

DATE: February 10, 2025

REPORT NO: PD-03-2025

SUBJECT: **Recommendation Report – Application for Temporary Use Extension 9127 Regional Road 20 File No. 1601-10-23**

CONTACT: Gerrit Boerema, Director of Growth and Sustainability

OVERVIEW:

- An application to extend a Temporary Use Bylaw 2024-10 (Agricultural ‘A’ (T-13)) has been made by Mr. Larry Pomerantz on behalf of the property owner of 9127 Regional Road 20.
- The property, located in the Hamlet of Fulton, was granted a 12 month temporary use bylaw to permit the storage of rain barrels and composters on 0.97 hectares of the property, subject to a temporary use agreement in February of 2024.
- A temporary use agreement was signed and completed on March 18, 2024 and a site and grading plan was approved in August of 2024.
- The temporary use bylaw approval lapses on February 26, 2025.
- The agent has applied for a three year extension to the temporary use, or until the Fulton Rural Employment Land Use study is completed.
- A public meeting was held on January 13, 2025 where a number of members of the public provided oral comments.

RECOMMENDATION:

1. That Recommendation Report PD-03-2025 title “Recommendation Report – Application for Temporary Use, 9127 Regional Road 20” dated February 10th, 2025, be received; and,
2. That, application for Temporary Use Extension File No. 1601-10-23, submitted by Mr. Larry Pomerantz for an extension to temporary use Bylaw A(T-13) for three years be denied; and,
3. That, Committee and Council permit an extension of Temporary Use Bylaw A(T-13) for a period of 4 months, expiring on June 24, 2025, as found in the attached bylaw (Schedule D), which prohibits the storage of any additional barrels and to allow for

- the orderly removal of the barrels and restoration of the property; and,
4. That the applicant provides a site plan showing the location of the stored buildings and provides adequate fire routes to the satisfaction of the Township Fire Department.

ALIGNMENT TO STRATEGIC PLAN:

Theme #

- **Champion Strategic Responsible Growth**

BACKGROUND:

An application for an extension to a temporary use bylaw has been submitted by Mr. Larry Pomerantz on behalf of the owner of 9127 Regional Road 20 to allow for a three-year extension to Bylaw 2024-10. The subject property is nearly 20 hectares in size and is located in the Hamlet of Fulton.

In February of 2024, the agent and owner were granted approval of Temporary Use Bylaw 2024-10 which added rain barrel and composter storage as a permitted use on the property for a period of 12 months, ending on February 26, 2025. This approval was subject to the owner entering into a temporary use agreement with the Township and the provision of a grading plan for the site.

An application has now been received to extend the temporary use on the property by three years or until the Fulton Rural Employment Land Use study has been completed.

Staff have attended the site in December of 2024 and found that there were a number of deficiencies, mainly related to grading and erosion control for the site.

A public meeting was held on January 13th 2025 where a number of residents provided oral comments regarding the application. [Staff Report PD-02-2025](#) was also presented to Committee and Council providing additional background on the application and the property.

CURRENT SITUATION:

Administration has now completed a review of the application against the applicable planning policies and have also taken into account a Planning Justification Letter completed by Mike Sullivan of LandPro Planning Solutions, received just prior to the public meeting and the comments raised by members of the public and committee. Administration also received an additional Planning report from LandPro Planning Solutions in late January.

Planning Act

The Planning Act in [Section 39](#) allows for local municipalities to authorize the temporary use of land, buildings or structures for any purpose that is otherwise prohibited by the

bylaw through the approval of a Temporary Use Bylaw. These bylaws cannot exceed a period of three years from the date of the passing of the bylaw. Council's may grant further extensions provided that they do not go beyond three years as well.

The Planning Act states that upon the expiry of the bylaw, the use is no longer permitted to continue.

The Planning Act requires that Temporary Use Bylaw's follow the same public consultation and approval process as a Zoning Bylaw Amendment.

Provincial Policy Statement 2024

The subject property is designated as being within a Rural Settlement in the [Provincial Planning Statement](#). Prior to the new Niagara Official Plan approved in 2022, the property was designated as Prime Agricultural Area. Provincial policy states that Rural Settlement Areas are to be the focus of growth and development within rural areas and that Planning Authorities shall give consideration to locally appropriate rural characteristics, the scale of development and the provision of appropriate service levels.

The Township has commenced the Fulton Rural Employment Land Use Study to review the subject property as well as the surrounding lands to determine what is appropriate rural development and scale in this area.

Based on Administration's review of the site and the use, as well as the number of concerns from neighbouring residents and farmers, this use is not appropriate in this location.

Niagara Official Plan

The subject property is also designated as Rural Settlement in the Niagara Official Plan as well as has a special policy 8.13.4 which requires the lands to be designated in the Township's Official plan for rural employment uses.

The Niagara Official Plan, in alignment with the Provincial Policy Statement requires the protection and enhancement of the character of rural settlements. This includes ensuring that development in rural settlements are planned to have adequate amenities to serve the needs of rural residents, area businesses and the surrounding nearby agricultural community.

The use on the property does not appear to have a direct connection to nearby agricultural community, but rather supports rain barrels sales in urban centres and internationally.

West Lincoln Official Plan

The Township's Official Plan has the subject lands designated as Hamlet Settlement Area. Similar to the Region's Official Plan, the policies in the Township's Official Plan support

uses that provide service to the larger agricultural and rural community. Further the Township’s Official Plan requires that uses be compatible within the hamlet. The Official Plan also states that Council shall have due regard to the compatibility of the proposal with neighbouring uses.

Based on the number of complaints and concerns raised by neighbouring residents and members of the public during the public meeting, it is evident that the temporary use is not compatible with the surrounding existing uses and does not appear to provide service to the larger agricultural community.

As mentioned previously in this report, the Township is undertaking a study of the Fulton Hamlet expansion area to develop land use policy and zoning regulations to ensure that future employment uses in this area will be compatible with surrounding land uses and that the character of the hamlet be protected.

Township Zoning Bylaw

The subject property is currently zoned Agricultural ‘A’ with a temporary use (T-13) which expires on February 26, 2025. A small portion of the property is also zoned Environmental Protection ‘EP’ near the north east corner of the property.

The Temporary Use Bylaw permits the following:

Temporary Use Provision	Map #	Parents Zone(s)	Property Description	Permitted Temporary Use	Regulations	Start Date	Expiry Date
T-13	A2	A	Concession 8, Part Lot 34 and 35	<i>Outdoor storage for rain barrels/ composters for 12 months</i>	As per the parent zone, subject to a Temporary Use Agreement	February 26, 2024	February 26, 2025

The applicants are requesting that this zoning be extended for an additional three years or until the Fulton Rural Employment Area Study is completed.

The applicants have submitted a professional planning opinion on January 9th to the Township regarding the extension request. The letter appears to focus on the agreement rather than the expiration of the temporary use bylaw, and appears to argue that the storage of rain barrels is an agricultural and agricultural related use. Administration does not agree with this interpretation, and believes the storage of these materials is an employment related use. The use has little to no benefit to surrounding agriculture and further based on the public comments received at the public meeting, the use has, or could have a negative impact on agriculture in the area.

As stated previously, this area is intended for future rural employment uses, and to

understand what uses are appropriate for this area, the Township is completing a rural employment land use study.

A further justification report was submitted in late January which focused on the completion of site works on the property. Additionally two letters from an Engineering outlining the remaining site plan deficiencies were received on February 3rd. Due to receiving the letters late, Administration has not been able to verify if the works have been completed as stated in the letter.

The Planning Addendum report prepared by LandPro Planning can be found in Schedule C and provides a list of mitigation measures that the applicant could implement to reduce or eliminate many of the concerns raised by members of the public and Committee. Administration does not believe that implementing these mitigation measures will eliminate the concerns raised as it appears that the use is not compatible with the surrounding land uses.

Administration are recommending that the three year extension be denied, and that a four month extension be granted to allow for the orderly removal of the barrels and the restoration of the site. The applicant has indicated to Administration that the barrels will be sold and completely removed from the site by the end of June.

FINANCIAL IMPLICATIONS:

The Township is currently holding \$20,000 in security for the grading and drainage works required to be completed on the site for the rain barrel storage. As the works have not yet been completed, the Township continues to hold this security.

The Township also collected \$5,000 from the agent as part of the Temporary Use Agreement, as security to ensure that the use was removed following the lapsing of the temporary use bylaw. This security amount would not be sufficient to remove and dispose of the majority of the barrels on the property if the Township became involved in their removal. As such, Administration is recommending a temporary use extension of four months to allow for the agent and owner to remove the barrels from the site, which they indicated would occur regardless by the end of June. The bylaw has been drafted to not permit any further barrels being brought to the site.

A new temporary use agreement has also been prepared, which is found in Schedule E. The new agreement is to ensure that the barrels are removed and that the site is restored to its former condition. It also combines the security into one \$25,000 security to ensure that the barrels are removed and that the site is restored by the lapsing date of the four-month extension.

PUBLIC COMMENTS:

The statutory public meeting was held on January 13, 2025 at the Growth and

Sustainability Committee Meeting. Five members of the public provided oral comments before Committee with concerns and opposition around the request for extension.

The concerns raised included: drainage, environmental impacts, the impacts to surrounding farmland, operation of a waste disposal site, the origin and toxicity of the barrels, Ministry of Environment inspections, fire protection plan, exit clean-up plan, impacts to economic development and issues regarding the landowner's involvement.

Administration conducted a scheduled site visit in December and do note that there are a number of drainage and sediment control issues on the property which need to be addressed. What has been constructed on the property is not compliant with the Temporary Use Agreement. Administration inspected a few of the barrels when on site following a delivery, and can confirm that the labels on the black barrels indicated they were originally from Asia and were used for shipping cucumbers to Mississauga. Staff only looked at a small number of barrels, however, the applicant has confirmed following the public meeting that all barrels are food grade.

In additional correspondence with LandPro Planning Solutions, they have also indicated that the barrels are sold to municipalities and charities for rain barrel sales, including the City of Hamilton which is a large customer. Administration contacted the City of Hamilton Rain Barrel program and they indicated that they only purchase new rain barrels and do not accept any used or refurbished rain barrels. Administration has also reached out to the City of Guelph but has not yet heard back at the time of writing this report. As such, Administration has concerns regarding the accuracy of the information provided in the application and planning reports received.

Administration Staff have reached out to the Ministry of the Environment, Conservation and Parks (MECP) compliance division. They have indicated that there may be compliance issues related to the subject property for run-off and the water retention pond which they will begin investigating.

The West Lincoln Fire Services has also been involved and has provided comments further in this report.

COMMITTEE COMMENTS:

Committee raised concerns with the site works not being completed as per the temporary use agreement, involvement of the owner, and increase of security to ensure the clean-up and restoration of the site, firefighting protection, height of barrels, accuracy of information being provided, berm height and alteration and the grade and source of the barrels.

Based on the concerns raised by members of the public and Committee, the use of the property is not compatible with the surrounding land uses and community.

INTER-DEPARTMENTAL COMMENTS:

FIRE SERVICES – The Township Fire Department has requested that a 6 metre fire lane be provided throughout the site to provide access for firefighting. The approved site plan does not show details regarding where the barrels are stored. The Fire Department is not aware of any additional special regulations regarding the storage of plastics, such as rain barrels under the Fire Code. It is the Fire Department’s understanding that the barrels are made of HDPE plastic which is difficult to ignite and sustain burning and as such is not covered in the Ontario Fire Code.

OPERATIONS DEPARTMENT– Administration has completed a site visit in December of 2024 and can confirm that the site works, as required by the approved grading and drainage plan, have not been completed. The Township is holding \$20,000 in security for the completion of the site works, including grading and stormwater management works.

BUILDING DIVISION – There is nothing in the Ontario Building Code that would apply to the storage of barrels as they are not located within a building but stored outside.

This report was also reviewed by the Director of Corporate Services/CFO, the CAO, and the Clerk’s Department.

CONCLUSION:

Administration is recommending that the application for a three year extension to the temporary use be denied and that a four month extension be approved to allow for the orderly removal of the barrels and the restoration of the site. Due to the number of barrels on the property, it would be challenging for the applicant to remove all the barrels prior to the lapsing of the current temporary use. Further, if the Township was to be involved with the removal of the barrels, this could generate a large expense for removal, and would require a significant timeline to get to compliance.

SCHEDULES:

- A. Location Map
- B. Planning Justification Report LandPro Planning
- C. Addendum Report – LandPro Planning
- D. Draft Temporary Use Bylaw
- E. New Temporary Use Agreement

Prepared & Submitted by:

Approved by:

**Gerrit Boerema
Director of Planning & Building**

**Truper McBride
CAO**