



The Corporation of the Town of Milton

Report To: Council

From: Glen Cowan, Chief Financial Officer/Treasurer

Date: February 10, 2020

Report No: CORS-001-20

Subject: Development Charge Rebate Program

Recommendation: **THAT Staff Report CORS-001-20 be received for information.**

EXECUTIVE SUMMARY

- On November 18, 2019, Council held a Development Charge Complaint Hearing with respect to five (5) building permits at Springridge Farms. Through the related discussion, it was suggested that although the Development Charge By-laws may have been accurately administered, they may not reflect the desire and will of the current Council with respect to such developments. Res. 236-19 was approved providing direction for staff to develop further recommendations to address the Development Charges payable for the five permits.
- Report CORS-001-20 has been prepared to provide Council with background information regarding the collection of Development Charges and applicable legislation governing the municipality's options with respect to providing relief from the collection of Development Charges.
- Should Council wish to provide some form of relief, Town staff have drafted a Development Charge Rebate Program for Council consideration (attached as Schedule A). **The resolution required to enact such a program has been provided in the body of this report and would need to be approved by Council.**

REPORT

Background

Development Charges (DCs) provide for the recovery of growth-related capital expenditures from new development. The *Development Charges Act, 1997* (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 of Milton has two DC By-laws in force and effect that govern the collection of DCs to support investment in growth related capital infrastructure and



supporting studies. The current By-laws were approved during the past term of Council (By-laws 053-2016 and 100-2016) and will expire in June 2021.

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 exemptions from DCs provided through the Town's DC By-laws are required to be funded by alternative sources, which for the Town would generally be the property tax base. The Town's DC By-laws provide legislated exemptions for industrial expansions and secondary dwelling units as well as numerous discretionary exemptions including: places of worship or cemeteries, accessory use structures of certain size or for residential use, public hospitals and agricultural developments. The annual capital budget includes tax supported funding for DC exemptions, which for 2020 is approved at \$1.7 million.

Through the provision of DC exemptions, the Town has long recognized the economic and community benefits provided by the agricultural sector. The Town's current DC By-laws provide financial support to the agricultural sector through a discretionary exemption for agricultural developments defined as:

“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”

The Town's by-law also provides a one-time exemption of up to 50 square metres for any commercial or retail component therein.

On November 18, 2019, Council held a Development Charge Complaint Hearing under Section 20 of the DCA and Section 257.85 of the *Education Act* with respect to five (5) building permits for developments at Springridge Farm, 7256 Bell School Line. As noted in report CORS-070-19, the grounds that a DC complaint can be made and a hearing held are very specific and articulated in the related legislation. Through Council discussions, it was suggested that although the current Development Charge By-laws may have been accurately administered, the By-laws themselves may not reflect the desire and will of the current Council with respect to such developments. Through resolution 236-19, Council has requested further recommendations be provided to address the development charges payable for permits 19-007596, 19-007600, 19-007601, 19-007607 and 19-007608.

Any recommendations provided must be in compliance with current legislation, particularly with respect to Sections 106 and 107 of the *Municipal Act, 2001*. Section 106 limits a



municipality from directly or indirectly assisting any manufacturing business or other industrial or commercial enterprise through the granting of bonuses. Section 107 provides a general power to municipalities to make grants, as council considers appropriate, for any purpose that council deems to be in the interests of the municipality.

Discussion

The Town has largely maintained a “growth pays for growth” philosophy. This is reflected in documents such as the Town’s Financial Principles Policy (Policy 110), as well as advocacy that the Town has undertaken with the Province. The collection of development charges provides the Town with an important cost recovery tool for the investment in growth related infrastructure. DCs are a charge imposed on new construction and re-developments to allocate the costs of growth-related infrastructure to those who generate the need for investment. DC rates are calculated on a municipal-wide basis and are therefore applied consistently to new development in accordance with the prevailing by-law(s). As such, this report has been presented for information. Should Council wish to provide relief for certain forms of development in recognition of the historic, educational and cultural benefit that may arise from a particular type of development to the residents of Milton as a whole (and beyond the exemptions provided for in the existing DC by-laws), the resolutions outlined below will require Council approval.

Alternatives Available to Council

In light of the recent DC Complaint Hearing, Council has requested options to address the DCs payable on the permits subject to the complaint. As Council was advised, without an amendment to the DC Bylaws that would follow the process outlined in the DCA, modifications to the Town’s existing DC By-laws and the rates to be levied are not permitted. Section 107 of the *Municipal Act, 2001*, however, provides a general power to municipalities to make grants, as Council deems appropriate, for any purpose Council considers to be in the interest of the municipality. Any grants provided by Council under Section 107 must be provided on such terms as may be established by Council.

In response to Council Resolution 236-19, staff, with the support of legal counsel, have drafted a potential DC Rebate Program as an option for Council consideration to offset the overall DC payable by Springridge Farm and other similar developments that meet the program’s eligibility criteria. The DC Rebate Program (attached as Schedule A) has been developed to reflect Council’s objectives within the current legislative framework, including the DCA and the *Municipal Act, 2001*.

Through the review and development of the potential program, staff have also identified another sector that provides comparable benefits to the residents of Milton and should similarly be considered as part of any rebate program. As such, the program has been drafted with options to provide financial subsidies to two distinct sectors:



1. Agricultural Tourism
2. Museums

The program is intended to recognize the contributions to the residents of Milton from such developments as defined in Schedule A, through the provision of a grant to offset the DCs on new or re-developments. The grant is structured to be calculated as a percentage, as determined by Council, of the Town DC payable. If adopted, it is recommended to be available for any permits issued during the current term of Council and until such time as it can be considered and potentially incorporated as an exemption in a new DC by-law. Allowing retroactive applications to the program for qualifying developments will ensure the fair and consistent treatment of all development applications processed during this term of Council in alignment with the intention of the present Council to provide support for these forms of development that advance the interest of the public.

Should Council decide to proceed with a DC Rebate Program to provide relief to applicants for DCs, Council could consider the following resolution. Council has the discretion to establish the degree of rebate for each development type, up to and including a 100% rebate.

WHEREAS the Town has long been associated with its agricultural, historic and cultural roots;

AND WHEREAS Council has supported development, as well as the advancement, of programs that help highlight the importance of the Town's history as an agricultural center and has encouraged tourism and education to support that continued recognition of its past, including existing exemptions from certain charges;

AND WHEREAS Council has determined that additional steps should be taken by the Town to highlight the importance of the Town's history and cultural connections to agriculture;

THAT a Development Charge Rebate Program be approved in accordance with Section 107 of the Municipal Act and as outlined in the Program attached as Schedule A with a financial rebate equal to ___% of the Town Development Charges payable for development applications meeting the definition of agricultural tourism building or structure and/or museum.

Financial Impact

The Town's annual capital budget and forecast includes capital project C200124 Legislated DC Exemptions to fund both mandatory and discretionary DC exemptions provided for in the Town's approved DC By-laws. The 2020 Capital Budget for DC



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Exemptions was approved at \$1,729,723. While the rebate program would not be an exemption under the DC Bylaws, the amount of the rebate which Council may approve would be required to be funded from sources outside of the development charge regime, which would mean that any such funds would need to be paid for by other revenue sources and not funding from growth.

If approved by Council, the cost of the DC Rebate Program will also be incorporated into the annual budget for Legislated DC Exemptions. This will ensure the DC reserve funds remain whole for the charges still payable per by-laws 053-2016 and 100-2016. The Town has been including an additional incremental investment of \$200,000 in the operating budget each of the past four years in recognition that the current level of operating budget support for the program is below the required amount. These incremental increases are currently projected to continue based on the most recent fiscal impact study.

The amount of private sector development that will be eligible for the potential DC Rebate Program is difficult to predict as it can vary greatly from year to year. In 2020 specifically, there is a projected cost of approximately \$43,000 for the program as it is outlined in Schedule A. This cost will be reflected in C200124 along with the balance of activity in 2020 should Council approve the DC Rebate Program. Similarly, through the 2021 budget process the annual funding level for the Legislated DC Exemption project will be revisited.

It is important to note that the program as outlined herein will only provide a rebate in the amount of the Town development charges. As such, any Regional or educational development charges will remain payable by the applicant. It is also worth noting that this report and attached program has not considered any potential impacts related to Bill 108 and the new Community Benefit Charge, as further clarity on that charge has yet to be released through Provincial regulations.

Even with careful planning with respect to compliance with the associated legislation, there is always a risk that the Town's position could be challenged and/or an adverse judicial finding might materialize should a rebate program be adopted. Should the Town have to defend itself, external legal costs will be incurred in addition to the internal resources required to represent the Town. The magnitude of potential cost would be dependent on the nature of the appeal and resulting time and effort required.

Respectfully submitted,

Troy McHarg
Commissioner, Corporate Services / Town Clerk



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For questions, please contact: Melanie Wallhouse,
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Attachments

Schedule A: Development Charge Rebate Program

CAO Approval
Andrew M. Siltala
Chief Administrative Officer



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Development Charge Rebate Program

Purpose: This program provides a financial incentive for the development, redevelopment, rehabilitation and/or adaptive reuse of buildings for agricultural tourism usage supporting a bona fide farming operation and/or museums.

Policy Statement: This Development Charge Rebate Program is designed to strengthen the vitality and economic viability of agricultural businesses which highlight the Town's agricultural history and public educational museums within the Town of Milton.

Definitions:

“agricultural tourism building or structure” means a building or structure or part thereof located on a working farm of a bona fide farmer for the purpose of providing enjoyment, education or active involvement in the activities of the farm where the principle activity on the property remains as a farm and where products used in the activity are produced on the property and/or are related to farming. The building or structure may be related to activities such as a hay or corn maze, farm related petting zoo, hay rides and sleigh, buggy or carriage rides, farm tours and/or education, processing demonstrations, pick-your-own produce, a farm theme playground for children, farm markets, farm and related produce stands, and farmhouse dining rooms but shall not include space used for banquets or weddings.

“museum” means a non-profit, permanent institution that is open to the general public and which acquires, conserves, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of public education, study and enjoyment.

Description:

The Development Charge Rebate Program will provide a financial grant for developments meeting the program requirements as follows:

Development Type	Amount of Grant (as a % of Town of Milton DC Payable)
Agricultural Tourism	
Museum	

Note: the grant is only applicable on the Town portion of Development Charges payable and excludes the Region and Local School Board Development Charges.



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This program is available to the net amount payable after any exemptions provided in the Town's DC By-laws 053-2016 and 100-2016. In no circumstance will the grant provided by this program result in an overall net payment to the applicant relative to the Town's development charges.

Review and evaluation of an application for a Development Charge Rebate along with a decision on approval will be completed by Town staff. Any rebate in the development charge would be applied at the time the Town development charge is payable.

Specific Program Requirements:

1. An application must be submitted to the Town at the time of building permit application to which the rebate of development charges will apply. To align with the current term of Council, retroactive applications for a DC rebates will be permitted for any permits issued since December 3, 2018.
2. Such application shall include sufficient details and evidence of the development and proposed operations for Town staff to determine to its satisfaction, eligibility for the program.
3. Any outstanding obligations or requests to comply and/or other charges from the Town (including tax arrears) must be satisfactorily addressed prior to the reduction of development charges.
4. Town staff, officials, and/or agents of the Town may inspect any property that is the subject of an application for this financial incentive program offered by the Town.
5. If any part of a development which received benefit from this reduction program is changed, within a two-year period, so that it would no longer be eligible for the program, the amount of the reduction is immediately payable to the Town.

Term of this Program:

The program outlined herein will be valid and applicable until Council approval of the Town's Development Charges By-law, scheduled for completion no later than June 2021 as required by the *Development Charges Act, 1997*.

At that time Council will review both the DC Rebate Program and DC Exemptions provided for in the By-law to determine the appropriateness of continuation of this program or other means by which the objectives of Council to promote developments that the support the agricultural and cultural history of the Town may be achieved. Any continuing incentive to the developments considered in this program will be either



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consolidated into the future DC By-law or incorporated into a new program that considers the updated Provincial legislation.

Reporting

Reporting of the Development Charge Rebate Program will be included with the annual Treasurer's Statement of Development Charge Reserve Funds.

Funding

The cost to the Town of the DC Rebate Program will be funded from the Town's capital project for Legislated Development Charge Exemptions, thereby ensuring the Town's Development Charge Reserve Funds remain whole in relation to the applicable developments.