



# The Corporation of the Town of Milton

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Report To: Council

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From: Glen Cowan, Chief Financial Officer/Treasurer

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Date: November 18, 2019

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Report No: CORS-070-19

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Subject: Development Charge Complaint filed by Springridge Farm

Recommendation: **THAT Council determine that the Town Development Charges By-laws 053-2016 and 100-2016 were properly applied to the developments at Springridge Farm, 7256 Bell School Line;**

**AND THAT Council dismiss the two (2) complaints filed by Springridge Farm pursuant to Section 20 of the Development Charges Act;**

**AND THAT Council determine that the Halton District School Board Education Development Charge Amending By-law (2019) and the Halton Catholic District School Board Education Development Charge Amending By-law (2019) were properly applied to the developments at Springridge Farm;**

**AND THAT Council dismiss the complaint filed by Springridge Farm pursuant to Section 257.85 of the Education Act.**

## EXECUTIVE SUMMARY

- The Town has received two (2) complaints under Section 20 of the Development Charges Act, 1997 (DCA) with respect to development charges (DCs) paid on the following building permits issued under the Building Code Act, 1992
  - 19-007596 Shade structure by animal barn
  - 19-007600 Addition to lean to on sandbox
  - 19-007601 Main admission hut
  - 19-007607 Enclosed lean to on south side of main barn
  - 19-007608 Addition on north side of main barn
- The second letter includes a complaint under Section 257.85 of the Education Act with respect to development charges paid to the local school boards on building permits:
  - 19-007607 Enclosed lean to on south side of main barn
  - 19-007608 Addition on north side of main barn



## EXECUTIVE SUMMARY

- Staff have reviewed the DCA, the Town's DC By-laws 053-2016 and 100-2016 and have consulted with the Town's legal expert on this matter.
- The Town has received a joint letter from the lawyers for the Halton District School Board (HDSB) and the Halton Catholic District School Board (HCDB) indicating the School Boards have reviewed and consulted with a legal expert regarding the education development charge portion of the complaint.
- This report has been prepared to provide Council with background information regarding the development, the investigation into the details of the development charges and the requirements of the DC By-laws.
- It is the position of Town and School Boards staff that the DCs were correctly calculated and applied as per their respective DC By-laws and no amendment or refund is required.
- Under both Section 20 of the DCA and Section 257.85 of the Education Act, Town Council is required to hold a hearing for the consideration of these complaints in order to determine if there has been an error in the application of the Town and school boards DC By-laws.

## REPORT

### Background

Development charges (DCs) provide for the recovery of growth-related capital expenditures from new development. The DCA provides the statutory basis for a municipality to impose these charges by way of a by-law that is based on a background study incorporating the rules and overall methodology defined in the DCA.

The Town has received two complaint(s) under Section 20 of the DCA from Mr. John Hughes, care of Springridge Farm, with respect to DCs paid on the following building permits issued under the Building Code Act, 1992:

Letter Received	Permits Subject to Complaint
September 4, 2019	<ul style="list-style-type: none"><li>○ 19-007596 Shade structure by animal barn</li><li>○ 19-007600 Addition to lean to on sandbox</li><li>○ 19-007601 Main admission hut</li></ul>
October 25, 2019	<ul style="list-style-type: none"><li>○ 19-007607 Enclosed lean to on south side of main barn</li><li>○ 19-007608 Addition on north side of main barn</li></ul>

The DCA establishes the grounds for, and provisions under which, a complaint is processed. Subsection 20(1) sets out the grounds under which a complaint can be made:

## Background

20 (1) A person required to pay a development charge, or the person's agent, may complain to the council of the municipality imposing the development charge that,

- (a) the amount of the development charge was incorrectly determined;
- (b) whether a credit is available to be used against the development charge, or the amount of the credit or the service with respect to which the credit was given, was incorrectly determined; or
- (c) there was an error in the application of the development charge by-law.

The DCA further provides the complainant with the right to appeal a DC complaint decision of Council to the Local Planning Appeal Tribunal (LPAT). A review of the complaint under Section 20 does not allow for any provisions in the By-law to be amended. It is not an appeal of the DC By-law but rather a review of the application of same.

The original complaint letter, received September 4, 2019, indicates that there was an error in the application of the Town's development charges by-laws, such that the three (3) buildings identified were not granted the agricultural and/or seasonal structure exemption. The letter provides several points in support of the complaint, including:

1. All three (3) buildings are open sided shade structures that are used seasonally by customers from April to October for weather protection;
2. The Niagara Escarpment Commission (NEC) identified the buildings as either Agricultural, Agri-tourism or a combination of the two;
3. The three (3) buildings are not "retail" buildings but an integral part of an agricultural business; and
4. Development charge supported services are generally not available to rural/agricultural areas which is probably why there is an exemption.

In the second complaint letter, received October 25, 2019, it is indicated that there is an error in the interpretation of agricultural buildings, such that two (2) additional building permit applications were not granted the agricultural exemption. The second letter does not provide any further justification of the error and it is presumed the justification provided in the original letter was intended to apply to all the permits under complaint. The second complaint extends to DCs imposed by the local school boards under the Education Act on the two (2) additional permits 19-007607 and 19-007608.

In this case, the Education Act establishes the grounds for, and provisions under which, a complaint is processed. Subsection 257.85(1) sets out the grounds under which a complaint may be made:

**257.85(1)** An owner, the owner's agent or a board, may complain to the council of the municipality to which an education development charge is payable that,



## Background

- a) the amount of the education development charge was incorrectly determined;
- b) a credit is or is not available to be used against the education development charge, or that the amount of a credit was incorrectly determined; or
- c) there was an error in the application of the education development charge by-law.

Similar to the DCA, the Education Act provides the complainant with the right to appeal a DC complaint decision of Council to the Local Planning Appeal Tribunal (LPAT).

As required by the legislation, the DCs have been paid prior to filing the complaint. This report addresses only the Town and Education portion of DCs as any complaints against Regional DCs will be heard by Regional Council.

## Discussion

In June 2019, following the conditional approval of development permit applications with the NEC, Mr. Hughes made application to the Town for building permit approvals for 14 structures that were previously constructed without a permit at Springridge Farm located at 7256 Bell School Line. Of the 14 permit applications, 12 permits were issued on July 3, 2019 while the remaining two (2) permits were issued on October 23, 2019. An additional public washroom building and sewage disposal system also requires approval and permit which the Building Department is coordinating with Mr. Hughes.

With respect to the Town DCs, seven (7) of the building permits issued were granted a full agricultural exemption totaling \$30,039.28, for which the Town is required to fund the exempted amounts. One (1) was classified as a patio/deck to which DCs are not imposed and one (1) was a residential expansion where Town DCs are not applicable. The remaining five (5) permits are those subject to the complaint.

With respect to Education DCs, 11 of the building permits issued were either granted a full agricultural exemption or were not subject to DCs as unenclosed structures are not included in the definition of gross floor area in the Education DC By-laws. One (1) permit for a residential expansion was charged DCs of \$457.45. The remaining two (2) permits are those subject to the complaint.

### Calculation of the Applicable Town Development Charges

Although these structures were erected prior to 2019, they were constructed without obtaining the permits required under the Building Code Act and were, therefore, not previously subject to DCs. The DCA stipulates in section 26(1) that DCs are payable when the building permit is being issued, in this case July 3, 2019 and October 23, 2019, at which time Development Charge By-laws 053-2016 and 100-2016 were in force and effect.

Staff applied the by-laws in the following manner:

Section 9 states:

“Development charges shall be imposed on all lands or buildings that are developed for residential or non-residential development if the development requires:

g) the issuing of a permit under the Building Code Act in relation to a building.”

The following definitions, from Section 1 of the By-laws, were used in determining the type of development and the DC rates applicable to each of the building permits:

“**agricultural development**” means a bona fide farming operation, including greenhouses used in connection with a bona fide farming operation which are not connected to Regional water services or wastewater services, sod farms and farms for the breeding and boarding of horses, and includes, but is not limited to barns, silos and other ancillary buildings to such agricultural development, but excluding in all circumstances any residential or commercial or retail component thereof and excludes marijuana production facilities.

“**commercial**” land, buildings or portions thereof used, designed or intended for use for the purpose of offering foods, wares, merchandise, substances, articles or things for sale directly or providing entertainment or entertainment facilities, recreation or recreation facilities to the public and includes the rental of wares, merchandise, substances, articles or things and includes offices and storage in connection with, related or ancillary to such uses.

“**retail development**” land, buildings or portions thereof used, designed or intended for use for the purpose of offering foods, wares, merchandise, substances, articles or things for sale directly to the public or providing bank kiosks and includes, but is not limited to:

- a) land, buildings or portions thereof used, designed or intended for use for the rental of wares, merchandise, substances, articles or things;
- b) offices and storage in connection with, related to or ancillary to retail use; and
- c) conventional restaurants; fast food restaurants; catering establishments, bars and taverns; beer and wine-making stores, concert halls/theatres/cinemas/movie houses/drive-in theatres; dinner theatres; casinos; amusement and theme parks;



amusement arcades; bowling alleys; pet boarding kennels, pet boarding kennel services, pet obedience training centres, pet care, attendance and grooming services; fitness/recreation sport centres; hotels motels/bed and breakfast facilities/rooming and boarding houses; gas stations and service stations; specialty automotive shops/auto repairs/collision services/car or truck washes; auto dealerships; shopping centres/plazas, including more than two attached stores under one ownership; department/discount stores; banks and similar financial institutions, including credit unions; insurance brokerages; investment advisory services; and warehouse clubs and retail warehouses.”

“**seasonal structure**” means a building placed or constructed on land and used, designed or intended for use for a non-residential purpose during a single season of the year where such building is designed to be easily demolished or removed from the land at the end of the single season and is erected immediately before the single season and is demolished or removed from the land immediately following the end of the single season.

Section 21 states:

“Notwithstanding the provision of this By-law development charges shall not be imposed with respect to:

f) agricultural development, including a one-time exemption of up to 50 sq. m. (538.2 sq. ft.) on any commercial or retail component therein.”



# The Corporation of the Town of Milton

After evaluating the definitions against the use of the structures, the Town's non-residential retail development charge rate was applied to the five (5) structures as follows:

Permit Number	Description of Structure	Total Floor Area (m <sup>2</sup> )	Non-Res DC Rate (per m <sup>2</sup> )	Town DCs	DC Exemption*	Net Town DCs Payable
19-007596	Shade structure by animal barn	20.50	\$82.65	\$ 1,694.35		\$1,694.35
19-007600	Addition to lean to on sandbox	35.67	\$82.65	\$ 2,948.13		\$2,948.13
19-007601	Main admission hut	11.61	\$82.65	\$ 959.58		\$ 959.58
19-007607	Enclosed lean to on south side of main barn	65.00	\$82.65	\$ 5,372.25		\$5,372.25
19-007608	Addition to north side of main barn	125.00	\$82.65	\$10,331.25	(\$4,132.50)	\$6,198.75
<b>TOTAL</b>				<b>\$21,305.56</b>	<b>\$4,132.50</b>	<b>\$17,173.06</b>

\*The DC Exemption of \$4,132.50 granted on permit 19-007608 is related to the 50 sq. m. exemption provided in section 21.f) of the Town's DC By-law and is in addition to the previously noted \$30,039.28 agricultural exemption granted on 7 permits not subject to the complaint. The agricultural exemption provided on the 14 building permits issued to Springridge Farm during 2019 total \$34,171.78.

### Calculation of the Applicable School Board Development Charges

Although DCs under the Education Act are collected by the Town, the local school boards are responsible for reviewing and calculating the Education DCs on each building permit application. The Town has received a joint letter from the lawyers representing the Halton District School Board (HDSB) and the Halton Catholic District School Board (HCDSB), attached in Appendix III, confirming the accuracy of the application of their respective DC By-laws to the two permits subject to a complaint under the Education Act. The Education DCs imposed are summarized in the following table:

Permit Number	Description of Structure	Gross Floor Area (m <sup>2</sup> )	HDSB DCs		HCDSB DCs		Total Education DCs
			Rate (m <sup>2</sup> )	\$	Rate (m <sup>2</sup> )	\$	
19-007607	Enclosed lean to on south side of main barn	65.00	\$11.95	\$776.75	\$6.89	\$447.85	\$1,224.60
19-007608	Addition to north side of main barn	125.00	\$11.95	\$1,493.75	\$6.89	\$861.25	\$2,355.00
<b>TOTAL</b>				<b>\$2,270.50</b>		<b>\$1,309.10</b>	<b>\$ 3,579.60</b>



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**Grounds for Complaint Stated by Mr. Hughes**

- 1. All three (3) buildings referenced on the first complaint letter are open sided shade structures that are used seasonally by customers from April to October for weather protection.**

Although the Fun Farm operation is only open to the public seasonally, it was confirmed through the building permit approval process, that the structures are permanent and intended to be used over multiple seasons of operation. As such, these structures do not meet the definition of a “**seasonal structure**” under the Town’s DC By-law and are, therefore, not subject to an exemption under Section 21.g).

- 2. The Niagara Escarpment Commission (NEC) identified the buildings as either agricultural, agri-tourism or a combination of the two.**

The letters received indicate that all of the NEC permits received were for buildings dedicated to agricultural, agri-tourism or a combination of both for their uses and that these building classifications form an integral part of the approved site plan by the NEC. The letters further indicate that the NEC is the Agency of higher authority who must first give their approval on any applications and that agri-tourism is a recognized agricultural land use in the NEC Plan.

Although NEC approval is required for permits within the NEC controlled lands, the NEC is not considered a higher authority and does not have jurisdiction over the Town’s definitions contained within the DC By-law for the various types of development. Furthermore, the definitions within the Town’s DC By-law extend beyond lands controlled by the NEC to the entire Town.

Under the Town’s DC By-law, any commercial or retail component, including such agri-tourism uses, are excluded from the agricultural development definition.

- 3. The buildings are not “retail” buildings but an integral part of an agricultural business.**

The letters indicated that agriculture has needed to evolve to stay viable and that Springridge started charging admission to the Fun Farm Yard in 2008 to help cover the cost of an educational/fun farm experience. The letter further indicates the structures providing weather protection were constructed in response to customer wants.

The definition of retail development includes lands, buildings or portions thereof used for the purposes of offering food or merchandise for sale and providing entertainment directly to the public. Three (3) of the structures subject to the complaint are within



the paid admission area of the Fun Farm Yard, designed for families to explore and play. The other two (2) permits relate to additions to the main barn primarily operated as a café and gift shop. Based on the location and use of the structures for family entertainment and retail sales, they were determined to fall within the “retail development” definition included in the Town’s DC by-law.

**4. Development charge supported services are generally not available to rural/agricultural areas which is probably why there is an exemption.**

In the complaint letter received there is a question as to whether there is an impact on services provided for three (3) shade structures and further comments that many of the DC supported services are not available to rural/agricultural areas which is probably the reason for the exemption. While this is not a consideration under Section 20, staff have nonetheless reviewed this element of the complaint and as noted below would note that DCs are not applied because specific services are required for any particular development but are based on municipal wide needs.

Agricultural DC exemptions have been available for bona fide farming operations since 1998; although they have changed over time. This type of exemption is a discretionary policy of Council and was originally provided to recognize that the farming community is an important part of the community that has often benefitted from government subsidies to maintain their viability. Springridge Farm has found further opportunity to maintain the viability of their farming operation by providing paid public access to the facility for entertainment and education purposes in addition to the cafe and gift shop. An increase in customers to Springridge Farm results in an increased use of Town infrastructure and services including roadways, traffic signals and fire services; all of which are included services in the Town’s DC By-law.

Subsection 5(6)3. of the DCA, requires that if a development charge by-law provides for a lower development charge than is allowed, the rules for determining development charges may not provide for any resulting shortfall to be made up through higher development charges for other developments. As such, any agricultural exemption provided under the Town’s DC by-law is required to be funded by alternative sources, which for the Town would be the property tax base.

### **Financial Impact**

There are no immediate financial impacts that would result from the recommendations in this report. Town development charges of \$17,173.06 were already collected by the Town prior to building permit issuance. It is important that the Town ensure the appropriate application of its DC By-laws as the funds collected finance important growth related infrastructure costs, including roads and fire stations, which service both new construction



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# Springridge

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springridgefarm.com

## Appeal/Complaint of Development Charges for Farm Buildings

### COMPLAINANT

John Hughes  
c/o Springridge Farm  
7256 Bell School Line  
Milton  
L9E 0N7

farm number is 905-878-4908 (Fax-905-878-4150)

John's cell [REDACTED]

### REASON FOR COMPLAINT

I feel there was an error in the interpretation of agricultural buildings, which we had applied for in our Building Permit applications.

All of the NEC permits we received were for buildings dedicated to Agricultural, Agritourism or a combination of both for their uses.

### BACKGROUND

The 3 Building Permit's in question were part of the 14 that we submitted and paid the fee for to the Town of Milton Building Dept. in early June of 2019.

Getting the Town of Milton's Building Permits were part of the Conditions of Approval from the Niagara Escarpment Commission received in May, 2019. This was a +3 year process that involved 4 different Planners from the NEC.

2 of the 14 permit applications required a further P.Eng. stamp so that is being worked on for the Building Dept.

### BUILDINGS IN QUESTION

The 3 buildings in question are located in our "Fun Farm Yard" and identified on the NEC permits as:

Shade structure by animal barn (Town permit #7596 AG) - DC..\$8,484.68

Lean to on sandbox (Town permit #7600 AG) - DC..\$14,763.28

Main Admission Hut (Town permit #7601 AG) - DC..\$4,805.22

## RATIONAL FOR THE OBJECTION

-all 3 buildings are open sided shade structures that have a combined construction cost of under \$8,000. We can not imagine the cost of the DC was ever intended to be +3 times the construction cost.

-the buildings are used seasonally by our farm customers from April (Easter) to the end of October for weather protection.

-the approved Niagara Escarpment Permits identified all the 14 buildings as either Agricultural, Agritourism or a combination of the two. The buildings classification are an integral part of the approved Site Plan by the NEC that was submitted with the Building Permit applications.

Further to this, we know that the NEC is the Agency of higher authority who must first give their approval on any applications and that Agritourism is a recognized agricultural land use in the NEC Plan.

-Springridge started to charge admission for our Fun Farm Yard in 2008 to help cover the cost for an educational/fun farm experience that includes animals, wagon rides, planting, harvesting, etc. All we have observed is an increasing number of season's pass holders who want to come to the farm. Others have done the same in Halton (think Chudleigh's, Andrew's, Conservation Halton and Stonehaven). The buildings enhance the farm experience by providing sun/rain protection.

-I think it is fair to say that Springridge has become a recognized destination in the Town of Milton, Region of Halton and beyond because it is a **farm**. A taste of country close to the intensification of people in the surrounding area

-Agriculture has needed to evolve to stay viable. Springridge Farm needs to attract customers and listening/reacting to their wants. Weather protection (UV) is a major one. An example is we can offer our educational school children tours (+20,000 per year) rain or shine because we have shade protection.

-the 3 Buildings are not "retail" buildings as suggested in explanation but an integral part of an agricultural business.

-if DC are in place to help provide services, is there really an impact for 3 shade structures on services provided? Springridge has paid "commercial taxes" for +30 years and yet the services we look for such as 3 phase power, city water/sewage, cable/internet, paved road, traffic light at Bell School Line and Derry have always been missing. These Development Charge supported services generally are not available to rural/agricultural areas so probably why there is an exemption.

-the Building Permit application form has a very clear exemption category for agricultural and this was applied for in all 14 applications. There is also an exemption category for seasonal buildings that for us means their use by customers.

## CONCLUSION

We were completely "surprised" to be made aware of the +\$28,000 DC charge on July 3/19 and appreciated the "heads up" that if we paid that day (July 3), could avoid any increases that were to happen July 4. We could also pick up our 12 permits.....we did both.

We are completely opposed to any Development Charge for the buildings that are critical and an integral part of our farm operation.

Our solution is to accept the buildings designation as agricultural/agritourism by the Niagara Escarpment Commission and be thankful there is still some agriculture in the Town of Milton.

## FURTHER INFORMATION ON EACH OF THE 3 SHADE STRUCTURES IN QUESTION

### 1. Shade Structure by Animal Barn

-Town Permit #7596 AG

-originally built as a pony shelter about 20 years ago and left in place when we built a new pony shelter further back in the fun farm yard .

-built with 6 of the 6"x6" posts and a low slope roof, completely open on all 4 sides.

-it is 8.5' x 26' and built for under \$2,000

-have 3-4 picnic tables under it for school children/public's weather protection.

-is used seasonally from Easter to end of October

-DC was \$8,484.68

### 2. Lean to on Sandbox

-Town Permit #7600 AG

-the "lean to" was **added to an existing** 32' x 80' open fronted pole barn that was built in 1997 as NEC permit #H/A/96-97/35 and the Town of Milton building permit #015-97 (B).

-no fee or DC at the time of building since was an agricultural building that supported the farm operation.

-the "lean to" is 12' x 32' and open sided all around built to approx. double the size of the kids sand box that was there since '97.

-total cost of the original building (32'x80') was \$23,000

-the "lean to" was built about 12 years ago and cost under \$4,000

-is used seasonally (Easter to end of October)

-DC was \$14,763.28

### 3. Main Admission Hut

-Town Permit #7601 AG

-built in 2008 with 3 open sides and dimensions 12.5' x 10'

-used by our staff and customers as shelter for collecting entrance fee to Fun Farm Yard

-cost to build was \$2,000

-is used seasonally from Easter to end of October

-DC was \$4,805.22



## Springridge Farm

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**From:** John Hughes [john@springridgefarm.com]  
**Sent:** Wednesday, September 4, 2019 10:02 AM  
**To:** Springridge Farm  
**Subject:** Fwd: Shade by animal barn

Begin forwarded message:

**From:** John Hughes <[john@springridgefarm.com](mailto:john@springridgefarm.com)>  
**Subject:** Shade by animal barn  
**Date:** January 23, 2017 at 2:53:27 PM EST  
**To:** John Hughes <[john@springridgefarm.com](mailto:john@springridgefarm.com)>





## Springridge Farm

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**From:** John Hughes [john@springridgefarm.com]  
**Sent:** Wednesday, September 4, 2019 10:02 AM  
**To:** Springridge Farm  
**Subject:** Fwd: Lean to on sandbox

Begin forwarded message:

**From:** John Hughes <[john@springridgefarm.com](mailto:john@springridgefarm.com)>  
**Subject:** Lean to on sandbox  
**Date:** January 23, 2017 at 2:55:58 PM EST  
**To:** John Hughes <[john@springridgefarm.com](mailto:john@springridgefarm.com)>



## Springridge Farm

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**From:** John Hughes [john@springridgefarm.com]  
**Sent:** Wednesday, September 4, 2019 10:03 AM  
**To:** Springridge Farm  
**Subject:** Fwd: Admission hut

Begin forwarded message:

**From:** John Hughes <[john@springridgefarm.com](mailto:john@springridgefarm.com)>  
**Subject:** Admission hut  
**Date:** January 23, 2017 at 2:56:27 PM EST  
**To:** John Hughes <[john@springridgefarm.com](mailto:john@springridgefarm.com)>





# Springridge

springridgefarm.com

## APPEAL/COMPLAINT OF DEVELOPMENT CHARGES FOR FARM BUILDINGS

### COMPLAINANT

John Hughes  
c/o Springridge Farm  
7256 Bell School Line  
Milton  
L9E 0N7

farm number is 905-878-4908 (FAX-905-878-4150)

John' cell [REDACTED]

TOWN CLERK'S DIVISION
OCT 25 2019
RECEIVED
PER:
ACTION:
TIME:

### REASON FOR COMPLAINT

I feel there was an error in the interpretation of agricultural buildings which we had applied for in our Building Permit Applications.

Springridge has been a FARM since it was purchased by my parents in 1960-now in the 3rd generation of our family.

The NEC permits received for the 2 buildings were classified on the Official Site Plan (required on the Conditions of Approval) as 50% Agriculture and 50% Agritourism.

The Town of Milton and the Region of Halton did not have any objection to the NEC permits and approval.

### BUILDINGS IN QUESTION

The 2 buildings in question are additions to our main barn that was built in 1929 and added to in 1985 on an earlier NEC permit and Town of Milton Building Permit.

Lean to on south side of main barn (NEC permit #H/A/2017-18/472 #16...  
Town permit #7607 AG

Addition on north side of main barn (NEC permit #H/A/2017-18/472 #17...  
Town permit #7608 AG

THE DC'S ON THE 2 PERMITS WAS +\$74,000

OTHER COMPLAINT FOR 3 BUILDINGS IS BEING CONSIDERED BY THE TOWN OF MILTON COUNCIL ON NOVEMBER 18. SHOULD THESE ALL BE DEALT WITH THEN?

John Hughes Oct 25/19

November 4, 2019

Mayor and Members of Council  
Corporation of the Town of Milton  
150 Mary Street  
Milton, ON L9T 6Z5

Attention: Ms Meaghen Reid  
Deputy Clerk

Dear Sirs/Mesdames:

**Re: 7256 Bell School Line, Springridge Farm  
Complaint Against Education Development Charges**

We are the lawyers for the Halton District School Board and the Halton Catholic District School Board (referred to collectively as the "Boards"). The Boards are the respondents to the above noted complaint filed by Springridge Farm (referred to as the "Complainant").

Town of Milton Council is scheduled to hear the complaint on Monday, November 18, 2019, at 7:00 P.M.

**Summary of Complaint**

We understand that the complaint advanced by the Complainant is that it should not be liable to pay the education development charges ("EDCs") that the Boards have imposed in connection with the construction of two additions to the main barn building on the property. The two additions are the subject of Permit Nos. 19-007607 and 19-007608 issued by the Town.

Permit No. 19-7607 relates to an enclosed lean-to on the south side of the main building while Permit No. 19-7608 relates to an enclosed addition on the north side of the main building. The additions are operated as a café and gift shop.

The Complainant argues that these buildings are used for agricultural purposes and should therefore be exempt from EDCs.

It is the Boards' position that, although the applicable EDC By-laws exempt agricultural buildings or structures from the payment of EDCs, the buildings in question are not used for "agricultural" purposes as that term is defined under the EDC By-laws. It is the Boards' further position that the EDC By-laws were properly and correctly applied to the developments at Springridge Farm.

We summarize below the facts and law that the Boards rely upon in support of their position.

***Education Act***

Section 257.85 of the *Education Act* prescribes the three grounds of complaint that a complainant may rely upon to challenge an EDC. They are as follows:

- (i) the amount of the education development charge was incorrectly determined;

- (ii) a credit is or is not available to be used against the education development charge, or that the amount of a credit was incorrectly determined; or
- (iii) there was an error in the application of the education development charge by-law.

The Complainant in this case appears to rely upon Clause (iii) of Section 257.85; that is, there was an error in the application of the EDC By-laws.

### **EDC By-laws**

Each of the Boards passed an EDC by-law in accordance with the provisions of the *Education Act* in June of 2018. Both EDC by-laws came into force on July 4, 2018 and replaced the previous by-laws of the Boards that were passed in 2013.

The EDC by-laws of the Boards are identical in all material respects.

Subsection 3(3) of the Boards' respective EDC By-laws provides that the by-laws shall not apply to non-residential agricultural buildings or structures that are owned by and are used for the purposes of a bona fide farming operation.

Section 1(b) of the EDC By-laws defines "agricultural building or structure" as follows:

"agricultural building or structure" means a building or structure used, or designed or intended for use for the purpose of a bona fide farming operation including, but not limited to, animal husbandry, dairying, fallow, field crops, removal of sod, forestry, fruit farming, horticulture, market gardening, pasturage, poultry keeping and any other activities customarily carried on in the field of agriculture, but shall not include a dwelling unit or other structure used for residential accommodation or any building or structure or parts thereof used for other commercial, industrial or institutional purposes qualifying as non-residential development; (highlighting added)

Section 1(m) of the EDC By-laws defines "non-residential development" as follows:

"non-residential development" means a development other than a residential development, and includes, but is not limited to, an office, retail, industrial or institutional development;

The use of the subject buildings for agritourism that brings visitors to a farm does not fall within the definition of "agricultural building or structure" as defined under the EDC By-laws. Nor does the café or gift shop, which are retail uses that fall within the definition of "non-residential development". As noted above, non-residential development is specifically excluded from the definition of "agricultural building or structure".

There are no other exemptions under the Boards' respective EDC By-laws that apply herein.

The additions built under Permit Nos. 19-007607 and 19-007608 are thus subject to EDCs.

In accordance with the provisions of the Boards' respective EDC By-laws, they have imposed EDCs in the following amounts in respect of the additions:

Permit 19-007607

Halton District School Board:  $65 \text{ m}^2 @ \$11.95 \text{ per m}^2 = \$776.75$ ;

Halton Catholic District School Board:  $65 \text{ m}^2 @ \$6.89 \text{ per m}^2 = \$447.85$

Total: \$1,224.60

Permit 19-007608

Halton District School Board:  $125 \text{ m}^2 @ \$11.95 \text{ per m}^2 = \$1,493.75$ ;

Halton Catholic District School Board:  $125 \text{ m}^2 @ \$6.89 \text{ per m}^2 = \$861.25$ ;

Total: \$2,355.00

**Total for Both Permits: \$3,579.60.**

We note that the Complainant has not challenged the above calculation or determination of the EDCs.

**Summary**

Subsection 257(7) of the *Education Act* directs that after hearing the evidence and submissions of the parties, the Council may dismiss the complaint or rectify any incorrect determination or error that was the subject of the complaint. Since the Boards did not make an incorrect determination or error in the application of their respective EDC By-laws, Town Council is obligated to dismiss the complaint.

In sum, we respectfully request that the Town of Milton Council dismiss the complaint and confirm the EDCs imposed by the Boards.

Yours truly,  
Overland LLP



Brad Teichman  
ABT:as

c: Domenico Renzella, Halton District School Board  
Frederick Thibeault, Halton Catholic District School Board