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MGP File: 18-2711

Hena Kabir
Town of Whitchurch-Stouffville
111 Sandiford Drive
Stouffville, ON L4A 0Z8

via email: hena.kabir@townofws.ca

Attention: Hena Kabir
Manager Development Planning

Dear Ms. Kabir:

**RE: Planning Opinion Letter – Extension of the Temporary Zoning By-law
2005 Bethesda Rd., Town of Whitchurch-Stouffville
Town of Whitchurch-Stouffville File ZBA15.010**

Malone Given Parsons (“MGP”) was retained by the DiCostanzo family and The Vianova Group Inc. to provide a Planning Opinion Letter for the extension of the Temporary Zoning By-law for the lands located at 2005 Bethesda Rd. in the Town of Whitchurch-Stouffville (“Subject Property”). The proposed extension of the temporary by-law would facilitate the storage, assembly, and cleaning of scaffolding and other construction materials and parking for automobiles and trucks on a temporary basis.

Application History

An application for an Official Plan Amendment, Zoning By-law Amendment, and Draft Plan of Subdivision was made in October, 1991 with respect to the Subject Property together with other lands and continues to remain open at the Town. The applications were to redesignate the lands from “Rural” to “Prestige Industrial” and “General Industrial” and to rezone the lands from “Rural” to “Industrial General” and “Industrial Prestige”. The application was appealed to the OMB based on Town Council’s refusal to enact the proposed OPA and ZBA. The Board made no decision on the merits of the application. In a Decision issued on November 4, 1994, the Board ordered that the applications could be brought back for hearing at the request of the Owners, once 50% of existing and approved lands for dry industry within the Town reached the building permit stage.

The Subject Property together with other adjoining lands owned by the applicant, was deemed the preferred site for Aluma-Safway for their Canadian Eastern division. Aluma-Safway, partially owned by Brookfield Asset Management, is an internationally recognized company specializing in the manufacturing and distribution of construction equipment. Though Aluma-Safway recognizes that the proposed land uses are not currently permitted as the OPA, ZBA, and Draft Plan of Subdivision applications are still under review, the Subject

Lands offer the necessary connections to their supply chain and the greater region for distribution. Aluma-Safway also recognizes the DiCostanzo Lands' proximity to the Metrolinx Transit Facility which would provide an alternative means for future employees to commute to and from work. The location of the DiCostanzo lands provided the necessary critical mass and configuration for the intended uses and would be able to benefit from the synergies with other business to the south as well as within the Region as a whole.

With respect to access and visibility, the Subject Property benefits from the access and visibility from a major goods movement corridor (Highway 404). This meets the intent of provincial policies for employment lands.

On December 1, 2015, the Town of Whitchurch-Stouffville approved Temporary Zoning By-law 2015-176-ZO to permit the use of the Subject Property for the temporary storage, assembly, and cleaning of scaffolding materials and the accessory outdoor storage of the scaffolding materials until December 1, 2018. The temporary zoning by-law permitted a 223m² temporary tent structure to allow for the assembly of the scaffolding, a temporary portable office trailer (maximum aggregate floor area of 134m²), and the provision of 10 parking spaces for employees. A 7-metre landscape strip along the frontage of the property was maintained to provide screening and act as a buffer from the surrounding uses to the north. The remainder of the Subject Property was proposed to be used for the storage of the scaffolding, shoring materials, and construction equipment and machinery.

On June 5, 2018, the Town of Whitchurch-Stouffville approved Temporary Zoning By-law 2018-091-ZO, granting an extension permitting the storage, assembly, and cleaning of scaffolding materials until December 1, 2021. The extension to the temporary use by-law did not propose any changes to the existing development and no changes were proposed to the siting plan. The location of the tent and trailer and the maintenance of the treed area along Bethesda was proposed to be maintained.

In January 2021, Aluma-Safway set up their Eastern division operations within the portion of the lands that were previously approved Temporary Zoning By-law 2018-091-ZO.

On July 23, 2021, the Town of Whitchurch-Stouffville approved Temporary Zoning By-law 2021-073-ZO, granting an extension permitting the storage, assembly and cleaning of scaffolding and other construction materials and parking of automobile and trucks on 5.25 hectares of a larger land holding of 9.51 hectares. The expansion area intends to serve as scaffolding, shoring, and crane storage. Council required a Site Plan approval application be submitted for the proposed development to finalize the proposed site design, complete updates to all required technical studies and to execute an Amendment to the Site Plan Agreement with the Town. The initial Site Plan Agreement application was submitted on November 4, 2021, a re-submission was provided on April 20, 2022, and the application was resubmitted for a second time on June 7, 2022. The Vianova Group working closely with the Town to get the Site Plan Agreement executed.

Site Location

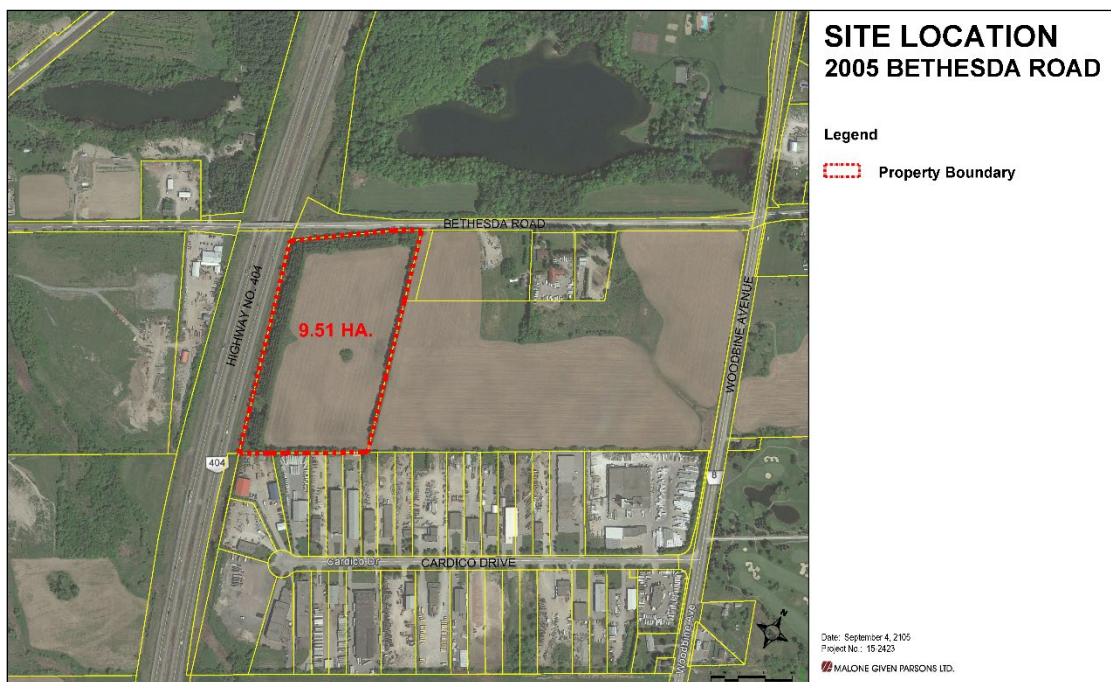
The Subject Property is municipally known as 2005 Bethesda Road. and is located at the south east corner of Highway 404 and Bethesda Road. The lands in their entirety total 9.51

hectares and are surrounded by the Gormley Industrial Area to south, Highway 404 to the west, and rural uses to the north and east. Figure 1 below displays the site location.

Table 1: Legal Description of Subject Lands

Owner	Municipal Address	Legal Description of Property	Lot Area (ha)
The Vianova Group Inc.	2005 Bethesda Rd.	PCL 5-1 SEC W3; PT LT 5 CON 3 (WW) PT 1 65R14297 ; WHITCHURCH-STOUFFVILLE	9.51

Figure 1: Site Location



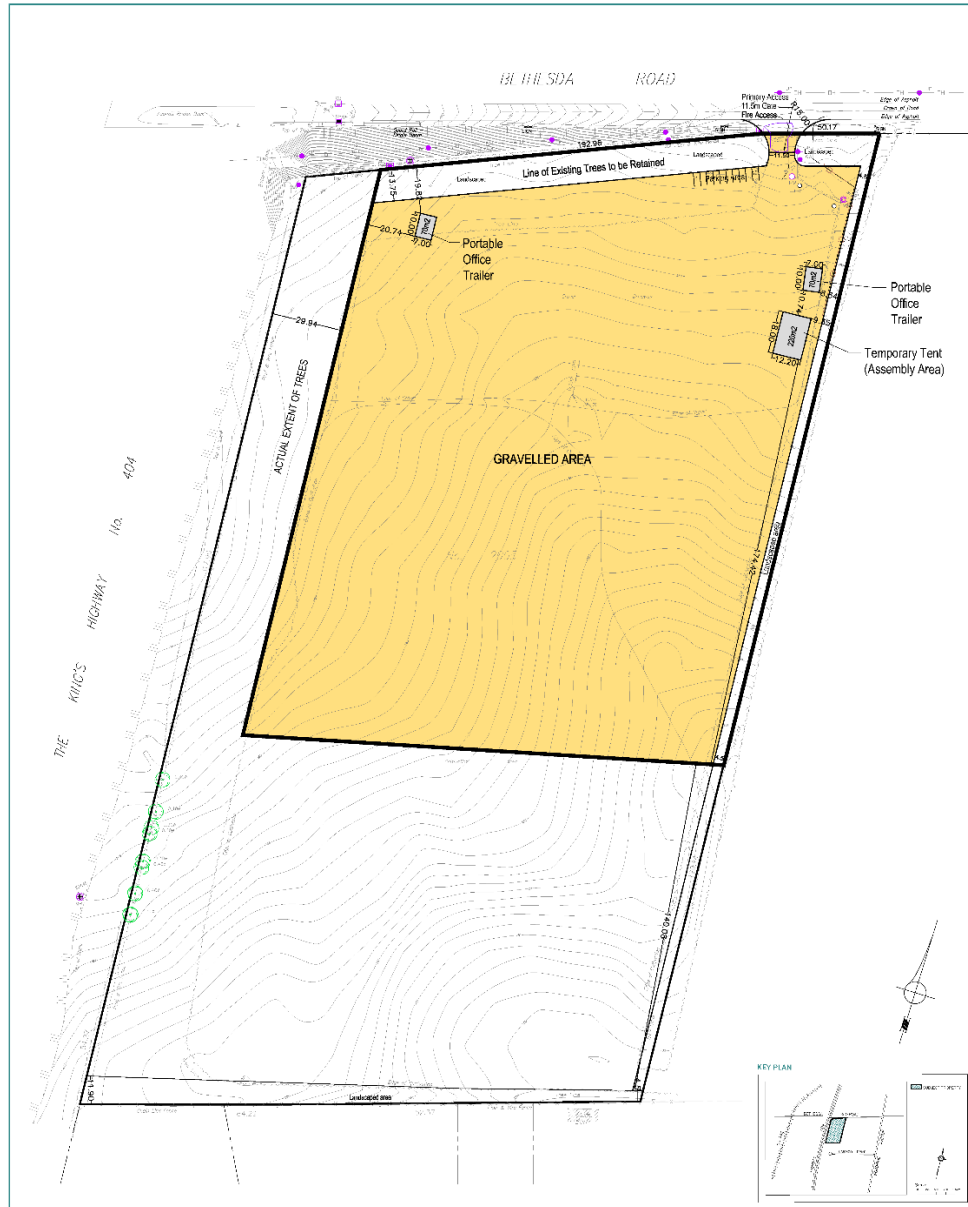
Request – Extension of the Temporary Zoning By-law

Mr. DiCostanzo (The Vianova Group Inc.) would like to request the following with respect to the extension of the temporary zoning by-law:

- That the temporary use be extended for another 3 years to allow Mr. DiCostanzo and his team to resolve planning permissions on the site with Town staff and the Local Planning Appeals Tribunal without impeding business operations; and,
- That under Section 1: Permitted Uses, the wording of Section 1.ii) be revised to “Temporary tent structures and associated office trailers shall be permitted for assembly, storage and cleaning of scaffolding materials, outdoor pool materials and related construction equipment and the accessory storage of the scaffolding, outdoor pool materials and related construction equipment on the subject lands and parking

for automobiles and trucks until December 1, 2027 Related construction equipment includes: steel crane tower sections, pile drivers, mini excavators, fork lifts, and mobile cranes. No construction equipment/materials that will pose a threat for environmental contamination will be permitted.”

Figure 2: Proposed Site Plan



SITE PLAN 2005 Bethesda Road		Site Statistics:		El. Zone Regulations	
<p>Project: 1750 Prepared for: Valdi Alliance Date: 09/19/2024</p>		<p>Zoning: Employment/Light Industrial (E-L) (2013-075-20) By-law: General Zoning By-law No. 2016-001 ZO as amended by (2015-176-22); (2017-090-22); (2018-09-20); (2021-075-22)</p> <p>Total Property Area: 9.51 ha (23.50 ac) Site Plan Area: 5.25 ha (13.02 ac) Gravelled Area: 4.88 ha (12.01 ac) Landscaped Area: 0.38 ha (0.95 ac)</p> <p>Coverage Calculations Tent Structures / Site Plan Area: 320 m² / 5.25 ha = 0.61% Office Trailers / Site Plan Area: 142 m² / 5.25 ha = 0.28%</p> <p>Parking Regulation: 1.6 spaces / 100 m² GPA Required: 6 spaces Proposed: 10 spaces Parking Space: 2.75 m x 5.5 m Aisle Width: 5.5 m</p>		<p>Regulation: Minimum Lot Area: 0.4 ha Minimum Lot Frontage: 30 m Minimum Front Yard: 15 m Minimum Exterior Side Yard: 7.5 m Minimum Interior Side Yard: 2.5 m Minimum Rear Yard: 2 m Minimum Floor Space Index: 1 Minimum Landscaped Area: 10% of lot area Front Yard Landscaped Area: 25% of front yard area Landscaped Yard: 4.5 m</p> <p>Required: 0.4 ha Proposed: 5.25 ha 30 m 15 m 7.5 m 2.5 m 2 m 1 10% of lot area 25% of front yard area 4.5 m</p>	

Planning Context

Provincial Planning Act, 2024

It should be noted that on August 20, 2024, the Province issued the new Provincial Planning Statement, 2024 (“2024 PPS”). The 2024 PPS provides a streamlined provincial wide planning document that replaces the 2020 Provincial Policy Statement and 2020 A Place to Growth: Growth Plan for the Greater Golden Horseshoe (“Growth Plan”) to provide for a simplified and integrated land use planning policy framework, combining and updating elements from both the PPS and Growth Plan. The 2024 PPS will be effective on October 20, 2024. The Growth Plan will be revoked effective on the same date.

The 2024 PPS directs that provincial plans, including the Oak Ridges Moraine Conservation Plan, be read in conjunction with and take precedence over the policies of the Provincial Planning Statement to the extent of any conflict, except where the relevant legislation provides otherwise. As such, the policies of the Oak Ridges Moraine Conservation Act and Plan are relied on for this application.

Transitional Policies

The Subject Property benefits from the transitional status under the Growth Plan and the Oak Ridges Moraine Conservation Plan based on the OPA, ZBA, and Draft Plan of Subdivision applications that were filed on October 1991 and the fact that a Decision has not been made on these applications. As such, this application for the temporary use zoning by-law should be evaluated based on the transitional policies of the relevant plans.

Oak Ridges Moraine Conservation Act and Plan

The Subject Property is located within the Oak Ridges Moraine Conservation Plan (ORMCP) Area and is within the “Countryside Area” designation. Section 15(2) of the ORMCA outlines the transitional provisions and conformity requirements for decisions made under the Planning Act. It directs that in making a decision under the Planning Act, the decision making body shall “*conform to the prescribed provisions of the Oak Ridges Moraine Conservation Plan as if the Plan were in force on or before the date the application, matter or proceeding was commenced, if,*

- a) *The application, matter or proceeding was commenced before November 17, 2001; and*
- b) *On November 17, 2001, no decision has been made in respect of the application, matter or proceeding.”*

The OMB did not render a decision on the OPA, ZBA, and Draft Plan of Subdivision applications. As such, the transitional policies of the ORMCA apply. This status was confirmed by the Town in its letter dated July 28, 2004.

For this matter, Section 48 of the ORMCP outlines the prescribed provisions with which transitional sites need to comply. The following how the proposed temporary-use meets the test of the prescribed policies.

Section 20 – Supporting Connectivity: *“Every application for development or site alteration shall identify planning, design and construction practices that ensure that no buildings or other site alterations impede the movement of plants and animals among key natural heritage features, hydrologically sensitive features and adjacent land within Natural Core Areas and Natural Linkage Areas.”*

Response: The report entitled “Natural Heritage Evaluation – 2005 Bethesda Side Road, Town of Whitchurch-Stouffville, Ontario” completed by Beacon Environmental and dated September 11, 2015 states that there are no Key Natural Heritage Feature or Hydrologically Sensitive Features on the Subject Property. The wetland located on the north side of Bethesda Rd. is more than 120m from the Subject Property and the woodland associated with the wetland is located outside of the 30m of the Minimum Vegetation Protection Zone (MPVZ). Additionally, Beacon has stated that they are of the opinion that no pathways of connectivity occur on the subject property (Page 7). Therefore, the proposed temporary use conforms with Section 20.

Section 22 – Key Natural Heritage Feature: *Key Natural Heritage features include Wetlands, significant portions of the habitat of endangered, rare and threatened species, fish habitat, areas of natural and scientific interest (life science), significant valleylands, significant woodlands, significant wildlife habitat, sand barrens, savannahs and tall grass prairies. Development and site alteration within a Key Natural Heritage Feature and within the MPVZ of a Natural Heritage Feature is generally prohibited. As per subsection 3, development and site alteration with respect to land within the minimum area of influence that relates to key natural heritage features, but are outside of key natural heritage features itself and the related minimum vegetation protection zone, shall be accompanied by a natural heritage evaluation.*

Response: As previously stated, the Beacon Environmental Natural Heritage Evaluation states that there are no Key Natural Heritage Features on the Subject Property or within the 30 m MPVZ of an offsite Key Natural Heritage Feature. The Natural Heritage Evaluation addresses subsection 3 of Section 22. Therefore, the proposed temporary use conforms with Section 22.

Section 23: Requirements for a Natural Heritage Evaluation- *A natural heritage evaluation shall (a) demonstrate that the development or site alteration applied for will have no adverse effects on the key natural heritage feature or on the related ecological features, (b) identify planning, design and construction practices that will maintain and, where possible, improve or restore the health, diversity and size of key natural heritage feature and its connectivity with other key natural heritage features;...*

Response: The Beacon Environmental Natural Heritage Evaluation identifies that there are no Natural Heritage Features on the Subject Property and that “development could occur in a manner that is consistent with the requirements and spirit of the ORMCP with respect to the protection of natural heritage features and functions.” (Page 7). Additionally, Beacon is of the opinion that no pathways of connectivity occur through the subject property. Therefore, the proposed temporary use conforms with Section 23.

Section 26: Hydrologically Sensitive Features- *Hydrologically sensitive features include permanent and intermittent streams, wetlands, kettle lakes, and seepage areas and springs.*

Development and site alteration with a Hydrologically Sensitive Feature or within the MPVZ of a Hydrologically Sensitive Feature is generally prohibited. As per subsection 3, development and site alteration with respect to land within the minimum area of influence that relates to a hydrologically sensitive feature, but outside the hydrologically sensitive feature itself and the related minimum vegetation protection zone, shall be accompanied by a hydrological evaluation under subsection (4). Subsection (4) states that a hydrological evaluation shall demonstrate that development will have no adverse effects on hydrologically sensitive features; identify practices that will maintain, improve, or restore health, diversity and size of hydrologically sensitive features; and, determine whether or not the minimum vegetation protection zone is sufficient.

Response: As previously stated, the Beacon Environmental Natural Heritage Evaluation states that there are no Hydrologically Sensitive Features on the Subject Property or within the MPVZ of an offsite Hydrologically Sensitive Features. The Natural Heritage Evaluation therefore addresses the requirements in subsection 3 and 4 of Section 26. Therefore, the proposed temporary use conforms with Section 26.

Section 43(1)(b): Sewage and water services – An application for major development shall be accompanied by a sewage and water system plan that demonstrates (b) that the quantity and quality of groundwater and surface water will be maintained;

Response: By definition of the ORMCP, Major Development is “the construction of a building or buildings with a ground floor area of 500 m² or more.” The proposed temporary use on the Subject Property consists of a temporary tent structure totaling 460 m². Therefore, this section is not applicable as the proposed temporary use is not considered Major Development.

Section 45(7) and (8): Stormwater Management – (7) despite anything else in the Plan, disposal of stormwater into a kettle lake is prohibited. (8) Despite anything else in this Plan, new stormwater management ponds are prohibited with respect to land in key natural heritage features and hydrologically sensitive features.

Response: As per the Beacon Natural Heritage Evaluation, there are no Key Natural Heritage Feature or Hydrologically Sensitive Features (including Kettle Lakes) on the Subject Property, thus the proposed temporary use conforms with Section 45 (7) and (8).

Section 47: Rapid infiltration basins and columns – Despite anything else in this Plan, new rapid infiltration basins and new rapid infiltration columns are prohibited.

Response: No rapid infiltration basins or columns are proposed for the proposed temporary use. Therefore, the proposed temporary use conforms with Section 47.

Based on the above responses, the proposed temporary use is consistent with the prescribed provisions as stated in the ORMCP.

York Region Official Plan ROPA 5

The Clean Water Act (2006) was created to prevent the contamination and overuse of municipal drinking water sources. As such, the Act does not have transitional policies pertaining to temporary uses and requires temporary uses to be consistent with its policies.

Regional Official Plan Amendment 5 (“ROPA 5”) updated the 2010 York Region Official Plan to reflect the information gathered in the Assessment Reports by the Source Water Protection Committee to comply with the Clean Water Act. This amendment introduced updated mapping for Wellhead Protection Areas and Intake Protection Zones, Significant Groundwater Recharge Areas and Highly Vulnerable Aquifers in the Region. The York Region Official Plan 2022 (“YROP”) has since replaced the 2010 York Region Official Plan, carrying over a number of policies from ROPA 5 and introducing new policies relating to source water protection.

Schedule 12 A of the YROP identifies a “Significant Groundwater Recharge Area” and “Recharge Management Area” located on a portion of the Subject Property. The policies of the YROP state that *“in recharge management areas (as shown on Map 12A) development and site alteration will maintain pre-development recharge rates to the fullest extent possible.”* (Section 3.3.7). Section 3.3.5 states *“That major development on the Oak Ridges Moraine is prohibited unless a water budget and water conservation plan is prepared consistent with the applicable watershed plan”*.

In the YROP, Major Development is defined as *“the construction of a building or buildings with a ground floor area of 500 square meters or more”*. The proposed temporary use on the Subject Property consists of a temporary tent structure and two portable office trailers totaling 460 m² which is under the 500m² threshold as identified in the definition. This definition of Major Development is the same as the definition of Major Development in the ORMCP. As such, a water budget and water conservation plan as outlined in Section 3.3.5 is not required.

As per Section 7.4.18 of the YROP, *“That all applications, matters or proceedings as defined under the Oak Ridges Moraine Conservation Act, commenced on or after November 17, 2001 are required to conform with the Oak Ridges Moraine Conservation Plan.”* As such, the proposed temporary use is subject to the ORMCP transition policies in which the proposed temporary use complies.

Temporary Zoning By-law

The provision of a temporary zoning by-law to permit the proposed use is governed by Section 39 (1) of the Planning Act. It states that *“The council of a municipality may, in a by-law passed under section 34, authorize the use of land, buildings or structures for any purpose out therein that is otherwise prohibited by the by-law.”* Temporary by-laws are not permitted to exceed 3 years from the day of the passing of the by-law unless council grants and extension (Section 39 (2) and (3)).

Further to the provisions in the Planning Act, Section 8.2.3 of the Town of Whitchurch-Stouffville directs that *“Pursuant to the provisions of the Planning Act, by-laws may be passed to permit the temporary use of lands, buildings or structures which may not conform to this Plan in areas other than the Oak Ridges Moraine Area, provided that the following:*

- I. That the use is compatible with surrounding land uses and activities*
- II. Adequate water and waste disposal activities are available to the satisfaction of the Town and the Region of York Health Services Department;*

- III. *That such temporary uses or activities do not result in a hazardous condition for either vehicular or pedestrian traffic and that the relevant parking area requirements are complied with;*
- IV. *There is a signed agreement between the applicant and the Town which addresses issues related to installation/removal and maintenance; and*
- V. *The Town is satisfied that the nature of the use is temporary and that any buildings and structures are kept to the minimum and can be easily dismantled.*

Section 8.2.3 directs that temporary use by-laws are permitted in areas outside the Oak Ridges Moraine Area. MGP is of the opinion that the permissions of Section 39 in the Planning Act permit temporary by-laws in all areas, even if the uses in those areas are otherwise prohibited by the Official Plan or the implementing zoning by-laws. Pertaining specifically to the Oak Ridges Moraine Area, the policies of the ORMCP do not prohibit temporary uses within the boundaries of the Plan. Furthermore, in our opinion, this section is intended to apply only to those lands which are subject to land use restrictions under the Oak Ridges Moraine Conservation Plan which do not have transition status. The Subject Property is transitioned and not subject to restrictions on land uses and thus this section in our opinion does not apply. It has been outlined how the proposed temporary use is consistent with the prescribed provisions of the ORMCP through the transitional status.

MGP has assessed the proposed temporary use against the prescribed criteria as listed in Section 8.2.3 to test the consistency of the proposed use with the requirements that the Town uses for temporary zoning by-laws. The following demonstrates how the proposed temporary uses meet these requirements.

- I. *That the use is compatible with surrounding land uses and activities*

Response: The proposed employment uses are adjacent to the Gormley Industrial Park and are located off of Highway 404 which would allow for visibility and access to the greater region. The remainder of the surrounding lands is used for rural purposes. The maintenance of the existing treed area along Bethesda Road will provide a natural screen which is compatible with surrounding rural uses. The outdoor storage of scaffolding, outdoor pool materials and construction equipment and automobile and truck parking is compatible with the industrial park to the south. The proposed concept has also been designed to meet the provisions of the appropriate zoning standards.

- II. *Adequate water and waste disposal activities are available to the satisfaction of the Town and the Region of York Health Services Department;*

Response: The portable trailer has sufficient water and waste disposal facilities internally to meet the Town and Region requirements.

- III. *That such temporary uses or activities do not result in a hazardous condition for either vehicular or pedestrian traffic and that the relevant parking area requirements are complied with;*

Response: The vehicular and pedestrian movements are not expected to exceed the normal levels of movement for the area. The 15 parking spaces for employees exceeds the required 8 spaces as per the zoning by-law (1.6 spaces for every 100 sq.m. of GFA)

IV. *There is a signed agreement between the applicant and the Town which addresses issues related to installation/removal and maintenance; and*

Response: an agreement between the applicant and the Town can be arranged at a later time. If a site plan control agreement is necessary, this requirement can be satisfied at that time.

V. *The Town is satisfied that the nature of the use is temporary and that any buildings and structures are kept to the minimum and can be easily dismantled.*

Response: The building on site will be a temporary tent to allow for assembly in inclement weather. Additionally, a portable office trailer will be provided for workers. The Applicant will ensure that the Town is satisfied that these uses are temporary in nature and that the structures can be easily dismantled.

Based on the above analysis, the proposed temporary use is consistent with the evaluation criteria of Section 8.2.3.

Planning Opinion

As per Section 1.3.1.b), planning authorities shall promote economic development and competitiveness by “*providing opportunities for a diversified economic base including maintaining a range of suitable sites for employment uses which support a wide range of economic activity...*” The Subject Lands have been identified by Aluma-Safway as their site for their Canadian Eastern division of operation as it possesses the necessary attributes such as access to the wider region, close proximity to their supply chain, access to transit, and the potential for synergies with the surrounding businesses. The addition of Aluma-Safway to the Canadian market would provide economic benefits to the Town and Region as well as increase the Town and Region’s economic competitiveness in the construction industry. Additionally, the proposed temporary use on the Subject Property is an effective use of the lands for employment purposes that receive the benefit of the visibility and access afforded to the site from Highway 404. Section 1.3.2.3 of the PPS provides that employment should be located in proximity to a major goods movement corridor. The proposed use and location of the Subject Property are consistent with this policy.

The proposed temporary use conforms with the ORMCP as well as the Clean Water Act through York Region’s Official Plan. The Subject Site does not have any Key Natural Heritage Features or Hydrologically Sensitive Features as identified in the Beacon Environmental’s Natural Heritage Evaluation, nor within the MPVZ of the site, and thus meet the criteria of the prescribed provisions in Section 48 of the ORMCP. While a portion of site is identified as a “Significant Groundwater Recharge Area”, the proposed temporary use does not classify as Major Development, and thus is not required to provide a water budget and water conservation plan as per Section 3.3.5 of ROPA 5.

Though not required, the proposed temporary use has been designed to be consistent with the applicable zoning by-law. As per the Pre-submission Consultation from August 17, 2015, it was suggested that the standards of Heavy Employment be consulted for comparable standards. The site has been assessed against these standards and complies with the zone provisions with regard to setbacks, parking, and permitted uses.

The overall concept of the site has been designed to have a minimal impact on the site and its surroundings. The use of a tent structure, a portable office trailer, and the maintenance of the existing treed area along Bethesda Road display the Applicant's intent to provide a temporary use that is suitable for the Subject Property and for the surrounding area. The minor and temporary nature of the proposed temporary use is in keeping with the intent of a temporary zoning by-law.

For the reasons outlined above, it is our opinion that the proposed temporary use represents good planning and the extension of the temporary use by-law should be approved.

The requested extension of the temporary zoning by-law is required to allow Mr. DiCostanzo (The Vianova Group) to continue using the site until the transitional development applications are resolved. Additional time will also provide for the resolution of planning permissions on the site currently held in abeyance by the Ontario Land Tribunal.

We look forward to continuing to work with you on this application. Should you have any questions or require additional information, please do not hesitate to contact us.

Yours very truly,
Malone Given Parsons Ltd.



Matthew Cory, MCIP, RPP, PLE, PMP
Principal

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cc. John DiCostanzo, Verdi Alliance Group of Companies.