

Bylaw #2022-50

Temporary and Construction Uses

Status: Approved

Meeting Date: April 19, 2022



A By-law to Regulate the Use of Construction Agreements

Whereas the Municipal Act, 2001, S.O. 2001, c.25 Section 9 provides that municipalities have the powers of a natural person under the law.

And Whereas the Municipal Act, 2001, S.O. 2001, c.25, Section 11 confers broad powers to municipalities, including the ability to pass bylaws relating to structures.

And Whereas the Municipality of Highlands East acknowledges that in specific circumstances, it may be desirable to enter into agreements with individuals to permit time limited uses of accessory structures or dwellings during the construction process.

Now Therefore, the Council of the Municipality of Highlands East enacts as follows:

1. That the following schedules form part of this by:
 - a. Schedule "A" - Policy to Govern Temporary Uses for Construction Purposes
 - b. Schedule "B" - Application for Construction Agreement
2. That Schedules A and B may be amended from time to time by resolution of the Council for the Municipality of Highlands East without amendment to this bylaw.
3. That this bylaw shall be effective the date of its passing.
4. In the event that section or sections of this by-law thereof are found by a Court of competent jurisdiction to be invalid or ultra vi res, such section, sections or parts thereof shall be deemed to be severable, with all other sections or parts of this by-law remaining in the full force and effect.

Enacted, Approved and Signed with the Corporate Seal attached on April 19, 2022.



Originals Signed

Dave Burton, Mayor

Originals Signed

Robyn Rogers, Municipal Clerk

Policy

Policy to Govern Temporary Uses for Construction Purposes



Policy No.: P-008
By-law #: 2022-50
Department: Planning
Effective Date: 19 Apr 2022
Revision Date: Each Term of Council

Purpose:

The Municipality of Highlands East Comprehensive Zoning By-law 2005-29 as amended outlines the permitted uses on land within the Municipality. This by-law restricts the construction of certain types of structures and buildings prior to the construction or issuance of a building permit for the principle use or building.

The Municipality of Highlands East recognizes that there may be situations wherein a landowner may require the construction of an accessory building prior to the erection of a principal building, which contravenes Section 3.1(a) of Zoning By-law 2005-29. The Municipality also recognizes there may be situations wherein a landowner may require the use of an existing dwelling on a lot while a new dwelling is being constructed, in contravention of Section 3.5 of Zoning By-law 2005-29.

This policy provides direction to staff in responding to such requests, and provides information to the public with regard to the Municipality's policies for temporary construction uses.

Scope:

1. The Zoning By-law regulates the development of land within the Municipality of Highlands East, and compliance with the Zoning By-law is a requirement for all building permit applicants. Requests for temporary relief through this policy shall not permit any long term non-compliance with the Zoning By-law.
2. Applications to construct any structures that are not compliant with the setback, size or lot coverage provisions of the Zoning By-law must seek planning relief through the Zoning By-law Amendment or Minor Variance process. This policy does not circumvent the public planning process.
3. The following uses or structures may not be permitted through this policy:
 - a. The construction of any accessory structure designed for human habitation, including but not limited to sleeping cabins or sleeping cabins/lofts situated within a garage.
 - b. The use of a trailer or recreational vehicle for temporary habitation, as this is addressed through the Municipality's Recreational Vehicle By-law.
 - c. The construction and use of any structure for the keeping of animals on a vacant lot, including kennels, dog houses or runs, chicken coops or housing for any other domesticated animal.

- d. Accessory structures within 20 m of any permanent watercourse or lake, including decks, gazebos or screened in structures.
 - e. Any use that is not otherwise permitted as a principal or accessory use for the zone provision of the subject property.
4. Construction Agreements are permitted only in situations where the non-compliant use will be in place for a short period of time. For clarity, the maximum time period that a use may be permitted through a Construction Agreement shall be 12 months from the date of the execution of the agreement.
 5. When a non-compliant use will be required for a period greater than 12 months, the landowner must apply for and receive a temporary use by-law for a period not exceeding 3 years.
 6. This policy shall not limit the ability for the Chief Building Official to permit structures under Sections 3.35 and 3.4 of the Zoning By-law.
 7. Temporary structures erected through either a Construction Agreement or a Temporary Use By-law must comply with the Ontario Building Code and the setbacks imposed by the Zoning By-law and must be fully permitted by the Chief Building Official for the Municipality or his/her designate.

Definitions:

Accessory Building:

A separate building or structure, which is incidental, subordinate, exclusively devoted to and located on the same lot as the principal use, building or structure but not including a building or structure which is used as a dwelling unless specifically permitted.

Accessory buildings, for the purpose of this policy, include garages, workshops, sheds and other enclosed storage buildings. Accessory buildings do not include any building intended for human habitation or boat houses.

All accessory buildings that are to be temporarily permitted under this policy must comply with the size, setback and lot coverage provisions of Zoning By-law 2005-29 as amended.

Principal Building:

Any building which is carried on the principal purpose for which the building lot is used and shall include a barn or silo used in conjunction with a farm.

Non-Compliant Use:

The use of a property that does not comply with the provisions of the Municipality of Highlands East Comprehensive Zoning By-law 2005-29 as amended.

For the purposes of this policy, non-compliant is meant to refer only to *temporarily* non-compliant uses, such as a second dwelling on a lot for the duration of construction, or the construction of an

accessory building in the prior to the construction of a dwelling. This policy does not permit uses that are generally non-compliant with the zone designation for the subject property.

Construction Agreement:

A binding agreement between the property owner and the Municipality of Highlands East to permit temporary uses while constructing or reconstructing a principal building on the subject property.

Construction agreements are permitted for short term uses only and do not replace the requirement for planning relief should the construction of any structures under the agreement not meet the zone provisions outlined in Zoning By-law 2005-29 as amended once the principal building has been erected.

Temporary Use By-law:

A zoning by-law passed by the Council of the Municipality of Highlands East to permit a specific use for a period of up to but not exceeding three years. Temporary Use By-laws are amendments to the Zoning By-law and are subject to the requirements of Section 34 of the *Planning Act*.

Once a temporary use by-law has expired, the use of the property must revert to its original zone provisions and the property must be compliant with these provisions.

Zoning By-law:

The Comprehensive Zoning By-law for the Municipality of Highlands East, being By-law 2005-29 as amended.

Construction Agreements:

1. All landowners wishing to enter into a Construction Agreement must complete an application in full and provide the following to the satisfaction of the Chief Building Official or his/her designate:
 - a. A completed application.
 - b. A copy of the parcel register (PIN) providing the legal description for the property and names of the legal owners for the property.
 - c. A copy of the building plans for the structure to be temporarily permitted.
 - d. A completed site plan for the lot illustrating the location of all existing and proposed buildings, their distances to property limits, including the septic envelope.
 - e. A copy of an approved entrance permit received from the appropriate approval authority.
 - f. Proof that a 911 address has been assigned to the property by the County of Haliburton.

2. All Construction Agreements must be approved by Council prior to execution by the Clerk and Mayor of the Municipality. Staff are not delegated the authority to approve or authorize a non-compliant use.

10. Construction agreements shall be registered on title, and shall be removed from title once the terms of the agreement have been fulfilled. All legal costs associated with the review, registration and removal of an agreement from title shall be at the expense of the landowner.
11. The Municipality shall hold a security against all agreements in the amount of five thousand dollars (\$5000.00). Security shall be returned to the landowner when the applicant has fulfilled the terms of the agreement. Failure to fulfill the terms of the agreement may result in enforcement action, and forfeiture of the security.
12. Construction Agreements will not be considered in situations where the landowner is unable to provide evidence to staff that construction for the principal building will be undertaken within 12 months.
13. Construction Agreements shall not be permitted to temporarily legalize a structure that has been unlawfully erected without a building permit.
 14. Construction Agreements shall not be extended. Should a landowner believe that they will not be able to fulfill the terms of the Construction Agreement within the 12 month period, they must consult the Chief Building Official and make an application for a temporary use by-law *at least* 90 days prior to expiration of their agreement. Failure to do so may mean the forfeiture of the construction bond lodged with the Municipality and enforcement action.

Temporary Use Bylaws:

15. All landowners wishing to submit an application for a temporary use by-law must complete an application in full and provide the following to the satisfaction of municipal planning staff:
 - a. A completed Zoning By-law Amendment Application in compliance with O.Reg. 545/06 under the Planning Act.
 - b. A site plan illustrating all existing and proposed structures on the lot and distances to property limits.
 - c. A letter outlining the nature of the request for Council's consideration.
 - d. The applicable fee.
16. Temporary Use By-laws are amendments to Municipality's Zoning By-law and are subject to all of the requirements for Zoning By-law amendment applications under Section 34 of the Planning Act. This includes the notification of neighbouring landowners together with a public meeting.
17. All amendments to a municipal zoning bylaw are subject to third party appeal under Section 34 (19) of the Planning Act. The applicant is wholly responsible for the payment for any costs incurred by the Municipality in the case of an Ontario Land Tribunals appeal.
18. The Council of the Municipality of Highlands East reserves the right to impose site plan control on lands subject to a zoning by-law amendment application to ensure the proper and orderly development of the property.
19. Temporary Use By-laws may be in force for a period not to exceed 3 years, as per the requirements of Section 39 (ii) of the Planning Act. The only means by which a Temporary Use By-law may be extended by the passage of a by-law by the Council of the Municipality of Highlands East. Staff are not able to permit extensions.

20. Upon expiry of a Temporary Use By-law, the regular zone provisions for the lot come into force. Any non-compliance with these provisions may result in the requirement for a landowner to make an application to amend the zoning by-law or enforcement action.

Enforcement:

21. Registered landowners are wholly responsible for ensuring that development on their lot is compliant with the Zoning By-law and Ontario Building Code. The Municipality bears no responsibility for negligence on the part of the landowner or their agents.

22. It is the responsibility of the registered landowner to ensure that their property is brought into compliance with the Zoning By-law prior to expiry of their Construction Agreement or Temporary Use By-law.

23. Failure to comply with the Provisions of the Zoning By-law, the Ontario Building Code, or the requirements under either a Construction Agreement or Site Plan Agreement can result in the loss of securities or bonds lodged with the Municipality and/or enforcement action.

Administrative Information:

Mandatory:

No

Attachments:

[Construction Agreement Application](#)

Revision Log:

Number	Date	Description