

DATE: September 12, 2022

REPORT NO: PD-79-2022

SUBJECT: **Technical Report**
4981 Regional Road 20 – Fred and Rebecca Vrugteveen
Temporary Use Bylaw Extension (File No. 1601-011-22)

CONTACT: Gerrit Boerema, Senior Planner
Brian Treble, Director of Planning & Building

OVERVIEW:

- In February 2020, Township Council granted a two-year Temporary Use Bylaw for 4981 Regional Road 20 to permit the temporary use of the property for commercial activity, primarily the storage of pallets and other materials related to the local business known as Niagara Pallets, operated by Mr. Fred Vrugteveen.
- A history of this property and the justification and review of the initial two-year temporary use bylaw can be found in the attached planning report PD-027-20 (Attachment 1).
- The temporary use bylaw had an expiry date of February 28th, 2022, but the owners argued that due to the Province passing O. Reg. 73/20 in response to the COVID-19 pandemic and the impact to the Provincial Court system, there should be an automatic extension of 6 months to the approval.
- Township staff requested the applicants legal Counsel for further information, but none was provided and therefore staff have never provided an opinion on the matter.
- The applicants have now submitted a request to extend the temporary use bylaw for a period of one year starting August 2022 and expiring in August 2023.
- The application states that the storage on this site is still needed until such time that their new facility, located on South Grimsby Road 8, is finalized.
- Planning Staff recommend that following the public consultation period and a full review of the application against the applicable planning policies, a recommendation report be prepared and presented to Committee and/or Council (depending on the meeting schedule surrounding the Municipal elections).
- The Region of Niagara has provided comments with regards to this application and are unable to support the extension to the Temporary Use Bylaw.

RECOMMENDATION:

1. That, Technical Report PD-79-2022, regarding “4981 Regional Road 20 – Fred and Rebecca Vrugteveen – Temporary Use Bylaw (File No. 1601-011-22)”, dated September 12th, 2022, be RECEIVED; and,
2. That a recommendation report be submitted to a future Planning/Building/Environmental Committee or Council meeting once a full staff and agency review has been completed.

ALIGNMENT TO STRATEGIC PLAN:

Theme #2 & #3

- **Support for Business Opportunities for Residents**
- **Strategic Responsible Growth**

BACKGROUND:

An application for an extension to a Temporary Use Bylaw has been submitted by Upper Canada Consultants on behalf of the property owners of 4981 Regional Road 20, Fred and Rebecca Vrugteveen, and Niagara Pallets. A Temporary Use Bylaw was granted in February of 2020 for a two-year time period to permit the storage of pallets relating to the Niagara Pallet business located on South Grimsby Road 8.

A full background to the initial two-year Temporary Use Bylaw and a history of the commercial use on this property can be found in the attached Planning Staff Report PD-027-20 in Attachment 1.

In summary of that report, a ±1.7ha (±4.3 acres) portion of the property has been used by Niagara Pallets for a number of years for a variety of commercial uses. In 2005 the Township received a complaint regarding the commercial use and subsequently the applicants made application for a 1-year temporary use bylaw to find another suitable site. Subsequent to that the applicants applied for a zoning bylaw amendment and official plan amendment in 2009. These applications were later withdrawn by the applicants citing lack of Regional support. The business activity was moved in part to their new property on South Grimsby Road 8, but complaints were received in 2016 and 2017 for ongoing commercial activity on the subject property. In late 2019 the applicants had applied for a temporary use bylaw to permit the ongoing commercial uses for a period of 3 years.

Township Council approved a temporary use bylaw permitting pallet storage relating to Niagara Pallet for a period of 2 years in February 2020, lapsing in February 2022. The applicants have argued that an automatic six-month extension to their temporary use bylaw applies due to the COVID-19 pandemic, however, specifics in this regards have not been provided by their legal Counsel despite several requests.

A temporary use bylaw was granted in 2020 on the justification that the applicants needed more time to expand and further develop their property on South Grimsby Road 8. A severance was approved and completed in 2020 (B02/2020WL) which added approximately 0.533 hectares to their 2.1-hectare commercial property. They are now in the process of having their site plan reviewed and approved to complete the second of four building expansion phases.

The applicants have requested the additional one-year temporary use bylaw extension to allow for the completion of the second phase of their building addition at South Grimsby Road 8. Planning staff need to see more justification as to how the building addition will accommodate the 1.7 hectares of outdoor pallet storage on the subject property and make the property compliant with the zoning bylaw.

CURRENT SITUATION:

Planning Staff have completed a preliminary review of the application against the applicable planning policies. To note, very little information has been submitted with the extension request application. Staff have only received an application form and a cover letter, which is attached to this report.

Planning Act

The Ontario Planning Act makes provision for municipalities to pass temporary use bylaws to zone land or buildings for a specific use for a maximum period of up to three years for uses that otherwise are not permitted in the municipalities zoning bylaw. The exception to this regulation is for garden suites, which are permitted for a period of up to 20 years.

Temporary use bylaws follow the same circulation and notification process as zoning bylaw amendments and require a statutory public meeting. Temporary use bylaws also do not grant any non-conforming status upon lapsing.

While the municipality can only extend for a period of up to 3 years for a temporary use bylaw, they can stipulate a lesser time period in the bylaw.

Provincial Policy Statement (PPS)

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. Section 2.3 of the Plan provides policy with regards to Prime Agricultural Areas, of which the subject property is located within. Prime agricultural areas are to be protected for long-term agricultural use and non-agricultural uses are strongly discouraged. Non-agricultural uses are only permitted for limited non-residential uses provided that the land does not comprise specialty crop area, meets the minimum distance separation formulae, has an identified need within the planning horizon and that there are no reasonable alternative locations for the use outside of the prime agricultural areas. Impacts from these non-agricultural uses need to be minimised or mitigated to the extent feasible.

The commercial activity on this property has existed for nearly 20 years starting around 2004. In that time the applicants have found and purchased a more suitable site on South Grimsby Road 8 at the intersection of Regional Road 20, west of Smithville. They have been working on expanding this site to accommodate their growing business.

In order to protect agricultural lands, lands within the urban area of Smithville and some select hamlets have been designated for such commercial and industrial uses. At certain points, some businesses experiencing significant growth should consider moving to these locations. The applicants have not proven that there are no alternative locations for this use. Staff are requesting additional information to understand if the current South Grimsby

Road 8 site is large enough to accommodate all of the commercial activity taking place on the subject lands, or whether a full relocation is even possible.

Although this is only a temporary use bylaw extension application, all Planning Act applications need to be evaluated against the applicable planning policy.

A Place to Grow – Provincial Growth Plan

The Provincial Growth Plan provides a framework for growth and development within the Greater Golden Horseshoe over the long term by supporting the achievement of complete communities while protecting the Province's valuable resources, such as its agricultural lands. Section 4.2.6 of the Growth Plan provides policy direction on the protection of the Agricultural System. In alignment with the PPS, the Growth Plan requires that agricultural lands be protected for long term agricultural use. Where non-agricultural uses are permitted, an agricultural impact assessment is required to mitigate any impacts to surrounding agricultural operations. The use of agricultural lots for non-agricultural uses is discouraged.

An agricultural impact assessment was not submitted to the Township for review as this is only an extension to a temporary use bylaw, however, if further extension requests are submitted, the Township may require additional information regarding any agricultural impacts.

Regional Official Plan (Current and Adopted)

The Niagara Region has adopted a new Regional Official Plan which is waiting Provincial approval. Staff have completed a preliminary review of this extension request against both the current and adopted Regional Official Plans.

The subject property is designated as Good General Agriculture within the current official plan and Prime Agricultural Areas within the adopted Official Plan. Both Regional Official Plans do not support non-agricultural uses within the Good General Agricultural and Prime Agricultural designations. The current Regional Official Plan allow for exceptions provided that the non-agricultural use meets a number of requirements including; there are no reasonable alternative locations outside of good general agricultural areas and a demonstrated need and desirability for the proposed use.

While minimal justification was provided for this extension request, the original extension request in 2019/2020 did state that "based on the context of the portion of the site being used for temporary storage, consideration from a Regional perspective should be provided to this application. As proposed, the storage will be contained on a developed portion of the site that exhibits industrial characteristics. No urban boundaries are to be superseded".

While the request for a one-year extension may only be for one year, it is important to note that this property has not been in compliance with the Township's zoning bylaw since 2004.

Township of West Lincoln Official Plan

The Township of West Lincoln Official Plan, in alignment with the Regional Official Plan, designates the subject property as Good General Agricultural Lands. Objectives for the

Good General Agricultural area include the promotion of a viable agricultural industry and the minimizing of non-farm uses in the agricultural area by re-directing them to locate within designated settlement areas and hamlets. Policy 4.2.1 g) states that new non-agricultural uses shall not be permitted within the agricultural areas, but are encouraged to locate within existing Settlement Areas to minimize the impact on existing and future agricultural operations.

Policy 18.4.1 speaks specifically to Temporary Use bylaws. It states that “Council shall satisfy itself that the proposed use is temporary, and will not create detrimental effects on the surrounding area. Temporary uses not allowed by the applicable policies of this plan will not be permitted. Temporary uses, buildings and structures that are not farm-related shall not be permitted in the unique or good general agricultural areas.”

The policy continues on to state that upon the expiry of the temporary use bylaw, the use cannot be considered legal non-conforming.

It is apparent that the use is not agriculture or agricultural related, but connected to the commercial/industrial use related to the Niagara Pallet operation on South Grimsby Road 8. It is also not clear, as no justification was provided, that the one-year extension application meets the applicable policies of the Township’s Official Plan.

The applicant should provide additional justification regarding alignment to the Township’s Official Plan.

FINANCIAL IMPLICATIONS:

Planning Staff in 2020 recommended to Committee and Council that prior to the signing of the Temporary Use Bylaw, the applicants enter into a temporary use agreement with the Township and provide securities in the event that the site was not vacated by the lapsing date. In the event that the Temporary Use Bylaw lapses prior to the site being cleaned up, the security could be used by the Township to have the site cleaned up as per the agreement.

Based on the Township’s records, it does not appear that this agreement was ever finalized or entered into. Staff will further develop an agreement that should be signed prior to a bylaw authorizing any extension to the temporary use.

INTER-DEPARTMENTAL AND PUBLIC COMMENTS:

At the time of writing this report, the Township has not received any public comments. The Township has only received comments from the Region of Niagara, which are attached to this report. The Region of Niagara does not support this application as it does not conform to Provincial or Regional policies, as stated in the letter.

CONCLUSION:

Upper Canada Consultants and the property owners of 4981 Regional Road 20, Fred and Rebecca Vrugteveen, have applied for a Temporary Use Bylaw extension of one year to permit an ongoing commercial use including pallet storage related to the Niagara Pallet operation on South Grimsby Road 8.

In reviewing the application, Township staff have requested the following additional information be provided:

- Justification for the need of an additional 1 year to the Temporary Use Bylaw and alignment to the Township's Official Plan;
- Information on how the 1.7 hectares of space currently used for pallet storage will be relocated onto the main business property on South Grimsby Road 8; and
- Cost estimate for removal of material from the site for the preparation of a Temporary Use Agreement.

Following receipt and review of this information, staff recommend preparing and bringing a recommendation report to Committee or Council (depending on the meeting schedule surrounding the municipal election).

ATTACHMENTS:

1. Location Map
2. Draft Temporary Use Bylaw
3. PD-027-20 Niagara Pallet Report
4. Regional Comments

Prepared & Submitted by:



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Approved by:



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