

DATE: February 12, 2024

REPORT NO: PD-07-2024

SUBJECT: **Recommendation Report – Application for Temporary Use
Zoning By-law Amendment for 9127 Regional Road 20 (File No.
1601-010-23)**

CONTACT: Susan Smyth, Senior Planner

OVERVIEW:

- An application for a Temporary Use By-law was submitted by Mr. Larry Pomerantz (Agent) on behalf of Mr. Giovanni Diflavio (Owner) to add a temporary use for outside storage for rain barrels/composters.
- The subject lands are legally described as Concession 8; Part Lot 34 and 35, municipally referred as 9127 Regional Road 20. The subject lands have a lot area of approximately 19.82 hectares (48.97 acres) and majority of the lands are actively farmed.
- The application is requesting to permit approximately 9,712.45 square metres (0.97 hectares/2.4 acres) approximately 5% of the total lot area for the outside storage of the rain barrels/composters situated behind the existing storage buildings fronting Regional Road 20 along the west side below the existing berm.
- The subject lands are located in the Fulton Hamlet expanded settlement area, which is subject to a future Secondary Plan process that will help identify the appropriate employment related land use designations for future growth in Fulton.
- The subject lands are zoned as Agricultural (A) and outside storage not directly related to a principle agricultural use is not permitted.
- Planning Staff has prepared the draft Request for Proposal (RFP) for the Secondary Plan process which is planned for commencement in the Summer/Fall 2024 with a processing timeframe of approximately 18 months.
- The Public Meeting was held on January 15, 2024 and several members of the public and Council members offered comments and concerns about the proposal related to drainage and flooding issues, unsightly views, height of barrels, high winds and potential for barrels to shift, potential impact on property values, site recovery and removal of barrels, fire concerns, misrepresentation of agent/applicant and the business.

- Planning Staff recommends approval of the application for a temporary use for outdoor storage of the rain barrels/composters for a period not to exceed 18 months which will align with the Township's execution of the Secondary Plan process for the Fulton Hamlet and expansion of new land uses focused on employment and those permitted uses appropriate and compatible with the adjacent agricultural and rural residential uses.

RECOMMENDATION:

1. That, Recommendation Report PD-07-2024, regarding "Recommendation Report – Application for Temporary Use Zoning By-law Amendment for 9127 Regional Road 20 (File No. 1601-010-23)" dated February 12, 2024, be received; and,
2. That, Section 34(17) of the Planning Act apply and that no further public meeting is required; and,
3. That, Planning Staff will require a Temporary Use Agreement and Site Plan that requires the Owner to work towards site clean-up over time; and
4. That, application for Temporary Zoning By-law 1601-010-23 submitted by Larry Pomerantz (Agent) on behalf of Mr. Giovanni Diflavio (Owner) and as presented in the attached bylaw for a period of 18 months; be approved.

ALIGNMENT TO STRATEGIC PLAN:

Theme #2 – Strategic Responsible Growth

Theme #3 – Enrich Strong Agricultural Legacy

BACKGROUND:

The lands subject to this application are legally described as Concession 8; Part Lot 34 and 35, and municipally referred as 9127 Regional Road 20. The subject lands are located on the north side of Regional Road 20 and west of South Grimsby Road 18 in the expanded Fulton Hamlet settlement area. The subject lands have a lot area of approximately 19.619 hectares (48.668 acres) and majority of the lands are actively farmed. Refer to Schedule A for the subject lands.

The Temporary Use By-law Application is requesting to permit a portion of the lands approximately 9,712.45 square metres (0.97 hectares/2.4 acres), approximately 5% of the total lot area for outside storage of rain barrels/composters. The proposed outside storage would be situated behind the existing storage buildings fronting Regional Road 20 along the west side below the existing berm. Refer to Schedule B for the conceptual site plan and proposed location of the outdoor storage area.

The rain barrels/composters measure approximately 2 feet x 2 feet x 3 feet and weigh 20 pounds and will be stored on their side and stacked in a pyramid shape to a maximum height of 4.87 metres (16 feet). The rain barrels/composters are distributed through contracts with the City of Hamilton, City of Guelph, City of Kingston, and other municipalities in the USA, Niagara Region and around the world, as well as schools and non-profit organizations such as the Lions Club. The product is available for online purchases only and no curb-side or store access on the subject lands will be provided.

The rain barrels/composters are produced off site and transported by tractor trailers and unloaded onto small trailers and towed to the location to be stored. The average delivery of the rain barrels/composters would be two trailer loads per day five days a week during regular business hours.

The Township's Temporary use by-law authorizes the temporary use of lands, buildings or structures for any purpose set out therein that is otherwise prohibited by the Zoning By-law. Council may extend the term of the by-law, by a further by-law amendment, for a maximum additional three (3) year term. Council shall be satisfied that the proposed use is temporary, and will not create detrimental effects on the surrounding area. Upon expiry of the Temporary Use By-law, uses permitted by that By-law must cease and cannot be considered as non-conforming uses, unless addressed by the Secondary Plan and subsequent permanent zoning by-law amendment application if this use is deemed appropriate and meets the intent of the rural employment area.

CURRENT SITUATION:

Planning Act

Temporary Use provisions are outlined in Section 39 of the Planning Act. This Section states that the Council of a local municipality may, in a by-law passed under Section 34, authorize the temporary use of land, buildings or structures for any purpose set out therein that is otherwise prohibited by the by-law.

A by-law authorizing a temporary use shall define the area to which the temporary use applies and specify the period of time for which the authorization shall be in effect, which shall not exceed three (3) years from the day of the passing of the by-law by Township of West Lincoln Council. Council may approve temporary bylaws for less than three (3) years.

This application for a temporary use is not explicitly related to agricultural uses, however the section of the site that is proposed to be used for the outdoor storage is not currently actively farmed or used for agricultural uses and will be situated between the existing berms and existing buildings separate from the areas being farmed. Planning Staff however consider the three (3) year timeframe to be excessive and has considered a reduced timeframe of 18 months or until such time as the Secondary Plan for Fulton is completed to determine the appropriate employment uses geared to the rural nature of which may include outdoor storage uses.

Provincial Policy Statement 2020

Land use planning decisions must be consistent with the Provincial Policy Statement (PPS), which ensures appropriate development while protecting resources of provincial interest, public health, and the quality of the natural and built environment.

Section 1.1 provides the policy framework for the management and efficient development and land use patterns to avoid environmental and public health and safety concerns, and avoid development that prevents the efficient expansion of settlement

areas or lands surrounding settlement areas.

Section 1.1.3 states that settlement areas are the focus of growth and economic prosperity. In this circumstance, the proposed temporary use will be an opportunity for a business to locate in Fulton on lands that are large enough to accommodate outside storage as well as to continue with current farming and agricultural uses.

The temporary use and operations of the outdoor storage of the rain barrels/composters will assist the Township to determine whether this business fits in the land use growth for rural employment geared for localized service commercial and light industrial uses as part of the Secondary Plan process and whether it can offer vitality to the immediate area.

Section 1.3 of the PPS provides policies related to employment and authorities shall promote economic development by providing for an appropriate mix and range of employment to meet long-term needs; providing opportunities for a diversified economic base, including maintaining a range and choice of suitable sites for employment uses which support a wide range of economic activities and ancillary uses, and take into account the needs of existing and future businesses; and facilitating the conditions for economic investment by identifying strategic sites for investment, monitoring the availability and suitability of employment sites, including market-ready sites, and seeking to address potential barriers to investment.

The Township is required to complete the Secondary Plan for Fulton to meet the intent of the PPS goals and objectives to secure employment uses and make land available for future investment.

Planning Staff considers the application to be consistent with the Provincial Policy Statement (PPS) with respect to the temporary nature of the application.

A Place to Grow, Growth Plan for the Greater Golden Horseshoe – 2020 Consolidation

The Place to Grow – Growth Plan for the Greater Golden Horseshoe (Growth Plan) builds on the PPS that supports the achievement of complete communities, a thriving economy, a clean and healthy environment and social equality. The Growth Plan guides how and where to grow communities, how to support growth while protecting what is valuable, such as the agricultural lands.

Section 2.2.1 provides policies that focus on where to grow and how to manage growth and settlement areas are to provide the opportunities for development.

Section 2.2.5 provides policies related to employment and municipalities should designate and preserve lands within settlement areas located adjacent to or near major goods movement facilities and corridors, including major highway interchanges, as areas for manufacturing, warehousing and logistics, and appropriate associated uses and ancillary facilities. Furthermore, municipalities, will designate all employment areas in official plans and protect them for appropriate employment uses over the long-term.

Consequently, the need to complete the Secondary Plan is necessary to be consistent with the policies geared to protect areas for employment opportunities.

Planning Staff considers the temporary use is providing some employment opportunities while continuing to protect the active agricultural use on the subject lands until the Secondary Plan process is completed. This will lend time for the Township to complete the Secondary Plan and determine the optimal long term land use for the area including the subject lands that will meet the growing needs of the Township, particularly for rural employment. For these reasons, Planning Staff considers the application to be consistent with the Growth Plan.

Niagara Official Plan, 2022

The Niagara Official Plan (NOP) provides a framework for growth and development within the Niagara Region. The NOP regulations are consistent with Provincial policies; including the PPS and Growth Plan as noted above.

Section 2 speaks to the growing Region and opportunities for growth that ensures amenities to serve the needs of the rural residents and area businesses are adequate and without compromise to the character of the area.

Section 4.1 provides the main objectives to facilitate a strong, diverse, and resilient agricultural economy and to protect the region's agricultural land base, ensuring agricultural sustainability for present and future generations. Planning Staff consider the location and size of the outdoor storage area to be acceptable and appropriate for the intended use while avoiding direct impacts to the agricultural operations and adjacent agricultural uses. This temporary use is within the expanded settlement area of Fulton and requires no water or sanitary services and will be buffered by the existing earth berm which will offer screening to the adjacent properties. The Agent/Applicant has agreed to plant trees on the east side of the existing buildings to provide additional buffering to the property located east of the parcel to mitigate any visual impacts.

Section 4.2 provides policies related to economic growth and opportunities for different employment growth should be considered in settlement areas. The proposal is limited in scale while intending to provide some employment to the local area with approximately four employees for loading and unloading the rain barrels/composters into position. The subject lands are designated as rural settlement area with a special policy requiring the designation of employment uses and the Region will be involved in the Secondary Plan process to assist in the evaluation of appropriate land uses geared for employment.

Planning Staff considers the application to conform to the Regional Official Plan for the protection of surrounding agricultural uses and diversification of employment in the settlement area of Fulton.

Township of West Lincoln Official Plan

As per the Official Plan Amendment 62, the subject lands are designated as Hamlet Settlement Area and the Township is required to complete the Secondary Plan to bring the

Plan into conformity with the Regional Official Plan.

The location of the outside storage is not in the vicinity of the natural heritage features and therefore should cast no impacts to any of the environmental features.

Planning Staff considers the application for the temporary use to meet the general intent of the Township's Official Plan.

Township of West Lincoln Zoning By-law 2017-70, as amended

The Township's Zoning By-law 2017-70, as amended zones the subject lands as 'Agricultural – A Zone' and 'Environmental Protection – EP' Zone. Outside storage is considered as an accessory use and permitted in the 'A' Zone as long as it is in conjunction with the permitted principal use being agricultural, however, the proposed temporary use is not directly related to agriculture. The location of the outside storage area is not within the limits of the 'EP' Zone and therefore there are no concerns and adheres to those regulations.

As a result of the Secondary Plan process, the Township will also propose to re-zone the lands to bring the zoning into conformity with the final Secondary Plan and Official Plan policies.

Planning Staff has assessed the proposal against the regulations for accessory structures in the 'A' Zone and the outside storage area to contain the rain barrels/composters will be approximately 9,712.45 square metres (0.97 hectares/2.4 acres) or 5% of the total lot area. Although there is no actual structure or building being proposed, Planning Staff recommend a site specific provision to set the maximum area permitted for the outside storage to 9,712.45 square metres (0.97 hectares/2.4 acres). Refer to Schedule C for the draft Temporary Use By-law.

The rain barrels/composters each measured approximately 2 feet x 2 feet x 3 feet and weigh 20 pounds and will be stored on their side and stacked in a pyramid shape to a maximum height of 4.87 metres (16 feet). The zoning regulations permit the maximum height of buildings and structures not to exceed 10 metres (32.8 feet), therefore Planning Staff are not concerned with the height of the stacked barrels.

Planning Staff considers the application for the temporary use not offensive and does not negatively deviate from the current (Section 5.2) A zoning regulations especially since the A zone will transition into an employment zone or development zone following the Secondary Plan process.

FINANCIAL IMPLICATIONS:

There are no financial implications associated with this report except for the potential implications associated with Bill 109, the *More Homes for Everyone Act, 2022*. Bill 109 requires municipalities, starting on July 1st, 2023, to provide fee refunds for planning act applications if decisions are not made within the required Planning Act timelines.

The timelines for approval and required fee returns associated with this requires Township Staff to prepare recommendations on a quicker timeline for Council's decisions. Council must make a decision within 90 days of complete application or the Township will be required to grant a refund.

	Zoning and Official Plan Combined	Zoning Bylaw Amendment	Site Plan
No refund	Decision is made within 120 days	Decision is made within 90 days	Plans are approve within 60 days
50%	Decision made within 121-179 days	Decision made within 91-149 days	Plans are approved between 61-89 days
75%	Decision made within 180 – 239 days	Decision made within 150 – 209 days	Plans are approved 90 – 119 days
100%	Decision made 240 days and later	Decision made 210 days and later	Plans are approved 120 days and beyond

The fee paid in 2023 for a Temporary Use By-law was \$3,640.00. If not approved within 90 days, the Township would be required to refund the applicant 50% (\$1,820.00) between 91 – 129 days and 75% (\$2,730.00) between 151 – 209 days, and 100% of the fee after 210 days.

Planning Staff consider that this application for a Temporary Use By-law does not create negative adverse impacts to the surrounding agricultural and environmental uses and approval of this application can be granted within the 90-day timeframe and no refund to the applicant should be required.

For further consideration, Planning Staff will be undertaking the 5-year Official Plan Review as well as the Secondary Plan for the Fulton Hamlet settlement area geared towards employment lands. This application for a Temporary Use is utilizing time until these processes are completed at which time a more definitive land use and zoning regulations will be contemplated and this Temporary Use will be reassessed to confirm its appropriateness.

INTER-DEPARTMENTAL AND PUBLIC COMMENTS:

A Public Meeting was held on Monday January 15, 2024 and there were eight participants/members of the public who provided comments and raised concerns on the proposal. The following table summarizes the comments and the responses from the various staff.

Comments	Staff Responses
Two municipal drains (Fortino and Fulton) are not working properly and there is a liability issue with water flowing south and potentially contaminated.	Drainage concerns have been recorded and the Township Staff will be conducting the Secondary Plan for the Fulton Hamlet which is geared to employment lands. The proposal for consultants to complete the Secondary Plan will be released in Q2 2024 and the process is targeted to commence in Q3 2024 at the latest.
Since the berms have been established there has been drainage issues and flooding in basements in the past several years.	Included in the Secondary Plan process is the examination of the watershed and potential impacts to the municipal drain.
The culvert is clogged and the grading has diverted water to travel in the opposite direction and create significant flooding in the ditches and impacts to farmland productivity.	Township Staff can conduct site visits to confirm the status of the culverts and ditches that are blocked and contributing to the flooding and provide the information in the Secondary Plan process.
Can the Township look into clearing out the ditches and culverts prior to the Secondary Plan process to help with the drainage issues?	Staff note that municipal drain improvements requires a petition from the affected landowners.
Concerns that the barrels are flammable and should be in a closed facility/building.	<p>The rain barrels/composters are made from re-purposed food grade plastic and contain no toxic or poisonous materials.</p> <p>Outdoor storage of general combustible materials is not specifically addressed in the Fire Code, but storage of combustible materials indoors is addressed. Therefore, storing the barrels indoor would have Fire Code implications.</p> <p>The Township Fire Department does not have reservations about the outdoor storage of these materials as long as fire lanes and clear entry/egress points are provided for firefighting purposes.</p>
Is the applicant/agent the owner of the site?	Mr. Larry Pomerantz is the tenant/leaser of the subject lands with intention to purchase the lands depending on the outcome of the Secondary Plan process and land use designation for employment lands.

Comments	Staff Responses
The stacked pyramid of the barrels will be unsightly and concerned that they will be scattered like how the current site, on Twenty Road is operating. The 16 feet high stacked barrels will be unattractive to the area.	<p>The zoning regulations for accessory structures in the Agricultural Zone can be as high as 10 metres or 32.80 feet. The proposed maximum height of the barrels is 4.8 metres or 16 feet high and nestled in between the existing earth berm behind the barn offering some screening from the view to the street and neighbours.</p> <p>The Applicant has agreed to plant some trees to buffer the adjacent properties along the east side of the subject lands to screen the view of the rain barrels/composters.</p>
If the business was not to be successful, who is responsible to remove the barrels.	Mr. Larry Pomerantz confirmed the intent is to conduct the business for a long term and this site is the ideal location for the business and if it was not to be successful then he would be responsible to remove the product to an alternative location. Staff recommend that through the temporary use agreement a security deposit be required to ensure that the barrels are removed upon expiry of a temporary use bylaw if the Secondary Plan does not permit the use.
Temporary Use By-law Agreement	Staff will require the Agent/Applicant to enter into a Temporary Use Agreement for 18 months while the Secondary Plan process is completed.

The Niagara Peninsula Conservation Authority (NPCA) offered no comments, however, the proposed storage area is not currently regulated by the NPCA.

The Region of Niagara Staff offers no objection to the proposed Temporary Use and is satisfied that the proposal would not be contrary to Provincial and Regional policies for forecasted rural employment growth.

Refer to Schedule D for the agency comments.

CONCLUSION:

An application for Temporary Use By-law for outdoor storage for the rain barrels/composters has been submitted by the agent Mr. Larry Pomerantz for the subject lands located at 9127 Regional Road 20.

The application has been reviewed in accordance with the Planning Act, and against Provincial, Regional and Township Policy, and the application has been deemed to meet

the policies for the long term protection and maintenance of agricultural land uses. As such, Planning Staff recommend the approval of the Temporary Use Zoning By-law with the site specific provision with the outdoor storage for rain barrels/composters not to exceed 9,712.45 square metres (0.97 hectares/2.4 acres).

The Temporary Use By-law would be subject to the Agent and Owner entering into a Temporary Use Agreement with the Township for a period of 18 months and for a security amount to be deposited to ensure that the use ceases especially if the Secondary Plan does not consider this use appropriate. This security amount would be used to remove the barrels and reinstate the site, if required.

SCHEDULES:

- A. Location Map
- B. Conceptual Site Plan
- C. Draft Temporary Use By-law
- D. Agency Comments

Prepared by:



Susan Smyth, CPT
Senior Planner

Approved by:



Gerrit Boerema, MCIP, RPP
Manager of Planning and Building



Brian Treble, MCIP, RPP
Director of Planning and Building



Donna DeFilippis, CPA, CA
Interim CAO