



April 16, 2021

By Email

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Attention: Lindsey Patenaude, Committee Coordinator

Dear Sirs and Mesdames:

**Re: Municipality of Clarington General Government Committee Meeting April 19, 2021
Staff Report LGS-016-21
On-Farm Special Event Licensing By-law**

We are the lawyers for Nancy Mallette who operates Bloom Field Farm. As you are aware, Ms. Mallette is the owner of 3745 Durham Regional Hwy 2, in the Municipality of Clarington. Since 2009, Bloom Field Farm has operated an on-farm agri-tourism business that includes among other things, a successful wedding venue.

The Bloom Field Farm property is the only agriculturally zoned property in Clarington that operates a legally permitted on-farm special events venue. There is one other property that has obtained zoning permission but has not commenced operations. We understand there is no indication they will be doing so soon.

We are writing to voice Bloom Field Farm's objection to the approach to licensing proposed by the Municipality of Clarington for its proposed On-Farm Special Event Licensing By-law. While our client does not object to licensing of businesses, *per se*, we do object to the use of a licensing by-law to rezone our client's property.

We also object to the use of by-law making authority in a manner that is targeted at our client's venue. The fact that substantial municipal resources seem to be directed at a single venue, a venue with a spotless compliance history, is concerning to say the least.

The Draft By-law is a Zoning By-law in Disguise

A municipality cannot, by adopting a descriptive disguise, by using technical language, or use other steps, to artificially transform a zoning by-law under the *Planning Act* into a regulatory by-law under the *Municipal Act, 2001*. The effect of the draft By-law is to regulate land-use. It is not a licensing scheme.

The purpose and effect of the draft By-law also creates an overly-restrictive land use planning regime that is not consistent with the *Planning Act* or the Provincial Policy Statement, 2020, and it does not conform with Provincial Plans, the Clarington Official Plan and the Region of Durham Official Plan.

In its pith and substance, it is a direct attack on our client's existing zoning approval. We urge this committee to recommend against adopting this by-law.

The draft By-law seeks to prohibit On-Farm Special Event Uses by making them difficult, and likely impossible, to operate while remaining profitable. It also reduces the operation of On-Farm Special Event Uses to a period of time that limits opportunity for innovation in a country where winter is a significant, and long, season.

The restrictions that are zoning restrictions in disguise include:

- Prohibiting all events or activities that are not permitted as-of-right as an on-farm diversified use, on lands specifically zoned to permit special events as a use that is secondary to the agricultural farm operations through the definition of "On-Farm Special Event".
 - This prohibition violates and attempts to modify the rights of all landowners in Clarington which have specific existing rights under the zoning by-law
 - For instance, it is a significant and improper intrusion into the section 3.1 accessory use rights under your zoning by-law, an approach which is practically speaking consistent across Ontario
- The restriction of On-Farm Special Events from May 1st to October 31st of each year
- The prohibition of any and all On-Farm Special Events from November 1st to April 30th of each year
- The restriction on the right to use a property from 10:01 am to 10:59 pm
- The restriction of On-Farm Special Events on the same property to one event within a three day interval
- The restriction of On-Farm Special Events on the same property to two events within a seven-day interval

If Council wants to regulate On-Farm Special Events, the only correct and appropriate process must be through amendments to the Zoning By-law. We can understand that this may make Council uncomfortable as it requires land use planning work to be undertaken and will open up the decision to the full mechanics of the public planning process. That is the point. Land use planning decisions should be subject to this fundamental check and balance put in place by the Ontario legislature through the *Planning Act*.

The approach ensures that land-use rights are not artificially taken away from landowners without a public hearing and a public process, and it also ensures that existing land-uses are grandfathered under section 34(9) of the *Planning Act*.

The planning rationale for the draft By-law is vague and arbitrary

There is no evidence provided in any of the Staff Reports that we have reviewed that demonstrates the purpose of these provisions that restrict off-season events, that limit the number of events, or that limit the number of people.

The entirety of the by-law appears to be arbitrary and intended to provide maximum land-use control with no accountability or justification for the requirements. There also appears to be little to no concern for the recent decision of the LPAT confirming that agri-business is acceptable and consistent with the Provincial Policy Statement. Through this licensing by-law, the Municipality is undermining the findings of the LPAT.

No Evidence of Nuisance or Harms to Persons

The conclusions of municipal staff should guide Council when Council is deciding what it should be trying to regulate. The Staff Reports make it abundantly clear that On-Farm Special Events do not pose any risk to the health, safety and well-being of persons nor do they present a public nuisance.

As stated in Staff Report No. LGS-012-21 dated March 8, 2021 (the “March 8th Report”),

- 3.2 Presently, there are a total of two agriculturally zoned properties in Clarington that have obtained the required zoning approval to permit on-farm special events. Both properties are situated in Ward 4. [...]
- 3.8 Whether, in fact, such impacts would be actualized is an open question. The almost total absence of by-law complaints in connection with the two farm properties where on-farm special events are already permitted suggests that the impacts of these events are manageable. However, these two locations may not reflect conditions elsewhere in the Municipality.

- 3.9 Agricultural properties are highly variable in terms of size, topography, orientation, means of access, proximity to neighbours and a variety of other features. This disparity in features may result in a disparity of the impacts experienced at each farm location. For this reason, it is extremely difficult to generalize about the impacts that would be associated with on-farm special events.
- 3.10 This overgeneralization represents a disadvantage associated with the proposed bylaws attached to this report. For this reason, Council may want to dispense with the notion of additional by-laws in favour of a more site-specific approach to regulation. Alternatively, Council may simply wish to defer consideration of additional by-laws at this time. Council retains the discretion to revisit the need to enact additional regulations at any point in time when it becomes evident that impacts associated with all on-farm special events require such regulation. (Emphasis Added)

The absence of identified harm makes the desire to regulate questionable. This is especially true since the LPAT has already made findings that On-Farm Special Events venues can mitigate the impacts of noise – as is extremely common in business operations – concluding that:

Based on Mr. Coulter's evidence, the Tribunal is satisfied that a seasonal special event venue on the Site can employ certain reasonable noise mitigation measures that will allow it to operate within the applicable noise standard.¹

We also note that there is already a full and complicated noise regulation regime that exists under the *Environmental Protection Act* that regulates the production of noise. There is no need for municipalities to overregulate in this area, especially when there is no identified problem and especially when the by-law will impose restrictions based on an inexistent problem in a manner that is inconsistent with the *Environmental Protection Act*.

Licensing fee unjustified

There is no rational connection between the proposed licencing fee and the business activity, especially in light of the fact that there are other businesses that are licensed at much lower rates. The fee for licence is therefore not enforceable.

A site-specific approach should be engaged

As recommended previously by Staff, a preferable approach would be to take a site-specific approach. Regulation should occur through review of future planning applications to permit On-Farm Special Event Uses. Despite the fact that our client has operated their business in a manner that has never had complaints, it now appears that the draft by-law unfairly attempts to

¹ Mathias v. Clarington (Municipality), PL170178 at para 55.

penalize our client and her business at a time when COVID-19 has created unprecedented strain on small businesses.

We therefore ask the General Government Committee to refuse to adopt the draft by-law.

Should Council choose to proceed with the by-law despite the serious problems identified above, we urge you to specifically grandfather our client's business by exempting the property and the business operation from the operation of the licensing by-law. While this will not fix the legal issues we have identified with the proposed approach, we anticipate our client would not take issue with the approach. In this regard, we would be pleased to work with staff to identify language that would be acceptable to our client.

Yours truly,

Cassels Brock & Blackwell LLP

A handwritten signature in blue ink, appearing to be 'Raivo Uukkivi', with a long horizontal line extending to the right.

Raivo Uukkivi

RU/JE