

November 20, 2024

VIA E-MAIL

Niagara Region
Office of the Regional Clerk
1815 Sir Isaac Brock Way
P.O. Box 1042
Thorold, ON L2V 4T7

Attention: Members of Council

Dear Members of Council:

**Re: Complaint to Regional Council – Niagara Region, Ontario
Regarding Development Charges pursuant to section 20 of the *Development Charges Act, 1997, S.O. 1997, c. 27*
Ratepayer: Vermeer Canada Inc.
Property: 12 Iroquois Trail, Grimsby (“Property”)**

We are counsel to Vermeer Canada Inc. (“**Vermeer**”) with respect to the above-referenced matter.

We understand that the Region of Niagara (the “**Region**”) has recently assessed development charges (“**DCs**”) for our client’s Proposed Development (defined below) to be payable on the basis that the use of the Property is “commercial” instead of “industrial” under the Regional Municipality of Niagara Development Charges By-laws No. 2020-71 (the “**Regional DC By-law**”).

Our client hereby complains to the Region of Niagara’s Council (“**Regional Council**”) pursuant to section 20 of the *Development Charges Act, 1997, S.O. 1997, c. 27* (the “**DC Act**”) that the DCs assessed for the Proposed Development are: (i) incorrectly determined; and/or (ii) there was an error in the application of the Regional DC By-law.

Request

Vermeer hereby requests the Region to proceed with a Regional Council hearing into its DC complaint under 20(4) of the DC Act, on an expedited basis to determine that the DCs

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File 25654.00001

*Partner through a professional corporation

payable for the Proposed Development are to be calculated on the basis that the use of the Property (as defined below) is “industrial” and not “commercial” under the Regional DC By-law.

DCs payable based on the commercial rate per square foot for the 16,307 sq ft building would be a total of \$406,472.85, with \$126,003.31 for the Town and \$280,469.54 for the Region.

If payable DCs are calculated based on the industrial rate per square foot, the total amount would be \$15,7525.52, with \$56,748.36 for the Town and \$100,777.26 for the Region.

The difference in the two amounts is significant: \$248,947.33.

Given the nature of Vermeer’s operation on the Proposed Development, it is unreasonable for DCs to be charged on a commercial use basis.

Moreover, the Proposed Development is simply not feasible if the Region of Niagara chooses to charge DCs based on a commercial rate rather than an industrial rate.

Background

Vermeer is the industrial dealer for Vermeer Manufacturing Inc., a global manufacturer of industrial and agricultural machines with headquarters in Pella, Iowa. Vermeer had been planning to build and relocate their business to the location municipally known as 12 Iroquois Trail, Grimsby (the “**Property**”) for a number of years, and had been liaising with officials at Grimsby and the Region.

Vermeer plans to build a new facility of 16,307 square feet with 25 employees on the Property. The new facility will accommodate light manufacturing, sales and servicing of machinery. It is anticipated that the facility will house Vermeer’s Canadian administrative center, including a shop area to prepare new and preowned equipment for customers, and accommodation for light manufacturing to prepare equipment to custom mount and assemble mixing units to customer vehicles and trailers (“**Proposed Development**”)

Vermeer's vision is to make the Proposed Development the new Canadian headquarters and the exclusive dealer of the global manufacturer, servicing all 13 locations across every province in Canada.

As Vermeer was working to bring the Proposed Development to Grimsby, while in the process of applying for a building permit, the Region determined that DCs should be charged based on the rate for "commercial" use instead of "industrial" use.

Reasons for Request

- (1) It is unreasonable for the Region to determine that the Proposed Development doesn't meet the definition of "industrial" but rather should be classified as "commercial" use instead under the definitions in the Regional DC By-law.

It is our position that the Proposed Development fits the definition of "industrial" use under the Regional DC By-law, which provides that:

"industrial use" means land, buildings or structures used for or in connection with manufacturing by: (a) manufacturing, producing, and processing goods for a commercial purpose, as well as storing and/or distribution of goods manufactured, produced or processed on site; (b) research or development in connection with manufacturing, producing or processing good for a commercial purpose; (c) retail sales by a manufacturer, producer or processor of goods they manufactured, produced or processed, if the retail sales are at the site where the manufacturing, production or processing takes place; (d) office or administrative purposes, if it is: (i) carried out with respect to manufacturing, producing, processing, storage or distributing of something; and (ii) in or attached to the building or structure used for that manufacturing, producing, processing, storage or distribution. (emphasis underlined)

Vermeer's President, Chris Burelle, has set out the manufacturing and processing component of the Proposed Development in an Affidavit sworn on November 19, 2024 (the "**Affidavit**"), which is enclosed herein as **Appendix "A"**.

The Affidavit demonstrates that the Proposed Development meets the Regional DC By-law's definition of "industrial" use due to the manufacturing and processing of:

- i) Custom fabrication of horizontal directional drill (HDD) mud mixing trailers; and
 - ii) In-house and on-site rebuilding of directional drilling tools which involve machining and welding processes.
- (2) The Proposed Development does not fit the definition of "commercial purpose" use under the Regional DC By-law, which provides that:

"commercial purpose" means any building or structure used, designed or intended for use for or in connection with the purchase and/or sale and/or rental of commodities; the provision of services for a fee; or the operation of a business office, including but not limited to: (a) Accommodations including but not limited to hotels and motels, bed and breakfast, or short-term rentals; (b) personal or self-storage facilities; (c) Wholesale trade; (d) Retail trade; (e) Auto repair shops; Car sales/dealers; (f) Warehousing of goods where manufacturing, producing, and processing of the goods is not completed on site; (g) Food Services; (h) Parking structures not used exclusively by a residential structure.

As set out in the Affidavit, the Proposed Development is not for "accommodations", "personal or self-storage facilities", "wholesale trade: "auto repair or dealer", "food services" or "parking structures".

As will be further supported by the Affidavit, Vermeer will be operating under a 'business-to-business' model, as opposed to providing retail sales services. While there will be warehouse facilities in the Proposed Development, the purpose of such facilities is not a warehouse for goods with the purpose of selling for outside manufacturing or distribution purposes.

- (3) We will elaborate on the above reasons, and provide such further reasons in support our client's position at the hearing to be held in front of Regional Council.

Notice

We request that we hear from you as soon as possible regarding the date for a Regional Council hearing into our client's complaint. Please send notice of the date of the Regional Council hearing to the undersigned together with a copy to our client at the following address:

Vermeer Canada Inc.
Chris Burelle, President
1100 South Service Road, Unit 423
Stoney Creek, ON L8E 0C5
E-mail: Chris.Burelle@vermeercanada.com

Should you have any questions and/or concerns regarding the above and/or enclosed, please do not hesitate to contact us.

Yours truly,

WeirFoulds LLP



Denise Baker

DB

Appendix "A"

Complaint to Regional Council – Niagara Region, Ontario

Regarding Development Charges pursuant to section 20 of the *Development Charges Act, 1997, S.O. 1997, c. 27*

Ratepayer: Vermeer Canada Inc.

Property: 12 Iroquois Trail, Grimsby

Affidavit of CHRIS BURELLE

(Sworn on November 19, 2024)

I, **CHRIS BURELLE**, of Niagara-on-the-Lake, Province of Ontario **MAKE OATH AND SWEAR AS FOLLOWS:**

1. I am the President of Vermeer Canada Inc. ("**Vermeer**"). Vermeer is the industrial dealer for Vermeer Manufacturing Inc., a global manufacturer of industrial and agricultural machines with headquarters in Pella, Iowa.
2. I have been overseeing Vermeer's plans to build and relocate their business to the location municipally known as 12 Iroquois Trail, Grimsby (the "**Property**") for a number of years, and have been liaising with officials at the Town of Grimsby ("**Grimsby**") and the Region of Niagara (the "**Region**") in order to bring this to fruition.
3. Vermeer plans to build a new facility of 16,307 square feet with 25 employees on the Property. The new facility will accommodate light manufacturing, sales and servicing of machinery. It is anticipated that the facility will house Vermeer's Canadian administrative center, including a shop area to prepare new and preowned equipment for customers, and accommodation for light manufacturing to prepare equipment to custom mount and assemble mixing units to customer vehicles and trailers ("**Proposed Development**").
4. I have been working towards realizing Vermeer's vision to make the Property the new Canadian headquarters and the exclusive dealer of the global manufacturer, servicing all 13 locations across every province in Canada.
5. I am also familiar with the manufacturing and processing facilities which would make up part of the Proposed Development.

6. The Proposed Development will allow for the manufacturing and processing of custom fabrication of horizontal directional drill (HDD) mud mixing trailers. The steps include:
 1. Send out closed- in trailer for insulation;
 2. Measure and determine component locations within the box truck;
 3. Fabricate all mounting brackets for MX125, freshwater tank, primary tank, and secondary tank;
 4. Design hose circuit for mixing system;
 5. Install MX125/primary water tank/secondary water tank and mud tank in truck box;
 6. Fabricate and install hose circuit and mounting brackets for hose circuit;
 7. Fabricate install exhaust system for the mixing system engine to vent outside truck.
 - (i) Exhibit "A" is a photograph of the directional bore truck assembly schematic;
 - (ii) Exhibit "B" shows the interior of closed trailer box after completed insulation before assembly;
 - (iii) Exhibit "C" is a photograph of the components, including the mixing unit/power pack and mud tank before assembly;
 - (iv) Exhibit "D" is a photograph of the fresh water tank and piping assembly; and
 - (v) Exhibit "E" is a photograph of the MX125 mixing unit c/w powerpack, mud tank and second fresh water tank after assembly, piping and ball valves.

As demonstrated by Exhibits "A" to "E", the use of the Proposed Development for custom fabrication of horizontal directional drill is a manufacturing and production process.

7. The Proposed Development will also allow for the manufacturing and processing of in-house and on-site rebuilding of directional drilling tools which involve machining and welding processes as follows:
 1. Cut worn head off drill;
 2. Install new head and old drill bit into a welding, as illustrated by Exhibit "F";

3. Tack weld new drill head onto old drill bit while in the welding, as illustrated by Exhibit “G”;
4. Install tacked drill bit into welding turntable, as illustrated by Exhibit “H”; and
5. Finish weld the drill bit and new head together, as illustrated by Exhibit “I”.

Again, similar to the HDD manufacturing assembly, the rebuilding of directional drills is also a manufacturing and production process.

8. Currently, these manufacturing processes are located in Vermeer’s locations in Barrie and Burlington. Vermeer plans to expand or move these productions to the Property.
9. As part of our discussions with the Town of Grimsby, I had discussions with Frank Miele, Economic Development Officer Town of Grimsby who, in correspondence dated September 9, 2024 from Mr. Miele to Michelle Seaborn at Niagara Region, recognized the Proposed Development as follows:

...

The Vermeer Grimsby industrial building main use is focused on light assembly, retooling, and servicing of agricultural and industrial machinery (from parts that will be warehoused in their new facility in Grimsby), and administrative offices for servicing and distribution processing.

A copy of the correspondence is attached hereto as Exhibit “J”.

10. We are advised by Town staff the development charges for the Proposed Development based on the commercial development charge rate per square foot for the 16,307 sq ft building would be a total of \$406,472.85 (\$126,003.31 for the Town and \$280,469.54 for the Region).
11. We are likewise advised by Town staff the development charges for the Proposed Development based on the industrial development charge rate per square foot for the 16,307 sq ft building would be a total of \$157,525.52 (\$56,748.36 for the Town and \$100,777.26 for the Region).
12. The difference between development charges based on the commercial or industrial rate is a staggering \$248,947.33.
13. The Proposed Development does not meet the definition of Commercial set out in the Region’s Development Charge By-law in so far as:
 - o Vermeer is not in the business of “accommodations”;

- Vermeer is not in the business of self storage;
 - Vermeer does not engage in “Wholesale trade”;
 - Vermeer does not engage in “retail sales”. We have a business-to-business model;
 - Vermeer is not an auto dealer nor does it repair automobiles;
 - Vermeer does not warehouse goods for the purpose of selling for outside manufacturing or distribution purposes;
 - Vermeer is not in the food business;
 - Vermeer is not in the parking lot business.
14. The Proposed Development is simply not feasible if the Region of Niagara chooses to charge a Commercial rate rather than an Industrial rate.
15. If needed, I will be available to testify before the Regional Council at the hearing which will be convened for the determination of the DC complaint pursuant to section 20 of the *Development Charges Act, 1997*, S.O. 1997, c. 27.

Affirmed remotely by Chris Burelle stated as being located in the Town of Niagara on the Lake in the Regional Municipality of Niagara before me at the City of Toronto on November 19, 2024, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



KATHERINE CHAN

A Commissioner of Taking Affidavits, *etc.*

Signed by:



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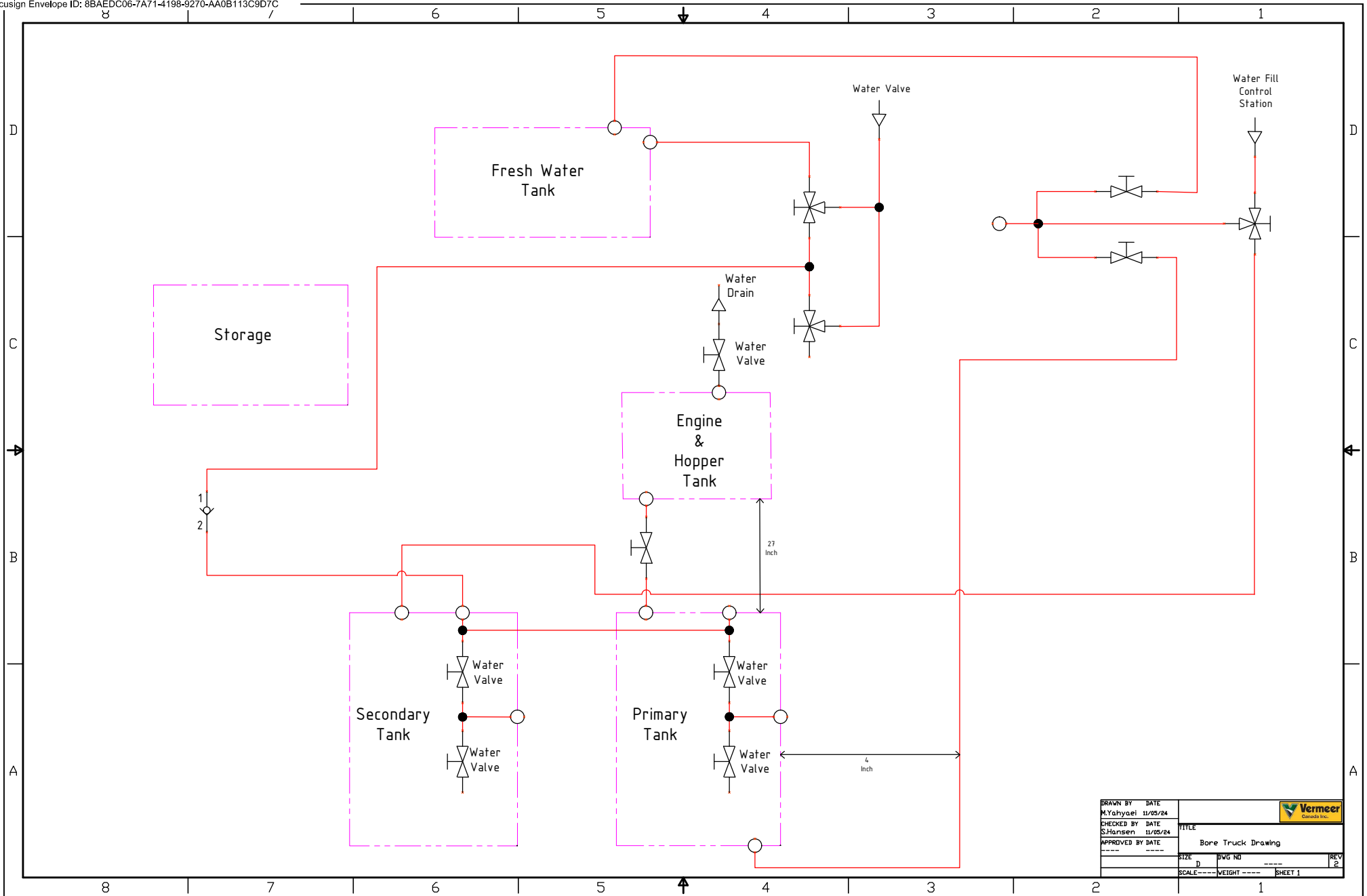
CHRIS BURELLE


This is Exhibit "A" referred to in the Affidavit of Chris Burelle sworn remotely by Chris Burelle from the city of Niagara-on-the-Lake, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

KATHERINE CHAN



DRAWN BY	DATE			
M.Yahyaoui	11/05/24			
CHECKED BY	DATE	TITLE		
S.Hansen	11/05/24	Bore Truck Drawing		
APPROVED BY	DATE	SIZE	DWG NO	REV
		D		2
		SCALE	WEIGHT	SHEET 1

This is Exhibit "B" referred to in the Affidavit of Chris Burelle sworn remotely by Chris Burelle from the city of Niagara-on-the-Lake, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

KATHERINE CHAN



This is Exhibit "C" referred to in the Affidavit of Chris Burelle sworn remotely by Chris Burelle from the city of Niagara-on-the-Lake, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

KATHERINE CHAN



This is Exhibit “D” referred to in the Affidavit of Chris Burelle sworn remotely by Chris Burelle from the city of Niagara-on-the-Lake, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

KATHERINE CHAN



e

This is Exhibit "E" referred to in the Affidavit of Chris Burelle sworn remotely by Chris Burelle from the city of Niagara-on-the-Lake, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

KATHERINE CHAN



This is Exhibit "F" referred to in the Affidavit of Chris Burelle sworn remotely by Chris Burelle from the city of Niagara-on-the-Lake, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

KATHERINE CHAN



This is Exhibit “G” referred to in the Affidavit of Chris Burelle sworn remotely by Chris Burelle from the city of Niagara-on-the-Lake, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

KATHERINE CHAN



This is Exhibit "H" referred to in the Affidavit of Chris Burelle sworn remotely by Chris Burelle from the city of Niagara-on-the-Lake, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

KATHERINE CHAN



This is Exhibit "I" referred to in the Affidavit of Chris Burelle sworn remotely by Chris Burelle from the city of Niagara-on-the-Lake, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

KATHERINE CHAN



This is Exhibit "J" referred to in the Affidavit of Chris Burrelle sworn remotely by Chris Burrelle from the city of Niagara-on-the-Lake, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

KATHERINE CHAN

From: Frank Miele <fmiele@grimsby.ca>
Sent: September 9, 2024 12:12 PM
To: Seaborn, Michelle
Cc: Reg Freake; 'Rick Boivin'; Chris Burelle
Subject: Vermeer Canada - DCs issue

Importance: High

CAUTION : External Mail. Do not click on links or open attachments you do not trust.
ATTENTION : Courriel Externe. Ne cliquez pas sur des liens et n'ouvrez pas de pièces jointes auxquelles vous ne faites pas confiance.

Hi Michelle

Further to our conversation this morning, herewith is the background on Vermeer Canada.

1. Vermeer is a privately held company with seven production facilities worldwide and their HQ in Pella, Iowa. They manufacture and support high-quality industrial and agricultural equipment.
2. Vermeer Canada is in the process of building their new locating in Grimsby (16,600sf) with 25 employees.
3. In November 2023 Vermeer applied for the Niagara Region Industrial Use Development Charge Grant and was denied because it was not manufacturing a product.
4. While in the process of applying for a building permit, the Region determined that since the grant was not approved the Development Charge would be based on the commercial rate vs the industrial rate. Not sure why a grant application determines the classification of an industrial use.
5. The Vermeer Grimsby industrial building main use is focused on light assembly, retooling, and servicing of agricultural and industrial machinery (from parts that will be warehoused in their new facility in Grimsby), and administrative offices for servicing and distribution processing.
6. Vermeer would prefer to deal with this matter with senior staff and resolve the issue. However, if this cannot be done, Vermeer will submit a complaint to appeal the development charge from Commercial to Industrial and request Regional Council or the OLT to amend the bylaw for Vermeer. A time and costly process hence the importance of resolving this matter with senior staff.
7. An industrial use is not strictly manufacturing, rather there are a variety of other uses that are industrial uses such as warehousing, light assembly, retooling, servicing agricultural and industrial machinery that qualify as industrial and not commercial!
8. Recognizing this may be a unique case for Regional staff, there are many examples of similar uses in other municipalities that paid industrial rates vs. commercial.
9. If there is anything else you need from me, let me know

Hope to see Tuesday or Friday sometime.

Frank Miele
Economic Development Officer

Town of Grimsby | 160 Livingston Ave | Grimsby, ON | L3M 4G3

Cell: 289-244-8054

fmiele@grimsby.ca | www.grimsby.ca



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