument, but where there is ambiguity I take it you
4 would agree that you could go to the Official Plan to
5 look for some way of resolving the ambiguity?

6 A. If there was ambiguity, yes, but
7 in the Milton by-law I don't think there is ambiguity.

8 Q. I take your point. I am not
9 pressing you to change your opinion. If there is
10 ambiguity or if you are left with some ambiguity even
11 after looking at the words of the by-law and the words
12 of the Official Plan, is it legitimate to go firstly to
13 the opinions of those who administer those documents on
14 behalf of the municipality, the Planning Director, for
15 instance?

16 A. It might be and I use the term
17 advisedly because sometimes, and to take the case in
18 point, your example, the Planning Director from his
19 professional standpoint lives with the by-law and, yes,
20 he has a lot of experience with the by-law, but it may
21 be that that person is also familiar with the context
22 and he may read more into a by-law than the by-law in
23 fact says.

24 I would not negate the opinion of
25 another planner like myself compared to the Planning



1 Director. That is not said in a pejorative sense with
2 regard to the Planning Director, it's just that he
3 lives with the thing on a daily basis, the by-law on a
4 daily basis and the Official Plan, and over time he may
5 have built more into it than the words actually say and
6 in the case of the by-law, assuming no ambiguity, I
7 think the by-law has to be able to be read on the face
8 of what the words say.

9 Q. Assuming ambiguity I agree, but
10 nevertheless you would not discount the views of those
11 who live with the by-law and the Official Plan day by
12 day and administer its meaning in the way they see it?

13 A. "Discount" is the wrong word.
14 This is perhaps small or large depending on where you
15 are, but part of the reason for having consultants in,
16 or consulting planners, is that they bring an outside
17 independent or fresh, whatever terminology you want to
18 use, view as to what the words actually say. There
19 have been many hearings I have been in, both for and
20 against the proposal, and at the end of it a Board
21 member or lawyers have said that it may be that the
22 municipality knows more about what its by-law says now
23 than it did when it went into the examination and
24 cross-examination, simply because they have a
25 tendency -- planners who deal with it every day have a



1 tendency to sometimes not look precisely at the words
2 and go to the intent.

3 Q. They don't see the forest for the
4 trees?

5 A. I was trying to be careful not to
6 say in any sense -- to leave any critical type of
7 analysis here, but it just happens.

8 Q. I don't mind you being critical
9 and I am sure Mr. Zsadanyi won't either, because we
10 will come to see if we can come to some common
11 understanding as to what it means. If, for instance,
12 Mr. Stagl, who has been sitting here from time to time
13 and who is a planner and you recognize him?

14 A. I know Mr. Stagl.

15 Q. If Mr. Stagl has an opinion which
16 is at odds with yours and Mr. Zsadanyi the Planning
17 Director were to come in from his understanding of the
18 context and the history of the matter give an opinion,
19 shouldn't the Board listen to that?

20 A. I think the Board should ask me if
21 they have the opportunity or anyone else who wants to
22 have the opportunity how the words of the Milton by-law
23 could be better structured depending upon the position
24 that Milton wishes to have that by-law portray.

25 I am not going to say anything beyond



1 that because planners will differ with one another
2 periodically.

3 Q. As indeed lawyers do?

4 A. Lawyers never disagree with each
5 other.

6 Q. Then, assuming we have for the
7 sake of this discussion, and to close it off, but
8 assuming we have three or four planners who give
9 evidence in this room and there is a variance of
10 opinion, does the legislative history of the matter
11 assist the Board in what was intended to be done in the
12 Official Plan and zoning by-law?

13 A. The history, as it was implemented
14 at the time, would help. What happened at one point in
15 time in history and what happens now should be looked
16 at to see whether it is the same or whether there has
17 been a change, and if Council and their advisors have
18 made a change, then I would have to assume that there
19 was a reason for that change.

20 Q. You would impute meaning to a
21 change and you discussed that with us, and you have
22 said it was done differently with the old Official Plan
23 and zoning by-law than it was done presently with the
24 present Official Plan and zoning by-law.

25 So, because there is a change in



1 approach, you would impute meaning to that and they
2 must have intended that?

3 A. I would have to assume a
4 municipality when it drafts a new document does intend
5 at the Official Plan level to portray what it portrays,
6 and in the realm it is a policy document, it's a
7 guideline that can be interpreted. I would have to
8 believe that when changes are made, changes are made
9 for the better or for some particular reason.

10 Q. As I understand your views with
11 respect to the Milton by-law and Official Plan, you see
12 a change in approach and, to just highlight that, you
13 see the policies in the old Official Plan which were
14 directed solely to sanitary landfill and which were
15 site-specific to old Site F becoming policies which are
16 included within the agricultural policies, as I
17 understand your view?

18 A. I think it was more the
19 methodology used. As I recall, there was a designation
20 of agricultural on the land and it was removed and
21 replaced with sanitary landfill as the designation on
22 the land. The technique, if you will, now is that
23 there is agricultural on the land and as part of that
24 agricultural designation there is one particular
25 location identified for sanitary landfill.



1 Q. If this Official Plan set out in
2 H-324 had a specific section in it, and not in
3 agricultural policies, but in a section which simply
4 said sanitary landfill and in that section said there
5 would be one place in Milton where sanitary landfill
6 may be permitted, and it is at the corner of Tremaine
7 and Britannia Road, would that in your view have been
8 consistent with what was done under the old zoning by-
9 law and the old Official Plan?

10 A. No. To compare apples to apples,
11 at the Official Plan level it would have been
12 consistent and outside the framework of the
13 agricultural designation or the agricultural policies.

14 Q. It is when they take it out of
15 that specificity and put it into the agricultural
16 policies that you view the Official Plan as being
17 somewhat more permissive for landfill within the whole
18 agricultural zone?

19 A. Yes. It is still a very specific
20 location, but they have added back in to the
21 agricultural policy context of the Official Plan where
22 before they took it out.

23 Q. If I can use the vernacular, the
24 nose of the camel has just entered the tent as far as
25 the rest of the agricultural designation is concerned?



1 A. I would prefer not to interpret
2 that saying.

3 Q. I can leave it standing alone.
4 Let me take you then to the zoning by-law itself and,
5 in particular, I want to review those sections dealing
6 with sanitary landfills so I can understand precisely
7 what you are saying as you find this by-law supporting
8 your opinion as to the meaning of the Official Plan.

9 Now, we are looking at H-325 and the
10 first reference I find is in the definition section,
11 the page numbered 20, and there is a specific
12 definition for sanitary landfill?

13 A. Yes.

14 Q. It is numbered page 20 at the top.
15 I notice by contrast that there is no definition, or at
16 least I took your evidence to be that there was no
17 definition in the by-law for public services. Am I
18 right about that?

19 A. There is in the definition
20 section, there isn't a section but, and this is not
21 uncommon in zoning by-laws, but under 3(16) there is a
22 de facto definition.

23 Q. To highlight that there is no
24 definition of the words "public services" in the
25 definition section of the by-law, but when we go to



1 section 3(16) we find the word heading "Public Use" and
2 under the words in bold type Public Use, we find the
3 words in lesser type, "Public Services" and I think
4 that it is this clause in relation to sub-section (c)
5 that allows you to come to the conclusion that sanitary
6 landfill may be permitted in other places in the Town
7 of Milton than the specific place which is later
8 identified in the by-law?

9 A. Yes. But, by its very use
10 throughout the by-law under the term "USES PERMITTED"
11 the term "Public Use" is a use. It is an all-inclusive
12 use, if you will, or a very wide span of the particular
13 uses, but it is a use, and I think it is defined in the
14 by-law by section 3(16)(a).

15 Q. If you look at 3(16)(a) and if you
16 assume that public services includes a sanitary
17 landfill, then just taking 3(16)(a) by itself a
18 sanitary landfill would be permitted anywhere in any
19 zone in Milton?

20 A. No, sir, I believe you must look
21 for an interpretation as to what the scope of the
22 public uses are to the Official Plan. Just the point
23 you made earlier about looking to the Official Plan for
24 interpretation and a by-law is specific in terms of the
25 use that is permitted, but in terms of scoping the use,



1 I think you could legitimately look to the Official
2 Plan for conformity with the by-law.

3 Q. We will do that, but by taking
4 this by itself:

5 "Except as otherwise provided in
6 paragraph (c) of this subsection, the
7 provisions of this By-law shall not
8 apply to the use of any lot or the
9 erection or use of any building or
10 structure for purposes of the public
11 services..."

12 A. Yes.

13 Q. If we take that at its plain
14 meaning, that means the by-law, which is a zoning by-
15 law, does not prevent the use to be made of public
16 services anywhere in Milton?

17 A. No. This clause is to be read in
18 conjunction with the rest of the text and it sets that
19 out as a general caveat and the answer is yes to that.

20 Q. We are not at odds on that. I
21 want to follow it through as logically as I can so I
22 can understand what it means. If we only had that, and
23 just accept that that is all we have for the purposes
24 of my edification, but if we only have that, does that
25 mean that if there weren't anything else in the by-law



1 that public services would be permitted in any zone to
2 be found anywhere in Milton.

3 A. It would say that the zoning by-
4 law is setting out to allow that, yes.

5 Q. If we go over then to find out
6 whether it is really meant to be as broad as that -- I
7 take it that is where you are trying to take me and I
8 want to go, I want to understand it, but can we go to
9 (c):

10 "Where in this By-law..."

11 The first part says you can have a landfill anywhere in
12 Milton, except as limited by sub-section (c)?

13 A. Correct.

14 Q. Which says:

15 "Where in this By-law, under the heading
16 of 'USES PERMITTED', a use is
17 specifically permitted in a zone, which
18 use without such reference thereto would
19 be permitted in any zone pursuant to the
20 provisions of paragraph (a) of this
21 subsection, then such use shall be
22 permitted only within the zone or zones
23 making reference thereto and the said
24 paragraph (a) shall not apply to such
25 use."



1 A. Yes.

2 Q. That says if I go through the by-
3 law and look for the heading of uses permitted
4 someplace and I find that a sanitary landfill is
5 permitted under those words, then that is the only zone
6 where it is allowed within the Town of Milton?

7 A. That is correct. You found
8 sanitary landfill under Uses Permitted.

9 Q. I go looking for that and I see
10 the general set-up of the zoning by-law, but let's go
11 to the agricultural A1 zone which is section 32 of the
12 page numbered 180. I see the very words I am looking
13 for "Uses Permitted" and it says that agricultural
14 zones are designated A1 and:

15 "No persons shall within any A1 zone use
16 any lot or erect, alter or use any
17 building or structure for any purpose
18 except one or more of the following A1
19 uses, namely:..."

20 And here are the uses permitted. I look down the uses
21 permitted and I do not see the words "Sanitary
22 Landfill"?

23 A. That is correct.

24 Q. If I am left just there I am still
25 in the position where I have to say to myself that



1 sanitary landfill is permitted anywhere in the Town of
2 Milton unless I can find some other place where
3 sanitary landfill is designated under the words "Uses
4 Permitted".

5 A. But you do see a public use as a
6 permitted use under "Uses Permitted"?

7 Q. "A Public Use in accordance with
8 the provisions of 3(16)..."

9 A. That is correct.

10 Q. We have gone in a circle. It says
11 that a public use can be anywhere except where it is
12 designated under a particular heading of Uses Permitted
13 and it can only be there. Is that what you are saying,
14 I can read that to mean sanitary landfill?

15 A. I believe so.

16 Q. Does that also mean that every
17 other public use or service is permitted in the
18 agricultural zones in Milton?

19 A. In the context of this by-law it
20 means that subject to the fact that the Official Plan
21 may otherwise preclude it. Therefore, you could not
22 allow a use that was precluded by the Official Plan
23 policies because it then would be in non-conformity
24 with the plan if a by-law allowed such uses.

25 Remember the point I made about the term



1 "Public Use". I went through the by-law and found
2 there were in fact zones where public use by term and
3 by use was not permitted, therefore, in my opinion sub-
4 clause (c) of 3(16) kicked in. In fact "public use" as
5 a use was precluded from certain zones and allowed in
6 other zones and therefore sub-clause (c) was operative.

7 Q. Which zones is public use not
8 permitted in?

9 A. In the estate residential zone,
10 hamlet residential zone, the hamlet, and there are two
11 zones, an RV and a V zone, in the
12 commercial/convenience zone, in the rural commercial
13 zone and there are five therefore to my knowledge where
14 it is not permitted and therefore it makes operative
15 sub-clause (c) as it refers to the term "Public Use".

16 Q. What we are left with is in the
17 agricultural zones in accordance with the wording of
18 this by-law, any public use is permitted because of the
19 inclusion of those words "Public Use" in accordance
20 with section the provisions of 3(16) hereof?

21 A. Yes, I believe that that's true.

22 Q. I then go on under the
23 Agricultural A1 zone and there is a thing called
24 "Special Provisions" and I find those words as I get
25 over to page 181 under sub (3)?



1 A. Correct.

2 Q. And I go on over to page 184 in
3 the exhibit and here I find a very specific special
4 use, "Sanitary Landfill District Parts 1, 2, 3, 4 and 5
5 on the Reference Plan of Survey ... Britannia (sic)
6 Road (sic) and Tremaine Road," and that's the old Site
7 F?

8 A. That is correct.

9 Q. That is the use that has been
10 carried forward from the amendments ordered by the
11 Municipal Board under the old documents into the new
12 document?

13 A. That is correct and carried into
14 the new document and into the new zoning.

15 Q. My problem is that I read that and
16 I conclude to myself that it is reasonable to interpret
17 this by-law in looking at section 32, the Uses
18 Permitted:

19 "A public use in accordance with the
20 provisions of section 3(16)..."

21 And I read that not to include sanitary landfill
22 because it is a special use specifically provided for
23 under the term "Special Uses" and the heading "Sanitary
24 Landfill District"?

25 A. I would say that I am not a lawyer



1 and I am not trying to give a legal opinion, but there
2 are from my standpoint two flaws to that argument from
3 a planning standpoint. One is that 3(16)(a) and (c)
4 are activated to allow public uses in the location that
5 it specifically says in sub-clause (c) and under the
6 title of sub-clause (i) under section 32, the
7 Agricultural Zone; clause (i) is the caption "Uses
8 Permitted". If it was intended to preclude sanitary
9 landfill as defined in the by-law, then the term
10 sanitary landfill should have been in that list,
11 otherwise the by-law does not speak to preclude
12 sanitary landfills in agricultural zones. It only goes
13 on to allow -- if you look at the wording of 32(3)(j),
14 and I think this is 194... I've lost it.

15 Q. Are you looking for Sanitary
16 Landfill District?

17 A. Yes. If you look at the words, it
18 doesn't say anything to preclude landfill even in this
19 location which is a site-specific annotation as to what
20 is to happen in that particular location and it does
21 not preclude sanitary landfills taking place elsewhere.
22 It says: "Notwithstanding any provisions of this By-law
23 to the contrary," in that district, as it is zoned,
24 "... no building... shall be erected,... except... for
25 one or more of the following uses." So, it sets out



1 specifically what is permitted on that site and that is
2 consistent with the pattern of this by-law.

3 If they wanted to preclude, using this
4 by-law, a sanitary landfill, as they carefully do by
5 definition in the by-law, then, in my opinion, it
6 should have been under sub-clause (i) to start with and
7 then introduce it under sub-clause (3)(j).

8 Q. I look at those words:

9 "Notwithstanding any provisions of this
10 By-law to the contrary..."

11 as being words which are used to permit this use in
12 this location and I look to those words as to
13 recognizing that there are provisions of this by-law to
14 the contrary. That is the way I read it and you may
15 agree or disagree?

16 A. It may be considered to be a legal
17 opinion, but I wouldn't read that as saying there are
18 necessarily any to the contrary, but it is saying if
19 there are some then they are not to apply and to
20 prevent this use from going in this location, but the
21 other side of the equation or the other saddlebag on
22 the horse, if you will, is not there to counteract it
23 going anywhere else under the agricultural zone at
24 least.

25 Q. I draw some support I think for my



1 view when I go back to the Official Plan and if you
2 would look at that with me, H-324. We went through the
3 exercise when we started in this area of looking at
4 sections 4.1.1 and at page 22, the agriculture section,
5 and 4.1.2 through 4.1.4?

6 A. Correct.

7 Q. As I recall the exercise, you
8 agreed if we took 4.1.1 by itself, that would not
9 include sanitary landfills?

10 A. That is correct.

11 Q. If we did the same with 4.1.2,
12 that would not include a sanitary landfill and even
13 added to 4.1.1 and similarly with 4.1.3, as I recall
14 it. I don't recall it the way you do, then tell me. I
15 looked at 4.1.4 which is the sanitary landfill
16 reference in the agricultural policies and I look at it
17 and I say that it is entirely inconsistent with the
18 preceding three paragraphs and so, as I interpret it,
19 you must interpret it with the words not written in
20 there but which must be there to make reason of it:

21 "Notwithstanding the foregoing
22 policies..."

23 and would you agree with me?

24 A. No.

25 Q. They are not there, but isn't that



1 what it means?

2 A. No. I don't think you could read
3 it that way. You might want to read it that way...

4 Q. I am trying very hard to read it
5 that way?

6 A. I am not trying to be funny here.
7 I think some people who have been through the process
8 might believe that it reads in that way, but I don't
9 believe the words read that way and I think the point I
10 made before about the principle being established in
11 the agricultural area, it is established by the very
12 inclusion under section 4. It does have a specific
13 location for it.

14 Q. It is the same location we find in
15 (j), the sanitary landfill district, so it is
16 consistent there?

17 A. It is consistent.

18 Q. And under (j):

19 "Notwithstanding any provisions of this
20 By-Law..."

21 and it seems to me we should read 4.1.4 the same way:

22 "Notwithstanding the foregoing
23 provisions..."

24 to make it consistent with the by-law?

25 A. I think ...



1 Q. That's where you and I part?

2 A. I am not trying to be with or
3 apart from anybody on this particular thing.

4 Agriculture is a policy there and the first one is the
5 agricultural areas primarily for agriculture, they are
6 primarily agricultural in character, and there are
7 other uses contemplated, some of which are not in my
8 opinion agriculture or even related to agriculture, but
9 that is not a serious breach, if you will, of a policy
10 direction.

11 Q. It is not a serious difference
12 like sanitary landfills?

13 A. The principle -- from a planning
14 standpoint, my opinion is that a sanitary landfill is
15 in principle permitted in an agricultural designation
16 in Milton.

17 Q. I am not asking you to change your
18 opinion, but I am asking you to consider whether
19 another opinion such as I have expressed in these
20 questions and answers can be held by someone else
21 reasonably?

22 A. Everybody is welcome to their
23 opinion and of course they can hold reasonable
24 opinions. You see, you have to look at the nature of
25 the use which by definition at the regional level, with



1 which this Official Plan must conform, at the regional
2 level it is considered, landfill is considered as an
3 interim use and therefore in the long-term after-use
4 governs the planning designation on a current basis if
5 it comes down to a squeeze play between regional and
6 area municipality, the regional plan or the intent of
7 the regional plan should prevail.

8 In this case they obviously don't have
9 approved policies which say interim use, or that
10 landfill is an interim use, but they do have those
11 Council-adopted policies and this plan in the earlier
12 version actually had the words scattered throughout "in
13 conformity with the regional plan", so there is no
14 question that this Official Plan is attempting to
15 conform with the regional Official Plan and I don't
16 think there should be any argument from any planner on
17 that.

18 Therefore, we are looking at a use which
19 in principle is an interim use, in my opinion at least,
20 and the possibility or my opinion that the principles
21 established is not inconsistent with it being an
22 interim use. I specifically agree with you that 4.1.4
23 locates the sanitary landfill as Milton was
24 contemplating it at the time, but I do not believe that
25 Milton's Official Plan, as it is drafted, could be



1 interpreted otherwise than to say under the
2 agricultural designation, the principle of land use
3 being in that zone, that it is there, is implicit in
4 that.

5 Now, if that is the case, and if you go
6 to the bottom of the page, and I had better be sure I
7 have the right one ...

8 Q. Before we go to the bottom of the
9 page, I take it that it would not surprise you to be
10 told that it is the view of the Planning Director of
11 the Town of Milton that it was not intended as a matter
12 of policy to open up the entire agricultural district
13 to landfill and, in fact, they thought they were doing
14 quite the contrary?

15 A. It would not surprise me at all as
16 it has been quite an emotional undertaking for
17 everybody who was involved in that, as I understand it.
18 I wasn't, but I understand from talking to him and
19 others, that it was, a very emotional issue or
20 undertaking.

21 Q. I have your point and I don't
22 propose to try to get you to change your view and I
23 would like to move on to the approvals now, if we can.

24 One thing before we go on. I understand
25 better this morning than I did last week what you meant



1 when you said your planning opinion was constrained or
2 proscribed, as I remember the word, but I would like
3 you to tell me, if you can, whether it is possible to
4 compare Sites F and D from the perspective of the
5 planning policies which you find applicable to each
6 site on a relative basis.

7 In other words, when you look at the
8 planning policies which affect Site F and you look at
9 the planning policies which affect Site D, are you able
10 from that perspective as a land use planner to reach an
11 opinion as to which is preferable for landfilling?

12 A. I am not so sure I understand what
13 you mean by planning policies.

14 Q. Let me try to define it even
15 further. Let's assume for the purposes of my question
16 that on all of the points of comparison that were made
17 in your comparative analysis with the exception of land
18 use planning, that you find the sites equal and you now
19 must make a decision as to which should be used for
20 sanitary landfill, and you turn your mind to the
21 planning policies which appear from all the planning
22 documents we have talked about, and you differentiate
23 between Site D and Site F, taking that assumption and
24 looking at provincial policies, federal policies, the
25 local policies as expressed in the zoning by-laws and



1 the Official Plans, and you arrive at a preference as a
2 land use planner as between the two sites on that
3 basis?

4 A. It is really a hypothetical in a
5 sense because there is a lot more behind it and you
6 have made it hypothetical by saying all things are
7 equal except the land use planning documents. I could
8 attempt to do it, Mr. Leitch, but I would not want to
9 be found wanting if I forgot something because it was
10 not something you asked me ahead of time to do.

11 I could try it. For instance, D falls
12 under the control of the Planning Act and therefore
13 there is at least three operative levels of planning
14 policy. One would be provincial in the sense of
15 policies within parenthesis like the Food Land
16 Guidelines. I must make the distinction because there
17 is now a planning policy under the Planning Act,
18 government policy under the Planning Act, section 3,
19 which is different, more formalized.

20 So, from a provincial standpoint the
21 Food Land Guidelines would apply as a planning policy
22 and you would have to meet the constraints or
23 considerations that it requires, that would have to be
24 taken into account.

25 Then there would be the regional



1 Official Plan and its policies and by and large
2 policies for agricultural lands, policies for urban
3 boundaries, policies for roads, policies for -- I think
4 the only thing that wouldn't apply in one form or
5 another would be the Parkway Belt on this site. It is
6 a bit to the east and the Parkway Belt does prevail in
7 Milton, but it wouldn't prevail on this site and the
8 mineral resource policies would not prevail, those in
9 the regional Official Plan would not prevail, but at
10 the regional level the rest of the Official Plan would
11 to one degree or another prevail.

12 At the Milton or area municipality level
13 the Official Plan and the zoning by-laws would prevail
14 there under the Planning Act.

15 There is a federal regulation or
16 guideline with regard to development adjacent to
17 airports, but I think by the time we have reached this
18 particular level it probably is not operative or only
19 to a very limited degree is it operative as it effects
20 Site D in Milton.

21 There are Ministry of the Environment--
22 at the provincial level there are Ministry of the
23 Environment guidelines for the development of landfills
24 and if I could just put that to one side as a package
25 of policies ...



1 Q. Those are the Site D policies?

2 A. Yes. Under F the operative
3 planning legislation is the Planning and Development
4 Act or the Parkway Belt West Act and the Planning Act
5 is effectively superseded by that in my opinion,
6 although obviously Burlington still has an Official
7 Plan and zoning by-laws, but by the very wording in
8 those documents it refers to the facility, if you will,
9 the Parkway Belt West area which is part of the
10 Planning and Development Act of Ontario. So that Act
11 is the operative planning Act in this area.

12 The regional plan in the same way
13 recognizes the primacy of the Parkway Belt Act and the
14 Parkway Belt West Plan by reference in its own Official
15 Plan, and I look upon those references in those
16 documents as something which is required of them to do
17 one way or the other to bring those documents into
18 conformity with the Parkway Belt West Act. I wouldn't
19 say courtesy is the right word, but it is almost a
20 housekeeping or administrative type of amendment which
21 has just been enacted.

22 The regulations which go behind the
23 Parkway Belt West Plan are the regulations which apply.
24 There is some provision for zoning to be made operative
25 again on those lands if the city and the province



1 agree, and also site plan control is the purview of the
2 municipality under normal circumstances where site plan
3 by-laws are required to be enacted. Site plan at Milton
4 would be in the purview of the Town of Milton as well.

5 Where there is any conflict with the
6 Parkway Belt West Plan, all the plans and by-laws give
7 way to the Parkway Belt Plan.

8 Again I hope that is an exhaustive list
9 but I can't be sure it is. Once you are into that,
10 Site D -- the Official Plan and the by-law are in
11 conformity, the latter with the former and the former
12 in conformity with the regional Official Plan, and so I
13 think it would be correct to say that you can read
14 those three together and the concept of having a
15 landfill on D is something which is recognized as a
16 possibility under the regional Official Plan,
17 notwithstanding the fact that the Region would consider
18 those lands to be good agricultural lands in the
19 relative context, and that is by section D3.9 of the
20 regional Official Plan and it would allow consideration
21 of that type of area.

22 Milton's Official Plan in my opinion,
23 the principle does allow the use and, in my opinion,
24 the by-law does allow the use.

25 Now, the process as laid out by us on



1 behalf of the Region I don't think is inappropriate. I
2 think in the case of Milton there is the need to clear
3 up any ambiguity between my opinion and somebody else's
4 opinion in light of the past that I am aware of, and
5 therefore an amendment would be necessary to the Milton
6 OP and the zoning by-law for clarification to ensure
7 you don't get hung up, if you will, but I would not see
8 landfill on Site D as an inappropriate use.

9 It is an interim use but it is not inappropriate and it
10 is something that is a use which has been considered in
11 the two levels that are operative under the Planning
12 Act, the regional and the Milton plans.

13 F is in the Parkway Belt West and does
14 not require in my opinion an amendment to the
15 Burlington Official Plan or to the zoning by-law and,
16 in my opinion, it would not require an amendment to the
17 Parkway Belt West Act, even if the Minister had not
18 deemed it. The Minister has taken that decision away
19 from the planners, if you will, by noting that it does
20 not conflict with the Parkway Belt Act, but I believe
21 the regulations would have allowed this particular use
22 in that area.

23 Now I believe that a landfill at F is an
24 appropriate use and, in light of the circumstances of
25 the surrounding land uses, F would probably be



1 preferred by me over D if I was making a comparison
2 between the two.

3 The difficulty I face is that if you
4 have taken away -- by making everything hypothetically
5 equal, then the land use planner is somewhat
6 constrained because I would normally bring to bear my
7 opinion...

8 Q. I think you have done that in your
9 comparative analysis, but my purpose is to try to see
10 if there is in your opinion a land use planner any
11 greater level of compatibility with the one site or the
12 other as regards the planning policies which come from
13 the documents and which affect the two sites?

14 A. In both cases there are different
15 provincial policies which prevail and one is under the
16 Planning Act, the aggregate policies, and it prevails -
17 -it doesn't prevail, but it applies in terms of the
18 consideration on F and the Food Land Guidelines apply
19 in D's case and they have to be in the same way
20 considered before you come to a planning opinion on the
21 D side of the equation.

22 Q. So, we have I suppose a relative
23 equality in relation to those two -- it may not even be
24 an equality but it may be an inequality with respect to
25 those two provincial policies?



1 A. I think each of those policies to
2 my recollection allows the consideration of the use of
3 those lands, those specific lands if you do certain
4 things and, to simplify it, if you come to a conclusion
5 that you may need those lands, there is a series of
6 considerations or a series of steps you have to go
7 through.

8 You effectively in both cases have to
9 prove that you need those lands for the use you are
10 proposing and that you specifically have had regard to
11 the nature of the resource. On the D site you have to
12 have regard to the fact is it agricultural land, is it
13 good agricultural land, and by taking this land using
14 it in the way they propose to do, are you bringing
15 adverse effects to the land, the community, to the area
16 and to other lands?

17 Similarly from F's standpoint, it is a
18 mineral resource and have you taken into consideration
19 -- do you need these lands? What is the quality of
20 these lands? How do you propose to use these lands?
21 Is there any way the mineral resource can be retrieved?
22 I am perhaps over-simplifying the matter, but
23 essentially it is a series of tests or considerations
24 which both policies have and, overriding this I have to
25 go back to the stuff that is hypothetical, but the



1 environmental assessment process has proven need for
2 landfill, in my opinion, it has proven the need for
3 scale and it has also narrowed down to several
4 particular sites and therefore the accumulation of
5 data, the accumulation of elements you need to consider
6 both on the Site F consideration when considering the
7 aggregate policy and on Site D when you are considering
8 the Food Land Guidelines, I believe is there and I
9 think the tests required or the rationalization for the
10 use of those lands for this particular type of use is
11 there.

12 I am sorry, Mr. Leitch.

13 Q. That's quite all right, Mr.
14 Walker. As I listened to your answer what I took from
15 your analysis of the planning policies which apply to
16 Site D was an opinion, and these are your words I wrote
17 down, "Landfill at Site D would be not inappropriate."
18 Did you say that? I am sure you did?

19 A. I am not saying I didn't say it,
20 and it would not be unusual for me to use those terms,
21 but I don't recall exactly what the answer was.

22 Q. You said on Site F it would be an
23 appropriate use?

24 A. Yes.

25 Q. Is it fair to say that in choosing



1 those words as you, did you have indicated from a
2 policy point of view a preference really in terms of
3 landfill at F over landfill at D, all other things
4 being equal. Perhaps not much of a preference, but is
5 that your view? It would be appropriate at one place
6 and not inappropriate at the other?

7 A. I could standardize it and I think
8 landfilling at either site is appropriate.

9 Q. Given the choice that exists
10 before this Board of taking one or the other, I take it
11 your view goes back to your comparative analysis and
12 you prefer it at Site F?

13 A. From a policy standpoint it is a
14 little simpler at F, but I wouldn't want policy alone
15 to be seen to be the reason for preferring F as the
16 site for the landfill.

17 Q. So I understand from a policy
18 point of view it is a little simpler at F but not
19 inappropriate at D, but taking your overall opinion and
20 taking all of the things into account and not being
21 constrained by the assumption I put to you, your
22 opinion is that landfill is to be preferred at F over
23 D?

24 A. Yes.

25 Q. Let me deal finally with the



1 approvals, if I may, H-326, the group of documents that
2 accompanied your letter to the Mayor of Milton and the
3 Members of Council?

4 A. H-326?

5 Q. H-326.

6 A. Thank you.

7 Q. The covering letter submits the
8 application to the Town of Milton for amendment of its
9 Official Plan and zoning by-law?

10 A. Yes.

11 Q. There is a summary of the argument
12 and reasons for the amendment, but I want to start with
13 Schedule A, which is the fourth page in, and to what it
14 was you were directed to do by regional Council with
15 regard to the approvals, and I find that at page 5 of
16 Schedule A, paragraph 26, where regional Council
17 directs you be retained to carry out the detailed
18 planning work necessary to obtain planning approval for
19 Sites F and D in accordance with the work program you
20 submitted, and there are some qualifications with
21 respect to amounts of money and there being no need for
22 a Parkway Belt amendment at Site F.

23 That, in essence, was your instruction
24 to proceed with the planning work?

25 A. Yes.



1 Q. I take it that having that in hand
2 you then reviewed the documents and, as I go over and
3 look at the first page following Schedule A, there is
4 an application to amend the zoning by-law, or a copy of
5 it. This is the form used by the Town of Milton in
6 circumstances where one is applying to amend the zoning
7 by-law?

8 A. That is correct.

9 Q. Is there a similar form for
10 amending the Official Plan?

11 A. No, not to my knowledge.

12 Q. Just the by-law?

13 A. I believe so.

14 Q. Then the application to amend the
15 Official Plan is contained in the documents following?

16 A. Yes.

17 Q. I have looked at the application
18 and I note going over two pages in the form itself and
19 past the concept plan into the text itself of the
20 amendments, I see firstly that there is an application
21 to amend by-law 61/85 and that is the current by-law?

22 A. Yes, and the form being proposed
23 is the one which the Town already has implicit in the
24 by-law.

25 Q. That by-law was approved by the



1 Municipal Board, as we have heard in the evidence, on
2 the 26th of January, 1986?

3 A. Yes.

4 Q. At the time this submission was
5 made, it was December 17, 1985?

6 A. Yes, in draft form.

7 Q. It had been approved by Council
8 because it was approved July 2nd, 1985, the zoning by-
9 law?

10 A. Yes.

11 Q. When you prepared these
12 applications to amend the by-law, you did so knowing
13 that Council had passed its zoning by-law?

14 A. Correct.

15 Q. You were aware that the matter had
16 been forwarded to the Municipal Board for approval?

17 A. That is correct.

18 Q. When the day came, I suppose in
19 your mind, you probably would be amending this by-law.
20 However, on the chance you wouldn't be amending this
21 by-law you also appended an application to amend by-
22 law 1642 of the Town of Burlington and by-law 1965-136
23 of the Town of Oakville?

24 A. That is correct.

25 Q. Just stopping there so this Board



1 understands the position of those two by-laws, they
2 were by-laws inherited by the Town of Milton at the
3 time of regional government?

4 A. That is correct.

5 Q. By-law 1642 for the former Town of
6 Burlington covered what we call old Site F?

7 A. Yes.

8 Q. And old Site F had been given
9 sanction in that by-law on the order of the Municipal
10 Board in the previous hearing dealing with old Site F?

11 A. Correct.

12 Q. And by-law 1965-136 is a by-law
13 which was inherited by the Town of Milton from the Town
14 of Oakville at the time of regional government, and it
15 covers present Site D?

16 A. That is correct.

17 Q. If I understand what you were
18 doing, you were saying that it may be necessary to
19 amend the old Burlington by-law to delete the approval
20 of old Site F, and it will be necessary then to amend
21 the old Oakville by-law to approve sanitary landfill at
22 Site D. Is that right?

23 A. Yes, sir, and I said all of this
24 in chief, I believe.

25 Q. I just want to be sure I



1 understand it. Sometimes I don't understand what
2 people say. Then, you then were in the position where
3 you probably on a balance of probabilities thought that
4 it was the new by-law 61-85 which would have to be
5 amended, but out of an abundance of caution you
6 provided the amendments for the other two. Am I right
7 about that?

8 A. They were the operative by-laws at
9 the time and it was a joint application. I think, as I
10 said in chief, when we were talking to Mr. Zsadanyi
11 about the methodology that we would pursue, he asked
12 and the Region concurred, that if a by-law was being
13 proposed for the new site whether the application
14 could concurrently remove the zoning designation on the
15 other site.

16 Q. I will come to that. But, for the
17 moment, I just want to get to the point where you made
18 an application in respect of all of the by-laws which
19 may have application because at that point in time,
20 although the new by-law was before the Municipal Board,
21 it had not received approval as yet?

22 A. That is correct.

23 Q. As things stand before this Board
24 there is no need for this Board to deal with the
25 applications to amend the old Burlington by-law and the



1 old Oakville by-law, is that correct?

2 A. That is correct.

3 Q. The only thing this Board must
4 deal with is the application to amend the existing by-
5 law 61-85?

6 A. That's right.

7 Q. For our purposes we will
8 concentrate on 61-85, and again that is the next page
9 following the concept plan. What I don't understand
10 about this is the way in which this amendment to the
11 by-law is set up, the only basis upon which Site D -- I
12 am sorry, let me start again.

13 The only basis on which old Site F is
14 removed from the previous approval, and its approval
15 under by-law 61-85, is if Site D is approved and as
16 these amendments stand before this Board, it would
17 appear that if Site D is approved by this Board, then
18 old Site F would be removed insofar as its approvals
19 are concerned?

20 A. Yes.

21 Q. But if Site F is approved by this
22 Board, ought not old Site F be removed as well?

23 A. Yes, sir.

24 Q. So, there would have to be a
25 further working of the draft by-law to amend 61-85 if



1 this Board approves Site F in Burlington, and that
2 would have the effect of removing old Site F from its
3 present landfill designation and there would then be no
4 approvals for landfill in the Town of Milton. Am I
5 right about that? Is that what is intended?

6 A. Yes. In my opinion the
7 designation and the zoning should be removed in Milton
8 if F was approved. The by-law which is before the
9 Board could actually be amended if that was the case,
10 it could be amended to effectively utilize clause 3 on
11 page 2 of this proposed amendment.

12 Q. If the Board approved Site F for
13 landfill then you would change -- would you need to
14 change any of the recitals, the whereas'. You wouldn't
15 leave in the second recital?

16 A. Let me just read it for a second,
17 Mr. Leitch.

18 Q. I want to make it clear to the
19 Board what it is supposed to do, consequent upon
20 whatever decision it makes at the end?

21 A. Clause 2 would come out.

22 Q. Yes? All the rest of the
23 recitals?

24 A. Three could stay in. Give me a
25 second to go through them. The fourth one would be



1 appropriate if there was a consistent amendment to the
2 Official Plan to remove clause 4.1.4.

3 Q. To follow on that, there is an
4 application to consistently amend the Official Plan?

5 A. Yes. The fifth one would stay.
6 Clause 1.1, the first two lines up to the comma, right
7 after the words "entirety" would stay and the rest
8 would be deleted.

9 Now sub-clause (i) on page 2 would be
10 deleted in its entirety. Clause 2 on page 2 would be
11 deleted and No. 3 would remain under the scenario you
12 have described.

13 Q. The scenario I have described, so
14 I have made it perfectly clear, is that if Site F is
15 approved and D is not approved, then the amendments
16 which you have just indicated would be appropriate?

17 A. In my opinion, yes, and the
18 environmental assessment process has not been
19 undertaken by the Region in order to still leave a
20 zoned and designated site in place.

21 Q. On the other hand if Site D were
22 approved, then there would be no need to amend as you
23 have done and the by-law would be satisfactory in its
24 original form?

25 A. Yes, in my opinion. No, I think I



1 said in chief there were some. Just a moment. Clause 3
2 would have to be adjusted -- clause 2 would have to be
3 adjusted depending upon the capacity which the Board
4 agreed to.

5 Q. It may be necessary to change the
6 numbers?

7 A. Yes, and also on page 2 under sub-
8 clause (i), item (d) "A public park"; that would be
9 removed because this proposal was made up when the
10 after-use was to be a recreational use or an
11 agricultural use and now the after-use is to be
12 agricultural.

13 As I said -- in chief I said that this
14 would be the sorts of changes that would have to be
15 made to the by-law before the Board approved it, if
16 they were going to approve D.

17 Q. Similarly, Mr. Walker, if we could
18 go over to the proposed amendment to the Town of Milton
19 Official Plan planning area, I would like you to deal
20 with the preamble?

21 A. One other thing. I suppose just
22 to be precise, under the scenario you have described,
23 the schedule would not have the square A1-13 on it and
24 we would be removing A1-10 if D was not approved by the
25 Board and the Board was agreeable to deleting old Site



1 F from the Milton by-law.

2 Q. You wouldn't need an area
3 designated as A1-13?

4 A. No, nor would you need A1-10.

5 Q. You are quite right. They both
6 come out.

7 A. Yes.

8 Q. On the other hand, if Site D is
9 approved then you simply remove A1-10?

10 A. Correct.

11 Q. Can you turn to the text of the
12 amendment and assist us by going through the same
13 exercise and assume with me that Site F is approved for
14 landfill and tell the Board what amendments you would
15 make?

16 A. On page 1 under Part A-The
17 Preamble, under the title of "Purpose" clause 1 would
18 come out. Clause 2 in slightly restructured form, but
19 to delete the reference on Figure D of the Milton
20 Official Plan, the reference to the sanitary landfill
21 site, that would stay in.

22 Q. Could you tell me exactly what
23 words would come out?

24 A. It's the preamble part of clause
25 2, it says:



1 "Related to the approval of permission
2 for a Sanitary Landfill as noted in
3 'Purpose 1' above..."
4 and that would come so that would leave in:
5 "...to delete provisions in the text and
6 a notation on 'Figure D' of the Official
7 Plan for the Town of Milton which
8 permits a Sanitary Landfill Site in Part
9 Lots 6 and 7, Concession 7 NS."
10 That could stay in.
11 Q. The first part would come out?
12 A. The first line and a bit of the
13 second.
14 Q. So you would start with:
15 "...to delete provisions in the text..."
16 and then the rest would stay in?
17 A. Yes.
18 Q. Would you carry on?
19 A. Three would be out.
20 Q. Yes?
21 A. Page 2 under "Location", there
22 would be some changes to delete some items in the first
23 paragraph and I can return to that in a second.
24 Item (1) would be out.
25 Q. Yes?



1 A. Item (2); most of the first line
2 would be out between the words "upon" and "above" and
3 the phrase would begin "Part 2, (policies) Subsection
4 4.1.4 is deleted in order to remove a special
5 provision" and to the end of the sentence where the
6 word "road" is found.

7 Q. That would read:
8 "Part 2 (Policies), Subsection
9 4.1.4,..."

10 A. Yes. Item (3) would be out. Item
11 (4) would be out. Item (5); the first line would be
12 out so item 5 would read:

13 "The symbol which designates a site near
14 Tremaine Road and Britannia Road as a
15 Sanitary Landfill Site on 'Figure D',
16 'Land Use' is deleted,
17 as indicated on Schedule 'A', attached."

18 And so the caption at the top would read:

19 "This Amendment consists of two parts,
20 which shall be referred to as ..."

21 I guess this is getting very complicated for the
22 record, but I will try and describe it verbally.

23 It would read, Item (1) which would
24 refer to the former item (2) as revised and it would
25 read Item (2) which would refer to the former Item (5)



1 revised. It would go on to say in the next sentence
2 that Item (1) deals with text changes and Item (2)
3 deals with the map changes indicated on the attached
4 Schedule A.

5 Q. Yes. All right. To make it
6 abundantly clear and without going into the reasons
7 which you have set forth, it is not intended in any way
8 to leave old Site F approved if new Site F is chosen by
9 this Board?

10 A. In my opinion it shouldn't be
11 having gone through the Environmental Assessment Act,
12 and in light of the fact that the Region has made it
13 clear that they are searching for a single site. To
14 leave otherwise designated, even in part a second site,
15 would, in my opinion, be very poor planning, and
16 speaking as a land use planner at this point in time.

17 Q. Mr. Walker, I want to deal finally
18 and quite briefly with the issue of the interim aspect
19 of landfill relative to agriculture. It is proposed in
20 this undertaking that if Site D is chosen that Site D
21 be returned to agriculture on the basis of a plan
22 propounded by Dr. Mackintosh and I am sure you are
23 familiar with that?

24 A. Yes.

25 Q. In that proposal Dr. Mackintosh



1 sets forth and he has given the opinion in evidence
2 that Site D could be returned to 90 per cent of the
3 Halton average production for agriculture. In those
4 circumstances, is it your opinion that landfill would
5 be an interim use to an agricultural district?

6 A. Yes.

7 Q. If the fact were that Site D could
8 only be returned to something in the order of 50 to 60
9 per cent of its original production or of the Halton
10 average, would it be your view that that was an interim
11 use relative to the long-term use of agriculture?

12 A. Yes.

13 Q. What is your rationale for that if
14 you take the assumption from me that 40 per cent of the
15 productive capacity of that site for agriculture would
16 be lost forever?

17 A. It is not inconceivable within the
18 context of the Food Land Guidelines and certainly not
19 in terms of the agricultural community to have areas of
20 relatively unproductive or lesser productive land as
21 part and parcel of the agricultural community,
22 agricultural farmland.

23 We tried as best we could, subject to
24 people saying we were right or wrong, but we believe
25 that we correctly screened down the sites until we were



1 looking at a piece of land, a piece of agricultural
2 land, if you will, or a piece of the Town of Milton
3 which was not a fundamental piece of agricultural land
4 from the standpoint of either the Region, the province
5 or Milton, and Dr. Mackintosh was quite instrumental in
6 that and in my opinion he was one of the best experts
7 in this type of analysis in the province.

8 I don't, therefore think, and this goes
9 back to the point I made before, but the nature of the
10 work undertaken really did go in a very significant way
11 to answering the considerations which are required
12 under, for instance, in this case the Food Land
13 Guidelines.

14 So, we didn't get to this piece of land
15 believing that it was an absolute key cog in the wheel
16 or a key element in Halton's agricultural community or
17 in Milton's agricultural community, but that doesn't
18 mean in absolute terms that it isn't a valuable piece -
19 -the candidate site or even the site plan site area is
20 not a valuable piece of agricultural land, but in the
21 relative sense it was one even if it was necessary to
22 sacrifice the whole site and not be able to bring it
23 back into agriculture, we had come to the conclusion at
24 the beginning of 2C that if that was necessary, that is
25 something we could rationalize.



1 As it turned out, we didn't have to do
2 that, and any return to agricultural production on that
3 site is, in my opinion, a valid response, a difficult
4 response in some respects and perhaps a costly
5 response, but still any percentage of return is not
6 going to adversely impact the agricultural community
7 and if some is brought back, regardless of the
8 percentage you want to hypothesize to me, it is still a
9 valid use of the site and valid to call it interim and
10 agriculture in my opinion is a valid after-use to
11 contemplate and to work towards, if you will.

12 Q. Given the suitability of Site F,
13 would you say on a comparative basis that Site D was
14 still a suitable place to landfill in relation to the
15 agricultural policies?

16 A. One of the elements that obviously
17 contributed to the consideration of Site F as more
18 preferable is the fact that it is not agricultural
19 land, but it has its own aspects, its own policy
20 framework within which you have to assess it and that
21 is the fact that is a licensed quarry and there is a
22 resource on it which D doesn't have.

23 Q. That has to be assessed?

24 A. Yes, and we had to assess it in
25 the same way, if you will, as we did agriculture on D



1 and with no aggregate resource, mineral resource on
2 Site D, aside from farmland which in itself is a
3 resource, but similar concerns could be voiced from
4 Site F's standpoint.

5 Q. My last question is as a planner,
6 do you recognize that the introduction of a use such as
7 landfill at Site D would have the effect of creating
8 development pressures in an area such as that
9 surrounding Site D?

10 A. Could you be more specific in
11 terms of development pressure?

12 Q. Let's look at severance. Could it
13 be used as a justification for more severance than have
14 been allowed up to this point?

15 A. I don't see why it would.

16 Q. Could it be used for a
17 justification for the provision of services to Site D
18 such as a dedicated sewer line?

19 A. It might be from the standpoint of
20 servicing the landfill, but that doesn't necessarily
21 mean that it is a pipe that anybody can get access to.
22 The Region is quite reluctant to extend services beyond
23 urban boundaries and when it does it does so in a
24 careful way in my opinion.

25 Q. If the pipe was there would there



1 not be pressure and applications by other people to
2 join in the use of the pipe?

3 A. Anybody can say I would like to
4 join on to the pipe, but they have to prove in the same
5 way that we have I believe proved the need for
6 agricultural land and anyone who wanted to utilize land
7 for other than agricultural purposes would have to make
8 the case and it is a fairly substantial case, and you
9 could take 12 lots of a subdivision and just take a
10 small subdivision, but that's one heck of a case to
11 prove in the face of the Food Land Guidelines because
12 the Ministry by and large is willing to crank out its
13 consulting team and its lawyer to fight small
14 subdivisions if it thinks the land is valuable.

15 Q. I understand. Is it your opinion
16 that the introduction of a landfill at Site D would not
17 cause greater pressures for development of that
18 agricultural area in a non-agricultural way?

19 A. I don't believe it would.

20 MR. LEITCH: Thank you, those are my
21 question.

22 MR. LANCASTER: Thank you, Mr. Leitch.
23 Ms. Cronk, with your permission, we will break now and
24 then hear from you after the break.

25 MS. CRONK: Yes, Mr. Chairman.



1 ---Recess

2 MR. LANCASTER: Please be seated.

3 CROSS-EXAMINATION BY MS. CRONK:

4 Q. Mr. Walker. The Milton team has
5 retired from the field and the NSP team is now at bat.

6 A. Shall I gird my loins?

7 Q. I think we will just
8 have a conversation.

9 MR. LEITCH: We were taken by free
10 agency.

11 MS. CRONK: Q. You have reviewed with a
12 number of counsel including your own, Mr. Lederer,
13 what the basic policy framework for Site F is in
14 planning terms and you have outlined for the Board what
15 the relevant policy documents and regulations are, and
16 I would like to have that clearly once again if you
17 will forgive me when we begin our discussion with Site
18 F.

19 I understand they are first and foremost
20 the Parkway Belt West plan?

21 A. Yes.

22 Q. The regulations under the Parkway
23 Belt West Plan?

24 A. Yes.

25 Q. The Regional Official Plan, the



1 City of Burlington Official Plan and the local zoning
2 enacted by the City of Burlington?

3 A. Correct.

4 Q. In your opinion, as you have said
5 a number of times to the Board, it is important in
6 looking at Site F and in discussing it in land use
7 planning terms to have in mind that the Parkway Belt
8 West Plan and the Planning and Development Act under
9 which it flows are the primary base documents that
10 govern with respect to Site F?

11 A. Yes. They are the ones, and I
12 think you forgot the mineral and aggregate policy which
13 applies as well.

14 Q. Coming back to the Parkway Belt
15 West Plan and the Act under which it was introduced,
16 those are the fundamental stated documents which govern
17 with respect to Site F?

18 A. In my opinion, yes.

19 Q. They take precedence over local
20 zoning and the City of Burlington zoning by-law and the
21 Parkway West Plan has been incorporated in both the
22 regional Official Plan and the City of Burlington
23 Official Plan, is that right?

24 A. The documents have been
25 incorporated into the Official Plans and the



1 regulations do hold sway at this point in time, the
2 regulations under the Parkway Belt...

3 Q. The answer is yes?

4 A. My answer was convoluted because I
5 was trying to draw a distinction. If Burlington had
6 enacted by-laws which reflected the Parkway Belt West
7 Plan, then those by-laws could be seen to be the
8 operative ones, but they have not and therefore the
9 regulations are still in effect.

10 Q. In the absence of specific by-laws
11 enacted by the City of Burlington which on their face
12 purported to implement the Parkway Belt West Plan, it
13 is correct in your opinion, as I understand it, that
14 the regulations under the Parkway Belt West Plan govern
15 and take precedence over the local zoning?

16 A. In my opinion.

17 Q. You have discussed with a number
18 of counsel including your own the existing land uses
19 which apply at Site F. Could you put up whatever map
20 you prefer on the easel which shows Site F because I
21 would like to discuss very briefly the quarry lands?

22 A. I believe Exhibit M-103, the
23 aerial photo for that particular site is the one you
24 are referring to.

25 Q. That is fine, we can use that. You



1 reminded the Board and it has heard evidence from other
2 witnesses that a portion of Site F is a licensed quarry
3 under the Pits and Quarries Control Act and that I take
4 it is a licensing designation which has existed since
5 1972. Am I correct in that?

6 A. I don't know the date, but it is a
7 licence that is in effect, a valid licence to extract
8 minerals.

9 Q. With respect to the areal extent
10 of the quarry lands, I understand it is about 30
11 hectares. Does that accord with the information you
12 had available to you?

13 A. Roughly, yes.

14 Q. You indicated in your reports,
15 Mr. Walker, that the quarry has been used from time to
16 time and I think you said on an intermittent basis in
17 the past. Did you or any other consultant upon whom
18 you relied investigate what the use or activity was on
19 those quarry lands prior to the early 1970's. Did you
20 go back that far and look at what activity there was on
21 Site F?

22 A. I don't recall anybody reporting
23 to me on the nature of the activity at that point in
24 time.

25 Q. When you speak of intermittent use



1 you were directly your attention then, I take it, to
2 the use which you understand has applied since and
3 after the granting of the licence under the Pits and
4 Quarries Control Act?

5 A. There has been extraction on the
6 site and I have been in part of the area that has been
7 extracted and whether it was done by licence or not,
8 and I have to assume it was.

9 Q. Your investigations did not go
10 back beyond 1970?

11 A. No.

12 Q. With respect to the quarry area
13 itself, the Board has had this several times, but to
14 make our discussion -- to put it in context, could you
15 point out roughly on the aerial photograph where the
16 quarry is situated on Site F?

17 A. The existing quarry for
18 extraction? It is currently -- you can see the white
19 area and I am describing it on the lower half of the
20 candidate site and you can see the scarred area in here
21 and this is the part that I am familiar with in terms
22 of the material having been extracted out of it.

23 Q. Is the extent of the area subject
24 to the licence larger than that?

25 A. Yes.



1 Q. Could you point that out to the
2 Board?

3 A. It is roughly something in the
4 order of that. I am describing something just north of
5 the Hydro lines and running up to slightly more than
6 halfway up the site and so it is a substantially bigger
7 area than extracted.

8 Q. As I understand it, the area which
9 falls within the licensed area is almost entirely
10 designated under the Parkway Belt West Plan as being
11 within the General Complementary Uses area, is that so?

12 A. Yes, a large proportion of it is,
13 yes.

14 Q. Could we go to the Parkway Belt
15 West Plan if we could, Exhibit H-319?

16 A. I have an extra one, Mr.
17 Lancaster, if that will help.

18 MR. LANCASTER: I have one here. Here
19 it is.

20 MS. CRONK: Q. Could I ask you to go
21 first if you would to Map 2 following after page 62,
22 and the first map is Map 1 and then Map 2. You
23 indicated a few moments ago that a large portion of the
24 quarry licensed area on Site F falls under the Parkway
25 Belt West Plan in the area designated for General



1 Complementary Uses. Just looking at the legend which
2 appears on Map 2, I suggest that virtually the entirety
3 of the quarry area but not all of it falls within that
4 use area. Do you agree?

5 A. Yes. The line on this aerial
6 photo, the line goes through roughly like that, the
7 south part being Special Complementary and the north
8 part being the General Complementary. I have marked on
9 that photo with a yellow marker.

10 Q. We will come to talk about the
11 lands to the south in a moment, but just so you are
12 clear, I am concentrating on the lands owned by
13 National Sewer Pipe Limited which form the north part
14 of Site F?

15 A. Yes.

16 Q. As I understand it, under the
17 Parkway Belt West Plan the policies which pertain to
18 the General Complementary Use areas are set out in
19 section 5.5.1 and I would ask you to turn to that area
20 if you would please.

21 A. Page 19?

22 Q. That is the section of the plan
23 that deals with permitted uses in General Complementary
24 Use areas?

25 A. It does.



1 Q. Am I correct that essentially, and
2 I understand there are a number of permitted uses dealt
3 with specifically, but essentially there are two
4 categories of permitted uses in such an area and the
5 first are those which are legally existing uses of the
6 land at the time of introduction of the Parkway Belt
7 West Plan and the second category is other specified
8 uses of a low density low intensity character. Would
9 that be a fair overall description of the two
10 categories of permitted land use activities?

11 A. You are referring to (a) and (b)?

12 Q. Throughout. I am referring --
13 perhaps we should back up. (a) through (i) of this
14 section which delineate -- (a) through (j) delineates
15 the types of permitted uses in the General
16 Complementary Use area?

17 A. Yes.

18 Q. The last two sub-paragraphs, (i)
19 and (j), deal with additions to uses that are in place
20 or changes to uses in place?

21 A. Correct.

22 Q. I am asking as a planner in
23 overall generic terms, were we to read in detail
24 through each of these paragraphs, I suggest the
25 permitted uses fall within one of two categories and



1 the first category being legally existing uses at the
2 time of introduction of the plan and the second
3 category being other specified uses, and the plan
4 specifies what they are, but they are to be of a low
5 density, low intensity character?..

6 A. Yes.

7 Q. That is true whether they are
8 agricultural uses, institutional uses, recreational
9 uses, public uses, et cetera?

10 A. Yes.

11 Q. Then we have in the various sub-
12 paragraphs which follow a delineation of the various
13 types of specific uses that are permitted and sub-
14 paragraph (e) is the public use section to which you
15 have drawn the attention of the Board?

16 A. Correct.

17 Q. I am interested as I told you for
18 the moment in the lands subject to the quarry licence
19 that NSP holds on Site F, and as I understand it, they
20 were a legal existing use in July of 1978 when the
21 Parkway Belt West Plan was introduced?

22 A. Yes, the licence was legally
23 existing.

24 Q. It follows, therefore, does it
25 not, that in planning terms the use of the lands for



1 quarrying purposes was a permitted use under the plan
2 upon the plan's introduction?

3 A. I believe so.

4 Q. Therefore that use was a permitted
5 use within the meaning of this section?

6 A. I believe so.

7 Q. If the existing use were to be
8 changed, as I understand it, and I would ask for your
9 confirmation that I am reading this plan correctly, the
10 new use would have to meet the low density, low
11 intensity threshold characteristic of the specified
12 uses set out in section 5.5.1. Is that correct?

13 A. That is correct as far as it goes,
14 but it would also have to specifically meet sub-clause
15 (j) requirements, change of use.

16 Q. With respect to sub-paragraph (e)
17 dealing with public uses, as I understand the evidence
18 you have given, it is your opinion that a sanitary
19 landfill as a public use on this site would satisfy the
20 low density, low intensity requirements of the section.
21 Is that fair?

22 A. I believe it would, Ms. Cronk,
23 subject to an interpretation. I believe it is a low
24 intensity use and I also believe it is a low density
25 use, but the one thing we can turn to is section 1.1,



1 definitions, and the definition of low density use, to
2 the extent that somebody in a legal sense might define
3 a landfill as a structure, I don't know whether low
4 density use would be totally met.

5 Q. I would depend, I suggest, on the
6 configuration of the landform and the plans for its
7 contours and related matters, would it not, and which
8 are all before the Board?

9 A. That is basically correct.
10 Certainly my consideration of the term low density use
11 as it is defined, it is somewhat -- not "somewhat", but
12 it must be read in terms of the part of the sentence
13 under Public Uses, (e):

14 "...shall meet to the maximum possible
15 degree the conditions set out in
16 Paragraph 5.5.1(b)..."

17 which is low density use. If the landfill represents a
18 structure in one form or another, it is still possible
19 to interpret this clause under the fourth line of
20 Public Uses.

21 Q. Are you as a planner, given the
22 investigation of this site you have undertaken,
23 satisfied that landfilling on the quarried portion of
24 lands would meet both the low intensity and the density
25 requirements of this plan?



1 A. I think it meets the requirements
2 of the plan, yes.

3 Q. You referred a moment ago to sub-
4 paragraph (j) which deals with change of uses in this
5 area and that sub-paragraph, I suggest, directs itself
6 to certain conditions which have to be satisfied. For
7 instance, in the first sub-paragraph new uses are to be
8 as compatible with the provisions of the plan as
9 existing uses or more compatible. That is one of the
10 conditions to be met?

11 A. Yes.

12 Q. And all natural features are
13 preserved to the maximum possible degree and any other
14 conditions required to secure the provisions of the
15 plan are satisfied?

16 A. Yes.

17 Q. That is the relevance of sub-
18 paragraph (j)?

19 A. Yes. I only brought it forward
20 because that specifically deals with changes of uses
21 which you were just talking to.

22 Q. In combination then when we look
23 to sub-paragraph (e) which specifically contemplates
24 public uses in General Complementary Use areas, and
25 when we look to the conditions of sub-paragraph (j),



1 do I understand your evidence to be that you are
2 satisfied that landfilling on the quarried portions of
3 Site F would satisfy both of those sections of the
4 plan?

5 A. Yes.

6 Q. Could you now go to the regional
7 plan and perhaps we could use H-87, the updated version
8 of it. You have told us, Mr. Walker, as I recall your
9 evidence, ...

10 A. Could I have a second just to get
11 my document, please. Yes.

12 Q. You have told us, Mr. Walker, that
13 Map 1 to the regional plan designates Site F within the
14 Parkway Belt public use area ?

15 A. The regional concept map.

16 Q. I would ask you to go to Map 4
17 which appears after page 80 and which, I suggest, shows
18 the quarry area on Site F as being what is called a
19 protection area for mineral resources. Do you see
20 that? Map 4.

21 A. It shows it as an extractive area.
22 The protection area is to the north.

23 Q. It shows it as extractive.

24 A. And to the east.

25 Q. An extractive area within the



1 meaning of Map 4?

2 A. Yes.

3 Q. Then go to Part IV dealing with
4 resource management policies in the region and it
5 begins at page 73, but perhaps we could go directly to
6 page 84. This whole part of the plan, as I understand
7 it, Mr. Walker, deals with and is an articulation of
8 regional policies for resource management?

9 A. Correct.

10 Q. Section C of Part IV of the plan
11 deals specifically with mineral resources, does it not?

12 A. Yes.

13 Q. It sets out the Region's policy
14 regarding mineral resources?

15 A. Yes, starting on page 79.

16 Q. I direct your attention at page 84
17 to the policies set out under paragraph C5c. Do you
18 see that?

19 A. Yes.

20 Q. Will you read that to the Board?

21 A. "Recognize Mineral..."

22 To put it in proper context I am referring to section C
23 of mineral resources, but the policy of the region is 2
24 and then C5c:

25 "Recognize Mineral Resource Extraction



1 as an interim land use which, through
2 proper rehabilitation can lead to a
3 desirable or even improved end land use.
4 Master rehabilitation plans will thus be
5 encouraged to show agriculture,
6 forestry, recreational-open space uses,
7 as interim and/or end uses."

8 That should be "recreational-open space uses, as
9 interim and/or end uses."

10 Q. Am I correct, Mr. Walker, that
11 this policy statement contained as it is in the Mineral
12 Resources section of the plan in the face of an
13 extractive area designation for the quarry lands on
14 Site F clearly applies to the lands on Site F subject
15 to that quarry licence?

16 A. I believe that it does, yes.

17 Q. The policy suggests, does it not,
18 that mineral extraction such as has occurred on the
19 quarried portion of Site F is in itself an interim land
20 use under the regional Official Plan?

21 A. It does.

22 Q. And regional policy as articulated
23 in this policy statement expressly recognizes that
24 through proper rehabilitation of such an interim land
25 use there may in the end be a more desirable end use



1 created following completion of the interim land use?

2 A. Yes.

3 Q. It can lead to a more desirable or
4 superior end land use?

5 A. If you want to attribute an
6 intention to that clause, I would say that that seems
7 to be the intention.

8 Q. One of the desirable end land uses
9 recognised under the policy statement is specifically
10 forestry, isn't that so?

11 A. Correct.

12 Q. That is the after-use proposed
13 for Site F after closure of the landfill site if Site F
14 is approved?

15 A. Yes, and I think you could combine
16 forestry and recreational open space; a blend of the
17 two, as I understand it.

18 Q. That is the after-use plan that
19 has been put before this Board for Site F?

20 A. Yes.

21 Q. Reforestation or forestation
22 combined with the recreational open space uses you
23 suggested we look at would meet, I suggest, the low
24 density, low intensity objectives of the Parkway Belt
25 West Plan for General Complementary Use areas; would



1 you agree?

2 A. Yes, it would.

3 Q. I suppose in fact we could go as
4 far to say, and I would be interested to know if you
5 would agree, that rehabilitation is thus specifically
6 mandated for quarry use areas?

7 A. Yes. Rehabilitation is a
8 provincial requirement as well.

9 Q. When you say a provincial
10 requirement, are you referring to the provisions of the
11 Pits and Quarries Control Act?

12 A. Yes. There has been one since at
13 least the late 1960's, putting rehabilitation in place
14 as a principle to try and alleviate some of the effects
15 of quarrying operations on the countryside.

16 Q. So in terms of the quarry, and we
17 keep calling it the quarry lands, but in terms of the
18 lands subject to the quarry licence held by National
19 Sewer Pipe, we have then, first as a matter of
20 provincial policy, a requirement that those lands be
21 rehabilitated?

22 A. Yes.

23 Q. And as a policy enunciation under
24 the Regional Official Plan an express indication that
25 the use of the lands for quarrying purposes is an



1 interim land use?

2 A. Yes.

3 Q. And an expressed requirement that
4 rehabilitation of such interim land use occur?

5 A. Yes.

6 Q. In the context of the regional
7 plan, use of those lands as a landfill leading
8 ultimately to reforestation is a form of rehabilitation
9 that has been expressly recognized under the regional
10 plan?

11 A. Yes.

12 Q. Could I ask you to turn to Part
13 III, section D3.8 at page 70?

14 A. Under Part III?

15 Q. Yes. In the regional plan on page
16 70. You will recall you brought this part of the
17 regional plan to the Board's attention previously and
18 it deals with the gross management policies?

19 A. Yes.

20 Q. Specifically, as I recall your
21 evidence, you directed the Board's attention to D3.8 at
22 page 70?

23 A. Yes.

24 Q. That section, as I understand your
25 evidence and its language, is a further policy



1 expression under the regional plan and it recognizes
2 landfilling as another form of interim land use. Is
3 that correct?

4 A. Yes. It doesn't say "another" as
5 another comes from an earlier reference.

6 Q. Section D3.8 recognizes land
7 filling as an interim land use?

8 A. Correct.

9 Q. If you put the two policy sections
10 together, the one dealing with mineral resources to
11 which I directed your attention a few moment ago
12 together with this one, it is clear under the plan that
13 both those types of uses, quarrying and landfilling,
14 are recognized as interim land uses?

15 A. By the Region, yes.

16 Q. So what we have with respect to
17 the quarry site area of Site F, were this Board to
18 approve a landfill as proposed, is one interim use
19 being substituted for another interim land use on the
20 road to ultimate rehabilitation under either of those
21 policies. Isn't that the effect?

22 A. Yes. Both talk about
23 rehabilitation and interim use.

24 Q. Both indeed require
25 rehabilitation, do they not?



1 A. Yes.

2 Q. Given the after-use plans --
3 perhaps I should make it very clear that as part of the
4 project co-ordination which you undertook for the
5 environmental assessment, I take it you are conversant
6 with and familiar in general terms at least with the
7 after-use proposal put forward for Site F?

8 A. Yes.

9 Q. Given that after-use proposal for
10 Site F and the fact that rehabilitation for such an
11 interim land use is required, I suggest that the after-
12 use proposal before the Board has certain advantages
13 with respect to Site F in land use planning terms.

14 First of all, it means that
15 rehabilitation is assured because there is a regional
16 commitment and express proposal before the Board as to
17 the type of rehabilitation which would take place?

18 A. I would say there are some
19 assurances, yes.

20 Q. And further, rehabilitation at a
21 date certain, within a specific timeframe is assured,
22 given the nature of the proposal before the Board?

23 A. There are very definite limits on
24 the proposal before the Board and so there is a
25 timeframe attached to it and/or capacity.



1 Q. One of the limits specifically is
2 that rehabilitation should occur after closure of the
3 active use of the site?

4 A. Right.

5 Q. Within a definable time period the
6 Board, if it were at the end to approve Site F, would
7 know that rehabilitation would occur in accordance with
8 a specific proposal within a specific timeframe?

9 A. Yes.

10 Q. Further there is certainty with
11 respect to the form of the after-use proposal put
12 before the Board and, as well, with respect to the form
13 of rehabilitation permitted under the regional Official
14 Plan and as contemplated by the Parkway Belt West Plan?

15 A. Could you be more specific?

16 Q. We have seen under the regional
17 Official Plan specifically that rehabilitation is
18 required and you told me that that was so provincially
19 as well?

20 A. Yes for the licensed quarry.

21 Q. Under the relevant legislation. I
22 suggest that because there is a specific after-use
23 proposal before the Board that the form of
24 rehabilitation that would take place on these lands is
25 known to the Board and there is certainty that attaches



1 to the form it would take?

2 A. Yes.

3 Q. Finally because there is a
4 regional proposal before the Board and the costs of
5 that after-use proposal have been included in the
6 costing analysis before the Board, funds would, if Site
7 F is approved, be in place to ensure that that
8 rehabilitation in fact would be effected?

9 A. I believe so.

10 Q. Given those elements of certainty
11 and specificity which attach to the after-use plan
12 before the Board, and the policies that we have looked
13 at in the regional Official Plan, Mr. Walker, and the
14 Parkway Belt West Plan, would you agree with me that
15 use of Site F including the lands subject to the quarry
16 licence would be, in planning terms, an interim land
17 use that would meet at the end of the day the
18 objectives for this area set out in the Parkway Belt
19 West Plan?

20 A. Yes.

21 Q. You mentioned at the beginning of
22 our discussion and several times in your evidence that
23 we should also have regard to the mineral aggregate
24 resource policy expressed by the provincial government
25 with respect to the lands on Site F. That has been



1 marked, Mr. Walker, as Exhibit N-305 before this Board
2 and do you have a copy available?

3 A. I have it, yes.

4 Q. As I recall when this was marked I
5 didn't have sufficient copies to supply the Board and
6 to counsel, but I now have copies. I take it from the
7 evidence given that you are familiar with this policy?

8 A. Yes, I am familiar with the
9 policy, but the policy however became government policy
10 under section 3 after the work we had done up to the
11 end of 2C was completed. It was in draft form at that
12 time.

13 Q. Let's deal with that for a moment.
14 Your Phase 2, Stage 2C report is Exhibit H-51 and as I
15 recall, and you can correct me if I am wrong, but that
16 was released in June of 1985?

17 A. That is correct.

18 Q. What you are confirming for the
19 Board is that this policy as formalized and released
20 under section 3 of the Planning Act did not come into
21 being in a formalized way until virtually a year later?

22 A. That is correct.

23 Q. But it was available in draft
24 form?

25 A. Yes, it had been in draft kicking



1 around for some time before that. There was one on the
2 Food Lands as well. In fact, this one ended up
3 preceding the Food Lands and in the planning
4 profession, we thought the Food Lands would probably
5 precede this one, but this one came out first.

6 Q. By preceded, you mean in terms of
7 formalization under section 3 of the Act?

8 A. That's right.

9 Q. In the event it was this policy
10 which was first declared in that fashion?

11 A. That is correct.

12 Q. Were you familiar with the drafts
13 of the policy, or it might be draft, I don't know if it
14 was one or more, but as it was evolving at the time of
15 preparation of your Phase 2, Stage 2C report?

16 A. We knew of them. The policies in
17 the regional plan were being considered very much like
18 these policies are and there was not a void in terms of
19 mineral aggregate policies for us to have regard to,
20 even though these weren't official policy. The answer
21 is yes, I did know of the draft.

22 Q. You were familiar with the mineral
23 resource policies of the regional Official Plan?

24 A. Yes.

25 Q. Were you also familiar with the



1 type of policy being formulated in those drafts by the
2 government of the day at that time?

3 A. Yes. I can't put my mind in the
4 government's head, but we knew the sorts of paper that
5 was floating around.

6 Q. In giving your evidence to the
7 Board over the last several days with respect to Site
8 F, did you take into account the provisions of the
9 mineral aggregate resources policy statement in the
10 form in which it now is?

11 A. Did we?

12 Q. Did you have it in your minds?

13 A. We had in it mind when we did it
14 and at the time we were doing the actual approvals
15 aspects this was then government policy.

16 Q. I would ask you to go to the
17 policy itself, Mr. Walker, and would you start first at
18 page 3. At page 3 under the section entitled Policy,
19 paragraph 1 General appears to be the general policy
20 enunciation of the mineral aggregate resources policy
21 of the government as set out in this statement?

22 A. Yes.

23 Q. And in paragraph 1 it provides:
24 "It is the policy of the Province of
25 Ontario that:



1 1.1: All land use planning and
2 resource management agencies within the
3 province have regard for the
4 implications of their actions on the
5 availability of mineral aggregate
6 resources to meet future local, regional
7 and provincial needs.

8 1.2: Any planning jurisdiction
9 including municipalities and planning
10 boards, identify and protect as much of
11 its mineral aggregate resources as is
12 practicable, in the context of other
13 land use planning objections, to supply
14 local, regional and provincial needs."

15 Looking at the general policy statement, Mr. Walker, it
16 appears to me, and I would ask whether you agree, that
17 the test for protecting mineral aggregate resources is
18 practicability?

19 A. That is what it says.

20 Q. And practicability, judging from
21 the language of paragraph 1.2, is to be measured
22 specifically in the context of other land use planning
23 objectives at the local and regional level?

24 A. And provincial.

25 Q. And provincial?



1 A. Yes.

2 Q. And the policy appears to
3 specifically contemplate, I suggest, that other land
4 uses may take precedence over mineral aggregate
5 extraction?

6 A. Yes.

7 Q. I would ask you to go back, if you
8 would, to the section which precedes the general policy
9 statement section, the predecessor section being
10 entitled "Principles" beginning on page 2, and do you
11 see that?

12 A. Yes.

13 Q. And it carries over on to page 3
14 and I would direct your attention to the second full
15 bulleted item which appears in that section which
16 reads:

17 "Other land uses may in specific
18 instances take precedence over aggregate
19 extraction including wayside pits and
20 quarries..."

21 And do you see that?

22 A. Yes.

23 Q. Would you agree with me that that
24 appears to be in the introductory statement of
25 principles that are to apply with respect to this



1 policy, to be an express recognition that other land
2 uses and other land use planning objectives may take
3 precedence in appropriate circumstances over extraction
4 objectives?

5 A. Yes. In fact the example is
6 essentially a public use. By definition on the page
7 opposite you will see the definition of wayside pits or
8 wayside quarries is a public road authority.

9 Q. You are suggesting the
10 illustration given in the bulleted item to which I
11 directed your attention falls into the category of
12 public use?

13 A. Yes, it is one type of public use.
14 I don't think that's exclusive and I don't think there
15 is any exclusion to other types of uses, but certainly
16 the example they use in my opinion is one type of
17 public use.

18 Q. If there is any suggestion of
19 exclusion, the word "including" would not have been
20 used, would it?

21 A. No.

22 Q. You told us in your opinion that
23 landfilling within the context of the regional Official
24 Plan is a public use?

25 A. In my opinion, yes.



1 Q. Is it also then your opinion,
2 depending upon the balance of this policy, that
3 landfilling as a public use may in fact under this
4 policy be a specific land use that could take
5 precedence over mineral extraction?

6 A. In my opinion, yes.

7 Q. Could I ask you to go to section 2
8 of this plan which deals with Official Plans, and that
9 is at the bottom of page 3. Do you see that?

10 A. Yes.

11 Q. As I understand this portion of
12 the policy statement, it sets out provincial policy
13 concerning Official Plans and mineral extraction
14 generally, and is that a correct reading of this
15 section?

16 A. Section 2?

17 Q. Yes, all of section 2?

18 A. Yes.

19 Q. It provides some direction, does
20 it not, as to what provisions will be contained in
21 Official Plans with respect to mineral extraction?

22 A. Yes, I believe so.

23 Q. I direct your attention to
24 paragraph 2.2 which reads:

25 "It is the policy of the Province of



1 Ontario that official plans:...

2 2.2: Identify and protect from land

3 uses which are incompatible with

4 possible future extraction, as much of

5 the mineral aggregate resources

6 occurring in the municipality as is

7 realistically possible in the context of

8 the municipality's other land use

9 planning objectives, and in recognition

10 of the continuing local, regional and

11 provincial need for mineral aggregates."

12 Would you agree with me, Mr. Walker, that that section

13 pertaining to the content of Official Plans appears

14 also to recognize that other land use objectives may

15 take precedence over mineral extraction or protection

16 of mineral resources?

17 A. I believe that it does.

18 Q. Could I ask you to go to the next

19 page if you would and could you read for the Board into

20 the record section 2.3?

21 A. "It is the policy of the Province

22 of Ontario that official plans:...

23 2.3: may establish policies to permit

24 non-aggregate land uses or developments

25 in areas of mineral aggregate resources,



1 which are protected in the Official
2 Plan, where it can be shown:
3 (a) extraction would not be feasible;
4 or
5 (b) the proposed land use or
6 development serves a greater long term
7 interest of the general public than does
8 aggregate extraction; or
9 (c) the proposed land use or
10 development would not significantly
11 preclude or hinder future extraction."

12 Q. Dealing first with sub-paragraph
13 (b) and the concept of the long-term public interest
14 use, in your opinion as a planner, Mr. Walker, would
15 landfilling on Site F serve the long-term interest of
16 the general public in the Region of Halton?

17 A. It is a long-term use in terms of
18 the planning period set aside for the landfill and it
19 is an interim use, but over the long-term; and so to
20 answer your question, yes.

21 Q. With respect to sub-paragraph (a)
22 and the feasibility of extraction, what do you
23 understand "feasibility" to mean in that context?

24 A. It would not be feasible. It
25 would not be practicable.



1 Q. By "practicable", and perhaps I
2 should in fairness put my question directly. Would it
3 be fair in your view as a planner to read this
4 provision of the policy statement as meaning
5 feasibility both in an economic and in a physical
6 sense?

7 A. I think it could be interpreted
8 that way. It is not clear which way it means and they
9 have been talking about practicality and realistically
10 possible, practicable. That is not defined either, so
11 it could be either way.

12 Q. Practicability, I suggest, could
13 take into account whether from an economic perspective
14 extraction was feasible?

15 A. Yes.

16 Q. With respect to the three sub-
17 paragraphs set out under 2.3, as I read them, Mr.
18 Walker, they are disjunctive, and what I mean by that
19 is that in order for an Official Plan to establish a
20 policy permitting non-aggregate land uses in areas
21 which are protected in the Official Plan, only one of
22 those conditions need be satisfied?

23 A. Yes.

24 Q. Is that how you read that section?

25 A. That is correct.



1 Q. Are we clear given the review of
2 the Region's Official Plan we looked at that the quarry
3 licensed area of Site F is protected in the Official
4 Plan?

5 A. Yes.

6 Q. In order to have a non-aggregate
7 land use in that area, at least under the regional
8 plan, one only of the conditions set out under 2.3 need
9 be met?

10 A. That is correct. Just a bit of
11 clarification, Ms. Cronk. Also under section 2 when it
12 says:

13 "It is the policy of the Province of
14 Ontario that official plans: ...
15 Identify and protect legally existing
16 pits and quarries ..."

17 That would by definition include one like this under
18 license. The definition is found on page 2.

19 Q. Looking at the balance of section
20 2 under Official Plans, 2.4 deals generally, I suggest,
21 with providing for mechanisms to permit the creation
22 and expansions of pits and quarries. That is what 2.4
23 is to address?

24 A. That's what it says.

25 Q. 2.5 is directed to permitting



1 wayside pits and quarries to be established and used?

2 A. Yes.

3 Q. 2.6, I suggest, indicates that
4 Official Plans may require rehabilitation to an after-
5 use compatible with the long-term uses permitted by the
6 plan?

7 A. That is what it says.

8 Q. Am I reading that correctly in
9 your opinion if I were to suggest that that is an
10 indication of provincial policy that Official Plans may
11 specifically require rehabilitation to specified after-
12 uses?

13 A. That is correct.

14 Q. You will note that that particular
15 section is asterisked and if we look at the bottom of
16 the page that appears to be simply confirmation of what
17 you have already told the Board that that in parts of
18 Ontario is designated under the Pits and Quarries
19 Control Act and rehabilitation is in fact mandatory?

20 A. Yes.

21 Q. That is regardless of whether the
22 applicable Official Plan for the area spoke to or
23 required rehabilitation?

24 A. That is correct, but by the
25 Official Plan speaking to it it has a chance to control



1 the after-use.

2 Q. That is what we have in this
3 situation?

4 A. Correct.

5 Q. Could I ask you to go to the
6 implementation section of the policy, Mr. Walker,
7 and which begins at the bottom of page 4 and which
8 continues on to page 5 and I direct your attention to
9 the section beginning with the second bulleted item
10 which deals with the duties, if you will, and the role
11 of the Ministry of Natural Resources with respect to
12 this policy statement?

13 A. Yes, on page 5.

14 Q. It begins in the preamble with
15 respect to the Ministry of Natural Resources by
16 providing that that Ministry:

17 "...within the context of its mandate
18 to manage mineral aggregate resources at
19 the provincial level will:..."

20 And then it sets out certain activities the Ministry is
21 to undertake?

22 A. Yes.

23 Q. I direct your attention to sub-
24 paragraph (g) which is one of the activities specified
25 to be undertaken or carried out by the Ministry of



1 Natural Resources, and again for the assistance of the
2 Board and so it is clear on the record, could you read
3 into the record what that paragraph is and then I
4 propose to ask you a number of questions about it.
5 Sub-paragraph (g).

6 A. Taking it from the bullet:

7 "The Ministry of Natural Resources,
8 within the context of its mandate to
9 manage mineral aggregate resources at
10 the provincial level, will:...

11 (g) encourage the concept of extraction
12 as an interim land use activity. Toward
13 this end the Ministry shall:

14 encourage operators of extraction sites
15 to make the most effective use of the
16 land resource;

17 encourage sequential land use and
18 progressive and ultimate rehabilitation
19 with the active extraction area limited
20 to a minimum practical size;

21 encourage operation of the site in a
22 manner as compatible as possible with
23 surrounding land uses and activities;

24 and

25 encourage all depleted extractive sites,



1 including wayside pits and quarries, to
2 be returned to a condition suitable for
3 an acceptable after use and compatible
4 with adjacent land uses."

5 Q. Dealing with the preamble to that
6 sub-paragraph, I suggest the Ministry of Natural
7 Resources is being encouraged in this provincial policy
8 statement to foster the concept of extraction as an
9 interim land use activity?

10 A. I believe so, yes. It says so.

11 Q. That is consistent, I suggest,
12 with the approach taken under the regional Official
13 Plan?

14 A. Yes.

15 Q. Looking specifically to the types
16 of activities that the Ministry is encouraged to
17 undertake, they are listed in the four bullets which
18 you read to the Board. Just before we look at those,
19 could I ask you to flip back, if you would, please, to
20 page 3 and perhaps leave page 5 open, but again under
21 the Principles section of the policy and to the very
22 last bullet which appears before the general policy
23 statement on page 3, beginning with the word
24 "Municipalities..."?

25 A. I see it.



1 Q. And it reads as follows and I
2 quote:

3 "Municipalities have an important role
4 in planning for mineral aggregate
5 resources and aggregate operations and
6 should encourage the concept of
7 extraction as an interim land use
8 activity."

9 Stopping there, we have in the articulation of
10 principles which are to apply with respect to the
11 policy statement, again a recognition that extraction
12 activities are an interim land use activity in planning
13 terms?

14 A. It is a direction that they should
15 be encouraged to be considered as an interim land use
16 activity.

17 Q. Then when we move to the specific
18 implementation provisions of the policy, we find the
19 Ministry of Natural Resources is encouraged to adopt a
20 like concept and to regard extraction as an interim
21 land use activity?

22 A. Yes.

23 Q. Then, as I have indicated and as
24 you read to the Board, specific items are set out and
25 the first is directed to making the most effective use



1 of the land resource on which an extraction site is
2 situate. Is that correct?

3 A. Correct.

4 Q. If the most effective use of any
5 given land resource is landfilling, would you agree
6 with me that the policy statement would appear
7 expressly to permit its use for landfill?

8 A. I would believe so.

9 Q. Looking at the second bullet, that
10 is directed specifically to rehabilitation and the
11 manner in which that is to be accomplished, staging ...

12 A. I know that. Could you repeat the
13 question?

14 Q. I am suggesting the second type of
15 activity which the Ministry of Natural Resources is
16 directed to undertake is to encourage rehabilitation in
17 a staged way?

18 A. Yes.

19 Q. Again, that specific activity
20 recognizes, I suggest, the goal of ultimate
21 rehabilitation and, where possible, sequential land
22 use?

23 A. Yes, it does.

24 Q. Looking at the third activity
25 which has been enumerated, that is directed to the



1 Ministry encouraging operation of a site in a manner
2 that is as compatible as possible with surrounding land
3 uses and activities?

4 A. It is.

5 Q. Finally with respect to bullet 4,
6 it deals with after-uses for depleted extraction sites;
7 is that correct?

8 A. Yes.

9 Q. That was a long yes. Have you any
10 hesitancy about that?

11 A. I was just finishing re-reading it
12 and the answer is yes.

13 Q. In your opinion, having regard to
14 these provisions of the policy we have looked at, would
15 sanitary landfilling and ultimate reforestation on Site
16 F meet the requirements of this policy, the Parkway
17 Belt West Plan and the regional Official Plan?

18 A. I believe so.

19 Q. In your view, having regard to the
20 specific provisions of this policy, is there any
21 difficulty from a land use planning perspective in
22 using the quarried areas on Site F for landfilling
23 purposes?

24 A. I don't believe so.

25 Q. I would like to turn, Mr. Walker,



Nethercut & Co. Ltd.

Toronto, Ontario

14701A

Walker, cr ex
(Cronk)

1 to explore with you the lands to the south on Site F
2 which are not subject to the quarry licence about which
3 we have been speaking. I will be a few moments dealing
4 with this area and I am certainly content to proceed,
5 but, at your convenience, perhaps you might indicate
6 when you would like to rise for lunch hour.

7 MR. LANCASTER: This might be a good
8 time to break. It is now going on 12:30. So, a
9 quarter to two.

10 MS. CRONK: Thank you, sir.

11 ---Luncheon Adjournment at 12:20 p.m.

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1 ---Upon commencing at 1:45 p.m.

2 MR. LANCASTER: Please be seated.

3 MS. CRONK: Q. Mr. Walker, are you
4 familiar with the procedure under section 17 of the
5 Planning Act whereby upon referral of an Official Plan
6 or part of an Official Plan to the Ontario Municipal
7 Board, the Minister, if of the opinion that a matter of
8 provincial interest is affected by the plan or the
9 referred part of the plan, may so advise the Board and
10 identify the part or parts of the Official Plans that
11 are considered to be or to raise a matter of provincial
12 interest?

13 A. Yes.

14 Q. Are you familiar with the
15 companion provision contained in section 34 of the Act
16 with respect to appeals from the passage of zoning by-
17 laws?

18 A. Yes.

19 Q. Is there in this case or has there
20 been to your knowledge in this case any declaration of
21 provincial interest under either of those sections?

22 A. I don't believe so, no.

23 Q. Before the luncheon break, Mr.
24 Walker, we were looking at specifically the lands
25 forming part of Site F that are subject to a quarry



1 licence and I would like to direct your attention to
2 the balance of the lands to the south belonging to
3 National Sewer Pipe which are not covered by that
4 licence. They fall, as I believe you indicated this
5 morning, under the Parkway Belt West Plan in the
6 Special Complementary Use area designation. Do I have
7 that correctly?

8 A. Yes.

9 Q. I believe you indicated a very
10 small portion at the southern end of the quarry licence
11 area is as well included in that Special Complementary
12 Use area?

13 A. Yes.

14 Q. Could I ask you to return then, if
15 you would then, please, to the Parkway Belt West Plan,
16 Exhibit H-319, and I would direct your attention to
17 section 5.5.2 which I suggest sets out the permitted
18 uses under the Parkway Belt West Plan with respect to
19 Special Complementary Use areas. Firstly, do I have
20 the right section, page 22?

21 A. I believe so.

22 DR. KINGHAM: While he is looking for
23 that, did you say the area in the south of Site F or to
24 the south of Site F?

25 MS. CRONK: I meant to say the area in



1 the south, the southern part of Site F and a small
2 portion at the south of the quarry licensed area within
3 the Special Complementary Use area.

4 Q. Page 22, Mr. Walker?

5 A. Yes.

6 Q. Is this the section, as I
7 suggested, which sets out and delineates the permitted
8 uses in Special Complementary Use areas?

9 A. Yes.

10 Q. As we did with the General
11 Complementary Use areas, I would like to use at this
12 section first with an overall broad brush approach, if
13 I can put it that way, and I will suggest that the
14 permitted uses as outlined in this section fall
15 essentially under one of three categories; the first is
16 that they are either legally existing uses of land at
17 the date of the introduction of the plan or, secondly,
18 they are publicly uses or, thirdly, they are other uses
19 as set out in Part 6 of the plan?

20 A. Yes.

21 Q. Landfilling by the Region of
22 Halton at Site F, be it on the quarry licensed areas or
23 on the lands in the south of Site F, would be, you have
24 told us, a public use in your opinion?

25 A. I believe it is, yes.



1 Q. Do I have it then that it is your
2 opinion that the public use category, section 5.5.2 of
3 this plan, would apply to the lands in the south of
4 Site F that fall within the Special Complementary Use
5 area?

6 A. I assume that it does. The wording
7 under sub-clause (b) is different because of its
8 shortness compared to the other one.

9 Q. And the third category to which I
10 directed your attention was as well the other uses set
11 out in Part 6 of the plan for Special Complementary Use
12 areas and that is set out under sub-paragraph (f) of
13 this section?

14 A. Yes.

15 Q. In Part 6 of the plan, as I
16 understand it, it makes it clear that for this Special
17 Complementary Use area some further industrial
18 development would be a permitted use, is that correct?

19 A. Yes. I think it is 6.2.3(q) you
20 are looking for.

21 Q. At page 31?

22 A. I will go by the section here.
23 Yes, and also there is a reference back to all of the
24 uses set out in 5.5.1 which is a General Complementary
25 Use as well, and so the uses permitted under 5.5.2, the



1 Special Complementary Uses, are by associated with this
2 section also expanded to be in 5.5.1.

3 Q. I was coming to that. That means
4 then, does it not, that when we are looking for the
5 full category of permitted uses on these southern
6 lands, that we have first the specific uses permitted
7 under section 5.5.2 as being those applicable to
8 Special Complementary Use areas, and that is the first?

9 A. Yes.

10 Q. Secondly, by reference to section
11 6.2.3 sub-paragraph (q), we find that all of the
12 permitted uses set out in section 5.5.1 are as well
13 permitted in the Special Complementary Use area?

14 A. Correct.

15 Q. That would include, would it not,
16 the public uses set out in sub-paragraph (e) of the
17 General Complementary Uses permitted?

18 A. Yes.

19 Q. You said that is a much broader
20 definition of public use than appears in the Special
21 Complementary Use area definition?

22 A. Where there is a definition, it is
23 a broader description, yes.

24 Q. The broader description found in
25 the General Complementary Use section of the plan is,



1 as we earlier discussed, it pertains to specific public
2 uses and a whole category of other public uses as long
3 as they are of low density, low intensity character?

4 A. Yes.

5 Q. Finally, the third character of
6 permitted uses in the Special Complementary Use areas
7 are as set out in sub-paragraph (q) and that is some
8 further industrial development?

9 A. Yes.

10 Q. Is it fair to suggest that in
11 examining the potential permitted uses under this plan
12 for those lands, it is any use permitted under any of
13 those three sections?

14 A. Yes, within the framework of the
15 words that are there, yes.

16 Q. I would like to look for a moment
17 at what would apply, or what provisions would apply in
18 the event of industrial development. I am going to
19 suggest the development of the lands in the southern
20 part of Site F for industrial purposes would be subject
21 to a number of material constraints.

22 First of all, if we look at sub-
23 paragraph (q) I suggest that it is clear that any such
24 development would be subject to sub-section 5.1.3 of
25 the plan?



1 A. That's what it says.

2 Q. And that sub-section, and you need
3 not go to it unless you wish to, but it deals with the
4 rights of municipalities?

5 A. It is entitled Municipal Actions.

6 Q. That is the first constraint or
7 limitation which applies to industrial development?

8 A. On page 12.

9 Q. Am I right; that's the first form
10 of constraint or limitation that would apply in the
11 event of industrial development?

12 A. Yes.

13 Q. The second, I suggest, is found in
14 the balance of the language of sub-paragraph (q)
15 itself, and that is to say there must be, first, a
16 comprehensive restricted area by-law in place before
17 any such industrial development can occur?

18 A. Yes.

19 Q. That is the second form of
20 constraint or limitation?

21 A. Correct.

22 Q. Thirdly, again deriving from the
23 same sub-paragraph (q) as I read it, there must also be
24 a development agreements in place in accordance with
25 the Planning Act?



1 A. Yes, and it says section 35(a) and
2 that would be section 40 today.

3 Q. That is the third type of
4 constraint or limitation, if you will, on that type of
5 development?

6 A. That is correct.

7 Q. Fourthly, I suggest if the
8 proposal were that the lands were to be subdivided for
9 industrial lots, that would require subdivision plan
10 approval from the Region, would it not?

11 A. If it was to be subdivided, yes.

12 Q. Fifthly, I suggest it would also
13 require site plan and zoning approval from the City of
14 Burlington?

15 A. Yes.

16 Q. Sixthly, would you agree inasmuch
17 as use of those southern lands for industrial purposes
18 would not constitute a public use, it might well
19 require an amendment to the Parkway Belt West Plan
20 zoning regulations?

21 A. May I back up one moment to
22 further answer your last question? There is a term
23 here called restricted area zoning by-law and nothing
24 may hinge on it, but it doesn't say it has to be a
25 restricted area zoning by-law of the City of Burlington



1 but a restricted area by-law in consultation with
2 municipal authorities and other concerned persons,
3 agencies and approved by the appropriate authorities.
4 It may or may not be indicating it was the City of
5 Burlington they were looking to provide the restricted
6 area by-law.

7 Q. I understand that and take your
8 point. Stepping out entirely from the express words of
9 sub-paragraph (q), I am suggesting beyond the
10 provisions of that sub-paragraph there are a range of
11 other constraints or restrictions that potentially
12 would apply and which one would have to address if
13 industrial development was proposed for these lands?

14 A. That is correct.

15 Q. I am suggesting they might extend
16 to a site plan and zoning approval from the City of
17 Burlington?

18 A. They might.

19 Q. I suggested as a sixth matter that
20 because the use of the southern lands for industrial
21 development would not fall within the meaning of a
22 public use as we have seen it under this plan, it would
23 likely require an amendment to the Parkway Belt West
24 Plan zoning regulations, would you agree, or have you
25 considered that?



1 A. Would you repeat the question?

2 Q. I am suggesting that if industrial
3 development were the use proposed for these southern
4 lands, it might well require an amendment to the
5 Parkway Belt West Plan regulations?

6 A. Yes.

7 Q. You admit that?

8 A. Yes.

9 Q. Do you agree?

10 A. Yes.

11 Q. Would you agree with me that the
12 obtaining of an amendment to those regulations is not
13 an uncomplicated matter, or have you had experience?

14 A. Double negative, "not
15 uncomplicated".

16 Q. That is true, there was a double
17 negative.

18 A. It can be relatively complicated.

19 Q. All those steps would have to be
20 satisfied before such a land use could realistically be
21 proposed for the lands on the southern part of Site F?

22 A. Yes.

23 Q. Is it also accurate in your
24 opinion, given the prevailing and governing sections of
25 the plan, to suggest that the plan certainly does not



1 require they be used for such purposes?

2 A. That is correct. I think section
3 5.3 specifically says that and so does the wording in
4 here.

5 Q. Would you look please at the
6 aerial photograph of Site F and get a depiction of it
7 in your mind because I am going to ask you to assume
8 for the moment, if you would, that the southern portion
9 of the site was developed for industrial purposes
10 without similar development of the quarry licensed area
11 to the north?

12 A. Could you repeat that?
13 I was retrieving it here.

14 Q. I am going to ask you to assume
15 for the moment that the lands in the southern part of
16 the site were developed or were proposed for
17 development for industrial purposes while the lands
18 subject to the quarry licensed area were not and are
19 you clear on the assumption?

20 A. Yes.

21 Q. Would you agree with me that
22 development of that kind of those lands to the south,
23 given the site configuration, could severely restrict
24 the potential for development of the remaining lands to
25 the north?



1 A. With what?

2 Q. I beg your pardon?

3 A. Development with what?

4 Q. Of any kind. I am suggesting the
5 lands to the south if developed for industrial
6 purposes, unless the northern part of the lands were
7 developed in concert, that the future development
8 potential of those northern lands could be materially
9 restricted?

10 A. It could be left as it is. It
11 does have road frontage on King Road.

12 Q. Are you aware as to whether that
13 road frontage is on NSP lands or Azova Investment
14 lands?

15 A. Most of it is Azova.

16 Q. I am suggesting, given the
17 configuration, that development of the lands to the
18 south for industrial purposes would undoubtedly have an
19 effect on the future development potential of the lands
20 to the north unless they were done in concert. Do you
21 agree?

22 A. Yes, it would be relatively land-
23 locked if not totally land-locked, and therefore
24 anything that happened on those lands would have to be
25 done with some right of access through the industrial



1 area up here, assuming you are talking about that area,
2 the southerly half of the property running from King
3 over to the existing landfill road access.

4 Q. Just looking at the lands to the
5 north and given the various planning policies we
6 reviewed this morning, it is clear that the Parkway
7 Belt West Plan does not permit industrial development
8 on those quarried lands at the present time?

9 A. That is correct, yes.

10 Q. So, if an in-concert development
11 were proposed on an industrial basis, that would
12 require an amendment to the Parkway Belt West Plan,
13 would it not?

14 A. Yes.

15 Q. Would you agree with me that that,
16 quite apart from an amendment to the regulations to the
17 Parkway Belt West Plan, an amendment to the Plan itself
18 is far from an uncomplicated procedure?

19 A. It is more complicated than the
20 amendment to the regulations.

21 Q. In addition, if you were to
22 attempt to develop those lands to the north forming
23 part of the quarry site for any purpose other than,
24 (a), landfilling or, (b), continued use as a quarry,
25 the owner would be obliged to satisfy Ministry of the



1 Environment guidelines concerning development of lands
2 within 500 metres of a landfill. Isn't that so?

3 A. The Ministry would definitely want
4 some control over that, yes; the Ministry of the
5 Environment would.

6 Q. My question was more specific.
7 The Ministry of the Environment has guidelines in place
8 today for the use of lands adjacent to landfills, does
9 it not?

10 A. Yes.

11 Q. I am suggesting that a further
12 constraint on the development of those lands would be
13 that satisfaction of the requirements of those
14 guidelines would have to be demonstrated before
15 development could proceed?

16 A. That is correct. That is
17 Regulation 0707.

18 Q. That constraint, if you will, or
19 that requirement would be in addition to all of those
20 imposed by virtue of the present conditions under the
21 Parkway Belt West Plan?

22 A. Correct.

23 Q. I am going to ask you as well
24 since we have the aerial photograph up to address your
25 mind to the surrounding land uses at Site F apart from



1 the lands actually constituting Site F. I am going to
2 suggest to you that in land use terms, and I want you
3 to think of it in that way, in your capacity as a
4 planner, but in land use terms, Site F is really quite
5 unusual in that it is completely surrounded on all
6 sides by either natural or man-made physical barriers
7 from the populated areas further out around the site
8 and I am going to ask you if you would start first of
9 all on the west, and look at the west side of the site
10 and as we move out we know we first encounter the
11 Burlington landfill?

12 A. That is correct.

13 Q. Moving to the west. As we move
14 out from that we encounter the Falcon Creek ravine?

15 A. Correct.

16 Q. Beyond that a very large wooded
17 open space area?

18 A. Yes.

19 Q. Would you agree with me that in
20 combination those three factors shield the site from
21 development on Waterdown Road which is further to the
22 west?

23 A. In physical terms, yes.

24 Q. On the south, and perhaps we can
25 come around that way, but as you move south from the



1 site boundary we encounter first the Hydro Electric
2 corridor?

3 A. Yes.

4 Q. Then Highway 403?

5 A. Yes. There is a small piece of
6 land in between, but Highway 403.

7 Q. When you said some small piece of
8 land in between, you were pointing to the triangle of
9 land appearing immediately south of the site boundary
10 and that land is owned by National Sewer Pipe; is it
11 not?

12 A. I believe it is.

13 Q. It is currently vacant?

14 A. There are lots of tracks over it,
15 but it is vacant in terms of structures and/or other
16 uses.

17 Q. What kind of tracks?

18 A. I think it was heavily used as
19 part of a biker, all-terrain vehicle type use of the
20 site at one point in time and it shows up in the aerial
21 photos quite clearly for future reference.

22 Q. If we are looking at what I
23 suggest are either natural or man-made barriers
24 existing to the south of the site, to recap, we have
25 the Hydro Electric corridor and then Highway 403?



1 A. Yes.

2 Q. Then we have as well the triangle
3 of NSP vacant lands which you have described and then
4 we move immediately to the CNR tracks; do we not?

5 A. Yes. There is a relatively large
6 piece of NSP-owned land to the south of 403 and then
7 the CNR tracks.

8 Q. The NSP land to the south of 403
9 is as well vacant, is it not?

10 A. Yes.

11 Q. Just dealing with those factors
12 then, I believe you indicated in your evidence, your
13 evidence to date, that they form in your opinion as a
14 planner a natural or man-made continuum of physical
15 barriers from the populated areas to the south. Do I
16 have that correctly?

17 A. I don't know if I used all those
18 words, but effectively there is a large physical
19 distance between the boundary of the proposed landfill
20 site and residential development.

21 Q. I put it to you it is much
22 stronger than mere geographical distance. In fact, what
23 exists on that intervening space of land, being the
24 Hydro Electric corridor, Highway 403 and then the CNR
25 tracks, in fact comprises physical barriers setting the



1 site apart from the populated areas further to the
2 south and southwest; would you agree?

3 A. Yes, the barriers are added to the
4 distance.

5 Q. Moving to the east of the site, as
6 we move out, we know we encounter first Bayview Park?

7 A. That is in the north, yes, and
8 moving east from the north half, let's say.

9 Q. We have Bayview Park?

10 A. Yes.

11 Q. Further out as we move east we
12 have again a parcel of land owned by National Sewer
13 Pipe?

14 A. Yes.

15 Q. That land is comprised both of an
16 active quarry operation which has been referred to in
17 this hearing as the quarry east of King Road?

18 A. Yes.

19 Q. Could you point that out?

20 A. You can see it relatively scarred
21 on the aerial photo.

22 Q. Part of the lands owned by
23 National Sewer Pipe to the east of King Road are in
24 fact vacant and heavily wooded, are they not?

25 A. To the north?



1 Q. To the east and to the north.

2 A. Yes.

3 Q. I suggest then -- finally, if we
4 move even farther to the north and east we again run
5 into a Hydro Electric Power corridor?

6 A. That is correct.

7 Q. I suggest again that moving out
8 then from the eastern site boundary there are a number
9 of natural or man-made physical barriers sheltering the
10 site from the built-up or populated areas further to
11 the east, would you agree?

12 A. That is correct.

13 Q. Finally looking at the northern
14 part of the site, in fact I suppose to be fair the
15 Burlington landfill which is on the west is in fact in
16 part on the north?

17 A. Yes.

18 Q. Looking then from the Burlington
19 landfill...

20 A. Northeast you might say.
21 Technically there is a little loop in the north.

22 Q. Moving further north we move into
23 vacant open space?

24 A. Yes and at least for part of it it
25 is where Falcon Creek loops around and then heads north



1 about mid-point in the northerly projection of the
2 landfill.

3 Q. So the sequence at that point is
4 first the Burlington landfill, then part of the Falcon
5 Creek system and then open, vacant land?

6 A. Yes. It is also rising in here
7 too because you are at the foot of the Escarpment so
8 you are starting to rise.

9 Q. As we move further to the north
10 again we run into the Hydro Electric Power corridor?

11 A. That's right. There are two in
12 here actually and there is the one that goes straight
13 north and it is visible -- diagonally north-northwest,
14 I suppose you might say, and it is visible by a tree
15 cut and then one that veers off, as I said in my
16 evidence in chief, veers off and goes west-northwest
17 and so there is actually a V with two in there.

18 Q. There are two of them. The land
19 in between is vacant open land?

20 A. By and large. In the middle of
21 them there are four houses where the bend of King Road
22 goes.

23 Q. If you move further north you have
24 the TransCanada Gas pipeline?

25 A. That is correct.



1 Q. I suggest again at the north all
2 of those landforms, if you will, provide either natural
3 or man-made physical barriers sheltering the site
4 itself from activities to the north?

5 A. Yes. They are different, but they
6 are barriers of one sort or another.

7 Q. Each and every one of them?

8 A. Yes.

9 Q. Would you agree with me then, Mr.
10 Walker, looking at the site in its entirety, and having
11 moved around the site figuratively speaking in each
12 direction, that in fact it is sheltered on all sides by
13 barriers of one form or another from the built-up or
14 more populated areas at greater distances to the west,
15 south, east and north?

16 A. Yes.

17 Q. I would like you to compare that
18 for the moment with the situation we encounter at Site
19 D. I would ask you to put up H-277 which I put behind
20 you over the break.

21 DR. KINGHAM: I wonder if you could put
22 it in such a way that we could see both M-103 you are
23 covering up alongside so we can get the relationship
24 between the aerial photograph and H-277. Perhaps you
25 could put M-102 over top of H-277.



1 THE WITNESS: I missed that.

2 MS. CRONK: Was it M-102 you wanted or
3 M-103?

4 DR. KINGHAM: M-102. Just set it on the
5 easel.

6 THE WITNESS: That's for my protection.

7 MS. CRONK: Q. I am going to suggest to
8 you in very simple terms that if you look at Site D, in
9 any direction in which you look, there are clearly
10 residential areas to the east, to the west, to the
11 north and to the south, and that is in distinction to
12 what we have just observed at Site F. Isn't that so?

13 A. There are individual residences
14 along First Line, Highway 25, and along Lower Base line
15 and whether they are classed as residential areas or
16 not I think is a moot point.

17 Q. But there are residences in every
18 direction as you move out from that site?

19 A. Yes.

20 Q. Either farming residences or non-
21 farm related?

22 A. That is right.

23 Q. That is so close to the site
24 boundary in some cases and as you move farther out from
25 the site in any direction?



1 A. Yes, and also on-site.

2 Q. Also on-site. Could I ask you
3 while those exhibits are up to put in front of you
4 Exhibit H-13, your evaluation and summary report from
5 Phase 2, Stage 2C?

6 A. Are we finished with the Parkway
7 Belt Plan?

8 Q. Yes, we are finished with that.

9 A. Yes.

10 Q. We are going to run into a bit of
11 a mechanical problem because some of us have numbered
12 our pages in this book and I don't know whether you did
13 so, but I would like to direct your attention to Chart
14 3 which as additionally numbered is 13(i)?

15 A. I may or may not have it. I have
16 Chart 3.

17 Q. The first page of Chart 3 begins
18 with Population Impacts?

19 A. Yes.

20 Q. I direct your attention to the
21 population impact category and for comparative purposes
22 I will ask you to look at Sites D and F. Site F had
23 zero population impact on-site, is that correct?

24 A. Yes.

25 Q. In the case of off-site impact,



1 Site F had the lowest off-site impact in the study
2 area?

3 A. Yes.

4 Q. We can tell that because the first
5 box of data set out under the population impacts
6 applies to dislocation of residents on-site?

7 A. Correct.

8 Q. And the second box deals with
9 measures of disruptions to residents in the study area;
10 correct?

11 A. Yes.

12 Q. I put the question to you in terms
13 of Sites D and F on a comparative basis, but in fact,
14 in looking at all six site plan area alternatives, Site
15 F had zero or nil impact and it was the best of all six
16 for on-site residents?

17 A. Where are you?

18 Q. Back in the first box, the measure
19 of the dislocation of residents on-site?

20 A. Yes.

21 Q. I am suggesting Site F was the
22 best of all six?

23 A. Yes.

24 Q. When you move to the disruption or
25 impact measurement on residents in the study area, Site



1 F was again the lowest of all six?

2 A. Yes.

3 Q. Further, when we look at all six
4 site plan areas to see how these impact measurements
5 really fell out, Site E was next in terms of low impact
6 in both categories; isn't that so?

7 A. Yes.

8 Q. Only then do we find Site D as
9 being the third least detrimental in terms of impact on
10 residents?

11 A. Yes.

12 Q. On or off-site?

13 A. Yes.

14 Q. And that is true for the overall
15 ranking we see at the bottom of the page in the summary
16 of rankings as between the six sites. Site F is ranked
17 as being the most preferable, having the least impact,
18 Site E as having the second preferable ranking and Site
19 D is in third place?

20 A. Correct.

21 Q. While we are on it, could you look
22 as well at the social impact or social environment
23 category, the very next page, and let's deal with
24 community facilities. Under that impact factor in the
25 summary and evaluation report, overall Site D was given



1 a ranking of 4 and Site F was given a ranking of 5?

2 A. Yes.

3 Q. Neither was very high up on the
4 preference list?

5 A. No, no they were not.

6 Q. When we look at dust and odour,
7 the next two factors, Site F was the first preferred
8 site?

9 A. Yes.

10 Q. Site D was the fifth preferred
11 site?

12 A. Yes.

13 Q. When we look at noise, Site F
14 again of all six Site plan area alternatives was the
15 first preferred site while Site D was the fourth
16 preferred?

17 A. Yes.

18 Q. For visual impact, again comparing
19 Site F with all the other site plan area alternatives,
20 Site F was the fourth preferred site and Site D was the
21 sixth or the least preferred; is that correct?

22 A. Yes. In that case F was tied with
23 E.

24 Q. Both F and E were ranked as fourth
25 preferred?



1 A. Yes.

2 Q. If we look at the land use
3 compatibility, the next page, again F was the first
4 preferred site?

5 A. Yes.

6 Q. D was the third preferred along
7 with Site E. Is that right?

8 A. Yes.

9 Q. In fact Site A alone from a land
10 use compatibility perspective was ahead of Site D and
11 was the runner-up?

12 A. Yes.

13 Q. The land use compatibility
14 component of the social environment category as I
15 understand it was the one in which you were
16 specifically involved in your capacity as a planner?

17 A. Yes.

18 Q. Would you agree with me, Mr.
19 Walker, looking at all the factors for the social
20 environment category as we have just done, community
21 facilities, dust, odour, noise, visual impact,
22 population impacts and land use compatibility, that
23 Site F was way ahead of Site D in this category?

24 A. It was the most preferred in those
25 different categories, different factors.



1 Q. Apart from ...

2 A. I have trouble saying way ahead
3 because I think in the overall we thought they were
4 very close and I don't think -- certainly in some cases
5 D was not immediately beside F in terms of ranking, it
6 was separated by some others, so there would be a
7 degree of difference in there, which is different,
8 there would be a wider gap between the two than we had
9 actually found.

10 Q. It was to that specific issue that
11 I was attempting to address the question.

12 A. Right.

13 Q. Because I have heard you express
14 that opinion before in this hearing. If you look at
15 the various component parts of the social environment
16 category and look at all of them, I suggest that in
17 each and every single one of those components, with the
18 exception of community facilities, Site F was clearly
19 to be preferred to Site D based on these rankings;
20 isn't that so?

21 A. Yes.

22 Q. Apart from the social environment
23 category, there are at least two others which have a
24 direct impact on people, I suggest, and that is the
25 public health and safety category first, do you agree?



1 A. Yes.

2 Q. And, secondly, the financial
3 category, namely costs?

4 A. I don't think that costs have a
5 direct impact. It is buffered by the fact that costs
6 are a regional expense by and large.

7 Q. Perhaps we can come back to costs
8 in a moment. In the public health and safety category,
9 Site F was preferred over Site D and the various
10 components are dealt with in Chart 1?

11 A. Yes.

12 Q. In the costs category at this
13 stage, in the preparation of the summary and evaluation
14 report, Site F was not considered -- was considered --
15 let me try that again.

16 In the costs category Site F was not
17 considered to be as preferable or as favourable as Site
18 D based on the information then available?

19 A. Correct.

20 Q. You are of course aware that Mr.
21 Watson has given evidence to the Board and has updated
22 the financial information contained in the various
23 costing analyses in written form that were previously
24 available?

25 A. He had done another one after this



1 one, of the comparative analysis, and that was a
2 different cost.

3 Q. By the time the comparative
4 analysis was done and consistent with that, by the time
5 Mr. Watson gave his evidence here, it was his view
6 there was no significant financial differential between
7 Site D and Site F, and were you aware of that?

8 A. I was aware of that.

9 Q. As the matter stood at the summary
10 and evaluation stage, I suggest in the categories which
11 most directly involve human impact, if I can put it
12 that way, the public and health safety category and the
13 social environment category, Site F was the clearly
14 preferred site, isn't that so?

15 A. Yes, but just let me check. Yes.

16 Q. I would like to deal next if I
17 could, Mr. Watson ...

18 A. My name is Walker.

19 Q. I am still looking at the costs, I
20 apologize. I would like to deal, Mr. Walker, with the
21 land use analysis per se done with respect to the
22 various sites including Site F and Site D and fairly
23 perhaps it would be of assistance if you had before you
24 as well as the evaluation and summary report, H-51,
25 your land use assessment report and also the



1 comparative analysis, H-14.

2 Perhaps we could deal first with H-51
3 which is first in point of time, as I understand your
4 evidence, your land use and planning assessment
5 prepared in June of 1985?

6 A. Correct.

7 Q. Could you turn to your
8 introduction at page 1-1. Given the nature of the
9 discussion you have had in evidence thus far concerning
10 the role which you played and the advice which you
11 rendered as a planner, I would like to understand very
12 clearly what was done by you in a planning capacity in
13 the compilation and formulation of this review
14 document. Dealing with the summary which you have set
15 out in the introduction, as I understand it, you were
16 first concerned to provide a review of both the
17 existing and the future land uses, not only for each
18 site plan area, but as well for the surrounding study
19 area for each site?

20 A. Correct, yes.

21 Q. What you were really doing as you
22 describe it in that first paragraph, or at least as I
23 read the paragraph, you dealt with existing land uses
24 for all six and then you dealt with existing land uses
25 for the study areas for all six site plan areas and



1 then you dealt with the future land uses for all six
2 sites and the future land uses for the study areas of
3 all six sites?

4 A. That is correct, within the
5 context of paragraph 3.

6 Q. What do you mean by that?

7 A. It says in the third line:
8 "In order to avoid duplication, only
9 those land use issues not dealt with
10 specifically in other technical reports
11 are evaluated here."

12 Q. I took that to mean where there
13 was a technical report specifically dealing with a land
14 use issue, specific to any one of the six sites, its
15 findings or contents were not repeated in this report
16 but rather this report was directed to the balance of
17 the land use planning issues?

18 A. Yes.

19 Q. Secondly, as I read the first
20 paragraph still on page 1-1, you also looked at
21 potential land use conflicts for each of the six site
22 plan areas?

23 A. Yes.

24 Q. Thirdly, and please stop me if I
25 suggest or if I miss something in what was done, but



1 looking at your third paragraph and you also as a third
2 step provided what you described as a broad land use
3 context for the other technical reports?

4 A. Yes.

5 Q. For example, am I correct that
6 where for illustration purposes a visual assessment
7 report had been done, you took the conclusions or
8 opinions expressed in that report and attempted to
9 provide a broader land use analysis for the assistance
10 of applying or considering the findings in the visual
11 report. You were providing a background context for
12 those ...

13 A. We were providing information to
14 people as well.

15 Q. Apart from the information you
16 provided to them which was then relied upon or rejected
17 or otherwise dealt with to generate the technical
18 report, I am trying to understand what you meant by "a
19 broad land use context?"

20 A. That's what it means. You are
21 correct as far as you go, but the next sentence is
22 important in the sense that we would not be commenting
23 to any extent at all on agricultural aspects because
24 that would have been done by Dr. Mackintosh.

25 Q. To the extent, however, that



1 existing land uses, for example, in the vicinity of
2 Site D might bear on that issue, were you concerned in
3 your analysis to set out and discuss those existing
4 land uses?

5 A. I was to the extent that I wasn't
6 duplicating something somebody else was doing, but for
7 instance he might be looking at the ownership pattern
8 and the viability of the farms, and so we would not
9 provide that information.

10 Q. To the extent it had not been done
11 by other consultants, only then was it done in this
12 report?

13 A. Yes, in a little bit of an
14 information framework. We were providing information
15 not otherwise being collected by other people.

16 Q. By the time those specific
17 technical reports came in and by the time you had
18 prepared what you had described as a broad land use
19 context for those technical reports, were you satisfied
20 as the Region's expert planner, that all matters
21 relating to the broad land use context had been
22 satisfactorily addressed?

23 A. Yes. To the best of my
24 recollection I couldn't think of anything at that point
25 in time that was missing from that level of the



1 analysis, the 2C type of analysis.

2 Q. Did you in the instance of each
3 technical report that was prepared review it yourself
4 to determine if the land use matters dealt with in the
5 technical report had been dealt with to your
6 satisfaction as a planner?

7 A. It was reviewed by my staff and I
8 didn't read every report, no.

9 Q. Fourthly, dealing with the summary
10 of the various steps you had gone through, do I
11 understand that you personally in the preparation of
12 this review, or your staff as opposed to the other sub-
13 consultants, looked at the long-term land use potential
14 for each site plan area?

15 A. Yes.

16 Q. As part of that, or was it part of
17 that exercise that involved you in considering the
18 existing planning designations and the existing
19 planning policies?

20 A. Yes.

21 Q. Is it that exercise which led you
22 to a discussion of the approvals that might be
23 necessary?

24 A. Correct.

25 Q. Or any planning amendments that



1 might be necessary?

2 A. That is correct.

3 Q. Is that in summary form, Mr.

4 Walker, a fair description of the methodology you used
5 in preparing, as a planner, this land use assessment?

6 A. Yes, as long as it is understood
7 that this document does not include land use
8 information that we would normally or otherwise have
9 collected if there was no specific expertise involved
10 from another consultant. In a land use report it would
11 not be unusual to find a land use and planning
12 assessment report under other circumstances to include
13 complete indications, as much as a planner can do,
14 about the validity and viability of farming in the area
15 and the types of farming and that is not in here.

16 Q. Because that was being separately
17 done by other consultants?

18 A. That is correct, yes.

19 Q. Was there from a land use planning
20 point of view insofar as you are concerned, anything
21 that was left undone or not done that you felt should
22 have been addressed to adequately provide an acceptable
23 and thorough land use and planning assessment at this
24 stage?

25 A. Putting this together with the



1 other documents, no.

2 Q. Could I take you specifically to
3 Table 7 which faces page 7-5. This is the table, as I
4 understand your evidence, which summarizes the land use
5 and planning assessment that you in fact carried out?

6 A. Within the context as I have
7 described it, yes.

8 Q. On page 2 of the table, or at
9 least at page 2 is where we see the comparison remarks,
10 if you will, set out with respect to Sites D, E and F?

11 A. Right.

12 Q. Overall, looking at the ratings
13 that were assigned to the three sites, Site F, I
14 suggest, was the only site plan area which in your
15 opinion deserved a low impact rating?

16 A. Correct.

17 Q. I would like to understand more
18 clearly what these ratings in fact mean and what you
19 meant when you used the word "impact" because we have
20 had from time to time in documents a range used or
21 numbers indicating a degree of preference used, or we
22 have had words such as low, moderate or high used.
23 When you refer to impact in this chart, are you
24 referring -- perhaps you should tell me what you meant
25 by the term?



1 A. Low impact, for instance?

2 Q. "Low" is the adjective. When you
3 refer to impact, what do you mean?

4 A. The effect of landfilling on the
5 site and the surrounding area.

6 Q. You were, I take it, concerning
7 yourself with the intrusive effect or negative effect?

8 A. Yes. By and large I was, yes.

9 Q. So, when for example, we see a low
10 impact rating in this chart in this report, what you
11 are saying is that as a planner you regard the
12 intrusive effect of landfilling to be very low?

13 A. Yes. The level of adversity is
14 low, if you will.

15 Q. Adverse impact?

16 A. Yes, adverse impact.

17 Q. In that context and in looking at
18 the six sites, Site F, you have said, is the only one
19 that had a low adverse impact rating?

20 A. Correct.

21 Q. I would like to look collectively
22 if we could at the six site plan areas. We look first
23 at B, C and E and the overall ratings that were applied
24 to those sites, and am I right that each of those sites
25 overall got a high adverse impact rating?



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Walker, cr ex
(Cronk)

1 A. Yes.

2 Q. Site D was expressed to be
3 moderate to high?

4 A. Right.

5 Q. Site A was expressed to be
6 moderate?

7 A. Correct.

8 Q. And Site F, you have indicated,
9 was low?

10 A. Correct.

11 Q. In the context purely of your
12 planning assessment, Site F was clearly the preferred
13 site?

14 A. Yes.

15 Q. Site A was next to be preferred
16 in terms of minimal or minimizing adverse impacts?

17 A. Yes.

18 Q. Only then Site D?

19 A. Yes.

20 Q. Could we look specifically at the
21 comments you did make with respect to Site D and I
22 would like to compare those with what you said about
23 Site E and then look at Site F. First is D and E. In
24 the first column, that sets out the potential effects
25 on land use, as I understand the captions from the



1 previous page?

2 A. Yes.

3 Q. The first item mentioned with
4 respect to Site D is the impact on the Burlington Air
5 Park and a proposed hospital helicopter facility?

6 A. Yes.

7 Q. In the case of Site D you have
8 described that as being significant impact and in light
9 of what you told us this afternoon that means
10 significant adverse impact?

11 A. Yes.

12 Q. You explained that the landfill at
13 Site D would increase bird hazards to aircraft
14 operations?

15 A. That's what we thought, yes.

16 Q. Is that the reason for the
17 significant diversity rating and is one the rating and
18 the next the explanation for the rating?

19 A. Yes. The middle column being the
20 mitigation aspects and the overall significance of the
21 effects is in the last column.

22 Q. In the case of Site D in the
23 mitigation column, you have made the observation that
24 the airport can't be moved and therefore there is
25 really no real or practical mitigating measures with



1 respect to moving the airport that can be undertaken?

2 A. Yes.

3 Q. Under the same factor with respect
4 to Site E, you have first of all identified it in
5 identical language as being a proposed impact for Site
6 E?

7 A. Yes.

8 Q. The mitigation observation is the
9 same, that the airport cannot be moved?

10 A. Yes.

11 Q. In the case of the rating in
12 respect of that impact, you have indicated it is higher
13 than at Site D due to greater proximity, meaning simply
14 that it is closer?

15 A. It is closer.

16 Q. That difference on that factor is
17 significant in the case of Site D and is high in
18 respect of Site E?

19 A. Yes.

20 Q. Could I ask you to go back to page
21 5-2 and perhaps you would keep your hand at the chart,
22 but could you confirm that at Site D is approximately
23 3.5 kilometres away from the Burlington Air Park?

24 A. That is correct.

25 Q. Site E on the other hand is



1 approximately 1.8 kilometres away from the Air Park,
2 page 5-3?

3 A. Yes.

4 Q. Do you want to check?

5 A. Yes.

6 Q. We have 1.8 kilometres in the case
7 of Site E and 3.5 in the case of D?

8 A. Yes.

9 Q. In the course of your discussion
10 about this on page 5-2 with respect to Site D, you make
11 reference to Transport Canada guidelines regarding bird
12 hazards and airport operations. Do you see that
13 reference in the last paragraph?

14 A. Yes, Guideline AK-75-10.

15 Q. You say it provides that garbage
16 dumps should not be located within 5 miles of an
17 airport?

18 A. Correct. I also make note that it
19 has no status in terms of legislation.

20 Q. You indicate that some potential
21 bird hazard to aircraft may nevertheless exist at Site
22 D?

23 A. That is what we believe.

24 Q. Site D is closer to the Burlington
25 Air Park than the 5 mile limit?



- 1 A. Yes.
- 2 Q. Is that the sole difference, that
- 3 geographical distance, for the difference in ratings
- 4 between Site D and Site E on that factor?
- 5 A. Yes.
- 6 Q. I have asked for your staff to
- 7 provide to me a copy of the guidelines which you
- 8 referred to at this stage of your report, and I am
- 9 showing you a document entitled "Airport Operations and
- 10 Reduction of Bird Hazards, AK-75-10" dated August, 1977
- 11 and I would ask you to tell me if this is the guideline
- 12 you were referring to?
- 13 A. Yes.
- 14 Q. That bears a receipt stamp date on
- 15 the top right of the page as received at your firm?
- 16 A. Yes.
- 17 Q. October 29, 1983?
- 18 A. Yes.
- 19 Q. Transport Canada, as I understand
- 20 it, is the federal government department responsible
- 21 for the administration of air traffic and airports, is
- 22 that not so?
- 23 A. Yes.
- 24 MS. CRONK: Could this be marked?
- 25 DR. KINGHAM: We will mark it N-338.



1 ---EXHIBIT NO. N-338: AK-75-10 from Transport Canada
2 Airways Division, August 1977

3 MS. CRONK: Q. Could I ask you firstly
4 to go to the first page of the guideline, paragraph
5 2.07 dealing with Food Sources. Do you have that?

6 A. These are extracts from the
7 regulation or from the guidelines. Yes, I have that.

8 Q. Under the caption of Food Sources
9 the guideline indicates and I quote:

10 "Food sources should be reduced or,
11 where possible, eliminated. Food
12 garbage presents one of the greatest
13 problems in this area. Extreme care is
14 required in the handling and disposal of
15 food garbage, both on and off the
16 airport. It shall be placed in closed
17 containers and disposed of."

18 A. Yes.

19 Q. Stopping there, if landfilling
20 occurs at Site D, I take it we are clear that it is
21 intended that this site would receive both domestic and
22 commercial waste including foodstuffs?

23 A. Yes.

24 Q. I would ask you to refer to
25 section 2.09, Garbage Dumps, and the first paragraph as
I read it pertains to lands owned and directly



1 controlled by Transport Canada and it simply indicates
2 that:

3 "Garbage dumps shall not be located on
4 land owned by Transport Canada."

5 A. Yes.

6 Q. It further indicates:

7 "On lands surrounding the airport, and
8 not owned by Transport Canada, the local
9 municipal officials shall be made aware
10 of the bird hazards to aircraft
11 associated with garbage dumps."

12 A. Yes.

13 Q. That paragraph, I take it, is a
14 statement of Transport Canada's policy with respect to
15 both lands used directly for airports and adjacent
16 lands not owned by them in terms of controlling bird
17 hazards?

18 A. Yes.

19 Q. Looking at the second paragraph
20 with respect -- perhaps we should look at the next two
21 together:

22 "Airport Managers, with assistance from
23 Regional Office, should make every
24 effort to have municipal governments
25 cooperate with Transport Canada by



1 encouraging the municipality to pass by-
2 laws and take other necessary actions to
3 ensure that the locations of dumps are
4 compatible with Transport Canada's
5 standards, as outlined below."

6 And then the third and final paragraph:

7 "Garbage dumps should not be located
8 within 5 miles of an airport."

9 I take it that is the expression of policy to which you
10 referred in Exhibit H-51; it establishes the 5 mile
11 limit radius referred to in your report?

12 A. Yes.

13 Q. Then Appendix F...

14 A. The one thing you must watch is
15 the use of the words. Whether it is a policy or a
16 guideline I think is definitely a debatable point. I
17 think it is a guideline for sure and I am not sure it
18 is a policy.

19 Q. Perhaps we should select some
20 compromise language. The documents is entitled, it
21 doesn't make reference to guidelines but you treated it
22 as being a guideline in your report and you refer to it
23 as such?

24 A. Oh, yes. throughout we had
25 reference to it because it was a federal document that



1 seemed to be addressing a specific aspect and they call
2 it dumps in here, but sanitary landfills, they are
3 roughly the same thing, and perhaps not as bad as
4 dumps.

5 Q. Whether you call it a guideline or
6 a policy, it is an expression of the position of
7 Transport Canada on bird hazards at and in the
8 immediate vicinity of airports?

9 A. Yes. As it stands it is a
10 statement and they have other ways in which they make
11 similar statements. For instance, in the by-laws that
12 they are empowered to pass around airports or to have
13 passed around airports they make statements and there
14 is a distinction because they don't always live by this
15 distance factor.

16 Q. We will come to look at some of
17 those in a moment, but for the purposes of this
18 exhibit, this document, am I right that that is where
19 the 5-mile restriction radius comes from you refer to
20 in your report?

21 A. Correct.

22 Q. Can we agree there is a clear
23 direction of position in this document by Transport
24 Canada that it is undesirable to locate garbage dumps
25 within that 5-mile radius?



1 A. Yes.

2 Q. If we look to the last page of the
3 document entitled Appendix F it sets out in diagram
4 form restricted areas for garbage dumps?

5 A. Yes and it is entitled that.

6 Q. Your staff also provided me with a
7 copy of a letter dated February 1, 1984 from Transport
8 Canada to Mr. Farrow, Assistant Deputy Minister,
9 Community Planning, Ministry of Municipal Affairs &
10 Housing, dealing with land use in the vicinity of
11 airports and the bird hazard policy of Transport
12 Canada. I am providing a copy of that letter and
13 attachments to you.

14 MR. LANCASTER: Exhibit N-339.

15 ---EXHIBIT N-339: Letter from Transport Canada
16 dated February 1, 1984 to
Mr. Farrow

17 MS. CRONK: Q. I direct your attention
18 first, if you would, to the first page immediately
19 following the letter entitled Appendix G to
20 AK-75-10-199, and I take this to be an appendix with
21 reference to the same guideline document AK-75-10 being
22 N-338 to which we just referred?

23 A. I believe so, yes.

24 Q. Except the date of this document
25 is February, 1984 whereas the Exhibit N-338 which we



1 looked at a few moments ago dates from 1977?

2 A. This doesn't have a date on it. It
3 is attached to a letter of that date, but I don't know
4 when the document itself was generated.

5 Q. That's fair comment. The letter is
6 dated February 1, 1984?

7 A. Yes.

8 Q. In the body of the letter there is
9 an indication that the author is enclosing the Bird
10 Hazard Guidelines which relate to land use in the
11 vicinity of airports?

12 A. Correct.

13 Q. From Transport Canada?

14 A. Correct.

15 Q. If we look at the guidelines
16 themselves, being Appendix G, in the first paragraph it
17 reads:

18 "Birds and aircraft are a potential
19 hazard to each other during all phases
20 of flight. This appendix describes ways
21 of minimizing this serious hazard from
22 the viewpoint of aircraft safety during
23 take-off, landing, and other manoeuvres
24 in the vicinity of airports."

25 I take it that first paragraph is really a description



1 of the purpose of the appendix and the need for land
2 use regulations to prevent bird hazards?

3 A. That is correct.

4 Q. I direct your attention
5 specifically to the remaining three paragraphs and with
6 respect to the second paragraph:

7 "The natural attraction of airports for
8 birds, i.e., rural setting, cleared
9 level ground, and accessibility of food,
10 water, and nesting areas, is difficult
11 to overcome except through rigid land
12 use controls to minimize these features.
13 Other supplementary control methods are
14 used, such as shell crackers, recorded
15 distress cries, etc., but their
16 effectiveness is limited."

17 Stopping there for a moment, Mr. Walker, was it your
18 understanding at the time of writing your land use
19 planning report, that in fact the Transport Canada
20 guidelines urged the use of strict or rigid land use
21 controls in an effort to try and deal with this
22 problem?

23 A. Yes.

24 Q. Would it be fair to suggest that
25 one of the mechanisms Transport Canada has proposed to



1 effect such land use control is in fact the 5-mile
2 restricted area radius to which you referred in your
3 report as we saw a moment ago in the guidelines?

4 A. Yes. That was the standard they
5 were using.

6 Q. And looking at the suggestions
7 contained in that second paragraph, is it a fair
8 reading in your view to suggest that the preferred
9 mitigation measure, taking into account non-land use
10 mitigation measures that are available, that the
11 preferred mitigation measure is in fact the application
12 of strict land use controls?

13 A. Yes.

14 Q. Looking at the third paragraph:
15 "Instituting land use controls near an
16 airport to reduce the natural attraction
17 of the area requires a great deal of
18 planning and work, but is extremely
19 effective for long-term results."

20 I suppose that suggests in part the rationale for the
21 preference for strict land use controls?

22 A. There is no question that they
23 felt that strict land use controls was the way to go.

24 Q. Finally, looking at the concluding
25 paragraph which reads:



1 "At proposed new airports, bird hazards
2 can be minimized by careful selection of
3 the site to avoid established bird
4 migration route and areas of naturally
5 attractive bird habitat, and by
6 utilizing the lands surrounding the
7 airport for purposes that will neither
8 attract nor support concentrations of
9 birds."

10 Stopping there for a moment, that applies to new
11 airports but I would direct your attention to the last
12 sentence which provides:

13 "At existing airports, the same criteria
14 applies with the exception, of course,
15 that little can be done with regard to
16 migration routes."

17 Is it fair to suggest that Transport Canada is
18 recommending with respect to existing airports that
19 lands surrounding those airports should be used
20 specifically for purposes that will neither attract nor
21 support concentrations of birds?

22 A. That is certainly what they would
23 prefer, yes.

24 Q. Do you regard that as a planning
25 concept, Mr. Walker?



1 A. That is something to be taken into
2 consideration in planning, yes.

3 Q. If we look at the next page of
4 Appendix G, we see again in diagrammatic fashion a
5 depiction of the 5-mile restricted radius expressed in
6 kilometres?

7 A. Eight kilometres.

8 Q. Eight kilometres?

9 A. Yes.

10 Q. There are two areas, area A the
11 inner circle on this page which appears to have a
12 radius of 3.2 kilometres, do you see that?

13 A. Yes.

14 Q. And then an extended restricted
15 radius which is depicted as area B with a radius of 8.0
16 kilometres?

17 A. Yes.

18 Q. If we turn to the next page,
19 Appendix G, this is entitled Land Use Guidelines for
20 the Avoidance of Bird Hazards and I direct your
21 attention to the two asterisked items on the page; the
22 first indicates that "On lands owned by Transport
23 Canada the land use guidelines outlined here are
24 mandatory." Do you see that?

25 A. I see that.



1 Q. The second asterisk indicates that
2 "These are general guidelines for planning and land use
3 zoning only?"

4 A. Yes.

5 Q. I am going to suggest to you,
6 Mr. Walker, and I would ask you to indicate whether you
7 agree that I am reading this document correctly, but
8 what follows is a column of designated land uses and on
9 the right-hand side of the page the guideline and an
10 indication as to whether in area A, which is 3.2
11 kilometres, and in area B, which is 8 kilometres, that
12 type of specific land use should be permitted. Is that
13 how the documents are set up?

14 A. Yes.

15 Q. I suggest that with respect to
16 food garbage disposal sites it is quite clear that
17 Transport Canada, or that its guidelines sanction such
18 a facility in neither area A nor area B?

19 A. That is correct, on page 2, the
20 last item.

21 Q. Nowhere within that 8 kilometre
22 radius on lands not owned by Transport Canada is it
23 recommended that foodstuffs, garbage facilities, be
24 constructed or permitted. Is that correct?

25 A. Yes.



1 Q. And the guideline as we have seen
2 from the asterisk on the previous page makes it quite
3 clear that the document in fact and the recommendations
4 contained in it are intended to be general guidelines
5 for planning and land use zoning purposes only?

6 A. That is correct.

7 Q. Mr. Walker, it is my understanding
8 that the Transport Canada guidelines were subsequently
9 updated in 1985 after the date of the letter I have
10 just shown you. I am now providing you a document
11 called Air Navigation Systems Branch, Land Use in the
12 Vicinity of Airports, an extract from the fifth
13 edition, November, 1985, No. TP 1247E.

14 MR. LANCASTER: Exhibit N-340.

15 ---EXHIBIT NO. N-340: Transport Canada Air Navigation
16 System Requirements Branch
document dated November 1985

17 MS. CRONK: Q. I would ask you if you
18 would go to the extracts attached to this document
19 which is Part III, Bird Hazards?

20 A. I see that.

21 Q. If we look at the first paragraph,
22 Mr. Walker, I suggest it is similar to the first
23 paragraph of N-339 which we read a few moments ago,
24 namely, a description of the hazards which can be posed
25 by bird concentrations in the area of airports and it



1 describes the purpose of the guideline?

2 A. Yes.

3 Q. The second paragraph, I suggest,
4 makes it very clear that there is a need in the view of
5 Transport Canada for off-airport site controls to try
6 and minimize these hazards?

7 A. Yes.

8 Q. Specifically in that paragraph,
9 the guidelines indicate that on-airport activities can
10 be effective to control the hazards, but they can be
11 neutralized by the presence of attractive land use or
12 activities outside the airport boundary?

13 A. Yes.

14 Q. It seems that Transport Canada is
15 acknowledging that there are mitigation measures which
16 can be adopted on-site, actually where an airport is,
17 but if attention is not paid and control is not had of
18 the immediately surrounding land areas, that what you
19 do on-site can be effectively neutralized in entirety?

20 A. Yes.

21 Q. To support that reading of that
22 paragraph I draw your attention to the last sentence of
23 paragraph two which reads:

24 "It is therefore important that land
25 uses in the general airport-surrounding



1 area be regulated with the same goal as
2 on-airport land use, to minimize the
3 attraction to birds."

4 And do you see that?

5 A. Yes.

6 Q. Finally, without taking you
7 through it word for word, I am going to suggest to you
8 that in the concluding paragraph of the revised
9 guidelines it makes it very clear that construction or
10 operation of a food waste landfill site within 5 miles
11 of an airport boundary is considered to be, and I
12 quote:

13 "Extremely hazardous land use
14 practices:"

15 And isn't that so?

16 A. Yes.

17 Q. I am sorry?

18 A. I am sorry, things are falling
19 apart. Yes.

20 Q. The introduction of such a
21 facility within that 5 mile or 8 kilometre radius or
22 less is not recommended by Transport Canada, isn't that
23 so?

24 A. Yes.

25 Q. Further, the recommendation in



1 fact made by Transport Canada is that such facilities
2 should be located at even greater distances from
3 airports; isn't that so?

4 A. Yes.

5 Q. Finally, in this series, I am
6 showing you a copy of a letter dated September 26, 1986
7 from Transport Canada, Air Planning Branch, addressed
8 to Mr. Paul Attack, Senior Planner at the Regional
9 Municipality of Halton dated September 26, 1986 and do
10 you know Mr. Attack?

11 A. I do.

12 Q. Was he then to your knowledge the
13 senior planner with the Region?

14 A. He was.

15 MS. CRONK: Could this be the next
16 exhibit?

17 MR. LANCASTER: N-341.

18 ---EXHIBIT NO. N-341: Letter from Transport Canada
19 dated September 26, 1986 to
Mr. P. Attack

20 MS. CRONK: Q. Looking at the body of
21 the letter, particularly the first paragraph -- the
22 author of the letter is the Regional Manager for Air
23 Planning, Mr. Livingston, or Ms. Livingston, I am not
24 sure which, of Transport Canada?

25 A. Yes.



1 Q. I am directing your attention
2 firstly to the first paragraph of the letter which
3 indicates a review had been completed by Transport
4 Canada of Halton's environmental assessment?

5 A. Yes.

6 Q. That review had been undertaken
7 with respect to potential conflicts between the
8 proposed landfill and the Burlington Air Park?

9 A. Yes.

10 Q. I would direct your attention to
11 the second paragraph in which a comment is made, and I
12 quote:

13 "The report fails to state the exact
14 distance between Burlington Airpark
15 property and the landfill site. The
16 report does indicate that it is less
17 than 5 nautical miles."

18 And that paragraph, I suggest, makes it quite clear
19 that the author is talking about Site D?

20 A. I presume so.

21 Q. What is the difference between a
22 nautical mile and a mile, Mr. Walker, do you know? I
23 am sorry, I thought I would slip that in there. I am
24 not sure myself. Which is larger?

25 A. I believe it is close to as the



1 crow flies. I believe it is a direct distance between
2 points, but there is a subtlety to it and if you want
3 to give me 10 minutes I might be able to find it.

4 Q. My information is that a nautical
5 mile is slightly larger than a normal mile, 1.17 normal
6 miles.

7 A. Then you know something I don't.

8 Q. You cannot confirm that?

9 MR. LANCASTER: 800 feet comes to mind.

10 MS. CRONK: Q. I thought the crow
11 flying analogy was somewhat apt.

12 A. No pun intended.

13 Q. Could you look at the third
14 paragraph, if you would, on the first page of the
15 letter in which, I suggest, Transport Canada is simply
16 confirming for the Region the limitation on its own
17 jurisdiction and that is it acknowledges it cannot
18 regulate the location of landfill sites on land not
19 owned by Transport Canada. That acknowledgement is set
20 out in that paragraph, is it not?

21 A. Yes.

22 Q. The author goes on to indicate and
23 refer to the guidelines prepared and used by Transport
24 Canada regarding land uses in the vicinity of airports
25 and the specific reference is to a document entitled



1 TP 1247E which, I suggest, is Exhibit N-340 which we
2 just looked at; isn't that so?

3 A. Yes. I am not so sure that this
4 statement that they can't regulate the location of
5 landfill sites on land ... I am not sure that that's
6 true anymore, as I think Buttonville, I won't say in
7 recently in terms of weeks or months, but I believe in
8 the past year there has been a by-law passed for
9 Buttonville which is a privately owned airport which at
10 least in part they tried to enact the same kind of
11 legislation and I know one element that says dumps are
12 not allowed.

13 Q. Who was the by-law passed by?

14 A. It was a Department of Transport
15 notice.

16 Q. You didn't mean to say by-law, did
17 you?

18 A. It was a notice of a by-law under
19 federal regulations. They have some rights around
20 airports to do that. I have a copy of the notice
21 somewhere and again if you want me to produce it I will
22 try and find it.

23 Q. That would be fine and I would
24 like you to come back to that in a moment, and I will
25 come back to that, but could I direct your attention to



1 the question I asked you a moment ago, and that is with
2 reference to the second sentence in the last paragraph,
3 I am correct the author is referring to the updated
4 guidelines I provided you as Exhibit N-340?

5 A. Yes.

6 Q. The author indicates that
7 "Instituting land use controls near airports is
8 necessary to minimize the serious bird hazard from the
9 viewpoint of aircraft safety?"

10 A. That is correct.

11 Q. Finally, looking at the last
12 paragraph on page 2 it reads, and I quote:

13 "Food garbage disposal sites attract and
14 support concentrations of birds. Due to
15 increased bird activity and potential
16 hazards to aircraft during all phases of
17 flight, food garbage disposal sites
18 should not be located within 5 nautical
19 miles of an airport."

20 Stopping there for a moment, that is a repetition
21 merely of the guideline contents we looked at a few
22 moments ago?

23 A. Yes.

24 Q. And the rationale for the rule?

25 A. Yes.



1 Q. Finally:

2 "The proposed location for the site is
3 within this 5 nautical mile area and
4 consequently unacceptable according to
5 our aforementioned guidelines."

6 A. Yes.

7 Q. I suggest to you that this is an
8 indication by Transport Canada that it regards the
9 introduction of landfilling at Site D as being in
10 contravention of its guidelines with respect to bird
11 hazards and airport land use controls?

12 A. I suppose it does say that.

13 MS. CRONK: Mr. Chairman, would it be an
14 appropriate time to break?

15 MR. LANCASTER: I was just going to
16 suggest that. Thank you.

17 ---Recess

18 MR. LANCASTER: Thank you, please be
19 seated.

20 MS. CRONK: Q. You will recall before
21 the break I was drawing your attention to the various
22 comments and ratings that had been made with respect to
23 Sites D and E in Exhibit H-51 and we moved somewhat
24 afar from that in our discussion of the Transport
25 Canada guidelines. I would ask you to go back to that,



1 to Table 7, H-51.

2 Given the exhibits we have looked at
3 just before the break with respect to the Transport
4 Canada guidelines regarding land uses in the vicinity
5 of airports and the 5 kilometre -- 5 mile or 8
6 kilometre restricted area recommendation, I take it
7 that we can agree that both Sites D and E offend that
8 restricted area recommendation in the guidelines?

9 A. They would not comply with that
10 guideline, yes.

11 Q. The only basis for the difference
12 in the rating impact assigned to Site D is what the
13 study team regarded as being the significance which
14 should attach to the greater distance of Site D from
15 the airport than Site E?

16 A. By and large, yes.

17 Q. If we look at the next impact
18 factor identified with respect to Site D, it deals with
19 residence on-sites and those to be displaced or
20 adversely affected and indicates there are four
21 residences and a private airfield on-site in the case
22 of Site D?

23 A. Yes.

24 Q. In the case of Site E it is three
25 residences on-site only and no other on-site facility



1 to be affected?

2 A. Yes.

3 Q. On a comparison of Sites D and E,
4 E is actually in a better position with respect to this
5 factor than Site D?

6 A. Yes.

7 Q. Both received a low rating impact
8 and no distinction between the two?

9 A. Yes.

10 Q. In both cases the only mitigation
11 measure indicated is compensation?

12 A. Yes.

13 Q. If we look at the third factor,
14 impact factor mentioned for Site D, this addresses off-
15 site residences impact and the indication is that there
16 are 73 residences in the study area, 12 adjacent to the
17 site plan area, is that correct?

18 A. Yes.

19 Q. That is compared to 38 residences
20 in the study area for Site E, 16 adjacent to the site
21 plan area. Do you see that?

22 A. Yes.

23 Q. On this impact factor, Site E had
24 exactly 50 per cent fewer facilities that stood to
25 suffer adverse impact from landfilling than did Site D?



1 A. Yes.

2 Q. Fairly to take that into account,
3 D got a high impact rating, and in fact it is expressed
4 to be relatively high compared with other site plan
5 areas, whereas Site E got a relatively low impact
6 rating, is that right?

7 A. Yes.

8 Q. When you compare Site D with E,
9 however, recognizing there were twice as many
10 residences within the site plan area at Site D that
11 stood to be adversely impacted, Site D clearly had a
12 high impact rating whereas Site E, I suggest, had a low
13 impact rating?

14 A. Yes.

15 Q. If we look at the fourth impact
16 factor cited, and that is perhaps a bad word to use,
17 but outlined with respect to Site D, it makes reference
18 to the existence of a private airstrip adjacent to the
19 First Line?

20 A. Yes.

21 Q. And it assigns a low impact rating
22 because the airstrip was not licensed and was
23 infrequently used?

24 A. Yes.

25 Q. That impact factor did not exist



1 with respect to Site E?

2 A. Correct.

3 Q. Had therefore a comparison been
4 drawn between the two sites, there would have been a
5 nil impact on that factor for Site D because it didn't
6 exist in the case of Site D?

7 A. It didn't exist, yes, so there
8 wouldn't be any rating and there wasn't.

9 Q. Finally with respect to Site D,
10 the fifth impact factor is stated to be impact on the
11 stable rural area?

12 A. Yes.

13 Q. The rating is significant impact
14 and both the identity of the impact factor and the
15 rating is identical for Site E, significant impact in
16 both cases, is that so?

17 A. Yes.

18 Q. What we have in summary, I
19 suggest, is with respect to the first factor, proximity
20 to Burlington Air Park and the implications of that for
21 bird hazards, both have high impact ratings but Site E
22 has a slightly higher one?

23 A. Yes.

24 Q. Under the second impact factor,
25 Site E is slightly lower in terms of adverse impact



1 than is Site D?

2 A. Yes.

3 Q. On the third factor D has a high
4 impact rating and E has a low one?

5 A. Yes.

6 Q. On the fourth factor E has no
7 negative impact and D has low negative impact?

8 A. Yes.

9 Q. On five they both have high
10 impacts?

11 A. Yes.

12 Q. I suggest in those circumstances,
13 just for illustration purposes, there is very little
14 difference at this stage of the analysis between Sites
15 D and E on these factors; isn't that so?

16 A. Yes.

17 Q. In fact overall when you look at
18 the five factors of the composite, Site E it looks
19 better than Site D in terms of minimizing adverse
20 impacts; isn't that fair?

21 A. Could you repeat that?

22 Q. I am suggesting that when you look
23 at the factors in total for Site E, one could argue
24 that E is better than Site D in that there is less
25 impact to be occasioned by Site E than there is by Site



1 D?

2 A. There is a greater public health
3 and safety impact which of course would be -- E has a
4 higher impact because of closer proximity to the
5 Burlington Air Park than D does. In terms of social
6 aspect or social environment, the number of residences
7 in the study area, especially those adjacent are
8 larger, so E is better in that sense.

9 Q. I am suggesting to you, to put it
10 directly to you, is that in the case of Site D you gave
11 it a moderate to high adverse impact and it could just
12 as easily have been given a high?

13 A. Not relatively speaking to E, no.

14 Q. It is your position that when you
15 look at each of these factors, that the 1.5 kilometre
16 distance, greater distance of Site D away from that Air
17 Park, more than addresses the differential on the other
18 factors as between it and Site E?

19 A. Yes. It is public health and
20 safety, as I said, which we considered to be the prime
21 one.

22 Q. All of these factors, however, are
23 those that were relied upon in the context of your land
24 use assessment?

25 A. Correct.



1 Q. I am suggesting there is really
2 very little difference between the two when you
3 actually go through the categories except for that
4 geographical distance from the airport?

5 A. I think there is enough to give a
6 different rating.

7 Q. Would you acknowledge with me that
8 others might view those ratings in a different way?

9 A. They might.

10 Q. In fact others might argue, and
11 not unreasonably given what has been said about Site E,
12 that Site D could just as easily been given a high
13 rating?

14 A. They might. I can't ...

15 Q. It is the only one of the six
16 which in fact has a range expressed for it, isn't that
17 so?

18 A. That is correct.

19 Q. Had you been required to chose
20 between moderate and high for Site D so that a range
21 was not open to you, I suggest a fair rating would have
22 been high in the circumstances; would you not agree?

23 A. I wasn't faced with that so I
24 can't tell you what I would have done.

25 Q. I am asking you to look at it now?



1 A. I know you are.

2 Q. The only other moderate rating
3 assigned is to Site A. I am suggesting that in terms
4 of similarity with the adverse impact factors
5 identified, it is more similar to E than it would be to
6 a site like A?

7 A. I might have put it as high if I
8 was not allowed the range.

9 Q. When we look at the chart
10 collectively as we have done, Mr. Walker, I am
11 suggesting that the exercise of going through the
12 various factors that were considered for Site E and D
13 helps us when we come to look at F and the matters
14 which are actually listed for it and the ratings
15 assigned to it. I suggest that in looking at the
16 potential adverse impact on land uses in planning
17 terms, Site F is clearly to be preferred to Site D as a
18 location for a landfill; would you agree?

19 A. Yes.

20 Q. Now, just while we are looking at
21 this exhibit, Mr. Walker, I would like to clarify the
22 study area that you in fact used for Site D. We still
23 have Exhibit H-277 up behind you. You have indicated
24 in the table for Site D that there were four residences
25 on-site to be displaced and 73 residences in the study



1 area, 12 adjacent to the site plan area. As I recall
2 your evidence in chief, that 73 was adjusted to 74
3 residences within the study area. Is that correct? Do
4 you recall that?

5 A. Yes, in the comparative analysis
6 it was 74.

7 Q. If you go back to Table 4 in
8 Exhibit H-51?

9 A. Yes?

10 Q. Facing page 5-2.

11 A. Correct.

12 Q. I thought in your direct evidence
13 with Mr. Lederer that you had indicated that in the
14 study area there was one extra house and it should be
15 added to that list?

16 A. Yes. As I said, it said 74 in the
17 comparative analysis.

18 Q. For the purposes of looking at the
19 total numbers shown, the appropriate numbers are 4 on-
20 site and 74 in the study area?

21 A. And in today's terms there are 76.
22 Things are enlarging as we go along.

23 Q. With reference to H-277, Mr.
24 Walker, could you outline for the Board with reference
25 specifically to that exhibit what the boundaries of the



1 study area were as used by you for your land use
2 planning assessment because, as you will appreciate,
3 the Board has heard evidence from other witnesses,
4 specifically from Mr. Watson, as to the primary and
5 secondary areas of impact after you move off-site at
6 Site D, and we have had some numerical evidence from
7 him as well. With reference to his exhibit, could you
8 explain to the Board what the boundaries of the study
9 area were that you used?

10 A. I had no input into what we did
11 here, but our boundary would have come down the rail
12 line and cut diagonally southeast very close to the
13 southwest corner of the site and gone down First Line,
14 penetrated below Base Line ...

15 DR. KINGHAM: I think it would be
16 easier to look at the map facing 1.2 in your exhibit,
17 and is that what we are talking about?

18 THE WITNESS: It is.

19 DR. KINGHAM: Do we need more than
20 that?

21 THE WITNESS: Ms. Cronk asked me to
22 delineate on the map.

23 MS. CRONK: Q. Perhaps you could
24 outline what the areas of difference are?

25 A. I believe Mr. Watson stopped at



1 the first lot north and ours would have gone one lot
2 further north than that and essentially would have
3 followed in a general way the watercourse and then gone
4 back in diagonally southwesterly close to Highway 25
5 and coming down the east side of Highway 25 and along
6 south of Lower Baseline.

7 Q. Do I have it and do I understand
8 that your study area extended further to the north than
9 did Mr. Watson's?

10 A. Yes, by one lot.

11 Q. By one lot?

12 A. Yes.

13 Q. Your study area did not extend as
14 far to the west as did Mr. Watson's?

15 A. Yes, it followed the rail line.

16 Q. Yours followed the rail line?

17 A. Yes. And on the other side of the
18 rail line was the study area for E.

19 Q. Similarly on the eastern boundary
20 of the site your study area did not extend as far to
21 the east as did Mr. Watson's?

22 A. He has gone over one full
23 concession or even more, yes, slightly more. The
24 team's followed the creek and then, as I said, it took
25 off in a southwesterly direction and then followed down



1 to the east of Highway 25.

2 Q. If we could look at the western
3 boundary of the study area which you used, am I correct
4 that the effect of using the rail line as the cut-off
5 point for the western boundary of the study area, and I
6 don't judge it but I am saying the effect or the result
7 was to not assess any adverse impacts on the
8 residences, farm or residential, lying to the west of
9 that rail line?

10 A. Yes.

11 Q. Similarly by using the closer-in
12 boundary on the east that you used as the study area
13 boundary, once again you did not take into account as
14 Mr. Watson appears to have done, adverse impact on some
15 of the residences lying farther to the east?

16 A. That is correct, if there were
17 adverse circumstances.

18 Q. With respect to the north, in fact
19 you took in more land than did Mr. Watson?

20 A. Yes.

21 Q. In fairness both to you and to
22 him, we should bear that in mind if we are comparing
23 the numbers of residences which you indicate will
24 suffer adverse impact with those he discussed with the
25 Board?



1 A. Yes.

2 Q. As a planner, Mr. Walker, do you
3 have any difficulty in agreeing with me that some of
4 the residences and properties lying to the west of the
5 rail line, the western side of Site D, might well be
6 adversely impacted if landfilling is introduced at Site
7 D?

8 A. Well, from his standpoint they
9 might be, but from my standpoint I don't believe that
10 they would be. From a physical --

11 Q. Did you look at it?

12 A. No, I just said that I didn't.

13 Q. I guess in fairness not having
14 looked at it, you can't assist the Board one way or
15 another as to whether there would be adverse impacts on
16 those residences in planning terms as distinct from
17 financial?

18 A. No.

19 Q. And that is equally true of those
20 on the east who are excluded from the boundary area?

21 A. Yes. I think there was a
22 distinction drawn in my comparison on Table 7 where I
23 was putting forward the total residences in the study
24 area but also those adjacent.

25 Q. With respect to the delineation of



1 the study area for planning purposes, I take it in
2 fairness to you that it was not your judgment alone
3 that went into that decision but that of other
4 consultants?

5 A. The general philosophy had been
6 the half mile distance. The original study area which
7 is shown best on the map Dr. Kingham referred to
8 related originally to the candidate site and was not
9 reduced when the site plan area was taken out of that
10 -- or within the candidate site, the site plan area was
11 outlined and, in addition to that, there was this
12 expansion which took place in 2C and occasioned in
13 large part by Dr. Schiff's attempt to ensure that the
14 context, the social context of the area was picked up
15 in an appropriate way, so she went and picked up
16 additional clusters and some other community
17 facilities.

18 Q. I may have missed it in your
19 direct evidence and, if so, I apologize, but I recall
20 you taking the number from 73 to 74, but I don't recall
21 it moving from 74 to 76. I might have missed that.
22 Could you explain where the other two extra residences
23 are?

24 A. There is one additional one which
25 has been built up Highway 25 and one across the road --



1 there is one -- there was one deducted and from the
2 comparative analysis standpoint the Miller-Figa
3 building was deducted and one additional was added up
4 Highway 25, I believe up in here, and perhaps it is
5 this one, and then also one was added on the First
6 Line. Miller-Figa was deducted.

7 Q. That should result ...

8 A. That would be a decrease of one
9 and then two more were added and it would be on First
10 Line on the opposite side of the road, there were two
11 additional buildings added.

12 Q. Is that a net addition of one?

13 A. Yes.

14 Q. That takes us to 74 from 73?

15 A. Yes.

16 Q. There are two others?

17 A. One is up here on Highway 25 and a
18 new one has been built and there is a new one being
19 built on-site, right in here.

20 Q. Where is "in here?"

21 A. North of the old Ford property.

22 Q. The Highway 25 one you pointed
23 out, isn't that the same one you mentioned a few
24 moments ago? Perhaps rather than taking the time now,
25 if you could assist me over the evening I would be



1 grateful. I would like to know what you believe the
2 number is now, and if there is or if there has been an
3 increment I would like to know where the properties
4 are?

5 A. Yes.

6 Q. In fairness to you it occurs to me
7 there is one other possible explanation for the
8 differential in the numbers, the impact numbers which
9 you show compared to those and about which Mr. Watson
10 spoke and established the study area was different from
11 the primary and secondary impact area he spoke of, but,
12 secondly, am I right, that on Table 7 when you spoke
13 about adverse impact you were directing your attention
14 to residences and not properties at large?

15 A. That is correct.

16 Q. Your number, be it 74 or 76, is
17 directed to the number of properties, (a), within and
18 only within your study area on which there is a home,
19 be it a farm house or another type of residence that
20 will be adversely impacted?

21 A. Yes.

22 Q. Whereas, as the Board will recall,
23 the approach was somewhat different in the case of
24 Mr. Watson. Could I ask you to go next to Exhibit H-
25 13, your summary and evaluation report. This is also



1 dated June of 1985 and as I understand it it followed
2 on the land use and planning assessment?

3 A. That is correct.

4 Q. You explained to Mr. Lederer how
5 the pairings approach worked which was used in this
6 report and, as I understand it, the objective was to
7 select a preferred site taking into account all
8 relevant factors, not just land use planning factors.
9 Is that not so?

10 A. Yes.

11 Q. In section 3 of the report we have
12 the results of the Stage 2C analysis and the ranking of
13 each site set out?

14 A. Yes. What page?

15 Q. Section 3. In section 4 you
16 discuss the pros and cons of each site and that is
17 where the pairings analysis was undertaken?

18 A. That is correct.

19 Q. Could you go to page 14, the
20 beginning of section 4. You took the Board through one
21 of the pairings for illustration purposes in your
22 direct evidence and, as I recall it, I think you used
23 the pairing of Sites D and A?

24 A. Yes.

25 Q. I could be wrong, but in any



1 event, it certainly was not D and F. I would like you
2 to now do that to assist the Board and again some of us
3 have numbered these pages, Mr. Walker, and I don't know
4 if you have?

5 A. I haven't.

6 Q. If you go over to page 20, the
7 chart immediately before page 20, Table 5 sets out the
8 effects of selecting Site F in preference to Site D?

9 A. Yes.

10 Q. The text of that description, the
11 textual description of that pairings analysis begins --
12 I am not sure what page, but 19(1) right after Table
13 5, the first page of the text?

14 A. Yes.

15 Q. Could I ask you to look first at
16 the text if you would, in the first paragraph, and to
17 put it back into context for all of us, in this report
18 each site was compared successively with the other five
19 sites until there was a natural process of elimination
20 and you were down to Site F and Site D?

21 A. Correct.

22 Q. Is this then the cumulative -- I
23 am sorry, the ultimate pairings analysis for Site F and
24 Site D?

25 A. Yes.



1 Q. In the first paragraph you
2 indicate the comparison of the two sites is somewhat
3 akin to the comparison of Site F and Site A, and you
4 indicate the major trade-off included the relatively
5 higher costs of Site F?

6 A. Yes.

7 Q. You see that?

8 A. Yes.

9 Q. I take it that that statement was
10 made at this time, June of 1985, on the strength of the
11 financial data then available to you?

12 A. That is correct. That is actually
13 on the leaf directly opposite and you can see just by
14 coincidence the cost factor is right there.

15 Q. You are referring to the bottom
16 section of Table 5 in which the costing disadvantages
17 of Site F, at least as they were thought to exist at
18 that time, are set out?

19 A. That is right.

20 Q. At that time the regional costs
21 for Site F were thought to be anywhere from 22 to 35
22 per cent more expensive?

23 A. Yes.

24 Q. You are aware, I take it, or you
25 would recall that by the time the comparative analysis



1 and by the time Mr. Watson gave evidence before the
2 Board, that that in fact was reserved in light of fresh
3 information and the regional costs at Site F were in
4 fact less expensive than at Site D?

5 A. I am aware of the ultimate
6 conclusion and I have Mr. Watson's report and if need
7 be I can look at it again. I don't know how he broke
8 it down.

9 Q. You don't know the particular
10 components?

11 A. I don't have it in my head anyway.

12 Q. When you say you are aware of the
13 general conclusion...

14 A. They were relatively even in
15 costs.

16 Q. Are you aware as well that the
17 Board has heard evidence that in terms of the overall
18 cost category, when you actually looked at the numbers,
19 the overall costs of Site F appear to be less than
20 those at Site D?

21 A. No, I didn't know that, no.

22 Q. Could I direct you in point of
23 time back to when you were writing this report?

24 A. Sure.

25 Q. I would like to look specifically



1 at what the perceived advantages of Site F were and the
2 perceived advantages or disadvantages of Site D as you
3 set them out in the pairings analysis. Dealing first
4 with paragraph 2, that deals with the natural
5 environment category?

6 A. Yes.

7 Q. That as I read the pairings
8 analysis is essentially a neutral factor as between the
9 two sites and you explain why?

10 A. Yes.

11 Q. Is it correct that in the study
12 team's view there was in that category therefore no
13 clear preference for either Site F or Site D?

14 A. That is correct.

15 Q. In the next paragraph, that deals
16 both with the social environment and the cultural
17 environment category, and let's just deal with the
18 social environment for a moment. There was a clear
19 preference for Site F in that category, was there not?

20 A. Yes, in all but the community
21 facilities section.

22 Q. And in all the other factors
23 describing social environment, Site F was preferred?

24 A. Yes.

25 Q. With respect to community



1 facilities, it was felt it was a low to moderate
2 potential impact?

3 A. That is correct.

4 Q. In the cultural environment
5 category, the third category, again there was a
6 preference for Site F?

7 A. Right.

8 Q. In the public health and safety
9 category you indicate that the sites were relatively
10 close or perceived to be at that point in time from a
11 hydrogeological perspective, but certain advantages
12 were then set out for Site F?

13 A. That is correct.

14 Q. I suggest the first advantage
15 specifically you indicate is set out in paragraph 4 and
16 I quote:

17 "There is no potential risk for
18 contamination of water supply wells in
19 the case of Site F."

20 And do you see that?

21 A. Correct.

22 Q. I suggest there is a second
23 advantage and that is the likelihood of a secondary
24 level of mitigation being required in the future is
25 slight. I take that to mean with respect to Site F?



1 A. Yes. This is a clear indication
2 that the reliance upon natural or existing situations
3 compared to the comparative analysis, the distinction
4 Dr. Kingham was asking questions on the first day I was
5 here. This is reliant on the existing situation
6 without full engineering.

7 Q. In that context and for the basis
8 of the pairings analysis you were undertaking, those
9 were two perceived advantages of Site F over Site D?

10 A. Yes.

11 Q. There was a third and that is the
12 study team did not see there would be a potential for
13 the costs which might be associated with additional
14 mitigation measures at Site F?

15 A. Yes.

16 Q. And a fourth as well, a fourth
17 advantage, there was no potential at Site F for the
18 loss of a water supply aquifer?

19 A. Yes.

20 Q. There was such a potential at Site
21 D in the opinion of the study team?

22 A. Yes.

23 Q. Those factors all relate to the
24 public health and safety category?

25 A. Yes.



1 Q. That led the study team to
2 conclude there was a clear preference for Site F in
3 that category?

4 A. Yes.

5 Q. Then returning to the matter of
6 costs, the concluding paragraph deals with that item
7 and the observation or the conclusion is made that the
8 cost benefit of Site D alone is not sufficient to
9 overcome the other noted deficits of Site F, and do you
10 see that?

11 A. Yes, and that's on the basis of
12 the costing, the fourth ranked priority.

13 Q. That was again the conclusion
14 drawn by the study team based on the information then
15 available?

16 A. Yes, correct.

17 Q. As I read the pairings analysis,
18 Mr. Walker, that was the only perceived advantage or,
19 to use your language, major trade-off that applied in
20 favour of Site D?

21 A. Yes.

22 Q. And that trade-off we know in the
23 light of subsequent information was neutralized?

24 A. Yes.

25 Q. Had you known or had the study



1 team known at the time this report was prepared that
2 the financial implications of both sites were, to take
3 for the moment Mr. Watson's position and obviously we
4 will argue it differently in the future, equal, I
5 suggest there would have been an unreserved endorsement
6 of Site F as the clearly preferred site for
7 landfilling?

8 A. Well, what was the word you used?

9

10 DR. KINGHAM: Unreserved.

11 THE WITNESS: Unreserved? It was
12 unreserved in any event and F was preferable to D, but
13 the term unreserved is referring to the degree of
14 preference and the degree of preference would
15 presumably enter into the situation and it would have
16 been greater.

17 MS. CRONK: Q. Thank you for the
18 assistance, but there would have no qualification or
19 trade-off in favour of Site D and it would have been a
20 stronger preference that existed for Site F?

21 A. That is right. On the other hand,
22 the equalization, if you will, of the costs is related
23 to the engineering scenario for the landfill so, it is
24 kind of hard to hypothesize one without making
25 reference to the other. We would then be making a



1 different assessment of the public health and safety
2 based upon, among other things, different ways of
3 handling the disposal of wastes on the site.

4 Q. We will come to what in the end,
5 what the recommendation was, but for the purposes of
6 the recommendation made in this report I think you
7 agreed with me firstly that there was, as you
8 indicated, an unreserved endorsement of Site F as a
9 preferred site based on the information then available
10 to you?

11 A. Yes.

12 Q. That was so even in the face of
13 what was thought to be much higher costs at Site F than
14 at Site D?

15 A. Yes.

16 Q. Had the study team been aware at
17 that point in time that the costs were according to Mr.
18 Watson essentially the same, you agreed that that would
19 have been an even stronger endorsement or the strength
20 of preference for F would have been that much stronger
21 at that point in time, correct?

22 A. It is a hypothetical question, but
23 if the costs had been equal, then you are right.

24 Q. The point is that that is the only
25 reservation or trade-off mentioned at all in the



1 pairings analysis with respect to Site D?

2 A. Yes.

3 Q. When we look at the comparative
4 analysis, and to be fair to you and to take your point,
5 it is at that stage the implications of an engineered
6 system at either site is considered and then we will
7 see what the differences were thought to be?

8 A. That is correct.

9 Q. Finally, could I ask you to look
10 at page 20 which sets out your conclusions and they
11 confirm what you told the Board and that is that Site F
12 was preferred with respect to Site D, but in addition,
13 Site F was in fact preferred to every other site plan
14 area under consideration. Is that not so?

15 A. In our opinion, yes.

16 Q. And I take it you agreed with that
17 conclusion and the recommendation that Site F go
18 forward as the preferred site?

19 A. Yes.

20 Q. Would it be fair to suggest, or
21 tell me, did you do so both in your capacity as a land
22 use planner and as the project co-ordinator who had
23 access to and responsibility to review all of the data
24 being compiled?

25 A. Yes.



1 Q. Could I ask you then to turn to
2 the comparative report and let's look and see how that
3 information changed, if at all, or if that strength of
4 preference changed if at all, Exhibit H-14. Could I
5 ask you first to go to page 12 which sets out a
6 description of the methodology that was used for the
7 purposes of the comparative analysis. Do you have that?

8 A. I do.

9 Q. I wish to be clear on what was
10 done in the comparative analysis that was different
11 from or incremental to the approach that had been used
12 for the purposes of your summary and evaluation report.
13 I have read through this and I suggest there were
14 really three material aspects to the methodology that
15 was used and the first, I suggest, was that you were
16 attempting to identify the potential for any changes to
17 environmental impacts that had occurred since the Stage
18 2C report was finalized?

19 A. That is correct.

20 Q. Secondly, if there were such
21 changes, to evaluate the degree of them or the strength
22 of them?

23 A. Yes.

24 Q. In short, what you were trying to
25 do was identify if the impacts had changed, and, if so,



1 in what way?

2 A. Correct.

3 Q. I take it as part of that analysis
4 to try and assess what significance, if any, those
5 changes might have if it was possible or in the realm
6 of possibility, as I suppose there could be changes
7 that could have been completely insignificant?

8 A. Yes, yes, that is within the realm
9 of possibility.

10 Q. Thirdly and finally, if I have
11 read the methodology description properly, as I
12 understand it, you were intending to and you did repeat
13 the site pairing analysis which you did at the end of
14 Stage 2C but this time the study team did it
15 specifically and only with respect to Sites D and F?

16 A. That is correct. There was no
17 ability to go beyond those two sites.

18 Q. I am having trouble hearing you?

19 A. There was no ability to go beyond
20 those two sites because the detailed level of analysis
21 which had been done from 2C up until the comparative
22 analysis was undertaken had only been done on the basis
23 of having two sites.

24 Q. At this point in time you were
25 carrying forward two sites and you were looking at it



1 in the way I have suggested?

2 A. That is correct. We were also
3 looking at whether there should be revised or refined
4 or new evaluation factors depending upon the new level
5 of information or a different way of handling
6 information.

7 For instance, Mr. Watson's analysis used
8 new factors, new evaluation factors to draw a
9 comparison between the two sites and to report the
10 information because the way it was reported in 2C was
11 not appropriate to the level of detail or the type of
12 detail being collected.

13 Q. I proposed a list to you, a
14 summary list of three features of your methodology and
15 so there should be a fourth in light of what you have
16 just said, and that is that you revisited the
17 evaluation factors to determine whether they continued
18 to be appropriate or should merit some change?

19 A. Yes.

20 Q. With those four steps in mind, is
21 that a fair and complete description of the methodology
22 in this report?

23 A. I think it is, Ms. Cronk, but you
24 are verbalizing the three in a general way and I think
25 you are right. If you had it in writing I would gladly



1 look at it to make sure it covers all the aspects that
2 were looked at.

3 Q. If you think of any others you can
4 let me know, either later tonight or in the morning?

5 A. Okay. The onus is on me.

6 Q. That's what I am trying to do. In
7 the context then of that set of objectives and that
8 method of accomplishing it, Mr. Walker, as I read the
9 report you had regard -- and by you I mean both you
10 personally and as well your staff members assisting you
11 in preparing the report -- you had regard to the
12 technical reports the various sub-consultants had
13 prepared?

14 A. Yes.

15 Q. You also had regard to something
16 you called the individual comparative analyses?

17 A. Yes.

18 Q. Do I understand those to be
19 really, to put it in the most simple way, you went to
20 the various sub-consultants and asked them to prepare
21 their own comparative analysis of Sites D and F and
22 received that in writing from them and took that into
23 account in preparing the overall comparative analysis
24 which your firm prepared?

25 A. As I recall, the Region in part of



1 the terms of reference for the sub-consultants asked
2 them to do a comparative analysis and if they didn't we
3 asked for it, and I think there were one or two who
4 hadn't done it and, in addition to that, they provided
5 a summary of their reports.

6 Q. An executive summary?

7 A. A summary, yes.

8 Q. The individual comparative
9 analyses I understand it are attached as appendices to
10 H-14, the main comparative report?

11 A. Yes, and these are actually
12 summaries as well, if you will.

13 Q. Are you saying the individual
14 comparative analyses are the same as the executive
15 summary?

16 A. They are embodied in it.

17 Q. There is no separate set of
18 documents provided by the sub-consultants?

19 A. No.

20 Q. When we look at the appendices we
21 are looking at both their comparative analysis and
22 their executive summary?

23 A. Yes.

24 Q. I would like to go through those
25 very briefly and could I ask you to turn to where the



1 appendices begin. We are going to run into the
2 numbering problem again, but if you can find your way
3 to Appendix A?

4 A. I am there.

5 Q. Mr. McQuaid and I have it numbered
6 page 58.

7 A. I will take note of it and try and
8 correct the omissions. That is the Appendix A and the
9 frontispiece, is that 58 or the Trow cover letter?

10 Q. Page 58 is the front page.

11 DR. KINGHAM: A mechanical point we
12 might remember for future hearings and consultants who
13 prepare reports, if all of the pages could be numbered
14 consequently including the appendices it would
15 certainly make life at these hearings a lot easier.

16 MS. CRONK: Q. Appendix A deals with --
17 I am sorry, is the individual comparative analysis and
18 executive summary prepared by Hydrology Consultants?

19 A. Yes.

20 Q. It deals therefore obviously with
21 the public health and safety category with which you
22 were concerned for your comparative analysis?

23 A. One aspect of it.

24 Q. Could I ask you to go to page 4 of
25 that appendix and I should explain as you will



1 appreciate the Board has heard a great deal of evidence
2 over the last six months and from time to time we have
3 gone over these appendices with various witnesses, but
4 you are the first witness who had a role to play with
5 respect to all of them?

6 A. I understand that, but I should
7 have Mr. Sobanski here for an interpretation of his
8 letter but presumably that has been addressed with Mr.
9 Sobanski.

10 Q. I think you can safely assume
11 that.

12 A. From what I heard, at least that
13 witness.

14 Q. Could you go to page 4?

15 A. I am there.

16 Q. For the purposes of the record,
17 the conclusion in the comparative analysis prepared by
18 Hydrology Consultants is set out in the last two
19 sentences on that page, namely:

20 "Considering the advantages of each
21 site, we feel that those of Site F
22 outweigh those of Site D. In
23 particular, Site F is better from the
24 point-of-view of public health and
25 safety because there are no groundwater



1 and surface water users. Therefore, we
2 favour Site F over Site D."

3 Do you see that?

4 A. Yes.

5 Q. So that individual comparative
6 analysis came in in favour of Site F?

7 A. Correct.

8 Q. Could you go to the next appendix
9 which is Appendix B and this deals, or this is the
10 transportation comparative analysis?

11 A. Could I have a page number?

12 Q. I would give you one if I had it.
13 Appendix B?

14 A. I have that, but I just wanted to
15 know I was numbering it right.

16 MR. McQUAID: 75 is the number of the
17 page.

18 THE WITNESS: The frontispiece?

19 MR. McQUAID: The page with Appendix B
20 on it is page 75.

21 MS. CRONK: Q. This is the other half
22 of the public health and safety category?

23 A. Yes.

24 Q. Could you go to page B11?

25 A. One thing. There was another or



1 third element added at this stage, and land use
2 compatibility - vermin was added to public health and
3 safety and this is the second of three items.

4 Q. Could I ask you to go to B11?

5 A. I am there.

6 Q. Under the conclusion section. The
7 Giffels firm is indicating, and I quote:

8 "In light of the fact that no major or
9 significant negative transportation and
10 traffic safety impacts have been
11 identified with either site, and that on
12 balance there is no clear, overall
13 advantage with either site over the
14 other, there is no site preference with
15 respect to transportation. Site D and
16 Site F are considered of equal merit."

17 Stopping there, the individual comparative analysis
18 prepared for transportation matters was essentially
19 neutral?

20 A. Yes.

21 Q. You indicated there was a third
22 item added for the purposes of the overall comparative
23 analysis and that was land use - vermin?

24 A. Yes. Land use compatibility -
25 vermin.



- 1 Q. There was no separate individual
2 comparative analysis prepared on that subject, is that
3 correct?
- 4 A. Miss Hellas did that work.
- 5 Q. So that included ...
- 6 A. It is on page 10 of the next
7 appendix, C10.
- 8 Q. Under the biophysical appendix?
- 9 A. Yes.
- 10 Q. Perhaps we could deal with it then
11 in the continuing order with which we were dealing with
12 it. The next appendix is Appendix C and that is the
13 Biophysical Comparative Analysis?
- 14 A. Yes.
- 15 Q. I would ask you to go to page C18,
16 the last page of that appendix?
- 17 A. Yes.
- 18 Q. Biophysical, as we know from your
19 evidence and that of others, is part of the natural
20 environment category as the study team formulated that
21 category?
- 22 A. Yes.
- 23 Q. I suggest Miss Hellas' conclusions
24 in summary comparative fashion are set out at the
25 beginning of page 18 which reads:



1 "Considering the biological
2 characteristics of the Sites, as
3 summarized above, it can be seen that
4 Site D has minor and Site F has major
5 biological constraints to the
6 development of a municipal landfill
7 site. Therefore, from a biological
8 perspective, Site D is the preferred
9 site for the landfill. However, for
10 Site F, in light of the mitigation
11 introduced by the reduction of the areal
12 extent of the landfill, if when
13 evaluating all aspects of the
14 'environment', as defined in the
15 Environmental Assessment Act, Site F is
16 found acceptable as a landfill site,
17 there are no biological conditions
18 within the proposed area for landfilling
19 that would absolutely preclude the use
20 of Site F as a landfill site, since none
21 of the biological resources, although
22 very significant, are categorized as
23 endangered."

24 I take it that Miss Hellas' conclusion was that Site F
25 was to be preferred on the biophysical categories?



1 A. Yes.

2 Q. Let's go back to C16 where there
3 is a discussion of land use conflict and vermin. Do you
4 see that?

5 A. Yes.

6 Q. Are you suggesting the comparative
7 conclusions drawn with respect to that item properly
8 should not be in this report but should be in the
9 public health and safety category?

10 A. Yes, they are in the public health
11 and safety category, but she did the work so she is
12 reporting it in her own report.

13 Q. If we look to the columns set out
14 back at page 14, Site D is the first column on the left
15 and Site F is the first column on the right and for
16 Site D, Miss Hellas concluded that the site should
17 receive a low impact rating, whereas at Site F, Site F
18 should receive a nil impact rating. Do you have that?

19 A. Where is this?

20 Q. On page 16 under Land Use Conflict
21 - Vermin. For Site D she assigned it a low impact
22 rating and at Site F a nil impact rating?

23 A. That's right and it is also on
24 Table 3 on page C17 at the bottom.

25 Q. Perhaps that would have been a



1 faster way to do it. Leaving aside any argument one
2 might have with the low impact rating for Site D, it is
3 clear that as between the two sites, Site F was
4 preferred in this the third category of the public
5 health and safety category?

6 A. Yes. As I recall, her low impact
7 rating was a result of a combination of two aspects and
8 one is the distance which is known from the Burlington
9 Air Park to Site D and also in her opinion the fact
10 that there were ways of mitigating the effect by actual
11 on-site measures at the airport.

12 Q. Whatever the reason, in the
13 end ...

14 A. She gave a low.

15 Q. She gave a low to Site D and a nil
16 to Site F?

17 A. Yes.

18 Q. To put that in the context of the
19 public health and safety category, we have on
20 hydrogeology a preference for Site F, we have on
21 transportation no distinction between the sites?

22 A. Right.

23 Q. We have on land use compatibility
24 - vermin a preference for Site F?

25 A. Yes.



1 Q. In the biophysical category, the
2 next, we have a preference for Site D?

3 A. Yes.

4 Q. Could I ask you to go to the next
5 category, or factor under Natural Environment which is
6 agricultural impacts, Appendix D at page D1, which is a
7 letter from Dr. Mackintosh to your firm and to your
8 attention dated January 23rd, 1987?

9 A. Yes.

10 Q. If we could consider the two
11 paragraphs in the summary letter he has provided he
12 indicates:

13 "Following rehabilitation of Site D for
14 an arable agricultural after use, the
15 overall impact on Site D would still be
16 high-moderate."

17 The high to moderate rating is based on the following
18 reasons:

- 19 "o loss of high quality agricultural
20 lands;
21 o impact on surrounding agricultural
22 community;
23 o elapsed time between landfilling
24 and rehabilitation; and
25 o reduction in crop diversity."



1 Do I take it from that letter, Mr. Walker, that a clear
2 preference for Site F in respect of the agricultural
3 impact category was being expressed?

4 A. I believe so.

5 Q. In the natural environment
6 category we have a preference for Site D on the
7 biophysical issue but a preference for Site F on the
8 agricultural?

9 A. I believe so, yes.

10 Q. Could we move to Appendix E
11 dealing with Social Impacts and I direct your attention
12 to page E3. This is a letter from Dr. Myra Schiff of
13 Myra Schiff Consultants Limited and I direct your
14 attention to the second and third last paragraphs:

15 "Site F is preferred over Site D with
16 respect to Population Impacts, but Site
17 D is preferred over Site F with respect
18 to impacts on community-serving
19 facilities. Since the effects on
20 population are more significant and of
21 greater duration than the impact on
22 users of community facilities, it is my
23 opinion that Site F is preferred over
24 Site D as the location of a landfill for
25 Halton Region.



1 Because there are higher population
2 impacts at Site D now than there were at
3 the time of the Environmental Assessment
4 report, particularly with respect to
5 measures of Disruption (i.e., effect on
6 people on site), I would say that the
7 gap between Sites D and F has widened
8 since that time."

9 A. Yes, it says that.

10 Q. That was a clear endorsement for
11 Site F in preference to Site D?

12 A. Yes, within the purview of what
13 Dr. Schiff had to deal with.

14 Q. On the social impacts factor?

15 A. Yes.

16 Q. Moreover she is indicating that
17 the preference for F had been strengthened?

18 A. That is correct.

19 Q. Can we look at air quality,
20 Appendix F? I would ask you to go to F6. Perhaps we
21 could do this a bit more quickly, but I suggest there
22 is a preference for Site F expressed by these
23 consultants?

24 A. Yes.

25 Q. The next appendix is Appendix G



1 which deals with litter and wind and I would invite you
2 to go to page G1. Do you have that?

3 A. I have that.

4 Q. In the concluding paragraph
5 Mr. Theakston indicates:

6 "No substantial distinction can be made
7 between the two sites regarding off-site
8 litter impacts; however, the number of
9 houses located in close proximity to
10 Side 'D' would suggest that Site 'F',
11 which has fewer houses located nearby,
12 would be the preferred site from this
13 perspective."

14 And that suggests a preference for Site F, does it not?

15 A. Yes.

16 Q. Could I ask you to go to Appendix
17 H dealing with noise and page H3. That suggests on
18 that page and I suggest quite clearly that Site F was
19 the preferred location over Site D as far as noise
20 impact was concerned?

21 A. That's in the first full
22 paragraph, yes.

23 Q. That is the conclusion of the
24 consultants in their comparative analysis?

25 A. Yes.



1 Q. Moreover, the consultants indicate
2 that Site F could operate virtually without mitigation
3 and still meet the noise criterion of the Ministry of
4 the Environment?

5 A. Correct.

6 Q. Page H3?

7 A. It is.

8 Q. Can we go to the next appendix,
9 Appendix I dealing with Visual Impact, and this is the
10 comparative analysis of Landplan Collaborative Ltd.?

11 A. It is.

12 Q. Could you go to page 12? Again I
13 suggest there is an expressed preference for Site F set
14 out in this consultant's report?

15 A. From a visual perspective, yes.

16 Q. That is what the report deals
17 with?

18 A. Correct.

19 Q. Moreover, the consultants indicate
20 that the visual impacts associated with Site D have
21 worsened slightly when compared with Site F had been
22 the case at the time of the summary and evaluation
23 reports?

24 A. It says it in the last paragraph.

25 Q. Appendix J dealing with



1 Archaeology, and this falls for the first time in the
2 cultural environment category?

3 A. Yes.

4 Q. Perhaps I should stop there for a
5 moment. Dealing with social impacts, which was
6 Appendix E, Air Quality, Appendix F, Litter and Wind,
7 which was Appendix G, Noise, which was Appendix H and
8 Visual, which was Appendix I; in each and every of
9 those categories a preference for Site F was expressed?

10 A. That is correct.

11 Q. Then we come to the cultural
12 environment category, archaeology, individual
13 comparative analysis, Appendix J, and I would ask you
14 to go to J1. I suggest the conclusion of these
15 consultants is again a preference for Site F?

16 A. Yes.

17 Q. The report indicates that between
18 the time of the summary and evaluation report and the
19 time of the request and delivery of the individual
20 comparative analysis an additional significant
21 archaeological site had been discovered on Site D?

22 A. That's what it says.

23 Q. In fairness, the authors indicate
24 that that discovery did not alter or affect the ranking
25 of potential landfill sites or the comparative



1 evaluation of D versus F from the museum is Stage 2C
2 report, but it goes on to say that the discovery of
3 that additional site does reinforce the conclusion that
4 Site F was to be preferred over Site D?

5 A. Yes. I guess if they found
6 another site, it did in fact have some alteration or
7 effect when they admit it reinforced their conclusion
8 that D was better...

9 Q. F or D was better? You said it
10 reinforces the conclusion that D was better?

11 A. That F was better. F was
12 preferred over D.

13 Q. Could you go to Appendix K which
14 deals with Costs and specifically K1. We have
15 received Mr. Watson's updated data in evidence, but
16 just dealing with the overall conclusion at the bottom
17 of K1 and based on his evidence, it was his view as
18 expressed to you:

19 "Overall, the two sites are quite evenly
20 matched in economic terms and a clear
21 preference does not exist, based on the
22 information currently at hand."

23 Is that not so?

24 A. Yes.

25 Q. The result is, looking at each and



1 every one of the individual comparative analyses in
2 this report, I suggest that on all of them, with the
3 exception of the biophysical category where one site
4 was preferred to another in all instances, it was Site
5 F, isn't that so?

6 A. Yes, based on the total factors,
7 yes.

8 Q. In fact looking at the one factor
9 where there was a preference for Site D, the
10 biophysical factor, that is in the natural environment
11 category, and we know the other half of that category,
12 if you will, in fact favoured Site F, is that not so?

13 A. Yes.

14 Q. One could look at that as a
15 neutralization of a factor in favour of Site D?

16 A. Yes.

17 Q. Moreover, within the biophysical
18 category where there was this preference for Site D,
19 part of that dealt with land use computability - vermin
20 and on that analysis Site F was again favoured?

21 A. Yes, but it wasn't biophysical.

22 Q. It wasn't dealt with in that
23 report and I know it was treated under public health
24 and safety?

25 A. It is the same consultant but it



1 wasn't biophysical.

2 Q. Only in the cost category were the
3 two sites considered to be equal?

4 A. Yes.

5 Q. I suggest to you, Mr. Walker, that
6 in the face of those individual comparative analyses
7 there could be very little doubt when it came to
8 prepare ...

9 A. No, litter was equal.

10 Q. Let's go back. Appendix G?

11 A. I am just going on -- litter was
12 equal.

13 Q. Let's go back to G1. This
14 individual comparative analysis deals with wind and
15 litter and snow, does it not?

16 A. Yes.

17 Q. I direct your attention to the
18 last paragraph which I read to you a few moments ago,
19 and it provides:

20 "No substantial distinction can be made
21 between the two sites regarding off-site
22 litter impacts; however, the number of
23 houses located in close proximity to
24 Site 'D' would suggest that Site 'F',
25 which has fewer houses located nearby,



1 every one of the individual comparative analyses in
2 this report, I suggest that on all of them, with the
3 exception of the biophysical category where one site
4 was preferred to another in all instances, it was Site
5 F, isn't that so?

6 A. Yes, based on the total factors,
7 yes.

8 Q. In fact looking at the one factor
9 where there was a preference for Site D, the
10 biophysical factor, that is in the natural environment
11 category, and we know the other half of that category,
12 if you will, in fact favoured Site F, is that not so?

13 A. Yes.

14 Q. One could look at that as a
15 neutralization of a factor in favour of Site D?

16 A. Yes.

17 Q. Moreover, within the biophysical
18 category where there was this preference for Site D,
19 part of that dealt with land use computability - vermin
20 and on that analysis Site F was again favoured?

21 A. Yes, but it wasn't biophysical.

22 Q. It wasn't dealt with in that
23 report and I know it was treated under public health
24 and safety?

25 A. It is the same consultant but it



1 wasn't biophysical.

2 Q. Only in the cost category were the
3 two sites considered to be equal?

4 A. Yes.

5 Q. I suggest to you, Mr. Walker, that
6 in the face of those individual comparative analyses
7 there could be very little doubt when it came to
8 prepare ...

9 A. No, litter was equal.

10 Q. Let's go back. Appendix G?

11 A. I am just going on -- litter was
12 equal.

13 Q. Let's go back to G1. This
14 individual comparative analysis deals with wind and
15 litter and snow, does it not?

16 A. Yes.

17 Q. I direct your attention to the
18 last paragraph which I read to you a few moments ago,
19 and it provides:

20 "No substantial distinction can be made
21 between the two sites regarding off-site
22 litter impacts; however, the number of
23 houses located in close proximity to
24 Site 'D' would suggest that Site 'F',
25 which has fewer houses located nearby,



1 would be the preferred site from this
2 perspective."

3 A. Yes.

4 Q. The question I put to you was that
5 in those instances where one site could be preferred to
6 the other, Site F was preferred in each and every
7 category with the exception of biophysical?

8 A. Yes.

9 Q. As put to you, that is in fact
10 accurate is it not?

11 A. Yes.

12 Q. I was about to suggest to you and
13 I now suggest to you that in the face of all those
14 individual comparative analyses, there could be no
15 doubt when you came to draft your overall comparative
16 analysis that Site F was clearly and strongly
17 preferable to Site D for landfilling. Isn't that so?

18 A. On the basis of those comparative
19 analyses, yes.

20 MS. CRONK: Thank you. Could we stop
21 there?

22 MR. LANCASTER: Very well. 9:30
23 tomorrow morning.
24
25



Nethercut & Co. Ltd.

Toronto, Ontario

14815 .

Walker, cr ex
(Cronk)

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---Adjournment at 4:30 p.m.

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Certified Correct

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C. F. Nethercut, C.V.R.

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