
Subject: Application for Tourism Exemption for Holiday Openings under the *Retail Business Holidays Act* – Lowe’s – 7959 McLeod Road, City of Niagara Falls

Report to: Corporate Services Committee

Report date: Wednesday, May 12, 2021

Recommendations

1. That Report CLK 5-2021, respecting Application for Tourism Exemption for Holiday Openings under the *Retail Business Holidays Act* – Lowe’s – 7959 McLeod Road, City of Niagara Falls, **BE RECEIVED**;
2. That the application from Lowe’s store, requesting a tourism exemption under the *Retail Business Holidays Act*, to permit the store located at 7959 McLeod Road, in the City of Niagara Falls, to open on all statutory holidays, with the exception of Christmas Day, from 7:00 a.m. to 9:00 p.m., **BE APPROVED**; and
3. That the necessary by-law **BE PREPARED** and **PRESENTED** to Regional Council for consideration.

Key Facts

- The purpose of this report is to seek Committee’s approval for the application for tourism exemption, under the *Retail Business Holidays Act*, to permit Lowe’s store located at 7959 McLeod Road in the City of Niagara Falls, to open on all statutory holidays, with the exception of Christmas Day, from 7:00 a.m. to 9:00 p.m.
- Documentation supporting this application, received from the City of Niagara Falls, in response to the Region’s request for comments, is attached as Appendix 2 to this report.

Financial Considerations

There are no financial considerations.

Analysis

An application received from Lowe's, 7959 McLeod Road, Niagara Falls, requests a tourism exemption under the *Retail Business Holidays Act* to permit the store to open on all statutory holidays, except Christmas Day, from 7:00 a.m. to 9:00 p.m.

This application has been processed in accordance with By-law No. 6728-92, being a by-law to establish procedures and fees for the processing of applications for holiday openings for tourism under the *Retail Business Holidays Act* and related Ontario Regulation 711/91. The application is available as Appendix 1 to this report.

By-law 6728-92 requires that a public meeting be held in order that any interested persons have the opportunity to comment on the application. A notice of the public meeting respecting this application was posted on the Region's website on April 9, 2021, and in the Niagara Falls Review on April 10, 2021.

On April 8, 2021, a letter was sent to the Clerk of the City of Niagara Falls requesting comments regarding this application. Correspondence dated April 22, 2021, received from the City of Niagara Falls, in support of this request for the tourism exemption for Lowe's, is attached to this report as Appendix 2.

The following two requirements of "Tourism Criteria" in O. Reg. 711/91. s. 2, must both be met by the applicant:

- a) The tourist attractions which the retail establishment must be "within 2 km" of are "natural", "outdoor recreational", "historical", "cultural, multi-cultural or educational" as defined in s. 2 of O. Reg. 711/91. The applicant has stated that Lundy's Lane historical district, and related shopping, hotel and recreational venues are located within two kilometres of the Lowe's store.
- b) The applicant may be exempted from closing on holidays if "it is directly associated with the tourist attraction or relies on tourists visiting the attraction for business on a holiday." The applicant has stated that Lowe's sells many items that are in demand for those travelling to Niagara Falls by automobile. Goods and services provided directly to tourists include recreational products, electric cords and chargers, cleaning supplies, gift items and garden items. In addition, Lowe's offers many products and services that assist the retail, recreation, accommodation and arts establishments that service tourism in Niagara Falls to meet the needs of the tourists who use their facilities.

Alternatives Reviewed

Council could decide not to approve this application for a Tourism Exemption for Holiday Openings for this store.

Relationship to Council Strategic Priorities

This report aligns with Council's Strategic Priority of Supporting Businesses and Economic Growth, specifically Economic Growth and Development (Strategic Objective 1.1).

Other Pertinent Reports

None.

Prepared and Recommended by:

Ann-Marie Norio
Regional Clerk

Submitted by:

Ron Tripp, P. Eng.
Acting Chief Administrative Officer

Appendices

Appendix 1	Application for Tourism Exemption
Appendix 2	Letter of Support from the City of Niagara Falls

Bill 6715, *as amended by By-law No. 19-2010*

THE REGIONAL MUNICIPALITY OF NIAGARA

APPLICATION FOR TOURISM EXEMPTION

RE HOLIDAY OPENINGS

The undersigned hereby applies to the Council of the Regional Municipality of Niagara for an exempting by-law under subsection 4(1) of the Retail Business Holidays Act, R.S.O. 1990, Chapter R. 30.

If more than one person carrying on retail business is represented in this application, please list information for each on a separate page and attach to form.

Pursuant to the Regulations under the Act, an application relating to a retail business establishment that on days other than holidays normally uses a total area of 2,400 square feet or more for serving the public or normally has four or more employees serving the public shall be made only by that business establishment.

(PLEASE PRINT OR TYPE AND ADD EXTRA PAGES, IF NECESSARY)

PART 1 – APPLICANT INFORMATION

1. Type of applicant (please check one):

- ☒ one or more person carrying on retail business in the Regional Municipality of Niagara
- ☐ an association, whether or not incorporated, representing persons carrying on retail business in the Regional Municipality of Niagara
- ☐ a council of a local municipality

2. Name of Applicant: LOWE'S
COMPANIES CANADA, ULC

Mailing Address of Applicant: 220, Chemin du Tremblay, Boucherville, Québec, J4B 8H7
(Lowe's Canada Head Office)

Telephone No. of Applicant: (905) 374-5520 (Store Fax No.
Manager)

Email Address of Applicant: avisjuridiques-
legalnotices@lowes.ca

Bill 6715, *as amended by By-law No. 19-2010*

3. Applicant's Authorized Agent (to whom all correspondence will be sent) Mary Ellen Bench Counsel

Mailing Address of Applicant: Dentons Canada LLP
77 King Street West
Suite 400, TD Centre
Toronto, Ontario
M5K 0A1

Telephone No. of Applicant 416-863-4724 Fax No. 416-863-4592

Email Address of Applicant maryellen.bench@dentons.com

4. Location of Retail Business Establishment

Municipal Address	Street	Lowe's Niagara Falls
Number, Municipality		7959 McLeod Road
		Niagara Falls, Ontario
		L2H 0G5

5. If you wish the exemption to apply to one or more classes of retail business establishments, please define and specify the classes:

Total No. of Sq. Ft. normally used for serving the public: 103,995 square feet

Total No. of Employees normally serving the public: 175 employees

PART II – TOURISM CRITERIA

Tourist attractions are limited to:

- a) Natural attractions or outdoor recreational attractions;
- b) Historical attractions; and
- c) Cultural, multi-cultural or educational attractions.

The two (2) kilometre restriction set out in the Regulations to the Act does not apply to a retail business establishment located in a local municipality within the Regional of Niagara, having a population of less than 50,000.

1. Is business located within two kilometres of a tourist attraction? Yes ☒ No ☐

If yes, describe the nature of tourist attraction:

Lundy's Lane historical district, and related shopping, hotel and recreational venues.

2. Describe nature of direct association with the tourist attraction or reliance on tourists visiting the attraction for business on a holiday

Tourism is the most important business in the City of Niagara Falls, and a major source of employment in the Region. Lowes sells many items that are in demand for those travelling to Niagara Falls by automobile. In addition, Lowes offers many products and services that assist the retail, recreation, accommodation, and arts establishments that serve tourism in Niagara Falls to meet the needs of the tourists who use their facilities. In addition, Lowes plays an important role in assisting local residents who work in the tourism industry and who must work on statutory holidays, to acquire the goods and services they need for their homes conveniently, given the proximity of the store to the tourism areas of Niagara Falls, most notable Lundy's Lane and Stanley Avenue. The location of Lowes makes it convenient to access the broader tourism areas of Niagara Falls as well.

Bill 6715, *as amended by By-law No. 19-2010*

3. Where the application involves a business that one days other than holidays normally uses a total area of 2,400 square feet or more for serving the public, or normally has four or more employees serving the public, please outline the goods or services provided primarily to tourists.

Goods and services provided directly to tourists include recreational products, electric cords and chargers, cleaning supplies, gift items, garden items, and almost everything in the store can be purchased for home delivery. Goods or services that primarily benefit tourists are also provided to restaurants, stores, inns, etc.

This section relates only to applications to grant exemptions on an area basis.

4. a) In what local municipality is it located?

- b) Describe subject area (in words):

(Please attach a map or sketch)

- c) How many businesses are included in this application?
- d) Are all the retail business establishments in the described area within two kilometres of the tourist attraction?
- e) Does the area exceed that necessary to encompass all of the retail business establishments for which an exemption is sought?
- If not, explain how it does not:
- f) How many of the businesses are directly associated with the tourist attraction or rely on tourists visiting the tourist attraction for business on a holiday? (Regulations to the Act require at least 25% of the businesses)
- g) If application is submitted by an association, describe briefly the purpose of the association, the area and type of businesses it represents.

Bill 6715, *as amended by By-law No. 19-2010*

PART III – GENERAL

1. Indicate which holidays, and which specific times or specific number of hours you wish to be open on those holidays:

7:00am to 9:00pm, on all holidays except Christmas

2. Is request seasonal in nature, e.g. summer months only?

If yes, what time period is sought?

N/A

3. What is the justification in relation to the seasonal nature, if any, of the tourist attraction, for the time period sought in the exemption?

4. Is request related to a special event?

NOTE: A retail business establishment may be exempted for up to five holidays a year during which a fair, festival or other special event (but not solely a parade) is being held in that municipality.

For what holidays is exemption being sought?

All holidays. The nature of the business means our goods and services are needed to support the tourism industry regardless of holidays. Our gardening supplies and nursery stock should also be available to the public regardless of holidays.

Describe special event, duration and time of year

5. Indicate how the exemption would, if granted, be for the maintenance or development of tourism and briefly identify other material submitted with this application that supports this conclusion:

Tourism is the most important economic generator for the City of Niagara Falls and the industry employs many from the whole of the Niagara Region, both directly and indirectly. Located close the Lundy's Land heritage district, the Lowes store provides goods that are in demand by tourists, but it also contributes significantly to providing for the goods and services needed to support and maintain the hotel, restaurant, recreational and restaurant industries. Their needs do not stop on statutory holidays, and having Lowes nearby allows the tourism businesses to meet their needs without delay. Also, the many who work in these businesses benefit from having the local Lowes store open to meet their needs on a day they are off work or by picking up an item on the way to or from work.

- 6 -

Approximately 20% of the store PRO sales can be attributed to maintenance items for restaurants, inns, stores that are part of the tourism industry, which is in excess of \$2 million annually in sales.

6. What justification is there for the opening of the retail business establishment(s) on holidays in light of the principle, stated in the Retail Business Holidays Act, that holidays should be maintained as common pause days?

Niagara Falls is unique as a world tourism site and has always been an exception to restrictions on store opening laws as a result. The needs of the tourism industry must be met regardless of whether a day is a statutory holiday.

On April 4, 2020 the Ontario government produced a list of essential service providers during the COVID-19 pandemic. Lowes meets the criteria as an essential service in multiple ways: as a store that sells hardware products and safety supplies, and as a business that supplies other essential businesses and services such as the hotel/motel industry, related to tourism. The important role played by Lowes in supplying goods and services is significant, as recognized by the Province. In addition, Lowes is a retailer of Gardening equipment and nursery stock, items that are meant to be available to the public, regardless of holidays.

EXECUTION BY APPLICANT

I, Antonio Cioffi, of the board of directors of Lowe's Compagnies Canada, ULC do solemnly declare that all of the statements contained in this application are true and I make this solemn declaration conscientiously, believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

Declared before me

Manon Labelle

In the Province of Québec,

this 22 day of March, 2021

Manon Labelle.

Commissioner of oaths

A Commissioner, etc.



(Applicant)

Bill 6715, as amended by By-law No. 19-2010

APPOINTMENT OF AUTHORIZED AGENT

I, Antonio Cioffi, hereby appoint Mary Ellen Bench of Dentons Canada LLP to act as Lowe's Companies Canada, ULC authorized agent in this Application.

Witness:

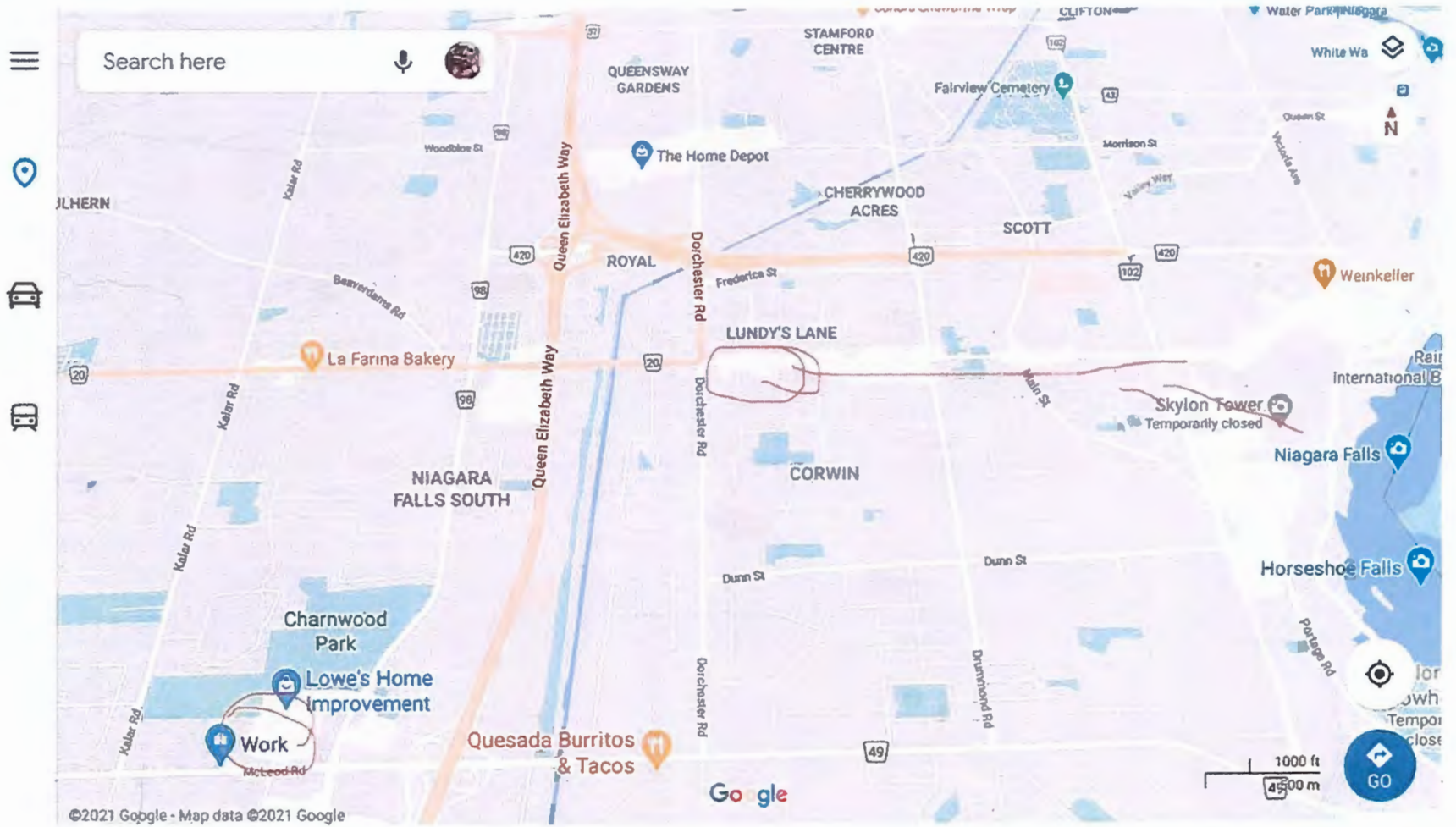
Sharon Weathe

Signed:

Date:

March 22, 2021

A. Cioffi



From: Heather Ruzylo <hruzylo@niagarafalls.ca>
Sent: Thursday, April 22, 2021 5:15 PM
To: Norio, Ann-Marie <Ann-Marie.Norio@niagararegion.ca>
Cc: Bill Matson <billmatson@niagarafalls.ca>; Heather Ruzylo <hruzylo@niagarafalls.ca>
Subject: City of Niagara Falls' Council Approved: Support for Tourist Exemption for Retail Holiday Openings

Ann-Marie:

Please be guided by the following motion that was approved at the City of Niagara Falls' Council meeting on April 20, 2021:

ORDERED on the motion of Councillor Wayne Thomson, Seconded by Councillor Victor Pietrangelo that Council support the Tourist Exemption for Retail Holiday Openings request.

Regards,

Heather Ruzylo | Clerks & Council Services Coordinator | Clerks Services | City of Niagara Falls
4310 Queen Street | Niagara Falls, ON L2E 6X5 | (905) 356-7521 ext 4203 | Fax 905-356-9083 | hruzylo@niagarafalls.ca



CLERKS DEPARTMENT

Inter-Departmental Memo

To: Mayor James M. Diodati & Members of Council
From: Bill Matson, City Clerk
Date: April 20, 2021
Re: Tourist Exemption for Retail Holiday Openings

Whether a business is allowed to open on a statutory holiday is determined by Provincial Legislation known as *The Retail Business Holidays Act*.

The Act does not allow holiday openings except for certain exemptions, which are outlined in the Act.

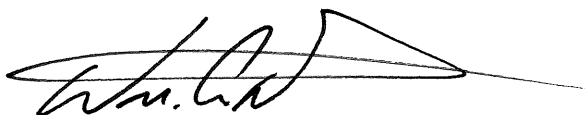
There is a process to apply for a tourist exemption through the Clerks Office at the Region. There is a fee and the Region will hold a public meeting to be held before the Region's Corporate Services Committee on Wednesday May 12, 2021.

The regulations of the legislation state that a retail establishment looking to open on a statutory holiday has to be located within 2km of a tourist attraction and relies on tourists visiting the attraction for business on a holiday. Most applications for such an exemption in Niagara Falls have been approved on the basis that just about every location could be argued to be catering to Tourist in the City.

The Regional Clerks Office has asked the City for its comments on the attached application for Lowe's in Niagara Falls to be open on all holiday's, with the exception of Christmas Day.

As a tourist community, where many businesses are already open on statutory holidays, there seems to be less of a desire to maintain the former "pause" days under the legislation. Council has supported other similar requests of this nature.

RECOMMENDATION: That Council support the request.





Administration

Office of the Regional Clerk

1815 Sir Isaac Brock Way, PO Box 1042, Thorold, ON L2V 4T7

Telephone: 905-685-4225 Toll-free: 1-800-263-7215 Fax: 905-687-4977

www.niagararegion.ca

April 8, 2021

Mr. Bill Matson, City Clerk
City of Niagara Falls
City Hall, P.O. Box 1023
4310 Queen St.
Niagara Falls, ON
L2E 6X5

SENT ELECTRONICALLY

Dear Mr. Matson:

Re: Request for Comments on Application for Tourism Exemption for Holiday Openings – Lowe's, 7959 McLeod Road, Niagara Falls.

Attached is an application received from the Lowe's store located at 7959 McLeod Road in the City of Niagara Falls, requesting a tourism exemption under the Retail Business Holidays Act to permit the store to open on all statutory holidays (with the exception of Christmas Day) from 7:00 a.m. to 9:00 p.m.

I kindly request that you arrange to provide me comments from the City of Niagara Falls regarding this application by Monday, April 26, 2021, for inclusion in the staff report for the Public Meeting to be held before the Region's Corporate Services Committee on Wednesday, May 12, 2021.

If you have any questions regarding this matter, please do not hesitate to contact me.

Yours truly,

A handwritten signature in black ink, appearing to read "Ann-Marie".

Ann-Marie Norio
Regional Clerk
:kl

Bill 6715, *as amended by By-law No. 19-2010*

THE REGIONAL MUNICIPALITY OF NIAGARA

APPLICATION FOR TOURISM EXEMPTION

RE HOLIDAY OPENINGS

The undersigned hereby applies to the Council of the Regional Municipality of Niagara for an exempting by-law under subsection 4(1) of the Retail Business Holidays Act, R.S.O. 1990, Chapter R. 30.

If more than one person carrying on retail business is represented in this application, please list information for each on a separate page and attach to form.

Pursuant to the Regulations under the Act, an application relating to a retail business establishment that on days other than holidays normally uses a total area of 2,400 square feet or more for serving the public or normally has four or more employees serving the public shall be made only by that business establishment.

(PLEASE PRINT OR TYPE AND ADD EXTRA PAGES, IF NECESSARY)

PART 1 – APPLICANT INFORMATION

1. Type of applicant (please check one):

- ☒ one or more person carrying on retail business in the Regional Municipality of Niagara
- ☐ an association, whether or not incorporated, representing persons carrying on retail business in the Regional Municipality of Niagara
- ☐ a council of a local municipality

2. Name of Applicant: LOWE'S
COMPANIES CANADA, ULC

Mailing Address of Applicant: 220, Chemin du Tremblay, Boucherville, Québec, J4B 8H7
(Lowe's Canada Head Office)

Telephone No. of Applicant: (905) 374-5520 (Store Fax No.
Manager)

Email Address of Applicant: avisjuridiques-
legalnotices@lowes.ca

Bill 6715, *as amended by By-law No. 19-2010*

3. Applicant's Authorized Agent Mary Ellen Bench
 (to whom all correspondence Counsel
 will be sent)

Mailing Address of Applicant: Dentons Canada LLP
 77 King Street West
 Suite 400, TD Centre
 Toronto, Ontario
 M5K 0A1

Telephone No. of Applicant 416-863-4724 Fax No. 416-863-4592

Email Address of Applicant maryellen.bench@dentons.com

4. Location of Retail Business Establishment

Municipal Address Street	Lowe's Niagara Falls
Number, Municipality	7959 McLeod Road
	Niagara Falls, Ontario
	L2H 0G5

5. If you wish the exemption to apply to one or more classes of retail business establishments, please define and specify the classes:

Total No. of Sq. Ft. normally used for serving the public: 103,995 square feet

Total No. of Employees normally serving the public: 175 employees

PART II – TOURISM CRITERIA

Tourist attractions are limited to:

- a) Natural attractions or outdoor recreational attractions;
- b) Historical attractions; and
- c) Cultural, multi-cultural or educational attractions.

The two (2) kilometre restriction set out in the Regulations to the Act does not apply to a retail business establishment located in a local municipality within the Regional of Niagara, having a population of less than 50,000.

1. Is business located within two kilometres of a tourist attraction? Yes ☒ No ☐

If yes, describe the nature of tourist attraction:

Lundy's Lane historical district, and related shopping, hotel and recreational venues.

2. Describe nature of direct association with the tourist attraction or reliance on tourists visiting the attraction for business on a holiday

Tourism is the most important business in the City of Niagara Falls, and a major source of employment in the Region. Lowes sells many items that are in demand for those travelling to Niagara Falls by automobile. In addition, Lowes offers many products and services that assist the retail, recreation, accommodation, and arts establishments that serve tourism in Niagara Falls to meet the needs of the tourists who use their facilities. In addition, Lowes plays an important role in assisting local residents who work in the tourism industry and who must work on statutory holidays, to acquire the goods and services they need for their homes conveniently, given the proximity of the store to the tourism areas of Niagara Falls, most notable Lundy's Lane and Stanley Avenue. The location of Lowes makes it convenient to access the broader tourism areas of Niagara Falls as well.

Bill 6715, *as amended by By-law No. 19-2010*

3. Where the application involves a business that one days other than holidays normally uses a total area of 2,400 square feet or more for serving the public, or normally has four or more employees serving the public, please outline the goods or services provided primarily to tourists.

Goods and services provided directly to tourists include recreational products, electric cords and chargers, cleaning supplies, gift items, garden items, and almost everything in the store can be purchased for home delivery. Goods or services that primarily benefit tourists are also provided to restaurants, stores, inns, etc.

This section relates only to applications to grant exemptions on an area basis.

4. a) In what local municipality is it located?

- b) Describe subject area (in words):

(Please attach a map or sketch)

- c) How many businesses are included in this application?
- d) Are all the retail business establishments in the described area within two kilometres of the tourist attraction?
- e) Does the area exceed that necessary to encompass all of the retail business establishments for which an exemption is sought?
- If not, explain how it does not:
- f) How many of the businesses are directly associated with the tourist attraction or rely on tourists visiting the tourist attraction for business on a holiday? (Regulations to the Act require at least 25% of the businesses)
- g) If application is submitted by an association, describe briefly the purpose of the association, the area and type of businesses it represents.

Bill 6715, *as amended by By-law No. 19-2010*

PART III – GENERAL

1. Indicate which holidays, and which specific times or specific number of hours you wish to be open on those holidays:

7:00am to 9:00pm, on all holidays except Christmas

2. Is request seasonal in nature, e.g. summer months only?

If yes, what time period is sought?

N/A

3. What is the justification in relation to the seasonal nature, if any, of the tourist attraction, for the time period sought in the exemption?

4. Is request related to a special event?

NOTE: A retail business establishment may be exempted for up to five holidays a year during which a fair, festival or other special event (but not solely a parade) is being held in that municipality.

For what holidays is exemption being sought?

All holidays. The nature of the business means our goods and services are needed to support the tourism industry regardless of holidays. Our gardening supplies and nursery stock should also be available to the public regardless of holidays.

Describe special event, duration and time of year

5. Indicate how the exemption would, if granted, be for the maintenance or development of tourism and briefly identify other material submitted with this application that supports this conclusion:

Tourism is the most important economic generator for the City of Niagara Falls and the industry employs many from the whole of the Niagara Region, both directly and indirectly. Located close the Lundy's Land heritage district, the Lowes store provides goods that are in demand by tourists, but it also contributes significantly to providing for the goods and services needed to support and maintain the hotel, restaurant, recreational and restaurant industries. Their needs do not stop on statutory holidays, and having Lowes nearby allows the tourism businesses to meet their needs without delay. Also, the many who work in these businesses benefit from having the local Lowes store open to meet their needs on a day they are off work or by picking up an item on the way to or from work.

- 6 -

Approximately 20% of the store PRO sales can be attributed to maintenance items for restaurants, inns, stores that are part of the tourism industry, which is in excess of \$2 million annually in sales.

6. What justification is there for the opening of the retail business establishment(s) on holidays in light of the principle, stated in the Retail Business Holidays Act, that holidays should be maintained as common pause days?

Niagara Falls is unique as a world tourism site and has always been an exception to restrictions on store opening laws as a result. The needs of the tourism industry must be met regardless of whether a day is a statutory holiday.

On April 4, 2020 the Ontario government produced a list of essential service providers during the COVID-19 pandemic. Lowes meets the criteria as an essential service in multiple ways: as a store that sells hardware products and safety supplies, and as a business that supplies other essential businesses and services such as the hotel/motel industry, related to tourism. The important role played by Lowes in supplying goods and services is significant, as recognized by the Province. In addition, Lowes is a retailer of Gardening equipment and nursery stock, items that are meant to be available to the public, regardless of holidays.

EXECUTION BY APPLICANT

I, Antonio Cioffi, of the board of directors of Lowe's Compagnies Canada, ULC do solemnly declare that all of the statements contained in this application are true and I make this solemn declaration conscientiously, believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

Declared before me

Manon Labelle

In the Province of Québec,

this 22 day of March, 2021

(Signature)
(Applicant)

Manon Labelle.
Commissioner of oaths
A Commissioner, etc.



Bill 6715, *as amended by By-law No. 19-2010*

APPOINTMENT OF AUTHORIZED AGENT

I, Antonio Cioffi, hereby appoint Mary Ellen Bench of Dentons Canada LLP to act as Lowe's Companies Canada, ULC authorized agent in this Application.

Witness:

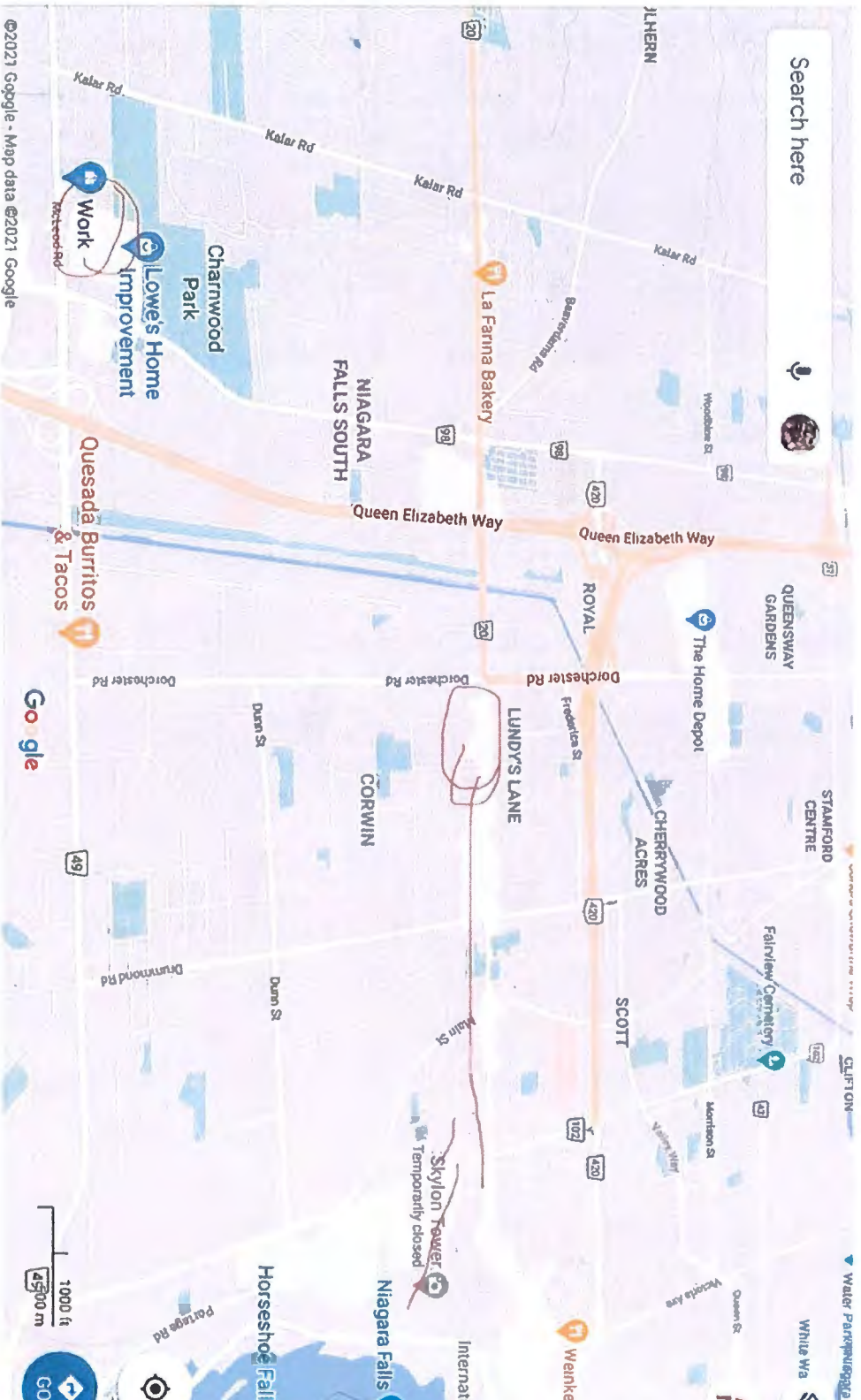
Sharon Wodke

Signed:

Date:

March 22, 2021

Antonio Cioffi



©2021 Google - Map data ©2021 Google

1000 ft
4500 m

