



The Corporation of the Town of Milton

Report To:	Council
From:	Glen Cowan, Chief Financial Officer/Treasurer
Date:	August 24, 2020
Report No:	CORS-041-20
Subject:	Education Development Charge Complaint filed by Springridge Farm
Recommendation:	<p>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;</p> <p>THAT Council dismiss the complaint filed by Springridge Farm pursuant to Section 257.85 of the Education Act.</p>

EXECUTIVE SUMMARY

- This report has been prepared to reconvene the development charge complaint hearing under Section 257.85 of the Education Act which commenced on November 18, 2019 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
- 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 complaint.
- It is the position of the School Boards that the DCs were correctly calculated and applied as per their respective DC By-laws and no amendment or refund is required.
- Under 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 school boards DC By-laws.
- The development charge complaints filed against the Town and Region by Mr. Hughes for developments at Springridge Farm have been withdrawn by the complainant.



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 while the Education Act defines the statutory basis for imposing such charges by a school board.

The Town 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">○ 19-007596 Shade structure by animal barn○ 19-007600 Addition to lean to on sandbox○ 19-007601 Main admission hut
October 25, 2019	<ul style="list-style-type: none">○ 19-007607 Enclosed lean to on south side of main barn○ 19-007608 Addition on north side of main barn

The second complaint letter extends to DCs imposed by the local school boards under the Education Act on the two (2) additional permits 19-007607 and 19-007608.

On November 18, 2019, Council held a Development Charge Complaint Hearing with respect to five (5) building permits at Springridge Farms. The hearing dealt with the Town and Education DCs only as complaints related to Regional DCs are addressed by Regional Council. Through the discussion at the Town's hearing, it was suggested that although the Town's 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 by Council and provided direction for staff to develop further recommendations to address the development charges payable for the five (5) permits.

On February 10, 2020, through report CORS-011-20, Council approved a Development Charge Rebate Program to provide relief from development charges for development applications meeting the definition of agricultural tourism building or structure and/or museum as defined in the Development Charge Rebate Program. The Program provides qualifying applicants with a financial rebate equal to 100% of the Town Development Charges payable up to a maximum of \$40,000 per property. The Program does not apply to any regional or education development charges payable by the applicant.



Background

Following a successful application to the Town's Development Charge Rebate Program, the Town received written confirmation from Mr. Hughes on March 17, 2020 of the withdrawal of the development charge complaint against the Town. In his letter, Mr. Hughes confirmed his intent to continue the appeals with both the education and region development charges.

On May 19, 2020, the Town received a letter from Mr. Hughes, by copy and attached as Appendix I, sent to the school boards confirming both his intent to continue with the appeal of education development charges as well as his withdrawal of both the Town and Region development charge complaints. Staff have confirmed with the Region that the development charge complaint filed by Springridge was withdrawn.

The Education Act establishes the grounds for, and provisions under which, a complaint is processed and stipulates the local municipal council will hold a hearing with respect to the complaint. 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,

- 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.

The Education Act 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 257.85 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.

As required by the legislation, the Education DCs have been paid prior to filing the complaint. This report addresses the Education portion of DCs as all other complaints regarding the noted permits have been withdrawn.

Discussion



The Corporation of the Town of Milton

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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 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 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 II, confirming the accuracy of the application of their respective DC By-laws to the two (2) 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 ²)	HDSB DCs		HCDSB DCs		Total Education DCs
			Rate (m ²)	\$	Rate (m ²)	\$	
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
TOTAL				\$2,270.50		\$1,309.10	\$ 3,579.60

Grounds for Complaint Stated by Mr. Hughes

Mr. Hughes contends there was an error in the application of the education development charge by-law by both the Halton District School Board and the Halton Catholic District School Board. As the Niagara Escarpment Commission (NEC) identified the buildings as a mixed use agricultural and agri-tourism use, Mr. Hughes suggests the buildings are farm buildings, supporting the farm operation and as such, should receive the agricultural exemption.

These two (2) permits relate to additions to the main barn, which is primarily operated as a café and gift shop and as stated in the school boards legal letter, the use of the buildings



Appeal of EDC's by Springridge Farm

Background

Springridge Farm appealed Development Charges for 5 farm buildings/additions totalling +\$100,000 that went through the Town of Milton Building Permit process in the summer of 2019.

Of this, the Town's portion was approx. \$17,000, the Region of Halton \$80,000 and +\$3,000 for the 2 school boards.

The School Boards adjusted their initial EDC's when they realized that 3 of the buildings/additions did not have sidewalls or floors.....only a roof for shade.

The Agency having the Higher Authority for the land uses at Springridge is the Niagara Escarpment Commission. The buildings in question were part of the NEC Development Permit H/A/2017-2018/472 and classified on their Final Approved Site Plan as 50% Agriculture and 50% Agritourism. The NEC permits were issued in May 2019 and then the Building Permits for Milton were applied for in June.

Building Permit No. 19-7607 is for the lean to on south side of the main barn.

Building Permit No. 19-7608 is for the addition on the north side of the main barn.

Current Status

The complaint/appeal of the Development Charges by Springridge Farm to both the Town of Milton and the Region of Halton have been **resolved**.

Springridge Farm has "signed off" and withdrawn the complaint/appeal to both the Town and Region.

This can be verified for the Town of Milton by Cathie Boyle (cathie.boyle@milton.ca). Telephone is 905-878-7252 ext.2402

This can be verified for the Region of Halton by Paula Kobli (paula.kobli@halton.ca). Telephone is 905-625-6000 ext.7184

Appeal of EDC's to the 2 School Boards

I would anticipate that both of the Halton Boards of Education would follow the direction of the Municipal and Regional government for resolving our complaint/appeal.

I feel there was an error in the application of the education development charge by-law by both Halton Boards of Education.

As a bona fide farming operation in Milton for 60 years, we have been and are a fruit farm that sell directly to our customer base throughout the golden horseshoe.

It is unfortunate that EDC staff did not visit the farm (like Halton Region DC staff did) to verify the uses of the 2 buildings in question.

Then the Lawyers Report on behalf of both Halton Boards that was submitted to Milton Council dated Nov.4 would be seen to be not accurate when it states that "The additions are operated as a cafe and gift shop".

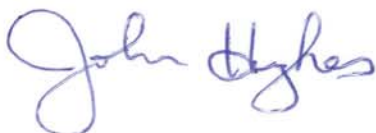
Permit No. 19-7608 (addition on north side of main barn) is used for receiving, has a large walk-in freezer (for our frozen strawberry storage), pastry ingredients for making strawberry pies, tarts and jam. In the winter, a tractor is stored there. Our customers do not go in this addition as it is used solely to support our farm operation. It is neither a cafe or a gift shop.

Permit No. 19-7607 (lean to addition on south side of main barn) is used as a shelter area for our customers from Easter to Christmas (when we are open) and then storage in the winter months. It is not a gift shop but our customers use the picnic tables to enjoy our home made strawberry custard tarts and more.

Parts of our main barn are Gift Shop but these have been in existence for +40 years and not a factor in these building permits.

These are farm buildings that support our farm operation and as such not subject to DC's.

Our appeal is important to maintain the agricultural exemption of Development Charges for farm buildings especially for what is remaining of agriculture in Halton Region.



John Hughes for our family at Springridge Farm

john@springridgefarm.com cell 905-864-5663

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