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Planning & Development Department
Township of West Lincoln
Smithville, ON

Professional Planning Opinion
9127 Regional Road 20
Fulton Hamlet

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This letter is provided in response to the Township of West Lincoln's request for justification to extend a Temporary Use By-law to permit the continued use of the property for outdoor storage of rain barrels, which the Township considers to be a Garden Centre at 9127 Regional Road 20.

1 BACKGROUND

1.1 TEMPORARY SITE PLAN USE AGREEMENT

In 2024, Larry Pomerantz (Client), entered an agreement to purchase 9127 Regional Road 20, from Giovanni DiFlavio (Owner), to establish:

"an outdoor storage area for rain barrels/composters not to exceed 9,712.45 square metres (0.97 hectares/2.4 acres) for a period not to extend beyond 12 months, in accordance with Temporary Use By-law 2024-10 passed for that purpose or extensions thereto;"

The Agreement, which is between DiFlavio and the Township, also references Pomerantz as the tenant. It requires that full Site Plan Agreement is required for permanent establishment of:

1. Rain barrels/composters, OR
2. Other commercial/industrial use of the lands

We understand that the current property owner may have a history of using this property for uses which may be questionable under the Zoning By-law. This includes the importation and grading of fill, without a permit, among other activities. This unrelated activity could have resulted in a bias with the Township. Our client, in response, is seeking permission for this use, independent of the current owner's activities. This puts the proposed development at a distinct disadvantage when seeking permission for their proposed use.

This Agreement includes a series of definitions that we can only assume are taken from the Townships Official Plan and related documents. The terms of this Agreement seem reasonable and directed towards a full Site Plan Agreement, which may be appropriate for this purpose.

We have reviewed these definitions and found that they have been interpreted literally for this matter, which limits the choices of uses to more traditional agricultural ones, including agriculture related, per the Province's Guidelines.

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The storage of rain barrels, as are the focus of this Temporary Agreement and its renewal, support agricultural uses. As a result, they meet the definition of “Agricultural Use” and “Agriculture-Related Use.” The Township has interpreted the definitions literally, which do not acknowledge or support the proposed use. This is unfortunate and, in our opinion, contrary to the intent of this business or the use of rain barrels. This position will be further explored later in this letter.

It is our opinion that the definitions of “Agricultural Use” and Agriculture-Related uses” both focus on primary uses. This application proposes rain barrel storage as a secondary or accessory use, which is not specifically addressed in the definitions provided. It is also our opinion that rain barrels are regularly used by agricultural operations and gardeners, to reduce reliance on municipal water supplies, wells and cisterns, while also demonstrating sustainability in their operations.

We view this application as appropriate for Agricultural lands on which it is currently operating. We also view it as compatible with the WSP Employment Lands Study planned for 2025.

2 PROJECT CONTEXT

In reviewing the subject property, the applicant has an option to purchase 9127 Regional Road 20 and currently operates a portion of his business at this location. To date, he has received a temporary use permit to operate rain barrel storage at this location for a period of up to one (1) year, which expires in January 2025.

The Township has recently retained WSP Canada to undertake a Fulton Hamlet Employment Study, which will result in the redesignation of lands within the newly created Fulton Hamlet, to employment. Subject to Council approving the requested extension, it will coincide with the completion of the Fulton Study, which will be implemented with Official Plan and Zoning By-law Amendments, that will presumably redesignate and zone the properties within Fulton to employment uses. This would include the subject property.

We understand that the Region of Niagara approved the creation of Fulton Hamlet in 2022, which effectively brings the subject lands into a hamlet (urban area), ultimately removing them from the agricultural designation. However, the lands remain designated and zoned Agricultural until they are converted to an appropriate designation to facilitate their use as employment lands. More recently, the Township has retained WSP Global to undertake the Fulton Hamlet Employment Lands Study, which will result in Amendments to both the Official Plan and Zoning By-law that will facilitate future establishment of employment (commercial & industrial) uses within Fulton. While this study is yet to commence, it is clear from reviewing the Request for Proposal, that the Township envisions this change being implemented.

It is finally our understanding that the property owner’s relationship with the Township may have muddied the opportunity to operate a non-traditional use, that of storing rain barrels for commercial use, at this location. The tenant, being Mr. Pomerantz, wants to gain permission for using this property for rain barrel storage before purchasing the property from Mr. DiFlavio. The Temporary Site Plan Agreement is written to Mr. DiFlavio, with references to Mr. Pomerantz, as is legally required. However, this is one reasonable way to write the Temporary Agreement. Ideally, Mr. Pomerantz would like his proposed use to be longer than one (1) year prior to purchasing the subject property. Normally Temporary Agreements are for three (3) year durations, which would

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give Mr. Pomerantz some certainty before investing further in this property. In this instance, we understand that Township staff determined that 1.5 years was appropriate, while Council ultimately approved one (1) year. We suggest this is based on confusion as to the applicant's intention for this property, and possibly the property ownership itself. From a land use planning perspective, it is difficult to quantify the risk to the Township of extending this approval.

3 THE PROPOSED DEVELOPMENT

The development proposed for this property includes rain barrel storage and other goods for sale at local greenhouses.

It is understood that this development will focus on permitting uses, including open outside storage. No new buildings are understood to be involved at this time.

The business has already been in operation for one year, without public comment or complaint.

4 PLANNING FRAMEWORK

In reviewing this matter, it appears that the proposed use does not "fit" with any of the traditional agricultural uses. As a result, Township staff appear to be interpreting the definitions of "Agricultural Use" and "Agriculture-Related Use" literally, recognizing that rain barrel storage, and indeed outdoor storage of goods is not specifically recognized by either definition.

4.1 PROVINCIAL POLICY STATEMENT, 2024

The PPS sets policy for all land uses in Ontario. To be considered good planning, an application must be consistent with the PPS. While there is no specific definition on how to be consistent, it is our understanding that an application must make best efforts to meet the PPS.

With this application, being consistent with the PPS means using this property for agricultural or agriculture-related purposes, which we view as including the storage of rain barrels. The PPS, for example, speaks to permitted uses, yet remains vague on secondary, accessory or supportive land uses. This application focuses on the storage of such uses, being rain barrels.

4.2 GUIDELINES FOR PERMITTED USES ON PRIME AGRICULTURAL LANDS

These are guidelines, which are neither policy nor zoning. They are meant to assist in interpreting the PPS policies. Several municipalities treat them as policy, or worse zoning. Neither is correct.

In our opinion, the rain barrel storage use supports the primary agricultural use, whether it be on-site or off-site.

The Guidelines suggest 2% of a property's land can be used for On-Farm Diversified Uses (OFDU). In this instance, our rough calculations show:

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19.8ha x 2% = 0.396ha (OFDU calculation)

0.65ha/19.8ha = 3.3% (approximately)

The applicant is requesting that approximately 3.3% of the total property be dedicated to OFDU, an increase from the 2.0% set by the Guidelines. The uses proposed for this area include outdoor storage of rain barrels and a garden centre.

Based on our review of drawing C1 prepared by Luban Engineering, the exact dimensions of proposed storage area may be flexible. From our review of the drawing, the area appears to follow a natural drainage channel. This provides a natural limit to the area for storage and results in less, even no removal of agricultural land, which is the principle upon which the Guidelines were approved.

A desktop review of property mapping identifies the area being used for storage of the rain barrels as not being actively farmed. This is likely due to the natural drainage channel's presence and general route, which makes active cultivation of this land difficult.

Based on the above, it is our opinion that this application meets the general intent of the Guidelines and is appropriate for the subject property. However, the development is considered to be commercial by the Township, which complicates matters.

4.3 NIAGARA REGION OFFICIAL PLAN (2022)

A review of the Niagara Region Official Plan notes that the subject property is in a "Rural Settlement." Based on Regional mapping

(<https://navigator.niagararegion.ca/portal/apps/webappviewer/index.html?id=4500745f3cd141ddb707913a444e7886>), the Hamlet is known as Fulton. Presently it includes lands on both sides of South Grimsby Road 18, north of Regional Road 20. Regional mapping, however, shows it is to expand west to South Grimsby Road 19. This will result in a significantly increased hamlet size.

The NROP notes that all lands surrounding Fulton are Prime Agricultural, while the subject property and other lands are identified as "No information exists" at the parcel level, while they are included in the Fulton settlement area.

This correlates with the Township's initiative to prepare Official Plan and Zoning By-law Amendments to facilitate Fulton's transition into an employment area. It also leaves the subject and adjacent properties in a "land use planning limbo," where the lands are no longer Agricultural but not yet Employment. This state of limbo effectively means that no development can occur within the expanded Hamlet boundaries until the Township's Amendments are approved. For any landowners hoping to develop, this results in a multi-month-long delay, which is unreasonable.

The NROP has already accommodated Fulton by including this and adjacent properties within its borders. It is now up to the Township to do the same.

This application conforms to the NROP.

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4.4 TOWNSHIP OF WEST LINCOLN OFFICIAL PLAN

The Township of West Lincoln Official Plan (WLOP) is consistent with the PPS and is seeking to conform with the NROP. As a policy document, the WLOP provides more specific policy direction on agricultural and related uses.

Fulton is identified as a Hamlet Settlement Area on Schedule B-3 (Land Use – South Grimsby). The surrounding lands, including the subject property, are designated “Good General Agricultural.” Based on the NROP data, however, the Good General Agriculture designation is obsolete and will be updated based on the outcome of WSP’s contract.

This application will conform to the WLOP, once this application has been approved, and subject to the Township’s Amendments related to Fulton.

5 ANALYSIS

In Ontario, property owners and their municipality have the right to change zoning. Tenants do not. However, with the owner’s permission, the Temporary Agreement could be tailored to the property rather than to the individual who owns the property. This would simplify the Temporary Agreement and result in less confusion and related risk for Township Council to approve it.

Agricultural Uses

Our interpretation of the 2% guideline is that it affords best efforts to meet. Where the need is greater, as is demonstrated here, 3.96% may be justified. Extending the Temporary Use Agreement by up to three (3) years makes sense from a planning perspective. It provides Township Council with an opportunity to review and consider any comments from neighbours or the public as to any impacts (negative or positive). Subject to this, the Temporary Agreement could be made permanent or revised to address any comments. The Guideline applies to the PPS, and by extension the NROP and WLOP, both of which conflict with the applicable policy. In our opinion, relying on the 2% rule from the Guidelines is inappropriate for this application given that the property is no longer considered agricultural.

The NROP identifies the subject property as being within a Settlement Area, known as the Hamlet of Fulton. More specifically, the Good General Agricultural area designation has been removed such that the subject property is now without an approved designation. This leaves the subject property in planning policy limbo, where no changes in land use can be requested until Township Council approves the Amendments, which is scheduled for the end of 2025. This is, of course, subject to change. At issue is the uncertainty this creates for affected property owners, which includes the subject property.

Fulton Employment Study

We understand that Township staff have encouraged the applicant, among others, to wait for the completion of the Fulton Employment Study and its related Amendments until proceeding with their plans. This seems counterproductive to both the Township and the applicants, as the Employment Study may experience delays in receiving approval, which will have resulting delays for applications as is the case here.

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We believe the Township has a low risk, no cost opportunity to guide the Fulton Employment Study towards completion based on existing demand for employment related matters such as this. The WSP study team can easily accommodate any such changes into its work before the final report is approved. Deferring development applications in the study area is a disservice to the Township and affected residents, who can benefit from multiple opportunities to comment and influence the study outcome.

Agricultural or Commercial Uses

Key to this application is the proposed use. Initially, the uses included outdoor storage or rain barrels with a garden centre also proposed. Both uses can be considered either agricultural or commercial depending on scale. Mr. Pomerantz focuses his business on agricultural and rural residential customers for rain barrels.

The storage of rain barrels is not a use per se. It would be classified as outdoor storage from a zoning perspective. Likewise, garden centres are often found in agricultural areas. Although they may be sold to residential customers in urban areas.

The Township kindly provided their definition of a greenhouse use, which seems to rely on a more traditional view of agricultural use, including percentage uses and even setting minimum and maximums for the use of certain areas (retail, office, vegetation storage, etc.). The greenhouse proposed with this application will comply with the Township rules in force at the time of the application.

Purpose of a Temporary Use Agreement

As a last note, it is important to reflect on the purpose of this request to extend a Temporary Use Agreement. The purpose is to allow the use for a limited time, in order to determine if there is any negative impact to adjacent and nearby lands. This is normally quantified by complaints, usually to by-law enforcement. As of the time of this report, we are not aware of any complaints received by the Township.

It is our opinion that based on the above analysis, there are no significant negative impacts resulting from the Temporary Use Agreement which would preclude its extension.

6 PROFESSIONAL OPINION

The applicant has clearly followed the Township's direction to obtain Council approval for a Temporary Use Agreement. This approach has demonstrated good faith in following the Township's requirements for the permitted uses. In applying for an extension to the Temporary Use Agreement, the application further confirms that the Township rules will continue to be followed.

It is our understanding that given the operational space needed for their business, if the Township is unable to approve the extension, they will look elsewhere for a suitable property to continue operations.

It is also our opinion that the uses proposed should eventually be able to occupy more space on the subject property once the Fulton Employment Study and its resulting Amendments are approved. The property is anticipated to be zoned employment, which will facilitate an enlarged area for use by this business. At that

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point, the lands will no longer be agricultural, but rather focused on employment. Removal of agricultural productivity will no longer be an issue.

For the applicant, they simply wish to continue operating their business at this location until the Township rules allow them to expand to their full potential.

In our opinion, there is no risk to the Township of approving an extension to the Temporary Use Agreement. The risk is to the applicant, who seeks permission to continue his business at this location.

7 RECOMMENDATION

Based on our research of this application, we recommend the following:

1. That this Temporary Agreement be extended for up to three (3) years, or until the Fulton Employment Lands Study is completed and approved by Council.
 - a. This is to provide the applicant with some much needed certainty to operate his business.
 - b. It also accounts for delays in completing the Township approvals process.
2. That the processing of this application be made concurrent with the WSP Study and its expected outcome.
3. That the Temporary Use Agreement be tied to the future property owner with the cooperation of the current property owner.
4. That the Temporary Use Agreement be updated to reflect the points noted in this Report.

8 CLOSING

The applicant continues to operate on a good faith basis with the Township. Spatial needs, uses proposed, and the location for said uses are all presented openly to the Township.

If we are agreeing to a Temporary Use Agreement, it should be for three (3) more years in case there are any unexpected delays.

We respectfully request that this brief be considered and acted on in advance of the January hearing date. Please contact me with any questions. We will be attending the hearing and available to discuss as required.

Sincerely,

LANDPRO PLANNING SOLUTIONS Inc



Michael Sullivan, MCIP, RPP
President | Founder